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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 00–103–1]

Brucellosis in Cattle; State and Area Classifications; South Dakota

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of South Dakota from Class A to Class Free. We have determined that South Dakota meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from South Dakota.

DATES: This interim rule was effective December 4, 2000. We invite you to comment on this docket. We will consider all comments that we receive by February 2, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–103–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–103–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percentage of all brucellosis reactor cases found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, South Dakota was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

The last brucellosis-infected cattle herd in South Dakota was released from quarantine in December of 1990. Since then, South Dakota has remained a Class A State due to the presence of a privately owned brucellosis-affected bison herd. An intensive plan for management of brucellosis within this affected herd was set forth in January of 1999, with a goal of releasing the herd from quarantine in November 2000. The herd was officially released from quarantine on October 31, 2000.

After reviewing the brucellosis program records for South Dakota, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing South Dakota from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from South Dakota.

Immediate Action

Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from South Dakota. Under these circumstances, the Administrator has determined that prior notice and

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opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of South Dakota from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in South Dakota, as well as buyers and importers of cattle from this State.

There are an estimated 18,300 cattle herds in South Dakota that will be affected by this rule. About 99 percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

Therefore, we believe that changing the brucellosis status of South Dakota will not have a significant economic effect on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

§ 78.41 [Amended]

2. Section 78.41 is amended as follows:

a. In paragraph (a), by adding "South Dakota," in alphabetical order.

b. In paragraph (b), by removing "South Dakota,".

Done in Washington, DC, this 28th day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–30764 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–377–AD; Amendment 39–12014; AD 2000–24–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspections to detect cracking of the frame web, doubler, and inner chord of the forward edge frame of main entry door number 1, and various follow-on actions. This amendment is prompted by reports of cracking in the frame web, doubler, inner chord, and strap of the forward edge frame of main entry door number 1. The actions specified by this AD are intended to prevent cracks in the frame web and doubler of the forward edge frame of main entry door number 1, which could result in inability of the edge frame to react door stop loads, and consequent rapid depressurization of the airplane.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on June 15, 2000 (65 FR 37497). That action proposed to require inspections to detect cracking of the frame web, doubler, and inner chord of the forward edge frame of main entry door number 1, and various follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposed rule.

Request to Reference New Service Information

One commenter requests that the FAA revise paragraphs (a), (b), and (c) of the proposed rule to reference Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000, as an acceptable means of compliance for the actions required by those paragraphs. (Certain paragraphs of the proposed rule reference Boeing Service Bulletin 747–53A2417, Revision 1, dated July 23, 1998, as the appropriate source of service information for accomplishment of the actions required by those paragraphs.)

Because paragraph (a) of the proposed rule does not reference a service bulletin but only specifies compliance times, the FAA infers that the commenter is requesting that the FAA revise paragraphs (b) and (c), as well as paragraphs (d) and (e), of the proposed rule. The FAA concurs with the commenter's request. Since the issuance of the proposed rule, the FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2417, Revision 2. The procedures in that service bulletin are substantially similar to those in Boeing Service Bulletin 747–53A2417, Revision 1. Thus, paragraphs (b), (d), and (e) of this final rule have been revised accordingly to reference Revision 2 of the service bulletin, in addition to Revision 1, as an acceptable source of service information.

Also, Revision 2 of the service bulletin expands the area of inspection specified in Revision 1 of the service bulletin, to include detailed visual inspections of the aft side of the frame web (referred to as "Area 3" in the service bulletin), an area which is specified in paragraph (c) of the proposed rule and this final rule. Accordingly, paragraph (c) of this AD has been revised to note that Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000, may be used to accomplish the inspections specified in that paragraph. Also, "Note 5" of the proposed rule has been amended to clarify that the inspections in paragraph (c) of this AD are described in Revision 2 of the service bulletin.

Difference Between Revision 2 of the Service Bulletin and This AD

Operators should note that, in addition to the detailed visual inspections of Area 3, the aft side of the frame web, that are specified in this AD, Revision 2 of the service bulletin also specifies detailed visual inspections of an "Area 2," which comprises the forward and aft sides of the frame web and chord. The FAA has determined that, because inspections in this area were not specified in the proposed rule, to require inspections of this area would expand the scope of this AD, necessitating additional notice to the public and reopening of the comment period. Due to the criticality of the unsafe condition addressed in this AD, the FAA finds that to delay issuance of this final rule in this way would be inappropriate. Therefore, this AD does not require inspections of "Area 2," as defined in the service bulletin. However, the FAA may consider further rulemaking to require inspections in this area.

Requests to Correct Typographical Error, Remove Doorstop Locations

One commenter, who otherwise supports the proposed rule, requests that the FAA revise paragraph (c) of the proposed rule to correct a typographical error in a reference to a doorstop location. In the **Federal Register** version of the AD, the sentence that is the subject of the commenter's request reads, "Perform a detailed visual inspection to detect cracking of the aft side of the forward edge door frame web of main entry door number 1 in the exposed area from doorstop #2 [approximately water line (WL) 218] to doorstop #2 (approximately WL 245) at body station 434." Another commenter suggests that the references to doorstop locations be removed entirely from the paragraph.

The FAA acknowledges the typographical error pointed out by the first commenter. The FAA has determined that the WL references in the subject sentence of the proposed rule are correct, and the references to the doorstop locations are not necessary to adequately define the area that needs to be inspected. Therefore, the FAA concurs with the second commenter's suggestion to remove the references to doorstop locations. The affected sentence of paragraph (c) of this final rule has been revised to read, "Perform a detailed visual inspection to detect cracking of the aft side of the forward edge door frame web of main entry door number 1 in the exposed area from approximately [WL] 218 to approximately WL 245 at body station 434."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 685 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 211 airplanes of U.S. registry will be affected by this AD.

For Group 1 airplanes (approximately 191 U.S.-registered airplanes), it will take approximately 3 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators of Group 1 airplanes is estimated to be $34,380, or $180 per airplane, per inspection cycle.

For Group 2 airplanes (approximately 20 U.S.-registered airplanes), it will take approximately 2 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators of Group 2 airplanes is estimated to be $2,400, or $120 per airplane, per inspection cycle.

For Group 1 airplanes (approximately 191 U.S.-registered airplanes), it will take approximately 128 work hours per airplane to accomplish the required repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this repair on U.S. operators of Group 1 airplanes is estimated to be $1,466,880, or $7,680 per airplane.

For Group 2 airplanes (approximately 20 U.S.-registered airplanes), it will take approximately 64 work hours per airplane to accomplish the required repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this repair on U.S. operators of Group 2 airplanes is estimated to be $76,800, or $3,840 per airplane.

The cost impact figures discussed above are based on assumptions that no

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operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the reinforcement of the door frame on a Group 1 airplane, it would take approximately 9 work hours per airplane to accomplish the reinforcement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the reinforcement on a Group 1 airplane is estimated to be $540 per airplane.

Should an operator elect to accomplish the reinforcement of the door frame on a Group 2 airplane, it would take approximately 5 work hours per airplane to accomplish the reinforcement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the reinforcement on a Group 2 airplane is estimated to be $300 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.G. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–07 Boeing: Amendment 39–12014. Docket 99–NM–377–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 685 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the frame web and doubler of the forward edge frame of main entry door number 1, which could result in inability of the edge frame to react door stop loads, and consequent rapid depressurization of the airplane, accomplish the following:

Initial Inspection: Compliance Time

(a) At the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD; as applicable; accomplish the requirements of paragraphs (b) and (c) of this AD.

(1) For airplanes that have accumulated fewer than 13,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 13,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 13,000 or more total flight cycles but fewer than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 21,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs first.

(3) For airplanes that have accumulated 20,000 or more total flight cycles but fewer than 25,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 25,500 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs first.

(4) For airplanes that have accumulated 25,000 or more total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

Initial Detailed Visual and High Frequency Eddy Current Inspections

(b) Perform a detailed visual inspection and a high frequency eddy current inspection of the frame web, doubler, and inner chord of the forward edge door frame to detect cracking of main entry door number 1, in accordance with Boeing Service Bulletin 747–53A2417, Revision 1, dated July 23, 1998; or Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000. For Group 1 airplanes (as identified in the service bulletin), accomplish the inspections on the left and right sides of the airplane. For Group 2 airplanes (as identified in the service bulletin), accomplish the inspections on the left side of the airplane only.

Note 2: For the purposes of this AD, it is not necessary to count flight cycles accumulated at 2.0 pounds per square inch or less differential pressure.

Note 3: Inspections, reinforcements, and repairs accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2417, dated June 25, 1998, are considered acceptable for compliance with paragraph (b) of this AD.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Detailed Visual Inspections (No Terminating Action)

(c) Remove the cover assemhly for the body torque tube located between the door hinge attachments. Perform a detailed visual inspection to detect cracking of the aft side of the forward edge door frame web of main entry door number 1 in the exposed area from approximately water line (WL) 218 to approximately WL 245 at body station 434. Pay particular attention to the row of fasteners that attach the frame web to the frame outer chord. After completing inspections, replace the cover assembly. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles. Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000, may be used to accomplish these inspections.

Note 5: The inspections required by paragraph (c) of this AD are not described in Boeing Service Bulletin 747–53A2417, Revision 1, dated July 23, 1998. However, these inspections are described in Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000.

Note 6: There is no terminating action currently available for the inspections required by paragraph (c) of this AD.

Repetitive Inspections/Reinforcement/Repair (No Cracks Detected)

(d) If no crack is detected during the inspection required by paragraph (b) of this AD, prior to further flight, oversize fastener holes in accordance with Boeing Service Bulletin 747–53A2417, Revision 1, dated July 23, 1998; or Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000; and accomplish the requirements of paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) Repeat the inspections specified in paragraph (b) of this AD one time within 3,000 flight cycles. Within 3,000 flight cycles after accomplishment of the repeat inspection, accomplish paragraph (d)(2) or (d)(3) of this AD.

(2) Reinforce the door frame, in accordance with Figure 5 of the service bulletin. Thereafter, at intervals not to exceed 3,000 flight cycles, perform a detailed visual inspection to detect cracks of the forward and aft side of the frame, in accordance with Figure 6 of the service bulletin. Within 10,000 flight cycles after the reinforcement, accomplish the requirements of paragraph (d)(3) of this AD.

(3) Accomplish the web replacement repair ("Terminating Action") in accordance with the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of paragraphs (d)(1) and (d)(2) of this AD.

Repair (Cracks Detected)

(e) If any crack is detected during any inspection required by paragraph (b), (d)(1), or (d)(2) of this AD, prior to further flight, accomplish the repair ("Terminating Action") in accordance with Boeing Service Bulletin 747–53A2417, Revision 1, dated July 23, 1998; or Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000. Such repair constitutes terminating action for the repetitive inspection requirements of paragraphs (d)(1) and (d)(2) of this AD.

Repair

(f) If any cracking is detected during the inspection required by paragraph (c) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided in paragraph (f) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53A2417, Revision 1, dated July 23, 1998; or Boeing Alert Service Bulletin 747–53A2417, Revision 2, dated August 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30399 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–363–AD; Amendment 39–12013; AD 2000–24–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707, 727C, and 727–100C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 707, 727C, and 727–100C series airplanes, that currently requires repetitive inspections to detect cracking of the main cargo door skin and frames, and repair, if necessary. The existing AD also provides optional terminating modifications. This amendment requires follow-on repetitive inspections of repaired or modified areas for certain airplanes. This amendment is prompted by reports of cracking and/or tearing of the main cargo door outer skin and subsequent failure of the door frame. The actions specified by this AD are intended to detect and correct such cracking and/or tearing, which could result in failure of the door frame and consequent rapid decompression of the airplane.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 83–02–09, amendment 39–4549 (48 FR 6953, February 17, 1983); which is applicable to certain Boeing Model 707, 727C, and 727–100C airplanes; was published in the Federal Register on April 19, 2000 (65 FR 20924). The action proposed to continue to require repetitive inspections to detect cracking of the main cargo door skin and frames, and repair, if necessary, and to continue to provide for optional terminating modifications. The action also proposed to require new follow-on repetitive inspections of repaired or modified areas for certain airplanes.

Explanation of Change in the Final Rule

Paragraph (e)(2) of the proposed rule states that it applies to airplanes on which the modification specified in Part II, Option 2 of the Accomplishment Instructions of Boeing Service Bulletin 727–52A0079, Revision 4, dated June 19, 1981, Revision 5, dated June 17,

1983, or Revision 6, dated January 11, 1990, has been accomplished. However, Part II, Option 2, and the modification contained therein (which involves installation of over-sized, protruding-head rivets), appears only in Revision 6 of the service bulletin. Therefore, paragraph (e)(2) of this final rule has been revised to refer only to Revision 6 of the service bulletin. In addition, paragraph (e)(1) of this final rule has been revised to clarify that the modification referred to as "Part II, Option 1" in Revision 6 of the service bulletin is referred to as "Part II" of Revisions 4 and 5 of the service bulletin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request to Reference Terminating Action

One commenter requests that the FAA revise the proposed rule to terminate the repetitive high frequency eddy current (HFEC) inspections specified in paragraph (e) of the proposed AD following installation of over-sized, protruding-head rivets in the skin of the main cargo door. The commenter points out that such installation of over-sized, protruding-head rivets in crack-free holes is one of two options for modification in Revision 5 of the service bulletin. The commenter states that eliminating the requirement for HFEC inspections would be consistent with the requirements of AD 91–06–06, amendment 39–6921 (56 FR 9612, March 7, 1991), which does not require repetitive HFEC inspections of the upper row of fuselage lap splices once protruding-head rivets have been installed.

The FAA concurs with the intent of the commenter's request and its rationale. However, the FAA infers that, though the commenter refers to Revision 5 of the service bulletin, the correct reference should be to Revision 6 of the service bulletin. (As noted above, Revision 5 does not describe the modification to which the commenter refers.) For airplanes modified per Part II, Option 2 of the Accomplishment Instructions of the service bulletin, paragraph (e)(2) of the proposed rule specifies repetitive internal and external detailed visual and HFEC inspections of the modified area. The FAA has determined that the HFEC inspection is no longer necessary following accomplishment of the modification in Part II, Option 2 of the Accomplishment Instructions of Revision 6 of the service bulletin. Therefore, paragraph (e)(2) of this final rule has been revised to delete reference to an HFEC inspection.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 50 Model 707 and 308 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 Model 707 and 81 Model 727 airplanes of U.S. registry will be affected by this AD.

The cost impact information in AD 83–02–09 inadvertently contained information relevant only to the X-ray inspection; however, since the detailed visual and eddy current inspections are also acceptable methods to detect cracking, this AD includes the estimated number of work hours necessary to accomplish any one of the three inspection methods. Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $40 per work hour to $60 per work hour. The cost impact information, below, has been revised to reflect these changes.

Should an operator elect to accomplish the detailed visual inspection that is currently required by AD 83–02–09, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed visual inspection is estimated to be $60 per airplane.

Should an operator elect to accomplish the eddy current inspection that is currently required by AD 83–02–09, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection is estimated to be $60 per airplane.

Should an operator elect to accomplish the X-ray inspection that is currently required by AD 83–02–09, it will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the X-ray inspection is estimated to be $180 per airplane.

The detailed visual inspection (for Model 727 series airplanes only) required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed visual inspection is estimated to be $4,860, or $60 per airplane.

The eddy current inspection (for Model 727 series airplanes only) required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection is estimated to be $4,860, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4549 (48 FR 6953, February 17, 1983), and by adding a new airworthiness directive (AD), amendment 39–12013, to read as follows:

2000–24–06 Boeing: Amendment 39–12013. Docket 99–NM–363–AD. Supersedes AD 83–02–09, Amendment 39–4549.

Applicability: Model 707, 727C, and 727–100C series airplanes; as listed in Boeing Service Bulletins 2999, Revision 3, dated January 12, 1972, and 727–52–79, Revision 4, dated June 19, 1981; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the main cargo door skin and frames, which could result in failure of the door frame, and consequent rapid decompression of the airplane, accomplish the following:

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Restatement of Requirements of AD 83–02–09:

Initial Inspection

(a) Within 500 landings after March 3, 1983 (the effective date of AD 83–02–09, amendment 39–4549), or prior to the accumulation of 25,000 total landings after March 3, 1983, whichever occurs later: Perform an inspection (detailed visual, eddy current, or X-ray) to detect cracks of the main cargo door outer skin and frames between body stations (BS) 505 and 595, from the lower edge of the door hinge a minimum of 6 inches down, and 6 inches above, and 3 inches below the center line of stringer 10, in accordance with Boeing Service Bulletin 2999, Revision 3, dated January 12, 1972, or Revision 4, dated January 31, 1991 (for Model 707 series airplanes); or Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Service Bulletin 727–52–79, Revision 5, dated June 17, 1983, or Boeing Service Bulletin 727–52A0079, Revision 6, dated January 11, 1990 (for Model 727 series airplanes); as applicable.

Repetitive Inspections

(b) Repeat the inspection required by paragraph (a) of this AD at the times specified in paragraph (b)(1), (b)(2) or (b)(3) of this AD; as applicable; until accomplishment of the modification required by paragraph (d) of this AD.

(1) Repeat the detailed visual inspection at intervals not to exceed 500 landings.

(2) Repeat the eddy current inspection at intervals not to exceed 750 landings.

(3) Repeat the X-ray inspection at intervals not to exceed 1,000 landings.

Repair

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, repair any cracks detected in accordance with Boeing Service Bulletin 2999, Revision 3, dated January 12, 1972, or Revision 4, dated January 31, 1991 (for Model 707 series airplanes); or Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Service Bulletin 727–52–79, Revision 5, dated June 17, 1983, or Boeing Service Bulletin 727–52A0079, Revision 6, dated January 11, 1990 (for Model 727 series airplanes); as applicable.

Optional Terminating Action

(d) Modification of the main cargo door in accordance with Part II, Option 1 or Option 2, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 2999, Revision 3, dated January 12, 1972, or Revision 4, dated January 31, 1991 (for Model 707 series airplanes); or Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Service Bulletin 727–52–79, Revision 5, dated June 17, 1983, or Boeing Service Bulletin 727–52A0079, Revision 6, dated January 11, 1990 (for Model 727 series airplanes); as applicable; constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

New Requirements of this AD:

Post-Repair/Post-Mod Repetitive Inspections

(e) For Model 727 series airplanes: Within 27,000 flight cycles after accomplishment of the repair specified in paragraph (c) of this AD, and/or the modification specified in paragraph (d) of this AD, as applicable; or within 1,000 flight cycles after the effective date of this AD; whichever occurs later; accomplish the requirements of paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes that have accomplished the modification specified in Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Revision 5, dated June 17, 1983; or in Part II, Option 1, of the Accomplishment Instructions of Boeing Service Bulletin 727–52A0079, Revision 6, dated January 11, 1990: Perform a detailed visual and eddy current inspection of the modified area and/or any repaired area to detect cracks, in accordance with the service bulletin. Repeat the inspections at intervals not to exceed 3,800 flight cycles.

(2) For airplanes that have accomplished the modification specified in Part II, Option 2 of the Accomplishment Instructions of Boeing Service Bulletin 727–52A0079, Revision 6, dated January 11, 1990: Perform an internal and external detailed visual inspection of the modified area to detect cracks in accordance with the service bulletin. Repeat the inspection at intervals not to exceed 3,800 flight cycles.

Repair

(f) If any cracking is detected during any inspection required by paragraph (e)(1) or (e)(2) of this AD: Prior to further flight, repair any cracks detected in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance approved previously in accordance with AD 83–02–09, amendment 39–4549, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note 4: Incorporation of the Boeing Model 707–720 Supplemental Structural Inspection

Document (SSID) into the operator's approved airplane maintenance program constitutes an approved alternative method of compliance for Model 707 and 720 series airplanes.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraph (f) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 2999, Revision 3, dated January 12, 1972; Boeing Service Bulletin 2999, Revision 4, dated January 31, 1991; Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981; Boeing Service Bulletin 727–52–79, Revision 5, dated June 17, 1983; or Boeing Service Bulletin 727–52A0079, Revision 6, including Addendum, dated January 11, 1990; as applicable. This incorporation by reference was approved by the Director of the in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30398 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–378–AD; Amendment 39–12027; AD 2000–24–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 707 and 720 series airplanes, that requires repetitive inspections of certain stringers and around certain fastener holes of the lower skin of the wings to detect fatigue cracking, and repair, if necessary. This action is necessary to detect and correct such cracking and consequent damage to adjacent structure, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 707 and 720 series airplanes was published in the **Federal Register** on August 10, 2000 (65 FR 48941). That action proposed to require repetitive inspections of certain stringers and around certain fastener holes of the lower skin of the wings to detect fatigue cracking, and repair, if necessary.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, Boeing, requests that all references to Model 720 series airplanes be deleted from the proposed rule. Specifically, Boeing suggests that:

- the Cost Impact paragraph be revised to specify that there are approximately "* * * 49 affected Model 707 series airplanes worldwide * * *;"
- paragraph (a) of the proposed rule be removed; and
- Note 2 of the proposed rule be revised to state that the actions required by AD 81–11–06 R1, amendment 39–4178, for Model 720 airplanes remain in effect. The commenter states that there are no Model 720 series airplanes in active service. In addition, the changes in Revision 4 of the referenced alert service bulletin affect only Model 707 series airplanes.

The FAA does not concur with the commenter's request to remove references to Model 720 series airplanes from this final rule. Even though no Model 720 series airplanes are currently in active service, including this model in the applicability of the final rule is necessary to ensure that the unsafe condition is addressed on any Model 720 series airplane that is returned to service in the future. In addition, the FAA notes that several changes in Revision 4 of the alert service bulletin do, in fact, address Model 720 series airplanes. No change to this final rule is necessary.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 49 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 56 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,720, or $3,360 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–20 Boeing: Amendment 39–12027. Docket 99–NM–378–AD.

Applicability: All Model 707 and 720 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect fatigue cracking of certain stringers, and around certain fastener holes of the lower skin of the wings, which could result in damage to adjacent structure and consequent reduced structural integrity of the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) For Model 720 series airplanes: Within 500 flight cycles after the effective date of this AD, perform an initial high frequency eddy current (HFEC) inspection to detect cracking, in accordance with Figure 1 of Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999.

(b) For Model 707 series airplanes having fewer than 15,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 15,000 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs later, perform an initial HFEC inspection in accordance with Figure 2; steps 1, 2, and 3; of Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999. Repeat the inspection thereafter at intervals not to exceed 1,300 flight cycles. Accomplishment of the repetitive HFEC inspections terminates the low frequency eddy current inspections specified in AD 81–11–06 R1, amendment 39–4178.

(c) For Model 707 series airplanes having 15,000 total flight cycles or more as of the effective date of this AD: Within 150 flight cycles after the effective date of this AD, perform an initial HFEC inspection in accordance with Figure 2; steps 4, 5, and 6; of Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999, and accomplish the requirements in paragraphs (c)(1) and (c)(2) of this AD.

(1) Repeat the inspection thereafter at intervals not to exceed 150 flight cycles until accomplishment of the inspections required by paragraph (c)(2) of this AD.

(2) Within 400 flight cycles after accomplishment of the initial inspection required by paragraph (c) of this AD, accomplish the HFEC inspections required by paragraph (b) of this AD. Accomplishment of these inspections terminates the repetitive inspections required by paragraph (c)(1) of this AD.

Note 2: The actions required by AD 81–11–06 R1, amendment 39–4178 (with the exception of the LFEC inspections, as specified in paragraph (b) of this AD) remain in effect.

Inspect and Repair

(d) If any cracking is detected during any inspection required by this AD, prior to further flight, perform an internal inspection in accordance with the Work Instructions specified in Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999; and, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as required by paragraph (d) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin A3395, Revision 4, dated October 28, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30397 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–96–AD; Amendment 39–12025; AD 2000–24–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, and Model A300–600 series airplanes, that requires repetitive inspections to detect chafing and the existence of repairs of the harness of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. This amendment also requires modification of the harness for the high-level sensor of the outer wing fuel tanks, which terminates certain repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing of the harness of the high-level sensor, which could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tanks.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (A300–600) series airplanes, was published in the **Federal Register** on June 13, 2000 (65 FR 37084). That action proposed to require repetitive inspections to detect chafing and the existence of repairs of the harness of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. That action also proposed to require modification of the harness for the high-level sensor of the outer wing fuel tanks, which would terminate certain repetitive inspections.

Clarification of Model Designation

Since the issuance of the proposed AD, the FAA has changed the manner in which it identifies the airplane models referred to as "Airbus Model A300 and A300–600 series airplanes" to reflect the model designation specified on the type certificate data sheet. This final rule has been revised to show the appropriate model designations for those airplanes.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter recommends that the FAA only mandate the inspection service bulletins, and not the modification service bulletins. The commenter is convinced that the inspections alone are sufficient to ensure safety.

The FAA does not concur with the commenter's request. The FAA is aware that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, did not mandate the modification in the French airworthiness directive that addresses the identified unsafe condition. However, as explained in the proposal, the FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. No additional data were submitted by the commenter that would cause the FAA to change its position in this regard. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $2,220, or $60 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $2,220, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–18 Airbus Industrie: Amendment 39–12025. Docket 2000–NM–96–AD.

Applicability: Model A300 B2 and B4 series airplanes, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (A300–600) series airplanes; certificated in any category; except those airplanes on which Airbus Modification 04489 has been installed during production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire harnesses of the high-level sensors, which could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tanks, accomplish the following:

Detailed Visual Inspection

(a) Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection to detect chafing and the existence of repairs of the harness (cable) of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators, in accordance with Airbus Service Bulletin A300–28–0077 (for Model A300 series airplanes) or A300–28–6062 (for Model A300–600 series airplanes), each dated July 19, 1999, as applicable.

(1) For airplanes on which modification of the harness in accordance with Airbus Service Bulletin A300–28–0058 (for Model A300 series airplanes) or A300–28–6020 (for Model A300–600 series airplanes), as applicable, HAS NOT been accomplished: Accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Repeat the detailed visual inspection thereafter at intervals not to exceed 500 flight hours until the requirements of paragraph (a)(1)(ii) of this AD are accomplished. If any wire chafing, chafe mark, or existing repair is detected during any inspection, prior to further flight, determine the appropriate repair and/or condition of repair as specified in Inspection Table 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–28–0077 or A300–28–6062, as applicable. At the times specified in Inspection Table 1, accomplish corrective actions (e.g., temporary or permanent repairs, and follow-on inspections and repairs) in accordance with the applicable service bulletin. If any discrepancy is found during any follow-on inspection, prior to further flight, repair the discrepancy in accordance with the applicable service bulletin.

(ii) Within 18 months after the effective date of this AD, modify the harness of the high-level sensor in the outer wing fuel tanks in accordance with Airbus Service Bulletin A300–28–0058, Revision 02 (for Model A300 series airplanes), or A300–28–6020, Revision 01 (for Model A300–600 series airplanes), each dated September 28, 1999. Accomplishment of the modification terminates the 500-flight-hour repetitive inspection required by paragraph (a)(1) of this AD. However, if a temporary repair is installed, the 10,000-flight-hour detailed visual inspection specified in the follow-on corrective actions of Table 1 continues to be required by this AD.

(2) For airplanes on which modification of the harness in accordance with Airbus Service Bulletin A300–28–0058 (for Model A300 series airplanes) or A300–28–6020 (for Model A300–600 series airplanes), as applicable, HAS been accomplished: Accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii), as applicable.

(i) If no wire chafing, chafe marks, or existing repairs are detected, no further action is required by this AD.

(ii) If any wire chafing, chafe mark, or existing repair is detected, prior to further flight, determine the appropriate repair and/or condition of repair specified in Inspection Table 2 of the Accomplishment Instructions of Airbus Service Bulletin A300–28–0077 or A300–28–6062, as applicable. At the times specified in Inspection Table 2, accomplish corrective actions (e.g., temporary or permanent repairs and follow-on inspections) in accordance with the applicable service bulletin. If any discrepancy is found during any follow-on inspection, prior to further flight, repair the discrepancy in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Modification accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–28–0058, dated December 15, 1988, or Revision 01, dated October 1, 1991 (for Model A300 series airplanes); or A300–28–6020, dated December 15, 1988 (for Model A300–600 series airplanes); is considered acceptable for compliance with the action specified in paragraph (a)(1)(ii) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A300–28–0077, dated July 19, 1999; Airbus Service Bulletin A300–28–0058, Revision 02, dated September 28, 1999; Airbus Service Bulletin A300–28–6062, dated July 19, 1999; or Airbus Service Bulletin A300–28–6020, Revision 01, dated September 28, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–404–293(B), dated October 6, 1999.

Effective Date

(e) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30395 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–227–AD; Amendment 39–12015; AD 2000–24–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A319, A320, and A321 series airplanes, that requires a revision to the Airplane Flight Manual; inspection to detect damage of the wiring and adjacent structure along the length of the fairing of the fuel boost pump; corrective actions, if necessary; and modification of the fuel pump wire and fairing. The actions specified by this AD are intended to prevent electrical arcing of the fuel boost pump wire, which could result in wing structural damage, fire, and/or fuel vapor explosion. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on August 24, 2000 (65 FR 51560). That action proposed to require a revision to the Airplane Flight Manual (AFM); inspection to detect damage of the wiring and adjacent structure along the length of the fairing of the fuel boost pump; corrective actions, if necessary; and modification of the fuel pump wire and fairing.

Action Since the Issuance of Proposed AD

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directive 2000–419–154(B), dated October 4, 2000. That airworthiness directive includes a procedure for revising the AFM. In addition, if a fuel boost pump malfunctions, airworthiness directive procedures specify removing the wiring fairing to inspect the electrical wiring, fairing, and wing skin within the fairing area; and corrective actions, if necessary. Procedures also include a reporting requirement.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the AFM revision specified by the proposed AD.

Request To Delete the Inspection Requirement

Five commenters request deleting the requirement in paragraph (b) of the proposed AD, which specifies an inspection of the wiring and adjacent structure along the length of the fairing. All of the commenters are concerned that the inspection could induce more damage, even if operators exercise caution as recommended in the proposed AD.

One commenter states that in-service experience indicates that arcing of the underwing fuel pump wiring is mainly linked to poor maintenance action rather than to damage due to vibration and chafing. That commenter considers that most of the damage has occurred during fairing replacement when the fuel boost pump wire can be pinched and damaged. A second commenter concurs and suggests that the inspection specified in paragraph (b) be included in paragraph (c) of this AD, in case a circuit breaker tripped. A third commenter considers that removing the fairing is unnecessary, and that such action may cause needless damage to the wiring upon re-installation. In addition, the design of the system is such that, if a wire is trapped, the circuit breaker will trip and avert danger. A fourth commenter considers that the inspection increases the probability of inducing a fault despite heightened awareness, and that the inspection should be required only when terminating action is identified and applied before reinstalling the fairing. A fifth commenter notes that, if a fuel pump circuit breaker trips, a full inspection of the wiring underneath the fairing is required prior to further use of that pump. Further, that requirement should be enough to remove the need for the inspection specified by the proposed AD.

The FAA does not concur that the detailed visual inspection in paragraph (b) of the proposed AD should be deleted. We consider that the benefit from the one-time inspection outweighs the risk of wire damage during reassembly of the fairing. We have received reports of damaged wiring and arcing to the fuselage skin on in-service and newly manufactured airplanes, which indicate that additional airplanes may have pre-existing wire damage. In addition, we have found that intermittent arcing, which gradually eroded the adjacent aluminum structure and penetrated into the fuel tank, has occurred on other model airplanes without tripping the circuit breaker. Therefore, the possibility that such arcing damage could result in fuel leaking on top of the arcing wire justifies the one-time inspection.

We do not agree that the inspection increases the probability of inducing damage. We point out that the original fairing installations were done without any installation precautions. However, to ensure that wiring damage is not induced during replacement action, we included specific instructions cautioning operators to take special care when replacing the fairing. Those instructions, which were added to paragraph (b) of the proposed AD, make it unlikely that improper installation of the fairing will occur.

For these reasons, we consider that the one-time detailed visual inspection required by paragraph (b) of this AD is needed to ensure that no critical condition exists in the fleet. Paragraph (b) has not been deleted in the final rule.

Requests To Specify a Difference Regarding the Inspection Requirement

Two commenters state that, although the proposed AD specifies a one-time inspection (of all Model A319, A320, and A321 series airplanes), the previously referenced French airworthiness directive does not specify such an inspection. This difference should be included in the final rule so that other Civil Aviation Authorities can decide on the corrective actions they consider appropriate, and so that any confusion for the operators is avoided.

We concur with the request to specify this difference in the final rule. **Note 4** of the final rule includes a statement that notifies operators of the difference between this AD and the French airworthiness directive.

Request To Add a Reference to an Airplane Flight Manual (AFM)

One commenter requests adding a reference to the DGAC-approved AFM Temporary Revision (TR) 2.05.00/31 in paragraph (a) of the proposed AD as a means of compliance. That TR includes the same basic requirements defined in paragraph (a) of the proposed AD.

We concur with this request, and agree that the TR includes the same basic requirements defined in paragraph (a) of the proposed AD. Paragraph (a) of the final rule now states that "This may be accomplished by inserting a copy of this AD or Airbus Temporary Revision 2.04.00/31 into the AFM."

Requests To Delete the Modification Requirement

Two commenters request deleting the modification requirement specified by paragraph (e) of the proposed AD. One commenter states that a final fix is being developed and should be available by the end of this year. When the final fix is available, a new AD should be issued to mandate the modification. Another commenter considers that the modification should be required within 18 months after the modification is made available. However, since the modification is not currently available, that requirement should be removed from the AD.

We partially concur with the requests regarding the modification requirement in paragraph (e) of the proposed AD. Although a final modification has not been completely defined, we consider it imperative to speed up the development and installation of a modification to prevent any chance of the wires being damaged either during removal and replacement of the fairing, or due to vibration while the airplane is in service. We have determined that allowing an additional 6 months for development and testing of the modification is appropriate to ensure that the modification is effective and to allow enough time for incorporating the modification on in-service airplanes. The compliance time for the modification is extended from 18 to 24 months in paragraph (e) of the final rule.

Request To Revise the Cost Estimate

The Air Transport Association (ATA) of America, on behalf of one of its members, states that re-installation of the fairing, per the "Installation of Fuel Pump Fairing" section of Airbus Airplane Maintenance Manual (AMM) Task 28–21–49–400–001, requires the use of a sealant with a cure time of up to 16 hours. The commenter adds that the sealant curing process will have a severe economic impact on the airlines, which does not appear to be addressed in the Cost Impact paragraph of the NPRM.

We infer that the commenter requests a revision of the cost estimate in the proposed AD, but we do not concur that a revision to the cost estimate is necessary. While we agree that the previously referenced AMM specifies the use of sealant to reassemble the front fairing and cover plate, upon further review we have determined that it is not necessary to remove the front fairing and cover plate to inspect the portion of the wiring where damage has been found. Therefore, we have revised paragraph (b) in the final rule to require removal of only the "rear and intermediate" fairing. With this change, there is no requirement to apply sealant during accomplishment of the action required by paragraph (b) of this AD. No change to the cost estimate was made in the final rule.

Request To Delete Paragraph (c)

One commenter requests that paragraph (c) of the proposed AD be deleted from the final rule. The airplane trouble-shooting manual (TSM) addresses what to do when a circuit breaker trips and includes procedures for checking the wiring, if necessary. The commenter adds that mandating the removal of the fairing to check the wiring when it is unnecessary may induce problems. In the past, the TSM procedure has been used to effectively locate any arcing of the pump wiring.

We do not concur that paragraph (c) should be deleted from this AD. While we agree that the TSM includes a procedure for checking the continuity of the wire, the check may not detect an exposed wire condition. In addition, there have been cases where the wire was not inspected and was later found to be damaged. Therefore, we consider that an inspection to determine the condition of the wire is necessary to ensure that no arcing condition exists. Paragraph (c) was not deleted in the final rule.

Request To Revise the Repair Requirements

One commenter recommends revising paragraph (b)(2) of the proposed AD to include a reference to the Airbus Standard Repair Manual (SRM), and points out that paragraph (b)(1) of the proposed AD references standard practices of the manufacturer's Aircraft Wiring Manual. The commenter notes that, if any damage beyond SRM limits is found, [the commenter's] procedures specify seeking FAA or DGAC repair approval for structures that are the subject of AD's.

We concur with the request to revise the repair requirements. Because the SRM is approved by the DGAC, it may be used as the approved data source to repair any damage that does not exceed the limits specified in the SRM. We have revised paragraph (b)(2) in the final rule to include the SRM as another approved method for repairing the airplane structure.

Explanation of Change Made to Proposal

We have clarified the inspection requirement contained in the proposed AD.

Although NOTE 2 in the proposal specified a detailed inspection, we have revised this final rule to clarify that its intent is to require a detailed visual inspection. NOTE 2 of the final rule has been changed accordingly.

Editorial Changes to the Final Rule

Airbus advises that the circuit breakers for the wing fuel tank pump are designated as 1QA, 2QA, 7QA, and 8QA. We have added these circuit breaker designators to paragraph (a) of the final rule.

Airbus also advises that the Aircraft Wiring Manual (AWM), Standard Practices, Chapter 20, includes procedures for repairing damaged wire. As a result of this information, we have added repair to the existing replacement action as another method of compliance in paragraph (b)(1) of the final rule. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD. This change provides operators with an option to either repair or replace the wire per the AWM.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 306 Model A319, A320, and A321 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators is estimated to be $18,360, or $60 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required inspection (including time to remove the fairing), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the wiring inspection on U.S. operators is estimated to be $36,720, or $120 per airplane.

Since the manufacturer has not yet developed a modification commensurate with the requirements of

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this AD, we are unable at this time to provide specific information as to the number of work hours or cost of parts that will be required to accomplish the modification. The compliance time of 24 months should provide ample time for the development, approval, and installation of an appropriate modification.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–08 Airbus Industrie: Amendment 39–12015. Docket 2000–NM–227–AD.

Applicability: All Model A319, A320, and A321 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing of the fuel boost pump wire, which could result in wing structural damage, or fire and/or fuel vapor explosion, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following which may be accomplished by inserting a copy of this AD or Airbus Temporary Revision 2.04.00/31 into the AFM:

"FUEL SYSTEM
If circuit breaker 1QA, 2QA, 7QA, and 8QA for any wing tank fuel boost pump is tripped, do not reset."

Inspection

(b) Within 90 days after the effective date of this AD: For each fuel boost pump, remove the rear and intermediate fairings located on the lower wing skin and perform a detailed visual inspection of the wiring and the adjacent structure along the length of the fairings. Inspect to detect damage to the wires including chafed, pinched, or melted wires, and any signs of arcing damage to the structure. When replacing the fairing following the inspection, take care not to pinch or otherwise damage the wiring of the fuel boost pumps; incorrect replacement of the fairing could cause damage to the wiring.

(1) If any damage to the wire, as described in paragraph (b) of this AD, is detected: Prior to further flight, either repair the wire or replace the wire with new wire per the manufacturer's Aircraft Wiring Manual, Standard Practices, Chapter 20. Submit a report at the time specified and per paragraph (d) of this AD.

(2) If any arcing damage to the structure is detected: Prior to further flight, repair the damaged structure per the airplane Structural Repair Manual or a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Submit a report at the time specified and per paragraph (d) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(c) As of the effective date of this AD: For any fuel boost pump on which circuit breaker 1QA, 2QA, 7QA, and 8QA of the pump has tripped, prior to further use of that pump, accomplish the inspection and applicable corrective actions specified by paragraph (b) of this AD.

Reporting Requirement

(d) If any damage is detected during any inspection required by paragraphs (b) and (c) of this AD: Within 10 days after accomplishing that inspection, submit a report of the inspection findings to the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1149. The report must include a description of the damage found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Modification

(e) Within 24 months after the effective date of this AD: Modify the fuel pump wire and fairing, per a method approved by the Manager, International Branch, ANM–116.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–419–154(B), dated October 4, 2000. Operators should note that, although this AD requires a one-time detailed visual inspection, the French airworthiness directive does not mandate such an inspection.

Effective Date

(h) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30394 Filed 12–1–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–107–AD; Amendment 39–12007; AD 2000–23–34]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–300, –400, and –500 series airplanes, that requires replacement of the existing autothrottle computer with a new, improved autothrottle computer. This amendment is prompted by reports of asymmetric thrust conditions during flight caused by irregular autothrottle operation in which the thrust levers slowly move apart causing the airplane to bank excessively and go into a roll. The actions specified by this AD are intended to prevent such conditions, which could result in loss of control of the airplane.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thanh Truong, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2552; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–300, –400, and –500 series airplanes was published in the **Federal Register** on June 12, 2000 (65 FR 36803). That action proposed to require replacement of the existing autothrottle computer with a new, improved autothrottle computer.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters state no objection to the proposed rule and indicate that the proposed replacements are already in progress on their fleets.

Request to Increase Compliance Time

Three commenters request an increase in the compliance time above the proposed one year after the effective date of this AD. One commenter suggests a compliance time of 18 months, but states no reason for its request. A second commenter suggests a compliance time of two years, to account for the amount of time necessary for a particular repair station to accomplish the modification. A third commenter does not make a specific suggestion for a compliance time, though it states that it will need four years to complete the proposed replacement using existing spares, considering the amount of time necessary for the repair station (the same one referenced by the second commenter) to modify existing autothrottle computers.

The FAA concurs that the compliance time for the requirements of this AD may be extended. To assist in determining an appropriate compliance time, the FAA contacted the manufacturer of the autothrottle computers to determine the number of authorized repair facilities and the manpower available. The FAA also obtained data on the number of autothrottle computers manufactured, the number of units already converted, and the number of airplanes that are affected. Based on this information, the FAA finds that an extension of the compliance time to 18 months will be sufficient to allow accomplishment of this AD on all affected airplanes. The FAA also finds that such an extension of the compliance time will not adversely affect the continued safety of the airplane fleet. Therefore, paragraph (a) of this AD has been revised to state a compliance time of 18 months after the effective date of this AD.

Request to Remove "Spares" Requirement

One commenter requests that the FAA revise the proposed AD to remove paragraph (b), the "Spares" paragraph. That paragraph states, "As of the effective date of this AD, no person shall install on any airplane, an autothrottle computer having part number 10–62017–1, –2, –3, –4, –5, –11, –21, –23, –25, or –27." The commenter's request was based on the length of time necessary for modification of the existing autothrottle computers by an authorized repair facility.

The FAA does not concur with the commenter's request to delete the "Spares" requirement. As stated previously, the FAA finds that extension of the compliance time for this AD from one year to 18 months after the effective date of this AD will allow adequate time for autothrottle computers to be modified by an authorized repair facility and for operators to comply with the requirements of this AD, without compromising safety. No change to the final rule is necessary in this regard.

Request to Reduce Compliance Time and Consider Interim Actions

One commenter states that there is an inconsistency between the urgency of the unsafe condition, as explained in the proposal, and the length of the compliance time. The commenter points to the statement in the "Differences Between Proposed Rule and Alert Service Bulletin" section of the proposed AD, which reads, "The FAA

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also finds that such a compliance time will not adversely affect the safety of the affected airplanes." The commenter states that it does not understand "an 'unsafe condition' that has already been identified that does not come into effect until 6th June 2001" and requests an explanation. The commenter also notes that the proposed AD does not contain any interim actions to be undertaken to ensure safety of the airplane fleet prior to accomplishment of the proposed replacement.

While the commenter makes no specific request for a change to the proposed AD, the FAA infers that the commenter is requesting that the FAA reduce the compliance time and include revisions to the flight procedures in this AD. The FAA does not concur with the commenter's request. As explained in the proposed AD, in developing an appropriate compliance time for the proposed replacement, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but also the number of proposed requirements and the availability of required parts. As stated previously in this AD, since the issuance of the proposed rule, the FAA has received information indicating that 18 months is an appropriate compliance time wherein all of these actions can be accomplished during scheduled airplane maintenance and an ample number of required parts will be available for modification of the U.S. fleet within the compliance period. The FAA also finds that such a compliance time will not adversely affect the safety of the affected airplanes.

With regard to the lack of interim actions in this AD, the FAA provides the following explanation. In 1994, the airplane manufacturer issued a Flight Operations Procedure to advise operators of an anomaly related to asymmetric thrust lever settings occurring during autothrottle operation. Such a procedure, if followed, adequately addresses the unsafe condition identified in this AD. However, this procedure does not take into account human factors that may result in the flightcrew failing to recognize an abnormality that develops over an extended period of time, resulting in an excessive bank angle for the airplane. There have been eight reported incidents of asymmetric thrust that occurred with delayed intervention by the pilots. Six of these eight incidents resulted in a bank angle of more than 30 degrees. In two incidents, airplanes have rolled more than 40 degrees before the flightcrew recognized the condition. For this reason, revisions to flight procedures are not considered adequate to provide the degree of safety assurance necessary for the transport airplane fleet. Consideration of these factors has led the FAA to mandate the replacement required by this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,974 Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 799 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost between $1,400 and $4,200 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $1,460 and $4,260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–34 Boeing: Amendment 39–12007. Docket 2000–NM–107–AD.

Applicability: All Model 737–300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a severe asymmetric thrust condition during flight which could result in loss of control of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the existing autothrottle computer with a new, improved autothrottle computer in accordance with Boeing Alert Service Bulletin 737–22A1130, dated September 24, 1998.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane, an autothrottle computer having part number 10–62017–1, –2, –3, –4, –5, –11, –21, –23, –25, or –27.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Boeing Alert Service Bulletin 737–22A1130, including Appendix A, dated September 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30319 Filed 12–1–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–06–AD; Amendment 39–12011; AD 2000–24–04]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models A36, B36TC, and 58 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Corporation (Raytheon) Beech Models A36, B36TC, and 58 airplanes. This AD requires you to inspect for misrouted rudder control cables; replace any worn or damaged guard pins; replace any pulley brackets that are damaged or worn; and replace any misrouted rudder control cables. Three reports of misrouted cables prompted this action. The actions specified by this AD are intended to correct the misrouted rudder control cable and consequent guard pin wear or fraying of the cables with loss of rudder control.

DATES: This AD becomes effective on January 5, 2001.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of January 5, 2001.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/27–3265.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–06–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received three reports of instances of misrouted cables in Raytheon Beech Models A36, B36TC, and 58 airplanes. In one instance, a report noted complete separation of the rudder cable. In another instance, a report noted fraying of the rudder cable.

What are the consequences if the condition is not corrected? This condition could result in guard pin wear and separation or fraying of the cables with loss of rudder control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models A36, B36TC, and 58 airplanes. This proposal published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 24, 2000 (65 FR 51562). The NPRM proposed to require you to inspect for misrouted rudder control cables; replace any worn or damaged guard pins; replace any pulley brackets that are damaged or worn; and replace any misrouted rudder control cables.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—will not change the meaning of the AD; and

—will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 842 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

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Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
1 workhour×$60 per hour=$60	No parts required for the inspection.	$60 per airplane	$60×842=$50,520.

We estimate the following costs to accomplish the rudder control replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
4 workhours × $60 per hour = $240.	Warranty Credit	$240 per airplane	$240 × 842 = $202,080.

The manufacturer will also allow warranty credit for labor to the extent noted in the service bulletin.

We estimate the following costs to accomplish the rudder control replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
2 workhours × $60 per hour = $120.	No cost. Raytheon will provide	$120 per airplane	$120 × 842 = $101,040.

The manufacturer will also allow warranty credit for labor to the extent noted in the service bulletin.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2000–24–04 Raytheon Aircraft Company: Amendment 39–12011; Docket No. 2000–CE–06–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Beech airplane models and serial numbers that are certificated in any category;

Model	Serial numbers
A36	E–2519 through E–3140
B36TC	EA–501 through EA–608
58	TH–1576 through TH–1838

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the misrouted rudder control cable and consequent guard pin wear or fraying of the cables with loss of rudder control.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
(1) Inspect rudder control cables that are routed around the pulley and through the brackets. (i) Replace any worn or damaged guard pins. (ii) Inspect pulley brackets for wear and damage, and replace as necessary. (iii) If rudder cables are routed properly, check the airplane log book to determine if a misrouted control cable was detected during maintenance and the misrouting was corrected.	Inspect within the next 50 hours time-in-service after January 5, 2001 (the effective date of this AD), and accomplish all follow-on actions, such as replacements before further flight after the inspection.	Accomplish the inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3265, Issued: January 2000, and the applicable airplane Maintenance Manual or Shop Manual.

Actions	Compliance times	Procedures
(2) If a misrouting has been recorded or found during this inspection, install replacement rudder control cables in accordance with the following: (i) Apply corrosion preventive compounds, as necessary, to provide corrosion protection. (ii) Install rudder control cables (iii) Adjust rudder control cables to correct tension and adjust control surface travel. (iv) Perform an operational checkout of the flight control system to ensure proper operation of installed rudder control cables, pulley brackets, guard pins and attaching hardware.	Before further flight after the inspection.	Accomplish this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3265, Issued: January 2000, and the applicable airplane Maintenance Manual or Shop Manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 27–3265, Issued: January 2000. The director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, KS 67201–0085; or on the Internet at *http://www.raytheon.com/rac/servinfo/27–3265.pdf*. This file is in Adobe Portable Document Format. The Acrobat Reader is available at *http://www.adobe.com/>*. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 5, 2001.

Issued in Kansas City, Missouri, on November 20, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30318 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–16–AD; Amendment 39–12012; AD 2000–24–05]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Models P 68 "OBSERVER", P68 "OBSERVER 2", and P68TC "OBSERVER" Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Vulcanair S.p.A. (Vulcanair) Models P 68 "OBSERVER", P68 "OBSERVER 2", and P68TC "OBSERVER" airplanes. This AD requires you to inspect the nose landing gear (NLG) upper strut for evidence of cracking (cracks or crack beginnings), and replace the NLG upper strut if you find evidence of cracking. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent failure of the NLG upper strut caused by cracking in the area of the seeger retaining ring groove, which could result in loss of control of the airplane.

DATES: This AD becomes effective on January 5, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 5, 2001.

ADDRESSES: You may get the service information referenced in this AD from Vulcanair S.p.A., Via G. Poscoli, 7, 80026 Casoria (Naples), Italy; telephone: +39–081–5918111; facsimile: +39–081–5918172. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–16–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roman Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on certain Vulcanair Models P 68 "OBSERVER", P68 "OBSERVER 2", and P68TC "OBSERVER" airplanes. The ENAC reports three instances of cracking of the nose landing gear (NLG) upper strut, part number 4.4173–1, in the area of the seeger retaining ring groove. Investigation of these instances reveals a work defect found during surface finishing within the groove. The groove is then susceptible to cracks after a hard landing.

What are the consequences if the condition is not corrected? Such cracking, if not detected and corrected, could result in failure of the NLG upper strut, which could result in loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Vulcanair Models P 68 "OBSERVER", P68 "OBSERVER 2", and P68TC "OBSERVER" airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 22, 2000 (65 FR 57296). The NPRM proposed to require you to inspect the NLG upper strut for evidence of cracking (cracks or crack beginnings), and replace the NLG upper strut if you find evidence of cracking.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—will not change the meaning of the AD; and

—will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 15 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
10 workhours × $60 per hour = $600.	No parts required for the inspection.	$600 per airplane	$600 × 15 = $9,000.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $60 per hour = $600	$600 per airplane.	$1,200 per airplane

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2000–24–05 Vulcanair S.P.A. (Partenavia Costruzioni Aeronautics S.p.A previously held Type Certificate A31EU): Amendment 39–12012; Docket No. 2000–CE–16–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models P 68 "OBSERVER", P68 "OBSERVER 2", and P68TC "OBSERVER" airplanes, all serial numbers up to and including 400, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the nose landing gear (NLG) upper strut caused by cracking in the area of the seeger retaining ring groove, which could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Inspect, using magnetic particle methods, the NLG upper strut, part number 4.4173–1 (or FAA-approved equivalent part number), for evidence of cracking (cracks or crack beginnings).	Within the next 200 hours time-in-service (TIS) after January 5, 2001 (the effective date of this AD).	Do this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Vulcanair Service Bulletiin No. 98, dated July 31, 1999.
(2) If there is evidence of cracking, replace the NLG upper strut with a new NLG upper strut, part number 4.4173–1 (or FAA-approved equivalent part number).	Prior to further flight after the inspection where evidence of cracking is found.	Use the procedures in the maintenance manual.
(3) Do not install any NLG upper strut, part number 4.4173–1, unless it is new from the factory, or has been inspected as required in paragraph (d)(1) of this AD and is found to not have any evidence of cracking.	As of January 5, 2001 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roman Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Vulcanair Service Bulletin No. 98, dated July 31, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Vulcanair S.p.A., Via G. Poscoli, 7, 80026 Casoria (Naples), Italy. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 5, 2001.

Note 2: The subject of this AD is addressed in Italian AD 2000–004, dated January 10, 2000.

Issued in Kansas City, Missouri, on November 20, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30317 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–112–AD; Amendment 39–12010; AD 2000–24–03]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with additional information regarding procedures to ensure complete pressurization of the hydraulic lines for the flaps. This amendment requires revising the existing AFM revision to include a flap system test to be performed prior to the first flight of the day. This amendment also requires, for certain airplanes, modification of the flap actuators of the flight controls. The actions specified by this AD are intended to prevent an uncommanded retraction of the flaps during takeoff, which could result in an aborted takeoff and consequent potential for runway overrun.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of January 8, 2001.

The incorporation by reference of Dornier 328 All Operators Telefax AOT–328–27–016, dated July 31, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 12, 1998 (63 FR 57244, October 27, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–22–07, amendment 39–10854 (63 FR 57244, October 27, 1998), which is applicable to all Dornier Model 328–100 series airplanes, was published in the **Federal Register** on August 29, 2000 (65 FR 52365). The action proposed to continue to require revising the Airplane Flight Manual (AFM) to provide the flightcrew with additional information regarding procedures to ensure complete pressurization of the hydraulic lines for the flaps. The action also proposed to require revising the existing AFM revision to include a flap system test to be performed prior to the first flight of the day. Additionally, the action proposed to add a requirement, for certain airplanes, for modification of the flap actuators of the flight controls.

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Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 52 airplanes of U.S. registry that will be affected by this AD.

The AFM revision that is currently required by AD 98–22–07, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is approximately $3,120, or $60 per airplane.

The new AFM revision that is required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required AFM revision on U.S. operators is estimated to be $3,120, or $60 per airplane.

The new modification that is required by this AD will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10854 (63 FR 57244, October 27, 1998), and by adding a new airworthiness directive (AD), amendment 39–12010, to read as follows:

2000–24–03 Dornier Luftfahrt GMBH: Amendment 39–12010. Docket 2000–NM–112–AD. Supersedes AD 98–22–07, Amendment 39–10854.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded retraction of the flaps during takeoff, which could result in an aborted takeoff and consequent potential for runway overrun, accomplish the following:

Restatement of Requirements of AD 98–22–07

Airplane Flight Manual (AFM) Revision

(a) Within 14 days after November 12, 1998 (the effective date of AD 98–22–07, amendment 39–10854), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Normal Procedures Section of the Dornier 328 FAA-approved AFM to include the information specified in pages 6 and 7 of Dornier 328 All Operators Telefax (AOT) AOT–328–27–016, dated July 31, 1998. This may be accomplished by inserting a copy of pages 6 and 7 of the AOT into the AFM.

(2) Revise the Abnormal Procedures Section of the Dornier 328 FAA-approved AFM to include the information specified in page 4 of Dornier 328 AOT–328–27–016, dated July 31, 1998. This may be accomplished by inserting a copy of page 4 of the AOT into the AFM.

New Requirements of This AD

New AFM Revision

(b) For all airplanes: Within 3 days after the effective date of this AD, revise the Dornier 328 FAA-approved AFM as specified in paragraphs (b)(1) and (b)(2) of this AD. Concurrent with this AFM revision, remove the AFM revisions required by paragraph (a) of this AD from the AFM.

(1) Revise the Normal Procedures Section to include the information specified in pages 4, 5, and 6 of Dornier 328 AOT–328–27–016, Revision 1, dated October 28, 1998. This may be accomplished by inserting a copy of pages 4, 5, and 6 of the AOT into the AFM.

(2) Revise the Abnormal Procedures Section to include the information specified in page 3 of Dornier 328 AOT–328–27–016, Revision 1, dated October 28, 1998. This may be accomplished by inserting a copy of page 3 of the AOT into the AFM.

Modification

(c) For airplanes with serial numbers 3005 through 3099 inclusive, 3101 through 3108 inclusive, and 3110 through 3119 inclusive: Within 5 months after the effective date of this AD, modify the flap actuators of the flight controls, in accordance with Dornier 328 Service Bulletin SB–328–27–293, dated November 10, 1999.

Note 2: The Dornier service bulletin references Liebherr Aerospace Service Bulletin 1048A–27–02, dated November 9, 1999, as an additional source of service information for accomplishing the modification of the flap actuators of the flight controls.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–22–07, amendment 39–10854, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (b) of this AD, the AFM revisions shall be done in accordance with Dornier 328 All Operators Telefax AOT–328–27–016, dated July 31, 1998; or Dornier 328 All Operators Telefax AOT–328–27–016, Revision 1, dated October 28, 1998. The modification shall be done in accordance with Dornier 328 Service Bulletin SB–328–27–293, dated November 10, 1999.

(1) The incorporation by reference of Dornier 328 All Operators Telefax AOT–328–27–016, Revision 1, dated October 28, 1998; and Dornier 328 Service Bulletin SB–328–27–293, dated November 10, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Dornier 328 All Operators Telefax AOT–328–27–016, dated July 31, 1998, was approved previously by the Director of the Federal Register as of November 12, 1998 (63 FR 57244, October 27, 1998).

(3) Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 1998–359/3, dated April 6, 2000.

Effective Date

(g) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30120 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–381–AD; Amendment 39–12009; AD 2000–24–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires repetitive inspections to detect wear of the inboard flap trunnions, and to detect wear or debonding of the protective half-shells; and corrective actions, if necessary. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing and resultant wear damage on the inboard flap drive trunnions or on the protective half-shells, which could result in failure of the trunnion primary load path; this would adversely affect the fatigue life of the secondary load path and could lead to loss of the flap.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of January 8, 2001.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 27, 1999 (64 FR 45868, August 23, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–17–11, amendment 39–11259 (64 FR 45868, August 23, 1999), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on September 20, 2000 (65 FR 56814). The action proposed to continue to require repetitive inspections to detect wear of the inboard flap trunnions, and to detect wear or debonding of the protective half-shells; and corrective actions, if necessary. The action also proposed to require accomplishment of the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 132 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 99–17–11, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is approximately $7,920, or $60 per airplane, per inspection cycle.

The new actions that are required in this AD will take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $110,880, or $840 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions

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actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11259 (64 FR 45868, August 23, 1999), and by adding a new airworthiness directive (AD), amendment 39–12009, to read as follows:

2000–24–02 Airbus Industrie: Amendment 39–12009. Docket 99–NM–381–AD. Supersedes AD 99–17–11, Amendment 39–11259.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; except airplanes on which Airbus Modification 26495 (reference Airbus Service Bulletin A320–27–1117) has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and resultant wear damage on the inboard flap drive trunnions or on the protective half-shells, which could result in failure of the trunnion primary load path, adversely affect the fatigue life of the secondary load path, and lead to loss of the flap, accomplish the following:

Restatement of Certain Requirements of AD 99–17–11

Inspections

(a) For airplanes on which a protective half-shell has been installed over area 1 of the left or right inboard flap trunnion: Perform a detailed visual inspection of the protective half-shell (area 1) to detect wear or debonding, and perform a detailed visual inspection of the trunnion (area 2) to detect wear at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable; in accordance with Airbus Service Bulletin A320–27–1108, Revision 01, dated July 15, 1997, Revision 02, dated April 17, 1998, or Revision 03, dated June 25, 1999.

(1) For Model A319 and Model A320 series airplanes on which Airbus Modification 22841 has been installed: Inspect prior to the accumulation of 2,500 flight hours after the incorporation of the modification, or within 500 flight hours after September 27, 1999 (the effective date of AD 99–17–11, amendment 39–11259), whichever occurs later.

(2) For Model A321 series airplanes on which Airbus Modification 23926 has been installed, or on which the repair specified in Airbus Service Bulletin A320–27–1097, dated October 5, 1996, or Revision 01, dated July 15, 1997, has been accomplished; and for Model A320 series airplanes on which the repair specified in Airbus Service Bulletin A320–27–1066, Revision 3, dated October 30, 1996, or Revision 4, dated July 15, 1997, has been accomplished: Inspect prior to the accumulation of 5,000 flight hours after incorporation of the repair or modification, or within 500 flight hours after September 27, 1999, whichever occurs later.

(3) For Airbus Model A320 series airplanes on which Airbus Modification 22881 (Airbus Service Bulletin A320–27–1050) has been accomplished, and on which Airbus Modification 22841 has not been accomplished: Inspect within 500 flight hours after the effective date of this new AD.

Note 2: Paragraph (a)(3) of AD 99–17–11 has been revised to correct the description of airplanes affected by that paragraph. Since such a revision could result in additional airplanes being affected, the compliance time has been restarted from the effective date of this AD to allow additional time to accomplish the actions required by that paragraph.

(b) For airplanes on which no protective half-shell is installed over area 1 of the left or right inboard flap trunnion: Within 500 flight hours after September 27, 1999, perform a detailed visual inspection of areas 1 and 2 of the inboard flap trunnion to detect wear on the trunnion, in accordance with Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997 (for Model A320 series airplanes); or A320–27–1097, Revision 01, dated July 15, 1997, or Revision 02, dated June 25, 1999 (for Model A321 series airplanes).

Corrective Actions

(c) Except as provided by paragraph (d) of this AD: Following the accomplishment of any inspection required by either paragraph (a) or (b) of this AD, perform the follow-on repetitive inspections and/or corrective actions, as applicable, in accordance with Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997 (for Model A320 series airplanes); A320–27–1097, Revision 01, dated July 15, 1997, or Revision 02, dated June 25, 1999 (for Model A321 series airplanes); or A320–27–1108, Revision 01, dated July 15, 1997, Revision 02, dated April 17, 1998, or Revision 03, dated June 25, 1999 (for Model A319, A320, and A321 series airplanes); as applicable; at the compliance times specified in the applicable service bulletin.

(d) If the applicable service bulletin specifies to contact Airbus for an appropriate action, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (or its delegated agent).

New Requirements of this AD

Service Bulletin Revisions

(e) As of the effective date of this new AD, the following service bulletin revisions must be used for accomplishment of the applicable actions required by paragraphs (a), (b), and (c) of this AD:

(1) Airbus Service Bulletin A320–27–1108, Revision 04, dated November 22, 1999.

(2) Airbus Service Bulletin A320–27–1066, Revision 5, dated June 25, 1999.

Terminating Modification

(f) Within 18 months after the effective date of this AD, modify the sliding panel driving mechanism of the flap drive trunnions, in accordance with Airbus Service Bulletin A320–27–1117, Revision 02, dated January 18, 2000. This modification constitutes terminating action for the repetitive inspections required by this AD.

Note 3: Accomplishment of the modification required by paragraph (f) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–27–1117, dated July 31, 1997, or Revision 01, dated June 25, 1999, is acceptable for compliance with that paragraph.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–17–11, amendment 39–11259, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as required by paragraph (d) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–27–1108, Revision 01, dated July 15, 1997; Airbus Service Bulletin A320–27–1108, Revision 02, dated April 17, 1998; Airbus Service Bulletin A320–27–1108; Revision 03, dated June 25, 1999; Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997; Airbus Service Bulletin A320–27–1097, Revision 01, dated July 15, 1997; Airbus Service Bulletin A320–27–1097, Revision 02, dated June 25, 1999; Airbus Service Bulletin A320–27–1108, Revision 04, dated November 22, 1999; Airbus Service Bulletin A320–27–1066, Revision 5, dated June 25, 1999; and Airbus Service Bulletin A320–27–1117, Revision 02, dated January 18, 2000; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–27–1108, Revision 04, dated November 22, 1999; Airbus Service Bulletin A320–27–1066, Revision 5, dated June 25, 1999; and Airbus Service Bulletin A320–27–1117, Revision 02, dated January 18, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–27–1108, Revision 01, dated July 15, 1997; Airbus Service Bulletin A320–27–1108, Revision 02, dated April 17, 1998; Airbus Service Bulletin A320–27–1108; Revision 03, dated June 25, 1999; Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997; Airbus Service Bulletin A320–27–1097, Revision 01, dated July 15, 1997; and Airbus Service Bulletin A320–27–1097, Revision 02, dated June 25, 1999, was approved previously by the Director of the Federal Register as of September 27, 1999 (64 FR 45868, August 23, 1999).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1996–271–092(B) R3, dated August 11, 1999.

Effective Date

(j) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30119 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–368–AD; Amendment 39–12008; AD 2000–24–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. This action requires installation of protection shields in the wheel bay of the main landing gear (MLG). This action is necessary to prevent water, ice or slush accumulation on the aileron quadrants and/or control cable pulleys in the wheel bay of the MLG during ground roll. Such water, ice or slush accumulation could subsequently freeze during the climb to cruise altitude and cause stiffness in the aileron controls, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 19, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 3, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–368–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–368–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation, which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. TCCA advises that it has received several reports of stiffness in the aileron controls following takeoff from a wet or snow/slush covered runway. The cause of the stiffness has been attributed apparently to water, ice or slush accumulation on

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the aileron quadrants and/or control cable pulleys in the wheel bay of the main landing gear (MLG) during ground roll, which subsequently froze during the climb to cruise altitude. This condition, if not corrected, could result in stiffness in the aileron controls and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued the following service bulletins:

Bombardier service bulletin	Service bulletin date	Model
600–0684	July 15, 1998	CL–600–1A11 (CL–600)
601–0507	June 30, 1998	CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R)
604–32–007	June 30, 1998	CL–600–2B16 (CL–604)

The service bulletins describe procedures for installation of protection shields in the wheel bay of the MLG. Accomplishment of the action specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. TCCA classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–2000–30, dated September 12, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent water, ice or slush accumulation on the aileron quadrants and/or control cable pulleys in the wheel bay of the MLG during ground roll. Such water, ice or slush accumulation could subsequently freeze during the climb to cruise altitude and cause stiffness in the aileron controls, which could result in reduced controllability of the airplane. This AD requires accomplishment of the action specified in the service bulletins described previously.

Differences Between the AD and Foreign Airworthiness Directive

The AD would differ from the parallel Canadian airworthiness directive in that it would require accomplishment of the installation within 45 days after the effective date of this AD. The parallel Canadian airworthiness directive recommends accomplishment of the installation within 120 days after October 25, 2000 (the effective date of the Canadian airworthiness directive). In developing an appropriate compliance time for this AD, the FAA considered not only TCCA's recommendation, but the onset of inclement weather conditions, degree of urgency associated with addressing the subject unsafe condition, and average utilization of the affected fleet. In light of these factors, the FAA finds a 45-day compliance time for initiating the required installation to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–368–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–01 Bombardier, Inc. (Formerly Canadair): Amendment 39–12008. Docket 2000–NM–368–AD.

Applicability: The following airplanes, certificated in any category:

Model	Serial Nos.
CL–600–1A11 (CL–600).	1004 though 1085 inclusive.
CL–600–2A12 (CL–601).	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A and CL–601–3R).	5001 through 5194 inclusive.
CL–600–2B16 (CL–604).	5301 through 5392 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent water, ice, or slush accumulation on the aileron quadrants and/or control cable pulleys in the wheel bay of the main landing gear (MLG) during ground roll, which could subsequently freeze during the climb to cruise altitude and cause stiffness in the aileron controls and reduced controllability of the airplane, accomplish the following:

Installation of Protection Shields

(a) Within 45 days after the effective date of this AD, install protection shields in the wheel bay of the MLG, per the following applicable Bombardier service bulletin:

Model	Bombardier service bulletin	Service bulletin date
CL–600–1A11 (CL–600)	600–0684	July 15, 1998
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R).	601–0507	June 30, 1998
CL–600–2B16 (CL–604)	604–32–007	June 30, 1998

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with the following service bulletins, as applicable:

Bombardier service bulletin	Service bulletin date
600–0684	July 15, 1998.
601–0507	June 30, 1998.
604–32–007	June 30, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–30, dated September 12, 2000.

Effective Date

(e) This amendment becomes effective on December 19, 2000.

Issued in Renton, Washington, on November 17, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30020 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–42–AD; Amendment 39–11965; AD 2000–22–18]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Model 58 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Model 58

airplanes. This AD requires you to inspect the rudder bellcrank interconnect tube for damage; replace or refinish the interconnect tube, if necessary; and modify the floorboard. Four reports of damage to the interconnect tube prompted this action. The actions specified by this AD are intended to correct the wrong use of screws and consequent wear in the pilot/copilot pedal interconnect tube, which could result in loss of rudder control.

DATES: This AD becomes effective on December 29, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 29, 2000.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/27–3013.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at *http://www.adobe.com/*. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received four reports of grooves cut in the pilot/copilot rudder interconnect tube. The grooves were discovered during routine inspections.

What are the consequences if the condition is not corrected? This condition could result in jamming or restricting rudder control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Model 58 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 7, 2000 (65 FR 54184). The NPRM proposed to require you to inspect the rudder bellcrank interconnect tube for damage; if necessary, replace or refinish the rudder bellcrank interconnect tube; and plug the floorboard screw hole.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—will not change the meaning of the AD; and

—will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 491 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification of the floorboard and inspection of the rudder bellcrank interconnect tube:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
4 workhours × $60 per hour = $240.	Parts are provided at no charge under warranty.	$240 per airplane	$240 × 491 = $117,840.

We estimate the following costs to accomplish the modification or replacement of the bellcrank interconnect tube:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
1 workhour × $60 per hour = $60	Parts are provided at no charge under warranty.	$60 per airplane	$60 × 491 = $29,460.

Note: The manufacturer will allow warranty credit for labor and parts to the extent noted in the service bulletin.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2000–22–18 Raytheon Aircraft Company: Amendment 39–11965; Docket No. 2000–CE–42–AD.

(a) *What airplanes are affected by this AD?* This AD affects Beech Model 58 airplanes; serial numbers TH–1389, and TH–1396 through TH–1885, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the wrong use of screws and consequent wear in the pilot/copilot pedal interconnect tube, which could result in loss of rudder control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must do the following actions:

Actions	Compliance times	Procedures
(1) Inspect the rudder bellcrank interconnect tube for damage and ensure the floorboard panel screws are ¾ inch or less in length. Screws that are longer than ¾ inch in length can damage parts installed immediately below the floorboards.	Inspect within the next 6 calendar months after December 29, 2000 (the effective date of this AD).	Do this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000, and the Baron Model 58 Shop Manual.
(2) If you find no damage to the rudder bellcrank interconnect tube, discard any self-tapping coarse thread screw installed in the flanges that is longer than ¾ inch.	Before further flight after the inspection.	Do these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000, and the Baron 58 Shop Manual.
(3) If you find damage to the rudder bellcrank interconnect tube, and the damage has not worn into the aluminum interconnect tube, refinish the interconnect tube and discard any self-tapping coarse thread screw installed in the flanges that is longer than ¾ inch.	Before further flight after the inspection.	Do these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000, and the Baron 58 Shop Manual.
(4) If you find damage to the rudder bellcrank interconnect tube, and the damage has worn into the aluminum interconnect tube, you must replace the interconnect tube and discard any self-tapping coarse thread screw installed in the flanges that is longer than ¾ inch.	Before further flight after the inspection.	Do these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000, and the Baron 58 Shop Manual.
(5) Plug the floorboard screw hole	Before further flight after the inspection.	Do these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000, and the Baron 58 Shop Manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can do the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; or on the Internet at <http://www.raytheon.com/rac/ servinfo/27–3013.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 29, 2000.

Issued in Kansas City, Missouri, on October 30, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 00–28438 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–28–AD; Amendment 39–12016; AD 2000–24–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires modification of the insulation blankets in the area surrounding the main external power ground studs. This action is necessary to prevent smoke and fire in the forward cargo compartment due to burn damage to the insulation blankets in the area surrounding the main external power ground studs. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 27, 2000 (65 FR 46203). That action proposed to require modification of the insulation blankets in the area surrounding the main external power ground studs.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter indicates that it has completed the subject modification and has no objection to the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 137 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–09 McDonnell Douglas: Amendment 39–12016. Docket 2000–NM–28–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–25A187, Revision 01, dated January 5, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and fire in the forward cargo compartment due to burn damage to the insulation blankets in the area surrounding the main external power ground studs, accomplish the following:

Modification

(a) Within one year after the effective date of this AD, modify the insulation blankets in the area surrounding the main external power ground studs in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A187, Revision 01, dated January 5, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.12000 of the Federal Aviation Regulations (14 CFR 21.197 and 21.12000) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The modification shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A187, Revision 01, dated January 5, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30434 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–29–AD; Amendment 39–12017; AD 2000–24–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires relocating the B7–28 bus located in the upper main circuit breaker in the rear cockpit observer's station from the lower to the upper terminals of the circuit breakers in Row P. This action is necessary to prevent insufficient clearance and contact between the B7–28 bus and an adjacent panel, which could result in arcing damage, smoke, and/or fire in the upper main circuit breaker panel. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 27, 2000 (65 FR 46204). That action proposed to require relocating the B7–28 bus located in the upper main circuit breaker in the rear cockpit observer's station from the lower to the upper terminals of the circuit breakers in Row P.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 144 airplanes of the affected design in the worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,720, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–10 McDonnell Douglas: Amendment 39–12017. Docket 2000–NM–29–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A180, dated January 4, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent insufficient clearance and contact between the B7–28 bus and an adjacent panel, which could result in arcing damage, smoke, and/or fire in the upper main circuit breaker panel, accomplish the following:

Relocation

(a) Within 12 months after the effective date of this AD, relocate the B7–28 bus located in the upper main circuit breaker in the rear cockpit observer's station from the lower to the upper terminals of the circuit breakers in Row P in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A180, dated January 4, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The relocation shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A180, dated January 4, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30435 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–31–AD; Amendment 39–12018; AD 2000–24–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. For certain airplanes, that AD requires installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure. For certain other airplanes, that AD requires inspection of the wire assembly support installation for evidence of chafing, and corrective actions, if necessary. For certain airplanes subject to the existing AD, as well as additional airplanes being added to the applicability of this AD, this action adds a requirement for modification of a support bracket for the ramp deflector assembly. This action is necessary to prevent chafing of electrical wire assemblies above the forward passenger doors, which could result in an electrical fire in the passenger compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of January 8, 2001.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; and McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 23, 2000 (65 FR 8034, February 17, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–03–10, amendment 39–11569 (65 FR 8034, February 17, 2000), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** on July 27, 2000 (65 FR 46206). That action proposed to continue to require a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. For certain airplanes, that action also proposed to continue to require installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure. For certain other airplanes, that action also proposed to continue to require inspection of the wire assembly support installation for evidence of chafing, and corrective actions, if necessary. For certain airplanes subject to the existing AD, as well as additional airplanes being added to the applicability of this new AD, that action proposed to add a requirement for modification of a support bracket for the ramp deflector assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD.

The inspection to detect discrepancies around the entry light connector of the slide ceiling panel above the forward passenger doors that is currently required by AD 2000–03–10 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $2,520, or $120 per airplane.

For Group 1 airplanes as specified in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06 (approximately 16 airplanes of U.S. registry), the installation of the flapper door ramp deflector that is currently required by AD 2000–03–10 takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $455 per airplane. Based on these figures, the cost impact of this currently required installation on U.S. operators of Group 1 airplanes is estimated to be $14,960, or $935 per airplane.

For Group 2 airplanes as specified in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06 (approximately 8 airplanes of U.S. registry), the installation of the flapper door ramp deflector that is currently required by AD 2000–03–10 takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $890 per airplane. Based on these figures, the cost impact of this currently required installation on U.S. operators of Group 2 airplanes is estimated to be $10,960, or $1,370 per airplane.

For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999 (approximately 21 airplanes of U.S. registry), the inspection of the wire assembly support installation that is currently required by AD 2000–03–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $1,260, or $60 per airplane.

For airplanes in Groups 1 and 3 as specified in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06 (approximately 18 airplanes of U.S. registry), the new modification that is required in this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required modification on U.S. operators is estimated to be $2,160, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11569 (65 FR 8034, February 17, 2000), and by adding a new airworthiness directive (AD), amendment 39–12018, to read as follows:

2000–24–11 McDonnell Douglas: Amendment 39–12018. Docket 2000–NM–31–AD. Supersedes AD 2000–03–10, Amendment 39–11569.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; and MD11–24A068, Revision 01, dated March 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of electrical wire assemblies above the forward passenger doors, which could result in an electrical fire in the passenger compartment, accomplish the following:

Restatement of the Requirements of AD 2000–03–10

Detailed Visual Inspection

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletins MD11–25A194, Revision 05, dated June 21, 1999, and MD11–24A068, Revision 01, dated March 8, 1999: Within 10 days after December 28, 1998 (the effective date of AD 98–25–11 R1, amendment 39–10988), perform a detailed visual inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) At the area of the forward drop ceiling just outboard of mod block S3–735, and forward and inboard of the light ballast for the entry light on the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5.

(2) At the area above the forward right passenger door (1R) at station location x = −30, y = 430, and z = 70 in the ramp deflector assembly part number 4223570–501.

Corrective Action

(b) If any discrepancy is detected during the visual inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated January 1, 1998, or April 1, 1998.

Inspection, Installation, and Modification

(c) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or MD11–24A068, Revision 01, dated March 8, 1999: Within 6 months after March 23, 2000 (the effective date of AD 2000–03–10, amendment 39–11569), accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, as applicable.

(1) For Group 1 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000. After the effective date of this AD, only Revision 06 of the alert service bulletin shall be used.

(2) For Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000. After the effective date of this AD, only Revision 06 of the alert service bulletin shall be used.

Note 3: Installation of a ramp deflector assembly in accordance with McDonnell Douglas Service Bulletin MD11–25–194, dated March 15, 1996; Revision 01, dated May 1, 1996; Revision 02, dated July 12, 1996; Revision 03, dated December 12, 1996; or Revision 04, dated March 8, 1999, is acceptable for compliance with the requirements of paragraph (c)(2) of this AD.

(3) For Group 3 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Modify the previously installed ramp deflector assembly bracket in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000. After the effective date of this AD, only Revision 06 of the alert service bulletin shall be used.

(4) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999: Perform a general visual inspection of the wire assembly support installation for evidence of chafing, in accordance with the service bulletin. If any chafing is detected, prior to further flight, repair or replace any discrepant part with a new part in accordance with the service bulletin.

Note 4: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being check."

New Requirements of this AD

One-Time Inspection

(d) For airplanes other than those identified in paragraph (a) of this AD: Within 10 days after the effective date of this AD, perform a detailed visual inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD. If any discrepancy is found, prior to further flight, repair in accordance with the requirements of paragraph (b) of this AD.

Note 5: Accomplishment of the inspection required by paragraph (a) of AD 98–25–11 R1, amendment 39–10988, prior to the effective date of this AD is acceptable for compliance with paragraph (d) of this AD.

Modification

(e) For airplanes listed in Group 3 of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000: Within 6 months after the effective date of this AD, modify the ramp deflector assembly support bracket on the right side forward entry door drop ceiling structure, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions provided by paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (e) of this AD shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; or McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; and McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999, was approved previously by the Director of the Federal Register as of March 23, 2000 (65 FR 8034, February 17, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30436 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–33–AD; Amendment 39–12019; AD 2000–24–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area; and corrective actions, if necessary. This amendment also requires revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays. This action is necessary to prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the CAC. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 27, 2000 (65 FR 46211). That action proposed to require an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area; and corrective actions, if necessary. That action also proposed to require revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 151 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 6 and 8 work hours per airplane depending on the configuration of the airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately between $1,091 and $1,256 per airplane depending on the configuration of the airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $85,609 and $102,424, or between $1,451 and $1,736 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–12 McDonnell Douglas: Amendment 39–12019. Docket 2000–NM–33–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the center accessory compartment, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD, perform a one-time general visual inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment area, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 (No Chafing or Damage)

(1) If no chafing or damage is detected, no further action is required by this paragraph.

Condition 2 (Evidence of Chafing or Damage on Terminal Strips)

(2) If any chafing or damage is detected on the terminal strips, before further flight, replace the terminal strip with a like part and seal screw heads of replaced terminal strips, in accordance with the service bulletin.

Condition 3 (Chafing or Damage Within Limits)

(3) If any chafing is detected and if any damage is detected within the limits specified in the service bulletin, before further flight, repair damage in accordance with the service bulletin.

Condition 4 (Chafing or Damage Beyond Limits)

(4) If any chafing is detected and if any damage is detected beyond the limits specified in the service bulletin, before further flight, replace damaged wires with new wires in accordance with the service bulletin.

Revise Wire Connection of the Cable Terminal Strips

(b) Within 12 months after the effective date of this AD, revise the wire connection stack up of certain cable terminals at the electrical power center bays in the center accessory compartment in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000.

Replacement of Terminal Strips and Removal of Nameplate

(c) Within 12 months after the effective date of this AD, replace the terminal strips with new strips and remove the applicable nameplate at electrical power center bays in the center accessory compartment, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30437 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–34–AD; Amendment 39–12020; AD 2000–24–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable. This action is necessary to prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 27, 2000 (65 FR 46214). That action proposed to require replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter states that there is a typographical error in the service bulletin citation in paragraph (a) of the proposed rule. The FAA concurs. Paragraph (a) of the proposed rule incorrectly references McDonnell Douglas Alert Service Bulletin MD11–24A128, dated April 3, 2000, as the appropriate source of service information for the accomplishment of the actions required by paragraphs (a)(1) and (a)(2) of the AD. The correct reference is McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000. Paragraph (a) of this AD has been changed accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 149 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 (for Group 1 airplanes) and 2 (for Group 2 airplanes) work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $337 (for Group 1 airplanes) or $647 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $21,835, or $397 per airplane (for Group 1 airplanes); or $42,185, or $767 per airplane (for Group 2 airplanes).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–13 McDonnell Douglas: Amendment 39–12020. Docket 2000–NM–34–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire,

insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment, accomplish the following:

Replacement and Reroute

(a) Within 12 months after the effective date of this AD, accomplish the actions specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000.

(1) For Group 1 airplanes listed in the service bulletin: Replace the ground support brackets with new brackets and reroute the ground cables of the galley external power and main external power.

(2) For Group 2 airplanes listed in the service bulletin: Replace the ground support bracket and reroute the ground cables of the main external power.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000: This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30438 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–35–AD; Amendment 39–12021; AD 2000–24–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires an inspection of the electrical wires routed above the door actuation cables for minimum .50-inch clearance with the door in the open and closed position, damage due to chafing or electrical arcing, or damaged door actuation cables; and corrective actions, if necessary. This action is necessary to prevent damaged electrical wires or damaged door actuation cables due to chafing by the cables during operation of the forward passenger door, which could result in electrical arcing and consequent smoke in the area above the forward passenger door. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 27, 2000 (65 FR 46216). That action proposed to require an inspection of the electrical wires routed above the door actuation cables for minimum .50-inch clearance with the door in the open and closed position, damage due to chafing or electrical arcing, or damaged door actuation cables; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 187 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 64 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $7,680, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time

required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government: Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–14 McDonnell Douglas: Amendment 39–12021. Docket 2000–NM–35–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A182, dated April 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damaged electrical wires or damaged door actuation cables due to chafing by the cables during operation of the forward passenger door, which could result in electrical arcing and consequent smoke in the area above the forward passenger door, accomplish the following:

Inspection

(a) Except as provided by paragarph (b) of this AD, within 6 months after the effective date of this AD, perform a one-time general visual inspection of the electrical wires routed above the door actuation cables for minimum .50-inch clearance with the door in the open and closed position, damage due to chafing or electrical arcing, or damaged door actuation cables, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A182, dated April 3, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 (Minimum Clearance and No Chafed Electrical Wiring or Damaged Door Actuation Cables)

(1) If minimum .50-inch clearance exists between the electrical wires and door actuation cables with the door in the open and closed positions, and if no chafed electrical wiring or damaged door actuation cable is detected, no further action is required by this AD.

Condition 2 (Less Than Minimum Clearance, No Chafed Electrical Wiring or Damaged Door Actuation Cables)

(2) If less than .50-inch clearance exists between the electrical wires and door actuation cables with the door in the open and closed positions, and if no chafed electrical wiring or damaged door actuation cable is detected, before further flight, loosen wire clamps as necessary, reposition electrical wires to provide minimum clearance, and tighten wire clamps, in accordance with the service bulletin.

Condition 3 (Less Than Minimum Clearance, Chafed Electrical Wiring or Damaged Door Actuation Cables)

(3) If less than .50-inch clearance exists between the electrical wires and door actuation cables with the door in the open and closed positions, and if any chafed electrical wiring or damaged door actuation cable is detected, before further flight, replace damaged electrical wires with new wires or repair damaged wires, loosen wire clamps as necessary, reposition electrical wires to provide minimum clearance, tighten wire clamps, and replace damaged door actuation cables with new cables, in accordance with the service bulletin.

Exception to Inspection Required in Paragraph (a) of This AD

(b) For Model MD–11 series airplanes, the inspection required by paragraph (a) of this AD is only applicable to functioning doors. For Model MD–11F series airplanes or Model MD–11 series airplanes converted to a freighter configuration, equipped with one or more disabled non-functioning doors that do not have door acuating cables, the inspection is NOT required for those disabled doors.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A182, dated April 3, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30439 Filed 12–1–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–36–AD; Amendment 39–12022; AD 2000–24–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in various areas of the airplane; and corrective actions, if necessary. This amendment is necessary to prevent electrical arcing and/or heat damaged wires due to improper wire installations during manufacture and/or maintenance of the airplane, and consequent fire and smoke in various areas of the airplane. This amendment is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 27, 2000 (65 FR 46218). That action proposed to require a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in various areas of the airplane; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for Reporting Requirement

One commenter requests that the FAA add a reporting requirement for the inspection findings. The commenter states that serious reporting is not possible using the reporting sheet attached to the referenced Boeing service bulletin. The commenter believes that it is important to collect the details of the inspection results using a database.

The FAA does not concur. The FAA understands the need to collect useful data in a consistent, detailed manner when investigating possible wiring service difficulties. However, the FAA has already conducted an extensive investigation of the wiring on McDonnell Douglas Model MD–11 series airplanes. As part of the investigation, the FAA has performed its own inspections on numerous in-service and in-production airplanes. The FAA has analyzed the data from the inspections and incorporated follow-on actions as part of a comprehensive corrective action plan; this AD is part of that plan. Therefore, the FAA has determined that the need for a reporting requirement for the required inspections to detect and correct minor wiring discrepancies in various areas of the airplane is not necessary.

Revise Corrective Action

One commenter notes that paragraph (c) of the NPRM reads, "If no gap between the wire bundle and blanket can be seen when pressure is applied to the blanket, before further flight, reposition wires or clamps so that a gap can been seen when pressure is applied to the blanket." The commenter asks, "Will this requirement be valid for all the wire gauges in every area? Does this requirement replace the existing DPS 1.834–7, Par. 4.1.12.1?"

From these questions, the FAA infers that the commenter is requesting that the scope of the corrective action specified in paragraph (c) of the NPRM apply only to wiring that is routed over structural frames. The FAA concurs. In its attempt to provide instructions for accomplishing certain corrective actions, which were not provided in the referenced service bulletin (discussed in the preamble of the NPRM), the FAA did not carry forward the scope of the test requirement into the corrective action specified in paragraph (c) of the AD. For clarification purposes, the FAA has revised paragraph (c) of the final rule to read, "If no gap between the wire bundle and blanket can be seen where the wiring is routed over structural frames * * *."

Actions Since Issuance of the NPRM

The FAA has reviewed and approved the following service bulletins:

Service bulletin	Revision level	Date
McDonnell Douglas Service Bulletin MD11–24–171	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–170	Revision 01	November 6, 2000.
Boeing Service Bulletin MD11–24–167, including Appendix	Revision 01	November 6, 2000.
Boeing Service Bulletin MD11–24–165, including Appendix	Revision 01	November 6, 2000.
Boeing Service Bulletin MD11–24–163, including Appendix	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–188	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–161	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–162	Revision 01	November 6, 2000.

The procedures described in these service bulletins are identical to those described in the original issue of the service bulletins (which were referenced in the NPRM as the appropriate sources of service information for doing the proposed actions), but contain certain editorial changes. No additional work is necessary on airplanes changed per the original issue of the service bulletins. Therefore, the FAA has revised the final rule to include Revision 01 of these service bulletins as additional sources of service information.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 182 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD.

It will take approximately 10 work hours per airplane to accomplish each of the six inspections specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these indicated inspections required by this AD on U.S. operators is estimated to be $216,000, or $3,600 per airplane.

It will take approximately 5 work hours per airplane to accomplish the inspection specified in paragraph (a)(7) of this AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this indicated inspection required by this AD on U.S. operators is estimated to be $18,000, or $300 per airplane.

It will take approximately 12 work hours per airplane to accomplish the inspection specified in paragraph (a)(8) of this AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this indicated inspection required by this AD on U.S. operators is estimated to be $43,200, or $720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–15 McDonnell Douglas: Amendment 39–12022. Docket 2000–NM–36–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, 0558 through 0633 inclusive, and 0635; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: The FAA recommends that the actions required by this AD be accomplished immediately after accomplishing the replacement of metallized polyethyleneteraphthalate (MPET) insulation blankets, as required by AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000).

To prevent electrical arcing and/or heat damaged wires due to improper wire installations during manufacture and/or maintenance of the airplane, and consequent fire and smoke in various areas of the airplane, accomplish the following:

One-Time Detailed Visual Inspection

(a) Within 5 years after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) of this AD, as applicable.

(1) *For all airplanes:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the center and aft cargo compartments from stations Y=1521.000 to Y=2007.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas service Bulletin MD11–24–171, dated April 4, 2000, or Revision 01, dated November 6, 2000.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(2) *For all airplanes:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward cargo compartment from stations Y=595.000 to Y=6–73.500, in accordance with the paragraph 3.B., "Work Instructions," of the

Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–170, dated April 12, 2000, or Revision 01, dated November 6, 2000.

(3) *For all airplanes:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=5–11.000 to Y=2007.000, in accordance with the paragraph 3.B., "Work instructions," of the Accomplishment Instructions of McDonnell Douglas Service bulletin MD11–24–167, dated April 4, 2000, or Boeing Service Bulletin MD11–24–167, revision 01, including Appendix 1, dated November 6, 2000.

(4) *For all airplanes:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=756.000 to Y=1501.000, in accordance with the paragraph 3.B., "Work instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–165, dated April 4, 2000, or Boeing Service Bulletin MD11–24–165, Revision 01, including Appendix, dated November 6, 2000.

(5) *For all airplanes:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=465.000 to Y=755.000, in accordance with the paragraph 3.B., "Work instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–163, dated April 4, 2000, or Boeing Service Bulletin MD11–24–163, Revision 01, including Appendix 1, dated November 6, 2000.

(6) *For oll airplanes:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the flight compartment and forward drop ceilings areas from stations Y=275.000 to Y=464.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–188, dated April 28, 2000, or Revision 01, dated november 6, 2000.

(7) *For airplanes having manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, 0558 through 0633 inclusive:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the center accessory compartment from stations y=6–50.000 to Y=1179.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–161, dated April 10, 2000, or Revision 01, dated November 6, 2000.

(8) *For airplanes having manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, 0558 through 0633 inclusive:* Perform a one-time detailed visual inspection to detect discrepancies of all electrical wiring installations in the main avionics compartment from stations y=275.000 to Y=464.000, in accordance with the paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–162, dated April 10, 2000, or Revision 01, dated November 6, 2000.

Corrective Action

(b) If any discrepancy is detected during the inspection required by paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this AD, before further flight, accomplish the applicable corrective action(s) in accordance with the Accomplishment Instructions of the following applicable service bulletins, except as provided in paragraphs (c) and (d) of this AD, as applicable:

(1) McDonnell Douglas Service Bulletin MD11–24–171, dated April 4, 2000, or Revision 01, dated November 6, 2000;

(2) McDonnell Douglas Service Bulletin MD11–24–170, dated April 12, 2000, or Revision 01, dated November 6, 2000;

(3) McDonnell Douglas Service Bulletin MD11–24–167, dated April 4, 2000;

(4) Boeing Service Bulletin MD11–24–167, dated April 4, 2000, Revision 01, including Appendix, dated November 6, 2000;

(5) McDonnell Douglas Service Bulletin MD11–24–165, dated April 4, 2000;

(6) Boeing Service Bulletin MD11–24–165, Revision 01, including Appendix, dated November 6, 2000;

(7) McDonnell Douglas Service Bulletin MD11–24–163, dated April 4, 2000;

(8) Boeing Service Bulletin MD11–24–163, Revision 01, including Appendix 1, dated November 6, 2000;

(9) McDonnell Douglas Service Bulletin MD11–24–188, dated April 28, 2000, or Revision 01, dated November 6, 2000;

(10) McDonnell Douglas Service Bulletin MD11–24–161, dated April 10, 2000, or Revision 01, dated November 6, 2000; or

(11) McDonnell Douglas Service Bulletin MD11–24–162, dated April 10, 2000, or Revision 01, dated November 6, 2000.

Note 4: Where there are differences between the AD and the referenced service bulletins, the AD prevails.

(c) If no gap between the wire bundle and blanket can be seen where the wiring is routed over the structural frames when pressure is applied to the blanket, before further flight, reposition wires or clamps so that a gap can be seen when pressure is applied to the blanket.

(d) If any screw terminal of the flag lug bus bar is loose, before further flight, retorque to 10 to 11 inch-pounds.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraphs (c) and (d) of this AD, the actions shall be done in accordance with the following applicable service bulletins:

Service bulletin	Revision level	Date
McDonnell Douglas Service Bulletin MD11–24–171	Original	April 4, 2000.
McDonnell Douglas Service Bulletin MD11–24–171	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–170	Original	April 12, 2000.
McDonnell Douglas Service Bulletin MD11–24–170	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–167	Original	April 4, 2000.
Boeing Service Bulletin MD11–24–167, including Appendix	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–165	Original	April 4, 2000.
Boeing Service Bulletin MD11–24–165, including Appendix	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–163	Original	April 4, 2000.
Boeing Service Bulletin MD11–24–163, including Appendix	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–188	Original	April 28, 2000.
McDonnell Douglas Service Bulletin MD11–24–188	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–161	Original	April 10, 2000.
McDonnell Douglas Service Bulletin MD11–24–161	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–162	Original	April 10, 2000.

Service bulletin	Revision level	Date
McDonnell Douglas Service Bulletin MD11–24–162	Revision 01	November 6, 2000.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30440 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–37–AD; Amendment 39–12023; AD 2000–24–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires an inspection of the one phase remote control circuit breaker (RCCB) in the main avionics compartment and center accessory compartment to determine its part number and serial number, and replacement of the RCCB with a certain RCCB, if necessary. This action is necessary to ensure that defective braze joints of certain latch assemblies of the RCCB are not installed on the airplane. Defective braze joints could fail and prevent the RCCB from tripping during an overload condition, which could result in a fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 27, 2000 (65 FR 46221). That action proposed to require an inspection of the one phase remote control circuit breaker (RCCB) in the main avionics compartment and center accessory compartment to determine its part number and serial number, and replacement of the RCCB with a certain RCCB, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 187 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $21,600, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–16 McDonnell Douglas: Amendment 39–12023. Docket 2000–NM–37–AD.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–24A144, dated May 2, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 6 months after the effective date of this AD, perform a one-time general visual inspection of the one phase remote control circuit breaker (RCCB) in the main avionics compartment and center accessory compartment to determine the part number and serial number (identified in Table 2 of the Accomplishment Instructions of the service bulletin), in accordance with Boeing Alert Service Bulletin MD11–24A144, dated May 2, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If any RCCB has a part number listed in Table 2 of the Accomplishment Instructions of the service bulletin and the corresponding serial number is NOT identified in that table, no further action is required by this AD.

(2) If any RCCB has a part number listed in Table 2 of the Accomplishment Instructions of the service bulletin and the corresponding serial number is identified in that table, before further flight, replace the RCCB with a RCCB having the same part number with a serial number that is NOT identified in Table 2, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A144, dated May 2, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30441 Filed 12–1–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–38–AD; Amendment 39–12024; AD 2000–24–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires deactivation of the forward and center cargo control units (CCU). This amendment requires, among other actions, a general visual inspection to verify that all six external connectors of suspect CCU's have a certain part number stamped on the connector bodies on all CCU assemblies, and follow-on actions, which would constitute terminating action for the deactiviation requirements. The actions specified by this amendment are intended to prevent overheating of the electrical pins inside the CCU's and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment.

DATES: Effective January 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–08–03, amendment 39–11689 (65 FR 21134, April 20, 2000), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** on July 27, 2000 (65 FR 46223). The action proposed to continue to require deactivation of the forward and center cargo control units (CCU). The action also proposed to require, among other actions, a general visual inspection to verify that all six external connectors of suspect CCU's have a certain part number stamped on the connector bodies on all CCU assemblies, and follow-on actions, which would constitute terminating action for the deactiviation requirements.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 104 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2000–08–03 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,200, or $60 per airplane.

The new inspection that is required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,200, or $60 per airplane.

Should an operator be required to accomplish the new modification that is required in this AD action, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer of the CCU at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $60 per airplane.

Should an operator be required to accomplish the new replacement that is required in this AD action, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer of the CCU at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11689 (65 FR 21134, April 20, 2000), and by adding a new airworthiness directive (AD), amendment 39–12024, to read as follows:

2000–24–17 McDonnell Douglas: Amendment 39–12024. Docket 2000–NM–38–AD. Supersedes AD 2000–08–03, Amendment 39–11689.

Applicability: Model MD–11 series airplanes, certificated in any category, having the serial numbers listed below.

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Group 1 Airplanes

48565	48566	48533	48549	48470	48406
48504	48602	48603	48571	48439	48605
48572	48471	48573	48600	48601	48633
48513	48574	48575	48542	48543	48576
48415	48631	48544	48632	48577	48545
48578	48546	48743	48744	48747	48748
48745	48746	48749	48579	48766	48768
48767	48769	48754	48623	48770	48753
48773	48774	48755	48758	[1] 48775–48779	
48624	48756	48780	48532		

[1] Inclusive.

Group 2 Airplanes:

48555	48556	48581	48630	48557	48539
48558	48559	48616	48560	48617	48618
48561	48629	48562	48563	48757	48540
48564	48634	48541	48798	[1] 48781–48792	
48794	48799	48801	48800	[1] 48802–48806	

[1] Inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical pins inside the cargo control units (CCU) and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment, accomplish the following:

Restatement of Requirements of AD 2000–05–01

Deactivation

(a) For Group 1 airplanes having serial numbers other than that identified in paragraph (c) of this AD: Within 15 days after March 20, 2000 (the effective date of AD 2000–05–01, amendment 39–11610), deactivate the forward and center CCU's in accordance with the following procedures:

(1) Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506	B1–489	B1–488	B1–487	B1–486
B1–485	B1–480	B1–481	B1–498	B1–482
B1–500	B1–495	B1–499	B1–490	

(2) Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552	B1–762	B1–761	B1–760	B1–759
B1–758	B1–518	B1–519	B1–751	B1–520
B1–753	B1–764	B1–752	B1–763	

(b) For Group 2 airplanes having serial numbers other than that identified in paragraph (c) of this AD: Within 15 days after March 20, 2000, deactivate the forward and center CCU's in accordance with the following procedures:

(1) Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506	B1–489	B1–488	B1–487	B1–486
B1–485	B1–480	B1–481	B1–498	B1–482
B1–500	B1–495	B1–499	B1–490	

(2) Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552	B1–762	B1–761	B1–760	B1–759
B1–758	B1–518	B1–519	B1–751	B1–520
B1–753	B1–764	B1–752		

Restatement of Requirements of AD 2000–08–03

Deactivation

(c) For Group 1 airplane, serial number 48769, and for Group 2 airplane, serial number 48563: Within 15 days after May 5, 2000 (the effective date of AD 2000–08–03, amendment 39–11689), accomplish the actions specified in either paragraph (a) or (b) of this AD, as applicable.

New Requirements of This AD

Inspection and Modification/Reidentification, If Necessary

(d) For Group 1 and Group 2 airplanes: Within 90 days after the effective date of this AD, perform an inspection to determine the part number of the CCU's.

(1) If both CCU's have part number (P/N) 462650–21, 462650–22, or 462650–23, the deactivation specified in paragraphs (a), (b), and (c) of this AD is no longer required, and the CCU's may be reactivated.

(2) If any CCU has a part number (P/N) other than 462650–21, 462650–22, or 462650–23, within 90 days after the effective date of this AD, perform a general visual inspection to verify that all six external connectors of the CCU have P/N M83723/71XXXXXX or P/N M83723/72XXXXXX stamped on the connector bodies on all TRW Aeronautical Systems, Lucas Aerospace, CCU assemblies, in accordance with Boeing Alert Service Bulletin MD11–25A253, dated March 10, 2000.

Note 2: McDonnell Douglas Service Bulletin MD11–25A253, dated March 10, 2000, references TRW Aeronautical Systems, Lucas Aerospace Alert Service Bulletin 462650–25–A01, dated March 10, 2000, as an additional source of service information to accomplish the inspection described above and corrective actions described below.

(i) If any connector has a P/N other than M83723/71XXXXXX or M83723/72XXXXXX, prior to further flight, replace the CCU with a spare CCU from the operator's stock that has one of the following P/N: 462650–21, 462650–22, or 462650–23. Following accomplishment of the replacement, the deactivation specified in paragraphs (a), (b), and (c) of this AD is no longer required, and the CCU's may be reactivated.

(ii) If any connector has P/N M83723/71XXXXXX or P/N M83723/72XXXXXX, prior to further flight, modify the rear cover (40) of the CCU assembly (including aligning the center hole of the insulator with the center hole on the rear cover (40), and ensuring that the top edge of the insulator is parallel to the top edge of the rear cover), and reidentify the CCU, in accordance with the service bulletin. Following accomplishment of the modification, the deactivation specified in paragraphs (a), (b), and (c) of this AD is no longer required, and the CCU's may be reactivated.

Spares

(e) As of the effective date of this AD, no person shall install on any airplane any part (identified under "Key Word"), having a "Spare Part No." listed in paragraph 2.D., "Parts Necessary to Change Spares," of Boeing Alert Service Bulletin MD11–25A253, dated March 10, 2000.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions required by paragraphs (d)(2), (d)(2)(i) and (d)(2)(ii) shall be done in accordance with Boeing Alert Service Bulletin MD11–25A253, dated March 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on January 8, 2001.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30442 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. PL00–1–000]

Dialog Concerning Natural Gas Transportation Policies Needed to Facilitate Development of Competitive Natural Gas Markets

November 22, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of staff conference.

SUMMARY: In Order No. 637, issued on February 9, 2000,the Federal Energy Regulatory Commission (Commission) revised its regulatory policies, amended its regulations, and established new procedures to enhance the competitiveness and efficiency of markets for the transportation of natural gas in interstate commerce. This document establishes the second of three public staff conferences in a dialog between the industry and Commission staff. This conference focuses on affiliate issues.

DATES: The conference will take place on January 31, 2001, starting at 1:00 p.m. Comments and requests to participate are due by January 5, 2001.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Robert A. Flanders, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. (202) 208–2084, e-mail: Robert.Flanders@ferc.fed.us.

SUPPLEMENTARY INFORMATION: Take notice that on January 31, 2001, the Staff of the Federal Energy Regulatory Commission will hold a public conference, as contemplated by Order No. 637,[1] to discuss how the changes in the natural gas market affect the way in which the Commission should regulate transportation transactions between pipelines and their affiliates, as well as between pipeline capacity holders and their affiliates, capacity managers and agents. The conference will begin at 1:00 p.m. in the Commission's Meeting Room at 888 First Street, N.E., Washington, D.C. All interested persons are invited to attend.

This conference is part of the continuing process established in Order No. 637,[2] to enable the industry and market participants to discuss with staff, and each other, issues relating to the development of Commission policy and regulatory responses so that Commission staff can develop "a better understanding of industry trends and regulatory changes that better meet the changing character of the industry."[3] This is the second of three conferences to discuss these issues.

As stated in Order No. 637, this conference will focus on "whether the regulatory policy with respect to pipeline affiliates and non-affiliates, as well as asset managers and agents, should be revised to reflect the changing nature of the gas market" and "whether there needs to be revisions to the regulations relating to pipeline affiliates."[4] Currently, the relationship between a pipeline and its marketing affiliate(s) is governed by the standards of conduct.[5] Market participants are also able to monitor pipeline/marketing affiliate relationships and capacity holder/affiliate relationships by obtaining specific information through various posting and reporting requirements. This conference is intended to open a dialog concerning the market consequences of transactions

[1] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, Final Rule, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [Jan. 2000-June 2000] ¶31,091 (Feb. 9, 2000), Order No. 637–A, Order on Rehearing, 65 FR 35705 (June 5, 2000) FERC Stats. & Regs. ¶31,099 (May 19, 2000).

[2] Id., FERC Stats. & Regs. ¶31,091 at pp. 31,268–69.

[3] Id., FERC Stats. & Regs. ¶31,091 at p. 31,268.

[4] Id., FERC Stats. & Regs. ¶31,091 at pp. 31,268–69.

[5] 18 CFR Part 161 (2000).

between pipelines and their affiliates as well as transactions between non-pipeline capacity holders and their affiliates.

This conference will be structured as a roundtable debate with staff as moderator. Panel participants will be selected after the submission of comments and will be announced in a subsequent notice. The debate roundtable format is intended to encourage a discussion of the issues, and, accordingly, participants will not be afforded the opportunity to make oral presentations at the conference. Parties are therefore encouraged to submit written comments by January 5, 2001 to: (1) provide input on how to structure the discussion; (2) identify issues and examples to foster a meaningful dialog; and (3) suggest questions the staff moderator may wish to pose to the panel.

Comments should include a one-page single spaced position summary. Each comment should indicate whether the party is interested in participating in the roundtable. To limit the number of panelists, parties with common positions are encouraged to select an appropriate spokesperson to allow balanced representation of each industry segment, such as pipelines, local distribution companies, producers, industrial end-users, electric utilities, marketer groups, state regulatory bodies, consumer groups, or other recognized industry trade organizations or groups. Comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and should refer to Docket No. PL00–1–000. Each request to participate must include a contact person, telephone number and e-mail address.

Commenters are encouraged to address the following areas:

Current Regulatory Approach: Comments should address the effectiveness of the current standards of conduct under Part 161 of the Commission's regulations, 18 CFR part 161 (2000), including a discussion of experiences in which the rules have been successful or unsuccessful, and whether the costs imposed by the current rules exceed the benefits. Comments should also address whether the affiliate transaction and index of customer reporting under sections 284.13(b)(1)(ix) and 284.13(c)(1)(ix), respectively, are effective in monitoring affiliate market activity.

Potential Affiliate Concerns: Comments should discuss whether, and in what circumstances, affiliate transactions pose the potential for anticompetitive or discriminatory effects or explain why such effects are not likely. Comments asserting that affiliate transactions do pose anticompetitive/discriminatory risks should provide examples or scenarios in which there is the potential for such effects. Comments also should address whether the same or different risks apply depending on the nature of the affiliate, gas or power marketer, asset manager, electric generator, or local distribution company. Comments should explore the impact of the changing market conditions on the potential, if any, for a pipeline or capacity holder, to give preferential treatment to an affiliate. Comments may also consider the potential market or consumer benefits of permitting affiliate transactions. Comments should focus on whether the problem or benefit relates to the ability to acquire services, construction of facilities, the rates at which services are acquired, the quality of that service, or other factors.

Potential Approaches for Dealing with Affiliates: Comments should address whether there may be better methods of regulating affiliate transactions that should be used in lieu of the current standards of conduct and reporting requirements. Some alternatives that could be considered are: maintaining open and fair bidding procedures; prohibitions on affiliates holding capacity on the affiliated pipeline; limitations on an affiliate's capacity market share; changes in open-season bidding evaluations to break-up large capacity packages; or divestiture of affiliates. Similar approaches could be considered for affiliates of non-pipeline capacity holders. Comments need to address the costs and benefits of adopting these approaches and whether there is a potential adverse impact on the market, such as the risk of unsubscribed pipeline capacity, potential cost shifts, or difficulties in planning new pipeline construction without reliance on affiliate contracts.

Comments should consider whether changes to the current standards of conduct approach should be made in light of the current operation and changing nature of the industry. Specifically, comments should discuss the options of eliminating, expanding or modifying the standards of conduct, whether there is a need for uniform standards of conduct for all sellers or holders of jurisdictional capacity, and whether there should continue to be distinctions in the treatment of affiliate relationships, and ownership rules, between the gas and electric industries.

The Capitol Connection may broadcast this conference in the Washington, D.C. area if there is sufficient interest. For those interested persons outside the Washington, D.C. area, the Capitol Connection may broadcast the conference via live satellite for a fee if there is sufficient interest to justify the cost. To indicate interest in either the local or national broadcast, please call David Reininger or Julia Morelli at the Capitol Connection at 703–993–3100 as soon as possible.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211 for further details. Anyone interested in purchasing videotapes of the meeting should call VISCOM at 703–715–7999.

Questions about the conference should be directed to: Robert A. Flanders, Office of Markets Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, 202–208–2084. e-mail: *Robert.Flanders@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–30595 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations and Removals and Supplementary Information on Specially Designated Narcotics Traffickers, Foreign Terrorist Organizations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V by adding the names of fifteen individuals and five entities, and supplementing information concerning one individual, who have been designated as specially designated narcotics traffickers. The entries for two individuals previously listed as specially designated narcotics traffickers are being removed from appendix A, and the name of one organization which has been designated as a foreign terrorist organization is being added to appendix A.

EFFECTIVE DATE: November 28, 2000.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Pursuant to section 804(b) of the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1903(b), on June 1, 2000, President Clinton identified twelve individuals as significant foreign narcotics traffickers. In accordance with section 598.314 of the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, those twelve individuals are added to appendix A as specially designated narcotics traffickers. The notes to the appendixes to 31 CFR chapter V are amended to add the term "[SDNTK]" to refer to those persons designated as specially designated narcotics traffickers under the Foreign Narcotics Kingpin Sanctions Regulations.

As of June 1, 2000, all property and interests in property, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, that are owned or controlled by those twelve persons are blocked. All transactions or dealings by U.S. persons or within the United States in property or interests in property of those twelve persons are prohibited unless licensed by the Office of Foreign Assets Control or otherwise authorized.

In addition, the Office of Foreign Assets Control is adding to appendix A the names of three individuals and five entities who have been determined to play a significant role in international narcotics trafficking centered in Colombia, to materially assist in or provide financial support or technological support for, or goods or services in support of the narcotics trafficking activities of other specially designated narcotics traffickers, or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order"), and section 536.312 of the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536 (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). All real and personal property in which the SDNTs have any interest, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, are blocked. All transactions by U.S. persons or within the United States in property or interests in property of SDNTs are prohibited unless licensed by the Office of Foreign Assets Control or exempted by statute. Supplementary information is added to an existing SDNT entry for one individual, and that entry is revised in its entirety.

The Office of Foreign Assets Control also is removing from appendix A the entries for two individuals because it has been determined that they no longer meet the criteria for designation as SDNTs under the Order and the Narcotics Trafficking Sanctions Regulations. All real and personal property of these two individuals, including all accounts in which they have any interest, that had been blocked solely due to their designation as SDNTs, is unblocked; and all lawful transactions involving U.S. persons and these individuals previously barred as a result of their designation are permissible.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Finally, in furtherance of section 303 of the Antiterrorism and Effective Death Penalty Act of 1996, 18 U.S.C. 2339B ("AEDPA"), implemented in part by the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (the "FTO Regulations"), the Office of Foreign Assets Control is adding the name of one foreign terrorist organization to appendix A to 31 CFR chapter V. Section 303 of AEDPA, as implemented in section 597.201 of the FTO Regulations, requires financial institutions in possession or control of funds in which a foreign terrorist organization or its agent has an interest to block such funds except as authorized pursuant to the FTO Regulations, and to file reports in accordance with the FTO Regulations.

The foreign terrorist organization, The Islamic Movement of Uzbekistan, was designated by the Secretary of State in a notice published in the **Federal Register** on September 25, 2000 (65 FR 57641), pursuant to section 302 of AEDPA, 8 U.S.C. 1189, which authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate organizations meeting stated requirements as FTOs, with prior notification to Congress of the intent to designate.

Because this rule involves a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 18 U.S.C. 2339B, 21 U.S.C. 1901–1908; 31 U.S.C. 321(b), 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, the appendixes to 31 CFR chapter V are amended as set forth below:

Appendixes to Chapter V

1. The notes to the appendixes to chapter V are amended by amending note 6 to add the following entry inserted in alphabetical order to read as follows:

Notes: * * *

* * * * *

6. * * *

[SDNTK]: Foreign Narcotics Kingpin Sanctions Regulations, part 598;

* * * * *

Appendix A—[Amended]

2. Appendix A to 31 CFR chapter V is amended by adding the following names inserted in alphabetical order:

ADEMULERO, Babestan Oluwole (see OGUNGBUYI, Oluwole A.) (individual) [SDNTK]

AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Carrera 4A No. 16–04 apt. 303, Cartago, Colombia; Km. 5 Via Aeropuerto, Cartago, Colombia; Carrera 1 No. 13–08, Cartago, Colombia; NIT 1 800021615–1 (Colombia) [SDNT]

AMESCUA, Chuey (see AMEZCUA CONTRERAS, Jose de Jesus) (individual) [SDNTK]

AMEZCUA CONTRERAS, Jesus (see AMEZCUA CONTRERAS, Jose de Jesus) (individual) [SDNTK]

AMEZCUA CONTRERAS, Jose de Jesus (a.k.a. AMESCUA, Chuey; a.k.a. AMEZCUA CONTRERAS, Jesus; a.k.a. AMEZCUA, Chuy; a.k.a. AMEZCUA, Jose de Jesus; a.k.a. HERNANDEZ, Adan), DOB 31 July 1963; alt. DOB 31 July 1964; alt. DOB 31 July 1965; POB Mexico (individual) [SDNTK]

AMEZCUA CONTRERAS, Luis Ignacio (a.k.a. AMEZCUA, Luis; a.k.a. CONTRERAS, Luis C.; a.k.a. LOPEZ, Luis; a.k.a. LOZANO, Eduardo; a.k.a. OCHOA, Salvador; a.k.a. RODRIGUEZ LOPEZ, Sergio), DOB 22 February 1964; alt. DOB 21 February 1964; alt. DOB 21 February 1974; POB Mexico (individual) [SDNTK]

AMEZCUA, Chuy (see AMEZCUA CONTRERAS, Jose de Jesus) (individual) [SDNTK]

AMEZCUA, Jose de Jesus (see AMEZCUA CONTRERAS, Jose de Jesus) (individual) [SDNTK]

AMEZCUA, Luis (see AMEZCUA CONTRERAS, Luis Ignacio) (individual) [SDNTK]

ARELLANO FELIX, Benjamin Alberto, DOB 12 March 1952; alt. DOB 8 November 1953; alt. DOB 11 August 1955; POB Mexico (individual) [SDNTK]

ARELLANO FELIX, Ramon Eduardo (a.k.a. COMACHO RODRIGUES, Gilberto; a.k.a. TORRES MENDEZ, Ramon), DOB 31 August 1964; POB Mexico (individual) [SDNTK]

BABESTAN, Abeni O. (see OGUNGBUYI, Abeni O.) (individual) [SDNTK]

BABESTAN, Wole A. (see OGUNGBUYI, Oluwole A.) (individual) [SDNTK]

CARO QUINTERO, Rafael (a.k.a. CARO QUINTERO, Raphael), DOB 12 December 1952; alt. DOB 24 November 1955; alt. DOB 24 October 1955; POB Mexico (individual) [SDNTK]

CARO QUINTERO, Raphael (see CARO QUINTERO, Rafael) (individual) [SDNTK]

CARRILLO FUENTES, Andres (see CARRILLO FUENTES, Vicente) (individual) [SDNTK]

CARRILLO FUENTES, Vicente (a.k.a. CARRILLO FUENTES, Andres), DOB 16 October 1962; POB Mexico (individual) [SDNTK]

CHAN, Changtrakul (see CHANG, Chi Fu) (individual) [SDNTK]

CHANG, Chi Fu (a.k.a. CHAN, Changtrakul; a.k.a. CHANG, Shi-Fu; a.k.a. CHANG, Xifu; a.k.a. CHANGTRAKUL, Chan; a.k.a. KHUN SA), DOB 17 February 1933; alt. DOB 7 January 1932; alt. DOB 12 February 1932; POB Burma (individual) [SDNTK]

CHANG, Shi-Fu (see CHANG, Chi Fu) (individual) [SDNTK]

CHANG, Xifu (see CHANG, Chi Fu) (individual) [SDNTK]

CHANGTRAKUL, Chan (see CHANG, Chi Fu) (individual) [SDNTK]

CHARNCHAI, Chiwinnitipanya (see WEI, Hsueh Kang) (individual) [SDNTK]

CHEEWINNITTIPANYA, Prasit (see WEI, Hsueh Kang) (individual) [SDNTK]

CHIVINNITIPANYA, Prasit (see WEI, Hsueh Kang) (individual) [SDNTK]

CHIWINNITIPANYA, Charnchai (see WEI, Hsueh Kang) (individual) [SDNTK]

COMACHO RODRIGUES, Gilberto (see ARELLANO FELIX, Ramon Eduardo) (individual) [SDNTK]

COMPANIA AGROINVERSORA HENAGRO LTDA., Carrera 1 No. 13–08, Cartago, Colombia; Hacienda Coque, Cartago, Colombia; Km. 5 Via Aeropuerto, Cartago, Colombia; NIT # 800084326–8 (Colombia) [SDNT]

CONTRERAS, Luis C. (see AMEZCUA CONTRERAS, Luis Ignacio) (individual) [SDNTK]

DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Carrera 4A No. 16–04 apt. 303, Cartago, Colombia; NIT # 800160475–2 (Colombia) [SDNT]

GONZALEZ BENITEZ, Olga Patricia, Hacienda Coque, Cartago, Colombia; Carrera 4 No. 16–04 apt. 303, Cartago, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; Cedula No. 29503761 (Colombia) (individual) [SDNT]

HEATH, Noel Timothy (a.k.a. ZAMBA, Noel Heath; a.k.a. ZAMBO, Noel Heath), Cardin Avenue, St. Kitts; DOB 16 December 1949; POB St. Kitts and Nevis; Passport 03574 (Great Britain) (individual) [SDNTK]

HENAO MONTOYA, Arcangel de Jesus, Hacienda Coque, Cartago, Colombia; Carrera 4 No. 16–04 apt. 303, Cartago, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 7 October 1954; Cedula No. 16215230 (Colombia) (individual) [SDNT]

HERNANDEZ, Adan (see AMEZCUA CONTRERAS, Jose de Jesus) (individual). [SDNTK]

THE ISLAMIC MOVEMENT OF UZBEKISTAN [FTO]

KADUMPORN, Somboon (see WEI, Hsueh Kang) (individual) [SDNTK]

KHUN SA (see CHANG, Chi Fu) (individual) [SDNTK]

LOPEZ, Luis (see AMEZCUA CONTRERAS, Luis Ignacio) (individual) [SDNTK]

LOZANO, Eduardo (see AMEZCUA CONTRERAS, Luis Ignacio) (individual) [SDNTK]

MAQUINARIA TECNICA Y TIERRAS LTDA. (a.k.a. M.T.T. LTDA.), Carrera 4A No. 16–04, Cartago, Colombia; NIT # 800084233–1 (Colombia) [SDNT]

MATHEW, Glenroy (see MATTHEWS, Glenroy Vingrove) (individual) [SDNTK]

MATTHEW, Glenroy Wingrove (see MATTHEWS, Glenroy Vingrove) (individual) [SDNTK]

MATTHEWS, Glenroy Vingrove (a.k.a. MATHEW, Glenroy; a.k.a. MATTHEW, Glenroy Wingrove; a.k.a. MATTHEWS, Glen Roy), Frigate Bay, St. Kitts; DOB 26 July 1958; POB St. Kitts and Nevis; Passport 047815 (St. Kitts) (individual) [SDNTK]

MATTHEWS, Glen Roy (see MATTHEWS, Glenroy Vingrove) (individual) [SDNTK]

M.T.T. LTDA. (see MAQUINARIA TECNICA Y TIERRAS LTDA.) [SDNT]

OCHOA, Salvador (see AMEZCUA CONTRERAS, Luis Ignacio) (individual) [SDNTK]

OGUNGBUYI, Abeni O. (a.k.a. BABESTAN, Abeni O.; a.k.a. SHOFESO, Olatutu Temitope), DOB 30 June 1952; POB Nigeria (individual) [SDNTK]

OGUNGBUYI, Oluwole A. (a.k.a. ADEMULERO, Babestan Oluwole; a.k.a. BABESTAN, Wole A.; a.k.a. OGUNGBUYI, Wally; a.k.a. OGUNGBUYI, Wole A.; a.k.a. SHOFESO, Olatude I.; a.k.a. SHOFESO, Olatunde Irewole), DOB 4 March 1953, POB Nigeria (individual) [SDNTK]

OGUNGBUYI, Wally (see OGUNGBUYI, Oluwole A.) (individual) [SDNTK]

OGUNGBUYI, Wole A. (see OGUNGBUYI, Oluwole A.) (individual) [SDNTK]

ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Carrera 4A No. 16–04 apt. 303, Cartago, Colombia; Km. 5 Via Aeropuerto, Hacienda Coque, Cartago, Colombia; NIT # 800157331–1 (Colombia) [SDNT]

PRASIT, Cheewinnittipanya (see WEI, Hsueh Kang) (individual) [SDNTK]

PRASIT, Chivinnitipanya (see WEI, Hsueh Kang) (individual) [SDNTK]

RAMIREZ ABADIA, Juan Carlos, Calle 6A No. 34–65, Cali, Colombia; DOB 16 February 1963; Passport AD127327 (Colombia); Cedula No. 16684736 (Colombia) (individual) [SDNT]

RODRIGUEZ LOPEZ, Sergio (see AMEZCUA CONTRERAS, Luis Ignacio) (individual) [SDNTK]

SHOFESO, Olatude I. (see OGUNGBUYI, Oluwole A.) (individual) [SDNTK]

SHOFESO, Olatunde Irewole (see OGUNGBUYI, Oluwole A.) (individual) [SDNTK]

SHOFESO, Olatutu Temitope (see OGUNGBUYI, Abeni O.) (individual) [SDNTK]

SOMBOON, Kadumporn (see WEI, Hsueh Kang) (individual) [SDNTK]

TORRES MENDEZ, Ramon (see ARELLANO FELIX, Ramon Eduardo) (individual) [SDNTK]

WEI, Hsueh Kang (a.k.a. CHARNCHAI, Chiwinnitipanya; a.k.a. CHEEWINNITTIPANYA, Prasit; a.k.a. CHIVINNITIPANYA, Prasit; a.k.a. CHIWINNITIPANYA, Charnchai; a.k.a. KADUMPORN, Somboon; a.k.a. PRASIT, Cheewinnittipanya; a.k.a. PRASIT, Chivinnitipanya; a.k.a. SOMBOON, Kadumporn; a.k.a. WEI, Shao-Kang; a.k.a. WEI, Sia-Kang; a.k.a. WEI, Xuekang), DOB 29 June 1952; alt. DOB 29 May 1952; Passports Q081061, E091929 (Thailand) (individual) [SDNTK]

WEI, Shao-Kang (see WEI, Hsueh Kang) (individual) [SDNTK]

WEI, Sia-Kang (see WEI, Hsueh Kang) (individual) [SDNTK]

WEI, Xuekang (see WEI, Hsueh Kang) (individual) [SDNTK]

ZAMBA, Noel Heath (see HEATH, Noel Timothy) (individual) [SDNTK]

ZAMBO, Noel Heath (see HEATH, Noel Timothy) (individual) [SDNTK]

3. Appendix A to 31 CFR chapter V is amended by revising the following existing entry to read as follows:

MUÑOZ PAZ, Joaquin Emilio, Avenida 4AN No. 47–89, Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia; DOB 18 January 1971; Cedula No. 16789012 (Colombia) (individual) [SDNT]

4. Appendix A to 31 CFR chapter V is amended by removing in their entirety the entries for "OSPINA DUQUE, Elssy" and "VILLALOBOS CASTAÑO, Luis Enrique".

Dated: October 27, 2000.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 4, 2000.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 00–30693 Filed 11–28–00; 4:29 pm]

BILLING CODE 4810–25–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7747]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits

flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

64.6 LIST OF ELIGIBLE COMMUNITIES

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Region V				
Michigan: Drummond Island, township of, Chippewa County.	260803	April 16, 1987, Emerg., September 30, 1987, Reg. November 20, 2000.	11–20–00	Do.
Onota, township of, Alger County.	260345	April 7, 1986, Emerg., December 18, 1986, Reg. November 20, 2000.	-do-	do.

Note to table: Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 21, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–30706 Filed 12–1–00; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 270 and 276

Bonus to Reward States for High Performance Under the TANF Program and Data Collection and Reporting Requirements for States and Indian Tribes Under Welfare-to-Work Grants

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rules; correction and removal.

SUMMARY: This document contains three actions. First, we are correcting two words in the high performance bonus final regulations, published August 30, 2000. Second, we are revising or updating two statements in the preamble to these regulations for clarity. Third, we are removing from the Code of Federal Regulations the interim final regulations on Welfare-to-Work data collection, published October 29, 1998, as the Department of Labor now has responsibility for all data collection on this program.

DATES: These actions are effective December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, Office of Planning, Research and Evaluation, at (202) 401–9297 or Ann Burek, Office of Family Assistance, at (202) 401–4528.

SUPPLEMENTARY INFORMATION:

A. Correction to Final Rule 45 CFR Part 270: Bonus to Reward States for High Performance under the TANF Program

We published final regulations for awarding high performance bonuses to States under the Temporary Assistance for Needy Families (TANF) Program on August 30, 2000 (65 FR 52814). The final regulations specified the measures on which we will base high performance bonus awards and the funds allocation formula.

The measures specified in § 270.4(d) are based on the participation by low-income families in the Medicaid/State Children's Health Insurance Program (SCHIP). In § 270.4(d), we are making two word changes:

1. § 270.4(d)(1)(i) as published on August 30, 2000, reads as follows:

"Beginning in FY 2002, we will measure the number of individuals receiving TANF benefits who are also enrolled in Medicaid or SCHIP, who leave TANF in a calendar year and are enrolled in Medicaid or SCHIP in the fourth month after leaving TANF assistance, and who are not receiving TANF assistance in the fourth month as a percentage of individuals who left TANF in the fiscal year and are not receiving TANF assistance in the fourth month after leaving."

In this section, we are making one correction. We are deleting the word "calendar" and substituting the word "fiscal." We are measuring performance based on the fiscal year, rather than the calendar year.

2. § 270.4(d)(2)(ii) as published on August 30, 2000, reads as follows:

"For any given year, we will compare a State's performance on this improvement measure to its performance in the previous year, beginning with a comparison of FY 2000 to FY 2001, based on a quarterly submission by the State as determined by matching individuals (adults and children) who have left TANF assistance and who are not receiving it in the fourth month with Medicaid or SCHIP enrollment data."

In this section, we are deleting the word "it" and substituting the words "TANF assistance" for clarity.

B. Revisions to Preamble Language

In the preamble to the final regulations for the high performance bonus, we listed a number of other TANF regulations we had published. That list included the September 23, 1998 publication of the Notice of Proposed Rulemaking covering the annual reports of State child poverty rates in relation to the TANF program (63 FR 52814). We are updating this information to note that the final regulation regarding child poverty and the TANF program was published on June 23, 2000 (65 FR 39233).

Also in the preamble to the high performance bonus final regulations, on page 52820 we summarized the major changes in and provisions of the final rule. We are revising item #13 regarding the child care measure to clarify the fiscal years the various components of the child care measure are in effect. The revised language reads as follows:

"Bases competition in FY 2002 on a child care measure which focuses on child care accessibility (the percent of CCDF-eligible children receiving services) and affordability (assessed family co-payments), using data the States currently report to us under the CCDF program; in FY 2003, a component on child care quality is added based on State reimbursement rates."

C. Removal of 45 CFR Part 276: Data Collection and Reporting Requirements for States and Indian Tribes under Welfare-to-Work Grants

We are removing 45 CFR part 276, the data collection and reporting requirements pertaining to participants in the WtW program, because the Omnibus Consolidated Appropriations Act (Pub. L. 106–113), signed into law on November 29, 1999, revised the data collection and reporting requirements for the Welfare-to-Work (WtW) program under sections 403(a)(5) and 411 of the Social Security Act (Act) to place all the responsibility with the Department of Labor (DOL). At the time we published the interim final rule (October, 1998), DOL and the Department of Health and Human Services shared these responsibilities.

The Omnibus Consolidated Appropriations Act also removed the WtW participant reporting requirements from section 411 of the Act.

The legislation that created the WtW program was in the Balanced Budget Act of 1997, Pub. L. 105–33. DOL's implementation of this legislation included the publication of an interim final rule on November 18, 1997 (62 FR 615588). This interim final rule specified program and administrative requirements, including financial reporting requirements, for formula grantees and competitive grantees. We (ACF) published an interim final rule on October 29, 1998, to implement the reporting requirements related to participant characteristics in the WtW program that were contained in section 411 of the Act.

When the Omnibus Appropriations Act placed responsibility for all data collection with the DOL, the Employment and Training Administration (ETA) of DOL published a notice of proposed information collection requirements for the WtW program on August 20, 2000 (65 FR 51034). Specifically, the notice requested public comment on revisions to two DOL quarterly status reports, *i.e.*, ETA #9068—Report by Formula Grantees and ETA #9068–1—Report by Competitive Grantees. The DOL revisions included reporting of WtW participant data consistent with the amendments under the Omnibus Appropriations Act.

D. Waiver of Notice and Comment Procedures

The Administrative Procedure Act (5 U.S.C. 553(b)(B)) requires that the Department publish a notice of proposed rulemaking unless the Department finds, for good cause, that such notice is impracticable, unnecessary, or contrary to the public interest. In this instance, this notice involves only a withdrawal of regulations that are no longer valid and two minor editorial corrections. Accordingly, the Department has determined that it would be unnecessary and contrary to the public interest to use notice and comment procedures in issuing these amendments.

E. Impact Analysis

No impact analysis is needed for these amendments.

List of Subjects

45 CFR Part 270

Grant programs—social programs; Poverty, Public assistance programs; Reporting and recordkeeping requirements.

45 CFR Part 276

Administrative practice and procedure; Employment; Manpower training programs; Penalties; Public assistance programs; Reporting and recordkeeping requirements; Vocational education.

(Catalog of Federal Domestic Assistance Programs: No.93.558 Temporary Assistance for Needy Families (TANF) Program; State Family Assistance Grants; Tribal Family Assistance Grants; Assistance Grants to Territories; Matching Grants to Territories; Supplemental Grants for Population Increases; Contingency Fund; High Performance Bonus; Decrease in Illegitimacy Bonus. Also, No.17.253 Welfare-to-Work Grants to States and Localities)

Dated: November 17, 2000.

Brian Burns,

Deputy Assistant Secretary for Information Resources Management.

For the reasons set forth in the preamble, 45 CFR part 270 is amended to make two corrections, and 45 CFR part 276 is removed as follows:

PART 270—HIGH PERFORMANCE BONUS AWARDS

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 603(a)(4).

§ 270.4 [Corrected]

2. In § 270.4(d)(1)(i), the word "calendar" is revised to read "fiscal".

3. In § 270.4(d)(2)(ii), the word "it" is revised to read "TANF assistance".

PART 276—DATA COLLECTION AND REPORTING REQUIREMENTS FOR STATES AND INDIAN TRIBES UNDER WELFARE-TO-WORK GRANTS [REMOVED]

4. Part 276 is removed from chapter II of title 45 of the Code of Federal Regulations.

[FR Doc. 00–30093 Filed 12–1–00; 8:45 am]
BILLING CODE 4184–01–P

Proposed Rules

Federal Register
Vol. 65, No. 233
Monday, December 4, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 99–087–1]

Licensing and Inspection Requirements for Dealers of Dogs Intended for Hunting, Breeding, or Security Purposes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Animal Welfare regulations to reflect our policy of regulating wholesale dealers of dogs intended for hunting, breeding, or security purposes. We currently regulate these dealers under the same regulations in place for wholesale dealers of other dogs. This action would make the regulations consistent with our policy and would, therefore, clarify licensing and inspection requirements for affected dealers of dogs intended for hunting, breeding, or security purposes.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by February 2, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 99–087–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–087–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) requires certain dealers to obtain a license from the Secretary of Agriculture in order to buy or sell animals. The AWA further authorizes the Secretary of Agriculture to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by these regulated dealers, as well as by research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in title 9, parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 contains general requirements for regulated parties. Part 3 contains specific requirements for the care and handling of certain animals. Subpart A of part 3 contains the requirements applicable to dogs and cats.

Section 4 of the AWA (7 U.S.C. 2134) requires that a dealer may not sell an animal to a research facility, or for use as a pet or for exhibition, until he or she first obtains a license from the Secretary. Section 4 also requires a dealer to have a license to buy from or sell to another dealer (i.e., at wholesale). Because dogs sold for hunting, breeding, or security purposes are not sold to research facilities, or for use as pets or for exhibition, dealers in these dogs do not need a license to buy or sell them unless they do so at wholesale.

Section 13 of the AWA (7 U.S.C. 2143) directs the Secretary to promulgate standards of care with which regulated dealers must comply. Because section 4 of the AWA requires the regulation only of wholesale dealers of hunting, breeding, and security dogs, retail dealers of such dogs are not subject to the standards promulgated under section 13 of the AWA.

In accordance with the AWA, on July 19, 1999, we published in the **Federal Register** (Docket No. 97–018–4, 64 FR 38546–38548) a decision and policy statement that notified the public that, among other things, it is now our policy to license and inspect wholesale dealers of dogs intended primarily for hunting, breeding, or security purposes. This means that we currently regulate these dealers under the same regulations in place for wholesale dealers of other dogs. We instituted this policy to help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

However, the regulations at § 2.1 require that all dealers of dogs must be licensed and inspected. Our current definition for "dealer" in § 1.1 includes both wholesale and retail dealers of hunting, breeding, and security dogs. These provisions are inconsistent with our published policy.

Therefore, we propose to amend the regulations to require that only wholesale dealers of hunting, breeding, and security dogs be licensed and inspected. This change would be reflected in the definition for "dealer" in § 1.1. This action would bring our regulations into accord with our policy to regulate wholesale dealers of hunting, breeding, and security dogs.

The licensing requirements for animal dealers are contained in 9 CFR part 2, subpart A, and the care standards for dogs and cats are contained in 9 CFR part 3, subpart A. For information about becoming licensed as a dealer under the AWA, contact the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number of small entities that would be affected by this proposed rule.

In accordance with the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers.

We propose to amend the Animal Welfare regulations to reflect our policy of regulating only wholesale dealers of dogs intended for hunting, breeding, or security purposes. As such, this action would not result in any changes to our operations. We currently help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs through the licensing and inspection of wholesale dealers of these types of dogs; we regulate these dealers under the same regulations in place for wholesale dealers of other types of dogs.

To comply with our current policy and the regulations, wholesale dealers of dogs intended for hunting, breeding, or security purposes incur costs for licensing, as well as other expenses. The costs of licensing for affected dealers include an annual application fee of $10 and an annual class "A" license fee based on 50 percent of total gross sales or compensation from leased animals. License fee amounts are determined according to ranges shown in Table 1 of 9 CFR part 2, § 2.6.

Among other costs incurred by wholesale dealers of hunting, breeding, and security dogs are expenses related to veterinary care, tagging or tattoo marking for animal identification, recordkeeping, health certification of dogs commercially transported, and maintenance of appropriate facilities and operating standards (see 9 CFR part 3, subpart A). It is reasonable to assume, however, that many of these responsibilities are met by affected dealers simply as a matter of good business practice. When dealers satisfy the facilities and operating standards of the regulations by, for example, providing a safe and healthy environment (including appropriate heating, cooling and ventilation of the dogs' housing to adequate feeding and exercising programs), those dealers are contributing to their dogs' eventual sale value. As another example, records of transactions can only further a wholesale dealer's business success. Therefore, it is in a dealer's financial interest to promote the health and well-being of his or her dogs in accordance with the regulations. However, if any wholesale dealers of hunting, breeding, or security dogs were not in compliance with the regulations in 9 CFR parts 2 and 3 prior to our policy announcement in July, they may have expenses related to these requirements. We do not have information at this time on the number of such dealers or what their expenses might be.

The purpose of this proposed rule is actually to remove regulatory requirements covering dealers who sell hunting, breeding, or security dogs at the retail level. Those dealers would experience no economic effects from this action since we have never enforced those provisions.

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small entities. The Small Business Administration determines the criteria by which entities are classified as "small," using Standard Industrial Classification (SIC) categories. Wholesale dealers of hunting, breeding, and security dogs are included within SIC category 0279, "Animal Specialties, Not Elsewhere Classified." Small entities in this category are defined as ones with annual receipts of $0.5 million or less. Although data is not available on the number of wholesale dealers of hunting, breeding, and security dogs, or their incomes, it is presumed that the majority are small entities.

While a substantial number of affected dealers may be small entities, we expect that the effect of the proposed rule on these dealers would be insignificant because licensing and inspection requirements would remain the same. This action would simply make our regulations consistent with our policy and would, therefore, clarify licensing and inspection requirements for affected dealers of dogs intended for hunting, breeding, and security purposes.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative since this action would make the regulations consistent with our policy to help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

This proposed rule contains information collection and recordkeeping requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99–087–1. Please send a copy of your comments to: (1) Docket No. 99–087–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would make our regulations consistent with our policy. Under our policy, affected wholesale dealers of dogs intended for hunting, breeding, or security purposes are required to apply for an initial license; apply annually for license renewal; keep and maintain records (for at least 1 year) regarding each animal, including those purchased, acquired, transported, sold, or otherwise disposed of; complete a written program of veterinary care for animals; and provide a health certificate for animals moving interstate or leaving the country.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .34 hours per response.

Respondents: Certain wholesale dealers of dogs intended for hunting, breeding, or security purposes.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 6.4.

Estimated annual number of responses: 32.

Estimated total annual burden on respondents: 11 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 1 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 would be revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. In § 1.1, the definition for "dealer" would be revised to read follows:

§ 1.1 Definitions.

* * * * *

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

* * * * *

Done in Washington, DC, this 29th day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–30765 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–34–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6910–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment. Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making.

The EPA is also proposing to grant a petition submitted by Eastman Chemical Company—Texas Operations, (Eastman) to exclude (or delist) certain solid wastes generated by its Longview, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

Eastman submitted the petition under sections 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of sections 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Eastman's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Eastman uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until January 18, 2001. We will stamp comments received after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

Your requests for a hearing must reach EPA by December 19, 2000. The request must contain the information prescribed in section 260.20(d).

ADDRESSES: Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: "F–00–TXDEL–TXEASTMAN."

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Michelle Peace at (214) 665–7430.

SUPPLEMENTARY INFORMATION:

The Information in This Section is Organized as Follows

I. What risk assessment methods has the Agency used in previous delisting determinations that are being revised in this proposal?
A. Introduction
B. What fate and transport model does the Agency use in the DRAS for evaluating

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the risks to groundwater from the proposed exempted waste?
C. Why is the EPACMTP fate and transport model an improvement over the EPACML?
D. Has the EPACMTP methodology been formally reviewed?
E. Has the Agency modified the EPACMTP as utilized in the HWIR proposal?
F. What modifications to the DRAS have been made since the proposal on September 27, 2000?
II. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve this delisting?
C. How will Eastman manage the waste if it is delisted?
D. When would the proposed exclusion be finalized?
E. How would this action affect states?
III. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
IV. EPA's Evaluation of the Waste Information and Data
A. What wastes did Eastman petition EPA to delist?
B. Who is Eastman and what process do they use to generate the petition waste?
C. How did Eastman sample and analyze the data in this petition?
D. What were the results of Eastman's analysis?
E. How did EPA evaluate the risk of delisting this waste?
F. What did EPA conclude about Eastman's analysis?
G. What other factors did EPA consider in its evaluation?
H. What is EPA's evaluation of this delisting petition?
V. Next Steps
A. With what conditions must the petitioner comply?
B. What happens if Eastman violates the terms and conditions?
VI. Public Comments
A. How may I as an interested party submit comments?
B. How may I review the docket or obtain copies of the proposed exclusions?
VII. Regulatory Impact
VIII. Regulatory Flexibility Act
IX. Paperwork Reduction Act
X. Unfunded Mandates Reform Act
XI. Executive Order 13045
XII. Executive Order 13084
XIII. National Technology Transfer and Advancements Act
XIV. Executive Order 13132 Federalism

I. What Risk Assessment Methods Has the Agency Used in Previous Delisting Determinations That Are Being Revised in This Proposal?

A. Introduction

The fate and transport of constituents in leachate from the bottom of the landfill or surface impoundment waste unit through the unsaturated zone (non-water bearing layer) and to a drinking water well in the saturated zone (water-bearing layer) is estimated using a fate and transport model. The Agency has applied the U.S. EPA Composite Model for Landfill (EPACML) fate and transport model to estimate constituent concentrations in groundwater at a receptor well located downgradient from a landfill or surface impoundment. The EPACML fate and transport model was used to determine a dilution attenuation factor (DAF). The DAF estimates the degree of dilution and attenuation that a waste constituent would undergo as it leaches from a waste management unit and is transported in the subsurface, into the saturated zone, and to a theoretical downgradient receptor well. The EPACML was originally developed to compute DAFs and set regulatory levels for specific constituents for the Toxicity Characteristics Rule (TC Rule) 55 FR 11798 (March 29, 1990). Subsequently, the EPACML has been used for multiple RCRA delistings beginning with the Reynolds Metals delisting decision 56 FR 67197 (December 30, 1991). The EPACML accounts for:

- one-dimensional steady and uniform advective flow;
- contaminant dispersion in the longitudinal, lateral, and vertical directions and;
- sorption

However, advances in groundwater fate and transport have been made in recent years and the Agency proposes the use of a more advanced groundwater fate and transport model for this RCRA delisting. More specific details about the DRAS can be found in 65 FR 58015 (September 27, 2000).

B. What Fate and Transport Model Does the Agency Use in the DRAS for Evaluating the Risks to Groundwater From the Proposed Exempted Waste?

The Agency proposes to use the EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) in this delisting determination. The EPACMTP considers the subsurface fate and transport of chemical constituents. The EPACMTP is capable of simulating the fate and transport of dissolved contaminants from a point of release at the base of a waste management unit, through the unsaturated zone and underlying groundwater (saturated zone), to a receptor well at an arbitrary downstream location in the aquifer. The model accounts for the following mechanisms affecting contaminant migration: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium adsorption onto the soil and aquifer solid phase, and biochemical degradation processes (EPACMTP Background Document and User's Guide, 1996).

C. Why Is the EPACMTP Fate and Transport Model an Improvement Over the EPACML?

The modeling approach used for this proposed rulemaking includes three major categories of enhancements over the EPACML. The enhancements include:

1—Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents);
2—Use of enhanced flow and transport solution algorithms and techniques (e.g., three-dimensional transport) and;
3—Revision of the Monte Carlo methodology (e.g., site-based implementation of available input data) (EPACMTP Background Document and User's Guide, 1996)

A Discussion of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste units. These conditions increase the transverse horizontal as well as the vertical spreading of a contaminant plume. The EPACMTP accounts for these effects directly by simulating groundwater flow in the vertical as well as horizontal directions.

The EPACMTP can simulate fate and transport of metals, taking into account geochemical influences on the mobility of metals. The EPA's MINTEQA2 metals speciation model is used to generate effective sorption isotherms for individual metals, corresponding to a range of geochemical conditions (EPACMTP Metals Background Document, 1996). The transport modules in EPACMTP have been enhanced to incorporate the nonlinear MINTEQ sorption isotherms. This enhancement provides the model with the capability to simulate, in the unsaturated and in the saturated zones, the impact of pH, leachate organic matter, natural organic matter, iron

hydroxide and the presence of other ions in the groundwater on the mobility of metals. The saturated zone module implemented in the EPACML was based on a Gaussian distribution of concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations. The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML.

To enable a greater flexibility and range of conditions that can be modeled, the analytical saturated zone transport module has been replaced with a numerical module, based on the highly efficient state-of-the-art Laplace Transform Galerkin (LTG) technique (EPACMTP Background Document and User's Guide, 1996). The enhanced module can simulate the anisotropic, non-uniform groundwater flow, and transient, finite source, conditions. The latter requires the model to calculate a maximum receptor well concentration over a finite time horizon, rather than just the steady state concentration which was calculated by the EPACML. The saturated zone modules have been implemented to provide either a fully three-dimensional (3D) solution, or a highly efficient quasi-3D solution. The latter has been implemented for Monte Carlo applications and provides nearly the same accuracy as the fully three dimensional option but is more computationally efficient. Both the unsaturated zone and the saturated zone transport modules can accommodate the formation and the transport of parent as well as of the transformation products.

A highly efficient semi-analytical unsaturated zone transport module has been incorporated to handle the transport of metals in the unsaturated zone and can use MINTEQA2 derived linear or nonlinear sorption isotherms. Conventional numerical solution techniques are inadequate to handle extremely nonlinear isotherms. An enhanced method-of-characteristic based solution has been implemented which overcomes these problems and thereby enables the simulation of metals transport in the Monte Carlo framework. Non-linearity in the metals sorption isotherms is primarily of concern at higher concentration values; for low concentrations, the isotherms are linear or close to linear. Because of the attenuation in the unsaturated zone, and the subsequent dilution in the saturated zone, concentrations in the saturated zone are usually low enough so that properly linearized isotherms are used by the model in the saturated zone without significant errors.

The internal routines in the model which determine placement of the receptor well relative to the areal extent of the contaminant plume have been revised and enhanced. The calculation of the areal extent of the plume has been revised to take into consideration the dimensions of the waste unit. The logic for placing a receptor well inside the plume limits has been improved to eliminate a bias towards larger waste unit areas and to ensure that the placement of the well inside these limits, for a given radial distance from the unit, is truly randomly uniform. However, for this proposal, the closest drinking water well is located anywhere on the downgradient side of the waste unit.

The data sources from which parameter distributions for nationwide Monte Carlo assessments are obtained have been evaluated, and where appropriate, have been revised to make use of the latest data available for modeling. Leachate rates for Subtitle D waste units have been revised using the latest version of the HELP model with the revised data inputs. Source specific input parameters (e.g., waste unit area and volume) have been developed for various different types of industrial waste units besides landfills. Input values for the groundwater related parameters have been revised to utilize information from a nationwide industry survey of actual contaminated sites. The original version of the model was implemented for Monte Carlo assessments assuming continuous source (infinite source) conditions only. This methodology did not take into account the finite volume and/or operational life of waste units. The EPACMTP model has been implemented for Monte Carlo assessments of either continuous source or finite source scenarios. In the latter scenario, predicted groundwater impact is not only based on the concentrations of contaminants in the leachate, but also on the amount of constituent in the waste unit and/or the operational life of the unit.

The landfill is taken to be filled to capacity and covered when leaching begins. The time period during which the landfill is filled-up, usually on the order of 20 years, is considered to be small relative to the time required to leach all of the constituent mass out of the landfill. The model simulation results indicate that this assumption is not unreasonable; the model calculated leaching duration is typically on the order of several hundred years. The leachate flux, or infiltration rate, is determined using the HELP model. The net infiltration rate is calculated using a water balance approach, which considers precipitation, evapo-transpiration, and surface run-off. The HELP model was used to calculate landfill infiltration rates for a representative subtitle D landfill with 2-foot earthen cover, and no liner or leachate collection system, using climatic data from 97 climatic stations located throughout the United States. These correspond to the reasonable worst case assumptions as explained in the HWIR Risk Assessment Background Document for the HWIR proposed notice 60 FR 66344 (December 21, 1995). Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the landfill scenario are presented in the Background Documents for the proposed HWIR rule. See 60 FR 66344 (December 21, 1995). The fraction of waste in the landfill is assigned a uniform distribution with lower and upper limits of 0.036 and 1.0, respectively, based on analysis of waste composition in Subtitle D landfills. The lower bound assures that the waste unit will always contain a minimum amount of the waste of concern. The waste density is assigned a value based on reported densities of hazardous waste, and varies between 0.7 and 2.1 g/cm^3.

The area of the surface impoundment and the impoundment depth used by the EPACMTP are obtained from the EPA's Office of Solid Waste Subtitle D Industrial Survey and were entered into the Monte Carlo analyses as distributions. The sediment layer at the base of the impoundment is taken to be 2 feet thick and to have an effective equivalent saturated conductivity of 10 minus;7 cm/s. These values were selected in recognition of the fact that most non-hazardous waste surface impoundments do have some kind of liner in place. Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the surface impoundment waste management scenario are presented in the Background Documents for the 1995 proposed HWIR rule. See 60 FR 66344 (December 21, 1995).

D. Has the EPACMTP Methodology Been Formally Reviewed?

The Science Advisory Board (SAB), a public advisory group that provides information and advice to the EPA, reviewed the EPACMTP model as part of a continuing effort to provide

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improvements in the development and external peer review of environmental regulatory models. Overall, the SAB commended the Agency for making significant enhancements to the EPACMTP's predecessor, the EPACML and for responding to previous SAB suggestions. The SAB also concluded that the mathematical formulation incorporating daughter products into the model appeared to be correct and that the site-based approach using hydrogeologic regions is superior to the previous approach used in EPACML. The model underwent public comment during the 1995 proposed HWIR. See 60 FR 66344 (December 21, 1995).

E. Has the Agency Modified the EPACMTP as Utilized in the HWIR Proposal?

The EPACMTP, as developed for HWIR, determined the DAF using a Monte Carlo approach that selected, at random, a waste volume from a range of waste volumes identified in EPA's 1987 Subtitle D landfill survey. In delisting determinations, the waste volume of the petitioner is known. Therefore, application of EPACMTP to the delisting program has been modified to evaluate the specific waste volume. The Agency modified the DAFs determined under the HWIR proposal to account for a known waste volume. To generate waste volume-specific DAFs, EPA developed "scaling factors" to modify DAFs developed for HWIR (based on the entire range of disposal unit areas) to DAFs for delisting waste volumes. This was accomplished by computing a 90th percentile DAF for a conservative chemical for 10 specific waste volumes (ranging from 1,000 cubic yards to 300,000 cubic yards) for each waste management scenario (landfill and surface impoundment). The Agency assumed that DAFs for a specific waste volume are linearly related to DAFs developed by EPACMTP for the HWIR. DAF scaling factors were computed for the ten increment waste volumes. Using these ten scaling factor DAFs, regression equations were developed for each waste management scenario to provide a continuum of DAF scaling factors as a function of waste volume.

The regression equations are coded into the DRAS program which then automatically adjusts the DAF for the waste volume of the petitioner. The method used to verify the scaling factor approach is presented in the document, Application of EPACMTP to Region 6 Delisting Program: Development of Volume-adjusted Dilution Attenuation Factors (1996). For the landfill waste management scenario, the DAF scaling factors ranged from 9.5 for 10,000 cu. yard to approximately 1.0 for waste volumes greater than 200,000 cu. yards. Therefore, for solid waste volumes greater than 200,000 cu. yards, the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation that can be used to determine the DAF scaling factor (DSF) as a function of waste volume (in cubic yards) for the landfill waste management unit is: $DSF = 6152.7 * (\text{waste volume})^{-0.7135}$. The correlation coefficient of this regression equation is 0.99, indicating a good fit of this line to the data points. DAF scaling factors for surface impoundment waste volumes ranged from 2.4 for 2,000 cu. yards to approximately 1.0 for 100,000 cu. yards. For liquid waste volumes greater than 200,000 cu. yards, the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation for DAF scaling factor (DSF) as a function of waste volume for surface impoundment wastes is: $DSF = 14.2 * (\text{waste volume})^{-0.2288}$. The correlation coefficient of this regression equation is also 0.99, indicating an extremely good fit of this line to the data points.

F. What Modifications Have Been Made to the DRAS Since its Proposal on September 27, 2000?

Several revisions have been made to the DRAS program in order to improve the modeling. Specifically, the groundwater inhalation pathway was revised to reflect recent advances in modeling household inhalation from home water use (*e.g.*, showering). The basis for estimating the concentration of constituents in the indoor air is based on the mass transfer of constituent from water to shower air. The initial version of DRAS used a fate and transport model described by McKone and Bogen (1982) which predicted the highest waste concentration emitted from the water into the air during a given water use period (*e.g.*, 10-minute shower). This method was revised to more accurately predict the average concentration occurring during the exposure event.

The revised model used in this analysis is based the equations presented in McKone (1987). The shower model estimates the change in the shower (or bathroom or household) air concentration based on the mass of constituent lost by the water (fraction emitted or emission rate) and the air exchange rate between the various model compartments (shower, the rest of the bathroom, and the rest of the house). The resulting differential equations were solved using finite difference numerical integration. The average air concentration in the shower and bathroom are obtained by averaging the concentrations obtained for each time step over the duration of the exposure event (shower and bathroom use). These concentrations and the durations of daily exposure are used to estimate risk from inhalation exposures to residential use of groundwater. Further, improvements were made to more accurately reflect the transfer efficiency of the waste constituent from the groundwater to the air compartment. The fraction emitted from the bathroom or household water use is a function of the input transfer efficiency (or maximum fraction emitted) and the driving force for mass transfer (the differential between air saturation concentration at air/water interface and bulk air concentration). For example, in the shower compartment, the constituent emission rate is estimated from the change in the shower water concentration as the water falls through the air. The shower emissions can be modeled based on falling droplets as a means of estimating the surface-area-to-volume ratio for mass transfer and the residence time of the water in the shower compartment, assuming the compound concentration in the gas phase is constant over the time frame of the droplet fall. By assuming the drops fall at terminal velocity, the surface-area-to-volume ratio and the residence time can be determined based solely on droplet size. A droplet size of approximately 1 mm (0.1 cm) was selected. The terminal velocity for the selected droplet size is approximately 400 cm/s. The fraction of constituent emitted from a water droplet at any given time can then be calculated.

The equations used to predict surface volatilization from a landfill have been modified to more accurately reflect true waste concentration releases. The previous version of DRAS used Farmer's equation to estimate the emission rate of volatiles from the surface of the landfill. Farmer's equation assumes that the emission originates as volatiles in liquids trapped in the pore spaces between solid particles of waste. The volatiles evaporate from the liquid and are emitted from the landfill following gaseous diffusion through the solid waste particles and soil cover to the surface of the landfill. Farmer's equation requires the mole fraction of a given volatile constituent in the liquid in order to calculate the emission. The previous version of DRAS used the TCLP value of a volatile constituent in the waste to approximate the mole fraction of a given constituent in the pore liquid. Since the TCLP test includes a 20-fold dilution, the calculation might underestimate the available concentration of volatiles in freshly deposited waste. The DRAS has been revised to use Shen's modification of Farmer's equation, described in U.S. EPA Office of Air Quality Planning and Standards' 1984 Evaluation and Selection of Models for Estimating Air Emissions from Hazardous Waste Treatment, Storage, and Disposal Facilities. EPA–450/3–84–020. Shen took the simplified version of Farmer's equation for vapor flux from a soil surface and converted it to an emission rate by multiplying it by the exposed landfill area. Shen's modification uses the total waste constituent concentration (weight fraction in the bulk waste) to approximate the mole fraction of that constituent in the liquid phase.

In estimating the amount of a given waste constituent that is released to surface water and eventually becomes freely dissolved in the water column, previous delisting petitions and the earlier version of the DRAS used the maximum observed TCLP concentration in waste as the total amount of the waste constituent available for erosion. Further, the former method assumed that all of the constituent mass that reached the stream, based on TCLP, became dissolved in the aqueous phase. Assuming complete conversion to a dissolved state is overly conservative and not in agreement with recent Agency methodology. In the revised DRAS, the total waste constituent concentration is used to estimate the constituent mass that reaches the stream. The portion of the waste constituent that becomes freely dissolved is determined by an estimate of partitioning between suspended solids and the aqueous phase. This methodology is described in U.S. EPA's 1998 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft. EPA530–D–98–001A.

Recent developments in mercury partitioning described in the Mercury Report to Congress led to another revision to the surface water pathway. The DRAS was modified to account for bioaccumulation of methyl mercury as a result of the release of mercury into the surface water column. The primary human health hazard posed by the release of mercury into surface water is through bioaccumulation of methyl mercury in fish followed by human consumption of the contaminated fish. Biological processes in surface water cause the conversion, or methylation, of elemental mercury to methyl mercury. In accordance with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft, 15% of mercury in the water column is assumed to be converted to methyl mercury. This fraction is then used, along with the current bioaccummulation factor, to determine the predicted concentration of methyl mercury in fish tissue.

II. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) To grant Eastman's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Eastman's petition requests a delisting for listed hazardous wastes. Eastman does not believe that the petitioned waste meets the criteria for which EPA listed it. Eastman also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste were originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. EPA's proposed decision to delist waste from Eastman's facility is based on the information submitted in support of today's rule, *i.e.*, descriptions of the waste water treatment system, incinerator, and analytical data from the Longview facility.

C. How Will Eastman Manage the Waste if it Is Delisted?

Eastman currently disposes of the petitioned waste (wastewater treatment sludge) generated at its facility in an on-site, state permitted solid waste landfill after the sludge has been incinerated. The ash from the incineration process was delisted by EPA in June 1996. If the waste is delisted it will meet the criteria for disposal in a Subtitle D landfill without incineration.

The incinerator is a RCRA Subtitle C regulated unit permitted by the Texas Natural Resource Conservation Commission. This proposed decision will not affect the current regulatory controls on the incineration unit.

D. When Would EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

RCRA section 3010(b)(1) at 42 USCA 6920(b)(1),allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude

two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C.A. § 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Eastman transports the petitioned waste to or manages the waste in any State with delisting authorization, Eastman must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

III. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because they do not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for the listed wastes. The criteria for which EPA lists a waste are in Part 261 and in the background documents for the listed wastes.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed wastes.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and 3001 (f) of RCRA, 42 U.S.C. § 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co.* v. *EPA., 950 F.2d 741* (D.C. Cir. 1991). EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See 57 *FR* 7628 (March 3, 1992). These rules became final on October 30, 1992. See (57 *FR* 49278). Consult these references for more information about mixtures derived from wastes.

IV. EPA's Evaluation of the Waste Data

A. What Waste Did Eastman Petition EPA To Delist?

On February 4, 2000, Eastman petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (dewatered sludge from the wastewater treatment plant) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 261.3. Specifically, in its petition, Eastman Chemical Company, Texas Operations, located in Longview, Texas, requested that EPA grant an exclusion for 82,100 cubic yards per year of dewatered sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with §261.3(c)(2)(i) (i.e., the "derived from" rule).

B. What Is Eastman Chemical Company, and What Process Does it use?

Eastman occupies approximately 6,000 acres in Longview, Texas. The facility owns and operates an organic chemical and plastics manufacturing facility in Longview, Texas. During manufacturing operations, various waste waters are generated such as process waste water, blowdowns from boilers, cooling towers, and the incinerators, and some storm water. Process waste waters from the facility, blowdowns, recovered ground water, leachate from the RCRA hazardous waste landfill, and some storm water are routed to an activated sludge wastewater treatment plant (WWTP). A sludge is generated from the waste water treatment system, which is dewatered and is currently sent to a fluidized bed incinerator (FBI) for thermal treatment. The resulting delisted FBI ash is disposed of in a solid waste landfill.

Influent to the waste water treatment plant is a combination of hazardous and non-hazardous waste. During treatment of the influent waste water, biological sludge is generated and dewatered. The wastewater treatment sludge currently falls under the classification of listed waste according to RCRA 40 CFR 261.3(c)(2)(i) because of the "derived from" rule. The waste codes of the constituents of concern are EPA Hazardous Waste Nos. F001, F002, F003, F005, K009, K010, U001, U002, U028, U031, U069, U088, U112, U115, U117, U122, U140, U147, U154, U159, U161, U220, U226, U239 and U359.

Table 1 lists the constituents of concern for these waste codes.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTE STREAMS

Waste code	Basis for characteristics/listing
F001	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1- trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1- trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2- trichloro-1,2,2-trichlorofluoroethane, orthodichlorobenzene, trichlorofluoromethane.
F003	Not applicable.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001	Acetaldehyde.
U002	Acetone.
U028	Bis(2-ethylhexyl) phthalate.
U031	n-Butyl alcohol.
U069	Dibutyl phthalate.
U088	Di-ethyl phthalate.
U112	Ethyl acetate.
U115	Ethylene Oxide.
U117	Ethyl ether.
U122	Formaldehyde.
U140	Isobutyl alcohol.
U147	Maleic anhydride.
U154	Methanol.
U159	Methyl ethyl ketone.
U161	Methyl isobutyl ketone.
U220	Toluene.
U226	1,1,1 Trichloroethane (Methyl chloroform).
U239	Xylene.
U359	Ethylene Glycol monoethyl ether.

C. How Did Eastman Sample and Analyze the Waste Data in This Petition?

To support its petition, Eastman submitted:

(1) descriptions of its waste water treatment system associated with petitioned wastes;

(2) results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) results for reactive sulfide,

(5) results for reactive cyanide;

(6) results for pH;

(7) results of the metals concentrations using multiple pH extraction fluids;

(8) information and results from testing of the fluidized bed incinerator's compliance testing and

(9) results from oil and grease analysis.

D. What Were the Results of Eastman's Analysis?

The EPA believes that the descriptions of the Eastman hazardous waste process and analytical characterization provide a reasonable basis to grant Eastman's petition for an exclusion of the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Eastman's process can render the wastewater treatment sludge non-hazardous. The EPA has reviewed the sampling procedures used by Eastman and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Eastman's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Eastman has successfully demonstrated that the wastewater treatment sludge is non-hazardous.

Eastman Chemical also conducted additional sampling at the pHs of 4.93, 7.0, and 10.1 to simulate whether the wastes would remain stable if disposed in a wide range of landfill pH environments. The highest level of leaching occurred at pH 4.93. The leachate concentrations for barium, nickel and zinc were below the maximum leachate concentration listed in Table II.

Eastman also provide data from its 1998 trial burn to demonstrate that the FBI incinerator met the required organic destruction and removal efficiency for RCRA incinerators and that the unit also met the Boiler and Industrial Furnace Tier I limits for metals.

E. How did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Eastman's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described above, to predict the maximum allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Eastman's petitioned waste on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS

program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the established an acceptable risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPACMTP fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenario resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, may not pose a significant threat to human health or the environment.

Similarly, the DRAS used the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the ground water analyses, the DRAS uses the established acceptable risk level, the health-based data and standard risk assessment and exposure algorithms to predicts maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels"). In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Eastman has never directly disposed of this material in its solid waste landfill, so no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

From the evaluation of Eastman's delisting petition, EPA developed a list of constituents for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., "delisting levels") are part of the proposed verification testing conditions of the exclusion.

The EPA believes that the descriptions of Eastman's hazardous waste process and analytical characterization, in conjunction with the proposed testing requirements (as discussed later in this notice) provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA should grant Eastman's petition for a conditional exclusion of the wastewater treatment sludge.

The EPA Region 6 Delisting Program guidance document states that the appropriate fate and effect model will be used to determine the effect the petitioned waste could have on human health if it is not managed as a hazardous waste. Specifically, the model considers the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) are then compared directly to the health-based levels used in delisting decision-making for hazardous constituents of concern. EPA Region 6 is proposing the DRAS as the appropriate model for this delisting. This subsection presents an evaluation of the potential for ground water contamination for the petitioned waste using the DRAS.

The EPA considered the appropriateness of alternative waste management scenarios for Eastman's wastewater treatment sludge. The EPA decided, based on the information provided in the petition, that disposal of the wastewater treatment sludge in a municipal solid waste landfill is the most reasonable, worst-case scenario for the wastewater treatment sludge. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Eastman's petitioned waste using DRAS which predicts the potential for ground water contamination from waste placed in a landfill.

For the evaluation of Eastman's petitioned waste, EPA used the DRAS to evaluate the mobility of the hazardous constituents detected in the extract of samples of Eastman's wastewater treatment sludge. Total analysis was also utilized for the wastewater treatment sludge. The maximum annual waste volume for Eastman is 82,100 cubic yards per year. The DAFs are currently calculated assuming an ongoing process generates waste for 20 years.

Analytical data for the wastewater treatment sludge samples were used in the model. The data summaries for detected constituents are presented in Tables II and III.

The EPA's evaluation of the wastewater treatment sludge is based on the maximum reported Total and TCLP concentrations (See Table II). Based on the DRAS, the petitioned waste should be delisted because no constituents of concern exceed the delisting concentrations.

TABLE II.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]

Constituent	Total Constituent Analyses (mg/kg)	TCLP Leachate Concentration (mg/l)
Antimony	1.5	<0.050
Barium	13	0.083
Chromium	2.5	<0.010

TABLE II.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]—Continued

Constituent	Total Constituent Analyses (mg/kg)	TCLP Leachate Concentration (mg/l)
Cobalt	3.5	0.062
Lead	2.1	<0.050
Mercury	0.067	<0.0015
Nickel	20	0.18
Selenium	1.5	0.065
Silver	0.18	<0.005
Vanadium	1.7	0.014
Zinc	97	1.7
Acenaphthene	1.8	<0.010
Acetone	<2.5	4.0
bis(2-ethylhexyl) phthlate	4.1	<0.010
2-Butanone	<2.5	1.4
Chloroform	<0.25	0.009
Fluorene	2.0	<0.010
Methanol	0.052	<5.0
Methylene Chloride	<0.25	0.15
2-Methyl naphthalene	7.4	<0.010
Naphthalene	5.5	<0.010

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE III.—MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE

Constituent	Maximum allowable leachate concentration (mg/l)
Antimony	0.0515
Barium	7.3
Chromium	5.0
Cobalt	2.25
Lead	5.0
Mercury	0.00115
Nickel	2.83
Selenium	0.22
Silver	0.384
Vanadium	2.11
Zinc	28
Acenaphthene	1.25
Acetone	7.13
bis(2-ethylhexyl) phthlate	0.28
2-Butanone	48.2
Chloroform	0.0099
Fluorene	0.55
Methanol	35.7
Methylene Chloride	0.486
Naphthalene	0.0321

F. What Did EPA Conclude About Eastman's Analysis?

The EPA concluded, after reviewing Eastman's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Eastman's waste. In addition, on the basis of explanations and analytical data provided by Eastman, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did EPA Consider?

During the evaluation of Eastman's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Eastman's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Eastman's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Eastman's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Eastman's Wastewater treatment sludge. A description of EPA's assessment of the potential impact of Eastman's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule, F–00–TXDEL–TXEASTMAN.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 *FR* 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Eastman's waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for today's proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Eastman's wastewater treatment sludge is not a present or potential substantial hazard

to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Eastman's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table III). We believe Eastman's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Eastman's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Eastman an exclusion for the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Eastman's process can render the wastewater treatment sludge nonhazardous.

We have reviewed the sampling procedures used by Eastman and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Eastman's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Eastman has successfully demonstrated that the wastewater treatment sludge is nonhazardous.

The EPA therefore, proposes to grant a conditional exclusion to the Eastman Chemical Company, in Longview, Texas, for the wastewater treatment sludge described in its petition. The EPA's decision to conditionally exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the wastewater treatment sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

V. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Eastman, must comply with the requirements in 40 CFR part 261, Appendix IX, Tables 1, 2, and 3. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which Eastman must test the leachate from the wastewater treatment sludge, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) because of information in the petition. We compiled the list from the composition of the waste, descriptions of Eastman's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that any wastewater treatment sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. If EPA determines that the data collected under this condition do not support the data provided in the petition, the exclusion will not cover the petitioned waste.

(3) Verification Testing Requirements

Although the wastewater treatment sludge would be considered delisted upon promulgation of the final rule, EPA believes that conditional testing requirements are still warranted to ensure continued effectiveness of the treatment process. During the initial verification period, which is described in paragraph (3)(A), Eastman must perform quarterly sampling for a period of one year to maintain the delisted status of the waste. As an additional condition of the initial verification period, the waste must continue to be processed in the incinerator prior to disposal in a landfill. After successful completion of the initial verification period, which is 12 months from the date of promulgation, the subsequent verification period, which is described in paragraph (3)(B), will begin. During the subsequent verification period, the waste may be either directly disposed in a landfill or disposed as an ash in a landfill with prior incineration.

(A) *Testing:* The EPA believes that quarterly sampling of this waste is adequate for a facility to collect sufficient data to verify that the data provided for the wastewater treatment sludge in the 2000 petition, is representative. Eastman may dispose of the sludge as a non-hazardous waste during the initial verification period if the waste is processed as described in the 1996 delisting exclusion and meets the exclusion levels of the fluidized bed incinerator ash.

If the data from the initial verification period demonstrate that the treatment process is effective, Eastman may request subsequent verification testing. EPA will notify Eastman, in writing, if and when it may replace the testing conditions in paragraph(3)(A)(i) with the testing conditions in (3)(B).

(B) *Subsequent Verification Testing:* The EPA believes that the concentrations of the constituents of concern in the wastewater treatment sludge may vary over time. As a result, to ensure that Eastman's treatment process can effectively handle any variation in constituent concentrations in the waste, we are proposing a subsequent verification testing condition.

The proposed subsequent testing would verify that Eastman wastes are similar to those sludges generated during the initial verification testing. It would also verify that the wastewater treatment sludge does not exhibit unacceptable levels of toxic constituents. Eastman would begin annual sampling on the anniversary date of the final exclusion.

(4) Changes in Operating Conditions

Paragraph (4) would allow Eastman the flexibility of modifying its processes (for example, changes in equipment or changes in operating conditions) to improve its treatment process. However, Eastman must prove the effectiveness of the modified process and request approval from the EPA. Eastman must manage wastes generated during the new process demonstration as hazardous waste until they have obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that Eastman's facility is properly treating the waste, Eastman must compile, summarize, and keep delisting records on-site for a minimum of five years. They should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Eastman furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 82,100 cubic yards of wastewater treatment sludge, generated annually at the Eastman facility after successful verification testing.

We would require Eastman to file a new delisting petition under any of the following circumstances:

(a) If it uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(b) If it makes any changes that could affect the composition or type of waste generated.

Eastman must manage waste volumes greater than 82,100 cubic yards of wastewater treatment sludge as hazardous until we grant a new exclusion.

If this exclusion becomes final, Eastman's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Eastman would be required to either treat, store, or dispose of the waste in an on-site facility that has a State permit, license, or is registered to manage municipal or industrial solid waste. If not, Eastman must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or is registered to manage municipal or industrial solid waste.

(6) Reopener Language

The purpose of Paragraph 6 is to require Eastman to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Eastman must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented. This provision expressly requires Eastman to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. § 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997)and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Eastman provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Eastman currently intends to manage the petitioned waste on-site. This notification requirement must be met if the waste is transported off-site. Eastman must provide this notification within 60 days of commencing this activity.

B. What Happens if Eastman Violates the Terms and Conditions?

If Eastman violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Eastman to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraphs 3, 4, 5 and 6 of the exclusion.

VI. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: "F–00–TXDEL–EASTMAN."

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VII. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the

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Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIV. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: November 17, 2000.

Bill Luthans,

Deputy Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Tables 1, 2, and 3 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) generated by Eastman (EPA Hazardous Waste Nos. F001, F002, F003, F005 generated at Eastman. Eastman must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (mg/l). For the wastewater treatment sludge constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. (A) Wastewater treatment sludge (i) Inorganic Constituents: Antimony—0.0515; Barium—7.30; Cobalt—2.25; Chromium—5.0; Lead—5.00; Mercury—0.0015; Nickel—2.83; Selenium—0.22; Silver—0.384; Vanadium—2.11; Zinc—28.0 (ii) Organic Constituents: Acenaphthene—1.25; Acetone—7.13; bis(2-ethylhexylphthalate—0.28; 2-butanone—42.8; Chlorotorm—0.0099; Fluorene—0.55; Methanol—35.7; Methylene Chloride—0.486; naphthalene—0.0321. (2) *Waste Holding and Handling:* Eastman may dispose of the waste water treatment sludge if it meets the conditions of the Eastman delisting exclusion found in 40 CFR Part 261, Appendix IX Tables, 1, 2, and 3 (September 25, 1996). If the waste water treatment sludge is not managed in the manner above, Eastman must manage it in accordance with applicable its RCRA Subtitle C requirements. If the levels of constituents measured in the samples of the waste water treatment sludge do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. (3) *Verification Testing Requirements:* Eastman must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. After completion of the initial verification period, Eastman may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Eastman must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). (A) *Initial Verification Testing:* (i) At quarterly intervals for one year after the final exclusion is granted, Eastman must collect and analyze composites of the wastewater treatment sludge for constituents listed in Condition (1). (B) *Subsequent Verification Testing:* Following termination of the quarterly testing, Eastman must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion). (4) *Changes in Operating Conditions:* If Eastman significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process). Eastman must notify the EPA in writing and may no longer handle the waste generated from the new process or no longer manage as nonhazardous until the waste meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* Eastman must submit or maintain, as applicable, the information described below. If Eastman fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Condition (6). Eastman must:

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TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Submit the data obtained through Condition (3) to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (B) Compile records of operating conditions and analytical data from Condition (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. "As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. "If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Eastman possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Condition (1), Eastman must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Eastman fails to submit the information described in Conditions (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in Condition (6)(D) or (if no information is presented under Condition (6)(D)) the initial receipt of information described in Conditions (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Eastman must do following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
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TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
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Eastman Chemical Company	Longview,Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) (EPA Hazardous Waste Nos. K009, K010) generated at Eastman. Eastman must implement the testing program described in Table 1 of this Appendix. Waste Excluded From Non-Specific Sources for the petition to be valid.
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TABLE 3.—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
Eastman Chemical Company	Longview, Texas	Wastewater treatment sludge, (at a maximum generation of 82,100 cubic yards per calendar year) generated by Eastman (EPA Hazardous Waste Nos. U001, U002, U028, U031, U069, U088, U112, U115, U117, U122, U140, U147, U154, U159, U161, U220, U226, U239, U359). Eastman must implement the testing program described in Table 1 of this Appendix. Waste Excluded From Non-Specific Sources for the petition to be valid.
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[FR Doc. 00–30632 Filed 12–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6910–9]

Land Disposal Restrictions: Notice of Intent to Grant a Site-Specific Treatment Variance to Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant, Deepwater, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to grant a site-specific treatment variance from the Land Disposal Restrictions (LDR) standards for wastewater treatment sludge generated at the Dupont Environmental Treatment (DET)—Chambers Works Wastewater Treatment Plant located in Deepwater, New Jersey. This sludge is derived from the treatment of multiple listed, including K088, and characteristic hazardous waste. DET requests this treatment variance because they contend that the chemical properties of the sludge differ significantly from the waste used to establish the LDR treatment standard for arsenic in K088 nonwastewaters. Accordingly, we propose to grant an alternate treatment standard of 5.0 mg/L Toxicity Characteristic Leaching Procedure (TCLP) for the arsenic in the wastewater treatment sludge generated at this facility.

If promulgated, DET may then dispose of their wastewater treatment sludge in their on-site RCRA Subtitle C landfill provided the sludge complies with the specified alternate treatment standard for arsenic in K088 nonwastewaters and meets all other applicable LDR treatment standards.

DATES: Comments must be received by December 26, 2000. Comments received after the close of the comment period will be stamped "late" and may or may not be considered by the Agency.

ADDRESSES: Commenters should submit an original and two copies of their comments referencing Docket Number F–2000–DPVP–FFFFF to: (1) If using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA–HQ), 1200 Pennsylvania Avenue, NW, Washington DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $0.15 per page. (The index is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 am to 6 pm, Eastern Standard Time. For more detailed information on specific aspects of this proposal, contact Elaine

Eby at 703–308–8449, eby.elaine@epa.gov, or write her at the Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

You may submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epa.gov. You should identify comments in electronic format with the docket number F–2000–DPVP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in WordPerfect 6.1 file format.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460–0002.

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type http://www.epa.gov/epaoswer/hazwaste/ldr/index.html.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC listed in the **ADDRESSES** section at the beginning of this document.

EPA's responses to comments, whether the comments are written or electronic, will be published in the **Federal Register** or in a response to comments document placed in the official record for this action. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

How Can I Influence EPA's Thinking on This Rule?

We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical data to support your views.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

The Agency will consider the public comments during development of the final rule related to this action. The Agency urges commenters submitting data in support of their views to include data evidence that appropriate quality assurance/quality control (QA/QC) procedures were followed in generating the data. Data the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing regulatory options for the final rule. For guidance see Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology; USEPA, October 23, 1991.

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I. Why and How Are Treatment Variances Granted?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984, EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." We have interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the court in Hazardous Waste Treatment Council vs. EPA, 886 F. 2d 355 (D.C.Cir.1989).

We recognize that there may be wastes that cannot be treated to levels specified in the regulation (see 40 CFR 268.40) (51 FR 40576, November 7, 1986). For such wastes, a treatment variance exists (40 CFR 268.44) that, if granted, becomes the treatment standard for the waste at issue.

Treatment variances may be generic or site-specific. A generic variance can result in the establishment of a new treatability group and a corresponding treatment standard that applies to all wastes that meet the criteria of the new waste treatability group (55 FR 22526, June 1, 1990). A site-specific variance applies only to a specific waste from a specific facility. Under 40 CFR 268.44(h), a generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance in cases where a waste that is generated under conditions specific to only one site and cannot or should not be treated to the specified level(s). The applicant for a site-specific variance must demonstrate that because the physical or chemical properties of the waste differ significantly from the waste analyzed in development of the treatment standard, the waste cannot be treated by BDAT to the specified levels or by the specified method(s). Although there are other grounds for obtaining treatment variances, we will not discuss those in this notice because this is the only provision relevant to the present petition.

Dupont Environmental Treatment—Chambers Works submitted their request for a treatment variance in February 2000. All information and data used in the development of this proposal can be found in the RCRA docket supporting this rule.[1]

[1] For purposes of this document, the term sludge, waste water treatment plant sludge, dewatered sludge, biosludge, and dewatered biosludge are used interchangeably and refer to the treated waste that has been dewatered and subject to analytical testing.

II. Why is Dupont Environmental Treatment Seeking a Treatment Variance?

Dupont Environmental Treatment—Chambers Works (herein referred to as "DET") operates a wastewater treatment plant (herein referred to as "WWTP") in Deepwater, New Jersey. The wastewater treatment performed at this facility can be described as an enhanced biological degradation system consisting of neutralization, equalization, primary clarification, secondary aeration and clarification, tertiary aeration and clarification, and sludge dewatering. Various pretreatment operations also are conducted on-site. DET WWTP operates as both a commercial treatment facility, for industrial and RCRA hazardous waste, and as an internal treatment operation, for Dupont's numerous manufacturing operations. DET WWTP processes approximately 16 million gallons of wastewater per day or 5.84 billion gallons per year, making it the largest wastewater treatment facility in the United States.

In December 1997, DET entered into a contractual agreement with Safety Kleen, Incorporated to treat wastewater from Safety Kleen's Waynoka, Oklahoma facility. The wastewater consists of approximately 87% multi-source leachate from an on-site Subtitle C landfill in Oklahoma (F039 waste) and 13% commercial wastewater pretreated by Safety Kleen. A portion of this commercial wastewater was shipped to Safety Kleen as K088 waste, i.e., potliner waste from primary aluminum reduction, originating as landfill leachate from a Reynolds Metals Company facility in Gum Springs, Arkansas. During the last three months of 1998, Safety Kleen shipped 192,000 gallons of this wastewater, i.e., the multi-source leachate and the commercial wastewater, to DET for treatment. In 1999, Safety Kleen transported approximately 1.3 million gallons of additional wastewater to DET.[2]

In February 2000, DET concluded, albeit belatedly, that there was a possibility that the continued treatment of Safety Kleen's wastewater, containing the K088 waste designation, at their WWTP could result in noncompliance for DET's WWTP sludge with the K088 nonwastewater treatment standard for total arsenic.[3] While compliance monitoring samples, taken since October 1998, show that the dewatered sludge meets both the Universal Treatment Standard (UTS) for arsenic of 5.0 mg/L TCLP and the K088 arsenic treatment standard of 26.1 mg/kg, screening samples taken in 1999 suggest that the total arsenic concentration in the dewatered sludge could exceed the 26.1 mg/kg treatment standard in future compliance monitoring tests.[4] However, these data do not meet EPA quality assurance and quality control requirements. Therefore, it is impossible for us to rely on these data in our deliberations.

On February 28, 2000, DET submitted a petition to EPA requesting a treatment variance from the K088 treatment standard for arsenic nonwastewaters generated at their facility. DET acknowledges that the WWTP sludge has not yet exceeded the treatment standard, based on compliance testing samples taken since late 1998. However, DET is concerned that, in the future, the sludge may exceed the treatment standard. DET states that, even if the arsenic standard is exceeded, the total arsenic concentration can not be reduced to meet the existing treatment standard. DET believes that requesting a treatment variance prior to an actual violation of the treatment standard is an appropriate and necessary action.

As part of their petition, in accordance with the requirements of 40 CFR 268.44, DET contends that their waste, i.e., the dewatered WWTP sludge carrying the K088 waste designation, differs significantly from the waste used to establish the treatment standard for total arsenic in K088 waste. DET states that the dewatered sludge is at least a second derivative treatment residue that bears no resemblance, in physical form or composition, to generated potliners or typically thought of generated residues from potliner treatment. DET maintains that for their waste, the TCLP is an appropriate analytical test for measuring arsenic mobility because of the neutral pH characteristic of the sludge. Additionally, DET states that no further treatment can be applied to the sludge because arsenic is an element, and as such cannot be destroyed to meet the existing treatment standard—a totals analysis test.

Based on these findings, DET requests that EPA grant a variance from the 26.1 mg/kg treatment standard for arsenic in K088 nonwastewaters for their wastewater treatment sludge. DET requests an alternative standard of 5.0 mg/L TCLP for arsenic in K088 waste. This level is the same as the old treatment standard for arsenic in K088 nonwastewaters, i.e., the standard that existed prior to the September 21, 1998 rulemaking and the current UTS for arsenic nonwastewaters. DET contends that the old standard is more appropriate for their waste because: (1) the TCLP measures mobility of arsenic; (2) the sludge's neutral pH is well-suited for evaluating whether arsenic could migrate and cause harm to human health and the environment; and (3) the arsenic in the WWTP sludge cannot be destroyed.

III. EPA's Analysis of DET's Petition

As just discussed, the waste at issue here is a dewatered WWTP sludge resulting from the treatment of wastewater carrying the K088 waste designation.[5] We agree with DET's main point—that this waste is significantly different from the waste on which the 26.1 mg/kg standard for total arsenic in K088 nonwastewaters is based. In addition, we agree that there is no available treatment to reduce the amount of total arsenic contained in the waste.

The 26.1 mg/kg standard for arsenic in K088 waste, promulgated in 1998, was developed based on performance data from a high temperature thermal treatment process for spent aluminum potliners from primary aluminum reduction used at a Reynolds Metals facility in Gum Springs, Arkansas. Specifically, the treatment standard was derived from an assay of the total acid soluble arsenic in K088 waste after spent potliner had been crushed, mixed with lime and sand, and sent through a

[2] In addition to the F039 and K088 waste designations, this wastewater contains eighteen additional RCRA hazardous waste codes.

[3] On September 21, 1998, EPA promulgated interim replacement standards for K088 waste. (See 63 FR 51254, September 24, 1998). As part of that rulemaking, the treatment standard for arsenic in K088 nonwastewaters was set at 26.1 mg/kg. That standard has been in effect since September 21, 1998 and applies to all K088 treatment sludge generated at DET WWTP since the effective date.

[4] Compliance data are generated by a contract laboratory based on TCLP analysis for metals on a secondary sludge sample from the treatment operation. The analysis is done quarterly for monitoring LDR compliance in accordance with DET's waste analysis plan. The compliance analysis for the TCLP extraction follows EPA protocol as specified in SW–846, Method 1311. Metals analysis is run by inductively coupled plasma via SW–846 Method 6010B, except for mercury which is done by SW–846 Method 7470A. Appropriate quality assurance/quality control is conducted by the contract laboratory in accordance with SW–846 requirements. DET's compliance data submitted to the Agency for the last quarter of 1998 show total arsenic concentrations in the WWTP sludge of 16 mg/kg. Quarterely compliance testing for 1999 show total asenic concentrations of 13.0, 12.3, 10.0 and <9.9 mg/kg. All TCLP data for arsenic in the WWTP sludge show concentrations of arsenic less than 0.10 mg/L.

[5] It should be noted that the WWTP sludge at issue here is generated by the biological treatment of a relatively small quantity of wastewater carrying the K088 waste designation. This K088 wastewater accounts for less than 0.002% of the total annual throughput at DET WWTP.

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high-temperature rotary kiln resulting in a fused waste residue.

As previously discussed, prior to 1998, the treatment standard for arsenic was 5.0 mg/L TCLP, based on the Reynolds treatment process that, at that time, treated much of the K088 generated in the United States (63 FR 51257, September 24, 1998). However, to address subsequent concerns regarding the elevated concentrations of arsenic in Reynold's landfill leachate, Reynolds changed the type of sand used in their thermal process to a sand with lower concentrations of arsenic. These 1998 revisions, to the K088 arsenic standards, were intended to cap arsenic concentrations in the treated potliner and to lock-in the Reynolds treatment process change, *i.e.*, the change in sand type. Therefore, the reason for our shift to a 26.1 mg/kg total arsenic standard has no basis in appropriate treatment levels for WWTP sludge carrying the K088 waste code solely due to the derived-from regulations.

In addition, Reynolds thermal treatment of K088 waste generates an extremely alkaline residue for which the TCLP was found to be a poor predictor of arsenic mobility. See *Columbia Falls v. EPA*, 139F.3d 914 (D.C. Cir 1998); see also 63 FR 28571, May 26, 1998 (EPA's interpretation of the court's opinion). This decision also provided additional impetus for our 1998 change to a total arsenic standard. As previously noted, the WWTP sludge from DET, conversely, is not alkaline. It is at a pH between 6.5 and 7.5 to ensure no adverse effect on the treatment microbes, and the expected sludge disposal conditions at DET are also in a neutral pH range.[6]

Based on this information, we conclude that an alternative treatment standard of 5.0 mg/L TCLP for arsenic in K088 dewatered sludge generated at DET's WWTP is warranted for several reasons. First, the sludge generated at DET's WWTP is not the same type of waste that was used to develop the 26.1 mg/kg treatment standard for arsenic in K088 nonwastewaters, nor does it present the same situation regarding the use of a total arsenic standard to lock-in treatment process parameters. Second, the sludge will be disposed of in a Subtitle C hazardous waste landfill with pH conditions in the range of 6.5 to 8.5 and not under the alkaline conditions, *i.e.*, pH conditions of 12 and above, that resulted in mobilization of arsenic at Reynold's K088 landfill.

[6] Compliance monitoring samples taken quarterly in 1999 show that the pH landfill leachate values at DET's onsite hazardous waste landfill, where the WWTP sludge was disposed were as follows: 7.46, 8.35, 6.59, and 8.34.

Thus, the conditions that prompted the change in the K088 treatment standard are absent for this site. Third, the TCLP remains an adequate measure of treatment efficiency for DET's WWTP sludge due to the non-alkaline sludge matrix and the expected disposal conditions. Therefore, we believe that a TCLP standard of 5.0 mg/L is a reasonable measure of demonstrating that threats posed by the waste's disposal have been minimized. Fourth, the alternative standard of 5.0 mg/L TCLP is currently the standard applicable to arsenic in all other hazardous wastes, except K088 nonwastewaters. Fifth, data submitted to the Agency shows that DET's dewatered WWTP sludge consistently maintains both a neutral pH and TCLP levels of arsenic far less than 5.0 mg/L. Finally, arsenic concentrations in the WWTP sludge cannot be treated to a lower treatment standard based on a totals analysis, i.e., arsenic must be immobilized, as an element cannot be destroyed.

IV. EPA's Proposal to Grant a Site-Specific Treatment Variance to DET

Based on these conclusions, we propose to grant DET's petition for a site-specific treatment variance for their WWTP sludge. After consideration of public comment and a determination to grant this variance, we will amend 40 CFR part 268 to state that wastewater treatment sludge generated by Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant in Deepwater, New Jersey is subject to an arsenic treatment standard of 5.0 mg/L TCLP for all RCRA wastes. We also will stipulate that the waste must be land disposed in their on-site Subtitle C landfill assuming the waste meets all applicable federal, state and local requirements.

V. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this proposed rule does not create any new regulatory requirements, it is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a regulated constituent. This action, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing education, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more in the aggregate to either State, local, or tribal governments or the private sector in one year. The proposed rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes, and local governments would have no compliance costs under this rule. EPA has also determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's proposed rule is not subject to Executive Order 13045 because it does not meet either of these criteria. The subject wastes will comply with all other treatment standards and be disposed of in a RCRA Subtitle C landfill. Therefore, we have identified no risks that may disproportionately affect children.

E. Environmental Justice Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule applies to wastes that will be treated and disposed of in a RCRA Subtitle C hazardous waste landfill, ensuring a high degree of protection to human health and the environment. Therefore, the Agency does not believe that today's action will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Paperwork Reduction Act

This proposed rule would only change the treatment standards applicable to a subcategory of K088 wastes and does not change in any way the paperwork requirements already applicable to these wastes, it does not affect requirements under the Paperwork Reduction Act.

G. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input to the development of

regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposal does not create a mandate on State, local or tribal governments, The proposal would not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

I. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implication." "Policies that have federalism implication" is defined in the Executive Order to include regulation that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local government, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that had federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing proposed regulation.

If EPA complies by consulting Executive Order 13132, it requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also when EPA transmits a draft final rule with federalism implication to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus the requirements of section 6 of the Executive Order do not apply to this proposed rule.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: November 6, 2000.

Timothy Fields, Jr.,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.44, the table in paragraph (o) is amended by adding in alphabetical order a new entry for "Dupont Environmental Treatment—Chambers Works Wastewater, Deepwater, NJ" to read as follows:

PART 268—LAND DISPOSAL RESTRICTIONS.

* * * * *

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
Dupont Environmental Treatment—Chambers Works Wastewater Treatment Plant, Deepwater, NJ.	K088	Standards under § 268.40	Arsenic	1.4	NA	5.0 mg/L TCLP	NA

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

Note: NA means Not Applicable.

* * * * *

[FR Doc. 00–30637 Filed 12–1–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 00–229; FCC 00–399]

2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission initiates a review of the service quality reporting requirements for incumbent local exchange carriers (LECs). The Commission proposes to eliminate the current service quality reporting and replace these reports with a more streamlined, consumer-oriented, reporting system. The Commission's objectives are to reduce regulatory burdens on carriers, eliminate reporting requirements that are no longer necessary, and better serve consumers.

DATES: Comments must be filed on or before January 12, 2001. Reply comments must be filed on or before February 16, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 2, 2001.

ADDRESSES: Federal Communications Commission, 445–12th Street, SW, TW–A325, Washington, D.C. 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Louise Klees-Wallace at (202) 418–1321 or Mika Savir at (202) 418–0384. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking* in CC Docket No. 00–229, adopted on November 9, 2000 and released on November 9, 2000, is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, Suite CY–A257, 445 12th Street, S.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 3, 2001; OMB notification of action is due February 2, 2001. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.
Title: The ARMIS Service Quality Report.
Form No.: FCC Report 43–05.
Type of Review: New collection.
Respondents: Business or other for-profit.
Number of Respondents: 12.
Estimated Time Per Response: 850.
Total Annual Burden: 10,196 hours.
Cost to Respondents: $0.
OMB Control Number: 3060–0763.
Title: The ARMIS Customer Satisfaction Report.
Form No.: FCC Report 43–06.
Type of Review: Proposed Revision.
Respondents: Business or other for-profit.
Number of Respondents: 8.
Estimated Time Per Response: 720 hours.
Total Annual Burden: 5760 hours.
Cost to Respondents: $0.

Needs and Uses: In the NPRM the Commission undertakes a review of its existing service quality requirements contained in its Automated Reporting Management Information System (ARMIS) FCC Report 43–05 (Service Quality) and FCC Report 43–06 (Customer Satisfaction) requirements. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. Among other things, the Commission proposes to reduce its reporting requirements from more than 30 categories of information down to six.

Synopsis of the *Notice of Proposed Rulemaking:*

I. Introduction

In this proceeding, the Commission proposes to streamline and reform the existing service quality monitoring program. The Commission proposes to eliminate reporting of many categories of information and thereby reduce the regulatory burden for carriers, as well as to modify how other information is reported so that it will be more useful to consumers and to state and federal regulators.

The Commission undertakes a review of the existing service quality requirements contained in the Automated Reporting Management Information System (ARMIS) 43–05 Report (Service Quality) and ARMIS 43–06 Report (Customer Satisfaction). The Commission proposes to reduce the reporting requirements from more than 30 categories of information down to six.

The Commission also hopes to work with in partnership with the states. The Commission's basic role in the service quality area is to serve as a central clearinghouse for information. States may, and likely will, impose additional service quality reporting and performance requirements on carriers operating within their jurisdictions. The Commission's proposed national monitoring "floor" will represent a uniform framework.

II. Discussion

Categories of performance data. The Commission proposes to continue

reporting obligations for six categories of service quality information that are important to consumers. The Commission proposes to retain reporting for the following measures: (1) The percentage of installation appointments that are missed; (2) the time it takes to install service; (3) the percentage of lines that have problems, including out of service lines; (4) the time it takes to have out of service lines repaired; (5) the percentage of repair appointments that are missed; and (6) the time it takes to repair service. The Commission seeks comment on this proposal.

With respect to missed installations, the Commission proposes that carriers continue to report the number of missed installation commitments and the total number of installations that occur during the reporting period. Through these two numbers a percentage can be generated that can permit appropriate comparisons among companies by consumers. The Commission seeks comment on this proposal.

With respect to installation intervals, the Commission proposes that carriers continue reporting installation time because consumers should know how long it is likely to take a particular carrier to provide service. The Commission seeks comment, however, on whether installation intervals should be measured in a different way. An average completion time may not provide an accurate picture to consumers because outliers may skew the reported data. The Commission seeks comment on whether carriers should report the number of installation orders for service completed within a specified number of days, such as five working days, instead of the current average interval, and the total number of installation orders.

With respect to trouble reports, or impairments on a customer's line, the Commission seeks comment on whether carriers should report only the number of initial trouble reports and number of out-of-service troubles occurring within the reporting period, as well as the total number of access lines.

An out-of-service trouble means that a consumer cannot make or receive calls. In addition to the inconvenience and potential financial impact of such an outage, this also raises safety concerns because the consumer cannot make 911 emergency calls. The Commission proposes collecting only information on average intervals for out-of-service troubles. The Commission seeks comment on this proposal.

A missed repair commitment occurs when a customer trouble is not repaired on or before the date and time commitment with the customer. The number of missed repair commitments should have a direct impact on consumers who are waiting for service problems to be fixed. The Commission proposes that carriers report the number of missed repair commitments, and the total number of repair commitments. The Commission seeks comment on this proposal.

Price cap incumbent LECs currently report the average time for repairs. The Commission proposes to continue measuring repair intervals and seeks comment whether this should require an average or some other measure.

The Commission seeks comment on whether there are other types of service quality information that consumers would find useful, and if so, what are the benefits, burdens and feasibility of requiring carriers to collect and disclose such information. The Commission seeks comment, for example, on whether carriers should report the length of time customers wait on hold before speaking to a customer service representative and the length of time a customer has to wait for a call back from a carrier. Commenters should discuss how carriers would collect this information.

Broadband services. The Commission seeks comment on whether to gather information and report about service quality in the provision of broadband and other advanced services. The Commission seeks comment on what information in this area consumers would find useful, and what are the costs and benefits of adding any new reporting requirements in this area.

Disaggregation of information. Currently, carriers are required to report installation and repair information separately for business and residential customers. The Commission proposes to maintain this aspect of the reporting requirements. A review of data filed to date shows different quality of service performance in the residential market and business markets. Accordingly, the Commission seeks comment on maintaining this disaggregation. Permitting carriers to aggregate business and residential customers into one class could provide a misleading picture of the carrier's performance with respect to each group of customers.

To depict a carrier's service quality in urban and rural areas, the current ARMIS service quality reports disaggregate information into results in "Metropolitan Statistical Areas" (MSAs) and "Non-Metropolitan Statistical Areas" (Non-MSAs). The Commission seeks comment on the proposal that carriers should no longer disaggregate data into MSA and non-MSA categories.

Types of reporting entities. Currently, only price cap LECs file the ARMIS 43–05 and 43–06 reports. The Commission does not collect service quality data from small incumbent LECs, including those serving rural areas, nor does the Commission collect this data from competitive LECs (CLECs). The NARUC Service Quality White Paper concludes that service quality data would be more meaningful for all interested parties, including consumers and state commissions, if all LECs—including CLECs—reported such data. The Commission seeks comment on the benefits and costs of imposing the proposed service quality reporting requirements on these carriers. Commenters should discuss whether certain entities could be exempt from service quality reporting requirements without compromising the consumer protection objectives in this proceeding. Commenters also should address how imposition of these requirements on CLECs and smaller LECs fits into the traditional regulatory treatment of these entities, many of which may not have encountered regulatory burdens of this nature at the federal level.

The Commission seeks comment on whether a viable alternative would be voluntary service quality reporting procedures for certain carriers. The service quality program could, for example, establish mandatory service quality reporting for incumbent LECs exceeding a threshold of lines served, such as two percent of the nation's access lines, or annual revenue, and allow voluntary service quality reports for all other carriers, including CLECs.

The Commission seeks comment on whether carriers should be relieved of all mandatory reporting under certain circumstances, and if so, when. For instance, whether a carrier should be relieved of any federal reporting obligation, if there are few or no service quality complaints relating to that carrier pending before a state commission, or if its performance meets a specified benchmark for a period of time. The Commission seeks comment on what the appropriate benchmarks should be.

The Commission notes that resellers and competitors that purchase network elements from an incumbent LEC may have no control over the service quality of the resold service or the purchased elements, which may impact their service to retail customers. Commenters should discuss how, if voluntary or mandatory reporting were extended to a broader class of carriers, service quality measures could take into account problems due to the conduct of the incumbent so that consumers would receive an accurate picture of the service quality provided by different carriers.

Frequency of reporting. Currently, carriers file ARMIS 43–05 reports on an annual basis. The Commission seeks comment on whether it would better serve the consumer protection goals to collect service quality information more frequently than yearly, and how the Commission might accomplish this. Individual states may require more frequent service quality reporting, *e.g.*, quarterly. The Commission seeks comment on whether it should act as a federal clearinghouse for information gathered at the state level.

Public disclosure of service quality data. Service quality information can enable consumers to compare carriers in their area and make informed choices between, or among, carriers. The Commission seeks comment on whether an effective method of publicizing service quality data would be for carriers to post service quality data on their web sites. This data would be accessible to the general public, as well as to state commissions and other interested parties. The Commission proposes that carriers would continue to file the service quality reports with the Commission as well, which would continue to be a central clearinghouse for service quality data. The Commission can require carriers to correct inaccurate data, collecting information at the federal level provides some ability to ensure that the information is accurate, which ultimately benefits consumers. The Commission also seeks comment on whether there are other public sources for service quality information. In particular, the extent to which the states collect service quality information, and whether that information is publicly accessible.

Elimination of other reporting requirements—Interexchange carriers. In Table I of the ARMIS Report 43–05 Service Quality Report, the Commission currently collects information from price cap incumbent LECs about the installation and repair of access services provided to interexchange carriers. In Table III of the same report, price cap carriers provide information about common trunk group blockage. The Commission seeks comment on whether it should eliminate these categories of information from the service quality reporting program. This information reports the quality of service performed by incumbent LECs to interexchange carriers. The Commission seeks comment on whether interexchange carriers are able to monitor service quality through operation of their business relationships with the incumbent local exchange carriers.

Elimination of other reporting requirements—the Network Reliability and Interoperability Council. The Network Reliability and Interoperability Council (NRIC) was established by the Commission to bring together leaders of the telecommunications industry with academic and consumer organizations to explore and recommend measures that would enhance network reliability. Carriers currently report in ARMIS 43–05, Table IV, the number of switches serving specified numbers of lines and the number of times switches are down from two minutes or longer. The number and duration of switch outages and interoffice transmission facility outages indicates the carrier's performance in providing continual access to the full capabilities and benefits of the network. This data has been gathered in ARMIS as a complement to information collected on large switches by the Network Reliability Council. Together this information has permitted regulators to monitor and assess network reliability, which is important to consumers because such outages affect service in their area. The Commission seeks comment on whether it should continue to collect the information contained in Table IV of ARMIS Report 43–05. The Commission also seeks comment on whether competitive pressures to achieve network reliability in today's marketplace have sufficiently replaced the need for reporting of network reliability data.

Elimination of other reporting requirements—complaints to federal and state commissions. Price cap incumbent LECs currently report to the Commission, as part of ARMIS, the number of customer complaints made to federal and state regulators. The Commission seeks comment on the benefits and burdens of requiring companies to continue to file FCC and state complaint information. In addition, the Commission seeks comment on whether carriers should be required to report the number of complaints they receive directly from consumers.

Elimination of other reporting requirements—customer satisfaction survey. Price cap LECs currently are required to conduct a survey of their customers' satisfaction and report the results of that survey in ARMIS Report 43–06. The Commission proposes to eliminate this requirement. Actual complaint information may be a better indicator of trends in service quality than a telephone consumer survey. The Commission seeks comment on this proposal.

NARUC Service Quality White Paper. The NARUC Service Quality White Paper contains additional proposals for refining the Commission's service quality monitoring program. These include more detailed measurements related to maintenance and repair intervals, answer time performance, and network performance. The NARUC Service Quality White Paper also proposes that the reports be made available to the public to allow interested parties to assess the data, and to provide consumers with information about their telecommunications carriers. The Commission seeks comment on the proposals in the NARUC Service Quality White Paper.

III. Conclusion

The Commission is committed to improving the service quality monitoring program to give consumers the ability to compare the service quality of competing carriers. At the same time, it intends to limit the reporting burden on carriers by reducing the categories of reported data. By making available timely and reliable service quality data, the Commission hopes to meet the needs of consumers as competition grows in the local exchange marketplace. The Commission hopes to facilitate market efficiency by ensuring that consumers have the information they need to make informed buying decisions.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of any possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Notice. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Action: The Commission has initiated this proceeding to determine whether it should improve the current service quality monitoring program. The Commission's goal is to ensure that the monitoring program will be uniform and provide the information needed to carry out statutory and policymaking

responsibilities. The Commission notes that as competition develops in the local exchange market, consumers will benefit from the ability to compare carriers' service quality. This should in turn lead to the availability of higher quality services for consumers.

Legal Basis: The legal basis for the action as proposed for this rulemaking is contained in sections 4(i), 4(j), 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b), 303(r), and 403.

Description and Estimate of the Number of Small Entities to which the Proposed Action May Apply: Currently, only price cap incumbent local exchange carriers (LECs) file service quality reports, the Automated Reporting Management Information System (ARMIS) 43–05 Report (Service Quality) and the ARMIS 43–06 Report (Customer Satisfaction). The Commission seeks comment on whether additional carriers, *e.g.*, all LECs, should comply with the proposed service quality reporting requirements and if compliance should be on a mandatory or voluntary basis. Below is a detailed description of the types of entities that could be required to comply with the proposed reporting requirement (either on a mandatory or voluntary basis).

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.

The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, appears to be data the Commission publishes in its *Trends in Telephone Service* report. *See* FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). According to data in the most recent report, there are 4,144 interstate carriers. *Id.* These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." *See* 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. *See* letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Commission has therefore included small incumbent LECs in this RFA analysis, although this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Total Number of Telephone Companies Affected. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. *See* United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (*1992 Census*). This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." *See* 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in the Notice.

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. *See 1992 Census* at Firm Size 1–123. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. *See* 13 CFR 121.201, SIC Code 4813. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small incumbent LECs. It seems certain that some of these carriers are not independently owned and operated, but we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules proposed in the NPRM.

Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, and Resellers. Neither the Commission nor the SBA has developed a definition of small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to recent *Trends in Telephone Service* data, 1,348 incumbent carriers reported that they were in the provision of local exchange services. *See* FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they engaged in competitive local exchange services. *Id.* It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,348 small incumbent LECs, 212 small entity CAPs, and 10 other small entity LECs that may be affected by the rules proposed in the Notice.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. *See* 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). *See* 47 CFR 22.757, 22.759. The Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. *See* 13 CFR 121.201, SIC Code 4812. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's definition.

Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements: The focus of this proceeding is whether the Commission should require LECs to report certain service quality information in a more consumer-friendly format instead of the format of the current ARMIS reports. Historically, service quality reporting was limited to the price cap LECs. With the emergence of competition in the local exchange market, service quality information on competitive LECs would permit consumers to compare carriers in their area. The Notice seeks comment on the costs and benefits of imposing new service quality reporting requirements on all LECs. The NPRM seeks comment on whether the Commission should modify its service quality reporting requirements by reducing the quantity of data requested and if all LECs should report this information on a mandatory or voluntary basis.

Commenters should discuss whether state commissions currently require LECs to provide the proposed service quality information. If LECs—other than price cap incumbent LECs—are required to file this service quality information with a state commission, is there an additional cost in preparing and filing the service quality data with the Commission? Commenters should discuss the costs to small entities of preparing the proposed service quality reports for federal reporting purposes.

The NPRM sets out in detail, and seeks comment on, the types of carriers that should report, frequency of reports, and data to be reported. The NPRM seeks comment on whether there are other types of service quality information that consumers would find useful, and if so, what are the benefits, burdens and feasibility of requiring carriers to collect and disclose such information. Under the proposal, there would be fewer categories of data reported but more carriers may be required to report. Commenters should address the benefit of giving consumers access to service quality data from all carriers providing local exchange service in their area, including small entities, and discuss the increased cost, if any, to smaller LECs.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

One of the goals in this proceeding is to consider whether consumers should have access to service quality information that can be used to make comparisons between the incumbent LEC and other carriers in their area. Service quality information is of limited use if the consumers do not have comparable information on all carriers in their area, including any small entities that might provide service. With the emergence of competition in the local exchange market, accurate service quality information on all LECs would permit consumers to compare carriers. The Notice seeks comment on the costs and benefits of imposing new service quality reporting requirements on all LECs and on whether all LECs should be required to report service quality data. Under this scenario, small entities may be required to report service quality data. The Commission is seeking to balance the consumers' need for information with the reporting burden on the industry, particularly small entities. Commenters should discuss how the imposition of service quality reporting on carriers other than price cap incumbent LECs may be burdensome, and the costs of compliance. Commenters should discuss whether certain entities should be exempt from service quality reporting requirements and how that could be done without compromising the goals in this proceeding.

One alternative would be to limit service quality reporting to the incumbent LECs. This alternative, however, would not permit consumers to compare service providers in their area. The Commission observes that the effective functioning of competitive markets is predicated on consumers having access to accurate information. Thus, revising the current service quality reporting requirements may be essential to allow consumers to compare service quality among or between carriers and make informed choices. A second alternative would be to make service quality reporting voluntary for certain carriers. Commenters advocating limiting service quality reporting to price cap LECs should discuss how consumers would have access to service quality data on all LECs in their area if only the price cap LECs were required to file service quality reports. Another alternative would be to limit service quality reporting to carriers whose performance fell below a specified performance benchmark. This alternative would reduce reporting burdens for carriers, including small carriers, that do not have significant service quality problems.

This proposed reporting requirement is less than the current service quality reporting requirement (now limited to price cap LECs). Commenters should discuss whether the proposed reporting requirements should be streamlined for small entities and how this could be done without compromising the goals in this proceeding. Commenters should address any cost savings to small entities resulting from such streamlining.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule: None.

B. Paperwork Reduction Act

This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in the Notice as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments

are due January 3, 2001. Written comments must be submitted by OMB on the proposed information collections on or before February 2, 2001. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Ex Parte Presentations

This is a permit-but-disclose rulemaking proceeding subject to "permit-but-disclose" requirements under § 1.1206 of the Commission's rules, as revised. *See* 47 CFR 1.1206. Additional rules pertaining to oral and written presentations are set forth in § 1.1206.

D. Comment Period

Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 12, 2001. Reply comments are to be filed on or before February 16, 2001. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. All filings by paper must be sent to the Commission's Secretary: Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on diskette. Diskettes should be submitted to: Ernestine Creech, Accounting Safeguards Division, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The required diskette copies of submissions should be on 3.5 inch diskettes formatted in an IBM compatible format using Word or compatible software. Each diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (CC Docket No. 00–229), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties who choose to file by paper must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during normal business hours in the FCC Reference Information Center, Courtyard Level, Suite CY-A257, 445 12th Street, S.W., Washington, D.C.

E. Authority

The action is authorized under the Communications Act of 1934, sections 4(i), 4(j), 201(b), 303(r), and 403, 47 U.S.C. 154(i), 154(j), 201(b), 303(r), and 403, as amended.

F. Ordering Clauses

Pursuant to the authority contained in sections 4(i), 4(j), 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b), 303(r), and 403, this notice of proposed rulemaking is hereby adopted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–30803 Filed 12–1–00; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register

Vol. 65, No. 233

Monday, December 4, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–00–11]

Market Promotion Funding—Lamb Meat Adjustment Assistance Measures Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice: Invitation to submit proposals.

SUMMARY: Interested parties are invited to submit proposals for the availability of approximately $1 million in competitive cooperative agreements to carry out "The Summary of Assistance Measures" of the Domestic Lamb Industry Adjustment Assistance Program. Approximately $3.85 million was previously awarded for proposals submitted under this program as announced in the **Federal Register**, Volume 65, Number 95, Tuesday, May 16, 2000. Funds have been made available through a Memorandum of Understanding (MOU) between the Agricultural Marketing Service (AMS) and the National Sheep Industry Improvement Center (NSIIC) to be awarded in fiscal year (FY) 2001—with projects completed by FY 2002. AMS hereby request proposals for projects from eligible entities interested in applying for competitively awarded cooperative agreements for lamb meat marketing and promotion. The intent is to fund a variety of marketing proposals that will complement previously awarded projects or demonstrate a new strategy to increase the sale of U.S. lamb.

DATES: Proposals must be received at the address below by close of business January 3, 2001.

ADDRESSES: Proposals (original and six copies) should be mailed to: Barry L. Carpenter, Deputy Administrator, Livestock and Seed Program, Agricultural Marketing Service, USDA, Room 2092–S, Stop 0249, 1400 Independence Avenue, SW., Washington, DC 20250–0249; telephone (202) 720–5705.

FOR FURTHER INFORMATION CONTACT: Martin O'Connor, International Marketing Specialist, Standardization Branch on (202) 720–7046, E-mail: *Martin.OConnor@usda.gov.*

SUPPLEMENTARY INFORMATION:

General Information

This program resulted from the United States International Trade Commission (USITC) findings in Investigation Number TA–201–68 and Presidential Proclamation 7208 of July 7, 1999, made subsequent to those findings, which initiates a 3-year assistance package for the domestic lamb industry. The Secretary of Agriculture outlined the assistance measures that were then incorporated by the Department of Agriculture (USDA) and the Office of Management and Budget into the Domestic Lamb Industry Adjustment Assistance proposal for the U.S. lamb industry. AMS is the lead agency implementing the assistance measures and will administer funds that have been made available through a MOU with the NSIIC for the Marketing and Promotion section of the Domestic Lamb Industry Adjustment Assistance Program for the U.S. lamb industry. AMS is authorized under 7 U.S.C. 1622 of the Agricultural Marketing Act to administer programs of this nature.

The NSIIC is authorized to conduct marketing and promotion programs under section 375 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2008j). A fund is established in the Treasury of the United States, without fiscal year limitation, to provide funds for the enhancement and marketing of sheep or goat products in the United States. Cooperative agreements for these purposes are authorized by section 375 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 2008j.

Under the terms of the MOU, a total of up to $1 million in addition to funds previously awarded will be provided in competitive cooperative agreements during FY 2001. Projects that are submitted in the proposals should be completed in a timely fashion as provided in the proposal, but under no circumstances later than July 21, 2002. The primary objective of the Domestic Lamb Industry Adjustment Assistance Program is to fund a number of diverse projects that will increase the sale of U.S. lamb regionally, nationally or internationally. The program is administered through USDA, AMS, in accordance with the MOU with NSIIC.

Eligible Applicants

An eligible entity is an organization that promotes the betterment of the United States sheep industry and that is: (a) a public, private, or cooperative organization; (b) an association, including a corporation not operated for profit; (c) a federally recognized Indian Tribe; or (d) a public or quasi-public agency. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(4)) which engages in lobbying activities, is not eligible to apply.

Use of Funds

Use of funds should directly increase the sale of U.S. lamb meat by focusing on, but not limited to, marketing, promotion, merchandizing, value-added proposals, market feasibility analysis, or market identification. Funds may not be used to: (a) pay costs of preparing the application package; (b) fund political activities; or (c) pay costs incurred prior to the effective date of the cooperative agreement.

Available Funds and Award Limitations

The total amount of additional funds available for cooperative agreements in FYs 2001 and 2002 is approximately $1.0 million. It is anticipated that all funds will be awarded in FY 2001 for projects that will be completed by July 21, 2002. It is expected that there will be submissions that propose to address a variety of needs in promoting U.S. lamb. Proposals may be fully or partially funded. Awards will be segregated so that a variety of marketing strategies and marketing situations will be addressed by the funded proposals. Additionally, proposals which further develop projects previously awarded under AMS Notice No. LS–00–07 will be considered equally with other submissions. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. The maximum amount of Federal funds

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awarded for any one proposal will be $250,000. Eligible entities will have the option of withdrawing proposals that are partially funded, if in their opinion, the portion funded does not meet their needs.

Selection Criteria

Initially, the proposal will be reviewed to determine whether the entity submitting the proposal meets the eligibility requirements and whether the proposal application contains the information required. After this initial evaluation, the following criteria will be used to rate and rank proposals received in response to this notice of funding availability. Failure to address any of the criteria will disqualify the proposal. Equal weight shall be given to each of the criteria listed below and points will be awarded to each criterion on a scale of 5, 4, 3, 2, 1. A score of 5 indicates that the proposal was judged to be highly relevant to the criteria and a score of 1 indicates that the proposal was judged not to sufficiently address the criteria. A proposal with an average score from the evaluation panel of AMS and NSIIC technical experts of less than 2 for any one criterion will disqualify the proposal.

Each proposal criteria area will be evaluated and judged on its own merits using the following criteria: (Clarification points are given in the italicized format following each question. They are not part of the criteria, but are provided to help the applicant better understand what the criteria means.)

(1) Demonstrates the potential to positively influence the U.S. lamb market.

Does the promotion place U.S. lamb on the center of the plate or position it well in the market? Does the proposal stress U.S. lamb?

(2) Demonstrates a merchandising strategy to create new sales or expand existing accounts.

Does the proposal address an improvement in product quality or a more consumer friendly product? Is this a new or better merchandising strategy?

(3) Demonstrates a strategy to create value-added linkages among various industry sectors.

Is there a value-added component to the plan? This could be coordination between any two or more sectors of the industry from producers through retailers. Is there production-to-final consumer or "gate-to-plate" component to the proposal?

(4) Demonstrates how the marketing proposal will coincide with the product marketing cycles.

Does the marketing strategy identify and address the cyclical nature of some markets in the lamb industry? That is, in some markets there is a surplus autumn supply with increased demand in the spring.

(5) Identifies coordination throughout the marketing chain to insure supply of the product being marketed in the proposal.

What segment(s) of the marketing chain does the proposal hope to influence? Is there a supplier commitment to provide the product to be marketed?

(6) Provides a detailed analysis of the product, geographic area and target market that will be affected.

Does the proposal identify lamb in general, a specific cut of lamb meat, pelts or other lamb products or processes that will be marketed? Is the target market area well defined? This could be local, regional, national, or international. Are the demographics of the proposed market area well defined and understood? Does the demographic information make the target audience a good candidate for cost efficient marketing?

(7) Provides a timetable and objectives along with quantifiable benchmark and expected results.

Does the proposal include: (a) a clear objective; (b) well-defined tasks that will accomplish the objectives; (c) realistic benchmarks; and (d) a realistic timetable for the completion of the proposed tasks?

(8) Identifies how the proposal coordinates with existing or previous marketing programs.

Is there an existing marketing campaign through a cooperative, Federal Agency, industry group, packer, breaker, or retailer that this proposal compliments? Are there any previous programs that this proposal will help continue? If there is a sheep industry checkoff, what is the likelihood that they would continue this proposed project? If there is no coordination; how will this project make positive impact in lamb marketing?

(9) Identifies the resources needed and a management team with the ability to administer the proposed project.

Does the proposal identify the qualified personnel to complete the proposed project?

What experience does the management team have in marketing this type of product? Does the management team have the experience needed to secure the supply of product to be promoted? Is there a good understanding of the marketing tools being proposed? For example, if the proposal calls for use of radio, show how this fits into the overall marketing strategy, cost, prior experience and expected result.

(10) Identifies other resources that will be used to leverage the funds requested in the proposal.

Does this proposal augment an existing program? Are there other sources of funding or personnel being used to complete the proposed project?

Selection Process

A panel of AMS and NSIIC technical experts will evaluate proposal applications. Applications will be evaluated competitively and points awarded as specified in the Selection Criteria section of this notice. Cooperative agreements will be awarded on a competitive basis to eligible entities. After assigning points upon those criteria, applications will be listed in rank order and presented, along with funding level recommendations, to the Administrator of AMS, who will make the final decision on awarding agreements. AMS reserves the right to make selections out of rank order to provide a diversity of projects targeting various marketing situations, geographic areas or subject matter distribution of funded projects. With respect to any approved proposal, the amount of funding and the project period during which the project may be funded and will be completed, are subject to negotiation prior to finalization of the cooperative agreement.

Proposal Submission

All proposals are to be submitted on standard 8.5x11 inch paper with typing on one side of the page only. In addition, margins must be at least 1 inch, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch.

Content of a Proposal

A proposal must contain the following:

1. *Form* SF–424 "Application for Federal Assistance."

2. *Form* SF–424A "Budget Information-Non Construction Programs."

3. *Form* SF–424B "Assurances-Non Construction Programs."

4. *Table of Contents*—For ease of locating information, each proposal must contain detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

5. *Project Summary:* The proposal must contain a project summary of one page or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.

6. *Project Narrative:* The narrative portion of the Project Proposal is limited to ten Pages of text and should contain the following:

a. Introduction. A clear statement of the goals and objectives of the project. The problem should be set in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project.

b. Rationale and Significance. Substantiate the need for the proposed project. Describe the impact of the project on the United States lamb market. Describe the project's specific relationship to the segment of lamb market being addressed.

c. Objectives and Approach. Discuss the specific objectives to be accomplished under the project. A detailed description of the approach must include:

(1) techniques or procedures used to carry out the proposed activities and for accomplishing the objectives; and (2) the results expected.

d. Timetable. Tentative schedule for conducting the major steps of the project.

e. Evaluation. Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the project and describe ways to determine the effectiveness (impact) of the end results upon conclusion of the project. Awardees will be required to submit written project performance reports on a quarterly basis.

f. Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

What To Submit

An original and 6 copies must be submitted. Each copy must be stapled in the upper left-hand corner. (DO NOT BIND). All copies of the proposal must be submitted in one package.

Other Federal Statutes and Regulations That Apply

Several other Federal, statutes and regulations apply to proposals considered for review and to cooperative agreements awarded under this program. These include but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.
7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964, as amended.
7 CFR part 3015—USDA Uniform Federal Assistance Regulations.
7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments.
7 CFR part 3019—Uniform Administrative Requirements for Grant Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.
7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

Public Burden in This Notice

Form SF–424, "Application for Federal Assistance"

This form is used by applicants as a required face sheet for applications for Federal assistance.

Form SF–424A, "Budget Information-Non Construction Programs"

This form must be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal sources.

Form SF–424B, "Assurances-Non Construction Programs"

This form must be completed by the applicant to give the Federal government certain assurances that the applicant has the legal authority to apply for Federal assistance and the financial capability to pay the non-Federal share of project costs. The applicant also gives assurance it will comply with various legal and regulatory requirements as described in the form.

Reporting Requirements

Awardees will be required to submit written project performance reports on a quarterly basis and a final report at the completion of the project. The project performance report and final report shall include, but need not be limited to: (1) A comparison of timeline, tasks and objectives outlined in the proposal as compared to the actual accomplishments; (2) If report varies from the stated objectives or they were not met, the reasons why established objectives were not met; (3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) Objectives established for the next reporting period; and (5) Status of compliance with any special conditions on the use of awarded funds.

Dated: November 28, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–30823 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia River Gorge National Scenic Area, Oregon and Washington States; Statutory Amendments Regarding Appraisal Standards and Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Appropriations Act for Fiscal Year 2001 for the Department of the Interior and Related Agencies, the Forest Service gives notice of the statutory amendments made to the Columbia River Gorge National Scenic Area of November 17, 1986.

Among other things, the Act authorized the Forest Service to acquire lands within the designated boundaries of the Columbia River Gorge National Scenic Area. To facilitate those acquisitions, Congress has recently amended the Act as part of the Fiscal Year 2001 appropriations act for the Forest Service (Public Law 106–291). These amendments provide special direction for the valuation of some lands being acquired by the Forest Service within Special Management Areas of the Scenic area. Generally, persons owning land within a Special Management Area as of September 1, 2000, who offer to sell their land to the federal government prior to April 1, 2001, will have their land appraised without regard to the effect of certain zoning and land use restrictions enacted pursuant to the Columbia River Gorge National Scenic Area Act. After April 1, 2001, land will be appraised considering all zoning and land use restrictions. In addition to the publication of this notice in the **Federal Register**, notice of these amendments is also being given via publication in newspapers of general circulation in the area and by direct mail to known landowners in the area.

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ADDRESSES: For a copy of the Columbia River Gorge National Scenic Area Act and amendments, write the National Scenic Area Headquarters, Forest Service, USDA, 902 Wasco Avenue, Suite 200, Hood River, Oregon 97031.

FOR FURTHER INFORMATION CONTACT: Pam Campbell, Lands Staff Officer, National Scenic Area Headquarters, telephone: 541–386–2333.

Dated: November 28, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–30752 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for McKenzie National Wild and Scenic River, Willamette National Forest, Lane and Linn Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the McKenzie National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Randy Dunbar, Willamette National Forest, 211 East 6th Avenue, Eugene, Oregon 97440, phone 541–465–6541.

SUPPLEMENTARY INFORMATION: The McKenzie Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues SW., Washington, DC 20024; Pacific Northwest Regional Office, 333 SW. First Avenue, Portland, Oregon 97204; and, Willamette National Forest, 211 East 6th Avenue, Eugene, Oregon 97440.

The Omnibus Oregon Wild and Scenic River Act (Public Act 100–557) of October 28, 1988, designated the McKenzie River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the McKenzie Wild and Scenic River Decision Notice and Environmental Assessment dated January 9, 1992. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives the transmittal.

Dated: November 28, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–30753 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for North Umpqua National Wild and Scenic River, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the North Umpqua National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Jamie Stone, Umpqua National Forest, 2900 NW. Stewart Parkway, Roseburg, Oregon 97470, phone 541–672–3293.

SUPPLEMENTARY INFORMATION: The North Umpqua Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building 14th and Independence Avenues SW., Washington, DC 20024; Pacific Northwest Regional Office, 333 SW. First Avenue, Portland, Oregon 97204; and Umpqua National Forest, 2900 NW. Stewart Parkway, Roseburg, Oregon 97470.

The Omnibus Oregon Wild and Scenic Rivers Act (Public Law 100–577) of October 28, 1988, designated the North Umpqua River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the North Umpqua Wild and Scenic River Decision Notice and Environmental Assessment dated July 28, 1992. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives the transmittal.

Dated: November 28, 2000.

Nancy Graybeal,

Deputy Regionol Forester.

[FR Doc. 00–30755 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for North Fork of the Middle Fork of the Willamette National Wild and Scenic River, Willamette National Forest, Lane County, OR

AGENCY: Forest Service. USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the North Fork of the Middle Fork of the Willamette National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Randy Dunbar, Willamette National Forest, 211 East 6th Avenue, Eugene, Oregon 97440, phone 541–465–6541.

SUPPLEMENTARY INFORMATION: The North Fork of the Middle Fork of the Willamette Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues SW., Washington, DC 20024; Pacific Northwest Regional Office, 333 SW. First Avenue, Portland, Oregon 97204; and, Willamette National Forest, 211 East 6th Avenue, Eugene, Oregon 97440.

The Omnibus Oregon Wild and Service Rivers Act (Public Law 100–557) of October 28, 1998, designated the North Fork of the Middle Fork of the Willamette River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the North Fork of the Middle Fork of the Willamette Wild and Scenic River Decision Notice and Environmental Assessment dated January 9, 1992. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives the transmittal.

Dated: November 28, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–30754 Filed 12–1–00; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the committee, which will be open to the public.

DATES: The next meeting of the committee is scheduled for December 19, 2000, beginning at 3:00 p.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail windley@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (http://www.access-board.gov/news/prowmtg.htm).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (committee) to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. 64 FR 56482 (October 20, 1999).

Committee meetings will be open to the public and interested persons can attend the meetings. All interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by December 13, 2000.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–30873 Filed 12–1–00; 8:45 am]

BILLING CODE 6150–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 001115321–0321–01]

Revisions to Shipper's Export Declaration, Commerce Form 7525–V

AGENCY: Bureau of the Census, Commerce.

ACTION: Program notice.

SUMMARY: This notice announces that on September 28, 2000, the Office of Management and Budget (OMB) approved use of the revised Shipper's Export Declaration (SED), Commerce Form 7525–V, and the Automated Export System (AES) for export reporting purposes. Under the OMB clearance, the Commerce Form 7525–V–Alternate (Intermodal) is eliminated as a shipper's export reporting form, and the sponsorship of the Commerce Form 7513, "Shipper's Export Declaration for In-Transit Goods," is transferred to the U.S. Army Corps of Engineers. The effective date for use of the new form is October 1, 2000. However the Census Bureau is allowing a 180 day grace period to April 1, 2001, to allow the trade community to deplete current stocks of the old forms. During the grace period, the Census Bureau will allow use of both the old and revised Commerce Form 7525–V and Commerce Form 7525–V–Alternate (Intermodal). As of April 1, 2001, only the Commerce Form 7525–V and the AES record will be accepted by the Census Bureau and the Customs Service as a means of reporting shipper's export declaration information.

DATES: The effective date for use of the revised SED form is October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or instructions for completion of the new form should be addressed to Jerome Greenwell, Foreign Trade Division, U.S. Census Bureau, Room 3125, FOB–3, Washington, DC 20233–0001, (301) 457–2238.

SUPPLEMENTARY INFORMATION: The Shipper's Export Declaration (SED) Commerce Form 7525–V and the Automated Export System (AES) reporting methods were approved under OMB clearance number 0607–0152. The SED is a Department of Commerce Form used by the Bureau of the Census (Census Bureau) for statistical reporting purposes and the Bureau of Export Administration (BXA) for export control purposes. It also is used by the U.S. Customs Service for verifying export shipments, the Department of State, and other federal government agencies for export control purposes. The SED was revised to delete unused or outdated data fields, to make it consistent with the regulation provisions contained in the final rule published in the **Federal Register** on July 10, 2000 (65 FR 42556), and to make the data elements on the paper SED consistent with the data elements on the AES record.

The OMB clearance for the SED, Commerce Form 7525–V, and Commerce Form 7525–V–Alternate (Intermodal), the Automated Export Reporting Program (AERP), the AES, and Commerce Form 7513, "Shipper's Export Declaration for In-Transit Goods" expired on September 30, 2000. On April 28, 2000, the Census Bureau published a presubmission notice in the **Federal Register** (65 FR 24912) announcing its intent to submit a forms clearance proposal to OMB to renew its clearance for the reporting of export data using: (1) the two types of paper SEDs, Form 7525–V, and Form 7525–V–Alternate (Intermodal); and (2) the AES.

In that notice the Census Bureau also announced that it was not renewing clearance for the AERP and the Commerce Form 7513, "Shipper's Export Declaration for In-Transit Goods." With the rapid growth of the AES, the Census Bureau discontinued the AERP program as of December 31, 1999. Filers using the AERP program, which was an electronic reporting system that was strictly used for Census Bureau statistical collection purposes, are now filing their export data through the AES or are in the process of converting to the AES.

The authority for clearance of the "Shipper's Export Declaration for In-Transit Goods," Commerce Form 7513, which serves as the source document from which the official U.S. statistics on outbound in-transit waterborne shipments is collected and compiled, has been transferred to the U.S. Army Corps of Engineers. This program was transferred to the Corps, as they are the primary users of the in-transit data.

In that notice the Census Bureau also identified the revisions that were being made to the SED to bring it up to date with current regulatory and policy provisions and to make it consistent with the AES record format.

On August 21, 2000, the Census Bureau published a second notice in the

Federal Register (65 FR 50674) announcing its submission of the Forms Clearance proposal to OMB requesting clearance only for the Commerce Form 7525-V, "Shipper's Export Declaration," and the AES. Subsequent to issuing the April 28, 2000, **Federal Register** notice, the Census Bureau determined that making the changes required to make the paper SEDs compatible with the AES record format would make the Form 7525-V-Alternate (Intermodal) incompatible with the ocean bill of lading, with which it was intended to align, thereby negating its utility to the vessel exporting community. Therefore, the Census Bureau did not request clearance for the Form 7525-V-Alternate (Intermodal). There was no objection to the elimination of the Form 7525-V-Alternate (Intermodal) as provided in comments to the August 21 **Federal Register** notice.

Program Change

Effective October 1, 2000, the only methods by which filers can report export information to the Census Bureau is by using the paper SED, Commerce Form 7525-V, or filing the export information electronically through the AES. In order to allow filers to deplete existing stocks of the old paper SED forms, the Census Bureau is allowing a 180-day grace period to April 1, 2001, during which time filers will be allowed to use either the revised SED or the old versions of the Form 7525-V or Form 7525-V-Alternate (Intermodal).

However, when using either the old or new version of the SED, filers must follow the provisions contained in the revised Foreign Trade Statistics Regulations (FTSR), published as a final rule in the **Federal Register** on July 10, 2000 (65 FR 42556). These regulations contain revised provisions for reporting the name of the U.S. principal party in interest (USPPI) on the SED or AES record, specifically clarify the reporting responsibilities of the USPPI and forwarding or other agents involved in the export transaction, and clarify the power of attorney provisions whenever a principal party interest authorizes a U.S. forwarding or other agent to act on its behalf to facilitate the export of items from the United States.

The revised SED is available for downloading on the Census Bureau's Foreign Trade Division (FTD) Web site at *www.census.gov/foreign-trade/www.* The SED can be prepared and downloaded from this website or it can be downloaded from the Web site on yellow or goldenrod paper and privately printed, or it can be ordered from the Government Printing Office by calling the Publication Order and Information Office at (202) 512–1800. The FTD also will provide a software package, free of charge, that will allow respondents to input SED information on their own computer and transmit it electronically through AES*Direct*. The FTD will inform the public through its FTD Web site and the AES newsletter as to when this software will be available. A copy of the revised SED also is published as part of this notice.

The Census Bureau strongly encourages all filers of export data to report their export information electronically using the AES. The Census Bureau offers a free Internet-based filing service on its Web site through which filers can transmit export information. This system is known as AES*Direct*, and detailed information on using this system can be obtained from the Census Bureau, FTD Web site at *www.aesdirect.gov.* General information about the AES and AES*Direct* can be obtained from the Census Bureau's FTD Web site at *www.census.gov/foreign-trade/www* and on the U.S. Customs Service Web site at *www.customs.gov.aes.*

The new instructions for completing the SED, "*The Correct Way To Complete The SED,*" are also available for downloading on the FTD Web site at *www.census.gov/foreign-trade/www.* These instructions include detailed data element descriptions for completing the revised SED. These data element descriptions should be used as a general reference for completing the SED. All filers are strongly encouraged to reference the detailed provisions for completing the SED and AES records contained in the FTSR, title 15, Code of Federal Regulations, part 30. Filers should be familiar with these regulations prior to completing the SED or AES record.

Dated: November 27, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

BILLING CODE 3510–07–P

U.S. DEPARTMENT OF COMMERCE — U.S. CENSUS BUREAU – Economics and Statistics Administration — BUREAU OF EXPORT ADMINISTRATION

FORM **7525-V** (7-25-2000) **SHIPPER'S EXPORT DECLARATION** OMB No. 0607-0152

1a. U.S. PRINCIPAL PARTY IN INTEREST (USPPI) *(Complete name and address)* ZIP CODE		2. DATE OF EXPORTATION	3. TRANSPORTATION REFERENCE NO.
b. USPPI EIN (IRS) OR ID NO.	c. PARTIES TO TRANSACTION ☐ Related ☐ Non-related		
4a. ULTIMATE CONSIGNEE *(Complete name and address)*			
b. INTERMEDIATE CONSIGNEE *(Complete name and address)*			
5. FORWARDING AGENT *(Complete name and address)*		6. POINT (STATE) OF ORIGIN OR FTZ NO.	7. COUNTRY OF ULTIMATE DESTINATION
8. LOADING PIER *(Vessel only)*	9. METHOD OF TRANSPORTATION *(Specify)*	14. CARRIER IDENTIFICATION CODE	15. SHIPMENT REFERENCE NO.
10. EXPORTING CARRIER	11. PORT OF EXPORT	16. ENTRY NUMBER	17. HAZARDOUS MATERIALS ☐ Yes ☐ No
12. PORT OF UNLOADING *(Vessel and air only)*	13. CONTAINERIZED *(Vessel only)* ☐ Yes ☐ No	18. IN BOND CODE	19. ROUTED EXPORT TRANSACTION ☐ Yes ☐ No

20. SCHEDULE B DESCRIPTION OF COMMODITIES *(Use columns 22–24)*

D/F or M (21)	SCHEDULE B NUMBER (22)	QUANTITY – SCHEDULE B UNIT(S) (23)	SHIPPING WEIGHT *(Kilograms)* (24)	VIN/PRODUCT NUMBER/ VEHICLE TITLE NUMBER (25)	VALUE (U.S. dollars, omit cents) *(Selling price or cost if not sold)* (26)

27. LICENSE NO./LICENSE EXCEPTION SYMBOL/AUTHORIZATION	28. ECCN *(When required)*

29. Duly authorized officer or employee	The USPPI authorizes the forwarder named above to act as forwarding agent for export control and customs purposes.
30. I certify that all statements made and all information contained herein are true and correct and that I have read and understand the instructions for preparation of this document, set forth in the **"Correct Way to Fill Out the Shipper's Export Declaration."** I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; 50 U.S.C. App. 2410).	
Signature	**Confidential** - For use solely for official purposes authorized by the Secretary of Commerce (13 U.S.C. 301 (g)).
Title	*Export shipments are subject to inspection by U.S. Customs Service and/or Office of Export Enforcement.*
Date	31. AUTHENTICATION *(When required)*
Telephone No. *(Include Area Code)*	E-mail address

This form may be printed by private parties provided it conforms to the official form. For sale by the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and local Customs District Directors. The **"Correct Way to Fill Out the Shipper's Export Declaration"** is available from the U.S. Census Bureau, Washington, DC 20233.

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[FR Doc. 00–30695 Filed 12–1–00; 8:45 am]
BILLING CODE 3510–07–C

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Preliminary Rescission of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary rescission in the antidumping duty administrative review of stainless steel plate in coils from Taiwan.

SUMMARY: On July 7, 2000, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review on stainless steel plate in coils from Taiwan. This review covers two manufacturers/exporters of the subject merchandise. The period of review ("POR") is November 4, 1998 through April 30, 2000. The Department is now preliminarily rescinding this review based on record evidence indicating that there were no entries into the United States of subject merchandise during the POR.

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Rick Johnson, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–0409 (Chen) or 202–482–3818 (Johnson), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Background

On May 21, 1999, the Department published the antidumping duty order on stainless steel plate in coils from Taiwan. *See* Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan, 64 FR 27756 (May 21, 1999).

On May 16, 2000, the Department published a notice of opportunity to request an administrative review of this order for the period November 4, 1998 through April 30, 2000. *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 65 FR 31141 (May 16, 2000). Petitioners Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization (collectively "petitioners") timely requested that the Department conduct an administrative review of sales by Yieh United Steel Corporation ("YUSCO"), a Taiwan producer and exporter of subject merchandise, and Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), a Taiwan exporter of subject merchandise. YUSCO also timely requested that the Department conduct an administrative review of YUSCO's sales. YUSCO withdrew its request for review on July 19, 2000. On July 7, 2000, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by YUSCO and Ta Chen for the period November 4, 1998 through April 30, 2000. *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part, 65 FR 41942 (July 7, 2000).

On July 10, 2000, the Department issued its antidumping duty questionnaire to YUSCO and Ta Chen. On July 19, 2000, along with withdrawing its request for an administrative review, YUSCO requested that the Department rescind this review, claiming it made no entries of subject merchandise into the United States during the POR. On July 27, 2000, the Department solicited comments on YUSCO's request for rescission. *See* Memo to the File from Juanita H. Chen (July 27, 2000). On August 8, 2000, YUSCO submitted its Section A response to the Department's questionnaire. YUSCO reiterated its request for rescission on August 16, 2000. Also on that date, petitioners filed comments opposing YUSCO's request for rescission, which included references to the original investigation indicating that Ta Chen's U.S. affiliate, Ta Chen International (CA) Corp. ("TCI") made sales of YUSCO's merchandise during the POR and had additional inventory not yet sold.

On July 31, 2000, Ta Chen stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR, and requested that it not be required to answer the Department's questionnaire. On August 1, 2000, the Department asked Ta Chen a supplemental question regarding shipments in the POR falling under a certain Harmonized Tariff Schedule of the United States ("HTS") number, and gave Ta Chen an extension of time in which to respond to the antidumping duty questionnaire. On August 9, 2000, Ta Chen repeated its statement that it did not have any U.S. sales, shipments or entries during the POR, stated that imports under the HTS number were cut-to-length stainless steel plate and not subject merchandise, and repeated its request not to have to answer the Department's questionnaire. On August 24, 2000, the Department denied Ta Chen's request that it not be required to answer the questionnaire, and issued supplemental questions to Ta Chen. On August 31 and September 5, 2000, Ta Chen responded to the Department's supplemental questions, stating that of TCI's sales of YUSCO's merchandise from TCI's U.S. warehouse inventory during the POR, all merchandise entered before the POR. Ta Chen also stated that while there was a sale of subject merchandise from YUSCO to TCI during the POR, such subject merchandise entered the United States and was resold after the POR. Ta Chen also stated that, for these reasons, it did not intend on answering the Department's questionnaire. On September 12, 2000, petitioners submitted comments on Ta Chen's response to the Department's supplemental questions, arguing that the Department should review TCI's resales of YUSCO's merchandise as constructed export price ("CEP") sales, citing to Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 59 FR 42806 (August 19, 1994). Petitioners emphasized that they requested the review not only to liquidate entries during the review period but also to set a new cash deposit rate on future entries. On September 26, 2000, the Department informed Ta Chen of its intention to conduct a review of TCI's sales, and asked that Ta Chen submit its response no later than October 10, 2000. Ta Chen failed to submit a response.

On September 19, 2000, the Department conducted an inspection of Customs documentation at the U.S. Customs Service ("Customs") in Long Beach, California. A review of a random sampling of entries during the POR revealed that none of the entries were of subject merchandise. *See* Memo to the File from Carrie Blozy and Juanita H. Chen (October 19, 2000). On October 24, 2000, the Department informed petitioners that as a result of this inspection, as well as a separate Customs inquiry, the Department is re-visiting the issue of whether it is appropriate to continue this administrative review. *See* Memo to the File from Juanita H. Chen through Edward Yang (October 25, 2000).

Scope of the Review

For purposes of this review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this review are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process. The merchandise subject to this review is currently classifiable in the HTS at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.0070, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Review

The POR is November 4, 1998 through April 30, 2000.

Preliminary Rescission of Review

The Department has previously determined that "{s}ales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department." *See* Certain Stainless Wire Rods From France: Final Results of Antidumping Duty Administrative Review, 61 FR 47874, 47875 (September 11, 1996); see also Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27295, 27314 (May 19, 1997).

Ta Chen has certified that of TCI's resales of YUSCO's merchandise from its U.S. warehouse inventory during the POR, all merchandise entered before the POR. Therefore, such merchandise entered prior to the suspension of liquidation. The only merchandise TCI purchased from YUSCO during the POR entered the United States and was resold after the POR. While petitioners reference evidence from the original investigation that TCI sold subject merchandise out of inventory on December 18, 1998, the Department's Customs inquiry indicates that such merchandise did not enter the United States after the suspension of liquidation. Accordingly, in this review, it has not been established that there were any sales of subject merchandise which entered during the POR.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Since the evidence shows that there were no entries of certain stainless steel plate in coils made by either YUSCO or Ta Chen from Taiwan during the POR, the Department is preliminarily rescinding this review in accordance with 19 CFR 351.213(d)(3). The cash deposit rate for YUSCO will remain at 8.02 percent, for YUSCO/Ta Chen will remain at 10.20 percent, and for "all other" producers/exporters of the subject merchandise will remain at 7.39 percent, the rates established in the most recent segment of this proceeding. *See* Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493 (March 31, 1999).

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to this preliminary rescission. Case briefs must be submitted within 14 days after the date of publication of this notice and rebuttal briefs, limited to arguments raised in the case briefs, must be submitted no later than 7 days after the time limit for filing case briefs. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: November 21, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–30804 Filed 12–1–00; 8:45 am]
BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 28, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body

pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits and guaranteed access levels.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 28, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Restraint limit
338/638	1,141,107 dozen.
339/639	1,357,915 dozen.
340/640	1,174,707 dozen.
342/642	826,668 dozen.
347/348/647/648.	2,812,017 dozen of which not more than 1,485,592 dozen shall be in Categories 647/648.
351/651	1,408,272 dozen.
433	22,792 dozen.
442	77,382 dozen.
443	141,572 numbers.
444	77,382 numbers.
448	39,864 dozen.
633	172,364 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 13, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2001, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in the Dominican Republic from fabric formed and cut in the United States and re-exported to the United States from the Dominican Republic during the period January 1, 2001 through December 31, 2001:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648.	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 25, 1987 (52 FR 6595), as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–30797 Filed 12–1–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 28, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit and guaranteed access level.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit and Guaranteed Access Level (GAL) for textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit and guaranteed access level for 2001.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 28, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of 1,474,798 dozen.

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in Categories 340/640 exported during 2000 shall be charged to the applicable category limit for that year (see directive dated October 13, 1999) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2001, a guaranteed access level of 1,000,000 dozen is being established for properly certified textile products in Categories 340/640 assembled in El Salvador from fabric formed and cut in the United States which are re-exported to the United States from El Salvador during the period beginning on January 1, 2001 and extending through December 31, 2001:

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 6, 1995 (60 FR 2740), as amended, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–30798 Filed 12–1–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 28, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALS) for textile products, produced or manufactured in Guatemala and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2001.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 28, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	1,796,578 dozen.
347/348	2,151,195 dozen.
351/651	378,978 dozen.
443	74,619 numbers.
448	46,753 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2001, you are directed to establish guaranteed access levels for

properly certified textile products in the following categories which are assembled in Guatemala from fabric formed and cut in the United States and re-exported to the United States from Guatemala during the period January 1, 2001 through December 31, 2001:

Category	Guaranteed access Level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 (55 FR 3079), as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–30799 Filed 12–01–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 28, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hong Kong and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 28, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–227, 300–326, 360–363, 369(1)[1], 369pt.[2], 400–414, 464, 469pt.[3], 600–629, 666, 669pt.[4] and 670, as a group.	261,507,986 square meters equivalent.
Sublevels in Group I	
219	47,005,609 square meters.
218/225/317/326	78,830,202 square meters of which not more than 4,341,659 square meters shall be in Category 218(1)[5] (yarn dyed fabric other than denim and jacquard).
611	7,411,068 square meters.
617	4,675,864 square meters.
Group I subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group	126,152,367 square meters equivalent.
Within Group I subgroup	
200	405,263 kilograms.
226/313	84,317,968 square meters.
314	22,739,544 square meters
315	11,242,508 square meters.
369(1) (shoptowels)	923,905 kilograms.
604	278,186 kilograms.
Group II	
237, 239pt.[6], 331–348, 350–352, 359(1)[7], 359(2)[8], 359pt.[9], 431, 433–438, 440–448, 459pt.[10], 631, 633–652, 659(1)[11], 659(2)[12], 659pt.[13], and 443/444/643/644/843/844(1), as a group.	901,076,901 square meters equivalent.
Sublevels in Group II	
237	1,359,275 dozen.
331	4,463,147 dozen pairs.
333/334	326,126 dozen.
335	352,328 dozen.
338/339[14] (shirts and blouses other than tank tops and tops, knit).	2,994,680 dozen.
338/339(1)[15] (tank tops and knit tops).	2,249,919 dozen.
340	2,867,722 dozen.
345	496,091 dozen.

Category	Twelve-month restraint limit
347/348	6,944,700 dozen of which not more than 6,854,700 dozen shall be in Categories 347–W/348–W[16]; and not more than 5,194,751 dozen shall be in Category 348–W.
352	7,995,074 dozen.
359(1) (coveralls, overalls and jumpsuits).	687,640 kilograms.
359(2) (vests)	1,433,187 kilograms.
433	10,974 dozen.
434	11,779 dozen.
435	78,838 dozen.
436	102,681 dozen.
438	843,303 dozen.
442	97,335 dozen.
443	64,785 numbers.
444	44,074 numbers.
445/446	1,393,867 dozen.
447/448	70,098 dozen.
631	754,418 dozen pairs.
633/634/635	1,462,845 dozen of which not more than 547,136 dozen shall be in Categories 633/634; and not more than 1,123,300 dozen shall be in Category 635.
638/639	5,027,449 dozen.
641	868,723 dozen.
644	51,169 numbers.
645/646	1,377,929 dozen.
647	627,574 dozen.
648	1,227,517 dozen of which not more than 1,212,727 dozen shall be in Category 648–W[17].
649	966,213 dozen.
650	199,809 dozen.
652	5,533,706 dozen.
659(1) (coveralls, overalls and jumpsuits).	760,024 kilograms.
659(2) (swimsuits)	319,071 kilograms.
443/444/643/644/843/844(1) (made-to-measure suits).	60,987 numbers.
Group II subgroup	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group.	167,814,523 square meters equivalent.
Within Group II subgroup	
336	262,531 dozen.
341	2,902,795 dozen.
342	606,407 dozen.
350	151,195 dozen.
351	1,226,009 dozen.
636	353,320 dozen.
640	1,070,858 dozen.
642	280,973 dozen.
651	382,638 dozen.
Group III	
831, 833–838, 840–844, 847–858 and 859pt.[18], as a group.	48,732,782 square meters equivalent.
Sublevels in Group III	
834	14,378 dozen.
835	119,843 dozen.
836	184,725 dozen.
840	711,880 dozen.
842	284,975 dozen.
847	382,306 dozen.
Limits not in a group	
845(1)[19] (sweaters made in Hong Kong).	1,134,387 dozen.
845(2)[20] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,715,291 dozen.
846(1)[21] (sweaters made in Hong Kong).	183,441 dozen.
846(2)[22] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	442,024 dozen.

[1] Category 369(1): only HTS number 6307.10.2005.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[4] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[14] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[15] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[16] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[17] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[19] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[20] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[21] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[22] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated November 23, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–30800 Filed 12–01–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 28, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Jamaica and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for the period January 1, 2001 through December 31, 2001.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 28, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	893,817 dozen pairs.
338/339/638/639	1,762,373 dozen.
340/640	824,132 dozen of which not more than 697,342 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	1,034,857 dozen.
345/845	255,355 dozen.
347/348/647/648	1,902,262 dozen.
352/652	2,842,337 dozen.
445/446	55,706 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 22, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 2001 and extends through December 31, 2001:

Category	Guaranteed access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 (52 FR 6049) shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–30801 Filed 12–01–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, December 1, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–30855 Filed 11–30–00; 10:46 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, December 8, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–30856 Filed 11–30–00; 10:46 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, December 15, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–30857 Filed 11–30–00; 10:46 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, December 22, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–30858 Filed 11–30–00; 10:46 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 29, 2000.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–30859 Filed 11–30–00; 10:46 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Design, Construction, and Operation and Closure of a Facility for the Destruction of Chemical Agents and Munitions at Blue Grass Army Depot (BGAD), Kentucky

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: This announces the Army's intent to prepare a site-specific EIS on the potential impacts of the design, construction, operation and closure of a facility to destroy all of the chemical agents and munitions currently stored at the BGAD, Kentucky. The EIS will examine potential environmental impacts of the following destruction facility alternatives: a baseline incineration facility; a full-scale facility to pilot test an alternative technology successfully demonstrated by the Assembled Chemical Weapons Assessment (ACWA) Program; and no action (an alternative that will continue the storage of the chemical agent and munitions at the BGAD). If any reasonable alternatives are identified during the environmental analysis process, they will be considered as alternative courses of action.

The United States has a statutory and international treaty obligation to destroy its stockpile of chemical weapons, including those at the BGAD. The technique of using incineration (herein referred to as baseline incineration) has already been tested safely and successfully in full-scale facilities. Alternatives to baseline incineration have been tested at the demonstration level, but not in pilot scale or full-scale facilities. Before additional federal funds can be spent on any alternative technology, sec. 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, requires that three findings be made. First, an alternative technology would have to be determined to be as safe as and as cost effective as baseline incineration. Second, it must also be capable of completing destruction of the stockpile by the later of either the Chemical Weapons Convention destruction date or the date the BGAD stockpile would be destroyed if baseline incineration were used. Finally, it must comply with Federal and State health and safety laws.

DATES: Written comments must be received not later than February 2, 2001 in order to be considered in the Draft EIS.

ADDRESSES: Written comments may be forwarded to the Program Manager for Chemical Demilitarization, Public Outreach and Information Office (ATTN: Mr. Gregory Mahall), Building E–4585, Aberdeen Proving Ground, MD 21010–4005.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Mahall by mail at the above listed address, by phone at 410–436–

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1093, by fax at 410–436–5122, or by email at gregory.mahall@pmcd.apgea.army.mil. For additional general information or questions on this process, please call 1–800–488–0648 to leave a message.

SUPPLEMENTARY INFORMATION: In compliance with the National Environmental Policy Act (Title 40, CFR, Parts 1500 through 1508), the Army will prepare an EIS to assess the health and environmental impacts of the design, construction, operation and closure of a facility to destroy all of the chemical agents and munitions stored at the BGAD. Federal law and an international treaty require that the chemical agents and munitions be destroyed. This EIS will analyze the impact of the various methods of destroying the BGAD stockpile. The ACWA Program is currently in the process of programmatically addressing pilot tests for alternative technologies at one or more Army chemical agent stockpile sites (FR 65 20139, April 14, 2000). These two separate and distinct analyses serve complementary but different purposes.

This site-specific EIS continues the process that began when Congress established the Program for Chemical Demilitarization in Pub. L. 99–145 in 1985. The law requires destruction of the chemical weapons stockpile by a deadline established by treaty; that date is April 2007. This requirement still exists, notwithstanding the establishment of the ACWA Program. The Chemical Demilitarization Program published a Programmatic EIS in January 1988. Its Records of Decision (ROD) states that the stockpile of chemical agents and munitions should be destroyed in a safe and environmentally acceptable manner by on-site incineration. Site-specific Environmental Impact Statements that tier off the Programmatic EIS have been prepared for Johnston Atoll Chemical Agent Disposal System, Tooele Chemical Agent Disposal Facility, Anniston Chemical Agent Disposal Facility, Umatilla Chemical Agent Disposal Facility, Pine Bluff Chemical Agent Disposal Facility, Aberdeen Chemical Agent Disposal Facility, and Newport Chemical Agent Disposal Facility. An updated report and Record of Environmental Consideration have also been done on the Tooele Chemical Agent Disposal Facility.

The specific purpose of the current analysis is to determine the environmental impacts of the methods that could accomplish the destruction of the stockpile at the BGAD by the required destruction date on April 2007. The environmental impact analysis will determine whether construction of a full-scale plant operated initially as a pilot facility and using one of the technologies successfully demonstrated in the ACWA Program is capable of destroying the stockpile at the BGAD by the reburied destruction date (or as soon thereafter as could be achieved by constructing a destruction facility using the baseline incineration technology), and if doing so is as safe as the baseline incineration technology. The 1988 Programmatic EIS ROD does not limit or predetermine the results of the selection of a destruction technology for the BGAD, and it does not dictate the decision to be made in the ROD following completion of the EIS for this action at the BGAD. The ACWA Program has already successfully demonstrated and validated neutralization followed by supercritical water oxidation. The ACWA Program is currently evaluating two additional technologies—electrochemical oxidation with nitric acid and neutralization/supercritical water oxidation/gas phase reduction. If one or more of these technologies are later considered to be a reasonable alternative, they will also be considered in this site-specific EIS. The ACWA Program EIS for potential follow-on pilot testing of successful ACWA Program demonstration tests pursuant to the process established by Congress in Pub. L. 104–208 and 105–261 addresses a separate but related purpose. That purpose is to determine if any ACWA Program technologies can be pilot tested, and, if so, at which site or sites. The ACWA Program EIS will be distinct from this site-specific EIS because its emphasis will be on the feasibility of pilot testing one or more of the successfully demonstrated and validated ACWA Program technologies considering the unique characteristics of various sites, where chemical weapons are currently stored, including the BGAD. At the conclusion of both of these Environmental Impact Statements, Records of Decision will be issued.

The Army will hold scoping meetings to aid in determining the significant issues related to the proposed action that will be addressed in the site-specific EIS. The scoping process will include public participation and seek input from Federal, Commonwealth of Kentucky, and local government agencies, as well as residents within the affected environment. The dates, times, and locations of scoping meetings will be announced in appropriate news media at least 15 days prior to these meetings.

Dated: November 28, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health), OASA(I&E).

[FR Doc. 00–30756 Filed 12–1–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Incorporation of the Overhills Property Into the Northern Training Area (NTA) of Fort Bragg, North Carolina

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The EIS will evaluate the Army's proposal to incorporate the Overhills property into Fort Bragg's NTA, and create a contiguous 22,000-acre area for training. Implementation of the proposed action would govern both military training and recreational land uses under a multiple land use concept.

ADDRESSES: Written comments concerning the scope of the EIS should be sent to the Commander, U.S. Army Engineer District, Savannah, ATTN: CESAS–PD–E (Mr. Seyle), P.O. Box 889, 100 West Oglethorpe Avenue, Savannah, GA 31402–0889.

FOR FURTHER INFORMATION CONTACT: Mr. Seyle at (912) 652–6017.

SUPPLEMENTARY INFORMATION: The Army would conduct the same full-scale training on Overhills that it is now conducting on the NTA. This training includes ground and air maneuvers involving both mechanized and light infantry with attached combat support and combat service support. These units would operate tracked and wheeled vehicles, as well as rotary and fixed-wing aircraft. Soldiers would train with live, frangible ammunition (with a maximum range of 200 meters) in and around existing non-historic structures. All units would train according to the Installation Range Regulation and the Army's Red-Cockaded Woodpecker guidelines. Additionally, the Army would allow hunting and fishing on selected areas of the property and use the family estate area, known as "The Hill," for youth oriented recreational activities such as golfing, horseback riding, hiking, swimming, and boating to the extent that these activities do not conflict with training.

Fort Bragg is the Headquarters of the XVIII Airborne Corps, the command element for America's contingency corps, and the U.S. Army Special Operations Command. The military units stationed at Fort Bragg and Pope Air Force Base (AFB) comprise approximately 44,000 soldiers and airmen. Major elements based at Fort Bragg include XVIII Airborne Corps, 82d Airborne Division, and Special Operations Forces. In addition to these units, Fort Bragg supports the training of soldiers from the Reserve Components of the U.S. Army. The 1995 Land Use Requirements Study identified a shortage of 125,512 acres needed to support training. The Army purchased the approximately 11,000-acre Overhills property in 1997 to help alleviate that training land deficit and protect the military missions of Fort Bragg and Pope AFB from encroachment by incompatible civilian development. The Army is in the process of acquiring the remaining private properties within Overhills, which are eight small parcels totaling 148.7 acres. Overhills is located in Cumberland and Harnett Counties in southeastern North Carolina and adjoins the northern boundaries of Fort Bragg and Pope AFB.

The EIS will consider several alternatives: (1) Incorporate Overhills into the NTA and use it only for military training. The Army would fence off and maintain at their current conditions the historical structures on "The Hill" and train on the golf course; (2) train on Overhills; Army would manage Overhills' facilities and resources solely as a caretaker; (3) no action alternative, which is to continue the status quo of permitting only low-impact military training at company level and not incorporating Overhills into the NTA while continuing caretaker operations for the rest of the property and facilities. Currently, units are conducting only light infantry training and driving only wheeled vehicles on roads and established trails.

During the scoping process, the Army will use any comments it receives as a result of this notice to identify potential impacts to the quality of the human environment. Individuals or organizations may participate in the scoping process by written comment or by attending a public scoping meeting. The date, time, and location of the public scoping meeting will be announced in the "Fayetteville Observer Times," "Charlotte Observer," "Raleigh News-Observer," and the "Paraglide" newspapers. The EIS will only consider comments received no later than 15 days following the public meeting.

Dated: November 28, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 00–30702 Filed 12–1–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2002–2003 year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs). The Secretary also requests comments on changes under consideration for the 2002–2003 FAFSA.

DATES: Interested persons are invited to submit comments on or before February 2, 2001.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, "in cooperation with agencies and organizations involved in providing student financial assistance," to "produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under" the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

The Secretary requests comments on the draft 2002–2003 FAFSA that has been posted to the IFAP website (see below). In particular, in an effort to continually improve the application for students, parents, and schools, the Secretary seeks comments to further simplify the FAFSA form and reduce burden hours, including removing, replacing or combining data elements.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 28, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Free Application for Federal Student Aid (FAFSA).
Frequency: Annually.
Affected Public: Individuals and families.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 10,979,031.
Burden Hours: 6,670,932.
Abstract: The FAFSA collects identifying and financial information about a student applying for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

ADDRESSES: Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Please specify the complete title of the information collection when making your request. In addition, interested persons can access this document on the Internet:

(1) Go to IFAP at *http://ifap.ed.gov*
(2) Click on "Current SFA Publications"
(3) Scroll down and click on "FAFSAs and Renewal FAFSAs"
(4) Click on "By 2002–2003 Award Year"
(5) Click on "Draft FAFSA Form/ Instructions"

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's website: *http://www.adobe.com* Comments regarding burden and/or the information collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

[FR Doc. 00–30750 Filed 12–1–00; 8:45 am]
BILLING CODE 4001–01–U

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting by teleconference of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: December 5, 2000.

TIME: 4:00–5:00 p.m.

LOCATION: National Assessment Governing Board, Suite 825, 800 North Capital Street, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ray Fields, Assistant Director for Policy, National Assessment Governing Board, Suite 825, 800 North Capital Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Public Law 105–78, the National Assessment Governing Board is also granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001.

On December 5, 2000, between 4:00 and 5:00 p.m, the Executive Committee of the National Assessment Governing Board will hold an open teleconference meeting. The purpose of this meeting is to review and take action on a proposal concerning assessment in urban school districts that was received from the Council of Great City Schools.

Because this is a teleconference meeting telephonic devices and seating space will be arranged to permit the public to have access to the Committee's deliberations.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, N.W., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: November 30, 2000.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 00–30862 Filed 12–1–00; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain and Wetlands Statement of Findings for the Floodplain Strip Adjacent to the Boeing Property in Roane County, Tennessee

AGENCY: Department of Energy (DOE).

ACTION: Floodplain and wetlands statement of findings.

SUMMARY: This is a Floodplain and Wetlands Statement of Findings for the Floodplain Strip Adjacent to the Boeing Property in Roane County, Tennessee, in accordance with 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements: A floodplains and wetlands assessment was conducted and is included in an Environmental Assessment (EA) that evaluated the potential impacts of transfer from DOE ownership. The floodplains and wetlands assessment describes the possible effects, alternatives, and measures designed to avoid or minimize potential harm to floodplains and wetlands or their flood storage potential. DOE will allow 15 days of public review after publication of the Statement of Findings before implementation of the Proposed Action.

FOR FURTHER INFORMATION, CONTACT: Katy Kates, Realty Officer, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee 37831. Ms. Kates can also be reached at 865–576–0977 or facsimile 865–576–9204.

For Further Information on General DOE Floodplain/Wetlands Environmental Review Requirements, Contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance; EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. Ms. Borgstrom can also be reached at 202–586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: A notice of Floodplain and Wetlands Involvement for the Floodplain Strip Adjacent to the Boeing Property was published in the **Federal Register** on May 3, 2000 (Volume 65, Number 86) and subsequently a floodplains and wetlands assessment was prepared and is included in an EA for divestiture of the Floodplain Strip from DOE ownership. The EA was prepared as part of National Environmental Policy Act (NEPA) requirements. The floodplain and wetlands assessment documented the floodplain and wetland communities on the Floodplain Strip, and assessed the potential impacts to floodplains and wetlands associated with conveyance of the 182-acre parcel. Alternatives considered include: (1) Conveyance of the Floodplain Strip to the abutting landowner for unrestricted use (the Preferred Alternative), (2) conveyance of the property to the Tennessee Valley Authority (TVA), (3) conveyance of the property to the City of Oak Ridge or Roane County, (4) DOE retention of ownership but with DOE granting easements to the abutting landowner, and (5) No Action. Any land conveyance would include land from the ordinary low water mark inward to the Boeing Property. The floodplains and wetlands assessment identified 69 acres of wetlands on the Floodplain Strip.

Some minor, short-term impacts could occur due to limited, proposed construction on the Floodplain Strip and potential development on the adjacent Boeing Property, which would primarily be associated with runoff and erosion of soil particles. Based on the limited planned improvements in the Floodplain Strip and types of subsequent activities that would occur under any alternative evaluated, DOE does not believe there would be any hazards to the public or property from flooding, nor would the activities jeopardize the wetlands' survival, quality, and natural beneficial values. The limited improvements planned for the property would be small in scale and by nature there would be no habitable structures within the floodplain or wetlands that could present a hazard or flooding risk. Additionally, any proposed structure in the floodplain (e.g., boat docks) would be subject to TVA's section 26(a) review. Any construction within jurisdictional wetlands as identified in the floodplains and wetlands assessment must comply with the Department of Army Wetlands Construction Restrictions contained in 33 CFR, sections 320 through 330, as amended, and any other applicable Federal, State, or local wetlands regulations.

Issued in Oak Ridge, Tennessee, on November 27, 2000.

James L. Elmore,

Alternate National Environmental, Policy Act Compliance Officer.

[FR Doc. 00–30766 Filed 12–1–00; 8:45 am]
BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 01–12: Natural and Accelerated Bioremediation Research (NABIR) Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. Applications should describe research projects that address the scientific aims of individual NABIR Science Elements including Biogeochemistry, Biotransformation, Community Dynamics, as well as Assessment projects that relate to those elements. Applications for research in other elements will not be considered at this time. Applications for research on Bioremediation and its Societal Implications and Concerns (BASIC) have been solicited under a separate announcement (Notice 00–21).

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. The deadline for preapplications is January 8, 2001. A brief preapplication should consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., February 28, 2001, to be accepted for merit review and to permit timely consideration for award late in Fiscal Year 2001 or in early Fiscal Year 2002. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preapplication, referencing Program Notice 01–12, it should be sent by e-mail to: anna.palmisano@science.doe.gov.

Formal applications referencing Program Notice 01–12 on the cover page must be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–12. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9963, e-mail: anna.palmisano@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 01–12 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: The mission of the NABIR Program is to provide the fundamental science to serve as the basis for development of cost-effective bioremediation of radionuclides and metals in the subsurface at DOE sites. In particular, the program focuses on research that will lead to immobilization of radionuclides and/or metals in place, or that will reduce re-mobilization. NABIR research encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of nutrient amendments (inorganic, organic or enzymatic) or microbial amendments. The program consists of seven interrelated scientific research elements (Biogeochemical Dynamics, Biotransformation, Community Dynamics and Microbial Ecology, Biomolecular Science and Engineering, Biotransformation and Biodegradation, Bacterial Transport, and Systems Integration/Data Management). The program also includes an element addressing ethical, legal and social issues of bioremediation called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program has established a Field Research Center (FRC) at the Y–12 site near Oak Ridge National Laboratory (ORNL). The FRC is a focal point of NABIR field research and can provide investigators with DOE-relevant samples contaminated with uranium and other radionuclides or metals. Additional information about NABIR and the Field Research Center can be accessed from the NABIR Homepage: *http://www.lbl.gov/NABIR/.*

Program Focus

The NABIR Program supports hypothesis-driven research that will help determine the potential for, and advance the field of, bioremediation as a cleanup option for radionuclides and metals in subsurface environments (both vadose and saturated zones, below the root zone) at the DOE sites. Contaminants of particular interest are the radionuclides uranium, technetium, and plutonium and the metals chromium and mercury. While the focus of the NABIR Program is on field-scale research, the research program will support laboratory, theoretical, modeling, and other non-field research projects, if they fill gaps that would be necessary to complete understanding required for field-scale applications. Problems characterized by large areas with low-concentration of contaminants are emphasized over problems of localized, high concentrations. NABIR research will focus on research leading to immobilization rather than mobilization scenarios for bioremediation of metals and radionuclides. Although the program is directed at specific goals, it supports research that is more fundamental in nature than demonstration projects.

NABIR will not support research leading to ex situ treatments, nor will research on phytoremediation be supported. Research on bioremediation of organic contaminants, such as solvents and complexing agents will not be considered, except to the extent that they influence the primary goal of understanding the remediation of radionuclides and metals. The NABIR

Program will not support research to evaluate the risk of contaminants to humans or to the environment.

Research plans that involve the potential release of nutrients, enzymes, and/or chemicals to the field (both at contaminated and non-contaminated control sites) should discuss the involvement of the public or stakeholders in their research, beginning with experimental design through completion of the project. Applications involving microbial amendments will be solicited in a separate announcement. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection and communication with and outreach to affected communities (including members of affected minority communities where appropriate).

A centrally-maintained database is being developed to provide appropriate data, such as site characterization and kinetics data, needed by a broad segment of investigators. Applications shall include a short discussion of the Quality Assurance and Quality Control (QA/QC) measures that will be applied in data gathering and analysis activities. Successful grantees will be expected to coordinate their QA/QC measures with NABIR program managers.

Current Request for Applications

Research projects that address the scientific aims of individual NABIR elements, including Biogeochemistry, Biotransformation, Community Dynamics, as well as Assessment projects supporting those three elements are being solicited. Applications for research on other elements will not be addressed at this time. Applications for research on Bioremediation and its Societal Implications and Concerns (BASIC) have been solicited under a separate announcement (Notice 00–21). Applicants for research projects within individual program elements should state which science element is most closely aligned with the proposed research. Applicants are encouraged to propose interdisciplinary research that transcends more than one research element. However, a primary element should be specified for the purpose of merit review.

Biogeochemical Dynamics

The goal of this area is to understand the fundamental biogeochemical reactions that would lead to long-term immobilization of metal and radionuclide contaminants in the subsurface. The focus is on reactions that govern the concentration, chemical speciation, and distribution of metals (Cr, Hg) and radionuclides (U, Tc, Pu) between the aqueous and solid phases.

Contaminated subsurface environments are complex. Biogeochemical reactions in subsurface environments are influenced by a wide variety of factors, including the availability of electron donors and acceptors, the nature of the microbial community, the chemical species or form of contaminant, the hydrology, and the nature of the environmental matrix. Often several competing redox reactions make the prediction of the substrates, products, and kinetics difficult. The biogeochemical reactions are further complicated by the sorption of contaminants and reaction products to mineral surfaces, and the presence of natural organic matter and co-contaminants. The research challenge is to identify and prioritize the key biogeochemical reactions that are needed to predict the rate and extent of reactions to immobilize radionuclides and metals for long term stability. New and creative scientific approaches are sought that address the following fundamental research questions:

- With the goal of increasing immobilization of radionuclides and metals, what are the principal biogeochemical reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases? What are the thermodynamic and kinetic controls on these reactions? How do factors such as co-contaminants, sorption processes, and the structure and composition of minerals that serve as terminal electron acceptors, influence these reactions?
- With the goal of decreasing the possible re-mobilization of immobilized radionuclides and metals, how can the above questions be addressed? Under what conditions would the contaminants remobilize, and what alterations to the environment would increase the long-term stability of metals and radionuclides in the subsurface?
- What influence do hydrological processes such as reactive transport, advective/dispersive transport and colloidal transport have on the biological availability, transformation, and movement of radionuclides and metals?

Biotransformation

DOE subsurface sites encompass a range of redox environments where contaminants such as uranium are present. One challenge is to understand the impact of these environments on microbial physiological processes involved in the transformation of radionuclides and metals to an immobilized form. Knowledge of the metabolic pathways for transformation of these contaminants by naturally occurring microbial communities in vadose zones, saturated zones and the waste plume is needed. A second challenge is to accelerate the rates of these physiological processes in situ, in complex subsurface environments. Biotransformation of metals and radionuclides in the subsurface is poorly understood, and predictive models based on laboratory studies have not always accurately simulated the observed fate of metals and radionuclides in the field. It is important to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics. Research is needed to address questions such as:

- What are the primary metabolic pathways for biotransformation of radionuclides and/or metals by subsurface microorganisms at DOE sites, such as the FRC?
- Can these biotransformations be harnessed or accelerated to immobilize radionuclides and/or metals in the subsurface?
- What environmental controls affect microbial physiological processes involved in radionuclide and metal biotransformations leading to immobilization in vadose and saturated zones? What factors inhibit these transformations in situ?

Community Dynamics and Microbial Ecology

Fundamental research in Community Dynamics and Microbial Ecology at both the molecular and the microbial level is needed to understand the natural intrinsic processes of bioremediation at contaminated sites. One challenge is to determine if sufficient genotypic and/or phenotypic potential exists to support natural and/or accelerated (biostimulated) bioremediation. Knowledge of microbial community structure and function may ultimately provide the ability to control or stimulate subsurface communities capable of transformation of radionuclides and metals. A second challenge is to optimize the community structure and activity for immobilization of radionuclides and metals, and to determine the long term stability of bioremediative communities. Research is needed to address questions such as:

- Is there sufficient biological activity and diversity in subsurface environments to support natural and/or accelerated bioremediation of metals and radionuclides?
- What are the effects of metals and radionuclides (or other environmental factors) on microbial community activity and diversity, particularly of populations that transform radionuclides and metals?
- What is the role of consortial interactions on biotransformations of metals and radionuclides in contaminated subsurface environments? Such interactions might include competition for electron donors and acceptors, or other consortial interactions that affect the transformation of metals and radionuclides.
- What is the potential importance of gene transfer in natural microbial communities at subsurface sites contaminated with radionuclides or metals?

Assessment

The Assessment Element is a cross-cutting element with a goal to develop innovative methods to assess processes and endpoints in support of the NABIR Science Elements. In this call, assessment projects that support the Science Elements of Biogeochemistry, Biotransformation, and Community Dynamics/Microbial Ecology are being sought. Methods may range from molecular to field scale, but they should improve the understanding of in situ bioremediation processes in subsurface environments contaminated with radionuclides and metals. Priority will be given to research applications that could lead to fieldable, cost-effective, real time assessment techniques and/or instrumentation. NABIR will not fund projects that examine endpoints relating to human health risks. Research should address the development of innovative and effective methods for assessing or quantifying:

- Biogeochemical processes, biotransformation processes and rates, and microbial community structure and function relative to bioremediation of metals and radionuclides.
- Bioremediation end points, in particular, the concentration, speciation and stability of radionuclide and metal contaminants.

Program Funding

It is anticipated that approximately $2 million will be available for multiple awards to be made in late FY 2001 and early FY 2002 in the categories described above, contingent on availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for projects in the four scientific research element projects are expected to range from $100,000 to $400,000 total costs. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. Renewal applications must include a list of publications resulting from prior NABIR funding. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments should include short curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9*.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate, for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following web site: *http://www.lbl.gov/NABIR/*. For researchers who do not have access to the world wide web, please contact Karen Carlson, Environmental Sciences Division, SC–74; U.S. Department of Energy; 19901 Germantown Road, Germantown, MD 20874–1290, phone: (301) 903–3338, fax: (301) 903–8519, e-mail: karen.carlson@science.doe.gov; for hard copies of background material mentioned in this solicitation.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605)

Issued in Washington, DC, on November 27, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–30767 Filed 12–1–00; 8:45 am]

BILLING CODE 6450–1–U

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and reinstatement under section 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

The entry contains the following information: (1) The collection numbers and title; (2) a summary of the collection of information, including the sponsor (i.e., the Department of Energy component), current OMB document number (if applicable), type of request (*i.e,* new, revision, extension, or reinstatement), and response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits), (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB DOE Desk Officer may be telephoned at (202) 395–7318. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712, FAX at (202) 287–1705, or e-mail at Grace.Sutherland@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Forms EIA–457 A/G "Residential Energy Consumption Surveys".
2. Energy Information Administration; OMB Number 1905–0092;. Reinstatement with revisions of currently approved collections; Mandatory.
3. EIA's Residential Energy Consumption Survey (RECS) collects basic data necessary to meet EIA's legislative mandates as well as the needs of EIA's public and private customers. Data collected include energy consumption and expenditures and related subjects for the household sector of the U.S. economy during the 2001 calendar year.
4. Individuals, Federal, State, and local Government as well as Business or other for-profit.
5. 2,842 hours (.55 hours per response × .33 responses per year × 15,535 respondents).

Responses per year" is prorated over requested three-year approval period.

Statutory Authority: Section 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, D.C., November 28, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–30768 Filed 12–1–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–380–000]

American Transmission Company, LLC Notice of Filing

November 28, 2000.

Take notice that on November 6, 2000, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Tansmission Interconnection Agreement between ATCLLC and Madison Gas and Electric Company.

ATCLLC requests an effective date of January 1, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Comission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 8, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30730 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–46–001]

Carnegie Interstate Pipeline Company; Notice of Tariff Filing

November 28, 2000.

Take notice that on November 21, 2000, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2000:

Original Tariff Sheet No. 115A
First Revised Tariff Sheet No. 116

CIPCO states that these tendered sheets are filed in compliance with Order No. 587–L, issued in Docket No. RM96–1–014 by the Federal Energy Regulatory Commission on June 30, 2000 and implements 18 CFR 284.(c)(ii), regarding the netting and trading of imbalances on CIPCO's system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30736 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–013]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

November 28, 2000.

Take notice that on November 20, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction: FTS–2 Service Agreement No. 69942 between Columbia Gulf Transmission Company and Murphy Exploration & Production Company dated November 14, 2000.

Transportation service is scheduled to commence upon Commission authorization.

Columbia Gulf states that copies of the filing have been served on all parties on all the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30727 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–011]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

November 28, 2000.

Take notice that on October 25, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

Amendment Agreement to FTS–2 Service Agreement No. 68854 between Columbia Gulf Transmission Company and Virginia Power Energy Marketing, Inc., dated June 30, 2000, Amended October 13, 2000

Transportation service is scheduled to commence upon Commission authorization.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30732 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–40–001]

Cove Point LNG Limited Partnership; Notice of Compliance Filing

November 28, 2000.

Take notice that on November 22, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing certain revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, to comply with the Commission's Order issued on November 9, 2000 in Docket Nos. RM96–1–14 and RP01–40–000.

Cove Point states that the purpose of the instant filing is to comply with the Commission's November 9 Order in the referenced dockets to file a tariff sheet to implement imbalance netting and trading on the Cove Point system within 15 days of the order. Accordingly, Cove Point proposes new Section 15(h) of its General Terms and Conditions, Netting and Trading, which describes the imbalance netting and trading process on the Cove Point system. In general, each buyer's imbalances on the Cove Point system will automatically be netted across rate schedules and imbalance trading between parties will be allowed until the 17th business day following the end of the applicable month.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30737 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–51–001]

Crossroads Pipeline Company Notice of Proposed Changes in FERC Gas Tariff

November 28, 2000.

Take notice that on November 22, 2000, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Tariff Sheet No. 76A, to be effective November 1, 2000.

Crossroads states that the purpose of the filing is to comply with the requirements of the order issued on November 9, 2000, in Docket No. RP01–51–000 and Order No. 587–L with respect to the netting and trading of imbalances by shippers.

Crossroads states that copies of this filing have been sent to Crossroads' shippers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30735 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–622–001]

El Paso Natural Gas Company; Notice of Compliance Filing

November 28, 2000.

Take notice that on November 22, 2000, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of November 1, 2000:

Substitute Second Revised Sheet No. 270
Substitute Second Revised Sheet No. 284

El Paso states that is being filed compliance with the Commission's order issued October 27, 2000 at Docket No. RM96–1–014, *et al.*

El Paso states that the tariff sheets are being filed to revise imbalance netting and trading tariff provisions in compliance with the Commission's order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30740 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–37–001]

Equitrans, L.P.; Notice of Tariff Filing

November 28, 2000.

Take notice that on November 21, 2000, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2000:

First Revised Tariff Sheet No. 254
Original Sheet No. 255
Sheet No. 256–257

Equitrans states that these tendered sheets are filed in compliance with Order No. 587–L, issued in Docket No. RM96–1–014 by the Federal Energy Regulatory Commission on June 30, 2000 and implemepts 18 CFR 284.(c)(ii), regarding the netting and trading of imbalances on Equitrans' system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30738 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–617–001]

Gulf States Transmission Corporation, Notice of Compliance Filing

November 28, 2000.

Take notice that on November 21, 2000, Gulf States Transmission Corporation (Gulf States), tendered for filing FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2000:

Substitute Original Sheet No. 58T

Gulf States states that the tendered sheets are filed in compliance with the Commission's October 27, 2000 Order in the referenced dockets, regarding the netting and trading of imbalances on Gulf States' system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the apropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30744 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–619–001]

High Island Offshore System, L.L.C.; Notice of Compliance filing

November 28, 2000.

Take notice that on November 21, 2000, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2000:

Substitute Second Revised Sheet No. 105
Substitute First Revised Sheet No. 106

HIOS states that the tendered sheets are filed in compliance with the Commission's October 27, 2000 Order in the referenced dockets, regarding the netting and trading of imbalances on HIOS' system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30742 Filed12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–75–001]

Mississippi River Transmission Corporation, Notice of Tariff Filing

November 28, 2000.

Take notice that on November 21, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Thirty Seventh Revised Sheet No. 5, with an effective date of November 1, 2000.

MRT states that the filing is being made to correct a mathematical error to the Maximum Rate for Authorized Overrun under the combined Field Zone and Market Zone rates that was filed on November 1, 2000.

MRT states that copies of the filing is being mailed to each of MRT's customers, all parties to this proceeding and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30734 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–022]

Natural Gas Pipeline Company of America Notice of Proposed Change in FERC Gas Tariff

November 28, 2000.

Take notice that on November 20, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 260, to be effective November 22, 2000.

Natural states that the purpose of this filing is to implement a negotiated rate transaction with Wise County Power Company, LP (WCPC) under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions (GT&C) of Natural's Tariff.

Natural concurrently tenders for filing with the Commission, by a separate filing in this docket, the Firm Transportation Negotiated Rate Agreement (Agreement) entered into by Natural and WPC. Natural states that the

Agreement does not deviate in any material respects from the applicable form of service agreement in Natural's Tariff. However, Natural submits the Agreement as an aid to Commission Staff because it provides a more detailed explanation of the transaction.

Natural requests waiver of the Commission's Regulations, including the 30-day notice requirement of Section 154.207, to the extent necessary to permit the tariff sheet to become effective November 22, 2000, consistent with Section 49.1(e) of the GT&C of Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30726 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–17–000]

New York Independent System Operator, Inc., Complainant v. New York State Electric & Gas Corporation, Respondent; Notice of Complaint

November 28, 2000.

Take notice that on November 24, 2000, the New York Independent System Operator, Inc. (NYISO) filed a Complaint pursuant to Section 206 of the Federal Power Act, and Rule 206 of the Commission's Rules of Practice and Procedure, against the New York State Electric and Gas Corporation (NYSEG) alleging that NYSEG has violated its obligations as a customer under the NYISO's Open Access Transmission Tariff (OATT) by unlawfully withholding $6.635 million that it owes the NYISO. By withholding this payment, NYSEG directly threatens the NYISO, and indirectly threatens other market participants, with serious financial harm. Accordingly, the NYISO has requested that the Commission: (i) consider the Complaint pursuant to its Fast-Track Processing procedures; (ii) declare that NYSEG is in violation of its obligations as a customer under the NYISO OATT and must immediately pay the full amount that it owes to the NYISO; and (iii) order NYSEG to make the payment immediately.

The NYISO has served this filing on NYSEG. The Complaint will be posted on the NYISO's web-site at *http://www.nyiso.com/topics/whats_new/whatsnew.html.*

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before December 6, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–30772 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–264–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 28, 2000.

Take notice that on November 22, 2000, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective on November 1, 2000.

Substitute Fifth Revised Sheet No. 1,
Substitute Sixth Revised Sheet No. 2,
Substitute 49 Revised Sheet No. 53,
Substitute First Revised Sheet No. 56,
Substitute Fourth Revised Sheet No. 143,
Substitute Ninth Revised Sheet No. 144,
Substitute Third Revised Sheet No. 145,
Substitute First Revised Sheet No. 158,
Substitute Original Sheet No. 162,
Substitute Original Sheet No. 163,
Substitute Original Sheet No. 164,
Substitute Sixth Revised Sheet No. 206,
Substitute Fifth Revised Sheet No. 220,
Substitute Second Revised Sheet No. 251,
Substitute Fourth Revised Sheet No. 252,
Substitute Third Revised Sheet No. 261,
Substitute Sixth Revised Sheet No. 263A,
Substitute Sixth Revised Sheet No. 265,
Substitute Second Revised Sheet No. 271,
Substitute Fifth Revised Sheet No. 288,
Substitute Third Revised Sheet No. 289,
Substitute Third Revised Sheet No. 290,
Substitute Fourth Revised Sheet No. 300,
Substitute Fourth Revised Sheet No. 302,
Substitute Original Sheet No. 462.

In addition, Northern hereby submits for filing as part of its F.E.R.C. Gas Tariff, Fifth Revised Volume No. 1, 1 Revised Third Revised Sheet No. 220 proposed to be effective October 11, 2000.

Northern states that the purpose of this filing is to comply with the Commission's Order issued on November 8, 2000 in Docket RP00–264–000. Northern is filing the revised tariff sheets to reflect the use of a five-year base period to determine VFT Shippers' load factors. In addition, Northern is filing revised tariff sheets to delete any references to LFT, to correct sheet pagination, and to file actual sheets for previously file pro forma tariff sheets.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30725 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–367–013]

Northwest Pipeline Corporation; Notice of Correction Filing

November 28, 2000.

Take notice that on November 21, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective December 1, 2000:

Substitute Tenth Revised Sheet No. 8.1

Northwest states that the purpose of this filing is to correct the Rate Schedule LS–2I rates filed on October 30, 2000 in Docket No. RP96–367–012.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30728 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–34–001]

Overthrust Pipeline Company; Notice of Tariff Filing

November 28, 2000.

Take notice that on November 21, 2000, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute First Revised Sheet No. 67D and Substitute Original Sheet No. 67F, to be effective November 1, 2000.

Overthrust states that the purpose of this filing is to comply with Ordering Paragraph (C) of the Commission's Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L issued November 9, 2000, in Docket Nos. RM96–1–014, et al., which directed Overthrust to file revised tariff sheets, within 15 days of the order. The revisions to be included are (1) the removal of the provision that, under certain circumstances, Overthrust can adjust a shipper's receipts and deliveries or take whatever action it deems necessary to keep the system in balance or maintain operational stability and system integrity and (2) corrects the references to "T–1" and "T–2" agreements by replacing them with "FT" and "IT" agreements.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30739 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–587–001]

Paiute Pipeline Company; Notice of Compliance Filing

November 28, 2000.

Take notice that on November 24, 2000, Paiute Pipeline Company (Paiute) submitted a filing to comply with the Commission's order issued on October 27, 2000 in Docket Nos. RM96–1–014, et al. Paiute states that in its order the Commission accepted, subject to refund, Paiute's tariff filing in Docket No. RP00–587–000 to implement imbalance netting and trading, and directed Paiute to submit further information regarding its imposition of transportation charges related to imbalance netting and trading. Paiute states that it has submitted the instant filing to comply with the Commission's directive.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30745 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–620–001]

Stingray Pipeline Company, L.L.C.; Notice of Compliance Filing

November 28, 2000.

Take notice that on November 21, 2000, Stingray Pipeline Company, L.L.C. (Stingray), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariffs, with an effective date of November 1, 2000.

Substitute Fourth Revised Sheet No. 132
Substitute Third Revised Sheet No. 133

Stingray states that the tendered sheets are filed in compliance with the Commission's October 27, 2000 Order in the referenced dockets, regarding the netting and trading of imbalances on Stingray's system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30741 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–618–001]

U–T Offshore System, L.L.C.; Notice of Compliance Filing

November 28, 2000.

Take notice that on November 21, 2000, U–T Offshore System, L.L.C. (UTOS), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2000:

Substitute Second Revised Sheet No. 61
Substitute First Revised Sheet No. 61–A

UTOS states that the tendered sheets are filed in compliance with the Commission's October 27, 2000 Order in the referenced dockets, regarding the netting and trading of imbalances on UTOS' system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30743 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–107–001]

Viking Gas Transmission Company; Notice of Compliance Filing

November 28, 2000.

Take notice that on November 22, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2001:

Twenty-Third Revised Sheet No. 6
Sixteenth Revised Sheet No. 6A
Sixth Revised Sheet No. 6B

Viking states that the purpose of the filing is to change Viking's Gas Research Institute Adjustment (GRI) in accordance with the Commission's September 19, 2000 letter order in Docket No. RP00–313–000.

Viking states that copies of the filing is being mailed to each of Viking's customers and to interested state commissions as well as to the parties listed on the Secretary's official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30733 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–36–000]

Zia Natural Gas Company, An Operating Division of Natural Gas Processing Company, Complainant, v. Raton Gas Transmission Company, Respondent; Notice of Complaint

November 28, 2000.

Take notice that on November 22, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company (Zia), filed a Section 5 complaint against Raton Gas Transmission Company (RGT), requesting the Commission to find that certain actions taken by RGT, as well as certain aspects of RGT's tariff, violate the Natural Gas Act. To redress these violations, Zia requests that the Commission direct RGT to convert its current Part 157 certificate to a Part 284 blanket certificate, and to implement other appropriate revisions to the RGT tariff.

Specifically, Zia asserts that RGT has commenced providing service that is not authorized pursuant to RGT's case-specific, Section 7(c) certificate and that threatens to degrade the certificated service received from RGT by Zia. In addition, Zia maintains that changing competitive circumstances have rendered RGT's tariff unjust and unreasonable in a number of respects. Zia requests that the Commission order RGT to (1) convert RGT's current Part 157 transportation service to Part 284, open access transportation service, (2) afford Zia its rights as a converting Part 157 shipper, including the right to acquire upstream transportation and storage capacity currently held by RGT, (3) modify RGT's tariff rate structure to remove the automatic passthrough of costs associated with upstream capacity held by RGT on the Colorado Interstate Gas Company Docket No. CP01–36–000 (CIG) system, and (4) modify RGT's tariff, which currently lists no receipt points,to explicitly designate the Trinidad, Colorado interconnection between RGT and CIG as a receipt point on the RGT system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before December 8, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–30731 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–31–000, et al.]

CIC Luxembourg SARL, et al.; Electric Rate and Corporate Regulation Filings

November 27, 2000.

Take notice that the following filings have been made with the Commission:

1. CIC Luxembourg SARL

[Docket No. EG01–31–000]

Take notice that on November 17, 2000, CIC Luxembourg SARL filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Mobile Energy LLC

[Docket No. EG01–32–000]

Take notice that on November 20, 2000, Mobile Energy LLC (Applicant) with its principal office c/o SkyGen Energy LLC, Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, Illinois 60062, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of "exempt wholesale generator" status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will be engaged in owning and operating the Mobile Energy Center (the Facility) consisting of one combustion turbine generating unit, one separately-fired heat recovery boiler, and up to four condensing steam turbine generating units having a maximum electrical output of approximately 345 MW. The Facility will be constructed in the City of Mobile, Alabama and commercial operation is anticipated to be approximately the second quarter of 2001. The Applicant also states that it will sell electric energy exclusively at wholesale to meet electricity needs in the region.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Magnolia Energy LP

[Docket No. EG01–33–000]

Take notice that on November 21, 2000, Magnolia Energy LP (Magnolia), a limited partnership with its principal place of business at 909 Fannin, Suite 2222, Houston, Texas 77010, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Magnolia will construct a 900 MW natural gas fired, combined cycle electric generating facility and related assets to be located near the town of Ashland, Mississippi. Magnolia will sell its capacity exclusively at wholesale.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER98–1438–007]

Take notice that on November 20, 2000, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO), tendered for filing its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, and Agreement of Transmission Facilities Owners to Organize the Midwest ISO (Owners Agreement), Rate Schedule FERC No. 1, both of which were previously accepted for filing in Docket No. ER98–1438–000, and both of which have been reformatted to conform to the requirements of Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

The Midwest ISO seeks an effective date of November 20, 2000 (the same

day of filing) and waiver of the Commission's sixty days' notice requirements. The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all parties on the official service list in Docket No. ER98–1438–000. The Midwest ISO has posted its reformatted OATT on its Internet site at *www.midwestiso.org*. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Golden Spread Electric Cooperative, Inc.; The Montana Power Trading and Marketing Company

[Docket Nos. ER00–3338–002, ER00–3367–002, and ER00–3368–002]

Take notice that on November 17, 2000, the Western Systems Power Pool (WSPP) tendered for filing a list of customers in compliance with the Federal Energy Regulatory Commission's November 2, 2000 order in the proceedings captioned above.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Praxair, Inc.

[Docket No. ER00–3767–001]

Take notice that on November 17, 2000, Praxair, Inc., tendered for filing a corrected Rate Schedule in compliance with the Commission's Order No. 614.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. USPowerEnergy, L.L.C.

[Docket No. ER01–36–001]

Take notice that on November 17, 2000, USPowerEnergy, L.L.C. (USPE) tendered for filing with the Federal Energy Regulatory Commission a compliance filing pursuant to the Commission's order in USPowerEnergy, L.L.C., Docket No. ER01–36–001 (Letter Order Issued November 2, 2000).

USPowerEnergy, L.L.C., stated that it served a copy of its filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER01–155–001]

Take notice that on November 17, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Gulf States, Inc., tendered for filing an amendment to its October 18, 2000 filing in Docket No. ER01–155–000, which amended Exhibit A to the Agreement for Special Requirements Wholesale Electric Service between Entergy Gulf States and East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. Entergy states that the amendment to the October 18 filing serves to conform that filing with the Commission's Order No. 614, Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000).

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. American Transmission Company LLC

[Docket No. ER01–380–000]

Take notice that on November 6, 2000, American Transmission Company, LLC (ATCLLC), tendered for filing a Generation Transmission Interconnection Agreement between ATCLLC and Madison Gas and Electric Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. New York Independent System Operator, Inc.

[Docket No. ER01–461–000]

Take notice that on November 15, 2000, the New York Independent System Operator, Inc. (NYISO) filed a complete version of FERC Electric Tariff Original Volume No. 1, the Open Access Transmission Tariff, in order to comply with Commission Order No. 614, on the designation of electric rate schedules. The filing effects no substantive changes to the tariff.

The NYISO has requested an effective date of September 1, 2000 for the filing, and has requested waiver of the Commission's notice requirements.

The NYISO has requested waiver of the Commission's service requirements. The document is available for download from the NYISO's website at www.nyiso.com. Copies will be provided upon request.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER01–464–000]

Take notice that on November 17, 2000, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), tendered an Interconnection Agreement (IA) by and between APC and Tenaska Alabama II Partners, L.P. (Tenaska Alabama). The IA allows Tenaska Alabama to interconnect its generating facility to be located near Billingsley, Alabama in Autauga County to APC's electric system.

An effective date of October 25, 2000 has been requested.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER01–465–000]

Take notice that on November 16, 2000, New England Power Company (as successor to Montaup Electric Company) (NEP) tendered for filing:

(1) Supplement No. 6 to Service Agreement No. 10 (Newport Electric Corporation) under Montaup Electric Company, FERC Electric Tariff, First Revised Volume No. 1; and

(2) Supplement No. 6 to Service Agreement No. 11 (Blackstone Valley Electric Company) under Montaup Electric Company, FERC Electric Tariff, First Revised Volume No. 1.

These Supplements take the form of a Stipulation and Agreement between Rhode Island Public Utilities Commission, the Rhode Island Division of Public Utilities and Carriers, The Narragansett Electric Company (as successor to Blackstone Valley Electric Company and Newport Electric Corporation), and NEP (as successor to Montaup Electric Company).

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE, Ameren Energy Marketing Company and Ameren Energy Generating Company

[Docket No. ER01–466–000]

Take notice that on November 17, 2000, Ameren Energy, Inc., on behalf of Union Electric Company d/b/a AmerenUE, Ameren Energy Market Company, and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and the market-based rate authority provided to the Ameren Parties, submitted for filing a bilateral Master Power Purchase and Sale Agreement.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER01–467–000]

Take notice that on November 17, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (each doing business and hereinafter collectively referred to as GPU Energy) submit for filing minor amendments to the Restated Composite Power Pooling Agreement among the GPU Energy companies. The Restated Agreement governs the integrated operation of the three GPU Energy companies. It is on file with the Commission as Jersey Central Power & Light Company, Rate Schedule No. 72, Metropolitan Edison Company, Rate Schedule No. 74 and Pennsylvania Electric Company, Rate Schedule No. 111.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Dominion Energy Marketing, Inc.

[Docket No. ER01–468–000]

Take notice that on November 17, 2000, Dominion Nuclear Marketing, Inc. tendered for filing its proposed FERC Electric Market-Based Sales Tariff and certain waivers of the Commission's regulations.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER01–470–000]

Take notice that on November 17, 2000, South Carolina Electric & Gas Company (SCE&G), tendered for filing executed service agreements with New Horizons Electric Cooperative, Inc. (NHEC) providing for transmission and ancillary services on a long-term basis pursuant to SCE&G's Open Access Transmission Tariff.

The parties proposed an effective date of January 1, 2001.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–471–000]

Take notice that on November 17, 2000, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH).

Con Edison has requested that this supplement take effect as of August 1, 2000.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. New York State Electric & Gas Corporation

[Docket No. ER01–472–000]

Take notice that on November 17, 2000 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations, an Agreement with the Power of the State of New York (also known as New York Power Authority or NYPA). This Agreement provides for the sale of, as well as the design, procurement, installation, testing, operation, and maintenance by NYSEG of a Static Var Compensator and its associated equipment. NYPA will compensate NYSEG for providing such services. Additionally, NYPA will pay monthly actual charges and costs incurred by NYSEG for operation, maintenance, general expenses and taxes.

NYSEG requests an effective date of November 10, 2000.

Copies of the filing were served upon NYPA and the Public Service Commission of the State of New York.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER01–473–000]

Take notice that on November 17, 2000, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission an Agreement for Supply of Power and Energy between Raft River Rural Electric Cooperative and Idaho Power Company dated October 25, 2000.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Baconton Power LLC

[Docket No. ER01–474–000]

Take notice that on November 17, 2000, Baconton Power LLC tendered for filing a revised long-term service agreement with Coral Power, L.L.C. pursuant to Baconton Power LLC's market-based tariff, FERC Electric Tariff, Original Vol. No. 1.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER01–475–000]

Take notice that on November 17, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Mississippi, Inc., tendered for filing a First Revised Interconnection Agreement with Southaven Power LLC. The First Revised Interconnection Agreement reflects the modifications necessary to conform the Southaven Interconnection Agreement with Entergy's Pro Forma Interconnection Agreement as filed on June 19, 2000, in Docket No. ER00–1743–002.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. PJM Interconnection, L.L.C.

[Docket No. ER01–476–000]

Take notice that on November 17, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreements: (i) an agreement for long-term firm point-to-point transmission service for Cargill-Alliant, L.L.C. (Cargill-Alliant), (ii) an umbrella service agreement for short-term firm point-to-point transmission service for the Public Service Company of Colorado (PSCC), and (iii) an umbrella service agreement for non-firm point-to-point transmission service for PSCC.

Copies of this filing were served upon Cargill-Alliant, PSCC, and the state commissions within the PJM control area.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER01–477–000]

Take notice that on November 17, 2000, Commonwealth Edison Company (ComEd), tendered for filing the following: (1) Facilities Rental Agreement between ComEd and the City of Naperville; (2) Meter Lease Agreement between ComEd and the City of Naperville; (3) Meter Lease Agreement between ComEd and the City of Batavia; and (4) Meter Lease Agreement between ComEd and the City of St. Charles (together Agreements) and respectfully requested that the Commission verify ComEd's conclusions that such Agreements are not subject to the Commission's jurisdiction and oversight.

ComEd requests an effective date of December 1, 2000, for the agreements in the event its request for disclaimer of

jurisdiction is not granted and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–478–000]

Take notice that on November 20, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered the Indian Point 3 Interconnection Agreement between Con Edison and Entergy Nuclear Indian Point 3, LLC, in the above-captioned docket.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–479–000]

Take notice that on November 20, 2000, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO), tendered for filing revised pages to its Open Access Transmission Tariff and Agreement of the Transmission Facilities Owners to Organize the Midwest ISO. The Midwest ISO's revisions expand the Midwest ISO Advisory Committee to include certain members of the Mid-Continent Area Power Pool (MAPP) and provide certain MAPP Transmission Owners with the option of electing Network Transmission Service on behalf of their bundled retail customers.

Copies of this filing were served upon parties listed on the official service list compiled by the Secretary of the Commission in Docket No. ER98–1438–000, the Midwest ISO Members, Members and Alternates of the Midwest ISO Advisory Committee as currently constituted, Members of MAPPCORR and State Commissions in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Montana, North Dakota, Ohio, South Dakota, Virginia, West Virginia and Wisconsin.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Mobile Energy LLC

[Docket No. ER01–480–000]

Take notice that on November 20, 2000, Mobile Energy LLC (Mobile Energy), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Mobile Energy proposes that its Rate Schedule No. 1 become effective upon commencement of service of the Mobile Energy Center (the Facility), a 345 MW generation project currently being developed by Mobile Energy in Mobile, Alabama. The Facility is expected to be commercially operable by approximately the second quarter of 2001.

Mobile Energy intends to sell energy, capacity, and certain ancillary services from the Facility in the wholesale power market at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Company of New Mexico

[Docket No. ER01–481–000]

Take notice that on November 20, 2000, Public Service Company of New Mexico (PNM), tendered for filing a Request for Waiver of Certain Provisions of the Fuel and Purchase Economic Power Adjustment Clauses and Refund Requirements Under Suspension Orders Regulations (18 CFR 35.14 and 35.19a) (Request). The Request is being made to allow for the inclusion, retroactively, of certain refunds received from Arizona Public Service Company for settlement of various fuel supply issues associated with the Four Corners Power Plant, of which PNM is a participant/owner, in the calculation of charges pursuant to its Fuel and Purchase Economic Power Adjustment Clause in wholesale power contracts for sales to its firm-requirements wholesale customers. The affected customers, both past and present, include the City of Farmington, New Mexico (Farmington), the City of Gallup, New Mexico (Gallup), Texas-New Mexico Power Company (TNMP), Plains Electric Generation and Transmission Cooperative, Inc. (now a part of Tri-State Generation and Transmission Association, Inc. (Tri-State)), and the United States Department of Energy (DOE). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Farmington, Gallup, TNMP, Tri-State, DOE, and to the New Mexico Public Regulation Commission.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. NiSource, Inc.

[Docket No. ER01–482–000]

Take notice that on November 20, 2000, NiSource, Inc., tendered for filing Notice of Succession in the above referenced docket.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–30723 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–13–000, et al.]

Duke Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 24, 2000.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Corporation, Carolina Power & Light Company, South Carolina Electric and Gas Company, GridSouth Transco, LLC

[Docket No. EL01–13–0000]

Take notice that on November 3, 2000, Duke Energy Corporation (Duke), Carolina Power & Light Company (CP&L), and South Carolina Electric and Gas Company (SCE&G), (collectively, the Transmission Owners) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, seeking Commission ratification of proposed accounting and rate treatment of Start-Up Costs associated with establishing a new Regional Transmission Organization (RTO) formed in compliance with FERC Order No. 2000.

Comment date: December 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Dockets Nos. ER99–4415–004, ER99–4530–004 and EL00–7–004]

Take notice that on November 9, 2000, Illinois Power Company (Illinois Power) tendered for filing a compliance filing under which Illinois Power modified certain provisions of its Open Access Transmission Tariff (OATT). In addition, Illinois Power re-filed its OATT, FERC Electric Tariff, Third Revised, Volume No. 8, with designations in accordance with the Commission's Order No. 614. Other than the designations, the only modifications to the OATT are those made for the compliance filing.

Copies of this filing have been served upon all affected customers under Illinois Power's OATT, upon the Illinois Commerce Commission, and upon all parties on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER00–982–005]

Take notice that on November 14, 2000, Central Maine Power Company (CMP) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Compliance Report pursuant to the Commission's Letter Order issued on September 28, 2000, in Docket Nos. ER00–26–000, *et al.*

Comment date: December 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Electric Power Company

[Docket No. OA01–2–000]

Take notice that on November 9, 2000, Maine Electric Power Company (MEPCO) on November 9, 2000 tendered for filing pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), the revised Standards of Conduct to be followed by MEPCO personnel.

MEPCO requests that the Standards of Conduct become effective on November 10, 2000.

MEPCO served copies of the filing upon the persons listed in the Commission's official service list and the Maine Public Utilities Commission.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–30724 Filed 12–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL01–1–000]

Hydroelectric Licensing Policies, Procedures, and Regulations—Comprehensive Review; Notice of Public Meetings and Requesting Comments and Recommendations

November 28, 2000.

Pursuant to Section 603 of the Energy Act of 2000 (Public Law No. 106–469), the Commission is preparing a comprehensive review of policies, procedures, and regulations for the licensing of hydroelectric projects to determine how to reduce the cost and time of obtaining a license. Section 603 directs the Commission to report its findings to Congress, including any recommendations for legislative changes, by May 8, 2001.

To ensure a comprehensive review, the Commission seeks the comments and recommendations of all stakeholders in the Commission's hydroelectric licensing program, including federal and state agencies, Indian tribes, non-governmental organizations, licensees, and other members of the public. In particular, the Commission wishes to receive comments identifying steps in the existing licensing process that may require inordinate time and expense to complete, and the reasons therefor.

The Commission will meet with other federal agencies in Washington, DC, and will send letters to state water quality officials requesting their views.

The Commission will also hold public meetings to receive comments and recommendations in Washington, DC, and in several locations throughout the country. Notice of the location, date, and times of these meetings will be provided in future notices as arrangements are made. Each public meeting will include a review of the existing licensing process and an opportunity for participants to offer their comments on how it can be improved. The public meetings will be recorded by a stenographer and, thereby, will become a part of the record of the proceeding. Persons making statements will be asked to identify themselves for the record. The speaking time permitted to individuals will be determined at the beginning of each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least ten minutes to present their views.

Persons choosing not to speak but wishing to comment, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written comments may also be mailed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Correspondence should clearly show the following caption on the first page:

[Docket No. PL01–1–000]

Hydroelectric Licensing Policies, Procedures, and Regulations—Comprehensive Review

In light of the limited amount of time available for submission on the Commission's Report to Congress, commenters are encouraged to provide written comments as early as possible, but not later than February 1, 2001, and to use their time at the public meetings to summarize previously filed written comments or to focus on only the most significant sources of cost and delay in the licensing process from their perspective. Comments may also be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

For further information, please contact Edward Abrams at the Commission, 202–219–2773.

David P. Boergers,
Secretary.
[FR Doc. 00–30729 Filed 12–1–00; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–4]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at 260–2740, or email at *Farmer.sandy@epa.gov*, and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1945.01; State Water Quality Program Management Gap Analysis; was approved 09/22/2000; OMB No. 2040–0216; expires 09/30/2003.

EPA ICR No. 1428.05; Trade Secret Claims for Emergency Planning and Community Right-to-Know (EPCRA Section 322); in 40 CFR part 350; was approved 09/22/2000; OMB No. 2050–0078; expires 09/30/2003.

EPA ICR No. 1665.03; Confidentiality Rule; in 40 CFR part 2, subpart B; was approved 09/22/2000; OMB No. 2020–0003; expires 09/30/2003.

EPA ICR No. 1064.09; NSPS for Automobile and Light Duty Truck Surface Coating Operations; in 40 CFR part 63, subpart MM; was approved 09/22/2000; OMB No. 2060–0034; expires 09/30/2003.

EPA ICR No. 0002.09; National Pretreatment Program; in 40 CFR part 403; was approved 09/28/2000; OMB No. 2040–0009; expires 09/30/2003.

EPA ICR No. 1940.02; Health Effects of Particulate Matter and Co-pollutant Exposures Near the El Paso/Juarez Border Crossings; was approved 09/29/2000; OMB No. 2080–0065; expires 09/30/2003.

EPA ICR No. 1415.04; NESHAP for Perchloroethylene (PCE) Dry Cleaning Facilities; in 40 CFR part 63.324, subpart M; was approved 09/30/2000; OMB No. 2060–0234; expires 09/30/2003.

EPA ICR No. 1774.02; Mobile Air Conditioner Retrofitting Program; in 40 CFR part 82.180; was approved 09/30/2000; OMB No. 2060–0350; expires 09/30/2003.

EPA ICR No. 1739.03; National Emission Standards for the Printing and Publishing Industry (MACT); in 40 CFR part 63, subpart KK; was approved 09/30/2000; OMB No. 2060–0335; expires 09/30/2003.

EPA ICR No. 0278.07; Notice of Supplemental Distribution of a Registered Pesticide Product; was approved 10/02/2000; OMB No. 2070–0044; expires 10/31/2003.

EPA ICR No. 1857.02; Emission Reporting Requirements for Ozone SIP Revisions (or Associated Federal Implementation Plans) Relating to Statewide Budgets for Nox Emissions to Reduce the Regional Transport of OZ; in 40 CFR part 75, subpart H; was approved 10/27/2000; OMB No. 2060–0445; expires 10/31/2003.

EPA ICR No. 1981.01; Distribution of Off-site Consequence Analysis Information under Section 112(r) of the Clean Air Act; in 40 CFR Chapter IV, part 1400; was approved 10/30/2000; OMB No. 2050–0172; expires 10/31/2003.

EPA ICR No. 1845.02; Small Spark Ignition Manufacturers Production Line Testing; in 40 CFR part 86, subpart K; was approved 10/30/2000; OMB No. 2060–0427; expires 10/31/2003.

EPA ICR No. 1962.01; Business Ownership Representation; was approved 11/20/2000; OMB No. 2030–0041; expires 11/30/2002.

Short Term Extensions

EPA ICR No. 0155.06; Certification of Pesticide Applicators; in 40 CFR part 171; OMB No. 2070–0029; on 09/26/2000 OMB extended the expiration date through 12/31/2000.

EPA ICR No. 1791.02; Establishment of No-Discharge Zones for Discharges Incidental to the Normal Operation of Armed Forces Vessels under CWA Section 312(n); in 40 CFR part 139; OMB No. 2040–0187; on 10/19/2000 OMB extended the expiration date through 02/28/2001.

EPA ICR No. 1056.06; NSPS for Nitric Acid Plants; in 40 CFR part 60, subpart G; OMB No. 2060–0019; on 10/26/2000 OMB extended the expiration date through 01/31/2001.

Comments Filed

EPA ICR No. 1665.04; Proposed Rule for Elimination of Special Treatment for Category of Confidential Business Information; on 09/26/2000 OMB filed comment.

Notice of Transfer

EPA OMB No. 2040–0186; Public Water Systems Annual Compliance Report; (Office of Water); on 09/22/2000 was transferred to OMB No. 2020–0020; (Office of Enforcement and Compliance Assurance).

Dated: November 27, 2000.

Oscar Morales,
Director, Collection Strategies Division.
[FR Doc. 00–30807 Filed 12–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Protection of Stratospheric Ozone—Phaseout Regulation

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Record Keeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transshipment and Feedstock Use of Ozone-Depleting Substances, OMB Number 2060–0170; with an extended expiration date of January 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 3, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1432.18 and OMB Control No. 2060–0170, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1432.18. For technical questions about the ICR contact Tom Land, Global Programs Division (6205J), telephone (202) 564–9185, facsimile (202) 565–2093, e-mail: land.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Record Keeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transshipment and Feedstock Use of Ozone-Depleting Substances, EPA ICR Number 1432.18; OMB Number 2060–0170; with an extended expiration date of January 31, 2001. This is a request for extension of a currently approved collection.

Abstract: The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and Title VI of the Clean Air Act (CAA) establish limits on total U.S. production, import and export of class I and class II controlled ozone-depleting substances. To ensure U.S. compliance with the limits and restrictions established by the Protocol and the CAA, the regulation establishes control measures for individual companies. The limits and restrictions for individual U.S. companies are monitored by EPA through the reporting requirements established in the regulation under 40 CFR part 82, subpart A. The regulation outlines both recordkeeping and reporting requirements. These reporting requirements are designed: (1) To satisfy U.S. obligations under the international treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer, in particular the requirements under Article 7 of the Protocol; (2) to fulfill statutory obligations under section 603(b) of Title VI of the CAA; (3) to report to Congress on the production, use and consumption of class I and class II controlled substances as statutorily required in section 603(d) of the CAA; and (4) to address Federal and industry concerns regarding illegal imports of newly produced and previously used controlled substances that are undercutting the U.S. markets for alternatives.

Pursuant to regulations 40 CFR part 2, subpart B, you are entitled to assert a business confidentiality claim covering any part of the submitted business information as defined in 40 CFR 2.201(c). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 6, 2000, (65 FR 53999) and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5.35 hours per response. EPA is concurrently working on many rules that will revise the recordkeeping and reporting under the regulations in 40 CFR part 82, subpart A in separate rulemakings with revisions to the ICR. In addition, EPA is in the process of reflecting these many revisions in a changed Guidance Document For The Stratospheric Ozone Protection Program on reporting (including reporting forms) and making them available electronically and creating a secure system for the direct submission of electronic reporting.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Users of Ozone-Depleting Substances.

Estimated Number of Respondents: 1,081.

Frequency of Response: On occasion, Quarterly, Annually.

Estimated Total Annual Hour Burden: 6,492.

Estimated Total Annualized Capital, O&M Cost Burden: $3,032.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1432.18 and OMB Control No. 2060–0170 in any correspondence.

Dated: November 28, 2000.

Oscar Morales,
Director, Collection Strategies Division.
[FR Doc. 00–30806 Filed 12–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Spark-ignition Marine Engine Application for Emission Certification and, Participation in the Averaging, Banking, and Trading Program

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Spark-Ignition Marine Engine Application for Emission Certification and Participation in the Averaging, Banking, and Trading Program, OMB Control Number 2060–0321, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost and, where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 3, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1722.03 and OMB Control No. 2060–0321, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download from the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1722.03. For technical questions about the ICR contact: William Rutledge

in the Certification and Compliance Division of the Office of Transportation and Air Quality; telephone (202) 564–9297, email address rutledge.william@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Spark-Ignition Marine Engine Application for Emission Certification and Participation in the Averaging, Banking, and Trading Program OMB Control Number 2060–0321, EPA ICR No. 1722.03, expiring December 31, 2000. This is a request for extension of a currently approved collection.

Abstract: Under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*; CAA), EPA is charged with issuing certificates of conformity for certain spark-ignition engines used to propel marine vessels that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system and engine emission test data. This information is organized by "engine family" groups expected to have similar emission characteristics. To comply with the corporate average emission standard, manufacturers must use the Averaging, Banking and Trading Program (AB&T) and must submit information regarding the calculation, actual generation and usage of emission credits in an initial report, end-of-the-year report, and final report. These reports are used for engine family certification, that is, to insure pre-production compliance with emissions requirements, and enforcement purposes. There are also record-keeping requirements. Manufacturers must maintain records for eight years on the engine families included in the program.

This information is collected by the Engine Programs Group (EPG), Certification and Compliance Division (CCD), Office of Transportation and Air Quality, U.S. Environmental Protection Agency, to provide assurance of compliance with certain minimal requirements for certification. Besides CCD, this information could be used by EPA's Office of Enforcement and Compliance Assurance (OECA) and the Department of Justice for enforcement purposes. Information that is not confidential business information (CBI) is also disclosed in a public database and through EPA's Internet web site. It is used by trade associations, environmental groups, and the public. The information is usually submitted in an electronic format, and it is stored in CCD's certification database.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 31, 2000 (65 FR 53005). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 152 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities

Respondents/Affected Entities: Engine manufacturers (SIC 3519).

Estimated Number of Respondents: 10.

Frequency of Response: On occasion and annually.

Estimated Total Annual Hour Burden: 38,647 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $1,881.80.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1722.03 and OMB Control No. 2060–0321 in any correspondence.

Dated: November 28, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–30808 Filed 12–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–1]

Notice of Availability of Guidance for Controlling Nonpoint Source Pollution From Marinas and Recreational Boating and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has developed and is requesting comments on draft technical guidance for managing sources of nonpoint pollution at marinas and recreational boating facilities. This guidance is intended to provide technical assistance to state program managers and others on the best available, economically achievable means of reducing nonpoint pollution of surface and ground water from marinas and recreational boating activity. The guidance provides background information about nonpoint source pollution, where it comes from, and how it enters the nation's waters; discusses the broad concepts of assessing and addressing water quality problems on a watershed level; and presents up-to-date technical information about how to prevent and reduce nonpoint source pollution from marinas and recreational boating.

Reviewers should note that the draft technical guidance is entirely consistent with the Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters, which EPA published in January 1993 under section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The draft document does not supplant or replace the requirements of the 1993 document. It enhances the technical information contained in the 1993 coastal guidance to include inland as well as coastal context and to provide updated technical information based on current understanding and implementation of best management practices. It does not set new or additional standards for either CZARA section 6217 or Clean Water Act section 319 programs.

EPA will consider comments on this draft guidance and will then publish final guidance.

DATES: Written comments must be postmarked no later than March 5, 2001.

ADDRESSES: Comments may be addressed to Edwin F. Drabkowski, Assessments and Watershed Protection Division (4503–F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or electronically mailed to drabkowski.ed@epa.gov.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information or a complete draft of the document should contact Ed Drabkowski at (202) 260–7009; drabkowski.ed@epa.gov; or the U.S. Environmental Protection Agency (4503–F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The complete text of the draft guidance is also available on EPA's Internet site on the Nonpoint Source Control Branch homepage <http://www.epa.gov/owow/nps/new.html>.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, state, territory, and tribal water quality assessments have identified nonpoint source (NPS) pollution as the most significant cause of degradation in surveyed waters nationwide. In 1987, Congress enacted section 319 of the Clean Water Act to establish a national program to control nonpoint sources of water pollution. Under section 319, states, territories, and tribes address NPS pollution by assessing the NPS pollution problems within the state, territory, or tribal lands, identifying the sources of pollution, and implementing management programs to control the NPS pollution. Section 319 also authorizes EPA to award grants to states and tribes to assist them in implementing management programs which have been approved by EPA. Program implementation includes non-regulatory and regulatory programs, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. In fiscal year 2000, Congress appropriated and EPA awarded $200 million dollars for nonpoint source management program grants. EPA has awarded a total of $1 billion under section 319 to states, territories, and Indian tribes since 1990.

In 1993, under the authority of section 6217(g) of the Coastal Zone Act Reauthorization Amendments, EPA issued Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (EPA840–B–92–002). That guidance document details management measures appropriate for the control of five sources of nonpoint pollution in the coastal zone: agriculture, forestry, urban areas, marinas and recreational boating, and hydromodification. The document also includes management measures for wetlands, riparian areas, and vegetated treatment systems, as they are important to the abatement of nonpoint source pollution in coastal waters. State and territory Coastal Nonpoint Pollution Control Programs were required to adopt measures "in conformity" with the coastal management measures guidance.

The 1993 management measures guidance focused on conditions and examples of management measure implementation for the coastal zone. To date, technical guidance on the best available, economically achievable measures for controlling nonpoint sources with a national scope has not been released. The draft national management measures guidance is intended to address this gap. While the practices detailed in the 1993 guidance generally apply to inland waters, EPA has recognized the utility of developing and publishing a technical guidance document that explicitly addresses nonpoint source pollution on a nationwide basis. Moreover, additional data and examples from inland marinas and recreational boating facilities are available to enrich the national guidance. These additional data have helped to prompt the revision and expansion of the marinas and recreational boating chapter of the 1993 guidance.

II. Scope of the Draft Guidance—Sources of Marinas and Recreational Boating Nonpoint Pollution Addressed

The draft technical guidance continues to focus on the most significant potential sources of pollution from marinas and recreational boating which were originally identified in the 1993 coastal guidance by EPA in consultation with a number of other federal agencies and leading national experts, including several experts from national marina associations and state Sea Grant Universities. Specifically, the guidance provides management measures for the following:

1. Marina flushing;
2. Water quality assessment;
3. Habitat assessment;
4. Shoreline stabilization;
5. Storm water runoff;
6. Fueling station design;
7. Petroleum control;
8. Liquid material management;
9. Solid waste management;
10. Fish waste management;
11. Sewage facility management
12. Maintenance of sewage facilities;
13. Boat cleaning;
14. Boat operation; and
15. Public education.

III. Approach Used to Develop Guidance

The draft national management measures guidance is based in large part on the 1993 coastal guidance. The 1993 coastal guidance was developed using a workgroup approach to draw upon technical expertise within other federal agencies as well as state water quality and coastal zone management agencies.

The 1993 text has been expanded to include more information on marinas and recreational boating management practices, including boat launching ramps. The draft guidance also incorporates examples and data from inland marinas in addition to improving the coverage of unique coastal environments. The document expands the information on operations and the costs of management measures at marina facilities.

None of the management measures from the 1993 document has been altered in substance. However, some editing was done on the management measure for shoreline stabilization and the order of some measures were rearranged.

IV. Request for Comments

EPA is soliciting comments on the draft guidance on management measures to control sources of nonpoint pollution at marinas and recreational boating facilities. The Agency is soliciting additional information and supporting data on the measures specified in this guidance and on additional measures that may be as effective or more effective in controlling nonpoint source pollution at marinas and recreational boating facilities.

Dated: November 22, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–30805 Filed 12–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–5]

Notice of Request for Comments on State, Regulated Community, and Small Business Cost Resulting From the TMDL Program

AGENCY: Environmental Protection Agency.

ACTION: Notice for solicitation of comments.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting comments on State resources required for development and implementation of Total Maximum Daily Loads (TMDLs), estimated annual costs to the regulated community, and estimated costs to small businesses resulting from

regulatory changes to the TMDL program. Under the Clean Water Act (CWA), States establish water quality standards for water bodies. The CWA provides a range of mechanisms to support the attainment and maintenance of these standards (e.g. discharge permits, financial assistance, etc.). A TMDL is a mechanism for determining a cost-effective combination of steps that will result in a polluted water body being restored and attaining water quality standards. Congressional Committee Reports accompanying EPA's appropriation for fiscal year 2001 direct EPA to conduct a comprehensive assessment of State and regulated community costs related to TMDLs, to solicit comments from the States and general public on these costs, and to present the results of the study to Congress within 120 days of the signing of the appropriation bill. The information submitted in response to this notice will be used by EPA in the development of the report that EPA must send to the Congress.

DATES: EPA will consider all comments received on or before 11:59 p.m.(Eastern time) January 3, 2001. Comments received after this time may be reviewed at EPA's discretion.

ADDRESSES: Please send electronic mail to ow-docket@epa.gov. Please send mailed comments to: W–00–31 Comment Clerk, Water Docket (MC 4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW; Washington, DC 20460. Overnight delivery or hand delivery should be delivered to EPA's Water Docket at 401 M Street, SW; Room EB57; Washington, DC, 20460. Please see **SUPPLEMENTARY INFORMATION** for other information about comments.

FOR FURTHER INFORMATION CONTACT: Michael Haire by phone at (202) 260–2734 or e-mail at Haire.Michael@epa.gov.

SUPPLEMENTARY INFORMATION:

What Does the Appropriation Bill Require?

On October 27, 2000, the President signed EPA's appropriation bill for fiscal year 2001. The Committee Reports for that bill require EPA to conduct three assessments related to TMDLs, one of which pertains to costs to States and the regulated community. The Conference Committee Report, House Report 106–988 (H.R. 4635), states:

. . . Further, EPA is directed to conduct a comprehensive assessment of the potential State resources which will be required for the development and implementation of TMDLs and present the results of the study to Congress within 120 days of enactment of this Act. In conducting this cost assessment, EPA must, in addition to direction included in Senate Report 106–410, provide an estimate of the annual costs to the regulated community in both the private and public sectors; address concerns regarding the economic analysis performed by the Administrator on regulatory changes to the TMDL program that were identified by the Comptroller General in a June 21, 2000, report; and estimate the costs to small businesses that would result from regulatory changes to the TMDL program. In conducting these analyses, the Administrator shall solicit comment from the Comptroller General, each State, and the public regarding the Agency's assessment.

The Senate Committee Report, Senate Report 106–410, states:

TMDLs Cost Assessment.—To obtain better cost information, the Committee directs EPA to conduct a comprehensive assessment of the potential State resources which will be required for the development and implementation of TMDLs and present the results of this study to Congress within 120 days of enactment of this Act. At a minimum, the report should (1) identify any expected increase in State personnel needed to develop and implement 40,000 TMDLs; (2) specify additional data collection activities to make listing decisions; (3) identify the cost of conducting the needed studies to collect high quality data on the current loads from sources (point and nonpoint sources) of a pollutant on 303(d) listed waters slated for TMDL development; and (4) provide an estimate of the annual costs to the private sector due to TMDL implementation and related costs.

What Is the Purpose of This Notice?

As required by the Congress, EPA is in the process of developing the assessment of State costs in developing and implementing TMDLs, regulated community costs resulting from TMDLs, and costs to small businesses that will result from the July 2000 regulatory changes to the TMDL program. (See 65 FR 43585–43670, July 13, 2000, which is available at http://www.epa.gov/owow/tmdl/july2000.html.) EPA will also address the concerns expressed by the Comptroller General on EPA's costs assessment for the July 2000 rule. The Comptroller General's comments can be found on the Internet at http://www.gao.gov/cgi-bin/getrpt?GAO/RCED–00–206R.

EPA solicits information on the topics (above) that EPA is addressing. In particular, EPA is looking for comments and information on:

- the costs to States and Territories for developing and implementing TMDLs; including any savings that may be associated with use of a TMDL to achieve the water quality goals of the CWA, as opposed to other provisions of the Act, and the potential need for additional information to assess current loads. You may want to view EPA's assessment model for State costs under the current TMDL program at http://www.asiwpca.org/policy/index.htm#WQ;
- the costs to the regulated community in both the private and public sectors for complying with TMDLs, including any savings that may result from more cost-effective pollution control approaches developed through the TMDL process (e.g. use of more cost-effective control mechanisms, coordination of program requirements and time lines for a water body, and integration of pollution control planning for multiple water bodies with common pollution problems);
- the costs to small businesses that would result from the July 2000 regulatory changes to the TMDL program. You may want to review EPA's assessment of the potential affect of this rule on small businesses. (See 65 FR 43654–43656, July 13, 2000, which is available at http://www.epa.gov/owow/tmdl/july2000.html);
- the concerns expressed by the Comptroller General on EPA's costs assessment for the July 2000 rule. You may want to review EPA's assessment of these costs in EPA's docket W–98–31 located at the Water Docket, Room EB57, 401 M Street, SW, Washington, DC; and
- any additional data collection efforts you believe are required by the July 2000 regulation to make listing decisions.

Due to the need to conduct and submit the assessments within 120 days, and the requirement to solicit comments, EPA has decided to request comments early in the process of developing the assessments. EPA believes, given the short time allowed to submit the report and the significant information now available, that this process provides an opportunity for the public to submit information that EPA will consider in the drafting of the report, and thus will lead to a better report.

How Can You Submit Comments?

You may submit comments by mail, e-mail, or delivered by hand to the addresses shown in the **ADDRESS** section of this notice. EPA will not accept facsimiles (faxes). If you mail or hand deliver comments, please send an original and three copies of your comments and enclosures (including references). If you want receipt of your comments acknowledged, you must include a self-addressed, stamped envelope.

You may also submit your comments by sending an e-mail to ow-docket@epa.gov or by disk. If you do, you must submit electronic comments as an ASCII file, or a WordPerfect 5.1, WordPerfect 6.1, or WordPerfect 8 file avoiding the use of special characters and any form on encryption, and identify these comments by the docket number "W–00–31" on the subject line. You may file electronic comments on this notice at many Federal Depository Libraries. You should not send confidential business information by e-mail.

The information received in response to this notice will be filed under docket number W–00–31, and includes referenced documents as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB57, U.S. Environmental Protection Agency Headquarters, 401 M., Washington, DC. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Dated: November 28, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 00–30908 Filed 12–1–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

November 20, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 3, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0032.

Title: Application for Consent to Transfer Control of Entity Holding Broadcast Station License Construction Permit or License.

Form No.: FCC 315.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Hours Per Response: 12–48 hours (the burden hour time and contracting time varies depending on the type of application filed).

Frequency of Response: on occasion.

Cost to Respondents: $12,236,878.

Estimated Total Annual Burden: 2,546.

Needs and Uses: FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of a corporation holding an AM, FM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for transfer of control of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for transfer of control of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

On April 4, 2000, the Commission adopted a Report and Order in MM Docket No. 95–31 in the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants. This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast channels. The new procedure will use points to compare objective characteristics whenever there are competing applications for full-service radio or television channels reserved for NCE use. The new procedure established a four-year holding period of on-air operations for licenses approved as a result of evaluation in a point system. The FCC 315 has been revised to reflect the new policy and to require stations authorized under the point system who have not operated for a four-year period to submit with their applications an exhibit demonstrating compliance with Section 73.7005.

The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

OMB Approval No.: 3060–0031.

Title: Application for Consent to Assignment of Broadcast License Construction Permit or License.

Form No.: FCC 314.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Hours Per Response: 12–48 hours (the burden hour time and contracting time varies depending on the type of application filed).

Frequency of Response: on occasion.

Cost to Respondents: $12,236,878.

Estimated Total Annual Burden: 2,546.

Needs and Uses: FCC Form 314 and applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM or TV broadcast station construction permit or license, along with applicable exhibits and explanations. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for assignment of license/permit. This notice must be completed within 30 days of the tendering of the

application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for assignment of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

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The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–30802 Filed 12–01–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–35–E (Auction No. 35); DA 00–2259]

Notice and Filing Requirements for 422 Licenses in the C and F Block Broadband PCS Spectrum Auction Minimum Opening Bids, Upfront Payments and Other Procedural Issues For Final Auction Inventory

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of broadband Personal Communications Services (PCS) spectrum and also provides the final inventory of licenses to be made available for this auction; we will not add to this inventory for the December 12, 2000, auction.

DATES: Auction No. 35 is scheduled for December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Audrey Bashkin, Legal Branch, or Craig Bomberger, Auctions Operations Branch, at (202) 418–0660; Lisa Stover, Auctions Operations Branch, at (717) 338–2888. Commercial Wireless Division: Gary Oshinsky, Policy and Rules Branch, at (202) 418–7167 or JoAnn Epps, Licensing and Technical Analysis Branch, at (202) 418–0620. Media Contact: Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATON: This is a summary of a Public Notice released October 5, 2000. The complete text of the public notice, including Attachments A through I, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

List of Attachments available at the FCC:

Attachment A..... Upfront Payments and Minimum Opening Bids for Auction No. 35
Attachment B..... FCC Auction Seminar Registration Form Auction No. 35
Attachment C..... Electronic Filing and Review of the FCC Form 175
Attachment D..... Guidelines for Completion of FCC Form 175 and Exhibits
Attachment E..... Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159-July 1997 edititon)
Attachment F..... FCC Bidding Preference/Remote Software Order Form Auction No. 35
Attachment G..... Bid Increments and Exponential Smoothing
Attachment H..... Accessing the FCC Network to File FCC Form 175
Attachment I..... Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

I. General Information

A. Introduction

1. By this public notice, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of broadband Personal Communications Services (PCS) spectrum in the C and F blocks (Auction No. 35) scheduled for December 12, 2000. The public notice also provides the final inventory of licenses to be made available for this auction; we will not add to this inventory for the December 12, 2000, auction.

2. On March 3, 2000, in accordance with the Balanced Budget Act of 1997, the Bureau released the *Auction No. 35 Public Notice* seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 35. After the August 29, 2000 release of the *C/F Block Sixth Report and Order,* 65 FR 53624 (September 5, 2000), the Bureau released the *Auction No. 35 Comment Public Notice,* 65 FR 55243 (September 13, 2000) on September 6, 2000, revising the list of licenses available and again seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 35. The Bureau received seven comments and two reply comments in response to the *Auction No. 35 Public Notice,* and three comments and two reply comments in response to the *Auction No. 35 Comment Public Notice.*

i. Background of Proceeding

3. Auction No. 35 will be the fourth auction of C block spectrum and the third auction of F block spectrum. In the past, these spectrum blocks were designated by the Commission as "entrepreneurs' blocks," meaning that participation in auctions of C and F block licenses was limited to entities qualifying under the Commission's rules as entrepreneurs. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C, E, and F block licenses that had been returned to, or reclaimed by, the Commission.

4. On August 29, 2000, the Commission released the *C/F Block Sixth Report and Order,* revising the service and auction rules for auction of C and F block PCS licenses. The Commission decided to reconfigure each 30 MHz C block license available in Auction No. 35 and other future broadband PCS auctions into three 10 MHz C block licenses. The Commission also divided Basic Trading Areas ("BTAs") into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 1990 census figures, and Tier 2 comprising the remaining markets. The Commission decided that some licenses would be available to all bidders in "open" bidding, while other licenses would be available only to entrepreneurs in "closed" bidding. The Commission established open bidding for all C and F block licenses available but unsold in Auction No. 22 or any subsequent auction. The Commission also established open bidding for the following licenses: two of the three reconfigured 10 MHz C block licenses in Tier 1, one of the three reconfigured 10 MHz C block licenses in Tier 2, the 15 MHz C block licenses in Tier 1, and all F block licenses (Tier 1 and Tier 2). The Commission established small and very small business bidding credits of 15 percent and 25 percent, respectively, for licenses won in open bidding and eliminated bidding credits for licenses won in closed bidding. Additionally, the Commission removed from its rules the § 24.710 license cap, which had prohibited an applicant from winning more than 98 of the licenses available in the C and F blocks. Finally, the Commission decided that the Commercial Mobile Radio Services spectrum cap would continue to apply to C and F block licenses, including those won in Auction No. 35.

ii. Licenses to Be Auctioned

5. The 422 licenses available in Auction No. 35 cover 195 various BTAs and consist of 312 C block 10 MHz licenses, 43 C block 15 MHz licenses, and 67 F block 10 MHz licenses. As stated, the BTAs are divided into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, and Tier 2 comprising the remaining markets. There will be 252 licenses open to all bidders in "open" bidding, while 170 licenses will only be available to entrepreneurs in "closed" bidding.

6. The following table contains the Block/Eligibility Status/Frequency Cross-Reference List for Auction No. 35:

Channel block	Eligibility status		Bandwidth (MHz)	Frequencies
	Tier 1	Tier 2		
C1	[Open]	Closed	15	1902.5–1910, 1982.5–1990
C2	[Open]	Closed*	15	1895–1902.5, 1975–1982.5
C3	Closed*	Closed*	10	1895–1900, 1975–1980
C4	Open	Closed*	10	1900–1905, 1980–1985
C5	Open	Open	10	1905–1910, 1985–1990
F	Open	Open	10	1890–1895, 1970–1975

Note: Brackets indicate that no licenses of the particular tier/channel block combination will be available in Auction No. 35.
*The entrepreneur eligibility restriction does not apply to licenses that were available but unsold in Auction No. 22. Tier 2 C2 licenses are classified as closed, but all of the C2 licenses available in Auction No. 35 were available but unsold in Auction No. 22 and are therefore open to all bidders. Certain C block licenses were also available but unsold in Auction No. 22 (as 30 MHz licenses), and the corresponding C3 and C4 licenses are therefore open to all bidders.

7. A complete list of licenses available for Auction No. 35 is included as Attachment A of the Public Notice. The attachment specifies the eligibility status of each license.

8. AT&T proposes switching the eligibility status of the C3 and C5 blocks, thereby making all of the C3 licenses open to all bidders. AT&T argues that the C3 block should be open rather than the C5 block, because that would afford AT&T and other bidders the opportunity to obtain 20 MHz of contiguous spectrum. We note that granting AT&T's request would be contrary to the Commission's recently adopted rules on the location of open and closed blocks of C block spectrum. As the Commission indicated in the *C/F Block Sixth Report and Order,* it placed the closed band(s) next to the F block spectrum in order that entrepreneurs aggregating newly acquired closed 10 MHz C block licenses with F block licenses might enjoy reduced base station facilities costs and simplified maintenance requirements. Accordingly, we will not make the change requested by AT&T.

B. Rules and Disclaimers

i. Relevant Authority

9. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to Broadband PCS, contained in title 47, part 24, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1, of the Code of Federal Regulations.

10. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 35 Comment Public Notice*; the *C/F Block Sixth Report and Order*; the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000); the *C Block Second Report and Order*, 62 FR 55348 (October 24, 1997); the *C Block Reconsideration Order*, 63 FR 17111 (April 8, 1998); the *C Block Fourth Report and Order*, 63 FR 50791 (September 23, 1998); part 24, subparts A, B, C, E, H, and I, of the Commission's Rules concerning broadband PCS; and part 1, subpart Q, of the Commission's Rules concerning competitive bidding proceedings.

11. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all, public notices and pronouncements, including orders on delegated authority or by the Commission relevant to one or more of the licenses or otherwise pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp at ftp://fcc.gov or the FCC Auctions World Wide Web site at *http://www.fcc.gov/wtb/auctions.* Additionally, documents may be obtained for a fee, by calling the Commission's copy contractor, International Transcription Service, Inc. ("ITS"), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00–313 for the *C/F Block Sixth Report and Order*). *See* also Due Diligence section.

ii. Prohibition of Collusion

12. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

13. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. In Auction No. 35, for example, the rule would apply to any applicants bidding for the same BTA. Therefore, applicants that apply to bid for any license in a BTA would be precluded from communicating after filing the FCC Form 175 short-form application with any other applicant for a license in the same BTA. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation.

14. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment I of the Public Notice.

iii. Due Diligence

15. Potential bidders are reminded that private and common carrier fixed microwave services ("FMS") operating in the 1850–1990 MHz band (and other bands) are being relocated to available frequencies in higher bands or to other media. Bidders should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders, in order to make a reasoned, appropriate decision about their participation in Auction No. 35 and their bidding strategy.

16. Potential bidders and interested parties should be aware that various proceedings that may relate to the licenses available in Auction No. 35 may be pending or subject to further administrative review before the Commission, including, for example, waiver requests, petitions for reconsideration, and applications for review. In addition, certain judicial proceedings that may relate to the licenses available in Auction No. 35 are pending or may be subject to further review. Resolution of these matters could have an effect on the availability of spectrum included in Auction No. 35, and the auction is subject to such matters. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction. The Commission will continue to act on matters before it, but it makes no representations as to the resolution of judicial proceedings. Potential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on or otherwise acquire licenses in Auction No. 35.

17. Potential bidders may obtain information about licenses available in Auction No. 35 through the Bureau's licensing databases on the World Wide Web at *http://www.fcc.gov/wtb/uls*. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov*. The hotline is available to assist with questions Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.* The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems.

18. Further, potential bidders are strongly encouraged to physically inspect any sites located in, or near, the geographic area for which they plan to bid.

19. Finally, potential bidders are strongly encouraged to make periodic, and continuing, inquiries to the Office of the Secretary and other available sources regarding any proceedings that are, or may be, pending with respect to the licenses available in Auction No. 35.

iv. Clarification of Payment Issue Relating to Licenses Subject to Pending Proceedings

20. As noted, potential bidders should be aware that certain of the licenses included in Auction No. 35 are or may become the subject of Commission or judicial proceedings initiated by parties claiming to have continuing interests in the licenses, despite their failure to meet payment obligations. This public notice clarifies that the Commission will return the payments made by winning bidders of licenses in Auction No. 35 in the event that such bidders are subsequently required to surrender licenses won to prior applicants or license holders as a result of final determinations reached in pending proceedings. The Commission, however, will not pay interest on the returned payments, as it lacks legal authority to do so.

21. Including contested licenses in the auction helps to fulfill the Commission's statutory mandate to hasten the development and deployment of new technologies and services and to promote competition for the benefit of the public. Returning payments to winning bidders if licenses won are later determined to be unavailable due to subsequent resolution of other proceedings furthers these vital public interest goals by reducing uncertainty in the licensing process and encouraging auction participants to bid on licenses regardless of whether they are subject to pending proceedings. Retaining payments under the circumstances could have a chilling effect on participation in Auction No. 35 and would therefore undermine our efforts to encourage more efficient use of the spectrum. We note that winning bidders of licenses subject to pending proceedings are still required to meet the normal payment and construction schedules established by the Commission.

v. Bidder Alerts

22. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially, and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

23. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does a FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

24. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 35 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

25. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 35 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225–5322).

vi. National Environmental Policy Act ("NEPA") Requirements

26. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

27. The auction will begin on Tuesday, December 12, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

28. In response to comments received, the Commission announces that bidding for Auction No. 35 will be temporarily suspended during the holidays. Beginning Friday, December 22, 2000 through Wednesday, January 3, 2001, no bidding will be conducted. Bidding will resume on Thursday, January 4, 2001.

ii. Auction Title

29. Auction No. 35—C and F Block Broadband PCS

iii. Bidding Methodology

30. The bidding methodology for Auction No. 35 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iv. Pre-Auction Dates and Deadlines

31. The following are important events and deadlines related to Auction No. 35:

Auction Seminar: October 20, 2000.
Short-Form Application (FCC FORM 175): November 6, 2000; 6:00 p.m. ET.
Upfront Payments (via wire transfer): November 27, 2000; 6:00 p.m. ET.
Orders for Remote Bidding Software: November 28, 2000; 6:00 p.m. ET.
Mock Auction: December 8, 2000.
Auction Begins: December 12, 2000.

v. Requirements For Participation

32. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 6, 2000.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, November 27, 2000.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

33. The following is a list of general contact information relating to Auction No. 35:

General Auction Information

General Auction Questions
Seminar Registration
Orders for Remote Bidding Software
FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.—5:30 p.m. ET.

Auction Legal Information

Auction Rules, Policies, Regulations

Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information

Rules, Policies, Regulations
Licensing Issues
Due Diligence
Incumbency Issues
Commercial Wireless Division, (202) 418–0620.

Technical Support

Electronic Filing Assistance
Software Downloading
FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY).
Hours of service: Monday through Friday 7 a.m. to 10:00 p.m. ET, Saturday, 8:00 a.m. to 7:00 p.m., Sunday, 12:00 noon to 6:00 p.m.

Payment Information

Wire Transfers
Refunds
FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding

Will be furnished only to qualified bidders.

FCC Copy Contractor

Additional Copies of Commission Documents
International Transcription Services, Inc., 445 12th Street, SW Room CY–B400, Washington, DC 20554, (202) 314–3070.

Press Information

Meribeth McCarrick (202) 418–0654.

FCC Forms

(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area) *http://www.fcc.gov/formpage.*

FCC Internet Sites

http://www.fcc.gov; http://ftp.fcc.gov; http://www.fcc.gov/wtb/auctions.

II. Short-Form (FCC Form 175) Application Requirements

34. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the Public Notice. The short-form application seeks the applicant's name and address, legal classification, status, small and very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

35. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia And Joint Bidding Arrangements (FCC Form 175 Exhibit B)

36. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

37. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Eligibility for Closed Bidding (FCC Form 175 Exhibit C)

38. *General rule.* In order to be eligible to bid for one or more closed licenses, an applicant must show on Exhibit C that, as of the FCC Form 175 filing deadline, the applicant, its affiliates, persons or entities that hold interests in the applicant, and their affiliates, have combined total assets of less than $500 million and have had combined gross revenues of less that $125 million in each of the last two years. Applicants that can make this showing qualify as "entrepreneurs" for purposes of C and F block auctions. *See* § 24.709 of the Commission's Rules.

39. *Grandfather exception.* Qualified applicants that were eligible for and participated in Auction No. 5 or 10 may bid on closed C block licenses in any auction that begins on or before March 23, 2001, even if their total assets and gross revenues exceed the financial caps for auction participation as an entrepreneur. This exception does not extend to F block licenses.

ii. Small Business Bidding Credit Eligibility (FCC Form 175 Exhibit D)

40. Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 24.720(b)) that win licenses in open bidding. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average annual gross revenues for the preceding three years of the bidder, together with its affiliates and controlling interests of the bidder and its affiliates:

• A bidder with average annual gross revenues of not more than $40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bids for C and F block licenses;

• A bidder with average annual gross revenues of not more than $15 million for the preceding three years ("very small business") receives a 25 percent discount on its winning bids for C and F block licenses.

41. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both. No small and very small business bidding credits are provided for licenses subject to closed bidding.

iii. Tribal Land Bidding Credit

42. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Part V.C.

iv. Applicability of Part 1 Attribution Rules

43. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the total assets and/or gross revenues of their investors and affiliates in determining entrepreneur and small business eligibility for future C and F block auctions. The Commission observed that the rule modifications adopted in the various part 1 orders would result in discrepancies and/or redundancies between certain of the new part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Time may not permit conforming edits to the part 24 C and F block rules to be made in advance of Auction No. 35; however, the part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 35. *Accordingly, the "controlling interest" standard as set forth will be in effect for Auction No. 35, even if conforming edits to the CFR are not made prior to the auction.*

44. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

• The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

• The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or

• The entity plays an integral role in management decisions.

45. *Attribution for entrepreneur eligibility.* For purposes of determining which entities qualify as entrepreneurs for closed bidding, the Commission will consider the total assets and gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. The Commission does not impose specific equity requirements on parties with controlling interests. Once principals or entities with a controlling interest are determined, only the assets and revenues of those principals or entities, the applicant, and their affiliates will be counted in determining entrepreneur eligibility. Applicants for closed bidding in Auction No. 35 should not include existing C and F block licenses in their calculations of total assets; however, all other Commission licenses must be included in such calculations.

46. *Attribution for small and very small business eligibility.* Similarly, in determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. As stated, the Commission does not impose specific equity requirements on controlling interest holders. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and their affiliates will be counted in determining small business eligibility.

47. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small or very small business in § 24.720(b). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

v. Application Showing

48. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneurs and/or small or very small businesses (or consortia of small or very small businesses) for this auction.

49. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

50. *Entrepreneur eligibility (Exhibit C).* Entities applying to bid on closed licenses will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding two years and the total assets of each of the following: (i) the applicant, (ii) the applicant's affiliates, (iii) the applicant's controlling interest holders, and (iv) the affiliates of the applicant's controlling interest holders. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for *each* of the preceding two years. As stated, entities applying for closed bidding under the grandfather exception (47 CFR 24.709(b)(i)) need not meet the total assets and gross revenues limits of § 24.709(a) of the Commission's rules. Applicants claiming auction eligibility under the grandfather exception should note the Commission's clarification of this exception in the *C/F Block Sixth Report and Order.*

51. *Small and very small business eligibility (Exhibit D).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit D to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) the applicant's affiliates, (iii) the applicant's controlling interest holders, and (iv) the affiliates of the applicant's controlling interest holders. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A

statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

D. Special C Block Eligibility Restriction Regarding Surrendered C Block Licenses

52. C block licensees that surrendered C block licenses pursuant to the disaggregation, prepayment, and/or amnesty/prepayment election options the Commission made available in the *C Block Second Report and Order*, as modified by the *C Block Reconsideration Order*, are ineligible to reacquire the spectrum represented by their surrendered licenses through auction participation, or by any other means, until March 23, 2001. This prohibition extends to qualifying members of the licensee's control group, and their affiliates. Licensees that surrendered licenses pursuant to the "pure amnesty" election option remain eligible to reacquire the spectrum represented by those surrendered licenses through auction participation or a secondary market transaction. Applicants that are prohibited from bidding on licenses representing previously surrendered spectrum, should not select "all markets" on their FCC Form 175 application if any of their surrendered spectrum is available in Auction No. 35.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit E)

53. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. Applicants must include this statement as Exhibit E of the FCC Form 175. If any of an applicant's controlling interests holders or their affiliates, as defined by § 1.2110 of the Commission's rules (as recently amended in the *Part 1 Fifth Report and Order*) have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

54. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 35, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Transfer and Assignment Restrictions on Licenses Won in Closed Bidding

55. C or F block licenses won in closed bidding generally may be transferred or assigned only to an entity that meets the entrepreneur financial caps or that holds another C or F block license that it acquired while meeting the entrepreneur financial caps. This restriction ends five years after the date of the initial license grant or upon notification by the licensee that it has satisfied its five-year construction requirement under 47 CFR 24.203(c), whichever comes first. Licenses won in open bidding are not subject to this restriction and may be transferred or assigned any time after grant to any qualified entity.

G. Unjust Enrichment Payments

56. C or F block licensees that use a small or very small business bidding credit, and during the first five years of their license term seek to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a small or very small business bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit, plus interest.

57. In the *C/F Block Sixth Report and Order*, the Commission decided that licensees are not subject to bidding credit unjust enrichment payments for early transfer or assignment of licenses won in Auction No. 5 or No. 10. We clarify that transfer or assignment of a license won in Auctions No. 11, 22, 35, or any other auction using a small or very small business bidding credit, will still be subject to any applicable bidding credit unjust enrichment payment under the Commission's rules.

H. Installment Payments

58. Installment payment plans will not be available in Auction No. 35.

I. Other Information (FCC Form 175 Exhibits F and G)

59. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit F) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit G (Miscellaneous Information) to the FCC Form 175.

J. Minor Modifications to Short-Form Applications (FCC Form 175)

60. After the short-form filing deadline (November 6, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official, or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4–A668 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Audrey Bashkin of the Auctions and Industry Analysis Division at (202) 418–0660.

K. Maintaining Current Information in Short-Form Applications (FCC Form 175)

61. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-auction Procedures

A. Auction Seminar

62. On Friday, October 20, 2000, the FCC will sponsor a free seminar for Auction No. 35 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the C and F block broadband PCS spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

B. Short-Form Application (FCC Form 175)—Due November 6, 2000

63. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on November 6, 2000. Late applications will not be accepted.

64. There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D.

i. Electronic Filing

65. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon on October 20, 2000, until 6:00 p.m. ET on November 6, 2000. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 6, 2000.

66. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the Public Notice. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

ii. Completion of the FCC Form 175

67. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the Public Notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

68. The FCC Form 175 electronic review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C of the Public Notice for details on accessing the review system.

C. Application Processing and Minor Corrections

69. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

70. As described more fully in the Commission's rules, after the November 6, 2000 short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due November 27, 2000

71. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on November 27, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 35 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the November 27, 2000, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

72. Wire transfer payments must be received by 6:00 p.m. ET on November 27, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 910–0198
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO.: (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A35U")
FCC CODE 1 (same as FCC Form 159, block 23A: "35")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. #358410

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

73. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209–6045 or (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 35." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

74. A completed FCC Remittance Advice Form (FCC Form 159) must be

faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the Public Notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

75. *In the Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* 62 FR 13570 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. In addition, as required by the *Part 1 Fifth Report and Order,* the upfront payment amount for "former defaulters," *i.e.,* applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, will be fifty percent more than the normal amount required to be paid. In the *Auction No. 35 Comment Public Notice,* the Bureau proposed upfront payments for Auction No. 35. Specifically, the Bureau proposed upfront payments using the following formula:

Tier 1

(1) 15 MHz licenses—2.5 % of most recent net high bid for C block licenses in same BTA
(2) 10 MHz licenses—1.6 % of most recent net high bid for C block licenses in same BTA

Tier 2

(1) 15 MHz licenses—1.25 % of most recent net high bid for C block licenses in same BTA
(2) 10 MHz licenses—1.0 % of most recent net high bid for C block licenses in same BTA

We adopt the proposed formula for upfront payments (with clarification):

Tier 1

(1) 15 MHz licenses—2.5 % of most recent net high bid for 30 MHz C block license in same BTA
(2) 10 MHz licenses—1.6 % of most recent net high bid for 30 MHz C block license in same BTA

Tier 2

(1) 15 MHz licenses—1.25 % of most recent net high bid for 30 MHz C block license in same BTA
(2) 10 MHz licenses—1.0 % of most recent net high bid for 30 MHz C block license in same BTA

76. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 35, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.,* a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

77. In order to be able to place a bid on a license, in addition to being qualified for and having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

78. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

79. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds for Upfront Payments

80. The Commission will use wire transfers for all Auction No. 35 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by November 28, 2000. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.F.

A. Auction Registration

81. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

82. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

83. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, December 8, 2000, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

84. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

B. Remote Electronic Bidding Software

85. Qualified bidders are allowed to bid electronically or telephonically. If choosing to bid electronically, each bidder must purchase its own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is $175.00 and must be ordered by Tuesday, November 28, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 35. If bidding telephonically, the telephonic bidding phone number will be supplied in the first Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, a FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should complete this form electronically, print it out, and fax to (717) 338–2850. A manual copy of this form is also included as Attachment F of the Public Notice.

C. Mock Auction

86. All qualified bidders will be eligible to participate in a mock auction on Friday, December 8, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

87. The first round of bidding for Auction No. 35 will begin on Tuesday, December 12, 2000. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

88. In the *Auction No. 35 Comment Public Notice,* we proposed to award all licenses in Auction No. 35 in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the PCS licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

ii. Maximum Eligibility and Activity Rules

89. In the *Auction No. 35 Comment Public Notice,* we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.

90. For Auction No. 35 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in Part IV.A.4), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given license.

91. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

92. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round either if it is the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* "Minimum Accepted Bids" in Part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Part IV.A.4 and "Stage Transitions" in Part IV.A.v., we adopt them for Auction No. 35.

iii. Activity Rule Waivers and Reducing Eligibility

93. In the *Auction No. 35 Comment Public Notice,* we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction.

94. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

95. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing

eligibility, thereby meeting the minimum requirements.

96. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Part IV.A.iv.). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

97. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

iv. Auction Stages

98. In the *Auction No. 35 Comment Public Notice,* we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder-desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 98 percent of its current bidding eligibility.

99. We conclude that the auction will be composed of three stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 35.

v. Stage Transitions

100. In the *Auction No. 35 Comment Public Notice,* we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each Stage. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

101. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines, the auction will start in Stage One and it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 35.

vi. Auction Stopping Rules

102. For Auction No. 35, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

103. The Bureau also proposed a modified version of the simultaneous stopping rule. This modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

104. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

105. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

106. We adopt all of the proposals concerning the auction stopping rules. Auction No. 35 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 35, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The substitutability among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of these stopping rules.

vii. Auction Delay, Suspension, or Cancellation

107. In the *Auction No. 35 Comment Public Notice,* we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

108. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

109. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. This public notice will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the public notice.

110. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

111. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because there are mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

112. In the *Auction No. 35 Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 35 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 35, the Commission proposed the following formula for minimum opening bids:

Tier 1

(1) 15 MHz licenses—5 % of most recent net high bid for C block licenses in same BTA

(2) 10 MHz licenses—3.2 % of most recent net high bid for C block licenses in same BTA

Tier 2

(1) 15 MHz licenses—2.5 % of most recent net high bid for C block licenses in same BTA

(2) 10 MHz licenses—1.6 % of most recent net high bid for C block licenses in same BTA

113. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

114. We will adopt minimum opening bids for Auction No. 35, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids, or reserve prices are in the public interest. We adopt the proposed formula for minimum opening bids (with clarification):

Tier 1

(1) 15 MHz licenses—5 % of most recent net high bid for 30 MHz C block license in same BTA

(2) 10 MHz licenses—3.2 % of most recent net high bid for 30 MHz C block license in same BTA

VOL
65
ISS
2
3
3
DE
4
2000
UMI

Tier 2

(1) 15 MHz licenses—2.5 % of most recent net high bid for 30 MHz C block license in same BTA
(2) 10 MHz licenses—1.6 % of most recent net high bid for 30 MHz C block license in same BTA

115. We conclude that the adopted formula presented here best meets the objectives of our authority in establishing reasonable minimum opening bids. We have noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices, and that we must balance the revenue raising objective against our other public interest objectives in setting the minimum bid level. For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses.

116. As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This discretion will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

iii. Bid Increments and Minimum Accepted Bids

117. In the *Auction No. 35 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate.

118. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G of the Public Notice.

119. We adopt our proposal of initial values for the maximum of 0.2 (20 percent of the license value) and for the minimum of 0.1 (10 percent of the license value). The Bureau retains the discretion to change the minimum bid increment if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 35 if circumstances warrant.

iv. High Bids

120. Each bid will be date-and time-stamped when it is entered into the FCC computer system. In the event of tied high bids (identical gross bid amounts) for a license during a round, the earliest of the tied bids will be the standing high bid at the end of the round. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date-and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

v. Bidding

121. During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

122. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 35.

123. A bidder's ability to bid on specific licenses in the first round of the auction is determined by three factors: (1) the licenses applied for on FCC Form 175, (2) eligibility restrictions on those licenses, and (3) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

124. The bidding software requires each bidder to log in to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

125. The bid entry screen of the Automated Auction System software for Auction No. 35 allows bidders to place multiple increment bids. Specifically, high bids may be increased from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

126. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

127. Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

128. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

129. In the *Auction No. 35 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion.

130. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 35, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

131. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

132. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 35.

133. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

134. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders to most efficiently allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

135. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the bid withdrawals. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed at the close of the subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

136. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 35 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

137. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

ix. Maintaining the Accuracy of FCC Form 175 Information

138. As noted in Part II.J., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Louis Sigalos, Deputy Chief, Auctions and Industry Analysis

Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4–A668, Washington, DC 20554.

139. A separate copy of the letter should be mailed to Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4–A665, Washington, DC 20554. Questions about other changes should be directed to Audrey Bashkin at (202) 418–0660.

V. Post-auction Procedures

A. Down Payments and Withdrawn Bid Payments

140. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

141. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

142. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each license won through Auction No. 35. Winning bidders that are entrepreneurs and/or small or very small businesses must include an exhibit demonstrating their eligibility for closed bidding and/or small and very small business bidding credits as applicable. *See* 47 CFR 1.2112(b), 24.709(c)(2)(i). Further filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

143. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(e). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

144. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). In order for a winning bidder to be awarded a tribal land bidding credit, it must provide specific certifications regarding the servicing of tribal lands and is subject to specific performance criteria as set forth in 47 CFR 1.2110(e).

145. For additional information on the tribal land bidding credit, including how to determine the amount of credit available, *see* Public Notice DA 00–2219, released September 28, 2000, entitled *Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands.*

D. Auction Discount Voucher

146. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of $125,273,878.00. This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

E. Default and Disqualification

147. Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

F. Refund of Remaining Upfront Payment Balance

148. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 35 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

149. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, SW, Room 1–A824, Washington, DC 20554.

150. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information. NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–30860 Filed 12–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1347–DR]

Arizona; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona, (FEMA–1347–DR), dated October 27, 2000, and related determinations.

EFFECTIVE DATE: November 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arizona is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 27, 2000:

Yavapai County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–30707 Filed 12–01–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 18, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Carl W. Ellis,* Perryton, Texas; to acquire additional voting shares of FirstPerryton Bancorp, Inc., Perryton, Texas, and FirstPerryton Delaware, Inc., Dover, Delaware, and thereby indirectly acquire additional voting shares of First Bank Southwest, N.A., Amarillo, Texas.

Board of Governors of the Federal Reserve System, November 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30758 Filed 12–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice regarding charges for certain disclosures.

SUMMARY: The Federal Trade Commission announces that the current $8.50 ceiling on allowable charges under Section 612(a) of the Fair Credit Reporting Act ("FCRA") will remain unchanged for 2001. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index ("CPI"), with fractional changes rounded to the nearest fifty cents. The CPI increased 7.75 percent between September 1997, the date the FCRA amendments took effect, and September 2000. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in no change in the current maximum allowable charge of $8.50.

EFFECTIVE DATE: January 1, 2001.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(a)(1)(A) of the Fair Credit Reporting Act, as amended in 1996, states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(a)(2) goes on to state that the Federal Trade Commission ("the Commission") shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of Section 612(a) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.*, September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2000, the Consumer Price Index for all urban consumers and all items increased by 7.75 percent—from an index value of 161.2 in September 1997 to a value of 173.7 in September 2000. An increase of 7.75 percent in the $8.00 base figure would lead to a new figure of $8.62. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the allowable charge should be $8.50.

The Commission therefore determines that the allowable charge for the year 2001 will remain unchanged at $8.50.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–30811 Filed 12–1–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1639]

SangStat Medical Corp.; Withdrawal of Approval of an Abbreviated New Drug Application; Cyclosporine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of an abbreviated new drug application (ANDA) held by SangStat Medical Corp., 6300 Dumbarton Circle, Fremont, CA 94555 (Sangstat). The ANDA is for SangCya Oral Solution (Cyclosporine Oral Solution, USP) Modified, which was the subject of a class II recall announced on July 10, 2000. SangStat has agreed in writing to

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permit FDA to withdraw approval of the application and has waived its opportunity for a hearing.

EFFECTIVE DATES: January 3, 2001.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: On July 10, 2000, SangCya Oral Solution (Cyclosporine Oral Solution, USP) Modified, 100 milligrams per milliliter, was the subject of a class II recall under 21 CFR part 7 (Ref. 1). The recall of the drug product, marketed under ANDA 64–195, arose from data recently submitted by SangStat to the agency regarding the bioavailability of the product in healthy subjects when administered with apple juice. Following the recall, SangStat notified the agency in writing on July 21, 2000, that the company had decided to permanently withdraw the product from the market. On August 4, 2000, SangStat requested in writing that the agency withdraw approval of ANDA 64–195. Subsequently, SangStat provided the agency with a full and complete waiver of the company's right to a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) to allow the agency to complete the withdrawal of approval under 21 CFR 314.150(d).

Therefore, under section 505(e) of the act and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of ANDA 64–195, and all amendments and supplements thereto, is hereby withdrawn, effective January 3, 2001. The effective date of the withdrawal of approval is intended to allow patients the opportunity to complete their transition to another cyclosporine drug product (see Ref. 1). Thereafter, distribution of the product in interstate commerce without an approved application is illegal and subject to regulatory action. Also, on the basis of the circumstances described above that led to the recall of the product and its subsequent removal from the market, the agency will remove the product from the agency's list of drug products with effective approvals, published under the title "Approved Drug Products with Therapeutic Equivalence Evaluations." This document serves as notice of the removal of the product covered by ANDA 64–195, SangCya Oral Solution, from the list of approved drug products.

Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The document may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. The document is available on the Internet at: *http:www//fda.gov/bbs/topics/ANSWERS/ANS01025.html.*

1. FDA Talk Paper dated July 10, 2000.

Dated: November 21, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–30773 Filed 12–1–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1601]

Guidance for Industry and for FDA Employees on Import Alert #66–66; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Import Alert #66–66, Detention Without Physical Examination of API's That Appear To Be Misbranded Under 502(f)(1) Because They Do Not Meet the Requirements for the Labeling Exemptions in 21 CFR 201.122." This document provides guidance for industry and FDA employees on FDA's interpretation of the Federal Food, Drug, and Cosmetic Act (the act) and the labeling exemptions in title 21 of the Code of Federal Regulations regarding bulk chemicals that can be used as active pharmaceutical ingredients (API's) and may be destined for pharmaceutical processors formulating finished drug products. The document includes FDA's guidance to industry and FDA district offices for detention without physical examination of API's from certain manufacturers.

DATES: Submit written comments on the guidance to the Dockets Management Branch (address below) by February 2, 2001. After February 2, 2001, submit written comments to the contact person listed below.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Import Alert #66–66, Detention Without Physical Examination of API's That Appear To Be Misbranded Under 502(f)(1) Because They Do Not Meet the Requirements for the Labeling Exemptions in 21 CFR 201.122" to the Division of Import Operations and Policy (HFC–170), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. You may fax your request to 301–594–0413. Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Thaddeus J. Poplawski, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

A large volume of bulk chemicals that can be used as API's in human medicines are being offered for entry into the United States. In order to be used as a pharmaceutical, an API is required to be included in an FDA approved new drug application (NDA), abbreviated new drug application (ANDA), or investigational new drug application (IND).

Imported API's labeled for further manufacturing and processing or labeled as chemical substances are frequently destined for pharmaceutical processors that formulate finished drug products under approved NDA's. These drug substances, consigned to individuals or processors who formulate and distribute human drugs, may be misbranded under section 502(f)(1) of the act (21 U.S.C. 352(f)(1)).

Sponsors of IND's frequently import from foreign countries either the dosage form or the API for use in laboratory research or clinical trials.

Some persons importing API's have found that they could obtain entry of these articles if they simply supply an NDA or IND number at the point of entry. FDA is advising its district offices that they should be alert to the possibility that: (1) The NDA or IND number provided does not cover the source of the particular API or (2) the persons importing the API have no authorization to refer to the particular NDA or IND number.

Section 502(f)(1) of the act provides that API or bulk chemical that can be used as an API must have labeling that lists adequate directions for its use, unless the API is subject to exemptions from labeling found in § 201.122 (21 CFR 201.122). If the API appears not to meet the requirements for the exemptions in § 201.122, and also lacks labeling listing adequate directions for its use, the article may be subject to refusal of admission under section 801(a)(3) of the act (21 U.S.C. 381(a)(3)) because it appears to be misbranded under section 502(f)(1) of the act.

A. Exemption Under § 201.122

API labeling invariably lacks adequate directions for use as required by section 502(f)(1) of the act. However, such drugs may be subject to an exemption under § 201.122. This regulation requires specific labeling on the package when adequate directions for use are missing, such as "Caution: For manufacturing, processing, or repacking."

However, the exemption under § 201.122 will not apply to a substance intended for a use in the manufacture, processing, or repacking of the API that causes the finished article to be a new drug, unless:

1. An approved NDA covers the production and delivery of the API to the application holder by persons named in the application; or

2. If no application is approved with respect to the API, the label statement "Caution: For manufacturing, processing, or repacking" is immediately supplemented by the words "in the preparation of a new drug or new animal drug limited by Federal law to investigational use," and the delivery is made for use only in the manufacture of such new drug or new animal drug limited to investigational use as provided in 21 CFR part 312 or 21 CFR 511.1.

The API/manufacturer combinations listed in Attachment A to Import Alert #66–66 appear to represent importations of API's to be used for the manufacture, processing, or repacking of drugs that the act and regulations require to be the subject of an approved NDA or a valid IND. However, either the person receiving the API or the person importing the API appears not to meet the statutory and/or regulatory labeling requirements. Further, it appears that the agency has never inspected the declared manufacturer's current good manufacturing practice for that imported API.

B. Guidance

FDA's district offices are provided guidance to detain, without physical examination, the API's from the manufacturers named in the attachment to this Import Alert.

Districts may detain without physical examination API's from the persons listed in Attachment A to Import Alert #66–66 because it appears that the API is misbranded based on its lack of adequate directions for use as required by section 502(f)(1) of the act and its failure to meet the requirements of the exemption found in § 201.122. Persons importing these API's may obtain release of the detained articles if these persons can supply evidence establishing that the article is:

1. Intended for pharmacy compounding that meets the requirements of section 503A of the act (21 U.S.C. 353a), including that the API: (a) Is accompanied by a valid certificate of analysis; (b) is manufactured by an establishment registered under section 510 of the act (21 U.S.C. 360); and (c) does not appear on a list of drugs identified in 21 CFR 216.24, that have been withdrawn or removed from the market for reasons of safety or effectiveness.

2. Intended for use in the manufacture, processing, or repacking of an over-the-counter (OTC) product or prescription product that does not require an NDA; or

3. A new animal drug, or intended for use in the manufacture, processing, or repacking of a new animal drug, subject to an NADA; and, therefore, the API is not subject to this import alert.

Persons importing API's may obtain release of the detained articles by supplying evidence establishing that the article is:

1. Intended for use in the manufacture, processing, or repacking of a human drug that is itself the subject of an approved NDA, and that the API is from the appropriate source; or

2. It is covered by IND requirements at § 312.110(a).

This guidance is not intended to address new animal drugs or investigational new animal drugs addressed by Import Alert number 68–09. If the imported API's are intended for use in an NADA or INAD (investigational new animal drug notice), refer to Import Alert number 68–09.

If the API's are intended for the compounding of finished drugs by pharmacies, persons importing the API's must comply with the requirements in section 503A of the act.

This guidance does not apply to excipients or API's intended for use in OTC drugs or prescription drugs that do not require a new drug application.

II. Significance of Guidance

This Level 1 guidance is being issued consistent with FDA's good guidance regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance represents the agency's current thinking on the detention without physical examination of API's that appear to be misbranded under 502(f)(1) of the act because they do not meet the requirements for the labeling exemptions in § 201.122. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

This guidance document is effective immediately because prior public participation to its implementation is not feasible or appropriate due to the risk to the public health.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at http://www.fda.gov/ora/fiars/ora_import_ia6666.html

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this immediately-in-effect guidance by February 2, 2001. After February 2, 2001, submit written comments regarding this guidance to the contact person (address above). Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 27, 2000.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 00–30696 Filed 12–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1595]

Draft Guidance for Industry on Recommendations for Complying With the Pediatric Rule; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Recommendations for Complying With the Pediatric Rule (21 CFR 314.55(a) and 601.27(a))." The draft guidance provides recommendations for sponsors of new drug applications (NDA's) and biologics license applications (BLA's) on how to meet the requirements of the final rule requiring manufacturers to assess the safety and effectiveness of new drugs and biological products in pediatric patients (pediatric rule).

DATES: Submit written comments on the draft guidance by March 5, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at *http://www.fda.gov/cder/guidance/index.htm*. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:
Terrie L. Crescenzi, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–7337, FAX 301–827–2520, e-mail *crescenzit@cder.fda.gov*, or
Elaine C. Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0641, FAX 301–827–0644, e-mail *esber@cber.fda.gov*.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Recommendations for Complying With the Pediatric Rule (21 CFR 314.55(a) and 601.27(a))." In the **Federal Register** of December 2, 1998 (63 FR 66632), FDA published the pediatric rule. Under the pediatric rule, applications for new active ingredients, new indications, new dosage forms, new dosing regimens, and new routes of administration must contain a pediatric assessment unless the applicant has obtained a waiver or deferral of pediatric studies (21 CFR 314.55(a) and 601.27(a)). The rule became effective on April 1, 1999. Under the compliance dates in the final rule, pediatric assessments must be included in applications after December 2, 2000, for: (1) NDA's; (2) BLA's; and (3) abbreviated new drug applications (ANDA's) that are based on suitability petitions for a change in active ingredient, dosage form, or route of administration.[1] This draft guidance describes how the pediatric rule will be implemented. Areas covered include an overview of pediatric assessments, pediatric plans, waivers and deferrals, compliance issues, pediatric exclusivity, and the role of FDA's Pediatric Advisory Subcommittee.

This Level 1 draft guidance is being issued consistent with FDA's good guidance regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on how to comply with the pediatric rule. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

[1] On November 4, 1999, FDA received a citizen petition raising issues associated with the relationship between the pediatric rule and ANDA suitability petitions. The issues raised in the petition are still under consideration by the agency. Therefore, this guidance does not address pediatric studies associated with suitability petitions.

Dated: November 22, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30697 Filed 12–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1156–N]

Medicare Program; Request for Nominations for the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations from physician medical organizations for individuals to serve on the Practicing Physicians Advisory Council.

Section 4112 of the Omnibus Budget Reconciliation Act of 1990 established the Council to advise the Secretary of the Department of Health and Human Services on proposed regulations and manual issuances related to physicians' services. There will be three Council vacancies on February 28, 2001.

EFFECTIVE DATE: Nominations will be considered if we receive them at the appropriate address, provided below, no later than 5 p.m., E.S.T., on December 30, 2000.

ADDRESSES: Mail or deliver nominations to the following address: Health Care Financing Administration, Center for Health Plans and Providers, Office of Professional Relations, Attention: Paul Rudolf, MD, JD, Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, MD, JD, Executive Director, Practicing Physicians Advisory Council, (202) 690–7418.

SUPPLEMENTARY INFORMATION: Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary of the Department of Health and Human Services (the Secretary) on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Section 1868(a) of the Act requires that the Council consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act, that is, State-licensed physicians of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors.

The Council must include both participating and nonparticipating physicians, as well as physicians practicing in rural and underserved urban areas. In addition, section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

This notice is an invitation to all organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire in 2001 will be considered for reappointment, if renominated, subject to the Federal Advisory Committee Management Handbook. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter, as requested by the Secretary, to discuss proposed changes in regulations and manual issuances that relate to physicians' services. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services provides management and support services to the Council.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee); 5 U.S.C. App. 2; and 45 CFR part 11.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 28, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 00–30717 Filed 12–1–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview; Correction

AGENCY: Health Resources and Services Administration.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** issue of Friday, July 7, 2000, make the following corrections:

Correction

In the **Federal Register** notice of Friday, July 7, 2000, in Part III "Availability of Funds Announced in the HRSA Preview" of FR Doc. 00–16874:

(1) on page 42223, the grant category beginning in the third column under the heading "Healthy Start Initiative Eliminating Disparities in Perinatal Health (CFDA #93.926E)," is amended to: (a) further restrict eligibility to applicants who will establish community-based consortia of individuals and organizations (including State Title V agencies, consumers of project services, public health departments, hospitals, community health centers, and other significant sources of health care services) that are appropriate for participation. Eligibility remains open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b); (b) restrict project areas to those which target a geographic area with high annual rates of infant mortality within a particular State, i.e., no statewide programs will be funded and (c) require that grantees coordinate their services and activities with State Title V agencies. Funding priorities and/or preferences will be given only to applicants who were recipients of Healthy Start community-based grants awarded prior to July 2000 (details will be provided in the application guidance). There will be no special considerations. The estimated amount of this competition will be up to $66,840,000. It is anticipated that 67 awards will be made.

(2) on page 42224, the grant category beginning in the first column under the heading "Interconceptional Care for High-Risk Women and Their Infants (CFDA #93.926K)", is amended to: (a) further restrict eligibility to applicants who will establish community-based consortia of individuals and organizations (including State Title V agencies, consumers of project services, public health departments, hospitals, community health centers, and other significant sources of health care services) that are appropriate for participation. Eligibility remains open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b); (b) restrict project areas to those which target a geographic area with high annual rates of infant mortality within a particular State, *i.e.*, no statewide programs will be funded and (c) require that grantees coordinate their services and activities with State Title V agencies. Funding priorities and/or preferences will be given only to applicants who were recipients of Healthy Start community-based grants awarded prior to July 2000 (details will be provided in the application guidance). There will be no special considerations.

(3) on page 42224, the grant category beginning in the second column under the heading "Improving Women's Health Through Screening and Intervention for Depression During and Around the Time of Pregnancy (CFDA #93.926L)" is amended to: (a) further restrict eligibility to applicants who will establish community-based consortia of individuals and organizations (including State Title V agencies, consumers of project services, public health departments, hospitals, community health centers, and other significant sources of health care services) that are appropriate for participation. Eligibility remains open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b); (b) restrict project areas to those which target a geographic area with high annual rates of infant mortality within a particular State, *i.e.*, no statewide programs will be funded and (c) require that grantees coordinate their services and activities with State Title V agencies. Funding priorities and/or preferences will be given only to applicants who were recipients of Healthy Start community-based grants awarded prior to July 2000 (details will be provided in the application

guidance). There will be no special considerations.

(4) on page 42225, the grant category beginning in the second column under the heading "Healthy Start Initiative Eliminating Disparities in Perinatal Health Border Health (CFDA #93.926N)", is amended to: (a) further restrict eligibility to applicants who will establish community-based consortia of individuals and organizations (including State Title V agencies, consumers of project services, public health departments, hospitals, community health centers, and other significant sources of health care services) that are appropriate for participation. Eligibility remains open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b)); (b) restrict project areas to those which target a geographic area with high annual rates of infant mortality within 62 miles from the Mexican border in a particular State, i.e., no statewide programs will be funded; and (c) require that grantees coordinate their services and activities with State Title V agencies. Funding priorities and/or preferences will be given only to applicants who were recipients of Healthy Start community-based grants awarded prior to July 2000 (details will be provided in the application guidance). There will be no special considerations. The estimated amount of this competition will be up to $1,500,000. It is anticipated that two awards will be made.

The amendments above conform to changes made in the Healthy Start program by Title XV of Public Law 106–310. Prospective applicants who have submitted letters of intent or requested application materials have been notified directly of this withdrawal. It is anticipated that applications for all four of these competitions will be available December 21, 2000. The deadline for Letters of Intent will be January 15, 2001. The application deadline is March 1, 2001. The anticipated project award date is June 1, 2001.

Two pre-application conferences are scheduled for these competitions. The first conference will be held on the afternoon of Wednesday, December 13, 2000, from 1:30–4:00 p.m., at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC, 20001, (202)737–1234. The second conference will be held on Friday, December 15, 2000, at the Hyatt Regency Dallas at Reunion, 300 Reunion Blvd., Dallas, TX, 75207–4498, (214)651–1234, Fax: (214)742–8126, Website: *www.hyatt.com*. If you plan to attend either one of these pre-application conferences, please call Shirletia Meredith at (301)443–0543.

FOR FURTHER INFORMATION CONTACT: Angela Hayes Toliver or Beverly Wright at 301–443–0543 (for CFDA #93.926E); Madelyn Renteria or Alexandra Cossi, at 301–443–0543 (for CFDA #93.926K); Janice Berger or John McGovern at, 301–443–8427(for CFDA #93.926L); or David de la Cruz, at 301–443–8427 (for CFDA #93.926N), Division of Perinatal Systems and Women's Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 11A–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 1–301–443–8427.

Dated: November 29, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–30824 Filed 12–1–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview; Withdrawal

AGENCY: Health Resources and Services Administration.

ACTION: Notice; withdrawal.

SUMMARY: In the **Federal Register** issue of Friday, July 7, 2000, in Part III "Availability of Funds Announced in the HRSA Preview" of FR Doc. 00–16874, on page 42219, the grant category beginning in the second column under the heading "Continuing Education and Development Cooperative Agreement to Advance Education and Program/Policy Development in Maternal and Child Health (CFDA #93.110TP)," is withdrawn from competition while the Agency is considering its options regarding the activities proposed for support. After a decision is made, another announcement will be published in the **Federal Register**.

Prospective applicants who have submitted letters of intent or requested application materials from the HRSA Grants Application Center have been notified directly of this withdrawal.

FOR FURTHER INFORMATION CONTACT: Carol Galaty or Sharon Adamo, Office of Program Development, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 11A–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 1–301–443–2778.

Dated: November 29, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–30825 Filed 12–1–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview; Withdrawal

AGENCY: Health Resources and Services Administration.

ACTION: Notice; withdrawal.

SUMMARY: In the **Federal Register** notice of Friday, July 7, 2000, in Part III "Availability of Funds Announced in the HRSA Preview" of FR Doc. 00–16874, on page 42223, the grant category beginning in the second column under the heading "The Perinatal Systems and Women's Health National Resource Center (CFDA #93.926D)," is withdrawn from competition while the Agency is considering its options regarding the activities proposed for support. After a decision is made, another announcement will be published in the **Federal Register**.

Prospective applicants who have submitted letters of intent or requested application materials from the HRSA Grants Application Center have been notified directly of this withdrawal.

FOR FURTHER INFORMATION CONTACT: Beverly Wright, Division of Perinatal Systems and Women's Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 11A–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 1–301–443–8427.

Dated: November 29, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–30826 Filed 12–1–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request, The Cardiovascular Health Study (CHS)

AGENCY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Cardiovascular Health Study. *Type of Information Request:* Revision. (OMB No. 0925–0334). *Need and Use of Information Collection:* This study will quantify associations between conventional and hypothetical risk factors and coronary heart disease (CHD) and stroke in people age 65 years and older. The primary objectives include quantifying associations of risk factors with subclinical disease, characterize the natural history of CHD, stroke and identify factors associated with clinical course. The findings will provide important information on cardiovascular disease in an older U.S. population and lead to early treatment of risk factors associated with disease and identification of factors which may be important in disease prevention. *Frequency of Response:* twice a year (participants) or once per cardiovascular disease event (proxies and physicians); *Affected Public:* Individuals. *Types of Respondents:* Individuals recruited for CHS and their selected proxies and physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 4,606; *Estimated Number of Responses per respondent:* 4.55; and *Estimated Total Annual Burden Hours Requested:* 1,719.

There are no capital, operating, or maintenance costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent*	Average burden hours per response	Estimated total annual burden hours requested
Participants	3,580	5.6	0.25	1,665
Physicians	606	1.0	0.10	20
Participant proxies	420	1.0	0.25	35
Total	4,606	4.55	0.246	1,719

*Total for 3 years.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have practical utility; (2) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Diane Bild, Division of Epidemiology and Clinical Applications, Epidemiology and Biometry Program, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0707, or e-mail your request, including your address to: bild@nih.gov.

DATES: *Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received on or before February 2, 2001.

Dated: November 16, 2000.

Peter Savage,

Acting Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.

[FR Doc. 00–30713 Filed 12–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

NAG–1: A Non-Steroidal Anti-Inflammatory Drug Related Gene Which Has Anti-Tumorigenic Properties

Thomas E. Eling, Seung Joon Baek (NIEHS)

DHHS Reference No. E–170–00/0 filed 08 Sep 2000

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

Non-steroidal anti-inflammatory drugs (NSAIDs) are widely used in the treatment of inflammatory disease, and their anti-inflammatory effects are believed to result from their ability to inhibit the formation of prostaglandins by prostaglandin H synthase (COX). Two forms of prostaglandin H have been identified, COX–1 and COX–2. The former seems to be constitutively expressed in a variety of tissues while the high expression of the latter has been reported in colorectal tumors. NSAIDs have been shown to be effective in reducing human colorectal cancers and possibly breast and lung cancers. While the exact mechanism(s) by which NSAIDs function has not been elucidated, they could potentially play a critical role in detecting, diagnosing and treating inflammatory diseases as well as cancer. The present invention relates to screening methods for the identification of agonistic and/or antagonistic agents for the activation of the promoter region of NAG–1. Additional claims are directed to 1) the

DNA sequence of NAG–1, 2) compositions containing the NAG–1 sequence and 3) methods for treating cancer patients using NAG–1.

Novel MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY–ESO–1

DHHS Reference No. E–090–00/0 filed 28 Jan 2000 and

MHC Class II Restricted CD4+ T Cell Epitopes From NY–ESO–1 Presented by DP

DHHS Reference No. E–227–00/0 filed 29 Sep 2000
Wang et al. (NCI)
Licensing Contact: Elaine White: 301/496–7056 ext. 282; e-mail: *gesee@od.nih.gov*

NY–ESO–1 is a known tumor antigen which is expressed on a broad range of tumor types, including melanoma, breast, bladder, ovarian, prostate, head and neck cancers, neuroblastoma, and small cell lung cancer. The above-referenced inventions embody the identification of a number of novel immunogenic peptide epitopes, and analogs thereof, which are derived from the NY–ESO–1 tumor antigen.

DHHS Reference No. E–090–00/0 serves to identify novel MHC Class II restricted epitopes of NY–ESO–1 which are recognized by CD4+ T cells. DHHS Reference No. E–227–00/0 embodies the identification of two additional immunogenic peptide epitopes of NY–ESO–1. The latter two epitopes are presented by HLA–DP4, a prevalent MHC Class II allele present in 43–70% of Caucasians. The inventors also determined that the DP allele is highly associated with the NY–ESO–1 antibody production. In addition, one of these epitopes has dual HLA A2 and DP4 specificity, thereby has the potential to generate both CD4+ and CD8+ tumor specific T cells. These epitopes may be of great value as prophylactic and/or therapeutic cancer vaccines for use against a number of common cancers.

T-Cell Epitope of MAGE–12 and Related Nucleic Acids, Vectors, Cells, Compositions, and Methods of Inducing an Immune Response to Cancer

Monica Panelli, Francesco Marincola, Maria Bettinotti (NCI)
DHHS Reference No. E–056–00/0 filed 03 Mar 2000
Licensing Contact: Elaine White; 301/496–7056 ext. 282; e-mail: *gesee@od.nih.gov*

The current invention embodies the identification of a T-cell epitope from the cancer-specific antigen MAGE–12. The MAGE family of genes encodes human tumor specific antigens (TSA), and various genes of this family are expressed by tumors of different histologies (melanoma, lung, colon, breast, laryngeal cancer, sarcomas, certain leukemias) and not by normal cells (except testis and placenta). The MAGE–12 peptide which is the subject of the current invention is a specific epitope within MAGE–12 (residues170–178) which is recognized by tumor infiltrating lymphocytes in the context of HLA–Cw0702 (a common HLA type in the Caucasian population). This T-cell epitope is advantageous in that it represents a novel tumor rejection antigen for use as a peptide vaccine against melanoma or other cancer types expressing MAGE–12 and may therefore be of great value for use in cancer immunotherapy.

Secreted Frizzled Related Protein, sFRP, Fragments and Methods of Use Thereof

JS Rubin, A Uren (both of NCI), and F Reichsman, S Cumberledge
Serial No. 09/546,043 filed 10 April 00
Licensing Contact: Susan S. Rucker; 301/496–7056 ext 245; e-mail: *ruckers@od.nih.gov*

This application relates to signal transduction pathways and mechanisms. More particularly, the application describes various active fragments of the secreted Wnt binding protein sFRP–1 (secreted *F*rizzled *R*elated *P*rotein-1). The sFRP–1 fragments described are capable of binding to Wnt and therefore are able to modulate Wnt activity. The fragments may or may not contain the cysteine rich domain (CRD) of sFRP–1 suggesting that the CRD is not essential for Wnt binding. In addition, in contrast to earlier findings employing higher levels of sFRP–1, the ability of sFRP–1 to enhance Wnt signaling at low levels is also described suggesting biphasic regulation of Wnt signaling by sFRP–1. The sFRP–1 fragments described herein may be useful in the further study of Wnt signaling as well as targets for the development of small molecules which can modulate Wnt signaling. PHS also owns additional intellectual property related to sFRP–1 which is described in US Patent Application Serial Number 09/087,031 and which has been published as WO 98/54325 (12/03/1998).

This work has appeared, in part, in Uren, A et al. JBC 275(6): 4374–4382 (Feb 11, 2000).

Dated: November 22, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–30714 Filed 12–1–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J. R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; e-mail: jd212g@nih.gov). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

Entitled: "Discovery of Gene Expressed in Many Cancers and Only Normal Testis"

Inventors: Drs. Ira H. Pastan (NCI), Xiu F. Liu (NCI), Byungkook Lee (NCI) and Lee J. Helman (NCI).

DHHS Ref. No. E–161–00/0 Filed: September 1, 2000.

Large numbers of expressed sequence tags (EST's) have been cloned from various normal and cancer tissues. Cancer-testis antigens are a distinct class of differentiation antigens that have a restricted pattern of expression in normal tissues. These genes are primarily expressed in the primitive germ cells, spermatogonia, in the normal testis. Malignant transformation is often associated with activation or derepression of silent Cancer-testis genes, and this results in the expression of Cancer-testis antigen in a variable proportion of a wide range of human tumors. Three related genes, termed XAGEs, were recently identified by homology walking using the dbEST database.

The XAGE–1 gene is a human X-linked gene that is strongly expressed in normal testis, Ewing's sarcoma, alveolar rhabdomyosarcoma, as well as breast cancer and other cancers (*e.g.*, lung carcinoma, prostate adenocarcinoma, ovarian carcinoma, pancreatic adenocarcinoma, glioblastoma, etc.). The largest open reading frame of the XAGE–1 transcript encodes a putative protein of 16.3 kD (p16) with a potential transmembrane domain at the amino terminus. In addition, the XAGE–1 transcript contains a second ATG in the reading frame corresponding to residue 66, which would encode a 9 kD protein (p9). In vitro transfection experiments using 293T cells have revealed a 9 kD protein. However, the size of the protein expressed endogenously is not yet known. XAGE–1 shares homology with GAGE/PAGE proteins in the C-terminal end.

The invention relates to the fact that the XAGE–1 gene is expressed in a number of human cancers, specifically: prostate, pancreatic, and ovarian cancers, as well as a large percentage of breast and lung tumors. The protein p9 and p16, immunogenic fragments thereof, analogs of these proteins, and nucleic acids encoding these proteins, fragments, or analogs, can be administered to persons with XAGE–1 expressing cancers to raise or augment an immune response to the cancer. The invention further provides nucleic acid sequences encoding the protein, as well as expression vectors, host cells, and antibodies to the proteins. Further, the invention provides immunoconjugates that comprise an antibody to p16 or to p9, and an effector molecule, such as a label, a radioisotope, or a toxin. The invention also provides methods of inhibiting the growth of XAGE–1 expressing cells by contacting them with immunoconjugates of an anti-p9 or p16 antibody and a toxic moiety. The invention also provides kits for the detection of p9 or p16 proteins in a sample. The XAGE–1 gene and encoded protein could be of value in the development of a cancer diagnostic and cancer immunotherapy.

The above mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: November 22, 2000.

Jack Spiegel,

Director, Division of Technology Development & Transfer, Office of Technology Transfer.

[FR Doc. 00–30716 Filed 12–1–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.
Date: December 1, 2000.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, Bethesda, MD 20017.
Contact Person: Eric H Brown, Scientific Review Administrator, Review Branch, Room 7204, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30711 Filed 11–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel, ZDK1 GRB–B(J3)M.
Date: December 4, 2000.
Time: 12:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: 2 Democracy Plaza, 6707 Democracy Blvd, Rm 645, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ned Feder, Scientific Review Administrator, Review Branch, DEA NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name: of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–B(J2)S.
Dote: December 15, 2000.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 2 Democracy Plaza, 6707 Democracy Blvd, Rm 645, Bethesda, MD 20892, (Telephone Conference Call).
Contact-Person: Ned Feder, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 27, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30708 Filed 12–1–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research, Gene Therapy & Therapeutics & Molecular Structural Biology Section.

Date: December 7–8, 2000.

Closed: December 7, 2000, 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: NIH, Building 30, Room 132, Bethesda, MD 20892.

Closed: December 7, 2000, 4:20 p.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: NIH, Building 30, Room 132, Bethesda, MD 20892.

Open: December 8, 2000, 8:30 a.m. to 11:55 a.m.

Agenda: Laboratory Tours, Poster Presentations.

Place: NIH, Building 30, Room 132, Bethesda, MD 20892.

Closed: December 8, 2000, 12:05 p.m. to 4:30 p.m.

Agenda: To review and evaluate meeting Report Formulation, Exit Interviews.

Place: NIH, Building 30, Room 132, Bethesda, MD 20892.

Contact Person: Wendy A. Liffers, JD, Director, Office of Science Policy & Analysis, National Institute of Dental & Craniofacial Res., 31 Center Drive, Rm. 5B55, Bethesda, MD 20892–2190.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30709 Filed 12–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 18, 2000.

Time: 12 to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John R. Lymangrover, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 20, 2000.

Time: 2 to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg., Rm 5As.25u, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tracy A. Shahan, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5AS25H, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30710 Filed 12–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors Meeting; Review of Nominations for Listing in the 10th Report on Carcinogens: Revised Preliminary Agenda and Review Order

This notice provides updated information and notes changes for the meeting of the NTP Board of Scientific Counselors' Report on Carcinogens (RoC) Subcommittee to be held on December 13, 14, & 15, 2000, at the Wyndham City Center, 1143 New Hampshire Ave., NW, Washington, DC 20037. On December 13, registration will begin at 9:00 am and the meeting will begin at 9:30 am. On December 14 & 15, the meeting will begin at 8:30 am. Pre-registration is not required; however, persons requesting time to make oral, public comments are asked to notify Dr. Mary S. Wolfe, Executive Secretary, prior to the meeting (contact information given below).

Background

This meeting covers the peer review of nominations for listing in the 10th RoC, and includes opportunity for public input. An earlier notice of this meeting, which included information about the nominations, review order, solicitation of oral and written comments, and how to secure background documents for the nominations, was published in the **Federal Register** (October 17, 2000, Volume 65, Number 201, Pages 61352–61354).

Changes in Review Order

While the agenda for this meeting remains preliminary, the order of the review as published in the previous notice has been altered as follows: the review of Chloramphenicol changes from six to five; Talc (Asbestiform and Non-Asbestiform) changes on the agenda from number seven to number six; and Estrogens, Steroidal changes from number five to number seven for review. Summary data and the revised, preliminary order for review of the nominations are listed in the table below:

SUMMARY DATA FOR NOMINATIONS TO BE REVIEWED AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' REPORT ON CARCINOGENS SUBCOMMITTEE—DECEMBER 13, 14, & 15, 2000

Nomination to be reviewed/cas number	Primary uses or exposures	To be reviewed for	Tentative review order
Broad Spectrum UV Radiation and UVA, UVB and UVC.	Solar and artificial sources of ultraviolet radiation	Listing in the 10th Report.	1
Chloramphenicol/(56–75–7)	Used widely as an antibiotic since the 1950s	Listing in the 10th Report.	5
Estrogens, Sterodial	Estrogens are widely used in post-menopausal therapy and in oral contraceptives for women.	Listing in the 10th Report.	7
Metallic Nickel & Nickel Alloys	Widely used in commercial applications for over 100 years.	Listing in the 10th Report.	4
Methyleugenol/(93–15–2)	Flavoring agent used in jellies, baked goods, nonalcholoic beverages, chewing gum, candy, and ice cream. Also used as a fragrance for many perfumes, lotions, detergents and soaps.	Listing in the 10th Report.	3
Talc/(14807–96–6) (Asbestiform and (Non-Asbestiform).	Asbestiform talc (i.e. talc containing Asbestiform fibers) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing. Non-asbestiform talc (i.e. talc not containing asbestiform fibers) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing. Exposure to general population occurs through use of products such as cosmetics.	Listing in the 10th Report.	6
Trichloroethylene (TCE)/(79–01–6)	Trichloroethylene is widely used as a solvent with 80–90% used worldwide for degreasing metals.	Upgrade to Known	2
Wood Dust	It is estimated that at least two million people are routinely exposed occupationally to wood dust worldwide. Non-occupational exposure also occurs. The highest exposures have generally been reported in wood furniture and cabinet manufacturer, especially during machine sanding and similar operations.	Listing in the 10th Report.	8

The RoC Subcommittee will provide separate recommendations for each of the agents, substances, mixtures or exposure circumstance listed in the table above. This includes separate recommendations for Broad Spectrum UV Radiation and for UVA, for UVB, and for UVC; for Metallic Nickel and for Nickel Alloys, and for Talc Asbestiform and for Talc Non-Asbestiform.

The agenda and a roster of Subcommittee members is available on the NTP web homepage at *http://ntp-server.niehs.nih.gov/* and upon request from Dr. Wolfe (Dr. Mary S. Wolfe, P.O. Box 12233, A3–07, Research Triangle Park, NC 27709 (telephone 919/541–3971; FAX 919/541–0295; email wolfe@niehs.nih.gov). Summary minutes for the previous meeting are available on the NTP web homepage and upon request from Dr. Wolfe.

Dated: November 21, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Services.

[FR Doc. 00–30712 Filed 12–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Request for Comments on Substances Nominated to the National Toxicology Program (NTP) for Toxicological Studies and on the Testing Recommendations Made by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC)

Summary

The National Toxicology Program (NTP) routinely solicits, accepts and reviews for consideration nominations for toxicological studies to be undertaken by the Program on substances of potential human health concern. Nominations are solicited widely from Federal agencies, the public, and other interested parties and those received undergo several levels of review before toxicological studies are designed and implemented. The NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) serves as the first level of review for NTP nominations. At the October 27, 2000 ICCEC meeting, 18 new nominations were reviewed and testing recommendations were made. As part of an effort to inform the public and to obtain input for consideration when selecting chemicals for evaluation, the NTP routinely seeks public comment on (1) substances nominated to the Program for toxicological studies and (2) the testing recommendations made by the ICCEC. This announcement provides brief background information about the nomination of substances for NTP study; presents the ICCEC's testing recommendations from the October 27, 2000 meeting; solicits public comment on those nominations and recommendations; and requests the submission of additional relevant information for consideration by the NTP in its subsequent evaluation of the nominations.

Background

The NTP actively seeks to identify and select for study chemicals and agents with the highest potential for

adversely impacting public health. The nomination process is open to all interested parties and substances selected for study generally fall into two broad overlapping categories: (1) Those substances of greatest concern for public or occupational health based on the extent of human exposure and suspicion of toxicity; and (2) substances for which toxicological data gaps exist and additional studies would aid in assessing potential human health risks by facilitating cross-species extrapolation and evaluation of dose-response relationships. Particular assistance is also sought for the nomination of studies that permit the testing of hypotheses to enhance the predictive ability of future NTP studies, address mechanisms of toxicity, or fill significant gaps in the knowledge of the toxicity of chemicals or classes of chemicals. Substances may be studied for a variety of health-related effects, including but not limited to reproductive and developmental toxicity, genotoxicity, immunotoxicity, metabolism and disposition, as well as carcinogenicity. Selections for NTP testing also consider legislative mandates that require responsible manufacturers to evaluate their own chemicals or agents for health and environmental effects. The possible human health consequences of anticipated or known human exposure, however, remain the over-riding factor in the decision to study a particular chemical or agent.

The review and selection of substances nominated for study is a multi-level process. A broad range of concerns are addressed during this process through the participation of representatives from Federal agencies, the NTP Board of Scientific Counselors—an external scientific advisory body, the NTP Executive Committee—the NTP Federal interagency policy body, and a public comment period. This process is described in further detail in a March 2, 2000 **Federal Register** Announcement (Volume 65, Number 42, pages 11329–11331). As a result of this multi-step evaluative process for NTP nominations, the Program receives appropriate direction and guidance to ensure that it's testing program addresses toxicological concerns relative to all areas of public health, and furthermore, that there is balance among the types of substances selected for study (e.g., industrial chemicals, consumer products, therapeutic agents, etc.). As such, it must be recognized that for any given committee review, the substances being considered for new testing do not necessarily reflect the overall balance of substances historically or currently being evaluated by NTP in it's testing program. For further information on NTP studies (previous or in progress) visit the NTP web page at the URL listed at the end of this announcement.

Nominated Substances and ICCEC Review

The NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) is composed of representatives from the Agency for Toxic Substances and Disease Registry, Consumer Product Safety Commission, Department of Defense, Environmental Protection Agency, Food and Drug Administration's National Center for Toxicological Research, National Cancer Institute, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, National Library of Medicine, and the Occupational Safety and Health Administration. As part of the review and selection process for nominations, the ICCEC meets once or twice annually to review and evaluate the nominations and to make testing recommendations with respect to both specific types of studies and testing priorities. At its meeting on October 27, 2000, the ICCEC reviewed 18 new nominations for NTP studies. For 15 of these nominations, pharmacokinetic, toxicity, and/or carcinogenicity studies were recommended. A testing recommendation for three nominations was deferred pending receipt of (1) additional information or data from the nominator or other organizations on related studies completed, anticipated or in progress, or (2) additional information on production, exposure, use patterns, and regulatory needs. The nominated substances with CAS numbers, nomination source, types of studies recommended, study rationale and other information are given in the attached tables.

Request for Comment

Interested parties are encouraged to provide comments or supplementary information on the nominated substances and recommendations identified in this announcement. The NTP would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies, as well as information on current production levels, human exposure, use patterns, environmental occurrence, or public health concerns for any of the substances listed in the attached tables. Comments or information should be sent to Dr. Scott Masten at the address given below within 60 days of the publication date of this announcement. Persons responding to this request are asked to include their name, affiliation, mailing address, phone, fax, e-mail address and sponsoring organization (if any) with the submission. An electronic copy of this announcement as well as further information on the NTP and the NTP Chemical Nomination and Selection Process can be accessed through the NTP web site. The URL for the NTP homepage is http://ntp-server.niehs.nih.gov.

Contact may be made by mail to Dr. Scott Masten, NIEHS/NTP, P. O. Box 12233, Research Triangle Park, North Carolina 27709; by telephone at (919) 541–5710; by FAX at (919) 558–7067; or by email to masten@niehs.nih.gov.

Dated: November 20, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

Attachment—Substances Nominated to the NTP for Study and Testing Recommendations Made by the ICCEC on October 27, 2000

TABLE 1.—SUBSTANCES RECOMMENDED FOR TESTING

Substance [CAS Number]	Nominated by	ICCEC recommendations	Study rationale; other information
Aluminum complexes found in drinking water, Aluminum fluoride, [7784–18–1], Aluminum citrate, [31142–56–0].	Environmental Protection Agency; National Institute of Environmental Health Sciences.	Long-term drinking water studies to address pharmacokinetics, neurotoxicity, bone development, and reproduction and developmental toxicity. —Consider testing in transgenic animal models of neurodegenerative disease.	Drinking water contaminants with a high health research priority; known neurotoxicity of aluminum; need for better understanding of pharmacokinetics and toxicity of aluminum species occurring in drinking water.

TABLE 1.—SUBSTANCES RECOMMENDED FOR TESTING—Continued

Substance [CAS Number]	Nominated by	ICCEC recommendations	Study rationale; other information
Bilberry fruit extract, [84082–34–8].	National Cancer Institute	—*In vitro* and *in vivo* genotoxicity testing ..	Widespread human exposure through use as a dietary supplement; lack of toxicity information.
Black cohosh, [84776–26–1].	National Cancer Institute; National Institute of Environmental Health Sciences.	—Subchronic toxicity testing in young and aged female animals. —Two-generation reproductive and developmental toxicity study.	Widespread human exposure through use as a dietary supplement; reported estrogenic activity; inadequate toxicity information.
Blue-Green algae (dietary supplements and selected toxins).	National Cancer Institute	—Subchronic toxicity and neurotoxicity studies of commercial blue-green algae dietary supplements. —Consider testing specific cyanobacterial toxins pending results of Blue-Green algae dietary supplement and microcystin-LR studies.	Widespread human exposure through drinking water and via contamination of algal dietary supplements; demonstrated acute toxicity but only limited chronic toxicity information available.
Cefuroxime, [55268–75–2]	Food and Drug Administration.	—Genotoxicity testing (Syrian hamster embryo *in vitro* cell transformation assay; *in vivo* micronucleus assay).	Prescription drug with widespread and potentially long-term use; lack of chronic toxicity data for any member of this class of drugs.
Clarithromycin, [81103–11–9].	Food and Drug Administration.	—Genotoxicity testing (Syrian hamster embryo *in vitro* cell transformation assay; *in vivo* micronucleus assay).	Prescription drug with widespread and potentially long-term use; numerous known toxicities in short-term studies; lack of chronic toxicity data.
D&C Red No. 27, [13473–26–2] and D&C Red No. 28, [18472–87–2].	Food and Drug Administration.	—*In vitro* percutaneous absorption testing —Photocarcinogenicity testing dependent on results of absorption studies.	Approved colorings for drugs and cosmetics that can lead to DNA damage; lack of sufficient data on long-term phototoxicity or photocarcinogenicity.
N,N-Dimethyl-*p*-toluidine, [99–97–8].	National Cancer Institute	—Subchronic toxicity testing pending review of industry test plans and/or data developed under EPA's High Production Volume Chemical Challenge Program.	High production volume chemical with potential for widespread human exposure and limited chronic toxicity or carcinogenicity data; genotoxic; suspicion of carcinogenicity.
Lemon Oil, [8008–56–8] and Lime Oil, [8008–26–2].	Food and Drug Administration.	—Photogenotoxicity testing ..... —Photocarcinogenicity testing dependent on results of phototogenotoxicity studies.	Widespread consumer exposure as a fragrance component; known phototoxicity; long-term toxicity unknown.
Local anesthetics that metabolize to 2,6-xylidine or *o*-toluidine, Bupivacaine, [38396–39–3], Prilocaine, [721–50–6].	Private Individual; National Institute of Environmental Health Sciences.	—Short-term *in vitro/in vivo* mechanistic studies to evaluate carcinogenic metabolite formation and genotoxicity of representative local anesthetic compounds.	Widespread clinical use and human exposure; potentially metabolized to carcinogenic and neurotoxic intermediates; little available quantitative metabolism or genotoxicity data.
Microcystin-LR, [101043–37–2].	National Institute of Environmental Health Sciences.	—Toxicokinetic, subchronic, reproductive toxicity, chronic toxicity and carcinogenicity studies including doses relevant to environmental concentrations in drinking water. —Consider carcinogenicity testing in Japanese Medaka fish model.	Cyanobacteria and their toxins are drinking water contaminants with a high health research priority; many have high acute toxicity and known hepatotoxicity and hepatocarcinogenicity.
Organotins occurring in drinking water, Monomethyltin trichloride, [993–16–8], Dimethyltin dichloride, [753–73–1], Monobutyltin trichloride, [1118–46–3], Dibutyltin dichloride, [683–18–1].	Environmental Protection Agency; National Institute of Environmental Health Sciences.	—Long-term single chemical and binary mixture drinking water studies to address pharmacokinetics, neurotoxicity, immunotoxicity, and reproductive and developmental toxicity. —Consider testing in transgenic animal models of neurodegenerative disease.	Drinking water contaminants with a high health research priority; numerous organotins have demonstrated a broad spectrum of toxicity; chronic toxicity information on organotin species primarily found in drinking water is limited.
All-*trans*-retinyl palmitate, [79–81–2].	Food and Drug Administration.	—Phototoxicity and photocarcinogenicity testing.	Widespread use in cosmetic products; known biochemical and histological cutaneous alterations; other retinoids known to enhance photocarcinogenesis.

TABLE 1.—SUBSTANCES RECOMMENDED FOR TESTING—Continued

Substance [CAS Number]	Nominated by	ICCEC recommendations	Study rationale; other information
S-Adenosylmethionine, [29908–03–0].	National Cancer Institute	—*In vitro* genotoxicity testing (Syrian hamster embryo cell transformation and DNA alkylation assays). —Subchronic toxicity testing dependent on results of genotoxicity studies.	Widespread exogenous human exposure through use as a dietary supplement; limited toxicity data available.
Senna [8013–11–4]	Food and Drug Administration	—Carcinogenicity testing in p53 transgenic mouse model	Data needed to complete safety evaluation of stimulant laxatives; transgenic studies will complement manufacturer sponsored carcinogenicity studies.

TABLE 2.—SUBSTANCES FOR WHICH A TESTING RECOMMENDATION IS DEFERRED PENDING RECEIPT AND CONSIDERATION OF ADDITIONAL INFORMATION

Substance [CAS Number]	Nominated by	Nominated for	Nomination rationale	Additional information needed
1,3-Dichloropropane, [142–28–9], 2,2-Dichloropropane, [594–20–7], 1,1-Dichloropropene, [563–58–6].	Environmental Protection Agency; National Institute of Environmental Health Sciences.	—Short-term comprehensive drinking water toxicity studies. —Pharmacokinetics —Medaka studies .... —Testing in human bladder cell transformation model.	Drinking water contaminants with high health research priority; very limited toxicity data; known toxicity and carcinogenicity of structurally similar compounds.	Additional drinking water occurrence data; production volumes; potential sources of drinking water contamination; anticipated regulatory value of additional toxicity data.
Hydergine, [8067–24–1].	National Cancer Institute.	—Genotoxicity testing.	Ergot alkaloid prescription drug with recent increase in "off label" and dietary supplement use in healthy individuals; lack of available information on toxicity and carcinogenicity.	Dietary supplement sales and use information; regulatory agency information needs.
Yohimbe bark extract, [85117–22–2], Yohimbine, [146–48–5].	National Cancer Institute.	—Micronucleus assay.	Significant human exposure through use as a dietary supplement; suspicion of carcinogenicity of yohimbine based on structural similarity to reserpine.	Dietary supplement use levels and patterns; regulatory agency informaiton needs.

[FR Doc. 00–30715 Filed 12–1–00; 8:45 am]
BILLING CODE 4140–00–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Treatment Improvement Protocols (TIPs) Evaluation Project—Prospective Study—New—Since 1993, SAMHSA's Center for Substance Abuse Treatment has published 37 Treatment Improvement Protocols, which provide administrative and clinical practice guidance to the substance abuse treatment field. This is the third of three major studies and is designed to assess readers' use of TIPs and the impact of TIPs on changing substance abuse treatment practices.

The Prospective Study seeks to determine the most cost effective level of support needed by substance abuse treatment providers to implement in practice the information contained in TIPs. Specifically, this study will examine the use of TIP # 35, "Enhancing Motivation for Change in Substance Abuse Treatment," by treatment professionals in four different areas of the country. The study will use a pretest/post-test experimental design in which treatment facilities will be randomly assigned to one of four conditions: (1) The control group (which will receive the TIP and no additional support); (2) a TIP-plus curriculum group; (3) a TIP-plus curriculum and training group; and (4) a TIP-plus curriculum, training, and ongoing support group.

Data will be collected at baseline and follow-up. Measures will include providers' awareness of TIP 35, their knowledge of the content contained in this TIP, their attitudes toward the TIP and its content, and their use of this TIP and its impact on practices within their facilities. Burden for State substance abuse (SSA) agency directors in the four areas of the country chosen will consist of information gathering by telephone. Burden for other respondents will consist of completing the pretest and post-test questionnaires. The total estimated burden for this project, to be completed in a 1-year period, is summarized below.

Respondent	Number of respondents	Responses/respondent	Average burden/response (hrs.)	Total burden (hrs.)
SSA Directors	6	1	1.0	6
Pretest:				
Facility Directors	577	1	.14	81
Clinical Supervisors	577	1	.14	81
Program Counselors	2,350	1	.14	329
Post-test:				
Facility Directors	577	1	.19	110
Clinical Supervisors	577	1	.19	110
Program Counselors	2,350	1	.19	447
Total	3,510			1,164

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 27, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–30757 Filed 12–1–00; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in December 2000. A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and an update on the draft guidelines for alternative specimen testing and on-site testing.

If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will also include the review, discussion, and evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App. 2, section 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014. The transcript for the open session will be available on the following website: www.health.org/workplace. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention Drug Testing Advisory Board.

Meeting Date: December 5, 2000; 8:30 a.m.–4:30 p.m.; December 6, 2000; 8:30 a.m.–3:30 p.m.

Place: Embassy Suites Hotel, 4300 Military Road, Chevy Chase, Maryland 20815.

Type: Open: December 5, 2000; 8:30 a.m.–Noon; Closed: December 5, 2000; Noon–4:30 p.m.; Closed: December 6, 2000; 8:30 a.m.–3:30 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014, and FAX: (301) 443–3031.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: November 27, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–30699 Filed 12–1–00; 8:45 am]
BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Comment Period: Draft Policy on Maintaining the Ecological Integrity of the National Wildlife Refuge System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, extension of comment period.

SUMMARY: We are extending the comment period on the **Federal Register** notice dated October 17, 2000 (65 FR 61356) that invites the public to comment on our draft ecological integrity policy.

DATES: Submit comments on or before December 15, 2000.

ADDRESSES: Send comments concerning this draft ecological integrity policy via mail, fax or email to: Elizabeth Souheaver, Chief, Branch of Wildlife Resources, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703–358–2248; email: *ecointegrity__policy__comments @fws.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Souheaver, Chief, Branch of Wildlife Resources, (703) 358–1744.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice dated October 17, 2000, we published our draft ecological integrity policy. We propose to establish an internal policy to guide personnel of the National Wildlife Refuge System (System) in implementing the clause of the National Wildlife Refuge System Improvement Act of 1997 that calls for maintaining the "biological integrity, diversity, and environmental health" of the System. The holistic integration of these three qualities constitutes ecological integrity.

We received several requests to extend the public comment period beyond the December 1, 2000 due date. In order to ensure that the public has an adequate opportunity to review and comment on our draft policy, we are extending the comment period to December 15, 2000.

Dated: November 29, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–30781 Filed 12–1–00; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–51437–A, N–51437–B]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855 and on July 23,1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for a park and tree farm.

N–51437–A (Park)

T. 21 S., R. 60 E., M.D.M., sec. 15, E½NE¼NW¼SW¼, E½W½NE¼NW¼SW¼, SW¼NW¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼SW¼. (approximately 52.5 acres)

N–51437–B (Tree Farm)

T. 21 S., R. 60 E., M.D.M., sec. 15, SE¼NW¼SW¼. (approximately 10 acres)

Both parcels are located at Buffalo Drive and Flamingo Road. The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for water line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–24659 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–24663 under the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for telephone line purposes which have been granted to the Sprint Central by Permit No. N–55679 under the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–58098 under the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for power line purposes which have been granted to the Nevada Power Company by Permit No. N–59318 under the Act of October 21, 1976 (43 U.S.C. 1761).

7. Those rights for roadway purposes which have been granted to Clark County by Permit N–59691 under the Act of October 21, 1976 (43 U.S.C. 1761). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a park and tree farm. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park and tree farm. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 21, 2000.

Cheryl Ruffridge,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–30703 Filed 12–1–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–73990]

Notice of Realty Action: Direct Sales

AGENCY: Bureau of Land Management.

ACTION: Direct Sale of Reversionary Interest—Recreation or Public Purposes Patent, Number 27–99–0008.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, was patented to West Charleston Baptist Church on February 19, 1999 under the Recreation or Public Purpose Act for a church and school. West Charleston Baptist Church requests the purchase of the reversionary interest. The land has been examined and found suitable for sale at fair market value under the provisions of the Federal Land Policy and Management Act (43 CFR 2711.3–3).

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., Sec. 7: Lots 22, 27–30
Containing 25.00 acres, more or less.

The land is not required for any federal purpose. The direct sale is consistent with current Bureau planning for this area and would be in the public interest. The patent will be subject to the provisions of the Federal Land Policy and Management Act and applicable regulations of the Secretary of the Interior, and the land will continue to be subject to the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. A 40 foot easement in width along the North boundary and a 30 foot easement along the West boundary of Lot 22, sec. 7, T. 20 S., R. 60 E., Mount Diablo Meridian, Nevada; TOGETHER with a 20 foot spandral area in the Northwest corner of Lot 22, sec. 7, T. 20 S., R. 60 E., Mount Diablo Meridian, Nevada, in favor of the City of Las Vegas, for roads, public utilities, and flood control purposes to insure continued ingress and egress to adjacent lands.

2. A 30 foot easement in width along the West boundary of Lot 27, sec. 7, T. 20 S., R. 60 E., Mount Diablo Meridian, Nevada, in favor of the City of Las Vegas, for roads, public utilities, and flood control purposes to insure continued ingress and egress to adjacent lands.

3. An easement covering the West 20 feet of the East 45.5 feet of Lots 28 and 29, sec. 7, T. 20 S., R. 60 E., Mount Diablo Meridian, Nevada, in favor of the City of Las Vegas, for roads, public utilities, and flood control purposes to insure continued ingress and egress to adjacent lands.

4. A 30 foot easement in width along the South boundary of Lot 29, sec. 7, T. 20 S., R. 60 E., Mount Diablo Meridian, Nevada, in favor of the City of Las Vegas, for roads, public utilities, and flood control purposes to insure continued ingress and egress to adjacent lands.

5. A 30 foot easement in width along the South boundary and a 30 foot easement in width along the West boundary of Lot 30, sec. 7, T. 20 S., R. 60 E., Mount Diablo Meridian, Nevada, in favor of the City of Las Vegas, for roads, public utilities, and flood control purposes to insure continued ingress and egress to adjacent lands.

6. Those rights for public roadway purposes which have been granted to Clark County, its successors or assigns, by right-of-way No. N–59722 the pursuant to the Act of October 21, 1976 (43 U.S.C.1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (P.L. 105–263).

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed direct sale to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Comments: Interested parties may submit comments regarding whether the BLM followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for a direct sale. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the decision will become effective February 2, 2001. The lands will not be offered for conveyance until after the decision becomes effective.

Dated: November 21, 2000.

Mark T. Morse,

Field Manager, Las Vegas, NV.

[FR Doc. 00–30704 Filed 12–01–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–66784]

Notice of Realty Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855 and on July 23, 1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register.** The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for an equestrian park.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E., M.D.M.
Sec. 7, SW¼SW¼NE¼NW¼, W½NW¼SE¼NW¼.
Containing 7.5 acres, more or less, located at Cameron Street and Maulding Avenue.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an equestrian park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper

administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an equestrian park. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 17, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–30705 Filed 12–1–00; 8:45 am]

BILLING CODE 4510–HC–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 65 FR 50019 and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB before January 3, 2001.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send email to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Public Attitudes Toward and Understanding of Science and Technology (OMB Control No. 3145–0033).

1. *Use of the information.* The proposed continuing information collection is a survey used to monitor public attitudes towards science and technology, including the public's level of scientific understanding and policy preferences on selected issues. This telephone survey has been conducted approximately every two years for more than 20 years, and the information collected with it appears in the Congressionally mandated National Science Board biennial report, Science and Engineering Indicators, and other pubications. Information on public attitudes and understanding of science and technology is used by government and nongovernment policy makers in developing and designing science and education programs and by researchers in government, industry, and academia. The proposed collection will occur in early 2001.

2. *Expected respondents.* The survey will be conducted by telephone. Using state-of-the-art, computer-assisted telephone interviewing software and random digit dialing, approximately 2000 adults will be contacted and asked a series of questions designed to measure their attitudes toward science and technology and their understanding of scientific concepts.

3. *Burden on the public.* The estimated respondent burden is 1000 hours. This estimate is based on the completion of 2000 telephone interviews with an average length of 30 minutes each.

Dated: November 28, 2000.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 00–30749 Filed 12–1–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 13, 2000, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 18, 2000 to the following applicant: Colin M. Harris, Permit No. 2001–023.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–30746 Filed 12–1–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95–541; 45 CFR Part 670).

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Description of Permit and Modification

1. On September 15, 1999, the National Science Foundation issued a permit (ACA #2000–004) to Dr. Paul J. Ponganis after posting a notice in the August 17, 1999 **Federal Regiser**. Public comments were not received. A request to modify the permit was posted in the **Federal Register** on October 20, 2000. No public comments were received. The modification, issued by the Foundation on November 1, 2000, allows for entry into the Cape Crozier Antarctic Specially Protected Area No. 124 for the purpose of conducting a census on the newly hatched Emperor penguin chicks.

Location: ASPA 124—Cape Crozier, Ross Island.

Dates: November 15, 2000 to February 28, 2002.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–30747 Filed 12–1–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: State Agreements Program, as authorized by Section 274(b) of the Atomic Energy Act.
2. Current OMB approval number: 3150–0029.
3. How often the collection is required: One time or as needed.
4. Who is required or asked to report: Thirty-two Agreement States who have signed Section 274(b) Agreements with NRC.
5. The number of annual respondents: 32.
6. The number of hours needed annually to complete the requirement or request: 1005.
7. Abstract: Agreement States are asked on a one-time or as-needed basis, e.g., to respond to a specific incident, to gather information on licensing and inspection practices and other technical statistical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

Submit, by February 2, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 28th day of November, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–30787 Filed 12–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–146]

GPU Nuclear, Inc. and Saxton Nuclear Experimental Corporation; Saxton Facility; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Amended License No. DPR–4 for the Saxton Facility, held by Saxton Nuclear Experimental Corporation (SNEC) and GPU Nuclear, Inc. (GPUN). The indirect transfer would be to FirstEnergy Corp. (FE), headquartered in Akron, Ohio.

According to a September 26, 2000, application submitted by FE and GPUN, as supplemented by letters dated September 27, November 9, and November 14, 2000, GPU, Inc., the corporate parent of SNEC and GPUN, is planning to be merged with and into FE. FE will remain as the surviving corporation in this transaction. Upon consummating the merger, FE will become a registered holding company under the Public Utility Holding Company Act of 1935, and SNEC and GPUN, currently direct or indirect subsidiaries of GPU, Inc., will become direct or indirect subsidiaries of FE.

No physical changes to the Saxton Facility or operational changes are being proposed in the application. SNEC, the licensed owner of the facility, will continue to be so following the merger, and GPUN, currently the licensee authorized to decommission the facility, will continue to maintain that status after the merger. No direct transfer of the license will result from the planned merger.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holders of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By December 26, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306,

and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon counsel for FE, Roy P. Lessey, Esq., Akin, Gump, Strauss, Hauer, & Feld, L.L.P., 1333 New Hampshire Ave., NW., Suite 400, Washington, DC 20036, (202) 887–4500, (202) 887–4288 (fax), e-mail: *rlessy@akingump.com;* and Mary O'Reilly, Esq., FirstEnergy Corp., 76 South Main Street, Akron, OH 44308, (330) 384–5224, (330) 384–3875 (fax), e-mail: *meoreilly@firstenergycorp.com;* counsel for GPUN, David R. Lewis, Esq., Shaw Pittman, 2300 N Street, NW., Washington, DC 20037–1128, (202) 663–8474, (202) 663–8007 (fax), e-mail: *david.lewis@shawpittman.com;* and Michael J. Connolly, Esq., Vice President—Law, GPU Service, Inc., 300 Madison Avenue, Morristown, NJ 07962, (973) 455–8245, (973) 993–4801 (fax), e-mail: *mconnolly@gpu.com;* the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *ogclt@nyc.gov;* and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 3, 2001, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the license transfer application dated September 26, 2000, and supplements dated September 27, November 9, and November 14, 2000, available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 22nd day of November 2000.

For the Nuclear Regulatory Commission.

John L. Minns,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30786 Filed 12–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al.; Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 189 to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (NNECO), which revised the Technical Specifications (TSs) for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London, Connecticut. The amendment was effective as of the date of its issuance.

The amendment modifies License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3 (MNPS3) by revising TSs 1.40, "Spent Fuel Pool Storage Pattern"; 1.41, "3-OUT-OF-4 AND 4-OUT-OF-4"; 3/4.9.1.2, "Boron Concentration"; 3/4.9.7, "Crane Travel-Spent Fuel Storage Areas"; 3/4.9.13, "Spent Fuel Pool-Reactivity"; 3.9.14, "Spent Fuel Pool-Storage Pattern"; 5.6.1.1, "Design Features—Criticality"; and 5.6.3, "Design Features—Capacity." In addition, the amendment revises INDEX pages xii and xv for new figures and page numbers and replaces Figures 3.9–1 and 3.9–2 with four new figures and makes changes to the TS Bases consistent with changes to their respective TS sections. These changes are being made to support the increase in the capacity of the spent fuel pool at MNPS3 from 756 assemblies to 1,860 assemblies.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 7, 1999 (64 FR 48672). A request for a hearing was filed on October 6, 1999, by the Connecticut Coalition Against Millstone (CCAM) and the Long Island Coalition Against Millstone (CAM). As a result of the request, the Atomic Safety and Licensing Board (ASLB) held hearings on July 19, 2000. The ASLB, reaching a conclusion on the contentions brought before it, issued its Memorandum and Order on October 26, 2000. Having reached a conclusion, the ASLB ordered the hearing terminated. However, the proceeding continues, since, on November 13, 2000, CCAM/CAM petitioned the Commission for review of the Memorandum and Order.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this amendment. Accordingly, as described above, the amendment has been issued and made immediately effective.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to this action see: (1) The application for an amendment filed by NNECO dated March 19, 1999, as supplemented April 17, May 5, June 16, July 26, and November 21, 2000, (2) Amendment No. 189 to Facility Operating License No. NPF–49, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 28th day of November 2000.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30784 Filed 12–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–336 and 50–423]

Northeast Nuclear Energy Company, et al.; Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 250 and 188 to Facility Operating License Nos. DPR–65 and NPF–49, issued to Northeast Nuclear Energy Company (NNECO), which revised the Technical Specifications (TSs) for operation of the Millstone Nuclear Power Station, Unit Nos. 2 and 3 located in New London, Connecticut. The amendment was effective as of the date of its issuance.

The amendments revise the TSs to relocate selected procedural details contained in the radiological effluent technical specifications (RETS) to the Radiological Effluent Monitoring and Offsite Dose Calculation Manual which is a licensee-controlled document. The relocation will be done in accordance with NRC guidance provided in: (1) Generic Letter 89–01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program;" (2) NUREG–1431, "Standard Technical Specifications Westinghouse Plants;" and (3) NUREG–1432, "Standard Technical Specifications Combustion Engineering Plants." In addition, several administrative changes to the TSs for Unit 2 are included.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 9, 2000, (65 FR 48754). A request for a hearing was filed on September 8, 2000, by the Connecticut Coalition Against Millstone and the STAR (Standing for Truth About Radiation) Foundation.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendments have been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that the amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

For further details with respect to this action see (1) the application for amendments dated February 22, 2000, as supplemented August 28, 2000, (2) Amendment Nos. 250 and 188 to Facility Operating License Nos. DPR–65 and NPF–49, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 28th day of November 2000.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30788 Filed 12–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TXU Utilities Electric Company, et al.; Comanche Peak Steam Electric Station, Units 1 and 2; notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89 issued to TXU Electric Company, *et al.* (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively. The CPSES facility is located at the licensee's site in Somervell County, Texas.

The proposed amendments would revise the technical specifications to reconfigure spent fuel storage in the spent fuel pool and increase the spent fuel pool storage capacity from 2,026 to 3,373 fuel assemblies.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed license amendment includes changes which provide the criteria for acceptable fuel storage in Region I/Region II racks. The revised criteria for acceptable fuel storage in the Region I/Region II racks are discussed below.

The Region I/Region II racks proposed for Spent Fuel Pool One (SFP1) and Spent Fuel Pool Two (SFP2), are a nominal 10.6 × 11 inch and nominal 9 × 9 inch center to center spacing respectively. The SFP1 Region II racks are similar to the existing Region II racks in SFP2 (nominal 9 × 9 inch center to center). The proposed Region I/Region II racks and the existing Region II racks in SFP2 are free standing whereas the low density racks being removed from SFP1 are bolted to the pool. Administrative controls are used to maintain the specified storage patterns and to assure storage of a fuel assembly in a proper location based on initial U–235 enrichment, burnup, and decay time. The increased storage capacity results in added weight in the pools and additional heat loads.

There is no significant increase in the probability of an accident concerning the potential insertion of a fuel assembly in an incorrect location in the Region I/Region II racks. TXU Electric has used administrative controls to move fuel assemblies from location to location since the initial receipt of fuel on site. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification spent fuel rack storage configuration limitations.

There is no increase in the probability of the loss of normal cooling to the fuel storage pool water due to the presence of soluble boron in the pool water for subcriticality control. A concentration of soluble boron similar to that currently approved (Technical Specification 3.7.16) has always been maintained in the fuel storage pool water. The amount of soluble boron required to offset the reactivity increase associated with water temperature outside the normal range was established for the proposed storage configurations.

The consequences of all of these changes have been assessed and the current acceptance criteria in the licensing basis of CPSES will continue to be met. The nuclear criticality, thermal-hydraulic, mechanical, material and structural designs will accommodate these changes. Potentially affected analyses, including a dropped spent fuel assembly, a loss of spent fuel pool cooling, a seismic event, a fuel assembly placed in a location other than a prescribed location, and a stuck fuel assembly and the associated uplift force continue to satisfy the CPSES licensing basis acceptance criteria. The analysis methods used by TXU Electric are consistent with methods used by TXU Electric in the past or methods used elsewhere in the industry and accepted by the NRC.

Based on the acceptability of the methodology used and compliance with the current CPSES licensing basis, use of the Region I/Region II racks and the increase in storage capacity do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The potential for criticality in the spent fuel pool is not a new or different type of accident. The potential criticality accidents have been reanalyzed to demonstrate that the pool remains subcritical.

Soluble boron has been maintained in the fuel storage pool water since its initial operation. The possibility of a fuel storage pool dilution is not affected by the proposed change to the Technical Specifications. Therefore, extending the Technical Specification controls for the soluble boron to include the Region II racks in SFP1 will not create the possibility of a new or different kind of accidental pool dilution.

With credit for soluble boron now a major factor in controlling subcriticality for the Region II racks in SFP1 (with no neutron absorber installed), the evaluation of fuel storage pool dilution events previously performed was updated. The results of the updated evaluation concluded that an event which would result in a reduction of the criticality margin below the 5% margin recommended by the NRC is not credible. In addition, the no soluble boron 95/95 criticality analysis assures that a boron concentration of zero ppm [parts per million] will not result in criticality.

The proposed changes which ensure the maintenance of the fuel storage pool boron concentration and storage configuration, do not represent new concepts. The actual boron concentration in the fuel storage pool is currently maintained at 2,400 ppm for SFP1 and SFP2 for refueling purposes. The criticality analysis determined that a boron concentration of 800 ppm (non-accident) and 1,900 ppm (accident) results in a $k_{eff} \leq 2$ 0.95.

For the Region I racks, credit is taken in the reactivity control analysis for the neutron absorber Boral (soluble boron is not credited). The criticality evaluation concluded that the requirement of $k_{eff} \leq 0.95$ when fully flooded with unborated water, including uncertainties, remain satisfied.

There is no significant change in plant configuration, equipment design, or usage of plant equipment. The safety analysis for boron dilution has been performed; however, the criticality analyses assure that the pool will remain subcritical with no credit for soluble boron. Therefore, the proposed changes will not create the possibility of a new or different kind of accident.

The installation and removal of racks meet the requirements of NUREG 0612, "Control of Heavy Loads at Nuclear Power Plants," and current CPSES Technical Requirement 13.9.34, "Refueling—Crane Travel—Spent Fuel Storage Areas."

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The NRC guidance has established that an evaluation of margin of safety should address the following areas:

(1) Nuclear criticality considerations

(2) Thermal-Hydraulic considerations

(3) Mechanical, material and structural consideration

Proposed Technical Specifications 3.7.17 and 4.3 and the associated fuel storage requirements will provide adequate margin to assure that the fuel storage array (Region I and Region II) will always remain subcritical by the 5% margin recommended by the NRC.

While the criticality analysis for Region II utilized credit for soluble boron, the storage configurations have been defined using k_{eff} calculations to ensure that the spent fuel rack k_{eff} will be less than 1.0 with no soluble boron. The criticality analysis for Region I utilized credit for the neutron absorber material Boral, the storage configurations have been defined using k_{eff} calculations to ensure that the spent fuel rack k_{eff} will be less than or equal to 0.95 with no soluble boron.

Soluble boron credit is used to offset off-normal conditions (such as a misplaced assembly) and to provide subcritical margin such that the fuel storage pool k_{eff} is maintained less than or equal to 0.95.

The loss of substantial amount[s] of soluble boron from the spent fuel pools, which could lead to exceeding a k_{eff} of 0.95, has been evaluated and shown not to be credible. These evaluations show that the dilution of the spent fuel pools boron concentration from 1,900 ppm to 800 ppm is not credible and that the Region II spent fuel rack k_{eff} will remain less than 1.0 when flooded with unborated water.

The thermal-hydraulic evaluation of spent fuel pool cooling demonstrates that the temperature margin of safety will be maintained. Evaluation of the spent fuel pool cooling system for the increased heat loads shows that the spent fuel cooling system will maintain the temperature of the bulk spent fuel pool water within the limits of the existing licensing basis. Additionally, it shows that the maximum temperature will be within the existing design temperatures for the Region I / Region II racks, liner, structure, and cooling system and will not have any significant impact on the spent fuel pool demineralizers. Thus, the existing licensing basis remains valid, and there is no significant reduction in the margin of safety for the thermal-hydraulic design or spent fuel cooling.

The main safety function of the spent fuel pool and the Region I / Region II racks is to maintain the spent fuel assemblies in a safe configuration through normal and abnormal operating conditions. The design basis floor responses of the Fuel Building were confirmed to be adequate and conservative and the floor loading will not exceed the capacity of the Fuel Building. The structural considerations of the Region I / Region II racks maintain margin of safety against tilting and deflection or movement, such that the Region I / Region II racks do not impact each other or the pool walls, damage spent fuel assemblies, or cause criticality concerns. Thus, the margin of safety with respect to mechanical, material or structural considerations is not significantly reduced by the use of the Region I / Region II racks.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, 20852 from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852 or by electronically accessing the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.org).

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 3, 2001, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 or by electronically accessing the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.org). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852 by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington,

DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for license amendments falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662, dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendments dated October 4, 2000, which is available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852 and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://nrc.gov).

Dated at Rockville, Maryland, this 27th day of November 2000.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30785 Filed 12–1–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43620; File No. SR–CSE–00–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc., To Provide for the Listing and Trading of Index Fund Shares

November 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 13, 2000, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by the Exchange. On November 17, 2000, the CSE filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons, and to grant accelerated approval of the proposed rule change and Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its rules to adopt listing standards and trading rules for Index Fund Shares, including generic listing standards, which would permit the Exchange to trade, either by listing or pursuant to unlisted trading privileges ("UTP"), series of Index Fund Shares. Below is the text of the proposed rule change; new language is in italics.

* * * * *

Chapter XI

Trading Rules

Rule 11.9 National Securities Trading System

* * * * *

Rule 11.9(x) Index Fund Shares

(1) Applicability. This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified.

(a) Index Fund Share[4] means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's[5] request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Funds Shares.

Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange. The[6] term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(3) Disclosure. Upon request of a customer, members and member organizations shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) Designation. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio and shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person thereof, as shall have authorized use of such index. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances:

(i) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days;

(ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of an open-ended management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(c) Voting. Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

** * * Interpretation and Policies*

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 Million;

(ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv) The underlying index or portfolio must include a minimum of 13 stocks; and

(v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation.

(i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and

(iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Series Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CSE requested accelerated *effectiveness* of the proposed rule change and provided reasons therefor. *See* Letter from James M. Flynn, Staff Attorney, CSE, to Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission (November 16, 2000). The CSE in fact meant to request accelerated *approval* under Section 19(b)(2) of the Act in Amendment No. 1. Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 21, 2000. Amendment No. 1 also made certain minor changes to the text of the proposed rule language, discussed below.

[4] In the proposed rule language submitted by the CSE, the term "Index Fund Sbare" as used here inadvertently had the letter "s" at the end. In the final rule text, the word "Share" will be in the singular. *See* Amendment No. 1.

[5] In the initial language of the proposed rule, the CSE inadvertently omitted the apostrophe in the word "holder's." The CSE has indicated that, in the official rule language, the apostrophe will be included. Telephone conservation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 21, 2000.

[6] In the proposed rule language submitted by the CSE, the two sentences of this paragraph were inadvertently run together and joined with a comma. The CSE has indicated that, in the official rule language, the sentences will be separated by a period, and the first letter of the word beginning the second sentence ("The") will be capitalized. *See* Amendment No. 1.

trading variation may vary among different series of Index Fund Shares but will be set at 1/16, 1/32, or 1/64 of $1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of the Cincinnati Stock Exchanges Rules and By-Laws will apply to all series of Index Fund Shares.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a[7] member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes, in a new CSE Rule 11.9(x), to adopt listing standards to accommodate the trading, whether by listing or pursuant to UTP, of Index Fund Shares. The CSE has stated that these standards are similar to those established by other exchanges.[8] The CSE believes that the proposed rule change would further the intent of Rule 19b–4(e) under the Act[9] by allowing trading on the Exchange to begin in Index Fund Shares, subject to the proposed generic standards, without the need for notice and comment and Commission approval. The CSE also believes that this new procedure has the potential to reduce the time frame for bringing these securities to market or for trading them pursuant to UTP.

i. Index Fund Shares Generally

Index Fund Shares are securities that are issued by an open-end management investment company ("Fund") that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. Index Fund Shares will be issued by an entity registered with the Commission as an open-end management investment company, and which may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index.

Issuance of Index Fund Shares by a Fund will be made only in minimum size aggregations or multiples thereof ("Creation Units"). The applicable Creation Unit size aggregation will be set forth in the Fund's prospectus and will vary from one series of Index Fund Shares to another, but generally will be of substantial size (*e.g.*, value in excess of $450,000 per Creation Unit). It is expected that a Fund will issue and sell Index Fund Shares through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Index Fund Shares in Creation Unit size aggregations is received in proper form.

Index Fund Shares will be traded on the Exchange like other equity securities, and the CSE's equity trading rules will apply to the trading of Index Fund Shares. The Exchange expects that Creation Unit size aggregations of Index Fund Shares generally will be issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitrageurs, and the Exchange designated dealers (generally referred to as "specialists"). Redemption of Index Fund Shares generally will be made "in kind" with a portfolio of securities and cash exchanged for Index Fund Shares that have been tendered for redemption. Issuances of redemptions also could occur for cash under specified circumstances (*e.g.*, if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

The Exchange expects that a Fund will make available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with issuance of Index Fund Shares of a particular series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net expenses and liabilities for such period.

ii. Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing standards used by the CSE for Portfolio Depository Receipts, currently found in Chapter XI, Rule 11.9(v) of the Exchange Rules.[10]

If Index Fund Shares are to be listed on the CSE, it will establish a minimum number of Index Fund Shares that must be outstanding at the commencement of Exchange trading, and such minimum number will be included in any required submission under Rule 19b–4.

In connection with continued listing, the CSE will consider the suspension of trading in, or removal from listing of, a Fund upon which a series of Index Fund Shares is based when any of the following circumstances arise: (1) there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (3) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. However, the CSE will not be required to suspend or delist from trading, based on the above factors, any Index Fund Shares for a period of twelve months after the initial listing of such Index Fund Shares for trading on the Exchange. In any case, upon termination of a Fund, the Exchange will require that Index Fund Shares issued in connection with that Fund be removed from Exchange listing.

The Exchange believes that these proposed criteria are similar to the Index Fund Shares listing criteria currently used by the Amex.[11]

iii. Required Standards To Permit Trading

The CSE proposes to adopt generic listing and delisting standards to permit the trading, either by listing or pursuant to UTP, of Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[12] Accordingly, the CSE proposes to approve a series of Index Fund Shares for listing or trading under the following criteria.

Initial Listing Criteria

Upon the initial listing of a series of Index Fund Shares, component stocks that in the aggregate account for at least 90 percent of the weight of the underlying index or portfolio must have a minimum market value of at least $75 million. The competent stocks representing at least 90 percent of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. The most heavily weighted component stocks in an underlying index or portfolio cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio.[13] All securities in an underlying index or portfolio must be listed on either a national securities exchange or the Nasdaq Stock Market (including the Nasdaq SmallCap Market). Finally, any series of Index Fund Shares must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.

Continued Listing Criteria

The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer will erect a fire-wall around the personnel who have access to information concerning changes and adjustments to the index, and the index will be calculated by a third party who is not a broker-dealer.

The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based upon, for example, current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

Index Fund Shares will be registered in book entry form through the Depository Trust Company. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading. Trading in Index Fund Shares on the Exchange will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. (all times Eastern Standard Time) for each series of Index Fund Shares, as specified by the CSE.

Pursuant to UTP, the CSE will rely upon the primary exchange that originally listed the respective Fund to monitor, surveil, and insure that the proceeding listing criteria are met by each index or portfolio that is listed and traded on the CSE. The CSE has stated that it will also monitor the respective primary exchange's actions, news releases, and disclosures made about any Index Fund Shares traded on the CSE.

iv. CSE Rules Applicable to the Trading of Index Fund Shares

Index Fund Shares are considered "securities" under the CSE's Rules and are subject to all applicable trading rules, including the provisions of CSE Chapter XIV, Rule 14.9, ITS "Trade-Throughs" and "Locked Markets," which prohibit Exchange members from initiating trade-throughs for Intermarket Trading System securities, as well as rules governing priority, parity, and precedence of orders; market volatility-related trading halt provisions; and responsibilities of CSE Designated Dealers.[14] CSE equity margin rules also

Continued

[7] In the proposed rule language submitted by the CSE, the word "a" as used here was omitted. The CSE has indicated that, in the official rule language, the word "a" will appear before the world "member." *See* Amendment No. 1.

[8] *See* Exchange Act Release No. 34–42988 (June 28, 2000), 65 FR 42041 (July 7, 2000) (accelerated approval of BSE generic listing standards for Index Fund Shares); Exchange Act Release No. 34–42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (accelerated approval of CHX generic listing standards for Portfolio Depository Receipts and Investment Company Units); Exchange Act Release No. 34–42833 (May 26, 2000), 65 FR 35679 (June 5, 2000) (accelerated approval of CBOE generic listing standards for Index Portfolio Shares); Exchange Act Release No. 34–42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approval of Amex generic listing standards for Portfolio Depository Receipts and Index Fund Shares).

[9] 17 CFR 240.19b–4(e).

[10] *See* Exchange Act Release No. 34–39268 (October 22, 1997), 62 FR 56211 (October 29, 1997) (approval of CSE proposal to establish listing criteria for Portfolio Depository Receipts).

[11] *See supra* note 8.

[12] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations ("SROs") to list and trade new derivative products that comply with existing SRO trading rules, procedures, surveillance programs, and listing standards, without submitting a proposed rule change under Section 19(b) of the Act, 15 U.S.C. 78s(b).

[13] The CSE states that, under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25 percent of a fund's total assets, and at least 50 percent of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5 percent of such fund's total assets.

[14] The term "Designated Dealer" means a proprietary Member who maintains a minimum net capital of at least the greater of $500,000 or the amount required under Rule 15c3–1 under the Act, 17 CFR 240.15c3–1, and who has been approved by the Exchange's Securities Committee to perform market functions by entering bids and offers for

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will apply to trading in Index Fund Shares.

The CSE's surveillance procedure for Index Fund Shares will be similar to the existing CSE procedures used for Portfolio Depositary Receipts [15] and will incorporate and rely upon existing Exchange surveillance systems. The Exchange has stated that it believes these procedures will effectively monitor the trading activity in Index Fund Share products so as to ensure full compliance with Exchange rules and the federal securities laws.[16]

Prior to the commencement of trading in Index Fund Shares, the Exchange will issue a circular to members highlighting the characteristics of Index Fund Shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular will discuss what Index Fund Shares are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Index Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange Rules, dissemination information, trading information, and the applicability of suitability rules.

Additionally, the circular will inform members of specific Exchange policies, such as trading halts and market conditions particular to such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters have been reached.[17] Second, the circular will advise that the Exchange may consider factors such as the extent to which trading is not occurring in one or more deposited securities and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market in such securities are present.

Pursuant to Rule 12f–5 under the Act,[18] to trade a particular class or type of security pursuant to UTP, the Exchange must have rules providing for transactions in such class or type of security. The CSE's proposed rule change is designed to create standards substantially similar to those approved for other exchanges.

v. Disclosure to Customers

The CSE will require its members to provide all purchasers of newly issued Index Fund Shares with a prospectus for each separate Fund. Because the Creation Units will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act of 1933 [19] will apply to all investors in Index Fund Shares, including investors who make secondary market purchases on the Exchange in Index Fund Shares. With respect to series of Index Fund Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940,[20] the CSE will inform members and member organizations regarding disclosure obligations with respect to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

For any exempted series, the Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the Fund issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to a purchaser. In addition, members and member organizations shall include such written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [Fund name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer a member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

vi. Minimum Fractional Change

The CSE proposes that the minimum fractional change for Index Fund Shares on the Exchange will be 1/16th, 1/32nd, or 1/64th of $1.00, depending on the series of Index Fund Shares. The Exchange has stated that these are the same minimum fractional increments for the trading of Index Fund Shares on the CSE, until such time as decimal increments are implemented.

2. *Statutory Basis*

The CSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act, [21] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating securities transactions; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received in connection with the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Designated Issues into the System. *See* CSE Rule 11.9(a)(3).

[15] *See* CSE Rule 11.9(v).

[16] *See* Amendment No. 1

[17] *See* CSE Rules, Chapter XIV.

[18] 17 CFR 240.12f–5.

[19] 15 U.S.C. 77e(b)(2).

[20] 15 U.S.C. 80a–24(d).

[21] 15 U.S.C. 78f(b)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–00–06 and should be submitted by December 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5). [22] Specifically, the Commission finds that the CSE's proposal to establish generic standards to permit the trading of Index Fund Shares pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. [23] By establishing generic standards, the proposal should reduce the CSE's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the CSE's proposal will promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act. [24] The Commission notes that it has previously approved similar rules, including generic listing standards, relating to similar products traded on the Boston Stock Exchange, the American Stock Exchange, the Chicago Board Options Exchange, and the Chicago Stock Exchange. [25]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures, and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. [26] The Commission's approval of the proposed generic listing standards for Index Fund Shares will allow those series of Index Fund Shares that satisfy those standards to start trading under Rule 19b–4(e), without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities. The Commission notes that, while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that Index Fund Shares and like products that it approved for trading under similar rules on other exchanges would allow investors: (1) To respond quickly to market changes through intra-day trading opportunities, (2) to engage in hedging strategies similar to those used by institutional investors, and (3) to reduce transactions costs for trading a portfolio of securities. [27] The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed standards for Index Fund Shares should produce the same benefits to the CSE and to investors.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the trading of Index fund Shares under Rule 19b–4(e). All series of Index Fund Shares listed under the proposed standards will be subject to the full panoply of CSE rules and procedures that now govern the trading of existing securities on the CSE. [28] Accordingly, any new series of Index Fund Shares listed and traded on the Exchange, or pursuant to UTP, will be subject to CSE rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, and margin. These criteria allow the CSE to consider the suspension of trading and the delisting of a series if an event occurred that made further dealings in such securities inadvisable. This will give the CSE flexibility to delist Index Fund Shares if circumstances warrant such action.

The Commission believes that the CSE's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading Index Fund Shares. Members and member organizations will be required to provide to all purchasers of Index Fund Shares a written description of the terms and characteristics of these securities, to include their description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by the customer. The proposal also requires a member or member organization carrying an omnibus account for a non-member broker-dealer to notify the non-member that execution of an order to purchase Index Fund Shares constitutes an agreement by the non-member to provide the product description to its customers.

The Commission also notes that, upon the initial listing or trading pursuant to UTP of any Index Fund Shares, the CSE will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the prospectus or product description delivery requirements of Exchange members and inform members of their responsibilities under CSE Rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investors about the terms and characteristics of a particular series and are consistent with Section 6(b)(5) of the Act. [29]

In addition, the CSE has developed specific listing criteria for series of Index Fund Shares qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78s(b)

[24] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] *See supra* note 8.

[26] *See* Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (adopting release for Rule 19b–4(e)).

[27] *See supra* note 25.

[28] The Commission notes that, although Index Fund Shares are not leveraged instruments and therefore do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective Funds. Accordingly, the level of risk involved in the purchase or sale of Index Fund Shares is similar to the risk involved in the purchase or sale of traditional common stock. Nevertheless, the Commission believes there are unique aspects to trading Index Fund Shares, which the Exchange has sufficiently and adequately addressed in this proposal.

[29] 15 U.S.C. 78f(b)(5).

of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of Index fund Shares be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the underlying indexes and portfolios are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts, and are therefore consistent with Section 6(b)(5) of the Act. Furthermore, the Commission finds that the Exchange's proposal to trade Index Fund Shares in increments of 1/16, 1/32, or 1/64, of $1.00, until the Exchange is required to convert to decimal trading, is consistent with the Act.

The Exchange also represents that the Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which products such as Index Fund Shares are based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index, and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

In its proposed generic listing standards, the CSE represents that it will rely upon its existing surveillance procedures for supervision of trading in Index Fund Shares listed or traded pursuant to Rule 19b–4(e). The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Index Fund Shares, including those listed or traded under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[30] The Commission further notes that the Exchange has represented that it will file form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements.[31]

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the CSE's proposal regarding the listing and trading of Index Fund Shares will be substantially similar to the rules for similar products traded on other exchanges that the Commission has previously approved, and that they raise issues that previously have been the subject of a full comment period under Section 19(b) of the Act.[32] The Commission does not believe that the proposal raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[33] to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–CSE–00–06) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30719 Filed 12–1–00; 8:45 am]

BILLING CODE 8010–01–M

[30] 15 U.S.C. 78f(b)(5).

[31] Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 1, 2000.

[32] 15 U.S.C. 78s(b) *See supra* note 25.

[33] 15 U.S.C. 78f(b)(6).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43604; File No. SR–CSE–00–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc. Relating to the Listing and Trading of Trust Issued Receipts

November 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 13, 2000, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 17, 2000, the CSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons, and to grant accelerated approval of the proposed rule change and Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its listing standards for Trust Issued Receipts ("TIRs") to establish generic standards that permit listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of TIRs pursuant to Rule 19b–4(e) under the Act.[4] The text of the proposed rule change is available at the principal office of the CSE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CSE requested accelerated effectiveness of the proposed rule change and provided reasons therefore. *See* Letter from James M. Flynn, Staff Attorney, CSE, to Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission (November 16, 2000). The CSE in fact meant to request accelerated approval of the proposal in Amendment No. 1. Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 21, 2000. Amendment No. 1 also corrected a typographical error in the proposed rule text.

[4] 17 CFR 240.19b–4(e).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CSE Chapter XI, Rule 11.9(w) (Trust Issued Receipts), to establish generic standards that permit listing and trading, or trading pursuant to UTP, of TIRs pursuant to Rule 19b–4(e) under the Act.

On July 17, 2000, the Commission approved a CSE proposal to adopt certain listing standards for TIRs and to trade two kinds of TIR—Internet HOLDRs and Biotech HOLDRs—pursuant to UTP.[5] This proposal included new rules stating that the CSE may trade, whether by listing or pursuant to UTP, TIRs based on one or more securities.[6] In addition, the new rules provided that the Exchange's Constitution and all other rules and policies of the Board of Trustees apply to the trading of TIRs on the Exchange.[7] For each trust, the CSE will establish a minimum number of TIRs required to be outstanding at the time of commencement of trading on the Exchange.[8] In addition, following the initial 12-month period after formation of a trust and commencement of trading on the Exchange, the CSE will consider the suspension of trading in, or removal from listing of a trust upon which a series of TIRs is based, under any of the following circumstances: (1) The trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of TIRs for 30 or more consecutive trading days; (2) the Trust has more than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1,000,000; or (4) if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.[9]

The CSE now intends to trade additional TIR products (*e.g.,* Pharmaceutical HOLDRs and Telecommunications HOLDRs) that currently are listed on other exchanges and that are developed from time to time. To accommodate the efficient listing or trading, or trading pursuant to UTP, of additional TIRs, the CSE proposes to add a new Interpretation to the Exchange's existing rules that would establish generic standards for the listing and trading of TIRs pursuant to Rule 19b–4(e). Under the new Interpretation, the Exchange could list or trade, pursuant to Rule 19b–4(e), any TIRs that meet the following additional criteria: (1) Each security underlying the TIR must be registered under Section 12 of the Act; [10] (2) each company whose securities are underlying securities for the TIR must have a minimum public float of at least $150 million; (3) each security underlying the TIR must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) each company whose securities are underlying securities for the TIR must have an average daily trading volume of at least 100,000 shares during the preceding 60-day trading period; (5) each company whose securities are underlying securities for the TIR must have an average daily dollar value of shares traded of at least $1 million; and (6) the most heavily weighted security in the TIR cannot initially represent more than 20 percent of the overall value of the TIR.

The CSE believes that these additional criteria will ensure that no security included as an underlying security in a TIR product will be readily susceptible to manipulation, while at the same time permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The CSE also believes that these criteria will ensure sufficient liquidity for those investors seeking to purchase and deposit the underlying securities with the trustee to create a new TIR.

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Sections 6(b)(5) [12] in particular, in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule would impose any inappropriate burden on competition. The CSE believes that the proposed rule would encourage competition among markets by allowing more than one exchange to list and trade TIRs pursuant to Rule 19b–4(e) under the Act.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment No. 1 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–00–05 and should be submitted by December 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1

The Commission finds that the proposed rule change and Amendment No. 1 are consistent with the

[5] *See* Exchange Act Release No. 43024 (July 17, 2000), 65 FR 45640 (July 24, 2000).

[6] *See* CSE Chapter XI, Rule 11.9(w)(3).

[7] *See* CSE Chapter XI, Rule 11.9(w)(1). However, exceptions exist where a trading rule is inconsistent with the TIR listing standards or where the context otherwise requires. *See id.*

[8] *See* CSE Chapter XI, Rule 11.9(w)(4)(a).

[9] *See* CSE Chapter XI, Rule 11.9(w)(4)(b).

[10] 15 U.S.C. 78*l*.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.19b–4(e).

requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5).[14] Specifically, the Commission finds that establishing generic standards to permit listing and trading of TIRs pursuant to Rule 19b–4(e) will further the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act.[15] By establishing generic standards, the proposal should reduce the CSE's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the CSE's proposal will promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[16] Furthermore, the Commission notes that it has previously approved similar proposals by the Chicago Stock Exchange ("CHX") and the American Stock Exchange ("Amex") to establish generic listing standards for TIRs.[17]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[18] The Commission's approval of the proposed generic listing standards for TIRs and the CSE will allow TIRs that meet those standards to start trading pursuant to Rule 19b–4(e) without the need for notice an comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities. The Commission notes that, while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any TIRs listed under the generic standards through regular inspections.

The Commission has previously approved a CSE proposal to establish certain listing standards for TIRs and to trade two series of TIRs (Internet HOLDRs and Biotech HOLDRs) pursuant to UTP.[19] In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the CSE's rules and surveillance programs that govern their trading, and determined that the CSE proposal was consistent with Section 6(b)(5) of the Act.[20] The Commission also believes that additional TIRs, that satisfy the proposed generic standards and thus can be listed or traded pursuant to Rule 19b–4(e) without prior Commission approval, should produce the same benefits to the CSE and to investors. As the Commission noted in the prior approval, trading of these products will be subject to the full panoply of rules and procedures that govern the trading of securities on the CSE, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.[21]

The Commission further finds that: (1) By requiring that the underlying securities in a TIR be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq; and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those trust issued receipt products listed and traded pursuant to Rule 19b–4(e). The Commission believes that these listing criteria will help to ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The Commission further believes that these criteria should help to ensure that the securities underlying such TIRs are well capitalized and actively traded, which will help ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b–4(e). Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act because they serve to prevent fraudulent or manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[22]

The Commission further notes that, in connection with its previous review and approval of the trading of two series of TIRs on the CSE, it approved the Exchange's surveillance procedures and disclosure and prospectus delivery requirements for TIRs.[23] In accord with these previous findings, the Commission believes that these rules, which will govern the trading of TIRs pursuant to Rule 19b–4(e), will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Finally, the Commission notes that the CSE, when trading a new derivative securities product under Rule 19b–4(e), must comply with certain recordkeeping requirements pertaining to each such product and must file Form 19b–4(e)[24] with the Commission within five business days after commencement of trading a new TIR under the generic standards.[25]

In conclusion, the Commission believes that the CSE's proposed rules governing the listing and trading of TIRs pursuant to Rule 19b–4(e) will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[26]

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act. The Commission notes that the generic listing standards for TIRs at the CSE will be substantially similar to the listing standards at the Amex and CHX that the Commission has approved in the past.[27] The Commission also observes that the proposal concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act.[28] The Commission does not believe that the proposal raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[29] to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–CSE–00–05) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30770 Filed 12–1–00; 8:45 am]

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[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b).

[16] 15 U.S.C. 78f(b)(5). In approving these rules, the Commission notes that is has considered the proposed rules' impact on efficiency, completion, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See* Exchange Act Release No. 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000).

[18] *See* Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (adopting release for Rule 19b–4(e)).

[19] *See* Exchange Act Release No. 43042 (July 17, 2000), 65 FR 45640 (July 24, 2000).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* 65 FR at 45643.

[22] 15 U.S.C. 78f(b)(5).

[23] *See* 65 FR 45643–44.

[24] 17 CFR 249.820.

[25] *See* 17 CFR 19b–4(e)(2).

[26] 15 U.S.C. 78f(b)(5).

[27] *See supra* note 17.

[28] 15 U.S.C. 78s(b). *See supra* note 17.

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43624; File No. SR–DTC–00–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to the Processing of Low Volume Tender Offers

November 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 29, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify the policy of DTC regarding low volume tender offers. A low volume tender offer is an offer in which the offeror is seeking to purchase for cash up to 5% of the outstanding shares of an equity issue or any amount of a debt issue. Low volume tender offers do not include an exchange offer or an offer by the issuer of the target security. The proposed rule change clarifies that it is DTC's policy (i) not to make an offeror's information about a low volume tender offer available to participants through DTC's Reorganization Inquiry for Participants System ("RIPS") unless the offeror uses DTC's Automated Tender Offer Program ("ATOP") to process the offer and (ii) not to make securities available to the offeror at the conclusion of a low volume tender offer processed through ATOP until DTC has received payment for the securities from the offeror.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As DTC has gained experience in processing low volume tender offers during recent years, DTC has sought to improve the manner in which it handles such offers. In a small number of cases, the offeror making a low volume tender offer sent DTC information to be entered into RIPS and paid DTC's low volume tender offer fee[3] but did not use ATOP to process acceptances of the offer. In such cases the offeror included in the offering documents an instruction that participants who wished to accept the offer should do so by a free book-entry delivery at DTC to the account of a participant represented to be acting on behalf of the offeror. Participants accepting such an offer did not have all the benefits of ATOP. Those benefits include more detailed information in the RIPS announcement, such as information about the existence of any withdrawal rights in the offer and information about the offeror's payment arrangements, and an indication on their daily participant statements while the offer is open that a tendered position is outstanding. In order to assure that its participants receive the benefits of ATOP, as a matter of policy DTC does not announce a low volume tender offer in RIPS unless the offer is processed through ATOP.

When a low volume tender offer is not processed through ATOP, payment for any securities purchased in the offer usually, if not always, are made to participants outside of DTC's facilities. It can be difficult for participants to assure themselves that securities delivered to the offeror by a free book-entry delivery at DTC are promptly paid for at the end of the offer. To give its participants the efficiency and safeguards of payment through DTC's facilities, DTC requires the offeror in a low volume tender offer processed through ATOP to send payment to DTC for any securities purchased in the offer before DTC makes the securities available to the offeror.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will facilitate the processing of low volume tender offers at DTC. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since low volume tender offers will be processed with the safeguards of the ATOP procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC charges a fee of $2,700 in connection with low volume tender offers processed through its facilities. Securities Exchange Act Release No. 41032, (February 9, 1999) 64 FR 7931 (February 17, 1999) [File No. SR–DTC–99–01]. DTC will continue to charge that fee, which is not affected by the proposed rule change.

Section 17A(b)(3)(F).[4] Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed, among other things, to protect investors and the public interest. DTC's policy of requiring low volume tender offers to be processed through ATOP and of not making securities available to an offeror until payment for the shares tendered is received should help to ensure that those tendering shares will be paid for their tendered shares. This should help DTC and its participants to protect investors and is in the public interest.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC to immediately apply the safeguards discussed above to the processing of low volume tender offers.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–00–13 and should be submitted by December 26, 2000.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–DTC–00–13) be and hereby is approved.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30718 Filed 12–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43626; File No. SR–GSCC–00–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Enhancements to the Government Collateral Finance Repo Service and Clarifying Certain Risk Management Practices of the Service

November 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 5, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on July 13, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow GCF Repo securities lenders to satisfy their collateral allocation requirements with "comparable securities," benchmark U.S. Treasury securities, or cash. Similarly, the proposed rule change will allow GCF Repo securities borrowers, under certain conditions, to return "comparable securities," benchmark U.S. Treasury securities, or cash. The proposed rule change also would allow GSCC to alter its risk management procedures associated with the GCF Repo service to conform to the mortgage-backed securities ("MBS") market practice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC introduced its GCF Repo Service in November 1998.[3] The GCF Repo Service allows GSCC's non-inter-dealer broker netting members ("dealers") to trade general collateral repos involving U.S. Government securities throughout the day without requiring trade for trade settlement on a delivery versus payment basis.

GSCC has been activating the generic CUSIP numbers representing the securities that are eligible for GCF Repo processing in stages. U.S. Treasury securities with a maturity of ten years or less and U.S. Treasury securities with a maturity of thirty years or less were the first products to be made eligible for GCF Repo processing. At the beginning of this year, GSCC also began accepting non-mortgage-backed agency securities for GCF Repo processing and more recently began accepting mortgage-backed securities ("MBS") for GCF Repo processing.[4]

Having gained the experience of operating the GCF Repo Service for more than one year, GSCC is now seeking to enhance the service in certain ways in order to make it more responsive to its members' needs and to clarify certain risk management practices, each in a manner consistent with market practice.

(i) Authority To Deliver Comparable or U.S. Treasury Securities

The first change proposed by GSCC applies to the collateral allocation obligations of securities lenders[5] in GCF Repo transactions. Under the proposed rule change, securities lenders will be permitted to satisfy their collateral allocation requirements in connection with their GCF Repo activity with (1) "comparable securities" (*i.e.*, those that fall within the same generic CUSIP number), (2) benchmark U.S. Treasury securities (*i.e.*, bills, notes, or bonds), or (3) cash. Market participants consider comparable securities to be acceptable substitutes because securities that fall within the same generic CUSIP number tend to have the same level of liquidity. U.S. Treasury securities are also acceptable substitute securities because of their high level of liquidity.

The second change proposed by GSCC applies where the securities borrower, due to reasons beyond its control and despite exercising best efforts, is not able to obtain in a timely manner the securities that were delivered on the day before by the securities lender. Under the proposed rule change, the securities borrower will have the right to return (1) "comparable securities," (2) benchmark U.S. Treasury securities, or (3) cash. The securities borrower will be responsible for making the securities lender whole (through GSCC) for any actual damages directly suffered by the securities lender as a result of not receiving back the same securities that were originally lent.

(ii) Insolvency Situation Involving Mortgage-Backed Securities

The third change proposed by GSCC relates to clarification of its risk management procedures associated with the GCF Repo Service to reflect the nature of MBS and MBS market practice. In the event of a securities borrower's insolvency, it may be impractical or even impossible for GSCC to obtain the identical types of MBS that were originally lent. Moreover, MBS market practice is such that in such a situation, securities lenders in repurchases transactions involving MBS would not expect to receive the same securities back.

The proposed rule change will amend Rule 22, Section 4 of GSCC's rules by giving GSCC the authority in an insolvency situation, where MBS were the underlying collateral, to deliver back to a securities lender "comparable securities" or benchmark U.S. Treasury securities.[6] Alternatively, the proposed rule change will permit GSCC to give a securities lender the right to close out the transaction by buying "comparable securities" or U.S. Treasury securities in return for a cash payment by GSCC equal to the value of the securities it bought. However, if GSCC determines that the price paid by the securities lender is unreasonably high, GSCC will be entitled to pay the securities lender a reasonable price as determined by an independent third party pricing source for the "comparable securities" or U.S. Treasury securities.

GSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to GSCC and in particular with Section 17A(b)(3)(F) of the Act because it will enhance the GCF Repo Service by making it more responsive to the needs of GSCC's members and by clarifying certain of GSCC's risk management practices, each in a manner consistent with market practice.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies of thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR–GSCC–00–05 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30771 Filed 12–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43603; File No. SR–NYSE–00–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials and Amending the Components of Coordination Activities

November 21, 2000.

I. Introduction

On August 11, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] In 1998, the Commission approved a rule change that allowed GSCC to implement the GCF Repo Service on an intrabank basis. Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831, (November 5, 1998) [File No. SR–GSCC–98–02]. In 1999, the Commission approved a rule change that allowed GSCC to implement the second, interbank phase of the GCF Repo Service. That enhancement has enabled participating dealers to engage in GCF Repo trading with participating dealers that use a different clearing bank. Securities Exchange Act Release No. 41303 (April 16, 1999), 64 FR 20346 (April 26, 1999) [File No. SR–GSCC–99–01].

[4] On March 20, 2000, GSCC activated the generic CUSIP number representing Federal Home Loan Mortgage Corporation and Federal National Mortgage Association fixed-rate MBS.

[5] As provided in GSCC's Rule 46, the use of borrowing and lending terminology in this proposed rule change filing and in GSCC's rules and agreements shall not be deemed to affect the intent of members as to their characterization of their transactions in agreements entered into by the members with each other or with third parties with respect to such transactions.

[6] Rule 3 of MBS Clearing Corporation ("MBSCC") reflects MBS market practice of delivering comparable securities in an insolvency situation.

[7] 17 CFR 200.30–3(a)(12).

[6] 17 CFR 200.30–3(a)(12).

"Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend the pilot fee structure governing the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communication materials and to amend the list of coordination services an intermediary must perform to collect the $20.00 nominee coordination fee. The proposed rule change was published in the **Federal Register** on August 23, 2000.[3] The Commission received one comment letter on the proposed rule change.[4] On October 20, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] This order approves the amended proposed rule change, including Amendment No. 1 on an accelerated basis through September 1, 2001. The Commission is also soliciting comment on Amendment No. 1 to the proposed rule change.

II. Background

NYSE member organizations that hold securities for beneficial owners in street name solicit proxies from, and deliver proxy and issuer communications to, beneficial owners on behalf of NYSE-listed companies.[6] For this service, NYSE issuers reimburse NYSE member organizations for reasonable out-of-pocket, clerical, postage, and other expenses incurred in performing such activities. The reimbursement of NYSE member organizations by NYSE issuers is governed by NYSE rules.[7] Today, many NYSE member organizations outsource their proxy delivery obligations to proxy distribution intermediaries. Currently, one intermediary handles the majority of the proxy distribution business, Automatic Data Processing, Inc. ("ADP").

Currently, the Exchange has a pilot fee structure ("Pilot Fee Structure") set forth in its Rules that governs the reimbursement of expenses by NYSE issuers to NYSE member organizations for processing and delivering proxy materials and other issuer communications (collectively "Materials") with respect to security holders whose securities are held in street name. Among other things, the Pilot Fee Structure sets certain guidelines concerning the reimbursement of fees for the distribution of Materials, creates incentive fees to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees.[8] The Pilot Fee Structure has been modified and extended several times,[9] most recently until November 20, 2000.[10]

In February 2000, the Exchange proposed extending the Pilot Fee Structure through September 1, 2000.[11] At that time, the Commission requested that the Exchange and ADP provide the Commission with descriptions and analysis of the fees permissible under the Pilot Fee Structure. In response, the Exchange submitted the Proposal and ADP submitted a letter to the Commission.[12]

III. Description of the Proposal

In the Proposal, the Exchange has requested that the Pilot Fee Structure be extended through September 1, 2001.

In addition, the Proposal would amend the functions that an intermediary is expected to perform to recover the nominee coordination fee.[13] Specifically, the Proposal contains detailed descriptions of the minimum services that must be provided by an intermediary that coordinates the delivery and processing of proxies across multiple nominees. For example, the Proposal specifies that an intermediary must coordinate the search of nominees and beneficial owners by: (1) Searching for all nominees that are clients of the intermediary; (2) obtaining beneficial ownership lists from nominee clients; (3) consolidating nominees' responses to an issuer's requests for the number of beneficial owner customers of the nominee clients; and (4) providing the names and addresses of nominee clients when requested by an issuer pursuant to Rule 14a–13(a)(1)(D) under the Act.[14] In addition, intermediaries collecting the coordination fee will be required to (1) accept issuers' proxies at a single location and prepare such proxies across multiple nominees for distribution to beneficial owners, including packaging, if necessary; (2) transmit issuers' proxy materials by making effective use of bulk mail opportunities; (3) receive and tabulate vote responses; and (4) provide vote reports across multiple nominees.[15]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43159 (August 16, 2000), 65 FR 51384 ("Proposal").

[4] *See* letter from T. Peter Townsend, Vice President, Investor Relations, Secretary, Exxon Mobil Corp., to Secretary, SEC. dated September 13, 2000.

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated October 18, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the language of the nominee coordination fee provision to more clearly articulate what services an intermediary is expected to perform to earn the $20.00 coordination fee.

[6] The ownership of shares in street name means that a shareholder, or "beneficial owner," has purchased shares through a broker-dealer or bank, also known as a "nominee." In contrast to direct ownership, where the shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company.

[7] *See* NYSE Rules 451, "Transmission of Proxy Material," and 465 "Transmission of Interim Reports and other Materials." In addition, the text of NYSE Rule 451 also is included at Paragraph 402.10(A) of the Exchange's *Listed Company Manual* (collectively "Rules").

[8] *See* Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997). The Commission originally approved the Pilot Fee Structure for a one-year period, expiring on May 13, 1998. *See* note 9 *infra* for additional extensions and changes to the original pilot.

[9] *See* Securities Exchange Act Release Nos. 39672 (February 17, 1998), 63 FR 9034 (February 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50); 40289 (July 31, 1998), 63 FR 42652 (August 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (October 30, 1998), 63 FR 60036 (November 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (February 11, 1999), 64 FR 8422 (February 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); 41669 (July 29, 1999), 64 FR 43007 (August 6, 1999) (order extending Pilot Fee Structure through November 1, 1999); 42086 (November 1, 1999), 64 FR 60870 (November 8, 1999) (order extending Pilot Fee Structure through January 3, 2000); 42304 (December 30, 1999), 65 FR 1212 (January 7, 2000) (order extending Pilot Fee Structure through February 15, 2000); 42433 (February 16, 2000), 65 FR 10137 (February 25, 2000) (order extending the Pilot Fee Structure through September 1, 2000); and 43151 (August 14, 2000), 65 FR 51382 (August 23, 2000) (order extending the Pilot Fee Structure through October 10, 2000).

[10] *See* Securities Exchange Act Release No. 43429 (October 10, 2000), 65 FR 62781 (October 19, 2000).

[11] Securities Act Release No. 4243 (February 16, 2000), 65 FR 10137 (February 25, 2000).

[12] *See* letter from Richard J. Daly, Group Co-President, ADP, to Jonathan G. Katz, Secretary, SEC, dated June 28, 2000.

[13] There is some overlap of the functions that an intermediary needs to perform to collect the proxy mailing fee and the nominee coordination fee. For example, under the Commission's rules, an intermediary is required to respond to an issuer's request for the number of beneficial owners served by the intermediary and forward issuer proxy materials to the beneficial owners, even if the intermediary is not coordinating these functions on behalf of multiple nominees. Intermediaries also traditionally have received and tabulated vote responses from beneficial owners and provided vote reports to the issuer in return for the proxy mailing fee. The proposed rule change is not intended to change existing practices or fee allocation in this regard. The listed functions are relevant to the nominee coordination fee only to the extent that an intermediary performs them on behalf of multiple nominees.

[14] 17 CFR 240.14a–13(a)(1)(D).

[15] The intermediary must provide a vote report, consolidated across multiple nominee clients no less than 10 days before the shareholder meeting. Thereafter, the intermediary must provide updated consolidated vote reports each day before the shareholder meeting. On the day before the shareholder meeting, the intermediary must provide two vote reports consolidated across multiple clients. Finally, on the day of the shareholder meeting, the intermediary must provide a final vote report consolidated across multiple nominee clients.

Finally, intermediaries must submit consolidated invoices to issuers for the processing of proxies on behalf of multiple nominees.[16]

IV. Summary of Comments

The Commission received one comment letter on the Proposal.[17] The commenter argued that the Pilot Fee Structure is not competitive and ultimately is costly to shareholders. The commenter suggested that the fee for mailing issuer materials be reduced from $0.50 to $0.25 per mailing to make it consistent with similar services for registered shareholders. The commenter argued that the current $0.50 mailing fee does not reflect continued technological improvements that have lowered costs. According to the commenter, this reduction could be recovered in the $0.50 elimination fee and $20.00 nominee coordination fee. Further, the commenter requested that intermediaries be required to provide annual justification of their costs that would be subject to an independent review. Finally, the commenter suggests the use of a sliding scale based on volume or a cap on total proxy fees paid by large issuers. In support of this, the commenter states that the current flat fee structure fails to take into account economies resulting from large shareholder bases.

V. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)[18] of the Act.[19] Section 6(b)(4) of the Act[20] requires that exchange rules provide the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the facilities of an exchange.

Section 6(b)(5) of the Act[21] requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

The Commission has decided to extend the pilot through September 1, 2001. The Commission believes that this time frame will permit further consideration by market participants and the Commission of the proxy fee structure.[22]

The Commission also believes that the components of the nominee coordination fee are consistent with the requirements of the Act. Currently, the Rules only require that an intermediary provide an issuer with the names and address of the nominees in response to the issuer's request and transmit the issuer's proxies to beneficial owners. The Proposal provides more specific information as to the services an intermediary is expected to perform, at a minimum, in order to collect the $20.00 nominee coordination fee. The Commission believes that clarifying the minimum services to be provided by intermediaries and specifying these in the Rules will provide market participants, including issuers, with more complete information about the scope of the fees charged and services provided by intermediaries.

The Commission notes that, under the NYSE Proposal, the list of services that an intermediary is required to provide for collecting the $20.00 nominee coordination fee is not exclusive. The list is considered the minimum services required to be performed for collection of the coordination fee and should be helpful to issuers by providing them with information on the services being provided for the fees they are paying. The Commission also believes that the additional specificity in the rule on the minimum requirements to collect the $20.00 coordination fee should help to address some of the concerns that have been raised since the inception of the Pilot Fee Structure.

As noted above, there is one intermediary, ADP that provides the majority of proxy and issuer communication delivery services. Thus, there is a lack of competitive market forces to dictate appropriate fees for services. The Commission believes that until an approach can be developed that would foster competition in the proxy distribution industry so that market forces could determine reasonable expenses for services, that it is appropriate for the Exchange to specify rates of reimbursement for NYSE member organizations that distribute Materials to beneficial owners on behalf of NYSE issuers.

The Commission received one comment letter in response to the proposed rule change.[23] The commenter argued that the Pilot Fee Structure is not competitive and ultimately costly to shareholders and therefore, the commenter believed that certain mailing fees should be reduced. The commenter also raised concerns that the fee structure does not reflect economies of scale from issuers with a large shareholder base.

The Commission, as noted above, also continues to be concerned about the lack of competitive forces driving the fees charged for the delivery and processing of issuer Materials and that is one of the main reasons why the Commission has decided to continue to approve the Rules on a pilot basis. The Commission hopes that market participants will further consider other more competitive approaches to establishing reasonable fees for distributing issuer Materials. The Commission believes that competitive market forces would best dictate reasonable fees. However, in the absence of such a competitive scheme, the Commission believes that it is appropriate for the minimum fees to be governed by NYSE Rules. The Commission also will continue to consider the appropriateness of the fees over the course of the pilot.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. In Amendment No. 1, the Exchange merely added clarifying language to the text of the proposed Rules. The substance of the minimum services expected to be provided by an intermediary in order to earn the nominee coordination fee was not changed. Therefore, because the substance of the Rules was not amended and the Proposal was subject to notice and comment by interested persons, the Commission believes that good cause exists pursuant to Sections 6(b)(5)[24] and 19(b)[25] of the Act to accelerate approval

[16] In the Proposal, the Exchange clarified that the list of coordination activities that an intermediary must perform was not intended to be exclusive. By setting forth the list of coordination activities in the Rules, the Exchange intended to add a level of specificity to provide both intermediaries and issuers with notice as to the minimum services that an intermediary is expected to perform.

[17] *See* note 4 *supra*.

[18] 15 U.S.C. 78f(b).

[19] In approving this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* Securities Exchange Act Release No. 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999) for a complete description of the Pilot Fee Structure and the Commission's basis for approval, which is incorporated herein.

[23] *See* note 4 *supra*.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b).

of Amendment No. 1 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–36 and should be submitted by December 26, 2000.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSE–00–36), as amended, is approved through September 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30721 Filed 12–1–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43619; File No. SR–PCX–00–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Committee Voting Requirements

November 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend PCX Rule 11.2(a) to replace the word "present" with the word "voting" to allow committee action to be approved by a majority of those voting at a meeting at which a quorum has been established. Below is the complete text of the proposed rule change. Proposed new text is in *italics*. Proposed deletions are in [brackets].

* * * * *

Pacific Exchange, Inc.

Constitution and Rules

* * * * *

Rule 11

Committees of the Exchange

¶6233 Committee Procedures

Rule 11.2(a). Except as otherwise provided in the Constitution, the Rules, or a resolution of the Board, each committee shall determine its own time and manner of conducting its meetings. The vote of a majority of the members of a committee [present] *voting* at a meeting at which a quorum is present shall be the act of the committee. Committees may act by written consent of a majority of the members of the committee.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the PCX's Board of Governors and the Exchange's standing committees operate under different voting standards. The voting standard applied to committees is more restrictive than that applied to the Board of Governors. The standard for committee voting is set by PCX Rule 11.2(a) which states that "the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee." This differs from the voting requirement for the Board of Governors which may act upon the affirmative vote of "not less than a majority of the Governors voting at a meeting at which a quorum is present * * *"[3] This section allows the Board of Governors to act on the majority vote of the Governors voting, regardless of whether the number of Governors recusing or abstaining reduces the number of those eligible to vote below a quorum, below a majority of the Governors attending or below a majority of the total number of Governors on the Board.

Unlike Section 1(a), PCX Rule 11.2(a) requires a vote of a majority of committee members present at the meeting, rather than a mere majority of those voting. The PCX believes that Rule 11.2(a) should be amended to make it consistent with the requirements set forth for the PCX Board of Governors. Recent changes in the ownership of, or capital investment in, many PCX member firms has increased the number of instances in which committee members must abstain or recuse from a committee vote. This may delay or preclude a committee from taking action, thereby reducing the responsiveness of a committee to rapidly changing market conditions and limiting overall committee effectiveness.

The proposed rule change conforms the committee voting standard to that applied to the PCX Board of Governors. The rule change will allow for greater committee responsiveness, improved timing for committee actions, and consistency across the Exchange with respect to rules of order.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(5)[5], in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[6] of the Securities Exchange Act of 1934 and subparagraph (f)(3) of Securities Exchange Act Rule 19b–4 thereunder[7] because it is concerned solely with the administration of the Exchange. At any time within 60 days of this filing, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–44 and should be submitted by December 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43623; File No. SR–PCX–00–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Buy-Writes & Book Priority

November 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to facilitate the execution of stock/option orders on the Exchange. Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

¶5139 Priority of Bids and Offers

Rule 6.75. Except as provided by Rule 6.76 below, the following rules of priority shall be observed with respect to bids and offers:

(a)–(c) No change.

(d) Notwithstanding anything in paragraphs (a) and (b) to the contrary, when a member *is* holding a spread order, a straddle order, or a combination order, *or stock/option order* and *is* bidding or offering on the basis of a total credit or debit for the order *and* has determined that the order may not be executed by a combination of transactions with or within the bids and offers displayed by the Order Book Official or other members, in procedures determined by the Options Floor Trading Committee, then the order may be executed as a spread, straddle, or combination, *or stock/option order* at the total credit or debit with one or more members without giving priority to bids or offers for the individual option series of the Order Book Official or of other members at the post that are no better than the bids or offers comprising such total credit or debit.

Commentary: .01–.03—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's priority rules for options provide, in general, that the highest bids and lowest offers have priority over other bids and offers, except that orders in the Limit Order Book have priority over other bids and offers at the same price.[3] The rules further provide if there are two or more bids (or offers) representing the highest bid (or lowest offer), and no orders in the Limit Order Book are involved, then priority is afforded to those bids (or offers) in the sequence in which they were made.[4] PCX Rule 6.75(d) currently allows three exceptions to the priority rules with respect to "spread orders,"[5] "straddle orders,"[6] and "combination

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[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PCX Constitution, Article II, Section 1(a).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rules 6.75(a)–(b).

[4] *Id.*

[5] A "spread order" is an order to buy a stated number of option contracts and to sell the same number of contracts (or contracts representing the same number of shares of the underlying security) of the same class of options. *See* PCX Rule 6.62(d).

[6] A "straddle order" is an order to buy or to sell the same number of options of each type with respect to the same underlying security and having the same exercise price and expiration date (e.g., an

Continued

orders."[7] As discussed below, the Exchange is now proposing to add a fourth exception, for stock/option orders,[8] including those that are commonly known as "buy-writes."

Currently, under Rule 6.75(d), when a member is holding a spread order, a straddle order or combination order, and is bidding or offering on the basis of a total credit or debit for the order, and has determined that the order may not be executed by a combination of transactions with or within the bids and offers displayed by the Order Book Official or other members, then the order may be executed as a spread, straddle or combination at the total credit or debit with one or more members without giving priority to bids or offers for the individual option series of the Order Book Official or of other members at the post that are no better than the bids or offers comprising such total credit or debit.

For example, a spread order may be executed as follows: assume that a floor broker is holding a spread order that requires selling 20 June 25 XYZ calls and buying 20 July 25 XYZ calls, and further assume that there is an order in the book to buy 5 June 25 XYZ calls and there are no orders in the book to sell July 25 XYZ calls. The floor broker could attempt to execute the spread order as three separate transactions: (1) Sell 5 June 25 calls to the Book; (2) sell 15 June 25 calls to the trading crowd; and (3) buy 20 July 25 calls from the trading crowd. If the customer's order specified a limit price of a specific debit amount—$1, for example—the order might theoretically be filled in this manner. Thus, if the broker could sell all 20 June calls at 4 and buy all 20 July calls at 5, the spread order could be filled as long as the customer's limit price was no more than a debit of $1. However, if the order in the book was to buy the June calls at 4, and the crowd was bidding 3⅞ for those calls, the broker could not fill the orders at the customer's limit price. In this example, the broker is placed at undue market risk in attempting to execute the order as separate transactions. If the broker sold 5 June calls to the book and, while consummating the trade, the XYZ stock ticks up ½ a point, the crowd would likely be unwilling to trade the remaining calls at a price that is within the customer's limit. The broker is then left with an error.

To avoid that problem, floor brokers typically call for a quote from the crowd for the entire spread. Following the previous example involving the June/July call spread, the trading crowd might provide a bid of $1 credit for the spread, which would satisfy the customer's limit price. This may occur, in accordance with Rule 6.75(d), even though one leg of the spread has traded at a price equal to the price of an order in the book on the other side of the market, *i.e.*, it "touches the book." The rationale for this exception is, as described previously, that without it a broker would assume undue risk in executing the spread order and many spread orders would otherwise remain unexecuted.

A similar problem exists for stock/option orders, such as buy-writes, which involve writing call options and purchasing the underlying stock.[9] For example, a customer may want to sell 10 XYZ July calls and buy 1000 shares of XYZ stock. The broker will typically enter the trading crowd and call for a market for the buy-write. The crowd will generally provide a two sided market expressed in the form of a total debit or credit—for example, $1 bid, $1½ offered—which will represent both the market to "buy" the buy-write ($1) as well as the market to "sell" the buy-write ($1½). If the customer is a seller and accepts the trading crowd's $1 bid on the transaction, then the stock and option portions of the trade will both have to be completed before the trade is fully consummated.[10]

Following the previous example, assume that the market in the underlying stock is 65⅞–66⅛ and the market in the overlying July 65 calls is 2–2¼. The customer would receive an execution at a total credit of $1 if the stock is executed at $66 and the calls are executed at $2. However, if the stock trades at 66⅛, the price of the option could be adjusted to 1⅞, so that the net debit is $1.

To complicate this matter, if there is an order in the book to buy 5 July 65 calls at 2, the buy-write cannot be executed unless either the stock trades at a price other than 66 or the trading crowd is willing to trade the buy-write with a stock/option ratio other than one-to-one. This is the case because, under PCX Rule 6.75, buy-writes are not afforded the same priority rule exemption that applies to spread, straddle and combination orders. Instead, buy-writes are only afforded a limited exemption to the priority rule, *i.e.*, "a stock/option order has priority over the bids and offers of members in the trading crowd, but not over the bids and offers of the Order Book Official."

Therefore, the Exchange is proposing to modify Rule 6.75 to provide stock/option orders with the same exemptive relief from Rule 6.75(a)–(b) that currently applies to spread orders, straddle orders and combination orders. The Exchange believes that this rule change will facilitate transactions in securities because it will allow floor brokers to execute stock/option orders more promptly, as a single package, without regard to other orders that may be in the Order Book at the time. This will allow brokers to focus on other orders they are representing. It will allow brokers to avoid undue liability and to avoid having to spend an inordinate amount of time in executing stock/option orders in compliance with the current restrictions of Rule 6.75 relating to orders in the order book. It will also allow stock/option orders to be executed when otherwise they might not be executed under Rule 6.75. The Exchange believes that the current exemptions for spread, straddle and combination orders under Rule 6.75 should be extended to include stock/option orders based upon just and equitable principles of trade.

2. Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, and to protest investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office at the PCX. All submissions should refer to File No. SR–PCX–00–04 and should be submitted by December 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30769 Filed 12–1–00; 8:45 am]

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order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order.) in the case of adjusted options contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares of the underlying security. *See* PCX Rule 6.62(g).

[7] A "combination order" is an order involving a number of call option contracts and the same number of put option contracts with respect to the same underlying security. In the case of adjusted options contracts, a combination order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares of the underlying security. *See* PCX Rule 6.62(h).

[8] A stock/option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either: (i) The purchase or sale of option contract(s) of the same series on the opposite side of the market representing the same number of units of the underlying or related security; or (ii) the purchase and sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and number of units of the underlying or related security, on the opposite side of the market representing in aggregate twice the number of units of the underlying or related security *See* PCX Rule 6.62(j).

[9] This strategy is also referred to as "covered call writing." As stated in the *Characteristics and Risks of Standardized Options*:

"If the writer of a physical delivery call option owns or acquires the amount of the underlying interest that is deliverable upon exercise of the call, he is said to be a covered call writer. EXAMPLE: An individual owns 100 shares of XYZ common stock. If he writes one physical delivery XYZ call option—giving the holder the right to purchase 100 shares of the stock at a specified exercise price—this would be a covered call. If he writes two such XYZ calls, one would be covered and one would be uncovered."

[Citation omitted in original].

[10] *See* Options Floor Procedure Advice A–6, which provides in part:

"When a stock/option order is taken to a crowd for execution, the stock transaction must be effected prior to the option transaction pursuant to Rule 6.47, Commentary .04. The following procedure should be observed:

After agreement with other members of the crowd has been reached as to the terms of the transaction, the option order tickets shall be written up and time-stamped. However, the order tickets should not be turned in to the Order Book Official at this time. The members shall attempt to immediately affect the transaction in the underlying or related security. If the stock transaction cannot be executed immediately or is effected at a price different than the agreed-upon price, the members shall not be held to the option transaction. If the stock transaction is effected at the agreed-upon price, than all the members who participated in the option transaction shall be held to their agreed-upon price. At the time the stock transaction is effected, the option trade tickets should be given to the Order Book Official.

This procedure applies to all executions of stock/option orders."

[Citation omitted in original].

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3305; Amendment No. 2]

State of Arizona

In accordance with a notice received from the Federal Emergency Management Agency, dated November 27, 2000, the above-numbered Declaration is hereby amended to include Yavapai County in the State of Arizona as a disaster area due to damages caused by severe storms and flooding which occurred beginning on October 21, 2000 and continuing through November 8, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Coconino, Arizona may be filed until the specified date at the previously designated location. All other contiguous counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 26, 2000 and for economic injury the deadline is July 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 28, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–30778 Filed 12–1–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[License #09/09–0386]

First Commerce & Loan, L.P.; Notice of License Surrender

Notice is hereby given that First Commerce & Loan, L.P. ("First Commerce"), an Arizona limited partnership, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). First Commerce was licensed by the Small Business Administration on October 19, 1990.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on November 9, 2000, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies)

Dated: November 28, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–30777 Filed 12–1–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of the U.S. Small Business Administration Financial Assistance Programs Subject to Title IX of the Education Amendments of 1972, as amended.

SUMMARY: In accordance with Subpart F of the final common rule for the enforcement of Title IX of the Education Amendments of 1972, as amended ("Title IX"), this notice lists federal financial assistance administered by the U.S. SBA that is covered by Title IX. Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F of the

Title IX common rule requires each federal agency that awards federal financial assistance to publish in the **Federal Register** a notice of the federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by the twenty-one (21) federal agencies, including SBA, on August 30, 2000 (65 FR 52857–52895). SBA's portion of the final common rule will be codified at 13 CFR Part 113.

SUPPLEMENTARY INFORMATION: Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). Title IX and the Title IX common rule prohibit discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but by other entities as well, including, for example, SBA-funded small business development centers and for profit and nonprofit organizations that receive SBA disaster loans.

List of Federal Financial Assistance Administered by the U.S. Small Business Administration to Which Title IX Applies

Note: All recipients of federal financial assistance from SBA are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any.

Failure to list a type of federal assistance below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

Information on SBA federal financial assistance can be found by consulting the Catalog of Domestic Financial Assistance (CFDA) at *http://www.cfda.gov*. If using the Internet site, please select "Search Catalog," select "Browse the Catalog—By Agency," and then click on "Small Business Administration." Catalog information is also available by calling, toll free, 1–800–699–8331 or by writing to: Federal Domestic Assistance Catalog Staff (MVS), General Services Administration, Reporters Building, Room 101, 300 7th Street, SW, Washington, DC 20407.

The following types of federal financial assistance administered through SBA are listed in the CFDA. For further information on any of these types of federal financial assistance, please consult the CFDA.

Economic Injury Disaster Loans
Business Development Assistance to Small Business
8(a) Business Development
Management and Technical Assistance for Socially and Economically Disadvantaged Businesses
Physical Disaster Loans
Procurement Assistance to Small Businesses
Small Business Investment Companies
Bond Guarantees for Surety Companies
Service Corps of Retired Executives Association
Small Business Development Centers
Certified Development Company Loans (504 Loans)
Women's Business Ownership Assistance
Veterans Entrepreneurial Training and Counseling
Microloan Demonstration Program
Office of Small Disadvantaged Business Certification and Eligibility

(Authority: 28 U.S.C. 1681–1688)

Dated: November 28, 2000.

James A. Westbrooks,

Acting Assistant Administrator, Office of Equal Employment Opportunity and Civil Rights Compliance.

[FR Doc. 00–30780 Filed 12–1–00; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 00–3(10)

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 00–3(10)—*Haddock* v. *Apfel*, 196 F.3d 1084 (10th Cir. 1999).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e) the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 00–3(10).

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On June 20, 2000, we issued Acquiescence Ruling 00–3(10) (65 FR 38312) to reflect the holding in *Haddock* v. *Apfel*, 196 F.3d 1084 (10th Cir. 1999). This circuit court holding interpreted 20 CFR 404.1566 and 416.966 to require that, before an Administrative Law Judge (ALJ) may rely on evidence from a Vocational Expert (VE) to support a determination of nondisability at step five of the sequential evaluation process, he or she must ask the expert how the testimony or information corresponds to the information provided in the Dictionary of Occupational Titles (DOT)[1] and elicit a reasonable explanation for any conflict.

We are publishing this notice of rescission of the Acquiescence Ruling concurrently with our publication of Social Security Ruling (SSR) 00–4p clarifying 20 CFR 404.1566 and 416.966. The SSR clarifies our rules on identifying and resolving conflicts or apparent conflicts between the testimony of the VE or a Vocational Specialist (VS) and the information contained in the DOT. The SSR explains that when a VE or VS provides evidence about the requirements of a job or occupation, the adjudicator has an affirmative responsibility to ask about any possible conflict between that VE or VS evidence and the information provided in the DOT. The SSR also provides that, before relying on VE or VS evidence to support a disability determination or decision, the adjudicator must obtain a reasonable explanation for any such conflict.

Because the SSR clarifies the provision of our rules upon which the holding in *Haddock* is based and our standards for identifying and resolving conflicts between occupational evidence provided by a VE and the information in the DOT, we are rescinding Acquiescence Ruling 00–3(10). By clarifying our regulations and rescinding this Acquiescence Ruling, we are restoring uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through uniform national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

[1] Employment and Training Administration, U.S. Department of Labor, Dictionary of Occupational Titles (Fourth Edition, Revised 1991) and its companion publication, Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles, (1993).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: October 27, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–30700 Filed 12–1–00; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 00–4p.; Titles II and XVI: Use of Vocational Expert and Vocational Specialist Evidence, and Other Reliable Occupational Information in Disability Decisions

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 00–4p. This Ruling clarifies our standards for the use of vocational experts, vocational specialists, and other reliable sources of occupational information in the evaluation of Social Security disability claims under title II, Federal Old-Age, Survivors, and Disability Insurance, and title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act.

In view of the clarification provided by this Ruling, AR 00–3(10) *Haddock* v. *Apfel*, "Use of Vocational Expert Testimony and the Dictionary of Occupational Titles Under 20 CFR 404.1566, 416.966—Titles II and XVI of the Social Security Act," is being rescinded through a separate notice in the **Federal Register**.

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 1–410–965–3632 or TTY 1–800–966–5609.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income.)

Dated: October 27, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Use of Vocational Expert and Vocational Specialist Evidence, and Other Reliable Occupational Information in Disability Decisions

Purpose: This Ruling clarifies our standards for the use of vocational experts (VEs) who provide evidence at hearings before administrative law judges (ALJs), vocational specialists (VSs) who provide evidence to disability determination services (DDS) adjudicators, and other reliable sources of occupational information in the evaluation of disability claims. In particular, this ruling emphasizes that before relying on VE or VS evidence to support a disability determination or decision, our adjudicators must:

- Identify and obtain a reasonable explanation for any conflicts between occupational evidence provided by VEs or VSs and information in the Dictionary of Occupational Titles (DOT), including its companion publication, the Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCO), published by the Department of Labor, and
- Explain in the determination or decision how any conflict that has been identified was resolved.

Citations (Authority): Sections 216(i), 223(d)(2)(A), and 1614(a)(3)(B) of the Social Security Act, as amended; 20 CFR Part 404, sections 404.1566–404.1569, 20 CFR Part 404, subpart P, appendix 2, § 200.00(b), and 20 CFR Part 416, sections 416.966–416.969.

Pertinent History: To determine whether an individual applying for disability benefits (except for a child applying for Supplement Security Income) is disabled, we follow a 5-step sequential evaluation process as follows:

1. Is the individual engaging in substantial gainful activity? If the individual is working and the work is substantial gainful activity, we find that he or she is not disabled.

2. Does the individual have an impairment or combination of impairments that is severe? If the individual does not have an impairment or combination of impairments that is severe, we will find that he or she is not disabled. If the individual has an impairment or combination of impairments that is severe, we proceed to step 3 of the sequence.

3. Does the individual's impairment(s) meet or equal the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If so, we find that he or she is disabled. If not, we proceed to step 4 of the sequence.

4. Does the individual's impairment(s) prevent him or her from doing his or her past relevant work (PRW), considering his or her residual functional capacity (RFC)? If not, we find that he or she is not disabled. If so, we proceed to step 5 of the sequence.

5. Does the individual's impairment(s) prevent him or her from performing other work that exists in the national economy, considering his or her RFC together with the "vocational factors" of age, education, and work experience? If so, we find that the individual is disabled. If not, we find that he or she is not disabled.

The regulations at 20 CFR 404.1566(d) and 416.966(d) provide that we will take administrative notice of "reliable job information" available from various publications, including the DOT. In addition, as provided in 20 CFR 404.1566(e) and 416.966(e), we use VEs and VSs as sources of occupational evidence in certain cases.

Questions have arisen about how we ensure that conflicts between occupational evidence provided by a VE or a VS and information in the DOT (including its companion publication,

the SCO) are resolved. Therefore, we are issuing this ruling to clarify our standards for identifying and resolving such conflicts.

Policy Interpretation

Using Occupational Information at Steps 4 and 5

In making disability determinations, we rely primarily on the DOT (including its companion publication, the SCO) for information about the requirements of work in the national economy. We use these publications at steps 4 and 5 of the sequential evaluation process. We may also use VEs and VSs at these steps to resolve complex vocational issues.[1] We most often use VEs to provide evidence at a hearing before an ALJ. At the initial and reconsideration steps of the administrative review process, adjudicators in the DDSs may rely on VSs for additional guidance. See, for example, SSRs 82–41, 83–12, 83–14, and 85–15.

Resolving Conflicts in Occupational Information

Occupational evidence provided by a VE or VS generally should be consistent with the occupational information supplied by the DOT. When there is an apparent unresolved conflict between VE or VS evidence and the DOT, the adjudicator must elicit a reasonable explanation for the conflict before relying on the VE or VS evidence to support a determination or decision about whether the claimant is disabled. At the hearings level, as part of the adjudicator's duty to fully develop the record, the adjudicator will inquire, on the record, as to whether or not there is such consistency.

Neither the DOT nor the VE or VS evidence automatically "trumps" when there is a conflict. The adjudicator must resolve the conflict by determining if the explanation given by the VE or VS is reasonable and provides a basis for relying on the VE or VS testimony rather than on the DOT information.

Reasonable Explanations for Conflicts (or Apparent Conflicts) in Occupational Information

Reasonable explanations for such conflicts, which may provide a basis for relying on the evidence from the VE or VS, rather than the DOT information, include, but are not limited to the following:

- Evidence from VEs or VSs can include information not listed in the DOT. The DOT contains information about most, but not all, occupations. The DOT's occupational definitions are the result of comprehensive studies of how similar jobs are performed in different workplaces. The term "occupation," as used in the DOT, refers to the collective description of those jobs. Each occupation represents numerous jobs. Information about a particular job's requirements or about occupations not listed in the DOT may be available in other reliable publications, information obtained directly from employers, or from a VE's or VS's experience in job placement or career counseling.
- The DOT lists maximum requirements of occupations as generally performed, not the range of requirements of a particular job as it is performed in specific settings. A VE, VS, or other reliable source of occupational information may be able to provide more specific information about jobs or occupations than the DOT.

Evidence That Conflicts With SSA Policy

SSA adjudicators may not rely on evidence provided by a VE, VS, or other reliable source of occupational information if that evidence is based on underlying assumptions or definitions that are inconsistent with our regulatory policies or definitions. For example:

- Exertional Level

We classify jobs as sedentary, light, medium, heavy and very heavy (20 CFR 404.1567 and 416.967). These terms have the same meaning as they have in the exertional classifications noted in the DOT.

Although there may be a reason for classifying the exertional demands of an occupation (as generally performed) differently than the DOT (*e.g.*, based on other reliable occupational information), the regulatory definitions of exertional levels are controlling. For example, if all available evidence (including VE testimony) establishes that the exertional demands of an occupation meet the regulatory definition of "medium" work (20 CFR 404.1567 and 416.967), the adjudicator may not rely on VE testimony that the occupation is "light" work.

- Skill Level

A skill is knowledge of a work activity that requires the exercise of significant judgment that goes beyond the carrying out of simple job duties and is acquired through performance of an occupation that is above the unskilled level (requires more than 30 days to learn). (See SSR 82–41.) Skills are acquired in PRW and may also be learned in recent education that provides for direct entry into skilled work.

The DOT lists a specific vocational preparation (SVP) time for each described occupation. Using the skill level definitions in 20 CFR 404.1568 and 416.968, unskilled work corresponds to an SVP of 1–2; semi-skilled work corresponds to an SVP of 3–4; and skilled work corresponds to an SVP of 5–9 in the DOT.

Although there may be a reason for classifying an occupation's skill level differently than in the DOT, the regulatory definitions of skill levels are controlling. For example, VE or VS evidence may not be relied upon to establish that unskilled work involves complex duties that take many months to learn, because that is inconsistent with the regulatory definition of unskilled work. See 20 CFR 404.1568 and 416.968.

- Transferability of Skills

Evidence from a VE, VS, or other reliable source of occupational information cannot be inconsistent with SSA policy on transferability of skills. For example, an individual does not gain skills that could potentially transfer to other work by performing unskilled work. Likewise, an individual cannot transfer skills to unskilled work or to work involving a greater level of skill than the work from which the individual acquired those skills. See SSR 82–41.

The Responsibility To Ask About Conflicts

When a VE or VS provides evidence about the requirements of a job or occupation, the adjudicator has an affirmative responsibility to ask about any possible conflict between that VE or VS evidence and information provided in the DOT. In these situations, the adjudicator will:

- Ask the VE or VS if the evidence he or she has provided conflicts with information provided in the DOT; and
- If the VE's or VS's evidence appears to conflict with the DOT, the adjudicator will obtain a reasonable explanation for the apparent conflict.

Explaining the Resolution

When vocational evidence provided by a VE or VS is not consistent with information in the DOT, the adjudicator must resolve this conflict before relying on the VE or VS evidence to support a determination or decision that the individual is or is not disabled. The adjudicator will explain in the determination or decision how he or she resolved the conflict. The adjudicator must explain the resolution of the conflict irrespective of how the conflict was identified.

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register**. The clarified standard stated in this ruling with respect to inquiring about possible conflicts applies on the effective date of the ruling to all claims for disability benefits in which a hearing before an ALJ has not yet been held, or that is pending a hearing before an ALJ on remand. The clarified standard on resolving identified conflicts applies to all claims for disability or blindness benefits on the effective date of the ruling.

Cross-References: SSR 82–41, "Titles II and XVI: Work Skills and Their Transferability as Intended by the Expanded Vocational Factors Regulations Effective February 26, 1979," SSR 82–61, "Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation as Generally Performed," SSR 82–62, "Titles II and XVI: A Disability Claimant's Capacity to Do Past Relevant Work, In General," SSR 83–10, "Titles II and XVI: Determining Capability to Do Other Work—The Medical-Vocational Rules of Appendix 2," SSR 83–12, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work," SSR 83–14, "Titles II and XVI: Capability to do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments," and SSR 85–15, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments"; AR 90–3(4), 837 F.2d 635 (4th Cir. 1987)–Use of Vocational Experts or Other Vocational Specialist in Determining Whether a Claimant Can Perform Past Relevant Work—Titles II and XVI of the Social Security Act; Program Operations Manual System, Part 04, sections DI 25001.001, DI 25005.001, DI 25020.001–DI 25020.015, and DI 25025.001–DI 25025.005.

[FR Doc. 00–30701 Filed 12–1–00; 8:45 am]

BILLING CODE 4191–02–U

[1] In accordance with Acquiescence Ruling 90–3(4), we do not use VEs at step 4 of the sequential evaluation process in the Fourth Circuit.

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice: 3488]

Extension of the Restriction of the Use of United States Passports for Travel to, in, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73 (a)(3), all United States passports were declared invalid for travel to, in or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area "* * * where there is imminent danger to the public health or physical safety of United States travelers" within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at midnight November 24, 2001, unless extended or sooner revoked by Public Notice.

Dated: November 22, 2000.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 00–30813 Filed 12–1–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3487]

Privacy Act of 1974; Altered System of Records

Notice is hereby given that the Department of State proposes to alter two existing systems of records, STATE–35 and STATE–40, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 522a (r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on November 27, 2000.

It is proposed that the current systems STATE–35 and STATE–40 will be merged and renamed "Information Access Programs Records," and due to the expanded scope of the current system, the altered system description will include revisions and/or additions to all other sections. Relevant information in STATE–40 has been incorporated in STATE–35 and STATE–40 will be deleted in the near future. Changes to the existing system descriptions are proposed in order to reflect more accurately the Bureau of Administration's record-keeping systems and a reorganization of activities and operations.

Any person interested in commenting on these altered systems of records may do so by submitting comments in writing to Margaret Peppe, Chief; Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, D.C. 20522–6001.

This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, "Information Access Programs Records, STATE–35" will read as set forth below.

Dated: November 27, 2000.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–35

SYSTEM NAME:

Information Access Programs Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State; SA–2; 515 22nd Street, NW; Washington, DC 20522–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting access to Department of State records under the Freedom of Information Act, the Privacy Act, the Ethics in Government Act, the access provisions of Executive Order 12958 or a successor order on national security information, and Touhy regulations. Also covered are individuals requesting access to Department of State records pursuant to certain other authorities for special documents requests and discovery and litigation support requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information documenting the processing of all requests pursuant to the Freedom of Information Act, the Privacy Act, the

Ethics in Government Act, and Executive Order 12958 or a successor order on national security information, for access to State Department records. This includes the request letter and Department responses, a copy of responsive records (if applicable) and any other correspondence, memoranda, interrogatories and declarations related to the processing of the request from the initial receipt stage through to completion, amendment, appeal and litigation. Hard copy records, for example, could include correspondence between the Department of State and the requester and other federal agencies pertaining to the request. Electronic records may contain the date of the request; requester's name and address; type of case; case number; dates of acknowledgement; fee categories; search and review taskings; number of documents/pages found, reviewed and released or denied; date of response and, where applicable, the exemptions applied. These files may contain names, addresses and phone numbers of attorneys, law firms, judges and U.S. attorneys involved with the processing or litigation of the case as well as separate but related court decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State); 5 U.S.C. 552 (Freedom of Information Act); 5 U.S.C. 552a (Privacy Act); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of Foreign Service) and Executive Order 12958 (Classified National Security Information).

PURPOSE(S):

The information contained in the Information Access Programs Records is created, collected, and maintained by the Office of IRM Programs and Services in the administration of its responsibility as the State Department's centralized authority for processing requests for access; amendments; appeals; special projects for Congress, the General Accounting Office, and the Department of Justice in support of court orders and subpoenas; discovery, litigation support, and litigation pursuant to the Freedom of Information Act, the Privacy Act, the Ethics in Government Act, Executive Order 12958 or a successor order on national security information, and Touhy regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the Information Access Programs Records is used or disseminated as follows:

—To formulate a response to requests for access to Department of State records and subsequent amendment requests, appeals and litigation;

—By Department of State officials in the execution of their responsibilities;

—By other government agencies that have custody of Department of State records or that share with the Department responsibility for granting access to certain categories of records, to coordinate decisions on access to records;

—By other government agencies for concurrence reviews in recommendations for access to classified or restricted material and in making appropriate arrangements for such access;

—In a proceeding before a court or adjudicative body, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation;

—To the Department of Justice for the purpose of obtaining its advice on any aspect of the processing of any requests for information under the access provisions of the laws or in connection with litigation;

—To an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings;

—By the Office of Management and Budget, National Archives and Records Administration and the Interagency Security Oversight Office, for the purpose of obtaining its advice regarding agency obligations under the Privacy Act or other access provisions of law;

—By the Interagency Security Classification Appeals Panel and member agencies for the purpose of obtaining its advice regarding agency obligations under the Privacy Act or other access provisions of law;

—In response to a properly issued subpoena; and

—By National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Also see "Routine Uses" paragraphs of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, electronic media.

RETRIEVABILITY:

Individual name, case number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be destroyed or retired according to published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Office of IRM Programs and Services, SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of IRM Programs and Services might have records maintained under their name or personal identifier should write to the Director, Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001. The individual must specify that he/she wishes the Information Access Programs Records to be checked. At a minimum, the individual must include: name; date and place of birth; current mailing address and zip code; signature; and case number if available.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records may contain information obtained from the requester, attorneys representing the requester and others authorized to represent requesters, records systems searched, and officials of other government agencies who may have provided/referred information relative to the request including but not limited to documents, advice, concurrence, recommendations and disclosure determinations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), (k)(5), and (k)(6) records in this system of records may be exempted from 5 U.S.C. 522a (c)(3) and (4), (d), (e)(1), (e)(4)(G), (H), and (I) and (f).

[FR Doc. 00–30812 Filed 12–1–00; 8:45 am]
BILLING CODE 4710–05–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Tariff-Rate Quota for Imports of Beef

AGENCY: Office of the United States Trade Representative.

ACTION: Correction of Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that USTR has determined that effective January 1, 2001, all imports of beef from New Zealand will need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate. The exception to this certificate requirement for exports made prior to January 1, 2001, announced in the **Federal Register** on October 26, 2000, is hereby eliminated.

DATES: The action is effective December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Suchada Langley, Senior Economist for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20508; telephone: (202) 395–6127.

SUPPLEMENTARY INFORMATION: The United States maintains a tariff-rate quota on imports of beef as part of its implementation of the Marrakesh Agreement Establishing the World Trade Organization. The in-quota quantity of that tariff-rate quota is allocated in part among a number of countries. As part of the administration of that tariff-rate quota, USTR provided, in 15 CFR part 2012, for the use of export certificates with respect to imports of beef from countries that have an allocation of the in-quota quantity. The export certificates apply only to those countries that USTR determines are participating countries for purposes of 15 CFR part 2012.

On September 26, 2000, USTR received a request and the necessary supporting information from the government of New Zealand to be considered as a participating country for purposes of the export certification program. Accordingly, USTR has determined that, effective January 1, 2001, New Zealand is a participating country for purposes of 15 CFR part 2012. As a result, USTR published a notice on October 26, 2000 stating that effective on and after January 1, 2001, imports of beef from New Zealand will need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate, but that imports exported from New Zealand prior to January 1, 2001, including exports currently warehoused, will not require an export certificate.

Since the publication of the October 26, 2000 notice, USTR has determined in consultation with the United States Department of Agriculture and New Zealand that given existing circumstances, including the imminent fill of the beef tariff quota for the current quota year, exemption of exports made prior to January 1, 2001, from the export certificate requirement for imports entered into the United States after January 1, 2001, is not necessary. Accordingly, the October 26, 2000 notice is hereby revised to provide that effective on January 1, 2001, imports of beef from New Zealand will need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate. There will be no exceptions made for exports of beef from New Zealand made prior to January 1, 2001.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–30782 Filed 12–1–00; 8:45 am]
BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on Environmental Review of Proposed Free Trade Area of the Americas

ACTION: Notice of Initiation of Environmental Review and Request for Comments on Scope of Review, and Notice of Availability of the Report of the Quantitative Analysis Working Group and Request for Comments.

SUMMARY: This publication gives notice that pursuant to Executive Order 13141 signed by President Clinton on November 16, 1999 (64 FR 63169) the Office of the U.S. Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is formally initiating an environmental review of the proposed Free Trade Area of the Americas (FTAA). USTR has established an FTAA interagency group, chaired at the TPSC level, to oversee the development and implementation of the environmental review, and an interagency working group composed of economic and environmental experts, to provide guidance on the quantitative and methodological parameters of the review. Thus far, the working group has developed a draft report which provides advice on the quantitative aspects of the environmental review. This document, entitled: Report of the Quantitative Analysis Working Group to the FTAA Interagency Environment Group, is available for review on the USTR website *www.ustr.gov*.

In this notice, the TPSC is requesting written comments from the public regarding what should be included in the scope of the environmental review, including the identification of potentially significant environmental impacts, both positive and negative, that may arise in the context of trade liberalization. Respondents should provide as much detail as possible on the degree to which the subject matter they propose may raise significant environmental issues in the context of the negotiation. In addition, the TPSC is seeking comments on advice provided by the interagency working group regarding the methodology for performing quantitative aspects of the environmental review.

DATES: Although USTR will accept any comments received during the course of the negotiations, comments should be submitted on or before January 19, 2001 to be assured of timely consideration in determining the scope of the environmental review.

FOR FURTHER INFORMATION CONTACT: Background information on the Executive Order 13141, the Environmental Review Guidelines and the FTAA can be found on the USTR website (*www.ustr.gov*). FTAA information can also be found on the official FTAA website (*www.ftaa-alca.org*). For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW, Washington, DC 20508 (202) 395–3475. All other questions regarding the review should be addressed to Joseph Ferrante, Director for Land Use Policy and Environmental Reviews, Office of Environment and Natural Resources, USTR (202–395–7320) or Chris Wilson, Director for Central America and the Caribbean, Office of Western Hemisphere, USTR (202–395–5190).

SUPPLEMENTARY INFORMATION:

Previous Notices

USTR welcomes and is taking into account the public comments on FTAA environmental issues submitted in response to two previous notices, the **Federal Register** notice dated Tuesday, December 28, 1999 (64 FR 72715) requesting written comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues, and the **Federal Register** notice dated Thursday, June 22, 2000 (65 FR 38872) providing notice that the FTAA Committee of Government Representatives on the Participation of Civil Society had issued a request for public comments on trade matters related to the FTAA process.

Background Information

The effort to unite the economies of the Western Hemisphere into a single free trade agreement was initiated at the Summit of the Americas, which was held on December 11, 1994 in Miami. President Clinton and the leaders of 33 other Western Hemisphere countries agreed to construct a "Free Trade Area of the Americas", or FTAA, and to complete negotiations for the agreement no later than 2005. The Miami Declaration of Principles and Plan of Action spells out the objectives of the FTAA as agreed by the leaders at the Summit. The full text can be found on the FTAA website. (*www.ftaa-alca.org/ministerials/plan_e.asp*)

The FTAA represents the largest regional integration effort ever undertaken involving both developed and developing countries in a common objective to realize free trade and investment in goods and services, on a basis of strengthened rules and disciplines. In 1999 two-way merchandise trade between the United States and the 33 other FTAA countries amounted to $675 billion, with more than eighty percent taking place between the United States and NAFTA partners Canada ($365 billion) and Mexico ($197 billion). Two-way services trade amounted to roughly $93 billion in 1998 (the most recent year for which data is available), $36 billion with South/Central America and the Caribbean, $35 billion with Canada, and $22 billion with Mexico.

FTAA Objectives

Nine negotiating groups responsible for the following areas of the negotiations have been established by the FTAA countries: (1) Market access; (2) investment; (3) services; (4) government procurement; (5) dispute settlement; (6) agriculture; (7) intellectual property rights; (8) subsidies, antidumping and countervailing duties; and (9) competition policy. In addition to the nine negotiating groups, three non-negotiating committees and groups were established. They are: (1) The Consultative Group on Smaller Economies; (2) the Committee of Government Representatives on the Participation of Civil Society; and (3) the Joint Government-Private Sector Committee of Experts on Electronic Commerce. Within the nine negotiating groups, and throughout the discussions in the three non-negotiating groups, the United States seeks to maximize market openness through high levels of discipline by creating a state-of-the-art, comprehensive agreement which, inter alia, will eliminate tariffs, reduce or eliminate non-tariff barriers and trade-distorting subsidies, provide non-discrimination in services and treatment of investment, provide transparency and market access in government procurement, strengthen the protection of intellectual property, and provide transparent and effective dispute settlement. The U.S. also seeks to further secure the observance and promotion of worker rights. In addition, the U.S. is striving to make our trade liberalization and environmental policies mutually supportive. These negotiation objectives are shaped in part by the information obtained through an environmental review, which is described in more detail below.

Environmental Review

Executive Order 13141 commits the United States to a policy of careful assessment and consideration of the environmental impacts of trade agreements and calls for environmental reviews of certain proposed trade agreements during the negotiating process. These environmental reviews will help identify potential environmental effects (both positive and negative) resulting from the proposed agreement, and facilitate the development of appropriate policy responses. As lead for this activity, USTR initiated an interagency process to analyze the environmental effects of the FTAA. This review will be the first application of Executive Order 13141 to a major pluri-lateral trade negotiation, and the results of this analysis are intended to inform our negotiating positions throughout the FTAA negotiations. Ultimately, the review will include an analysis of environmental effects resulting from projected changes in economic activity as a result of negotiations, and potential impacts on U.S. environmental laws and regulations. Comments are sought on the full range of possible impacts that could be associated with the agreement, taking into account a realistic range of approaches for achieving its broad objectives, as well as the relative importance and priority of these impacts. Statements regarding potential impacts will be most useful if they are elaborated with some specificity and supported by factual references and analysis. As stated in the Executive Order, the emphasis of the review shall be on domestic impacts, but transboundry and global impacts may also be considered as appropriate and prudent.

Given the FTAA environmental review's potential complexity and significance, the FTAA Environmental Group, chaired at the TPSC level, created an interagency Quantitative Analysis Working Group composed of experts from relevant agencies. The Working Group was charged with providing advice on an analytical methodology for quantifying the environmental effects of hemispheric trade liberalization. The Working Group recently presented its recommendations regarding the completion of a quantitative analysis in a report to the FTAA Environmental Group.

This document, entitled Report of the Quantitative Analysis Working Group to the FTAA Interagency Environment Group, is available on the USTR website (www.ustr.gov).

In summary, the Working Group has recommended a two pronged approach consisting of a core (quantitative) analysis of the FTAA, accompanied by a supplemental analysis of specific economic sectors, geographic areas, and other relevant issues not covered in the core analysis. The Working Group has presented: (1) Existing methods to quantify the potential economic and environmental effects to complete the core analysis, (2) identification of and recommendations to address some of the challenges presented by the core analysis, (3) recommendations for a process to help identify priority issues and appropriate methodologies for a supplemental analysis of issues not treated in the core analysis, and (4) estimates of the resources necessary to perform the core analysis.

By itself, the proposed quantitative methodology will not constitute a comprehensive analysis of the FTAA's environmental effects; rather, the outcome of this effort is intended to feed into the larger environmental review process. In addition, the core quantitative analysis would help inform the selection of key economic sectors and geographic areas within the United States that may warrant further examination in the supplemental analysis. These issues may be analyzed in a qualitative or quantitative fashion, depending upon such factors as: the nature of potential environmental effects, data availability and the availability of methods to estimate environmental endpoints (positive or negative). As envisaged by the Working Group, once the additional issues have been identified in the core and supplemental analyses, specific recommendations can be developed regarding analytical methods. In addition, specific global and trans-boundary environmental effects that may emerge as potentially significant issues will be examined in the core and/or supplemental analyses and incorporated, as appropriate, into the environmental review. At a minimum, other components of the review will include a concurrent analysis of potential impacts on domestic environmental laws and regulations resulting from potential rules changes and changes in non-tariff barriers to trade which may result from the negotiations. In addition, specific global and trans-boundary environmental effects that may emerge as potentially significant issues will be examined and incorporated, as appropriate, in the environmental review.

The FTAA Environmental Group is favorably considering the advice and recommendations of the Working Group as presented in the proposed methodology. Following input from USTR's advisors, Congress, and the public, the Environmental Group will further refine its analytical strategy. Initiation of the entire analytical effort should take place as soon as possible to ensure the timely consideration of the results in the negotiating process.

WRITTEN COMMENTS: Persons submitting written comments should provide twenty (20) copies no later than 5:00 PM January 19, 2001, to Gloria Blue at the address listed above. Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room 101) at the address noted above. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty (20) copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 00–30783 Filed 12–1–00; 8:45 am]

BILLING CODE 3901–1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2000–8278]

High Density Airports; Notice of Lottery of Slot Exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration.

ACTION: Notice of lottery for takeoff and landing times at LaGuardia Airport.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) lottery to reallocate exemption slots at LaGuardia Airport as authorized under the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century. The FAA finds that this action is necessary to address the level of delays that are currently experienced as a result of the significant increase in operations authorized by that legislation, and to prevent an increase in delays from additional flights scheduled to begin in the near future.

DATES: The lottery will be held on December 4, 2000.

ADDRESSES: The lottery will take place in the FAA Auditorium, 3rd floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 at 12:30 p.m.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3053.

SUPPLEMENTARY INFORMATION:

Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan National Airport and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR landing takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970s.

"AIR–21"

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" ("AIR–21") was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. § 41714 and included new provisions codified at 49 U.S.C. §§ 41716, 41717, and 41718. These provisions enabled air carriers meeting specified criteria to obtain new slot exemptions at New York's LaGuardia Airport (LaGuardia) and John F. Kennedy International Airport (JFK), Chicago's O'Hare International Airport (O'Hare) and Washington DC's Ronald Reagan Washington National Airport (National). As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemptions authorized by the statute.

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides in pertinent part that an exemption must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub airport in 1997, under certain conditions. The exemption must be granted if: (1) the airline was not providing such nonstop service between the small hub or nonhub airport and LaGuardia Airport during the week of November 1, 1999; or (2) the proposed service between the small hub or nonhub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub or nonhub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "* * * to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 41715(b)(1) expressly provides that the provisions for slot exemptions are not to affect the FAA's authority for safety and the movement of air traffic. The reallocation of exemption times by the lottery procedures described in this Notice is based on the FAA's statutory authority and does not rescind the exemptions issued by the Department under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain an allocation of slot exemption times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LaGuardia Airport, especially during peak hours, even if those operations would otherwise qualify for exemptions under AIR–21.

Lastly, section 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described herein and allows for special conditions to be included when circumstances warrant special consideration.

Actions of the Port Authority of New York and New Jersey

In response to a significant increase in exemption operations under AIR–21 beginning in late summer (from 53 operations in August 2000 to 192 operations at the end of September), the Port Authority of New York and New Jersey (Port Authority) issued a letter on August 2 to all carriers filing for AIR–21 exemptions requiring 45 days advance notice of new operations at the airport under AIR–21. On August 21, the Port Authority issued a second letter to carriers planning to initiate service under AIR–21 exemptions requesting that the carriers schedule their flights outside of the most congested hours in order to mitigate the delays generated by additional flights. On September 19, the Port Authority announced a temporary moratorium on new flights. In that letter, the Port Authority stated its intent to replace this moratorium as soon as possible with a measure that will prevent an unlimited increase in operations at LaGuardia, and at the same time fairly accommodate Federal interests in competition and in service to small hub or nonhub airports as provided in AIR–21. To that end, the Port Authority has proposed to the FAA the imposition of a limit on the number of AIR–21 exemption flights at LaGuardia, and the allocation of those flights to eligible carriers through a lottery procedure to address, in the short-term, the current situation at the airport.

The following factors describe the current operating conditions experienced at LaGuardia:

- There were more than 9,000 flight delays at LaGuardia in September 2000, up from 3,108 in September 1999. In September 2000, 25% of the flight delays in the U.S. were at LaGuardia. In September 1999, the figure was 12%.
- Average delays for many afternoon flights at LaGuardia in September 2000 exceeded 48 minutes. The average delay for all flights that month was 43 minutes.
- LaGuardia has recently experienced as many as 600 delayed flights on a day when there is good weather and no other significant problems in the air traffic control system.
- Some flights at LaGuardia have experienced average ground delay time that exceeds scheduled flight time.
- Air carriers routinely cancel scheduled flights, especially in afternoon and evening hours, due to aircraft positioning and other operational issues related to excessive delays.

Since AIR–21 was enacted on April 5, 2000:

- Carriers have filed exemption requests for more than 600 new flights a day at LaGuardia.
- As of November 1, over 300 new flights are operating under AIR–21 exemptions.
- Carriers have published schedules for 28 new flights in December and 23 more new flights in January 2001.
- In April 2000, the number of scheduled operations at LaGuardia was 1064. As of November 1, that number was 1344.
- If the flights published for December and January began operation, there would be approximately 1395 scheduled operations each day at the airport, an increase of 30% in less than a year at an airport that was already one of the top two delay airports in the U.S.

Notice of Intent To Conduct a Lottery

On November 9, 2000, the FAA issued a Notice of Intent to Conduct a Lottery seeking comment on the agency's proposed slot lottery at LaGuardia (65 FR 69126; November 15, 2000). The agency proposed that as of January 1, 2001, scheduled operations would be limited to 75 per hour to limit daily and hourly demand on airport facilities and the air traffic control system. The FAA believes that this number of flights can be accommodated in good weather conditions and at the same time, will provide access for AIR–21 exemption flights. (This number does not include extra sections of scheduled air carrier flights or the 6 reservations per hour for "Other" nonscheduled operations, including general aviation, charters and military flights.) As a result, the number of AIR–21 slot exemptions at LaGuardia would be limited to approximately 150 a day between the hours of 7:00 a.m. and 9:59 p.m. (the actual hourly total is 159). Also on January 1, 2001, the FAA would reissue AIR–21 exemption slots and operating times to eligible carriers in accordance with the results of a lottery. The FAA further proposed that carriers eligible for participation in the lottery would be those carriers that have applications on file with the Department, fulfilled the certification requirements articulated in OST Orders 2000–4–10 and 2000–4–11, received an FAA allocation as of the date of the notice, and would have commenced operations by January 1, 2001. Lastly, the agency proposed that independently owned carriers that had obtained AIR–21 certification in their own name could participate in the lottery separately, regardless of whether the service is under that carrier's name or under a code-share arrangement.

Discussion of Comments

After a seven-day comment period, which closed on November 20, the agency received 36 comments. Comments were submitted from 15 airlines, six airport authorities, two associations representing airports and small air carriers, private individuals and representatives from the City of Knoxville, Tennessee (Chamber of Commerce, Convention and Visitors Bureau, and Mayor's Office) and representatives from the State of Maine (Governor King. City of Portland, Department of Economic and Community Development). In addition, comments were received from Senators Brownback, Roberts, Grassley, Harkin, Kohl and Feingold and Congressmen Barrett and Kleczka.

The comments discussed nine main issues: (1) Treatment of commuter affiliates; (2) elimination or reduction of service to small communities; (3) new entrant/ limited incumbent preference; (4) carrier eligibility for the lottery; (5) suspension of the use-or-lose requirement; (6) suspension of the extra section provision; (7) implementation date of the reallocation; (8) alternative allocation methods; and (9) trading of slot exemption times.

Treatment of Commuter Affiliates

The FAA proposed that independently owned carriers that had obtained AIR–21 certification in their own name could participate in the lottery separately, regardless of code-share arrangements with other operators at LaGuardia Airport. The basis for this proposal was a strict reading of the statutory language in AIR–21, which specifically provides that:

> For purposes of this section and section 41716, 41717, and 41718, an air carrier that operates under the same designator code, or has or entered into a codeshare agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the 2 carriers at the airport exceeds 20 slots and slot exemptions. (49 U.S.C. 41714(k)).

The majority of comments on this issue opposed the FAA's proposal that the above provision only applies to new entrant/limited incumbents. The majority of commenters argue that by adopting the above interpretation, the code-share affiliates of the major incumbent carriers are being treated as individual carriers for the purpose of participating in the slot lottery, regardless of the fact that many of these carriers carry the same airline designator code. Consequently, the number of carriers eligible to participate in the lottery for slot exemptions to small hub and nonhub airports is inflated to 8 carriers versus 4 carriers if affiliated carriers are aggregated.

This leaves less exemption slots available for new entrants during the lottery, particularly during the most desirable times and results in an inequitable and disproportionate weight toward incumbent carriers with multiple contracted codeshare affiliates. These commenters contend that this approach would enhance the dominance of the airlines that already dominate LaGuardia and are better able to complement their AIR–21 operations with HDR slots, which is precisely contrary to the intent of AIR–21.

Both the Senate version (S. 82) and the House version (H.R. 1000) of AIR–21 contained language that aggregated commuter affiliates for purposes of applying for slot exemptions as new entrants or limited incumbents. The conference substitute stated that,

> For purposes of determining whether an airline qualifies as a new entrant or limited incumbent for receiving slots exemptions, DOT shall count the slots and slot exemptions of both that airline and any other that it has a code-share agreement at that airport. Conference Report on AIR–21, H. Rep. 106–513, 106th Cong., 2d Sess. (March 8, 2000), p. 174.

Additionally, in the Senate debate, Senator McCain, chairman of the Senate Commerce Committee stated with respect to this provision that "It means the Secretary should consider commuter affiliates as new entrant or limited incumbents for purposes of applying for slot exemptions and interim access to O'Hare. A major airline should not be allowed to game the system and add to its hundreds of daily slots through its commuter affiliates and codeshare partners" (106th Cong., 1st Sess. Vol. 145, No. 134, S12096, October 6, 1999).

It is argued by the commenters, including all members of Congress that commented on this notice, that it was only necessary for Congress to address the commuter affiliates only with respect to new entrants and limited incumbents because those are the only circumstances in which AIR–21 exemptions would be limited by the status of the carrier. The statutory provisions governing slot exemptions for small or nonhub airports provide for automatic access upon meeting the stated criteria without regard to the status of the carrier. Consequently, it was not necessary for Congress to address the affiliated carrier issue with respect to these slot exemptions and the statute is silent.

The FAA does not dispute the above arguments. However, in ensuring that the proposed lottery meets the intent of AIR–21 to the greatest extent possible, the agency has to consider the effect of amending its interpretation of this provision and applying the commuter affiliate provision to both new entrants/ limited incumbents and carriers providing service to small and nonhub airports. As stated in the notice, in capping the number of slot exemptions, the agency is striving to strike a balance between new entrants/limited incumbents and carriers providing service to small and nonhub airports that provides a fair and equitable distribution between the two categories

of operations, consistent with the intent of AIR–21.

The FAA agrees with the comments that it was logical for Congress not to treat commuter affiliates as a single entity for purposes of obtaining slot exemptions for carriers providing service to small and nonhub airports. Since the statute does not provide for a cap on these exemptions nor any allocation framework, it is unnecessary to include the language specifically applicable to new entrants and limited incumbent carriers. However, given the circumstances today that warrant a limit of some sort on the total number of operations at the airport and the clear Congressional intent in cases where such limits applied, the FAA finds that it is reasonable to apply the commuter affiliate principle to the carriers providing service to small and nonhub airports. First, since AIR–21 is silent on this issue, in looking at the legislative history, the reading suggested by the commenters is consistent with the intent of the statute. Second, in adapting the use of the definition for the purpose of the lottery of FAA-issued operating rights, the FAA is dealing with a situation not contemplated by the drafters of AIR–21. The agency's procedure is for the allocation of limited operating rights, and attempts to comport with the intent of AIR–21 to the maximum extent possible. Accordingly, the list of eligible carriers set forth in this notice reflect an aggregation of commuter affiliates with their codeshare partners, *i.e.* all carriers sharing a common designator code will be considered a single carrier for the purpose of selecting exemption slots in the lottery.

Elimination or Reduction in Service to Small and Nonhub Airport

Comments were received from the Knoxville Airport Authority, Convention and Visitor Bureau, Mayor, the Charleston County Aviation Authority, Birmingham Area Chamber of Commerce, Lee County Port Authority, City of Portland, Maine, the Governor of Maine, State of Maine Department of Economic and Community Development, Piedmont Triad Airport Authority, Lebanon Municipal Authority, and the Charlottesville-Albemarle Airport Authority who object to the proposed lottery if it would result in any reduction or elimination of service to their communities. They urge the FAA to protect the needs of their individual communities and other communities that AIR–21 was intended to benefit. Colgan Air contends that it provides the only LaGuardia service to the markets it serves. Without the AIR–21 exemption slots, Colgan states that its service to these small hub and nonhub markets will disappear. Similarly, Delta Air Lines comments that Congress encouraged airlines to institute new regional jet service between LaGuardia and underserved cities to redress the lack of air service from these communities to the New York market. As a result, Delta has already instituted nonstop LaGuardia service with regional jets to 14 small hub and nonhub markets (46 daily nonstop roundtrip flights). According to Delta, the proposed lottery would likely force Delta to cancel all but a few of these flights and impose hardships on these communities who are now using this new service. Delta also argues that the FAA does not properly balance regional jet service versus new entrant service, of which the regional jet service will endure most of the reduction in number of slot exemptions in the lottery.

The FAA realizes that an approximate 44 percent reduction in the number of exemption slots available during peak hours is going to result in reduced service. The agency's foremost concern with this lottery, after establishing the limit on the number of operations, is how to make the resulting allocation as fair as possible among the competing entities and consistent with the purposes of AIR–21. As stated previously, the FAA believes that since the agency is imposing a cap on slot exemptions, it is appropriate to aggregate commuter affiliates with their codeshare partners. While this may reduce the number of slot exemptions available to the carriers providing service to small hub and nonhub airports, these carriers, by virtue of their codeshare arrangements have alternative sources of slots available to adjust their level of service. It is also noted that this action does not reduce the number of HDR slots or preclude the option to provide the small community service to other New York City area airports. Several of the incumbent carriers providing service under AIR–21 slot exemptions are the largest individual slot holders at the airport and previously served some of the same communities using HDR slots. These carriers may choose to continue providing service with a combination of AIR–21 exemption slots and HDR slots within the carriers' base. This notice will not require a carrier to continue or discontinue service to any eligible community. These decisions will be make by the individual carrier. In sum, the FAA is aware that some communities will not receive service to LaGuardia Airport they may have expected under the provision of AIR–21, even if a carrier is willing to provide the service. LaGuardia Airport simply does not have the capacity for the unlimited addition of new flights.

New Entrants/Limited Incumbents

America West Airlines, Legend Airlines, Spirit Airlines, Shuttle America and the Air Carrier Association of America (ACAA) all raise issues concerning the impact of the lottery on new entrants/limited incumbents. These entities argue that the number of exemption slots operated by new entrants/limited incumbents pales in comparison to the number of exemption slots operated by carriers providing service to small hub and nonhub airports. These commenters believe that the proposed lottery is not structured so as to provide new entrants/limited incumbents with meaningful opportunities to promote competition, as intended by AIR–21. Several of the commenters requested that the FAA allocate additional slots to limited incumbents and new entrants to provide for expansion of their schedules in the next year, even if the slots would not be used immediately.

The FAA believes that the application of the commuter affiliate principle to carriers providing service to small and nonhub airports helps balance the two interests. However, the FAA also believes that while the lottery is intended to equitably address the needs of all carriers under the cap, it is necessary to ensure the competitive viability of new entrants, and still providing small hub and nonhub access granted under the statute. Consequently, the FAA finds that the lottery procedures described herein give equal weight to both categories of carriers for slot exemptions.

Carrier Eligibility

Sun Country states that it meets the definition of a "new entrant," but is not eligible to participate in the lottery because it did not apply for exemptions at the Department and receive allocations from the FAA by November 9. (Sun Country did file its application with the Department on November 17, 2000). Sun Country further argues that at the time that the deadline was published, it made it impossible for any new entrant to participate that had not yet filed with the Department. Shuttle America comments that it should be permitted to participate in all three initial rounds of the lottery because it is a new entrant and because it is providing service to a new and nonhub market, therefore uniquely qualifying

for inclusion in the first three rounds of the lottery under both categories of operations.

Due to the current operating environment at LaGuardia as described in the previous notice, the FAA finds that immediate action is necessary to prevent worsening of an already intolerable situation. As previously stated, the reallocation based on this lottery is an interim step and will only be in effect for the short-term, *i.e.* until September 15, 2001. After that date, the FAA and the Department of Transportation fully expect to have a long-term mechanism in place to better address congestion at the airport, developed with the participation of all interested parties. Because of the temporary nature of the allocation, and the fact that many of the carriers already operating AIR–21 exemption service will need to reduce their operations, the FAA did not open the lottery to carriers that had taken no steps to initiate AIR–21 flights at LaGuardia as of the date the notice was issued. It is incumbent that the FAA reduce the operations at the airport to an acceptable number. The FAA's immediate goal is to bring the current level of operations to a level that more appropriately recognizes airport capacity and to do so by addressing the operations that are already in place. If the FAA were to permit Sun Country to participate in the lottery, that decision would require further reduction of service that is already being operated by other carriers. We note that other carriers, some of whose current operations are being reduced, also have plans (and in some cases, have already received slot times by the FAA) to increase service after January 1, 2001, and prior to September 15, 2001, but are unable to do so. We note that Sun Country has previously filed for exemptions and initiated AIR–21 flights at JFK International Airport and O'Hare International Airport and is clearly benefiting from AIR–21 even if it is unable to begin LaGuardia service immediately. Also, as previously stated, the allocation of exemption slots by this lottery is for the short-term only and this action is not a permanent bar to Sun Country or other operators from commencing future AIR–21 operations.

The FAA does not agree that Shuttle America should be able to participate in all rounds of the lottery as both a new entrant/limited incumbent and a carrier providing small hub and nonhub service. The FAA has listed Shuttle America as a new entrant (to which Shuttle America did not comment on) and eligible to select four slots in the first round, but ineligible for participation in the second and third rounds for carriers obtaining AIR–21 authority on the basis of providing small hub and nonhub service.

The FAA also makes four corrections to the November 9 notice regarding the number of slot exemptions available during the lottery for Midway, Legend, American Eagle and Delta Connection. In the previous notice, the FAA incorrectly stated that Midway was eligible for 9 operations, Legend for 7 operations, American Eagle for 26 operations and Delta Connection for 81. The corrected numbers are 15, 8, 34 and 88 respectively. However, this notice clarifies that only slots between the hours of 0700–2159 are included.

Alternative Allocation Methods

A number of commenters proposed various alternative methods of allocation or variations of the lottery procedures proposed. These methods and variations include increasing the number of slots that new entrants may select in the first round; withdrawal and reallocation of 10 percent of all HDR slots; allocation of available slots among eligible carriers in proportion to the number of AIR–21 flights already implemented as of a certain date; allowing lottery slots to be traded freely as long as relevant city and aircraft requirements are met; allowing carriers to have a limited number of delay-free arrivals and to pick commercially viable times; rolling back the cut-off date for operations eligible for lottery to those operations operating on August 31, 2000; and use a rolling 3-hour limitation (do not exceed 225 operations in any three consecutive hours).

The FAA has reviewed each alternative and variation submitted and finds that the results of the lottery, if any of these suggestions were adopted, would favor one carrier or category of carriers over the others. It would also detract from the purposes of this lottery, which are to cap operations at an acceptable level for the short-term, and at the same time realize the benefits of AIR–21 to the extent possible at that level of operations. For example, if the number of slots were increased for new entrants in the first round, that would adversely affect the number of slots available for carriers providing service to small and nonhub airports, which has already been significantly reduced. Also, if the FAA were to change the cutoff date to August 31, 2000, this would disproportionately benefit incumbent carriers, which in some cases started the AIR–21 service only a few days before that deadline. If the FAA were to adopt a prorated method of allocation, then new entrants, whose presence at the airport is largely or exclusively due to slot exemptions, would be disfavored.

Lastly, adoption of a 3 hour rolling limit would allow for further peaking of operations at certain times, which is inconsistent with an hourly cap. Consequently, the FAA believes that the lottery procedures proposed provide an approach that distributes the benefits and burdens of the allocation among carriers, and strikes a balance between the two distinct purposes of AIR–21: competition by new entrant and small incumbent carriers and service to small hub and nonhub airports by regional jets and other small aircraft. The FAA adopts herein the lottery procedures proposed, and as amended by this notice.

Suspension of the Use-or-Lose Requirement

Several commenters requested that the FAA temporarily suspend the minimum slot usage requirement for all operators at LaGuardia.

On November 13, 2000, the FAA issued a Statement of Policy, which set forth a temporary policy concerning the minimum slot usage requirement at LaGuardia (65 FR 69601; November 17, 2000). According to the policy statement, carriers are permitted to temporarily return slots or slot exemptions to the FAA in advance due to schedule planning or other decision by the carriers without fear of jeopardizing the permanent loss of the slot or slot exemptions. Additionally, this policy provided that the FAA will treat as used a slot or slot exemption if the flight was scheduled but canceled for operational reasons and the slot would not otherwise have been subject to withdrawal.

The FAA intends to issue a separate notice that clarifies the November 13 policy statement in view of the lottery and the reallocation of the AIR–21 exemption slots.

Suspension of Extra Sections

Several commenters stated that the extra section provision of the High Density Rule is either being abused and should be suspended or is contributing to the overall delay situation at the airport and that the FAA should suspend this provision.

The FAA is not suspending the use of extra sections at this time. However, based on the comments received, the agency will review extra section operations under current regulations and intends to monitor these operations in the future to determine whether further rulemaking or enforcement action is warranted.

Implementation Date

The FAA received comments regarding the proposed reallocation date of January 1, 2001. Several carriers stated that this date would be too soon after the lottery, in that it would not be possible to change published schedules, or that the date fell in the middle of the holiday travel time. In addition, several carriers cited operational problems with the proposed date since airlines already have posted crew bids for January before the lottery process is completed. Midway Airlines specifically stated that "If the lottery is not held until early December, which appears likely, then carriers will not have the time necessary to review and adjust fleet allocations and positionings in order to meet the deadlines for distributing bid packages to their crews on December 10."

Based on these comments, the FAA agrees that the January 1 date is not practicable to reallocate exemption slots and have carriers adjust schedules based on that reallocation without significant disruption. The carriers recommended implementation date of January 31, 2001, which will provide carriers with approximately seven weeks after the lottery to adjust schedules. This date addresses the situation at the airport in the most expeditious timeframe reasonable recognizing that airlines must take actions to reschedule flights, comport with their union contracts and accommodate passengers on alternative routings if necessary.

Trading of Slot Exemptions

Several commenters raised the issue of allowing the transfer of the slot exemption times among carriers consistent with industry practices and FAA regulations governing the transfer of slots.

Under the provisions of 49 U.S.C. 41714(j), carriers may not sell, trade, transfer, or convey the operating authorities granted by the Department's exemptions. Under certain conditions, the Department has allowed the temporary transfer of slot exemption times under its pre AIR–21 authority and AIR–21 when slot timings were limited. These conditions include that the transfer is for operational reasons, of a temporary nature, and on a one-for-one basis at the same airport. In addition, the carrier with the exemption must certify to the FAA that no other consideration is involved, which is consistent with the provisions of AIR–21.

Re-allocation of Slot Exemptions at LaGuardia Airport by Lottery

As stated in the November 9 notice, the FAA will proceed with the development of new department policy on measures available at LaGuardia for management of congestion, with participation by all interested parties. However in the short term, the FAA finds that it is appropriate to limit the number of AIR–21 exemption operations at LaGuardia and allocate those operations by lottery to eligible carriers described herein. The agency reiterates that the limit will not be permanent and will remain in effect until September 15, 2001, when a permanent demand management policy for the airport, developed with the participation of all interested parties, can be implemented.

Reallocation of AIR–21 exemption flights at LaGuardia in accordance with the following conditions is in furtherance of the spirit and intent of AIR–21, and is consistent with the FAA's responsibility for the efficient use of the navigable airspace, which is articulated in 49 U.S.C. § 40103(b).

Effective January 31, 2001, the number of scheduled operations at LaGuardia will be limited to approximately 75 per hour. Consequently, the number of AIR–21 slot exemptions at LaGuardia is limited to approximately 159 per day between the hours of 7:00 a.m. and 9:59 p.m. Also effective January 31, 2001, all AIR–21 slot exemptions will be allocated in this lottery, and all carriers currently operating under AIR–21 exemption authority will be required to conform their schedules accordingly.

The number of AIR–21 slot exemptions that will be available during the lottery and consistent with an hourly total of approximately 75 scheduled operations is as follows (allocations will be made by 30 minute time periods):

Hourly period	Number of exemptions
0700	16
0800	11
0900	9
1000	8
1100	8
1200	13
1300	14
1400	8
1500	12
1600	7
1700	2
1800	7
1900	7
2000	6
2100	31

The following criteria, as proposed in the previous notice, are used to determine carrier participation. A carrier must have: (1) An application on file with the Department; (2) fulfilled the certification requirements articulated in OST Orders 2000–4–10 and 2000–4–11 as of November 9, the date of the notice; (3) received an allocation of slot times from the FAA; and (4) commenced operations by January 1, 2001.

Carriers that meet this criteria under Order 2000–4–10 and eligible for a lottery of times between the hours of 0700–2159 are: Air Tran (11 operations), American Trans Air (6 operations), Legend (7 operations), Midway (15 operations), Midwest Express (8 operations), Spirit Airlines (12 operations), Shuttle America (14 operations), Southeast Airlines (4 operations) and Vanguard (2 operations).

Carriers that meet this criteria under Order 2000–4–11 for service for small hub and nonhub airports and would be eligible for a lottery of slot times between the hours of 0700–2159 are: American Eagle (32 operations), Continental Express (31 operations) Delta Connection (88 operations) and US Airways Express (82 operations).

Definitions for the terms "carrier," "new entrant," and "limited incumbent" for purposes of participation in the lottery, are proposed as set forth in 14 CFR 93.213, and amended by § 231 of AIR–21. The FAA has applied the "commuter affiliate" provision in 49 U.S.C. 41714(k) to carriers eligible for the slot lottery, both new entrants/limited incumbents and carriers serving small hub and nonhub airports, and is reflected in the previously mentioned list of carriers eligible to participate in the slot lottery.

The FAA advises all carriers that it will not allocate slot times for any request for slot exemption times between the hours of 0700–2159 received by the FAA Slot Administration Office prior to September 15, 2001, for operation after that date.

The slot exemption lottery will be conducted in accordance with the following procedures:

a. Carriers will participate in a random drawing for selection order. Carriers will select in that order in each round. At the lottery, each operator must make its selection within 5 minutes after being called or it shall lose its turn.

b. No carrier may select more exemption times than it was allocated by the FAA to operate between 0700–2159 on January 1, 2001.

c. In the first round, only new entrants and limited incumbent carriers may participate. Each new entrant and limited incumbent carrier may select up to 4 slot exemption times, 2 arrivals and 2 departures. No more than one slot exemption time may be selected in any hour. In this round each carrier may select one slot exemption time in each hour without regard to whether a slot is available in that hour.

d. In the second and third rounds, only carriers providing service to small hub and nonhub airports may participate. Each carrier may select up to 2 slot exemption times, one arrival and one departure in each round. No carrier may select more than 4 exemption slot times in rounds 2 and 3.

e. Beginning with the fourth round, all eligible carriers may participate. Each carrier may select up to 2 of the remaining slot exemption times, one arrival and one departure, in each round, until a total of 159 slot exemption times have been selected.

f. If the last remaining slot exemption times available do not permit a reasonable arrival-departure turnaround, the FAA will take requests for limited trades among AIR–21 operators, or may make an adjustment to one of the times to assure that all slot exemption time pairs selected, combined with other slots and slot exemptions available to the operator, provide for a viable operation by the selecting carrier. In addition, the FAA may approve the transfer of slot exemption times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

g. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the lottery.

h. The slot exemptions reallocated by lottery will remain in effect until September 15, 2001.

i. Carriers that participate and select exemption slots during the lottery must re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000–4–10 and 2000–4–11, and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operation, which is consistent with AIR–21 prohibition on the sale or lease of exemption slots.

Issued on November 29, 2000 in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 00–30793 Filed 11–29–00; 4:18 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Future Flight Data Collection Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L, 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Future Flight Data Collection Committee meeting to be held January 11, 2000, starting at 9 a.m. This meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Review Meeting Agenda; (3) Review Previous Meeting Minutes; (4) Receive report on the deliberations of Working Group 1 (Data Needs); (5) Receive report on the deliberations of Working Group 2 (Technology); (6) Discuss Interim Report; (7) Review First Draft of Final Report Outline; (8) Presentations; (9). Other Business; (10) Establish Agenda for Next Meeting; (11) Date and Location of Next Meeting; (12) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements, obtain information or pre-register for the committee should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 22, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–30775 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hattiesburg-Laurel Regional Airport, Hattiesburg, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice document 00–29918 appearing in the issue of Wednesday, November 22, 2000, under **SUPPLEMENTARY INFORMATION**, in the first column, in the fifteenth line, the date the FAA will approve or disapprove the application, in whole or part, no later than should read "March 15, 2001".

FOR FURTHER INFORMATION CONTACT: Patrick Vaught, Program Manager, FAA/ Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, 601–664–9885.

Issued in Jackson, Mississippi on November 24, 2000.

Patrick Vaught,

Acting Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 00–30774 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Transportation of Hazardous Materials; Designated, Preferred, and Restricted Routes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: This notice provides the current listing of all restricted, designated, and preferred road and highway routes for transporting radioactive (RAM) and non-radioactive hazardous materials (NRHM) that have been reported to the FMCSA by State and Indian Tribe routing agencies as of November 14, 2000. This listing has been extracted from the National Hazardous Material Route Registry (NHMRR). The information contained in this notice supersedes that published at 63 FR 31549 on June 9, 1998. The periodic updating and publishing of this listing is required by the Hazardous Materials Transportation Act of 1975 (HMTA), as amended (49 U.S.C. 5112). Also, the FMCSA's regulations include Federal standards and procedures which the States and Indian Tribes must follow if they establish, maintain, or enforce routing designations that: (1) Specify highway routes over which NRHM or RAM may, or may not, be transported within their jurisdictions; and/or (2) impose limitations or requirements with respect to highway routing of NRHM or RAM. States and Indian Tribes are also required to furnish updated route information to the FMCSA within 60 days of establishing or changing a route.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Swedberg, (303) 969-5772, ext. 363, FMCSA, 555 Zang St., Room 400, Lakewood, CO 80228-1010; or Mr. Joseph Solomey, Office of the Chief Counsel, (HCC-20), (202) 366-0384, Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512-1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's web site at: http://www.access.gpo.gov/nara. To find the most up-to-date listing of hazmat routes, you may access the National Hazardous Material Route Registry (NHMRR) directly at: http://hazmat.fmcsa.dot.gov/. This site is considered the source of this information and will display hazmat route listings and maps which will reflect any changes that have been made since the publication of this notice.

Background

Section 5112(c) of title 49, United States Code, requires the Secretary of Transportation (Secretary), in coordination with the States and Indian Tribes, to update and publish periodically a list of current effective hazardous materials highway routing designations and restrictions. For NRHM routing designations or restrictions, 49 CFR 397.73(b) requires each State or Indian Tribe to furnish information on any new or changed routes to the FMCSA within 60 days after establishment. For RAM preferred routing, 49 CFR 397.103(c)(1) requires the authorized routing agency to provide the FMCSA with written notification in order for the route to become effective. Updates should be sent to: Mr. Richard Swedberg, FMCSA, 555 Zang St., Room 400, Lakewood, CO 80228-1010.

This notice is being published to provide the public with the FMCSA's current list of State-assigned hazardous materials (HM or hazmat) routes (alphabetically by State) along with the State and Federal points of contact. For each routing agency, the route listing may be divided into three main categories as follows: (1) Restricted Routes for ALL Hazmats, (2) Radioactive Routes, (3) and Non-Radioactive Hazmat Routes. Within the RAM and NRHM categories, the list will further be divided into restricted and designated/preferred routes. Note that "preferred routes" (49 CFR 397.103) are routes which must be utilized for shipments of "highway route controlled quantity" (HRCQ) of radioactive materials. If there are no routes to be reported under any of these categories or subcategories, the category will not appear in the route listing.

Each route will be identified with one or more restriction or designation codes which will follow the route description. Restriction codes identify which materials may not be transported along the given route, while designation codes indicate which materials the routing authority has determined must be shipped along the route. These codes can be deciphered using the Restriction/Designation key which precedes the route listing. Note that the restriction code "0" indicates that ALL hazmats, both RAM and NRHM, are restricted for the indicated route. These routes will be listed under the main category "Restricted Routes for ALL Hazmats" for that State. Because of this, you may need to look in two sections to find routes that are restricted for either RAM or NRHM. For example, to find all restricted RAM routes, first look under the "Restricted Routes for ALL Hazmats" and then look under the "RAM Restricted" section, which lists routes in which RAM alone is restricted.

Authority: 49 U.S.C. 5112; and 49 CFR 1.73.

Issued on: November 28, 2000.

Julie Anna Crillo,

Acting Assistant Administrator.

Federal Motor Carrier Safety Administration Hazmat Route Registry

Report Date: 11/14/00

The following key applies to information listed for all 50 states

RESTRICTION/DESIGNATION KEY

Restrictions	Designations
0—ALL Hazmats	A—ALL NRHM Hazmats
1—Class 1—Explosives	B—Class 1—Explosives
2—Class 2—Gas	I—Poisonous Inhalation Hazard (PIH)
3—Class 3—Flammable	M—Medical Waste
4—Class 4—Flammable Solid/Combustible	P—*Preferred Route* Class 7—Radioactive
5—Class 5—Organic	
6—Class 6—Poison	
7—Class 7—Radioactive	
8—Class 8—Corrosives	
9—Class 9—Dangerous (Other)	
i—Poisonous Inhalation Hazard (PIH)	

STATE: ALABAMA

State Agency:	AL DOT	**FMCSA:**	AL FMCSA Field Office
POC:	James R. Braden	**FMCSA POC:**	AL Motor Carrier State Director
Address:	1409 Coliseum Blvd Montgomery, AL 36130-3050	**Address:**	500 Eastern Blvd. Suite 200 Montgomery, AL 36117-2018
Phone:	(334)-242-6474	**Phone:**	(334) 223-7244
Fax:	(334) 242-6378	**Fax:**	

RESTRICTED ROUTES FOR ALL AL HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/07/94	Wallace Twin Tunnels [I10 & US90 in Mobile] [A signed detour is in place to direct traffic along Water St., US43, and Alt US 90. Traffic will pass over the Mobile River using the Cochrane Bridge.]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

AL RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
08/26/96	Battleship Parkway [Mobile] from Bay Bridge Rd. [Mobile] to Interstate 10 [exit 27]	P
08/26/96	Bay Bridge Rd. [Mobile] from Interstate 165 to Battleship Parkway [over Africa Town Cochran Bridge] [Westbound Traffic: Head south on I165; To by-pass the downtown area, head north on I165.]	P
08/26/96	Interstate 10 from Mobile City Limits to Exit 26B [Water St] [Eastbound Traffic: To avoid the downtown area, exit on I-65 North]	P
08/26/96	Interstate 10 from Mobile City Limits to Exit 27	P
08/26/96	Interstate 65 from Interstate 10 to Interstate 165 [A route for trucks wishing to by-pass the downtown area.]	P
08/26/96	Interstate 65 from Mobile City Limits to Interstate 165	P
08/26/96	Interstate 165 from Water St. [Mobile] to Bay Bridge Rd. exit [Mobile]	P
09/27/93	Interstate 459 from Interstate 20/I-59 [Northeast of Birmingham] to Interstate 20/I-59 [Southwest of Birmingham] [This route should be used in lieu of I-20/I-50 in the Birmingham area, Jefferson county.]	P
08/26/96	Water St. [Mobile] from Interstate 10 [exit 26B] to Interstate 165	P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

AL NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/07/94	US 43/Alt US90 from State 16/US 90 or I-10 to State 16/US 90 or I-10 [Alternate route for Wallace Twin Tunnels, Mobile County.]	A

STATE: ALASKA

State Agency:	AK DOT—MSCVE	**FMCSA:**	AK FMCSA Field Office
POC:	Trooper Hans Roelle	**FMCSA POC:**	AK Motor Carrier State Director
Address:	12050 Industry Way Building O, Suite 6 Anchorage, AK 99515	**Address:**	Historic Federal Building 605 W. 4th Ave, Room 249 Anchorage, AK 99501
Phone:	(907)-345-7750	**Phone:**	(907) 271-4068
Fax:	(907)-345-6835	**Fax:**	

No Routes Designated as of 11/14/00

STATE: ARIZONA

State Agency:	AZ DOT, Hwy. Div.	**FMCSA:**	AZ FMCSA Field Office
POC:	Mike Manthey	**FMCSA POC:**	AZ Motor Carrier State Director
Address:	206 South 17th Ave Phoenix, AZ 85007-3213	**Address:**	234 North Central Ave. Suite 305 Phoenix, AZ 85004
Phone:	(602)-712-8888	**Phone:**	(602) 379-6851
Fax:	(602)-407-3243	**Fax:**	

RESTRICTED ROUTES FOR ALL AZ HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/20/99	Exit Ramp from US 60 [Westbound] to State 101 [Northbound]	0

RESTRICTED ROUTES FOR ALL AZ HAZMATS—Continued

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/27/99	Exit Ramp from US 60 [Eastbound] to State 101 [Southbound]	0
01/01/90	Interstate 10 [Deck Tunnel—Phoenix] from 7th St. exit [Mile Post 144.3] to 7th Ave. exit [Mile Post 146.2] [Interstate 17 is the designated truck route which has been posted as the alternative route for hazmat traffic.]	0
10/16/95	State 202 from Mile Post 8.33 [McClintock Exit] to Mile Post 11.07 [Dobson Exit] [Alternate Routes are as follows: 1. McClintock to University to Dobson 2. McClintock to McKellips to SR-101 Note: Freeway ends at SR-101 with temporary lanes to Dobson. Alternative routing may vary with continuing construction.]	0

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

AZ NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/90	Interstate 17 from Interstate 10 [west of Deck Tunnel] to Interstate 10 [east of Deck Tunnel]	A

STATE: ARKANSAS

State Agency:	AR Hwy & Transportation Dept.	**FMCSA:**	AR FMCSA Field Office
POC:	Lt. George R. Franks, Jr.	**FMCSA POC:**	AR Motor Carrier State Director
Address:	Arkansas Highway Police Div. P.O. Box 2779 Little Rock, AR 72203	**Address:**	3414 Federal Building 700 W. Capitol Ave Little Rock, AR 72201
Phone:	501-569-2421	**Phone:**	(501) 324-5050
Fax:	501-568-4921	**Fax:**	

RESTRICTED ROUTES FOR ALL AR HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/08/92	Interstate 30 from Interstate 440 to Interstate 40 [in downtown Little Rock] [Exception for local delivery.]	0
07/08/92	Interstate 630 [Entire Highway] [Downtown Little Rock. Exception for local delivery.]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

AR RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
(unknown)	Interstate 30 from Interstate 440 to Texas [Memphis to Texarkana Route. Use this route in lieu of I-430, I-630 or that portion of I-30 connecting I-40 and I-440]	P
11/28/88	Interstate 40 from Tennessee to Oklahoma [Memphis to Fort Smith route]	P
11/28/88	Interstate 440 from Interstate 40 to Interstate 30 [Memphis to Texarkana route Use this route in lieu of I-430, I-630 or that portion of I-30 connecting I-40 and I-440]	P

STATE: CALIFORNIA

State Agency:	CA Highway Patrol	**FMCSA:**	CA FMCSA Field Office
POC:	Dave Gaffney	**FMCSA POC:**	CA Motor Carrier State Director
Address:	P.O. Box 942898 Sacramento, CA 94298-0001	**Address:**	US Bank Plaza 980 Ninth Street Sacramento, CA 95814-2724
Phone:	(916)-445-1865	**Phone:**	(916) 498-5050
Fax:	(916)-446-4579	**Fax:**	

RESTRICTED ROUTES FOR ALL CA HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/09/95	Berryessa Knoxville Rd [Napa Valley] from Homestake Mining to South [Restrictions are placed on mine's operating permits.]	0
01/01/95	Monterey Traffic Underpass [City of Monterey] from Washington St. to Lighthouse Ave. [Alternate route: Pacific St. to Del Monte Ave.]	0
01/09/95	Napa County [Hazmat to and from the Geysers project in Lake and Sonoma county are excluded from traversing Napa county.]	0
01/01/95	State 24 [Caldecott Tunnel] from Mile Post R5.89 [Alameda County] to Mile Post R0.35 [Contra Costa County] [Transportation of an explosive substance, flammable liquid, liquefied petroleum gas, or poisonous gas in a tank truck, trailer, or semitrailer is allowed through the tunnel only between the hours of 3:00 AM and 5:00 AM.]	0
01/01/95	State 260 from Mile Post R0.62 to Mile Post R1.92 [Alameda County] [Eastbound Webster St. Tube & westbound Posey Tube from Atlantic Ave. to the end of State 260]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

CA RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
02/25/00	Interstate 5 from Interstate 605 to Interstate 805	P
01/01/95	Interstate 5 from Mexican Border to Interstate 805 [Radioactive route originated 02/25/00]	I,P
10/25/94	Interstate 5 from Oregon to Interstate 210	P
10/25/94	Interstate 8 from Arizona to Interstate 805 [Near San Diego]	P
10/25/94	Interstate 10 from Arizona to Interstate 605 [West of Los Angeles]	P
10/25/94	Interstate 15 from Nevada to Interstate 8	P
01/01/95	Interstate 40 from Arizona to Interstate 15 [Radioactive route designated on 10/25/94]	B,I,P
01/01/95	Interstate 80 from Nevada to Interstate 580 [north of Oakland] [Radioactive route origination date 10/24/94]	B,P
01/01/95	Interstate 205 from Interstate 5 to Interstate 580 [South of San Joaquin Radioactive route origination date 10/24/94]	B,P
01/01/95	Interstate 210 from Interstate 5 [North of Los Angeles] to Interstate 10 [West of Los Angeles] [Radioactive route origination date 10/25/94]	B,P
10/25/94	Interstate 238 [in Ashland] from Interstate 580 to Interstate 880	P
10/25/94	Interstate 280 from Interstate 680 [in San Jose] to Interstate 380 [in San Francisco]	P
10/25/94	Interstate 580 from Interstate 5 [Southwest of Tracy] to Interstate 680 [in Dublin]	P
10/25/94	Interstate 605 [Los Angeles County] from Interstate 210 to Interstate 5	P
10/25/94	Interstate 680 from Interstate 80 [in Cordelia Junction] to Interstate 280 [in San Jose]	P
10/25/94	Interstate 805 from Interstate 5 [North of the city of San Diego] to Interstate 5 [South of the city of San Diego]	P
10/25/94	Interstate 880 from Interstate 980 [in Oakland] to Interstate 238	P
01/01/95	Interstate 980 [Oakland area] from Interstate 580 to Interstate 880 [Radioactive route origination date 10/25/94]	B,P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

CA NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/09/95	Napa County [general county restriction]	1

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NON-RADIOACTIVE HAZMAT (NRHM) ROUTES—Continued

CA NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/95	State 75 [Coronado Toll Bridge] from Mile Post 19.59 to Mile Post R22.26 [San Diego County]	1,3,8
02/25/00	State 101 [Golden Gate Bridge] from Marin/San Francisco [County Line—North End] to Toll Plaza [South End] [No explosive laden trucks are permitted on the bridge between the hours of 0630 and 0930 and between 1600 and 1900 on weekdays. Bridge escort required.]	1
01/01/95	S.F.-Oakland Bay Bridge from Mile Post 4.92 [San Francisco] to Mile Post 2.20 [Alameda County]	1,3
02/25/00	Sepulveda Blvd. [tunnel] from W. Manchester Ave to Mariposa Ave	1,2,3,4,5,6,8

CA NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/95	3rd St. [San Francisco Bay] from US 101 to Berry St.	B
01/01/95	4th St. [San Francisco Bay] from 3rd St. to Channel St.	B
01/01/95	6th St. [San Francisco Bay] from Channel St. to [southeast]	B
01/01/95	Academy Ave. from Ventura Ave. [State 180] to State 168	B
01/01/95	Adobe Rd. from Amboy Rd. to State 62	B
01/01/95	Alabama St. from Interstate 10 to Norton A.F.B.	B
01/01/95	Amboy Rd. from National Trails Highway [near Amboy] to Adobe Rd.	B
01/01/95	American Ave. from Cove Ave. to State 63	B
01/01/95	Army St. [San Francisco Bay] from 3rd St. to Pier 80	B
01/01/95	Bear Valley Cutoff from US 395 to State 18	B
01/01/95	Berry St. [San Francisco Bay] from 3rd St. to pier	B
01/01/95	Bird Rd. from Chrisman Rd. to State 33 [or Ahern Rd.]	B
01/01/95	Byron Rd. [J4] from Grant Line Rd. to State 4	B
01/01/95	County 2 [Susanville Rd.] from State 299 to State 139	B
01/01/95	County 3 from US 395 to US 395	B
01/01/95	CE7 [Pedrick Rd.] from Interstate 80 to Interstate 5	B
01/01/95	Cargo Way [San Francisco Bay] from 3rd St. to Jennings St.	B
01/01/95	Channel St. from 4th St. to 6th St.	B
01/01/95	Chestnut Ave. from State 99 to Jensen Ave.	B
01/01/95	Chrisman Rd./11th St. from Interstate 580 to Bird Rd.	B
01/01/95	Cove Ave. from State 180 to American Ave.	B
01/01/95	Crafton Ave. from Sand Canyon Rd. to Lockheed Propulsion	B
01/01/95	Daggett-Yermo Rd. from Interstate 15 to Interstate 40	B
01/01/95	Dennison St. [San Francisco Bay] from Interstate 880 to Coast Guard Island	B
01/01/95	Evans Ave. [San Francisco Bay] from 3rd St. to Jennings St.	B
01/01/95	Forrester Rd. from State 86 [at Westmoreland] to Interstate 8	B,I
01/01/95	Fort Irwin Rd. from Interstate 15 to Fort Irwin	B
01/01/95	G14 from US 101 [at King City] to G18	B
01/01/95	G18 from G14 to US 101 [near Bradley]	B
01/01/95	Grand St. [San Francisco Bay] from Encinal Ave. to Buena Vista Ave.	B
01/01/95	Grangeville Blvd. from State 41 to Lemoore Naval Air Station	B
01/01/95	Grant Line Rd. from Byron Rd. to Interstate 5	B
01/01/95	Hueneme Rd. from Las Posas Rd. to end of road at Pacific Coast	B
01/01/95	Hunters Point Blvd. [San Francisco Bay] from Evans Ave. to Innes Ave.	B
01/01/95	Interstate 5 from Interstate 405 to State 78	I
01/01/95	Interstate 5 from Mexican Border to Interstate 805 [Radioactive route originated 02/25/00]	I,P
01/01/95	Interstate 5 from Oregon to Interstate 405	I
01/01/95	Interstate 5 from Oregon to Mexico	B
01/01/95	Interstate 8 from North of San Diego to Arizona	B
01/01/95	Interstate 10 from Interstate 405 to Arizona	B
01/01/95	Interstate 10 from State 60 to Arizona	I
01/01/95	Interstate 15 from State 91 to Interstate 8	B
01/01/95	Interstate 15 from Nevada to State 163	I
01/01/95	Interstate 15 from Nevada to State 60	A
01/01/95	Interstate 40 from Arizona to Interstate 15 [Radioactive route designated on 10/25/94]	B,I,P
01/01/95	Interstate 80 from Interstate 5 to Interstate 680	I
01/01/95	Interstate 80 [Sacramento Business Route] from Interstate 80 to Interstate 80	B
01/01/95	Interstate 80 from Nevada to Interstate 580 [north of Oakland] [Radioactive route origination date 10/24/94]	B,P
01/01/95	Interstate 105 from Interstate 405 to Interstate 605	B
01/01/95	Interstate 110 from Interstate 10 to east of San Pedro	B

CA NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/95	Interstate 205 from Interstate 5 to Interstate 580 [South of San Joaquin Radioactive route origination date 10/24/94]	B,P
01/01/95	Interstate 210 from Interstate 5 [North of Los Angeles] to Interstate 10 [West of Los Angeles] [Radioactive route origination date 10/25/94]	B,P
01/01/95	Interstate 215 from Interstate 15 to Interstate 10	B
01/01/95	Interstate 280 from US 101 to Interstate 680/US 101	B
01/01/95	Interstate 405 from Interstate 5 [north of L.A.] to Interstate 5 [south of L.A.]	B,I
01/01/95	Interstate 505 from Interstate 5 to Interstate 80	B,I
01/01/95	Interstate 580 from Interstate 880 to Interstate 5	B
01/01/95	Interstate 580 [in Oakland] from Grand Ave to Interstate 980	B
01/01/95	Interstate 605 from Interstate 210 to Interstate 405	B
01/01/95	Interstate 605 from State 91 to State 60	I
01/01/95	Interstate 680 from Interstate 80 to Interstate 580	I
01/01/95	Interstate 680 from Interstate 80 to US 101	B
01/01/95	Interstate 710 from City of Long Beach to City of Commerce	I
01/01/95	Interstate 710 from Interstate 10 to Interstate 405	B
01/01/95	Interstate 780 from Interstate 80 to Interstate 680	B
01/01/95	Interstate 805 from Interstate 5 to Interstate 5	B
01/01/95	Interstate 805 from State 163 to Interstate 5	I
01/01/95	Interstate 880 from Interstate 280 to Market St.	B
01/01/95	Interstate 980 [Oakland area] from Interstate 580 to Interstate 880 [Radioactive route origination date 10/25/94]	B,P
01/01/95	Innes Ave. [San Francisco Bay] from Hunters Point Blvd. to Hunters Pt. Navel Shipyards	B
01/01/95	Jennings St. [San Francisco Bay] from Evans Ave. to Cargo Way	B
01/01/95	Jensen Ave. from Chestnut Ave. to McCall Ave.	B
01/01/95	Jensen Ave. from Marks Ave. to State 99	B
01/01/95	Las Posas Rd. from US 101 to Mugu Navel Air Center [also Missile Test Center]	B
01/01/95	Lenwood Rd. from State 58 to Interstate 15	B,I
01/01/95	Lugonia Ave. from Alabama St. to Menton Ave.	B
01/01/95	Marks Ave. from State 99 to Jensen Ave.	B
01/01/95	McCall Ave. from Jensen Ave. to Ventura Ave. [State 180]	B
01/01/95	Menton Ave. from Lugonia Ave. to Crafton Ave.	B
01/01/95	Mission Gate Rd. from Purisima Rd. to State 1	B
01/01/95	Mission Rd./Main St. [S-13] from Interstate 15 to State 76 [NOTE: Towards Fall Brook NAS.]	B
01/01/95	National Trails Highway from Interstate 40 [near Ludlow] to Interstate 40	B
01/01/95	Oakland Army Base [US Navy Supply Center] from W. Grand Ave. [at Interstate 80] to Market St. [at Interstate 880] [From W. Grand Ave. via Interstate 80 to Maritime St. to 7th St. the 15th St. to Middle Harbor Rd. to 3rd St. to Market St. which connects to Interstate 880.]	B
01/01/95	Ocean Blvd. from State 75 to North Island NAS	B
01/01/95	Patterson Pass Rd. from Byron Rd. to Interstate 580	B
01/01/95	Prairie City Rd. [east of Sacramento] from US 50	I
01/01/95	Purisima Rd. [State 20] from State 246 to State 1	I
01/01/95	Railroad Blvd./River Rd. from State 98 to U.S. Customs Compound [at Mexico]	B
01/01/95	Road 102 [E8] from Interstate 5 to State 113	B
01/01/95	State 1 from Purisima Rd. [State 20] to Vandenburg A.F.B.	I
01/01/95	State 1 from US 101 [north of S.F.] to Las Cruces	B
01/01/95	State 1 from US 101 [at Leggett] to US 101	B
01/01/95	State 2 from Interstate 5 to Interstate 210	B
01/01/95	State 4 from Interstate 680 to City of Pittsburgh	I
01/01/95	State 4 from State 99 to Interstate 80	B
01/01/95	State 4 from State 99 to State 89	B
01/01/95	State 12 from Interstate 80 to State 99	B
01/01/95	State 12 from State 99 to State 49	B
01/01/95	State 14 from US 395 to Interstate 5	B
01/01/95	State 14 from US 395 to State 138 [north junction]	I
01/01/95	State 15 from State 94 to Interstate 5	B
01/01/95	State 16 from State 20 to CE7 [Pedrick Rd.]	B
01/01/95	State 16 from US 50 to State 49	B
01/01/95	State 17 from Interstate 880/I280 to State 1	B
01/01/95	State 18 from Bear Valley Cutoff to State 247	B
01/01/95	State 18 from State 138 to US 395	B
01/01/95	State 20 from State 1 to State 29	B
01/01/95	State 20 from State 53 to Interstate 80	B
01/01/95	State 22 [Garden Grove Freeway] from Interstate 405 to State 55	B
01/01/95	State 25 from US 101 to State 156	B
01/01/95	State 26 from State 99 to State 49	B

CA NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/95	State 27 from State 118 to City of Chatsworth	I
01/01/95	State 29 from State 20 to State 53	B
01/01/95	State 32 from State 36/89 to Interstate 5	B
01/01/95	State 33 from Bird Rd. to State 166	B
01/01/95	State 36 from State 99 to US 395	B
01/01/95	State 37 from US 101 to Interstate 80	B
01/01/95	State 37 from US 101 to Interstate 80	I
01/01/95	State 41 from State 145 to Yosemite National Park	B
01/01/95	State 41 from US 101 to State 99	B
01/01/95	State 43 from State 99 to State 58	B
01/01/95	State 44 from Interstate 5 to State 36	B
01/01/95	State 46 from State 41 to State 99	I
01/01/95	State 49 from State 70 to State 140 [near Mariposa]	B
01/01/95	State 53 from State 20 to State 29	B
01/01/95	State 55 from Interstate 405 to State 91	B
01/01/95	State 57 from Interstate 5 to Interstate 10	B
01/01/95	State 58 from State 14 to Interstate 15	I
01/01/95	State 58 from State 33 to Interstate 15	B
01/01/95	State 60 from Interstate 5 to Interstate 10	B
01/01/95	State 60 from Interstate 605 to Interstate 10	I
01/01/95	State 61 [and Hegenberger Rd.—San Francisco Bay] from Interstate 880 to Interstate 880 [The following is the designated route in the vicinity of Alameda: from Hegenberger via Interstate 880 to State 61 to Doolittle Rd. (State 61) to Otis Dr. to Broadway to Encinal Ave. (State 61) to Central Ave. to Main St. to Atlantic Ave. to Webster St. (State 61) to Buena Vista Ave. to Park St. to 23rd St. to Interstate 880. NOTE: Also, Grand St. connects Encinal Ave. and Buena Vista Ave. NOTE: Sherman St. leads to Inner Harbor from Buena Vista Ave.]	B
01/01/95	State 62 from Interstate 10 to Arizona	B
01/01/95	State 63 from American Ave. to State 201	B
01/01/95	State 65 from State 198 to State 99	B
01/01/95	State 65 from State 70 to Interstate 80	B
01/01/95	State 67 from State 94 to Interstate 8	B
01/01/95	State 68 from State 1 to US 101	B
01/01/95	State 70 from State 20 to State 99	B
01/01/95	State 70 from State 20 to US 395 [near border of Calif.-Nevada]	B
01/01/95	State 71 from Interstate 10 to State 91	B
01/01/95	State 75 from Interstate 5 to Ocean Blvd.	B
01/01/95	State 76 from Interstate 5 to Interstate 15	B
01/01/95	State 78 from Interstate 5 to Interstate 15	I
01/01/95	State 85 from Interstate 280 to US 101	B
01/01/95	State 86 from Interstate 10 to Forrester Rd. [at Westmoreland]	B,I
01/01/95	State 88 from State 89 [at Picketts Junction] to Nevada	B
01/01/95	State 88 from State 99 to State 49 [at Jackson]	B
01/01/95	State 89 from Interstate 5 to Interstate 70	B
01/01/95	State 89 from US 395 to State 49	B
01/01/95	State 91 from Interstate 605 to State 215	B
01/01/95	State 91 from Interstate 710 to Interstate 605	I
01/01/95	State 92 from US 101 to Interstate 280	B
01/01/95	State 94 from Interstate 5 to Interstate 8	B
01/01/95	State 96 from State 299 to Interstate 5	B
01/01/95	State 98 from Interstate 8 to Interstate 8	B
01/01/95	State 99 from City of McFarland to State 46	I
01/01/95	State 99 from State 36 to Interstate 5	B
01/01/95	State 99 from US 50 to Interstate 5	B
01/01/95	State 108 from State 132 to US 395	B
01/01/95	State 111 from Interstate 8 to State 98	B
01/01/95	State 113 from Interstate 80 to State 12	B
01/01/95	State 113 from State 99 to CE8 [Road 102]	B
01/01/95	State 118 from Interstate 405 to LA County Line	B
01/01/95	State 118 from Interstate 5 to Interstate 210	B
01/01/95	State 118 from Interstate 5 to State 27	I
01/01/95	State 118 from State 126 to State 232	B
01/01/95	State 119 from State 99 to Interstate 5	B
01/01/95	State 120 from State 99 to Yosemite National Park [westside]	B
01/01/95	State 126 from City of Santa Paula to Interstate 5	I
01/01/95	State 126 from Interstate 5 to State 118	B
01/01/95	State 127 from Nevada to Interstate 15	B
01/01/95	State 128 from State 1 to US 101	B
01/01/95	State 132 from Interstate 580 to State 49	B

CA NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/95	State 134 from Interstate 5 to Interstate 210	B
01/01/95	State 136 from US 395 to State 190	B
01/01/95	State 138 from Interstate 5 to Interstate 15	B
01/01/95	State 138 from Interstate 5 to State 14	I
01/01/95	State 139 from Oregon to State 36	B
01/01/95	State 140 from State 49 to Interstate 5	B
01/01/95	State 145 from State 99 to State 41	B
01/01/95	State 147 from State 36 to State 89	B
01/01/95	State 149 from State 99 to State 70	B
01/01/95	State 152 from Interstate 5 to City of Gilroy	I
01/01/95	State 152 from US 101 to State 99	B
01/01/95	State 156 from State 1 to State 152	B
01/01/95	State 163 from Interstate 15 to Interstate 805	I
01/01/95	State 163 from Interstate 8 to Interstate 15	B
01/01/95	State 166 from US 101 to Interstate 5	I
01/01/95	State 166 from US 101 to State 33	B
01/01/95	State 167 from Nevada to US 395	B
01/01/95	State 168 from Academy Ave. to Lake Shore	B
01/01/95	State 177 from State 62 to Interstate 10	B
01/01/95	State 180 from McCall Ave. to Cove Ave.	B
01/01/95	State 180 from State 33 to Marks Ave.	B
01/01/95	State 183 from State 1 to State 68/U101	B
01/01/95	State 190 from US 395 to State 127	B
01/01/95	State 193 from State 65 to Interstate 80	B
01/01/95	State 198 from US 101 to Sequoia National Forest [NOTE: State 198 between State 99 and State 65 is NOT a designated route for explosives.]	B
01/01/95	State 201 from State 99 to State 245	B
01/01/95	State 215 from State 91 to Interstate 15	B
01/01/95	State 223 from Interstate 5 to State 58	B
01/01/95	State 232 from State 118 to US 101	B
01/01/95	State 237 from Interstate 680 to US 101	B
01/01/95	State 242 from Interstate 680 to State 4	I
01/01/95	State 245 from State 201 to State 198	B
01/01/95	State 246 from State 1 to US 101	B
01/01/95	State 246 from US 101 to Purisima Rd.	I
01/01/95	State 247 from State 18 to State 62	B
01/01/95	State 299 from US 101 to Nevada	B
01/01/95	State 1000 from Hueneme Rd. to Las Posas Rd.	B
01/01/95	Sand Canyon Rd. from Crafton Ave. to Interstate 10	B
01/01/95	Santa Lucia Canyon Rd. from State 1 to Vandenburg AFB	B
01/01/95	Seal Beach Blvd. [Los Angeles] from Interstate 405 to North of Seal Beach	B
01/01/95	Sherman St. [San Francisco Bay] from Buena Vista Ave. to S.F. Bay [Inner Harbor]	B
01/01/95	Termo-Grasshopper Rd. from State 139 to US 395	B
01/01/95	Twin Cities Rd. from State 99 to Interstate 5	B
01/01/95	US 6 from Nevada to US 395	B,I
01/01/95	US 50 from Interstate 80 [Business Route] to Nevada	B
01/01/95	US 50 from Prairie City Rd. [east of Sacramento] to Interstate 80	I
01/01/95	US 95 from Nevada to Interstate 10	A
01/01/95	US 97 from Oregon to Interstate 5	B,I
01/01/95	US 101 from City of Camarillo to Interstate 5	I
01/01/95	US 101 from Healdsburg to State 37	I
01/01/95	US 101 from State 166 to State 246	I
01/01/95	US 101 from State 232 to Las Posas Rd.	B
01/01/95	US 101 from Oregon to State 246	B
01/01/95	US 199 from Oregon to US 101	B
01/01/95	US 395 from Nevada to Interstate 15	I
01/01/95	US 395 from Oregon to Nevada [NOTE: US 395 enters Nevada and returns into California in the mid-eastern section.]	B
01/01/95	W. El Camino Ave: [Near Sacramento] from Interstate 80 to Interstate 5	I

STATE: COLORADO

State Agency:	CO State Patrol	**FMCSA:**	CO FMCSA Field Office
POC:	Capt. Allan Turner	**FMCSA POC:**	CO Motor Carrier State Director
Address:	700 Kipling Street Denver, CO 80215-5865	**Address:**	555 Zang St. Room 250 Lakewood, CO 80228-1097
Phone:	(303)-239-4546	**Phone:**	(303) 969-6748 x388
Fax:	(303)-239-4577	**Fax:**	

RADIOACTIVE HAZMAT (RAM) ROUTES

CO RAM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
12/30/86	Interstate 70 from Interstate 25 [at Mile Post 274.039] to State 2 [at Mile Post 276.572]	7
12/30/86	Interstate 70 from Utah to US 40 [at Mile Post 261.63]	7

CO RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
04/30/89	Interstate 25 from Wyoming to New Mexico [HMR 9.5]	A,P
04/30/89	Interstate 76 from Interstate 25 to Nebraska [HMR 9.56]	A,P
04/30/89	Interstate 225 from Interstate 70 to Interstate 25 [HMR 9.21]	A,P
04/30/89	Interstate 270 [Near Denver] from Interstate 70 to Interstate 76 [HMR 9.59]	A,P
03/10/89	State 93 from Rocky Flats Plant to State 128	P
03/10/89	State 128 from State 93 to US 36	P
03/10/89	US 36 from State 128 to Interstate 25	P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

CO NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
04/30/89	1st St. [City of Craig] from State 13 [east] to State 394 [Craig City Limit] [HMR 9.67]	A
04/30/89	1st. St. [Moffat County Rd. CG 2] from State 394 [Craig City Limit] to US 40 [HMR 9.68: Runs East from Route 394 to US 40.]	A
04/30/89	2nd St. [City of Lamar] from US 50/385 to Maple St. [HMR 9.26]	A
04/30/89	County 7 [(Great Divide Rd.)] from City Limit [City of Craig (north)] to County 183 [in Moffat County] [HMR 9.29]	A
04/30/89	County 183 [Moffat County] from County 7 [Moffat County] to State 13 [HMR 9.30]	A
04/30/89	Great Divide Rd. [City of Craig] from US 40 [north] to City Limit [HMR 9.28]	A
04/30/89	Interstate 25 from Wyoming to New Mexico [HMR 9.5]	A,P
04/30/89	Interstate 70 from Interstate 270 to Kansas [HMR 9.54]	A
04/30/89	Interstate 70 from US 6 [east of Loveland Pass] to Interstate 25 [HMR 9.53]	A
04/30/89	Interstate 70 from Utah to US 6 [at Silverthorne [Loveland Pass]] [HMR 9.52]	A
04/30/89	Interstate 70 [business loop] from Interstate 70 [east of Grand Junction] to State 141 [HMR 9.55]	A
04/30/89	Interstate 76 from Interstate 25 to Nebraska [HMR 9.56]	A,P
04/30/89	Interstate 225 from Interstate 70 to Interstate 25 [HMR 9.21]	A,P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES—Continued

CO NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
04/30/89	Interstate 270 [Near Denver] from Interstate 70 to Interstate 76 [HMR 9.59]	A,P
04/30/89	Maple St. [City of Lamar] from 2nd St. to US 50/287 [HMR 9.27]	A
04/30/89	State 9 from US 40 [in Kremmling] to Interstate 70 [in Silverthorne] [HMR 9.1]	A
04/30/89	State 10 from Interstate 25 [in Walsenburg] to US 50 [in La Junta] [HMR 9.35]	A
04/30/89	State 13 from US 40 [west of Craig] to US 6 [west of Rifle] [HMR 9.3]	A
04/30/89	State 13 from Wyoming to County 183 [North of Craig] [HMR 9.2]	A
04/30/89	State 14 from Interstate 25 to US 6 [in Sterling] [HMR 9.37]	A
04/30/89	State 14 from US 40 to State 125 [HMR 9.36]	A
04/30/89	State 17 from US 285 [near Mineral Hot Springs] to US 160 [near Alamosa] [HMR 9.4]	A
04/30/89	State 47 from Interstate 25 to US 50 [State 96] [HMR 9.6]	A
04/30/89	State 52 from State 119 to State 79 [HMR 9.50]	A
04/30/89	State 64 from US 40 [in Dinosaur] to State 13 [HMR 9.51]	A
04/30/89	State 71 from State 14 to US 24 [in East Limon] [HMR 9.7]	A
04/30/89	State 71 from US 24 [in Limon (west junction)] to US 50 [near Rocky Ford] [HMR 9.8]	A
04/30/89	State 71 from Nebraska to State 14 [HMR 9.64]	A
04/30/89	State 79 from State 52 to Interstate 70 [at Bennett] [HMR 9.9]	A
04/30/89	State 83 from US 24 to State 115 [HMR 9.10]	A
04/30/89	State 91 from Interstate 70 to US 24 [near Leadville] [HMR 9.11]	A
04/30/89	State 112 from US 285 to US 160 [HMR 9.57]	A
04/30/89	State 113 from Nebraska to US 138 [HMR 9.12]	A
04/30/89	State 115 from State 83 to US 50 [HMR 9.13]	A
04/30/89	State 119 from State 157 to State 52 [HMR 9.14]	A
04/30/89	State 125 from Wyoming to US 40 [west of Granby] [HMR 9.15]	A
04/30/89	State 127 from Wyoming to State 125 [HMR 9.16]	A
04/30/89	State 139 from State 64 [in Rangely] to Interstate 70 [near Loma] [HMR 9.18]	A
04/30/89	State 141 from Interstate 70 [(Business Loop) near Grand Junction] to US 50 [HMR 9.19]	A
04/30/89	State 141 from US 50 to US 666 [HMR 9.66]	A
04/30/89	State 157 from US 36 to State 119 [HMR 9.20]	A
04/30/89	State 470 from US 285 to Interstate 70 [HMR 9.60]	A
04/30/89	US 6 from Interstate 25 [in Denver] to Interstate 70 [HMR 9.32]	A
04/30/89	US 6 [Loveland Pass] from Interstate 70 [just east of the Eisenhower/Johnson Tunnels] to [just west of the Eisenhower/Johnson Tunnels at Silverthorne] [HMR 9.31]	A
04/30/89	US 6 from State 13 [west of Rifle] to Interstate 70 [Exit 87] [HMR 9.33]	A
04/30/89	US 6 from State 14 [(Main St.) in Sterling] to Nebraska [HMR 9.34]	A
04/30/89	US 24 [Business Route] from State 71 [east junction in Limon] to State 71 [west junction] [HMR 9.48]	A

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES—Continued
CO NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
04/30/89	US 24 [Business Route] from US 24 [on the west side of Limon] to State 71 [west junction] [HMR 9.46]	A
04/30/89	US 24 from State 83 to Interstate 70 [at West Limon (Exit 359)] [HMR 9.39]	A
04/30/89	US 24 from State 91 [at Leadville] to Interstate 25 [in Colorado Springs] [HMR 9.38]	A
04/30/89	US 34 from Interstate 25 to Interstate 76 [HMR 9.40]	A
04/30/89	US 34 from State 71 [west junction] to Nebraska [HMR 9.41]	A
04/30/89	US 36 from Interstate 25 to State 157 [HMR 9.42]	A
04/30/89	US 36 from Interstate 70 [in Byers] to State 71 [at Last Chance] [HMR 9.43]	A
04/30/89	US 40 from First St. [Moffat County Road CG 2] to Interstate 70 [east of Craig] [HMR 9.45]	A
04/30/89	US 40 from Interstate 70 [(Exit 363) in Limon] to Kansas [HMR 9.47]	A
04/30/89	US 40 from Utah to State 13 [west of Craig] [HMR 9.44]	A
04/30/89	US 50 from State 141 [north junction near Grand Junction] to Kansas [HMR 9.49]	A
04/30/89	US 85 from Wyoming to Interstate 76 [HMR 9.63]	A
04/30/89	US 138 from State 113 to US 6 [(Chestnut St.) in Sterling] [HMR 9.17]	A
04/30/89	US 160 from New Mexico to Interstate 25 [Business Route in Walsenburg South to Exit 49 on I-25] [HMR 9.58]	A
04/30/89	US 285 from State 112 to US 160 [HMR 9.62]	A
04/30/89	US 285 from State 470 to State 112 [HMR 9.24]	A
04/30/89	US 285 from US 160 [in Alamosa] to New Mexico [HMR 9.23]	A
04/30/89	US 287 from US 40 [in Kit Carson] to Oklahoma [HMR 9.22]	A
04/30/89	US 385 from Interstate 76 [in Julesburg] to US 40 [in Cheyenne Wells] [HMR 9.25]	A
04/30/89	US 550 from US 160 to New Mexico [HMR 9.65]	A
04/30/89	US 666 from Utah to New Mexico [HMR 9.61]	A

STATE: CONNECTICUT

State Agency:	CT Dept. of Environmental Protection	**FMCSA:**	CT FMCSA Field Office
POC:	Mr. Dave Sattler	**FMCSA POC:**	CT Motor Carrier State Director
Address:	79 Elm St. Hartford, CT 06106-5127	**Address:**	628-2 Hebron Ave. Suite 303 Glastonbury, CT 06033-5007
Phone:	860-424-3289	**Phone:**	(860) 659-6700 x3020
Fax:	860-424-4059	**Fax:**	

No Routes Designated as of 11/14/00

STATE: DELAWARE

State Agency:	DE Emergency Management Agency	**FMCSA:**	DE FMCSA Field Office
POC:	Emily Falone	**FMCSA POC:**	DE Motor Carrier State Director
Address:	165 Brick Stone Landing Rd. Smyrna, DE 19977	**Address:**	300 South New St. Room 2101 Dover, DE 19904
Phone:	(302) 659-2232	**Phone:**	(302) 734-8173
Fax:	(302) 659-6855	**Fax:**	

RADIOACTIVE HAZMAT (RAM) ROUTES
DE RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
08/09/00	Interstate 95 from Interstate 495 [Northeast of Wilmington] to Pennsylvania	P
08/09/00	Interstate 95 from Maryland to Interstate 495 [southwest of Wilmington]	P
08/09/00	Interstate 295 from Interstate 95 [Southwest of Wilmington] to New Jersey	P
08/09/00	Interstate 495 from Interstate 95 [southwest of Wilmington] to Interstate 95 [northeast of Wilmington]	P

STATE: DISTRICT OF COLUMBIA

State Agency:	Dept. of Public Works	**FMCSA:**	DC FMCSA Field Office
POC:	John Payne	**FMCSA POC:**	DC Motor Carrier State Director
Address:	2000 14th Street NW 6th Floor Washington, DC 20009	**Address:**	Union Center Plaza 820 First St., NE., Suite 750 Washington, DC 20002
Phone:	(202)-671-2710	**Phone:**	(202) 523-0178
Fax:	(202)-939-3039	**Fax:**	

RESTRICTED ROUTES FOR ALL DC HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/08/95	9th St. Expressway Tunnel from North Portal [at Madison Dr.] to South Portal [south of Independence Ave.]	0
03/08/95	Interstate 395 Tunnel from South Portal [south of Independence Ave.] to the most northerly portal [at K St.]	0

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES
DC NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/08/95	Anacostia Fwy from Interstate 295 [11th St. Bridge] to E. Capitol St.	A
03/08/95	Interstate 295 from Maryland to Interstate 695 [vicinity of 11th and L St, S.E.]	A
03/08/95	Interstate 395 from Virginia to Interstate 695 [vicinity of 2nd and E St., S.W.]	A
03/08/95	Interstate 695 from Interstate 295 [vicinity of 11th and L St., S.E.] to Interstate 395 [vicinity of 2nd and E St., S.W.]	A
03/08/95	Kenilworth Ave., N.E. from E. Capital St. to Maryland	A

STATE: FLORIDA

State Agency:	Florida Dept. of Transportation	**FMCSA:**	FL FMCSA Field Office
POC:	Capt. Ken Carr	**FMCSA POC:**	FL Motor Carrier State Director
Address:	Miracle Plaza 1815 Thomasville Rd. Tallahassee, FL 32303-5750	**Address:**	227 North Bronough St. Suite 2060 Tallahassee, FL 32301
Phone:	(850)-488-7920	**Phone:**	(850) 942-9338
Fax:	(850)-922-6798	**Fax:**	

RESTRICTED ROUTES FOR ALL FL HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
02/14/95	Florida Ave. [Tampa] from Crosstown Expressway to Scott Street [Use Crosstown Expressway to 22nd St. North, thence north along 22nd Street to Interstate 4 to either Interstate 275 or points east.]	0
02/14/95	Kennedy Blvd. [Tampa] from Crosstown Expressway to Hillsborough River [Use Crosstown Expressway to Hyde Park Ave. and Davis Island Exit No. 5 to all points west.]	0

RESTRICTED ROUTES FOR ALL FL HAZMATS—Continued

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
02/14/95	Tampa central business area [Bounded on the east by Ybor Channel, on the west by the Hillsborough River, and on the north by a line running along Scott Street east to Orange Ave, south to Cass St., east to the Seaboard Cost Line Railroad, northeast to Adamo Drive, and on the south by Garrison Channel. * State-maintained highways other than Florida Ave. and Kennedy Blvd. are exceptions to this restriction *]	0

STATE: GEORGIA

State Agency:	GA Public Service Comm	**FMCSA:**	GA FMCSA Field Office
POC:	Lucia A. Ramey	**FMCSA POC:**	GA Motor Carrier State Director
Address:	1007 Virginia Ave. Suite 310 Hapeville, GA 30354	**Address:**	61 Forsyth St., SW Suite 17T85 Atlanta, GA 30303-3104
Phone:	(404)-559-6626	**Phone:**	(404) 562-3620
Fax:	(404)-559-4906	**Fax:**	

RESTRICTED ROUTES FOR ALL GA HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/14/95	State 400 [Atlanta area] [Noted by Georgia Public Service Commission: "A ban on a portion of 400 due to a tunnel", but does include specific sections and routes of ban.]	0

STATE: HAWAII

State Agency:	No Agency Designated	**FMCSA:**	HI FMCSA Field Office
POC:		**FMCSA POC:**	HI Motor Carrier State Director
Address:		**Address:**	300 Ala Moana Blvd, Room 3-306 Box 50206 Honolulu, HI 96850
Phone:		**Phone:**	(808) 541-2700 x301
Fax:		**Fax:**	

No Routes Designated as of 11/14/00

STATE: IDAHO

State Agency:	ID State Police	**FMCSA:**	ID FMCSA Field Office
POC:	Cpt. Lamont Johnston	**FMCSA POC:**	ID Motor Carrier State Director
Address:	P.O. Box 700 700 S. Stratford Dr Meridian, ID 83680	**Address:**	3050 Lakeharbor Lane Suite 126 Boise, ID 83703
Phone:	(208)-884-7220	**Phone:**	(208) 334-1842
Fax:	(208)-884-7192	**Fax:**	

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

ID NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/85	Interstate 84 from Exit 99 to Missile Base Rd. [Envirosafe site] [Transporters are to exit at Exit 99 onto I84 Business Loop to its intersection with old US 330. Follow US 30 approx. 3/4 mile to Hamilton Rd. Follow Hamilton for 3 miles and turn south onto S51 until its junction with State 78. Exit State 78 onto Missile Base Rd. and follow to Envirosafe waste site.]	A
01/01/85	US 95 [northbound] from Oregon to Missile Base Road [location of Envirosafe waste site] [Northbound hazardous waste transporters are directed to exit US 95 onto Sommercamp Rd. (STC-3710) to its junction with State 78. Follow State 78 to its junction to Missile Base Rd. that leads to the Envirosafe waste site.]	A

STATE: IDAHO

State Agency:	Fort Hall Reservation	**FMCSA:**	ID FMCSA Field Office
POC:	Reginald Thorpe	**FMCSA POC:**	ID Motor Carrier State Director
Address:	Dept. of Public Safety P.O. Box 306 Fort Hall, ID 83203	**Address:**	3050 Lakeharbor Lane Suite 126 Boise, ID 83703
Phone:	(208)-237-0137	**Phone:**	(208) 334-1842
Fax:	(208)-237-0049	**Fax:**	

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

ID NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/12/95	Interstate 15 [within the Fort Hall Indian Reservation] [Designation by Shoshone-Bannock tribe. Only valid within Fort Hall Reservation.]	A
01/12/95	Interstate 86 [within the Fort Hall Indian Reservation] [Designation by Shoshone-Bannock tribe. Only valid within Fort Hall Reservation.]	A

STATE: ILLINOIS

State Agency:	IL DOT	**FMCSA:**	IL FMCSA Field Office
POC:	Larry Wort	**FMCSA POC:**	IL Motor Carrier State Director
Address:	3215 Executive Park Drive P.O. Box 19245 Springfield, IL 62794-9245	**Address:**	3250 Executive Park Drive Springfield, IL 62703-4514
Phone:	(217)-782-4974	**Phone:**	(217) 492-4608
Fax:	(217)-782-9159	**Fax:**	

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

IL NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
02/14/86	Alpine Rd. from Bypass 20 to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Auburn St. from Springfield St. to Rock River [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Blackhawk Park from Magnolia St. to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Cedar St. from S. Main St. to Tay [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Central Ave. from Preston to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Charles St. from Longwood to Alpine Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	College Ave. from Rock River to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	E. State St. from Second St. to Interstate 90 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Fifteenth Ave. from S. Main St. to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	First Ave. from Kishwaukee St. to Longwood [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Forest Hills Rd. from N. Second St. to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES—Continued

IL NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
02/14/86	Harrison Ave. from S. Main St. to Mulford Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Kilburn Ave. from Auburn St. to W. State St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Kishwaukee St. from Harrison Ave. to Bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Magnolia St. from Harrison Ave. to Fifteenth Ave. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Montague Rd. from S. Pierpont to Bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Morgan St. from S. Main St. to Rock River [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Mulford Rd. from Sandy Hollow Rd. to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	N. Main St. from Riverside Blvd. to Auburn St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Preston St. from Tay to S. Pierpont [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	S. Main St. from Morgan St. to Bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	S. Pierpont from W. State St. to Montague Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Sandy Hollow Rd. from Kishwaukee St. to Mulford Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Springfield—Riverside St. from W. State St. to Interstate 90 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Tay from Cedar St. to Preston St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Twentieth St. from Sandy Hollow Rd. to Twentieth St. Underpass [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Twenty Third Ave. from Eleventh St. to Twentieth St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	US 20 [Business Route throughout the City of Rockford] [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	US 251 [throughout the City of Rockford] [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	W. State St. from Meridian Rd. to Kilburn Ave. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A
02/14/86	Whitman St. from N. Second St. to Kilburn Ave. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	A

STATE: INDIANA

State Agency:	IN DOT	**FMCSA:**	IA FMCSA Field Office
POC:	Christine Klika	**FMCSA POC:**	IA Motor Carrier State Director
Address:	IN Gov. Center North 100 N. Senate Ave. Room N755 Indianapolis, IN 46204	**Address:**	575 N. Pennsylvania St. Room 261 Indianapolis, IN 46204-1520
Phone:	(317) 232-5526	**Phone:**	(317) 226-7474
Fax:	(317) 232-0238	**Fax:**	

RESTRICTED ROUTES FOR ALL IN HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
06/19/89	Interstate 65 [within Indianapolis I-465 beltway]	0
06/19/89	Interstate 70 [within Indianapolis I-465 beltway]	0

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

IN NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
06/19/89	Interstate 465 [around the city of Indianapolis]	A

STATE: IOWA

State Agency:	IA DOT, Motor Vehicle Enfcmnt	**FMCSA:**	IA FMCSA Field Office
POC:	Cpt. Tom Sever	**FMCSA POC:**	IA Motor Carrier State Director
Address:	Park Fair Mall 100 Euclid Ave. Des Moines, IA 52306-0473	**Address:**	105 6th St. Ames, IA 50010-6337
Phone:	515-237-3278	**Phone:**	(515) 233-7300
Fax:	515-237-3387	**Fax:**	

RADIOACTIVE HAZMAT (RAM) ROUTES

IA RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/18/88	Interstate 29 from Missouri to Interstate 80 [I-80 and I-680 are used in lieu of I-29 in the Council Bluffs area when heading North/South per 49 CFR 397.103 (b)]	P
07/18/88	Interstate 29 from Nebraska to Interstate 680 [I-80 and I-680 are used in lieu of I-29 in the Council Bluffs area when heading North/South per 49 CFR 397.103 (b)]	P
07/18/88	Interstate 35 from Minnesota to Missouri [Say on I-35/I-80 in lieu of I-235 in the Des Moines area per 49 CFR 397.103 (b)]	P
07/18/88	Interstate 80 from Interstate 29 to Illinois [Use I-280 or I-80 in the Quad cities. Use I-80 in lieu of I-235 in the Des Moines area. Use I-680 in lieu of I-80 in the Council Bluffs area per IA-NE coordination when heading east/west. Use I-80 and I-680 in the Council Bluffs area in lieu of I-29 when heading north/south]	P
07/18/88	Interstate 280 from Interstate 80 to Illinois [Use I-280 or I-80 in Quad cities area.]	P
07/18/88	Interstate 680 from Interstate 80 to Interstate 29 [Used in lieu of I-29 in the Council Bluffs area per 49 CFR 397.103 (b)]	P
07/18/88	Interstate 680 from Nebraska to Interstate 80 [Use I-680 and I-80 in lieu of I-29 in the Council Bluffs area when heading north/south per 49 CFR 397.103 (b). Use I-680 in lieu of I-80 in the Council Bluffs area when heading east/west per IA-NE co-ordination.]	P

STATE: KANSAS

State Agency:	Div of Emergency Mgmt	**FMCSA:**	KS FMCSA Field Office
POC:	Mr. Frank Moussa	**FMCSA POC:**	KS Motor Carrier State Director
Address:	Technological Hazards Section 2800 SW Topeka Blvd Topeka, KS 66611-1287	**Address:**	3300 S. Topeka Blvd. Suite 1 Topeka, KS 66611-2237
Phone:	(785) 274-1408	**Phone:**	(916) 267-7286
Fax:	(785) 274-1426	**Fax:**	

No Routes Designated as of 11/14/00

STATE: KENTUCKY

State Agency:	Dept. of Vehicle Regulation	**FMCSA:**	KY FMCSA Field Office
POC:	Commissioner Ed Logsdon	**FMCSA POC:**	KY Motor Carrier State Director
Address:	501 High St., No. 308 Frankfort, KY 40622	**Address:**	Federal Bldg. & US Courthouse 330 W. Broadway Frankfort, KY 40601
Phone:	(502)-564-7000	**Phone:**	(502) 223-6779
Fax:	(502)-564-6403	**Fax:**	

RESTRICTED ROUTES FOR ALL KY HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/88	Interstate 75 from Interstate 275 to Ohio [Ban has been currently lifted due to construction to northbound I275. This route will be evaluated again to reinstate restriction after construction is complete.]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

KY RAM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/02/88	Interstate 264 from Interstate 64 [West of Louisville] to Interstate 71 [East of Louisville]	7
11/02/88	Interstate 471 [in Newport area] [Use the preferred route I-275 instead]	7

KY RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/02/88	Interstate 24 [Western KY North/South Route]	P
11/02/88	Interstate 64 [East/West route]	P
11/02/88	Interstate 65 [Central KY North/South route]	P
11/02/88	Interstate 71 from Indiana [in Louisville] to Interstate 275 [southwest of Covington]	P
01/01/88	Interstate 275 from Interstate 75 to Ohio [Preferred route origination date 11/2/88]	A,P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

KY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/88	Interstate 275 from Interstate 75 to Ohio [Preferred route origination date 11/2/88]	A,P

STATE: LOUISIANA

State Agency:	LA State Police Transportation Dept.	**FMCSA:**	LA FMCSA Field Office
POC:	Lt. Tim Sharkey	**FMCSA POC:**	LA Motor Carrier State Director
Address:	Environmental Safety Section P.O. Box 66614, Mail Slip 21 Baton Rouge, LA 70896-6614	**Address:**	5304 Flanders Drive Suite A Baton Rouge, LA 70808-4348
Phone:	(225)-295-8550	**Phone:**	(225) 757-7640
Fax:	(225)-295-8554	**Fax:**	

RESTRICTED ROUTES FOR ALL LA HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
08/01/99	Caddo and Bessier Parish [All Roads] [Except for carriers making local pickups or deliveries, carriers using the route to reach a local pickup or delivery point, or carriers traveling to or from their terminal facilities or carriers using the route to reach maintenance or service facilities within the boundaries of the parish, no carrier shall transport hazardous materials in Caddo or Bessier Parish, except on the designated routes. [R.S. 32:1521 Motor Vehicles-Traffic Regulations]]	0
03/01/95	Harvey Tunnel [of Jefferson Parish on US90-B]	0
08/01/99	State 1 from State 3132 to Interstate 220 [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0
08/01/99	State 73 from Interstate 10 to State 74 [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0
03/01/95	State 73 [In Ascension Parish] from Interstate 10 to State 74 [and within 300 yards or less of any building used as a public or private elementary or secondary school except for carriers making local deliveries on this portion of State 73.]	0
03/01/95	Tunnel Boulevard Tunnel [in Terrebonne Parish (Houma)]	0
08/01/99	US 71 from Interstate 220 to Interstate 20 [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0
08/01/99	US 171 from State 3132 to US 80 [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

LA NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
08/01/99	Interstate 20 from Bossier-Caddo [parish boundary] to Bossier-Webster [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	Interstate 20 from Texas to Caddo-Bossier [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	Interstate 49 from Caddo-DeSoto [parish boundary] to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	Interstate 220 from Bossier-Caddo [parish boundary] to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	Interstate 220 from Interstate 20 to Caddo-Bossier [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	State 1 from Caddo-Red River [parish boundary] to State 3132 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	State 1 from Interstate 220 to Arkansas [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	State 2 from Caddo-Bossier [parish boundary] to Bossier-Webster [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	State 2 from State 1 to Caddo-Bossier [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	State 3 [Benton Road] from Arkansas to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	State 511 [Jimmie Davis Highway] from US 71 to State 3132 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	State 3105 [Airline Drive] from Arkansas to US 71 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	US 71 from Bossier-Red River [parish boundary] to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	US 71 from Interstate 229 to Arkansas [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	US 79 from Texas to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES—Continued

LA NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
08/01/99	US 80 from Texas to City of Greenwood [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	US 171 from Caddo-DeSoto [parish boundary] to State 3132 [R.S. 32:1521 Caddo-Bossier designated route]	A

STATE: MAINE

State Agency:	Maine State Police	**FMCSA:**	ME FMCSA Field Office
POC:	John Fraser	**FMCSA POC:**	ME Motor Carrier State Director
Address:	Department of Public Safety 20 State House Station Augusta, ME 04333	**Address:**	Federal Bldg & US Post Office 40 Western Ave., Room 601 Augusta, ME 04330
Phone:	(207)-624-8939	**Phone:**	(207) 622-8358
Fax:	(207)-624-8945	**Fax:**	

No Routes Designated as of 11/14/00

STATE: MARYLAND

State Agency:	MD Transportation Authority Police	**FMCSA:**	MD FMCSA Field Office
POC:	Capt. Martin Uzarowski	**FMCSA POC:**	MD Motor Carrier State Director
Address:	Comm Vehicle Safety Division 15 Turnpike Dr. Perryville, MD 21903	**Address:**	The Rotunda 711 West 40th St., Suite 220 Baltimore, MD 21211-2187
Phone:	(410) 575-6955	**Phone:**	(410) 962-2889
Fax:	(410) 378-8123	**Fax:**	

RESTRICTED ROUTES FOR ALL MD HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/25/80	Baltimore Harbor Tunnel [I-895]	0
01/25/80	Fort McHenry Tunnel [I95]	0
01/25/80	Francis Scott Key Bridge [State 695]	0
01/25/80	Harry W. Nice Memorial Bridge [Located on US Route 301]	0
01/25/80	Thomas J. Hatem Mem. Bridge [US Route 40]	0
01/25/80	W. P. Lane, Jr. Mem. Bridge [Located on US 50/301]	0

STATE: MARYLAND

State Agency:	MD State Highway Administration	**FMCSA:**	MD FMCSA Field Office
POC:	Ms. Dolores Strausser	**FMCSA POC:**	MD Motor Carrier State Director
Address:	Motor Carrier Division 7491 Connelley Dr. Hanover, MD 21076	**Address:**	The Rotunda 711 West 40th St., Suite 220 Baltimore, MD 21211-2187
Phone:	(410) 582-5734	**Phone:**	(410) 962-2889
Fax:	(410) 787-2863	**Fax:**	

RESTRICTED ROUTES FOR ALL MD HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/25/80	J.F.K. Memorial Highway [I-95]	0

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

MD NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
08/16/95	Interstate 495 [NOTE: Restricts all vehicles carrying hazmats to right two lanes.]	A

STATE: MASSACHUSETTS

State Agency:	MA Highway Department	**FMCSA:**	MA FMCSA Field Office
POC:	Mr. Harindra Vohra, P.E.	**FMCSA POC:**	MA Motor Carrier State Director
Address:	Ten Park Plaza Boston, MA 02116-3973	**Address:**	Transportation Systems Center 55 Broadway, Room I-35 Cambridge, MA 02142
Phone:	(617) 973-7362	**Phone:**	(617) 494-2770
Fax:	(617) 973-8037	**Fax:**	

RESTRICTED ROUTES FOR ALL MA HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/13/94	Callahan Tunnel [Route 1A Northbound under Boston Inner Harbor]	0
11/13/94	Charlestown Tunnel from Interstate 93 to Charlestown	0
11/13/94	Interstate 90 [Prudential Tunnel] from Dalton St. to Clarendon St. [including interchange 22]	0
12/01/95	Interstate 90 [Ted Williams Tunnel under Boston Harbor]	0
11/13/94	Interstate 93 [Dewey Square Tunnel] from Sumner St. to Kneeland St.	0
11/13/94	Sumner Tunnel [Route 1A Southbound under Boston Inner Harbor]	0
11/13/94	US 1 [Northbound and Southbound Tunnels in Boston]	0

STATE: MICHIGAN

State Agency:	Michigan DOT	**FMCSA:**	MI FMCSA Field Office
POC:	Mr. James R. DeSana, Director	**FMCSA POC:**	MI Motor Carrier State Director
Address:	425 West Ottawa P.O. Box 30050 Lansing, MI 48909	**Address:**	Federal Building, Room 205 315 West Allegan Street Lansing, MI 48933
Phone:	(517)-373-1884	**Phone:**	(517) 377-1866
Fax:	(517)-373-0176	**Fax:**	

RESTRICTED ROUTES FOR ALL MI HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/08/95	International Bridge [I75] [All placarded vehicles require an escort. Contact Operations Supervisor at (906)-635-5255 before crossing. Sault Ste. Marie, MI to Sault Ste. Marie, Ontario.]	0
03/08/95	Mackinac Bridge [I75] [Mackinac City to St. Ignace. All placarded loads require an escort by the Mackinac Bridge Authority. Phone (906) 643-7600.]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

MI RAM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/29	Ambassador Bridge [Detroit] from Porter St. to Canada [Windsor] [Phone (313)-849-5244]	1,3,7,8
03/08/95	Blue Water Bridge [I69] [Port Huron, MI to Sarnia, Ontario. NOTE: In addition to the listed restrictions, Pyrophoric Liquids prohibited. Contact Michigan Dept. of Transportation for specific restrictions. (810)-984-3131]	1,5,7,9

RADIOACTIVE HAZMAT (RAM) ROUTES—Continued

MI RAM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/30	Windsor Tunnel [Detroit] from Jefferson Ave. to Canada [Windsor] [Phone: (313)-567-4422]	1,3,7,8

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

MI NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/29	Ambassador Bridge [Detroit] from Porter St. to Canada [Windsor] [Phone (313)-849-5244]	1,3,7,8
03/08/95	Blue Water Bridge [I69] [Port Huron, MI to Sarnia, Ontario. NOTE: In addition to the listed restrictions, Pyrophoric Liquids prohibited. Contact Michigan Dept. of Transportation for specific restrictions. (810)-984-3131]	1,5,7,9
01/01/90	Interstate 696 [County of Oakland] from State Route M-10 to Interstate 75	1,3
01/01/64	State Route M-10 [Detroit] from 8 Mile Rd [South] to Wyoming Rd	1,3
01/01/58	State Route M-10 [Detroit] from Howard St. to Woodward Ave. [Under Cobo Hall (approx 1 mile)]	1,3
10/03/98	State Route M-59 [Utica] [1.1 mile from either direction of the Mound Rd exit]	1,3
01/01/30	Windsor Tunnel [Detroit] from Jefferson Ave. to Canada [Windsor] [Phone: (313)-567-4422]	1,3,7,8

STATE: MINNESOTA

State Agency:	MN DOT—OCMS	**FMCSA:**	MN FMCSA Field Office
POC:	Michael Ritchie	**FMCSA POC:**	MN Motor Carrier State Director
Address:	1110 Centre Point Curve GNB Building—MS 420 Mendota Heights, MN 55120	**Address:**	Galtier Plaza, Box 75 175 E. 5th St., Suite 500 St. Paul, MN 55101-2904
Phone:	(651) 405-6120	**Phone:**	(612) 291-6150
Fax:	(651) 405-6082	**Fax:**	

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

MN NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/09/95	Lowry Hill Tunnel [I94]	1,3

STATE: MISSISSIPPI

State Agency:	MS Emergency Management Svcs	**FMCSA:**	MS FMCSA Field Office
POC:	Robert Latham	**FMCSA POC:**	MS Motor Carrier State Director
Address:	P.O. Box 4501 Jackson, MS 39296-4501	**Address:**	666 North St. Suite 105 Jackson, MS 39202-3199
Phone:	(601)-352-9100	**Phone:**	(601) 965-4219
Fax:	(601)-352-8314	**Fax:**	

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

MS NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
02/06/94	Utilize interstate system as the primary routes or transporting NRHM.	A

STATE: MISSOURI

State Agency:	No Agency Designated	**FMCSA:**	MO FMCSA Field Office
POC:		**FMCSA POC:**	MO Motor Carrier State Director
Address:		**Address:**	209 Adams St. Jefferson City, MO 65101
Phone:		**Phone:**	(573) 636-3246
Fax:		**Fax:**	

No Routes Designated as of 11/14/00

STATE: MONTANA

State Agency:	Montana DOT	**FMCSA:**	MT FMCSA Field Office
POC:	Mr. Drew Livesay	**FMCSA POC:**	MT Motor Carrier State Director
Address:	Motor Carrier Services Div. P.O. Box 4639 Helena, MT 59620-0801	**Address:**	2880 Skyway Drive Helena, MT 59602-1230
Phone:	(406)-444-6146	**Phone:**	(406) 449-5304 x223
Fax:	(406)-444-7670	**Fax:**	

RESTRICTED ROUTES FOR ALL MT HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
09/26/94	US 191 [through and around the Yellowstone Park area] [This route under the jurisdiction of the Park Service, not the State of Montana. Contact Yellowstone Visitor Services Office 307-344-2115.]	0

STATE: NEBRASKA

State Agency:	Nebraska State Patrol	**FMCSA:**	NE FMCSA Field Office
POC:	Major Bryan Tuma	**FMCSA POC:**	NE Motor Carrier State Director
Address:	P.O. Box 94907 Lincoln, NE 68509-4907	**Address:**	Federal Building, Room 220 100 Centennial Mall North Lincoln, NE 68508
Phone:	(402) 479-4950	**Phone:**	(402) 437-5986
Fax:	(402) 479-4002	**Fax:**	

RADIOACTIVE HAZMAT (RAM) ROUTES

NE RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
08/03/88	Interstate 680 from Interstate 80 to Iowa [Use in lieu of I-80 in the Omaha area.]	P

STATE: NEVADA

State Agency:	No Agency Designated	**FMCSA:**	NV FMCSA Field Office
POC:		**FMCSA POC:**	NV Motor Carrier State Director
Address:		**Address:**	705 N. Plaza St. Suite 220 Carson City, NV 89701-4015
Phone:		**Phone:**	(775) 687-5335
Fax:		**Fax:**	

No Routes Designated as of 11/14/00

STATE: NEW HAMPSHIRE

State Agency:	NH Dept. of Safety	**FMCSA:**	NH FMCSA Field Office
POC:	Commissioner Richard Flynn	**FMCSA POC:**	NH Motor Carrier State Director
Address:	10 Hazen Dr. Concord, NH 03305	**Address:**	279 Pleasant St. Suite 202 Concord, NH 03301-2509
Phone:	(603) 271-2792	**Phone:**	(603) 225-1626
Fax:	(603) 271-3903	**Fax:**	

No Routes Designated as of 11/14/00

STATE: NEW JERSEY

State Agency:	Ports Terminals & Freight Svcs	**FMCSA:**	NJ FMCSA Field Office
POC:	Theodore H. Matthews, Manager	**FMCSA POC:**	NJ Motor Carrier State Director
Address:	NJ Dept of Transportation 1035 Parkway Ave (CN-600) Trenton, NJ 08625	**Address:**	840 Bear Tavern Rd. Suite 310 West Trenton, NJ 08628-1019
Phone:	(609) 530-8026	**Phone:**	(609) 637-4222
Fax:	(609) 530-4549	**Fax:**	

No Routes Designated as of 11/14/00

STATE: NEW MEXICO

State Agency:	NM State Hwy & Transportation	**FMCSA:**	NM FMCSA Field Office
POC:	Richard Montoya	**FMCSA POC:**	NM Motor Carrier State Director
Address:	General Office P.O. Box 1149 Santa Fe, NM 87504-1149	**Address:**	2400 Louisiana Blvd., NE AFC-5, Suite 520 Albuquerque, NM 87110-4316
Phone:	(505)-827-5549	**Phone:**	(505) 346-7858
Fax:	(505)-989-4983	**Fax:**	

RADIOACTIVE HAZMAT (RAM) ROUTES

NM RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
04/30/99	Eastern WIPP Route [From the Texas-New Mexico border [MP 373.51] west on I-40 through Tucumcari to the junction of I-40 and US 54 [MP 276.836, Exit 275] at Santa Rosa; west on US 54 through Pastura to the junction of US 54 and US 285 at Vaughn; south on US 285 through Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and US 62/180[MP 31.180] in Carlsbad; east on US 62/180 to the WIPP north access road [MP 64.652]. If and when Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials)]	P
04/30/99	Los Alamos National Laboratory [From the Los Alamos National Laboratory in Los Alamos County [Tech Area 54, MP 0.000] east on the Los Alamos Truck Route to the junction of the Los Alamos Truck Route and NM 4; east on NM 4 to the junction of NM 4 and NM 502; [MP 68.186] east on NM 502 to the junction of NM 502 [18.081] and US 84/285 at Pojoaque; south on US 84/285 [MP 181.251] to the junction of US 84/285 and NM 599; [MP 167.443] south on NM 599 to the junction of NM 599 and I-25; north on I-25 to the junction of I-25 and US 285 [MP 290.809, Exit 290]; south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) and Artesia to the junction of US 285 and US 62/180 [MP 31.180] in Carlsbad; east on US 62/180 to the WIPP north access. If and when the Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used, except for the Los Alamos Truck Route as stated above. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials)]	P

RADIOACTIVE HAZMAT (RAM) ROUTES—Continued

NM RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
04/30/99	Northern WIPP Route [From the Colorado-New Mexico border [MP 462.124] south on I-25 through Raton, Springer, and Las Vegas to the junction of I-25 and US 285 [283.800, Exit 290] near Santa Fe; south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and US 62/180 [MP 31.180] in Carlsbad; east on us 62/180 to the WIPP north access road [MP 64.652]. If and when Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials)]	P
04/30/99	Southern WIPP Route [From the Texas-New Mexico border [MP 0.000] north on US 285 through Loving to the Junction on US 285 and US 62/180 [MP 31.180] in Carlsbad; east on US 62/180 to the WIPP north access road [MP 64.652]. If and when a south Carlsbad Relief Route is available, it shall be used instead of the route through the city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials)]	P
04/30/99	Western WIPP Route [From the Arizona-New Mexico border [MP 0.000] east on I-40 through Gallup, Thoreau, Grants, Albuquerque and Moriarty to the junction of I-40 and US 285 [MP 218.064, Exit 218] at Clines Corners; south on US 285 through Encino, Vaughn, Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and US 62/180 [MP 31.180] in Carlsbad; east on US 62/180 to the WIPP north access road [MP 64.652]. If and when Artesia and Carlsbad Relief Routes are available, they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials)]	P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

NM NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
02/18/91	Interstate 10 [within Las Cruces city Limits]	A
02/18/91	Interstate 25 [within Las Cruces city Limits]	A
02/18/91	US 70 from East City Limits [Las Cruces near Organ] to Interstate 25	A

STATE: NEW YORK

State Agency:	New York City Fire Dept.	**FMCSA:**	NY FMCSA Field Office
POC:	Lt. James Yakimovich	**FMCSA POC:**	NY Motor Carrier State Director
Address:	Bureau of Operations 9 MetroTech Center Brooklyn, NY 11201-3587	**Address:**	Leo O' Brien Federal Bldg. Clinton & N. Pearl St., 9th Fl Albany, NY 12207
Phone:	(718) 999-1060	**Phone:**	(518) 431-4145 x315
Fax:		**Fax:**	

RESTRICTED ROUTES FOR ALL NY HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	City of New York Hazmat Restrictions [For shipments of Hazardous Cargo through the City without pickup or delivery within the City, to piers, airports, and shipping terminals, hazardous cargo transportation prohibited by City, State, Federal law or regulation shall not be permitted to enter or pass through New York City, except where specifically authorized by authorized governmental agencies and the Fire Commissioner. Such shipments shall conform to routes, times, and safety conditions specified by the Fire Commissioner. (Such designated routes are listed here in the National Hazardous Material Route Registry) Motor Vehicles conforming to Fire Department specifications and under Fire Department permit may be used to transport allowable Hazardous Cargo in accordance with Chapter 4 of Title 27 Administrative Code and the rules and regulations of the Fire Commissioner without conformance to the routing, time, escorts, and other restrictions and such "permitted" vehicles must be used for deliveries for storage and/or use or for pickup in the City. Hazardous cargo shipments shall transit the City only during non-rush hours. Shipments of explosives are permitted only during daylight hours, except that shipments at night may be allowed in individual cases for escorted shipments as pursuant to Administrative Code 27-4019(b). Times for shipments are as follows: Monday through Friday: For explosives, and prohibited materials for which specific permission has been given by Fire Department: 10:00 A.M. to 3:00 P.M. and 7:00 P.M. to 6:00 A.M. For all other hazardous cargo: 9:00 A.M. to 4:00 P.M. and 6:00 P.M. to 7:00 A.M. Saturday, Sunday, and Holidays: As traffic conditions permit, consistent with the rules and regulations of government agencies and/or authorities having jurisdiction.]	0

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

NY NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	Verrazano Bridge [Contact the FDNY (718) 403-1580 for more information.]	1

NY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	City of New York Escort Rendezvous Points [Escorts by a fully manned fire department engine company shall be required for all permitted Class "A", Class "B", and Class "C" explosives (over 50 pounds in weight) from point of entry into the City until its exit from the City pursuant to 27-4034(j) Administrative Code of the City of New York. The fire commissioner reserves the right to require escorts for any hazardous cargo shipment when he deems necessary. Notification of arrival of explosives shipments shall be made 48 hours in advance by calling the notification desk in the chief of department's office (718) 403-1580. Shipments from North Shore Long Island: Meet at safety area of Westbound Long Island Expressway (I-495) on the right side between Lakeville Road and Little Neck Parkway. Shipments from South Shore Long Island: Meet at northwest corner of intersection of Sunrise Highway (State 27) between Hook Creek Blvd. and 246th Street. From Upstate New York or New England via New England Thruway (I-95): exit at Connors Street exit, proceed on New England Thruway Service Road to Connors Street to meet Fire Department escort. From Upstate New York and New England via New York Thruway (I-87): exit into Service Area of Major Deegan Expressway located between Westchester County line and the East 233rd street exit of the expressway, to meet Fire Department escort From NJ via Goethals, Bayonne, Outerbridge Crossing, and George Washington Bridges: Meet at Adm. Bldg—Toll Plaza From J.F.K. International Airport: Meet in front of the Major Robert Fitzgerald Building ı111 on the inbound service road of the Federal Circle From LaGuardia Airport: Meet at Marine Air Terminal P.A.N.Y.N.J. Police Building, entering at 82nd Street entrance to LaGuardia Airport.]	B
01/06/95	NYC Route 1: From NJ to western Westchester County and upstate New York [George Washington Bridge (upper level) to Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge to the Major Deegan Expressway to New York Thruway (I-87). Note: Reverse routing permitted. Rendezvous with escort, if required.]	A

NY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	NYC Route 2: From NJ to eastern Westchester County, upstate New York, and New England [George Washington Bridge (upper level) to Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95) to Bruckner Interchange, continue on Bruckner Expressway to New England Thruway (I-95). Note: Reverse routing permitted. Rendezvous with escort if required.]	A
01/06/95	NYC Route 3: From NJ to Nassau and Suffolk Counties [NYC Route 3(i): George Washington Bridge (upper level) via Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway, east on Long Island Expressway (I-495) to Nassau and/or Suffolk Counties. NYC Route 3(ii): Use either 3(ii)A, 3(ii)B, or 3(ii)C THEN, East on Staten Island Expressway (I-278) to Verrazano Bridge, cross upper level of Verrazano Bridge to Brooklyn Queens Expressway (I-278), then east on Brooklyn Queens Expressway (I-278) to Long Island Expressway (I-495), then east on Long Island Expressway (I-495) to Nassau and/or Suffolk Counties. NYC Route 3(ii)A: Outerbridge crossing to West Shore Expressway, North on West Shore Expressway (State 440) to Staten Island Expressway (I-278) NYC Route 3(ii)B: Bayonne Bridge to Willowbrook Expressway (State 440) south to Staten Island Expressway (I-278) NYC Route 3(ii)C: Goethals Bridge to Staten Island Expressway (I-278) Note: Reverse routing permitted. Rendezvous with escort if required. Hazardous cargo requiring escort (i.e. explosives) shall use route via George Washington Bridge only to minimize travel time within the city: Explosives are prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 4: From Upstate NY or New England to Nassau and Suffolk Counties [NYC Route 4(i): New England Thruway (I-95) (to Connors Street exit to meet escort if required), to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295), to Throgs Neck Bridge, to Clearview Expressway (I-295), to Long Island Expressway (I-495), east on Long Island Expressway to City Line. NYC Route 4(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87), to Cross Bronx Expressway (I-95), east to Bruckner Expressway (I-278) to Throgs Neck Bridge, to Clearview Expressway (I-295), to Long Island Expressway (I-495), east on Long Island Expressway to City Line. Note 1: Reverse routing permitted. Rendezvous with escort if required. See NYC Route 25 for alternate routes.]	A
01/06/95	NYC Route 5: From NJ to LaGuardia Airport via Goethals Bridge [Goethals Bridge to Staten Island Expressway (I-278) to Verrazano Narrows Bridge (upper level) to Brooklyn Queens Expressway (I-278) to Astoria Blvd. (exit 39), east to 82nd Street then north on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge]	A
01/06/95	NYC Route 6: From NJ to LaGuardia Airport via Outerbridge Crossing [Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I-278) east to Verrazano Narrows Bridge (upper level) to Brooklyn Queens Expressway (I-278) to Astoria Blvd. (exit 39), east to 82nd Street then north on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge]	A
01/06/95	NYC Route 7: From NJ to LaGuardia Airport via George Washington Bridge [George Washington Bridge (upper level) via Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west on L.I.E. (I-495) to Van Wyck Expressway (I-678), north on Van Wyck Expressway (I-678) to Northern Blvd. (25A), west on Northern Blvd. to Astoria Blvd. West on Astoria Blvd to 82nd Street, north on 82nd Street to LaGuardia Airport. Note: See NYC Route 25 for alternate routes. Rendezvous with escort if required. Reverse routing permitted.]	A
01/06/95	NYC Route 8: From Long Island to LaGuardia Airport [NYC Route 8(i): Long Island Expressway (I-495) West to Van Wyck Expressway (I-678), North to Northern Blvd. (25-A), West to Astoria Blvd., Astoria Blvd. to 82nd Street, North on 82nd Street to LaGuardia Airport NYC Route 8(ii): Long Island Expressway (I-495) West to Brooklyn Queens Expressway (I-278) East to Astoria Blvd. (Exit 39) East to 82nd Street, North on 82nd to LaGuardia Airport NYC Route 8(iii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I-678), North on Van Wyck Expressway (I-678) to Northern Blvd. (25-A), West to Astoria Blvd., Astoria Blvd. to 82nd Street, North on 82nd Street to LaGuardia Airport NYC Route 8(iv): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I-678), North on Van Wyck Expressway (I-678) to Long Island Expressway (I-495), West to Brooklyn Queens Expressway (I-278), East to Astoria Blvd. (Exit 39), East to 82nd Street, North on 82nd Street to LaGuardia Airport Note: Rendezvous for escort if required Reverse routing permitted.]	A

NY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	NYC Route 9: From New England or upper New York State to LaGuardia Airport [NYC Route 9(i): New England Thruway (I-95) south (to Connors Street exit to meet escort, if required), to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295), via Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west to Brooklyn Queens Expressway (I-278) east, to Astoria Blvd. (exit 39), east to 82nd Street, then north on 82nd Street to LaGuardia Airport NYC Route 9(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87) to Cross Bronx Expressway (I-95) east to Bruckner Expressway (I-278) to Throgs Neck Bridge, to Clearview Expressway (I-295), to Long Island Expressway (I-495) west, to Brooklyn Queens Expressway (I-278) east, to Astoria Blvd. (Exit 39), east to 82nd Street, then north on 82nd Street to LaGuardia Airport Note: Rendezvous with escort if required. Reverse routing permitted. See NYC Route 25 for alternate routes.]	A
01/06/95	NYC Route 10: From New Jersey to J.F.K. International Airport via Goethals Bridge [From New Jersey via Goethals Bridge to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level), Brooklyn Queens Expressway (I-278) east to Long Island Expressway (I-495), east to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. International Airport Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 11: From New Jersey to J.F.K. International Airport via Outerbridge Crossing [From New Jersey via Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level), to Brooklyn Queens Expressway east (I-278) to Long Island Expressway (I-495), East on Long Island Expressway (I-495) to Van Wyck Expressway (I-678), South on Van Wyck Expressway (I-678) to J.F.K. International Airport Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 12: From New Jersey to J.F.K. International Airport via George Washington Bridge (upper level) [From New Jersey via George Washington Bridge (upper level), via Washington Expressway (without detouring onto City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95), to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. International Airport Note: Rendezvous with escort if required. Reverse routing permitted. See NYC Route 25 for alternate routes.]	A
01/06/95	NYC Route 13: From New England and upper New York State to J.F.K. International Airport [NYC Route 13(i): New England Thruway (I-95), south (to Connors Street exit to meet escort, if required) to Bruckner Expressway (I-95), to Throgs Neck Expressway (I-295), via Throgs Neck Bridge to Clearview Expressway (I-295), to Long Island Expressway (I-495) west on Long Island Expressway (I-495) to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678), to J.F.K. International Airport NYC Route 13(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87) to Cross Bronx Expressway (I-95), east to Bruckner Expressway (I-278) to Throgs Neck Bridge, to Clearview Expressway (I-295) to L.I. Expressway (I-495) west to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. Airport Note: Rendezvous with escort if required. Reverse routing permitted. See NYC Route 25 for alternate routes.]	A
01/06/95	NYC Route 14: From Long Island to J.F.K. International Airport [NYC Route 14(i): West on Long Island Expressway (I-495) to Van Wyck Expressway (I-676), south on Van Wyck Expressway (I-678) to J.F.K. International Airport NYC Route 14(ii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. International Airport NYC Route 14(ii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Rockaway Blvd., or 150th Street, to J.F.K. International Airport Note: Rendezvous with escort if required. Reverse routing permitted.]	A
01/06/95	NYC Route 15: From New Jersey to Staten Island Piers [NYC Route 15(i): From New Jersey via Bayonne Bridge Plaza via Willowbrook Expressway (State 440) to Staten Island Expressway (I-278), west on Staten Island Expressway to Western Avenue, north on Western Avenue to Richmond Terrace, east on Richmond Terrace to Northside Piers, or Staten Island Expressway, east to Bay Street Exit, then local streets to east side piers NYC Route 15(ii): From Goethals Bridge Plaza via Staten Island Expressway (I-278) to Forest Avenue, north on Forest Avenue to Goethals Road North, west on Goethals Road North to Western Avenue, north on Western Avenue to Northside Piers, or Staten Island Expressway east to Bay Street exit, then local streets to east side piers NYC Route 15(iii): From Outerbridge Crossing via West Shore Expressway (State 440) and Staten Island Expressway (I-278), west on Staten Island Expressway to Western Avenue, north on Western Avenue to Richmond Terrace, then local streets for Northside piers, or Staten Island Expressway east to Bay Street exit, then local streets to east side piers Note: Rendezvous with escort if required. Reverse routing permitted.]	A

NY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	NYC Route 16: From New Jersey to Brooklyn Piers [NYC Route 16(i): From Bayonne Bridge, south via Willowbrook Expressway (State 440) to Staten Island Expressway (I-278), east to Verrazano-Narrows Bridge (upper level) to Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278) to nearest exit to location of pier then local streets to pier NYC Route 16(ii): From New Jersey via Goethals Bridge to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level), to Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278) to nearest exit to location of pier then local streets to pier NYC Route 16(iii): >From New Jersey via Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level) , to Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278) to nearest exit to location of pier, local streets to pier Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge]	A
01/06/95	NYC Route 17(i): From New Jersey to Manhattan Piers via George Washington Bridge [NYC Route 17(i): From New Jersey via George Washington Bridge (upper level), exit at 178th Street and Fort Washington Avenue, east on 178th Street to Amsterdam Avenue, south on Amsterdam Avenue to Cathedral Parkway (110th Street), east on 110th Street to Columbus Avenue, south on Columbus Avenue to west 57th Street, west on 57th Street to 11th Avenue, south on 11th Avenue to 55th Street, west on 55th Street to 12th Avenue, 12th Avenue north or south to pier location. Note: Rendezvous with escort if required. Reverse routing permitted. In area of 12th Street, 12th Avenue becomes West Street.]	A
01/06/95	NYC Route 17(ii)A and 17(ii)B: From New Jersey to Manhattan Piers via Lincoln Tunnel [NYC Route 17(ii)A: Lincoln Tunnel to west side piers north of Lincoln Tunnel: From Lincoln Tunnel, exit at Dyer Avenue (40th Street) north on Dyer Avenue to 41st Street, west (left) on 41st Street, to 12th Avenue (right turn at 12th Avenue adjacent to elevated structure of West Side Highway, continue north on 12th Avenue to piers. Return route 17(ii)A: Return route to Lincoln Tunnel: South on 12th Avenue (at 43rd Street, move to left traffic lane to exit at 42nd Street), east (left turn) at 42nd Street on block to 11th Avenue, turn south (right) at 11th Avenue, continue south on 11th Avenue for two blocks (follow signs to Lincoln Tunnel) , east (left) on 40th Street to Lincoln Tunnel entrance at Galvin Avenue. NYC Route 17(ii)B: Lincoln Tunnel to west side piers south of Lincoln Tunnel: From Lincoln Tunnel exit at Dyer Avenue (40th Street) north on Dyer Avenue to 41st Street, west (left) on 41st Street to 12th Avenue, south (left) on 12th Avenue (under elevated structure of West Side Highway to southbound traffic lane of 12th Avenue) continue south on 12th Avenue and/or West Street to piers. Return route 17(ii)B: Return route to Lincoln Tunnel: North on West Street to 12th Avenue, north on 12th Avenue to 40th Street, east on 40th Street across 11th Avenue to Galvin Avenue entrance to Lincoln Tunnel. Note: In area of 12th Street, 12th Avenue becomes West Street.]	A
01/06/95	NYC Route 17(ii)C and 17(ii)D: From New Jersey to Manhattan Piers via Holland Tunnel [NYC Route 17(ii)C: Holland Tunnel to west side piers north of Holland Tunnel: Exit from Holland Tunnel at Hudson Street, north (right turn) on Hudson Street to Canal Street, west (left turn) on Canal Street to West Street, north (right turn) on West Street, continue north on West Street and/or 12th Avenue, to piers. Return route 17(ii)C: Return route to Holland Tunnel: South on 12th Avenue and continue south on West Street to Canal Street, east (left turn) on Canal Street to Hudson Street, then north (left turn) at Hudson Street to Holland Tunnel entrance. NYC Route 17(ii)D: Holland Tunnel to west side piers south of Holland Tunnel: Exit from Holland Tunnel at Hudson Street, north (right turn) on Hudson Street to Canal Street, west (left turn) on Canal Street to West Street, north (right turn) on West Street to west Houston Street, make "U" turn from north bound traffic lane under elevated West Side Highway to south bound traffic lane of West Street, continue south on West Street to piers. Return route 17(ii)D: North on West Street to Canal Street, east (right turn) on Canal Street to Hudson Street, then north (left turn) on Hudson Street to Holland Tunnel entrance. Note: In area of 12th Street, 12th Avenue becomes West Street.]	A
01/06/95	NYC Route 17(ii)E: From New Jersey, via George Washington Bridge, Lincoln or Holland Tunnels to lower east side (East River) piers [Utilize routes 17(ii)A through 17(ii)D, continue south on 12th Avenue or West Street, south on West Street to Battery Park Underpass (head room 12' 11"), enter Battery Park Underpass and exit on South Street, continue north on South Street and/or marginal street under elevated F.D.R. Drive to location of pier Return route: Proceed south on marginal street under elevated F.D.R. Drive and/or South Street to Battery Park Underpass, enter Battery Park Underpass and exit on West Street, proceed north on West Street and/or 12th Avenue, continue as per routes 17(ii)A through 17(ii)D to Lincoln and Holland Tunnels respectively, and, for George Washington Bridge, proceed north on 12th Avenue to 57th Street, east on 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 179th Street, west on 179th Street to George Washington Bridge. Note: Rendezvous with escort if required. In area of 12th Street, 12th Avenue becomes West Street.]	A

NY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	NYC Route 18(i): From New England to Manhattan piers [South on New England Thruway (I-95) (to Connors Street exit to meet escort if required), to Bruckner Expressway (I-278), to Willis Avenue and Third Avenue exit on 135th Street, west on 135th Street Third Avenue, south on Third Avenue across 3rd Avenue Bridge to 129th Street, east on 129th Street to Second Avenue, south on Second Avenue to East 125th Street. Return route: From Manhattan Piers to upstate New York, Westchester County, and New England. Reverse route 18 (ii) to 12th Avenue, north to West 57th Street, then east on West 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 125th Street, east to 1st Avenue, north on 1st Avenue to Willis Avenue Bridge, across Willis Avenue Bridge to Bruckner Blvd., Bruckner Blvd. to 138th Street entrance to Bruckner Expressway (I-278), east and north on Bruckner Expressway (I-278) to New England Thruway (I-95), then New England Thruway (I-95) north to City line. Note: Rendezvous with escort if required.]	A
01/06/95	NYC Route 18(ii): From Westchester County or upstate New York to Manhattan piers [New York Thruway (I-87), south to Major Deegan Expressway (I-87), Major Deegan Expressway, (I-87) south to 138th Street exit, service road to Third Avenue, south on 3rd Avenue, across 3rd Avenue Bridge to east 129th Street, east on 129th Street to Second Avenue, south on Second Avenue to east 125th Street. Then, west on 125th Street to Amsterdam Avenue, south on Amsterdam Avenue to Cathedral Parkway (110th Street) east on 110th Street to Columbus Avenue, south on Columbus Avenue to west 57th Street, west on 57th Street to 11th Avenue, south on 11th Avenue to west 55th Street, west on west 55th Street to 12th Avenue north or south to pier location. For lower East River piers, continue south on 12th Avenue to West Street, south on West Street around Battery Park (do not use Battery Under-Pass) to South Street, north on marginal streets under the elevated F.D.R. Drive to location of pier. Return route: Reverse route 18(ii) to 12th Avenue, then north to West 57th Street, then east on west 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 125th Street, east on 125th Street to 1st Avenue, north on 1st Avenue to Willis Avenue Bridge, across Willis Avenue Bridge, Willis Avenue to Major Deegan Expressway (I-87), Major Deegan Expressway north to New York Thruway (I-87), then north to City line. Note: Rendezvous with escort if required.]	A
01/06/95	NYC Route 19: From New England, upper New York State and Westchester County to Staten Island Piers [NYC Route 19(i): South on New England Thruway (I-95) (to Connors Street exit to meet escort if required) to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295) via Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278), west to Verrazano-Narrows Bridge (upper level) to Staten Island Expressway (I-278) to Bay Street exit for eastside piers, or west to Western Avenue, north to Richmond Terrace, then local streets to northside piers. NYC Route 19(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87) (exit into "service area" of Expressway, located between Westchester County line and east 233rd Street exit of the Expressway, to rendezvous with escort, if required) to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, to Clearview Expressway (I-295) to Long Island Expressway (I-495), west to Brooklyn Queens Expressway (I-279), west to Verrazano-Narrows Bridge (upper level), to Staten Island Expressway (I-278) , exit at Bay Street for eastside piers, or continue on Staten Island Expressway (I-278) to Western Avenue, north on western Avenue to Richmond Terrace, then local streets to northside piers. Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 20: From New England, Westchester County and upstate New York to Brooklyn piers [NYC Route 20(i): South on New England Thruway (I-95) (to Connors Street exit to meet escort if required) to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295) via Throgs Neck Bridge to Clearview Expressway (I-295), to Long Island Expressway (I-495), west on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278) west on Brooklyn Queens Expressway (I-278) to nearest exit to pier location. Route from nearest expressway exit to pier via local streets NYC Route 20(ii): From New York State Thruway (I-87), south to Major Deegan Expressway (I-87) , (exit into "service area" of expressway, located between Westchester County line and east 233rd Street exit of the Expressway, to rendezvous with escort, if required) to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, south to Clearview Expressway (I-295), to Long Island Expressway, west on Long Island Expressway (I-495) to Brooklyn Queens Expressway, west on Brooklyn Queens Expressway (I-278) to nearest exit to pier location, then via local streets to pier. Note: Rendezvous with escort if required. Reverse routing permitted.]	A

NY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	NYC Route 21: From Long Island (Nassau or Suffolk) to Brooklyn and Staten Island piers [Long Island Expressway (I-495) west to Brooklyn Queens Expressway (I-278) , then west on Brooklyn Queens Expressway (I-278), then either: NYC Route 21(i)A: Continue to nearest exit for Brooklyn piers location NYC Route 21(i)B: Continue west on Brooklyn Queens Expressway (I-278) to Verrazano Bridge (upper level), cross bridge to Staten Island Expressway (I-278), exit at Bay Street for Staten Island eastside piers (utilizing local streets) , or continue west on Staten Island Expressway (I-278) to Western Avenue, north on Western Avenue to Richmond Terrace, then local streets for northside Staten Island piers. Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 22: From Long Island (Nassau or Suffolk) to Manhattan piers [East on Long Island Expressway (I-495) to Clearview Expressway (I-295), north on Clearview Expressway (I-295) across Throgs Neck Bridge to Bruckner Expressway (I-278), west on Bruckner Expressway (I-278) continuing as per NYC route 18(i) and 18(ii) to Manhattan piers. Return routing: From Manhattan piers to Long Island. Use return route for 18(i) to Bruckner Expressway (I-278), east on Bruckner Expressway (I-278) to Throgs Neck Expressway (I-295) south on Throgs Neck Expressway (I-295), over Throgs Neck Bridge, south on Clearview Expressway (I-295) to Long Island Expressway (I-495), then east on Long Island Expressway (I-495) to Nassau and Suffolk Counties. Note: Rendezvous with escort if required.]	A
01/06/95	NYC Route 23(i): From New Jersey to Howland Hook Truck Terminal, Staten Island [NYC Route 23(i)A: From New Jersey via Bayonne Bridge Plaza via Willowbrook Expressway (State 440) south to Staten Island Expressway (I-278), north on Western Avenue, east to Howland Hook Terminal. NYC Route 23(i)B: From New Jersey via Outerbridge Crossing, north on West Shore Expressway (State 440) to Staten Island Expressway (I-278), west on Staten Island Expressway (I-278) to Western Avenue, north on Western Avenue, east to Howland Hook Terminal. NYC Route 23(i)C: From New Jersey via Goethals Bridge to Staten Island Expressway (I-278) to Forest Avenue, north on Forest Avenue to Goethals Road North, west on Goethals Road North to Western Avenue, north on Western Avenue, then east to Howland Hook Terminal. Note: Rendezvous with escort if required. Reverse routing permitted.]	A
01/06/95	NYC Route 23(ii): From New England, upper New York State and Westchester County to Howland Hook Truck Terminal, Staten Island [Use routes 19(i) and 19(ii) except that entrance to Howland Hook Terminal is east from Western Avenue. Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 23(iii): From Nassau County and Suffolk County to Howland Hook Truck Terminal, Staten Island [West on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278), then west on Brooklyn Queens Expressway (I-278) to Verrazano Bridge, cross upper level of Verrazano Bridge, then west on Staten Island Expressway (I-278) to Western Avenue, north on Western Avenue, then east to Howland Hook Terminal. Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 23(iv): From Airports to Howland Hook Truck Terminal, Staten Island [NYC Route 23(iv)A: From J. F. Kennedy Airport, north on Van Wyck Expressway (I-678) to Long Island Expressway (I-495), then west on Long Island Expressway continuing as per route 23(iii). NYC Route 23(iv)B: From LaGuardia Airport, south on 82nd Street to Astoria Blvd., west on Astoria Boulevard to Brooklyn Queens Expressway (I-278), then west on Brooklyn Queens Expressway (I-278), continuing as per route 23(iii) Note: Rendezvous with escort if required. Reverse routing permitted. Explosives prohibited on Verrazano Bridge.]	A
01/06/95	NYC Route 24: Truck and Railroad Terminal in Bushwick area, Brooklyn and Maspeth area, Queens [Utilize routes 3(i) or 3(ii) from New Jersey, 4(i) or 4(ii) from upstate New York, New England or Westchester County, C-3 Island Expressway (I-495), then Long Island Expressway (I-495) to Grand Avenue exit (westbound) or Maurice Ave. exit (eastbound), then to Grand Avenue (and Grand Street), east or west as required. Note: Rendezvous with escort if required. Reverse routing permitted.]	A

NY NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/06/95	NYC Route 25: Alternate hazmat routes in lieu of the Throgs Neck Bridge [For vehicles not carrying explosives, alternate routes utilizing the Whitestone Bridge or the Triboro Bridge may be used in lieu of the Throgs Neck Bridge specified in Routes 4(ii), 7(i), 9(ii), 12(i), 13(ii), 19(ii), and 20(ii), as follows: NYC Route 25(i): Cross Bronx Expressway (I-95) to Hutchinson River Parkway, south on Hutchinson River Parkway over Whitestone Bridge, and continue south on Whitestone Expressway (I-678)—THEN either: NYC Route 25(i)A: to Astoria Blvd., west on Astoria Blvd. to 82nd Street, north on 82nd Street to LaGuardia Airport. NYC Route 25(i)B: to Van Wyck Expressway (I-678), south on Van Wyck Express way (I-676) to J.F. Kennedy Airport. NYC Route 25(i)C: to Van Wyck Expressway (I-678), south to Long Island Expressway (I-495), west on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278), west on Brooklyn Queens Expressway (I-278) to Brooklyn or Staten Island piers as per routes (19) or (20). NYC Route 25(ii): South on Major Deegan Expressway (I-87) from Cross Bronx Expressway or Upstate New York, to Triboro Bridge, across Triboro Bridge to Queens, exit and proceed east on Astoria Blvd.—THEN either: NYC Route 25(ii)A: to 82nd Street, north on 82nd Street to LaGuardia Airport. NYC Route 25(ii)B: to Brooklyn Queens Expressway (I-278), west on Brooklyn Queens Expressway (I-278) to Long Island Expressway (I-495), east on Long Island Expressway (I-495) to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. Airport. NYC Route 25(ii)C: to Brooklyn Queens Expressway (I-278), west on Brooklyn Queens Expressway (I-278) to Brooklyn or Staten Island Piers as per routes (19) or (20). Note: Rendezvous with escort if required. Reverse routing permitted.]	A

STATE: NORTH CAROLINA

State Agency:	NC Dept. of Transportation	**FMCSA:**	NC FMCSA Field Office
POC:	Cpt. George Gray	**FMCSA POC:**	NC Motor Carrier State Director
Address:	Transportation Building, DMV 1 S. Wilmington St., BOX 25201 Raleigh, NC 27611-5201	**Address:**	310 New Bern Ave. Suite 468 Raleigh, NC 27601
Phone:	919-861-3186	**Phone:**	(919) 856-4378
Fax:	919-715-3988	**Fax:**	
No Routes Designated as of 11/14/00			

STATE: NORTH DAKOTA

State Agency:	ND DOT	**FMCSA:**	ND FMCSA Field Office
POC:	Jerry Homer	**FMCSA POC:**	ND Motor Carrier State Director
Address:	608 East Blvd. Ave. Bismarck, ND 58505	**Address:**	1471 Interstate Loop Bismarck, ND 58501-0567
Phone:	(701)-328-4443	**Phone:**	(701) 250-4346
Fax:	(701)-328-4623	**Fax:**	
No Routes Designated as of 11/14/00			

STATE: OHIO

State Agency:	Public Utilities Comm of OH	**FMCSA:**	OH FMCSA Field Office
POC:	Dan Fisher	**FMCSA POC:**	OH Motor Carrier State Director
Address:	180 East Broad St Columbus, OH 43215	**Address:**	200 N. High St. Room 328 Columbus, OH 43215
Phone:	(614)-752-7991	**Phone:**	(614) 280-5657
Fax:	(614)-752-8349	**Fax:**	

RESTRICTED ROUTES FOR ALL OH HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/01/96	Any other highway or state or local road not otherwise designated for the transportation of hazardous materials by the routing designation. [in Northeastern Ohio]	0
10/14/93	City of Cambridge [Hazmat transportation in the City of Cambridge is prohibited where there is neither a point of origin or destination within the City on the following routes: US Route 40, US Route 22, State Route 209, and any City streets]	0
05/04/92	City of Cleveland [City Streets] [Hazmat transportation in the City of Cleveland is prohibited where there is neither a point of origin nor delivery point with the City unless the point of origin or delivery is within one mile of the City limits and the use of the city streets is the safest and most direct route and the shortest distance of travel. Downtown streets are restricted from hazmat transportation between 7 AM and 6PM daily, except on the weekend. When city streets are to be used, the transporter must use interstate highways to a point as close as possible to the destination.]	0
11/03/86	City of Lorain [Hazmat transportation in the City of Lorain is prohibited where there is neither a point of origin or destination within the City on the following routes: State Route 57, State Route 611, State Route 58, US Route 6, and any city streets.]	0
07/01/96	Interstate 71 from Interstate 80 to Interstate 90 [in Cuyahoga County]	0
07/01/96	Interstate 77 from Interstate 80 to Interstate 90 [in Cuyahoga County]	0
07/01/96	Interstate 90 from Interstate 271 [in Lake County] to Interstate 80/90 [in Lorain County]	0
07/01/96	Interstate 480 from Interstate 271 to Interstate 480N [in Cuyahoga County]	0
07/01/96	Interstate 490 from Interstate 90 to Interstate 77 [in Cuyahoga County]	0
07/01/96	State 2 from State 44 to Interstate 90 [in Lake County]	0
07/01/96	State 44 from State 2 to Interstate 90 [in Lake County]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

OH RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
09/09/88	State-Wide [Preferred routes for high route controlled quantities of radioactive materials (HRCQ of RAM) are, "Interstate System highways, including interstate system bypasses or Interstate System beltways" as per 49 CFR Part 397]	P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

OH NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/29/90	Bedford from Erieway Facility [at 33 Industry Drive] [Proceed on Industry Dr, turn right on Northfield Rd, turn left on Alexander Rd., to I271 access road. Alternatively, from Northfield Rd, turn right on Forbes Rd, turn right on Broadway Rd. to I271.]	A
04/06/85	Broad St. [Inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	A
10/14/93	County 35 [Old 21/Clark/Byesville Rd. in the City of Cambridge] [for destination within City only]	A
11/03/86	Cooper Foster Park Rd. [in the City of Lorain] [for destination within City only]	A
04/06/85	High St. [Inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	A
10/14/93	Interstate 70 [in the City of Cambridge] [For hazmat shipments which have neither a point of origin or destination within the City of Cambridge.]	A
04/06/85	Interstate 70 [inside I270] [Only for the delivery of NRHM within the City of Columbus]	A
07/01/96	Interstate 71 from Interstate 80 [in Cuyahoga County] to Interstate 271 [in Summit County]	A
04/06/85	Interstate 71 [inside I270] [Only for the delivery of NRHM within the City of Columbus]	A
07/01/96	Interstate 77 from Interstate 80 [in Cuyahoga County] to Interstate 271 [in Summit County]	A
10/14/93	Interstate 77 [in the City of Cambridge] [For hazmat shipments which have neither a point of origin or destination within the City of Cambridge.]	A
07/01/96	Interstate 80 [and I80/I90 Ohio Turnpike] from Gate 13 [in Portage County] to Loraine/Erie County Line	A
07/01/96	Interstate 90 from Lake/Ashtabula county line to Interstate 271 [in Lake county]	A

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES—Continued

OH NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/03/86	Interstate 90 [in the City of Lorain] [For hazmat shipments which have neither a point of origin or destination within the City of Lorain.]	A
11/01/94	Interstate 90 [in the City of Westlake]	A
04/06/85	Interstate 270 [Columbus Outerbelt] [Shipments which do not have the destination within the City of Columbus, but as a throughway.]	A
07/01/96	Interstate 271 from Interstate 90 [in Lake County] to Interstate 71 [in Medina County]	A
07/01/96	Interstate 480N from Interstate 271 to Interstate 480 [in Cuyahoga County]	A
07/01/96	Interstate 480 from Interstate 480N [in Cuyahoga County] to Interstate 80 [in Loraine County]	A
07/01/96	Interstate 480 from Interstate 80 [Gate 13 in Portage County] to Interstate 271 [in Summit County]	A
04/06/85	Interstate 670 from Interstate 70 to Interstate 270 [Only for the delivery of NRHM within the City of Columbus]	A
10/02/89	Liberty St. [in the City of Painesville]	M
11/03/86	Middle Ridge Rd. [in the City of Lorain] [for destination within City only]	A
10/14/93	North Second St. [in the City of Cambridge] [for destination within City only]	A
10/02/89	Richmond St. [in the City of Painesville]	M
10/02/89	State 2 [City of Painesville] [For medical waste which does note originate in the City of Painesville]	M
11/03/86	State 2 [in the City of Lorain] [For hazmat shipments which have neither a point of origin nor destination within the City of Lorain.]	A
04/06/85	State 33 [inside I270] [Only for the delivery of NRHM within the City of Columbus]	A
10/02/89	State 44 [City of Painesville] [For medical waste which does not originate in the City of Painesville]	M
11/03/86	State 57 [in the city limits of Lorain] [for destination within City only]	A
11/03/86	State 58 [in the city limits of Lorain] [for destination within City only]	A
04/06/85	State 161 [inside I270] [Only for the delivery of NRHM within the City of Columbus]	A
10/14/93	State 209 [Southgate Parkway in the City of Cambridge] [for destination within City only]	A
11/01/94	State 252 [Columbia Rd. in the City of Westlake]	A,B
11/01/94	State 254 [Detroit Rd. in the City of Westlake]	A,B
04/06/85	State 315 [inside I270] [Only for the delivery of NRHM within the City of Columbus]	A
11/03/86	State 611 [in the city limits of Lorain] [for destination within City only]	A
10/14/93	Stubenville Ave. [in the City of Cambridge] [for destination within City only]	A
11/03/86	US 6 [in the city limits of Lorain] [for destination within City only]	A
11/01/94	US 20 [Center Ridge Rd. in the City of Westlake]	A,B
10/14/93	US 22 [Wheeling Ave. in the City of Cambridge] [for destination within City only]	A
10/14/93	US 40 [Whelling Ave. in the City of Cambridge] [for destination within City only]	A

STATE: OKLAHOMA

State Agency:	OK Dept. of Transportation	**FMCSA:**	OK FMCSA Field Office
POC:	Harold Smart	**FMCSA POC:**	OK Motor Carrier State Director
Address:	200 NE 21st St Oklahoma City, OK 73105-3204	**Address:**	300 N. Meridian Suite 106S Oklahoma City, OK 73107-6560
Phone:	(405) 521-2861	**Phone:**	(405) 605-6047
Fax:	(405) 521-2865	**Fax:**	

RESTRICTED ROUTES FOR ALL OK HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/29/97	Interstate 40 [In Oklahoma City] from Interstate 44 to Interstate 35 [(Elevated section—not full-width shoulder)]	0

RESTRICTED ROUTES FOR ALL OK HAZMATS—Continued

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/29/97	OK City & Tulsa [Carriers transporting hazardous cargo should avoid traveling through large metropolitan areas during times of the day when congestion is expected. These carriers should also avoid construction zones when possible. Construction information can be accessed by calling the OK Department of Transportation at (405) 521-2554.]	0

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

OK NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/29/97	All Interstates [All hazardous material shipments moving through Oklahoma should remain on Interstate routes, when possible.]	A
07/29/97	Interstate 44 [Southwest of Oklahoma City] from Interstate 40 to Interstate 240 [Use to bypass section of I-40 running through downtown Oklahoma City]	A
07/29/97	Interstate 240 [South of Oklahoma City] from Interstate 44 to Interstate 40 [Southeast of Oklahoma City] [Use to bypass section of I-40 running through downtown Oklahoma City]	A
07/29/97	Interstate 244 [Tulsa] from Interstate 44 [West of Tulsa] to Interstate 44 [East of Tulsa] [Use to bypass downtown Tulsa]	A

STATE: OREGON

State Agency:	Oregon DOT	**FMCSA:**	OR FMCSA Field Office
POC:	Michael Sullivan	**FMCSA POC:**	OR Motor Carrier State Director
Address:	12348 N. Center Ave Portland, OR 97217	**Address:**	The Equitable Center-Suite 100 530 Center Street, NE Salem, OR 97301-3740
Phone:	(503)-283-5790	**Phone:**	(503) 399-5775
Fax:	(503)-283-5703	**Fax:**	

RESTRICTED ROUTES FOR ALL OR HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	NW Balboa Ave [Portland—crossing Burlington Northern rail tracks] from Frost Ave. to St. Helens Rd.	0
11/01/94	NW Doane Ave. [Portland—crossing Burlington Northern rail tracks] from St. Helens Rd. to Frost Ave. [03/01/00—This route is deleted—NW Doane Ave. no longer exists.]	0
11/01/94	US 26 [includes Vista Ridge Tunnel] from Interstate 405 to State 217	0
11/01/94	US 30 [St. Helens Rd. near NW Doane Ave. and NW Boloa Ave. Rail Crossings (Burlington Northern)] [Use the Kittridge Ave Overpass to Frost Ave.]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

OR RAM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	Interstate 84 [east of Pendelton] [Arrowhead Truck Plaza (on tribal land) prohibits parking of classes 1.1, 1.2, 1.3, and 7.]	1,7

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

OR NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	Interstate 84 [east of Pendelton] [Arrowhead Truck Plaza (on tribal land) prohibits parking of classes 1.1, 1.2, 1.3, and 7.]	1,7

OR NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	Interstate 5 from Interstate 405 to State 217 [** alternate route in Portland **]	A
11/01/94	Interstate 205 from Interstate 5 [south of Portland] to Interstate 5 [Washington State]	A
11/01/94	Interstate 405 from Interstate 5 to Interstate 5 [** alternate route for Portland **]	A
11/01/94	Kittridge Ave. Overpass [Portland] from St. Helens Ave. to Frost Ave.	A
11/01/94	State 217 from Interstate 5 to US 26 [** alternate route in Portland]	A

STATE: PENNSYLVANIA

State Agency:	PA DOT	**FMCSA:**	PA FMCSA Field Office
POC:	Daniel R. Smyser, P.E.	**FMCSA POC:**	PA Motor Carrier State Director
Address:	Chief, Motor Carrier Division P.O. Box 8210 Harrisburg, PA 17105-8210	**Address:**	228 Walnut St. Room 536 Harrisburg, PA 17101-1720
Phone:	(717)-787-7445	**Phone:**	(717) 221-4443
Fax:	(717)-705-1434	**Fax:**	

RESTRICTED ROUTES FOR ALL PA HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/58	Interstate 279 [Forts Pitt Tunnels in Pittsburgh] [(1) Explosives A, (2) Explosives B, (3) Blasting Agents, (4) Flammable Gas, (5) Flammable, (6) Flammable Solids, and (7) Flammable Solid W. prohibited.]	0
01/01/52	Interstate 376 [Squirrel Hill Tunnels in Pittsburgh] from Exit 8 to Exit 9 [(1) Explosives A, (2) Explosives B, (3) Blasting Agents, (4) Flammable Gas, (5) Flammable, (6) Flammable Solids, and (7) Flammable Solid W. prohibited.]	0
01/01/50	Liberty Ave. [in Liberty Tunnels—Allegheny County] from Carston St. to Saw Mill Run Blvd. [(1) Explosives A, (2) Explosives B, (3) Blasting Agents, (4) Flammable Gas, (5) Flammable, (6) Flammable Solids, and (7) Flammable Solid W. prohibited.]	0
09/15/93	State 34 [in Cumberland County] from Segment 0270/Offset 0000 to Segment 0300/Offset 0000	0
09/09/93	State 39 [Dauphin County] from Segment 0030/Offset 0000 to Segment 0210/Offset 0000	0
09/15/93	State 74 [in Cumberland County] from Segment 0170/Offset 0000 to Segment 0210/Offset 0000	0
09/15/93	State 641 [in Cumberland County] from Segment 0440/Offset 3196 to Segment 0470/Offset 0000	0
11/03/94	SR3009 [Dauphin County] from Segment 0210/Offset 0720 to Segment 0221/Offset 1382	0
03/21/94	SR4020 [Lancaster County] from Segment 0010/Offset 0000 to Segment 0130/Offset 0000	0
09/15/93	US 11 [in Cumberland County] from Segment 0360/Offset 2119 to Segment 0510/Offset 0000	0
09/09/93	US 22 [Eastbound—Dauphin County] from Segment 0420/Offset 0000 to Segment 0570/Offset 0000	0
09/09/93	US 22 [Westbound—Dauphin County] from Segment 0421/Offset 0000 to Segment 0571/Offset 0000	0
07/22/89	US 30 [West—Descending Laurel Mountain in Somerset/Westmoreland Counties] [Descending Laurel Mountain into the Village of Laughlintown (to protect Ligonier Municipal Reservoir). The "recommended" alternate route is south on US 219 to I-76 (PA Turnpike), west on I-76 to New Stanton.]	0

STATE: PENNSYLVANIA

State Agency:	PA Turnpike Commission	**FMCSA:**	PA FMCSA Field Office
POC:	Doris Stringer	**FMCSA POC:**	PA Motor Carrier State Director
Address:	Customer Service Center P.O. Box 67676 Harrisburg, PA 17106-7676	**Address:**	228 Walnut St. Room 536 Harrisburg, PA 17101-1720
Phone:	1-800-331-3413	**Phone:**	(717) 221-4443
Fax:	(717) 986-9686	**Fax:**	

RESTRICTED ROUTES FOR ALL PA HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
01/01/40	Interstate 70/176 [Allegheny Tunnel—Somerset County] from Exit 10 to Exit 11 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)]	0
01/01/40	Interstate 76 [Blue Mountain Tunnel and Kittatinny Tunnel—Franklin County] from Exit 14 to Exit 15 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)]	0
01/01/40	Interstate 76 [Tuscarora Tunnel—Franklin/Huntingdon Counties] from Exit 13 to Exit 14 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)]	0
01/01/65	Interstate 476 [Northeast Extension of PA Turnpike at Lehigh Tunnel] from Exit 33 to Exit 34 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)]	0

STATE: PUERTO RICO

State Agency:	DOT & Public Works	**FMCSA:**	PR FMCSA Field Office
POC:	Sergio Gonzales	**FMCSA POC:**	PR Motor Carrier State Director
Address:	P.O. Box 41269 Minillas Station Santurce, PR 00940	**Address:**	US Courthouse & Fed Bldg. Carlos Chardon St., Room 329 Hato Rey, PR 00918-1755
Phone:	(787)-728-7785	**Phone:**	(787) 766-5985
Fax:		**Fax:**	

No Routes Designated as of 11/14/00

STATE: RHODE ISLAND

State Agency:	Depart. of Environmental Mgt.	**FMCSA:**	RI FMCSA Field Office
POC:	Beverly M. Migliore	**FMCSA POC:**	RI Motor Carrier State Director
Address:	Div. of Waste Mgt. 291 Promenade Street Providence, RI 02908	**Address:**	380 Westminster Mall Room 547 Providence, RI 02903
Phone:	(401)-222-2797	**Phone:**	(401) 528-4578
Fax:	(401)-222-3810	**Fax:**	

RESTRICTED ROUTES FOR ALL RI HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/18/84	Aquidneck Ave [in Middletown] from Wave Ave to Valley Road	0
07/18/84	Bliss Mine Road [in its entirety in Newport & Middletown]	0
07/18/84	Burchard Road [in its entirety in Little Compton]	0
07/18/84	Central Pike [in Scituate and Foster] from Route 94 [Foster] to Route 102 [Scituate]	0
07/18/84	Danielson Pike [in Scituate] from Route 6 to Route 6	0
07/18/84	Miantonami Ave. [in Middletown] from Bliss Mine Road to Valley Road	0
07/18/84	Neck Road [in its entirety in Tiverton]	0
07/18/84	North Main Road [in Jamestown] from Route 138 to East Shore Road	0
07/18/84	Old Plainfield Pike [in Foster & Scituate] from Route 102 to Route 12 [Scituate]	0
07/18/84	Peckham Road [in Little Compton] from Route 77 to Burchard Road	0
07/18/84	Reservoir Road [in Cumberland] from Route 114 to Massachusetts	0
07/18/84	Reservoir Road [in its entirety in Smithfield and North Smithfield]	0
07/18/84	Rocky Hill Rd. & Peeptoad Rd. [in Scituate] from Route 101 to Route 116 [Sawmill Rd.]	0
07/18/84	Route 101 [in Foster, Glocester, and Scituate] from Route 94 [Foster] to Route 6 [Scituate]	0
07/18/84	Route 102 [in Scituate and Foster] from Route 94 [Foster] to Snake Hill Road [Glocester]	0

RESTRICTED ROUTES FOR ALL RI HAZMATS—Continued

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/18/84	Route 116 [in Scituate & Smithfield] from Scituate Ave. [Scituate] to Smoke Hill Rd. [Smithfield]	0
07/18/84	Route 12 [in Scituate and Cranston] from Route 14 [Scituate] to Route 116 [Scituate]	0
07/18/84	Route 120 [in Cumberland] from Mendon Road to Massachusetts	0
07/18/84	Route 14 [in Scituate] from Route 102 to Route 116	0
07/18/84	Route 295 [in Smithfield and Lincoln] from Exit 8 [Douglas Pike—Smithfield] to Exit 9 [Route 146—Lincoln]	0
07/18/84	Route 6 [in Scituate, Johnston, & Foster] from Route 94 [Foster] to Hopkins Ave [Johnson]	0
07/18/84	Route 77 [in Little Compton and Tiverton] from Peckham Road [Little Compton] to Route 179 [Tiverton]	0
07/18/84	Route 94 [in Foster] from Route 101 to Route 102 [Scituate]	0
07/18/84	School House Road [in Warren] from Birch Swamp Rd. to Long Lane	0
07/18/84	Serpentine Road [in its entirety in Warren]	0
07/18/84	Valley Road [in Middletown] from Miantonami Ave to Route 138	0
07/18/84	Wave Ave [in its entirety in Middletown]	0

STATE: SOUTH CAROLINA

State Agency:	No Agency Designated	**FMCSA:**	SC FMCSA Field Office
POC:		**FMCSA POC:**	SC Motor Carrier State Director
Address:		**Address:**	Strom Thurmond Federal Bldg. 1835 Assembly St., Suite 1253 Columbia, SC 29201
Phone:		**Phone:**	(803) 765-5414
Fax:		**Fax:**	

No Routes Designated as of 11/14/00

STATE: SOUTH DAKOTA

State Agency:	South Dakota Highway Patrol	**FMCSA:**	SD FMCSA Field Office
POC:	Capt. Myron Rau	**FMCSA POC:**	SD Motor Carrier State Director
Address:	500 E. Capitol Pierre, SD 57501	**Address:**	116 East Dakota Ave. Pierre, SD 57501-3110
Phone:	(605) 773-4578	**Phone:**	(605) 224-8202
Fax:	(605) 773-6046	**Fax:**	

No Routes Designated as of 11/14/00

STATE: TENNESSEE

State Agency:	TN DOT	**FMCSA:**	TN FMCSA Field Office
POC:	Carl Cobble	**FMCSA POC:**	TN Motor Carrier State Director
Address:	Suite 400 James K. Polk Bldg. Nashville, TN 37243-0333	**Address:**	640 Grassmere Park Rd. Suite 112 Nashville, TN 37211-3568
Phone:	(615)-741-2027	**Phone:**	(615) 781-5781
Fax:	(615)-532-5995	**Fax:**	

RESTRICTED ROUTES FOR ALL TN HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
05/15/87	Interstate 40 [Through City of Knoxville] from Exit 385 [intersection with I-75/I-640 west of Knoxville] to Exit 393 [intersection with I-640 east of Knoxville] [Prohibition does not apply to hazmat shipments originating at or destined to the City of Knoxville and to service points of US 129 in Blount County as verified by appropriate shipping papers, or shipments to be interlined with other carriers or to be transferred to other vehicles of the same carrier at facilities in these areas, or to vehicles which need emergency repair or warranty work performed at authorized dealers in these areas.]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

TN RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
05/15/87	Interstate 640/I75 from Interstate 40 [exit 385 West of Knoxville] to Interstate 40 [exit 393 East of Knoxville] [In lieu of I-40 in the Knoxville area. Preferred route originate date is 08/03/88]	A,P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

TN NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
05/15/87	Interstate 640/I75 from Interstate 40 [exit 385 West of Knoxville] to Interstate 40 [exit 393 East of Knoxville] [In lieu of I-40 in the Knoxville area. Preferred route originate date is 08/03/88]	A,P

STATE: TEXAS

State Agency:	TX Department of Transportation	**FMCSA:**	TX FMCSA Field Office
POC:	Margaret Moore	**FMCSA POC:**	TX Motor Carrier State Director
Address:	125 E. 11th St. Austin, TX 78701-2483	**Address:**	Federal Office Bldg., Rm 826 300 East 8th St. Austin, TX 78701
Phone:	(512)-416-3122	**Phone:**	(512) 916-5475
Fax:	(512)-416-3299	**Fax:**	

RESTRICTED ROUTES FOR ALL TX HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	Interstate 30 [Dallas] from Interstate 35 to Oakland Ave. [Overpass] [No operator of a motor vehicle transporting hazardous material scheduled for delivery to or from a Dallas Terminal shall transport those materials on any street or highway, or segment of a street or public highway designated as "Prohibited Hazardous Materials Area."]	0
11/01/94	Interstate 45 Elevated [Dallas] from Lamar Underpass to Bryan St. Underpass [No operator of a motor vehicle transporting hazardous material scheduled for delivery to or from a Dallas Terminal shall transport those materials on any street or highway, or segment of a street or public highway designated as "Prohibited Hazardous Materials Area"]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

TX RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	US 277 [San Angelo] from Farm to Market 2105 to Loop 306 N	P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

TX NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	Loop 335 [Amarillo] from Amarillo Blvd W to South City Limits	2

TX NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	10th St. [Texas City, Galveston County] from 4th St. to end	A
11/01/94	14th St. [Texas City, Galveston County] from Loop 197 to 5th Ave.	A
11/01/94	2nd Ave. [Texas City, Galveston County] from Loop 197 to Sterling Chemical Co.	A
11/01/94	4th Ave. [Texas City, Galveston County] from Loop 197 to 10th St.	A
11/01/94	51st St./Seawolf Pkwy. [Galveston, Galveston County] from State 275 to end	A
11/01/94	5th Ave. [Texas City, Galveston County] from State 146 to 14th St.	A
11/01/94	Airway Blvd [El Paso] from Interstate 10 to US 62/180	A
11/01/94	BI 40 [Amarillo] from West City Limits to Farm to Market 1719	A
11/01/94	BS 36 [Brenham] from State 36 to Farm to Market 577	A
11/01/94	BS 71 [La Grange] from West City Limits to Farm to Market 609	A
11/01/94	BU 281 [Edinburg] from US 281 N to Farm to Market 1925	A
11/01/94	BU 77 [Harlingen] from North City Limits to South City Limits	A
11/01/94	BU 77 [Harlingen] from US 77 N to Loop 499 N	A
11/01/94	Commerce St. [Harlingen] from BU 77 N to BU 77 S	A
11/01/94	Cordova Port of Entry [El Paso] from Interstate 110 to Republic of Mexico	A
11/01/94	Delta Dr. [El Paso] from Trowbridge Dr. to Fonseca Dr.	A
11/01/94	Farm to Market 106 [Harlingen] from East City Limits to BU 77	A
11/01/94	Farm to Market 324 [Lufkin] from South City Limits to Loop 287	A
11/01/94	Farm to Market 507 [Harlingen] from North City Limits to BU 77	A
11/01/94	Farm to Market 519 [Texas City, Galveston County] from West City Limits to Loop 197	A
11/01/94	Farm to Market 565 [Mont Belvieu] from Loop 207 to Farm to Market 3360	A
11/01/94	Farm to Market 577 [Brenham] from US 290 to BS 36	A
11/01/94	Farm to Market 609 [La Grange] from Southwest City Limits to BS 71	A
11/01/94	Farm to Market 659 [El Paso] from East City Limits to Loop 375 E	A
11/01/94	Farm to Market 715 [Midland] from Interstate 20 to BI 20	A
11/01/94	Farm to Market 801 [Harlingen] from Southwest City Limits to US 77/83	A
11/01/94	Farm to Market 1336 [Lufkin] from Farm to Market 324 to end	A
11/01/94	Farm to Market 1479 [Harlingen] from Southwest City Limits to US 77/83	A
11/01/94	Farm to Market 1719 [Amarillo] from North City Limits to BI 40	A
11/01/94	Farm to Market 1764 [Texas City, Galveston County] from Interstate 45 to State 146	A
11/01/94	Farm to Market 1925 [Edinburg] from US 281 to Farm to Market 2061	A
11/01/94	Farm to Market 1926 [Edinburg] from Southwest City Limits to State 107	A
11/01/94	Farm to Market 2004 [Texas City, Galveston County] from West City Limits to State 3	A
11/01/94	Farm to Market 2061 [Edinburg] from South City Limits to Farm to Market 1925	A
11/01/94	Farm to Market 2105 [San Angelo] from US 87 to US 277	A
11/01/94	Farm to Market 2128 [Edinburg] from East City Limits to US 281	A
11/01/94	Farm to Market 2994 [Harlingen] from West City Limits to Farm to Market 3195	A
11/01/94	Farm to Market 3195 [Harlingen] from US 83 to Farm to Market 2994	A
11/01/94	Fairgrounds Rd. [Midland] from BI 20 to Loop 250	A
11/01/94	Fonesca Dr. [El Paso] from Delta Dr. to Loop 375	A
11/01/94	Fred Wilson Rd. [El Paso] from Airport Rd. to US 54	A
11/01/94	Interstate 10 [Beaumont] from East City Limits to West City Limits	A
11/01/94	Interstate 10 [El Paso] from East City Limits to West City Limits	A
11/01/94	Interstate 10 [Houston] from Interstate 610 E to East City Limits	A
11/01/94	Interstate 10/US 90 [Houston] from Interstate 610 W to West City Limits	A
11/01/94	Interstate 10 [Mount Belvieu] from East City Limits to West City Limits	A
11/01/94	Interstate 20 [Dallas] from East City Limits to West City Limits	A
11/01/94	Interstate 20 [Fort Worth] from East City Limits to West City Limits	A
11/01/94	Interstate 20 [Midland] from East City Limits to West City Limits	A
11/01/94	Interstate 27 [Amarillo] from South City Limits to Interstate 40	A
03/26/96	Interstate 27 [Lubbock] from North City Limits to South City Limits	A
11/01/94	Interstate 30 [Dallas] from East City Limits to Interstate 635	A
11/01/94	Interstate 30 [Fort Worth] from West City Limits to Interstate 820 W	A
11/01/94	Interstate 35 E [Dallas] from North City Limits to LP 12	A
11/01/94	Interstate 35 E [Dallas] from South City Limits to Interstate 20	A
11/01/94	Interstate 35 W [Fort Worth] from North City Limits to Interstate 820	A
11/01/94	Interstate 35 W [Fort Worth] from South City Limits to Interstate 20	A
11/01/94	Interstate 35 [New Braunfels] from North City Limits to South City Limits	A
11/01/94	Interstate 35 [Temple] from North City Limits to South City Limits	A
11/01/94	Interstate 40 [Amarillo] from East City Limits to West City Limits	A
11/01/94	Interstate 45 [Dallas] from South City Limits to Interstate 20	A
11/01/94	Interstate 45 [Galveston, Galveston County] from Northwest City Limits to State 87	A
11/01/94	Interstate 45 [Houston] from North City Limits to Interstate 610 N	A
11/01/94	Interstate 45 [Houston] from South City Limits to Interstate 610 S	A
11/01/94	Interstate 45 [Texas City, Galveston County] from North City Limits to South City Limits	A
11/01/94	Interstate 110 [El Paso] from Cordova Port-of-Entry to Interstate 10	A
11/01/94	Interstate 610 [Houston (entire highway)]	A
11/01/94	Interstate 635 [Dallas] from Interstate 35 E to Interstate 20	A
11/01/94	Interstate 820 [Fort Worth (entire highway)]	A

TX NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	Loop 12 [Dallas] from Spur 408 to Interstate 35 E	A
11/01/94	Loop 197 [Texas City, Galveston County] from State 46 to 2nd Ave.	A
11/01/94	Loop 207 [Mont Belvieu] from State 146 N to State 146 S	A
11/01/94	Loop 224 [Nacogdoches (Entire Highway)]	A
11/01/94	Loop 250 [Midland] from Interstate 20 [North, and East] to Fairgrounds Rd.	A
11/01/94	Loop 287 [Lufkin (entire highway)]	A
03/28/96	Loop 289 [Lubbock] from US 62/82 W [North, East, South, & West] to Interstate 27 S	A
11/01/94	Loop 304 [Crockett (entire highway)]	A
11/01/94	Loop 306 [San Angelo] from US 277 [South, West, and North] to US 67 S	A
11/01/94	Loop 335 [Amarillo] from Dumas Dr. [US 27/US 287] to East City Limits	A
11/01/94	Loop 335 [Amarillo] from Dumas Dr. [(US 87/US 287)] to West City Limits	A
11/01/94	Loop 335 [Amarillo] from NE 24th Ave. to Interstate 40	A
11/01/94	Loop 337 [New Braunfels] from Interstate 35 N to Interstate 35 S	A
11/01/94	Loop 363 [Temple] from Interstate 35 N [East, South, West, & North] to State 36 W	A
11/01/94	Loop 375 [El Paso] from Railroad Dr. [East, South, West, & North] to US 54 S	A
11/01/94	Loop 499 [Harlingen] from BU 77 N [East & South] to US 77/83	A
11/01/94	Loop 500 [Center] from State 7 W to State 7 E	A
11/01/94	Marshall Rd. [El Paso] from Fred Wilson Rd. to Railroad Dr.	A
11/01/94	Railroad Dr. [El Paso] from North City Limits to Fred Wilson Rd.	A
11/01/94	Rio Hondo Rd. [Harlingen] from Farm to Market 507 to Academy	A
11/01/94	State 3 [Houston] from Southeast City Limits to Interstate 45	A
11/01/94	State 3 [Texas City, Galveston County] from Loop 197 to Farm to Market 1765	A
11/01/94	State 3 [Texas City, Galveston County] from Northwest City Limits to Farm to Market 2004	A
11/01/94	State 7 [Crockett] from East City Limits to Loop 304 E	A
11/01/94	State 7/21 [Crockett] from West City Limits to Loop 304 W	A
11/01/94	State 7 [Nachgdoches] from West City Limits to US 59	A
11/01/94	State 7 [Nacogdoches] from East City Limits to Loop 224 E	A
11/01/94	State 19 [Crockett] from South City Limits to Loop 304 S	A
11/01/94	State 21 [Crockett] from Northeast City Limits to Loop 304 NE	A
11/01/94	State 21 [Nacogdoches] from East City Limits to Loop 224 E	A
11/01/94	State 21 [Nacogdoches] from West City Limits to US 59	A
11/01/94	State 36 [Brenham] from BS36 N to US 290	A
11/01/94	State 36 [Temple] from West City Limits to State 95	A
11/01/94	State 53 [Temple] from East City Limits to Loop 363 E	A
11/01/94	State 71 [La Grange] from East City Limits to West City Limits	A
11/01/94	State 87 [Center] from West City Limits to US 96	A
11/01/94	State 94 [Lufkin] from West City Limits to Loop 287 W	A
11/01/94	State 95 [Temple] from South City Limits to State 36/Loop 363	A
11/01/94	State 103 [Lufkin] from East City Limits to Loop 287 US 59/69	A
11/01/94	State 103 [Lufkin] from West City Limits to Loop 287 W	A
11/01/94	State 105 [Beaumont, Beaumont District] from West City Limits to US 69/96/287	A
11/01/94	State 107 [Edinburg] from East City Limits to US 281	A
11/01/94	State 107 [Edinburg] from West City Limits to Farm to Market 2061	A
03/28/96	State 114 [Lubbock] from Northeast City Limits to Loop 289 NE	A
03/28/96	State 114 [Lubbock] from West City Limits to Loop 289 W	A
11/01/94	State 146 [Mont Belvieu] from North City Limits to Interstate 10	A
11/01/94	State 146 [Texas City, Galveston County] from North City Limits to South City Limits	A
11/01/94	State 199 [Fort Worth] from Northwest City Limits to Interstate 820	A
11/01/94	State 225 [Houston] from East City Limits to Interstate 610	A
11/01/94	State 275 [Galveston, Galveston County] from Interstate 45 to 9th St.	A
11/01/94	South Zargosa Rd. [El Paso] from Ysleta Port of Entry to Loop 375 S	A
11/01/94	Spur 408 [Dallas] from Interstate 20 to Loop 12	A
11/01/94	Spur 54 [Harlingen] from US 77 to US 83	A
11/01/94	Trowbridge Dr. [El Paso] from Interstate 10 to Delta Dr.	A
11/01/94	US 54 [El Paso] from New Mexico to Loop 375 S	A
11/01/94	US 59 [Houston] from North City Limits to Interstate 610 N	A
11/01/94	US 59 [Houston] from West City Limits to Interstate 610 W	A
11/01/94	US 59 [Lufkin] from North City Limits to South City Limits	A
11/01/94	US 59 [Nacogdoches] from North City Limits to South City Limits	A
11/01/94	US 60 [Amarillo] from East City Limits to Loop 335 E	A
11/01/94	US 62/180 [El Paso] from East City Limits to Airway Blvd.	A
03/28/96	US 62/82 [Lubbock] from Northeast City Limits to Loop 289 NE	A
03/28/96	US 62/82 [Lubbock] from Southwest City Limits to Loop 289 SW	A
11/01/94	US 67 [San Angelo] from Southwest City Limits to Loop 306 W	A
11/01/94	US 69/96/287 [Beaumont] from North City Limits to South City Limits	A
11/01/94	US 69 [Lufkin] from Northwest City Limits to Southeast City Limits	A
11/01/94	US 75 [Dallas] from North City Limits to Interstate 635 N	A
11/01/94	US 77 [Harlingen] from North City Limits to South City Limits	A
11/01/94	US 77 [La Grange] from North City Limits to State 71	A

TX NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/01/94	US 80 [Dallas] from East City Limits to Interstate 635	A
11/01/94	US 81/287 [Fort Worth] from North City Limits to Interstate 35 W	A
11/01/94	US 83 [Harlingen] from South City Limits to West City Limits	A
03/28/96	US 84 [Lubbock] from Northwest City Limits to Loop 289 N	A
03/28/96	US 84 [Lubbock] from Southeast City Limits to Loop 289 S	A
11/01/94	US 87/287 [Amarillo] from Loop 335 to North City Limits	A
11/01/94	US 87 [San Angelo] from North City Limits to Farm to Market 2105	A
11/01/94	US 90 [Beaumont] from West City Limits to Interstate 10	A
11/01/94	US 96 [Center] from North City Limits to South City Limits	A
11/01/94	US 175 [Dallas] from South City Limits to Interstate 20	A
11/01/94	US 190 [Temple] from South City Limits to Interstate 35	A
11/01/94	US 281 [Edinburg] from North City Limits to South City Limits	A
11/01/94	US 287 [Amarillo] from East City Limits to Interstate 40	A
11/01/94	US 287 [Crockett] from East City Limits to Loop 304 E	A
11/01/94	US 287 [Crockett] from North City Limits to Loop 304 N	A
11/01/94	US 290 [Brenham] from East City Limits to West City Limits	A
11/01/94	US 290 [Houston] from Northwest City Limits to Interstate 610	A
11/01/94	US 377 [Fort Worth] from West City Limits to Interstate 20	A

STATE: UTAH

State Agency:	Utah DOT / OMC	**FMCSA:**	UT FMCSA Field Office
POC:	Mr. Richard M. Ollerton	**FMCSA POC:**	UT Motor Carrier State Director
Address:	4501 South 2700 West Box 148240 Salt Lake City, UT 84119	**Address:**	2520 W. 4700 South Suite 9A Salt Lake City, UT 84118-1847
Phone:	(801) 965-4880	**Phone:**	(801) 963-0096
Fax:	(801) 965-4211	**Fax:**	

RADIOACTIVE HAZMAT (RAM) ROUTES

UT RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/01/97	Interstate 15 from Idaho to Interstate 84	P
07/01/97	Interstate 80 from Interstate 84 to Wyoming	P
07/01/97	Interstate 84 from Interstate 15 to Interstate 80 [Note: The Perry Port of Entry on I-15/I-84 is a designated safe haven for radioactive materials in transit.]	P

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

UT NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
07/01/97	All Interstates [The Utah Department of Transportation states that all Interstate routes in the State are designated NRHM routes.]	A
07/01/97	Interstate 215 [Belt Route] [Entire Route]	A

STATE: VERMONT

State Agency:	VT Emergency Mgt. Div.	**FMCSA:**	VT FMCSA Field Office
POC:	Mr. Ed VonTurkovich	**FMCSA POC:**	VT Motor Carrier State Director
Address:	Department of Public Safety 103 South Main Street Waterbury, VT 05671	**Address:**	Federal Building 87 State St. / P.O. Box 568 Montpelier, VT 05601
Phone:	(802)-244-8721	**Phone:**	(802) 828-4480
Fax:	(802)-244-8655	**Fax:**	

No Routes Designated as of 11/14/00

STATE: VIRGINIA

State Agency:	VA DOT	**FMCSA:**	VA FMCSA Field Office
POC:	Perry Cogburn	**FMCSA POC:**	VA Motor Carrier State Director
Address:	1221 East Broad St. Richmond, VA 23219	**Address:**	400 North 8th St. Room 750 Richmond, VA 23240
Phone:	(804)-786-6824	**Phone:**	(804) 775-3322
Fax:	(804)-225-4979	**Fax:**	

RESTRICTED ROUTES FOR ALL VA HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
05/25/85	Airport Tunnel [City of Roanoke] [Detours: Airport Rd- Route 118; Hershberger Rd—Route 101; Williamson Rd.—Route 11; Peters Creek Road—Route 117.]	0

RADIOACTIVE HAZMAT (RAM) ROUTES

VA RAM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/15/95	Interstate 64 [Tunnel] from [Hampton] to [Norfolk]	7
11/15/95	Interstate 77 [to/from West Virginia] [Tunnel]	7
11/15/95	Interstate 264 from [Norfolk] to [Portsmouth]	7
11/15/95	Interstate 664 [Tunnel] from [Newport News] to [Suffolk]	7
11/15/95	US 58 [Tunnel] from Norfolk to Portsmouth	7

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES

VA NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/12/96	Chesapeake Bay Bridge—Tunnel [Phone: (757) 331-2960. This falls under the jurisdiction of Chesapeake Bay Bridge and Tunnel District, who maintain their own regulations regarding its use. Copies of these regulations can be obtained from: Chesapeake Bay Bridge and Tunnel District, 32386 Lankford Highway, Post Office Box 111, Cape Charles, VA 23310.]	1,2,4,6,A
11/15/95	Elizabeth River Tunnel [Downtown] [Phone: (757) 494-2424. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219. See http://www.vdot.state.va.us/roads/tunnel.html for real-time traffic information.]	1,2,4,6,A
11/15/95	Elizabeth River Tunnel [Midtown] [Phone: (757) 683-8123. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219. See http://www.vdot.state.va.us/roads/tunnel.html for real-time traffic information.]	1,2,4,6,A

NON-RADIOACTIVE HAZMAT (NRHM) ROUTES—Continued

VA NRHM Restricted Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/15/95	Hampton Roads Bridge—Tunnel [Phone: (757) 727-4830. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219]	1,2,4,6,i,A
11/15/95	Monitor-Merrimac Memorial [Bridge/Tunnel] [Phone: (757) 247-2100. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219. See http://www.vdot.state.va.us/roads/tunnel.html for real-time traffic information.]	1,2,4,6,i,A

VA NRHM Designated Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
11/15/95	Big Walker Mountain Tunnel [Phone: (540) 228-5571. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219]	A
11/12/96	Chesapeake Bay Bridge—Tunnel [Phone: (757) 331-2960. This falls under the jurisdiction of Chesapeake Bay Bridge and Tunnel District, who maintain their own regulations regarding its use. Copies of these regulations can be obtained from: Chesapeake Bay Bridge and Tunnel District, 32386 Lankford Highway, Post Office Box 111, Cape Charles, VA 23310.]	1,2,4,6,A
11/15/95	East River Mountain Tunnel [Phone: (540) 928-1994. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219]	A
11/15/95	Elizabeth River Tunnel [Downtown] [Phone: (757) 494-2424. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219. See http://www.vdot.state.va.us/roads/tunnel.html for real-time traffic information.]	1,2,4,6,A
11/15/95	Elizabeth River Tunnel [Midtown] [Phone: (757) 683-8123. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219. See http://www.vdot.state.va.us/roads/tunnel.html for real-time traffic information.]	1,2,4,6,A
11/15/95	Hampton Roads Bridge—Tunnel [Phone: (757) 727-4830. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219]	1,2,4,6,i,A
07/31/95	Interstate 495 [** Restricted to right lanes only **]	A
05/25/85	Interstate 664 [Bridge-Tunnel] [Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities". This manual available from: State Traffic Engineer, VDOT, 1401 E. Broad St., Richmond 23219.]	A
11/15/95	Monitor-Merrimac Memorial [Bridge/Tunnel] [Phone: (757) 247-2100. Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 are PROHIBITED. Hazmat shipper MUST abide by rules & regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". This document is available from: VDOT EOC, 1221 E. Broad St., Richmond 23219. See http://www.vdot.state.va.us/roads/tunnel.html for real-time traffic information.]	1,2,4,6,i,A

STATE: VIRGINIA

State Agency:	Dept. of Emergency Management	**FMCSA:**	VA FMCSA Field Office
POC:	Brian Iverson	**FMCSA POC:**	VA Motor Carrier State Director
Address:	10501 Trade Court Richmond, VA 23236-3713	**Address:**	400 North 8th St. Room 750 Richmond, VA 23240
Phone:	(804) 897-6500	**Phone:**	(804) 775-3322
Fax:	(804) 897-6576	**Fax:**	

RADIOACTIVE HAZMAT (RAM) ROUTES

VA RAM Preferred Routes

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
03/11/94	Interstate 85 from Interstate 95 to State 460	P
03/11/94	State 5 from State 155 [in Charles City] to State 156	P
03/11/94	State 10 from State 156 to State 58	P
03/11/94	State 100 [at Pearisburg] from US 460 to Interstate 81	P
03/11/94	State 155 from Interstate 64 to State 5 [at Charles City]	P
03/11/94	State 156 from State 5 to State 10	P
03/11/94	State 208 from US 522 to US 1	P
03/11/94	State 460 from Interstate 85 to State 726 [Mt. Athos Rd. in Lynchburg]	P
03/11/94	US 1 from State 208 to Interstate 95 [At Fourmile Fork]	P
03/11/94	US 17/U258 from Interstate 64 to State 10	P
03/11/94	US 29 from Interstate 66 to Interstate 64	P
03/11/94	US 58 from Portsmouth to Interstate 95	P
03/11/94	US 220 Alt. from US 460 to Interstate 81	P
03/11/94	US 460 from US 1 [in Petersburg] to US 58 [North of Suffolk]	P
03/11/94	US 460 from West Virginia to State 100 [Pearisburg]	P
03/11/94	US 469 from State 726 [Mt. Athos Rd. in Lynchburg] to US 220 Alt.	P
03/11/94	US 522 from State 208 to Interstate 64	P

STATE: WASHINGTON

State Agency:	No Agency Designated	**FMCSA:**	WA FMCSA Field Office
POC:		**FMCSA POC:**	WA Motor Carrier State Director
Address:		**Address:**	711 S. Capitol Way Suite 501 Olympia, WA 98501-1284
Phone:		**Phone:**	(206) 753-9875
Fax:		**Fax:**	

No Routes Designated as of 11/14/00

STATE: WEST VIRGINIA

State Agency:	WV Office of Emergency Services	**FMCSA:**	WV FMCSA Field Office
POC:	John Pack	**FMCSA POC:**	WV Motor Carrier State Director
Address:	1900 Kanawha Blvd. East EB-80, Bldg. 1 Charleston, WV 25305-0360	**Address:**	700 Washington St. East Geary Plaza, Room 205 Charleston, WV 25301-1604
Phone:	(304) 558-5380	**Phone:**	(304) 347-5935
Fax:	(304) 344-4538	**Fax:**	

No Routes Designated as of 11/14/00

STATE: WISCONSIN

State Agency:	Wisconsin DOT	**FMCSA:**	WI FMCSA Field Office
POC:	Terrence D. Mulcahy	**FMCSA POC:**	WI Motor Carrier State Director
Address:	Office of the Secretary P.O. Box 7910 Madison, WI 53707-7910	**Address:**	567 D'Onofrio Dr. Suite 101 Madison, WI 53719-2814
Phone:	(608) 266-1114	**Phone:**	(608) 829-7530
Fax:	(608) 266-9912	**Fax:**	
No Routes Designated as of 11/14/00			

STATE: WYOMING

State Agency:	WY Highway Patrol	**FMCSA:**	WY FMCSA Field Office
POC:	Capt L.S. Gerard	**FMCSA POC:**	WY Motor Carrier State Director
Address:	5300 Bishop Blvd Cheyenne, WY 82009-3340	**Address:**	1916 Evans Ave. Cheyenne, WY 82001-3764
Phone:	(307)-777-4312	**Phone:**	(307) 772-2305
Fax:	(307)-777-4282	**Fax:**	

RESTRICTED ROUTES FOR ALL WY HAZMATS

Designation Date	Route Description	Restrict Desig 0123456789i ABIMP
04/12/94	City of Cheyenne [City Ordinance: Hazardous materials and radioactive materials may not be transported by motor vehicle within the City of Cheyenne except for the purpose of making pickups and/or deliveries within the City, unless such routing is consistent with 49 CFR 397.7 or 49 CFR 177.825. Motor vehicles carrying hazardous and/or radioactive materials which are making local pickups and/or deliveries must be operated over the safest and most direct route to and from the origination and destination point. Such routes shall not pass through residential areas unless there is no practical alternative.]	0

[FR Doc. 00–30815 Filed 12–1–00; 8:45 am]

BILLING CODE 4910–EX–F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–471 (Sub–No. 3X)]

South Kansas and Oklahoma Railroad Company—Abandonment Exemption—in Cherokee and Allen Counties, KS

South Kansas and Oklahoma Railroad Company (SKO) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon: (1) An 8-mile line of railroad between milepost 109.0 at Iola and milepost 117.0 at Humboldt, in Allen County, KS; and (2) a 5-mile line of railroad between milepost 382.0 at Sherwin and milepost 387.0 at Faulkner, in Cherokee County, KS. The line traverses United States Postal Service Zip Codes 66749, 66748, and 66725.

SKO has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 3, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 14, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 26, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SKO has filed an environmental report which addresses the effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 8, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SKO shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by SKO's filing of a notice of consummation by December 4, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30654 Filed 12–1–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2439

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden; invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains.

DATES: Written comments should be received on or before February 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DG 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice to Shareholder of Undistributed Long-Term Capital Gains.

OMB Number: 1545–0145.

Form Number: Form 2439.

Abstract: Form 2439 is used by regulated investment companies (RICs) and real estate investment trusts (REITs) to report undistributed capital gains and the amount of tax paid on these gains designated under Internal Revenue Code section 852(b)(3)(D) or 857(b)(3)(D). The company, the trust, and the shareholder file copies of Form 2439 with the IRS. The IRS uses the information to verify that the shareholder has included the capital gains in income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,363.

Estimated Time Per Respondent: 4 hr., 8 min.

Estimated Total Annual Burden Hours: 34,539.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–30794 Filed 12–1–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 976

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

DATES: Written comments should be received on or before February 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

OMB Number: 1545–0045.

Form Number: Form 976.

Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to use the payment of dividends to reduce taxes imposed after the tax return is filed. The IRS uses Form 976 to determine if shareholders have included the dividend amounts in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 7hr., 40 min.

Estimated Total Annual Burden Hours: 3,830

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–30795 Filed 12–1–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Electronic Tax Administration Advisory Committee

AGENCY: Internal Revenue Service (IRS).

ACTION: Notice.

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of the ETAAC on Thursday, December 14, 2000. The meeting will be held in the Radisson Barcelo" Hotel, 2121 P Street, NW, Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Thursday, December 14, 2000

9:00 Meeting Opens
12:00 Break for Lunch
1:15 Meeting Resumes
3:00 Meeting Adjourns

The topics that are planned to be covered are as follows:
(1) Transition between Members
(2) Digital Daily
(3) ETA Direction
(4) Strategic Plan Update

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service" (IRS") strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

The meeting will be open to the public, and will be in a room that accommodates approximately 100 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, *notification of intent to attend the meeting should be made with Ms. Robin Marusin by December 8, 2000. Ms. Marusin can be reached at 202–622–8184.* Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names.

A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Marusin on or after Thursday December 7 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC, call Robin Marusin at 202–622–8184.

Approved: November 27, 2000.

Terence H. Lutes,

Acting Director, Electronic Tax Administration.

[FR Doc. 00–30796 Filed 12–1–00; 8:45 am]

BILLING CODE 4830–01–U

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Federal Register

Monday,
December 4, 2000

Part II

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 14, 208, 343, and 536
Consumer Protections for Depository Institution Sales of Insurance; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 14

[Docket No. 00–26]

RIN 1557–AB81

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1079]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064–AC37

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 536

[Docket No. 2000–97]

RIN 1550–AB34

Consumer Protections for Depository Institution Sales of Insurance

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively, the Agencies) are publishing final insurance consumer protection rules. These rules are published pursuant to section 47 of the Federal Deposit Insurance Act (FDIA), which was added by section 305 of the Gramm-Leach-Bliley Act (the G–L–B Act or Act). Section 47 directs the Agencies jointly to prescribe and publish consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a depository institution [1] or any person that is engaged in such activities at an office of the institution or on behalf of the institution. Section 47 directs the Agencies to include specific provisions relating to sales practices, disclosures and advertising, the physical separation of banking and nonbanking activities, and domestic violence discrimination.

Section 47 also requires the Agencies to consult with the State insurance regulators, as appropriate. The National Association of Insurance Commissioners (NAIC) has submitted a comment letter in connection with the proposed rules. In preparing the proposed rules and these final rules, the Agencies also have met and consulted with the NAIC.[3] These final rules reflect these meetings with, and comments from, the NAIC.

The texts of the Agencies' final rules are substantially identical. Any differences in style or terms are not intended to create substantive differences in the requirements imposed by the regulations.

EFFECTIVE DATE: April 1, 2001.

FOR FURTHER INFORMATION CONTACT:

OCC: Stuart Feldstein, Assistant Director, or Michele Meyer, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Asa Chamberlayne, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210; Stephanie Boccio, Asset Management, (202) 874–4447; Barbara Washington, Core Policy Development (202) 874–6037, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Richard M. Ashton, Associate General Counsel, Legal Division, (202) 452–3750; Angela Desmond, Special Counsel, Division of Banking Supervision and Regulation, (202) 452–3497; David A. Stein, Attorney, Division of Consumer and Community Affairs, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Janice Simms, (202) 872–4984.

FDIC: Keith A. Ligon, Chief, Policy Unit, Division of Supervision, (202) 898–3618; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–3581; Jason C. Cave, Senior Capital Markets Specialist, (202) 898–3548, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Robyn Dennis, Manager, Supervision Policy, (202) 906–5751; Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Sally Watts, Counsel (Banking and Finance), (202) 906–7380; Mary Jane Cleary, Insurance Risk Management Specialist, (202) 906–7048, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1999, President Clinton signed the G–L–B Act into law. Section 305 of the Act [2] added new section 47 to the FDIA, captioned "Insurance Customer Protections." This section requires the Agencies jointly to prescribe and publish consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of insurance products by depository institutions or persons engaged in these activities at an office of the institution or on behalf of the institution. Section 47 directs the Agencies to include specific provisions relating to sales practices, disclosures and advertising, the physical separation of banking and nonbanking activities, and domestic violence discrimination.

Section 47 also requires the Agencies to consult with the State insurance regulators, as appropriate. The National Association of Insurance Commissioners (NAIC) has submitted a comment letter in connection with the proposed rules. In preparing the proposed rules and these final rules, the Agencies also have met and consulted with the NAIC.[3] These final rules reflect these meetings with, and comments from, the NAIC.

The texts of the Agencies' final rules are substantially identical. Any differences in style or terms are not intended to create substantive differences in the requirements imposed by the regulations.

Overview of Comments Received

On August 21, 2000, the Agencies published a joint notice of proposed rulemaking (the proposed rules) in the **Federal Register** (65 FR 50882). The Agencies received approximately 75 comments in response to the proposed rules.

The majority of comments were received from depository institutions. These commenters offered a large number of suggested changes, with the most commonly advanced suggestions including: modifying the "covered person" definition; excepting various types of insurance from coverage by the final rules; eliminating certain disclosure requirements; and limiting the physical separation requirements to the teller area of an institution.

The NAIC submitted a comment on behalf of the State insurance authorities that generally supported the Agencies' proposed rules. The NAIC advised the Agencies to clarify in the final rules the role of the States in regulating insurance sales. The NAIC also requested more detailed guidance in the Consumer Grievance Appendix to the final rules. Finally, the NAIC expressed its view that the lending area of a depository institution should be separated from the area in which insurance is sold.

The Agencies have modified certain provisions of the proposed rules in light of the comments received. The most significant comments, and the Agencies' responses, are discussed in the following section-by-section analysis. As was done in the preamble discussion of the proposed rules, the citations are to sections only, leaving blank the citations to the part numbers used by each agency.[4]

The Agencies also received several comments requesting the Agencies to delay the effective date of these rules. The commenters state that institutions will need time to modify existing disclosure forms, train personnel and implement system changes. In determining the effective date and administrative compliance requirements for new regulations, the Agencies are required to consider any administrative burden that the regulations would place on depository institutions and to delay the effective date until at least the first day of a calendar quarter that begins on or after the date on which the regulations are published.[5] The Agencies recognize that "lead time" is necessary for some institutions covered by the final rules to adjust their systems to comply, although others have systems that already conform to some extent to the requirements of the rules. The Agencies therefore have made the effective date April 1, 2001.

Section-by-Section Analysis

The discussion that follows applies to each of the Agencies' final rules.

Section ____.10 Purpose and Scope

Proposed § ____.10 identified the purposes and scope of the rules. As stated in the proposal, the rules are intended to establish consumer protections in connection with retail sales of insurance products and annuities [6] to consumers by any depository institution or by any person that is engaged in these activities at an office of the institution or on behalf of the institution. These rules address certain consumer protection concerns that arise from the conduct of insurance activities by a depository institution, at an office of the institution, or on behalf of the institution and are not intended to authorize new activities. These rules are not exclusive and, for example, applicable State laws administered by State insurance commissioners may apply, as provided by sections 104 and 305 of the G–L–B Act.

The Agencies received several comments on the proposed scope of these rules. Some of these commenters noted that the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (Interagency Statement) also may apply in certain circumstances to sales of insurance or annuities by depository institutions. These commenters requested clarification on how the Agencies will apply the Interagency Statement to those products subject to both these rules and the Interagency Statement. The Agencies note that in the event of a conflict between the Interagency Statement and the final rules, the rules will prevail.

Certain of the definitions contained in the final rules also address the circumstances under which the rules will apply. Under the proposed rules, only subsidiaries that are selling insurance products or annuities at an office of the institution or acting "on behalf of" the depository institution as defined in the rules [7] would be subject to the requirements of the rules. Section 47 gives the Agencies discretion to determine whether the Act's consumer protections should extend to a depository institution's subsidiary in other circumstances. The Agencies received only one comment supporting broader application of the final rules to depository institution subsidiaries. The Agencies believe that extending the rules to a depository institution's subsidiary in circumstances other than when the subsidiary is selling insurance products or annuities at an office of the institution or acting "on behalf of" the depository institution is unnecessary and, therefore, the final rules retain the approach taken in the proposed rules on this issue. A more complete discussion of when a person is engaged in insurance activities "on behalf" of the depository institution is set forth below in the definition of "covered person."

Section ____.20 Definitions

The proposed rules contained several definitions about which the Agencies received little or no comment. The final rules therefore retain the definitions of "affiliate," "company," "control," "domestic violence," and "subsidiary" set forth in the proposed rules. The definitions about which the Agencies received more substantial comment are discussed below.

Consumer (§ ____.20(d)). The proposed rules defined "consumer" as an individual who obtains, applies for, or is solicited to obtain insurance products or annuities from a covered person. The final rules make a clarifying change by replacing the term "obtains" with "purchases" in the definition of "consumer." A purchase includes any transaction where there is a cost to the consumer for the insurance either directly or indirectly such as a higher interest rate on a loan.

Several commenters asked the Agencies to distinguish between the terms "consumer" and "customer" in the same way as the Final Rules on the Privacy of Consumer Financial Information (Privacy Rules).[8] However, unlike the Privacy Rules, section 47 uses the terms "consumer" and "customer" interchangeably without distinguishing between the two terms. For this reason, the Agencies believe that Congress did not intend to distinguish between consumers and customers for purposes of section 47. Thus, the Agencies have determined to continue to use the single term "consumer" in the final rules.

The Agencies also requested comment on whether the final rules should expand the definition of "consumer" to include small businesses. The majority of those commenting on this issue believed that the Agencies should not expand the definition to include small businesses because most Federal consumer protection statutes apply only to individuals. The Agencies agree with these commenters and therefore have not changed the definition of "consumer" to include small businesses.

The Agencies also invited comment on whether to limit the definition of consumer to individuals who "obtain or apply for insurance products or annuities primarily for personal, family, or household purposes." One effect of this change would be to exclude entities such as sole proprietorships and partnerships from the scope of the rules.

Several commenters preferred limiting the definition in this manner to be consistent with the Truth in Lending regulation's definition of "consumer credit." [9] The Agencies agree with the commenters that depository institutions are familiar with this approach because it is used in other consumer protection rules. Thus, the final rules apply to an individual "who purchases or applies for insurance products or annuities primarily for personal, family, or household purposes."

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[1] "Depository institution" means national banks in the case of institutions supervised by the Office of the Comptroller of the Currency (OCC), state member banks in the case of the Board of Governors of the Federal Reserve System (Board), state nonmember banks in the case of the Federal Deposit Insurance Corporation (FDIC), and savings associations in the case of the Office of Thrift Supervision (OTS).

[2] Pub. L. 106–102, sec. 305, 113 Stat. 1338, 1410–15 (codified at 12 U.S.C. 1831x).

[3] A summary of the Agencies' consultations with the NAIC is available in the rule-making file.

[4] The Board's rule is a new subpart of the Board's existing Regulation H, and not a separate regulation. Accordingly, the sections of the Board's rule are numbered consecutively.

[5] 12 U.S.C. 4802.

[6] These rules are not intended to have any effect on whether annuities are considered to be insurance products for purposes of any other section of the G–L–B Act or other laws. That question depends on the terms and purposes of those laws, as interpreted by the appropriate agency and the courts.

[7] OTS does not intend the requirements of this part to apply to other savings association operating subsidiaries or service corporations by operation of 12 CFR 559.3(h). The OCC does not intend the requirements of this part to apply to other national bank operating subsidiaries by operation of 12 CFR 5.34(e)(3).

[8] 65 FR 35162 (June 1, 2000).

[9] 12 CFR 226.2(a)(12)("*Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.")

Covered person or you (§ ____.20(e)). The proposal used the term "covered person," or "you," to determine to whom the requirements in these rules apply. As defined in the proposed rules, a covered person means any depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the institution or on behalf of the institution. A "covered person" includes any person, including a subsidiary or other affiliate, if that person or one of its employees sells, solicits, advertises, or offers insurance products or annuities at an office of an institution or on behalf of an institution.

For purposes of this definition, the proposed rules provided that a person's activities are "on behalf of" a depository institution if:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the institution;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the institution or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the institution or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the institution or uses its corporate logo or corporate name.

In the preamble to the proposed rules, the Agencies noted that the second prong of the "on behalf of" test—the receipt of commissions or fees—did not include situations in which the institution receives a fee solely for performing a separate service or function that may relate to an insurance sale (such as processing a credit card charge for the insurance premium, or performing recordkeeping or payment functions on behalf of the affiliate) where the fee is based on that service or function and is not calculated as a share of the commissions or fees derived from the insurance product or annuity sale.

The Agencies sought comment on the proposed definition of covered person and specifically on those activities that would cause a person to be considered to be acting "on behalf of" an institution. The Agencies also invited comment on whether the following should be considered an activity on behalf of the institution:

- The use of the name or corporate logo of the holding company or other affiliate, as opposed to the name or corporate logo of the depository institution in documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity.
- The sale, solicitation, advertising, or offer of an insurance product or annuity at an off-premises site that identifies or refers to the holding company or other affiliate, as opposed to the depository institution, or uses the name or corporate logo of the holding company or other affiliate.

The Agencies received several comments on the proposed definition of covered person. Many commenters did not believe that the second prong of the "on behalf of" test should include a depository institution's receipt of commissions or fees as a result of cross marketing. Those commenters suggested that the risk of customer confusion is small because a consumer typically would not know about the receipt of these fees. These commenters believed that requiring disclosures in these situations might actually result in increased customer confusion. The Agencies agree and therefore delete the reference to cross-marketing in the final rules. Thus, for example, while the sharing of customer lists with an unaffiliated third party would trigger certain requirements under the Privacy Rules, it would not trigger the requirements under any of the prongs in these final rules. The Agencies also note that the institution's receipt of dividends from a subsidiary, or a holding company's receipt of dividends from an affiliate, does not constitute receipt of "commissions or fees" within the meaning of this paragraph.

Several commenters also contended that the term "on behalf of" should not include sales of insurance products or annuities that result from a referral to an unaffiliated insurance agency by an employee of a depository institution. Unlike cross-marketing, a depository institution making a referral is in a position to influence a consumer's choice of insurance providers. Therefore, the final rules retain the reference to "referrals" in the second prong of the "on behalf of" test, but with an important modification.

Rather than applying to any commission or fee derived from a sale resulting from a referral, the second prong of the "on behalf of" test in the final rules applies only when a depository institution has a contractual arrangement with an insurance provider to receive those fees. This is meant to distinguish referral fees and commissions received by a depository institution under an arrangement based on sales with an insurance provider from those referral fees received by a teller, which are limited by § ____.50(b). Under § ____.50(b), any person who accepts deposits from the public in an area where such transactions are routinely conducted may receive a referral fee if it is a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

A number of commenters also contended that the third prong of the "on behalf of" test should not cover situations where documents or other communications use the depository institution's corporate logo or corporate name (a common logo or name used by the corporate family and not just by the depository institution). Those commenters believe that these circumstances alone are insufficient to create a level of confusion that warrants imposing the requirements under this rule. Moreover, extending the rules in this manner would cover transactions in which a depository institution has no involvement in the sale of insurance. The Agencies agree with these commenters, and therefore, the third prong of the "on behalf of" test in the final rules has been modified so that it does not cover documents that use a corporate logo or corporate name. It does, however, cover documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity that identify or refer to the depository institution. Under the final rules, insurance activities are conducted on behalf of a depository institution if the documents evidencing the activity identify or refer to the institution. In the Agencies' view, the circumstances when the relevant documents refer to the institution for purposes of this test will depend on the facts involved.

The final rules also delete the fourth prong of the proposed "on behalf of" test because it is covered by the three remaining revised prongs. As revised, the Agencies believe that the remaining three prongs capture the appropriate circumstances under which a person could be said to be acting "on behalf of" a depository institution for purposes of these rules.

Several commenters also noted that the definition of "covered person" or "you" could be read to mean that once a person is a "covered person," all insurance sales, solicitations, advertisements or offers by that person would be subject to these rules, whether or not these activities are conducted at an office of, or on behalf of, a depository institution. The Agencies do not intend this result and have changed the proposal to clarify that a covered person is: (1) A depository institution; or (2) any other person only *when* the person sells, solicits, advertises or offers an insurance product or annuity to a consumer at an office of the institution or on behalf of the institution.

Finally, in the preamble to the proposed rules, the Agencies noted that the use of electronic media may present special issues in the application of the "on behalf of test" of the covered person definition. The Agencies invited comment on whether, and under what circumstances, to require disclosures for sales or solicitations by electronic media.

Several commenters suggested that the purposes of the statute and the rules—to avoid customer confusion about the nature of the products offered that arises because of the identity of the seller or marketer—is not implicated in all cases where a depository institution acts solely to bring together buyers and sellers of insurance products. For example, the Agencies believe that links established from depository institution web sites through the Internet or wireless services generally do not come within the scope of the covered person definition. To the extent there is a risk of possible consumer confusion when a customer leaves an institution's web site, the nature or type of these disclosures may differ and is better addressed in subsequent guidance or rulemaking.

Electronic media (§ ____.20(g)). Section 47 permits the Agencies to make adjustments to the Act's requirements for sales conducted in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and consumer acknowledgment of the receipt of such disclosures. The proposed rules set forth special rules for electronic disclosures and consumer acknowledgments. A discussion of changes made to these provisions in the final rules is set forth below. *See* proposed § ____.40.

In addition, the proposed rules recognized the need for flexibility to accommodate rapid changes in communications technologies and thus defined "electronic media" broadly to include any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, such as a personal computer. The Agencies invited comment on this proposed definition and on whether a more expansive definition would be consistent with the G–L–B Act's requirement for both written and oral disclosures. The majority of commenters supported the proposed definition of "electronic media" [10] because it provided sufficient flexibility to address future innovation. The final rule, therefore, retains the proposed definition of "electronic media."

Office (§ ____.20(h)). The proposed rules defined "office" as the premises of an institution where retail deposits are accepted from the public. The Agencies received several comments requesting that this definition be limited to deposit taking areas. The Agencies note that specific provisions in these rules relating to the physical separation of the insurance activities and permissibility of referral fees are limited to areas where deposits are routinely taken. However, the Agencies do not believe that the overall protections afforded by these rules should be limited in this manner and, therefore, retain in the final rules the definition of "office" set forth in the proposed rules.

The proposed rules did not define the term "insurance product." As explained in the preamble to the proposed rules, the Agencies recognize that there is no single standard for defining the term "insurance" and that its definition may vary significantly depending on the context in which it is used. For example, section 302 of G–L–B Act lists certain types of products that are first offered after January 1, 1999 that may constitute insurance for purposes of determining when a national bank may underwrite, rather than sell, insurance. Thus, the Agencies indicated that they will look to a variety of sources in determining whether a given product is covered by the proposed rules, including section 302(c), common usage, conventional definitions, judicial interpretations, and other Federal laws. The Agencies invited comment on these and other sources for determining whether a product comes within the scope of the proposed rules, or, alternatively, whether the rule should include a specific definition of the term "insurance."

Few commenters requested a specific definition of insurance. Many commenters, however, asked that we exclude certain products from coverage or at least not require certain disclosures for those products. For example, those commenters believe that the rules should not cover credit insurance and property and casualty insurance because these products do not have an investment component and have been sold by and on behalf of depository institutions for years without consumer confusion. Section 47 of the G–L–B Act, however, does not distinguish between types of insurance products nor are the consumer protections under the statute limited to instances where there is a risk of investment loss or consumer confusion. The final rules therefore do not define the term "insurance" but, as explained in the discussion of § ____.40, provide more guidance on when certain disclosures are required.

Section ____.30 Prohibited Practices

Under section 47(b) of the FDIA, the Agencies' regulations must prohibit a covered person from engaging in any practice that would lead a consumer to believe that an extension of credit, in violation of the anti-tying provisions of section 106(b) of the Bank Holding Company Act Amendments of 1970, [11] is conditional upon either:

(1) The purchase of an insurance product or annuity from the depository institution or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity. These prohibitions on tying and coercion were set forth in proposed § ____.30(a).

Section 47(c)(2) of the FDIA also requires the Agencies' regulations to prohibit a covered person from engaging in any practice at any office of, or on behalf of, a depository institution or a subsidiary of a depository institution that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The uninsured nature of any insurance product or annuity offered for sale by the covered person or subsidiary;

(2) In the case of an insurance product or annuity that involves investment risk, the investment risk associated with any such product; or

(3) The fact that the approval of an extension of credit to a consumer by the institution or subsidiary may not be conditioned on the purchase of an insurance product or annuity from the institution or subsidiary, and that the consumer is free to purchase the

[10] Most of the comments concerning electronic media were raised in the context of disclosures and acknowledgments and are, therefore, discussed in the sections below concerning those requirements.

[11] 12 U.S.C. 1972. Section 106(b) of the Bank Holding Company Act Amendments of 1970 does not apply to savings associations. Those institutions are, however, subject to comparable prohibitions on tying and coercion, under section 5(q) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(q). Accordingly, OTS's final rule cites the HOLA provision.

insurance product or annuity from another source.

These prohibitions on misrepresentations were set forth in §____.30(b) of the proposed rules.

The Agencies received several comments on these prohibitions. A few commenters asserted that the prohibitions on tying an extension of credit to the purchase of insurance should apply only to depository institutions and not all covered persons because section 106(b) of the Bank Holding Company Amendments of 1970 applies only to depository institutions. Therefore, the commenters requested the Agencies to amend proposed §____.30(a) to delete references to parties other than depository institutions.

The commenter's proposed changes to §____.30(a) are not supported by the statutory language, however. Section 47(c)(2) is not limited to depository institutions but also expressly applies to persons selling at an office of a depository institution or on behalf of the institution. In addition, §____.30(a) is not a restatement of the section 106(b) prohibition on coercion by depository institutions. Rather, it is a prohibition on misleading a consumer into believing that an extension of credit could be conditioned in a manner that is prohibited by section 106(b). Section 47(c) of the G–L–B Act recognizes that either a depository institution, or someone selling at an office of a depository institution or on its behalf could mislead a consumer in this way. Therefore, the Agencies decline to limit §____.30(a) to depository institutions.[12]

One commenter also questioned whether §§____.30 (a) and (b) would apply to "force placed" insurance. "Force placed" is a term used to describe a situation in which a depository institution purchases insurance, and bills the customer for it, because the customer has failed to obtain, or allowed to lapse, required insurance coverage for an asset used as collateral for a secured loan. The Agencies do not intend these final rules to apply to force placed insurance purchases since they are *made by depository institutions* to protect loan collateral rather than by consumers.

Finally, proposed §____.30(c) implemented section 47(e) of the FDIA, which, as already noted, prohibits a covered person from considering a person's status as a victim of domestic violence or a provider of services to domestic violence victims in making decisions regarding certain types of insurance products. One commenter stated that this provision could be difficult to comply with where a covered person sells or offers for sale insurance products for which a third party makes the decisions regarding the underwriting, pricing, renewal, scope of coverage, or payment of claims. However, the statute provides no exception from the prohibition on domestic violence discrimination in these circumstances. Therefore, the final rules as modified prohibit a covered person from selling or offering for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

Section ____.40 What a Covered Person Must Disclose

In addition to prohibiting the misrepresentations outlined above, section 47(c) of the FDIA requires the Agencies' regulations to mandate that a covered person make affirmative disclosures in connection with the initial purchase of an insurance product or annuity. The proposed rules required the following disclosures:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository institution or (if applicable) an affiliate;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the depository institution, or (if applicable) an affiliate;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The depository institution may not condition an extension of credit on either the consumer's purchase of an insurance product or annuity from the depository institution or any of its affiliates or the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Several commenters believed that the first disclosure—that the insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository institution—is unnecessary and not required by section 47. These commenters asserted that there is minimal risk that a customer will confuse an insurance product or annuity with a deposit. The Agencies disagree with this contention, particularly where the product has a savings component. Although the first disclosure is not expressly required by the statute, section 47 requires the Agencies to issue regulations that are consistent with the requirements of the G–L–B Act and provide "additional protections for customers" as necessary. The Agencies believe that requiring a covered person to disclose that the insurance product or annuity is not a deposit is necessary to protect consumers from confusion about the nature of the product offered.

There are, however, some instances where the first and second disclosures may not be accurate. Several commenters noted that the second disclosure—that a product is not insured by the depository institution or an agency of the United States—would not be true for Federal Crop Insurance and Federal Flood Insurance, both of which are insured by United States agencies. To address these concerns and to ensure that the disclosures required by §____.40(a) are only made where accurate, the Agencies have modified §____.40(a) to require a covered person to make the disclosures except to the extent the disclosures would not be accurate.

Several commenters also suggested removing certain types of insurance, such as property and casualty insurance and credit-related insurance, from the requirement to disclose that the product is not FDIC-insured. These commenters contend that there is little risk of confusion in these circumstances and that such disclosures may serve to increase customer confusion about the nature of the product offered. The Agencies disagree with this contention and favor requiring this disclosure in connection with the sale of any insurance product to prevent possible confusion about the nature of the product offered. The Agencies, however, will review this requirement on an ongoing basis and make future changes if necessary.

Several commenters objected to the requirement that a covered person give the anti-coercion disclosures twice (once before the insurance sale and again if the consumer applies for credit). These commenters argued that section 47(a)(1)(A) provides that the Agencies' regulations only require the anti-coercion disclosure be made at the time of an application for credit. The Agencies agree that this is a permissible interpretation of the statute and believe that the anti-coercion disclosure is most meaningful and relevant at the time a consumer is applying for credit. For this reason, the final rules only require that the anti-coercion disclosure be given at the time of application for credit. The Agencies have redesignated this provision as §____.40(b) in the final rules.

Timing and Method of Disclosures

Under proposed §____.40(b)(1), a covered person must provide the disclosures described in §____.40(a) orally and in writing before the completion of the sale of an insurance product or annuity to a consumer. The disclosures concerning the prohibition on tying an extension of credit to an insurance product or annuity purchase (proposed §____.40(a)(4)) also must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. Section 47 of the FDIA authorizes the Agencies to make necessary adjustments to the G–L–B Act's requirements for sales conducted in person, by telephone, or by electronic media. Section 47(a)(1) also requires the Agencies to publish final rules in a form that the Agencies jointly determine to be appropriate. Proposed §§____.40(b)(2) set forth special timing and method of disclosure rules for electronic and telephone disclosures. Because the Agencies modified the anti-coercion disclosure and redesignated it as §____.40(b), the timing and method of disclosure rules are contained in §____.40(c).

The Agencies received several comments on the timing and method of disclosures. A few commenters contended that it would be difficult if not impossible to provide the required oral disclosures in connection with direct mail solicitations. The Agencies recognize that providing oral disclosures in circumstances like these—where there is no means of communicating orally at the time of the sales presentation—would be impracticable. Therefore, the final rule provides that if the sale of an insurance product or annuity is conducted by mail, a covered person that sells, solicits or offers an insurance product or annuity by mail is not required to make the oral disclosures required by §____.40(a). The final rule further provides that if a covered person receives an application for credit by mail, the covered person is not required to make the oral disclosure required by §____.40(b). The Agencies also intend this exception from the oral disclosure requirements to apply to a situation such as a "take one" credit application, where the consumer picks up a blank application form, completes the application at home, and mails it back to the institution.

A similar situation arises with respect to offers, solicitations or sales by telephone. Under the proposed rules, a covered person who takes an application for credit by telephone may provide the written anti-coercion disclosure by mail, if the covered person mails it to the consumer within three days starting on the next business day, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). Several commenters requested the Agencies extend this flexible approach to all of the written disclosures, not just the anti-coercion disclosure, when transactions are conducted by telephone. The Agencies agree with this concern and have changed the final rules relating to telephone transactions to extend the option of providing any written disclosures by mail within a three-day time period.

Under proposed §____.40(b)(2)(i), where the consumer affirmatively consents, a covered person may provide the written disclosures required by §____.40(a) through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically, such as by downloading. Under proposed §____.40(b)(2)(ii), if the sale of an insurance product or annuity is conducted entirely through the use of electronic media and written disclosures are provided electronically, a covered person is not required to provide disclosures orally. The proposal also required a covered person to comply with all other requirements imposed by law or regulation for providing disclosures electronically.

In the preamble to the proposed rules, the Agencies also noted that new legislation addressing the use of electronic signatures and electronic records may affect institutions that provide disclosures and obtain acknowledgments electronically. The Electronic Signatures in Global and National Commerce Act (the E-Sign Act)[13] contains, among other things, Federal rules governing the use of electronic records for providing required information to consumers. An institution may satisfy a legal requirement that the institution provide *written* disclosures by using an electronic disclosure if the consumer affirmatively consents and if certain other requirements of the E-Sign Act are met. For example, the E-Sign Act requires that, before a consumer consents to receive electronically information that is otherwise legally required to be provided in writing, the consumer must receive a "clear and conspicuous statement" containing certain information prescribed by the statute.[14] The statute authorizes Federal regulatory agencies to exempt specified categories or types of records from the E-Sign Act requirements relating to consumer consent only if an exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.[15] The Agencies invited comment on whether—and, if so, how—they should address the requirements of the E-Sign Act in the context of these proposed rules.

Two commenters suggested that providing disclosures consistent with the E-Sign Act should suffice. Commenters did not support other modifications of the final rule to address the E-Sign requirements. The Agencies believe electronic disclosures in lieu of written disclosures are appropriate if they meet the requirements of the E-Sign Act. Thus, the final rules provide that, subject to the requirements of section 101(c) of the E-Sign Act, a covered person may provide the written disclosures required by section ____.40(a) and (b) through electronic media if the consumer affirmatively consents to receiving disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later. This option is not limited to situations where the sale is conducted *entirely* through the use of electronic media, as in the proposed rule. Moreover, under the final rules, any disclosures required by ____.40(a) and (b) that are provided by electronic media are not required to be provided orally.

The Agencies made one additional clarifying change to the timing and method of the disclosure provisions to avoid an open-ended time frame for disclosures. The proposed rules required a covered person to make the anti-coercion disclosure "at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity *will be* solicited, offered, or sold." Section ____.40(c)(1) requires that this

[12] The Agencies note that other provisions, such as the prohibitions on misrepresentations and certain required disclosures, also generally address situations relating to consumer coercion.

[13] Pub. L. 106–229, 114 Stat. 464 (June 30, 2000) (codified at 12 U.S.C. 7001 *et seq.*) The E-Sign Act generally took effect on October 1, 2000, although there are delayed effective dates for provisions other than those discussed in the text.

[14] *See* 12 U.S.C. 7001(c)(1).

[15] 12 U.S.C. 7004(d)(1).

disclosure be made "at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold." In addition, if a solicitation, offer, or sale occurs in connection with an application for credit that is pending with the depository institution, a covered person must make the disclosure when the solicitation, offer, or sale occurs.

The Agencies note that, consistent with section 47(c), the final rules require a covered person to provide the disclosures in connection with the "initial purchase" of an insurance product or annuity. Accordingly, while new disclosures are not required when a consumer simply renews an insurance policy or annuity, disclosures are required if a consumer purchases a different insurance product or annuity.

Disclosures Must Be Readily Understandable, Designed To Call Attention to the Information, and Meaningful

Section 47 of the FDIA requires the Agencies to promulgate regulations encouraging the use of disclosures that are conspicuous, simple, direct, and readily understandable. Proposed §____.40(b)(3) contained this requirement and further required that the disclosures also must be designed to call attention to the nature and significance of the information provided. For example, the proposed rules provided that a covered person may use the following short-form disclosures as may be appropriate:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK [OR SAVINGS ASSOCIATION]
- MAY GO DOWN IN VALUE.

Several commenters requested that the Agencies clarify the circumstances in which a covered person may use the short form disclosures. The Agencies believe that provisions in the Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products (September 12, 1995) for use of short form disclosures provide useful guidance on this issue. Therefore, the final rules are changed to provide that short form disclosures may be used in visual media, such as television broadcasts, ATM screens, billboards, signs, posters, and in written advertisements and promotional materials, such as brochures. The Agencies note that it may be appropriate to use the short form disclosures in other circumstances. The Agencies will monitor use of these disclosures and issue further guidance if necessary.

In addition, several commenters requested that the final rules provide a short form of the anti-coercion disclosures. However, the commenters' suggested short form anti-coercion disclosure did not adequately capture all of the information contained in the form set forth in §____.40(b) of the final rules. Moreover, the Agencies believe that requiring the full anti-coercion disclosure is not particularly burdensome because the final rules require the disclosure to be made only in circumstances involving a consumer's application for credit in connection with which insurance is solicited, offered, or sold. Therefore, the final rules do not provide a short form of the anti-coercion disclosure.

The Agencies also invited comment on whether the final rule should provide specific methods of calling attention to the material contained in the disclosures. For example, the Agencies suggested that the final rule could provide that the disclosures are designed to call attention to the nature and significance of the information provided if they use:

- A plain-language heading to call attention to the disclosures;
- A typeface and type size that are easy to read;
- Wide margins and ample line spacing;
- Boldface or italics for key words; and
- Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

Some commenters expressed concern that including these examples in the regulation would be viewed as adding new requirements. These concerns, however, are unfounded. The Agencies believe that providing examples of possible methods of calling attention to the material contained in the disclosures will provide useful guidance to the industry. The Agencies therefore have included these methods in the final rules as *examples* of ways in which a covered person could call a consumer's attention to the nature and significance of the information provided in the required disclosures. These examples are not binding requirements.

Further, as provided in §____.40(c)(6) of the final rules, a disclosure is not "meaningfully" provided if a covered person merely tells the consumer that the disclosures are available in printed material without also providing the material and orally disclosing the information to the consumer. Similarly, a disclosure made through electronic media is not meaningfully provided if the consumer may bypass the visual text of the disclosure before purchasing an insurance product or annuity.

The Agencies invited comment on whether these standards would adequately address situations where disclosures are made through electronic media. For example, the Federal Trade Commission (FTC) recently released detailed guidance on online advertising and sales reiterating that many of the general principles of advertising law apply to Internet advertisements, but recognizing that developing technology raises new issues.[16] The Agencies sought comment on whether the type of detail provided in the FTC guidance is necessary in these proposed rules.

The Agencies received several comments on this issue, none of which favored providing the type of detail provided in the FTC guidance. Accordingly, the final rule does not include this level of detail.

Consumer Acknowledgment

Under the proposal, a covered person must obtain from the consumer, at the time the consumer receives the disclosures set forth in proposed §____.40(a), the consumer's acknowledgment of receipt. In keeping with section 47's express provision for adjustments to the G–L–B Act's requirements for sales conducted by electronic media and the E-Sign Act, the proposal further provided that a consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

Several commenters noted that it would be difficult to comply with the consumer acknowledgment requirement in situations other than face-to-face transactions. In mail or telephone transactions, for example, a covered person cannot control whether a consumer completes and returns a written acknowledgment. These commenters requested that the Agencies modify the proposed consumer acknowledgment provision to waive the written acknowledgment requirement in transactions that are not face-to-face. The Agencies appreciate the difficulties with obtaining consumer acknowledgments in non-face-to-face transactions but note that section 47 of the G-L-B Act contains no waiver for consumer acknowledgments in those situations. To address this problem, the Agencies have modified the consumer acknowledgment provision to provide that, if the disclosures required under §____.40(a) or (b) are provided in connection with a transaction that is conducted by telephone, a covered person must: (1) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and (2) make reasonable efforts to obtain a written acknowledgment from the consumer. The final rules also clarify that a covered person may in all circumstances permit a consumer to acknowledge receipt of the disclosure electronically or in paper form. The Agencies intend that the implementation of this consumer acknowledgment requirement will not affect the substantive requirements of the parties pursuant to contracts for the sale of insurance products and annuities under applicable State law.

[16] The FTC's guidance, Dot Com Disclosures: Information about Online Advertising is available at www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.html.

Advertisements and Other Promotional Material for Insurance Products or Annuities

In accordance with section 47(c)(1)(C) of the FDIA, proposed §____.40(c) clarified that the disclosures described in proposed §____.40 are not required in advertisements of a general nature describing or listing the services or products offered by the depository institution. The final rules modify this section slightly, and redesignate it as §____.40(d), to clarify that the exclusion of the disclosure requirements does not apply to all advertisements and promotional material for insurance products or annuities but only to such material that is of a general nature, describing or listing the services or products offered by the depository institution. Further, §____.40(d) refers only to the disclosures described in §____.40(a). The Agencies believe that because the anti-coercion disclosure set forth in §____.40(b) is required to be made only in the context of an application for credit, it could be confusing to the consumer if the disclosures were required in all advertisements and promotional material for insurance products or annuities.

Section ____.50 Where Insurance Activities May Take Place

Section 47(d)(1) of the FDIA requires that the Agencies' regulations include provisions to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity. Proposed §____.50(a) set forth this general rule. It further required that, to the extent practicable, a depository institution identify areas where insurance product or annuity sales activities occur and clearly delineate and distinguish them from the areas where the institution's retail deposit-taking activities occur, in accordance with section 47(d)(2)(A) of the FDIA.

The Agencies received several comments on this provision, most of which asked for clearer guidance on what constitutes the area where deposits are routinely accepted. Several asserted that the physical segregation requirement should not apply to an institution's "platform" areas and should only apply to teller windows. "Platform" areas are typically areas of an institution's premises in which employees other than tellers engage in a variety of activities, including the origination of loans, the sale of insurance and annuity products, and occasionally, the acceptance of deposits. The Agencies wish to clarify for purposes of these final rules that the areas where retail deposits are routinely accepted from the general public are generally limited to traditional teller windows and teller lines.

One commenter also recommended physically segregating the area where lending activities occur from the area where insurance products or annuities sales occur. The Agencies decline to make this change because it would extend significantly beyond the restrictions set forth in the statute.

Proposed §____.50(b) implemented section 47(d)(2)(B) of the FDIA, concerning referrals to insurance product and annuity sales personnel by a person who accepts deposits from the public. Under that proposed section, any person who accepts deposits from the public in an area where such transactions are routinely conducted in a depository institution may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product. The person making the referral may only receive a one-time, nominal fee of a fixed dollar amount for each referral. The fee may not depend on whether the referral results in a transaction. The Agencies received several comments requesting that the limits on referral fees apply only to tellers. The Agencies believe that the person described in the regulation text—that is, a person "who accepts deposits from the public in an area where such transactions are routinely conducted" will typically be a teller. The Agencies also believe that a description by function is preferable because it is more precise. We have therefore retained the language as proposed.

Section ____.60 Qualificotion and Licensing Requirements for Insurance Sales Personnel

Section 47(d)(2)(C) of the FDIA requires that the Agencies' regulations prohibit any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed. Thus, proposed section ____.60 provided that a depository institution may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended. One commenter expressed the opinion that this provision is unnecessary because each state's insurance licensing agency is already policing its licensing and qualification requirements. The Agencies retain this provision because it is required by the statute.

Appendix—Consumer Grievance Process

Section 47(f) of the FDIA requires that the Agencies jointly establish a consumer complaint mechanism for addressing consumer complaints alleging violations of these rules. Each agency has procedures in place to handle consumer complaints they receive directly.[17] The Agencies will apply those procedures to complaints involving these rules. The Appendix to each agency's final rule contains the name and address of each agency's consumer complaint office. Any consumer who believes that a depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the institution or on behalf of the institution has violated the requirements of these rules may contact the consumer complaint office listed in the Appendix.

Each agency already has entered into, or is developing, agreements with State insurance commissioners regarding the sharing of consumer complaints. It is expected that these agreements will facilitate prompt resolution of consumer complaints and ensure that incoming complaints are directed to the appropriate agency. Consumer complaints alleging violations of these rules that raise issues under State and

[17] *E.g.*, OTS Customer Service Plan at www.ots.treas.gov/consass/html.

local law will be shared with State regulators pursuant to those agreements.

Effect on Other Authority

Section 47(g) sets forth a general framework for determining the effect of these final rules on State law. Under that framework, the Agencies' insurance consumer protection rules will not apply in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the Agencies' rules. If the Board, FDIC and OCC jointly determine, however, that the protection afforded by a provision of these final rules is greater than the protection provided by comparable state law or rulings, these final rules shall preempt the contrary or inconsistent State law or ruling. Prior to making this determination, the Board, FDIC and OCC must notify the appropriate State regulatory authority in writing, and the Board, FDIC and OCC will consider comments submitted by the appropriate State regulatory authorities. If the Board, FDIC and OCC determine that a provision of these final rules affords greater protection than State provisions, the Board, FDIC and OCC will send a written preemption notice to the appropriate State insurance authority that the provision of these final rules will be applicable unless the State adopts legislation within three years to override the preemption notice.

In the preamble to the proposed rules, the Board, FDIC and OCC invited comment on whether it would be helpful to include a second appendix restating these statutory requirements or whether such a restatement would be confusing absent a determination regarding the applicability of specific State laws. The comments generally did not support the inclusion in the final rules of a preemption appendix. The Agencies do not believe it would be useful to include such an appendix.

Regulatory Analysis

A. Paperwork Reduction Act

The Agencies may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers and clearance expiration dates are listed below:

OCC: 1557–0220; October 31, 2003.
Board: 7100–0295; November 30, 2003.
FDIC: 3064–0140; October 31, 2003.
OTS: 1550–0106; October 31, 2003.

The final rule contains requirements to make disclosure at two different times. The respondents must prepare and provide certain disclosures to consumers: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are solicited, offered or sold in connection with an extension of credit) (§§ ___. 40(a) and (b)).

The Agencies received one comment that addressed a perceived low burden estimate stemming from these disclosures. The commenter, however, provided no suggestion as to an appropriate higher estimate. Other comments regarding the information collection are discussed above in the preamble discussion of §§ ____.20, ____.40 (a) and (b).

OCC: The respondents are national banks, District of Columbia banks, and Federal branches and agencies of foreign banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a national bank or on behalf of a national bank. OMB has reviewed and approved the collections of information contained in the rule under control number 1557–0220, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There are 1,949 respondents with a total annual burden of 19,490 hours.

Board: The respondents are state member banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a state member bank or on behalf of a state member bank. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board approved the rule under the authority delegated to the Board by OMB. The OMB control number is 7100–0295. There are 1,010 respondents with a total annual burden of 46,090 hours.

FDIC: The respondents are insured nonmember banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of an insured nonmember bank or on behalf of an insured nonmember bank. OMB has reviewed and approved the collections of information contained in the rule under control number 3064–0140, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There are 5,800 respondents with a total annual burden of 76,667 hours.

OTS: The respondents are savings associations and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a savings association or on behalf of a savings association. OMB has reviewed and approved the collections of information contained in the rule under control number 1550–0106, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There are 1,097 respondents with a total annual burden of 47,286 hours.

The Agencies have a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspect of these collections of information. Comments may be sent to:

OCC: Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 8–4, Washington, DC 20219.

Board: Mary M. West, Federal Reserve Board Clearance Officer, Mailstop 97, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080, 550 17th Street, NW, Washington, DC 20429.

OTS: Dissemination Branch (1550–0106), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires federal agencies either to provide a Final Regulatory Flexibility Analysis (FRFA) with a final rule or certify that the final rule "will not, if promulgated," have a significant economic impact on a substantial number of small entities. On the basis of the information currently available, the OCC is of the opinion that this final rule is unlikely to have a significant impact on a substantial number of small entities. Because the final rules implement new legislation, however, the OCC lacks historical information specific to the requirements in the final rules on which to base estimates of cost. For this reason, the OCC has prepared the following FRFA.

Reasons, Objectives, and Legal Basis for the Final Rule

The OCC is issuing this final rule to implement section 47 of the FDIA. A fuller discussion of the reasons for, objectives of, and legal basis for, the final rule appears elsewhere in the Supplementary Information.

Description of the Small Entities to Which the Final Rule Would Apply

The final rule would apply to a national bank or any "other person" who, at an office of a national bank or on behalf of a national bank, sells, solicits, advertises, or offers insurance products or annuities to consumers. The final rule would apply regardless of the size of the bank or other organization for which a person worked.

Small national banks are generally defined, for Regulatory Flexibility Act purposes, as those with assets of $100 million or less. 13 CFR 121.201, Division H (2000). As of January, 1999, 1,949 national banks or national bank subsidiaries were engaged in insurance activities that would bring them within the scope of coverage of the final rule. We estimated in the preamble to the proposed rule that 976 of the national banks that sold insurance as of January, 1999, had $100 million or less in assets. We received no comment on this estimate and believe it to be accurate.

Reporting, Recordkeeping, and Compliance Requirements of the Final Rule

The final rule requires national banks (and entities acting on behalf of national banks) to amend the written materials and Internet web sites they use in connection with the retail sale, solicitation, advertising, or offer of insurance products to consumers. The final rule also requires national banks (and entities acting on their behalf) to obtain from consumers acknowledgment that the consumer has received certain disclosures. The substance of these requirements is described in detail elsewhere in the Supplementary Information.[18]

The OCC believes that most national banks will be able to satisfy the disclosure provisions by including the information required to be disclosed in their written materials with minimal cost. We estimate that most banks maintain a 3 to 4 month inventory of those materials. This final rule will not become effective until April 1, 2001, which should allow ample time for most banks to exhaust their inventory of printed materials and prepare new materials. Nevertheless, our analysis assumes that some banks may need to amend the written materials they have in inventory during an interim period between the effective date of the final rule and the next regularly scheduled printing of those materials because their inventories will not be depleted during that time. These banks—which are probably smaller banks that order written materials infrequently and in large quantities to obtain reduced rates on printing—would therefore incur costs as a result of this requirement.

There are approximately 25 national banks that sell insurance products over the Internet. Our experience has been that Internet banks regularly upgrade their web sites. Adding the required disclosures could be done as part of a regular upgrade and would therefore present only minimal additional costs to the bank.

The primary cost associated with the requirement that a bank obtain from the consumer a written acknowledgment of the consumer's receipt of the disclosures is, in the OCC's opinion, likely to be the cost of developing the written acknowledgment. Banks that sell insurance products over the Internet should, as part of a regularly scheduled upgrade, be able to revise their web sites to include a series of "click throughs" that will require affirmation from the customer that he or she has received the required disclosures.

Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Analysis and Description of Steps the Agency Has Taken To Minimize Burden

The issues raised by the commenters are described more fully elsewhere in the Supplementary Information. The issues that were raised by commenters about the proposal's impact on small businesses were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.
- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions where deposits and loan applications are taken at the same place.

The OCC considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the anti-coercion disclosure due at the time of applications to be given orally and followed with written disclosures mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the covered person documents the acknowledgment. In that case, the final rule requires the covered person also to make reasonable efforts to obtain a written acknowledgment.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. The proposed rule limited the use of electronic disclosures to those transactions taking *place entirely* electronically. Commenters were concerned that the proposed rule did not permit electronic disclosures to be used in transactions that may have started with a telephone contact. To address this concern, the final rule provides that, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of electronic disclosures applies under the final rule to these mixed media transactions, as well. The final rule also provides that oral disclosures are not required where disclosures are provided electronically. This exception applies not only to disclosures provided in the sale of insurance and annuities as in the proposed rule, but also to the anti-coercion disclosure provided with credit applications.

In response to the concern expressed about the difficulty of separating functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a savings association to sell insurance products and annuities from the "platform area," where loan transactions may routinely be conducted, if the savings association distinguishes that area from the teller window area. The regulation also

[18] The final rule also requires national banks to keep the area where the bank conducts insurance transactions physically separate from the areas where retail deposits are routinely accepted from the general public "to the extent practicable." This requirement, which is worded like the requirement in the statute, leaves significant discretion to each national bank to determine what costs, if any, the bank must incur in order to avoid customer confusion.

requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business insurance purchases, not to broaden the coverage.
- Does not apply to subsidiaries of depository institutions, except where the subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association.
- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the savings association.
- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.
- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).
- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.
- Provides flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.
- Does not require disclosures in advertisements of a general nature describing or listing the services or products offered by the savings association.
- Provides for a delayed effective date, requiring compliance by April 1, 2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

Significant Alternatives to the Final Rule

Section 305 of the G-L-B Act expressly prescribes the content of its implementing regulations. The OCC's final rule does not depart materially from the requirements of the statute. The statute does not authorize the OCC to provide exemptions or exceptions to its requirements for small national banks.

In preparing the final rule, the OCC has considered the burden on small national banks to the extent that it has the discretion to do so. As set forth above in the discussion of significant issues raised in response to the Initial Regulatory Flexibility Analysis, the Agencies have modified the final rules to minimize burden.

Duplicative, Overlapping, or Conflicting Federal Rules

As used in the Interagency Statement, the term "nondeposit investment products," includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited. The final rules do not appear to conflict materially with the Interagency Statement.

Board: The Regulatory Flexibility Act (5 U.S.C. 601–12) requires federal agencies either to provide a Final Regulatory Flexibility Analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Based on available data, the Board is unable to determine at this time whether the final rule would have a significant impact on a substantial number of small entities. For this reason, the Board has prepared the following Final Regulatory Flexibility Analysis.

Reasons, Objectives, and Legal Basis for the Final Rule

A description of the reasons why the Board is adopting this final rule and a statement of the need for, and the objectives of, the final rule are contained in the supplementary materials provided above. The Board's final rule is virtually identical to the final rules being adopted by the other Federal banking agencies for the depository institutions over which they have primary supervisory authority.

Description of the Small Entities to Which the Final Rule Would Apply

The final rule applies to all state member banks and any other person when that person sells, solicits, advertises, or offers an insurance product or annuity to an individual for personal, family, or household purposes at an office of a state member bank or on behalf of the bank. As of year-end 1999, there were approximately 1,010 state member banks. The Board estimates that approximately 480 state member banks have assets less than $100 million. Based on available data, the Board is unable to estimate the number of other persons who engage in retail insurance activities at an office of a state member bank or on behalf of the bank, or how many of these other persons are small entities.

Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Analysis and Description of Steps the Agency has Taken to Minimize Burden

The issues raised by the commenters generally are described more fully in the supplementary material provided above. The issues that were raised by commenters in connection with impact on small businesses, specifically, were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.
- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions where deposits and loan applications are taken at the same place.

The Board considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the anti-coercion disclosure due at the time of applications to be given orally and followed with written disclosures mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the acknowledgment is documented. In that case, the final rule requires also that reasonable efforts be made to obtain a written acknowledgment.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. The proposed rule limited the use of electronic disclosures to those transactions taking place *entirely* electronically. Commenters were concerned that the proposed rule did not permit electronic disclosures to be used in transactions that may have started with a telephone contact. To address this concern, the final rule provides that, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of electronic disclosures applies under the final rule to these mixed media transactions, as well.

In response to the concern expressed about the difficulty of separating functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a state member bank to sell insurance products and annuities from the "platform area," where loan transactions may routinely be conducted, if the state member bank distinguishes that area from the teller window area. The regulation also requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business insurance purchases, not to broaden the coverage.
- Does not apply to subsidiaries of depository institutions, except where the subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a state member bank or on behalf of a state member bank.
- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the state member bank.
- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.
- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).
- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.
- Provides flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.
- Does not require disclosures in advertisements of a general nature describing or listing the services or products offered by the state member bank.
- Provides for a delayed effective date, requiring compliance by April 1, 2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

Reporting, Recordingkeeping, and Compliance Requirements of the Final Rule

The final rule requires a depository institution to make required disclosures in connection with insurance activities and applications for credit if insurance is sold or solicited in connection with the credit. Some insurance products or annuities that are covered by the final regulation may also be subject to the Interagency Statement. The Interagency Statement provides for consumer disclosure, acknowledgment, separation of activities, and personnel qualification requirements that are similar to the provisions of the final rule. The Board does not believe that the final rule would conflict materially with the Interagency Statement.

The final rule also prohibits certain practices in the sale of insurance, such as the tying of credit and insurance, making misrepresentations, and discriminating against the victims of domestic violence. These prohibitions incorporate the existing statutory prohibition on tying arrangements in section 106(b) of the Bank Holding Company Amendments of 1970 (12 U.S.C. 1972). Existing laws also ban many types of discrimination. To some extent, therefore, state member banks may already have the professional skills needed to comply with the requirements of the final rule.

Significant Alternatives to the Final Rule

As explained above, the substantive provisions of the final rule are required by section 47 of the FDIA. The final rule does not impose any new substantive requirements that are not mandated by the statute. Section 47 applies to all depository institutions, regardless of size, and does not provide the Agencies with the authority to exempt a small institution from the requirements of the statute. Thus, the Board has only limited discretion to consider alternatives to minimize the economic impact on small entities. As explained above, the Agencies have made some modifications to the proposed rule to accommodate existing methods of soliciting and selling insurance products and annuities and to reduce regulatory burden.

FDIC: The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires

federal agencies either to provide a Final Regulatory Flexibility Analysis (FRFA) with a final rule or certify that the final rule "will not, if promulgated," have a significant economic impact on a substantial number of small entities. On the basis of the information currently available, the FDIC believes that this final rule is unlikely to have a significant impact on a substantial number of small entities. Because the final rules implement new legislation, however, the FDIC lacks historical information specific to the requirements in the final rules on which to base estimates of cost. For this reason, the FDIC has prepared the following FRFA.

Reasons, Objectives, and Legal Basis for the Final Rule.

The FDIC is issuing this final rule to implement section 47 of the FDIA. A fuller discussion of the reasons for, objectives of, and legal basis for, the final rule appears elsewhere in the Supplementary Information.

Description of the Small Entities to Which the Final Rule Would Apply

The FDIC's final rule applies to all FDIC-insured, state-chartered banks that are not members of the Federal Reserve System (approximately 5800) and any "other person" who, at an office of the bank or on behalf of the bank, sells, solicits, advertises, or offers insurance products or annuities to consumers. The final rule applies regardless of the size of the bank or other organization for which a person worked. The FDIC estimated in the preamble to the proposed rule that approximately 3700 of this total are "small entities" as defined by the RFA [19] We received no comment on this estimate and believe it to be accurate.

Reporting, Recordkeeping, and Compliance Requirements of the Final Rule

The final rule requires banks (and entities acting on behalf of banks) to amend the written materials and Internet web sites they use in connection with the retail sale, solicitation, advertising, or offer of insurance products and annuities to consumers. The final rule also requires banks (and entities acting on their behalf) to obtain from consumers acknowledgment that the consumer has received certain disclosures. The substance of these requirements is described in detail elsewhere in the Supplementary Information. [20]

The FDIC believes that most banks will be able to satisfy the disclosure provisions by including the information required to be disclosed in their written materials with minimal cost. We estimate that most banks maintain a 3 to 4 month inventory of those materials. This final rule will not become effective until April 1, 2001, which should allow ample time for most banks to use up their inventory of printed materials and prepare new materials. Nevertheless, our analysis assumes that some banks may need to amend the written materials they have in inventory during an interim period between the effective date of the final rule and the next regularly scheduled printing of those materials because their inventories will not be depleted during that time. These banks—which are probably smaller banks that order written materials infrequently and in large quantities to obtain reduced rates on printing—would therefore incur costs as a result of this requirement.

The primary cost associated with the requirement that a bank obtain from the consumer a written acknowledgment of the consumer's receipt of the disclosures is, in the FDIC's opinion, likely to be the cost of developing the written acknowledgment. Banks that sell insurance products over the Internet should, as part of a regularly scheduled upgrade, be able to revise their web sites to include a series of "click throughs" that will require affirmation from the customer that he or she has received the required disclosures.

Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Analysis and Description of Steps the Agency Has Taken To Minimize Burden

The issues raised by the commenters generally are described more fully in the supplementary material provided above. The issues that were raised by commenters in connection with impact on small businesses, specifically, were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.
- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions where deposits and loan applications are taken at the same place.

The FDIC seriously considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the anti-coercion disclosure due at the time of applications to be given orally and followed with written disclosures mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the covered person documents the acknowledgment. In that case, the final rule requires the covered person also to make reasonable efforts to obtain a written acknowledgment.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. The proposed rule limited the use of electronic disclosures to those transactions taking place *entirely* electronically. Commenters were concerned that the proposed rule did not permit electronic disclosures to be used in transactions that may have started with a telephone contact. To address this concern, the final rule provides that, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of electronic disclosures applies under the final rule to these mixed media transactions, as well. The final rule also provides that oral disclosures are not required where disclosures are provided electronically. This exception applies not only to disclosures provided in the sale of insurance and annuities as in the proposed rule, but also to the anti-coercion disclosure provided with credit applications.

In response to the concern expressed about the difficulty of separating functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a depository institution to sell insurance products and annuities from the "platform area," where loan transactions may routinely be conducted, if the savings association distinguishes that area from the teller window area. The regulation also requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business purchase, not to broaden the coverage.
- Does not apply to subsidiaries of depository institutions, except where the subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a bank or on behalf of a bank. The FDIC is adopting this approach even though, under section 47(a)(2) of FDIA, the FDIC could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.
- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the bank.
- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.
- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).
- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.
- Provides flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.
- Does not require disclosures in advertisements of a general nature describing or listing the services or products offered by the bank.
- Provides for a delayed effective date, requiring compliance by April 1, 2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

Significant Alternatives to the Final Rule

Section 305 of the G–L–B Act expressly prescribes the content of its implementing regulations. The FDIC's final rule does not depart materially from the requirements of the statute. The statute does not authorize the FDIC to provide exemptions or exceptions to its requirements for small banks.

In preparing the final rule, the FDIC has considered the burden on small banks to the extent that it has the discretion to do so. As set forth above in the discussion of significant issues raised in response to the Initial Regulatory Flexibility Analysis, the Agencies have modified the final rules to minimize burden.

Duplicative, Overlapping, or Conflicting Federal Rules

As used in the Interagency Statement, the term "nondeposit investment products," includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited. The final rules do not appear to conflict materially with the Interagency Statement.

OTS: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires federal agencies to prepare a final regulatory flexibility analysis (RFA) with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. OTS believes that this rule will not have a significant economic impact on a substantial number of small thrifts or other small entities because the burden imposed on small entities stems in large part from the G-L-B Act rather than from the final rule. This final rule restates and clarifies the statutory requirements. These clarifications should reduce the burden of complying with the G-L-B Act provisions. OTS has revised the proposed rule to reduce the regulatory burden on financial institutions of all sizes, as discussed below. However, OTS has prepared the following final RFA, because the G-L-B Act creates requirements that, in part, are new to the OTS, the thrift industry, and others, and because OTS is uncertain of the economic impact of compliance with the new requirements.

1. Statement of Need and Objectives

A description of the reasons why OTS is adopting this final rule and a statement of the objectives of, and legal basis for, the final rule, are contained in the supplementary materials provided above.

2. Small Entities to Which the Final Rule Would Apply

The final rule would apply to a savings association or any "other person" who, at an office of a savings association or on behalf of a savings association, sells, solicits, advertises, or offers insurance products or annuities to consumers. The final rule would apply regardless of the size of the savings association or other organization for which a person worked.

Small savings associations are generally defined, for Regulatory

[19] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity of banking purposes as a national or commercial, savings institution or credit union with less than $100 million in assets." See 13 CFR 121.201.

[20] The final rule also requires banks to keep the area where the bank conducts insurance transactions physically separate from the areas where retail deposits are routinely accepted from the general public "to the extent practicable." This requirement, which is worded like the requirement in the statute, leaves significant discretion to each bank to determine what costs, if any, the bank must incur in order to avoid customer confusion.

Flexibility Act purposes, as those with assets of $100 million or less. 13 CFR 121.201, Division H (2000). As of the publication of the proposed rule, OTS calculated that of the approximately 1,097 savings associations, a maximum of 482 were small savings associations. Currently, OTS calculates that of the approximately 1,091 savings associations, a maximum of 476 are small savings associations. OTS estimates that all of the small savings associations sell, solicit, advertise, or offer insurance products or annuities to consumers.

OTS does not collect data on how many "covered persons" that are not savings associations sell, solicit, advertise, or offer insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association, or on how many of them are small entities. The initial RFA published in the proposed rule sought information about impact on entities other than savings associations affected by the rule to permit OTS to better analyze the effect. Although OTS received comments on the proposed rule from insurance industry representatives, who might have data with respect to their members, none of them provided information on the number or size of entities other than savings associations affected by the rule. As a result, OTS is unable to determine the number or size of entities other than savings associations affected by this final rule.

3. Significant Issues Raised in Response to Initial Regulatory Flexibility Analysis and Changes Made To Minimize Burden

The issues raised by the commenters generally are described more fully in the supplementary material provided above. The issues that were raised by commenters in connection with impact on small businesses, specifically, were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.
- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions where deposits and loan applications are taken at the same place.

OTS seriously considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the disclosure on anti-tying due at the time of applications to be given orally and followed with written disclosures by mail, provided that the written disclosures were mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the covered person documents the acknowledgment. In that case, the final rule requires the covered person to make reasonable efforts to obtain a written acknowledgment, as well.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. In response to concerns expressed about the proposed rule's limitation of using electronic disclosures to those transactions taking place *entirely* electronically, and not permitting them to be used in transactions that may have started with a telephone contact, we have removed that limitation. Thus, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of electronic disclosures applies under the final rule to these mixed media transactions, as well. The final rule also provides that oral disclosures are not required where disclosures are provided electronically. This exception applies not only to disclosures provided in the sale of insurance and annuities as in the proposed rule, but also to the anti-coercion disclosure provided with credit applications.

In response to the concern expressed about the difficulty of separating functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a savings association to sell insurance products and annuities from the "platform area" where loan transactions may routinely be conducted, if the savings association distinguishes that area from the teller window area. The regulation also requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business purchase, not to broaden the coverage.
- Does not apply to subsidiaries of depository institutions, except where the subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association. OTS is adopting this approach even though, under section 47(a)(2) of FDIA, OTS could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.
- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the savings association.
- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.
- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).
- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.

- Provides flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.
- Does not require disclosures in advertisements of a general nature describing or listing the services or products offered by the savings association.
- Provides for a delayed effective date, requiring compliance by April 1, 2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

While the scope of the final rule implementing section 47 of FDIA is unique, there is some overlap with certain prior guidance and Federal statutes and rules. As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) ("Interagency Statement"), the term "nondeposit investment products" includes some products, such as annuities, that are covered by section 47 of FDIA and this final rule. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited.

Other federal authorities that overlap with the final rule include the statutory prohibition on tying arrangements in section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), and OTS's regulation prohibiting advertising that is inaccurate or makes misrepresentations (12 CFR 563.27). State consumer protection rules also may apply to sales, solicitations, advertisements, and offers of insurance products or annuities. The final rule does not appear to conflict materially with the Interagency Statement or these other authorities.

As a result of the overlap of the rule's requirements with the provisions of the Interagency Statement and other federal authorities discussed above, many savings associations and other persons may already be partly or fully prepared to meet the requirements of the final rule. Persons selling, soliciting, advertising, or offering insurance products or annuities may have to revise printed materials and modify Internet web sites. Compliance with other requirements, such as the prohibition on domestic violence discrimination, will call for similar types of resources as are used to comply with other existing nondiscrimination statutes such as the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f, and the Fair Housing Act, 42 U.S.C. 3601 *et seq.* Covered persons may need to provide further training or additional personnel, including personnel skilled in clerical, computer, compliance, and legal matters. The delayed effective date of the final rule should provide adequate time for the affected parties to develop revised materials and to modify web sites, as necessary.

5. Significant Alternatives

The requirements in the final rule parallel those in section 47 of FDIA. The final rule clarifies the statutory requirements in some areas and restates the requirements in a more understandable manner in other areas. The final rule does not impose any requirements that differ substantially from the statute. Since the requirements are set by statute, OTS has only limited discretion to consider alternatives. To the extent that OTS does have discretion, it has exercised that discretion to minimize the burden as discussed in section 3 above.

Congress has decided that "any depository institution" and "any person" that is engaged in retail sales, solicitations, advertising, or offers of insurance products (or annuities), at the office or on behalf of a depository institution, must comply with these disclosure requirements. The G-L-B Act does not expressly authorize OTS to exempt small savings associations, affiliates, or persons from these requirements. OTS does not interpret the statute to permit such an exemption.

C. Executive Order 12866

OCC: The OCC has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866. While the OCC's cost estimates are necessarily imprecise because the requirements included in the final rule result from new legislation, under the most conservative cost scenarios that the OCC can develop on the basis of available information, the impact of the final rule falls well short of the thresholds established by the Executive Order.

OTS: OTS has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866. The rule follows closely the requirements of section 305 of the G–L–B Act. Since the G–L–B Act establishes the minimum requirements for this activity, OTS has little discretion to propose regulatory options that might significantly reduce costs or other burdens. OTS believes that the impact of the rule would not meet the thresholds of the Executive Order, and consequently OMB review is not necessary.

D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. However, an agency is not required to assess the effects of its regulatory actions on the private sector to the extent that such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Section 305(e) of the G–L–B Act imposes the requirements contained in the final rules concerning domestic violence even without the issuance of regulations. Sections 305(a)–(d) of the G–L–B Act direct the Agencies to issue regulations implementing disclosure requirements and requirements to segregate the areas in which insurance activities are conducted from the areas where deposits are routinely accepted. The burden the rules place on the private sector is almost entirely attributable to the G–L–B Act. Therefore, the OCC and OTS have determined that the final rules will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and OTS have not

prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. Executive Order 13132—Federalism

OCC: Executive Order 13132 imposes certain requirements when an agency issues a regulation that has federalism implications or that preempts State law. Under the Executive Order, a regulation has federalism implications if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In general, the Executive Order requires the agency to adhere strictly to federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

This final rule satisfies the requirements of the Executive Order. If an agency promulgates a regulation that has federalism implications and preempts State law, the Executive Order imposes upon the agency requirements to consult with State and local officials; to publish a "federalism summary impact statement," and to make written comments from State and local officials available to the Director of the Office of Management and Budget (OMB).

In the OCC's opinion, it is not clear that Executive Order 13132 applies to the OCC's rules implementing section 305 of the G–L–B Act because the statute itself directs most of the significant policy choices that the Agencies have made—that is, the statute expressly prescribes both the substantive content and the preemptive effect of the rules. Moreover, the impact of the language of the express preemption provision in section 305 is to preserve State laws, subject to certain exceptions, rather than to preempt them. Under that provision, the insurance customer protections in the Agencies' rules generally will not have preemptive effect in a State where the State has in effect statutes, rules, regulations, orders, or interpretations that are inconsistent with or contrary to the regulations prescribed by the Agencies unless a provision in the Agencies' rules affords greater protection to customers than is afforded by a comparable State law. Section 305 prescribes a process for the Agencies to use in order to determine jointly whether a provision in the Agencies' regulations satisfies this "greater protection" standard. If the Agencies make that joint determination, and provide written notice to the affected State that its law is preempted, then that provision of State law will be preempted unless, within 3 years after the date that the Agencies issue the written notice, the State adopts legislation that overrides the preemption.

As we indicated in the Supplementary Information that accompanied the proposal, the federalism implications and the preemptive effect of the OCC's rules implementing section 305 depend, in the first instance, on how the Agencies' final rules compare with a particular State's laws and, ultimately, on whether a State adopts the "opt-out" legislation that section 305 permits.

Separately, section 305 of the G–L–B Act requires the Agencies to consult with State insurance regulators before issuing final implementing regulations. As described elsewhere in the Supplementary Information, the OCC and the other Agencies have consulted with the NAIC in preparing this final rule. The Agencies have provided the OMB a copy of the NAIC's written comments on the proposed rule.

OTS: Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, or taking actions that preempt state law. Section 47(g) of FDIA, 12 U.S.C. 1831x, as added by section 305 of the G–L–B Act, provides that the insurance consumer protections in the Agencies' rules generally will *not* apply to retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any savings association or any person that is engaged in such activities at an office of the savings association or on behalf of the savings association in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the federal regulations. However, if the federal regulations afford greater protection for insurance consumers than a comparable State law, rule, regulation, order, or interpretation, the State provision may be preempted by the Board, the OCC, and the FDIC in accordance with certain specified procedures described in greater detail in the OCC's statement on Executive Order 13132 above.

OTS has determined that application of these statutorily-mandated provisions will have federalism implications and may result in the preemption of state law. Section 47(a) of FDIA obligates OTS to issue this regulation to implement section 305 of the G–L–B Act, which includes section 47(g) of FDIA. Consistent with section 47(a)(3) of FDIA and section 6(c) of Executive Order 13132, OTS and the other Agencies have consulted with the National Association of Insurance Commissioners (NAIC), as indicated in the Supplementary Information above. As noted above, the Agencies considered and responded to the NAIC's comments. The Agencies also provided an advance copy of the final rule to the NAIC and OTS has provided an advance copy of the final rule to the Conference of State Bank Supervisors. The Agencies expect to consult with the NAIC and State insurance regulators as decisions are made concerning preemption in particular states.

Solicitation of Comments on Use of "Plain Language"

Section 722 of the G–L–B Act requires that the Federal banking Agencies use "plain language" in all proposed and final rules published after January 1, 2000. We invited your comments on how to make the proposed rules easier to understand. We received no comments on this general topic, only on ways to clarify the meaning of such terms as "covered person." We did make revisions in response to those specific types of comments, as discussed above.

List of Subjects

12 CFR Part 14

Banks, banking, Insurance consumer protection, National banks.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Insurance consumer protection, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 343

Banks, banking, consumer protection, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 536

Consumer protection, Insurance, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations by adding a new part 14 to read as follows:

PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

14.10 Purpose and scope.
14.20 Definitions.
14.30 Prohibited practices.
14.40 What a covered person must disclose.
14.50 Where insurance activities may take place.
14.60 Qualification and licensing requirements for insurance sales personnel.
Appendix A to Part 14—Consumer Grievance Process

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 92, 93a, 1818, and 1831x.

§ 14.10 Purpose and scope.

(a) *General rule.* This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(1) Any national bank; or

(2) Any other person that is engaged in such activities at an office of the bank or on behalf of the bank.

(b) *Application to operating subsidiaries.* For purposes of § 5.34(e)(3) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a bank or on behalf of a bank.

§ 14.20 Definitions.

As used in this part:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Bank* means a national bank or a Federal branch, or agency of a foreign bank as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101, *et seq.*)

(c) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

(e) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(f)(1) *Covered person* means:

(i) A bank; or

(ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank or on behalf of a bank.

(2) For purposes of this definition, activities on behalf of a bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the bank;

(ii) The bank refers a consumer to a seller of insurance products or annuities and the bank has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank.

(g) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(h) *Electronic media* includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(i) *Office* means the premises of a bank where retail deposits are accepted from the public.

(j) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

§ 14.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* A covered person may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the

applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 14.40 What a covered person must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, a covered person must disclose that the bank may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) *Timing and method of disclosures.* (1) *In general.* The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, a covered person is not required to make the oral disclosures required by paragraph (a) of this section. If a covered person takes an application for credit by mail, the covered person is not required to make the oral disclosure required by paragraph (b).

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, a covered person may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If a covered person takes an application for credit by telephone, the covered person may provide the written disclosure required by paragraph (b) of this section by mail, provided the covered person mails it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), a covered person may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) Any disclosures required by paragraphs (a) or (b) of this section that are provided by electronic media are not required to be provided orally.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures in visual media; such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK [OR SAVINGS ASSOCIATION]
- MAY GO DOWN IN VALUE

(6) *Disclosures must be meaningful.* (i) A covered person must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A covered person may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, a covered person must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

§ 14.50 Where insurance activities may take place.

(a) *General rule.* A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 14.60 Qualification and licensing requirements for insurance sales personnel.

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix A to Part 14—Consumer Grievance Process

Any consumer who believes that any bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or on behalf of the bank has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency, (800) 613–6743, 1301 McKinney Street, Suite 3710, Houston, Texas 77010–3031.

Dated: November 17, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board amends part 208, chapter II, title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Subpart H [Redesignated as Subpart I]

2. The existing subpart H—Interpretations is redesignated as subpart I.

3. A new subpart H is added to read as follows:

Subpart H—Consumer Protection in Sales of Insurance

Sec.

208.81 Purpose and scope.
208.82 Definitions for purposes of this subpart.
208.83 Prohibited practices.
208.84 What you must disclose.
208.85 Where insurance activities may take place.
208.86 Qualification and licensing requirements for insurance sales personnel.
Appendix A to Subpart H—Consumer Grievance Process

§ 208.81 Purpose and scope.

This subpart establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(a) Any state member bank; or

(b) Any other person that is engaged in such activities at an office of the bank or on behalf of the bank.

§ 208.82 Definitions for purposes of this subpart.

As used in this subpart:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Bank* means a state member bank.

(c) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who purchases, applies to purchase, or is solicited to purchase from you insurance products or annuities primarily for personal, family, or household purposes.

(e) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(f) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(g) *Electronic media* includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(h) *Office* means the premises of a bank where retail deposits are accepted from the public.

(i) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

(j)(1) *You* means:

(i) A bank; or

(ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank or on behalf of a bank.

(2) For purposes of this definition, activities on behalf of a bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the bank;

(ii) If the bank refers a consumer to a seller of insurance products or annuities and the bank has a contractual arrangement to receive commissions or fees derived from the sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank.

§ 208.83 Prohibited practices.

(a) *Anticoercion and antitying rules.* You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity sold or offered for sale by you or any subsidiary of the bank is not backed by the Federal government or the bank or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 208.84 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that the bank may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) *Timing and method of disclosures.* (1) *In general.* The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which insurance is solicited, offered, or sold.

(2) *Exceptions for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b) of this section.

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C 6103(a). If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraphs (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) Any disclosures required by paragraphs (a) or (b) of this section that are provided by electronic media are not required to be provided orally.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures, in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK
- MAY GO DOWN IN VALUE

(6) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but you do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

§ 208.85 Where insurance activities may take place.

(a) *General rule.* A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 208.86 Qualification and licensing requirements for insurance sales personnel.

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix A to Subpart H—Consumer Grievance Process

Any consumer who believes that any bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or on behalf of the bank has violated the requirements of this subpart should contact the Consumer Complaints Section, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System at the following address: 20th & C Streets, NW, Washington, D.C. 20551.

By order of the Board of Governors of the Federal Reserve System, November, 21, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations by adding a new part 343 to read as follows:

PART 343—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

343.10 Purpose and scope.
343.20 Definitions.
343.30 Prohibited practices.
343.40 What you must disclose.
343.50 Where insurance activities may take place.
343.60 Qualification and licensing requirements for insurance sales personnel.
Appendix A to Part 343—Consumer Grievance Process

Authority: 12 U.S.C. 1819 (Seventh and Tenth); 12 U.S.C. 1831x.

§ 343.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(a) Any bank; or

(b) Any other person that is engaged in such activities at an office of the bank or on behalf of the bank.

§ 343.20 Definitions.

As used in this part:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Bank* means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(c) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who purchases, applies to purchase, or is solicited to purchase from you insurance products or annuities primarily for personal, family, or household purposes.

(e) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(f) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward

another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(g) *Electronic media* includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(h) *Office* means the premises of a bank where retail deposits are accepted from the public.

(i) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

(j) (1) *You* means:

(i) A bank; or

(ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank or on behalf of a bank.

(2) For purposes of this definition, activities on behalf of a bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the bank;

(ii) The bank refers a consumer to a seller of insurance products or annuities and the bank has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank.

§ 343.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity sold or offered for sale by you or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 343.40 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that the bank may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) *Timing and method of disclosures.* (1) *In general.* The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b).

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) Any disclosure required by paragraphs (a) or (b) of this section that is provided by electronic media is not required to be provided orally.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK
- MAY GO DOWN IN VALUE

(6) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

§ 343.50 Where insurance activities may take place.

(a) *General rule.* A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 343.60 Qualification and licensing requirements for insurance sales personnel.

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix A to Part 343—Consumer Grievance Process

Any consumer who believes that any bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or on behalf of the bank has violated the requirements of this part should contact the Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation, at the following address: 550 17th Street, NW., Washington, DC 20429, or telephone 202–942–3100 or 800–934–3342, or e-mail *dcainternet@fdic.gov*.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 21st day of November, 2000.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, OTS amends chapter V of title 12 of the Code of Federal Regulations by adding a new part 536 to read as follows:

PART 536—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

536.10 Purpose and scope.
536.20 Definitions.
536.30 Prohibited practices.
536.40 What you must disclose.
536.50 Where insurance activities may take place.
536.60 Qualification and licensing requirements for insurance sales personnel.
Appendix A to Part 536—Consumer Grievance Process.

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831x.

§ 536.10 Purpose and scope.

(a) *General rule.* This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(1) Any savings association; or

(2) Any other person that is engaged in such activities at an office of a savings association or on behalf of a savings association.

(b) *Application to operating subsidiaries.* For purposes of § 559.3(h) of this chapter, an operating subsidiary is subject to this part only to the extent

that it sells, solicits, advertises, or offers insurance products or annuities at an office of a savings association or on behalf of a savings association.

§ 536.20 Definitions.

As used in this part:

Affiliate means a company that controls, is controlled by, or is under common control with another company.

Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

Consumer means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

Control of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

Electronic media includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

Office means the premises of a savings association where retail deposits are accepted from the public.

Subsidiary has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

You means:

(1) A savings association, as defined in § 561.43 of this chapter; or

(2) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of a savings association, or on behalf of a savings association. For purposes of this definition, activities on behalf of a savings association include activities where a person, whether at an office of the savings association or at another location, sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the savings association;

(ii) The savings association refers a consumer to a seller of insurance products and annuities and the savings association has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the savings association.

§ 536.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), is conditional upon either:

(1) The purchase of an insurance product or annuity from a savings association or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, a savings association or a subsidiary of a savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity you or any subsidiary of a savings association sell or offer for sale is not backed by the Federal government or a savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a savings association or subsidiary of a savings association at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the savings association or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the savings association or a subsidiary of a savings association; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 536.40 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, a savings association or an affiliate of a savings association;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, a savings association, or (if applicable) an affiliate of a savings association; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) *Credit disclosures.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that a savings association may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the savings association or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) *Timing and method of disclosures.*

(1) *In general.* The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If you conduct an insurance product or annuity sale by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b) of this section.

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, solicitation, or offer, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) You are not required to provide orally any disclosures required by paragraphs (a) or (b) of this section that you provide by electronic media.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE SAVINGS ASSOCIATION
- MAY GO DOWN IN VALUE

(6) *Disclosures must be meaningful.*

(i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional materiol for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional material are of a general nature describing or listing the services or products offered by a savings association.

§ 536.50 Where insurance activities may take place.

(a) *General rule.* A savings association must, to the extent practicable:

(1) Keep the area where the savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public;

(2) Identify the areas where insurance product or annuity sales activities occur; and

(3) Clearly delineate and distinguish those areas from the areas where the savings association's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a savings association may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 536.60 Qualification and licensing requirements for insurance sales personnel.

A savings association may not permit any person to sell or offer for sale any insurance product or annuity in any part of the savings association's office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

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Appendix A to Part 536—Consumer Grievance Process

Any consumer who believes that any savings association or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the savings association or on behalf of the savings association has violated the requirements of this part should contact the Director, Consumer Programs, Office of Thrift Supervision, at the following address: 1700 G Street, NW, Washington, DC 20552, or telephone 202–906–6237 or 800–842–6929, or e-mail consumer.complaint@ots.treas.gov.

Dated: November 21, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–30404 Filed 12–1–00; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P



Federal Register

Monday,
December 4, 2000

Part III

The President

Proclamation 7382—World AIDS Day, 2000

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Presidential Documents

Title 3—

The President

Proclamation 7382 of November 30, 2000

World AIDS Day, 2000

By the President of the United States of America

A Proclamation

As the global community observes the 13th annual World AIDS Day, we remember with sorrow our friends, loved ones, neighbors, and colleagues who have lost their lives to AIDS, and we reaffirm our shared commitment to carry on the fight until our battle against this devastating disease is won.

We can be proud of our efforts over the past 8 years. My Administration has worked aggressively to increase funding for AIDS research; to find better treatments, a vaccine, and a cure; to enhance HIV prevention efforts; and to help ensure that those living with HIV and AIDS receive the health care they need. Federal funding for such activities has doubled on the national front and tripled internationally, reaching nearly $11 billion last year alone, and I recently named a Presidential Envoy for AIDS Cooperation.

Building on this commitment, last month I signed into law the Ryan White CARE Act Amendments of 2000, improving the Federal Government's most comprehensive program for providing services to Americans living with HIV/AIDS. Our investment is producing results and, thanks to new treatments, many people with AIDS are living longer and experiencing a better quality of life than ever before.

But our battle is far from over. Last year, 3 million people died from HIV/AIDS—the highest global total reported since the pandemic began. Current estimates indicate that more than 50 million people have been infected with HIV since the virus was first identified more than 15 years ago, and some 21.8 million people have died from HIV/AIDS. The number of children orphaned as a result of HIV/AIDS is estimated to be more than 13.2 million.

Because the spread of HIV has reached catastrophic proportions in many areas of our global community, AIDS has become a national and international security threat. The United States is working hard to develop partnerships with other nations and to mobilize a greatly expanded global response to address HIV/AIDS through our Leadership and Investment in Fighting an Epidemic Initiative. And this week, we will host a White House Summit of Religious Leaders to underscore the important role the world's faith communities play in preventing the spread of HIV and in caring for those affected by HIV. Many care and treatment programs around the world are operated by religious-based organizations, and often these groups provide the only available source of care. The summit will highlight successful efforts and raise awareness of our moral obligations in addressing HIV and AIDS.

Our goals are clear, and our resolve is firm. Working with our partners at home and abroad, we will triumph over the tragedy of HIV/AIDS and ensure a bright, healthy future for our children.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 2000, as World AIDS Day. I invite the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction

of the United States, and the American people to join me in reaffirming our commitment to defeating HIV and AIDS. I encourage every American to participate in appropriate commemorative programs and ceremonies in workplaces, houses of worship, and other community centers, to reach out to protect and educate our people, and to provide hope and help to all who are living with HIV and AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

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Red-cockaded woodpecker; comments due by 12-13-00; published 10-17-00

LABOR DEPARTMENT
Federal Contract Compliance Programs Office
Affirmative action and nondiscrimination obligations of contractors and subcontractors:
Compliance evaluations; comments due by 12-11-00; published 10-12-00

LABOR DEPARTMENT
Occupational Safety and Health Administration
State plans; standards approval, etc.:
New Jersey; comments due by 12-13-00; published 11-13-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Veterans Entrepreneurship and Small Business Development Act of 1999; implementation; comments due by 12-11-00; published 10-11-00

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Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 12-11-00; published 10-11-00
Bombardier; comments due by 12-14-00; published 11-14-00
British Aerospace; comments due by 12-15-00; published 11-2-00
Empresa Brasileira de Aeronautica S.A.; comments due by 12-13-00; published 11-13-00
Raytheon; comments due by 12-11-00; published 10-18-00
Rolladen Schneider Flugzeugbau GmbH; comments due by 12-14-00; published 11-9-00
Class E airspace; comments due by 12-11-00; published 10-25-00

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Drivers' hours of service—
Fatigue prevention; driver rest and sleep for safe operations; comments due by 12-15-00; published 8-15-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Fuel system integrity—
Compressed natural gas fuel containers; comments due by 12-14-00; published 10-30-00

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol; viticultural area designations:
West Elks, CO; comments due by 12-15-00; published 10-16-00

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Post-traumatic stress disorder claims based on personal assault; comments due by 12-15-00; published 10-16-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2346/P.L. 106–521
To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment. (Nov. 22, 2000; 114 Stat. 2438)

H.R. 5633/P.L. 106–522
District of Columbia Appropriations Act, 2001 (Nov. 22, 2000; 114 Stat. 2440)

S. 768/P.L. 106–523
Military Extraterritorial Jurisdiction Act of 2000 (Nov. 22, 2000; 114 Stat. 2488)

S. 1670/P.L. 106–524
To revise the boundary of Fort Matanzas National Monument, and for other purposes. (Nov. 22, 2000; 114 Stat. 2493)

S. 1880/P.L. 106–525
Minority Health and Health Disparities Research and Education Act of 2000 (Nov. 22, 2000; 114 Stat. 2495)

S. 1936/P.L. 106–526
Bend Pine Nursery Land Conveyance Act (Nov. 22, 2000; 114 Stat. 2512)

S. 2020/P.L. 106–527
To adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes. (Nov. 22, 2000; 114 Stat. 2515)

S. 2440/P.L. 106–528
Airport Security Improvement Act of 2000 (Nov. 22, 2000; 114 Stat. 2517)

S. 2485/P.L. 106–529
Saint Croix Island Heritage Act (Nov. 22, 2000; 114 Stat. 2524)

S. 2547/P.L. 106–530
Great Sand Dunes National Park and Preserve Act of 2000 (Nov. 22, 2000; 114 Stat. 2527)

S. 2712/P.L. 106–531
Reports Consolidation Act of 2000 (Nov. 22, 2000; 114 Stat. 2537)

S. 2773/P.L. 106–532
Dairy Market Enhancement Act of 2000 (Nov. 22, 2000; 114 Stat. 2541)

S. 2789/P.L. 106–533
To amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board. (Nov. 22, 2000; 114 Stat. 2545)

S. 3164/P.L. 106–534
Protecting Seniors From Fraud Act (Nov. 22, 2000; 114 Stat. 2555)

S. 3194/P.L. 106–535
To designate the facility of the United States Postal Service located at 431 North George Street in Millersville, Pennsylvania, as the "Robert S. Walker Post Office". (Nov. 22, 2000; 114 Stat. 2559)

S. 3239/P.L. 106–536
To amend the Immigration and Nationality Act to provide special immigrant status for certain United States international broadcasting employees. (Nov. 22, 2000; 114 Stat. 2560)

Last List November 24, 2000

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
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400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
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1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
200–End	(869–042–00024–2)	44.00	Jan. 1, 2000
10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
200–499	(869–042–00027–7)	38.00	Jan. 1, 2000
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11	(869–042–00029–3)	23.00	Jan. 1, 2000
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200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–042–00032–3)	45.00	Jan. 1, 2000
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
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600–End	(869–042–00035–8)	53.00	Jan. 1, 2000
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200–1199	(869–042–00040–4)	29.00	Jan. 1, 2000
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15 Parts:			
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1000–End	(869–042–00046–3)	43.00	Jan. 1, 2000
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18 Parts:			
1–399	(869–042–00051–0)	54.00	Apr. 1, 2000
400–End	(869–042–00052–8)	15.00	Apr. 1, 2000
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141–199	(869–042–00054–4)	40.00	Apr. 1, 2000
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170–199	(869–042–00061–7)	29.00	Apr. 1, 2000
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300–499	(869–042–00063–3)	20.00	Apr. 1, 2000
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600–799	(869–038–00065–0)	10.00	Apr. 1, 2000
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300–End	(869–042–00069–2)	31.00	Apr. 1, 2000
23	(869–042–00070–6)	29.00	Apr. 1, 2000
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200–499	(869–042–00072–2)	37.00	Apr. 1, 2000
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§§ 1.170–1.300	(869–042–00079–0)	38.00	Apr. 1, 2000
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§§ 1.1401–End	(869–042–00088–9)	66.00	Apr. 1, 2000
2–29	(869–042–00089–7)	45.00	Apr. 1, 2000
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
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100–499	(869–042–00101–0)	14.00	July 1, 2000
500–899	(869–042–00102–8)	47.00	July 1, 2000
900–1899	(869–042–00103–6)	24.00	July 1, 2000
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1927–End	(869–042–00108–7)	49.00	July 1, 2000
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630–699	(869–042–00117–6)	25.00	July 1, 2000
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35	(869–042–00126–5)	10.00	July 1, 2000
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41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
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200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
*500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
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Title	Stock Number	Price	Revision Date
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CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

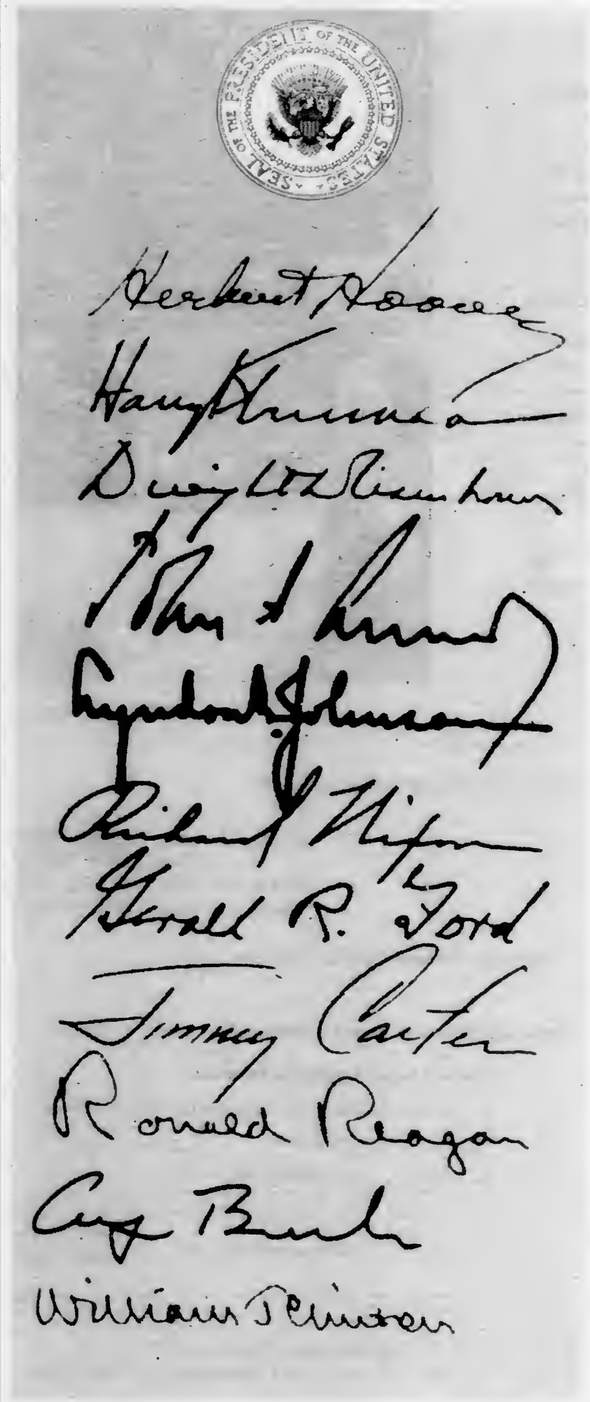
[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

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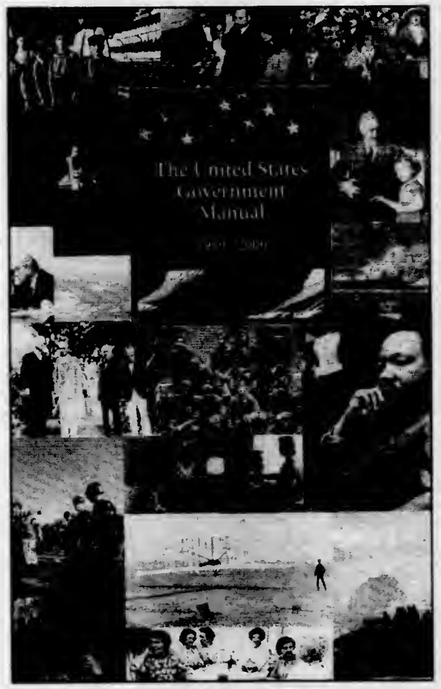
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG66

List of Approved Spent Fuel Storage Casks: TN–32 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the Transnuclear, Inc. TN–32 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). This amendment will allow holders of power reactor operating licenses to store spent fuel in the cask under the revised conditions. The changes proposed for Amendment No. 1 to the TN–32 CoC include the addition of the B&W/FCF 17 x 17 Mark BW assembly to the Technical Specification for "Fuel to be stored in the TN–32 Cask," with revised bounding characteristics, and (2) a revised TS for "Site Specific Parameters and Analysis," to allow analysis of verification of allowable seismic loads.

DATES: The final rule is effective February 20, 2001, unless significant adverse comments are received by January 4, 2001. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail rwb@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 20, 2000 (65 FR 14790) that approved the TN–32 cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1021.

Discussion

On April 23, 1999, and February 29, 2000, the certificate holder (Transnuclear, Inc.) submitted applications to the NRC to amend the Certificate of Compliance (CoC, No. 1021) to allow holders of power reactor operating licenses to store spent fuel in the cask under revised conditions. The changes requested include: (1) Addition of B&W/FCF 17 x 17 Mark BW assembly to Technical Specification (TS) 2.1, "Fuel to be stored in the TN–32 Cask," with revised bounding characteristics, and (2) revision of the TS 4.3.3, "Site Specific Parameters and Analysis" to allow analysis of verification of allowable seismic loads. No other changes to the TN–32 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that the proposed changes do not reduce the safety margin. In addition, the NRC staff has determined that the changes do not pose any increased risk to public health and safety.

This direct final rule revises the TN–32 cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1021. The amendment consists of two changes to the TSs. The first allows the storage of an additional type of spent fuel in the TN–32 cask system, with its bounding characteristics. The second changes the site-specific seismic horizontal and vertical acceleration limits from discrete values to two equations. The latter change increases a

general licensee's flexibility by making the technical specification more performance based. The particular TSs being changed are identified in the NRC Staff's Safety Evaluation Report (SER) for Amendment No. 1.

The amended TN–32 cask system, when used under the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

CoC No. 1021, the revised TSs, the underlying SER for Amendment No. 1, and the Environmental Assessment are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the CoC may be obtained from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7608, email rwb@nrc.gov. An electronic copy of the proposed CoC and preliminary SER can be found in the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1021 is revised by adding the effective date of the initial certificate and the effective date of Amendment Number 1. In addition, two technical specifications are modified. The first allows the storage of an additional type of spent fuel in the TN–32 cask system with its bounding characteristics. The second changes the site-specific seismic horizontal and vertical acceleration limits from discrete values to two equations. The latter change increases a general licensee's flexibility by making the technical specification more performance based.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1021 and does not include other aspects of the TN–32 cask system design. The NRC is using the "direct final rule procedure" to promulgate this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial; adequate protection of public health and safety continues to be ensured. This amendment is not considered to be a significant amendment by the NRC staff. The amendment to the rule will become effective on February 20, 2001. However, if the NRC receives significant adverse comments by January 4, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the amendment. These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will amend the CoC for the TN–32 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. This amendment will allow holders of power reactor operating licenses to store spent fuel in the cask under revised conditions. The changes proposed for Amendment No. 1 to the TN–32 CoC include: (1) Addition of B&W/FCF 17 x 17 Mark BW assembly to TS 2.1, "Fuel to be stored in the TN–32 Cask," with revised bounding characteristics, and (2) revised TS 4.3.3, "Site Specific Parameters and Analysis" to allow analysis of allowable seismic loads. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Electronic copies the environmental assessment and finding of no significant impact can be found in the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html; single copies are available from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7608, email rwb@nrc.gov.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the TN–32 cask system design listed in § 72.214 (List of approved spent fuel storage casks). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Nuclear Regulatory Commission (NRC) issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's Certificate of Compliance (CoC), and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 20, 2000 (65 FR 14790), the NRC issued an amendment to Part 72 that approved the TN–32 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On April 23, 1999, and February 29, 2000, the certificate holder (Transnuclear, Inc.) submitted applications to the NRC to amend the Certificate of Compliance (CoC, No. 1021) to allow holders of power reactor operating licenses to store spent fuel in the cask under revised conditions. The changes requested include: (1) addition of B&W/FCF 17 x 17 Mark BW assembly to TS 2.1, "Fuel to be stored in the TN–32 Cask," with revised bounding characteristics and (2) revision of TS 4.3.3, "Site Specific Parameters and Analysis" to allow analysis of verification of allowable seismic loads.

This rule will permit the changes requested by the certificate holder. The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate the above described problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1021 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1021

Initial Certificate Effective Date: April 19, 2000

Amendment Number 1 Effective Date: February 20, 2001

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the TN–32 Dry Storage Cask

Docket Number: 72–1021

Certificate Expiration Date: April 19, 2020

Model Number: TN–32, TN–32A, TN–32B

* * * * *

Dated at Rockville, Maryland, this 16th day of November, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–30906 Filed 12–4–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 00–28]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H and Y; Docket No. R–1087]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC46

Risk-Based Capital Guidelines; Market Risk Measure; Securities Borrowing Transactions

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) are issuing an interim rule with a request for comment that amends their market risk rules to revise the capital treatment for cash collateral that is posted in connection with certain securities borrowing transactions. The effect of the interim rule is to more appropriately align the capital requirements for these transactions with the risk involved and to provide a capital treatment for U.S. banking organizations that is more in line with the capital treatment applied to their domestic and foreign competitors.

DATES: This interim rule is effective January 4, 2001. U.S. banking organizations may apply the provisions of this interim rule beginning December 5, 2000. Comments must be received by January 19, 2001.

ADDRESSES: Comments should be directed to:

OCC: Written comments may be submitted electronically to regs.comments@occ.treas.gov or by mail to Docket No. 00–28, Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW, Mail Stop 1–5, Washington, DC 20219. Comments will be available for inspection and photocopying at that address.

Board: Comments, which should refer to Docket No. R–1087, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m. weekdays pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor, Capital Policy (202) 874–5070, or Ron Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Norah Barger, Assistant Director (202/452–2402), or David Adkins, Supervisory Financial Analyst (202/452–5259), Division of Banking Supervision and Regulation. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Janice Simms (202/872–4984), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Stephen G. Pfeifer, Examination Specialist (202/898–8904), Accounting Section, Division of Supervision; Michael B. Phillips, Counsel, (202/898–3581), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Securities borrowing transactions were not specifically addressed in the July 1988 agreement entitled "International Convergence of Capital Measurement and Capital Standards" (Basel Accord), nor in the risk-based capital guidelines adopted by the Agencies in 1989.[1] At that time, the involvement of U.S. banking organizations in corporate debt and equity securities trading activities was limited. However, in recent years, U.S. banking organizations have experienced a rapid growth of such activities, and it is recognized that securities borrowing transactions serve an important function in the operation of securities markets. Securities borrowings are used in conjunction with short sales, securities fails (securities sold but not made available for delivery on the settlement date), and option and arbitrage positions. Securities are also borrowed in order to be pledged against public fund deposits. Securities borrowing enhances market efficiency and provides an important source of liquidity to the securities markets.

In a typical securities borrowing transaction, a party (for example, a banking organization) needing to borrow securities obtains the securities from a securities lender and posts collateral in the form of cash or highly marketable securities with the securities lender (or an agent acting on behalf of the securities lender) in an amount that fully covers the value of the securities borrowed plus an additional margin, usually ranging from two to five percent. In accordance with U.S. generally accepted accounting principles, cash collateral posted with the securities lender is treated as a receivable on the books of the securities borrower (that is, it is treated as a cash loan from the securities borrower to the securities lender, who is the obligor). Under the existing capital rules, the securities borrower must hold capital against the full amount of this receivable, *i.e.,* the collateral posted. The borrowed securities generally remain on the balance sheet of the securities lender, and, therefore, no additional capital charge is incurred by the securities borrower. Where a securities borrower posts collateral in the form of securities that continue to be carried on the borrower's books, the only capital charge incurred by the borrower under the present guidelines is that associated with a direct holding of the securities.

[1] The Basel Accord was developed by the Basel Committee on Banking Supervision and endorsed by the central bank governors of the Group of Ten (G–10) countries. The Basel Accord provides a framework for assessing the capital adequacy of a depository institution by risk weighting its assets and off-balance sheet exposures primarily based on credit risk. The Basel Committee on Banking Supervision consists of representatives of the supervisory authorities and central banks from the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States), and Luxembourg.

The Agencies recognize that securities borrowing is a long-established financial activity that historically has resulted in an exceedingly low level of losses. Applying a standard 100 percent risk weight to the full amount of the cash collateral posted to support such borrowings, the Agencies further recognize, results in a capital charge that is inordinately high, not only in light of the risk involved in the transactions, but also in comparison to the capital required by other U.S. and non-U.S. regulators of financial firms for the same transactions. Further, under the current capital rules, a banking organization incurs no incremental capital charge when it borrows securities and posts securities to collateralize the borrowing, even though it is at risk for the amount by which the collateral exceeds the value of the securities borrowed.

The Agencies are issuing an interim rule that better reflects the low risk of securities borrowing and the posting of cash collateral in connection with such transactions and brings the capital requirements for U.S. banking organizations into better alignment with the capital requirements of other U.S. and non-U.S. regulators of financial institutions.

Specifically, the Agencies are adopting an interim rule that permits banking organizations under the market risk rules to exclude from risk-weighted assets receivables arising from the posting of cash collateral associated with securities borrowing transactions to the extent such receivables are collateralized by the market value of the securities borrowed, subject to the following conditions:

1. The transaction is based on securities includable in the trading book that are liquid and readily marketable;
2. The transaction is marked to market daily;
3. The transaction is subject to daily margin maintenance requirements, and;
4. The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purpose of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR Part 231).

Under this treatment, the amount of the receivable created in connection with the posting of cash collateral in a securities borrowing transaction that would be excluded from the securities borrower's adjusted risk-weighted assets is limited to the portion that is collateralized by the market value of the securities borrowed. The uncollateralized portion, which equals the difference between the amount of cash collateral that the securities borrower posts in support of the borrowing and the current market value of the securities borrowed, would be assigned to the risk weight appropriate to the obligor.

The Agencies note that the Basel Accord is currently under revision. These revisions could result in a more risk-sensitive treatment for securities borrowing transactions. Accordingly, banking organizations should be aware that this capital treatment under the market risk rules is subject to change pending the outcome of the Basel revisions, which may call for higher capital charges for securities borrowing and similar transactions.

The Agencies welcome comment on all aspects of this interim rule. In particular, the Agencies request industry views on the capital treatment of the posting of securities collateral associated with securities borrowing transactions. Under the current capital rules and the interim rule, the posting of securities collateral will continue to not incur a capital charge even though the securities borrower is at risk (as it is where cash is posted as collateral) for the amount by which the securities collateral exceeds the value of the securities borrowed. The Agencies recognize that a strong case can be made for achieving a greater consistency between the treatment of the posting of cash collateral and the posting of securities collateral by requiring a capital charge on the amount by which the market value of the securities posted as collateral exceeds the market value of securities borrowed. This could be accomplished under the present capital framework, for example, by requiring the difference in the market value of the securities posted as collateral and that of the securities borrowed to be treated as a securities lending transaction. Under such a treatment, the difference would be converted at 100 percent to an on-balance sheet credit equivalent amount and risk-weighted according to the obligor. Industry views are sought on whether the Agencies should seek to further equalize the capital treatment of cash and securities collateral posted in support of a securities borrowing transaction.

In addition, the Agencies are specifically interested in whether this revision to the calculation of the capital requirement for securities borrowing transactions should be limited only to those banking organizations that have implemented the market risk rules. Under the interim rule, no reduction in the capital requirement for these securities borrowing transactions is available to banking organizations that have not implemented an approved value-at-risk model. Accordingly, comment is sought on whether the capital treatment of securities borrowing should be modified within the non-trading portion of the risk-based capital calculation.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this interim rule would not have a significant impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The interim rule would reduce regulatory burden. The rule will only affect banking organizations that operate under the market risk rules which limits the applicability of the rule to organizations with significant trading operations. The rule will reduce regulatory burden for banking organizations that engage in securities borrowing transactions.

Administrative Procedure Act

Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the Agencies find good cause for issuing this interim rule in advance of the receipt of comments from interested parties. Currently, U.S. banking organizations are at a competitive disadvantage versus certain foreign organizations because of differing capital treatment for securities borrowing transactions. The Agencies find that it is contrary to the public interest for U.S. banking organizations to be subject to more stringent rules (resulting in higher regulatory capital requirements) than direct competitor institutions outside of the U.S. that have capital charges determined from rules that are consistent with the interim rule. This rule relieves a restriction on banking organizations and fosters consistency among international institutions prior to year-end, but does not raise safety and soundness concerns.

The Agencies are seeking public comment on the interim rule.

Paperwork Reduction Act

The Agencies have determined that this interim rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

OCC Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this interim rule is limited to banking organizations subject to the market risk rules and to securities borrowing transactions collateralized with cash. The OCC, therefore, has determined that the interim rule will not result in expenditures by State, local, or tribal governments, or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Department of Treasury

Office of the Comptroller of the Currency

12 CFR Chapter 1

Authority and Issuance

For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907 and 3909.

2. In appendix A to part 3, in section 3:

a. Revise paragraph (a)(4) introductory text; and

b. Add a new footnote 12a.

Appendix A To Part 3—Risked-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(4) *100 percent risk weight.* All other assets not specified above,[12a] including:

[12a] A bank subject to the market risk capital requirements pursuant to appendix B of this part 3 may calculate the capital requirement for qualifying securities borrowing transactions pursuant to section 3(a)(1)(ii) of appendix B of this part 3.

* * * * *

3. In appendix B to part 3, in section 3, revise paragraph (a)(1) to read as follows:

Appendix B to Part 3—Risk-Based Capital Guidelines; Market Risk Adjustment

(a) * * *

(1) *Adjusted risk-weighted assets.* (i) *Covered positions.* Calculate adjusted risk-weighted assets, which equal risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amount of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivatives positions).[7]

(ii) *Securities borrowing transactions.* In calculating adjusted risk-weighted assets, a bank also may exclude a receivable that results from the bank's posting of cash collateral in a securities borrowing transaction to the extent that the receivable is collateralized by the market value of the borrowed securities and subject to the following conditions:

(A) The borrowed securities must be includable in the trading account and must be liquid and readily marketable;

(B) The borrowed securities must be marked to market daily;

(C) The receivable must be subject to a daily margining requirement; and

(D) The securities borrowing transaction must be a securities contract for purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555741(7)), a qualified financial contract for purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions, for purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) or Regulation EE (12 CFR Part 231).

* * * * *

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in adjusted risk-weighted assets as determined in appendix A of this part 3.

Dated: November 20, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter 11

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix E to part 208, under section 3, paragraph (a)(1) is revised to read as follows:

Appendix E to part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

* * * * *

Section 3 Adjustments to the Risk-Based Capital Ratio Calculations

(a) * * *

(1) *Adjusted risk-weighted assets.* Calcuate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the counter derivative positions)[7] and receivables arising from the posting of cash collateral that is associated with securities borrowing transactions to the extent the receivables are collateralized by the market value of the borrowed securities, provided that the following conditions are met:

(i) The transaction is based on securities includable in the trading book that are liquid and readily marketable,

(ii) The transaction is marked to market daily,

(iii) The transaction is subject to daily margin maintenance requirements,

(iv) The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR part 231).

* * * * *

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in the adjusted risk weighted assets asdetermined in appendix A of this part.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907. and 3909; 15 U.S.C. 6801 and 6805.

2. In appendix E to part 225, under section 3, paragraph (a)(1) is revised to read as follows:

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies; Market Risk Measure

* * * * *

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations

(a) * * *

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions)[7] and receivables arising from the posting of cash collateral that is associated with securities borrowing transactions to the extent the receivables are collateralized by the market value of the borrowed securities, provided that the following conditions are met:

(i) The transaction is based on securities includable in the trading book that are liquid and readily marketable,

(ii) The transaction is marked to market daily,

(iii) The transaction is subject to daily margin maintenance requirements,

(iv) The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR Part 231).

* * * * *

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in the adjusted risk weighted assets as determined in appendix A of this part.

By order of the Board of Governors of the Federal Reserve System, November 24, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix C to part 325, under section 3, paragraph (a)(1) is revised to read as follows:

Appendix C to Part 325—Risk-Based Capital for State Non-Member Banks: Market Risk

* * * * *

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations

(a) * * *

* * * * *

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions)[7] and receivables arising from the posting of cash collateral that is associated with securities borrowing transactions to the extent the receivables are collateralized by the market value of the borrowed securities, provided that the following conditions are met:

(i) The transaction is based on securities includable in the trading book that are liquid and readily marketable,

(ii) The transaction is marked to market daily,

(iii) The transaction is subject to daily margin maintenance requirements,

(iv) The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR Part 231).

* * * * *

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in the adjusted risk weighted assets as determined in appendix A of this part.

Dated at Washington, DC, this 21st day of November, 2000.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretory.

[FR Doc. 00–30748 Filed 12–4–00; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 00–31]

RIN 1557–AB72

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending the assessment formula it uses to assess independent trust banks. A trust bank is considered independent for purposes of this regulation if it specializes in trust activities and is not affiliated with a

full-service national bank. Under the revised rate structure, all independent trust banks will be assessed based on balance sheet assets plus a minimum fee as provided by the OCC in the annual Notice of Comptroller of the Currency Fees (Notice of Fees). Independent trust banks with assets under management in excess of $1 billion would pay an additional amount based on a declining marginal rate, which also will be provided in the Notice of Fees.

EFFECTIVE DATE: December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mitchell E. Plave, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Karen McCluskey, National Bank Examiner, Asset Management Division, (202) 874–7276.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises approximately 2300 national banks and 58 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States.

The OCC funds the activities it undertakes to carry out this mission through assessments on national banks and Federal branches and agencies of foreign banks. The National Bank Act authorizes the OCC to collect these assessments, stating, in relevant part:

> The Comptroller of the Currency may impose and collects assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office of the Comptroller. Such assessments, fees, and other charges shall be set to meet the Comptroller's expenses in carrying out authorized activities.
>
> 12 U.S.C. 482 (Supp. 2000).

This provision authorizes the OCC to adjust its assessment formula so that banks, or categories of banks, pay an assessment that appropriately apportions to them the OCC's overall expenses of carrying out the agency's activities. Therefore the OCC currently assesses national banks and Federal branches and agencies according to a formula based on several factors, including a bank's size, condition, and whether it is the "lead" bank or "non-lead" bank among national banks in a holding company.[1] The OCC also has reserved in its assessment regulation (12 CFR part 8) the authority to assess a fee for certain special examinations and investigations and for examining the fiduciary activities of national banks. 12 CFR 8.6(a). In recent years, however, the OCC stopped separately charging national banks for the expenses of examining and supervising fiduciary activities.

Since the OCC eliminated those separate fees, the number, size, and complexity of the activities of independent trust banks have increased and their balance sheet assets increasingly do not reflect the ongoing scope or complexity of their activity, nor the extent of the OCC's responsibilities with respect to them. For example, although trust assets managed by a bank are not shown on the bank's balance sheet, the bank's fiduciary activities are subject to extensive regulatory standards under 12 CFR part 9 as well as under state laws that are made applicable to national bank fiduciary activities by 12 U.S.C. 92a. The OCC evaluates the bank's adherence to those standards as part of our examination, supervision, and regulation of the bank.

On March 21, 2000, we published a notice of proposed rulemaking in the **Federal Register** (65 FR 15111) to amend the OCC's assessment regulation to revise the formula for independent trust banks. The purpose of the proposal was to adjust the OCC's assessment structure to better reflect the full extent of the OCC's activities in the examination, supervision, and regulation of those banks. For the reasons discussed below, we are adopting the rule as proposed with changes to clarify the definition of "affiliated" and to address situations in which a large trust bank becomes affiliated with a small full-service national bank. We also have updated our anticipated flat minimum fee and rate schedules applicable to managed assets to reflect more recent data concerning the OCC's activities, as discussed more fully below.

Proposed Rule and Comments Received

We proposed to amend 12 CFR 8.6 to give the OCC the flexibility to increase assessments on independent trust banks by applying either a managed assets component or a flat fee, depending on the amount of assets a particular bank has under management. Under the proposed rule, the managed assets component and flat fee were assessed on independent trust banks in addition to the assessment calculated on book assets under 12 CFR 8.2.

The OCC received 18 comments on the proposal. The comments included 16 from trust banks and 2 from bank trade associations. While many of the commenters objected to paying increased assessments, the commenters also recognized that the OCC must recover its expenses through assessments. Several commenters recommended specific changes to the proposal or asked for clarifications. The following is a more detailed discussion of the issues raised by the proposal, the comments we received concerning those issues, and the OCC's responses to the comments.

Scope of the rule. The proposal did not include additional assessments for full-service national banks or trust banks that are affiliated with a full-service national bank. Four commenters suggested that we apply the proposal to all trust banks, not only those affiliated with a full-service national bank.

In the case of a full-service national bank that exercises trust powers, however, since the bank also conducts substantial non-fiduciary activities, the balance sheet assets approach of the general assessment schedule continues to be a fair yardstick for determining the bank's assessments. Similarly, when a full-service bank opts as a matter of corporate form to use a separate charter to conduct its trust business, the OCC is able to supervise, examine, and regulate those activities on a coordinated basis with its activities with respect to the affiliated full-service bank. Thus, in this situation, since the activities of the two charters will be evaluated in combination, the balance sheet assets approach for determining assessments continues to be a fair basis of measurement.

Independent trust banks that are not affiliated with a full-service national bank present a distinguishable situation because their balance sheet assets do not constitute a fair yardstick of the complexity of their operations or the extent of the OCC's activities related to their operations. Therefore, except as noted below in the discussion of the test for affiliation, the OCC has decided to confine the scope of the rule to independent trust banks.

Test for affiliation. The proposal defined an "independent trust bank" as a national bank that "has trust powers, does not primarily offer full-service banking, and is not *affiliated* with a full service national bank" (emphasis added).[2] It did not, however, define "affiliated." Two commenters asked that we clarify the meaning of the term "affiliated."

The final rule states that a trust bank is "affiliated" with another entity for assessment purposes if it meets the criteria for affiliation found in the OCC's trust regulation (12 CFR part 9), which incorporates the definition of "affiliate" found in section 2 of the Banking Act of 1933, 12 U.S.C. 221a(b). Generally speaking, a trust bank is deemed "affiliated" with a full-service national bank under that section if the full-service bank owns more than 50% of the voting stock of the trust bank or controls the election of a majority of the trust bank's directors, or if the trust bank is controlled by shareholders that own at least 50% of the full-service bank or control the election of a majority of the full-service bank's directors. Given that this is the test already used in the OCC's trust regulation, affected institutions should be familiar with its application.

The final rule also adds a provision, in new § 8.6(c)(2), to address situations in which an independent trust bank affiliates with a comparatively small full-service national bank for the purpose of evading the assessment regulation. The final rule preserves the authority of the OCC in those instances to assess a trust bank that is affiliated with a full-service national bank as if the trust bank were independent. This change is consistent with one of the underlying premises of the rulemaking, namely, that assessments paid by full-service national banks that are affiliated with trust banks are adequate to meet the OCC's expenses in carrying out our authorized activities.

Distinguishing discretionary from non-discretionary assets. Under the proposal, independent trust banks with assets under management in excess of $1 billion would pay a managed assets component that would be calculated by multiplying the amount of assets under management by a factor to be supplied by the OCC in the annual Notice of Fees pursuant to 12 CFR 8.8. "Assets under management" are those assets reported by national banks on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form 001).

The proposal asked for comment on whether we should distinguish for assessment purposes between assets over which the bank has investment discretion (discretionary assets) and those that it holds without discretion (non-discretionary assets), for example in a custodial capacity. Two commenters stated that they can differentiate such assets and that the OCC should make that distinction. A third commenter, a large independent trust bank with a considerable amount of assets under management, rejected the assumption underlying the question. This commenter disagreed with the implication that it takes more time or resources to supervise discretionary assets and rejected the concept of making the distinction.

After considering these views, we have concluded that making this distinction between discretionary and non-discretionary assets is inappropriate because it is inconsistent with the way the OCC examines trust banks. The OCC examines trust banks based on lines of business and areas of risk rather than on the discretionary/non-discretionary asset distinction. Making the distinction between discretionary and non-discretionary assets for assessment purposes would not reflect this risk-focused examination approach. One additional basis for rejecting the distinction is that, depending on the nature of the product or services, it can be difficult for trust banks to fit assets neatly in one category or the other. Indeed, there is a large "gray" area in making this distinction, which supports a risk-focused supervisory approach rather than one based on the label applied to the assets.

Basis for the flat fee and managed asset rates. The proposal stated the flat fee and managed asset rate tiers were being proposed to better align the OCC's assessment structure with the OCC's responsibilities regarding independent trust banks. One commenter opined that the "assets under management" approach fails to take into account economies of scale or relative risks of off-balance sheet activities or the OCC's ratings of individual banks.

The OCC notes that the proposal does reflect economies of scale. As is explained further in the discussion of the final rule, all independent trust banks will pay a minimum flat fee. In addition to the minimum flat fee, independent trust banks with assets under management in excess of $1 billion will be assessed according to a declining marginal rate to reflect the economies of scale noted by the commenter. For institutions with $1 billion or less in assets under management, we have identified no additional economy of scale when analyzing the expenses of supervising these institutions. Accordingly, the final rule retains the approach of assessing these institutions by a minimum flat fee that is set at a level consistent with the OCC's expenses.

Application of assessment to de novo banks. The proposal did not distinguish the assessment of *de novo* independent trust banks from those already established. Six commenters suggested that the OCC assess "start-up" independent trust banks at a reduced rate or phase in the fees over a few years. These banks asserted that our proposed flat fee will be burdensome for them.

We believe that it would be inappropriate to charge *de novo* institutions less. While we recognize that newly formed trust banks typically will not be immediately profitable, they nevertheless require considerable supervisory attention as they set up systems and procedures and learn the compliance requirements. In addition, *de novo* national trust banks are often not new to trust business—they are often formed when an institution transfers its existing trust business into a national bank charter. For these reasons, the OCC believes that it is appropriate to treat *de novo* trust banks in the same manner as all other *de novo* national banks are treated.

Billable hours. The proposed rule did not include a billable hours component, although it did invite comment on whether the OCC should adopt a billable hours approach to assessing independent trust banks. Five commenters were of the view that a system of assessments for independent trust banks with $1 billion or less in managed assets based on billable hours would be more "fair" than a flat fee, because it would ensure that the assessment was directly linked to the amount of effort required of the OCC in any given assessment period.

After a careful consideration of the comments received, we have declined to adopt a billable hours approach. Based on experience gained previously with a billable hours system, we have concluded that such a system can have an adverse impact on the examiner/banker relationship. In addition, given the variability in scheduling examinations, a billable hours approach could result in assessments that vary from year to year for any given institution, thereby making it difficult for banks to anticipate expenses.

Final Rule

For the reasons discussed above, the OCC adopts the rule as proposed, with two changes. The first change, as described previously, is to clarify the meaning of "affiliate" for purposes of the assessment rule. The second is to address affiliations created for the

[1] A "lead bank" is the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's most recent Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries) (Call Report). 12 CFR 8.2(a)(6)(ii)(A).

[2] *See Charters*, Corporate Manual, Office of the Comptroller of the Currency at 19–20 (1998) (describing trust banks).

purpose of evading the assessment regulation.

While the actual assessment rates will be set in the Notice of Fees, we have revised our projected fee schedule to include an additional marginal rate. Under the final rule, the OCC will assess all independent trust banks a minimum flat fee. Independent trust banks with assets under management in excess of $1 billion will pay an additional amount, calculated by multiplying assets under management by a declining marginal rate. That calculation will yield the managed assets component of the assessment for these banks. In either case, the trust bank will also be assessed an amount based on its book assets.

In the proposal, we set out estimated rates and fees that reflected the data we had at the time. These rates and fees have been adjusted in the final rule to reflect more recent data. Using these more recent data, we now anticipate that a bank having assets under management in excess of $1 billion would, in the upcoming year, calculate each of its semiannual assessments by multiplying the first $1 billion in assets under management by 0.00001875 [3], assets under management over $1 billion up to $10 billion by 0.00000375, assets under management over $10 billion up to $100 billion by 0.000000625, and assets under management over $100 billion by .0000004. The product then would be added to the assessment calculated under section 8.2 that is based on book assets.

For independent trust banks that have $1 billion or less in trust assets, the OCC will assess a flat fee that reflects the minimum expenses of regulating and supervising any independent trust bank, regardless of size. We expect that the fee due with each of the semiannual assessments for the upcoming year will be $18,750, in addition to the amount calculated under the formula based on balance sheet assets. The actual fees and rates used to calculate assessments of independent trust banks will be published in the Notice of Fees. Future rates and fees may be adjusted to reflect the OCC's latest expense data and the appropriate allocation of those expenses to national banks.

Regulatory Flexibility Act

An agency must prepare a Regulatory Flexibility Analysis if a rule it proposes will have a "significant economic impact" on a "substantial number of small entities." 5 U.S.C. 603, 605. If, after an analysis of a rule, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify. The OCC has reviewed the impact this final rule will have on small independent trust banks. Based on that review, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The basis for this conclusion is that the rule will apply to a very small portion of national banks. For purposes of this Regulatory Flexibility Analysis and regulation, the OCC defines "small independent trust banks" to be those banks with less than $100 million in total assets, including managed assets.[4] Using this definition, the final rule will affect only seven small entities, representing less than 1% of all national banks. The OCC does not believe this to be a substantial number of small entities.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

[3] This rate will yield $18,750 on a semi-annual basis, which is the same as the minimum flat fee for independent trust banks with $1 billion or less in managed assets.

[4] The OCC is using this definition for the sole purose of this preliminary regulatory flexibility analysis after consulting with the Small Business Administration's Office of Advocacy. The OTS, in its assessment regulation, also consulted with the Office of Advocacy and defined "small savings associations" as those with less than $100 million in total assets, including off-balance sheet assets. *See* Assessments and Fees, 63 FR 43642, 43646 (1998).

List of Subjects in 12 CFR Part 8

National banks.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 8 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for Part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, and 3102 and 3108; 15 U.S.C. 78c and 781; and 26 D.C. Code 102.

2. In § 8.6, the section heading is revised and a new paragraph (c) is added to read as follows:

§ 8.6 Fees and assessments for examinations and investigations; independent trust banks.

* * * * *

(c) *Additional assessments on trust banks.* (1) *Independent trust banks.* The assessment of independent trust banks will include a managed asset component, in addition to the assessment calculated according to § 8.2 of this part, as follows:

(i) *Minimum fee.* All independent trust banks will pay a minimum fee, to be provided in the Notice of Comptroller of the currency Fees.

(ii) *Additional amount for independent trust banks with managed assets in excess of $1 billion.* Independent trust banks with managed assets in excess of $1billion will pay an amount that exceeds the minimum fee. The amount to be paid will be calculated by multiplying the amount of trust assets under management by a rate or rates provided by the OCC in the Notice of Comptroller of the Currency Fees.

(2) *Trust banks affiliated with full-service national banks.* The OCC will assess a trust bank in accordance with paragraph (c)(1) of this section, notwithstanding that the bank is affiliated with a full-service national bank, if the OCC concludes that the affiliation is intended to evade the assessment regulation.

(3) *Definitions.* For purposes of this paragraph (c) of this section, the following definitions apply:

(i) *Affiliate* has the same meaning as this term has in 12 U.S.C. 221a(b);

(ii) *Independent trust bank* is a national bank that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service national bank; and

(iii) *Trust assets* are those assets reported on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form 001). The form is available by mail from the Office of the Comptroller of the Currency, Asset Management Division, 250 E Street, SW., Washington, DC 20219.

Dated: October 20, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–30843 Filed 12–4–00; 8:45 am]

BILLING CODE 4810–33–P

POSTAL SERVICE

39 CFR Part 111

Nonmailable Written, Printed, and Graphic Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Part C030 of the Domestic Mail Manual (DMM) to provide for changes to the standards concerning written, printed, and graphic matter as a result of a recent Department of Justice opinion concerning lottery material.

EFFECTIVE DATE: December 14, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease (703) 292–4184.

SUPPLEMENTARY INFORMATION: As the result of an inquiry from the Postal Service, the Department of Justice has issued an opinion stating that the statute prohibiting the mailing of truthful advertising concerning lawful gambling activity, whether state-run or private, is no longer enforceable. The Attorney General has notified Congress that it will no longer enforce the criminal lottery statute (18 U.S.C. Section 1302) against gambling advertisement mailers, so long as the activity advertised is legal and the mailing does not provide any entry materials.

The Attorney General's opinion is based upon a decision of the Supreme Court issued in June 1999, which struck down similar prohibitions against truthful broadcast advertising for lawful gambling activity.

Accordingly, the Domestic Mail Manual (DMM) is revised to conform to the Attorney General's new guidance. The changes mean that:

1. Mailers may now mail advertisements for casinos and state-run or private lotteries (so long as that lottery is legal).

2. Newspapers and other publications that are mailed may run advertisements for lawful gambling activity without risking their authorizations to mail at periodicals rates.

3. The Postal Service may actively solicit advertising mail from licensed casinos and others lawfully conducting gambling activity.

The following prohibitions will still apply:

1. No mailing is acceptable if it provides entry materials or instrumentalities (lottery or raffle tickets, for instance) through the mail.

2. Mailing gambling proceeds, instrumentalities, or other means of participation continue to violate the criminal statute.

The changes announced in this document are effective on December 14, 2000, and also will be published in Postal Bulletin 22039 (12–14–00). These revisions to the DMM will be included in the printed version of DMM Issue 56, scheduled for January 2001 (pending a decision about the R2000–1 omnibus rate case). These amendments are being published without provision for public comment because the changes are required by law.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM) which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise part C030 of the DMM to include the following revisions:

C CHARACTERISTICS AND CONTENT

C000 General Information

* * * * *

C030 Nonmailable Written, Printed, and Graphic Matter

* * * * *

C031 Written, Printed, and Graphic Matter Generally

* * * * *

3.0 LOTTERY MATTER (18 USC 1302)

* * * * *

[Revise 3.2 to read as follows:]

3.2 Unlawful Mail Matter

Unlawful matter includes any letter, newspaper, periodical, parcel, stamped card or postcard, circular, or other matter permitting or facilitating participation in a lottery; any lottery ticket or part thereof or substitute; and any form of payment for a lottery ticket or share.

3.3 Fishing Contests, Indian Gaming Regulatory Act, Lotteries

[Remove item b. Redesignate items c and d as b and c, respectively. Revise newly redesignated item c to read as follows:]

* * * * *

c. An advertisement, list of prizes, or other information on a lottery not prohibited by the state where it is conducted.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–30810 Filed 12–4–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1504 and 1552

[FRL–6912–2]

Acquisition Regulation: Business Ownership Representation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to add a new clause that will provide the Agency with information regarding its contract awards. This new clause requests the successful awardee of an EPA contract to voluntarily identify the specific racial/ethnic category that best represents the ownership of its business. The information provided by the clause will not be used for the establishment of a set-aside or quota. The information will be used for general statistical purposes or for the purpose of focusing future outreach initiatives to those businesses owned by racial/ethnic groups who are unaware of EPA contracting opportunities.

DATES: This rule is effective January 4, 2001.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Telephone: (202) 564–4364.

SUPPLEMENTARY INFORMATION:

A. Background Information

A new Environmental Protection Agency Acquisition Regulation clause has been developed to provide statistical data concerning EPA awards made to businesses owned by various racial/ethnic groups, regardless of size or disadvantaged status. The new clause will be incorporated into all EPA solicitations and contracts expected to exceed the simplified acquisition threshold ($100,000). The clause asks EPA contract recipients to voluntarily identify the specific racial/ethnic category that best represents the ownership of its business. The statistics generated by the clause will help EPA target future outreach initiatives to both large and small business owners who are unaware of EPA contracting opportunities. Possible outreach initiatives may consist of workshops, seminars or conferences and may include presentations on how to do business with EPA or how the Government contracting process works. Such outreach efforts will not be limited to target audiences, but will be open to the general public. Further, the information provided by the clause will not be used to establish a set-aside or a quota.

Currently, statistical data is available to identify the types of small businesses receiving EPA awards. There is no mechanism for obtaining similar information for large businesses. The Federal Acquisition Regulation clause at 52.219–1 (Alt II) permits the Department of Defense, the National Aeronautics and Space Administration, and the U.S. Coast Guard to gather ethnic and minority ownership information. However, the Federal Acquisition Regulation clause at 52.219–1(ALT II) only pertains to offerors who represent themselves as small disadvantaged business concerns, as defined in Title 13 of the Code of Federal Regulations, section 124.1002.

The business ownership racial/ethnic groups in this new clause are similar to the categories listed in the Office of Management and Budget Statistical Policy Directive No. 15, Race and Ethnic Standards of Federal Statistics and Administrative Reporting. The clause contains minor variations to enable EPA to compare collected data to data published by the US Census Bureau. As Census Bureau data becomes compliant with the Office of Management and Budget Statistical Policy Directive No. 15, EPA will adjust the clause accordingly.

The Civilian Agency Acquisition Council (CAAC) was consulted regarding the development of this clause, and did not voice any objections.

The comment period for the proposed rule extended from June 23, 2000, to August 22, 2000, and yielded one external comment. A Summary and Analysis of Comments document containing the EPA response is included in the docket for this rule and is available by contacting Leigh Pomponio at (202) 564–4364 or E-mail: *pomponio.leigh@epa.gov*.

In response to the external comment, EPA has made three minor changes to the proposed rule to better describe: (1) Why EPA needs the new clause, (2) the information requirements of the new clause, and (3) statistical evidence to support that there is not an impact on a substantial number of small entities.

While we recognize that statistical data may be available for small businesses, there is no mechanism for obtaining similar data for large businesses. The intent of the new clause is to provide statistical data on whether businesses owned by various racial and ethnic groups are represented in Agency contract awards. Such data will help EPA target audiences for its outreach initiatives.

B. Executive Order 12866

This final rule is not a significant regulatory action for the purposes of Executive Order 12866. Therefore, no review was required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2030–0041. EPA utilizes outside contractors for the performance of many critical activities. EPA encourages full participation in its contractor selection process and would like to make information about contracting opportunities readily available to the contracting community. By collecting business ownership data, EPA will be able to analyze the data and make business decisions relative to outreach activities. The information collected will not be used to make award decisions. Responses to the collection will be voluntary, and a response is not required to obtain or retain a benefit. Responses will be treated as Confidential Business Information (CBI). CBI is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

The burden of responding under this rule is estimated to average 3 minutes per response. The estimated number of respondents, based upon average annual awards, is 240. The frequency of responses is 1 per respondent. Therefore, the estimated total annual hour burden for all respondents is 12 hours (3 x 240 x 1 divided by 60). There are no estimated total annualized capital and operating and maintenance cost burden associated with this rule. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search the data sources; to complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, and 48 CFR Chapter 15. EPA is amending the table in 48 CFR Chapter 15, of currently approved ICR control numbers issued by OMB for various regulations, to list the information requirements contained in this final rule.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, the Agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The impact on small entities will not be significant. This final rule is voluntary and will have no effect on the evaluation criteria for award. As noted in the Information Collection Request **Federal Register** (65 FR 47985, August 4, 2000) document and the *Paperwork Reduction Act* discussion above, contractors will require only a minimal amount of time (three minutes per respondent) to complete the clause. Therefore, to the extent that this does result in some contractor-incurred costs, EPA anticipates that these will be de minimus. Further, because the clause will only be applicable over the simplified acquisition threshold ($100,000), this final rule will not have an impact on a substantial number of small entities. It is noted that, historically, small businesses do not receive a large percentage of EPA contracts which exceed the simplified acquisition threshold ($100,000). In fiscal year 1999, 137 small businesses received EPA awards over $100,000. This represents only 17.5% of the agency's total contract awards which exceeded $10,000 in fiscal year 1999. It is anticipated that this percentage will remain the same or be minimally higher for fiscal year 2000.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in aggregate, or the private sector in any one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks that have a disproportionate effect on children.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay for the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C: 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132. This rule amends the EPA Acquisition Regulation relating to internal agency procedures addressing business ownership categories of contractors who receive EPA awards. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; section 205(c), 63 Stat. 390, as amended 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1504 and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1504 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); 41 U.S.C. 418b.

2. Part 1504 is amended by adding subpart 1504.6 as follows:

PART 1504—ADMINISTRATIVE MATTERS

Subpart 1504.6—Contract Reporting

1504.670 Business Ownership Representation.

Contracting officers shall insert the clause at 1552.204–70, Business Ownership Representation, in solicitations and contracts with an estimated dollar value greater than the simplified acquisition threshold. Completion of the clause by the successful awardee is voluntary.

3. Subpart 1552.2 is amended by adding 1552.204–70 as follows:

1552.204–70 Business Ownership Representation.

As prescribed in 1504.670, insert the following clause in solicitations and contracts:

Business Ownership Representation (JAN 2001)

The successful awardee should check one or more of the categories below that represents its business ownership and return this information to the contracting officer within ten (10) calendar days after award. Completion of this clause by the successful awardee is voluntary.

"Ownership," as used in this clause, means: (a) At least 51 percent of the concern is owned by one or more individuals from a category listed below; or, in the case of any publicly owned business, at least 51 percent of the stock of the concern is owned by one or more such individuals; and (b) The management and daily business operations of the concern are controlled by one or more such individuals.

Ethnicity

[ ] Hispanic or Latino.
[ ] Not Hispanic or Latino.

Race

[ ] American Indian, Eskimo, or Aleut.
[ ] Asian or Pacific Islander.
[ ] Black or African American.
[ ] White.

(End of clause)

Dated: November 29, 2000.

Judy S. Davis,

Acting Director, Office of Acquisition Management.

[FR Doc. 00–30911 Filed 12–4–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 102600E]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason orders.

SUMMARY: NMFS publishes the Fraser River salmon inseason orders regulating salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2000 sockeye and pink salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all–citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 2000 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason actions was effective upon the dates and times as specified at 50 CFR 300.97(b)(1). Comments will be accepted through December 20, 2000.

ADDRESSES: Comments may be mailed to Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: The treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300 subpart F provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the Fraser River Panel Area (U.S.) to U.S. sockeye and pink salmon fishing unless opened by Panel orders or by inseason regulations published by NMFS that give effect to Panel orders. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Regional Administrator, Northwest Region, NMFS, issues the inseason orders. Official notification of these inseason actions of NMFS is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1).

Inseason orders must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2000 orders are therefore being published in this document to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2000 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 2000–1: Issued 5 p.m., July 21, 2000

Treaty Indian Fishery

Areas 4B, 5 and 6C: Open for drift gillnets from 6 p.m. July 21, 2000, to 12 noon July 26, 2000.

Order No. 2000–2: Issued 1 p.m. July 25, 2000

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12 noon July 26, 2000, to 12 noon July 29, 2000.

Areas 6,7 and 7A: Open for net fishing from 4 a.m. to 8 p.m. on July 26, 2000.

All Citizen Fishery

Areas 7 and 7A: Purse seine fishery open from 6 a.m. to 3 p.m. on July 27, 2000. Drift gillnet fishery open from 3 p.m. to 11:59 p.m. on July 27, 2000. Reef net fishery open from 5 a.m. to 9 p.m. on July 29, 2000.

Order No. 2000–3: Issued 4 p.m., July 25, 2000, and supersedes all previous inseason orders

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnet open from 12 noon July 26, 2000, to 12 noon July 29, 2000.

Areas 6, 7 and 7A: Open for net fishing from 4 a.m. July 26, 2000, to 8 a.m. July 27, 2000.

All Citizen Fishery

Areas 7 and 7A: Drift gillnet fishery open 8 a.m. to 11:59 p.m. July 27, 2000. Purse seine fishery open 5 a.m. to 9 p.m. July 28, 2000. Reef net fishery open from 5 a.m. to 9 p.m. on July 29, 2000, and July 30, 2000.

Order No. 2000–4: Issued 4 p.m. August 2, 2000, and supersedes all previous inseason orders

All Citizen Fishery

Areas 7 and 7A: Purse seine fishery open from 5 a.m. to 9 p.m. August 3, 2000, and from 5 a.m. to 9 p.m. August 4, 2000. Drift gillnet fishery open from 7:15 a.m. to 11:59 p.m. August 3, 2000, and from 7:15 a.m. to 11:59 p.m. August 4, 2000.

Order No. 2000–5: Issued at 4:00 p.m., August 5, 2000

Treaty Indian Fishery

Areas 4B, 5 and 6C: Open for drift gillnets from 6 p.m. August 5 to 6:00 p.m. August 7, 2000.

Areas 6, 7 and 7A: Open for net fishing from 12:00 noon August 6, 2000, to 6:00 p.m. August 7, 2000.

Order No. 2000–6: Issued at 4:00 p.m. August 8, 2000

All Citizen Fishery

Areas 7 and 7A: Reef net fishery open from 6:00 a.m. to 6:00 p.m. August 9, 2000. Purse seine fishery open from 6:00 a.m. to 6:00 p.m. August 10, 2000. Drift gillnet fishery open from 8:00 a.m. to 8:00 p.m. on August 10, 2000.

Order No. 2000–7: Issued at 4:00 p.m. August 15, 2000

All Citizen Fishery

Areas 7 and 7A south and east of a line from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia: Purse seine fishery open from 6:00 a.m. to 6:00 p.m. on August 16, 2000. Drift gillnet fishery open from 8:00 a.m. to 8:00 p.m. August 16, 2000.

Order No. 8–2000: Issued at 4:00 p.m. August 22, 2000

United States Fraser River Panel Area Waters

Areas 4B, 5 and 6C, relinquish regulatory control effective August 27, 2000.

Areas 6 and 7 and Area 7A south and east of a line from Iwerson's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia, relinquish regulatory control effective August 27, 2000.

Classification

Because these fisheries have been closed, NMFS has determined that good cause exists for this notification to be issued without affording a prior opportunity for public comment because such notification would be unnecessary, impracticable, and contrary to the public interest.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30818 Filed 12–4–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 111400A]

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal, Pelagic, and Small Coastal Shark Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing season notification.

SUMMARY: NMFS notifies eligible participants of the opening and closing of fishing seasons for Atlantic large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks.

DATES: The fishery opening for LCS is effective January 1, 2001; the LCS closure is effective from 11:30 p.m. local time March 24, 2001, through June 30, 2001. The fishery opening for SCS and pelagic sharks is January 1, 2001; no closure dates for these fisheries are included in this document.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, 301-713-2347; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On June 30, 1999, NMFS received a Court Order from Judge Steven D. Merryday enjoining NMFS from enforcing the 1999 regulations, 64 FR 29090 (May 28, 1999), regarding Atlantic shark commercial catch quotas and fish-counting methods (including the counting of dead discards and state commercial landings after Federal closures) that are different from the quotas and fish counting methods prescribed by the 1997 Atlantic shark regulations, 62 FR 16648 (April 7, 1997). On June 12, 2000, the Court issued

another order permitting NMFS to implement and enforce the 1999 prohibited species provisions. NMFS and plaintiffs recently reached settlement in this litigation; NMFS intends to publish an emergency rule consistent with the settlement agreement once the Court stipulates to the settlement agreement.

As such, the annual 2001 LCS quota continues at the 1997 level of 1,285 mt dw for all species of LCS, (Table 1 of appendix A to part 635), with no minimum size on ridgeback LCS. The SCS and pelagic shark quotas also remain at the annual 1997 levels, of 1,760 and 580 mt dw, respectively. The prohibited species provisions will be enforced. A list of prohibited shark species can be found in Table 1 of Appendix A to part 635, part D. The limited access provisions for commercial harvests still apply, including trip limits for directed and incidental shark permit holders.

The first semiannual fishing season of the 2001 fishing year for the commercial fishery for LCS in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open January 1, 2001. In 1998, 1999, and 2000, the first semiannual fishing season remained open until March 31 of each year. In all three years, the semiannual quota was exceeded. Catch rate data from the first semiannual fishing season from 1998 and 1999 for LCS species indicate that approximately 70 percent of the LCS quota had been taken by the end of February of each year. In 2000, catch rate data indicate that approximately 55 percent of the LCS quota had been taken by the end of February. In addition, catch rate data in all three years indicate that catch rates increase through the month of March. Accordingly, the Assistant Administrator for Fisheries (AA) has determined, based on these catch rates and the available quota, that the quota for the 2001 first semiannual season for LCS in or from the western north Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained as of March 24, 2001. The LCS fishery will close March 24, 2001, at 11:30 p.m. local time.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

The first semiannual quota for SCS is 880 mt dw. The first semiannual quota for pelagic sharks is 290 mt dw. When quotas are projected to be reached for these fisheries, the AA will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

Those vessels that have not been issued a limited access permit under 50 CFR 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at 50 CFR 635.22(c) and 635.20(d), respectively. The recreational fishery is not affected by any closure in the commercial fishery.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 29, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30821 Filed 12–4–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 65, No. 234

Tuesday, December 5, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AG66

List of Approved Spent Fuel Storage Casks: TN–32 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc. TN–32 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). This amendment will allow holders of power reactor operating licenses to store spent fuel in the cask under the revised conditions. The changes proposed for Amendment No. 1 to the TN–32 CoC include the addition of the B&W/FCF 17 x 17 Mark BW assembly to the Technical Specification for "Fuel to be stored in the TN–32 Cask," with revised bounding characteristics, and (2) a revised TS for "Site Specific Parameters and Analysis," to allow analysis of verification of allowable seismic loads.

DATES: Comments on the proposed rule must be received on or before January 4, 2001.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail rwb@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

The NRC is also publishing this amendment as a direct final rule because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial; adequate protection of public health and safety continues to be ensured. This amendment is not considered to be a significant amendment by the NRC staff. The direct final rule will become effective on February 20, 2001. However, if the NRC receives significant adverse comments on the direct final rule by January 4, 2001, then the NRC will publish a notice to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1021 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1021

Initial Certificate Effective Date: April 19, 2000
Amendment Number 1 Effective Date: February 20, 2001
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the TN–32 Dry Storage Cask
Docket Number: 72–1021
Certificate Expiration Date: April 19, 2020
Model Number: TN–32, TN–32A, TN–32B

* * * * *

Dated at Rockville, Maryland, this 16th day of November, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–30907 Filed 12–4–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 00–32]

RIN 1557–AB92

Operating Subsidiaries of Federal Branches and Agencies

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Proposed rule.

SUMMARY: Consistent with the principle of national treatment for foreign banks operating in the United States established by the International Banking Act of 1978, the Office of the Comptroller of the Currency (OCC) proposes to enable a Federal branch or agency to establish or maintain an operating subsidiary in generally the same manner that a national bank may establish or control an operating subsidiary.

DATES: Comments must be received by February 5, 2001.

ADDRESSES: Please direct comments to: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW, Mail Stop 1–5, Washington, DC, 20219, Attention: Docket No. 00–32. In addition, comments may be sent by facsimile transmission to fax number 202–874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E. Street, SW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days. You can make an appointment to inspect the comments by calling 202–874–5043.

FOR FURTHER INFORMATION CONTACT: Martha Clarke, Senior Attorney, International Activities Division, 202–874–0680; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, 202–874–5090; Heidi M. Thomas, Senior Attorney, Legislative and Regulatory Activities Division, 202–874–5090, or Carlos Hernandez, Senior International Advisor, International Banking and Finance Division, 202–874–4730.

SUPPLEMENTARY INFORMATION:

Background

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) (the IBA) applies the national treatment principle to the regulation of foreign bank activities in the United States. Specifically, under the national treatment principle established by the IBA, the operations of a foreign bank conducted through a Federal branch or agency shall be conducted with the same rights, privileges, conditions, and limitations that apply to a national bank operating at the same location, subject to the OCC's regulations.[1] 12 U.S.C. 3102(b). For example, the powers of national banks that are set forth in the National Bank Act, such as lending money and engaging in certain securities and insurance sales activities, are not expressly repeated in the IBA but are provided to Federal branches and agencies by operation of section 3102(b).

Congress has subsequently enacted other legislation that confirms that the IBA need not be amended each time there is a change to the banking laws that affects national banks, unless the IBA prohibits or limits that specific activity. For example, when Congress authorized broader leasing authority for national banks in 1987, Federal branches and agencies could avail themselves of this authority by operation of section 3102(b) of the IBA. Thus, it is not necessary to amend the IBA to authorize Federal branches and agencies to take advantage of powers authorized for national banks. Consistent with these principles, this proposal provides that a Federal branch or agency may establish an operating subsidiary to the same extent as a similarly situated national bank.

Description of the Proposal

12 CFR 5.34 sets forth application or notice procedures for national banks engaging in activities through an operating subsidiary and lists the activities that qualify for the notice procedures. The proposal provides that § 5.34 applies to a Federal branch or agency that seeks to establish or maintain any subsidiary that a national bank would be authorized to establish or control under § 5.34. The procedures of § 5.34 apply to the Federal branch or agency with certain modifications that reflect the differences in the nature of Federal branches and agencies compared to national banks.

Section 5.34(e)(5)(iv) provides that a national bank that is well capitalized and well managed may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, by filing a notice with the OCC within 10 days after acquiring or establishing the subsidiary, or commencing the activity, if the activities are listed in § 5.34(e)(5)(v). National banks that do not meet the well capitalized and well managed criteria also may acquire or establish an operating subsidiary by filing an application with, and receiving approval from, the OCC. 12 CFR 5.34(e)(5)(i). Finally, § 5.34(e)(5)(vi) provides that a national bank may acquire or establish an operating subsidiary without filing an application or providing notice to the OCC, if the bank is adequately capitalized or well capitalized and the activities of the new subsidiary meet certain conditions.

Under the proposal, a Federal branch or agency is considered well capitalized for purposes of § 5.34 if it meets the definition of "well capitalized" that the OCC uses when authorizing an extended examination cycle for certain Federal branches and agencies. *See* 12 CFR 4.7(b)(1)(iii).[2] Section 4.7(b)(1)(iii) requires that: a foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or the Federal branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable Federal and state law), and sufficient liquidity is currently available to meet obligations to third parties.

Under the proposal, a Federal branch or agency is well managed if: the Federal branch or agency has a composite Risk Management, Operational Controls, Compliance, and Asset Quality (ROCA) supervisory rating of 1 or 2 at its most recent examination; or in the case of a Federal branch or agency that has not been examined, the Federal branch or agency has and uses managerial resources that the OCC determines are satisfactory.

The OCC will apply other relevant regulatory standards to Federal branches and agencies that establish and maintain operating subsidiaries as appropriate in light of the differences in corporate structure between national banks and Federal branches and agencies. For example, current § 5.34(e)(4) requires that pertinent book figures of the parent bank and its operating subsidiary to be combined for the purpose of applying statutory limitations when combination is needed to effect the intent of the statute, *e.g.*, for purposes of the statutory dividend restrictions, lending limits, or investments in bank premises. See 12 U.S.C. 56, 60, 84, and 371d. Any limitation or restriction based on the capital of a national bank (*e.g.*, the lending limit at 12 U.S.C. 84) refers, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank. See 12 U.S.C. 3102(b). For purposes of determining compliance with the limitation or restriction, pertinent book figures of the Federal branch or agency and its operating subsidiary shall be combined. If the foreign bank has more than one Federal branch or agency, pertinent book figures of all its Federal branches and agencies and their operating subsidiaries shall be combined.

Comment Solicitation

The OCC requests comment on all aspects of this proposal.

The OCC requests comment on whether the proposal is written clearly and is easy to understand. On June 1, 1998, the President issued a Memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106–102 requires each Federal agency to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comment on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposal will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866 Determination

The Comptroller of the Currency has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Paperwork Reduction Act

Respondents are not required to respond to these collections of information unless they display a currently valid Office of Management and Budget (OMB) control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Alexander Hunt, Desk Officer, Office of Management and Budget, Paperwork Reduction Project (1557–0215), Washington, DC 20503, with copies to the Jessie Dunaway, Legislative and Regulatory Activities Division (1557–0215, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposal are found in 12 CFR 5.34. The likely respondents are Federal branches and agencies of foreign banks.

Estimated average annual burden hours per Federal branch and agency respondent: 1 hour

Estimated number of Federal branch and agency respondents: 20

Estimated total annual reporting burden: 20 hours

The OCC invites comment on:

(1) Whether the collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 5 of chapter I of Title 12 of the Code of Federal Regulations as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

2. In § 5.34:

A. Revise paragraph (c); and

B. Revise paragraphs (d)(2) and (d)(3) to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(c) *Scope.* This section sets forth authorized activities and application or

[1] *See Conference of State Bank Supervisors* v. *Conover*, 715 F.2d 604, 615 (D.C. Cir. 1983) (confirming the OCC's interpretation of how the national treatment principle applies).

[2] 12 CFR 4.7 generally provides that the OCC may conduct a full-scope, on-site examination of certain well capitalized and well managed Federal branches and agencies at least once during each 18-month period, rather than each 12-month period. The FRB applies the same capital and management requirements when determining whether a State branch or agency will be subject to the 18-month examination schedule. 12 CFR 211.26(c)(2).

notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39. This section applies to a Federal branch or agency that establishes or maintains any subsidiary that a national bank is authorized to establish or control under this section.

(d) * * *

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1) or, in the case of a Federal branch or agency, the capital level required by 12 CFR 4.7(b)(1)(iii).

(3) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) In the case of a national bank:

(A) The national bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(B) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(ii) In the case of a Federal branch or agency:

(A) The Federal branch or agency has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination; or

(B) In the case of a Federal branch or agency that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

* * * * *

Dated: November 28, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–30885 Filed 12–4–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 9

[Docket No. 00–30]

RIN 1557–AB79

Fiduciary Activities of National Banks

AGENCY: Office of the Comptroller of the Currency.

ACTION: Notice of proposed rulemaking; advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), through a Notice of Proposed Rulemaking (NPRM), is proposing to amend its regulations to codify OCC interpretations on national bank multi-state trust operations. The purpose of these changes is to provide enhanced guidance to national banks engaging in fiduciary activities. The OCC also is inviting comment, through an advance notice of proposed rulemaking (ANPR), on whether uniform standards of care generally applicable to national bank trustees' administration of private trusts and investment of private trust property should be established. The purpose of the ANPR is to determine the extent to which national banks that engage in fiduciary activities in more than one state experience problems in their administration as a result of complying with more than one state's laws and, if problems exist, to invite comment on ways in which the OCC could address these problems.

DATES: Comments must be received by February 5, 2001.

ADDRESSES: Send your comments to: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW, Mail Stop 1–5, Washington, DC 20219, Attention: Docket No. 00–30. Comments will be available for public inspection and photocopying at the same location. In addition, you may send comments by fax to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning the NPRM, contact Lisa Lintecum, Director, or Joel Miller, Senior Advisor, Asset Management, (202) 874–4447; Richard Cleva, Senior Counsel, Bank Activities and Structure, (202) 874–5300; Michele Meyer, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or William Dehnke, Assistant Director, Securities and Corporate Practices Division, (202) 874–5210.

SUPPLEMENTARY INFORMATION: This rulemaking consists of two parts. First, the OCC, through an NPRM, proposes to codify recent OCC interpretations in which we analyzed the extent to which a national bank may, in states other than its home state, (a) have trust offices or trust representative offices, (b) engage in fiduciary activities, and (c) market its fiduciary services to customers. Second, we invite comments, through an ANPR, on whether the OCC should propose to add a new section to part 9 that would establish national standards for the conduct of fiduciary activities by national banks. These ideas are explained more fully below.

NPRM: Codification of OCC Interpretations

The OCC has issued three interpretive letters [1] addressing multi-state fiduciary activities. In IL 695, we concluded that a national bank with its main office in one state may act in a fiduciary capacity in any other state that permits its own in-state fiduciaries to act in that capacity, including at trust offices in other states. In IL 866 and IL 872, we further clarified that a national bank that acts in a fiduciary capacity in one state may market its fiduciary services to customers in other states, solicit business from them, and act as fiduciary for customers located in other states. The proposal codifies these interpretations, which affect several sections in part 9, as explained in the following discussion.

Definitions (Revised § 9.2)

The second sentence in current § 9.2(g) provides that the extent of fiduciary powers is the same for out-of-state national banks as in-state national banks. This sentence is unnecessary in light of proposed new § 9.7, which sets forth the rules concerning multi-state fiduciary operations, and the proposal removes it.

Proposed §§ 9.2(j) and (k) define "trust office" and "trust representative office," respectively. These terms are used in proposed new § 9.7. A "trust office" is defined as an office of a national bank, other than a main office or a branch, at which the bank acts in a fiduciary capacity. A trust representative office is an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, but does not act in a fiduciary capacity. These ancillary activities might include, for instance, advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (*e.g.*, forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); or simply inspecting or maintaining custody of fiduciary assets.

Neither a trust office nor trust representative office is a branch for purposes of the McFadden Act, 12

[1] OCC Interpretive Letter No. 872 (Oct. 28, 1999) (IL 872); OCC Interpretive Letter No. 866 (Oct. 8, 1999) (IL 866); and OCC Interpretive Letter No. 695 (Dec. 8, 1995), *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81.010 (IL 695).

U.S.C. 36, which governs the location of national bank branches. In order to be considered a branch under the McFadden Act, a bank facility must perform at least one of the core banking functions of receiving deposits, paying checks, or lending money. 12 U.S.C. 36(j). The locational limitations of 12 U.S.C. 36 are not intended to reach all activities in which national banks are authorized to engage, but only core banking functions. *See Clarke* v. *Securities Industry Association*, 479 U.S. 388 (1987) (considering securities brokerage powers). Proposed §§ 9.2(j) and (k) therefore state that a trust office or a trust representative office is not a branch unless it is also an office at which deposits are received, or checks paid, or money lent.

Approval Requirements (Revised § 9.3)

Current § 9.3(a) provides that "a national bank may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26." Section 5.26(e)(5) currently provides that a national bank that has obtained the OCC's approval to exercise fiduciary powers does not need to obtain further approval to "commence fiduciary activities" in a state in addition to the state(s) described in the application for which it received OCC approval to exercise fiduciary powers. Instead, the bank is required only to provide written notice to the OCC within ten days after commencing expanded fiduciary activities.

As discussed in greater detail in the next section, proposed new § 9.7 codifies recent OCC interpretations clarifying national banks' authority to engage in multi-state fiduciary operations. Among other things, those interpretations, and new § 9.7, distinguish between acting in a fiduciary capacity and conducting other activities ancillary to the bank's fiduciary business. The proposal adds a new paragraph (b) to § 9.3 to clarify that a bank that has received OCC approval to exercise fiduciary powers does not need prior OCC approval each time it seeks to act in a fiduciary capacity in a new state or to conduct, in a new state, activities that are ancillary to its fiduciary business. Instead, paragraph (b) directs the bank to follow the notice procedures in § 5.26(e)(5). Current paragraph (b), which addresses the procedures for organizing a limited purpose trust bank, is redesignated as paragraph (c).

Multi-State Fiduciary Operations (New § 9.7)

The statutory authority for national banks to exercise fiduciary power is contained in 12 U.S.C. §§ 92a(a) and (b). Under section 92a(a), the Comptroller may permit national banks, when not in contravention of State or local law, to exercise eight expressly identified fiduciary powers and to act in any other fiduciary capacity in which State banks, trust companies, or other corporations that come into competition with national banks are permitted to act under the laws of the State in which the national bank is located. Under section 92a(b), whenever state law permits state institutions that compete with national banks to exercise any of the fiduciary powers listed in section 92a(a), a national bank's exercise of those powers is deemed not to be in contravention of State or local law under section 92a.

Sections 92a(a) and (b) do not expressly address the extent to which a national bank may conduct a multi-state fiduciary business. The OCC, however, has issued several interpretive letters that address multi-state fiduciary activities. In IL 695, we concluded that a national bank with its main office in one state may have trust offices in another state. We also concluded that the bank may engage in (a) any of the eight fiduciary capacities listed in 12 U.S.C. 92a(a), unless the state prohibits its own state banks, trust companies, and other corporations that compete with national banks in that state from acting in that capacity; and (b) any other fiduciary capacity the state permits for its own state banks, trust companies, or other corporations that compete with national banks in that state. This conclusion applies even in a state that has laws prohibiting or restricting out-of-state fiduciaries from providing fiduciary services or having trust offices within their state. As explained in the interpretive letter, section 92a(b) makes it clear that, if a state permits its own state institutions to exercise certain fiduciary powers, then national banks are authorized to exercise those fiduciary powers in that state.

Proposed § 9.7(a) codifies this interpretation. Pursuant to that section, a national bank may act in any of the eight fiduciary capacities listed in the statute in any state in which a national bank "is located," which we have interpreted for purposes of section 92a as the state in which a national bank acts in a fiduciary capacity. It may also act in any other fiduciary capacity that the state permits for its own state institutions, "when not in contravention of State or local law." Thus, a national bank may act in any of the eight capacities listed in the statute unless the state affirmatively prohibits that activity for national banks and for its own institutions. If state law is silent on any of these eight capacities, it is permitted for a national bank by virtue of the direct grant of authority in section 92a(a). Further, if a state permits its own state institutions to exercise additional fiduciary powers, then national banks are authorized to exercise those fiduciary powers in that state. The state may not limit them, because the terms of section 92a(b) expressly deem the fiduciary powers that a state permits to its own institutions not to be in contravention of state law. Thus, under proposed § 9.7(a)(2), a national bank acting in a fiduciary capacity in a particular state may act in each of the eight fiduciary capacities listed in section 92a(a) (unless the state expressly prohibits the capacity for its own state institutions) and in any other fiduciary capacities permitted for state banks, trust companies, or other corporations that compete with national banks.

In IL 866 and IL 872, the OCC clarified that a national bank that acts in a fiduciary capacity in a given state under the authority of section 92a is authorized to market its services to customers in other states, to solicit business from them, and to act as fiduciary for customers located in other states.[2] A state may not prohibit or restrict out-of-state national banks from marketing to, or performing fiduciary functions for, customers in that state. Therefore, proposed § 9.7(b) provides that a national bank may market its fiduciary services to, and act as fiduciary for, customers located in any state and provides that the bank may use a trust representative office for these purposes. Proposed § 9.7(c) expressly authorizes a national bank with fiduciary powers to establish a trust office or trust representative office in any state. IL 866 and IL 872 also addressed where a national bank is deemed to be "acting in a fiduciary capacity" for purposes of section 92a. As explained in those letters, in order to determine in which state a bank "acts in

[2] This approach is consistent with that taken by the Office of Thrift Supervision, as summarized in its letter dated August 8, 1996, from Carolyn J. Buck, Chief Counsel, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) § 83–102 (in which the OST concluded (1) that, for trust pruposes, a savings associaiton will not be deemed located in a state where its only trust-related activities are marketing its trust services and performing incidental duties pursuant to its appointment as testamentary trustee holding read estate (2) federal law would preeempt state laws that prohibit or restrict an out-of-state federal shift engaging in the state.

a fiduciary capacity" for section 92a purposes, one looks to the state in which the bank performs key fiduciary functions. These key activities include executing the documents that create the fiduciary relationship, accepting the fiduciary appointment, and making decisions regarding the investment or distribution of fiduciary assets. Proposed § 9.7(d) codifies this position and further provides that if these key fiduciary activities take place in more than one state, then the state in which the bank acts in a fiduciary capacity for section 92a purposes will be the state that the bank and customer designate from among those states. We invite comment on ways to simplify the determination of where a bank with multi-state operations is acting in a fiduciary capacity.

The state in which the bank acts in a fiduciary capacity for an account, in turn, determines—with respect to that account—which state laws apply in the provisions of section 92a that refer to state law.[3] Thus, if a national bank acts in a fiduciary capacity in State A for a customer located in State B, the bank looks to the laws of State A in applying the provisions of section 92a that refer to state law. These include not only state laws affecting permissible fiduciary capacities (referred to in sections 92a(a) and (b)) but also state laws used in setting operational requirements for national banks as corporate fiduciaries (referred to in sections 92a(f), (g) & (i)) and those that grant state banking authorities limited access to OCC examination reports relating to national bank trust departments (referred to in section 92a(c)). Therefore, proposed § 9.7(e) clarifies that the references in section 92a to state law mean the law of the state in which the bank acts in a fiduciary capacity. The laws of other states where the bank is not acting in a fiduciary capacity, including states in which the bank's customers may reside or in which trust assets may be located, are not made applicable to national banks by section 92a.

Deposit of Securities With State Authorities (Revised § 9.14)

Under section 92a(f) of the statute and current § 9.14 of our regulations, a national bank must comply with state laws that require corporations that act in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts. The proposal makes a technical amendment to § 9.14 to conform to the terminology used in proposed § 9.7. Instead of saying that a bank "administers trust assets" in paragraph (b) of that section, the proposed language states that a bank "acts in a fiduciary capacity." No substantive change is intended by this amendment.

The proposal also adds a second sentence to § 9.14(b) to clarify how a bank, which conducts fiduciary operations on a multi-state basis pursuant to proposed § 9.7, should compute the amount of deposit required by a state law that requires a deposit of securities on a basis other than assets (such as an amount equal to a percentage of capital). In such a state, the bank may compute the amount of deposit required on a pro-rated basis, according to the proportion of fiduciary assets for which the bank is acting in a fiduciary capacity at offices located in that state.

Fiduciary Powers (Revised § 5.26)

Consistent with the proposed changes discussed above, the proposal also would amend 12 CFR 5.26(e) to clarify that a national bank that plans to act in a fiduciary capacity in a state in addition to the state described in the application for fiduciary powers that the OCC has approved need only give after-the-fact notice of having commenced acting in a fiduciary capacity in a new state. The proposal revises current § 5.26(e)(5) so that it reflects the distinction between acting in a fiduciary capacity and conducting activities ancillary to the bank's fiduciary business. The ten-day, after the fact notice requirement would apply only to acting in a fiduciary capacity.

ANPR: Uniform Standards Governing Fiduciary Activities

Twelve U.S.C. 92a, which authorizes national banks to act as fiduciaries, also governs the exercise of their fiduciary powers in certain respects. For example, the statute requires national banks to segregate the assets they hold in a fiduciary capacity from the "general assets" of the bank and to keep separate records of the transactions they engage in as fiduciary.[4] The statute does not set out general standards of care that apply to national banks acting in a fiduciary capacity; however, it expressly authorizes the OCC to issue regulations to enforce compliance with section 92a and "the proper exercise of the powers" that the statute grants.[5] Thus, the statutory scheme governing national bank fiduciary powers specifically permits the Comptroller to promulgate regulations necessary to the proper exercise of national bank fiduciary powers and to address any areas unique to national banks.[6]

Trustees are responsible for performing a core set of fundamental duties when exercising the powers permitted under section 92a. These include the duty to administer the trust according to its terms; the duty of loyalty; the duty to be impartial where there is more than one beneficiary of a trust; the duty to be prudent with trust assets; and so on. These duties are embodied in most state trust codes, but the precise formulation and the elements of the applicable standards vary from state to state, causing a national bank that conducts an interstate fiduciary business to continually monitor the differing state laws and to develop different plans for compliance in each state where it operates.

One example of where state laws may differ is the investment management standard that applies to trustees. Trustees have always had the duty to manage trust assets prudently. In the first half of the twentieth century, most states enacted lists of specific types of investments that trustees were permitted to make, and trustees were required to assess the prudence of each individual investment in isolation. More recently, however, many states have applied a "prudent investor" rule, which focuses on the need to manage risk in the portfolio by balancing the role of a single asset or group of assets against that of the overall portfolio. Examples of other areas where the applicable standards might vary from one jurisdiction to another include the laws governing reasonableness of compensation of trustees; duties regarding trust accounting; the termination, modification, or reform of a trust; records retention; and purchases by a bank, in its capacity as trustee, of shares of proprietary mutual funds.

The lack of uniformity in applicable fiduciary standards may become more burdensome in light of the increase in national banks' interstate fiduciary operations following the enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and in light of new technologies that greatly facilitate the marketing and delivery of fiduciary services to customers nationwide. National banks not only have trust customers and conduct fiduciary activities in many different states, but they also act as trustee for trusts governed by the laws of many different states.

For these reasons, in addition to inviting comments on the proposed amendments to part 9 as discussed in the previous portion of this notice, the OCC invites comments on whether we should adopt uniform standards of care governing fiduciary activities of national banks. The OCC is not proposing specific standards at this point; rather, we seek the views of interested persons on the need for such standards and, if there is a need, on what the standards should contain.

The OCC contemplates that any uniform standards would apply only to private trusts. As under current law, we envision that the uniform federal standard could be modified by the terms of the trust, but not by contrary or inconsistent state law.

The OCC invites comments on whether uniform, national standards in the areas noted (or other areas) would promote the efficient exercise of a national bank's fiduciary powers, consistent with the fulfillment of its fiduciary obligations. Specifically, the OCC seeks comments on the following:

- Does compliance with multiple state laws that establish separate fiduciary standards of care present a significant burden? If so, please identify the principal sources of that burden.
- How would a bank's administration of trusts or estates differ if there were a federal law creating a uniform standard of care?
- If the OCC were to adopt uniform standards, should those standards be modeled after the Uniform Trust Act prepared by the National Conference of Commissioners on Uniform State Laws? If so, which sections should we adopt?
- What other sources should the OCC rely upon in developing uniform, nationwide standards of care?
- Do most states already have substantially similar laws governing trust administration and investment of trust assets? Is adoption of the model uniform laws by additional states likely?
- What effect have the OCC's recent opinions on the applicability of state law to interstate fiduciary activities had on national banks' interstate fiduciary business?
- How could a federal standard work when there are specific state statutes (such as those governing the investment by trustees in proprietary mutual funds) that make investment explicitly subject to state laws?
- How should the OCC resolve issues that arise about the meaning or applicability of any uniform standards it issues? What would be the effect of a uniform standard on the common law that has developed over time in connection with state fiduciary standards?
- If uniform standards are adopted, how should the OCC manage the transition from the existing regulatory structure? Should new standards be applied only to fiduciary relationships formed after a date certain?
- Could uniform standards impose unanticipated burdens on national banks? If so, what would those burdens be? What could the OCC do to reduce the burden?
- Even if a uniform national approach to fiduciary standards proves beneficial over time, a change in applicable fiduciary standards may create near-term uncertainty about what rules govern national banks' fiduciary activities. What could the OCC do to reduce uncertainty, and any accompanying litigation risk, that may result from our adoption of uniform standards?
- Should the OCC adopt a uniform federal choice of law rule for determining what law governs the fiduciary relationship in the absence of a provision in the trust instrument specifying the governing law? This would address questions of applicable law that are not resolved by operation of section 92a.

This ANPR reflects our ongoing commitment to review and reevaluate our regulations periodically to ensure that they encourage national banks' efficiency and competitiveness, consistent with safety and soundness and fair treatment of bank customers. Based on the comments we receive, we may propose specific revisions to our rules for comment in a later rulemaking.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The NPRM codifies caselaw and OCC interpretations, but adds no new requirements. Similarly, the ANPR merely invites comments on whether uniform federal standards would be appropriate. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this rulemaking is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. For the reasons outlined above, the OCC has determined that this rulemaking will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has Federalism

[3] This is to be contrasted with the laws governing the trust itself, which are determined by the trust instrument and, in some instances, by choice-of-law rules. For example, if a national bank is acting in a fiduciary capacity in State A and is a trustee for a trust for which the trust instrument says the laws of State B govern, then the laws governing the administration of the trust (for example, the standard of care to be applied) will be those of State B.

[4] 12 U.S.C. 92(a).

[5] 12 U.S.C. 92a(j). *See also id.* at 93a.

Section 92a(j) states "The Comptroller of the Currency is authorized and empowered to promulgate such regulations as he may deem necessary to enforce compliance with the provisions of this section *and the proper exercise of the powers granted therein.*" (Emphasis added.)

[6] The view that fiduciary rules applicable to a national bank fiduciary may be affected by Federal law is supported by the legislative history of section 92a. When Congress enacted the precursor to section 92a in 1913, it authorized the Federal Reserve Board (which regulated national bank fiduciary activities until 1962, when Congress transferred that authority to the OCC) to grant national banks that right to act in a fiduciary capacity "under such rules and regulations as the board may prescribe." Pub. L. 63–43 11(k), 38 Stat. 251 (1913).

implications and that preempts State law, the Order imposes certain consultation requirements with State and local officials; requires publication in the preamble of a federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted to us by State and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

Certain provisions of this proposal and advance notice, including uniform federal standards if they were to be adopted, may have Federalism implications, as that term is used in the Order, or may be found by a Federal court to preempt state law. Therefore, before promulgating a final regulation based on this proposal, the OCC will, to the extent practicable and permitted by law, seek consultation with State and local officials, include a Federalism summary impact statement in the preamble to the final rule, and make available to the Director of OMB any written communications we receive from State or local officials.

List of Subjects in 12 CFR Parts 5 and 9

Banks, banking, Insurance, National banks, Trusts and trustees.

Authority and Issuance

For the reasons set forth in the preamble, part 5 and part 9 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

Subpart B—Initial Activities

2. Paragraph (e)(5) of § 5.26 is revised to read as follows:

§ 5.26 Fiduciary powers.

* * * * *

(e) * * *

(5) *Notice of fiduciary activities in additional states.* No further application under this section is required when a national bank with existing OCC approval to exercise fiduciary powers plans to act in a fiduciary capacity, or to conduct activities ancillary to its fiduciary business, in a state in addition to the state described in the application for fiduciary powers that the OCC has approved. Instead, unless the bank provides notice through other means (such as a merger application), the bank shall provide written notice to the OCC no later than ten days after it begins to act in a fiduciary capacity in the new state. The written notice must identify the new state or states involved, identify the fiduciary activities to be conducted, and describe the extent to which the activities differ materially from the fiduciary activities that the bank was previously authorized to conduct.

* * * * *

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

1. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

2. Section 9.2 is revised by removing the second sentence in paragraph (g) and adding new paragraphs (j) and (k) as follows:

§ 9.2 Definitions.

* * * * *

(j) *Trust office* means an office of a national bank, other than a main office or a branch, at which the bank acts in a fiduciary capacity. Pursuant to 12 U.S.C. 36(j), a trust office is not a "branch" for purposes of 12 U.S.C. 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

(k) *Trust representative office* means an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, but does not act in a fiduciary capacity. Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (*e.g.*, forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); or inspecting or maintaining custody of fiduciary assets. Pursuant to 12 U.S.C. 36(j), a trust representative office is not a "branch" for purposes of 12 U.S.C. 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

3. Section 9.3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 9.3 Approval requirements.

(b) A national bank that has obtained the OCC's approval to exercise fiduciary powers is not required to obtain the OCC's prior approval to act in a fiduciary capacity in a new state or to conduct, in a new state, activities that are ancillary to its fiduciary business. Instead, the national bank must follow the notice procedures prescribed by 12 CFR 5.26(e).

(c) A person seeking approval to organize a special-purpose national bank limited to fiduciary powers shall file an application with the OCC pursuant to 12 CFR 5.20.

4. A new § 9.7 is added to read as follows:

§ 9.7 Multi-state fiduciary operations.

(a) *Acting in a fiduciary capacity in more than one state.* A national bank with fiduciary powers may act in a fiduciary capacity in different states. In each state in which a national bank acts in a fiduciary capacity, the bank may act in:

(1) Any of the eight fiduciary capacities listed in 12 U.S.C. 92a(a), unless the state prohibits its own state banks, trust companies, and other corporations that compete with national banks in that state from acting in that capacity; and

(2) Any other fiduciary capacity the state permits for its own state banks, trust companies, or other corporations that compete with national banks in that state.

(b) *Serving customers in more than one state.* While acting in a fiduciary capacity in one state, a national bank may market its fiduciary services to, and act as fiduciary for, customers located in any state. The bank may use a trust representative office for this purpose.

(c) *Offices in more than one state.* A national bank with fiduciary powers may establish trust offices or trust representative offices in any state.

(d) *Acting in a fiduciary capacity.* For each fiduciary relationship, a national bank acts in a fiduciary capacity in a state in which it accepts the fiduciary appointment, executes the documents that create the fiduciary relationship, or makes discretionary decisions regarding the investment or distribution of fiduciary assets. If these activities take place in more than one state, then the state in which the bank acts in a fiduciary capacity for section 92a purposes will be the state that the bank and customer designate from among those states.

(e) *Application of state law.* (1) *State laws used in section 92a.* The state trust laws that apply to a national bank's fiduciary activities by operation of the provisions of 12 U.S.C. 92a that refer to state law are the laws of the state in which the bank acts in a fiduciary capacity.

(2) *Other state laws.* Section 92a specifically identifies which state laws regulating the operations of bank trust departments, trust companies, or other corporate fiduciaries are applicable to national banks. Other state laws regulating such operations are not applicable to national banks.

5. Section 9.14(b) is revised to read as follows:

§ 9.14 Deposit of securities with state authorities

* * * * *

(b) *Acting in a fiduciary capacity in more than one state.* If a national bank acts in a fiduciary capacity in more than one state, the bank may compute the amount of securities that are required to be deposited for each state on the basis of the amount of assets for which the bank is acting in a fiduciary capacity at offices located in that state. If state law requires a deposit of securities on a basis other than assets (*e.g.*, a requirement to deposit a fixed amount or an amount equal to a percentage of capital), the bank may compute the amount of deposit required in that state on a pro-rated basis, according to the proportion of fiduciary assets for which the bank is acting in a fiduciary capacity at offices located in that state.

Dated: October 31, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–30844 Filed 12–4–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require identifying the part and serial numbers of the pressure reducing valve on each air pressurization unit, testing pressure reducing valves and air pressurization units having affected serial numbers, and replacing faulty valves or units with new parts. This action is necessary to prevent the simultaneous failure of two air pressurization units, which could result in loss of three hydraulic circuits and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–118–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–NM–118–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that air pressurization units ("Pressurization Units, Air" or "PUA") have failed on three Model A330 series airplanes. Two potential failure modes, linked to defects in the seal quality of the internal pressure reducing valve, have been identified on these air pressurization units. The simultaneous failure of two units could result in the loss of three hydraulic circuits and consequent reduced controllability of the airplane.

Similar Model

The same air pressurization units are installed on Model A330 and A340 series airplanes. Therefore, Model A340 series airplanes are also subject to the unsafe condition identified by this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–29A3073 and A340–29A4058, both Revision 01, including Appendix 01, dated April 10, 2000. The service bulletins describe procedures for a one-time special detailed visual inspection to identify the part and serial numbers of the pressure reducing valve on each air pressurization unit, testing affected valves and units, repairing a faulty valve by replacing either the valve or the entire unit with a new part, and reidentifying functional air pressurization units. These procedures are intended to detect air pressurization units that might contain defective pressure reducing valves. Replacing defective valves or units improves the reliability of the reservoir's pressurization system. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2000–138–118(B) and 2000–139–143(B), both dated March 22, 2000, in order to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletins refer to Le Bozec Filtration & Systems Service Bulletin 4020Q8–29–03, dated December 17, 1999, as an additional source of service information for accomplishment of the actions specified by this proposed AD.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to inspect it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AD on U.S. operators is estimated to be $60 per airplane. However, the FAA has been advised that all affected airplanes currently on the U.S. Register are in compliance with the actions of this proposed AD.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–118–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; fitted with any air pressurization unit ("Pressurization Unit, Air" or "PUA") having part number (P/N) 4020 Q8–3.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the simultaneous failure of two air pressurization units, which could result in loss of three hydraulic circuits and consequent reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 500 flight hours after the effective date of this AD, perform a one-time detailed visual inspection to determine the P/N and serial number (S/N) of the pressure reducing valve on each air pressurization unit, per Airbus Service Bulletin A330–29A3073 (for Model A330 series airplanes) or A340–29A4058 (for Model A340 series airplanes), both Revision 01, including Appendix 01, dated April 10, 2000; as applicable.

(1) If no P/N or S/N is identified as affected equipment per the applicable service bulletin, you have fulfilled the requirements of this AD.

(2) If any P/N or S/N is identified as affected equipment per the applicable service bulletin: Prior to further flight, perform applicable tests and repairs in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: An inspection per Airbus Service Bulletin A330–29A3073, dated January 18, 2000 (for Model A330 series airplanes), or A340–29A4058, dated January 20, 2000 (for Model A340 series airplanes), is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 4: The Airbus service bulletins refer to Le Bozec Filtration & Systems Service Bulletin 4020Q8–29–03, dated December 17, 1999, as an additional source of service information for accomplishment of the actions specified by this AD.

Spares

(b) As of the effective date of this AD, you may not install any air pressurization unit having P/N 4020 Q8–3 on any airplane, unless all actions have been accomplished for that part in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in French airworthiness directives 2000–138–118(B) and 2000–139–143(B), both dated March 22, 2000.

Issued in Renton, Washington, on November 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 00–30951 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that currently requires repetitive inspections to detect loose or migrated levers of the elevator cable tension regulators, and replacement of the regulator assembly with a new assembly, if necessary. This action would require modification of the elevator cable tension regulator lever assembly, terminating the repetitive inspections. The proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the elevator cable tension regulator from becoming detached from the splined shaft of the assembly, which could result in difficulty adjusting the elevators, leading to reduced controllability of the airplane.

DATES: Comments must be received by January 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–224–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–224–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

2000–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 17, 1999, the FAA issued AD 99–26–18, amendment 39–11478 (64 FR 72531, December 28, 1999) applicable to all British Aerospace (Jetstream) Model 4101 airplanes, to require repetitive inspections to detect loose or migrated levers of the elevator cable tension regulators, and replacement of the regulator assembly with a new assembly, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct loose or migrated regulator levers of the elevator cable tension regulators, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–26–18, the FAA indicated that the action required by that AD was considered "interim action" until final action was identified, at which time further rulemaking might be considered. Since the issuance of AD 99–26–18, British Aerospace has issued Jetstream Service Bulletin J41–27–059, dated May 31, 2000, which describes procedures for modification of the elevator cable tension regulator assembly, which eliminates the need for repetitive inspections of the regulator assembly. The modification involves removing the existing bolt, nut, cotter pin, and washers and installing a new locking clip, sleeves, bolt, nut, cotter pin, and washers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Jetstream Service Bulletin J41–27–059 refers to Pacific Scientific Service Bulletin 25–1128, dated April 15, 2000, as an additional source of service information for accomplishment of the modification of the elevator cable tension regulators. Pacific Scientific Company has designed a secondary locking clip, which, when installed under the bolt, will prevent the elevator cable tension regulator from becoming detached from the splined shaft of the regulator assembly.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has classified the Jetstream service bulletin as mandatory and issued British airworthiness directive 006–05–2000 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–26–18 to continue to require inspection of the elevator cable tension regulator lever assembly and to require modification of the elevator cable tension regulators. The modification would be required to be accomplished in accordance with Jetstream Service Bulletin J41–27–059.

Cost Impact

There are approximately 57 airplanes of U.S. registry that would be affected by this proposed AD. The repetitive inspection that is currently required by AD 99–26–18 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The modification that is proposed in this AD would take approximately 6 work hours per airplane to accomplish at an average labor rate of $60 per work hour. There would be no charge for required parts. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $20,520, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11478 (64 FR 72531, December 28, 1999), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited British Aerospace (Commercial Aircraft) Limited]: Docket 2000–NM–224–AD. Supersedes AD 99–26–18, Amendment 39–11478.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the elevator cable tension regulators from becoming detached from the splined shaft of the assembly, which could result in difficulty adjusting the elevators, leading to reduced controllability of the airplane, accomplish the following:

Restatement of Certain Actions Required by AD 99–26–18

Inspection

(a) Within 7 weeks after February 1, 2000 (the effective date of AD 99–26–18, amendment 39–11478), perform a detailed visual inspection of the elevator cable tension regulator lever assembly to detect discrepancies (including looseness and migration along the splines of the elevator cable tension regulator assembly), in accordance with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999. Repeat the inspection thereafter at intervals not to exceed 1,500 flight hours until accomplishment of paragraph (c) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

New Actions Required by This AD

Modification

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, perform the requirements of paragraph (c) of this AD.

(c) Except as required by paragraph (b) of this AD: Within 12 months after the effective date of this AD, modify the elevator cable tension regulators in accordance with Jetstream Service Bulletin J41–27–059, dated May 31, 2000.

(d) As of the effective date of this AD, no person shall install any elevator cable tension regulator lever assembly, unless that assembly has been modified in accordance with the requirements of paragraph (c) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directive 006–05–2000.

Issued in Renton, Washington, on November 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30950 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 767 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and 767 series airplanes. This proposal would require modification of the core cowl assemblies of the engines. This action is necessary to prevent failure of the core cowl latches during an engine fire, and consequent in-flight separation of an engine core cowl and its strut fire barrier from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–275–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–275–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report indicating an in-flight engine fire occurred on a Model 747–400 series airplane powered by General Electric CF6–80C2 series engines. The fire was caused by a fuel leak in the Integrated Drive Generator fuel/oil heat exchanger and was ignited by fuel vapors coming in contact with the hot turbine case. The fire was located directly under the core cowls and caused significant damage to the cowls, which weakened the aluminum structure supporting the steel latches that hold the core cowls closed. Opening of the core cowls during an engine fire breaches the engine fire containment design features and could allow the engine fire to spread to the strut and wing. (Model 767 series airplanes powered by General Electric CF6–80C2 series engines have a similar design.) Such conditions, if not corrected, could result in separation of an engine core cowl and its strut fire barrier from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletins 747–71–2285 (for Model 747–400 series airplanes) and 767–71–0088 (for Model 767 series airplanes), both dated October 8, 1998, which describe procedures for modification of the left- and right-hand core cowl assemblies of the engines. The modification includes, but is not limited to, replacement of the aluminum forward and extension frames located between the forward hinge and the latch in each core cowl with inconel frames that provide fireproof reinforcement to the core cowl latches. The Boeing service bulletins reference ROHR Service Bulletin TBC/80C2–NAC–71–028, dated August 1, 1998, as an additional source of service information for accomplishment of the modification. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Service Bulletins and This Proposed AD

Operators should note that this proposed AD would require modification of the core cowl assemblies of the engines to be accomplished within 24 months after the effective date of this AD. The service bulletins recommend that this modification should be accomplished "as soon as manpower and facilities are available." But in developing an appropriate compliance time for the proposed modification, the FAA considered not only the manufacturer's recommendation and the degree of urgency associated with addressing the subject unsafe condition, but also the average utilization of the affected fleet and the time necessary to perform the modification. The FAA has determined that 24 months represents an appropriate interval of time allowable wherein the modification can be accomplished during scheduled airplane maintenance and an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. The FAA also finds that such a compliance time will not adversely affect the safety of the affected airplanes.

Cost Impact

There are approximately 563 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 14 Model 747–400 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 168 work hours (42 per engine) per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $84,732 ($21,183 per engine) per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $1,327,368, or $94,812 per airplane.

The FAA estimates that 64 Model 767 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 84 work hours (42 per engine) per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $42,366 ($21,183 per engine) per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,033,984 or $47,406 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–275–AD.

Applicability: Model 747–400 and 767 series airplanes equipped with General Electric CF6–80C2 series engines, certificated in any category; as listed in Boeing Service Bulletins 747–71–2285 or 767–71–0088, both dated October 8, 1998.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the core cowl latches during an engine fire, and consequent in-flight separation of an engine core cowl and its strut fire barrier from the airplane, accomplish the following:

Modification

(a) Within 24 months after the effective date of this AD: Modify the left- and right-hand core cowl assemblies of the engines per the Accomplishment Instructions of Boeing Service Bulletin 747–71–2285 (for Model 747–400 series airplanes) or 767–71–0088 (for Model 767 series airplanes), both dated October 8, 1998.

Note 2: The Boeing service bulletins reference ROHR Service Bulletin TBC/80C2–NAC–71–028, dated August 1, 1998, as an additional source of service information for accomplishment of the modification.

Spares

(b) As of 6 months after the effective date of this AD, no one may install an aluminum core cowl assembly, part number 224–2301–513 (left-hand) or 224–2302–539 (right-hand), on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector or Principal Maintenance Inspector, as applicable, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued per §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 29, 2000.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30949 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. Models SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes. The earlier NPRM would have required you to replace the brake shuttle valves with parts of improved design and install a shield over the hydraulic lines. The earlier NPRM resulted from a report of a wheel brake system malfunction caused by a faulty brake shuttle valve on an affected airplane. Evaluation of the public comments on the NPRM reveals the need to also include airplanes that have an anti-skid system in the Applicability of the proposed AD. In addition, we are proposing a requirement of replacing the rubber fuel hose with a metal device for the SA226 series airplanes. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive comments on or before January 11, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory

documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA received a report of an accident involving a Fairchild Model SA226–TC airplane where the flight crew lost control of the airplane at low altitude during the final approach for landing. Prior to the accident, the flight crew reported a loss of hydraulic pressure and a fire on the left side of the airplane.

Investigation of this accident indicates the following:

—The flight crew applied right rudder power during the takeoff roll to compensate for a dragging and overheated left wheel brake and then raised the landing gear into the wheel wells;
—The overheated left wheel brake ignited the tires and the hydraulic fluid; and
—The resultant fire burned the rubber fuel crossover hose and resulted in fuel leakage with a consequent fuel fire.

The accident investigation shows that the brake shuttle valve may have caused the left wheel brake to drag and overheat.

What Are the Consequences if the Condition Is Not Corrected?

Original design brake shuttle valves, if not replaced with improved design valves, could cause the wheel brakes to drag and overheat. This could result in hydraulic or fuel line damage if the overheated brake assembly is retracted into the main wheel wells. A consequent fire could occur if the hydraulic or fuel lines ruptured.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 3, 2000 (65 FR 47701). The NPRM proposed to replace each brake shuttle valve with a part number (P/N) MS28767–4 brake shuttle valve and install a shield over the hydraulic lines.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Make the AD Apply to Airplanes Equipped With Anti-Skid Systems

What Is the Commenter's Concern?

One commenter recommends that the proposed AD apply to certain SA226 and SA227 series airplane regardless of whether they are equipped with anti-skid systems. The NPRM proposed to exempt those airplanes with an anti-skid system installed. The commenter states that the related service bulletins recommend the installation of Kevlar blankets around the hydraulic lines for all airplanes so airplanes with anti-skid systems should be included in order to protect the hydraulic lines.

What Is FAA's Response to the Concern?

After re-evaluating all information related to this issue, we concur that the AD action should also apply to airplanes equipped with anti-skid systems.

We are incorporating this change into the proposed rule.

Comment Issue No. 2: Remove all Reference to "Parking Brake Shuttle Valves" From the AD

What Is the Commenter's Concern?

One commenter requests that FAA remove all reference to "parking brake shuttle valves" from the proposed AD because SA226 and SA227 series airplanes do not have such equipment.

What Is FAA's Response to the Concern?

The FAA concurs. The correct terminology is "brake shuttle valves."

We are incorporating this change into the proposed rule.

Other Information Since Issuance of the NPRM

Is There Additional Information Available on This Subject?

Fairchild Aircraft Service Bulletin No. 226–26–003 specifies replacing the rubber fuel hose with a metal device. When we issued the NPRM, parts were not available for this replacement. Since that time, Fairchild has stocked enough parts for this replacement.

We will now address the fuel hose replacement in the proposed AD.

The FAA's Determination

What Has FAA Decided?

After careful review of all available information related to the subject presented above, we have determined that:

—The AD action should also affect airplanes equipped with anti-skid systems;
—The requirement of replacing the rubber fuel hose with a metal device for the SA226 series airplanes should be added to the proposed AD; and
—AD action should be taken to correct potential brake shuttle valve problems, which could cause the brake assembly to drag and overheat. Hydraulic or fuel line damage could then occur if the overheated brake assembly is retracted into the main wheel well, with a consequent fire if the hydraulic or fuel lines ruptured.

The Supplemental NPRM

How Will the Changes to the NPRM Impact the Public?

Proposing that the NPRM apply to airplanes equipped with anti-skid systems and proposing to require replacement of the rubber fuel hose with a metal device on SA226 series airplanes present actions that go beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

What Are the Provisions of the Supplemental NPRM?

The proposed AD would require you to:

—Replace the brake shuttle valves with parts of improved design (except on airplanes with an anti-skid/power brake system);
—Install a shield over the hydraulic lines; and
—Replace the rubber fuel hose with a metal device on the SA226 series airplanes.

What Document Should I Use To Accomplish These Actions?

Accomplishment of the proposed actions would be in accordance with the following, as applicable:

Affected pages	Revision level	Date
—Fairchild Aircraft Service Bulletin No. 226–26–003, which incorporates the following pages		
1, 2, 4, 6, 8, 9, 10, 11, and 14	Original issue	March 1, 2000.
3, 5, 12, and 13	Revision 1	June 27, 2000.
7 and 15	Revision 2	October 2, 2000.
—Fairchild Aircraft Service Bulletin No. 227–26–002, which incorporates the following pages		
1, 2, 8, and 9	Original issue	March 1, 2000.
7	Revision 1	June 27, 2000.
3, 4, 5, and 6	Revision 2	October 2, 2000.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

The FAA estimates that 2,344 airplanes in the U.S. registry would be affected by the proposed AD.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed installations and replacement.

Labor cost	Parts cost	Total cost per airplane
For SA226 Series Airplanes		
65 workhours × $60 per hour = $3,900	$3,431 per airplane	$7,331 per airplane.
For SA227 Series Airplanes		
55 workhours × $60 per hour = $3,300	$1,369 per airplane	$4,669 per airplane.

Compliance Time of the Proposed AD

What Is the Compliance Time of the Proposed AD?

The compliance time of this proposed AD is at whichever of the following that occurs later:

—Within 500 hours time-in-service (TIS) after the effective date of this proposed AD; or
—Within 6 months after the effective date of this proposed AD.

Why Is the Compliance Time of the Proposed AD Presented in Both Hours TIS and Calendar Time?

The affected airplanes are used in both general aviation and commuter operations. Those commuter operators may accumulate 500 hours TIS on the airplane in less than 2 months and many owners have numerous affected airplanes in their fleets. We have determined that the dual compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and accomplish the actions in this proposed AD; and
—Assures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

The FAA has determined that the proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if adopted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it at the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety,

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

Fairchild Aircraft, Inc.: Docket No. 2000–CE–28–AD

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are certificated in any category;

Model	Serial Nos.
SA226–T	T201 through T248
SA226–T(A)	T(A)249 through T(A)–291
SA226–T(B)	T(B) 276 and T(B) 292 through T(B) 417
SA226–AT	AT001 through AT074
SA226–TC	TC201 through TC419
SA227–TT	TT421 through TT555
SA227–TT(300)	TT447, TT465, TT471, TT483, TT512, TT518, TT521, TT527, TT529, and 536
SA227–AT	AT421, AT423 through AT631, and AT695
SA227–AC	AC406, AC415, AC416, and AC420 through AC599

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD. The AD applies to any airplane with or without an anti-skid/power brake system installed.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct potential brake shuttle valve problems, which could cause the brake assembly to drag and overheat. Hydraulic or fuel line damage could then occur if the overheated brake assembly is retracted into the main wheel well, with a consequent fire if the hydraulic or fuel lines ruptured.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes except those equipped with an anti-skid/power brake system, replace each brake shuttle valve with part number (P/N) MS28767–4 brake shuttle valve (or FAA-approved equivalent part number).	Within 500 hours time-in-service (TIS) after the effective date of this AD or within 6 months after the effective date of this AD, whichever occurs later.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin No. 226–26–003, or Fairchild Aircraft Service Bulletin No. 227–26–002, as applicable.
(2) For all affected airplanes, install a shield over the hydraulic lines.	Within 500 hours time-in-service (TIS) after the effective date of this AD or within 6 months after the effective date of this AD, whichever occurs later.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin No. 226–26–003, or Fairchild Aircraft Service Bulletin No. 227–26–002, as applicable.
(3) For all airplane models within the SA226 series, replace the rubber fuel hose with a metal device.	Within 500 hours time-in-service (TIS) after the effective date of this AD or within 6 months after the effective date of this AD, whichever occurs later.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin No. 226–26–003.
(4) Do not install any brake shuttle valve that is not a P/N MS28767–4 brake shuttle valve (or FAA-approved equivalent part number) or a fuel hose that is made out of rubber.	As of the effective date of this AD	Not Applicable.

(e) *Can I utilize different revisions to the affected service bulletins?* The service bulletins required to accomplish this action incorporate the following pages:

Affected pages	Revision level	Date
(1) Fairchild Aircraft Service Bulletin No. 226–26–003		
1, 2, 4, 6, 8, 9, 10, 11, and 14	Original Issue	March 1, 2000.
3, 5, 12, and 13	Revision 1	June 27, 2000.
7 and 15	Revision 2	October 2, 2000.
(2) Fairchild Aircraft Service Bulletin No. 227–26–002		
1, 2, 8, and 9	Original Issue	March 1, 2000.
7	Revision 1	June 27, 2000.
3, 4, 5, and 6	Revision 2	October 2, 2000.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 28, 2000.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30948 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–87–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a supplemental notice of proposed rulemaking (NPRM) that would have applied to all Bombardier Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. The NPRM would have superseded both AD 80–13–11 R2 and AD 80–03–08, which currently require repetitive inspections of the flight control rods for cracks on the above-referenced airplanes, with replacement of any cracked flight control rods. The NPRM would have required replacement of these flight control rods with improved design parts and would have reduced the need for the number of repetitions of the inspections. After evaluating all the comments received on the proposal, we have determined that, since the need for repetitive inspections is not eliminated by the replacements, the requirements of the current AD's should stand. We have not received any recent service problems regarding this subject on the affected airplanes. For these reasons, we are withdrawing the supplemental NPRM.

ADDRESSES: You may look at information related to this action at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 91–CE–87–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Discussion

What Action Hos FAA Taken to Date?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Bombardier Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. The proposal was published in the **Federal Register** as a supplemental NPRM on April 1, 1997 (62 FR 15443).

The NPRM proposed to supersede both AD 80–13–11 R2 and AD 80–03–08, which currently require repetitive inspections of the flight control rods for cracks on the above-referenced airplanes, with replacement of any cracked flight control rods. The NPRM would have required replacement of these flight control rods with improved design parts and would have reduced the need for the number of repetitions of the inspections.

Was the Public Invited To Comment?

The FAA invited interested persons to participate in the making of this amendment. The comments, in most part, reflect the public's desire to have FAA withdraw the proposal and let the current AD's stand. The reason for this is because the need for repetitive inspections is not eliminated by replacing flight control rods with improved design parts.

The FAA's Determination

What Is FAA's Final Determination on This Issue?

After re-evaluating all information related to this subject, we have determined that:

—The unsafe condition is currently addressed through AD 80–13–11 R2 and AD 80–03–08;

—Because we have not received any recent service problems regarding this subject on the affected airplanes, there is no need for the supplemental NPRM, Docket No. 91–CE–87–AD; and

—We should withdraw the supplemental NPRM.

Withdrawal of this action does not prevent us from taking or commit us to any future action.

Regulatory Impact

Does This Proposed AD Withdrawal Involve a Significant Rule or Regulatory Action?

Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws the supplemental notice of proposed rulemaking, Docket No. 91–CE–87–AD, published in the **Federal Register** on April 1, 1997 (62 FR 15443).

Issued in Kansas City, Missouri, on November 28, 2000.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30947 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94P–0036]

Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to January 19, 2001, the comment period for a document published in the **Federal Register** of November 17, 1999 (64 FR 62746). In that document, FDA proposed to amend its regulations on nutrition labeling to require that the amount of *trans* fatty acids present in a food, including dietary supplements, be included in the amount and percent Daily Value declared for saturated fatty acids. FDA also proposed that, wherever saturated fat limits are placed on nutrient content claims, health claims, or disclosure or disqualifying levels, the amount of *trans* fatty acids be limited as well. Finally, FDA proposed to define the nutrient content claim "*trans* fat free." FDA is taking this action in response to comments on the November 17, 1999, proposal to ensure that interested parties have an adequate opportunity to comment on the issue of whether the agency should define the nutrient content claims "reduced *trans* fat" and "reduced saturated and *trans* fats."

DATES: Submit written comments on nutrient content claims for "reduced *trans* fat" and "reduced saturated and *trans* fats" by January 19, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–832), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5587.

SUPPLEMENTARY INFORMATION:

I. Reopening of Comment Period

In the **Federal Register** of November 17, 1999 (64 FR 62746), FDA (we) proposed to amend our regulations on nutrition labeling to require that the amount of *trans* fatty acids present in a food, including dietary supplements, be included in the amount and percent Daily Value declared for saturated fatty acids. We also proposed that, wherever saturated fat limits are placed on nutrient content claims, health claims, or disclosure or disqualifying levels, the amount of *trans* fatty acids be limited as well. Finally, we proposed to define the nutrient content claim "*trans* fat free." In that document, we requested comments on the proposal by February 15, 2000. In the **Federal Register** of February 16, 2000 (65 FR 7806), we extended the comment period to April 17, 2000.

Ten comments responding to the proposal (see Docket 94P–0036, Comment numbers 1776, 2113, 2117, 2125, 2128, 2133, 2135, 2138, 2139, and EMC 475) requested that the final rule define the nutrient content claim "reduced *trans* fat." We had not proposed a definition for this claim, and had suggested that persons who believe that such a claim is useful could petition the agency under § 101.69 (21 CFR 101.69) (64 FR 62746 at 62760). Other comments (see Docket 94P–0036, Comment numbers 2136 and 2139) suggested a criterion (i.e., 25 percent less saturated fat and *trans* fat combined) for the claim "reduced saturated fat" that we believe may be more appropriate as a criterion for the claim "reduced saturated and *trans* fats."

We have considered these comments and believe that some members of the public may not have anticipated these issues and thus did not address them in comments. To ensure that all interested parties have had an opportunity to comment on whether the final rule should define the claims "reduced *trans* fat" and "reduced saturated and *trans* fats," we are reopening the comment period for the November 17, 1999, proposed rule for a period of 45 days. Comments submitted during this period are to be limited to those that directly address the two claims identified above. We are not requesting comments on any other issue, and we do not intend to consider such comments if submitted.

II. How to Submit Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments by January 19, 2001. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov, or via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30827 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 580

[RIN 3141–AA04]

Environment, Public Health and Safety

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule: Notice of extension of time.

SUMMARY: On July 24, 2000, the National Indian Gaming Commission (Commission) issued a Proposed Rule (65 FR 45558, July 24, 2000) promulgating draft regulations to provide for adequate protection of the environment, public health and safety under the Indian Gaming Regulatory Act (Act). The date for filing comments is being extended.

DATES: Comments shall be filed on or before January 19, 2001.

ADDRESSES: Comments may be mailed to: Environment, Public Health and Safety Comments, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Christine Nagle at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with ensuring that tribal gaming facilities are constructed, maintained and operated in a manner, which adequately protects the environment and the public health and safety. The proposed regulations establish a process for carrying out this Commission responsibility. The Commissioners have been requested to allow additional time for preparation of comments on the proposed regulations. The Commission has determined that these regulations are of such significance that interested parties should be given additional time to determine and present their views.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 00–30851 Filed 12–4–00; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–087–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment adds new West Virginia regulations at 199 CSR 1 concerning Surface Mine Blasting Rule. The amendments are intended to improve the operational effectiveness of the West Virginia program.

DATES: If you submit written comments, they must be received on or before 4:00 p.m. (local time), on January 4, 2001. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. (local time), on January 2, 2001. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on December 20, 2000.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158. E-mail: chfo@osmre.gov

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515. The proposed amendment will be posted at the Division's Internet page: *http://www.dep.state.wv.us*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated October 30, 2000 (Administrative Record Number WV–1187), the WVDEP submitted an amendment to its program. The amendment concerns the addition to the West Virginia regulations of new Title 199, Series 1, entitled Surface Mine Blasting Rule. These regulations consist of new blasting provisions and blasting provisions that have been relocated or derived from previously approved West Virginia blasting provisions. We have identified in brackets in the proposed amendment below, those instances where the State has indicated that specific provisions have been relocated or derived from previously approved blasting provisions. On November 12, 1999 (Administrative Record Number WV–1143), we approved, with certain exceptions, revisions to the West Virginia Code (W. Va. Code) concerning blasting (64 FR 61507–61518). The current amendment is intended to revise the States blasting rules to implement the approved blasting statutes.

The new blasting regulations are presented below.

199 CSR 1

Title 199

Legislative Rule

Division of Environmental Protection

Series 1

Surface Mining Blasting Rule

Section 199–1–1. General

1.1. Scope.—This rule establishes general and specific rules for overseeing and regulating blasting on all surface mining operations; implementing and overseeing the pre-blast survey process; inspection and monitoring of blasting operations; seismograph use; warning methods; site specific limitations for type, size, timing and frequency of blasts; public notice requirements; maintaining and operating a system to receive and address questions, concerns and complaints relating to mining operations; setting the qualifications for individuals and firms performing pre-blast surveys; establishing the education, training, examination and certification of blasters; disciplinary procedures for blasters; and administering a claims process, including arbitration, for property damage caused by blasting.

1.2. Applicability.—This rule applies to all surface mining operations and surface disturbances associated with underground mining operations in the State of West Virginia.

1.3. Authority.—W. Va. Code Sections 22–1–3, 22–3A–4, 22–1–5. *et seq.*

1.4. Filing Date.

1.5. Effective Date.

1.6. Incorporation by Reference.—Federal Counterpart Regulations—30 CFR 850.

1.7. Repeal of Former Rule.—This rule repeals and replaces 38CSR2C—Standards for Certification of Blasters—Surface Coal Mines, effective May 1, 1995, filed April 26, 1995.

Section 199–1–2

Definitions.—As used in this rule unless used in a context that clearly requires a different meaning the term:

2.1. Active Blasting Experience means experience gained by a person who has worked on a blasting crew, supervised a blasting crew, or worked on a drilling crew which performed blasting operations. Two hundred forty working days constitutes one year of experience. Experience may only be gained by "first-hand" participation in activities associated with the storing, handling, transportation and use of explosives or the immediate supervision of those activities within surface coal mines, and the surface areas of underground coal mines. Experience should be related to surface mine blasting; Provided, that other related blasting experience (quarrying

operations, etc.) may be accepted by the director on a case-by-case basis as qualifying experience. [This provision was relocated from CSR 38–2C–2.1]

2.2. Air Blast means an airborne shock wave resulting from the detonation of explosives.

2.3. Adjuster means an outside party that is assigned to investigate, document, evaluate and make recommendations on a reported loss.

2.4. Arbitrator means an impartial individual appointed by the Office of Environmental Protection with the authority to settle the disputes between property owners and mine operators as they relate to allegations of blasting damage.

2.5. Arbitration means the referral of a dispute to a neutral or impartial person for total or partial determination. It is intended to be inexpensive, prompt and fair to the parties.

2.6. Blast means any planned or unplanned detonation(s) of an explosive(s) being initiated simultaneously by a single energy source. [This provision was relocated from CSR 38–2C–2.2.]

2.7. Blast Site means the area where explosive materials is handled during loading including the perimeter formed by the loaded blast holes and 50 feet in all directions from loaded holes.

2.8. Blaster means a qualified person in charge of and responsible for the design, loading and firing of a blast. This must be an individual who is certified by the Office of Explosives and Blasting.

2.9. Blasting Complaint means a communication to the Office of Explosives and Blasting from a member of the public expressing concern, aggravation, fear or indications of blasting damage. A blasting complaint may or may not initially indicate damage.

2.10. Blasting Claim means an allegation by the property owner of blasting related damage to property.

2.11. Blasting Log means a written record containing all pertinent information about a specific blast as may be required by law or rule.

2.12. Blasting Vibration means the temporary ground movement produced by a blast that can vary in both intensity and duration.

2.13. Caused By Blasting means that there is direct, consistent and conclusive evidence or information that the alleged damage was definitely caused by blasting from the mine site in question.

2.14. Certified Blaster means a person who has taken and passed the examination described in this rule, and has been issued a certification card by the Office of Explosives and Blasting. [This provision was relocated from CSR 38–2C–2.3.]

2.15. Certified Examiner/Inspector means a person employed by the Office of Explosives and Blasting who administers training or examinations to applicants for certification as certified blasters, or who inspects surface mining operations and who has taken and passed the examination described in of this rule. [This provision was relocated from CSR 38–2C–2.4.]

2.16. Claimant means the property owner who makes a blasting damage claim.

2.17. Claims Administrator means the individual, firm or organization that manages the blasting damage claims program for the Office of Explosives and Blasting.

2.18. Construction Blasting means blasting to develop haulroads, mine access roads, coal preparation plants, drainage structures, or underground coal mine sites and shall not include production blasting.

2.19. Detonation means a chemical reaction resulting in a rapid release of energy. [This provision was relocated from CSR 38–2C–2.5]

2.20. Director means the director of the Division of Environmental Protection or the director's authorized agent.

2.21. Division means the Division of Environmental Protection.

2.22. Explosives means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; including, but not limited to, water gel, slurries, emulsion, dynamites, permissibles, pellet powder, blasting caps, cast primers and boosters, detonating cord, detonating cord delay connectors, and blasting agents. [This provision was relocated from CSR 38–2C–2.6]

2.23. Fly Rock means rock and/or earth propelled from the blast area through the air or along the ground by the force of the detonated explosives.

2.24. Loss Reserve means the total amount of money indicated in a given loss to include the estimated value (repairs or replacement costs), and the costs to administer and adjust that loss.

2.25. Loss Value means the amount of money indicated in a given loss to include costs of repairs or replacement costs.

2.26. Not Caused By Blasting means that there is direct, consistent, and conclusive evidence or information that blasting from the mine site in question was definitely not at fault for the alleged property damage.

2.27. Office means the Office of Explosives and Blasting.

2.28. Operator means any person who is granted or who should obtain a permit to engage in any activity covered by W. Va. Code Section 22.

2.29. Possible Caused By Blasting means the physical damage in question is not entirely consistent with blasting induced property damage, but that blasting cannot be ruled out as a casual factor.

2.30. Pre-Blast Survey means the written documentation of the existing condition of a given structure near an area where blasting is to be conducted. The purpose of the survey is to note the pre-blasting condition of the structure and note any observable defects or damage.

2.31. Probably Caused By Blasting means that there is physical damage present at the site in question that is entirely consistent with blasting induced property damage, and said damage can be attributed to a specific mine site and/or blast event(s).

2.32. Probably Not Caused By Blasting means that there is substantial, but not conclusive information that the alleged damage was caused by something other than blasting.

2.33. Production Blasting means blasting that removes the overburden to expose underlying coal seams and shall not include construction blasting.

2.34. Protected Structure means any of the following structures that are situated outside the permit area: an occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past ninety (90) days, a public building, a habitable building for commercial purposes, a school, a church, a community or institutional building, a public park or a water well. [This provision was relocated and modified from CSR 38–2–2.98.]

2.35. Supervised a Blasting Crew means that a person assumed responsibility for the conduct of a blasting crew(s) and that the crew(s) reported directly to that person. [This provision was relocated from CSR 38–2C–2.7.]

2.36. Surface Mine and Surface Area of Underground Mines means all areas except underground workings surface mined or being surface mined, including adjacent areas ancillary to the operations, i.e., preparation and processing plants, storage areas, shops, haulageways, roads, and trails, which are covered by the provisions of W. Va. Code Section 22–3–1 *et seq.*, and rules promulgated under that article. [This provision was relocated from CSR 38–2C–2.8.]

2.37. Worked on a Drilling Crew means that a person has directly participated in the loading, connecting, and preparation of blast holes and has detonated blasts. [This provision was relocated from CSR 38–2C–2.9.]

2.38. Worked on a Blasting Crew means that a person has first-hand experience in storing, handling, transporting, and using explosives. [This provision was relocated from CSR 38–2C.2.10.]

Section 199–1–3. Blasting

3.1. General Requirements. Each operator shall comply with all applicable state and federal laws in the use of explosives. A blaster certified by the office shall be responsible for all blasting operations including the transportation, storage and use of explosives within the permit area in accordance with the blasting plan. [This provision was relocated from CSR 38–2–6.1.]

3.2. Blasting Plans.

3.2.a. As required by statute, all surface mining operations that propose blasting shall include a blasting plan. The blasting plan shall explain how the applicant will comply with the blasting requirements of W. Va. Code Section 22–3–1 *et seq.*, and this rule. This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the basis for those limitations, and the methods to be applied in preventing the adverse effects of blasting operations. [This provision was relocated and modified from CSR 38–2–6.2.]

3.2.b. The blasting plans referred to in paragraph 3.2.a. of this rule will be reviewed for administrative and technical completeness by the office. The person conducting the review shall be experienced in common blasting practices utilized on surface mining operations. The reviewer will take into consideration past operational history of the applicant, the geological formation the blasting operations will take place in, and the proximity of individual dwellings or communities to the blasting operations.

3.2.c. The blasting plan shall also contain an inspection and monitoring procedure to insure that all blasting operations are conducted to eliminate, to the maximum extent technically feasible, adverse impacts to the surrounding environment and surrounding occupied dwellings.

3.2.d. For operations where a notice of violation (NOV) or cessation order (CO) has been issued; the office shall review the blasting plan within thirty (30) days of final disposition of the NOV or CO. This review will focus on the specific circumstances that led to the enforcement action. If necessary the blasting plan will be modified to insure all precautions are being taken to safely conduct blasting operations.

3.3. Public Notice of Blasting Operations. [Subsection CSR 199–1–3.3 was relocated and modified from CSR 38–2.6.3.a.]

3.3.a. At least ten (10) days but not more than thirty (30) days prior to any blasting operations which detonate five (5) pounds or more of explosives at any given time, the operator shall publish a blasting schedule in a newspaper of general circulation in all the counties of the proposed area. Copies of the schedule described in subdivision 3.6.a. of this rule shall be distributed by Certified Mail to local governments, public utilities and each resident within seven tenths (0.7 mi.) of a mile of the blasting site in accordance with W. Va. Code Section 22–3–13a(a)(1 and 2). The operator shall republish and redistribute the schedule at least every twelve (12) months and revise, republish and redistribute the schedule at least ten (10) days but not more than thirty (30) days prior to blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from that set forth in the prior schedule. The blasting schedule described in subdivision 3.6.a. shall contain at a minimum the following:

3.3.a.1. Name, address and phone number of the operator;

3.3.a.2. Identification of the specific areas in which blasting will take place;

3.3.a.3. Dates and times when explosives will be detonated;

3.3.a.4. Methods to be used to control access to the blasting area; and

3.3.a.5. Types and patterns of audible warning and all clear signals to be used before and after blasting.

3.4. Surface blasting activities incident to underground coal mining are not subject to the requirements of subdivision 3.3.a of this rule so long as all local governments and residents or owners of dwellings or structures located within one-half (½) mile of the blast site are notified in writing by the operator of proposed times and locations of the blasting operation. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than twenty-four (24) hours before the blasting will occur. [This provision was relocated from CSR 38–2–6.3.b.]

3.5. Blast Record. [Subsection CSR 199–1–3.5 was relocated from CSR 38–2–6.4.]

3.5.a. A blasting log book formatted in a manner prescribed by the director shall be kept current daily and made available for inspection at the site by the director and upon written request by the public.

3.5.b. The blasting log shall be retained by the operator for three (3) years.

3.5.c. The blasting log shall, at a minimum, contain the following information:

3.5.c.1. Name of permittee, operator or other person conducting the blast;

3.5.c.2. Location, date and time of blast;

3.5.c.3. Name, signature and certification number of blaster-in-charge;

3.5.c.4. Identification of nearest structure not owned or leased by the operator and direction and distance, in feet, to such structure;

3.5.c.5. Weather conditions;

3.5.c.6. Type of material blasted;

3.5.c.7. Number of holes, burden, and spacing;

3.5.c.8. Diameter and depth of holes;

3.5.c.9. Types of explosives used;

3.5.c.10. Weight of explosives used per hole;

3.5.c.11. Total weight of explosives used;

3.5.c.12. Maximum weight of explosives detonated within any eight (8) millisecond period;

3.5.c.13. Method of firing and type of circuit;

3.5.c.14. Type and length of stemming;

3.5.c.15. If mats or other protections were used;

3.5.c.16. Type of delay detonator used and delay periods used;

3.5.c.17. Seismograph records and air blast records shall include but not be limited to:

3.5.c.17.A. Seismograph and air blast reading, including exact location, date, and time of reading and its distance from the blast;

3.5.c.17.B. Name of person and firm taking the readings;

3.5.c.17.C. Name of person and firm analyzing the record, where analysis is necessary; and

3.5.c.17.D. Type of instrument, sensitivity and calibration signal or certification of annual calibration.

3.5.c.18. Shot location;

3.5.c.19. Sketch of delay pattern to include the entire blast pattern and all decks; and

3.5.c.20. Reasons and conditions for unscheduled blasts.

3.6. Blasting Procedures. [Subsection 199–1–3.6. was relocated and modified from CSR 38–2–6.5.]

3.6.a. All blasting shall be conducted during daytime hours, between sunrise and sunset; provided, that the director may specify more restrictive time periods based on public requests or other consideration, including the proximity to residential areas. No blasting shall be conducted on Sunday. Provided, however, the director may grant approval of a request for Sunday blasting if the operator demonstrates to the satisfaction of the director that the blasting is necessary and there has been an opportunity for a public hearing. Blasting shall not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions, or operator or public safety requires unscheduled detonations. Blasting shall be conducted in such a way so as to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or groundwater outside the permit area.

3.6.b. Safety Precautions:

3.6.b.1. Three (3) minutes prior to blasting, a warning signal audible to a range of one-half (1/2) mile from the blast site will be given. This preblast warning shall consist of three (3) short warning signals of five (5) seconds duration with five (5) seconds between each signal. One (1) long warning signal of twenty (20) seconds duration shall be the "all clear" signal. Each person in the permit area, and each person who resides or regularly works within one-half (1/2) mile of the permit area shall be notified of the meaning of these signals;

3.6.b.2. All approaches to the blast area shall be guarded against unauthorized entry prior to and immediately after blasting;

3.6.b.3. All charged holes shall be guarded and posted against unauthorized entry; and

3.6.b.4. The certified blaster shall be accompanied by at least one other person at the time of firing of the blast.

3.6.c. Airblast Limits.

3.6.c.1. Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public buildings, school, church, or community or institutional building outside the permit area.

Lower Frequency Limit of Measuring System in Hz (+ 3 dB)—Maximum Level, in db

0.1 Hz or lower—flat response (Only when approved by the Director)—134 peak.
2 Hz or lower—flat response133 peak.
6 Hz or lower—flat response 129 peak.
C-weighted—slow response (Only when approved by the Director)—105 peak dBC.

3.6.c.2. If necessary to prevent damage, the director may specify lower maximum allowable airblast levels for use in the vicinity of a specific blasting operation.

3.6.c.3. Monitoring. The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken. The air blast measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

3.6.d. Flyrock, including blasted material, shall not be cast from the blasting site more than half way to the nearest dwelling or other occupied structure, beyond the area of control specified in subdivision 3.6.e of this rule, or in no case beyond the bounds of the permit area.

3.6.e. Access to the blast area shall be controlled against the entrance of livestock or unauthorized personnel during blasting and for a period thereafter until an authorized person has reasonably determined:

3.6.e.1. That no unusual circumstances exist such as imminent slides or undetonated charges, etc.; and

3.6.e.2. That access to and travel in or through the area can be safely resumed, from 38–2–6.5

3.6.f. At the request of the director, the operator shall monitor air blast levels using

an instrument with an upper-end flat-frequency response of at least 200 Hz.

3.6.g. Blast Design.

3.6.g.1. An anticipated blast design shall be submitted if blasting operations will be conducted within:

3.6.g.1.A. 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

3.6.g.1.B. 500 feet of an active or abandoned underground mine.

3.6.g.2. The blast design may be presented as part of a permit application or at a time, before the blast as approved by the director.

3.6.g.3. The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures, including protected structures, to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards.

3.6.g.4. The blast design shall be prepared and signed by a certified blaster.

3.6.g.5. The director may require changes to the design submitted. [This provision was relocated from CSR 38–2–6.5.g.]

3.6.h. No blasting within five hundred (500) feet of an underground mine not totally abandoned shall be permitted except with the concurrence of the office, the operator of the underground mine and the Mine Safety and Health Administration. The director may prohibit blasting on specific areas where it is deemed necessary for the protection of public or private property, or the general welfare and safety of the public. [This provision was relocated from CSR 38–2–6.5.h.]

3.6.i. The operator may use the following scaled distance formulas to determine the allowable maximum weight of explosives (lbs.) to be detonated in any eight millisecond period without seismic monitoring:

Formula and Distance in Feet From the Blasting Site to the Nearest Protected Structure

W = (D/50)2—0—300 feet
W = (D/55)2—301—5,000 feet
W = (D/65)2—5,001 feet or greater
W = Weight of explosives in pounds
D = Distance to the nearest structure

[This provision was relocated from CSR 38–2–6.5.i.]

3.6.j. The scaled distance formulas need not be used if a seismograph measurement at the nearest protected structure is recorded and maintained for every blast. The peak particle velocity in inches per second in any one of the three mutually perpendicular directions shall not exceed the following values at any protected structure:

Seismograph Measurement and Distance to the Nearest Protected Structure

1.25—0—300 feet
1.0—301—5,000 feet
0.75—5,001 feet or greater

[This provision was relocated from CSR 38–2–6.5.j.]

3.6.k. The director may require a seismograph recording of any or all blasts based on the physical conditions of the site in order to prevent injury to persons or damage to property. [This provision was relocated from CSR 38–2–6.5.k.]

3.6.l. The maximum allowable ground vibration as provided in subdivisions 3.6.i and 3.6.j of this subsection shall be reduced by the director, if determined necessary to provide damage protection. [This provision was relocated from CSR 38–2–6.5.l.]

3.6.m. The maximum airblast and ground-vibration standards of subdivisions 3.6.c and 3.6.j of this subsection shall not apply at the following locations:

3.6.m.1. Structures owned by the permittee and not leased to another person; and

3.6.m.2. Structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the director before blasting. [This provision was relocated from CSR 38–2–6.5.m.]

3.7. Blasting Control for Other Structures. [Subsection CSR 199–1–3.7. was relocated from CSR 38–2–6.6.]

3.7.a. All other structures in the vicinity of the blasting area which are not defined as protected structures in subsection 2.24 of this rule shall be protected from damage by establishment of a maximum allowable limit on ground vibration, specified by the operator in the blasting plan and approved by the director.

3.7.b. The plan submitted under this subsection shall not reduce the level of protection for other structures otherwise provided for in this rule.

3.8. Certified Blasting Personnel.—Each person responsible for blasting operations shall be certified. Each certified blaster shall have proof of certification either on his person or on file at the permit area during blasting operations. Certified blasters shall be familiar with the blasting plan and blasting related performance standards for the operation at which they are working. [This provision was relocated from CSR 38–2–6.7.]

3.9. Pre-blast Surveys. [This provision is new. Many of the previously approved pre-blast survey requirements and specifications are now included in statute at W. Va. Code 22–3–13a.]

3.9.a. Qualifications for Individuals and Firms Performing Pre-blast Surveys.—Individuals must comply with the following:

3.9.a.1. Individuals must be approved by the office to administer pre-blast surveys.

3.9.a.2. The office shall develop a list of individuals who have exhibited ability by past experience to perform pre-blast surveys. Provided, however, attending a training course administered by the office on pre-blast surveys shall meet the previous experience requirements.

3.9.a.3. Every three (3) years after meeting initial qualifications for performing pre-blast surveys, individuals must meet the requirements of subparagraphs 3.9.a.1. (or submit written qualifications of previous experience performing pre-blast surveys) of this rule.

3.9.b. Pre-blast Survey Review.

3.9.b.1. Pre-blast surveys shall be submitted to the office on forms prescribed by the director in accordance with W. Va. Code Section 22–3–13a.

3.9.b.2. The office shall review each pre-blast survey as to form and completeness only, and notify the operator of any deficiencies within 15 days.

3.9.b.3. At the time the pre-blast survey is accepted by the DEP, the DEP shall forward a copy to the homeowner or resident.

3.9.b.4. The Office of Explosives and Blasting shall develop a procedure for assuring surveys shall remain confidential.

3.9.b.5. The DEP shall make available informational materials educating citizens about pre-blast surveys and blasting.

Section 199–1–4. Certification of Blasters.

4.1. Requirements for Certification.—In every surface mine and surface area of an underground mine when blasting operations are being conducted, a certified blaster shall be responsible for the storage, handling, transportation, and use of explosives for each and every blast, and for conducting the blasting operations in accordance with the blasting plans approved in a permit issued pursuant to W. Va. Code Section 22–3–1 et seq., and the rules promulgated under that article. [This provision is relocated and modified from CSR 38–2–6–1 and 38–2C–3.1.]

4.2. Qualifications for Certification.—Each applicant for certification shall have had at least one (1) year active blasting experience within the past five (5) years, and have demonstrated a working knowledge of and skills of the storage, handling, transportation, and use of explosives, and a knowledge of all state and federal laws pertaining thereto, by successfully taking and passing the examination for certification required by subsection 6.2 of this rule. [This provision is derived from W. Va. Code 22–3C–3.2.]

4.3. Application for Certification.—Prior to taking the examination for certification, a person must submit an application along with a fifty dollar ($50.00) application fee to the office to take the examination on forms prescribed by the director. Upon receipt of an application for examination, the director shall, after determining that the applicant meets the experience requirements of subsection 4.2 of this rule, notify the applicant of the date, time, and location of the scheduled examination. [This provision was derived from W. Va. Code 22–3C–3.3.]

Section 199–1–5. Training.—

The office will administer a training program to assist applicants for blaster certification or re-certification in acquiring the knowledge and skills required for certification. The training requirements shall include, at a minimum, those subject areas set forth in subdivisions 6.1.a through 6.1.k of subsection 6.1 of this rule, and paragraphs 6.2.a.1 through 6.2.a.11 of subsection 6.2 of this rule.

In lieu of completing the training program, the applicant for certification or re-certification may complete a self-study course using the study guide and other materials available from the office. [CSR 199–1–5 was relocated and modified from CSR 38–2C–4.]

Section 199–1–6.

Examination for Certification of Examiner/Inspector and Certified Blaster. [This entire section was relocated and modified from CSR 38–2C–5.1.]

6.1. Examinations for Certified Blaster Examiners/Inspectors.—All persons employed by the office, whose duties include training, examining, and certification of blasters and/or inspecting blasting operations shall be a certified examiner/inspector. Certification under the provisions of this subsection does not constitute certification under the provisions of subsection 6.2 of this rule; however, certification under subsection 6.2 of this rule is sufficient for certification under this subsection. The examination for certified examiner/inspector shall at a minimum tests the applicant's knowledge of the information presented in the Study guide for West Virginia Surface Mine Blasters, and shall consist of three parts;

6.1.a. Part 1.—A written multiple choice examination covering:

6.1.a.1. Types of explosives and their properties, to include selection of appropriate explosives;

6.1.a.2. Blasting equipment and accessories, to include blasting machines;

6.1.a.3. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;

6.1.a.4. Delay systems, to include pattern design, field layout, and initiation systems;

6.1.a.5. Timing;

6.1.a.6. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;

6.1.a.7. Loading and detonating, to include priming, scheduling, site control warning signals, and unpredictable hazards;

6.1.a.8. Storage and transportation of explosives;

6.1.a.9. Record keeping and reporting;

6.1.a.10. Current state and federal laws and regulations relating to the storage, handling, transportation, and use of explosives; the training and certification of blasting personnel, and blasting signs; and

6.1.a.11. Responsibilities of a certified blaster.

6.1.b. Part 2.—A written simulation whereby the applicant must correctly and properly complete a blasting log.

6.1.c. Part 3.—A hands-on simulation whereby the applicant must demonstrate the ability to properly connect a blast, simulate a selected initiation system, and simulate detonating a blast.

6.1.d. A score of 70 percent (70%) for part 1, and satisfactorily completion of parts 2 and 3 are required for successful passage of the examination. An individual who fails to achieve a passing score may retake the examination subject to the discretion of the director.

6.2. Examination for Certified Blaster. [This provision was relocated from CSR 38–2C–5.2.]—The examination for certified blaster shall include information presented in the study Guide for West Virginia Surface Mine Blasters, and shall consist of three (3) parts:

6.2.a. Part 1.—A written multiple choice examination covering:

6.2.a.1. Types of explosives and their properties, to include selection of appropriate explosive(s);

6.2.a.2. Blasting equipment and accessories, to include blasting machines;

6.2.a3. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;

6.2.a.4. Delay systems, to include pattern design, field layout, and initiation systems;

6.2.a.5. Timing;

6.2.a.6. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;

6.2.a.7. Loading and detonating, to include priming, scheduling, site control, warning signals, and unpredictable hazards;

6.2.a.8. Storage and transportation of explosives;

6.2.a.9. Record keeping and reporting;

6.2.a.10. Current state and federal laws and regulations relating to the handling, storage, transportation, and use of explosives; the training and certification of blasting personnel, and blasting signs; and

6.2.a.11. Responsibilities of a certified blaster.

6.2.a.b. Part 2.—A simulation examination whereby the applicant must correctly and properly complete a blasting log.

6.2.c. Part 3—A hands-on simulation whereby the applicant must demonstrate the ability to properly connect a blast, simulate a selected initiation system, and simulate detonating a blast.

6.2.d. A score of 80 percent (80%) for a part 1, and a "passing grade" on parts 2 and 3, which are graded on a pass/fail basis, are required for successful passage of the examination.

6.3. Notification of Score.—The office will notify all persons of their scores within thirty (30) days of completing the examination. A person who fails to achieve a passing score of any of the three (3) parts of the examination, may apply, after thirty (30) days of receipt of his or her examination results, to retake the entire examination or any portions that the individual failed to pass.

Any person who fails to pass the exam on the second attempt must certify that he/she has taken or retaken the training course described in section 4 of this rule prior to applying for another examination. [This provision is relocated from CSR 38–2C–5.3]

Section 199–1–7

Approval of Certification.

Upon determination that an applicant for certification has satisfactorily passed the examination, the director shall, within thirty (30) days of the examination date, issue a certification card to the applicant. [This provision was relocated from CSR 38–2C–6.]

Section 199–1–8

Conditions or Practice Prohibiting Certification.

[This provision was relocated from CSR 38–2C–7.]—The Director shall not issue a blaster certification to persons who:

8.1. Are currently addicted to alcohol, narcotics or other dangerous drugs;

8.2. Have exhibited a pattern of conduct inconsistent with the acceptance of responsibility for blasting operations; or

8.3. Are convicted felons. [This provision was relocated from CSR 38–2C–7.]

Section 199–1–9

Re-certification Requirements for Certified Blaster.

9.1. Re-certification of Blasters.—A certified blaster must be re-certified every three (3) years. Each applicant for re-certification must be currently and must document that he or she satisfactorily meets the experience requirements of subsection 4.2 of this rule and has retaken the training course described in section 4 of this rule within the past twelve (12) months prior to application. The application for re-certification must be submitted on forms prescribed by the director along with a thirty dollar (30.00) reapplication fee. [This provision was relocated and modified from CSR 38–2C–8.1.]

9.2. Refresher Training Course/Self-Study, Course.—An applicant who does not meet the experience requirements of subsection 3.8 of this rule must take the refresher training course, or complete the self-study course described in section 5 of this rule, and must take and pass the examination required in subsection 6.2 of this rule. [This provision was relocated form CSR 38–2C–8.2.]

Section 199–1–10

Presentation of Certificate; Transfer; and Delegation of Authority

10.1. Upon request by the director, a certified blaster shall exhibit his or her blaster certification card. [This provision was derived from W. Va. Code 22–3C–9.1.]

10.2. The certified blaster shall take all reasonable care to protect his or her certification card from loss or unauthorized duplication, and shall immediately report any such loss or duplication to the office. [This provision was derived from W. Va. Code 22–3C–9.2.]

10.3. Blaster's certifications may not be transferred or assigned. [This provision was derived from W. Va. Code 22–3C–9.3.]

10.4. Certified blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster. [This provision was derived form W. Va. Code 22–3C–9.4.].

Section 199–1–11

Violations by a Certified Blaster.

The director may issue a notice of violation against a certified blaster who is in violation of any of the following:

11.1. Failure to comply with any order issued by the director;

11.2. Illegal use of drugs or narcotics, or any use of alcohol in the work place;

11.3. Violations of federal laws or regulations governing the purchase, use, handling, transportation, storage, or detonation of explosives;

11.4. False swearing in order to obtain a blaster's certification card; or

11.5. Any illegal or improper action taken by a certified blaster which may or has led to injury or death at a blast site. [Relocated from CSR 38–2C–10.1.]

Section 199–1–12

Penalties.

[Section 199–1–12 was relocated from CSR 38–2C–11.]

12.1. Suspension.—Upon service of a written notice of violation by the director to a certified blaster, the director may also, based on clear and convincing evidence of a violation, issue an order suspending his or

her certification. Prior to the issuance of such an order, the certified blaster shall be granted a hearing before the director to show cause why his or her certification should not be suspended.

The period of suspension will be conditioned upon the time period for completion of remedial measures to abate the violation as specified in the notice of violation. The director may also require retraining or reexamination as a condition for reinstatement of certification.

12.2. Revocation.—If the remedial action required to abate a notice of violation issued by the director to a certified blaster is not taken within the specified time period for abatement, the director may revoke the blaster's certification and require the blaster to relinquish his or her certification card. Revocation will occur if the certified blaster fails to retrain or fails to take and pass reexamination as a requirement for remedial action as described in subsection 12.1 of this rule.

12.3. Civil and Criminal Penalties—Any certified blaster is subject to the individual civil and criminal penalties provided for in W. Va. Code Section 22–3–17.

Section 199–1–13

Hearings and Appeals.—Any certified blaster who is served a notice of violation, suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in W. Va. Code section 22–3–16 and 17. [This section was relocated from CSR 38–2C–12.]

Section 199–1–14. Blasting Crew

Persons who are not certified and who are assigned to a blasting crew, or assist in the use of explosives, shall receive directions and on-the-job training from a certified blaster. [This section was relocated from CSR 38–2C–13.]

Section 199–1–15

Reciprocity With Other States.

The director may enter into a reciprocal agreement with other states wherein persons holding a valid certification in that state may apply for certification in West Virginia, and upon approval by the director, be certified without undergoing the training or examination requirements set forth in this rule. [This section was relocated from CSR 38–2C–14.]

Section 199–1–16

Blasting Damage Claim [This section is new.]

16.1. Damage to Surface Structures.—A claim of damage to surface structures from blasting will be the result of one or more of the following:

16.1.a. Fly Rock.—Fly rock damage is based on the presence of debris from the blast site and the presence of impact damage;

16.1.b. Air Blast.—Air blast damage is characterized by broken or cracked window glass; and

16.1.c. Blasting Vibration Damage.—Blasting vibration damage is investigated by experienced and specially trained personnel to accurately determine the presence of such damage. Examples are explained in, but not limited to, the American Insurance Association publication, Blasting Damage, A Guide for Adjusters and Engineers.

16.2. Filing a Claim.

16.2.a. It is the responsibility of the property owner to notify the office of the alleged blasting damage. An inspector will be assigned to conduct a field investigation to determine the initial merit of the damage. An investigation will include the following:

16.2.a.1. Inspector will contact property owner within one (1) business day of receiving the complaint to schedule a visit to the property where the alleged blasting damage occurred and interview the property owner;

16.2.a.2. Inspector will visit the blasting site to determine if the operator and blaster are in compliance with state blasting requirements; and

16.2.a.3. Inspector will make written documentation on the investigation that describes the nature and extent of alleged damage, taking into consideration the damage that is accurately indicated on a pre-blast survey, damage where there has been no blasting conducted by the operator or other reliable indicators that the alleged damage actually pre-dated the blasting. Inspector will make one of the following determinations:

16.2.a.3.A. A definite determination that the merit of the alleged blasting damage can be made. Inspector will notify the claims administrator and supply such information that the claims administrator needs to sufficiently document the claim;

16.2.a.3.B. A definite determination that the merit of the alleged blasting damage cannot be made. Inspector will notify the claims administrator and supply such information that the claims administrator needs to sufficiently document the claim;

16.2.a.3.C. Inspector will inform the property owner of the following four resolution options available for the alleged blasting damage:

16.2.a.3.C.1. Withdraw the claim, with no further action required by the office;

16.2.a.3.C.2. File a claim with the operator or the operator's general liability insurance carrier;

16.2.a.3.C.3. File a claim with the homeowner's insurance carrier; or

16.2.a.3.C.4. Submit to the office's claims process.

16.2.a.3.D. If the property owner declines Part 16.2.a.3.C.4. of this rule, the office's involvement will be concluded.

16.2.a.4. Once a determination is made as to the merit of a claim, the office shall offer a chance to meet between the claimant and the permittee to attempt to resolve the issue.

16.3. The claims administrator will be responsible for the following:

16.3.a. Sending notice to the respective operator of the damage claim;

16.3.b. Making an initial assignment of the damage claim to a qualified claims adjuster within one business day;

16.3.c. Making an initial monetary determination of loss reserve of the respective claim; and

16.3.d. Providing the relevant claims information to the arbitrator assigned to that claim.

16.4. The adjuster will be responsible for the following:

16.4.a. Contacting the property owner and physically visiting the blasting damage site within three (3) business days of the initial assignment;

16.4.b. Documenting the alleged blasting damage through accepted methods such as photographs, video tapes, written descriptions, and diagrams;

16.4.c. Reviewing such available supporting information such as blasting logs, seismograph records and pre-blasting surveys;

16.4.d. Making a determination for the need for additional assistance from structural engineers, building contractors, and blasting consultants. The claims administrator will be the approving authority for the assignment of such specialists;

16.4.e. Making a determination as to the merit of the alleged blasting damage claim.

16.4.f. Making an initial monetary determination of the loss value of the respective claim.

16.4.f.1. The adjuster will use the following ratings in the determination of the merit of the alleged blasting damage claim:

16.4.f.1.A. Caused by blasting;

16.4.f.1.B. Probably caused by blasting;

16.4.f.1.C. Possibly caused by blasting;

16.4.f.1.D. Probably not caused by blasting; or

16.4.f.1.E. Not caused by blasting.

16.4.f.2. The merit-rating factors include, but are not limited to the following:

16.4.f.2.A. The claimant is the property owner;

16.4.f.2.B. Correlation of alleged damage event to a specific blast and mine;

16.4.f.2.C. Correlation of alleged damage event to a large, unusual, or problem shot;

16.4.f.2.D. Proximity to the blast site;

16.4.f.2.E. Timeliness of first notice of loss;

16.4.f.2.F. Damage that is not indicated on the pre-blast survey;

16.4.f.2.G. Lack of any other issues or grievances besides blasting;

16.4.f.2.H. Age and physical condition of the structure in question;

16.4.f.2.I. Presence of seismographic records close to the structure in question;

16.4.f.2.J. History of previous blasting in the immediate area;

16.4.f.2.K. Property that has been undermined; and

16.4.f.2.L. An area with a history of geological abnormalities.

16.4.g. Recommendations as to the equitable resolution of the claim; and

16.4.h. Completing report and sending to the claims administrator.

Section 199–1–17

Arbitration for Blasting Damage Claims. [This section is new.]

17.1. Listing of Arbitrators.—The office shall maintain and make available to the claimant and the operator a listing of persons willing and qualified to serve as arbitrators. The listing shall identify those persons who are qualified and willing to serve, included but not limited to, those willing to serve on a volunteer (i.e., without compensation) basis. The office shall establish a pool of arbitrators sufficient to handle the claims process. Once a year the Environmental Advocate, and industry representatives (selected by the West Virginia Mining and Reclamation Association and the West Virginia Coal Association) may move to strike up to twenty-five percent (25%) of the list. The Environmental Advocate is required to seek citizen input. It is anticipated that the office will recommend the roster be maintained by the American Arbitration Association from which the parties will choose the arbitrator.

17.2. Selection of Arbitrator.—The parties may choose their own arbitrator by agreement, who may or may not be a person on the listing of arbitrators as defined in subsection 17.1 of this rule. In the absence of such agreement, the director will provide the parties with a listing of arbitrators and permit each of the parties to eliminate, in rotation, names from the list until one name remains. That person shall serve as the arbitrator.

17.3. Provision for Preliminary Information to the Arbitrator.—The arbitrator may require the parties to provide pertinent information to the arbitrator and to the other parties prior to the arbitration session. Such information may include, but is not limited to:

17.3.a. The pre-blast survey, shot logs, and other documents deemed necessary by the arbitrator to determine the merits and value, if any, of the blasting damage claim; and

17.3.b. A confidential statement summarizing a party's position on the issues and what relief, if any, should be awarded.

17.4. Demand for Arbitration and Timeframes for Arbitration.—On forms to be provided by the office when notifying the parties of its initial claim determination and the right to demand arbitration, a party seeking arbitration shall serve the other party by certified mail a written demand for arbitration within fifteen (15) days of receipt of the initial claim determination. An arbitrator shall be chosen within fifteen (15) days of receipt. Unless otherwise agreed by the parties and the arbitrator, the arbitration shall be conducted within thirty (30) days after the appointment of the arbitrator. Arbitration shall be completed within thirty (30) days after the first arbitration session, unless changed by agreement of the parties and the arbitrator. The arbitrator is empowered to set the date and time of all arbitration sessions.

17.5. Place of Arbitration.—The parties may by agreement select the place of arbitration and arrange for paying any associated costs. If the place of arbitration is determined by agreement, the place must be identified to the arbitrator upon the arbitrator's appointment. The office shall upon reasonable request by the parties make available its state office for the arbitration. In the event the parties cannot agree on the place of arbitration, the arbitrator is empowered to do so.

17.6. Confidentiality of the Arbitration Process.—Arbitration shall be regarded as confidential. The arbitrator shall maintain and preserve the confidentiality of all arbitration proceedings and records. An arbitrator may not be subpoenaed or called to testify, or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the dispute arbitrated.

17.7. Presentations to the Arbitrator.—Unless otherwise directed by the arbitrator:

17.7.a. Witnesses for the claimant will be the claimant, any one other person designated by the claimant, and the claimant's representative; and witnesses for the operator will be a company officer, its engineer or blaster, and its representative. If the claimant does not have a representative and requests representation, the Office of Explosives and Blasting, through the Office of the Environmental Advocate, shall provide a representative throughout the arbitration process, which representative shall not necessarily be an attorney-at-law.

17.8. Arbitration Award, Fees, Costs and Expenses.—If parties agree on settlement after entering into arbitration, parties may request their settlement be declared the official award by the arbitrator. Within thirty (30) days after the arbitration process is closed or terminated, the arbitrator shall issue a decision upholding, upholding in part, or overruling the initial claim determination made by the representatives of the Office of Explosives and Blasting. If the initial claim determination was in favor of the claimant, the operator requests arbitration and the claim determination is upheld or upheld in part, the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant not to exceed one thousand dollars ($1,000.00). Otherwise, the parties are equally responsible for the cost of the proceeding and are responsible for their own fees and costs.

17.9. Binding Nature of the Award.—By requesting arbitration, the results of such arbitration are intended to be final and binding. As such they are not appealable to the West Virginia Supreme Court of Appeals, the circuit courts, or any other tribunal. The office shall provide written notice to the claimant of the binding nature of the arbitration award and shall secure from the claimant a written acknowledgement that the claimant understands the final nature of the award and agrees to be bound by it.

17.10. Payment of the Award.—Should an award be made against the operator on an arbitrated claim, the operator shall pay the full amount of the award within thirty (30) days of the final determination and award. If the operator fails to pay the award within thirty (30) days, the director may issue a cessation order pursuant to W. Va. Code Section 22–3–16 for all sites operated by the operator.

Section 199–1–18

Explosive Material Fee [This section is new.]

18.1. Assessment Fee on Blasting Material.—Pursuant to W. Va. Code Section 22–3A–7 and Section 22–5B–2a–2, there is hereby assessed a fee of one-quarter cent ($.0025) per pound on explosive material used for any purpose on surface mining operations. Provided, That the operators exempted from the application of Chapter 5B, Article 2A shall pay one-eighth ($.00125) cent per pound on explosive material.

18.2. Remittance of Fee.—Within thirty (30) days of the end of each previous quarter after the effective date of this rule, the operator shall remit to the office the amount of the fee calculated by multiplying one-quarter cent ($.0025) or one-eighth cent ($.00125) for operators exempt from the application of Chapter 5B, Article 2A, times the number of pounds of explosive material used during the preceding quarter for any purpose on the surface mining operations: Provided, That, the materials are measured by the pound. Copies of the delivery records and inventories shall be submitted with the fee to verify the accuracy of the fee calculation.

18.3. Dedication of the Fee.—The office shall deposit all moneys received from the explosive material fees into a special revenue fund to be known as the "mountaintop removal fund" within the state treasury. These moneys shall be expended by the Office of Explosives and Blasting and the Office of Coalfield Community Development, created by W. Va. Code Section 5B–2A–1, in the performance of their respective duties: Provided, However, that no explosive material fees collected from underground or surface mining operations specifically exempted from application of Chapter 5B, Article 2A, may be expended to fund the Office of Coalfield Community Development. All such fees shall be reserved and expended exclusively to fund the Office of Explosives and Blasting.

18.4. Expenditures.—Direct expenditures from the fees collected are not authorized, but shall be appropriated by the legislature.

18.5. Sufficiency of Fees.—After one year of collection of the explosive material fees and expenditure of the appropriations therefrom, the office shall report to the legislature whether the fees have provided sufficient revenue to fund the operation of both the Office of Explosives and Blasting and the Office of Coalfield Community Development.

18.6 The director is authorized, through the Treasurer's Office to invest the mountaintop removal fund with all interest earnings accrued to be returned to and be made part of the fund.

Section 199–1–19

Noncompliance. [This section is new.]

Failure to timely comply with the fee requirements of W. Va. Code Section 22–3A and this rule may result in permit suspension or revocation in accordance with W. Va. Code Section 22–3–17.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

If you submit written or electronic comments on the proposed amendment during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments

delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. WV–087–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (local time), on December 20, 2000. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–30870 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[OSD Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary is proposing to add an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before February 5, 2001 to be considered by this agency.

ADDRESSES: Send comments to the OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 311

Privacy.

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 311.8 is amended by adding paragraph (c)(7) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(7) System identifier and name: DGC 20, DoD Presidential Appointee Vetting File.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to 5 U.S.C. 552a(k)(5) are subsections (d)(1) through (d)(5).

(ii) **Authority:** 5 U.S.C. 552a(k)(5).

(iii) Reason: From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

* * * * *

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–30472 Filed 12–4–00; 8:45 am]

BILLING CODE 5001–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6904–3]

Hazardous Waste Management System; Proposed Exclusion for Identification and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by Heritage Environmental Services, LLC (Heritage) to exclude (or "delist") treated Electric Arc Furnace Dust (EAFD) produced at Nucor Steel, Division of Nucor Corporation (Nucor) located in Crawfordsville, Indiana from the lists of hazardous wastes contained in Subpart D of Part 261.

The Agency has tentatively decided to grant the exclusion based on an evaluation of waste-specific information provided by Heritage. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that Heritage's petitioned waste is nonhazardous with respect to the original listing criteria.

DATES: *Comments.* We will accept public comments on this proposed decision until January 19, 2000. We will

stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

Request for Public Hearing. Your request for a hearing must reach EPA by December 20, 2000. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: *Comments.* Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL, 60604.

Request for Public Hearing. Any person may request a hearing on this proposed decision by filing a request with Robert Springer, Director, Waste, Pesticides and Toxics Division (D–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL, 60604.

Docket. The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at 312–353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
  A. What action is EPA proposing?
  B. Why is EPA proposing to approve this delisting?
  C. How will Heritage manage the waste if it is delisted?
  D. When would EPA finalize the proposed delisting exclusion?
  E. How would this action affect States?
II. Background
  A. What is the history of the delisting program?
  B. What is a delisting petition, and what does it require of a petitioner?
  C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
  A. What waste did Heritage petition EPA to delist?
  B. What information and analyses did Heritage submit to support this petition?
  C. How does Heritage generate the petitioned waste?
  D. How did Heritage sample and analyze the data in this petition?
  E. What were the results of Heritage's analysis?
  F. How did EPA evaluate the risk of delisting this waste?
  G. What other factors did EPA consider in its evaluation?
  H. What did EPA conclude about Heritage's analysis?
  I. What is EPA's final evaluation of this delisting petition?
IV. Conditions for Exclusion
  A. What are the maximum allowable concentrations of hazardous constituents in the waste?
  B. How frequently must Heritage test the waste?
  C. What must Heritage do if the process changes?
  D. What data must Heritage submit?
  E. What happens if Heritage's waste fails to meet the conditions of the exclusion?
V. Regulatory Impact
VI. Regulatory Flexibility Act
VII. Paperwork Reduction Act
VIII. Unfunded Mandates Reform Act
IX. Executive Order 12875
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer And Advancement Act

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing to grant Heritage's petition to have treated EAFD from the production of steel at Nucor excluded, or delisted, from the definition of a hazardous waste. Heritage petitioned EPA to exclude, or delist, the EAFD because Heritage believes that the petitioned waste does not meet the RCRA criteria for which EPA originally listed the waste. Heritage also believes there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described below, we agree with the petitioner that the waste is nonhazardous with respect to the original listing criteria. Furthermore, EPA finds no additional constituents or factors which would cause the waste to be hazardous. If our review had found that the waste remained hazardous based on the factors for which we originally listed the waste, we would have proposed to deny the petition.

B. Why Is EPA Proposing To Approve This Delisting?

We believe that the petitioned waste does not meet the criteria for which the waste was originally listed and does not contain other constituents at levels which would cause it to be hazardous, and therefore, should be delisted. Our tentative decision to delist waste treated by Heritage at Nucor's Crawfordsville facility is based on the description of the process which generates the waste and the analytical data submitted to support today's proposed rule.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR Part 260.22 (d)(2) through (4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

We also evaluated the waste for other factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

C. How Will Heritage Manage the Waste If It Is Delisted?

If the petitioned waste is delisted, Heritage must dispose of it in a Subtitle D landfill licensed or permitted by a State to manage industrial waste. Heritage may also dispose of the delisted waste in a permitted Subtitle C landfill.

D. When Would EPA Finalize the Proposed Delisting Exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments (including any at public hearings,) on today's proposal.

Since this rule would reduce the existing requirements for a person generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with Section 3010 of RCRA as amended by HSWA. Therefore, the exclusion would become effective upon finalization.

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under

section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge the petitioners to contact the state regulatory authority to establish the status of their waste under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Heritage transports the petitioned waste to or manages the waste in any state with delisting authorization, Heritage must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (3).

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility that meets the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows a person to demonstrate that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude wastes from the list of hazardous wastes. In a delisting petition, the petitioner must show that the waste generated at a particular facility do not meet any of the criteria for listed wastes. The criteria for which EPA lists a waste are in 40 CFR 261.11 and in the background documents for the listed wastes.

In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in 40 CFR 260.22(a), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous. (See The Hazardous and Solid Waste Amendments (HSWA) of 1984.)

EPA must also consider as a hazardous waste, mixtures containing listed hazardous wastes and wastes derived from treatment of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion but remain hazardous wastes until excluded.

III. EPA's Evaluation of the Waste Information and Data

A. What Wastes Did Heritage Petition EPA To Delist?

August 3, 1999, Heritage petitioned EPA to exclude an annual volume of 30,000 cubic yards of K061 EAFD generated at Nucor Steel Corporation located in Crawfordsville, Indiana from the list of hazardous wastes contained in 40 CFR 261.32. K061 is defined as "emission control dust/sludge from the primary production of steel in electric arc furnaces." The EPA reviews a petitioner's estimated volume and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts Heritage's estimate of annual volume of waste.

B. What Information and Analyses Did Heritage Submit To Support This Petition?

To support its petition, Heritage submitted (1) descriptions and schematic diagrams of the EAFD treatment system; (2) analyses for antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, vanadium, and zinc (a) for total concentration, (b) by the Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, (c) by the Multiple Extraction Procedure (MEP), SW–846 Method 1312, and (d) using the TCLP and MEP procedures while substituting neutral and basic extraction fluids for the acidic extraction fluids specified in the method; (3) total constituent analyses for sulfide, and cyanide; (4) total constituent analyses for semivolatile organic compounds (SVOCs); (5) total constituent analyses for volatile organic compounds (VOCs); (6) total polychlorinated biphenyls (PCBs); and (7) total oil & grease.

C. How Is the Petitioned Waste Generated?

The treated EAFD proposed for exclusion has been generated at Nucor since the facility began steel manufacturing in 1989. Carbon and stainless steel are manufactured from scrap metal using two electric arc furnaces. The exhaust from the furnaces is conveyed via a capture system designed to capture emissions from the furnaces and the associated building. Larger particles are removed in a dropout chamber while the capture system conveys the smaller particles for capture in air pollution control devices (*i.e.*, baghouses). EAFD captured in the baghouses is conveyed by a screw conveyor system to two aboveground, cone bottom silos that accumulate the dust prior to introduction into the treatment process. The EAFD is conveyed from the accumulation silos either by screw conveyor or by gravity, to the treatment equipment.

The computer controlled treatment system weighs a predetermined amount of EAFD into a mixing device. Treatment reagents are added proportionally in sequential manner to the mixing device. The mixing device thoroughly blends the EAFD and the treatment reagents in precise amounts based on certain dust characteristics. Once the mixing operation is completed, the waste is conveyed to a dump truck for transportation to a landfill.

D. How Did Heritage Sample and Analyze the Data in This Petition?

In consultation with EPA Region 5, Heritage developed a list of analytical constituents based on a review of the EAFD and the treatment process. Three

randomly collected composite samples of treated carbon steel EAFD were collected for testing each week over a four week period for a total of twelve samples during an initial round of sampling. Each composite sample was comprised of four grab samples that were collected immediately after loading from a roll-off box containing treated EAFD. Heritage conducted a second round of random sampling over a four week period similar to the first round with the exception of stainless steel. A total of eight samples were collected during the second round of sampling and analysis. Treated stainless steel samples were collected on two days when the facility was generating EAFD from stainless steel production. Treated stainless steel samples were randomly collected during the two days of stainless steel production.

To quantify the total constituent and extraction fluid concentrations, Heritage used the following SW–846 Methods: 7041/6010 for antimony; 6010B for arsenic, barium, beryllium, cadmium, chromium, lead, nickel, selenium, silver, thallium, vanadium, and zinc; 7470 for mercury; 9012 for total cyanide; 9034 for total sulfide; 8082 for PCBs; 8260 for volatile organic compounds, 8270 for semivolatile organic compounds, and 413.1 for Oil & Grease.

During the initial round of sampling and analysis, Heritage demonstrated that the treated EAFD was stable when using the TCLP. During the second round of sampling and analysis, Heritage demonstrated that the treated EAFD is stable over a range of pH values (acidic, neutral, and basic). In addition to the TCLP, Heritage analyzed the second round of samples using a modified TCLP procedure, in which the prescribed TCLP extraction fluid was substituted with (1) a neutral extraction fluid of reagent water (ASTM Type II water) adjusted to pH 6.5 ± 0.05 using 1 N NaOH and (2) a basic extraction fluid consisting of reagent water to which high calcium hydrated lime was added to reach a pH of 12.0 ± 0.05. Heritage removed dissolved oxygen from both the neutral and basic extraction fluids to less than 0.5 ppm by the addition of a stoichiometric amount of sodium hydrosulfite. Heritage believes it is appropriate to test stabilized waste using an oxygen depleted extraction fluid because it believes that the environment of a solid waste landfill is anaerobic or oxygen depleted. Furthermore, to more closely simulate the anaerobic environment of the landfill, Heritage performed the extraction procedure with zero headspace in the extraction vessel and performed the filtration step under a nitrogen blanket. Heritage submitted documentation to U.S. EPA supporting Heritage's belief that solid waste landfills are oxygen depleted. Heritage also submitted a summary of dissolved oxygen data for leachate from their two landfills in support of their assertion that the landfill environment is anaerobic. Heritage believes that the oxygen depleted environment of the buried waste in combination with appropriate stabilization reagents inhibits the mobilization of metallic species.

Heritage analyzed four samples following the Multiple Extraction Procedure (MEP), SW 846 method 1320, but substituting the TCLP procedure, Method 1311 for the EP Tox test, Method 1310. Heritage also analyzed four additional samples following the MEP method, but using a neutral extraction fluid for all ten extractions.

E. What Were the Results of Heritage's Analysis?

Table 1 presents the maximum total and leachate concentrations for 14 metals, total cyanide, and total sulfide. The concentrations of metals in the extract are the maximum obtained in any of the three extraction fluids (acidic, neutral, and basic).

Heritage analyzed one sample of petitioned waste for 57 volatile organic compounds, 72 semi-volatile organic compounds, and eight Arochlor mixtures of PCBs. There were no detections of these organic constituents in the treated EAFD samples. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results. Heritage submitted a signed Certification of Accuracy and Responsibility statement presented in 40 CFR 260.22(i)(12).

F. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. We used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed to evaluate the potential impact of the petitioned waste on human health and the environment. To accomplish this, we used a Windows based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases using several EPA models including the EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) fate and transport model for groundwater releases. For a detailed description of the DRAS program and the EPACMTP model, see 65 FR 58015, September 27, 2000. A technical support document for the DRAS program is available in the public docket.

Revisions have been made to the DRAS program in order to improve the modeling which are being implemented for the first time in a draft exclusion. Specifically, the groundwater inhalation pathway was revised to reflect recent advances in modeling household inhalation from home water use (e.g., showering). The basis for estimating the concentration of constituents in the indoor air is based on the mass transfer of constituent from water to shower air. The initial version of DRAS used a fate and transport model described in T.E. McKone and K.T. Bogen's 1992 Uncertainties in Health-Risk Assessment: An Integrated Case Study Based on Tetrachloroethylene in California Groundwater, *Regulatory Toxicology and Pharmacology, 15: 86–103*, which predicted the highest waste concentration emitted from the water into the air during a given water use period (e.g., 10-minute shower). This method was revised to more accurately predict the average concentration occurring during the exposure event.

The revised model used in this analysis is based on the equations presented in T.E. McKone's 1987 Human Exposure to Volatile Organic Compounds in Household Tap Water: The Indoor Inhalation Pathway, *Environmental Science and Technology, 21(12): 1194–1201*. The shower model estimates the change in the shower (or bathroom or household) air concentration based on the mass of constituent lost by the water (fraction emitted or emission rate) and the air exchange rate between the various model compartments (shower, the rest of the bathroom, and the rest of the house). The resulting differential equations were solved using finite difference numerical integration. The average air concentration in the shower and bathroom are obtained by averaging the concentrations obtained for each time step over the duration of the exposure event (shower and bathroom use). These concentrations and the durations of daily exposure are used to estimate risk from inhalation exposures to residential use of groundwater. Further, improvements were made to more accurately reflect the transfer efficiency of the waste constituent from the groundwater to the air compartment. The fraction emitted from the bathroom or household water use is a function of the input transfer efficiency (or maximum fraction emitted) and the driving force for mass transfer (the differential between air saturation concentration at air/water interface and bulk air concentration). For example, in the shower compartment, the constituent emission rate is estimated from the change in the shower water concentration as the water falls through the air. The shower emissions can be modeled based on falling droplets as a means of estimating the surface-area-to-volume ratio for mass transfer and the residence time of the water in the shower compartment, assuming the constituent concentration in the gas phase is constant over the time frame of the droplet fall. By assuming the drops fall at terminal velocity, the surface-area-to-volume ratio and the residence time can be determined based solely on droplet size. A droplet size of approximately 1 mm (0.1 cm) was selected. The terminal velocity for the selected droplet size is approximately 400 cm/s. The fraction of constituent emitted from a water droplet at any given time can then be calculated.

The equations.used to predict surface volatilization from a landfill have been modified to more accurately reflect true waste concentration releases. The previous version of DRAS used Farmer's equation to estimate the emission rate of volatiles from the surface of the landfill. Farmer's equation assumes that the emission originates as volatiles in liquids trapped in the pore spaces between solid particles of waste. The volatiles evaporate from the liquid and are emitted from the landfill following gaseous diffusion through the solid waste particles and soil cover to the surface of the landfill. Farmer's equation requires the mole fraction of a given volatile constituent in the liquid in order to calculate the emission. The previous version of DRAS used the TCLP value of a volatile constituent in the waste to approximate the mole fraction of a given constituent in the pore liquid. Since the TCLP test includes a 20-fold dilution, the calculation might underestimate the available concentration of volatiles in freshly deposited waste. The DRAS has been revised to use Shen's modification of Farmer's equation, described in U.S. EPA Office of Air Quality Planning and Standards' 1984 Evaluation and Selection of Models for Estimating Air Emissions from Hazardous Waste Treatment, Storage, and Disposal Facilities, EPA–450/3–84–020. Shen took the simplified version of Farmer's equation for vapor flux from a soil surface and converted it to an emission rate by multiplying it by the exposed landfill area. Shen's modification uses the total waste constituent concentration (weight fraction in the bulk waste) to approximate the mole fraction of that constituent in the liquid phase.

In estimating the amount of a given waste constituent that is released to surface water and eventually becomes freely dissolved in the water column, previous delisting petitions and the earlier version of the DRAS used the maximum observed TCLP concentration in waste as the total amount of the waste constituent available for erosion. Further, the former method assumed that all of the constituent mass that reached the stream, based on TCLP, became dissolved in the aqueous phase. Assuming complete conversion to a dissolved state is overly conservative and not in agreement with recent Agency methodology. In the revised DRAS, the total waste constituent concentration is used to estimate the constituent mass that reaches the stream. The portion of the waste constituent that becomes freely dissolved is determined by an estimate of partitioning between suspended solids and the aqueous phase. This methodology is described in U.S. EPA's 1998 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft, EPA530–D–98–001A.

Recent developments in mercury partitioning described in the Mercury Report to Congress, Volume III: Fate and Transport of Mercury in the Environment, EPA–452/R–97–005, led to another revision to the surface water pathway. The DRAS was modified to account for bioaccumulation of methyl mercury as a result of the release of mercury into the surface water column. The primary human health hazard posed by the release of mercury into surface water is through bioaccumulation of methyl mercury in fish followed by human consumption of the contaminated fish. Biological processes in surface water cause the conversion, or methylation, of elemental mercury to methyl mercury. In accordance with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft, 15% of mercury in the water column is assumed to be converted to methyl mercury. This fraction is then used, along with the current bioaccummulation factor, to determine the predicted concentration of methyl mercury in fish tissue.

The maximum allowable leachate concentrations and the point of exposure (POE) concentrations of concern in groundwater are also presented in Table 1. For inorganic constituents, the maximum reported leachate concentrations for metals in the treated EAFD were well below the health-based levels of concern used in decision-making for delisting. No organic constituents were detected. We believe that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in our modeling efforts if the non-detectable value was obtained using the appropriate analytical method. For constituents which are not detected in the extract but are detected as a total concentration, the DRAS model requires that the detection level to be entered along with the other data. For these constituents, the DRAS uses one-half of the detection level to calculate risk.

G. What Other Factors Did EPA Consider in Its Evaluation?

We also considered the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, we determined that it would be inappropriate to request ground-water monitoring data because the waste is currently disposed off-site. For a petitioner using off-site management, EPA believes that, in most cases, the ground water monitoring data would not be meaningful. Most commercial land disposal facilities accept waste from numerous generators. Any ground water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, EPA believes that it would be impossible to isolate ground water impacts associated with any one waste disposed of in a commercial landfill. Therefore, we did not request ground water monitoring data from Heritage. Potential impacts of the petitioned waste via air emission and storm water run-off are also addressed in the DRAS.

H. What Did EPA Conclude About Heritage's Analysis?

After reviewing Heritage's petition, the EPA concludes that (1) no hazardous constituents are likely to be present above health based levels of concern in the waste generated at Nucor Steel; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

The total cumulative risk posed by the waste is approximately 1.6×10^{-5}. Although this value exceeds the Region 5 Delisting Program's target risk level of

1×10^{-6} for delisting hazardous waste, EPA believes that this risk is acceptable because the estimated risk is almost entirely associated with a single contaminant/pathway which may be evaluated in more than one way. Furthermore, EPA has considered cancer risks in the range of 1×10^{-4} to 1×10^{-6} to be acceptable in other programs and the Region 5 Delisting Program has considered risks in this range acceptable if there are reasons to do so.

In this case, exposure to carcinogenic arsenic through ingestion of contaminated drinking water accounted for almost all of the risk estimated from disposal of the petitioned waste at a Subtitle D landfill. If the POE target concentration was set at the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL), the maximum allowable waste leachate concentration would be 0.96 mg/L TCLP arsenic, over 60 times higher than the maximum observed leachate concentration in the waste. EPA's July 1996 Soil Screening Guidance: User's Guide, EPA/540/R–96/018, states that acceptable levels of contaminants in soils for the ground-water pathway could be derived from SDWA Maximum Contaminant Level Goals or MCLs. Given that the difference between the MCL for arsenic and the health-based POE concentration is three orders of magnitude and that, according to EPA's May 2000 Technical Fact Sheet: Proposed Rule for Arsenic in Drinking Water and Clarifications to Compliance and New Source Contaminants Monitoring, EPA 815–F–00–011, naturally occurring levels of arsenic are often higher than these levels, we believe that some allowance can be exercised in setting the allowable level for arsenic in the leachate. EPA proposes to set the allowable arsenic leachate level at a concentration which corresponds to a total waste cancer risk of 1×10^{-4} (which is still within the generally acceptable range of 1Qtimes10^{-4} to $\times10^{-6}$). Delisting levels for constituents other than arsenic will still be set at concentrations corresponding to the original Region 5 target of 1×10^{-6}. By this method, the delisting level for leachable arsenic in this proposed exclusion will be set at a value which corresponds to a POE concentration of approximately one-tenth of the existing MCL. The EPA has recently proposed to lower the arsenic MCL to one-tenth its current value and thus, if finalized, it would correspond well with the delisting level we are setting.

The aggregate hazard index for this waste is estimated to be 0.965, which does not exceed the EPA Region 5 Delisting Program's target of 1.0. The majority of this aggregate hazard index, 0.774, occurs as a result of migration of mercury to surface water followed by ingestion of fish by humans. For this reason, a delisting level for total mercury in the waste will also be imposed. All other delisting levels imposed in this exclusion are based on the concentration of constituents in leachate.

I. What Is EPA's Final Evaluation of This Delisting Petition?

We have reviewed the sampling procedures used by Heritage and have determined they satisfy EPA criteria for collecting representative samples of the treated EAFD. The descriptions of the hazardous waste treatment process and the analytical data, together with the proposed verification testing requirements, provide a reasonable basis for EPA to grant the exclusion. We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a Subtitle D landfill. We therefore, propose to grant Heritage an exclusion for the EAFD generated at Nucor.

If we finalize this proposed exclusion, the Agency will no longer regulate the petitioned waste under 40 CFR Parts 262 through 268 and the permitting standards of Part 270.

IV. Conditions for Exclusion

A. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

The following table summarizes delisting levels for Nucor's waste. The EPA calculated maximum allowable concentrations in the extract for detected constituents using the DRAS program. The allowable leachate concentrations were derived either from the health-based calculation within the DRAS program, from MCLs, treatment technique (TT), or toxicity characteristic values, whichever resulted in a lower delisting level, with the exception of arsenic as discussed in Section III. H. of this preamble. In addition, the concentration of total mercury in the waste shall not exceed 1 mg/kg.

TABLE 1.—CONSTITUENT CONCENTRATIONS AND DRAS MAXIMUM ALLOWABLE LEACHATE AND POINT OF EXPOSURE LEVELS

Constituent	Maximum [1] Observed Total Concentration (mg/kg)	Maximum [1] Observed Leachate Concentration (mg/L TCLP)	Maximum Allowable Leachate Concentration (mg/L TCLP)	Maximum Allowable Point of Exposure Concentration (mg/L in groundwater)
Antimony	<25	0.0082	[2] 0.206	[2] 0.006
Arsenic	30	0.015	0.0936	0.005
Barium	56	0.83	[2] 55.7	[2] 2.0
Beryllium	10	<0.002	[2] 0.416	[2] 0.004
Cadmium	130	<0.001	[2] 0.15	[2] 0.005
Chromium	2,880	0.11	[2] 1.55	[2] 0.1
Lead	4,600	2.4	[3] 5	[2] 0.015
Mercury	0.72	<0.002	[2] 0.149	[2] 0.002
Nickel	130	<0.020	28.3	0.753
Selenium	8.8	0.056	[2] 0.58	[2] 0.05
Silver	47	0.023	3.84	0.187
Thallium	<30	<0.05	[2] 0.088	[2] 0.002
Vanadium	160	<0.01	21.1	0.263
Zinc	240,000	2.7	280	11.25
Cyanide	<0.23	NR	NA	[2] 0.2

TABLE 1.—CONSTITUENT CONCENTRATIONS AND DRAS MAXIMUM ALLOWABLE LEACHATE AND POINT OF EXPOSURE LEVELS—Continued

Constituent	Maximum [1] Observed Total Concentration (mg/kg)	Maximum [1] Observed Leachate Concentration (mg/L TCLP)	Maximum Allowable Leachate Concentration (mg/L TCLP)	Maximum Allowable Point of Exposure Concentration (mg/L in groundwater)
Sulfide	31	NR	NA	NA

[1] These levels represent the highest constituent concentration found in any sample and are not necessarily the specific levels found in any one sample.
[2] The concentration is based on the MCL or TT action level.
[3] The concentration is based on the toxicity characteristic level in 40 CFR 261.24.
< The constituent was not detected at the stated concentration.
NA Not applicable
NR Analysis not run.

B. How Frequently Must Heritage Test the Waste?

Heritage must demonstrate on a monthly basis that the constituents of concern in the petitioned waste do not exceed the levels of concern in section IV.A. above. Heritage must collect two representative samples of the treated EAFD per month and analyze the samples using a) the TCLP method; b) the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and c) SW–846 Method 7470 for mercury. The alkaline extraction fluid will consist of reagent water to which high calcium hydrated lime is added to reach a pH of 12.0 ± 0.05. Appropriate detection levels and quality control procedures are required.

C. What Must Heritage Do if the Process Changes?

If Nucor significantly changes the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage may not handle the EAFD generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the levels set in Section IV.A and that no new hazardous constituents listed in Appendix VIII of 40 CFR Part 261 have been introduced. Heritage must manage wastes generated after the process change as hazardous waste until Heritage has received written approval from EPA.

D. What Data Must Heritage Submit?

Heritage must submit an annual summary of the data obtained through monthly verification testing to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604, by February 1 of each year for the prior calendar year. Heritage must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

E. What Happens if Heritage Fails To Meet the Conditions of the Exclusion?

If Heritage violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the monthly testing of the waste does not meet the delisting levels described in Section IV.A above, Heritage must notify the Agency according to Section IV.D. The exclusion will be suspended and the waste managed as hazardous until Heritage has received written approval for the exclusion from the Agency. Heritage may provide sampling results that support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* (APA), to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the Agency certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, *etc.*) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 8, 2000.

Willie H. Harris,

Acting Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX of Part 261—[Amended]

2. In Table 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
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Heritage Environmental Services, LLC., at Nucor Steel.	Crawfordsville, Indiana	Treated electric arc fumace dust (EAFD), K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant at a maximum annual rate of 30,000 cubic yards per year and disposed of in a Subtitle D landfill, after (insert publication date of the final rule). (1) *Delisting Levels:* (A) The constituent concentrations measured in either of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony—0.206; Arsenic—0.0936; Barium—55.7; Beryllium—0.416; Cadmium—0.15; Chromium (total)—1.55; Lead—5.0; Mercury—0.149; Nickel—28.30; Selenium—0.58; Silver—3.84; Thallium—0.088; Vanadium—21.1; Zinc—280.0. (B) Total mercury may not exceed 1 mg/kg. (2) *Verification Testing:* On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP method, the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and SW–846 Method 7470 for mercury. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). (3) *Changes in Operating Conditions:* If Nucor significantly changes the manufacturing process or chemicals used in the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage or Nucor must notify the EPA of the changes in writing. Heritage and Nucor must handle wastes generated after the process change as hazardous until Heritage or Nucor has demonstrated that the wastes continue to meet the delisting levels set forth in Paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and Heritage and Nucor have received written approval from EPA. (4) *Data Submittals:* Heritage must submit the data obtained through monthly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Heritage or Nucor must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage or Nucor must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (5) *Reopener Language*—(A) If, anytime after disposal of the delisted waste, Heritage or Nucor possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in Paragraph (1) is at a level in the leachate higher than the delisting level established in Paragraph (1), or is at a level in the groundwater higher than the maximum allowable point of exposure concentration predicted by the CMTP model, then Heritage or Nucor must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (5)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Heritage and Nucor in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Heritage and Nucor with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Heritage and Nucor shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days Heritage or Nucor presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
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* * * * *

[FR Doc. 00–29647 Filed 12–4–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

42 CFR Part 36

Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee

AGENCY: Indian Health Service (IHS), Department of Health and Human Services (DHHS).

ACTION: Notice of intent to establish negotiated rulemaking committee.

SUMMARY: As required by section 3 of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 564, the Department of Health and Human Services, (DHHS) is giving notice of the intent to establish a Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing Title V of the Tribal Self-Governance Amendments of 2000; Public Law 106–260, (the Act). DHHS invites any interested party to comment on the proposal to create this negotiated rulemaking committee and on the proposed membership of the committee, which is subject to the requirements of the Act. In addition, DHHS invites persons who believe that they will be significantly affected by the proposed rule to apply or nominate other persons for membership on the negotiated rulemaking committee.

DATES: Written comments concerning this notice must be received on or before January 4, 2001. Nominations or applications for membership on the committee may be made by submitting applications on or before January 4, 2001. Each application must contain the information described in the "Application for Membership" section below.

ADDRESSES: Please submit comments and applications to: Paula K. Williams, Director, Office of Tribal Self-Governance, Indian Health Service, 5600 Fishers Lane, Room 5A–55, Rockville, MD 20857. Comments and applications received will be available for inspection at the address above from 9:00 a.m. to 3:00 p.m., Monday through Friday, beginning approximately two weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Paula K. Williams, Director, Office of Tribal Self-Governance, Indian Health Service, at the address listed above, or by telephone at 301–443–7821. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 517 of Title V of the Act, requires the Secretary, not later than 90 days after the date of the enactment of the Act, to initiate procedures under the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* to negotiate and promulgate the regulations necessary to carry out Title V. The Act calls for a negotiated rulemaking committee to be established pursuant to 5 U.S.C. 565, comprised only of Federal and tribal representatives, with a majority of the tribal government representatives representing Self-Governance tribes. The Committee will confer with and allow representatives of Indian tribes, inter-tribal consortiums, tribal organizations, and individual tribal members to actively participate in the rulemaking process. The Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of Self-Governance and the government-to-government relationship between the United States and Indian tribes.

Copies of the Committee's charter will be filed with the appropriate committees of Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act, (FACA), 5 U.S.C. Appendix.

Scope of the Proposed Rule

The proposed rule generally will include provisions governing how DHHS/IHS carries out its responsibility to tribes under the Act and how tribes carry out their responsibility under the Act. Because of the detailed provisions contained in the Act, it is anticipated that regulations can be kept to a minimum. Examples of some areas where procedures may be required are for regulations waivers, appeals of rejection of final offers, or where regulations would be required, such as under sec. 507(a) which specifies that reporting requirements can only impose minimal burdens on a tribe and may only be imposed if they are contained in regulations developed under negotiated rulemaking. It is anticipated that the negotiated rulemaking committee will develop proposed regulations in any other areas that may be suggested during the process.

Interests Significantly Affected

A limited number of identifiable interests will be significantly affected by the rule. Those parties are Indian tribes, tribal organizations as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act, and individual tribal members.

Proposed Agenda and Schedule for Publication of Proposed Rule

It is the Secretary's intent to publish the proposed rule for notice and comment no later than 1 year after the date of the enactment of the Act (August 18, 2000 + 1 year), as required by section 517(a)(2) of the Act.

The charter will specify that a minimum of three meetings will be held. The first meeting will serve as an organizational meeting to establish procedures, deadlines and a work schedule in order for the 12–month time period to be met.

Negotiated Procedures

The following procedures and guidelines will apply to the negotiated rulemaking committee, unless they are modified as a result of comments received on this notice or during the negotiation process.

The committee may use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to help the negotiation process run smoothly, and help participants define and reach consensus.

The members of the committee, with the assistance of the facilitator, may adopt procedures for committee meetings which they consider most appropriate.

The goal of the negotiating process is for the committee to reach consensus on the proposed rule. Consensus means unanimous concurrence among the interests represented unless the committee agrees to define such term to mean general but not unanimous concurrence, or agrees upon another specified definition.

If the committee reaches consensus on the proposed rule, the committee shall transmit a report containing the proposed rule to the Secretary at the conclusion of negotiations. If the committee does not reach consensus on the proposed rule, it may transmit a report specifying any areas in which it did reach consensus, and any other recommendation it considers appropriate, including dissenting views of committee members. The DHHS, to the maximum extent consistent with its legal obligations, will use the consensus of the committee as the basis for a proposed rule for notice and comment. Parties to the negotiation may withdraw at anytime. If this happens, the remaining committee members will evaluate whether the committee should continue or be reconstituted.

Meetings will be held in the Washington, DC area, or in another location, at the convenience of the committee. DHHS will announce committee meetings in the **Federal Register**. These meetings will be open to the public.

Records of Meetings

In accordance with the requirements of the Federal Advisory Committee Act. 5 U.S.C. Appendix, DHHS will keep a record of all committee meetings.

Administrative Support

The Office of Tribal Self-Governance will provide funding for the costs of the committee, as well as administrative support and technical assistance, including logistical support services, for the activities of the committee.

Committee Membership

The Act requires that the committee be comprised only of Federal and tribal government representatives and that a majority of the tribal committee members be representatives from Self-Governance tribes. The Secretary has determined in accordance with 5 U.S.C. 565(b) that for the proper functioning of the committee and in order to achieve balanced membership and representation from all geographic regions that the committee membership not be limited to 25 members.

The following are the proposed members of the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee:

Tribal Co-Chairman

Merle Boyd—Chairman, TSGAC, Second Chief, Sac and Fox Nation

Ron Allen—Alternative, Chairman/Executive Officer, Jamestown S'Klallam Indian Tribe

Self-Governance Tribes

1. Don Kashevaroff, Chairman of the Board, Alaska Native Tribal Health Consortium
2. Katherine Gotlieb, President/CEO, Southcentral Foundation
3. Valerie Davidson, General Counsel, Yukon-Kuskokwim Health Corporation
4. Carolyn Crowder, Alaska
5. Melanie Benjamin, Chief Executive, Mille Lacs Band of Ojibwe
6. Alvin Windy Boy, Sr., Councilman, Chippewa Cree Tribe of the Rocky Boy's Reservation, Rocky Boy Health Board
7. James T. Martin, Executive Director, United South & Eastern Tribes, Inc.
8. Merle Boyd, Second Chief, Sac and Fox Nation
9. Jefferson Keel, Lt. Governor, Chickasaw Nation
10. Wanda Stone, Chairperson, Kaw Nation
11. W. Ron Allen, Chairman/Executive Officer, Jamestown S'Klallam Indian Tribe
12. Willie Jones, Tribal Chairman, Lummi Indian Nation

Title I and Direct Service Tribes

1. Carol Anne Heart, Executive Director, Aberdeen Area Tribal Chairman's Health Board
2. Jim Hooper, Acting Executive Director, Ramah Navajo School Board
3. Jessica Berger, Health Director, Little River Band of Ottawa Indians
4. Gary Melbourne, Health Director, Fort Peck Tribal Health Department
5. Kelly Short-Slagley, Aqua Caliente Tribe, Vice President, Riverside-San Bernardino County Indian Health, Inc.
6. Albert Long, Navajo Nation, Department Director, Block Grants and Special Projects Department
7. William McKee, Individual Tribal Member
8. Garland Brunoe, Vice-Chairman, Confederated Tribes of Warm Springs
9. Bob Brobois, Secretary of Tribal Business, Spokane Tribe of Indians
10. Vernon James, Health Director, San Carlos Apache Tribe
11. Reuben Howard, Executive Director, Pasqua Yaqui Tribe

HHS/IHS Federal Team

1. Paula Williams—Lead Negotiator, Director, Office of Tribal Self-Governance, IHS
2. Leslie Morris—Alternate Lead Negotiator, Director, Division of Regulatory and Legal Affairs, IHS
3. Michael Mahsetky, Director, Legislative Affairs, IHS
4. Ronald C. Ferguson, Principal Engineer, Office of Environmental Health and Engineering, Office of Public Health, IHS
5. Duke McCloud, Senior Counsel, Office of General Counsel, DHHS
6. Eugenia Tyner-Dawson, Senior Advisor for Tribal Affairs, Office of Intergovernmental Affairs, DHHS
7. Katherine Hughes, Office of Grants Acquisition Management, DHHS

HHS/IHS Alternates

1. Kitty Marx, Senior Policy Analyst, Division of Regulatory and Legal Affairs, IHS
2. June Tracy, Legislative Specialist, Legislative Affairs, IHS
3. Eric Broderick, D.D.S., Principal Dental Consultant, IHS, Office of Public Health
4. Barbara Hudson, Senior Attorney, Office of General Counsel, DHHS
5. James Mason, Special Assistant to the Director, Office of Intergovernmental Affairs, DHHS

In addition to the tribal representatives identified above, DHHS solicits nominations of other tribal government representatives whose interest will be significantly affected by the rule.

Application for Membership

Each application or nomination for committee membership shall include:

1. Name, address, and telephone number of the nominee and the name of his or her tribe.
2. Evidence that the nominee is authorized to represent that tribe.
3. A written commitment from the nominee to actively participate in good faith in the development of the proposed rule.

The DHHS will give full consideration to all applications and nominations timely submitted.

Solicitation of Public Comments

Members of the public are invited to submit comments on this proposal to establish the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee, as well as on the proposed membership of the committee.

November 6, 2000.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service, DHHS.

[FR Doc. 00–30698 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–16–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA B–7407]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, *§ 67.4*

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Alaska	Shishmaref (City) Nome Division.	Chukchi Sea	Approximately 3,140 feet west of Old Gravel Airstrip along north shore of Sarichef Island.	None	[1]8
			Approximately 400 feet east of Old Gravel Airstrip along north shore of Sarichef Island.	None	[1]8
		Shishmaref Inlet	Approximately 1,100 feet east of Old Gravel Airstrip along south shore of Sarichef Island.	None	[1]5
			Approximately 3,140 feet west of Old Gravel Airstrip along south shore of Sarichef Island.	None	[1]8
Maps are available for inspection at the Shishmaref City Hall, Shishmaref, Alaska.					
Send comments to The Honorable Daniel Iyatunguk, Mayor, City of Shishmaref, P.O. Box 83, Shishmaref, Alaska 99772.					
Nevada	Washoe County (Unincorporated Areas).	Galena Creek	Approximately 12,000 feet downstream of Joy Lake Road.	None	#3
			Approximately 1,950 feet downstream of Joy Lake Road.	None	*5,840
			Approximately 1,000 feet upstream of Joy Lake Road.	None	*6,830
		Jones Creek	At Mount Rose Highway	None	#2
			At confluence with Galena Creek	None	#3
			At Callahan Ranch Road	None	*5,450
			Approximately 2,600 feet upstream of Bordeaux Drive.	None	*5,888
			At Mount Rose Highway	None	#1
Maps are available for inspection at Washoe County Engineering, 1001 E. 9th Street, Reno, Nevada.					
Send comments to The Honorable Ted Short, Chairman, Washoe County Commission, 1001 E. 9th Street, Reno, Nevada 89512.					
New Mexico	Red River (Town) Toas County.	Bitter Creek	Approximately 220 feet downstream of East River Street.	None	*8,654
			Approximately 760 feet upstream of East High Street.	None	*8,691
		Mallette Creek	Approximately 340 feet downstream of West Main Street.	None	*8,632
			Approximately 180 feet downstream of Mallette Canyon Park Road.	None	*8,656
	Red River (Town) Toas County.	Red River	Approximately 100 feet downstream of High Cost Trail.	None	*8,608
			Approximately 1,500 feet upstream of Fishing Pond Bridge.	None	*8,778
Maps are available for inspection at 100 East Main Street, Red River, New Mexico.					
Send comments to The Honorable Craig Swaggerty, Mayor, Town of Red River, P.O. Box 1020, Red River, New Mexico 87558.					
Oklahoma	Creek County (Unincorporated).	Polecat Creek	Just upstream of 33rd West Avenue	None	*663
			Approximately 4,000 feet upstream of Burlington Northern Railroad.	None	*667
		Rock Creek	At confluence of Polecat Creek	None	*666
			Approximately 1,100 feet downstream of Lake Sahoma Den Outlet.	None	*694
		Nickel Creek	Just upstream of 33rd West Avenue	None	*636
			Approximately 3,500 feet upstream of 66th Street.	None	*712
Maps are available for inspection at the County Courthouse, 317 East Lee, Sapulpa, Oklahoma.					
Send comments to The Honorable Johnny Burke, Chairman, Creek County Board of Commissioners, 317 East Lee, Suite 103, Sapulpa, Oklahoma 74066.					
Oklahoma	Jenks (City) Tulsa County.	Wilmott Creek	Northwest of intersection of 101st Street and Sunbelt Railway.	*614	*612
			Approximately 100 feet downstream of 91st Street.	*614	*613
Maps are available for inspection at 211 North Elm, Jenks, Oklahoma.					
Send comments to The Honorable Mike Tucker, Mayor, City of Jenks, P.O. Box 2007, Jenks, Oklahoma 74037.					
Oklahoma	Logan County (Unincorporated Areas).	Chisholm Creek	Approximately 2,200 feet downstream of Waterloo Road.	*1,014	*1,014
			Just downstream of Waterloo Road	*1,015	*1,016
		Coon Creek	Just upstream of Waterloo Road	None	*969
			Approximately 100 feet upstream of Waterloo Road.	None	*970
Maps are available for inspection at the Logan County Courthouse, 301 East Harrison, Guthrie, Oklahoma.					
Send comments to The Honorable Joe Hall, Chairman, Logan County Board of Commissioners, 301 East Harrison, Guthrie, Oklahoma 73044.					
Oklahoma (cont'd)	Muskogee County and Incorporated Areas.	Arkansas River (Lower Reach).	Just upstream of Interstate Highway 40	None	*476
			Approximately 4,000 feet downstream of U.S. Highway 64.	*481	*479
			Just north of U.S. Highway 64	*482	*480
			Approximately 3,500 feet downstream of Webbers Falls Lock and Dam.	None	*483
		Dirty Creek	Approximately 700 feet downstream of Route 100.	None	*485
			Approximately 500 feet upstream from intersection of Muskogee Turnpike and Interstate 40.	None	*487

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) Existing	Modified
Maps for the unincorporated areas of Muskogee County are available for inspection at the Muskogee County Courthouse, 1300 South Cherokee, Muskogee, Oklahoma.					
Send comments to The Honorable Bruce Crittenden, Chairperson, Muskogee County Board of Commissioners, Muskogee County Courthouse, 1300 South Cherokee, Muskogee, Oklahoma 74403.					
Maps for the Town of Webbers Falls are available for inspection at the Webbers Falls City Hall, 100 River Street, Webbers Falls, Oklahoma.					
Send comments to The Honorable Jewell Horne, Mayor, Town of Webbers Falls, P.O. Box 216, Webbers Falls, Oklahoma 74470.					
Oklahoma	Sapulpa (City) Creek County.	Nickel Creek	Approximately 3,000 feet downstream of Land Road.	None	*663
			Approximately 300 feet upstream of Tulsa Sapulpa Union Railroad.	None	*695
		Polecat Creek	Approximately 4,000 feet downstream of Hilton Road.	None	*649
			Approximately 8,000 feet upstream of Hilton Road.	*653	*654
			Just upstream of Route 117	*662	*662
			Just downstream of alternate Route 75	*667	*667
		Rock Creek	Approximately 3,300 feet upstream of the confluence with Polecat Creek.	*667	*667
			Just downstream of Old Highway 66	*676	*678
			Just downstream of Turner Turnpike	*682	*684
Maps are available for inspection at 425 East Dewey, Sapulpa, Oklahoma.					
Send comments to The Honorable Brian Bingman, Mayor, City of Sapulpa, P.O. Box 1130, Sapulpa, Oklahoma 74067.					
	Sequoyah County and Incorporated Areas.	Arkansas River	Just above Highway 40	*477	*476
			Approximately 4,200 feet upstream of Route 100—U.S. Highway 64.	None	*481
			Western corporate limits just south of the Union Pacific Railroad.	None	*481
Maps for the unincorporated areas of Sequoyah County are available for inspection at the Sequoyah County Courthouse, 120 East Chickasaw, Sallisaw, Oklahoma.					
Send comments to The Honorable Cleon Harrell, Chairman, Sequoyah County Board of Commissioners, 117 South Oak Street, Sallisaw, Oklahoma 74037.					
Maps for the Town of Gore are available for inspection at the Town Municipal Building, 8th and South Main Streets, Gore, Oklahoma 74435.					
Send comments to The Honorable Bill Summers, Mayor, Town of Gore, P.O. Box 181, Gore, Oklahoma 74435.					
Texas	Vernon (City) Wilbarger County.	Pease River Tributary 1	Approximately 100 feet downstream of Harrison Street.	None	+1,206
			Approximately 2,400 feet upsteram of Brewer Street.	None	+1,231
		Pease River Tributary 2	Approximately 100 feet downstream of the BN&SF Railroad.	None	+1,200
			Just upstream of U.S. Highway 287	None	+1,219
Maps are available for inspection at the City of Vernon City Hall, 1725 Wilbarger Street, Vernon, Texas.					
Send comments to The Honorable Kelly Couch, Mayor, City of Vernon, 1725 Wilbarger Street, Vernon, Texas 76384.					

[1] Mean Sea Level

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 27, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–30868 Filed 12–4–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 112700D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to issue EFPs that would allow two vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The Manomet Center for Conservation Sciences (Manomet) submitted a complete application for the issuance of EFPs to two commercial fishing vessels, which warrants further consideration. The EFPs would allow two federally permitted groundfish vessels to conduct composite mesh selectivity studies with small-mesh codend covers to target mixed groundfish species--primarily yellowtail flounder, winter flounder (blackback), summer flounder (fluke), American plaice (dab) and cod, and may also allow access to seasonal area closures in the Gulf of Maine (GOM). The study is intended to determine the selective efficiency of each experimental codend and will attempt to correlate fish behavior with these findings. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before December 20, 2000.

ADDRESSES: Written comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281-9135.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978-281-9244.

SUPPLEMENTARY INFORMATION: Manomet submitted an industry cooperative proposal on November 6, 2000, for two EFPs to conduct composite codend mesh selectivity studies to address bycatch and discard of incidental catch and sub-legal sized fish in the mixed-groundfish fisheries of the Northeast. The study would be conducted in that portion of the GOM/Georges Bank Regulated Mesh Area that extends east from the New Hampshire shoreline at 43° N. lat. to 43° N. lat./70° W. long., then following the 70° W. long. line south to the 42° N. lat. line, and then extending west to the Cape Cod shoreline.

This industry collaborative study involves Manomet, the Massachusetts Division of Marine Fisheries, and the Maine Department of Marine Resources as co-principal investigators, and proposes to field test two composite mesh combinations against two industry-standard codend mesh sizes as follows: (1) Two composite codends made of 6.5-inch (16.51-cm) square mesh on the top half, one with 6.5-inch (16.51-cm) diamond mesh on the bottom half and the other with 6-inch (15.24-cm) diamond mesh on the bottom half, and (2) Two industry-standard codends, one made entirely of 6-inch (15.24-cm) diamond mesh and one made entirely of 6.5-inch (16.51-cm) square mesh.

The purpose of the study is to compare the length frequencies (size classes) of the catch retained by the two industry-standard codends and the two composite mesh codend combinations. To accomplish this, 1-7/8 inch (4.78-cm) codends will be used to cover the four test codends in order to retain for analysis fish that pass through the larger-mesh codends. The catch data for each sample (tow) would be used to prepare species-specific mesh selectivity curves. That is, the research will determine the size of each fish species retained by each of the codends tested versus the fish that are excluded by the codends. Data would be pooled for each of the codends tested and the selective efficiency of each codend will be determined for each important target species. Manomet will also conduct a detailed behavioral analysis to ascertain the presence/absence of species-specific behavioral patterns that may explain observed differences in the selective efficiency of the experimental composite codend mesh.

The field trials would take place over a period of approximately 5 days, with a total sample size of 40 tows. The 40 tows will consist of 10 tows for each of four codend mesh sizes (standard and composite mesh), at eight tows per day. These commercial gear trials would operate in the designated study area outside the Western GOM Year Round Closure Area beginning in December 2000, until the 40 tows are obtained. However, the principal investigator may decide that access to the GOM seasonal closure areas is necessary to catch the desired species at the appropriate time, in order to achieve the optimal sample. This would only occur as a last resort, in the event that the required species cannot be caught outside of these areas. Should access to these areas be necessary, the GOM seasonal closures that may correspond in time and location with the proposed study are as follows: Rolling Closure Area I (March 1- March 31), Rolling Closure Area II (April 1- April 30), Rolling Closure Area III (May 1 - May 31), and Rolling Closure Area VI (February 1 - February 28).

The experimental sampling design (use of double codend) is intended to greatly minimize the number of tows necessary to yield the necessary amount of catch information; a minimum of 10 tows (1 hour in length) is required for satisfactory selectivity curve results. The target species are yellowtail flounder, winter flounder (blackback), summer flounder (fluke), American plaice (dab) and cod. The main incidental species are expected to be skates, smooth and spiny dogfish, sculpins, sea raven and sea robin. Any sub-legal sized fish would be processed by the researcher (e.g., measured) and returned immediately to the water. During the experimental trials, participating vessels would be instructed to conduct normal fishing operations. Therefore, the vessels may only retain fish for commercial sale in the amount allowed under their respective Federal fishery permits and Days-at-Sea allocations. Catch would be sampled on each trip by NMFS-certified observers and all data, including the weight and length of all fish caught, would be entered into NMFS logbooks and submitted to the Northeast Fisheries Science Center upon completion of a trip.

Manomet will train up to five commercial fishers as sea samplers for use during the course of this

experiment. It is hoped that the newly trained sea samplers would be available to support other programs at the completion of the proposed experiment.

EFPs would be issued to two participating federally permitted Northeast multispecies vessels to exempt them from the gear restrictions and, if necessary, the GOM seasonal area closures of the Northeast Multispecies Fishery Management Plan, found at 50 CFR part 648, subpart F.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30820 Filed 12–4–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 001127331-0331-01; I.D. No. 102600B]

RIN 0648-AN69

Magnuson-Stevens Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2001 Specifications and Foreign Fishing Restrictions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2001 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 2001 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources. This action also proposes an inseason adjustment procedure for the 2001 mackerel joint venture processing (JVP) annual specifications and a proposal to allocate the domestic annual harvest (DAH) for Loligo squid into quarterly periods.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on January 4, 2001.

ADDRESSES: Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Please mark the envelope, "Comments-2001 MSB Specifications." Comments also may be sent via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or Internet.

Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to Patricia A. Kurkul, Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst (978)281-9273, fax 978-281-9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), DAH, domestic annual processing (DAP), JVP, and total allowable levels of foreign fishing (TALFF) for the affected species managed under the FMP. The regulations also specify that there will be no JVP or TALFF specified for Loligo, Illex, or butterfish, except that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

In addition to the annual specifications for each of the four species managed under the FMP, the Council recommended that, for several species managed by the Council, 2 percent of the 2001 total allowable landings (TAL) for each of these species be set aside for data collection purposes. Because no TAL is specified for Atlantic mackerel, squid, and butterfish, TAL is considered equivalent to IOY. The deduction would occur no later than December 31, 2000, upon notification to the Northeast Regional Administrator that the Council, in consultation with the Atlantic States Marine Fisheries Commission, has approved a specific data collection project that would use the set-aside allocation. If a project is not approved before December 31, 2000, then a set-aside deduction from the TAL would not occur. However, the set-aside recommendation cannot become effective until the Council adopts a framework measure, which in turn, is approved by NMFS, to establish the regulatory underpinnings of the process to allocate the set-aside.

Table 1 contains the proposed initial specifications for the 2001 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2001.

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	17,000[6]	24,000[6]	88,000[2,6]	5,900[6]
DAH	17,000	24,000	85,000[3]	5,897
DAP	17,000	24,000	50,000	5,897
JVP	0	0	20,000[4]	0

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2001.—Continued

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
TALFF	0	0	3,000	3[5]

[1] Not applicable.
[2] OY may be increased during the year, but the total ABC will not exceed 347,000 mt
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 30,000 mt at discretion of RA.
[5] Bycatch TALFF specified at § 648.21(b)(3)(ii).
[6] If a 2 percent research set-aside is deducted, the total IOY would be as follows: Atlantic mackerel - 86,240 mt, Loligo - 16,660 mt, Illex - 23,520 mt, and butterfish - 5,782 mt.

2001 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of FMSY (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the overfishing limit is FMSY (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP adopted a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (1/4 of the biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB ($1/2\ B_{MSY}$). Annual quotas are specified that correspond to the target F resulting from this control rule.

Since SSB is currently above 890,000 mt, the target F for 2001 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents the F=0.25 yield estimate of 369,000 mt, minus the estimated Canadian catch of 22,000 mt. The proposed IOY for the 2001 Atlantic mackerel fishery is 88,000 mt, which is equal to the proposed DAH plus TALFF. The specification for DAH is computed by calculating the estimated recreational catch, the proposed DAP and JVP. The recreational catch component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey, which is intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, for the years 1994 through 2001, response to this voluntary survey was low and did not contain projections from some large processors. The Council still believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors capacity to process mackerel. Additionally, the Council generally agreed that JVs have had a positive impact on the development of the U.S. Atlantic mackerel fishery. This assertion led to the Council recommendation that JVP be set at 20,000 mt in 2001 (10,000 mt more than 1999 and 2000; 5,000 mt more than in 1998; and 5,000 mt less than in 1997).

The Council has recommended, and NMFS proposes, a specification of 20,000 mt of JVP for the 2001 fishery, with a possible increase to 30,000 mt later in the year. If additional applications for JVP are received, NMFS could increase this allocation to 30,000 mt by publishing notification in the **Federal Register**. The Council also recommended, and NMFS proposes, a DAP of 50,000 mt, yielding a DAH of 85,000 mt, which includes the 15,000-mt recreational catch component.

A TALFF of 3,000 mt is recommended by the Council and proposed by NMFS for the 2001 Atlantic mackerel fishery. Several foreign nations have expressed their interest in JVP, with two applications already submitted by Lithuania and the Russian Federation. TALFF, which is foreign fishing, rather than just processing by foreign vessels, would be authorized only if U.S. vessels are unable to deliver product to foreign JV catcher/processor vessels for a period of time due to events such as bad weather. The Council's intent is to encourage JV fisheries by allowing TALFF in special circumstances.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council also recommended, and NMFS proposes, that several special conditions be imposed on the 2001 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37° 30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) directed foreign fishing for Atlantic mackerel would be prohibited south of 37° 30′ N. lat., north of 37° 30′ N. lat., directed foreign fishing for Atlantic mackerel would be prohibited landward of a line 20 nautical miles from shore and no bycatch TALFF of river herring is specified; (3) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (4) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; (5) applications from a particular nation for a Atlantic mackerel JV or TALFF allocation for 2001 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years; (6) no purchase ratios would be specified; upon approval of an application for TALFF, 50 percent of the foreign nation's TALFF allotment would be released; additional TALFF would be released only when the foreign participant has purchased 25 percent of the JVP allotment to that nation; (7) foreign fishing vessels (FFV) would be required to purchase JVP-caught fish from contracted U.S. vessels; if a FFV were engaged in directed fishing and is approached by a contracted U.S. vessel, the FFV would be required to cease directed fishing and take the transfer from the U.S. vessel as soon as practicable; (8) no in-season adjustment in TALFF (i.e., TALFF not to exceed 3,000 mt) would be authorized, unless the Regional Administrator, with concurrence of the Council, determined that it is appropriate to increase IOY to provide additional TALFF, but the TALFF should not exceed a cap of 5,000 mt; an (9) directed foreign fishing for Atlantic mackerel would be limited to the use of mid-water trawl gear.

Atlantic Squids

Loligo

The FMP defines overfishing for Loligo as occurring when the catch associated with a threshold of the

fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for FMSY). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy F_{MAX}. Max OY is specified as the catch associated with a F_{MAX}. In addition, the biomass target is specified as B_{MSY}.

The most recent stock assessment for *Loligo* (the 29th Northeast Regional Stock Assessment Workshop, August 1999 (SAW-29)) concluded that the stock is approaching an overfished condition and that overfishing is occurring. More recently, NMFS' Report to Congress: Status of Fisheries of the United States (October 1999) determined that the *Loligo* stock is overfished.

The Magnuson-Stevens Fishery Conservation and Management Act requires the Council to take remedial action to rebuild an overfished stock to a level that will produce B_{MSY}. The control rule in the FMP specifies that the target F must be reduced to zero if biomass falls below 50 percent of B_{MSY}. The target F increases linearly to 75 percent of F_{MSY} as biomass increases to B_{MSY}. However, projections made in SAW-29 indicate that the *Loligo* control rule appears to be overly conservative. The projections from SAW 29 indicated that the *Loligo* biomass could be rebuilt to levels approximating Bmsy in three years if fishing mortality was reduced to the target mortality rate specified in Amendment 8 of 75 percent of F_{MSY}. The yield associated with this fishing mortality rate (75 percent of F_{MSY}) in 2000, assuming status quo F in 1999, was estimated to be 11,732 mt in SAW 29. The current regulations still specify Max OY as the yield associated F_{MAX}, or 26,000 mt. In determining the specification of ABC for the year 2000, the Council considered advice offered by SAW 29 which indicated that the control rule adopted in Amendment 8 was too conservative. Model projections presented in the most recent assessment demonstrated that the stock could be rebuilt in a relatively short period of time, even at fishing mortality rates approaching F_{MSY}. Based on the SAW 29 projections, the Council chose to specify ABC as the yield associated with 90 percent F_{MSY} or 13,000 mt in 2000.

The most recent survey data for *Loligo* squid indicate that abundance of this species has increased significantly since the most recent assessment was conducted (i.e., SAW-29). Estimates of biomass based on NMFS' Northeast Fisheries Science Center (NEFSC) fall 1999 and spring 2000 survey indices for *Loligo* indicate that the stock is currently at or near Bmsy. In fact, the 1999 fall survey index was the sixth highest value observed in the time series since 1967 and the second highest since 1987. The 2000 spring survey index for *Loligo* was the tenth highest in the time series since 1968 and the fifth highest since 1987. Based on the assumption that the stock will be at or near B_{MSY} in 2001, the Council recommended that the 2001 quota be specified as the yield associated with 75 percent of F_{MSY}. The yield associated with 75 percent of F_{MSY} at B_{MSY} is 17,000 mt, based on projections in SAW-29. The establishment of quarterly allocation periods spreads F out over the fishing year and is expected to protect spawners. The current regulations still specify Max OY as the yield associated with F_{MAX}, or 26,000 mt.

Thus, the proposed Max OY for *Loligo* is 26,000 mt and the recommended ABC for the 2001 fishery is 17,000 mt. NMFS issued a notification in the **Federal Register** on October 10, 2000 (65 FR 60118), announcing an inseason action to adjust the 2000 annual specifications for *Loligo* squid, including ABC, IOY, DAH and DAP, from 13,000 mt to 15,000 mt. Therefore, the 2001 annual specifications represent an increase of 2,000 mt from the 2000 ABC of 15,000 mt. This ABC is based on the NEFSC fall 1999 and spring 2000 survey indices for *Loligo* and is determined to be a level that would allow the *Loligo* stock to rebuild to levels at or near BMSY within 3 to 5 years.

Distribution of Annual *Loligo* Quota into Four Quarters

The Council recommended, and NMFS proposes, an IOY of 17,000 mt for *Loligo* squid, which is equal to ABC. Management advice from SAW-29 made special note of the fact that yield from this fishery should be distributed throughout the fishing year. Given that the current permitted fleet historically has demonstrated the ability to land *Loligo* in excess of the quota specified for 2001, the Council recommends, and NMFS proposes, that the annual quota be subdivided into quarterly periods. The quota would be allocated to each period based on the proportion of landings occurring in each 4-month period from 1994-1998. The directed fishery would be closed in Quarters I-III when 80 percent of that period's allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* trip limit until the end of the respective quarter. Additionally, when 95 percent of the total annual DAH has been harvested, the trip limit would be reduced to 2,500 lb (1,134 kg) of *Loligo* for the remainder of the year. When the 2,500-lb (1,134-kg) trip limit has been triggered, vessels will be prohibited from possessing or landing more than 2,500 lb in a single calendar day. Any quota overages in Quarter I would be deducted from the allocation in Quarter III, and any overage in Quarter II would be deducted from the allocation in Quarter IV. The quota allocation is shown in Table 2.

TABLE 2. *Loligo* QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons
I (Jan-Mar)	33.23	5,649
II (Apr-Jun)	17.61	2,994
III (Jul-Sep)	17.3	2,941
IV (Oct-Dec)	31.86	5,416
Total	100.00	17,000

In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis, so DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can process that portion of the OY that will be harvested by U.S. commercial fishing vessels, so DAP equals DAH, and JVP is zero. Since U.S. fishing vessels have the capacity to harvest, and are expected to attempt to harvest, the entire OY, there is no portion of the OY that can be made available for foreign fishing, making TALFF zero. These determinations were made in Amendment 5 to the FMP. The proposed values of IOY, DAH, and DAP are 17,000 mt for the 2001 *Loligo* fishery, and represent an increase of 2,000 mt from the final 2000 *Loligo* IOY/DAH/DAP specifications (NMFS issued a notification in the **Federal Register** on October 10, 2000 (65 FR 60118), announcing an inseason action to adjust the 2000 annual specifications for *Loligo* squid, including ABC, IOY, DAH and DAP, from 13,000 mt to 15,000 mt).

Illex

The approved overfishing definition for *Illex* states that overfishing for Illex occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Maximum OY is to be specified as the catch associated with a fishing mortality rate of F_{MSY}. In addition, the biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as $_{1/2}$ B_{MSY}.

The most recent assessment of the Illex stock (SAW-29) concluded that the stock is not overfished and that overfishing is not occurring. The previous assessment, the 21st Northeast Regional Stock Assessment (1996), had concluded that the U.S. *Illex* stock is fully exploited. Due to a lack of adequate data, the estimate of yield at F_{MSY} was not updated in SAW-29. However, an upper bound on annual F was computed for the U.S. Exclusive Economic Zone portion of the stock, based on a model that incorporated weekly landings and relative fishing effort and mean squid weights during 1994-1998. These estimates of F were well below the biological reference points. Current absolute stock size is unknown and no stock projections were done in SAW-29.

Since data limitations did not allow an update of yield estimates at the threshold and target F values, the Council recommended, and NMFS proposes, that the specification of Max OY and ABC be specified as 24,000 mt (the yield associated with F_{MSY}). Under this option, the directed fishery for *Illex* would remain open until 95 percent of the ABC is taken (22,800 mt). Once 95 percent of the ABC is estimated to have been taken, the directed fishery would be closed and a 5,000-lb (2,268-kg) trip limit would remain in effect for the remainder of the fishing year. Similar to *Loligo*, when a trip limit is in effect, vessels are prohibited from possessing or landing more than 5,000 lb (2,268 kg) in a single calendar day. Amendment 5 to the FMP eliminated the possibility of JVP and TALFF for the *Illex* fishery because of the domestic fishing industry's ability to harvest and to process the OY from this fishery.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2001 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low at 2,798 mt, 1,964 mt, and 2,116 mt for the 1997 through 1999 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have caused severe reductions in the supply of butterfish. Discard data from the offshore *Illex* fishery are lacking and high discard rates could be reducing potential yield.

The Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,897 mt and a bycatch TALFF that is equal to 0.08 percent of the allocated Atlantic mackerel TALFF. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Since the Council has recommended TALFF for Atlantic mackerel, TALFF for butterfish is 3 mt. If the Regional Administrator, with concurrence of the Council, determines that it is appropriate to increase the current proposed TALFF of 3,000 mt for Atlantic mackerel up to a final 5,000 mt, then TALFF for butterfish would be increased from 3 mt to a final value of 4 mt.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA in section 5.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

The IRFA describes the action, why it is being considered, and the legal basis for it. These are the same as appear at the beginning of this preamble and in the **SUMMARY** section of the preamble and are not repeated here.

The IRFA identifies the number of potential fishing vessels in the 2001 fisheries as 443 vessels fishing for *Loligo*, 77 vessels fishing for *Illex*, 443 vessels fishing for butterfish, and 1,980 vessels fishing for Atlantic mackerel. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed ABC specifications of 347,000 mt and DAH of 85,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish, represent no constraint on vessels in these fisheries. The proposed specifications have not been achieved by landings for these species in recent years. Absent a constraint on the fisheries, no impacts on revenues are expected.

If the 2001 DAH specification of 17,000 mt for *Loligo* squid is not exceeded, the result would be a decrease in catch and revenue in the *Loligo* fishery relative to the 1999 landings and an increase from the average landings from 1996-1999 (i.e., if the status quo were maintained).

The first alternative action for Atlantic mackerel would be to set the 2001 specifications at the same level as 2000. Although it was rejected as inconsistent with the FMP because it would not meet the policy objectives of the Council relative to further development of the US domestic harvest of Atlantic mackerel, this alternative would place no constraints, and consequently no revenue impacts, on the fishery. The second alternative for mackerel was to set ABC at the long-term potential catch (LTPC), or 150,000 mt. This alternative was found inconsistent with the FMP because it would not allow for variations and contingencies in the status of the stock. For example, the current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The level of foregone yield under this alternative was considered unacceptable and would not impact the IOY specifications. The third alternative considered for mackerel included the elimination of JVP, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. These alternatives would not constrain the fishery and were determined to have no impact on revenues of participants in this fishery.

For *Loligo*, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt. This was the same level as 2000 until an inseason adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000). Under the scenario of a 13,000 mt DAH; if that value were not exceeded in 2001, 121 of the 443 impacted vessels would experience revenue reductions of greater than 5 percent. This would represent a 20.5-percent reduction in 1996-1999 average landings of 16,348 mt. The remaining 322 vessels would experience less than 5-percent reduction in revenue or an increase in revenue. A second alternative would set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 28.4-percent reduction in 1996-1999 average landings. Under this scenario, 161 of the 443 impacted vessels would experience revenue reductions of greater than 5-percent. The remaining 282 vessels would experience less than a 5-percent reduction in revenue, or an increase in revenue.

For *Illex*, the first alternative that sets Max OY, ABC, IOY, DAH, and DAP of 30,000 mt and the second alternative that sets Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt far exceed recent landings in this fishery. Therefore, there would be no constraints, and, thus, no revenue reductions, associated with these specifications.

For butterfish, the Council considered a DAH, OY, and Max OY of 16,000 mt and a DAH and OY of 10,000 mt. These specifications would not constrain or impact the industry; however, they would lead to overfishing of the stock, and, thus, were rejected by the Council.

This rule does not duplicate, overlap, or conflict with other Federal rules.

There are no recordkeeping or reporting requirements associated with this rule.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to Patricia A. Kurkul, the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 28, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (e) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(e) *Distribution of annual Loligo squid commercial quota.* (1) Beginning January 1, 2001, a commercial quota will be allocated annually for *Loligo* squid into quarterly periods, based on the following percentages:

COMMERCIAL QUOTA

Quarter	Percent
I January-March	33.23
II April-June	17.61
III July-September	17.30
IV October-December	31.86

(2) Beginning January 1, 2001, any overages of commercial quota landed from Quarter I will be subtracted from Quarter III and any overages of commercial quota landed from Quarter II will be subtracted from Quarter IV.

* * * * *

3. In § 648.22, paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* NMFS shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that DAH will be attained for mackerel, NMFS will close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. NMFS will close the directed fishery in the EEZ for *Loligo* when 80 percent is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. The closure of the directed fishery will be in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section. NMFS will close the directed fishery in the EEZ for *Illex* or butterfish when 95 percent of the DAH has been harvested. The closure of the directed fishery will be in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 001120327-0327-01; I.D. 091800H]

RIN 0648-AO58

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to modify the management measures applicable to the American lobster fishery. This action would exempt black sea bass fishers who concurrently hold limited access lobster and limited access black sea bass permits from the more restrictive gear requirements in the lobster regulations when fishing in Lobster Management Area (LMA) 5 if they elect to be restricted to the non-trap lobster allowance while targeting sea bass in LMA 5. This regulation also clarifies that lobster trap regulations do not affect trap gear requirements for fishermen who do not possess a limited access American lobster permit. The intent of these regulations is to relieve restrictions on fishers that were unintended, without compromising lobster conservation goals.

DATES: Comments on this proposed rule must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m., eastern standard time, on December 26, 2000.

ADDRESSES: Send written comments on this proposed rule to, and obtain copies of supporting documents that also include a Draft Environmental Assessment/Regulatory Impact Review (DEA/RIR) from, the Director, State, Federal and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments will not be accepted if submitted via e-mail or Internet. Comments regarding the collection of information requirements contained in the proposed rule should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Ross, NMFS, Northeast Region, 978-281-9234.

SUPPLEMENTARY INFORMATION: NMFS proposes regulations to modify the Federal lobster conservation management measures issued as part of a Federal/state cooperative management effort under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Section 804(b) of ACFCMA authorizes NMFS to issue regulations governing fishing in the Exclusive Economic Zone (EEZ) that are compatible with the effective implementation of the Atlantic States Marine Fisheries Commission's American Lobster Interstate Fishery Management Plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 6, 1999, NMFS, in an effort to end overfishing of the American lobster resource, published a final rule (64 FR 68228) creating seven LMAs; imposing trap limits (800 traps/vessel in LMA 5), trap tagging requirements, and a maximum trap size; increasing the lobster escape vent size; restricting lobster trap fishers to their annually selected LMAs; and establishing a harvest limit for non-trap vessels. A Final Environmental Impact Statement/Regulatory Impact Review was prepared for the action and was published on May 28, 1999 (64 FR 29025).

The lobster management program uses a gear conservation and effort limitation strategy to control lobster mortality. Fishing effort is limited by limiting the access of new vessels to the fishery and the number and size of traps that may be fished per vessel. To enforce these measures, lobster traps must be tagged, and the tags must be traceable to the owner of each vessel. A minimum lobster size combined with a corresponding escape vent opening in traps helps control mortality on juvenile lobsters. A maximum trap size was imposed to preclude possible increases in trap efficiency. These measures are applied to all traps designed for, and capable of, catching lobster. NMFS does not consider traps targeting other species and fished by non-lobster permit holders to be "designed for" or "capable of" catching lobsters. This proposed rule would remove the present definition of trap and add a definition for lobster trap to in essence exclude those traps fished by vessels not eligible for limited access lobster permits (non-eligible vessels). Non-eligible vessels are prohibited from retaining, landing, or possessing American lobster.

The black sea bass fishery is managed under the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass (FMP) developed by the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) under the Magnuson-Stevens Act. The black sea bass fishery was added to the FMP when Amendment 9 was approved and implemented in 1997 (61 FR 58461, November 15, 1996). Amendment 9 to the FMP established a limited access permit system for the entry of new vessels to the fishery.

Black sea bass (*Centropristis striata*) and American lobster (*Homarus americanus*) are often harvested using similarly configured fish traps or pots, although black sea bass traps are not usually baited. Black sea bass fishermen prefer to use as many as 1,500 traps/vessel but are now restricted by the lobster regulations under 50 CFR part 697 to 800 traps/vessel when fishing in LMA 5. Black sea bass fishermen also prefer to use traps with smaller escape vents than the lobster regulations allow. In the Mid-Atlantic where the two fisheries overlap considerably, the two management strategies come into conflict. Concerned about the impacts on commercial fishing enterprises from differing management systems, the Mid-Atlantic Council and the ASMFC requested that NMFS provide an exemption from the lobster gear requirements to black sea bass fishers when fishing in LMA 5. LMA 5, which is located in the Mid-Atlantic area, has historically represented less than 2 percent of the total annual lobster landings. The Mid-Atlantic Council and ASMFC recommended further that the non-trap lobster allowance that applies to non-trap lobster fishers be applied to exempted black sea bass fishers. As a result, NMFS prepared a DEA/RIR and this proposed rule to address this management issue.

This action would allow dual permit status vessels–vessels having limited access eligibility in the black sea bass and lobster fisheries– to elect to participate in a program that exempts them from the lobster gear restrictions while targeting black sea bass in LMA 5 but which limits them to the non-trap lobster allowance. The non-trap allowance is a landing limit of 100 lobsters per day and up to 500 lobsters per trip for trips 5 days or longer.

To participate in the proposed exemption, a vessel would obtain an "Area 5 Trap Waiver" category permit through the normal permitting process. A vessel with the waiver would be limited to the non-trap allowance and may only land lobsters in greater numbers by formally canceling the "Area 5 Trap Waiver" permit and switching to the commercial lobster category, again through the normal Federal permitting process. Cancellations of the "Area 5 Trap Waiver" permit would be treated administratively as a lobster permit category change and would not result in the loss of limited access eligibility in either the lobster or the black sea bass fisheries. Vessels would be required to comply with the regulations that are appropriate for the target fishery and with the category of permits presently issued.

The creation of this new permit category addresses a common problem in managing overlapping or mixed fisheries. Ideally, conservation restrictions should be tailored as closely as possible to the target fishery; for instance, lobster fishers would be required to comply with the lobster gear restrictions and black sea bass fishers with sea bass restrictions. In mixed fisheries, tailoring becomes more difficult because the least restricted fishery can be used as a loophole for the other; in this case, black sea bass traps can become a loophole in the lobster conservation program. This proposed rule isolates and prohibits the problematic trips, namely, those that would target lobster with black sea bass traps. Only incidental amounts of lobster could be retained from such trips.

NMFS has prepared a DEA/RIR that discusses the impacts of this proposed rule as well as the impacts of the reasonable alternatives. Because access to both the lobster and black sea bass fisheries is closed to new entrants, the universe of vessels that may be affected by this rule is estimated as the number of vessels from states bordering LMA 5 that are currently eligible to fish in both fisheries, or 204 vessels. Fewer vessels actually land both species in 1 year or have selected LMA 5 to fish in.

The impacts on the lobster resource, essential fish habitat, or protected resources from the exemption are expected to be neutral, while a positive economic benefit should accrue to some fishers. The exemption provides an opportunity for dual permit status vessel owners to maintain their limited access eligibility in the fisheries in which they have historically participated. Although there is an additional administrative burden imposed on NMFS and on those opting for this exemption, NMFS believes this is an important and necessary trade-off for enforceability and conservation effectiveness.

This alternative preserves the ability to fish in both fisheries in a single year under rules appropriate to the fisher's preferred target and without the loss of limited access status in either fishery. Detection of violations is simplified through the permit mechanism because an agent would need only to compare the observed landings with the rules associated with the permit.

Environmental benefits to marine habitat, mammals, and other protected species are generally considered to increase as the amount of gear in the water decreases. A change in the number of traps deployed as a result of this or of any alternative would depend on whether dual status vessels previously used separate traps for the lobster and black sea bass fisheries and on the individual decisions made by the affected fishers in reaction to the measures imposed. If a lobster/black sea bass vessel historically fished a separate set of traps for each fishery, the preferred alternative would potentially restore this dual ability, but would not allow simultaneous fishing of both types of traps. While data is not available on the number of dual status vessels fishing separate traps for each fishery, environmental impacts are expected to be neutral.

Classification

This proposed rule is published under the authority of the ACFCMA.

Paragraphs (A) and (B) of section 804(b)(1) of the ACFCMA authorize the Secretary of Commerce (Secretary) to issue regulations in the EEZ that are compatible with the effective implementation of a coastal fishery management plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. This authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA). The AA has preliminarily determined that these actions are consistent with the national standards of the Magnuson-Stevens Act. The AA, before making the final determinations, will take into account the data, views, and comments received during the comment period.

An updated Biological Opinion under section 7 of the Endangered Species Act (ESA) was issued for the American Lobster fishery on December 17, 1998. A formal consultation concluded that the continued operation of the American lobster fishery operating under new measures implemented to reduce entanglements, "may affect but is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale, sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle and is not likely to destroy or adversely modify critical habitat that has been designated for the northern right whale."

As a result of entanglement events in 1999, including one mortality of a right whale, NMFS is currently revising the Atlantic Large Whale Take Reduction Plan (ALWTRP) to determine what changes or additional measures are necessary to meet the plan objectives. NMFS has re-initiated consultation on the lobster fishery to determine whether the revised ALWTRP will be an acceptable reasonable and prudent alternative to remove the likelihood of jeopardy to right whales caused by the lobster fishery.

As a result of the proposed measures, traps targeting black sea bass in the waters of LMA 5 could potentially increase to levels in place prior to the imposition of lobster trap limits. However, there have been no observed takes of ESA or Marine Mammal Protection Act listed species in the black sea bass trap fishery, and these measures are expected to affect only a small number of fishers. Therefore, this proposal would not change the basis of the Biological Opinion made on December 17, 1998, or affect any ongoing consultation for this fishery under section 7 of the ESA.

The proposed measures for a LMA 5 Black Sea Bass Trap Waiver fall within the scope of consultations on previous American lobster and Black Sea Bass FMP actions. Given the number of vessels affected by these proposed measures, the limited presence of protected species most susceptible to trap gear (i.e., right whales, humpback whales) in the area, and the application of ALWTRP measures to black sea bass trap fishers, none of the proposed measures is expected to result in the addition of adverse impacts that would change the basis for the determinations in those consultations. Should activities under this action change or new information become available that changes the basis for this determination, consultation will be re-initiated.

NMFS has prepared a DEA/RIR, supplemented by the preamble to this proposed rule that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). All participants in the lobster and black sea bass fisheries are considered to be small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification is based on the analysis in the DEA/RIR, which takes into account the applicable criteria established by the agency for determining whether economic impacts on small entities are "significant" under the Regulatory Flexibility Act. The factual basis for the certification is as follows:

NMFS found no significant impact on small entities because the proposed rule would relieve a restriction on black sea bass fishers who concurrently hold limited access lobster and limited access black sea bass permits and are thus subject to the more restrictive gear requirements in the lobster regulations. The intent of these regulations is to relieve unintended restrictions without compromising lobster conservation goals. Participating vessels in the LMA 5 trap waiver program would be exempt from the 800 lobster traps per vessel limit and the trap tagging requirements, the maximum trap size requirement, and the increased lobster escape vent size requirement. Because of not being subject to the smaller vent size requirement, they would be able to harvest black sea bass and because of not being subject to the 800 traps/vessel limitation some may even catch a greater number of lobsters. Participating vessels would be allowed to land the non-trap allowance of lobster (100 lobsters per day and up to 500 lobsters per trip for trips of over 5 days). In addition, to the extent that a black sea bass vessel is relieved from the lobster gear restrictions, compliance costs reductions of up to $1180 per inshore vessel may be experienced. Eligible vessels will not have to incur the costs of converting black sea bass traps to conform to the lobster regulations, will not be forced to use less efficient lobster gear when targeting black sea bass, and will have greater flexibility to fish under regulations and possession limits appropriate to the target fishery. Eligible vessels will also not be forced to incur the cost of switching from trap gear to towed gear. While these savings are not considered substantial in terms of their proportion to overall operating costs per inshore vessel, each of these considerations will enable participating vessels to achieve higher levels of gross revenue. The prospects for higher gross revenue resulting from this regulatory action, as well as the ability to maintain and possibly improve the relative competitive position for each affected business, will result in a net improvement in distributive impacts of regulatory action.

The preferred alternative would also allow dual permit holders to retain their dual limited access status and to alternately fish in the black sea bass and lobster fisheries under appropriate regulations for each of those species. The need to permanently cancel access to one or the other limited access fisheries to avoid a conflicting regulatory regime would be eliminated, allowing fishers flexibility to adjust to changing economic conditions in one or the other fishery.

As a result, an initial regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. The following are the proposed new collection-of-information requirements and their respective estimated response times that have been submitted to OMB for approval:

1. Initiate a permit category change and select the LMA 5 Trap Waiver Permit category (15 minutes);

2. Return a suspended limited access lobster trap permit to NMFS (2 minutes); and

3. Initiate cancellation of a LMA 5 Trap Waiver Permit and re-activate a suspended limited access lobster trap permit (15 minutes).

The following collection-of-information requirements are being restated and have already been approved by OMB as shown: vessel permit applications approved under OMB control number 0648-0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications, and a lobster trap tag requirement approved under OMB control number 0648–0351 with a response time of 1 minute per tag.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including information through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: November 28, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

Subpart A—General Provisions

2. In § 697.2, the definition of "Trap" is removed and a definition for "Lobster trap" is added to read as follows:

§ 697.2 Definitions.

* * * * *

Lobster trap means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters. Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), and fishing gear fished by a vessel not issued a limited access lobster permit under § 697.4(a), are gear deemed not to be lobster traps for the purpose of this part, and are not subject to the provisions of this part.

* * * * *

3. In § 697.4, paragraph (d)(1) is revised and paragraph (p) is added to read as follows:

§ 697.4 Vessel permits and trap tags.

* * * * *

(d) * * * (1) Beginning fishing year 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member, unless exempt under § 697.26.

* * * * *

(p) *Permit category change.* A vessel permit category change may be issued by the Regional Administrator when requested in writing by the owner or by an authorized representative of a vessel meeting the eligibility requirements under § 697.26(a).

4. In § 697.7, paragraphs (c)(1)(vii) through (x) are revised to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(vii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear in excess of the trap limits specified in § 697.19 unless exempted pursuant to § 697.26.

(viii) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear that does not satisfy the requirements on gear identification and marking, escape vents, ghost panel and maximum trap size specified in § 697.21, unless such gear has been rendered unfishable, or unless exempted pursuant to § 697.26.

(ix) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not tagged in accordance with the requirements in § 697.19, unless such gear has been rendered unfishable, or unless exempted pursuant to § 697.26.

(x) Fail to produce, or cause to be produced, lobster trap tags when requested by an authorized officer, unless exempted pursuant to § 697.26.

* * * * *

Subpart B—Management Measures

5. In § 697.19, paragraph (e) is added to read as follows:

§697.19 Trap limits and trap tag requirements for vessels fishing with traps.

* * * * *

(e) *Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.26(a) is exempt from the provisions of this section.

6. In § 697.21, paragraph (g) is added to read as follows:

§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.

* * * * *

(g) *Exemption.* Any vessel issued a permit under § 697.26(a) is exempt from the provisions of this section.

7. A new § 697.26 is added to subpart B to read as follows:

§ 697.26 Lobster Management Area 5 Trap Waiver.

(a) *Eligibility.* Vessels eligible for limited access lobster permits under § 697.4(a)(1) and limited access black sea bass permits under § 648.4(a)(7)(i) of this title may request an Area 5 Trap Waiver Permit, under the procedures described in § 697.4.

(b) *Restrictions.* A vessel issued an Area 5 Trap Waiver permit under this section may engage in trap fishing for black sea bass in Lobster Management Area 5 and is exempt from the provisions of § 697.19 and § 697.21 if such fishing is conducted in accordance with all other provisions of this section except § 697.19 and § 697.21 and all other Federal and state laws and regulations applicable to lobster and black sea bass fishing.

(1) A vessel issued a permit under this section may retain, land and sell an incidental allowance of lobster equal to the non-trap harvest restrictions specified in § 697.17(a).

(2) A vessel issued a permit under this section may not possess on board or deploy bait or baited traps.

[FR Doc. 00–30822 Filed 12–4–00; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 65, No. 234
Tuesday, December 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Construction and Installation of Broadband Telecommunications Services in Rural America; Availability of Loan Funds

AGENCY: Rural Utilities Service, USDA.
ACTION: Notice of Funds Availability.

SUMMARY: The Rural Utilities Service (RUS) announces a new loan program and the availability of loan funds under this program to finance the construction and installation of broadband telecommunications services in rural America. The President of the United States and the United States Congress have made $100 million in treasury rate loan funds available, through a one-year Pilot Program, to encourage telecommunications carriers to provide broadband service to rural consumers where such service does not currently exist. This program will provide loan funds, on an expedited basis, to communities up to 20,000 inhabitants to ensure rural consumers enjoy the same quality and range of telecommunications services that are available in urban and suburban communities. Loan funds are available immediately and applications will be processed and approved on a first-come, first served basis throughout FY 2001 until the appropriation is utilized in its entirety.

DATES: Applications for loans will be accepted as of the date of this notice and will be accepted anytime on or before September 30, 2001; however, all applications must be postmarked no later than September 30, 2001. Applications will be processed and approved on a first-come, first-served basis until the $100 million appropriation is utilized in its entirety.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

General Information

For FY 2001, $100 million in loans will be made available for the construction and installation of facilities and for other costs as RUS deems necessary to provide broadband services in rural areas. The broadband pilot program is authorized by 7 U.S.C. 950 aaa.

Applications

Applications will be accepted as discussed previously in the "Dates" section. All interested parties are strongly encouraged to contact the Rural Utilities Service, USDA to discuss its financial needs and eligibility.

Use of Loan Funds

Loan funds may be used to finance the improvement, expansion, construction, and operation of systems or facilities to furnish or improve broadband service in rural areas.

Definition of Broadband Services

As used in this notice, the term broadband services means providing an information rate equivalent to at least 200 kilobits/second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

Definition of Rural Area

As used in this notice, rural area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

Loan Terms

For FY 2001, $100 million in loans will be made available to eligible applicants. The loans will bear interest at the comparable Treasury rate for comparable maturities not to exceed ten years.

Eligible Applicants

Loans may be made to legally organized entities providing, or proposing to provide, broadband services in rural areas. Eligible entities may be public bodies, cooperatives, nonprofits, and limited dividend or mutual associations and must be incorporated or a limited liability company.

RUS Findings

Feasibility of and security for the Loan. A borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that the security for the loan is reasonably adequate and that the loan will be repaid on time. Factors used in making this determination include, but are not limited to:

(1) Evidence of sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), for full repayment of the loan with interest;

(2) Reasonable assurance of achieving market penetration projections upon which the loan is based;

(3) Adequate security for the loan;

(4) Appropriate financial controls included in the loan documents; and

(5) Other factors determined relevant by RUS.

Loan Application

RUS suggests that an application for a loan pursuant to this notice include a loan design that contains a forecast of service requirements and a narrative describing the planned construction and delivery of broadband services. The narrative should detail the purposes and amounts of the proposed project including construction, the proposed service area, and the basis for subscriber forecasts. Other items include:

(1) Certified financial statements, if available;

(2) 10 years of pro-forma financial information;

(3) An environmental report;

(4) Depreciation rates for the equipment being financed;

(5) A sketch or map showing existing and proposed service areas;

(6) A description of the current level of service available;

(7) All other required forms for Federal assistance; and

(8) If not a current RUS borrower, information on the owners and principal employees' relevant work experience that would ensure the success of the project.

Loan Security

Loans must be repaid according to their terms. RUS will require security to be provided for each loan. RUS generally obtains a lien on all the property financed by the loans. The borrower will need to provide adequate security and execute the appropriate legal documents.

Evaluation Criteria

Loan applications will be accepted as of the date of this notice and will be processed and approved on a first-come, first served basis throughout FY 2001 until the appropriation is utilized in its entirety provided that:

(1) The loan is for approved loan purposes for broadband telecommunications services in rural areas;

(2) The loan is deemed to be feasible and adequate security is provided;

(3) The system design is appropriate; and

(4) All other applicable Federal requirements are met.

Dated: November 27, 2000.

Christopher A. McLean,
Administrator, Rural Utilities Service.

[FR Doc. 00–30872 Filed 12–4–00; 8:45 am]
BILLING CODE 3410–15–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: December 12, 2000; 8:30 a.m.–4 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting

The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 1, 2000.

Carol Booker,
Legal Counsel.

Certification

Based on the information provided to me, the meeting scheduled by the Broadcasting Board of Governors for December 12, 2000, may be closed to the public pursuant to sections (c)(1), (2), (6), and 9(B) of the Government in the Sunshine Act (5 U.S.C. 552b.).

Issues qualifying for closure of the meeting will be inextricably intertwined with issues which do not so qualify. During the course of the meeting there will be discussions relating to foreign policy options (c)(1), internal BBG or IBB personnel, budgetary, and organizational matters (c)(2), the performance or selection of personnel (c)(6), and options for negotiations or other sensitive discussions within the U.S. or abroad. (c)(9)(B).

Carol Booker,
BBG Legal Counsel.

[FR Doc. 00–31031 Filed 12–1–00; 2:29 pm]
BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–805]

Suspension Agreement on Silicomanganese from Ukraine; Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of preliminary results of the administrative review of the suspension agreement on silicomanganese from Ukraine.

SUMMARY: In response to a request from Eramet Marietta Inc. (petitioner), the Department of Commerce ("the Department") is conducting an administrative review of the suspension agreement on silicomanganese from Ukraine ("the Agreement") for the period November 1, 1998 through October 31, 1999, to review the current status of, and compliance with, the Agreement. For the reasons stated in this notice, the Department preliminarily determines that the Government of Ukraine ("the GOU") is not in compliance with the Agreement. The preliminary results are listed in the section titled "Preliminary Results of Review," infra. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the arguments.

EFFECTIVE DATE: December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4037 or (202) 482–0165, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On October 31, 1994, the Department signed an agreement with the Government of Ukraine which suspended the antidumping investigation on silicomanganese from Ukraine. *See Silicomanganese from Ukraine; Suspension of Investigation*, 59 FR 60951 (November 29, 1994). In accordance with section 734(g) of the Act, on December 6, 1994, the Department published its final determination of sales at less than fair value in this case. *See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Ukraine*, 59 FR 62711 (December 6, 1994).

On November 30, 1999, petitioner submitted a request for an administrative review pursuant to the notice of *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 64 FR 62167 (November 16, 1999). On December 28, 1999, the Department initiated a review of the Agreement. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* ("*Initiation Notice*"), 64 FR 72644 (December 28, 1999).

On August 4, 2000, the Department extended the time limit for the preliminary results of review by 120 days. *See Notice of Extension of Time*

Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Silicomanganese From Ukraine, 65 FR 47959 (August 4, 2000). On October 6, 2000, petitioner submitted a letter to the Department requesting that the Department determine within the administrative review that the Government of Ukraine has violated the Agreement. On November 14, 2000, the Department placed on the record of this administrative review a copy of the public version of all sales reports filed by the GOU which cover the reporting periods during the period of review.

The Department is conducting this review in accordance with section 751(a)(1) of the Act.

Scope of Review

The merchandise covered by this agreement is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this agreement, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This agreement covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States ("HTS"). Some silicomanganese may also currently be classifiable under HTS subheading 7202.99.5040. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Review

The period of review ("POR") is November 1, 1998 through October 31, 1999.

Preliminary Results of Review

Section 751(a)(1)(C) of the Act specifies that the Department shall "review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.* * *" In this case the Department and the GOU signed the Agreement suspending the antidumping duty investigation on silicomanganese from Ukraine on October 31, 1994. In order to effectively restrict the volume of exports of silicomanganese from Ukraine to the United States, the Agreement provides for the implementation by the GOU of certain provisions (Article VII). Moreover, Article IX of the Agreement (Monitoring) requires the GOU to "provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of {the} Agreement." One of the tools the Department uses to monitor the Agreement is sales reports filed by the GOU. Specifically, the GOU is required to collect and provide to the Department sales data on silicomanganese from Ukraine to the United States, in the home market, and to countries other than the United States in the format specified in Appendix B. Although the Agreement specifies that these sales reports are to be submitted to the Department on a semi-annual basis, subsequent to the signing of the Agreement the GOU agreed to submit the sales reports on a quarterly basis. *See* Paris Minutes, Memorandum of Consultations Regarding Administration of the Silicomanganese Suspension Agreement, (May 28, 1998), which are attached as exhibit 1 to petitioner's October 6, 2000 letter.

For the first three reporting periods of the POR, the GOU timely submitted their sales reports; however, to date, the GOU has not filed a sales report for the fourth reporting period of the POR.[1] In their October 6, 2000 letter, which was filed on the record of this administrative review, petitioner, arguing that the GOU has violated the Agreement and that the Agreement can no longer be effectively monitored, calls for the Department to cancel the Agreement, issue the antidumping duty order and take the other actions required by law when a suspension agreement has been violated. Specifically, as evidence that the GOU has violated the Agreement, petitioner cites the failure by the GOU to file a sales report for the last four reporting periods[2] as well as other alleged sales reporting and implementation violations, which were alleged in a February 3, 1998 letter to the Department, a copy of which is attached as an exhibit to the October 6, 2000 letter.

It is indisputable that the GOU failed to file a required sales report for the last period of the POR. Although parties may dispute whether this omission alone constitutes non-compliance with the Agreement, absent complete and verifiable information on sales of silicomanganese from Ukraine during the POR, the Department cannot conclusively determine whether the GOU has complied with the provisions of the Agreement restricting the price and volume of direct and indirect exports of silicomanganese from Ukraine to the United States over the POR. Therefore, we preliminarily determine that the GOU has not been in compliance with the Agreement during the POR. Nevertheless, at this time we are not reaching a determination on petitioner's allegation that the Agreement has been violated. As stated at the beginning of this section, the purpose of this administrative review is to "review the current status of, and compliance with" the Agreement. Consequently, within this administrative review, the Department will determine the status of the Agreement and whether the GOU was in compliance with the Agreement over the POR. If the Department makes a final determination of non-compliance, it will then be necessary to determine whether this non-compliance rises to the level of a violation as defined in Article XII of the Agreement.

Therefore, to provide all interested parties an opportunity to address our preliminary finding of non-compliance and whether such non-compliance constitutes a violation, we are extending the deadline for submission of factual information, other than the reports required under the Agreement, until 30 days after publication of this notice in the **Federal Register**.

Public Comment

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 60 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 C.F.R. 351.310(c).

Any hearing, if requested, will be held 67 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 60 days after publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing of case briefs. If this review proceeds normally, the Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

This notice is published in accordance with sections 751(a) and 777(i) of the Act.

Dated: November 29, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–30955 Filed 12–4–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] The report covering the period August 1, 1999 to October 31, 1999 was due on December 1, 1999.

[2] This includes three reporting periods outside of the POR.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review: stainless steel bar From India.

SUMMARY: On October 4, 2000, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on stainless steel bar from India. This review covers one manufacturer/exporter, Atlas Stainless Corporation. This review covers sales of the subject merchandise to the United States during the period February 1, 1999 through January 31, 2000. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. The final results do not differ from the preliminary results of review, in which we found that the respondent did not make sales in the United States at prices below normal value.

EFFECTIVE DATE: December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Ryan Langan, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4207 or (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (1999).

Background

On October 4, 2000, the Department published in the **Federal Register** the preliminary results of its new shipper review of stainless steel bar from India. *See Preliminary Results of the New Shipper Review*, 65 FR 59173 (October 4, 2000). We invited parties to comment on our preliminary results of review. We received no comments. The Department has now completed the new shipper review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Final Results of the Review

We received no comments from interested parties on our preliminary results. In addition, we have determined that no changes to our analysis are warranted for purposes of these final results. The weighted-average dumping margin for Atlas for the period February 1, 1999 through January 31, 2000, is as follows:

Manufacturer/exporter	Margin
Atlas Stainless Corporation ("Atlas")	0.00%

Because the weighted-average dumping margin is zero, we will instruct the Customs Service to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that Atlas exported.

Cash-Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel bar from India, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash-deposit rate for the reviewed company will be the rate indicated above; (2) for previously investigated or reviewed companies, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or the original less-than-fair-value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 12.45 percent, the all-others rate.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to

comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: November 28, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–30954 Filed 12–4–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of new shipper review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of a new shipper review of certain stainless steel flanges from India. This review covers one Indian exporter, Bhansali Ferromet Pvt. Ltd. (Bhansali), and the period August 1, 1998 through July 31, 1999.

EFFECTIVE DATE: December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5222, or (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Tariff Act) by the Uruguay Round Agreements Act. In addition, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (1999).

Background

Based on a request from Bhansali, and pursuant to section 351.214, the Department initiated a new shipper review of the antidumping duty order on certain stainless steel flanges from India, covering the period February 1, 1999 through February 29, 2000 (65 FR 8120, February 17, 2000). The final results are currently due no later than December 14, 2000. The deadline for the final results may be extended from 90 to 150 days after the issuance of the preliminary results, according to section 751(a)(2)(B)(iv) of the Tariff Act and 351.214(i)(2) of the Department's regulations.

Postponement of Final Results

The Department has determined that the issues of this case are extraordinarily complicated and it is not practicable to issue the final results of the new shipper review within the original time limit. *See* Memorandum from Richard A. Weible to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III, November 22, 2000. Accordingly, the Department is extending the time limit for completion of the final results of this review until February 12, 2001, the first business day following the sixtieth day from the issuance of the preliminary results.

Dated: November 22, 2000.

Edward Yang,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–30953 Filed 12–4–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review made by the International Trade Administration, respecting Cut-to-Length Carbon Steel Plate From Canada (Secretariat File No. USA-CDA–99–1904–02).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the complainants, the panel review is terminated as of November 20, 2000. A panel has been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated and the panelists are discharged.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: November 21, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–30919 Filed 12–4–00; 8:45 am]

BILLING CODE 3510–GT–P/Z≤

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072600B]

Marine Mammals; Permit Application No. 116-1591 for Public Display

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821, has applied in due form for a permit to import one killer whale (Orcinus orca) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before January 4, 2001.

ADDRESSES: The application and related documents are available f or review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802, (562/980-4021).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular permit request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski,(301/713-2289).

SUPPLEMENTARY INFORMATION: The subject application for Permit No. 116-1591-00 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import one female, adult killer whale (*Orcinus orca*), identified as "Bjossa", from the Vancouver Aquarium Marine Science Center; British Columbia, Canada to the Sea World facility in San Diego, California. The applicant requests this import for the purpose of public display. The receiving facility, Sea World San Diego, 1720 South Shores Road, San Diego, California 92109 is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the AZA and the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 93-C-069, issued by the U.S. Department of Agriculture under the Animal Welfare Act.

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 27, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–30817 Filed 12–4–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0134]

Proposed Collection; Comment Request Entitled Environmentally Sound Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Environmentally Sound Products. The clearance currently expires on March 31, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before February 5, 2001.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Federal Acquisition Policy Division, GSA (202) 208–7279.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA requires the Environmental Protection Agency (EPA) to designate items which are or can be produced with recovered materials. RCRA further requires agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Affirmative procurement programs required under RCRA must contain, as a minimum (1) a recovered materials preference program and an agency promotion program for the preference program; (2) a program for requiring estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and

reasonable verification procedures for estimates and certifications; and (3) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

The items for which EPA has designated minimum recovered material content standards are (1) construction products, (2) paper and paper products, (3) vehicular products, (4) landscaping products, (5) nonpaper office products, (6) park and recreation products, (7) transportation products, and (8) miscellaneous products. The FAR rule also permits agencies to obtain pre-award information from offerors regarding the content of items which the agency has designated as requiring minimum percentages of recovered materials. A complete list of EPA designated items is available at *http://www.epa.gov/cpg.*

In accordance with RCRA, the information collection applies to acquisitions requiring minimum percentages of recovered materials, when the price of the item exceeds $10,000 or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was $10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

B. Annual Reporting Burden

Respondents: 64,350.

Responses Per Respondent: 1.

Total Responses: 64,350.

Hours Per Response: 25 minutes.

Total Burden Hours: 26,800.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB control No. 9000–0134, Environmentally Sound Products, in all correspondence.

Dated: November 28, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 00–30897 Filed 12–4–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066]

Proposed Collection; Comment Request Entitled Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a revision to an existing OMB clearance (9000–0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Professional Employee Compensation Plan. The clearance currently expires on March 31, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before February 5, 2001.

ADDRESSES: Comments including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

48 CFR 22.1103 requires that all professional employees shall be compensated fairly and properly. Accordingly, a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data must be submitted to the contracting officer for evaluation.

B. Annual Reporting Burden

Respondents: 6,193.
Responses Per Respondent: 1.
Total Responses: 6,193.
Hours Per Response: .5.
Total Burden Hours: 3,097.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0066, Professional Compensation Plan, in all correspondence.

Dated: November 30, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 00–30898 Filed 12–4–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Record of Decision (ROD) on the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Military Ocean Terminal, Bayonne, New Jersey

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: The Department of the Army announces its ROD on the FEIS for the disposal and reuse of the Military Ocean Terminal, Bayonne (MOTBY). The closure of MOTBY was mandated in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

The ROD allows the Army to initiate action to dispose of the excess/surplus property of MOTBY, in accordance with the Bayonne Local Redevelopment Authority Amended Reuse Plan.

ADDRESSES: A copy of the ROD may be obtained by contacting Dr. Susan Ivester Rees, U.S. Army Corps of Engineers, U.S. Army Engineer District, Mobile (CESAM–PD), 109 St. Joseph Street, Mobile, AL 36602.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Ivester Rees at 334–694–4141 or by facsimile at 334–690–2727.

SUPPLEMENTARY INFORMATION: The FEIS analyzed three disposal alternatives with respect to the disposal and subsequent reuse of the 676-acre (440 land acres and 236 submerged land acres) comprising the MOTBY: (1) the no action alternative, under which the property would be maintained in a caretaker status after closure; (2) the unencumbered alternative, under which the Army would transfer the property without encumbrances, such as environmental restrictions and easements; and (3) the encumbered disposal alternative, under which the Army would transfer the property with various environmental restrictions and easements, limiting the future use of the property.

In the ROD, the Army concludes that the FEIS adequately addresses the impacts of property disposal and documents its decision to transfer the property as encumbered. Possible encumbrances include: Covenants and restrictions pertaining to asbestos-containing material, lead-based paint, floodplains, future remedial activities after transfer, wetlands, easements and rights-of-way.

Dated: November 29, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 00–30952 Filed 12–4–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 4, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 29, 2000.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement.

Type of Review: New.

Title: International Association for the Evaluation of Educational Achievement (IEA) Progress in International Reading Literacy Study.

Frequency: One time.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 6,900, Burden Hours: 9,350.

Abstract: Information collected is used to assess the reading literacy skills, habits, and attitudes of approximately 6,000 4th-graders in 200 schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–30853 Filed 12–4–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 01–04; Division of Materials Sciences and Engineering, Robotics and Intelligent Machines (RIM) Program

AGENCY: Department of Energy.

ACTION: Notice inviting academic research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. In keeping with its mission, the DOE hereby announces its interest in receiving grant applications for support under its Robotics and Intelligent Machines (RIM) Program. RIM is needed to develop cost-effective solutions to tasks relating to energy efficiency, safety, and security. Applications should be from investigators who are currently involved in basic research in this area, and should be submitted through an U.S. academic institution. The purpose of this program is to support fundamental research in Robotics and Intelligent Machines for the present and future needs of the Department of Energy.

Restricted Eligibility: Eligibility is restricted to academic research institutions. This is required by the Fiscal Year 2001, Congressional Budget for the DOE Office of Science, where it is stated "a new, university-based research effort in Robotics and Intelligent Machines will focus on sensors and sensor integration, remote operation and data acquisition, and controls."

DATES: Potential applicants are strongly encouraged to submit a brief pre-application. DOE should receive all pre-applications, referencing Program Notice 01–04, by 4:30 P.M., E.S.T., January 2, 2001. A response to the pre-applications encouraging or discouraging a formal application will be communicated to the applicant

within approximately thirty days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., March 20, 2001, in order to be accepted for programmatic and merit review and to permit timely consideration for award in Fiscal Year 2001.

ADDRESSES: All pre-applications, referencing Program Notice 01–04, should be sent to Dr. Robert Price, Division of Materials Sciences and Engineering, SC–131, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

After receiving notification from DOE encouraging submission of a formal application, applicants should send formal applications to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–04. This above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant. An original and 11 copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Price, Program Manager, Engineering Sciences Program, Division of Materials Sciences and Engineering, SC–131, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–3565, Facsimile: (301) 903–9513 or Internet E-mail address: *bob.price@science.doe.gov*. The full text of Program Notice 01–04 is available via the World Wide Web at the following address: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: The emphasis of this program is on the engineering science developments that are needed for deployment of mobile intelligent machines with robust behavior and reduced complexity. Such systems are critically needed in a wide spectrum of settings in the Department of Energy, such as the extension of human capabilities to sense, perceive, and interact with phenomena at a distance or in hazardous or inaccessible locations along with improved information handling. Engineering science developments for the needs of improving the design and deployment of a team of mobile intelligent machines will be considered for funding under this program. Research topics include but are not limited to, scientifically ground breaking forefront investigations involving:

- Inherently distributed missions in dynamic, uncertain environments.
- Sensor integration for distributed RIM systems.
- Revolutionary collaborative research using remote and virtual systems.
- Intelligent machine concepts and controls methodologies for manipulative tasks.
- Improved operation and remote usage of SC strategic facilities to meet programmatic needs.

Additional information on RIM may be found by opening the following site on the World Wide Web: *http://www.rim.doe.gov/* or by doing a search on rim.doe.gov. If you are unable to get this information, contact Dr. Robert Price at 301–903–3565 or at his previously listed address and the information will be provided.

Program Funding

This is a new program and it is anticipated that approximately $2,000,000 will be available in FY 2001 for research in Robotics and Intelligent Machines. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, and the availability of funds. Awards are expected to range up to a maximum of $500,000 annually with terms from one to three years. The number of awards and range of funding will depend on the number and quality of applications received and selected for award. Award funds will be provided to the recipient organization for the purpose of supporting the research efforts and may include travel and lodging, faculty or student stipends, materials, services and equipment.

Applications

To minimize undue effort on the part of applicants and reviewers, interested parties are invited to submit pre-applications. The pre-applications will be reviewed relative to the scope and research needs of the Department of Energy. The brief pre-application must consist of a three to five page project description describing the research objectives and methods of accomplishment, along with an estimated budget and biographical information limited to two pages per Principal Investigator and co-Principal Investigator. The pre-applications will be reviewed by the programmatic research area program manager, to determine the relevance of the research to the DOE, appropriateness for support in Engineering research and the priority of research. Based on this review, DOE/RIM management will recommend formal submission of some of the applications to the Department. A telephone number, facsimile number, and e-mail address are required parts of the pre-application. Further instructions regarding the contents of pre-application and other pre-application guidelines can be found on the SC Grants and Contracts web site at: *http://www.sc.doe.gov/production/grants/preapp.html*.

Formal applications, when received, will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, listed in descending order of importance as codified at 10 CFR part 605.10(d).

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs and priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. Other applications received by SC under its current competitive application mechanisms that meet the criteria outlined in this Notice may also be deemed appropriate for consideration under this announcement and may be funded under this program. General information about the development and submission of pre-applications, applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Financial Assistance Guide is possible via the Internet at the following web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

Additional information regarding format, preparation and specific requirements may be found at web site address: *http://www.sc.doe.gov/production/bes/EPSCoR/APPLI1.HTM*.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on November 29, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–30926 Filed 12–4–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Fourmile Hill Geothermal Development Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of record of decision (ROD).

SUMMARY: This notice announces the availability of BPA's ROD to execute Power Purchase Agreements (PPAs) and Transmission Services Agreements (TSAs) with Calpine Siskiyou Geothermal Partners, L.P. to acquire and transmit output from the Fourmile Hill Geothermal Development Project (Project), relying on the Fourmile Hill Geothermal Development Project Final Environmental Impact Statement/Environmental Impact Report (Project EIS) (DOE/EIS–0266, September 1998).

ADDRESSES: Copies of the ROD and Executive Summary of the Project EIS can be obtained by calling BPA's toll-free document request line: 1–800–622–4520. The ROD is also available on the internet at *www.efw.bpa.gov*.

FOR FURTHER INFORMATION, CONTACT: Kathy Fisher—KEW–4, Environmental Project Manager, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone (503) 230–4375; fax (503) 230–5699; e-mail *kpfisher@bpa.gov*.

SUPPLEMENTARY INFORMATION: These PPAs and TSAs will allow BPA to (1) test the ability of geothermal energy in the Fourmile Hill area to provide a reliable, economical, and environmentally acceptable energy resource in the region; (2) assure consistency with BPA's statutory responsibilities; and (3) assure consistency with BPA's April 22, 1993, Resource Programs ROD.

The Bureau of Land Management (BLM) and the United States Forest Service (Forest Service) served as joint lead agencies under the National Environmental Policy Act in the preparation of the Project EIS and issued a ROD approving the Project on May 31, 2000. The Siskiyou County Air Pollution Control District served as the state lead agency under the California Environmental Quality Act and, similarly, posted notice of their approval of the Project on August 9, 2000. BPA, as a cooperating agency with BLM and the Forest Service, adopts the Project EIS and the entire Administrative Record, including the aforementioned decision documents and related post-Project EIS documentation, in this ROD. As detailed in the Final EIS, the proposed power plant and related facilities will be located in eastern Siskiyou and western Modoc Counties, California, on the Klamath and Modoc National Forests.

Issued in Portland, Oregon, on November 20, 2000.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 00–30927 Filed 12–04–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Grande Ronde and Imnaha Spring Chinook Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to construct new facilities and modify existing facilities for a conservation, integrated recovery production program for Imnaha, Lostine, and Upper Grande Ronde Rivers and Catherine Creek spring chinook salmon. The new and existing facilities would be and are located in Wallowa County, Oregon. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the Environmental Assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act (NEPA). A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EA.

DATE: Comments are due to the address below no later than December 20, 2000.

ADDRESSES: To comment, phone toll-free 1–800–622–4519, send an e-mail to the BPA Internet address *comment@bpa.gov*; or mail comments to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION, CONTACT: Patricia R. Smith, KEC–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621; phone number 503–230–7349; fax number 503–230–5699; e-mail address *prsmith@bpa.gov*.

SUPPLEMENTARY INFORMATION: The project would include the following types of activities that may involve work in wetlands and floodplains: construction of various buildings, raceways, rearing ponds, effluent facilities, and pipelines. Wetlands and floodplains that may be affected by the project are in Wallowa County, Oregon; Township 1 South, Range 48 East, Section 10; Township 2 South, Range 43 East, Section 3; and Township 3 South, Range 48 East, Section 22.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on November 22, 2000.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 00–30928 Filed 12–04–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emissions Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations, (40 CFR part 63, subpart JJ), OMB number 2060–0324, Expiration Date February 28, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 4, 2001.

ADDRESSES: Send comments, referencing EPA ICR number 1716.03, OMB number 2060–0324 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at *Farmer.Sandy@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr/icr.htm* and refer to EPA ICR No. 1716.03. For Technical questions about the ICR, contact Robert C. Marshall, Jr. (202) 564–7021.

SUPPLEMENTARY INFORMATION:

Title: National Emissions Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations, (40 CFR part 63, subpart JJ), OMB number 2060–0324, EPA ICR number 1716.03, expiration date February 28, 2001. This is a request for extension of a currently approved collection.

Abstract: Respondents to this information collection request are the owners and operators of both new and existing wood furniture manufacturing operations that are major sources of hazardous air pollutants. Respondents are required to submit both initial and regular semiannual compliance reports and to perform record keeping activities. The information is used to determine that all sources subject to the rule are complying with the standards. The information to be collected is mandatory under the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 17, 2000 (FR 50196); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Wood Furniture Manufacturers.

Estimated Number of Respondents: 750.

Frequency of Response: On occasion, quarterly, semi-annually and annually.

Estimated Total Annual Hour Burden: 92,071 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $40,500.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR number 1716.03, OMB number 2060–0324 in any correspondence.

Dated: November 28, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–30910 Filed 12–04–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–8]

Notification of Episodic Releases of Oil and Hazardous Substances; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notification of Episodic Releases of Oil and Hazardous Substances (EPA ICR No. 1049.09, OMB No. 2050–0046). This is a request to renew an existing ICR that is currently approved. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection.

DATES: Comments must be submitted on or before February 5, 2001.

ADDRESSES: Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To ensure proper receipt by EPA, it is imperative that you identify docket control number 102RQ–ER2 in the subject line on the first page of your comment. Comments may also be submitted electronically or in person. Please follow the detailed instructions for these submission methods as provided in unit III of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov. Comments should not be submitted to this contact person.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be affected by this notice if you are the person in charge of a facility or vessel that releases hazardous substances into the environment or discharges oil into U.S. waters as specified in section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and section 311 of the Clean Water Act (CWA), as amended. To determine if the facility or vessel you are in charge of is affected by this action, you should carefully examine the applicability provisions at 40 CFR parts 110, 117, and 302.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. By Phone, Fax, or E-mail

If you have any questions or need additional information about this notice or the information collection request (ICR) referenced, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

B. In Person

The official record for this notice, including the public version, and the referenced ICR have been established under docket control number 102RQ–ER2 (including comments and data submitted electronically, as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), and the referenced ICR are available for inspection in the U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Superfund Docket is open from 9 AM to 4 PM, Monday through Friday, excluding legal holidays. The telephone number of the Superfund Docket is (703) 603–9232.

C. By Internet

The referenced draft ICR and draft Paperwork Reduction Act Submission Form (OMB83–I) are available on the Internet at the following addresses: *http://www.epa.gov/superfund/resources/rq/icr00d1.pdf*, and *http://www.epa.gov/superfund/resources/rq/omb83ed1.pdf* or see the "Renewal Information Collection Requests (ICRs)" page for Reportable Quantities at: http://www.epa.gov/superfund/resources/rq/icr.htm.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the docket control number 102RQ–ER2 in your correspondence.

1. *By mail:* Submit written comments to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

2. *In person or by courier:* Deliver written comments to: U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Telephone: (703) 603–9232.

3. *Electronically:* Submit your comments and/or data electronically by e-mail to: superfund.docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 6/7/8 or ASCII file format. All comments and data in electronic form must be identified by the docket control number 102RQ–ER2. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to EPA?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of EPA, including whether the information will have practical utility.

2. Evaluate the accuracy of EPA's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options EPA proposes, new approaches EPA hasn't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like EPA to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA ICR or the Office of Management and Budget (OMB) control number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Notification of Episodic Releases of Oil and Hazardous Substances.

ICR numbers: EPA ICR No. 1049.09 OMB No. 2050–0046.

ICR status: The expiration date for this ICR was extended is currently scheduled to expire on February 28, 2001. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ) limit. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 311 of the CWA, as amended, requires the person in charge of a vessel to immediately notify the NRC of an oil spill into U.S. navigable waters if the

spill causes a sheen, violates applicable water quality standards, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. Likewise, the reporting of oil spills allows the Federal government to determine whether cleaning up the oil spill is necessary to mitigate or prevent damage to public health or welfare or the environment.

The hazardous substance and oil release information collected under CERCLA section 103(a) and CWA section 311 also is available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Emergency Response Notification System (ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and the regulated community use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. ERNS fact sheets, which provide summary and statistical information about hazardous substance and oil release notifications, also are available to the public.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 4.1 hours per reportable hazardous substance release or oil spill. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are facilities or vessels that manufacture, process, transport, or otherwise use certain specified hazardous substances and oil.

Estimated total number of reportable releases of hazardous substances and oil per year: 29,204.

Frequency of response: When a reportable release occurs.

Estimated total annual burden hours: 119,737 hours.

Estimated total annual burden costs: $3,411,000.

VI. Are There Changes in the Estimates from the Last Approval?

In the renewal ICR, EPA will review the current burden and cost statement and adjust it accordingly. EPA does not expect the burden and cost statement in the renewal ICR to differ significantly from the burden and cost statement in the current ICR.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

Dated: November 16, 2000.

Elaine F. Davies,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 00–30913 Filed 12–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–6]

Protection of Stratospheric Ozone: Revocation of Refrigerant Reclaimer Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revocation.

SUMMARY: Through this action, EPA is announcing the revocation of 15 refrigerant reclaimers previously approved to reclaim used refrigerant for sale to a new owner in accordance with the regulations promulgated at 40 CFR 82.164.

The following nine reclaimers have received written notification, dated November 21, 2000, explaining the basis for EPA's decision to revoke their certification: Advanced Recovery Systems, Inc. located in Hernando, Florida; CFC (Charles Family Corporation) Reclamation located in North Kansas City, Missouri; CFC Recovery located in Utica, New York; Colorado Reclamation located in Commerce City, Colorado; Major Diversities, Inc. located in Arvada, Colorado; Polar Pacific, Inc. located in San Diego, California; SPW Engineering located in Arnold, Maryland; Tampa Bay Trane located in Tampa, Florida; and Trane Oregon located in Tigard, Oregon.

This action also acknowledges the voluntary withdrawal of six previously certified reclaimers. Reclaimers requesting to be removed from the list of EPA-certified reclaimers include the Alliance Recovery Services, Inc. located in LaPorte, Texas; Appliance Recycling Centers of America located in Minneapolis, Minnesota; E.I. du Pont de Nemours and Company located in Wilmington, Delaware; MRI Refrigerant Reclaim located in Niles, Illinois; The Reclaim Center located in Parker, Florida; and the Trane Company-Denver Sales District located in Denver, Colorado. These reclaimers have received written notification, dated November 21, 2000, informing them of EPA's action granting their request to voluntarily withdraw their certification.

The aforementioned reclaimers have either voluntarily withdrawn their certification or have not complied with the recordkeeping and reporting requirements established for all EPA-certified reclaimers pursuant to section 608 of the Clean Air Act Amendments (the Act). In accordance with those requirements, codified at 40 CFR 82.166(h), all reclaimers must annually report, within 30 days of the end of the calendar year, the quantity of material sent to them for reclamation, the mass of refrigerant reclaimed, and the mass of waste products. EPA sent to each of the reclaimers an information collection request issued pursuant to section 114(a) of the Act, dated March 31, 2000, in which EPA requested that the reclaimers submit the required annual report. That information request indicated that failure to respond could result in revocation of their EPA certification.

In accordance with 40 CFR 82.164(g), EPA revoked the certifications of these reclaimers on November 21, 2000. Therefore, these businesses are no longer authorized to reclaim used refrigerant for sale to a new owner.

DATES: Advanced Recovery Systems, Inc.; Alliance Recovery Services, Inc.; Appliance Recycling Centers of America; CFC (Charles Family Corporation) Recovery; Colorado Reclamation; E.I. du Pont de Nemours and Company; Major Diversities, Inc; MRI Refrigerant Reclaim; Polar Pacific, Inc.; The Reclaim Center; SPW Engineering; Tampa Bay Trane; Trane Company-Denver Sales District; and Trane Oregon had their credentials as EPA-certified reclaimers revoked, effective November 21, 2000.

FOR FURTHER INFORMATION CONTACT: Julius Banks; Stratospheric Program Implementation Branch; Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J); 1200 Pennsylvania Avenue, NW; Washington, DC 20460; (202) 564–9870. The Stratospheric Ozone Information Hotline, (800) 296–1996, can also be contacted for further information.

Dated: November 22, 2000.

Edward Callahan,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 00–30914 Filed 12–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6911–7]

Science Advisory Board; Request for Nomination of Members and Consultants

The U.S. Environmental Protection Agency's Science Advisory Board (SAB), including the Clean Air Scientific Advisory Committee (CASAC) and the Advisory Council on Clean Air Compliance Analysis (Council), of the Environmental Protection Agency (EPA) is soliciting nominations for Members and Consultants (M/Cs). As part of this effort, the Agency is publishing this notice to describe the purpose of the SAB and to invite the public to nominate appropriately qualified candidates of any gender or ethnic background to fill upcoming vacancies. This process supplements other efforts to identify qualified candidates.

The SAB is composed of Non-Federal Government scientists and engineers who are employed on an intermittent basis to provide independent advice directly to the EPA Administrator on technical aspects of public health and environmental issues confronting the Agency. Members of the SAB are appointed by the Administrator—generally in October—to serve two years terms with some possibilities for reappointment. Consultants are appointed throughout the year, as the need arises, by the SAB Staff Director to serve renewable one-year terms and serve on SAB committees, as needed, to support the work of the Board. Many individuals serve as Consultants prior to serving as Members.

Any interested person or organization may nominate qualified persons to serve on the SAB. Nominees should be qualified by education, training, and experience to evaluate scientific, engineering and/or economics information on issues referred to and addressed by the Board. Successful candidates have distinguished themselves professionally and should be available to invest the time and effort to advance the cause of the supporting the use of good science through the efforts of the SAB.

Members and Consultants (M/Cs) most often serve in association with one of the following standing committees: Advisory Council on Clean Air Compliance Analysis, Clean Air Scientific Advisory Committee, Drinking Water Committee, Ecological Processes and Effects Committee, Environmental Economics Advisory Committee, Environmental Engineering Committee, Environmental Health Committee, Integrated Human Exposure Committee, Radiation Advisory Committee, and Research Strategies Advisory Committee.

M/Cs can expect to attend 1–6 meetings per year, based upon the activity of the committee on which they serve. M/Cs generally serve as Special Government Employees (SGEs) (40 CFR part 3, subpart F or EPA Ethics Advisory 88–6 dated 7/6/88) and receive compensation, in addition to reimbursement at the Federal government rate for travel and per diem expenses while serving on the SAB. Prior to their appointment, SGEs are required to complete an information package, including a Confidential Financial Disclosure Report.

Membership appointments associated with this solicitation will begin in the fall of 2001. While it is too early to know for certain what types of expertise will be needed, it is likely that at least some of the new members will have expertise in the following areas:

Air pollution effects on plant life.
Criteria air pollutants.
Dietary intake exposure.
Engineering options for risk reduction.
Environmental modeling.
Environmental microbiology.
General toxicology.
Landscape ecology.
Risk assessment modeling.

Nominees should be identified by name, occupation, position, address, telephone number, fax number, email address, and SAB committee of primary interest. Nominations should include a current resume that addresses the nominee's background, experience, qualifications, and specific areas of expertise.

Information on the nominees will be entered into the SAB's data base for potential M/Cs which will be consulted, as appropriate, when vacancies arise and/or when special expertise is needed for particular reviews. This request for nominations does not imply any commitment by the Agency to select individuals to serve as a M/C to the SAB from the responses received.

Nominations should be submitted to: Ms. Carolyn Osborne, Project Coordinator, Science Advisory Board (1400A), USEPA, 1200 Pennsylvania Avenue, Washington, DC 20460 Tel: (202) 564–4533 no later than February 1, 2001. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website: *http://www.epa.gov/sab.*

Dated: November 24, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–30915 Filed 12–4–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting, Open Commission Meeting, Thursday, December 7, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 7, 2000, which is scheduled to commence at 9:30 a.m. in

Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No., Bureau, and Subject

1—Mass Media—Title: Applications of Anderson Broadcasting Company (Assignor) and Cumulus Licensing Corp. (Assignee); For Consent to the Assignment of the Licenses of KBMR(AM), Bismarck, ND, KXMR(AM), Bismarck, ND, KSSS(FM), Bismarck, ND, KAVG(FM), Beulah, ND, and KBKU(FM), Hettinger, ND. (File Nos. BAL/BALH/BAP–19991004AAY–ABC). Summary: The Commission will consider a Hearing Designation Order concerning applications for the assignment of licenses from Anderson Broadcasting Company to Cumulus Licensing Corp.

2—Mass Media—Title: Definition of Radio Markets. Summary: The Commission will consider a Notice of Proposed Rule Making concerning its methodology for defining radio markets, and other related policies for applying the radio multiple ownership rules.

3—Common Carrier—Title: Numbering Resource Optimization (CC Docket No. 99–200); and Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 (CC Docket No. 96–98). Summary: The Commission will consider a Second Report and Order, Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200, and a Second Further Notice of Proposed Rule Making in CC Docket No. 99–200 regarding plans for nationwide thousands-block number pooling and other strategies to ensure that the numbering resources of the North American Numbering Plan are used efficiently.

4—Office of Engineering and Technology—Title: Authorization and Use of Software Defined Radios (ET Docket No. 00–47). Summary: The Commission will consider a Notice of Proposed Rule Making concerning the authorization and sue of software defined radios.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail its_inc@ix.netcom.com. Their Internet address is *http://www.itsdocs.com/*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 00–31049 Filed 12–1–00; 2:44 pm]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA's use of surveys to collect disaster related information. FEMA will use various modes of data collection including: mailed questionnaires, phone surveys, and computerized surveys. The survey respondents will include individual disaster applicants, state and local government officials, voluntary agency officials, and officials from other Federal agencies involved in delivering disaster assistance.

SUPPLEMENTARY INFORMATION: These surveys are conducted in response to Executive Order 12862 which requires that "all executive departments and agencies that provide significant services directly to the public" meet established customer service standards and to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services."

Collection of Information

Title: FEMA Disaster Assistance and Operations Customer Satisfaction Surveys.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0256.

Abstract. The surveys provide FEMA with information about customer satisfaction and program effectiveness. The surveys help interpret the effects of disaster-related policy changes or innovations. The survey is also used to measure trends and patterns in customer satisfaction and program effectiveness over time. FEMA will use various modes of data collection including: mailed questionnaires, phone surveys, and computerized surveys. Phone surveys of individual applicants may be conducted daily and written surveys will be conducted after every presidentially declared disaster for individual assistance (the average number of declared disasters per year is 50). The survey respondents will include individual disaster applicants, state and local government officials, voluntary agency officials, and officials from other Federal agencies involved in delivering disaster assistance. FEMA will randomly sample individual disaster applicants and will survey the entire universe of state and local government officials, voluntary agency officials. Officials from other Federal agencies involved in delivering disaster assistance also will be surveyed.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, Federal Government, state, local, or tribal government. It is important to note that FEMA does not solicit survey responses from businesses or other for-profit institutions, but it is possible that an individual applicant sampled will respond as a business owner.

Estimated Total Annual Burden Hours. 23,480. See calculations in table below.

Respondent group	Survey	Desired respondents per administrations (A)	Number of administration per year (B)	Burden hours per respondent (C)	Total annual burden hours (AXBXC)
Individual assistance applicants.	Disaster Assistance Customer Satisfaction Survey.	400	50	.25	5,000
	Inspection Services Survey	400	50	.25	5,000
	Teleregistration Survey (Proposed)	400	50	.25	5,000
	Helpline Survey (Proposed)	400	50	.25	5,000
	Preferences & Best Practices in the Delivery of Customer Service/Disaster Recovery Center Survey (Proposed).	400	10	.25	1,000
	Community Relations Survey (Proposed)	400	4	.25	400
Officials	Public Assistance Survey—30 per disaster, 2 responses per year.	60	60	.25	900
	Other Federal Agency Officials Survey (Proposed)—15 per disaster, 2 responses per year.	30	60	.25	450
	Voluntary Agencies Survey (Proposed)—10 per disaster, 4 responses per year.	40	60	.25	600
	Community Relations Survey (Proposed)	30	4	.25	30
Total				23,380	

Estimated Annual Cost To Respondents. We have estimated that it will cost each respondent $4.00 to complete each survey. The estimate is based on the respondent making $16.00 per hour (median household income of $34,076/2,080 hours per year). The estimated total annualized cost is $93,520.00 (23,380 respondents x $16.00 per hour x .25 hour).

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received on or before February 5, 2001.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3347. E-mail address: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Kedra Mitchell, Program Specialist, Federal Emergency Management Agency, Response and Recovery Directorate, Readiness Coordination Division, Strategic Planning & Evaluation Team, (202) 646–3381 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: November 28, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–30867 Filed 12–4–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated

collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 5, 2001.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

1. *Report title:* Money Market Mutual Fund Assets Report.

Agency form number: FR 2051a and b.

OMB control number: 7100–0012.

Frequency: weekly and monthly.

Reporters: money market mutual funds.

Annual reporting hours: 6,360 hours.

Estimated average hours per response: 3 minutes (FR 2051a), 12 minutes (FR 2051b).

Number of respondents: 1800 (FR 2051a), 700 (FR 2051b).

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 353 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The weekly FR 2051a and the monthly FR 2051b reports cover total value of shares outstanding and investments of approximately 1,800 money market mutual funds. The data are used at the Board for constructing the monetary aggregates and for the analysis of current money market conditions and developments in the financial sector.

Board of Governors of the Federal Reserve System, November 29, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–30835 Filed 12–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Hardin County Bancshares, Inc. Employee Stock Ownership Plan, and Eddie K. Whitlow, Savannah, Tennessee; as trustee for Hardin County Bancshares, Inc., Savannah, Tennessee, executor of the Isom G. Hinton Estate, and co-executor of the Hinton Family Partnership; to retain voting shares of Hardin County Bancshares, Inc., Savannah, Tennessee, and thereby indirectly retain voting shares of The Hardin County Bank, Savannah, Tennessee.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Stewart Larkin Armstrong, San Antonio, Texas; to acquire additional voting shares of Kleberg and Company Bankers, Inc., Kingsville, Texas, and thereby indirectly acquire additional voting shares of Kleberg First National Bank, Kingsville, Texas.

Dated: Board of Governors of the Federal Reserve System, November 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30833 Filed 12–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision)

1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to merge with Capital Holdings, Inc., Sylvania, Ohio, and thereby indirectly acquire voting shares of Capital Bank, N.A., Sylvania, Ohio.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Garden City Bancshares Acquisition Corporation, Garden City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Garden City Bancshares, Inc., Garden City, Missouri, and thereby indirectly acquire Garden City Bank, Garden City, Missouri.

Board of Governors of the Federal Reserve System, November 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30832 Filed 12–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Milstar Financial, Inc., Miami Beach, Florida; to become a bank holding company by acquiring 46.04 percent of the voting shares of First Western Bank, Cooper City, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Comerica Incorporated, Detroit, Michigan; to merge with Imperial Bancorp, Inglewood, California, and thereby indirectly acquire voting shares of Imperial Bank, Inglewood, California. Comerica also has applied to acquire an option to acquire up to 19.9 percent of Imperial Bancorp.

Board of Governors of the Federal Reserve System, November 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30902 Filed 12–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. National Australia Bank Limited, Melbourne, Australia; to acquire indirectly through Homeside Lending, Inc., Jacksonville, Florida, certain assets and assume certain liabilities of Charles F. Curry Company, Kansas City, Missouri, and to thereby engage in the nonbanking activities of extending credit and servicing loans and activities related to extending credit, pursuant to §§ 225.28(b)(1) and 225.28(b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30834 Filed 12–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire 100 percent of the voting stock of PBOC Holdings, Inc., Los Angeles, California, and thereby indirectly acquire voting shares of Peoples Bank of California, Los Angeles, California, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30901 Filed 12–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Meeting Act

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, December 11, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31103 Filed 12–1–00; 3:58 pm]

BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATES: 10:00 a.m. (EST) December 11, 2000.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 13, 2000, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of KPMG Peat Marwick audit reports;

(a) "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff"

(b) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan C and F Fund Investment Management Operations at Barclays Global Investors, N.A."

(c) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, National Finance Center."

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 30, 2000.

Elizabeth S. Woodruff,

Ssecretary to the Board, Federal Retirement Thrift Investment Baord.

[FR Doc. 00–31014 Filed 12–1–00; 12:29 pm]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of an Optional Form by Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low usage:

OF 189, Travel Reimbursement Voucher

The form will be converted to a State Department form. You can request copies of the new form from: Department of State, IS/OIS/DIR, 2201 C Street, NW; Room B264NS, Washington, DC 20520–0264.

DATES: Effective December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 25, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–30900 Filed 12–4–00; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Travel and Transportation Policy Division; Construction Cancellation of a Standard Form

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration, Office of Governmentwide Policy is cancelling the constructions of the following Standard Form because of low user demand:

SF 1169, U.S. Government Transportation Requests (2-part set) (identified by NSN 7540–00–634–4363) and (4-part set book) (identified by NSN 7540–00–634–4365). The 4-part single set version (identified by NAN 7540–00–985–8038) of this form is still available from FSS.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Forms Management, (202) 501–0581.

DATES: Effective December 5, 2000.

Dated: October 30, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–30899 Filed 12–4–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Commission. The Commission will discuss its ongoing project ethical and policy issues in international research. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on January 18 from 1:00–1:30 pm.

Dates/times	Location
January 18, 2001, 8:30 am–5 pm.	Sheraton Premiere at Tysons Corner, 8661 Leesburg Pike, Tysons Corner/Vienna, Virginia 22182
January 19, 2001, 8 am–12 pm.	Same Location as Above

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: November 29, 2000.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 00–30871 Filed 12–4–00; 8:45 am]

BILLING CODE 4167–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 1 p.m.–1:30 p.m., December 19, 2000.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1006, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Open: 1:00 p.m.–1:10 p.m., December 19, 2000;

Closed: 1:10 p.m.–1:30 p.m., December 19, 2000.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control and to support injury prevention research centers.

Matters To Be Discussed: Agenda items include the purpose of the meeting and discussion and vote on site visits to be conducted by IRGRC. Beginning at 1:10 p.m., through 1:30 p.m., December 19, the Committee will discuss and vote on the preliminary evaluation (triage) conducted by IRGRC to determine if a grant application submitted in response to Program Announcement #01007 is of sufficient scientific and technical merit to warrant further review by IRGRC. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. Law. 92–463.

This notice is published less than 15 days prior to the conference call due to administrative delay.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Acting Executive Secretary, IRGRC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–4330.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 30, 2000.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–30995 Filed 12–1–00; 11:39 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Allotment Percentages to States for Child Welfare Services State Grants

AGENCY: Administration for Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Biennial publication of allotment percentages for States under the Title IV–B subpart 1, Child Welfare Services State Grants Program.

SUMMARY: As required by section 421(c) of the Social Security Act (42 U.S.C. 621(c)), the Department is publishing the allotment percentage for each State under the Title IV–B subpart 1, Child Welfare Services State Grants Program. Under section 421(a), the allotment percentages are one of the factors used in the computation of the Federal grants awarded under the Program.

EFFECTIVE DATE: The allotment percentages shall be effective for Fiscal Years 2002 and 2003.

FOR FURTHER INFORMATION CONTACT: Doris Lee, Office of Management Services, Administration for Children, Youth and Families, Administration for Children and Families, 330 C Street, SW., Washington, D.C. 20447.

SUPPLEMENTARY INFORMATION: The allotment percentage for each State is determined on the basis of paragraphs (b) and (c) of section 421 of the Act. These figures are available on the ACF homepage on the internet: *http://www.acf.dhhs.gov/programs/cb/.* The allotment percentage for each State is as follows:

State	Allotment percentage
Alabama	59.48
Alaska	48.91
Arizona	55.89
Arkansas	61.01
California	48.04
Colorado	45.34
Connecticut	31.28
Delaware	46.32
District of Columbia	30.47
Florida	50.80
Georgia	52.27
Hawaii	50.75
Idaho	59.88
Illinois	45.27
Indiana	54.08
Iowa	54.58
Kansas	52.98
Kentucky	59.13
Louisiana	59.38
Maine	56.91
Maryland	43.39
Massachusetts	38.66
Michigan	50.76
Minnesota	46.26
Mississippi	63.55
Missouri	53.49
Montana	61.15
Nebraska	52.59
Nevada	45.54
New Hampshire	45.92
New Jersey	37.46
New Mexico	61.30
New York	40.91
North Carolina	53.73
North Dakota	59.09
Ohio	52.15
Oklahoma	59.47
Oregon	52.39
Pennsylvania	49.81
Rhode Island	48.60
South Carolina	58.73
South Dakota	56.50
Tennessee	55.06
Texas	52.96
Utah	59.18
Vermont	54.70
Virginia	48.07
Washington	47.49
West Virginia	62.93
Wisconsin	52.03
Wyoming	54.03
American Samoa	70.00
Guam	70.00
N. Mariana Islands	70.00
Puerto Rico	70.00
Virgin Islands	70.00

Dated: November 27, 2000.

Patricia Montoya,

Commissioner, Administration for Children, Youth and Families.

[FR Doc. 00–30887 Filed 12–4–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1575]

Agency Information Collection Activities; Proposed Collection; Comment Request; Nutrition Labeling; Declaration of Caloric Amounts and Serving Sizes for Breath Mints

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements regarding the nutrition labeling of breath mints.

DATES: Submit written or electronic comments on the collection of information by February 5, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Nutrition Labeling; Declaration of Caloric Amounts and Serving Sizes for Breath Mints—21 CFR 101.9(b) and 101.9(c)(1) (OMB Control Number 0910–0364)—Extension

Section 403(q) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)) requires that the label or labeling of a food bear nutrition information, including information on: (1) The serving size and number of servings per container, and (2) the number of calories present in a serving of the food. Under FDA's nutrition labeling regulations in § 101.9(d)(3) (21 CFR 101.9(d)(3)), the nutrition facts panel of the food label must disclose the serving size of the food product and the number of servings in each package. Under § 101.9(c)(1), the nutrition facts panel must disclose the number of calories present in a serving of the food.

In the **Federal Register** of December 30, 1997 (62 FR 67775), FDA published a proposed rule to amend the nutrition labeling regulations by changing the label serving size for the product category "Hard candies, breath mints" to one unit. FDA proposed this change in response to a petition to provide a serving size for breath mints that more accurately reflects the amount customarily consumed per eating occasion. In a related issue, FDA also proposed to: (1) Modify the rounding rules for calories to allow the declaration of caloric amounts of less than 5 calories on the nutrition label, and (2) require that the number of calories declared on the nutrition label of a food product be consistent with any claims about caloric content that are made in its labeling. As a result of this proposed rule, manufacturers, packers, or distributors who make labeling claims that their products contain between 1 and 5 calories would be required to change the declaration of the amount of calories on the nutrition label. In addition, manufacturers of small breath mints would be required, under § 101.9(b), to change the serving size and, under § 101.9(c) and (d), to modify the amounts and Daily Values for nutrients listed in the nutrition label for their products. The proposal

included burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ADDITIONAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Total No. of Responses	Hours per Response	Total Operating Costs	Total Hours
101.9(b) and (c)(1)	4	30	1	$15,000	30

[1] There are no capital or maintenance costs associated with this collection of information.

The proposed modification of the rules for the declaration of the amount of calories and the proposed change of the label serving size on the nutrition facts panel would result in a one-time burden created by the need for firms to revise their labels. In addition to changing the statement of calories and the serving sizes, firms would have to recalculate the number of servings per container and any nutrient amounts and Daily Values affected by the change in serving size. Of those breath mints for which FDA has information regarding the size of the product, there are 4 firms producing 5 brands of small breath mints, or approximately 30 distinct small breath mint labels. These are the only firms that would be affected by this proposed rule. FDA estimates that these firms would require an average of 1 hour per label to comply with the requirements of a final rule based on this proposal. For breath mint products, the average administrative, redesign, and inventory disposal costs for a labeling change of this type, with a 1-year compliance period, would result in a one-time operating cost of $500 per label or a total estimated operating cost of $15,000.

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30828 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1283]

Agency Information Collection Activities; Announcement of OMB Approval; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 13, 2000 (65 FR 55262), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0025. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30830 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1311]

Agency Information Collection Activities; Announcement of OMB Approval; Export of Medical Devices—Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Export of Medical Devices—Foreign Letters of Approval" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 12, 2000 (65 FR 55027), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the

information collection and has assigned OMB control number 0910–0264. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30831 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1060]

Agency Information Collection Activities; Announcement of OMB Approval; Adoption of FDA Food Code by Local, State, and Tribal Jurisdictions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adoption of FDA Food Code by Local, State, and Tribal Jurisdictions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 2000 (65 FR 47736), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–448. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30874 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1440]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; User Fee Cover Sheet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 4, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

User Fee Cover Sheet; Form FDA 3397—(OMB Control Number 0910–0297)—Extension

Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), the "Prescription Drug User Fee Act of 1992" (PDUFA) (Public Law 102–571), as amended by the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), FDA has the authority to assess and collect user fees for certain drug and biologics license applications and supplements. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications, biologics license applications or supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. Form FDA 3397 is the user fee cover sheet, which is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, biologics license applications, and supplemental applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's data base system, there are an estimated 208 manufacturers of products subject to PDUFA. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in fiscal year 1999. CDER estimates 2,478 annual responses that include the following: 125 new drug applications, 1,458 chemistry supplements, 755 labeling supplements, and 140 efficacy supplements. CBER estimates 443 annual responses that include the following: 8 biologics license applications, 396 manufacturing (chemistry) supplements, 29 labeling supplements, and 10 efficacy supplements. The estimated hours per response are based on past FDA experience with the various submissions, and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

In the **Federal Register** of August 18, 2000 (65 FR 50540), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3397	208	14.4	2,921	.30	876

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30829 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1491, HCFA–382, and HCFA–R–207]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1.) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Request for Medicare Payment—Ambulance and Supporting Regulations in 42 CFR Section 410.40 and 424.124;

Form No.: HCFA–1491 (OMB# 0938–0042);

Use: This form is used by physicians, suppliers, and beneficiaries to request payment of Part B Medicare services. It is used to apply for reimbursement for ambulance services.

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit Institutions;

Number of Respondents: 9,301,183;

Total Annual Responses: 9,301,183;

Total Annual Hours: 390,418.

(2.)*Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: ESRD Beneficiary Selection and Supporting Regulations Contained in 42 CFR 414.330;

Form No.: HCFA–382 (OMB# 0938–0372);

Use: ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting Method I and the carriers pay for the beneficiaries selecting Method II. This system was developed to avoid duplicate billing by both intermediaries and carriers.

Frequency: Other (One time only);

Affected Public: Individuals or households, business or other for-profit, and not-for-profit institutions;

Number of Respondents: 8,600;

Total Annual Responses: 8,600;

Total Annual Hours: 717.

(3.) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Evaluation of the State Medicaid Reform Demonstrations and Evaluation of the Medicaid Health Reform Demonstrations;

Form No.: HCFA–R–207 (OMB# 0938–0708);

Use: These evaluations investigate health care reform in ten states that have implemented demonstration programs using Section 1115 waivers. The surveys gather information to answer questions regarding access to health care, quality of care delivered, satisfaction with health services, and the use and cost of health services. During the extended period of authorization, the surveys will be administered to Medicaid eligibles, both demonstration participants and comparison group non-participants.;

Frequency: Other: One-time;

Affected Public: Individuals or Households;

Number of Respondents: 5,050;

Total Annual Responses: 5,050;

Total Annual Hours: 2,746.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 20, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–30840 Filed 12–4–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1162–N]

Medicare Program; Establishment of the Advisory Panel on Ambulatory Payment Classification Groups and Request for Nominations for Members

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Advisory Panel on Ambulatory Payment Classification (APC) Groups and solicits nominations for members of the panel. The purpose of the panel is to review the APC groups and their associated weights and advise the Secretary and the Administrator of the Health Care Financing Administration (HCFA) concerning the clinical integrity of these groups and weights, which are major elements of the hospital outpatient prospective payment system (OPPS). This notice also announces that on November 21, 2000 the Secretary signed the charter establishing the panel. The charter will

terminate two years from the signing date unless renewed by the Secretary.

DATES: Nominations for members will be considered if we receive them at the appropriate address, as provided below, before 5 p.m. on December 26, 2000.

ADDRESSES: Mail written nominations for membership to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1162–N, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver, by courier, your written nominations to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or Health Care Financing Administration, Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Nominations mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept nominations by facsimile (FAX) or email transmission. Please refer to file code HCFA–1162–N on each nomination.

You may receive a copy of the Secretary's charter for the panel by mailing a written request to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1162–N, P.O. Box 8013, Baltimore, MD 21244–8013.

FOR FURTHER INFORMATION CONTACT: Paul Olenick, (410) 786–0282.

SUPPLEMENTARY INFORMATION:

I. Background

The requirement for the Secretary to consult with an outside Advisory Panel on Ambulatory Payment Classification (APC) Groups is set forth in section 1833(t)(9)(A) of the Social Security Act (the Act), as added by section 201(b) and redesignated by section 202(a)(2) of the Balanced Budget Refinement Act of 1999 (BBRA 1999). The Secretary signed the charter establishing the panel on November 21, 2000. The charter will terminate two years from the signing date unless renewed by the Secretary. The purpose of the panel is to review, and advise the Secretary and the Administrator of the Health Care Financing Administration (HCFA) concerning, the clinical integrity of the APC groups and associated weights. The panel consists of up to 15 members, selected by the Secretary or a designee, and a Chair, who is a government official appointed by the Secretary.

The panel meets once each calendar year in January or February so that we may consider its advice when we prepare the Annual Notice of Proposed Rulemaking for changes to the hospital outpatient prospective payment system (OPPS). The work of the panel is technical in nature and will concentrate on the operational aspects of the APC system. We will prepare the agenda for the panel's activities, which will set the boundaries for discussion, and will include issues such as the following:

- The determination as to whether selected procedures are similar both clinically and in terms of resource use.
- The assignment of new HCFA Common Procedure Coding System (HCPCS) codes to new or existing APCs.
- The reassignment of HCPCS codes to different APCs.
- The reconfiguring of existing APCs into new APCs.

The panel will not make policy recommendations and will not discuss items not on the agenda. Items that will not be considered for the agenda include the following, as well as other items that are determined by us to be outside the technical scope of the panel's activities:

- The conversion factor.
- The OPPS wage adjustments.
- The outlier or transitional corridor payments.
- The transitional pass-through payments for medical devices, drugs, and biologicals.

In order to obtain the broadest possible input for its work, the panel must consult with entities and organizations, such as the medical device and drug industries, with expert technical knowledge of the components of the APCs. The panel may use data collected or developed from entities and organizations other than the Department of Health and Human Services and HCFA in conducting its review.

We are requesting nominations for members to serve on the panel. Panel members serve without compensation, although travel, meals, lodging, and related expenses will be reimbursed in accordance with standard government travel regulations. We have a special interest in ensuring that women, minorities, and the physically challenged are adequately represented on the panel and encourage nominations of qualified candidates from those groups.

II. Criteria for Nominees

Nominees must be representatives of Medicare providers (including Community Mental Health Centers) subject to the OPPS, with technical and/or clinical expertise in any of the following areas:

- Hospital payment systems.
- Hospital medical care delivery systems.
- Outpatient payment requirements.
- Ambulatory payment classification groups.
- Use of, and payment for, drugs and medical devices in an outpatient setting.
- Provision of, and payment for, partial hospitalization services.
- Any other relevant expertise.

It is not necessary that any nominee possess expertise in all of the areas listed, but each must have a minimum of five years experience, and currently be employed full-time, in his or her area of expertise. Members of the panel serve overlapping four-year terms, contingent upon the rechartering of the panel.

Any interested person may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include a letter of nomination, a curriculum vita of the nominee, and a statement from the nominee that the nominee is willing to serve on the panel.

Authority: Section 1833(t)(9)(A) of the Social Security Act (42 U.S.C. 1395(t)).

Dated: November 29, 2000.

Michael M. Hash,

Acting Administrator, Health, Care Financing Administration

[FR Doc. 00–30994 Filed 12–1–00; 12:21 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is also available on the internet at the following website: *http://www.health.org/workplace*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Laboratory Partners, LLC 129 East Cedar St. Newington, CT 06111, 860–696–8115, (Formerly: Hartford Hospital Toxicology Laboratory).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers).

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA, 31602 912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc. DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 1301 18th Ave NW, Suite 110, Austin, MN 55912, 507–437–7322.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232, (Formerly: Cedars Medical Center, Department of Pathology).

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891.

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177.

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800, (Formerly: Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106, (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories).
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947, (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories).
Quest Diagnostics Incorporated, 801 East Dixie Ave., Suite 105A, Leesburg, FL 34748, 352–787–9006x4343, (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory).
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories).
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970.
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–339–4299, (Formerly: MetWest-BPL Toxicology Laboratory).
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–30854 Filed 12–4–00; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement and Receipt of an Application for an Incidental Take Permit for the Metro Air Park Project in the Natomas Basin, Sacramento County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The Metro Air Park Property Owners Association (Association) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Association, a non-profit mutual benefit corporation, has applied on behalf of 138 individual property owners within the Metro Air Park 1,892-acre Special Planning Area who wish to pursue development of urban uses and rice farming on these lands. The development area is in the Natomas Basin, Sacramento County, California, with associated mitigation lands for Metro Air Park development within Sacramento and Sutter Counties, California. The proposed permit would authorize incidental take of three federally listed species. The proposed taking of these species would be incidental to the implementation of the Metro Air Park Habitat Conservation Plan (Plan), which provides for the development of the Metro Air Park industrial park project along with the continuation of rice farming activities. The proposed permit also would authorize future incidental take of 10 currently unlisted species, should any of them become listed under the Act during the life of the permit. The proposed permit duration is 50 years. The permit application, available for public review, includes the Plan which describes the proposed program and mitigation, and an accompanying Implementing Agreement.

The Service also announces the availability of a Draft Environmental Impact Statement for the incidental take permit application. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Public Meeting: A public meeting will be held on January 8, 2001, from 7 p.m. to 9 p.m. at the County of Sacramento, Hearing Room 1, 700 H Street, Sacramento, California, 95814. For additional meeting information, contact Ms. Vicki Campbell, Chief, Conservation Planning Division at (916) 414–6600. Oral and written comments will be received at the meeting.

DATES: Written comments should be received on or before February 6, 2001.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief, Conservation Planning Division, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, Draft Environmental Impact Statement, Plan, and Implementing Agreement should immediately contact the Service by telephone at (916) 414–6600 or by letter to the Sacramento Fish and Wildlife Office. Copies of the Draft Environmental Impact Statement, Plan, and Implementing Agreement also are available for public inspection, during regular business hours, at the Sacramento Fish and Wildlife Office; State Library, 914 Capitol Mall, Sacramento, CA; the State Library, 828 I Street, Sacramento, CA; and the State Library, 1620 W. El Camino Avenue, Sacramento, CA.

Background Information

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize "incidental take" of listed animal species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Background

The Association seeks a permit for take of the following federally listed species: the threatened giant garter snake (*Thamnophis gigas*), threatened Aleutian Canada goose (*Branta canadensis leucopareia*), and threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). This take would be incidental to urban development of the Metro Air Park industrial park project and from rice farming activities within the 1,892-acre Special Planning Area and on 119 acres of lands outside the Special Planning Area in Sacramento County, California. The proposed permit would also authorize future incidental take of the currently unlisted Swainson's hawk (*Buteo swainsoni*), greater sandhill crane (*Grus canadensis tubida*), bank swallow (*Riparia riparia*), tricolored blackbird (*Agelaius tricolor*), northwestern pond turtle (*Clemmys marmorata marmorata*), white-faced ibis (*Plegadis chihi*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), delta tule pea (*Lathyrus jepsonii* ssp. *jepsonii*), and Sanford's arrowhead (*Sagittaria sanfordii*) should any of these species become listed under the Act during the life of the permit. Collectively, the 13 listed and unlisted species are referred to as the "covered species" for the Association's Plan.

The Metro Air Park Special Planning Area comprises 1,892 acres within the Natomas Basin in Sacramento County, California. Agriculture is the dominant land use in the Natomas Basin and on the Metro Air Park site. The predominant crops are rice, corn, sugar beets, grain, tomatoes, and pasture. Natural and uncultivated vegetation types are interspersed throughout the agricultural areas of the Natomas Basin. Natural areas are found primarily along irrigation canals, drainage ditches, pastures, and uncultivated fields. The borders of drainage canals are often associated with narrow strips of emergent vegetation and/or wooded riparian areas.

Portions of the Natomas Basin that are within the jurisdiction of the City of Sacramento are included in the Natomas Basin Habitat Conservation Plan which was completed by the City of Sacramento in November, 1997. The Metro Air Park Project is described in the Natomas Basin Habitat Conservation Plan, but because the Metro Air Park Project is outside of the City limit lines, the project cannot be covered by the City's incidental take permit. Therefore, the Association is seeking a separate incidental take permit for the Metro Air Park project. Take could occur as a result of urban development of the Metro Air Park industrial park project and from rice farming activities.

Under the Plan, the Association proposes to minimize and mitigate the effects of urban development by participating in the basin-wide conservation program set up for the entire Natomas Basin which is described in the Natomas Basin Habitat Conservation Plan. The focus of this basin-wide conservation program is the preservation, enhancement, and restoration of ecological communities which support species associated with the wetland and upland habitats. Through the payment of development fees, one-half acre of mitigation land would be established for every acre of land developed within the Plan area. The mitigation land would be acquired and managed by the Natomas Basin Conservancy, a non-profit conservation organization established to implement the Natomas Basin Habitat Conservation Plan. Mitigation fee amounts and the mitigation strategy for the Plan would be subject to the same adjustments required under the Natomas Basin Habitat Conservation Plan. To mitigate for the loss of Swainson's hawk nest trees on-site, the Association will secure 200 contiguous acres, in perpetuity, and transfer the lands to the Natomas Basin Conservancy to manage them for the benefit of Swainson's hawk. The Plan also includes take avoidance and minimization measures that include the requirement for landowners to conduct pre-construction surveys for covered species and to carry out minimization measures prior to site development.

The Plan will be implemented by the Association with assistance from the County of Sacramento and environmental consultants. The Natomas Basin Conservancy will serve as the Plan Operator, receive mitigation fees from the County, and be responsible for using the fees to acquire and manage habitat lands in accordance with the Plan.

Funding for the Plan will be financed through a combination of development fees charged at the time grading permits are issued, Mello-Roos Community Facilities District bond proceeds, and Property Owners Assessments.

The Draft Environmental Impact Statement considers four alternatives, including the Proposed Action and the No-Action/No Take Alternative. Under the No-Action/No Take Alternative, no section 10(a)(1)(B) permit would be issued for take of listed species during urban development and other activities in the Plan area. Landowners within the Plan area would continue to apply for individual incidental take permits on a case-by-case basis.

The Increased Mitigation Ratio Alternative examines the environmental effects of applying a higher mitigation ratio for addressing impacts to the giant garter snake and the Swainson's hawk than is required under the Natomas Basin Habitat Conservation Plan and the proposed Plan. This alternative would

require a site-specific analysis of habitat values in order to determine specific mitigation obligations.

The Reduced Development Alternative would result in reduced development of the Metro Air Park site. The 18-hole golf course situated on approximately 279 acres would be reduced to a 140-acre 9-hole golf course. This would reallocate 140 acres on-site for the creation of habitat as a mitigation area for covered species.

The analysis provided in the Draft Environmental Impact Statement is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comments received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

The Service invites the public to comment on the Plan and Draft Environmental Impact Statement during a 60-day public comment period. This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6): The Service will evaluate the application, associated documents, and comments submitted thereon to prepare a Final Environmental Impact Statement. A permit decision will be made no sooner than 30 days after the publication of the Final Environmental Impact Statement.

Dated: November 28, 2000.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–30837 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Acceptance of Retrocession of Jurisdiction for the Tulalip Tribes, Washington

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968 (33 FR 17339) and redelegated to the Assistant Secretary—Indian Affairs by 209 DM 8, I hereby accept as of 12:01 PST, November 21, 2000 retrocession to the United States of partial criminal jurisdiction over the Tulalip Tribes, which was acquired by the state of Washington, pursuant to Public Law 83–280, 67 Stat. 588, 18 U.S.C. 1162, 28 U.S.C. 1360.

The retrocession herein accepted was offered by the Proclamation by the Governor of the state of Washington on January 14, 1997, and transmitted to the Secretary on February 18, 2000. By Resolution No. 96–0167 dated November 2, 1996, the Tulalip Tribes requested that the state of Washington retrocede partial criminal jurisdiction to the tribes.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Maybee, Executive Officer, Bureau of Indian Affairs, Office of Law Enforcement Services, 1849 C Street, NW, Mailstop 2607–MIB, Washington, DC 20240, telephone nubmer (202) 208–5758.

Dated: November 29, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–30956 Filed 12–04–00; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–PB-01-24 1A; OMB Approval Number 1004–0001]

Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 22, 2000, the BLM published a notice in the **Federal Register** (65 FR 51017) requesting comment on this proposed collection. The comment period ended on October 23, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1004–001), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Free Use Application and Permit (43 CFR 3620, 5510).

OMB Approval Number: 1004–0001.

Bureau Form Number: Form 5510–1.

Abstract: The BLM uses this form to collect information from applicants for free permits for vegetative or mineral materials.

Frequency: Once, at time of application.

Description of Respondents: Respondents include the general public and not-for-profit organizations.

Estimated Completion Time: 30 minutes.

Annual Responses: 450.

Filing Fee Per Response: 0.

Annual Burden Hours: 225.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 13, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30888 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–JH–01–24 1A; OMB Approval Number 1004–0019]

Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 22, 2000, the BLM published a notice in the **Federal Register** (65 FR 51017) requesting comment on this proposed collection. The comment period ended on October 23, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1004–0019), Office of Information and Regulatory Affairs, Washington, DC 205903. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Range Improvement Permit (as required by 43 CFR 4120.3).

OMB Approval Number: 1004–0019.

Bureau Form Number: Form 4120–7.

Abstract: The form is used to apply for approval to install the improvement and documents the records for the service life of the improvement.

Frequency: On occasion.

Description of Respondents: Respondents are applicants requesting permission to construct range improvements on public lands.

Estimated Completion Time: 20 minutes.

Annual Responses: 60.

Filing Fee Per Response: 0.

Annual Burden Hours: 20.

Bureau Clearance Office: Michael Schwartz, (202) 452–5033.

Dated: November 13, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30889 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–PB–01–24 1A]

OMB Approval Number 1004–0058; Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 22, 2000, the BLM published a notice in the **Federal Register** (65 FR 51018) requesting comment on this proposed collection. The comment period ended on October 23, 2000. The BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM information clearance officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1004–0058), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Timber Export Reporting and Substitution Determination (43 CFR 5424).

OMB Approval Number: 1004–0058.

Bureau Form Number: Form 5460–17.

Abstract: The BLM uses this form to determine if there was a substitution of Federal timber for exported private timber in violation of the Forest Resources Conservation and Shortage Act of 1990.

Frequency: On occasion and within 12 months of last export sale.

Description of Respondents: Respondents include Federal timber purchasers.

Estimated Completion Time: 1 hour.

Annual Responses: 25.

Filing Fee Per Response: 0.

Annual Burden Hours: 45.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: Dated: November 15, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30890 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24–1A–PB]

OMB Approval Number 1004–0132; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*). On August 18, 2000, the BLM published a notice in the **Federal Register** (65 FR 50557) requesting comments on the collection. The comment period ended October 17, 2000. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should

be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0132), Office of Information and Regulatory Affairs, Washington, DC, 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Geothermal Resources Operations (as required by 43 CFR 3260).

OMB Approval Number: 1004–0132.

Abstract: Data submitted by geothermal lessees and operators issued for agency approval of specific and/or additional operations on a well and to report the completion and/or progress of such additional work.

Bureau Form Numbers: 3260–2, 3260–3, 3260–5.

Frequency: Nonrecurring, on occasion, and monthly.

Description of Respondents: Lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight.

Estimated Completion Time: 2 hours.

Information collection (43 CFR)	Requirement	Hours per response	Burden hours	Respondents
3162.3–1(a)	Well-Spacing Program	.5	75	150
3162.3–1(e)	Drilling Plans	8	23,000	2,875
3162.6	Well Markers	.5	150	300
3162.5–2(b)	Direction Drilling	1	165	165 or 5% of wells
3162.4–2(a)	Drilling Tests, Logs, Surveys	1	330	330 or 10% of wells
3162.3–4(a)	Plug and Abandon for Water Injection.	1.5	1,800	1,200
3162.3–4(b)	Plug and Abandon for Water Source.	1.5	1,800	1,200
3162.7–1(d)	Additional Gas Flaring	1	400	400
3162.5–1(c)	Report of Spills, Discharges, or Other Undesirable Events.	2	400	200
3162.5–1(b)	Disposal of Produced Water	2	3,000	1,500
3162.5–1(d)	Contingency Plan	16	800	50
3162.4–1(a) and 3162.7–5(d)(1)	Schematic/Facility Diagrams	4	9,400	2,350
3162.7–1(b)	Approval and Reporting of Oil in Pits.	.5	260	520
3164.1 (Order No. 3)	Prepare Run Tickets	.2	18,000	90,000
3162.7–5(b)	Records on Seals	.2	18,000	90,000

Annual Responses: 760.
Annual Burden Hours: 1,700.
Bureau Clearance Officer: Michael Schwartz, 202–452–5033.

Dated: November 8, 2000.

Michael Schwartz,

BLM Information Collection Cleorance Officer.

[FR Doc. 00–30891 Filed 12–4–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24 1A–PB]

OMB Approval Number 1004–0134; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*). On August 22, 2000, the BLM published a notice in the **Federal Register** (65 FR 51019) requesting comments on the collection. The comment period ended October 23, 2000. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0134), Office of Information and Regulatory Affairs, Washington, D.C., 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Onshore Oil and Gas Operations Nonform Items (as required by 43 CFR 3160).

OMB Approval Number: 1004–0134.

Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: On occasion and nonrecurring.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimated Completion Time:

Information collection (43 CFR)	Requirement	Hours per response	Burden hours	Respondents
3165.1(a)	Application for Suspension	8	800	100
3165.3(b)	State Director Review	16	1,600	100
3162.7–5(c)	Site Security	7	16,905	2,415
Totals			96,885	193,855

Annual Responses: 193,855.
Annual Burden Hours: 96,885.
Filing Fee Per Response: 0.
Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 14, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30892 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24 1A–PB]

OMB Approval Number 1004–0135; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 18, 2000, the BLM published a notice in the **Federal Register** (65 FR 50558) requesting comments on the collection. The comment period ended October 17, 2000. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0135), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information of those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Sundry Notices and Reports on Wells (as required by 43 CFR 3162).

OMB Approval Number: 1004–0135.

Abstract: Data submitted by oil and gas operators are used for agency approval of specific additional operations on a well and to report the completion of such additional work.

Bureau Form Number: 3160–5.

Frequency: On occasion.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimated Completion Time: 25 minutes.

Annual Responses: 34,000.
Annual Burden Hours: 14,166.
Filing Fee per Response: 0.
Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 8, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30893 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24–1A–PB]

OMB Approval Number 1004–0136; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*). On August 18, 2000, the BLM published a notice in the **Federal Register** (65 FR 50559) requesting comments on the collection. The comment period ended October 17, 2000. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0136), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following.

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Application for Permit for Drill, Deepen, or Plug Back (as required by 43 CFR 3162).

OMB Approval Number: 1004–0136.

Abstract: Data submitted by oil and gas operators are used for agency approval of proposed drilling operations through review of technical and environmental factors.

Bureau Form Number: 3160–3.
Frequency: On occasion.
Description of Respondents; Oil and gas operators.
Estimated Completion Time: 30 minutes.
Annual Responses: 4,000.
Annual Burden Hours: 2,000.
Filing Fee Per Response: 0.
Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 18, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30894 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24–1A–PB]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*). On August 18, 2000, the BLM published a notice in the **Federal Register** (65 FR 50560) requesting comments on the collection. The comment period ended October 17, 2000. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Office at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0137), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Well Completion or Recompletion Report and Log, (as required by 43 CFR Part 3160).
OMB Approval Number: 1004–0137.
Abstract: Data submitted by oil and gas operators is used for agency approval of specific additional operations on a well and to report the completion of such additional work.
Bureau Form Number: 3160–4.
Frequency: Nonrecurring.
Description of Respondents: Oil and gas operators.
Estimated Completion Time: 1 hour.
Annual Responses: 2,200.
Annual Burden Hours: 2,290.
Filing Fee Per Response: 0.
Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 18, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30895 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–AE]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Williams, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Wednesday and Thursday, Jan. 24, and 25, 2001, for a business meeting and field tour. The meeting and tour are open to the public, but anyone participating in the tour must provide their own transportation and lunch.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Wednesday, Jan. 24, at Granzella's Inn, 391 Sixth St., Williams, California. The members will depart immediately for a tour of public lands managed by the BLM's Ukiah Field Office. Discussions will focus on cultural resources and Native American issues. On Thursday, Jan. 25, the council will convene a business meeting at 8 a.m. in the Conference Room at Granzella's Inn. Agenda items will include a report on the BLM's new mining regulations, a presentation on best management practices for water quality, a status report on a management feasibility study at Lake Berryessa, and reports from the managers of the BLM Arcata, Redding and Ukiah field offices.

Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

FOR ADDITIONAL INFORMATION: Contact Lynda J. Roush, BLM Arcata Field Manager, at (707) 825–2300.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–30838 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Gulf of Mexico (GOM) Region, Proposed Eastern GOM Sale 181

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (EIS) and Public Hearings on Proposed Eastern GOM Sale 181.

SUMMARY: The MMS has prepared a draft EIS on a proposed OCS oil and gas lease sale in the Eastern GOM. This proposed sale is the only Eastern GOM sale scheduled during the current 5-Year Oil and Gas Leasing Program and the first proposed sale in the Eastern GOM since 1988.

You may obtain single copies of the draft EIS from the MMS, Gulf of Mexico OCS Region, Attention: Public Information Office (MS–5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200-GULF.

You may look at copies of the draft EIS in the following libraries:

Louisiana

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;

Grand Isle Branch Library, Highway 1, Grand Isle;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Regional Branch Library, 4747 West Napoleon Avenue, Metairie;
Jefferson Parish West Bank Outreach Branch Library, 2751 Manhattan Boulevard, Harvey;
Lafayette Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, Route 1, Box 2, Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston;
Loyola University, Government Documents Library, 6363 St. Charles Avenue, New Orleans;
LUMCON, Library, Star Route 541, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South, Buras;
St. Bernard Parish Library, 1125 East Street, Bernard Highway, Chalmette;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John The Baptist Parish Library, 1334 West Airline Highway, LaPlace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville;

Mississippi

Eudora Welty Library, 300 North State Street, Jackson;
Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs;
Hancock County Library System, 312 Highway 90, Bay St. Louis;
Harrison County Library, 14th and 21st Avenues, Gulfport;
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula;

Alabama

Auburn University at Montgomery Library, 7300 University Drive, Montgomery;
Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores;
Mobile Public Library, 701 Government Street, Mobile;
Montgomery Public Library, 445 South Lawrence Street, Montgomery;
Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores;
University of South Alabama, University Boulevard, Mobile;

Florida

Bay County Public Library, 25 West Government Street, Panama City;
Charlotte-Glades Regional Library System, 18400 Murdock Circle, Port Charlotte;
Collier County Public Library, 650 Central Avenue, Naples;
Environmental Library, Sarasota County, 7112 Curtis Avenue, Sarasota;
Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee;
Florida Northwest Regional Library System, 25 West Government Street, Panama City;
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee;
Fort Walton Beach Public Library, 105 Miracle Strip Parkway, Fort Walton Beach;
Leon County Public Library, 200 West Park Avenue, Tallahassee;
Marathon Public Library, 3152 Overseas Highway, Marathon;
Monroe County Public Library, 700 Fleming Street, Key West;
Port Charlotte Public Library, 2280 Aaron Street, Port Charlotte;
Selby Public Library, 1001 Boulevard of the Arts, Sarasota;
St. Petersburg Public Library, 3745 Avenue North, St. Petersburg;
Tampa-Hillsborough County Library, Documents Division, 900 North Ashley Drive, Tampa;
University of Florida Library, University Avenue, Gainesville;
University of Florida, Holland Law Library, Southwest 25th Street and 2nd Avenue, Gainesville;
University of West Florida Library, 1100 University Parkway, Pensacola;
West Florida Regional Library, 200 West Gregory Street, Pensacola.

There will be four public hearings held to receive comments on the draft EIS. The hearings will provide us with information that will help in the evaluation of the potential effects of the proposed lease sale.

January 8, 2001, 2 p.m. to 4 p.m., Minerals Management Service, Gulf of Mexico Region,1201 Elmwood Park Boulevard, New Orleans, Louisiana;

January 9, 2001, 6 p.m. to 9 p.m., New World Landing, 600 South Palafox, Pensacola, Florida;

January 10, 2001, 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., Tallahassee-Leon County Civic Center, Tallahassee, Florida; and

January 11, 2001, 6 p.m. to 9 p.m., Adams Mark Hotel, 64 South Water Street, Mobile, Alabama.

If you wish to testify at a hearing, you may register beginning 1 hour prior to the meeting. Speakers will be limited to 10 minutes. Each hearing will recess when all speakers have had an opportunity to testify. If there are no additional speakers, we will adjourn the hearing immediately after the recess. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearing, you may submit written statements until January 23, 2001. Send written statements to the Regional Director, Gulf of Mexico OCS Region, MMS, 1201 Elmwood Park Boulevard, MS–5410, New Orleans, Louisiana 70123–2394. All comments are due by January 23, 2001.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 9, 2000.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 00–30925 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures for Social Science

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures related to social science. When adopted, the policies and procedures will apply to all units of the national park system.

DATES: Written comments will be accepted until January 15, 2001.

ADDRESSES: Draft Director's Order #78 is available on the Internet at *http://www.nps.gov/refdesk/DOrders/index.htm.* Requests for copies and written comments should be sent to Dr. Gary Machlis, NPS Visiting Chief Social Scientist, Social Science Program, National Park Service, 1849 C Street, NW (3127), Washington, DC 20240, or to his Internet address: gary__machlis@nps.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Machlis at *gary__machlis@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal policies. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. This draft of Director's Order #78 covers social science topics such as permits, data collection and Paperwork Reduction Act compliance, ethical guidelines, and roles and responsibilities related to social science in the National Park Service.

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: November 27, 2000.

Michael Soukup,

Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 00–30848 Filed 12–4–00; 8:45 am]

BILLING CODE 4321–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

In 1879, human remains representing one individual were sent to the Army Medical Museum (now the National Museum of Health and Medicine, Armed Forces Institute of Pathology) by U.S. Army Assistant Surgeon A. Girard following the removal of bone fragments from an individual during medical treatment. This individual has been identified as Black Horse, a Cheyenne man. No associated funerary objects are present.

Accession records from the National Museum of Health and Medicine, Armed Forces Institute of Pathology indicate that these human remains are those of Black Horse, a Cheyenne man. Early in 1879, Black Horse was wounded by a settler on the "Niobrara" (river) and subsequently captured with Little Wolf's band and treated by U.S. Army surgeons at Fort Keogh, Custer County, MT. Biological evidence of the human remains is consistent with the accession records.

On October 6, 2000, Gilbert Brady, Sr., as the great-grandson and authorized representative of the descendants of Black Horse, claimed Black Horse's remains as a lineal descendent, tracing his ancestry directly and without interruption by means of the traditional kinship system of the Northern Cheyenne. The Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana supports this claim.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, have determined that, pursuant to 43 CFR 10.2 (b)(1), Gilbert Brady, Sr. can trace his ancestry directly and without interruption by means of the traditional kinship system of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana to the human remains of Black Horse. This notice has been sent to Gilbert Brady, Sr., Annie Brady; Anne Limberhand, Genevieve Bearquiver, and officials of the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. Any other individuals who believe themselves to be lineal descendants of Black Horse should contact Lenore Barbian, Ph.D., Anatomical Collections Manager, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306–6000, telephone (202) 782–2203, facsimile (202) 782–3573, before January 4, 2001. Repatriation of the human remains to Mr. Brady may begin after that date if no additional claimants come forward.

Dated: November 17, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–30847 Filed 12–4–00 ; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

CORRECTION— Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the Control of the California Department of Transportation, Sacramento, CA

AGENCY: National Park Service.

ACTION: Correction.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Anthropological Studies Center (ASC), Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the control of the California Department of Transportation (CALTRANS), Sacramento, CA. **This notice corrects the contact address of the Notice of Inventory Completion published August 16, 2000. The last paragraph of the August 16, 2000 notice is corrected as follows:** This notice has been sent to officials of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Tina Biorn, Environmental Program, Department of Transportation, **P.O. Box 942094 (M.S. 19)**, Sacramento, CA 94274–0001, telephone (916) 653–0013, before August 16, 2000. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may begin after that date if no additional claimants come forward.

Dated: November 17, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–30846 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–433]

Certain Safety Eyewear and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the above-captioned investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Gracemary Rizzo, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3117. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 1, 2000, based on a complaint filed by Bacou USA Safety, Inc. and Uvex Safety Manufacturing, Inc. ("complainants"), both of Smithfield, Rhode Island. The complaint named one respondent, Crews, Inc. of Memphis, Tennessee.

On October 23, 2000, complainants and respondent filed a joint motion to terminate the investigation on the basis of the settlement agreement under Commission rule 210.21(b).

On November 2, 2000, the Commission investigative attorney filed a response supporting the motion the joint motion. On November 3, 2000, the ALJ issued an ID (Order No. 37) granting the joint motion. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: November 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30865 Filed 12–4–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–864 (Final)

Certain Stainless Steel Butt-Weld Pipe Fittings From Germany

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that imports of the subject merchandise from Germany were negligible for purposes of the Commission's analysis of material injury by reason of imports of certain stainless steel butt-weld pipe fittings from Germany but that there is a potential that such imports will imminently account for more than three percent of total imports. The Commission also determines that an industry in the United States is not threatened with material injury by reason of imports of certain stainless steel butt-weld pipe fittings from Germany, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective December 29, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Alloy Piping Products, Inc., Shreveport, LA; Flowline Division of Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; and Taylor Forge Stainless, Inc., North Branch, NJ. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain stainless steel butt-weld pipe

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

fittings from Germany were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 23, 2000 (65 FR 51328). The hearing was held in Washington, DC, on October 17, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 29, 2000. The views of the Commission are contained in USITC Publication 3372 (November 2000), entitled Certain Stainless Steel Butt-Weld Pipe Fittings from Germany: Investigation No. 731–TA–864 (Final).

Issued: November 29, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30864 Filed 12–4–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–053]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: December 12, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–861 (Final) (Certain Expandable Polystyrene Resins from Indonesia)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on December 20, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 30, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31048 Filed 12–1–00; 2:39 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated June 26, 2000, and published in the **Federal Register** on July 14, 2000, (65 FR 43785), American Radiolabeled Chemical, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Phencyclidine (7471)	II
Hydromorphone (9150)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds. No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of American Radiolabeled Chemical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemical, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30936 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–9–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 21, 2000, and published in the **Federal Register** on September 6, 2000, (65 FR 54067), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid dyethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

No comments or objections were received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Applied Science Labs to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Applied Science Labs on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30935 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated August 14, 2000 and published in the **Federal Register** on August 23, 2000, (65 FR 51330), Applied Science Labs, Inc., A Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroine (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import these controlled substances for the manufacture of reference standards.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Applied Science Labs, Inc., to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Applied Science Labs, Inc., on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30938 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Registration

By notice dated August 8, 2000, and published in the **Federal Register** on August 23, 2000 (65 FR 51331), Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121–4340, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Phencyclidine (7471)	II
Phenylaceton (8501)	II
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research community.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Calbiochem-Novabiochem Corporation is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Calbiochem-Novabiochem Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in accordance with the Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 00–30939 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 29, 2000, and published in the **Federal Register** on July 14, 2000, (65 FR 43785), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Lab on a regular basis to ensure that its continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30932 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 14, 2000, and published in the **Federal Register** on June 26, 2000, (65 FR 39430), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for product research and development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Celgene Corporation to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated the Celgene Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 10, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30933 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated June 29, 2000, and published in the **Federal Register** on July 14, 2000, (65 FR 43785), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II

No comments or objections have been received. The firm plans to bulk manufacture amphetamine and methamphetamine to produce products for distribution to its customers.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated; November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30937 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

The Church of the Living Tree; Notice of Withdrawal of Denial of Application

On November 4, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause proposing to deny The Church of the Living Tree's application for registration as a manufacturer of the controlled substance marijuana. Effective August 18, 2000, the DEA Administrator, in his final order published in the **Federal Register**, 65 FR 50567, denied the application for registration, noting that The Church of the Living Tree had not responded to the Order to Show Cause.

By letter dated August 11, 2000, a representative of The Church of the Living Tree advised that he had in fact properly submitted a timely request for hearing. Photocopies of a United States Postal Service Receipt for Certified Mail and Domestic Return Receipt indicating delivery accompanied the letter.

Inasmuch as it appears that The Church of the Living Tree timely requested a hearing in this matter, the final order should not have issued. The Deputy Administrator of the Drug Enforcement Administration therefore orders that the final order published August 18, 2000, at 65 Fed. Reg. 50567 be, and it hereby is, rescinded, and this matter is hereby remanded to the Office of Administrative Law Judges, Drug Enforcement Administration, for further appropriate proceedings. This order is effective December 5, 2000.

Dated: November 21, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–30929 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 15, 2000, Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 5, 2001.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–10]

Nicholas A. Sychak, d/b/a Medicap Pharmacy; Revocation of Registration

The Deputy Administrator, Drug Enforcement Administration (DEA), issued an Order to Show Cause dated December 14, 1998, to Nicholas A. Sychak d/b/a Medicap Pharmacy (Respondent), seeking to revoke the Replacement's DEA Certificate of Registration, BM2751736, pursuant to 21 U.S.C. 824(a)(4); and to deny any pending application for renewal of such registration pursuant to 21 U.S.C. 823(f) because the registration would be inconsistent with the public interest as defined by 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that: (1) On June 20, 1996, DEA obtained information that Nicholas A. Sychak, R.Ph., the owner and operator of Medicap Pharmacy, ordered large quantities of various Schedule II through IV controlled substances and diverted these drugs to other individuals for no legitimate medical purpose; (2) Also on June 20, 1996, a cooperating individual provided DEA investigators with information that Mr. Sychak was a known source of supply for illegally diverted controlled substances, and that drug dealers and drug dependent individuals traveled to Medicap Pharmacy to purchase large quantities of controlled substances for sums ranging from several hundred to several thousand dollars per transaction; (3) On August 8, 1997, a confidential source, posing as a physician, telephoned Mr. Sychak and placed a fictitious prescription for sixty dosage units of hydrocodone, a Schedule II controlled substance, with no refills. Mr. Sychak was aware the individual calling in the prescription was not a physician, but nevertheless filled the prescription in exchange for cash. Mr. Sychak also authorized two refills for the prescription, even though prescriptions for Schedule II controlled substances may not be refilled; (4) Also on August 8, 1997, the confidential source placed another telephone call to Mr. Sychak, posing as another physician. When the confidential source later arrived at Medicap Pharmacy, Mr. Sychak directed that individual to exhaust the refills under the first physician's name before using a second physician's name to obtain additional prescriptions; (5) On August 22, 1997, a confidential source, acting in an undercover capacity, obtained the remaining unauthorized refill of the August 8, 1997, fraudulent hydrocodone prescription from Mr. Sychak, again in exchange for cash; (6) On September 5, 1997, a confidential source again posed as a physician and telephoned Mr. Sychak for a fictitious prescription for sixty dosage units of hydrocodone. The confidential source was also provided with a blank prescription bearing fictitious physician information. While on Medicap Pharmacy's premises, and within the presence of Mr. Sychak, the confidential source wrote out a prescription for sixty tablets of Percocet, a Schedule II controlled substance. Mr. Sychak admonished the confidential source for filling out the prescription in the pharmacy, but filled the prescription and also provided the confidential source with sixty hydrocodone tablets; (7) The DEA investigation revealed that from June 1995 through October 1997, Mr. Sychak and Medicap Pharmacy illegally dispensed more than 5,700 dosage units of Percocet to one individual. This individual presented forged prescriptions attributed to a physician and used the aliases "Walter Kaczynski" and "Linda Kaczynski." DEA subsequently verified that the purported prescribing physician never issued the prescriptions; (8) The DEA investigation further revealed that Mr. Sychak and Medicap Pharmacy unlawfully dispensed a total of 5,255 dosage units of controlled substances to another individual between July 17, 1997, and December 30, 1997, pursuant to prescriptions purportedly issued by two different physicians. DEA subsequently verified that neither of these two physicians authorized the dispensing of these controlled substances; (9) The DEA investigation further revealed that between July 1997 and March 1998, Mr. Sychak and Medicap Pharmacy unlawfully dispensed a total of 7,225 dosage units of various controlled substances, plus 48 ounces of Hydromet syrup, to two individuals who utilized eight aliases on prescriptions attributed to one physician; (10) On April 24, 1998, a confidential source acting in an undercover capacity purchased two prescription vials containing seventy-five dosage units of hydrocodone each and one prescription vial containing seventy-five dosage units of Vicodin, a Schedule III controlled substance, without a prescription, from Mr. Sychak and Medicap Pharmacy in exchange for $277.00 in cash. These prescription vials listed three different aliases previously used by the confidential source. The DEA investigation subsequently revealed that Mr. Sychak created fraudulent records of this transaction by indicating that these drugs were dispensed to three different individuals; (11) On April 24, 1998, an additional confidential source illegally obtained from Mr. Sychak and Medicap Pharmacy two prescription vials containing seventy-five hydrocodone each and another vial containing sixty hydrocodone in exchange for $281.00 in cash. Mr. Sychak listed on the vials three different aliases previously used by the confidential source and created

fraudulent dispensing records of this transaction; (12) On April 24, 1998, DEA agents and investigators executed a search warrant upon Mr. Sychak and Medicap Pharmacy. During the search, Mr. Sychak admitted that he sold controlled substances without prescriptions. Items seized pursuant to the search warrant included $14,906 in cash, eight dosage units of various Schedule III controlled substances that were found in Mr. Sychak's front pants pocket, and a loaded 9mm handgun; (13) In conjunction with the criminal diversion investigation of Medicap Pharmacy, DEA also conducted a financial investigation of Mr. Sychak and the pharmacy. As a result of this investigation, DEA investigators obtained a federal seizure warrant for the business bank account of Medicap Pharmacy, and pursuant to that warrant DEA seized $102,650.90; (14) On September 3, 1998, an undercover informant obtained 1,120 dosage units of Schedule III and IV controlled substances from Mr. Sychak and Medicap Pharmacy without a prescription and in exchange for $2,000.00 cash. On September 22, 1998, the undercover informant again obtained 1,120 dosage units of Schedule III and IV controlled substances from Mr. Sychak and Medicap Pharmacy without a prescription and in exchange for $2,000.00 cash; and (15) On November 5, 1996, Mr. Sychak inquired of DEA regarding the DEA registration and medical license status of a Pennsylvania medical practitioner. Although DEA personnel informed Mr. Sychak that the practitioner was not registered with DEA and did not possess a valid Pennsylvania medical license, Medicap Pharmacy nevertheless proceeded to fill approximately 111 controlled substance prescriptions purportedly issued by the physician between December 1996 and April 1997. The Order to Show Cause further gave notice that Respondent's Certificate of Registration was immediately suspended, and the suspension would remain in effect until a final determination is reached in these proceedings. The Order authorized and directed DEA agents and diversion investigators to place under seal and remove all controlled substances possessed by Respondent pursuant to his DEA Registration and to take into their possession the suspended Certificate of Registration and all unused official DEA order forms.

Respondent, through counsel, timely requested a hearing on the issues raised in the Order to Show Cause. The requested hearing was held in Pittsburgh, Pennsylvania, on July 12 and 13, 1999. At the hearing, the Government called witnesses to testify and introduced documentary evidence. After the hearing, the Government submitted Proposed Findings of Fact, Conclusions of Law, and Argument. In a letter dated September 14, 1999, and received September 17, 1999, counsel for Respondent advised that, "without conceding any of the facts in the government pleadings or those presented at the administrative hearing on July 13 and 14, 1999, Nicholas A. Sychak, will not be filing proposed findings of fact, conclusions of law and argument." On February 23, 2000, Judge Mary Ellen Bittner issued her Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's registration be revoked, and any pending applications for renewal be denied. The record was transmitted to the Deputy Administrator for final decision March 27, 2000.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in its entirety the Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion). His adoption is in no manner diminished by any recitation of facts, issues, and conclusions herein, or of any failure to mention a fact or matter of law. The Respondent did not introduce evidence or call witnesses at the hearing, therefore Judge Bittner's Opinion is based on testimony and other evidence offered by the Government.

As a preliminary matter, counsel for Respondent raised two evidentiary issues that must be addressed before the merits of these proceedings can be fully discussed.

First, on June 9, 1999, counsel for Respondent filed a Motion to Compel Discovery Pursuant to *Brady* v. *Maryland* that requested Judge Bittner to issue "an order requiring DEA to preserve and to provide defendant, within a time to be specified, any and all actual and potential exculpatory evidence relating to the issues of guilt or punishment currently known to the Government, its agents, and representatives, *or which may become known to them by the exercise, on their part, of due diligence.*" (Emphasis original). In support of this request, counsel for Respondent cites numerous cases applying *Brady* v. *Maryland*, 373 U.S. 83 (1963) (*Brady*) in various criminal contexts. Counsel for Respondent did not address the issue and cited no authority for the proposition that *Brady* is or should be applicable to civil proceedings, much less an administrative proceeding, as is the case here. On June 24, 1999, the Government filed an Opposition to Respondent's Motion to Compel Discovery Pursuant to *Brady* v. *Maryland*, arguing that the Administrative Procedure Act (APA) confers no independent discovery right; that *Brady* applies only in the criminal context; that DEA regulations govern discovery in these proceedings; and that the DEA regulations provide for adequate discovery. On June 30, 1999, Judge Bittner issued a Ruling and Order, finding *Brady* inapplicable to these proceedings, but further finding that because these proceedings are adversarial, "on the grounds of fairness, * * * the Government must disclose any exculpatory information in its possession when such information is timely requested by a respondent." In response, the Government filed on July 7, 1999, an Emergency Request For Consent to File Appeal to the June 30, 1999, Ruling of the Administrative Law Judge, arguing that neither the APA nor the DEA regulations governing the proceedings provide for the disclosure of exculpatory information, and further that Judge Bittner's Order "constitutes a significant and unprecedented departure from DEA regulations and practice." The Government also argued that Judge Bittner's Order would place a severe burden upon DEA, including the potentialities of placing ongoing investigations and the identities of confidential informants at risk. Subsequently, on July 8, 1999, Judge Bittner issued a Memorandum to Counsel Clarifying Ruling and Order, limiting the scope her previous ruling somewhat by requiring the Government's counsel only "to review files available to him and on which the Government relied in preparing its prehearing statements for information that would clear or tend to clear Respondent from alleged fault or guilt as to the allegations of Respondent misconduct made in the Government's prehearing statements in this proceeding[.]" On the same day, Judge Bittner issued a Ruling Denying Request for Consent to File Appeal, denying the Government's request to file an appeal pursuant to the Clarifying Ruling and Order. On July 9, 1999, the Government filed a Response and Objection to Ruling Denying Request For Consent to File Appeal reiterating its objections and requesting that the issue be made part of the official administrative record and forwarded to the Deputy Administrator for consideration.

The Deputy Administrator agrees with the Government, for the following reasons:

First, these proceedings are governed generally by the APA, and specifically by the procedures set forth at 21 CFR 1316.41–1316.68. See 21 CFR 1316.41. What applicable caselaw there is on the issue finds that the APA confers no independent discovery right; *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979); *National Labor Relations Board* v. *Valley Mold Co., Inc.*, 530 F.2d 693 (6th Cir. 1976) (cert. denied, 429 U.S. 824 (1976)); and that the extent of discovery in administrative proceedings is primarily determined by the agency; *Mister Discount Stockbrokers, Inc.* v. *Securities Exchange Commission*, 768 F.2d 875, 878 (7th Cir. 1985) (finding *Brady* inapplicable to agency administrative proceedings). As the Government correctly points out, neither the APA, nor the relevant DEA regulations, nor prior published DEA precedent, authorize the Government's production of exculpatory information.

Second, the applicable DEA Regulations, *supra*, supply more than sufficient due process, whether Respondent's DEA Registration is viewed as a license conferred based on the public interest alone, or whether it is also viewed as a property or a liberty interest. The pertinent DEA Regulations governing these proceedings authorize a pre-hearing conference and written pre-hearing statements for *inter alia* the simplification of the issues, stipulations, identification of witnesses, and the advance submission of all documentary evidence and affidavits for identification; an administrative hearing, reported verbatim; representation by counsel; allow for the introduction of evidence and documents; provide for witnesses and documents to be subpoenaed; allow for the examination and cross-examination of witnesses; allow for the parties to make written proposed corrections to the transcript of the hearing; allow for the parties to submit proposed findings of fact and conclusions of law; and also allow for the parties to file exceptions to the ALJ's recommended decision, findings of fact and conclusions of law. Furthermore, the pre-hearing conference pursuant to 21 CFR 1316.54 and the prehearing disclosure of witness testimony and documentary evidence pursuant to 21 CFR 1316.57 and 1316.58, set forth in each party's pre-hearing statement, provide more than adequate pre-hearing disclosure of the issues and evidence to be submitted in these proceedings. In its June 24, 1999, memorandum of Opposition, the Government notes that "[i]n this proceeding, the evidentiary items that the Government intends to offer were outlined in its March 1, 1999, Prehearing Statement and the May 24, 1999, supplement thereto. The Government has provided to the Respondent all evidentiary items that it intends to offer during the upcoming administrative hearing." Thus, the Deputy Administrator finds the current DEA regulations provide more than adequate discovery in these proceedings, and there was no need for the Government to take the unprecedented and extraneous step of disclosing potentially exculpatory information.

Third, in her June 30, 1999, Ruling and Order, Judge Bittner stated her belief that the burden said Order placed upon the Government was "minimal, for the Government need only review its files to determine if such information exists." Following the filing of the Government's June 24, 1999, Opposition memorandum, Judge Bittner attempted to narrow the scope of her Order in her July 8, 1999, Clarifying memorandum by limiting the Government's burden to review of those files "available * * * and on which the Government relied in preparing its prehearing statements for [exculpatory] information * * * as to the allegations of Respondent misconduct made in the Government's prehearing statements in the proceeding[.] " The Deputy Administrator agrees with the Government that, even in its more limited form, Judge Bittner's Order places a significant burden on the Government. The Order creates a risk of disclosure of sensitive information which could reveal the identity of confidential informants, compromise the effectiveness of investigative techniques, or compromise an ongoing criminal investigation concerning the Respondent on third parties. The Order will also require the Government to address Privacy Act issues with respect to information concerning third parties.

For the above-stated reasons, the Deputy Administrator finds that the Government is not required to disclose potentially exculpatory information to Respondent or counsel for Respondent at any phase of these proceedings.

The second evidentiary issue raised by counsel for Respondent is his assertion of a continuing objection to the Government's use of hearsay evidence at the hearing. It is well established, however, that hearsay is admissible in these proceedings. See Arthur Sklar, R.Ph., d/b/a King Pharmacy, 54 FR 34623, 34627 (DEA 1989). "Hearsay is both admissible, and may, standing by itself, constitute substantial evidence in support of an administrative decision." *Klinestiver* v. *DEA*, 606 F.2d 1128 (D.C. Cir. 1979). Judge Bittner addressed this issue at the hearing and in her Opinion, and she has indicated that she considered the hearsay nature of the evidence when determining the evidentiary weight to give it; and she further indicated that, where she has relied on hearsay evidence, she did so because she found it reliable. *See Ramon P. Johnson* v. *United States*, 628 F.2d 187, 190 (D.C. Cir. 1980). The Deputy Administrator concurs with Judge Bittner's analysis and findings of fact with regard to this issue.

Medicap Pharmacy is located in Murrysville, Pennsylvania. According to one of the Government's witnesses, Karen Ruffner, Nicholas A. Sychak opened the pharmacy in 1989 or 1990. The pharmacy was first registered with DEA on July 2, 1991. On June 20, 1996, a confidential informant advised Diversion Investigator John Conlon of the DEA Pittsburgh Resident Office that Mr. Sychak was selling controlled substances to certain individuals without a valid prescription and for no legitimate medical purpose.

As a result of this information, DEA initiated an investigation of the Respondent, and various Pennsylvania State law enforcement agencies subsequently joined the investigation. Surveillance and intelligence gathering identified Lynette Reffner and Steve and Karen Ruffner as frequent visitors to the pharmacy. Investigators also searched the pharmacy's dumpster and found computer printouts of purported controlled substance dispensings. These printouts listed an individual's name, a prescription number, the drug, the date it was dispensed, and the name of the physician who purportedly authorized the dispensing. Agent Edward Cartwright of the Pennsylvania Bureau of Narcotics Investigations and Drug Control (BNIDC) testified that a review of these printouts disclosed discrepancies, such as prescriptions whose dates were inconsistent with the computer's system of numbering prescriptions in chronological order. According to Agent Cartwright, these printouts indicated that some prescriptions were predated. Investigators subsequently learned from pharmacy employees that Mr. Sychak also "predated" prescriptions by substituting an old ribbon in the pharmacy's printer to make it appear

that a label was older than the date the drug was actually dispensed.

As the Order to Show Cause indicates, there are numerous separate incidents upon which this proceeding is based. Therefore, the different incidents are herein organized by the nine subsequent numbered sections which group the relevant facts, though not necessarily in chronological order, since the timeframes of many of the events described herein overlap.

1. Michael Ray's 1997 Undercover Purchases from Medicap Pharmacy

Agent Cartwright had arrested Michael Ray several years prior to the investigation of Respondent. Mr. Ray was again arrested in the spring of 1997, and the arresting agent asked Agent Cartwright for information about Mr. Ray. Consequently, Agent Cartwright spoke to Mr. Ray, who said that for the previous two years Mr. Sychak had filled forged controlled substance prescriptions for him and that these prescriptions listed "Ed Olson" as the patient. At some point, Mr. Ray agreed to act as an undercover informant; Agent Cartwright testified that Mr. Ray was not offered anything in return for his cooperation except that Agent Cartwright appeared at Mr. Ray's sentencing hearing and advised the court of Mr. Ray's cooperation.

On August 8, 1997, Mr. Ray telephoned Mr. Sychak, pretending to be a Dr. Wigle, a name he had picked out of a telephone directory, and asked for sixty hydrocodone 7.5 mg. extra strength, with no refills, for "Ed Olson." That same day, Mr. Ray went to Medicap Pharmacy wearing a recording device, and carrying funds Agent Cartwright had provided him. Mr. Ray paid $37.50 and received the sixty hydrocodone he had requested. The memorialization of the oral prescriptions lists one refill.

On August 15, 1997, Mr. Ray again called the pharmacy, pretending to be a Dr. Beck, to authorize a prescription for hydrocodone for Ed Olson. "Dr. Beck" was a fictitious physician invented by DEA for whom Mr. Ray provided fictitious telephone and DEA registration numbers. Mr. Ray called the pharmacy again to ask if the prescription was ready, and spoke with Mr. Sychak's wife. Mr. Ray said that he knew he had refills from Dr. Wigle's prescription, and Ms. Sychak said something to the effect that there should not be any problem and that she would give him a refill of what was on the computer screen. Mr. Ray then visited the pharmacy and paid $37.50 for a "refill" of the Dr. Wigle prescription. Mr. Sychak refused to fill the purported prescription from Dr. Beck, telling Mr. Ray that he first wanted to use the refills from Dr. Wigle and that the information about Dr. Beck, including his physician license number and his DEA number, were not yet in the pharmacy's computer system.

On August 22, 1997, Mr. Ray returned to Medicap Pharmacy and paid $37.50 for a second refill of sixty hydrocodone from the Dr. Wigle prescription. Mr. Ray also had with him a blank prescription form listing the information for Dr. Beck so that Mr. Sychak could enter the information into the pharmacy computer. Agent Cartwright testified that Mr. Ray gave the form to Mr. Sychak, who said it would be helpful and put the form in his pocket.

On August 29, 1997, Mr. Ray was sent into the pharmacy with a recording device. Prior to this visit, a prescription for hydrocodone purportedly authorized by Dr. Beck had been called in to the pharmacy. During that visit, Mr. Ray also tried to obtain other controlled substances using the blank Dr. Beck form, but Mr. Sychak refused to provide him any drugs, saying that DEA investigators sometimes inspected the pharmacy and might realize that the handwriting on Dr. Beck's prescription form was the same as that on other pharmacy records. Mr. Sychak returned the blank form to Mr. Ray. Mr. Ray took the blank form with him when he left the pharmacy and, in the presence of Agent Cartwright, filled it out for sixty Percocet. Mr. Ray then took the form back into the pharmacy, paid $39.83 in cash, and received sixty Percocet.

Mr. Ray made another undercover visit to the pharmacy on September 5, 1997. Mr. Ray asked for the hydrocodone purportedly authorized by Dr. Beck for Ed Olson, and presented a written prescription for Percocet in some other patient name. Agent Cartwright testified that investigators had intentionally made this Percocet prescription facially invalid by showing the patient as someone other than the person who presented it. Ray paid $37.50 for sixty hydrocodone 7.5 mg. with APAP, but Mr. Sychak refused to fill the Percocet prescription. Mr. Ray then took from his pocket a blank prescription form purporting to be that of Dr. Beck and filled in the requisite information in Mr. Sychak's presence. Mr. Sychak said something to the effect that most of his customers did not fill out their own prescriptions in front of him, but nonetheless filled the prescription, providing Mr. Ray sixty Roxicet in exchange for $47.95. On September 12, 1997, Mr. Ray again visited Respondent and obtained hydrocodone pursuant to the purported authorization of Dr. Beck, paying $37.50 for the drug.

As noted above, investigators obtained records of purported dispensings from Respondent's trash dumpster. Among these was the pharmacy's receipt for the Roxicet provided to Mr. Ray on September 5.

2. The Delivery of Controlled Substances to Walter, Linda, and James Kaczynski

Pennsylvania state law requires pharmacists to submit to BNIDC monthly a form known as a "BDC–6" listing information about all dispensings of Schedule II controlled substances. In early 1998 Investigator Conlon reviewed BDC–6 forms Respondent had submitted for the period April 1995 through October 1997. Respondent listed a large number of Percocet and Roxicet prescriptions purportedly issued by a Dr. Mark Fennema to a Walter Kaczynski, a Linda Kaczynski, and a James Kaczynski. Although the BDC–6 reports indicated that Dr. Fennema was an emergency room physician at a hospital in south Pittsburgh, when investigators subpoenaed the hospital for the Kaczynskis' medical records, the hospital responded that it had not treated any patients with any of those names.

In about March 1998 Investigator Conlon telephoned Dr. Fennema, who was at that time in upstate New York. Dr. Fennema told Investigator Conlon that he generally saw patients only in the emergency room and that he would have no reason to continually prescribe medications to the same patient. After reviewing a faxed copy of the list of prescriptions, Dr. Fennema told Investigator Conlon that he had not issued them.

3. The Deliveries to Lynette Reffner and Michael Riley

Investigator Conlon testified that Medicap Pharmacy records showed that it had dispensed controlled substances to a Lynette Reffner pursuant to prescriptions purportedly issued by a Dr. Richard Kucera between July 17, 1997, and December 23, 1997, and pursuant to prescriptions purportedly issued by a Dr. David Blinn between July 17, and December 30, 1997. The prescriptions that Dr. Blinn purportedly issued totaled 1,620 dosage units of Vicodin, 715 dosage units of hydrocodone, 164 dosage units of Hydroment syrup, and 60 dosage units of phenobarbital. The prescriptions that Dr. Kucera purportedly issued aggregated to 1,390 dosage units of alprazolam, 1,240 dosage units of Ap-Oxazepam, 130 dosage units of diazepam, and 100 dosage units of Darvocet.

On March 25, 1998, Investigator Conlon and Agent Cartwright interviewed Dr. Kucera, who said that he had treated Lynette Reffner but had not authorized any of the prescriptions at issue. Investigator Conlon, DEA Diversion Investigator Kurt Dittmer of DEA's Pittsburgh office, and Agent Cartwright interviewed Dr. Blinn on March 30, 1998, and showed him the list of prescriptions. Dr. Blinn advised the investigators that he had not authorized any of them.

On April 29, 1998, Investigators Conlon and Dittmer, Agent Cartwright, and Sergeant Stan King of the Murrysville Police Department interviewed Ms. Reffner and her paramour, Michael Riley. Subsequently, on June 17, 1999, Ms. Reffner executed a declaration in evidence as a Government exhibit. In the declaration, Ms. Reffner said she originally had valid prescriptions for controlled analgesics filled at Medicap Pharmacy, but in 1992 or shortly thereafter Mr. Sychak began giving her refills for these medications that were not authorized by her physician. Ms. Reffner further stated that by about 1994 she had arranged with Mr. Sychak to purchase drugs from him upon presenting lists of the controlled substances she wanted. Investigators found some of these lists during the searches of Medicap Pharmacy's trash dumpster.

Ms. Reffner stated that every Tuesday she and Mr. Riley purchased sixty Vicodin ES, sixty Xanax, fifty Darvocet, fifty Soma, and eight ounces of Hydromet syrup, and every Friday they bought the same quantities of Xanax, Soma, and Hydromet syrup, along with eighty Vicodin ES and sixty Darvocet. Ms. Reffner stated that Mr. Sychak had told her and Mr. Riley that Soma in combination with the other drugs would "intensify the high," and that they should take a half-tablet of Soma at mealtimes. Ms. Reffner stated that the Soma was listed on Mr. Riley's patient record at the pharmacy, but that Mr. Sychak said he recorded the other drugs as dispensed to her, because she had been severely injured some years earlier and her medical history "would cover it." Ms. Reffner also stated that at some point Mr. Sychak directed Mr. Riley to come to the pharmacy only on Tuesdays and Fridays, when Mr. Sychak and his wife were present, because Mr. Sychak did not want his relief pharmacist to know about this arrangement. Ms. Reffner stated that Mr. Riley and Mr. Sychak also socialized together, and that Mr. Riley worked on Mr. Sychak's cars and Mr. Sychak gave him "care packages" of controlled substances, including Lorcet and Vicodin.

Ms. Reffner further stated that in late 1995 she entered a methadone treatment program and that Mr. and Ms. Sychak agreed to provide her a phenobarbital to lessen potential withdrawal symptoms. Ms. Reffner said that both she and Mr. Riley wanted to get help for their addiction and that the Sychaks said they would decrease the quantity of controlled substances they supplied, but in fact the quantity increased. Ms. Reffner also stated that on numerous occasions when she presented a legitimate prescription for a non-controlled substance, Mr. Sychak told her she would not have to pay for the medication, and that he would charge it to some other customer's insurance. Finally, Ms. Reffner stated that Mr. Sychak filled some drugs to her Medical Assistance card and that she paid cash for the rest, that Mr. Sychak always extended her and Mr. Riley credit when they did not have enough money to pay for the drugs they purchased, and that Mr. Sychak maintained a record of how much they owed in a pink notebook.

Investigator Conlon testified that as of the hearing date Ms. Reffner and Mr. Riley were the targets of an ongoing investigation, and he anticipated that they would be charged with state narcotics violations. Investigator Conlon further testified that Mr. Riley and Ms. Reffner agreed to cooperate in the investigation and that investigators told them that their cooperation would be made known to the proper authorities at the time of sentencing.

4. The Deliveries to Karen and Steven Ruffner

The previously mentioned trash dumpster searches disclosed receipts purportedly showing Dr. Ralph Capone as the authorizing physician for numerous controlled substance prescriptions for patients named Daniel Frieben, Amy McKluskey, Phyllis Ruffner, Charles Ruffner, Steve Ruffner, Grace Ruffner, Ruth Snow, and Deborah McCracken. In November 1997, Agent Cartwright interviewed Dr. Capone and asked him about these individuals. Dr. Capone told Agent Cartwright that although Mr. Frieben had been his patient, Dr. Capone had not treated him since about 1993, and that Karen Ruffner was his patient during the period at issue but that he did not authorize any of the prescriptions shown to him.

Karen Ruffner testified as a Government witness. Ms. Ruffner's mother was Sandra Frieben, who died in 1992. For some period of time prior to her death Ms. Frieben worked as a medical assistant to Dr. Capone. Ms. Ruffner testified that Ms. Frieben suffered from a number of painful conditions for which she took, Soma, Talwin, and Vicodin ES and that she abused controlled substances from the end of 1989 until her death. Ms. Frieben obtained drugs by calling prescriptions to pharmacies for herself, saying that the prescriptions were authorized by Dr. Capone, and by writing fake prescriptions for herself on prescription pads she took from Dr. Capone's office. Ms. Ruffner testified that she saw Ms. Frieben write some of these prescriptions, that Ms. Frieben made some of the telephone calls from Ms. Ruffner's home, and that Ms. Frieben asked Ms. Ruffner to take fake prescriptions to the pharmacy for her. Ms. Ruffner testified that she suggested to her mother that she seek treatment for drug abuse, but her mother refused to do so because she did not want her husband to learn about her problem.

Ms. Ruffner testified that although initially her mother used different pharmacies, eventually she obtained drugs only from Medicap Pharmacy. At some point, Ms. Frieben began stealing boxes of drug samples from Dr. Capone's office and taking them to Mr. Sychak, who gave her medication or discounts on medication in exchange. Ms. Ruffner accompanied her mother on these visits to the pharmacy, and testified that after she had done so three or four times, Ms. Frieben asked her to take the samples to Mr. Sychak and bring back her medication. Ms. Ruffner testified that her mother called Medicap Pharmacy both from Dr. Capone's office and from Ms. Ruffner's home to authorize prescriptions for herself for Vicodin, Talwin, or Soma, and sent Ms. Ruffner to the pharmacy to pick up the drugs and to pay for them in cash. Ms. Ruffner further testified that her mother instructed her to deal only with Mr. Sychak.

Ms. Ruffner testified that her mother also asked her to call the pharmacy and would write down exactly what Ms. Ruffner was to say. Ms. Ruffner spoke only to Mr. Sychak, and testified that in these calls she told Mr. Sychak that she was "Beth" from Dr. Capone's office (as far as she knew, a made-up name) and that she was "calling for Sandra Frieben, for Vicodin number 50." Ms. Ruffner also testified that the price of the controlled substances increased over time so that her mother paid cash in addition to providing Mr. Sychak the drug samples. Ms. Frieben eventually paid about $89 for 60 Talwin, about $68 for 50 Vicodin, and $34 for generic hydrocodone.

Ms. Ruffner further testified that her own health had been "fairly poor" all her life, that she had suffered from chronic pain since she was twelve years old, and that various physicians had prescribed her controlled substances including Vicodin, Vicodin ES, and Soma. Ms. Ruffner started sharing her mother's medications in 1989, when she was nineteen years old, but testified that she never took her mother's drugs without the latter's knowledge.

Ms. Ruffner testified that from 1992 until 1994 she received legitimate prescriptions for Valium and Vicodin, and that she filled all these prescriptions at Medicap Pharmacy. Ms. Ruffner further testified that frequently the vial she received from the pharmacy indicated more authorized refills than the prescription did, but she never asked Mr. Sychak why refills were added. In 1994 Ms. Ruffner's physician stopped prescribing her Vicodin, but Ms. Ruffner continued to receive drugs from Mr. Sychak because he gave her more refills than were authorized by the written prescription. As an example, Ms. Ruffner testified that if a written prescription for 80 Vicodin ES showed one refill, the vial might show four refills. Ms. Ruffner admitted, however, that she did not know whether Mr. Sychak obtained the physician's oral authorization for additional refills.

Ms. Ruffner further testified that at some point "the refills just stopped," and Mr. Sychak told her to call and ask for a prescription for a named person because "I have to be able to say that I received a phone call from somebody." Consequently, according to Ms. Ruffner, she called the pharmacy pretending to be "Beth" from Dr. Capone's office, told Mr. Sychak she was authorizing a prescription for Vicodin ES, and gave the patient's name variously as Amy McKluskey, Dan Frieben, Tina Pavolik, Ruth Snow, Debbie McCracken, or Charles, Steve, Phyllis, or Grace Ruffner. All of these names were those of individuals who were either friends or family members of Ms. Ruffner or of her husband, Steven Ruffner. According to Ms. Ruffner, between 1994 and 1998 she made "hundreds" of such telephone calls to the pharmacy.

Ms. Ruffner testified that sometimes Mr. Sychak would fill "prescriptions" without requiring her to telephone him, but other times he would tell her to call him so that he could say there had been a telephone call. According to Ms. Ruffner, she usually handed Mr. Sychak a piece of paper with a list of names and the controlled substance to be attributed to each name, and sometimes she handed the list to one of the women who worked at the pharmacy. (Agent Cartwright testified that he found such lists during the searches of Medicap's trash dumpster.)

Ms. Ruffner testified that she paid cash for the drugs and that in 1994 she paid about $89 for sixty Vicodin, but that almost every month Mr. Sychak increased the price, telling her that the manufacturer had increased its price. Ms. Ruffner also testified that she initially obtained drugs from Respondent once per month and shared them with her husband, and beginning in about 1996 she and her husband began selling Lorcet and Vicodin in quantities of ten to fifty dosage units. According to Ms. Ruffner, she and her husband used the proceeds of their drug sales to purchase more drugs from Mr. Sychak for their own use and to sell. Eventually, according to Ms. Ruffner, she was paying Mr. Sychak a thousand dollars once or twice per week for drugs; she and her husband would take "what we needed, and we would sell the rest." Ms. Ruffner also testified that when she was in the pharmacy and other people were present in addition to Mr. Sychak, she signaled to him that she wanted Vicodin, Lorcet, or Lortab by referring to Vicodin as "whites," and Lorcet or Lortab as "blues."

In early 1998 local police arrested Ms. Ruffner's husband for possession of controlled substances. Ms. Ruffner testified that when she told Mr. Sychak about the arrest he expressed concern about whether any vials from Medicap Pharmacy would be found in Mr. Ruffner's car. Ms. Ruffner further testified that a few days after the arrest she and her husband asked Mr. Sychak for a prescription vial with a legitimate-looking label on it so Mr. Ruffner could say that he had drugs legally. Mr. Sychak complied with Ms. Ruffner's request, and provided him with a legitimate-appearing prescription vial. At some point Mr. Sychak also warned Mr. Ruffner to be sure that he did not leave pill bottles in his car and to destroy the bottles when he had gotten rid of the contents.

On April 24, 1998, Investigator Conlon and three other law enforcement officers visited Ms. Ruffner at her father's home, where she was staying. Investigator Conlon asked Ms. Ruffner to go to the local police station, and she agreed to do so. At the Murrysville police station, Ms. Ruffner agreed to cooperate in the investigation and Agent Cartwright asked her to make a controlled buy from Respondent that same day. Investigators fitted Ms. Ruffner with a recording device and gave her $400 to make the purchase. They also asked her to follow the procedure she normally used to obtain drugs, and consequently she prepared a note with the words, "Karen's Vicodin (brand)," "Daniel's Vicodin (generic)," "Tina's Lorcet (generic)," and "Amy's Lorcet (generic)." Next to the reference to "brand," Ms. Ruffner drew an arrow to the comment, "I only have $400. However you can help me out. Thanks." Ms. Ruffner went to Medicap Pharmacy and gave the list to Mr. Sychak, who filled vials with the drugs listed. The total cost of the drugs was $415; Ms. Ruffner asked Mr. Sychak if she could take the drugs and return with the additional $15, but Mr. Sychak refused. Consequently, Mr. Sychak retained the Vicodin, and Ms. Ruffner left the store with the other drugs and gave them to Agent Cartwright. Agent Cartwright testified that although the cash register receipts for Ms. Ruffner's undercover purchase showed a small amount, such as $3 or $6, she actually was spending about $300 to $365. Agent Cartwright further testified that Mr. Ruffner also paid substantially more for the controlled substances he was purchasing from Respondent than the amount reflected on the cash register receipt.

As of the hearing date, Ms. Ruffner had not been charged with any criminal conduct. She testified, however, that Agent Cartwright had told her that she would be charged but had not told her what the charges would be. Investigator Conlon testified that both Mr. and Ms. Ruffner agreed to cooperate in the investigation and that the only statements investigators made to them were that their cooperation would be made known to the proper authorities at the time of sentencing.

Counsel for Respondent contended at the hearing that Ms. Ruffner, the only informant to testify in this proceeding, is not credible. In her Opinion, Judge Bittner recognizes that Ms. Ruffner is not a totally disinterested participant in this proceeding in light of her own status as a target of an investigation. Nonetheless, Judge Bittner found that Ms. Ruffner appeared candid and forthright, and on the basis of her demeanor Judge Bittner found her to be believable. In addition, Judge Bittner found, and the Deputy Administrator agrees, that much of Ms. Ruffner's testimony was consistent with documentary and other evidence and, as noted above, Respondent adduced no evidence and thus Ms. Ruffner's testimony is uncontradicted. See Singers-Andreini Pharmacy, 63 Fed. Reg. 4668, 4672 (DEA 1998).

5. The April 24, 1998, Search

On April 23, 1998, a United States Magistrate Judge issued a search warrant for the premises of Medicap Pharmacy. The warrant was executed on April 24, 1998. As part of the search, investigators received a "dump" of Mr. Sychak's computer, and found that "Walter Kaczynski" was an alias used by a Larry Stepinski.

The search disclosed substantial amounts of cash, specifically, $11,394 in Mr. Sychak's briefcase, $2,306 in daily deposit envelopes, $706 in a cash register, and $150 from a shelf in a work area. Investigators also retrieved a ledger listing various persons, including targets of investigations, and a running balance of what they owed the pharmacy. In addition, investigators recovered $520 and a small quantity of loose controlled substance tablets from Mr. Sychak's pants pockets. This cash was the State funds that Agent Cartwright had supplied to Karen and Steve Ruffner earlier in the day and that they had used to make an undercover purchase of controlled substances at the pharmacy. Investigator Dittmer testified that the currency was photocopied before it was provided to the Ruffners and that the serial numbers on the photocopies matched those on the bills found in Mr. Sychak's pockets.

Investigator Dittmer also testified that he asked Mr. Sychak if he had any rifles or handguns on the premises and that Mr. Sychak said he did not have any weapons. The search disclosed a loaded 9mm semiautomatic handgun in a plastic grocery bag, however, that also contained cash. The weapon was registered to Mr. Sychak.

During the search, investigators also conducted an inventory of several products containing hydrocodone. Respondent had on hand 18,000 dosage units of Vicodin, 13,000 dosage units of Lorcet, 1,500 dosage units of Didrex, 5,200 dosage units of Darvocet, 3,000 dosage units of Soma, and 10,500 dosage units of alprazolam. Although Soma is not controlled under federal law, Investigator Dittmer testified that he included it in his inventory because it is sometimes used to boost the "high" provided by hydrocodone.

Investigator Dittmer and Agent Cartwright interviewed Mr. Sychak during the search and asked him if he ever dispensed a drug without a legitimate prescription. Mr. Sychak responded affirmatively and said that he sold drugs to people who were nagging him, naming Karen and Steven Ruffner. The investigators also asked Mr. Sychak about the "Dr. Beck prescriptions," and Mr. Sychak said that he had spoken personally with Dr. Beck about those prescriptions. When informed that Dr. Beck was fictitious, Mr. Sychak did not respond.

6. The Interviews of Respondent's Employees

During the April 24, 1998, search investigators interviewed Sylvia Macerelli, a pharmacy technician/clerk employed at Medicap Pharmacy. Ms. Macerelli later provided a declaration, in evidence as a Government exhibit. Ms. Macerelli stated that she, pharmacy technician/clerk Amy Meyers, and relief pharmacist Fred Werl believed that Mr. Sychak was committing fraud and distributing drugs illegally. More specifically, Ms. Macerelli said that Mr. Sychak was the only pharmacy employee who waited on the Ruffners and Ms. Reffner. Ms. Macerelli stated that the Ruffners never presented prescriptions, but gave Mr. Sychak lists of controlled substances on scraps of paper, and that they usually received Vicodin and Lorcet. Ms. Macerelli stated that Ms. Reffner similarly presented lists of controlled substances she wished to purchase, that she received drugs in her own name and Mr. Riley's, and that she received Vicodin, Darvocet, Xanax, and hydrocodone products. Ms. Macerelli further stated that Mr. Sychak allowed Ms. Reffner to run a tab, and as of the date of the search she owed approximately $1,000.

Ms. Macerelli also said that Mr. Sychak frequently directed her and Ms. Meyers to add unauthorized refills to prescriptions, telling them that he had checked with the prescribing physician for authorization, but that she never observed Mr. Sychak telephone a physician for such authorization until a few weeks before the search. Ms. Macerelli further stated that she and Ms. Meyers recognized Ms. Ruffner's voice on the telephone when she telephoned the pharmacy and pretended to be calling from a doctor's office. Ms. Macerelli further stated that in the summer of 1997 an assistant in a doctor's office across the street from the pharmacy complained to Mr. Sychak that medicines that she never received were fraudulently billed to her insurance company. According to Ms. Macerelli, she and Ms. Myers would note that although they indicated on the log sheet the last customer of the day to receive drugs billed to insurance plans, the next day there would be additional entries added to the log.

Investigators interviewed Amy Meyers on May 7, 1998. On May 25, 1999, Ms. Meyers executed a declaration, in evidence as a Government exhibit, in which she corroborated many of Ms. Macerelli's statements. Ms. Myers corroborated the information that the Ruffners, Ms. Reffner, and Mr. Riley, obtained controlled substances from Medicap Pharmacy after presenting handwritten notes listing drug names, numbers of dosage units, and the names of persons for whom the drugs were purportedly prescribed, and stated that Walter Kaczynski, Craig Smilack, Linda Nader, Grace Seigworth, Scott Hoyle, Gary Harpis, Tom Farrah, Steve Cuccaro, and Camille Maggio-Palmiere also received controlled substances in a similar fashion. Ms. Meyers stated that all these individuals either paid cash, ran a tab, or used a Medical Assistance card. Ms. Meyers also stated that she checked her own personal prescription profile at the pharmacy in the spring of 1998 and discovered numerous prescriptions listed as billed to her insurance carrier that were allegedly issued to her by various physicians she had never seen for drugs she had never received. Ms. Myers stated that when she confronted Mr. Sychak about these prescriptions he said, "How do you think I pay for your health insurance?"

On June 8, 1998, investigators interviewed Mr. Fred Werl. Mr. Werl said that he had discovered that the prescriptions issued to the Kaczynskis were forgeries when he called the hospital to verify a prescription and was told that Dr. Fennema was no longer associated with the hospital. Mr. Werl also told the investigators that he told Mr. Sychak about these fraudulent prescriptions and Mr. Sychak said he would take care of the matter, but that Mr. Sychak in fact continued to fill these prescriptions. Mr. Werl said that "Walter Kaczynski" came to the pharmacy and gave Mr. Sychak gifts, but that he did not know whether these were in exchange for drugs. Mr. Werl told investigators that at some point he was present when a commercial auditing firm confronted Mr. Sychak and told him that some of the pharmacy documents and records were fraudulent. Mr. Werl also told investigators about the insurance log, and noted that one day he counted 65 entries added after closing hours.

7. The Controlled Buys by Arthur Glaser

On July 27, 1998, Detective Michael Garlecki of the Allegheny County Police Department Narcotics Unit advised Investigator Dittmer that an Arthur Glaser was in custody and that a search of Mr. Glaser's home had revealed some loose pills of controlled substances. Detective Garlecki further advised Investigator Dittmer that Mr. Glaser said that he had obtained these drugs from Medicap Pharmacy. Consequently, Investigator Dittmer interviewed Mr. Glaser, who said that on either July 17

or July 20, 1998, he had purchased four bottles of Lorcet, one bottle of Vicodin, one bottle of Xanax, 200 Valium, and some "speed" from Mr. Sychak without a prescription. Mr. Glaser said that he obtained controlled substances in his own name and in the names of his brother and sister, Joseph Glaser and Nanette Glaser, respectively.

Mr. Glaser further stated that he could make undercover purchases from Mr. Sychak under the direction of law enforcement personnel. On September 2, 1998, Mr. Glaser made a recorded telephone call to Mr. Sychak and said he would go to the pharmacy the next day to pick up refills on his inhaler medication and what Investigator Dittmer described as "other stuff."

On September 3, 1998, Mr. Glaser, fitted with a recording device and a transmitter and provided with $2,000 in DEA funds, went to the pharmacy. Mr. Glaser obtained from Mr. Sychak 120 Vicodin ES, 500 alprazolam, and 500 Lorcet, in exchange for the $2,000 in cash. While Mr. Glaser was in the pharmacy, Mr. Sychak asked Ms. Sychak, "What's you intuition?" and she said, "I don't know. I think it's okay. Art, you're not being—everything's okay with you, right?" to which Mr. Glaser replied, "No, my line is good. My lines are clear. I'm okay."According to Investigator Dittmer, Mr. Glaser understood Ms. Sychak to ask if his telephone was being tapped.

When Mr. Glaser left the pharmacy, Mr. Sychak followed him out and told Mr. Glaser to telephone the pharmacy when he got home and ask whether it was open on Sundays. Mr. Glaser agreed to do so, and explained to investigators that he routinely called the pharmacy after he arrived home and used a code phrase to let Mr. Sychak know that he had not been stopped by law enforcement personnel who would find the controlled substances.

Mr. Glaser returned to Medicap Pharmacy on September 22, 1998, pursuant to an arrangement he made with Mr. Sychak the day before by telephone. Mr. Glaser was fitted with a recording device and a transmitter and provided with $2,000 in Government funds. Mr. Glaser gave Mr. Sychak the $2,000 and some sports trading cards for Mr. Sychak's son and received in exchange 120 Vicodin ES tablets, 500 alprazolam tablets, and 500 Lorcet tablets. Investigator Dittmer testified that at some point during the visit, Mr. Sychak told Mr. Glaser to "put the word out on the street that Amy is doing—is selling all these controlled substances."

On February 16, 1999, Mr. Glaser executed a declaration in evidence as a Government exhibit. In his declaration Mr. Glaser described his arrangement with law enforcement authorities and the undercover visits discussed above. He also stated, among other things, that he and Mr. Sychak had agreed that Mr. Glaser would purchase Lorcet in 500-tablet quantities in the original manufacturer's bottles for $1,500 per bottle. Mr. Glaser further stated that he sold the pills for $4 each to individuals who would then sell them for $8 each on the street, and that he also paid Mr. Sychak $5,000 in cash at unstated intervals in exchange for a shopping bag of Schedule III controlled substances. Mr. Glaser stated that as of sometime in 1993 he routinely paid Mr. Sychak $12,000 to $15,000 per transaction and that sometimes Mr. Sychak kept the pharmacy open late so that Mr. Glaser could make these purchases.

8. The December 16, 1998, Search

As a result of the undercover purchases, investigators obtained a second search warrant for Medicap Pharmacy and executed it on December 16, 1998. Investigators Conlon and Dittmer and ten to fifteen other law enforcement officers conducted the search and seized, among other things, the pharmacy computer's hard drive. That same day, the Deputy Administrator issued the Order to Show Cause and Immediate Suspension of Registration that gave rise to the instant proceeding.

9. The Interview of Larry Stepinski

Also on December 16, 1998, Investigators Conlon and Dittmer and Sergeant Stan King of the Murrysville Police Department interviewed Mr. Stepinski and videotaped the interview. During the interview, Mr. Stepinski said that about four years earlier a Robert Mrvos had written fake prescriptions for Percocet and Didrex, gave them to Mr. Stepinski, and told him to take them to Medicap Pharmacy to be filled. Mr. Stepinski said that he told Mr. Mrvos that the prescriptions were for diametrically opposed drugs, but Mr. Mrvos assured him that Mr. Sychak would fill both. Mr Stepinski further said that Mr. Sychak filled both prescriptions.

Mr. Stepinski stated that Mr. Mrvos sent various drug addicts to Medicap Pharmacy with fake prescriptions; these individuals had the prescriptions filled and then turned the drugs over to Mr. Mrvos in exchange for money. According to Mr. Stepinski, however, at some point Mr. Mrvos was arrested, and Mr. Stepinski obtained the blank prescription forms that Mr. Mrvos had used. Mr. Stepinski stated that he wrote the prescriptions for various fictitious people with the last name Kaczynski, his late uncle's name, because he thought such a name would be believable inasmuch as it was hard to spell. Mr. Stepinski also stated that Mr. Sychak filled prescriptions for him for two people with fictitious last names other than Kaczynski; according to Mr. Stepinski, he told Mr. Sychak "they were my neighbors and could you fill these for me?" Mr. Stepinski believed, Mr. Sychak knew that these names were fictitious.

Mr. Stepinski further stated that he forged prescriptions for Didrex and Percocet using blanks from three different physicians, and that from time to time Mr. Sychak told him, "you're going to have to find a new doctor," which Mr. Stepinski interpreted as an instruction to use a different physican's prescription blank. Mr. Stepinski further said that Mr. Sychak told him not to present his "prescriptions" to Mr. Werl, because Mr. Werl would call the physician to verify them.

Mr. Stepinski said that he went to the pharmacy every two weeks with two prescriptions, apparently one for Walter Kaczynski and one for Linda Kaczynski, and that he obtained Percocet every two weeks and Didrex once per month. Mr. Stepinski said that about a year after he started taking the Kaczynski prescriptions to the pharmacy he explained to Mr. Sychak that many people, himself among them, were using fictitious names on prescriptions filled at the pharmacy. Mr. Stepinski further said that as a result of this warning, Mr. Sychak stopped providing drugs to the people Mr. Stepinski identified, but not to Mr. Stepinski himself.

Mr. Stepinski said that at one point he used five different fictitious names on the false prescriptions, but that Mr. Sychak told him to cut back to two names. Mr. Stepinski further stated that after the investigation and arrest of a pharmacist at another pharmacy, Mr. Sychak took him outside the pharmacy building and told him that Percocet was "too hot," and suggested he obtain Lorcet instead. Mr. Stepinski said that he told Mr. Sychak he could not switch because he did not know what instructions to write on a Lorcet prescription, and Mr. Sychak went back into the building, returned with Mr. Stepinski's receipt, and wrote the instructions for use for Lorcet on the back. Mr. Stepinski said that after that conversation he wrote "prescriptions" for Lorcet instead of Percocet. Apparently, these were standard preprinted forms on which Mr. Mrvos forged the physician's signature. Mr. Stepinski said that he spent about $280 per month for Percocet and about the same amount for Didrex, and that he always paid cash for the drugs.

Counsel for Respondent objected to the introduction into evidence of the videotape of Mr. Stepinski's interview, asserting that Mr. Stepinski was not subject to cross examination, and that Mr. Stepinski may have had reason to cast Mr. Sychak in an unfavorable light. Judge Bittner found, however, and the Deputy Administrator agrees, there is other credible evidence from the hospital where Dr. Fennema had worked and also Investigator Conlon's report of his conversation with Dr. Fennema, that the Kaczynskis were fictitious. In these circumstances, the inference is warranted, which Judge Bittner made, and with which the Deputy Administrator concurs, that none of the deliveries to them were authorized. Judge Bittner also noted that Respondent adduced no evidence that Mr. Sychak made any attempt to verify any of the purported prescriptions to them.

The Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such a certificate "if he determines that the issuance of such registration would be inconsistent with the public interest" as determined pursuant to 21 U.S.C. 824(a)(4) an 823(f). Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

As a threshold matter, the factors specified in section 823(f) are to be considered in the disjunctive: the Deputy Administrator may properly rely on any one or a combination of those factors, and give each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration denied. Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (DEA) 1989).

The Controlled Substances Act further prohibits dispensing a Schedule II controlled substance without the written prescription of a practitioner, with certain exceptions not pertinent here. 21 U.S.C. 829(a) (1996).

The Act also prohibits dispensing a Schedule III or IV controlled substance "without a written or oral prescription in conformity with [the Federal Food, Drug and Cosmetic Act," 21 U.S.C. 829(b) (1996).

Furthermore, the relevant regulations governing prescriptions and implementing the Controlled Substances Act, 21 CFR 1306.03 through 1306.06 (1999) provide, in relevant part, that: (1) Prescriptions for controlled substances may be issued only by an individual practitioner who is authorized to prescribe these medications by the jurisdiction in which he is licensed to practice his profession and is registered by DEA or exempt from such registrations; (2) a prescription for a controlled substance must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice; (3) although a prescribing practitioner is responsible for the proper prescribing and dispensing of controlled substances, "a corresponding responsibility rests with the pharmacist who fills the prescription," (4) prescriptions for controlled substances must be rated as of and signed on the day issued and must bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, and directions for use, as well as the name, address, and DEA registration number of the practitioner; and (5) prescriptions for controlled substances may be filled only by a pharmacist acting in the usual course of his professional practice.

The Government argues, in substance, that Mr. Sychak filled fictitious and fraudulent prescriptions, delivered controlled substances without a prescription, provided controlled substances in exchange for stolen drug samples, added unauthorized refills to prescriptions, encouraged drug abusers to place fraudulent telephone calls purportedly authorizing dispensings, falsified insurance records, and made misrepresentations to investigators. The Government further argues that even if Mr. Sychak and Medicap Pharmacy could be considered the victims on occasion of stratagems by drug-seeking individuals who presented fraudulent prescriptions or posed as physicians, the pharmacy abrogated its obligation to ensure that it filled only lawful prescriptions.

As noted above, Respondent did not file proposed findings of fact, conclusions of law or argument in this proceeding. In his closing argument at the hearing, counsel for Respondent asserted, in substance, that much of Ms. Ruffner's testimony was hearsay and she had reason to fabricate her testimony; the Government did not offer into evidence the tape recordings of the undercover visits; Respondent was not afforded the opportunity to cross-examine Mr. Stepinski or the other informants; and the Government did not conduct a full audit of the pharmacy. In sum, Respondent argues that the Government has not met its burden of proof in this proceeding.

With regard to factor one of the public interest analysis pursuant to 21 U.S.C. 824(a)(4) and 823(f), the recommendation of the State licensing board, it is undisputed that at the time of the hearing Respondent was authorized by the Commonwealth of Pennsylvania to handle controlled substances. Inasmuch as State licensing is a necessary but not sufficient condition for DEA registration, however, Judge Bittner found, and the Deputy Administrator concurs, that this factor is not determinative.

With regard to factor two, Respondent's experience in handling controlled substances, Judge Bittner made the following factual findings, with which the Deputy Administrator concurs. The stated quantities of illicitly dispensed controlled substances are based upon the evidence of the record as a whole. The Deputy Administrator recognizes that Respondent's computer logs may not have been entirely accurate. Testimony and other evidence, however, such as the fraudulent prescriptions themselves, paint a fairly complete picture of the magnitude of illicit activity encouraged and abetted by Respondent. It is highly doubtful, moreover, that Respondent would have overstated in his computer logs the quantities of controlled substances he was illegally dispensing.

a. The Deliveries to Mr. Ray

On August 8, 1997, Mr. Sychak delivered sixty hydrocodone 7.5 mg to Mr. Ray pursuant to the fictitious oral authorization of Dr. Wigle. Although that "authorization" specified no refills, Respondent's memorialization of it lists one refill. Mr. Sychak in fact treated that "authorization" as if it provided for two refills, delivering hydrocodone to Mr. Ray on August 15, and August 22, 1997. On August 29, 1997, Mr. Sychak refused to provide drugs based on the blank prescription from the fictitious Dr. Beck, but based that refusal on his concern that DEA investigators might notice that the handwriting on the filled-out prescription was the same as that on other pharmacy records. When Mr. Ray returned to the pharmacy shortly thereafter with the same form filled out

for sixty Percocet, however, Mr. Sychak honored it.

On September 5, 1997, Mr. Sychak delivered Percocet to Mr. Ray after he filled out the "prescription" in Mr. Sychak's presence, and also provided Mr. Ray with sixty hydrocodone pursuant to another fictitious authorization from Dr. Beck. A week later, Mr. Sychak again provided hydrocodone to Mr. Ray pursuant to a fictitious authorization from Dr. Beck.

b. The Deliveries to Mr. Stepinski

The record establishes that between January 2, 1997, and April 14, 1998, Mr. Sychak delivered 2,870 Percocet, 60 Roxicet, 4,310 Didrex 50 mg., and 360 Lorcet 10/650 to Mr. Stepinski using the names of various Kacyznskis as aliases. The record also establishes that these deliveries were made pursuant to fictitious "prescriptions" and that Mr. Sychak was aware that these were not bona fide dispensings.

c. The Deliveries to Lynette Reffner and Michael Riley

Between July 17, 1997, and December 30, 1997, Respondent delivered to Ms. Reffner a total of 1,620 dosage units of Vicodin; 715 dosage units of hydrocodone; 164 dosage units of Hydromet syrup; 60 dosage units of phenobarbital; 1,390 dosage units of alprazolam; 1,240 dosage unit of Ap-Oxazepam; 130 dosage units of diazepam; and 100 dosage units of Darvocet. From 1994 until 1998 Ms. Reffner and Mr. Riley regularly purchased Vicodin ES, Xanax, Darvocet, Soma, and Hydromet syrup from Mr. Sychak without a prescription or any other form of physician authorization.

d. The Deliveries to the Ruffners

The record establishes that Mr. Sychak provided controlled substances to Ms. Ruffner's mother in exchange for physician samples of other drugs, delivered drugs to Ms. Ruffner and to her mother pursuant to purported telephone authorizations he knew to be fictitious, provided Ms. Ruffner more refills than the written legitimate prescriptions authorized, and sold controlled substances to Ms. Ruffner on the basis of lists she gave him containing names of persons and drugs, without any physician authorization. Mr. Sychak also provided Mr. Ruffner a fraudulent prescription vial at the latter's request. Respondent unlawfully delivered controlled substances to the Ruffners for several years. Between July 1996 and April 1998, Respondent delivered to the Ruffners 18,031 Vicodin ES 7.5; 9,165 hydrocodone with APAP 7.5; 8,425 hydrocodone 10 with APAP 650; 2,990 Lorcet 10/650; 2,640 diazepam 10 mg.; 330 Fioricet with codeine No. 3; 90 Lomotil and Lonox; 4,080 milliliters of Hydromet syrup, and 390 Prelu-2 105 mg. There is no indication that any of these deliveries were pursuant to legitimate prescriptions or other physician authorizations. Karen Ruffner additionally received 60 dosage units of Vicodin ES in March and April of 1993 pursuant to a purported prescription issued by Dr. Dzialowski. Finally, during Ms. Ruffner's undercover visit on April 24, 1998, Mr. Sychak sold her generic hydrocodone, without a prescription and upon her giving him a list of people and drug names.

e. The Deliveries to Mr. Glaser

Mr. Glaser stated in his February 1999 declaration that he had purchased Lorcet and other Schedule III controlled substances from Mr. Sychak since 1993, and that he paid $3.00 per pill for Lorcet. The record establishes that between November 1993, and March 1997 Respondent delivered to Mr. Glaser a total of 12,030 dosage units of alprazolam 2 mg.; 360 dosage units of diazepam 10 mg.; 13,980 dosage units of Lorcet; 420 dosage units of Vicodin ES 7.5; 60 hydrocodone 7.5 with APAP; 12,080 milliliters of Tussionex Pennkinetic suspension; 60 phentermine 37.5 mg.; and 240 Xanax 2 mg. It is also noteworthy that Respondent delivered to Mr. Glaser 300 Vicodin in a six-week period in 1994, and 240 Xanax in a three-week period in 1995. Furthermore, as described above, in the course of the two undercover visits in September 1998, less than five months after execution of the April 24 search warrant, Mr. Sychak sold Mr. Glaser 1,000 alprazolam; 140 Vicodin; 1,000 Lorcet; and 60 generic hydrocodone, for a total of $4,000.

Judge Bittner found, and the Deputy Administrator concurs, that the record establishes that over a period of about six years Mr. Sychak sold tens of thousands of dosage units of controlled substances without a physician's authorization. The record further establishes that Mr. Sychak knew or should have known that he was delivering these medications to persons who were drug abusers themselves and/or who were providing the controlled substances to others who were. Judge Bittner found, and the Deputy Administrator concurs, that this factor weighs in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

With regard to factor three, Respondent's conviction record relating to controlled substances, there is no evidence that either Medicap Pharmacy or Mr. Sychak has been convicted of violating any laws relating to controlled substances at the time of the hearing.

With regard to factor four, Respondent's compliance with applicable laws relating to controlled substances, the record establishes that Mr. Sychak delivered tens of thousands of dosage units of controlled substances without complying with the statutory and regulatory provisions discussed above. Judge Bittner therefore found, and the Deputy Administrator concurs, that this factor weighs in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

Finally, with regard to the fifth factor, other conduct that may threaten the public health and safety, Judge Bittner found, and the Deputy Administrator concurs, that Mr. Sychak (1) acquiesced to Mr. Ruffner's request to provide a fraudulent prescription vial; (2) provided Percocet to Mr. Ray pursuant to a fictitious prescription that Mr. Ray filled out in front of him; (3) offered to bill Ms. Reffner's phenobarbital to another patient's medical insurance; (4) exchanged controlled substances for stolen physician samples of other drugs; (5) continued to fill false prescriptions after Mr. Werl warned him that they were fraudulent; (6) misrepresented to investigators that he had contacted Dr. Beck to verify a prescription; and (7) billed insurance carriers for drugs the policyholders did not receive. Judge Bittner therefore found, and the Deputy Administrator concurs, that this factor weighs in favors of a finding that Respondent's continued registration would be inconsistent with the public interest.

Judge Bittner found, and the Deputy Administrator concurs, that it is abundantly clear that Mr. Sychak has egregiously abused his privilege to handle controlled substances. It appears from the record that Mr. Sychak was purposefully attempting to engender addiction through his unauthorized dispensing of refills, apparently hoping to profit from the illicit market for controlled substances he thereby created. There is no exculpatory evidence to explain why Mr. Sychak acted as he did, that he regrets his actions, or that he will not repeat them in the future. In these circumstances the conclusion is appropriate that Respondent's continued registration with DEA would be inconsistent with the public interest. See Singers-Andreini Pharmacy, Inc., 53 FR 4668, 4672 (DEA 1998); Gerald M. Bluestone, R.Ph., d/b/a Bluestone Drug Store, 56 FR 16114, 16116 (DEA 1991); Arthur Sklar, R.Ph., d/b/a King Pharmacy, 54 FR 34623 (DEA 1989).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BM2751736, issued to Medicap Pharmacy, be, and hereby is, revoked, and any pending applications for renewal of such registration be denied. This order is effective January 4, 2001.

Dated: November 21, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–30930 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 8, 2000, and published in the **Federal Register** on August 23, 2000, (65 FR 51331), Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Thebaine (9333)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

No comments or objections have been received. DEA has considered the factors in Title 21, United States code, section 823(a) and determined that the registration of Radian International LLC to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Radian International LLC on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30934 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–7]

In the Matter of Mary Thomson, M.D.; Continuation of Registration With Restrictions

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause dated October 30, 1998, to Mary Thomson, M.D. (Respondent), seeking to revoke the Respondent's DEA Certificate of Registration, BT3320203, pursuant to 21 U.S.C. 824(a)(2) and (4); and deny any pending application for renewal of such registration pursuant to 21 U.S.C. 823(f) because her registration would be inconsistent with the public interest as defined by 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that Respondent (1) became opiate dependent on Demerol, a Schedule II Controlled Substance, and received in-patient treatment for chemical dependency; (2) tested positive for opiates and benzodiazepines in October of 1995 and had her hospital privileges suspended; (3) obtained controlled substances by fraud or misrepresentation by issuing prescriptions for controlled substances in names of persons for whom such controlled substances were not intended and administered the controlled substances to herself for no legitimate medical purpose and not in the usual course of her professional practice; (4) pled guilty to one felony count of obtaining controlled substances by fraud and received three years of probation, community service, and a fine; and (5) admitted to using controlled substances without a legitimate medical purpose and diverting controlled substances to her own use. Respondent requested to hearing in a letter filed November 30, 1998. The requested hearing was held in Dallas, Texas, on April 6–8, 1999. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law, and Argument. On January 4, 2000, Judge Randall issued her Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's registration be continued, subject to three restrictions. The Government thereafter filed Exceptions to Judge Randall's Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision; and Respondent filed Responses to the Government's Exceptions, The record was transmitted to the Deputy Administrator for final decision February 16, 2000.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge, but includes additional restrictions on Respondent's continued registration. His adoption is in no manner diminished by any recitation of facts, issues, and conclusions herein, or of any failure to mention a fact or matter of law. The Deputy Administrator finds the following facts especially relevant to his decision.

Respondent was a practicing pharmacist from 1980 until 1987. Respondent has practiced medicine since 1994, when she completed her medical education. During the course of her medical education, Respondent earned several performance awards, including "Resident Physician of the Month," "Resident of the Year," and "Outstanding Third Year Resident." Respondent was employed by St. Mary's Hospital from 1994 until she resigned by letter received May 6, 1996. Respondent is currently employed as the sole full time physician for Special Health Resources of East Texas (SHRET). SHRET is a non-profit public organization funded at least in part by government grants. Respondent works in three clinics serving a large part of East Texas and also provides treatment for HIV patients at the Well Spring Recovery Center, a center for patients with HIV and substance abuse problems. Most of the patients who avail themselves of SHRET's services

are the needy and indigent, and who are also mostly suffering from HIV and related complications. Respondent also administers Phase III clinical trials of experimental AIDS drugs, and follows the treatment of participating patients. Respondent's co-workers at SHRET variously describe her patient care as "excellent" and "exceptional." Respondent also provides HIV/AIDS awareness and treatment training to local healthcare professionals, including other physicians.

Before, during, and after the events at issue, Respondent suffered from a number of serious medical disorders, including Lyme Disease and Bipolar Disorder, Type II. The Bipolar Disorder was diagnosed in June of 1996, subsequent to the events forming the basis for the Show Cause Order. Prior to this diagnosis, Respondent's Bipolar Disorder symptoms had been incorrectly diagnosed as depression, and were being treated as such. Judge Randall credited Respondent's treating psychiatrist's testimony that this misdiagnosis of Respondent's Bipolar Disorder contributed to her susceptibility to drug use. Since her diagnosis, Respondent's Bipolar Disorder has been treated with lithium, and her levels are monitored by a psychiatrist on a monthly basis.

On June 28, 1995, Respondent was escorted from St. Mary's Health Care clinic, her place of employment, because nurses there noticed Respondent behaving strangely, that her speech was slurred, and that she was unsteady on her feet. Following Respondent's departure, hospital staff found in Respondent's desk drawer two used syringes and four vials labeled "Demerol 50 mg", one partially empty. Each vial listed the same patient's name, hereinafter referred to as J.T. Rather Than resign, or submit to close monitoring by St. Mary's Hospital, Respondent entered an in-patient recovery center for one week, and thereafter attended recovery groups three to five times a week.

On October 13, 1995, nurses working with Respondent again noticed strange behavior by Respondent, who seemed confused while examining patients, and again exhibited slurred speech. Respondent agreed to provide a urine sample to test for controlled substances. The test was positive for opiates and benzodiazepines. At the time, however, Respondent had just had minor surgery, and the evidence shows that the positive results of this test were from validly prescribed drugs related to this surgery.

On November 15, 1995, Respondent entered into an impaired physician agreement with St. Mary's Hospital. The agreement provided that Respondent would submit to weekly drug testing, would attend Alcoholics Anonymous meetings three times a week, and that Respondent would not prescribe any medication for herself.

On March 20, 1996, Respondent tested positive for amphetamines, and subsequently resigned from St. Mary's, rather than face a peer review committee. Respondent's supervisor subsequently testified that this drug test was a false positive, that could be explained by Respondent's use of a decongestant, an antihistamine, or by prescription antidepressant drugs.

On February 11, 1997, Respondent was indicted in the United States District Court for the Northern District of Texas, Lubbock Division (Court), for 12 counts of knowingly and intentionally obtaining and acquiring injectable meperidine, also known as Demerol, a Schedule II narcotic controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge, in violation of 21 U.S.C. 843(a)(3), and one count of knowingly and intentionally obtaining and acquiring oxycodone, a Schedule II narcotic controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge, in violation of 21 U.S.C. 843(a)(3). On June 9, 1997, Respondent pled guilty to count eight of the indictment and was sentenced to three years probation. Pursuant to the plea agreement, Respondent was required to participate in a program for the treatment of narcotic dependency, including drug testing; refrain from employment as a physician or pharmacist for the duration of probation except with the written consent of the Court; participate in mental health services as directed by the probation officer; provide 50 hours of community service; and pay a fine.

On August 9, 1997, the Texas Board of Medical Examiners (Board) revoked Respondent's license to practice medicine in Texas; however, the Board probated the revocation, placing Respondent on probation for ten years, subject to the terms and conditions set forth in an Agreed Order with Respondent. The Deputy Administrator finds the following conditions set by the Board especially relevant: (1) Respondent shall obtain written consent from the United States District Court during the probationary period for employment as a physician in the State of Texas; (2) Respondent may only practice in an institutional setting as approved by the Board; (3) Respondent shall not consume alcohol, dangerous drugs, or controlled substances unless prescribed by another physician for a legitimate and therapeutic purpose; (4) Respondent shall submit to random drug and alcohol testing at the request of the authorized representative of the Board and at the request of any of the physicians required and authorized to authorized to evaluate or treat Respondent pursuant to the terms of the Order; (5) Respondent shall submit to a Board approved psychiatrist for monthly counseling and evaluation of her lithium level; (6) Respondent shall participate in an ongoing substance abuse program approved by the Board at least three times a week, and shall provide written reports to the Board documenting the number and locations of the meetings attended; (7) Respondent shall participate in physician health and rehabilitation society meetings and make written reports documenting the Respondent's attendance and participation; (8) Respondent shall complete at least 50 hours per year of continuing AMA approved medical education; (9) Respondent must keep a log book available for inspection at all times of all prescriptions of controlled substances or dangerous drugs with potential for abuse; (10) Respondent's medical practice must be monitored by at least one or more physicians approved by the Board and practicing in Texas; (11) Respondent must not treat or otherwise serve as physician for her immediate family; (12) Respondent shall not unilaterally withdraw from any evaluation, treatment, or medical care required by the Order, upon penalty of the suspension of her medical license; (13) Respondent shall provide written reports regarding any aspect of Respondent's mental or physical condition and compliance with the terms of the Order upon the request of the Board or Board Staff; (14) Respondent may not possess alcohol, controlled substances, or dangerous drugs with potential for abuse, except as authorized by the Order; and (15) Respondent must cooperate with all requests by the Board and Board Staff to monitor her compliance with this Agreed Order.

On October 20, 1997, the Court issued an order consenting to Respondent's "accepting employment as a physician with SHRET, and practicing medicine with that organization in accordance with the Agreed Order, dated August 9, 1997, issued by the Texas State Board of Medical Examiners." Respondent has been employed by SHRET since July or August of 1997 as a consultant, and since November of 1997 as a physician. She has not maintained nor dispensed

controlled substances since her employment with SHRET.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration as a practitioner if the registrant has been convicted of a felony *inter alia* under any law of the United States, relating to controlled substances; or if the continuance of such a registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f) and 824(a)(4) and subdelegations of authority thereunder, (28 CFR 0.100(b) and 0.104 (1998)), the Deputy Administrator may deny pending applications for renewal or modification of this registration as a practitioner if the issuance of such application would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in evaluating the public interest: (1) The recommendation of the appropriate State licensing board or professional disciplinary authority; (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances; (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances; (4) Compliance with applicable State, Federal, or local laws relating to controlled substances; and (5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., MD., 54 FR 16,422 (1989).

It is undisputed that Respondent in this case has been convicted of a felony within the meaning of 21 U.S.C. 824(a)(2). Her June 9, 1997, plea of guilty to count eight of the indictment for violating 21 U.S.C. 843(a)(3) resulted in a sentence of three years probation with standard and additional conditions. Respondent's DEA Certificate of Registration may be revoked upon this basis alone. See George Forest Landman, D.O., 52 FR 1,258 (1987); Fairbanks T. Chua, M.D., 51 FR 41,676 (1986). The statute is discretionary, however, and the relevant language states "A registration pursuant to section 823 of this title * * * may be suspended or revoked by the Attorney Generla upon a finding that the registrant—* * * (2) has been convicted of a felony under this subchapter * * * " (Emphasis added). In this case, the Deputy Administrator finds that the public interest is best served by continuing Respondent's registration, as set forth below.

Regarding factor one of the public interest analysis pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator finds that it is undisputed that Respondent's license to practice medicine in the State of Texas was revoked, and the revocation probated for ten years subject to the Agreed Order dated August 9, 1997. The Texas Board placed no restrictions on Respondent's authority to prescribe, administer, or dispense controlled substances, except that she keep a log of such prescriptions available for inspection at all times, and that she only possess such substances as permitted by the Agreed Order. Thus, Respondent is authorized to practice medicine and handle controlled substances in the State of Texas, pursuant to the Agreed Order. While 21 U.S.C. 824(a)(3) requires a registrant to have a valid State license or registration, this is not the only requirement for DEA registration, and therefore is not determinative.

Regarding factor two, Respondent has been employed as both a pharmacist and a physician during her career. While Judge Randall found that Respondent demonstrated a knowledge and understanding of applicable State and federal laws and regulations concerning the handling of controlled substances, the Government accurately points out in its Exceptions that Judge Randall failed to take note of her finding that Respondent failed to understand that DEA regulation required Respondent to notify DEA of Respondent's new registered address, even though Respondent neither dispensed nor maintained controlled substances at that place of business. It is undisputed that Respondent failed to formally notify DEA of the change of her registered address after she began employment with SHRET. This oversight, however, while cause for some concern, is also not dispositive.

Regarding factor three, it is undisputed that Respondent pled guilty to one count of knowingly and intentionally obtaining and acquiring injectable Demerol, a Schedule II narcotic substance, by misrepresentation, fraud, forgery, deception, and subterfuge. This conviction resulted from Respondent's actions on June 26, 1995, when she wrote a prescription for Demerol for J.T., and administered the Demerol to herself while at work. Judge Randall credited the testimony of Respondent and her treating psychiatrist in finding that Respondent's drug use was caused by her various medical and emotional diagnoses, and especially her previously undiagnosed Bipolar Disorder. The Deputy Administrator finds the record contains no evidence that Respondent's illegal actions harmed anyone other than herself. In addition, there appears to be no evidence in the record that Respondent's patients failed to receive needed medications. On the other hand, there is significant evidence in the record that Respondent is successfully recovering from her drug abuse, and she has effective professional and personal support networks in place to ensure against further relapse. It is undisputed that Respondent has not improperly used controlled substances since at least May of 1996.

Regarding factor four, Respondent admitted to diverting controlled substances on at least two or three occasions, between February 15, 1995, and June 26, 1995. This is in addition to the specific instance forming the basis of her conviction. Respondent alleges that she cannot remember exactly how many times she diverted controlled substances to her own use, nor from whose prescriptions the controlled substances were diverted. The Deputy Administrator shares Judge Randall's concern with regard to respondent's diversion history. While the record is not clear regarding the number of occasions the Respondent diverted, nor the quantity of controlled substances she diverted, the Deputy Administrator finds that there is sufficient evidence in the record to believe that Respondent's estimates regarding her diversion history substantially minimize the extent of her illegal activity. Judge Randall twice noted in her Recommended Rulings that Respondent's attitude at the hearing showed an attempt to minimize her illegal actions. Not only did Respondent studiously avoid admitting that she diverted the very Demerol upon which her criminal conviction was based, she further alleged that she could not remember any specific instances of diversion whatsoever. In addition, Judge Randall credited the Government's showing that Respondent's claims of an ongoing patient-physician relationship with J.T. were false, and that the Respondent was using J.T.'s name merely to obtain Demerol and to conceal her own illicit use. Judge Randall found, and the Deputy Administrator concurs, that absent the evidence of Respondent's strong efforts to rehabilitate herself, her continual minimizations of her criminal actions and significant breaches of professional judgment would weigh heavily against her retention of a DEA Certificate of

Registration. It is undisputed, however, that Respondent is in compliance with the terms of her Federal probation, and also with the terms of the Agreed Order.

Finally, with regard to the fifth factor, there is no question that Respondent abused controlled substances while performing her duties as a physician. Also troubling is Respondent's false physician-patient relationship with J.T., which Respondent continued to refuse to acknowledge as a subterfuge to supply Respondent's own drug addition. Fortunately for Respondent's patients, and for Respondent herself, there is no evidence that Respondent's illicit drug abuse harmed any others than herself, and further, there is no evidence that Respondent's patients failed to receive needed medications. Without the strong and extensive controls set in place by the Agreed Order, and without the strong evidence of Respondent's sincere efforts to rehabilitate herself, her retention of a DEA Certificate of Registration would not be in accord with the public interest.

The Deputy Administrator agrees with Judge Randall that the Government has met its *prima facie* burden in its case to revoke Respondent's DEA Certificate of Registration and to deny her pending application for renewal. As Judge Randall notes in her Recommended Rulings, however, the governing statute is discretionary. 21 U.S.C. 823(f) states in relevant part that "[t]he Attorney General *may* deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest." (Emphasis added). The Deputy Administrator previously has concluded that, in exercising his discretion in determining the appropriate remedy in any given case, he should consider all the facts and circumstances of the case. See Martha Hernandez, M.D., 62 FR 61,145 (1997). The Deputy Administrator concurs with Judge Randall that the Respondent has presented sufficient evidence to alter the ultimate determination of her case.

Specifically, the Deputy Administrator finds that the Texas Board's Agreed Order with the Respondent provides the public and Respondent herself with effective protection against future criminal diversion of controlled substances. The evidence shows that Respondent is in compliance with all terms of the Agreed Order. In addition, Respondent currently maintains a lifestyle that will help to prevent a relapse of the substance abuse problems she experienced in 1995. Currently, the Respondent attends a substance recovery group, maintains a relationship with a therapist, receives lithium to control the effects of her Bipolar Disorder, submits to regular drug testing, and has developed strong familial and religious associations.

Another significant factor influencing the Deputy Administrator's decision in this case is that Respondent's current professional position at SHRET is devoted to serving the public interest. The Deputy Administrator finds that the public interest is best served in this case by continuing Respondent's registration, with appropriate restrictions, as set forth below. Through SHRET, Respondent provides critical services to a medically under-served community. Respondent also is committed to performing training and continuing education to other health professionals, including physicians, regarding AIDS and HIV issues, over a large geographic area. At least some of this training is performed during her personal time, and not during her regular work hours. Respondent additionally has been approved by the FDA to administer Phase III clinical trials of experimental AIDS drugs, and thereafter to monitor the results. As of the date Respondent's testimony in the present hearing, she had administered six trials in the previous 18 month period. Respondent and her co-workers all credibly testified that her work at SHRET gives Respondent great professional satisfaction. Additionally, Respondent's quality of work at SHRET was credibly characterized by co-workers as "excellent" and "exceptional." Respondent is also the medical director at Well Spring, a recovery center designed to assist individuals who are suffering from HIV and who are also substance abusers. The 60 to 90 day program is designed to teach participants alternative methods of pain and stress management, including massage, Acudetox, and neuro-feedback. Well Spring Recovery Center is the only program of its type in Texas, and one of only three in the United States (the other two are located on the East and West Coasts).

The Deputy Administrator agrees with Judge Randall's finding that Respondent effectively has addressed the personal, and professional problems that contributed to her drug abuse. While it is troubling that Respondent attempted to tailor her testimony to limit and minimize her illicit activity, the record indicates that Respondent did take affirmative responsibility for her misconduct. The strong and extensive controls set by the Texas Board's Agreed Order, combined with Respondent's actions clearly showing a great personal desire to rehabilitate herself personally and professionally, provide a sufficient level of protection for both Respondent and the public that Respondent should be allowed to maintain her DEA Registration, with restrictions.

Therefore, the Deputy Administrator concludes that Respondent's DEA Certificate of Registration should be continued subject to the following restrictions for three years from the effective date of this final order.

1. Respondent is to forward on a quarterly basis her prescription log to the DEA regional office for the entire three year period of this registration;

2. Respondent is to promptly forward whatever evidence of drug screen results available to her to the DEA regional office for the entire three year period of this registration;

3. Respondent is to promptly forward to the DEA regional office any changes the Texas Board of Medical Examiners may make to the terms of her probation;

4. Respondent shall not prescribe, dispense, administer, or otherwise handle any narcotic controlled substance as defined under the Controlled Substances Act; this restriction shall also extend to the Controlled Substances Buprenorphine, Butorphanol, and Pentazocine; and

5. Consistent with the Court's October 20, 1997 order, Respondent's Registration is contingent upon continuing her employment with SHRET for the entire three year period of the Registration. If for any reason Respondent terminates her employment with SHRET, Respondent shall promptly notify the DEA regional office in writing, setting forth the facts and circumstances leading to said termination of employment.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BT3320203, submitted by Mary Thomson, M.D. be, and hereby is, continued, and any pending applications for renewal be granted, for Schedules II, III, IV, and V non-narcotics, excepting Butorphanol and Pentazocine, and subject to the above-described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than January 4, 2001.

Dated: November 21, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–30931 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service.

[INS No. 2103–00]

Immigration and Naturalization Service Airport and Seaport Inspections User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service Airport and Seaport Inspections User Fee Advisory Committee.

Date and time: Wednesday, January 31, 2001, at 1 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street NW, Washington, DC 20536, Shaughnessy Conference Room—Sixth Floor.

Status: Open. Twenty-first meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street NW., Washington, DC 20536, telephone: (202) 616–7498, fax: (202) 514–8345 E-mail: charles.d.montgomery@usdoj.gov.

Dated: November 28, 2000.

Mary Ann Wyrsch,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–30842 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Rosebud Mining Company

[Docket No. M–2000–135–C]

Rosebud Mining Company, R.D. #9, Box 379A, Kittanning, Pennsylvania 16201 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its Rosebud No. 2 Mine (I.D. No. 36–08410), Rosebud No. 3 Mine (I.D. No. 36–08773), Roaring Run Mine (I.D. No. 36–08329), Tracy Lynne Mine (I.D. No. 36–08603), Dutch Run Mine (I.D. No. 36–08701) all located in Armstrong County, Pennsylvania; Josephine No. 3 Mine (I.D. No. 36–08719) located in Indiana County, Pennsylvania; and Twin Rocks Mine (I.D. No. 36–08836) located in Cambria County, Pennsylvania. The petitioner proposes to use an alternative method of compliance for firefighting equipment at temporary electrical installations. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and will not result in a diminution of safety to the miners.

2. Gibson County Coal, L.L.C.

[Docket No. M–2000–136–C]

Gibson County Coal, L.L.C., P.O. Box 1269, Route 3 Lyle Station Road, Princeton, Indiana 47670 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Gibson Mine (I.D. No. 12–02215) located in Gibson County, Indiana. The petitioner proposes to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries, and to the permissible mobile powered equipment the batteries serve, to prevent the battery plugs from accidentally separating from their receptacles during normal operation of the battery equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and will not result in a diminution of safety to the miners.

3. Gibson County Coal, L.L.C.

[Docket No. M–2000–137–C]

Gibson County Coal, L.L.C., P.O. Box 1269, Route 3 Lyle Station Road, Princeton, Indiana 47670 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Gibson Mine (I.D. No. 12–02215) located in Gibson County, Indiana. The petitioner proposes to use a 480-volt, three-phase, 200KW diesel powered generator set with an approved diesel drive engine to supply power to a 250 KVA three-phase transformer and three-phase 480-, 600-, and 995-volt power circuit, to move equipment in and out of the mine and to perform rehab work in areas outby section loading points. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Black Beauty Coal Company

[Docket No. M–2000–138–C]

The Peabody Group, 801 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324–1233 has filed a petition for the Black Beauty Coal Company, 8282 Catlin Indianola Road, Catlin, Illinois 61817, to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Riola #1

Mine (I.D. No. 11–02971) located in Vermilion County, Illinios. The petitioner proposes to use high-voltage (2,400) trailing cables inby the last open crosscut at the working continuous miner section(s). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. R & R Coal Company

[Docket No. M–2000–139–C]

R & R Coal Company, 21 East Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its R & R Coal Company Mine (I.D. No. 36–08498) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit alternative methods of construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. R & R Coal Company

[Docket No. M–2000–140–C]

R & R Coal Company, 21 East Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its R & R Coal Company Mine (I.D. No. 36–08498) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the mine illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. R & R Coal Company

[Docket No. M–2000–141–C]

R & R Coal Company, 21 East Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (temporary notations, revisions, and supplements) to its R & R Coal Company Mine (I.D. No. 36–08498) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible area under 30 CFR 75.389 is required. The petitioner asserts that the low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. RAG Emerald Resources LP

[Docket No. M–2000–142–C]

RAG Emerald Resources LP, One Oxford Centre, 301 Grant Street, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Emerald Mine (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner requests that the Proposed Decision and Order of its previously granted petition for modification, docket number M–96–069–C be amended to permit use of the petition at locations other than the No. 3 bleeder shaft at the Emerald Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. San Juan Coal Company

[Docket No. M–2000–143–C]

San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its San Juan South Mine (I.D. No. 29–02170) and San Juan Deep Mine (I.D. No. 29–02201) located in San Juan County, New Mexico. The petitioner proposes to operate its diesel road grader without front wheel brakes. The petitioner proposes to operate its diesel grader at a maximum speed of 10 miles per hour, lower the moldboard to increase stopping capability in emergency situations, and to provide training to grader operators on how to recognize the appropriate speeds for different road and slope conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and that application of the existing standard would result in a diminution of safety to the miners.

10. McCoy Elkhorn Coal Corporation

[Docket No. M–2000–144–C]

McCoy Elkhorn Coal Corporation, 1148 Long Fork Road, Kimper, Kentucky 41539 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 14 Mine (I.D. No. 15–18088), No. 16 Mine (I.D. No. 15–18250), No. 21 Mine (I.D. No. 15–18085), and Smithfork Mine (I.D. No. 15–16693) all located in Pike County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded locking device on mobile battery-powered machines instead of padlocks to prevent the battery plugs from accidentally separating from their receptacles, and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. Ohio County Coal Corporation

[Docket No. M–2000–145–C]

Ohio County Coal Corporation, 19050 Highway 1078 South, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Freedom Mine (I.D. No. 15–17587) located in Hopkins County, Kentucky. The petitioner proposes to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve, to prevent battery plugs from accidentally separating from their receptacles during normal operation of the battery equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. Powder River Coal Company

[Docket No. M–2000–146–C]

Powder River Coal Company, Caller Box 3035, Gillette, Wyoming 62717–3035 has filed a petition to modify the application of 30 CFR 77.1200 (mine map) to its North Antelope/Rochelle Complex (I.D. No. 48–01353) located in Campbell County, Wyoming. The petitioner proposes to use a scale of 1,000 feet to the inch instead of using a scale of not less than 100 or more than 500 feet to the inch. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and would not result in a diminution of safety to the miners.

13. Gibson County Coal Corporation

[Docket No. M–2000–147–C]

Gibson County Coal Corporation, P.O. Box 1269, Route 3, Lyle Station Road, Princeton, Indiana 47670 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Gibson Mine (I.D. No. 12–02215) located in Gibson County, Indiana. The petitioner proposes to use a 200 KW/250 KVA, 480-volt, diesel powered generator set to move equipment in and out of the mine(s) and in emergency situations to move equipment underground. The petitioner proposes to have the neutral of the secondary side of the wye configured 480-, 575-, 995-volt transformer in series between it and the frame of the generator unit, a 995-volt rated resistor that will limit phase-to-frame fault current to 0.5 ampere continuously. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

14. D & F Deep Mine

[Docket No. M–2000–148–C]

D & F Deep Mine, RD 1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 49.2 (mine rescue teams) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

15. D & F Deep Mine

[Docket No. M–2000–149–C]

D & F Deep Mine, RD 1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit alternative methods of construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

16. D & F Deep Mine

[Docket No. M–2000–150–C]

D & F Deep Mine, RD 1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner proposes to use an alternative method of compliance for firefighting equipment at temporary electrical installations. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the existing standard.

17. D & F Deep Mine

[Docket No. M–2000–151–C]

D & F Deep Mine, RD 1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the mine illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

18. D & F Deep Mine

[Docket No. M–2000–152–C]

D & F Deep Mine, RD 1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (temporary notations, revisions, and supplements) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible area under 30 CFR 75.389 is required. The petitioner asserts that the low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

19. Shamrock Coal Company

[Docket No. M–2000–153–C]

Shamrock Coal Company, 1374 Highway 192 East, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Shamrock #18 Series Mine (I.D. No. 15–02502) located in Leslie County, Kentucky. The petitioner has identified one oil or gas well located adjacent to longwall gate entries, and within a proposed longwall mining panel at its Shamrock #18 Series underground mine. The petitioner proposes to plug the well and mine through the plugged well. The petitioner asserts that the proposed alternative

method would provide at least the same measure of protection as the existing standard.

20. Canyon Fuel Company, LLC

[Docket No. M–2000–154–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526–9804 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner proposes to use belt air to ventilate active working places. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

21. Mountain Coal Company, L.L.C.

[Docket No. M–2000–155–C]

Mountain Coal Company, L.L.C., 5174 Highway 133, P. O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests a modification of the existing standard to permit the use of a two-entry mining system with the belt entry used as a return air course as stipulated in this petition for modification during longwall panel development mining. The petitioner proposes to install a low-level carbon monoxide system to be used as an early warning detection system during panel development mining, longwall setup, longwall retreat mining, and longwall recovery. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

22. Oxbow Carbon and Minerals, Inc.

[Docket No. M–2000–156–C]

Oxbow Carbon and Minerals, Inc., P.O. Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Sanborn Creek Mine (I.D. No. 05–04452) located in Gunnison County, Colorado. The petitioner requests a modification of the existing standard to permit an alternative method for grounding of a diesel generator. The petitioner proposes to use a 480 volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

23. Oxbow Carbon and Minerals, Inc.

[Docket No. M–2000–157–C]

Oxbow Carbon and Minerals, Inc., P.O. Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Sanborn Creek Mine (I.D. No. 05–04452) located in Gunnison County, Colorado. The petitioner requests a modification of the existing standard to permit an alternative method for grounding of a diesel generator. The petitioner proposes to use a 480 volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 4, 2001. Copies of these petitions are available for inspection at that address.

Dated: November 22, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 00–30841 Filed 12–4–00; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250/251–LR; ASLBP No. 01–786–03–LR]

Florida Power and Light Company Turkey Point Nuclear Plant, Units 3 and 4; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Florida Power and Light Company
Turkey Point Nuclear Plant, Units 3 and 4

This Board is being established pursuant to a notice published in the **Federal Register** (65 FR 60693 (Oct. 12, 2000)) and the Commission's November 28, 2000 order referring intervention petitions for a hearing (CLI–00–23, 52 NRC —— (Nov. 28, 2000)). The proceeding involves an application by the Florida Power and Light Company to renew the operating licenses for its Turkey Point Nuclear Plant, Units 3 and 4, pursuant to the provisions of 10 CFR part 54. The renewed licenses, if granted, would authorize the applicant to operate those units for an additional twenty-year period.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 29th day of November 2000.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–30905 Filed 12–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–333–LT and 50–286–LT ASLBP No. 01–785–02–LT]

Power Authority of the State of New York and Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 3 LLC, and Entergy Nuclear Operations, Inc. James A. Fitzpatrick Nuclear Power Plant and Indian Point Nuclear Generating Unit No. 3; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and CLI–00–22, 52 NRC__(Nov. 27, 2000), and the Commission's regulations, *see* 10 CFR 2.1319, notice is hereby given that a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to conduct further proceedings in accordance with 10 CFR 2.1320 in the following case:

Power Authority of The State of New York, and Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 3 LLC, and Entergy Nuclear Operations, Inc.

James A. FitzPatrick, Nuclear Power Plant, and Indian Point Nuclear Generating Unit No. 3

The hearing will be conducted pursuant to 10 CFR part 2, subpart M, of the Commission's Regulations, "Public Notification, Availability of Documents and Records, Hearing - Requests and Procedures for Hearings on License Transfer Applications." This proceeding concerns applications that together seek the Commission's authorization to transfer the ownership interest in, and operating/maintenance responsibility for (1) the Indian Point Nuclear Generating Unit No. 3 from the Power Authority of the State of New York (PASNY) to Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (ENO), respectively; and (2) the James A. FitzPatrick Nuclear Power Plant from PASNY to Entergy Nuclear Indian Point 3, LLC, and ENO, respectively. The notices of consideration of these transfer requests and opportunity for hearing were published in the **Federal Register** on June 28, 2000. *See* 65 FR 39,953 (2000); 65 FR 39,954 (2000).

The Presiding Officer in this proceeding is Administrative Judge Charles Bechhoefer. All correspondence, documents, and other materials shall be filed with Judge Bechhoefer in accordance with 10 CFR § 2.1313. His mail and e-mail addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, E-mail: cxb2@nrc.gov.

Issued at Rockville, Maryland, this 28th day of November 2000.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–30904 Filed 12–4–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, December 14, 2000
Thursday, December 21, 2000

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538 , 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: November 21, 2000.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 00–30863 Filed 12–4–00; 8:45 am]

BILLING CODE 6325–01–U

RAILROAD RETIREMENT BOARD

2001 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2000, is $103,012,214.34;

2. The September 30, 2000, balance of any new loans to the RUI Account, including accrued interest, is zero;

3. The system compensation base is $3,091,618,036.00 as of June 30, 2000;

4. The cumulative system unallocated charge balance is ($225,212,154.12) as of June 30, 2000;

5. The pooled credit ratio for calendar year 2001 is zero;

6. The pooled charged ratio for calendar year 2001 is zero;

7. The surcharge rate for calendar year 2001 is 1.5 percent;

8. The monthly compensation base under section 1(i) of the Act is $1,050 for months in calendar year 2001;

9. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $2,625 for base year (calendar year) 2001;

10. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $1,356 for months in calendar year 2001;

11. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $2,625 for base year (calendar year) 2001;

12. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $2,625

with respect to disqualifications ending in calendar year 2001;

13. The maximum daily benefit rate under section 2(a)(3) of the Act is $50 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2001.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2000. The balance in notice (2) is based on data as of September 30, 2000. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2001. The determinations made in notices (8) through (12) are effective January 1, 2001. The determination made in notice (13) is effective for registration periods beginning after June 30, 2001.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2000, the computation of the calendar year 2001 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2001, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2001.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2000 was $3,091,618,036.00. The ratio of $3,091,618,036.00 to $2,763,287,237.04 is 1.11881892. Multiplying 1.11881892 by $100 million yields $111,881,892. Multiplying $50 million by 1.11881892 produces $55,940,946. The Account balance on June 30, 2000, was $103,012,214.34. Accordingly, the surcharge rate for calendar year 2001 is 1.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2001 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2001 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2001 tier 1 tax base is $80,400. Subtracting $37,800 from $80,400 produces $42,600. Dividing $42,600 by $56,700 yields a ratio of 0.75132275. Adding one gives 1.75132275. Multiplying $600 by the amount 1.75132275 produces the amount of $1,050.79, which must then be rounded to $1,050. Accordingly, the monthly compensation base is determined to be $1,050 for months in calendar year 2001.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2001 monthly compensation base of $1,050 produces $2,625. Accordingly, the amount determined under section 1(k) is $2,625 for calendar year 2001.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account. The calendar year 2001 monthly compensation base is $1,050. The ratio of $1,050 to $600 is 1.75000000. Multiplying 1.75000000 by $775 produces $1,356. Accordingly, the amount determined under section 2(c) is $1,356 for months in calendar year 2001.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2001 monthly compensation base of $1,050 produces $2,625. Accordingly, the amount determined under section 3 is $2,625 for calendar year 2001.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 2001 monthly compensation base of $1,050 produces $2,625. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,625 for calendar year 2001.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2001, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2000 monthly compensation base is $1,005. Multiplying $1,005 by 0.05 yields $50.25, which must then be rounded down to $50. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2001, is determined to be $50.

Dated: November 29, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–30861 Filed 12–4–00; 8:45 am]

BILLING CODE 7905–01–U

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension: Rule 11Aa3–2, SEC File No. 270–439, OMB Control No. 3235–0500; Rule 15c3–4, SEC File No. 270–441, OMB Control No. 3235–0497; Rule 15c3–1(c)(13), SEC File No. 270–443, OMB Control No. 3235–0499.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 11Aa3–2 provides that self-regulatory organizations (SROs) may, acting jointly, file a national market system plan or may propose an amendment to an effective national market system plan by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (b)(4) and (5) of rule 11Aa3–2.

The collection of information is designed to permit the Commission to achieve its statutory directive to facilitate the development of a national market system. The information is used to determine if a national market system plan, or an amendment hereto, should be approved and implemented.

The respondents to the collection of information are self-regulatory organizations, including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

Ten respondents file an average total of eight responses per year, which corresponds to an estimated annual response burden of 267 hours. At an average cost per burden hour of $50, the resultant total related cost of compliance for these respondents is $13,350 per year (267 burden hours multiplied by $50/hour = $13,350).

Rule 15c3–4 requires certain broker-dealers that are registered with the Commission as OTC Derivatives Dealers to establish, document, and maintain a system of internal risk management controls. The rule sets forth the basic elements for an OTC Derivatives Dealer to consider and include when establishing, documenting, and reviewing its internal risk management control system, which are designed to, among other things, ensure the integrity of an OTC Derivaties Dealer's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the dealer's activities and level of risk. The rule also requires that management of an OTC Derivatives Dealer must periodically review, in accordance with written procedures, the OTC Derivatives Dealer's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time an OTC Derivatives Dealer will spend implementing its risk management control system is 2,000 hours and that, on average, an OTC Derivatives Dealer will spend approximately 200 hours each year reviewing and updating its risk management control system. Currently, one firm is registered with the Commission as an OTC Derivatives Dealer. The staff estimates that approximately five additional OTC Derivatives Dealers may become registered within the next three years. Accordingly, the staff estimates the total burden for six OTC Derivatives Dealers to be 1,200 hours annually for reviewing and updating its risk management control system.

The staff believes that the cost of complying with Rule 15c3–4 will be approximately $82.50 per hour.[1] This per hour cost is based upon the annual average hourly salary for a compliance manager, who would generally be responsible for initially establishing, documenting, and maintaining an OTC Derivatives Dealer's internal risk management control system. The total annual cost for all affected OTC Derivatives Dealers is estimated to be $275,000, based on five firms each spending 10,000 hours to implement an internal risk management control system at $82.50 per hour within the next three years.

On December 17, 1997, the Commission proposed for comment amendments to its net capital rule, Rule 15c3–1, which would define the term "nationally recognized statistical rating organization" ("NRSRO")[2] Rule 15c3–1 currently requires broker-dealers, when computing net capital, to deduct from their net worth certain percentages of the market value ("haircuts") of their proprietary securities positions. Broker-dealers' proprietary position in commercial paper, nonconvertible debt securities, and nonconvertible preferred stock are accorded preferential treatment under the net capital rule, in the form of smaller haircuts, if the instruments are rated investment grade by at least two NRSROs.

The Commission believes that defining the term NRSRO within the net capital rule would provide more transparency in the NRSRO application and review process. In the proposed amendments, the Commission sets forth a list of attributes that it would consider when reviewing a credit rating organization's NRSRO application. Further, the proposed amendments would formalize the appeals process if a credit rating organization is not provided with the NRSRO status it requests.

Currently, the Division utilizes the no-action letter process to determine which credit rating organizations may be considered NRSROs under the net capital rule. Through the no-action letter process, the Division has provided seven credit rating organizations with written assurance that it will not recommend enforcement action against broker-dealers that rely on their credit

[1] Per SIA Management and Professional Earnings, Table 051 (Compliance Manager) + 35% overhead (based on end-of-year 1998 figures).

[2] *See* Securities Exchange Act Release No. 39457 (December 17, 1997), 62 FR 68018 (December 30, 1997). The Commission has not yet adopted a final rule defining the term NRSRO. The Commission's Division of Market Regulation (the "Division") has reviewed comments received in connection with the proposal and is preparing a recommendation for the Commission to determine what action, if any, should be taken.

ratings for purposes of the net capital rule.[3] The Division has issued one letter in which the firm requesting NRSRO status was not provided with the assurance it requested.

It is difficult to estimate the number of potential respondents to this collection of information. However, based on the current number of NRSROs and the previous inquires of credit rating organizations, it appears reasonable to estimate that eight credit rating organizations may apply with the Commission pursuant to the proposed amendments. Based on conversations with rating organizations currently treated as NRSROs under the net capital rule and the Commission's experience in this area, it is estimated that the average amount of time necessary to compile the information required to submit an NRSRO application is approximately 100 hours. Therefore, because there may be eight potential respondents to this collection and because it is estimated that it will take approximately 100 hours to collect the information necessary for an adequate submission, the total reporting and recordkeeping burden is estimated to be approximately 800 hours.

Because the proposed amendments only require a one-time application process, which includes any amendments to the initial application, there is no recurring reporting or recordkeeping requirement and thus no annual reporting or recordkeeping requirement. However, NRSROs will be obligated to inform the Commission of any material changes to the information previously collected under the proposed amendments.

The staff believes that the cost of complying with the proposed amendments will be approximately $105 per hour.[4] This per hour cost is based upon the annual average hourly salary for a senior analyst, who would generally be the personnel responsible for preparing an NRSRO application. The total annual startup cost for all affected credit rating organizations is estimated to be $84,000, based on eight firms spending a total of 800 hours to prepare NRSRO applications.

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: November 20, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30849 Filed 12–4–00; 8:45 am]

BILLING CODE 8010–01–M

[3] Four of these firms have since combined or are in the process of combining with other NRSROs.

[4] Per SIA Management and Professional Earnings, Table 145 (Senior Research Analyst) + 35% overhead (based on 1999 annual base salary).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27285]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 27, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 22, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if order, and will receive a copy of any notice or order issued in the matter. After December 22, 2000, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9735)

Alliant Energy Corporation ("Alliant"), a registered public utility holding company and is wholly owned utility subsidiaries, Wisconsin Power & Light Company ("WPL") and South Beloit Water, Gas & Electric Company ("South Beloit"), each with principal executive offices N16 W23217 Stone Ridge Drive, Waukesha, Wisconsin 53187, and American Transmission Company LLC ("Transco"), an inactive Wisconsin limited liability subsidiary company of WPL which intends to operate as a utility company, and ATC Management Inc., an inactive Wisconsin subsidiary corporation of WPL which also intends to operate as a utility company ("Corporate Manager", and together with Alliant, WPL, South Beloit and Transco, "Applicants"), with principal executive offices at 231 W. Michigan Street, Milwaukee, Wisconsin 53203, have filed an application-declaration ("Application") under to sections 6(a), 7, 9(a), 10, 11, 12 and 13 of the Act and rules 43, 44, 54, 90 and 91 under the Act.

In summary, Applicants request authority for: (1) WPL to transfer, directly or indirectly, ownership and control over its transmission assets ("WPL Transmission Assets") to Transco, (2) South Beloit to transfer, directly or indirectly, ownership and control over its transmission assets ("South Beloit Transmission Assets") to Transco, (3) Transco to issue and WPL, South Beloit, Wisconsin Electric Power Co. ("WEPCO"), Edison Sault Electric Company ("ESE"), Wisconsin Public Power, Inc. ("WPPI"), Wisconsin Public Service Corporation ("WPS") and Madison Gas and Electric Company ("MGE" and collectively "Member Utilities" [1]) to acquire, directly or indirectly, member units ("Member Units") of Transco in exchange for either transmission assets or cash, (4) WPL to purchase, and Corporate Manager to issue Class A shares of the Corporate Manager, (5) WPL to purchase, and Corporate Manager to issue, one Class B share of the Corporate Manager, (6) Transco to acquire the WPL Transmission Assets and the South Beloit Transmission Assets, as well as the transmission assets of WEPCO, ESE, WPS and MGE and (7) a series of

[1] ESE, WPPI, WPS, WEPCO and MGE are either exempt or municipal nonassociate utility companies of alliant and are not required to be applicants in this matter.

financings by Transco and Corporate Manager through June 30, 2004 ("Authorization Period").

WPL is engaged principally in the generation, purchase, distribution and sale of electric power in 35 counties in a 16,000 square-mile area in southern and central Wisconsin. As of December 31, 1999, WPL provides retail electric service to approximately 407,000 customers in 599 cities, villages and towns, and wholesale service to 24 municipal utilities, three rural electric cooperatives, the WPPI system, which provides retail electric service to nine communities in the WPL service area, and one privately owned utility. The WPL Transmission Assets consist of 107 miles of 345 kV transmission facilities, 758 miles of 138 kV transmission facilities, 1,908 miles of 69 kV transmission facilities and associated substations and real property interests. WPL is subject to regulation by the Public Service Commission of Wisconsin.

South Beloit is a wholly owned subsidiary of WPL that supplies retail electric and gas services to customers in the cities of South Beloit and Rockton, Illinois, and the adjacent rural areas. As of December 31, 1999, South Beloit serves approximately 8,000 electric customers. The South Beloit Transmission Assets consist of less than one mile of 345 kV transmission facilities, 10 miles of 69 kV transmission facilities, one substation and associated real property interests. The service territory of South Beloit is located in Illinois and is adjacent to the service territory of WPL in Wisconsin. South Beloit is subject to regulation by the Illinois Commerce Commission.

The electric distribution systems of WPL and South Beloit are interconnected at many points along the Wisconsin-Illinois state line. Applicants state that the electric operations of WPL and South Beloit are integrated and all of WPL's generating units are centrally dispatched by Alliant Energy Corporate Services, Inc., the service company affiliate of WPL and South Beloit. The transmission facilities that Transco will acquire from WPL and South Beloit operate at voltages of 345 kV, 138 kV and 69 kV and include:

1. Transmission lines (including towers, poles and conductors) and transmission substations;

2. Transformers providing transformation within the bulk transmission system and between the bulk and area transmission systems;

3. Lines providing connections to generation sources and step-up (plant) substations;

4. Radial taps from the transmission system up to, but not including, the facilities that establish the final connection to distribution facilities or retail customers;

5. Substations that provide primarily a transmission function;

6. Voltage control devices and power flow control devices directly connected to the transmission system; and

7. WPL's systems operation center located in Stoughton, Wisconsin.

As of December 31, 2000, the original cost of the WPL Transmission Assets and the South Beloit Transmission Assets will be approximately $314,276,000 and $678,000, respectively. The net book value (original cost less accumulated depreciation) of the WPL Transmission Assets and the South Beloit Transmission Assets is expected to be approximately $177,650,000 and $439,000, respectively, at December 31, 2000.

In 1999, Wisconsin enacted legislation ("Transco Legislation") that facilitates the formation of transmission companies, such as Transco, as not for-profit, single-purpose, limited liability transmission companies. This legislation promotes the transfer of utility company transmission assets to Transco. Transco will issue Member Units to the Member Utilities for cash, in the case of those Member Utilities who don't own transmission assets, or based on the contribution value ("Contribution Value") of the transmission assets conveyed to Transco. Contribution Value is defined as the original cost less accumulated deprecation, as adjusted on a dollar-for-dollar basis for deferred taxes, excess deferred taxes and deferred investment tax credits. Transco also seeks authority to acquire the incidental transmission facilities of Member Utilities who do not own any transmission assets. The Member Utilities intend to contribute their transmission assets to Transco on or about January 1, 2001. Transco will have the exclusive duty to provide transmission service in geographic areas formerly served by the Transco members.[2]

Because of limitations imposed by the WPL indenture ("Indenture"), WPL will effect the transfer of the WPL Transmission Assets to Transco, and its acquisition of Transco Member Units, through a newly created limited liability company ("NewCo") to be wholly owned by WPL. Applicants specifically seek authority to carry out the following transactions:

(1) WPL will form NewCo and acquire ownership of NewCo for one or more cash payments,

(2) NewCo will transfer cash [3] is an amount approximately equal to WPL's corresponding cash payment to NewCo for NewCo's ownership interest to the trustee under the Indenture ("Trustee"),

(3) Upon receipt of the payment, the Trustee will release the WPL Transmission Assets from the Indenture lien,

(4) WPL will transfer the WPL Transmission Assets to Transco and

(5) Transco will issue its Member Units to NewCo. WPL and South Boloit also seek authority to transfer to Transco, from time to time, up to $10,000,000 of additional transmission assets, which are currently under construction, in exchange for additional Member Units to be issued to NewCo or South Beloit, as the case may be.

The transmission assets will be valued at their Contribution Value when identifying the Member Utilities' relative shares of interest in the Transco. The resulting shares will be adjusted based on various factors including the relative interest of transmission-dependent Member Utilities which acquire Member Units for cash instead of transmission assets.[4] It is expected that WPL and South Beloit's Contribution Values at December 31, 2000 will be approximately $126,784,000 and $590,000, respectively, and their aggregate initial interest in Transco will approximate 26%. This ownership percentage may fluctuate based on various factors, including the number of Member Utilities.

The Member Utilities will enter into an agreement ("Operating Agreement") governing the activities of Transco. The Operating Agreement will grant the Corporate Manager full, complete and exclusive discretion to manage and control Transco. The Corporate Manager will have the power to do all things necessary and convenient to carry out Transco's business including the employment of all personnel necessary to operate Transco and the management of any future Transco subsidiaries. In accordance with the Operating

[2] Transco is expected to transfer operational control of its assets to the Midwest Independent Transmission System Operator, Inc. by November 1, 2001.

[3] The cash payment will be equal to the "fair value" to WPL of the WPL Transmission Assets, as is defined in, and required by, the Indenture. The fair value will approximate the value of the WPL Transmission Assets. NewCo's payment of cash to the Trustee will permit the WPL Transmission Assets to be released from the Indenture lien.

[4] The transmission dependent Member Utilities' ownership interest in Transco will be measured in relative shares of interest based upon their 1999 Wisconsin load share ratios.

Agreement, all expenses of the Corporate Manager will be treated as Transco expenses. These expenses will be charged back to Transco at cost in accordance with section 13 of the Act and rules 90 and 91 under the Act. The Corporate Manager will employ all personnel necessary to operate Transco. The Corporate Manager will also hold Member Units.

It is expected that the transmission-owning Member Utilities and Transco will enter into one or more agreements ("O&M Agreements") pursuant to which the Member Utilities will provide Transco with "reasonable and cost effective operations and maintenance services" for at least the first three years after the operations date in accordance with the Transco Legislation. Services provided under the O&M Agreements will include line equipment services, station equipment services and emergency response services. The Member Utilities and Transco will also enter into one or more services agreements ("Services Agreements") under which the Members Utilities will provide Transco with certain services, such as control center services, real estate services and capital project services, not covered by the O&M Agreements. Additionally, the Member Utilities and Transco will enter into a system operating agreement ("System Operating Agreement") under which Transco will provide, among other things, ancillary services and control area operations at rates approved by the Federal Energy Regulatory Commission. Finally, Transco will provide certain services from the Stoughton Operations Center to support Alliant Energy's operation of its transmission facilities outside of Wisconsin and its 34.5 kV facilities in Wisconsin that are not being transferred to Transco. It is expected that these operations will be governed by an agency agreement ("Agency Agreement"). Any services provided or received by WPL, South Beloit or any other Alliant Energy affiliate under the foregoing agreements will be provided "at cost" in accordance with section 13 and rules 90 and 91 under the Act, unless otherwise authorized or directed by appropriate governmental or regulatory authority.

Member Utilities will also purchase shares of the Corporate Member, for cash, in proportion to their percentage interests in Transco. WPL proposes to pay $10 per share for an approximate 26% interest in the Corporate Manager. The Corporate Manager will have two classes of stock: Class A and Class B shares.[5] WPL will receive approximately 26% of the nonvoting Class A shares. Additionally, each Member Utility will receive one Class B voting share.[6] Each holder of a Class B share will be entitled to appoint one of the Corporate Manager's directors. All Class B shares will convert into Class A shares on the earlier of (1) the ownership by the Corporate Manager of more than 50% of Transco interests or (2) the tenth anniversary of the first day of operations of Transco, unless the Corporate Manager's board of directors ("Board") elects to override the conversion. Class A shares will become voting shares upon the conversion of Class B shares to Class A shares or after the Corporate Manager commences a public offering of its stock. Following a public offering, the Class A shareholders will have the right to elect a majority of the Board and the Class B shareholders will elect a minority of the Board, but each owner of a Class B share will continue to have the right to appoint one of the Board. Each Class A and Class B share will be entitled to the same amount of dividends.

Transco and the Corporate Manager also request authorization for external financing as follows: (1) Short-term debt financing by Transco in the form of, among other things, borrowings under a revolving credit agreement and issuance of commercial paper, (2) long-term debt financing by Transco in the form of debentures or other forms of long-term debt financing and (3) equity financing by Transco and the Corporate Manager in the form of common or preferred stock of the Corporate Manager and other equity securities or additional interests in Transco. The amount of Transco's short-term and long-term debt outstanding at any time will not exceed, in the aggregate, $400 million.

Transco will initially obtain funds externally through short-term debt financing under a Credit Agreement between Transco and Bank One, N.A., as Agent ("Credit Facility"). Transco seeks authority to enter into borrowings up to a principal amount of $125 million under the Credit Facility.[7] Transco proposes to issue short-term debt under the Credit Facility, commercial paper or other forms of short-term financing from time to time during the Authorization Period. Commercial paper would be issued in established domestic or European commercial paper markets to dealers at the prevailing discount rate per annum, or at the prevailing coupon rate per annum, at the date of issuance. The maturity of short-term debt will not exceed one year. Transco seeks authority to amend the Credit Facility without further authorization provided that the maturity date does not extend beyond the Authorization Period and the aggregate principal amount of authorized borrowings does not exceed $125 million.

Transco also proposes to issue long-term debt consisting of debentures, which may be in the form of medium-term notes, convertible debt, subordinated debt, bank borrowings, other debt securities or other forms of long-term financing from time to time, through the Authorization period. Any long-term debt security would have a maturity ranging from one to 50 years. Debentures and medium-term notes would be issued under an indenture. The aggregate amount of short-term and long-term debt outstanding at any time, including debt under the Credit Facility, will not exceed $400 million.

Transco and the Corporate Manager propose to issue equity securities from time to time through the Authorization Period. Corporate Manager intends to issue common or preferred stock and Transco intends to issue other equity securities or additional interests. The aggregate amount of both Transco and Corporate Manager's equity securities will not exceed $500 million. The dividend rate on any series of preferred securities issued by the Corporate Manager will not exceed 500 basis points over the yield to maturity of U.S. Treasury security having a remaining term equal to the term of that series of preferred securities at the time of issuance. Preferred securities may have mandatory redemption dates. Transco also requests authorization to enter into interest rate hedging transactions with respect to existing indebtedness, subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. In addition, the Transco request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings, subject to certain limitations and restrictions.

Applicants state that proceeds requested under this application will be used to provide financing for general corporate purposes, including working capital requirements, and to fund construction spending to undertake large scale capital improvements to the Wisconsin transmission system necessary to maintain reliability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30850 Filed 12–4–00; 8:45 am]

BILLING CODE 8010–01–M

[5] The Class A and B structure ensures that the Member Utilities will have economic interests proportionate to the value of their contribution to the Transco while still maintaining the desired per capita voting arrangement.

[6] Neither South Beloit nor ESE will receive shares in the Corporate Manager.

[7] Transco was previously authorized to enter into borrowings of $30 million under the Credit Facility. *See Alliant Energy Corporation, et al.*, Holding Co. Act Release No. 27197 (August 3, 2000).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27281A]

Amended Notice; A Filing Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 28, 2000

A notice issued in this matter on November 22, 2000 (HCAR No. 27281), concerning a proposal by Northeast Utilities (NU), a registered holding company, and its utility subsidiaries to issue short-term debt. NU intended to, and by this amended notice does, include its nonutility subsidiaries in its request for authority to issue short-term debt.

An amended notice is given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application-declaration for complete statements of the proposed transactions summarized below. The application-declaration and any amendments are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application-declaration should submit their views in writing by December 26, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the applicant-declarants at the addresses specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 26, 2000, the application-declaration, as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–9755)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, its service company subsidiary, Northeast Utilities Service Company ("Service"), P.O. Box 270, Hartford, Connecticut 06141–0270, and its public utility and nonutility subsidiary companies (together, "Subsidiaries"), Western Massachusetts Electric Company ("WMECO") and The Quinnehtuk Company ("Quinnehtuk", both located at 174 Brush Hill Avenue, West Springfield, Massachusetts, 01090–0010; The Connecticut Light and Power Company ("CL&P"), NU Enterprises, Inc. ("NUEI"), Northeast Generation Service Company ("NGS"), Northeast Generation Company ("NGC"), Select Energy, Inc. ("Select"), Model 1 Communications, Inc. ("Mode 1"), Northeast Nuclear Energy Company ("NNECO"), The Rocky River Realty Company ("RR") and Yankee Energy System, Inc. ("YES"), all located at 107 Selden Street, Berlin, Connecticut 06037; Yankee Gas Services Company ("Yankee Gas"), Yankee Energy Financial Services Company ("Yankee Financial") and NorConn Properties, Inc. ("NorConn"), all located at 599 Research Parkway, Meriden, Connecticut 06450; Holyoke Water Power Company ("HWP"), Canal Street, Holyoke, Massachusetts 01040; Public Service Company of New Hampshire ("PSNH") and North Atlantic Energy Corporation ("NAEC"), both located at 1000 Elm Street, Manchester, New Hampshire 03015; Yankee Energy Services Company ("YESCO"), 148 Norton Street, Milldale, Connecticut 06467; HEC, Inc. ("HEC"), 24 Prime Parkway, Natick, Massachusetts 01760; and R.M. Services, Inc. ("RMS"), 639 Research Parkway, Meridan, Connecticut 06467 (together with NU and Service, "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13, 32 and 33 of the Act and rules 43, 45, 52, 54, 90 and 91 under the Act.

By order dated December 28, 1994 (HCAR No. 26207) and Supplemental Orders dated November 20, 1996 (HCAR 26612), February 11, 1997 (HCAR 26665), March 25, 1997 (HCAR 26692), May 29, 1997 (HCAR 26721), January 16, 1998 (HCAR 26816), May 13, 1999 (HCAR 27022), November 17, 1999 (HCAR 27103) and November 13, 2000 (HCAR No. 27275) (collectively, the "Prior Orders"), the Commission authorized through December 31, 2000 ("Authorization Period"), among other things, (1) NU to issue and sell unsecured short-term notes and commercial paper and to make loans to participants in the NU system money pool ("Money Pool"); (2) Service to administer the Money Pool in accordance with the authority granted in the Prior Orders; (3) WMECO, CL&P, NNECO, YES, Yankee Gas, HWP, PSNH and NAEC (together, the "Utility Subsidiaries") to issue and sell unsecured short-term notes; (4) WMECO, CL&P, Yankee Gas and PSNH to issue and sell commercial paper; and (5) the Subsidiaries to borrow from NU and each other, and to lend to each other under the Money Pool, all as provided for in the Prior Orders ("Short-Term Debt Authority").[1] The Prior Orders limited the Utility Subsidiaries' Short-Term Debt Authority, as appropriate, to any combination of notes, commercial paper or Money Pool borrowings outstanding at any one time in aggregate amounts of $400 million for NU, $250 million for WMECO, $375 million for CL&P, $75 million for NNECO, $50 million for YES, $100 million for Yankee Gas, $5 million for HWP, $225 million for PSNH and $260 million for NAEC ("Debt Limitation").[2]

The Applicants now request that the Commission modify and supersede the Prior Orders to extend the Authorization Period from December 31, 2000 to June 30, 2003 ("New Authorization Period").[3] The Applicants request further that the Short-Term Debt Authority, subject to the Debt Limitation, be extended through the New Authorization Period. The Applicants propose that short-term borrowings will take the form of notes to banks and other financial institutions ("Notes"), commercial paper ("Paper"), loans and open-account advances from

[1] Subject to a reservation of jurisdiction over all the nonutility Subsidiaries' Money Pool borrowing authority, Quinnehtuk could borrow up to $16 million outstanding at any one time, NUEI up to $100 million, NGS up to $20 million, Select up to $200 million, RR up to $30 million, Yankee Financial up to $10 million, NorConn up to $10 million, YESCO up to $30 million, HEC up to $20 million and RMS up to $10 million. Subject to the same reservation of jurisdiction, NGC and Mode 1 currently do not have authority to borrow from the Money Pool.

[2] CL&P, WMECO, PSHN and NAEC are currently subject to charter limitations and/or state laws that would prevent them from incurring short-term debt up to their Debt Limitation.

[3] On January 20, 2000 (S.E.C. File 70–9613), NU and Consolidated Edison, Inc. ("CEI") requested that the Commission approve the terms of an Agreement and Plan of Merger to merge the two companies, resulting in NU becoming a wholly owned subsidiary of CEI. Subsequently, on June 30, 2000 (S.E.C. File 70–9711) ("Financing Order"), NU and CEI requested that the Commission approve certain financing activities for the combined companies, including authority for NU system companies to issue and sell short-term debt and participate in the Money Pool. The Applicants propose that the authority granted in the Prior Orders, as modified and extended in this matter, be superseded by the authority requested in the Financing Order.

NU to the Utility Subsidiaries and Money Pool borrowings.

In particular, the Applicants propose that any Notes issued by NU or the Utility Subsidiaries will bear interest at a rate not exceeding 500 basic points over the base rate in effect from time to time of the lending institution or the base rate of a representative institution. The Notes may be secured or unsecured and will mature no later than 364 days from the date of their issuance. The Applicants further propose that Paper issued by NU, WMECO, CL&P, Yankee Gas and PSNH ("Issuers") will be issued at rates not exceeding the annual rate prevailing at the time of issuance for commercial paper of comparable qualities and maturities. The Paper will mature no later than 270 days from the date of issuance and will not be repayable prior to maturity. The Applicants state that each of the Issuers will not issue Paper unless the effective cost of the Paper will be equal to or less than that for the issuance of Notes in an amount at least equal to the principal amount of Paper proposed to be issued.

The Applicant finally propose, through the New Authorization Period, that the Subsidiaries be authorized to borrow from NU and each other, and to lend to each other under the Money Pool, as authorized in the Prior Orders and subject to the Debt Limitation.[4] Service will continue to administer the Money Pool under the same terms and conditions approved by the Commission in the Prior Orders. The Applicants state that all other terms, conditions, limitations and reporting obligations contained in the Prior Orders will apply to the proposed transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30875 Filed 12–4–00; 8:45 am]

BILLING CODE 8010–01–M

[4] Currently, an order of the Massachusetts Department of Telecommunications and Energy limits WMECO's authority to make loans under the Money Pool to CL&P and HWP and three nonutility subsidiaries. WMECO has requested that the Commission reserve jurisdiction over its authority to lend to other Money Pool participants, pending completion of the record. PSNH may not lend to the Money Pool participants under a New Hampshire Public Utilities Commission ("NHPUC") order authorizing such lending, subject to the elimination of certain write-offs associated with restructuring mandated by the NHPUC. WMECO and PSNH may borrow from the Money Pool.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43628; File No. SR–DTC–00–8]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Tax Certificate as to Beneficial Ownership

November 28, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on June 1, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates the requirement for DTC's participants to submit a "Tax Certificate as to Beneficial Ownership" form.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change eliminates the requirement that DTC participants file a "Tax Certificate as to Beneficial Ownership" form ("Tax Certificate").[4] The Tax Certificate requires participants to certify that each beneficial owner of a "foreign security"[5] credited to the participant's DTC account will be entitled to the same reduction in rate or exemption from any applicable withholding tax as would apply if the owner of such foreign security were an individual citizen of the United States who (1) was a resident in the United States and (2) who had no connection with the jurisdiction imposing the tax that would affect the rate at which the tax is to be withheld or an exemption from the tax. By submitting the Tax Certificate, participants also represent that they will withdraw from custody outside of DTC any foreign security which becomes beneficially owned by a person not entitled to such tax treatment.

DTC began requiring the Tax Certificate in 1976, in conjunction with DTC's program to make foreign securities eligible for a full range of DTC services, in order to stop its participants from depositing at DTC physical certificates evidencing foreign issues beneficially owned by customers (primarily foreign persons) not entitled to a treaty rate or to an exemption. Based on the Tax Certificate, issuers could make payment of dividends and other distributions on foreign securities at single rate without regard to the varying withholding tax rates that might otherwise apply.

DTC believes that developments in industry practices and DTC initiatives over the last twenty years make continued reliance upon the Tax Certificate inappropriate and unnecessary. Reliance on the Tax Certificate is no longer necessary because DTC has developed the TaxRelief service over DTC's Elective Dividend Service ("EDS"). Using this service, DTC can solicit certifications from participants regarding the characteristics of beneficial owners of foreign securities held in the participant's account at DTC. The certification can reflect various categories of the tax attributes of the beneficial owners, as relevant under the tax laws of the foreign jurisdictions and any relevant tax treaties, and in accordance with the extent of the participant's knowledge of the beneficial owners' characteristics.[6] In contrast, under the Tax Certificate, the participant was required to certify that every underlying beneficial owner was subject to the same withholding tax rate as would be a U.S. individual and to withdraw any foreign securities held by beneficial owners that were subject to different withholding rates (as for example might be the case for charitable organizations, pensions, and residents of certain other countries holding securities directly or indirectly in the participant's DTC account).

In addition, DTC now admits foreign participants, which may be expected to hold securities on behalf of beneficial owners not meeting the criteria set forth in the text of the Tax Certificate.[7] With regard to U.S. participants, most of which executed the Tax Certificates in the 1970s, it is doubtful that they have systems in place to prevent the prohibited deposits or to insure withdrawal after book-entry delivery for a prohibited beneficial owner. Also, book-entry only securities are now eligible for processing at DTC. In such cases, a participant may be unable to comply with the requirement that it withdraw a security in the event it becomes held by a beneficial owner not meeting the criteria.

Under current investment practices, beneficial owners of securities may now hold securities through several layers of custodians that cross country lines and even through foreign central securities depositories that have accounts at DTC. Given these practices, DTC believes that continued reliance on the Tax Certificate, in which every participant certifies that all beneficial owners have the same withholding tax status as U.S. individual residents, is no longer realistic.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in DTC's possession or control.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC proposed eliminating the Tax Certificate at meetings of the DTC Foreign Tax Legal Working Group, most recently at a meeting held on September 29, 1999, and requested comments from the participant representatives that comprise the group. No written comments were received and the members of the Foreign Tax Legal Working Group concurred with the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(4)[10] promulgated thereunder because the proposed rule change effects a change in an existing DTC service that does not adversely affect the safeguarding of securities or funds in DTC's custody or control or for which DTC is responsible and does not significantly affect DTC's respective rights and obligations or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–00–8 and should be submitted by December 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30877 Filed 12–4–00; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the Tax Certificate is set forth in Exhibit 2 of DTC's proposed rule change, which is available through the Commission's Public Reference Room or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] It has been DTC's practice to require applicants to submit the Tax Certificate prior to becoming DTC participants in order to continue as a participant. Under the proposed rule change, applicants will no longer be required to submit the certificate, and all such certificates previously submitted will be null and void.

[5] The Tax Certificate defines a "foreign security" as "any security any income from which would be subject to withholding tax imposed by any country other than the United States."

[6] For a more complete discussion of DTC's EDS service (now called TaxRelief), refer to Securities Exchange Act Release Nos. 29814 (October 11, 1991), 56 FR 52563 (October 21, 1991) and 32171 (April 19, 1993), 58 FR 22003 (April 26, 1993).

[7] See Securities Exchange Act Release Nos. 38600 (May 9, 1997), 62 FR 27086 (May 16, 1997); 40064 (June 3, 1998), 63 FR 31818 (June 10, 1998); and 41466 (May 28, 1999), 64 FR 30077 (June 4, 1999).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(4).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43634; File No. SR–DTC–00–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to DTAX Fees in Connection With Providing Internet

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on, November 2, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow DTC to modify its current fees for its domestic tax reporting service ("DTAX") in connection with providing Internet access to the DTAX information database.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise current fees for DTAX[3] in connection with providing Internet access to the DTAX information database.

DTAX is a data service containing tax information on distributions received with respect to domestic securities. It is available through DTC's PTS and CCF facilities and effective on or about December 1, 2000, will also be accessible over the Internet through DTC's website.

Annual subscription fees for DTAX accessed over the Internet will be as follows:

$4,999 Unlimited interactive inquiries and master file download of all available CUSIPs.

$999 Unlimited interactive inquiries.

Initially, DTAX will be available only to participants although usage may be expanded to include non-participant customers at a later date.[4]

The proposed rule change is consistent with the requirements Section 17A of the Act and the rules and regulations thereunder applicable to DTC because fees will be equitably allocated among users of DTC services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a description of DTAX, refer to Securities Exchange Act Release No. 41105 (February 25, 1999), 64 FR 10523 (March 4, 1999) [File No. DTC–99–02].

[4] Before expanding access to non-participants, DTC will file a proposed rule change under Section 19(b) of the Act.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder, because the proposed rule change is changing a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–15 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30878 Filed 12–04–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43631; File No. SR–DTC–00–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Creating a United States Withholding Tax Service Available Through The Depository Trust Company's Elective Dividend Service

November 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 31, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow DTC to institute a U.S. withholding tax service available to foreign participants beginning January 1, 2001, in which DTC will act as withholding agent to deduct and withhold U.S. tax on U.S.-source income paid to foreign participants.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements. [2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to institute a U.S. withholding tax service available to foreign participants beginning January 1, 2001, in which DTC will act as withholding

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

agent to deduct and withhold U.S. tax on U.S.-source income paid to foreign participants.

The U.S. Internal Revenue Code ("Code") generally requires U.S. payors such as DTC to deduct and withhold thirty percent from most payments of U.S.-source income paid to a foreign payee unless lower U.S. withholding tax rates or exemptions apply under provisions of the Code, the regulations, or applicable tax treaties.[3] In the past, DTC has complied with its withholding obligations with respect to securities dividends and other payments made by a U.S. entity to foreign participants by generally requiring each foreign participant to appoint a U.S. bank or broker/dealer to act as its withholding agent or to otherwise obtain an exemption from the IRS thereby relieving DTC of the withholding responsibility. DTC currently has seven foreign participants.[4]

Foreign central securities in obtaining U.S. tax withholding services from U.S. financial institutions and have requested that DTC undertake the U.S. tax withholding responsibility.

In its role as U.S. tax withholding agent under the proposed rule change, DTC will accept relevant instructions from the foreign participant to determine the withholding tax rates; pay dividends, interest, and other securities distributions to the participant net of appropriate taxes, if any, based on the applicable withholding rates; remit the taxes to the IRS; and report the payments on Form 1042–S. Initially, DTC will use its Elective Dividend Service to solicit and receive the instructions from foreign participants, similar to the procedures currently in place with respect to instructions received from U.S. participants that use DTC's TaxRelief service to obtain relief from foreign taxes imposed on U.S. holders of foreign securities.[5]

DTC proposes to charge the following fees for the U.S. tax withholding service:

Monthly Fee	$150	Monthly service charge assessed on each account using the service.
Transaction Fee	$1.50	The fee for each tax adjustment instruction to withhold taxes at a specific rate pool.

Foreign participants that elect not to use DTC's U.S. tax withholding service may continue the current practice of appointing a third party U.S. bank or broker-dealer to receive gross payments on their behalf and act as U.S. tax withholding agent for such payments, or otherwise obtain an exemption from the IRS that relieves DTC of the withholding obligation.

The proposed rule change is consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder applicable to DTC because it promotes the prompt and accurate clearance and settlement of securities transactions by facilitating international investment in U.S. securities. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[7] of the Act and Rule 19b–4(f)(4) promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–14 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30883 Filed 12–4–00; 8:45 am]

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[3] *See* Sections 1441, 1442 and 1443 of the Internal Revenue Code and the regulations promulgated thereunder.

[4] The seven foreign participants referenced herein are The Canadian Depository for Securities; Cavali ICLC S.A.; Clearstream Banking AG; Crest International Nominees Limited; Donaldson Luftkin & Jenrette International; Hong Kong Securities Clearing Limited; and Transatlantic Securities Company.

[5] Securities Exchange Act Release Nos. 34–42192 (December 1, 1999), 64 FR 69054 (File No. SR–DTC–99–23) (describing DTC's TaxRelief service) and 32171 (April 19, 1993), 58 FR 22003 [File No. SR–DTC–92–17] (approving the extension of DTC's EDS service to include all foreign securities).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43629; File No. SR–EMCC–00–06]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Issuing Reports Concerning Warrants With a Money Distribution

November 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on August 22, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would clarify EMCC's procedures for issuing reports concerning warrants with a money distribution.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Rule 7, Section 16, paragraph (b) of EMCC's Rules provides that where an issuer of a warrant has declared a money distribution on such warrant, EMCC will issue a "Record Date Report" ("Report") to each EMCC member with an outstanding fail deliver or fail receive obligation with respect to that warrant. The Report indicates the member's record date delivery or receive obligations with respect to the distribution. The Rules specify that the Report is to be issued on the record date.

However, EMCC believes that there is no operational reason for the Report to be produced on the record date. The proposed rule change would allow EMCC to provide this information to its members through one or more reports that will be issued after a record date is declared.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it would provide EMCC with the capability to issue informative reports to members with affected positions and therefore will facilitate the prompt and accurate clearance and settlement of emerging market securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received by EMCC. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(4)[4] thereunder because the rule change effects a change in an existing service of EMCC that does not adversely affect the safeguarding of securities or funds in the EMCC's custody or control or for which it is responsible and does not significantly affect EMCC's respective rights or obligations or persons using the service. At any time within sixty days of the proposed filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the rule proposal that are filed with the Commission, and all written communications relating to the rule proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR–EMCC–00–06 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30876 Filed 12–4–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1)

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43636; File No. SR–GSCC–00–14]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to GSCC's Fee Structure With Respect to GCF Repo Service

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] hereby given that on November 14, 2000, the Government Securities Clearing Corporation ("GSCC") field with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

After offering the GCF Repo Service free of charge for two years, GSCC is proposing to amend its fee structure to begin charging for the GCF Repo Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC introduced its GCF Repo Service in November 1998.[3] The GCF Repo Service allows GSCC's non-inter-dealer broker netting members ("dealers") to trade general collateral repurchase transactions involving U.S. Government securities throughout the day without requiring trade for trade settlement on a delivery versus payment basis. Although the Commission has authorized GSCC to charge participants for GCF Repo transactions,[4] GSCC has offered the GCF Repo Service without any charge for two years while it tailored the service to meet the needs of participants. Now that the service has succeeded in becoming an accepted means of processing general collateral repurchase transactions. GSCC has decided to begin charging participants for the service and is proposing to amend its fee structure for GCF Repo transactions. The new charges will be effective as of December 1, 2000.

The current fee schedule for GCF Repo Transactions includes (i) flat fees based on the number of legs of the repo transaction and the number of $50 million increments that make up the trade and (ii) basis point charges applied to the dollar amount of each GCF Repo Transaction.[5] The revised fee schedule drops the flat fees, retains the basis point charges, and adds a recording fee that is also applied to the dollar amount if each GCF Transactions.[6] Basis point charges will be applied to both overnight and term GCF Repo Transactions.

GSCC has determined to assess all fees for the GCF Repo Service based on the total value of a trade instead of including flat fees in the computation. This type of fee arrangement better reflects the risk of GSCC, which risk increases with the dollar amount of transactions that GSCC guarantees. Assessing fees in this manner works particularly well with GCF Repo transactions, which are settled in their full dollar amount by internal entries on the books of the clearing banks and not in $50 million increments as is required over the securities FedWire system.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to GSCC, because it involves changes to GSCC's fee structure that fairly reflect the costs incurred by GSCC in providing services to its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[8] of the Act and Rule 19b–4(f)(2)[9] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–14 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30880 Filed 12–4–00; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Securities Exchange Act Release Nos. 40623 (October 30, 1998), 63 FR 59831 [File No. SR–GSCC–98–02] (order approving GSCC to implement the GCF Repo Service on an intrabank basis) and 41303 (April 16, 1999), 64 FR 20346 [File No. SR–GSCC–99–01] (order approving GSCC to implement the second, interbank phase of the GSF Repo Service that has enabled participating dealers to engage in GCF Repo trading with participating dealers that use a different clearing bank).

[4] Securities Exchange Act Release No. 40623.

[5] As stated above, despite the existence of a fee schedule for GCF Repo transactions, GSCC has never charged for such transactions.

[6] The Revised Fee Structure, attached as Exhibit A to the GSCC filing, is available for inspection and copying in the Commission's Public Reference Section and at the principal office of GSCC.

[7] 15 U.S.C. 78q-1.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43635; File No. SR–NASD–00–68]

Self-Regulatory Organizations; The National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Transfer Customer Account(s)

November 29, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that, on November 20, 2000, the National Association of Securities Dealers, Inc. ("NASD") through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NASD. The Commission is publishing this notice to solicit comments on the propose rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow the NASD to amend Rule 11879(e) of the Uniform Practice Code to require that following the validation of a transfer instruction, the carrying member must complete the transfer of customer account(s) to the receiving member within three business days instead of four business days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 11870(e) regulates the transfer of customer accounts from one member organization to another. Such transfers are generally effected through the Automated Customer Account Transfer ("ACAT") Service, which is a system administered by the National Securities Clearing Corporation ("NSCC"). Since the inception of the ACAT Service in 1985, numerous enhancements to the system have allowed for faster and more efficient transfers of customer accounts. The NSCC enhanced the ACAT Service in 1999 to require carrying members to complete the transfer of accounts to the receiving member within three business days following the validation of a transfer instruction. The NYSE has already amended its Rule 412 to reduce the total post-validation transfer period from four days to three days.[3] The NASD currently expects its members to comply with the three-day requirement notwithstanding that Rule 11870(e) to conform to the NYSE Rule 412(b)(3) requirement that post-validation transfer occur within three business days. This will make Rule 11870(e) consistent with the current NSCC and NYSE three-day requirement, which is the industry standard.

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is designed to accomplish these ends by reducing the time frame allowed for the transfer of customer accounts from one member organization to another and to make NASD requirements conform to NYSE Rule 412(b)(3) and current NSCC requirements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

The proposed rule change has been filed by NASD as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[4] In accordance with Rule 19b–4(f)(6)(iii), prior to the filing date, NASD Regulation submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change. In that notice of its intent, NASD Regulation requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as consistent with the protection of investors and the public interest. The Commission has decided to waive that requirement. Accordingly, the proposed rule change will become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–00–68 and should be submitted by December 21, 2000.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the NASD.

[3] Securities Exchange Act Release No. 40712 (Nov. 25, 1998), 63 FR 67163 (December 4, 1998).

[4] 17 CFR 240.19b–4(f)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30879 Filed 12–4–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43630; File No. SR–OCC–00–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Stockholder Approval of Certain By-Law Amendments

November 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that, on June 20, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article XI, Section 1 to provide more explicit authorization for a procedure to obtain stockholder approval of certain By-Law amendments.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make explicit a long-standing interpretation of OCC's By-Laws, Article XI, Section 1, which provides that certain enumerated provisions of the By-Laws "may not be amended by action of the Board of Directors without the approval of the holders of all of the outstanding Common Stock of the Corporation." Each of OCC's stockholders is a participant exchange of OCC, and each is entitled to elect one "exchange director" to OCC's board of directors. It has been the practice of OCC and the exchanges to consider the affirmative vote of each exchange director to be the required approval of the stockholder that elected that exchange director. OCC is proposing to amend Article XI, Section 1 to provide more explicit authorization for this procedure. The proposed rule change was approved by the holders of all outstanding common stock of OCC by unanimous written consent on May 23, 2000, and by OCC's board of directors at a meeting held on May 23, 2000.

In order to eliminate any potential conflict between an exchange director's fiduciary duty as a director of OCC and his or her duty to the stockholder that elected the director, the rule change also allows an exchange director to choose not to have his or her vote in favor of a By-Laws amendment considered to be the approval of such stockholder. In the event that any exchange director exercises this right, the rule change provides that the By-Laws amendment in question will require the written approval of the stockholder represented by that exchange director. Such approval could then be given or withheld by the stockholder without the vote of the exchange director.

The proposed rule change is consistent with Delaware corporate law. Absent the current provision in Article XI, Section 1 of the By-Laws, no stockholder action would be required in order to amend any part of the By-Laws of OCC. Where the requirement of stockholder "approval" is imposed by the By-Laws, the By-Laws may specify the mechanism by which that approval is to be obtained.

The proposed rule change is also consistent with the purposes and requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to OCC because it assures the fair representation of OCC stockholders in the administration of OCC's affairs and does not impose any burden on competition.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[5] of the Act and Rule 19b–4(f)(3)[6] promulgated thereunder because the proposal is solely concerned with the administration of OCC and does not affect the protection of investors or the public interest and does not impose any burden on competition. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C.

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the text of OCC's proposed rule change and the attached exhibit are available at the Commission's Public Reference Section or through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–00–05 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30882 Filed 12–4–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43632; File No. SR–OCC–00–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Instructions to Pledge and Release Pledges

November 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on, September 8, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to give effect on an intraday basis to instructions to pledge long options positions and instructions to release pledges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to accelerate the time when OCC gives effect to instructions to pledge or release long options for purposes of determining margin requirements. Currently, such instructions are acted on during the nightly processing cycle for effect the next business day. As a result, positions that have been released from pledge and could be used to reduce a clearing member's margin requirement are "idled" during a business day. OCC proposes to act on pledge and release instructions on an intraday basis thereby affording clearing members more efficient use of their assets and potentially greater flexibility in their financing decisions. No effect would be given to a requested pledge to the extent that the pledge would cause the account not to be adequately margined.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to OCC because it increases the ability of clearing members to manage their financing arrangements while maintaining OCC's overall protection against default.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Exchange Act and Rule 19b–4(f)(6) promulgated thereunder because the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. In accordance with Rule 19b–4(f)(6)(iii), prior to the filing date, OCC submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change. In that notice of its intent, OCC requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as consistent with the protection of investors and the public interest. The Commission has decided to waive that requirement. Accordingly, the proposed rule change will become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–00–08 and should be submitted by December 26, 2000.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30884 Filed 12–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43625; File No. SR–Phlx–00–72]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Rules 501, 505, and 506 Regarding Allocation and Specialist Appointment, as well as Rule 748, Supervision, to Reflect Current Circumstances on the Equity, Foreign Currency Option and Option Trading Floors

November 27, 2000.

On July 25, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 501, 505, and 506 regarding Allocation and Specialist Appointment, as well as Rule 748, Supervision, to reflect current circumstances on the equity, foreign currency option and option trading floors. The proposed rule change was noticed in the **Federal Register**.[3] No comments were submitted on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

The Phlx proposes to amend Rules 501, 505, 506, and 748 to require certain information be provided to the Allocation, Evaluation and Securities Committee ("AES Committee") for approval and to require certain minimum staffing levels for specialist units. Specifically, the Exchange proposes to amend Rule 501(b)(4) to require that option and foreign currency option specialist units provide detailed information on their application to become a specialist unit regarding their back-up arrangements with regard to financial and staffing support.

The proposal would add Rule 501(c) to require that the AES Committee approve an individual before he may act as a specialist on behalf of a specialist unit. In addition, proposed Rule 501(c) would require that applications for individuals to act as specialist include any other special information that the AES Committee may require for approval. Proposed Rule 501(c) would also require that the AES Committee or its designee approve an individual before that individual may move from one specialist unit to another specialist unit.

The proposal would re-designate Rule 501(c) ad Rule 501(d), which requires that to be approved and retain their specialist privileges, option and foreign currency option specialists must maintain the clearing arrangements and capital structure stated on their application. In addition, Rule 501(d) would require that changes regarding back-up arrangements must be submitted to and approved by the AES Committee. The proposal would also amend Rule 501(d) to require option and foreign currency option specialists to maintain a minimum staffing level for each quarter turret of space on the trading floor.

The proposal would add Rule 501(e), which is similar to Rule 501(d), and would contain the same staffing requirements for equity specialists as are currently contained in Rule 501(c)(2).

The proposal would re-designate Rule 501(d) as Rule 501(f) and amend the language of 501(f) to state that once an applicant is approved by the AES Committee as a specialist unit, any material change in the capital or staff of the unit or any move by the head or assistant specialist must be reported in writing to the AES Committee within two days of the change.

The proposal would add Rule 501, Commentary .02, which states that for purposes of Rule 748 on Supervision, individuals employed or associated with the back-up specialist will be considered engaging in a business activity of the specialist unit that they are assisting. Rule 748(b) would also be amended to refer to this situation.

The proposal would amend Rule 505 to require registrant specialist units to report material changes on the respective equity, option and foreign currency option registration forms to the AES Committee.

The proposal would amend Rule 506 to codify expressly that the AES Committee may require applicant specialist units to provide other information, including system order acceptance and execution levels, and guarantees on the application for a particular equity or option. The proposal also would require that, should a specialist be allocated that equity or option, the specialist would be immediately required to notify the Exchange staff and submit for approval to the AES Committee or its designee in writing any change to the respective system acceptance and execution levels or any other material changes on that application.

The proposal also would replace references to the Department of Securities in Rules 505 and 506 with references to the Exchange staff.

II. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[4] which require, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with respect to facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[5] The proposed amendments will provide the AES Committee with additional information to make decisions regarding allocation, reallocation, and transfer of specialist books as well as the approval and retention of specialists on the trading floor.

The Commission believes that proposed amendment to Rule 501(b)(4) regarding back-up arrangements for staffing and capital will help to ensure that specialist books continue to trade on the floor in an efficient manner by requiring the specialist unit to have sufficient staff to handle the high volume in busy markets and requiring the back-up to step in to act as a specialist, when the assigned specialist is unable to do so.

The Commission believes that the proposed amendment to Rule 501(c) regarding the AES Committee's supervision of the individuals applying to be specialists on the floor will help to ensure that applicants have sufficient qualifications and experience to perform the duties of a specialist in active markets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43407 (Oct. 3, 2000), 65 FR 60711 (Oct. 12, 2000) (SR–PHLX–00–72).

[4] 15 U:S.C. 78f(b)(5).

[5] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Presently, the Phlx's Rules do not sufficiently address the issue of staffing levels; however, the Commission believes that proposed amendment to Rule 501(d) will help to ensure that there is adequate staffing coverage on the trading floors.

The Commission believes that proposed amendment to Rule 506 regarding the AES Committee's authority to require specialist units to state their system order acceptance and execution levels, and notify the AES Committee of any changes to the respective system acceptance and execution levels, will help the Exchange to accurately and effectively assess whether the specialist units have the ability to attract order flow to the Exchange.

The Commission believes that proposed amendments to Rule 501, Commentary .02 and Rule 748, will help ensure adequate supervision of specialist staff by considering back-up staff used by a specialist to be employees of the specialist unit. This will help to hold a specialist unit accountable for the acts of staff under their direction, albeit such staff is not directly employed by that specialist unit.

Lastly, the Commission believes that proposed amendments to Rule 501, 505, and 506 regarding notification will help to supply the Phlx and the AES Committee with the appropriate information to make determinations regarding the ability of a specialist to perform in a particular security in accordance with the AES Committee's review procedures.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PHLX–00–72) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30881 Filed 12–4–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconferences and meeting.

DATES: *Teleconferences:*
December 12, 2000, 1:30–3:30 p.m.
December 19, 2000, 1:30–3:30 p.m.
Meeting:
January 9, 2001, 8:30 a.m.–5 p.m.
January 10, 2001, 8:30 a.m.–5 p.m.

ADDRESSES:
Teleconferences: Social Security Administration, International Trade Center, 500 E St. SW., 8th Floor, Theatre Room, Washington, D.C. 20254.
Meeting: Holiday Inn-Capitol, 550 C Street, SW., Washington, DC, 20024, (202) 479–4000, (202) 479–4353 Fax. The hotel is located one block from the L'Enfant Metro Station.

SUPPLEMENTARY INFORMATION:
Type of meetings: These meetings are open to the public. The public is invited to participate by calling into the teleconferences or coming to the addresses listed above for the teleconferences and the meeting. The public is also invited to submit comments in writing at any time on or before January 10, 2001.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces meetings of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the teleconferences and meeting. The Panel will use the teleconferences to conduct full Panel deliberations on the implementation of the TWWIIA. The Panel will not be taking public testimony at the teleconferences. The Panel will use the meeting time to receive public testimony, hear presentations on the implementation of TWWIIA, conduct full Panel deliberation, receive briefings and conduct business.

Teleconference Agenda: The Panel will meet by teleconference commencing Tuesday, December 12, 2000 at 1:30 p.m. to 3:30 p.m. The Panel will deliberate on the implementation of TWWIIA. The public is invited to participate by coming in to the address listed above or calling in to the scheduled teleconference to listen. No public testimony will be taken.

Teleconference Agenda: The Panel will meet by teleconference commencing Tuesday, December 19, 2000 at 1:30 p.m. to 3:30 p.m. The Panel will deliberate on the implementation of TWWIIA. The public is invited to participate by coming in to the address listed above or calling in to the scheduled teleconference to listen. No public testimony will be taken.

Meeting Agenda: The Panel will meet in person commencing Tuesday, January 9, 2001 at 8:30 a.m. to 5:00 p.m. and Wednesday, January 10, 2001 at 8:30 a.m. to 5:00 p.m. Seating may be limited so persons interested in attending this meeting should contact the Panel staff by e-mail or telephone. Public testimony will be heard in person on Tuesday, January 9, 2001 and Wednesday, January 10, 2001 from 8:30 a.m. to 9:30 a.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Members of the public must schedule a timeslot in order to comment.

Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in-person or by mail, fax or email on an on-going basis to the Panel for consideration.

In the event that the public comments do not take up the scheduled time period for each day, the Panel will use that time to deliberate and conduct other Panel business.

Since teleconference ports and seating may be limited, persons interested in attending these meetings or in providing testimony at the in-person meeting should contact the Panel staff by E-mailing Kristen M. Breland, at '*kristen.m.breland@ssa.gov*' or calling (410) 966–7225.

The full agendas for the meetings follow this announcement. The agendas are also posted on the Internet at *http://www.ssa.gov/work/Resources/Toolkit/* or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore MD, 21235
- Telephone contact with Kristen Breland at (410) 966–7225
- Fax at (410) 965–9063
- E-mail to *TWWIIAPanel@ssa.gov*

Dated: November 30, 2000.

Deborah M. Morrison,

Designated Federal Officer.

Ticket to Work and Work Incentives Advisory Panel, Teleconference Meeting Agenda

Tuesday, December 12, 2000

Social Security Administration, 8th Floor Theatre Room, 500 E Street, SW, Washington, DC 20254

1:30 p.m.

Meeting Convened by Designated Federal Officer, Deborah M. Morrison, Sarah Wiggins Mitchell, Chair, Presiding

1:30–3:15 p.m.

Deliberations on the Implementation of the Ticket to Work and Work Incentives Improvement Act

3:15–3:30 p.m.

Administrative Issues

3:30 p.m.

Adjournment

Tuesday, December 19, 2000

Social Security Administration, 8th Floor Theatre Room, 500 E Street, SW, Washington, DC 20254

1:30 p.m.

Meeting Convened by Deborah M. Morrison, Designated Federal Officer, Sarah Wiggins Mitchell, Chair, Presiding

1:30–3:15 p.m.

Deliberations on the Implementation of the Ticket to Work and Work Incentives Improvement Act

3:15–3:30 p.m.

Administrative Issues

3:30 p.m.

Adjournment

Ticket to Work and Work Incentives Advisory Panel, Public Meeting Agenda

January 9 and 10, 2001

Holiday Inn-Capitol, 550 C Street, SW, Washington, DC, 20024, (202) 479–4000, (202) 479–4353 Fax. The hotel is located one block from the L'Enfant Metro Station.

Day 1—Tuesday, January 9, 2001

8:30 a.m.

Meeting Called to Order by Deborah M. Morrison, Designated Federal Officer, Welcome and Introductions—Sarah Mitchell, Chair, Presiding

8:30 to 9:30 a.m.

Public Testimony Comment Period on TWWIIA Implementation

9:30 to 10:30 a.m.

Update on TWWIIA Implementation by Office of Employment Support Programs

10:30 to 10:45 a.m.

Break

10:45 to 11:45 a.m.

Panel Deliberations on TWWIIA Implementation

11:45 a.m. to 1:15 p.m.

Lunch (On Your Own)

1:15 p.m.

Meeting Reconvenes, Sarah Mitchell, Chair, Presiding

1:15 to 3:00 p.m.

Panel Deliberations on TWWIIA Implementation

3:00 to 3:30 p.m.

Break

3:00 to 5:00 p.m.

Panel Deliberations on TWWIIA Implementation

5:00 p.m.

Adjournment

Please note: If time allotted for public comment exceeds the time required, the Panel will use the time to deliberate on TWWIIA implementation.

Day 2—Wednesday, January 10, 2001

8:30 to 9:30 a.m.

Public Testimony Comment Period on TWWIIA Implementation

9:30 to 11:45 a.m.

Briefings on TWWIIA Implementation

11:45 a.m. to 1:15 p.m.

Lunch (On Your Own)

1:15 p.m.

Meeting Reconvenes Sarah Mitchell, Chair, Presiding

1:15 to 3:30 p.m.

Panel Deliberations on TWWIIA Implementation

3:30 to 3:45 p.m.

Break

3:45 to 5:00 p.m.

Business Meeting

5:00 p.m.

Adjournment by Deborah M. Morrison, Designated Federal Officer

Please note: If time allotted for public comment exceeds the time required, the Panel will use the time to deliberate on TWWIIA implementation.

[FR Doc. 00–31015 Filed 12–4–00; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New System of Records and Proposed New Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, the Social Security Administration's Customer PIN/Password (PPW) Master File System (hereinafter referred to as the Customer PPW Master File System) and routine uses applicable to this system. The proposed Customer PPW Master File System will maintain information collected for use in connection with SSA's implementation of a personal identification number (PIN)/Password system that allows Social Security program applicants, beneficiaries and other customers to conduct business with SSA in an electronic business environment.

The proposed Customer PPW Master File System will provide for routine use disclosures in connection with our administration of the Social Security Act or as mandated by Federal law. We invite public comment on this proposal.

DATES: We filed a report of the proposed new system of records with the Chairman of the Senate Governmental Affairs Committee, the Chairman of the House Reform and Oversight Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 28, 2000. The proposed system of records, including the proposed routine uses, will become effective on January 13, 2001, unless we receive comments that would warrant the system of records not being implemented.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Peddicord, Social Insurance Policy Specialist, Social Security Administration, Room 3–C–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 966–6491.

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[6] 15 U.S.C. 78s(b)(2).
[7] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION:

1. Background and Purpose of the Proposed Customer PPW Master File System

SSA has a number of electronic initiatives underway that support the government mandate directing federal agencies to use information technology to offer more efficient and accessible service channels to the public. To support some of SSA's electronic initiatives, and after careful study and development, the Agency created the PPW infrastructure that will allow customers to conduct transactions with SSA on a routine basis through the Internet and toll free automated touch tone response telephone system. The PPW infrastructure will enable SSA to offer customers a specific suite of services that require a PIN/Password system. Using a PPW process, our customers will be able to apply for social security program benefits or view and possibly change personal record information, such as mailing address, through secure online transactions.

Customers must elect (opt-in) to use the PPW process to conduct electronic transactions with SSA. Those who opt-in may include applicants for Social Security benefits, current beneficiaries in pay or non-pay status and other customers who choose these electronic service delivery options to conduct business with SSA. Customers who initially choose to use the PPW process may later elect out (opt-out) of the system by requesting SSA to block access to their records. SSA will disable the PPW capabilities to the records of customers making this request, thus blocking any access to the record.

Further, customers who receive information soliciting their interest in using the PPW process may want to ensure that no electronic access to their records can occur. They may also elect out, and SSA will also disable the PPW capabilities to the records of these customers, thus blocking any access to the record.

Establishment of the PPW Infrastructure

The Agency first identified and developed the underlying principles to support a PPW business process. These principles intentionally focused on the framework to implement a successful PPW process in the various electronic applications SSA develops for customer service initiatives. For example, the PPW infrastructure is designed to:

- Support all direct customer service delivery by SSA,
- Maximize the level of automation involved in assigning, maintaining and using the PPW services,
- Minimize the manual intervention of SSA employees in the PPW process, and
- Limit customer information access to that which is appropriate to the means used in obtaining the password.

SSA also established authentication requirements for its electronic application and transaction processes that the PPW infrastructure is designed to support. These authentication requirements allow SSA to verify the identity of users of the Internet and automated telephone system electronic services. The process for SSA customers to obtain passwords and the corresponding authentication required to use these passwords for a determined set of electronic services share a number of principles:

- Customers must opt-in to the PPW process by indicating to SSA their interest in obtaining a password.
- A customer must have a Password Request Code (PRC) to begin the process of obtaining a password. A PRC has one purpose—to identify a customer who may wish to obtain an SSA password.
- PRCs are electronically generated and assigned to customers by SSA and will only be accessible to a limited number of SSA system employees who maintain the PPW system.
- PRCs are sent to customers through the US Mail.
- The authentication parameters for various electronic services depend on the level of sensitivity assigned to the particular application or transaction to be conducted and the customer's current relationship to the Agency.

2. Collection, Maintenance and Use of Data in the Proposed Customer PPW Master File System

The information maintained in this system of records will be collected from customers who elect to conduct transactions with SSA in an electronic business environment that requires the PPW infrastructure. The information maintained will include identifying information such as the customer's name, Social Security number (SSN) (which functions as the individual's PIN) and mailing address. The system will also maintain the customer's PRC, the password itself and the authorization level and associated data (*e.g.*, effective date of authorization).

We will also maintain transactional data elements necessary to administer and maintain the PPW infrastructure. These include access profile information such as blocked PINs, failed access data, effective date of password and other data linked to the required authentication processes for Internet and automated telephone system applications. The information on this system may also include archived transaction data and historical data.

SSA will use the data in the proposed system for management information purposes in order to effectively administer the PPW infrastructure used to conduct electronic business with SSA customers. Because we will maintain and retrieve data from the proposed system of records by the customer's SSN (which acts as the individual's PIN), the database will constitute a "system of records" under the Privacy Act.

3. Proposed Routine Use Disclosures of Data Maintained in the Proposed Customer PPW Master File System

We are proposing to establish routine uses of information that will be maintained in the proposed system as discussed below.

A. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in an SSA matter on his or her behalf involving this system of records. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the office is acting on behalf of the individual whose record is requested.

B. Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his her congressional representative to intercede in an SSA matter on his or her behalf involving this system of records. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

C. To the Department of Justice (DOJ), a court or other tribunal (either foreign or domestic), or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ, a court or other tribunal to effectively defend SSA, its components or employees in litigation involving the proposed system of records.

D. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

E. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

4. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses lettered A–D above will ensure efficient maintenance of the Customer PPW Master File System; the disclosures that would be made under routine use "E" are required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

5. Records Storage Medium and Safeguards for The Proposed Customer PPW Master File System

We will maintain information in the proposed Customer PPW Master File System in electronic form, computer data systems and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information.

Computer firewall technology, data encryption and other systems security measures will ensure that the PPW system is protected from inappropriate access. The existing SSA firewall architecture ensures that customers will be limited only to electronic transactions the Agency determines and will not be able to access SSA's other systems or data.

Security measures also include the use of access codes to enter the computer systems that will maintain the data and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Also, all buildings housing this data are accessible to authorized personnel only, with entrances and exits supervised by security guards. Contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data. SSA personnel having access to the data on these systems will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

6. Effect of the Proposed Customer PPW Master File System on the Rights of Individuals

The proposed new system will maintain the necessary data elements to effectively administer the PPW infrastructure used to conduct electronic business with SSA customers. SSA has developed a strategy that makes SSA electronic services more readily available via the Internet and automated telephone systems but with the commensurate privacy and security protections to ensure appropriate use of this new system. We will not collect any unnecessary information and will protect the personal information that does need to be gathered for the Customer PPW Master File System. There are existing security standards that protect access to and disclosure of records in this proposed new system. We will not use the information in any manner that will be adverse to the individuals to whom it pertains. Thus, we do not anticipate that the Customer PPW Master File System will have any unwarranted adverse effect on individuals.

Dated: November 28, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

60–0290

SYSTEM NAME:

Social Security Administration's Customer PIN/Password (PPW) Master File System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All SSA customers (applicants, beneficiaries and other customers) who elect to conduct transactions with SSA in an electronic business environment that requires the PPW infrastructure. This may include customers who elect to block PPW access to SSA electronic transactions by requesting SSA to disable their PPW capabilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information maintained in this system of records is collected from customers who elect to conduct transactions with SSA in an electronic business environment that requires the PPW infrastructure. The information maintained includes identifying information such as the customer's name, Social Security number (which functions as the individual's personal identification number (PIN) and mailing address. The system also maintains the customer's Password Request Code (PRC), the password itself and the authorization level and associated data (*e.g.*, effective date of authorization).

We also maintain transactional data elements necessary to administer and maintain the PPW infrastructure. These include access profile information such as blocked PINs, failed access data, effective date of password and other data linked to the required authentication processes for Internet and automated telephone system applications. The information on this system may also include archived transaction data and historical data.

SSA will also use the data in the proposed system for management information purposes in order to effectively administer the PPW infrastructure used to conduct electronic business with SSA customers. Because we will maintain and retrieve data from the proposed system of records by the customer's SSN (which acts as the individual's PIN), the database will constitute a "system of records" under the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 205(a) of the Social Security Act; 5 U.S.C. 552a(e)(10) of the Privacy Act; and the Government Paperwork Elimination Act.

PURPOSE(S):

The Customer PPW Master File System maintains information collected for use in connection with SSA's implementation of a PIN/Password system that allows Social Security program applicants, beneficiaries and other customers to conduct business with SSA in an electronic business environment. The system of records is designed to permit entry and retrieval of information associated with maintaining a PPW infrastructure that supports SSA's electronic initiatives requiring a PPW entry process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

(1) Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

(2) Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

(3) To the Department of Justice (DOJ), a court, or other tribunal (either foreign or domestic) or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) any SSA employee in his/her official capacity; or

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

(4) Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

(5) Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

STORAGE:

Data are stored in electronic and paper form.

RETRIEVABILITY:

Records in this system are indexed and retrieved by SSN (which acts as the individual's PIN).

SAFEGUARDS:

Security measures include computer firewall technology, data encryption and other systems security measures to ensure that the PPW system is protected from inappropriate access. The existing SSA firewall architecture ensures that customers are limited only to electronic transactions the Agency determines and will not be able to access SSA's other systems or data.

Security measures also include the use of access codes to enter the database and storage of the electronic records in secured areas which are accessible only to employees who require the information in performing their official duties. The paper records that result from the data base site are kept in locked cabinets or in otherwise secure areas. Contractor personnel having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. SSA personnel having access to the data on this system are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

RETENTION AND DISPOSAL:

PPW information maintained in this system is retained until notification of the death of the account holder plus seven years. Means of disposal is appropriate to storage medium (*e.g.*, deletion of individual records from the data base when appropriate or shredding of paper records that are produced from the system).

SYSTEM MANAGER AND ADDRESS:

Social Security Administration, Associate Commissioner, Office of Program Benefits, 6401 Security Boulevard, Baltimore, Maryland, 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to the system manager at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification, such as a voter registration card, credit card, etc. If an individual does not have any identification document sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her permission in providing access by telephone to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with SSA Regulations 20 CFR 401.45.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations 20 CFR 401.50.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations 20 CFR 401.65.

RECORD SOURCE CATEGORIES:

Data for the system are obtained primarily from the individuals to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 00–30836 Filed 12–4–00; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–213]

WTO Consultations Regarding Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products From Germany

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on November 13, 2000, the United States received from the European Communities (EC) a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The request relates to the countervailing duties imposed by the United States on imports of certain corrosion-resistant carbon steel flat products from Germany (U.S. Department of Commerce (Commerce) case number C–428–817). In particular, the request relates to the final results of a full sunset review in that case carried out by Commerce and published at 65 FR 47407 (August 2, 2000). The EC alleges that Commerce's finding that revocation of the countervailing duty order would be likely to lead to the continuation or recurrence of a countervailable subsidy is inconsistent with U.S. obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), particularly Articles 10, 11.9 and 21 of that agreement. Under Article 4.3 of the WTO Dispute Settlement Understanding (DSU), consultations are to take place within a period of 30 days from the date of receipt of the request, or within a period otherwise mutually agreed between the United States and the EC. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 15, 2001, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Corrosion-Resistant Steel Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508. Telephone: (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the EC

In its consultation request, the EC alleges that the 1 percent *de minimis* standard in Article 11.9 of the SCM Agreement applies to sunset reviews under Article 21.3. Thus, according to the EC, because Commerce found a likely subsidization rate of only 0.54 percent in its sunset review of the countervailing duty order on corrison-resistant steel from Germany, Commerce was required to revoke the countervailing duty order. The EC also alleges that there is no possibility that the rate of subsidization could increase, because under Commerce's "declining balance" methodology for allocating non-recurring subsidies over time, the rate of subsidization likely will continue to decline.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street,

NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–213, Corrosion-Resistant Steel Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–30886 Filed 12–4–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Partnership Council (The Council) Meeting

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Transportation (DOT) announces a meeting of the Transportation Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

Time and Place: The Council will meet on Wednesday, December 13, 2000, at 10 a.m., at the U.S. Department of Transportation, Nassif Building, room 10214, 400 Seventh Street, SW, Washington, DC 20590. The room is located on the 10th floor.

Type of Meeting: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of Contact: Jean B. Lenderking, Human Resource Leadership Division, M–13, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–8085.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is provide final report on Phase II of the DOT labor-management climate study, address next steps for integrating labor-management strategic plan with climate assessment results; and review Council accomplishments.

Public Participation

We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by December 1, 2000 in order to be considered at the December 13th meeting.

Issued in Washington, DC, on November 20, 2000.

For the Department of Transportation.

Jean Lenderking,

Labor Relations Officer.

[FR Doc. 00–30259 Filed 12–04–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Buffalo Niagara International Airport, Buffalo, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of the proposed release of approximately 21 acres of land, also referred to as 455 Cayuga Road, at Buffalo Niagara Internatinal Airport for long term lease for non-aeronautical development. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value lease payments will be paid over a 40-year term to the Airport Sponsor, and used for capital development of the airport.

Any comments the agency receives will be considered as a part of the decision.

DATES: Comments must be received on or before January 4, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lawrence Meckler, Executive Director, Niagara Frontier Transportation Authority, at the following address: Mr. Lawrence Meckler, Executive Director, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; E-Mail *Philip.Brito@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Weldell H. Ford Aviation Investment and Reform Act for the 21st Century, Pubic Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day pubic notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Garden City, New York on October 3, 2000.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 00–30923 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum percentage rate for drug testing for the period January 1, 2001, through December 31, 2001, will remain at 25 percent of covered aviation employees for random drug testing and will remain at 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold N. Schwartz, Office of Aviation Medicine, Drug Abatement Division, Program Analysis Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–5970.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2001 Random Drug and Alcohol Testing Rates

In final rules published in the **Federal Register** on February 15, and December 2, 1994 (59 FR 7380 and 62218, respectively), the FAA announced that it will set future minimum annual percentage rates for random alcohol and drug testing for aviation industry employers according to the results which the employers experience conducting random alcohol and drug testing during each calendar year. The rules set forth the formula for calculating an annual aviation industry "violation rate" for random alcohol testing and an annual aviation industry "positive rate" for random drug testing. The "violation rate" for random alcohol tests means the number of covered employees found during random tests given under 14 CFR part 121, appendix J to have an alcohol concentration of 0.04 or greater plus the number of employees who refused a random alcohol test, divided by the total reported number of employees given random alcohol tests plus the total reported number of employees who refused a random test. The "positive rate" means the number of positive results for random drug tests conducted under 14 CFR part 121, appendix I plus the number of refusals to take random drug tests, divided by the total number of random drug tests plus the number of refusals to take random drug tests. The violation rate and the positive rate are calculated using information required to be submitted to the FAA by specified aviation industry employers as part of an FAA Management Information System (MIS) and form the basis for maintaining or adjusting the minimum annual percentage rates for random alcohol and drug testing as indicated in the following paragraphs.

When the annual percentage rate for random alcohol testing is 25 percent or more, the FAA Administrator may lower the rate to 10 percent if data received under the MIS reporting requirements for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 25 percent.

When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 50 percent.

When the minimum annual percentage rate for random drug testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.

When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the MIS reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent.

There is a one year lag in the adjustment in the minimum annual percentage rates for random drug and alcohol testing because MIS data for a given calendar year is not reported to the FAA until the following calendar year. For example, MIS data for 1998 is not reported to the FAA until March 15, 1999, and any rate adjustments resulting from the 1998 data are not effective until January 1, 2000, following publication by the FAA of a notice in the **Federal Register.**

The minimum annual percentage rate for random alcohol testing was 10 percent for calendar year 2000. In this notice, the FAA announces that it has determined that the violation rate for calendar year 1999 is less than one percent positive, at approximately 0.42 percent. Since the data received for that calendar year do not indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the minimum annual percentage rate for random alcohol testing for aviation industry employers for calendar year 2001 will remain at 10 percent.

The minimum annual percentage rate for random drug testing was 25 percent in calendar year 2000. Therefore, the FAA is also announcing that it has determined that the positive rate for calendar year 1999 is less than 1 percent, at approximately 0.65 percent, and that the minimum annual percentage rate for random drug testing for aviation industry employers for calendar year 2001 will remain at 25 percent.

Issued in Washington, DC on November 29, 2000.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 00–30922 Filed 11–30–00; 3:24 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–65]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from special requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 26, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the

above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91 of Part 11.

Issued in Washington, DC, on November 30, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemptions

Docket No.: FAA–2000–8218

Petitioner: Bombardier Aerospace, Inc.

Section of 14 CFR Affected: 14 CFR 25.1435(b)(1)

Description of Relief Sought: To permit Bombardier Aerospace, Inc. an exemption from the 14 CFR 25.1435(b)(1) requirements for static testing of a complete hydraulic system to 1.5 times the design operation pressure for the CL–600–2D24 (Regional Jet CRF–900) airplane.

[FR Doc. 00–30924 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jackson County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed I–94 Jackson Urban Area Study between M–60 and Sargent Road in Jackson County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Programs and Environmental Engineer, Federal Highway Administration, 315 W. Allegan Street, Room 207, Lansing, Michigan 48933, Telephone (517) 377–1880 or Mr. Ron Kinney, Manager, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, PO Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2621.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with Michigan Department of Transportation (MDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to improve I–94 in the Jackson Urban Area. The proposed study location is approximately 9 miles of the I–94 corridor commencing at the M–60/I–94BL interchange, then proceeding easterly to the Sargent Road interchange. Various rehabilitations and maintenance of this section of I–94 have occurred since its initial construction in 1949 to improve the ride quality and operational characteristics of the route, but it still remains suboptimal by modern day freeway standards. Alternatives under consideration include (1) do-nothing, and (2) widen from two lanes in each direction to three lanes in each direction. The proposed work will include interchange reconstruction.

Scoping documents describing the proposed action and soliciting comments will be sent to appropriate Federal, state, local agencies, private organizations, and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held as well as a formal public hearing. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

Comments and suggestions are invited from all interested parties to insure that the full range of issues related to this proposed action are addressed and all significant issues are identified. Questions or comments concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 28, 2000.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 00–30920 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Rankin County, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed extension of Airport Parkway from Old Brandon Road south to I–20 along Highway 475 in Rankin County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Cecil Vick, Environmental Coordinator, Federal Highway Administration, 666 North Street, Suite 105, Jackson, MS 39202–3199, Telephone: (601) 965–4217. Contacts at the State and local level, respectively are: Mr. Claiborne Barnwell, Environmental/Location Division Engineer, Mississippi Department of Transportation, P.O. Box 1850, Jackson, MS, 39215–1850, telephone: (601) 359–7920; and Mr. William R. May, District Engineer, Mississippi Department of Transportation, 7759 Highway 80 W., Newton, MS, 39345, telephone (601) 683–3341.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Mississippi Department of Transportation (MDOT), will prepare an Environmental Impact Statement (EIS) for the proposed extension of Airport Parkway from Old Brandon Road south to I–20 along Highway 475 in Rankin County, Mississippi.

The project as proposed would be a facility with full access controls. The study area for the proposed project is bounded by Old Brandon Road to the north, Interstate 20 to the south, and extends a sufficient distance beyond these boundaries to allow for alternative concepts. The boundaries will extend to the vicinity of Fox Hall Drive on the west and approximately 300 meters (1,000 feet) east of the existing roundabout at the airport. Alternatives under consideration include (1) taking no action and (2) build alternative.

A scoping process will be initiated that involves all appropriate federal and state agencies. This will continue throughout the study as an ongoing process. A formal scoping meeting will be held for the project. Coordination will be continued with federal, state, and local agencies, and with private organizations and citizens who express or are known to have interest in this proposal. A formal public involvement process will be initiated, and public meetings will be held as appropriate. The draft EIS will be available for public and agency review and comment prior to the official public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MDOT at the addresses provided above.

Andrew H. Hughes,

Division Administrator, Jackson, Mississippi.

[FR Doc. 00–30839 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33960]

The Central Illinois Railroad Company—Lease and Operation Exemption—Lines of The Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL

The Central Illinois Railroad Company, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF) approximately 5.9 miles of main line track and approximately 12.47 miles of sidetrack, collectively referred to as the Lumber District and Illinois Northern lines or portions thereof, in the vicinity of BNSF's Western Avenue Yard in Chicago, Cook County, IL.[1]

The transaction was scheduled to be consummated no earlier than November 23, 2000, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33960, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Jr., Esq., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

[1] On November 20, 2000, a petition to stay the effective date of the exemption was filed by Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board. The petition for stay was denied in *The Central Illinois Railroad Company—Lease and Operation Exemption—Lines of The Burlington Northern and Santo Fe Roilway Company at Chicogo, Cook County, IL*, STB Finance Docket No. 33960 (STB served Nov. 22, 2000).

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30655 Filed 12–4–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 212X)]

Norfolk Southern Railway Company—Discontinuance Exemption—in Hudson County, NJ [1]

On November 14, 2000, Norfolk Southern Railway Company (NS) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 to discontinue service over approximately 3.84 miles of the Weehawken Branch [2] and approximately 6.95 miles of the River Line [3] in Hudson County, NJ. The lines traverse U.S. Postal Zip Codes 07302, 07303, 07306, 07407, and 07087.

NS acquired the right to operate over these lines under the North Jersey Shared Assets Areas Operating Agreement approved by the Board in *CSX Corp.—Control and Operating Leases/Agreements—Conrail Inc.*, STB Finance Docket No. 33388 (Decision No. 89) (STB served July 23, 1998), *clarified and modified* (Decision No. 96) (STB served Oct. 19, 1998), *petitions for review pending sub nom. Erie Niagara Rail Steering Committee* v. *STB*, Nos. 98–4285, *et al.* (2d Cir. filed July 31, 1998).[4] Pursuant to that agreement, NS does not conduct freight operations over the River Line. NS publishes rates and maintains stations for the River Line's shippers,[5] and Conrail conducts the actual train operations in NS's name.

The lines do not contain federally granted rights-of-way. A large part of the real estate and track is owned by the New Jersey Transit Corporation (NJT), and the remainder is owned by Conrail.[6] Any documentation in NS's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 3, 2001.[7]

[1] The petition is related to two abandonment applications simultaneously filed by Conrail under section 308 of the Regional Rail Reorganization Act of 1973 (3–R Act), 45 U.S.C. 748, a provision added to the 3–R Act by the Northeast Rail Service Act of 1981 (Pub. L. No. 97–35). *See Conrail—Abandonment of the Weehawken Branch—in Hudson County, NJ*, STB Docket No. AB–167 (Sub-No. 766N); and *Conrail—Abandonment of the River Line—in Hudson County, NJ*, STB Docket No. AB–167 (Sub-No. 1067N). Conrail has requested that the applications be considered together because the Weehawken Branch and the River Line are operated as a single line due to changes made to track alignment and operations. Where appropriate, the two lines will be referenced as the River Line.

Notices of Insufficient Revenues were timely filed on October 31, 1983, and October 31, 1985, respectively. The Board must grant the applications within 90 days after their filing date (*i.e.*, by February 12, 2001) unless offers of financial assistance (OFA) are filed within the 90-day period. *See* sections 308(c) and (d).

[2] The 3.84-mile segment extends from the point of switch in Jersey City (approximately MP 0.00), to the southerly R.O.W. line of Baldwin Avenue, in Weehawken (approximately MP 2.84), and includes the former DL&W Railroad Lead to the Hoboken Freight Yard in Jersey City.

[3] The 6.95-mile segment is divided into two parts: (1) from the connection to the Passaic and Harismus Branch at CP "Waldo" in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken (approximately MP 4.7), including the River Yard; and (2) from (a) the south side of Clifton Road in Weehawken (approximately MP 0.00) to the northwest side of Tonnelle Avenue (excluding the portion of line, associated track, and underlying right-of-way necessary to retain access and continue service to Durkee Foods) in North Bergen (approximately MP 1.53); (b) the National Docks Secondary in Jersey City from its connection with the River Line at CP "Nave" to the east side of Newark Avenue (approximately 1,350 feet); and (c) the Weehawken Branch (Chicken Yard) in Weehawken, from its connection with the River Line on the east side of Willow Avenue to the end of the track (approximately 2,450 feet).

[4] CSX Transportation, Inc., also acquired the same rights with respect to the River Line and filed a similar petition for exemption on November 20, 2000. *See CSX Transportation, Inc.—Discontinuance Exemption—in Hudson County, NJ*, STB Docket No. AB–55 (Sub-No. 584X).

[5] Two shippers, Cognis Chemical Company and Dykes Lumber Company, are being served.

[6] The River Line's real estate and track was transferred to NJT on or about October 24, 1995, pursuant to the Freight Relocation and River Line Acquisition Agreement that Conrail and NJT entered into on June 8, 1989. Conrail retained a free and exclusive easement for the operation and maintenance of rail freight service.

NJT will reconstruct the River Line and dedicate it to light rail commuter passenger service. The River Line's freight operations will be transferred to Conrail's Northern Branch, which will be reconstructed to accommodate through train service and to remove "at-grade" highway and street crossings. Conrail will not terminate freight operations or consummate the abandonment of the River Line, and NS will not exercise the discontinuance authority, until the Northern Branch has been reconstructed.

[7] NS has requested that its petition for exemption be granted with an effective date of February 12, 2001, to coincide with the anticipated effectiveness of the two related Conrail abandonment applications. This request will be considered by the Board when the petition for exemption is addressed.

Any OFA with respect to the lines should be filed in the pertinent Conrail application proceeding under section 308(d) of the 3–R Act and 49 CFR 1152.27. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 212X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510. Replies to the NS petition are due on or before December 26, 2000.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

An environmental assessment (or impact statement) is normally made available in abandonment or discontinuance proceedings, but under 49 CFR 1105.6(d), the Board may modify the environmental requirements in appropriate circumstances. The requirements are being modified here. NS has never conducted operations over the line apart from those Conrail conducted on NS's behalf. Granting a carrier authority to discontinue service it has never provided appears to have no environmental impact. The requirement that the carrier submit a report and that the Board prepare an analysis are therefore superfluous.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: November 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30941 Filed 12–4–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Grant Program for Research and Development in the Field of Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice; correction.

SUMMARY: On November 20, 2000, the Bureau of Transportation Statistics (BTS) published a **Federal Register** notice soliciting applications for its Transportation Statistics Research Grants program. The due date for applications listed in that notice was incorrect and this document provides the correct date.

DATES: For BTS to consider your application, we must receive it by January 19, 2001, at 5 p.m. Eastern Standard Time. Applications received after January 19, 2001, will be held for the next cycle, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

ADDRESSES: You must send six copies of the application package to the BTS Grants Program, Room 3430, Bureau of Transportation Statistics, US Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Promod Chandhok, Office of Statistical Programs and Services, Bureau of Transportation Statistics, Room 3430, 400 Seventh Street, SW., Washington, DC 20590; phone (202) 366–2158; fax: (202) 366–3640; e-mail: promod.chandhok@bts.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 2000, 65 FR 69803, the Bureau published a notice announcing its Transportation Statistics Research Grants program and describing who is eligible to apply, the application process, and how grants will be awarded. However, the notice was published with an incorrect application due date listed in the **DATES** section. The correct due date is January 19, 2001.

David Banks,

Assistant Director.

[FR Doc. 00–30869 Filed 12–4–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Monetary Fund Advisory Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 610 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the Secretary of the Treasury is required to establish an International Monetary Fund Advisory Committee (the "Committee") to advise the Secretary of the IMF policy.

DATES: The fifth meeting of the Committee will be held on December 18, 2000, beginning at 2 p.m. in the Diplomatic Room located on the third floor of the main Department of the Treasury building, 1500 Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, (Room 4305, NY Ave. Bldg.), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, D.C., 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The IMF Advisory Committee will continue discussions regarding the reforms of the IMF called for by Congress in various pieces of legislation. The reforms may be broadly categorized in the areas of trade and market liberalization, social policy, core labor standards, the environment, good governance, and transparency.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. If you wish to attend please FAX your full name, date of birth and social security number to the Designated Federal Official no later than 4 p.m., December 14th, for clearance into the Treasury building. Members of the public who have provided such information, must enter the main Treasury building at the entrance on 15th Street between F and G Streets, and must provide a photo ID at the entrance to be admitted into the building.

Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Committee in advance of the fourth meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than December 12, 2000.

Dated: November 28, 2000.

William McFadden,

Designated Federal Official.

[FR Doc. 00–30845 Filed 12–4–00; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register

Vol. 65, No. 234

Tuesday, December 5, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM98-4-000; Order No. 642]

Revised Filing Requirements Under Part 33 of the Commission's Regulations

Correction

In rule document 00–29676 beginning on page 70984 in the issue of Tuesday, November 28, 2000, make the following corrections:

§33.3 [Corrected]

1. On page 71016, in the third column, §33.3(c)*(5)* is corrected; "*(5)*" should read "(5)".

2. On the same page, in the same column, §33.3 (c)*(6)* is corrected; " *(6)* " should read "(6)".

[FR Doc. C0–29676 Filed 12–4–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 99F-1912]

Irradiation in the Production, Processing, and Handling of Food

Correction

In rule document 00–30453 beginning on page 71056 in the issue of Wednesday, November 29, 2000, make the following correction:

On page 71056, in the third column "**ER29NO00.001**" should read

$$RE = \frac{Dup}{\mu}$$

[FR Doc. C0–30453 Filed 12–4–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF INTERIOR

Bureau of Land Management

[OR-957-00-1420-BJ: G01-0033]

Filing of Plats of Survey: Oregon/Washington

Correction

In notice document 00–29480 beginning on page 69572 in the issue of Friday, November 17, 2000, make the following corrections:

1. On page 69573, in the first column, under "*Washington* ", "T. 27 S., R. 34 E., accepted February 4, 1999 " should read "T. 27 N., R. 34 E., accepted February 4, 1999 ".

2. On the same page, in the same column, in the same location "T. 22 S., R. 11 W., accepted October 5, 1999 " should read "T. 22 N., R. 11 W., accepted October 5, 1999 ".

3. On the same page, in the same column, in the same location "T. 33 S., R. 17 E., accepted October 20, 2000 " should read "T. 33 N., R. 17 E., accepted October 20, 2000 ".

[FR Doc. C0–29480 Filed 12–4–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Reveiw; comment request

Correction

In notice document 00–29620 appearing on page 69793 in the issue of Monday, November 20, 2000, make the following correction:

In the second column, nine paragraphs from the bottom of the page, "OMB Number: 1200-0153 " should read "OMB Number: 1220-0153 ".

[FR Doc. C0–29620 Filed 12–4–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES and EXCHANGE COMMISSION

[Release No. 34–43583; File No. SR–NASD–00–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc., Relating to the Removal of Duplicative Provisions

Correction

In notice document 00–30136 beginning on page 70751 in the issue of Monday, November 27, 2000, make the following correction:

On page 70756, in the second column, in the first complete paragraph, "December 18, 2001 ", should read "December 18, 2000 ".

[FR Doc. C0–30136 Filed 12–4–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Departmental Offices; Privacy Act of 1974; Implementation

Correction

In rule document 00–29673 beginning on page 69865 in the issue of Tuesday, November 21, 2000, make the following correction:

§1.36 [Corrected]

On page 69875, in the first column, in the table under "(v) Bureau of Engraving and Printing:", "BEP .004" should read "BEP .044".

[FR Doc. C0–29673 Filed 12–4–00; 8:45 am]

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Federal Register

Tuesday,
December 5, 2000

Part II

Securities and Exchange Commission

17 CFR Parts 210 and 240
Revision of the Commission's Auditor Independence Requirements; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release Nos. 33–7919; 34–43602; 35–27279; IC–24744; IA–1911; FR–56; File No. S7–13–00]

RIN 3235–AH91

Revision of the Commission's Auditor Independence Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is adopting rule amendments regarding auditor independence. The amendments modernize the Commission's rules for determining whether an auditor is independent in light of investments by auditors or their family members in audit clients, employment relationships between auditors or their family members and audit clients, and the scope of services provided by audit firms to their audit clients. The amendments, among other things, significantly reduce the number of audit firm employees and their family members whose investments in audit clients are attributed to the auditor for purposes of determining the auditor's independence. The amendments shrink the circle of family and former firm personnel whose employment impairs an auditor's independence. They also identify certain non-audit services that, if provided by an auditor to public company audit clients, impair the auditor's independence. The scope of services provisions do not extend to services provided to non-audit clients. The final rules provide accounting firms with a limited exception from being deemed not independent for certain inadvertent independence impairments if they have quality controls and satisfy other conditions. Finally, the amendments require most public companies to disclose in their annual proxy statements certain information related to, among other things, the non-audit services provided by their auditor during the most recent fiscal year.

DATES: *Effective date:* February 5, 2001.

Compliance dates: Transition Dates: Until August 5, 2002, providing to an audit client the non-audit services set forth in § 210.2–01(c)(4)(iii) (appraisal or valuation services or fairness opinions) and § 210.2–01(c)(4)(v) (internal audit services) will not impair an accountant's independence with respect to the audit client if performing those services did not impair the accountant's independence under pre-existing requirements of the SEC, the Independence Standards Board, or the accounting profession in the United States. Until May 7, 2001, having the financial interests set forth in § 210.2–01(c)(1)(ii) or the employment relationships set forth in § 210.2–01(c)(2) will not impair an accountant's independence with respect to the audit client if having those financial interests or employment relationships did not impair the accountant's independence under pre-existing requirements of the SEC, the Independence Standards Board, or the accounting profession in the United States. Until December 31, 2002, § 210.2–01(d)(4) shall not apply to offices of the accounting firm located outside of the United States. Registrants must comply with the new proxy and information statement disclosure requirements for all proxy and information statements filed with the Commission after the effective date.

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant, or Sam Burke, Assistant Chief Accountant, Office of the Chief Accountant, at (202) 942–4400, or with respect to questions about investment companies, John S. Capone, Chief Accountant, Division of Investment Management, at (202) 942–0590, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to Rule 2–01 of Regulation S–X [1] and Item 9 of Schedule 14A [2] under the Securities Exchange Act of 1934 (the "Exchange Act").[3]

I. Executive Summary

We are adopting amendments to our current rules regarding auditor independence.[4] The final rules advance our important policy goal of protecting the millions of people who invest their savings in our securities markets in reliance on financial statements that are prepared by public companies and other issuers and that, as required by Congress, are audited by independent auditors.[5] We believe the final rules strike a reasonable balance among commenters' differing views about the proposals while achieving our important public policy goals.[6]

Independent auditors have an important public trust.[7] Investors must be able to rely on issuers' financial statements.[8] It is the auditor's opinion that furnishes investors with critical assurance that the financial statements have been subjected to a rigorous examination by an objective, impartial, and skilled professional, and that investors, therefore, can rely on them. If investors do not believe that an auditor is independent of a company, they will derive little confidence from the auditor's opinion and will be far less likely to invest in that public company's securities.[9]

One of our missions is to protect the reliability and integrity of the financial statements of public companies. To do so, and to promote investor confidence, we must ensure that our auditor independence requirements remain relevant, effective, and fair in light of significant changes in the profession, structural reorganizations of accounting firms, and demographic changes in society.[10] There have been important developments in each of these areas since we last amended our auditor independence requirements in 1983.[11]

More and more individual investors participate in our markets, either directly or through mutual funds, pension plans, and retirement plans. Nearly half of all American households are invested in the stock market.[12] As technology has advanced, investors increasingly have direct access to financial information, and they act decisively upon relatively small changes in an issuer's financial results. These and other market changes highlight the importance to the market and to investor confidence of financial information that has been audited by an auditor whose only master is the investing public.[13]

As discussed in the Proposing Release and below, the accounting industry has been transformed by significant changes in the structure of the largest firms. Accounting firms have woven an increasingly complex web of business and financial relationships with their audit clients. The nature of the non-audit services that accounting firms provide to their audit clients has changed, and the revenues from these services have dramatically increased. In addition, there is more mobility of employees and an increase in dual-career families.

We proposed changes to our auditor independence requirements in response to these developments. As more fully discussed below, we are adopting rules, modified in response to almost 3,000 comment letters we received on our proposal, written and oral testimony from four days of public hearings (about 35 hours of testimony from almost 100 witnesses), academic studies, surveys and other professional literature.

The Independence Standard. Independence generally is understood to refer to a mental state of objectivity and lack of bias.[14] The amendments retain this understanding of independence and provide a standard for ascertaining whether the auditor has the requisite state of mind. The first prong of the standard is direct evidence of the auditor's mental state: independence "in fact." The second prong recognizes that generally mental states can be assessed only through observation of external facts; it thus provides that an auditor is not independent if a reasonable investor, with knowledge of all relevant facts and circumstances, would conclude that the auditor is not capable of exercising objective and impartial judgment. The proposed amendments to Rule 2–01 included in the rule four principles for determining whether an accountant is independent of its audit client. While some commenters supported our inclusion of the four principles in the rule,[15] others expressed concerns about the generality of these principles and raised questions concerning their application to particular circumstances.[16] In response, we have included the four principles instead in a Preliminary Note to Rule 2–01 as factors that the Commission will consider, in the first instance, when making independence determinations in accordance with the general independence standard in Rule 2–01(b).

The amendments identify certain relationships that render an accountant not independent of an audit client under the standard in Rule 2–01(b). The relationships addressed include, among others, financial, employment, and business relationships between auditors and audit clients, and relationships between auditors and audit clients where the auditors provide certain non-audit services to their audit clients.

Financial and Employment Relationships. Current requirements attribute to an auditor ownership of shares held by every partner in the auditor's firm, certain managerial employees, and their families. We believe that independence will be protected and the rules will be more workable by focusing on those persons who can influence the audit, instead of all partners in an accounting firm. Accordingly, we proposed to narrow significantly the application of these rules. Commenters generally supported our efforts to modernize the current rules because they restrict investment and employment opportunities available to firm personnel and their families in ways that may no longer be relevant or necessary for safeguarding auditor independence and investor confidence.[17] Not all commenters agreed with all aspects of the proposals.[18] We have modified the proposal in some respects, but the final rule, like the proposal, shrinks significantly the circle of firm personnel whose investments are imputed to the auditor. The rule also shrinks the circle of family members of auditors and former firm personnel whose employment with an audit client impairs the auditor's independence.

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[1] 17 CFR 210.2–01.

[2] 17 CFR 240.14a–101.

[3] 15 U.S.C. § 78a *et seq.*

[4] The amendments were proposed in Securities Act Release No. 7870 (June 30, 2000) (the "Proposing Release") [65 FR 43148].

[5] This release uses the terms "independent auditor," "auditor," "independent public accountant," "accountant," and "independent accountant" interchangeably to refer to any independent certified or independent public accountant who performs an audit of or reviews a public company's financial statements or whose report or opinion is filed with the Commission in accordance with the federal securities laws or the Commission's regulations.

[6] In addition to soliciting comments in the Proposing Release, we held four days of public hearings (July 26, Sept. 13, Sept. 20, and Sept. 21). The public comments we received can be reviewed in our Public Reference Room at 450 Fifth Street, N.W., Washington, D.C., 20549, in File No. S7–13–00. Public comments submitted by electronic mail are on our website, www.sec.gov. The written testimony and transcripts from each of our public hearings (July 26, Sept. 13, Sept. 20, and Sept. 21) are available on our website. For purposes of this release, date references following the names of participants at our public hearings indicate the hearing date for which the participant submitted written testimony and/or appeared as a witness.

[7] The profession's principles of professional conduct state, "Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism." American Institute of Certified Public Accountants ("AICPA") Professional Standards: Code of Professional Conduct ("AICPA Code of Professional Conduct"), ET § 53.

[8] Public companies and other public issuers and entities registered with us must have their annual financial statements audited by independent public accountants. *See, e.g.*, Items 25 and 26 of Schedule A to the Securities Act of 1933 (the "1933 Act"), 15 U.S.C. § 77aa(25) and (26), that expressly require that financial statements be audited by independent public or certified accountants. *See also infra* note 34.

[9] *See, e.g.*, Testimony of John Whitehead, retired Chairman, Goldman Sachs & Co. (Sept. 13, 2000) ("Financial statements are at the very heart of our capital markets. They're the basis for analyzing investments. Investors have every right to be able to depend absolutely on the integrity of the financial statements that are available to them, and if that integrity in any way falls under suspicion, then the capital markets will surely suffer if investors feel they cannot rely absolutely on the integrity of those financial statements.").

[10] As stated by Baxter Rice, President of the California Board of Accountancy, "[i]n this ever-revolving economy and business environment, it's important that we go back and take a look at these regulations and see whether they are really applicable, and whether or not what we do is going to in any way interfere with or is going to enhance auditor independence, including the public perception of auditor independence." Testimony of Baxter Rice (Sept. 13, 2000).

[11] Financial Reporting Release ("FRR") No. 10 (Feb. 25, 1983).

[12] In 1999, an estimated 48.2%, or 49.2 million, U.S. households owned equities either in mutual funds or individually, up from 19% in 1983. Investment Company Institute and Securities Industry Association, "Bull Market, Other Developments Fuel Growth in Equity Ownership" (available at www.sia.com/html/pr834.html.).

[13] *See, e.g.*, Testimony of Senator Howard Metzenbaum (Ret.), Chairman, Consumer Federation of America (Sept. 20, 2000) ("Our nation's current prosperity and future financial security are tied up as never before in our financial markets. For that reason, whether they know it or not, Americans are enormously dependent on independent auditors, both to * * * ensure the reliability of the information they use to make individual investment decisions and to ensure the efficiency of the marketplace in assigning value to stocks."); Testimony of Ralph Whitworth, Managing Member, Relational Investors LLC (Sept. 13, 2000) ("[A]uditor independence goes to the very essence of our capital markets, and it's linked inextricably to the efficiencies of our capitalist system.").

[14] See discussion In Proposing Release, Section II.B.

[15] *See, e.g.*, Written Testimony of Dennis Paul Spackman, Chairman, National Association of State Boards of Accountancy (Sept. 13, 2000) (The four principles "set a sensible baseline that is simply stated, easy to understand, useable, and square on the mark. They also serve as an exceptional foundation to the other elements of the proposed revision. * * * [T]hey can serve as a bright beacon giving much needed guidance to members of the profession * * *"); Written Testimony of Robert L. Ryan, Chief Financial Officer, Medtronic, inc. (Sept. 20, 2000); Written Testimony of John C. Bogle, Member, Independence Standards Board (July 26, 2000).

[16] *See, e.g.*, Letter of Arthur Andersen LLP (Sept. 25, 2000) ("Arthur Andersen Letter"); Written Testimony of the New York Society of Certified Public Accountants (Sept. 13, 2000).

[17] *See, e.g.*, Letter of Ernst & Young LLP (Sept. 25, 2000) ("Ernst & Young Letter"); Written Testimony of James]. Schiro, Chief Executive Officer PricewaterhouseCoopers (Sept. 20, 2000); Written Testimony of the New York State Society of Certified Public Accountants (Sept. 13, 2000); Written Testimony of James E. Copeland, Chief Executiva Officer, Deloitte & Touche LLP (Sept. 20, 2000); Arthur Andersen Letter.

[18] Some commenters, for example, believed that the amendments went too far. *See, e.g.*, Written Testimony of J. Michael Cook, former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000) (supporting proposed rule changes in this area but stating that no partner in an accounting firm should have a financial interest in any of the firm's audit clients); Written Testimony of Ray]. Groves, former Chairman and CEO, Ernst & Young (July 26, 2000) (agreeing with proposals but stating preference to retain current proscription of direct investment in an audit client by all partners, principals, and shareholders of an accounting firm); Testimony of Paul B.W. Miller, Professor, University of Colorado at Colorado Springs (July 28, 2000) ("I want to direct my attention * * * to the ownership [provisions], and my language is plain. It simply says don't do it"); Written Testimony of Ronald Nielsen and Kathleen Chapman, Iowa Accountancy Examining Board (Sept. 20, 2000). While supporting the goals of the modernization, others provided suggestions to address their concerns about possible unintended consequences. *See, e.g.*, Ernst & Young Letter; Letter of PricewaterhouseCoopers LLP (Sept. 25, 2000) ("PricewaterhouseCoopers Letter").

Non-Audit Services. As we discuss below,[19] there has been growing concern on the part of the Commission and users of financial statements about the effects on independence when auditors provide both audit and non-audit services to their audit clients. Dramatic changes in the accounting profession and the types of services that auditors are providing to their audit clients, as well as increases in the absolute and relative size of the fees charged for non-audit services, have exacerbated these concerns. As the Panel on Audit Effectiveness (the "O'Malley Panel") recently recognized, "The potential effect of non-audit services on auditor objectivity has long been an area of concern. That concern has been compounded in recent years by significant increases in the amounts of non-audit services provided by audit firms."[20]

We considered a full range of alternatives to address these concerns. Our proposed amendments identified certain non-audit services that, when rendered to an audit client, impair auditor independence. The proposed restrictions on non-audit services generated more comments than any other aspect of the proposals. Some commenters agreed with our proposals.[21] Others believed that the proposals were not restrictive enough and recommended a total ban on all non-audit services provided by auditors to their audit clients.[22] Still other commenters opposed any Commission rule on non-audit services.[23] After careful consideration of the arguments on all sides, and for the reasons discussed below, we have determined not to adopt a total ban on non-audit services, despite the recommendations of some, and instead to identify certain non-audit services that, if provided to an audit client, render the auditor not independent of the audit client.

In response to public comments,[24] in several instances we have conformed the restrictions to the formulations set forth in the professional literature or otherwise modified the final rule to better describe, and in some cases narrow, the types of services restricted. For example, the final rule does not ban all valuation and appraisal services; its restrictions apply only where it is reasonably likely that the results of any valuation or appraisal, individually or in the aggregate, would be material to the financial statements, or where the results will be audited by the accountant. The rule also provides several exceptions from the restrictions, such as when the valuation is performed in the context of certain tax services, or the valuation is for non-financial purposes and the results of the valuation do not affect the financial statements. These changes are consistent with our approach to adopt only those regulations that we believe are necessary to preserve investor confidence in the independence of auditors and the financial statements they audit.

We recognize that not all non-audit services pose the same risk to independence. Accordingly, under the final rule, accountants will continue to be able to provide a wide variety of non-audit services to their audit clients. In addition, they of course will be able to provide any non-audit service to non-audit clients.

Quality Controls. The quality controls of accounting firms play a significant role in helping to detect and prevent auditor independence problems. The final rule recognizes this role by providing accounting firms a limited exception from being deemed not independent for certain independence impairments that are cured promptly after discovery, provided that the firm has certain quality controls in place.

Disclosure of Non-Audit Services. Finally, we continue to believe that disclosures that shed light on the independence of public companies' auditors assist investors in making investment and voting decisions. Accordingly, we proposed and are adopting requirements for disclosures that we believe will be useful to investors.[25] In response to commenters' concerns about the breadth of the proposed disclosure requirements,[26] however, we have modified them in the final rule.

[19] *See infra* Section III.C; *see also* Proposing Release, Section II.C.

[20] *The Panel on Audit Effectiveness: Report and Recommendations* (the "O'Malley Panel Report"), at ¶ 5.6 (Aug. 31, 2000). The Chairman of the Public Oversight Board ("POB") similarly warned about the "uncontrolled expansion" of management advisory services to audit clients. Letter from John J. McCloy, Chairman, POB (former Chairman of the Board of Chase Manhattan Bank and former President of The World Bank), to Walter E. Hanson, Chairman, Executive Committee, SEC Practice Section ("SECPS") (Mar. 9, 1979).

[21] *See, e.g.*, Testimony of Robert E. Denham, Member, Independence Standards Board ("ISB") (July 26, 2000) ("I think [the proposals] represent a very thoughtful, rational, coherent set of proposals."); Letter of Michael McDaniel (Aug. 14, 2000) (supporting SEC proposal and disagreeing with a Form Letter from the AICPA to its members ("AICPA Form Letter") urging them to write to the SEC to oppose the scope of services proposal); Letter of Randie Burrell, CPA (Aug. 14, 2000) (same); Letter of Leland D. O'Neal, CPA (Aug. 15, 2000) (same); Letter of David A. Storhaug, CPA (Aug. 21, 2000) (same); Letter of Arthur Gross (Sept. 10, 2000); Letter of Kristian Holvoet (Sept. 8, 2000); Letter of Bettina B. Menzel (Sept. 9, 2000); Letter of Robert Hanseman (Sept. 10, 2000); Written Testimony of Thomas S. Goodkind, CPA (Sept. 13, 2000); Testimony of Senator Howard Metzenbaum (Ret.), Chairman, Consumer Federation of America (Sept. 20, 2000); Written Testimony of Bill Patterson, Director, Office of Investments, AFL–CIO (Sept. 20, 2000); Written Testimony of Frank Torres, Consumers Union (Sept. 20, 2000); Testimony of Nimish Patel, Attorney, Pollet & Richardson (July 26, 2000). *See also* Senator George J. Mitchell (Ret.), "How to Keep Investor Confidence," Editorial, Boston Globe, pg. A15 (Oct. 28, 2000) ("The commission's proposal is well-reasoned and appropriate. * * * [T]he commission should adopt this rule to protect investor confidence and strengthen the most vibrant financial market system in the world.").

[22] *See, e.g.*, Written Testimony of Kayla J. Gillan, General Counsel, California Public Employees' Retirement System ("CalPERS"), which is the largest public retirement system in the United States with over 1.2 million participants (Sept. 13, 2000) ("The SEC should consider simplifying its Proposal and drawing a bright-line test: no non-audit services to an audit client."); Written Testimony of John H. Biggs, Chairman and CEO of TIAA–CREF, which has 2.2 million participants (July 26, 2000) ("[I]ndependent public audit firms should not be the auditors of any company for which they simultaneously provide other services. It's that simple,"); Written Testimony of Alan P. Cleveland, the New Hampshire Retirement System, with 52,000 members (Sept. 13, 2000) ("We regard the concurrent performance by the company's external auditor of non-auditor services at the direction and under the control of management to be inherently corrosive and fundamentally incompatible with that duty of independence and fidelity owed by the auditor to the investing public"); Testimony of Jack Ciesielski, accounting analyst (July 26, 2000) ("I think the single best way to improve auditor independence and the appearance of auditor independence is to call for an exclusionary ban on non-audit services to audit clients."); Letter of Carson L. Eddy, CPA, (Aug. 22, 2000) ("It is my opinion that the general public would be better served if Certified Public Accountants providing the attest function for a client were unable to do any other consulting work for that client, with the exception for the ability to prepare tax returns."); Letter of William V. Allen, Jr., CPA (Aug. 22, 2000); Letter of Terry Guckes (Sept. 9, 2000); Letter of Art Koolwine (Sept. 8, 2000); Letter of Elliot M. Simon (Sept. 9, 2000); Letter of Melvin Schupack (Sept. 9, 2000); Letter of William Odendahl (Sept. 5, 2000).

[23] *See, e.g.*, Letter of the AICPA (Sept. 25, 2000) ("AICPA Letter"); Letter of KPMG (Sept. 25, 2000) ("KPMG Letter"); Letters of Robert Roy Ward, Chairman and Chief Executive Officer, Horne CPA Group (Sept. 20, 2000), Douglas R. Ream, CPA (undated), Jack W. Palmer (Sept. 9, 2000), Sherry Wilson, CPA (Aug. 28, 2000), and Nathaniel Boyle, CPA (Aug. 16, 2000) (each reiterating concerns expressed in the AICPA's Form Letter).

[24] *See, e.g.*, Ernst & Young Letter; PricewaterhouseCoopers Letter.

[25] Commenters generally agreed that disclosure would be useful to investors. *See, e.g.*, Written Testimony of James W. Barge, Vice President and Controller, Time Warner (Sept. 20, 2000); Letter of The Institute of Internal Auditors (Sept. 5, 2000); Written Testimony of Dennis Paul Spackman, Chairman of the National Association of State Boards of Accountancy (Sept. 13, 2000); Letter of Marsha Payne, President, Association of College & University Auditors (Sept. 25, 2000); Letter of Keith Johnson, Chief Legal Counsel, State of Wisconsin Board (Sept. 20, 2000); Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Investments, TIAA–CREF (Sept. 21, 2000).

[26] *See, e.g.*, Written Testimony of Clarence E. Lockett, Vice President and Corporate Controller, Johnson & Johnson (Sept. 20, 2000); Written Testimony of Philip A. Laskawy, Chairman, Ernst & Young LLP (Sept. 20, 2000).

II. Background

Our Proposing Release generated significant comment and broad debate. We received nearly 3,000 comment letters. In addition to soliciting comments in the Proposing Release, we held four days of public hearings, including one day in New York City, so that we could engage in a public dialogue with interested parties. At the hearings, we heard from almost 100 witnesses, representing investors, investment professionals, large and small public companies, the Big Five accounting firms, smaller accounting firms, the AICPA, banking regulators, consumer advocates, state accounting board officials, members of the Independence Standards Board ("ISB"), academics, and others.[27] In addition, the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs held a hearing about our proposal.[28]

We received thoughtful and constructive input from a broad spectrum of interested parties. That input helped us to understand better the sincere and strongly-held views on all sides and to shape final rule amendments that incorporate these views to the extent consistent with our public policy goals. As discussed specifically below, the final rule amendments, particularly those related to non-audit services, have been modified from the proposals.

Nevertheless, some commenters expressed concern that we have "rushed to regulate,"[29] and they asked that we take more time before addressing auditor independence issues generally; and especially the issues regarding the provision of non-audit services to audit clients. As many commenters noted, however, the issues presented by this rulemaking are not new,[30] and recent and accelerating changes in the accounting profession and in society have made resolution of these issues more pressing. For many years the profession has been discussing modernization of the financial and employment relationship rules, and the scope of services issue has been on the horizon even longer.[31] Many previous Commissions have studied these issues.[32] Against this backdrop, in light of the comments that our proposals generated, and informed by our experience and expertise in these matters, we believe that it is appropriate to act now.[33]

[27] *See* written testimony and transcripts from each of our hearings.

[28] *A Proposal by the Securities and Exchange Commission to Modernize Its Rules That Govern the Independence of Accountants that Audit Public Companies, Before the Subcomm. On Securities of the Senate Comm. On Banking, Housing, and Urban Affairs*, 95th Cong. 2d Sess. (Sept. 28, 2000).

[29] *See, e.g.*, Letter of KPMG; Written Testimony of Robert K. Elliott, Chairman, AICPA (Sept. 13, 2000) ("There is no reason * * * for a rush to judgment on these critical issues. We have the time to get it right, and the public is entitled to nothing less."); Written Testimony of Barry Melancon, President and Chief Executive Officer, AICPA (Sept. 13, 2000); Letters of Richard W. Hammel, CPA (Sept. 25, 2000), Roland H. Flyge II, CPA (Sept. 23, 2000), and Daniel P. Naragon, CPA (Sept. 25, 2000) (each reiterating concerns expressed in the AICPA Form Letter).

[30] *See* Written Testimony of Bevis Longstreth, former SEC Commissioner and member of the Panel on Audit Effectiveness (Sept. 13, 2000) ("The SEC acting upon the need for greater independence, a need long recognized by virtually every group assigned the task of considering the issue (and there have been many), has proposed a rule to meet this need."); Testimony of Senator Howard Metzenbaum (Ret.), Chairman, Consumer Federation of America (Sept. 20, 2000); Written Testimony of Douglas Scrivner, General Counsel, Andersen Consulting (Sept. 20, 2000) ("This issue is not new. The issue has been debated within the profession and by others for over 20 years. The only thing that has changed, in my opinion, is that the risks to the system have increased."); Written Testimony of Dennis Paul Spackman, Chairman of the National Association of State Boards of Accountancy (Sept. 13, 2000) ("[A]ction is needed. Indeed, I believe it is long over due. While further study may enhance the finer points of the issues, it would do nothing to resolve the larger concerns. They have been deliberated far too long."); Testimony of Larry Gelfond, CPA, CVA, CFE, former President of the Colorado State Board of Accountancy (Sept. 13, 2000) ("I firmly believe the SEC is taking a correct position in this long debated area of concern to the profession.").

[31] Congress itself considered the issue of scope of services in the 1970s. *See Report on Improving the Accountability of Publicly Owned Corporations and Their Auditors, Subcomm. on Reports, Accounting and Management of the Senate Comm. on Governmental Affairs*, 95th Cong., 1st Sess. (Comm. Print Nov. 1977).

[32] In the late 1980s, for example, several of the large public accounting firms filed a petition with us seeking to enter into joint ventures, limited partnership agreements, and other similar arrangements with audit clients. *See* Letter from Jonathan G. Katz, Secretary, SEC, to Duane R. Kullberg, Arthur Andersen & Co. (Feb. 14, 1989) (denying the petition).

[33] *See Richard C. Breeden, Roderick M. Hills, David S. Ruder and Harold M. Williams* (former Chairmen of the SEC), Editorial, "Accounting for Conflicts," *Wash. Post*, at A31 (July 21, 2000) ("This initiative is timely and necessary. * * * [T]he time has come to chart a surer path to preserving the all-important principle of auditor independence from commercial client relationships."); James J. Schiro, Chief Executive Officer, PricewaterhouseCoopers LLP, "Auditor Independence: It's Time to Change the Rules," Wall St. J. (Oct. 10, 2000) ("*New rules are needed now.* Working together, we can devise rules that will protect the public interest today and for decades to come. The need for change is upon us. Further delay will only prolong confusion at a time when greater clarity is needed.") (emphasis in original); Written Testimony of Senator Howard Metzenbaum (Ret.), Chairman, Consumer Federation of America (Sept. 20, 2000) ("[A] more compelling question is, why wait? * * * Speaking for consumers across the country, we urge the Commission to move forward expeditiously with this important rule proposal."); Testimony of Professor John C. Coffee, Columbia University (July 26, 2000) ("Right now you have the appropriate moment because the vast majority of firms aren't purchasing dual services. If you wait ten years, that will change, and [it's] much harder to change an existing reality rather than an approaching change. So I think this is the time for action. * * *"); Testimony of J. Michael Cook, former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000) ("[T]he Commission's consideration of this issue at this time is both warranted and necessary. The status quo is not an acceptable answer."); Written Testimony of Professor Curtis C. Verschoor, DePaul University (July 26, 2000) (stating that the question is "[n]ot why so fast, but what took so long?"); Letter of John S. Coppel, CPA, CFO, Electric Power Equipment Company (Aug. 16, 2000) ("I view this rule as a long overdue, greatly needed response to the practices now taking place within the profession.").

III. There Is a Need for Commission Rulemaking

A. The Independence Requirement Serves Important Public Policy Goals

The federal securities laws require, or permit us to require, that financial information filed with us be certified or audited by "independent" public accountants.[34] To a significant extent, this makes independent auditors the "gatekeepers" to the public securities markets.[35] This statutory framework gives auditors both a valuable economic franchise and an important public trust. Within this statutory framework, the

[34] For example, Items 25 and 26 of Schedule A to the Securities Act, 15 U.S.C. 77aa(25) and (26), and Section 17(e) of the Exchange Act, 15 U.S.C. 78q, expressly require that financial statements be audited by independent public or certified accountants. Sections 12(b)(1)(J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78l and 78m, Sections 5(b)(H) and (I), 10(a)(1)(G), and 14 of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. 79e(b), 79j, and 79n, Sections 8(b)(5) and 30(e) and (g) of the Investment Company Act of 1940 ("ICA"), 15 U.S.C. 80a–8 and 80a–29, and Section 203(c)(1)(D) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. 80b–3(c)(1), authorize the Commission to require the filing of financial statements that have been audited by independent accountants. Under this authority, the Commission has required that certain financial statements be audited by independent accountants. *See, e.g.*, Article 3 of Regulation S–X, 17 CFR 210.3–01, *et seq.* In addition, public companies must have their quarterly reports reviewed by independent accountants. Article 10 of Regulation S–X, 17 CFR 210.10–01(d) and Item 310(b) of Regulation S–B, 17 CFR 228.310(b). The federal securities laws also grant the Commission the authority to define the term "independent." Section 19(a) of the Securities Act, 15 U.S.C. 77s(a), Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), Section 20(a) of PUHCA, 15 U.S.C. 79t(a), and Section 38(a) of the ICA, 15 U.S.C. § 80a–37(a), grant the Commission the authority to define accounting, technical, and trade terms used in each Act. Section 17 of the Exchange Act, 15 U.S.C. 78q, and Section 31 of the Investment Company Act, 15 U.S.C. 80a–30, grant the Commission authority to prescribe accounting principles to be used in the preparation of financial statements required.

[35] Steven M. H. Wallman, "The Future of Accounting and Disclosure in an Evolving World: The Need for Dramatic Change," *Accounting Horizons*, at 81 (Sept. 1995).

independence requirement is vital to our securities markets.

The independence requirement serves two related, but distinct, public policy goals. One goal is to foster high quality audits by minimizing the possibility that any external factors will influence an auditor's judgments. The auditor must approach each audit with professional skepticism and must have the capacity and the willingness to decide issues in an unbiased and objective manner, even when the auditor's decisions may be against the interests of management of the audit client or against the interests of the auditor's own accounting firm.

The other related goal is to promote investor confidence in the financial statements of public companies. Investor confidence in the integrity of publicly available financial information is the cornerstone of our securities markets. Capital formation depends on the willingness of investors to invest in the securities of public companies. Investors are more likely to invest, and pricing is more likely to be efficient, the greater the assurance that the financial information disclosed by issuers is reliable.[36] The federal securities laws contemplate that that assurance will flow from knowledge that the financial information has been subjected to rigorous examination by competent and objective auditors.

The two goals—objective audits and investor confidence that the audits are objective—overlap substantially but are not identical. Because objectivity rarely can be observed directly, investor confidence in auditor independence rests in large measure on investor perception.[37] For this reason, the professional literature, such as the AICPA's Statement on Auditing Standards (SAS) No. 1, has long emphasized that auditors "should not only be independent in fact; they should also avoid situations that may lead outsiders to doubt their independence."[38] The Supreme Court has emphasized the importance of the connection between investor confidence and the appearance of independence:

> The SEC requires the filing of audited financial statements in order to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the Nation's industries. It is therefore not enough that financial statements be accurate; the public must also perceive them as being accurate. Public faith in the reliability of a corporation's financial statements depends upon the public perception of the outside auditor as an independent professional. . . . If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost.[39]

The Commission's independence requirements have always included consideration of investor perceptions.[40] Many foreign countries have similar requirements. A comparative analysis of the independence requirements of eleven countries concluded, "With the possible exception of Switzerland, most of the countries stress both the appearance and the fact of independence."[41] In Canada, Rules of Professional Conduct require that the auditor be free of influence that would impair its judgment "or which, in the view of a reasonable observer, would impair * * * professional judgment or objectivity."[42] David A. Brown, Chair of the Ontario Securities Commission, testified that the importance of the perception of auditor independence "cannot be overstated."[43]

International organizations and standard setters also stress the appearance of independence. In its comment letter, the Federation of European Accountants stated, "In dealing with independence, one must address both: Independence of mind * * * and Independence in appearance, [i].e. the avoidance of facts and circumstances, which are so significant that an informed third party would question the statutory auditor's objectivity."[44] Although the European Union has not defined independence for auditors, a Green Paper from 1996 provides, "In dealing with independence, it is necessary to address both independence in mind * * * and independence in appearance, i.e. the avoidance of facts and circumstances which are so significant that an informed third party would question the statutory auditor's objectivity."[45]

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[36] *See generally* Codification of Financial Reporting Policies (the "Codification") § 601.01 ("An investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest."). Use of the term "Codification" means the Codification that existed prior to the Commission's adoption of the rule amendments in this release. For a list of changes to the Codification resulting from the rule amendments, see *infra* Section IX.

[37] *See, e.g.*, Testimony of Laurence H. Meyer, Governor, Board of Governors of the Federal Reserve System (Sept. 13, 2000) ("High quality accounting standards * * * can potentially be nullified if there is a perception that auditors lack independence and objectivity in their enforcement role * * * I think if the perception didn't have any basis in reality, it would not necessarily last very long, so there has to be some interconnection between them, but the perception is an important one."); Testimony of David A. Brown, QC, Chair, Ontario Securities Commission (Sept. 13, 2000) ("The reality of independence is difficult, if not impossible. Perceptions of independence, therefore, become almost equal to reality in importance."); Testimony of Kayla Gillan, General Counsel, CalPERS (Sept. 13, 2000) ("It's not only the reality of biased auditing, but also the perception that a biased practice is possible that erodes investor confidence.").

[38] AICPA SAS No. 1, AU § 220.03. As explained in SAS No. 1, "Public confidence would be impaired by evidence that independence was actually lacking, and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence." *See also* Testimony of Robert K. Elliott, Chairman, AICPA (Sept. 13, 2000) ("[The AICPA] believe[s] that appearances are very important and capital markets require confidence in financial statements and audit reports, and the member firms of the AICPA are basing their business of auditing on their reputations, and that is heavily affected by appearance. There is no question about that. We are not disputing that appearance is important."); Public Oversight Board ("POB"), *Scope of Services by CPA Firms*, at 27 (Mar. 1979) ("1979 POB Report") (citing A. Arens and J. Loebbecke, *Auditing: An Integrated Approach* (Prentice-Hall 1976)) ("[The appearance of independence is] a key ingredient to the value of the audit function, since users of audit reports must be able to rely on the independent auditor. If they perceive that there is a lack of independence, whether or not such a deficiency exists, much of that value is lost."); Earnscliffe Research and Communications ("Earnscliffe"), *Report to the United States Independence Board: Research into Perceptions of Auditor Independence and Objectivity—Phase II*, at 11 (July 2000) ("Earnscliffe II") ("Perhaps the most overwhelming consensus was the belief that the perception of auditor independence is as critical to the integrity of the financial system, as is the reality.").

[39] *United States* v. *Arthur Young and Co.*, 465 U.S. 805, 819 n.15 (1984) (emphasis in original). *See also* Article IV of the AICPA's Standards of Professional Conduct, which provides, "Objectivity is a state of mind. * * * Independence precludes relationships that *may appear to impair a member's objectivity.* * * *" AICPA Code of Professional Conduct, ET § 55.01 (emphasis added). Elsewhere, the AICPA's SAS No. 1 states that auditors should "avoid situations that *may lead outsiders to doubt their independence.*" SAS No. 1, AU § 220.03 (emphasis added).

[40] *See* Codification § 601.01.

[41] Belverd E. Needles, Jr. (ed.) *Comparative International Accounting Standards* 26 (1985) (comparing France, Netherlands, Switzerland, U.K., Germany, Jordan, Kuwait, Canada, Mexico, U.S., and Japan).

[42] Institute of Chartered Accountants of Ontario, Rules of Professional Conduct Rule 204.1 (Objectivity: audit engagements); *see also* Institute of Chartered Accountants of British Columbia, Rules of Professional Conduct. Rule 204.1, Objectivity—Assurance and Specified Auditing Procedure Engagements.

[43] Testimony of David A. Brown, QC, Chair, Ontario Securities Commission (Sept. 13, 2000). Principles in Hong Kong regarding the conduct of accountants provide that "a member must at all times perform his work objectively and impartially and free from influence by any consideration which might appear to be in conflict with this requirement." Hong Kong Society of Accountants, Fundamental Principles ¶ 10 (revised April 1999). In addition, a Statement of Professional Ethics in that country provides that an auditor "should be, and be seen to be, free in each professional assignment he undertakes of any interest which might detract from objectivity." Hong Kong Society of Accountants, Statement 1.203, Professional Ethics (Integrity, Objectivity and Independence) ¶ 2 (revised June 2000).

[44] Letter of Helene Bon, President, Federation of European Accountants (Sept. 25, 2000).

[45] In 1998, the European Parliament approved a resolution broadly supporting the Green Paper. Green Paper, *The Role, The Position and the Liability of the Statutory Auditor Within the European Union* § 4.8 (July 24, 1996), available at http://europa.eu.int. Communication from the Commission, *The Statutory Audit in the European Union: The Way Forward* (May 7, 1998), C143 8.05.1988–EN, available at http://europa.eu.int.

The concept of "appearance" as used in the final rule is not unbounded. "Appearance" as used in our operative legal standards is not a reference to what anyone might think under any circumstances. Rather, as explained below,[46] it is an objective test, keyed to the conclusions of reasonable investors with knowledge of all relevant facts and circumstances.

B. Recent Developments Have Brought the Independence Issues to the Forefront

The accounting industry is in the midst of dramatic transformation. Firms have merged, resulting in increased size, both domestically and internationally. They have expanded into international networks, affiliating and marketing under a common name. Increasingly, accounting firms are becoming multi-disciplinary service organizations and are entering into new types of business relationships with their audit clients. Accounting professionals have become more mobile, and geographic location of firm personnel has become less important due to advances in telecommunications. In addition, there are more dual-career families, and audit clients are increasingly hiring firm partners, professional staff, and their spouses for high level management positions.

In conjunction with these changes, accounting firms have expanded significantly the menu of services offered to their audit clients, and the list continues to grow.[47] Companies are turning to their auditors to perform their internal audit, pension, financial, administrative, sales, data processing, and marketing functions, among many others.[48]

As we noted in the Proposing Release, U.S. revenues for management advisory and similar services[49] for the five largest public accounting firms (the "Big Five") amounted to more than $15 billion in 1999.[50] Moreover, revenues for these service lines are now estimated to constitute half of the total revenues for these firms.[51] In contrast, these service lines provided only thirteen percent of total revenues in 1981.[52] From 1993 to 1999, the average annual growth rate for revenues from management advisory and similar services has been twenty-six percent; comparable growth rates have been nine percent for audit and thirteen percent for tax services.[53]

For the largest firms, the growth in management advisory and similar services involves both audit clients and non-audit clients. For the largest public accounting firms, MAS fees from SEC audit clients have increased significantly over the past two decades. In 1984, only one percent of SEC audit clients of the eight largest public accounting firms paid MAS fees that exceeded the audit fee.[54] For the Big Five firms, the percentage of SEC audit clients that paid MAS fees in excess of audit fees did not exceed 1.5% until 1997.[55] In 1999, 4.6% of Big Five SEC audit clients paid MAS fees in excess of audit fees,[56] an increase of over 200% in two years. For the Big Five firms, average MAS fees received from SEC audit clients amounted to ten percent of all revenues in 1999.[57] Almost three-fourths of Big Five SEC audit clients purchased no MAS from their auditors in 1999. This means that purchases of MAS services by one-fourth of firms' SEC audit clients account for ten percent of all firm revenues.[58]

Some smaller firms are consolidating their audit practices and seeking public investors in the resulting company.[59] Other firms are entering into agreements to sell all of their assets, except their audit practices, to established financial services companies. As part of these agreements, the financial services companies hire the employees, and in some cases the partners, of the accounting firm, and then lease back the majority or all of the assets and audit personnel to the "shell" audit firm. These lease arrangements allow the financial services firm to pay the professional staff for "nonprofessional" services for the corporate organization as well as professional attest services rendered for the audit firm.[60]

Recently, Ernst & Young sold its management-consulting business to Cap Gemini Group SA, a large and publicly traded computer services company headquartered in France.[61] KPMG has sold an equity interest in KPMG Consulting to Cisco Corporation[62] and is in the process of registering additional shares in its consulting business to sell to the public in an initial public offering.[63] In addition, PricewaterhouseCoopers has publicly announced an intention to sell portions of its consulting businesses. Also, Grant Thornton recently sold its e-business consulting practice.[64]

Simultaneous with this metamorphosis of the accounting profession, public companies have come under increasing pressure to meet earnings expectations. Observers suggest that this pressure has intensified in recent years, especially for companies operating in certain sectors of the economy.[65] The extent of the pressure

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[46] *See infra* Section IV.C.

[47] Some firms are seeking to provide expanded services through joint ventures with audit clients or their affiliates. As noted above, as early as 1988, large public accounting firms were looking to enter into joint ventures, limited partnership agreements, and other similar arrangements with audit clients. *See* Letter from Jonathan G. Katz to Duane R. Kullberg, Arthur Andersen & Co. (Feb. 14, 1989).

[48] *See* Proposing Release, App. A, for a list of services that auditors provide to their audit and non-audit clients. The list was prepared by the ISB. *See also* Beverly Gordon, "KPMG spies rapid growth in 'shared services,'" *Accounting Today*, at 12 (June 3, 1996); "KPMG Restructures to Reposition Outsourcing," *Public Accounting Report*, at 1 (May 15, 1996); websites of Deloitte & Touche (http://www.deloitte.com) and KPMG (http://www.us.kpmg.com).

[49] Management advisory services ("MAS") are a subset of non-audit services.

[50] *See* Proposing Release, Table 1 in Appendix B. The underlying data are derived from data in "Special Supplement: Annual Survey of National Accounting Firms—2000," *Public Accounting Report* (Mar. 31, 2000), annual reports filed with the AICPA Division for CPA Firms by public accounting firms, and from reports prepared by the AICPA Division for CPA firms.

[51] *See* Proposing Release, Tables 1 and 2 in Appendix B.

[52] *See* Proposing Release, Table 2 in Appendix B.

[53] *See* Proposing Release, Table 1 in Appendix B.

[54] *See* Proposing Release, Table 3 in Appendix B.

[55] *Id.*

[56] *Id.*

[57] *See* Proposing Release, Table 4 in Appendix B.

[58] *See* Proposing Release, Table 3 in Appendix B. Taken together, the data from Tables 1, 3, and 4 indicate that in 1999 more than 12,700 clients of the five largest public accounting firms paid approximately $9.150 billion for accounting and auditing services.

[59] *See, e.g.*, Rick Telberg, "Anybody can do it! says small-firm consolidator," *Accounting Today*, at 5 (Jan. 4–24, 1999).

[60] "Done Deal: HRB acquires M&P for $240 million cash, pension obligation," *Public Accounting Report*, at 1 (July 15, 1999); "Amex and Checkers Close The Deal," *Public Accounting Report*, at 1 (Mar. 31, 1997).

[61] "Cap Gemini and Ernst & Young Have Agreed to Terms for the Acquisition of Ernst & Young Consulting" (Feb. 29, 2000) (press release of Ernst & Young).

[62] As clarified by the amended S–1 filed by KPMG Consulting, Inc., in connection with the initial public offering, Cisco may sell up to about half of its stake in that entity. *See* KPMG Consulting, Inc., Form S–1, Amend. No. 3 (Sept. 25, 2000).

[63] *Id.*

[64] Albert B. Crenshaw, "Audit Firm Sells Consulting Unit," Wash. Post, Oct. 26, 2000, at E2; *see also* news release at www.grantthornton.com/esannounce/index.html.

[65] *See* Earnscliffe, *Report to the United States Independence Board: Research into Perceptions of Auditor Independence and Objectivity* ("Earnscliffe I") at 16 (Nov. 1999) (finding increased pressure and threat of earnings management in the technology sector); *see also* Testimony of Jay W. Eisenhofer, Partner, Grant & Eisenhofer (Sept. 13, 2000) ("[I]n the current environment where

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becomes apparent each time a company loses a significant percentage of its market capitalization after failing to meet analysts' expectations.[66] These intense pressures on companies lead to enhanced pressure on auditors to enable their clients to meet expectations.[67]

As discussed below, the changes in the accounting profession, combined with increasing pressures on companies, raise questions about auditor independence and investor confidence in the financial statements of public companies that those auditors audit. To respond to some of these questions, we proposed, and are now adopting, new rules relating to the financial and employment relationships independent auditors may have with their audit clients, business and financial relationships between accounting firms and audit clients, and the non-audit services that auditors can provide to audit clients without impairing their independence.

C. Independence Concerns Warrant Restrictions on the Scope of Services Provided to Audit Clients

The rules that we adopt today include provisions restricting the scope of services that an auditor may provide to an audit client without impairing the auditor's independence with respect to that client. The proposed restrictions on non-audit services generated most of the public comment on our proposals, both in written comment letters and in testimony provided during our public hearings. Commenters expressed a range of views from full support to staunch opposition.[68]

After careful consideration of the arguments on various sides, we have determined that it is in the public interest for us to adopt certain restrictions on the provision of non-audit services to audit clients. We act on the basis of our evaluation of the potential impact of non-audit relationships on audit objectivity and also on the basis of indications that investor confidence is in fact affected by reasonable concerns about non-audit services compromising audit objectivity.

1. The Expansion of Non-Audit Service Relationships with Audit Clients Has Long Been Viewed as a Potential Threat to Auditor Independence

It has long been recognized that an unchecked expansion of non-audit relationships between auditors and their audit clients could affect both an auditor's objectivity and investor confidence in financial statements.[69] In the 1970s, Congress seriously considered limiting the types of non-audit services that independent auditors could provide. Even though non-audit services did not constitute a large percentage of audit firms' revenues at that time, and Congress ultimately determined not to take legislative action, the deliberations highlighted significant concerns bearing on the independence issue.[70]

These concerns gradually became the subject of increasing debate and study. In 1979, the then-Chairman of the POB expressed concern about the expansion of non-audit services to audit clients:

> The [POB] believes that there is a possibility of damage to the profession and the users of the profession's services in an uncontrolled expansion of MAS [management advisory services] to audit clients. Investors and others need a public accounting profession that performs its primary function of auditing financial statements with both the fact and the appearance of competence and independence. Developments which detract from this will surely damage the professional status of CPA firms and lead to suspicions and doubts that will be detrimental to the continued reliance of the public upon the profession without further and more drastic governmental intrusion.[71]

A 1994 Report of the AICPA Special Committee on Financial Reporting noted that users of financial statements believed that non-audit service relationships could "erode auditor independence" and that those users were "concerned that auditors may accept audit engagements at marginal profits to obtain more profitable consulting engagements."[72] A separate 1994 report of the Advisory Panel on Auditor Independence noted the increased basis for investor concerns, describing the trend toward non-audit services as "worrisome" because "[g]rowing reliance on nonaudit services has the potential to compromise the objectivity or independence of the auditor."[73]

In 1994, the SEC staff also studied the issues and issued a Staff Report.[74] While concluding that no action was warranted at the time, the staff recognized the need "to be alert" to independence problems that may be

company stock prices are increasingly dependent on showing growth and on meeting or exceeding the expectations of Wall Street investment analysts [, e]ven one missed profit number can have a significant negative effect on stock price. This places great pressure on company executives to insure that each quarter the profits are in the expected range, regardless of whether the quarter has been as good as the analyst expected. In order to meet these expectations, we often find that corporations will sometimes make questionable assumptions.").

[66] Ann Grimes, "Former McKesson Officials are Charged," *Wall St. J.*, at B6 (Sept. 29, 2000); Sarah Schafer and David S. Hilzenrath, "Orbital to Settle Shareholder Suit," *Wash. Post*, at E1 (July 18, 2000); Paul Sweeney, "Accounting Fraud: Learning from the Wrongs," *Fin. Exec.* (Sept./Oct. 2000); Mike McNamee, "Accounting Wars," *Bus. Wk.*, 157, 160 (Sept. 25, 2000); Bernard Condon, "Pick a Number, Any Number, Forbes (Mar. 23, 1998).

[67] *See* O'Malley Panel Report, *supra* note 20, ¶ 1.10 ("The growth in equity values over the past decade has introduced extreme pressures on management to achieve earnings, revenue or other targets. These pressures are exacerbated by the unforgiving nature of the equity markets as securities valuations are drastically adjusted downward whenever companies fail to meet 'street' expectations." " " These pressures on management, in turn, translate into pressures on how auditors conduct audits and in their relationship with audit clients.").

[68] *See supra* notes 21–23.

[69] *See* Proposing Release, Section II.C.2; O'Malley Panel Report, *supra* note 20, at App. D (chronicling the debate since 1957); The Commission on Auditors' Responsibilities, *Report, Conclusions and Recommendations* 95–96 (1978). *See also infra* notes 92, 98 (citing recent studies).

[70] *Report on Improving the Accountability of Publicly Owned Corporations and Their Auditors, Subcomm. On Reports, Accounting and Management of the Senate Comm. on Governmental Affairs*, 95th Cong., 1st Sess. (Comm. Print Nov. 1977). In the Report, the Subcommittee stated that it "agrees with the Cohen Commission and many others that the accounting profession must improve its procedures for assuring independence in view of the public's needs and expectations. Several activities of independent auditors have raised questions. Among them are public advocacy on behalf of a client, receiving gifts and discounts from clients, and maintaining relationships that detract from the appearance of arm's-length dealings with clients. Such activities are not appropriate." *Id.* at 16. The Subcommittee also stated that "[t]he best policy . . . is to require that independent auditors of publicly owned corporations perform only services directly related to accounting. Non-accounting management services . . . should be discontinued." *Id.* at 16–17. In a letter to Harold Williams, Chairman, SEC, Senator Thomas F. Eagleton, Chairman, Subcomm. on Governmental Efficiency and the District of Columbia, of the Senate Comm. on Governmental Affairs, recommended that "[t]here must be a requirement that independent auditors of publicly owned corporations perform only services directly related to accounting." Letter from Senator Thomas F. Eagleton to Harold Williams (Apr. 6, 1978) (attached list of recommendations) (reprinted in *Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role* (July 1978)).

[71] Letter from John J. McCloy, Chairman, POB (former Chairman of the Board of Chase Manhattan Bank and former President of The World Bank), to Walter E. Hanson, Chairman, Executive Committee, SECPS (Mar. 9, 1979).

[72] Special Committee on Financial Reporting, AICPA, *Improving Business Reporting—A Customer Focus: Meeting the Information Needs of Investors and Creditors*, at 104 (1994).

[73] Advisory Panel on Auditor Independence, *Strengthening the Professionalism of the Independent Auditor: Report to the Public Oversight Board of the SEC Practice Section, AICPA*, at 9 (Sept. 13, 1994).

[74] Office of the Chief Accountant, SEC, *Staff Report on Auditor Independence* (Mar. 1994) ("*Staff Report*"). Between 1979 and 1981, public companies were required to disclose in their proxy statements certain information about non-audit services provided by their auditors. *See infra* Section IV.G. (discussing these disclosure requirements).

caused by auditors' provision of non-audit services.[75] A 1996 General Accounting Office (GAO) study predicted that the "concern over auditor independence may become larger as accounting firms move to provide new services that go beyond traditional services."[76]

2. The Growth of Certain Non-Audit Services Jeopardizes Independence

A common theme running through the reports described above is concern that future expansion of non-audit services may make regulatory action necessary. We believe that the circumstances about which the Commission was warned are coming to pass. An auditor's interest in establishing or preserving a non-audit services relationship raises two types of independence concerns. First, the more the auditor has at stake in its dealings with the audit client, the greater the cost to the auditor should he or she displease the client, particularly when the non-audit services relationship has the potential to generate significant revenues on top of the audit relationship. Second, certain types of non-audit services, when provided by the auditor, create inherent conflicts that are incompatible with objectivity.

a. *Non-Audit Services Create Economic Incentives that May Inappropriately Influence the Audit.* As explained above and in the Proposing Release, the rapid rise in the growth of non-audit services has increased the economic incentives for the auditor to preserve a relationship with the audit client, thereby increasing the risk that the auditor will be less inclined to be objective.[77] Some commenters supported this analysis,[78] while others took issue with it.[79] The principal criticisms were: (i) the economic stake in the relationship with the audit client in fact had not materially increased and any such increase is offset by countervailing incentives on the auditor not to compromise his or her independence; and (ii) there is no proof that changing the mix of incentives has affected auditor behavior. We have considered each of these criticisms and address them below.

(i) *The Mix of Economic Incentives Has Changed.* Commenters generally agreed that there has been enormous growth in non-audit services and in their importance to the firms that provide them. Several commenters took issue with whether this growth enhanced any potential conflict of interest. These commenters argued, in essence, that there has always been the potential for a conflict of interest, since the auditor is paid by the client.[80] They argue that because Congress adopted this arrangement in enacting the federal securities laws, by choosing the statutory independence requirement rather than creating a corps of government-paid auditors, Congress implicitly condoned these types of conflicts of interest.

The argument proves too much; it assumes that because Congress permitted one form of potential conflict of interest, it intended to permit all forms. Taken to its logical conclusion, this argument, of course, would read the independence requirement out of the statute. If Congress believed that all conflicts were equal in kind or degree, it would not have required that auditors be independent. Congress apparently chose to tolerate a degree of potential conflict of interest rather than supplant the private auditing profession. Simply because Congress chose to tolerate an unavoidable degree of conflict inherent in the relationship between a private auditor and a paying client, it hardly follows that all conflicts of interest beyond the unavoidable minimum were approved by Congress or that the statutes express indifference to conflicts of interest.

A related argument is that, despite the rapid growth of services, the economic stakes have not really changed for the auditor. The argument is that, despite the growth of non-audit services generally, these services are rarely as significant to the auditor, from an economic standpoint, as maintaining the audit relationship.[81] Put another way, while non-audit services (excluding tax) account for as much as fifty percent of audit firm revenue, only ten percent of revenues come from providing these services to audit clients. But, as noted above, the trend of available data suggests a rapid increase in the provision of non-audit services to audit clients—in 1999, 4.6% of Big Five SEC audit clients paid MAS fees in excess of audit fees, an increase of over 200% in two years.

The increasing importance of non-audit services to accounting firms is further evidenced by suggestions that the audit has become merely a "commodity" and that the greater profit opportunities for auditors come from using audits as a platform from which to sell more lucrative non-audit services.[82] An AICPA practice aid entitled "Make Audits Pay: Leveraging the Audit Into Consulting Services" provides a step-by-step guide for auditors to become "business advisers" to their audit clients. The book quotes an AICPA officer as follows: "We see the greater viability of the CPA going forward as being a strategic business adviser, an information professional being viewed by the public as the person for solid big-picture business advice—applied to a broader information world instead of a financial information world."[83] At the same time, the book acknowledges that "[t]he business adviser is a client advocate. The entire business adviser audit process is based on understanding the client's business from the owner's perspective and acting in the owner's best interest,"[84] which, of course, is contrary to the duty of the auditor to the public.

At our public hearings and in comment letters, we also heard a great deal about the "loss leader" phenomenon. When an auditor uses the audit as a loss leader, the auditor, in essence, "low-balls" the audit fee—even offering to perform it at a loss—in order to gain entry into and build a relationship with a potential client for

[75] *See Staff Report, supra* note 74, at 84; Proposing Release, notes 40–42.

[76] GAO, *THE ACCOUNTING PROFESSION—Major Issues: Progress and Concerns*, at 8 (GAO/AIMD–96–98, Sept. 1996).

[77] *See supra* Section III.B.; Proposing Release, Section II.C.2(b).

[78] *See, e.g.*, Testimony of Kayla Gillan, General Counsel, CalPERS (Sept. 13, 2000) ("The concept that an auditor who has a greater financial incentive to please management than to criticize it will tend to find ways to avoid negative comment is intuitive and obvious."); Letter of B. Raymond Dunham ("I understand that actual hard evidence may not be apparent on the surface. However, it becomes obvious that auditing judgment may be clouded when large sums of potential revenues are dependent upon an auditing decision from any firm that derives great revenues from consulting services to the same organizations it is responsible for auditing." " " The separation of consulting and auditing is intuitive if a firm is to maintain independence in its auditing procedures."); Letter of David T. DeMonte, CPA ("The conflict of interest potential is so patently obvious.").

[79] *See, e.g.*, Testimony of Thomas C. DeFazio, Executive Vice President and Chief Financial Officer, VirtualCom, Inc. (Sept. 13, 2000) ("[T]he provision of non-audit services does not pressure the audit firms to look the other way."); Testimony of Thomas M. Rowland, Senior Vice President, Fund Business Management Group, Capital Research & Management Co. (Sept. 20, 2000) ("[A]t no time during my career did I feel pressure from other partners in the firm " " " not to do the right thing.").

[80] *See, e.g.*, Testimony of Robert K. Elliott, Chairman, AICPA (Sept. 21, 2000).

[81] *See, e.g.*, Letter of Financial Accounting Standards Committee, American Accounting Association (Oct. 12, 2000).

[82] *See* O'Malley Panel Report, *supra* note 20, ¶ 4.4 at 99 ("Focus group participants often indicated that not only clients, but also engagement partners and firm leaders, treat the audit negatively—as a commodity.").

[83] AICPA Practice Aid Series, *Make Audits Pay: Leveraging the Audit Into Consulting Services*, at 3 (1999).

[84] *Id.* at 24.

the firm's non-audit services.[85] Low-balling creates a variety of independence issues.[86] Use of audits as loss leaders to be made up for with more lucrative consulting contracts further suggests the growth in importance of non-audit services as compared to audits.[87]

Changes in legal standards have also affected incentives. Professor John C. Coffee, Jr. testified that the legal constraints on accountants have loosened considerably in recent years, and as a result, there has been a significant decrease in the threat of liability. It has become much more difficult, and less worthwhile, for private plaintiffs to assert civil claims against auditors even in cases where the plaintiffs believe that an audit failure flowed from a lack of auditor independence.[88] He specifically described the following four significant developments in the law since 1994 that he believes have reduced the likelihood of success in private lawsuits against auditors: (i) the passage of the Private Securities Litigation Reform Act of 1995, which affected pleading standards and substituted proportionate liability for joint and several liability, which makes it less attractive to sue accountants "because even if you're successful you're only going to get a portion of the total liability assessed against them, and that may not justify the cost"; (ii) passage of the Securities Litigation Uniform Standards Act of 1998, which preempted certain state or common law claims in securities fraud actions against auditors in both state and federal court;[89] (iii) the Supreme Court's decision in Central Bank of Denver in 1994,[90] eliminating liability in private litigation for aiding and abetting a securities fraud violation, "which was the principal tool used to sue accountants by the plaintiff's bar"; and (iv) the elimination of the threat of treble damage liability as a result of amendment to the Racketeer Influenced and Corrupt Organization Act.[91]

Professor Coffee summarized the effect of these developments by noting that while lawsuits involving accounting irregularities have actually increased since 1995, "those suits today rarely involve * * * the outside accountant, as a defendant, and when they do they're often very easily and quickly dismissed," which would preclude relevant evidence from coming to light. In view of these developments in the law, he noted that an auditor today "faces greatly increased benefits through the existence of non-audit advisory services that are subject to the discretion of management, and it faces greatly reduced liabilities."

In part because the risks of liability have changed, as described by Professor Coffee, we do not believe, as urged by at least one commenter,[92] that liability insurance premiums are a barometer of the extent to which non-audit services pose a risk to audit quality. Professional malpractice premiums reflect the risk that the liability insurer will have to fund a judgment or settlement imposing money damages on the auditor. This risk of liability is attributable to a variety of factors, only one of which is the risk of audit failure. The likelihood of audit failure, in turn, is attributable to many factors, only one of which is auditor independence. And auditor independence, in turn, can be threatened in numerous ways, only one of which is the provision of non-audit services. In assessing overall litigation risk, it is entirely possible, for example, that a liability insurer would conclude that an enhanced risk of misconduct is offset by a small probability of discovery, as well as a diminishing likelihood, owing to changes in the law, that even known misconduct would result in a judgment or settlement that the insurer would have to fund. Consequently, even if insurers were to provide auditors substantially the same professional malpractice coverage at approximately the same cost despite increases in their provision of non-audit services, that indicates at most that, from the insurers' perspective, overall litigation risks have not increased. Because there are numerous explanations as to why auditors' professional liability premiums might or might not increase, we are not persuaded that insurance premiums are a useful measure of the effect of non-audit services on auditor independence.

(ii) *Changes in Incentives Are Likely to Affect Behavior.* In the Proposing Release, we discussed our concern that the enhanced incentive to perpetuate a client relationship involving non-audit services increases the so-called "self-serving bias" auditors experience in favor of an audit client. We heard during our public hearings from academics who have studied the "self-serving bias," including in connection with the behavior of auditors. Two academics presented research tending to show that subtle but powerful psychological factors skew the perceptions and judgments of persons—including auditors—who have a stake in the outcome of those judgments.[93] Other academics, by contrast, pointed out that the issue may be more complicated because, even where an auditor has some stake in an outcome, the auditor also has countervailing reputational interests,[94] and concerns about, for example, legal liability,[95] audit committee review,[96] and peer review.[97]

We do not question that there are influences on the auditor and an accounting firm beyond a "self-serving bias." We accept also that firms have incentives to avoid situations that expose them to liability and reputational harm. But, again, the argument proves too much. Even with these disincentives, audit failures and impairments of independence occur.[98] Other studies tend to show that the reputational interests of the audit firm are not the same as the reputational interests of the audit engagement partner or the office of the partner that performs most of the work for an audit client. Specifically, these studies suggest that the audit engagement partner and the office have more to gain by, for example, acquiescing to the client's aggressive accounting treatment than they have to lose if it results in audit failure, particularly if the client engagement contributes substantially to the partner's income and the office's revenues. Reputational damage will be spread across the entire firm, whereas income from the client will be concentrated in the partner and the office out of which he or she works.[99] In addition, in a two-phase study commissioned by the ISB, Earnscliffe reported that "[m]ost believe that accounting firms today are not indifferent about their reputation for quality audits, but are more focused on raising the profile, reputation, and profitability of non-audit services." [100]

While we do not purport to resolve a debate among scholars, it is plain that there is ample basis to conclude that the more a person, including an auditor, has at stake in a judgment, the more likely his or her judgment is to be affected.[101] We stress that the influences that we are concerned with can be "extremely subtle," as stated by the Comptroller of the Currency, John D. Hawke, in testimony supporting our proposal to restrict internal audit outsourcing.[102] Paul A. Volcker, the former Chairman of the Federal Reserve, in his testimony supporting our proposal, noted the real threat posed by the "insidious, hard-to-pin down, not clearly articulated or even consciously realized, influences on audit practices" that flow from non-audit relationships with audit clients.[103]

b. *Certain Non-Audit Services Inherently Impair Independence.* Our rule lists services that, regardless of the size of the fees they generate, place the auditor in a position inconsistent with the necessary objectivity. Bookkeeping services, for example, place the auditor in the position of later having to audit his or her own work and identify the auditor too closely with the enterprise under audit. It is asking too much of an auditor who keeps the financial books of an audit client to expect him or her to be able to audit those same records with an objective eye.

In much the same way, performing certain valuation services for the audit client is inconsistent with independence. An auditor who has appraised an important client asset at mid-year is less likely to question his or her own work at year-end. Similarly, an auditor who provides services in a way that is tantamount to accepting an appointment as an officer or employee of the audit client cannot be expected to be independent in auditing the financial consequences of management's decisions. And an auditor who has helped to negotiate the terms of employment for an audit client's chief financial officer is less likely to bring quickly to the audit committee questions about the new CFO's performance.

3. The Expansion of Non-Audit Service Relationships with Audit Clients Is Affecting Investor Confidence in the Independence of Auditors

Recent studies indicate that there is a growing disquiet among investors and other users of financial statements about auditor independence in light of the multi-faceted relationships between auditors and their audit clients. Recently, Earnscliffe found that most interviewees "felt that the evolution of accounting firms to multi-disciplinary business service consultancies represent[ed] a challenge to the ability of auditors to maintain the reality and the perception of independence." [104] In Phase II of its study, Earnscliffe reported that interviewees generally had confidence in and are satisfied with the current standard of financial reporting in the U.S. Nonetheless, the study noted, "[m]ost [interviewees] felt that the risks of unfavorable perceptions of auditor independence are growing, due largely to the provision of non-audit services to auditees." [105]

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[85] *See, e.g.*, Letter of William S. Lersch, Milberg Weiss Bershad Hynes & Lerach LLP (Sept. 22, 2000) ("In some instances, public companies bid out auditing work demanding low bids, while indicating to the bidding firms that low auditing bids will be rewarded with lucrative consulting work"). Texas adopted a statutory provision to prevent the use of audits as loss leaders in order to protect small audit firms that could not compete in a market where audits were underpriced. Tex. Rev. Civ. Stat. art. 41a–1, § 20A (1994). *See also* Testimony of K. Michael Conaway, Presiding Officer, Texas State Board of Accountancy (Sept. 20, 2000) (explaining that the worry was that "big firms would predatory price their way into markets and * * * in effect, gain a competitive advantage over smaller firms that couldn't discount their work to the same extent"); Written Testimony of Wanda Lorenz, CPA, Lane Gorman Trubitt (Sept. 20, 2000) ("[M]ost of the problems that exist today can be tied to *fee negotiations* on audits * * *. Therefore the profession has accepted being bargained with like a shopkeeper in some bazaar in order to perform other more lucrative work.") (emphasis in original).

[86] *See* Testimony of Larry Gelfond, CPA, CVA, CFE, former President of the Colorado State Board of Accountancy (Sept. 13, 2000) ("Audit failures occur because auditors become careless and in the oversight or reliance on something, they may be taking a shortcut. Clearly, where an audit is low bid, there is that concern.").

[87] Low-balling also sends a message to the auditor that the audit relationship is not as valuable as the consulting relationship. *See* Testimony of Roderick Hills, former Chairman, SEC (Sept. 20, 2000). Low-balling sends a message inside the audit firm as well. We are concerned that the shift in a firm's emphasis away from auditing and toward non-audit services causes, over time, a cultural shift within the firm. The factors that drive a high quality audit, including the core values of the auditing profession, may diminish in importance to the firm, as will the influence of those firm members who exemplified those core values in their own professional careers.

[88] Testimony of Professor John C. Coffee, Jr., Columbia University (July 26, 2000) ("[T]he expected costs facing the accountant who might be []tempted to shirk his duties in order to please management have vastly declined in just the last five or six years."); *see also* Written Testimony of Professor Coffee.

[89] Securities Litigation Uniform Standards Act of 1998, Pub. L. No. 105–353, 112 Stat. 3227 (codified in scattered sections of the U.S.C.) (requiring most private class actions alleging fraud in the sale of nationally traded securities to be based on federal law and brought in federal court).

[90] *Central Bank of Denver* v. *First Interstate Bank of Denver*, 511 U.S. 164 (1994).

[91] The Private Securities Litigation Reform Act of 1995, Pub. L. No. 104–67, 109 Stat. 737, amended 18 U.S.C. § 1964(c) to eliminate "fraud in the purchase or sale of securities" as a predicate act for RICO liability unless the defendant has been criminally convicted.

[92] AICPA Letter (citing AICPA, *Serving the Public Interest: A New Conceptual Framework for Auditor Independence* (Oct. 20, 1997) ("AICPA White Paper")). We note that the data relied on in the AICPA White Paper and referred to in the AICPA Letter was collected in 1997. As we discuss throughout this release, the magnitude of non-audit services has increased dramatically over the past several years.

[93] *See* Testimony of Professor Max H. Bazerman, Northwestern University (July 26, 2000); Testimony of Professor George F. Loewenstein, Carnegie Mellon Institute (July 26, 2000); *see also* Max H. Bazerman, Kimberly P. Morgan, and George F. Loewenstein, "The Impossibility of Auditor Independence," *Sloan Management Review* at 91, 94 (Summer 1997) (reviewing empirical research showing that "[w]hen people are called on to make impartial judgments, those judgments are likely to be unconsciously and powerfully biased in a manner that is commensurate with the judge's self interest," and concluding that, despite their best intentions, "there is good reason to believe that auditors will unknowingly misrepresent facts and will unknowingly subordinate their judgment due to cognitive limitations"); Jesse D. Beeler and James E Hunton, "Contingent Economic Rents; Insidious Threats to Auditor Independence," manuscript (2000).

[94] Testimony of Don N. Kleinmuntz, Professor, University of Illinois at Urbana-Champaign (Sept. 21, 2000); Testimony of Urton Anderson, Professor, University of Texas at Austin (Sept. 21, 2000) (presenting results of research commissioned by Arthur Andersen, Deloitte & Touche, KPMG, and the AICPA); *see also* Testimony of Professor Rick Antle, Yale University (July 26, 2000) (researcher for the AICPA presenting personal views on data).

[95] *See supra* notes 88–91.

[96] *See infra* Section III.C.5.

[97] At least one witness challenged the effectiveness of the current peer review system. She testified that, as enacted, peer review has no "teeth." Testimony of Wanda Lorenz, CPA, Lane Gorman Trubitt, LLP (Sept. 20, 2000).

[98] *See, e.g., In the Matter of PricewaterhouseCoopers LLP*, AAER No. 1098 (Jan. 14, 1999).

[99] W.R. Kinney, Jr., "Auditor Independence: Burdensome Constraint or Core Value?" *Accounting Horizons* (March 1999); G. Trompeter, "The effect of partner compensation schemes and generally accepting accounting principles on audit partner judgment," *Auditing: A Journal of Practice and Theory* (Fall 1994); Paul M. Clikeman, "Auditor Independence: Continuing Controversy," *Ohio CPA Journal* (Apr.–Jun. 1998).

[100] Earnscliffe II, *supra* note 38, at 6. Interviewees included chief executive officers, chief financial officers and controllers, auditors, buy-side and sell-aside analysts, audit committee chairs, and regulators.

[101] The Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees noted with respect to independent directors that, even absent objective verification, "common sense dictates that a director without any financial, family, or other material personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting, internal control and reporting practices." The Blue Ribbon Committee on improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee"), *Report and Recommendations*, at 22 (1999) (the "Blue Ribbon Report"). Copies of the Blue Ribbon Report are available at *www.nyse.com* or *www.nasd.com*.

[102] Written Testimony of John D. Hawke, Jr. (July 26, 2000).

[103] Written Testimony of Paul A. Volcker (September 13, 2000). Aggregate economic incentives aside, non-audit services can have the effect of aligning the accountant's interests with those of management. When the accountant acts as a consultant, the accountant must answer to management, and a "consultant . . . will be judged by the ultimate usefulness of his advice in bringing success to management's efforts. He has had a hand in shaping managerial decisions and will be judged by management on the same basis that the management itself will be judged." R.K. Mautz and Hussein A. Sharaf, *The Philosophy of Auditing* at 222 (Am. Acct. Ass'n 1961). As the auditor becomes increasingly involved with the audit client and its managers, the auditor is more likely to perceive himself as a part of the management team and place less emphasis on his or her primary loyalty to investors. In Earnscliffe I, Earnscliffe reported that many individuals interviewed believed that pressures on auditors have been increasing and are becoming problematic, and that "auditors are developing a stronger interest in their relationship with management, perhaps at the expense of their responsibilities to shareholders." Earnscliffe I, *supra* note 65, at 9.

[104] Earnscliffe I, *supra* note 65, at 46 (Nov. 1999). The study also found that many individuals interviewed believed that "auditors are developing a stronger interest in their relationship with management, perhaps at the expense of their responsibilities to shareholders." *Id.* at 9.

[105] Earnscliffe II, *supra* note 38, at 5 (July 2000).

Though the O'Malley Panel did not reach consensus on whether changes to the independence rules are needed, over the past year it surveyed preparers and users of financial statements, auditors, regulators, academics, lawyers, and analysts about the provision of non-audit services, and heard from witnesses at the Panel's public hearings. The Panel found that,

> [M]any people continue to be concerned—some very concerned—that the performance of non-audit services could impair independence, or that there is at least an appearance of the potential for impairment. Almost two-thirds of the respondents to the Panel's survey from outside the profession who addressed non-audit services expressed such concerns.[106]

In a June 2000 study, Brand Finance plc surveyed analysts and representatives of companies listed on the London Stock Exchange. Brand Finance reported,

> Analysts are concerned that the acceptance of non-audit fees by auditors is likely to result in the independence of the audit being compromised. 94% of analysts stating an opinion believe that significant non-audit fees are likely to compromise audit independence. 76% of companies stating an opinion felt that auditor independence is likely to be compromised where significant non-audit fees are received from audit clients.[107]

Brand Finance also found that "83% of analysts who expressed an opinion believe objectivity is threatened even when the non-audit fee is less than the audit fee."[108]

In another recent survey, the Association for Investment Management and Research ("AIMR") surveyed its members and certified financial analyst candidates regarding auditor independence issues. AIMR reported that "[p]otential threats to auditor independence, resulting from audit firms providing non-audit services to their audit clients [were] troublesome to many . . . respondents."[109]

A recent poll was conducted by Public Opinion Strategies[110] to determine, among other things, how the investing public views our proposed rules.[111] The results showed that eighty percent of investors surveyed favor (forty-nine percent strongly favor; thirty-two percent somewhat favor) an SEC rule that generally would require restrictions on the types of consulting services accounting firms can provide their audit clients,[112] and fifty-one percent thought the new rule was "very important" to protecting individual stock market investors.[113] As summarized by James C. Stadler of Duquesne University, "The results of our national poll indicate that average American investors, in fact, overwhelmingly support the need for some new rulemaking in this area." He further stated, "The survey results confirm what most practitioners have felt for decades—that large consulting engagements for audit clients can raise serious concerns regarding audit independence."[114]

Witnesses at our public hearings and written comments on our proposed rules supplied additional indications that investor confidence in auditor independence is in fact being undermined by non-audit relationships between auditors and audit clients.[115] For example, representatives of TIAA–CREF, CalPERS, the New Hampshire Retirement System, and the AFL–CIO, organizations with responsibilities for the sound investment of hundreds of billions of dollars for the benefit of millions of participants, all came forward to express precisely that concern and to urge us to adopt the restrictions we proposed, or even more stringent restrictions.[116]

Paul Volcker, former Chairman of the Federal Reserve Board, testified as follows about investors' perceptions of a conflict of interest when auditors provide non-audit services to audit clients:

> The perception is there because there is a real conflict of interest. You cannot avoid all conflicts of interest, but this is a clear, evident, growing conflict of interest, given the relative revenues and profits from the consulting practice, and a conflict of interest is there.[117]

Richard Blumenthal, the Attorney General of Connecticut stated in his testimony before us, "The tough-minded questions and vigorous standards that the public has traditionally associated with the term "independent auditor" have been compromised by the interdependent business relationship between the auditors and the audited."[118] Manuel H. Johnson, a public member of the ISB and the former Vice Chairman of the Federal Reserve Board, testified that,

> [T]he growing complexity of financial and economic relationships and the extent of non-audit services provided to audit clients by major accounting firms have significantly increased the perception and the potential for conflicts of interest and threatens the integrity of the independent audit function.[119]

At a Congressional subcommittee hearing regarding our proposals, John H. Biggs, Chairman, President, and Chief Executive Officer of TIAA–CREF, said,

> The concern about auditor independence in the presence of substantial management consulting fees has been with us for years, and has caused much questioning and study in the profession. Investor uneasiness and suspicion of the quality of audited financial statements is growing rapidly along with the dramatic rise in the percentage of audit firm revenues that come from cross-sold services.[120]

[106] The O'Malley Panel Report, *supra* note 20, at ¶ 5.20.

[107] Brand Finance plc, *The future of audit—"Back to the Future,"* ch. 1 (June 2000).

[108] *Id.*

[109] Written Testimony of Mauricio Kohn, CFA, CMA, CFM, AIMR (Sept. 20, 2000) (submitting survey). AIMR is a global, non-profit organization of investment professionals.

[110] The results were published by the A.J. Palumbo School of Business Administration at Duquesne University ("Duquesne Poll"). PricewaterhouseCoopers provided funding for the poll.

[111] The 800 adults had incomes greater than $50,000.

[112] Duquesne Poll, *supra* note 110, Question 12.

[113] Duquesne Poll, *supra* note 110, Question 13. The Poll also found that 37% of respondents thought the new rule was "somewhat important," 6% thought it "not very important," and 3% thought it "not at all important."

[114] Mr. Stadler is Dean of the John F. Donahue Graduate School of Business and the A.J. Palumbo School of Business Administration.

[115] For written comments, *see, e.g.*, Letter of Samuel Fleishman (Sept. 9, 2000) ("My confidence in the audits is greatly decreased by knowing that the same company is or could be doing consulting work for the company they are auditing."); Letter of George R. Jensen (Sept. 8, 2000) ("Investors have a right to expect that sanctity [of the audit) as it is promised without having to wonder about the same firm monkeying with the audit to preserve or enhance their consulting business."); Letter of Goran LindeOlsson (Sept. 9, 2000) ("The mere possibility that audits may not be 100% objective is reason enough to toughen the rules and keep accounting and consulting services separate."); Letter of Vivian D. Kilgore Jr. ("No public confidence should be given to any report of any firm that engages in this practice."); Letter of John Dossing (Sept. 10, 2000) ("Common sense tells me and other indivi[d]ual invest[o]rs this conflict of interests will lead to at the very least the appearance of conflict of interest. How can we trust any audits with the appearance of a conflict of interest. Why invest if we can't trust the figures presented to us in the financial statements?").

[116] *See* Testimony of John H. Biggs, Chairman and CEO of TIAA–CREF (July 26, 2000); Testimony of Kayla J. Gillan, General Counsel, CalPERS (Sept. 13, 2000); Testimony of Alan P. Cleveland, New Hampshire Retirement System (Sept. 13, 2000); Testimony of Bill Patterson, Director, Office of Investment, AFL–CIO (Sept. 20, 2000).

[117] Testimony of Paul A. Volcker (Sept. 13, 2000).

[118] Written Testimony of Richard Blumenthal (Sept. 20, 2000).

[119] Testimony of Manuel H. Johnson (July 26, 2000). *See also* Testimony of William T. Allen, Chairman, ISB (July 26, 2000) ("[T]he evolution of the auditing profession into multi-service professional firms has given rise to reasonable concerns that the integrity of financial data is being or may be adversely affected or at least that markets may become suspicious of that fact and impose an additional risk premium.").

[120] Written Testimony of John H. Biggs before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Development (Sept. 28, 2000).

We recognize there are different views as to whether investor confidence is being undermined.[121] For example, in Phase I of its study, Earnscliffe reports "The vast majority of respondents believe that auditors are currently performing audits, which meet a high standard of objectivity and independence."[122] In Phase II, Earnscliffe reports that with respect to the investing public surveyed, "Most had a high degree of confidence in the quality and reliability of the information that was available for them to use in making investment decisions."[123] In addition, two professors from North Carolina State University submitted a study tending to suggest that "non-audit services had a positive influence on participants" perceptions of auditor independence, consistent with the contention that nonaudit services enhance auditor independence."[124] Some commenters also cited a survey commissioned by the AICPA and conducted by Penn Schoen & Berland Associates,[125] which found that ninety-one percent of investors surveyed believe audited financial statements are credible.[126]

We take seriously the indications of investor unease, along with indications that investor opinion may be divided. We focus on *degrees* of investor confidence, and we cannot take lightly suggestions that even a minority portion of the population is "mildly worried" about a possible appearance problem or that their confidence is being undermined.[127] We also take into account the durability of investor concerns. For decades there have been some who were troubled at the growth of non-audit services.[128] Those who were troubled remain troubled, only more so, and they have been joined by new voices from disparate quarters. We also consider whether the concerns that we hear will likely persist, or are merely transitory and unreasonable fears that inevitably will be allayed. In this instance, we believe that the indications of unease are reasonably based and thus likely to endure and increase, absent preventive action by the Commission.

4. The Rules Are Appropriately Prophylactic

Some commenters and witnesses argue that there is "no empirical evidence to support the notion that providing non-audit services to audit clients has had any adverse effect on the quality of audits."[129] This argument fails to take into account not only the extensive body of research and comments discussed above that document investor concerns, but also the extent to which our approach is, and must be, prophylactic. Moreover, as we explain below, the asserted absence of conclusive empirical evidence on this point is not particularly telling.

a. *The Commission's Independence Rules Must Be Prophylactic.* Our approach to auditor independence traditionally has been, as it must be, prophylactic. Independence rules are similar, though not identical, to conflict of interest rules. To minimize the risks of bias, the independence rules, like conflict of interest rules, proscribe certain relationships or circumstances, whether or not one can show that biased behavior inevitably results from the conflict.[130] The independence rules are preventive both because of the difficulty in proving the link from circumstance to state of mind, as discussed below, and because of the need to act in the public interest and protect investor confidence before it has been significantly undermined.

The Commission's obligation to protect investors requires it to act before there has been a serious erosion of confidence in our nation's securities markets. Our view on this point is quite different from the suggestion from the CEO of an accounting firm that we should wait to adopt restrictions on non-audit services until there has been "a train wreck or a stockmarket crash."[131] Our mission is not to pick up the pieces of such a "train wreck," but to prevent one.

[121] *See, e.g.*, Testimony of John Guinan, Partner, KPMG (Sept. 13, 2000) ("There's no fundamental unease within the marketplace on this subject."); Testimony of Richard J. Stegemeier, Chairman Emeritus, Unocal Corp. (Sept. 13, 2000) ("I do not believe that [a clear and present danger to investors] exists.").

[122] Earnscliffe I, *supra* note 65, at 8.

[123] Earnscliffe II, *supra* note 38, at 44. At the request of the AICPA, Gary Orren, a professor at the John F. Kennedy School of Government, reviewed and evaluated Earnscliffe I and II. Memorandum from Gary Orren to AICPA (Sept. 19, 2000). Mr. Orren concluded that the findings do not support our proposals, and that the studies were methodologically flawed. At the same time, he acknowledged that among the respondents in the studies, "[a] larger number, about half, thought that a perception problem might develop in the future," that the majority of groups interviewed perceived a "slight appearance problem" today, that the respondents registered "mild misgivings" about the effects of non-audit services on independence, and that the respondents were "mildly worried" about a possible appearance problem in the future. *Id.* at 3, 4, and 7.

[124] J. Gregory Jenkins and K. Krawczyk, North Carolina State University, *Perceptions of the Relationship Between Nonaudit Services and Auditor Independence*, manuscript (2000) (synopsis). In this study, the researchers interviewed 289 users of financial statements, including business professionals, graduate business students, and accounting professionals at Big Five firms and Non-Big Five firms.

[125] Penn Schoen & Berland Associates, Inc., *Notional Investors Survey* (Sept. 12, 2000) ("Penn Schoen Survey").

[126] *Id.* at 4. What the Penn Schoen Survey did not report, but what we believe to be equally important, however, is that among all investors surveyed, only 54% said that they believe audited financial statements are "very credible," 37% believe they are only "somewhat credible," 5% believe they are "not credible," and the remaining 3% do not know if they are credible. *See* Judith Burns, "Investors Unconcerned About Auditor Independence," *Dow Jones New Service* (Sept. 12, 2000). We do not believe that investors or the accounting profession are well-served by a situation in which 37% of investors in a survey think public companies' audited financial statements are only "somewhat credible." In addition, according to the Penn Schoen Survey, 23% of investors surveyed believed that regulators should play a bigger role than they do now in prohibiting accounting firms from offering a range of services (*id.* at 10) and 33% of investors surveyed disagreed that if our rules proposals were implemented audit firms will know less about the companies they audit and the quality of the audit will suffer (*id.* at 13).

[127] Some have suggested that perception is not an appropriate basis for regulation. *See* AICPA White Paper, at App. A (paper by Gary Orren, "The Appearance Standard for Auditor Independence: What We Know and Should Know" (Oct. 20, 1997)). Others believe that "investor perceptions constitute an economically legitimate and theoretically sound basis for regulatory intervention." *See, e.g.*, Written Testimony of Rajib Doogar (Sept. 20, 2000).

[128] *See supra* Section III.C.1; *see also* Arthur A. Schulte, Jr., "Compatibility of Management Consulting and Auditing," *Accounting Rev.* 586 (July 1965) (survey of four respondent groups—research and financial analysts of brokerage firms, commercial loan and trust officers of banks, investment officers of insurance companies, and investment officers of domestic mutual funds—indicated a third of all respondents believed that the provision of both audit and non-audit services was a conflict of interest); Abraham J. Briloff, "Old Myths and New Realities in Accountancy," *Accounting Rev.* 490–94 (July 1996) (finding that a significant number of academics, members of financial community, and accountants believed that an auditor's provision of management-advisory services detracted from the quality of the audit); Pierre L. Titard, "Independence and MAS—Opinions of Financial Statement Users," *J. Accountancy* 47 (July 1971) (finding that a significant number of parties who represented major investment concerns believed that an auditor's provision of management advisory services impaired auditor independence).

[129] Letter of Deloitte & Touche (Sept. 25, 2000) ("Deloitte & Touche Letter").

[130] In this regard, our rule addresses potential conflicts in a way that is similar to rules regarding the conduct of federal judges. For example, § 455 of title 28 of the federal code provides that a federal judge is to disqualify himself (and may be disqualified by the appellate court) in any proceeding where the judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The courts have explained that "disqualification is required if a reasonable person who knew the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown." *Gray v. University of Arkansas*, 883 F.2d 1394, 1398 (8th Cir. 1989).

[131] "The Ties That Bind Auditors," *The Economist* at 63 (Aug. 12, 2000) ("Usually there is a train wreck or a stock market crash prompting this sort of radical legislation.").

We have adopted other rules with a similar attentiveness to the need to sustain investor confidence in the public securities markets. For example, in our Order regarding rule changes by the Municipal Securities Rulemaking Board to address "pay to play" practices in the municipal securities market, we stated that the proposed rule changes were intended, among other things, "to bolster investor confidence in the integrity of the market by eliminating the opportunity for abuses in connection with the awarding of municipal securities business."[132] Regulation FD provides another example of our acting to protect investor confidence.[133] There, our concern was, among other things, that "the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets."[134]

The courts have specifically rejected the need for proof of prior harm as an antecedent to government action designed to safeguard public confidence in the integrity of public actors and processes. For example, the court in *Blount* v. *Securities and Exchange Commission*,[135] articulated this principle in the context of those rules limiting "pay to play" practices in the municipal securities markets, stating, "Although the record contains only allegations, no smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic."[136]

In promulgating rules concerning auditor independence, we are making judgments about incremental probabilities. We must make judgments about the circumstances that render a loss of auditor objectivity more or less likely. "Objectivity" is not merely the absence of a conscious intention to skew audit results in a client's favor; it is a willingness to go without reluctance wherever the data lead. For us, the question is not whether an auditor who otherwise would be without bias will inevitably become biased and then intentionally disregard a false statement in a client's financial statements. We do not believe the appropriate benchmark for action is whether new rules are needed to make "bad" auditors good, malleable ones stronger, or sales-oriented ones focus solely on the audit. Rather, the actual issue is whether providing these services makes it unacceptably likely that there will be an effect on the auditor's judgment, whether or not the auditor is aware of it.

Similarly, our mandate to enhance investor confidence in our securities markets requires us to make judgments as to effects on degrees of confidence. Investor confidence in the securities markets arises from a multiplicity of sources. Investor confidence is currently high. We must consider not whether otherwise confident investors will lose confidence in our markets, but whether there is a significant enough probability that enough investors will lose enough confidence if we fail to act. In our judgment, the risk is present, and we should address it.

b. *The Commission Should Not Delay Action to Engage in Further Study.* In any event, the assertion that no empirical evidence conclusively links audit failures to non-audit services misses the point.[137] First, "audit quality," which we seek to protect, is about more than just avoiding major audit failures or financial fraud. Auditing, we are often reminded, is not mechanical, but requires numerous subtle judgments.[138] It is important that these judgments be made fairly and objectively, whether or not they relate to matters that are material to the financial statements. As four previous SEC Chairmen stated,

> Some will say that action now is premature or unwarranted. They argue that there's no harm unless you can directly tie a firm's nonaudit services to a failed audit. But this claim belies the environment in which many tough business decisions are made. It is rarely the black-and-white issues that an auditor faces. The danger lies in the gray area—where the pressure to bend to client interest is subtle, but no less deleterious.[139]

The number of "audit failures" says nothing about misjudgments in the gray area.

"Audit failures" in all likelihood also demonstrate relatively little about the incidence of auditor error. An "audit failure," as we use the term, refers to an instance in which the issuer's financial statements are materially misstated and in which the auditor either failed to discover the misstatement or acquiesced in the inclusion of the misstatement in the issuer's financial statements. The Commission is aware of only those audit failures it discovers or that are made public; presumably there are more. And, presumably, every error by an auditor does not lead to an audit failure. Moreover, audit failures arise from a multiplicity of causes, of which an impairment of independence is but one. To demand, as a predicate for Commission action, evidence that each loss of independence produces an audit failure is a bit like demanding proof that every violation of a fire safety code results in a catastrophic fire.[140]

[132] Notice of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business, Exchange Act Release No. 33482 (Jan. 14, 1994) [59 FR 3389]; *see also* "Exceptions to Rules 10b–6, 10b–7, and 10b–8 Under the Securities Exchange Act of 1934 for Distributions of Foreign Securities to Qualified Institutional Buyers, Securities Act Rel. No. 6999 (May 5, 1993) [58 FR 27686]] ("Rules 10b–6, 10b–7, and 10b–8 ('Trading Rules') are prophylactic in nature and designed to protect investors purchasing a security in a distribution from paying a price that has been artifically influenced (*i.e.*, raised or supported) by those persons who have the greatest incentive to engage in manipulative activity. Because the Trading Rules protect investors against artificial price movements, they promote the integrity of the pricing process and public confidence in the U.S. securities markets.").

[133] "Selective Disclosure and Insider Trading," Release No. 33–7881 (Aug. 15, 2000) [65 FR 51715].

[134] *Id.*

[135] 61 F.3d 938 (D.C. Cir. 1994).

[136] *Id.* at 945. Similarly, even in the First Amendment context of restrictions on campaign contributions, the Supreme Court has upheld the validity of prophylactic rules. *Nixon v. Shrink Missouri Government*, 528 U.S. 377 (2000) (relying on the seminal case of *Buckley v. Valeo*, 424 U.S. 1 (1976)).

[137] The widespread perception among sophisticated members of the financial community that non-audit services are jeopardizing audit reliability at the very least suggests that there is in fact a problem. Moreover, at least one published study has found a statistical link between the provision of non-audit services and the frequency of audit qualifications. Graeme Wines, "Auditor Independence, Audit Qualifications and the Provision of Non-Audit Services: A Note," 34 *Acc. & Fin.* 76 (May 1994). The author analyzed the audit reports put out between 1980 and 1989 by 76 companies publicly listed on the Australian Stock Exchange. He found that "the auditors of companies not receiving an audit qualification of any type over the period derived a significantly higher proportion of their remuneration from non-audit services fees than the auditors of companies receiving at least one audit qualification." *Id.* at 76. While the author acknowledges that his research is by no means conclusive, it does corroborate the common-sense expectation that "auditors are less likely to qualify a given company's financials statements when higher levels of non-audit fees are derived." *Id.* at 83.

[138] *See* Testimony of Robert L. Ryan, CFO, Medtronic, Inc. (Sept. 20, 2000) ("[T]o my mind one of the most sacred things in the whole audit process is judgment. * * * [T]here is so much judgment that goes into a financial statement and I want to feel that if I'm sitting across from a partner * * * that audit is the primary thing. * * *").

[139] Richard C. Breeden, Roderick M. Hills, David S. Ruder and Harold M. Williams, Editorial, *supra* note. 33.

[140] See, e.g., Written Testimony of J. Michael Cook former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000) ("I do not share the view that proof of such a linkage is the only appropriate basis for regulatory action. To the contrary, I believe the most independence rules today are the result of appearance-based rather than fact-based concerns. Further, I agree with the Commission that the absence of "proof" does not justify inaction, particularly when such evidence cannot be expected to be demonstrable."); Paul B.W. Miller, Ph.D., CPA, Professor, University of Colorado at Colorado Springs, and Paul R. Bahnson, "The Spirit of Accounting" (draft column to appear in *Accounting Today*, submitted as Addendum to Written Testimony of Paul Miller (July 31, 2000) ("[A]udit failure is the wrong factor to consider. * * * The issue is not whether the auditor can avoid catastrophic failure but whether the audit can increase the credibility of the statements enough to make investors perceive a lower risk of being misled."); Testimony of Robert E. Denham, Member, ISB (July 26, 2000) ("[I]t's a mistake to focus too much on the cases of major audit failure and try to draw lessons from whether independence played a role in those. * * * [T]he better question for guiding the Commission * * * is what set of rules is more likely to produce better accounting, better financial reporting in the ordinary circumstances of the good companies. * * *")

[141] *See, e.g., SEC* v. *Jose Gomez*, AAER No. 57 (May 8, 1985).

[142] *See, e.g., SEC* v. *Christopher Bagdasarian and Sam White*, AAER No. 825 (Sept. 26, 1996).

[143] Article IV of the AICPA's Code of Professional Conduct provides, "Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services." AICPA Code of Professional Conduct, ET § 55.01.

[144] 1979 POB Report, *supra* note 38, at 34 n.103. As the POB noted, "[T]he Board recognizes that the nonexistence of such evidence does not necessarily mean that there have not been instances where independence may have been impaired. Not all situations where an auditor's objectivity is compromised will result in a lawsuit." *Id.* at 35.

[145] While we considered testimony from our public hearings in evaluating the need for the rules as a matter of public policy, there was no fact finding with respect to particular cases and we have not reached any conclusions as to the presence or absence of securities law violations in cases discussed by witnesses.

[146] Testimony of Robert M. Morgenthau (Sept. 13, 2000).

[147] *See* Testimony of Jay W. Eisenhofer, Partner, Grant & Eisenhofer (Sept. 13, 2000) ("It's always difficult to prove [that the auditor was influenced by large consulting fees] as a certainty, but what you're attempting to do is to use that information to demonstrate that the auditor had a motive that in combination with other facts that you're able to elicit demonstrates that the auditor at least recklessly disregarded its obligations, if not intentionally did so.").

[148] Testimony of Charles R. Drott (Sept. 13, 2000).

[149] Testimony of Stuart Grant, Partner, Grant & Eisenhofer (Sept. 20, 2000). Mr. Grant testified at the request of his client, the Council of Institutional Investors, although he stated that he was expressing his own views.

[150] Testimony of Jay W. Eisenhofer (Sept. 13, 2000).

[151] *But see* Testimony of Barry Melancon, President and Chief Executive Officer, AICPA (Sept. 21, 2000) ("Even if there was some isolated case[s] in which non-audit services were found to be linked to audit failures that would not establish a proper basis for the drastic action proposed by this rule.").

[152] Written Testimony of Richard Blumenthal (Sept. 20, 2000).

[153] Letter of William S. Lerach (Sept. 22, 2000). *See also* Letter of Britton Davis (Aug. 14, 2000) ["I

Continued

Second, the subtle influences that we are addressing are, by their nature, difficult to isolate and difficult to link to any particular action or consequence. The asserted lack of evidence isolating those influences and linking them to questionable audit judgments simply does not prove that an auditor's judgment is unlikely to be affected because of an auditor's economic interest in a non-audit relationship. Indeed, it is precisely because of the inherent difficulty in isolating a link between a questionable influence and a compromised audit that any resolution of this issue must rest on our informed judgment rather than mathematical certainty.

Except where an auditor accepts a payment to look the other way,[141] is found to have participated in a fraudulent scheme,[142] or admits to being biased, we cannot know with absolute certainty whether an auditor's mind is, or at the time of the audit was, "objective." It is even harder to measure the impact that a particular financial arrangement with the audit client had on the auditor's state of mind.[143] Similarly, it is difficult to tie a questionable state of mind to a wrong judgment, a failure to notice something important, a failure to seek important evidential matter, a failure to challenge a management assertion, or a failure to consider the quality " not just the acceptability " of a company's financial reporting. As the POB noted, "Specific evidence of loss of independence through MAS [management advisory services], a so-called smoking gun, is not likely to be available even if there is such a loss."[144]

Testimony during our hearings provided informed, real-world perspectives bearing on the practical difficulty of establishing a conclusive link between non-audit service relationships and compromised audit judgments. Many who provided those perspectives nonetheless urged that we proceed with our rule.[145]

Based on his thirty-three years of law enforcement experience and several cases involving unlawful and questionable conduct by auditors, Robert M. Morgenthau, the District Attorney for the County of New York, testified, "in most cases, it was impossible to tell whether financial considerations played a role in the auditor's issuing the opinion he did."[146] In these instances, absent the sort of admission referenced above, we can look only to circumstantial evidence of influences or incentives affecting the auditor.[147] A number of plaintiffs' lawyers agreed that the hard evidence opponents of the proposals seek will be rare because even where the evidence does exist, it is unlikely that it will be made public. Charles Drott, a CPA and a forensic examiner, testified that "the only time these issues come to light * * * is when there is significant litigation. * * * The accounting firm[s] [are] not sharing this information, and I don't know of any vehicle at the present time that requires them to do so."[148] Stuart Grant, an attorney who regularly represents institutional investors in securities litigation, stated that, based on his experience, he thought it unlikely that an auditor, like any party to a lawsuit, would ever concede that it made an accounting judgment in part to protect its consulting business.[149] Jay W. Eisenhofer, Mr. Grant's partner, noted that even if a case involving independence allegations were to proceed to trial, any information relevant to the alleged violation that was produced in discovery likely would be protected from general disclosure by a confidentiality order.[150]

While these witnesses and commenters said that, based on their experience, we should not expect to have an abundance of evidence showing a direct link between the provision of non-audit services and audit failures, others pointed to cases where they believed the connection was apparent.[151] Richard Blumenthal, Attorney General of the State of Connecticut, described a matter investigated by his office which he believed did involve a significant audit failure linked to a loss of audit objectivity caused by the auditor's non-audit business relationship with the audit client. Mr. Blumenthal stated, "Connecticut residents have personally experienced the financial hardship occasioned by the loss of independence and objectivity in the accounting profession. * * * While investors eventually recovered a portion of their losses, many surely never recovered their faith in * * * the accounting profession."[152]

William S. Lerach, of Milberg Weiss Bershad Hynes & Lerach LLP, which represents investors in securities litigation, provided his perspective on this issue. He stated,

> It has been asserted there is as yet no "empirical evidence" demonstrating a loss of auditor independence in providing consultant and other non-audit services. In fact, we know otherwise.
>
> In prosecuting securities fraud cases against public companies and their auditors, we obtain access to internal corporate documents that are sealed from public view by confidentiality orders and are never made available to the Commission. Over the years, we have seen repeated instances where auditors are unable to maintain independence from their clients. Not infrequently, the lack of independence arises most directly from the fact that the auditing firm has substantial consulting relationships with the client " relationships that are extremely lucrative " much more lucrative than the auditing work.[153]

Finally, we are also cognizant that concerns about the impact of non-audit services on independence have been steadily with us, and growing, during relatively prosperous times, and that any economic downturn may heighten concern over some of these issues. As one analyst stated during our public hearings,

> If we're asking hard questions about independence and the appearance of independence now, won't our concerns be magnified during times of economic distress? It's not hard to imagine an economic environment where firms may be more prone to pushing the envelope of reliable accounting and reporting, and that's when you would want an auditing profession possessing unquestionable independence. If we have qualms about that independence now, it will be worse in an economic downturn, and that's when investor confidence may be tested on issues other than auditor independence.[154]

5. Our Two-Pronged Approach Responds to Various Aspects of Auditor Independence

As discussed above, some non-audit services, by their very nature, raise independence concerns because, for example, they place the auditor in the position of auditing his or her own work. We are otherwise concerned about non-audit services because of the overall economic incentives they create and because of the interdependence that develops between the auditor and the audit client in the course of the non-audit relationship.

The greatest assurance of auditor independence would come from prohibiting auditors from providing any non-audit services to audit clients. We solicited comment on this approach, and some commenters strongly urged that we adopt such an exclusionary ban.[155] That way, the auditor would never be placed in a conflict-of-interest position, nor would the auditor have any economic incentive, beyond continuation of the audit relationship, that might give rise to a biased attitude. We believe, however, that the better course is for us to eschew a single bright line and instead to draw a series of lines, based on our assessment of particular factual circumstances, understanding that identifying dangerous circumstances in this area is more a matter of informed judgment than measurement. We believe that the two-pronged approach we are taking in the final rules—requiring disclosure of the fees billed by the auditor for the audit, financial information systems design and implementation services, and other non-audit services, and identifying particular services that are incompatible with independence—best protects the audit process. Our approach also permits us to restrict non-audit services only to the extent necessary to protect the integrity and independence of the audit function. Accountants will continue to be able to provide a wide variety of non-audit services to their audit clients. They also will be able to provide any non-audit service to non-audit clients.

Under the proxy disclosure rule being adopted, registrants will have to disclose, among other things, the aggregate fees billed for the audit in the most recent fiscal year, the aggregate fees billed for financial information systems design and implementation, and the aggregate fees billed for non-audit services performed by the auditor in the most recent fiscal year. In addition, companies must provide certain disclosures about their audit committee. Investors will be able to evaluate for themselves whether the proportion of fees for audit and non-audit services causes them to question the auditor's independence. As discussed above, in recent years there has been a dramatic growth in the number of non-audit services provided to audit clients and the magnitude of fees paid for non-audit services.[156] Moreover, there may be less information available to investors about these services since the SECPS has stopped publishing information about audit firms' provision of non-audit services.[157]

Surveys confirm that investors expect that the information that will be disclosed under the final rule will be useful in making investment decisions. In its Phase II study, Earnscliffe found that "[m]any advocate[] a requirement of full disclosure as a way to both deter an unhealthy relationship between auditor and client, and to inform investors of any risks" related to the relationship.[158] In addition, the Penn Schoen Survey found that "[n]ine in ten investors want to know if a company's auditor also provides other services."[159] Eighty-nine percent of respondents in that study said, "It would be important for shareholders to know if a company's auditor also provides consulting services to that company."[160]

We considered a disclosure-only approach and solicited comment on that approach. Some commenters favored a disclosure-only approach to the independence issues created by auditors' provision of non-audit services.[161] We, however, do not believe that such an approach is appropriate for several reasons. First, our federal securities laws require that auditors be independent, and we do not believe that disclosure can "cure" an impairment of independence.[162] Second, as discussed above, by their very nature, certain non-audit services provided by auditors can affect an auditor's independence, regardless of whether investors are made aware of the provision of the services. As a representative of one of the largest pension funds commented, "While we do not believe that disclosure in and of itself is adequate to deal with the independence problems involved here, shareholders have a right to know about relationships that may compromise the independence of audits on which they rely."[163]

6. The Final Rules Will Assist Audit Committees in Their Oversight Role

Issuers and other registrants have strong incentives to promote auditor independence. It is their financial statements that an auditor examines. They have the legal responsibility to file the financial information with the Commission, as a condition to accessing the public securities markets, and it is their filings that are legally deficient if auditors who are not independent certify their financial statements.

For most public companies, audit committees have become an essential means through which corporate boards of directors oversee the integrity of the company's financial reporting process, system of internal accounting control, and the financial statements themselves. Among other things, an audit committee serves as the board's principal interface with the company's auditors and facilitates communications between the company's board, its management, and its internal and independent auditors on significant accounting issues and policies.

The Commission is an advocate of effective and independent audit committees. Most recently, the Commission and three major exchanges adopted important audit committee rules. The New York Stock Exchange, the National Association of Securities Dealers, Inc., and the American Stock Exchange changed their listing standards. These changes require listed companies to have independent audit committees, and require audit committees to play a significant role in overseeing the company's auditors.[164]

Also, we adopted new disclosure rules regarding audit committees and auditor reviews of interim financial information[165] in response to recommendations of the Blue Ribbon Committee.[166] Those rules require that companies include in their proxy statements reports of their audit committees that state whether, among other things, the audit committees received the written disclosures and the letter from the independent auditors required by ISB Standard No. 1,[167] and discussed with the auditors the auditors' independence. ISB Standard No. 1 requires each auditor to disclose in writing to its client's audit committee all relationships between the auditor and the company that, in the auditor's judgment, reasonably may be thought to bear on independence and to discuss the auditor's independence with the audit committee.[168]

The final rule supplements those required disclosures with an additional disclosure as to whether the issuer's audit committee "has considered whether the provision of non-audit services] is compatible with maintaining the principal accountant's independence." The disclosure focuses particularly on non-audit services and requires disclosure of whether the audit committee itself has focused on the issue. We believe that our final rule, our new audit committee disclosure rules, and the new requirements of the NYSE, AMEX, NASD, and ISB should encourage auditors, audit committees, and management to conduct robust and probing discussion on all issues that might affect the auditor's independence. According to the Blue Ribbon Report, "If the audit committee is to effectively accomplish its task of overseeing the financial reporting process, it must rely, in part, on the work, guidance and judgment of the outside auditor. Integral to this reliance is the requirement that the outside auditors perform their service without being affected by economic or other interests that would call into question their objectivity and, accordingly, the reliability of their attestation."[169]

Our final rule does not impose any new legal requirements on audit committees.[170] While the rule may serve to direct the attention of audit committees to the potential for independence issues arising from non-audit services, any action taken by audit committees will be business judgments. Nonetheless, the rule should help audit committees carry out their existing responsibilities by codifying the key legal requirements that may bear on audit committees' exercise of their business judgment.[171] We believe that audit committees, as well as management, should engage in active discussions of independence-related issues with the outside auditors.[172] As with discussions over the quality and acceptability of management's judgments, audit committees can be useful in considering whether assertions of independence rest on conservative or aggressive readings of the independence rules. Similarly, audit committees may wish to consider whether to adopt formal or informal policies concerning when or whether to engage the company's auditing firm to provide non-audit services.[173]

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have witnessed several instances of "rolling over" on issues that affected our clients, for no other reason than the apparent conflict sticking to our guns would have caused (thus threatening our revenue stream)."); *see also* Testimony of Charles R. Drott, CPA, CFA (Sept. 13, 2000) ("My overall conclusion * * * has been that in most of the cases that I have been involved in, meaning at least 50 cases that I have been involved in regarding audit failures, that the underlying cause of most of these situations was compromised auditor independence. This involved auditors auditing their own work, acting as advocates for their clients, entering into improper business relationships with their clients, and acting as management for their clients.").

[154] Testimony of Jack T. Ciesielski, accounting analyst (July 26, 2000).

[155] *See supra* note 22.

[156] As discussed above and in the Proposing Release (Section II.C), there have been significant changes in the accounting profession and the provision of non-audit services since 1982, when we rescinded our previous proxy statement disclosure requirement regarding non-audit services. From 1978 to 1982, we required companies to include in their proxy statement disclosures about non-audit services provided by their auditors, including the percentage of the fees for all non-audit services compared to total audit fees and the percentage of the fee for each non-audit service compared to total audit fees ("Disclosure of Relationships with Independent Public Accountants," ASR No. 250 (June 29, 1978)). Although our concerns about the provision of consulting and other non-audit services remained unchanged, we later determined to rescind the proxy disclosure requirement ("Rescission of Certain Accounting Series Releases and Adoption of Amendments to Certain Rules of Regulation S–X Relating to Disclosure of Maturities of Long-Term Obligations," ASR No. 297 (Aug. 20, 1981)). Among other reasons, our review of proxy disclosures convinced us that accounting firms then, in contrast to now, were not providing extensive non-audit services to their audit clients. In addition, we noted that, even without the proxy statement requirement, investors had access to useful data provided to and made public by the SECPS. As discussed below, that data are no longer readily available.

[157] In particular, summarized information regarding the relationship between non-audit and audit fees is provided to the SECPS by its member firms. Until recently, the SECPS published aggregate information regarding the mix of services provided by an accounting firm to all of its clients. Investors, however, would be primarily interested in the receipt of non-audit services by the companies in which they invest.

[158] Earnscliffe II, *supra* note 38 at 9.

[159] Penn Schoen Survey, *supra* note 125, at 15.

[160] *Id.*

[161] *See, e.g.*, Arthur Andersen Letter.

[162] Testimony of Jack Ciesielski, accounting analyst (July 26, 2000).

[163] Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Investment, TIAA–CREF (Sept. 21, 2000).

[164] The New York Stock Exchange ("NYSE"), National Association of Securities Dealers, Inc. ("NASD"), and the American Stock Exchange ("AMEX") also changed their company listing standards to make it clear that the auditor is ultimately accountable to the board of directors and the audit committee, as opposed to management, and that the audit committee and the board of directors have the ultimate authority and responsibility to select, evaluate and, when appropriate, replace the auditor. *See* Order Approving Proposed Rule Change by the NASD, Exchange Act Rel. No. 42231, File No. SR–NASD–99–48 (Dec. 14, 1999); Order Approving Proposed Rule Change by the NYSE, Exchange Act Rel. No. 42233, File No. SR–NYSE–99–39 (Dec. 14, 1999); and Order Approving Proposed Rule Change by the AMEX, Exchange Act Rel. No. 42232, File No. SR–Amex–99–38 (Dec. 14, 1999).

[165] "Audit Committee Disclosure," Exchange Act Rel. No. 42266 (Dec. 22, 1999).

[166] In its report, the Blue Ribbon Committee noted that with respect to independent directors, even absent objective verification, "common sense dictates that a director without any financial, family, or other material personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting, internal control and reporting practices." Blue Ribbon Report, supra note 101, at 22.

[167] ISB Standard No. 1, "Independence Discussions with Audit Committees" (Jan. 1999). Copies of standards issued by the ISB are available on the ISB's website at www.cpaindependence.org.

[168] In a letter to the SECPS, ISB Chairman William Allen clarified the use of the auditor's judgment under the standard. He stated:

> [I]n asking itself whether a fact or relationship is material in this setting the auditor may not rely on its professional judgment that such fact or relationship does not constitute an impairment of independence. Rather the auditor is to ask, in its informed good faith view, whether the members of the audit committee who represent reasonable investors, would regard the fact in question as bearing upon the board's judgment of auditor independence.

Letter from William T. Allen, Chairman, ISB, to Michael A. Conway, Chairman, Executive Committee, SECPS (Feb. 8, 1999). We believe that Chairman Allen's interpretation is appropriate.

[169] Blue Ribbon Report, *supra* note 101, at 40.

[170] *See* Testimony of Barry Malancon, President and Chief Executive Officer, AICPA (Sept. 21, 2000) ("[I]t's the audit firm's responsibility to determine that they are independent." * * * [T]he obligation is clearly on the auditor. The auditor cannot put that obligation off solely to the audit committee in any form or fashion. And even if the audit committee were to determine things were okay, the firm is still responsible to make an independent judgment that they are in fact independent.")

[171] *See* Testimony of John Whitehead, former Chairman, Goldman Sachs & Co. (Sept. 13, 2000).

[172] *See, e.g.*, Testimony of Robert L. Ryan, Chief Financial Officer, Medtronic, Inc. (Sept. 20, 2000) ("We believe that we should continue to require our audit committees, who are in the best position to evaluate independence, to play an active role in this assessment process as the proposed rule changes outline.")

[173] Companies have differing approaches to hiring their auditors to provide non-audit services. For example, John H. Biggs testified that TIAA–CREF does not hire its auditors to provide non-audit services (Testimony of John H. Biggs (July 26, 2000)), while Judy Lewent, Senior Vice President and CFO, Merck & Co., Inc., testified that her company employs a set of principles and practices for determining whether to hire their auditors to provide non-audit services, such as rotating its lead auditor every five years and requiring the audit committee to approve each request to use the

Continued

In this latter connection, we note that recently the O'Malley Panel recommended certain guiding factors for audit committees to consider in making business judgments about particular non-audit services. According to the O'Malley Panel, one guiding principle should be whether the "service facilitates the performance of the audit, improves the client's financial reporting process, or is otherwise in the public interest."[174] Other matters to be considered are:

- Whether the service is being performed principally for the audit committee.
- The effects of the service, if any, on audit effectiveness or on the quality and timeliness of the entity's financial reporting process.
- Whether the service would be performed by specialists (e.g., technology specialists) who ordinarily also provide recurring audit support.
- Whether the service would be performed by audit personnel and, if so, whether it will enhance their knowledge of the entity's business and operations.
- Whether the role of those performing the service (e.g., a role where neutrality, impartiality and auditor skepticism are likely to be subverted) would be inconsistent with the auditor's role.
- Whether the audit firm's personnel would be assuming a management role or creating a mutuality of interest with management.
- Whether the auditors, in effect, would be auditing their own numbers.
- Whether the project must be started and completed very quickly.
- Whether the audit firm has unique expertise in the service.
- The size of the fee(s) for the non-audit service(s).[175]

These factors expand upon the four factors in the Preliminary Note to Rule 2–01. Additionally, the O'Malley Panel recommends that audit committees pre-approve non-audit services that exceed a threshold determined by the committee. We believe that the O'Malley Panel recommendations represent a thoughtful and appropriate approach to these issues by audit committees, and we encourage audit committees to consider the Panel's recommendations.

Some commenters suggested that the Commission and investors rely primarily on corporate audit committees to monitor and ensure auditor independence.[176] Other commenters, however, including investor representatives, indicated that this approach, without more, was inadequate.[177] While we welcome active oversight by audit committees with respect to auditor independence, we do not believe that this oversight obviates the need for the rule we adopt today. Audit committees bring business judgment to bear on the financial matters within their purview. Their purpose is not to set the independence standards for the profession, and we are not attempting to saddle them with that responsibility. On the other hand, we believe that the final rule facilitates the work of audit committees by establishing clear legal standards that audit committees can use as benchmarks against which to exercise business judgment.

7. The Final Rules Will Not Diminish Audit Quality

Some commenters expressed concern that the proposed restrictions on non-audit services would hurt audit quality.[178] These commenters assert that the auditor gains valuable knowledge about an audit client's business by providing non-audit services. The more the auditor knows about the client, these commenters assert, the higher the quality of the audit. These commenters further assert that accounting firms need broad technical skills to provide high quality audits and that the necessary array of skills can be acquired only if the accounting firm has a multidisciplinary practice. Finally, the commenters assert that the rules will affect accounting firms' ability to recruit and hire talented professionals, which in turn will lead to less capable professionals performing lower quality audits. We note that the rules we adopt today are significantly less restrictive than the proposed rules. We are adopting without substantial alteration restrictions that already appear in the professional literature with respect to the majority of the nine services that are covered by our rules. In any event, we are not persuaded by these arguments.

a. *Auditors Will Continue to Have the Expertise Necessary for Quality Audits.* The suggestion that the more the auditor knows about the audit client, the better its capacity to audit, is flawed. It is an argument without limitation that takes no account of the negative impact on audit quality from an independence impairment. As the former Chief Accountant of the SEC explained several years ago, "Arguments that more knowledge of the audit client increases the quality of the audit * * * taken to the extreme, would have the auditor keeping the books and preparing the financial statements. Once a firm has worked closely with a client to improve the client's operations or reporting systems, it would appear that the firm would have difficulty in providing a "critical second look" at those operations and systems,"[179] as the investing public relies on the auditor to do.

In addition, the argument incorrectly assumes that all additions to an auditor's knowledge about the client's business are relevant to an audit. With respect to the full-scale non-audit practices of some firms, however, the O'Malley Panel said,

> Audit firms' management consulting practices have expanded far beyond the skills required for audit support and the traditional areas related to financial planning and controls. For example, some firms now offer certain investment banking and legal services, outsourcing of a variety of corporate functions, strategic business planning and business process reengineering advice.[180]

Further, the argument that the more an auditor knows about an audit client, the better the audit, assumes that knowledge gained by an accounting firm's consultants is inevitably transferred to the firm's auditors. We are skeptical about this claim. Some testified that there is no sharing of firm personnel between the consulting side and auditing side. The General Counsel of Andersen Consulting said, "[I]n our experience there is no meaningful crossover of personnel between the audit divisions and these other business consulting functions. The skills necessary to perform high quality audits are vastly different from those needed to perform consulting services of the type covered by the rule."[181]

outside audit firm for non-audit services. She noted that the company's process for such determinations has resulted in the use of their audit firm for non-audit services only in limited circumstances (Testimony of Judy Lewent (Sept. 13, 2000)).

[174] O'Malley Panel Report, *supra* note 20, at ¶ 5.29.

[175] *Id.* at 116–17.

[176] *See, e.g.*, Testimony of Philip D. Ameen, Chair, Committee on Corporate Reporting, FEI–CRR (Sept. 20, 2000); Letter of Caroline Rook, Acxiom Corp. (Sept. 7, 2000); Letter of Allen J. Krowe, retired Vice Chairman, Texaco, Inc. (Sept. 5, 2000).

[177] *See, e.g.*, Testimony of Bill Patterson, Director of the Office of Investment, AFL–CIO (Sept. 20, 2000).

[178] *See, e.g.*, AICPA Letter.

[179] Letter from Michael H. Sutton, Chief Accountant, SEC to William T. Allen, Chairman, ISB (Dec. 11, 1997), at 6–7 (attaching SEC Staff Analysis of AICPA White Paper).

[180] O'Malley Panel Report, *supra* note 20, at ¶ 5.11 *But see* Testimony of James E. Copeland, Chief Executive Officer of Deloitte & Touche (Sept. 20, 2000) (asserting that it is the overall competencies gained by providing non-audit services to audit clients and non-audit clients that improve the quality of audits).

[181] Written Testimony of Douglas Scrivner, General Counsel, Andersen Consulting (Sept. 20, 2000). Scrivner also is a former partner of Arthur Andersen. *See also* Testimony of Thomas Goodkind, CPA (Sept. 13, 2000) ("I have rarely seen [a transference of knowledge] occur in my experience.")

Available evidence suggests that even without the opportunity to provide non-audit services to audit clients, auditors will have the expertise to perform quality audits.[182] First, under the final rules, auditors will be able to continue to provide non-audit services to non-audit clients. They can gain the technical and other expertise that they believe they need by providing the non-audit services to all of their other clients who are not also audit clients. Second, the great majority of companies do not purchase any non-audit services from their auditors in any given year. In the most recent year for which data are available, approximately seventy-five percent of the public company clients of the Big Five accounting firms received no non-audit services from their auditor.[183] This would mean that the financial statements of thousands of public companies were audited by firms who provided no non-audit services to them in that year. We do not believe that the lack of non-audit services resulted in inadequate audits of the financial statements of seventy-five percent of all public companies. As J. Michael Cook, former Chairman and Chief Executive Officer of Deloitte & Touche said, "Some suggest that consulting services are essential to the performance of a quality audit. That assertion, in my opinion, is incorrect. The vast majority of all audits are for companies who purchase little or no consulting services from the audit firm, and those audits are of high quality and always have been."[184]

We also note that accounting firms that do not provide consulting can focus more readily on the audit function, which could in turn improve audits. As the Chairman of Ernst & Young said regarding his firm's recent sale of its consulting practice,

> [N]ow that we have sold this practice, we have not discovered that we are somehow enfeebled, unable to perform effective audits or to maintain a top-notch audit and tax practice. In fact, we have found the opposite to be true: without a large consulting practice to manage, we are now more targeted and more focused on our core audit and tax business. * * * We have had a greater string of "wins" in obtaining new audit clients since we sold our management consulting practice than we have had at any time in recent history—four new Fortune 500 clients, including two Fortune 50 companies, just within the last six months.[185]

Some commenters[186] have cited the O'Malley Panel Report as evidence that the provision of non-audit services positively affects audit quality, reciting the statement from the Report that "[o]n about a quarter of the engagements in which non-audit services had been provided * * * those services had a positive impact on the effectiveness of the audit."[187] It may well be that—independence concerns aside—providing certain non-audit services can be said to enhance the "efficiency" of the audit. But, as Laurence H. Meyer, a Governor of the Federal Reserve Board, said in support of our proposed restriction on internal audit outsourcing, "auditor independence is more valuable than these asserted efficiencies."[188]

Furthermore, we are concerned that as non-audit services become more important, firms may care less about auditing and more about expanding their service lines, which itself may have a negative effect on audit quality.[189] The factors that drive a high-quality audit, including the core values of the auditing profession, may diminish in importance to the firm, as will the influence of those firm members who exemplify those core values.[190] Equally important, the training and compensation that auditors receive may stress the importance of cross-selling at the expense of auditing.[191] The O'Malley Panel, for example, noted a sense that accounting firms "treat the audit negatively—as a commodity."[192] The O'Malley Panel also agreed that, "[i]n their zeal to emphasize the array of services that CPAs offer, audit firms and the AICPA scarcely acknowledge auditing services in the public images that they portray. This serves to exacerbate the independence issue and to downplay

Andersen. *See also* Testimony of Thomas Goodkind, CPA (Sept. 13, 2000) ("I have rarely seen [a transference of knowledge] occur in my experience.")

[182] *See* Testimony of Stephen G. Butler, Chairman and Chief Executive Officer, KPMG (Sept. 21, 2000) ("[C]learly we don't believe that we will not be able to do a quality audit today in the structure that we have," with KPMG having incorporated its consulting business and prepare for an initial public offering of that business). Auditors of course have a professional obligation to have the expertise required to perform quality audits, and during the audit process, to gather all the evidence needed to evaluate, test, and render an opinion on the client's financial statements. *See, e.g.*, General Standard No. 1 of Generally Accepted Auditing Standards ("GAAS") ("The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor."); Standards of Field Work No. 3 of GAAS ("Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit."). Au § 150.02. Where auditors do not have the requisite expertise in house, they can hire others outside the firm to provide the skills needed. As observed by Jack Ciesielski, "Auditors have always had to call in specialists when matters are outside their understanding." Testimony of Jack Ciesielski, accounting analyst (July 26, 2000). *See also* Testimony of John J. Costello, Senior Director of Litigation, Gursey, Schneider & Co., LLP (Sept. 20, 2000) ("[I]n my experience over the years, many times have we had to go and get an independent consultant that was not part of the firm. * * * It is not something that's new. It's been there for a long time and could be done again.").

[183] *See* Proposing Release, Table 3 in Appendix B.

[184] Written Testimony of J. Michael Cook, former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000). *See also* Written Testimony of Philip A. Laskawy, Chairman, Ernst & Young (Sept. 20, 2000) ("[T]he argument that you have to have 30,000 consultants to do an audit is not real, it never was real, because * * * what percentage of clients are you doing consulting for and it is usually in the 20 to 30 percent range. So, the other 70 percent, I hope, are getting good audits.").

[185] Written Testimony of Philip A. Laskawy, Chairman, Ernst & Young (Sept. 20, 2000).

[186] *See, e.g.*, KPMG Letter; Deloitte & Touche Letter; Arthur Andersen Letter.

[187] O'Malley Panel Report, *supra* note 20, at ¶ 5.18. Some of the eight members of the Panel, however, issued a separate statement calling for an outright ban (with very limited exceptions) on auditors providing non-audit services to audit clients because of their belief in the "central importance of independence to the profession of auditing in general, and to the effectiveness of the audit process in particular," and "the severe and growing challenges to independence that the audit profession faces in the current environment." *Id.*, ¶ 5.32.

[188] Written Testimony of Laurence H. Meyer (Sept. 13, 2000). Moreover, it has been suggested that these efficiencies can "be partially appropriated as rents to the CPA firm supplier, and hence can themselves create a threat to independence." Dan A. Simunic, "Auditing, Consulting, and Auditor Independence," 22 *J. Accounting Research* 679, 681 (Autumn 1984).

[189] *E.g.*, Letter of Ronald J. Marek, CPA (Aug. 17, 2000) ("Over the past twenty to thirty years, the big accounting firms started placing a higher value on selling skills and less on being 'a good accountant.' This change is appropriate if the goal is generating more fees. This change has resulted in a deterioration of audit quality."); Letter of Mike McDaniel, CPA (Aug. 14, 2000) ("[T]he focus was sharper and firm operations had many fewer conflicts during the period when consulting services were not a central profit center for the Firms.").

[190] *See* Testimony of Douglas Scrivner, General Counsel, Andersen Consulting (Sept. 20, 2000) ("What is necessary to maintain audit quality is a sustained focus and investment in the audit profession rather than in non-audit services in order to keep up with the complexity and sophistication of business in a rapidly changing environment.").

[191] *See, e.g.*, Letter of John L. Marty, CPA (Sept. 9, 2000) ("If the practice of 'cross-selling' of services were constrained, it may cause a renewed emphasis on effective auditing and thereby, enhance the reliability of audited financial statements and protect the investing public."); Testimony of Larry Gelfond, CPA, CVA, CFE, former President of the Colorado State Board of Accountancy (Sept. 13, 2000) ("Partners are measured by the amount of business that they generate, the referrals that they bring in, and the jobs that they handle. Obviously, their ability to generate more fees has a direct relationship in many of these firms, including my own, to their compensation."); Testimony of Wanda Lorenz, CPA, Lane Gorman Trubitt, LLP (Sept. 20, 2000) (acknowledging the "pressure on (audit partners) to sell—pressure on them to retain the client, pressure on them to build fees").

[192] O'Malley Panel Report, *supra* note 20, ¶ 4.4.

the importance of auditing."[193] This is a trend that we and the accounting profession alike must guard against because, as one commenter remarked, "the value of [a CPA] license and the public's perception of that license is going to be diminished when it becomes another one of the alphabet soup titles that people in the various professions now use."[194]

b. *Many Factors Affect Firms' Recruiting Efforts.* We take concerns about recruiting and retention very seriously. Nonetheless, we are skeptical about the claim that the capacity to offer non-audit services to audit clients is critical to the auditing profession's ability to recruit and retain talented professionals.

Today's prosperity, with record lows in unemployment, has intensified the recruiting pressures on all sectors of the economy, not just the accounting profession.[195] Enabling auditors to provide all types of non-audit services to audit clients is not likely to solve the auditor recruiting issues for the accounting firms. From 1993 to 1999, the average annual growth rate for revenues from management advisory and similar services was twenty-six percent.[196] Over approximately the same time frame, according to data from the U.S. Census Bureau, the number of candidates sitting for the first time for the CPA exam dropped from 53,763 (1991) to 38,573 (1998),[197] and the percentage of students majoring in accounting dropped from four percent of all graduates in 1990 to two percent in 2000.[198] In other words, while accounting firms have been dramatically expanding their consulting practices, there has been a steady decline in certain indicators of interest in the accountancy profession as a career choice, and the firms have been hiring fewer accounting graduates.[199]

According to some commenters, potential recruits have negative perceptions about the accounting profession, including that accounting work is unsatisfying and that accountants have no interaction with clients, and these perceptions must be overcome in order for the profession to attract the best and brightest students.[200] By "selling" the non-audit practice to recruits, the commenters suggest that they will be able to dispel negative perceptions of the auditing profession.

If a bar to successful recruiting is the perception that auditing is not especially rewarding, the profession must take some responsibility for creating it.[201] As noted above, some firms increasingly regard the audit as a "commodity," downplay its importance, and present themselves to the public as business advisors first and only incidentally as independent, objective auditors. If large multidisciplinary firms downplay to the general public the importance of auditing, they do little to dispel negative impressions of the auditing profession to the public or to potential recruits.[202]

Moreover, the salaries of accountants, particularly in comparison to the salaries of consultants, may exacerbate recruiting problems. Dennis Spackman, Chairman of the National Association of State Boards of Accountancy, testified, "[T]here is a disparity in what [the accounting firms] [a]re willing to pay somebody to come on to their consulting staff with what they're willing to pay for somebody to come on the audit staff."[203] In Mr. Spackman's view, the "big salary differential" gives incentives to recruits who are looking for a promising career path to work at a public accounting firm in the nonattest area, rather than the attest area.[204] Publicly available statistical data support the conclusion that firms pay accounting recruits less than consulting recruits and that salaries for accounting recruits have increased at a significantly slower pace than starting salaries for consultants.[205]

Undoubtedly, there are many factors contributing to the decline in interest in careers in the accounting profession.[206] The O'Malley Panel noted a similar concern about the decline in the attractiveness of auditing as a career, identifying increased educational requirements, issues of compensation, heavy workloads and issues of family or lifestyle as contributing factors. In addition, the Panel noted that the decline

also has been influenced by the perception that alternative career opportunities are more exciting, challenging and rewarding than auditing.* * * The profession will need to restore the historic attractiveness of auditing as a profession and convince the "best" people that it offers excellent long-term career opportunities. To do so it will have to lift the public perception of the profession to a higher plane and convincingly demonstrate the worth of the profession. This is an effort that will require a partnership among audit firms, professional societies and the academic community.[207]

Finally, our revised rules on investments may assist the accounting profession in addressing their difficulties in recruiting and retaining professionals. In particular, by, among other things, significantly shrinking the circle of accounting firm employees to whom restrictions on investments in audit clients apply, the final rules will allow more accountants to take greater advantage of investment opportunities, and therefore, may make the accounting profession more attractive.[208]

c. *The Rules Need Not Lead to Restructurings.* Some commenters said that our proposals, if adopted, would require accounting firms to restructure their business by, for example, spinning off their consulting practices.[209] It was not, and is not, our intention to cause any firms to restructure. In any event, we remain skeptical of the claim that our rules will be the cause of wholesale restructuring of the accounting profession. Before we proposed these amendments, three of the Big Five firms had either consummated or announced their intention to enter into transactions that would separate their auditing and consulting practices,[210] and other firms undertook restructurings while the proposals were pending. That suggests that reasons, apart from this rulemaking, prompted those business decisions. Indeed, one industry leader commented that his firm was splitting off its consulting business and "it wasn't done for cultural reasons, it was done for different business reasons than that, and it certainly wasn't done for independence issues."[211]

Moreover, while a few commenters asserted that accounting firms will sell their consulting practices if we adopt a final rule, they did not provide us with any basis beyond assertion for evaluating their comments. While it would have been preferable to have information describing the economic impact of the proposed rules upon them, these commenters have not elaborated on the claim.[212]

Without information supporting it, the argument that firms will sell off their consulting practices solely because they cannot provide certain consulting services to audit clients seems similarly questionable. As noted in the Proposing Release, while firms will be prevented from providing some consulting services to their audit clients, they will gain potential clients from other firms who are similarly situated.[213] Even assuming some accounting firms will lose the ability to market their consulting services based on asserted synergies with their audit services, no other firm will be better situated. Every consulting firm, including non-accounting firms, will have to compete for consulting business on the same footing.

8. The Final Rules Will Apply to Small Accounting Firms Only if They Have SEC Audit Clients

The final rule applies only to public companies and other entities registered with the Commission or otherwise required to file audited financial statements with the Commission. It does not apply to audits of financial statements not required to be filed with us. Big Five firms audit the vast majority of the financial statements of public companies. Data from the SECPS public files indicate that, in 1999, non-Big Five firms earned less than one percent of their annual revenues from consulting services provided to public company audit clients.[214] Consequently, we believe there will be only an incidental impact on accounting firms that provide audit and non-audit services principally to audit clients that are private companies not registered with the SEC.

We received many letters from small accounting firms expressing strong support for our proposal,[215] and the National Conference of CPA Practitioners, a national organization comprised of 1,200 member firms that represent 5,000 CPAs and service between 400,000 and 500,000 small and medium sized business clients, similarly wrote to express support for the proposal.[216] Indeed, some commenters pointed out that rather than harming the interests of the small practitioners, the rules could provide smaller firms with new business opportunities to provide non-audit services to companies that previously used their auditors to provide those services.[217]

Some commenters expressed concern about a possible derivative effect of our rule amendments on smaller or regional accounting firms that provide audit and non-audit services solely or principally to private companies.[218] The concern is that state boards of accountancy, which regulate and license certified public accountants, may adopt rules analogous to our own for all accountants in their jurisdiction without regard to whether the companies to which they provide non-audit services are public or private companies.[219] This certainly is not our intention. Our concern throughout this rulemaking has been with investors in public companies and the public securities markets.

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[193] O'Malley Panel Report, supra note 20, ¶ 5.23. *See also* Testimony of Jack Ciesielski, accounting analyst (July 26, 2000) ("[The] accounting profession * * * increasingly seeks to distance itself from the public image as auditor in favor of one that positions accountants in the public's collective mind as business enhancing consultants.").

[194] Testimony of Robert Fox, Chair, New York State Board of Public Accountancy (Sept. 13, 2000).

[195] *See* Testimony of Paul Volcker, former Chairman, Board of Governors of the Federal Reserve System (Sept. 13, 2000) ("I suspect that many of the traditional professions are feeling under some pressure from the lure of Wall Street incomes, and the dot com world, and I suspect the Federal Reserve feels that, and auditing firms feel it. It is a fact of life. I don't think you cure that problem by creating a conflict of interest in your own firm.").

[196] *See supra* note 53.

[197] U.S. Census Bureau, *Statistical Abstract of the United States: The National Data Book* (119th ed. 1999).

[198] Taylor Research & Consulting Group Study (2000) (commissioned by the AICPA); *see generally* AICPA Letter (noting trend); *see also* Letter of W. Steve Albrecht, Professor and Associate Dean, Marriott School of Management, Brigham Young University (Aug. 29, 2000) (noting trends and expressing concern that the proposal regarding non-audit services would cause "further and dramatic declines in the quality and quantity of students wanting to become accountants and auditors" because the accounting field will be narrower).

[199] In the 1991–1992 academic school year, the firms hired 22,520 graduates with bachelor and master degrees in accounting. In 1995–1996, that number had fallen to 20,470. AICPA: Supply/Demand Study 1997 ("AICPA Supply/Demand Study") presented to the O'Malley Panel (Aug. 31, 1999).

[200] *See, e.g.*, Arthur Andersen Letter; KPMG Letter; Testimony of Joseph F. Berardino, Managing Partner, Assurance and Business Advisory Services, Arthur Andersen (Sept. 20, 2000).

[201] *See* Testimony of David A. Brown, QC, Chair, Ontario Securities Commission (Sept. 13, 2000) ("[F]irms will continue to have difficulty recruiting new talent for the audit department, particularly if new recruits get a sense that other areas of the firm are more highly valued by firm management. . . . I think [the difficulty of recruiting on the audit side is] a very real issue, but I think the issue is clearly exacerbated by the messages being telegraphed to young recruits, and that is that there's a faster partnership track on the consulting side.").

[202] We also cannot overlook the extent to which the challenge of recruiting auditors partially may be a result of the firms' own business decisions. As the General Counsel of Andersen Consulting testified at our hearings, "Some of the firms have diverted investment and resources out of the audit function and into non-audit services, thereby reducing the attractiveness of the audit function as a career path." Testimony of Douglas Scrivner, General Counsel, Andersen Consulting (Sept. 20, 2000); Letter of John S. Coppel, CPA, CFO, Electric Power Equipment Company (Aug. 16, 2000) ("Promising young staff are exiting the audit area, the professions[') most important training ground, after a[ss]essing accurately, that career growth opportunities lie elsewhere within the practice.").

[203] Testimony of Dennis Paul Spackman (Sept. 13, 2000).

[204] *Id.* ("The profession to a great extent is doing it to itself and it's doing it when it gives up audits in very competitive low ball kinds of bidding processes."); *see also* Testimony of Thomas Goodkind, CPA (Sept. 13, 2000) (stating in response to a question from Chairman Levitt about why the profession is having a hard time recruiting auditors, "They're not offering enough money").

[205] W. Steve Albrecht & Robert J. Sack, *Accounting Education: Charting the Course Through a Perilous Future* 9 (Aug. 2000).

[206] *Id.* (showing that the number of accounting degrees awarded in the 1998–99 academic year declined 20% compared to those awarded in the 1995–96 academic year). There has been a general decline in students seeking bachelor degrees in business-related fields. *See* AICPA Supply Demand/Study 1997, *supra* note 199, which indicates that from 1992 to 1997, the number of students obtaining bachelor degrees in accounting declined by 14%, those obtaining finance degrees declined by 17%, those obtaining general business degrees declined by 8%, and those obtaining marketing degrees declined by 27%.

[207] O'Malley Panel Report, *supra* note 20, ¶¶ 8.9, 8.10.

[208] *See* Written Testimony of Testimony of Jack Ciesielski, accounting analyst (July 26, 2000); "Where Have All the Accountants Gone?" *Bus. Wk.*, at 203 (Mar. 27, 2000) (noting that in addition to competition from corporations and startups and increasing college requirements, "also to blame, many are beginning to argue, are regulations that govern auditors' ability to invest in stocks," and that the firms "are having a much harder time addressing the biggest retention problem they face today: regulatory restrictions on stock ownership.").

[209] *See generally* Deloitte & Touche Letter.

[210] *See supra* Section III.B.

[211] Testimony of Stephen G. Butler, Chief Executive Officer, KPMG LLP (Sept. 21, 2000).

[212] Because we believed that it would have been useful to have additional data concerning the revenue mix of accounting firms, as well as the extent to which fees to audit clients for non-audit services exceed fees for audits, we solicited comment on revenue data. In addition, SEC Commissioner Isaac C. Hunt, Jr. informed the Big Five firms that these data would help the Commission in its deliberations. *See* Transcript of July 26 hearing for questions of Commissioner Isaac C. Hunt, Jr. posed to Joseph F. Berardino, Managing Partner, Assurance and Business Advisory Services, Arthur Andersen LLP, Robert R. Garland, National Managing Partner, Assurance & Advisory Services, Deloitte & Touche, and J. Terry Strange, Global Managing Partner, Audit, KPMG LLP (July 26, 2000); *see also* Letters from Commissioner Isaac C. Hunt, Jr. to Joseph F. Berardino, Robert R. Garland, and J. Terry Strange (Aug. 18, 2000) and Letters from Commissioner Isaac C. Hunt, Jr. to Kenton J. Sicchitano, Global Managing Partner—Independence and Regulatory Affairs, PricewaterhouseCoopers LLP, and Mr. Robert Herdman, Vice Chair—AABS Professional Practice, Ernst & Young (Sept. 14, 2000). Counsel to Arthur Andersen LLP, Deloitte & Touche LLP and KPMG LLP indicated that some of these data might be provided by mid-September (Letter from John F. Olson, Gibson, Dunn & Crutcher LLP to Commissioner Isaac C. Hunt, Jr. (Sept. 1, 2000). However, no data were submitted by any of the five firms.

[213] *See* Albert B. Crenshaw, "Breakup of Andersen Firm Approved," *Wash. Post*, at E3 (Aug. 8, 2000) (quoting former Arthur Andersen Chief Executive James Wadia).

[214] *See* Proposing Release, Table 4 in Appendix B.

[215] *See, e.g.*, Letter of Josepb F. Simontacci, CPA (Aug. 14, 2000); Letter of Leland D. O'Neal, CPA (Aug. 15, 2000); Letter of Danny M. Riddle, CPA (Aug. 16, 2000); Letter of Frank Chovanetz, CPA (Aug. 16, 2000).

[216] Letter of National Conference of CPA Practitioners (Sept. 25, 2000).

[217] Testimony of Larry Gelfond, CPA, CVA, CFE, former President of the Colorado State Board of Accountancy (Sept. 13, 2000); *see also* Letter of John Mitchell, CPA (Aug. 14, 2000).

[218] *See* Testimony of Harold L. Monk, Jr., Chairman of the PCPS Executive Committee, AICPA (Sept. 21, 2000); Letter of Peter J. Hackett, Clark, Schaefer, Hackett & Co. (July 25, 2000); Letter of Frank P. Orlando (July 28, 2000); Letter of Michael L. Toms, York, Neel and Co. (Aug. 16, 2000).

[219] *See, e.g.*, Testimony of Thomas J. Sadler, Past Chair, Washington State Board of Accountancy (Sept. 20, 2000); Letter of Mark A. Maurice, Chief Financial Officer, Avenir Group, Inc. (Aug. 15, 2000); Letter of Allan W. Nietzke, CPA (Sept. 23, 2000); Letter of Steven F. Farrel, CPA, ABV Gaither Rutherford & Co. LLP (Sept. 22, 2000); Letter of Honkamp Krueger and Co., P.C. (Sept. 22, 2000).

As we noted in the Proposing Release, the proposals were not intended to "alter the relationship between federal and state authorities" or to "affect the ability of the states to adopt different regulations in those areas they currently regulate." Though several state boards suggested that our rules would have a high degree of influence over their state regulations,[220] other commenters pointed out that state boards of accountancy have a strong independent tradition.[221] We fully expect that the state boards will continue their practice of exercising independent judgment in determining the extent to which our rules should be imported into what may be a different context.

9. The Rules Take Into Account the Work of the ISB

During this rulemaking process, members of the ISB provided thoughtful and constructive comments and testimony.[222] We appreciate their commitment and professionalism in pursuing their mandate, and their work laid the foundation for our rulemaking. Several commenters requested that we defer to the ISB[223] with respect to financial and employment rules and scope of services rules,[224] while others stated their belief that the Commission is the appropriate body to act, and that we should act now.[225]

In crafting our rules, we were, and continue to be, mindful of the work of the ISB, and we give due regard to their requests for our guidance. For example, the ISB noted in ISB Standard No. 2 that the standard would not take effect until the SEC revises its rules on independence.[226] Importantly, public members of the ISB have stated that the Commission is the appropriate body to take action with respect to the scope of services issues, and have requested that we do so. As William T. Allen, Chairman of the ISB, stated at our public hearings, the scope of services issue is "not well-suited for a board of our character. It's really a public policy choice that the government needs to make, I think. And that's, I think the view of us all."[227] Similarly, Robert Denham, a public member of the ISB, stated, "the Commission is uniquely well-suited to making the difficult public policy choices that are required to protect independence in an environment that has become increasingly complex."[228] Mr. Denham also stated,

> As a public member of the ISB I have encouraged the Commission to exercise its authority in this area, because the Commission is the only entity able to balance and evaluate the difficult policy issues that are involved. I am comfortable that the rules proposed regarding scope of services represent a rational, coherent and thoughtful set of policies that will substantially improve protection for auditor independence.[229]

Manuel H. Johnson, another public member of the ISB, stated, "I do feel it's important the SEC undertake a new rulemaking not only to strengthen the standards and guidance of the ISB but also to directly address in a timely fashion the difficult policy issues surrounding the proper scope of services appropriate for accounting firms charged with the trust of performing independent audits."[230] We believe that these considerations, and our evaluation of the important public policy goals addressed by our rulemaking, require us to act.

10. The Final Rules Encourage International Efforts in This Area

Foreign companies increasingly seek to raise capital in the U.S. securities markets,[231] and holdings by U.S. investors of foreign company securities have risen. With the increasing globalization of the markets, regulators worldwide have been re-examining current regulatory requirements applicable to cross-border offerings. We, and regulators around the world, have an interest in promoting high quality international accounting, auditing, and independence standards, while at the same time preserving or enhancing existing investor protections.

We have been involved in and support efforts to raise the level and quality of information available to investors in connection with cross-border flows of capital, consistent with our mandate to protect investors. We worked on a project in which the International Accounting Standards Committee ("IASC") developed the principal components of a core set of international accounting standards. Earlier this year, the International Organization of Securities Commissions ("IOSCO")[232] announced that it completed its assessment of the IASC core set of standards, and recommended that its members allow multinational issuers to use the IASC standards, as supplemented by reconciliations, disclosure and interpretation where necessary.[233] In order to determine whether and under what conditions we should accept financial statements of foreign issuers using the IASC standards, earlier this year we issued a Concept Release on International Accounting Standards, seeking comment on the necessary elements of a high quality global financial reporting framework that also upholds the high quality of financial reporting domestically.[234] In addition, last year, we amended our non-financial statement disclosure requirements for offerings by foreign issuers to conform to the international disclosure standards adopted by IOSCO in 1998.[235]

The International Federation of Accountants ("IFAC"), in which the accounting profession participates actively, has several recent initiatives to establish global auditing standards.[236] Most recently, the IFAC Ethics Committee issued for comment an Exposure Draft proposing a framework for independence.[237] In the Exposure Draft, IFAC presents a conceptual or principle-based approach to addressing auditor independence. Some commenters on our proposal, particularly foreign-based firms and organizations such as the Federation Des Experts Comptables Europeens ("FEE"), suggested that we too adopt a conceptual approach, as opposed to a rules-based approach.[238] Several of these commenters argued that while a rules-based approach has certain advantages and is consistent with the historical U.S. approach, a conceptual approach, particularly in the area of non-audit services, is more efficient and flexible.[239]

We understand that many regulators do not agree with the conceptual approach,[240] and several foreign countries prohibit certain non-audit services though standards vary from country to country.[241] Standards vary for a number of reasons, including that in some countries, audits are conducted by statutory auditors who are directly responsible to shareholders, and in some cases audits may be conducted for other than financial reporting purposes.

We believe that our final rules combine important and useful elements of both approaches. As noted, Rule 2–01(c) does not set forth all circumstances that may impair an auditor's independence from its audit client. For other services, and in particular future services, the Preliminary Note makes clear that in applying the general standard in Rule 2–01(b), we will look in the first instance to the four factors. The four factors provide guiding principles for the Commission, similar to what a "conceptual approach" would provide.

We recognize that our system of regulation is not universal. We have worked, and will continue to work closely, both directly and through IOSCO, with our foreign counterparts on the important issue of auditor independence.

D. It Is Appropriate To Ease Restrictions on Financial and Employment Relationships

In our approach to financial and employment relationship restrictions, we have attempted to draw lines that promote investor confidence but recognize the problems confronting dual career families and employees of huge accounting firms. Specifically, in the investment and employment area, we have adopted investment and employment rules that allow auditors to maximize the opportunities available to them, while promoting the public interest and protecting investor confidence.

As noted in the Proposing Release and above, there have been significant demographic changes, changes in the accounting profession, and changes in the business environment that have affected accounting firms. Among other things, there has been an increase in dual-career families and an ever-increasing mobility among professionals. Accounting firms have expanded internationally. Most SEC registrants now have their financial statements audited by firms that have offices and professionals stationed in hundreds of cities around the globe, and many of those offices and professionals have no connection to, or influence over, a company's audit.

The current rules on financial and employment relationships of auditors were developed largely when the accounting firms were smaller and less diversified. The trends discussed above, and others, have highlighted the need for us to effect a modernization in these areas. In particular, the current rules describing the financial and employment relationships that an audit partner's spouse could have with a firm's audit client called for modernization. For example, under the current rules, the spouse of a partner at an accounting firm could not hold certain positions at an audit client or stock in an audit client, even through an employee stock compensation or 401(k) plan, even if the partner had no connection to the audit. In light of the trends noted above, including the growth in dual-career families, we sought to address this and similar situations.

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[220] *See, e.g.*, Letter of Baxter Rice, President, California Board of Accountancy (Sept. 25, 2000); Letter of James E. Houle, CPA, Chair, Oregon Board of Accountancy (Sept. 24, 2000).

[221] *See, e.g.*, Testimony of K. Michael Conaway, Presiding Officer, Texas State Board of Public Accountancy (Sept. 20, 2000); Letter of William D. Baker, President, Arizona Board of Accountancy (Sept. 20, 2000).

[222] *See* Letter from Arthur Siegel, Executive Director, ISB (Aug. 31, 2000); Testimony of William T. Allen, John C. Bogle, Manuel H. Johnson, and Robert E. Denham (July 26, 2000).

[223] In this regard, we note that in FRR No. 50, we stated that we were not abdicating our responsibilities in this area and that our existing authority regarding auditor independence was not affected. ISB standards and interpretations do not take precedence over our regulations or interpretations. *See* FRR No. 50 (Feb. 18, 1998). In FRR No. 50, we also stated that "[i]n view of the significance of auditor independence to investor confidence in the securities markets, the Commission also will review the operations of the ISB as necessary or appropriate and, within five years from the date the ISB was established, will evaluate whether this new independence framework serves the public interest and protects investors." *Id.* Some witnesses acknowledged that changes to the ISB structure, such as having a majority of public members, may benefit the process and enhance the public's perception of the Board as a body focused on the public interest and protecting investors. *See, e.g.*, Testimony of William T. Allen, Chairman of the ISB (July 26, 2000) ("[I]nformally we have discussed whether or not it would be desirable to increase the public membership of the board to a majority. I don't think it would [change] the outcome of our deliberations, but I recommended that we consider doing that on the notion that it might help the perception of the world, thinking that perhaps we were compromising to get standards done."); Testimony of Clarence Lockett, Vice President and Corporate Controller, Johnson & Johnson (Sept. 20, 2000) ("I believe that [having a majority of public members] would certainly go a long way in establishing that body in giving the appearance of greater independence from the profession of that body and its role in establishing independence."); Testimony of Philip A. Laskawy, Chairman, Ernst & Young (Sept. 20, 2000); Written Testimony of James J. Schiro, Chairman and Chief Executive Officer, PricewaterhouseCoopers (Sept. 20, 2000); Testimony of John J. Costello, Senior Director of Litigation, Gursey, Schneider & Co., LLP (Sept. 20, 2000); *see also* the Memorandum by Shaun O'Malley, Chair of the O'Malley Panel, to the O'Malley Panel, dated Aug. 31, 2000, identifying the expansion of the public representation on the ISB as a "major recommendation" of the Panel.

[224] *See, e.g.*, KPMG Letter; AICPA Letter; Written Testimony of Philip D. Ameen, Philip B. Livingston, Roger W. Trupin, Financial Executives Institute (Sept. 20, 2000); Written Testimony of the New York State Society of Certified Public Accountants (Sept. 13, 2000).

[225] *See, e.g.*, Letter of Kayla J. Gillan, General Counsel, CalPERS (Sept. 25, 2000) ("While CalPERS supports the work of the [ISB], only this Commission has the legal authority and effective ability to weigh the competing public interests that are represented in this area and reach conclusions about the best way to protect shareowners and the integrity of the financial markets.").

[226] ISB Standard No. 2, "Certain Independence Implications of Audits of Mutual Funds and Related Entities," ¶ 5 (Dec. 1999).

[227] Testimony of William T. Allen, Chairman, ISB (July 26, 2000).

[228] Testimony of Robert E. Denham, Member, ISB (July 26, 2000).

[229] Written Testimony of Robert E. Denham (July 26, 2000).

[230] Testimony of Manuel H. Johnson, Member ISB (July 26, 2000).

[231] During 1999, approximately 120 foreign companies from 26 countries entered our markets for the first time. At year-end, there were over 1,200 foreign companies from 57 countries filing reports with us, and public offerings by foreign companies totaled over $244 billion. SEC, *Annual Report*, at 76 (1999).

[232] IOSCO is an association of securities regulatory organizations and has over 100 members. *See* IOSCO Annual Report (1999), App. III.

[233] IOSCO, Press Release, IASC Standards (May 17, 2000), available at www.iosco.org/iosco.html.

[234] "International Accounting Standards," Securities Act Rel. No. 7801 (Feb. 16, 2000) [65 FR 8,896].

[235] "International Disclosure Standards," Exchange Act Rel. No. 41936 (Sept. 28, 1999) [64 FR 53,900].

[236] The Institute of Management Accountants, the AICPA, and the National Association of State Boards of Accountancy are members of IFAC.

[237] IFAC Ethics Committee, *Independence: Proposed Changes to the Code of Ethics for Professional Accountants* (Exposure Draft: Sept. 15, 2000).

[238] *See, e.g.*, Letter of Horst Kaminski, German Institut der Wirtschaftsprufer (Institute of Certified Public Accountants) (Sept. 18, 2000); Letter of Ernst & Young (UK practice) (Sept. 7, 2000); Testimony of Jack Maurice, Member of Ethics Working Party, Federation des Experts Comptables Europeens (Sept. 21, 2000).

[239] *See, e.g.*, Letter of Mike Rake, Chairman, KPMG Europe (Sept. 22, 2000); Letter of Ernst & Young (UK practice) (Sept. 7, 2000).

[240] *See* Letter from Phillipe Danjou, COB, to Lynn Turner, Chief Accountant, SEC (Oct. 10, 2000) ("I can assure you that many regulators in Europe (mainly continental Europe) do not agree with FEE's [conceptual] approach and have made their views known to the European commission when it started its consultation on the proposed Recommendations on statutory auditors' independence. I wrote a letter to Karel Van Hulle, Head of Unit, European Commission, to make clear that COB is not ready to accept a purely conceptual system without clear prohibitions.").

[241] *Id.* (noting that France, Germany, Italy, Spain, Belgium and others presently have a system based primarily on specific prohibitions of non-audit services, with exceptions for special circumstances). *See also* Letter from Michel Prada, President, COB, to Marilyn Pendergast, Chairman, Ethics Committee, IFAC (Sept. 15, 2000) (commenting on IFAC's Exposure Draft and noting that "we believe that the thrust of the exposure draft should be reversed from an 'allowed if * * *' system to a 'forbidden except when * * *' system. The proposed change from a prescriptive approach to a framework approach is flawed by the absence of a clear definition of an auditor's unique role and position"). In Australia, securities regulators recently settled a case with one of the Big Five firms where the firm agreed to undertakings that restrict its ability to provide certain non-audit services. For example, one of the covenants is that the firm agreed not to "accept an audit engagement where [the firm] has valued an asset and the valuation is material to the audit engagement. The valuation constitutes a service which is a barrier to the firm's ability to provide an independent audit opinion on the client's financial statements." Media Release, Australia Securities and Investments Commission (Nov. 2, 2000), available at www.asic.gov.au. *See also Staff Report, supra* note 74, at Appendix II; Michael Firth, "The Provision of Nonaudit Services by Accounting Firms to their Audit Clients," *Contemporary Accounting Research* Vol. 14, No. 2, pp. 1–21 (Summer 1997). With respect to a recognized need by foreign regulators to take some type of regulatory action in this area, *see* Testimony of David A. Brown, Q.C., Chair, Ontario Securities Commission (Sept. 13, 2000) (noting that for over a year, the Ontario Securities Commission has publicly raised concerns about the issue of auditor independence, and that "[a]lthough we've not begun to frame a regulatory solution, it has become increasingly evident in Canada that some form of regulatory involvement in a solution will be essential.").

Accordingly, we are adopting final rules that, among other things, reduce the pool of people within audit firms whose independence is required for an independent audit of a company and shrink the circle of family members whose employment by an audit client impairs an accountant's independence. As noted above, we are adopting these changes not because doing so will itself enhance independence, but because the current rules are broader than necessary to protect investors and our securities markets.

IV. Discussion of Final Rules

A. The Preliminary Note

We have included a Preliminary Note to Rule 2–01 that explains the Commission's approach to independence issues. Rule 2–01 does not purport to, and the Commission could not, consider all circumstances that raise independence concerns. The Preliminary Note makes clear that, in applying the standard in Rule 2–01(b), the Commission looks in the first instance to whether a relationship or the provision of a service:

(a) creates a mutual or conflicting interest between the accountant and the audit client; [242]

(b) places the accountant in the position of auditing his or her own work; [243]

(c) results in the accountant acting as management or an employee of the audit client; or [244]

(d) places the accountant in a position of being an advocate for the audit client.[245]

These factors are general guidance and their application may depend on particular facts and circumstances. Nonetheless, we believe that these four factors provide an appropriate framework for analyzing auditor independence issues. We had proposed to include these four factors in the general standard of Rule 2–01(b). While some commenters agreed with including the four principles in the rule,[246] others did not. Some commenters believed that the principles were too general and difficult to apply to particular situations.[247] Others suggested that the principles should more appropriately be used as "guide posts" and included in a preamble instead of in the rule text.[248]

While the principles were derived from current independence requirements, because of these concerns, we are including them in the Preliminary Note. In the context of this Preliminary Note, the four factors play a role comparable to that of the Ethical Considerations in the American Bar Association's Model Code of Professional Responsibility. The Model Code contains three separate but interrelated parts.[249] Ethical Considerations "represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations."[250] Like those Ethical Considerations, the four principles constitute a body of principles to which accountants and audit committees can look for guidance when an independence issue is raised that is not explicitly addressed by the final rule.

The Preliminary Note states that "these factors are general guidance only and their application may depend on particular facts and circumstances." The Preliminary Note also reflects the notion that the influences on auditors may vary with the circumstances and, as a result, Rule 2–01 provides that the Commission will consider all relevant facts and circumstances in determining whether an accountant is independent.

B. Qualifications of Accountants

Rule 2–01(a) remains unchanged and requires that in order to practice before the Commission an auditor must be in good standing and entitled to practice in the state of the auditor's residence or principal office. This requirement has existed since the Federal Trade Commission first adopted rules under the Securities Act.[251] It acknowledges our deference to the states for the licensing of public and certified public accountants.

C. The General Standard for Auditor Independence

Our rule provides a general standard of auditor independence as well as specifying circumstances in which an auditor's independence is impaired. As to circumstances specifically set forth in our rule, we have set forth a bright-line test: an auditor is not independent if he or she maintains the relationships, acquires the interests, or engages in the transactions specified in the rule. In identifying particular circumstances in which an auditor's independence is impaired, we have taken into account the policy goals of promoting both auditor objectivity and public confidence that auditors are unbiased when addressing all issues encompassed within the audit engagement. We have also taken into account the value of specificity, and we have tried to give registrants and accountants substantial guidance and predictability. The particular circumstances that are set forth in our rule as impairing independence are those in which, in our judgment, it is sufficiently likely that an auditor's capacity for objective judgment will be impaired or that the investing public will believe that there has been an impairment of independence.

Circumstances that are not specifically set forth in our rule are measured by the general standard set forth in final Rule 2–01(b). Under that standard, we will not recognize an accountant as independent with respect to an audit client if the accountant is not, or if a reasonable investor knowing all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.[252]

The general standard in paragraph (b) recognizes that an auditor must be independent in fact and appearance. Some commenters suggested that the use of an appearance-related standard departs from current rules.[253] As discussed above and in the Proposing Release, the Commission, courts, and the profession have long recognized the importance of the appearance of independence.[254]

Moreover, the general standard we are adopting merely reflects the different means of demonstrating a lack of objectivity. Objectivity is a state of mind,[255] and except in unusual circumstances, a state of mind is not subject to direct proof.[256] Usually, it is demonstrated by reference to circumstantial evidence. Accordingly, the final rule is formulated to indicate that an auditor's independence is impaired either when there is direct evidence of subjective bias, such as through a confession or some way of recording the auditor's thoughts, or when, as in the ordinary case, the facts and circumstances as externally observed demonstrate, under an objective standard, that an auditor would not be capable of acting without bias.

The appearance standard incorporated in the general standard is an objective one. Appearance is measured by reference to a reasonable investor. The "reasonable person" standard is embedded in the law generally. In particular, the "reasonable investor" standard is reflected in the concept of materiality under the federal securities laws.[257]

Commenters expressed concern that a general standard based on the conclusion of a "reasonable investor" may have some imprecision. They urged that the general standard require only independence "in fact." We believe, however, that we have reduced imprecision substantially by describing in some detail particular circumstances that give rise to an impairment of independence. Moreover, reliance solely on independence "in fact" would increase the imprecision beyond a "reasonable investor" test, because independence "in fact" is essentially an inquiry into the subjective workings of the accountant's mind, whereas a "reasonable investor" test relies on observable circumstances and is thus better suited to uniform and consistent application.

We recognize that there is an irreducible degree of imprecision in the notion of independence. We will be mindful of this imprecision, and the range of reasonable views that it engenders, in applying the auditor independence rules. We do not, for example, seek to discourage the development of non-audit services that do not raise independence issues. In considering our response to services not explicitly covered by these rules, we will take into account the nature of the service, prior contacts with the staff, relevant public statements by the Commission or staff, and any related professional literature.

Paragraphs (c)(1) through (5) require the accountant to be independent during the "audit and professional engagement period."[258] This term is defined in Rule 2–01(f)(5) to mean the period covered by any financial statements being audited or reviewed, and the period during which the auditor is engaged either to review or audit financial statements or to prepare a report filed with us, including at the date of the audit report.[259] The use of the word "during" in paragraphs (c)(1) through (5) is intended to make clear that an accountant will lack independence if, for example, he or she is independent at the outset of the engagement but acquires a financial interest in the audit client during the engagement.

We have further confined the legal standard by including the explicit reference to "all relevant facts and circumstances." To make this explicit, we have included the language in the rule text. We have also modified the language to refer to whether a reasonable investor would "conclude" as opposed to "perceive" that the accountant was not capable of exercising objective and impartial judgment. While this is not a substantive change, it makes clear that independence is an objective standard measured from the perspective of the reasonable investor.

Current Rule 2–01(c) provides that we will look to all relevant circumstances, including all relationships between the accountant and the audit client and not just those relating to reports filed with the Commission. We proposed to include this language in Rule 2–01(e). Under the adopted rule, however, the language appears in Rule 2–01(b) in order to highlight that in applying the general standard in Rule 2–01(b), we will consider "all relevant circumstances."

We remind registrants and accountants that auditor independence is not just a legal requirement. It is also a professional and ethical duty. That duty requires auditors to remain independent of audit clients,[260] and includes an obligation to "avoid situations that may lead outsiders to doubt [the auditor's] independence."[261]

In certain situations, whether or not legally required, the best course may be for the accountant to recuse himself or herself from an audit engagement. On occasion, there may be a relationship, apart from those contemplated by any standard or rule, that has an important meaning to an individual accountant and could create, or be viewed by a reasonable investor with knowledge of all relevant facts and circumstances as creating, a conflict with the accountant's duty to investors.[262] In this and any similar situation, we encourage accountants to seek to recuse themselves from any review, audit, or attest engagement, whether or not specifically required by the Commission's, the ISB's, or the profession's rules.

D. Specific Applications of the Independence Standard

Rule 2–01(c) ties the general standard of paragraph (b) to specific applications. Paragraphs (c)(1) through (c)(5) address separately situations in which an accountant is not independent of an

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[242] *See, e.g.*, Codification §§ 601.01 and 601.04.

[243] *See, e.g.*, Codification § 602.02.c.i.

[244] *See* Rule 2–01(b), 17 CFR 210.2–01(b) (accountant cannot act as "director, officer or employee" of audit client and remain independent for purposes of Regulation S–X); Codification §602.02.d.

[245] *See, e.g., Arthur Young*, 465 U.S. at 819 n.15; Codification §§ 602.02.e.i and ii.

[246] *See supra* note 15.

[247] *See supra* note 16; *see also* Written Testimony of Dan L. Goldwasser, Vedder, Price, Kaufman & Kammholz (July 26, 2000) (while acknowledging that "these concepts are not novel and can be found throughout the audit literature," stating that they "should not be adopted as guiding principles to be invoked each time a novel situation is encountered.").

[248] *See, e.g.*, Testimony of K. Michael Conaway, Presiding Officer, Texas State Board of Accountancy (Sept. 20, 2000) ("[W]e would ask that [the four principles] be better placed in a preamble or a guidance document."); Testimony of Clarence E. Lockett, Vice President and Corporate Controller, Johnson & Johnson (Sept. 20, 2000) ("[W]e do not believe the four governing principles should be stated as firm rules [but rather] be part of the framework and serve [as] guiding principles.").

[249] Thomas D. Morgan and Ronald D. Rotunda, eds., The Model Code of Professional Responsibility (1995).

[250] *Id.* at Preliminary Statement (citing "Professional Reponsibility: Report of the Joint Conference," 44 A.B.A.J., at 1159 (1958)).

[251] Federal Trade Commission, *Rules and Regulations Under the Securities Act of 1933*, art. 14 (July 6, 1933).

[252] *Cf. Staff Report*, *supra* note 74, at 12–16. *See also* SEC, *Tenth Annual Report of the Securities and Exchange Commission*, at 205–207 (1944), which states:

[T]he Commission has found an accountant to be lacking in independence with respect to a particular registrant if the relationships which exist between the accountant and the client are such as to create a reasonable doubt as to whether the accountant will or can have an impartial and objective judgment on the questions confronting him.

[253] *See, e.g.*, KPMG Letter.

[254] *See, supra* note 38–40; Proposing Release, Section II.B.

[255] *See, supra* note 39.

[256] *See, United States* v. *Gamache*, 156 F.3d 1, 8 (1st Cir. 1998) ("Now, undoubtedly, establishing intent, short of a situation in which it is admitted, is difficult and usually depends on the use of circumstantial evidence.").

[257] *See TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976) (information is material if it would be "viewed by the reasonable investor as having significantly altered the 'total mix' of information made available"); *Basic, Inc.* v. *Levinson*, 485 U.S. 234–236 (1988).

[258] *See also* AICPA Code of Professional Conduct, ET § 101.02 (revised Feb. 28, 1998).

[259] Rule 2–01(f)(5) states that the engagement period ends when the registrant or accountant notifies the Commission that the registrant is no longer the accountant's audit client. This notice typically would occur when the registrant files with the Commission a Form 8–K with disclosures under Item 4 "Changes in Registrant's Certifying Accountant." In some cases, however, a Form 8–K is not required, such as when the registrant is a foreign private issuer or when the audited financial statements of a non-reporting company are filed upon its acquisition by a public company. Notification to the Commission in these cases would occur by the filing of the next audited financial statements of the foreign private issuer or the successor corporation. Registrants or auditors in these situations, however, may provide earlier notice to the Commission on Form 6–K or by other appropriate means.

[260] *See* AICPA SAS No. 1, Au § 220.03; AICPA Code of Professional Conduct, ET § 101. Of course, accountants also have to comply with applicable state law on independence. *Id.*

[261] AICPA SAS No. 1, AU § 220.03.

[262] *Cf. AUSA Life Ins. Co.* v. *Ernst & Young*, 206 F.3d 202, 205 (2d Cir. 2000) (noting "E&Y's failure lay in the seeming spinelessness" of the audit engagement partner and that "[p]art of the problem was undoubtedly the close personal relationship between" that partner and the company's chief executive officer, a former co-partner in the firm) (quoting 991 F. Supp. 234, 248 (S.D.N.Y. 1997) (district court opinion)).

audit client because of certain: (1) financial relationships, (2) employment relationships, (3) business relationships, (4) transactions or situations involving the provision of non-audit services, or (5) transactions or situations involving the receipt of contingent fees.[263]

The proposed rule included a provision under which an accountant's independence would have been impaired if the accountant had any of the relationships or provided any of the services described by proposed Rule 2–01(c), or "otherwise [did] not comply with the standard" of paragraph (b). We have eliminated from the text of the rule the language regarding the accountant's failure "otherwise" to comply with the standard. Instead, we have modified the structure of paragraph (c) to make clear that the paragraph sets forth a "non-exclusive specification of circumstances" that are inconsistent with the standard of paragraph (b).

1. Financial Relationships

Rule 2–01(c)(1) sets forth the general rule regarding financial relationships that impair independence. It addresses, among other things, direct or material indirect investments, trustee positions involving investment decision-making authority, investments in common with audit clients, debtor-creditor relationships, deposit accounts, brokerage accounts, commodity accounts, and insurance policies.

Rule 2–01(c)(1) contains the general standard that "[a]n accountant is not independent if, at any point during the audit and professional engagement period, the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client." The rule then specifies certain financial interests that constitute a direct or material indirect financial interest in an audit client. As the rule indicates, the list of specified interests is not intended to be exclusive. The specified interests represent common types of financial interests that impair independence, but the effect of other types of financial interests on auditor independence will be determined under the general standards of paragraphs (b) and (c)(1).

In applying the financial relationship provisions of the rule, it is important to bear in mind the definition of "audit client." "Audit client," when used in the rule, includes some "affiliate[s] of the audit client," as that term is defined in the rule.[264] Accordingly, financial relationships with certain affiliates of audit clients are subject to the provisions of Rule 2–01(c)(1). In this discussion, as well as in the rule, references to "audit client" should be understood to include the appropriate affiliates of the audit client.

For the most part, the specified financial interests described in this section of the rule impair independence only if they are financial interests of the accounting firm, covered persons in the firm, or immediate family members of covered persons. (The exception concerns situations involving beneficial ownership of more than five percent of an entity, or control of an entity.) This represents a liberalization from prior restrictions that generally reached all partners in the firm regardless of whether they had any relationship to the audit of the particular client.

While the comments we received reflected widespread (although not universal) agreement with our goal of modernizing the financial relationships restrictions, some commenters urged us not to liberalize these restrictions to the extent we proposed. Generally, these commenters argued in favor of the prophylactic value of a rule precluding a broader scope of persons from having a financial interest in an audit client of the firm.[265] Several of these commenters also spoke of the importance of a firm culture that treats all clients as clients of the firm, and in which the firm can call on any partner to assist with the audit of any client on short notice without having to consider whether the partner's personal financial interests preclude it.[266]

On the other hand, some commenters, while agreeing generally with our proposal to scale back the scope of persons whose financial interests are restricted, advocated that we further narrow the group of persons who are included in the restrictions. These commenters generally expressed a preference for a "tiered" approach that would restrict even fewer people with respect to some types of financial interests.[267]

The balance we struck between these two sets of concerns was viewed favorably by many commenters.[268] We believe that fair, meaningful, and relevant independence rules concerning financial relationships should reflect a calibrated approach to determining what specific relationships realistically give rise to independence concerns. After considering the comments we received, we have drawn the lines essentially where we proposed—"covered persons in the firm" and their immediate family members—though we have modified slightly the definition of "covered persons" in the firm.[269] The final rule, like the proposed rule, would attribute all investments by a covered person's "immediate family members," that is, the covered person's spouse, spousal equivalent, and dependents, to the covered person.

a. *Investments in Audit Clients.* Rule 2–01(c)(1)(i) describes investments that impair an accountant's independence as to a particular audit client. Paragraph (A) provides that an accountant is not independent of an audit client if the accounting firm, any covered person in the firm, or any immediate family member of any covered person has a "direct investment"—such as stocks, bonds, notes, options, or other securities—in the audit client. As the language of the rule makes clear, this is not an exclusive list of all ownership interests subject to the rule. Other than with respect to the scope of persons encompassed by the rule, paragraph (A) does not represent any substantive change to our rules on direct investments.

We noted in the Proposing Release that "as under current law, the rule cannot be avoided through indirect means."[270] We stated, as an example, that an accountant precluded from having a direct investment in an audit client could not evade that restriction by investing in the client through a corporation or as a member of an investment club.[271] Some commenters proposed that we address that issue with specific rule text, and they proposed language.[272] While not adopting the language proposed by commenters, we have, in the interest of increased clarity, included in the final rule language addressing that issue.

Specifically, we have added the proviso that an investment through an intermediary shall constitute a "direct investment" in the audit client if either of two conditions is satisfied: "(1) The accounting firm, covered person, or immediate family member, alone or together with other persons, supervises or participates in the intermediary's investment decisions or has control over the intermediary; or (2) The intermediary is not a diversified management investment company . . . and has an investment in the audit client that amounts to 20% or more of the value of the intermediary's total investments." If either of these criteria is satisfied, the investment is treated as a direct investment in the audit client and, therefore, impairs independence. If an investment through an intermediary does not satisfy either of these two criteria, however, the investment is considered "indirect," and it impairs independence only if it crosses one of the thresholds set out in Rule 2–01(c)(1)(i)(D) or (E).

Rule 2–01(c)(1)(i)(B) provides that an accountant is not independent when "[a]ny partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, or any group of the above persons has filed a Schedule 13D or 13G[273] [] with the Commission indicating beneficial ownership of more than five percent of an audit client's equity securities, or controls an audit client, or a close family member of a partner, principal, or shareholder of the accounting firm controls an audit client." Paragraph (B) is the only one of the financial relationship provisions that specifically encompasses a range of persons beyond covered persons and their immediate family members. The broader scope of coverage under paragraph (B) is based on the view that when a financial interest in an audit client of the firm becomes particularly large, the fact that the person holding that interest is distanced from the audit engagement no longer sufficiently mitigates the potential for a conflict.

We have made one substantive addition to the proposed paragraph (B). We have added at the end of the paragraph the clause "or a close family member of a partner, principal, or shareholder of the accounting firm controls an audit client." This provision identifies additional circumstances that impair independence, beyond the circumstances in our proposed rule.[274] For instance, this provision would provide that independence is impaired when the sister or parent of a partner in the firm who is not a covered person controls an audit client. We agree that the circumstances described by this provision would result in an impairment of independence. In addition, we note that this provision is consistent with existing rules.[275]

Rule 2–01(c)(1)(i)(C) provides that an accountant is not independent when "[t]he accounting firm, any covered person in the firm, any of his or her immediate family members, serves as voting trustee of a trust or executor of an estate containing the securities of an audit client, unless the accounting firm, covered person in the firm or immediate family member has no authority to make investment decisions for the trust or estate." Because a trustee or executor typically has a fiduciary duty to preserve or maximize the value of the trust's or estate's assets, we believe it is appropriate to treat the trustee's or executor's interest as a direct financial interest in the audit client and to deem the auditor's independence impaired. We understand, however, that a person might serve as a trustee or executor without having any authority to make investment decisions for the trust or estate. Because we see no reason to consider an auditor's independence impaired in those circumstances, we have added the proviso at the end of paragraph (C) to include an exception for those circumstances.

Rule 2–01(c)(1)(i)(D) covers material indirect investments in an audit client. The basic rule provides that an accountant is not independent when "[t]he accounting firm, any covered person in the firm, any of his or her immediate family members, or any group of the above persons has any material indirect investment in an audit client." This provision carries over the existing proscription on material indirect investments in audit clients.[276]

At the proposing stage, paragraph (D) included two examples of what would constitute a material indirect investment: (1) Ownership of more than five percent of an entity that has an ownership interest in the audit client, and (2) ownership of more than five percent of an entity in which the audit client has an ownership interest. A number of commenters, however, proposed eliminating those examples as unnecessarily restrictive and burdensome. We agree that the examples would have consequences beyond what we intended. Accounting firms may, through their pension plans or otherwise, acquire more than five percent stakes in other entities. In these situations, it may well be impracticable for an accounting firm regularly to monitor whether that entity has *any* financial interest in an audit client or whether an audit client has *any* financial interest in the entity.[277] Accordingly, we have omitted those examples in the final rule.

Because the material indirect investment rule is a general standard, we have also decided to include one additional provision to clarify the meaning of "material indirect investment" in the context of mutual fund investments. Specifically, the rule makes explicit that the term "material indirect investment" does not include ownership by any covered person in the firm, any of his or her immediate family members, or any group of the above persons, of five percent or less of the outstanding shares of a diversified management investment company that invests in an audit client.[278] Consequently, the material indirect investment rules, as adopted, allow auditors to invest in management investment companies, provided that the company is diversified as defined under the Investment Company Act of 1940.[279] If an investment company is

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[263] A number of the specified situations are based on examples in the Codification and the AICPA and SECPS membership rules.

[264] *See infra* Sections IV.H.3 and IV.H.5, for detailed discussions of the definitions of "audit client" and "affiliate of the audit client." As explained below, the affiliates of the audit client that are deemed to included in the term "audit client" for purposes of the financial relationship provisions in paragraph (c)(1)(i) are more limited than the group included in other parts of the rule.

[265] *See, e.g.*, Written Testimony of Thomas M. Rowland, Senior Vice President, Fund Business Management Group, Capital Research and Management Company (Sept. 20, 2000) (restrictions should extend to persons in the firm beyond the scope of "covered persons"); Letter of John Spadafora (June 28, 2000) (Narrowing the scope of persons whose investments are restricted "is another step backwards creating temptations to pass inside information to those whose investments are not restricted.").

[266] *See, generally*, Written Testimony of J. Michael Cook, former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000); Testimony of Ray J. Groves, former Chairman and Chief Executive Officer of Ernst & Young (July 26, 2000).

[267] *See, e.g.*, Ernst & Young Letter.

[268] *See, e.g.*, Written Testimony of William R. Kinney, Jr., Professor, University of Texas at Austin (Sept. 20, 2000) (proposed changes will "reduce aggregate regulatory compliance without affecting audit quality or increasing independence impairment risk for investors"); Testimony of Robert L. Ryan, Chief Financial Officer, Medtronic, Inc. (Sept. 20, 2000) (proposed financial relationship rules are "logical, less bureaucratic, and we're completely in agreement").

[269] *See infra* Section IV.H.9 for a detailed discussion of the definition of "covered persons in the firm."

[270] Proposing Release, Section III.C.1(a) citing Codification § 602.02.b.ii (Example 1).

[271] Proposing Release, Section III.C.1(a).

[272] *See* Ernst & Young Letter; PricewaterhouseCoopers Letter.

[273] 17 CFR 240.13d–101, 13d–102.

[274] *Cf.* Ernst & Young Letter; PricewaterhouseCoopers Letter (suggesting a similar provision for immediate family members of all partners in the firm).

[275] *See* Codification § 602.02.h (Examples 1 and 5).

[276] *See* former Rule 2–01(b).

[277] The analysis is different with respect to situations where the entity has a material investment in the audit client, or the audit client has a material investment in the entity. We address those situations in Rule 2–01(c)(1)(i)(E), discussed below.

[278] The term "diversified management investment company" refers to those entities meeting the definitions of "management company" and "diversified company" in Sections 4(3) and 5(b)(1) of the Investment Company Act, 15 U.S.C. §§ 80a–4(3) and 80a–5(b)(1).

[279] Under the Investment Company Act, a "diversified" management company must meet the following requirements: at least 75% of the value of its total assets is in cash, cash items, Government securities, securities of other investment companies, and other securities limited in respect

non-diversified under the Investment Company Act of 1940,[280] the company must disclose that fact in its prospectus. As a result, an accountant can easily determine by reviewing the prospectus whether the company is diversified for purposes of the rule. In addition, this provision does not constitute any substantive change from the proposed rule, because the general categories of examples in the proposed rule would have covered this situation. This provision is intended to ensure that all firm personnel and their family members can freely invest (up to the five percent cap) in diversified mutual funds that are not audit clients and are not part of an investment company complex that includes an audit client, without bearing the burden of constantly monitoring whether, and to what degree, those funds invest in an audit client's securities.[281]

We have not included accounting firms within this provision for two reasons. First, in contrast to most individual investors, accounting firms through their pension funds may invest large sums and, therefore, better access diversified investment vehicles, such as managed accounts that do not invest in their audit clients. At the same time, the large amounts that may be invested by an accounting firm, through its pension plan or otherwise, increase the chances that the indirect investment may be material to the audit client. This should not be understood, however, to prevent accounting firms from investing in diversified mutual funds. Rather, when they invest in such funds, they must comply with the general "material indirect investment" standard.

Second, at the suggestion of commenters,[282] we have included a new paragraph (E) that governs (1) investments in entities that invest in audit clients ("intermediary investors") and (2) investment in entities in which audit clients invest ("common investees"). We have decided to codify in our rule the substance of the existing AICPA restrictions applicable to those situations.[283] We have codified those restrictions in paragraph (c)(1)(i)(E).

Paragraph (E), like the AICPA rule, is framed in terms of material investments and the ability to exercise significant influence over an entity.[284] In the case of an intermediary investor, paragraph (E) provides that an accountant is not independent if the firm, a covered person, or an immediate family member of a covered person has either (1) a direct or material indirect investment in an entity that has both an investment in an audit client that is material to that entity and the ability to exercise significant influence over the audit client,[285] or (2) the ability to exercise significant influence over an entity that has the ability to exercise significant influence over an audit client.[286]

In the case of a common investee, paragraph (E) provides that an accountant is not independent if the firm, a covered person, or an immediate family member of a covered person has either (1) a direct or material indirect investment in an entity in which an audit client has a material (to the audit client) investment and over which the audit client has the ability to exercise significant influence,[287] or (2) any material investment in an entity over which an audit client has the ability to exercise significant influence.[288]

With respect to paragraph (c)(1)(i)(E)(*2*), which turns in part on whether a covered person's or immediate family member's investment in an entity is material to that person, we do not anticipate that compliance requires a firm constantly to monitor the net worth of all covered persons and their immediate family members in order to know at all times whether any particular investment is material to them. We anticipate that monitoring for compliance with this paragraph will involve routine monitoring of the investments of all covered persons and their immediate family members, combined with monitoring of the identity of entities over which the firm's audit clients have the ability to exercise significant influence. When overlap between those categories appears, the firm can take additional steps to determine whether the relevant investment is material to the covered persons or immediate family members holding the investment.

If an "intermediary investor" or a "common investee" becomes an affiliate of the audit client under paragraph (f)(4)(i) or (iv), then paragraph (E) no longer governs the question of independence. Rather, paragraph (A)'s provision concerning direct investments in audit clients will apply to that intermediary investor or common investee, and *any* investment in that entity by the firm, a covered person, or an immediate family member of a covered person would impair independence.

b. *Other Financial Interests.* Rule 2–01(c)(1)(ii) describes other financial interests of an auditor that would impair an auditor's independence with respect to an audit client because they create a debtor-creditor relationship or other commingling of the financial interests of the auditor and the audit client. In some situations, the continued viability of the audit client may be necessary for protection of the auditor's own assets (*e.g.*, bank deposits or insurance) or for the auditor to receive a benefit (*e.g.*, insurance claim). These situations reasonably may be viewed as creating a self-interest that competes with the auditor's obligation to serve only investors' interests. We have adopted Rule 2–01(c)(1)(ii) largely as proposed, though we have made some modifications, described below.

(i) *Loans/Debtor-Creditor Relationships.* Rule 2–01(c)(1)(ii)(A) provides that an accountant will not be independent when the accounting firm, any covered person in the accounting firm, or any of the covered person's immediate family members has any loan (including any margin loan) to or from an audit client, or an audit client's officers, directors, or record or beneficial owners of more than ten percent of the audit client's equity securities. As proposed, we have also adopted exceptions for four types of loans:[289] (1) automobile loans and leases collateralized by the automobile; (2) loans fully collateralized by the cash surrender value of an insurance policy; (3) loans fully collateralized by cash deposits at the same financial institution; and (4) a mortgage loan collateralized by the borrower's primary residence provided the loan was not obtained while the covered person in the firm was a covered person.

As adopted, paragraph (A) varies from the proposed rule in two respects, one representing a substantive change and one a clarifying change. The substantive change involves increasing to ten percent (up from the proposed five percent) the percentage of an audit client's securities that a lender may own without posing an independence impairment for an accountant who borrows from that lender. We have made this change because we believe that doing so will not make the rule significantly less effective, and may significantly increase the ease with which one can obtain the information necessary to assure compliance with this rule. The ten percent threshold corresponds to the definitions in the Commission's Regulation S–X of a "principal holder of equity securities,"[290] as well as a "promoter."[291] In addition, other aspects of the securities laws attach significance to an equity interest in excess of ten percent.[292] These definitions and substantive legal provisions clearly classify ten percent shareholders as having a special and influential role with the issuer. Accordingly, a lender owning more than ten percent of an audit client's securities would be considered to be in a position to influence the policies and management of that client.

The clarifying change involves the wording of paragraph (A)(*4*), which describes the mortgage loan exception. The proposed rule referred to a mortgage loan "collateralized by the accountant's primary residence." In the final rule, we have changed "accountant" to "borrower," because we intend for the exception to apply also to mortgage loans obtained by an immediate family member of a covered person. The proposed rule also specified that this exception was limited to loans "not obtained while the borrower was a covered person in the firm or an immediate family member of a covered person in the firm." In the final rule, we have changed this language to "not obtained while the covered person in the firm was a covered person." This change is intended only as a way of clarifying that the test focuses on the status of the relevant covered person at the time of the mortgage loan.

(ii) *Savings and Checking Accounts.* Rule 201(c)(1)(ii)(B) concerns savings and checking accounts. It provides that an accountant is not independent when the firm, a covered person, or an immediate family member of a covered person "has any savings, checking, or similar account at a bank, savings and loan, or similar institution that is an audit client, if the account has a balance that exceeds the amount insured by the Federal Deposit Insurance Corporation or any similar insurer, except that an accounting firm account may have an uninsured account balance provided that the likelihood of the bank, savings and loan, or similar institution experiencing financial difficulties is remote."

At the suggestion of commenters, we have modified this provision from the proposed rule by adding the exception for accounting firm accounts with institutions that have no more than a remote likelihood of experiencing financial difficulties.[293] Large firms often maintain account balances well in excess of FDIC limits, and the heavy daily volume of large transactions imposes such demands on a financial institution that there is, as a practical matter, a very limited universe of banks capable of servicing those accounts. Under the circumstances, we are persuaded that it is necessary to provide an exception that would allow accounting firms (but not individuals who are covered persons) to maintain balances above insured limits even if the financial institution is an audit client. We emphasize that this is a narrow exception mandated by practical necessity, and that, even so, the exception only applies as long as there is no more than a remote likelihood of the institution experiencing financial difficulties. If there is more than a remote likelihood of the institution experiencing financial difficulties, then an uninsured balance will impair independence because the auditor would be placed in the situation of having to decide whether to express an opinion about the institution as a going concern when the auditor's own assets may be at risk.

(iii) *Broker-Dealer Accounts.* Rule 2–01(c)(1)(ii)(C) provides that an accountant will not be independent when the accounting firm, any covered person in the firm, or any of the covered person's immediate family members, has any brokerage or similar accounts maintained with a broker-dealer that is an audit client if any such accounts include any asset other than cash or securities (within the meaning of "security" provided in the Securities Investor Protection Act ("SIPA")), or where the value of the assets in the accounts exceeds the amount that is subject to a Securities Investor Protection Corporation ("SIPC") advance for those accounts, under Section 9 of SIPA. Those final provisions are as we proposed.

In addition, we have added to paragraph (C) a provision intended to ensure that brokerage accounts maintained outside of the U.S. not covered by SIPA will nonetheless not impair independence so long as the value of the assets in those accounts is insured or protected pursuant to a program similar to SIPA. Some commenters noted that SIPC insurance is not available in jurisdictions outside the U.S. and suggested that we add this provision.[294] We believe that this addition represents a logical extension of our purpose in originally proposing the SIPA exception. Again, however, the insurance must be similar to SIPA for the exception to apply.

(iv) *Futures Commission Merchant Accounts.* Rule 201(c)(1)(ii)(D) provides that the accountant will not be independent when the accounting firm, any covered person in the firm, or any covered person's immediate family member has any futures, commodity, or similar account maintained with a futures commission merchant that is an audit client. Few commenters

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of any one issuer to an amount not greater in value than five percent of the value of the total assets of such management company and not more than ten percent of the outstanding voting securities of such issuer. 15 U.S.C. § 80a–5(b)(1).

[280] One commenter recommended that diversification be measured under Subchapter M of the Internal Revenue Code rather than the Investment Company Act of 1940. *See* Letter of Investment Company Institute (Sept. 25, 2000) ("ICI Letter"). Under Subchapter M, at the end of each calendar quarter of the taxable year, at least 50% of the value of the fund's total assets must be represented by cash, cash items, U.S. Government securities, securities of other investment companies, and investments in other securities, which, with respect to any one issuer, do not represent more than five percent of the value of total assets of the fund or more than ten percent of the voting securities of the issuer. In addition, no more than 25% of the value of the fund's total assets may be invested in securities of any one issuer. The Commission determined not to adopt the tax code diversification test because an investment company could concentrate its investments in a smaller number of issues and requires diversification only at the close of each quarter.

[281] *See* Written Testimony of Thomas C. Rowland, Senior Vice President, Fund Business Management Group, Capital Research and Management Company (Sept. 20, 2000) (suggesting a similar rule).

[282] *See* Ernst & Young Letter; PricewaterhouseCoopers Letter.

[283] *See* AICPA Code of Professional Conduct, ET section 101–8.

[284] Here, as elsewhere in the rule, we use the term "significant influence" as it is used in Accounting Principles Board Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock" (Mar. 1971) ("APB No. 18"). *See infra* Section IV.H.3. Because we have included a specific rule on investments in non-clients, as well as the material indirect investment rule of paragraph (D), we have decided that a more limited definition of "affiliate of an audit client" is warranted for purposes of the investment rules in paragraph (c)(1)(i). The definition of "audit client" provides that, for purposes of paragraph (c)(1)(i), audit client does not include "entities that are affiliates of the audit client only by virtue of paragraph (f)(4)(ii) or (f)(4)(iii) of the section." In other words, the only "affiliates of the audit client" that are included in the term "audit client" in section (c)(1)(i) are those that are in a control relationship with the audit client or that are part of the same investment company complex as the audit client. The rules on investments specifically state that an investment in certain entities that significantly influence, or are significantly influenced by, the audit client, impair the auditor's independence. Accordingly, there is no need to include those entities within the more general definition of an "affiliate of the audit client."

[285] *See* Rule 2–01(c)(1)(i)(E)(*1*)(*ii*).

[286] Rule 2–01(c)(1)(i)(E)(*3*). The operation of paragraphs (E)(*1*)(*ii*) and (E)(*3*) is illustrated in the chart attached as Appendix A.

[287] Rule 2–01(c)(1)(i)(E)(*1*)(*i*).

[288] Rule 2–01(c)(1)(i)(E)(*2*). The operation of paragraphs (E)(*1*)(*i*) and (E)(*2*) is illustrated in the chart attached as Appendix B.

[289] Consistent with the Proposing Release, we have treated credit card debt as a separate category. *See* discussion of paragraph (c)(1)(ii)(E) below.

[290] Regulation S–X, Rule 1–02(r), 17 CFR 210.1–02(r).

[291] Regulation S–X, Rule 1–02(s)(2), 17 CFR 210.1–02(s)(2).

[292] *See, e.g.*, Section 16 of the Securities Exchange Act of 1934, 15 U.S.C. § 78p.

[293] *See* Ernst & Young Letter; PricewaterhouseCoopers Letter.

[294] *See generally*, Deloitte & Touche Letter.

commented on this provision,[295] and we have adopted it exactly as proposed.

(v) *Credit Cards.* Rule 201(c)(1)(ii)(E) provides that an accountant is not independent when the accounting firm, any covered person in the firm, or any covered person's immediate family member has "[a]ny aggregate outstanding credit card balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and any available grace period." This represents a slight modification from the rule as proposed. Under the proposed rule, independence would have been impaired the moment that a relevant credit card balance exceeded $10,000. Commenters, noting the occasional use of credit cards for large consumer purchases, college tuition, and tax payments, asked that we modify the rule so that the $10,000 limit applies only as of the due date.[296] We agree that the issue we seek to address in this paragraph (E) is equally well addressed with a more flexible approach, taking account of the realities of day-to-day life, that allows a credit card balance to exceed $10,000 so long as the balance is brought back down below $10,000 within the immediate credit card payment cycle.

(vi) *Insurance Products.* Rule 201(c)(1)(ii)(F) provides that an auditor's independence is impaired whenever any covered person in the firm or any immediate family member of a covered person holds any individual insurance policy issued by an insurer that is an audit client unless: (1) The policy was obtained at a time when the person in the firm was not a covered person; or (2) the likelihood of the insurer becoming insolvent is remote. The final rule reflects two modifications from the proposed rule.

First, the rule that we proposed would have provided that an accounting firm's independence was impaired by having a professional liability policy originally issued by an audit client. We have reconsidered this issue in light of comments pointing out that professional liability insurance for accountants is provided by relatively few insurers and, moreover, complex syndication relationships among those insurers make it unreasonable to expect that any given professional liability insurer will ever be completely absent from the coverage scheme that insures its auditor.[297] The final rule, therefore, does not provide that a professional liability policy gives rise to an independence impairment. In addition, by leaving the word "individual" in our final rule, we intend to make clear that the rule does not apply to professional liability or any other type of insurance policy held by an accounting firm.

Second, the rule that we proposed would have provided that independence was impaired by a covered person or immediate family member having any individual policy originally issued by an insurer that is an audit client. Commenters pointed out how this provision could work a hardship where, for example, an accountant obtains a life insurance policy from an audit client of the firm, but obtains the policy when he or she is not a covered person with respect to the client. If that accountant later becomes a covered person with respect to that insurer, our proposed rule effectively would have required that accountant to obtain that insurance from another carrier. Changing life insurers, however, could prove to be very difficult and expensive depending on many other factors that could have changed since the accountant first obtained the insurance.

We believe that the goal of this paragraph (F) can be served equally well by a provision that largely averts that potential hardship. The final rule, therefore, provides that, so long as the likelihood of the insurer becoming insolvent is remote, independence is not impaired if a covered person or immediate family member obtains a policy from an audit client when the covered person is not a covered person with respect to that audit client.[298] If, however, the likelihood of the insurer becoming insolvent is not remote, then independence is impaired regardless of the lack of "covered person" status at the time the policy was obtained. In any event, when the likelihood of insolvency is remote, and the policy was obtained when the covered person was not a covered person, it is our intention that the covered person be able to renew the policy and increase the coverage if done pursuant to the pre-existing contractual terms of the policy.

Finally, as discussed in more detail below, recusal remains an option in some circumstances. If a person or a member of that person's immediate family wished to obtain insurance from an audit client, the person may be able to recuse himself or herself from being a covered person for that audit client. For instance, depending on a firm's organization, persons that are covered persons only because they are within the definition of the "chain of command" may be able to re-structure their supervisory role with respect to a particular audit client so as to fall outside that definition with respect to the audit client.

(vii) *Investment Companies.* Rule 2–01(c)(1)(ii)(G) addresses investments in an entity that is part of an investment company complex. The rule provides that, when an audit client is part of an investment company complex, an accountant is not independent if the accounting firm, a covered person, or an immediate family member of a covered person has any financial interest in an entity in the investment company complex. Technically, this provision represents an explicit statement of a concept that otherwise necessarily follows from other aspects of the rule. Specifically, because the definition of "affiliate of the audit client" includes any entity that is part of an investment company complex (as defined in Rule 2–01(f)(14)) that includes an audit client,[299] the restrictions included in paragraphs (c)(1)(i) and (c)(1)(ii) necessarily apply to any such entity. We have singled out these entities in paragraph (G) to minimize the possibility that a reader focused on the financial relationship provisions might overlook those entities' inclusion as "an affiliate of the audit client." We solicited comment on whether we should follow ISB Standard No. 2,[300] and our intent, as stated in the Proposing Release, was to codify the substance of ISB Standard No. 2. Commenters generally did not object to this concept, although several expressed concerns about the definition of "investment company complex" as discussed below.[301] We have reworded paragraph (G) from the Proposing Release solely for the purpose of clarity. No substantive change is intended.

c. *Exceptions.* We are adopting Rule 2–01(c)(1)(iii) regarding limited exceptions to the financial relationship rules substantially as proposed, with slight modifications, and we are adding one additional exception. These exceptions recognize that there are situations in which an accountant, by virtue of being given a gift or receiving an inheritance, or because the accounting firm has taken on a new audit client, may lack independence solely because of events beyond the accountant's control. In these circumstances, independence is not deemed to be impaired if the financial interest is promptly disposed of or the financial relationship is promptly terminated. These exceptions operate to avert an independence impairment only with respect to the financial interests referenced in the exceptions. These exceptions do not have the effect of averting an independence impairment caused by any other factors, such as employment relationships or non-audit services.

(i) *Inheritance and Gift.* Rule 2–01(c)(1)(iii)(A) provides that an accountant's independence will not be impaired by virtue of an unsolicited financial interest, such as a gift or inheritance, so long as the recipient disposes of the interest as soon as practicable, but in no event later than thirty days after the recipient has knowledge of, and the right to dispose of, that interest. Our proposed version of this provision required that the interest be disposed of no later than thirty days after the recipient has a right to dispose of it. We have added the phrase "has knowledge of" to avoid the unfairness that could result in a case where the recipient of a financial interest does not learn of that interest immediately upon acquiring it. In addition, several commenters from foreign jurisdictions noted that there are situations abroad in which an accounting firm may be appointed executor of an estate without its advance knowledge.[302] We have modified the rule to address these situations. Specifically, we have expanded it to cover "unsolicited financial interests" even if not acquired through inheritance or gift.

(ii) *New Audit Engagement.* We are adopting Rule 2–01(c)(1)(iii)(B) substantially as proposed. It is designed to allow accounting firms to bid for and accept new audit engagements, even if a person has a financial interest that would cause the accountant to be not independent under the financial relationship rules. This exception is available to an accountant so long as the accountant did not audit the client's financial statements for the immediately preceding fiscal year, and the accountant was independent before the earlier of (1) signing an initial engagement letter or other agreement to provide audit, review, or attest services to the audit client, or (2) commencing any audit, review, or attest procedures (including planning the audit of the client's financial statements).

The new audit engagement exception of Rule 2–01(c)(1)(iii)(B) is necessary because an auditor must be independent, not only during the period of the auditor's engagement, but also during the period covered by any financial statements being audited or reviewed. Because of an existing financial relationship between an accounting firm or one of its employees and a company (that is not an audit client), an accounting firm may not be able to bid for or accept an audit engagement from the company without this exception. This exception allows firms to bid for and accept engagements in these circumstances, provided they are otherwise independent of the audit client and they become independent of the audit client under the financial relationship rules before the earlier of the two events specified in paragraphs (B)(2)(i) and (ii).

We have modified the audit engagement exception slightly from the proposed rule. As proposed, the exception would have applied only if the firm was independent under the financial relationship rules before the earlier of beginning work on the audit or accepting the engagement to provide audit, review, or attest services. Commenters have pointed out that it would be reasonable to allow for some grace period to divest of financial interests after the audit client and the accountant first agree to an audit relationship. Otherwise, an accountant would have little choice but to come into compliance with the financial interest rules before even bidding to become the auditor for a particular client.

Accordingly, we have revised paragraph (B)(2)(i) to focus on the "signing of an initial engagement letter or other agreement," rather than "accepting the engagement." By this change, we mean to afford accountants a divestiture window between the time they first understand that a new client has selected them to perform audit, review, or attest services—or there has been an oral agreement to that effect—and the time that an initial engagement letter or other written agreement is actually signed, or audit procedures commence. If an accountant is in compliance with the financial relationship rules before the earlier of that signing or the commencement of audit, review, or attest services, the accountant's independence is not impaired by the operation of the financial relationship rules of paragraphs (c)(1)(i) and (c)(1)(ii).

(iii) *Employee Compensation and Benefit Plans.* We are adopting an additional exception to the financial interest rules in response to concerns expressed by several commenters. These commenters encouraged us as part of this modernization to allow for broader participation by immediate family members of auditors in employee compensation and benefit plans.[303] This additional exception is consistent with our goal of updating the independence rules in ways that recognize the realities of the modern economy (and dual income households) and continue to protect the public interest.

The exception is necessary because our employment rules will allow an immediate family member of a covered person (most typically a spouse) to be employed by an audit client in a position other than an "accounting role or financial reporting oversight role" without impairing the auditor's independence. In these situations, the immediate family member would remain subject to our financial interest rules and therefore could not have a direct financial interest in the audit client. Accordingly, an employee in this situation could be prevented from participating in a stock-based compensation program.

We are adopting an additional exception to the financial interest rules to provide some relief in these situations. The exception will apply to investments in audit clients by immediate family members of covered persons who are covered persons only by virtue of being a partner in the same office as the lead audit engagement partner of, or a partner or manager performing ten or more hours of non-audit services for, an audit client. This exception will allow the immediate family members of these covered persons to acquire an interest in an audit client, if the immediate family member works for the audit client and acquires the interest as an "unavoidable consequence" of participating in an employee compensation program in which employees are granted, for example, stock options in the employer as part of their total compensation package, without impairing the audit firm's independence. The phrase "unavoidable consequence" in this paragraph means that, to the extent the employee has the ability to participate in the program but has the option to select investments in entities that would not make him or her an investor in an audit client, the employee must choose

[295] *See* Deloitte & Touche Letter (agreeing that such accounts "might, in certain circumstances, create a perception that an accounting firm's independence has been impaired").

[296] *See, e.g.*, AICPA Letter.

[297] Letter of XL Capital Limited (Sept. 25, 2000); AICPA Letter; Letter of Swiss Re (Sept. 22, 2000).

[298] *See* AICPA Letter (suggesting this approach).

[299] *See* Rule 2–01(f)(4)(iv).

[300] ISB Standard No. 2, "Certain Independence Implications of Audits of Mutual Funds and Related Entities," at ¶3 (Dec. 1999).

[301] *See infra* Section IV.H.11.

[302] *See* Letter of KPMG Europe (Sept. 22, 2000); Written Testimony of Institute of the Chartered Accountants in England & Wales ("ICAEW") (Sept. 13, 2000).

[303] *See, e.g.*, ICI Letter; Deloitte & Touche Letter; *see also* Letter of the Association of Private Pension and Welfare Plans (Aug. 7, 2000).

other investments to avoid an impairment of independence.

Immediate family members of this subset of covered persons must dispose of the financial interest as soon as practicable once they have the right to do so, however, and they may not otherwise invest in the audit client without impairing the firm's independence. Where there are legal or other similar restrictions on a person's right to dispose of a financial interest at a particular time, the person need not dispose of the interest until the restrictions have lapsed. For example, a person will not have to dispose of an investment in an audit client if doing so would violate an employer's policies on insider trading. On the other hand, waiting for more advantageous market conditions to dispose of the interest would not fall within the exception.

This exception is similarly available to immediate family members of the same subset of covered persons who must invest in one or more audit clients in order to participate in their employer's 401(k) or similar retirement plan. Accordingly, under the exception, the spouse or another immediate family member of this subset of covered persons can participate in a 401(k) plan, even if his or her only investment option within the plan is, for example, a mutual fund that is in the same investment company complex as a mutual fund that is an audit client. If, however, the immediate family member has an alternative in the 401(k) plan that does not involve investing in a fund complex for which the person's relative is a covered person, then the family member may not invest in the audit client without impairing the auditor's independence. We highlight that the exception in paragraph (c)(1)(iii)(C) is available only to immediate family members of covered persons who are covered persons by virtue of being in the same office as the lead audit engagement partner of an audit client (paragraph (f)(11)(iv)) or because they perform ten or more hours of non-audit services for an audit client (paragraph (f)(11)(iii)).

The Investment Company Institute proposed that the exception apply to the immediate family members of all covered persons in the firm.[304] We believe, however, that the exception we are adopting is sufficiently broad. As discussed elsewhere in this release, even absent this exception, the rules we are adopting significantly shrink the circle of firm personnel to whom the financial interest rules apply.

[304] ICI Letter.

d. *Audit Clients' Financial Relationships.* Rule 2–01(c)(1)(iv) specifies two sets of circumstances in which an audit client's financial interests in the accounting firm cause an accountant to be not independent of that audit client. We have modified the proposed rule as discussed below.

(i) *Investments by the Audit Client in the Auditor.* As discussed in the Proposing Release, when an audit client invests in its auditor, the auditor may be placed in the position of auditing the value of any of its securities that are reflected as an asset in the financial statements of the audit client. In addition, the accountant may reasonably be presumed to have a mutuality of financial interest with the owners of the firm, including an audit client-shareholder.[304]

Under Rule 2–01(c)(1)(iv)(A), an accountant is not independent with respect to an audit client when the audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than five percent of the equity securities of the accounting firm. In applying this provision, it is important to remember that the definition of accounting firm includes "associated entities" of the accounting firm, including any that are public companies. Paragraph (A) seeks to prevent a situation in which an accountant, in order to audit asset valuations of a client that holds securities of the accounting firm, must value the accounting firm's own securities. Paragraph (A) also seeks to prevent a situation in which the audit client, or in some circumstances its officers and directors, can exercise any degree of influence over the accounting firm, whether by virtue of the accounting firm's fiduciary obligation to its investors or by nominating and voting for directors.

The AICPA noted in its comment letter that its current rules also do not permit an audit client to hold any investment in its auditor.[306] The AICPA was critical of the application of our proposed provision, at least without a materiality threshold, to subsidiaries and other entities related to the accounting firm. Consistent with our general approach, we have decided to apply this rule to not only the corporate entity performing the audit, but also its subsidiaries and associated entities. We note that we have eliminated the definition of "affiliate of the accounting firm," which many commenters argued captured more entities with some relation to the accounting firm than necessary.[307]

The proposed rule did not include any provision restricting audit client officers and directors from owning the accounting firm's securities. In that respect, our proposed approach was more liberal than existing law, which deems independence impaired if an audit client's officers or directors own any equity securities of the accounting firm. We sought comment, however, on whether the rule's prohibitions should also apply to other situations in which the audit client has a financial interest, such as when the audit client's CEO invests in the accounting firm. Although some commenters opposed the addition of this notion,[308] we have determined that the final rule should liberalize existing law, simply not to the extent we proposed. Accordingly, the final rule provides that independence is impaired if an officer or director of the audit client owns more than five percent of the equity securities of the accounting firm. We believe that investments in the accounting firm by audit client officers and directors do not routinely give rise to independence concerns, but that concerns arise when an officer or director of the audit client accumulates a significant stake in the accounting firm. Because record or beneficial ownership interests exceeding five percent will be reflected in Schedule 13D filings relating to the accounting firm, the firm will be able to monitor for compliance with this provision, without having to rely solely on an intrusive investigation or audit client monitoring of its officers' and directors' investments.

(ii) *Underwriting.*

Rule 2–01(c)(1)(iv)(B) provides that an accountant is not independent of an audit client when the accounting firm "engages an audit client to act as an underwriter, broker-dealer, market maker, promoter, or analyst with respect to securities issued by the accounting firm." Few transactions are as significant to the financial health of a company, including an accounting firm, as the sale of its securities, whether in private or public offerings. In an offering, an underwriter either buys and then resells a company's securities or receives a commission for selling the securities. In either circumstance, were an audit client to act as underwriter of an accounting firm's or its associated entity's securities, the audit client would assume the role of advocate or seller of the accounting firm's securities. Moreover, depending on the terms of the underwriting, the underwriter could for a time become a significant shareholder of the accounting firm. There also may be indemnification agreements that place the underwriter and auditor in adversarial positions.

In addition, the accounting firm would have a direct interest in ensuring the underwriter's viability and credibility, either of which could be damaged as the result of an audit. Moreover, the auditor would have a clear incentive not to displease an audit client to which it had entrusted a critical financial transaction. Similar conflicts of interest may arise if an audit client or an affiliate of an audit client is engaged to perform other financial services for an accounting firm, such as making a market in the accounting firm's securities or issuing an analyst report concerning the securities of the accounting firm.

We have reworded paragraph (B) from the proposed wording to avert an unintended consequence. The proposed rule provided that independence would be impaired if an audit client "performs any service for the accounting firm related to underwriting, offering, making a market in, marketing, promoting, or selling securities issued by the accounting firm, or issues an analyst report concerning the securities of the accounting firm." Worded that way, the provision could be read to impair independence any time, for example, a broker-dealer issues an analyst's report making a favorable recommendation concerning the securities of any associated entity of an accounting firm, because, in a broad sense, that report could benefit the accounting firm and could be seen as a "service for" the accounting firm. To avoid any possibility of that construction, we have reworded paragraph (B) to make clear that independence is impaired only if the accounting firm actually "engages" the audit client for the purpose of obtaining those services.

2. Employment Relationships

We are adopting, substantially as proposed, Rule 2–01(c)(2), which sets forth the employment relationships that impair an auditor's independence. As discussed in the Proposing Release, independence requirements related to employment relationships between accountants or their family members and audit clients are based on the premise that when an accountant is employed by an audit client, or has a close relative or former colleague employed in certain positions at an audit client, there is a significant risk that the accountant would not be capable of exercising the objective and impartial judgment that is the hallmark of independence.

We are modernizing the employment relationship rules in a manner consistent with the public interest and investor protection. We are keenly aware of the changes in traditional family structures, the increased mobility of professional employees, the recent globalization of accounting firms, and similar changes in society at large. We have determined that, in this environment, existing restrictions on employment relationships between accountants or their family members and audit clients are more restrictive than necessary to protect investors. Accordingly, we are narrowing those restrictions.

We received a number of comments on our proposals to modernize the employment relationship rules. The vast majority of commenters who spoke to this issue supported modernization in general, even if they did not support all aspects of our proposals.[309] For example, some commenters who agreed with the objectives of our proposals questioned if the ISB rather than the Commission should prescribe requirements in this area.[310] Some commenters expressed a preference for the language used in ISB proposals and ISB Standard No. 3.[311] ISB Standard No. 3, "Employment with Audit Clients," states, "An audit firm's independence is impaired with respect to an audit client that employs a former firm professional who could, by reason of his or her knowledge of and relationships with the audit firm, adversely influence the quality or effectiveness of the audit, unless the firm has taken steps that effectively eliminate such risk." The standard also describes the types of safeguards that the ISB believes would effectively eliminate the risk of an impairment of independence.

We appreciate the concepts underlying ISB Standard No. 3 and strongly support firms' use of quality controls and "safeguards" to encourage their partners and employees to be aware of and adhere to auditor independence standards. We are concerned, however, that a "safeguards" approach, which is dependent on a firm's self-analysis and self-reviews, will not provide a definitive standard. In our view, independence is better assured by consistent and uniform rules, rather than by rules that rely on the auditor's assessment of the extent of its own self-interest. Furthermore, it has been our experience that the existence of safeguards or quality controls alone does not ensure compliance with even the most basic independence regulations.[312] Accordingly, we have chosen a more objective standard for employment relationships, which is described in paragraph (c)(2).[313]

Like the financial interest rules we are adopting, the employment relationship rules greatly reduce the pool of people within audit firms whose families are affected by the independence requirements. Paragraph (c)(2) sets forth the general rule that an auditor is not independent of an audit client if the accountant or a family member has an employment relationship with an audit client. The provision includes a non-exclusive list of employment relationships that are inconsistent with the general standard of paragraphs (b) and (c)(2). Employment relationships not specifically described in paragraphs (c)(2)(i) through (c)(2)(iv) are subject to the general test of paragraphs (b) and (c)(2).

The following are examples of employment relationships that impair an auditor's independence under the final rule.[314]

- A current partner of an accounting firm serves as a member of the board of directors of the audit client;

[305] *See* Letter from POB to ISB (Jan. 12, 2000) ("Public ownership in an auidt firm or in its parent or in an entity that effectively has control of the audit firm would add another form of allegiance and accountability to those identified by the Supreme Court—a form of allegiance that in our opinion will be viewed as detracting from, if not conflicting with, the auditor's 'public responsibility' ").

[306] See AICPA Letter.

[307] *See infra* Section IV.H.2.

[308] *See* Written Testimony of William Travis, McGladrey & Pullen LLP (Sept. 20, 2000).

[309] *See* PricewaterhouseCoopers Letter ("We endorse and applaud the SEC's initiatives to modernize the archaic financial interest and employment rules in order to reflect today's social and business realities. We support, for the most part, the treatment of these topics in the Release.").

[310] *See, e.g.*, Deloitte & Touche Letter; Letter of Steven Ryan, Chair, Financial Accounting Standards Committee, American Accounting Association (Oct. 12, 2000); Written Testimony of John C. Bogle, Public Member, ISB (July 26, 2000).

[311] *See, e.g.*, AICPA Letter; Written Testimony of William T. Allen, Chair, ISB (July 26, 2000).

[312] *See, e.g.*, Letter from Lynn E. Turner, Chief Accountant, SEC, to Charles A. Bowsher, Chairman, Public Oversight Board (Dec. 9, 1999); Letters from Lynn E. Turner, Chief Accountant, SEC, to Michael A. Conway, Chair, SECPS (Nov. 30, 1998; Dec. 9, 1999). These letters are available on our website.

[313] Nevertheless, we encourage, and we expect, firms to follow the steps described in ISB Standard No. 3, including the steps to be taken in the period after the firm's professional reports an intention to join an audit client and the steps to be taken after the professional actually joins the audit client. We also anticipate that peer reviews conducted by the POB will cover firms' compliance with these steps.

[314] These examples are illustrative only and should not be relied upon as a complete list of employment relationships that impair an accountant's independence under paragraphs (b) and (c)(2).

- A sibling of a covered person is employed by an audit client as the director of internal audit;
- A former professional employee of an accounting firm who resigned from the accounting firm two years ago is employed by an audit client in an accounting role and the former employee receives a pension from the firm tied to the firm's revenues or profits;
- A former partner of an accounting firm accepts the position of chief accounting officer at an audit client, and the former partner continues to maintain a capital balance with the accounting firm; or,
- A former director of an audit client becomes a partner of the accounting firm, and that individual participates in the audit of the financial statements of the audit client for a period during which he or she was a director of the audit client.

We discuss each of the rules giving rise to these examples in turn.

a. *Employment at Audit Client of Accountant.* Rule 2–01(c)(2)(i) continues the principle set forth in current Rule 2–01(b) that to be independent, neither the accountant nor any member of his or her firm can be a director, officer, or employee of an audit client. Paragraph (2)(i) provides that an accountant is not independent if any current partner, principal, shareholder, or professional employee of the accounting firm is employed by the audit client, or serves as a member of the board of directors or similar management or governing body of the audit client. In the most basic sense, the accountant cannot be employed by his or her audit client and be independent.

b. *Employment at Audit Client of Certain Relatives of Accountant.* Rule 2–01(c)(2)(ii) provides that certain employment relationships between covered persons' close family members and an audit client will impair the auditor's independence. As discussed below, close family members include the covered person's spouse, spousal equivalent, dependents, parents, nondependent children, and siblings. The application of the rule to close family members stands in contrast to the financial interest rules, where only the interests of the covered person's immediate family members (*i.e.*, spouse, spousal equivalent, and dependents) are attributed to the covered person. As we explained in the Proposing Release, we believe this distinction is appropriate because, while some close family members' investments may not be known to a covered person, the place and nature of such family members' employment should be obvious.

Like the proposed rule, final Rule 2–01(c)(2)(ii) limits the employment relationships that impair auditor independence when held by a close family member of a covered person to those involving an "accounting role or financial reporting oversight role." As a result, an audit client's employment of even an immediate family member will not necessarily impair an auditor's independence, unless that family member is in an "accounting role or financial reporting oversight role."

Not all commenters agreed with the scope of the rule, some arguing that our proposal was too generous and others arguing that the proposal was too restrictive.[315] In this regard, we note that the ISB has taken a more restrictive approach in suggesting that independence is impaired if an immediate family member of a person on the audit engagement team is employed by the audit client in any position.[316] We continue to believe, however, that we need only apply our restriction to family members in an "accounting role or financial reporting oversight role" at an audit client. Some commenters, on the other hand, argued for a rule that did not impose restrictions on close family members of all covered persons. While we acknowledge that individuals who are covered persons because they provide ten or more hours of non-audit services to the audit client or work in the same office as the lead audit engagement partner are less likely to be able to influence an audit than covered persons who are on the audit engagement team or in the "chain of command," we do not agree that the likelihood is so remote as to warrant carving their close family members out of the rule.

We define "accounting role or financial reporting oversight role" in Rule 2–01(f)(3). The definition includes two categories of persons. One category includes those with more than minimal influence over the contents of the accounting records or anyone who prepares them. This typically would include certain persons working in the accounting department or who perform accounting functions. We have not chosen to reach as many persons in the audit client's accounting department as are covered by the "audit sensitive" category in the AICPA's employment rules.[317] The definition also may include certain individuals, such as an accounts receivable supervisor or manager, who are relied upon by management to calculate amounts that are placed directly into the company's financial statements.

The second category includes those who influence the preparers or the contents of the financial statements of the audit client. The definition lists positions in which we believe a person generally wields the type of influence over the financial statements that causes independence concerns, such as a member of the audit client's board of directors (or similar management or governing body), chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, vice president of marketing, or any equivalent position.

Several commenters expressed support for the concept of "accounting role or financial reporting oversight role," but recommended that we modify the definition in various ways, for example, by eliminating vice president of marketing from the scope of the rule or making the list an exhaustive list of covered positions.[318] We believe that the vice president of marketing makes important determinations that affect the company's financial results.[319] These include, for example, supervising sales that result in the revenues reported in financial statements, shaping sales policies and procedures, and participating at a high level in the formulation of the company's budget. For these reasons, we consider a vice president of marketing to be involved in a financial reporting oversight role. We have declined to make the list of positions exhaustive because titles alone do not always accurately describe a person's duties and functions.

Other modifications to the definition make explicit our concerns about positions in which the employee would exercise more than minimal influence over the contents of the accounting records or anyone who prepares them, or would exercise influence over the contents of the financial statements or anyone who prepares them. As noted above, the final rule also incorporates the proposed list of examples of positions in which we consider a person to exercise influence over the contents of the financial statements or people who prepare the financial statements. We have singled out these two categories of positions because persons in these positions can influence the financial reporting of the company.

As noted in the Proposing Release, the so-called "five hundred mile rule" has been eliminated under Rule 2–01(c)(2)(ii). Whether a covered person lives near a close family member who is employed by the audit client no longer seems relevant in today's world of instantaneous international communications and global securities markets. Accordingly, we have dispensed with this test of auditor independence.

c. *Employment at Audit Client of Former Employee of Accounting Firm.* We are adopting Rule 2–01(c)(2)(iii) substantially as proposed, with the minor modifications discussed below. Rule 2–01(c)(2)(iii) describes the circumstances under which an auditor's independence will be impaired by an audit client's employment of a former partner, principal, shareholder, or professional employee of the accounting firm in an accounting role or financial reporting oversight role. As we noted in the Proposing Release, when these persons retire or resign from accounting firms, it is not unusual for them to join the management of former audit clients or to become members of their boards of directors. Registrants and their shareholders may benefit from the former partner's accounting and financial reporting expertise. Investors and the public in general also may benefit when individuals on the board or in management can work effectively with the auditors, members of the audit committee, and management to provide informative financial statements and reports.

When these persons, however, assume positions with the firm's audit client and also remain linked in some fashion to the accounting firm, they may well be in a position to influence the content of the audit client's accounting records and financial statements on the one hand, and the conduct of the audit, on the other. This is particularly true when the individual, while at the accounting firm, was in some way associated with the audit of the client. A close association between a member of the board of directors or of senior management with his or her former firm creates an impression of a mutuality of interest and may well affect the auditor's judgment.[320]

In addition, even under the usual circumstances, there is some possibility that accounting firm partners may compromise their independence in order to secure management positions with the audit clients.[321] That risk is heightened where there is a "revolving door" between the auditor and the client.[322] Finally, there is the risk that the former partner's familiarity with the firm's audit process and the audit partners and employees of the firm will enable him or her to affect the audit as it progresses.[323] Accordingly, under the final rule, as under current requirements, an auditor's independence with respect to an audit client is deemed to be impaired when former partners, shareholders, principals, or professional employees of the firm are employed in an accounting or financial reporting oversight role at an audit client, unless certain conditions are met.

Consistent with our proposal, the final rule provides that independence will not be impaired if certain steps are taken to ensure the individual's separation from the accounting firm. Under the final rule, the former partner, principal, shareholder, or professional employee must not: (i) Influence the firm's operations or financial policies, (ii) have a capital balance in the firm, or (iii) have a financial arrangement, other than one providing for regular payment of a fixed dollar amount, as described in paragraphs 2–01(c)(2)(iii)(C)(*1*) and (*2*). Any payment of a fixed dollar amount must be made pursuant to a fully funded retirement plan, rabbi trust or similar vehicle. Or, in the case of a former professional employee who was not a partner, principal, or shareholder of the firm and has been disassociated from the accounting firm for more than five years, the fixed payments made to the former employee must be immaterial to him or her.

As proposed, the rule contemplated only fixed payments made pursuant to a fully funded retirement plan or rabbi trust.[324] Several commenters expressed concern about the rule's application in foreign jurisdictions in which rabbi trusts are not recognized.[325] In response to these comments, we have modified the rule to indicate that using a similar payment vehicle will satisfy the rule. If

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[315] *Compare* Letter of Paula Morris, MPA, CPA, Assistant Professor, Kennesaw State University (Sept. 25, 2000) (expressing her concerns about loosening the rules regarding spouses' and dependents' employment relationships) with Deloitte & Touche Letter (suggesting that an audit client's employment of a close family member of a covered person who is not on the audit engagement team or in the chain of command, should not be deemed to impair the auditor's independence, even if the person holds an accounting or financial reporting oversight role because there is only a "remote likelihood" that such a person could influence the audit).

[316] ISB, "Invitation to Comment 99–1: Family Relationships Between the Auditor and the Audit Client" (July 1999).

[317] AICPA Code of Professional Conduct, ET § 101.11.

[318] AICPA Letter ("For the most part, the specific positions listed in the definition . . . are appropriate and provide helpful advice to practitioners. . . . however . . . we do not believe the vice president of marketing should be included in this list."); Ernst & Young Letter.

[319] *See, e.g., In the Matter of Jimmy L. Duckworth*, CPA, AAER No. 1205 (Nov. 10, 1999); *In the Matter of Pinnacle Micro, Inc., Scott A. Blum, and Lilia Craig*, AAER No. 975 (Oct. 3, 1997).

[320] *See* AICPA, Auditing Standards Division, "Audit Risk Alert—1994, General Update on Economic, Accounting, and Auditing Matters," at 35 (1994).

A few litigation cases suggest auditors need to be more cautious in dealing with former coworkers employed by a client. None of these cases involved collusion or an intentional lack of objectivity. Nevertheless, if a close relationship previously existed between the auditor and a former colleague now employed by a client, the auditor must guard against being too trusting in his or her acceptance of representations about the entity's financial statements. Otherwise the auditor may rely too heavily on the word of a former associate, overlooking that a common interest no longer exists.

[321] *See* Paul M. Clikeman, "Close revolving door between auditors, clients," *Accounting Today*, at 20 (July 8–28, 1996); *Cf. In the Matter of Richard A. Knight*, AAER No. 764 (Feb. 27, 1996) (individual allegedly learned of accounting misstatements while he was engagement partner for firm conducting audit and resigned to become registrant's executive vice president and chief financial officer).

[322] *See, e.g., AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202 (2d Cir. 2000); AICPA Board of Directors, *Meeting the Financial Reporting Needs of the Future: A Public Commitment From the Public Accounting Profession*, at 4 (June 1993) ("AICPA Board Report"); *see also Staff Report, supra* note 74, at 51–52; In addressing an example of this problem, the court in *Lincoln S&L v. Woll*, 743 F. Supp. 901, 917 n.23 (D.D.C. 1990) wrote:

> Atchison, who was in charge of the Arthur Young audit of Lincoln, left Arthur Young to assume a high paying position with Lincoln. This certainly raises questions about Arthur Young's independence. Here a person in charge of the Lincoln audit resigned from the accounting firm and immediately became an employee of Lincoln. This practice of "changing sides" should certainly be examined by the accounting profession's standard setting authorities as to the impact such a practice has on an accountant's independence. It would seem that some "cooling off period" perhaps, one to two years, would not be unreasonable before a senior official on an audit can be employed by the client.

[323] In response to these and other concerns, the AICPA Board of Directors suggested in 1993 that we prohibit a public company from hiring the partner responsible for the audits of that company's financial statements for a minimum of one year after the partner ceases to serve that company. *See* AICPA Board Report, *supra* note 322, at 4. Our staff has indicated, however, that, if implemented, this suggestion would take the form of the firm's independence being impaired for a period of time from the date the individual left the audit engagement, rather than as a prohibition on hiring the former partner. *Staff Report, supra* note 74, at 52 n.146. *See also* Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), "Fraudulent Financial Reporting: 1987–1997: An Analysis of U.S. Public Companies," at 21 (1999) (finding, with respect to companies where there was fraudulent financial reporting, that among 44 companies for which there was information available on their CFO's background, 11% of the companies' CFOs had previous experience with the companies' audit firms just before joining the company).

[324] As noted in the Proposing Release, to avoid adverse tax consequences to the individual, accounting firms often settle their retirement obligations to former partners by fully funding a "rabbi trust" from which payments will be made to the individual. Under Rule 2–01(f)(16), a "rabbi trust" is an irrevocable trust whose assets are not accessible to the firm until all benefit obligations have been met but are subject to claims of the firm's creditors in bankruptcy or insolvency. We are adopting the definition of "rabbi trust" as proposed.

[325] *See, e.g.*, Written Testimony of ICAEW (Sept. 13, 2000).

a rabbi trust is available in the jurisdiction, however, the accounting firm and the former professional must use a rabbi trust, rather than some other vehicle.

As noted, to satisfy the conditions of paragraph (C)(1), the retirement plan or rabbi trust must be fully funded.[326] We believe that full funding is critical to breaking the link between the firm and the individual. Any situation that requires the individual to be dependent on the firm to fund his or her retirement payments weds the financial interests of the former employee and the firm, and creates the potential for the firm to exert influence over the individual, or vice versa.

The proposed rule did not contain a "cooling off" period. We solicited comment on whether we should require a mandatory cooling off period for former partners and professional staff of an audit firm who join an audit client.[327] Several commenters supported the notion of a cooling off period,[328] but others disagreed.[329] We have determined that a cooling off period unnecessarily restricts the employment opportunities of former professionals, and we have decided not to adopt a cooling off provision.[330]

We also solicited comment on whether application of the rule should depend on whether the professional leaving the accounting firm was a partner at the firm or non-managerial audit staff. We considered whether to provide a sunset provision so that accounting firms need not track all former professional employees indefinitely to determine, for purposes of this provision, whether they become employed in an accounting role or financial reporting oversight role at an audit client. While we believe that it is usual for accounting firms to know whether their former partners, principals, or shareholders are employed in these roles at an audit client, we understand the practical difficulties firms might have tracking all former professionals who left the firm while at a managerial or staff level. Accordingly, we are adopting a rule under which the accountant's independence will not be impaired when a former professional, who was not a partner, joins an audit client in an accounting role or financial reporting oversight role position after five years, provided the retirement benefits of the former employee are immaterial to him or her.

The materiality provision is necessary because, to satisfy the conditions in paragraph (C)(2), the retirement plan does not have to be fully funded. In the absence of such funding, we believe that the receipt by the former employee of more than an immaterial amount would create the unification of financial interests discussed above.

d. *Employment at Accounting Firm of Former Employee of Audit Client.* We are adopting Rule 2–01(c)(2)(iv) substantially as proposed. The rule specifies that individuals who were formerly officers, directors, or employees of an audit client and who later become partners, principals, or shareholders of the accounting firm will impair the independence of the firm with respect to that audit client, unless they do not participate in, and are not in a position to influence, the audit of the financial statements of the audit client covering a period during which the individuals were employed by or associated with the audit client. When a former employee of an audit client joins the accounting firm, the independence rules ensure that the employee is not in a position to influence the audit of his or her former employer.[331] Because participating in the audit of the former employer could easily require former employees to audit their own work, the rule provides that independence is impaired unless the former employees do not participate in and are not in a position to influence the audit of the financial statements of the audit client for any period during which they were employed by or associated with that audit client.

The final rule applies to all former employees of the audit client, not only those who were in accounting or financial reporting oversight roles. It also applies to former audit client employees whether they become partners, principals, or shareholders of the accounting firm or professional employees of the firm.[332]

3. Business Relationships

We proposed Rule 2–01(c)(3) to describe the business relationships that impair an auditor's independence from an audit client. We are adopting the rule substantially as proposed with two minor modifications. The rule continues the Codification's current standard that an auditor's independence with respect to an audit client is impaired when the accounting firm, or a covered person in the firm, has a direct or material indirect business relationship with an audit client, or any person associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or substantial stockholders.

Commenters were generally supportive of the approach we took in the proposal, with the exception of one provision.[333] We proposed that independence was also impaired if the accounting firm or any covered person had a direct or material indirect business relationship with "record or beneficial owners of more than five percent of the [audit client's] equity securities." This formulation was intended to provide a more precise definition of the subset of associated persons who constitute "substantial stockholders" in the existing restrictions on business relationships in the Codification.[334] Commenters, however, expressed concerns with this threshold.[335] Similarly, one large accounting firm expressed concern with the proposed language, asserting that our proposal would "greatly expand[] the universe of venture capital firms with which we could not have any business relationships."[336]

In response to these comments, we are adopting instead the language used in the Codification, which refers to an associated person "in a decision-making capacity, such as an audit client's officers, directors or substantial stockholders." Because our rule, as adopted, conforms more closely to the Codification, we anticipate that it will provide greater clarity to the profession in interpreting Rule 2–01(c)(3) and address the concerns about the proposal that were articulated by several commenters.

We are also clarifying the rule by adding the words "to the audit client" after "provides professional services" in the last sentence of the rule. As discussed in the Proposing Release, the exception for providing professional services is meant only to make clear that Rule 2–01(c)(3) does not address the provision of professional services by the auditor to the audit client. The addition of these four words is intended to make clear that joint business ventures or prime/subcontractor arrangements in which audit clients and auditors jointly provide "professional services" would continue to impair the auditor's independence.[337]

We also proposed defining the phrase "consumer in the ordinary course of business" as part of the definitions explicitly set forth in Rule 2–01(f). Commenters, however, expressed concern that, as defined, this phrase could have unintended consequences.[338] Accordingly, we omit the definition of "consumer in the ordinary course of business" in the rules we are adopting and will continue to apply the term consistent with its use in the Codification.

As we noted in the Proposing Release, we are retaining a number of the examples currently found in the Codification to provide guidance on permissible and impermissible business relationships.[339] We expect that the interpretations and examples that have evolved under the Codification with respect to this rule will continue to provide useful guidance to the profession.

We also solicited comment as to whether we should retain the "direct or material indirect business relationship" formulation or if there was another formulation that could provide additional or more precise guidance. The AICPA asserted that "not all business relationships with audit clients should be proscribed if they are immaterial. . .. The inclusion of a materiality standard in the context both of [sic] all business relationships (direct and indirect) sufficiently mitigates whatever independence risk would be posed."[340] For the same reasons we have explained before, we do not believe that auditors should be allowed to have any direct business relationships with their audit clients other than as a consumer in the ordinary course of business.[341] We have carefully considered the comments we have received and believe that the rule we are adopting constitutes a fair and balanced approach that protects independence without unduly restricting business opportunities for auditors or their clients.

4. Non-Audit Services

a. *General Rule.* We are adopting a rule that provides that an accountant is not independent if the accountant provides the non-audit services identified in paragraph (c)(4). The rule is derived from current Rule 2–01, our releases that have been incorporated into the Codification, and existing AICPA rules.

The proposed rule identified certain services that could not be provided by the auditor without impairing the auditor's independence with respect to the audit client "[e]ven if the audit client accept[ed] ultimate responsibility for the work that is performed or decisions that are made . . . ." In the final non-audit services rule, Rule 2–01(c)(4), we have eliminated that language. As described below, we have added certain exceptions to the non-audit services that impair an auditor's independence. These exceptions are appropriate only where management takes certain actions and accepts certain responsibilities. For example, we have set forth certain circumstances where an auditor does not lose his or her independence by providing certain actuarial services to insurance company audit clients. The exception, however, is available only where management accepts responsibility for significant actuarial methods and assumptions.

The final amendments identify nine non-audit services that, when provided by the auditor to an audit client, impair the auditor's independence. In the proposed rule, we identified ten such services. For many of the non-audit services that we proposed to include in the rule, we aimed to codify existing restrictions.[342] Commenters expressed concerns, however, that certain of our proposed rules were written more broadly than existing independence rules.[343] In addition, commenters indicated that, to the extent our proposals differed from current standards, they believed current standards more appropriately circumscribed auditors' non-audit activities.[344] In response to these comments, we made several modifications to the rules, including eliminating altogether the provision on expert services.[345]

b. *Particular Non-Audit Services that Impair Independence.* (i) *Bookkeeping or Other Services Related to the Audit Client's Accounting Records or Financial Statements.* We proposed and are adopting paragraph (c)(4)(i), which, with limited exceptions, would deem an auditor's independence to be impaired when the auditor performs bookkeeping services for an audit client. Even prior to our proposals, auditors were restricted by AICPA Ethics Rules and the Codification from providing certain bookkeeping services.[346] As explained in the Codification and reiterated in the Proposing Release,[347] providing bookkeeping services for an audit client impairs the auditor's independence because the auditor will be placed in the position of auditing the firm's work

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[326] We would not consider an individual's 401(k) account to constitute a financial arrangement with the accounting firm to be fully funded for these purposes because, although the investment remains subject to market risk, the account balance is not dependent on the accounting firm's financial performance even if the firm continues to administer the account for the former firm personnel.

[327] With regard to cooling off periods, *see* AICPA Board Report, *supra* note 322, at 4 (June 1993) (suggesting that the Commission prohibit a public company from hiring the partner responsible for the audits of that company's financial statements for a minimum of one year after the partner ceases to serve that company) and *Lincoln S&L* v. *Wall*, 743 F. Supp. at 917 n.23 ("It would seem that some 'cooling off period,' perhaps one to two years, would not be unreasonable before a senior official on an audit can be employed by the client.").

[328] *See, e.g.*, Letter of Pamela Roush, Ph.D., CMA (undated).

[329] *See, e.g.*, Written Testimony of Mauricio Kohn, CFA, CMA, CFM, AIMR (Sept. 20, 2000) ("We do not believe it is necessary to impose a mandatory 'cooling-off period,' prohibit clients from hiring audit firm professionals, or stipulate that an audit firm's independence is impaired when its professionals accept key positions with current clients.").

[330] Nonetheless, we encourage firms to maintain adequate controls to ensure that former employees are not unduly influencing the audit engagement team.

[331] Of course, once an employee of an accounting firm, the person would also be subject to all other independence requirements applicable to other firm members. For example, if the former audit client employee becomes a covered person, he or she could have no financial interest in the audit client. *See* Rule 2–01(c)(1).

[332] The AICPA recommended that the rule apply to all professional employees of the accounting firm, not just to partners, shareholders, and principals. *See* AICPA Letter. We agree and, therefore, have modified the final rule to encompass this situation.

[333] *See, e.g.*, Deloitte & Touche Letter; Written Testimony of Dennis Paul Spackman, Chairman, National Association of State Boards of Accountancy (Sept. 13, 2000) ("I am in full agreement with the provisions of the Commission's proposal [regarding] Business Relationships.").

[334] *See* Codification § 602.02.g.

[335] *See* Deloitte & Touche Letter ("Although we agree with the direction of [Rule 2–01(c)(3)], it provides no basis for prohibiting business relationships with beneficial owners of more than five percent of the equity securities of the audit client or any of its affiliates.").

[336] Ernst & Young Letter; *see also* AICPA Letter ("Such sweeping new restrictions would dramatically constrict the parties with which accounting firms could engage, even though many such parties at most have only very attenuated ties to audit clients. . . . We view independence risks as extremely remote in such circumstances and, therefore, consider the reach of such provisions unnecessarily broad.").

[337] *See* Codification § 602.02.g; Letter from Jonathan G. Katz, Secretary, SEC, to Duane R. Kulberg, Arthur Andersen & Co. (Feb. 14, 1989).

[338] *See, e.g.*, Deloitte & Touche Letter.

[339] *See* infra Section IX; Codification 602.02(g).

[340] *See* AICPA Letter.

[341] *See* Letter from Jonathan G. Katz, Secretary, SEC, to Duane R. Kulberg, Arthur Anderson & Co., (Feb. 14, 1989).

[342] *See, e.g.*, Proposing Release, Section III.D.1.(b)(i)(iv) (regarding bookkeeping and actuarial services, respectively). *But see* Proposing Release, Section III.D.1.(b)(ii) (regarding financial information systems).

[343] *See, e.g.*, Testimony of Barry Melancon, President and Chief Executive Officer, AICPA (Sept. 21, 2000).

[344] *See* Testimony of Joseph F. Bernardino, Managing Partner, Assurance and Business Advisory Services, Arthur Anderson LLP (Sept. 20, 2000) and Testimony of James E. Copeland, Chief Executive Officer, Deloitte & Touche LLP (Sept. 20, 2000) (responsing to questions from Chairman Arthur Levitt, SEC, about whether they would be comfortable if our final rules on non-audit services paralleled the profession's own rules); *see also* testimony of K. Michael Conaway, President Officer, Texas State Board of Accountancy (Sept. 20, 2000).

[345] *See infra* Section IV.D.4.b(x).

[346] AICPA Code of Professional Conduct, ET § 101.05; Codification § 602.02.c.i.

[347] Proposing Release, Section III.D.1(b)(i); Codification § 602.02.c.

when auditing the client's financial statements. It is hard to maintain the requisite objectivity about one's or one's firm's own work. This is especially true where finding an error would raise questions about the adequacy of the bookkeeping services provided by the firm. In addition, keeping the books is a management function, the performance of which leads to an inappropriate mutuality of interests between the auditor and the audit client.

We have modified our final rule in response to several comments.[348] First, commenters believed that the proposed definition should not cover all financial statements, including those not filed with the Commission. For example, auditors sometimes prepare statutory financial statements for foreign companies, and these are not filed with us. At least one commenter requested that we therefore exclude those financial statements from the rule's coverage.[349] Focusing solely on whether the financial statements are filed with us would not be appropriate in all circumstances, since in some instances statutory financial statements form the basis of the U.S. GAAP financial statements that are filed with us. Under these circumstances, an auditor who has prepared the statutory financial statements of an audit client is put in the position of auditing its own work when auditing the resultant U.S. GAAP-converted financial statements. Accordingly, the final rule amendments cover not only financial statements that are filed with us, but also financial statements that form the basis of financial statements that are filed with us. As proposed, the final amendments also cover any service involving maintaining or preparing the audit client's accounting records.

Second, although we proposed to cover services that resulted in the accountant generating financial information that would be disclosed to investors, commenters believed that this language was too broad. As part of the audit process, auditors may generate data in connection with evaluating financial information that eventually may be disclosed to investors.[350] We believe that they should continue to be able to do so. Accordingly, we narrowed the definition to eliminate this language and instead are incorporating wording from the AICPA Ethics Rules to the effect that an accountant cannot prepare source documents or originate data underlying the client's financial statements without impairing independence.[351]

Third, several commenters requested that we provide an exception to the rule so that auditors could perform bookkeeping services in emergency or other unusual situations.[352] The Codification provides such an exception. Example 6 of Section 602.02.c.ii of the Codification states that when, due to the unexpected resignation of a company's comptroller at the end of the year, the accountant was called upon to provide assistance in closing the books and the accountant did not make decisions on a managerial level, the accountant's independence was not impaired.[353] We recognize that there may be emergency or other unusual situations, such as the one described above, in which the auditor will need to provide bookkeeping services that are otherwise prohibited. Accordingly, we are adopting an exception from the bookkeeping restriction for emergency or other unusual situations, provided that the accountant does not act as a manager or make any managerial decisions. We expect that such situations will be rare. We encourage registrants and auditors to contact the staff with any questions about the application of this provision to particular circumstances.

Finally, the final rule contains a limited exception related to bookkeeping for foreign subsidiaries or divisions of audit clients. The Codification provides this type of exception.[354] The Proposing Release noted that the Commission recognized the need for relief in this area, and that therefore we had proposed to retain this section of the Codification.[355] In response to commenters' concerns,[356] however, we are incorporating the exception into the rule. Accountants therefore may provide these services for foreign divisions or subsidiaries of a domestic audit client under certain conditions. First, the services must be limited, routine, or ministerial. Second, it must be impractical for the entity receiving the services to obtain them from another provider.[357] Third, under the adopted rule as under the Codification, the foreign entity for which the accountant is performing these services cannot be material to the consolidated financial statements. Fourth, as under the Codification, the entity must not have employees capable or competent to perform the services. Fifth, the services performed must be consistent with local professional ethics rules.[358] Last, as explained in the Codification, "the Commission believes that a comparison of the fees for the bookkeeping services and the audit should provide a fair test for determining the significance of the work to the registrant and the accountant, and indirectly, the possible effect on the firm's independence," and that therefore a limit on the services can be "based on the relationship of the fee charged for the service to the total audit fee charged to the registrant."[359] Accordingly, the final rule provides that the total fees for the bookkeeping services provided by the auditor to a company's foreign entities collectively (for the entire group of companies) cannot exceed the greater of one percent of the consolidated audit fee or $10,000.[360]

(ii) *Financial Information Systems Design and Implementation.* Paragraph (c)(4)(ii) identifies certain information technology services that, if provided to an audit client, impair the accountant's independence. Paragraph (c)(4)(ii) also identifies other information technology services that may be provided to an audit client without impairing independence so long as certain conditions are satisfied.

The rule we adopt today on information technology services represents a change from the rule we proposed. Some commenters objected to our proposed rule. This provision lay at the heart of some of the largest accounting firms' arguments that our proposed rules would hinder their access to technology, limit their understanding of their clients' operations, and hurt their recruiting efforts.[361] These arguments compete

[348] *See, e.g.*, Deloitte & Touche Letter; AICPA Letter.

[349] *See*, Ernst & Young Letter.

[350] For example, as part of the audit process, the auditor might process adjustments that eventually are incorporated into the audit client's financial statements. *See* Deloitte & Touche Letter.

[351] AICPA Code of Professional Conduct, ET § 101.05.

[352] *See, e.g.*, Deloitte & Touche Lettter.

[353] Codification § 601.02.c.ii, Example 6.

[354] Codification § 601.02.c.iii.

[355] Proposing Release, note 160.

[356] Deloitte & Touche Lettter; Ernst & Young Letter; PricewaterhouseCoopers Letter.

[357] There may be entities that are not large enough to maintain the capability in-house, yet there may not be reputable providers of these services where domestic companies' foreign affiliates are located or a reputable firm may not want to provide the Services because they will generate only minimal fees. *See* Codification § 601.02.e.iii.

[358] Codification § 601.02.c.iii (requiring compliance with this condition, "so that an informed observer in the foreign location would have no cause to question the fact or appearance of independence").

[359] Codification § 601.02.c.iii.

[360] The Commission has determined to raise to $10,000 from $1,000 the dollar threshold in the Codification in light of the inflation since the provisions in the Codification were adopted.

[361] *See generally*, Arthur Andersen Letter; Deloitte & Touche Lettter.

with the widespread and persistent perceptions that large, lucrative information technology consulting relationships with an audit client may give rise to conflicts of interest, may result in auditors functioning as management, or may result in an auditor auditing his or her own work.

The final rule reflects a pragmatic approach to a difficult issue. The rule singles out certain information technology services as independence impairments under any circumstances, and identifies other categories of information technology services that will not impair independence if certain conditions are fulfilled. Those conditions are designed to minimize the potential for an auditor to end up making management decisions or auditing his or her own work.

The rule also takes a pragmatic approach to the potential independence problem posed by the economic incentives that accompany large consulting contracts. Rather than effectively ban those relationships, we are amending the proxy disclosure rules to require public companies to make specific disclosure of fees paid to their auditor for information technology services. In addition, public companies must disclose that their audit committee (or, if there is no audit committee, the board of directors) considered whether the provision of the information technology services, as well as all other non-audit services, is compatible with maintaining the auditor's independence.

As discussed in greater detail below, we anticipate that audit committees will consider the independence implications of the engagements that are subject to the disclosure requirements. Moreover, the disclosure will provide information to enable investors themselves to evaluate auditor independence, and will enable future study of whether large information technology consulting relationships have an effect on audit quality and auditors' independence.

Paragraph (c)(4)(ii)(A) provides that an accountant is not independent of an audit client if the accountant is "[d]irectly or indirectly operating, or supervising the operation of, the audit client's information system or managing the audit client's local area network." These services impair an accountant's independence under existing AICPA rules,[362] and, under the rules we adopt today, will impair independence under any circumstances.

Under paragraph (c)(4)(ii)(B), "[d]esigning or implementing a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the audit client's financial statements, taken as a whole," will impair an accountant's independence unless certain conditions are met.[363] This section of the final rule differs from the proposed rule in that we have modified the description of the hardware and software systems that the rule reaches by adding the phrase "that aggregates source data underlying the financial statements." This change was suggested by commenters. [364]We have adopted this change because, to the extent that the design and implementation activities concern hardware and software systems that aggregate source data, they are likely to be the types of systems that raise independence concerns.

The conditions that the rule imposes are intended to reduce the likelihood that the auditor will be placed in a position of making, and then auditing, managerial decisions. They are also intended to ensure that management will make all significant decisions during the process and, at its conclusion, will be fully responsible for the results of the project including the proper functioning of the company's internal accounting controls.

The first condition, set out in paragraph (c)(4)(ii)(B)(1), is that "the audit client's management has acknowledged in writing to the accounting firm and the audit client's audit committee, or if there is no such committee then the board of directors, the audit client's responsibility to establish and maintain a system of internal accounting controls in compliance with Section 13(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(b)(2)." This condition makes clear that this statutory responsibility cannot be shifted to the accounting firm.

Paragraphs (c)(4)(ii)(B)(2) and (c)(4)(ii)(B)(3), setting out the second and third conditions, complement each other. Paragraph (B)(2) articulates the condition that "the audit client's management designates a competent employee or employees, preferably within senior management, with the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system." Paragraph (B)(3) articulates the condition that "the audit client's management makes all management decisions with respect to the design and implementation of the hardware or software system including, but not limited to, decisions concerning the systems to be evaluated and selected, the controls and system procedures to be implemented, the scope and timetable of system implementation, and the testing, training and conversion plans." These conditions are intended to ensure that an audit client that receives information technology services from its auditor does not delegate to its auditor responsibility for "management decisions" relating to the design and implementation of the system.

The fourth condition, set out in paragraph (c)(4)(ii)(B)(4), is that "the audit client's management evaluates the adequacy and results of the design and implementation of the hardware or software system." Paragraph (c)(4)(ii)(B)(5) sets out the fifth condition, that "the audit client's management does not rely on the accountant's work as the primary basis for determining the adequacy of its internal controls and financial reporting systems." These conditions reiterate the principles that management is to make all substantive decisions, that the auditor should not have a mutual interest in the successful operation of the systems, and that the auditor should not be placed in the position of auditing his or her firm's decisions about the system.

The rule expressly does not limit services in connection with the assessment, design, and implementation of internal accounting and risk management controls, provided the auditor does not act as an employee or perform management functions. During the audit, accountants generally obtain

[362] *See* AICPA Code of Professional Conduct, ET § 101.05.

[363] Although we anticipate that accountants and their audit clients will usually seek to meet these conditions, we note certain points about paragraph (c)(4)(ii)(B) relevant to situations where these conditions are not met. First, by "significant," we refer to information that is reasonably likely to be material to the financial statements of the audit client. Since materiality determinations may not be final before financial statements are generated, an accounting firm may need to evaluate the general nature of the information rather than wait to evaluate system output during the period of the audit engagement. For example, without satisfying the conditions of paragraphs (c)(4)(ii)(B)(1)–(5), an accountant would not be independent of an audit client for which it designed an integrated Enterprise Resource Planning ("ERP") system. (An ERP system is designed to integrate all functions and departments in a company into one computer system that can serve the needs of each department.) In addition, without satisfying the conditions, a firm's independence would be impaired if it designed and implemented an accounts receivable/order management system that recorded and summarized sales that were material to the financial statements of the audit client. A firm's independence would not be impaired, however, if the accounting firm designed and implemented a system for a foreign subsidiary whose financial condition and results of operations were not material to the financial statement of the audit client.

[364] Ernst & Young Letter; PricewaterhouseCoopers Letter.

an understanding of their audit clients' systems of internal accounting controls and may recommend ways in which those controls can be improved or strengthened. This service can be valuable to companies and their audit committees, and may also enhance audit quality, without raising independence concerns. In addition, we do not see any significant reason for concern about an audit firm's work on hardware or software systems that are unrelated to the audit client's financial statements or accounting records.

(iii) *Appraisal or Valuation Services and Fairness Opinions.* We are adopting a rule that, with some exceptions, provides that an accountant is not independent if the accountant provides appraisal or valuation services or any service involving a fairness opinion.[365] Appraisal and valuation services include any process of valuing assets, both tangible and intangible, or liabilities. Fairness opinions are opinions that an accounting firm provides on the adequacy of consideration in a transaction. As explained more thoroughly in the Proposing Release, if an audit firm provides these services to an audit client, when it is time to audit the financial statements the accountant could well end up reviewing his or her own work, including key assumptions or variables suggested by his or her firm that underlie an entry in the financial statements.[366] Where the service involves the preparation of projections of future results or future cash flows, the accountant may develop a mutuality of interest with the audit client in attaining the forecasted results.

We solicited comment on whether we should provide an exception from the rule when the amounts involved are likely to be immaterial to the financial statements that later would be reviewed by the auditor. Several commenters stated that such an exception is warranted.[367] In response, we are limiting application of the rule to the provision of appraisals, valuations, or services involving a fairness opinion where it is reasonably likely that the results, individually or in the aggregate, would be material to the audit client's financial statements[368] or where the results would be audited by the auditor. As a general matter, auditors would be auditing the results when they perform a GAAS audit.

The rule also contains an exception for appraisal or valuation services where the accounting firm reviews and reports on work done by the audit client itself or an independent, third-party specialist employed by the audit client, and the audit client or specialist provides the primary support for the balance recorded in the client's financial statements. In those instances, because a third party or the audit client is the source of the financial information subject to the review or audit, the accountant will not be reviewing or auditing his or her own work.

Another exception allows accountants to continue to value an audit client's pension, other post-employment benefit, or similar liabilities, so long as the audit client has determined and taken responsibility for all significant assumptions and data underlying the valuation.[369] Accountants historically have provided pension assistance to their audit clients, and if appropriate persons at the audit client determine the underlying assumptions and data, we believe that independence is not impaired.

Commenters also stated that an accountant's independence should not be deemed impaired when the accountant performs appraisal or valuation services as a necessary part of permitted tax services. As the rule text and this Release make clear, accountants will continue to be able to provide tax services to audit clients. A few commenters pointed out, however, that unless accountants can perform appraisal and valuation services that are part of a tax planning strategy or for tax compliance purposes, the client would not hire the accountant to provide tax services.[370] The final rule makes clear that accountants can perform appraisal and valuation services for those purposes without impairing independence.

Commenters requested an exception for appraisal and valuation services where the services are for non-financial purposes. Because our principal concern about appraisal and valuation services is that they lead auditors to audit their own work, so long as the results do not affect the financial statements, appraisal or valuation services performed for non-financial purposes do not impair an auditor's independence.

At least one commenter suggested that we include an exception for purchase price allocations.[371] An exception is not appropriate here because these allocation decisions, particularly those regarding the valuation of intangible assets, can have a direct, significant, and immediate impact on companies' financial statements. For example, where a company acquires another company with large, on-going in-process research and development projects, the acquiring company will need to decide how much of the purchase price to allocate to those projects. This may affect in turn the amount charged against earnings in the current year as in-process research and development expense, and the amount to be classified as goodwill and amortized against future years' earnings. Any such allocations later will be reviewed in the course of the audit, leading the firm to audit its own work.[372]

Finally, commenters raised concerns about the restriction on the provision of contribution-in-kind reports.[373] We have removed the language in the rule referring to contribution-in-kind reports because we view such reports to be akin to fairness opinions, which are restricted under the final rules. We understand from commenters that certain foreign jurisdictions require auditors to issue contribution-in-kind reports for their audit clients[374] and that, in some European jurisdictions, auditors may be appointed or approved by an administrative or judicial authority to act as an independent expert and issue a contribution-in-kind report for the audit client.[375] The Commission is sensitive to those issues and in the past has worked with foreign regulators and companies to reach an acceptable resolution.[376] We will continue our practice of determining whether to accept a contribution-in-kind report on a case-by-case basis. In this regard, we encourage registrants and their auditors to contact the staff to discuss particular situations where a foreign jurisdiction requires a contribution-in-kind report to enable the staff to work with the registrant and the foreign jurisdiction in reaching an appropriate resolution.

(iv) *Actuarial Services.* SECPS rules currently prohibit member accounting firms from providing certain actuarially oriented advisory services to insurance companies.[377] Accountants providing these services assume a key management task. In addition, because actuarially oriented advisory services may affect amounts reflected in an insurance company's financial statements, providing these services may cause an accountant later to audit his or her own work. Rule 2–01(c)(4)(iv) addresses these issues.

Commenters expressed concern that the proposal was broader than a similar SECPS rule, in that the restrictions in the proposal applied to services provided to all public companies, not just insurance companies, and the proposal did not include the four examples of appropriate services that are included in the SECPS rule.[378] We have modified our final rule with respect to actuarial services to parallel closely the SECPS rule, including the four exceptions. The final rule limits only actuarially oriented advisory services involving the determination of insurance company policy reserves and related accounts. We are narrowing the prohibition to services for insurance companies because, as explained in the SECPS rule, it is primarily in these companies that the actuarial function is "basic to the operation and management" of the company.[379]

The final rule states that an auditor's independence is impaired if the audit firm provides certain actuarially oriented advisory services involving the determination of insurance company policy reserves and related accounts, unless three conditions are met. First, the audit client must use its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities. Second, management must accept responsibility for any significant actuarial methods and assumptions employed by the accountant in performing or providing the actuarial services. Third, the accountant cannot render the actuarial services to the audit client on a continuous basis. All of these conditions are designed to ensure that the accountant does not assume a management function for the audit client.

Assuming these conditions are met, the accountant can perform four types of actuarial services for an insurance company audit client without impairing the accountant's independence. The four types of actuarial services are: (i) Assisting management to develop appropriate methods, assumptions, and amounts for policy and loss reserves and other actuarial items presented in financial reports, based on the company's historical experience, current practice, and future plans; [380] (ii) assisting management in the conversion of financial statements from a statutory basis to one conforming with GAAP; (iii) analyzing actuarial considerations and alternatives in federal income tax planning; and (iv) assisting management in the financial analyses of various matters, such as proposed new policies, new markets, business acquisitions, and reinsurance needs. Allowing accountants to provide these four types of actuarially oriented advisory services under the three conditions is consistent with the SECPS rule.[381] We believe that if the conditions are met, in the context of state-regulated insurance companies, the four services would not constitute an assumption of the insurance company management's role or responsibilities, and would not impair the auditor's independence.

(v) Internal Audit Services. Although companies are not required to do so, they may, as part of their internal controls, form internal audit departments that are used to make sure that control systems are adequate and working. According to the Committee of Sponsoring Organizations ("COSO"), internal auditors play an important role in evaluating and monitoring a company's internal control system.[382] As explained by Robert Denham, a member of the ISB, at our public hearings, "Good internal auditing . . . requires the internal auditor to be very closely integrated with management. The internal auditor is part of the management team. He or she is identifying problems and providing reports that help management correct those problems."[383] In sum, "the internal audit function is, basically, an arm of management,"[384] and internal auditors are, in effect, part of a company's internal accounting control system.

Although a company may prefer to outsource its internal audit function, management must continue to be responsible for the function.[385] When a company outsources the function to a third-party provider, there may be a concern that management has ceded this responsibility. While this is a concern in any internal audit outsourcing arrangement, there are additional concerns when a company outsources the work to its external auditor. As Comptroller of the Currency John D. Hawke, Jr., testified, "When a bank outsources its internal audit function to the same firm that performs the bank's external financial audit . . . the possibility for inherent conflicts and impairments of auditor independence and auditor integrity is greatest."[386] Although Mr. Hawke discussed the conflicts in the bank context, his comments are equally applicable to any registrant.

Research commissioned by the Institute of Internal Auditors indicates that the internal auditors surveyed perceive an independence problem where internal audit work is outsourced to the external auditor.[387] In particular,

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[365] The ISB has identified threats to the independence of firms that perform appraisal and valuation services for audit clients. *See* ISB, Discussion Memorandum 99–3 "Appraisal and Valuation Services," at 7–9.

[366] *See generally* Codification § 602.02.c.

[367] *See e.g.*, Arthur Anderson Letter; Deloitte & Touche Letter; PricewaterhouseCoopers Letter.

[368] Of course, reference to financial statements includes results of operations, financial conditions and cash flows.

[369] AICPA Code of Professional Conduct, ET §101.05 states that an auditor's independence would not be impaired in connection with appraisal and valuation services "when all significant matters of judgment are determined or approved by the client and the client is in a position to have an informed judgment on the results of the valuation."

[370] *See, e.g.*, Arthur Andersen Letter.

[371] Deloitte & Touche Letter.

[372] We note in this regard, that if an acquisition individually, and when aggregated with other acquisitions reflected in the financial statements, is immaterial to the audit client's financial statements, then assisting in the allocation of the purchase price would not fall within the conditions of the rule and therefore would not be deemed to impair the auditor's independence.

[373] *See, e.g.*, Deloitte & Touche Letter; Ernst & Young Letter; Letter of KPMG Europe (Sept. 22, 2000).

[374] Ernst & Young Letter.

[375] *See e.g.*, Deloitte & Touche Letter; Letter of KPMG Europe (Sept. 22, 2000).

[376] *See* Letter from Lynn Turner, Chief Accountant, SEC, to Antonio Rosati, CONSOB (Aug. 24, 2000). In that letter, our Chief Accountant did not deem the auditor's independence to be impaired where there were certain agreed-upon procedures for the contribution-in-kind report and the accountant represented in the report that the report did not express an opinion on the fairness of the transaction, the value of the security, or the adequacy of consideration to shareholders. This letter is available on our website.

[377] SECPS Reference Manual ("SECPS Manual") §1000.35.

[378] PricewaterhouseCoopers Letter; Ernst & Young Letter; see also Deloitte & Touche Letter.

[379] SECPS Manual §1000.35, at ¶ 5.

[380] Although it addresses a different topic, accountants and registrants may refer to ISB, "Interpretation No. 99:1: Impact on Auditor Independence of Assisting Clients in the Implementation of FAS 133 (Derivatives)" for general guidance on what constitutes "assistance" as opposed to "performing" certain functions or services.

[381] See SECPS Manual §1000.35.

[382] See Committee of Sponsoring Organizations of the Treadway Commission, Internal Control—Integrated Framework, at 7 (1992) (the "COSO Report").

[383] Testimony of Robert E. Denham (July 26, 2000); see also Testimony of John Whitehead, retired Chairman, Goldman Sachs & Co. (Sept. 13, 2000) ("internal auditing is the function of management").

[384] Testimony of Manuel H. Johnson, Public Member, ISB (July 26, 2000).

[385] See AICPA Code of Professional Conduct, ET §101.15 (Interpretation 101–13).

[386] Testimony of John D. Hawke, Jr. (July 26, 2000). He also reported a trend among banks in favor of outsourcing internal audit work to the external auditor. He testified that "[o]f [the] 50 largest banks" within the jurisdiction of the OCC, "8 out-source their internal audit, and 7 of those 8 out-source to the same firm that does their external audit. That's a pretty good chunk of the largest banks." Id. In addition, Mr. Hawke reported that in a survey of the OCC banks in the Northeast region, one-third outsource their internal audit work and half of those banks outsource to their external auditor. Id.

[387] In this study, companies with small, "mean-sized," and large internal audit departments were asked to indicate their level of agreement (on a scale of zero to five, with five being the strongest) with the following statement: "There is an independence

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in auditing the company's financial statements, the accountant will consider the extent to which he or she may rely on the internal control system in designing its audit procedures.[388] When the auditor has performed the internal audit work, the auditor will need to consider or examine its own work.

Final Rule 2–01(c)(4)(v) seeks to curb these conflicting interests without precluding companies, particularly small companies, from obtaining internal audit services from their auditors where the auditor's independence would not be compromised. Under the final rule, an auditor's independence is impaired by performing more than forty percent of the audit client's internal audit work related to the internal accounting controls, financial systems, or financial statements, unless the audit client has $200 million or less in assets.

The final rule provides an exception for businesses with $200 million or less in assets. Specifically, the rule provides that audit clients who have less than $200 million in total assets may receive more than forty percent of their internal audit functions from their auditor without giving rise to an impairment of independence. We provide this exception after carefully considering the potential impact of our rules on small businesses. At the proposing stage, we requested comment on whether we should provide an exception for smaller businesses. We adopt this exception in response to comments that we received,[389] and in recognition of the fact that smaller businesses, many of which may be located away from major business centers, could suffer particular hardships if we do not provide some exception.[390]

We chose a $200 million threshold for various reasons. From the available data, the $200 million threshold appears to provide a line below which not only are the companies themselves smaller, but the accounting firms that audit them also tend to be smaller.[391]

Commenters distinguished the situation in which the auditor supplements an audit client's internal audit function from the situation in which the auditor supplants the client's internal audit function. They suggested that an auditor should not be permitted to provide all of the internal audit services required by an audit client but should be allowed to provide a limited amount of internal audit services without impairing the auditor's independence.[392] For example, Ray J. Groves, former Chairman and Chief Executive Officer of Ernst & Young, said that "limited amounts in specific areas of internal out-sourcing make a lot of sense, as opposed to complete out-sourcing, as long as the audit client maintains their own independent internal audit function with capable management and people within it."[393] These comments in large part reflect the current AICPA rule on internal audit outsourcing,[394] which, as explained by a senior official of the AICPA, "prohibit[s] the complete outsourcing."[395] In response to these comments and in recognition of the AICPA rule, our final rule, with respect to registrants with $200 million or more in assets, allows auditors to perform up to forty percent of an audit client's internal audit work.[396]

Several commenters expressed concern about the effect of the proposed rule on small businesses that have no internal audit department or staff. They noted that smaller firms may not have sufficient need for full-time internal auditors but nonetheless, may need some services that internal auditors typically provide, which they obtain from their external auditors. According to these commenters, we should encourage this practice. Unless these companies can turn to their external auditors, they state, the work will not be done at all. Because we agree that small businesses should be encouraged to use internal audit services, the final rule allows auditors to provide an unlimited amount of internal audit services to clients with less than $200 million in assets, provided certain conditions are met.

In addition, the final rule does not restrict internal audit services regarding operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements. This is because our focus is on services that affect the integrity of financial statements and reported financial information.[397]

Under all circumstances in which an auditor performs any internal audit services for an audit client, including with respect to companies with assets under $200 million, the auditor must comply with the six conditions listed in paragraph (B) to avoid an impairment of independence. Four of the six conditions are drawn from a ruling published in 1996 by the Ethics Committee of the AICPA.[398] It states that AICPA members may provide certain internal audit outsourcing services to audit clients without

problem if the external audit firm performs extended audit services (internal audit services) for the same firm for which it performs the annual financial statement audit." The level of agreement among respondents was between 3.7 and 4.0, "indicating a perception of an independence problem." Larry E. Rittenberg and Mark A. Covaleski, The Outsourcing Dilemma: What's Best for Internal Auditing, at 68 and Exh. 4–4 (Institute of Internal Auditors Research Foundation 1997).

[388] AICPA SAS No. 55, AU § 319 (effective for audits on or after Jan. 1, 1990).

[389] See, e.g., Testimony of John D. Hawke, Jr., Comptroller of the Currency (July 26, 2000) (noting concerns about the effect of the proposed rule on small banks); Testimony of Wayne A. Kolins, National Director of Assurance, BDO Seidman, LLP (Sept. 20, 2000).

[390] These hardships could include, for example, difficulty in obtaining suitable professional services at a cost appropriate to the size of the business, or, for a small accounting firm, the loss of a substantial portion of its client base for either its audit or internal audit services.

[391] Using the $200 million threshold reasonably isolates companies that are relatively small themselves—approximately 54% of the 9,414 public reporting companies in the Standard & Poors Research Insight Compustat Database ("Compustat Database") " and has the effect of almost completely excepting smaller accounting firms. Approximately 85% of the public company audit clients (other than bank holding companies) of non-Big Five accounting firms have less than $200 million in assets. Of public company audit clients with more than $200 million in assets—the companies that would not trigger the exception—no more than 6.1% (again, excluding bank holding companies) are audited by non-Big Five firms. The source for these data is the Compustat Database, October 31, 2000. For further analysis, see infra Section V.B. (cost-benefit analysis).

[392] *See, e.g.*, Testimony of Jacqueline Wagner (Sept. 13, 2000) (testifying for the Institute of Internal Auditors) ("The IIA believes that the total outsourcing of the internal auditing function to the organization's external auditing firm impairs that firm's independence."); Testimony of Dominick Esposito, Chief Executive Officer, Grant Thornton LLP (Sept. 13, 2000) ("I think if there is the entire internal audit department outsourced, it can present a conflict.").

[393] Testimony of Ray J. Groves (July 26, 2000).

[394] See AICPA Code of Professional Conduct, ET §101.15 (Interpretation 101–13).

[395] Testimony of Barry Melancon, President and Chief Executive Officer (Sept. 13, 2000). Mr. Melancon also noted that "[t]here still has to be management responsibility for the overall internal audit function . . . we certainly agree that the ultimate responsibility for internal auditing, the management decision making, must [lie] with management, not with the auditor."

[396] When providing internal audit services to an audit client with $200 million or more in assets, the auditor must measure the internal audit services provided to the audit client in full-time employee hours. In order to remain independent, the auditor must ensure that it provides 40% or less of the total hours expended by the audit client, the auditor and anyone else on internal audit matters related to internal accounting controls, financial systems, and financial statements, and matters that impact the financial statements.

[397] In addition, performing procedures that generally are considered to be within the scope of the engagement for the audit of the audit client's financial statements, such as confirming accounts receivable and analyzing fluctuations in account balances, would not impair the accountant's independence, even if the extent of testing exceeds that required by GAAS. For example, if an accountant in normal circumstances would plan to observe ten percent of an audit client's inventory, but at the audit client's request the accountant observes 50% of inventory on hand, the accountant's independence would not be impaired.

[398] AICPA Code of Professional Conduct, ET §101.15 (Interpretation 101–13).

impairing their independence, so long as, among other things, (i) the client designates a competent member of management to be responsible for the internal audit function, (ii) management determines the scope, risk, and frequency of internal audit activities, including those to be performed by the auditor, (iii) management evaluates the findings and results arising from the internal audit activities, including those performed by the auditor, and (iv) management evaluates the adequacy of the audit procedures performed and the findings resulting from performance of those procedures. In addition, consistent with a later ruling by the AICPA, the final rule requires that (v) the audit client acknowledges its responsibility to establish and maintain a system of internal accounting controls in compliance with Section 13(b)(2) of the Securities Exchange Act, and (vi) that management not rely on the auditor's work as the primary basis for determining the adequacy of its internal controls.[399]

In the Proposing Release we noted that we were inclined not to follow the AICPA rule on internal audit outsourcing because we believed that, in providing such services, the auditor assumed a management function and, in the course of the audit, would have to review his or her own work. As discussed above, however, we have been persuaded that the auditor can perform a limited amount of an audit client's internal audit function without supplanting management's role or auditing its own work. In addition, we have been persuaded that encouraging internal audit outsourcing at small businesses is wise public policy. We have, accordingly, determined to allow the limited relationships described above under the conditions recommended and used at this time by the AICPA.

(vi) *Management Functions.* Current Rule 2–01 of Regulation S–X and the AICPA's rules preclude accountants from acting as management.[400] We are adopting Rule 2–01(c)(4)(vi) as proposed, which provides that an accountant's independence is impaired with respect to an audit client for which the accountant acts, temporarily or permanently, as a director, officer, or employee or performs any decision-making, supervisory, or ongoing monitoring functions.

(vii) *Human Resources.* Under current SECPS rules, accountants cannot perform certain executive recruiting and human resource services for audit clients.[401] Specifically, under those rules, an accountant's independence would be impaired if the accountant: (a) Searches for or seeks out prospective candidates for managerial, executive or director positions with audit clients;[402] (b) engages in psychological testing, or other formal testing or evaluation programs;[403] (c) undertakes reference checks of prospective candidates for executive or director positions with audit clients;[404] (d) acts as a negotiator on the audit client's behalf, such as in determining position, status or title, compensation, fringe benefits, or other conditions of employment;[405] or (e) recommends, or advises an audit client to hire, a specific candidate for a specific job.[406] Those rules do not, however, preclude an accountant from, upon request of the audit client, interviewing candidates and advising an audit client on the candidate's competence for financial, accounting, administrative or control positions.[407]

Excessive involvement in human resource selection or development places the auditor in the position of having an interest in the success of the employees that the auditor has selected, tested, or evaluated. Accordingly, an auditor may be reluctant to suggest that those employees failed to perform their jobs appropriately because doing so would require the auditor to acknowledge shortcomings in its human resource service.

Commenters were concerned that our proposed language expanded upon the limitations in the AICPA and SECPS rules.[408] For example, commenters expressed concern that the proposed rule would prohibit an accountant from advising an audit committee on the competence of a prospective controller or CFO.[409] Commenters also were concerned that the proposed rule limited accountants from providing tax-related services related to structuring compensation packages.[410] We agree that an objective evaluation by the accountant of a candidate's competency for an accounting or financial position may be useful to some, particularly smaller, companies and that the impact of this evaluation is reduced by the proscription that the accountant may not recommend that the audit client hire a particular candidate. We also believe that an accountant should not negotiate regarding the contents of a compensation package the accountant has designed. Accordingly, in light of the comments received, we have modified the final rule, and final Rule 2–01(c)(4)(vii) more closely parallels the SECPS rules.

(viii) *Broker-Dealer Services.* Current Rule 2–01 states that an accountant's independence is impaired if the accountant is connected with the audit client as an underwriter or promoter.[411] The Codification further states that concurrent engagement as a broker-dealer is incompatible with the practice of public accounting.[412] Rule 2–01(c)(4)(viii) combines these provisions with certain provisions from the AICPA rules.[413] As adopted, the amendments state that an accountant's independence will be impaired if the accountant acts as a broker-dealer, promoter, or underwriter on behalf of an audit client, makes investment decisions on behalf of the audit client or otherwise has discretionary authority over an audit client's investments, executes a transaction to buy or sell an audit client's investment, or has custody of assets of the audit client, such as taking temporary possession of securities purchased by the audit client. As noted in our existing standards, activities such as recommending securities, soliciting customers, and executing orders create a mutuality of interest and the potential for self-review.

Although our intention was to codify current restrictions, commenters believed that our proposal went further.[414] In particular, commenters were concerned that by including the term "investment adviser" we were precluding accountants from providing certain investment advisory or personal financial planning services that they currently provide.[415] In response to

[399] AICPA Code of Professional Conduct, ET §191.206–207 (Interpretation 101–103).

[400] Former Rule 2–01(b), 17 C.F.R. 210.2–01(b); AICPA Code of Professional Conduct, ET §101.02.

[401] *See* SECPS Manual §1000.35 App. A; see also AICPA Code of Professional Conduct, ET §101.05 (Interpretation 101–3) (deeming an auditor's independence impaired when the auditor negotiates employee compensation or benefits, or hires or terminates client employees).

[402] SECPS Manual §1000.35 App. A.

[403] *Id.*

[404] *Id.*

[405] *Id.*; AICPA Code of Professional Conduct, ET §101.05.

[406] *Id.*

[407] SECPS Manual §1000.35 App. A

[408] *See, e.g.*, Deloitte & Touche Letter; KPMG Letter; PricewaterhouseCoopers Letter; Ernst & Young Letter.

[409] *See, e.g.*, KPMG Letter; Ernst & Young Letter.

[410] *See, e.g.*, Deloitte & Touche Letter; Ernst & Young Letter.

[411] Former Rule 2–01(b), 17 CFR 210.2–01(b).

[412] Codification §602.02.e.iii.

[413] *See* AICPA Code of Professional Conduct ET §101.05.

[414] *See, e.g.*, Ernst & Young Letter; PricewaterhouseCoopers Letter.

[415] *See* Arthur Andersen & Co., 1994 SEC No Act. LEXIS 617 (July 8, 1994) ("Andersen No-Action Letter") in which the staff stated it would not recommend enforcement action under the Investment Advisers Act where an accounting firm did not register as an investment adviser but an

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these concerns, we have removed the term "investment adviser" from the rule text.

Current AICPA rules specify investment advisory services that accountants may provide to audit clients without impairing their independence. Under these rules, accountants can recommend the allocation of funds that an audit client should invest in various asset classes, based on the client's risk tolerance and other factors; provide a comparative analysis of the client's investments to third-party benchmarks; review the manner in which the audit client's portfolio is being managed by investment account managers; and transmit a client's investment selection to a broker-dealer, provided that the client has made the investment decision and has authorized the broker-dealer to execute the transaction.[416] Accountants may continue to provide those services without impairing their independence.

Current AICPA rules also specify investment advisory services accountants may not provide to audit clients without impairing their independence. The final rule incorporates these restrictions. Accordingly, as under the AICPA's rules,[417] auditors cannot make investment decisions for audit clients or exercise discretionary trading authority over an audit client's account, cannot execute transactions for audit clients, and cannot take custody of an audit client's assets. Providing such services creates a mutuality of interest and may result in the auditor having to audit the value of investments that the auditor made for the client.

The Codification states that "[t]he functions customarily performed [by a broker-dealer] include the recommendation of securities, the solicitation of customers and the execution of orders, any one of which could involve securities transactions of clients either as issuer or investor and provide third parties with sufficient reason to question the accountant's ability to be impartial and objective."[418] Because these activities continue to be encompassed within the meaning of "broker-dealer" under the rule we are adopting, and therefore, when performed on behalf of an audit client, impair an auditor's independence, we have eliminated the language "in any capacity recommending the purchase or sale of an audit client's securities' from the rule text.

By restricting broker-dealer services to those provided "on behalf of the audit client," we do not mean to suggest that an auditor can recommend an audit client's securities to either another audit client or a non-audit client.[419] The language "on behalf of" the audit client encompasses all situations in which the auditor is directly or indirectly compensated for the recommendation.

The final rule, however, will not alter current guidance as to the corporate finance consulting services auditors provide to audit and non-audit clients.[420] For example, accountants, without impairing their independence, may advise audit clients in need of capital that one alternative is to do a public offering of their securities. Also, the staff has indicated that limited activities on the part of the auditor by way of general explanatory work and limited fact finding (such as identifying and introducing an audit client to potential merger partners that meet specified criteria) would not impair an auditor's independence. An auditor's independence would be impaired, however, by entering into preliminary or other negotiations on behalf of an audit client, by promoting the client to potential buyers, or "with respect to subsequent audits of a client if the accountant renders advice as to whether, or at what price a transaction should be entered into."[421] These interpretations of former Rule 2–01(b) apply equally to the amended rule we adopt today. To the extent an auditor is otherwise permitted to provide services to a non-audit client concerning corporate financing transactions to which an audit client is a party, the permissibility of those services does not turn on whether the advice involves transactions in which the consideration provided by an audit client to the non-audit client is in the form of an audit client's securities, as opposed to cash or other assets.

Commenters expressed concern that, because the terms "securities professional" and "analyst" are not defined in the securities laws, they would cause confusion.[422] To avoid any such confusion and to limit concerns about overbroad application of those terms, we have eliminated those terms from the rule text. We note, however, that broker-dealers provide an array of services that may include analyst activities.

Finally, we have not included in the final rule the prohibition relating to designing broker-dealer or investment adviser compliance systems. We have eliminated this provision to conform the rule to current law.

(ix) *Legal Services.* For the reasons set forth in the Proposing Release, we believe that there is a fundamental conflict between the role of an independent auditor and that of an attorney. The auditor's charge is to examine objectively and report, regardless of the impact on the client, while the attorney's fundamental duty is to advance the client's interests.[423] As discussed in the Proposing Release at greater length,[424] existing regulations,[425] the U.S. Supreme Court,[426] and professional legal organizations[427] have deemed it inconsistent with the concept of auditor independence for an accountant to provide legal services to an audit client. Accordingly, we are adopting the proposed rule as to legal services with a few modifications. Final Rule 2–01(c)(4)(ix) provides that an accountant is not independent of an audit client if the accountant provides any service to an audit client under circumstances in which the person providing the service must be admitted to practice before the courts of a U. S. jurisdiction.

We understand that some firms, largely through their foreign affiliates, are providing legal services outside of the United States. Moreover, we understand[428] that lawyers affiliated with foreign affiliates of U. S. accounting firms on occasion provide legal services in the United States where they are not required to be admitted to a bar in the United States. The final rule does not address these practices, where local law does not preclude such services and the services relate to matters that are not material to the consolidated financial statements of an SEC registrant or are routine and ministerial. We note, however, that it is clear to us that legal services provided outside the United States raise serious independence concerns under circumstances other than those meeting at least those minimum criteria.

We solicited comment on whether our proposed rule on legal services created uncertainty or complexity since the prohibition focused on the jurisdiction in which the legal services were provided. Commenters stated that indeed the rule should be revised because U.S. attorneys can, under various circumstances, render legal services in jurisdictions where they are not licensed to practice law. For example, when an attorney is not licensed to practice law in a particular jurisdiction, he or she can apply to a court *pro hac vice* to be able to appear before the court for purposes of the case.[429] Accordingly, we modified the rule so that an accountant's ability to render legal services no longer depends on his or her being licensed in the jurisdiction where the services are rendered, but rather on whether, under the circumstances, the provider of the services must be admitted to practice before the courts of a U.S. jurisdiction.

Some commenters suggested that safeguards, such as firewalls, could prevent or cure any independence problem that might arise by virtue of an accountant providing legal services to an audit client.[430] Recently, the Commission on Multidisciplinary Practice of the ABA considered whether firewalls would address sufficiently issues that might arise if a law firm were to provide both legal and other services.[431] That Commission rejected the firewall approach, stating "[We] explicitly recognize[] the[] incompatibility [of legal and audit services]. [We] do not believe that a single entity should be allowed to provide legal and audit services to the same client."[432] In light of current regulations and the ABA Report, we have determined not to adopt a firewall approach.

(x) *Expert Services.* We are not adopting the proposal to restrict the provision of expert services. The proposed rule would have provided that an accountant's independence is impaired as to an audit client if the accountant renders or supports expert opinions for the audit client or an affiliate of the audit client in legal, administrative, or regulatory filings or proceedings ("expert services"). Commenters said that our proposals went beyond current rules.[433] For example, AICPA Ethics Standards permit accountants to serve as expert witnesses.[434]

Commenters argued that accountants may need to act as experts in defending work they have done for audit clients before such bodies as the Internal Revenue Service, and indeed, this Commission.[435] As stated in the Proposing Release, we did not intend for our proposals to prohibit an auditor from testifying as a fact witness to its audit work for a particular client. In those instances, the auditor is merely providing a factual account of what he or she observed and the judgments he or she made. Nevertheless, to avoid confusion and any uncertainty that might be created by permitting the accountant to testify in one capacity but not another, we have determined not to adopt a restriction on expert services. When an accountant performs such services, however, he or she should be particularly mindful of his or her duty to maintain objectivity and integrity, as discussed in the AICPA Ethics Regulations.[436]

c. *Alternative Approaches to Scope of Services Restrictions.* As discussed in the Proposing Release, we considered a number of alternatives concerning scope of services. We solicited public comment on each alternative. After considering the comments received, we have determined not to adopt any of the alternatives proposed.

For the reasons discussed above, we have not adopted a disclosure-only approach or a complete ban on auditors' provision to audit clients of non-audit services. In addition, as discussed above, we welcome and encourage active oversight by audit committees with respect to auditor independence, but do not believe that such oversight obviates the need for the rule we adopt today. In this regard, it is our statutory responsibility to protect the public interest.

We are persuaded that relying on a firewalls approach is also unworkable. Under a firewalls approach, there would be a strict separation between those professionals in the accounting firm who perform audit work for an audit client and those who provide non-audit services for the client. GAAS, however, under certain circumstances requires that auditors seek out a registrant's consultants in the course of an audit to discuss work performed by the consultant.[437] Accordingly, a strict firewalls approach would conflict with GAAS requirements.

5. Contingent Fees

We proposed to restrict the receipt of contingent fees from audit clients, and we continue to believe that contingent fee arrangements result in the auditor having a mutual interest with the client. For example, if an accounting firm arranged to receive an audit fee of $200,000, but half of that fee was contingent on the audit client successfully completing an initial public offering within the following year, the auditor would have a mutual interest with the audit client in the success of the planned IPO and in the continuing viability of the audit client. Consequently, we are adopting a restriction on contingent fees. In response to comments,[438] however, we

affiliated registered investment adviser provided investment advisory services. The staff permitted the affiliate to publish a newsletter with financial planning information, provided the newsletter does not recommend any specific industry sectors or securities, to identify categories of mutual funds that satisfy an advisory client's investment objectives, and to recommend two or more mutual funds in each category. When an advisory client wants more specific advice, the investment advisory affiliate accountant will provide a client with a list of two or more investment advisers or broker-dealers that meet certain predetermined criteria, provided that the accountant does not receive any fee or other economic benefit from the mutual funds, investment advisers or broker-dealers recommended. The advisory affiliate will disclose to advisory clients that the recommended mutual funds, investment advisers, or broker dealers may include audit clients. *See also* Ernst & Young Letter (citing Andersen No-Action Letter).

[416] AICPA Code of Professional Conduct, ET §101.05 (Interpretation 101–3).

[417] *Id.*

[418] Codification §602.02.e.iii.

[419] *See* Arthur Andersen Letter (acknowledging that it is appropriate to prohibit accountants from recommending any specific securities to audit clients and from recommending audit clients' securities to non-audit clients).

[420] *See* AICPA Code of Professional Conduct, ET §101.05, Interpretation 101–3, which states that an accountant's independence would not be impaired if that accountant assists in developing corporate strategies, assists in identifying or introducing the client to possible sources of capital that meet the client's specifications or criteria, assists in analyzing the effects of proposed transactions, assists in drafting an offering document or memorandum, or participates in transaction negotiations in an advisory capacity.

[421] Letter from Edmund Coulson, Chief Accountant, SEC, to Edward McGowen, Pannall Kerr Forster, at 2 (July 11, 1988) (discussing mergers and acquisition services, among others).

[422] *See* Ernst & Young Letter; PricewaterhouseCoopers Letter.

[423] *See also* ISB, "Discussion Memorandum 99–4: Legal Services" (Dec. 1999).

[424] *See* Proposing Release, Section III.D.1(b)(ix).

[425] Codification §602.02.e.ii.

[426] *Arthur Young*, 465 U.S. at 819–20 n.15.

[427] American Bar Association Commission on Multidisciplinary Practice, Report to the House of Delegates, at 5 (July 2000) ("ABA Report") (available at www.ABAnet.org/cpr/mdpfinalrep2000.html).

[428] *See* Ernst & Young Letter; PricewaterhouseCoopers Letter; Arthur Andersen Letter.

[429] *See, e.g.*, Va. Sup. Ct. R. 1A:4 (2000).

[430] *See, e.g.*, Arthur Andersen Letter.

[431] *See* ABA Report, *supra* note 427.

[432] *Id.* at 5 (footnote omitted).

[433] *See, e.g.*, PricewaterhouseCoopers Letter; Deloitte & Touche Letter.

[434] AICPA Code of Professional Conduct, ET §101.202–101.203.

[435] *See, e.g.*, Arthur Andersen Letter.

[436] AICPA Code of Professional Conduct, ET §102.07 ("[I]n the performance of any professional service, a member shall comply with rule 102 [ET §102.01], which requires maintaining objectivity and integrity and prohibits subordination of judgment to others.* * * Moreover, there is a possibility that some requested professional services involving client advocacy may appear to stretch the bounds of performance standards, may go beyond sound and reasonable professional practice, or may compromise credibility, and thereby pose an unacceptable risk of impairing the reputation of the member and his or her firm with respect to independence, integrity, and objectivity. In such circumstances, the member and the member's firm should consider whether it is appropriate to perform the services.").

[437] AICPA SAS No. 22, AU § 311.04b; AU § 9311.03.

[438] *See, e.g.*, PricewaterhouseCoopers Letter; Deloitte & Touche Letter.

modified the rules to parallel more closely the existing restrictions.[439]

Final Rule 2–01(c)(5) defines a contingent fee as any fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Contingent fees include commissions and similar payments. Consistent with the AICPA rules, our definition of "contingent fees" contains an exception for fees fixed by courts or other public authorities, or, in tax matters, fees determined based on the results of judicial proceedings or the findings of governmental agencies. We have added the AICPA's exception for fees, in tax matters, determined based on the results of judicial proceedings or the findings of governmental agencies. This exception is based, in part, on the position that when the fee is determined not by the parties but by courts or government agencies acting in the public interest, it is less likely that such fees will be used to create a mutual financial interest between the auditor and audit client. This exception also acknowledges that, as explained above, tax services generally do not create the same independence risks as other non-audit services.

In response to comments, we have eliminated from the rule text the language regarding "value added" fees. Some commenters represented that accounting firms sometimes receive fees where the client determines at the end of the engagement whether the services rendered warrant an additional fee, but there is no agreement (written or otherwise) for the audit client to pay the additional fee. In these situations, the client, at its complete discretion, determines at the end of the performance period that the accountant provided services that had greater value than the amount due under the contract. That type of "value added" fee is not within the scope of the prohibition.[440]

On the other hand, the staff will look closely to determine whether a fee labeled a "value added" fee is in fact a contingent fee, such as where there are side letters or other evidence that ties the fee to the success of the services rendered. For example, as discussed in the Proposing Release, an auditor might undertake a study of certain types of a client's expenditures in order to identify greater amounts of qualifying expenses that would result in greater income tax credits. Fees for such services might be based on a percentage of the tax credits generated, a base fee plus a percentage of tax credits generated over a pre-determined base amount, or a base fee plus a "value added" amount to be added to the base fee. In that case, the accounting firm's economic benefit will be greater if the tax credits are maximized. Because this interest (in the economic benefit) is inconsistent with acting independently in assessing the accuracy of the impact on the income tax accounts and financial statements of the tax credits, those kinds of fee arrangements are prohibited under the final rule.

E. Quality Control Provisions

We recognize that situations may arise where an accountant's independence becomes impaired inadvertently, such as where a family member makes an investment of which the covered person is not aware. Paragraph (d) addresses those situations. We are adopting a limited exception pursuant to which inadvertent violations of these rules by covered persons will not make the accounting firm not independent if the accounting firm maintains certain quality controls and satisfies other conditions. The effect of this provision is that an accounting firm that has appropriate quality controls will not be deemed to lack independence when an accountant did not know of the circumstances giving rise to the impairment and, upon discovery, the impairment is quickly resolved.

As we explained in the Proposing Release, strong quality controls deter, detect, and provide a means to address impairments of an auditor's independence. Our staff has stated repeatedly that it is concerned that firms, particularly larger firms, may lack appropriate worldwide quality controls.[441] The staff has urged certain firms to review and modernize existing procedures.[442]

Many firms have designed and implemented quality controls or are doing so now. In that regard, several commenters wrote that because firms already have quality control procedures in place, there is no need for this provision.[443] Other commenters supported the provision and asked us to adopt it.[444] We are adopting this limited exception to the general principle that attributes to an entire firm independence impairments of individual accountants. We proposed such a limited exception in the belief that adequate quality controls would limit the occasions in which the exception would come into play. Without such a requirement, we fear that the incidence of individual violations would be much greater.

Paragraph (d) provides that an accounting firm's independence will not be impaired solely because a covered person in the firm is not independent, as long as three conditions are met. First, the covered person must not have known of the circumstances giving rise to the lack of independence. The proposed rule provided that to take advantage of the exception, the firm must show that the covered person did not know, and was "reasonable in not knowing," of the circumstances giving rise to the impairment. One commenter suggested eliminating this language because, once a firm implements a quality control system envisioned in the rule (with automated tracking of investments, ongoing training, and inspections and monitoring programs), a person may never be deemed to be "reasonable" in not knowing the circumstances giving rise to an impairment, and the exception would never be available.[445] Accordingly, we have revised the first condition to apply when the covered person did not know of the circumstances giving rise to the impairment.

The second condition is that the covered person's lack of independence was corrected as promptly as possible under the relevant circumstances after the covered person, or the firm, became aware of it. Several commenters suggested adding the phrase "under the relevant circumstances."[446] We agree that this change is appropriate because whether an action is "prompt" depends, at least in part, on the surrounding circumstances. In light of this change, however, we also have revised this provision so that the lack of independence must be corrected as promptly as possible under the relevant circumstances.

The third condition is that the accounting firm must have a quality control system in place that provides "reasonable assurance" that the firm and its employees do not lack independence. As we stated in the Proposing Release, we believe that a quality control system is the first line of defense to guard against independence impairments. We understand that accounting firms vary greatly. The rule we are adopting, as proposed, explicitly states that the quality control provisions may take into account the size and nature of the firm's practice.

In the Proposing Release, we stated that a firm's quality controls should apply to the firm and its affiliates worldwide,[447] and we solicited comment about whether a firm's quality controls should be this comprehensive. We received useful comments about the applicability of this provision to foreign affiliates.[448] Because we have eliminated the definition of affiliate of the accounting firm, however, we have modified the third provision to state that the quality controls must cover at least all employees and associated entities of the accounting firm participating in the engagement, including employees and associated entities located abroad. While we do not necessarily expect a firm making use of the limited exception to demonstrate that it has implemented appropriate quality control systems in each of its offices worldwide, the rule requires that, to avail itself of the limited exception, the firm must have quality control systems that cover each employee and associated entity participating in the engagement for which independence was impaired.

Several commenters stated that while it is appropriate for the Commission to examine whether a firm or a covered person is independent, we should not prescribe quality controls.[449] The rule does not require any firm to adopt quality controls.[450] Rather, for the reasons stated above, it makes adequate quality controls a prerequisite for a limited exception where the firm otherwise would be deemed not independent.

Rule 2–01(d)(4) describes the elements of a quality control system that large accounting firms—those with more than 500 SEC registrants as audit, review, or attest clients—must have in place to qualify for the limited exception.[451] Many of the elements are set forth in a 1999 letter from the staff to the SECPS.[452] While the rule as adopted requires only the larger firms to implement these elements to qualify for the limited exception, we note that some of these elements may be suitable for other firms as well. We discuss the elements below.

1. Written Independence Policies and Procedures

The largest firms' independence policies and procedures must be reduced to writing. As we stated in the Proposing Release, we expect the policies and procedures to be comprehensive, to cover all professionals in the accounting firm, and to address all aspects of independence, including financial, employment, and business relationships, as well as fee arrangements.

2. Automated Systems

Large firms must have automated systems to identify investments that may impair independence. In our proposal, this provision applied to all employees in the firm. Commenters stated, however, that it may not be necessary for the automated quality control system to include the financial investments of persons below the managerial level. Commenters also stated that it may be difficult to establish a system to identify all financial relationships that might impair independence.[453] These commenters suggested revising the provision for an automated tracking system to apply only to partners and managerial employees, while adding a provision providing for timely dissemination of information about its current list of audit clients to all professionals.[454] We agree with these commenters that non-managerial employees have less control over the audit process and, therefore, need not be included in the automated system. However, to meet this limited exception, a firm's quality control system must provide reasonable assurance that nonpartners and managerial employees are complying with the applicable independence rules. We also have clarified the scope of the required automated system, by changing the words "financial relationships" to "investments in securities." Accordingly, an automated system would not need to track covered persons' "other financial interests," such as brokerage and credit card accounts, to qualify for this limited exception. We also note that, for purposes of monitoring compliance with our rule on "material" indirect investments, an automated system need not track covered persons' net worth to determine if an indirect investment is material to that person. Nonetheless, such a system must provide some means of identifying indirect investments that might impair independence under the material indirect investment rule.

3. Timely Information

In light of the changes made to the requirement for automated systems; we added a provision that applies to all professionals. The quality controls of a large firm taking advantage of the limited exception must include a system that provides timely information about the entities from which the accountant must be independent. We expect that this system, for example, would contain current and accurate information about audit, review, and attest clients of the accounting firm and the affiliates of those audit clients. All professionals should be able quickly to determine whether an investment they are about to make may cause the independence of the firm to be impaired.

4. Training

Large firm quality controls also must include annual or ongoing firm-wide training about auditor independence, and we are adopting this provision as proposed. Each professional in a large accounting firm should be able to demonstrate competence with respect to professional standards, legal requirements, and firm policies and procedures.

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[439] AICPA Code of Professional Conduct, ET § 302.01.

[440] As Ray J. Groves, former Chairman and CEO, Ernst & Young testified, "It does not impair independence to reward a professional who excels in his or her performance, or who exceeds reasonable expectations." Written Testimony of Ray J. Groves (July 26, 2000).

[441] *See* Letter from Lynn Turner, Chief Accountant, SEC, to Charles Bowsher, Chairman, POB (Dec. 9, 1999); *see, e.g., In the Matter of PricewaterhouseCoopers, LLP*, AAER No. 1098 (Jan. 14, 1999).

[442] *See* Letters from Lynn Turner, Chief Accountant, SEC, to Michael Conway, Chairman, SECPS Executive Committee (Nov. 30, 1998; Dec. 8, 1999; May 1, 2000).

[443] AICPA Letter; Deloitte & Touche Letter; KPMG Letter; Letter of Jodi L. McFall, CPA (Sept. 1, 2000); Letter of Electronic Data Systems (Sept. 11, 2000); Letter of William Tourville, CPA (Sept. 14, 2000); Letter of Gary Whitsell (Sept. 19, 2000).

[444] Letter of Thomas Graves (July 18, 2000); Letter of the FEE (Sept. 25, 2000).

[445] *See* Ernst & Young Letter.

[446] *See, e.g.*, Ernst & Young Letter.

[447] Proposing Release, n. 192.

[448] *See* Ernst & Young Letter (acknowledging that the requirement applies worldwide).

[449] *See* KPMG Letter; Letter of KPMG Europe (Sept. 22, 20000).

[450] GAAS already requires firms to have quality controlls for their audit practices and refers auditors to the "Statements on Quality Control Standards" ("SQCS") for guidance regarding the elements of those systems. AICPA SAS No. 25; AU section 161.

[451] We considered whether to use the number of firm professionals, instead of the number of SEC registrants, to determine which firms are required to implement the quality controls in Rule 2–01(d) to qualify for the limited exception. *See* SECPS Manual § 1000.46. We use number of SEC registrants because we are particularly concerned with those firms that audit a large number of SEC registants, regardless of the number of professionals, and because we can more easily verify the number of SEC registrants audited by a firm.

[452] Letter from Lynn Turner, Chief Account, SEC, to Michael Conway, Chairman, SECPS Executive Committee (DEC. 9, 1999).

[453] *See, e.g.*, Letter of KPMG Europe (Sept. 22, 2000).

[454] *See* Ernst & Young Letter; PricewaterhouseCoopers Letter.

5. Internal Inspection and Testing

For a large firm to qualify for the limited exception, its quality controls must include an internal inspection and testing program to monitor adherence to the independence requirements of the profession, standard setters, and other regulatory bodies. This would entail procedures to audit, on a test basis, information submitted by employees and partners and information in a client investment database. Firms also should monitor the investments of the firms themselves and their pension and retirement plans, and any business arrangements with their audit clients.

6. Notice of Names of Senior Management Responsible for Independence

We also proposed to require, with respect to large firms, that all firm members, officers, directors, and employees be notified of the name and title of the member of senior management responsible for compliance with the independence requirements. We are adopting this provision as proposed.

7. Prompt Reporting of Employment Negotiations

The quality control system of a large firm must contain written policies and procedures to require firm professionals to report promptly to the firm as soon as they begin employment negotiations with an audit client. The firm also should have appropriate procedures to remove immediately such a professional from an audit client's engagement and review the professional's work related to that audit client. In addition, we believe such engagements should be selected for peer review. As proposed, this provision would have applied to all firm professionals. Commenters, however, suggested that the provision should apply only to partners and covered persons.[455] Because of the number of professionals employed by the larger firms, and because we are most concerned with individuals who may affect the audit, we have revised this provision to apply only to partners and covered persons.

8. Disciplinary Mechanism

As we proposed, the quality control system of a large firm also must have a disciplinary mechanism to ensure compliance. One commenter stated that a disciplinary mechanism may only promote compliance, but cannot ensure it.[456] Although no system can guarantee 100% compliance in all circumstances, a firm's quality controls should be designed and implemented to ensure compliance, not merely to promote it. We are, therefore, adopting this language as proposed.

Several commenters noted that firms operating overseas may be prohibited from requesting certain information based on local restrictions on information gathering, or they may be required to amend an employee's employment contract before doing so.[457] We are sensitive to these concerns and we have responded, in part, by providing for a long transition period for accountants operating abroad, as discussed below. In any event, the SECPS has required member firms to implement quality controls, including many of these provisions.[458] If a firm is unable to apply its quality controls to offices outside the U.S., it may be unable to take advantage of the limited exception we are adopting.

F. Transition and Grandfathering

1. Transition

a. *Appraisal or Valuation Services or Fairness Opinions, and Internal Audit Services.* We proposed that, for the two years following the effective date of Rule 2–01, providing to an audit client certain non-audit services identified in the rule would not impair the accountant's independence if the services were provided under an existing contract and performing the services would not impair the accountant's independence under existing requirements. As discussed above, we modified eight of the non-audit service provisions proposed to parallel or draw from current independence requirements regarding these services. Because the restrictions embodied in these provisions now more closely parallel current restrictions, we assume that accountants currently comply with them.

With respect to appraisal or valuation services or fairness opinions and internal audit services, however, we are providing for a longer transition because the new rule extends beyond current restrictions. Final Rule 2–01(e)(1)(i) provides that an accountant's independence will not be impaired if the accountant continues for up to eighteen months to provide to an audit client these services, so long as the services did not impair the accountant's independence under pre-existing independence requirements.

We recognize that adoption of these and other provisions might require a registrant to decide between continuing to engage its auditing firm to audit its financial statements and continuing to engage that firm to provide certain non-audit services. It may not be feasible for the registrant and the auditor to cease all ongoing or scheduled non-audit engagements immediately. The company may need time to find a new provider of those services, to complete works in progress, and to provide for a smooth transition from one provider of services to another. Consequently, with respect to the two identified non-audit services, the final rule provides for an eighteen-month transition.

Under the transition provision proposed, accounting firms could not have entered into any new non-audit service contracts with their audit clients without impairing their independence. In response to commenters' concerns that the viability of these lines of business could be called into question if they were prohibited from entering into new contracts, we modified the provision to allow firms the flexibility to make business decisions over the next eighteen months that, in light of the new rule, are appropriate for their firms.

Final Rule 2–01(e)(1)(i), however, requires performance on any contracts inconsistent with the non-audit service provisions to be completed within eighteen months of the effective date of the final rule. To the extent that work on current contracts and contracts entered into within eighteen months of the effective date cannot be completed before the non-audit service provisions of the final rule take effect, accountants must take whatever steps are necessary to ensure that, at the end of the eighteen-month transition period, they are not providing any non-audit services inconsistent with final Rule 2–01.

b. *Other Financial Interests and Employment Relationships.* Rule 2–01(e)(1)(ii) provides for a three-month transition for certain of the financial interest rules (paragraph (c)(1)(ii)) and all of the employment provisions (paragraph (c)(2)) in the final rule. We are providing a transition period for these provisions because Rule 2–01 modestly expands current restrictions on certain accounting firm personnel in these areas. Because accounting firms may, therefore, need time to educate their employees and provide guidance on the new rule, we are providing a transition period of three months after the effective date of the rule.

[455] *See* Ernst & Young Letter; PricewaterhouseCoopers Letter.

[456] Letter of KPMG Europe (Sept. 22, 2000).

[457] *See* Ernst & Young Letter; Letter of Ernst & Young, U.K. (Sept. 7, 2000); Letter of KPMG Europe (Sept. 22, 2000); Deloitte & Touche Letter.

[458] *See* Letter from Michael A. Conway, Chairman, SECPS Executive Committee, to the Managing Partners of the SECPS Member Firms (April 2000).

c. *Quality Control Systems.* As discussed at length above, accounting firms can take advantage of the limited exception to the independence requirements provided by paragraph (d) of the rule, if they have in place a quality control system that, based on several factors, "provides reasonable assurance" that the firm and its employees do not lack independence. Under Rule 2–01(d)(4), the quality control systems of accounting firms that provide audit, review or attest services to more than 500 SEC registrants will not be considered to provide reasonable assurance of independence, unless the systems have certain characteristics. We are providing a transition provision that applies to the implementation date for the specific elements of a quality control system as described in paragraph (d)(4) of the rule.

Recently adopted SECPS provisions require quality controls substantially similar to those described in paragraph (d)(4).[459] Because these SECPS requirements are effective December 31, 2000, which precedes the effective date for the Commission's final rule, no transition date for paragraph (d)(4) is necessary for domestic accounting firms. By the date that this rule becomes effective, SECPS member firms should have appropriate quality control systems in place.

In the Proposing Release, however, we noted that foreign offices, or foreign "associated" or "sister" firms, of domestic firms may require additional time to develop and implement quality control systems that satisfy the requirements of paragraph (d)(4). We solicited comment on whether foreign offices, accordingly, should be afforded a transition period to phase in the quality control systems necessary to take advantage of the limited exception provided by the rule. Some commenters suggested that because establishing and implementing quality controls to apply worldwide would be difficult, we should provide for a long transition period.[460] In response to these comments, we determined to give accounting firms' foreign offices until December 31, 2002 to implement the quality controls described by the final rule.

We believe that investors in our capital markets should have the right to expect that the same quality controls over a firm's adherence to the independence requirements apply irrespective of where the audit, or where parts of the audit, take place. The two-year transition period strikes a reasonable balance between the need for improved quality control systems by all offices participating in an audit and the practical problems inherent in implementing these controls abroad.

As a result of this transition provision, before January 1, 2003, if a domestic firm with more than 500 SEC registrants as audit clients seeks to avail itself of the limited exception in paragraph (d), it must have a quality control system that complies with paragraph (d)(4) and any foreign office of the firm (or foreign associated or sister firm) participating in the audit of that company must have a system that provides reasonable assurance of independence, as required by paragraph (d)(3). After December 31, 2002, the foreign office (or foreign associated or sister firm) also must comply with the requirements in paragraph (d)(4).

2. Grandfathering

The rule provisions related to loans, insurance products, and employment relationships take effect three months after the effective date of the rule. Under the new rule, absent a grandfathering provision, a limited number of accountants or their family members might have been required, for example, to refinance a mortgage loan with an audit client or to leave their current employment with an audit client, in order for the auditor to remain independent. Because we would expect it to be more problematic in some cases for auditors and their family members to refinance a loan or to obtain a replacement insurance policy than, for example, for them to obtain a new credit card (from a non-audit client), we have grandfathered these relationships in Rule 2–01(e)(2), provided that these relationships do not impair independence under existing requirements. The AICPA similarly grandfathered certain loans that auditors and their family members had with audit clients when it revised its independence requirements related to loans in November 1991.[461] Accordingly, under the final rule, auditors and their relatives should not have to alter their loan agreements, change insurance policy providers, or require family members to find different employment for the accountant to maintain his or her independence.

Likewise, we have grandfathered contracts for the provision of financial information systems design and implementation in existence on the effective date of the rule. The information technology rule we adopt today imposes five conditions on these services, but we believe it would be unfair to require auditors providing these services to their audit clients under existing contracts to satisfy these conditions. We do not, however, believe that the conditions are so onerous as to warrant a transition period for new contracts. Accordingly, we are grandfathering contracts that are in place on the effective date of the rule, but requiring all contracts entered after the effective date of the rule to meet the conditions imposed by Rule 2–01(c)(4)(ii)(B).

3. Settling Financial Arrangements with Former Professionals

As discussed above, under Rule 2–01(c)(2)(iii), an accounting firm will not be considered independent of an audit client if a former employee of the firm has an "accounting role or financial reporting oversight role" at the audit client and the firm and the former employee have a financial arrangement that does not satisfy the requirements set forth by Rule 2–01(c)(2)(iii). Rule 2–01(e)(3) provides that, notwithstanding Rule 2–01(c)(2)(iii), an accounting firm will not lose its independence with respect to an audit client if the former employee with whom it maintains a financial arrangement inconsistent with Rule 2–01(c)(2)(iii) assumed an accounting or financial reporting oversight role at the audit client prior to the effective date of this rule. With respect to former firm employees who join an audit client in such a role after the effective date of this rule, however, the firm must ensure that the requirements of paragraph (c)(2)(iii) are met in order to maintain its independence with respect to the audit client. We are including this provision, which essentially grandfathers existing employment relationships between former audit firm employees and audit clients, because our intention was not to require former firm employees who are currently in accounting or financial reporting oversight roles at audit clients to leave their positions to preserve the accounting firm's independence.

G. Proxy Disclosure Requirement

We proposed to require disclosure of certain information regarding, among other things, non-audit services provided by the registrant's auditor to the registrant. We solicited comment on whether the proposed disclosures would be useful to investors. As noted above, most commenters addressing the issue supported a disclosure

[459] SECPS Manual § 1000.46 (April 2000).

[460] Ernst & Young Letter (suggesting a three-year transition period); Letter of Ernst & Young U.K. (Sept. 7, 2000).

[461] AICPA Ethical Standard ET § 101.07 (grandfathering certain loans that existed as of January 1, 1992).

requirement, though several raised concerns with elements of the proposal.[462] We believe that with the disclosures we are adopting, investors will be better able to evaluate the independence of the auditors of the companies in which they invest.[463] Accordingly, we are requiring companies to provide certain disclosures, but we have modified the proposed disclosure requirement as discussed below.[464] Our disclosure requirement has three components: (1) Disclosure regarding fees billed for services rendered by the principal accountant; (2) disclosure regarding whether the audit committee considered the compatibility of the non-audit services the company received from its auditor and the independence of the auditor; and (3) disclosure regarding the employment of leased personnel in connection with the audit.

1. Disclosure of Fees

The final proxy disclosure rule, like the proposal, requires registrants to aggregate and disclose the fee paid for the annual audit and for the review of the company's financial statements included in the company's Forms 10-Q or 10-QSB for the most recent fiscal year.[465] In light of the other modifications described below, we are requiring this fee disclosure under a caption entitled "Audit Fees."

We proposed to require registrants to describe each professional service, other than audit services, provided by their principal accountants during the most recent fiscal year, and to disclose the fee for each of these professional services; however, under the proposed disclosures, a registrant would not have had to describe the service or disclose the fee if the fee for the service was less than the lesser of $50,000 or ten percent of its audit fee. We solicited comment on the scope of this proposed disclosure. Several commenters believed that this proposed disclosure was too detailed. At least one commenter worried that the detailed disclosure requirement could place registrants at a competitive disadvantage when, for example, they disclose that the audit firm was retained to conduct due diligence in connection with a possible acquisition.[466] Other commenters suggested that a simpler disclosure, focused on the aggregate amount of non-audit and audit services provided to a company by its auditor, would be more useful to investors.[467] We were persuaded by these arguments and, accordingly, we are adopting a more limited disclosure requirement.

Under the final rule, we are not requiring registrants to describe each professional service or to disclose the fee for each service. Instead, we are requiring that registrants disclose under the caption, "Financial Information Systems Design and Implementation Fees," the aggregate fees billed for services of the type described in final Rule 2–01(c)(4)(ii)(B)(information technology services)[468] rendered by the registrant's principal accountant during the most recent year, and, under the caption "All Other Fees," the fees billed for all other non-audit services, including fees for tax-related services, rendered by the principal accountant during the most recent year.

Although some commenters suggested that we require disclosure only of the aggregate fees billed by the principal accountant for audit and for non-audit services, we are, in essence, requiring registrants to break non-audit services into two categories—one category focused on information technology services and one category encompassing all other non-audit services. As discussed above, our concern with information technology services relates both to the relative size of non-audit fees to audit fees and the value of the services themselves.[469] Our two-pronged approach responds to both of these concerns.

We are also requiring disclosure of fees billed for non-audit services, other than information technology services, rendered by the principal accountant in the last fiscal year. While we proposed to require disclosure of fees for each service as discussed above, we have determined to require only disclosure of aggregate fees billed for non-audit services, excluding information technology services. As noted above, commenters generally favored more simple disclosure, believing it is more useful to investors. In requiring disclosure of aggregate fees, we are adopting a disclosure requirement that is similar to the disclosure that the United Kingdom has required since 1989. As discussed in the Proposing Release, since 1989, the British government has required companies to disclose their annual audit fee and fees paid to their auditor for non-audit services.[470] "The [British] government believes that the publication of the existence of, and extent of, non-audit consultancy services provided to audit clients will enable shareholders, investors, and other parties to judge for themselves whether auditor independence is likely to be jeopardized."[471]

Some have argued that disclosure should be our sole response to auditor independence issues and that we should adopt no additional rules, noting that this is the regulatory scheme in the U.K.[472] As we discussed above, we have determined to adopt a two-pronged approach—disclosure plus restrictions on the provision of certain non-audit services. The U.K. disclosure rules are just one piece of a larger regime in the U.K. to address auditor independence issues. The self-regulatory authority in the U.K. has a majority of public members and generally exercises broad examination authority.[473] An "independent practice inspection unit" sends inspectors to the 20 largest accounting firms (who audit ninety percent of the companies listed on the London FTSE) every year to examine the accounting firms for independence issues.[474] The differences in the U.K. and U.S. regulatory schemes and self-regulatory approaches highlight the need for our two-pronged approach—disclosure plus restrictions on the provision of certain non-audit services.

We requested comment on whether, in the case of investment companies, the rule should extend beyond the registrant to require the disclosures as to all entities in the investment company complex. One commenter suggested that applying the proxy disclosure requirements to the investment company complex would be of limited utility to investors, particularly where the adviser's parent company is an entity, such as a bank, broker-dealer or insurance company whose operations are completely separate from the investment adviser and the registrant. The commenter suggested requiring disclosure only of the aggregate fees billed for information technology services and other non-audit services provided to certain other service providers in the investment company complex.[475]

We recognize that it could be confusing to provide investors with disclosure concerning audit and non-audit services for all entities (including all the funds) within the investment company complex. We believe, however, that the ability to compare the registrant's audit fee with the aggregate fees billed for non-audit services provided to all the entities that operate an investment company would be useful for investors in evaluating the independence of the investment company's auditor. Because the adviser plays an integral role in managing and overseeing the investment company, we believe the fees billed for non-audit services provided to a fund's adviser are relevant and should be disclosed. In addition, various service providers to the investment company are in a control relationship with the adviser. We believe that investors should be informed of the aggregate amount of the registrant's audit fee and the fees billed for information technology services and other non-audit services provided by the independent principal accountant to these service providers.

As a result, the proxy rules require investment companies to disclose a fund's audit fee and the aggregate fees billed for information technology and other non-audit services provided by the registrant's auditors to the registrant, its adviser, and entities in a control relationship with the adviser that provide services to the registrant. This approach will provide investors with pertinent information about the relationship between the fund's auditor and other entities in the investment company complex.

2. Audit Committee Disclosure

As discussed above, audit committees play an important role in overseeing the financial reporting process and the auditor's independence. We proposed to require that companies disclose in their proxy statements whether, before each disclosed non-audit service was rendered, the company's audit committee approved, and considered the effect on independence of, such service provided by the company's principal accountant. Several commenters encouraged us to wait until the full effects of recently enacted audit committee reforms are known, in particular the effects of ISB Standard No. 1, the new exchange listing rules, and our recent audit committee disclosure rules. However, we think that the disclosure requirements that we are adopting will complement those initiatives by encouraging audit committees to focus particular attention on scope of services issues.

We have modified the proposed disclosure to require disclosure only of whether the audit committee considered whether the principal accountant's provision of the information technology services and other non-audit services to the registrant is compatible with maintaining the principal accountant's independence.[476] In light of the recommendations adopted by the O'Malley Panel and the other audit committee reforms,[477] we believe that companies will be providing useful information to investors under the modified requirement. Investors will be aided by knowing whether the company's audit committee considered whether the provision of non-audit services by the company's principal accountant is compatible with maintaining the accountant's independence. We are requiring issuers to disclose only whether the audit committee considered whether the principal accountant's provision of non-audit services is compatible with maintaining the principal accountant's independence. We are not requiring issuers to disclose the conclusions of the audit committee deliberations. Accordingly, we see little possibility of private liability arising from these disclosures.

3. Leased Employees

Under the final amendments, a company will have to disclose, if greater than fifty percent of the hours expended on the audit engagement, the percentage of hours expended by personnel the principal auditor leased or otherwise acquired from another entity. This disclosure requirement responds to a recent trend by some accounting firms to sell their non-audit practices to financial services companies. Often in these transactions, the partners and employees become employees of the financial services firm. The accounting firm then leases assets, namely professional auditors, back from those companies to complete audit engagements. In such an arrangement, audit professionals become full- or part-time employees of the financial services company, but work on audit engagements for their former accounting firm. They receive compensation from the financial services firm and, in some situations, from the accounting firm, as well.[478] We believe that investors

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[462] *See supra* note 25.

[463] See Earnscliffe II, *supra* note 38, at 45, which states, "Most people sensed that the relationship between the auditor and auditee was appropriate, typically neither too close nor tension-ridden. The one area of greater concern had to do with the provision of non-audit services to audit clients, where participants felt unsettled and discomfited. Avoidance of this practice seemed preferred, but disclosure was seen as a helpful alternative step as well."

[464] The disclosure requirement pertains to the accounting firm that is the registrant's principal accountant. The principal accountant generally is the accounting firm that takes responsibility for the report on the financial statements of the registrant for each year presented. *See* SEC Division of Corporation Finance, "Accounting Disclosure Rules and Practices: An Overview," Topic Four, I.D. (Mar. 31, 2000).

[465] *See* proposed Rule 14a–101 Item 9(e)(4); Rule 10–01(d) of Regulation S–X and Item 310 of Regulation S–B, 17 CFR 210.10–01, 228.310(b).

[466] Ernst & Young Letter.

[467] PricewaterhouseCoopers Letter; Ernst & Young Letter; Testimony of J. Michael Cook, former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000); Testimony of Philip D. Ameen, Chair, Committee on Corporate Reporting, FEI–CRR (Sept. 20, 2000).

[468] *See supra* Section IV.D.4.b(ii). The services described in Rule 2–01(c)(4)(ii)(B) relate to systems that aggregate source data underlying, or generate information significant to, the financial statements, which may be a particular concern to investors. *See* Earnscliffe I, *supra* note 65, at 24, which states, "Some felt that installing computer systems was not a problem * * * others argued that if the computer system had anything to do with the financial reporting systems * * * then the auditor would be in serious conflict." The required disclosure will permit investors to decide whether such services create independence concerns.

[469] *See* Earnscliffe I, *supra* note 65, at 26, which describes responses to a scenario when the annual audit fee was $1 million and the auditor performed computer system work for $10 million, which was 1% of the auditor's annual revenues, and states, "First off, the sheer size of the contract was seen as a potential perception challenge. Even though $10 million might be good value for the client, and only a tiny fraction of the audit firm's business, there was a sense of doubt that the firm would be willing to walk away from such a relationship, if that were necessary to protect the independence of the audit."

[470] Companies Act 1985, Part XI, Chapter V, Auditors, §390B, "Remuneration of Auditors and Their Associates for Non-audit Work," and Regulations 1991, §5, "Disclosure of Remuneration for Non-Audit Work." *See generally* Written Testimony of Graham Ward, Institute of Chartered Accountants of England and Wales ("ICAEW") (Sept. 13, 2000).

[471] Michael Firth, "The Provision of Nonaudit Services by Accounting Firms to their Audit Clients," *Contemporary Accounting Research*, at 6 (Summer 1997). Firth hypothesized that companies with potentially high agency costs (i.e., companies in which directors do not control management or which have a large amount of debt) would limit the non-audit services provided by their auditors because the appearance of a lack of auditor independence would increase their cost of capital. Firth's sample data came from the 500 largest British industrial, listed companies. Firth's findings were consistent with his hypothesis.

[472] *See* Arthur Andersen Letter.

[473] *See* Department of Trade and Industry, "A Framework of Independent Regulation for the Accounting Profession," ¶¶ 29, 35, 39, 44, and 46 (Nov. 1998).

[474] Testimony of Graham Ward, ICAEW (Sept. 13, 2000).

[475] ICI Letter.

[476] We note that audit committees currently receive information about the auditor's provision of non-audit services under ISB Standard No. 1 and SECPS Manual § 1000.08. *See* ISB Standard No. 1, *supra* note 167; SECPS Manual § 1000.08 (requiring the auditor to report annually to the audit committee or board of directors (or its equivalent in a partnership) of SEC registered audit clients on the "total fees received from the client for management advisory services during the year under audit and a description of the types of such services rendered").

[477] The O'Malley Panel has recommended that audit committees pre-approve non-audit services that exceed a threshold determined by the committee. This recommendation is consistent with the recommendations of the Blue Ribbon Committee regarding auditors' services. The Panel set forth factors for audit committees to consider in determining the appropriateness of a service. *See* O'Malley Panel Report, *supra* note 20, at ¶ 5.30.

[478] The ISB cites threats to independence arising from these structures and identifies quality controls to ensure the independence of the auditors in these situations. *See* ISB, "Discussion Memorandum 99–

Continued

should be informed of arrangements whereby most of the auditors who work on an audit are employed elsewhere.[479]

4. Proxy Statement

Finally, under the final rules, companies must provide the disclosures we are requiring in their proxy and information statements. We solicited comment on whether the disclosure should instead be required in the Form 10–K. Some commenters said that the disclosure should be made in the Form 10–K,[480] with some commenters expressing concern that the proxy statement will become overloaded with information. Other commenters expressed a preference for the disclosure to be in proxy statements.[481] We have determined that the proxy statement is the appropriate place for the disclosure since shareholders often vote on whether to select or ratify the selection of the auditors.[482] Companies must provide the disclosure only in the proxy statement relating to an annual meeting of shareholders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). This disclosure is not required for companies reporting solely under Section 15(d) of the Exchange Act[483] since they are not subject to our proxy rules. Similarly, this disclosure will not be required to be provided by foreign private issuers[484] since they have different corporate governance regimes and are not subject to our proxy rules.

Companies must comply with the new proxy and information statement disclosure requirements for all proxy and information statements filed with us after the effective date.

H. Definitions

As we proposed, we are including definitions of some of the key terms used in Rule 2–01 in paragraph (f) of the Rule. In this section of the release, we provide a more detailed explanation of those defined terms not discussed in the preceding sections. We have made clear in the rule we adopt that paragraph (f) provides definitions only for the purposes of Rule 2–01 and not for other sections of Regulation S–X.

1. "Accountant"

We are adopting, as proposed, Rule 2–01(f)(1) that defines the term "accountant." The rules are written in terms of an accountant's independence from the audit client. The definition of "accountant" includes the accounting firm in which the auditor practices. The definition makes clear that an individual accountant's lack of independence may be attributed to the firm.

2. "Accounting Firm"

We are adopting the definition of "accounting firm" in Rule 2–01(f)(2) with two modifications from the version proposed. As adopted, "accounting firm" means "an organization (whether it is a sole proprietorship, incorporated association, partnership, corporation, limited liability company, limited liability partnership, or other legal entity) that is engaged in the practice of public accounting and furnishes reports or other documents filed with the Commission or otherwise prepared under the securities laws, and all of the organization's departments, divisions, parents, subsidiaries, and associated entities, including those located outside of the United States." The definition also expressly includes "the organization's pension, retirement, investment or similar plans."

The first modification is solely to clarify the definition. We have simplified the description of what public accounting firms are covered under our rule by referring only to those that "furnish reports or other documents filed with the Commission or otherwise prepared under the securities laws." We believe that this description captures the accounting firms subject to our independence requirements. No substantive change from the rule as proposed is intended.

The second change is more significant. As proposed, the definition of "accounting firm" included "affiliate of the accounting firm." The term "affiliate of the accounting firm" was separately defined to include a broad group of entities that are either financially tied to or otherwise associated with the accounting firm enough to warrant being treated like the accounting firm for purposes of our independence requirements. Specifically, we defined as an "affiliate of the accounting firm" any person controlling, controlled by, or under common control with the firm, shareholders of more than five percent of the firm's voting securities, and entities five percent or more of whose securities are owned by the firm. The proposed rule also included any officer, director, partner, or co-partner of any of the foregoing.

We also proposed defining as affiliates of the accounting firm certain entities that are business partners of the accounting firm. In general, these included certain (i) joint ventures in which the accounting firm participates, (ii) entities that provide non-audit services to the accounting firm's audit clients and with which the accounting firm has certain financial interests or relationships, and (iii) entities involved in "leasing" professional services to the accounting firm for their audits. The proposed definition also included all other entities with which the accounting firm is publicly associated in certain ways.

The definition we proposed also attributed to the auditor actions and interests of certain entities involved in joint ventures or partnerships with the accounting firm in which the parties agree to share revenues, ownership interests, appreciation, or certain other economic benefits. It also expressly included any entity that provides non-audit services to an audit client, if the accounting firm has an equity interest in, shares revenues with, loans money to, or if any covered person has certain direct business relationships with, the consulting entity, as well as persons "co-branding" or using the same (or substantially the same) name or logo as the accounting firm, cross-selling services with the accounting firm, or co-managing with the accounting firm.

Finally, the proposed definition of "affiliate of the accounting firm" addressed the situation where full- or part-time employees of an entity other than the firm signing the audit report perform a majority of the audit engagement. The proposal provided that if an auditor "leases" personnel from an entity to perform audit procedures or prepare reports to be filed with the Commission, and the "leased" personnel perform a majority of the hours worked on the engagement, then the actions and interests of the "lessor," and certain persons at the lessor are attributed to the audit firm.

Our proposed definition of "affiliate of the accounting firm" proved to be one of the most controversial aspects of our proposed rule. Many commenters believed that the definition was overbroad and expressed concern over the application of the proposed definition to their business arrangements. The largest accounting firms were concerned that the definition, as a practical matter, would inappropriately restrict their ability to enter into certain types of business relationships, including joint ventures and co-branding arrangements.[485] One of the so-called "middle tier" accounting firms expressed concern that the proposed definition would reach the "alliance" it has arranged with other accounting firms and service providers across the country.[486] Many commenters repeated the AICPA's comment that the definition was "overbroad."[487] Some commenters suggested an alternative, much narrower definition that defined affiliates of the accounting firm as entities that control, are controlled by, or are under common control with the accounting firm.[488] Some firms acknowledged that, at least with respect to the provision of non-audit services, a test based on significant influence may be appropriate.

In light of these comments and after careful consideration, we have decided not to adopt the definition of "affiliate of the accounting firm" we proposed. The issue of what entities other than the legal entity issuing reports or other documents filed with the Commission should be treated as the accounting firm is of relatively recent origin. In recent years, accounting firms have explored new "alternative practice structures" and increasingly entered into new business arrangements with entities not engaged in public accounting. To date, our staff has dealt with these questions by interpreting the existing rules. Our staff's approach has been to analyze these situations in light of all relevant facts and circumstances.[489] We proposed a comprehensive definition that described all the relevant facts and circumstances that might lead us to conclude that a separate legal entity was sufficiently associated with the accounting firm to warrant applying the Commission's independence requirements to that entity. In light of the comments received, we are persuaded that the rule as proposed could have unintended consequences, and that varying criteria of affiliation could be appropriate depending on the regulatory context in which the issue of attribution arises.

Accordingly, we have eliminated the proposed definition of "affiliate of the accounting firm" from the rule we adopt and replaced the phrase "and affiliates of the accounting firm" in the proposed definition of "accounting firm" with "and associated entities, including those located outside of the United States."[490] We intend this phrase to reflect our staff's current practice of addressing these questions in light of all relevant facts and circumstances, looking to the factors identified in our staff's previous guidance on this subject.[491] While the rules we adopt do not provide accounting firms with the certainty of our proposed rule, we are convinced that a more flexible approach is warranted as the types and nature of accounting firms' business arrangements continue to develop.

3. "Affiliate of the Audit Client"

We are adopting a modified definition of "affiliate of the audit client." As proposed, Rule 2–01(f)(4) defined "affiliate of the audit client" as any entity that has "significant influence" over the audit client, or any entity over which the audit client has significant influence. The definition was intended to cover both "upstream" and "downstream" affiliates of the audit client, including the audit client's corporate parent and subsidiary.

We received a number of comments expressing concern about our proposed definition of "affiliate of the audit client." Some members of the accounting profession felt that our proposed definition was overbroad and would require the auditor to maintain independence from entities far removed from the audit client.[492] Some commenters suggested that we should use the "control" test currently found in Rule 1–02 of Regulation S–X to define an affiliate of an audit client. At least one commenter suggested that our proposed definition should be limited to only those affiliates that are "material" to the audit client.[493]

After considering these comments, we have decided to modify substantially our proposed rule. Under the rule we adopt today, entities, if not part of an investment company complex, will be considered affiliates of the audit client if they satisfy the criteria of one of three paragraphs of Rule 2–01(f)(4). First, under paragraph (4)(i), which is based on the control definition currently in Rule 1–02 of Regulation S–X, an entity is an affiliate of the audit client when the entity controls, is controlled by, or is under common control with the audit client. Second, paragraph (4)(ii) defines as an affiliate of the audit client any entity over which the audit client has significant influence, unless that entity is not material to the audit client. Third, paragraph (4)(iii) includes those entities that have significant influence over the

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2: Evolving Forms of Firm Structure and Organization," at 20 (Oct. 1999).

[479] AICPA SAS No. 1, AU § 543 also sets forth guidance on when a principal auditor discloses and makes reference to another auditor who performs an audit of a component of the entity.

[480] *See, e.g.*, Testimony of Robert E. Denham, Member, ISB (July 26, 2000) (recommending that disclosure be put in footnotes to the financial statements or in the Form 10–K).

[481] *See, e.g.*, Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Investments, TIAA-CREF (Sept. 21, 2000).

[482] *See* Item 9 of Schedule 14A. 17 CFR 240.14a–101.

[483] 15 U.S.C. 78(d).

[484] "Foreign private issuer" is defined in Securities Act Rule 405 (17 CFR 230.405) and Exchange Act Rule 3b–4 (17 CFR 240.3b–4).

[485] *See, e.g.*, KPMG Letter; Arthur Andersen Letter.

[486] *See* Written Testimony of Wayne Kolins, National Director of Assurance, BDO Seidman, LLP (Sept. 20, 2000).

[487] *See, e.g.*, Letter of Fred M. Rock, CPA (Sept. 20, 2000); Letter of Centerprise Advisors, Inc. (Sept. 25, 2000).

[488] *See, e.g.*, Deloitte & Touche Letter; Testimony of Wayne A. Kolins, BDO Seidman, LLP (Sept. 20, 2000).

[489] *See* Letter of Edmund Coulson, Chief Accountant, SEC, to Robert Mednick, Arthur Andersen (June 20, 1990).

[490] Questions of attribution in this context have not been analyzed on the basis of "affiliation" in the past. Indeed, the term "affiliate of the accounting firm" is not used in our current Rule 2–01 or in the Codification. The term was used in our proposed rule, along with the proposed definition of the term, to attempt to bring certainty to this issue. Since "affiliate" is defined in Rule 1–02 of Regulation S–X and we are eliminating the definition of "affiliate of the accounting firm," we have used the term "associated" instead of "affiliated" in our final rules to make clear that, consistent with the status quo, the entities treated as if they were the accounting firm will not be determined by reference to the definition of "affiliate" in Rule 1–02 of Regulation S–X. While the "control" relationships of Rule 1–02 may be adequate to warrant treating an entity as the accounting firm for independence purposes, Rule 1–02 does not set forth the exclusive circumstances in which an entity's interests will be imputed to the accounting firm in this context. In addition, we do not intend for the definition of "associated" used in any other context in the federal securities laws to apply to this term.

[491] *See, e.g.*, Letter of Edmund Coulson, Chief Accountant, SEC, to Robert Mednick, Arthur Andersen (June 20, 1990); Letter of W. Scott Bayless, Assistant Chief Accountant, SEC, to Larry Edgerton, Elms, Faris & Co. (June 7, 1996); Letter of Lynn E. Turner, Chief Accountant, SEC, to Jeff Yabuki, American Express Financial Advisors (Nov. 2, 1998); Letter of Lynn E. Turner, Chief Accountant, SEC to Michael Gleespen, Century Business Services (Nov. 2, 1998); Letter of Lynn E. Turner, Chief Accountant, SEC, to Terry Putney, H&R Block Business Services (Nov. 2, 1998); Letter of Lynn E. Turner, Chief Accountant, SEC, to Michael Conway, KPMG Peat Marwick LLP (Jan. 7, 1999); Letter of Lynn E. Turner, Chief Accountant, SEC, to Nigel Buchanan, PricewaterhouseCoopers (July 26, 1999); Letter of Lynn E. Turner, Chief Accountant, SEC, to Kathryn A. Oberly, Esq., Ernst & Young (May 25, 2000); Letter of Lynn E. Turner, Chief Accountant, SEC, to Antonio Rosati, Director of Issuers Division, Commissione Nazionale per le Societa e la Borsa (August 24, 2000); Letter of Lynn E. Turner, Chief Accountant, SEC, to J. Terry Strange, KPMG (October 16, 2000); *see also* Codification § 602.02.b.ii, Ex. 8; 602.02.b.iv; 602.02.c.iii; 602.02.g, Ex. 5. *Cf.* SECPS Manual § 1000.45 (discussing application of SECPS rules to "foreign associated firm[s]"); AICPA Code of Professional Conduct, ET § 101.16 (Interpretation 101–14) (application of independence rules to alternative practice structures); AICPA Code of Professional Conduct, ET § 505.03 (application of independence rules to entities controlled by an accounting firm or its members). In addition, accounting firms entering into business transactions in which they acquire equity stakes in other companies will need to continue to consider whether they will have a direct or material indirect business relationship with, or a direct financial interest or material indirect financial interest in, any of their audit clients that are also clients of or enter into business relationships with or invest in or are invested in by that other company. *See* Letter of Lynn E. Turner, Chief Accountant, SEC, to Kathryn A. Oberly, Esq., Ernst & Young (May 25, 2000); Letter of Lynn E. Turner, Chief Accountant, SEC, to J. Terry Strange, KPMG (October 16, 2000).

[492] *See* AICPA Letter; Arthur Andersen Letter.

[493] *See* Deloitte & Touche Letter.

audit client, unless the audit client is not material to that entity.

Paragraph (4)(i) now makes clear that entities in a control relationship with the audit client, regardless of materiality considerations, are affiliates of the audit client for independence purposes. This includes the audit client's parent and subsidiaries and is consistent with current Rule 2–01(b). We are not convinced, however, that a control test alone captures all situations in which an entity is sufficiently related to the audit client to require it to be treated as the audit client's affiliate for independence purposes. Our Codification currently considers entities affiliates of the audit client in a number of situations in which control is not present.[494] As under our proposal, we continue to believe that a significant influence test sets a proper baseline threshold for audit client affiliation because, under the equity method of accounting,[495] it results in the marriage of financial information between the audit client and the entity influenced by, or influencing, the financial or operating policies of the audit client. As urged by commenters, however, the addition of the materiality threshold to the significant influence test should avoid undue hardships to accounting firms in situations where their audit clients have numerous affiliates that are immaterial to them.

As in our proposed rule, we continue to use the term "significant influence" in the definition to refer to the principles in APB No. 18. Some commenters suggested that, since the term "significant influence" is not defined in the rules, it would be difficult to apply.[496] Many other commenters, however, did not object to the term or express any uncertainty as to the term's meaning. Given the concept's familiarity to the accounting profession and its use in the profession's independence requirements, we have decided to retain its use without providing an explicit definition in the rules we adopt.

We use the term "significant influence" as it is used in APB No. 18. It recognizes that "significant influence" can be exercised in several ways: representation on the board of directors; participation in key policy decisions; material inter-company transactions; interchange of personnel; or other means. APB No. 18 also recognizes that an important consideration is the extent of the equity investment, particularly in relation to the concentration of other investments. In order to provide a reasonable degree of uniformity in application of this standard, the Board concluded that,

> [A]n investment (direct or indirect) of 20% or more of the voting stock of an investee should lead to a presumption that in the absence of evidence to the contrary an investor has the ability to exercise significant influence over an investee. Conversely, an investment of less than 20% of the voting stock of an investee should lead to a presumption that an investor does not have the ability to exercise significant influence unless such ability can be demonstrated.[497]

In addition, we have added a new section to the definition of "affiliate of an audit client" to deal specifically with affiliation questions in mutual fund complexes. Paragraph (4)(iv) provides that when the audit client is part of an investment company complex, each entity in the investment company complex is an "affiliate of the audit client." In this respect, we are following the ISB's Standard No. 2, "Certain Independence Implications of Audits of Mutual Funds and Related Entities."[498]

While this provision was not in our proposed definition of "affiliate of the audit client," it was clearly embodied in our proposed Rule 2–01(c)(1)(ii)(G), which provided, "When the audit client is an entity that is part of an investment company complex, the accountant must be independent of each entity in the investment company complex." As we explained in the Proposing Release, this provision was meant to reflect the standard of ISB Standard No. 2. We pointed out in the Proposing Release that this provision applied to auditor-audit client relationships other than financial interests, and sought comment on whether it should be limited in any context other than financial interests. At least one commenter analyzed our proposed Rule 2–01(c)(1)(ii)(G) as an extension of the definition of "affiliate of the audit client."[499]

While some commenters suggested that we limit this principle through a restriction on the scope of the "investment company complex" definition, few commenters disagreed with the ISB's basic conclusion that the unique structure of mutual fund complexes warrants special rules of affiliation. After considering the comments on this issue, we have decided to adopt this provision substantively as proposed, but to move it to the definition of "affiliate of the audit client" to make its purpose and effect clearer.

4. "Audit and Professional Engagement Period"

We have adopted the definition of "audit and professional engagement period" in Rule 2–01(f)(5), as proposed, with one modification. As defined, the 'audit and professional engagement period' is "[t]he period covered by any financial statements being audited or reviewed (the "audit period"); and the period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the 'professional engagement period')."

The definition specifies that the professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins review, audit, or attest procedures, whichever is earlier,[500] and that the professional engagement period ends when the client or accountant notifies the Commission that the client is no longer that accountant's audit client.[501] Some commenters asserted that the professional engagement period should begin when the accountant begins its procedures.[502] Commenters expressed concern that "time will be needed for covered persons and their family members to unwind financial interests or employment relationships."[503] We believe that our rule, as adopted, provides an appropriate amount of flexibility and certainty to the auditor because both signing the initial engagement letter and beginning the audit procedures are entirely within the control of the accountant. An accountant may orally agree to an engagement and then simply delay signing an engagement letter or beginning procedures so as to toll the start of its professional engagement period.

With regard to the termination of the professional engagement period, we note that the current rules of the SECPS require an auditor to notify the Commission in writing that an SEC registrant who was a former client is no longer a client.[504] Similarly, a domestic registrant has an obligation to report changes in its independent auditor on Form 8–K. While no corollary requirement applies to foreign private issuers, there is certainly no prohibition against either such an issuer or its auditor providing us with a private notification that would suffice to end the professional engagement period for purposes of our independence assessment, should this be an issue for the accountant or the registrant.

In response to concerns of commenters,[505] we are providing a limited exception in the definition that applies to foreign private issuers who are offering or listing securities in the United States for the first time. For auditors of those foreign private issuers who previously were not required to, and did not, file any registration statement or report with the Commission, the "audit and professional engagement period" does not include periods ended prior to the beginning of the last fiscal year ended before the issuer first filed or was required to file a registration statement or report with us, provided that the company has fully complied with home country independence standards in those prior periods.

5. "Audit Client"

Rule 2–01(f)(6) defines "audit client." We have defined this term as the entity whose financial statements or other information is being audited, reviewed, or attested. We believe this is how "audit client" commonly is used, and we are adopting this as part of the definition. Use of this definition, of course, in no way changes our position that the auditor "owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public."[506]

We have made one change to the definition. Commenters suggested adding affiliate of the audit client, defined above, to the definition of audit client for the sake of simplicity, and we have done so.[507] The definition of audit client, for purposes of paragraph (c)(1)(i) (investments in audit clients), however, does not include entities that are affiliates of the audit client by virtue of paragraph (f)(4)(ii) or paragraph (f)(4)(iii), which define an affiliate in terms of significant influence. As discussed more fully above, if an entity is an affiliate of the audit client because of a "significant influence" relationship, it is covered by the rules relating to material indirect investments and investments in non-client entities under (c)(1)(i)(D) and (c)(1)(i)(E), and it is not necessary, therefore, to include it in the definition of audit client.

6. "Audit Engagement Team"

Rule 2–01(f)(7) defines the term "audit engagement team." The "audit engagement team" includes the people in the accounting firm who are most directly in a position to influence the audit. Members of the "audit engagement team" are included within the category of "covered persons in the firm," which is the term used to indicate the persons in the firm subject to a number of the specific provisions of paragraph (c) of Rule 2–01.

The "audit engagement team" includes "all partners, principals, shareholders, and professional employees participating in an audit, review, or attestation engagement of an audit client, including those conducting concurring or second partner reviews, and all persons who consult with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events."

Commenters who addressed this definition generally agreed that persons in a position to influence the audit, such as the audit engagement team, should be covered persons for purposes of the rule's restrictions on certain relationships with audit clients.[508] We have adopted the definition with only one variation from the proposed definition. The proposed definition included the phrase "all persons who consult, *formally or informally*, with others . . . ." In the final rule, we have deleted the phrase "formally or informally," to avoid unintended overbreadth. Rather, we use the term "consult" to refer to meaningful discussions related to the audit.

7. "Chain of Command"

Rule 2–01(f)(8) defines the term "chain of command." This term is defined to refer to the group of people in the accounting firm who, while not directly on the audit engagement team, are capable of influencing the audit process either through their oversight of the audit itself or through their influence over the members of the audit engagement team. Like the "audit engagement team," persons in the "chain of command" are included as "covered persons in the firm," and therefore are subject to a number of the provisions in paragraph (c) of Rule 2–01.

Based on the input of commenters, we have modified this definition somewhat from the proposed definition. Commenters stated that our definition included too broad a range of persons, capturing people, such as managers who could "influence the . . . compensation of any member of the audit engagement team," whose connection to the audit is too tenuous to reasonably conclude that they have the ability to influence the audit.[509]

We are persuaded that the proposed definition was broader than necessary, and we have accordingly sharpened its focus and tried to eliminate any ambiguity. As defined in the final rule, "chain of command" includes all persons who (i) supervise or have direct management responsibility for the audit, including at all successively senior levels through the accounting firm's chief executive; (ii) evaluate the performance or recommend the compensation of the audit engagement partner; or (iii) provide quality control or other oversight of the audit."

8. "Close Family Members"

We are adopting, as proposed, Rule 2–01(f)(9) that defines "close family members." Close family members is defined to mean a person's spouse, spousal equivalent, parent, dependent, nondependent child, and sibling. These terms should be understood in terms of contemporary family relationships. Accordingly, "spouse" means a husband or wife, whether by marriage or under common law; "spousal equivalent" means a cohabitant occupying a relationship generally equivalent to that of a spouse; "parent" means any biological, adoptive, or step-parent; "dependent" means any person who received more than half of his or her support for the most recent calendar year from the relevant covered person; "child" means any person recognized by law as a child or step-child; and "sibling" means any person who has the same mother or father.

"Close family members" includes the persons separately defined as "immediate family members" (spouse, spousal equivalent, and dependent), and adds certain family members who may, as a general matter, be thought to have less regular, but not necessarily less close, contact with the covered person

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[494] *See* Codification § 602.02.b.iii (Ex. 1); 602.02.b.iv; 602.02.c.iii; 602.02.h (Ex. 9).

[495] *See* APB No. 18.

[496] *See* Letter of Stanley Keller, Esq., and Richard Rowe, Esq., ABA Committees on Federal Regulation of Securities Law and Accounting (Sept. 27, 2000).

[497] *See* APB No. 18, at ¶ 17. Paragraph 17 of APB No. 18 also discusses a number of considerations that may affect the ability of an entity to have significant influence over an investee.

[498] We have, however, narrowed the definition of "investment company complex" from the definition used in ISB Standard No. 2. *See infra* Section IV.H.11.

[499] *See* Arthur Andersen Letter.

[500] Rule 2–01(f)(5)(ii)(A).

[501] Rule 2–01(f)(5)(ii)(B).

[502] *See, e.g.*, Deloitte & Touche Letter.

[503] *See, e.g.*, Deloitte & Touche Letter.

[504] SECPS Manual § 1000.08; *cf.* AICPA Code of Professional Conduct, ET § 101.02.

[505] *See, e.g.*, Ernst & Young Letter ("We also would revise the definition of 'audit and professional engagement period' in the Release . . . to codify the Commission staff's practice of only requiring the latest audited period in initial filings by foreign private issuers to be fully compliant with SEC independence rules.").

[506] *Arthur Young*, 465 U.S. at 818.

[507] *See, e.g.*, PricewaterhouseCoopers Letter.

[508] *See, e.g.*, Deloitte & Touche Letter.

[509] *See* Deloitte & Touche Letter.

in question (parent, nondependent child, and sibling). We distinguish the two groups, in part, because the less immediate the family relationship to the covered person, the more substantial that family member's relationship to the audit client should be before we deem it to impair the auditor's independence. Commenters, in general, raised few issues with the proposed definition of "close family members" and, therefore, we are adopting this definition as proposed.

9. "Covered Persons in the Firm"

Rule 2–01(f)(11) defines the term "covered persons in the firm." The term includes four basic groups. The first two groups, the "audit engagement team" and the "chain of command," are described above. Their inclusion in the category of "covered persons in the firm" is unchanged from the proposed rule.

We have modified the description of the third category of covered persons from our proposal. The proposed rule referred to "any other partner, principal, shareholder, or professional employee of the accounting firm who is, or during the audit client's most recent fiscal year was, involved in providing any professional service to the audit client or an affiliate of the audit client." We included this category because the auditing literature, quite appropriately, directs the audit engagement team to discuss certain matters with the firm personnel responsible for providing such services to that client.[510]

In response to concerns raised by commenters,[511] we have modified the definition of this category of covered persons in two respects. First, we have changed the term "professional employee" to "managerial employee," to encompass a somewhat narrower scope of persons. Second, we have set a minimum hour threshold that must be crossed before an individual becomes a covered person by virtue of providing a non-audit service to an audit client. This subpart of the definition now includes only those individuals who have "provided ten or more hours of non-audit services to the audit client for the period beginning on the date such services are provided and ending on the date the accounting firm signs the report on the financial statements for the fiscal year during which those services are provided, or who expects to provide ten or more hours of non-audit services to the audit client on a recurring basis."

In this definition, the phrase "beginning on the date such services are provided" refers to the date on which the individual provides his or her tenth hour of non-audit service to a particular audit client within the space of a single fiscal year of that client. For example, if the client's fiscal year runs from January 1 to December 31, and an individual provides eight hours of non-audit services on February 1 and two hours of non-audit services on June 1, then the period described above would commence following the provision of the services on June 1. From that date through the date that the accounting firm signs the report on the financial statements for that fiscal year, that individual is a "covered person in the firm." We reiterate: the individual's status as a covered person does *not* end at the conclusion of the fiscal year in question, but continues until the firm has signed the report for the financial statements for that fiscal year.

The proposed rule described the fourth category of covered persons as "any other partner, principal, or shareholder from an 'office' of the accounting firm that participates in a significant portion of the audit." We included these people on the theory that they are the ones most likely to interact with the audit engagement team on substantive matters and may exert influence over the audit engagement team by virtue of their physical proximity to, or relatively frequent contact with, the audit engagement team.

In response to concerns raised by commenters about the breadth of the category, particularly the inclusion of every "office" that participates in a "significant portion" of the audit,[512] we have modified this definition. The final rule narrows the scope of the definition to "any other partner, principal, or shareholder from an 'office' of the accounting firm in which the lead audit engagement partner primarily practices in connection with the audit." We are persuaded that it is reasonable to draw the line at partners, principals, and shareholders, rather than at all "professional employees," and that it is also more reasonable and more practicable to draw a clear line at the "office"[513] of the firm in which the lead engagement partner primarily practices.

A person who is not a covered person at the time an audit engagement begins might nonetheless become a covered person at any time during the audit engagement. As soon as events or circumstances bring a person within any category of covered person defined above, that person is a "covered person in the firm." An individual must be independent of the audit client, pursuant to the provisions of the rule, before becoming a covered person in the firm. That means, for example, that an individual must dispose of any financial interest in the audit client completely and irrevocably before being consulted by another covered person concerning the audit engagement. For example, the rule does not allow the person consulted to participate in a discussion about the audit engagement and then "cure" an independence impairment by later disposing of an investment. Likewise, a person who becomes a covered person by rotating onto an engagement or being promoted into the chain of command must be independent pursuant to the provisions of the rule prior to becoming a covered person.

One commenter suggested that the definition of "covered persons in the firm" should include leased accounting personnel.[514] We note that to the extent leased personnel otherwise fall within any category of "covered persons in the firm," such as by being on the audit engagement team, they will be covered persons in the firm.[515]

Because the rule narrows the scope of firm personnel to whom investment and employment restrictions apply, an accounting firm employee in a distant part of the world, or even down the street, might own an audit client's securities, have a family member in a financial position at the client, or enter into a business relationship with a client without necessarily impairing the firm's independence from the audit client. We expect that many partners and employees who previously could not own securities issued by an audit client will be able to do so under the rule.

It should be noted that insider trading restrictions prohibit any partner, principal, shareholder, or employee of the firm, whether or not he or she performs any service for the client, from trading on the basis of any material nonpublic information about that client.

10. "Immediate Family Members"

We are adopting, as proposed, final Rule 2–01(f)(13), which defines "immediate family members" to mean a person's spouse, spousal equivalent, and dependents. These terms have the same meaning as they do in the definition of "close family members."

"Immediate family members" is a narrower group than "close family members." Again, we believe that the less immediate the family relationship to the covered person, the more substantial that family member's relationship to the audit client should be before we deem it to impair independence. By identifying "immediate family members," we are identifying those persons who have such regular and close contact with a "covered person" that it is fair, for independence purposes, to attribute to the covered person any financial and employment relationships that family member has with the audit client.

We received a few comments on the definition of "immediate family members." Some commenters agreed that the definition should not include emancipated adult children, while others expressed concern that non-dependent children were not included in this group.[516] On balance, we believe that, for purposes of these rules, emancipated children are sufficiently independent of their parents to warrant not imputing their financial interests to their parents. We are, therefore, adopting the definition as proposed.

11. "Investment Company Complex"

As proposed, the definition of "investment company complex" focused on investment advisers and entities in a control relationship with the adviser, including entities under common control with the adviser. The proposed definition was loosely based on ISB Standard No. 2, which defines "mutual fund complex" to mean "[t]he mutual fund operation in its entirety, including all the funds, plus the sponsor, its ultimate parent company, and their subsidiaries."[517]

We solicited comment on the definition proposed, and, in particular, on whether an alternative definition, focusing on the fund's principal underwriter and administrator would be more appropriate. Some commenters expressed concern about the scope of the investment company complex definition, particularly that it included entities that have no direct relationship to investment company operations.[518] These commenters' concern was that all subsidiaries of an adviser's parent company would also be included in the investment company complex. Therefore, an accounting firm could not provide certain non-audit services to, or invest in, subsidiaries of the parent of the adviser, even if those subsidiaries operated businesses unrelated to the investment company business. Under the proposed definition, for example, if a parent company owned an adviser and a manufacturing company, the accountant that audited the adviser (or a fund advised by the adviser) could not invest in the manufacturing company, even though its operations would not be affected by the audit of the adviser (or the fund).

In response to these comments, we have adopted in Rule 2–01(f)(14) a definition of investment company complex that is more limited than the one proposed. As adopted, the rule only includes an entity under common control with the adviser if the entity provides services to an investment company in the investment company complex. More specifically, if a sister entity of the investment adviser, other than another investment adviser, does not provide administrative, custodian, underwriting, or transfer agent services to the adviser or a fund, it is not part of the investment company complex.

As proposed, an entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act and that is advised by the investment adviser or sponsored by the sponsor is part of the investment company complex. Also, as proposed, the definition does not include sub-advisers whose role is primarily portfolio management and who provide services pursuant to a subcontract with, or are overseen by, an adviser in the complex. There was some support for excluding sub-advisers from the definition of investment company complex.[519] We have determined to exclude sub-advisers from the definition because a fund, or even its adviser, may not be able to know whether the sub-adviser obtained any non-audit services from the fund's or the adviser's auditor. Moreover, considering a sub-adviser or the funds it advises to be part of the investment company complex presents practical difficulties where the sub-adviser is itself an adviser in a separate investment company complex.

12. "Office"

Rule 2–01(f)(15) defines "office" to mean a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines. The term "office" is an integral part of the description of one category of "covered persons" and, thereby, helps identify firm personnel who cannot have financial or employment relationships with a particular audit client without impairing the firm's independence. The definition has not changed from the proposed definition.

We give "office" a meaning that does more than merely refer to a distinct physical location where the firm's personnel work. By "office" we mean to encompass any reasonably distinct sub-group within an accounting firm, whether constituted by formal organization or informal practice, where the personnel who make up the sub-group generally serve the same clients, work on the same matters, or work on the same categories of matters. In this sense, "office" may transcend physical boundaries, and it is possible that a firm may have a sub-group that constitutes an "office" even though the personnel making up that sub-group are stationed at various places around the country or the world.

At the same time, we intend for "office" also to include reference to a physical location. For this reason, "office" will generally include a distinct physical location where the firm's personnel work. We recognize, however, that in some cases thousands of firm personnel may work at a single, large physical location, but physical divisions may nonetheless effectively isolate different sub-groups of personnel from each other in ways that will warrant treating each sub-group as a separate "office" under the proposed definition.

Some commenters raised concerns about the definition of office.[520] One commenter asserted that the proposed definition is unworkable and does not provide helpful guidance.[521] This commenter expressed a preference for the ISB's approach to the concept of "office or practice unit," in the ISB's Exposure Draft on Financial Interests and Family Relationships.[522]

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[510] AICPA SAS No. 22, AU § 311.046 and AUI 9311.03.

[511] *See, e.g.*, Deloitte & Touche Letter; Ernst & Young Letter.

[512] *See, e.g.*, Deloitte & Touche Letter; Ernst & Young Letter.

[513] For a discussion of the definition of "office," *see infra* Section IV.H.12.

[514] *See* Deloitte & Touche Letter.

[515] For example, leased accounting personnel might consult with a professional employee participating in an audit and thereby become a member of the audit engagement team.

[516] *See* Written Testimony of Ronald Nielsen and Kathleen Chapman, Iowa Accountancy Examining Board (Sept. 20, 2000).

[517] ISB Standard No. 2, *supra* note 226.

[518] *See, e.g.*, Deloitte & Touche Letter; AICPA Letter.

[519] *See, e.g.*, Arthur Andersen Letter.

[520] *See, e.g.*, Deloitte & Touche Letter; AICPA Letter.

[521] *See* AICPA Letter.

[522] The ISB Exposure Draft, cited in the AICPA Letter, states the following: the identification of the relevant "office" or practice unit is based on the facts and circumstances, including the firm's operating structure, and requires judgment. In a traditional geographic practice office (one city location with one managing partner in charge of all operations—audit, tax, and consulting), that location should be considered to be the office. In addition, if there are smaller, nearby "satellite" offices managed under the primary city office, broadly sharing staff, etc., those locations should also be considered part of the primary office. On the other hand, many firms are now structured more on an industry specialization or line-of-service basis, and manage offices on that basis. For example, if

Continued

In some respects, the definition that we adopt overlaps with the ISB approach. Like the ISB approach, our definition will necessarily involve the application of judgment, governed by substance. And under our definition, as under the ISB approach, expected regular personnel interactions and assigned reporting channels may well be more important than an individual's physical location. We have determined to adopt the definition that we proposed, because it is unclear to us that the ISB approach would necessarily encompass each distinct sub-group that, in particular circumstances, should be encompassed.

I. Codification

As previously discussed, the Commission's current auditor independence requirements are found in various rules and interpretations. Section 600 of the Codification provides interpretations and guidance not otherwise available in Rule 2–01. The final rule articulates a number of situations and circumstances, such as financial relationships, employment relationships, and non-audit services that impair auditor independence. Accordingly, we are deleting some interpretations included in the Codification, either because they are reflected in the revised Rule 2–01 or they have been superseded, in whole or in part, by the rule. Because examples have been deleted both because they are no longer necessary and because they are inconsistent with the final rule, inferences should not be drawn from the deletion of a particular example. The revised Codification contains the discussion of the final rule from this release, as well as the background information and interpretations that may continue to be useful in situations not specifically or definitively addressed in paragraph (c). Examples of these items include business relationships, unpaid prior professional fees, indemnification by clients, and litigation.

V. Cost-Benefit Analysis

The amendments to Rule 2–01 modernize the rules for determining whether an auditor is independent in light of (i) investments by auditors or their family members in audit clients; (ii) employment relationships between auditors or their family members and audit clients; and (iii) the non-audit services provided by audit firms to their audit clients. In the Proposing Release, we identified three constituencies affected by the rule: (1) investors; (2) issuers; and (3) accounting firms that provide services affected by this release.[523] Below we discuss the costs and benefits to each of these groups. In all cases, we discuss the costs and benefits relative to the current regulatory environment.[524]

A. Costs and Benefits of the Rule Regarding Investments in and Employment Relationships With Audit Clients

The final rule clarifies, and in some cases eliminates, certain existing requirements under which an accountant's independence is impaired by investment and employment relationships between an accountant, covered persons, or their families, and an audit client. As explained above,[525] changes in business practices and demographics, including an increase in dual-career families, warrant a change in our auditor independence requirements to prevent an unnecessary restriction on the employment and investment opportunities available to auditors and members of their families. To this end, the rule amendments take a more targeted approach, focusing on those persons who are involved in or can influence an audit. In addition, the rule provides a limited exception for accounting firms under which an inadvertent violation of these rules by certain persons will not cause a firm's independence to be impaired, so long as the firm has quality controls that meet certain conditions and the impairment is resolved promptly.

1. Benefits

The elimination of certain investment and employment restrictions should benefit auditors and their families by permitting a wider range of investment and employment opportunities. According to the 1999 annual reports filed by accounting firms with the SECPS, the five largest accounting firms employ approximately 115,000 professionals. Other public accounting firms that audit SEC registrants employ an estimated 5,000 to 25,000 professional staff. The amendments we are adopting will benefit these 120,000 to 140,000 accounting firm professional employees and their families by enabling them to invest in some public companies in which, under the current rules, they cannot invest without impairing the independence of the companies' auditors. In addition, under these amendments, audit clients and their affiliates may, in certain circumstances, employ family members of some audit firm employees without impairing the auditor's independence.

Expanding the set of investment opportunities available to auditors and their family members may increase the return they can earn on their investments and improve their ability to reduce risk through diversification. Opening employment opportunities to auditors and their family members increases their freedom of choice with respect to their employment opportunities and may lead to an increase in their compensation. Consequently, the amendments have the potential to improve the pecuniary and non-pecuniary benefits of employment. These benefits may make accounting firms more appealing as a career choice, and as a result may aid the firms in their recruiting efforts.[528]

In addition, independence requirements are found in various Commission rules, Commission interpretations, staff letters and reports, and, in some cases, AICPA literature. The final rule puts this guidance in an easily accessible format that will save interested parties costs in ascertaining and complying with the rule.

Finally, the rule provides that an accounting firm's independence will not be impaired solely because a covered person inadvertently fails to comply with the independence rules if the firm has adequate independence quality controls in place. This limited exception should provide a benefit to accounting firms and their employees.

2. Costs

Modification of the investment and employment restrictions may require accounting firms, their employees, or others to incur transaction costs, such as one-time costs to modify existing systems that monitor investments and employment relationships, and training

a financial services group were a separate practice unit, and were operated that way with limited contact with personnel of other local units, that may represent a separate office for purposes of this standard. Substance should govern the office classification, and the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than his or her physical location.

[523] While we discuss the costs and benefits to issuers separately from those accruing to investors, impacts on the issuers are also likely to flow to investors as owners of the issuers' securities.

[524] It has been suggested that the Proposing Release did not clearly specify the baseline from which the costs and benefits were being estimated. The following presentation clearly establishes the baseline: costs and benefits are compared to current regulations.

[525] *See supra* Section III.B.

[526] See Written Testimony of Jack Ciesielski, accounting analyst (Sept. 13, 2000) ("I think the real problem in attracting talent in the auditing profession is the share ownership restrictions placed on auditors. * * * The relaxation of share ownership constraints that are proposed in this document should allay most fears of future auditors.").

costs to prepare professional staff to understand and conform to the revised rules. With respect to the provisions regarding employment relationships and investments, the rule provides a transition period and does not cover loan contracts, insurance products, and employment relationships undertaken prior to the end of this transition period. The rule does not impose any additional costs with respect to the separations of former partners that have occurred prior to the effective date of this rule. Existing rules will apply to these partners. During the transition period, the only cost to separating partners and their firms relates to the timing of the payments made as part of the separation.[527] The new rule applies only to those that leave the firm after the new rule becomes effective. These modifications of the rule from our original proposal will reduce the costs of implementation.[528]

As discussed above, the rule does not require accounting firms to establish quality controls that conform to the rule requirements. In the case of the largest firms, the rule specifies minimum characteristics of these systems.[529] Because the limited exception is elective, any related costs will be assumed voluntarily, if at all, by accounting firms that decide that the benefits of this limited exception justify the costs of any incremental changes that are necessary to make their quality control systems meet the rule's standards.

An accounting firm that chooses to upgrade its existing quality control system to comply with the limited exception should incur only the incrementally small costs of implementing any improvements beyond what is required by GAAS and SECPS membership requirements.[530]

[527] *See* Rule 2–01(e)(1)(ii).

[528] The rules we adopt today are slightly more restrictive than current rules with respect to certain financial interests—such as credit cards and bank accounts—and employment relationships as they relate to covered persons on the audit engagement team. We do not anticipate that these changes will impose significant costs.

[529] Other public accounting firms would have the flexibility to adopt a system to comply with the requirement in light of the nature and size of their practice. *See* SAS No. 25, AU §161.03. This is in general conformity with GAAS, which states, "The nature and extent of a firm's quality control policies and procedures depend on factors such as its size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations." *See* SAS No. 25, AU §161.02.

[530] Because the threshold for the limited exception is based on the number of audit clients rather than professionals, certain middle-tier firms, if they grow, may meet the threshold earlier than they would under current SECPS requirements. See GAAS already requires firms to have quality controls for their audit practices and refers auditors to the "Statements on Quality Control Standards" ("SQCS") for guidance regarding the elements of those systems.[531] SQCS No. 2 states that firms' controls should provide "reasonable assurance that personnel maintain independence (in fact and in appearance) in all required circumstances, perform all professional responsibilities with integrity, and maintain objectivity in discharging professional responsibilities."[532] Because foreign accounting firms providing assurance on financial statements filed with the SEC are required to adhere to GAAS, they are also subject to these same quality control standards.[533]

In addition to requirements imposed by GAAS, public accounting firms that are SECPS members must comply with independence quality control membership requirements. Further, SECPS guidelines indicate that its members are required to assist their foreign associated firms to conform to "U.S. independence requirements of the SEC and ISB, and SEC rules and regulations in areas where such rules and regulations are pertinent."[534] Among other things, member firms with at least 7,500 professionals must implement an electronic tracking system by no later than December 31, 2000.[535] The final rule supplements the GAAS requirement for firms with more than 500 SEC registrants as audit clients by identifying procedures that should be part of their quality control systems. Because an accounting firm with 500 SEC registrants will likely also meet the SECPS' 7,500 professionals requirement, the rule is unlikely to impose a requirement for quality controls that does not already exist under GAAS and SECPS membership requirements.

In the Proposing Release, we asked for comments and data on the assessment of potential costs associated with the proposed quality control provision, but no commenter provided specific or empirical data on this issue. We expect the costs associated with the implementation of an amended quality control system to be small. Firms may choose to maintain the current restrictions if they determine that the costs of establishing the new system exceed the benefits. We nevertheless recognize that public accounting firms and their employees will require some time to familiarize themselves with, and understand, the amended rule. A one-hour review by each of the 120,000 to 140,000 public accounting professionals would result in a $3.6 million to $4.2 million one-time transition cost.[536] We include the $4.2 million in our aggregate cost estimation. Given that accounting firms currently engage in on-going training relating to auditor independence, we believe that these transition costs likely represent an over-estimation of the true cost imposed by this rule. Further, given that the firms must continue the educational process regardless of the rule, we treat this as a one-time cost.

Commenters were generally supportive of the proposals regarding employment relationships between and investments by auditors or their family members and audit clients. As discussed above, after considering the comments received, we are adopting the investment and employment rules, as modified.[537]

B. Costs and Benefits of Restricting Certain Non-Audit Services

There is increasing concern that the growth of non-audit services provided by auditors to audit clients affects auditor independence.[538] There is also concern that auditors' provision of certain non-audit services to audit clients creates a conflict of interest that also affects auditor independence. These effects on auditor independence may be costly to investors if they lead to, among other things, a decrease in the quality of financial reporting, lower investor confidence, or both. Importantly, as a result of the conflicts created by auditors' provision of non-audit services, investors may lose confidence in the quality and integrity of financial reports even if there are relatively few dramatic audit failures or restatements. Given the size of U.S. securities markets, even a small loss in

SECPS Manual §1000.46. We note that our rule does not require implementation of these systems, but rather leaves it to the discretion of the firm.

[531] SAS No. 25, AU §161 n.1.

[532] AICPA Professional Standards: SQCS, QC §20.09.

[533] *See* "International Accounting Standards," Securities Act Rel. No. 7801 (Feb. 16, 2000) [65 FR 8,896]; Form 20–F, Item 8, "Financial Information," 17 CFR 249.220f.

[534] *See* SECPS Manual §1000.45.

[535] *See* Letter from Michael A. Conway, Chairman, Executive Committee, SECPS, to the Managing Partners of SECPS Member Firms, April 2000 (available at www.aicpa.org).

[536] *See* Romac International, *1999 Salary Survey and Career Navigator: Finance & Accounting* (1999), which reports the median national public accounting salary to be $47,300 annually. Assuming a 2080-hour work year, we obtain $22.75 per hour. We increase our hourly estimate to $30 to allow for benefits and other overhead expenses.

[537] *See supra* Sections IV.D.1, IV.D.2.

[538] *See supra* Section III.B.

investor confidence has large wealth consequences for investors.

After careful consideration of the testimony from four days of public hearings and a review of the almost 3,000 comment letters received by the Commission, we have narrowed the scope of our proposals regarding non-audit services. In the Proposing Release, we enumerated ten services that if provided by the auditor to an audit client would be considered to be, in whole or in part, incompatible with the concept of auditor independence. As discussed above, in many cases we intended our proposal to track substantially the existing independence requirements of the profession. In response to commenters' concerns that our proposals were broader than existing requirements, we have made certain modifications.[539] As a result of our modifications, the language in the adopted rule substantially mirrors or draws from existing Commission requirements or the professional guidance of the AICPA and SECPS with respect to eight non-audit services (not including internal audit services). There should, therefore, be minimal costs associated with our codification of the provisions regarding these eight services. With respect to most information systems consulting, auditors may continue to provide these services to an audit client without impairing independence, as long as certain conditions are met.

The final rule does impose new limitations on auditors' ability to provide to audit clients internal audit services without impairing independence. If the accounting firm provides both the internal and external audit, it may, in effect, be auditing its own work. In this situation, the firm cannot, in our view, provide a truly independent "second opinion." Without a truly independent second opinion, material defects in the accounting system may not be detected as quickly, if at all. Final Rule 2–01(c)(4)(iv) seeks to curb these conflicting interests without precluding companies, particularly small companies, from obtaining internal audit services from their auditors where the auditor's independence would not be compromised.

Under the final rule, accounting firms may provide all internal audit services to audit clients with assets of $200 million or less, provided certain conditions are met. In addition, accounting firms may provide up to forty percent of the internal audit services of issuers with assets in excess of $200 million, provided the same conditions are met.[540] These conditions are intended to create circumstances in which the auditor can continue to exercise objective and impartial judgment, and the audit retains its value as a "second opinion."

Relative to the Proposing Release, the $200 million threshold in the internal audit provision minimizes the aggregate costs associated with the rule without substantially reducing the benefits of greater investor confidence in audited financial statements. In addition, the $200 million threshold in the internal audit provision minimizes the impact of the provision on smaller companies and smaller accounting firms.

The available data indicate that most SEC registrants are audited by one of the largest accounting firms, sing 1999 SECPS data, we identified 16,653 registrants who filed audited company financial statements with the Commission.[541] Of those 16,653 registrants, the Big Five accounting firms audit 12,769 (76.7%) of these companies; the next three largest firms (referred to as the "second tier firms") audit 942 (5.7%); the next 20 largest accounting firms audit 730 (4.4%); and the remaining 2,212 (13.3%) companies are audited by smaller accounting firms.

In order to estimate the impact of the rule on small companies and small accounting firms, we used the Compustat Database.[542] Our analysis indicates that of the 9,414 Compustat covered companies, 4,326 (46%) have assets of $200 million or more and will be covered by the limitation, whereas 5,088 (54.1%) have assets of less than $200 million[543] and will not be covered by the rule. By excluding companies with less than $200 million in assets from application of the new limitation on these non-audit services for audit clients, the final rule permits, subject to certain conditions, large and small accounting firms to accept consulting engagements with these small companies that would otherwise be prohibited.

The Compustat Database includes 8,732 non-bank companies: 3,735 (42.8%) have assets of $200 million or more, and 4,997 (57.2%) have assets of $200 million or less. The Compustat data indicate that approximately 93.9% of non-bank companies with assets in excess of the $200 million threshold are audited by one of the Big Five accounting firms. Clients of second tier accounting firms account only for 1.3% of this group. The database specifically identifies 107 companies or 2.9% as audited by other smaller accounting firms. The remaining 71 (1.9%) large companies were not identified with an auditor in the database. If we include these 71 companies with the 107 identified as audited by smaller accounting firms, at most 4.8% of the companies with assets in excess of $200 million are audited by the smaller firms and, therefore, potentially impacted by the provision on internal audit services. Conversely, 85.7% of non-Big Five audit clients have assets below $200 million.

Current and past bank regulators expressed concern about the effect of our internal audit proposal on smaller banks serving smaller communities.[544] The $200 million threshold is designed to limit the impact of the rule to larger, national banks. The Compustat Database included 682 bank holding companies. Of these, 591 (86.7%) have assets of $200 million or more and 91 (13.3%) have assets of less than $200 million. Big Five accounting firms audit 382 (64.6%) of the large bank holding companies. The next three largest (second tier) firms audit 31 (5.2%) of the large bank holding companies. Compustat specifically identified 116 (19.6%) as audited by other accounting firms. The data source did not identify an auditor for the remaining 62 (10.5%) companies.[545] The $200 million exemption permits the 91 smaller bank holding companies, likely to serve smaller communities,[546] to obtain from their auditors internal audit services. Accordingly, as adopted, the rule should not impose a substantial burden on these institutions and the communities they serve. Further, the Compustat criteria for inclusion in the database may understate the population of smaller bank holding companies.

Evidence suggests that internal audit outsourcing is provided primarily by the largest of the public accounting firms.[547] Under the adopted rule, auditors will still be able to provide internal audit services.[548] We estimate that the auditor could still provide on average as much as sixty-one percent of a company's internal audit activity, including internal audit activities not covered by the rule.[549]

The effect of the rule changes pertaining to internal audit outsourcing is to reduce the costs associated with the final rule without substantially reducing the benefits. To the extent that the final rule, taken as a whole, maintains or increases investors' confidence in the reliability of publicly available financial information, it increases the integrity of the U.S. securities markets. In the Proposing Release, we asked for comments and data on the assessment of costs associated with internal audit outsourcing and information systems consulting. While the staff garnered and analyzed data where it could, we received little data from public commenters that could be used in our analysis.[550]

1. Benefits

Benefits are expected to accrue to investors, issuers, providers of management consulting services, and public accounting firms. Benefits include:

- Greater confidence in auditor independence and increased reliability of financial statements to investors, issuers and other users;
- Centralizing and codifying of the independence rules; and
- Better operational and investment decisions.

a. *Investors.* For the reasons explained in this release, the Commission believes that the rule will enhance auditor independence. This should result in improved reliability, credibility, and quality of financial statements of public companies. Quality financial statements depend on subtle choices and judgments in reflecting economic events using accounting numbers. Quality financial statements also depend upon highly competent and independent auditors. Investors rely on quality financial statements in order to invest their funds effectively and efficiently. Therefore, the more confidence investors have in the independence of the auditor, the more reliance they will place on the financial statements when making investment decisions.

Several representatives of the largest institutional investors in the country testified that this rule would enhance auditor independence, bolster institutional and individual investor confidence, and benefit their plan participants.[551] One institutional investor associated poor performance with poor quality financial reporting and "a seemingly meek auditor."[552] In a similar vein, another commenter asserted that the rule will increase auditor independence and this, in turn, may reduce the incidence of fraud or lead to its more timely discovery.[553]

Some commenters suggested that there is no empirical evidence that

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[539] In the Proposing Release, the proscribed services included expert witness services. Expert witness services have been removed from the list of services that are per se incompatible with an auditor's independence.

[540] Under the final rule, the term "internal audit services" does not include operational internal audit services unrelated to the internal accounting controls, financial systems, or financial statements. Additional discussion of the impact of this threshold appears in Section IV.D.4.b(v).

[541] Throughout this section we round percentages to one decimal place. As a result some percentage combinations, when relevant, will not add to exactly 100.

[542] Our purpose in using these data is to estimate the association between company size and the auditors classified as Big Five, second tier and smaller accounting firms. The Compustat Database has two limitations for purposes of this estimate. First, the Compustat Database does not include all companies filing with the SEC. Second, we note that Compustat includes American Depository Receipts (ADRs). Some of the companies issuing ADRs and included on Compustat may not be required to file audited financial statements with the SEC. The data include 499 non-bank filers who issue ADRs; 405 are for companies with $200 million or more of assets; and 94 are companies with less than $200 million in assets. Only 57 of these ADR issuers are not audited by Big Five accounting firms.

The data also include 22 bank holding companies with $200 million or more of assets that have issued ADRs. The database contains information on approximately 9,414 registered companies including bank holding companies. Compustat applies set criteria for adding companies to the database. The criteria vary depending upon whether a company is domiciled in the U.S., Canada or abroad. The net effect of these criteria is that Compustat is heavily weighted toward larger companies, particularly, larger North American companies. If these criteria have the effect of excluding smaller companies that may have assets of less than $200 million, this analysis will overstate the proportion of companies that will be affected by the rule and the impact of the rule on smaller companies. *See* Compustat Database, October 31, 2000.

[543] The average revenue of companies with assets of $195—$205 million is $209 million.

[544] *See* Testimony of Paul Volcker, former Chairman, Board of Governors of the Federal Reserve System (Sept. 13, 2000) ("I know that when . . . I was Chairman, there was still a question of whether banks had to be audited, and they are, of course, examined and many of the banks complain that it would be very costly and they didn't have the resources for decent internal auditing efforts. . . ."); *see also* Testimony of Laurence H. Meyer, Governor, Board of Governors of the Federal Reserve System (Sept. 13, 2000); Testimony of John D. Hawke, Jr., Comptroller of the Currency (July 26, 2000). Both indicated that their respective organizations have been concerned about internal audit outsourcing for some time. Neither organization has placed an absolute ban on internal audit outsourcing. However, both have provided guidance on the manner in which internal audit outsourcing is to be handled.

[545] Professional staff of the Office of the Chief Accountant obtained the names of bank holding company auditors by searching Commission 10–K filings contained in EDGAR. 10KWizard was utilized to search the EDGAR database.

[546] Only ten of the 91 bank companies with less than $200 million in assets were located in one of the top 35 U.S. cities by population. *See* Compustat Database, October 31, 2000.

[547] The Institute of Internal Auditors ("IIA") Global Auditing Information Network ("GAIN") cited by Larry E. Rittenberg and Mark A. Covaleski in their monograph, *The Outsourcing Dilemma: What's Best for Internal Auditing* for IIA (1997) ("Rittenberg") and Manufacturers Alliance, *Survey of General Audit* (2000) generally include large companies. According to Rittenberg, companies included in the IIA GAIN study are large, increasing the probability that the GAIN companies are Big Five clients. Only two of the companies responding to the Manufacturers Alliance survey used accounting firms other than a Big Five firm as the primary external auditor. The Alliance survey reported a ten percentage point increase in the outsourcing of general audit tasks to the primary external auditor between 1995 and 2000. Of the companies using Big Five firms as their primary auditor, 42.5% indicated that they outsourced general audit work to their primary auditor. The survey also indicates that the portion of general audit needs that is outsourced remains fairly small, at less than 5% for 72.9% of the respondents.

[548] As noted above, our definition of internal audit is narrower than that used by Rittenberg and Covaleski.

[549] Rittenberg and Covaleski provide data that allows us to estimate the potential impact of the 40% limitation included in the rule. The Table below uses the information above to estimate the internal audit outsourcing and extended audit services that the external auditor can perform for the SEC registrant audit clients after the new rule is in effect. According to the IIA GAIN information in 1995 studied by Rittenberg and Covaleski, 35% of internal audit activities were classified as "operational." These activities can be fully outsourced under the rule. The remaining services were classified as follows: 17% compliance audit; 14% information systems; 26% financial audits; 8% other (unspecified). The rule will allow 40% of these services to be outsourced. Accordingly, under the rule, 61% of internal audit services could be outsourced.

In addition, the Manufacturers Alliance conducted its Survey of General Audit, 2000 and received responses from 106 companies of which 104 were audited by Big Five firms. It asked respondents how general audit time was allocated and received the following response: 40.2% control/compliance, 32.3% operational audit, 5.9% assisting external audit, 11.0% service requests, 3.4% M&A work and 7.1% other activities. While the categories are generally not the same as those used in the IIA GAIN reports, the operational audit component in both surveys is similar. On the other hand, control/compliance work is much higher for the Alliance survey respondents than the apparently similar category used in GAIN. This might be attributed to classification problems and/or the time period considered. However, in 1995 the Alliance survey reported an even higher control/compliance allocation at 46.9%. Further, the Alliance survey does not break out IT work specifically, making it difficult to compare the two survey results on this dimension. Alliance survey respondents did indicate that computer systems oriented work was growing rapidly (33%) or somewhat rapidly (59.4%). The Alliance survey reported a rise from 20.0% in 1995 to 32.3% in 2000 in the operational audit category, a category of internal auditing services not prohibited by the rule.

[550] *See* Letters from Commissioner Isaac C. Hunt, Jr., *supra*, note 212. Some commenters suggested that by requesting data on the costs and benefits of the rule, we asked the public to shoulder a burden rightfully belonging to the regulator. *See, e.g.*, Arthur Andersen Letter. We do not suggest that any party was obligated to provide data in response to our requests for comments. On the other hand, where data are exclusively under the control of commenters, our rules cannot be criticized for any failure to take into account data to which we do not have access. Wherever possible, we relied on information supplied by interested parties and other public sources of information.

[551] *See* Letter of Kim Johnson, General Counsel, The Public Employees Retirement Association of Colorado (September 1, 2000); Testimony of Allen Cleveland, New Hampshire Retirement System (Sept. 13, 2000); Testimony of John Biggs, Chairman, President and CEO of TIAA-CREF (July 26, 2000).

[552] *See* Testimony of Kayla Gillan, General Counsel, CalPERS (Sept. 13, 2000).

[553] *See* Testimony of Jay Eisenhofer, Partner, Grant & Eisenhofer (Sept. 13, 2000) ("Your rule, I believe, will cut down on fraud, cut down on auditor self-interest, and increase the reliability of financial statements.").

shows that the provision of non-audit services damages investors' confidence in the independence of auditors or the accuracy of financial statements.[554] Commenters suggested that there is, therefore, no basis for our assertion that the rule will benefit investors.[555] One such commenter suggested that the rule might, in fact, decrease investor confidence. This commenter argued that investors believe that the rule may decrease the quality of audits because auditors will know less about the companies they audit.[556] However, other commenters suggested that providing consulting services does not improve the quality of audits.[557] There is also academic and survey evidence that users of financial statements believe that the provision of non-audit services may impair the auditor's independence.[558] A public opinion poll conducted by Public Opinion Strategies found that approximately eighty percent of investors favor a rule that imposes such restrictions.[559] Another survey, conducted by AIMR, reported that over sixty-two percent of responding analysts believe that providing outsourcing services would likely compromise or impair auditor judgment.[560] Brand Finance, in a survey of U.K. analysts, found that ninety-four percent of respondents believed that the current level of non-audit service fees was likely to compromise auditor independence.[561]

b. *Issuers.* Issuers will benefit from the proposed scope of services regulations in several respects. First, the rule will eliminate some of the uncertainties as to when a registrant's auditor will not be recognized as independent. Second, since increased investor confidence in financial reporting may encourage investment, the rule would facilitate capital formation. Issuers should be able to attract capital at lower rates of return or in some circumstances attract investment where they currently cannot raise capital.[562] Third, the rule will increase the utility of annual audits to the management of issuers.

Management of the issuer also receives benefits from the external audit. No less than other investors, managers need reliable financial information about potential investment opportunities in order to manage their firm's assets. Internally, managers need assurance of the effective functioning of the control and reporting systems that produce the information on which they base their operating decisions. While company managers may obtain the needed assurances through internal processes, including internal audit groups, the external auditor also contributes to the company managers' assurance that the company's internal control processes are functioning effectively and that financial and other data are reliable.

One commenter asserted that to the extent an issuer perceived that buying non-audit services from its auditor increased its cost of capital to such an extent that it outweighed the benefits of purchasing non-audit services, it could protect itself by limiting the amount and types of non-audit services it purchased from its auditor.[563] This argument may not fully capture the incentives of management or the issuer, however. Academic literature describes how managers' incentives can deviate from those of investors.[564] For example, a company manager may have a family or financial relationship with the auditor and may benefit from a lack of complete independence from the company's auditor. It is difficult for the company to credibly pre-commit to restricting the purchase of non-audit services from the auditor. Further, managers rely on auditors that may be unaware that they are subject to subtle biases that may affect their judgments.[565] Finally, management may be frequently marketed to by its auditor to purchase non-audit services.[566]

Although the decision of an individual company to purchase services from the auditor may be in the best interest of the company's investors, it may not be in the interest of investors in all companies as a whole. If decisions by individual company management reduce the reliability of audited financial statements as a whole, aggregate investment may be misallocated even if any individual company is acting in the best interest of its shareholders. It is unlikely that such concerns would enter into the company manager's choice of service provider even if it were a logical consequence of that choice.

Audit committees will also have more concise and clearer guidance to support their enhanced role in overseeing the management/auditor relationship. The amendments to the proxy rules require disclosure of whether the audit committee, or the board of directors if there is no such committee, considered whether the provision of non-audit services by the company's principal accountant is compatible with maintaining the principal accountant's independence. Several commenters stated that the rule enhances the ability of the audit committee to identify situations in which auditor independence may be impaired. For example, the Co-Chairman of the Blue Ribbon Committee stated that he thought that "[this rule] would help audit committees do their job better."[567] Another commenter argued that without this guidance audit committees must rely primarily on auditors to determine their own independence.[568]

c. *Public Accounting Firms.* The rule provides a general test for, and a list of, non-audit services that, when provided to an audit client, will impair an auditor's independence. Currently, auditor independence requirements are found in several sources, including AICPA guidance, the Codification on Financial Reporting, SECPS rules, and a variety of Commission interpretive releases and staff no-action letters. Consolidating many of these requirements into one rule is an important purpose and benefit to this rule.

Some commenters disagreed that this rule would clarify independence requirements for public accounting firms.[569] These commenters argued that the rule creates confusion and therefore increases the amount of time that accounting firms, and others, will need to spend on compliance.[570] We disagree. As discussed above, in response to comments, we have made significant modifications that clarify the rule's requirements. We realize that any rule inevitably requires some interpretation. We believe that, as modified, this rule will centralize and clarify independence requirements and thus result in increased certainty, resulting in a benefit to public accounting firms.

Some commenters have argued that no benefits at all will be created by the rule. The basic argument is that no tangible evidence exists that independence has been impaired by provision of these non-audit services to audit clients.[571] In testimony, however, several individuals recounted litigation experiences and discussed cases in which they believed that a lack of independence contributed to an audit failure and financial reporting fraud.[572]

Others have argued that economic forces provide sufficient incentives to audit firms to ensure independence.[573] According to one such commenter, auditors lose market share when their reputations are damaged, either as a result of government action or private litigation.[574]

Commenters also suggested that auditors already have strong incentives to maintain their reputations.[575] The auditor's reputation is based on the public's belief in the auditor's objectivity and competence. The actual or perceived loss of either objectivity or competence can be expected to affect negatively the auditor's ability to obtain and retain clients.[576] We also note that the SECPS mandates certain quality controls designed to support auditors' self-monitoring.[577] However, evidence suggests that these mechanisms may not be sufficient.[578] One commenter concluded, based on a model of the auditor's incentives to maintain independence, that under certain circumstances when an auditor can command sufficiently high benefits from the mix of services, audit credibility may be diminished.[579]

Some commenters have suggested that litigation acts as an incentive for the auditor to maintain independence.[580] Conversely, another commenter noted that the expected cost of an auditor's

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[554] *See, e.g.*, KPMG Letter.

[555] *See, e.g.*, Arthur Andersen Letter.

[556] *See, e.g.*, Deloitte & Touche Letter.

[557] *See, e.g.*, Testimony of Douglas Scrivner, General Counsel, Andersen Consulting (Sept. 20, 2000) ("It is important to note that audit firms do not provide consulting services to improve the quality of the audits, but rather for commercial considerations. A then CEO of one of the Big Five audit firms was quoted recently in *Business Week* saying 'If I had to trade an auditing account for other business, I would do it.'").

[558] Despite the mixed academic results and the difficulties in preparing unbiased survey results, it is clear that the perception of auditor independence is important to financial statement users and can be affected negatively by the extent and type of non-audit services provided by the auditor to audit clients.

Perception is difficult to establish definitively. A number of academics have provided evidence that perceptions are affected by the mix of audit and non-audit services provided to audit clients. The academic evidence is mixed and subject to alternative interpretation. Selected papers by academics include: M. Firth, "Perceptions of Auditor Independence and Official Ethical Guidelines," 55 *Acct. Rev.*, at 451–466 (July 1980) ("Firth"); R.A. Shockley, "Perceptions of Auditors' Independence: An Empirical Analysis," 56 *Acct. Rev.*, at 785–800 (October 1981) ("Shockley"); D.J. Lowe and K. Pany, "CPA Performance of Consulting Engagements with Audit Clients: Effects on Financial Statement Users' Perception and Decisions," 14 *Auditing: J. of Prac. & Theory*, at 35–53 (Fall 1995) ("Lowe 1995"); D.J. Lowe and K. Pany, "An Examination of the Effects of Type of Engagement Materiality, and Structure on CPA Consulting Engagements with Audit Clients," 10 *Acct. Horizons*, at 32–52 (December 1996) ("Lowe 1996"); J.G. Jenkins and K. Krawczyk, "Perception of the Relationship Between Nonaudit Services and Auditor Independence," North Carolina State University, manuscript (2000) ("Jenkins & Krawczyk").

Generally, Firth and Shockley found that financial statement users are more concerned than auditors about the independence problems associated with matters such as incentives to retain clients in a competitive environment and/or when non-audit services are sold to audit clients. More recently, Lowe (1995, 1996) found that loan officers and financial analysts appear to perceive little or no independence problem at low levels (1% of office revenue) of non-audit services, but did exhibit concern as the level of office revenues from non-audit services rose. Jenkins & Krawczyk studied three group's perceptions about auditor independence and the provision of non-audit services to audit clients. The Jenkins and Krawczyk study groups are Big Five CPA professionals, non-Big Five CPA professionals and a group labeled "general public," composed of business professionals and graduate business students. The CPA professionals, particularly those associated with the Big Five, generally felt that independence was not threatened and in some cases might be strengthened by the provision of non-audit services to audit clients. The "general public" was generally supportive of the provision of non-audit services, but less so than the other two groups.

Recent surveys of a variety of financial statement users demonstrate the existence of varying degrees of concern for auditor independence when offering non-audit services to audit clients. The story told by the surveys is admittedly complex. Virtually all of the surveys that have been submitted to the public record (Public Opinion Strategies, Brand Finance PLC, Earnscliffe, AIMR, Penn Schoen Survey, and Pace University) indicate some concern for auditor independence. The degree of concern may be, in part, a function of the timing of the surveys, the manner in which the subjects were queried, and the subject sample selection.

[559] Duquesne Poll, *supra* note 110. The surveyors asked several related questions of the subjects. First they asked, "And from what you've seen, read or heard, do you generally favor or oppose this SEC proposal?" This was immediately followed by, "And do you strongly favor/oppose or just somewhat favor/oppose the SEC proposal." In response to this question, 30% stated that they "Strongly Favor" and 34% that they "Somewhat Favor" the SEC proposal. The surveyors then provided a one paragraph narrative describing the auditor's responsibilities with respect to fair presentation of financial statements and a one paragraph narrative describing the SEC concerns about the potential conflict of interest auditors face when selling both audit and consulting services to the same client. The subjects were then asked to state whether they strongly/somewhat favor/oppose a position based on this information. At this point 49% stated that they "Strongly Favor" and 32% stated that they "Somewhat Favor" the SEC proposal.

[560] *See* Testimony of Mauricio Kohn, CFA, CMA, CFM, AIMR (Sept. 20, 2000).

[561] *See* Letter of Brand Finance PLC (June 13, 2000).

[562] *See* Testimony of Rajib Doogar (Sept. 13, 2000) ("Low audit credibility, in turn, will drive up costs of capital, affecting the well functioning of capital markets and indeed of the US economy as a whole.").

[563] *See* Letter of Charles C. Cox, Kenneth R. Cone, and Gustavo E. Bamberger, Lexecon Inc. (Sept. 25, 2000) ("Lexecon Letter").

[564] *See, e.g.*, M.C. Jensen and W.H. Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," 3 *J. of Fin Econ*, at 305–360 (1976); A.A. Alchian and H. Demsetz, "Production, Information Costs, and Economic Organization," 62 *Am. Econ. Rev.*, at 777–795 (1972). This agency conflict grows out of the inability of investors to perfectly control by contract managers' behavior. The problem is exacerbated if investors cannot monitor management's choices.

[565] *See* M.H. Bazerman, K.P. Morgan, and G.F. Loewenstein, "The Impossibility of Auditor Independence," 38 *Sloan Mgt. Rev.* 89–94 (Summer 1997); Testimony of Professor Max H. Bazerman, Northwestern University (July 26, 2000); Testimony of Professor George F. Loewenstein, Carnegie Mellon Institute (July 26, 2000); J.D. Beeler and J.E. Hunton, "Contingent Economic Rents: Insidious Threats to Auditor Independence," manuscript (2000); G. Trompeter, "The Effect of Partner Compensation Schemes and Generally Accepted Accounting Principles on Audit Partner Judgment," 13 *Auditing: J. Prac. & Theory*, at 56–68 (Fall 1994). Trompeter provides experimental evidence that compensation schemes can influence subject judgments. Trompeter finds that auditors whose rewards are based on local office revenues have a tendency to support management views more often than if their rewards are computed on the broader firm revenue base. In the latter case, loss of a local client does not necessarily lead to substantial individual reward losses. Trompeter addresses the incentives issue, one of the complex issues possibly leading to subtle biases in judgment. His results suggest a self-serving bias effects judgment. *But see* Testimony of Professor Urton Anderson, University of Texas (Sept. 21, 2000) and Professor Don N. Kleinmuntz, University of Illinois at Urbana-Champaign (Sept. 21, 2000) for arguments that the self-serving bias is overcome in practice by a variety of behavioral and institutional factors. *See* R.R. King, "An Experimental Investigation of Self-Serving Biases in an Auditing Trust Game," manuscript (2000).

[566] *See* AICPA Practice Aid Series, *Make Audits Pay: Leveraging the Audit into Consulting Services* (1999). Furthermore, as a result of the rule, issuers may avoid marketing pressure from their auditors to purchase certain non-audit services.

[567] *See* Testimony of John C. Whitehead, retired Chairman, Goldman Sachs & Co. (Sept. 13, 2000).

[568] *See* Testimony of D. Bevis Longstreth, former SEC Commissioner and Member of the O'Malley Panel (Sept. 13, 2000).

[569] *See, e.g.*, Lexecon Letter.

[570] *See, e.g.*, Deloitte & Touche Letter.

[571] *See, e.g.*, KPMG Letter. *See supra* Section III.C.4, for a discussion of this comment. *But see* Testimony of J. Michael Cook, former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000) ("I agree with the Commission that the absence of 'proof' does not justify inaction, particularly when such evidence cannot be expected to be demonstrable.").

[572] *See, e.g.*, Testimony of Richard Blumenthal, Attorney General, State of Connecticut (Sept. 20, 2000); Testimony of Robert Morgenthau, District Attorney for the County of New York (Sept. 13, 2000); Testimony of Charles R. Drott (Sept. 13, 2000).

[573] *See, e.g.*, Lexecon Letter.

[574] *See, e.g.*, Lexecon Letter. The authors cite two studies that find accounting firms face significant costs when government regulators criticize auditors: M. Firth, "Auditor Reputation: The Impact of Critical Reports Issued by Government Inspectors," 21 *Rand J. of Econ.*, at 374–387 (Autumn 1990) and L. R. Davis and D. T. Simon, "The Impact of SEC Disciplinary Actions on Audit Fees," 11 *Auditing: J. of Prac. & Theory*, at 58–68 (Spring 1992). In the former study, the loss of reputation in the U.K. manifested itself in lower market share for the largest accounting firms, while in the latter loss of reputation was related to a reduction in audit fees. We note that in both studies governmental oversight was responsible for making public the improper auditor behavior. It is not clear from this research that other economic forces were (or are) sufficiently strong to impose the costs to loss of reputation.

[575] *See, e.g.*, Lexecon Letter.

[576] *See* Lexecon Letter for a discussion and bibliography on this point.

[577] *See* SECPS Manual §1000.45 (April 2000).

[578] *See, e.g.*, Testimony of Dennis Paul Spackman, Chairman, National Association of State Boards of Accountancy (Sept. 13, 2000); Testimony of Paul Volcker, former Chairman, Board of Governors of the Federal Reserve System (Sept. 13, 2000).

[579] *See* Testimony of Rajib Doogar (Sept. 13, 2000).

[580] *See, e.g.*, Lexecon Letter.

loss of independence due to litigation declined in recent years with the passage of the Private Securities Litigation Reform Act of 1995.[581]

d. *Estimation of Benefits of Restricting Certain Non-Audit Services.* The primary benefit of this rule is increased investor confidence in reported financial statements. This benefit is spread across all market participants and may manifest itself in changes in the investment patterns of individuals and the borrowing costs of businesses. Given the sheer magnitude of the U.S. financial system, even a small change in investor confidence manifests itself as a large aggregate benefit.

If we measure the increase in investor confidence by a decrease in the required rate of return on an investment, it would lead to increased profitability for investment opportunities. As a result, the change in investor confidence may manifest itself in a revaluation of current securities prices. Everyone in the market benefits from this change in confidence because all participants can potentially take advantage of the increased investment opportunities. All individual investors benefit from the general increase in market values while businesses benefit in reconsidering their investment opportunities within their existing budget constraints and when seeking additional capital from the market. The market revaluation will be the result of many forces, but should be greater than the change in the required rate of return on a percentage basis simply because of the mathematical relationship between cash flows, interest rates and securities values.[582]

Not all market participants may benefit equally. The extent of individual and business benefit depends upon their current resources and assets, investments and investment opportunities. It is not clear whether these conditions would reduce the aggregate economic benefit. Because we cannot observe the distribution of benefits to individuals and businesses, we assume for the purposes of this estimate that benefits accrue primarily to those affected directly by all parts of the rule. This group includes businesses (and investors in those businesses) that will benefit from the increased confidence.

To obtain an estimate of the number of individuals and businesses that may benefit, we note that, in any given year, approximately 74.3% of companies purchase only auditing services from their Big Five auditor.[583] SECPS data further indicate that consulting revenues from SEC clients amount to 22.8% of the Big Five firms' total consulting revenues. It may be reasonable, therefore, to estimate that only twenty-five percent of audit clients will be directly affected by the rule.

However, the Big Five accounting firms provide audit and consulting services to the largest companies listed on the stock exchanges. According to a 1996 GAO report, the then largest six accounting firms audited seventy-eight percent of the nation's publicly traded companies.[584] Approximately ninety percent of all companies with more than $200 million in assets are audited by one of these five firms.[585] Therefore it is likely that the proportional value of the benefits will be significantly greater than twenty-five percent.

If an increase in investor confidence generated by these rules leads to a decrease in the required rate of return, we can estimate the benefits based on the current market capitalization. For example, a decrease in the cost of capital as small as a single basis point (or one one-hundredth of one percent) would lead to an aggregate annual impact of approximately $2 billion.[586] Although increased confidence should benefit the entire market, we provide an estimate that limits the benefit to those directly affected by the rule. Even if we measure the impact on the basis of the proportion of companies that annually purchase services covered by the rule (25%), a one basis point reduction in the required rate of return would result in an annual benefit of approximately $500 million.

Benefits may also accrue to the economy in the form of more efficient contracting, improvements in operating and investing decisions by management, and greater market stability. Each of these benefits is extremely difficult to measure. We know that many parties to contracts rely on financial statement data, management relies on such data when negotiating contracts, and reliable financial data contributes to both the efficiency of contracting and the effectiveness of contract enforcement. Management needs reliable financial information when making operational and investment decisions, and external auditors contribute to management's assurance about financial information. Unexpected financial statement restatements result in large market capitalization drops. Recent examples of large unexpected financial reports restatements and resulting market capitalization losses have been reported.[587] The logical consequence of such market surprises, in addition to the redistribution of gains and losses across investors, is greater uncertainty in the market place.[588] The resulting uncertainty may dissuade investors from participating[589] or may increase the required rate of return as a means of ensuring against the uncertainty. We make no separate estimate of benefits for the above noted items.

We recognize the difficulty in obtaining direct measures of all the benefits associated with each aspect of the rule to each individual or group. Therefore, in this section, we limited our estimate to the broad economic impact on the capital markets that affects all participants.

2. Costs

Some commenters suggested that the only way to ensure that the provision of certain services does not impair auditor independence is to completely prohibit the purchasing of those services from the auditor.[590] We do not believe that such a prohibition would serve the investor and issuer communities.

a. *Issuers.* The final rule has the effect of restricting issuers from purchasing certain non-audit services from their auditors. Most of the rule's limitations, however, are drawn from existing limitations, including the proscription on operating or supervising an audit client's information technology function. Moreover, issuers would still be allowed to obtain most other information technology services and internal audit services from their auditor provided they comply with certain conditions. The rule would have the effect, however, of preventing issuers with more than $200 million in total assets from outsourcing more than forty percent of certain of their internal audit activities to their auditor.

As some commenters noted, the rule may impose costs on some issuers.[591] Issuers that do not competitively bid non-audit services or that would have purchased these newly proscribed non-audit services solely from their auditors and that are limited by the rule will have to look to other professional services firms, including other public accounting firms, to provide these services in the future. These issuers may incur costs from the use of a separate vendor, including the possible loss of any synergistic benefits of having a single provider of both audit and non-audit services. The issuer may also incur one-time transaction costs associated with identifying and choosing another vendor to provide those services.[592] Estimation of these costs is discussed below.

Some commenters have argued that the rule will sometimes force an audit firm to choose between providing an audit or non-audit service to a public company client, and that audit firms may forego providing audit services, thereby reducing competition for both audit and non-audit services.[593] As to internal audit services, in particular, however, available evidence suggests it is unlikely that auditors will cross the threshold that would require them to choose between external audit revenues and internal audit revenues.[594] Further, it is unlikely that any individual firm has particular exclusive expertise in the internal audit function and therefore a suitable number of competitors likely exists to ensure that the issuer can obtain these services elsewhere at a reasonable cost.

b. *Public Accounting Firms.* Public accounting firms may individually lose a source of revenue because they will no longer be able to sell internal audit services to their audit clients. Any loss may be mitigated by the opportunity to market this service to the audit clients of other public accounting firms. As discussed above, the $200 million asset exemption reduces the impact of the rule on the Big Five and particularly on the second tier and smaller accounting firms.

Of the top three second-tier firms with fewer than 1,000 clients, one firm has stated that it does not perform internal audit outsourcing work for its public company audit clients.[595] Another firm's testimony indicates that it provides minimal proscribed non-audit services to its public audit clients.[596] Thus, it does not appear that at least two of the next three largest firms will be significantly affected by the rule.

c. *Shared Costs.* The rule might also affect what some contend are synergies (or "knowledge spillovers") that arise from providing non-audit services to an audit client. If they exist, spillovers may provide issuers with a more efficient audit or provide the auditor with additional knowledge that will enhance not only the concurrent audit, but other audits as well. Since synergies may benefit either or both parties to some extent, we consider them a potentially shared benefit or cost. As well, to the extent that the proposed definition of affiliate of the accounting firm or affiliate of the audit client would have reduced the market for the provision of internal audit outsourcing, we consider that here.

Some commenters have suggested that the proposed rule's definition with respect to affiliate of the accounting firm would be restrictive and impose significant costs. We have not adopted the proposed definition of an "affiliate of the accounting firm," and left in place the existing standards for determining those entities associated with a firm that should be deemed to be part of the firm for auditor independence purposes. As such, it imposes no additional cost.

Generally, research on enhanced efficiency or effectiveness of providing non-audit services to audit clients is suggestive, but indirect and inconclusive.[597] The recent sale or

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[581] *See* Testimony of Professor John C. Coffee, Jr., Columbia University (July 26, 2000).

[582] This effect can be observed in a simple present value calculation. Assuming future cash flows of $100 per period and a discount rate or required rate of return of 10%, the present value of the cash flows in perpetuity is $1,000. If the discount rate is reduced to 9%, a 10% change in the discount rate, the present value of the future cash flows is $1,111, an 11% change in the present value. This analysis ignores the possibility that a decrease in the discount rate can change the investment opportunity set and increase the per-period cash flows.

[583] While we recognize that the set of firms that may purchase such services may change from year to year, we have received no evidence to suggest that the fraction of companies that may actually purchase such services in any given year is different from our estimate.

[584] *See* GAO Report. Appendix B of the Proposing Release, Table 4 provides a 1999 comparable figure of 76.68%.

[585] *See* Compustat Database (October 31, 2000).

[586] This calculation is based on the aggregate value of U.S. equities markets of $16.1 trillion as of September 29, 2000 as reported by Wilshire Associates and an additional $4.3 trillion in corporate debt outstanding issued by U.S. firms as of June 30, 2000 as reported by the Board of Governors of the Federal Reserve. Therefore the aggregate value of outstanding debt and equity securities is $20.4 trillion.

[587] *See* "Accounting Wars," *Bus. Wk.*, at 156–168 (Sept. 25, 2000).

[588] *See* Testimony of Bill Patterson, Director, Office of Investments, AFL-CIO (Sept. 20, 2000) ("Now, the individual investor, I think their interest in the process is really catalyzed again around these high profile irregularities like Cendant, Sunbeam, Lucent, and Waste Management. I think these are warning shots to investors that this is a problem that has to be addressed.").

[589] *See* Testimony of Frank Torres, Consumers Union (Sept. 20, 2000) ("I think American consumers, from my experience, don't like the idea that they might get had.").

[590] *See, e.g.*, Letter of Jack Ciesielski, accounting analyst (July 14, 2000); Letter of William V. Allen, Jr. (Aug. 22, 2000); Testimony of John Biggs, Chairman and CEO of TIAA–CREF (July 26, 2000); Testimony of Kayla J. Gillan, General Counsel, CalPERS (Sept. 13, 2000) ("A clear, simple and bright line [prohibition] standard will avoid this tendency [toward creative ways to avoid the rule], and moreover, I have not heard anyone suggest that there is an absence of qualified and cost effective alternatives to the auditor performing nonaudit consulting services to the same client.").

[591] *See, e.g.*, Lexecon Letter.

[592] Some commenters suggested that the rule would impose additional costs on small businesses and accounting firms. The impact of the rule on small entities is discussed below in Section VI.

[593] *See, e.g.*, Arthur Andersen Letter; Deloitte & Touche Letter.

[594] *See* Manufacturers Alliance, *Survey of General Audits* (2000). In a survey of its members, the Alliance found that just less than 96% of respondents outsourced less than 35% of the internal audit. This amount is within the 40% threshold allowed by the rule.

[595] Memorandum to File No. S7–13–00 (September 23, 2000).

[596] *See* Testimony of William D. Travis, Managing Partner, McGladrey and Pullen, LLP (Sept. 20, 2000). According to Mr. Travis' testimony, 85% of McGladrey and Pullen LLP's total revenues are attributable to accounting, auditing and tax. Therefore, only 15% is attributable to all consulting engagements. In addition the testimony indicates that approximately 50% of the firm's accounting and tax clients purchase audit services and that only 15% of its client base is made up of public companies. Mr. Travis also notes elsewhere in his testimony that "[t]he IT practice [] was part of what was sold to an affiliate of Block, so the consulting practice is owned entirely by Block." *See also* Compustat Database, October 31, 2000. Compustat lists only five companies with assets of $200 million or more as audited by McGladrey and Pullen, LLP.

[597] Two studies in the 1980s documented that audit fees were generally greater, after controlling for other factors, for clients that also purchased non-audit services from the same public accounting firm. *See* Z. V. Palmrose, "The effect of non-audit services on the pricing of audit services," 24 *J. of Acct. Res.*, at 405–11 (Autumn 1986); D. A. Simunic, "Auditing, consulting, and auditor independence," 22 *J. of Acct. Res.*, at 679–702 (Autumn 1984). Palmrose found that the positive relationship held for both incumbent and non-incumbent auditors, suggesting that synergies may not exist. Nevertheless, the authors of these studies concluded that this evidence was not inconsistent with the hypothesis that the joint provision of audit and non-audit services may give rise to "knowledge spillovers." More recent research documents that these higher fees are associated with increased audit effort (in labor hours). *See* L. R. Davis, David N. Ricchiute, and G. Trompeter, "Audit Effort, Audit Fees, and the Provision of Non-audit Services to Audit Clients," 68 *Acct. Rev.*, at 135–50 (Jan. 1993). The results of the Davis study therefore cast further doubt on the knowledge spillover hypothesis.

Three recent studies also address the issue of synergies at least indirectly. *See* B. Arrunada, "The Provision of Non-Audit Services by Auditors: Let the Market Evolve and Decide," 19 *Intl. Rev. of Law and Econ.*, at 513–31 (1999) ("Arrunada"); M. Ezzamel, D.R. Gwilliam and K.M. Holland, "Some Empirical Evidence from Publicly Quoted UK Companies on the Relationship Between the Pricing of Audit and Non-audit Services," 27 *Acct. and Bus. Res.*, at 3–16 (1996) ("Ezzamel"); K. Pany and P. M. J. Reckers, "Auditor Performance of MAS: A Study of its Effects on Decisions and Perceptions," *Acct. Horizons*, at 31–38 (June 1988) ("Pany & Reckers"). Ezzamel in the U.K. observed a positive relationship between audit fees and non-audit fees. But the authors do not distinguish between competing explanations of the observed phenomenon. Pany & Reckers conducted an experimental study on U.S. loan officers. They did not find deterioration in the loan approval rate as consulting fees increased. But they did find limited evidence that providing MAS at a level of 90% of audit fees for a period of three years may present an independence perception problem among some financial analysts. They note that in 1988, levels of MAS fees as high as 90% of audit fees were uncommon. Arrunada states that after examining the effects of the provision of non-audit services on service cost, audit competition, service quality, and auditor independence, "[he] concludes that the provision of non-audit services reduces total costs,

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proposed sale of the consulting divisions of several large public accounting firms argues against significant knowledge spillovers. If efficient and effective audits require expertise most efficiently maintained through the provision of consulting services to audit clients, there is an incentive to retain consulting practices. Thus, the sale of these consulting practices would appear inconsistent with the existence of significant synergies that would be negatively affected by the rule.[598]

In the Proposing Release, we asked for comment and data on our estimates of the number of accounting firms affected by the rule and the costs imposed by the rule. We also sought comment and data specifically as to the existence and value of such synergies. We received many comments but no data. Instead, we estimate the potential costs associated with the possible loss of synergy as a percent of revenues lost from internal audit outsourcing.

We base our cost estimates on the total audit, accounting and tax revenues for fiscal 1999 for the Big Five public accounting firms.[599] This estimate is $14.9 billion. From this $14.9 billion, we estimate the total costs of the internal audit for Big Five audit clients based on the relationship between internal audit budgets and external audit fees for firms responding to the Manufacturers Alliance survey. On average, firms in this sample spent 1.7 times as much on the internal audit as they did on the external audit.[600] Therefore, we estimate the aggregate cost of internal audits for Big Five audit clients in 1999 to be $25.6 billion.

This estimate of aggregate internal audit costs is likely to overstate the true costs for two reasons. First, the aggregate revenues reported by PAR include tax and accounting services in addition to external audit fees. Second, data in the Manufacturers Alliance survey suggest that the ratio of internal to external audit fees is smaller for smaller companies.[601] In fact, for the smallest firms in their sample, external audit fees exceed the internal audit budget.

Additional information in the Manufacturers Alliance survey indicates that approximately two percent of respondents outsource more than fifty percent of their internal audit.[602] Further, analysis described earlier indicated that on average, companies with assets greater than $200 million could still purchase as much as sixty-one percent of their entire internal audit budget from their external auditor. Together, these estimates imply that at most, the restrictions will reduce internal audit outsourcing fees to the auditor by 0.8%, or $207.7 million. Finally, we apply a growth rate of twenty-one percent to these revenues to arrive at a year 2000 estimate of $251.3 million.[603]

Professor Rick Antle testified to the effect that there is little reliable evidence as to the size of potential synergies from purchasing consulting services from the audit firm, but he has provided an estimate.[604] We agree with Professor Antle's assessment of the difficulties inherent in measuring these effects. In his testimony, Professor Antle estimated that lost synergies could be on the order of ten percent of twice the gross profits before partner compensation and taxes of the consulting practice. Further, he estimates the gross profit margin to be 0.20.[605] We acknowledge that there is little empirical evidence to support this estimate, but it represents the larger of the two estimates presented by the two representatives of the accounting firms.[606] Applying those percentages to our estimate of revenues restricted by the rule results in an annual estimate of lost synergies of $10.1 million for audit clients who will be forced to reduce internal audit outsourcing services from their auditors.

In addition, the rule may impose certain transition costs to be borne by companies that currently have long-term consulting engagements with their auditors for proscribed services. A significant number of consulting engagements are short-term projects.[607]

increases technical competence, and motivates more intense competition. Furthermore, it does not necessarily damage either auditor independence or the quality of non-audit services."

[598] *See* Testimony of Philip A. Laskawy, Chairman, Ernst & Young LLP (Sept. 20, 2000). Mr. Laskawy commented on this matter as it relates to information systems consulting: We recently sold our practice in this area. We did so for a variety of reasons, but one reason certainly was that although we did not believe independence was actually impaired by this service, we could understand that particularly with large fees that sometimes are involved an appearance problem could be present. I might note that now that we have sold this practice we have not discovered that we are somehow enfeebled, unable to perform effective audits or to maintain top-notch audit and tax practices. In fact, we have found more the opposite to be true. Without a large consulting practice to manage we are now more targeted and more focused on our core audit and tax business, and our audit and tax partners feel as though they, and not the management consultants, are in the drivers seat at the firm. Moreover, from our clients' perspective, there actually may be an advantage in not having such a practice. We have had a greater string of wins in obtaining new audit clients since we sold our management consulting practice than we had at any time in recent history, four new Fortune 500 clients, including two Fortune 50 companies, just within the last six months.

See also Testimony of James J. Schiro, Chief Executive Officer, PricewaterhouseCoopers, before the Panel on Audit Effectiveness (July 10, 2000) ("[Our] restructuring will allow us to rededicate ourselves to our core principles."); Testimony of J. Terry Strange, Global Managing Partner, Audit, KPMG LLP, (July 26, 2000) ("In our view, the restructurings that are underway are driven by market forces, not regulatory considerations."); Testimony of Thomas Goodkind, CPA (Sept. 13, 2000) (responding to a question about his experiences relating to synergies and knowledge transfers between audit and non-audit staff, Goodkind replied, "In my experience, a transference of knowledge, I've rarely seen that in my experience."); Testimony of Douglas R. Carmichael (July 26, 2000) ("The counter argument that consulting improves audit quality is also unproven and does not provide a basis for eliminating the proposed restrictions."); Testimony of Douglas Scrivner, General Counsel, Andersen Consulting (Sept. 20, 2000) ("It is important to note that audit firms do not provide consulting services to improve the quality of the audits, but rather for commercial considerations.").

[599] *See Public Accounting Report: Annual Survey of National Accounting Firms* (2000) ("PAR").

[600] See Manufacturers Alliance, *Survey of General Audit* (2000). We use data from table 13 and table 66 to derive this ratio.

[601] *Id.* at table 16.

[602] *Id.* at table 73.

[603] Data are derived from PAR. The average growth rate in non-audit service revenues in 1999 was 21% and 9% for auditing and accounting services. Because there is uncertainty about whether individual firms classify internal audit outsourcing as consulting or assurance services, we choose the larger growth rate. In the current economy this may represent an optimistic growth rate.

[604] *See* Testimony of Professor Rick Antle, Yale University (July 26, 2000) ("I'll tell you now that as far as I know there's no systematic evidence as to the magnitude of these economies, just none that I know of."). *See also* Letter of Professor Rick Antle, Yale University (Sept. 25, 2000). Professor Antle provides analysis to estimate the aggregate cost of lost synergies. He estimates the value of the non-audit services as "the additional value of having the consulting done by the audit firm." He further estimates this value at $700 million, the gross margin attributable to all non-audit services provided to SEC audit clients in 1999. This number likely over-estimates the gross profits for these services in the future for two reasons: First, it includes revenues for non-audit services for the Big Five firms, two or three of which have sold or are committed to selling most of these practices. Second, the rule does not prohibit the purchase of all non-audit services by audit clients. In addition, Professor Antle estimates the aggregate social benefit of non-audit services purchased from any provider. Because the rule does not prohibit the purchase of any of these services, this estimate is not relevant to the cost-benefit analysis.

[605] Professor Antle's assumption about the value of synergies to the gross profit before partner compensation implies that the value of these synergies is on the order of 4% of non-audit revenues from SEC clients.

[606] *See also* Testimony of Charles Cox, Kenneth R. Cone and Gustavo E. Bamberger, Lexecon, Inc. (Sept. 25, 2000). These commenters also estimate the aggregate cost of lost synergies on the order of 1%–2% of non-audit revenues from SEC clients.

[607] *See* Testimony of Stephen G. Butler, Chairman and Chief Executive Officer, KPMG (Sept. 21, 2000). In response to a Commissioner's question about the source of non-audit service revenues, Mr. Butler commented that any statement attributing a percent of non-audit services to SEC audit clients for his firm would be difficult to interpret. Butler stated that "it is difficult to look at that sort of statistic because that's not a constant 20% that buys that

The rule allows for a transition period of eighteen months for certain non-audit services. Over this period, audit firms may continue to contract with their audit clients for the newly covered non-audit services. The firms entering into new contracts, however, will either plan to complete those services by the end of the transition period or to assign or sell those contracts to someone else before the end of the period because at the end of this period, audit firms may no longer provide the newly proscribed services to their audit clients.

In this analysis, we recognize that some companies may face transition costs associated with changing the provider of non-audit services. But, for the reasons discussed above, we believe those costs will be small in the aggregate. Thus, any company whose current contract expires during the transition period faces the same costs as any new purchaser of the services. Those contracting costs are captured above in our analysis of synergies.

By extension, only companies with contracts for the proscribed services extending beyond the transition period will be faced with any re-contracting costs imposed by the rule. We note that those re-contracting costs may be borne by the company itself or by the auditor in its attempt to sell the contract to another provider. We received no information concerning these costs from commenters. Nevertheless, we have included $1.3 million in the cost estimate.[608]

Commenters also suggested that the rule would generate a cost associated with lost effectiveness on the audit and a cost associated with recruiting and retention of staff professionals.[609] We have seen no evidence that the rule will lead to less effective audits. Our cost estimates associated with lost synergies and scope include efficiency costs, if any, associated with an increase in cost to accomplish an effective audit. The sale by certain of the Big Five firms of their consulting practices further undermines the argument that the loss of non-audit business will impair audit effectiveness.

We also are skeptical about comments that suggest that the prohibition of certain services will make the profession less attractive to potential employees,[610] and increase staff recruiting and retention costs. Some argue that less qualified individuals will have to be hired to meet personnel needs and that this will ultimately lead to less effective audits, with a resulting impact on auditing firms, issuers and investors.[611] We do not believe that the issues of retention and recruitment are caused by this rule.[612] These problems are not new and are more systemic. Several commenters have noted that starting salaries for recent accounting graduates have failed to keep pace with other fields such as information systems, financial and treasury analysis and consulting.[613] Other commenters have stated that accounting firms have de-emphasized the audit function, treating it more like a commodity.[614] In addition, despite increases in university enrollments, interest in technical fields such as accounting, engineering, computer sciences and mathematics have been declining.[615]

C. Costs and Benefits of the Disclosure Requirements

The final rules require public companies to disclose in their proxy statements audit fees, fees for permitted information systems consulting and other fees paid to the auditor. The rule also requires public companies to disclose, when applicable, that personnel who are full- or part-time employees of an entity other than the audit firm performed more than fifty percent of the audit. In addition, the audit committee or the board of directors must state whether it has considered whether the provision of non-audit services by the auditor is compatible with maintaining auditor independence.

Many commenters argued that the provision of information systems consulting in and of itself does not impair auditors' independence.[616] This may be true where the conditions described in the rule are met. Even when these conditions are met, when the information systems consulting fees become large relative to audit fees, auditor independence may be at risk. At the same time, we understand that the level where impairment may occur may be related to other factors such as the closeness of the auditor-client relationship or the nature of the client's business and industry. Therefore, we believe that investors and audit committees are well-suited to determine when provision of these services may cause impairment.

The disclosure of fees from the provision of information systems and

service from us. It might be 20% of the number of our clients this year, it might be the same percentage next year, but it might be a totally different 20 percent."; Testimony of Robert K. Elliott, Chairman, AICPA (Sept. 21, 2000) ("[auditing is) . . . not an annuity, [but] it is more like an annuity than a consulting engagement which, when it's over, it's over.").

[608] We assume that these costs may represent as much as 5% of the revenues from proscribed services purchased by each affected company. If as many as 10% of the purchasers of proscribed internal audit services from their auditor have contracts in excess of eighteen months and the entire $251.3 million represents revenues from proscribed services, the aggregate transition costs would be $1.3 million. Some may argue that transition costs are substantially higher, but we note that if transition costs are sufficiently high, economic theory suggests the service providers would be, on average, charging higher fees for the same level of service to the detriment of their clients. *See, e.g.*, T. Nilssen, "Two Kinds of Consumer Switching Costs," 23 *Rand J. of Econ.*, at 579–589 (Winter 1992).

[609] *See, e.g.*, Arthur Andersen Letter; Deloitte & Touche Letter.

[610] *See, e.g.*, Letter of W. Steve Albrecht, Professor and Associate Dean, Marriott School of Management, Brigham Young University (Aug. 25, 2000); Letter of Professor James Jiambalvo, University of Washington (Sept. 14, 2000); Written Testimony of Professor Peter Cappelli, Wharton School (Sept. 20, 2000).

[611] *See, e.g.*, Testimony of Joseph F. Berardino, Managing Partner, Assurance and Business Advisory Services, Arthur Andersen (July 26, 2000); Written Testimony of Stephen G. Butler, Chairman and Chief Executive Officer, KPMG (Sept. 13, 2000).

[612] *See* Testimony of J. Michael Cook, former Chairman and Chief Executive Officer, Deloitte & Touche (July 26, 2000) ("A final assertion that quality will ultimately decline because the 'new audit profession' will be unattractive to the best and brightest people. I cannot evaluate that possibility but would observe that the audit-dominated firms of the future that today's leaders express concerns about are in many respects comparable to the firms that attracted them (and me) to the profession twenty or more years ago. Certainly much has changed in that time period, but I would expect the right leaders to be able to make such firms attractive once again.").

[613] *See* Salary Survey Fall 2000, National Association of Colleges and Employers, 2000. Recent starting salaries for accounting graduates are 23% lower than those for information systems, 24% for consulting and 9% for financial and treasury analysis; *See also* Testimony of Robert K. Elliot, Chairman, AICPA (Sept. 21, 2000); Testimony of Barry Melancon, President and Chief Executive Officer, AICPA (Sept. 21, 2000).

[614] *See, e.g.*, Testimony of Douglas Scrivner, General Counsel, Andersen Consulting (Sept. 20, 2000) ("It is more likely that recruitment has been jeopardized by the actions of the accounting firms themselves. Some of the firms have diverted investment and resources out of the audit function and into non-audit services, thereby reducing the attractiveness of the audit function as a career path. They have created the very environment in which accounting majors look elsewhere and audit staff move over to the consulting side as quickly as they can."); *See also* O'Malley Panel Report, *supra* note 20, at ¶ 4.4 ("Focus group participants often indicated that not only clients, but also engagement partners and firm leaders, treat the audit negatively as a commodity."). *See generally* the Taylor Research and Consulting Group, Inc., *Final Quantitative Report* (2000); Albrecht and R. Sack, *Accounting Education: Charting the Course through a Perilous Future*, at 23 (August 2000). AICPA statistics presented to the O'Malley Panel indicate that from 1992 to 1997 the number of students obtaining bachelor degrees declined by 14%, those obtaining finance degrees declined by 17%, those obtaining general business degrees declined by 8%, and those obtaining marketing degrees declined by 27%.

[615] *See* Digest of Educational Statistics, 1999.

[616] *See, e.g.*, Written Testimony of Mauricio Kohn, CFA, CMA, CFM, AIMR (Sept. 20, 2000) (submitting survey); Letter of Mary Ellen Oliverio and Bernard Newman, Lubin School of Business, Pace University (Sept. 23, 2000).

other non-audit services provided by a company's auditor is intended to assist investors in deciding whether these services affect the independence of the auditor. Similar disclosures have been provided in the United Kingdom for several years.[617] The disclosure regarding the use of leased personnel to perform an audit is intended to allow investors to know when personnel of an entity other than the audit firm performed a majority of the audit so that investors can consider the independence of the other entity. Under such circumstances, the independence of the other entity and its personnel may be as relevant "if not more relevant" to auditor independence than the independence of the auditor itself. As discussed above, some commenters believe disclosure alone would not be sufficient to alleviate an impairment of auditor independence.

1. Benefits

While the SECPS collects information on non-audit and audit fees from its member firms, it no longer publishes this information. Accordingly, such information is not readily available or easily accessible to the investing public. Further, this information provides a description of types of services provided by the public accounting firm for all of its clients, rather than for each audit client. The rule would provide aggregate fee information for each registrant to the market.[618]

The disclosure related to non-audit services fees received by auditors would give investors insight into the relationship between a company and its auditor. In so doing, the disclosure will reduce uncertainty about the scope of such relationships by providing facts about the magnitude of non-audit service fees. This information may help shareholders decide, among other things, how to vote their proxies in selecting or ratifying management's selection of an auditor.

The disclosure regarding the auditor's use of another entity's employees to perform a majority of the audit work also provides important information to investors. Investors need to know when a majority of the audit work is performed by persons who have financial, business, and personal interests in addition to, or different from, persons employed by the auditor. This disclosure is significant because it reveals when the "principal auditor" (the auditor performing a majority of the audit work) is an entity other than the firm signing the audit opinion.

We believe that investors benefit jointly from the prohibition of certain services and the disclosure discussed above. Investors benefit under the rule from the knowledge that the accounting firms are not providing certain services that impair their independence. They will also be able to assess the relevance of aggregate compensation to the auditor for non-audit services. To the extent that confidence arises from both the prohibition and the disclosure aspects of the rule, our estimate of annual benefits on the order of one half to two billion dollars includes both elements of the rule.

2. Costs

We believe that the disclosure rule will impose relatively minor reporting costs on issuers. Generally, information about auditor fees is readily available to registrants. ISB Standard No. 1 requires auditors to report on certain independence issues to the audit committees of their SEC audit.[619] In addition, the SECPS requires members to report annually to the audit committee, or similar body, the total fees received from the company for management advisory services during the year under audit and a description of the types of such services rendered.[620] Companies also must report the billings from their auditors as expenses and import this billing information into their systems. As a result, companies should have ready access to the information on fees paid to their auditor for non-audit services.

Disclosure of audit and non-audit fees will impose a reporting burden on all issuers subject to the proxy disclosure rules. For the purpose of the Paperwork Reduction Act, we estimated the aggregate reporting cost of $272,620 to complete the appropriate paperwork.[621] Commenters suggested that this estimate is unreasonably low.[622] Some commenters suggested that registrants would spend more time making the required disclosures. We do not agree; the disclosures can be made using information that registrants will have on hand. We also note that the scope of the required disclosure has been significantly reduced from the proposal, limiting it to only aggregate audit, IT, and other non-audit fees. For the purpose of providing an aggregate cost estimate, we consider a range of $272,620 and $1.09 million, but use only the top of this range for the total. The rule will not impose significant burdens related to storing, analyzing and compiling data, or to training employees. Moreover, even if registrants spend more time in making the required disclosure, the marginal increase in cost will not be significant relative to the overall costs discussed in this section. Even assuming the burden is four times as great to make the disclosure, the annual cost of complying with the disclosure portion of the rule would be $1.09 million.

D. Estimated Aggregate Costs and Benefits

The elements of the total quantified cost of the rule are lost synergies for those currently purchasing proscribed services; transition costs for those currently purchasing both audit and proscribed consulting services; professional training to learn the new rules regarding employment, investment, and independence; and disclosure costs. Using assumptions and methods that tend to overstate costs, we estimate the aggregate cost to the U.S. economy to be approximately $16.6 million for the first year and $12.4 million for subsequent years.[623]

Finally, we have quantified one primary benefit of the rule as increased investor confidence that may lead to a reduction in the required rate of return. In summary the rule benefits (i) auditors and members of their families as a result of changes in restrictions on investment and employment relationships; (ii) family members of auditors as a result of changes in the restrictions on employment relationships; (iii) issuers by eliminating certain uncertainties about their auditor's independence, by increasing investor confidence and thus facilitating issuers in raising capital, and by increasing the utility of annual audits and quarterly reviews; (iv) public accounting firms by clarifying the independence rules; (v) investors who will benefit from increased confidence in the reported financial statements; and (vi) all of the market participants through more efficient contracting, improved operating and investing decisions, and greater market stability.

Even if the rule leads to only a very small change in that rate of return, the annual benefit could be in the range of one half to two billion dollars. Benefits may also accrue to the economy in the form of more efficient contracting, improvements in operating and investing decisions by management and greater market stability. Finally, relaxation of the investment and employment constraints on auditing professionals and their families may also lead to more efficient investments by these persons.

VI. Final Regulatory Flexibility Analysis

We have prepared this Final Regulatory Flexibility Act Analysis in accordance with the Regulatory Flexibility Act ("RFA").[624] This analysis relates to amendments to Rule 2–01 of Regulation S–X and to Item 9 of Schedule 14A[625] under the Exchange Act. The amendments modernize our auditor independence requirements.

The rules as adopted will not have a significant impact on a substantial number of small entities. The vast majority of public companies required under the federal securities laws to submit reports prepared by an independent accountant to the Commission are not "small" for purposes of the RFA. Moreover, as to the impact on small accounting firms, the Big Five accounting firms, which are not small entities, provide auditing services for the vast majority of public companies. The major effects of these rules, therefore, will not be on small entities. Nevertheless, we are mindful of the possible effect of our rules on small entities, and we have made certain modifications, noted below, that should reduce significantly the impact of the new rules on small entities.

A. Reasons for and Objectives of the Rule Amendments

As discussed above, the federal securities laws require registrants to file financial statements that have been audited, and reports that have been prepared, by "independent" accountants.[626] Our auditor independence requirements are found in Rule 2–01 and interpretations, which have been supplemented by staff letters, staff reports, and ethics rulings by the accounting profession. Many of the interpretations are reprinted in Section 600 of the Codification. We have not amended the fact-specific examples in the Codification since 1983. As discussed more fully above, since that time, there has been a dramatic transformation of the accounting industry. Increasingly, accounting firms are becoming multi-disciplinary service organizations and are entering into novel and complex business relationships with their audit clients. At the same time, individual accounting professionals have become more mobile, while the geographic location of personnel has become less important due to advances in telecommunications and the Internet. In addition, an increasing number of American families have two wage earners.

To protect the reliability and integrity of the financial statements of public companies and to promote investor confidence, we must ensure that our auditor independence requirements remain relevant, effective, and fair in light of the new business environment. Consequently, the rule amendments provide a general standard for determining auditor independence and identify relationships that render an accountant not independent of an audit client under the standard in Rule 2–01(b). The relationships addressed include, among others, financial and employment relationships, business relationships, and relationships where auditors provide certain non-audit services to their audit clients. We also are requiring certain public companies to disclose in their annual proxy statements information about, among other things, non-audit services provided by their auditors.

Financial and Employment Relationships. Under former requirements, an auditor's independence was impaired if any partner in the firm, any manager in an office participating in a significant portion of the audit, or certain of their relatives, had a financial interest in, or certain employment relationships with, an audit client. As explained above, these requirements may have unnecessarily restricted employment and investment opportunities for auditors and members of their families.

The amended rule targets application of these particular auditor independence rules to those who can actually influence the audit of a client. The amended rule allows audit firm partners, other professionals, and their families, more freedom in their investments and employment decisions and will allow them to take greater advantage of future opportunities in these areas. The amended rule shrinks significantly the circle of family members and former accounting firm personnel whose employment impairs an auditor's independence; the amended rule similarly reduces significantly the pool of firm personnel whose investments are imputed to the auditor. We believe that the amended rule will maximize the opportunities available to auditors while promoting the public interest and protecting investor confidence.

Non-Audit Services. We, along with certain users of financial statements,

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[617] *See* Lexecon Letter; Letter of Brand Finance PLC (June 13, 2000).

[618] The Commission imposed a similar disclosure requirement when it issued ASR 250. As noted above, ASR 250 was withdrawn three years later. The rule prompted some academic research at the time. Three studies from the period and a current study are of particular interest: J. H. Scheiner and J.E. Kiger, "An Empirical Investigation of Auditor Involvement in Non-Audit Services," 20 *J. of Acct. Res.*, at 482–496 (Autumn 1982) ("Scheiner & Kiger); J. H. Scheiner," "An Empirical Assessment of the Impact of SEC Nonaudit Service Disclosure Requirements on Independent Auditors and Their Clients," 22 *J. of Acct. Res.*, at 789–797 (Autumn, 1984) ("Scheiner"); G.W. Glezen and J.A. Millar, "An Empirical Investigation of Stockholder Reaction to Disclosures Required by ASR No. 250," 23 *J. of Acct. Res.*, at 859–870 (Autumn 1985); M. Ezzamel, D.R. Gwilliam and K. M. Holland, "Some Empirical Evidence from Publicly Quoted UK Companies on the Relationship Between the Pricing of Audit and Non-audit Services," 27 *Acct. and Bus. Res.*, at 3–16 (1996) ("Ezzamel").

Scheiner and Glezen studied the impact of ASR 250 disclosure requirements on the provision of audit and non-audit services and concluded that the major accounting firms did not significantly reduce the amounts of services offered. Glezen compared stockholder approval of auditors before and after the issuance of ASR 250 and found no significant decline in the approval ratios across the three periods. These authors generally conclude that either independence is not important to stockholders, a conclusion they consider unlikely, or the level of non-audit services did not reach the level at which independence was perceived to be threatened. Scheiner allows that the firms in his study were not providing clients many of the services that fell within the disclosure rule. Scheiner and Kiger find evidence that the non-audit services provided to audit clients at that time generally "consisted of traditional accounting services—primarily tax services. Less traditional services which are often questioned by critics of the accounting profession comprise only a small part of total non-audit services." They further state that at that time, "[t]he prohibition of non-accounting, non-audit services would not appear to have a substantial impact on firms because these services do not represent a large percentage of total revenues."

As we discussed in Section III.B., the level of non-audit services in general and non-audit services for audit clients in particular have increased substantially in recent years. Ezzamel found in the U.K. that substantial income was produced by non-audit services and that "the extent of voluntary disclosure of the breakdown on non-audit services was limited and the existing disclosure requirement allowed considerably variety in the manner in which non-audit services incurred or paid abroad were disclosed."

[619] ISB Standard No. 1, *supra* note 167. In addition, SAS No. 61 provides additional guidance on topics that an auditor should discuss with the audit committee (or board of directors if there is no such committee) of each registrant. AICPA SAS No. 61, AU § 380.

[620] SECPS Manual § 1000.08(i).

[621] In our Paperwork Reduction Act analysis in the Proposing Release, we estimate that approximately 9,892 respondents file proxy statements under Schedule 14A and approximately 253 respondents file information statements under Schedule 14C. We based the number of entities that would complete and file each of the forms on the actual number of filers during the 1998 fiscal year.

[622] See Deloitte & Touche Letter. Deloitte & Touche provided an estimate of 3–6 hours per filing for a small firm and 50–100 hours for a large firm, but provided no data to support this estimate.

[623] The ongoing figure is not adjusted for inflation or growth in consulting revenues beyond 2000. However, we note that there is a slowdown in the growth of these services. See, e.g., PAR, End of a Run: National Firms' Growth Rate Slowed In FY 99 (Mar. 31, 2000).

We note that the transition costs of $1.3 million may be incurred at any time over the eighteen-month transition period. We include this estimate in the first year only for ease of presentation.

[624] 5 U.S.C. 603.

[625] 17 CFR 240.14a–101.

[626] *See supra* note 8.

have become increasingly concerned about the effects on independence when auditors provide both audit and non-audit services to their audit clients. These concerns have been exacerbated in recent years by changes in the types of non-audit services that accounting firms provide as well as by dramatic increases in the fees, in both absolute and relative terms, for those non-audit services. As we discuss more fully above, the rapid growth of non-audit services has increased the economic incentives for the auditor to preserve a relationship with the audit client, thereby increasing the risk that the auditor will be less vigilant in its objectivity. Additionally, aggregate economic incentives aside, certain types of non-audit services by their very nature can create conflicts incompatible with objectivity. At the same time that more and more individual investors are participating in our capital markets, either directly or through mutual funds, pension plans, and retirement plans, we have seen growing public concern about the increasing importance of non-audit services to accounting firms. The amended rule identifies certain non-audit services that, if performed by an auditor for an SEC audit client, would render the accountant not independent.

Disclosure. As discussed, the types of non-audit services provided by auditors to audit clients have changed, and the fees paid for those services have increased. We are adopting a proxy statement disclosure requirement focused on the fee relationship between registrants and their auditors. Independent studies and the comments we received have shown that concerns are likely to be raised about auditor independence when the consulting fees paid by a registrant are significant when compared to the audit fees. Accordingly, the disclosure we are mandating addresses this area and will be useful to investors in evaluating auditors' independence. The amendments require registrants to disclose in their proxy statements their audit fees, fees for financial information systems design and implementation, and the fees for other non-audit services rendered by the principal accountant to the company. In addition, we are requiring companies to disclose whether their audit committees have considered whether the provision of financial information systems design and implementation services and other non-audit services provided by the company's principal accountant is compatible with maintaining the principal accountant's independence. Investors accordingly will have access to this information when making investment and voting decisions.

B. Significant Issues Raised by Public Comment

The proposals generated significant comment and broad debate. As we discussed in detail above, the final rule amendments, particularly those related to non-audit services, have been modified from the proposals in response to comment letters, written and oral testimony from four days of public hearings, academic studies, surveys, and other professional literature.

At the time we published the Proposing Release, we also prepared an Initial Regulatory Flexibility Analysis (IRFA), a summary of which was published in the Proposing Release. We requested comment on the IRFA, and we received several comments in response. Separately, many commenters representing small accounting firms expressed strong support for the proposal,[627] and other commenters representing small businesses expressed concerns about the proposal.

With respect to procedural issues related to the IRFA, one commenter questioned our procedure, arguing that we should have requested information on the number of small entities affected some time earlier and that neither the Proposing Release nor the IRFA indicates that the Small Business Administration ("SBA") reviewed or commented on the IRFA.[628] At the time that we prepared the Proposing Release, we prepared the IRFA in accordance with the RFA and made it available to the public as required by Section 603 of the RFA. We submitted the IRFA to the SBA, and the SBA had no comments on the IRFA. The same commenter questioned whether the agency assured that small entities had an opportunity to participate in the rulemaking. In addition to soliciting extensive comments in the Proposing Release and holding four days of hearings at which representatives of small accounting firms testified, we published a summary of the IRFA in the **Federal Register**, and many small firms commented on the proposed amendments.

C. Small Entities Subject to the Rule

For purposes of analyzing the impact on small public companies, the Commission has defined "small business" in Rule 157 under the Securities Act.[629] Rule 157 provides that "small business" means any entity whose total assets on the last day of its most recent fiscal year were five million dollars or less and is engaged, or proposes to engage, in small business financing. A registrant is considered to be engaged, or to propose to engage, in small business financing under this rule if it is conducting, or proposes to conduct, an offering of securities which does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act.[630] We estimated in the IRFA that there are approximately 2,500 Exchange Act reporting companies that are small businesses.

The Commission also has defined small business for purposes of an investment company in Rule 0–10 of the Investment Company Act.[631] This definition provides that an investment company is a "small business" if it has net assets of $50 million or less as of the end of its most recent fiscal year. In the IRFA, we estimated that approximately 227 investment companies are small businesses.

Our rules do not define "small business" or "small organization" with regard to accounting firms. The SBA, however, has defined a small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[632] In the IRFA, we explained that we have limited data indicating revenues for accounting firms, and that we cannot estimate the number of firms with less than $6 million in revenues. We requested comment on the number of accounting firms with revenues under $6 million in order to determine the number of small accounting firms potentially affected by the rule amendments but received no response. We also requested comment generally on the number of small entities that may be affected by the rule amendments and received no estimates. One commenter believed that we had not identified the full range of types of and number of small entities affected or the types of impacts, but the commenter provided no further information.[633]

Several small accounting firms and small companies expressed concern about a possible derivative effect of our rule on companies that are not registered with us and on the auditors of such companies.[634] These commenters were concerned that state governments, state boards of accountancy, and others may adopt rules similar to ours without regard to whether the companies are public or private. As we explained above, the rules apply to public companies and other entities registered with the Commission or otherwise required to file audited financial statements with the Commission. In addition, the rules are not intended to alter the relationship between federal and state agencies, and they do not affect the ability of the states to adopt their own rules. Moreover, commenters pointed out that state boards have a strong independent tradition.[635] We expect that the state boards of accountancy will continue their practice of exercising independent judgment in determining the extent to which our rules should be imported into their regulatory regimes.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The new rules could potentially affect two primary groups—registrants and auditors. The rules could affect these two groups differently, but in neither case do we expect that the rules would result in significant reporting, recordkeeping or other compliance requirements. The possible effects of the rules on these two groups are as follows:

Investments and Family Relationships. The rule amendments regarding investments and employment relationships liberalize restrictions on investments by, and employment available to, accountants and their families without impairing the accountant's independence. We stated in the IRFA that in this sense, therefore, we are relaxing compliance requirements. One commenter noted that although we correctly state that we are relaxing certain requirements, the proposed threshold regarding a material indirect investment and the proposed definition of affiliate of the accounting firm would restrict the ability of small businesses to invest in, or enter business relationships with, other firms.[636]

We recognize these concerns, and we have revised the rules, in part, to take them into account. As described above, the rule governing a material indirect investment in an audit client is intended to carry over the existing proscription on material indirect investments in audit clients. In addition, in part because of concerns that the definition of "affiliate of the accounting firm" would have unintended consequences on alliances of small accounting firms, we have modified our approach to avoid this result.

Non-Audit Services. The IRFA discussed whether the proposed rule on non-audit services would have a significant effect on small entities. Some commenters expressed concern about the effects of the rules on small registrants that rely on the special expertise of their auditors or that lack resources to engage a second accounting firm to provide non-audit services.[637] Other commenters stated that small businesses have long-term relationships with auditors that provide non-audit services, or are located in an area with few firms able to provide such services.[638] Some small businesses in rural areas may lack the ability to perform the internal audit function on their own.[639]

We are sensitive to these concerns and we have modified the rule so that eight of the non-audit service provisions parallel or draw from current independence requirements regarding those services. We also determined not to adopt a restriction on "expert services. Accordingly, with respect to the eight non-audit services, therefore, we do not believe that the rules would have a significant effect on small businesses.

We have amended our rule regarding financial information systems design and implementation. The rule proposal would have prevented audit firms from providing some information technology consulting to their audit clients without impairing the firm's independence. The final rule singles out certain services as impairing independence and identifies other categories of such services that will not impair independence if certain conditions are met that are designed to ensure that the audit client's management retains responsibility for decision-making authority over the client's financial information systems. Accordingly, if the conditions are met, a small entity could obtain financial information systems design and implementation services.

With regard to internal audit services, we have revised the rule from what we proposed so that the internal audit restrictions do not apply to registrants with less than $200 million in assets, as long as the registrant follows certain conditions. This, of course, largely eliminates the effect of the rule amendments on small entities with respect to the auditor's provision of internal audit services to small entities. This change from the proposed rule would lower the burden on smaller businesses that are not defined as small under our rules. It also has the effect of almost completely excepting smaller accounting firms from the coverage of this provision of the rule, since the firms that audit those companies tend to be smaller. Our analysis indicates that approximately fifty-four percent of registrants have assets of less than $200 million, which, of course, would exclude all companies defined as "small businesses" for purposes of the RFA.

The IRFA also stated that we did not believe that the non-audit services provision would have a significant impact on a substantial number of small accounting firms and requested comment on the impact. Some commenters stated that the rules could harm firms that must offer both audit and non-audit services to stay in business,[640] and one commenter recommended that firms with $1 million or less in revenue be exempt.[641]

Other commenters supported the rule amendments relating to non-audit services. Some noted that rather than harming small accountants, the rules could provide smaller firms with new business opportunities to provide non-audit services to companies that previously used their auditors for these services.[642]

Although we lacked definitive data, the IRFA provided information on accounting firms that were likely to be small accounting firms, and the number of SEC clients of those firms. The majority of SEC registrants are audited by one of the Big Five firms, which are not small entities. We have data regarding the approximately 776 accounting firms with fewer than 20 SEC audit clients.[643] Accounting firms with fewer than 20 SEC audit clients tend to be smaller accounting firms, and we estimate that fewer than twenty percent of these firms provide any consulting or non-audit services to their SEC audit clients. Only ten to twelve percent of the accounting firms with two or fewer SEC audit clients provide

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[627] *See supra* notes 215, 216.

[628] Letter of Jim J. Tozzi, Member, Board of Advisors, Center for Regulatory Effectiveness (Aug. 30, 2000) ("Tozzi Letter").

[629] 17 CFR 230.157.

[630] 15 U.S.C. § 77c(b).

[631] 17 CFR 270.0–10.

[632] 13 CFR 121.201.

[633] Tozzi Letter.

[634] *See supra* notes 218, 219.

[635] *See supra* note 221.

[636] *See, e.g.*, AICPA Letter.

[637] *Id.; see also* Letter of David E. Pertl, Senior Vice President and CFO, First Choice, Inc. (Sept. 18, 2000); Letter of Kelly Schwarzbeck, CPA, Alexander X. Kuhn & Co. (Aug. 22, 2000); Letter of Robert L. Bunting (Aug. 22, 2000).

[638] *See, e.g.*, Letter of the California Chamber of Commerce (Sept. 15, 2000); Letter of Joseph C. King, CPA, Faulkner & King, PSC (Sept. 13, 2000).

[639] *See, e.g.*, Letter of Landon J. Brazier, Knight Vale & Gregory (Aug. 31, 2000); Letter of Stephen Lange Ranzini, Chairman, CEO and President, University Bank (Sept. 9, 2000).

[640] *See, e.g.*, Letter of Dean R. Heintz, CPA, Casey Peterson & Assoc., Ltd. (Aug. 8, 2000); Letter of Patrick J. Day, CPA (Aug. 10, 2000).

[641] Letter of Patrick J. Day, CPA (Aug. 10, 2000).

[642] *See* Testimony of Larry Gelfond, CPA, CVA, CFE, former President of the Colorado State Board of Accountancy (Sept. 13, 2000); Letter of John Mitchell, CPA (Aug. 14, 2000).

[643] *See* Public Accounting Report, Special Supplement: Annual Survey of National Accounting Firms—2000 (March 31, 2000); Annual Reports to SECPS, Annual reports filed with AICPA Division for CPA firms; SECPS Reports, Reports prepared by the AICPA Division for CPA firms.

any consulting or non-audit services to their SEC audit clients. We also estimated that the fees of the firms with 20 or fewer SEC audit clients that come from consulting and non-audit services provided to SEC audit clients average less than 7.5% of the firms' total fees for non-audit services, and less than one percent of their total fees. We estimated that small accounting firms obtain non-audit or consulting fees, on average, from less than one SEC audit client.

In addition, the change from the proposed rule discussed above—eliminating restrictions on internal audit services for registrants with less than $200 million in assets—would lower the burden on smaller accounting firms. We estimate that approximately eighty-five percent of the clients of non-Big Five firms have assets of less than $200 million.[644] Thus, as long as certain conditions are met, the rule amendments regarding internal audit services would not apply to eighty-five percent of audit clients of all but the Big Five firms.

While we understand that some small businesses may incur some costs as a result of the rule amendments, we believe that few small businesses will be affected, and that any effects will be minimal. The changes we have made in the rules as adopted should ameliorate any burden on small firms significantly. Moreover, while some small businesses may be required to engage a new firm to perform certain functions, there is no comparatively greater effect on small firms with respect to costs incurred to choose a new accounting firm. Such costs apply equally to larger registrants as to smaller registrants.

Quality Controls. The new rules establish a limited exception pursuant to which inadvertent violations of the rules by covered persons in the accounting firm will not render the firm not independent if the accounting firm maintains certain quality controls and satisfies other conditions. SECPS membership requirements and GAAS already require firms to have quality controls over their audit practices, so there should be little additional burden on accounting firms that want to take advantage of the exception.

Disclosure. The new proxy disclosure rules require all companies subject to our proxy rules to disclose information to shareholders regarding fees for audit services, fees for services related to financial information systems design and implementation, and fees for all other non-audit services. Companies also must disclose if the audit committee considered whether the provision of non-audit services by the company's principal accountant is compatible with maintaining the principal accountant's independence. These requirements would apply to small businesses that are subject to the proxy rules, which we estimate to be no more than most of the 2,500 small registrants that file periodic reports, and 227 investment companies.

The rules as proposed required, among other things, a description of each professional service provided by the principal accountant, disclosure of the fee for each, and disclosure of whether the audit committee approved the service. We have modified the disclosure requirement to eliminate the requirements that companies describe each non-audit service provided by their auditors and the fee for each such service. We believe that by making these changes, we have accommodated commenters' concerns while ensuring that investors have the information they need to make judgments about whether the registrant has an independent auditor. In addition, the information required should be readily available to the registrant because of the requirements under ISB Standard No. 1 and the rules of SECPS.[645]

E. Agency Action to Minimize Effect on Small Entities

The RFA directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. We considered several alternatives, including the following referenced in the RFA: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (ii) the clarification, consolidation or simplification of compliance and reporting requirements for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the new rules, or parts of the new rules, for small entities.

We considered each of the four alternatives, and a variety of alternatives to our provisions on non-audit services. With respect to the first alternative—establishment of differing compliance or reporting requirements—we stated in the IRFA that, with respect to investments and employment relationships, we believe that the impact of the rules in this area on small entities was already minimal. We did not believe, therefore, that establishing differing requirements would materially decrease the impact of the rules on small businesses, and we did not make special provisions. The IRFA discussed establishing differing standards in the area of non-audit services, and further discussed the three other alternatives contained in the RFA, mentioned above.

Regarding the provision of non-audit and consulting services by small accounting firms, we considered several approaches. As discussed above, however, we have determined that our two-pronged approach of requiring disclosure and identifying particular non-audit services that are incompatible with independence best protects the audit process.[646] In addition, because of the limited amount of non-audit services that small accounting firms provide to their SEC audit clients, we believe that the adoption of any of these approaches would not have a significant impact on a substantial number of small businesses or small accounting firms.

The second alternative—the clarification, consolidation or simplification of compliance and reporting requirements for small entities—is addressed below in connection with our discussion of our consideration of the fourth alternative. We have exempted small entities from certain provisions of the rules, which simplifies compliance requirements for those entities.

The third alternative mentioned above—use of performance rather than design standards—would be difficult, in part, to implement in this context. As to the quality controls exception we did implement such a performance standard. As to the other components of the rule changes, performance standards would not carry out the Commission's statutory mandate to ensure that registrants file financial statements and reports with us that have been certified by independent public accountants. Rather, we must identify and address influences that impair independence.

Some commenters suggested that we adopt the last alternative—an exemption from coverage of the new rules, or parts of the new rules, for small entities.[647] Other commenters suggested that our rules not apply to audits of smaller public companies, regardless of the size of the auditor. These commenters stated that small public companies may be in greater need of consulting assistance and may not be able to obtain the assistance from anyone other than their auditors.[648] We appreciate this concern and we have made certain changes to the rule.

The changes we have made recognize that, for some small companies, the company's auditor may be the only reasonably available service provider for certain services. The final rules, therefore, take into account that small firms may need internal audit services from their auditors and provide an exception for companies under $200 million in assets, subject to certain conditions. For the reasons discussed above, aside from these limited areas, we do not believe that a further exemption for small entities is appropriate.

VII. Paperwork Reduction Act

Certain of the provisions in the amendment to Item 9 of Schedule 14A contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[649] We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. The collections of information are titled "Regulation 14A (Commission Rules 14a–1 through 14b–2 and Schedule 14A)" and "Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)."

OMB approved the rule's collection of information requirements.[650] Regulation 14A (OMB Control No. 3235–0059) was adopted pursuant to Section 14(a) of the Exchange Act and prescribes information that a company must include in its proxy statement to ensure that shareholders are provided information that is material to their voting decisions. Regulation 14C (OMB Control No. 3235–0057) was adopted pursuant to Section 14(c) of the Exchange Act and prescribes information that a company must include in an information statement when a shareholder vote is to be held but proxies are not being solicited. Schedule 14A requires certain disclosure related to a company's independent accountants and Schedule 14C refers to Schedule 14A for the disclosure requirements related to the company's independent accountants. The final rule requires issuers to disclose in Schedules 14A and 14C, among other things, the aggregate fees billed for audit services, for financial information systems design and implementation services, and for other non-audit services provided by the issuer's principal accountant, and certain disclosures regarding the company's audit committee.

The Commission received comments concerning the proposed collection of information requirements. Some commenters suggested that the collections of information lacks practical utility and noted that we rescinded an earlier requirement that issuers disclose information concerning non-audit services provided by their auditors.[651] These commenters generally argued that the proposed disclosure was unnecessary and would be confusing to registrants and investors.[652] Commenters also argued that we had not adequately demonstrated the need for the disclosure requirement.[653] One commenter suggested that the proposed collection of information is duplicative of information available to the Commission from the SECPS.[654]

We believe that the disclosure requirement is necessary, practical, and useful. As discussed more fully above, in recent years there has been a dramatic growth in the absolute and relative size of fees charged for non-audit services provided to audit clients.[655] At the same time, information about audit firms' provision of non-audit services is not as readily available as it was when we rescinded an earlier disclosure requirement.[656] The disclosure we seek is not, contrary to one commenter's assertion, readily available through industry sources.[657] Under circumstances where investors have less information about a matter that has become more important, we believe that the disclosure requirement will prove useful to investors. Further, we have modified the rule from that proposed to make the disclosed information more understandable to investors.[658] For example, under the rule as adopted, registrants will not disclose a line-by-line description of each non-audit service, but rather will disclose relevant amounts in the aggregate. Investors will be able to determine quickly the amounts spent on non-audit services relative to the amount spent on audit services. As discussed below, these modifications lower the already minor burden on registrants of making this disclosure.

Commenters also questioned our estimate of the burden imposed by the new disclosure requirement.[659] Specifically, commenters suggested that issuers will spend more than one hour on completing the new disclosure requirements.[660] Some commenters suggested that in calculating the burden, we did not consider all of the relevant factors.[661] Among other things, some commenters suggested that we failed to

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[644] *See* Compustat Database, Oct. 31, 2000. The 85% figure excludes clients that are bank holding companies. For further analysis, see the cost-benefit analysis in Section V.B above.

[645] *See supra* note 476.

[646] *See supra* Section IV.G.

[647] *See, e.g.*, Letter of Donald G. Mantyla, CPA (Sept. 25, 2000).

[648] Letter of Stanley Keller, Chair, Committee on Federal Regulation of Securities, American Bar Association (Sept. 27, 2000); Letter of Robert Bunting (Sept. 6, 2000); Letter of P. Gerard Sokoloski, CPA, President, NY State Society of Certified Public Accountants (Sept. 25, 2000).

[649] 44 U.S.C. 3501 *et seq.*

[650] One commenter raised a number of issues related to OMB's processing and review of our submission. Because OMB has reviewed and approved our submission, we do not address these comments here.

[651] *See, e.g.*, Letter of Center for Regulatory Effectiveness: CRE Report Card on the SEC's Proposed Rule on Auditor Independence ("CRE Report Card").

[652] *See, e.g.*, Letter of Douglas R. Cox, Gibson, Dunn and Crutcher (Aug. 22, 2000) ("Cox Letter"). This commenter suggested, among other things, that the rule mandates disclosure of information that would appear irrelevant to the selection of auditors because a vote to ratify auditors is not required by the federal securities laws or many state laws. The commenter noted that the rule requires disclosure on Schedule 14C which does not ask investors to vote on any matter. Deloitte & Touche, in its comment letter, suggested that the Commission could minimize the burden imposed by the rule by requiring disclosure only when the stockholders vote on the approval or ratification of the company's accounting firm. Deloitte & Touche Letter. The disclosure rule serves a broader purpose than assisting shareholders in votes to ratify the selection of an auditor. The disclosure rule is one component of our auditor independence rules, the purpose of which is to promote the integrity of financial statements and promote investor confidence. Thus, the disclosure is aimed not only at a registrant's existing shareholders but at prospective shareholders as well.

[653] Tozzi Letter.

[654] CRE Report Card.

[655] *See* Section IV.G for further discussion of the disclosure requirement, including discussion of comments received concerning that requirement.

[656] As discussed in the Proposing Release (*see* Section II.C.4 and note 156 of this release), from 1978 to 1982, we required companies to disclose in their proxy statements all non-audit services provided by their auditors but later rescinded the requirement. Among other reasons, our review of proxy disclosures convinced us that accounting firms then, in contrast to now, were not providing extensive non-audit services to their audit clients. In addition, we noted that, even without the proxy statement requirement, investors had access to useful data provided to and made public by the SECPS.

[657] As noted above, the SECPS has stopped publishing information about audit firms' provision of non-audit services.

[658] *See supra* Section IV.G.

[659] *See, e.g.*, Deloitte & Touche Letter; Cox Letter.

[660] *See, e.g.*, Deloitte & Touche Letter. Deloitte & Touche stated in its comment letter that it "is difficult to estimate the average hours without an empirical study," but suggested that disclosure would require approximately three to six hours for companies with basic reporting systems and approximately 50–100 hours for companies with more complex reporting systems. As discussed below, we have modified the disclosure requirement, and we do not agree that the required disclosure will create more than a minimal additional burden to companies already preparing Schedules 14A or 14C.

[661] Cox Letter.

consider burdens relating to storing and analyzing the information, training personnel, hiring outside assistance, and putting the information into a reporting format.[662] Further, commenters disagreed with our assertion in the Proposing Release that the information required to make the disclosure should be readily available to respondents.[663]

Commenters also disagreed with our estimate of the number of registrants that would be affected by the disclosure requirement. In the Proposing Release, we stated the burden would fall primarily on one-quarter of registrants because only one-quarter of registrants receive non-audit services from their accountants in any given year. Some commenters disagreed. While it may be true, these commenters suggested, that only twenty-five percent of registrants receive non-audit services in any given year, a larger percentage receives non-audit services in some years and not others.[664] Commenters suggested that the percentage of registrants that would have to maintain records related to the disclosure requirements would therefore be greater than twenty-five percent.[665] At least one commenter stated that all registrants would have to check their records to determine whether they must disclose more than just audit fees.[666]

We believe that our estimate of the burden imposed by the disclosure requirement is reasonable. While all registrants will have to disclose audit fees under the new rule, and, where applicable, registrants must make disclosures concerning the use of leased personnel on the audit, we believe that the time and expense required to make such disclosures will be minimal. In calculating our estimate of the burden imposed by the new disclosure requirement, we carefully considered the relevant factors.[667] Further, as discussed above, we have reduced the amount and narrowed the scope of disclosure that registrants will be required to make. These modifications reduce the amount of time spent in making disclosure. For example, as proposed, the rule would have required a registrant to describe each professional service rendered by its accounting firm, and to disclose the fee paid for each service.[668] Instead, the rule as adopted requires a registrant to disclose the aggregate fees paid for audit, information technology, and other non-audit services.[669] This information is readily accessible to issuers;[670] it is an incremental addition to previously required disclosure about the identity of a company's auditor. In addition, we believe that a registrant will know how much it spent during the previous fiscal year on its audit. A registrant should be able to determine quickly the amounts paid to its auditor for information technology and other non-auditservices by consulting its internal records. The rule should not require registrants to seek significant outside assistance, or substantially modify their systems to maintain and collect data. We therefore believe that 2,536 hours is a reasonable estimate of the paperwork burden imposed by the rule.[671]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

VIII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Sections 2(b) of the Securities Act, 3(f) of the Exchange Act, and 2(c) of the Investment Company Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation.[672] The rule amendments update our independence requirements in light of developments in the accounting profession and in society generally. The rule amendments affect the scope of services an auditor may provide to an audit client without impairing the auditor's independence and also affect the financial, employment and business relationships that an auditor (and certain other persons) may have with an audit client without impairing independence. The purpose of the amendments is to promote investor confidence in the integrity of the audit process and in the audited financial statements that investors use to make investment decisions. As discussed above, investor confidence promotes market efficiency and capital formation. Competition is discussed below.

With respect to the scope of services provisions, some commenters suggested that there is no evidence that auditors' provision to audit clients of non-audit services affects auditor independence or investors' perceptions of auditor independence, and they therefore argued that the rule will not increase investor confidence.[673] Academic studies and other surveys, however, suggest that certain users of financial statements have long believed that an auditor's provision to an audit client of non-audit services could affect both the auditor's objectivity and investor confidence in the financial statements.[674] Furthermore, even a relatively modest increase in investor confidence could have a significant, positive effect on the economy,[675] while a relatively modest decrease in investor confidence could have significant consequences for the capital formation process.

[662] CRE Report Card; AICPA Letter.

[663] *See, e.g.*, Cox Letter.

[664] *Id.*

[665] *See, e.g.*, CRE Report Card.

[666] *See* Deloitte & Touche Letter.

[667] We do not believe that the new disclosure requirement will cause registrants significant burdens associated with administrative tasks such as collecting, storing, and formatting the information, nor do we believe that compliance with the disclosure rule will require significant employee training.

[668] The proposed rule required disclosure of each professional service during the most recent fiscal year. Under the proposed rule, a service did not have to be disclosed if the fee for that service was less than $50,000 or ten percent of that registrant's audit fee. Commenters suggested that these thresholds were too low, and would result in disclosures of insignificant services. As adopted, the rule does not require disclosure of each professional service.

[669] As proposed, the rule would have required registrants to disclose whether the audit committee approved each disclosed non-audit service and considered the possible effect on the principal accountant's independence. As adopted, the rule requires disclosure of whether the audit committee considered whether the provision of the non-audit services by the principal accountant is compatible with maintaining the principal accountant's independence. We do not believe that this requirement imposes a significant burden.

[670] As noted above, audit committees currently receive information about the auditor's provision of non-audit services under ISB Standard No. 1 and SECPS Manual §1000.08. *See supra* note 476.

[671] In its comment letter, the AICPA suggested that the proposed rule's definition of "affiliate of the accounting firm" created ambiguities that made the disclosure requirement potentially overbroad and burdensome. In response to commenters' concerns, we have removed the definition of "affiliate of the accounting firm" from the rule as adopted. Instead, the rule relies on existing guidance concerning when an entity is associated with the accounting firm. We believe that, with this modification, the disclosure requirement in the final rule is targeted to its purpose and is not unduly burdensome.

[672] 15 U.S.C. 77b(b); 15 U.S.C. 78c(f); 15 U.S.C. 80a–2(c).

[673] *See, e.g.*, KPMG Letter.

[674] *See supra* Sections III.C.1, III.C.3.

[675] *See supra* Section IV.B.1.

Commenters suggested that the proposals would impede efficiency because the rule may prevent audit clients from selecting the most efficient service provider.[676] As adopted, however, the rule in large part codifies existing limitations on auditors' provision to audit clients of non-audit services. To the extent these existing limitations or new limitations from our rule prevent the choice of the least costly service provider in some situations, we believe such limitations are warranted to achieve our goal of enhancing auditor independence.[677]

With respect to the claim that synergies are created by the auditor's provision of both audit and non-audit services, research on the evidence of such synergies is inconclusive.[678] Moreover, the recent sales or proposed sales by large accounting firms of their consulting divisions[679] suggest that audit firms' provision of at least certain non-audit services creates, at most, limited synergies.

Section 23(a) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact on competition of any rule it adopts.[680] Some commenters suggested that the rule would inhibit competition. Some of these commenters argued that, in response to the proposed rule, accounting firms would choose not to provide audit services in favor of providing non-audit services, and that firms already providing the audit might not bid on that client's non-audit work.[681] They suggested that this would lead to reduced competition for both audit and non-audit services, reducing issuers' choices and increasing their costs. One commenter further suggested that reduced competition in the bidding process would place firms that chose to split off their consulting competencies at a competitive advantage over those that chose to stay together, and ultimately cause firms to consider splitting off their consulting groups.[682]

The rule as adopted, however, allows issuers to purchase more non-audit services from their auditors than would have been allowed under the rule as proposed. This modification should reduce the effect on competition about which commenters were most concerned.

Some commenters suggested that the proposed rule would hinder the ability of small accounting firms to compete. They argued that the definition of "affiliate of the accounting firm" in the proposal would restrict small firms from participating in alliances and other business relationships, thereby providing larger firms with a competitive advantage by limiting the scope of services available to clients of small firms.[683] Still other commenters suggested that if the rule results in a reshuffling of clients, medium-sized and small firms may suffer a net loss of non-audit service clients. According to these commenters, displaced clients of these firms may be more likely to engage a better-known firm for non-audit services than another small or medium-sized firm.[684] On the other hand, some commenters stated that the proposal would not be harmful to small accounting firms, but rather would allow small accounting firms to compete for audit or non-audit services that could no longer be provided by a company's auditor.[685]

Commenters also suggested that the rule would make it difficult for small businesses to compete. Some expressed concern about the effects of the rules on small businesses that rely on the special expertise of their auditors or that lack the resources to engage a second accounting firm to provide non-audit services; they commented that small registrants would be required to either choose a new accounting firm to perform audits or to provide non-audit services.[686] Other commenters stated that small businesses have long-term relationships with auditors that provide non-audit services, or are located in a geographic area with few firms able to provide such services.[687] Commenters also suggested that accounting firms other than the Big Five may stop serving SEC registrants, or they may stop providing audit services, in both cases leading to less choice and competition.[688]

As discussed elsewhere in this release, we have modified the rule so that the provisions regarding most affected non-audit services do no more than codify existing restrictions. For example, under the rule as adopted, all registrants may purchase most information technology consulting services from their auditors, so long as the stated conditions are met. With respect to internal audit services, the adopted provision does not restrict registrants with $200 or less in assets, as long as certain conditions are met. As a result, small businesses should be able to obtain the services they need.

In addition, approximately eighty-five percent of the public company audit clients of non-Big Five accounting firms have assets of $200 million or less.[689] Accordingly, as long as certain conditions are met, the rule will not preclude smaller firms from providing internal audit services to the vast majority of their public company clients. This modification should alleviate many of the commenters' concerns about the rule's impact on small accounting firms' ability to compete. In any event, to the extent the rule has any anti-competitive effect, we believe it is necessary and appropriate in furtherance of the goals of the Exchange Act.

IX. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) is amended as follows:

1. By removing section 602.01.

2. By amending section 602.02 by removing the preamble paragraph immediately preceding the introduction.

[676] *See, e.g.*, Arthur Andersen Letter.

[677] *Cf.* Testimony of Alfred M. King, Valuation Research Corporation (July 26, 2000).

[678] *See supra* Section V.B.2(c).

[679] *Id.*

[680] 15 U.S.C. 78w(a)(2).

[681] *See, e.g.*, Arthur Andersen Letter; Deloitte & Touche Letter.

[682] *See* Deloitte & Touche Letter. As discussed above, some firms had already split off, or announced the split-off of, their consulting practices prior to our Proposing Release. The rule does not dictate any particular business model for accounting firms. Rather, firms remain free to determine their own structure, consistent with the law.

[683] *See, e.g.*, Testimony of Wayne A. Kolins, National Director of Assurance, BDO Seidman, LLP (Sept. 20, 2000). As discussed in more detail in this release, we have removed the definition of "affiliate of the accounting firm" from the rule as adopted. Instead, the rule relies on existing guidance concerning when an entity is associated with the accounting firm. We believe that this modification addresses commenters' concerns in this area.

[684] *See id.*

[685] *See, e.g.*, Testimony of Larry Gelfond, CPA, CVA, CFE, Colorado Accountancy Board, September 13, 2000 ("I do not believe that [the rule] will in any way hinder our [small] firm. In many respects, it may even benefit our firm. . . . I look at this, frankly, as an opportunity, particularly in the internal audit functions to step in, and given our experience, to work with management and with their respective independent auditor, let's say a Big Five firm, that this is an area that we can frankly look at as a new revenue generator.").

[686] *See, e.g.*, AICPA Letter; Letter of David E. Pertl, Senior Vice President and CFO, First Choice, Inc. (Sept. 18, 2000); Letter of Kelly Schwarzbeck, CPA, Alexander X. Kuhn & Co. (Aug. 22, 2000); Letter of Robert L. Bunting (Sept. 6, 2000); Letter of Bruce C. Holbrook, Vice Chairman, Goodman & Company, LLP (July 25, 2000); Letter of William W. Traynham, CPA, President, Community Bankshares Inc. (Aug. 14, 2000).

[687] *See, e.g.*, Letter of the California Chamber of Commerce (Sept. 15, 2000); Letter of Joseph C. King, CPA, Faulkner & King, PSC (Sept. 13, 2000).

[688] *See, e.g.*, Letter of Jeffry T. Herbst (Sept. 11, 2000); Letter of Richard P. Thornton (Sept. 13, 2000); Letter of Marc J. Garofalo, Mayor, Derby, Conn. (Sept. 18, 2000).

[689] *See* Compustat Database, October 31, 2000. The 85% figure excludes clients that are bank holding companies. For further analysis, *see supra* Section V.B (cost-benefit analysis).

3. By amending section 602.02.b.i to remove paragraphs 2 and 3.

4. By amending section 602.02.b.ii to remove examples 1, 2, 3, 4, 6, 7, 8, and 10, and redesignate examples 5 and 9 as examples 1 and 2.

5. By amending section 602.02.b.iii to remove examples 1, 2, and 4, and redesignate example 3 as example 1.

6. By removing section 602.02.b.iv.

7. By amending section 602.02.b.v to remove example 4.

8. By amending section 602.02.c.i to remove the last two paragraphs.

9. By removing section 602.02.c.ii.

10. By removing section 602.02.c.iii.

11. By removing section 602.02.d.

12. By removing section 602.02.e.ii.

13. By removing section 602.02.e.iii.

14. By removing section 602.02.f.

15. By amending examples 2, 3, 4, 5, 6, 7, 8, 10, 13, 15, 16, 20, and 23 in section 602.02.g by replacing the references to "partner," "partners," "certifying accountant," or "accountant" to "covered person," "covered persons," "covered person" and "covered person," respectively, except no change should be made where references to "partner" are preceded by the word "limited" or "general."

16. By amending section 602.02.g to replace the reference to Rule 2–01(b) in the last sentence of the first introductory paragraph with "Rule 2–01" and to remove examples 17, 18, 19, and 22 and redesignate examples 20, 21, 23, and 24 as examples 17, 18, 19, and 20, respectively.

17. By removing section 602.02.h.

18. By adding a new section 602.01, captioned "Discussion of Rule 2–01," to include the text in Section IV of this release.

19. By amending Section 601.03 to include, at the end, the text in Section III.C.6 of this release.

20. By amending section 602.02 to redesignate sections 602.02.b.v, 602.02.e.i, 602.02.e.iv, 602.02.g, 602.02.i.i, and 602.02.i.ii as sections 602.02.b.iv, 602.02.d.i, 602.02.d.ii, 602.02.e, 602.02.f.i, and 602.02.f.ii, respectively.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

X. Statutory Bases and Text of Amendments

We are adopting amendments to Rule 2–01 of Regulation S-X and Item 9 of Schedule 14A under the authority set forth in Schedule A and Sections 7, 8, 10, 19, and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23, and 36 of the Exchange Act, Sections 5, 10, 14, and 20 of the Public Utility Holding Company Act of 1935, Sections 8, 30, 31, and 38 of the Investment Company Act of 1940, and Sections 203 and 211 of the Investment Advisers Act of 1940.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The heading for Part 210 is revised as set forth above.

2. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

3. By amending § 210.2–01 by adding a preliminary note and paragraphs (d), (e) and (f) and revising paragraphs (b) and (c) to read as follows:

§ 210.2–01 Qualifications of accountants.

Preliminary Note to § 210.2–01

1. Section 210.2–01 is designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance. Accordingly, the rule sets forth restrictions on financial, employment, and business relationships between an accountant and an audit client and restrictions on an accountant providing certain non-audit services to an audit client.

2. Section 210.2–01(b) sets forth the general standard of auditor independence. Paragraphs (c)(1) to (c)(5) reflect the application of the general standard to particular circumstances. The rule does not purport to, and the Commission could not, consider all circumstances that raise independence concerns, and these are subject to the general standard in § 210.2–01(b). In considering this standard, the Commission looks in the first instance to whether a relationship or the provision of a service: creates a mutual or conflicting interest between the accountant and the audit client; places the accountant in the position of auditing his or her own work; results in the accountant acting as management or an employee of the audit client; or places the accountant in a position of being an advocate for the audit client.

3. These factors are general guidance only and their application may depend on particular facts and circumstances. For that reason, § 210.2–01 provides that, in determining whether an accountant is independent, the Commission will consider all relevant facts and circumstances. For the same reason, registrants and accountants are encouraged to consult with the Commission's Office of the Chief Accountant before entering into relationships, including relationships involving the provision of services, that are not explicitly described in the rule.

(a) * * *

(b) The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.

(c) This paragraph sets forth a non-exclusive specification of circumstances inconsistent with paragraph (b) of this section.

(1) *Financial relationships.* An accountant is not independent if, at any point during the audit and professional engagement period, the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client, such as:

(i) *Investments in audit clients.* An accountant is not independent when:

(A) The accounting firm, any covered person in the firm, or any of his or her immediate family members, has any direct investment in an audit client, such as stocks, bonds, notes, options, or other securities. The term *direct investment* includes an investment in an audit client through an intermediary if:

(*1*) The accounting firm, covered person, or immediate family member, alone or together with other persons, supervises or participates in the intermediary's investment decisions or has control over the intermediary; or

(*2*) The intermediary is not a diversified management investment company, as defined by section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), and has an investment in the audit client that amounts to 20% or more of the value of the intermediary's total investments.

(B) Any partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, or any group of the above persons has filed a Schedule 13D or 13G (17 CFR 240.13d–101 or 240.13d–102) with the Commission indicating beneficial ownership of more than five percent of an audit client's equity securities or controls an audit client, or a close family member of a partner, principal, or shareholder of the accounting firm controls an audit client.

(C) The accounting firm, any covered person in the firm, or any of his or her immediate family members, serves as voting trustee of a trust, or executor of an estate, containing the securities of an audit client, unless the accounting firm, covered person in the firm, or immediate family member has no authority to make investment decisions for the trust or estate.

(D) The accounting firm, any covered person in the firm, any of his or her immediate family members, or any group of the above persons has any material indirect investment in an audit client. For purposes of this paragraph, the term *material indirect investment* does not include ownership by any covered person in the firm, any of his or her immediate family members, or any group of the above persons of 5% or less of the outstanding shares of a diversified management investment company, as defined by section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), that invests in an audit client.

(E) The accounting firm, any covered person in the firm, or any of his or her immediate family members:

(*1*) Has any direct or material indirect investment in an entity where:

(i) An audit client has an investment in that entity that is material to the audit client and has the ability to exercise significant influence over that entity; or

(*ii*) The entity has an investment in an audit client that is material to that entity and has the ability to exercise significant influence over that audit client;

(*2*) Has any material investment in an entity over which an audit client has the ability to exercise significant influence; or

(*3*) Has the ability to exercise significant influence over an entity that has the ability to exercise significant influence over an audit client.

(ii) *Other financial interests in audit client.* An accountant is not independent when the accounting firm, any covered person in the firm, or any of his or her immediate family members has:

(A) *Loans/debtor-creditor relationship.* Any loan (including any margin loan) to or from an audit client, or an audit client's officers, directors, or record or beneficial owners of more than ten percent of the audit client's equity securities, except for the following loans obtained from a financial institution under its normal lending procedures, terms, and requirements:

(*1*) Automobile loans and leases collateralized by the automobile;

(*2*) Loans fully collateralized by the cash surrender value of an insurance policy;

(*3*) Loans fully collateralized by cash deposits at the same financial institution; and

(*4*) A mortgage loan collateralized by the borrower's primary residence provided the loan was not obtained while the covered person in the firm was a covered person.

(B) *Savings and checking accounts.* Any savings, checking, or similar account at a bank, savings and loan, or similar institution that is an audit client, if the account has a balance that exceeds the amount insured by the Federal Deposit Insurance Corporation or any similar insurer, except that an accounting firm account may have an uninsured balance provided that the likelihood of the bank, savings and loan, or similar institution experiencing financial difficulties is remote.

(C) *Broker-dealer accounts.* Brokerage or similar accounts maintained with a broker-dealer that is an audit client, if:

(*1*) Any such account includes any asset other than cash or securities (within the meaning of "security" provided in the Securities Investor Protection Act of 1970 ("SIPA") (15 U.S.C. 78aaa *et seq.*));

(*2*) The value of assets in the accounts exceeds the amount that is subject to a Securities Investor Protection Corporation advance, for those accounts, under Section 9 of SIPA (15 U.S.C. 78fff-3); or

(*3*) With respect to non-U.S. accounts not subject to SIPA protection, the value of assets in the accounts exceeds the amount insured or protected by a program similar to SIPA.

(D) *Futures commission merchant accounts.* Any futures, commodity, or similar account maintained with a futures commission merchant that is an audit client.

(E) *Credit cards.* Any aggregate outstanding credit card balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and any available grace period.

(F) *Insurance products.* Any individual policy issued by an insurer that is an audit client unless:

(*1*) The policy was obtained at a time when the covered person in the firm was not a covered person in the firm; and

(*2*) The likelihood of the insurer becoming insolvent is remote.

(G) *Investment companies.* Any financial interest in an entity that is part of an investment company complex that includes an audit client.

(iii) *Exceptions.* Notwithstanding paragraphs (c)(1)(i) and (c)(1)(ii) of this section, an accountant will not be deemed not independent if:

(A) *Inheritance and gift.* Any person acquires an unsolicited financial interest, such as through an unsolicited gift or inheritance, that would cause an accountant to be not independent under paragraph (c)(1)(i) or (c)(1)(ii) of this section, and the financial interest is disposed of as soon as practicable, but no later than 30 days after the person has knowledge of and the right to dispose of the financial interest.

(B) *New audit engagement.* Any person has a financial interest that would cause an accountant to be not independent under paragraph (c)(1)(i) or (c)(1)(ii) of this section, and:

(*1*) The accountant did not audit the client's financial statements for the immediately preceding fiscal year; and

(*2*) The accountant is independent under paragraph (c)(1)(i) and (c)(1)(ii) of this section before the earlier of:

(*i*) Signing an initial engagement letter or other agreement to provide audit, review, or attest services to the audit client; or

(*ii*) Commencing any audit, review, or attest procedures (including planning the audit of the client's financial statements).

(C) *Employee compensation and benefit plans.* An immediate family member of a person who is a covered person in the firm only by virtue of paragraphs (f)(11)(iii) or (f)(11)(iv) of this section has a financial interest that would cause an accountant to be not independent under paragraph (c)(1)(i) or (c)(1)(ii) of this section, and the acquisition of the financial interest was an unavoidable consequence of participation in his or her employer's employee compensation or benefits program, provided that the financial interest, other than unexercised employee stock options, is disposed of as soon as practicable, but no later than

30 days after the person has the right to dispose of the financial interest.

(iv) *Audit clients' financial relationships.* An accountant is not independent when:

(A) *Investments by the audit client in the accounting firm.* An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

(B) *Underwriting.* An accounting firm engages an audit client to act as an underwriter, broker-dealer, market-maker, promoter, or analyst with respect to securities issued by the accounting firm.

(2) *Employment relationships.* An accountant is not independent if, at any point during the audit and professional engagement period, the accountant has an employment relationship with an audit client, such as:

(i) *Employment at audit client of accountant.* A current partner, principal, shareholder, or professional employee of the accounting firm is employed by the audit client or serves as a member of the board of directors or similar management or governing body of the audit client.

(ii) *Employment at audit client of certain relatives of accountant.* A close family member of a covered person in the firm is in an accounting role or financial reporting oversight role at an audit client, or was in such a role during any period covered by an audit for which the covered person in the firm is a covered person.

(iii) *Employment at audit client of former employee of accounting firm.* A former partner, principal, shareholder, or professional employee of an accounting firm is in an accounting role or financial reporting oversight role at an audit client, unless the individual:

(A) Does not influence the accounting firm's operations or financial policies;

(B) Has no capital balances in the accounting firm; and

(C) Has no financial arrangement with the accounting firm other than one providing for regular payment of a fixed dollar amount (which is not dependent on the revenues, profits, or earnings of the accounting firm):

(*1*) Pursuant to a fully funded retirement plan, rabbi trust, or, in jurisdictions in which a rabbi trust does not exist, a similar vehicle; or

(*2*) In the case of a former professional employee who was not a partner, principal, or shareholder of the accounting firm and who has been disassociated from the accounting firm for more than five years, that is immaterial to the former professional employee.

(iv) *Employment at accounting firm of former employee of audit client.* A former officer, director, or employee of an audit client becomes a partner, principal, shareholder, or professional employee of the accounting firm, unless the individual does not participate in, and is not in a position to influence, the audit of the financial statements of the audit client covering any period during which he or she was employed by or associated with that audit client.

(3) *Business relationships.* An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or substantial stockholders. The relationships described in this paragraph do not include a relationship in which the accounting firm or covered person in the firm provides professional services to an audit client or is a consumer in the ordinary course of business.

(4) *Non-audit services.* An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

(i) *Bookkeeping or other services related to the audit client's accounting records or financial statements.*

(A) Any service involving:

(*1*) Maintaining or preparing the audit client's accounting records;

(*2*) Preparing the audit client's financial statements that are filed with the Commission or form the basis of financial statements filed with the Commission; or

(*3*) Preparing or originating source data underlying the audit client's financial statements.

(B) Notwithstanding paragraph (c)(4)(i)(A) of this section, the accountant's independence will not be impaired when the accountant provides these services:

(*1*) In emergency or other unusual situations, provided the accountant does not undertake any managerial actions or make any managerial decisions; or

(*2*) For foreign divisions or subsidiaries of an audit client, provided that:

(*i*) The services are limited, routine, or ministerial;

(*ii*) It is impractical for the foreign division or subsidiary to make other arrangements;

(*iii*) The foreign division or subsidiary is not material to the consolidated financial statements;

(*iv*) The foreign division or subsidiary does not have employees capable or competent to perform the services;

(*v*) The services performed are consistent with local professional ethics rules; and

(*vi*) The fees for all such services collectively (for the entire group of companies) do not exceed the greater of 1% of the consolidated audit fee or $10,000.

(ii) *Financial information systems design and implementation.*

(A) Directly or indirectly operating, or supervising the operation of, the audit client's information system or managing the audit client's local area network.

(B) Designing or implementing a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the audit client's financial statements taken as a whole, unless:

(*1*) The audit client's management has acknowledged in writing to the accounting firm and the audit client's audit committee, or if there is no such committee then the board of directors, the audit client's responsibility to establish and maintain a system of internal accounting controls in compliance with section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2));

(*2*) The audit client's management designates a competent employee or employees, preferably within senior management, with the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system;

(*3*) The audit client's management makes all management decisions with respect to the design and implementation of the hardware or software system including, but not limited to, decisions concerning the systems to be evaluated and selected, the controls and system procedures to be implemented, the scope and timetable of system implementation, and the testing, training, and conversion plans;

(*4*) The audit client's management evaluates the adequacy and results of the design and implementation of the hardware or software system; and

(*5*) The audit client's management does not rely on the accountant's work as the primary basis for determining the adequacy of its internal controls and financial reporting systems.

(C) Nothing in this paragraph (c)(4)(ii) shall limit services an accountant performs in connection with the assessment, design, and implementation of internal accounting controls and risk management controls, provided the auditor does not act as an employee or perform management functions.

(iii) *Appraisal or valuation services or fairness opinions.*

(A) Any appraisal service, valuation service, or any service involving a fairness opinion for an audit client, where it is reasonably likely that the results of these services, individually or in the aggregate, would be material to the financial statements, or where the results of these services will be audited by the accountant during an audit of the audit client's financial statements.

(B) Notwithstanding paragraph (c)(4)(iii)(A) of this section, the accountant's independence will not be impaired when:

(*1*) The accounting firm's valuation expert reviews the work of the audit client or a specialist employed by the audit client, and the audit client or the specialist provides the primary support for the balances recorded in the client's financial statements;

(*2*) The accounting firm's actuaries value an audit client's pension, other post-employment benefit, or similar liabilities, provided that the audit client has determined and taken responsibility for all significant assumptions and data;

(*3*) The valuation is performed in the context of the planning and implementation of a tax-planning strategy or for tax compliance services; or

(*4*) The valuation is for non-financial purposes where the results of the valuation do not affect the financial statements.

(iv) *Actuarial services.*

(A) Any actuarially-oriented advisory service involving the determination of insurance company policy reserves and related accounts for the audit client, unless:

(*1*) The audit client uses its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities;

(*2*) Management accepts responsibility for any significant actuarial methods and assumptions; and

(*3*) The accountant's involvement is not continuous.

(B) Subject to complying with paragraph (c)(4)(iv)(A)(*1*)–(*3*) of this section, the accountant's independence will not be impaired if the accountant:

(*1*) Assists management to develop appropriate methods, assumptions, and amounts for policy and loss reserves and other actuarial items presented in financial reports based on the audit client's historical experience, current practice, and future plans;

(*2*) Assists management in the conversion of financial statements from a statutory basis to one conforming with generally accepted accounting principles;

(*3*) Analyzes actuarial considerations and alternatives in federal income tax planning; or

(*4*) Assists management in the financial analysis of various matters, such as proposed new policies, new markets, business acquisitions, and reinsurance needs.

(v) *Internal audit services.* Either of:

(A) Internal audit services in an amount greater than 40% of the total hours expended on the audit client's internal audit activities in any one fiscal year, unless the audit client has less than $200 million in total assets. (For purposes of this paragraph, the term *internal audit services* does not include operational internal audit services unrelated to the internal accounting controls, financial systems, or financial statements.); or

(B) Any internal audit services, or any operational internal audit services unrelated to the internal accounting controls, financial systems, or financial statements, for an audit client, unless:

(*1*) The audit client's management has acknowledged in writing to the accounting firm and the audit client's audit committee, or if there is no such committee then the board of directors, the audit client's responsibility to establish and maintain a system of internal accounting controls in compliance with section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2));

(*2*) The audit client's management designates a competent employee or employees, preferably within senior management, to be responsible for the internal audit function;

(*3*) The audit client's management determines the scope, risk, and frequency of internal audit activities, including those to be performed by the accountant;

(*4*) The audit client's management evaluates the findings and results arising from the internal audit activities, including those performed by the accountant;

(*5*) The audit client's management evaluates the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining reports from the accountant; and

(*6*) The audit client's management does not rely on the accountant's work as the primary basis for determining the adequacy of its internal controls.

(vi) *Management functions.* Acting, temporarily or permanently, as a director, officer, or employee of an audit client, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client.

(vii) *Human resources.*

(A) Searching for or seeking out prospective candidates for managerial, executive, or director positions;

(B) Engaging in psychological testing, or other formal testing or evaluation programs;

(C) Undertaking reference checks of prospective candidates for an executive or director position;

(D) Acting as a negotiator on the audit client's behalf, such as determining position, status or title, compensation, fringe benefits, or other conditions of employment; or

(E) Recommending, or advising the audit client to hire, a specific candidate for a specific job (except that an accounting firm may, upon request by the audit client, interview candidates and advise the audit client on the candidate's competence for financial accounting, administrative, or control positions).

(viii) *Broker-dealer services.* Acting as a broker-dealer, promoter, or underwriter, on behalf of an audit client, making investment decisions on behalf of the audit client or otherwise having discretionary authority over an audit client's investments, executing a transaction to buy or sell an audit client's investment, or having custody of assets of the audit client, such as taking temporary possession of securities purchased by the audit client.

(ix) *Legal services.* Providing any service to an audit client under circumstances in which the person providing the service must be admitted to practice before the courts of a United States jurisdiction.

(5) *Contingent fees.* An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides any service or product to an audit client for a contingent fee or a commission, or receives a contingent fee or commission from an audit client.

(d) *Quality controls.* An accounting firm's independence will not be impaired solely because a covered person in the firm is not independent of an audit client provided:

(1) The covered person did not know of the circumstances giving rise to the lack of independence;

(2) The covered person's lack of independence was corrected as promptly as possible under the relevant circumstances after the covered person or accounting firm became aware of it; and

(3) The accounting firm has a quality control system in place that provides reasonable assurance, taking into account the size and nature of the accounting firm's practice, that the accounting firm and its employees do not lack independence, and that covers at least all employees and associated entities of the accounting firm participating in the engagement, including employees and associated entities located outside of the United States.

(4) For an accounting firm that annually provides audit, review, or attest services to more than 500 companies with a class of securities registered with the Commission under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), a quality control system will not provide such reasonable assurance unless it has at least the following features:

(i) Written independence policies and procedures;

(ii) With respect to partners and managerial employees, an automated system to identify their investments in securities that might impair the accountant's independence;

(iii) With respect to all professionals, a system that provides timely information about entities from which the accountant is required to maintain independence;

(iv) An annual or on-going firm-wide training program about auditor independence;

(v) An annual internal inspection and testing program to monitor adherence to independence requirements;

(vi) Notification to all accounting firm members, officers, directors, and employees of the name and title of the member of senior management responsible for compliance with auditor independence requirements;

(vii) Written policies and procedures requiring all partners and covered persons to report promptly to the accounting firm when they are engaged in employment negotiations with an audit client, and requiring the firm to remove immediately any such professional from that audit client's engagement and to review promptly all work the professional performed related to that audit client's engagement; and

(viii) A disciplinary mechanism to ensure compliance with this section.

(e) *Transition and grandfathering.*

(1) *Transition.*

(i) *Appraisal or valuation services or fairness opinions and internal audit services.* Until August 5, 2002, providing to an audit client the non-audit services set forth in paragraphs (c)(4)(iii) and (c)(4)(v) of this section will not impair an accountant's independence with respect to the audit client if performing those services did not impair the accountant's independence under pre-existing requirements of the Commission, the Independence Standards Boards, or the accounting profession in the United States.

(ii) *Other financial interests and employment relationships.* Until May 7, 2001, having the financial interests set forth in paragraph (c)(1)(ii) of this section or the employment relationships set forth in paragraph (c)(2) of this section will not impair an accountant's independence with respect to the audit client if having those financial interests or employment relationships did not impair the accountant's independence under pre-existing requirements of the Commission, the Independence Standards Board, or the accounting profession in the United States.

(iii) *Quality controls.* Until December 31, 2002, paragraph (d)(4) of this section shall not apply to offices of the accounting firm located outside of the United States.

(2) *Grandfathering.* Financial interests included in paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(F) of this section and employment relationships included in paragraph (c)(2) of this section in existence on May 7, 2001, and contracts for the provision of services described in paragraph (c)(4)(ii) of this section in existence on February 5, 2001 will not be deemed to impair an accountant's independence if they did not impair the accountant's independence under pre-existing requirements of the Commission, the Independence Standards Board, or the accounting profession in the United States.

(3) *Settling financial arrangements with former professionals.* To the extent not required by pre-existing requirements of the Commission, the Independence Standards Board, or the accounting profession in the United States, the requirement in paragraph (c)(2)(iii) of this section to settle financial arrangements with former professionals applies to situations that arise after the effective date of this section.

(f) *Definitions of terms.* For purposes of this section:

(1) *Accountant,* as used in paragraphs (b) through (e) of this section, means a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.

(2) *Accounting firm* means an organization (whether it is a sole proprietorship, incorporated association, partnership, corporation, limited liability company, limited liability partnership, or other legal entity) that is engaged in the practice of public accounting and furnishes reports or other documents filed with the Commission or otherwise prepared under the securities laws, and all of the organization's departments, divisions, parents, subsidiaries, and associated entities, including those located outside of the United States. Accounting firm also includes the organization's pension, retirement, investment, or similar plans.

(3) *Accounting role or financial reporting oversight role* means a role in which a person is in a position to or does:

(i) Exercise more than minimal influence over the contents of the accounting records or anyone who prepares them; or

(ii) Exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, vice president of marketing, or any equivalent position.

(4) *Affiliate of the audit client* means:

(i) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;

(ii) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;

(iii) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and

(iv) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.

(5) *Audit and professional engagement period* includes both:

(i) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(ii) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period"):

(A) The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

(B) The professional engagement period ends when the audit client or the accountant notifies the Commission that the client is no longer that accountant's audit client.

(iii) For audits of the financial statements of foreign private issuers, the "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

(6) *Audit client* means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client, other than, for purposes of paragraph (c)(1)(i) of this section, entities that are affiliates of the audit client only by virtue of paragraph (f)(4)(ii) or (f)(4)(iii) of this section.

(7) *Audit engagement team* means all partners, principals, shareholders, and professional employees participating in an audit, review, or attestation engagement of an audit client, including those conducting concurring or second partner reviews and all persons who consult with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

(8) *Chain of command* means all persons who:

(i) Supervise or have direct management responsibility for the audit, including at all successively senior levels through the accounting firm's chief executive;

(ii) Evaluate the performance or recommend the compensation of the audit engagement partner; or

(iii) Provide quality control or other oversight of the audit.

(9) *Close family members* means a person's spouse, spousal equivalent, parent, dependent, nondependent child, and sibling.

(10) *Contingent fee* means, except as stated in the next sentence, any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service. Solely for the purposes of this section, a fee is not a "contingent fee" if it is fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. Fees may vary depending, for example, on the complexity of services rendered.

(11) *Covered persons in the firm* means the following partners, principals, shareholders, and employees of an accounting firm:

(i) The "audit engagement team";

(ii) The "chain of command";

(iii) Any other partner, principal, shareholder, or managerial employee of the accounting firm who has provided ten or more hours of non-audit services to the audit client for the period beginning on the date such services are provided and ending on the date the accounting firm signs the report on the financial statements for the fiscal year during which those services are provided, or who expects to provide ten or more hours of non-audit services to the audit client on a recurring basis; and

(iv) Any other partner, principal, or shareholder from an "office" of the accounting firm in which the lead audit engagement partner primarily practices in connection with the audit.

(12) *Group* means two or more persons who act together for the purposes of acquiring, holding, voting, or disposing of securities of a registrant.

(13) *Immediate family members* means a person's spouse, spousal equivalent, and dependents.

(14) *Investment company complex.*

(i) "Investment company complex" includes:

(A) An investment company and its investment adviser or sponsor;

(B) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (f)(14)(i)(A) of this section, or any entity under common control with an investment adviser or sponsor in paragraph (f)(14)(i)(A) of this section if the entity:

(*1*) Is an investment adviser or sponsor; or

(*2*) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(C) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (f)(14)(i)(A) or (f)(14)(i)(B) of this section.

(ii) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(iii) Sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

(15) *Office* means a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines.

(16) *Rabbi trust* means an irrevocable trust whose assets are not accessible to the accounting firm until all benefit obligations have been met, but are subject to the claims of creditors in bankruptcy or insolvency.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. The general authority citation for Part 240 is revised to read, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

5. By amending § 240.14a–101 to add paragraph (e) to Item 9 to read as follows:

§ 240.14a–101 Schedule 14A Information required in proxy statement.

* * * * *

Item 9. *Independent public accountants.*

* * *

* * * * *

(e)(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for professional services rendered for the audit of the registrant's annual financial statements for the most recent fiscal year and the reviews of the financial statements included in the registrant's Forms 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for that fiscal year.

(2) Disclose, under the caption *Financial Information Systems Design and Implementation Fees*, the aggregate fees billed for the professional services described in Paragraph (c)(4)(ii) of Rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(4)(ii)) rendered by the principal accountant for the most recent fiscal year. For purposes of this disclosure item, registrants that are

investment companies must disclose fees billed for services rendered to the registrant, the registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the adviser that provides services to the registrant.

(3) Disclose, under the caption *All Other Fees*, the aggregate fees billed for services rendered by the principal accountant, other than the services covered in paragraphs (e)(1) and (e)(2) of this section, for the most recent fiscal year. For purposes of this disclosure item, registrants that are investment companies must disclose fees billed for services rendered to the registrant, the registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the adviser that provides services to the registrant.

(4) Disclose whether the audit committee of the board of directors, or if there is no such committee then the board of directors, has considered whether the provision of the services covered in paragraphs (e)(2) and (e)(3) of this section is compatible with maintaining the principal accountant's independence.

(5) If greater than 50 percent, disclose the percentage of the hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Dated: November 21, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

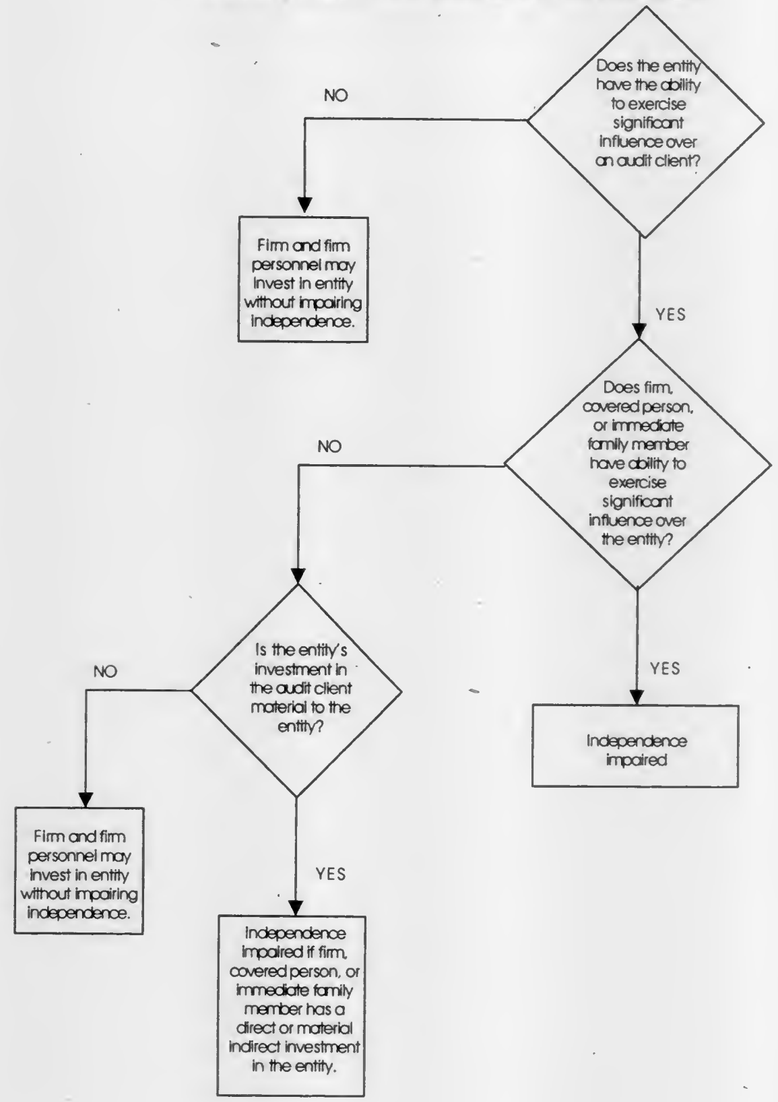
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Note: The Appendices to the Preamble will not appear in the Code of Federal Regulations.

APPENDIX A

Investing in Entities that Invest in Audit Clients

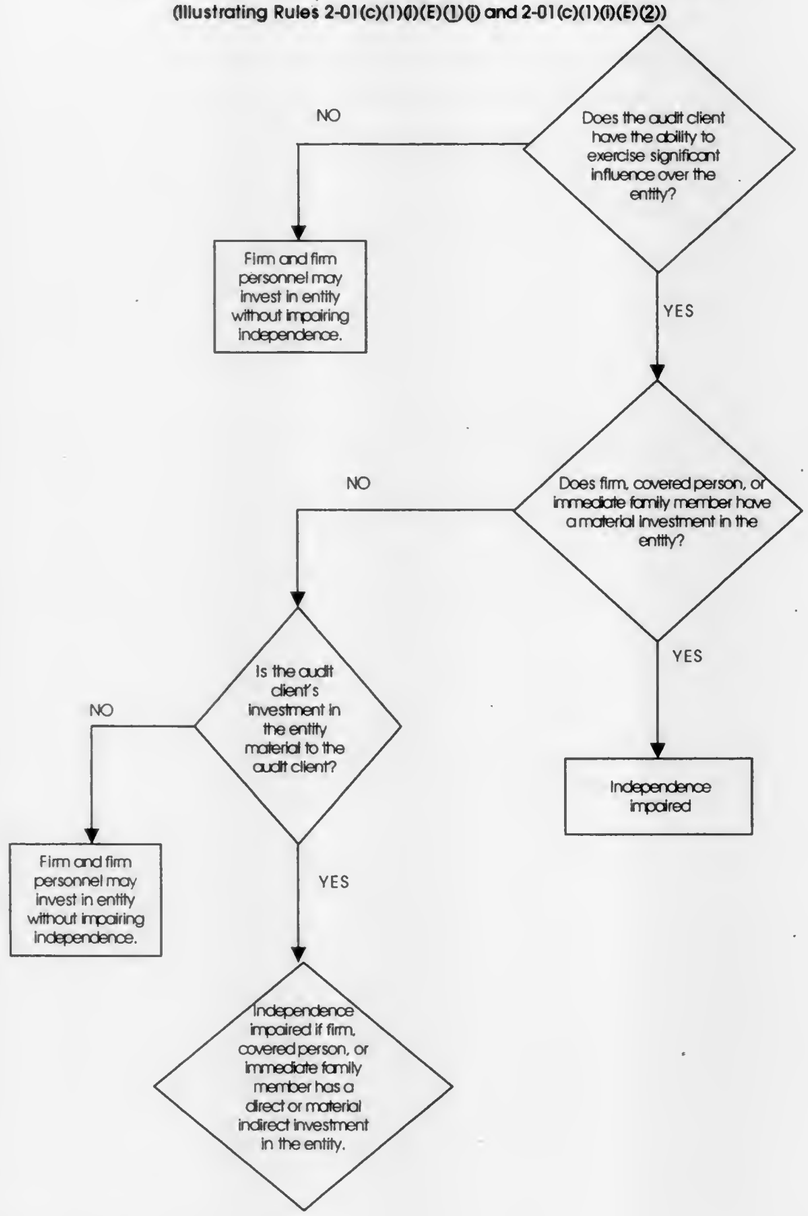
(Illustrating Rules 2-01(c)(1)(i)(E)(1)(ii) and 2-01(c)(1)(i)(E)(3))



APPENDIX B

Investing in Entities in which Audit Clients Invest

(Illustrating Rules 2-01(c)(1)(i)(E)(1)(i) and 2-01(c)(1)(i)(E)(2))



[FR Doc. 00–30244 Filed 12–4–00; 8:45 am]
BILLING CODE 8010–01–C

Federal Register

Tuesday,
December 5, 2000

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 16, 101 and 115

Food Labeling, Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 101, and 115

[Docket Nos. 98N–1230, 96P–0418, and 97P–0197]

RIN 0910–AB30

Food Labeling, Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising its food labeling regulations to require a safe handling statement on cartons of shell eggs that have not been treated to destroy *Salmonella* microorganisms. The agency also is requiring that, when held at retail establishments, shell eggs be stored and displayed under refrigeration at a temperature of 7.2 °C (45 °F) or less. FDA is taking these actions because of the number of outbreaks of foodborne illnesses and deaths caused by *Salmonella* Enteritidis (SE) that are associated with the consumption of shell eggs. These actions also respond, in part, to petitions from Rose Acres Farm, Inc., and the Center for Science in the Public Interest (CSPI). Safe handling statements will help consumers take measures to protect themselves from illness or deaths associated with consumption of shell eggs that have not been treated to destroy *Salmonella* (all serotypes). Refrigeration of shell eggs that have not been treated to destroy *Salmonella* will help prevent the growth of SE in shell eggs.

DATES: This rule is effective September 4, 2001, except § 115.50, which is effective June 4, 2001.

FOR FURTHER INFORMATION CONTACT: For the labeling provisions: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561. For refrigeration provisions: Nancy S. Bufano, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–401–2022.

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I. Background

FDA and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) share Federal authority to regulate eggs. The two agencies published in the **Federal Register** of May 19, 1998 (63 FR 27502), an advanced notice of proposed rulemaking seeking information on how to identify farm-to-table actions that would decrease food safety risks associated with shell eggs. On July 1, 1999, FDA and FSIS, in testimony before the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia of the Senate Committee on Governmental Affairs, committed to developing by November 1, 1999, an action plan to address the presence of SE in shell eggs using a farm-to-table approach. On August 26, 1999, FDA and FSIS jointly held a public meeting to gather stakeholders' input and to discuss the development of the action plan. On December 10, 1999, FDA and FSIS presented the Egg Safety Action Plan (Ref. 1) to the President. The plan identifies the systems and practices from production to consumption that must be implemented to reduce and, ultimately, eliminate eggs as a source of human SE illnesses. This plan includes requirements for refrigeration at retail and requirements for the safe handling statement being issued in this rulemaking. FDA, along with FSIS, intends to use information gathered by both agencies to develop and implement a comprehensive program to address the safety of shell eggs from farm to table.

In the **Federal Register** of July 6, 1999 (64 FR 36492), FDA published a proposed rule (hereinafter referred to as "the proposal") to require safe handling label statements on shell eggs that have not been treated to destroy *Salmonella* microorganisms and refrigeration of these shell eggs while held by retail establishments. In a separate document in the same issue of the **Federal Register** (64 FR 36516), FDA published a Preliminary Regulatory Impact Analysis (PRIA) and Initial Regulatory Flexibility Analysis of the proposal. FDA proposed these regulations because of the number of outbreaks and deaths associated with the consumption of shell eggs that have not been treated to destroy *Salmonella*. Interested parties were given until September 20, 1999, to comment on the proposal.

FDA received approximately 790 responses, each containing one or more comments, to the proposal. These responses were received from the egg industry, egg packaging companies, trade associations, consumers, consumer interest groups, animal interest groups, academia, State Government agencies, members of Congress, and a foreign Government agency. More than 700 of these comments addressed forced molting, which is directed at the production of shell eggs, and, therefore, outside of the scope of this rulemaking, and will not be addressed in this document. Other comments also addressed issues that are outside the scope of this rule and will not be addressed in this document (e.g., implementation of national standards for quality assurance (QA) programs, implementation of Hazard Analysis and Critical Control Points (HACCP) programs, use of sanitary standard operating procedures, Good Agricultural Practices/Good Manufacturing Practices, and other intervention procedures such as manipulation of feeds and competitive exclusion to control SE, sell-by dates, uniform coding, repacking of shell eggs, refrigeration of nest run

shell eggs, and creation of a single food safety agency responsible for eggs). These comments were considered by the agency in its action plan to address the presence of SE in shell eggs and will be considered in the development of subsequent proposed measures aimed at improving egg safety.

Some of the remaining comments supported the proposal. Others opposed the proposal or suggested modifications to the proposal. The relevant comments and the agency's responses to the comments are discussed below.

II. Shell Egg Labeling

A. Rationale for the Safe Handling Statement

In the proposal, FDA discussed the risk of foodborne illness associated with the consumption of shell eggs. In 1997, there were 7,924 SE isolates reported to the Centers for Disease Control and Prevention (CDC). In 1998, 58 percent of the SE outbreaks reported to CDC where a food vehicle was identified implicated foods containing eggs. Although recent CDC data show a 44 percent decrease in the isolation rate of SE, FDA believes that the incidence of SE is still too high. As discussed in the proposal (64 FR 36492 at 36501), FDA believes that it could take considerable time to design and implement a complete program that would eliminate eggs as a source of human SE illnesses, and indeed the Egg Safety Action Plan has a 10-year timeframe to achieve that goal (Ref. 1). However, as part of this program, FDA determined that there are measures that can be put in place quickly that can reduce the risks to consumers: refrigeration, which lengthens the effectiveness of the eggs' natural defenses against SE and slows the growth rate of SE, and thorough cooking, which kills viable SE that may be present. The agency maintained in the proposal that, unless informed about the risks presented by eggs contaminated with SE and ways that they may reduce these risks, consumers could suffer serious illness or death from consumption of raw or undercooked eggs. Accordingly, FDA proposed to require safe handling statements on shell eggs to inform consumers that there may be a risk associated with consumption of eggs and ways that they can properly handle and prepare eggs in order to reduce such risks.

(Comment 1) Several comments maintained that FDA overstated the magnitude of the risk associated with SE. One comment contended that the incidence of illness cited in the proposal was misleading. For example, the comment stated that information on all cases of salmonellosis was cited with the implication that it has a direct application to salmonellosis from SE. The comment stated that information on foodborne disease data from the years where salmonellosis associated with SE was increasing were included in the proposal, whereas, data from 1995 to 1998 showing a decrease in salmonellosis associated with SE were omitted. Some comments pointed out that recent data from CDC showing a 44 percent decrease in the isolation rate of SE from 1996 to 1998 do not support FDA's conclusion of a continued predominance of SE. Furthermore, one comment pointed out that there was only a 14 percent decrease in the isolation rate of all *Salmonella* serotypes in the same time period as the 44 percent decrease in the isolation rate of SE.

FDA disagrees that it overstated the magnitude of the risk associated with SE. The comment misunderstood how the data were presented in the proposal. FDA did not present the data regarding the incidence of all cases of salmonellosis to imply that these cases were reflective of SE-associated cases of salmonellosis. Rather, FDA used this information to place SE-associated salmonellosis in context of the epidemiology of *Salmonella* overall. First, in the proposal, FDA discussed the severity of salmonellosis and the magnitude of the disease, i.e., numbers of reported illnesses. Next, the agency discussed the numbers of SE-associated cases of salmonellosis and the fact that shell eggs are the major source of SE-related cases of salmonellosis where a food vehicle is identified.

The agency also disagrees with the comment stating that FDA did not include information on the decrease in the rate of infections caused by SE from 1996 to 1998. On the contrary, in the proposal (64 FR 36492 at 36493), FDA stated that recent CDC data showed a 44 percent decrease in the isolation rate of SE. However, the agency concluded that, even with the decrease in the isolation rate of SE reported by CDC, the incidence of SE associated with eggs was still too high and additional measures could and should be put in place to reduce the incidence even further.

B. Safe Handling Statement

In the proposal, FDA tentatively concluded that certain elements were essential to an effective safe handling statement, i.e., an informational statement that describes the hazard and the at-risk consumers, an instructional statement that describes measures that consumers can take to reduce or eliminate the risk, and a linking statement that relates the informational statement to the instructional statement. Applying the essential elements, FDA crafted several examples of label statements. FDA conducted focus group research to evaluate consumer understanding of the safe handling statements to test their effectiveness in informing consumers of the risks associated with shell eggs and of the safe handling practices that may be used to mitigate the risks.[1] Based on information from the focus groups, FDA proposed to require the following safe handling statement on shell eggs that have not been treated to destroy *Salmonella:*

SAFE HANDLING INSTRUCTIONS: Eggs may contain harmful bacteria known to cause serious illness, especially in children, the elderly, and persons with weakened immune systems. For your protection: keep eggs refrigerated; cook eggs until yolks are firm; and cook foods containing eggs thoroughly.

1. Comments on the Focus Group Research

(Comment 2) Several comments questioned FDA's focus group research. One comment maintained that, although focus groups are helpful tools to obtain feedback on food safety messages, FDA tested four very similar versions of the same label statement and, therefore, could not judge whether its proposed statement provided consumers with information they thought was necessary. The comment concluded that the label statements tested by FDA did not adequately reflect how consumers perceived FDA's proposed safe handling statement versus any other statement.

FDA disagrees with this comment. The comment misunderstood the intent of the focus group research. The intent of the research was for FDA to gauge how best to word the safe handling statement so that it is understood by consumers, not to determine what information is necessary in the statement. FDA developed several statements containing information

[1] The moderator of the focus groups asked participants about their knowledge of the possible health effects associated with eggs as well as their personal experiences with handling eggs. After assessing the participants' knowledge and attitudes, the moderator gave the participants a series of safe handling statements for shell eggs on individual sheets of 8.5 x 11-inch white paper. The moderator engaged the participants in discussions on the impact of the statements and asked them to compare each statement with the other statements. The moderator also asked participants to comment on the format of the statements. The focus of the discussions was whether they understood the message.

judged by FDA subject matter experts to be most necessary to consumers. These subject matter experts arrived at their determination of necessary information content after considering suggestions for messages that were submitted by outside organizations (Ref. 2). FDA provided five different safe handling statements for discussion in the focus groups. During the focus groups, participants discussed specific phrasing or message elements within each statement to gauge the effect of both the specific elements of the message and the overall message. Participants also provided input on how formatting could make the statement more readable. Thus, while adhering to the content judged necessary by FDA subject matter experts, the agency assessed numerous variations in how to best word and format the statement to communicate effectively with consumers.

(Comment 3) One comment stated that, although FDA did conduct some focus group testing, it should conduct direct testing such as mall-intercept studies to further refine the statement. This comment maintained that considering the susceptibility of older persons to foodborne illness, FDA should direct its message testing to this group.

FDA disagrees that it needs to conduct mall-intercept studies to fine tune the statement. If focus group results are not clear cut, then an experimental quantitative method such as mall-intercept studies could be used to fine tune the message. In this case, however, the focus group results were so consistent that FDA did not deem it necessary to conduct experimental testing. In addition, the focus group testing of the safe handling statements included consumers 60 years of age and older. These older consumers did not differ greatly from younger consumers in their responses to the safe handling statements that were tested. Consequently, FDA sees no need to conduct additional testing on older persons.

2. Description of the Hazard

Most of the comments that responded to the proposed labeling supported the concept of safe handling instructions for shell eggs. However, some of these comments opposed the specific language in the proposed statement for the reasons discussed below.

(Comment 4) Many of these comments asserted that including a description of the hazard, i.e., "eggs may contain harmful bacteria known to cause serious illness, especially in children, the elderly, and persons with weakened immune systems," is unwarranted.

Several comments contended that the hazard description will distract consumers from the safe handling instructions. To support this assertion, one comment presented consumer research from the American Egg Board (AEB) and concluded from it that most respondents saw FDA's proposed label statement as a warning that eggs are harmful rather than a message to promote safe handling. Some comments asserted that consumers have become weary of labels and warnings and no longer pay attention to them. Other comments expressed their concern that, because of the length of the hazard description, consumers may not read the entire statement and, thus, would not read the safe handling instructions.

Several comments that opposed the inclusion of the hazard statement maintained that consumers are aware of risks associated with SE in eggs and, therefore, the description is unnecessary. One of these comments presented data from a survey conducted by the California Department of Public Health Services that showed that 84 percent of the respondents were aware that eggs contained bacteria that could cause illness. The comment also pointed out that a consumer survey in Iowa reported that 93 percent of those surveyed were aware of *Salmonella* in eggs. Another survey in California showed that 86 percent of the English-language respondents were aware of *Salmonella* in eggs. The comment noted that a FDA survey in 1998 showed that ⅔ of respondents had heard of *Salmonella* and knew that cooking would kill it. This represented a 60 percent increase from a survey done in 1993. According to another comment, before FDA implements such a strongly worded safe handling instruction, it should determine whether consumers are really uninformed about the possibility of the presence of illness-causing bacteria in eggs.

Several comments maintained that the proposed safe handling statement for eggs is more harsh than the safe handling statement on meat and poultry and, therefore, unfairly targets the egg industry. One comment pointed out that USDA's risk assessment estimated that the contamination rate for eggs is 1 egg in 20,000, which, according to the comment, is several orders of magnitude lower than most animal products. Thus, the comment maintained that because the risk of becoming ill can be eliminated completely with proper handling and cooking, such a harsh hazard description for a product with a small risk is not justified.

In the proposal, FDA discussed its concern that unless consumers are advised of the risks presented by eggs contaminated with SE and ways that they could reduce these risks, consumers, especially those that are at greatest risk, could suffer serious illness or death from the consumption of raw or undercooked eggs. The agency's primary intent in proposing the label statement for eggs was to give consumers ways to reduce their risk, without having to avoid the product. In addition, consumer research available to the agency indicated that label messages generally are more credible when consumers know the reason for the message (Ref. 3). Therefore, the agency tentatively concluded that to adequately inform consumers there was a need to include information on why there was a risk associated with consumption of raw or improperly cooked shell eggs. However, in light of the comments that asserted that the hazard description: (1) Is not new information, (2) is not consistent with safe handling statements on other raw animal products, and (3) may distract consumers from the safe handling instructions, the agency is persuaded that it should reconsider the necessity of the hazard description as proposed.

The agency is persuaded by information provided by FDA's consumer research and comments to the proposal that the risks associated with consumption of SE-contaminated eggs is not new information to consumers. FDA survey data indicate that the percentage of consumers eating raw eggs has declined in recent years, as appropriate food safety practices have received more publicity (Ref. 4). FDA's own focus group research indicated that many consumers were aware that *Salmonella* is the major cause of foodborne illness associated with egg consumption. Because many of the consumers stated that they knew of the risk associated with eggs, they considered the safe handling statement to be more of a reminder than to provide new information.

FDA recognizes that the proposed label statement is different than that for meat and poultry. In crafting the label statement, the agency relied on previous focus group research that indicates consumers prefer messages that are more specific to the nature of the hazard and the appropriate action to take because of the hazard (Ref. 3). The agency points out, however, that there are differences in the labeling issues involved, which result in some differences in wording. For example, in the meat/poultry safe handling statement there is no specific mention of the food, rather the statement uses "some products" whereas, the proposed statement for eggs refers to "eggs." The agency points out that the meat/poultry statement was designed to appear on a very wide range of products, therefore, it needed to be more general in the way that it identifies foods. The egg label statement will appear only on eggs and, therefore, can be more specific. However, FDA acknowledges that the proposed hazard description on the labels of eggs may appear more harsh than the hazard description on the packages of meat/poultry. The agency does not want consumers to be confused about the level of risk associated with the consumption of raw or undercooked eggs versus consumption of any other raw or undercooked animal product.

FDA has decided to revise the safe handling statement by removing the proposed hazard description, i.e., "eggs may contain harmful bacteria known to cause serious illness especially in children, the elderly, and persons with weakened immune systems" and replace it with a shorter hazard description. FDA continues to believe that the safe handling statement would be more effective if consumers knew that the reason for following the safe handling instructions was to prevent illness from bacteria. Consequently, FDA has decided to minimize the potential for misunderstanding by shortening the introductory hazard description to "to prevent illness from bacteria." As was the case with the proposed hazard statement, this statement alerts consumers to the reason why it is important to adhere to the safe handling instructions and does not have the same potential as the proposed statement to distract consumers from the safe handling message.

Accordingly, based on the findings of the agency's consumer focus group research and comments to the proposal, FDA is revising the safe handling statement in proposed § 101.17(h)(1) to read as follows:

SAFE HANDLING INSTRUCTIONS:

To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.

3. Description of At-Risk Consumers

(Comment 5) A few comments opposed the description of at-risk groups in the hazard statement. According to one comment, consumers would perceive that the safe handling instructions are targeted only at the groups listed in the statement. Another comment pointed out that the safe handling labels on meat and poultry do not list at-risk groups. This comment contended that because of the low probability of contamination of eggs, vulnerable populations are no more at risk from eggs, and probably at less risk, than they are from any other raw animal product. One comment requested removal of the at-risk groups from the proposed safe handling statement because the reference to at-risk groups may heighten the misperception that eggs are a dangerous food.

FDA points out that the new hazard description does not include the listing of at-risk consumers. While FDA survey data indicated that most consumers do not know that some people are at a higher risk of foodborne illness than others and that focus group participants thought that the information on at-risk groups was an important aspect of communicating the nature of the hazard, the agency has reconsidered whether, in this case, it is necessary to provide that information on the labels of eggs. The agency acknowledges that the labels of meat/poultry do not include the listing of at-risk consumers. Because vulnerable populations are at greater risk of most foodborne illnesses, FDA believes that it would be better to provide this information to these consumers through educational channels rather than to tie the information to specific products. FDA does not want at-risk populations to be misled to believe that eggs present a greater risk to them than other raw animal products. Thus, the agency decided to remove the at-risk consumers from the proposed safe handling statement on eggs to be consistent with label statements on other raw animal products.

FDA believes that the information that eggs may be harmful to certain vulnerable populations is important information that must be conveyed to these consumers. Therefore, FDA will continue to provide information about food safety to consumers, including those at greater risk. In addition, FDA plans to develop an educational and outreach campaign after the publication of this final rule to bring attention to the new requirements for shell eggs and to disseminate information to consumers, particularly at-risk populations and those that prepare their meals.

4. Cooking Instructions

(Comment 6) Most comments agreed that there should be an instruction on proper cooking. Although some of the comments supported the language in the cooking instruction, i.e., "cook eggs until yolks are firm, and cook foods containing eggs thoroughly," a few comments objected to the cooking instruction. One comment stated that the phrase "cook thoroughly" may be too vague, but offered no alternative language. Another comment contended that FDA should eliminate the phrase "cook foods containing eggs thoroughly" because it is impossible to cook some egg-containing foods thoroughly, e.g., meringue and Caesar salad. The comment asserted that these foods can be made safe by using pasteurized eggs or avoiding the food. Therefore, the comment concluded that because the proposed phrase cannot be followed in all cases, it should be removed.

FDA disagrees with the elimination of the phrase "cook foods containing eggs thoroughly." FDA believes that it is necessary to inform consumers that, when cooking or preparing a food that contains raw eggs, the food must be cooked thoroughly to reduce the risk of illness. The agency rejects the notion that the cooking instruction should be removed because it is not possible to cook all egg-containing foods thoroughly. The intent of the cooking instruction is to give consumers information generally on how to properly cook eggs and egg-containing foods to reduce risks. The intent of the message is not to cover every possible scenario as it relates to eggs. The agency concludes that if consumers recognize that they are at risk of illness if they consume a food that is made with a raw or undercooked egg, they would avoid the food or use a substitute, e.g., pasteurized egg product, to reduce the risk. Thus, FDA is retaining the cooking instructions, as proposed, in the safe handling statement.

In the proposal, FDA requested comment on whether it should require a statement that the product should not be used for certain purposes, e.g., "use pasteurized eggs for recipes requiring raw or partially cooked eggs." The agency also requested comment on whether it should include on the label an explicit instruction to avoid the product for at-risk consumers or for individuals preparing food for at-risk consumers.

(Comment 7) One comment stated that FDA should not use the phrase "use pasteurized eggs for recipes requiring raw or partially cooked eggs" because consumers cannot readily purchase certain pasteurized egg products in retail stores, e.g., egg whites. However, the comment did not provide data on the availability of the product. There were no comments that supported use of the statement "use pasteurized eggs for recipes requiring raw or partially cooked eggs."

Because there was no support for the subject statement, the agency is not requiring it in the safe handling statement. In addition, FDA did not receive any comments on whether it

should include an explicit instruction for at-risk consumers to avoid the product, and therefore, is not requiring such a statement. However, as announced in the Egg Safety Action Plan, FDA plans to take additional steps to protect at-risk consumers by establishing safe egg handling and preparation practices consistent with provisions in the Food Code. (Refs. 1 and 5).

5. Other Comments on the Text of the Safe Handling Statement

(Comment 8) Some comments maintained that the description of the hazard will frighten consumers and will discourage consumers from eating eggs. According to one comment, eggs have a history of consumer avoidance because of the fear of heart disease from dietary cholesterol provided by eggs. This comment asserted that, given the history and perception that eggs are a dangerous food, the proposed statement may likely lead to further avoidance of eggs. The comment suggested that additional language be placed on the carton to combat the negative connotation of the safe handling statement.

It is not the agency's intent to frighten consumers or discourage consumption of eggs. Rather, the main purpose of the proposed label statement is to provide consumers with information on how to prepare eggs safely. FDA focus group research did not indicate that the proposed hazard description frightened consumers. Rather, the research indicated that consumers perceived the hazard statement as a helpful reminder about why they should handle eggs safely. Thus, FDA is not persuaded that additional language to combat a negative connotation of the safe handling statement is warranted. Nevertheless, the agency believes that it is less likely that the revised safe handling statement would frighten consumers.

(Comment 9) A few comments asserted that the hazard description is unwarranted for eggs produced under a proven risk-reduction program. According to one of these comments, consumer perception of the frightening or negative nature of the message would negate the effort put forth by producers who use these food-safety programs. Another comment contended that the proposed label statement with the hazard description has the potential to increase foodborne illness because producers would be less likely to participate in risk reduction programs if their products would still be required to bear the hazard component of the safe handling statement. The comments suggested a two-tiered label system, i.e., one label statement for eggs produced under QA systems and another for eggs that are not produced under QA systems. Another comment that supported the two-tiered concept contended that although the safe handling statement on eggs produced under on-farm QA programs could have a less stringent hazard description, it should not omit the reference to the potential hazard. The comment offered the following two tiered labeling scheme:

For eggs not in QA programs:

Caution: Eggs may contain illness-causing bacteria. Keep refrigerated. Do not eat raw. Cook until yolk is firm.

For those in QA programs:
SAFE HANDLING INSTRUCTIONS:

To prevent illness, keep refrigerated. Do not eat raw. Cook until yolk is firm.

As an alternative to the proposed label statement, one comment suggested that FDA develop and adopt a "positive" label system that would recognize eggs produced under proven risk reduction programs.

FDA recognizes and applauds the work being done by States and industry to address egg safety. However, FDA believes that two different label statements in the marketplace may be confusing to consumers. A different safe handling statement for eggs produced under QA programs could mislead consumers to believe that those eggs do not require safe handling when, in fact, both categories of eggs should be handled safely. However, in light of the agency's decision to revise the hazard description to "to prevent illness from bacteria," the question of a two tiered labeling scheme with a less stringent hazard description for eggs produced under QA plans becomes moot. Finally, the agency is not persuaded to develop a "positive" labeling scheme for eggs produced under QA plans, since like the two-tiered approach, it could create confusion. However, FDA would not object to "positive" statements, or any other voluntary information on the labels of eggs, as long as the information is truthful and not misleading. This information may not appear inside of the box with the required safe handling statement. FDA points out that information may be considered misleading, for example, if it implies that a food is safer than other similar products that may not be labeled.

(Comment 10) One comment from a foreign government stated that it uses QA programs and HACCP principles to ensure egg safety and that its eggs for export into the United States must be SE-free. Thus, the comment asserted that the proposed label statement is unnecessary for its products.

The agency does not agree with the comment that a foreign government requirement that eggs for export into the United States be SE-free negates the necessity for safe handling instructions. Unless eggs have been specifically treated to destroy *Salmonella*, FDA believes that there still is a chance that the eggs contain transovarian-transmitted SE. Further, FDA notes that it regulates both domestic and imported foods on an equal basis. As discussed above in this section, FDA is not permitting a different safe handling statement for eggs produced under QA plans. Thus, FDA is not establishing different labeling criteria for imported eggs based on the requirements of the country of origin.

(Comment 11) A few comments stated that the safe handling statement should begin with the terms "caution" or "notice." One of these comments stated that the word "caution" or "notice" would attract the consumer's attention. Another comment asserted that the serious public health threat posed by SE warrants a cautionary statement on labels that informs consumers that the way they are accustomed to eating eggs may no longer be safe. This comment contended that the term "safe handling instructions" does not achieve the objective of communicating to consumers quickly and unambiguously that eggs may be unsafe. Further, according to the comment, the word "caution" unlike "warning" or "danger" would not cause the consumer to avoid the product altogether.

Consumer research indicates that the word "caution" has the same connotation to consumers as "warning" and is, therefore, inappropriate for a safe handling statement (Ref. 6). Because FDA's focus group research indicates that consumers believe that there are practical, simple things they can do to control the risk from eggs, a safe handling statement is more appropriate and, consequently, the most appropriate signal words are "safe handling instructions." In addition, as discussed in the proposal (64 FR 36492 at 36505), FDA considered the term "notice" to introduce the safe handling statement and concluded that the term would not draw attention to the important fact that there are ways to reduce the risks of foodborne illness other than avoidance of the product. Therefore, FDA is not changing the phrase "safe handling instructions" to "caution" or "notice."

(Comment 12) One comment expressed the concern that the safe handling statement would be difficult to understand because it is above a fifth grade reading level.

FDA points out that considerable effort was made to ensure that the language in the statement would be understandable to consumers. Specific phrases or message elements were tested for comprehensibility either in the egg focus groups or in previous consumer research on food safety issues. For example, results of the focus group research indicated that some participants were confused by the term "shell eggs" and found "eggs" more understandable. They also found the phrase "cook eggs until yolks are firm" more understandable than "cook thoroughly." These findings were used to craft the proposed statement. Although focus group participants had varying educational levels, those with high level of education, e.g., graduate degrees, were excluded from participation. None of the participants appeared to find the message difficult to understand. Thus, the agency is not persuaded by the comment that the safe handling statement would be difficult to understand.

Other comments addressing the length of the safe handling statement and the specific wording of the hazard description in the safe handling statement have become moot because FDA has revised the statement. Therefore, those comments will not be addressed.

6. Alternatives to the Proposed Label Statement

(Comment 13) A few comments stated that the label statement on eggs for household consumers should be different from that on eggs for food service. One of the comments offered the following suggested labeling in a two tiered labeling scheme:

For household eggs:

Keep refrigerated and cook thoroughly

For eggs in food service:

Handle Safely: refrigerate promptly; don't cross contaminate; clean hands and surfaces often; cook to proper temperature.

FDA believes that the statement suggested by the comment for household consumers does not provide adequate information. For example, the statement required by § 101.17(h)(1) uses the phrase "cook eggs until yolks are firm" which is more descriptive than "cook thoroughly." Furthermore, FDA was not persuaded by these comments that food service establishments need additional information on cartons of eggs. Although the agency recognizes that many of the SE-associated outbreaks occur in food service establishments, it does not agree that additional labeling is the best way to address this issue. Thus, the agency is not persuaded to change the safe handling statement to those suggested by the comment.

(Comment 14) One comment stated that a lengthy safe handling statement is unnecessary and, alternatively, supported the use of the following on shell eggs:

IMPORTANT: Must Be Kept Refrigerated to Maintain Safety
or
IMPORTANT: Must Be Kept Refrigerated

According to this comment, if FDA determines that the labels of shell eggs need safe handling instructions, then those instructions should be in addition to the statement above.

The agency is not persuaded that this suggested label statement is all that is needed on eggs to inform consumers of ways that they may protect themselves. As discussed in the proposal, two measures that would mitigate the risk of SE in shell eggs are refrigeration and proper cooking. The suggested message does not instruct consumers that proper cooking is a measure that they can take to protect themselves. The agency also rejects the comment's suggestion that the suggested statement appear on the label in addition to FDA's proposed safe handling instructions. Two statements on the label informing consumers to keep eggs refrigerated would be redundant. FDA believes that the phrase "to prevent illness from bacteria" informs consumers that refrigeration is one measure they can take to reduce or eliminate the risk of foodborne illness. Thus, FDA concludes that it is implicit in the safe handling statement that refrigeration helps maintain safety.

(Comment 15) A few comments preferred statements that were very short, clear, and aimed at all consumers such as "do not eat raw or undercooked eggs" and "keep refrigerated, cook thoroughly, and do not eat raw" with each of the instructions preceded by bullets. Other comments supported the following label statement that incorporates the basics of the Fight Bac campaign:

Safe Handling Instructions
CLEAN: Wash hands and surfaces often.
SEPARATE: Don't cross contaminate
COOK: Cook to proper temperatures.
CHILL: Refrigerate Promptly

This statement, according to one comment is a simple and positive message and was designed based on consumer focus research. Furthermore, the comment maintained that it does not single out a specific food item.

FDA is not persuaded to adopt the safe handling statements suggested by these comments. The agency believes that the suggested statements do not inform consumers why the safe handling instructions should be followed. Also, the agency notes that the statement incorporating the basics of the Fight Bac campaign educates consumers about food safety in general. However, FDA's proposal to require a safe handling instruction is being issued under 201(n) and 403(a) of the Federal Food, Drug, and Cosmetic (FD&C Act) (21 U.S.C. 321(n) and 343(a)). Under section 201(n) of the FD&C Act, in determining whether labeling is misleading, it must be taken into account, among other things, the extent to which labeling fails to reveal material information with respect to consequences that may result from the usual use of the product. FDA believes that, although instructions to wash hands and not to cross contaminate products are useful pieces of information, such information is not specific to eggs. Therefore, FDA is not persuaded to adopt this suggested alternative phrasing.

7. Placement and Prominence

a. *Placement and type size of the safe handling statement.* As discussed in the proposal, section 403(f) of the FD&C Act requires that mandatory label information be placed on the label with such conspicuousness as to render it likely to be read and understood by ordinary individuals under customary conditions of use. In the past, FDA has generally required label statements required by § 101.17 (21 CFR 101.17) to be placed on the information panel. The agency noted that the principal display panel (PDP) would provide even more prominence. Accordingly, the agency tentatively concluded to require the proposed safe handling statement either on the information panel or the PDP. The agency also noted in the proposal that § 101.2(c) (21 CFR 101.2(c)) requires that mandatory information appearing on the PDP and information panel, including information required by § 101.17, appear prominently and conspicuously in type size no less than 1/16 inch. Consequently, the agency concluded that it was not necessary to repeat the requirements in this rulemaking.

(Comment 16) Some of the comments stated that there is not enough room on the egg carton to print such a lengthy safe handling statement with the other Federal and State mandated labeling requirements such as nutrition labeling, USDA grade and quality logos, product code, registration numbers to identify packers, date of pack, sell-by date, and count and weight. Some comments

maintained that the lack of space is greater for small (six or eight count) cartons and pulp/open view cartons. Further, one comment pointed out that some of the manufacturers of smaller egg cartons are incapable of printing on the side of the lid. For those who have space to print on the side of the lid, the comment pointed out that the cost to purchase equipment needed to print on the side of the lid would cost several million dollars. Some comments asserted that the space on the label is used by some firms for promotional material, which is a critical selling feature for the firm. Therefore, according to these comments, further regulation would limit a firm's ability to market its own products. While one comment stated that the safe handling statement should be on the outside of the lid, other comments requested some flexibility for placement of the label statement. Two comments maintained that FDA should conduct more research to see if the statement should appear on the information panel and whether consumers would notice the statement there. One comment requested that for small cartons the safe handling information be communicated with an 800 telephone number printed on the carton, e.g., "FOR SAFE HANDLING INSTRUCTIONS, PLEASE CALL 1–(800)____–____."

FDA recognizes that manufacturers may have to redesign their labels, but believes that, in many instances and, particularly in light of the fact that the safe handling statement that will be required is about one-half the length of the one proposed, simply reducing the type size of non-mandatory information will provide sufficient space to accommodate the safe handling statement in § 101.17(h)(1). Further, FDA believes that there is enough space on the foam type cartons of shell eggs (both the small, i.e., 6 to 8 egg carton, and larger cartons) to bear all other Federal and State mandated information as well as FDA's safe handling statement. In fact, some of those cartons now contain safe handling information that is comparable in length or more lengthy than FDA's revised safe handling statement. Therefore, for these cartons, FDA concludes that, as revised, there is ample space for its safe handling statement.

FDA also recognizes the limitation of label space on pulp style egg cartons. However, FDA believes that the pulp/open view cartons also have ample space for the shorter revised safe handling statement as evidenced by existing nonmandatory labeling. Thus, FDA is not revising the requirement in § 101.17(h)(2) that the safe handling statement must appear either on the PDP or the information panel of the label. The agency concludes that because there is ample space for the safe handling statement on both large and small cartons of shell eggs, FDA is not providing a telephone referral for the safe handling instructions for these cartons. In addition, FDA rejects the comments suggesting that it should conduct more research to determine whether consumers would notice safe handling instructions on the information panel. The comments did not provide any information that consumers would not notice the safe handling statement on the information panel and, therefore, FDA is not changing the provision of allowing the safe handling statement on the information panel.

(Comment 17) A few comments requested that FDA require a minimum type size. For example, one comment stated that 12-point type is best for older persons to read. The comment acknowledged that some egg cartons may not be able to accommodate 12-point type and stated that type size of less than 8-point would be difficult to read. One comment maintained that other formatting requirements would enhance the readability of the statement. For example, the comment suggested that FDA consider requirements for the use of simple type and use of ink and paper with sufficient contrast. Another comment suggested that FDA require that the statement appear in a hairline box with adequate space around the statement and appear in dark words on light background to enhance the visibility.

FDA does not agree that it should require a minimum type size. The agency reiterates that § 101.2(c) requires that mandatory information appearing on the PDP and the information panel, including information in § 101.17, appear prominently and conspicuously in a type size of no less than 1/16 inch. Although comments recommended 12 point font for the safe handling statement to make it easier for older persons to read, one of these comments acknowledged that there may be insufficient space to accommodate the statement in that type size on the egg carton. Furthermore, the comments did not provide data to support the contention that older consumers are unable to read information on the information panel and PDP that appear in 1/16 type size. Accordingly, FDA is not requiring a minimum type size for the safe handling statement that is different from the minimum type size requirements in § 101.2(c). The agency also notes that 21 CFR 101.15 describes conditions that would make a label statement lack the prominence and conspicuousness required by § 101.2(c). Some of these include insufficient background contrast, and crowding with other written, printed, or graphic matter. Because these provisions are already in place for prominence and conspicuousness for information required by § 101.17, the agency finds that it is not necessary to repeat these requirements in this rulemaking.

b. *Use of graphics.* In the proposal, FDA recognized that safe handling instructions on meat and poultry utilized graphic illustrations. The agency tentatively concluded that its focus group research did not indicate that graphic illustrations were necessary to convey the safe handling instructions to consumers. However, the focus groups did respond favorably to bullets and the agency requested comment on whether graphics would enhance the visibility of the statement and whether it should require them.

(Comment 18) Some comments maintained that icons depicting actions to be taken (e.g., a refrigerator to indicate that product should be refrigerated) make the safe handling statement easier to understand. Other comments supported the use of bullets to enhance the safe handling statement. One comment supported use of a graphic symbol to attract the consumer's attention to the label such as an exclamation point in a triangle. This symbol, the comment maintained, could become a universal symbol for foods that present a hazard.

The agency is not requiring these suggested labeling options. None of the comments provided data that showed that consumers would be better informed with graphics and, thus, did not call into question FDA's testing that showed that consumers would be adequately informed of safe handling information without the use of graphics. However, the agency would not object to the use of bullets or graphic illustrations in addition to what is required. Accordingly, graphic illustrations and bullets may appear with the safe handling statement to draw greater attention to the statement. However, other wording may not appear in the box with the prescribed label statement. As stated in the proposal (64 FR 36492 at 36504), FDA believes that prescribing the specific language of the safe handling statement gives manufacturers a level playing field by requiring the same language for all products covered by the regulation, while giving consumers a message that is not confusing, misleading, or ineffective.

c. *Labeling for shell eggs not for direct sale to consumers.* In the proposal, FDA stated that the safe handling statement on cartons of shell eggs that are not for direct sale to consumers, e.g., shell eggs that are to be repacked at a site other than originally processed or are to be shipped for use in food service establishments, would serve as a means to inform repackers and food preparers of the safe handling instructions. The agency tentatively concluded that the same goal of conveying the message could also be accomplished by customary practices of the trade. Thus, FDA proposed that the safe handling statement on shell eggs that are not for direct sale to consumers may be provided on cartons or in labeling, e.g., invoices or bills of lading in accordance with the practice of the trade.

(Comment 19) Some comments opposed labeling in invoices and bills of lading because, they asserted, the labeling may be separated from the product and not read by food handlers. The comments maintained that the safe handling instructions must be read and understood by the food handler because they are the ones who must use the safe handling instructions when storing and preparing egg dishes. Moreover, according to one comment, the majority of eggs shipped to food service establishments are in 15 or 30 dozen cases that have ample room for labeling and, therefore, there is no need for the flexibility. One comment asserted that the proposed safe handling instructions should be on shipping containers and other food service packages because most incidents of SE-contamination in eggs occur in food service establishments.

The agency agrees that the safe handling instructions must be conveyed and understood by the food handler. However, the agency is not persuaded by comments that the safe handling statement would not reach the food preparers if it is not on the label. FDA believes that it is the responsibility of the owner/operator of the establishment to make sure that food preparers receive the safe handling instructions as well as training on how to implement the instructions. Moreover, the agency points out that it intends to ensure that food preparers receive safe handling information for shell eggs by establishing safe egg handling and preparation practices at retail consistent with the Food Code (Refs. 1 and 5). Thus, FDA is not persuaded to prohibit the use of labeling such as invoices and bills of lading as a means for meeting the requirements of this rule when the eggs are to be repacked, relabeled, or further processed.

8. Other Labeling Issues

(Comment 20) Some comments contended that the label statement will not significantly reduce the numbers of SE-associated illnesses.

The agency disagrees that the label statement will not significantly reduce the numbers of SE-associated illnesses. In the PRIA, FDA used a Food Marketing Institute study (Ref. 7) of the effects of USDA's meat and poultry safe handling instructions to estimate the effect of the safe handling label statement for shell eggs. The agency estimated that the likelihood that shell eggs would be undercooked or consumed raw would decline by approximately 5 percent. FDA also estimated that the likelihood that consumers would fail to refrigerate shell eggs would decline by 2 percent. These percentages continue to be the agency's best estimate of the approximate effects of the safe handling label for shell eggs. In a separate simulation, FDA used its modification of USDA's SE risk assessment model [1] and CDC's surveillance model to estimate the effect of the safe handling label. With the FDA-modified SE risk assessment baseline, FDA estimated the number of illnesses that would be prevented by labeling to be 4,948 to 162,846 with a mean of 46,339. Using the CDC baseline, the estimate of the number of illnesses prevented by labeling was 2,813 to 42,892, with a mean of 14,775. As discussed below in section IV.A of this document, FDA used more recent data to adjust the CDC surveillance model used in the proposal. Thus, FDA's estimate of the number of illnesses prevented by labeling using the revised CDC baseline is 1,570 to 25,196 with a mean of 8,784. Comments did not provide FDA with other estimates of the prevention of salmonellosis. FDA maintains that its estimates represent a significant reduction in illness.

(Comment 21) Some comments contended that most outbreaks occur in food service establishments and, therefore, FDA's focus should be on educating and providing safe handling instructions for food service workers, not household consumers. On the other hand, one comment maintained that label statements are not going to change the behavior of food service workers who take shortcuts.

FDA disagrees with these comments. The agency believes that information about food safety should be given to both household consumers and food service workers. Previously in section II.A of this document, FDA discussed its rationale for providing safe handling instructions for consumers. The agency recognizes that food service is an additional component of the farm-to-table continuum and points out that, as part of FDA's and FSIS' Egg Safety Action Plan, FDA intends to initiate rulemaking to establish safe handling and preparation practices for food service establishments based on sections of the Food Code related to egg safety (Refs. 1 and 5). FDA also points out that the requirement for refrigeration of eggs at retail, including food service establishments (see discussion below in section III of this document) will be mandatory upon the effective date of this regulation.

FDA agrees that education is an important factor in providing instructions on food safety. Thus, the agency intends to develop an educational and outreach campaign related to this final rule to inform the public, including both consumers and food service employees.

(Comment 22) Several comments pointed out that many existing egg cartons already bear safe handling instructions. To eliminate costly relabeling, these comments requested that FDA permit existing safe handling label statements if they meet or exceed the statement required by the final rule. One comment requested that if a carton already has a "keep refrigerated" label on the carton that it be allowed to delete the phrase from the safe handling statement.

The agency is not persuaded to exempt eggs that have existing safe handling instructions from requirements in § 101.17(h)(1). FDA has concluded that prescribing the language for a safe handling statement for shell eggs would give consumers a clear and consistent message and provide a "level playing field" for industry by requiring that all products covered by the regulation bear the same information. Further, FDA concludes that a prescribed safe handling statement would ensure a message that is not misleading or confusing.

In addition, the agency is not persuaded to delete the phrase "keep

[1] The baseline for the cases of samonellosis was estimated in three different ways. The USDA risk assessment estimated the number of illnesses with a full farm-to-table model. The model included an estimate of the number of eggs infected, the number of infected eggs likely to be consumed, and an estimate of the number and severity of illnesses caused by SE. In the second model, FDA modified the USDA risk assessment model by using a 5 percent probability that shell eggs are refrigerated at 7.2 °C (45 °F) in retail establishments and institutions. FDA modified the original model based on more recent information on the numbers of establishments not refrigerating eggs at 7.2 °C (45 °F). The CDC model estimates the number of illnesses based on the number of confirmed cases as indicated by the number of SE isolates reported to CDC plus estimated unreported cases.

eggs refrigerated" from the safe handling statement on cartons that already have a keep refrigerated statement. The agency recognizes that many cartons already have refrigeration instructions and notes that USDA requires in 9 CFR 590.50 that eggs packed for the ultimate consumer be labeled to indicate that refrigeration is required. However, FDA believes that the refrigeration instruction is an essential component of the safe handling statement and, as such, should not be taken out of the context of the rest of the statement. Further, FDA's safe handling statement permits manufacturers to uniformly comply with both FDA's safe handling statement and FSIS' refrigeration labeling requirement because FSIS' requirement is that cartons be labeled to indicate that refrigeration is required. Consequently, this safe handling statement can replace that required by FSIS. The agency recognizes the redundancy in having two refrigeration statements and points out that, while firms are revising labels to add the safe handling statement, they can delete the additional "keep refrigerated" statement that is not a part of the safe handling statement required in § 101.17.

Although FDA is not exempting eggs that have existing safe handling instructions from requirements in § 101.17(h)(1), the agency does see merit in using enforcement discretion with firms that want to exhaust existing labels provided that the labeling meets or exceeds the requirement for the instructional element, which includes: (1) A refrigeration instruction and (2) a cooking instruction. FDA believes that this would reduce the costs for some firms while still providing consumers information on how to properly handle eggs. Firms with existing inventories as of the effective date of this final rule may exhaust those inventories as long as they contain the essential elements listed above. Upon their next printing, however, these firms must comply with the requirements in § 101.17(h)(1).

Lastly, the agency is revising proposed § 101.17(h)(1) and deleting proposed § 101.17(h)(6) to be consistent with the changes made in § 115.50 (as discussed in section III.C of this document). The remainder of § 101.17(h) is renumbered to reflect this change.

C. Comments on Effective Date

(Comment 23) A few comments asserted that the implementation time for the proposed labeling requirement is insufficient. These comments maintained that given the logistics of redesigning cartons, replacing inventory, making necessary adjustments to distribution channels, and accommodating seasonal product demand fluctuations, the egg industry needs a 360-day implementation period. According to one comment, once the rule is finalized, new designs will need to be developed, then sent to customers for label approval. The comment stated that production of the label could not take place until the design is approved, which according to the comment, could take 60 to 90 days. The comment maintained that once production begins, it will involve label changes for thousands of stockkeeping units (SKU's) of hundreds of different customers, which would be a burden given only the approximately 90 days left to comply. The comment estimated that personnel would take 11,386 to 19,880 hours to redesign the label; retool all carton labels, including artwork; communicate with customers; order plates; and complete other required activities.

Further, the comment contended that it is not likely that egg producers will have begun to use the proposed statement before the compliance date in order to take advantage of FDA's willingness, as stated in the proposal (64 FR 36492 at 36510), to allow producers to use the safe handling statement as proposed and if printed before the publication of the final rule. The comment asserted that producers would not want to take the chance of changing labels twice. The comment explained that egg carton stock is prepared well in advance and customers' needs may be less than expected. Therefore, if cartons are not used prior to the effective date, they will need to be discarded. The comment stated that, on the other hand, a large inventory may be needed to accommodate peak periods, such as Christmas and Easter and if large stocks are not maintained, the inventory may run out. Additionally, the comment expressed concern that, depending on when the rule is published, the labeling requirement could be implemented during the time of peak production, and, therefore would make compliance with the requirement extremely difficult. Another comment disagreed with FDA's assessment that a longer compliance period would delay benefits of the rule because many cartons currently contain safe handling instructions and, therefore, benefits are being realized now.

The agency notes that the purpose of the safe handling labeling requirement is to protect the public health by providing consumers with material information, i.e., instructions on how to safely handle and prepare eggs in order to reduce the risk of illness. Therefore, FDA believes that the safe handling statement should be placed on egg cartons as soon as possible. However, FDA is persuaded by the comments that it may be extremely burdensome for some producers to comply with the labeling requirements in 180 days. The agency acknowledges the difficulty in designing new labels, receiving label approval from customers, and building up inventories. The agency also recognizes the costliness of destroying inventories that do not comply with FDA's requirements. The agency is persuaded by the economic concerns raised in the comments that it should provide some flexibility to manufacturers. As discussed below in more detail in section IV.A of this document, the longer compliance period will generate savings in costs that would exceed the reduction in benefits thus still meeting the agency's need to address the public health concern. Therefore, FDA is providing an additional 90 days for firms to come into compliance with the requirements in § 101.17(h).

III. Refrigeration of Shell Eggs in Retail Establishments

As discussed in section II of this document, SE in eggs is a significant public health concern. As discussed in the proposal, FDA concluded that one practicable measure to limit the number of viable SE in shell eggs is refrigeration because it extends the effectiveness of the egg's natural defenses against SE and slows the growth rate of SE. USDA published a final rule (63 FR 45663, August 27, 1998) to require that shell eggs packed for consumer use be stored and transported at an ambient temperature not to exceed 7.2 °C (45 °F). This regulation, however, does not apply to eggs while held at all retail establishments. FDA is concerned that without continued refrigeration up until the time that the eggs are cooked, there would be an opportunity for the egg's defenses to degrade and growth of SE to occur. The agency reviewed research indicating that SE multiplies at temperatures of 10 °C (50 °F) and above but can be inhibited at lower temperatures, e.g., 8 °C (46 °F), 7.2 °C (45 °F) and 4 °C (39 °F). Based on this research and USDA's temperature requirement during transport, FDA proposed a maximum ambient temperature of 7.2 °C (45 °F) for eggs stored and displayed at retail establishments.

A. Refrigeration Temperature Requirements

(Comment 24) Most comments regarding the proposal to require refrigeration of shell eggs supported a requirement for refrigeration. Some of these comments supported the proposed maximum temperature requirement, i.e., 7.2 °C (45 °F), whereas other comments disagreed with this temperature requirement. Several comments suggested that the agency set the maximum ambient temperature for shell eggs held at retail at 5 °C (41 °F), instead of 7.2 °C (45 °F). Some of these comments suggested that this would provide a margin of safety, especially for eggs packed tightly together in large trays or in large retail coolers. Other comments noted that a requirement of 5 °C (41 °F) would ensure consistency with the requirement in FDA's Food Code that potentially hazardous foods be refrigerated at 5 °C (41 °F) (Ref. 5).

The agency is not persuaded that the temperature requirement should be 5 °C (41 °F), rather than 7.2 °C (45 °F). As discussed in section I.F of the proposal, research indicates that SE multiplies at temperatures of 10 °C (50 °F) and above but that multiplication is inhibited at lower temperatures. Therefore, by requiring a refrigeration temperature lower than 10 °C (50 °F), the agency is already providing a margin of safety for shell eggs. FDA concludes that refrigeration at 7.2 °C (45 °F), i.e., the same temperature required by USDA under the Egg Products Inspection Act (EPIA) for the storage and transportation of shell eggs, is sufficient to protect the public health. Because eggs cool down only slightly faster when held at 5 °C (41 °F) as opposed to 7.2 °C (45 °F), as discussed in the PRIA (64 FR 36516 at 36518), requiring eggs to be stored at the lower temperature would have a negligible effect on the SE risk. Requiring a temperature of 5 °C (41 °F) as the maximum ambient temperature would increase costs to the producer without producing significant additional food safety benefits.

Furthermore, the agency notes that the storage temperature of shell eggs addresses growth of SE in shell eggs, whereas the refrigeration temperature required by the Food Code, i.e., 5 °C (41 °F), addresses growth of all pathogens that may be present in potentially hazardous foods. Thus, in addressing holding temperatures for potentially hazardous foods in general, the Food Code requires a temperature for retail storage that will prevent or slow the growth of most pathogens, including cold-tolerant pathogens such as *Listeria monocytogenes* that have been shown to grow at 5 °C (41 °F). The agency does not have data suggesting that *L. monocytogenes* or other pathogens are a potential concern in shell eggs. The agency concluded that a maximum storage temperature of 7.2 °C (45 °F) will be effective in inhibiting the growth of SE that may be present in shell eggs. Of course, this requirement does not preclude States or retailers from maintaining shell eggs at lower refrigeration temperatures.

(Comment 25) One comment contended that FDA based the 7.2 °C (45 °F) ambient temperature requirement on studies that do not provide a sound scientific foundation for the requirement. The comment stated that none of the articles FDA cites in support of the proposed refrigeration requirement examined SE growth in eggs stored under conditions that simulate actual commercial storage conditions. The comment maintained that, because commercially stored egg cartons are often placed on pallets in large numbers and stacked to high levels in high-volume coolers, the eggs' internal temperature may be substantially higher than the coolers' ambient temperature, especially for centrally located eggs that are insulated by surrounding eggs and, therefore, exposed to warmer temperatures.

FDA disagrees with the comment. The studies noted by the comment were not cited as evidence that eggs in commercial storage conditions would achieve a certain temperature when refrigerated. Rather, these studies provide evidence that SE growth is inhibited when eggs are at the temperature studied. While the agency agrees that eggs packed near the center of a large pallet may not cool as quickly as those near the perimeter, the temperature of eggs, when refrigerated, will progress towards the ambient temperature of the refrigeration unit. As discussed above in this section, FDA has provided its rationale for why an ambient temperature of 7.2 °C (45 °F) for storage of eggs is the best available option for protecting the public health.

(Comment 26) One comment recommended that States be allowed to require ambient temperatures lower than 7.2 °C (45 °F) for shell eggs if they believe their citizens will be better protected by a lower temperature, such as 5 °C (41 °F), particularly if gaps exist in the scientific data on this issue.

The agency recognizes that some States and localities may have temperature requirements lower than 7.2 °C (45 °F). As stated in the proposal (64 FR 36492 at 36499), the agency does not intend that this regulation would preempt recommendations of the Food Code or other State or local requirements that require a lower temperature. The regulation would, however, preempt any State or local requirements that allow a temperature greater than 7.2 °C (45 °F).

(Comment 27) One comment supported the 7.2 °C (45 °F) ambient temperature requirement, but urged the agency and others to communicate effectively with retail establishments to minimize any confusion that may result from the temperature difference between this proposed requirement and the requirement in the Food Code.

While the new temperature requirement may create some confusion initially, the Food Code will be revised to reflect this new temperature for storage of shell eggs in its next reprinting (currently anticipated to be 2001). The revision will include not only the new temperature requirement, but also the scientific references and public health reasons for the change in annexes 2 and 3, respectively, of the Code. In the meantime, FDA will rely, as it has in the past, on State and local authorities to assist retail establishments in complying with the agency's regulations. The agency holds annual training courses for State personnel and food service directors that focus on changes in the Food Code. FDA will work closely with the States to ensure that they communicate effectively with retail establishments to minimize any confusion that may result from the temperature difference between this requirement and the requirement in the 1999 Food Code and to ensure that compliance assistance is consistent nationwide.

(Comment 28) One comment supported the refrigeration of shell eggs at 7.2 °C (45 °F) provided that minor variations in ambient temperature do not result in condemnation of eggs. The comment suggested that FDA make refrigeration mandatory, but make the temperature of 7.2 °C (45 °F) a voluntary standard, or establish a level of temperature variation (e.g., 5 °F) that would be tolerated before the eggs would be subject to regulatory action. Another comment objected to the fact that FDA made no provision in its proposal for eggs that are out of compliance for a limited amount of time, and suggested that the allowance of a reasonable amount of time to place eggs in a cooler after delivery would not compromise their safety.

FDA disagrees with the comment that the temperature for refrigeration of eggs be a voluntary standard, rather than a mandatory requirement. The agency has proposed 7.2 °C (45 °F) as the maximum ambient temperature for storage and display of shell eggs at retail establishments. Realizing that minor variations in ambient temperature are unavoidable, retailers may choose to

maintain shell eggs at temperatures below the maximum established temperature to provide for a margin for variation. As with any regulation, the enforcement of this temperature requirement will depend on the particular circumstances regarding the situation (including the temperature of the eggs themselves) as well as the discretion of the agency. In § 115.50(b)(1), FDA provided that "shell eggs held for retail distribution shall promptly be placed under refrigeration * * * upon receipt at a retail establishment." The agency believes that retailers should make every effort to promptly place shell eggs under refrigeration upon receipt. In most cases, this can be done. However, FDA recognizes that there may be some circumstances in which short delays are unavoidable. For example, when eggs are delivered to a grocery store, the stock clerk responsible for moving the eggs into the cooler could be briefly delayed in the task because he is cleaning up after an accident in one of the aisles involving a glass breakage. To allow for a practical application of the refrigeration requirement in such situations, FDA is adding a provision to § 115.50(b)(1) that provides that where short delays are unavoidable, the eggs should be placed under refrigeration as soon as reasonably possible.

B. Enforcement of the Refrigeration Requirement

(Comment 29) One comment expressed concern that consequences for violation of FDA's refrigeration requirement are inconsistent with violation of FSIS' refrigeration requirement for shell eggs during transportation. The comment noted that FSIS issues a facility violation but does not retain the product if eggs are found to be held above 7.2 °C (45 °F), whereas FDA would require diversion or destruction of the eggs.

As set out in the final rule, FDA has the authority, under sections 301 and 402(a)(4) of the FD&C act, to seize eggs that are held at retail at an ambient temperature above 7.2 °C (45 °F), on the grounds that those eggs have been held under insanitary conditions whereby they may be rendered injurious to health and are, therefore, adulterated. FDA may also use administrative procedures set out in this rule to order that the eggs that have been held in violation of the 7.2 °C (45 °F) requirement established in this rule, be destroyed or diverted. FSIS has the authority, under the EPIA, to detain eggs that are transported at an ambient temperature above 7.2 °C (45 °F), pending judicial seizure. FSIS also has the option of seeking civil money penalties against violators of the transport temperature requirement. The two agencies will coordinate enforcement efforts as closely as the different statutes allow. Both agencies agree that enforcement of the temperature requirement will depend on the particular circumstances regarding the situation (including the temperature of the eggs themselves) as well as the discretion of each agency.

(Comment 30) Two comments stated that they oppose complete preemption of State and local egg safety provisions. One of these comments from an association of State food and drug officials agreed that temperature requirements should be uniform, but also argued that the States should be free to enforce equivalent State requirements under State laws and regulations. This comment also stated that States should be permitted to require refrigeration temperatures lower than 7.2 °C (45 °F).

In the proposal, FDA tentatively concluded that the regulation should preempt less stringent State and local requirements because allowing them would interfere with the important public health objective of refrigerating eggs at 7.2 °C (45 °F). FDA does not intend that this regulation preempt State requirements that are the same as or more stringent, i.e., 7.2 °C (45 °F) or lower. The regulation does, however, preempt any State or local temperature requirements greater than 7.2 °C (45 °F). FDA would like to clarify that States will be permitted to enforce their own temperature requirements that are equivalent to or lower than FDA's proposed requirement. For example, if a State has a temperature requirement of 5 °C (41 °F) and eggs were found at a storage temperature of 6.7 °C (44 °F), then the eggs would be in compliance with the Federal regulations, but not the State regulations and the State could take enforcement action to enforce its own regulations.

(Comment 31) One comment also opposed preemption of State administrative procedures. The comment asserted that, the administrative procedures provided in the proposal would impose a lengthy process on States and localities. The comment maintained that it is doubtful that State or local jurisdictions would follow FDA's proposed procedures, e.g., they would not call FDA district or regional directors to remove adulterated eggs from establishments traditionally under their jurisdiction. Nevertheless, the comment asks for clarification on whether the proposed regulations preempt State administrative procedures.

The agency is clarifying that the administrative procedures in proposed § 115.50 do not preempt State or local administrative procedures. On the contrary, FDA explicitly provides in § 115.50(d) that State and localities may follow the hearing procedures set out in § 115.50(e) substituting, where necessary, appropriate State or local officials for FDA officials, or they may follow comparable State and local procedures as long as such procedures satisfy basic due process. Thus, FDA intends that States could use their own administrative procedures to enforce the regulation. FDA is removing the word "comparable" to make it clearer that State and local administrative procedures do not need to track FDA's procedures.

(Comment 32) One comment raised concerns about the breadth of the preemptive effect of the proposed regulation. It questioned whether the proposed rule might preempt all State laws relating to egg safety and substitute FDA's regulation. This comment contended that States already have systems in place that expeditiously remove unsafe foods from commercial channels and that those should not be preempted.

FDA agrees with the comment. States do have systems already in place that expeditiously remove adulterated food from the marketplace. In the proposal, FDA acknowledged that States and localities, more than FDA, currently enforce regulations in retail establishments. When examining options for the enforcement of refrigeration requirements, FDA tentatively concluded that a Federal-State cooperative approach would be the best approach to enforce the refrigeration requirements. Thus, FDA proposed to allow States and localities to enforce the Federal regulation, along with FDA, if the States and localities so desired.

FDA wants to make it very clear that the intended preemptive effect of this regulation is very narrow. FDA does not intend to preempt general food safety laws that apply to eggs, such as State food and drug acts, or State or local laws, regulations, or ordinances applying to retail establishments, e.g., the Food Code. A State or local food safety agency can continue to enforce its own refrigeration requirements or other egg safety requirements under its own administrative or judicial enforcement procedures as long as the retail refrigeration requirements for eggs are (equal to or less than 7.2 °C (45 °F). FDA is including State and local agencies in the enforcement of this regulation to broaden their enforcement tools, not to narrow them. To ensure that the limited preemptive effect of these regulations is clear, FDA has added a statement on the preemptive effect of the regulations to the codified text.

(Comment 33) A comment contended that the provisions in the proposal that allow States and localities to enforce the provisions "until FDA notifies the State or locality in writing that such assistance is no longer needed" appear to place State regulatory actions subordinate to those of FDA. The comment maintained that it knew of no other situation where regulatory actions of State or localities constituted "assistance" to a Federal agency, especially when intrastate commerce is involved. The comment asked for clarification of this issue.

The provision that allows State and local agencies to enforce FDA's regulations draws its terms from section 311 of the Public Health Service Act (PHS Act). FDA does not consider State and local food safety activities to be subordinate to Federal activities. In fact, FDA created this cooperative model to ensure that State and local officials continue to be the primary enforcement officials in retail establishments while being provided the ability to enforce this Federal requirement for egg refrigeration.

(Comment 34) One comment also expressed concern regarding the precedent of using the PHS Act for enforcement of communicable disease regulations when there are other collaborative and integrated mechanisms available, e.g., the Food Code. The comment maintained that many States adopt the provisions of title 21 of the *Code of Federal Regulations* (CFR) and, therefore, the comment noted that it previously requested that FDA adopt relevant sections of the Food Code as regulations. The comment asserted that adopting relevant sections of the Food Code as a Federal regulation would lower the risk of illness, while promoting uniformity without preempting State and local authority.

The agency notes that this regulation is not the first regulation issued by FDA that utilized the PHS Act to address prevention of communicable diseases. FDA used the PHS Act as its legal authority to issue: (1) Regulations to control the interstate shipment of molluscan shellfish (21 CFR 1240.60); (2) regulations to control the interstate and intrastate commerce of turtles (§ 1240.62 (21 CFR 1240.62)); (3) requirements for mandatory pasteurization of milk and milk products (21 CFR 1240.61); and regulations to control blood and tissue products (21 CFR 640 and 1270). However, the agency acknowledges that this regulation represents a new approach to food safety as it relates to matters traditionally addressed by the States. The agency believes that the Federal-State cooperative approach that it is adopting in this final rule for the regulation of eggs is the most effective and efficient use of Federal, State, and local food safety authorities.

Further, FDA recognizes that many States adopt parts of 21 CFR by reference. However, the agency is not persuaded by the comment that it should adopt relevant sections of the Food Code in lieu of issuing this regulation. FDA notes that its policy on the refrigeration of eggs, i.e., that refrigeration at 7.2 °C (45 °F) is adequate to maintain the safety of shell eggs would be the same whether or not the agency issued rulemaking to codify in 21 CFR sections of the Food Code relevant to shell eggs. Nevertheless, as announced in the Egg Safety Action Plan, the agency plans to take additional steps to protect at-risk consumers by establishing safe egg handling and preparation practices at retail, consistent with provisions in the Food Code.

(Comment 35) One comment contended that FDA should evaluate each State and local program to ensure that they have the expertise and resources to enforce the regulations. This comment contended that if the States and local programs do not have the capability to enforce the rule, FDA should provide training or resources, or enforce the rule itself. Furthermore, the comment stated that FDA should perform comprehensive annual reviews and permit only those agencies that satisfy strict performance standards to continue to enforce the rule.

FDA disagrees with this comment. As discussed in the proposal, the agency recognizes that the inspection of retail establishments traditionally has been the province of State and local food safety agencies. FDA expects that these agencies would continue to inspect these establishments and will be able to enforce the refrigeration requirement. FDA considered a requirement that the States report to FDA on their enforcement activities. However, the agency concluded that, because of the vast number of food safety agencies at the State and local level, reporting to FDA would be too resource intensive. Further, the agency concluded that requiring States and localities to report to FDA would remove valuable resources from egg safety enforcement and place them into administrative activities. Consequently, FDA decided to not require enforcement reports from State and local agencies. Moreover, FDA, in keeping with the principles of Executive Order 13132 on federalism, thought it prudent to allow States the maximum administrative discretion possible in enforcing this rule. However, the agency intends to stay informed of the enforcement of State and local agencies. Where State or local coverage needs to be augmented, FDA intends to act.

(Comment 36) One comment opposed the allowance of 10-working days after the order is given for the destruction of eggs that are not in compliance with the temperature requirement as proposed in § 115.50(e)(1)(i). This comment maintained that FDA provided no rationale for the time period. Moreover, the comment contended that 10 days was an unnecessarily long period of time and could allow for inadvertent repacking. The comment suggested that only 3 to 5 days be allowed.

The agency disagrees with the comment. The time period of 10-working days is consistent with other regulations that address the prevention of communicable disease, e.g., regulations in § 1240.62 that control the interstate and intrastate commerce of turtles. Moreover, the agency believes that 10-working days allows sufficient time for interested parties to appeal the detention order as provided in § 115.50(e)(2)(i). In addition, the agency points out that the administrative procedures provide for sufficient safeguards against inadvertent repacking of shell eggs that were not held in compliance with the temperature requirement. Section 115.50(e)(1)(iv) provides that eggs that are detained be labeled with official tags stating that they not be sold, distributed, or otherwise disposed of except that they be diverted or destroyed, or moved pending appeal. The comment did not persuade FDA that there is sufficient cause to be concerned that eggs will be inadvertently repacked if they are held for 10-working days before they are destroyed or diverted. Thus, the agency is retaining the provision in § 115.50(e)(1)(i) for 10-working days before eggs are diverted or destroyed.

(Comment 37) One comment suggested that inspectors check the temperature of the shell eggs' environments at least twice a year. The comment also suggested that, to ensure that retail establishments are maintaining accurate temperatures, continuous temperature recording devices be required and records made available to inspectors.

The agency agrees that the inspection of retail establishments twice a year is reasonable. In fact, the Food Code recommends that retail establishments be inspected once every 6 months. These inspections include checking the temperature at which potentially hazardous foods, including eggs, are being held. However, the agency does not find that it is necessary to make the inspection a requirement as part of this rulemaking. The agency expects that when State and local agencies routinely inspect retail establishments, they will check the temperature at which shell eggs are held. In addition, for any establishment that FDA inspects, it will also check the temperature at which shell eggs are held. Thus, FDA is not persuaded by the comment to require a specific interval for checking the temperature at which shell eggs are held.

FDA disagrees that it should require that retail establishments maintain continuous recording devices. The agency notes that neither the Food Code nor FSIS, in its directive regarding the enforcement of refrigeration requirements for shell eggs (Ref. 8), recommends that such devices be used. Furthermore, FDA notes that requirement of such devices may be very costly, especially for small businesses. Consequently, the agency is not persuaded by the comment to require establishments to maintain continuous recording devices.

C. Other Changes to the Proposal

FDA is revising proposed § 115.50 by deleting paragraph (d) and revising paragraph (b) for clarification. The agency concludes that § 115.50(d) stating that the requirements of this section apply to all eggs may be confusing in light of the fact that paragraph (b) states that all requirements of the section, except paragraph (c) apply to shell eggs. FDA is revising paragraph § 115.50(b) to state "except as provided in paragraph (c) of this section; shell eggs held for retail distribution, whether in intrastate or interstate commerce, shall bear the following statement: " With this revision, § 115.50(d) becomes redundant. The rest of the section is renumbered to reflect this change.

IV. Final Regulatory Impact Analysis

A. Benefit-Cost Analysis

FDA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting some sector of the economy in a material way; or adversely affecting jobs or competition. A regulation is also considered a significant regulatory action under Executive Order 12866 if it raises novel legal or policy issues. Under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requiring cost-benefit and other analyses, a significant rule is defined in section 1531(a) as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year * * *." Finally, the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FDA finds that this final rule is economically significant under Executive Order 12866. FDA determined that this final rule, based on the median estimate of cost contained in the economic analysis, does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Furthermore, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1995 (Public Law 104–121) FDA determined that this final rule will be a major rule for the purpose of congressional review.

This section contains the regulatory impact analysis of the final rule. A more complete analysis and a list of references is available in a separate document entitled "Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rule to Require Refrigeration of Shell Eggs at Retail and Safe Handling Labels" (64 FR 36516, July 6, 1999).

FDA received no comments that directly addressed the cost-benefit analysis of the proposed rule. Several comments, however, discussed aspects of the rule that would affect the cost-benefit analysis. In this final regulatory impact analysis, FDA responds to those comments.

1. Regulatory Options

FDA considered several regulatory options for dealing with SE in shell eggs. The options considered include: (1) No new regulatory action, (2) labeling only, (3) refrigeration at 7.2 °C (45 °F) only, (4) refrigeration at 5 °C (41 °F), (5) labeling and refrigeration as proposed, (6) HACCP for shell eggs, (7) in-shell pasteurization, (8) longer compliance periods, and (9) limited retail sell-by periods. FDA received comments on the proposal that directly or indirectly dealt with the economic analyses of some of these options.

(Comment 38) Several comments discussed the costs of in-shell pasteurization (option 7). In the analysis of the proposal, FDA assumed that the annual cost of pasteurization was $0.30 per dozen eggs. If 47 billion shell eggs were consumed per year, the annual cost of pasteurizing all of them would be about $1.2 billion. One comment estimated the cost to be $0.26 to $0.38 per dozen eggs, which implies that the annual cost of pasteurizing 47 billion shell eggs would be $1 to $1.5 billion. Another comment estimated that pasteurization would increase the price of a dozen eggs by 35 to 40 percent. The comment listed no prices, but at an average price of $0.80, the additional cost of pasteurizing 47 billion eggs would be $0.28 to $0.32 per dozen, or $1.1 to $1.3 billion per year. FDA did not estimate the transition, or set-up costs, (e.g., costs of equipment, redesign of processing facilities, training) for processors switching to pasteurization, so these estimates understate the full cost of in-shell pasteurizing all shell eggs.

Although in-shell pasteurization would greatly reduce SE, the agency concludes that other interventions between farm and table will reduce SE at lower cost. The egg safety action plan includes these other interventions, such as on-farm controls, controls at packer/processor, and retail controls, in addition to in-shell pasteurization.

(Comment 39) Several comments requested a longer compliance period for the new egg label.

The main disadvantage of longer compliance periods for the labeling provision (option 8) is that the option would delay the realization of the benefits of the rule. In this final rule, the agency will allow 9 months (instead of the proposed 6 months) for producers to comply with the labeling provision. The longer compliance period will probably generate savings in costs that exceed the reduction in benefits (as measured with the revised CDC surveillance baseline). FDA discusses the effects of the longer compliance period in more detail in the sections on benefits and costs.

2. Benefits

Benefits from the final rule to require a safe handling label and the refrigeration of shell eggs at 7.2 °C (45 °F) come from reducing egg-related illness. The formula FDA used for estimating benefits is:

Marginal health benefits = baseline risk (number of SE illnesses related to shell eggs) x expected reduction in the number of illnesses brought about by the final rule x health cost per illness.

(Comment 40) Although there were no comments directly on the estimated benefits, several comments argued that FDA used too high a baseline number of SE illnesses. In addition, some comments cited new data from CDC on SE. In the economic analysis in the proposal, FDA used the results of the USDA SE risk assessment for one estimate of the baseline risk and the CDC *Salmonella* surveillance data for another estimate of the baseline (64 FR 36516 at 36520). The CDC active surveillance data showed a 44 percent fall in SE between 1996 and 1998 (Ref. 9). CDC also released a new estimate of the total number of illness associated with *Salmonella* (Ref. 10). The new estimate of the total number of illnesses from *Salmonella* is lower than previous estimates, which implies that the baseline number of SE-related illnesses is also lower. In response to the comments on FDA's baseline number of illnesses, FDA adjusted the CDC surveillance baseline to incorporate the recent CDC surveillance data and estimated number of SE-related illnesses.[2] The SE risk assessment model baseline did not use CDC cases, so it does not change. Table 1 of this document shows the USDA SE risk assessment baseline, the FDA-modified USDA SE risk assessment baseline (for explanation of this modification, see footnote 1 in section II.A.8 of this document), the CDC surveillance baseline, and the adjusted CDC surveillance baseline.

TABLE 1.—FOUR ANNUAL ILLNESSES FROM ESTIMATES OF SALMONELLA ENTERITIDIS (SE) IN SHELL EGGS

	5th Percentile	Median	Mean	95th Percentile
a. USDA SE Risk Assessment				
Illnesses	126,374	504,082	661,633	1,742,592
Arthritis	3,631	14,864	19,994	55,915
Deaths	68	301	391	1,050
b. USDA SE Risk Assessment as Modified by FDA				
Illnesses	115,645	416,156	569,231	1,508,814
Arthritis	3,372	12,548	17,175	48,594
Deaths	66	250	354	985
c. CDC Surveillance Model				
Illnesses	63,884	189,599	191,511	319,275
Arthritis	1,330	5,533	5,727	12,202
Deaths	37	122	115	197
d. Revised CDC Surveillance Model				
Illnesses	36,523	112,138	114,271	194,796
Arthritis	762	3,011	3,410	7,251
Deaths	21	66	68	117

FDA used the USDA SE risk assessment model to estimate the expected reduction in illnesses attributed to the rule. The design of the USDA SE risk assessment model allowed the agency to estimate the number of illnesses prevented by comparing the baseline number of illnesses with the number of illnesses under the rule.

FDA calculated the health cost per illness prevented by classifying SE illnesses by the severity of outcome: Mild, moderate, and severe acute gastrointestinal illnesses; resolved and chronic reactive arthritis; and death. The agency then multiplied the estimated monetary health cost per type of illnesses by the number of illnesses prevented of each type. FDA calculated total health benefits from the final rule with the following formula:

Total health benefits = (number of mild cases prevented x $ per case) + (number of moderate cases prevented x $ per case) + (number of severe-acute cases prevented x $ per case) + (number of resolved cases of arthritis prevented x $ per case) + (number of chronic cases of arthritis prevented x $ per case) + (number of deaths x $ per death).

The baseline risk, the expected reduction in risk, and the health costs per illness are all uncertain. FDA, therefore, estimated a distribution of possible health benefits for the final rule, with the distribution based on the probability distributions associated with the main uncertainties. FDA estimated that this final rule would reduce the number of egg-related illnesses by 6 to

[2] In the analysis of the proposed rule, FDA estimated the number of SE illnesses from shell eggs with a Monte Carlo simulation. In one simulation, FDA used CDC surveillance data from 1988 through 1997 to calculate that the annual average number of SE isolates was 8,400. FDA then applied the probability that an isolate would be reported that was used in the USDA SE risk assessment, i.e., 0.014, to estimate the total number of SE cases. FDA assumed, based on outbreak and other information, that 10 to 60 percent of all SE cases were associated with shell eggs. In the revised CDC surveillance model, FDA used CDC surveillance data from 1989 through 1998 to calculate an average annual number of SE isolates of 8,300. The agency applied the probability of reporting used in the new CDC foodborne illness estimates, 0.026, to estimate the total number of SE cases (Ref. 10). As in the proposed rule, FDA assumed that 10 to 60 percent of all SE cases were associated with shell eggs. Part d of table 1 shows the results of the simulation based on the revised CDC data.

49 percent (5th to 95th percentile), with the median equal to 14.5 percent and the mean equal to 19 percent. The ranges (5th to 95th percentile) of estimated annual benefits for the three baselines are shown in table 2 of this document.

TABLE 2.—TOTAL ANNUAL HEALTH BENEFITS FROM THE REDUCTION IN SALMONELLOSIS ATTRIBUTABLE TO THE PROPOSED SHELL EGG RULES: USDA[1] SE[2] RISK ASSESSMENT BASELINE, CDC[3] SURVEILLANCE BASELINE, AND ADJUSTED CDC SURVEILLANCE BASELINE

Variable	5th Percentile	Median	Mean	95th Percentile
a. Modified USDA SE Risk Assessment Baseline				
Illnesses prevented Health benefits	12,369 $86.7 million	65,801 $703 million	115,848 $1,700 million	407,064 $6,610 million
b. CDC Surveillance Baseline				
Illnesses prevented Health benefits	7,032 $49.2 million	25,132 $303 million	36,937 $501 million	107,230 $1,679 million
c. Revised CDC Surveillance Baseline				
Illnesses prevented Health benefits	3,925 $32.9 million	14,958 $259.5 million	21,961 $466.3 million	62,991 $1,619 million

[1] USDA means U.S. Department of Agriculture.
[2] SE means *Salmonella* Enteritidis.
[3] CDC means the Centers for Disease Control and Prevention.

FDA estimated the benefits derived from extending the compliance period for the labeling regulation. With the longer compliance period for the labeling provision, some of the labeling benefits will be postponed for 3 months. In the analysis of the proposal, the agency estimated the median benefits attributable to labeling alone to be $261 million using the USDA SE risk assessment baseline and $103 million using the CDC surveillance baseline. With the revised CDC surveillance baseline, median labeling benefits are $91 million. FDA used a 7 percent rate of discount to estimate the reduction in benefits from increasing the compliance period for labeling by 3 months. The later effective date will reduce median health benefits by, at most, $5 million under the USDA SE risk assessment baseline and $2 million under either version of the CDC surveillance baseline because some labels would be in place before the effective date. Because it is based on more recent information, the agency believes that $2 million is the best estimate of the reduction in benefits associated with the later effective date for the safe handling label.

The benefit estimates above depend on a number of assumptions including assumptions about individual response to the egg labels. Modification of these assumptions would lead to changes (increases or decreases) in the estimate of the benefits of this rule.

3. Costs

FDA received no comments on the estimated costs of this rule and, therefore, will use the same estimate reported in the analysis of the proposal. The costs of the final rule are the sum of the costs of changes in manufacturing practices—labeling and refrigeration—and changes in consumer practices—egg preparation and consumption.

a. *Labeling.* The costs of labeling are the sum of inventory disposal, label redesign and administrative costs. FDA calculated labeling costs with the following model:

Labeling cost = ($ administrative costs per firm x number of affected firms) + ($ value of cartons manufactured x disposal percentage of carton inventory) + (number of affected labels x $ redesign cost per label).

In the analysis of the proposed rule, FDA estimated the total cost of labeling for a 6-month compliance period to be a one-time cost of approximately $18 million. The cost included administrative costs, inventory disposal costs, and label redesign costs. Several comments stated that inventory and redesign costs would be high, but did not state whether the cost estimates FDA presented were high. One comment from a carton manufacturer stated that redesign costs for its foam labels would be $2 million. Based on the market share cited in the comment, the cost per SKU would be about $500, which is the cost used in the proposal for a 6-month compliance period.

Another comment stated that in order to print on the sides of cartons manufacturers of smaller egg cartons would have to purchase new equipment costing several million dollars. The agency disagrees that such purchases will be necessary. With redesign and reduced type size for non-mandatory material, sufficient free space will be available for the safe handling statement without the need to print on the sides of the cartons. The shorter safe handling statement in this final rule (compared to the statement in the proposal) increases the agency's confidence that smaller egg cartons will have sufficient space.

In light of FDA's decision to extend the compliance period to 9 months, labeling costs will decrease. In the analysis of the proposal, FDA compared a 6-month compliance period with a 12-month compliance period. FDA now assumes that the labeling costs for a 9-month compliance will be about halfway between the costs for 6- and 12-month periods. As table 3 of this document shows, this assumption leads to estimated costs of $15 million.

TABLE 3.—ESTIMATED TOTAL COSTS TO INCORPORATE SAFE HANDLING STATEMENTS (TOTAL COSTS ROUNDED TO NEAREST MILLION)

Compliance Period	6 Months	9 Months	12 Months
Total administrative costs	$280,000	$240,000	$200,000
Total inventory disposal costs	$3,000,000	$2,250,000	$1,500,000
Total label redesign costs	$15,000,000	$12,500,000	$10,000,000
Total labeling costs	$18,000,000	$15,000,000	$12,000,000

FDA believes that the 9-month compliance period combined with the shortening of the safe handling statement may reduce labeling costs by more than the $3 million difference shown in table 3. The shorter statement should eliminate many of the problems associated with fitting the statement on cartons with limited flat space. With 3 more months for compliance, many more establishments will be able to use up all of their carton inventories before the effective date.

b. *Refrigeration.* FDA estimated the refrigeration costs to be the cost of the additional equipment required for all establishments to maintain an ambient temperature of 7.2 °C (45 °F). The agency calculated the cost by multiplying the estimate of the number of establishments that would require new (or upgraded) equipment by the cost of equipment. FDA estimated the number of establishments that would require new equipment by assuming that no establishments in States that have adopted the Food Code and some fraction—with one-third the most likely—of establishments in States that have not adopted the Food Code would require new equipment. FDA used industry sources to obtain estimates of the range of costs of new or additional equipment necessary to meet the refrigeration provision of the final rule. The estimated costs per establishment ranged from close to zero for small equipment upgrades to $6,000 for a large new refrigerator.

FDA estimated a distribution of the total possible refrigeration costs for the final rule. The range (5th to 95th percentile) of estimated one-time refrigeration costs was $7 million to $228 million, with a median of $31 million.

c. *Changes in consumer practices.* FDA estimated the annual costs to consumers of changing the way eggs are prepared and consumed as:

Cost of changes in consumer practices = annual number of eggs consumed x baseline fraction of eggs consumed undercooked x fractional reduction in undercooked eggs in response to safe handling label x $ value of undercooking one egg.

This cost to consumers is uncertain. The range (5th to 95th percentile) of annual costs was $2 million to $20 million, with a median of $10 million. The cost of changes in consumer practices is an annual recurring cost of the final rule.

4. Summary of Costs and Benefits

Table 4 of this document shows the median estimated benefits and costs of the final rule.

TABLE 4.—MEDIAN ANNUAL ESTIMATED BENEFITS AND COSTS OF THE FINAL RULE (IN MILLIONS OF DOLLARS)

Benefits/Costs	First Year	All Other Years
Median estimated benefits (USDA[1] SE[2] risk assessment baseline)	$700	$700
Median estimated benefits (original CDC[3] surveillance baseline)	$300	$300
Median estimated benefits (revised CDC surveillance baseline, final rule)	$260	$260
Median estimated costs (proposed rule)	$60	$10
Median estimated cost (final rule)	$56	$10

[1] U.S. Department of Agriculture
[2] *Salmonella* Enteritidis
[3] Centers for Disease Control and Prevention

B. Small Entity Analysis

1. Introduction

FDA has examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that, under the Regulatory Flexibility Act, this final rule will have a significant economic impact on a substantial number of small entities.

2. Economic Effects on Small Entities

a. *Number of small entities affected.* The final rule will affect many small entities, including egg processors, grocery stores and other stores including roadside stands, restaurants, and other food service establishments. FDA has not been able to determine how many of the 669 egg processors registered with the USDA are small businesses (Ref. 11). Egg processors generally fall into two industrial classifications: Poultry slaughtering and processing (standard industrial classification (SIC) code 2015) and whole poultry and poultry products (SIC code 5144). The two classifications roughly correspond to in-line and off-line processors. In-line processors package the eggs at the egg laying facility. Off-line processors ship the eggs to packers.

The Small Business Administration (SBA) defines in-line egg processors (SIC code 2015–03) to be small businesses if they employ 500 or fewer people. According to a search in Dun's Market Identifiers (Ref. 12) 25 in-line egg-processing firms would be defined as small. SBA defines off-line processors (SIC code 5144) to be small if they employ 100 or fewer people. Dun's Market Identifiers did not have a subcategory for egg processors. For the entire category of poultry and poultry products (SIC code 5144), 80 percent of establishments employ fewer than 100 workers. If the same proportion holds for the subcategory composed of egg processors, then 470 firms would be classified as small.[3] FDA, therefore,

[3] The estimated total number of in-line establishments is 134, but 52 are branches of firms. If the total number of in-line firms is 82(=134 − 52),

Continued

estimated the total number of small egg processors to be 495 (= 25 + 470).

The refrigeration provision will affect small establishments that are not currently refrigerating at 7.2 °C (45 °F). SBA defines grocery stores (SIC code 5411) to be small if annual gross revenue is less than $20 million. Other food stores (SIC codes 5431, 5451, and 5499), which include fruit and vegetable markets, dairy product stores, and miscellaneous food stores, are small if annual sales are less than $5 million. Restaurants are small if annual sales are less than $5 million and institutions are small if sales are less than $15 million.

As shown in table 5 of this document, FDA estimated that the number of small establishments affected by the final refrigeration provision will be 25,400. One comment questioned how FDA derived this estimate. The agency derived this estimate of small businesses affected from the estimate for all establishments affected. FDA estimated the number of establishments (small and large) currently not keeping eggs at an ambient temperature of 7.2 °C (45 °F) by assuming that some fraction of establishments in States without temperature requirements were holding eggs at temperatures greater than 7.2 °C (45 °F). FDA does not know the fraction of establishments holding shell eggs at temperatures greater than 7.2 °C (45 °F), so the agency used a Monte Carlo simulation to estimate a distribution for the number of establishments affected. In the simulation, FDA assumed that in each State without a 7.2 °C (45 °F) requirement, between 0 and 100 percent (with 33 percent the most likely proportion) of the establishments held shell eggs at a higher temperature. The mean result of the 1,000 iterations of the simulation was a total of approximately 44,400 large and small establishments, which included 10,700 grocery and other food stores, 24,000 restaurants, and 9,700 institutions (including schools, hospitals, nursing homes, prisons, military establishments, and universities) (64 FR 36516 at 36536, July, 9 1999). FDA reported only the mean of the distribution of simulation results. The results for the simulated number of establishments ranged from a 5th percentile of 12,320 to a 95th percentile of 81,700.

To estimate the number of small establishments holding eggs at temperatures above 7.2 °C (45 °F), FDA assumed that the proportion of small establishments affected by the refrigeration provision would be the same as the fraction of institutions for the entire category. According to SBA size standards for small entities, 71 percent of grocery and other food stores and 54 percent of restaurants are small. Institutions are more complicated, because they cut across SIC codes. FDA assumed that 50 percent of institutions serving eggs are small. FDA then estimated the number of small establishments affected by the refrigeration provision by multiplying the fraction assumed to be small by the total number of establishments affected. Table 5 of this document shows the mean number of small establishments likely to be affected by the refrigeration provision of the final rule. The agency also has included the 5th and 95th percentiles to show the uncertainty associated with the mean estimates. FDA emphasizes that these are estimates, not a count of the actual firms affected. The agency uses them to demonstrate that this final rule will affect a substantial number of small establishments.

TABLE 5.—NUMBER OF SMALL ENTITIES LIKELY TO BE AFFECTED BY THE REFRIGERATION PROVISION OF THE FINAL RULE (SIMULATION RESULTS; ROUNDED TO NEAREST 100)

Category	5th Percentile	Mean	95th Percentile
Grocery and Other Stores	2,100	7,600	14,000
Restaurants	3,600	13,000	23,900
Institutions	1,300	4,800	8,900
Total	7,000	25,400	46,800

b. *Costs for small entities.* For the 9-month compliance period in the final rule, redesign costs per SKU will be about $875 for pulp cartons and $375 for foam cartons.[4] The cost of the labeling provision borne by small processors will vary with the number of SKU's and the fraction of the costs passed to the processors from carton manufacturers. The average number of SKU's per processor for the industry is 30; FDA assumed small processors will market somewhere between 2 and 20 SKU's. Additional redesign costs could, therefore, be as high as $17,500 for a small processor (= 20 x $875), although it is unlikely that the processor would bear all redesign costs.

Refrigeration costs vary across establishments, depending on the age of current refrigerators, the planned replacement cycle, and whether the small establishments are currently keeping eggs at or below 7.2 °C (45 °F). FDA assumed that additional refrigeration costs for small retailers will average $633, with $700 the most likely value. The agency also assumed that the proportion of additional refrigeration costs borne by small entities will be the same as the proportion of small entities in each category of establishment. The cost of the refrigeration provision to small entities is shown in table 6.

TABLE 6.—COSTS TO SMALL ENTITIES OF THE REFRIGERATION PROVISION OF THE FINAL RULE

Category	Total Costs for Small Entities	Percent of Total
Grocery and Other Stores	$4.8 million	30
Restaurants	$8.2 million	51
Institutions	$3.1 million	19
Total	$16.1 million	100

and the number of processors is 669, then 587 firms are off-line processors. If 80 percent are small, then 470 off-line(=0.8 × 587) processors are small.

[4] In the analysis of the proposal, FDA estimated that the average redesign cost for foam cartons would be $500 for a 6-month compliance period and $250 for a 12-month compliance period. In the analysis of the final rule, FDA assumed that the redesign cost for a 9-month compliance period will by $375, midway between the two. Similarly, the agency assumed that the redesign costs for a pulp carton will be $875 for a 9-month compliance period, midway between the $1,000 and $750 estimated for 6-month and 12-month compliance periods.

3. Regulatory Options

a. *Exemption for small establishments.* The burden on small establishments would be lifted if they were exempt from the provisions of the final rule. Most of the establishments affected by this final rule, however, are small. Exempting small establishments from its provisions would largely negate the rule. No comments requested exemptions from the proposed rule for small establishments.

b. *Longer compliance periods.* Lengthening the labeling compliance periods for the labeling and refrigeration provisions would provide regulatory relief (cost reduction) for small entities. Lengthening the refrigeration compliance period from the final rule's effective date to 12 months after the effective date would reduce costs by allowing establishments to postpone upgrading their equipment. To estimate the regulatory relief from lengthening the refrigeration compliance period, FDA assumed that the reduction in cost would equal the interest (discounted at 7 percent per year) on the cost of refrigeration equipment over the extension of the compliance period. If the compliance period were extended by 12 months, the interest on the cost of equipment would be over $1 million (= $16.1 x 0.07). For the most likely equipment cost of $700 per small establishment, the interest saving would be about $50 (= 0.07 x $700). FDA received no comments requesting longer compliance periods for the refrigeration provision.

(Comment 41) Some comments requested a 12-month compliance period for the labeling provision. The agency has responded by increasing the compliance period to 9 months. In the cost analysis of this final rule, FDA estimated that total industry costs would fall by at least $3 million if the compliance period for the labeling provisions were extended from 6 months to 9 months. Most of the relief will come from the reduced costs of redesigning the carton label and reduced inventory disposal costs. For pulp cartons, extending the compliance period to 9 months will reduce redesign costs from $1,000 (for a 6-month compliance period) to $875 per SKU. For foam cartons, extending the compliance period to 9 months will reduce redesign costs from $500 (for a 6-month compliance period) to $375 per SKU. The comments stressed the difficulty of redesign caused by the length of the statement in the proposal. Because the safe handling statement in the final rule has been shortened, FDA expects that redesign costs will not be as large a burden as many comments on the proposed rule implied. Furthermore, redesign costs are not necessarily passed on to small processors.

Small processors will, however, bear inventory disposal costs. In the cost analysis of the proposal, FDA estimated disposal costs for label inventories to be $3 million for a 6-month compliance period. The agency believes that the principal relief for small egg packers and processors will come from the reduction in inventory costs. For a 9-month compliance period, the disposal costs for label inventories will be $2,250,000. FDA does not know what fraction of those costs will be borne by small processors. If the agency assumes that small processors bear half of the disposal costs, then the average inventory cost per small processor would be $3,000 (= ($3,000,000 x 0.5) / 495) for a 6-month compliance period and $2,250 (= ($2,250,000 x 0.5) / 495) for a 9-month compliance period. Changing the effective date to 9 months after publication will, therefore, save $750 per small processor. For processors holding large inventories, the saving will be larger. The longer compliance period will also increase the likelihood that small processors will use up their carton inventories and bear no disposal costs.

4. Recordkeeping and Recording Requirements

The Regulatory Flexibility Act requires a description of the recordkeeping and recording required for compliance with this rule. This rule does not require the preparation of a report or a record.

5. Worst Case for a Small Establishment

The greatest impact to a small retail establishment as a consequence of the refrigeration provision would be the purchase of a new refrigerator. In the analysis of the proposal, FDA estimated the cost of a new refrigerator to be between $2,500 and $6,000. In order to estimate the worst possible outcome for a small entity, FDA assumed that some small retail establishment would purchase a new refrigerator at the maximum estimated cost of $6,000. If this cost were amortized over a 10-year period (using a discount rate of 7 percent) then the approximate annual expense would be $850 per year for 10 years. According to Dun and Bradstreet, 85 percent of all grocery stores have annual sales of less than $20 million, and 71 percent of all restaurants have annual sales of less than $5 million (Ref. 12). Among the smallest 10 percent of these establishments, the average sales volume is $100,000 per year for a grocery store and $50,000 per year for a restaurant. Therefore, an additional expense of $850 per year amounts to approximately 1 to 2 percent of average sales per year for the smallest stores. Grocery stores and restaurants typically have profit margins on sales of 1 to 5 percent, so a reduction of the profit margin by 40 to 100 percent would be the worst-case outcome for the smallest retailers.

Because the comments on the proposed rule emphasized the importance of inventories, FDA concludes that the worst outcome from the labeling provision would occur if a small packer held large inventories of cartons that could not be used. If average inventory costs per small processor (for a 9-month compliance period) are $2,250, some establishments could bear much higher inventory costs.

6. Summary of Small Entity Analysis

FDA estimated that the labeling provisions could impose average inventory costs of $2,250 on 495 small processing establishments. The refrigeration provision would impose estimated average costs of $633 on approximately 25,400 small establishments. The agency concludes that this final rule will have a significant economic impact on a substantial number of small entities.

V. Federalism

These rules establish national safe handling labeling and retail refrigeration requirements for shell eggs under the FD&C Act and the PHS Act. FDA has determined that these egg safety final rules have federalism implications under Executive Order 13132 because they will preempt State and local labeling and retail refrigeration requirements that are not as stringent as Federal requirements. Although FDA proposed this rule before Executive Order 13132 was issued or became effective, FDA believes that these final rules satisfy the requirements of Executive Order 13132.

The constitutional basis for FDA's authority to regulate the safety and labeling of foods is the statutes created by Congress to regulate food safety. As set out in the preamble to the proposed and final rules, foodborne illness resulting from SE contaminated eggs is a public health problem nationwide. However, only 37 States and the District of Columbia require refrigeration at 7.2 °C (45 °F) or lower in retail establishments, the temperature that FDA has determined is necessary to prevent growth of SE. No State has a requirement for complete safe handling instructions. Accordingly, there is a

clear need for Federal action to establish national standards that will ensure the safety of eggs for all consumers in this country.

To ensure the safety of eggs for all consumers in this country, not only must there be national standards, but enforcement of these standards must be uniform across the country. However, because State and local public health officials are the primary enforcement officials in retail establishments, FDA has recognized that it must rely on these officials to provide the bulk of the enforcement of these regulations. FDA thus believes that it is critical for these regulations to establish uniform minimum standards. If less stringent State or local refrigeration and labeling requirements are not preempted, enforcement of those less stringent requirements—which are not sufficient to protect the public health—will interfere with the cooperative enforcement of the Federal egg refrigeration and labeling requirements. FDA believes that the cooperative enforcement approach utilized in these rules is critical to effective implementation of these important food safety requirements.

Thus, although Congress did not expressly preempt State law in this area, FDA finds preemption is needed because State and local laws that are less stringent than the Federal requirements will significantly interfere with the important public health goals of these regulations.

FDA does not believe that preemption of State and local refrigeration and labeling requirements that are the same as or more stringent than the requirements of these regulations is necessary, as enforcement of such State and local requirements will not interfere with the food safety goals of these regulations. Accordingly, the preemptive effect of this rule is limited to State or local requirements that are not as stringent as the requirements of these regulations; requirements that are the same as or more stringent than FDA's requirements remain in effect.

Although the proposed rule was published before Executive Order 13132, FDA gave States and localities notice of the intended preemptive effect of these rules in the notice of proposed rulemaking. In addition, FDA consulted with representatives of State and local governments before issuing the proposal. FDA received one comment from a State Department of Agriculture, which did not discuss preemption and one comment from an organization representing State and local food safety officials, which raised questions about the scope of preemption. These questions are answered in the body of the preamble. As set out in the preamble and this discussion on federalism, the preemptive effect of these regulations is very narrow.

VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposal (64 FR 36492, July 6, 1999). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that environmental impact statement is not required.

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the safe handling statement is "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VIII. References

The following references have been placed on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. President's Council on Food Safety, "Egg Safety from Production to Consumption: an Action Plan to Eliminate *Salmonella* Enteritidis Illnesses due to Eggs," December 10, 1999.

2. Summary Report on Focus Group Testing of Safe Handling Statements on Shell Eggs. Levy, A. S. and A. W. Heaton, Consumer Studies Team, Office of Scientific Analysis and Support, Center for Food Safety and Applied Nutrition, Food and Drug Administration, March 13, 1998.

3. FDA memorandum, Alan S. Levy to Kenneth Falci, June 26, 1999.

4. "FDA: Consumers are Changing," *Food Safety Educator*, vol. 3(4), p. 2, 1998.

5. U.S. Public Health Service, "Food Code: 1999, Recommendations of the United States Public Health Service, Food and Drug Administration," Ch. 3.

6. Review of Research Communicating Warning Information. Consumer Studies Team, Office of Scientific Analysis and Support, Center for Food Safety and Applied Nutrition, Food and Drug Administration, p. 54, July 1998.

7. Food Marketing Institute (conducted by Abt Associates, Inc.), "Trends in the United States: Consumer Attitudes & the Supermarket," Washington, DC, Food Marketing Institute, 1996.

8. United States Department of Agriculture, Food Safety and Inspection Service, FSIS Directive 8840.1, "Enforcement of Refrigeration and Labeling Requirements for Shell Eggs Packed for Consumer Use," June 18, 1999.

9. Centers for Disease Control and Prevention, "Incidence of Foodborne Illnesses: Preliminary Data from the Foodborne Diseases Active Surveillance Network (FoodNet)—United States, 1998," *Morbidity and Mortality Weekly Report*, vol. 48, pp. 189–194, March 12, 1999.

10. Mead, P. S., L. Slutsker, V. Dietz, L. F. McCaig, J. S. Bresee, C. Shapiro, P. M. Griffin, and R. V. Tauxe, "Food-Related Illness and Death in the United States," *Emerging Infectious Diseases*, vol. 5, pp. 607–625, September to October 1999.

11. FDA memorandum, Peter Vardon to the record, October 7, 1998.

12. The Dialog Corp., Dun's Market Identifiers, Mountain View, CA, March 19, 1998.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 115

Eggs, Refrigeration.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Services Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.5 is amended by adding paragraph (a)(4) to read as follows:

§ 16.5 Inapplicability and limited applicability.

(a) * * *

(4) A hearing on an order for relabeling, diversion, or destruction of shell eggs under section 361 of the Public Health Service Act (42 U.S.C. 264) and §§ 101.17(h) and 115.50 of this chapter.

* * * * *

PART 101—FOOD LABELING

3. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

4. Section 101.17 is amended by revising the section heading and by adding paragraph (h) to read as follows:

§ 101.17 Food labeling warning, notice, and safe handling statements.

* * * * *

(h) *Shell eggs.* (1) The label of all shell eggs, whether in intrastate or interstate commerce, shall bear the following statement:

SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.

(2) The label statement required by paragraph (h)(1) of this section shall appear prominently and conspicuously, with the words "SAFE HANDLING INSTRUCTIONS" in bold type, on the information panel or principal display panel of the container.

(3) The label statement required by paragraph (h)(1) of this section shall be set off in a box by use of hairlines.

(4) Shell eggs that have been, before distribution to consumers, specifically processed to destroy all viable *Salmonella* shall be exempt from the requirements of paragraph (h) of this section.

(5) The safe handling statement for shell eggs that are not for direct sale to consumers, e.g., those that are to be repacked or labeled at a site other than where originally processed, or are sold for use in food service establishments, may be provided on cartons or in labeling, e.g., invoices or bills of lading in accordance with the practice of the trade.

(6) Under sections 311 and 361 of the Public Health Service Act (PHS Act), any State or locality that is willing and able to assist the agency in the enforcement of paragraphs (h)(1) through (h)(5) of this section, and is authorized to inspect or regulate establishments handling packed shell eggs, may in its own jurisdiction, enforce paragraphs (h)(1) through (h)(5) of this section through inspections under paragraph (h)(8) of this section and through administrative enforcement remedies identified in paragraph (h)(7) of this section until FDA notifies the State or locality in writing that such assistance is no longer needed. When providing such assistance, a State or locality may follow the hearing procedures set out in paragraphs (h)(7)(ii)(C) through (h)(7)(ii)(D) of this section, substituting, where necessary, appropriate State or local officials for designated FDA officials or may utilize State or local hearing procedures if such procedures satisfy due process.

(7) This paragraph (h) is established under authority of both the Federal Food, Drug, and Cosmetic Act (the act) and the PHS Act. Under the act, the agency can enforce the food misbranding provisions under 21 U.S.C. 331, 332, 333, and 334. However, 42 U.S.C. 264 provides for the issuance of implementing enforcement regulations; therefore, FDA has established the following administrative enforcement procedures for the relabeling, diversion, or destruction of shell eggs and informal hearings under the PHS Act:

(i) Upon finding that any shell eggs are in violation of this section an authorized FDA representative or State or local representative in accordance with paragraph (h)(6) of this section may order such eggs to be relabeled under the supervision of said representative, diverted, under the supervision of said representative for processing in accordance with the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*), or destroyed by or under the supervision of an officer or employee of the FDA, or, if applicable, of the State or locality, in accordance with the following procedures:

(A) *Order for relabeling, diversion, or destruction under the PHS Act.* Any district office of the FDA or any State or locality acting under paragraph (h)(6) of this section, upon finding shell eggs held in violation of this regulation, may serve upon the person in whose possession such eggs are found a written order that such eggs be relabeled with the required statement in paragraph (h)(1) of this section before further distribution. If the person chooses not to relabel, the district office of the FDA or, if applicable, the appropriate State or local agency may serve upon the person a written order that such eggs be diverted (from direct consumer sale, e.g., to food service) under the supervision of an officer or employee of the issuing entity, for processing in accordance with the EPIA (21 U.S.C. 1031 *et seq.*) or destroyed by or under the supervision of the issuing entity, within 10-working days from the date of receipt of the order.

(B) *Issuance of order.* The order shall include the following information:

(*1*) A statement that the shell eggs identified in the order are subject to relabeling, diversion for processing in accordance with the EPIA, or destruction;

(*2*) A detailed description of the facts that justify the issuance of the order;

(*3*) The location of the eggs;

(*4*) A statement that these eggs shall not be sold, distributed, or otherwise disposed of or moved except as provided in paragraph (h)(7)(i)(E) of this section;

(*5*) Identification or description of the eggs;

(*6*) The order number;

(*7*) The date of the order;

(*8*) The text of this entire section;

(*9*) A statement that the order may be appealed by written appeal or by requesting an informal hearing;

(*10*) The name and phone number of the person issuing the order; and

(*11*) The location and telephone number of the responsible office or agency and the name of its director.

(C) *Approval of director.* An order, before issuance, shall be approved by the director of the office or agency issuing the order. If prior written approval is not feasible, prior oral approval shall be obtained and confirmed by written memorandum as soon as possible.

(D) *Labeling or marking of shell eggs under order.* An FDA, State, or local representative issuing an order under paragraph (h)(7)(i)(A) of this section shall label or mark the shell eggs with official tags that include the following information:

(*1*) A statement that the shell eggs are detained in accordance with regulations issued under section 361(a) of the PHS Act (42 U.S.C. 264(a)).

(*2*) A statement that the shell eggs shall not be sold, distributed or otherwise disposed of or moved except, after notifying the issuing entity in writing, to:

(*i*) Relabel, divert them for processing in accordance with the EPIA, or destroy them, or

(*ii*) Move them to another location for holding pending appeal.

(*3*) A statement that the violation of the order or the removal or alteration of the tag is punishable by fine or imprisonment or both (section 368 of the PHS Act, 42 U.S.C. 271).

(*4*) The order number and the date of the order, and the name of the government representative who issued the order.

(E) *Sale or other disposition of shell eggs under order.* After service of the order, the person in possession of the shell eggs that are the subject of the order shall not sell, distribute, or otherwise dispose of or move any eggs subject to the order unless and until the notice is withdrawn after an appeal except, after notifying FDA's district office or, if applicable, the State or local agency in writing, to:

(*1*) Relabel, divert, or destroy them as specified in paragraph (h)(7)(i) of this section, or

(*2*) Move them to another location for holding pending appeal.

(ii) The person on whom the order for relabeling, diversion, or destruction is served may either comply with the order or appeal the order to the FDA Regional Food and Drug Director.

(A) *Appeal of a detention order.* Any appeal shall be submitted in writing to the FDA District Director in whose district the shell eggs are located within 5-working days of the issuance of the order. If the appeal includes a request for an informal hearing, the hearing shall be held within 5-working days after the appeal is filed or, if requested by the appellant, at a later date, which shall not be later than 20-calendar days after the issuance of the order. The order may also be appealed within the same period of 5-working days by any other person having an ownership or proprietary interest in such shell eggs. The appellant of an order shall state the ownership or proprietary interest the appellant has in the shell eggs.

(B) *Summary decision.* A request for a hearing may be denied, in whole or in part and at any time after a request for a hearing has been submitted, if the FDA Regional Food and Drug Director or his or her designee determines that no genuine and substantial issue of fact has been raised by the material submitted in connection with the hearing or from matters officially noticed. If the FDA Regional Food and Drug Director determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

(C) *Informal hearing.* Appearance by any appellant at the hearing may be by mail or in person, with or without counsel. The informal hearing shall be conducted by the FDA Regional Food and Drug Director or his designee, and a written summary of the proceedings shall be prepared by the FDA Regional Food and Drug Director.

(*1*) The FDA Regional Food and Drug Director may direct that the hearing be conducted in any suitable manner permitted by law and this section. The FDA Regional Food and Drug Director, has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct an informal fair, expeditious, and impartial hearing, and to enforce the requirements concerning the conduct of hearings.

(*2*) Employees of FDA will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present oral or written information relevant to the hearing. All parties may conduct reasonable examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(*3*) The hearing shall be informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any party may comment upon or rebut any information and views presented by another party.

(*4*) The party requesting the hearing may have the hearing transcribed, at the party's expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be included with the FDA Regional Food and Drug Director's report of the hearing.

(*5*) The FDA Regional Food and Drug Director shall prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. Whenever time permits, the FDA Regional Food and Drug Director may give the parties the opportunity to review and comment on the report of the hearing.

(*6*) The FDA Regional Food and Drug Director shall include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and shall include a recommended decision, with a statement of reasons.

(D) *Written appeal.* If the appellant appeals the detention order but does not request a hearing, the FDA Regional Food and Drug Director shall render a decision on the appeal affirming or revoking the detention within 5-working days after the receipt of the appeal.

(E) *Regional Food and Drug Director decision.* If, based on the evidence presented at the hearing or by the appellant in a written appeal, the FDA Regional Food and Drug Director finds that the shell eggs were held in violation of this section, he shall affirm the order that they be relabeled, diverted under the supervision of an officer or employee of the FDA for processing under the EPIA, or destroyed by or under the supervision of an officer or employee of the FDA; otherwise, the FDA Regional Food and Drug Director shall issue a written notice that the prior order is withdrawn. If the FDA Regional Food and Drug Director affirms the order he shall order that the relabeling, diversion, or destruction be accomplished within 10-working days from the date of the issuance of his decision. The FDA Regional Food and Drug Director's decision shall be accompanied by a statement of the reasons for the decision. The decision of the FDA Regional Food and Drug Director shall constitute final agency action, reviewable in the courts.

(F) *No appeal.* If there is no appeal of the order and the person in possession of the shell eggs that are subject to the order fails to relabel, divert, or destroy them within 10-working days, or if the demand is affirmed by the FDA Regional Food and Drug Director after an appeal and the person in possession of such eggs fails to relabel, divert, or destroy them within 10-working days, the FDA district office, or, if applicable, the State or local agency may designate an officer or employee to divert or destroy such eggs. It shall be unlawful to prevent or to attempt to prevent such diversion or destruction of the shell eggs by the designated officer or employee.

(8) Persons engaged in handling or storing packed shell eggs for retail distribution shall permit authorized representatives of FDA to make at any reasonable time such inspection of the establishment in which shell eggs are being held, including inspection and sampling of the labeling of such eggs as may be necessary in the judgment of such representatives to determine compliance with the provisions of this section. Inspections may be made with or without notice and will ordinarily be made during regular business hours.

(9) No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement requiring safe handling instructions on unpasteurized shell eggs that are less stringent than those required in paragraphs (h)(1) through (h)(5) of this section.

5. New part 115 is added to read as follows:

PART 115—SHELL EGGS

Authority: 21 U.S.C. 342, 371; 42 U.S.C. 243, 264, 271.

§ 115.50 Refrigeration of shell eggs held for retail distribution.

(a) For purposes of this section a "retail establishment" is an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption directly to consumers.

(b) Except as provided in paragraph (c) of this section, all shell eggs, whether in intrastate or interstate commerce, held for retail distribution:

(1) Shall promptly be placed under refrigeration as specified in paragraph (b)(2) of this section upon receipt at a retail establishment, except that, when short delays are unavoidable, the eggs shall be placed under refrigeration, as soon as reasonably possible; and

(2) Shall be stored and displayed under refrigeration at an ambient temperature not greater than 7.2 °C (45 °F) while held at a retail establishment.

(c) Shell eggs that have been specifically processed to destroy all viable *Salmonella* shall be exempt from the requirements of paragraph (b) of this section.

(d) Under sections 311 and 361 of the Public Health Service Act (PHS Act), any State or locality that is willing and able to assist the agency in the enforcement of paragraph (b) of this section, and is authorized to inspect or regulate retail establishments, may, in its own jurisdiction, enforce paragraph (b) of this section through inspections under paragraph (f) of this section and through administrative enforcement remedies identified in paragraph (e) of this section until FDA notifies the State or locality in writing that such assistance is no longer needed. When providing assistance under paragraph (e) of this section, a State or locality may follow the hearing procedures set out in paragraphs (e)(2)(iii) through (e)(2)(iv) of this section, substituting, where necessary, appropriate State or local officials for designated FDA officials or may utilize State or local hearing procedures if such procedures satisfy due process.

(e) This section is established under authority of both the Federal Food, Drug, and Cosmetic Act (the act) and the PHS Act. Under the act, the agency can enforce the food adulteration provisions under 21 U.S.C. 331, 332, 333, and 334. However, 42 U.S.C. 264 provides for the issuance of implementing enforcement regulations; therefore, FDA has established the following administrative enforcement procedures for the diversion or destruction of shell eggs and for informal hearings under the PHS Act:

(1) Upon finding that any shell eggs have been held in violation of this section, an authorized FDA representative or a State or local representative in accordance with paragraph (d) of this section may order such eggs to be diverted, under the supervision of said representative, for processing in accordance with the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) or destroyed by or under the supervision of an officer or employee of the FDA, or, if applicable, of the State or locality in accordance with the following procedures:

(i) *Order for diversion or destruction.* Any district office of FDA or any State or local agency acting under paragraph (d) of this section, upon finding shell eggs held in violation of this section, may serve upon the person in whose possession such eggs are found a written order that such eggs be diverted, under the supervision of an officer or employee of the issuing entity, for processing in accordance with the EPIA (21 U.S.C. 1031 *et seq.*) or destroyed by or under the supervision of said district office, within 10-working days from the date of receipt of the order.

(ii) *Issuance of order.* The order shall include the following information:

(A) A statement that the shell eggs identified in the order are subject to diversion for processing in accordance with the EPIA or destruction;

(B) A detailed description of the facts that justify the issuance of the order;

(C) The location of the eggs;

(D) A statement that these eggs shall not be sold, distributed, or otherwise disposed of or moved except as provided in paragraph (e)(1)(v) of this section;

(E) Identification or description of the eggs;

(F) The order number;

(G) The date of the order;

(H) The text of this entire section;

(I) A statement that the order may be appealed by written appeal or by requesting an informal hearing;

(J) The name and phone number of the person issuing the order; and

(K) The location and telephone number of the office or agency and the name of its director.

(iii) *Approval of District Director.* An order, before issuance, shall be approved by the Food and Drug Administration (FDA) District Director in whose district the shell eggs are located. If prior written approval is not feasible, prior oral approval shall be obtained and confirmed by written memorandum as soon as possible.

(iv) *Labeling or marking of shell eggs under order.* An FDA, State, or local agency representative issuing an order under paragraph (e)(1) of this section shall label or mark the shell eggs with official tags that include the following information:

(A) A statement that the shell eggs are detained in accordance with regulations issued under section 361(a) of the PHS Act (42 U.S.C. 264(a)).

(B) A statement that the shell eggs shall not be sold, distributed or otherwise disposed of or moved except, after notifying the issuing entity in writing, to:

(*1*) Divert them for processing in accordance with the EPIA or destroy them; or

(*2*) Move them to an another location for holding pending appeal.

(C) A statement that the violation of the order or the removal or alteration of the tag is punishable by fine or imprisonment or both (section 368 of the PHS Act, 42 U.S.C. 271).

(D) The order number and the date of the order, and the name of the government representative who issued the order.

(v) *Sale or other disposition of shell eggs under order.* After service of the order, the person in possession of the shell eggs that are the subject of the order shall not sell, distribute, or otherwise dispose of or move any eggs subject to the order unless and until the notice is withdrawn after an appeal except, after notifying FDA's district office or, if applicable, the State or local agency in writing, to:

(A) Divert or destroy them as specified in paragraph (e)(1)(i) of this section; or

(B) Move them to another location for holding pending appeal.

(2) The person on whom the order for diversion or destruction is served may either comply with the order or appeal the order to the FDA Regional Food and Drug Director in accordance with the following procedures:

(i) *Appeal of a detention order.* Any appeal shall be submitted in writing to FDA's District Director in whose district the shell eggs are located within 5-working days of the issuance of the order. If the appeal includes a request for an informal hearing, the hearing shall be held within 5-working days after the appeal is filed or, if requested by the appellant, at a later date, which shall not be later than 20-calendar days after the issuance of the order. The order may also be appealed within the same period of 5-working days by any other person having an ownership or proprietary interest in such shell eggs. The appellant of an order shall state the ownership or proprietary interest the appellant has in the shell eggs.

(ii) *Summary decision.* A request for a hearing may be denied, in whole or in part and at any time after a request for a hearing has been submitted, if the FDA Regional Food and Drug Director or his or her designee determines that no genuine and substantial issue of fact has been raised by the material submitted in connection with the hearing or from matters officially noticed. If the FDA Regional Food and Drug Director determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

(iii) *Informal hearing.* Appearance by any appellant at the hearing may be by mail or in person, with or without counsel. The informal hearing shall be conducted by the FDA Regional Food and Drug Director or his designee, and

a written summary of the proceedings shall be prepared by the FDA Regional Food and Drug Director.

(A) The FDA Regional Food and Drug Director may direct that the hearing be conducted in any suitable manner permitted by law and this section. The FDA Regional Food and Drug Director has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct an informal fair, expeditious, and impartial hearing, and to enforce the requirements concerning the conduct of hearings.

(B) Employees of FDA will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present oral or written information relevant to the hearing. The party requesting the hearing may then present oral or written information relevant to the hearing. All parties may conduct reasonable examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(C) The hearing shall be informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any party may comment upon or rebut any information and views presented by another party.

(D) The party requesting the hearing may have the hearing transcribed, at the party's expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be included with the FDA Regional Food and Drug Director's report of the hearing.

(E) The FDA Regional Food and Drug Director shall prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. Whenever time permits, the FDA Regional Food and Drug Director may give the parties the opportunity to review and comment on the report of the hearing.

(F) The FDA Regional Food and Drug Director shall include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and shall include a recommended decision, with a statement of reasons.

(iv) *Written appeal.* If the appellant appeals the detention order but does not request a hearing, the FDA Regional Food and Drug Director shall render a decision on the appeal affirming or revoking the detention within 5-working days after the receipt of the appeal.

(v) *Regional Food and Drug Director decision.* If, based on the evidence presented at the hearing or by the appellant in a written appeal, the Regional Food and Drug Director finds that the shell eggs were held in violation of this section, he shall affirm the order that they be diverted, under the supervision of an officer or employee of the FDA for processing under the EPIA or destroyed by or under the supervision of an officer or employee of the FDA; otherwise, the Regional Food and Drug Director shall issue a written notice that the prior order is withdrawn. If the Regional Food and Drug Director affirms the order he shall order that the diversion or destruction be accomplished within 10-working days from the date of the issuance of his decision. The Regional Food and Drug Director's decision shall be accompanied by a statement of the reasons for the decision. The decision of the Regional Food and Drug Director shall constitute final agency action, reviewable in the courts.

(vi) *No appeal.* If there is no appeal of the order and the person in possession of the shell eggs that are subject to the order fails to divert or destroy them within 10-working days, or if the demand is affirmed by the Regional Food and Drug Director after an appeal and the person in possession of such eggs fails to divert or destroy them within 10-working days, FDA's district office or appropriate State or local agency may designate an officer or employee to divert or destroy such eggs. It shall be unlawful to prevent or to attempt to prevent such diversion or destruction of the shell eggs by the designated officer or employee.

(f) *Inspection.* Persons engaged in retail distribution of shell eggs shall permit authorized representatives of FDA to make at any reasonable time such inspection of the retail establishment in which shell eggs are being held, including inspection and sampling of such eggs and the equipment in which shell eggs are held and any records relating to such equipment or eggs, as may be necessary in the judgement of such representatives to determine compliance with the provisions of this section. Inspections may be made with or without notice and will ordinarily be made during regular business hours.

(g) *Preemption.* No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement allowing refrigeration of unpasteurized shell eggs at retail establishments at any temperature greater than 7.2 °C (45 °F).

Dated: June 2, 2000.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 2346/P.L. 106–521
To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment. (Nov. 22, 2000; 114 Stat. 2438)

H.R. 5633/P.L. 106–522
District of Columbia Appropriations Act, 2001 (Nov. 22, 2000; 114 Stat. 2440)

S. 768/P.L. 106–523
Military Extraterritorial Jurisdiction Act of 2000 (Nov. 22, 2000; 114 Stat. 2488)

S. 1670/P.L. 106–524
To revise the boundary of Fort Matanzas National Monument, and for other purposes. (Nov. 22, 2000; 114 Stat. 2493)

S. 1880/P.L. 106–525
Minority Health and Health Disparities Research and Education Act of 2000 (Nov. 22, 2000; 114 Stat. 2495)

S. 1936/P.L. 106–526
Bend Pine Nursery Land Conveyance Act (Nov. 22, 2000; 114 Stat. 2512)

S. 2020/P.L. 106–527
To adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes. (Nov. 22, 2000; 114 Stat. 2515)

S. 2440/P.L. 106–528
Airport Security Improvement Act of 2000 (Nov. 22, 2000; 114 Stat. 2517)

S. 2485/P.L. 106–529
Saint Croix Island Heritage Act (Nov. 22, 2000; 114 Stat. 2524)

S. 2547/P.L. 106–530
Great Sand Dunes National Park and Preserve Act of 2000 (Nov. 22, 2000; 114 Stat. 2527)

S. 2712/P.L. 106–531
Reports Consolidation Act of 2000 (Nov. 22, 2000; 114 Stat. 2537)

S. 2773/P.L. 106–532
Dairy Market Enhancement Act of 2000 (Nov. 22, 2000; 114 Stat. 2541)

S. 2789/P.L. 106–533
To amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board. (Nov. 22, 2000; 114 Stat. 2545)

S. 3164/P.L. 106–534
Protecting Seniors From Fraud Act (Nov. 22, 2000; 114 Stat. 2555)

S. 3194/P.L. 106–535
To designate the facility of the United States Postal Service located at 431 North George Street in Millersville, Pennsylvania, as the "Robert S. Walker Post Office". (Nov. 22, 2000; 114 Stat. 2559)

S. 3239/P.L. 106–536
To amend the Immigration and Nationality Act to provide special immigrant status for certain United States international broadcasting employees. (Nov. 22, 2000; 114 Stat. 2560)

Last List November 24, 2000

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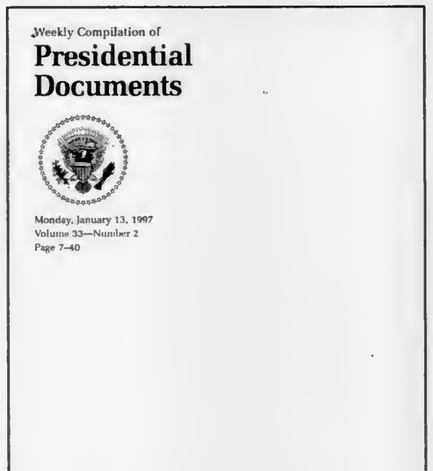
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106th Congress, 2nd Session, 2000

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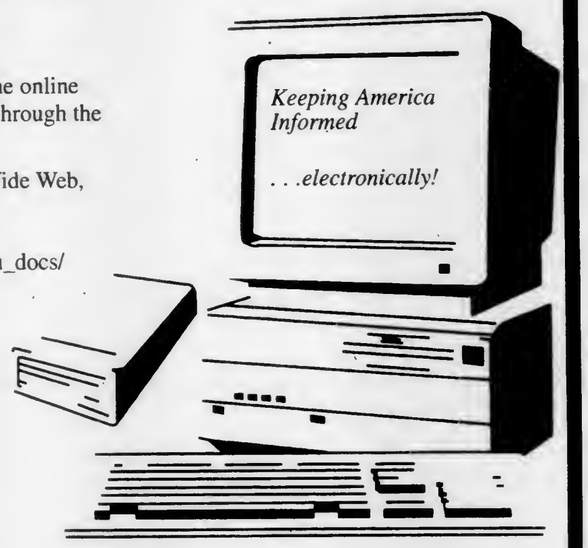
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Federal Register
Vol. 65, No. 235
Wednesday, December 6, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 773 and 774

RIN 0560–AG23

Implementation of the Special Apple Loan Program and Emergency Loan for Seed Producers Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action is being taken to implement provisions of the Agricultural Risk Protection Act of 2000 (Act). The intended effect is to assist producers of apples suffering economic loss as a result of low prices and by making low cost loans available to seed producers adversely affected by the bankruptcy filing of AgriBiotech.

DATES: Effective December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Elzinga, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–3889; facsimile (202) 690–1117; electronic mail: *pelzinga@wdc.usda.gov;* and Orlando C. Kilcrease, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–1472; facsimile: 202–720–6797; electronic mail: *Orlando Kilcrease@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 263 of the Agricultural Risk Protection Act requires that these regulations be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) related to notices of proposed rulemaking and public participation in the rulemaking process. This rule is thus issued as final and is effective immediately.

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Farm Service Agency (Agency) certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, as amended (5 U.S.C. 601). This rule does not impact the small entities to a greater extent than the large entities.

Environmental Evaluation

National Environmental Policy Act

The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (42 U.S.C. 4321 et seq.) neither an Environmental Impact Statement nor an environmental assessment is required.

Environmental Justice, Executive Order 12898

This rule is subject to the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Implementation of these requirements will occur at the time of actions performed hereunder.

Executive Order 12988

The rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule. In accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994, before any judicial action may be brought concerning the provisions of this rule, administrative review under 7 CFR part 11 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit assessment, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, under the regulatory provisions of title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 263 of the Act provides that this rule will be promulgated without regard to the Paperwork Reduction Act contained in chapter 35 of title 44, United States Code. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Background

This rule will implement sections § 203(f) and 253 of the Act (Pub. L. 106–224) enacted June 20, 2000, related to the Special Apple Loan Program and

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Emergency Loan for Seed Producers Program, respectively.

1. 7 CFR Part 773—Special Apple Loan Program

Apple prices in the 1998–1999 growing season fell to their lowest levels in nearly 10 years. The average U.S. 1998–1999 farm price for fresh market apples was estimated to be down more than 20 percent from the previous growing season, resulting in a 16 percent drop in total farm revenue. Even with a possible improvement in the coming growing seasons, the serious economic impact of the earlier economic losses will result in ongoing financial difficulties for apple producers.

Section 203(f) of the Act directed the Secretary to make loans to producers of apples that are suffering economic loss as a result of low prices for apples. To ensure that the borrowers under this program are those that most likely are suffering economic loss, the Agency restricted applicants to those that produced apples, on not less than 10 acres, for sale in 1999 or 2000. This restriction excludes hobby apple producers. Funds allocated will most effectively assist those most directly affected by the economic crisis in the apple industry since those eligible will have been dependent on apple production for a primary source of income. In addition, this program is intended to assist producers recover from economic losses and enable them to continue their farming operations. Therefore, loan funds must be used for specified purposes related to the production and marketing of apples. Distribution of funds has been determined to be on a per acre basis to provide the most equitable access to assistance for all affected producers, and to best meet the intent of the authorizing statute.

Congress allocated a limited amount of funds for this program so certain limits are necessary to help ensure that loan funds are distributed equitably to all interested producers. In addition, this program is intended to assist producers through a period of low apple prices, not replace the producers' established sources of credit. For these reasons, the regulation limits loan size to a maximum of $300.00 per acre of apples in production and a maximum indebtedness of $500,000 per producer. To expedite funding of eligible requests, the Agency will waive the application requirements of historical production and financial information, and cash flow projections, for applicants requesting $30,000 or less. The Agency, however, will require these applicants to provide cash flow projections later to show repayment if their balance sheet shows a net worth of less than three times the loan amount. This additional documentation is needed to minimize the credit risk to the Government. For loans for more than $30,000, repayment will always be based on the applicant's projected cash flow budget.

To minimize the credit risk to the Government, the Agency requires that the applicants have an acceptable credit history and demonstrate an ability to repay the proposed loan. The Agency cannot make a loan to an applicant who is delinquent on a non-tax Federal debt (31 U.S.C. 3720B), or has an outstanding non-tax Federal judgment (28 U.S.C. 3201(e)). The restrictions will not apply if the Federal delinquency and judgment are cured on or before the loan closing date. Applicants who have provided the Agency false or misleading information are also not eligible for this program.

The Agency has established rates, terms, and collateral requirements for Special Apple Loans to allow for maximum flexibility. The Act allows the Agency to require collateral in an amount adequate to protect the Government's interest and to minimize potential loss. The Agency therefore, will take a lien on available assets as necessary to adequately secure the loan. The level of documentation of collateral value will depend on the risk of loss, as determined by a review of the applicant's financial condition, and the size of the loan. For loans over $30,000, applicants with net worth of at least three times the loan amount have demonstrated an ability to successfully manage the finances of their operation and have accumulated assets to protect against adverse conditions. Applicants with those characteristics generally represent significantly less potential loss, so Agency will place less emphasis on collateral when evaluating the soundness of the loan request. Therefore, these applicants will be allowed to provide documentation of collateral value in the form of assessments or depreciation schedules. For loans over $30,000, applicants with net worth of less than three times the loan amount will be required to provide current appraisals, at the applicant's expense, to document collateral values. All appraisals must be completed by a knowledgeable appraiser, acceptable to the Agency. Real estate appraisals must be prepared by a state certified general appraiser in compliance with the Uniform Standards of Professional Appraisal Practices (USPAP). For loans of $30,000 or less, collateral value will be based on the best available, verifiable information. In addition, debtors will be subject to the collection authorities of 31 U.S.C. chapter 37.

All persons approved for such loan assistance must execute loan instruments and legal documents to secure the loan and reduce the risk to the Government. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and by each individual member. This requirement is necessary to minimize the credit risk.

The Agency will service Special Apple Loans like nonprogram loans under 7 CFR part 1951, subpart J. These borrowers have not been required at loan origination to meet the more stringent eligibility requirements of Agency loans under the Consolidated Farm and Rural Development Act (CONACT), and the Act does not provide CONACT servicing benefits to Special Apple Loan program borrowers.

2. 7 CFR Part 774—Emergency Loans for Seed Producers Program

Seed producers have suffered economic hardships as a result of the bankruptcy filing of AgriBiotech. AgriBiotech, one of the largest single turf, forage, and alfalfa seed companies in the country, filed for protection under chapter 11 of the bankruptcy code affecting over 1,200 farmer growers in 39 States. The growers are the largest segment of creditors in the bankruptcy proceedings. AgriBiotech cannot pay these growers for their 1999 produced crop as a result of the bankruptcy filing. The courts have estimated the total value of seed growers' claims to be approximately $50 million.

Section 253 of the Act directed the Secretary to make no-interest loans to producers of the 1999 crop of grass, forage, vegetable, or sorghum seed that have not received payments for the seed as a result of bankruptcy proceedings involving AgriBiotech. The funds allocated for the program are believed to be adequate for all eligible producers. If demand does exceed the allocation, funds will be paid in order of application approval. For the producer to be eligible, the seed producer must have a valid claim in the bankruptcy proceeding arising from a contract to grow seeds in the United States.

The Agency has established terms and collateral requirements for Emergency Loans for Seed Producers to allow for maximum flexibility. The Agency will take as security an assignment on the bankruptcy claim, and any seed still held in the applicant's possession, as provided by the Act to secure loans made to producers under this program. The Agency will obtain a balance sheet and any other financial information needed to determine if there are liens impacting the collateral. In addition, debtors will be subject to the debt collection authorities of 31 U.S.C. chapter 37. For example, in cases of default, the Agency may seek to attach additional assets by filing judgments or refer the debt to the Department of Treasury for offset and cross-servicing. In light of the Government's limited exposure on these small loans and desire for simple administration, the Agency believes that no further security requirements are needed.

The Agency cannot make a loan to an applicant who is delinquent on a non-tax Federal debt (31 U.S.C. 3720B) or has an outstanding non-tax Federal judgment (28 U.S.C. 3201(e)). These restrictions will not apply if the Federal delinquency and judgment are cured on or before the loan closing date. Applicants who have provided false or misleading information also are not eligible for this program. The above restrictions are needed to minimize credit risk and comply with statutory requirements.

All persons approved for such loan assistance must execute the Agency's loan instruments and legal documents. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and by each individual member. This requirement is necessary to minimize risk and protect the Government's interest should default occur.

In accordance with § 253 of the Act, the loan interest rate for Emergency Loans for Seed Producers will be zero initially. Upon completion and disbursal of the estate in bankruptcy or 18 months after the date of the note, whichever comes first, the note will convert any outstanding balance to the then current Farm Operating loan-direct interest rate over an additional 7 years. Interest rates are specified in exhibit B of Agency Instruction 440.1 (available in any Agency office) by loan type. If the loan is not paid in full during this term and default occurs, servicing will proceed in accordance with existing Agency regulations (7 CFR part 1951, subpart J, Management and Collection of Nonprogram Loans, specifically § 1951.468). The loan will be serviced as a nonprogram loan because the program is not authorized by the CONACT and, therefore, does not receive the benefits of CONACT program loans. The borrowers also have not been required to meet the more stringent CONACT requirements.

Section 263 of the Act directed the Secretary to implement this program as soon as practicable and without regard to the notice and comment provisions of section 553 of title 5, United States Code and the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, relating to notices of proposed rulemaking and public participation in rulemaking. Publication of this rule for immediate effect without prior notice and comment as a final rule, therefore, is warranted.

List of Subjects

7 CFR Part 773

Fruits, Loan programs-agriculture.

7 CFR Part 774

Seeds, Loan programs-agriculture.

For reasons set out in the preamble, 7 CFR chapter VII is amended as set forth below.

1. Part 773 is added to read as follows:

PART 773—SPECIAL APPLE LOAN PROGRAM

Sec.

773.1 Introduction.
773.2 Definitions.
773.3 Appeals.
773.4–773.5 [Reserved]
773.6 Eligibility requirements.
773.7 Loan uses.
773.8 Limitations.
773.9 Environmental compliance.
773.10 Other Federal, State, and local requirements.
773.11–773.17 [Reserved]
773.18 Loan application.
773.19 Interest rate, terms, security requirements, and repayment.
773.20 Funding applications.
773.21 Loan decision, closing and fees.
773.22 Loan servicing.
773.23 Exception.

Authority: Pub. L. 106–224.

§ 773.1 Introduction.

This part contains the terms and conditions for loans made under the Special Apple Loan Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist producers of apples suffering from economic loss as a result of low apple prices.

§ 773.2 Definitions.

As used in this part, the following definitions apply:

Agency is the Farm Service Agency, its employees, and any successor agency.

Apple producer is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.

Applicant is the individual or business entity applying for the loan.

Business entity is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

Cash flow budget is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate.

Domestically owned enterprise is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

False information is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect, and was given to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

Feasible plan is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency.

Security is real or personal property pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

USPAP is Uniform Standards of Professional Appraisal Practice.

§ 773.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

§§ 773.4–773.5 [Reserved]

§ 773.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible for a Special Apple Program Loan:

(a) The loan applicant must be an apple producer;

(b) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(c) The loan applicant and anyone who will execute the promissory note

must possess the legal capacity to enter into contracts, including debt instruments;

(d) At loan closing the loan applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(e) At loan closing the loan applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(f) The loan applicant, in past or present dealings with the Agency, must not have provided the Agency with false information; and

(g) The individual or business entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

§ 773.7 Loan uses.

Loan funds may be used for any of the following purposes related to the production or marketing of apples:

(a) Payment of costs associated with reorganizing a farm to improve its profitability;

(b) Payment of annual farm operating expenses;

(c) Purchase of farm equipment or fixtures;

(d) Acquiring, enlarging, or leasing a farm;

(e) Making capital improvements to a farm;

(f) Refinancing indebtedness;

(g) Purchase of cooperative stock for credit, production, processing or marketing purposes; or

(h) Payment of loan closing costs.

§ 773.8 Limitations.

(a) The maximum loan amount any individual or business entity may receive under the Special Apple Loan Program is limited to $500,000.

(b) The maximum loan is further limited to $300 per acre of apple trees in production in 1999 or 2000, whichever is greater.

(c) Loan funds may not be used to pay expenses incurred for lobbying or related activities.

(d) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

§ 773.9 Environmental compliance.

(a) Except as otherwise specified in this section, prior to approval of any loan, an environmental evaluation will be completed by the Agency to determine if the proposed action will have any adverse impacts on the human environment and cultural resources. Loan applicants will provide all information necessary for the Agency to make its evaluation.

(b) The following loan actions were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. Therefore the following loan actions are categorically excluded from the requirements of an environmental evaluation:

(1) Payment of legal costs associated with reorganizing a farm to improve its profitability as long as there will be no changes in the land's use or character;

(2) Purchase of farm equipment which will not be affixed to a permanent mount or position;

(3) Acquiring or leasing a farm;

(4) Refinancing an indebtedness not greater than $30,000;

(5) Purchase of stock in a credit association or in a cooperative which deals with the production, processing or marketing of apples; and

(6) Payment of loan closing costs.

(c) The loan actions listed in paragraph (b) of this section were also reviewed in accordance with section 106 of the National Historic Preservation Act (NHPA). It was determined that these loan actions are non-undertakings with no potential to affect or alter historic properties and therefore, will not require consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other interested parties.

(d) If adverse environmental impacts, either direct or indirect, are identified, the Agency will complete an environmental assessment in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.

(e) In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation of the environmental risks to the real estate collateral posed by the presence of hazardous substances and other environmental concerns.

(1) The Agency will not accept real estate as collateral which has significant environmental risks.

(2) If the real estate offered as collateral contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, or offering other non-contaminated property as collateral.

§ 773.10 Other Federal, State, and local requirements.

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

§§ 773.11–773.17 [Reserved]

§ 773.18 Loan application.

(a) A complete application will consist of the following:

(1) A completed Agency application form;

(2) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(3) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(4) A balance sheet on the applicant;

(5) The farm's operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(6) The last 3 years of production and income and expense information;

(7) Payment to the Agency for ordering a credit report; and

(8) Any additional information required by the Agency to determine the eligibility of the applicant, the feasibility of the operation, or the adequacy and availability of security.

(b) Except as required in § 773.19(e), the Agency will waive requirements for a complete application, listed in paragraphs (a)(5) and (a)(6) of this section, for requests of $30,000 or less.

§ 773.19 Interest rate, terms, security requirements, and repayment.

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by the Agency and available in each Agency Office, based upon the cost of Government borrowing for loans of similar maturities.

(b) *Terms.* The loan term will be for up to 3 years, based upon the useful life of the security offered.

(c) *Security requirements.* The Agency will take a lien on the following security, if available, as necessary to adequately secure the loan:

(1) Real estate;

(2) Chattels;

(3) Crops;

(4) Other assets owned by the applicant; and

(5) Assets owned and pledged by a third party.

(d) *Documentation of security value.*

(1) For loans that are for $30,000 or less, collateral value will be based on the best available, verifiable information.

(2) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of three times the loan amount or greater, collateral value will be based on tax assessment of real estate and depreciation schedules of chattels, as applicable, less any existing liens.

(3) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of less than three times the loan amount, collateral value will be based on an appraisal. Such appraisals must be obtained by the applicant, at the applicant's expense and acceptable to the Agency. Appraisals of real estate must be completed in accordance with USPAP.

(e) *Repayment.* (1) All loan applicants must demonstrate that the loan can be repaid.

(2) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of three times the loan amount or greater, repayment ability will be considered adequate without further documentation.

(3) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of less than three times the loan amount, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance. Such operating plan is required notwithstanding § 773.18 of this part.

(4) For loans that are for more than $30,000, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance.

(f) *Creditworthiness.* All loan applicants must have an acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

§ 773.20 Funding applications.

Loan requests will be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.

§ 773.21 Loan decision, closing, and fees.

(a) *Loan decision.* (1) The Agency will approve a loan if it determines that:

(i) The loan can be repaid;

(ii) The proposed use of loan funds is authorized;

(iii) The applicant has been determined eligible;

(iv) All security requirements have been, or will be met at closing;

(vi) All other pertinent requirements have been, or will be met at closing.

(2) The Agency will place conditions upon loan approval as necessary to protect its interest.

(b) *Loan closing.* (1) The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to loan closing;

(2) There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved; and

(2) The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in property securing the loan, and protect the Government's interests, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees including credit report fees, fees for appraisals, fees for recording any legal instruments determined to be necessary, and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

§ 773.22 Loan servicing.

Loans will be serviced in accordance with subpart J of part 1951, or its successor regulation, during the term of the loan. If the loan is not paid in full during this term, servicing will proceed in accordance with § 1951.468 of that part.

§ 773.23 Exception.

The Agency may grant an exception to the security requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

2. Part 774 is added to read as follows:

PART 774—Emergency Loan for Seed Producers Program

Sec.

774.1 Introduction.
774.2 Definitions.
774.3 Appeals.
774.4–774.5 [Reserved]
774.6 Eligibility requirements.
774.7 [Reserved]
774.8 Limitations.
774.9 Environmental requirements.
774.10 Other Federal, State, and local requirements.
774.11–774.16 [Reserved]
774.17 Loan application.
774.18 Interest rate, terms, and security requirements.
774.19 Processing applications.
774.20 Funding applications.
774.21 [Reserved]
774.22 Loan closing.
774.23 Loan servicing.
774.24 Exception.

Authority: Pub. L. 106–224

§ 774.1 Introduction.

The regulations of this part contain the terms and conditions under which loans are made under the Emergency Loan for Seed Producers Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist certain seed producers adversely affected by the bankruptcy filing of AgriBiotech.

§ 774.2 Definitions.

As used in this part, the following definitions apply:

Agency is the Farm Service Agency, its employees, and any successor agency.

Applicant is the individual or business entity applying for the loan.

Business entity is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

Domestically owned enterprise is an entity organized in the United States under the law of the state or states in which the entity operates and a majority

of the entity is owned by members meeting the citizenship test.

False information is information provided by an applicant, borrower or other source to the Agency that the borrower knows to be incorrect, and that the borrower or other source provided in order to obtain benefits for which the borrower would not otherwise have been eligible.

Seed producer is a farmer that produced a 1999 crop of grass, forage, vegetable, or sorghum seed for sale to AgriBiotech under contract.

§ 774.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

§§ 774.4–774.5 [Reserved]

§ 774.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible under the Emergency Loan for Seed Producers Program;

(a) The loan applicant must be a seed producer;

(b) The individual or entity loan applicant must have a timely filed proof of claim in the Chapter XI bankruptcy proceedings involving AgriBiotech and the claim must have arisen from acontract to grow seeds in the United States;

(c) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(d) The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments;

(e) At loan closing, the applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(f) At loan closing, the applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(g) The loan applicant, in past and current dealings with the Agency, must not have provided the Agency with false information.

§ 774.7 [Reserved]

§ 774.8 Limitations.

(a) The maximum loan amount any individual or business entity may receive will be 65% of the value of the timely filed proof of claim against AgriBiotech in the bankruptcy proceeding as determined by the Agency.

(b) Loan funds may not be used to pay expenses incurred for lobbying or related activities.

(c) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

§ 774.9 Environmental requirements.

The loan actions in this part were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. These loan actions are categorically excluded from the requirements of an environmental evaluation due to the fact that the loan funds would be utilized to replace operating capital the applicant would have had if AgriBiotech had not filed bankruptcy.

§ 774.10 Other Federal, State, and local requirements.

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

§ 774.11–774.16 [Reserved]

§ 774.17 Loan application.

A complete application will consist of the following:

(a) A completed Agency application form;

(b) Proof of a bankruptcy claim in the AgriBiotech bankruptcy proceedings;

(c) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(d) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(e) A balance sheet on the applicant; and

(f) Any other additional information the Agency needs to determine the eligibility of the applicant and the application of any Federal, State or local laws.

§ 774.18 Interest rate, terms and security requirements.

(a) *Interest rate.* (1) The interest rate on the loan will be zero percent for 18 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.

(2) Thereafter interest will begin to accrue at the regular rate for an Agency Farm operating-direct loan (available in any Agency office).

(b) *Terms.* (1) Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 18 months from the date of the note.

(2) However, any principal remaining thereafter will be amortized over a term of 7 years at the Farm operating-direct loan interest rate (available in any Agency office). If the loan is not paid in full during this term and default occurs, servicing will proceed in accordance with § 1951.468 of this title.

(c) *Security Requirements.* (1) The Agency will require a first position pledge and assignment of the applicant's monetary claim in the AgriBiotech bankruptcy estate to secure the loan.

(2) If the applicant has seed remaining in their possession that was produced under contract to AgriBiotech, the applicant also will provide the Agency with a first lien position on this seed. It is the responsibility of the applicant to negotiate with any existing lienholders to secure the Agency's first lien position.

§ 774.19 Processing applications.

Applications will be processed until such time that funds are exhausted, or all claims have been paid and the bankruptcy involving AgriBiotech has been discharged. When all loan funds have been exhausted or the bankruptcy is discharged, no further applications will be accepted and any pending applications will be considered withdrawn.

§ 774.20 Funding applications.

Loan requests will be funded based on the date the Agency approves an application. Loan approval is subject to the availability of funds.

§ 774.21 [Reserved]

§ 774.22 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in the bankruptcy claim, and protect the Government's interest, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

§ 774.23 Loan servicing.

Loans will be serviced in accordance with subpart J of part 1951 of this title, or its successor regulation. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with section 1951.468 of that part.

§ 774.24 Exception.

The Agency may grant an exception to any of the requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

Signed at Washington, D.C., on November 29, 2000.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 00–30977 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 208

[INS Order No. 1865–97; AG Order No. 2340–2000]

RIN 1115–AE93

Asylum Procedures

AGENCY: Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Justice regulations implementing the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), governing asylum claims. Additionally, this rule amends portions of the regulations governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country. Finally, the rule identifies factors that may be considered in the exercise of discretion in asylum cases in which the alien has established past persecution but may not have a well-founded fear of future persecution. This final rule will ensure that asylum applications are processed in accordance with the Immigration and Nationality Act (Act), as amended by IIRIRA, as well as with international instruments.

DATES: This rule is effective January 5, 2001.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO third floor, Washington, DC 20536, telephone (202) 305–2663. *For matters relating to the Executive Office for Immigration Review*—Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

Regulotions To Implement the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

On March 6, 1997, the Service and EOIR jointly published in the **Federal Register**, at 62 FR 10312, an interim rule to implement Public Law 104–208 (110 Stat. 3546) (IIRIRA). That legislation significantly amended several parts of the Immigration and Nationality Act ("Act" or "INA"), including part 208. The interim regulations implementing IIRIRA were preceded by a notice of proposed rulemaking, published in the **Federal Register** on January 3, 1997, at 62 FR 444, and providing a 30-day comment period. The interim rule provided a 120-day comment period. The Department of Justice (Department) received 39 comments on the interim rule in addition to the 124 comments already received as a result of the proposed rule. This final rule reflects further changes resulting from comments received in response to both the original proposed rule and the interim rule.

Proposed Rule Regarding Past Persecution, Internal Relocation, and Discretion (Past Persecution Rule)

On June 11, 1998, at 63 FR 31945, the Service and EOIR jointly published in the **Federal Register** a proposed rule to change portions of 8 CFR 208.13 and 208.16 in order to provide further guidance on adjudicating asylum cases and withholding of removal cases when an applicant has established past persecution and when the applicant may be able to avoid persecution in his or her home country by relocating to another area of that country. The rule proposed to establish new guidelines concerning the Attorney General's exercise of discretion in cases in which past persecution is established, and the types of evidence that may be considered in determining whether an applicant has a well-founded fear of future persecution. Additionally, the rule proposed to identify new factors that could be considered in the determination whether to grant asylum when an applicant has established past persecution but no longer has a well-founded fear of future persecution. The Department received 35 comments on the proposed past persecution rule.

The Department has elected to split part 208 from the rest of the IIRIRA interim regulations and to incorporate amendments to part 208 into this final rule based both on comments to the IIRIRA interim rule and on comments to the June 1998 proposed rule regarding past persecution. In the future, the Department will publish a proposed rule concerning the definition of "persecution" and the definition of "particular social group." Those new proposals are based in part on certain of the provisions being made final in this rule.

II. Comments

Most of the commenters on both the interim IIRIRA rule and proposed past persecution rule represented either attorney organizations or voluntary organizations predominantly involved with refugees and asylum claimants. The Department also received comments from individual attorneys and the regional representative of United Nations High Commissioner for Refugees (UNHCR). Since many of the comments were duplicative or endorsed the submissions of other commenters, the Department will address the comments by section and topic, rather than reference each comment and commenter. The following discussion

also identifies amendments made by the Department to clarify and streamline the regulations as part of the Administration's reinvention and regulation streamlining initiative.

§ 208.2—Jurisdiction

To clarify jurisdiction over asylum applications, the Department has reorganized and revised this section as follows:

(1) Language has been added to § 208.2(a) to establish that the Office of International Affairs has initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

(2) Language in § 208.2(a) relating to the filing of a complete application has been removed as redundant with the provisions of § 208.3.

(3) Section 208.2(b)(3) has been redesignated as § 208.2(b) to provide a general description of Immigration Court jurisdiction, relevant to the majority of asylum applications adjudicated in Immigration Court, prior to discussion of the more limited jurisdiction applicable in circumstances described in new § 208.2(c).

(4) The first sentence in new § 208.2(b) (formerly § 208.2(b)(3)), which refers to an immigration judge's jurisdiction over asylum applications "after a copy of the charging document has been filed with the Immigration Court," has been amended. The Department has removed the words "a copy of" from that sentence because, in general, only the charging document with the original signature of the Service officer who issued the charging document may be filed with the Immigration Court. The Department also amended the last sentence in § 208.2(b) to establish that immigration judges have exclusive jurisdiction over credible fear determinations that have been referred to the Immigration Court pursuant to § 208.30, as well as reasonable fear determinations that have been referred to the Immigration Court pursuant to § 208.31. In addition, the reference to "Executive Office for Immigration Review" has been replaced with "Immigration Court" because only immigration judges have jurisdiction over credible fear and reasonable fear review proceedings.

(5) Section 208.2(b)(1) has been redesignated as § 208.2(c), governing asylum and withholding proceedings for those aliens not entitled to removal proceedings under section 240 of the Act. Section 208.2(c)(1) relates to aliens who are not entitled to proceedings under section 240 of the Act and are eligible to apply only for asylum and withholding of removal. Section 208.2(c)(2) relates to jurisdiction over proceedings that are limited to requests for withholding of removal pursuant to § 208.31, after an alien subject to reinstatement of a prior order under section 241(a)(5) of the Act or administrative removal under section 238(b) of the Act has been found to have a reasonable fear.

(6) The Department has rewritten the language of § 208.2(c)(1)(v) (formerly § 208.2(b)(1)(v)), to clarify the existing rules relating to cases falling under section 235(c) of the Act. Section 235(c) provides an expedited removal process for certain aliens who are suspected of being inadmissible on national security grounds; the Service has the authority to order such an alien removed without further inquiry or hearing by an immigration judge, as provided in § 235.8 of this chapter.

The current regulatory scheme provides adequate safeguards to ensure that the expedited nature of removal under section 235(c) is balanced against the right to apply for asylum in appropriate cases. An immigration officer or immigration judge must initiate certain procedures described in 8 CFR 235.8 when an arriving alien is suspected of being inadmissible on security or related grounds. Only after those procedures have been completed and a permanent order of inadmissibility is issued would the question arise regarding eligibility for asylum or withholding of removal. Although some categories of persons found inadmissible on those grounds are ineligible for asylum, other persons, such as those found inadmissible based on membership in a terrorist organization, remain eligible for asylum.

The Regional Director is authorized to pretermit an asylum application for aliens who have been issued a permanent order of inadmissibility. However, in some cases, and in the exercise of prosecutorial discretion, the Regional Director may choose to place persons found subject to removal under section 235(c) of the Act, but who are not subject to the bars to asylum, in asylum-only proceedings under § 208.2(c)(1) by issuing a Form I–863, Notice of Referral to Immigration Judge. In those cases in which the Service has affirmatively decided to place an alien in asylum-only proceedings and has issued a Form I–863, the immigration judge would then have jurisdiction to hear the alien's asylum application. Of course, unless the Service has issued a Form I–863 to an alien who is found to be removable under section 235(c) of the Act, the immigration judges have no jurisdiction with respect to those cases.

The Department further notes that § 235.8 of this chapter, as amended by the regulations implementing the Convention Against Torture, expressly limits the applicability of § 208.2. Section 235.8(b)(4) specifically states that persons seeking withholding under section 241(b)(3) of the Act or the Convention Against Torture are not subject to the "provisions of part 208 of this chapter relating to consideration or review by an immigration judge, the Board of Immigration Appeals or an asylum officer." Instead, it is the Service's responsibility to ensure that no removals are conducted under section 235(c) that violate our international obligations; the process for making such a determination remains within the Service's control.

(7) Section 208.2(c)(1)(vi) [formerly section 208.2(b)(1)(vi)] has been amended to clarify that the exclusive jurisdiction of the immigration judge comes into effect only when the district director refers an alien described in this provision for a hearing that is limited to asylum and withholding of removals.

(8) In § 208.2(c)(3)(i) (formerly § 208.2(b)(2)(i)), which describes rules of procedures, the reference to "8 CFR part 240" in the first sentence has been amended to read "8 CFR part 240, subpart A," to clarify that hearings limited to eligibility for asylum and/or withholding of removal shall be conducted under the same procedures that apply in removal proceedings.

(9) Section § 208.2(b)(2)(ii) has been redesignated as § 208.2(c)(3)(ii), but otherwise is unchanged.

(10) Section 208.2(b)(2)(iii) has been redesignated as § 208.2(c)(3)(iii). Additionally, it has been amended by removing reference to sections 208, 212(h), 212(i) of the Act and by adding an exception based on a showing of exceptional circumstances, in order to reflect the statutory language in section 240(b)(7) of the Act.

§ 208.3—Form of Application

The name of the Form I–589, Application for Asylum and Withholding of Removal, as it appeared in § 208.3(a) has been corrected to "Form I–589, Application for Asylum and for Withholding of Removal." Section 208.3(c)(4) has been corrected to reflect that section 274C of the Act provides for criminal as well as civil penalties for knowingly placing false information on an Application.

§ 208.4—Filing the Application

A considerable number of comments were received regarding the 1-year filing deadline contained in section 208(a)(2)(B) of the Act and the provisions for exemption contained in section 208(a)(2)(D) of the Act relating to changed conditions.

Some commenters took issue with the deadline itself. While the Department understands the concerns of those commenters, the 1-year filing deadline is a statutory requirement and therefore cannot be removed by rulemaking.

Some commenters suggested that an asylum officer or immigration judge should question an applicant before an application can be rejected as untimely filed. This suggestion has been adopted for two reasons. First, the decision on a tardy filing issue can best be made only after an asylum officer, in an interview, or immigration judge, in a hearing, has given an applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing. Second, for applicants who are placed in removal proceedings, the immigration judge must still determine whether the applicant is eligible for withholding of removal, even if it is found that the alien is ineligible to apply for asylum.

Language in § 208.4(a)(2)(ii) was added for consistency with § 1.1(h), which defines the term "day" for computing the period of time for taking action provided in 8 CFR. When calculating the one-year period when the last day of the period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. One commenter suggested that the Department consider the filing of an asylum application to be the date the application is mailed or otherwise sent to the Service or Immigration Court. This suggestion has been adopted in part. For an application filed with the Service, an application is considered to have been filed on the date it is received by the Service. In a case in which the 1-year filing deadline has not been met, however, if the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For a case before the Immigration Court or the Board of Immigration Appeals (Board), an asylum application is considered to have been filed on the date it is received by the Court or the Board.

In addition, other references to filing an application in paragraph (a) relating to "submission of," "submitted," or "applied for" have also been changed to "filed" in order to make language in the section consistent. Language was also added to reflect that the provisions of this section apply to asylum applications decided by an asylum officer, an immigration judge, or the Board.

Many commenters recommended a change in the language of § 208.4(a)(4) and § 208.4(a)(5) that would indicate the list of circumstances is not all-inclusive. That suggestion has been adopted.

The Department agreed with several of the recommended amendments to § 208.4(a)(4), relating to changed circumstances. First, the Department eliminated the requirement that the changed circumstances be "objective." The modifier "objective" was removed to avoid confusion in cases where, for example, the changed circumstance relates to a subjective choice an applicant has made, such as a religious conversion or adoption of political views. Additionally, the Department eliminated the requirement that the changed circumstances occur within the United States, because there may be situations in which the changed circumstances, such as religious conversion, took place outside the United States, but not in the applicant's home country. The Department also specified that cessation of the requisite relationship between a principal applicant and a dependent after the dependent has been included in the principal applicant's application as a derivative applicant may constitute a changed circumstance. Finally, the Department clarified that an adjudicator must take into account an applicant's delayed awareness of a changed circumstance, such as events in the home country, when determining whether a period of delay is reasonable.

Section 208.4(a)(5), relating to extraordinary circumstances, has been revised to reflect the numerous comments regarding the current list of circumstances that may constitute extraordinary circumstances. The Department has added additional circumstances to the non-exhaustive list, as discussed below. Additionally, the Department has changed the word "shall" in the second sentence of paragraph (a)(5) to "may" to better reflect the statutory language in section 208(a)(2)(D) and to reinforce the necessity of analyzing each case on an individual basis. The Department has also added language to the burden of proof requirement to specify clearly that the applicant bears the burden to demonstrate that the delay was reasonable under the circumstances.

With respect to § 208.4(a)(5), some commenters suggested that extraordinary circumstances not be limited to factors beyond the alien's control. That suggestion has been partially adopted. While it is hard to imagine a situation that both would be entirely within the alien's control and would also prevent him or her from filing the application, it is not difficult to imagine qualifying situations in which the alien might be forced to choose between the lesser of two evils, or the alien might be able to exercise a limited amount of control. The regulation has been amended to provide that the alien must not have intentionally created the circumstance.

Additionally, the phrase "but for those circumstances he or she would have been able to file the application within the 1-year period" has been modified to ensure consistency with the statutory language to read "those circumstances were directly related to the alien's failure to file the application within the 1-year period."

In § 208.4(a)(5)(i), the phrase "of significant duration," in reference to an experience of serious illness or disability, was removed to allow for a situation in which the timing of an applicant's serious illness or disability prohibited him or her from filing the asylum application within one year of the individual's arrival in the United States, even though the illness or disability was of short duration.

Several commenters recommended that the list of extraordinary circumstances be expanded to include maintaining valid immigrant or nonimmigrant status, in addition to maintaining Temporary Protected Status. The Department has accepted the recommendation because there are sound policy reasons to permit persons who were in a valid immigrant or nonimmigrant status, or were given parole, to apply for asylum within a reasonable time after termination of parole or immigration status. The Department does not wish to force a premature application for asylum in cases in which an individual believes circumstances in his country may improve, thus permitting him to return to his country. For example, an individual admitted as a student who expects that the political situation in her country may soon change for the better as a result of recent elections may wish to refrain from applying for asylum until absolutely necessary. The Department would expect a person in that situation to apply for asylum, should conditions not improve, within a very short period of time after the expiration of her status. Failure to apply within a reasonable time after expiration of the status would foreclose the person from meeting the statutory filing requirements. Generally, the Department expects an asylum-seeker to apply as soon as possible after expiration of his or her valid status, and failure to do so will result in rejection

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of the asylum application. Clearly, waiting six months or longer after expiration or termination of status would not be considered reasonable. Shorter periods of time would be considered on a case-by-case basis, with the decision-maker taking into account the totality of the circumstances.

Others recommended including situations involving the death or serious illness or incapacity of the applicant's legal representative or of a member of the applicant's immediate family. The Department agrees that there may be situations in which the serious illness of an applicant's representative or family member could relate to an applicant's delay in applying for asylum. Therefore, that suggestion has been adopted. As with all exceptions to the 1-year filing requirement based on extraordinary circumstances, the applicant would have to demonstrate that the illness of the representative or family related to the delay in filing and that the applicant applied for asylum within a reasonable amount of time after the illness.

Some commenters suggested broadening the two illustrative lists. The lists have been expanded to include some, but not all, of the suggestions. The Department's decision to include only some of the circumstances suggested in the comments does not mean that the Department has determined that those that were not included could never excuse tardiness. The fact that an applicant's circumstances are described in the list of possible changed or extraordinary circumstances does not in itself mandate that a tardy filing be excused; nor does the lack of such a description mean that the circumstances cannot be raised during an interview or hearing and result in excuse of the untimely filing. The lists merely provide examples of circumstances that might result in a tardiness being excused. In order for a tardy filing to be excused, an applicant must first credibly show the existence or occurrence of the circumstances (regardless of whether those circumstances are specifically listed in the regulations), and then show (1) for changed circumstances, that those changes materially affect the alien's eligibility for asylum, or (2) for extraordinary circumstances, that those circumstances directly relate to the alien's failure to file the application within the 1-year deadline. Without the direct connection, the alien is statutorily ineligible to apply for asylum.

The Department notes that the existing provision in this section relating to "ineffective assistance of counsel" raises questions that have arisen under the Act more generally concerning whether, and if so when, errors by counsel may furnish a ground for an alien to obtain relief, such as setting aside a final order or excusing a failure to comply with a statutory deadline. For example, in a case that is currently pending before the Board of Immigration Appeals, the Service is arguing that because there is no constitutional right to government-furnished counsel in immigration proceedings, there is, under *Coleman v. Thompson*, 501 U.S. 722 (1991), no constitutional basis for relief based on a claim of ineffective assistance of counsel. Similar issues concerning errors of counsel have been raised in court in other contexts under the Act. The Department accordingly is re-examining the ineffective-assistance-of-counsel provision in the asylum regulations as part of a broader assessment of the role that counsel error may play in requests for relief in immigration proceedings. However, because those issues have not yet been raised in the context of the current rulemaking proceedings, this provision is being carried forward unchanged at the present time. The Department will address those issues separately in the future.

Certain commenters appeared to be confused about the amount of additional time an applicant should receive in order to file an application when it has been determined that a changed or extraordinary circumstance is present in a particular case. While most understood that the finding of changed or extraordinary circumstances justifies the tardiness being excused to the extent necessary to allow the alien a reasonable amount of time to submit the application, some believed that the alien would automatically receive one year from the date of the circumstance involved to file a timely application. Although there may be some rare cases in which a delay of one year or more may be justified because of particular circumstances, in most cases such a delay would not be justified. Allowing an automatic one year extension from the date a changed or extraordinary circumstance occurred would clearly exceed the statutory intent that the delay be related to the circumstance. Accordingly, that approach has not been adopted.

Section 208.4(b)(2) has been clarified to reflect that the director of the local asylum office, in addition to the director of the asylum program, can authorize the filing of an application directly with a local asylum office instead of with a Service Center. A provision was also added to this section that allows an application to be filed directly with an asylum office in a case in which an individual who was previously included in a principal applicant's asylum application as a dependent has lost derivative status and wants to file as a principal applicant.

The title of § 208.4(b)(3) has been changed from "With the immigration judge" to "With the Immigration Court," and in § 208.4(b)(3)(i), the phrase "jurisdiction over the port, district office, or sector after service and filing of the appropriate charging document" has been changed to "jurisdiction over the underlying proceeding." The form number of the Notice of Referral to Immigration Judge (I–863) has also been added to § 208.4(b)(3)(iii).

Finally, the second sentence of § 208.4(b)(5) has been amended to reflect that submission of an asylum application to the district director does not automatically trigger the issuance of a Form I–863, Notice of Referral to an Immigration Judge.

§ 208.5—Special Duties Towards Aliens in Custody of the Service

Language was added to reflect that paragraph (a), which relates to aliens in the custody of the Service who request asylum or withholding of removal, or who express a fear of persecution or harm, does not pertain to an alien in custody pending a reasonable fear determination pursuant to § 208.31, just as it does not pertain to an alien pending a credible fear determination. However, a sentence was added to reflect that, even though the Service is not required to provide application forms to aliens pending a credible fear or reasonable fear determination, the Service may provide the forms upon request. The word "persecution" was deleted after the terms "credible fear" and "reasonable fear" to reflect that a credible fear or reasonable fear determination involves an evaluation of both fear of persecution and fear of torture. Finally, § 208.5(b)(1)(ii) has been amended to allow a district director to extend the 10-day filing period for crewmen when good cause exists.

§ 208.6—Disclosure to Third Parties

One commenter suggested the restoration of the second sentence in § 208.6(a), which had been removed as superfluous, relating to the deletion of identifying details from copies of asylum cases in public reading rooms. The Department believes § 208.6 protects the confidentiality of asylum applicants in public reading rooms and, therefore, has decided not to restore the removed language to this section. The Department has added language to

§ 208.6 regarding the disclosure to third parties of information and records relating to credible fear interviews and determinations, as well as reasonable fear interviews and determinations, to protect claimants' confidentiality in those proceedings.

The Department is considering further amendments to the confidentiality provisions and will publish a proposed rule if it decides further change is necessary.

§ 208.7—Employment Authorization

One commenter suggested a clarification that an asylum office referral of an asylum application to an immigration judge does not stop the 150-day employment authorization clock. This suggestion has not been adopted because it is not entirely accurate. Although the 150-day clock continues to run even if an asylum application is referred to the Immigration Court, an applicant may cause a delay that could stop the clock, including failing to appear at a hearing before the Immigration Court, or failing to follow fingerprinting requirements. Accordingly, this section has not been changed.

§ 208.9—Procedure for Interview Before an Asylum Officer

This section has not been substantively changed, although several comments were received. The reference to § 208.14(b) in paragraph (d) of this section was amended to refer to § 208.14(c) for consistency with revisions to § 208.14.

One commenter suggested that the regulations should contain protections to ensure the non-adversarial nature of the asylum interview and further commented that, because § 208.9(b) states that interviews will be conducted separate and apart from the public except at the request of the applicant, the asylum applicant, not the asylum officer, has the right to determine the number of individuals who may be present during an asylum interview. The Department believes that the regulations contain sufficient guidelines regarding the nonadversarial nature of the interview and has not amended them. The asylum officer needs to retain control over the flow and parameters of the interview, and the Department believes it is appropriate for asylum officers, taking into account the applicant's right to bring a representative and to present witnesses, and his or her need for an interpreter, to determine the number of individuals who may be present at the interview. Individual problems that may arise are more appropriately addressed by raising them with local asylum office directors than through regulatory changes.

The same commenter suggested that the asylum interview should be taped for accurate preservation of the record. While the Department has carefully considered that comment, and the Service does not rule out adopting a policy to tape record interviews in the future, at the present time the Department will not adopt that suggestion. In order to benefit the process, the taping would have to be transcribed for inclusion in the record. That would increase the cost, time, and personnel resources required to adjudicate an asylum application in a system that was designed to have an initial nonadversarial hearing with an asylum officer, followed, if the case is referred, by a *de novo*, more formal adversarial hearing, which is recorded, before an immigration judge. The Service believes that, in light of current circumstances, the administrative cost and burden of tape recording asylum interviews outweigh any expected benefit from the recording of interviews. As previously stated, however, the Service does not rule the option out for the future.

The same commenter also suggested that the Department should secure interpreters for asylum applicants who are interviewed at an asylum office. If the Department is unwilling to do so, the commenter continued, the Department should not penalize an applicant with an unexcused absence for failing to bring a qualified interpreter. The interim regulation provided an applicant a greater opportunity to find a qualified interpreter by permitting an applicant to provide an interpreter who is fluent in English and the applicant's native language, or any other language in which the applicant is fluent. The Service recognizes that Service-appointed interpreters could benefit applicants and the program. At this time, all federal agencies, including the Service, are reviewing issues relating to language interpreters in light of the recent Presidential Executive Order 13116, which directs federal agencies to establish written policies by December 11, 2000, on the language-accessibility of their programs and the programs of those who receive federal funds. The issue of interpreters raised by the commenter will therefore be addressed in compliance with Executive Order 13116.

The commenter's final suggestion was to incorporate into this part of the regulations guidelines for paroling detained asylum-seekers. The parole of aliens into the United States is within the purview of a district director and covered under § 212.5. The Department believes that § 212.5 contains sufficient guidelines to the Service for determining which aliens may be paroled, and has not included any guidelines for paroling aliens into this part.

Another commenter suggested that an applicant should be able to authorize counsel or a representative to pick-up a decision, without interruption of the 150-day clock. Section 239(a)(1) of the Act, however, specifically states that a Notice to Appear shall be given in person to the alien. The Act does not allow for a counsel or representative to accept service of a Notice to Appear unless the decision is mailed.

The same commenter suggested that § 208.9(d) should allow an attorney the opportunity to respond orally to any questions or evidence presented at the interview rather than allowing an asylum officer to require a representative to submit comments in writing. The current provisions in this section do allow for an attorney or representative to make an oral statement, and they also allow an asylum officer the discretion to have a representative submit comments in writing rather than orally, depending upon the particular facts in the case. Consistent with the current regulations, it is the general practice of asylum officers to allow an attorney the opportunity for oral responses and to ask questions at the end of the interview, subject to appropriate limitations. Therefore, the Department does not believe it necessary to make the suggested changes.

§ 208.10—Failure To Appear at an Interview

The Department received comments from one commenter on this section. The comments included a request for guidance on how an applicant can prove that the Service did not mail notice of interview to his or her address, and what constitutes "exceptional circumstances." With regard to the latter, the commenter recommended that the term "exceptional circumstances," which the commenter viewed as too harsh, be replaced with "good cause."

The Department declines to provide guidance on how to prove a notice of interview was not properly provided, and to further define "exceptional circumstances" beyond the definition provided in section 240(e)(1) of the Act. Determining whether a notice was properly provided and what constitutes "exceptional circumstances" must be reviewed on a case-by-case basis. That

approach allows an asylum office director the discretion to determine the type of evidence necessary to show that notice of interview was not properly given in a particular individual's case, and the types of circumstances that may be considered "exceptional." In accordance with section 208(d)(5)(A)(v) of the Act, the Service must excuse the applicant's failure to appear for an interview for exceptional circumstances, but may excuse an applicant's failure to appear for good cause where appropriate. As a practical matter, the Service generally will exercise discretion to excuse a first-time failure to appear if (1) good cause has been shown, (2) proceedings before the Immigration Court have not been initiated, and (3) the excuse is received within a reasonable amount of time after the interview date. In the near future, the Service intends to issue a proposed rule clarifying the consequences of failure to appear, which will give the public further opportunity to comment on those issues.

§ 208.12—Reliance on Information Compiled by Other Sources

In response to one comment, paragraph (b) of this section was revised to clarify that a prohibition on discovery of information does not include requests for information made under the Freedom of Information Act (FOIA).

§ 208.13—Establishing Asylum Eligibility

Some commenters suggested that the former §§ 208.13(b)(2)(ii) and 208.16(b)(4) (giving due consideration to evidence that the government persecutes its nationals for unauthorized departure or seeking asylum) be reinstated in the regulations. This matter was thoroughly reviewed in the preamble to the interim rule at 62 FR 10312 in response to the earlier comments to the proposed rule at 62 FR 444. The comments to the interim rule raised no significant issues that were not previously addressed, and no changes have been made in that regard.

A new § 208.13(c)(2)(F) was added for consistency with the provisions of the Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA). For applications for asylum filed prior to April 1, 1997, an applicant who falls within subclauses (I), (II), or (III) of section 212(a)(3)(B)(i) of the Act (relating to terrorist activity) is ineligible for a grant of asylum unless it is determined that there are no reasonable grounds to believe that the individual is a danger to the security of the United States.

Some commenters argued that language about discretionary denials of asylum in § 208.13(d) was inconsistent with section 208(a)(2)(A) of the Act, which provides for rejection of an asylum application when an alien may be removed pursuant to a bilateral or multilateral agreement to a safe third country. In drafting the interim rule, the Department had based its decision to include this regulatory provision on section 208(d)(5)(B) of the Act (which gives the Attorney General the authority to "provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this Act") and section 208(b)(2)(C) of the Act (which gives the Attorney General authority to establish limitations and conditions under which an alien may be found ineligible for asylum), not on section 208(a)(2)(A) of the Act. While the Department still finds that the regulatory provision would be fully in keeping with the Act, it has decided to remove it from the regulations to avoid confusion.

The Department notes that it has not issued a notice in the **Federal Register** announcing that the United States has entered into a bilateral or multilateral agreement permitting removal to a safe third country pursuant to section 208(a)(2)(A) of the Act. The Department indicated in the final rule at 59 FR 62284 its intent to notify the public in advance through a **Federal Register** publication should the United States enter into any such agreements.

Past Persecution Rule

This final rule also incorporates changes to this section and § 208.16 (withholding of removal) that were the subject of a proposed rule that was published in the **Federal Register** on June 11, 1998, at 63 FR 31945. In that rule, changes were proposed for adjudicating cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in his or her home country by relocating to another area of that country.

There were 35 comments submitted in response to the publication of the June 11, 1998, proposed rule. Twenty-six of the commenters argued that the proposal should be withdrawn and the effort to amend the regulation abandoned because the proposed changes violate the Act under which the Attorney General is given authority over the adjudication of applications for asylum and withholding of removal, and are inconsistent with precedent court decisions and international law. The other commenters were also opposed to virtually all the changes included in the proposed rule, but did not specifically request that the proposed rule be abandoned outright.

First, the Department does not agree with the argument that those regulatory changes are *ultra vires*, or beyond the authority granted to the Attorney General under the Act. Under section 208 of the Act, when an individual has established that he or she is a "refugee," as defined in section 101(a)(42)(A) of the Act, the Attorney General is granted the discretion to determine which "refugees" will be granted asylum in the United States. Prior to enactment of IIRIRA, this broad delegation of power to the Attorney General over the adjudication of asylum applications withstood challenges to the Attorney General's authority to implement rules that denied asylum to persons who otherwise met the "refugee" definition for reasons other than those listed in the Act. *Komarenko* v. *INS*, 35 F.3d 432, 435–36 (9th Cir. 1994) (rejected challenge to the Attorney General's authority to issue a regulatory provision that denied asylum to refugees who were convicted of particularly serious crimes); *Yang* v. *INS*, 79 F.3d 932 (9th Cir.), *cert. denied*, 519 U.S. 824 (1996) (rejected challenge to the Attorney General's authority to deny asylum to refugees who were found to have been firmly resettled). Although the commenters correctly point out that section 208 of the Act was amended by IIRIRA to make several categories of individuals ineligible for asylum who had previously been barred only by regulation, section 208(b)(2)(C) of the Act specifically continues to give the Attorney General authority "by regulation (to) establish additional limitations and conditions * * * under which an alien shall be ineligible for asylum."

The Department has concluded that revisions to the regulatory language providing guidelines on the exercise of discretion in determining an applicant's eligibility for asylum, once he or she has been found to meet the definition of refugee based on past persecution, are justified and in line with the administrative and judicial precedents outlined in the Supplementary Information section to the proposed rule at 63 FR 31945. That includes, inter alia, consideration of the ability of an applicant who has been subjected to past persecution to relocate safely in his or her home country, a factor that has been recognized as appropriate for the Attorney General to consider in the exercise of her discretion to grant or deny asylum. *Harpinder Singh* v. *Ilchert*, 63 F.3d 1501, 1511 (9th Cir. 1995); *Surinder Singh v. Ilchert*, 69 F.3d 375, 379 (9th Cir. 1995). In addition, the Department has concluded that requiring consideration of the applicant's ability to relocate safely in his or her home country in determining whether the applicant has a well-founded fear of persecution is in line with the previous administrative and judicial decisions, such as *Matter of Acosta*, 19 I. & N. Dec. 211, 235 (BIA 1985), *modified on other grounds*, *Matter of Mogharrabi*, 19 I & N Dec. 439 (BIA 1987); *Etugh* v. *INS*, 921 F.2d 36, 39 (3rd Cir. 1990); *Quintanilla-Ticas* v. *INS*, 783 F.2d 955, 957 (9th Cir. 1986), outlined in the Supplementary Information section to the proposed rule.

The Department does agree, however, that some changes to the proposed language are appropriate in order to ensure that those provisions are applied in a manner that complies with our international obligations under the 1951 Convention relating to the Status of Refugees ("1951 Convention"), as modified by the 1967 Protocol relating to the Status of Refugees. In determining how to revise these provisions, the Department referred to the relevant provisions of the United Nations High Commissioner for Refugee's Handbook on Procedures and Criteria for Determining Refugee Status ("UNHCR Handbook"). Although the Department is not bound by the UNHCR Handbook, the handbook can serve as a "useful interpretative aid," *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 427 (1999), and "provides significant guidance in construing the Protocol, to which Congress sought to conform" with the passage of the Refugee Act of 1980. *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 439 n.22 (1987). In §§ 208.13(b)(1)(i)(A) and 208.16(b)(1)(i)(A), the regulatory language for overcoming the presumption of a well-founded fear of persecution and a threat to the applicant's life or freedom because of past persecution is changed to state that the Service must show a "fundamental change in circumstances" in order to overcome the presumption. That phrase is consistent with Article 1 C(5) of the 1951 Convention, reflects the relevant language regarding the fundamental nature of the change at paragraph 135 of the UNHCR Handbook, and is also the exact language provided in section 208(c)(2)(A) of the Act concerning the termination of a refugee's grant of asylum in the United States. By adopting that language rather than that requiring a showing of changed country conditions to overcome the presumption, other changes in the circumstances surrounding the asylum claim, including a fundamental change in personal circumstances, may be considered, so long as those changes are fundamental in nature and go to the basis of the fear of persecution.

The amended language in §§ 208.13(b)(1) and 208.16(b)(1)(i) is not intended to alter the holding in the Board decision *Matter of N–M–A*, Int. Dec. 3368 (BIA 1998), that the presumption raised by a finding of past persecution applies only to a fear of future persecution based on the original persecution, and not to a fear of persecution from a new source unrelated to the past persecution. In *Matter of N–M–A*, the Board explained, "once an applicant has demonstrated that he has suffered past persecution on account of a statutorily-protected ground, and the record reflects that country conditions have changed to such an extent that the applicant no longer has a well-founded fear of persecution from his original persecutors, the applicant bears the burden of demonstrating that he has a well-founded fear of persecution from any new source." While the amendments to §§ 208.13(b)(1) and 208.16(b)(1)(i) change the regulations to the extent that the presumption may be overcome by events other than a change in country conditions, the regulations retain and specify the requirement that the presumption relates only to fear of harm based on facts that give rise to the original persecution.

In the sections of the regulations dealing with the issue of internal relocation, §§ 208.13(b)(1)(i)(B) and (b)(2)(ii), and 208.16(b)(1)(i)(B) and (b)(2), the provisions have been revised to require a showing by the Service that "under all the circumstances, it would be reasonable to expect the applicant to (relocate)." That language is nearly identical to the language used in the relevant section of the UNHCR Handbook, paragraph 91. The reasonableness standard with regards to relocation is consistent with the general standard for adjudicating well-founded fear claims.

With regard to other sections of the proposed rule at 63 FR 31945, some commenters recommended that the language regarding the burden of proof to overcome the presumption that arises after a finding of past persecution should be revised to indicate clearly that the Service bears the burden to overcome those presumptions, by a preponderance of the evidence, even in the context of asylum adjudications by an asylum officer. The Department agrees, and changes have been made accordingly.

The Department declines to adopt the recommendation of many commenters to allow adjudicators to consider additional humanitarian factors, unrelated to the severity of the past persecution or other serious harm, in exercising their discretion to grant asylum to a refugee who no longer has a well-founded fear of persecution. In allowing an applicant to be granted asylum based on past persecution alone when it is determined that the applicant has established either (1) compelling reasons because of the severity of the past harm, or (2) a reasonable possibility that he or she may suffer serious harm upon removal to his or her home country, the Department is already providing avenues for relief that are consistent with the protection function of the 1951 Convention, and that go beyond the provisions of the UNHCR Handbook. *See* paragraph 136 of the UNHCR Handbook. As explained in the Supplementary Information to the proposed rule published in the **Federal Register** on June 11, 1998, at 63 FR 31945, 31947, by "other serious harm," the Department means harm that is not inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but is so serious that it equals the severity of persecution. Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as "other serious harm."

In summary, the changes in the regulation are consistent with the Act, relevant case law, international instruments, and guidance in the UNHCR Handbook. The regulations leave intact the important principle that an applicant who has established past persecution on account of one of the five grounds is a refugee. It also continues to provide that a person who has established past persecution on account of race, religion, nationality, membership in a particular social group, or political opinion shall be presumed to have a well-founded fear of future persecution on account of those same grounds, and shall also be presumed to have established a threat to his or her life or freedom under the standard for eligibility for withholding of removal. The regulations also make it clear that the Service has the burden of overcoming such presumptions by a preponderance of the evidence.

Finally, the Department has renamed paragraph (b) of § 208.13, currently "persecution," to "eligibility," to reflect the incorporation of the new paragraph (b)(3), regarding reasonableness of internal relocation, as well as the other eligibility requirements contained in paragraphs (b)(1) and (b)(2).

§ 208.14—Approval, Denial, Referral, or Dismissal of Application

This section has been substantially revised and reorganized to clarify the circumstances under which an asylum officer may grant, deny, or refer an asylum application. Because an asylum officer's authority to grant asylum to an applicant within the Asylum Office's jurisdiction is unrelated to an applicant's status, discussion of authority to grant asylum has been consolidated in § 208.14(b). The statutory requirement that identity checks be completed before asylum can be granted by an asylum officer has been added to paragraph (b).

Discussion of an asylum officer's authority to deny, dismiss, or refer an application has been placed in a new § 208.14(c), with a breakdown of how an application will be processed based on the applicant's status. In § 208.14(c)(1), language was added to clarify that applicants who are inadmissible or deportable will either be referred to the Immigration Court, or have their asylum applications dismissed. Section 208.14(c)(2) now clarifies that the classes of aliens to whom an asylum officer may grant or deny asylum status include aliens in valid Temporary Protected Status and immigrant status. New §§ 208.14(c)(3) and 208.14(c)(4) were added, and detail how the Service processes asylum applications of aliens who were paroled into the United States, depending upon the decision an asylum officer makes on the application and the validity of the parole.

§ 208.15—Definition of "firm resettlement"

All of the references to "he" have been changed to "he or she," and the references to "nation" have been changed to "country."

§ 208.16—Withholding of Removal Under Section 241(b)(3)(B) of the Act and Withholding of Removal Under the Convention Against Torture

This section was substantially revised with the publication of February 19, 1999, interim regulations on Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) in the **Federal Register**, at 64 FR 8478, with a request for comments. Any comments regarding that interim rule will be addressed in the final rule implementing the Convention Against Torture. Some of the comments on the March 6, 1997, interim rule addressed concerns about how the Department would implement Article 3 of the Convention Against Torture. Because many of the commenters' concerns were addressed with the February 19, 1999, interim rule, they will not be addressed in this supplementary information.

Language in paragraph (b) relating to eligibility for withholding of removal is being amended to reflect similar amendments to § 208.13 on adjudicating claims where past persecution has been established. See the discussion in this preamble regarding changes in § 208.13.

§ 208.19—Decisions

With the publication of the interim rule at 64 FR 8478 to implement Article 3 of the Convention Against Torture, § 208.17 was revised, §§ 208.18 through 208.22 were redesignated as §§ 208.19 through 208.23, and a new § 208.18 was added. However, due to Department error, § 208.17 was not redesignated and was, therefore, dropped from 8 CFR part 208. This final rule reinstates the former § 208.17 relating to decisions on applications for asylum and for withholding of removal as the new § 208.19, and redesignates §§ 208.19 through 208.23 as §§ 208.20 through 208.24.

Language in § 208.17 that appeared before it was dropped from 8 CFR part 208 has been slightly amended. In response to one comment, language has been added to indicate that a letter communicating denial or referral of the application shall state the basis for the denial or referral.

§ 208.20—Determining if an Asylum Application is Frivolous

Section 208.19 has been redesignated as § 208.20, with no substantive changes. One commenter stated that the regulatory definition of "frivolous" does not contain appropriate safeguards, and that the Service should advise every asylum applicant of the consequences of filing frivolous claims. The current regulation provides appropriate safeguards by stipulating that an immigration judge or the Board must be satisfied that an applicant had sufficient opportunity to account for any discrepancies before finding that an applicant filed a frivolous application, and by permitting an applicant to seek withholding or removal even if he or she is found to have filed a frivolous application. The regulation itself also advises an applicant that he or she is subject to the provisions of section 208(d)(6) of the Act if a final order specifically finds that the alien knowingly filed a frivolous application. Finally, both the instructions to the Form I–589 and the application itself warn the applicant about the consequences of filing a frivolous claim, as required by section 208(d)(4) of the Act.

The Department believes that the current regulation provides for appropriate safeguards for filing a frivolous asylum application, and that, for the reasons set forth in the supplemental information to the January 3, 1997 proposed rule, the definition of frivolous is sufficient. The Department, therefore, has not changed any language in this section.

A commenter also suggested that an applicant should not be punished for voluntarily withdrawing an asylum application, and that the Department should advise adjudicators that, before finding that an individual filed a frivolous application, they should consider the fact that an applicant may not have been able to afford to retain counsel for advice on the legal strength of an asylum claim. The current regulation does not contain any provisions that punish an applicant for withdrawing an asylum application. Any applicant may choose to withdraw an application at any time prior to a final decision; however, a withdrawal does not preclude the Service from seeking removal of the alien if he or she is deportable or removable. The fact that an applicant may not have hired legal counsel may be one factor, among others, that an immigration judge or the Board may consider when determining whether an applicant had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

§ 208.21—Admission of Asylee's Spouse and Children

Section 208.20 has been redesignated as § 208.21 and restructured to provide greater clarity. Additionally, this section has been amended to correct an error in the interim rule published in the **Federal Register** at 62 FR 10312, effective April 1, 1997, which omitted the bar to asylum eligibility based on the commission of a serious non-political crime outside the United States, for applicants who applied on or after April 1, 1997. The omission was inadvertent, since such ground had been specifically included under IIRIRA for asylees. That error has been corrected and the provision redrafted to specify the applicable bar for derivative applications filed prior to April 1, 1997, and those filed on or after April 1, 1997. The Service finds that good cause exists for adopting the provision in this final rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b) because the provision merely codifies in the Service's regulation the statutory mandates of section 604 of IIRIRA. In addition, after reviewing the Department's implementation of the statutory mandate, it is clear that the omission was an inadvertent error. Therefore, the notice and comment period normally required under 5 U.S.C. 553(b) is impracticable and unnecessary prior to adopting this provision.

§ 208.22—Effect on Exclusion, Deportation, or Removal Proceedings

Section 208.21 has been redesignated as § 208.22, and paragraph (b), which addresses the initiation of removal proceedings upon termination of an asylum grant, has been moved to § 208.24.

§ 208.24—Termination of Asylum and Withholding of Removal

Section 208.23 has been redesignated as § 208.24. Some comments on § 208.24 suggested that the provision be removed or narrowed, and that more procedural protections be provided before termination. The Department finds that the existing procedural protections, which provide for prior notice of grounds for termination and an opportunity to respond, are sufficient. No changes have been made in the regulations governing termination procedures.

However, § 208.24(b)(1) was revised for consistency with the revisions in this final rule to § 208.16 and for consistency with the provisions for termination of asylum. The provision that "[t]he alien is no longer entitled to withholding of deportation or removal due to a change of conditions in the country to which removal was withheld" has been replaced with, "The alien is no longer entitled to withholding of deportation or removal because, owing to a fundamental change in circumstances relating to the original claim, the alien's life or freedom no longer would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the country from which deportation or removal was withheld."

In addition, the former § 208.21(b), concerning the initiation of removal proceedings, is now paragraph (e) of this section. The Department deleted the phrase "under section 235 or 240 of the Act" from the former § 280.21(b) because an alien may be subject to removal under other sections of the Act, such as section 238, which concerns administrative removal of aggravated felons, or section 241(a)(5), which requires reinstatement of prior orders under certain circumstances.

§ 208.30—Credible Fear Determinations

The format of this section has been revised for the purpose of clarity. Also, a new paragraph (b) has been added at § 208.30; that paragraph provides that an accompanying dependent (spouse or child) may be included in the application of the principal alien, if the spouse or child so chooses.

Some commenters objected to the use of telephonic interpreters in credible fear interviews. Telephonic interpretation has given asylum officers flexibility in scheduling and conducting credible fear interviews, and has proven to be a reliable source of interpretation services. First, because the number of languages available through telephonic interpretation is quite large, applicants can be interviewed in the language or dialect with which they are most comfortable. Relying on physically present interpreters would limit the number of languages that are available and, although an alien may be able to speak a particular language or dialect, it may not be the language or dialect with which the alien is most comfortable speaking and understanding. Second, if an applicant requests an interpreter of a gender other than that of the individual initially assigned to perform telephonic interpretation services, a replacement interpreter can be easily identified and enlisted when using a telephonic interpreter, so the interview does not need rescheduling. The use of physically present interpreters usually limits the ability to secure such quick personnel replacements. Finally, an asylum officer can always locate an interpreter for a particular language on short notice regardless of whether the interview is conducted at a detention facility or at a remote location, such as a border port-of-entry. In many instances, live interpreters cannot appear for an interview on short notice or are not willing to travel to a remote location for an interview. The current provision for using telephonic interpreters, which has been in place for approximately 3 years, has worked well. However, as mentioned earlier, practices relating to language accessibility in federal programs are under review as part of the Department's compliance with Presidential Executive Order 13116. Therefore, the use of telephonic interpretation will be addressed in compliance with that Executive Order.

Some commenters suggested that the regulations allow counsel to be present during the credible fear interview. The regulations already allow any person with whom the alien chooses to consult to be present. For purposes of this section, the term "persons" is interpreted to include legal counsel. Accordingly, the regulation has not been changed in that regard.

There were also some suggestions that the asylum officer's credible fear interview should also serve as an Asylum Pre-Screening Officer (APSO) interview for purposes of determining whether the alien should be released from detention. While a positive credible fear determination may be considered by a district director when making a parole decision, it is not determinative, and other factors must be taken into account, such as whether the applicant is likely to appear for a hearing or may pose a threat to the community.

Some commenters suggested that the rules specify that credible fear is a low screening standard. The Department finds that language in section 235(b)(1)(B)(v) of the Act is more precise than the rather vague term "low." While the Department does not disagree that it is a threshold or low standard, defining it as such would only foster debate about what "low" means. Accordingly, the regulation has not been amended in that regard.

There were also some suggestions that, when a case raises a novel issue of law, the individual should be referred for a full hearing before an immigration judge. The regulation has been clarified to provide that, in making a credible fear determination, the asylum officer or immigration judge shall take into consideration whether the case presents novel or unique issues.

Likewise, there were also suggestions that such a referral should be made regardless of any apparent statutory ineligibility under section 208(a)(2) or 208(b)(2)(A) of the Act. The Department has adopted that suggestion and has so amended the regulation.

Several commenters suggested that the Service should presume a request for appeal by any alien who expressed fear to a pre-screening officer and tried without success to persuade an asylum officer that the alien has a credible fear of persecution. It would be contrary to the intent of the statute to mandate a review in every case, including those where the alien clearly and knowingly decides not to pursue a review. However, the regulations have been modified to provide that an alien's failure or refusal to indicate whether he or she desires a review shall be deemed to be a request for such review.

The Department has also amended paragraph (b) regarding the interview procedure by adopting language from § 208.9 on eliciting testimony and who may act as an interpreter.

Finally, in § 208.30(g)(2)(iv)(A), the Department added language that would permit the Service to reconsider a negative credible fear determination, even after such determination has been affirmed by an immigration judge, as long as the Service provides the immigration judge with notice of its reconsideration.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities. This rule will ensure that asylum applications are processed in accordance with the Act, as amended by IIRIRA, as well as with international instruments. Moreover, it will have no effect on small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 208 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.2 is revised to read as follows:

§ 208.2 Jurisdiction

(a) *Office of International Affairs.* Except as provided in paragraph (b) or (c) of this section, the Office of International Affairs shall have initial jurisdiction over an asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry. The Office of International Affairs shall also have initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

(b) *Jurisdiction of Immigration Court in general.* Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Form I–221, Order to Show Cause; Form I–122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I–862, Notice to Appear, after the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program. Immigration judges shall also have the authority to review reasonable fear determinations referred to the Immigration Court under § 208.31, and credible fear determinations referred to the Immigration Court under § 208.30.

(c) *Certain aliens not entitled to proceedings under section 240 of the Act.*

(1) *Asylum applications and withholding of removal applications only.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any asylum application filed on or after April 1, 1997, by:

(i) An alien crewmember who:

(A) Is an applicant for a landing permit;

(B) Has been refused permission to land under section 252 of the Act; or

(C) On or after April 1, 1997, was granted permission to land under section 252 of the Act, regardless of whether the alien has remained in the United States longer than authorized;

(ii) An alien stowaway who has been found to have a credible fear of persecution or torture pursuant to the procedures set forth in subpart B of this part;

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Pilot Program under section 217 of the Act;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Pilot Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status;

(v) An alien who has been ordered removed under § 235(c) of the Act, as described in § 235.8(a) of this chapter (applicable only in the event that the alien is referred for proceedings under this paragraph by the Regional Director pursuant to section 235.8(b)(2)(ii) of this chapter); or

(vi) An alien who is an applicant for admission, or has been admitted, as an alien classified under section 101(a)(15)(S) of the Act (applicable only in the event that the alien is referred for proceedings under this paragraph by the district director).

(2) *Withholding of removal applications only.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any application for withholding of removal filed by:

(i) An alien who is the subject of a reinstated removal order pursuant to section 241(a)(5) of the Act; or

(ii) An alien who has been issued an administrative removal order pursuant to section 238 of the Act as an alien convicted of committing an aggravated felony.

(3) *Rules of procedure.*

(i) *General.* Except as provided in this section, proceedings falling under the jurisdiction of the immigration judge pursuant to paragraph (c)(1) or (c)(2) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 240, subpart A. The scope of review in proceedings conducted pursuant to paragraph (c)(1) of this section shall be limited to a determination of whether the alien is eligible for asylum or withholding or deferral of removal, and whether asylum shall be granted in the exercise of discretion. The scope of review in proceedings conducted pursuant to paragraph (c)(2) of this section shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal. During such proceedings, all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.

(ii) *Notice of hearing procedures and in-absentia decisions.* The alien will be provided with notice of the time and place of the proceeding. The request for asylum and withholding of removal submitted by an alien who fails to appear for the hearing shall be denied. The denial of asylum and withholding of removal for failure to appear may be reopened only upon a motion filed with the immigration judge with jurisdiction over the case. Only one motion to reopen may be filed, and it must be filed within 90 days, unless the alien establishes that he or she did not receive notice of the hearing date or was in Federal or State custody on the date directed to appear. The motion must include documentary evidence, which demonstrates that:

(A) The alien did not receive the notice;

(B) The alien was in Federal or State custody and the failure to appear was through no fault of the alien; or

(C) "Exceptional circumstances," as defined in section 240(e)(1) of the Act, caused the failure to appear.

(iii) *Relief.* The filing of a motion to reopen shall not stay removal of the alien unless the immigration judge issues an order granting a stay pending disposition of the motion. An alien who fails to appear for a proceeding under this section shall not be eligible for relief under section 240A, 240B, 245, 248, or 249 of the Act for a period of 10 years after the date of the denial, unless the applicant can show exceptional circumstances resulted in his or her failure to appear.

3. Section 208.3 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (c)(4); and

c. Revising paragraph (c)(5), to read as follows:

§ 208.3 Form of application.

(a) An asylum applicant must file Form I–589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application.

* * * * *

(c) * * *

(4) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil or criminal penalties under section 274C of the Act; and

(5) Knowingly filing a frivolous application on or after April 1, 1997, so long as the applicant has received the notice required by section 208(d)(4) of the Act, shall render the applicant permanently ineligible for any benefits under the Act pursuant to § 208.20.

4. Section 208.4 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(2);

c. Revising paragraph (b)(3); and

d. Revising paragraph (b)(5), to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. If an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

(1) *Authority.* Only an asylum officer, an immigration judge, or the Board of Immigration Appeals is authorized to make determinations regarding the prohibitions contained in section 208(a)(2)(B) or (C) of the Act.

(2) *One-year filing deadline.*

(i) For purposes of section 208(a)(2)(B) of the Act, an applicant has the burden of proving:

(A) By clear and convincing evidence that the application has been filed within 1 year of the date of the alien's arrival in the United States, or

(B) To the satisfaction of the asylum officer, the immigration judge, or the Board that he or she qualifies for an exception to the 1-year deadline.

(ii) The 1-year period shall be calculated from the date of the alien's last arrival in the United States or April 1, 1997, whichever is later. When the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. For the purpose of making determinations under section 208(a)(2)(B) of the Act only, an application is considered to have been filed on the date it is received by the Service, pursuant to § 103.2(a)(7) of this chapter. In a case in which the application has not been received by the Service within 1 year from the applicant's date of entry into the United States, but the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For cases before the Immigration Court in accordance with § 3.13 of this chapter, the application is considered to have been filed on the date it is received by the Immigration Court. For cases before the Board of Immigration Appeals, the application is considered to have been

filed on the date it is received by the Board. In the case of an application that appears to have been filed more than a year after the applicant arrived in the United States, the asylum officer, the immigration judge, or the Board will determine whether the applicant qualifies for an exception to the deadline.

(3) *Prior denial of application.* For purposes of section 208(a)(2)(C) of the Act, an asylum application has not been denied unless denied by an immigration judge or the Board of Immigration Appeals.

(4) *Changed circumstances.*

(i) The term "changed circumstances" in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum. They may include, but are not limited to:

(A) Changes in conditions in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence;

(B) Changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk; or

(C) In the case of an alien who had previously been included as a dependent in another alien's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

(ii) The applicant shall file an asylum application within a reasonable period given those "changed circumstances." If the applicant can establish that he or she did not become aware of the changed circumstances until after they occurred, such delayed awareness shall be taken into account in determining what constitutes a "reasonable period."

(5) The term "extraordinary circumstances" in section 208(a)(2)(D) of the Act shall refer to events or factors directly related to the failure to meet the 1-year deadline. Such circumstances may excuse the failure to file within the 1-year period as long as the alien filed the application within a reasonable period given those circumstances. The burden of proof is on the applicant to establish to the satisfaction of the asylum officer, the immigration judge, or the Board of Immigration Appeals that the circumstances were not intentionally created by the alien through his or her own action or inaction, that those circumstances were directly related to the alien's failure to file the application within the 1-year period, and that the delay was reasonable under the circumstances. Those circumstances may include but are not limited to:

(i) Serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival;

(ii) Legal disability (*e.g.*, the applicant was an unaccompanied minor or suffered from a mental impairment) during the 1-year period after arrival;

(iii) Ineffective assistance of counsel, provided that:

(A) The alien files an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;

(B) The counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond; and

(C) The alien indicates whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not;

(iv) The applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application;

(v) The applicant filed an asylum application prior to the expiration of the 1-year deadline, but that application was rejected by the Service as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter; and

(vi) The death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family.

(b) * * *

(2) *With the asylum office.* An asylum application shall be filed directly with the asylum office having jurisdiction over the matter in the case of an alien who:

(i) Has received the express consent of the asylum office director or the Director of Asylum to do so, or

(ii) Previously was included in a spouse's or parent's pending application but is no longer eligible to be included as a derivative. In such cases, the derivative should include a cover letter referencing the previous application and explaining that he or she is now independently filing for asylum.

(3) *With the Immigration Court.* Asylum applications shall be filed directly with the Immigration Court having jurisdiction over the case in the following circumstances:

(i) During exclusion, deportation, or removal proceedings, with the Immigration Court having jurisdiction over the underlying proceeding.

(ii) After completion of exclusion, deportation, or removal proceedings, and in conjunction with a motion to reopen pursuant to 8 CFR part 3 where applicable, with the Immigration Court having jurisdiction over the prior proceeding. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(iii) In asylum proceedings pursuant to § 208.2(c)(1) and after the Form I–863, Notice of Referral to Immigration Judge, has been served on the alien and filed with the Immigration Court having jurisdiction over the case.

(4) * * *

(5) *With the district director.* In the case of any alien described in § 208.2(c)(1) and prior to the service on the alien of Form I–863, any asylum application shall be submitted to the district director having jurisdiction pursuant to 8 CFR part 103. If the district director elects to issue the Form I–863, the district director shall forward such asylum application to the appropriate Immigration Court with the Form I–863 being filed with that Immigration Court.

* * * * *

5. Section 208.5 is amended by:

a. Revising the first sentence in paragraph (a);

b. Adding a new second sentence in paragraph (a); and

c. Revising paragraph (b)(1)(ii), to read as follows:

§ 208.5 Special duties toward aliens in custody of the Service.

(a) *General.* When an alien in the custody of the Service requests asylum or withholding of removal, or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, the Service shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear determination under § 208.30 or a reasonable fear determination pursuant to § 208.31. Although the Service does not have a duty in the case of an alien who is in custody pending a credible fear or reasonable fear determination under either § 208.30 or § 208.31, the Service may provide the appropriate forms, upon request. * * *

(b) * * *

(1) * * *

(ii) An alien crewmember shall be provided the appropriate application forms and information required by section 208(d)(4) of the Act and may then have 10 days within which to submit an asylum application to the district director having jurisdiction over the port-of-entry. The district director may extend the 10-day filing period for good cause. Once the application has been filed, the district director, pursuant to § 208.4(b), shall serve Form I–863 on the alien and immediately forward any such application to the appropriate Immigration Court with a copy of the Form I–863 being filed with that court.

* * * * *

6. Section 208.6 is revised to read as follows:

§ 208.6 Disclosure to third parties.

(a) Information contained in or pertaining to any asylum application, records pertaining to any credible fear determination conducted pursuant to § 208.30, and records pertaining to any reasonable fear determination conducted pursuant to § 208.31, shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

(b) The confidentiality of other records kept by the Service and the Executive Office for Immigration Review that indicate that a specific alien has applied for asylum, received a credible fear or reasonable fear interview, or received a credible fear or reasonable fear review shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of those records is maintained if they are transmitted to Department of State offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) The adjudication of asylum applications;

(ii) The consideration of a request for a credible fear or reasonable fear interview, or a credible fear or reasonable fear review;

(iii) The defense of any legal action arising from the adjudication of, or failure to adjudicate, the asylum application, or from a credible fear determination or reasonable fear determination under § 208.30 or § 208.31;

(iv) The defense of any legal action of which the asylum application, credible fear determination, or reasonable fear determination is a part; or

(v) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, State, or local court in the United States considering any legal action:

(i) Arising from the adjudication of, or failure to adjudicate, the asylum application, or from a credible fear or reasonable fear determination under § 208.30 or § 208.31; or

(ii) Arising from the proceedings of which the asylum application, credible fear determination, or reasonable fear determination is a part.

§ 208.9 [Amended]

7. In § 208.9, paragraph (d) is amended by revising the reference to "§ 208.14(b)" to read "§ 208.14(c)."

8. Section 208.12 is amended by revising paragraph (b) to read as follows:

§ 208.12 Reliance on information compiled by other sources.

* * * * *

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directly toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State. Persons may continue to seek documents available through a Freedom of Information Act (FOIA) request pursuant to 8 CFR part 103.

9. Section 208.13 is amended by:

a. Revising the heading of paragraph (b);

b. Revising paragraph (b)(1);

c. Revising paragraph (b)(2);

d. Adding new paragraph (b)(3);

e. Adding a new paragraph (c)(2)(i)(F); and

f. Removing paragraph (d), to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(b) *Eligibility.* * * *

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. That presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.

(i) *Discretionary referral or denial.* Except as provided in paragraph (b)(1)(iii) of this section, an asylum officer shall, in the exercise of his or her discretion, refer or deny, or an immigration judge, in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or

(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) *Burden of proof.* In cases in which an applicant has demonstrated past persecution under paragraph (b)(1) of this section, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (B) of this section.

(iii) *Grant in the absence of well-founded fear of persecution.* An applicant described in paragraph (b)(1)(i) of this section who is not barred from a grant of asylum under paragraph (c) of this section, may be granted asylum, in the exercise of the decision-maker's discretion, if:

(A) The applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution; or

(B) The applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.

(2) *Well-founded fear of persecution.* (i) An applicant has a well-founded fear of persecution if:

(A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and

(C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.

(ii) An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.

(iii) In evaluating whether the applicant has sustained the burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:

(A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) of this section, adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. Those factors may, or may not, be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecution is by a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(F) Is described within section 212(a)(3)(B)(i)(I),(II), and (III) of the Act as it existed prior to April 1, 1997, and as amended by the Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA), unless it is determined that there are no reasonable grounds to believe that the individual is a danger to the security of the United States.

* * * * *

10. Section 208.14 is amended by:

a. Revising paragraph (b);

b. Redesignating paragraphs (c)–(f) as paragraphs (d)–(g);

c. Adding a new paragraph (c);

d. Revising newly redesignated paragraph (e); and

e. Adding a heading to new redesignated paragraph (g), to read as follows:

§ 208.14 Approval, denial, referral, or dismissal of application.

* * * * *

(b) *Approval by an asylum officer.* In any case within the jurisdiction of the Office of International Affairs, unless otherwise prohibited in § 208.13(c), an asylum officer may grant, in the exercise of his or her discretion, asylum to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, and whose identity has been checked pursuant to section 208(d)(5)(A)(i) of the Act.

(c) *Denial, referral, or dismissal by an asylum officer.* If the asylum officer does not grant asylum to an applicant after an interview conducted in accordance with § 208.9, or if, as provided in § 208.10, the applicant is deemed to have waived his or her right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application, as follows:

(1) *Inadmissible or deportable aliens.* Except as provided in paragraph (c)(4) of this section, in the case of an applicant who appears to be inadmissible or deportable under section 212(a) or 237(a) of the Act, the asylum officer shall refer the application to an immigration judge, together with the appropriate charging document, for adjudication in removal proceedings (or, where charging documents may not be issued, shall dismiss the application).

(2) *Alien in valid status.* In the case of an applicant who is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status at the time the application is decided, the asylum officer shall deny the application for asylum.

(3) *Alien with valid parole.* If an applicant has been paroled into the United States and the parole has not expired or been terminated by the Service, the asylum officer shall deny the application for asylum.

(4) *Alien paroled into the United States whose parole has expired or is terminated.*

(i) *Alien paroled prior to April 1, 1997, or with advance authorization for parole.* In the case of an applicant who was paroled into the United States prior to April 1, 1997, or who, prior to departure from the United States, had received an advance authorization for parole, the asylum officer shall refer the application, together with the appropriate charging documents, to an immigration judge for adjudication in removal proceedings if the parole has expired, the Service has terminated parole, or the Service is terminating parole through issuance of the charging documents, pursuant to § 212.5(d)(2)(i) of this chapter.

(ii) *Alien paroled on or after April 1, 1997, without advance authorization for parole.* In the case of an applicant who is an arriving alien or is otherwise subject to removal under § 235.3(b) of this chapter, and was paroled into the United States on or after April 1, 1997, without advance authorization for parole prior to departure from the United States, the asylum officer will take the following actions, if the parole has expired or been terminated:

(A) *Inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act.* If the applicant appears inadmissible to the United States under section 212(a)(6)(C) or 212(a)(7) of the Act and the asylum officer does not intend to lodge any additional charges of inadmissibility, the asylum officer shall proceed in accordance with § 235.3(b) of this chapter. If such applicant is found to have a credible fear of persecution or torture based on information elicited from the asylum interview, an asylum officer may refer the applicant directly to an immigration judge in removal proceedings under section 240 of the Act, without conducting a separate credible fear interview pursuant to § 208.30. If such applicant is not found to have a credible fear based on information elicited at the asylum interview, an asylum officer will conduct a credible fear interview and the applicant will be subject to the credible fear process specified at § 208.30(b).

(B) *Inadmissible on other grounds.* In the case of an applicant who was paroled into the United States on or after April 1, 1997, and will be charged as inadmissible to the United States under provisions of the Act other than, or in addition to, sections 212(a)(6)(C) or 212(a)(7), the asylum officer shall refer the application to an immigration judge for adjudication in removal proceedings.

* * * * *

(e) *Duration.* If the applicant is granted asylum, the grant will be effective for an indefinite period, subject to termination as provided in § 208.24.

* * * * *

(g) *Applicants granted lawful permanent residence status.* * * *

11. Section 208.15 is revised to read as follows:

§ 208.15 Definition of "firm resettlement."

An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

12. Section 208.16 is amended by

a. Revising paragraph (b)(1);

b. Revising paragraph (b)(2);

c. Revising paragraph (b)(3);

The revisions read as follows:

§ 208.16 Withholding of removal under section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(b) * * *

(1) *Past threat to life or freedom.* (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) In cases in which the applicant has established past persecution, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (b)(1)(i)(B) of this section.

(iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

(2) *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the asylum officer or immigration judge finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1) and (b)(2) of this section, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

* * * * *

§§ 208.19 through 208.23 [Redesignated as §§ 208.20 through 208.24, respectively].

13. Sections 208.19 through 208.23 are redesignated as §§ 208.20 through 208.24, respectively.

14. Section 208.19 is added to read as follows:

§ 208.19 Decisions.

The decision of an asylum officer to grant or to deny asylum or to refer an asylum application, in accordance with § 208.14(b) or (c), shall be communicated in writing to the applicant. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision to grant or deny asylum, or to refer an asylum application unless, in the discretion of the asylum office director, service by mail is appropriate. A letter communicating denial of asylum or referral of the application shall state the basis for denial or referral and include an assessment of the applicant's credibility.

15. Newly redesignated § 208.21 is amended by revising paragraph (a) to read as follows:

§ 208.21 Admission of the asylee's spouse and children.

(a) *Eligibility.* In accordance with section 208(b)(3) of the Act, a spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1) of the Act, also may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum, unless it is determined that the spouse or child is ineligible for asylum under section 208(b)(2)(A)(i), (ii), (iii), (iv) or (v) of the Act for applications filed on or after April 1, 1997, or under § 208.13(c)(2)(i)(A), (C), (D), (E), or (F) for applications filed before April 1, 1997.

* * * * *

16. Newly redesignated § 208.22 is revised to read as follows:

§ 208.22 Effect on exclusion, deportation, and removal proceedings.

An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant to § 208.24 or deferral is terminated pursuant to § 208.17(d) or (e).

17. Newly redesignated § 208.24 is amended by:

a. Revising paragraph (b)(1);

b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

c. Adding a new paragraph (e); and

d. Revising newly redesignated paragraphs (f) and (g), to read as follows:

§ 208.24 Termination of asylum or withholding of removal or deportation.

* * * * *

(b) * * *

(1) The alien is no longer entitled to withholding of deportation or removal because, owing to a fundamental change in circumstances relating to the original claim, the alien's life or freedom no longer would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the country from which deportation or removal was withheld.

* * * * *

(e) *Removal proceedings.* When an alien's asylum status or withholding of removal or deportation is terminated under this section, the Service shall initiate removal proceedings, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may take place in conjunction with a termination hearing scheduled under § 208.24(f).

(f) *Termination of asylum, or withholding of deportation or removal, by an immigration judge or the Board of Immigration Appeals.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum, or a withholding of deportation or removal. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum, or a withholding of deportation or removal, made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation, or removal proceeding.

(g) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in § 208.24 and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

18. Section 208.30 is revised to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, the Service has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart, paragraphs (b) through (g) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and reviews under section 235(b)(1)(B) of the Act.

(b) *Treatment of dependents.* A spouse or child of an alien may be included in that alien's credible fear evaluation and determination, if such spouse or child:

(1) Arrived in the United States concurrently with the principal alien; and

(2) Desires to be included in the principal alien's determination. However, any alien may have his or her credible fear evaluation and determination made separately, if he or she expresses such a desire.

(c) *Authority.* Asylum officers conducting credible fear interviews shall have the authorities described in § 208.9(c).

(d) *Interview.* The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture, and shall conduct the interview as follows:

(1) If the officer conducting the credible fear interview determines that the alien is unable to participate effectively in the interview because of illness, fatigue, or other impediments, the officer may reschedule the interview.

(2) At the time of the interview, the asylum officer shall verify that the alien has received Form M–444, Information about Credible Fear Interview in Expedited Removal Cases. The officer shall also determine that the alien has

an understanding of the credible fear determination process.

(3) The alien may be required to register his or her identity electronically or through any other means designated by the Attorney General.

(4) The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview and on the length of the statement.

(5) If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter must be at least 18 years of age and may not be the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, a representative or employee of the applicant's country of nationality, or, if the applicant is stateless, the applicant's country of last habitual residence.

(6) The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct any errors therein.

(e) *Determination.* (1) The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien has established a credible fear of persecution or torture.

(2) In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, or a credible fear of torture, the asylum officer or immigration judge shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

(3) If an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Service shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Service shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

(4) An asylum officer's determination shall not become final until reviewed by a supervisory asylum officer.

(f) *Procedures for a positive credible fear finding.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act. If an alien stowaway is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–863, Notice of Referral to Immigration Judge, for full consideration of the asylum claim, or the withholding of removal claim, in proceedings under § 208.2(c). Parole of the alien may be considered only in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter.

(g) *Procedures for a negative credible fear finding.* (1) If an alien is found not to have a credible fear of persecution or torture, the asylum officer shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge. The alien shall indicate whether he or she desires such review on Form I–869. A refusal by the alien to make such indication shall be considered a request for review.

(i) If the alien requests such review, or refuses to either request or decline such review, the asylum officer shall arrange for detention of the alien and serve him or her with a Form I–863, Notice of Referral to Immigration Judge, for review of the credible fear determination in accordance with paragraph (f)(2) of this section.

(ii) If the alien is not a stowaway and does not request a review by an immigration judge, the officer shall order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal, after review by a supervisory asylum officer.

(iii) If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(2) Review by immigration judge of a negative credible fear finding.

(i) The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, or upon the applicant's refusal either to request or to decline the review after being given such opportunity, in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

(ii) The record of the negative credible fear determination, including copies of the Form I–863, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination.

(iii) A credible fear hearing shall be closed to the public unless the alien states for the record or submits a written statement that the alien is waiving that requirement; in that event the hearing shall be open to the public, subject to the immigration judge's discretion as provided in § 3.27.

(iv) Upon review of the asylum officer's negative credible fear determination:

(A) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed. The Service, however, may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge.

(B) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution or torture, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal in accordance with § 208.4(b)(3)(i).

(C) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution or torture, the alien shall be allowed to file an application for asylum and withholding of removal before the immigration judge in accordance with § 208.4(b)(3)(iii). The immigration judge shall decide the

application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If a denial of the application for asylum and for withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If an approval of the application for asylum or for withholding of removal becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

Dated: November 27, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–30601 Filed 12–5–00; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 109 and 110

[Notice 2000—21]

General Public Political Communications Coordinated With Candidates and Party Committees; Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is adopting new rules to address expenditures for coordinated communications that include clearly identified candidates, and that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address expenditures for communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where any such person has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. The Commission is also revising the definition of "independent expenditure," to conform with this new definition. Further changes to the rules on coordination between political party committees and their candidates are awaiting the outcome of a pending Supreme Court case. Additional information is provided in the supplementary information that follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules at 11 CFR 100.23 that address coordinated communications that include clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where a candidate, authorized committee, or party committee has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. Other than the requirement that covered communications include a clearly identified candidate, the new rules contain no content standard. The Commission is also revising its rules at 11 CFR 100.16 and 109.1, which define "independent expenditure," to conform with this new definition; and making conforming amendments to 11 CFR 110.14, the section of the Commission's rules that deals with contributions to and expenditures by delegates and delegate committees.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. Because these rules were approved by the Commission on November 30, 2000, which is less than 30 legislative days before the adjournment of the 106th Congress, the Commission plans to transmit them to Congress on the first day of the 107th Congress, which will occur in January 2001. A Notice announcing the effective date of these rules will be published in the **Federal Register**.

Explanation and Justification

The Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* ("FECA" or the "Act") prohibits corporations and labor organizations from using general treasury funds to make contributions to a candidate for federal office. 2 U.S.C. 441b(a). It also imposes limits on the amount of money or in-kind contributions that other persons may contribute to federal campaigns. 2 U.S.C. 441a(a). Individuals and persons other than corporations, labor organizations, government contractors and foreign nationals can make independent expenditures in connection with federal campaigns. 11 CFR 110.4(a) and 115.2. Independent expenditures must be made without cooperation or consultation with any candidate, or any authorized committee or agent of a candidate; and they shall not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. 2 U.S.C. 431(17).

Expenditures that are coordinated with a candidate or campaign are considered in-kind contributions. *Buckley* v. *Valeo,* 424 U.S. 1, 46–47 (1976) (footnote omitted) ("*Buckley*"); *Federal Election Commission v. The Christian Coalition,* 52 F.Supp.2d 45, 85 (D.D.C. 1999) ("*Christian Coalition*"). As such, they are subject to the limits and prohibitions set out in the Act. The Act defines "contribution" at 2 U.S.C. 431(8) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

The Commission is promulgating new rules at 11 CFR 100.23 that define the term *coordinated general public political communication.* They generally follow the standard articulated by the United States District Court for the District of Columbia in the *Christian Coalition* decision, *supra.* This decision sets out at length the standards to be used to determine whether expenditures for communications by unauthorized committees, advocacy groups and individuals are coordinated with candidates or qualify as independent expenditures.

A. History of the Rulemaking

This rulemaking was originally initiated to implement the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996) (*Colorado I*) concerning the application of section 441a(d) of the FECA. In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such

independent expenditures to the section 441a(d) expenditure limits. *Id.* at 2315.

Section 441a(d) permits national, state, and local committees of political parties to make limited general election campaign expenditures on behalf of their candidates, which are in addition to the amount they may contribute directly to those candidates. 2 U.S.C. 441a(d). These section 441a(d) expenditures are commonly referred to as "coordinated party expenditures." Prior to the *Colorado* case, it was presumed that party committees could not make expenditures independent of their candidates.

The Commission notes that not all coordinated expenditures constitute communications. In fact, party committees may use their coordinated expenditure limits to pay for many other types of expenses incurred by candidates, including staff costs, polling and other services.

Following the *Colorado I* Supreme Court decision, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee filed a Petition for Rulemaking urging the Commission to (1) repeal or amend 11 CFR 110.7(b)(4) to the extent that that paragraph prohibited national committees of political parties from making independent expenditures for congressional candidates; (2) repeal or amend 11 CFR Part 109 with respect to which expenditures qualify as "independent"; and (3) issue new rules to provide meaningful guidance regarding independent expenditures by the national committees of political parties. Although the Petition for Rulemaking urged changes only in the rules applicable to national committees of political parties, the Commission's rulemaking also sought comment on proposed changes to the provisions governing state and local party committees, as well as coordination by outside groups with either candidates or party committees.

In response to the *Colorado I* decision, the Commission promulgated a Final Rule on August 7, 1996 which repealed paragraph (b)(4) of section 110.7. *See* 61 F.R. 40961 (Aug. 7, 1996). That paragraph had provided that party committees could not make independent expenditures in connection with federal campaigns. On the same date, the Commission also published a Notice of Availability ("NOA") seeking comment on the remainder of the Petitioners" requests. *See* 61 F.R. 41036 (Aug. 7, 1996). No statements supporting or opposing the petition were received by the close of the comment period.

On May 5, 1997 the Commission published an NPRM in which it sought comments on proposed revisions to these regulations. 62 FR 24367 (May 5, 1997). Comments in response to this NPRM were received from Common Cause; the Democratic National Committee ("DNC"); the Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC") (joint comment); the Internal Revenue Service ("IRS"); the National Republican Congressional Committee ("NRCC"); the National Republican Senatorial Committee ("NRSC"); the National Right to Life Committee; the Republican National Committee ("RNC"); and the United States Chamber of Commerce. On June 18, 1997, the Commission held a public hearing on this Notice, at which witnesses testified on behalf of Common Cause, the DNC, the DSCC and the DCCC, the National Right to Life Committee, the NRSC, and the RNC.

The IRS found no conflict with the Internal Revenue Code or that agency's regulations with regard to any Notice considered in the course of this rulemaking. All other comments received in connection with this rulemaking will be discussed *infra.*

The Commission subsequently decided to hold the 1997 rulemaking in abeyance until it received further direction from the courts. The coordinated spending limits were invalidated on constitutional grounds by the district court in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 41 F. Supp. 2d 1197 (D. Colo. 1999) (*Colorado II*), on remand from the *Colorado I* Supreme Court decision. In May 2000, that decision was affirmed by the Court of Appeals for the Tenth Circuit. 213 F.3d 1221 (10th Cir. 2000). The Supreme Court has now agreed to review this decision. 2000 WL 1201886 (U.S. Oct. 10, 2000) (No. 00–191).

On December 16, 1998, the Commission published a new NPRM putting forth proposed amendments to its rules governing publicly financed presidential primary and general election candidates. 63 FR 69524 (Dec. 16, 1998). Issues concerning coordination between party committees and their presidential candidates, which had been raised in the earlier NPRM, were addressed in the public funding rulemaking. For example, the 1998 NPRM put forward narrative proposals regarding a content-based standard for coordinated communications made to the general public. It also sought comment on coordination between the national committees of political parties and their presidential candidates with respect to poll results, media production, consultants, and employees whose services are intended to benefit the parties' eventual presidential nominees.

The Commission received seven written comments on coordinated expenditures in response to the 1998 NPRM. Commenters included the Brennan Center for Justice at New York University School of Law ("Brennan Center"); Common Cause and Democracy 21 (joint comment); the DNC; the James Madison Center for Free Speech; Perot '96; the RNC; and the law firm of Ryan, Phillips, Utrecht, & MacKinnon, and Patricia Fiori, Esq. (joint comment). The Commission subsequently reopened the comment period and held a public hearing on March 24, 1999, at which witnesses representing the DNC; the James Madison Center for Free Speech; the RNC; and Ryan, Phillips, Utrecht & MacKinnon presented testimony on coordination issues.

On November 3, 1999, the Commission promulgated new paragraph (d) of section 110.7, addressing pre-nomination coordinated expenditures. 64 FR 59606 (Nov. 3, 1999). The new paragraph states that party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. It further states that all pre-nomination coordinated expenditures are subject to the section 441a(d) coordinated expenditure limitations, whether or not the candidate with whom they are coordinated receives the party's nomination. Please note that new § 110.7(d) applies to all federal elections. For additional information, see *Explanation and Justification for Section 110.7, Party Committee Coordinated Expenditures and Spending Limits (2 U.S.C. 441a(d)),* 64 FR 42579, 42580–81 (Aug. 5, 1999).

The Commission published the document that serves as the primary basis for these final rules, a Supplemental Notice of Proposed Rulemaking ("SNPRM") addressing general public political communications coordinated with candidates, on December 9, 1999. 64 FR 68951 (Dec. 9, 1999). The Commission received 15 comments in response to the SNPRM, from the Alliance for Justice; the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO"); the Brennan Center; The Coalition; Common Cause and Democracy 21 (joint comment); the DNC; the DSCC and DCCC (joint

comment); the First Amendment Project of the Americans Back in Charge Foundation; the IRS; the James Madison Center for Free Speech; J. B. Mixon, Jr.; the National Education Association; the NRSC; the RNC; and United States Senators Russell D. Feingold, John McCain, Carl Levin and Richard J. Durbin (joint comment). In addition, the Commission held a public hearing on the SNPRM on February 16, 2000, at which nine witnesses testified on behalf of the Alliance for Justice, the AFL-CIO, the Americans Back in Charge Foundation, the Brennan Center, The Coalition, the DNC, the DSCC and DCCC, the James Madison Center for Free Speech, and the RNC.

B. The Christian Coalition Decision

The *Christian Coalition* case arose out of an FEC enforcement action alleging coordination between the Christian Coalition and various federal campaigns in connection with the 1990, 1992, and 1994 elections, resulting in disbursements from the Coalition's general corporate treasury for voter guides, "get out the vote" activities, direct mailings and payments to speakers. The Christian Coalition characterized these activities as independent corporate speech; while the FEC alleged that, because of the varying degrees of interaction between the Christian Coalition and those candidates and their campaigns, the activities must be treated as in-kind contributions that violated the Act's contribution limits and/or prohibitions.

In setting out a working definition of "coordination," the *Christian Coalition* court explained that "the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which the coordination is extensive enough to make the potential for corruption through legislative *quid pro quo* palpable without chilling protected contact between candidates and corporations and unions." 52 F.Supp.2d at 88–89. The court continued, "First Amendment clarity demands a definition of "coordination" that provides the clearest possible guidance to candidates and constituents, while balancing the Government's compelling interest in preventing corruption of the electoral process with fundamental First Amendment rights to engage in political speech and political association." *Id.* at 91. In its opinion the district court referred to "expressive expenditures," as opposed to expenditures for other types of campaign support, and defined a "coordinated expressive expenditure" as "one for a communication made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender's choice of speech has been arrived at after coordination with the campaign." Id. at 85, n. 45.

The court went on to explain that "an expressive expenditure becomes 'coordinated,' where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over a communication's: (1) Contents; (2) timing; (3) location, mode, or intended audience (*e.g.*, choice between newspaper or radio advertisement); or (4) 'volume' (*e.g.*, number of copies of printed materials or frequency of media spots). 'Substantial discussion or negotiation' is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners." *Id.* at 92. The court acknowledged that "a standard that requires 'substantial' anything leaves room for factual dispute," but reasoned that the standard reflects a reasonable balance between possibly chilling some protected speech and the need to protect against the "real dangers to the integrity of the electoral process" expressive expenditures may present. *Id.*

The district court then applied this standard to the challenged campaign activities. In most instances the court did not find coordination. For example, the court found no coordination between the Christian Coalition and the Bush-Quayle campaign in the preparation of voter guides in connection with the 1992 presidential campaign, explaining that, while the campaign was generally aware President Bush would compare favorably in the eyes of the target audience with the other candidates profiled in the guides, the campaign staff did not seek to discuss the issues that would be profiled or how they would be worded. Nor did they seek to influence the Coalition's decisions as to how many guides would be produced, and when and where they would be distributed. *Id.* at 93–95. Similarly, the fact that a Coalition official served as a volunteer in a 1994 House campaign and also made decisions as to where the Coalition's voter guides would be distributed in connection with that campaign did not amount to coordination where the official did not make his decisions based on any discussions or negotiations with the campaign for which he volunteered. *Id.* at 95–96. In contrast, the court found coordination where the Coalition provided a Senate campaign consultant with a commercially valuable mailing list. *Id.* at 96. The Commission subsequently decided not to appeal the district court's decision.

C. Other Court Decisions

In *Clifton* v. *Federal Election Commission*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 118 S.Ct. 1036 (1998) ("*Clifton*"), the United States Court of Appeals for the First Circuit ruled that coordination in the context of voter guides "implie(s) some measure of collaboration beyond a mere inquiry as to the position taken by a candidate on an issue." 114 F.3d at 1311, citing *Buckley*, 424 U.S. at 46–47 and n. 53 (1976). The court invalidated those portions of the Commission's voter guide regulations at 11 CFR 114.4(c)(5)(i) and (ii)(C) that limit any contact with candidates to written inquiries and replies, and generally require all candidates for the same office to receive equal space and prominence in the guide. *Id.* at 1317. The court also invalidated the Commission's voting record rules at 11 CFR 114.4(c)(4) to the extent they could be read to prohibit mere inquiries to candidates. *Id.*[1] In *Federal Election Commission* v. *Public Citizen, Inc.*, 64 F.Supp.2d 1327 (N.D. Ga. 1999), a federal district court followed the *Clifton* "collaboration" language in holding that contacts between a public interest group and a candidate made in connection with an advertising campaign to defeat a candidate for the House of Representatives were not coordinated for FECA purposes. The Commission did not appeal that portion of the *Public Citizen* decision that addresses the coordination standard.

D. General Concerns Raised by Commenters

The commenters and witnesses raised several general points in connection with the SNPRM. Several noted that the FECA does not use the terms "coordinated" or "coordination" in discussing campaign contributions and expenditures. This regulation uses the single term "coordination" to encompass those expenditures described in 2 U.S.C. 441a(a)(7)(B)(i) as made "in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate." The statutory terms are not inherently clear, nor does the Act's legislative history provide much guidance. Thus, these rules will fill what is largely a vacuum in this area. All of the commenters, regardless of the positions they espoused, asked the Commission to issue clear rules that provide the regulated community with sufficient guidance to easily understand which communications come within the definition.

One commenter, citing *Buckley*, 424 U.S. at 48 (1976), argued that the Commission was powerless to act in this area, because it had not shown that covered communications involved actual corruption between those making the communications in question and the recipient candidates. However, after the SNPRM was published, the Supreme Court's decision in *Nixon* v. *Shrink Missouri Government PAC*, 120 S.Ct. 897 (2000) (*Shrink Missouri*) upheld the constitutionality of State contribution limits, which the Court said could be based, *inter alia*, on newspaper accounts that inferred the impropriety of large contributions. *Id.* at 907. While some commenters argued that the holding in *Shrink Missouri* is limited to non-federal contributions, others stated that, in their view, this decision vitiates the need for the Commission to find *quid pro quo* corruption in a particular case before taking action in this area. The Commission agrees with this latter view, that the holding in *Shrink Missouri* is applicable to federal contribution limits.

E. Content of Covered Communications

Several commenters urged the Commission to limit the definition of general public political communications to communications that contain "express advocacy" of the election or defeat of a clearly identified candidate, *i.e.*, those covered by the Commission's definition of "express advocacy" as defined at 11 CFR 100.22(a). That paragraph requires the use of individual words or phrases that, in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s). They argued that express advocacy is constitutionally required even for communications specifically requested by a candidate to benefit the candidate's campaign. Other commenters, citing the definition of "independent expenditure" at 2 U.S.C. 431(17), *supra*, argued that any contact with a candidate or campaign should result in coordination.

Several commenters urged the Commission to limit the definition of general public political communications to communications that refer to clearly identified candidates in their status as candidates, or otherwise refer to an election. They noted, for example, that Members of Congress run for office virtually full-time, and argued that communications that referred to them in passing should not be subject to this standard.

The *Buckley* Court emphasized the necessity of avoiding vague or overbroad regulation of political speech. 424 U.S. at 42–44, 77–80. In light of these constitutional concerns, the Commission's goal in adopting § 100.23 is to establish a test that (1) provides reasonable certainty as to which communications between a person and a candidate or a party committee rise to the level of coordination; and (2) properly balances the Commission's "interest in unearthing disguised contributions," *Clifton*, 114 F.3d at 1315, with the right of the citizenry to engage in discussions about public issues with candidates. *Buckley*, 424 U.S. at 14.

The Commission is addressing the constitutional concerns raised in *Buckley* by creating a safe harbor for issue discussion. Section 100.23(d) makes it clear that a candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues will not suffice to establish coordination. In addition, the Commission's new rules establish a "buffer zone" for protected speech by requiring that discussions or negotiations regarding certain aspects of a communication must be "substantial" and result in "collaboration or agreement" in order to rise to the level of coordination. See § 100.23(c)(2)(iii). At a minimum, this new rule is more protective of First Amendment rights than the standard it is replacing.

The Commission is not adopting any content standard as a part of these rules at this time. There were significant disagreements among commenters over what content standard, if any, should be adopted. There is a substantial argument that any of the content standards suggested could be under-inclusive in the context of coordination. Some advertising by campaigns, for instance, does not include express advocacy and does not refer specifically to candidates as candidates or state that they are running for election. Allowing candidates, campaigns and political parties to ask corporations, labor unions or other persons to sponsor that kind of advertising without limit or disclosure could "give short shrift to the government's compelling interest in preventing real and perceived corruption that can flow from large campaign contributions." *Christian Coalition*, 52 F.Supp.2d at 88.

The argument that a communication must constitute express advocacy in order to fall within the definition of "expenditure," 2 U.S.C. 431(9), in all circumstances (and thus be controlling for purposes of defining a "coordinated expenditure") is not being addressed in this rulemaking. See *Republican National Committee* v. *Federal Election Commission*, 1:98CV1207 (June 25, 1998 D. D.C.) (slip op.), aff'd, No. 98–5263 (D.C. Cir. Nov. 6, 1998). The term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. Exceptions to this definition are set forth at section 431(9)(B).

A content element in the definition of coordination may be more useful in the context of political party communications coordinated with candidates, a topic which will be addressed in a subsequent phase of this rulemaking. In the party-candidate context the principal question could become how an expenditure is reported rather than how it is financed or whether it is reported at all. The Commission may revisit the issue of a content standard for all coordinated communications when it considers candidate-party coordination.

Section 100.16 Definition of "independent expenditure"

The Commission is amending the definition of independent expenditure in this section to track more closely the statutory definition of independent expenditure. *See* 2 U.S.C. 431(17). It is also adding a conforming amendment, to indicate that the meaning of the phrase "made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate," is now governed by 11 CFR 100.23, discussed *infra*, instead of former 11 CFR 109.1(b)(4), which has been repealed. Finally, a new cross reference to 11 CFR 109.1 alerts readers to the additional information on independent expenditures contained in that section.

Section 100.23 Coordinated General Public Political Communications

The Commission is adding a new section, 11 CFR 100.23, to its rules, to address expenditures for coordinated communications made for the purpose of influencing federal elections that are

[1] On July 20, 1999, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech, on behalf of the Iowa Right to Life Committee, seeking repeal of the rules at 11 CFR 114.4(c)(4) and (c)(5) to reflect the *Clifton* decision. The Commission published an NOA on this petition on Aug. 25, 1999. 64 FR 46319 (Aug. 25, 1999). Further action on that petition, which is related to the issues addressed in this rulemaking, will be taken by the Commission after this rulemaking has been concluded.

paid for by persons other than candidates, candidates' authorized committees, and party committees. The Commission believes it is appropriate to place this language in a separate section of the rules to properly alert the regulated community of this standard.

New § 100.23 generally follows the language of the *Christian Coalition* decision, discussed above. The Commission is, however, using the phrase "expenditures for general public political communications" in place of "expressive expenditure," the term used by the *Christian Coalition* court, because these rules do not address the content standard analysis in *Christian Coalition*, and "expenditures for general public political communications" more precisely describes the types of communications covered by these rules. *See* discussion of § 100.23(c)(1), *infra*.

There was no consensus among the comments and witnesses as to whether the Commission should follow the approach set forth in *Christian Coalition*. Some favored this overall approach although they urged the Commission to limit coverage to communications that contained express advocacy. As explained above, the rules do not address this further limitation. Others opposed this approach, urging retention of a broad definition of coordination.

Although the final rules have been modified somewhat from those proposed in the SNPRM, the Commission continues to believe that the *Christian Coalition* court correctly decided which communications are "coordinated" in this context. While the court recognized that it was establishing a difficult standard to meet, the Commission believes the court correctly concluded that a high standard is required to safeguard protected core First Amendment rights.

Section 100.23(a) Scope

Paragraph (a)(1) of this section states that these new rules apply to expenditures for general public political communications paid for by separate segregated funds, nonconnected committees, individuals, or any other person except candidates, authorized committees, and party committees. Paragraph (a)(2) notes that coordinated party expenditures made on behalf of a candidate pursuant to 2 U.S.C. 441a(d) are governed by 11 CFR 110.7.

In the SNPRM, the Commission sought comments on whether the standard for coordination proposed in that document should be applied to political party expenditures for general public political communications that are coordinated with particular candidates. All party committees that commented on the SNPRM argued that they should not be covered by these rules. They urged the Commission to wait until *Colorado II* has been decided before acting in that area, since that decision could have major ramifications for any rules that might have been adopted in the meantime.

In light of *Colorado II*, the Commission is not amending the rules in 11 CFR 110.7 governing coordinated expenditures between party committees and candidates at this point. The Commission expects that additional guidance will be forthcoming in that decision, at which time it will re-examine this aspect of the rulemaking.

Section 100.23(b) Treatment of General Public Political Communications as Expenditures and Contributions

As explained above, for purposes of the FECA, a coordinated expenditure is considered both an expenditure by the person making the expenditure and an in-kind contribution to the recipient candidate or political committee. Consistent with such treatment, paragraph (b) of § 100.23 states that any expenditure covered by these rules shall be treated as both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii). As such, it is subject to the contribution limits of 2 U.S.C. 441a and must be reported as both a contribution and an expenditure as required at 2 U.S.C. 434. Please note that the new rules apply not only to situations in which separate segregated funds and nonconnected committees coordinate their expenditures with candidates, but also where they coordinate with party committees, thus clarifying that party committees can themselves receive coordinated contributions.

Section 100.23(c) Coordination With Candidates and Party Committees

This paragraph contains the text of the coordination standard: it addresses what contact between a campaign and a person paying for a communication made in connection with that campaign is sufficient to bring that communication within the purview of these rules. Please note that the standards set forth in paragraphs (2)(i), (2)(ii) and (2)(iii) are alternatives. Communications that meet the standard established by any one of these paragraphs are considered coordinated general public political communications for purposes of these rules.

The SNPRM proposed alternative language for the introductory text of this paragraph. Both Alternatives, designated Alternative 1–A and Alternative 1–B, stated that general public political communications would be considered coordinated if paid for by any person other than a candidate, the candidate's authorized committee, or a party committee, provided that the requirements set forth in paragraphs (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section, *infra*, were met. Alternative 1–B would have added an additional requirement before a communication be considered coordinated, namely that it be distributed primarily in the geographic area in which the candidate was running. Alternative 1-A omitted this geographical restriction.

The SNPRM explained that Alternative 1–B was intended to ensure that costs of national legislative campaigns that refer to clearly-identified candidates, and may be designed or endorsed by one or more of the named candidates, not be considered expenditures on behalf of those candidates' campaigns. The Commission noted, however, two concerns with Alternative 1–B: (1) The definition of "coordination" would exclude media broadcasts to several adjacent states; and (2) the definition of "coordination" would exclude communications disseminated in one state that solicit funds on behalf of a candidate running in another state, if contributors are asked to send their contributions directly to the candidate on whose behalf they are made.

One commenter pointed out that a geographic limit has nothing to do with the concept of coordination. No one addressed the Commission's concern that Alternative 1–B would allow persons to solicit contributions to be sent directly to candidates in another state, without these contributions being considered coordinated. The Commission is adopting Alternative 1–A, because the geographic restriction does not get at the question of whether the parties coordinated a communication.

Please note that, in the SNPRM, the requirement at paragraph (1) of this section that covered communications be paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, was included as part of the introductory text. For clarity, the Commission has decided to place this language in a separate paragraph.

Section 100.23(c)(2)(i) The "Request or Suggestion" Standard

The Commission also sought comment on two alternatives of a provision, to be located in paragraph (c)(2)(i), which addressed

communications made at the request or suggestion of the candidate or campaign, and those authorized by a candidate or campaign. Alternative 2–A stated that coordination would occur when a communication is created, produced or distributed at the request or suggestion of, or when authorized by, a candidate, candidate's authorized committee, a party committee, or an agent of any of the foregoing. Alternative 2–B would have limited such coordination to those instances where the parties also discuss the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement.

One commenter urged the Commission to adopt Alternative 2–A, because it is consistent with the statutory language. Another found even Alternative 2–B to be overly broad. A party committee argued that the definition was overly broad as applied to party committees; however, as discussed above, that portion of the rulemaking has been held in abeyance pending the Supreme Court's decision in *Colorado II*.

The Commission is adopting an amended version of Alternative 2–A because it is more consistent with the FECA than Alternative 2–B. Section 441a(a)(7)(B)(i) states that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, * * * shall be considered to be a contribution to such candidate." The new rule also reflects the following language in the *Christian Coalition* decision: "The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within the Act's prohibition on contributions." 52 F.Supp.2d at 91. The Commission has accordingly decided to adopt an amended version of Alternative 2–A, so that a communication made at the request or suggestion of a candidate will be considered to be coordinated with that candidate, regardless of whether any of the further contacts that would have been required by Alternative 2–B took place. The Commission emphasizes that this regulation encompasses only requests or suggestions for communications to the general public. Thus, a general appeal for support would clearly not fall within the scope of this regulation.

The proposed rules indicated that general public political communications authorized by candidates or party committees would be considered to be coordinated. The final coordination rules do not cover authorized communications, because these expenditures are already in-kind contributions to the candidates or party committees under 11 CFR 100.7(a)(1)(iii), and thus are not mentioned in the statutory definition of "independent expenditure" at 2 U.S.C. 431(17). Thus, if these communications contain express advocacy or solicit contributions, they must state who paid for them, and if applicable, that they are authorized by the candidate or the candidate's committee. *See* 11 CFR 110.11(a)(1).

The SNPRM sought comments on a hypothetical in which, shortly before an election, a candidate complained to a supporter that no one had publicized various problems in the personal life of his opponent. The supporter then ran such advertisements. Most of those who commented on this hypothetical thought this hypothetical should fall within the "request or suggestion" language. However, some witnesses said that it would not be considered coordinated under either Alternative 2–A or 2–B, and urged the Commission to revise the proposed regulation to ensure that such communications would in fact be considered coordinated. The Commission notes that this hypothetical turns on the precise language used, which would be needed to determine if in fact the candidate requested or suggested that the supporter run the advertisements in question. If the candidate made no request or suggestion, the communication would not be coordinated for purposes of these rules.

In determining whether a particular statement by a candidate or committee constitutes an appeal for an in-kind contribution in the form of a general public political communication, the Commission will consider both whether the requested action appears to be for the purpose of influencing a Federal election and the specificity of the request or suggestion. Such determinations would turn on the same factors addressed specifically in the "substantial discussion" standard, *infra*, with the principal difference being that a request or suggestion could be made by a candidate, authorized committee or party committee without any negotiation or immediate response from an outside group. If such a request or suggestion indicated that a communication with specified content would be valuable or important to a candidate or committee, then payments for the communication would constitute in-kind contributions.

One commenter proposed an additional hypothetical, in which a candidate's campaign committee chose to target only urban areas with campaign advertisements because it could not afford to cover the entire State. The director of a rural Political Action Committee ("PAC") later met the campaign manager and asked whether the campaign would be running ads in rural areas. Told that it would not be, due to lack of money, the rural PAC paid for and distributed the ads. The Commission notes that this mailing would be covered by 11 CFR 109.1(d)(1), part of the Commission's definition of independent expenditures, which states that the financing or dissemination, distribution, or republication of any campaign materials prepared by a candidate, campaign committee or their authorized agent is a contribution by the person making the expenditure, but not an expenditure by the candidate or committee unless coordination is present. *See also* 11 CFR 100.7(a)(1)(iii).

Section 100.23(c)(2)(ii) The "Control or Decision-Making" Standard

Paragraph (c)(2)(ii) states that communications are coordinated if the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication. This standard is based on the *Christian Coalition* definition, 52 F.Supp.2d at 92; and it, too, would turn on the specific actions involved in each case. The commenters did not focus extensively on this portion of the proposed definition.

Section 100.23(c)(2)(iii) The "Substantial Discussion or Negotiation" Standard

Under 11 CFR 100.23, a general public political communication is considered coordinated if it is made after substantial discussion or negotiation between the creator, producer or distributor of the communication, or person paying for the communication, and a candidate, candidate's authorized committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. The paragraph further provides that substantial discussion or negotiation

can be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

Some commenters expressed uncertainty about the scope of "substantial," which admittedly "leaves room for factual dispute." *Christian Coalition*, 52 F.Supp.2d at 92. By including the word "substantial," the Commission intends to make clear that whether or not "discussions or negotiations" satisfy the requirements of § 100.23(c)(2)(iii) will depend not on their frequency but on their substance. The "substance" must go beyond protected issue discussion to specific information about how to communicate an issue in a way that is valuable or important for the campaign. The Commission has concluded that when the topic of discussion turns from the candidate's views on a political issue to the candidate's views on how to communicate that issue, there is far greater likelihood of collaboration. Thus, numerous discussions with a campaign about a complex or controversial public issue would not be considered "substantial" for the purposes of paragraph (c)(2)(iii), but a brief discussion as to how to phrase an issue, or as to which issues to emphasize, could be considered "substantial."

The word "substantial" applies not only to discussions about the content of a communication, but also to discussions about the timing, location, mode, intended audience, volume of distribution or frequency of placement of a communication. In those circumstances, "substantial" is meant to exclude discussions that do not include enough specific information for collaboration or agreement to occur. For example, if a person states that he is planning to pay for a communication "soon," or to run the ad "on TV," without further probing from the campaign, this would not be considered "substantial."

The Commission recognizes, as did the *Christian Coalition* court, that use of the term "substantial" means that determinations involving this standard will likely be fact-specific. 52 F.Supp.2d at 92. Those seeking additional guidance as to the application of this standard to specific facts and circumstances are encouraged to make use of the Commission's advisory opinion process. *See* 2 U.S.C. 437f and 11 CFR Part 112.

Section 100.23(d) Exception

Consistent with *Buckley*, *Christian Coalition*, and *Clifton*, paragraph (d) of new section 100.23 provides that a candidate's or political party's response to an inquiry regarding the candidate's or the party's position on legislative or public policy issues does not alone make the communication coordinated.

Several commenters urged the Commission to broaden this exception to include, for example, public policy announcements or communications disseminated as part of a public policy debate; and legislative lobbying campaigns, including grass roots lobbying. While the Commission is generally sympathetic to these concerns, it can be difficult to distinguish between lobbying activities and electoral campaigning. As the *Buckley* Court explained, "(T)he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." 424 U.S. at 42. Further, some of these communications may have components that could trigger application of these rules. Thus the Commission is not enacting the blanket exception recommended by these commenters. However, the Commission stresses that such contacts, while not receiving a blanket exception, do not necessarily result in coordination. The test of 11 CFR 100.23 (c) must still be met.

Section 100.23(e) Definitions

This paragraph defines the terms "general public political communications," "clearly identified," and "agent" for purposes of these rules. The term "general public political communications" includes those made through a broadcasting station, including a cable television operator; newspaper; magazine; outdoor advertising facility; mailing or any electronic medium, including over the Internet or on a web site. Including cable television broadcasts is consistent with the Commission's candidate debate regulations at 11 CFR 110.13(a)(2), while including communications made over the Internet reflects the expanding role of that medium in federal campaigns.

The definition is limited to those communications having an intended audience of over one hundred people. The exclusion of communications with an intended audience of one hundred people or fewer mirrors the Commission's disclaimer rules at 11 CFR 110.11(a)(3), which exempt from the disclaimer requirements direct mailings of one hundred pieces or less.

The term "general public political communication" is similar to the term "general public political advertising," which appears in three places in the Act and in several sections of the regulations. The latter term has similar and generally consistent meanings in the Act and the Commission's rules. For example, the definitions of "contribution" and "expenditure" at 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv) respectively refer to "broadcasting stations, newspapers, magazines, or similar types of general public political advertising." Section 441d(a) of the Act, which addresses communications that require a disclaimer, includes the same list and adds outdoor advertising facilities and direct mailings. The corresponding rules are found at 11 CFR 100.7(b)(9) (definition of "contribution"), 100.8(b)(10) (definition of "expenditure"), and 110.11(a)(1) (communications requiring disclaimers). The Commission therefore believes this term is preferable to "expressive communications," the term used in the *Christian Coalition* decision.

The Commission sought comments on a hypothetical in which a Savings and Loan League runs public service announcements intended to reinforce the public's confidence in the safety of deposits in savings and loan institutions. The announcements, which are run in January of an election year, feature a U.S. Senator who is a candidate for reelection. The commenters who discussed this hypothetical argued that the announcements should not be considered coordinated general public political communications, both because of the timing of the announcements, early in an election year, and because they had no electoral content. Although the Commission is not including a specific time period prior to an election in the text of the new rules, timing is an element of coordination in 11 CFR 100.23(c)(2)(ii) and (iii). The *Christian Coalition* decision supports the idea that the timing of a communication is one aspect of whether it is coordinated with a campaign. *Christian Coalition*, 52 F.Supp. 3d at 92. However, as discussed above, the Commission does not believe that the lack of electoral content is controlling.

This is another situation that would turn on the specific facts. *See* discussion of the first hypothetical discussed in connection with paragraph (c)(2)(i), *supra*.

Section 100.23(e)(2) Definition of "Clearly Identified"

The new rules at 11 CFR 100.23(b) limit their coverage to communications that include a "clearly identified candidate." Paragraph (e)(2) of § 100.23 explains that the term "clearly identified candidate" has the same meaning as that in 11 CFR 100.17, which is based on 2 U.S.C. 431(18). Thus, it includes communications where the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic Presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

Section 100.23(e)(3) Definition of "Agent"

This paragraph notes that the definition of "agent" for purposes of these new rules is identical to that found at 11 CFR 109.1(b)(5), part of the rules defining independent expenditures. The term "agent" in this context means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate; or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. The Commission is including this cross reference in 11 CFR 100.23 to clarify that the term has the same meaning in the context of coordinated general public political communications.

Section 109.1 Independent Expenditures

In its 1997 NPRM, the Commission sought comment on several proposed revisions to this section, which defines the term "independent expenditure." The commenters and witnesses who addressed this issue at the Commission's 1997 public hearing had equally wide-ranging views this issue. However, those events took place prior to the *Christian Coalition* decision, which the Commission has determined should serve as the basis for this definition.

The Commission is amending the definition of "independent expenditure" in paragraph (a) to track more closely the statutory definition of independent expenditure. *See* 2 U.S.C. 431(17). In addition, the § 109.1(a) Commission has included a cross-reference 11 CFR 100.23, to indicate that the meaning of the phrase "made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent of authorized committee of such candidate," is now clarified by § 100.23, instead of by former paragraph (b)(4) of § 109.1. The Commission is deleting paragraph (b)(4) because the standards for coordination set forth in that section were overbroad. *See Christian Coalition*, 52 F.Supp. at 90.

Former § 109.1(b)(4) explained what was meant by the phrase, "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate, or any agent, or authorized committee of the candidate." It indicated that this covered "any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication." This phrase has been clarified, consistent with the *Christian Coalition* decision, and moved to new 11 CFR 100.23(c)(2).

Former paragraph (b)(4) also addressed contacts between the campaign and the person making the expenditure. For example, it included, at former paragraph (b)(4)(i)(A), a presumption that coordination applied to expenditures "based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made." The *Christian Coalition* court, likening this regulation to an "insider trading" standard, held it to be overbroad. 52 F.Supp. 2d at 89–91. The Commission is accordingly revising this paragraph to explain that a communication is "made with the cooperation of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate" if it is a coordinated general public political communication under 11 CFR 100.23.

Section 110.14 Contributions To and Expenditures By Delegates and Delegate Committees

This section of the Commission's rules sets forth the prohibitions, limitations and reporting requirements under the Act applicable to all levels of a delegate selection process. Paragraphs (f)(2)(i), (f)(2)(ii), (f)(3)(iii), (*i*)(2)(i), (*i*)(2)(ii), and (*i*)(3)(iii) address independent expenditures and in-kind contributions. The Commission is making conforming amendments to these paragraphs to reflect new 11 CFR 100.23 and revised 11 CFR 109.1.

Advisory Opinions Superseded

The Commission has in the past issued Advisory Opinions ("AO") that employed a broader definition of "coordination" than is contained in these new rules. Many of these AOs addressed the "insider trading" situation in which a campaign employee later became involved, or sought to become involved, with an entity that wished to make independent expenditures. This prohibition was found to be overly broad by the *Christian Coalition* court. *See* discussion of revised 11 CFR 109.1(b)(4), *supra*, which has been rewritten to reflect that aspect of the decision. The following AOs are superseded, to the extent they conflict with these new rules: AOs 1999–17, 1998–22, 1996–1, 1993–18, 1982–20, 1980–116, 1979–80.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules follow court decisions that expand the definition of certain coordinated communications made in support of or in opposition to clearly identified federal candidates. The rules also permit, but do not require, small entities to make independent expenditures. Therefore, there will be no significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* is amended to read as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), and 438(a)(8).

2. Section 100.16 is revised to read as follows:

§ 100.16 Independent expenditure (2 U.S.C. 431(17)).

The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation of or in consultation with, or in concert with, or

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at the request or suggestion of, a candidate or any agent or authorized committee of such candidate. A communication is "made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate" if it is a coordinated general public political communication under 11 CFR 100.23. *See* 11 CFR 109.1.

3. Section 100.23 is added to read as follows:

§ 100.23 Coordinated General Public Political Communications.

(a) *Scope.*

(1) This section applies to expenditures for general public political communications paid for by persons other than candidates, authorized committees, and party committees.

(2) Coordinated party expenditures made on behalf of a candidate pursuant to 2 U.S.C. 441a(d) are governed by 11 CFR 110.7.

(b) *Treatment of expenditures for general public political communications as expenditures and contributions.* Any expenditure for general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii).

(c) *Coordination with candidates and party committees.* An expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication—

(1) Is paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, and

(2) Is created, produced or distributed—

(i) At the request or suggestion of the candidate, the candidate's authorized committee, a party committee, or the agent of any of the foregoing;

(ii) After the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of that communication; or

(iii) After substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate, the candidate's authorized committee, a party committee, or the agent of such candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. Substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of the communication for a particular election.

(d) *Exception.* A candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues does not alone make the communication coordinated.

(e) *Definitions.* For purposes of this section:

(1) *General public political communications* include those made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a web site, with an intended audience of over one hundred people.

(2) *Clearly identified* has the same meaning as set forth in 11 CFR 100.17.

(3) *Agent* has the same meaning as set forth in 11 CFR 109.1(b)(5).

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

4. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

5. Section 109.1 is amended by revising paragraphs (a), (b)(4) and (d)(1) to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

(a) *Independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) * * *

(4) A communication is "made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate" if it is a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(d)(1) The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities by the person making the expenditure but shall not be considered an expenditure by the candidate or his authorized committees unless the dissemination, distribution, or republication of campaign materials is a coordinated general public political communication under 11 CFR 100.23

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

6. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

7. Section 110.14 is amended by revising the introductory text to paragraphs (f)(2)(i) and (f)(2)(ii); paragraph (f)(3)(iii); the introductory text to paragraphs (i)(2)(i) and (i)(2)(ii); and paragraph (i)(3)(iii) to read as follows:

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

* * * * *

(f) * * *

(2) * * *

(i) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated general public political communications under 11 CFR 100.23.

* * * * *

(i) * * *

* * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated general public political communications under 11 CFR 100.23.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated general public political communications under 11 CFR 100.23.

* * * * *

Dated: November 30, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–31013 Filed 12–5–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM179; Special Conditions No. 25–168–SC]

Special Conditions: Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B Series Airplanes as Modified by Duncan Aviation; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes modified by Duncan Aviation. These modified airplanes will have a novel or unusual design feature(s) associated with new avionics/electronics and electrical systems that will perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 29, 2000. Comments must be received on or before January 22, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM179, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at that address. All comments must be marked: Docket No. NM179. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information concerning the certification program for Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes, contact: Meghan Gordon, Federal Aviation Administration, Transport Airplane Directorate, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; fax (425) 227–1149.

For information on the general subject of HIRF, contact: Massoud Sadeghi, Federal Aviation Administration, Transport airplane Directorate, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2117; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although these special conditions are being issued as final special conditions without prior public notice, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: "Comments to NM179." The postcard will be date stamped and returned to the commenter.

Background

On September 13, 2000, and on September 20, 2000, Duncan Aviation, 15745 South Airport Road, Battle Creek, Michigan 49015, submitted applications to the FAA for two Supplemental Type Certificates (STC). These STC's are for modifying Gulfstream Aerospace Model G–1159, G–1159A, and G–1159B series airplanes to include:

- The Collins FDS–2000 Flight Display System; and
- Dual Collins AHS–3000A Altitude Heading Reference Systems.

The FDS–2000 system is a replacement of the existing electro-mechanical Attitude Directional Indicator (ADI) and Horizontal Situational Indicator (HSI) flight instruments. It also provides additional functional capability and redundancy in the system.

The AHS–3000A system is a replacement for the existing electro-mechanical vertical and directional gyros. It also provides additional functional capability and redundancy in the system.

The avionics/electronics and electrical systems installed in the Gulfstream Model G–1159, G–1159A, and G–1159B airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

The subject Gulfstream airplanes are T-tail, low swept-wing small transport category airplanes. The Model G–1159 airplane is powered by two Rolls Royce SPEY RB (163) 511–8 series engines mounted on pylons extending from the aft fuselage, and it has a maximum takeoff weight of 64,800 pounds. The Models G–1159A and G–1159B are slightly larger than the Model G–1159. These models are powered by two Rolls Royce SPEY RB (163–25) 511–8 series engines, and have a maximum takeoff

weight of 69,700 pounds. This series of airplanes operates with a 2-pilot crew and can hold up to 19 passengers.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Duncan Aviation must show that the Gulfstream Models G–1159, G–1159A, and G–1159B airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the modification. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A12EA are as follows:

1. For the Gulfstream Model G–1159 Airplane

- CAR 4b dated December 31, 1953, including Amendments 4b-1 through 4b-14;
- Special Regulations SR422B and SR450A;
- § 25.1325 (effective 2/1/65);
- § 25.175 (effective 3/1/65) in lieu of 4b.155(b);
- § 36.1(c)(2) for airplane serial numbers (S/N) 1 through 165 and 775 approved for a 62,000 lb. takeoff weight;
- 14 CFR Part 36, Appendix C, for airplane S/N 166 through 299, except 249, 252, and 775;
- Special Conditions in Attachment A of FAA letter to Grumman, dated 9/27/65;
- Exemption No. 695A, CAR 4b.437, "Fuel Jettisoning System."

2. For the Model G–1159A Airplane

- 14 CFR part 25 effective February 1, 1965, and Amendments 25–2 through 25–8, 25–10, 25–12, 25–16 through 25–22, 25–24, 25–26, 25–27, 25–29 through 25–34, 25–37, 25–40 (as applicable to a new APU installation);
- § 25.329 of Part 25 dated February 1, 1965 (as applied to a new autopilot installation);
- § 25.581 (lightning protection) of Amendment 25–23;
- § 25.771, Amendment 25–4. (A lockable door is not required between the pilot and passenger compartments.);
- § 25.994 (crashworthiness fuel system components);
- § 25.1309 of Amendment 25–41;
- Special Federal Aviation Regulation (SFAR) 27 through Amendment 2 (fuel venting emission);
- 14 CFR part 36 through Amendment 36–8 (noise requirements);
- Special Conditions contained in the FAA's letter to Grumman, dated 9/27/65, applicable to the Gulfstream Model G–1159 airplane, are also applicable to the Gulfstream Model G–1159A airplane, except that reference to "4b.450" in the "Cooling Systems" special conditions is replaced by "FAR 25.1043 contained in Part 25 of the FAR, effective 2/1/65;"
- Special Conditions pertaining to dynamic gust loads contained in the enclosure to FAA AEA–212 letter, dated 7/22/80.

3. For the Model G–1159B

- *Fuselage, Empennage, Autopilot, and Noise:*
  - —Car 4b, dated December 31, 1953, including Amendments 4b-1 through 4b-14;
  - —CAR 4b.450, Cooling Systems;
  - —Special Regulation SR450A;
  - —§ 25.175 (effective 3/1/65) in lieu of CAR 4b.155(b);
  - —§ 25.771, Amendment 25–4. [A lockable door is not required between the pilot and passenger compartments.]
  - —§ 25.1325 (effective 2/1/65);
  - —§ 36.7(d)(3)(ii);
  - —Special Conditions in Attachment A of FAA letter to Grumman, dated 9/27/65.
- *Wing Assembly, Landing Gear, Fuselage, and Empennage Modifications:*
  - —14 CFR part 25, effective February 1, 1965, Amendments 25–2 through 25–8, 25–10, 25–12, 25–16 through 25–22, 25–24, 25–26, except § 25.1203(b)(3), 25–27, 25–29 through 25–31,25–34, 25–37, 25–40 (as applicable to a new APU installation);
  - —§ 25.581 (Lightning Protection) of Amendment 25–23;
  - —§ 25.771, Amendment 4 (A lockable door is not required between the pilot and passenger compartments.);
  - —§ 25.994 (Crashworthiness Fuel System Components);
  - —25.1309 of Amendment 25–41;
  - —§ 25.1329 (effective 2/1/65);
  - —SFAR 27 through Amendment 2 (Fuel Venting Emissions);
  - —Special Conditions contained in the FAA's letter to Grumman, dated 9/27/65, applicable to Gulfstream Model G–1159 airplane, are also applicable to the Gulfstream Model G–1159B airplane;
  - —Special Conditions pertaining to dynamic gust loads, contained in the enclosure to FAA letter AEA–212, dated 7/22/80, is applicable to the Model G–1159B airplane.

The special conditions approved in this document will form an additional part of the type certification basis for these airplanes.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25 as amended) do not contain adequate or appropriate safety standards for the Gulfstream Model G–1159, 11–59A, and G–1159B airplanes modified by Duncan Aviation because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Gulfstream Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation will incorporate new avionics/electronics and electrical systems that will perform critical functions. These systems include a new flight display system and a new attitude heading reference system. These systems may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, and the use of composite material in the airplane structure, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1. or, alternatively, paragraph 2., below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

Or

2. A threat external to the airframe for both of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz	50	50
2 MHz—30 MHz	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz—700 MHz	700	50
700 MHz—1 GHz	700	100
1 GHz—2 GHz	2000	200
2 GHz—4 GHz	3000	200
4 GHz—6 GHz	3000	200
6 GHz—8 GHz	1000	200
8 GHz—12 GHz	3000	300
12 GHz—18 GHz	2000	200
18 GHz—40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified in Table 1 are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EA to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

As stated previously, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Aerospace Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 29, 2000.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31085 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–27–AD; Amendment 39–12028; AD 2000–24–21]

RIN 2120–AA64

Airworthiness Directives; Siam Hiller Holdings, Inc. Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, and UH–12L4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), for Siam Hiller Holdings, Inc. (Hiller), formerly Rogerson Hiller Corporation, Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, and UH–12L4 helicopters, that requires replacing all undrilled-shank bolts at pivoting joints in the control system linkage with drilled-shank bolts and installing castellated nuts and cotter pins. This amendment is prompted by an accident caused by separation of the control system linkage of a Model UH–12E helicopter. The actions specified by this AD are intended to prevent separation of the control system attachments at pivoting points and subsequent loss of control of the helicopter.

DATES: Effective January 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933–5101, telephone (408) 384–4500, fax (408) 384–3100. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) for Hiller Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, and UH–12L4 helicopters was published in the **Federal Register** on August 31, 2000 (65 FR 52958). That action proposed to require replacing all undrilled-shank bolts at the pivoting joints in the control system linkage with drilled-shank bolts and installing castellated nuts and cotter pins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 500 helicopters of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $150 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $795,000.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–24–21 Siam Hiller Holdings, Inc.: Amendment 39–12028. Docket No. 2000–SW–27–AD.

Applicability: Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, UH–12L4 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required at the next annual inspection or within 12 months, whichever occurs first, unless accomplished previously.

To prevent separation of the control system attachments at pivoting points and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace all undrilled-shank bolts at pivoting joints in the control system linkage with drilled-shank bolts, and install castellated nuts and cotter pins in accordance with Hiller Aircraft Corporation Service Bulletin No. 10–4, Revision 2, dated December 20, 1999.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The installation of castellated nuts and cotter pins shall be done in accordance with Hiller Aircraft Corporation Service Bulletin No. 10–4, Revision 2, dated December 20, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933–5101, telephone (408) 384–4500, fax (408) 384–3100. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 10, 2001.

Issued in Fort Worth, Texas, on November 14, 2000.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–30652 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–11]

Revision to the Legal Description of the Laughlin/Bullhead International Airport Class D Airspace Area, AZ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal description of the Laughlin/Bullhead International Airport Class D airspace area, AZ, by including that airspace within a 4.2-mile radius of the Laughlin/Bullhead International Airport west of a line 1.8-miles west of and parallel to the north/south runway.

EFFECTIVE DATE: January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Richard V. Coffin Jr., Airspace Specialist, Airspace Branch, AWP–520.9, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (301) 725–6533.

SUPPLEMENTARY INFORMATION:

History

The Airspace Branch in the Western-Pacific Region received a request from the Laughlin/Bullhead International Airport air traffic control tower manager to include the airspace west of the airport beyond 1.8 miles of the north/south runway and within a 4.2 mile radius of the airport.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, through September 15, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations revises the legal description of the Laughlin/Bullhead International Airport Class D airspace area, AZ, by including that airspace within a 4.2-mile radius of the Laughlin/Bullhead International Airport west of a line 1.8 miles west of and parallel to the north/south runway. This action will change the actual dimensions, configuration, or operating requirements of the Laughlin/Bullhead International Airport Class D airspace area, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRPSACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 *Class D Airspace*

* * * * *

AWP AZ D Bullhead City, AZ [Revised]
Laughlin/Bullhead International Airport, AZ
(Lat. 35°09′ 27″N, Long. 114°33′ 34″W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.2-mile radius of the Laughlin/Bullhead International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 21, 2000.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–31087 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–ACE–23]

RIN 2120–AA66

Amendment of Time of Use for Restricted Areas R–4501A, B, C, D, and E, Fort Leonard Wood; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the times of use for Restricted Areas R–4501A, B, C, D, and E, Fort Leonard Wood, MO. Specifically, this action reduces and/or increases the published times and/or days the restricted areas are in use. The FAA is taking this action in response to the United States Army's (USA) increased training requirements.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2000, the FAA proposed to amend 14 CFR part 73 to amend the times of use for Restricted Areas R–4501A, B, C, D, and E, Fort Leonard Wood, MO (65 FR 52961). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The Department of Defense in a continuing need to meet its added national defense responsibilities has increased its training requirements of the USA Reserve and National Guard resources in many areas of the United States. One of the locations where this training has been increased is at Fort Leonard Wood, MO. This increase in training requires modification of the times of use for R–4501 and its subdivisions. Therefore, the USA has requested that the FAA amend the times and days of use for R–4501A, B, C, D, and E. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.45 of part 73 was republished in FAA Order 7400.8H dated September 1, 2000.

The Rule

This amendment to 14 CFR part 73 modifies the times of use of R–4501 and

its subdivisions over Fort Leonard Wood, MO. Specifically, R–4501A is activated thirty minutes earlier and deactivated three hours later. Additionally, R–4501B is activated on the same schedule but deactivated four hours later. The day schedule (Monday-Saturday) remains unchanged.

Also, R–4501C and D are activated two hours later Monday-Friday and deactivated three hours later than the current designation on Monday and two hours earlier Tuesday-Friday. Saturday is no longer designated as an active day unless done so by NOTAM 24 hours in advance. In addition, R–4501E is activated on the same schedule as R–4501C and D. The FAA is taking this action at the request of the USA to meet the increasing training efforts of the USA at Fort Leonard Wood, MO, and to better depict more realistic operational times of use of the restricted areas. Section 73.45 of 14 CFR part 73 was republished in FAA Order 7400.8H, dated September 1, 2000.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces and/or increases the published times and/or days the restricted areas are in use. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

List of Subjects on 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.45 [Amended]

2. Section 73.45 is amended as follows:

* * * * *

R–4501A Fort Leonard Wood West, MO [Amended]

By removing the words "Time of Designation. 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance." and inserting the words "Time of Designation. 0630–2100 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance."

R–4501B Fort Leonard Wood East, MO [Amended]

By removing the words "**TIME OF DESIGNATION.** 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance." and inserting the words "**TIME OF DESIGNATION.** 0630–2200 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance."

R–4501C Fort Leonard Wood, MO [Amended]

By removing the words "**TIME OF DESIGNATION.** 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance." and inserting the words "**TIME OF DESIGNATION.** 0900–2100 Monday; 0900–1600 Tuesday-Friday; other times by NOTAM issued at least 24 hours in advance."

R–4501D Fort Leonard Wood, MO [Amended]

By removing the words "**TIME OF DESIGNATION.** 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance." and inserting the words "**TIME OF DESIGNATION.** 0900–2100 Monday; 0900–1600 Tuesday-Friday; other times by NOTAM issued at least 24 hours in advance."

R–4501E Fort Leonard Wood, MO [Amended]

By removing the words "**TIME OF DESIGNATION.** As specified by NOTAM at least 24 hours in advance." and inserting the words "**TIME OF DESIGNATION.** 0900–2100 Monday; 0900–1600 Tuesday-Friday; other times by NOTAM issued at least 24 hours in advance."

* * * * *

Issued in Washington, DC, on November 30, 2000.

Reginald C. Matthews,

Manager Airspace and Rules Division.

[FR Doc. 00–31086 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8909]

RIN 1545–AY46

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to the deposit of Federal employment taxes. The regulations change the de minimis deposit rule for quarterly and annual return periods. The regulations affect taxpayers required to make deposits of Federal employment taxes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective date:* These regulations are effective December 6, 2000.

Applicability date: For dates of applicability, see § 31.6302–1T(f)(4).

FOR FURTHER INFORMATION CONTACT: Brinton T. Warren, (202) 622–4940 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 31, Employment Taxes and Collection of Income Tax at the Source. Section 31.6302–1(f)(4) provides that if the total amount of accumulated employment taxes for a return period is less than $1,000 and the amount is fully deposited or remitted with a timely filed return for the quarter, the amount deposited or remitted will be deemed to be timely deposited.

The temporary regulations change the $1,000 threshold to $2,500. Thus, a taxpayer that has accumulated employment taxes of less than $2,500 for a return period (quarterly or annual, as the case may be) does not have to make deposits but may remit its full liability with a timely filed return for the return period.

The *de minimis* threshold is being raised as part of the IRS and Treasury's continued efforts to reduce burden on the small business community. On June 16, 1998, temporary regulations (TD 8771) that raised the de minimis threshold from $500 to $1,000 were published in the **Federal Register** (63 FR 32735). This increase of the threshold to $1,000 was made final on June 17, 1999, (TD 8822) in regulations published in the **Federal Register** (64 FR 32408).

Having conducted further study, the IRS now seeks additional changes in deposit requirements to reduce taxpayer burden. The IRS and Treasury have determined that another increase in the *de minimis* threshold is a simple and straightforward step that will reduce burden on small businesses.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6302–1T also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. In § 31.6302–1, a new sentence is added at the end of paragraph (f)(4) to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) * * * For guidance regarding de minimis amounts for quarterly or annual return periods beginning on or after January 1, 2001, see § 31.6302–1T(f)(4).

* * * * *

Par. 3. Section 31.6302–1T is added to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (f)(3). [Reserved] For further guidance, see § 31.6302–1(a) through (f)(3).

(f)(4) *De Minimis rule.* For quarterly and annual return periods beginning on or after January 1, 2001, if the total amount of accumulated employment taxes for the return period is less than $2,500 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

(f)(5) through (n). [Reserved] For further guidance, see § 31.6302–1(f)(5) through (n).

Approved: November 21, 2000.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 00–30791 Filed 12–5–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–00–053]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.511 for the Eastport Yacht Club Lighted Boat Parade, a marine event to be held December 9, 2000, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.511 is effective from 4:45 p.m. to 9:15 p.m. on December 9, 2000.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The Eastport Yacht Club will sponsor a lighted boat parade on the waters of the Severn River and Spa Creek at Annapolis, Maryland. The event will consist of approximately 50 vessels, ranging in length from 20 to 55 feet, traveling at slow speed along two separate parade routes in Annapolis Harbor. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: November 21, 2000.

T.C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–31045 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–247]

Mystic River, CT, Drawbridge Operation Regulations:

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of AMTRAK railroad bridge, at mile 2.4, across the Mystic River at Mystic, Connecticut. This deviation allows the bridge owner to open the bridge only three times a day at 6:30 a.m. to 7:30 a.m., 12:30 p.m. to 1 p.m., and 6:15 p.m. to 7 p.m. from December 11, 2000 to December 13, 2000. This action is necessary to facilitate replacement of the pinion at the bridge.

EFFECTIVE DATES: This deviation is effective from December 11, 2000, to December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The AMTRAK railroad bridge, at mile 2.4, across the Mystic River, has a vertical clearance of 4 feet at mean high water, and 7 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.211(a).

The bridge owner requested a temporary deviation from the drawbridge operating regulations to open the bridge only three times a day at 6:30 a.m. to 7:30 a.m., 12:30 p.m. to 1 p.m., and 6:15 p.m. to 7 p.m., from December 11, 2000 to December 13, 2000, to facilitate the replacement of the pinion at the bridge. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 24, 2000.

Gerald M. Davis,

Captain, U.S. Coast Guard, Acting Commander, First Class Guard District.

[FR Doc. 00–31096 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 20

Global Express Guaranteed

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On April 19, 1999, the Postal Service published an interim rule introducing Priority Mail Global Guaranteed service on a test basis. The Postal Service has since amended that interim rule on four occasions, with the last amendment being announced on September 29, 2000, and amending the interim rule to rename the service Global Express Guaranteed service (GXG), establishing it as a permanent international service and expanding the service to include a new classification for Non-Document (merchandise) shipments. That amendment to the interim rule also established and published separate rates for the Non-Document service. The Postal Service hereby gives notice that it is implementing the interim rule as amended on a permanent basis.

EFFECTIVE DATE: November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Hunt, (770) 360–1104.

SUPPLEMENTARY INFORMATION: On April 19, 1999, the Postal Service announced in the **Federal Register** (64 FR 19039–19042) the introduction of Priority Mail Global Guaranteed (PMGG) service on an interim basis. With PMGG, the USPS provided customers with a fully featured premium international service for documents with full track and trace capability. This service was initially available from 3,000 retail locations for delivery to a total of 19 countries.

On November 4, 1999, the Postal Service announced in the **Federal Register** (64 FR 60106–60109) the expansion of PMGG service to permit acceptance at a total of 10,000 retail locations, with destination locations expanded to 65 countries and territories.

On May 26, 2000, the Postal Service announced in the **Federal Register** (65 FR 34096–34101) the further expansion of PMGG service to a total of 202 destinating countries and territories. A revised rate structure was also introduced.

On August 28, 2000, the Postal Service announced in the **Federal Register** (65 FR 52023–52028) a further expansion of PMGG service. The number of retail locations was increased to a total of 20,000, Document service rates were adjusted, optional document reconstruction insurance was increased to $2499, and delivery service was extended to China. An incorrect listing of three-digit ZIP Codes was included in the list of participating post offices in this rule. The correct list of participating post offices by three-digit ZIP Code is incorporated in the final rule.

On September 29, 2000, the Postal Service announced in the **Federal Register** (65 FR 58350–58359) a further expansion of PMGG service based on the successive and successful expansions of PMGG service. The Postal Service established it as a permanent international mail service. To effectuate this change, the Postal Service changed the name of the service to Global Express Guaranteed (GXG) and completed the expansion to include a new classification for merchandise shipments. GXG now consists of two mail classifications:

a. GXG Document service
b. GXG Non-Document service

The GXG Document service mail classification is for shipments that contain only documents and general correspondence for which no duty is assessed by the customs authority of the destinating country. This mail classification is a designated letter mail class pursuant to 39 U.S.C. 3623(d) and, as such, is sealed against inspection by the Postal Service. These Document service shipments may be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. The rate structure for Document service is separate and distinct from the rate structure for Non-Document service.

The GXG Non-Document service mail classification is for shipments that do not contain documents or general correspondence and for which duty may be assessed by the customs authority of the destinating country. Merchandise and all other dutiable items may be shipped using only this GXG classification. As such, this mail classification is not a letter mail class pursuant to 39 U.S.C. 3623(d). In order to provide for expedited customs clearance of these dutiable shipments, Non-Document service shipments will be subject to inspection by the Postal Service and its designated agents for purposes of air security and to determine that the contents are eligible for shipment via Non-Document service and that the contents are adequately declared on the GXG Air Waybill/Shipping Invoice to permit expedited customs clearance. These Non-Document service shipments may also be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. The rate structure for Non-Document service is separate and distinct from the rate structure for Document service and reflects the generally higher costs inherent with handling dutiable shipments. Non-Document service is not available to some countries to which Document service is provided. See the listing of destinating countries in International Mail Manual (IMM) 215.32 below for specific availability.

This separate mail classification treatment for GXG Document and Non-Document services is also reflected in the proposed changes to the Postal Service's Administrative Support Manual (ASM) provisions regarding mail security.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service solicited comment on the amendment to the interim rule. One comment was received regarding the different rate structure for the Document and Non-Document services, specifically that a half-pound rate is not available for Non-Document shipments. These rate structures were developed for GXG based upon the Postal Service's required cost coverage for providing these services and upon industry cost margins. A comment was also received regarding the lack of availability of the service in some post offices. GXG is available in approximately 20,000 post offices. Those offices were chosen based upon market research and the Postal Service's current logistical infrastructure to support the network.

Through the implementation of the interim rule, as amended, the Postal Service amends the International Mail Manual and the Administrative Support Manual as set forth below, both of which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

Transmittal letters changing the relevant pages in the International Mail Manual and the Administrative Support Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

On or about September 26, 2000, the Postal Service announced in the **Federal Register** a proposed rule which would amend and renumber provisions in the International Mail Manual. If that rule is adopted, GXG will be found in Section 210 of Chapter 2 of the International Mail Manual.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended as follows:

2 CONDITIONS FOR MAILING

210 Express Mail International Service

* * * * *

215 Global Express Guaranteed

215.1 Description

215.11 General

Global Express Guaranteed (GXG) service is an international expedited delivery service provided through an alliance with DHL Worldwide Express, Inc. It provides reliable, high-speed, guaranteed, and time-definite service from selected post offices in the United States to a large number of international destinations. (Consult Countries and Cities Served Section of the *Global Express Guaranteed Service Guide* for destination service commitments.) GXG delivery service is guaranteed to meet the specified service standards or the postage paid may be refunded. Liability insurance is provided for lost or damaged shipments. See section 215.54 for an explanation of limits of liability.

215.12 Allowable Contents

Documents and general correspondence (non-dutiable items), and non-documents (all dutiable items including merchandise) may be shipped using GXG service. See 215.2 for classification and rate treatment of specific shipments based on content. The allowable contents for GXG shipments may also be restricted by the destinating country. Refer to the *Global Express Guaranteed Service Guide* for the definition of allowable contents for each destination country. Senders are responsible for determining if their item is allowable despite any statement made in the *Global Express Guaranteed Service Guide*, on the GXG Web Site, or by a postal employee or the Postal Service's agents.

215.2 Mail Classifications

215.21 Global Express Guaranteed Document Service

The GXG Document service mail classification is for shipments that contain only documents and general correspondence for which no duty is assessed by the customs authority of the destinating country (non-dutiable shipments). Packages shipped by GXG Document service are sealed against inspection by the Postal Service. These Document service shipments may be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. The postage rates applicable to Document service shipments are set forth in 215.61 and are separate and distinct from the postage rates for Non-Document service.

215.22 Global Express Guaranteed Non-Document Service

The GXG Non-Document service mail classification is for shipments that do not contain documents or general correspondence and for which duty may be assessed by the customs authority of the destinating country. Merchandise and all other dutiable items may be shipped using only this GXG classification. Non-Document service shipments will be subject to inspection by the Postal Service and its designated agents for purposes of air security and to determine that the contents are eligible for shipment via Non-Document service and that the contents are adequately declared on the GXG Air Waybill/Shipping Invoice to permit expedited customs clearance. These Non-Document service shipments may also be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. Non-Document service is not available to some countries to which Document service is provided. See the listing of destinating countries in 215.32 for specific availability. The postage rates applicable to Non-Document service shipments are set forth in 215.62 and are separate and distinct from the postage rates for Document service.

215.3 Service Areas

215.31 U.S. Origins

GXG items must be entered through selected post offices that are located in the following ZIP Code areas. Check with your local post office or review the *Global Express Guaranteed Service Guide* for a participating post office near you.

State	ZIP code areas
AL—Alabama	352, 356–358, 361–362, 366, 368
AR—Arkansas	722–723
AZ—Arizona	850, 852–853, 857
CA—California	900, 902–908, 910–918, 920–921, 926–928, 934, 936–937, 939–941, 943–951, 954
CO—Colorado	800–803, 805–806, 808–810
CT—Connecticut	060–069
DC—District of Columbia	200, 202–203, 205
DE—Delaware	197–199
FL—Florida	320–323, 326–338, 342, 344, 346–347, 349
GA—Georgia	299–319
IA—Iowa	500–507, 510–511, 515–516, 520, 522–528
IL—Illinois	600–620, 622, 625–627, 629
IN—Indiana	460–479
KS—Kansas	660–662, 667, 674, 676
KY—Kentucky	400–406, 410–416, 421–424, 427
LA—Louisiana	700–701, 703–704, 707–708
MA—Massachusetts	010–027
MD—Maryland	206–212, 214, 217, 219
ME—Maine	039–041
MI—Michigan	480–497
MN—Minnesota	550–551, 553–554, 558–563
MO—Missouri	630–631, 633, 636–641, 644–648, 654–658
MS—Mississippi	383, 386–392, 394–397
MT—Montana	591
NC—North Carolina	270–282, 286
NE—Nebraska	680–681, 685–687
NH—New Hampshire	010–011, 030–034, 036–038
NJ—New Jersey	070–089
NM—New Mexico	871
NY—New York	100–101, 103–149
OH—Ohio	430–458
OK—Oklahoma	730–731, 734–738, 740–741, 743–748
OR—Oregon	972
PA—Pennsylvania	150–168, 170–176, 178–179, 189–191, 193–196
PR—Puerto Rico	006–007, 009
RI—Rhode Island	028–029
SC—South Carolina	297–299
SD—South Dakota	570–571
TN—Tennessee	370–374, 376–385
TX—Texas	750–756, 759–764, 768–770, 772–778, 780–782, 784, 786–788, 791, 794–796, 799
UT—Utah	840–841, 843–847
VA—Virginia	201, 220–227, 230–239
VI—Virgin Islands	008
VT—Vermont	054, 056
WA—Washington	980–985, 988–989
WI—Wisconsin	530–532, 534, 540, 546–548
WV—West Virginia	250–257, 260, 267
WY—Wyoming	820

215.32 Destinating Countries and Rate Groups

GXG service is available to the following destinating countries and territories. For rate purposes, countries have been placed into one of eight rate groups.

Country	Document service rate group	Non-document service rate group
Afghanistan	*	*
Albania	8	8
Algeria	8	8
Andorra	6	6
Angola	8	8
Anguilla	7	7
Antigua & Barbuda	7	7
Argentina	5	5
Armenia	8	8
Aruba	7	7
Ascension	*	*
Australia	4	4
Austria	6	6
Azerbaijan	8	8
Bahamas	7	7
Bahrain	4	4

Country	Document service rate group	Non-document service rate group
Bangladesh	4	4
Barbados	7	7
Belarus	8	8
Belgium	3	3
Belize	5	5
Benin	8	8
Bermuda	7	7
Bhutan	5	5
Bolivia	5	5
Bosnia-Herzegovina	8	8
Botswana	8	8
Brazil	5	5
British Virgin Islands	7	7
Brunei Darussalam	8	8
Bulgaria	8	8
Burkina Faso	8	8
Burma (Myanmar)	8	8
Burundi	8	8
Cambodia	8	8
Cameroon	8	8
Canada	1	1
Cape Verde	8	8
Cayman Islands	7	7
Central African Republic	8	8
Chad	8	8
Chile	5	5
China	4	4
Colombia	5	5
Comoros	8	8
Congo, Democratic Republic of the	8	8
Congo, Republic of the (Brazzaville)	8	8
Costa Rica	5	5
Cote d'Ivoire (Ivory Coast)	8	8
Croatia	8	8
Cuba	8	*
Cyprus	4	4
Czech Republic	8	8
Denmark	6	6
Djibouti	8	8
Dominica	7	7
Dominican Republic	7	7
Ecuador	5	5
Egypt	4	*
El Salvador	5	5
Equatorial Guinea	8	8
Eritrea	8	8
Estonia	8	8
Ethiopia	8	8
Falkland Islands	5	5
Faroe Islands	6	6
Fiji	5	5
Finland	6	6
France	3	3
French Guiana	5	*
French Polynesia	8	8
Gabon	8	8
Gambia	8	8
Georgia, Republic of	8	8
Germany	3	3
Ghana	8	8
Gibraltar	6	6
Great Britain & Northern Ireland	3	3
Greece	6	6
Greenland	6	6
Grenada	7	7
Guadeloupe	7	7
Guatemala	5	5
Guinea	8	8
Guinea-Bissau	8	8
Guyana	5	5
Haiti	7	7
Honduras	5	5

Country	Document service rate group	Non-document service rate group
Hong Kong	3	3
Hungary	8	8
Iceland	6	6
India	4	4
Indonesia	4	4
Iran	4	*
Iraq	*	*
Ireland (Eire)	3	3
Israel	4	4
Italy	3	3
Jamaica	7	7
Japan	*	*
Jordan	4	4
Kazakhstan	8	8
Kenya	8	8
Kiribati	8	8
Korea, Democratic People's Republic of (North)	*	*
Korea, Republic of (South)	4	4
Kuwait	4	4
Kyrgyzstan	8	8
Laos	8	8
Latvia	8	8
Lebanon	4	4
Lesotho	8	8
Liberia	8	8
Libya	*	*
Liechtenstein	6	6
Lithuania	8	8
Luxembourg	3	3
Macao	3	3
Macedonia, Republic of	8	8
Madagascar	8	8
Malawi	8	8
Malaysia	4	4
Maldives	8	8
Mali	8	8
Malta	6	6
Martinique	7	7
Mauritania	8	8
Mauritius	8	8
Mexico	2	2
Moldova	8	8
Mongolia	8	8
Montserrat	7	7
Morocco	8	8
Mozambique	8	8
Namibia	8	8
Nauru	8	8
Nepal	8	8
Netherlands	3	3
Netherlands Antilles	7	7
New Caledonia	5	5
New Zealand	4	4
Nicaragua	5	5
Niger	8	8
Nigeria	8	8
Norway	6	6
Oman	4	4
Pakistan	4	4
Panama	5	5
Papua New Guinea	5	5
Paraguay	5	5
Peru	5	5
Philippines	4	4
Pitcairn Island	*	*
Poland	8	8
Portugal	6	6
Qatar	4	4
Reunion	8	8
Romania	8	8
Russia	8	8
Rwanda	8	8

Country	Document service rate group	Non-document service rate group
St. Christopher (St. Kitts) & Nevis	7	7
Saint Helena	*	*
Saint Lucia	7	7
Saint Pierre & Miquelon	1	1
Saint Vincent & Grenadines	7	7
San Marino	3	3
Sao Tome & Principe	8	8
Saudi Arabia	4	4
Senegal	8	8
Serbia-Montenegro (Yugoslavia)	8	8
Seychelles	8	8
Sierra Leone	8	8
Singapore	3	3
Slovak Republic (Slovakia)	8	8
Slovenia	8	8
Solomon Islands	8	8
Somalia	8	8
South Africa	8	8
Spain	6	6
Sri Lanka	4	4
Sudan	*	*
Suriname	5	5
Swaziland	8	8
Sweden	6	6
Switzerland	6	6
Syrian Arab Republic (Syria)	4	*
Taiwan	3	3
Tajikistan	8	8
Tanzania	8	8
Thailand	4	4
Togo	8	8
Tonga	8	8
Trinidad & Tobago	7	7
Tristan da Cunha	*	*
Tunisia	8	8
Turkey	4	4
Turkmenistan	8	8
Turks & Caicos Islands	7	7
Tuvalu	8	8
Uganda	8	8
Ukraine	8	8
United Arab Emirates	4	4
Uruguay	5	5
Uzbekistan	8	8
Vanuatu	5	5
Vatican City	3	3
Venezuela	5	5
Vietnam	4	4
Wallis & Futuna Islands	4	4
Western Samoa	4	4
Yemen	4	4
Zambia	8	8
Zimbabwe	8	8

*No service.

GXG service is available to all locations that are referenced in the Individual Country Listings *except for the following:*

a. Afghanistan
b. Ascension
c. Iraq
d. Japan
e. Korea, Democratic People's Republic of (North)
f. Libya
g. Pitcairn Island
h. Saint Helena
i. Sudan
j. Tristan de Cunha

The following countries are limited to *GXG Document service only:*

a. Cuba
b. Egypt
c. French Guiana
d. Iran
e. Syrian Arab Republic (Syria)

215.4 Service Guarantee

215.41 General

The Postal Service guarantees delivery within the service standards specified in the *Global Express Guaranteed Service Guide* or the sender may be entitled to a full refund of the postage paid. For the purpose of the service guarantee, the date and time of delivery, attempted delivery, or availability for delivery constitutes delivery.

215.42 Transit Days for Non-Document Service

For GXG Non-Document service, total transit days may be affected by general

customs delays, specific customs commodity delays, holidays observed in the destinating country, and other factors beyond the Postal Service's control. See Terms and Conditions on the GXG Air Waybill/Shipping Invoice or in the Global Express Guaranteed Service Guide for details.

215.5 Inquiries, Postage Refunds, and Indemnity Claims

215.51 Inquiries

Inquiries concerning the delivery of GXG items are made by calling 1–800–222–1811 or through the Internet at *http://www.usps.com/gxg.*

215.52 Postage Refunds

Postage may be refunded if a shipment tendered at a designated post office before the specified deposit time is not delivered or if delivery is not attempted before 5:00 p.m. local time in the delivery location in accordance with the guaranteed delivery standards in the *Global Express Guaranteed Service Guide.* The mailer may file requests for postage refunds only by contacting a Customer Service Representative at 1–800–222–1811. The original receipt of the GXG Air Waybill/Shipping Invoice is required when filing a claim for a postage refund. Requests for postage refunds must be made no later than 30 days from the date of shipment. The GXG Customer Service Office will adjudicate refunds for GXG at 1–800–222–1811. Final approval and payment will be made by the Postal Service.

Refunds will not be made if delivery was attempted but could not be made, if the delivery address was incomplete or inaccurate, or if the shipment was delayed by circumstances outside the control of the Postal Service or its agents (as defined in the *Global Express Guaranteed Service Guide*).

215.53 Indemnity Claims

215.531 Claims for Document Service Shipments

If a Document service shipment is lost or damaged, the sender may file a claim for document reconstruction costs, subject to 215.54. All claims must be initiated within 30 days of the shipment date by contacting a Customer Service Representative at 1–800–222–1811; this representative will provide more details on how to file a claim. The original receipt of the GXG Air Waybill/ Shipping Invoice must be included when filing a claim. Consult the *Global Express Guaranteed Service Guide* for limitations and restrictions on indemnity payments for GXG items. The GXG Customer Service Office will adjudicate claims for GXG at 1–800–222–1811. Final approval and payment will be made by the Postal Service.

215.532 Claims for Non-Document Service Shipments

If a Non-Document service shipment is lost or damaged, the sender may file a claim for the declared value of the shipment costs, subject to 215.54. All claims must be initiated within 30 days of the shipment date by contacting a Customer Service Representative at 1–800–222–1811; this representative will provide more details on how to file a claim. The original receipt of the GXG Air Waybill/Shipping Invoice must be included when filing a claim. Consult the *Global Express Guaranteed Service Guide* for limitations and restrictions on indemnity payments for GXG items. The GXG Customer Service Office will adjudicate claims for GXG at 1–800–222–1811. Final approval and payment will be made by the Postal Service.

215.54 Extent of Postal Service Liability for Lost or Damaged Contents

215.541 Document Service Shipments

Liability for a lost or damaged Document service shipment is limited to the lowest of the following:

a. $100 or the amount of additional optional insurance purchased.
b. The actual amount of the loss or damage.
c. The actual value of the contents.

"Actual value" means the lowest cost of replacing, reconstructing, or reconstituting the Allowable Contents of the shipment (determined at the time and place of acceptance).

215.542 Non-Document Service Shipments

Liability for a lost or damaged Non-Document service shipment is limited to the lowest of the following:

a. $100 or the amount of additional optional insurance purchased.
b. The actual amount of the loss or damage.
c. The actual value of the contents.

"Actual value" means the lowest cost of replacing, reconstructing, or reconstituting the Allowable Contents of the shipment (determined at the time and place of acceptance).

215.55 Insurance

215.551 Insurance for Document Service Shipments

Document reconstruction insurance (this is the reasonable costs incurred in reconstructing duplicates of nonnegotiable documents mailed), up to $100 per shipment, is included at no additional charge. Additional document reconstruction insurance may be purchased for Document service shipments, as outlined in section 215.553, not to exceed the total cost of reconstruction, $2,499 or a lesser amount as limited by country, content, or value. *Coverage, terms, and limitations are subject to change.*

215.552 Insurance for Non-Document Service Shipments

Non-Document insurance for loss, damage, or rifling, up to $100 per shipment, is included at no additional charge. Additional Non-Document insurance may be purchased for shipments, as outlined in section 215.553, not to exceed the total declared shipment value, $2,499 or a lesser amount as limited by country, content or value. *Coverage, terms, and limitations are subject to change.*

215.553 Insurance Fees

Insurance amount	Fee
$100	No Fee
200	$0.70
300	1.40
400	2.10
500	2.80
For document reconstruction insurance or Non-Document insurance coverage above $500, add $0.70 per $100 or fraction thereof, up to a maximum of $2,499 per shipment.	
2,499	16.80

BILLING CODE 7710–12–U

215.6 Postage

215.61 Document Service Rates/Groups

Weight Not Over (Lbs.)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8
0.5	$19	$20	$24	$29	$40	$28	$24	$60
1	28	28	30	38	46	41	35	68
2	33	35	38	47	56	51	41	79
3	35	41	45	54	70	57	48	91
4	38	45	53	61	84	63	54	102
5	41	50	61	68	97	70	60	114
6	43	53	67	75	110	75	65	126
7	46	56	71	81	122	81	70	138
8	48	60	75	88	134	86	74	150
9	50	63	80	95	147	91	79	162
10	53	65	84	99	156	97	82	170
11	55	68	87	104	166	100	86	181
12	57	71	91	110	176	104	90	193
13	60	74	94	115	186	108	94	205
14	62	76	98	120	196	112	98	216
15	64	79	101	125	205	116	102	228

Weight Not Over (Lbs.)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8
16	67	82	104	131	214	120	106	239
17	69	84	108	136	222	124	110	250
18	71	87	111	141	229	128	114	261
19	74	90	115	146	237	132	118	272
20	76	92	118	151	244	136	122	283
21	78	95	121	156	251	139	126	292
22	80	97	125	161	259	143	130	301
23	82	100	128	166	266	147	134	308
24	85	103	132	171	274	151	138	315
25	87	105	135	176	281	155	142	323
26	89	108	138	181	289	159	146	330
27	91	110	142	185	296	163	150	337
28	93	113	145	190	304	167	153	345
29	95	115	148	195	311	171	157	352
30	98	119	153	202	322	177	163	363
31	100	122	157	207	329	181	167	371
32	102	124	160	212	337	185	171	378
33	104	126	164	217	344	189	175	386
34	107	127	167	222	352	193	179	393
35	109	129	170	227	360	197	183	401

Weight Not Over (Lbs.)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8
36	111	131	174	231	367	201	187	408
37	113	133	177	236	375	205	191	416
38	115	135	181	241	382	209	195	423
39	117	137	184	246	389	213	199	430
40	119	139	187	251	395	217	203	438
41	121	141	191	256	402	221	207	445
42	125	143	194	261	409	225	211	453
43	127	145	198	266	416	229	215	460
44	129	146	201	271	423	233	219	468
45	132	148	205	275	430	237	223	475
46	134	150	208	280	437	241	227	482
47	136	151	211	285	443	245	231	490
48	138	153	215	290	450	249	235	497
49	141	155	218	295	457	253	239	505
50	143	158	224	303	469	259	245	518
51	147	160	227	308	476	259	249	533
52	149	160	231	313	483	267	253	533
53	151	164	234	318	490	271	257	549
54	154	164	238	323	497	275	261	549
55	155	167	241	328	504	278	265	562

Weight Not Over (Lbs.)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8
56	157	167	245	333	511	283	270	562
57	157	170	248	338	518	286	274	574
58	157	170	251	343	524	291	278	574
59	157	173	255	348	531	294	282	587
60	157	173	258	353	538	299	285	587
61	164	176	262	358	545	302	290	602
62	165	176	265	362	551	308	292	602
63	167	179	269	367	559	310	298	617
64	168	179	272	372	562	316	298	617
65	169	182	276	377	573	318	305	632
66	169	182	279	382	573	324	305	632
67	169	186	282	387	584	326	313	647
68	169	186	286	392	584	332	313	647
69	169	189	289	397	595	334	320	662
70	169	189	293	402	595	340	320	662

215.62 Non-Document Service Rates/Groups

Weight Not Over (Lbs.)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8
1	$33	$34	$39	$45	$52	$47	$40	$75
2	38	40	46	52	65	55	46	89
3	40	46	53	59	79	62	53	101
4	43	50	60	66	93	68	59	112
5	46	55	67	73	106	75	65	124
6	48	58	72	80	119	80	70	136
7	51	61	76	86	131	86	75	148
8	53	65	80	93	143	91	79	160
9	55	68	85	100	156	96	84	172
10	58	70	89	104	165	102	87	180
11	60	73	92	109	175	105	91	191
12	62	76	96	115	185	109	95	203
13	65	79	99	120	195	113	99	215
14	67	81	103	125	205	117	103	226
15	69	84	106	130	214	121	107	238
16	72	87	109	136	223	125	111	249
17	74	89	113	141	231	129	115	260
18	76	92	116	146	238	133	119	271

19	79	95	120	151	246	137	123	282
20	81	97	123	156	253	141	127	293
21	83	100	126	161	260	144	131	302
22	85	102	130	166	268	148	135	311
23	87	105	133	171	275	152	139	318
24	90	108	137	176	283	156	143	325
25	92	110	140	181	290	160	147	333
26	94	113	143	186	298	164	151	340
27	96	115	147	190	305	168	155	347
28	98	118	150	195	313	172	158	355
29	100	120	153	200	320	176	162	362
30	103	124	158	207	331	182	168	373
31	105	127	162	212	338	186	172	381
32	107	129	165	217	346	190	176	388
33	109	131	169	222	353	194	180	396
34	112	132	172	227	361	198	184	403
35	114	134	175	232	369	202	188	411
36	116	136	179	236	376	206	192	418
37	118	138	182	241	384	210	196	426
38	120	140	186	246	391	214	200	433
39	122	142	189	251	398	218	204	440
40	124	144	192	256	404	222	208	448
41	126	146	196	261	411	226	212	455
42	130	148	199	266	418	230	216	463
43	132	150	203	271	425	234	220	470

44	134	151	206	276	432	238	224	478
45	137	153	210	280	439	242	228	485
46	139	155	213	285	446	246	232	492
47	141	156	216	290	452	250	236	500
48	143	158	220	295	459	254	240	507
49	146	160	223	300	466	258	244	515
50	148	163	229	308	478	264	250	528
51	152	165	232	313	485	264	254	543
52	154	165	236	318	492	272	258	543
53	156	169	239	323	499	276	262	559
54	159	169	243	328	506	280	266	559
55	160	172	246	333	513	283	270	572
56	162	172	250	338	520	288	275	572
57	162	175	253	343	527	291	279	584
58	162	175	256	348	533	296	283	584
59	162	178	260	353	540	299	287	597
60	162	178	263	358	547	304	290	597
61	169	181	267	363	554	307	295	612
62	170	181	270	367	560	313	297	612
63	172	184	274	372	568	315	303	627
64	173	184	277	377	571	321	303	627
65	174	187	281	382	582	323	310	642
66	174	187	284	387	582	329	310	642
67	174	191	287	392	593	331	318	657
68	174	191	291	397	593	337	318	657
69	174	194	294	402	604	339	325	672
70	174	194	298	407	604	345	325	672

215.63 Payment of Postage

215.631 Methods of Payment

Both GXG Document service shipments and Non-Document service shipments may be paid by postage stamps, postage validation imprinter (PVI) labels, or postage meter stamps.

215.632 Official Mail

Mailings Made by Federal Government Agencies

GXG shipments that are originated by federal agencies and departments are subject to the same postage payment requirements, weight and size limits, customs requirements, and general conditions for mailing as GXG shipments that are originated by non-governmental entities.

USPS Mailings

Both GXG Document Service shipments and Non-Document Service shipments mailed by Postal Service entities must bear the G–10 permit indicia that is prescribed for all USPS official mail. There is a 70-pound weight limit for USPS-originated GXG shipments going to all authorized, destinating countries. See section 144.2.

215.7 Weight and Size Limits

215.71 General

The weight, dimensional weight, and size limits set forth in this section are the same for both GXG Document service shipments and Non-Document service shipments.

215.72 Weight Limits

The maximum weight is 70 pounds.

215.73 Dimensional Weight

The equation to determine dimensional weight is as follows:

(Length × Width × Height)/166 = Dimensional Weight

When determining the dimensional weight, each individual measurement must be rounded down to the nearest whole inch.

215.74 Size Limits

215.741 Minimum Size

Items must be large enough—approximately 9 inches in height and 12 inches in length—so that a GXG Air Waybill/Shipping Invoice can be affixed on the face of the item.

215.742 Maximum Size

Length and girth combined may not exceed 108 inches. Individual dimensions may not exceed the following:

a. Length: 46 inches.
b. Width: 35 inches.
c. Height: 46 inches.

215.8 Preparation Requirements

215.81 Preparation by the Sender

a. Prepare the item as a flat or package using either the GXG envelope provided by the Postal Service or mailer-supplied packaging. Mailers using their own envelope or wrapping must also affix a GXG sticker (Item 107RGG3) to the front and back of the item.

b. Complete the GXG Air Waybill/Shipping Invoice (Item 11FGG1) to show the complete address of the sender and addressee. Items cannot be addressed to a post office box or an APO or FPO address.

c. GXG Document Service Shipment Preparation: Complete the "Shipment Details" to show the contents in detail including description and estimated cost of reconstruction. A separate customs declaration is not used. Sign and date the mailer agreement.

d. GXG Non-Document Service Shipment Preparation: Complete the "Shipment Details" to show the contents in detail including description, valuation, and country of manufacture. Non-Document service shipments cannot have a value that exceeds US $2,499. A separate customs declaration is not used. Sign and date the mailer agreement.

215.82 Preparation by Acceptance Employee

a. Check that the sender has properly completed the GXG Air Waybill/Shipping Invoice.

b. Complete the postage transaction if the item is not prepaid.

c. Complete the "Origin" information.

d. Remove the customer's copy of the GXG Air Waybill/Shipping Invoice and give it to the customer. Process the GXG Air Waybill/Shipping Invoice according to directions on the shipping document.

215.83 Customs Forms Not Required

The GXG Air Waybill/Shipping Invoice contains space for the sender to declare the contents. A separate postal customs declaration is not used.

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[The Individual Country Listing pages in the *International Mail Manual* will be revised to reflect the availability of GXG service and the applicable postage rates.]

Administrative Support Manual

2 AUDITS AND INVESTIGATIONS

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27 Security

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274 Mail Security

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274.2 Opening, Searching, and Reading Mail Generally Prohibited

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274.23 Definitions

274.231 Mail Sealed Against Inspection

The following terms and definitions apply:

a. For purposes of this part, the terms "mail sealed against inspection" and "sealed mail" mean mail on which appropriate postage is paid, and which, under postal laws and regulations, is included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection.

b. The terms include First-Class Mail, Priority Mail, Express Mail (domestic and international), Mailgram messages, GXG Document service, and the international letter mail forming part of the LC class of Postal Union mail. See the definition of Postal Union mail in the *International Mail Manual*.

c. The terms exclude incidental First-Class matter permitted to be enclosed in or attached to certain Periodicals, Standard (A) and Standard (B) mailings (see DMM E070) and international transit mail (see 274.8).

d. When sealed mail is part of a mixed class mailing (see DMM E070), the sealed mail component of the combination item is treated as sealed mail only if it is contained in its own envelope or other form of sealed container.

274.232 Mail Not Sealed Against Inspection

The following terms and definitions apply:

a. For purposes of this part, the terms "mail not sealed against inspection" and "unsealed mail" mean mail on which appropriate postage for sealed mail is not paid, and which under postal laws or regulations is not included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection.

b. The terms include Periodicals, Standard Mail, incidental First-Class attachments or enclosures mailed under DMM E070, and (as defined in the International Mail Manual) GXG Non-Document service, international parcel post mail, the AO class of Postal Union mail, and the international post cards and postal cards forming part of the LC class of Postal Union mail.

c. The terms do not include international transit mail (see 274.8).

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Stanley F. Mires,

Chief Counsel, Legislative.

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BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301083; FRL–6756–6]

RIN 2070–AB78

Fludioxonil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide fludioxonil in or on caneberries at 2 parts per million (ppm) for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on caneberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective December 6, 2000. Objections and requests for hearings, identified by docket control number OPP–301083, must be received by EPA on or before February 5, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301083 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9362; and e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register** —Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301083. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of June 30, 1999 (64 FR 35037) (FRL–6086–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of fludioxonil in or on caneberries at 2 ppm, with an expiration date of December 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of fludioxonil on caneberries for this year's growing season due to the widespread development of pest resistance to previously-used standard fungicides benomyl, iprodione and vinclozolin; no currently available alternatives appear to provide suitable disease control and significant economic losses are expected with moderate to severe disease pressure. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of fludioxonil on caneberries for control of gray mold in Oregon and Washington.

EPA assessed the potential risks presented by residues of fludioxonil in or on caneberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 30, 1999 (64 FR 35037) (FRL–6086–4). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on caneberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301083 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 5, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301083, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule extends the expiration date of a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

§ 180.516 [Amended]

2. In § 180.516, by amending the table in paragraph (b), by revising the expiration/revocation date for Caneberries from "12/31/00" to read "12/31/01".

[FR Doc. 00–31054 Filed 12–5–00; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301079; FRL–6754–5]

RIN 2070–AB78

Avermectin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for the combined residues of the insecticide and miticide avermectin [a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-O-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1) and its delta-8,9-isomer] in or on celeriac at 0.05 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2002. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on celeriac. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective December 6, 2000. Objections and requests for hearings, identified by docket control number OPP–301079, must be received by EPA on or before February 5, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301079 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration

Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301079. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 19, 1997 (62 FR 44089) (FRL–5737–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of avermectin [and its delta-8,9-isomer] in or on celeriac at 0.05 ppm, with an expiration date of July 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of avermectin on celeriac for this year's growing season due to the continued pest pressure on this commodity from the two-spotted spider mite. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of avermectin on celeriac for control of two-spotted spider mite in California.

EPA assessed the potential risks presented by residues of the avermectins in or on celeriac. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 19, 1997 (62 FR 44089). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on celeriac after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301079 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 5, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301079, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited [tolerance] under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the [tolerance] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.449 Avermectin B1 and its delta-8,9-isomer; tolerances for residues.

2. In § 180.449, amend paragraph (b) by revising the Expiration/revocation date for "celeriac" from "1/31/00" to read "12/31/02."

[FR Doc. 00–31055 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 6)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—Policy Statement

AGENCY: Surface Transportation Board.

ACTION: Policy Statement.

SUMMARY: The Surface Transportation Board (Board) announces that henceforth it will apply its rule providing for a waiver of filing fees for state and local government entities only as originally intended. More specifically, the fee waiver rule will apply only to state and local government entities and only when they file on behalf of the general public. Any state or local government entity filing as an owner or proposed owner of a carrier or as a shipper, as well as quasi-governmental corporations and government-subsidized transportation companies, will not qualify for the fee waiver.

DATES: This policy statement is effective January 5, 2001.

FOR FURTHER INFORMATION CONTACT: Anne K. Quinlan, (202) 565–1727 [TDD/TTY for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), agencies are obliged to establish fees for specific services provided to identifiable beneficiaries.[1] Office of Management and Budget (OMB) Circular No. A–25 establishes a policy of full cost recovery for government services and contains guidelines for federal agencies to apply in assessing and collecting those fees.

Pursuant to the IOAA and Circular No. A–25, the Board's predecessor, the Interstate Commerce Commission (ICC), undertook a thorough examination of the fee policy in *Regulations Governing Fees for Services*, 1 I.C.C.2d 60 (1984) (*Fees for Services*). The ICC adopted numerous new fee items and provided for fee waivers in certain circumstances, including a fee waiver for government entities, 49 CFR 1002.2(e)(1). In so doing, the ICC established strict guidelines for applying the government-entity fee waiver—a policy that the Board will henceforth follow more strictly in applying the rule.

Rule 1002.2(e)(1) provides as follows:

(e) Waiver or reduction of filing fees. It is the general policy of the Board not to waive or reduce filing fees except as described below:

(1) Filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity. For purposes of this section the phrases "federal government agency" or "government entity" do not include a quasi-governmental corporation or government subsidized transportation company.

The fee waiver for federal government agencies is based on the IOAA, which excludes from its scope persons on official business of the United States Government. The fee waiver for state and local government entities was based on the provisions of former Circular No. A–25 that allowed agencies to make exceptions to the policy of full cost recovery where the recipient of a service was engaged in a non-profit activity designed for the public safety, health, or welfare, or if payment of the full fee by a state, local government, or non-profit group would not be in the interest of the program.[2]

In the *Fees for Services* proceeding, the ICC originally proposed to assess 50% of applicable fees to state or local government entities. It ultimately decided, however, to assess no fee to state and local government entities. The agency explained that state and local government entities generally do not receive direct benefits from participation in agency proceedings and that the benefits instead flow to the general public residing in the area. *Fees for Services* at 89. But the ICC limited the circumstances under which the fee waiver would apply, specifically providing that the waiver should not apply where a state agency owns a carrier and is before the ICC in its proprietary role. The ICC stated (*id.* at 71):

> [W]e conclude here that when a governmental agency owns or subsidizes some transportation entity and comes before the Commission in that capacity, it should be required to pay the entire fee that would otherwise be applicable. When a State-owned transportation entity acts in the same capacity as a privately owned transportation entity, it should be treated as such. The Interstate Commerce Act does not exempt such transportation entities, and we do not believe that those entities should be treated differently from private transportation entities for purposes of determining user fees.

The State-owned carrier in those situations receives the "special benefits" envisioned under the IOAA and Budget Circular A–25. We recognize that there may be public benefits associated with a State-owned entity. However, those public benefits are indistinguishable from the public benefits that are incidental to the special benefits conferred upon private carriers in a similar posture. Therefore, we believe fees should be charged to the state-owned entities.

[1] 31 U.S.C. 9701 provides, in pertinent part:

(a) It is the sense of Congress that each service or thing of value provided by an agency * * * to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to the policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

[2] Circular No. A–25, revised in 1993, no longer contains an exception from the policy of full cost recovery for state and local governments.

In recent years the fee waiver for state and local government entities rule has been applied more broadly than envisioned in *Fees for Services*. We have waived fees in cases where the filer has been a state or local government entity acting in a proprietary capacity as a carrier. For example, the fee waiver has been applied where states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party. We also have waived fees where the filer has been a quasi-government corporation. For example, waivers have been granted if the filer demonstrated that it was created through legislation designed to meet a public purpose.

Public corporations are created by statute for public purposes only and the interests of public corporations are the exclusive property and domain of the government. Private corporations, on the other hand, are created for private, rather than purely public, purposes and their powers are exercised for the profit or advantage of the stockholders. Quasi-public (or quasi-governmental) corporations, commonly referred to as public service corporations, have the appearance of being public, but in many respects they are private. Quasi-public corporations are private corporations that have special powers or privileges of a public nature, such as the power of eminent domain, to enable them to carry out those functions that benefit the public; but they also exercise their powers to further the interests of their stockholders. Corporations are not considered public merely because they are creatures of legislation or established to promote the public interest. In our view, only the true public corporation should qualify for a waiver. Whether a corporation should be considered public or not depends on the terms of its charter and the laws under which it has been organized.

We are not, through this policy, seeking to inhibit parties from using our processes, or to undercut transactions by which, for example, local bodies attempt to facilitate continued rail service. But Congress has directed us to collect appropriate fees, and we must make every effort to conform our fee assessment and collection practices to the policy of full cost recovery that underlies the IOAA and Circular No. A–25. Thus, filers must henceforth clearly demonstrate that they are true public corporations in order to qualify for the fee waiver. Fees will be assessed to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, or that is a shipper, and comes before the Board in that capacity. *See Fees for Services* at 71. Fees will also be assessed to quasi-governmental corporations or government-subsidized transportation companies for *ony filing* submitted for which there is a fee. The fee waiver will be available to a state or local government entity that is not acting in the capacity of a carrier or shipper. Thus, for example, a state or local entity filing an adverse (or third party) abandonment proposal would benefit from the waiver rule because the filer would not be appearing as a carrier or as a shipper.

Entities that do not qualify for the fee waiver may request a fee waiver or reduction in fees under 49 CFR 1002.2(e)(2), which provides that in extraordinary situations the Board will waive or reduce fees. The requestor must show that the waiver or reduction is in the best interest of the public or that payment of the fee would impose an undue hardship on the requestor.

As a final matter, we are clarifying the process by which waiver requests will be administered at the Board. Currently, a waiver request must be submitted at the time the related filing is submitted, and a filing (other than a tariff) not accompanied by the appropriate fee is deficient. *See* 49 CFR 1002.2(e)(2)(i), 1002.2(b). Waiver requests are considered only when accompanied by the related filing; waiver requests submitted in advance of the filing to which they relate are not accepted. When a waiver request is accompanied by the related filing and the appropriate fee, the filing is processed immediately, the fee is deposited, and the waiver request is acted upon in due course. If the waiver is granted, the filer receives a refund from the U. S. Department of the Treasury.

We understand that some parties may find it financially burdensome to submit the fee and then run the risk that the waiver will not be granted. We will permit parties to file waiver requests without submitting the fees; however, as we sometimes need to review the substantive document in order to determine whether the waiver ought to be granted, we will not accept a waiver request unless the substantive document is also filed. Moreover, if a waiver request is filed with the related filing but without the appropriate fee, we will be unable to process the substantive filing until the fee issue is resolved. Therefore, whenever a waiver request is filed without an appropriate fee, we will be unable to process the substantive filing will be processed only after the waiver request has been granted or, if the request is denied, upon receipt of the appropriate fee. A filer seeking a waiver and prompt processing of a filing should, therefore, submit the fee, the related filing and the waiver request simultaneously.

The legal and policy bases underlying rule 1002.2(e)(1) already have been established in *Fees for Services*. Thus, we do not propose a new rule or policy here, but rather announce a stricter adherence to a policy that has already been established and was never formally changed. For that reason, we do not seek public comment on this announcement that we will henceforth follow this policy more literally.

Decided: November 29, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30965 Filed 12–5–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 080900A]

RIN 0648–A028

Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of fishery management plan amendment.

SUMMARY: NMFS announces the approval of Amendment 15 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This amendment is necessary to implement a plan to rebuild the overfished stock of St. Matthew blue king crab. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and is intended to achieve, on a continuing basis, the optimum yield from the affected crab fisheries.

DATES: The amendment was approved on November 29, 2000.

ADDRESSES: Copies of Amendment 15 to the FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the Sustainable Fisheries Division, Alaska

Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS declared the stock of St. Matthew blue king crab (*Paralithodes platypus*) overfished on September 24, 1999, because the spawning stock biomass was below the minimum stock size threshold as defined in the FMP. NMFS notified the North Pacific Fishery Management Council (Council) once NMFS determined that the stock was overfished (64 FR 54791, October 8, 1999). The Council developed a rebuilding plan within 1 year as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In June 2000, the Council adopted Amendment 15, the rebuilding plan, to accomplish the purposes outlined in the national standard guidelines to rebuild the overfished stock. Amendment 15 specifies a time period for rebuilding the stock that satisfies the Magnuson-Stevens Act. The rebuilding plan is estimated to allow St. Matthew blue king crab to rebuild, with a 50 percent probability, within 10 years. The stock will be considered "rebuilt " when the stock reaches the maximum sustainable yield stock size level in 2 consecutive years.

The rebuilding plan consists of a framework that references the State of Alaska's harvest strategy, bycatch control measures, and habitat protection measures.

The rebuilding plan will use the harvest strategy developed by the Alaska Department of Fish and Game and adopted by the Alaska Board of Fisheries (Board). The FMP defers to the State of Alaska the authority to develop harvest strategies, with oversight by NMFS and the Council. The rebuilding harvest strategy should result in more spawning biomass, because more large male crab would be conserved and fewer juveniles and females would die due to incidental catch and discard mortality. This higher spawning biomass would be expected to produce good year-classes when environmental conditions are favorable.

The rebuilding plan also references the bycatch reduction measures and habitat protection measures adopted by the Board in March 2000. The Board adopted gear restrictions to reduce bycatch of sub-legal and female blue king crab in the directed fishery. To protect the habitat of egg-bearing females, the Board took action to close State waters around St. Matthew Island, Hall Island, and Pinnacles Island to crab fishing. Protection of habitat and reduction of bycatch will reduce mortality on juvenile and egg-bearing female crabs, thus allowing a higher percentage of each year-class to contribute to spawning and future landings.

An EA was prepared for Amendment 15 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

A notice of availability for the proposed Amendment 15 to the FMP, which described the proposed amendment and invited comments from the public, was published in the **Federal Register** on August 29, 2000 (65 FR 52405). Comments were invited until October 30, 2000.

Response to Comments

NMFS received one public comment on Amendment 15.

Comment: The comment requested that NMFS include additional analysis in the EA, however, it did not recommend approval or disapproval of the amendment. The comment advanced these concerns about the EA: (1) the costs associated with monitoring bycatch of blue king crab in the trawl fishery were not analyzed; (2) the discussion of higher probabilities of rebuilding under alternative rebuilding scenarios is insufficient; and (3) further evaluation of the economic impacts of implementing a stricter rebuilding time and probability is needed.

Response: NMFS determined that the existing EA is sufficient for decision making, complies with applicable law, and additional analysis would not change the components of the rebuilding plan. The EA represents the best scientific information available, as certified by the Alaska Fisheries Science Center. For the following reasons, NMFS does not believe modification of the EA is warranted.

1. The decision not to enact measures to reduce bycatch of blue king crab in the trawl fisheries was based on the fact that, according to observer data, blue king crab is not a measurable component of trawl bycatch. Thus, an analysis of the costs associated with monitoring a bycatch limit or a closed area would not change the conclusion that trawl bycatch is not a significant source of blue king crab mortality.

2. The rebuilding time period satisfies the requirements of section 304(e)(4)(A) of the Magnuson–Stevens Act. The rebuilding plan is estimated to allow the St. Matthew blue king crab stock to rebuild, with a 50 percent probability, to the B_{msy} level within 10 years. A 50 percent rebuilding probability within 10 years is the estimated probability recommended in the NMFS technical guidance for rebuilding overfished stocks. This probability of rebuilding includes the conservative parameter that stock will be considered 'rebuilt' when the stock size reaches the Bmsy in 2 consecutive years. The stock assessment experts that developed the model used to estimate the rebuilding times and probabilities determined that a 50 percent probability best represented reality given the biology of the species and our current level of scientific information. However, the EA also analyzes the alternatives at a 90 percent probability. The alternative that would achieve rebuilding at a 90 percent probability within 10 years is the no fishing alternative, which the EA analyzes. The exercise of estimating rebuilding probabilities provides managers an idea of the potential outcomes of different alternatives and to help assure that the chosen alternative will rebuild the stock within 10 years. One of the measures that predicts success of this rebuilding plan is that it is estimated to rebuild the stock in 12 years with a 90 percent probability. In other words, NMFS predicts that there is a 90 percent probability that the estimated spawning biomass will be above the B_{msy} level of 22 million lb (9,679.2 metric tons) for 2 years within 12 years.

3. Information on the percentage of a crab catcher vessel's total crab catch that is comprised of St. Matthew blue king crab is not substantially relevant to the decision making. The comment implies that this information would lead to a more conservative rebuilding plan because most catcher vessels do not depend on this fishery as a sole source of income. The rebuilding harvest strategy provides a balance between being sufficiently conservative to rebuild the stock and prevent overfishing, yet to allow some fishing during the rebuilding period once the stock increases in abundance to above the MSST. A fishery will occur when the stock abundance warrants it, regardless of each individual vessel's other sources of income.

NMFS determined that Amendment 15 to the FMP is consistent with the Magnuson–Stevens Act and other applicable laws and approved Amendment 15 on November 29, 2000. Additional information on this action is contained in the August 29, 2000, notice of availability (65 FR 52405).

No regulatory changes are necessary to implement this FMP amendment.

Dated: November 30, 2000.

Clarence Pautzke,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31033 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 235
Wednesday, December 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[PRM–50–62]

Changes to Quality Assurance Programs; Withdrawal of Remaining Issues Concerning a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is terminating its plans to develop a voluntary option alternative to its regulations to allow licensees to make unilateral changes to their quality assurance (QA) program descriptions. This action is being taken because the petitioner, the Nuclear Energy Institute (NEI), has withdrawn the remaining issues raised in its petition for rulemaking submitted on June 8, 1995 (Docket No. PRM–50–62). NEI's action is related in part to a revision dated February 23, 1999, to the Commission's regulations that was implemented in response to the petition and provided the industry with a reduction of unnecessary regulatory burden. The effect of this action is that further revisions to the Commission's quality assurance regulations are not being developed.

ADDRESSES: Copies of the petition for rulemaking, the public comments received on the notice of receipt of the petition (60 FR 47716; September 14, 1995), NRC's response to the petitioner, public comments received on the direct final rule (64 FR 9029; February 23, 1999), NRC's response to comments received on the direct final rule partially granting the petition (64 FR 42823; August 6, 1999), the Petitioner's letter (Accession No. ML003755305), stating that it is not necessary to pursue further changes, and NRC's confirmation letter (Accession No. ML003747685), pertaining to the withdrawal of the petition are available for public inspection or copying for a fee in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for perusal at the NRC's rulemaking website http://ruleforum.llnl.gov. Questions or comments regarding this website should be directed to Carol A. Gallagher at 301–415–5905 or CAG@NRC.GOV.

FOR FURTHER INFORMATION CONTACT: Michael T. Bugg, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–3221, e-mail mtb@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

By letter dated June 8, 1995, NEI petitioned the NRC to amend its regulations controlling changes to nuclear power plant licensee QA programs. The petition was received by the Commission on June 19, 1995, and assigned Docket No. PRM–50–62. The petitioner requested that the NRC modify 10 CFR 50.54(a) to permit a nuclear power plant licensee to make a broader range of changes to its QA programs without prior NRC approval. At the time of the petition submittal, 10 CFR 50.54(a)(3) allowed a licensee to "* * * make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report, provided the change does not reduce the commitments in the program description previously accepted by the NRC." NEI requested that the Commission amend this requirement to allow a licensee to "* * * make a change to a previously accepted quality assurance program description included or referenced in its Safety Analysis Report without prior Commission approval unless the proposed change involves a change in the technical specifications incorporated in the license or involves an unreviewed safety question," consistent with the criteria of 10 CFR 50.59. According to NEI's proposal, changes involving unreviewed safety questions (USQs) would require NRC approval before implementation.

The Petition

NEI stated that 10 CFR 50.54(a) is sometimes interpreted by the NRC as requiring NRC approval for any changes in the QA program, regardless of the safety significance associated with the change. As a consequence, there are often prolonged and sometimes unnecessary regulatory debates about the correct interpretation of the term "reduction in commitment." NEI presented the following examples of changes that it believed could be made without the need for prior NRC approval but that have been viewed as "reductions in commitment," requiring prior NRC approval:

1. Changes in the level of approval of administrative, implementation, or policy procedures, regardless of the safety significance;
2. Changes in the company organization as it is described in a licensee's original quality plan;
3. Changes in frequency for audit, review, or surveillance activities that have minimal, if any, safety significance;
4. Adoption of a more recent national standard that may, or may not, have been endorsed by the NRC staff, that results in a different implementation methodology, yet fulfills the same function and achieves the same objective as the original standard described in the QA program description through the use of enhanced technology or other developments; and
5. Adoption of quality processes different or more effective and efficient than those described in a licensee's original quality plan based on the safety significance and past operating performance.

NEI estimated that NRC review and approval of these types of changes cost the industry in excess of $1 million per year. In addition, NEI asserted that licensees occasionally were hesitant to pursue QA program improvements because of the resources required for NRC approval, even though the ultimate result would be improvements in efficiency, quality, or safety.

NEI also noted that the NRC's main purpose for the current requirement in 10 CFR 50.54(a) (which was adopted in 1983) was to preclude licensees from making certain changes to QA programs without prior NRC approval because, in the past, some QA programs had been changed and no longer conformed to NRC regulations. NEI claimed that its proposed approach in PRM–50–62 would still address the NRC's concerns because QA program changes would continue to be reported periodically to the NRC as required by 10 CFR 50.71(e) as program updates, and changes that involve a USQ or cause a change to the technical specifications would be submitted to the NRC for approval before they are implemented. The petitioner reiterated that this is the same process used for change control for many other aspects of the facility design and operation, and should be used for QA programs as well. NEI further stated that the proposed amendment would improve the consistency of the regulatory process and would result in increased safety of commercial nuclear power plants through more efficient use of NRC and industry resources.

Comments Received on the Petition

On September 14, 1995 (60 FR 47716), the NRC published a notice of receipt of the NEI petition for rulemaking and provided an opportunity for public comment. The document requested that public comment on eight specific questions on critical regulatory aspects of the NEI petition. Seventeen comment letters were received, plus one comment letter that supplemented one of the original letters.

Eleven of the public comment letters were sent by nuclear power plant licensees and NEI; all supported the proposed change in the regulations. The six non-NEI/non-licensee letters were sent by individual concerned citizens (two are currently employed in the nuclear field); all expressed opposition to the relaxation of current requirements that address changes in QA programs. All of the comment letters addressed issues raised in the petition, particularly the appropriateness of using the 10 CFR 50.59 criteria for QA program changes.

Commission Decision

The Commission agreed with NEI that the 10 CFR 50.54(a) criteria under which a licensee was allowed to make unilateral QA program changes was too stringent because it prevented a licensee from making QA program changes of minor safety significance without first obtaining NRC approval. The Commission decided that new criteria should be adopted to broaden the scope of changes that could be made by a licensee without prior NRC approval. Therefore, the Commission accepted the petition in part and issued a direct final rule (64 FR 9029; February 23, 1999) that revised 10 CFR 50.54(a) to allow a licensee to make additional changes to selected elements of its QA program without having to obtain prior NRC approval. As of April 26, 1999, a licensee is permitted to make the following types of unilateral changes to its QA programs:

1. The use of a quality assurance standard approved by the NRC that is more recent than the QA standard in a licensee's current QA program at the time of the change;
2. The use of a quality assurance alternative or exception previously approved by an NRC safety evaluation, provided that the bases of the NRC approval are applicable to a licensee's facility;
3. The use of generic organizational position titles that clearly denote the position function, supplemented as necessary by descriptive text, rather than specific titles;
4. The use of generic organizational charts to indicate functional relationships, authorities, and responsibilities, or, alternately, the use of descriptive text;
5. The elimination of quality assurance program information that duplicates language in quality assurance regulatory guides and quality assurance standards to which a licensee is committed; and
6. Organizational revisions that ensure that persons and organizations performing QA functions continue to have the requisite authority and organizational freedom, including sufficient independence from cost and schedule considerations, when these concerns are in conflict with safety considerations.

Licensees shall continue to conform to the requirements in Appendix B to 10 CFR Part 50 and 10 CFR 50.34(b)(6)(ii) and to notify the NRC of these changes as required by 10 CFR 50.71(e). The direct final rule provided immediate relief to licensees by clearly defining six categories of QA program changes that do not require NRC approval prior to implementation. On June 7, 2000, the NRC staff conducted a public workshop to solicit feedback on the implementation of the revision to 10 CFR 50.54(a) and to gather information to determine the need for and feasibility of developing a voluntary alternative rule based on the NEI petition. Workshop participants acknowledged the significant burden reduction already achieved through the 1999 revision to 10 CFR 50.54(a). As a result of the discussions at the workshop, NEI concluded, and the NRC agreed, that a separate rulemaking on 10 CFR 50.54(a) is not needed at this time. By letter dated August 15, 2000 (Accession No. ML003755305), NEI documented its belief that "it is not necessary to pursue" further changes to 10 CFR 50.54(a) related to its petition. By letter to NEI dated September 5, 2000, the NRC staff confirmed NEI's intent to withdraw the remainder of the 1995 petition.

In the direct final rule published on February 23, 1999 (64 FR 9029), the NRC noted that completion of the NEI petition should be accomplished in two stages. The first stage was the immediate burden relief of partially granting the NEI petition through the direct final rule. The second stage proposed was a follow-on rulemaking action in which criteria would have been developed for determining other areas in which unilateral changes could be made by licensees without prior NRC approval that would not negatively impact on the effectiveness of the licensee's QA program. However, given the petitioner's belief that it is not necessary to pursue further changes and based upon feedback from a public workshop on the implementation of the direct final rule, the NRC has decided not to pursue the previously planned second rulemaking.

For these reasons, the NRC finds that all outstanding issues relating to PRM–50–62 are resolved. This completes NRC action on PRM–50–62.

Dated at Rockville, Maryland, this 30th day of November, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31100 Filed 12–5–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 00–27]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1085]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC17

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 2000–96]

RIN 1550–AB11

Risk-Based Capital Standards: Claims on Securities Firms

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Board, OCC, FDIC and OTS (collectively, the Agencies) are proposing to amend their respective risk-based capital standards for banks, bank holding companies, and savings associations (collectively, institutions) with regard to the risk weighting of claims on, and claims guaranteed by, qualifying securities firms. This proposed rule would reduce the risk weight applied to claims on, and claims guaranteed by, qualifying securities firms incorporated in countries that are members of the Organization for Economic Cooperation and Development (OECD) from 100 percent to 20 percent under the Agencies' risk-based capital rules.

DATES: Your comments must be received by January 22, 2001.

ADDRESSES: Comments should be directed as follows:

OCC: You may send comments electronically to *regs.comments@occ.treas.gov* or by mail to Docket No. 00–27, Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274. You can inspect and photocopy comments at that address. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Comments should refer to docket number R–1085, and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between the hours of 8:45 a.m. and 5:15 p.m. and, outside those hours, to the Board's security control room. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838; Internet address; comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–96. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Docket No. 2000–96. Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–96; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to *public.info@ots.treas.gov*, Attention Docket No. 2000–96, and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9 a.m. until 5 p.m. on business days. Comments and the related index will also be posted on the OTS Internet Site at *www.ots.treas.gov*.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Risk Expert (202/874–5070), Capital Policy Division; or Ron Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Norah Barger, Assistant Director (202/452–2402), Barbara Bouchard, Manager (202–452–3072), or John F. Connolly, Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Janice Simms (202/872–4984), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist (202/898–8904), Accounting Section, Division of Supervision; for legal issues, Leslie Sallberg, Counsel, (202/898–8876), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: David W. Riley, Project Manager, (202/906–6669), Supervision Policy; Teresa A. Scott, Counsel, Banking and Finance (202/906–6478), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Agencies' risk-based capital standards are based upon principles contained in the July 1988 agreement entitled "International Convergence of Capital Measurement and Capital Standards" (Basel Accord or Accord). The Basel Accord was developed by the Basel Committee on Banking Supervision (Basel Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries.[1] The Basel Accord provides a framework for assessing the capital adequacy of a depository institution by risk weighting its assets and off-balance-sheet exposures primarily based on credit risk.

[1] The G–10 countries are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The Basel Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries and Luxembourg.

The original Basel Accord imposed a 20 percent risk weight for claims on banks incorporated in OECD countries[2] and a 100 percent risk weight for claims on securities firms and most other nonbanking firms. In April 1998, the Basel Committee amended the Basel Accord to lower the risk weight from 100 percent to 20 percent for claims on, and claims guaranteed by, securities firms incorporated in OECD countries if such firms are subject to supervisory and regulatory arrangements that are comparable to those imposed on OECD banks. Such arrangements must include risk-based capital requirements that are comparable to those applied to depository institutions under the Accord and its amendment to incorporate market risks. The term "comparable" is also intended to require that qualifying securities firms (but not necessarily their parent organizations) be subject to consolidated regulation and supervision with respect to any of their subsidiaries.

One of the primary reasons that the Basel Committee amended the Accord was to make it consistent with the treatment of claims on securities firms permitted under the European Union's (EU) Capital Adequacy Directive (CAD). A number of European countries have followed the CAD for some time. The CAD, which subjects EU depository institutions and securities firms to the same capital requirements, applies a 20 percent risk weight to claims on both depository institutions and securities firms.

This proposed rule would reduce the risk weight applied to claims on, and claims guaranteed by, qualifying securities firms from 100 percent to 20 percent under the Agencies' risk-based capital rules. Under this proposal, qualifying securities firms must be incorporated in an OECD country, be subject to supervisory and regulatory arrangements that are comparable to those imposed on OECD banks, and have a credit rating that is in one of the three highest investment grade rating categories used by a nationally recognized statistical rating organization (rating agency).

Qualifying U.S. securities firms must be broker-dealers registered with the Securities and Exchange Commission (SEC). Qualifying U.S. securities firms also must be subject to and comply with the SEC's net capital rule,[3] and margin and other regulatory requirements applicable to registered broker-dealers.[4]

Qualifying securities firms incorporated in any other OECD country must be subject to consolidated supervision and regulation (covering their subsidiaries, but not necessarily their parent organizations) comparable to that imposed on depository institutions in OECD countries, including risk-based capital requirements comparable to those applied to depository institutions under the Accord.[5]

The Agencies are of the view that supervision and regulation alone are not necessarily sufficient indicators of creditworthiness to warrant a 20 percent risk weight. Consequently, a qualifying securities firm, or the parent consolidated group of a qualifying securities firm, must have a long-term issuer credit rating,[6] or a rating on at least one issue of long-term (*i.e.*, one year or longer) unsecured debt, from a nationally recognized statistical rating organization (rating agency) that is in one of the three highest investment grade rating categories used by the rating agency.[7]

Claims on, and claims guaranteed by, holding companies and other affiliates of a qualifying securities firm, would retain their current 100 percent risk weighting under the Agencies' risk-based capital rules. This treatment is consistent with the existing treatment for depository institution holding companies and other affiliates of depository institutions in consolidated holding companies. Claims on, and claims guaranteed by, a subsidiary of a qualifying securities firm also would retain their current 100 percent risk weight, unless such subsidiary's obligations were guaranteed by a qualifying securities firm (*e.g.*, its parent qualifying securities firm).

The Agencies are proposing to revise their rules to apply a 20 percent risk weight to qualifying securities firms for several reasons. First, claims on qualifying securities firms generally involve relatively low credit risk because such firms are subject to supervision and regulation, including capital requirements, comparable to banks in OECD countries and have ratings in one of the three highest investment grade rating categories. Second, the 100 percent risk weight applied to claims on securities firms under the Agencies' current capital rules is more stringent than the 20 percent capital charge applied to claims on securities firms under the Basel Accord and the CAD. This results in a competitive inequity for U.S. depository institutions, which would be mitigated by this proposed rule.

[2] The OECD is an international organization of countries that are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices, liberal trade policies, and the absence of exchange controls. For purposes of the Basel Accord, OECD countries are those countries that are full members of the OECD or that have concluded special lending arrangements associated with the International Monetary Fund's General Arrangements to Borrow. A listing of OECD member countries is available at *www.oecdwash.org*. Any OECD country that has rescheduled its external sovereign debt, however, may not receive the preferential capital treatment generally granted to OECD countries under the Accord for five years after such rescheduling.

[3] The SEC's net capital rule, as set forth at 17 CFR 240.15c3–1, requires broker-dealers to maintain continually sufficient liquid assets to protect the interests of customers and other market participants if a broker-dealer becomes insolvent. Under the SEC's rules, a broker-dealer must maintain a minimum ratio of net capital to either liabilities or customer-related receivables.

[4] U.S. securities firms that have registered with the SEC as over-the-counter derivatives dealers would not be qualifying securities firms because they are subject to a less rigorous net capital rule and are exempt from a variety of regulatory requirements applicable to fully regulated broker-dealers, including certain margin requirements. *See* 63 FR 59362 (Nov. 3, 1998).

[5] For example, this generally would include firms engaged in securities activities in the EU that are subject to the CAD. Securities firms in other OECD countries would need to demonstrate to lending institutions and regulatory authorities that their supervision and regulation qualify as comparable under this rule and the Accord.

[6] A long issuer credit rating is one that assesses a firm's overall capacity and willingness to pay on a timely basis its unsecured financial obligations. Issuer credit ratings that are assigned to non-broker-dealer subsidiary or affiliate of the securities firm, or debt ratings on long-term unsecured debt issues of such a subsidiary or affiliate of the securities firm, would not satisfy the rating criteria to be a qualifying securities firm.

[7] The Agencies recognize that two recent proposals used the two highest investment grade rating categories to identify assets that would qualify for a 20 percent risk weight. The Basel Committee's June 1999 consultative paper entitled "A New Capital Adequacy Framework" proposed that a bank, commercial firm or securitization position rated in one of the two highest investment grade rating categories would qualify for a 20 percent risk weight. In addition, the Agencies' recent proposed rule on recourse and direct credit substitutes proposed that a securitization position rated in one of the two highest investment grade rating categories would qualify for a 20 percent risk weight. 65 FR 12319 (March 8, 2000).

The Agencies considered proposing a rating requirement for securities firms consistent with these other proposals, but decided for several reasons that it would be appropriate to propose requiring qualifying securities firms to be rated in one of the top three rating categories of a rating agency. In addition to meeting the rating standard, qualifying securities firms are subject to supervision and regulation comparable to depository institutions in OECD countries. This supervision distinguishes qualifying securities firms from other types of entities, such as commercial firms. Further, under the current Basel Accord, claims on OECD depository institutions and securities firms receive a 20 percent risk weight without satisfying a similar credit rating requirement. Thus, while the Agencies considered both a higher rating requirement, on the one hand, and whether any rating requirement should be imposed on securities firms, on the other, the Agencies believe the proposed rating requirement strikes an appropriate balance.

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The Agencies are seeking comment on all aspects of this rule. Particularly, the Agencies request comment on their proposed criteria for qualifying securities firms.

(1) Does the rating of a broker-dealer's parent consolidated organization serve as a reliable indicator of the credit quality of claims on, or guaranteed by, the broker-dealer?

(2) Is there a rating or other indicator of a broker-dealer's credit quality that is more reliable and more consistent with market practices than the proposed standard?

(3) Should claims on, and claims guaranteed by, certain subsidiaries of qualifying securities firms be accorded a 20 percent risk weight? If so, what should the qualifying criteria be for such subsidiaries?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies certify that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not have a significant impact on the amount of capital required to be held by small institutions. The proposed rule: (1) Only covers a narrow category of assets that might be held by an institution, (2) decreases the amount of capital that an institution must hold for those assets, (3) does not significantly change the amount of total capital an institution must hold, and (4) will have a positive impact on an affected institution's capital requirements. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Agencies have determined that this proposal does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Executive Order 12866

The Comptroller of the Currency and the Director of the OTS have determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. This proposed rule would reduce the current risk weighting applied to claims on qualifying securities firms and would not impose additional cost or burden on institutions.

OCC and OTS—Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposal would reduce the current risk-based capital charge for claims on, and claims guaranteed by, qualifying securities firms. Accordingly, the OCC and OTS have determined that this proposed rule would not result in the expenditure by state, local, and tribal governments, or by the private sector, of more than $100 million or more in any one year. In fact, this proposed rule would impose no new cost or burden on state, local, or tribal governments, or the private sector. Therefore, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

(5) Would more (but shorter) sections be better?

(6) What else could we do to make the rule easier to understand?

FDIC Assessment of Impact of Federal Regulation On Families

The FDIC has determined that this proposed rule would not affect family well being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277).

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the Office of the Comptroller of the Currency proposes to amend part 3 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3:

A. In section 1:

i. Redesignate paragraphs (c)(17) through (c)(31) as (c)(18) through (c)(32); and

ii. Add new paragraph (c)(17).

B. In section 3:

i. Redesignate footnotes 11a and 11b as 11b and 11c;

ii. Add new paragraph (a)(2)(xiii);

iii. Add new footnote 11a to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(17) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) as a nationally recognized statistical rating organization for various purposes, including the Securities Exchange Commission net capital requirement for brokers and dealers.

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(2) * * *

(xiii) Claims on, or guaranteed by, a qualifying securities firms incorporated in an OECD country, subject to the following conditions:

(A) If the securities firm is incorporated in the United States, then the securities firm must be a broker-dealer that is registered with the Securities and Exchange Commission and must be subject to and comply with the Securities Exchange Commission net capital regulation (17 CFR 240.15c3(1)), margin regulations and other regulatory requirements applicable to a registered broker-dealer.

(B) If the securities firm is incorporated in any other OECD country, then the securities firm must be subject to consolidated supervision and regulation (covering its subsidiaries, but not necessarily its parent organization) comparable to that imposed on depository institutions under the Basel Capital Accord.[11a]

(C) A securities firm (or its parent consolidated group), whether incorporated in the United States or another OECD country, must also have a long-term issuer credit rating, or a credit rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization. The credit rating must be in one of the three highest investment grade categories used by the nationally recognized statistical rating organization.

* * * * *

[11a] *See* Accord on International Convergence of Capital Measurement and Capital Standards as adopted by the Basle Committee on Banking Regulations and Supervisory Practices (renamed as the Basel Committee on Banking Supervision), dated July 1988.

Dated: November 6, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

Part 208—Membership of State Banking Institutions in the Federal Reserve System (Regulation H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, the following amendments are made:

a. In sections III. and IV., redesignate footnotes 34 through 52 as footnotes 35 through 53;

b. In section III.C.2., the three existing paragraphs are designated as III.C.2.a. through III.C.2.c., and a new section III.C.2.d. is added with a new footnote 34; and

c. In Attachment III, under Category 2, a new paragraph 12. is added. The revision and additions read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. * * *

d. This category also includes claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.[34]

* * * * *

[34] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities that are broker-dealers registered with the Securities and Exchange Commission (SEC). They must be subject to and in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1, and subject to the margin and other regulatory requirements applicable to registered broker-dealers. With regard to securities firms incorporated in any other country in the OECD-based group of countries, qualifying securities firms are those securities firms that are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord). Furthermore, any qualifying securities firm, or its parent consolidated group, must have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization that is in one of the three highest investment grade rating categories used by the rating agency.

Attachment III—Summary of Risk Weights and Risk Categories for State Member Banks

* * * * *

Category 2: 20 Percent * * *

12. Claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.

* * * * *

Part 225—Bank Holding Companies and Change in Bank Control (Regulation Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225, the following amendments are made:

a. In sections III. and IV., redesignate footnotes 37 through 57 as footnotes 38 through 58;

b. In section III.C.2., the three existing paragraphs are designated as III.C.2.a. through III.C.2.c., and a new section III.C.2.d. is added with a new footnote 37; and

c. In Attachment III, under Category 2, a new paragraph 12 is added. The revision and additions read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. * * *

d. This category also includes claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.[37]

* * * * *

[37] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities that are broker-dealers registered with the Securities and Exchange Commission (SEC). They must be subject to and in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1, and subject to the margin and other regulatory requirements applicable to registered broker-dealers. With regard to securities firms incorporated in other countries in the OECD-based group of countries, qualifying securities firms are those securities firms that are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement

Continued

Attachment III—Summary of Risk Weights and Risk Categories for Bank Holding Companies

* * * * *

Category 2: 20 Percent * * *

12. Claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 27, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In appendix A to part 325, section II.B.3., the phrase "U.S. depository institutions and foreign banks" is removed and the phrase "U.S. depository institutions, foreign banks, and qualifying OECD-based securities firms" is added in its place.

3. In appendix A to part 325:

a. In section II.C., under *Category 2—20 Percent Risk Weight*, add a new sentence immediately after the existing first sentence;

b. Redesignate footnotes 23 through 42 as footnotes 24 through 43;

c. Add a new footnote 23; and

d. In Table II, add a new paragraph (13) under *Category 2—20 Percent Risk Weight*.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

Category 2–20 Percent Risk Weight

* * * This category also includes claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.[23]

* * *

* * * * *

Table II—Summary of Risk Weights and Risk Categories

* * * * *

Category 2–20 Percent Risk Weight

* * * * *

(13) Claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 17th day of October, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

For the reasons set forth in the joint preamble, the Office of Thrift Supervision amends part 567 of chapter V of title 12 of the Code of Federal Regulations as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.6 is amended by adding paragraph (a)(1)(ii)(T) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(ii) * * *

(T) Claims on, and claims guaranteed by, a qualifying securities firms incorporated in an OECD-based country.

(1)(i) A qualifying securities firm incorporated in the United States must be a broker-dealer that is registered with the Securities and Exchange Commission (SEC). It must be subject to and comply with the SEC's net capital rule (17 CFR 240.15c3(1), margin regulations and other regulatory requirements applicable to a registered broker-dealer.

(ii) A qualifying securities firm incorporated in any other OECD-based country must be a security firm that is subject to consolidated supervision and regulation (covering its subsidiaries, but not necessarily its parent organization) comparable to that imposed on depository institutions under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998).

(2) A qualifying securities firm (or its parent consolidated group) must also have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization. The rating must be in one of the three highest investment grade categories used by the ratings agency.

* * * * *

By the Office of Thrift Supervision.

Dated: November 3, 2000.

Ellen Seidman,

Director.

[FR Doc. 00–30615 Filed 12–5–00; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Proposed waiver of rule.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Surge Arresters, Current and Voltage Transformers, Disconnected Switches, Sultotransformers, Power Transformers (multiple winding type), Insulator Assemblies for transmission lines (porcelain and polymer type), and Stacking Post Insulators. The basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this document is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before December 12, 2000.

ADRESSES: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422, FAX (202) 205–6845.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found a 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Surge Arresters (SIC 3643, NAICS 335931), Current and Voltage Transformers (SIC 3612, NAICS 335311), Disconnect Switches (SIC 3613, NAICS 335313), Sutotransformers (SIC 3612, NAICS 335311), Power Transformers (multiple winding type) (SIC 3612, NAICS 335311), Insulator Assemblies for transmission lines (porcelain and polymer type) (SIC 3264/3644, NAICS 327113/335932), and Stacking Post Insluators (SIC 3264, NAICS 3327113), and invites the public to comment or provide information on potential small business manufacturers for these products.

In an effort to identify potential small business manufacturers, the SBA has searched Procurement Marketing & Access Network (PRO-Net) and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for these classes of products.

Dated: November 21, 2000.

Luz A. Hopewell,

Associate Administrator for Government Contracting.

[FR Doc. 00–30779 Filed 12–5–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 Series Airplanes; Model MD–88 Airplanes; and Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes.

This proposal would require repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. This action is necessary to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–260–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (526) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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and Capital Standards (1988, as amended in 1998) (Basel Accord). Furthermore, any qualifying securities firm, or its parent consolidated group, must have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization that is in one of the three highest investment grade rating categories used by the rating agency.

[23] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities firms that are broker-dealers registered with the Securities and Exchange Commission (SEC). They must be subject to and in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1, and subject to the margin and other regulatory requirements applicable to registered broker-dealers. With regard to securities firms incorporated in any other country in the OECD-based group of countries, qualifying securities firms are those securities firms that are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord). Furthermore, any qualifying securities firm, or its parent consolidated group, must have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization that is in one of the three highest rating categories used by the rating agency.

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–260–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that, during ground operations or when powered in flight by the air driven generator, the electric motors of the auxiliary hydraulic pump and associated motor feeder cables failed on certain McDonnell Douglas Model MD–80, DC–10, MD–10, MD–11, and MD–90–30 series airplanes. These failures consisted of seized or difficult to turn rotor on the pump assembly, burnt and shorted motor feeder cables, and/or uncontained internal electric arcing failures with the electric motor. Investigation revealed that these failures may be caused by hydraulic fluid contamination to the electric motor portion of the pump, failed rotor bearing, and/or degradation of the stator's encapsulate material. These conditions, if not corrected, could result in a fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

Other Relevant Rulemaking

This proposed AD affects McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes (*i.e.*, MD–80 series airplanes); Model MD–88 airplanes; and Model MD–90–30 series airplanes. The FAA is planning to issue a separate rulemaking action for McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes to address the identified unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); and McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes). These service bulletins describe procedures for repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. The corrective actions involve replacing the auxiliary hydraulic pump with a serviceable pump, troubleshooting, and repairing the wiring.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 1,292 Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 697 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $41,820 or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–260–AD.

Applicability: Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Inspection

(a) Do a detailed inspection of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated 3,000 total flight hours or more as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(2) For airplanes that have accumulated less than 3,000 total flight hours as of the effective date of this AD: Inspect within 12 months after accumulating 3,000 total flight hours.

Condition 1, No Failures: Repetitive Inspections

(b) If no failures are detected during the inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD every 5,000 flight hours.

Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections

(c) If any pump motor fails during any inspection required by paragraph (a) of this AD, before further flight, replace the failed auxiliary hydraulic pump with a serviceable pump, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 5,000 flight hours.

Condition 3, Failure of Any Wiring: Repair and Repetitive Inspection

(d) If any wiring fails during any inspection required by paragraph (a) of this AD, before further flight, troubleshoot and repair the failed wiring, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 5,000 flight hours.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31067 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius Models 2B, 2B1, 2F Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arrius Models 2B, 2B1, and 2F turboshaft engines. This proposal would require the replacement of the right injector half manifold, left injector half manifold, and privilege injector pipe with the engine installed on the helicopter. This proposal is prompted by reports from the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, of partially or totally blocked fuel injection manifolds, which were found during inspections at a repair workshop. The actions specified by the proposed AD are intended to prevent engine flameout during rapid deceleration, or the inability to maintain the 2.5 minutes one engine inoperative (OEI) rating. The actions are also intended to prevent injector air path cracks, due to blockage of the fuel injection manifolds.

DATES: Comments must be received by February 5, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Turbomeca S.A., 40220 Tarnos, France; telephone: (33) 05 59 64 40 00; fax: (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7152; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The DGAC recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius 2B, 2B1, and 2F turboshaft engines. The DGAC advises that during inspections performed at a repair workshop, some right injector half manifolds, left injector half manifolds, and privilege injector pipes were found totally or partially blocked. This condition may cause engine flameout during engine deceleration or the inability to maintain the 2.5 minutes OEI rating. This condition may also cause injector air path cracking.

Manufacturer's Service Information

Turbomeca has issued alert service bulletin (ASB) No. A319 73 2012, Revision 2, dated May 25, 1999, for Arrius 2B and 2B1 turboshaft engines and ASB No. A319 73 4001, Revision 3, dated May 25, 1999, for Arrius 2F turboshaft engines. These ASB's require the replacement of the right injector half manifold, left injector half manifold, and privilege injector pipes, based on operating hours and power check performance. When replacing the manifolds for the first time, the ASB's also require a borescope inspection of the flame tube and the high pressure turbine (HPT) area. The DGAC classified these ASB's as mandatory and issued AD 1999–217(A) and AD 1999–233(A) in order to assure the airworthiness of these Turbomeca turboshaft engines in France.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products for this type design that are certificated for operation in the United States.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require:

- Replacement of the right injector half manifolds, left injector half manifolds, and privilege injector pipes with 200 or more hours time-in-service (TIS) on the effective date of the proposed AD within 30 days after the effective date of the proposed AD.
- Thereafter, the injector manifolds must be replaced within 200 hours TIS since last replacement.

Those actions would be required to be accomplished in accordance with the ASB's described previously.

Economic Impact

There are about 130 engines of the affected design in the worldwide fleet. The FAA estimates that 22 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take about 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost about $14,320.00 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $317,680.00 for initial inspection and parts replacement. The manufacturer has advised the DGAC that the operator may exchange the removed injection manifolds, at no cost to the operator, thereby substantially reducing the cost impact of this proposed rule.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca: Docket No. 2000–NE–12–AD.

Applicability: This airworthiness directive (AD) is applicable to Arrius Models 2B, 2B1, and 2F engines. These engines are installed on but not limited to Eurocopter France Model EC120B and Eurocopter Deutschland EC135 T1 rotorcraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with the following initial and repetitive replacement procedures are required unless already done.

Perform the following actions to prevent engine flameout and the inability to maintain the 2.5 minutes one engine inoperative (OEI) rating due to blockage of the fuel injection manifolds.

Initial Replacement

(a) Replace injector manifolds and borescope—inspect the flame tube and the high pressure turbine area within 30 days after the effective date of this AD, or prior to exceeding 200 hours time-in-service (TIS) since new, whichever is later. Do this in accordance with 2.A. through 2.C.(3) (except for recording requirement) of Turbomeca Alert Service Bulletin (ASB) No. A319 73 2012 for Arrius 2B and 2B1 turboshaft engines, and ASB No. A319 73 4001 for Arrius 2F turboshaft engines.

Repetitive Replacements

(b) Thereafter, replace injector manifolds within 200 hours TIS since last replacement, or prior to further flight after performing a flight manual power check if the power check shows a negative turbine outlet temperature (TOT) or negative T4 margin.

(c) After the effective date of this AD, do not install any injector manifold with 200 hours TIS since new or greater onto an engine.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 30, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–31114 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–24775; File No. S7–20–00]

RIN 3235–AH57

Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits a registered investment company ("fund") that has certain affiliations with an underwriting participant to purchase securities during an offering. The proposed amendments would expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering. The proposed amendments also would modify the rule's quantitative limit on purchases, to cover purchases by a fund as well as any account advised by the fund's investment adviser. These amendments are intended to respond to recent changes in the method of offering certain government securities, and to improve the effectiveness of the quantitative limit on fund purchases.

DATES: Comments must be received on or before February 15, 2001.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–20–00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Senior Counsel, or C. Hunter Jones, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rule 10f–3 [17 CFR 270.10f–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or "Act").[1]

I. Discussion

A. Background

Section 10(f) of the Investment Company Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter[2] for the security ("affiliated underwriter").[3] This provision was designed to protect funds and their investors from the "dumping" of unmarketable securities on a fund in order to benefit the fund's affiliated underwriter.[4] Section 10(f) is a broad

[1] Unless otherwise noted, all references to "rule 10f–3" or any paragraph of the rule will be to 17 CFR 270.10f–3.

[2] *See* section 2(a)(29) of the Investment Company Act [15 U.S.C. 80a–2(a)(29)] (definition of principal underwriter).

[3] Section 10(f) [15 U.S.C. 80a–10(f)] prohibits the purchase if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. For purposes of this Release, a person that falls within one of these categories is referred to as an "affiliated underwriter," even though the Investment Company Act defines the term "affiliated person" to include a broader set of relationships. *See* section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a–2(a)(3)]. Similarly, this Release refers to a fund that is subject to section 10(f) as a result of its relationship with an "affiliated underwriter" as an "affiliated fund."

[4] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy). An underwriter could, for example, "dump" unmarketable securities on its controlled fund, either by causing the fund to purchase the securities from the underwriter itself,

Continued

prohibition, and Congress included in the provision specific authority for the Commission to issue rules or orders exempting transactions from the prohibition, if consistent with the protection of investors.

Rule 10f–3, which the Commission adopted in 1958 and last amended in 1997, permits a fund to purchase securities in a transaction that section 10(f) would prohibit, if certain conditions are met.[5] The conditions of rule 10f–3 are designed to ensure that the purchases are not likely to raise the concerns that section 10(f) was enacted to address, and are thus consistent with the protection of investors.[6]

B. Purchase of Government Securities

When the Commission first adopted rule 10f–3 in 1958, one of the conditions of the rule was that the securities be registered under the Securities Act of 1933 ("Securities Act") as part of a public offering.[7] This condition served to assure that the fund did not purchase the securities through a private placement,[8] and provided the basis for other conditions of the rule concerning the timing and conduct of the public offering.[9] Since then, in response to changes in the methods of offering securities and other developments, we have revised the rule to permit the purchase of certain types of securities that are not registered under the Securities Act, such as municipal securities and securities offered through regulated foreign offerings or private institutional offerings. We determined that the circumstances in which these securities generally are offered, including the availability of relevant information about the issuer and the establishment of a uniform offering price, provided an effective substitute for the Securities Act registration requirement.[10]

Government securities,[11] including securities issued by agencies or instrumentalities of the U.S. government,[12] are not included in the types of securities that rule 10f–3 permits affiliated funds to purchase. Until recently, there has been little need to exempt the purchase of government securities from section 10(f), because these securities generally have not been offered through "selling syndicates" or underwritings that involve affiliated underwriters to a significant degree.[13] In 1998, however, at least two government-sponsored enterprises began to offer their securities through syndicated underwritings.[14] Because rule 10f–3 does not provide an exemption from section 10(f) for affiliated funds to purchase government securities, affiliated funds have been unable to purchase securities in those offerings, and investors in those funds have been unable to benefit from the purchases their funds otherwise would have been able to make.[15]

The Commission is proposing to amend rule 10f–3 to permit affiliated funds to purchase government securities during the existence of an underwriting or selling syndicate for those securities.[16] Government securities are high-quality investments, and therefore are unlikely to be dumped into a fund. Moreover, the circumstances under which government agencies offer their securities to the public appear to be an effective substitute for Securities Act registration for purposes of rule 10f–3. Government agencies generally must obtain approval from the Department of Treasury concerning the timing, price, and terms of the securities offering.[17] In addition, information about these

or by encouraging the fund to purchase securities from another member of the underwriting syndicate. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838 (Mar. 21, 1996) [61 FR 13630 (Mar. 27, 1996)] ("1996 Release"), at text accompanying n.2.

[5] Rule 10f–3 currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) the securities either are registered under the Securities Act, are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) the offering involves a "firm commitment" underwriting; (iii) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (iv) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (v) if the securities are municipal securities, the purchase is not a group sale; and (vi) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* rule 10f–3(b).

[6] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] ("1997 Release").

[7] *See* Notice of Proposal to Adopt Rule N–10F–3 Permitting Investment Companies to Purchase Securities Where Affiliates Participate in Underwriting, Investment Company Act Release No. 2744 (July 15, 1958) (noting that proposed conditions were consistent with prior exemptive relief granted by the Commission).

[8] In private placements at that time, obtaining adequate information about the issuer and a fair price and other favorable terms for the securities depended mostly on the efforts of the purchaser. *See* Eli Shapiro and Charles R. Wolf, *The Role of Private Placements in Corporate Finance* 1–7 (1972).

[9] *See, e.g.*, rule 10f–3(b)(2)(i) (requiring that securities be purchased at no more than the public offering price on the first day of the offering).

[10] *See* 1996 Release, *supra* note 4, at nn.31–51 and accompanying text. In addition, the other protections of rule 10f–3 continued to apply to purchases of these types of securities.

[11] The term "government securities" is defined by the Investment Company Act as "any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing." 15 U.S.C. 80a–2(a)(16). Government securities are exempt from the registration requirements of the Securities Act and from the reporting and other requirements of the Securities Exchange Act of 1934 ("Exchange Act"). *See* 15 U.S.C. 77c(a)(2), 78c(a)(12)(A). Offers of or transactions in government securities are subject, however, to the anti-fraud provisions of the Securities Act and Exchange Act. *See* 15 U.S.C. 77q(a), 78j(b).

[12] Government securities may be issued by government-sponsored enterprises such as the Federal National Mortgage Association ("FNMA") and by government corporations such as the Federal Deposit Insurance Corporation. *See* 31 U.S.C. 9101 (definition of "government corporation"); A. Michael Froomkin, *Reinventing the Government Corporation*, 1995 U. Ill. L. Rev. 543, 555–56.

[13] U.S. Treasury securities are sold through a system involving auctions and dealers, while government corporations primarily raise money through the Federal Financing Bank, which is part of the Department of Treasury. *See* U.S. Department of Treasury, Office of Market Finance, *United States of America: U.S. Treasury Security Auctions* (Aug. 12, 1998); Frank J. Fabozzi, *Treasury and Agency Securities*, in The Handbook of Fixed Income Securities 157 (Frank J. Fabozzi ed., 1997). *See also* 12 U.S.C. 2285 (sale of government corporation securities by Federal Financing Bank). Purchases of government securities in these circumstances therefore probably would not involve an "underwriting or selling syndicate" under section 10(f). *See* Institutional Liquid Assets, SEC No-Action Letter (Dec. 16, 1981) (staff agreed that the broker-dealer, which participated with other broker-dealers in distributions of Federal Home Loan Bank notes, was not a principal underwriter in an "underwriting or selling syndicate" for purposes of section 10(f)).

[14] *See* Chris O'Leary, *Fonnie Mae to Launch Rival Treasury Note as Benchmark*, Investment Dealer's Digest, Jan. 5, 1998, at 9; Adam Reinebach, *Fonnie Mae Sells $4 Billion Benchmark Notes Offering*, Investment Dealer's Digest, Jan. 19, 1998, at 4, 5; Joshua Brockman, *Wall Street Watch: Second Fonnie Benchmark Issue Draws More Europeans*, American Banker, Feb. 10, 1998, at 15; and *Freddie Prices $400 MM Offering*, National Mortgage News, Mar. 23, 1998, at 2.

In response to these developments in the offering of government securities, the Commission has received a request to permit affiliated funds to purchase these securities in syndicated underwritings. *See* Memorandum from Brown & Wood to the Division of Investment Management, Securities and Exchange Commission (1998) (available to the public in File No. S7–20–00).

[15] A fund that is unable to purchase securities in a primary offering may be able to purchase the securities in the secondary market, but often at a higher price or with additional transaction costs. *See* 1997 Release, *supra* note 6, at text accompanying n.13.

[16] Proposed rule 10f–3(b)(1)(ii).

[17] The Department of Treasury establishes a general calendar for securities offerings that includes sale announcement, pricing, trading release, and settlement dates. *See* Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market D–1 (1992). *See also* 12 U.S.C. 2286 (Treasury authorization of issuance of government securities); 31 U.S.C. 9108 (same).

securities typically is available to the public through prospectuses or similar offering documents,[18] and these securities trade actively in the secondary market.[19] Under the proposed amendments, the other restrictions of rule 10f–3, such as limitations on the price and quantity of securities purchased, would apply to the purchase of government securities by the fund.[20]

The Commission requests comment on the proposed amendments related to government securities. Should the rule include limitations on the purchase of government securities that do not apply to other securities purchased under the rule? For example, should rule 10f–3 require that government securities receive a certain credit rating from a Nationally Recognized Statistical Rating Organization ("NRSRO"), as is required for municipal securities?[21] Should any of the limitations included in rule 10f–3 not apply to purchases of government securities?

C. Purchases Covered by the Percentage Limit

One of the key conditions of rule 10f–3 is that a fund, together with any other fund advised by the fund's adviser, purchase no more than 25 percent of an offering ("percentage limit"). The purpose of the percentage limit is to provide an indication that a significant portion of an offering is being purchased by persons acting independently of the adviser. The existence of these purchasers demonstrates that the securities are not being "dumped" and suggests that the price of the securities is based on market forces.

Since amending rule 10f–3 in 1997, we have become aware of a possible "loophole" in the rule that could permit an investment adviser to circumvent the percentage limit and compromise the effectiveness of the rule. Although the percentage limit requires that an adviser aggregate the purchases of all the funds that it advises, the rule does not require that the adviser also aggregate purchases by its other (*i.e.*, non-fund) clients. As a result, if an adviser purchases most or all of an offering for its fund clients and non-fund clients, the percentage limit may not provide a reliable indicator of market forces.[22] The adviser could use these controlled accounts to assure the success of the affiliated underwriting, thus undermining an important protection that section 10(f) provides fund shareholders.

In order to assure the effectiveness of the percentage limit of rule 10f–3, we are proposing to amend the rule to include purchases by any other account over which the adviser has discretionary authority or exercises control. Therefore, if a fund purchases securities in reliance on rule 10f–3, the fund's purchases, aggregated with purchases by any other fund advised by the fund's adviser, and any other account over which the fund's adviser has discretionary authority or otherwise exercises control, could not exceed 25 percent of the offering.[23]

The Commission requests comment on the proposed amendment to the percentage limit. Should we increase the percentage in light of the changes that we are now proposing?

II. General Request for Comments

Any interested persons wishing to comment on the rule changes that are the subject of this Release, to suggest additional changes, or to comment on other matters that might have an effect on the proposals contained in this Release, are requested to submit written comments. Comment is specifically requested whether the Commission should amend or eliminate conditions in rule 10f–3 other than those addressed in this Release.

The Commission also requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act.[24] For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[25] the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

III. Cost-Benefit Analysis

A. Purchase of Government Securities

The proposed amendments to rule 10f–3 should, if adopted, increase the ability of funds to purchase securities during the existence of a syndicate in which an affiliated underwriter participates. The benefits to funds would include the ability to purchase government securities in syndicates involving an underwriter affiliated with the fund's investment adviser, without having to seek an exemptive order from the Commission. The potential benefits to fund investors would include better investment performance, and possibly lower fund expenses.

The costs to funds and investors of the proposed amendments should be small. Funds would be required to determine whether purchases of government securities comply with the conditions of the rule. The additional cost of determining compliance with the rule's conditions, as applied to purchases of government securities, should be minimal. Funds also would be required to (i) maintain a written record of each purchase of government securities made in reliance on the proposed amendments and (ii) report those transactions on Form N–SAR. Rule 10f–3 currently requires funds relying on the rule to comply with these recordkeeping and reporting requirements. The additional costs of complying with these requirements with respect to purchases of government securities made in reliance on the proposed amendments would be minimal and likely would be justified by the potential benefits to funds and investors described above.

B. Purchases Covered by the Percentage Limit

The proposed amendments would require that the total of the fund's purchases in any offering purchased by the fund in reliance on the rule, aggregated with purchases in the offering by any other fund advised by the fund's adviser, and purchases in the offering by any other account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent

[18] *See* U.S. General Accounting Office, Government-Sponsored Enterprises: Changes in Securities Distribution Process and Use of Derivative Products 48–49 (1993).

[19] Frank J. Fabozzi, *Treasury and Agency Securities*, in The Handbook of Fixed Income Securities 158 (Frank J. Fabozzi ed., 1997). *See also* B.J. Reed and John W. Swain, Public Finance Administration 227 (1997).

[20] *See* rule 10f–3(b).

[21] *See* rule 10f–3(a)(3).

[22] The adviser, for example, could arrange for its fund clients to purchase 25 percent of an offering and for its non-fund clients to purchase the remaining 75 percent of the offering.

[23] *See* proposed rule 10f–3(b)(7). In a different context, the Gramm-Leach-Bliley Act recently amended section 2(a)(19) of the Investment Company Act to include language that is parallel to the proposed rule amendments. As amended, a person is an "interested person" of a fund or adviser (and is therefore disqualified from being an independent director) if, among other things, she (or her affiliate) has executed portfolio transactions for the fund, any other fund advised by the fund's adviser, or "any account over which the [fund's] adviser has brokerage placement discretion." Pub. L. No. 106–102, 113 Stat. 1338 (1999), to be codified at 15 U.S.C. 6801–6809.

[24] Section 2(c) requires the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 80a–2(c).

[25] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

of the offering. The proposed amendments will benefit funds and their investors by closing a loophole in the percentage limit. By doing so, the rule will reduce the likelihood that the fund's adviser is circumventing the percentage limit, and will thereby minimize the risk that fund investors will be harmed by the dumping of unmarketable securities into their funds.[26] With respect to costs, the proposed amendments will require a fund or its adviser to monitor the purchases of non-fund accounts over which the fund's adviser has discretionary authority or otherwise exercises control. The cost of this monitoring is likely to be minimal, because this information should be readily available to the fund's adviser.

C. Request for Comments

The Commission requests comment on the potential costs and benefits of the proposed amendments and any suggested alternatives to the proposal. Data are requested concerning these costs and benefits.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments to rule 10f–3 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) ("PRA"), and the Commission is submitting the proposed amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The title for the collection of information is "Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate." Rule 10f–3 contains currently approved collections of information under OMB control number 3235–0226. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Purchase of Government Securities

Rule 10f–3 permits a fund to purchase securities, from an unaffiliated underwriter, in an underwriting of securities in which an affiliated underwriter is a member of the underwriting or selling syndicate. The proposed amendments to rule 10f–3 would permit a fund to purchase government securities under the conditions of the rule.

Rule 10f–3 requires the board of directors of a fund relying on the rule to approve procedures that are reasonably designed to ensure compliance with the conditions of the rule, and to approve changes to these procedures as necessary. The fund must maintain these procedures permanently in an easily accessible place. A fund that chooses to rely on the proposed amendments also may need to amend these procedures to account for purchases of government securities. The fund also must report on Form N–SAR any transactions under the rule and attach a written record of each transaction, and the board must review the transactions quarterly to determine compliance with the fund's procedures.[27] Finally, a fund must retain written records of the rule 10f–3 transactions and of the information reviewed by the board, for at least six years from the end of the fiscal year in which the transactions occurred. A fund would need to comply with these recordkeeping requirements in order to obtain the benefit of exemption from section 10(f) of the Act for purchases of government securities under the proposed amendments.

The collections of information are necessary to provide the Commission with information regarding compliance with rule 10f–3. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under paragraph (b)(11)(ii) of rule 10f–3, none of the information required to be collected or disclosed for PRA purposes will be kept confidential. If the records required to be kept under these rules are requested by and submitted to the Commission, they will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.

The Division of Investment Management estimates that 300 funds rely upon rule 10f–3 each year, and that 70 of those funds purchase government securities (although not all 70 funds would likely need to rely upon rule 10f–3 to purchase government securities). It is estimated that the recordkeeping burden for funds that rely on the proposed amendments to purchase government securities would increase by an estimated 0.25 hours per fund per year.[28]

B. Purchases Covered by the Percentage Limit

The recordkeeping burden for funds that rely on rule 10f–3 may minimally increase due to the condition that the total of the fund's purchases in any offering, aggregated with purchases of any other fund advised by the fund's adviser, and purchases by any other account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent of the offering.

C. Comments

The Commission solicits comments under 44 U.S.C. 3506(c)(2)(B) concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information will have practical utility; the accuracy of the staff's estimate of the burden of the proposed collection of information; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget ("OMB"), Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th St., NW., Washington, DC 20549–0609 with reference to File No. S7–20–00. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–20–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to the OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

[26] *See supra* Section I.C.

[27] The written record must state (i) from whom the securities were acquired, (ii) the identity of the underwriting syndicate's members, (iii) the terms of the transactions, and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board. *See* rule 10f–3(b)(9).

[28] The total additional burden of the proposed amendments concerning the purchase of government securities is estimated to be 17.5 hours per year. This estimate is based on the following: 70 funds x 0.25 hours = 17.5 hours.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding amendments to rule 10f–3 under the Investment Company Act. The following summarizes the IRFA.

Section 10(f) prohibits investment companies from purchasing government securities from an affiliated underwriter during the existence of an underwriting or selling syndicate for that security, and authorizes the Commission to exempt transactions by rule or order from the prohibition. The Commission adopted rule 10f–3 to permit a fund to purchase securities from an unaffiliated member of an underwriting or selling syndicate when an affiliated underwriter is a member of the underwriting or selling syndicate. We are proposing amendments to rule 10f–3 in response to the recent syndicated underwriting of government securities issued by government-sponsored enterprises.[29] The proposed amendments are designed to permit funds to purchase government securities in syndicated offerings, in accordance with other conditions of rule 10f–3.[30] We are also proposing amendments in response to concerns that purchases by advisory clients other than funds may undercut the effectiveness of the percentage limit of the rule. To address this concern the Commission is proposing that the total of the fund's purchases in any offering, aggregated with purchases of any other fund advised by the fund's adviser, and purchases by any account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent of the offering.

A small business or small organization (collectively, "small entity") for purposes of the Investment Company Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[31] Of approximately 3900 active funds, 339 are small entities. Any of these 339 funds would be able to rely on the proposed amendments to rule 10f–3. It appears that the proposed amendments would affect small entities in the same manner as other entities subject to section 10(f), and that the proposed amendments increase flexibility for all funds.

The IRFA states that purchases of government securities made in reliance on rule 10f–3 would be subject to the existing and amended reporting and recordkeeping requirements of the rule.[32] There are no rules that duplicate, overlap, or conflict with the proposed amendments. The IRFA also discusses the absence of any viable alternatives considered by the Commission in connection with the proposed amendments that might minimize the effect on small entities.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposed rule amendments. Comment is also requested on the effect of the rule amendments on investment advisers and funds that are small entities. Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect. These comments will be placed in the same public file as comments on the proposed rule amendments. A copy of the IRFA may be obtained by contacting Curtis A. Young, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

VI. Statutory Authority

The Commission is proposing to amend rule 10f–3 under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Amend § 270.10f–3 by revising paragraphs (b)(1), (b)(4) and (b)(7).

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(b) *Conditions.* Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act (15 U.S.C. 80a–10(f)) will be exempt from the provisions of that section if the following conditions are met:

(1) *Type of Security.* The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a—aa) that is being offered to the public;

(ii) Part of an issue of government securities, as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16));

(iii)Eligible Municipal Securities;

(iv) Securities sold in an Eligible Foreign Offering; or

(v) Securities sold in an Eligible Rule 144A Offering.

* * * * *

(4) *Continuous operation.* If the securities to be purchased are part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a–aa) that is being offered to the public, are government securities (as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16))), or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities must have been in continuous operation for not less than three years, including the operations of any predecessors.

* * * * *

(7) *Percentage limit.* The amount of securities of any class of such issue purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company's investment adviser, and purchases by any other account over which such adviser has discretionary authority or otherwise exercises control, do not exceed the following limits:

(i) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(ii) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(A) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; plus

[29] *See supra* note 14.

[30] The amendments to rule 10f–3 are proposed by the Commission under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act.

[31] Rule 0–10 [17 CFR 270.0–10].

[32] A fund would be required to report purchases of government securities on Form N–SAR, attach a written record of each transaction, and keep a copy of the written records of those transactions. *See* rule 10f–3(b).

(B) The principal amount of the offering of such class in any concurrent public offering.

* * * * *

By the Commission.
Dated: November 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30975 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116495–99]

RIN 1545–AX68

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries.

DATES: The public hearing is being held on January 17, 2001 at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by December 27, 2000.

ADDRESSES: The public hearing is being held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC (REG–116495–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG–116495–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Sonya M. Cruse at (202) 622–7805 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–116495–99) that was published in the **Federal Register** on July 31, 2000 (65 FR 46677).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by December 27, 2000.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–31083 Filed 12–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–114423–00]

RIN 1545–AY47

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: These proposed regulations affect taxpayers required to make deposits of Federal employment taxes. This document contains proposed regulations which change the de minimis deposit rule for quarterly and annual return periods.

In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 6, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–114423–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–114423–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brinton T. Warren, (202) 622–4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31) relating to section 6302. The temporary regulations change the de minimis rule for the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register.**

Drafting Information

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 31.6302–1, paragraph (f)(4) is revised to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) [The text of proposed § 31.6302–1(f)(4) is the same as the text of § 31.6302–1T(f)(4)].

* * * * *

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–30792 Filed 12–5–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 00–054]

RIN 2115–AA97

Safety Zone Regulations: Tampa Bay, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations for floating safety zones around Liquefied Petroleum Gas (LPG) vessels transiting the waters of Tampa Bay. This action is necessary due to the opening of a new LPG facility in Port Sutton. This proposal will enhance public and maritime safety by minimizing meeting and overtaking situations between other vessels and LPG vessels.

DATES: Comments and related material must reach the Coast Guard on or before February 5, 2001.

ADDRESSES: You may mail comments and related material to Marine Safety Office Tampa (COTP Tampa 00–054), 155 Columbia Drive, Tampa Florida 33606. The Waterways Management Branch of Marine Safety Office Tampa maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606, Attention: Lieutenant Warren Weedon, or phone (813) 228–2189 ext 101.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Tampa 00–54), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Marine Safety Office Tampa at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Starting in June 2000, SEA–3, a new LPG facility, started operations and expects to receive approximately six (6) LPG vessels per year. Prior to the opening of the SEA–3 facility, all LPG vessels calling on Tampa Bay received a safety zone in accordance with 33 CFR 165.704. To enhance public and marine safety and to minimize meeting and overtaking situations, the Coast Guard is looking to amend the safety zone transit requirements for LPG vessels by adding a new section that mirrors the established safety zone requirements for Anhydrous Ammonia (NH3) vessels that call on Port Sutton. The current LPG regulations which start at Tampa Bay Cut "J" provide safety zone requirements for LPG vessels calling at the LPG facility located at Rattlesnake and will remain as is, except for standardizing the moving safety zone size which will minimize confusion and provided consistency throughout all of the port's safety zones. The revisions include standardizing the safety zone surrounding LPG vessels from 500 yards to 1000 yards and replacing the safety zone extending 50 feet waterside while the vessel is moored, with a requirement calling for passing vessels to provide a 30 minute notification allowing the LPG vessel time to take appropriate safety precautions.

In the late 1980's and early 1990's, many safety changes were made to the port, including the widening and deepening of the shipping channels,

installation of centerline range marks, inbound and outbound, an increased brightness in range lights, and a new Vessel Traffic Advisory System (VTAS). These changes have enhanced the level of safety on the navigable waters of Tampa Bay. Incorporating these amendments will further enhance safety on the waters of Tampa Bay.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation is needed to ensure public safety in a limited area of Tampa Bay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612 *et seq.*), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect approximately six (6) times per year in a limited area of Tampa Bay. Meeting or overtaking of the vessel is permitted between Gadsden Cut buoys #3 and #7; therefore, the impact on other waterway users is expected to be minimum.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concludes that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

In consideration of the foregoing, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Revise § 165.704 to read as follows:

§ 165.704 Safety Zone; Tampa Bay, Florida.

(a) A floating safety zone is established consisting of an area 1000 yards fore and aft of a loaded Liquefied Petroleum Gas (LPG) vessel and the width of the channel in the following areas. Any vessels desiring to enter the safety zone must obtain authorization from the Captain of the Port Tampa.

(1) For vessels loaded with LPG and bound for the LPG receiving terminal in Port Sutton the safety zone starts at Tampa Bay Cut "F" Channel from Lighted Buoys "3F" and "4F" and proceeds north ending at Gadsden Point Cut Lighted Buoys "3" and "4". The safety zone starts again at Gadsden Point Cut Lighted Buoys "7" and "8" and proceeds north through Hillsborough Cut "C", Port Sutton Entrance Channel, and ends at the Port Sutton LPG facility.

(2) For vessels loaded with LPG and bound for the LPG receiving terminal in Rattlesnake the safety zone starts at Tampa Bay Cut "J" Channel from lighted buoy "10J" and proceeds north through Tampa Bay Cut "K" Channel to buoy "11K." When a loaded LPG vessel departs the marked channel at Tampa Bay Cut "K" buoy "11K" enroute to Rattlesnake, Tampa, FL, the floating safety zone extends 500 yards in all directions surrounding the loaded LPG vessel, until it arrives at the entrance to Rattlesnake. While the loaded LPG vessel is maneuvering in the Rattlesnake slip and until it is safely moored at the LPG facility, the floating safety zone extends 150 feet fore and aft of the loaded LPG vessel and the width of the slip. Moored vessels are allowed within the parameters of the 150-foot safety zone.

(b) The floating safety zone is disestablished when the LPG carrier is safely moored at the LPG receiving facility.

(c) For outbound tank vessels loaded with LPG, the safety zone is established when the vessel departs the terminal and continues through the area described in paragraph (a) of this section.

(d) All vessels over 5000 gross tons intending to pass LPG vessels moored in Port Sutton, and all vessels intending to pass LPG vessels moored in Rattlesnake, must give 30 minutes notice to the LPG vessel so it may take appropriate safety precautions.

(e) The general regulations governing safety zones contained in § 165.23 apply.

(f) The Coast Guard Captain of the Port Tampa will notify the maritime community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a marine broadcast Notice to Mariners.

(g) Should the actual time of entry of the LPG vessel into the safety zone vary more than one half (½) hour from the scheduled time stated in the broadcast Notice to Mariners, the person directing the movement of the LPG vessel shall obtain permission from Captain of the Port Tampa before commencing the transit.

(h) Prior to commencing the movement, the person directing the movement of the LPG vessel shall make a security broadcast to advise mariners of the intended transit. All additional security broadcasts as recommended by the U.S. Coast Pilot 5, ATLANTIC COAST, shall be made throughout the transit.

(i) Vessels carrying LPG are permitted to enter and transit Tampa Bay and Hillsborough Bay and approaches only with a minimum of three miles visibility.

(j) The Captain of the Port Tampa may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for purposes of port safety or environmental safety.

(k) The owner, master, agent or person in charge of a vessel or barge, loaded with LPG shall report, at a minimum, the following information to the Captain of the Port Tampa at least twenty-four (24) hours before entering Tampa Bay, its approaches, or departing Tampa Bay:

(1) The name and country of registry of the vessel or barge;

(2) The name of the port or place of departure;

(3) The name of the port or place of destination;

(4) The estimated time that the vessel is expected to begin its transit of Tampa Bay and the time it is expected to commence its transit of the safety zone(s); and

(5) The cargo carried and amount.

Dated: September 28, 2000.

A.L. Thompson, Jr.,

Captain, Coast Guard, Captain of the Port, Tampa, Florida.

[FR Doc. 00–31046 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY44–215, FRL–6911–9]

Approval and Promulgation of Implementation Plans; New York; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New York. This SIP revision responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The SIP revision includes a narrative and a regulation that establish a statewide nitrogen oxides (NO_X) budget and a NO_X allowance trading program that begins in 2003 for large electricity generating and industrial sources.

The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. EPA is proposing this action pursuant to section 110 of the Clean Air Act.

DATES: EPA must receive written comments on or before January 5, 2001.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal and other information are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Ted Gardella at (212) 637–3892 for general questions, Rick Ruvo at (212) 637–4014 for specific questions on the Trading Program, or Raymond Forde at (212) 637–3716 for specific questions on the Budget Demonstration; Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866.

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) is proposing to approve the New York State Department of Environmental Conservation's (New York's) NO_X SIP Call State Implementation Plan (SIP) revision. The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

I. EPA's Action
- A. What action is EPA proposing today?
- B. Why is EPA proposing this action?
- C. What are the NO_X SIP Call general requirements?
- D. What is the NO_X Budget and Allowance Trading Program?
- E. What guidance did EPA use to evaluate New York's program?
- F. What is the result of EPA's evaluation of New York's program?

II. New York's NO_X Budget Program
- A. What is New York's NO_X Budget Demonstration?
- B. What is New York's NO_X Budget Trading Program?
- C. What is the Compliance Supplement Pool?
- D. How does New York's program protect the environment?
- E. How will New York and EPA enforce the program?
- F. When did New York propose and adopt the program?
- G. When did New York submit the SIP revision to EPA and what did it include?
- H. What other significant items relate to New York's program?
- I. Impact of D.C. Circuit Court remand on New York's NO_X SIP Call submittal.
- J. What is the relationship of today's proposal to EPA's findings under the section 126 rule?

III. Proposed Action

IV. Administrative Requirements

I. EPA's Action

A. What action is EPA proposing today?

EPA proposes approval of revisions to New York's ground level ozone SIP which New York submitted on April 3, 2000 and April 18, 2000. These SIP revisions include a new regulation, 6 NYCRR Part 204, " NO_X Budget Trading Program," dated April 3, 2000, and a narrative entitled, "New York State Implementation Plan For Ozone; Meeting The Statewide Oxides of Nitrogen (NO_X) Budget Requirements Contained In The NO_X SIP Call (63 FR 57356, October 27, 1998)," dated April 18, 2000 and supplemented on May 16, 2000. New York submitted the regulation and narrative, including NO_X reducing measures, in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call during each ozone season, *i.e.*, May 1 through September 30, beginning in 2003. EPA proposes that New York's submittal is fully approvable as a SIP strengthening measure for New York's one-hour ground level ozone SIP and EPA has determined it meets the air quality objectives of EPA's NO_X SIP Call requirements. New York's SIP revision also satisfies Phase III of the Ozone Transport Commission's NO_X Budget Program as discussed in section II.H. of this document.

B. Why Is EPA Proposing This Action?

EPA is proposing this action in order to:

- Approve a control program which reduces NO_X emissions, a precursor of ozone, and which therefore helps to achieve the national ambient air quality standard for ozone,
- Fulfill New York's and EPA's requirements under the Clean Air Act (the Act),
- Make New York's NO_X allowance trading regulation federally enforceable and available for credit in the SIP,
- Make New York's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the New York SIP, and
- Give the public an opportunity to submit written comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the NO_X SIP Call General Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." See 63 FR 57356. At that time, the NO_X SIP Call required 22 states and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999, and to implement control strategies by May 1, 2003.[2]

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. However, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generators would provide a highly cost-effective means for states to meet their NO_X budgets. In fact, the state-specific budgets were derived using an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at electricity generating units (EGUs) with a nameplate capacity greater than 25 megaWatts, multiplied by the projected heat input (mmBTU) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions was based on an emissions trading program used to achieve part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied to units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, to units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans," (40 CFR part 96), that could be used by states to develop their regulations. The NO_X SIP Call rule explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What Is the NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow its sources to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while achieving emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance permits the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On April 3rd and 18th, 2000, New York voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on *Michigan* v. *EPA*, affirming many aspects of the SIP Call and remanding certain other portions to the Agency. On June 22, 2000, the DC Circuit upheld EPA's NO_X SIP Call. This allows EPA to move forward on a fixed schedule to reduce NO_X emissions. The court's previous rulings did not affect this action because it was submitted and is being proposed as a SIP-strengthening measure regardless of the status of the case.

E. What Guidance Did EPA Use To Evaluate New York's Program?

EPA evaluated New York's NO_X SIP Call submittal using EPA's "NO_X SIP Call Checklist," (the checklist), issued on April 9, 1999. The checklist summarizes the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122. The checklist, developed from the basic requirements of the formal SIP Call **Federal Register** action (63 JR 57356), outlines the criteria that the EPA Regional Office used to determine the completeness and provability of New York's submittal.

As noted in the checklist, the key elements of an provable submittal under the NO_X SIP Call are: a budget demonstration; enforceable control measures; legal authority to implement and enforce the control measures; adopted control measure compliance dates and schedules; monitoring, record keeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's web site at: *http://www.epa.gov/ttn/otog/sip/related.html.*

As described above, the final NO_X SIP Call rule included a model NO_X budget trading regulation. See 40 CFR part 96. EPA used the model rule to evaluate New York's Part 204. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), in evaluating the approvability of New York's submittal. EPA also used section 110 of the Act, "Implementation Plans," to evaluate the approvability of New York's submittal as a revision to the SIP.

F. What Is the Result of EPA's Evaluation of New York's Program?

EPA has evaluated New York's NO_X SIP Call submittal and proposes to find it approvable. The April 3, 2000 and April 18, 2000 submittals will strengthen New York's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. EPA proposes to find that the NO_X control measure, Part 204, as well as the SIP narrative that includes New York's 2007 NO_X baseline and controlled budgets, are approvable. EPA finds that the submittal contained the information necessary to demonstrate that New York has the legal authority to implement and enforce the control measures, as well as a description of how the state intends to use the compliance supplement pool. Furthermore, EPA proposes to find that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

Although provisions in New York's control regulation, Part 204, differ slightly from EPA's NO_X Budget Trading Model Rule, EPA finds that Part 204 is consistent with EPA's guidance and meets the requirements of the NO_X SIP Call, including those found in 40 CFR part 51, § 51.121 and § 51.122 and 40 CFR part 96, as well as the general SIP submittal requirements of the Act, section 110, 42 U.S.C. 7401 *et seq.* The most notable differences between the EPA's model rule and New York's control regulation are related to the applicability of Part 204 to Portland cement kilns and smaller electricity generating sources than the model rule, and the use of a different method for allocating NO_X allowances. These differences are acceptable since Part 204 conforms with the timing requirements for submitting the allocations to EPA.

While Part 204 contains provisions which differ slightly from the model rule, these deviations are limited to the acceptable deviations under § 51.121(p)(2). Therefore New York's Part 204 is approvable as satisfying the same portion of New York's NO_X emission reduction obligations as the State projects the regulation will satisfy. See 63 FR 57495–57496.

EPA is proposing to approve New York's Part 204, and provides the following clarification with respect to exempted NO_X Budget units. New York's Part 204–1.5 contains provisions dealing with the shutdown and/or change in physical characteristics of a NO_X Budget unit and allows units which shutdown to re-enter the trading program as new sources or as opt-in sources if they change their physical characteristics such that they no longer are NO_X Budget units. Therefore, New York should ensure that when the State computes future budget demonstrations, the emissions which account for shutdown and modified units are not combined with emissions from these new sources or with the emissions from uncontrolled source categories.

For example, allowing shutdown units to re-enter the Program without reducing the budget will decrease the tons of emissions reductions. The units' emissions would still be included in the trading program budget and allocated to other NO_X Budget units, thereby requiring fewer tons of reduction from all other NO_X Budget units. Similarly, New York's Part 204–1.4(b) provides for units which emit less than 25 tons of NO_X per ozone season to be exempted from the trading program. However, New York does not reduce the trading program budget by the NO_X emission limitation which again creates the potential for misinterpreting its emissions during a future budget determination. In this case, the unit's emissions could be counted in both the trading program budget and the uncontrolled source categories. In its budget demonstration, New York is responsible for accounting for the emissions reductions which it would have obtained from any shutdown or modified units.

Regarding New York's SIP narrative, EPA finds that the submittal contains the required elements, including: the baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory (budget demonstration) reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial and 2007 state reporting requirements. EPA further finds that New York's 2007 projected inventory, reflecting the control strategies, is approvable, reflecting the air quality objectives of the NO_X SIP Call.

For additional information regarding EPA's evaluation of New York's SIP Call submittal, the reader should refer to the document entitled, "Technical Support Document for New York's NO_X SIP Call Submittal," dated October 3, 2000. Copies of the technical support document can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

II. New York's NO_X Budget Program

A. What Is New York's NO_X Budget Demonstration?

New York's April 18, 2000 SIP submittal, as supplemented on May 16, 2000, includes New York's SIP narrative entitled, "New York State Implementation Plan For Ozone; Meeting The Statewide Oxides of Nitrogen (NO_X) Budget Requirements Contained In The NO_X SIP Call (63 FR 57356, October 27, 1998)," that contains a statewide NO_X emissions budget for the 2007 ozone season. Combined with

New York's new regulation, Part 204, "NO_X Budget Trading Program," the narrative demonstrates that the statewide NO_X budget will be met in 2007.

The NO_X SIP Call contained EPA calculations of baseline NO_X emissions for the year 2007 for stationary point sources that are EGUs, stationary point sources that are non-EGUs, area sources, and mobile sources (both nonroad and highway). New York's SIP submittal incorporated EPA's 2007 baseline inventory.

To achieve the statewide budget, New York is relying on the expected NO_X reductions from Part 204. Part 204 applies to all EGUs with nameplate electricity generating capacities equal to or greater than 15 megawatts that sell any amount of electricity, non-EGU units that have a maximum design heat input capacity equal to or greater than 250 mmBtu per hour, as well as Portland cement kilns with maximum design heat inputs equal to or greater than 250 mmBtu per hour.

Below is a table of the 2007 baseline, 2007 budget, and projected 2007 emission levels that New York has submitted with its NO_X SIP Call submittals. The 2007 baseline and budget emissions in the following table are identical to the emission levels published by EPA in the March 2000 technical amendment. EPA has reviewed and agrees with New York's procedures for determining the 2007 projected emissions and reductions and therefore, EPA expects that New York's 2007 statewide budget will be achieved.

Source category	EPA's 2007 baseline NO_X emissions for NY (tons/season)	EPA's 2007 NO_X budget emissions for NY (tons/season)	NY's 2007 projected emissions (tons/season)	NY's 2007 projected reductions (tons/season)
EGUs	39,199	31,036	[1] 30,589	8,610
Non-EGU Point	32,678	25,477	[2] 25,185	7,493
Area Sources	17,423	17,423	17,423	0
Non-Road Mobile	42,091	42,091	42,091	0
Highway Mobile	124,261	124,261	124,261	0
NY Total	255,652	240,288	239,549	16,103

[1] 30,405 cap from trading program.
[2] 10,945 cap from trading program.

B. What Is New York's NO_X Budget Trading Program?

In response to the NO_X SIP Call, New York adopted Part 204, "NO_X Budget Trading Program." With Part 204, New York established a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. New York developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the kind of interstate NO_X allowance trading program described in § 51.121(b)(2).

Under Part 204, New York allocates NO_X allowances to its EGUs and large industrial units, including Portland cement kilns. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can ever use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budgeted source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other Federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

As described above, Part 204 differs from EPA's NO_X model budget trading rule in two notable ways. Specifically, Part 204 includes Portland cement kilns and smaller electricity generating sources than the model rule. Also, Part 204 uses a different method for allocating NO_X allowances. Refer to section I.F. of this document for more details.

C. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a "compliance supplement pool." The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. The NO_X SIP Call included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply, or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.*, early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3).

Part 204 provides for the distribution of supplementary allowances by the early reduction credit methodology but not the direct distribution methodology. The distribution of early reduction credits are available to sources that implement NO_X reductions beyond applicable requirements after September 30, 1999 but before May 1, 2003. Under Part 204, New York will only provide early reduction credits to those sources holding banked allowances that were allocated in 2000, 2001, and 2002, under New York's Ozone Transport Commission's (OTC's) Memorandum of Understanding (MOU). Subpart 227–3 contains New York's SIP approved OTC's regional NO_X cap and allowance trading program. See 65 FR 20905, April 19, 2000.

Part 204 specifies New York's compliance supplement pool to be 2,370 allowances whereas EPA's March 2000 technical amendment allows for 2,764 allowances. If New York wants to take advantage of this increased share of the pool, New York should amend Part 204 to 2,764 tons and submit it as a SIP revision for EPA approval. Also, should EPA subsequently revise New York's compliance supplement pool amount through rulemaking, New York should amend Part 204 and submit it as a SIP revision for EPA approval.

D. How Does New York's Program Protect the Environment?

New York's revised NO_X SIP Call submittal is expected to result in about 6.3% reduction in NO_X from New York's total 2007 baseline ozone season inventory and about 22.4% reduction in NO_X from the EGUs and non-EGUs affected by Part 204. After reviewing air quality modeling assessments performed for the NO_X SIP Call, EPA has determined that the NO_X reductions in New York and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Besides ozone air quality benefits, decreases of NO_X emissions will also help improve the environment in several other important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

E. How Will New York and EPA Enforce the Program?

Once approved into New York's SIP, both New York and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in Part 204. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emission allowances, emissions monitoring or pollution control equipment requirements. New York and EPA will be able to enforce the source specific requirements of those permits.

In order to determine compliance with the emission requirements of the program, at the end of each ozone season, New York and EPA will compare sources' allowance and actual emissions. The allowances are tracked using the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X actually emitted by that source and recorded in the NO_X Emissions Tracking System (NETS) for a particular ozone season. For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. When Did New York Propose and Adopt the Program?

New York published public notices on June 30, 1999 and February 16, 2000 to announce the availability of the proposed Part 204 and the SIP narrative, that included the statewide 2007 NO_X emission budget, respectively. The public notices opened 30-day public comment periods. New York held public hearings on the proposed regulation on August 2 and 3, 1999 and on the SIP narrative on March 20 and 21, 2000. After modifying the proposal in response to public comment, New York filed the final Part 204 on January 26, 2000 with the Department of State. The regulation became effective at the State level on February 25, 2000.

G. When Did New York Submit the SIP Revision to EPA and What Did It Include?

New York submitted Part 204 and the SIP narrative to EPA, on April 3, 2000 and April 18, 2000 respectively, with a request to revise the New York SIP. On July 11, 2000, EPA sent a letter to New York finding the SIP submittals technically and administratively complete.

New York's SIP submittals include the following:

- Adopted control measures which require emission reductions beginning in 2003; Part 204, "NO_X Budget Trading Program";
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007, as part of New York's SIP narrative;
- A 2007 projected inventory (budget demonstration) reflecting NO_X reductions achieved by the state control measures contained in the submittal, as part of New York's SIP narrative;
- A description of how the State intends to use the compliance supplement pool, as part of New York's SIP narrative and in Part 204;
- A commitment to meet the annual, triennial, and 2007 reporting requirements, as part of the SIP narrative.

H. What Other Significant Items Relate to New York's Program?

In addition to submitting the April 2000 SIP package in order to fulfill its NO_X SIP Call obligation, New York adopted Part 204 as part of its one-hour ozone attainment plans for the ozone nonattainment areas of the State. The attainment plans rely on the NO_X reductions associated with Part 204 in 2003 and beyond. EPA proposed approval of New York's attainment plans for ozone nonattainment areas on December 16, 1999. See 64 FR 70364. Approval and implementation of Part 204 is relied on in order for New York to attain the one-hour ozone standard.

Part 204 is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including New York, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of reductions by 1999 and another phase of reductions by 2003.

As a signatory state of the MOU, New York adopted its NO_X budget and allowance trading regulation, Subpart 227–3, on January 12, 1999. Subpart 227–3 contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as "OTC Phase II." EPA approved New York's Phase II OTC NO_X budget regulation on April 19, 2000. See 65 FR 20905. Although the OTC MOU obligations are not Federal requirements, Part 204 can be viewed as satisfying the "OTC Phase III" program requirements for the ozone seasons beginning in 2003 and beyond.

I. Impact of D.C. Circuit Court Remand on New York's NO_X SIP Call Submittal

On March 3, 2000, the D.C. Circuit ruled on *Michigan* v. *EPA*, affirming many aspects of the NO_X SIP call and remanding certain other portions to the Agency (*e.g.*, the definition of an EGU and the control assumptions for internal combustion engines). Because of the litigation, the States' deadline for submitting their SIP revisions was extended, and as a result, by order dated August 30, 2000, the Court also extended the deadline for implementation of the required SIP revisions from May 1, 2003 to May 31,

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2004. Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including New York. The Agency expects to publish those recalculated budgets in the next few months. However, this means that although EPA is proposing to approve New York's SIP submittal as meeting the air quality objectives of the NO_X SIP Call published to date, New York may be required to make minor adjustments to its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, EPA will inform New York and other states subject to the NO_X SIP Call as to what if any changes are needed.

J. What Is the Relationship of Today's Proposal to EPA's Findings Under the Section 126 Rule?

In the January 18, 2000 section 126 rule (65 FR 2674), EPA granted, in part, petitions submitted by Connecticut, Massachusetts, New York, and Pennsylvania under the 1-hour ozone standard. The EPA made findings that large EGUs and large non-EGUs located in the District of Columbia and 12 states, including a portion of New York, are significantly contributing to nonattainment problems in one or more of the petitioning states. The January 18, 2000 rule established Federal emissions limits for the affected sources in the form of tradable NO_X allowances and required these sources to reduce NO_X emissions by May 1, 2003.

The section 126 rule provides that if a state submits, and EPA fully approves, a SIP revision meeting the requirements of the NO_X SIP call, the section 126 findings and associated control requirements would automatically be revoked for sources in that state. See 40 CFR 52.34(i). As discussed in the preamble to the section 126 rule (65 FR 2682–2684), the premise for the automatic withdrawal provision was that once a SIP (or Federal Implementation Plan (FIP)) controls the full amount of significant contribution from a state, the section 126 sources in that state could no longer be significantly contributing to downwind nonattainment, and hence the basis for the section 126 findings would no longer be present. Moreover, the provision would ensure that the downwind states receive the emission reduction benefits they are entitled to under section 126 by May 1, 2003, either under the section 126 rule or under a federally enforceable SIP or FIP. See 65 FR 2684. Thus, EPA's rationale for adopting the automatic withdrawal provision depended upon a May 1, 2003 compliance date for sources under the SIP that would substitute for the control remedy under section 126. Accordingly, EPA interpreted section 52.34(i) to apply only where EPA approves a SIP revision (or promulgates a FIP) meeting the full requirements of the NO_X SIP call and including a May 1, 2003 compliance date for sources.[3] See 65 FR 2683.

As discussed in section II.I. of this proposal, the EPA is currently revising certain portions of the NO_X SIP call in response to a March 3, 2000 decision by the U.S. Court of Appeals for the D.C. Circuit. *See Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). In this decision, the court upheld the NO_X SIP call on all major issues, but remanded four narrow issues to EPA for further rulemaking. EPA expects to issue soon a proposal to address the remanded issues, which will slightly modify the NO_X SIP budgets based on the court's decision. In light of the changes necessary to respond to the court decision, EPA anticipates that the final NO_X SIP budgets would be no more stringent than the original SIP budgets as modified by the March 2, 2000 technical amendment which modified the NO_X emission budgets for each affected state. See 65 FR 11222. Therefore, a SIP meeting the March 2, 2000 budgets and providing for reductions by May 1, 2003, should fully address the significant NO_X transport from that state, and therefore section 52.34(i) would apply to automatically withdraw the section 126 requirements for sources in that state.

In today's action, EPA is proposing to approve the New York NO_X SIP revision as meeting the full NO_X SIP Call, and including a May 1, 2003 compliance date. Therefore, if the SIP revision is fully approved as proposed, the section 126 requirements will automatically be withdrawn for sources in the State pursuant to 40 CFR 52.34(i).

III. Proposed Action

EPA has reviewed New York's April 3, 2000 and April 18, 2000 SIP submittals, including New York's May 16, 2000 supplement, using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed New York's control measures and projected reductions and finds them approvable. Therefore, EPA proposes approval of Part 204 and the SIP narrative into the New York SIP at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. EPA will consider these comments before it takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by § 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 27, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–30912 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–P

[3] On August 30, 2000, in response to a motion from industry, the Court extended the NO_X SIP call compliance deadline for sources until May 31, 2004. The court's decision does not affect any state that chooses to submit a SIP revision which includes an earlier compliance deadline.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket Id–00–01; FRL–6912–4]

Finding of Attainment for PM–10; Portneuf Valley PM–10 Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: EPA is proposing to find that the Portneuf Valley nonattainment area in Idaho has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM–10) as of December 31, 1996.

DATES: Written comments must be received on or before December 26, 2000.

ADDRESSES: Written comments should be mailed to Debra Suzuki, SIP Manager, Office of Air Quality, Mailcode OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION: Throughout this notice, the words "we", "us", or "our" means the Environmental Protection Agency (EPA).

Table of Comments

I. Background
  A. Designation and Classification of PM–10 Nonattainment Areas.
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  A. What Does the Air Quality Data Show As of the December 31, 1996 Attainment Date?
  B. Does the More Recent Air Quality Data Also Show Attainment?
  C. Request for Public Comment.
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I. Background

A. Designation and Classification of PM–10 Nonattainment Areas

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA) were designated nonattainment for PM–10 by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. See generally 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM–10 prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as "initial" PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). The Power-Bannock Counties PM–10 nonattainment area was one of these initial moderate PM–10 nonattainment areas. As discussed below, the Portneuf Valley PM–10 nonattainment area was originally part of the Power-Bannock Counties PM–10 nonattainment area.

All initial moderate PM–10 nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant up to two one-year extensions to the attainment date provided certain requirements are met. States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM–10 NAAQS by the December 31, 1994 attainment date was practicable. See section 189(a).

B. How Does EPA Make Attainment Determinations

All PM–10 nonattainment areas are initially classified "moderate" by operation of law when they are designated nonattainment. See section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM–10 nonattainment areas attained the PM–10 NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement.

Generally, we determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined to meet federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A &B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual

arithmetic mean PM–10 concentration over a three year period (for example 1994, 1995, and 1996 for areas with a December 31, 1996 attainment date) is equal to or less than 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m3 (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM–10. See 40 CFR part 50 and appendix K.

C. What is the Attainment Date for the Portneuf Valley PM–10 Nonattainment Area

As stated above, the Power-Bannock Counties PM–10 nonattainment area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990. The area covered approximately 266 square miles in south central Idaho and included State lands in portions of Power and Bannock Counties, as well as both trust and fee lands within the Fort Hall Indian Reservation. The cities of Pocatello and Chubbuck were located near the center of this nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the "industrial complex," where two major stationary sources of PM–10 are located, which was also in the Power-Bannock Counties PM–10 nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex, with the Astaris-Idaho, LLC facility (formerly owned and operated by FMC Corporation) located on the Fort Hall Indian Reservation and the J.R. Simplot Corporation facility located on State lands immediately adjacent to the Reservation. For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29670 (June 12, 1996).

The original attainment date for the Power-Bannock Counties PM–10 nonattainment area was December 31, 1994. The attainment date was later extended to December 31, 1995, and then to December 31, 1996, under the authority of section 188(d) of the Act. See 61 FR 20730 (May 8, 1996) (first one-year extension); 61 FR 66602 (December 18, 1996) (second one-year extension). Effective December 7, 1998, the Power-Bannock Counties PM–10 nonattainment area was split into two nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands: the Fort Hall PM–10 nonattainment area and the Portneuf Valley PM–10 nonattainment area. For a more detailed discussion of the rationale behind EPA's decision to split the Power-Bannock County PM–10 nonattainment area into two separate PM–10 nonattainment areas, please refer to the discussion at 63 FR 33597 (June 19, 1998)(proposed action) and 63 FR 59722 (November 5, 1998)(final action). The attainment date for both nonattainment areas continues to be December 31, 1996.

D. What PM–10 Planning has Occurred for the Portneuf Valley PM–10 Nonattainment Area

After the Power-Bannock Counties PM–10 nonattainment area was designated nonattainment for PM–10, the Idaho Division of Environmental Quality (IDEQ), the Shoshone-Bannock Tribes, and EPA began to work together in the early 1990s to prepare the technical elements needed to bring the area into attainment and meet the planning requirements of title I of the CAA. Based on these technical products, IDEQ, along with several local agencies, developed and implemented control measures on PM–10 sources in what is now known as the Portneuf Valley PM–10 nonattainment area. The State submitted these control measures to EPA in 1993 as a moderate PM–10 nonattainment state implementation plan (SIP) revision under section 189(a) of the Act. The control measures submitted by the State include a comprehensive residential wood combustion program, controls on fugitive road dust, and a revised operating permit for the J.R. Simplot facility, the only major stationary source of PM–10 in the Portneuf Valley PM–10 nonattainment area. EPA has not yet taken final action to approve the State's moderate PM–10 SIP for the area and additional air quality planning efforts may be needed because of recent air quality data. EPA will take action on IDEQ's SIP revision for the Portneuf Valley PM–10 nonattainment area in a separate rulemaking. For a discussion of the PM–10 planning for the Fort Hall PM–10 Nonattainment Area, please refer to 64 FR 7308 (February 12, 1999); 65 FR 51412 (August 23, 2000).

II. EPA's Proposed Action

A. What Does the Air Quality Data Show As of the December 31, 1996 Attainment Date?

Whether an area has attained the PM–10 NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR 50, appendix K. For an area with a December 31, 1996, attainment date, data reported for calendar years 1994, 1995 and 1996 is considered.

The State of Idaho has established and operated four PM–10 SLAMS monitoring sites in the Portneuf Valley PM–10 nonattainment area during 1994 through 1996. The State began monitoring for PM–10 in 1986 at the Sewage Treatment Plant (STP) monitoring site, located approximately one mile to the northeast of the industrial complex. A site at Idaho State University (ISU), located near downtown Pocatello, began operation in 1988 and continued operation until June 1999. The Chubbuck School monitoring site (CS), located approximately four miles northeast of the industrial complex, began operation in 1989 and continued operation until July 1999. In 1990, a fourth PM–10 monitoring site was established at the intersection of Garrett and Gould (G&G), located approximately halfway between the industrial complex and downtown Pocatello. All four monitoring sites meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E, and continue to monitor for PM–10.

There have been no violations of the annual PM–10 standard at any of the State monitors since 1990. A violation of the 24-hour PM–10 NAAQS was recorded at the ISU and G&G monitoring sites on January 7, 1993. As a result of the one-in-every six day sampling frequency at each of these sites at that time, the expected exceedance rate for the 1993 calendar year at the SLAMS sites was 6.0. No measured values above the level of the 24-hour NAAQS were recorded, however, in the remainder of 1993, 1994, 1995, or 1996. Therefore, the three year average (1994, 1995, 1996) expected exceedance rate at the SLAMS sites as of the attainment date of December 31, 1996 is 0.0. This data was discussed in detail in the June 19, 1998, **Federal Register** notice which proposed to split the Power-Bannock Counties PM–10 nonattainment area at the State-Reservation boundary. See 63 FR 33597. In the public comments received on that proposal, no one disputed the validity of that data and EPA has received no additional air quality data since that time for the period from 1994 to 1996 showing an exceedence of PM–10 standards. Therefore, EPA proposes to find that the Portneuf Valley PM–10 nonattainment area attained the PM–10 standard by extended attainment date of December 31, 1996.

B. Does the More Recent Air Quality Data Also Show Attainment?

Although the attainment date for the Portneuf Valley PM–10 nonattainment area is December 31, 1996, and the air quality data used to judge attainment by that date includes all data collected in calendar years 1994, 1995, and 1996, EPA has also reviewed the air quality data collected at the State monitoring sites from 1997 through the second quarter of 2000. During 1997, the highest measured PM–10 concentration was recorded at the STP site at a level of 149 ug/m3, just below the level of the 24-hour standard. All other measurements in the Portneuf Valley PM–10 nonattainment area during 1997 were less than 100 ug/m3. During 1998, the highest measured PM–10 concentration recorded on any of the State monitors was at the CS site, at a level of 118 ug/m3. The second highest measured PM–10 concentration was at the ISU site, at a level of 108 ug/m3. All other measurements in the area were less than 100 ug/m3 during 1998.

During the end of December 1999 and the beginning of January 2000, there was a significant air pollution episode in the Portneuf Valley and Fort Hall PM–10 nonattainment areas during which elevated levels of PM–10 were recorded on the State monitors as well as on the Tribal monitors. In addition, both the State of Idaho and the Shoshone-Bannock Tribes received a significant number of air quality complaints during this time. During this several day episode, three levels above the level of the 24-hour PM–10 NAAQS were reported on the State monitors, all of which occurred at the G&G site: 183 ug/m3 on December 27, 1999, 168 ug/m3 on December 29, 1999, and 159 ug/m3 on December 31, 1999. The next highest concentration at the G&G site during 1999 was 146 ug/m3 on December 26, 1999, which is below the level of the 24-hour PM–10 standard. The G&G site samples every day between October 1st and March 30th. The other three State monitoring sites did not report levels above 150 ug/m3, the level of the 24-hour PM–10 standard. The next highest level reported at any of the other of the State monitoring sites during 1999 was 124 ug/m3 recorded at the STP site on December 26, 1999. The highest reported concentration during 1999 at the ISU site was 74 ug/m3 on January 25, 1999, and at the CS site was 39 ug/m3 on January 30, 1999. During the first two quarters of 2000, the highest 24-hour PM–10 concentration was recorded at the G&G site, at 112 ug/m3 on February 6, 2000.

Although the three days with concentrations above the level of the 24-hour PM–10 NAAQS reported at the G&G site at the end of 1999 are of concern to EPA, these data do not represent a violation of the 24-hour PM–10 standard because there were no days with levels above the 24-hour PM–10 standard during 1997 and 1998. Three exceedences in three years results in an expected exceedance rate of 1.0 for the three-year period from 1997 to 1999, just below the rate that would represent a violation of the 24-hour PM–10 standard. Should any measured level above the 24-hour PM–10 standard be recorded at G&G site during the years 2000 or 2001, however, then a violation of the 24-hour PM–10 standard would exist in the Portneuf Valley PM–10 nonattainment area. EPA is continuing to closely follow the air quality data reported by the State of Idaho for the Portneuf Valley PM–10 nonattainment area.

In summary, there were no PM–10 concentrations above the level of the 24-hour standard at any of the four different SLAMS monitoring sites in the Portneuf Valley PM–10 nonattainment area in 1994, 1995, and 1996, which indicates that the Portneuf Valley area attained the 24-hour PM10 NAAQS as of December 31, 1996. Review of the annual standard for calendar years 1994, 1995 and 1996 reveals that the Portneuf Valley area also attained the annual PM–10 NAAQS as of December 31, 1996. The area has continued to attain the 24-hour and annual PM–10 standards since that time. Therefore, EPA proposes to find that the Portneuf Valley PM–10 nonattainment area attained the PM–10 NAAQS as of December 31, 1996. If we finalize this proposal, consistent with CAA section 188, the area will remain a moderate PM–10 nonattainment area and will avoid the additional planning requirements that apply to serious PM–10 nonattainment areas.

This proposed finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because Idaho has not submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Portneuf Valley PM–10 nonattainment area until such time as Idaho meets the CAA requirements for redesignations to attainment.

C. Request for Public Comment

We are soliciting public comments on EPA's proposal to find that the Portneuf Valley PM–10 nonattainment area has attained the PM–10 NAAQS as of the December 31, 1996 attainment date. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely makes a determination based on air quality date and does not impose any requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality date and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied

with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 21, 2000.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 00–31053 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2676, MM Docket No. 00–241, RM–9968]

Digital Television Broadcast Service; Hastings, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Nebraska Educational Telecommunications Commission, licensee of noncommercial educational Station KHNE(TV), NTSC Channel *29, Hastings, Nebraska, requesting the substitution of DTV Channel *28 for station KHNE(TV)'s assigned DTV Channel *14. DTV Channel *14 can be allotted to Hastings, Nebraska, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (40–46–20 N. and 98–05–21 W.). As requested, we propose to allot DTV Channel *28 to Hastings with a power of 200 and a height above average terrain (HAAT) of 366 meters.

DATES: Comments must be filed on or before January 22, 2001, and reply comments on or before February 6, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for Nebraska Educational Telecommunications Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–241, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nebraska is amended by removing DTV Channel *14 and adding DTV Channel *28 at Hastings.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30974 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2677, MM Docket No. 00–242, RM–9998]

Digital Television Broadcast Service; Weston, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Withers Broadcasting Company of West Virginia, licensee of station WDTV–TV, NTSC channel 5, Weston, West Virginia, requesting the substitution of DTV channel 6 for station WDTV–TV's assigned DTV channel 58. DTV Channel 6 can be allotted to Weston, West Virginia, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (39–04–29 N. and 80–25–28 W.). As requested, we propose to allot DTV Channel 6 to Weston with a power of 10 and a height above average terrain (HAAT) of 253 meters.

DATES: Comments must be filed on or before January 22, 2001, and reply comments on or before February 6, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson, Lee G. Petro, Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel for Withers Broadcasting Company of West Virginia).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–242, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

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For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia is amended by removing DTV Channel 58 and adding DTV Channel 6 at Weston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30973 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2691, MM Docket No. 00–243, RM–9981]

Digital Television Broadcast Service; Orono, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Maine Public Broadcasting Corporation, licensee of noncommercial educational station WMEB–TV, NTSC channel 12, Orono, Maine, proposing the substitution of DTV channel *9 for station WMEB–TV's assigned DTV channel *22. DTV Channel *9 can be allotted to Orono, Maine, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (44–42–13 N. and 69–04–47 W.). However, since the community of Orono is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel *9 to Orono with a power of 15.0 and a height above average terrain (HAAT) of 375 meters.

DATES: Comments must be filed on or before January 25, 2001, and reply comments on or before February 9, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow, Lohnes & Albertson, 1200 New Hampshire, NW., Suite 800, Washington, DC 20036 (Counsel for Maine Public Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–243, adopted December 1, 2000, and released December 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Maine is amended by removing DTV Channel *22 and adding DTV Channel *9 at Orono.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30971 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG28

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Zayante Band-winged Grasshopper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft economic analysis for the proposed designation of critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*). We are opening a 15-day comment period to allow all interested parties to submit written comments on the draft economic analysis. Comments submitted during this comment period will be incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period is opened and we will accept comments until

December 21, 2000. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at "www.r1.fws.gov" or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. All written comments should be sent to the Field Supervisor at the above address. You may also send comments by electronic mail (e-mail) to "fw1grasshopper@r1.fws.gov." Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AG27" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805–644–1766; facsimile 805–644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Zayante band-winged grasshopper (*Trimerotropis infantilis*) was first described from near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California, in 1984 (Rentz and Weissman 1984). The grasshopper is in the Order Orthoptera and Family Acrididae.

The body and forewings of the Zayante band-winged grasshopper are pale gray to light brown with dark cross-bands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue, and the eyes have bands around them. Males range in length from 13.7 to 17.2 millimeters (0.54 to 0.68 inches); females are larger, ranging in length from 19.7 to 21.6 millimeters (0.78 to 0.85 inches) (Otte 1984; Rentz and Weissman 1984).

The Zayante band-winged grasshopper occurs in association with the Zayante series soils in the vicinity of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley in Santa Cruz County, California. These soils harbor a complex mosaic of vegetation dominated by maritime coast range ponderosa pine forest and northern maritime chaparral (Griffin 1964; Holland 1986). The distributions of these two vegetative communities overlap to form a complex and intergrading mosaic of communities variously referred to as ponderosa sand parkland, ponderosa pine sand hills, and silver-leafed manzanita mixed chaparral. These communities are collectively referred to as "Zayante sand hills" and harbor a diversity of rare and endemic plant and animal species, including the Zayante band-winged grasshopper (Thomas 1961; Griffin 1964; Morgan 1983). A unique habitat within the Zayante sand hills is sand parkland, characterized by sparsely vegetated, sandstone dominated ridges and saddles that support scattered ponderosa pines and a wide array of annual and perennial herbs and grasses.

Within the Zayante sandhills, the Zayante band-winged grasshopper occurs primarily in early successional sand parkland with widely scattered tree and shrub cover, extensive areas of bare or sparsely vegetated ground, loose sand, and relatively flat relief. In addition, Zayante band-winged grasshoppers have been observed in areas with a well-developed ground cover and in areas with sparse chaparral mixed with patches of grasses and forbs (Hovore 1996; Arnold 1999a,b).

The primary threat to the Zayante band-winged grasshopper is loss of habitat. Over 40 percent of Zayante sand hills, and 60 percent of the sand parkland within that habitat, is estimated to have been lost or altered due to human activities, including sand mining, urban development, recreational activities and agriculture (R. Morgan, private consultant, pers. comm. 1992; Marangio and Morgan 1987; Lee 1994). Approximately 200 to 240 hectares (ha) (500 to 600 acres(ac)) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (R. Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac), largely because of identification and inclusion of additional lower quality sand parkland (Lee 1994).

The disruption of natural landscape-level processes may also be resulting in shifts in vegetative communities and loss of habitat for the Zayante band-winged grasshopper. For example, lack of fire is resulting in the encroachment of mixed evergreen forest into ponderosa pine forest (Marangio 1985). Lack of sunlight as a result of shading by Ponderosa pines appears to be restricting use of areas by the Zayante band-winged grasshopper and resulting in low population numbers (C. Sculley, USFWS, pers. observation 1999). Historically, fires would have burned in these areas resulting in the loss of Ponderosa pines and the creation of areas with increased exposure to sunlight. Non-native species of vegetation, including Portuguese broom (*Cystisus striatus*) and sea fig (*Carpobrotus chilensis*) are out-competing native vegetation and encroaching on sites occupied by the Zayante band-winged grasshopper (Rigney 1999). Pesticides and over-collection are also recognized as potential threat to the Zayante band-winged grasshopper.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the species was federally listed as endangered on January 24, 1997 (62 FR 3616). On July 7, 2000, we published in the **Federal Register** (65 FR 41919) a determination proposing critical habitat for the Zayante band-winged grasshopper. Approximately 4,230 hectares (10,560 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, as described in the proposed determination.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Zayante band-winged grasshopper and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address. We will accept written comments during this reopened comment period. The current comment period on this proposal closes on December 21, 2000. Written comments may be submitted to the Ventura Fish and Wildlife Office in the **ADDRESSES** section.

Author

The primary author of this notice is Colleen Sculley, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 29, 2000.

Dennis D. Peters,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 00–31007 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 235
Wednesday, December 6, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–047N]

FSIS: The Next Steps

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a public meeting on December 13, 2000, to discuss the Agency's plans to continue to improve the quality and effectiveness of its programs and to work with establishments in the meat and poultry industry to improve their performance under the Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) regulations. FSIS believes that, since the HACCP-based regulatory approach has now been implemented in meat and poultry establishments of all sizes, it is time to plan for these improvements. At the meeting, FSIS will provide information and receive comments from the public on several major areas in which improvements can and should be made. FSIS will carefully consider the input from all interested parties at this meeting in formulating a multi-year strategy for such program improvements.

DATES: The meeting will be held from 9:00 a.m. to 3:00 p.m. on December 13, 2000. Written comments must be received on or before January 5, 2001.

ADDRESSES: The meeting will be held at the Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037; telephone (202) 429–2400. Submit written comments to the FSIS Docket Clerk, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. Interested persons are requested to submit an original and two copies of comments concerning this subject. Comments should be sent to the Docket Clerk at the address shown above and should refer to Docket No. 00–047N. Copies of all comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: To obtain general information about the meeting arrangements, contact Ms. Sally Fernandez at (202) 690–6524 or fax at (202) 690–6519. For more technical program information, contact Loren Lange, Special Assistant to the Deputy Administrator, Office of Policy, Program Development, and Evaluation, FSIS, at (202) 690–4039 or fax (202) 205–0058.

SUPPLEMENTARY INFORMATION: The regulatory requirements mandated by the Pathogen Reduction/HACCP final rule (61 FR 33806 *et seq.*) have now been implemented by meat and poultry establishments of all sizes. Although some of the establishments have excellent HACCP programs, it is clear that other establishments have less effective programs, and that some owners and managers may not fully understand their responsibilities under the Sanitation Standard Operating Procedures regulations (9 CFR 416.11–416.17) and HACCP program requirements (9 CFR 417).

It is also clear that FSIS activities can be improved. Many more FSIS personnel need training, more experience, and better feedback in HACCP concepts and in the application of FSIS HACCP regulations. FSIS personnel also need additional guidance material that they can use to better assist small and very small establishments. In addition, FSIS must complete regulatory actions that fill in gaps in the HACCP framework and the farm-to-table food safety continuum. FSIS needs to establish the necessary infrastructure to fulfill its responsibilities as a 21st century public health regulatory agency.

The public meeting is being held to discuss the Agency's current thinking on, and public reaction to, themes that will guide the Agency's strategies and activities for making system improvements. At the public meeting, presentations will be made on HACCP experience and accomplishments to date and the Agency's thinking about the concepts that are likely to guide its future actions. After the presentations, there will be opportunity for further discussion and comment by interested parties.

Additional Public Notification

FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. FSIS anticipates that this notice will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, notices are designed to provide information and receive public comment on issues that may lead to new or revised Agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly Constituent Update, which is communicated via fax to more than 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, allied health professionals, scientific professionals, and other persons who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done in Washington, DC, on November 30, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–31069 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 2000. The list of newspapers will remain in effect until June 1, 2001, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5301.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forest in Idaho:
The Idaho Statesman, Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah:
Salt Lake Tribute, Salt Lake City, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Salt Lake Tribune, Salt Lake City, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decision:
The Long Valley Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho World, Garden Valley, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decision:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decision:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpeler District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Westside District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Caribou-Targhee Forest Supervisor decisions for the Targhee Portion:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Range decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Specturm, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

Humboldt—Toiyabe National Forests

Humboldt—Toiyabe Forest Supervisor decisions for the Humboldt portion:

Elko Daily Free Press, Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
Reno Gazette-Journal, Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger, decisions:
The Review-Herald, Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystem (SMNRAE):
Spring Mountains National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho.
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
The Recorder-Herald, Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion:
The Challis Messenger, Challis, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon/Colbalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portion of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Idaho Mountain Express, Ketchum, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah, and
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herold, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah

Dated: November 30, 2000.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 00–30999 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Loan and Grant Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2001

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2001. The maximum dollar award on zero-interest loans for FY 2001 is $450,000. The maximum dollar award on grants for FY 2001 is $200,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2000, and ending September 30, 2001. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6870, 1400 Independence Avenue, SW, Washington, DC 20250. Telephone: (202) 720–9558. FAX: (202) 720–6561. E-mail: PWing@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2001 for zero-interest loans is $15 million and the projected program level for grants is $3 million. Applying the specified 3.0 percent to the program level for loans results in the maximum loan award of $450,000. Applying the specified 3.0 percent to the program level for grants results in an amount lower than $200,000. Therefore, the maximum grant award for FY 2001 will be $200,000.

Dated: November 21, 2000.

Wilbur T. Peer,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–30966 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2001 Survey of Program Dynamics.

Form Number(s): SPD–21005, SPD–21006, SPD–21007, SPD–21008, SPD–21009, SPD–21103(L), SPD–21105(L), SPD–21107(L), SPD–21109(L), SPD–21113(L), SPD–21999.

Agency Approval Number: 0607–0838.

Type of Request: Revision of a currently approved collection.

Burden: 37,023 hours.

Number of Respondents: 75,225.

Avg Hours Per Response: 29.5 minutes.

Needs and Uses: The Census Bureau seeks OMB approval to conduct the 2001 Survey of Program Dynamics (SPD). The SPD provides the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people. This survey simultaneously measures the important features of the full range of welfare programs, including programs that are being reformed and those that are unchanged, and the full range of other important social, economic, demographic, and family changes that will facilitate or limit the effectiveness of the reforms.

The SPD is a longitudinal study that follows a subset of the respondents from the 1992 and 1993 panels of the Survey of Income and Program Participation (SIPP). The SPD was first implemented in the spring of 1997 with a bridge survey that provided a link to baseline data for the period prior to the implementation of welfare reforms. The first full-scale SPD was conducted in 1998. Annual surveys are currently planned through 2002. The data gathered for the 10-year period (1992–2002) will aid in assessing short- to medium-term consequences of outcomes of the welfare legislation.

The 2001 SPD instrument will remain largely unchanged from 2000. A new response category will be added to an existing question regarding types of health insurance coverage. Also, a paper Adolescent Self-Administered Questionnaire (SAQ) for 12- to 17-year-olds will be added. The Adolescent SAQ was last asked in the 1998 SPD. The 2001 SPD is conducted by our interviewing staff using a computer-assisted interviewing instrument on laptops during personal and telephone interviews.

In order to improve the validity of the SPD data we supplemented the 2000 SPD sample with 3,500 former SIPP households who were non-interviews in the 1997 SPD. Contingent on Congressional funding, we plan to continue interviewing these 3,500 households and add an additional 6,000 former SIPP households to the 2001 SPD sample. As in previous years, we will offer monetary incentives to select groups of respondents in order to maintain and improve response rates.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 U.S.C., Section 614.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 30, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–30962 Filed 12–05–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) Update Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 5, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Tomassoni, Bureau of the Census, WP–1, Room 204, Washington, DC 20233. Phone Number 301–457–8253.

SUPPLEMENTARY INFORMATION:

I. Abstract

Note: The present clearance expires May 31, 2001. This request covers field activities to be conducted from June 1, 2001 through May 31, 2004.

The Census Bureau presently operates a generic clearance covering activities involving respondent burden associated with updating our Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) system. (The MAF is the Census Bureau's address database and TIGER is the geographic database.) We now propose to extend that generic clearance to cover update-activities we will undertake during the next three fiscal years.

Under the terms of the generic clearance, we plan to submit a request for OMB approval that will describe all planned activities for the entire period; we will not submit a clearance package for each updating activity. We will send a letter to OMB at least five days before the planned start of each activity that

gives more exact details, examples of forms, and final estimates of respondent burden. We also will file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted. This generic clearance enables OMB to review our overall strategy for MAF and TIGER updating in advance, instead of reviewing each activity in isolation shortly before the planned start. The Census Bureau used the MAF for mailing and delivering questionnaires to households during Census 2000. The MAF is also used as a sampling frame for our demographic current surveys. In the past, the Census Bureau built a new address list for each decennial census. The MAF we built for Census 2000 is meant to be kept current, thereby, eliminating the need to build a completely new address list for future censuses and surveys. The TIGER is a geographic system that maps the entire country in Census Blocks with applicable address range or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail. The following are descriptions of each activity we plan to conduct under the clearance for the next three fiscal years.

1. Community Address Updating System (CAUS)

The CAUS program will consist of both tests and actual production work over the next few years. The 2000 CAUS Field Test was conducted in twenty-four counties throughout the country. The test began in Fiscal Year (FY) 2000 and will continue into FY 2001. The tests objectives are to obtain address information about new housing units and add those to the MAF, and to correct and update the existing addresses in the MAF. In FY 2000, we produced data sets and assignments which we loaded onto laptop computers. The data sets are used in the Automated Listing and Mapping Instrument (ALMI) to allow the Field Representatives (FRs) to collect updates which can then be applied to the Master Address File (MAF) and TIGER.

In addition to the above, a smaller "Splash" test will be conducted sometime during the first half of 2001. This field test will be similar to the 2000 field test, but on a smaller scale. The estimated number of households involved will be 2,500. The estimated time per response is 2 minutes. The estimated respondent burden hours is 85 hours.

In FY 2002, there will be a CAUS Field Test Dress Rehearsal. The operation will be similar to the 2000 CAUS Field Test, but there will be more of a production component to the CAUS Dress Rehearsal. The estimated number of households involved will be 125,000. The estimated time per response is 2 minutes. The estimated respondent burden hours is 4,165 hours.

Planned for FY 2003 is the actual CAUS operation. The operation will take place nationwide. The estimated number of households involved will be 200,000. The estimated time per response is 2 minutes. The estimated respondent burden hours is 6,660 hours.

The CAUS will help the Census Bureau maintain a current MAF and TIGER throughout the decade and into the next decennial census.

2. Evaluation of the Quality of Geocodes

The Census Bureau is conducting the Accuracy and Coverage Evaluation (A.C.E.) to measure the overall and differential coverage of the U.S. population and housing in Census 2000. An independent listing (IL) of all the housing units in the A.C.E. sample clusters was conducted before census day. This IL was then matched to the Decennial Master Address File (DMAF) to measure housing unit coverage. In some cases, the results found in A.C.E. will reflect geocoding error in the census. The objective of the Evaluation of the Quality of the Geocodes Associated with Census Addresses is to measure the quality of the geocodes in Census 2000, beyond the measure provided by the A.C.E.

The final housing unit matching results from the A.C.E. sample are used as the starting point for this evaluation. For cases that didn't match during the final housing unit matching, the search will be extended from the block cluster level on the DMAF to a wider search area on the MAF. Potential matches from this search indicate possible geocoding error or cases that were excluded from Census 2000. In some cases, field follow-up will be done to confirm the matches.

There are approximately 310,000 housing units in the A.C.E. Approximately 10,600 of those 310,000 are expected to not match to the DMAF. These 10,600 cases will then be computer matched to the full MAF looking at the ring of 1990 census tracts surrounding the 1990 tract to which the address is assigned in the MAF.

Roughly 4,000 of the 10,600 housing units are expected to computer match to the MAF at the surrounding tract level and 6,600 are not. These 6,600 cases will be sent to the National Processing Center for clerical matching. About 2,000 of the 6,600 are estimated to clerically match to the MAF at the surrounding tract level. That gives an estimated 6,000 cases that will match to the MAF at the surrounding tract level. These 6,000 cases will be sent to the field for follow-up. For cases that match to units on the MAF within the ring of tracts, Field Division will be asked to confirm the existence of the unit and the MAF block. All of the remaining A.C.E. nonmatches will be assumed to be census misses.

It is anticipated that the field work will involve contacting respondents about residential status only if it is not already obvious. In addition, field staff may need to contact residents regarding specific information about the location of their unit to help determine what block they're in. The most burdensome case scenario would be all 6,000 units being contacted. The estimated time per response is 1 minute. The estimated total respondent burden is 100 hours. All of the field work is expected to take place in FY 2002.

3. Evaluation of the Block Splitting Operation for Tabulation Purposes

Collection blocks are blocks defined by visible features. Sometimes these blocks cross governmental or other required data tabulation boundaries. Collection blocks are used to conduct field operations. At the end of Census 2000, blocks need to be defined by governmental and other boundaries for data tabulation purposes. To achieve this, collection blocks need to be split in certain situations. The resulting blocks are called tabulation blocks.

The objective of this evaluation is to measure the quality of the processes that are used to provide the address range and map spot information to split blocks for tabulation purposes.

Approximately 600,000 blocks will be split for tabulation purposes. For this evaluation, a sample of collection blocks that have at least one block split caused by tabulation geography will be field visited. The purpose of the field visit is to determine if the splitting of the block was accurate relative to the actual feature or governmental unit boundary that caused the block split in the first place. The types of tabulation geography that are inscope for this evaluation are visible boundaries, non-visible governmental boundaries, and American Indian Reservation boundaries. The sample of blocks will be split blocks that have at least one housing unit or group quarters. Areas that were enumerated in the Remote Alaska operation will not be in sample. Puerto Rico will be in sample however, the sample size may not be large enough to produce estimates specifically for Puerto Rico.

All sampled split collection blocks will be sent to the field with maps and listings of addresses in the 2000 Census. Field will determine actual tabulation geography for every housing unit in the collection block.

A sample size has not been determined yet. The most burdensome case scenario would be approximately 10,000 units being contacted. This is based on the assumptions that:

- 2,000 blocks will be selected,
- Each block has 30 housing units,
- Most of the field work will be done by observation, and
- 5 housing units per block will need to be contacted to confirm their location relative to the governmental boundary.

The estimated time per response is 1 minute. The estimated total respondent burden is 167 hours. All of the field work will occur in FY 2001.

In addition to the above evaluations, there may be other evaluations that may be conducted in the next three years to help the Census Bureau evaluate the quality of work done during Census 2000. Any other evaluations would be similar to those above and would be within the scope of the clearance as a MAF/TIGER updating activity.

II. Method of Collection

The primary method of data collection for all operations will be personal interview by Census Listers or Enumerators using the operation's listing form. In some cases, the interview could be by telephone callback if no one was home on the initial visit. See part I for details of each operation.

III. Data

OMB Number: 0607–0809.

Form Number: The form numbers for some activities have not yet been assigned. See the descriptions of the activities in part I for form numbers where applicable.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: Varies by operation, see chart below.

Estimated Time Per Response: Varies by operation, see chart below.

Estimated Total Annual Burden Hours: FY01 377; FY02 10,500; FY03 16,700.

Estimated Total Annual Cost: The only cost to respondents is that of their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

Activity	FY 2001 respond-ents	FY 2002 respond-ents	FY 2003 respond-ents	Average hours per response	Responses per respondent	FY 2001 burden hours	FY 2002 burden hours	FY 2003 burden hours
CAUS (Splash Test)	2,500	0	0	.033	1	85	0	0
CAUS (Dress Rehearsal)	0	125,000	0	.033	1	0	4,165	0
CAUS Operation	0	0	200,000	.033	1	0	0	6,660
Evaluations (Quality of Geocodes)	0	6,000	0	.016	1	0	100	0
Evaluations (Block Splitting)	10,000	0	0	.016	1	167	0	0
Totals	12,500	131,000	200,000			252	4,265	6,660

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–30961 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Evaluation of Responses to the Question on Race

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 5, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christine Hough, Bureau of the Census, Building 2, Rm: 1801–MOD B, Washington, DC 20233–9200, 301–457–4248.

SUPPLEMENTARY INFORMATION:

I. Abstract

On October 30, 1997, the Office of Management and Budget (OMB) issued revised standards by which all federal agencies, beginning with Census 2000, are to collect, tabulate, and present data on race and ethnicity. Included in these standards was the identification of five racial categories—White, Black or African American, American Indian or Alaskan Native, Asian, and Native Hawaiian or Other Pacific Islander. For the 1990 census, sixteen specific racial response categories that collapsed into the 1977 four racial categories were used—White, Black or African American, American Indian or Alaskan Native, and Asian or Pacific Islander. The standards also included changes in the terminology used for each group and the sequencing of the questions on race and Hispanic origin. In the 1990 census, the question on race preceded the question on Hispanic origin with two intervening questions. For Census 2000, the question on Hispanic origin is

immediately before the question on race with a note to respondents to answer both questions. The most profound change to the standards was that of allowing respondents to report more than one race if they chose to do so. Some of the impetus for the OMB change to allow the reporting of one or more races came from the increasing number of interracial marriages and births to parents of different races in the past 25 to 35 years. For many census data users, both governmental and non-governmental as well as the private sector, there is a need to understand how the Census 2000 race distributions relate to race distributions from previous censuses and current surveys where respondents were instructed to report only one race.

Data by race from most federal surveys currently reflect a collection methodology of asking respondents to mark only one race category. Users of the Census 2000 data on race will need to compare the race distribution from Census 2000 to these other sources. The objective of the study is to produce data that will improve users' ability to make comparisons between Census 2000 data on race that allowed the reporting of one or more races, and data on race from other sources that allow single race reporting. The primary goal is to improve comparisons of 1990 and Census 2000 race distributions, at national and lower geographic levels. Other goals are to facilitate comparisons between Census 2000 and Census Bureau surveys which instruct respondents to mark one race, and with data from the vital records system which uses census data to calculate such indicators as birth and death rates.

II. Method of Collection

The methodology for the evaluation requires that the sample households be contacted twice to provide information on race. The sample households are mailed an initial questionnaire which they are scheduled to receive around July 1, 2001. Approximately one month later, the sample households are re-contacted by telephone to collect additional race and other information. The evaluation requires the administration of both the 1990 question on race and the Census 2000 question on race in a split panel design. A total sample of about 50,000 addresses will be selected containing respondents who reported more than one race, as well as addresses where respondents reported a single race in Census 2000.

For the initial data collection, one panel of about 25,000 housing units will be enumerated using a questionnaire similar to the Census 2000 short form with the 1990 census instruction to the question on race, that is, to "mark one race." The other panel of about 25,000 housing units will be enumerated using the identical questionnaire, except the instruction to the question on race will include the wording "mark one or more races." Census 2000 data collection methods will be used including the mailout/mailback procedure along with personal interviewing for those addresses that do not respond via mail. We are assuming a 50 percent initial mail response rate. Therefore, nonresponse follow-up procedures similar to those used for Census 2000 will be implemented. Results from each of the panels will be matched to their Census 2000 results. The match variables will include the name, age, date of birth, and sex of the sample housing unit members. Every effort will be made to capture data for people who moved into the sample address and ascertain the previous address at which they were enumerated in Census 2000. However, no efforts will be made to trace movers; that is, we will not ask information about people who have moved out of the sample addresses since April 1, 2000.

A reverse questionnaire design procedure will be used to re-contact housing units that participated in the initial data collection. Sample housing units that participated in the intial data collection with the mark one or more races instruction will be re-contacted by telephone and asked to report one race. Those housing units that received the mark one race instruction will be asked to mark one or more races. For housing units for which there is no telephone, personal interviews will be conducted to collect the re-contact information. The questions on both the re-contact instruments will be similar; only minor modifications will be made to probe for additional information in instances where respondents are reluctant to report a single race when asked to do so. During the re-contact, every effort will be made to speak with the individual who completed the initial questionnaire. To facilitate this effort, data from the initial questionnaires will be transcribed onto the re-contact instruments. During the re-contact interview, respondents will be asked to provide additional relevant information, including the race of biological parents, and other pertinent social, demographic, and economic data.

The goal is to produce reliable estimates that replicate, to the extent possible, the Census 2000 race distributions in terms of the percent reporting a single race, more than one race, and the distribution of the responses among a pre-determined number of possible race combinations. It is likely that less than 20 combinations will be identified.

III. Data

OMB Number: Not available.
Form Number(s): S–698A, S–698B.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 50,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25,000.
Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.
Respondents Obligation: Mandatory.
Legal Authority: Title 13 of the United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–30960 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1129]

Expansion of Foreign-Trade Zone 3, San Francisco, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the San Francisco Port Commission, grantee of Foreign-Trade Zone 3, submitted an application to the Board for authority to expand FTZ 3 to include the jet fuel storage and distribution system at the San Francisco International Airport and related facilities (261 acres) in the San Francisco, California, area, within the San Francisco Customs port of entry (FTZ Docket 16–2000; filed April 28, 2000);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 30057, May 10, 2000) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 3 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–31111 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1128]

Expansion of Foreign-Trade Zone 79, Tampa, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Tampa, Florida, grantee of Foreign-Trade Zone 79 (Tampa, Florida), submitted an application to the Board for authority to expand FTZ 79 to include the jet fuel storage and distribution system at the Tampa International Airport (Site 7—100 acres) in Tampa, Florida, within the Tampa Customs port of entry (FTZ Docket 12–2000; filed March 28, 2000);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 18282, April 7, 2000) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 79 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–31109 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 64–2000]

Foreign-Trade Zone 133–Rock Island, Illinois; Application For Foreign-Trade Subzone Status, Deere & Company (Construction Equipment), Davenport, Iowa

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Quad-City Foreign-Trade Zone, Inc., grantee of FTZ 133, requesting special-purpose subzone status for the manufacturing facility (construction equipment) of Deere & Company (Deere), located in Davenport, Iowa. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 17, 2000.

The Deere facility is located at the intersection of Highway 61 and Mt. Joy Road in Davenport, Iowa. This facility (2.2 million square feet; 900 employees) is used for the development and manufacture of construction equipment (heavy-duty four-wheel-drive loaders, motor graders, and heavy-duty wheeled log skidders). Deere uses some foreign-sourced components in the manufactures of these products. However, most of those items enter the U.S. duty-free. The only foreign-sourced items for which Deere is seeking to gain FTZ benefits are transmissions, controllers, and shifters, all of which are only used in the production of four-wheel drive loaders (these components represent approximately 24.3% of the production cost of the loaders). Duty rates on these imported components range from 2.5% to 2.7%.

Zone procedures would exempt Deere from Customs duty payments on foreign components used in export production. On its domestic sales, Deere would be able to choose the lower duty rate that applies to the finished products (duty-free) for the foreign components noted above. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 5, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 20, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, NW., Washington, DC. 20230. Quad-City Foreign-Trade Zone, Inc., 1830 Second Avenue, Suite 200, Rock Island, Illinois 61201.

Dated: November 27,2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31106 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1121]

Grant of Authority; Establishment of a Foreign-Trade Zone; Decatur, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and

for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of Park Commissioners, Decatur Park District (the Grantee), has made application to the Board (FTZ Docket 36–99, filed July 14, 1999), requesting the establishment of a foreign-trade zone in Decatur, Illinois, adjacent to the Peoria Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 39483, July 22, 1999); and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 245, at the site described in the application and serving the area described in the application record, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

Foreign-Trade Zones Board.

Norman Y. Mineta,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 00–31107 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1127]

Expansion of Foreign-Trade Zone 22 Chicago, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Illinois International Port District, grantee of Foreign-Trade Zone No. 22, submitted an application to the Board for authority to expand FTZ 22-Site 3 in the Chicago, Illinois area, within the Chicago Customs port of entry (FTZ Docket 1–2000, filed 1/4/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 2375, January 1, 2000) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 22–Site 3 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–31108 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2000]

Foreign-Trade Zone 44—Mount Olive, New Jersey, Area Application for Expansion; Extension of Public Comment Period

The comment period for the above case, submitted by the New Jersey Commerce and Economic Growth Commission, requesting authority to expand its zone to include a site in Cranbury Township (65 FR 52984, August 31, 2000), is extended to December 29, 2000, to allow interested parties additional time in which to comment on the proposal. The period for rebuttal comments is extended to January 31, 2001.

Submissions should include three (3) copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 30, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31110 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1131]

Expansion of Foreign-Trade Zone 86 Tacoma, Washington, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Tacoma (Washington), grantee of Foreign-Trade Zone 86, submitted an application to the Board for authority to expand FTZ 86 to include additional FTZ space at Sites 1, 2 and 3, and to include four new sites in the Tacoma, Washington, area, adjacent to the Tacoma Customs port of entry (FTZ Docket 4–2000; filed February 17, 2000);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 11549, March 3, 2000) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 86 is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–31112 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results and Rescission in Part of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. The period of review is November 1, 1998 through October 31, 1999. This review covers imports of subject merchandise from three producers/exporters.

We have preliminarily determined that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the United States Customs Service to assess antidumping duties based on the difference between the U.S. price and normal value.

We have also determined that the reviews of Dongbu and Union should be rescinded.

We invite interested parties to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or John Brinkmann, AD/CVD Enforcement, Office 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 and 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1999).

Background

On November 16, 1999, the Department published in the **Federal Register** a *Notice of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, for the period November 1, 1998 through October 31, 1999 (64 FR 62167).

In accordance with 19 CFR 351.213(b)(2), the following producers and/or exporters of circular welded non-alloy steel pipe (standard pipe) from the Republic of Korea requested an administrative review of their sales on November 30, 1999: SeAH Steel Corporation (SeAH) and Hyundai Pipe Company, Ltd. (Hyundai). Also on November 30, 1999, Allied Tube and Conduit Corporation, Sawhill Tubular Division-Armco, Inc., and Wheatland Tube Company (collectively, the petitioners) requested reviews of Dongbu Steel Company, Ltd. (Dongbu), Hyundai, Korea Iron and Steel Company, Ltd. (KISCO), Shinho Steel Company, Ltd. (Shinho) and Union Steel Manufacturing Company, Ltd. (Union). On December 28, 1999, we published the notice of initiation of this antidumping duty administrative review for Dongbu, Hyundai, KISCO, SeAH, Shinho, and Union (collectively, the respondents). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 72644 (*Initiation Notice*).

On January 13, 2000, we issued questionnaires to the respondents. Because the Department disregarded sales that failed the cost test during the most recently completed segment of the proceeding in which each company participated, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of normal value (NV) in this review were made at prices below the cost of production (COP). Therefore, we initiated cost investigations of the respondents at the time we initiated the antidumping review.

Union made a submission on January 18, 2000, certifying that it did not make exports to or sales in the United States of subject merchandise manufactured or produced by itself during the period of review (POR). In its submission, Union elaborated that in 1997 it had sold its manufacturing facilities and relinquished its business licenses with respect to the subject merchandise, citing material it had submitted in the 1997/98 review of this order. As part of a July 6, 2000 submission, Union placed on the record of this proceeding information from the 1997/98 review.

On February 1, 2000, Dongbu also submitted a certification that it did not make exports to or sales in the United States of subject merchandise manufactured or produced by itself during the POR. However, a review of Customs Service entries during the POR revealed a number of entries listing Dongbu as the manufacturer. In response, Dongbu made a submission on June 30, 2000, showing that an erroneous manufacturer identification code was used for those entries by the importer of record.

On February 15, 2000, Hyundai requested that it be excused from reporting resales of subject merchandise that were produced by unaffiliated manufacturers and not further manufactured by Hyundai. The petitioners commented on Hyundai's request on February 16, 2000. On February 22, 2000, we issued a memorandum instructing respondents to report only those resales of merchandise that were further processed. *See* the Memorandum to the File, "Extension of Due Dates for Questionnaire Responses, Reporting of Cost Data on Fiscal-year Basis, Reporting of Resales" (*Reporting Memorandum*).

On February 11, 2000, Hyundai requested that it be allowed to report its cost data on a fiscal-year basis. On February 15, 2000, similar requests were received from KISCO, SeAH, and Shinho. On February 16, 2000, the petitioners commented on the respondents' requests for fiscal-year reporting of costs. On February 22, 2000, we requested that the respondents demonstrate that the use of fiscal-year cost reporting would not be distortive. Between February 28 and March 10, 2000, we received information and comments from the petitioners and the respondents on the difference between fiscal-year and POR-based cost reporting.

After requesting extensions for the submission of their responses to the questionnaire and receiving the same, Hyundai, KISCO, SeAH and Shinho submitted their section A through D responses by March 24, 2000. The petitioners submitted comments on the questionnaire responses in April 2000. We issued supplemental questionnaires covering sections A through D to the respondents by June 14, 2000, and received responses by July 5, 2000.

The petitioners withdrew their request for review with respect to KISCO on June 15, 2000. On July 11, 2000, the Department rescinded the review with respect to KISCO and extended the time limit for the preliminary results to October 6, 2000. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Administrative Review*, 65 FR 44521 (July 18, 2000).

On September 14, 2000, the petitioners submitted comments to the Department addressing several issues in

anticipation of these preliminary results.

On October 2, 2000, we extended the time limits for the preliminary results by an additional twenty-eight days, or until no later than November 3, 2000. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review,* 65 FR 59823 (October 6, 2000). On October 31, 2000, we fully extended the time limits for the preliminary results until no later than November 29, 2000. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review,* 65 FR 66523 (November 6, 2000).

Rescission of Review in Part

As stated above in the "*Case History*" section of this notice, Dongbu certified that it did not make sales or exports of subject merchandise to the United States during the POR. To confirm the same, we reviewed Customs Service data which revealed a number of entries listing Dongbu as the manufacturer. In response, Dongbu submitted documentation on June 30, 2000, showing that these entries contained the wrong manufacturer designation. On September 15, 2000, Dongbu informed the Department that the Customs Service data did not need to be corrected because although the wrong manufacturer designation was listed; the correct dumping deposit rate was paid on all the sales listed on the Customs documentation for the period. We confirmed the information provided by Dongbu. *See* Memorandum to the File, "Confirmation of Customs Data Concerning Dongbu," dated November 29, 2000. Furthermore, we find that Union placed sufficient evidence on the record of this review demonstrating that it did not make exports to or sales in the United States of subject merchandise manufactured or produced by itself during the period of review. Accordingly, we are rescinding this review with respect to Dongbu and Union.

Scope of Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and Customs Service purposes, our written description of the scope of this proceeding is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States with identical merchandise sold in Korea. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar foreign like product.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (variable COM) between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of standard pipe from Korea were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the "*Export Price and Constructed Export Price*" and "*Normal Value*" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price and Constructed Export Price

For sales to the United States, we used, as appropriate, EP or CEP in accordance with sections 772(a) and 772(b) of the Act. We calculated EP where the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. We calculated CEP for sales made by affiliated U.S. resellers that took place after importation into the United States.

We based EP and CEP on the packed C&F, CIF duty paid, FOB, or ex-dock duty paid prices to the first unaffiliated purchaser in, or for exportation to, the United States. Where appropriate, we made deductions for discounts and rebates, including early payment discounts. We added to U.S. price amounts for duty drawback, pursuant to section 772(c)(1)(B) of the Act, to the extent that such rebates were not excessive. See *Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea,* 62 FR 55574 (October 27, 1997) (*Pipe First Review*). We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including: foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. wharfage, U.S. customs brokerage, and U.S. customs duties (including harbor maintenance and merchandise processing fees).

For CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with economic activities occurring in the United States, including commissions, credit costs, warranty expenses, and indirect selling expenses, where applicable. We made adjustments for interest revenue

collected on late payments, where applicable. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Consistent with the preceding review, we determined that although for home market transactions the invoice date reasonably approximates the date on which material terms of sale are made, invoice date should not be used as the date of sale for U.S. transactions. While each company has a slightly different U.S. sales process, consistent throughout the responses is the notion that price and quantity are established, then the factory produces the subject merchandise, and finally, after a significant period of time, the product is shipped and an invoice issued. Based on this understanding of the respondents' U.S. sales process, we have used as date of sale the purchase order date, which reasonably approximates the time at which the material terms of sale are set.

Pursuant to sections 772(a) and 772(b) of the Act, we reclassified Hyundai's reported EP sales as CEP sales since the agreement for sale occurred in the United States between Hyundai Pipe America and Hyundai Corporation USA, Hyundai's U.S. affiliates, and the unaffiliated customers. *See* Memorandum to Susan Kuhbach, "Classification of Sales by Hyundai Pipe Co., Ltd as EP or CEP," dated November 27, 2000.

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

Hyundai and SeAH reported sales in the home market of "overrun" merchandise (*i.e.*, sales of a greater quantity of pipe than the customer ordered due to overproduction). Hyundai and SeAH claimed that we should disregard "overrun" sales in the home market as outside the ordinary course of trade.

Section 773(a)(1)(B) of the Act provides that normal value shall be based on the price at which the foreign like product is sold in the usual commercial quantities and in the ordinary course of trade. Ordinary course of trade is defined in section 771(15) of the Act. We analyzed the following criteria to determine whether "overrun" sales differ from other sales of commercial pipe: (1) Ratio of overrun sales to total home market sales; (2) number of overrun customers compared to total number of home market customers; (3) average price of an overrun sale compared to average price of a commercial sale; (4) profitability of overrun sales compared to profitability of commercial sales; and (5) average quantity of an overrun sale compared to the average quantity of a commercial sale. Based on our analysis of these criteria and on an analysis of the terms of sale, we found certain overrun sales to be outside the ordinary course of trade. This analysis is consistent with our treatment of such sales in prior reviews. *See* Memoranda from Team to the File, "Preliminary Results Calculation Memorandum for Hyundai Pipe Co., Ltd.. ('HDP')" and "Preliminary Results Calculation Memorandum for SeAH Steel Corporation ('SeAH')," dated November 29, 2000.

B. Arm's Length Test

Hyundai and SeAH had sales in the home market to affiliated customers. Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties),* 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403.

C. Cost of Production Analysis

Because we disregarded sales below the COP in the last completed review for Hyundai, SeAH, and Shinho (*see Circular Welded Non-Alloy Steel Pipe from Korea: Final Results of Antidumping Duty Administrative Review,* 63 FR 32833, June 16, 1998 (*Pipe Fourth Review*)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review for all respondents may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a sales-below-cost investigation of these companies' home market sales.

We conducted the COP analysis described below.

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and packing, in accordance with section 773(b)(3) of the Act.

We allowed respondents to report their costs on a fiscal-year basis because their fiscal years were closely aligned with the POR (November–October POR vs. January–December fiscal year), the differences in costs were minimal, and there was no other indication that the use of fiscal-year data would be distortive. *See Reporting Memorandum.*

We relied on the respondents' information as submitted, except in the specific instances discussed below.

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP to the per unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product

were made at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the 12-month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such below-cost sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that Hyundai, SeAH, and Shinho all made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB, or delivered prices to comparison market customers. We made deductions from the starting price for inland freight and warehousing. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale (COS) adjustments for direct expenses, including imputed credit expenses and warranty expenses, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using POR-average costs.

We also made adjustments, where applicable, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Specifically, where commissions are incurred in one market, but not in the other, we make an allowance for the indirect selling expenses in the other market up to the amount of the commissions.

During the POR, SeAH purchased the foreign like product from unaffiliated manufacturers and then further manufactured it into products also within the scope of this review. For purposes of these preliminary results, we have included sales of all such further-manufactured subject merchandise in our analysis.

E. Level of Trade (LOT)

As set forth in section 773(a)(1)(B) of the Act and in the Statement of Administrative Action (SAA) accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market.

We determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731* (November 19, 1997); *see also* 19 CFR 351.412 (62 FR 27296, 27414–27415 (May 19, 1997)) for a concise description of this practice. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we consider the selling functions reflected in the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[1] We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

When CEP sales have been made in the United States, section 773(a)(7)(B) of the Act establishes that a CEP offset may be granted provided that two conditions exist: (1) NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP; and (2) the data available do not permit a determination that there is a pattern of consistent price differences between sales at different LOTs in the comparison market.

In implementing these principles in this review, we obtained information from each respondent regarding the marketing stage involved in the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the November 29, 2000, "Antidumping Administrative Review of *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea:* Preliminary Level of Trade Analysis'" memorandum, on file in the Central Records Unit (CRU). The company-specific LOT analysis is included in the business proprietary analysis memorandum for each company.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period November 1, 1998, through October 31, 1999:

Manufacturer/exporter	Margin (percent)
Hyundai	3.77
Shinho	1.38
SeAH	0.98

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue a notice of the final results of this administrative review, including the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of standard pipe from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 4.80 percent, the "all others" rate established in the less-than-fair-value investigation. *See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2000.

Troy H. Cribb,

Assistant Secretary, for Import Administration.

[FR Doc. 00–31105 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] The U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.*, v. *United States*, 4 F. Supp.2d 1221, 1241–42 (CIT March 26, 1998) (*Borden II*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in *Borden II* on the LOT issue. *See Borden, Inc.*, v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a LOT analysis, as articulated in the Department's regulations at section 351.412.

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense will submit to OMB for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Personnel Security Investigation Projection for Industry Survey; OMB Number 0704–[To Be Determined].

Type of Request: New Collection; Emergency processing requested with a shortened public comment period ending December 11, 2000. An approval date by December 15, 2000, has been requested.

Number of Respondents: 242.

Responses Per Respondents: 1.

Annual Responses: 242.

Average Burden Per Response: 75 minutes.

Annual Burden Hours: 303.

Needs and Uses: Under the National Industrial Security Program (NISP), the Defense Security Service (DSS) is responsible for personnel security clearance investigations within industry. The Defense Security Service has used historical data for agency budget projections.

This collection of information is necessary to request the voluntary assistance of a segment of the cleared industry facilities to provide projections of numbers and types of personnel security investigations. This initial effort will serve as the prototype for an annual data collection from industry. This information collection will only address the largest cleared facilities that account for a significant number of the security clearances. The data would become part of the total clearance projections for industry to be included in an automated database for use with DSS budget submissions.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, or by fax at (703) 604–6270.

Dated: November 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31016 Filed 12–5–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, December 11, 2000, from 8:30 a.m. to 11:45 a.m. The closed Executive Session will be from 10:50 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Dining Room of Alumni Hall at the U.S. Naval Academy.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas E. Osborn, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone number: (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: November 29, 2000.

James L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–31000 Filed 12–5–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–136–000]

Madison Gas & Electric Company, Wisconsin Public Service Corporation, American Transmission Company, LLC; Notice of Filing

November 30, 2000.

Take notice that on November 29, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing a request for clarification of the Commission's November 24, 2000, order authorizing, *inter alia*, the disposition of WPSC's transmission facilities to American Transmission Company LLC (ATC LLC). The requested clarification relates to whether the Commission's order encompassed the issuance of the membership units in ATC LLC that are related to the WPSC transmission facilities, to a wholly-owned WPSC subsidiary (WPS LLC). If the requested clarification cannot be granted, then WPSC alternatively requests Commission authorization under section 203 of the FPA to effectuate the aspects of the transfer involving WPS LLC.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or December 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31020 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–33–000]

Northern Natural Gas Company; Notice of Application

November 30, 2000.

Take notice that on November 20, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed with the Commission in Docket No. CP01–33–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), to abandon and remove certain pipeline facilities and appurtenant equipment in Dodge and Saunders Counties, Nebraska, all as more fully set forth in the application which is open to the public for inspection.

Northern proposes to abandon and remove approximately 2,200 feet of its 16-inch diameter A-Line at its Platte River bridge crossing. Northern states that the abandonment project begins in northeastern Saunders County and ends in southwestern Dodge County. Northern also states that approximately half of the A-Line to be abandoned lies in Saunders County and the other half lies in Dodge County. The A-Line runs down the face of a 107-foot bluff on the south side of the river crossing. Several naturally caused landslides have occurred on the face of this bluff. Although the A-Line has not suffered any physical damage, Northern cannot predict the timing, location, and magnitude of a future landslide. Consistent with Northern's goal to provide safe and reliable natural gas service, Northern states that it has decided to remove the A-Line river crossing. Northern further states that it will be able to provide the capacity required to meet current firm obligations through existing facilities. Thus, the proposed abandonment of facilities would not result in the abandonment of service to any of Northern's existing customers. Northern estimates it would spend $410,000 to remove the 2,200 feet of 16-inch diameter pipe on the A-Line and the appurtenant bridge structure.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Any questions regarding the application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, phone number (402) 398–7421, or Don Vignaroli, Senior Regulatory Analyst at (402) 398–7139.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission. A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Comments will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–30983 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–35–000]

Southern Natural Gas Company; Notice of Application

November 30, 2000.

Take notice that on November 21, 2000, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP01–35–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate certain pipeline looping facilities on its South Georgia Facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us./online/rims.htm* (call (202) 208–2222 for assistance).

Southern states that on August 1, 2000, South Georgia Natural Gas Company (South Georgia), which had been a wholly owned subsidiary of Southern, was merged into Southern. Southern states that the former South Georgia facilities are now owned and operated by Southern as part of its system and known as the South Georgia Facilities. Southern further states that customers benefiting from the South Georgia Facilities continue to pay rates applicable only to the South Georgia Facilities pursuant to the May 31, 2000, Order on Uncontested Settlement and Granting Certificate Authorization in Docket No. RP99–496–000, *et al.*

Southern states that South Georgia conducted an open season that expired on July 14, 2000, to determine whether any shippers were interested in acquiring long-term Rate Schedule FT service on the South Georgia Facilities. As a result of the open season, Southern states that it has entered into long-term service agreements with seven shippers who have collectively subscribed for a total of 17,000 Mcf per day of firm transportation service on Southern's South Georgia Facilities. Southern states that in order to provide this service, it seeks authorization to construct and operate 7.1 miles of 16-inch pipeline looping on the 12-inch main line of the South Georgia Facilities. Southern further states that the pipeline looping will extend from the discharge side of Southern's Holy Trinity Compressor Station in Russell County, Alabama to the beginning of its 16-inch loop in Stewart County, Georgia.

Southern states that the estimated cost of the proposed project is $6.0 million. Southern further states that the project will be financed through the use of available cash on hand and cash from operations. Southern states that it plans to include the costs and revenues attributable to the proposed facilities in the cost of service and revenues for its South Georgia Facilities on a rolled-in basis in future rate proceedings.

Questions regarding the details of this proposed project should be directed to John Griffin, Southern Natural Gas Company, Post Office Box 2563,

Birmingham, Alabama 35202–2563, call (205) 325–7133.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–30984 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–112–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 28, 2000.

Take notice that on November 22, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff Sixth Revised Volume No. 1, Sixth Revised Volume No. 1 and Sixth Revised Sheet No. 647 to be effective on January 1, 2001.

Texas Eastern states that the purpose of this filing is to remove from Section 16 of the General Terms and Conditions of its FERC Gas Tariff certain provisions that are no longer applicable, to revise the phone number of the person to whom complaints should be directed regarding Texas Eastern's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on Texas Eastern's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30986 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–34–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

November 30, 2000.

Take notice that on November 20, 2000, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 42301, in Docket No. CP01–34–000 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval for

Transco to abandon certain pipeline facilities, located in offshore Texas, which are portions of the North Padre Island Gathering System and the Central Texas Gathering System (North Padre and Central Texas Gathering Systems), by transfer to Williams Gas Processing-Gulf Coast Company, L.P. (WGP), an affiliate of Transco, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http:// www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Transco proposes to abandon 3.83 miles of 10-inch pipeline and 18.79 miles of 20-inch pipeline of the North Padre Gathering System, located in the North Padre Island Area and the North Padre Island Area East Addition, offshore Texas by transfer to WFP. Transco also proposes to abandon 4.96 miles of 6-inch pipeline, 4.19 miles of 8-inch pipeline, 3.77 miles of 10-inch pipeline, 64.79 miles of 12-inch pipeline, 11.56 miles of 16-inch pipeline, 116.48 miles of 20-inch pipeline, 23.42 miles of 24-inch pipeline, and 41.15 miles of 30-inch pipeline of the Central Texas Gathering System, located in the Galveston Area, the Brazos Area, the Brazos Area South Addition, the Matagorda Island Area, and the Mustang Island Area East Addition, offshore Texas by transfer to WGP. Transco advises that the facilities will be transferred at net book value, which has been calculated at $34,893,250 as of October 31, 2000.

Transco also requests authorization to abandon its Rate Schedule X–66, under which Transco states that gas has not flowed since 1989. Transco asserts that it has either notified or has caused the notification of the affected parties of its intent to terminate and abandon the affected services, and WGP will begin discussions with the affected parties for continued service.

WGP has concurrently filed a petition for a declaratory order in Docket No. CP01–32–000 requesting that the Commission determine that WGP's acquisition, ownership, and operation of the facilities at issue not subject WGP or any portion of WGP's facilities, rates, or services to the jurisdiction of the Commission under the Natural Gas Act.

Any questions regarding the application should be directed to Randall R. Conklin, Vice President and General Counsel, and Gisela Cherches, Senior Attorney at (713) 215–2000, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the projects. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–30982 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–32–000]

Williams Gas Processing—Gulf Cost Company, L.P.; Notice of Petition for Declaratory Order

November 30, 2000.

Take notice that on November 20, 2000, Williams Gas Processing—Gulf Coast Company, L.P. (WGP), P.O. Box 1396, Houston, Texas 77251, in Docket No. CP01–32–000 filed a petition for a declaratory order requesting that the Commission declare that certain pipeline facilities located almost entirely in offshore waters on the Outer Continental Shelf (OCS), offshore Texas to be acquired from WGP's affiliate, Transcontinental Gas Pipe Line Corporation (Transco), would have the primary function of gathering of natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act,

all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

WGP states that the pipeline facilities at issue consist of portions of the North Padre Island Gathering System (North Padre) and the Central Texas Gathering System (Central Texas). Specifically, WGP states that the North Padre facilities consist of 3.83 miles of 10-inch pipeline that begins in North Padre Island (NPI) Block 967 and ends at NPI Block 956 and 18.79 miles of 20-inch pipeline that begins in East Addition Block A–42 and ends at NPI Block 956, offshore Texas. WGP states that the Central Texas facilities consist of 4.96 miles of 6-inch pipeline, 4.19 miles of 8-inch pipeline, 3.77 miles of 10-inch pipeline, 64.79 miles of 12-inch pipeline, 11.56 miles of 16-inch pipeline, 116.48 miles of 20-inch pipeline, 23.42 miles of 24-inch pipeline, and 41.15 miles of 30-inch pipeline in the Brazos Area Block 538, offshore Texas.

Under a Transfer and Assignment Agreement entered into by WGP and Transco, WGP indicates that it will provide gathering services in a manner consistent with open access and non-discriminatory principles. WGP advises that no customers presently receive direct sales service from the subject facilities pursuant to right-of-way agreements or other sales agreements, therefore, no direct sales service will be terminated as a result of the transfer.

WGP states that the primary function of the facilities is gathering, consistent with the criteria set forth in Farmland Industries, Inc. (23 FERC ¶ 61,063 (1983)), as modified in subsequent orders, and in Sea Robin Pipeline Co. (87 FERC ¶ 61,384 (1999), reh'g denied, 92 FERC ¶ 61,072 (2000)).

WGP advises that this petition is a companion to Transco's concurrently filed application in Docket No. CP01–34–000 to abandon the subject facilities by transfer to WGP.

Any questions regarding the application should be directed to Steve Springer, Senior Vice President, at (713) 439–2454, Williams Gas Processing-Gulf Coast Company, L.P., Houston, Texas 77251.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before The Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WGP to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–30981 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proposed Change in Land Rights, and Soliciting Comments, Motions to Intervene, and Protests

November 30, 2000.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Change in Land Rights.

b. *Project No:* 2738–049.

c. *Date Filed:* September 27, 2000.

d. *Applicant:* New York State Electric and Gas Corporation (NYSEG).

e. *Name of Project:* Saranac River Hydroelectric Project.

f. *Location:* The subject parcel is located upstream from the Kents Falls dam, near the Kents Falls Reservoir, in Clinton County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Carol A. Howland, Project Environmental Specialist, NYSEG, P.O. Box 5224, Binghamton, New York, 13902, (607) 729–2551.

i. *FERC Contact:* Any questions concerning this notice should be addressed to Paul Friedman at (202) 208–1108; e-mail: paul.friedman@ferc.fed.us.

j. *Deadline for filing comments, motions, or protests:* January 5, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Commission, 888 First Street, NE, Washington, DC 20426. Please include the Project No. (2738–049) on any comments or motions filed. Comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission web site at http://www.ferc.fed/efi/doorbell.htm.

k. *Description of Project:* The Kents Falls development consists of: (1) a 172-foot-wide, 59-foot-high, concrete gravity dam; (2) a reservoir with a surface area of 43 acres; (3) a penstock; (4) a powerhouse; (5) headworks; (6) surge tank; and (7) appurtenant facilities. The change in land rights would be for a 101 acre parcel located within the project boundary for the Kents Falls development. The purpose of the change in land rights is to allow the licensee to convey project lands to Clinton County, to allow for the future expansion of the county's adjacent existing land fill.

l. *Locations of this application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. The filing may be viewed on http://www/ferc/fed.us.online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant. The application may be viewed on the web site at www.ferc.fed.us. Call (202) 208–2222 for assistance.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–30980 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Recreation Plan and Soliciting Comments, Motions To Intervene, and Protests

November 30, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Plan.

b. *Project No.:* 10810–015.

c. *Date Filed:* December 15, 1999.

d. *Applicant:* Wolverine Power Corporation.

e. *Name of Project:* Smallwood Project.

f. *Location:* The project is located on the Tittabawassee River in Hay Township, Gladwin County, Michigan. The project does not occupy any Federal or tribal lands.

g. *Field Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Anthony Gamage, Operations Manager, Wolverine Power Corporation, 6000 S. M–30, P.O. Box 147, Edenville, Michigan 48620.

i. *FERC Contact:* Steve Naugle, *steven.naugle@ferc.fed.us*, 202–219–2805.

j. *Deadline for filing comments and or motions:* January 6, 2001. All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*. Please reference the following number, P–10810–015, on any comments or motions filed.

k. *Description of the Applicant:* The application is a proposed recreation plan required by article 409 of the project license. The plan provides for a fishing access site at the project dam, including a barrier-free fishing pier on the shoreline dike near the dam, a tailwater fishing pier, a 15-vehicle parking area with designated barrier-free parking spaces, a barrier-free restroom, connecting access paths, and directional signs; a canoe portage around the project dam; and signs that identify the project's recreational facilities. The plan also includes design drawings for the proposed recreation facilities, a cost estimate for constructing the facilities, and a schedule for completing construction of the facilities.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at *http:www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comment filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Mail Stop PJ–12.1, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–30985 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6912–5]

Notice of Deficiency for Clean Air Act Operating Permits Program; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority at 40 CFR 70.4(i)(1) and 70.10(b)(1), EPA is publishing this Notice of Deficiency for the Commonwealth of Kentucky's Clean Air Act Title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the Commonwealth's audit privilege and immunity law, KRS 224.01–040, unduly restricts Kentucky's ability to adequately administer and enforce the criminal enforcement, civil penalty and public access provisions of its Title V program, which has previously been granted interim approval status. Therefore, Kentucky's Title V program no longer meets minimum federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Kentucky's Title V program approval, but does not effect such a withdrawal. Withdrawal of interim program approval, if necessary, will be accomplished through subsequent rulemaking.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, Title V Program Manager, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303–8909, (404) 562–9124.

SUPPLEMENTARY INFORMATION:

I. Description of Action

EPA is publishing a Notice of Deficiency for the Clean Air Act (CAA or Act) Title V program of the Commonwealth of Kentucky, which was granted interim approval on December 14, 1995. This document is being published to satisfy 40 CFR 70.4(i)(1) and 70.10(b)(1), which provide that EPA shall publish in the **Federal Register** a notice of any determination that a Title V permitting authority is not adequately administering or enforcing a 40 CFR part 70 program. The deficiency being noticed relates to Kentucky's audit privilege and immunity law, KRS 224.01–040, which places undue restrictions on the Commonwealth's ability to adequately administer and enforce its Title V program. Because of restrictions contained within Kentucky's audit privilege and immunity law, the Natural Resources and Environmental Protection Cabinet (Cabinet) may, in some circumstances, be unable to: (1) Seek criminal remedies, including fines, (2) recover civil penalties for any violation, and (3) make available to the public all materials available to the Commonwealth that are relevant to a permit decision. Therefore, Kentucky's legal authority no longer meets the requirements of the Title V program and 40 CFR part 70.

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive Title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements that the state permitting authority have authority to "assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter." CAA 502(b)(5)(A). In addition, the state permitting authority must have authority "to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties." CAA 502(b)(5)(E). The state permitting authority must also have authority "to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 7661b(e) of this title, subject to the provisions of section 7414(c) of this title." CAA 502(b)(8). These requirements are echoed in the operating permit program approval regulations promulgated at 40 CFR part 70. See 40 CFR 70.4(b)(3)(i), 70.4(b)(3)(viii), 70.8(h)(2), and 70.11(a)–(b).

EPA interprets section 502(b)(5)(E) of the CAA to mean that to have adequate criminal enforcement authority, criminal fines must be recoverable against any person: (1) Who knowingly violates any applicable Title V requirement, any Title V permit condition, or any Title V fee or filing requirement; (2) against any person who knowingly makes any false material statement, representation, or certification in any Title V form, notice, or report required by a Title V permit; and (3) who knowingly renders inaccurate any required Title V monitoring device or method. 40 CFR 70.11(a)(3)(ii) and (iii). The Kentucky audit privilege and immunity law provides that an environmental audit report shall be privileged and shall not be admissible as evidence in any legal action in any civil, criminal, or administrative proceeding. KRS 224.01–040(3). To meet the requirements of an approvable part 70 program and the requirements of 40 CFR 70.11(a)(3)(ii) and (iii), Kentucky law must allow Cabinet officials an unfettered right to access evidence in criminal proceedings and to use evidence of criminal conduct contained in an audit to assess criminal fines and remedies. In addition, requirements contained in the Kentucky audit privilege and immunity law such as the private hearing prior to the use of an audit report and the need to establish probable cause with an independent source may significantly impede criminal investigations and prosecutions and further render Kentucky's criminal enforcement authority inadequate (letter dated January 12, 1998 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky). Because of these provisions in KRS 224.01–040, Kentucky no longer meets the requirements for Title V program approval. To have an approvable Title V program, any Kentucky audit privilege and immunity law must make the privilege outlined in the current law inapplicable to criminal proceedings and also must provide unfettered access to information in criminal proceedings.

EPA also interprets section 502(b)(5)(E) of the CAA to mean that to have adequate civil penalty authority, Kentucky must retain full authority to assess civil penalties for any violation, including violations of (1) Any applicable requirement; (2) any permit condition; (3) any fee or filing requirement; (4) any duty to allow or carry out inspection, entry, or monitoring activities; and (5) any regulation or orders issued by the Commonwealth. 40 CFR 70.11(a)(3)(i). Kentucky's audit privilege and immunity law provides immunity from all civil penalties if certain conditions are met. However, to meet the requirements of an approvable part 70 program and the requirements of 40 CFR 70.11(a)(3)(i), Kentucky must retain the ability to collect penalties based on economic gain from noncompliance when it is significant (letter dated July 12, 1996 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky). The concept of economic benefit relates to any economic gain a violator may have realized as a result of noncompliance regardless of when these gains occur. Although correspondence from Kentucky to EPA addresses the benefit that might accrue after discovery and disclosure (letter dated February 12, 1997 from James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky to John H. Hankinson, Jr., Regional Administrator, EPA Region 4), the relevant time frame for determining economic benefit is the entire period of noncompliance including prior to discovery and disclosure (e.g., facility operates for two years without installing required air emissions control equipment). Because KRS 224.01–040 precludes the Cabinet from recouping economic benefit when the conditions of KRS 224.01–040 are met, Kentucky lacks the legal authority to recover a penalty for "every violation" and therefore no longer meets the requirements for Title V program approval. In subsequent correspondence between Kentucky and EPA, including a letter dated March 27, 1997 from Glenda J. Curry, General Counsel, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky to John H. Hankinson, Jr., Regional Administrator, EPA Region 4; and a letter dated January 12, 1998 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky. these issues were discussed and EPA urged Kentucky to remedy them. To date, Kentucky has not effected these changes. To have an approvable Title V program, any Kentucky audit privilege and immunity law must restore full civil penalty authority to the Title V program by allowing for the collection of civil penalties where violations result in significant economic benefit to the violator as a consequence of its noncompliance with Title V.

EPA interprets section 502(b)(8) of the CAA to mean that to have adequate public access authority, Kentucky must assure that the public have access to certain information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in 40 CFR 70.4(b)(3)(viii), and all other materials available to the permitting authority that are relevant to the permit decision. Kentucky's audit privilege and immunity law provides that documents, communications, data, reports, or other information required to be collected, developed, maintained, reported, or made available to a regulatory agency pursuant to this law or any other Federal, state or local law shall not be privileged. KRS 224.01–040(6). This language potentially limits public access to information and renders Kentucky's legal authority to ensure public access to certain information inadequate. Therefore Kentucky no longer meets the requirements for Title V program approval. To meet the requirements of an approvable part 70 program and the requirements of 40 CFR 70.4(b)(3)(viii) and 40 CFR 70.8(h)(2), any Kentucky audit privilege and immunity law must provide that documents, communications, data, reports, or other information required to be collected, developed, maintained, reported, or made available to a regulatory agency or any other person shall not be privileged. This issue was discussed in a letter, dated January 12, 1998 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky, and EPA urged Kentucky in that letter to correct it. To date, Kentucky has not effected these changes. To have an approvable Title V program any Kentucky audit privilege and immunity law must provide the public with access to information available to the Commonwealth that is relevant to a Title V permit decision.

40 CFR 70.4(k), 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority no longer meets the requirements of Part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If Kentucky has not taken significant action to assure adequate administration and enforcement of the program within 90 days after publication of this notice of deficiency, and has not corrected the above-identified deficiencies by June 2, 2001, then EPA will take action to withdraw Kentucky's Title V program approval, and may apply any of the sanctions specified in section 179(b) of the Act. 40 CFR 70.4(k) and 70.10(b)(2)–(4).

This notice of deficiency is not itself a proposal to withdraw Kentucky's Title V program approval. Consistent with 40 CFR 70.10(b)(2), EPA will wait 90 days to determine whether the Commonwealth has taken significant action to correct the above-identified deficiencies. Consistent with 40 CFR 70.4(i)(1) and 70.10(b)(4), EPA will wait until June 2, 2001 to determine whether Kentucky has corrected the deficiencies. Any proposal to withdraw approval of Kentucky's Title V program will occur after June 2, 2001.

II. Administrative Requirements

As noted above, publication of this Notice of Deficiency does not effect a withdrawal of the Commonwealth of Kentucky's Title V program. Program withdrawal, if necessary, will be accomplished through a subsequent notice-and-comment rulemaking. This action does not: (1) Impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4); (2) require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998); or (3) involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). The Office of Management and Budget has exempted this action from review under Executive Order 12866 (58 FR 51735, October 4, 1993). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Furthermore, this action does not contain any information collections subject to Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). And because this action is a Notice of Deficiency and does not constitute a rule, Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks does not apply. For the same reason, Executive Order 13132: Federalism and section 112(d) of the National Technology Transfer Advancement Act of 1995 do not apply.

Dated: November 29, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–31051 Filed 12–05–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439I; FRL–6757–1]

Pesticide Program Dialogue Committee (PPDC); Notice of Invitation for Nominations of Qualified Candidates to be Considered for Appointment to EPA's PPDC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is inviting nominations of qualified candidates to consider for appointment to the Pesticide Program Dialogue Committee (PPDC). EPA renewed the Charter for the PPDC in November 1999 for a two–year term. EPA intends to seek renewal of the PPDC Charter for another two–year term in November 2001 in accordance with the Federal Advisory Committee Act, 5 U.S.C., App.2 section 9(c).

DATES: Nominations will be accepted until 5 p.m. on December 29, 2000.

ADDRESSES: Nominations should be submitted in writing to Margie Fehrenbach, Designated Federal Officer for PPDC, Office of Pesticide Programs, (7501C), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC; e-mail address: fehrenbach.margie@epa.gov.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach, Designated Federal Officer for PPDC, Office of Pesticide Programs, (7501C), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–4775 or (703) 305–7090; fax number: (703) 308–4776; e-mail address: Fehrenbach.Margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are concerned about implementation of the Food Quality Protection Act (Public Law 104–170) which was passed in 1996 to strengthen the nation's system for regulating pesticides on food; the Federal Insecticide, Fungicide, and Rodenticide Act; and the Federal Food, Drug, and Cosmetic Act. PPDC was established in 1995 to provide a forum for a diverse group of stakeholders to provide advice and recommendations to EPA regarding pesticide regulatory and policy issues. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information regarding PPDC, go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/ and select ppdc.

2. *In person.* The Agency has established an administrative record for all PPDC meetings and workgroups under docket control number OPP–00439. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Pesticide Program Dialogue Committee and its workgroups, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

III. Background

The Office of Pesticide Programs is entrusted with the responsibility of ensuring the safety of the American food supply, the protection and education of those who apply or are exposed to pesticides occupationally or through use of products from unreasonable risk, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Pesticide Program Dialogue Committee (PPDC) is a federal advisory committee under the Federal Advisory Committee Act (FACA), Public Law 92–463. It was established in September 1995 for a two–year term and renewed in November 1997 and November 1999. PPDC provides advice and recommendations to the Office of Pesticide Programs on a broad range of pesticide regulatory, policy and program implementation issues that are associated with evaluating and reducing risks from use of pesticides.

EPA intends to appoint members to one– or two–year terms. An important consideration in EPA's selection of members will be to maintain balance and diversity of experience and expertise. EPA also intends to seek broad geographic representation from the following sectors: environmental/public interest and consumer groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Potential candidates should submit the following information: name, occupation, organization, position, address, telephone number and a brief resume containing their background, experience, qualifications and other relevant information as part of the consideration process. Any interested person and/organization may submit the name(s) of qualified persons.

Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Pesticides, Inerts, PPDC.

Dated: November 28, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–30916 Filed 12–05–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100162; FRL–6757–4]

Arctic Slope Regional Corporation (ASRC) Aerospace; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Arctic Slope Regional Corporation (ASRC) Aerospace in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). ASRC Aerospace has been awarded a contract to perform work for OPP, and access to this information will enable ASRC Aerospace to fulfill the obligations of the contract.

DATES: ASRC Aerospace will be given access to this information on or before December 11, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–W0–0102, work assignment 001, the contractor will perform the following:

The Public Information and Records Integrity Branch in responding to Freedom of Information Act (FOIA) requests and public inquiries expeditiously shall use contractor services to perform distinct tasks in a multi-task response process, such as gathering records identified as responsive by EPA, filling out standard response forms in accordance with office procedures, packaging the response after completion by the EPA caseworker, compiling documents to assist information collection activities, and managing an OPP/FOIA website and records/internal computer systems associated with this work.

The contractor will process FOIA requests assigned to OPP and maintain appropriate case files and records which may involve all pending and registered sensitive information.

The contractor must have access to CBI in order to conduct records management activities associated with the OPP's FOIA and public response activities.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with ASRC Aerospace, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ASRC Aerospace is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to ASRC Aerospace until the requirements in this document have been fully satisfied. Records of information provided to ASRC Aerospace will be maintained by EPA Project Officers for the contract. All information supplied to ASRC Aerospace by EPA for use in connection with the contract will be returned to EPA when ASRC Aerospace has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: November 28, 2000.

Joanne Martin,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–31061 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203F; FRL–6758–2]

Chlorpyrifos; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order that was signed November 27, 2000, announcing the use deletions and cancellations as requested by the companies that hold the registrations of pesticide products containing the active ingredient chlorpyrifos and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 20, 2000, notice of receipt of requests for amendments to delete uses and receipt of a request for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary use deletions and registration cancellations. Any distribution, sale, or use of canceled chlorpyrifos products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34203D. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In a memorandum of agreement (Agreement) effective June 7, 2000, EPA and a number of registrants of pesticide products containing chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. Shortly thereafter, EPA and several other pesticide registrants of manufacturing-use products containing chlorpyrifos signed ancillary agreements in which the parties agreed to comply with the terms of the June 7, 2000, agreement. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As part of the Agreement, the signatory registrants that hold the pesticide registrations of manufacturing-use pesticide products containing chlorpyrifos have asked EPA to cancel their registrations for these products. In addition, these companies asked EPA to cancel or amend their registrations for end-use products containing chlorpyrifos. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced the Agency's receipt of these requests from the registrants on September 20, 2000 (65 FR 56886). With respect to the registration amendments, the companies have asked EPA to amend end-use product registrations to delete the following uses: all termite control uses (these will be phased out); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers and underground utility cable and conduits; and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on tomatoes and post-bloom apple trees. With respect to the registration cancellations, the companies have submitted replacement applications for registration with new labeling that would also eliminate all of these uses. In addition, the companies agreed to limit the maximum chlorpyrifos end-use dilution to 0.5% active ingredient (a.i.) for termiticide uses that will be phased out, limit the maximum label application rate for outdoor non-residential use on golf courses, road medians, and industrial plant sites to 1 lb/a.i. per acre, and either classify all new/amended chlorpyrifos products (except baits in CRP) as Restricted Use or package the products in large containers, depending on the formulation type, to ensure that remaining chlorpyrifos products are not available to homeowners. In return, EPA stated that with this Agreement, it had no current intention to initiate any cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA with respect to the issues addressed in the Agreement.

On September 20, 2000, (65 FR 56886) (FRL–6743–7), EPA published in the **Federal Register** a notice of the Agency's receipt of amendments and cancellations for manufacturing-use products and associated end-use products for signatories of the Memorandum of Agreement that was signed on June 7, 2000 and subsequent ancillary agreements. A copy of the Memorandum of Agreement that was signed on June 7, 2000 is located in docket control number OPP–34203D.

B. Requests for Voluntary Cancellation of Manufacturing-Use Products

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), the registrants have submitted requests for voluntary cancellation of registrations for their manufacturing-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.—MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Aventis Environmental Science USA	432–570	Ultratec Insecticide w/ SBP–1382/ Chlorpyrifos Trans. E.C. 1.6%—16%
	432–571	Ultratec Insecticide w/ SBP–1382/ Chlorpyrifos Trans.E.C. 3.2% – 16%
	432–615	UltratecInsecticide w/ ChlorpyrifosEsbiothrin Trans.E.C. 2.5% –25%
	432–649	UltratecInsecticide w/ SBP–1382/ Chlorpyrifos Trans.E.C. 1.6% – 16%
	432–661	UltratecInsecticide w/Chlorpyrifos/ EsbiothrinTrans.
	432–662	UltratecInsecticide w/ ChlorpyrifosTrans. Emuls. 25%
	432–682	UltratecInsecticide w/Chlorpyrifos/ Pyr/PBO Trans.Emuls. 1.5 – 7.5 – 15
	432–692	UltratecInsecticide w/ SBP–1382/ Chlorpyrifos Trans. E.C.3.2%–16% LO
	432–718	SBP–1382/ Chlorpyrifos Trans.E.C. 3.2% – 16% LO For Pres. Spray
	432–1019	Niagara P–D 5Residual InsecticideIntermediate
	432–1095	PyrenoneDursban Aqueous Base
	432–1104	PyrenoneDursban W–B
	432–1106	PyrenoneDursban Aqueous Base II
Verdant Brands, Inc.	769–690	SMCP DFC–4Formulators Concentrate
McLaughlin Gormley King Company	1021–1215	Pyrocide Intermediate 7129
	1021–1220	D-Trans Intermediate 1957
	1021–1221	Pyrocide Intermediate 7130
	1021–1434	Esbiol Intermediate 2235
	1021–1438	D-Trans Intermediate 2247
	1021–1444	Multicide Intermediate 2253
	1021–1506	D-Trans Intermediate 2321
	1021–1707	Multicide Concentrate 2748
	1021–1717	Multicide Intermediate 2745
Griffin LLC	1812–429	Questor MUP Insecticide
Cheminova, Inc.	4787–27	Chlorpyrifos Technical
	4787–29	Cyren MUC
	4787–30	Cyren 150 Concentrate
	4787–32	Cyren RT
3M Company	10350–10	Dursban 20 MEC
Makhteshim-Agan of North America Inc.	11678–45	Pyrinex Chlorpyrifos Insecticide
Platte Chemical Company	34704–801	Chlorpyrifos Technical
Luxembourg Industries (Pamol) Ltd.	42519–17	DorsanTechnical
Insecta Sales & Research, Inc.	45600–6	Insecta No.105
Micro-Flo Company	51036–217	Chlorpyrifos61.5% MUP
Control Solutions,Inc.	53883–34	Martin's 6 lb. Chlorpyrifos
Dow AgroSciences LLC	62719–15	Dursban F Insecticidal Chemical
	62719–44	Dursban R
	62719–45	Dursban 30 SEC
	62719–66	Dursban HF Insecticidal Concentrate
	62719–76	Lentrek 6
	62719–78	Dursban W Insecticidal Chemical
	62719–225	XRM–5222
Gharda USA, Inc.	70907–1	Chlorpyrifos Technical
	70907–6	Chlorpyrifos 6 Manufacturing Concentrate
	70907–14	Chlorpyrifos 4 Manufacturing Concentrate

In the **Federal Register** notice published on September 20, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day period provided under FIFRA section6(f)(1)(C). One public comment was submitted to the docket in response to EPA's request for comments.This comment was a generic comment on the overall organophosphate process focusing on the development of a new process for review of the organophosphate pesticides that did not relate to this action specifically.

C. Requests for Voluntary Cancellation of End-Use Products

In addition to requesting voluntary cancellation of manufacturing-use products, several registrants have submitted requests for voluntary cancellation of some of their registrations for end-use pesticide products containing chlorpyrifos. The end-use registrations for which cancellation was requested are identified in the following Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Aventis Environmental Science USA	432–566	SBP–1382/ Chlorpyrifos Transparent Emulsion Spray 0.05% + 0.5%
	432–567	SBP–1382/ ChlorpyrifosTransparent Emulsion Dilutable Conc. 1.6% + 16%
	432–568	Ultratec Insecticide w/ SBP–1382/ ChlorpyTrans. EM.Dil.Conc. 3.2% + 16%
	432–569	SBP–1382/ ChlorpyrifosTransparent Emulsion Spray0.1 % + 0.5%
	432–1027	PyrenoneDursban Roach & Ant Spray
	432–1059	PyrenoneDursban Dual Use E.C.
	432–1101	AqueousResidual Spray
	432–1107	Pyrenone Dursban Water-Based Pressurized Spray
Verdant Brands, Inc.	769–562	Mole Cricket Bait ·D
	769–576	Sureco Indoor Pest Control

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	769–578	Sureco Yard and Kennel Spray Concentrate
	769–607	R&M InsectSpray withResmethrin/ Dursban
	769–666	Dursban 1E Insecticide
	769–668	SMCP D/V217 Insecticide
	769–672	SMCP Residual Roach Spray
	769–685	SMCP Dursban Household Insecticide
	769–694	SMCPXtraban Roach Concentrate
	769–697	SMCP Dursban Plus Turf Insecticide
	769–715	SMCP Lawn-Gard Spray
	769–716	SMCP Lawn and Ornamental Spray
	769–717	Dursban .8% Granular Insecticide
	769–721	SMCP Dursban Granular Insecticide
	769–731	SMCP Home Lawn and Ornamental Spray
	769–735	SMCP Dursban Cricket Bait 200
	769–737	SMCP Blatta-Bits Roach Bait Insecticide
	769–738	Frank's Finest Roach/Flea Spray
	769–781	AFC Residual Insect Spray
	769–800	Superior Dursban 4E Emulsifiable Concentrate
	769–801	Superior Dursban 2E
	769–804	Superior Delve Concentrate
	769–826	Sureco T.A.S.K
	769–827	Dursban Plus Dichlovos
	769–828	Dursban 1.4% G
	769–829	SMCP 32–4–7 Fertilizer with Dursban
	769–831	SMCP 40–0–0 with Dursban
	769–873	Dursban 135 EC
	769–880	Pratt Dursban 250 EC
	769–936	Warner Enterprises Residual Spray
	769–952	Dursban G5 Granular
	769–953	Pratt Dursban G232 Granular Lawn Insect Control for Professional Use
	769–962	Ulti-Mate Homeowner Pest Control Concentrate
McLaughlin Gormley King Company	1021–1362	Pyrocide Concentrate 7254
	1021–1416	Pyrocide Residual Contact Spray 7335
	1021–1435	Esbiol Residual Contact Spray 2236
	1021–1439	D-Trans Concentrate 2249
	1021–1605	D-Trans Residual Spray 2580
	1021–1668	Evercide Residual Spray 2640
	1021–1693	Evercide Residual Pump Spray 2641
	1021–1716	Multicide Pressurized Ant and Roach Spray 27451
Griffin LLC	1812–427	Pyrinex 4EC Insecticide
	1812–428	Pyrinex 2 EC Area Insecticide
	1812–443	Questor LO Insecticide
3M Company	10350–12	Duratrol Yard Spray Concentrate
Luxembourg Industries (Pamol) Ltd.	42519–18	Dorsan 4E–41
Micro-Flo Company	51036–102	Chlorpyrifos 0.5% RTU
	51036–118	Chlorpyrifos 4E LO Insecticide
	51036–119	Chlorpyrifos 1E
	51036–223	Chloroban 4–E
	51036–303	Chlorpyrifos 5.3%
Control Solutions, Inc.	53883–36	Martin's Surrender Chlorpyrifos TC
	53883–37	Martin's Chlorpyrifos 2E
	53883–49	Martin's Dursban 1L Lawn and Ornamental Plant Insecticide
	53883–53	Martin's Dursban Pest Control
	53883–55	Martin's Termite and Soil Insect Control
Dow AgroSciences LLC	62719–22	Dursban 25W
	62719–23	Lorsban 4E
	62719–29	Lorsban 1–PE
	62719–41	Dursban 4 Plus
	62719–46	Dursban WB05
	62719–55	Dursban LO
	62719–56	Dursban 1–12 Insecticide
	62719–74	Dursban ME
	62719–85	Lorsban 7.5 G
	62719–163	Dursban 50 DF
	62719–197	Dursban WB05 III
	62719–235	Dursban Lawn and Ornamental Insecticide
	62719–252	Dursban 50WSP Insecticide in Water Soluble Packets
	62719–269	Dursban NXS–4
	62719–281	Dursban NXS05
	62719–283	Dursban ME02 + ETOC
	62719–284	Dursban NXS–6
	62719–298	Dursban ME 1.7
Cheminova, Inc.	67760–5	Cyren 1E
	67760–22	Cheminova Chlorpyrifos 4E–AG–SG
	67760–23	Cyren Turf and Ornamental Insecticide
	67760–24	Cyren 1/2 G Granular Insecticide
	67760–25	Cyren 1G
	67760–32	Cyren 2E XL
Platte Chemical Company	2393–245	Hopkins Lincoln Granules
	34704–305	Hopkins Lincoln Granules
	34704–413	Dursban 1 Coated Granules
	34704–449	Clean Crop Chlorpyrifos 1.14G Insecticide and Fertilizer
	34704–523	Clean Crop Dursban Insect Spray
	34704–526	Pest Control for Home and Garden
	34704–541	Dursban 4E
	34704–748	Clean Crop Household Insect Spray
	34704–765	Clean Crop Dursban 1
	1812–404	Chlorfos 15G
3M Company	10350–22	MEC Chlorpyrifos Livestock Premise Spray Concentrate
Platte Chemical Company	34704–55	Clean Crop Chlorpyrifos 1/2G Turf Insecticide
	34704–65	Chlorpyrifos 2E
	34704–66	Clean Crop Chlorpyrifos 4E Insecticide
	34704–423	Dursban 2 Coated Granules
	34704–448	Clean Crop Dursban 1G Insecticide
	34704–587	Chlorpyrifos-thiram 7.5–7.5G
	34704–693	Clean Crop Chlorpyrifos 50WP Seed Treater
Luxembourg Industries (Pamol) Ltd.	42519–19	Dorsan 4E–45
	42519–20	Dorsan 2E
	42519–21	Dorsan 4E
Insecta Sales & Research, Inc.	45600–1	Insecta
	45600–11	Insecta 1000
	45600–17	Insecta for Manholes
Control Solutions, Inc.	53883–48	Martin's Dursban Insecticide Granules
	53883–52	Martin's Dursban 21/2% Insecticide Granules
Micro-Flo Company	51036–117	Chlorpyrifos 1/2% Bait
	51036–122	Micro-flo Chlorpyrifos Termite Concentrate
	51036–152	Micro-Flo Chlorpyrifos 2E
	51036–153	Chlorpyrifos1% Bait
	51036–154	Chlorpyrifos 4–E Insecticide
	51036–216	Micro-Flo Chlorpyrifos 4E Wood Treatment
	51036–220	1% Chlorpyrifos Granule
	51036–247	Chlorpyrifos 2.5% G
	51036–259	Chlorpyrifos 2.32 Bait
	51036–263	Chlorpyrifos 1/2% Granule
	51036–264	Chlorpyrifos 2.32% Granule
	51036–291	Chlorpyrifos 4 AG
	51036–300	Chlorpyrifos 15G
Dow AgroSciences LLC	62719–11	Dursban 4E Insecticide
	62719–14	Dursban 1/2 G Granular
	62719–34	Lorsban 15G
	62719–35	Dursban Turf Insecticide
	62719–39	Lorsban 50W Wettable Powder (SLNs; FL9000500, GA93000300)
	62719–47	Dursban TC
	62719–54	Dursban 1–D Insecticide
	62719–65	Dursban 2E
	62719–68	Dursban 50W
	62719–69	Dursban WT Insecticidal Wood Treatment
	62719–72	Dursban 50W in Water Soluble Packets
	62719–77	Lentrek 6 WT
	62719–88	Dursban ME20 Microencapsulated Insecticide
	62719–89	Dursban ME04 Microencapsulated Insecticide
	62719–90	Dursban ME02 Microencapsulated Insecticide
	62719–166	Dursban Pro
	62719–167	Equity
	62719–210	Dursban 1G Insecticide
	62719–221	Lorsban 50W Insecticide in Water Soluble Packets (SLNs; FL92001000, GA93000400)
	62719–254	Dursban 4E–N
	62719–255	Dursban 50W Nursery in Water Soluble Packets

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	34704–523	Clean Crop Dursban Insect Spray
	34704–526	Pest Control for Home and Garden
	34704–541	Dursban 4E
	34704–748	Clean Crop Household Insect Spray
	34704–765	Clean Crop Dursban 1

In the **Federal Register** notice published on September 20, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day period provided under FIFRA section 6(f)(1)(C).

Requests for voluntary amendments to delete uses from the registrations of end-use products. Pursuant to section 6(f)(1)(A) of FIFRA, the signatory registrants have also submitted requests to amend all of their other end-use registrations of pesticide products containing chlorpyrifos to delete the aforementioned uses. The registrations for which amendments to delete uses were requested are identified in the following Table 3.

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Reg. No.	Product/SLNs
Verdant Brands, Inc.	769–641	Dursban 2EInsecticide
	769–662	SMCP Dursban .5% Granular Insecticide
	769–679	Dursban 1% Granular Insecticide
	769–680	Dursban Mole Cricket Bait
	769–699	Dursban 4E Insecticide
	769–726	Dursban 1G Granular Insecticide
	769–808	Banzol
	769–825	SMCP Dursban 2.5% G Insecticide
	769–940	Dursban Plus Insecticide
Griffin LLC	1812–403	Chlorfos 4E Insecticide

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Reg. No.	Product/SLNs
	1812–404	Chlorfos 15G
3M Company	10350–22	MEC Chlorpyrifos Livestock Premise Spray Concentrate
Platte Chemical Company	34704–55	Clean Crop Chlorpyrifos 1/2G Turf Insecticide
	34704–65	Chlorpyrifos 2E
	34704–66	Clean Crop Chlorpyrifos 4E Insecticide
	34704–423	Dursban 2 Coated Granules
	34704–448	Clean Crop Dursban 1G Insecticide
	34704–587	Chlorpyrifos-thiram 7.5–7.5G
	34704–693	Clean Crop Chlorpyrifos 50WP Seed Treater
Luxembourg Industries (Pamol) Ltd.	42519–19	Dorsan 4E–45
	42519–20	Dorsan 2E
	42519–21	Dorsan 4E
Insecta Sales & Research, Inc.	45600–1	Insecta
	45600–11	Insecta 1000
	45600–17	Insecta for Manholes
Control Solutions, Inc.	53883–48	Martin's Dursban Insecticide Granules
	53883–52	Martin's Dursban 21/2% Insecticide Granules
Micro-Flo Company	51036–117	Chlorpyrifos 1/2% Bait
	51036–122	Micro-flo Chlorpyrifos Termite Concentrate
	51036–152	Micro-Flo Chlorpyrifos 2E
	51036–153	Chlorpyrifos1% Bait
	51036–154	Chlorpyrifos 4–E Insecticide
	51036–216	Micro-Flo Chlorpyrifos 4E Wood Treatment
	51036–220	1% Chlorpyrifos Granule
	51036–247	Chlorpyrifos 2.5% G

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Reg. No.	Product/SLNs
	51036–259	Chlorpyrifos 2.32 Bait
	51036–263	Chlorpyrifos 1/2% Granule
	51036–264	Chlorpyrifos 2.32% Granule
	51036–291	Chlorpyrifos 4 AG
	51036–300	Chlorpyrifos 15G
Dow AgroSciences LLC	62719–11	Dursban 4E Insecticide
	62719–14	Dursban 1/2 G Granular
	62719–34	Lorsban 15G
	62719–35	Dursban Turf Insecticide
	62719–39	Lorsban 50W Wettable Powder (SLNs; FL9000500, GA93000300)
	62719–47	Dursban TC
	62719–54	Dursban 1–D Insecticide
	62719–65	Dursban 2E
	62719–68	Dursban 50W
	62719–69	Dursban WT Insecticidal Wood Treatment
	62719–72	Dursban 50W in Water Soluble Packets
	62719–77	Lentrek 6 WT
	62719–88	Dursban ME20 Microencapsulated Insecticide
	62719–89	Dursban ME04 Microencapsulated Insecticide
	62719–90	Dursban ME02 Microencapsulated Insecticide
	62719–166	Dursban Pro
	62719–167	Equity
	62719–210	Dursban 1G Insecticide
	62719–221	Lorsban 50W Insecticide in Water Soluble Packets (SLNs; FL92001000, GA93000400)
	62719–254	Dursban 4E–N
	62719–255	Dursban 50W Nursery in Water Soluble Packets

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Reg. No.	Product/SLNs
	62719–271	Dursban 1F
	62719–276	Dursban 2.5G
	62719–293	Dursban 75WG
	62719–295	Lorsban 30G
	62719–316	Dursban Plus Fertilizer 2
Makhteshim-Agan of North America Inc.	66222–3	Pyrinex Chlorpyrifos 4EC
	66222–4	Pyrinex Chlorpyrifos Lawn Chinch Bug and Sod Webworm Control
	66222–5	Pyrinex Chlorpyrifos Lawn and Ornamental Insecticide w/ Dursban 2E
	66222–6	Pyrinex Chlorpyrifos Dursban 2E Insecticide
	66222–17	Pyrinex Chlorpyrifos Termiticide Concentrate
Cheminova, Inc.	67760–6	Cyren 2E
	67760–7	Cyren 4E Insecticide
	67760–10	Cyren TC
	67760–31	Cyren 2 TC
Gharda USA, Inc.	70907–2	Regatta 4E Chlorpyrifos Professional Insecticide
	70907–4	Pilot 4E Chlorpyrifos Agricultural Insecticide
	70907–7	Navigator 4 TC Chlorpyrifos Termite Concentrate
	70907–8	Pilot 50W Chlorpyrifos Agricultural Insecticide
	70907–9	Regatta 50W Chlorpyrifos Professional Insecticide
	70907–13	Navigator 4WT Chlorpyrifos Wood Treatment Concentrate

In the **Federal Register** notice published on September 20, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day period provided under FIFRA section 6(f)(1)(C).

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. Accordingly, the Agency orders that the registrations identified in Table 3 are hereby amended to delete the following uses: All post-construction termite control uses, except spot and local treatment (use of such products for spot and local treatment will be prohibited after December 31, 2002 by product labeling); all other termite control uses, effective December 31, 2004 (unless EPA has made a decision prior to that date that preconstruction use may continue); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential, non-agricultural uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential, non-agricultural sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers and underground utility cable and conduits; and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on tomatoes and post-bloom apple trees (except for tree trunk use). The Agency also orders that the registrations identified in Tables 1 and 2 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1–3 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this document will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term existing stocks is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

A. Manufacturing-Use Products

1. *Distribution or sale* . The distribution or sale of existing stocks of any manufacturing-use product identified in Table 1 will not be lawful under FIFRA as of December 27, 2000, except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

2. *Use for producing other manufacturing-use products.* The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any other manufacturing-use product will not be lawful under FIFRA as of December 1, 2000 unless such product bears an EPA-approved label that is consistent with the provisions of the Agreement.

3. *Use for producing end-use products*—(i) *Restricted use and package size limitations.* (a) The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product that is an emulsifiable concentrate (EC) will not be lawful under FIFRA as of December 1, 2000, unless the end-use product is labeled for restricted use;

(b) The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product labeled for any agricultural use (other than cattle ear tags) and that is not an EC, will not be lawful under FIFRA as of December 1, 2000, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation;

(c) The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product labeled solely for non-agricultural uses (other than containerized baits in Child Resistant Packaging (CRP)) and that is not an EC, will not be lawful under FIFRA as of December 1, 2000, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(ii) *Use in products labeled for use on tomatoes or use on apple trees post bloom.* The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into end-use products bearing instructions for use on tomatoes or use on apple trees following bloom (except for tree trunk use) will not be lawful under FIFRA as of December 1, 2000.

(iii) *Use in products labeled for other end-uses.* The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product bearing instructions for any of the following uses will not be lawful under FIFRA after December 1, 2000:

(a) All termite control uses, unless the end-use product bears directions for use of a maximum 0.5% chlorpyrifos end-use dilution;

(b) Post-construction termite control, except for spot and local termite treatment, provided the label of the end-use product states that the product may not be used for spot and local treatment after December 31, 2002;

(c) Indoor residential, except for containerized baits in CRP;

(d) Indoor non-residential, except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, food processing plants, or processed wood products treated during the manufacturing process at the manufacturing site or at the mill;

(e) Outdoor residential, except for products bearing labeling solely for one or more of the following public health uses: individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies;

(f) Outdoor non-residential, non-agricultural except for products that bear labeling solely for one or more of the following uses: golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1lb./ai per acre; mosquito control for public health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers and underground utility cable and conduits.

(iv) *Final use date for any manufacturing-use product labeled for termite control.* The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product labeled for termite control will not be lawful under FIFRA after December 31, 2004, except that EPA will permit the continued use for the manufacture of end-use products labeled solely for pre-construction termite control if EPA has issued a written determination that the pre-construction use may continue consistent with the requirements of FIFRA.

4. *All other use* . Any use of existing stocks of a canceled manufacturing-use product identified in Table 1 that is not otherwise limited by this order may continue until such stocks are exhausted provided such use is in accordance with the existing label of that product.

B. End-Use Products

1. *Distribution, sale of products bearing instructions for use on tomatoes or apple trees post bloom.* The distribution or sale of existing stocks by any person of any product listed in Table 2 or 3 that bears instructions for post-bloom application to apple trees (other than tree trunk use) or use on tomatoes will not be lawful under FIFRA after December 31, 2000, except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal. Any use of such products for post-bloom application to apple trees (other than tree trunk use) or tomatoes will not be lawful after December 31, 2000. All other use of such products may continue until stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

2. *Distribution or sale by registrants of products bearing other uses*— (i) *Restricted use and package size limitations.* Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal:

(a) The distribution or sale by registrants of existing stocks of any EC formulation product listed in Table 2 or 3 that is an EC will not be lawful under FIFRA after February 1, 2001 unless the product is labeled as restricted use;

(b) The distribution or sale by registrants of existing stocks of any product listed in Table 2 or 3 labeled for any agricultural use and that is not an EC, will not be lawful under FIFRA after February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation;

(c) The distribution or sale by registrants of existing stocks of any product listed in Table 2 or 3 labeled solely for non-agricultural uses (other than containerized baits in CRP) and that is not an EC, will not be lawful under FIFRA after of February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(ii) *Prohibited uses* . Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal, the distribution or sale of existing stocks by registrants of any product identified in Table 2 or 3 that bears instructions for any of the following uses will not be lawful under FIFRA after February 1, 2001:

(a) Termite control, unless the product bears directions for use of a maximum 0.5% active ingredient chlorpyrifos end-use dilution;

(b) Post-construction termite control, except for spot and local termite treatment, provided the label of the product states that the product may not be used for spot and local treatment after December 31, 2002;

(c) Indoor residential except for containerized baits in CRP;

(d) Indoor non-residential except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, food processing plants, or processed wood products treated during the manufacturing process at the manufacturing site or at the mill;

(e) Outdoor residential except for products bearing labeling solely for one or more of the following public health uses: individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies;

(f) Outdoor non-residential, non-agricultural except for products that bear labeling solely for one or more of the following uses: golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1lb./ai per acre; mosquito control for public

health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, and underground utility cable and conduits.

3. *Retail and other distribution or sale,*. The retail sale of existing stocks of products listed in Table 2 or 3 bearing instructions for the prohibited uses set forth in Unit IV.B.2.(ii)(a)-(f) of this document will not be lawful under FIFRA after December 31, 2001. Except as otherwise provided in this order, any other distribution or sale (for example, return to the manufacturer for relabeling) is permitted until stocks are exhausted.

4. *Final distribution, sale and use date for preconstruction termite control.* The distribution, sale or use of any product listed in Table 2 or 3 bearing instructions for pre-construction termiticide use will not be lawful under FIFRA after December 31, 2005, unless, prior to that date, EPA has issued a written determination that such use may continue consistent with the requirements of FIFRA.

5. *Use of existing stocks.* Except for products bearing those uses identified above in Units IV.B.1. and IV.B.4. of this document, EPA intends to permit the use of existing stocks of products listed in Table 2 or 3 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: November 27, 2000.

Jack E. Housenger,

Acting Director, Special Review ond Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–30917 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64053; FRL–6755–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on January 5, 2001 unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This Notice announces receipt by the Agency of applications from registrants to delete uses in eight pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Chemical Name	Delete From Label
000264–00637	Thiodan Technical	Endosulfan	Sugarcane
000279–02306	Thiodan Technical Insecticide	Endosulfan	Sugarcane
001812–00404	Chlorfos 15G	Chlorpyrifos	Popcorn
002724–00450	Zoecon 9001 EW	Propetamphos	All broadcast and spot treatment, including all residential uses
010163–00158	Gowan Chlorpyrifos 4E	Chlorpyrifos	Popcorn
011678–00005	Thionex (Endosulfan) Technical	Endosulfan	Sugarcane
019713–00319	Velsicol Technical Endosulfan Insecticide	Endosulfan	Sugarcane

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product Name	Chemical Name	Delete From Label
066222–00002	Thionex Endosulfan 50WP Insecticide	Endosulfan	Alfalfa grown for forage, artichokes, peas (seed crop only), sugar beets, sunflowers, leather leaf fern, ornamentals (greenhouse) ornamentals (outdoors — except trees and shrubs)

NOTE: The comment period has been waived for EPA Registration 001812–00404, 002724–00450 and 010163–00158

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 5, 2001 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000264	Aventis Cropscience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000279	FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
001812	Griffin L.L.C., Box 1847, Valdosta Ga 316, GA 31603.
002724	Wellmark International, 1100 E. Woodfield Rd., Suite 500, Schaumburg, IL 60173.
010163	Gowan Co., Box 5569, Yuma Az 853, AZ 85366.
011678	Makhteshim Chemical Works, Ltd, c/o Makhteshim-Agan of N. America Inc., 551 Fifth Ave, Suite 1100, New York, NY 10176.
019713	Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave, Suite 1100, New York, NY 10176.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail*: Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked January 5, 2001.

2. *In Person or by courier*. Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically*. You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18–months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 16, 2000.

Richard D. Schmitt,

Associate Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–31060 Filed 12–5–00; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–978; FRL–6748–9]

Notice of Filing Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–978, must be received on or before January 5, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–978 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C),

Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–978. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–978 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–978. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 17, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent the view of the petitioner. EPA is publishing the petitioner's summaries verbatim without editing it in any way. The petitioner's summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemicals residues or an explanation of why no such method is needed.

1. Auxein Corporation

PP 7F4842 and PP 7F4843

EPA has received pesticide petitions PP 7F4842 and PP 7F4843 from Auxein Corporation, 3125 Sovereign Drive, Suite B, Lansing, MI 48911–4240, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish amendments of existing tolerance exemptions for the biochemical pesticides L-glutamic acid and gamma aminobutyric acid (GABA) pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended. Auxein Corporation has submitted the following summaries of information, data, and arguments in support of their pesticide petitions. These summaries were prepared by Auxein Corporation and EPA has not fully evaluated the merits of the pesticide petitions. The summaries may have been edited by EPA if the terminology used was unclear, the summaries contained extraneous material, or the summaries unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

PP 7F4842

In the **Federal Register** of October 29, 1997 (62 FR 56268, FRL–5751–3), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition (PF–772) by Auxein Corporation. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. This petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent glutamic acid in or on all raw agricultural commodities. The final rule exempted the biochemical glutamic acid from the requirement of a tolerance on all raw agricultural commodities when used as a plant growth enhancer in accordance with good agricultural practices. EPA published a final rule establishing a tolerance exemption in the **Federal Register** on January 7, 1998 (63 FR 679–682) (FRL–5764–4) amending 40 CFR 1180.1187. An amendment to this petition and thus the final rule establishing a tolerance exemption, was requested by Auxein Corporation to change the name of the active ingredient from the above to L-glutamic acid. In the **Federal Register** of September 25, 1998 (63 FR 51302) Auxein Corporation requested a correction to the name. Throughout the preamble to the final rule and in the codified text (40 CFR 180.1187), reference was made to "glutamic acid." Auxein Corporation brought to the Agency's attention that the requested tolerance was for residues of "L-glutamic acid" rather than "glutamic acid." This technical amendment corrected the preamble and the codified text in the January 7, 1998 final rule. Therefore, in the preamble to FR Doc. 98–359, published at 63 FR 679, FRL–6029–1, January 7, 1998, reference to "glutamic acid" was changed to refer to "L-glutamic acid." Recent research performed on this active ingredient indicates the method of protection is not restricted to growth enhancement, and Auxein wishes to delete the wording "when used as a plant growth enhancer" from the present exemption as well as correct the term "raw agricultural commodities" to "food commodities."

A. Product Name and Proposed Use Practices

AuxiGro WP Plant Metabolic Primer. When used as directed, AuxiGro has been shown to increase yields and/or quality of treated commodities, early ripening in certain vegetables, increased root growth, early flowering and fruit set, faster seed germination and rooting.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Supporting data for this section were submitted with PP 7F4842. Supporting product chemistry data for the end-use product, AuxiGro WP (EPA Reg. No. 70810–1 was submitted on June 12, 1997 (MRID 44296801) and February 16, 1998 (MRID 44538701).

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Supporting data for this section was submitted with PP 7F4842.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Supporting data for this section was submitted with PP 7F4842.

C. Mammalian Toxicological Profile

Supporting data for this section was submitted with PP 7F4842.

D. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* No differences in exposure are expected compared to those described in PP 7F4842.

ii. *Drinking water.* No differences in exposure are expected compared to those described in PP 7F4842.

2. *Non-dietary exposure.* No differences in exposure are expected compared to those described in PP 7F4842.

E. Cumulative Exposure

No differences in exposure are expected compared to those described in PP 7F4842.

F. Safety Determination

1. *U.S. population.* Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of L-glutamic acid. This includes all dietary exposure and all other exposure for which there is reliable information. This is a reasonable conclusion because of the preponderance of data from open literature supporting the safe use of L-glutamic acid in foods, the supporting acute toxicity data on AuxiGro, and inconsequential exposure resulting from its application to crops.

2. *Infants and children.* No differences in exposure are expected

compared to those described in PP 7F4842.

G. Existing Tolerances

Existing tolerances have been established for L-glutamic acid, 40 CFR part 180.1187.

H. International Tolerances

No Codex maximum residue levels have been established for L-glutamic acid.

PP 7F4843

In the **Federal Register** of October 29, 1997 (62 FR 57170, FRL–5751–3) EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition (PF–772) by Auxein Corporation. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the FQPA of 1996. This petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent gamma aminobutyric acid in or on all food commodities. The final rule exempted the biochemical gamma aminobutyric acid from the requirement of a tolerance on all food commodities when used as a plant growth enhancer in accordance with good agricultural practices. EPA published a final rule establishing a tolerance exemption in the **Federal Register** on January 7, 1998 (63 FR 676–679) (FRL–5764–5) amending 40 CFR 1180.1188. Recent research performed on this active ingredient indicates the method of protection is not restricted to growth enhancement, and Auxein Corporation wishes to delete the wording "when used as a plant growth enhancer" from the present exemption.

A. Product Name and Proposed Use Practices

AuxiGro WP Plant Metabolic Primer. When used as directed, AuxiGro has been shown to increase yields and/or quality of treated commodities, early ripening in certain vegetables, increased root growth, early flowering and fruit set, faster seed germination and rooting.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Supporting data for this section were submitted with PP 7F4843. Supporting product chemistry data for the end-use product, AuxiGro WP (EPA Reg. No. 70810–1) were submitted on June 12, 1997 (MRID 44296801) and February 16, 1998 (MRID 44538701).

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Supporting data for this section were submitted with PP 7F4843.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Supporting data for this section were submitted with PP 7F4843.

C. Mammalian Toxicological Profile

Supporting data for this section were submitted with PP 7F4843.

D. Aggregate Exposure

1. *Dietary exposure—i. Food.* No differences in exposure are expected compared to those described in PP 7F4843.

ii. *Drinking water.* No differences in exposure are expected compared to those described in PP 7F4843.

2. *Non-dietary exposure.* No differences in exposure are expected compared to those described in PP 7F4843.

E. Cumulative Exposure

No differences in exposure are expected compared to those described in PP 7F4843.

F. Safety Determination

1. *U.S. population.* Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of GABA. This includes all anticipated dietary exposure and all other exposures for which there is reliable information. This is a reasonable conclusion because exposure to GABA resulting from label directed use is inconsequential, does not cross the blood-brain barrier, and is consumed daily by the human population from naturally occurring sources.

2. *Infants and children.* No differences in exposure are expected compared to those described in PP 7F4843.

G. Existing Tolerances

Existing tolerances have been extablished for gamma aminobutyric acid (GABA), 40 CFR part 180.1188.

H. International Tolerances

No Codex maximum residue levels have been established for gamma aminobutyric acid (GABA)

[FR Doc. 00–30918 Filed 12–5–00; 8:45a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–985; FRL–6755–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–985, must be received on or before January 5, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–985 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–985. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–985 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–985. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences

PP 4F4412

EPA has received a pesticide petition (PP 4F4412) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268–1054 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending the time–limited tolerance for residues of picloram, 4-amino-3,5,6-trichloropicolinic acid and its potassium salt in or on in or on the raw agricultural commodities (RACs) sorghum grain at 0.3 parts per million (ppm), sorghum grain forage at 0.2 ppm, and sorghum stover at 0.5 ppm; and for residues of picloram in or on the RAC aspirated grain fractions at 4 ppm until December 31, 2002. EPA issued a final rule, published in the **Federal Register** of January 5, 1999 (64 FR 418) (FRL–6039–4), which announced that it established a time–limited tolerance for the indirect or inadvertent residues of the herbicide picloram, 4-amino-3,5,6-trichloropicolinic acid and its potassium salt in or on sorghum grain at 0.3 ppm, sorghum grain forage at 0.2 ppm, and sorghum stover at 0.5 ppm; and for residues of picloram in or on the RAC aspirated grain fractions at 4 ppm, with an expiration date of December 31, 2000. A condition of this rule required Dow AgroSciences to submit an aspirated grain residue study before December 31, 1999, which they did on December 9, 1999. The extension of the time–limited tolerances to December 31, 2002 will allow time for review of this additional data and establishment of final tolerances. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is understood based on a wheat metabolism study. The residue of concern in wheat forage, straw and grain is conjugated picloram, which is hydrolyzable by acid, base and B-glucosidase. The minor metabolites that were identified in grain and straw were 4-amino-6-hydroxy-3,5-dichloropicolinic acid and 4-amino-2,3,5-trichloropyridine.

2. *Analytical method.* The analytical portions of the magnitude of residue studies were performed at Dow AgroSciences in Midland, MI. The analytical method utilized for the determination of picloram residue levels in the submitted studies was ACR 73.3.S2. There is a practical analytical method for detecting and measuring levels of picloram in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement.

3. *Magnitude of residues*

TABLE 1.–SUMMARY OF RESIDUES OF PICLORAM (PPM) FOUND IN GRAIN SORGHUM

Matrix	Range
Grain	ND[a]-0.23
Forage	ND-0.17
Fodder	ND-0.44
Aspirated grain fractions	ND

[a] ND = less than one–half of the validated lower limit of quantitation of 0.05 µg/g in grain, 0.1 µg/g in forage and fodder, and 0.25 µg/g in aspirated grain fractions.

B. Toxicological Profile

1. *Acute toxicity.* Studies for acute toxicity indicate that picloram is classified as category III for acute oral toxicity, category III for acute dermal toxicity, category I/II (depending on whether acid or salts) for acute inhalation toxicity, category IV for skin irritation potential, and category III for eye irritation potential. The potassium salt is classified as a skin sensitizer. In addition, picloram has a low vapor pressure.

Picloram potassium salt has low acute toxicity. The rat oral LD_{50} is 3,536 milligram/kilogram (mg/kg) or greater for males and females. The rabbit dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 1.63 milligram/liter (mg/L) air (the highest attainable concentration). Picloram potassium salt is a positive skin sensitizer in guinea pigs but is not a dermal irritant. Technical picloram potassium salt is a moderate ocular irritant but ocular exposure to the technical material would not normally be expected to occur to infants or children or the general public. End use formulations of picloram have similar low acute toxicity profiles plus low ocular toxicity as well. Therefore, based on the available acute toxicity data, picloram does not pose any acute dietary risks.

2. *Genotoxicty.* Picloram acid was evaluated in the Ames test using *Salmonella typhimurium*. Doses ranged up to 5,000 µ g/plate, with and without metabolic activation. The test substance did not produce a mutagenic response either in the presence or absence of activation.

Picloram acid was evaluated for gene mutation in mammalian cells (HGPRT/CHO). As evaluated up to toxic levels (1,750 gram/milliliter (µg/mL) without metabolic activation; 4,500 µg/mL with metabolic activation), the compound was found to be negative for inducing forward mutation in Chinese hamster ovary (CHO) cells.

Picloram acid was evaluated for cytogenetic effects on bone marrow cells of rats via intra gastric administration at dosage levels of 0 (vehicle), 20, 200 or 2,000 mg/kg. The test material did not produce cytogenetic effects in the study.

Picloram acid was evaluated for genotoxic potential as administered to primary rat hepatocyte cultures at concentrations of 0 (vehicle), 10, 33.3, 100, 333.3 or 1,000 g/mL. The test material was negative for unscheduled DNA synthesis (UDS, a measure of DNA damage/repair) treated up to cytotoxic levels of (1,000 µg/mL).

3. *Reproductive and developmental toxicity.* The HED RfD Peer Review Committee concluded that there was no evidence, based on the available data, that picloram and its salts were associated with significant reproductive or developmental toxicity under the testing conditions.

In the following developmental toxicity studies, the dose levels that appear in parenthesis are picloram acid equivalents where the conversion factor employed was 0.86 as applied to doses of potassium salt.

Picloram potassium salt was administered to New Zealand rabbits by oral gavage at dosage levels of 0, 40, 200, and 400 mg/kg/day (picloram acid equivalents) during days 6 to 18 of gestation. The maternal no observed adverse effect level (NOAEL) is 40 (34) mg/kg/day, where the lowest observed adverse effect level (LOAEL) is 200 (172) mg/kg/day based on reduced maternal weight gain during gestation. The developmental NOAEL is 400 (340) mg/kg/day and the LOAEL was not determined. The potassium salt of picloram was administered to CD rats by gastric intubation at dosage levels of 0, 35 (30), 174 (150) and 347 (298) mg/kg/day during day 6–15 of gestation. The test vehicle was distilled water. There was no evidence of developmental toxicity at doses up to and including the high dose of 347 (298) mg/kg/day. The maternal LOAEL is 347 (298) mg/kg/day based upon excessive salivation in the dams of the high dose group. Hence, the developmental toxicity NOAEL is greater than or equal to 347 (298) mg/kg/day. The maternal toxicity LOAEL is 347 (298) mg/kg/day and NOAEL is 174 (150) mg/kg/day.

Picloram acid was evaluated in a 2–generation reproduction study in the CD rat. Dosage levels employed were 0, 20, 200 or 1,000 mg/kg/day. The parental LOAEL is 1,000 mg/kg/day based on histopathological lesions in the kidney of males of both generations and some females. In males of both generations, blood in the urine, decreased urine specific gravity, increased absolute and relative kidney weight, and increased body weight gain was observed at the high dose. The parental LOAEL is 1,000 mg/kg/day and the NOAEL is 200 mg/kg/day. The reproductive LOAEL was not identified and the NOAEL is 1,000 mg/kg/day.

4. *Subchronic toxicity.* In a 90–day oral toxicity study, picloram acid was administered via the diet to groups of 15 F344 rats/sex/dose at dosage levels of 0, 15, 50, 150, 300, or 500 mg/kg/day. Based upon liver weight changes and minimal microscopic changes in the liver, the systemic LOAEL is 150 mg/kg/day. The NOAEL is 50 mg/kg/day.

In a 1982 6–month dog dietary study, picloram acid was evaluated at dosage levels of 0, 7, 35 or 175 mg/kg/day. The systemic NOAEL is 35 mg/kg/day and the LOAEL is 175 mg/kg/day based on decreases in body weight gain and food consumption and increases in liver weights (relative), alkaline phosphatase and alanine transaminase. Increased liver to body weight ratios and absolute liver weights were observed in only two males at the 35 mg/kg/day dosage level.

In a 21–day dermal toxicity study, the potassium salt of picloram was administered dermally to groups of five New Zealand white rabbits of each sex at doses of (vehicle control) 0, 75.3, 251, or 753 mg/kg/day (0, 65, 217, or 650 mg/kg/day picloram acid equivalents) for a total of 15 applications over the 21–day period. The NOAEL is greater than or equal to 753 mg/kg/day for both sexes; hence, a LOAEL was not established for either sex. Although the limit dose of 1,000 mg/kg/day was not achieved, practical difficulties precluded administering more test material. The study revealed the non–systemic effects of dermal irritation and very slight to well defined edema and/or erythema in both sexes at all dose levels.

5. *Chronic toxicity.* In a 1988 1–year chronic feeding study in the dog, picloram acid was administered orally via the diet at dosage levels of 0, 7, 35, or 175 mg/kg/day. The LOAEL is 175 mg/kg/day based on increased liver weight (absolute and relative). The NOAEL is 35 mg/kg/day.

In a chronic toxicity/carcinogenicity feeding study conducted in the F344 rat, picloram acid (technical grade 93% containing 197 ppm hexachlorobenzene as an impurity) was evaluated at 0, 20, 60, or 200 mg/kg/day for two years. The chronic toxicity LOAEL was 60 mg/kg/day as evidenced by altered size and tinctorial properties of centrilobular hepatocytes and increased absolute and/or relative liver weights in both sexes. The NOAEL was 20 mg/kg/day. The study was negative for carcinogenicity, but due to concerns that a MTD may not have been achieved and the fact that the test material contained 197 ppm hexachlorobenzene impurity, the study was not considered to fulfill adequately the carcinogenicity testing requirement.

In response to the deficiencies cited in the study above, an additional 2–year dietary chronic/carcinogenicity study was conducted (in 1992) using F344 rats administered picloram acid at dosage levels of 0, 250, or 500 mg/kg/day for 104 weeks. Chronic toxicity was observed at 250 mg/kg/day among males only (increased incidence and severity of glomerulonephritis, blood in urine, decreased specific gravity of urine, increased size of hepatocytes that often had altered staining properties). Among females, there were chronic effects only at 500 mg/kg/day (increased glomerulonephropathy, increased absolute and relative kidney weight). There was no evidence of carcinogenicity in this study. It should be noted that use of the Osborne–Mendel rat was waived due to lack of availability of the strain of rat. In addition, the level of hexachlorobenzene in the test material employed in this study was 12 ppm. These two studies fulfill the guidelines 83–1(a) and 83–2(a) for rats.

In a 1992 2–year dietary carcinogenicity study in B6C3F1 mice, picloram acid was evaluated at doses of 0, 100, 500, or 1,000 mg/kg/day. The systemic NOAEL in this study is 500 mg/kg/day based on a significant increase in absolute and relative kidney weights in males (at the high dose level). No histopathological lesions were found to corroborate these changes. There was no evidence of carcinogenicity.

The dose levels tested in the 1992 carcinogenicity studies in rats and mice were considered adequate for carcinogenicity testing. The treatment did not alter the spontaneous tumor profile in mice or different strains of rats tested under the testing conditions. The chemical was classified as a "Group E - Evidence of Non–Carcinogenicity for Humans." This classification applies to the picloram acid and potassium salt forms for which acceptable carcinogenicity studies were available for review by the HED Carcinogenicity Peer Review Committee (May 26, 1988).

Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), picloram is classified as Group "E" for carcinogenicity (no evidence of carcinogenicity) based on the results of the carcinogenicity studies. The dose levels tested in the 1992 carcinogenicity studies in rats and mice were considered adequate for carcinogenicity testing. The treatment did not alter the spontaneous tumor profile in mice or different strains of rats tested under the testing conditions. The chemical was classified as a "Group E - Evidence of Non–Carcinogenicity for Humans." This classification applies to the picloram acid and potassium salt forms for which acceptable carcinogenicity studies were available for review by the HED Carcinogenicity Peer Review Committee May 26, 1988). Thus, a cancer risk assessment would not be appropriate.

Hexachlorobenzene (HCB), a recognized impurity in picloram compounds, is considered to be an animal carcinogen and probable human carcinogen as discussed in the 1988 Registration Standard for picloram. The Q^* is 1.02 (mg/kg/day)–1. The maximum level of HCB in picloram is considered to be 0.005%.

6. *Animal metabolism.* The absorption, distribution, metabolism and excretion of picloram acid was evaluated in female rats administered a single i.v. or oral gavage dose of 10 mg/kg, an oral gavage dose of 1,000 mg/kg ^{14}C–picloram, or 1 mg/kg/day unlabeled picloram by gavage for 14 days followed by a single oral gavage dose of 10 mg/kg ^{14}C–picloram on day 15. The study demonstrates that ^{14}C–picloram is rapidly absorbed, distributed and excreted following oral and i.v. administration. This study alone is not adequate; however, this study is acceptable when considered in conjunction with a male rat metabolism study which yielded similar results.

7. *Endocrine disruption.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined. However, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that picloram causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.–i. Food.* For purposes of assessing the potential

dietary exposure under these tolerances, aggregate exposure is estimated based on the TMRC from the existing and future potential tolerances for picloram on food crops. The TMRC is obtained by multiplying the tolerance level residues (existing and proposed) by the consumption data which estimates the amount of those food products eaten by various population subgroups. Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. The following assumptions were used in conducting the HED exposure assessment: 100% of the crops were treated, the RAC residues would be at the level of the tolerance, and some refinements were made based on marketing information previously supplied to HED by BEAD. This screening level analysis results in an overestimate of human exposure and a conservative assessment of risk.

The chronic dietary exposure/risk estimates for picloram are extremely low. For the United States population as a whole, the Theoretical Maximum Residue Contribution (TMRC) is 0.0011 mg/kg bw/day, < 1 of the reference dose (RfD). The subgroup with the greatest routine chronic exposure is Non–nursing Infants (Less Than 1–Year Old), which has a TMRC of 0.0042 mg/kg bw/day (2% of the RfD).

There is currently no form of sorghum observed in human consumption surveys utilized by EPA in their dietary risk evaluation model (DRES) assessments. Furthermore, residues of picloram in sorghum do not increase the dietary burden of picloram in animal feeds. Therefore, sorghum tolerances will have no effect on the human dietary consumption of picloram, and the proposed action, as well as existing tolerances, pose no concern with regards to chronic dietary exposure to food residues of picloram.

The estimated carcinogenic dietary risk for HCB as an impurity in picloram only for the U.S. population is 1.5 X10–^{7} which is less than the 1.0 X10–^{6} point below which risk is generally considered to be negligible.

ii. *Drinking water.* An additional potential source of dietary exposure to residues of pesticides are residues in drinking water. The Maximum Contaminant Level for residues of picloram in drinking water has been established at 500 µg/L and a 1–10 day Health Advisory of 20,000 µg/L.

The Agency has published screening methods for estimating chemical residues in both ground water (SCI–GROW2) and surface water (GENEEC). Employing these methods yields the following 56–day Expected Environmental Concentrations (EEC) for a range of application rates:

TABLE 2.–EXPECTED ENVIRONMENTAL CONCENTRATIONS

Application rate (lb: acidequivalent/acre) and use	SCI–GROW2EEC (µg/L)	GENEECEEC (µg/L)
0.023 (wheat, barley,and oats use rate)	4.4	1.2
1 (maximum broadcastrate in label)	189	51.3
2(maximum spottreatment rate in label)	379	103.1

The 56–day value is an appropriate endpoint to employ for the chronic exposure scenario. Default, conservative inputs were used for the models, as described in July 27, 1998 memorandum from EPA to Dow AgroSciences.

Employing these values, a worst–case drinking water risk assessment can be performed as summarized below:

TABLE 3.–DRINKING WATER RISK ASSESSMENT

Population subgroup[1]	RfD (mg/kg/day)	Food exposure (mg/kg/day)	Maximum water exposure(mg/kg/day)[2]	DWLOC(µg/L)[3]	SCI–GROW^{2EEC} (µg/L)	GENEEC EEC (µg/L)
U.S population	0.2	0.0011	0.2	7,000	379	103.1
Females(13–19, not nursing orpregnant)	0.2	0.00090	0.2	6,000	379	103.1
Non–Nursing infants(< 1 yr. old)	0.2	0.0043	0.2	2,000	379	103.1

[1] Population subgroups chosen in EPA memorandum of July/27/98.
[2]=RfD - ARC from DRES (cited above)
[3] Drinking water level of concern, based on default water body weights and water consumption of: 70 kg/2L (adult males), 60 kg/2L (adult female), 10 kg/1L (infant).

This tables shows that for even the most highly exposed population, exposure from water is below HED's DWLOC for chronic dietary exposure. Further refinement is also possible based on monitoring data. Monitoring data available from the Pesticides in Ground Water Data base indicate that picloram has been detected in ground water at concentrations ranging up to 30 µg/L. Results reported in this database typically were focused on highly vulnerable areas and, in many cases, the database reports information from poorly constructed or damaged wells. These wells are at high risk because of the potential for surface residues to be carried directly down the casing into the ground water. Recognizing these high risk situations, an analysis of this database shows that less than 3% of the wells sampled were found to contain picloram. No distinction has been made between point and non point sources of material. Many of the detections are known to be related to point source contamination including spills at mixing/loading sites, near wells and back siphoning events. Of the detections which may have resulted from non–point sources, none are documented to occur on sites where application would be recommended based on current labeling. Nearly 99% of the ground water detections are at levels of less than 1% of the Maximum Contaminant Level (*i.e.*, <5 µg/L) established for human consumption by the EPA Office of Drinking Water. The STORET data base maintained by the USEPA Office of Drinking Water indicates that picloram has been reported in surface water samples before 1988. Of these detections, 85% were at concentrations 0.13 µg/L or lower and the maximum was 4.6 µg/L. The maximum concentration reported was 4.6 µg/L. Comparing these values to the DWLOC shows an even greater degree of protection for all of the population subgroups.

HCB contamination of ground water resources is relatively unlikely due to its high binding potential. Based on monitoring data and fate properties it is unlikely that long term HCB concentrations in surface water would exceed 10 ppt. Therefore, exposure from water is below EPA's drinking water level of concern of 34 ppt for chronic dietary exposure to HCB for the U.S. population.

In summary, these data on potential water exposure indicate insignificant additional dietary intake and risk for picloram.

2. *Non–dietary exposure.* This is a restricted use chemical that has no residential uses at this time; therefore, there are no human risks associated with residential uses. Entry into a treated area soon after the application of picloram is expected to be rare given the cultural practices typically associated with the use sites (rights–of–way, forestry, pastures, range lands, and small grains) defined by the picloram labels at this time. Furthermore, if entry should occur, the potential exposures are expected to be minimal due to the characteristics of those use–sites.

D. Cumulative Effects

The potential for cumulative effects of picloram and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of picloram is well defined. However, the biochemical mechanism of toxicity of this compound is not well known. No reliable information exists to indicate that toxic effects produced by picloram would be cumulative with those of any other chemical compounds. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate. Thus, only the potential risks of picloram are considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* In the meeting of September 30, 1993, the OPP RfD Peer Review Committee recommended that the RfD for this chemical be based on a NOAEL of 20 mg/kg/day for a dose–related increase in size and altered tinctorial properties of centrilobular hepatocytes in males and females at 60 and 200 mg/kg/day in a chronic toxicity study in rats. An uncertainty factor (UF) of 100 was used to account for the inter–species extrapolation and intra–species variability. On this basis, the RfD was calculated to be 0.20 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is 0.001845 mg/kg/day. Existing tolerances utilize < 1% of the RfD. It should be noted that no regulatory value has been established for this chemical by the World Health Organization (WHO) up to this date. The committee classified picloram as a "Group E" chemical, no evidence of carcinogenicity for humans.

Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to picloram will utilize approximately 1% of the RfD for the U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to picloram residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of picloram, data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat were considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism during prenatal development resulting from pesticide exposure to one or both parents. Reproduction studies provide (i) information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and (ii) data on systemic toxicity.

Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental NOAEL of > 298 mg/kg/day and a maternal toxicity NOAEL of 280 mg/kg/day. A study in rabbits resulted in a maternal NOAEL of 34 mg/kg/day and a developmental NOAEL of 344 mg/kg/day. Based on all of the data for picloram, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity.

In a 2–generation reproduction study in rats, the NOAEL for parental systemic toxicity is 200 mg/kg/day. There was no effect on reproductive parameters at 1,000 mg/kg/day, nor was there an adverse effect on the morphology, growth or viability of the offspring. Thus, the reproductive NOAEL is 1,000 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre–natal and post–natal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base relative to pre–natal and post–natal effects for children is complete. Therefore, it is concluded that an additional UF is not warranted and that the RfD at 0.2 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumption previously described, it is concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of picloram will be less than 4% of the RfD for all populations and subgroups. Since this estimate represents the "worst case" exposure for a given population (Non–nursing infants, < 1 year old), exposures will be less for all other sub–populations, e.g., children, 1–6 years. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to picloram residues.

F. International Tolerances

There are no Codex maximum residue levels established for residues of picloram.

[FR Doc. 00–31057 Filed 12–5–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–984; FRL–6755–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–984, must be received on or before January 5, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed

instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–984 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–984. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–984 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–984. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities

under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

9E6063 and 7E4865

EPA has received pesticide petitions (9E6063 and 7E4865) from Interregional Research Project Number 4, Technology Centre of New Jersey, 681 U.S. Highway # 1 South, North Brunswick, NJ, 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of clomazone in or on the raw agricultural commodities (RAC) tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group at 0.05 parts per million (ppm). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of clomazone in plants is adequately understood.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of clomazone in or on tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group, with a limit of detection that allows monitoring of food for residues at or above the levels proposed in this tolerance. Samples are analyzed using an analytical method consisting of an acid reflux, a C_{18} solid phase extraction (SPE), a Florisil SPE clean–up followed by gas chromatography (GC)-mass selective detection (MSD). The method limit of quantitation (LOQ) is 0.05 ppm. The method limit of detection (LOD) is 0.01 ppm.

3. *Magnitude of residues.* The representative commodity for the tuberous and corm vegetable (except potato) subgroup, is sweet potato. IR-4 has previously submitted residue data for clomazone use on sweet potato (MRID # 40572701). Four field trials, with two different applications timings were conducted. No clomazone residues were found above the LOQ (0.05 ppm) in any of the treated samples. FMC Corporation submitted additional data for clomazone on sweet potatoes (MRID # 44441405).

B. Toxicological Profile

1. *Acute toxicity.* The following mammalian toxicity studies have been conducted with clomazone technical (unless noted otherwise) to support registrations and/or tolerances of clomazone:

i. A rat acute oral study with an lethal dose $(LD)_{50}$ of 2,077 mg/kg (male) and 1,369 mg/kg (female).

ii. A rabbit acute dermal lethal concentration $(LC)_{50}$ of > 2,000 mg/kg.

iii. A rat acute inhalation LC_{50} of 6.25 mg/L/4 hrs. (male), 4.23 mg/L/hrs. (female) and 4.85 mg/L/4 hrs. (combined sexes).

iv. A primary eye irritation study in the rabbit which showed practically no irritation.

v. A primary dermal irritation study in the rabbit which showed minimal irritation.

vi. A primary dermal sensitization study in the guinea pig which showed no sensitization.

vii. Acute delayed neurotoxicity – clomazone, and its known metabolites, are not structurally related to known neurotoxic substances.

2. *Genotoxicity.* The following genotoxicity tests were all negative: Ames Assay; CHO/HGPRT Mutation Assay; and Structural Chromosomal Aberration. The Unscheduled DNA Synthesis genotoxicity was negative with activation; weakly positive without activation.

3. *Reproductive and developmental toxicity.* A 2–generation reproduction study was conducted in the rat with a parental systemic no observed adverse effect level (NOAEL) of 1,000 ppm (50 mg/kg/day) based on decreased body weight and food consumption at 2,000 ppm; and a progeny systemic NOAEL of 1,000 ppm (50 mg/kg/day) based on decreased pup body weight at 2,000 ppm. The reproductive performance NOAEL was > 4,000 ppm which was the highest dose tested (HDT). There was an unexplained decrease in the fertility index during mating of the F1b generation at 4,000 ppm which was not observed in the F1a litter or repeated in the F2 generation. Additionally, there was one F2a pup at 1,000 ppm which had non–functional hindlimbs and one F2b pup at 4,000 ppm which had extended hindlimbs with no flexion at the ankle. These limb abnormalities were not considered treatment–related for the following reasons (i) there was no dose response observed, (ii) the findings were not statistically significant, (iii) the findings were not repeated at the 1,000 ppm dose level in the F2b litter or found in the F1a or F1b litters, and (iv) these findings or related hindlimb abnormalities were not observed in developmental studies at gavage dose levels up to 100 mg/kg/day in the rat or 240 mg/kg/day in the rabbit.

A developmental toxicity study in rats given gavage doses of 100, 300 and 600 mg/kg/day and with maternal and fetal NOAELs of 100 mg/kg/day. The maternal NOAEL is based on decreased locomotion, genital staining and runny eyes and the developmental NOAEL is based on increased incidence of delayed ossification at 300 mg/kg/day. This study was negative for developmental at all doses tested.

A developmental toxicity study in rabbits given gavage doses of 30, 240 and 700 mg/kg/day with maternal and fetal NOAELs of 240 mg/kg/day. The maternal NOAEL is based on a decrease in body weight and the developmental NOAEL is based on an increase in the number of fetal resorptions at 700 mg/kg/day. This study was negative for teratogenicity at all doses tested.

In all cases, the reproductive and developmental NOAELs were equal to the parental NOAELs, thus indicating that clomazone does not pose any increased risk to infants or children.

4. *Subchronic toxicity.* In a 90–day feeding subchronic study in mice the

NOAEL was 20 ppm (< 2.9 mg/kg/day)based on liver cytomegaly at 20 ppm.

5. *Chronic toxicity.* A 12–month feeding study in the dog with a NOAEL of 500 ppm (14.0 mg/kg/day for males; 14.9 mg/kg/day for females) based on increased blood cholesterol and liver weights at 2,500 ppm.

A 24–month chronic feeding/carcinogenicity study in the rat with a NOAEL of 100 ppm (4.3 mg/kg/day for males; 5.5 mg/kg/day for females) based on increased liver weights and increased liver cytomegaly at 500 ppm. There were no carcinogenic effects observed under the conditions of the study.

A 24–month chronic feeding/carcinogenicity study in the mouse with a NOAEL of 100 ppm (15 mg/kg/day) based on an increase in the white blood cell count. There were no carcinogenic effects observed under the conditions of the study.

Using the Guidelines for Carcinogen Risk Assessment, it is proposed that clomazone be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in rats and mice.

The reference dose (RfD) for clomazone has been established at 0.043 mg/kg/day. The RfD for clomazone is based on the 24–Month Feeding/Carcinogenicity Study in the Rat with a NOAEL of 4.3 mg/kg/day and an uncertainty factor of 100.

6. *Animal metabolism.* The metabolism of clomazone in animals is adequately understood. Clomazone degrades rapidly and extensively in rats, goats and poultry to a variety of metabolites which were readily excreted from the body via excreta.

7. *Metabolite toxicology.* No clomazone related metabolite residues have been identified as being of toxicological concern. The residue of significance is parent.

8. *Endocrine disruption.* No specific tests have been conducted with clomazone to determine whether the herbicide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. It should be noted, however, that the chemistry of clomazone is unrelated to that of any compound previously identified as having estrogen or other endocrine effects. Additionally, a standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. No endocrine effects were noted in any of these studies with clomazone.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food* For purposes of assessing the potential dietary exposure, EPA has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the established tolerances for clomazone. The TMRC is a "worst case" estimate of dietary exposure since it is assumed that 100 percent of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels. Dietary exposure to residues of clomazone in or on food will be limited to residues on cabbage (0.1 ppm), cottonseed (0.05 ppm), cucurbit vegetables (0.05 ppm), succulent peas (0.05 ppm), peppers (0.05 ppm), soybeans (0.05 ppm), sweet potato (0.05 ppm), snap beans (0.05 ppm) rice (0.05 ppm), sugar (from cane) (0.05 ppm) and residues on tuberous and corm vegetable (except potato) (0.05 ppm each). As noted above, this exposure assessment is based on very conservative assumptions, i.e., 100% of crops treated will contain clomazone residues and those residues would be at the level of the tolerance. It is FMC's opinion that these assumptions result in an overestimate of human exposure.

ii. *Drinking water.* It is unlikely that there will be exposure to residues of clomazone through drinking water supplies. A field mobility study was conducted at a loamy sand location. Clomazone was found only in the top 0-1 ft. soil samples during the 61 day study period. No clomazone residue (< 0.02 ppm) was detected in the deeper soil levels (1-2, 2-3 and 3-4 ft.). Detectable residues of clomazone were found only in the 0-6 horizon. Should movement into surface water occur; potential for clomazone residues to be detected in drinking water supplies at significant levels is minimal. Accordingly, there is no reasonable expectation that there would be an additional incremental aggregate dietary contribution of clomazone through groundwater or surface water.

2. *Non–dietary exposure.* Clomazone is only registered for use on food crops. Since the proposed use on the tuberous and corm vegetable (except potato) crop subgoup and cucurbit vegetable crop group is consistent with existing registrations, there will be no non–dietary, non–occupational exposure.

D. Cumulative Effects

Clomazone is an isoxazolidinone herbicide. No other registered chemical exists in this class of chemistry. Therefore, given clomazone's unique chemistry low acute toxicity, the absence of genotoxic, oncogenic, developmental or reproductive effects, and low exposure potential (see Sections A and C), the expression of cumulative human health effects with clomazone and other natural or synthetic pesticides is not anticipated.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above, based on the completeness and reliability of the toxicology data, it is concluded that aggregate exposure due to existing registered uses, and pending uses, of clomazone will utilize less than 1% of the RfD for the U.S. population. Additionally, an analysis concluded that aggregate exposure to clomazone adding use on cucurbit vegetable crop group and tuberous and corm vegetable (except potato) crop subgroup at a 0.05 ppm will utilize a negligible (i.e., 0.011% or less for cucurbits and 0.002% or less for these root crops) percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to residues of clomazone, including all anticipated dietary exposure.

2. *Infants and children.* Based on the current toxicological data requirements, the data base relative to prenata and postnatal effects for children is complete (See Section B.3). Further, for clomazone, the NOAEL in the two year feeding study which was used to calculate the RfD (0.043 mg/kg/day) is already lower than the NOAELs from the reproductive and developmental studies by a factor of more than 10-fold. Therefore, it can be concluded that no additional uncertainty factors are warranted and that the RfD at 0.043 mg/kg/day is appropriate for assessing aggregate risk to infants and children as well as adults.

Using the conservative exposure assumptions described above, FMC has concluded that < 1% of the RfD will be utilized by aggregate exposure to residues of clomazone in/on tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group for non–nursing infants (< 1 year old), the population subgroup most sensitive.

Based on the above information, FMC has concluded that there is a reasonable certainty that no harm will result to infants, children or adults from dietary food consumption exposure to clomazone residues from tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group plus all other clomazone treated human dietary food sources.

F. International Tolerances

There are Codex residue limits for residues of clomazone in or on oilseed rape, potatoes, tobacco, soybeans, rice, cottonseed, sugarcane and peas.

[FR Doc. 00–31058 Filed 12–5–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–983; FRL–6573–7]

Notice of Filing Pesticide Petitions to Establish and to Extend Tolerances for Certain Pesticide Chemicals In or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–983, must be received on or before January 5, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–983 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For Pesticide Petition (PP 9F5079) contact: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; Telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

For Pesticide Petitions (PP 8F3654 8F3674) contact: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; Telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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2. *In person.* The Agency has established an official record for this action under docket control number PF–983. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–983 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–983. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

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1. Explain your views as clearly as possible
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required bysection 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. ISK Biosciences Corporation (PP 9F5079)

Summary of Petition

EPA has received a pesticide petition (PP 9F5079) from ISK Biosciences Corporation, 5970 Heisley Road, Suite 200, Mentor, Ohio, 44060, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fluazinam in or on the raw agricultural commodities potato and peanut at 0.02 parts per million (ppm) and wine grapes at 3.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The residue of concern is best defined as the parent, fluazinam. The metabolism of fluazinam in plants (potatoes, peanuts, and wine grapes) is adequately understood for the purposes of these tolerances. The metabolism of fluazinam involves initial reduction of the nitro groups, hydrolysis of the trifluoromethyl group as well as replacement of chlorine by glutathione with subsequent reactions along the glutathione pathway. Parent fluazinam is rapidly degraded and is either not found or barely detectable in peanuts and potatoes. Fluazinam parent was the major identifiable residue in a grape metabolism study. Identifiable residues in plant metabolism studies either closely resemble fluazinam in structure or are the result of re-incorporation of the fluazinam carbon pool into natural products.

Ruminant and poultry metabolism studies demonstrated that the transmittal of residues from the feed of goats and hens through to meat, milk, and eggs was low. Total 14C residues were below 1 ppm in all tissues, milk and eggs. Identifiable residues were less than 2% of the administered dose in all matrices, except for chicken fat and liver.

2. *Analytical method.* An analytical method using gas chromatography with electron capture detection (GC-ECD) for the determination of fluazinam residues on potatoes, peanuts, grapes and the processing fractions thereof has been developed and validated. The method involves solvent extraction followed by liquid-liquid partitioning and concentration prior to a final purification using column chromatography. The method has been successfully validated by an independent laboratory using peanut nutmeat as the matrix. The limit of quantitation of the method is 0.02 ppm in peanuts and 0.01 ppm in potatoes and grapes.

3. *Magnitude of residues*—i. *Potatoes.* Data from 11 field trials in potatoes showed that mean fluazinam residues from duplicate samples were <0.01 ppm in the RAC commodity at all locations. The result of a processing study using a 3.5X application rate showed no concentration into the processing fractions dry peels, french fries and chips. A calculated processing factor of 2.4 for the animal feed commodity wet peels was determined based on residue levels just slightly above the limit of quantitation.

ii. *Peanuts.* A total of 15 field trials were conducted over three growing seasons at nine sites representative of peanut production. Residues of fluazinam in nutmeat from all location were below 0.01 ppm. Residues in peanut hay, a grazing restriction commodity, ranged from 0.16 to 10.2 ppm in the six locations where it was harvested. In a processing study, residues concentrated 3x in crude oil and 5x in soapstock, but did not concentrate in refined oil or presscake.

iii. *Wine grapes.* A total of 20 field trials were conducted over three growing seasons in major wine grape growing regions worldwide. Residues of fluazinam in grapes ranged from 0.03 to 2.27 ppm. Vinification of grapes from two locations showed a reduction of fluazinam in wine to non-detectable levels.

iv. *Secondary residues.* Since levels of fluazinam in potatoes and peanut nutmeat were below detectable levels

(the fluazinam label includes a peanut hay grazing restriction, and only wine grapes which are imported are included in this tolerance petition), no residues of concern are expected on animal feed items. Furthermore, since animal metabolism studies do not show potential for significant residue transfer, detectable secondary residues in animal tissues, milk or eggs are not expected. Therefore, tolerances are not needed for these commodities.

B. Toxicological Profile

1. *Acute toxicity.* A battery of acute toxicity studies was conducted which placed technical fluazinam in Toxicity Category III for oral LD_{50}, dermal LD_{50}, dermal irritation, Category II for inhalation LC_{50} and Category I for eye irritation. Technical fluazinam showed potential for dermal sensitization.

In an acute neurotoxicity study, the no observed affect effect level (NOAEL) for neurotoxicity was 2,000 milligram/kilogram (mg/kg) highest dose tested (HDT) and the NOAEL for systemic effects was 50 mg/kg.

2. *Genotoxicty.* A battery of tests has been conducted to assess the genotoxic potential of technical fluazinam. Assays conducted included two gene mutation tests in bacteria, a chromosomal aberration test in mammalian cells, a mouse micronucleus test and a DNA repair test in bacteria. Technical fluazinam did not elicit a genotoxic response in any of the studies conducted.

3. *Reproductive and developmental toxicity.* In a 2–generation reproductive toxicity study, the NOAEL for reproductive effects was 100 ppm (10.1 mg/kg/day). The NOAEL for parental toxicity was 20 ppm (2.1 mg/kg/day).

In a rat developmental study, there were no developmental effects observed at non-maternally toxic doses. The developmental NOAEL was 50 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 250 mg/kg/day, based upon statistically significant decreased mean fetal body weight and other evidence suggestive of delayed fetal development related to maternal toxicity. The maternal NOAEL was shown to be 50 mg/kg/day.

In a rabbit developmental study, there were no developmental effects observed at non-maternally toxic doses. The developmental NOAEL was 7 mg/kg/day and the LOAEL was 12 mg/kg/day, based on increased incidence of total litter loss and possible slightly increased incidences of fetal findings at this dose. It was concluded that the maternal NOAEL was 4 mg/kg/day.

4. *Subchronic toxicity.* The NOAEL for the 13 week feeding study in rats was 50 ppm (4.1 mg/kg/day). The LOAEL was 500 ppm (41 mg/kg/day), based on periacinar hepatocellular hypertrophy and sinusoidal chronic inflammation in males, increased liver weights in males and increased lung weights in females.

In a 13 week dog study, the NOAEL was 10 mg/kg/day. The LOAEL was 100 mg/kg/day, based on ocular change observed ophthalmoscopically and liver effects consisting of increased relative liver to body weight, bile duct hyperplasia with or without cholangiofibrosis and increased plasma phosphatase levels.

In a 21 day dermal study, the NOAEL for systemic effects was 10 mg/kg/day. The LOAEL was 100 mg/kg/day, based on hepatocelluar hypertrophy and increases in AST and cholesterol levels.

In a subchronic neurotoxicity study, no effects considered to be indicative of neurotoxicity were observed at the highest dose tested, 3,000 ppm (233 mg/kg/day). The NOAEL for systemic toxicity (body weight differences) was 1,000 ppm (74 mg/kg/day).

5. *Chronic toxicity.* Fluazinam was not carcinogenic in rats. A NOAEL of 10 ppm (0.43 mg/kg/day) of fluazinam was established based on the following effects at 1,000 and/or 100 ppm: lower food consumption and efficiency of food utilization, slight anemia, elevated cholesterol, increased liver weights, an increased number of macroscopic liver and testes lesions and an increased incidence of microscopically observed lung, liver, pancreas, lymph node and testes lesions.

An additional study was conducted to further define the NOAEL for long-term effects in the rat. In the second study, a NOAEL of 50 ppm (2.2 mg/kg/day) was established based on liver and testes effects.

Two long-term feeding studies were conducted in mice. In the first, the NOAEL for all effects was 10 ppm (1.14 mg/kg/day) and the LOAEL was 100 ppm (11.2 mg/kg/day) based on the treatment-related effects observed in the liver.

A second oncogenicity study in mice was conducted at 1,000, 3,000 and 7,000 ppm to ensure that an maximum tolerance dose (MTD) was studied. Findings included increased female mortality, reduced body weight gains, increased brain weights and/or liver weights. An impurity in the test material used in this study resulted in vacuolation of the white matter of the brain and cervical spinal cord in treated animals. A statistically significant higher incidence of hepatocellular adenomas was observed in the 3,000 ppm dose males. Hepatocellular adenomas are common tumors in male mice. There was no dose relationship in the induction of the adenoma and no increase in hepatocellular carcinomas. It was concluded that fluazinam is not carcinogenic in the mouse.

In a chronic dog study, the NOAEL was determined to be 1 mg/kg/day. The LOAEL was 10 mg/kg/day based on generalized, nonspecific toxicity. No ocular effects were observed ophthalmoscopally at any dose in this study.

6. *Animal metabolism.* After an oral dose of fluazinam the median peak time for blood concentration of radiolabel activity for both sexes was 6 hours. The major route of excretion was the feces with urine contributing as a minor route. Less than 1% of the administered dose was found in the terminated animals. The highest concentration was found in the liver. There were no major differences related to sex or dose level in the findings. It was concluded that fluazinam is metabolized by both reduction and glutathione and glucuronide conjugation and further metabolism.

7. *Metabolite toxicology.* The same metabolic processes occur in plants and animals but metabolism in plants is more extensive than in animals. All of the major identified metabolites in both plants and animals retain the phenylpyridinylamine structure. Many of the metabolites resulting from fluazinam are similar in plants and animals and, therefore, have already been evaluated toxicologically.

Because of the rapid and complete elimination (in animals) and re-incorporation (in plants) of fluazinam, the toxicity of metabolites is expected to be similar to but lower than the toxicity of the parent compound. The residue of concern is parent fluazinam only.

8. *Endocrine disruption.* The toxicological profile of fluazinam shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen in mammalian chronic studies or in mammalian or avian reproduction studies. It is therefore considered that there is an adequate level of safety over the reference dose for possible endocrine effects and that an additional safety factor for possible endocrine effects is not warranted.

C. Aggregate Exposure

1. *Dietary exposure.* An RfD of 0.01 mg/kg/day is proposed for humans, based on the NOAEL from the one year dog study (1 mg/kg/day) and dividing by an uncertainty factor of 100.

i. *Food—a. Acute risk.* Tier 1 acute dietary exposure analyses were

conducted for fluazinam in/on peanuts, potatoes and imported wine grapes to determine the exposure contribution of these commodities to the diet and to ascertain the acute risk potential. The estimates were based on proposed tolerance level residues for all three crops, peanut and potato processing studies, market share assumptions of 100% crop treated, and consumption data from the 1994 through 1996 USDA continuing survey of food intake.

Even using all of the worst case exposure scenarios listed above, the Tier 1 acute assessment for the U.S. population resulted in a margin of safety (MOS) of 270,507 at the 95th percentile. This corresponded to an estimated exposure of 0.000185 mg/kg/day. The highest acute exposure estimate (95th percentile) was observed in the seniors (55 years and over) subpopulation: 0.001285 mg/kg/day. This correlates to an MOE of 38,908.

b. Chronic risk. Tier 1 dietary exposure analyses were conducted for fluazinam in/on peanuts, potatoes and imported wine grapes to determine the exposure contribution of these commodities to the diet and to ascertain the chronic risk potential. The estimates were based on proposed tolerance level residues for all three crops, peanut and potato processing studies, market share assumptions of 100% crop treated, and consumption data from the 1994 through 1996 USDA continuing survey of food intake.

Even using all of the worst case exposure scenarios listed above, the Tier 1 chronic dietary exposure estimates resulted in an estimated exposure for the U.S. population of 0.000104 mg/kg/day. This exposure corresponds to 1.0% of the reference dose (RfD) of 0.01mg/kg/day. The highest exposure estimate was calculated for the Females 20+ years (non-pregnant/non-nursing) population subgroup. This exposure was determined to be 0.000156 mg/kg/day (1.6% of the RfD).

It can be concluded that acute or long-term dietary exposure to fluazinam through residues on treated peanuts, potatoes and imported wine grapes should not be of cause for concern.

ii. *Drinking water.* Since fluazinam is intended for application outdoors to field grown peanut and potato crops, the potential exists for parent and or metabolites to reach ground or surface water that may be used for drinking water. The calculated drinking water levels of concern (DWLOC) for chronic exposure for adult males, adult females and toddlers were estimated to be 355 parts per billion (ppb), 296 ppb, and 149 ppb, respectively. The calculated DWLOCs for acute exposure for all adults, adult females and toddlers were estimated to be 17,943 ppb, 14,993 ppb, and 7,497 ppb, respectively. The chronic and acute DWLOC values are well above the modeled chronic and acute DWECs of 0.17 ppb (GENEEC 56–day/3) and 15.1 ppb (GENEEC instantaneous value), respectively. Therefore, there is comfortable certainty that no harm will result from combined dietary (food and water) exposure due to the use of fluazinam on peanuts, potatoes and imported wine grapes.

2. *Non-dietary exposure.* No petition for registration of fluazinam is being made for either indoor or outdoor residential use. Non-occupational exposure of fluazinam to the general population is therefore not expected and is not considered in aggregate exposure estimates.

D. Cumulative Effects

Fluazinam is a phenylpyridinylamine fungicide. Since there are no other members of this class of fungicides, it is considered unlikely that fluazinam would have a common mechanism of toxicity with any other pesticide in use at this time.

E. Safety Determination

1. *U.S. population.* Based on a NOAEL of 1 mg/kg bwt/day from a one year feeding study in dogs, and using an uncertainty factor of 100, a reference dose of 0.01 mg/kg bwt/day is proposed for assessment of long-term risk. The estimate of dietary intake was based on proposed tolerance level residues for all three crops, peanut and potato processing studies, market share assumptions of 100% crop treated and consumption data. Even using those conservative intake estimates, the proposed tolerances will utilize only 1% of the RfD for the U.S. population. The estimated exposure of fluazinam from drinking water, 0.17 ppb is at least three orders of magnitude below the calculated drinking water level of concern, 355 ppb.

2. *Infants and children.* Data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study were considered. These studies which were described earlier, demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to fluazinam. In addition, the multigeneration reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. For all three studies, parental NOAELs were lower than or equivalent to the developmental or offspring NOAELs. It is concluded that the standard margin of safety will protect the safety of infants and children and that an additional safety factor is not warranted.

The dietary exposure of fluazinam to infants and children is estimated to be much lower than adults because 80% to 90% of the exposure is expected from sherry and wine. The proposed tolerances will utilize <0.5% of the RfD for infants and children. The estimated exposure of fluazinam from drinking water, 0.17 ppb is three orders of magnitude below the calculated drinking water level of concern, 149 ppb.

F. International Tolerances

There are presently no Codex maximum residue levels established for residues of fluazinam on any crop.

2. Novartis Crop Protection, Inc.,

Summary of Petitions:

EPA has received two pesticide petitions (PP 8F3654, PP 8F3674) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing,pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending the expiration date for tolerances for residues of propiconazole in or on the raw agricultural commodities corn, field, stover (12.0 parts per million (ppm)); corn, field, forage (12.0 ppm); corn, field, grain (0.1 ppm); corn, sweet (0.1 ppm); pineapple (0.1 ppm); pineapple, fodder (0.1 ppm) (PP 8F3674); peanut (0.2 ppm); peanut, hay (20 ppm); and peanut, hulls (1.0 ppm) (PP 8F3654). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however,EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Novartis believes the studies supporting propiconazole adequately characterize metabolism in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for combined residues of propiconazole and its metabolites which contain the 2,4-dichlorobenzoic acid (DCBA) moiety.

2. *Analytical method.* Novartis has submitted a practical analytical method involving extraction, filtration, conversion, partition, derivitization, and solid phase cleanup with analysis by confirmatory gas chromatography using electron capture detection (ECD). The total residue method is used for determination of propiconazole and its metabolites. The limit of quantitation (LOQ) for the method is 0.05 ppm.

3. *Magnitude of residues.* Field residue trials have been conducted at various rates, timing intervals, and applications methods to represent the use patterns which would most likely result in the highest residues. For all samples, the total residue method was used for determination of the combined residues of parent and its metabolites which contain the DCBA moiety.

B. Toxicological Profile

1. *Acute toxicity.* Propiconazole exhibits low toxicity. Data indicated the following: a rat acute oral LD_{50} of 1,517 milligrams/kilograms (mg/kg); a rabbit acute dermal LD_{50} > 6,000 mg/kg; a rat inhalation LC_{50} >5.8 g/liter air; minimal skin and slight eye irritation; and nonsensitization.

2. *Genotoxicty.* Propiconazole exhibits no mutagenic potential based on the following data: *In vitro gene* mutation test (Ames assay, rat hepatocyte DNA repair test, (human fibroblast DNA repair test), *In vitro* chromosome test, (human lymphocyte cytogenetic test), *In vivo* mutagenicity test, (Chinese hamster bone marrow cell nucleus anomaly test, Chinese hamster bone marrow cell micronucleus test, mouse dominant lethal test), and other mutagenicity test (BALB/3T3 cell transformation assay).

3. *Reproductive and developmental toxicity.* In an oral teratology study in the rabbit, a maternal no observed adverse effect level (NOAEL) of 30 mg/kg was based on reduced food intake but without any fetotoxicity even at the top dose of 180 mg/kg. In an oral teratology study in the rabbit, a maternal NOAEL of 100 mg/kg was based on reductions in body weight gain and food consumption and a fetal NOAEL of 250 mg/kg was based on increased skeletal variations at 400 mg/kg. In an oral teratology study in the rat, a maternal and fetal NOAEL of 100 mg/kg was based on decreased survival, body weight gain, and food consumption in the dams and delayed ossification in the fetuses at 300 mg/kg. In a second teratology study in the rat, a maternal and fetal NOAEL of 30 mg/kg was based on reductions in body weight gain and food consumption in the dams and delayed development in the fetuses at 90 and 360/300 mg/kg. A supplemental teratology study in the rat involving eight times as many animals per group as usually required showed no teratogenic potential for the compound. A 2-generation reproduction study in the rat showed excessive toxicity at 5,000 ppm without any teratogenic effects. A 2-generation reproduction study in the rat showed no effects on reproductive or fetal parameters at any dose level. Postnatal growth and survival were affected at the top dose of 2,500 ppm, and parental toxicity was also evident. The NOAEL for development toxicity is 500 ppm.

4. *Subchronic toxicity.* In a 21 day dermal study in the rabbit, a NOAEL of 200 mg/kg was based on clinical signs of systemic toxicity. In a 28 day oral toxicity study in the rat, a NOAEL of 50 mg/kg was based on increased liver weight. In a subchronic feeding study in the mouse, a NOAEL of 20 ppm (3 mg/kg) was based on liver pathologic changes. In a 13 week feeding study in the male mouse, a NOAEL of 20 ppm (3 mg/kg) was based on liver pathologic changes. In a 90 day feeding study in rats, the NOAEL was 240 ppm (24 mg/kg) based on a reduction in body weight gain. In a 90 day feeding study in dogs,the NOAEL was 250 ppm (6.25 mg/kg) based on reduced food intake and stomach histologic changes.

5. *Chronic toxicity.* In a 12 month feeding study in the dog, a NOAEL of 50 ppm (1.25 mg/kg) was based on stomach histologic changes. In a 24 month oncogenicity feeding study in the mouse, the NOAEL was 100 ppm (15 mg/kg). The MTD was exceeded at 2,500 ppm in males based on decreased survival and body weight. Increased incidence of liver tumor was seen in these males but no evidence of carcinogenicity was seen at the next lower dose of 500 ppm in either sex. In a 24 month chronic feeding/oncogenicity study in the rat, a NOAEL of 100 ppm (5 mg/kg) was based on body weight and blood chemistry. The MTD was 2,500 ppm based on reduction in body weight gain and no evidence of oncogenicity was seen. Based on the available chronic toxicity data, Novartis believes the Reference dose (RfD) for propiconazole is 0.0125 mg/kg/day. This RfD is based on a 1 year feeding study in dogs with a NOAEL of 1.25 mg/kg/day (50 ppm) and an uncertainly factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as stomach mucous hyperemia was the most sensitive indicator of toxicity in that study.

Using the Guidelines for Carcinogenic Risk Assessment published on September 24, 1986 (51 FR 33992), the USEPA has classified propiconazole in group C for carcinogenicity (evidence of possible carcinogenicity for humans). The compound was tested in 24 month studies with both rats and mice. The only evidence of carcinogenicity was an increase in liver tumor incidence in male mice at a dose level that exceeded the maximum tolerated dose (MTD). Dosage levels in the rat study were appropriate for identifying a cancer risk. The Cancer Peer Review Committee recommended the RfD approach for quantitation of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer.

C. Aggregate Exposure

1. *Dietary exposure.* The RfD for propiconazole is 0.0125 mg/kg/day and is based on a 1 year feeding study in dogs with a NOAEL of 1.25 mg/kg/day (50 ppm) and an uncertainly factor of 100.

i. *Food—Acute risk.* The risk from acute dietary exposure to propiconazole is considered to be very low. The lowest NOAEL in a short term exposure scenario, identified as 30 mg/kg in the rat teratology study, is 24-fold higher than the chronic NOAEL. Based on worst-case assumptions, the chronic exposure assessment did not result in any margin of exposure (MOE) less than 150 for even the most impacted population subgroup. Novartis believes that the MOE for acute exposure would be more than 100 for any population groups; MOE of 100 or more are considered satisfactory.

ii. *Chronic risk.* For the purposes of assessing the potential dietary exposure under the existing, pending, and proposed tolerances for the residue of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid, Novartis has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC). The TMRC is a "worst case" estimate of dietary exposure since it assumes 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels, resulting in an overestimation of human exposure.

Currently established tolerances range from 0.05 ppm in milk to 60 ppm in grass seed screenings and include: apricots (1.0 ppm); bananas (0.2 ppm); barley grain (0.1 ppm); barley straw (1.5 ppm); cattle kidney and liver (2.0 ppm); cattle meat, fat, and meat by products except kidney and liver (0.1 ppm); celery (5.0 ppm); corn forage and fodder (12.0 ppm); corn grain and sweet (0.1); eggs (0.1 ppm); goat kidney and liver (2.0 ppm); goat meat, fat, and meat by products except kidney and liver (0.1 ppm); grass forage (0.5 ppm); grass hay/straw (40.0 ppm); grass seed screenings (60.0 ppm); hogs kidney and liver (2.0 ppm); hog meat, fat, and meat by products except kidney and liver (0.1 ppm); horses kidney and liver (2.0 ppm); horse meat, fat, and meat by

products except kidney and liver (0.1 ppm); milk (0.05 ppm); mint tops (0.3 ppm - regional tolerance west of Cascade Mountains); mushrooms (0.1 ppm); nectarines (1.0 ppm); oat forage (10.0 ppm); oat grain (0.1 ppm); oat hay (30.0 ppm); oat straw (1.0 ppm); peaches (1.0 ppm); peanut hay (20.0 ppm); peanut hulls (1.0 ppm); peanuts (0.2 ppm);, pecans (0.1 ppm); pineapple (0.1 ppm); pineapple fodder (0.1 ppm); plums (1.0 ppm); poultry liver and kidney (0.2 ppm); poultry meat, fat, and meat by products except kidney and liver (0.1 ppm); prunes, fresh (1.0 ppm); rice grain (0.1 ppm); rice straw (3.0 ppm); wild rice (0.5 ppm regional tolerance Minnesota); rye grain (0.1 ppm); rye straw (1.5 ppm); sheep kidney and liver (2.0 ppm); sheep meat, fat, and meat by products except kidney and liver (0.1 ppm); stone fruit crop group 12 (1.0 ppm); wheat grain (0.1 ppm); and wheat straw (1.5 ppm). In addition, time-limited regional tolerances for sorghum grain and stover at 0.1 ppm and 1.5 ppm, respectively were established to support a section 18 Crisis exemption in Texas (expiration date December 31, 2000) and Nebraska, Kansas, and Oklahoma (expiration date September 30, 2000).

Additional uses of propiconazole have been requested in several pending petitions. Proposed tolerances include: PP 5F4424 for use of propiconazole on dry bean and soybean - dry bean forage (8.0 ppm); dry bean hay (8.0 ppm); dry bean vines (0.5 ppm); dry bean (0.5 ppm), soybeans (0.5 ppm); soybean fodder (8.0 ppm); soybean forage (8.0 ppm); soybean hay (25.0 ppm); and soybean straw (0.1 ppm); PP 5F4591 for use of propiconazole on berries, carrots and onions - berry crop grouping (1.0 ppm); dry bulb onion (0.3 ppm); green onion (8.0); PP 5F3740 - tree nut crop grouping (0.1 ppm); PP 5F4498 - inadvertent/rotational crop tolerances for alfalfa forage (0.1 ppm), alfalfa hay (0.1 ppm), grain sorghum fodder (0.3 ppm), grain sorghum forage (0.3 ppm) and grain sorghum grain (0.2 ppm).

ii. *Drinking water.* Other potential sources of exposure of the general population to residues of propiconazole are residues in drinking water and exposure from non-occupational sources. Review of environmental fate data by the Environmental Fate and Effects Division of USEPA indicates that propiconazole is persistent and moderately mobile to relatively immobile in most soil and aqueous environments. No Maximum Concentration Level (MCL) currently exists for residues of propiconazole in drinking water and no drinking water health advisory levels have been established for propiconazole.

The degradation of propiconazole is microbially mediated with an aerobic soil metabolism half-life of 70 days. While propiconazole is hydrolytically and photochemically stable (T ½ >100 days), it binds very rapidly and tightly to soil particles following application. Adsorption/desorption and aged leaching data indicate that propiconazole and its degradates will primarily remain in the top 0–6 inches of the soil. It has been determined that under field conditions propiconazole will degrade with a half-life of approximately 100 days.

2. *Non-dietary exposure.* Propiconazole is registered for residential use as a preservative treatment for wood and for lawn and ornamental uses. At this time, no reliable data exist which would allow quantitative incorporation of risk from these uses into a human health risk assessment. The exposure to propiconazole from contacting treated wood products is anticipated to be very low since the surface of wood is usually coated with paint or sealant when used in or around the house. The non-occupational exposure from lawn and ornamental applications is also considered to be minor. It is estimated that less than 0.01% of all households nationally use propiconazole in a residential setting.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable information to indicate that toxic effects produced by propiconazole would be cumulative with those of any other types of chemicals. While other triazoles are available on the commercial or consumer market, sufficient structural differences exist among these compounds to preclude any categorical grouping for cumulative toxicity. Consequently, Novartis is considering only the potential risks of propiconazole in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population—Reference dose.* Using the conservative exposure assumptions described above (100% stone fruit acres treated and tolerance level residues) and based on the completeness and reliability of the toxicity data base for propiconazole, Novartis has calculated aggregate exposure levels for this chemical. The calculation shows that only 16% of the RfD will be utilized for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

2. *Infants and children.* Developmental toxicity (e.g., reduced pup weight and ossification) was observed in the rat teratology studies and 2–generation rat reproduction studies at maternally toxic doses. Some of these findings are judged to be nonspecific, secondary effects of maternal toxicity. The lowest NOAEL for developmental toxicity was established in the rat teratology study at 30 mg/kg, a level 24–fold higher than the NOAEL of 1.25 mg/kg on which the RfD is based.

3. *Reference dose.* Using the same conservative exposure assumptions as employed for the determination in the general population, Novartis has calculated that the percent of the RfD that will be utilized by aggregate exposure to residues of propiconazole is 26% for nursing infants less than 1 year old, 65% for non-nursing infants less than 1 year old, 35% for children 1–6 years old, and 23% for children 7–12 years old. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

F. International Tolerances

International CODEX values are established for almond, animal products, bananas, barley, coffee, eggs, grapes, mango, meat, milk, oat, peanut-whole, peanut grains, pecans, rape, rye, stone fruit, sugar cane, sugar beets, sugar beet tops, and wheat. The U.S. residue definition includes both propiconazole and metabolites determined as 2,4-dichlorobenzoic acid (DCBA), while the CODEX definition is for propiconazole, per se, i.e. parent only. This difference results in unique tolerance expressions with the U.S. definition resulting in the higher tolerance levels.

[FR Doc. 00–31056 Filed 12–5–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50877; FRL–6758–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: *By mail:* Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in the experimental use permit: 1921 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUP:

064500–EUP–1. Issuance. U.S. Department of Agriculture, Agricultural Research Service, Pacific West Area (PWA), Department of Plant Pathology, University of California, One Shield Ave., Davis, CA 95616. This experimental use permit allows the use of 25 gallons of the biochemical pesticide sucrose octanoate esters on 50 acres of grapevines to evaluate the control of glassy-winged sharpshooter during post harvest. The program is authorized only in the State of California. The experimental use permit is effective from September 15, 2000 to December 15, 2000. This is a non-crop destruct EUP. (S. Diana Hudson; Rm. 910, Crystal Mall #2; telephone number: (703) 308–8713; e-mail address: hudson.diana@epa.gov).

Persons wishing to review the EUP are referred to the designated contact person. Inquiries concerning the permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: November 29, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–31059 Filed 12–5–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6912–3]

ILCO Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into two settlement agreements with a total of 45 de-minimis parties for response costs pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding the Interstate Lead Company (ILCO) Superfund Site located in Leeds, Alabama. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–PSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor on or before January 5, 2001.

Dated: November 20, 2000.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–31052 Filed 12–5–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6912–1]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), Tokeland Cow Dip Pit CERCLA Site, Pacific County, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act ("CERCLA"), notice is hereby given of a proposed settlement to resolve a claim against Estate of Virginia M. Nelson. The proposed settlement concerns the federal government's past response costs at the Tokeland Cow Dip Pit CERCLA Site, Pacific County, Washington. The settlement requires the settling party, the Estate of Virginia M. Nelson, to pay $57,111.55 to the Hazardous Substance Superfund. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region 10, office at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Mary Shillcutt, Regional Hearing Clerk, EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–2429. Comments should

reference the "Tokeland Cow Dip Pit CERCLA Site" and EPA Docket No. CERCLA–10–97–0043 and should be addressed to Ms. Shillcutt at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Byrne, Assistant Regional Counsel, EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–0050.

Dated: November 21, 2000.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–30909 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–U

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Executive Office of the President; Federal Policy on Research Misconduct; Preamble for Research Misconduct Policy

AGENCY: Office of Science and Technology Policy.

ACTION: Notification of Final Policy.

SUMMARY: The Office of Science and Technology Policy (OSTP) published a request for public comment on a proposed Federal research misconduct policy in the October 14, 1999 **Federal Register** (pp. 55722–55725). OSTP received 237 sets of comments before the public comment period closed on December 13, 1999. After consideration of the public comments, the policy was revised and has now been finalized. This notice provides background information about the development of the policy, explains how the policy has been modified, and discusses plans for its implementation.

EFFECTIVE DATE: December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Holly Gwin, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20502. Tel: 202–456–6140; Fax: 202–456–6021; e-mail: hgwin@ostp.eop.gov.

SUPPLEMENTARY INFORMATION: Advances in science, engineering, and all fields of research depend on the reliability of the research record, as do the benefits associated with them in areas such as health and national security. Sustained public trust in the research enterprise also requires confidence in the research record and in the processes involved in its ongoing development. For these reasons, and in the interest of achieving greater uniformity in Federal policies in this area, the National Science and Technology Council (NSTC) initiated discussions in April 1996 on the development of a research misconduct policy. The Office of Science and Technology Policy (OSTP) provided leadership and coordination. The NSTC approved the proposed draft policy in May 1999, clearing the way for the October 14, 1999 **Federal Register** notice. Public comments in response to that notice have been reviewed. The purpose of this notice is to provide information about the policy as it has now been finalized.

This policy applies to federally-funded research and proposals submitted to Federal agencies for research funding. It thus applies to research conducted by the Federal agencies, conducted or managed for the Federal government by contractors, or supported by the Federal government and performed at research institutions, including universities and industry.

The policy establishes the scope of the Federal government's interest in the accuracy and reliability of the research record and the processes involved in its development. It consists of a definition of research misconduct and basic guidelines for the response of Federal agencies and research institutions to allegations of research misconduct.

The Federal agencies that conduct or support research will implement this policy within one year of the date of publication of this notice. An NSTC interagency research misconduct policy implementation group has been established to help achieve uniformity across the Federal agencies in implementation of the research misconduct policy. In some cases, this may require agencies to amend or replace extant regulations addressing research misconduct. In other cases, agencies may need to put new regulations in place or implement the policy through administrative mechanisms.

The policy addresses research misconduct. It does not supersede government or institutional policies or procedures for addressing other forms of misconduct, such as the unethical treatment of human research subjects or mistreatment of laboratory animals used in research, nor does it supersede criminal or other civil law. Agencies and institutions may address these other issues as authorized by law and as appropriate to their missions and objectives.

Summary of Comments

The Office of Science and Technology Policy received 237 comments on the proposed Federal Research Misconduct Policy. Letters were signed by individuals, and by representatives of universities, university associations, Federal agencies, and private entities. Comments are available for review. Comments that resulted in a modification of the policy are summarized below. A section that addresses other questions raised by the comments follows the summary of modifications.

Uniform Federal Policy

Issue: Many comments recommended various mechanisms to ensure uniform implementation of this policy.

Response: An NSTC research misconduct policy implementation group has been formed to foster uniformity among the agencies in their implementation of the policy.

Section I: Research Misconduct Defined

Issue: A number of comments suggested that the definition of fabrication be modified to read as follows: "Fabrication is making up data or results and recording or reporting them." (Italicized words are suggested addition.) This change is to clarify that the raw data collected or generated in the research process can be fabricated just as can the results of the research.

Response: This change was accepted.

Issue: A number of commenters interpreted the definition of plagiarism to imply that using material gathered during the peer review process was acceptable as long as it is cited.

Response: The policy is intended to address the problem of reviewers who take material from the peer review process and use it without attribution. This constitutes plagiarism. We have deleted the phrase "including those obtained through confidential review of others' research proposals and manuscripts" to avoid any appearance of condoning a breach of confidentiality in the peer review process.

Issue: Despite general support for the rationale for the phrase "does not include honest error or honest differences of opinion," several comments requested various clarifications.

Response: This phrase is intended to clarify that simple errors or mere differences of judgment or opinion do not constitute research misconduct. The phrase does not create a separate element of proof. Institutions and agencies are not required to disprove possible "honest error or differences of opinion." The phrase has been retained, with the deletion of the second "honest" of the phrase as redundant.

Issue: A number of comments raised questions about what fields of research are included in the definition of research. For example, some readers were unsure about the applicability of the policy as written to medicine or the social sciences.

Response: The policy applies to research funded by the Federal agencies. In order to be responsive to specific inquiries about what fields of research are covered by the policy, an illustrative, non-exclusive list of selected fields of research is now included in the policy itself.

Section II: Findings of Research Misconduct

Issue: Several comments stressed the need for greater precision in the phrase "significant departure from accepted practices of the scientific community."

Response: This phrase is intended to make it clear that behavior alleged to involve research misconduct should be assessed in the context of community practices, meaning practices that are generally understood by the community but that may not be in a written form. For clarification purposes and in order to be more comprehensive, the term "scientific community" has been modified to read "relevant research community." The policy is not intended to ratify those "accepted practices" but rather to indicate that these may vary among different communities.

Issue: Several comments requested clarification regarding the level of intent that is required to be shown in order to reach a finding of research misconduct.

Response: Under the policy, three elements must be met in order to establish a finding of research misconduct. One of these elements is a showing that the subject had the requisite level of intent to commit the misconduct. The intent element is satisfied by showing that the misconduct was committed "intentionally, or knowingly, or recklessly." Only one of these needs to be demonstrated in order to satisfy this element of a research misconduct finding.

Section III: Responsibilities of Federal Agencies and Research Institutions

Issue: Some comments indicated that this section could be incorrectly construed to require appeal of the agency misconduct finding back to the institution.

Response: The policy has been clarified to affirm that each agency should establish an appeals process for persons found by the agency to have engaged in research misconduct. The subject of the agency finding cannot appeal the agency decision back to the institution, although some institutions do offer an appeal of the institutional finding at the institutional level.

Section IV: Guidelines for Fair and Timely Procedures

Issue: The comments indicated some uncertainty about to whom the actions section applied.

Response: The actions delineated are those that may be taken by the Federal agencies if research misconduct has been shown to have occurred. The section has thus been renamed "Agency Administrative Actions."

Issue: The suggestion was made that publications based on false or fabricated data, or including such data, should be required to be officially withdrawn.

Response: Correction of the research record has been added to the list of possible actions to be taken if a researcher is found to have engaged in research misconduct.

Issue: The suggestion was made that safeguards for informants and subjects of allegations be made more explicit.

Response: More explicit safeguards have been added to the policy for both informants and subjects.

Other Comments

Several comments and clarifications are addressed in the following question and answer format rather than through modification of the policy.

Will agencies be required to announce the details of their implementation plans? Yes. Agencies will announce the details of their implementation plans, including those plans that do not require formal rulemaking.

What types of misconduct are covered by this policy? This policy is limited to addressing misconduct related to the conduct and reporting of research, as distinct from misconduct that occurs in the research setting but that does not affect the integrity of the research record, such as misallocation of funds, sexual harassment, and discrimination. This policy does not limit agencies or research institutions from addressing these other issues under appropriate policies, rules, regulations, or laws. In addition, should the behavior associated with research misconduct also trigger the applicability of other laws (including criminal law) this policy is not intended to limit agencies or research institutions from pursuing these matters under separate authorities.

Does this policy address misrepresentation of a researcher's credentials or publications? Yes, misrepresentation of a researcher's qualifications or ability to perform the research in grant applications or similar submissions may constitute falsification or fabrication in proposing research.

Are authorship disputes covered by this policy? Authorship disputes are not covered by this policy unless they involve plagiarism.

Does research misconduct include the mistreatment of human subjects or animals in research? This policy addresses activity that occurs in the course of human subjects or animal research that involves research misconduct as defined by the policy. Thus, falsification, fabrication, or plagiarism that occurs during the course of human or animal research is addressed by this policy. However, other issues concerning the ethical treatment of human or animal subjects are covered under separate procedures and are not affected by this policy.

Why doesn't the policy provide immunity for research misconduct investigative committees? Providing immunity to research misconduct investigative committees and other participants in institutional and agency research misconduct proceedings would require significant statutory or regulatory initiatives which will be explored separately from this policy.

Aren't there circumstances when omission of data or results is appropriate? A number of commenters suggested that there are circumstances when it may be appropriate to omit data in reporting research results. It is not the intent of this policy to call accepted practices into question. However, the omission of data is considered falsification when it misleads the reader about the results of the research.

Does this policy supersede institutional policies regarding research misconduct? Non-federal research institutions have authority to establish policies for research and employee misconduct that serve their own institutional purposes. However, the Federal research misconduct policy (as implemented by the agencies) provides the relevant guidance to institutions for purposes of Federal action.

Does this policy supersede other agency policies, procedures, rules, and regulations? Agencies must comply with all relevant Federal personnel policies and laws in responding to allegations of research misconduct. However, personnel actions may not adequately protect the public from the consequences of falsified, fabricated or plagiarized research. For example, Federal personnel policies may permit termination of an employee who commits research misconduct, but may not address the problem of research misconduct or seek to prevent it from recurring. The administrative actions available under the Federal research misconduct policy, such as debarment from federal funding, supervision and certification of research, and correction

of the literature, are designed to specifically address the problems raised by research misconduct.

Must all three elements in the Finding of Research Misconduct section be present for there to be a finding of research misconduct? Yes.

Who makes the final determination about whether or not there is a finding of research misconduct? The Federal agency will make the final decision about whether to make an agency finding of research misconduct. However, within its own internal jurisdiction, a non-Federal research institution may establish policies and take actions as appropriate to its needs and as consistent with other relevant laws.

Shouldn't the burden of proof be more stringent, e.g., require "clear and convincing evidence" to support a finding of research misconduct? While much is at stake for a researcher accused of research misconduct, even more is at stake for the public when a researcher commits research misconduct. Since "preponderance of the evidence" is the uniform standard of proof for establishing culpability in most civil fraud cases and many federal administrative proceedings, including debarment, there is no basis for raising the bar for proof in misconduct cases which have such a potentially broad public impact. It is recognized that non-Federal research institutions have the discretion to apply a higher standard of proof in their internal misconduct proceedings. However, when their standard differs from that of the Federal government, research institutions must report their findings to the appropriate Federal agency under the applicable Federal government standard, i.e., preponderance.

Why don't the Federal agencies conduct all inquiries and investigations? Research institutions are much closer to what is going on in their own institutions and are in a better position to conduct inquiries and investigations than are the Federal agencies. While the Federal agencies could have taken on the task of investigating all allegations of research misconduct, or established a separate agency for this purpose, this would have involved a substantial new Federal bureaucracy, which is not thought desirable. An agency may take steps, as appropriate, should a research institution demonstrate a lack of commitment to the policy's guidelines.

How will a lead agency be identified? If more than one Federal agency has jurisdiction over allegations of research misconduct, those agencies should work together to designate a lead agency.

What criteria will be used for selecting the research institution that will handle the response to the allegation of research misconduct? In most cases, agencies will rely on the researcher's home institution to respond to allegations of research misconduct. However, in cases where the subject has switched institutions, it may be more appropriate for the institution where the alleged research misconduct occurred to respond to the allegation. The institution where the questioned research was conducted may have better access to the evidence and witnesses and therefore will have the capability to undertake a more efficient and thorough response.

Shouldn't the policy be more explicit about time lines for a response to allegations of misconduct? In establishing reasonable time lines the Federal agencies must balance the interests of concluding the process expeditiously while ensuring it has been conducted fairly and thoroughly. This will allow flexibility for the research institutions while at the same time ensuring that the process does not extend for an unreasonably long period. Research institutions should have the option to request reasonable extensions of agency timelines in individual cases.

What can informants or subjects of allegations expect with regard to confidentiality? The policy strives for confidentiality for all involved to the extent consistent with a fair and thorough process and as allowed by law, including applicable Federal and state freedom of information and privacy laws.

Should the policy punish informants who act in bad faith or individuals who harass informants? The principal aim of this policy is to communicate to the research community those behaviors that constitute research misconduct and to take actions where research misconduct is found to have occurred. As employers and managers of the research, non-Federal research institutions may adopt policies to address the consequences of false, malicious, or capricious allegations and to respond to retaliation against informants. Agencies may also address this issue in their implementation of this policy.

How should the "seriousness" of the research misconduct be evaluated and how will this relate to any actions taken? In determining what action to take, agencies should fully consider the level of intent of the misconduct, the consequences of the behavior, and other aggravating and mitigating factors.

Next Steps

The Federal agencies have up to one year from the date of publication of this notice to implement the policy. An interagency implementation group has been established under the auspices of the National Science and Technology Council to assist agencies in their implementation process and to strive for the highest level of uniformity possible and as appropriate in their implementation plans.

Federal Policy on Research Misconduct [1]

I. Research [2] Misconduct Defined

Research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

- Fabrication is making up data or results and recording or reporting them.
- Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.[3]
- Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- Research misconduct does not include honest error or differences of opinion.

II. Findings of Research Misconduct

A finding of research misconduct requires that:

- There be a significant departure from accepted practices of the relevant research community; and
- The misconduct be committed intentionally, or knowingly, or recklessly; and
- The allegation be proven by a preponderance of evidence.

[1] No rights, privileges, benefits or obligations are created or abridged by issuance of this policy alone. The creation or abridgment of rights, privileges, benefits or obligations, if any, shall occur only upon implementation of this policy by the Federal agencies.

[2] Research, as used herein, includes all basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

[3] The research record is the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

III. Responsibilities of Federal Agencies and Research Institutions [4]

Agencies and research institutions are partners who share responsibility for the research process. Federal agencies have ultimate oversight authority for Federally funded research, but research institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

- *Agency Policies and Procedures.* Agency policies and procedures with regard to intramural as well as extramural programs must conform to the policy described in this document.
- *Agency Referral to Research Institution.* In most cases, agencies will rely on the researcher's home institution to make the initial response to allegations of research misconduct. Agencies will usually refer allegations of research misconduct made directly to them to the appropriate research institution. However, at any time, the Federal agency may proceed with its own inquiry or investigation. Circumstances in which agencies may elect not to defer to the research institution include, but are not limited to, the following: the agency determines the institution is not prepared to handle the allegation in a manner consistent with this policy; agency involvement is needed to protect the public interest, including public health and safety; the allegation involves an entity of sufficiently small size (or an individual) that it cannot reasonably conduct the investigation itself.
- *Multiple Phases of the Response to an Allegation of Research Misconduct.* A response to an allegation of research misconduct will usually consist of several phases, including: (1) an *inquiry*—the assessment of whether the allegation has substance and if an investigation is warranted; (2) an *investigation*—the formal development of a factual record, and the examination of that record leading to dismissal of the case or to a recommendation for a finding of research misconduct or other appropriate remedies; (3) *adjudication*—during which recommendations are reviewed and appropriate corrective actions determined.
- *Agency Follow-up to Institutional Action.* After reviewing the record of the investigation, the institution's recommendations to the institution's adjudicating official, and any corrective actions taken by the research institution, the agency will take additional oversight or investigative steps if necessary. Upon completion of its review, the agency will take appropriate administrative action in accordance with applicable laws, regulations, or policies. When the agency has made a final determination, it will notify the subject of the allegation of the outcome and inform the institution regarding its disposition of the case. The agency finding of research misconduct and agency administrative actions can be appealed pursuant to the agency's applicable procedures.
- *Separation of Phases.* Adjudication is separated organizationally from inquiry and investigation. Likewise, appeals are separated organizationally from inquiry and investigation.
- *Institutional Notification of the Agency.* Research institutions will notify the funding agency (or agencies in some cases) of an allegation of research misconduct if (1) the allegation involves Federally funded research (or an application for Federal funding) and meets the Federal definition of research misconduct given above, and (2) if the institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation. When an investigation is complete, the research institution will forward to the agency a copy of the evidentiary record, the investigative report, recommendations made to the institution's adjudicating official, and the subject's written response to the recommendations (if any). When a research institution completes the adjudication phase, it will forward the adjudicating official's decision and notify the agency of any corrective actions taken or planned.
- *Other Reasons to Notify the Agency.* At any time during an inquiry or investigation, the institution will immediately notify the Federal agency if public health or safety is at risk; if agency resources or interests are threatened; if research activities should be suspended; if there is reasonable indication of possible violations of civil or criminal law; if Federal action is required to protect the interests of those involved in the investigation; if the research institution believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or if the research community or public should be informed.
- *When More Than One Agency is Involved.* A lead agency should be designated to coordinate responses to allegations of research misconduct when more than one agency is involved in funding activities relevant to the allegation. Each agency may implement administrative actions in accordance with applicable laws, regulations, policies, or contractual procedures.

IV. Guidelines for Fair and Timely Procedures

The following guidelines are provided to assist agencies and research institutions in developing fair and timely procedures for responding to allegations of research misconduct. They are designed to provide safeguards for subjects of allegations as well as for informants. Fair and timely procedures include the following:

- *Safeguards for Informants.* Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith.
- *Safeguards for Subjects of Allegations.* Safeguards for subjects give individuals the confidence that their rights are protected and that the mere filing of an allegation of research misconduct against them will not bring their research to a halt or be the basis for other disciplinary or adverse action absent other compelling reasons. Other safeguards include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct (if any).
- *Objectivity and Expertise.* The selection of individuals to review allegations and conduct investigations who have appropriate expertise and have no unresolved conflicts of interests help to ensure fairness throughout all phases of the process.
- *Timeliness.* Reasonable time limits for the conduct of the inquiry, investigation, adjudication, and appeal

[4] The term "research institutions" is defined to include all organizations using Federal funds for research, including, for example, colleges and universities, intramural Federal research laboratories, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes. Independent researchers and small research institutions are covered by this policy.

phases (if any), with allowances for extensions where appropriate, provide confidence that the process will be well managed.

• *Confidentiality During the Inquiry, Investigation, and Decision-Making Processes.* To the extent possible consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know. Records maintained by the agency during the course of responding to an allegation of research misconduct are exempt from disclosure under the Freedom of Information Act to the extent permitted by law and regulation.

V. Agency Administrative Actions

• *Seriousness of the Misconduct.* In deciding what administrative actions are appropriate, the agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowing, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare.

• *Possible Administrative Actions.* Administrative actions available include, but are not limited to, appropriate steps to correct the research record; letters of reprimand; the imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of an award; suspension or termination of an active award; or suspension and debarment in accordance with applicable government-wide rules on suspension and debarment. In the event of suspension or debarment, the information is made publicly available through the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the U.S. General Services Administration. With respect to administrative actions imposed upon government employees, the agencies must comply with all relevant federal personnel policies and laws.

• *In Case of Criminal or Civil Fraud Violations.* If the funding agency believes that criminal or civil fraud violations may have occurred, the agency shall promptly refer the matter to the Department of Justice, the Inspector General for the agency, or other appropriate investigative body.

VI. Roles of Other Organizations

This Federal policy does not limit the authority of research institutions, or other entities, to promulgate additional research misconduct policies or guidelines or more specific ethical guidance.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 00–30852 Filed 12–5–00; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 27, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 5, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0951.

Title: Service of Petitions for Preemption, 47 CFR 1.1204(b) Note and 1.1206(a) Note 1.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; businesses or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 125.

Estimated Time Per Response: 15 minutes.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 30 hours.

Total Annual Cost: N/A.

Needs and Uses: These provisions supplement the procedures for filing petitions seeking Commission preemption of state and local government regulation of telecommunications services. They require that such petitions, whether in the form of a petition for rulemaking or a petition for declaratory ruling, be served on all state and local governments. The actions for which as cited as a basis for requesting preemption. Thus, in accordance with these provisions, persons seeking preemption must serve their petitions not only on the state or local government whose authority would be preempted, but also on other state or local governments whose actions are cited in the petition.

OMB Control No.: 3060–0937.

Title: Establishment of a Class A Television Service, MM Docket No. 00–10.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 1,000 respondents; 19,370 responses.

Estimated Time Per Response: .166 hours to 52 hours.

Frequency of Response: Recordkeeping requirement, on occasion and quarterly reporting requirement and third party disclosure requirement.

Total Annual Burden: 396,251 hours.

Total Annual Cost: $2,284,000.

Needs and Uses: The Community Broadcasters Protection Act directed the Commission to make Class A television licensees subject to the same operating requirements as that of full-service broadcast stations. The Commission has modified Part 73 to incorporate Class A licensees. The data will be used to ensure that the public is being served and will not cause harmful interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–30970 Filed 12–05–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–2692]

Consumer/Disability Telecommunications Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces formation of the Consumer/Disability Telecommunications Advisory Committee (hereinafter "the Committee") to make recommendations to the Commission regarding consumer and disability issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations) in proceedings before the Commission. The Commission also requests applications of representatives to serve on the Committee.

DATES: Applications should be received no later than January 15, 2001.

ADDRESSES: Applications should be sent to the Federal Communications Commission, Consumer Information Bureau, Attn: Scott Marshall, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer Information Bureau, Federal Communications Commission, and 445 12th Street, SW., Washington, DC 20554. Telephone 202–418–2809 (voice) or 202–418–0179 (TTY).

SUPPLEMENTARY INFORMATION: This public notice, which announces formation of the Consumer/Disability Advisory Telecommunications Committee, was released November 30, 2000.

Electronic Access and Filing

A copy of this notice is also available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's website at *http://www.fcc.gov/cib/dro.* Applications for membership on the Committee may also be sent to the Commission via email addressed to *smarshal@fcc.gov* or may be transmitted via facsimile to 202–418–1414.

Background

The Telecommunications Act of 1996 paved the way for a new era of greater competition and consumer choice in telecommunications for all Americans. Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App II, the Commission announces the formation of the Consumer/Disability Telecommunications Advisory Committee to ensure that all Americans, including individuals with disabilities and underserved populations such as tribal nations, have equal access to telecommunications products and services; and to facilitate consumer involvement and input into all activities of the Commission.

Functions

The Committee will provide general guidance to the Federal Communications Commission, and will make specific recommendations on issues and questions presented to it through the Commission's Consumer Information Bureau (CIB). The issues or questions referred to the Committee will include, but are not limited to the following topic areas:

• Consumer Protection and Education (e.g., cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations).

• Access by People with Disabilities (e.g., telecommunications relay services, video description, captioning, accessible billing, and access to telecommunications products and services).

• Impact of New and Emerging Technologies (e.g., availability of Broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).

• Enforcement and Consumer Participation in the FCC Rulemaking Process.

It is anticipated that the Committee will meet a minimum of two times per year in Washington, DC, and that approximately three informal subcommittees will be established to facilitate the Committee's work between meetings of the full Committee.

Applications for Membership

The Commission seeks applications from interested individuals or organizations from both the public and private sectors that wish to be considered for membership on the Committee. Selections will be made on the basis of factors such as expertise and viewpoints that are necessary to address effectively the questions presented to the Committee. Members should be recognized experts in their fields, including but not limited to, consumer advocacy organizations, organizations representing persons with disabilities, representatives of underserved populations, equipment manufacturers, telecommunications service providers (including wireless), broadcast/cable providers, state/local regulators, and/or other qualified persons serving in their individual capacities. Members must be willing to commit to a two-year term of service, should be willing and able to attend a minimum of two (2) one-day meetings per year of the Committee held in Washington, D.C., and are also expected to participate in deliberations of at least one subcommittee. The Commission is unable to pay per diem or travel costs. Members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities who are, or will, be regulated by or that have interests before the FCC. The number of Committee members will be limited to effectively accomplish the Committee's work. Organizations with similar interests are encouraged to submit a single application to represent their interests. Although the Committee will be limited in size, there will be opportunities for the public to present written information to the Committee, participate through subcommittees, and to comment at Committee meetings. Applications should be sent to the Commission at the address listed at the beginning of this notice, and should be received by the Commission no later than January 15, 2001. The application should include the representative's name (and for organizations, the name of an alternate), title, address and telephone number, a statement of the interests represented and the consumer and/or disability issues of interest to the applicant; and a description of the applicant's qualifications. The application should further be supported by a statement indicating a willingness to serve on the Committee for a two-year period of time; to attend a minimum of two (2) one-day meetings per year in Washington DC; and a commitment to work on at least one subcommittee, at the applicant's own expense. After the applications have been reviewed, the Commission will publish a notice in the **Federal Register** announcing the appointment of the Committee members

and the first meeting date of the Committee. It is anticipated that the first Committee meeting will take place in March of 2001.

The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. App II. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Bureau Chief, Consumer Information Bureau.

[FR Doc. 00–31082 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–2684]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Orlando, Florida. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the eleventh meeting of the Public Safety National Coordination Committee.

DATES: January 19, 2001 at 9:30 a.m.–12:30 p.m.

ADDRESSES: Holiday Inn Select, 5750 T. G. Lee Blvd., Orlando, Florida 32822.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the eleventh meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Orlando, Florida.

The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: January 19, 2001.

Meeting Time: General Membership Meeting—9:30 a.m.–12:30 p.m.

Address: Holiday Inn Select, 5750 T. G. Lee Blvd., Orlando, Florida 32822.

The NCC Subcommittees will meet from 9:00 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee including, without limitation, recommendations for an incident response system, recommendations for the number of interoperability channels to be operator-accessible on mobile and portable radios; recommendations on interoperability channel labeling conventions and any other matters related to interoperability.
4. Report from the Technology Subcommittee including, without limitation, discussion of an encryption standard appropriate for use on the narrowband 700 MHz public safety frequencies; technology-related issues arising from the recommendations of the other subcommittees; and any other matters related to interoperability.
5. Report from the Implementation Subcommittee including, without limitation, recommendations for guidelines and model documents for use by Regional Planning Committees; recommendations for use of a pre-coordination database; operations-related issues arising from the recommendations of the other subcommittees; and any other matters related to interoperability.
6. Public Discussion.
7. Other Business.
8. Upcoming Meeting Dates and Locations.
9. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the eleventh meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing to jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this eighth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated

Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 00–31081 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

Special Executive Session

Date & Time: *Thursday, November 30, 2000, following the open meeting.*

Place: 999 E Street, NW., Washington, DC.

Status: This meeting was closed to the public pursuant to 11 CFR § 2.4(b)(1).

Item to be discussed: Personnel.

Date & Time: *Tuesday, December 12, 2000 at 10:00 a.m.*

Place: 999 E Street, NW., Washington, DC.

Status: This meeting was closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personal rules and procedures or matters affecting a particular employee.

Date & Time: *Thursday, December 14, 2000 at 10:00 a.m.*

Place: 999 E Street, NW., Washington, DC.

Status: This meeting was closed to the public.

Item to be discussed:

Correction and Approval of Minutes

Election of Officers.

Future Meeting Dates.

Draft Advisory Opinion 200–28: American Seniors Housing Associaiton (ASHA) and the National Multi Housing Council (NMHC) by counsel, Cheryl M. Cronin.

Draft Advisory Opinion 2000–36: Andersen Consulting PAC by counsel, John C. Keeney, Jr.

Draft Advisory Opinion 2000–38: Democractic Party of the commonwealth of Puerto Rico.

Draft Advisory Opinion 2000–39: Pacific Green Party of Oregon by Trey Smith, Treasurer.

Regulations Priority Report.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–31219 Filed 12–4–00; 2:11 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011700–002.

Title: Senator/CSAV Slot Charter Agreement.

Parties: Senator Lines GmbH, Compania Sud Americana de Vapores.

Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include ports in Asia, Central America, and Mexico.

Agreement No.: 011735.

Title: Safmarine/Andrew Weir Cooperative Working Agreement.

Parties: Andrew Weir Shipping Limited, Safmarine Container Lines NV.

Synopsis: The proposed Agreement provides that the parties will not compete with one another in the trade between U.S. ports and, generally, ports in South and East Africa, Australia, and New Zealand. This Agreement will expire on December 31, 2002.

Agreement No.: 011736.

Title: SEN/CSAV Cross Slot Charterparty Agreement on AMA/MPX.

Parties: Senator Lines GmbH, Bremen, Compania Sud Americana de Vapores S.A.

Synopsis: The proposed agreement authorizes the parties to charter space to and from each other on vessels operated as part of services in which each party respectively participates, covering the trades between United States East Coast ports and ports in Asia, the Middle East, and South Europe.

Dated: December 1, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–31073 Filed 12–5–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant: Global Cargo Corp., 8470 N.W. 30th Terrace, Miami, FL 33122, Officers: Pedro Altove, Vice President (Qualifying Individual), Homero Hauque, President.

Dated: December 1, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–31072 Filed 12–5–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
4014F	Air Cargo Centralam, Inc., 8001 S.W. 157th Court, Miami, FL 33193	October 13, 2000.
1483NF	Tokyo Express Co., Inc., 70 Charter Oak Avenue, San Francisco, CA 94124	July 13, 2000.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 00–31070 Filed 12–5–00; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 4619F.
Name: Amad Corporation d/b/a Amad Forwarding Corporation.
Address: 3550 N.W. 33rd Street, Miami, FL 33142
Date Revoked: November 8, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4384F.
Name: Continuity Corporation d/b/a Alamo Forwarding.
Address: 2320 McCue Road, Houston, TX 77056
Date Revoked: November 8, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14049N.
Name: Ever-Lasting Int'l Inc.
Address: 179–39 149th Avenue, Rm. 105, Jamaica, NY 11434
Date Revoked: November 5, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13730N.
Name: Freight Systems International, Inc.
Address: 1300 Newark Turnpike, Kearny, NJ 07032
Date Revoked: November 8, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4541N.
Name: Southeast Logistics International, Inc.
Address: 122 Agape Street, Williamson, GA 30292
Date Revoked: October 31, 2000.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 00–31071 Filed 12–5–00; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 21, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Stephen Dale Kroenke, Douglas Britt Kroenke, and Dwight Alan Kroenke, all of Lincoln, Missouri; to acquire voting shares of Lincoln Bancshares, Inc., Lincoln, Missouri, and thereby indirectly acquire voting shares of Farmers Bank of Lincoln, Lincoln, Missouri.

Board of Governors of the Federal Reserve System, December 1, 2000.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–31030 Filed 12–5–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Arkansas State Bancshares, Inc., Siloam Springs, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Arkansas State Bank, Siloam Springs, Arkansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Triple J. Financial, Inc., Claude, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Caprock Bancshares, Inc., Claude, Texas; and thereby indirectly acquire First National Bank of Claude, Claude, Texas.

Board of Governors of the Federal Reserve System, December 1, 2000.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–31029 Filed 12–5–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Community First Bancshares, Inc., Union City, Tennessee; to acquire three offices of an unaffiliated finance company, and thereby engage directly in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 2000.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–31028 Filed 12–5–00; 8:45 am]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management of Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. National Centers of Excellence in Women's Health Program Quantitative Evaluation Survey—NEW—The Office on Women's Health is proposing a survey of patients receiving services at the fifteen National Center of Excellence (CoE) in Women's Health clinical care centers. This survey will provide an assessment of the level of patient satisfaction and service utilization at the CoEs for comparison to other data on women's health service utilization.

Respondents: Individuals.

Number of Respondents: 3,000.

Burden per Response: 20 minutes.

Total Burden: 1,000 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: November 27, 2000.
Dennis P. Williams,
Deputy Assistant Secretary, Budget.
[FR Doc. 00–30964 Filed 12–5–00; 8:45 am]
BILLING CODE 4150–33–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB review; comment request

Title: Child Care Case-Level Report.

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option) include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. Disagregate data is used to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	20	4,480
Estimated Total Annual Burden Hours				4,480

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after

publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 30, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–30963 Filed 12–5–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Mexican Border Youth Survey—New—SAMHSA's Center for Substance Abuse Prevention is planning to conduct breath test surveys at the U.S./Mexican border to address underage and binge drinking related problems to both sides of the border. The surveys are a component of the Safe Crossing environmental program in two Texas sites along the U.S.-Mexico border. The initial project targeting underage and binge drinking was implemented in San Diego, California and yielded successful outcomes, including a 26% reduction in youth crossing the border to drink alcohol. The purpose of replicating the model in Texas is to test a local adaptation of the program which surveys youth crossing the U.S.-Mexico border. This effort informs the public of problem behaviors specific to their local community and serves to develop community awareness and inform community interventions, such as underage curfews and enforcing bar closing hours. The data collected will be made available to local groups to assist in raising community awareness of youth drinking issues. It is expected that communities will use the information to tailor interventions to reduce youth drinking-associated problems.

The survey will be a five-minute interview with youths 18 to 30 years of age returning to the U.S. from Mexico between midnight and 6 a.m. on Friday and Saturday evenings. The interview consists of 26 questions concerning drinking behavior and a breath test. Approximately 100 pedestrians and 100 motorists will be interviewed one weekend per month. A total of approximately 2,400 respondents will be interviewed; half of the interviews will be conducted at El Paso, TX/Juarez, Mexico and half at the Brownsville, TX/Matamoros, Mexico border crossing site. The total burden associated with this project is summarized in the table below.

Number of responses	Respondents per respondent	Average burden per response (Hrs.)	Total burden
2,400	1	.083	200

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 30, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–31002 Filed 12–5–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Measuring Progress of Consumer Involvement in Public Managed Behavioral Health Care—New—The tremendous growth of managed care over the last ten years has dramatically changed the ways that public sector mental health and substance abuse services are organized and funded. The numbers of persons enrolled in managed care programs under Medicaid increased from 10 percent in 1991 to 54 percent in 1998, with escalating numbers of persons with disabilities included under the programs. The number of States with managed care programs in public mental health and substance abuse programs tripled in three years from 14 States in 1996 to 42 States in 1999. Currently, there are 39 States operating managed behavioral healthcare programs. The decrease is due to the fact that a few States terminated or did not implement planned programs.

SAMHSA has engaged in a number of projects to improve the genuine participation of consumers and family members in the design, procurement, implementation and evaluation of managed care programs in the public system. Under the SAMHSA Managed Care Initiative, a group of consumers, family members and advocacy groups developed the *Partners in Planning Guide* to educate consumers and family members on becoming active in designing managed care systems in their State. A related project supported training on the Guide at national and grassroots venues to advocated as well as persons with mental illnesses and/or chemical dependencies.

However, the impact of these and other efforts to promote greater inclusion of consumers and family members in system design remains largely unmeasured. The objective of this effort, sponsored by SAMHSA's Office of Managed Care, is to identify progress of the consumer and family member involvement in managed care. A survey will assess the level of consumer/family involvement in managed care design, implementation and evaluation. More specifically, mental health and substance abuse consumer leaders in targeted States will be surveyed about their involvement in Medicaid and waivered programs with behavioral healthcare services to assess: how consumer/family involvement has evolved over the past five years and identify areas of improvement and areas that still need improvement and reasons for the changes; the consumer's specific roles in formal governmental bodies, such as serving on the legislative commissions or governor advisory boards, etc; whether consumers and family members are finding useful the SAMHSA technical assistance documents and other resources for consumers and family members about managed behavioral healthcare. The resulting information will be shared with SAMHSA leadership and constituents to identify what works and best practices and to guide SAMHSA activities to further promotion of consumer and family involvement in managed care.

Participants in the survey will be identified through a combination of databases for the following constituencies: consumers/survivors, family members, and persons in recovery from substance abuse problems. In addition, recommendations from local mental health association and other advocate will be sought. The survey will involve approximately 3–5 individuals in each of 15 States. Total burden for this single-time survey is as follows:

Number of respondents	Responses/ respondent	Burden/ response	Total burden (hrs.)
75	1	.37	28

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 28, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–31003 Filed 12–5–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2000 Survey of Mental Health Organizations, General Hospital Mental Health Services, and Managed Care Organizations (SMHO)—(OMB No. 0930–0119, revision)—The survey, to be conducted by SAMHSA's Center for Mental Health Services (CMHS), will be conducted in two phases. Phase I will be a brief two-three page inventory consisting of four forms: (1) a specialty mental health organization and general hospital with separate mental health services form; (2) a general hospital with integrated mental health services screener form; (3) a community residential organization screener form; and (4) a managed behavioral healthcare organization form. This short inventory will be sent to all known organizations to define the universe of valid mental health organizations to be sampled in Phase II. The inventory will collect basic information regarding the name and address of the organizations, their type and ownership, and the kinds of services provided.

Phase II will sample approximately 2,000 mental health organizations and utilize a more detailed survey instrument. Although the Sample Survey form will be more comprehensive, it will be very similar to surveys and inventories fielded in 1998, 1994, 1992 and earlier. The organizational data to be collected by the Sample Survey form include university affiliation, client/patient census by basic demographics, revenues, expenditures, and staffing.

The resulting database will be used to provide national estimates and will be the basis for the National Directory of Mental Health Services. In addition, data derived from the survey will be published by CMHS in *Data Highlights*, in *Mental Health, United States*, and in professional journals such as *Psychiatric Services* and the *American Journal of Psychiatry*. *Mental Health, United States* is used by the general public, state governments, the U.S. Congress, university researchers, and other health care professionals.

Questionnaire	Number of respondents	Responses/ respondent	Average hour/ response	Total burden
Phase I (Inventory)				
Specialty Mental Health Organizations	3,563	1	0.5	1,781
State Central Database Processing	413	1	0.2	83
National Association of Psychiatric Health Systems Processing	150	1	0.2	30
General Hospitals with Separate Mental Health Services	1,736	1	0.5	868
General Hospitals with Integrated Mental Health Services	3,617	1	0.5	1,809
Community Residential Organizations	1,415	1	0.5	707
Managed Care Organizations	1,740	1	0.5	870
Phase I Subtotal	12,634			6,148
Phase II (Sample Survey)				
Specialty Mental Health Organizations	1,213	1	3.0	3,639
State Central Database Processing	140	1	0.5	70
National Association of Psychiatric Health Systems Processing	151	1	0.5	26
General Hospitals with Separate Mental Health Services	596	1	3.0	1,788
Phase II Subtotal	2,000			5,523
Grand total	12,634			11,671
3–Year Average	4,211			3,890

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 30, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–31001 Filed 12–5–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4562–N–09]

Notice of Proposed Information Collection for Public Comment: 2001 American Housing Survey—National Sample

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB control number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact Ronald J. Sepanik at (202)–708–1060, Ext. 5887 (this is not a toll-free number), or Jane M. Kneessi, Bureau of the Census, HHES Division, Washington, DC 20233, (301)–457–3235 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 2001 American Housing Survey—National Sample.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The 2001 American Housing Survey-National Sample (AHS–N) provides a periodic measure of the size and composition of the housing inventory in our country. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandate the collection of this information.

The 2001 survey is similar to previous AHS–N surveys and collects data on subjects such as the amount and types of housing in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With these data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With these data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–22 and AHS–23.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 55,000.

Estimate Responses per Respondent: 1 every two years.

Time per respondent: 34 minutes.

Total hours to respond: 31,167.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: November 17, 2000.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 00–30991 Filed 12–5–00; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–03]

Announcement of Funding Awards—Fiscal Year 2000 Office of Troubled Agency Recovery Cooperative Agreements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department from funds distributed to the Office of Troubled Agency Recovery during Fiscal Year 2000. This announcement contains the name and address of all awardees and the amount of each award.

FOR FURTHER INFORMATION CONTACT: Kathryn Edgar, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1141. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Cooperative Agreement with each of the following recipients was issued pursuant to Section 6(j) of the United States Housing Act of 1937. The awards will be used to provide technical assistance to support troubled agency recovery efforts and funding assistance as necessary to remedy the substantial deterioration of living conditions in public housing or other related emergencies that endanger the health, safety, and welfare of the residents.

The Catalog of Federal Domestic Assistance number for this program is 14.859.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of each award as follows:

Awardee	Amount
San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102	$367,139
Housing Authority of New Haven, 360 Orange St., New Haven, CT 06501	540,000
Housing Authority of New London, 78 Walden Avenue, New London, CT 06320	111,000
Topeka Housing Authority, 2101 SE California Avenue, Topeka, KS 66607	150,000
Housing Authority of New Orleans, 4100 Touro Street, New Orleans, LA 70122	150,000
Inkster Housing Commission, 4500 Inkster Road, Inkster, MI 48141	3,500
Muskegon Housing Commission, 1823 Commerce Street, Muskegon, MI 49440	115,000
Housing Authority of Kansas City, 299 Paseo, Kansas City, MO 64106	475,000
Saint Louis Housing Authority, 4100 Lindell Boulevard, Saint Louis, MO 63108	800,000
Wellston Housing Authority, 1584 Ogdon Avenue, Wellston, MO 63112	50,000
Sainte Genevieve Housing Authority, 225 Saint Joseph Street, Sainte Genevieve, MO 63670	55,000
Omaha Housing Authority, 540 South 27th Street, Omaha, NE 68105	275,000
Clinton Metropolitan Housing Authority, 478 Thorne Avenue, Wilmington, OH 45177	50,000
Potter County Housing Authority, East Seventh Street, Coudersport, PA 16915	7,500
Philadelphia Housing Authority, 2021 Chestnut Street, Philadelphia, PA 19103	1,800,000
Franklin Housing Authority, 601 Campbell Avenue, Franklin, VA 23851	40,000

Dated: November 29, 2000.

Milan Ordinec,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–30988 Filed 12–5–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4623–N–01]

Deployment of the FHA TOTAL Mortgage Scorecard

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's intention to deploy the FHA TOTAL Scorecard for mortgage industry use.

TOTAL refers to "Technology Open To All Lenders." The FHA TOTAL Scorecard, developed by HUD, assesses the credit worthiness of FHA borrowers by evaluating certain mortgage application and borrower credit information that has been statistically proven to accurately predict the likelihood of borrower default. The FHA TOTAL Scorecard is not an automated underwriting system; rather, it is a mathematical equation intended to be used within an automated underwriting system. HUD wishes to deploy the FHA TOTAL Scorecard with industry users

who share the Department's vision of increasing homeownership opportunities.

In order to participate in the Scorecard initiative, interested parties should have an automated underwriting system ("AUS") in place. As this product offering relates solely to the deployment of a scorecard, the AUS will utilize its own checks for FHA eligibility rules and its own functionality for loan specific messages. Based on the Scorecard configurations, the industry user must be equipped with a Sybase Database Server that receives calls in XML or Sybase Open Client. In addition, the user must have a communication link to HUD (https). In order to maximize the effectiveness of the Scorecard, interested participants should consult their internal IT personnel to ensure sufficient capacity to house the FHA TOTAL Scorecard. Participants should be prepared to fully support the server under their current IT Operations center. Additionally, any programming related to required inputs/connectivity to the FHA TOTAL Scorecard are the responsibility of the industry users.

ADDRESSES: Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: Laura Donnelly, Office of the Deputy Assistant Secretary for Single Family Housing, Room 9278, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C., 20410, telephone (202) 708–0614 (this is not a toll-free number). Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background, Purposes and Objectives

In July 1996, the FHA, an entity within the Department of Housing and Urban Development ("HUD" or the "Department") issued Mortgagee Letter 96–34. That Mortgagee Letter set forth HUD/FHA's requirements and processes for approving automated mortgage underwriting systems ("AUSs") to underwrite HUD/FHA insured mortgage loans. Mortgagee Letter 96–34 permitted lenders to utilize various AUSs in underwriting FHA loans, following screening, evaluation and approval of the AUS by FHA. Pursuant to Mortgagee Letter 96–34, two individual privately-developed mortgage scorecards were approved by HUD for use in the processing of HUD/FHA mortgage loans. Both of these systems employ mortgage scorecards developed by the system vendors using FHA borrower data. This notice is to inform the public that FHA intends to rescind approval of these proprietary scorecards and replace with the FHA TOTAL Scorecard. TOTAL refers to "Technology Open To All Lenders."

A Mortgagee Letter will be issued to supersede Mortgagee Letter 96–34, and outline the basic requirements for an AUS to be used in underwriting FHA loans; this future Mortgagee Letter may be further amended or supplemented by future mortgagee letters, handbooks, policy statements, or lender notices concerning AUSs. Prior approvals for use of privately-developed mortgage scorecards will be formally rescinded by written notice to the entities previously receiving such approvals. HUD anticipates providing three months prior notice of rescission and thereafter HUD will require use of the FHA TOTAL Scorecard in any AUS. Users of the FHA TOTAL Scorecard will receive documentation relief and credit policy waivers provided by FHA. FHA has also developed a Use Agreement which sets forth the requirements and responsibilities for implementation and use of the FHA TOTAL Scorecard by qualified lenders, government sponsored enterprises and their contractors, sponsors, loan correspondents and authorized agents that purchase, sell, underwrite or document HUD/FHA mortgage loans for lenders under HUD/FHA's Direct Endorsement procedures for various HUD/FHA mortgage insurance programs (hereinafter "Lenders"). Please note that while FHA wishes to permit access to the FHA TOTAL Scorecard as widely as possible, only lenders with Direct Endorsement status may "underwrite" FHA insured loans, with or without use of AU systems, on FHA's behalf.

HUD/FHA's objectives for entering into the Use Agreement are to:

(a) Provide for the use and implementation of the FHA TOTAL Scorecard in AUSs used during the process of underwriting FHA loans;

(b) Identify and approve creditworthy borrowers that may have been excluded from homeownership under traditional HUD/FHA underwriting guidelines;

(c) Continue to ensure that no borrower will be denied an FHA-insured mortgage loan solely on the basis of a "refer" risk classification by an AUS.

(d) Expand access to mortgage credit for low-and moderate-income borrowers and other under served populations and locations and to discourage unlawful discrimination against borrowers protected by the Fair Housing Act and the Equal Credit Opportunity Act;

(e) Facilitate access to and reduce the cost and time associated with originating HUD/FHA-insured mortgages;

(f) Enhance HUD/FHA's ability to assess and manage risk and preserve the actuarial soundness of HUD/FHA's mutual mortgage insurance fund;

(g) Facilitate and encourage a standardized, industry-wide capability for communication and exchange of information among members of the mortgage lending community.

This Notice

HUD is in the process of deploying the FHA TOTAL Scorecard and will rescind the approval of scorecards under Mortgage Letter 96–34, ML 98–14 and ML 99–26. Upon completion of FHA's deployment efforts, FHA will require use of the FHA TOTAL Scorecard in any AUS and Users will receive documentation relief and credit policy waivers approved by FHA. HUD's goals are to increase the availability of the FHA TOTAL Scorecard and increase lenders' efficiencies through loan level data transfer on a real-time basis thereby reducing lenders reporting requirements and improving workflow processes through reduced data entry. Other goals include improving underwriting efficiencies by lenders, decreasing losses to FHA's insurance fund, and integrating the use of automated underwriting systems into FHA's existing processes and workflow including mortgage insurance endorsement processing.

To that end, HUD continues to work with Users to deploy the FHA TOTAL Scorecard.

Dated: November 29, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–30987 Filed 12–5–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum (ALMF) to be held on Thursday, December 14, 2000, beginning at 9:00 a.m. It will take place in conference room B, Department of the Interior, 1689 C Street, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports and informational briefings on recreation and tourism, and to announce the winners of the 2000 ALMF Tourism Awards Program.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Marilyn Heiman,

Special Assistant to the Secretary for Alaska, Department of the Interior, Office of the Secretary.

[FR Doc. 00–31006 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–RP–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary, Interior.

ACTION: Notice, reestablishment of advisory committee.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 CFR 101–6.1015(a). Following consultation with the General Services Administration and the Office of Management and Budget, notice is hereby given that the Secretary of the Interior is administratively reestablishing an advisory committee known as the Alaska Land Managers Forum. The purpose of the committee is to advise the Secretary on Alaska land and resources issues.

EFFECTIVE DATE: This decision is effective November 29, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Heiman, Special Assistant to the Secretary for Alaska, Office of the Secretary, Department of the Interior, 1689 C Street, Suite 100, Anchorage, Alaska 99501–5151, (907) 271–5485.

Marilyn Heiman,

Special Assistant to the Secretary for Alaska, Department of the Interior, Office of the Secretary

[FR Doc. 00–31005 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–RP–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Issue 2 Draft Comprehensive Conservation Plans and Associated Environmental Assessments for 2 National Wildlife Refuges in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared draft Comprehensive Conservation Plans (CCP) and associated Environmental Assessments for the Balcones Canyonlands National Wildlife Refuge, Austin, Texas; and the Buenos Aires National Wildlife Refuge, Sasabe, Arizona, pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations.

DATES: The Service will be open to written comments through March 5, 2001.

ADDRESSES: Copies may be obtained by writing to: Mr. Tom Baca, Natural Resource Planner, Division of Refuges, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306. Comments should be submitted to: Mr. Tom Baca, Natural Resource Planner, Division of Refuges, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of the draft documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to consider comments and advice generated in response to the draft documents prior to the preparation of a final CCP. The Service is furnishing this notice in compliance with Service CCP policy: (1) To advise other agencies and the public of the availability of the draft documents, and (2) to obtain suggestions and advice for consideration in preparation of final documents.

The Service anticipates that final CCP documents and any associated NEPA documents will be available by July 31, 2001.

Dated: November 29, 2000.

Thomas C. Bauer,

Acting Regional Director.

[FR Doc. 00–31065 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Paskenta Band of Nomlaki Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 1898.16 acres, more or less, of land into trust for the Paskenta Band of Nomlaki Indians of California on November 30, 2000. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On November 30, 2000, the Assistant

Secretary—Indian Affairs decided to accept approximately 1898.16 acres, more or less, of land into trust for the Paskenta Band of Nomlaki Indians of California pursuant to Section 305 of the Paskenta Band Restoration Act, 25 U.S.C. § 1300m–3 (1994). The Secretary shall acquire title in the name of the United States in trust for the Paskenta Band of Nomlaki Indians of California for the following parcels of land described below no sooner than 30 days after the date of this notice.

Containing 1,635.70 acres, more or less, located within Tehama County, California. Further described as follows:

Located in the Unincorporated Area

Parcel One: (APN 87–210–09)

The north half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom that portion conveyed to the United States of America, by deed recorded August 11, 1955 in Book 281 at page 80, official records of Tehama County, described as follows: A parcel of land in the north half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, described as follows; beginning at a point in the south boundary of Maywood Colony No. 24, as said colony is shown on the map entitled; "Maywood Colony No. 24 Tehama County California:", filed in the official records of county recorder of said county on April 23, 1900 in book "B" of maps at page 46, said point being also in the north boundary of the south half of said Section 5, distant therealong south 89°25′ east 1885.3 feet from a sandstone monument set at the west quarter corner of said section 5; thence south 89° 25′ east 97.3 feet along said common boundary; thence leaving said common boundary south 235.5 feet; thence east 102.7 feet; thence south 150.0 feet; thence south 78° 31′ west 204.1 feet; thence north 427.1 feet to the point of beginning.

Excepting therefrom that portion lying within parcel fourteen described herein.

Parcel Two: (APN 87–210–16)

The southeast quarter of Section 6, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom that portion described as commencing at the northwest corner of the south one-half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof; thence 482 feet west parallel to the south line of section 6, Township 23 north, Range 3 west, Mount Diablo Meridian, to the point of beginning; thence south 300 feet; thence west 330 feet; thence north 660 feet; thence east 330 feet; thence south 360 feet.

Also excepting therefrom the following described real property consisting of approximately 17.00 acres:

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 28°14′38″ west a distance of 1049.89 feet to a point on the south line of "Parcel A" which is the true point of beginning of this description, thence south 90°00′00″ east a distance of 487.43 feet, thence due north a distance of 331.64 feet, thence north 02°54′08″ west a distance of 650.42 feet to a railroad spike set along the westerly side of the existing access road, thence south 62°36′00″ west a distance of 763.01 feet to an iron pipe monument, thence south 22°05′06″ west a distance of 944.25 feet to an iron pipe monument, thence south 32°31′22″ east a distance of 101.77 feet to a point on an existing fence line, thence north 57°36′52″ east a distance of 202.01 feet along said fence line, thence north 70°24′17″ east along said fence a distance of 57.07 feet, thence north 55°46′08″ east a distance of 361.49 feet to the true point of beginning of this description.

Also excepting therefrom that portion lying within parcel thirteen described herein.

Parcel Three: (APN 87–210–19)

Commencing at the northwest corner of the south one-half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof; thence 482 feet west parallel to the south line of Section 6, Township 23 north, Range 3 west, Mount Diablo Meridian, to the point of beginning; thence south 300 feet; thence west 330 feet; thence north 660 feet; thence east 330 feet; thence south 360 feet.

Excepting therefrom the following described real property consisting of approximately 17.00 acres.

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 28°14′38″ west a distance of 1049.89 feet to a point on the south line of "Parcel A" which is the true point of beginning of this description, thence south 90°00′00″ east a distance of 487.43 feet, thence due north a distance of 331.64 feet, thence north 02°54′08″ west a distance of 650.42 feet to a railroad spike set along the westerly side of the existing access road, thence south 62°36′00″ west a distance of 763.01 feet to an iron pipe monument, thence south 22°05′06″ west a distance of 944.25 feet to an iron pipe monument, thence south 32°31′22″ east a distance of 101.77 feet to a point on an existing fence line, thence north 57°36′52″ east a distance of 202.01 feet along said fence line, thence north 70°24′17″ east along said fence a distance of 57.07 feet, thence north 55°46′08″ east a distance of 361.49 feet to the true point of beginning of this description.

Parcel Four: (APN 87–210–21)

The south half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom a life estate in and to all oil, gas and mineral rights as reserved by Nola Fay Smith in deed recorded December 24, 1971 in Book 581, page 133, official records.

Also excepting therefrom the following described real property consisting of approximately 3.91 acres.

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 41°48′03″ west a distance of 11.54 feet to the southwest corner of the "Fly Pen Parcel" which is the true point of beginning of this description, thence north 00°47′25″ east a distance of 406.28 feet to the northwest corner of the "Fly Pen Parcel", thence north 87°45′48″ east a distance of 420.05 feet to the northeast corner of the "Fly Pen Parcel", thence south 00°47′25″ west a distance of 406.28 feet to the southeast corner of the "Fly Pen Parcel", thence south 00°47′25″ west a distance of 420.05 feet to the true point of beginning of this description.

Also excepting therefrom the following described real property consisting of approximately 17.55 acres:

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 79°55′10″ east a distance of 1892.35 feet to the southwest corner of the "Dam & Spillway Parcel" which is the true point of beginning of this description, thence north 06°44′50″ east a distance of 516.20 feet to a point lying in the lake which is partially encompassed by the "Dam & Spillway Parcel", thence north 17°00′36″ west a distance of 514.96 feet to the northwest corner of the "Dam & Spillway Parcel" which point lies along the south side of an existing access road and fence, thence north 89°25′25″ east a distance of 851.69 feet more or less to the mid-section line of Section 5, Township 23 north, Range 3 west, which point is also the northeast corner of the "Dam & Spillway Parcel" thence south 00°03′59″ west along the said mid-section line a distance of 1021.68 more or less to the southeast corner of the "Dam & Spillway Parcel", thence north 89°23′44″ west a distance of 762.87 feet more or less to the true point of beginning of this description.

Parcel Five: (APN 87–220–11)

Lot 7 in block 213 of Maywood Colony No. 24, as the same is shown on the map entitled: "Maywood Colony No. 24 Tehama Co. CAL. T–23 N R 3 W.", filed in the office of the county recorder of the County of Tehama, State of California April 23, 1900 in book B of maps at page 46.

Excepting therefrom: Beginning at the northeast corner of lot 7 of said block 213 and running thence along the east boundary of said lot 7, south 0°21′ east 641.7 feet to the southeast corner of said lot 7; thence continuing along the southerly prolongation of said east boundary, south 0°21′ east 20.0 feet to a point in the common boundary between Maywood Colony No. 24 and the south half of Section 5, Township 23 north, Range 3 west of the Mount Diablo Meridian; thence running along said common boundary north 89°25′ west 97.3 feet; thence leaving said common boundary north 20.0 feet to a point in the south boundary of said lot 7; thence continuing north 641.7 feet to a point in the common boundary between lots 2 and 7 of said block 213; thence running along last said common boundary south 89°23′ east 93.3 feet to the point of beginning.

Also excepting therefrom all oil, gas, minerals and hydrocarbon substances as excepted in the deed from William E. MacAulay, Et Ux, to A & K Cattle Company, Inc., recorded March 4, 1991 as document No. 2514, official records.

Parcel Six: (APN 87–220–12)

Lot 6 in block 213 of Maywood Colony No. 24, as the same is filed in the office of the county recorder of the County of Tehama, State of California, April 23, 1900 in Book B of maps at page 46.

Excepting therefrom all oil, gas and minerals, as excepted in the deed form Geraldine E. Kretsinger, as executor of the estate of Josiah T. Kretsinger, decease, recorded November 13, 1991, in Book 1347, page 83, officials records.

Parcel Seven: (Portion of APN 87–310–02)

The east half of the northeast quarter and the east half of the west half of the northeast quarter of section 7, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances, lying in or under said land, as reserved in the deed from Charles Merlin Morgan, also known as Charles M. Morgan and as C.M. Morgan, and Mary Jean Morgan, his wife, recorded October 21, 1976 in Book 698, page 72, official records.

Parcel Eight: (Portion of APN 87–310–02)

The west half of lots 2 and 7 of Elmore Co-operative Colony, also described as the west half of the west half of the northeast quarter of Section 7; and lot 10 of Elmore Co-operative Colony, also described as the northwest quarter of the southeast quarter of Section 7, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances, lying in or under said land, as reserved in the deed from Charles Merlin Morgan, also known as Charles M. Morgan and as C.M. Morgan, and Mary Jean Morgan, his wife, recorded October 21, 1976 in Book 698, page 72, official records.

Parcel Nine: (APN 87–310–08)

The southeast quarter of the southeast quarter of Section 7, Township 23 north, Range 3 west, Mount Diablo Meridian (also referred to as lot 16 of Elmore Cooperative Colony in Section 7, Township 23 north, Range 3 west).

Parcel Ten: (APN 87–310–06)

North half of the northeast quarter of southeast quarter of Section 7, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Parcel Eleven: (APN 87–310–10)

The north one-half of Section 8 in Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances lying in or under said land, as reserved in deed from Charles Merlin Morgan, et ux, recorded October 21, 1976 in Book 698, page 69, official records.

Parcel Twelve: (APN 87–210–17, 18 & 20)

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 28°14′38″ west a distance of 1049.89 feet to a point on the south line of "Parcel A" which is the true point of beginning of this description, thence south 90°00′00″ east a distance of 487.43 feet, thence due north a distance of 331.64 feet, thence north 02°54′08″ west a distance of 650.42 feet to a railroad spike set along the westerly side of the existing access road, thence south 62°36′00″ west a distance of 763.01 feet to an iron pipe monument, thence south 22°05′06″ west a distance of 944.25 feet to an iron pipe monument, thence south 32°31′22″ east a distance of 101.77 feet to a point on an existing fence line, thence north 57°36′52″ east a distance of 202.01 feet along said fence line, thence 70°24′17″ east along said fence a distance of 57.07 feet, thence north 55°46′08″ east a distance of 361.49 feet to the true point of beginning of this description.

Parcel Thirteen (APN 87–210–22)

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 41°48′03″ west a distance of 11.54 feet to the southwest corner of the "Fly Pen Parcel" which is the true point of beginning of this description, thence north 00°47′25″ east a distance of 406.28 feet to the northwest corner of the "Fly Pen Parcel", thence north 87°45′48″ east a distance of 420.05 feet to the northeast corner of the "Fly Pen Parcel", thence south 00°47′25″ west a distance of 406.28 feet to the southeast corner of the "Fly Pen Parcel", thence south 87°45′48″ west a distance of 420.05 feet to the true point of beginning of this description.

Excepting therefrom a life estate in and to all oil, gas and mineral rights as reserved by Nola Fay Smith in deed recorded December 24, 1971 in Book 581, page 133 official records.

Parcel Fourteen (APN 87–210–23)

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 79°55′10″ east a distance of 1892.35 feet to the southwest corner of the "Dam & Spillway Parcel" which is the true point of beginning of this description, thence north 06°44′50″ east a distance of 516.20 feet to a point lying in the lake which is partially encompassed by the "Dam & Spillway Parcel", thence north 17°00′36″ west a distance of 514.96 feet to the northwest corner of the "Dam & Spillway Parcel" which point lies along the south side of an existing access road and fence, thence north 89°25′25″ east a distance of 851.69 feet more or less to the mid-section line of Section 5, Township 23 north, Range 3 west, which point is also the northeast corner of the "Dam & Spillway Parcel", thence south 00°03′59″ west along the said mid-section line a distance of 1021.58 feet more or less to the southeast corner of the "Dam & Spillway Parcel", thence north 89°23′44″ west a distance of 762.87 feet more or less to the true point of beginning of this description.

Excepting therefrom a life estate in and to all oil, gas and mineral rights as reserved by Nola Fay Smith in deed recorded December 24, 1971 in Book 581, page 133, official records.

Parcel Fifteen: (APN 87–280–15)

The southwest quarter of the northwest quarter of the southeast quarter of Section Four (4), Township Twenty-Three (23) north, Range Three (3) west Mount Diablo Meridian.

Excepting therefrom all oil, gas and minerals as excepted Myrna B. Henze, surviving joint tenant, in deed recorded november 13, 1998 as instrument No. 15549, official records of Tehama County.

Parcel Sixteen: (APN 87–280–08)

The west half of the east half of the northwest quarter of southeast quarter of Section 4, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Parcel Seventeen: (APN 87–280–29)

All that portion of the south half of the northeast quarter of the southeast quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof, lying west of the lands conveyed to the State of California in deed recorded November 25, 1964 in Book 462, page 96, official records.

Parcel Eighteen: (APN 87–280–20)

The west half of the northwest quarter of the southwest quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Nineteen: (APN 87–210–11)

The southeast quarter of Section 5, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom an undivided ½ interest in and to all oil, gas and mineral rights for a period of 20 years from the recording date of that certain deed from Wayne S. Junkin, a widower, to C. Leroy Myers, a married man, recorded November 15, 1976 in Book 699, page 597, official records.

Parcel Twenty: (APN 87–280–18)

The southeast quarter of the west half of the west half of the south half of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-One: (APN 87–280–06)

The south one-half of the northeast quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Also excepting therefrom an undivided ½ interest in and to all oil, gas, minerals and other hydrocarbon substances as reserved by Fred L. Dietz, et ux, in deed recorded October 26, 1959 in Book 358, page 597, official records.

Parcel Twenty-Two: (APN 87–280–32 & 33)

The east half of the southwest quarter of the southwest quarter; southeast quarter of the southwest quarter and all that portion of the south half of the southeast quarter lying westerly of that certain parcel of land deeded to the State of California by deed dated May 14, 1964, recorded September 23, 1964 in Book 458, page 750, official records. All of the above described property being in Section 4, Township 23 North, Range 3 West,

Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom one-half of all oil, gas, petroleum and other hydrocarbon substances and minerals, as reserved in deed from Samuel H. Smith, et ux, to Chris Lorenson, dated January 20, 1943, recorded November 20, 1943 in Book 142, page 247, official records.

Also excepting therefrom one-half of all oil, gas, minerals and other hydrocarbon substances, as reserved in the deed from Adolph Feusi, et ux, to Charles W. Reed, et al, dated January 14, 1966, recorded January 19, 1966 in Book 481, page 352, official records.

Parcel Twenty-Three (APN 87–280–31)

The southwest quarter of the west half of the west half of the south half of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom the west 130 feet of the south 150 feet.

Parcel Twenty-Four: (APN 87–280–17)

The northeast quarter of the west half of the west half of the south half of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Five: (APN 87–280–14)

The southeast quarter of the northwest quarter of the southeast quarter of section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Six: (APN 87–280–04)

The north half of the north half of the northeast quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Seven: (APN 87–280–05)

The south half of the north half of the northeast quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Eight: (APN 87–280–01)

The north half of the north half of the northwest quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas and minerals as reserved by Tunstall P. Baylor and Ollie S. Baylor, husband and wife, in the deed recorded February 17, 1954, in book 259, page 30, Official records of Tehama County.

Parcel Twenty-Nine: (APN 87–280–03)

The south one-half of the northwest quarter of the southwest quarter and the south one-half of the north one-half of the northwest quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas and minerals as reserved by Tunstall P. Baylor and Ollie S. Baylor, Husband and wife, in the deed recorded February 17, 1954, in book 259, page 30, Official records of Tehama County.

Parcel Thirty: (APN 87–230–11 & 87–280–07)

The south one-half of lot 5 in block 216 of Maywood Colony No. 24, as the same is shown on the map filed in the office of the county recorder of the County of Tehama, State of California, April 23, 1990, in book B of maps at page 46.

The west one-half of the northwest quarter of the northwest quarter of the southeast quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom the above described property, an undivided one-half interest in and to all oil, gas minerals, and other hydrocarbon substances as reserved in the deed from Fred L. Dietz and Grace E. Dietz, husband and wife, to Jack R. Wood and Ardean M. Wood, husband and wife, as joint tenants, dated October 6, 1959 and recorded October 29, 1959 in book 359, official records at page 93, records of Tehama County.

Parcel Thirty-One (APN 87–310–11)

The South One-Half of Section 8 in Township 23 North, Range 3 west, Mount Diablo Meridian, according to the official plat thereof. (The Southwest Quarter of said Section 8 is also known as lots 69, 70, 71, 72, 73, 74, 75, 76, 85, 86, 87, 88, 89, 90, 91, 92, 101, 102, 103, 104, 105, 106, 107, 108, 117, 118, 119, 120, 121, 122, 123 and 124, as the same are so designated and delineated upon that certain map entitled: "Plat of Elmore Colony, 5 Acre Subdivisions, being Southwest ¼ Section No. 8, in Township No. 23 north, Range No. 3 west, Mount Diablo Meridian, Tehama County, California", filed in the Tehama County Recorder's Office, May 20, 1889 in Book A of maps at page 9.)

Excepting therefrom all oil, gas and mineral rights, as excepted in the deed from James WM. (Mike) Morgan, Jr., to A & K Cattle Company, a California corporation, Recorded August 25, 1998 in Book 1813, page 92, official records.

Containing 262.46 acres, more or less, located within Tehama County, California. Further described as follows:

Located in the Unincorporated Area

All that portion of the north one-half of Section 9, Township 23 north, Range 3 west, Mount Diablo Meridian, lying west of the west line of that parcel acquired by the State of California by final order of condemnation recorded December 16, 1966 in Book 494, page 281, Official Records of Tehama County.

Excepting Therefrom a 840/1160ths Interest in and to all gas, oil, hydrocarbons, minerals and fissionable materials in and under the above described land, pursuant to that certain agreement by and between James WM. Morgan, Robert Earl Morgan, George Merlin Morgan and Charles Merlyn Morgan, Recorded June 9, 1960, in Book 371, page 443, and that certain agreement by and between James WM. Morgan, Robert Earl Morgan, George Merlin Morgan and Charles Merlyn Morgan, Recorded April 14, 1966, in Book 484, page 624, Official Records of Tehama County.

Dated: November 30, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31027 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of Siletz Indians of Oregon and the State of Oregon, which was executed on November 17, 2000.

DATES: This action is effective December 6, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 27, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31025 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amended Tribal-State Compact for Regulation of Class III Gaming between the Coquille Indian Tribe and the State of Oregon which was executed on November 15, 2000.

DATES: This action is effective December 6, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 27, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31026 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–01–1410–00; AA–49285]

Realty Action; Termination of Classification and Opening Order: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice terminates a Small Tract Classification and opens certain lands near Port Moller, Alaska, that were classified for small tract lease under the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended. This action would allow the land to be conveyed to the State of Alaska if such land is otherwise available.

EFFECTIVE DATE: December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy A. Stubbs, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507; telephone number 907–267–1284.

SUPPLEMENTARY INFORMATION: Classification Order No. 386–NC dated June 1, 1961, segregated the lands from all forms of appropriation under the public land laws, including location under the mining laws, except as to application under the mineral leasing laws and the Small Tract Act. The Small Tract Act was repealed by section 702 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701). Accordingly the classification is not longer applicable.

1. Pursuant to the regulations contained in 43 CFR 2091.7–1(b)(2), at 9 a.m. on December 6, 2000, Classification Order No. 386–NC dated June 1, 1961, is hereby terminated insofar as if affects the following described land:

Seward Meridian, Alaska

A–049285

T. 48 S., R. 72 W., (surveyed)
Tract A.

The area described contains 5 acres in Port Moller, Alaska.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1995), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this notice in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

Stuart Hirsh,

Acting Field Manager.

[FR Doc. 00–31004 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–60030]

Notice of Realty Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855 and on July 23, 1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for a high school.

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 9, SW¼NE¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, NW¼SE¼SW¼.

Containing 40.0 acres, more or less, located near Haven Street and Dale Avenue.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. Nev-055893 under the Act of February 15, 1901 (43 USC 959).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a high school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper

administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a high school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 22, 2000.

Cheryl Ruffridge,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–31008 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–41568–38]

Notice of Realty Action: Transfer of Title

AGENCY: Bureau of Land Management, Interior.

ACTION: Title Transfer of Recreation or Public Purpose Patent # 27–96–0002.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, was patented to the Clark County School District on November 27, 1995 under the Recreation and Public Purpose Act for the Silverado High School. The Clark County Fire Department requests 2.5 acres of the patented land upon which to construct Fire Station 38. The land has been examined and found suitable for transfer under the provisions of the Federal Land Policy and Management Act (43 CFR 2741.6).

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 23, NE¼SE¼SE¼NW¼.

Containing 2.5 acres, more or less, located at Serene Avenue and Spencer Street.

The land is not required for any federal purpose. The title transfer is consistent with current Bureau planning for this area and would be in the public interest. The transfer will be subject to the provisions of the Federal Land Policy and Management Act and applicable regulations of the Secretary of the Interior, and the land will continue to be subject to the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391, 43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for power line purposes which have been granted to Nevada Power Company by right-of-way number N–15291 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed title transfer to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Application Comments: Interested parties may submit comments regarding the application as to whether the BLM followed proper administrative procedures in reaching the decision or any other factor directly related to the suitability of the land for a fire station. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Interior. The lands will not be offered for title transfer until 60 days from the date of publication in the **Federal Register**.

Dated: November 29, 2000.

Rex Wells,

Assistant Field Manager, Las Vegas, NV.

[FR Doc. 00–31009 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–66782]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855 and on July 23,1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for an elementary school.

Mount Diablo Meridian, Nevada

Being a portion of Lot 1, sec. 13, T. 19 S., R. 60 E., more particularly described as follows:

Commencing at the northeast one sixteenth (NE1/16) corner of section 13, point also being the Point of Beginning: Thence North 00°16′52″, a distance of 670.0 feet; thence south 84°45′05″ west, a distance of 816.0 feet; thence south 00°16′54″ west, a distance of 670.0 feet; thence north 84°45′05″ east, a distance of 816.51 feet to the Point of Beginning. Containing 12.5 acres, more or less, located at Grand Teton Drive and Whispering Sands Drive.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV or by calling (702) 647–5088.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act,

leasing under the mineral leasing laws, and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for an elementary school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 29, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–31010 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 25, 2000. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 21, 2000.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Dallas County

Marianna Commercial Historic District, (Civil War Commemorative Sculpture MPS), Portions of Chestnut, Liberty, East Columbia, Mississippi, Poplar, Main, Court and Church Sts., Marianna, 00001559

California

Los Angeles County

Cooper Arms, 455 E. Ocean Blvd., Long Beach, 00001538

Connecticut

Litchfield County

Bryan, Roderick, House, 867 Linkfield Rd., Watertown, 00001563

Middlesex County

Villa Bella Vista, 7 Old Depot Rd., Chester, 00001560

New Haven County

Burgis II, Thomas, House, 85 Boston St., Guilford, 00001562

New London County

Brewster Homestead, 306 Preston Rd., Griswold, 00001561

Florida

Lee County

Whidden's Marina, (Lee County MPS) 190 First St. E, Boca Grande, 00001539

Georgia

Toombs County

Garbutt, Robert and Missouri, House, 700 W. Liberty St., Lyons, 00001564

Indiana

Clark County

Work, John, House and Mill Site, Address Restricted, Charlestown, 00001546

Dearborn County

Vance—Tousey House, 508 W. High St., Lawrenceburg, 00001547

Decatur County

Harris, Bright B., House, 413 N. Franklin St., Greensburg, 00001545

Jefferson County

St. Stephen's African Methodist Episcopal Church, 220 W. Main St., Hanover, 00001544

Lake County

Monon Park Dancing Pavillion, 13701 Lauerman St., Cedar Lake, 00001540

Morgan County

Lamb's Creek Bridge, Jct. of Lamb's Creek and Old IN 67 W, Martinsville, 00001541

Rush County

Rush County Bridge No. 188, Cty. Rd. 150 W over Little Flatrock River, Milroy, 00001542

St. Joseph County

Muessel—Drewry's Brewery, 1408 Elwood Ave., South Bend, 00001543

Missouri

Jackson County

Crossroads Historic Freight District, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS)

Roughly bounded by Southwest Blvd., W. 20th St., Baltimore Ave., W 22nd St., and Broadway, Kansas City, 00001565

Madison County

Madison County Courthouse, 1 Courthouse Sq., Fredericktown, 00001548

Scott County

Sikeston St. Louis, Iron Mountain and Southern Railway Depot, Front St., bet. Scott and New Madrid Sts., Sikeston, 00001549

St. Louis Independent City

Buehler, William, House, 2610 Tennessee Ave., St. Louis (Independent City), 00001550

Montana

Cascade County

Masonic Temple, 821 Central Ave., Great Falls, 00001568

Gallatin County

Methodist Episcopal Church, 116 Cedar St., Third Forks, 00001566

Golden Valley County

Slayton Mercantile Co., 23 Main St., Lavina, 00001567

New York

Columbia County

Columbia Turnpike—West Tollhouse, NY 23B, Greenport, 00001571

North Carolina

Avery County Linville Falls Tavern, (former), 25 Rock House Ln., Linville Falls, 00001554

Brunswick County

Oak Island Life Saving Station, 217 Caswell Beach Rd., Caswell Beach, 00001553

Forsyth County

Middleton House, 2721 Robinhood Rd., Winston-Salem, 00001552

Lee County

Lee County Training School, (Lee County MPS) 806 S. Vance St., Sanford, 00001551

Macon County

Cowes-West's Mill Historic District, (Macon County MPS) Address Restricted, Franklin, 00001569

Wake County

Mordecai Place Historic District (Boundary Increase), 208 Delway St., Raleigh, 00001570

Ohio

Clark County

Tecumseh Building, 34 W. High St., Springfield, 00001555

Cuyahoga County

Shaker Village Historic District (Boundary Increase), Roughly bounded by Lomond Blvd., Lytel Rd., Scottsdale Blvd., and Lindholm Rd., Shaker Heights, 00001557

Summit County

Ozmun, Isaac and Maria, Farmstead, 6928 Olde Eight Rd., Boston Heights, 00001556

Oklahoma

Cleveland County

Cleveland County Courthouse, 200 S. Peters Ave., Norman, 00001580
Norman City Park New Deal Resources, Jct. of Daws St. and Webster Ave., Norman, 00001572
Norman Public Library, 329 S. Peters Ave., Norman, 00001581
United States Post Office—Norman, 207 E. Gray St., Norman, 00001573

Oklahoma

Grady County

Chickasha Milling Company Elevator, (Grain Storage and Processing Facilities in Western Oklahoma MPS) 100 Choctaw Ave., Chickasha, 00001574

Lincoln County

Mensch, William Alfred, Building, 218 W. Main St., Stroud, 00001576

Pawnee County

Pawnee Agency and Boarding School Historic District, Pawnee Tribal Reserve, E of Pawnee, roughly bounded by Morris Rd., following Harrison St. and Agency Rd., Pawnee, 00001577

Payne County

Perkins Downtown Historic District, 100 Blk. of Main St. bounded by Stumbo and Thomas Sts., Perkins, 00001578

Pottawatomie County

Bell Street Historic District, Along N. Bell St., from East Ninth to East Main, Shawnee, 00001579

Texas

Denton County

Denton County Courthouse Square Historic District, (Denton, Texas MPS) Area bounded by Pecan, Austin, Walnut, and Cedar Sts., Denton, 00001582

Utah

Box Elder County

Glover, William and Nettie, House, (Brigham City MPS) 106 West 100 North, Brigham, 00001587
Jenson, Nels and Minnie, House, (Brigham City MPS) 136 East 100 South, Brigham City, 00001588
Knudson, Jonathan and Jennie, House, (Brigham City MPS) 48 South 100 East, Brigham City, 00001583

Rich County

Woodruff Stake House, (Tithing Offices and Granaries of the Mormon Church TR) 50 South Main, Woodruff, 00001586

Salt Lake County

Sweet Candy Company Building, (Salt Lake City Business District MRA) 224 South 200 West, Salt Lake City, 00001584
Webster School, 2700 South 9180 West, Magna, 00001585

Wisconsin

Milwaukee County

West Side Commercial Historic District, Roughly, W. Wisconsin Ave., N. Third St., N. Plankinton Ave., and N. Second Ave., Milwaukee, 00001590

Ozaukee County

Day, Isham, House, 11312 N. Cedarburg Rd., Mequon, 00001558

Wyoming

Fremont County

Wind River Agency Blockhouse, Address Restricted, Ft. Washakie, 00001589

A request for REMOVAL has been made for the following Resource:

South Dakota

McPherson County

Eureka Lutheran College 301 4th St. Eureka, 90001643

[FR Doc. 00–30996 Filed 12–5–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a) (3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 37 cultural items are 1 pair of scissors, 8 bracelets, 7 thimbles, 2 knives, 1 glass ball, 2 horn spoons, 1 powder horn, 2 fragments of a powder horn, 1 bone whistle, 1 bone scraper, 2 stones, 1 gunflint, 1 beaded necklace, 6 beaded ornaments and loose beads, and yellow paint.

Prior to 1870, human remains and associated funerary objects were collected by Assistant Surgeon A. I. Comfort, U.S. Army, from graves at the Old Ponca Agency, Knox County, NE. Surgeon Comfort donated the human remains and the associated funerary objects to the Army Medical Museum (forerunner of the National Museum of Health and Medicine), Washington, DC, in 1870. Surgeon Comfort's letter of transmittal to the Army Medical Museum identified the graves as culturally affiliated with the Ponca.

The human remains were later transferred to the Smithsonian Institution, Washington, DC, by the Army Medical Museum. The National Museum of Natural History repatriated these human remains to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998.

In 1874, a beaded necklace from one of these graves was transferred to the Peabody Museum of Archaeology and Ethnology from the Army Medical Museum.

In 1876, one powder horn and one gun flint from one of these graves were transferred to the Peabody Museum of Archaeology and Ethnology by the Army Medical Museum. Surgeon Comfort described the gunflint as a "wahintka" or "skin scraper."

Prior to 1869, human remains and associated funerary objects were collected by Acting Assistant Surgeon G. P. Hachenberg, U.S. Army, from a grave near the Old Ponca Agency, Knox County, NE. Surgeon Hachenberg donated the human remains and associated funerary objects to the Army Medical Museum in 1869. Museum records indicate that the grave was that of a Ponca woman.

The human remains were later transferred to the Smithsonian Institution by the Army Medical Museum. The National Museum of Natural History repatriated these human remains to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998.

In 1876, one pair of scissors and one glass ball were transferred to the Peabody Museum of Archaeology and Ethnology from the Army Medical Museum.

Prior to 1871, human remains and associated funerary objects were removed by Assistant Surgeon George N. Hopkins, U.S. Army, from a grave near the Old Ponca Agency, Knox County, NE. Surgeon Hopkins donated these human remains and associated funerary objects to the Army Medical Museum in April of 1871. Surgeon Hopkins' letter of transmittal to the Army Medical Museum identifies the grave as Ponca.

The human remains were later transferred to the Smithsonian Institution by the Army Medical Museum. The National Museum of Natural History repatriated these human remains to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998.

In 1876, 32 cultural items including 8 bracelets, 2 horn spoons, 1 bone scraper, 2 butcher knives, 7 thimbles, 1 bone whistle, 6 beaded ornaments and loose beads, 2 stones, 2 fragments of a powder horn, and yellow paint were transferred to the Peabody Museum of Archaeology and Ethnology from the Army Medical Museum.

Because the human remains associated with these cultural items were repatriated to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998, these cultural items are considered unassociated funerary objects.

Based on the above information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d) (2) (ii), the 37 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska.

This notice has been sent to officials of the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before January 5, 2001. Repatriation of these cultural items to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska may begin after that date if no additional claimants come forward.

Dated: November 17, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–30997 Filed 12–5–00; 8:45 am]
BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application for travel document.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannnot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of this information.

If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725—17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Ms. Lauren Wittenberg, Department of Justice Desk Officer, 202–395–4718. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Wittenberg at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS request written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for sixty days until February 5, 2001. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Suite 4034, Washington, DC 20536; 202–514–3291.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
(3) Enhance the quality, utility, and clarity of the information to be collected; and
(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–131. Adjudications Division, immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by permanent or conditional residents, refugees or asylees and aliens abroad seeking to apply for a travel document to lawfully reenter the United States or be paroled for humanitarian purposes into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 453,318 responses at 55 minutes (.90 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: 407,986 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: November 30, 2000.

Richard A. Sloan,

Department Clearance Officer, Immigration and Naturalization Service, Department of Justice.

[FR Doc. 00–30958 Filed 12–5–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 28, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 of by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Mine Rescue Teams: Arrangements for Emergency Medical Assistance and Arrangements for Transportation for Injured Persons.

OMB Number: 1219–0078.

Affected Public: Business or other for-profit.

Cite/ reference	Total respondents	Frequency	Total annual responses	Average time per response (hours)	Burden (hours)
49.2	1,145	On occasion	147	1.00	146
49.3 & 4	10	On occasion	10	2.00	20
49.6	520	Bimonthly	28,080	0.31	8,517
49.7	520	Annually	3,120	2.13	6,630
49.8	260	Annually	14,456	0.60	8,723
49.9	1,145	On occasion	147	2.00	293
75.1713–1	921	On occasion	116	2.00	233
77.1702	1,601	On occasion	206	2.00	413
Totals	6,122		46,282	0.54	24,975

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $468,080.

Description: Operators of small and remote underground mines or underground mines operating under special mining conditions may apply for permission to provide alternative mine rescue capability. The intent of this requirement is that such mines establish the best possible rescue response available given their unique circumstances.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–31041 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 29, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: New collection.

Agency: Employment and Training Administration.

Title: O*NET Data Collection Program.

OMB Number: 1205–0New.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal government;

Frequency: Survey to be repeated every three to five years, depending on the occupation.

Number of Respondents: 51,300.

Estimated Time Per Respondent: 1 hour, 35 minutes per participating business, 30 minutes per employee respondent.

Total Burden Hours: 23,305.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintainng systems or purchasing services): $0.

Description: The O*NET Data Collection Program will yield information on worker and job characteristics to populate the O*NET (Occupational Information Network) database. O*NET is replacing the obsolete Dictionary of Occupational Titles, and will be used for a wide range of purposes related to employment and training program administration, career counseling and development, training curriculum design, Employment Service job orders and referrals, development of Labor Market Information, rehabilitation and disability programs, and private sector human resources functions. The survey will include contacting businesses to gain their cooperation, and collecting information from employees of cooperating businesses. For a small number of occupations, professional associations will be contacted to gain their cooperation in providing member lists for surveying. Subject matter experts will also be surveyed in a limited number of cases.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Workforce Investment Act Cumulative Quarterly Financial Reporting for Funds Allotted to States for Services to Youth, Services to Adults, Services to Dislocated Workers, Local Area Administration, Statewide Activities (15% of Total Federal Allotment), and Statewide Rapid Response.

OMB Number: 1205–0408.

Frequency: Quarterly.

Affected Public: States, Local, or Tribal governments; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 56.

DOL–ETA REPORTING BURDEN FOR WIA TITLE I–B STATES

Requirements	PY 1999	PY 2000	PY 2001	PY 2002
Number of Reports Per Entity Per Quarter	3	3	3	3
Total Number of Reports Per Entity Per Year	12	12	12	12
Number of Hours Required Per Report	1	1	1	1
Total Number of Hours Required for Reporting Per Entity Per Year	12	12	12	12
Number of Entities Reporting	16	56	56	56
Total Number of Hours Required for Reporting Burden Per Year	192	672	672	672

Note: Number of reports required per entity per quarter/per year is impacted by the 3 year life of each year of appropriated funds, *i.e.*, PY 1997 and 1998 funds are available for expenditure in PY 1999, thus 3 reports reflect 3 available funding years. DOL estimates 16 entities reporting for PY 1999. Beginning in PY 2000, all entities (56) are required to report under WIA.

Total Burden Cost (capital/start): $0.

Total Burden Cost (operating/maintaining): $0.

Description: This Information Collection Request (ICR) incorporates the necessary reporting instructions for States to report financial data related to Workforce Investment Act programs to DOL. These instructions have been prepared in response to the requirement set forth at 20 CFR 667.300, for DOL to issue financial reporting instructions to States; and to ensure State compliance with the reporting elements contained in the Workforce Investment Act (WIA) of 1998, Subtitle E, Sec. 185. The WIA requires quarterly financial reports, which shall include information identifying all program and activity costs by cost category in accordance with generally accepted accounting principles and by year of appropriation. The WIA also requires reporting any income or profits earned, including such income or profits earned by sub-recipients and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. In addition, WIA requires the reporting of costs only as administrative or programmatic, with computerization/technology costs not included in the administrative cost limit calculation.

The Standard Form 269 has been modified to provide the six reporting formats which will be used for WIA reporting. Separate reporting formats will be needed for: (1) Local area youth, (2) local area adults, (3) local area dislocated workers, (4) local administration, (5) Statewide activities (15% total Federal allotment), and (6) Statewide rapid response.

ETA has designed software that contains the data elements required for each of the reporting formats. Instructions corresponding to the required data elements have been provided to the States in the software package. Transmittal of this data will occur on a quarterly basis via the Internet.

The data collection and reporting requirements requested by the Employment and Training Administration are necessary to effectively manage and evaluate the financial status of the WIA program, to measure regulatory compliance, to prepare required reports to Congress, and for audit purposes.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–31042 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 30, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.
Agency: Occupational Safety and Health Administration (OSHA).
Title: Noise.
OMB Number: 1218–0048.
Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.
Frequency: On occasion.
Number of Respondents: 379,512.
Number of Annual Responses: 17,982,447.
Estimated Time Per Response: Varies from 2-minutes to notify employees when noise exposure exceeds the 8-hour time-weight average of 85 decibels to 1-hour for employees in small establishments to take audiometric examinations.
Total Burden Hours: 5,175,645.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services: $98,815,961.
Description: The purpose of the occupational noise exposure Standard (29 CFR 1910.95) and its information collection requirements are to provide protection to employees from adverse health effects associated with occupational exposure to noise. The Standard requires employers to establish and maintain accurate records of employee exposure to noise and audiometric testing performed in compliance to this Standard.

Type of Review: Extension of a currently approved collection.
Agency: Occupational Safety and Health Administration (OSHA).
Title: Access to Employee Exposure and Medical Records.
OMB Number: 1218–0065.
Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.
Frequency: On occasion.
Number of Respondents: 763,734.
Number of Annual Responses: 5,030,002.
Estimated Time Per Response: 8-minutes.
Total Burden Hours: 610,136.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services: $10.00.
Description: 29 CFR 1910.1020 requires employers to preserve and provide access to records associated with employee exposure to toxic chemicals and harmful physical agents. Employee records and access to them are critically important to the detection, treatment, and prevention of occupational illness and disease.

Type of Review: Extension of a currently approved collection.
Agency: Occupational Safety and Health Administration (OSHA).
Title: Formaldehyde.
OMB Number: 1218–0145.
Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.
Frequency: On occasion.
Number of Respondents: 113,150.
Number of Annual Responses: 1,569,329.
Estimated Time Per Response: Varies from 5-minutes for an employer to maintain exposure-monitoring and medical records for each employee, to 1-hour for an employee to receive a medical exam.
Total Burden Hours: 591,079.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $56,531,328.
Description: The Formaldehyde Standard (29 CFR 1910.1048) and its information collection requirements are designed to provide protection for employees from the adverse health effects associated with occupational exposure to formaldehyde. The Standard requires employers to monitor employee exposure and provide notification to employees of their exposure. Employers are required to make available medical surveillance to employees. Employers are also required to communicate hazards associated with exposure to formaldehyde through signs, labels, and employee training.

Type of Review: Extension of a currently approved collection.
Agency: Occupational Safety and Health Administration (OSHA).
Title: Definition and Requirements for a Nationally Recognized Testing Laboratory.
OMB Number: 1218–0147.
Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.
Frequency: On occasion.
Number of Respondents: 58.
Number of Annual Responses: 58.
Estimated Time Per Response: 23-hours.
Total Burden Hours: 1,345.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: A number of OSHA's standards require certain equipments to be "tested" (or "approved") by a "nationally recognized testing laboratory" (NRTL). Pursuant to 29 CFR 1910.7, an organization seeking to perform this testing (or approval) must be "recognized" by OSHA and must apply to the OSHA NRTL Program for recognition. Recognition is granted after OSHA determines that the organization meets certain requirements.

Type of Review: Extension of a currently approved collection.
Agency: Occupational Safety and Health Administration (OSHA).
Title: Bloodborne Pathogens.
OMB Number: 1218–0180.
Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.
Frequency: On occasion.
Number of Respondents: 113,150.
Number of Annual Responses: 1,569,329.
Estimated Time Per Response: Varies from 1-minute to maintain in employee's training record, to 105-minutes for an employee to receive a Hepatitis B vaccination (HBV) and post-vaccination screening for the HBV.
Total Burden Hours: 12,178,601.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $30,415,000.
Description: The Bloodborne Pathogens Standard (29 CFR 1910.1030) is designed to prevent occupational exposure to bloodborne pathogens. The Standard's information collection requirements are used by employers to implement required protective actions. OSHA compliance officers will use some of the information for enforcement purposes.

Type of Review: Extension of a currently approved collection.
Agency: Occupational Safety and Health Administration (OSHA).
Title: Lead in Construction.
OMB Number: 1218–0189.
Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.
Frequency: On occasion.
Number of Respondents: 147,073.
Number of Annual Responses: 6,155,640.
Estimated Time Per Response: Varies from 5-minutes for a supervisor to provide OSHA with written compliance plans, training-program materials, and other records during an inspection, to 2.44-hours for a supervisor to write a compliance plan.
Total Burden Hours: 1,697,383.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $69,083,073.
Description: 29 CFR 1926.62 requires employers to train employees about the hazards of lead, monitor employee exposure, provide surveillance and maintain accurate records of employee exposure. These records are used by employers, employees, physicians, and the Government to ensure that employees are not harmed by occupational exposure lead.

Type of Review: Extension of a currently approved collection
Agency: Occupational Safety and Health Administration (OSHA).
Title: Construction Fall Protection Plans and Records.
OMB Number: 1218–0197.
Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.
Frequency: On occasion.
Number of Respondents: 100,000.
Number of Annual Responses: 100,000.
Estimated Time Per Response: Variable (5-minutes to certify a safety net; 1-hour to develop and write a fall-protection plan; and 5-minutes to certify training).
Total Burden Hours: 744,480.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The construction fall protection plan and certification records required by 29 CFR 1926.502 and the related training requirements required by 29 CFR 1926.503 are needed to help employees identify fall hazards and to know which protective measures are to be used in order to protect them from workplace fall hazards.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 00–31043 Filed 12–5–00; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance:

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 20th day of November, 2000.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 11/20/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,321	International Paper (Co.)	Lock Haven, PA	11/01/2000	Reprographic Paper.
38,322	Golden Northwest Aluminum (USWA)	The Dallas, OR	11/03/2000	Aluminum.
38,323	Winpak Films (Wkrs)	Senoia, GA	10/27/2000	Machine Operators, Packers, Inspectors.
38,324	Remacor (Wkrs)	West Pittsburg, PA	10/29/2000	Ground Magnesium.

APPENDIX—PETITIONS INSTITUTED ON 11/20/2000—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,325	Posies, Inc. (Co.)	Rockport, ME	11/03/2000	Children's Special Occasion Dresses.
38,326	Encore Textiles (Co.)	Monroe, NC	10/31/2000	Tee Shirts.
38,327	Irving Forest Products (PACE)	Ashland, ME	11/07/2000	Kiln Dried Lumber.
38,328	Staples, Inc. (Co.)	Canton, MI	10/30/2000	Sell Office Products.
38,329	Fashion Technologies (UNITE)	Hackensack, NJ	10/27/2000	Engraving and Screens Making.
38,330	Central Industries (Co.)	Greenwood, AR	10/25/2000	Electrical Wiring Harnesses.
38,331	Babyfair, Inc. (Wkrs)	Brooklyn, NY	11/06/2000	Infants and Children's Clothing.
38,332	Pronav Ship Management (Wkrs)	Greenwich, CT	11/03/2000	Natural Gas Transportation.
38,333	Smith and Wesson (Co.)	Springfield, MA	11/02/2000	Firearms.
38,334	General Magnetic (Co.)	Dallas, TX	11/06/2000	Ceramic Magnetics.
38,335	Victor Electric (Wire (IBEW)	Coventry, RI	11/01/2000	Electric Cordsets.
38,336	Dunham Bush (Wkrs)	Harrisonburg, VA	11/06/2000	Heating.
38,337	Norton Company (PACE)	Watervliet, NY	11/06/2000	Sandpaper.
38,338	Cooper Energy Services (Wkrs)	Mt. Vernon, OH	11/06/2000	Compressor Fralies and Cylinders.
38,339	Maytag (Co.)	Jefferson City, MO	11/08/2000	Wiring Harnesses for Appliances.
38,340	New Monarch Machine Tools (UAW)	Cortland, NY	11/06/2000	Vertical Machining Centers.
38,341	Caffall Bros. Forest Prod (Co.)	Wilsonville, OR	11/07/2000	Western Red Cedar Fencing Products.
38,342	Gulf States Steel (USWA)	Gadsden, AL	11/07/2000	Steel Plates, Coils.
38,343	United Steelworkers (USWA)	Gadsden, AL	11/07/2000	Steelworkers Union Office.
38334	Rockwell Automation (UE)	Milwaukee, WI	11/01/2000	Industrial Controls, Switches.
38345	General Time Corp. (Co.)	Athens, GA	11/13/2000	Keywound and Electric Analog Clocks.

[FR Doc. 00–31035 Filed 12–05–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,065]

It's Personal, New York, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 5, 2000, in response to a petition filed on August 22, 2000 on behalf of workers at It's Personal, New York, New York.

The Department of Labor has been unable to locate principals of the firm or otherwise obtain information to reach a determination on worker eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 20th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31039 Filed 12–5–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of November, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 11/13/2000

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
38,296	Kim Mark Hosiery Inc. (Comp)	Mount Airy, NC	11/06/2000	Hosiery.
38,297	Qwik Tool Manufacturing (Wrks)	Lexington, KY	11/06/2000	Automotive Parts.
38,298	JN Oil and Gas, Inc. (Comp)	Billings, MT	10/20/2000	Crude Oil and Natural Gas.
38,299	Originals Bi-Judy, Inc. (Comp)	Tolleson, AZ	10/31/2000	Baby Bedding.
38,300	ABB Westinghouse (Wrks)	Festus, MO	10/17/2000	Nuclear Fuel and Fuel Bundles.

APPENDIX—PETITIONS INSTITUTED ON 11/13/2000—Continued

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
38,301	York International (Wrks)	Elyria, OH	10/24/2000	Residential Heating and Cooling Products.
38,302	Ohpus Corp (Comp)	Florham Park, NJ	10/25/2000	Electronic Scales.
38,303	CMI Industries, Inc. (Wrks)	Geneva, AL	10/27/2000	Unfinished Cloth.
38,304	USR Optonix, Inc. (Comp)	Hackettstown, NJ	10/24/2000	Toner and Developer for Copy Machines.
38,305	Stora Enso North America (Comp)	Wisconsin Rapid, WI	10/31/2000	Paper.
38,306	Alstom Power (Comp)	Kings Mountain, NC	11/06/2000	Heat Recovery Steam Generators.
38,307	Progress Lighting (Wrks)	Cowpens, SC	10/28/2000	Light Fixtures.
38,308	Advanced Cast Products (USWA)	Meadville, PA	10/25/2000	Railroad Products, Truck Suspension.
38,309	Virogenetics Corp. (Wrks)	Troy, NY	10/27/2000	Biotech Research Facility.
38,310	ABC–NACO (BBF)	Ashland, WI	10/24/2000	Rail Track Switches.
38,311	Lightnin SPX Corp (Comp)	Wytheville, VA	10/20/2000	Industrial Mixing Equipment.
38,312	R and S Manufacturing (GMP)	West Chester, PA	11/13/2000	Electric Motors for Room Fans.
38,313	Winn Dixie (Wrks)	Garden City, SC	10/30/2000	Grocery Store.
38,314	International Security (Wrks)	Ogdensburg, NY	10/30/2000	Printing Ink.
38,315	DiBon Leather Goods (Wrks)	Hackensack, NJ	10/20/2000	Briefcases, Portfolios, Agendas, Handbags.
38,316	Bryant Grinder Corp. (UE)	Springfield, VT	11/01/2000	Internal/External Grinders.
38,317	Vanalco Aluminum (Wrks)	Vancouver, WA	11/01/2000	Aluminum.
38,318	Pyramid Mountain Lumber (Comp)	Seeley Lake, MT	10/30/2000	Kiln Dried Lumber.
38,319	Hit Apparel, Inc. (Comp)	Athens, TN	10/13/2000	Children's Pajamas.
38,320	American Baseball Cap (Wrks)	Friedens, PA	10/30/2000	Baseball Helmets.

[FR Doc. 00–31040 Filed 12–5–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,195]

Nova Bus, Inc., Roswell, New Mexico; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was intitiated on October 10, 2000, in response to a petition which was filed by the company on behalf of workers at Nova Bus, Inc., Roswell, New Mexico.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31038 Filed 12–5–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,022; Celanese Acetate, Cel River Plant, Rock Hill, SC.
TA–W–38,204; Williamette Industries, Custom Products Div., Albany, OR.
TA–W–37,911; Pillowtex Corp., Rocky Mount, NC.
TA–W–38,211; ADM Milling Co., Milwaukee, WI.
TA–W–38,145; Ceragraphic, Inc., Hackensack, NJ.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–38,213; General Electric Industrial Systems, Motor Div., Erie, PA.
TA–W–37,919; Guess?, Inc., Los Angeles, CA.
TA–W–38,223; GE Capital Card Service, Cincinnati, OH.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–38,031; Wabash Automotive, Fort Worth, TX.
TA–W–38,006; Rohm and Haas Co., Philadelphia, PA.
TA–W–38,239; Airtherm LLC, Forrest City, AR.
TA–W–37,998; Eaton Corp., Vickers Industrial and Mobile Div., Omaha, NE.

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TA–W–37,933; Scott Logging, Inc., Bend, OR.
TA–W–38,010; Key Tronic Corp., Spokane, WA.
TA–W–38,076; Union Tools, Frankfort, NY.
TA–W–37,962; Boise Cascade Corp., Timber and Wood Products Div., Independence, OR.
TA–W–38,238; Royal Oak Enterprises. Inc., Paris, AR.
TA–W–38,168; Anchor Dye and Finishing Co. A Div. of Amicale Industries, Inc., Philadelphia, PA.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,999; Savane International Corp., El Paso, TX

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–38,290; Sara Campbell Ltd, Boston, MA: October 20, 1999.
TA–W–38,136; Fruit of The Loom, Texas, Inc., Gitano Dept, Harlingen, TX: September 11, 1999.
TA–W–37,887; Avent, Inc., Tucson, AZ: April 8, 2000.
TA–W–38,173; Ethicon Endo-Surgery, Inc., Including Leased Workers of Kelly Services, Cincinnati, OH; September 20, 1999.
TA–W–37,965; Telex Communication, Inc., Sevierville, TN: July 24, 1999.
TA–W–38,159; Exel USA, Inc., Fiberspar Sports, West Wareham, MA: September 15, 1999.
TA–W–38,105; Briggs Industries, Inc., Abingdon, IL: September 7, 1999.
TA–W–38,245, Leapwood Apparel, Adamsville, TN: October 11, 1999.
TA–W–38,025; Jenny K. Fashions, Meriden, CT: May 11, 1999.
TA–W–37,179; Wexco Corp., Lynchburg, VA: September 22, 1999.
TA–W–37,926; Philips Consumer Electronics—Industrial Operation, Life Test and Qualify Control Dept, Greenville, TN: July 13, 1999.
TA–W–37,809; Aly-Wear, Inc., Ephrata, PA: April 12, 1999.
TA–W–37,994; Central Point Lumber, a/k/a Tree Source, Central Point, OR; August 10, 1999.
TA–W–38,220; Avery Dennison, Writing Instruments Div., Crossville, TN: September 29, 1999.
TA–W–37,858; Shape Global Technology, Inc., Kennebunk, ME: June 28, 1999.
TA–W–38,009; Roseburg Forest Products, Co., Big Log Sawmill, Dillard, OR: August 16, 1999.
TA–W–37,831; Cross Huller North America, Div. of Thyseeenrupp, Fraser, MI: June 14, 1999.
TA–W–38,119; John Dusenberg Co., Randolph, NJ: September 11, 1999.
TA–W–38,143 & A; Copley Pharmaceutical, Inc., Canton, MA and Dedham, MA: September 13, 1999.
TA–W–38,042; EJ Footwear LLC, Franklin, TN: August 22, 1999.
TA–W–38,130; Elberton Manufacturing Co., Inc., Elberton, GA: September 8, 1999.
TA–W–37,929; B.F. Goodrich Aerospace (Coltec), Landing Gear Div., Eulese, TX: July 14, 1999.
TA–W–38,057; Corlair Corp., Piedmont, MO: August 24, 1999.
TA–W–38,124; A.D.H. Manufacturing Corp., Etowah, TN: September 8, 1999.
TA–W–38,102; McDowell Manufacturing, DuBois, PA: September 11, 1999.
TA–W–37,942; Unique Finishing, Inc., Wrightsville, GA: July 19, 1999.
TA–W–38,038; Guilford Mill, Inc., Fishman Facility, Greensboro, NC; August 7, 1999.
TA–W–38,272; Renfro Corp., Finishing Dept, Pulaski, VA: October 13, 1999.
TA–W–38,070; Sharp Manufacturing Co. of America, Memphis, TN: September 11, 1999.
TA–W–38,234 & A; Northside Manufacturing, Philipsburg, PA and Streamline Fashions Manufacturing Co., Philipsburg, PA: October 6, 1999.
TA–W–38,004 & A; Duluth Engineering and Manufacturing/Pitman, Duluth, MN and Grandview, MO: August 11, 1999.
TA–W–38,190; Amscan, Inc., Lumart Div., Brooklyn, NY: September 22, 1999.
TA–W–38,176; Tyco Electronics, TDI Batteries Div., Romeoville, IL: September 8, 1999.
TA–W–38,296; Kim Mark Hosiery, Mount Airy, NC: July 14, 1999.
TA–W–38,235; Universal Auto Radiator Mfg Co., Pittsburgh, PA: October 10, 1999.
TA–W–38,016; Leoni Wiring Systems, Tucson, AZ: August 10, 1999.
TA–W–37,953; & A, B; Stanley Knitting Mills (South Main Street Plant), Oakboro, NC, Richfield, NC and Stanley Knitting Mills, Sales Corp., New York: August 4, 1999.
TA–W–38,030; Phoenix Medical Technology, Inc., Andrews, SC: August 17, 1999.
TA–W–37,980; Fulton Apparel, Inc., South Pittsburg, TN: July 27, 1999.
TA–W–38,273; McNairy Shirtworks, Adamsville, TN: October 17, 1999.
TA–W–38,273; Stanley Tools, Eagle Square Plant, Shaftsbury, VT: August 8, 1999.
TA–W–38,255; Still-Man Heating Product, Cookeville, TN: October 18, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof; (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations.

There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04282; Norman Barnes & Co., Inc., Arlington, WA
NAFTA–TAA–04210; Royal Oak Enterprises, Inc., Paris, AR
NAFTA–TAA–03904; APV Americas, Lake Mills, WI
NAFTA–TAA–04120; Corlair Corp., Piedmont, MO
NAFTA–TAA–04025; Kim Mark Hosiery, Inc., Mount Airy, NC
NAFTA–TAA–04149; Owik Tool Manufacturing, Magna Div., Lexington, KY
NAFTA–TAA–04131; Burlington Resources Oil and Gas, Mid Continent–Rockies, Sidney, MT
NAFTA–TAA–04194; Wabash Automotive, Ft. Worth, TX
NAFTA–TAA–04226; Airtherm, LLC, Forrest City, AR
NAFTA–TAA–04169; Hoh River Timber, Omak, WA
NAFTA–TAA–04162; Potlatch Corp., Wook Products, Div: Jaype Mill, Pierce, ID
NAFTA–TAA–04167; Roseboro, Lumber, Dimension Lumber Div., Springfield, OR
NAFTA–TAA–04179; GP Timber, Central Point, OR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–04197; General Electric Industrial Systems, Motors Div., Erie, PA.
NAFTA–TAA–04239; DR Rent, LLC, Klamath Falls, OR.
NAFTA–TAA–04177; Derby Industries, LLC, Lexington, KY.
NAFTA–TAA–04243; Pronav Ship Management, Inc., Greenwich, CT.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04088; Leoni Wiring Systems, Tucson, AZ: August 10, 1999.
NAFTA–TAA–04223; Amscan, Inc., Lumart Div., Brooklyn, NY: September 22, 1999.
NAFTA–TAA–04061 & A, B; Stanley Knitting Mills (South Main Street Plant), Oakboro, NC, Richfield, NC and Stanley Knitting Mils Sales Corp., New York, NY: August 4, 1999.
NAFTA–TAA–04032; Philips Consumer Electronics—Industrial Operations, Life Test and Quality Control Department, Greenville, TN: July 13, 1999.
NAFTA–TAA–04168; Tyco Electronics TDI Batteries Div., Tomeoville, IL: September 21, 1999.
NAFTA–TAA–04160; Quality Veneer and Lumber, Aberdeen, WA: September 12, 1999.
NAFTA–TAA–04111; Hayden Industrial Products LLC, Corona, CA August 22, 1999.
NAFTA–TAA–04245; Still-Man Heating Products, Cookeville, TN: October 18, 1999.
NAFTA–TAA–4296; Mulox, Inc., Macon, GA: August 30, 1999.
NAFTA–TAA–04257; A.O. Smith Electrical Products Do., Paoli Plant, Paoli, IN: October 20, 1999.
NAFTA–TAA–04260; 3M, Scientific Angler, a/k/a Streamworks, a/k/a D.B. Dun, Boise, ID: October 19, 1999.
NAFTA–TAA–04251; Authentic Fitness Corp., Cutting Operation, Bell, CA: September 16, 1999.
NAFTA–TAA–04211; Tyco Electronics, Clinton Township, MI: October 4, 1999.
NAFTA–TAA–04076; Reynolds Metals Co., Troutdale, OR: August 9, 1999.

I hereby certify that the aforementioned determinations were issued during the month of November, 2000. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 27, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–31036 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04101]

The Garden Grow Co., Lilly Miller Packet Seed Division, Wilsonville, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application dated November 2, 2000, the petitioner requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for NAFTA-Transitional Adjustment Assistance. The denial notice was signed on October 6, 2000 and published in the **Federal Register** on November 1, 2000 (65 FR 65331).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner requested that the Department reassess the findings that The Garden Company has *not* shifted production to Canada, nor has the Division of Lilly Miller. No new information concerning the decision was provided by the petitioner for reconsideration..

The Department's denial of NAFTA-TAA was based on the findings that creiteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. Findings of the investigation showed that workers of The Garden Grow Company, Lilly Miller Packet Seed Division, Wilsonville, Oregon packaged seed in paper envelopes. The Department's denial of NAFTA-TAA for workers of the subject firm was based on the finding that there was no shift of production from the Wilsonville, Oregon production facility to Mexico or Canada. Sales and production were relatively flat. The workers were separated because the subject division was sold to a competitor who is shifting the work to another domestic location.

Although, the company has shifted some production (plastic seed bottle production) to Canada, no shifts in production have occurred during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31037 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10901 and D–10902, et al.]

Proposed Exemptions; IRAs for Eldon Nysether and Mark Nysether (the IRAs)

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *Attention:* Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

IRAs for Eldon Nysether and Mark Nysether (the IRAs)

Located in Seattle, Washington

[Application Nos. D–10901 and D–10902]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRAs of their interests in certain improved real property (the Property) to Sea-Land Development Corporation (Sea-Land), a disqualified person with respect to the IRAs,[1] provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the IRAs pay no commissions nor other expenses relating to the sale; and (3) the sale price received by the IRAs equals the Property's fair market value, as of the date of the sale, as established by a qualified, independent appraiser.

Summary of Facts and Representations

1. The two IRAs are individual retirement accounts, as described under section 408(a) of the Code. One IRA was established by Eldon Nysether, the sole participant. The other IRA was established by Mark Nysether, the sole participant. As of November 8, 2000, the IRAs had total assets of $684,124.26 and $684,124.26, respectively. The custodian of both IRAs is The Commerce Bank of Washington, located in Seattle, Washington.

2. The Property consists of a currently unoccupied one-story commercial office building with approximately 20,300 sq. ft. on a 2.17 acre lot. It is located in Skagit Industrial Park, 500 Metcalf Street, Sedro Woolley, Washington. The adjacent parcel to the west of the Property is already owned by Sea-Land. The adjacent parcel is improved with a number of buildings that, together, form an industrial complex.

3. The Property is held as equal interests by each IRA. Except for a small amount of cash, the Property consists of the IRAs' sole asset. According to the applicants, the Property was originally acquired as an investment by the Sea-Dog Corporation 401(k) Profit Sharing Plan (the Sea-Dog Plan) from unrelated parties in 1993 for a total cash purchase price of $275,000.[2] The IRAs obtained the Property in 1997 in a rollover of assets as distributions to which the Nysethers were each entitled as participants in the Sea-Dog Plan, when they were informed by the Sea-First Bank that it would no longer permit real estate to be held in 401(k) plan accounts at the bank. At that time, the Property had an appraised value of $550,000. The Sea-Dog Corporation, in which Mark Nysether has a 34.28% ownership interest and his father Eldon has a 28.15% ownership interest, is a sister company of Sea-Land, the proposed purchaser of the Property. Mark Nysether is also a 50% owner of Sea-Land.[3]

[1] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[2] The applicants represent that, at the same time the Sea-Dog Plan purchased the Property, Sea-Land purchased the adjacent industrial complex. In this regard, the Department expresses no opinion herein as to whether the acquisition and holding of the Property by the Sea-Dog Plan violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

[3] The applicants state that Sea-Land is a "disqualified person" with respect to the IRA for Mark Nysether. Section 4975(e)(2)(G) of the Code defines the term "disqualified person" to include, in pertinent part, a corporation of which (or in which) 50 percent or more of the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation is owned directly or indirectly, or held by, a fiduciary of a plan.

The applicants state that Sea-Land is also a "disqualified person" with respect to the IRA for Eldon Nysether, Mark's father, despite Eldon's having no direct ownership interest in Sea-Land. Section 4975(e)(4) of the Code, in part, provides that, for purposes of paragraph (2)(G)(i), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), the attribution rules under the Code.

The applicants represent that, as of May 5, 2000, the IRAs had received gross rental income, since acquiring the Property, in the following amounts: $26,433.21 to the IRA for Eldon Nysether and $26,433.22 to the IRA for Mark Nysether. In regard to certain expenses relating to the Property, the IRAs, as of May 5, 2000, had each paid $6,921.63 in taxes and $2,506.00 for insurance. The applicants further represent that the Property has not been leased to, nor used by, by a disqualified person with respect to the IRAs, at any time since being acquired by the IRAs.[4]

4. The Property has been appraised by David Parsons & Associates, Inc., qualified, independent appraisers located in Mount Vernon, Washington. Mr. Parsons, M.A.I., a general appraiser certified in the State of Washington, and Roger Lindblom, Associate Appraiser, estimated that the fair market value of the Property was $1,334,000, as of July 11, 2000. In their report, Messrs. Parsons and Lindblom state that they utilized all three valuation approaches: Cost, Sales Comparison, and Income, with greater consideration given to the latter two approaches. They state that the Property is a sound strucure, but the interior needs to be completely refurbished. The Property is zoned CBD, which represents the prime commercial designation for small-to-moderate scale commercial activities in the area where the Property is located.

Further, in a subsequent letter dated November 3, 2000, Mr. Parsons states that, in making an appraisal of the Property, he was aware that the adjacent industrial complex is already owned by Sea-Land, which rents out its buildings to approximately 19 different tenants. Mr. Parsons states that, because most of these tenants operate businesses with small offices, there is not deemed a specific demand for office space from this complex that may affect the value of the subject Property. Thus, according to Mr. Parsons, no premium would be associated with its purchase by Sea-Land.

5. The applicants propose that Sea-Land purchase the Property from the IRAs for an amount in cash equal to the fair market value of the Property ($1,334,000 as of July 11, 2000), as of the date of the sale, based upon an updated, independent appraisal. The IRAs will pay no commissions nor other expenses relating to the sale. Each IRA will receive one-half of the sale proceeds, in accordance with their one-half ownership interests in the Property.

The applicants represent that the proposed exemption is in the best interests of the IRAs because the sale will allow the IRAs an opportunity to divest their respective portfolios of an illiquid asset. In addition, the sale proceeds received by each IRA will be reinvested in other assets that will increase the diversification of the IRAs' assets and facilitate the payment of retirement benefits.

6. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons:

(a) the sale will be a one-time transaction for cash; (b) the IRAs will pay no commissions nor other expenses relating to the sale; (c) the sale price received by the IRAs will equal the Property's fair market value, as of the date of the sale, as established by a qualified, independent appraiser; and (d) the sale will allow the IRAs an opportunity to divest their respective portfolios of an illiquid asset, increase the diversification of the IRAs' assets by reinvesting the proceeds of the sale in other assets, and facilitate the payment of retirement benefits.

Notice To Interested Persons

Because the Nysethers are the sole participants in their IRAs, it has been determined that there is no need to distribute the notice of proposed exemption to other interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[4] The Department notes that any lease or use of the Property by a "disqualified person," as defined in section 4975(e)(2) of the Code, would be a separate prohibited transaction under section 4975(c)(1)(D) of the Code.

ING Barings LLC,

ING Institutional Trust Company and Affiliates

Located in New York, New York

[Exemption Application No.: D–10908]

Proposed Exemption

Section I—Transactions

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[5] If the exemption is granted, effective as of the date of the publication of the proposed exemption in the **Federal Register**, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) the lending of securities to:

(1) ING Barings LLC (ING);

(2) the London branch (ING Bank London) of ING Bank N.V. or any successor in interest bank which is subject to the laws of the United Kingdom and the Netherlands;

(3) ING Barings Limited (ING London);

(4) ING Baring Securities (Japan) Limited (ING Japan); and

(5) any broker-dealer that, now or in the future, is an affiliate of ING which is subject to regulation under the laws of the United States or the United Kingdom or Japan;[6] by employee benefit plans, including commingled investment funds holding assets of such plans (the Client Plan(s)), for which in connection with securities lending activities, an affiliate of the ING Borrowers, the ING Institutional Trust Company (ING Institutional), its corporate successors, or any foreign or domestic affiliate of ING,[7] acts as a securities lending agent (or sub-agent) or as a directed trustee or custodian for such Client Plans under either of two

[5] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[6] ING, ING Bank London or any successor in interest bank which is subject to the laws of the United Kingdom and the Netherlands, ING London, ING Japan, and any broker-dealer that, now or in the future, is an affiliate of ING which is subject to regulation under the laws of the United States or the United Kingdom or Japan are referred to herein collectively as ING Borrowers or individually as ING Borrower.

[7] ING Institutional, its corporate successors, or any foreign or domestic affiliate of ING are referred to herein collectively as IITC.

securities lending arrangements referred to herein as Plan A and Plan B; and

(b) the receipt of compensation by IITC in connection with securities lending transactions, provided that for all transactions described above the conditions, as set forth in Section II, below, are satisfied.

Section II—Conditions

(a) For each Client Plan, neither the ING Borrowers nor IITC has or exercises discretionary authority or control with respect to the investment of the assets of such Client Plan involved in the transaction (other than with respect to the investment of cash collateral after the securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including any decisions concerning such Client Plan's acquisition or disposition of securities available for securities lending transactions;

(b) With regard to:

(1) Plan A, under which IITC lends securities of a Client Plan to an ING Borrower in either an agency or sub-agency capacity, such arrangement is approved in advance by a fiduciary of the Client Plan (the Client Plan Fiduciary) that is independent of IITC and the ING Borrower and is negotiated by IITC, which acts as a liaison between the lender and the borrower to facilitate the securities lending transaction.[8]

(2) Plan B, under which an ING Borrower directly negotiates an agreement with the Client Plan Fiduciary, including a Client Plan for which IITC provides services with respect to the portfolio of securities to be loaned, pursuant to an exclusive borrowing arrangement (an Exclusive Borrowing Arrangement), such Client Plan Fiduciary is independent of both the ING Borrower and IITC, and IITC does not participate in any such negotiations.

(c) Before a Client Plan participates in a securities lending program with respect to Plan A and before any loan of securities to an ING Borrower pursuant to Plan A is affected, a Client Plan Fiduciary that is independent of IITC and the ING Borrower must have:

(1) Authorized and approved a securities lending authorization agreement with IITC (the Agency Agreement), where IITC is acting as the direct securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where IITC is lending securities under a sub-agency arrangement with a primary lending agent; and

(3) Approved the general terms of the securities loan agreement (the Basic Loan Agreement) between such Client Plan and the ING Borrower, the specific terms of which are negotiated and entered into by IITC.

(d) The terms of each loan of securities by a Client Plan to an ING Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties;

(e) A Client Plan may terminate a securities lending agency (or sub-agency) agreement under Plan A or an Exclusive Borrowing Arrangement under Plan B at any time without penalty on five (5) business days notice, whereupon the ING Borrower shall deliver securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Client Plan within:

(1) the customary delivery period for such securities;

(2) five (5) business days; or

(3) the time negotiated for such delivery by the Client Plan and the ING Borrower, whichever is less.

(f) The Client Plan (or another custodian designated to act on behalf of the Client Plan) receives from the ING Borrower (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to such ING Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable letters of credit issued by a United States Bank, other than IITC or the ING Borrowers, or any combination thereof, or other collateral permitted under PTCE 81–6 (as it may be amended or superseded);

(g) The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent (102%) of the market value of the loaned securities. The applicable Basic Loan Agreement gives the Client Plan a continuing security interest in and an lien on the collateral. The level of collateral is monitored daily either by IITC under Plan A or IITC or other designee of the Client Plan under Plan B. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (100%) of the market value of the loaned securities at the close of business on that day, the ING Borrower is required to deliver by the close of business on the next day, sufficient additional collateral such that the market value of the collateral will again equal 102 percent (102%).

(h) With regard to:

(1) Plan A, prior to a Client Plan entering into a Basic Loan Agreement, the ING Borrower will furnish its most recent available audited and unaudited statements to IITC, which, in turn, will provide such statements to the Client Plan before such Client Plan approves of the terms of the Basic Loan Agreement. The Basic Loan Agreement contains a requirement that the applicable ING Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, IITC will not make any further loans to the ING Borrower, unless an independent Client Plan Fiduciary is provided notice of any material change and approves the loan in view of the changed financial condition;

(2) Plan B, prior to a Client Plan entering into an Exclusive Borrowing Arrangement, the ING Borrower will furnish its most recent available audited and unaudited statements to the Client Plan before the Client Plan elects to enter into such agreement. The Exclusive Borrowing Arrangement contains a requirement that the ING Borrower must give prompt notice at the time of the loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements;

(i) In return for lending securities, the Client Plan either:

(1) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan; or

(2) has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to the ING Borrower, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(j) All the procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTCE 81–6 and PTCE 82–63 as well as the applicable banking laws of the United Kingdom and the Netherlands and securities laws of the United States or the United Kingdom or Japan;

(k) ING Institutional agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with ING Borrowers so that the Client Plans do not have to litigate in the case of ING Borrowers in foreign jurisdictions or sue ING Borrowers to realize on the indemnification. Such indemnification by ING Institutional is against any and all reasonably foreseeable damages, losses, liabilities, costs, and expenses (including attorney's fees) which the Client Plans may incur or suffer, arising from any impermissible use by ING Borrowers of the loaned securities or from an event of default arising from ING Borrowers' failing to deliver loaned securities in accordance with the applicable Basic Loan Agreement or otherwise failing to comply with the terms of such agreement, except to the extent that such losses or damages are caused by the Client Plans' own negligence.

(1) If any event of default occurs, ING Institutional promptly and at its own expense (subject to rights of subrogation in the collateral and against such borrower), will purchase or cause to be purchased, for the account of the Client Plans, securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, ING Institutional will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, ING Institutional will pay the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities.

(2) If, however, the event of default is caused by the ING Borrower's failure to return securities within a designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

(l) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, and interest payments on the loaned securities, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(m) Prior to any Client Plan's approval of the lending of its securities to any ING Borrower, a copy of the notice of proposed exemption and a copy of the final exemption, if granted, will be provided to such Client Plan.

(n) Each Client Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information described below in representation number 19 of the Summary of Facts and Representations, so that an independent Client Plan Fiduciary may monitor such transactions with the ING Borrowers.

(o) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the ING Borrowers; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the ING Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations, or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the ING Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such plan or an employee organization whose members are covered by such plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to Client Plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(p) With respect to any calendar quarter, at least 50 percent (50%) or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers, unless the Client Plan has entered into an Exclusive Borrowing Arrangement with the ING Borrowers.

(q) In addition to the above, all loans involving Foreign Borrowers, as defined in Section III (c), below, must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a bank which is regulated by both the Dutch Central Bank (De Nederlandsche Bank or DNB) and the Financial Services Authority (FSA) of the United Kingdom or must be a registered broker-dealer subject to regulation by either the Securities and Futures Authority of the United Kingdom (the SFA) or the Ministry of Finance (the MOF) and the Tokyo Stock Exchange.

(2) Such Foreign Borrower must be in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities and Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or United States dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and the situs of the securities lending agreements (either the Basic Loan Agreement under Plan A or the Exclusive Borrowing Arrangement

[8] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than IITC, beyond that provided pursuant to Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), and Prohibited Transaction Class Exemption 82–63 (PTCE 82–63)(47 FR 14804, April 6, 1982).

under Plan B) is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to entering a transaction involving a Foreign Borrower, the applicable Foreign Borrower must—

(A) Agree to submit to the jurisdiction of the United States;

(B) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) Consent to service of process on the Process Agent; and

(D) Agree that enforcement by a Client Plan of the indemnity provided by ING Institutional will occur in the United States courts;

(r) ING maintains or causes to be maintained within the United States for a period of six (6) years from the date of each securities lending transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in Section II (s)(1) below to determine whether the conditions of this exemption, if granted, have been met; except that—

(1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of ING or the other ING Borrowers, the records are lost or destroyed prior to the end of the six year period; and

(2) no party in interest with respect to an employee benefit plan, other than ING or the other ING Borrowers, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by Section II(s)(1), below.

(s)(1) Except as provided in subparagraph (2) of this Section II(s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section II(r), above, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission (SEC);

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan, or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B)-(D) of Section II(s)(1) shall be authorized to examine trade secrets of ING or the other ING Borrowers, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption,

(a) The term "affiliate" of another person shall include:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, employee, or relative (as defined in section 3(15) of the Act) of such other person or any partner in such person; and

(3) Any corporation or partnership of which such other person is an officer, director, employee or in which such person is a partner.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, "Foreign Borrower or Foreign Borrowers" means: (1) ING Bank London or any successor in interest bank subject to the laws of the United Kingdom and the Netherlands; (2) ING London; (3) ING Japan; and (4) any broker-dealer that, now or in the future, is an affiliate of ING which is subject to regulation under the laws of the United States or the United Kingdom or Japan.

Summary of Facts and Representations

1. The ING Groep N.V. (the ING Groep) is a publicly held Dutch corporation with slightly under one billion shares outstanding as of December 31, 1998. American Depository Receipts of the ING Groep are traded on the New York Stock Exchange.[9] In addition, the shares of the ING Groep are traded on the Amsterdam Stock Exchange.

2. ING Barings LLC (ING), a Delaware limited liability corporation, is an indirect wholly-owned subsidiary of the ING Groep. ING is a full service investment firm serving institutional, corporate, and high net worth individual clients. ING is registered with the SEC and is a member of all principal securities exchanges in the United States, including, but not limited to, the New York Stock Exchange, the American Stock Exchange, as well as the National Association of Securities Dealers, Inc. As of March 31, 2000, ING had $17.746 billion in assets.

ING, acting as principal, borrows securities from institutions and either utilizes such securities to satisfy its own needs, or re-lends these securities to brokerage firms and other entities. The average amount of securities on loan to ING during the month of March 2000, was approximately $11.356 billion, and the average amount of securities being lent by ING during March 2000, was approximately $7.986 billion. It is represented that in making securities loans, ING carefully reviews the credit-worthiness of its counter-parties and conforms to the requirements of Regulation T, as promulgated by the U.S. Federal Reserve Board.

3. ING Institutional, an indirect wholly-owned subsidiary of the ING Groep and an affiliate of ING, is organized as a limited purpose trust company licensed by the New York State Banking Department. ING Institutional has its principal executive offices in New York, New York. ING Institutional acts as a securities lending agent and provides securities lending services for Client Plans and other entities. ING Institutional may also be retained from time to time by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary securities lending agents. As a securities lending sub-agent, ING Institutional's role (i.e., negotiating the terms of the loans with borrowers pursuant to a client-approved form of a loan agreement, and monitoring receipt of, and marking-to-market, the required collateral) parallels those under the securities lending transactions for which ING Institutional acts as a primary lending agent on behalf of its own clients.

4. ING Bank N.V., a direct subsidiary of the ING Groep, is a Dutch incorporated public limited liability company regulated by the DNB. As of December 31, 1999, ING Bank N.V. had total assets of approximately EUR 349,618 million and shareholder's equity of approximately EUR 13,212 million. ING Bank London, a branch of ING Bank N.V., is authorized to conduct a banking business in the United Kingdom.

5. ING London, an indirect subsidiary of the ING Groep, is an English company registered with the Registrar of Companies for England and Wales. ING London is also an international investment banking organization. As of December 31, 1999, ING London had total assets of approximately 2,595,477,000 pounds. ING London is authorized to conduct an investment business in and from the United Kingdom as a broker-dealer.

6. ING Japan is an indirect subsidiary of the ING Groep. As of December 31, 1999, ING Japan had total assets of approximately 39 billion yen. ING Japan is a Japanese company authorized to conduct an investment business in Japan as a broker-dealer.

7. Brokers and other entities, including banks, often need to borrow a particular security for certain periods of time in order to satisfy deliveries in cases of short sales, or in cases where a broker, bank, or other entity fails to receive securities which it in turn is required to deliver. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer, a bank, or other entity to earn a fee in addition to any interest, dividends, or other distributions paid on the loaned securities. The lender generally requires that the security loans be fully collateralized. In this regard, the collateral usually is cash or high quality liquid securities issued by the U.S. Government, Federal Agency obligations, or certain bank letters of credit. When the collateral is cash, the lender generally invests the cash and rebates a portion of the earnings on such cash collateral to the borrower. The fee received by the lender is the difference between the earnings on the cash collateral and the amount of the rebate that is paid to the borrower. When a securities loan is collateralized with U.S. Government or Federal Agency securities or with letters of credit issued by a bank, the fee is paid directly by the borrower to the lender.

Institutional investors often utilize the services of an agent in performing securities lending transactions. The lending agent is also paid a fee for its services that may be a percentage of the income earned by the investor from lending its securities. The essential functions which define a securities lending agent are identifying appropriate borrowers of securities and negotiating loan terms with the borrowers. Certain services that are ancillary to securities lending include monitoring the level of collateral, the value of loaned securities, and in some instances, investing the collateral.

8. The applicants request an individual administrative exemption for the lending of securities owned by Client Plans, with respect to which IITC acts as a directed trustee or custodian and/or securities lending agent (or sub-agent),[10] to the ING Borrowers following disclosure to the Client Plans of IITC's affiliation with such ING Borrowers, under either of two arrangements—described as Plan A and Plan B. The applicants also request an individual administrative exemption for the receipt of compensation by IITC in connection with such securities lending transactions. Neither IITC nor the ING Borrowers will have discretionary authority or control over the Client Plans' decisions concerning the acquisition or disposition of securities available for lending. However, because IITC under the Plan A arrangement and the ING Borrowers under the Plan B arrangement (as discussed further below), will have discretion with respect to whether there is a loan of the Client Plans' securities to the ING Borrowers, the lending of securities to the ING Borrowers under such arrangements may be outside the scope of relief provided by PTCE 81–6 and PTCE 82–63.[11]

Plan A

9. As noted above, the agreement by IITC to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. In the case of the Plan A arrangement, where IITC acts as the securities lending agent, the Client Plan Fiduciary who is independent of IITC and the ING Borrower will sign the Agency Agreement with IITC before the Client Plan participates in IITC's securities lending program. Further, the Client Plan and IITC will agree to an arrangement under which IITC will be compensated for its services as the lending agent prior to the commencement of any lending activity. The Client Plan may terminate the Agency Agreement at any time, without penalty, on no more than five (5) business days' notice.

The Agency Agreement will, among other things, describe the operation of the securities lending program, prescribe the form of the securities loan agreement to be entered into on behalf of the Client Plan with the borrowers, and identify the securities which are available to be lent, the required collateral, and daily marking-to-market. The Agency Agreement will set forth the basis and rate for IITC's compensation from the Client Plan for the performance of securities lending services. Further, the Agency Agreement will contain provisions regarding designation by the Client Plan of a list of permissible borrowers, including the ING Borrowers. Specifically, the Client Plan will acknowledge that the ING Borrowers are affiliates of IITC. Pursuant to the Agency Agreement, IITC will represent to each Client Plan that each loan made to ING Borrowers on behalf of such Client Plan will be at market rates, and in no event will such rates be less favorable to the Client Plan than a loan of such securities made at the same time and under the same circumstances to an unaffiliated borrower.

10. When IITC is lending securities under a sub-agency arrangement, before the Client Plan participates in the securities lending program, the primary lending agent will enter into the Primary Lending Agreement with a Client Plan Fiduciary, who is independent of such primary lending agent, IITC, and the ING Borrowers. The Client Plan may terminate the Primary Lending Agreement at any time, without penalty, on no more than five (5) business days' notice.

The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement described above, relating to the description of the operation of the securities lending program, the use of an approved form of securities loan agreement, the identification of securities which are available to be lent, the required collateral, daily marking-to-market, and the provision of a list of approved borrowers, including the ING Borrowers. The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including IITC, to facilitate its performance of securities lending agency functions.

Where IITC is to act as a sub-agent, the Primary Lending Agreement will expressly disclose such fact. The Primary Lending Agreement will also set forth the basis and rate for the

[9] As such, shares of the ING Groep are registered pursuant to section 12(b) of the 1934 Act.

[10] Future references to IITC's performance of services as securities lending agent should be deemed to include its parallel performance as a securities lending sub-agent, and references to the Client Plans should be deemed to include those plans for which IITC is acting as a sub-agent with respect to securities lending activities, unless otherwise specifically indicated or by the context of reference.

[11] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTCE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTCE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

primary lending agent's compensation from the Client Plan for the performance of securities lending services. Further, such agreement will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s), including IITC, that the primary lending agent retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with IITC under which the primary lending agent will retain and authorize IITC, as sub-agent, to lend securities of the primary lending agent's clients, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of securities loan agreement will be the same as that approved by the Client Plan Fiduciary in the Primary Lending Agreement, and the list of permissible borrowers under the Sub-Agency Agreement (which will include the ING Borrowers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

The Sub-Agency Agreement will contain provisions that are in substance comparable to those which would appear in the Agency Agreement in situations where IITC is the primary lending agent. In this regard, IITC will make the same representation in the Sub-Agency Agreement with respect to arm's-length dealings with the ING Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for IITC's compensation to be paid by the primary lending agent.

11. IITC, acting as securities lending agent for the Client Plans, will negotiate the Basic Loan Agreement and any modifications thereto with the ING Borrowers on behalf of the Client Plans. The Basic Loan Agreement will set forth the basis for compensation to the Client Plan for lending securities to the ING Borrowers under each category of collateral. The Basic Loan Agreement will also contain a requirement that the ING Borrowers must pay all transfer fees and transfer taxes related to the security loans. An independent Client Plan Fiduciary will approve the form of the Basic Loan Agreement before such fiduciary executes the Agency Agreement. Further, the Basic Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Client Plan's rights in the event of any default by the ING Borrowers.

12. Prior to making any loans under the Basic Loan Agreement, the ING Borrower will furnish to IITC (assuming IITC does not already possess such statements), its most recent available audited financial statements (and unaudited financial statements if more recent than such audited statements). IITC will, in turn, provide such statements to the Client Plan before the independent Client Plan Fiduciary is asked to approve the terms of the Basic Loan Agreement. The terms of the Basic Loan Agreement will contain a requirement that the ING Borrower must give prompt notice at the time of the loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, IITC will request that the independent Client Plan Fiduciary approve the loan in view of the changed financial condition.

13. Each time a Client Plan loans securities to an ING Borrower pursuant to the Basic Loan Agreement, such ING Borrower will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

14. To assure uniformity of treatment among borrowing brokers and to limit the discretion IITC would have in negotiating securities loans to the ING Borrowers, IITC will establish each day a written schedule of lending fees and rebate rates. In this regard, IITC will adopt minimum daily lending fees payable by each borrower, including ING Borrowers, to IITC on behalf of the Client Plans with respect to securities loans secured with collateral other than cash and will adopt maximum daily rebate rates payable to each borrower, including the ING Borrowers, with respect to securities loans secured with cash collateral. Loans to all borrowers, including ING Borrowers, of a given security on any day will be made at rebate rates or lending fees on the relevant daily schedule or at rebate rates or lending fees that may be more advantageous to the Client Plans. In no case will the loans be made to ING Borrowers at rebate rates or lending fees less advantageous to the Client Plan than those on the schedule.

IITC will negotiate on behalf of a Client Plan rebate rates for loans secured by cash collateral payable to each borrower, including ING Borrowers. When a loan of securities by a Client Plan is collateralized with cash, IITC, at the Client Plan's direction, will either transfer such cash collateral to the Client Plan or its designated agent for investment. Alternatively, IITC may invest the cash in short-term securities or interest-bearing accounts. In either case, IITC will on behalf of the Client Plan rebate a portion of the earnings on the cash collateral to the ING Borrowers. The rebate rates, which are established for loans secured by cash collateral made by the Client Plans, will take into account the potential demand for the loaned securities, the applicable benchmark cost of funds indices (typically, the U.S. Federal Funds Rate established by the Federal Reserve System (Federal Funds), the overnight "REPO" [12] rate, or the like), and the anticipated investment return on overnight investments which are permitted by the Client Plan Fiduciary. For example, where cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable "ask" quotation therefor. For example, where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the investment return (assuming no investment default). With respect to any loan to ING Borrowers, IITC will not knowingly negotiate a rebate rate with respect to such loan which over the anticipated term of the loan would produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where IITC has investment discretion over the cash collateral). IITC represents that the written rebate rate established daily for cash collateral under loans negotiated with the ING Borrowers will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction.

Where the collateral consists of obligations other than cash, the ING Borrowers will pay a fee to the Client Plan based on the value of the loaned securities. The lending fees, which are established with respect to loans made by the Client Plans collateralized by other than cash, will be set daily to reflect conditions as influenced by potential market demand. For loans secured by collateral other than cash, the applicable lending fee in respect of any outstanding loan will be reviewed daily by IITC for competitiveness and adjusted, where necessary, to reflect market terms and conditions. With respect to any calendar quarter, at least 50 percent (50%) of the securities loans negotiated on behalf of the Client Plans will be to borrowers not affiliated with IITC, and so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, the applicants state that loans to the ING Borrowers should result in a competitive rate of income to the lending Client Plan. At all times, IITC will effect loans in a prudent and diversified manner.

Prior to lending any securities to the ING Borrowers on behalf of the Client Plan, IITC will disclose the method for determining minimum daily lending fees and maximum daily rebate rates, as described above, to an independent Client Plan Fiduciary for approval. The method of determining the actual daily securities lending rates (fees and rebates), the minimum lending fees payable by the ING Borrowers and the maximum rebate payable to the ING Borrowers, will be specified in an exhibit attached to the Agency Agreement to be executed between the independent Client Plan Fiduciary and IITC in cases where IITC is the direct securities lending agent.

15. If IITC reduces the lending fee or increases the rebate rate on any outstanding loan to an ING Borrower (except for any change resulting from a change in the value of any index with respect to which the fee or rebate is calculated), IITC, by the close of business on the date of such adjustment, shall provide the independent Client Plan Fiduciary with notice that IITC has adjusted such fee or rebate to such affiliated borrower, and that the Client Plan may terminate such loan at any time. IITC shall provide the independent Client Plan Fiduciary with such information as may reasonably be requested regarding such adjustment.

16. While IITC will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowing brokers, in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur in instances when: (a) the credit limit established for such "first in line" borrower by IITC and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by a particular Client Plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different representatives of IITC at or about the same time with respect to the same security. In situations (a) and (b), above, loans would usually be effected with the "second in line" borrower. In situation (c), above, securities would be allocated as equitably as practicable among all eligible requesting borrowers.

17. IITC on behalf of a Client Plan will receive collateral from ING Borrowers by physical delivery, book entry in a U.S. securities depository, wire transfer, or similar means by the close of business on or before the day the loaned securities are delivered to such ING Borrowers. The collateral will consist of U.S. dollars, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable United States bank letters of credit issued by an entity other than the ING Borrowers or any affiliate thereof, or any combination thereof, or other collateral permitted under PTCE 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans).

The market value of the collateral on the close of business on the business day preceding the day the loaned securities are delivered to the ING Borrowers will be at least 102 percent (102%) of the then market value of the loaned securities. The Basic Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. IITC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (100%), IITC will require the ING Borrower to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent (102%).

18. Subject to the terms and conditions of the Agency Agreement (or the Primary Lending Agreement), IITC will invest and reinvest all or substantially all cash collateral in approved investments designated by the applicable Client Plan and identified on a schedule attached to the relevant agreement. All approved investments made by IITC will be for the sole account and risk of the applicable Client Plan. From time to time, the Client Plan may instruct IITC in writing not to make an approved investment with a certain counter-party, or through a particular financial institution or intermediary. Alternatively, the Client Plan may also retain the right to directly control the reinvestment of the cash collateral.

19. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. At the request of the Client Plan, such a report will be provided on a weekly or daily basis, rather than a monthly basis. Also, upon request of the Client Plan, IITC will provide the Client Plan with daily confirmations of securities lending transactions.

In order to provide the means for monitoring lending activity, rates on loans to the ING Borrowers compared with loans to other brokers, and the level of collateral on such loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding loans of securities to the ING Borrowers and to other borrowers. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the ING Borrowers compared with the rates at which securities are loaned to other brokers. This statement will give each independent Client Plan Fiduciary information that can be compared to that contained in the daily rate schedule.

20. Under the Plan A arrangement and, in some instances, under the Plan B arrangement (see paragraph 21, below, for the types of lending services which may be provided to the Client Plans by IITC under Plan B arrangement), the Client Plan will pay a fee to IITC for providing lending services to the Client Plan, which will reduce the income earned by the Client Plan from lending its securities to the ING Borrowers. The Client Plan and IITC will agree in advance to this fee, which will represent a percentage of the income the Client Plan earns from its lending activities.

[12] An overnight "REPO" is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes, and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other).

Plan B

21. With respect to Plan B, the ING Borrowers will directly negotiate an Exclusive Borrowing Arrangement with a fiduciary of a plan, including Client Plans for which IITC serves as directed trustee or custodian, where such fiduciary is independent of the ING Borrower and IITC. Under the Exclusive Borrowing Arrangement, the ING Borrower will have exclusive access for a specified period of time to borrow securities of the Client Plan pursuant to certain conditions. IITC will not participate in the negotiation of the Exclusive Borrowing Arrangement. The involvement of IITC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral, and investing or depositing any cash collateral and supplying the Client Plans with certain reports. The applicants represent that, under an Exclusive Borrowing Arrangement, neither the ING Borrower nor IITC will perform for the relevant Client Plan the functions which constitute the essential functions of a securities lending agent.

22. Upon delivery of loaned securities to the ING Borrower, IITC, or another custodian on behalf of the Client Plan, will receive from the ING Borrower on the same day by physical delivery, book entry in a U.S. securities depository, wire transfer, or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable United States bank letters of credit issued by an entity other than the ING Borrowers, or any combination thereof, or other collateral permitted under PTCE 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans).

The market value of the collateral at the close of business on the business day preceding the day the loaned securities are delivered to the ING Borrower will be at least 102 percent (102%) of the then market value of the loaned securities. IITC or such other custodian will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (100%) of that of the loaned securities, the ING Borrower will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent (102%) of the market value of the loaned securities. The ING Borrower or, in the case of some Client Plans, IITC, will provide a weekly report to the Client Plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the ING Borrower, and the aggregate market value of the collateral.

23. Before entering into an Exclusive Borrowing Arrangement, the ING Borrower will furnish to the Client Plan, if such plan does not already possess such statements, the most recent publicly available audited and unaudited statements of its financial condition, as well as any other publicly available information which the ING Borrower believes is necessary for the Client Plan to determine whether to enter into or renew the arrangement, and a copy of the final exemption, if granted, together with this proposed exemption. The Exclusive Borrowing Arrangement will contain a requirement that the ING Borrower must give prompt notice at the time of a loan of any material adverse changes in financial condition of the ING Borrower since the date of the most recently furnished financial statements. All the procedures under the Exclusive Borrowing Agreement will conform to the applicable provisions of PTCE 81–6 and PTCE 82–63 and will be in compliance with the applicable banking laws of the United Kingdom and the Netherlands, and the securities laws of the United States, the United Kingdom or Japan.

24. In exchange for the exclusive right to borrow certain securities from a Client Plan, an ING Borrower will pay such Client Plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the Exclusive Borrowing Arrangement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. A percentage may be established by reference to an objective formula. The ING Borrower and the independent Client Plan Fiduciary may agree that different fee arrangements will apply to different securities or different groups of securities. Any change in the rate paid to the Client Plan will require the written consent of the independent Client Plan Fiduciary. However, such Client Plan's consent will be presumed where the rate changes pursuant to an objective formula. In such instances, an independent Client Plan Fiduciary must be notified at least 24 hours in advance of the rate change, and the independent Client Plan Fiduciary must not object in writing to such change, prior to the effective date of the change. Under this fee arrangement, all earnings generated by the cash collateral will be returned to the ING Borrower. The Client Plan will receive credit for all interest, dividends, or other distributions on any borrowed securities. In addition, under some arrangements, the earnings on the collateral due to the ING Borrower, and the dividends, interest, and other distributions on the borrowed securities payable to the Client Plan may be offset against each other, so that only a net amount will be returned to the ING Borrower.

25. Either party may terminate the Exclusive Borrowing Arrangement and/or any outstanding securities loan at any time. Upon termination of any securities loan, the ING Borrower will deliver any borrowed securities back to the Client Plan within five (5) business days of written notice of termination.

26. With regard to those Client Plans for which IITC provides custodial, clearing, and/or reporting functions relative to securities lending transactions, IITC and an independent Client Plan Fiduciary and the ING Borrowers will agree in advance and in writing to any fee that IITC is to receive for such services. Such fees, if any, would be fixed fees (*e.g.*, IITC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount) and any such fee would be in addition to any fee IITC has negotiated to receive from any such Client Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for IITC to provide such functions relative to loans of securities to the ING Borrower will be terminable by the Client Plan within five (5) business days of receipt of written notice without penalty to the Client Plan, except for the return to the ING Borrower of a part of any flat fee paid by such ING Borrower to the Client Plan, if the Client Plan has also terminated its Exclusive Borrowing Arrangement with the ING Borrower. Before entering into an agreement with the Client Plan to provide such functions relative to loans of securities to the ING Borrower, IITC will furnish to the Client Plan any publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the Exclusive Borrowing Arrangement.

27. The conditions of this exemption, if granted, will provide adequate safeguards for the Client Plans which engage in securities lending transactions. Under the terms of this proposed exemption, only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the ING Borrowers, as measured in accordance with Section I(o) of this proposed exemption. This restriction is intended to assure that any lending to the ING Borrowers will be monitored by an independent Client Plan Fiduciary of above average experience and sophistication in matters of this kind who is acting on behalf of a Client Plan.

Further, safeguards are provided in that for any transactions with ING Borrowers covered by this proposed exemption, ING Institutional, a U.S. affiliate of ING, has agreed to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) so that the Client Plans will not have to litigate in the case of ING Borrowers in foreign jurisdictions or sue ING Borrowers to realize on the indemnification. Such indemnification by ING Institutional protects the Client Plans against any and all reasonably foreseeable damages, losses, liabilities, costs, and expenses (including attorney's fees) which such plans may incur or suffer, arising from any impermissible use by ING Borrowers of the loaned securities or from an event of default arising from an ING Borrower's failure to deliver loaned securities in accordance with the applicable Basic Loan Agreement or otherwise failing to comply with the terms of such agreement. If any event of default occurs, ING Institutional promptly and at its own expense (subject to rights of subrogation in the collateral and against such borrower), will purchase or cause to be purchased, for the account of the Client Plans, securities identical to the borrowed securities (or their equivalent). Alternatively, if such replacement securities cannot be obtained on the open market, ING Institutional will pay the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral, on the date of the borrower's breach of its obligation to return the loaned securities. If, however, the event of default is caused by the ING Borrower's failure to return securities within a designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase. If the collateral is insufficient to accomplish such purchase, ING Institutional will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision).

28. The proposed exemption will be protective of the rights of participants and beneficiaries of the Client Plans because of the on-going oversight of certain regulatory agencies. In this regard, ING Bank London is subject to primary supervision of DNB (i.e., De Nederlandsche Bank), the Dutch central bank. DNB is also a member of the European System of Central Banks. Pursuant to the Dutch banking law and directives issued by the European Union (EU), DNB is responsible for safeguarding the solvency and liquidity of Dutch banks and protecting the rights of creditors thereof, including branches of ING Bank located in EU Member States. ING represents that the DNB ensures that there are procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. ING further represents that it is required to provide the DNB on a recurring basis with information regarding capital adequacy, as well as periodic, consolidated financial reports on the financial condition of ING Bank N.V. and its affiliates.

DNB has adopted rules to insure that Dutch banks, such as ING Bank, remain solvent through limitations imposed on the risk-bearing operations of such institutions. DNB has also issued liquidity directives mandating that Dutch banks maintain a certain level of liquid assets to insure that all liabilities can be met when due. Finally, DNB supervises the administrative organizations of Dutch banks, including their internal accounting systems and internal control systems. This authority includes taking measures designed to prevent conflicts of interest within Dutch banks and advising (and, when necessary, directing) Dutch banks with regard to their internal administrative organization to insure adequate risk management. It is represented that such supervisory authority also applies to the ING Bank London.

To ensure compliance with all applicable rules and to enable DNB to monitor the operations, Dutch banks are required to submit monthly and audited annual returns which reflect the banks true and fair financial position. DNB can withdraw a bank's license for failure to follow instructions to correct an incorrect return. Failure to file an annual report, within six (6) months of the end of the fiscal year, can result in the imposition of a fine or two years imprisonment.

With regard to enforcement, where a Dutch bank fails to comply with DNB's solvency, liquidity, or administrative organization requirements, DNB will inform the bank that a violation has occurred and that such violation must be corrected. In this regard, it is represented that DNB may instruct the bank on how to correct the violation. Failure to comply with DNB instructions within a two week period, or failure to submit a suitable explanation of the violation, may result in: (a) all management decisions being subject to DNB approval; (b) the appointment of DNB officers to assume control; or (c) when warranted, a cease and desist order or significant fines. If officers of a foreign branch of a Dutch bank, such as ING Bank London, fail to follow DNB instructions, and if such failure rises to a criminal violation, a fine or two years imprisonment may be imposed.

Further protection is offered the Client Plans in that ING Bank London is also subject to regulation by the FSA (i.e., the Securities and Futures Authority of the U.K.) for the Bank of England. FSA assumed the regulatory role of the Bank of England in 1998. FSA's powers include licensing banks in the United Kingdom, issuing directives to address violations or irregularities involving such banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses.

29. As a broker-dealer authorized to conduct business in the United Kingdom, ING London is authorized and governed by the rules, regulations, and registration requirements of the SFA. In this regard, ING London is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and requirements for books and records with respect to client accounts. Although ING London is not registered with the SEC in the United States, the rules and regulations set forth by the SFA share a common objective with the SEC in that both protect the investor by regulating the securities industry under their jurisdiction. The SFA requires each firm that employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations when due. In addition, the SFA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the SFA rules impose

reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and record keeping requirements to the effect that required records must be produced at the request of the SFA, at any time. Finally, the rules and regulations of the SFA for broker-dealers impose potential fines and penalties that establish a comprehensive disciplinary system.

30. As a Japanese company authorized as a broker-dealer, ING Japan is governed by the rules, regulations and membership requirements of the MOF (*i.e.*, the Ministry of Finance) and the Tokyo Stock Exchange. In this regard, ING Japan is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and requirements for books and records with respect to client accounts. The MOF and the Tokyo Stock Exchange share a common objective with the SEC in that each provides protection for the investor by the regulation of the securities industry. The rules of MOF and the Tokyo Stock Exchange require each firm that employs registered representatives or registered traders to have a positive tangible net worth and to be able to meet its obligations when due. In addition, the rules of the MOF and the Tokyo Stock Exchange set forth comprehensive financial resource and reporting/disclosure requirements regarding capital adequacy. Further, to demonstrate capital adequacy, the rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and record keeping requirements to the effect that required records must be produced at the request of the MOF and the Tokyo Stock Exchange at any time. Finally, the rules and regulations of the MOF and the Tokyo Stock Exchange for broker-dealers impose potential fines and penalties that establish a comprehensive disciplinary system.

31. In addition to the protections afforded by the DNB and the FSA in the case of the ING Bank London, by the SFA in the case of ING London, and the MOF and the Tokyo Stock Exchange regulations in the case of ING Japan, ING represents that the Foreign Borrowers, including ING Bank London,[13] ING London, and ING Japan, will comply with all applicable provisions of Rule 15a–6 of the 1934 Act. In this regard, Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements, as described below, and offers additional protections. Specifically, Rule 15a–6 provides an exemption from U.S. broker-dealer registration for foreign broker-dealers that induce or attempt to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor"[14] or a "U.S. major institutional investor,"[15] provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary.

32. Several safeguards, described more fully below, are incorporated into the proposed exemption to ensure the protection of the Client Plans' assets involved in these securities lending transactions. In this regard, ING represents that under Rule 15a–6, any Foreign Borrower that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor must, among other things—

(a) Provide written consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody, or control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the rule;

(c) Rely on the U.S. registered broker-dealer[16] through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rule 17a–3 (Records to be Made by Certain Exchange Members) and Rule 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (*e.g.*, telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

33. In all cases, ING will maintain records of each transaction and market records sufficient to assure that all loans

[13] Section 3(a)(4) of the 1934 Act defines "broker" to mean "any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank." Section 3(a)(5) of the 1934 Act provides a similar exclusion for "banks" in the definition of the term "dealer." However, section 3(a)(6) of the 1934 Act defines "bank" to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term "foreign broker or dealer" means "any non-U.S. resident person . . . whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the 1934 Act. Therefore, the test of whether an entity is a "foreign broker" or "dealer" is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term "broker" or "dealer." Thus, for purposes of this exemption request, the applicants will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6 with respect to all Foreign Borrowers.

[14] The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act, if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors," as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended.

[15] The term "U.S. major institutional investor" is defined in Rule 15a–6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

The Department notes that a SEC No-Action Letter has expanded the categories of entities that qualify as "'major U.S. institutional investors". See SEC No-Action letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997.

[16] ING London and ING Japan, in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including ING Institutional, to perform this role.

to the ING Borrowers will be effected under arm's-length terms. Such records will be provided to the Client Plan Fiduciary, who is independent of IITC and the ING Borrowers, in the manner and format agreed to by such Client Plan Fiduciary and IITC, without charge to the Client Plan.

34. The applicants represent that the proposed transactions are in the interest of the Client Plans in that the lending of securities is a low-risk method to enable a plan to enhance its returns on otherwise idle assets. In this regard, a Client Plan which participates in securities lending is able to earn a fee for lending the securities to the borrower while continuing to receive the economic benefits of receiving dividends, interest payments, and other distributions made with respect to the loaned securities.

35. The proposed exemption is administratively feasible in that it will not require any ongoing involvement by the Department, and the proposed conditions provide for the review and approval of the securities borrowing agreement by an independent Client Plan Fiduciary. Further, it is represented that the conditions to which the applicants have consented are comparable in all material respects to other recent individual administrative exemptions granted by the Department under similar circumstances. In addition, the applicants represent that both the Plan A and Plan B arrangements described herein incorporate the relevant conditions contained in class exemptions, PTCE 81–6 and PTCE 82–63. Finally, the applicants will bear the cost of filing the application for exemption and the costs associated with providing notice to interested persons, and will be responsible for the payment of all transfer fees and taxes related to securities lending transactions that are the subject of this proposed exemption.

36. In summary, the applicants represent that the subject transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

a. Plan A requires approval of the terms of the Basic Loan Agreement and the execution of the Agency Agreement (or the Primary Lending Agreement) by an independent Client Plan Fiduciary before such Client Plan lends any securities to an ING Borrower;

b. Under Plan B, an ING Borrower will directly negotiate the Exclusive Borrowing Arrangement with the Client Plan and such arrangement may be terminated by either party to the arrangement at any time;

c. The lending arrangements will permit the Client Plans to lend securities to the ING Borrowers, which have a substantial market position as securities lenders, and will enable the Client Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities while continuing to receive any dividends, interest payments, and other distributions on those securities;

d. Neither the ING Borrowers nor IITC will exercise any discretionary authority or control with respect to the investment of the assets of Client Plans involved in the securities lending transactions, or render investment advice with respect to those assets, including any decisions concerning a Client Plan's acquisition or disposition of securities available for lending;

e. Before a Client Plan participates in a securities lending program under Plan A and before entering into any securities lending transaction under Plan A with an ING Borrower, an independent Client Plan Fiduciary must have: (i) Authorized and approved the Agency Agreement with IITC, where IITC is acting as the direct securities lending agent; (ii) Authorized and approved the Primary Lending Agreement with the primary lending agent, where IITC is serving under a Sub-Agency Agreement with the primary lending agent; (iii) Approved the general terms of the Basic Loan Agreement between such Client Plan and the ING Borrower;

f. A Client Plan may terminate any securities lending agency agreement at any time without penalty on five (5) business days' notice;

g. By the close of business on or before the day the loaned securities are delivered to the ING Borrowers, IITC (or another custodian acting on behalf of the Client Plan) will receive from the ING Borrowers, by various means, collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit (issued by an entity other than the ING Borrowers) or other collateral permitted under PTCE 81–6;

h. The market value of the collateral which secures any loan of securities will at all times equal at least 102 percent (102%) of the market value of the loaned securities;

i. The Basic Loan Agreement will give the Client Plans a continuing security interest in, and a lien on, the collateral which secures any loan of securities;

j. IITC will monitor daily the level of the collateral which secures any loan of securities;

k. All the procedures regarding the securities lending activities will conform to the applicable provisions of PTCE 81–6 and PTCE 82–63 and will be in compliance with the applicable banking laws of the United Kingdom and the Netherlands, and the securities laws of the United States, the United Kingdom or Japan;

l. In the event the ING Borrower fails to return securities within a designated time, the Client Plan will have the right under the Basic Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price;

m. If the collateral is insufficient to satisfy the obligation of the ING Borrower to return the Client Plan's securities, ING Institutional will indemnify the Client Plan with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Client Plan plus applicable interest at a reasonable rate;

n. The Client Plan will receive the equivalent of all distributions made to the holders of the borrowed securities during the term of the loan;

o. Only those Client Plans which have assets with an aggregate market value of at least $50 million (except for certain Related Client Plans or Unrelated Client Plans whose assets are commingled in a group trust under the conditions discussed herein) will be permitted to lend securities to ING Borrowers;

p. With respect to any calendar quarter, at least 50 percent (50%) or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers, unless the Client Plan has entered into an Exclusive Borrowing Arrangement;

q. The terms of each loan of securities by the Client Plans to the ING Borrowers will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

r. Each Client Plan will receive monthly reports on the securities lending transactions, so that an independent Client Plan Fiduciary may monitor the securities lending transactions with the ING Borrower;

s. Before entering into the Basic Loan Agreement and before a Client Plan lends any securities to an ING Borrower, an independent Client Plan Fiduciary will receive sufficient information concerning the financial condition of the ING Borrower, including the audited

and unaudited financial statements of such ING Borrower;

t. The ING Borrower will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in such ING Borrower's financial condition, since the date of the most recently furnished financial statements;

u. The Client Plan will receive a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or will have the opportunity to derive compensation through the investment of cash collateral;

v. The loan rebate or similar fee paid by the Client Plan to the ING Borrower will not be greater than the fee such Client Plan would pay an unrelated party in an arm's length transaction;

w. Prior to the Client Plan's approval of the lending of its securities to any ING Borrowers, a copy of the final exemption, if granted, and a copy of this notice of pendency will be provided to the Client Plan;

x. ING will maintain or cause to be maintained within the United States for a period of six (6) years from the date of each transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable certain parties to determine whether the conditions of this exemption, if granted, have been met; and

y. All loans involving the Foreign Borrowers must satisfy certain supplemental requirements, as set forth in Section I(q), above, of this proposed exemption.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the proposed exemption are the trustees or fiduciaries of Client Plans which are interested in lending securities to the ING Borrowers. In this regard, the applicant represents that because the Client Plans which will be potentially interested in the transactions cannot be identified at the time the Notice of Proposed Exemption (the Notice) is published in the **Federal Register**, that the only practical means of notifying the trustees or fiduciaries of the Client Plans is by publication of the Notice in the **Federal Register**. Written comments and/or requests for a hearing must be received by the Department not later than thirty (30) days from the date of the publication of this proposed exemption in the **Federal Register**. Further, it is represented that prior to entering into a securities lending agreement with a Client Plan, the applicants will provide the appropriate fiduciaries of such plan, by first class mail, a copy of such Notice and a copy of the final exemption, if granted.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 219–8883. (This is not a toll-free number.)

Cranston Print Works Company General Employees' Retirement Plan (the Plan)

Located in Cranston, Rhode Island

[Application No. D–10909]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed purchase by the Plan of shares of common stock (the Stock) of Cranston Print Works Company (Cranston) from Cranston, the Plan's sponsor; (2) the Plan's holding of the Stock; (3) the acquisition and holding by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to Cranston at a price which is the greater of: (i) the fair market value of the Stock determined by an independent appraisal at the time of the exercise of the Put Option, or (ii) the price at which the Stock originally was sold by Cranston to the Plan; and (4) the possible future repurchase of the Stock by Cranston pursuant to the Put Option or a right of refusal, provided the following conditions are satisfied: (a) the purchase of the Stock by the Plan will be a one-time transaction for cash, and no commissions will be paid by the Plan with respect to the purchase; (b) the Stock will represent no more than 7.5% of the value of the assets of the Plan; (c) the Plan pays no more than the fair market value of the Stock on the date of the acquisition, as determined by an independent, qualified appraiser; (d) the transactions will be expressly approved on behalf of the Plan by a qualified, independent fiduciary based upon a determination that such acquisition is in the best interests of, and appropriate for, the Plan; (e) the Plan's independent fiduciary will monitor the holding of the Stock by the Plan and take whatever action is necessary to protect the Plan's rights, including, but not limited to, the exercising of the Put Option if the independent fiduciary, in its sole discretion, determines that such exercise is appropriate; (f) the purchase price per share for any shares of the Stock that are repurchased by Cranston pursuant to the right of first refusal will be the greater of: (i) the then current fair market value of the Stock, as determined by a bona fide third party purchase offer from an unrelated party, or (ii) the fair market value of the Stock, as determined by a contemporaneous independent appraisal; and (g) Cranston's obligation under the Put Option is secured by an escrow arrangement, as described herein, which is maintained by the Plan's independent fiduciary as long as the Plan continues to hold any shares of the Stock.

Summary of Facts and Representations

1. Cranston, the Plan sponsor, is involved in the textile, trucking and chemical industries. Equity interests in Cranston, including the Stock, are not publicly-traded. As of December 31, 1999, approximately 97.4% of the outstanding shares of the Stock were held by Cranston's Employee Stock Ownership Plan (the ESOP). The balance of the outstanding Stock is held by individual shareholders.

2. The Plan is a defined benefit pension plan. As of December 31, 1999, the Plan had assets with a total market value of approximately $112,000,000. The Plan had 1,346 participants as of that date and an accumulated benefit obligation of approximately $56,400,000. The total market value of the Plan's assets has increased since December 31, 1999; as of June 6, 2000, the total was over $115 million. As of the January 1, 2000 actuarial valuation, the Plan had projected benefit obligations of $56.4 million, making the Plan better than 200% funded with respect to the projected benefit obligations.

3. The Plan proposes to acquire approximately 650,000 shares of the Stock from Cranston's treasury.[17] The applicant represents that the Plan's investment in the Stock will be limited to no more than 7.5% of the Plan's assets, determined immediately after the sale. No assets of the Plan are currently invested in any loans to, property leased to, or securities issued by Cranston or any of its affiliates. No commissions will be charged with respect to the sale of the Stock to the Plan.

4. In connection with the Plan's acquisition of the Stock, the Plan will also obtain a Put Option from Cranston. The Put Option, which will be exercisable by the Plan's independent fiduciary (see reps. 6 and 9, below), will permit the Plan to require Cranston to purchase from the Plan all or any portion of the Stock sold to the Plan upon a determination by the Plan's independent fiduciary that the Stock is no longer a prudent investment for the Plan considering: (a) the diversification and liquidity of the Plan's assets; (b) the relative size of the investment in the Stock as a proportion of the Plan's overall assets; (c) the funding of the Plan (i.e., the ratio of the Plan's assets to its actuarially determined obligations); and (d) Cranston's prospects as a long-term investment. The purchase price to Cranston of such Stock sold pursuant to the Put Option will be the greater of: (i) the fair market value of the Stock at the time the Put Option is exercised, as determined by an independent appraisal, or (ii) the price at which the Stock was sold by Cranston to the Plan.

The Plan will also give Cranston a right of first refusal with respect to the Stock. Thus, if the Plan proposes to sell any or all of its shares of the Stock to a party other than Cranston, Cranston will have a right of first refusal to repurchase those shares from the Plan for cash. The purchase price per share for any shares of Stock that are repurchased pursuant to the right of first refusal will be the greater of the then fair market value for the Stock, as determined by a bona fide third party purchase offer from an unrelated party, or the fair market value of the Stock as determined by a contemporaneous independent appraisal.

5. The applicant represents that the acquisition of the Stock by the Plan will be a one-time transaction for cash, and the Plan will invest no more than 7.5% of its assets in the Stock. The applicant further represents that the Stock purchased by the Plan will not be a "qualifying employer security" as defined under section 407(d)(5) of the Act, because it will not be an employer security that satisfies the requirements of section 407(f)(1) of the Act. In this regard, the Stock purchased by the Plan will not satisfy section 407(f)(1)(B) of the Act because that section requires that at least 50% of the aggregate amount of the Stock which is issued and outstanding be held by persons independent of the issuer. Thus, since the ESOP holds approximately 97.4% of the Stock, the requirements of section 407(f)(1)(B) will not be met. Accordingly, the applicant states that the statutory exemption contained in section 408(e) of the Act (relating to the acquisition or sale by a plan of qualifying employer securities) will not apply to the proposed acquisition or sale of the Stock by the Plan, and the applicant has requested the relief proposed herein.

6. In connection with the Plan's proposed acquisition of the Stock, Cranston will deposit 12.5% of the sales proceeds as the initial balance in an escrow account (the Escrow) as an additional safeguard to support Cranston's obligations to the Plan under the Put Option. Thus, the Escrow will ensure that the proposed transaction is in the Plan's best interests and protective of the Plan. Cranston further represents that it will add deposits of $125,000 to the Escrow at the end of each calendar quarter thereafter until a total of 25% of the purchase price of the Stock has been deposited into the Escrow. The applicants represent that the Escrow will be held by the Plan's independent fiduciary (see rep. 7, below).

7. State Street Bank and Trust Company (the Bank) headquartered in Boston, Massachusetts, will act as the Plan's independent fiduciary for the purposes of approving the proposed transaction and monitoring the retention of the Stock by the Plan after the acquisition. Cranston has no corporate lending or banking relationships with the Bank and owns no interest in the Bank either directly or indirectly. The Bank is an industry leader in independent fiduciary transactions. Among other things, the Bank manages over $75 billion in company stock as assets in retirement and deferred compensation plans. The Bank has acted as an independent fiduciary in a wide range of transactions, including leveraged employee stock ownership plan acquisitions, defined benefit plan investments, mergers and acquisitions, and initial public offerings.

8. In addition, the Bank has retained Willamette Management Associates (Willamette), located in Chicago, Illinois, to act as its financial advisor in connection with its decision to purchase the Stock. Willamette, which has been in operation for over 31 years, has a national practice in providing opinions regarding fairness and securities valuation. Willamette has made a preliminary determination that, as of May 21, 2000, the Stock had a fair market value of $13.29 per share. Willamette developed this value for the Stock utilizing the Capitalization of Earnings Method and the Guideline Publicly Traded Method. Willamette will prepare an appraisal as of the date of sale. In determining fair market value on the acquisition date, Willamette will consider the income and cash flow capacities of Cranston. Willamette will review prior analyses of the Stock which have been conducted for the ESOP, and discuss with Cranston's management all relevant changes to Cranston's financial situation since the most recent prior analysis. Willamette will review financial data bearing upon recent and proposed operations, and will consider the most current economic environment in which Cranston operates its business. Neither Willamette nor any of its principals own any interest in Cranston, and Cranston owns no interest in Willamette.

9. The Bank represents that it will independently review Willamette's valuation of the Stock, as well as the annual valuations performed by Management Planning, Inc. for the ESOP for the years 1997, 1998 and 1999. In addition, the Bank will independently review Cranston's audited financial statements for the fiscal years ending June 30, 1997, 1998 and 1999, and unaudited financial statements for the nine month period ending March 31, 2000. The Bank will also review the current audited and unaudited financial statements that are available as of the date of the sale of the Stock to the Plan. The Bank will interview officers at Cranston and will consider the purchase of the Stock in the context of the investment goals of the Plan.

Prior to purchasing the Stock, the Bank, as a result of this review and relying on the opinion of Willamette, will make specific findings that: (a) it is appropriate for the Plan to purchase the Stock from Cranston; (b) such purchase is in the Plan's best interests; and (c) the Plan is paying no more than adequate consideration (i.e., fair market value) for the Stock. The Bank represents that it has made a preliminary determination, based upon the advice of Willamette, that the transaction is prudent for the Plan and in the Plan's best interests, and that the proposed consideration to be paid for the Stock by the Plan would not be greater than its current fair market value.

10. The Bank will have the authority and the responsibility, as the Plan's independent fiduciary, to monitor the Plan's continued holding of the Stock. The Bank will make all decisions for the Plan regarding the continued holding or disposition of the Stock.[18] The Bank

[17] As of May 21, 2000, the price per share for the Stock was $13.29. Therefore, the proposed transaction will involve approximately $8.6 million in cash.

[18] The Department notes that any decision made by the Bank as the Plan's independent fiduciary with respect to the exercise of the Plan's rights under the Put Option shall be fully subject to the fiduciary responsibility provisions of the Act. However, by proposing this exemption, the Department is not expressing an opinion regarding

Continued

will direct the Plan's trustee with respect to the exercise of voting and other privileges applicable to shareholders of Cranston, and the Plan's rights pursuant to the Put Option as it deems appropriate.

11. In summary, the applicants represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) the Stock will represent no more than 7.5% of the Plan's assets at the time of the acquisition; (b) the purchase price for the Stock will be determined by an evaluation prepared by Willamette, a qualified independent expert in the valuation of such securities; (c) the Plan has received an additional safeguard in the form of an irrevocable Put Option which will enable the Plan, upon the independent fiduciary's decision, to sell the Stock back to Cranston at a price which is equal to the greater of the Stock's then current fair market value, as determined by independent appraisal, or the price at which the Stock was sold by Cranston to the Plan; (d) the Bank, an independent fiduciary for the Plan, will determine that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (e) the Bank will monitor the holding of the Stock and determine, among other things, when to exercise the Put Option; (f) any sale of the Stock by the Plan to Cranston pursuant to Cranston's right of first refusal will be triggered by a proposed sale of the Stock by the Plan to an unrelated party pursuant to a bona fide purchase offer, and any shares of the Stock that are repurchased by Cranston, under its right of first refusal, will be for cash at a price which is equal to the greater of the then current fair market value of the Stock, as determined by the bona fide third party purchase offer, or the fair market value of the Stock as determined by a contemporaneous independent appraisal; and (g) Cranston will make an initial deposit of 12.5% of the purchase price for the Stock into the Escrow (which will be held by the Bank), and will make additional deposits of $125,000 at the close of each calendar quarter thereafter until a total of 25% of the purchase price for the Stock has been deposited into the Escrow to support Cranston's obligations to the Plan under the Put Option.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of December, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–31017 Filed 12–5–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 2000–63; [Exemption Application No. D–10651, et al.] Grant of Individual Exemptions; Merrill Lynch & Co., Inc. (ML&Co.)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

whether any actions taken by the Bank would be consistent with its fiduciary obligations under Part 4 of Title I of the Act. In this regard, section 404(a) requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Merrill Lynch & Co., Inc. (ML&Co.) Located in New York, NY

[Prohibited Transaction Exemption 2000–63 Exemption Application No. D–10651]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the purchase or sale by employee benefit plans (the Plans), other than Plans sponsored by ML&Co. or its affiliates (collectively, the Applicants), of Market Index Target-Term Securities (the MITTS), which are debt securities issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the MITTS.

This exemption is subject to the general conditions that are set forth below in Section II.

Section II. General Conditions

(a) The MITTS are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the MITTS is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to ML&Co. or its affiliates in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75–1 (40 FR 50845, October 31, 1975).[1]

(e) ML&Co. agrees to notify Plan investors in the prospectus (the Prospectus) for the MITTS that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the MITTS.

(f) The MITTS do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the MITTS, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such MITTS, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the MITTS will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the MITTS is based;

(3) A numerical example, capable of being understood by the average investor, which explains the calculation of the return on the MITTS at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the MITTS are issued;

(5) The date on which the MITTS will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the MITTS is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the MITTS may be redeemed;

(12) The exchange or market where the MITTS are traded or maintained; and

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the MITTS are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event a MITTS security is delisted from either the American Stock Exchange (the AMEX), the New York Stock Exchange or any other nationally-recognized securities exchange, Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) will apply for trading through the National Association of Securities Dealers Automated Quotations System, which requires that there be independent market-makers establishing a market for such securities in addition to MLPF&S. If there are no independent market-makers, the exemption will no longer be considered effective with respect to that MITTS security.

(j) The MITTS are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the MITTS is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a "market disruption event" that is described in the Prospectus for the MITTS.

(l) The MITTS are based on an Index that is—

(1) Created and maintained [2] by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants or an affiliate, but maintained by an entity that is unrelated to the Applicants, and

(i) Consists either of standardized and generally-accepted Indexes or an Index comprised of at least 10 publicly-traded securities that are not issued by the Applicants or their affiliates, are designated in advance and listed in the Prospectus for the MITTS (under either circumstance, neither the Applicants nor their affiliates may unilaterally modify the composition of the Index, including the methodology comprising the rate of return),

(ii) Meets the requirements for an Index in Rule 19b–4 under the Securities Exchange Act of 1934, and

[1] The Department is providing no opinion herein as to whether any principal transactions involving debt securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[2] For purposes of this exemption, the term "maintain" means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants or their affiliates.

(iii) The index value for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC or Bloomberg L.P., or through a national securities exchange, such as the AMEX.

(m) The Applicants do not trade in any way intended to affect the value of the MITTS through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Applicants shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any Plan Participant or beneficiary of any participating Plan, or any duly authorized representative of such Plan Participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of paragraph (o)(1) are authorized to examine the trade secrets of the Applicants or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published on October 19, 2000 at 65 FR 62756.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption. The comment, which was submitted on behalf of the Applicants, requests several clarifications to the conditional language of the proposal. First, in Section II(i) of the General Conditions, in the first sentence thereof, the Applicants suggest that the phrase "In the event a MITTS security is delisted * * *" be substituted for the phrase "In the event the MITTS are delisted * * *" Second, in the last sentence of the same subparagraph, at the end thereof, the Applicants request the addition of the following new phrase "with respect to that MITTS security." Third, in Section II(l) of the General Conditions, the Applicants suggest that the word "and" be added at the end of subparagraph (l)(2), that the comma prior to the parenthetical in subparagraph (l)(2)(i) be deleted, that a lower case "u" be substituted for the upper case "U" in the word "under" in the parenthetical and that the period at the end of (but within) the parenthetical be deleted.

The Department concurs with these clarifications to the proposed exemption and has made the changes requested by the Applicants in the operative language of the final exemption. The Department has also noted these changes in the Summary of Facts and Representations of the proposed exemption.

For further information regarding the Applicants' comment letter and other matters discussed therein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10651) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the Applicants' comment, the Department has decided to grant the exemption subject to the modifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The David Mandelbaum IRA Rollover Account (the IRA) Located in West Orange, New Jersey

[Prohibited Transaction Exemption 2000–64; Exemption Application No. D–10765]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the cash sale by the IRA * ensp:* ensp:* to the David Mandelbaum Family Trust of a 50 percent (50%) undivided interest in two (2) parcels of improved real property subject to a long term lease (the Property); provided the following conditions are satisfied:

(1) The sale is a one time transaction for cash;

(2) The terms and conditions of the sale are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties;

(3) The IRA receives the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale;

(4) The fair market value of the IRA's undivided interest in the Property is determined by an independent, qualified appraiser, as of the date of the sale; and

(5) The IRA does not pay any commissions, costs, finder's fees, or other expenses in connection with such sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on October 11, 2000, at 65 FR 60464.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

I.B.E.W. LU 567 Electrical Joint Apprenticeship and Training Trust Fund (the Training Plan) and Money Purchase Retirement Plan of Local 567, I.B.E.W (the M/P Plan) (Collectively, the Plans) Located in Falmouth, Maine

[Prohibited Transaction Exemption 2000–64; Exemption Application Nos. L–10906 and D–10907]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application

* * * Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, the IRA is subject to Title II of the Act, pursuant to section 4975 of the Code.

of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective August 31, 2000, to the leases (the Leases) of certain office space and supplemental facilities (the Leased Space) to the Plans by Local 567 I.B.E.W. Building Corporation (the Building Corporation), an entity which is wholly owned by Local 567 of the International Brotherhood of Electrical Workers (the Union), a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(1) The terms of the Leases are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party;

(2) A qualified, independent appraiser determines annually the fair market rental value of the Leased Space;

(3) The Lease payments are adjusted annually by an independent fiduciary to assure that such Lease payments are not greater than the fair market rental of the Leased Space. The Lease payments are reduced, if the fair market rental value, as determined by the independent fiduciary, decreases;

(4) An independent fiduciary determines that the transactions are appropriate for the Plans and in the best interest of the Plans' participants and beneficiaries;

(5) The independent fiduciary monitors the terms of the transactions and conditions of this exemption at all times, and takes whatever actions are necessary and proper to enforce the Plans' rights under the Leases and protect the participants and beneficiaries of the Plans. (Such independent fiduciary duties also include, but are not limited to, negotiating any required amendments to the Leases on behalf of the Plans to make certain the terms of the Leases are commercially reasonable.); and

(6) The annual fair market rental amount for the Leased Space will not exceed 5% of the Training Plan's total assets, and 1% of the M/P Plan's total assets.

EFFECTIVE DATE: This exemption is effective as of August 31, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on September 22, 2000 at 65 FR 57397.

Written Comments

The Department received two written comments (the Comments) with respect to the Notice and no requests for a hearing. The Comments were submitted by the same commenter (the Commenter), who is a party in interest with respect to the Plans. Set forth below is a discussion of the major points made by the Commenter, and the applicant's response to the issues raised thereby.

Discussion of the Comments

The Commenter raised certain issues relating to the operation of the Union and the Plans. In particular, the Commenter made various allegations regarding Milton McBreairty (Mr. McBreairty), who is the business manager for the Union and a trustee of the Plans (Trustee). The Commenter believed that Mr. McBreairty is not carrying out his duties as business manager for the Union in an appropriate manner and that his duties as business manager will conflict with his duties as a Plan Trustee. Among other things, the Commenter suggested that there should be a complete audit and examination of the business manager's spending of the Union's monies. The Commenter also questioned whether Maineland Appraisal Consultants of Portland, Maine, the Plans' independent fiduciary for the Leases (the Independent Fiduciary), and Frank R. Montello, the president of the Independent Fiduciary, will be able to effectively represent the interests of the Plans or can be considered independent of the business manager. In this regard, the Commenter asserted that the Independent Fiduciary's fees are being paid by the business manager from the Union's funds. In addition, the Commenter stated that the M/P Plan should only be permitted to lease a maximum of 800 square feet in Building I, instead of the 1200 square feet mentioned in the Notice. Finally, the Commenter stated that the annual fair market rental amount for the Leased Space paid by the M/P Plan should not represent more than 1% of the M/P Plan's total assets, rather than the 5% required by condition 6 of the Notice.

Discussion of the Applicant's Response to the Comments

1. With respect to the Commenter's assertion that Mr. McBreairty's position as business manager of the Union is inconsistent with his duties as a Plan Trustee, the applicant stated that the IBEW Constitution requires that the Union's business manager serve as a Union Trustee for the Plans. Further, the applicant noted that the safeguards set forth in the Notice are intended to protect the Plans' participants from conflicts of interest relating to all three Union Trustees for the Plans (not only Mr. McBreairty). The governing documents of the Plans require at least one Union Trustee's affirmative vote for any action. The applicant represents that because all of the Union Trustees may be construed as having a conflict of interest in approving any Plan leases with the Building Corporation, the Plans have engaged the Independent Fiduciary to protect the interests of the Plans and their participants and beneficiaries.

2. The applicant also addressed the Commenter's concern that Mr. Montello, who is the president of the Independent Fiduciary, is biased because the business manager for the Union pays him with the Union members' money. The applicant stated that Mr. Montello is not compensated by the business manager with Union funds. Rather, all of the Independent Fiduciary's fees, just like other administrative expenses of the Plans, are paid by the Plans' Trustees out of the Plans' assets and are accounted for in the Plans' administrative budgets.

The applicant represented that Mr. McBreairty is paid by the Union for his services to the Union as business manager.

Mr. McBreairty does not receive any compensation from the Plans apart from reimbursement of his expenses as the Plans' Trustee while doing business for the Plans, as reported to the Department on the Plans' annual Form 5500 filings. In addition, the applicant noted that each year the Plans engage certified public accountants to audit their finances, and such audits have not revealed any misuse of the Plans' funds. The applicant represented further that the M/P Plan and the Union have been subject to random audits by the Internal Revenue Service and the Department, and none of these audits have revealed any improper payments to Mr. McBreairty or any other Plan Trustee.

3. With respect to the Commenter's concerns about the amount of space leased to the M/P Plan, the applicant stated that the office space needs of the M/P Plan are dictated by its need to house all of its staff, equipment and records. In this regard, the applicant maintained that the anticipated expansion of its portion of the Leased Space up to 1200 square feet is reasonable and appropriate for its operations which involve overseeing 500 current Plan participant accounts.

The applicant also addressed the Commenter's request that the annual fair market rental for the Leased Space rented to the M/P Plan be required to represent less than 1% of the M/P Plan's assets. The applicant stated that the 5% limitation with respect to the M/P Plan's assets cited in the Notice is intended to be a maximum amount. Furthermore,

the applicant noted that the M/P Plan's initial annual lease payments for the Leased Space in Building I represent only approximately 1/100th of 1% of the current market value of the M/P Plan's assets.

In consideration of this Comment, the Department has modified condition 6 of the final exemption such that it reads: "The annual fair market rental amount for the Leased Space will not exceed 5% of the Training Plan's total assets and 1% of the M/P Plan's total assets."

After giving full consideration to the entire record, including all of the Comments submitted to the Department and the responses made by the applicant, the Department has determined to grant the exemption, subject to the modification described above.

The Comments have been included as part of the public record for the exemption application. Interested persons should be aware that the complete exemption application file is available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

3. The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 1st day of December, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–31018 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–29–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, December 14, 2000, and Friday, December 15, 2000, at the Ronald Reagan Buildings, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on December 14, and at 9 a.m. on December 15.

Topics for discussion include: payment update for hospital inpatient services; analysis of Medicare + Choice; issues in post-acute care; the March 2001 Report; updating payments for physician services and ambulatory care facilities; end-stage renal disease payment policies in traditional Medicare; hospital margins and subsidies analysis for rural hospitals; MedPAC site visits to rural communities, and the disproportionate share payment adjustment for inpatient hospitals.

Agendas will be mailed on December 6, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW., Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 00–30959 Filed 12–5–00; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 5, 2001.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411. It is also available on the following website: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0004.

Form Number: NCUA 5300.

Type of Review: Revision to the currently approved collection.

Title: Semi-Annual and Quarterly Call Report.

Description: The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Respondents: All Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 11,000.

Estimated Burden Hours Per Response: 9 hours.

Frequency of Response: Quarterly and Semi-Annually.

Estimated Total Annual Burden Hours: 225,000.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 30, 2000.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–30993 Filed 12–5–00; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.09% (.0009) for tier 2 for calendar year 2000. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission.

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the rate being finalized today are effective for calendar year 2000.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 00–31084 Filed 12–5–00; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME:

December 14, 2000: 11:30 a.m.–11:45 a.m.; Closed Session

December 14, 2000: 12:30 p.m.–1 p.m.; Closed Session

December 14, 2000: 1 p.m.–5 p.m.; Open Session

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: Part of this meeting will be closed to the public; Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Thursday, December 14, 2000

Closed Session (11:30 a.m.–11:45 a.m.)

—Closed Session Minutes, October 2000
—Personnel
—NSB nominees
—NSB Public Service Award

Closed Session (12:30 p.m.–1:00 p.m.)

—Awards and Agreements
—FY 2002 Budget

Open Session (1:00 p.m.–5:00 p.m.)

—Open Session Minutes, October 2000
—Closed Session Items for January 31, February 1, and March 14, 15, 2001
—Chairman's Report
—Director's Report
—Report: NSF Public Affairs Advisory Committee
—COSEPUP Postdoc Study: Bruce Alberts
—NSF & Social Sciences: N. Bradburn
—NSB Report: Allocation of Scientific Resources
—NSB Report: NSF International Activities
—Committee Reports
—Other Business

Marta Cehelsky,

Executive Officer.

[FR Doc. 00–31143 Filed 12–4–00; 10:27 am]

BILLING CODE 7555–01–M.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Energy Northwest; WNP–2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to Energy Northwest (the licensee), for operation of WNP–2 located in Benton County, Washington.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the name of the facility from WNP–2 to Columbia Generating Station in all applicable locations of the Facility Operating License including the licensee's technical specifications (TS). In addition, the proposed action would make editorial changes to TS Figure 4.1–1, "Site Area Boundary" modifying or deleting text associated with references to WNP–2. TS Figure 4.1–1 also identifies a building as both the "Plant Support Facility" and the "Emergency Operations Facility." The licensee has proposed a change to delete the name "Plant Support Facility" from the figure.

The proposed action is in accordance with the licensee's application for amendment dated October 12, 2000.

The Need for the Proposed Action

The proposed action is needed to change the operating license to accurately reflect the name change of the facility from WNP–2 to Columbia Generating Station and to identify the building in TS Figure 4.1–1 with only the name "Emergency Operations Facility."

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the name change is administrative in nature and will not affect the operation of WNP–2.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regards to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the

proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for WNP–2.

Agencies and Persons Consulted

In accordance with its stated policy, on November 1, 2000, the staff consulted with the Washington State official, Mr. Richard Crowley of the Division of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 12, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 30th day of November 2000.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31099 Filed 12–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of December 4, 11, 18, 25, 2000, January 1, and 8, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Weeks of December 4

Monday, December 4, 2000

1:55 p.m.
Affirmation Session (Public Meeting)
a: Final Rule Amending the Fitness-for-Duty Rule (Tentative)

2:00 p.m.
Briefing on License Renewal Generic Aging Lessons Learned (GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (Contact: Chris Grimes, 301–415–1183)
This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 11—Tentative

There are no meetings scheduled for the Week of December 11.

Week of December 18—Tentative

Wednesday, December 20, 2000

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on the Status on the Fuel Cycle Facility Oversight Program Revision (Public Meeting) (Contact: Walt Schwink, 301–415–7253)
This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1, 2001—Tentative

There are no meetings scheduled for the Week of January 1, 2001.

Week of January 8, 2001—Tentative

Tuesday, January 9, 2001

9:30 a.m.
Briefing on EEO Program (Public Meeting)

Wednesday, January 10, 2001

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on Status on Nuclear Waste Safety (Public Meeting)
This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

The Schedule for Commission meeting is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on November 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of POWER AUTHORITY OF THE STATE OF NEW YORK ENTERGY COMPANIES, Transfer of licenses for Indian Point 3 and FitzPatrick nuclear plants, Petitions to Intervene" be held on November 27, and on less than one week's notice to the notice.

By a vote of 5–0 on November 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of FLORIDA POWER & LIGHT CO., License Renewal Application for Turkey Point Units 3 and 4; Licensing Board Referral and Scheduling Order" be held on November 27, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 1, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–31154 Filed 12–4–00; 12:19 pm]

BILLING CODE 7590–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Performance Review Board; Membership: Senior Executive Service

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Ledia Esther Bernal, Director, Office of Financial and Administrative Services, Occupational Safety and Health Review Commission, 1120 20th Street, NW., 9th Floor, NW., Washington, DC 20036, (202) 606–5390.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s).

Members of the Performance Review Board are:

1. Elizabeth M. Thornton, Director, Office of Field Programs, Equal Employment Opportunity Commission.
2. Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission.
3. Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission.
4. Patricia A. Randle, Executive Director, Occupational Safety and Health Review Commission.

Dated: November 30, 2000.

Thomasina V. Rogers,

Chairman.

[FR Doc. 00–30992 Filed 12–5–00; 8:45 am]

BILLING CODE 7600–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24776; File No. 812–12300]

John Hancock Variable Series Trust I, et al.; Notice of Application

November 30, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application under Section 17(b) of the Investment Company Act of 1940 ("1940 Act") for an exemption from Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order to permit one series of John Hancock Variable Series Trust I (the "Trust") to acquire all of the assets and liabilities of another series of the Trust. Because of certain affiliations, applicants may not be able to rely on rule 17a–8 under the 1940 Act.

APPLICANTS: John Hancock Variable Series Trust I ("Trust") and John Hancock Life Insurance Company ("John Hancock").

FILING DATE: The application was filed on October 13, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on December 21, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Arnold R. Bergman, Esquire, P.O. Box 111, John Hancock Place, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the 1940 Act as an open-end diversified management investment company and is currently comprised of 33 series ("Funds").

2. Two of these Funds are party to the transaction for which Applicants seek exemptive relief: the International Opportunities II Fund (the "Acquired Fund") and the International Opportunities Fund (the "Acquiring Fund").

3. John Hancock serves as investment adviser to both the Acquired Fund and the Acquiring Fund. John Hancock is a wholly-owned subsidiary of John Hancock Financial Services, Inc., a publicly-owned diversified financial services company whose shares are traded on the New York Stock Exchange.

4. T. Rowe Price International, Inc. ("T. Rowe Price") serves as sub-adviser to both the Acquired Fund and the Acquiring Fund. T. Rowe Price uses substantially the same personnel and analytical techniques in managing each fund. Applicants assert that the reorganization will not change the Acquiring Fund's Investment strategies or the analytical techniques or personnel that T. Rowe Price uses to implement them. Prior to June 13, 2000, the Acquired Fund had been called the Global Equity Fund reflecting a "global" investment strategy and was sub-advised by Scudder Kemper investments, Inc. The current sub-investment management with T. Rowe Price was approved by a vote of the Acquired Fund's shareholders (based on instructions received from participating contract owners).

5. The shares of the Acquired Fund and the Acquiring Fund are currently sold exclusively to John Hancock and certain insurance companies affiliated with John Hancock (collectively, the "Insurance Companies") for allocation to separate accounts (the "Separate Accounts") established to fund the benefits under variable annuity contracts and variable life insurance policies (collectively, the "Contracts") issued by these companies. The Separate Accounts are registered as investment companies of the unit investment trust type under the 1940 Act. As a result of investing "seed money" in the Acquired Fund, John Hancock beneficially owner more than 5% of the Acquired Fund's outstanding shares.

6. Owners of the Contracts ("Owners") may choose to allocate their Contract premiums and account values among various investment options, including the Acquired Fund and/or the Acquiring Fund. As a result, Owners may participate, indirectly, in the performance of one or both of the funds.

7. Applicants assert that except for the fact that the Acquiring Fund is significantly larger than the Acquired Fund, the two funds are identical (including with respect to their investment programs, the identity of their investment and sub-investment adviser, their advisory fee schedules, and the types of other costs and expenses that they bear).

8. On September 27, 2000, the Trust's board, including all of the trustees who are not "interested persons," as defined in section 2(a)(19) of the 1940 Act ("Independent Trustees"), unanimously approved a reorganization of the Acquired Fund into the Acquiring Fund (the "Reorganization Agreement" or "Plan"). The reorganization is expected to occur on December 22, 2000 (the "Closing Date"). Under the Plan, the Acquiring Fund will acquire substantially all of the assets, subject to the liabilities, of the Acquired Fund in consideration of the issuance by the Acquiring Fund of shares having an aggregate net asset value ("NAV") equal to the aggregate NAV of the Acquired Fund's shares, determined as of 4:00 p.m. Eastern Time (the "Effective Time") on the Closing Date. The NAV of each Fund's shares for these purposes

will be computed in the manner set forth in the Trust's Form N–1A registration statement as currently in effect with the Commission. The aforementioned Acquiring Fund shares will be issued pro-rata to the Acquired Fund's shareholders of record as of the Effective Time.

9. The Trust's Board, including all of the Independent Trustees, determined that participation in the reorganization is in the best interests of the shareholders and Contract Owners participating in each of the Acquired and Acquiring Funds and that the interests of existing shareholders and Owners will not be diluted as a result of the reorganization. In approving the reorganization, the following factors, among others, were relevant to the Board: (a) That, because of breakpoints, combining the Acquired Fund and the Acquiring Fund will result in a lower effective rate of advisory fees and other expenses for the Acquired Fund and, to a lesser extent, for the Acquiring Fund; (b) that the funds' investment programs are essentially identical, which means that there will be no need to liquidate and reinvest any portfolio securities in connection with the reorganization; (c) the fact that John Hancock will bear all other direct or indirect costs and expenses associated with the reorganization; (d) the tax-free nature of the reorganization; and (e) that the reorganization presents no foreseeable disadvantages to either fund or to any Owner.

10. The Plan is subject to a number of conditions precedent, including that the reorganization will have been approved by the vote of shareholders of the Acquired Fund. In connection with that vote, the Insurance Companies have solicited instructions from Owners as to how to vote the Acquired Fund's outstanding shares. This solicitation will be made pursuant to a Form N–14 registration statement that the Trust filed with the Commission on October 10, 2000. Applicants assert that shares of the Acquired Fund for which no instructions are received in time to be voted will be represented by the Insurance Companies at the meeting and voted in the same proportion as shares for which instructions have been received in time to be voted. Applicants further assert that Acquired Fund shares not attributable to policies or contracts represented by Insurance Companies, including shares held by John Hancock reflecting "seed money," will be voted in the same proportion as shares for which instructions have been received in time to be voted.

11. The Plan may be terminated at any time by mutual agreement between the Trust and John Hancock. Applicants have agreed to the relief they are requesting being conditioned on their obtaining prior approval from the Commission of any material change in the Plan.

Applicants' Legal Analysis

1. Section 17(a) of the 1940 Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the 1940 Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% of more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquired Fund and the Acquiring Fund may be deemed affiliated persons and, thus, absent an exemption, the reorganization may be prohibited by Section 17(a).

2. Rule 17a–8 under the 1940 Act exempts from the prohibitions of Section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rules are satisfied.

3. Applicants believe that rule 17a–8 may be unavailable in connection with the reorganization because the funds may be deemed to be affiliated for reasons other than those set forth in the rule. In particular, John Hancock may be an affiliated person of the Acquired Fund, because Acquired Fund shares held by John Hancock and reflecting "seed money" that John Hancock has maintained in the Acquired Fund constitute more than 5% of the Acquired Fund's outstanding shares.

4. Section 17(b) of the 1940 Act provides that the Commission may exempt a transaction from the provisions of Section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the 1940 Act.

5. Applicants request an order under Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit applicants to consummate the reorganization. Applicants submit that the reorganization satisfies the standards of Section 17(b) of the 1940 Act. Applicants assert that the proposed reorganization will not in any way affect the price or value of outstanding shares of the Acquired Fund or the Acquiring Fund, nor will it in any way affect the Contract values or interests of Owners. Applicants assert that John Hancock will pay all costs and expenses directly or indirectly associated with the reorganization. Applicants further assert that the investment programs and fundamental investment policies of the Acquired Fund and the Acquiring Fund are identical in all material respects. Finally, Applicants note that investors in the Acquired Fund will have the opportunity to approve or disapprove the reorganization.

6. Applicants believe that such relief is warranted because of (a) the advantages of the reorganization to the Acquired Fund and, to a lesser extent, the Acquiring Fund and, by extension, to the shareholders of and Contract Owners participating in those Funds, coupled with (b) the absence of any foreseeable disadvantages that the reorganization might have for any of them.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31023 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24777]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 30, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Mackenzie Solutions [File No. 811–9107]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 5, 2000, applicant made its final liquidating distribution to its shareholders based on net asset value. Expenses of $34,420 incurred in connection with the liquidation were paid by Ivy Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on November 7, 2000.

Applicant's Address: Via Mizner Financial Plaza, 700 South Federal Highway—Suite 300, Boca Raton, Florida 33432.

Anchor Gold and Currency Trust [File No. 811–4640]; Anchor Resource and Commodity Trust [File No. 811–8706]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 30, 2000, each applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $86,026 and $30,038, respectively, were incurred in connection with the liquidations and were paid by the applicants.

Filing Date: The applications were filed on November 6, 2000.

Applicants' Address: 579 Pleasant Street, Suite 4, Paxton, Massachusetts 01612.

Insured Tax Free Income Multi Series I (and Subsequent Multi-Series of the Trust) [File No. 811–4469]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 16, 1999, applicant made its final liquidating distribution to unit holders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on October 23, 2000.

Applicant's Address: c/o Van Kampen Funds Inc., Administrator, 1 Parkview Plaza, PO Box 5555, Oakbrook Terrace, Illinois 60181–5555.

A.G. Series Trust [File No. 811–8912]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 23, 1999, applicant distributed all of its shares at net asset value to its shareholders in connection with applicant's liquidation. Total expenses of $57,130.00 were incurred in connection with the liquidation and were paid by American General Annuity Insurance Company.

Filing Dates: The application was filed on August 23, 2000 and amended on November 15, 2000.

Applicant's Address: 2929 Allen Parkway, Houston, Texas 77019.

Norwest Select Funds [File No. 811–8202]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 5, 1999, the shareholders of the applicant voted to approve the merger of applicant with another investment company. The name of the funds surviving the merger is Wells Fargo Variable Trust, and its Investment Company Act file number is 811–9255. Expenses of $109,099 were incurred in connection with the merger and were paid by Wells Fargo Bank, N.A., the administrator of Wells Fargo Variable Trust.

Filing Date: The application was filed on June 19, 2000, and amended on July 28, 2000 and October 5, 2000.

Applicant's Address: Two Portland Square, Portland, ME 04101.

GT Global Variable Investment Series [File 811–6672]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 15, 1999, GT Global Variable America Fund, a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. On October 18, 1999, GT Global Money Market Fund, a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. On October 22, 1999, GT Global Variable International Fund, GT Global Variable Europe Fund, and GT Global Variable New Pacific Fund, each a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. The distributions were based on net asset value. Legal expenses of $10,117 incurred in connection with the reorganization were paid by applicant's investment adviser, AIM Advisors, Inc. Accounting and other expenses of $5,387 were paid by applicant.

Filing Date: The application was filed on September 26, 2000.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

GT Global Variable Investment Trust [File 811–7164]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 15, 1999, GT Variable Growth & Income Fund, GT Global Variable Telecommunications Fund, GT Global Variable Strategic Income Fund, GT Global Variable Global Government Income Fund, and GT Global Variable U.S. Government Income Fund, each a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. On October 22, 1999, GT Global Variable Natural Resources Fund, GT Global Variable Infrastructure Fund, GT Global Variable Latin America Fund, and GT Global Variable Emerging Markets Fund, each a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. The distributions were based on net asset value. Legal expenses of $18,368 incurred in connection with the reorganization were paid by applicant's investment adviser, AIM Advisors, Inc. Accounting and other expenses of $7,903 were paid by applicant.

Filing Date: The application was filed on September 26, 2000.

Applicant's Address; 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31022 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43627; File No. SR–NASD–99–60]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trading in Hot Equity Offerings

November 28, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 2 to the proposed rule change[3] as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice of Amendment No. 2 to solicit comments on the amended proposed rule change from interested persons.

On October 15, 1999, NASD Regulation submitted the proposed rule change to the Commission. On December 21, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[4] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 18, 2000.[5] The Commission received twenty-four comment letters on the proposed rule change.[6] NASD Regulation is responding to the comment letters with Amendment No. 2.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to establish NASD Rule 2790, Restrictions on the Purchase and Sale of Initial Equity Public Offerings, to replace the Free-Riding and Withholding Interpretation, IM–2110–1. Below is the amended text of the proposed rule change as proposed in Amendment No. 2. Additions are italicized and deletions are bracketed. (Note: Section (a) "Definitions" has been renumbered as Section (i). The comparison of changes to the defintions is located under Section (i).

Rule 2790. [Trading in Hot Equity Offerings]

[(b)] *Restrictions on the Purchase and Sale of Initial Equity Public Offerings*

(a) General Prohibitions

(1) A member or a person associated with a member may not sell, or cause to [sell,] *be sold,* a [hot] *new* issue [in a public offering] to any account in which a restricted person [or a member of the restricted person's immediate family] has a beneficial interest, except as *otherwise* permitted herein [or through an exemption pursuant to the Rule 9600 Series].

(2) A member or a person associated with a member may not purchase a [hot issue in a public offering, except as permitted herein or through an exemption pursuant to the Rule 9600 Series.] *new issue in any account in which such member or person associate with a member has a beneficial interest, except as otherwise permitted herein.*

(3) A member may not continue to hold [hot issues acquired in a public offering except as permitted herein or through an exemption pursuant to the Rule 9600 Series.] *new issues acquired by the member as an underwriter, selling group member, or otherwise, except as otherwise permitted herein.*

[(c) Canceling Trades

A member or a person associated with a member does not violate this rule if it cancels a sale of a hot issue made to the account of a restricted person or a member of the person's immediate family prior to the end of the first business day following the date that market trading commences (*i.e.,* T+1) and reallocates such hot issue at the public offering price to a non-restricted person.

(d)]*(b)* Preconditions for Sale

Before selling a [hot] *new* issue to any account, a member must *in good faith* have obtained within the [previous] twelve months [documentary evidence] *prior to such sale, a representation* from the account holder(s), or a person authorized to represent the beneficial owners of the account [or the ultimate purchasers if the account is a conduit account, demonstrating that no restricted person or ultimate purchasere in the case of a conduit account, has a beneficial interest in the account, except as permitted under the rule. Members], *that the account is eligible to purchase new issues in compliance with this rule. A member may not rely upon any representation that it believes, or has reason to believe, is inaccurate. A member* shall maintain a copy of all records and information [used to determine that] *relating to whether* an account [does not contain a restricted person] *is eligible to purchase new issues* in its files for at least three years following the member's last sale of a [hot] *new* issue to that account.

[(e) General Exemptions] *(c) General Exemptions*

[A member or a person associated with a member may sell hot issues to:] *The general prohibitions in paragraph (a) of this rule shall not apply to sales to and purchases by:*

[(1) A registered investment company] *(1) An investment company registered* under the Investment Company Act of 1940[.];

[(2) A collective investment account (including a joint back office broker/dealer or a collective investment account with a joint back office broker/dealer subsidiary),] *(2) A common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Act, provided that:*

(A) the fund has investments from 1,000 or more trust accounts; and

(B) the fund does not limit beneficial interests in the fund principally to trust accounts of restricted persons;

(3) An insurance company general, separate or investment account, provided that:

(A) the account has investments from 1,000 or more policyholders; and

(B) the insurance company does not limit beneficial interests in the account principally to restricted persons;

(4) An account that is beneifically owned in part by restricted persons, provided that such restricted persons in *the* aggregate own less than 5% of such account, *and that:*[.]

[(3) A publicly traded corporation (other than an affiliate of a broker/dealer) listed on an exchange or The Nasdaq Stock Market, in which no person with a 10% or more ownership interest in a restricted person.] *(A) each such restricted person does not manage or otherwise direct investments in the account; and*

[(4) A foreign] *(B) on a pro rata basis, each such restricted person who is a natural person receives less than 100 shares of any new issue;*

(5) A publicly traded entity (other than a broker/dealer) that is listed on a national securities exchange or is traded on the Nasdaq National Market, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders;

(6) An investment company organized under the laws of a foreign jurisdiction, [meeting the following criteria:] *provided that:*

[(A) the company has 100 or more investors;

(B) the](A) *the investment* company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; *and*

(B)[(C)] no *person owning* more than 5% of the *shares of the investment* [company's assets shall be invested in a particular hot issue; and,

(D) no person owning more than 5% interest in such] company is a restricted person[.];

[(5) An employee benefits plan qualified under the] *(7) An* Employee Retirement Income Security Act [provided that the plan sponsor is not a member or an affiliate; or a state or foreign government employee benefit] *benefits plan that is qualified under Section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker/dealer;*

(8) A state or municipal government benefits plan that is subject to [separate] state [and] *and/or* municipal regulation; *or*[.]

[6]*(9)* A tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.

[(7) Employees and directors of the issuer, an entity which controls, is controlled by, or is under common control of the issuer.]

(d) Issuer-Directed Securities

[(8) An immediate family member of a restricted person in paragraph (a)(11)(B) if:] *The prohibitions on the purchase and sale of new issues in this rule shall not apply to securities that:*

[(A) such restricted person does not directly or indirectly provide material support to, or receive material support from, the immediate family member;]

(1) are specifically directed by the issuer; provided, however, that this exemption shall not apply to securities directed by the issuer to an account in which any restricted person specified in subparagraphs (i)(10)(B) or (i)(10)(C) of this rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer. Also, for purposes of this subparagraph (d)(1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting securities of the subsidiary;

[(B) such restricted person is not employed by the member,]

(2) are part of a program sponsored by the issuer or an affiliate of the *issuer that* [member, selling the hot issue to the immediate family member; and

(C) such restricted person has no ability to control the allocation of the hot issue.

(9) An immediate family member of a restricted person in paragraphs (a)(11)(C)–(D) if such restricted person does not directly or indirectly provide material support to the member of the immediate family;

(10) A restricted person in paragraph (a)(11)(E) provided that the sale is to an account established for the benefit of bona fide public customers, including insurance company general, separate and investment accounts, and bank trust accounts.

(f) Anti-Dilution Provisions

The restrictions on the sale of hot issued in this rule shall not apply to sales to a restricted person in an initial public offering who] meets the following criteria:

(a) the opportunity to purchase a new issue under the program is offered to at least 10,000 participants;

(b) every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;

(c) if not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method;

(d) the class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; and

(e) sales are not made to participants who are managing underwriter(s), the broker/dealer administering the program ("Administering Broker/Dealer"), the officers or directors of the managing underwriter(s) or Administering Broker/Dealer, or any employee of the managing underwriter(s) or Administering Broker/Dealer with access to non-publicly available information about the new issue; or

(3) are directed to eligible purchasers as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.

(e) Anti-Dilution Provisions

The prohibitions on the purchase and sale of new issues in this rule shall not apply to an account in which a restricted person has a beneficial interest that meets the following conditions:

(1) the restricted person has held an equity ownership interest in the issuer, or a company that has been acquired by the issuer in the past year, for a period of one year prior to the effective date of the [public] offering;

(2) the sale of the [hot issues] *new issue* to the [restricted person] *account* shall not increase the restricted person's percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement [with the SEC] in connection with the offering;

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 14, 2000 ("Amendment No. 2"). In response to the comment letters, Amendment No. 2 was filed to replace the proposed rule change and Amendment No. 1 in their entirety.

[4] *See* Letter from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated December 20, 1999 ("Amendment No. 1"). In Amendment No. 1, NASD Regulation makes certain technical amendments to the proposed rule change.

[5] Securities Exchange Act Release No. 42325 (January 10, 2000), 65 FR 2656.

[6] Letter from Willkie Farr & Gallegher to Jonathan G. Katz, SEC, dated January 28, 2000 ("Willkie"); Letter from Faith Colish to Jonathan G. Katz, SEC, dated January 31, 2000 ("Colish"); Letter from Katten Muchin Zavis to Jonathan G. Katz, SEC, dated January 28, 2000 ("Katten"); Letter from Driehaus Capital Management, Inc. to Jonathan G. Katz, SEC, dated February 4, 2000 ("Driehaus"); Letter from Fu Associates, Ltd. to Jonathan G. Katz, SEC, dated February 7, 2000 ("Fu"); Letter from Cadwalader, Wickersham & Taft to Jonathan G. Katz, SEC, dated February 4, 2000 ("Cadwalader"); Letter from Schulte Roth & Zabel LLP to Jonathan G. Katz, SEC, dated February 7, 2000 ("Schulte"); Letter from Rosenman & Colin LLP to Jonathan G. Katz, SEC, dated February 7, 2000 ("Rosenman"); Letter from Fried, Frank, Harris, Shriver & Jacobson to Jonathan G. Katz, SEC, dated May 9, 2000 ("Fried"); Letter from Ropes & Gray to Jonathan G. Katz, SEC, dated February 8, 2000 ("Ropes"); Letter from The Washington Group to Jonathan G. Katz, SEC, dated February 8, 2000 ("Washington"); Letter from Testa, Hurwitz & Thibeault, LLP to Jonathan G. Katz, SEC, dated February 8, 2000 ("Testa"); Letter from Chicago Board Options Exchange to Jonathan G. Katz, SEC, dated February 14, 2000 ("CBOE"); Letter from Sullivan & Cromwell to Jonathan G. Katz, SEC, dated February 15, 2000 ("Sullivan"); Letter from Charles Schwab to Jonathan G. Katz, SEC, dated February 15, 2000 ("Schwab"); Letter from Sidley & Austin to Jonathan G. Katz, SEC, dated February 16, 2000 ("Sidley"); Letter from North American Securities Administrators Association, Inc. to Jonathan G. Katz, SEC, dated February 18, 2000 ("NASAA"); Letter from Northern Trust Global Advisors, Inc. to Jonathan G. Katz, SEC, dated February 13, 2000 ("Northern"); Letter from Securities Industry Association to Jonathan G. Katz, dated February 18, 2000 ("SIA"); Letter from Morgan Stanley Dean Witter to Jonathan G. Katz, SEC, dated March 17, 2000 ("MSDW"); Letter from Mayor, Day, Caldwell & Keeton, LLP to Jonathan G. Katz, SEC, dated June 2, 2000 ("Mayor"); Letter from Covington & Burling to Jonathan G. Katz, SEC, dated April 14, 2000 ("Covington"); Letter from Orrick, Herrington & Sutcliffe LLP to Jonathan G. Katz, SEC, dated May 2, 2000 ("Orrick"); and Letter from Sandra K. Smith to Jonathan G. Katz, SEC, dated February 1, 2000 ("Smith").

(3) the sale of [hot issues to the restricted person must not include any special terms; and

(4) the hot issues purchased pursuant to this subsection shall be restricted from sale or transfer for a period of three months following the effective date of the offering.

(g) Conversion Offerings

The rule shall not apply to the sale of securities directed by the issuer of a conversion offering, either on an underwritten or non-underwritten basis, to any person eligible to purchase securities in accordance with the governmental agency or instrumentality having authority to regulate such conversion offering.] *the new issue to the account shall not include any special terms; and*

(4) the new issue purchased pursuant to this subparagraph (e) shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(f) Stand-by Purchasers

The prohibitions on the purchase and sale of new issues in this rule shall not apply to the purchase and sale of securities pursuant to a stand-by agreement that meets the following conditions:

(1) the stand-by agreement is disclosed in the prospectus;

(2) the stand-by agreement is the subject of a formal written agreement;

(3) the managing underwriter(s) represents in writing that is was unable to find any other purchasers for the securities; and

(4) the securities sold pursuant to the stand-by agreement shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(g) Under-Subscribed Offerings

Nothing in this rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.

(h) Exemptive Relief

Pursuant to the Rule 9600 series, the staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from this rule to the extent that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.

(i) Definitions

(1) ["Affiliate" shall have the same meaning as in Rule 2720(b)(1). (2) "Beneficial interest" means any [ownership or other direct financial interest] *economic interest, such as the right to share in gains or losses.* The receipt of a management or performance based fee for operating a collective investment account shall not be considered a beneficial interest in the account.

[(3)]*(2)* "Collective investment account" means any hedge fund, investment partnership, investment corporation, or any other collective investment vehicle [that manages assets of other persons. Collective investment account shall not include any entity in which the decision to buy or sell securities is made jointly by each of the persons investing in the entity or by a member of their immediate family.].

[(4)]*(3)* "Conversion offering" means any offering of securities made as part of a plan by which a savings and loan association, insurance company, or other organization converts from a mutual to a stock form of ownership.

[(5) "Hot issue" means any security that is part of a public offering if the volume weighted price during the first five minutes of trading in the secondary market is 5% or more above the public offering price.]

(4) "Family partnership" means a partnership comprised solely of immediate family members.

[(6)]*(5)* "Immediate family member" [shall include] *means* a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual *to whom* the person[, directly or indirectly,] provides material support.

[(7) "Joint back office broker/dealer" means any domestic or foreign private investment fund that has voluntarily registered as a broker/dealer solely to take advantage of more favorable margin treatment afforded under Section 220.7 of Regulation T of the Federal Reserve. The activities of a joint back office broker/dealer must not require that it register as a broker/dealer under Section 15(a) of the Act.]

(6) "Investment club" means a group of friends, neighbors, business associates, or others that pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.

[(8)]*(7)* "Limited business broker/dealer" means any broker/dealer whose authorization to engage in the securities business is limited solely to the purchase [or] *and* sale of [either] investment company/variable contracts securities [or] *and* direct participation program securities.

[(9)]*(8)* "Material support" means *directly or indirectly* providing more than [10%] 25% of a person's income [or expenses. Material support shall be presumed for members] *in the current or prior calendar year. Members* of the immediate family living in the same household *are deemed to be providing each other with material support.*

(9) "New issue" means any initial [.(10) "Public offering" means any initial or secondary] public offering of an equity security as defined in [section] *Section* 3(a)(11) of the Act, made pursuant to a registration statement or offering cicrcular, [including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition,] or other securities distributions of any kind whatsoever, including securities that are specifically directed by the issuer on a non-underwritten basis. [Public offering] *New issue* shall not include:

(A) [Offerings] *offerings* made pursuant to an exemption under Section 4(1), 4(2) or 4(6) of the Securities Act of [1993 or SEC Rule 504, 505 or]*1933, or SEC Rule 504 if the securities are "restricted securities" under SEC Rule 144(a)(3), or Rule 505 or Rule* 506 adopted thereunder; [and]

(B) [Offerings] *offerings* of exempted securities as defined in Section 3(a)(12) *of the Act;*

(C) rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;

(D) offerings of investment grade asset-backed securities;

(E) offerings of convertible securities;

(F) offerings of preferred securities; and

(G) offerings of securities of closed-end companies as defined under Section (5)(a)(2) of the Investment Company Act of 1940. (10)[(11)] "Restricted person" [includes] means:

(A) Members or other broker/dealers[, unless the ultimate purchaser is a non-restricted person purchasing the security at the public offering price;];

[(B) Officers, directors, general partners, employees or agents] *(B) Broker/Dealer Personnel*

(i) Any officer, director, general partner, associated person, or employee of a member or any other broker/dealer (other than a limited business broker/dealer), *or any agent of a member or any other broker/dealer (other than a limited business broker/dealer) that is engaged in the investment banking or securities business;*[;]

[(C)]*(ii) An immediate family member of a person specified in subparagraph (B)(i) if the person specified in subparagraph (B)(i):*

(a) materially supports, or receives material support from, the immediate family member;

(b) is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or

(c) has an ability to control the allocation of the new issue.

(C) Finders and Fiduciaries

(i) With respect to the security being offered, [finders] *a finder* or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and

(ii) An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.

(D) Portfolio Managers

(i) Any person who has authority to buy or sell[(D) Any employee or other person who supervises, or whose activities directly or indirectly involve or are related to, the buying or selling of] securities for a bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account, *other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account over which such person has investment authority;* [;]

[(E) Any affiliate of a broker/dealer (other than a limited business broker/dealer); and]*(ii) An immediate family member of a person specified in subparagraph (D)(i) that is materially supported by such person, other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account over which such person has investment authority.*

[(F) Any natural person or member of the person's immediate family who owns 10% or more or has contributed 10% or more of the capital of a broker/dealer (other than a limited business broker/dealer).] *Provided, however, that the term "restricted person" under this subparagraph (D) shall not include a person solely because he or she is a participant in an investment club or a family partnership.*

(E) Persons Owning a Broker/Dealer

(i) Any person listed, or required to be listed, in Schedule A of a Form BD, except persons with ownership interests of less than 10%;

(ii) any person listed, or required to be listed, in Schedule B of a Form BD, except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A with an ownership interest of less than 10%;

(iii) any person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above;

(iv) any person that directly or indirectly owns 10% or more of a public reporting company listed on Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders);

(v) Any person that directly or indirectly owns 25% or more of a public reporting company listed on Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders).

(vi) An immediate family member of a person specified in subparagraphs (E)(i)–(v) unless the person owning the broker/dealer:

(a) does not materially support, or receive material support from, the immediate family member;

(b) is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and

(c) has no ability to control the allocation of the new issue.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) *Background.* In general, NASD Regulation believes that the commenters supported its efforts to reform the Free-Riding and Withholding Interpretation.[7] Several commenters believed that the proposed rule change was a significant improvement over the Interpretation. Testa stated that "[i]n general, the Proposal presents a much more easily understood and more workable regulatory scheme." Kattan and Schwab stated that the proposed rule change was more carefully targeted towards the purpose of the rule while at the same time it was easier for firms, institutional investors and the investing public in general to understand and follow. Katten also added that protecting the integrity of the public offering process is a noteworthy objective that benefits all investors.

As NASD Regulation expected, the commenters supported certain elements of the proposed rule change, opposed others, and made suggestions for further changes. A summary and analysis of the specific comments are provided below.

(ii) *Scope of Securities Covered by the Proposed Rule Change.* The area that generated the most comment was the proposed definition of "hot issue." Currently, under the Interpretation, a hot issue is any security in a public offering that trades at a "premium" in the secondary market. In the October 1999 filing, NASD Regulation defined a hot issue as a security that is part of a public offering "if the volume weighted price during the first five minutes of trading in the secondary market was 5% or more above the public offering price." Many commenters supported NASD Regulation's decision to adopt a clear and measurable standard for determining whether an offering is a hot issue, but believed that the 5% threshold was too low. Colish, Driehaus, SIA, and MSDW questioned whether the methodology proposed by NASD Regulation would be effective in identifying those offerings that should be subject to the rule. Colish and Dreihaus added that NASD Regulation should supply data to support its chosen methodology.

By contrast, Schwab and the SIA suggested what they termed a more "straightforward" approach: prohibiting

[7] *See, e.g.*, Sullivan, SIA, and Schwab.

allocations of all initial public offerings ("IPOs") to restricted persons. Schwab stated that even though the Interpretation and the proposed rule change contain a safe harbor for canceling a sale and reallocating the security to a non-restricted account, many firms do not and would not avail themselves of the safe harbor. In practice, Schwab said, under the proposed hot issue definition, firms would continue too treat all IPOs as hot issues. The SIA, which argued in the alternative for a higher threshold premium, agreed and stated that if a 5% threshold were adopted, firms would continue to treat all IPOs as being subject to the rule because they cannot be in a position of having to anticipate which offerings will trade through the 5% threshold.

Based on these comments, NASD Regulation has amended the proposed rule change to restrict the purchase and sale of all initial equity public offerings,[8] not just those that open above a certain premium. Like Schwab and the SIA, NASD Regulation believes that this approach is the most straightforward way to achieve the purposes of the rule. It is both easier to understand and avoids many of the complexities associated with canceling and reallocating the sale of an IPO to a non-restricted person in the event that an offering unexpectedly becomes a hot issue. NASD Regulation disagrees with those commenters who recommended a higher threshold premium, such as 10% or more. In NASD Regulation's view, allocating IPOs with such notable gains (approaching 10% or even more) to restricted persons is precisely the type of conduct that the rule is designed to prevent.

As a corollary to the proposal to apply the proposed rule change to all IPOs, NASD Regulation is proposing to exempt secondary offerings. Many of the commenters opposed NASD Regulation's decision in the October 1999 filing to roll back the exemption for secondary offerings of actively traded securities. As NASD Regulation stated in the October 1999 filing, the decision to roll back the exemption for secondary offerings was premised upon the decision to adopt a 5% threshold premium for hot issues. NASD Regulation believed that with a 5% premium, as a practical matter, all secondary offerings would be exempt from the rule. In proposing to eliminate the requirement for a 5% threshold premium, however, NASD Regulation believes that reinstating the exemption for secondary offerings is now appropriate. NASD Regulation has observed that secondary offerings rarely, if at all, trade at a significant premium to the public offering price. We also agree with Schwab that the negative consequences to both issuers and customers in applying the rule to secondary offerings would outweigh any benefits associated with including such offerings in the proposed rule change.

Schwab, Sullivan and others also recommended that all secondary offerings, not just those that are actively traded, should be excluded from the proposed rule change. NASD Regulation has not observed any unique concerns with respect to secondary offerings of non-actively traded securities. Accordingly, consistent with its objective to develop a more streamlined rule, NASD Regulation has proposed expanding the exemption for secondary offerings to include all secondary offerings.

The decision to apply the proposed rule change to all IPOs, not just those that are hot issues, may lead to problems in offerings for which there is insufficient investor demand. Under the current Interpretation, such offerings would typically not open at a premium and would not be hot issues. With a rule that applies to all IPOs, however, NASD Regulation is proposing to add provisions to address circumstances where purchases by restricted persons are necessary for the successful completion of an offering. Amendment No. 2 contains provisions for stand-by purchasers that are identical to the stand-by provisions in the Interpretation. With respect to the stand-by provisions, MSDW suggested imposing minimum capital contribution requirements and extending the lock-up requirements from three months to one year. NASD Regulation does not believe that these additional requirements are necessary. Amendment No. 2 also contains provisions addressing under-subscribed offerings. Specifically, the proposed rule change states that nothing in the rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.

In the October 1999 filing, NASD Regulation targeted the proposed rule change to equity offerings only. Historically, the Interpretation applied to equity and debt offerings; in a series of amendments in 1998, however, NASD Regulation exempted most types of debt. Several commenters, including the SIA and Sullivan, expressed support for the elimination of debt securities entirely from the rule's coverage. These commenters generally believed that debt offerings do not raise the same issues as equity offerings and for that reason should be excluded.

There are a number of other categories of offerings that NASD Regulation does not believe should be covered by the proposed rule change. First, NASD Regulation recommends exempting public offerings of investment grade asset-backed securities as defined in SEC Form S–3, some of which may otherwise fall within the definition of new issue. The Interpretation currently exempts investment grade, financing instrument-backed securities and, in view of the decision to eliminate the 5% threshold, NASD Regulation believes that it is appropriate to reinstate the exemption.

Second, NASD Regulation recommends exempting convertible securities.[9] NASD Regulation staff has already exempted many convertible securities from the Interpretation under its exemptive authority.[10] NASD Regulation found that in light of the Interpretation's current exclusion for debt securities and secondary offerings, the failure to exclude convertible securities led to an anomalous result. A law firm noted that an issuer could issue a non-convertible debt security and make a secondary offering of an actively traded security and neither would be subject to the Interpretation. Yet, if an issuer decided to, in effect, combine these two securities and issue a debt security that had the additional feature of being convertible into an actively traded security, then the Interpretation would apply. To correct this inconsistency, NASD Regulation staff has used its exemptive authority to exempt from the Interpretation debt securities that are convertible into an actively traded security. NASD Regulation now proposes to codify this exemption. However, in view of the decision to exclude all secondary offerings from the proposed rule change, NASD Regulation has expanded the exemption to include all convertible securities, not just those that are convertible into actively traded securities.

Third, NASD Regulation recommends exempting preferred securities. In connection with amendments to the Interpretation in 1998, NASD Regulation considered, but deferred an exemption for preferred securities.[11] Specifically, NASD Regulation stated that it would "evaluate the impact of excluding investment grade debt and investment grade financing backed securities from the Interpretation and will consider in the future whether preferred [securities] should also be excluded."[12] Based upon its experience with the 1998 amendments, and the purposes of the proposed rule change, NASD Regulation now recommends excluding preferred securities. On balance, NASD Regulation believes that preferred securities exhibit pricing and trading behavior that more closely resemble debt than equity securities.

Fourth, NASD Regulation recommends exempting offerings of closed-end company securities as defined under Section 5(a)(2) of the Investment Company Act of 1940 from the restriction of the rule. Generally, when closed-end companies make a public offering they are seeking as large an infusion of capital as possible and will expand the number of shares offered to meet the demand. These shares typically commence trading at the public offering price; if there is a premium, it is very small. Accordingly, applying the proposed rule change to closed-end companies does not further the purposes of the rule and may impair the ability of closed-end companies to obtain capital. NASD Regulation therefore recommends an exemption for closed-end companies.

(iii) *Portfolio Fund Managers.* Another area that generated a significant amount of comment was the proposed definition and treatment of portfolio managers. In the October 1999 filing, NASD Regulation proposed a "more function-oriented approach" towards personnel with respect to the securities activities of a bank, insurance company, investment company, investment adviser, or collective investment account. NASD Regulation suggested that only persons who supervise or whose activities are directly or indirectly related to the buying or selling of securities for one of the listed entities should be restricted. Ropes, Testa, and Schwab supported this function-oriented approach, but believed that the proposed rule change was still too broad and could reach persons whose functions were purely ministerial. These commenters suggested that the restrictions in the proposed rule change should apply only to those persons who have "the authority to make investment decisions." Ropes believed that this would be a better and more precise indicator of whether a person is in a position to direct business to a member. NASD Regulation believes that this is a useful clarification and has amended the proposed rule change accordingly.[13]

The proposed rule change also sought to remove the restrictions on persons who participate in an investment club or manage a family partnership. Fu, Sullivan, Smith and Schwab all strongly supported these changes. Fu, the general partner of a small investment club, believed that he had been unfairly restricted access to IPOs because the Interpretation treated an investment club as an "institutional account." Similarly, Smith viewed her participation in an investment club as a "learning and social activity" and did not believe that her participation in an investment club should affect her, or her husband's, ability to purchase an IPO. Cadwalader noted, however, that, as drafted, the exemption for investment clubs and family partnerships would inadvertently exempt sales to an investment club or family partnership consisting solely or predominantly of restricted persons. NASD Regulation agrees that this was not an intended result. To correct this problem, the proposed rule change no longer exempts investment clubs or family partnerships per se, but rather states that participation in an investment club or family partnership does not by itself make a person restricted.

A number of commenters, including Willkie, Katten, Washington, and Northern, were strongly opposed to the restrictions on portfolio managers, and in particular hedge fund managers, because they would prohibit a hedge fund manager from investing in hot issues through a fund he or she manages. Although the proposed rule change allowed portfolio managers and other restricted persons in aggregate to own up to 5% of a collective investment account that invests in hot issues, these commenters believed that the 5% figure was too low. They added that investors generally expect portfolio managers to make significant investments in accounts they manage as it helps to align the managers' interests with those of investors. Several commenters, including Rosenman, Willkie, and Northern urged NASD Regulation to exempt hedge fund managers with respect to the accounts they manage, while retaining the restriction with respect to purchases of IPOs in their personal accounts. Northern, for example, stated "[w]e would not be in favor of letting a hedge fund manager receive benefits on the side that might permit the manager to divert hot issues to his or her own personal account." Willkie added that the fiduciary duty of a hedge fund manager would prevent him or her from profiting from new issues personally at the expense of hedge fund investors.

Based upon these comments, NASD Regulation has amended the restriction on portfolio managers. NASD Regulation agrees with the commenters that the 5% exemption in the October 1999 filing did not achieve its intended purpose and could, as discussed below, undermine the purposes of the rule by allowing broker/dealer personnel and other restricted persons to purchase substantial quantities of IPOs. Amendment No. 2 treats a portfolio manager and certain members of his or her immediate family as restricted persons other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment adviser, or collective investment account, over which such person has investment authority. Amendment No. 2 thus permits a hedge fund manager who in not otherwise restricted to invest in IPOs through a fund he or she manages. Under Amendment No. 2, however, a portfolio manager may not purchase IPOs in his or her personal accounts. Several commenters, including Willkie and Rosenman, proposed language that is substantively similar to that proposed by NASD Regulation.

Amendment No. 2 does not define what constitutes a personal account of a portfolio manager. NASD Regulation believes that a number of factors will contribute to a determination of whether an account is a personal account. These factors include, but are not limited to, the number of beneficial owners in the account, the identity of the participants, whether the account participants are members of the portfolio manager's immediate family, the compensation scheme, the manner in which profits and losses are distributed, the expectations of the account participants, and the overall trading activity in the account.

[8] Amendment No. 2, like the October 1999 filing, limits the application of the proposed rule change to equity offerings only.

[9] Although the proposed change applies only to equity securities, the definition of equity security in section 3(a)(11) of the Exchange Act, which is used in the proposed rule change, includes any security, including a debt security, that is convertible into stock.

[10] *See* Letter to Peter C. Manbeck, Sullivan, from Gary L. Goldsholle, NASD Regulation, dated December 21, 1998.

[11] Securities Exchange Act Release No. 40001 (May 18, 1998), 63 FR 28535 (May 26, 1998).

[12] *Id.*

[13] Schwab also requested an exemption for persons who, on a volunteer basis, make investment decisions of behalf of a tax-exempt charitable organization. NASD Regulation is not proposing such an exemption. Depending on the particular facts, NASD Regulation believes the purposes of the rule may be implicated by a person who manages the investments of a tax-exempt charitable organization.

Despite this change, NASD Regulation does not believe that the treatment of portfolio managers in Amendment No. 2 will lead to an environment that is significantly different from that under the current Interpretation. Under the Interpretation, portfolio managers are entitled to purchase hot issues if such purchases are, among other things, consistent with their normal investment practices. They also are entitled to receive benefits from new issues in accounts they manage in the form of performance fees.

Katten sought clarification on whether an investment adviser organized as an entity is a restricted person. Katten stated that the proposed rule change treats certain employees of an investment adviser as restricted but does not state whether an investment adviser organized as an entity is a restricted person. NASD Regulation believes that the status of an entity organized as an investment adviser would depend on the status of its beneficial owners. If the beneficial owners are restricted persons because of their investment advisory activities or otherwise, then the entity would be a restricted person.

(iv) *Preconditions for Sale/Documentation.* The proposed rule change streamlined the requirements for members to demonstrate that sales of IPOs were made in conformity with the rule. NASD Regulation replaced the myriad means for members to demonstrate that they have not sold IPOs to restricted persons; with a single requirement applicable to all accounts—a representation from the account holder, or a person authorized to represent the beneficial owners of the account, that the account is eligible to purchase new issues in compliance with the rule. Colish supported these changes. The SIA stated that the requirement as to the type of evidence that is needed "is a significant improvement over current requirements." Commenters also had concerns. Schwab and MSDW were concerned that the proposed rule change would require an annual mailing to all customers that may be interested in purchasing new issues and would prohibit the use of electronic communications. The SIA and MSDW stated that firms should be permitted to develop their own methods to verify the status of a customer, including the use of oral representations so long as such representations are documented internally. In response to these comments, NASD Regulation intends to state in a Notice to Members announcing SEC approval of the proposed rule change that an annual mailing is not required, and that electronic or oral communications are permitted so long as such communications and the response are documented internally by the member firm.

MSDW also stated that the documentation requirements may hinder a *bona fide* public distribution if members withhold securities from public customers because they have not provided the necessary information. NASD Regulation disagrees and believes that MSDW's comment may be based on a misinterpretation of the nature of the required documentation. In general, NASD Regulation does not believe that adhering to these requirements, even if it means that certain public customers cannot purchase IPOs, will cause a member to fail to make a *bona fide* public offering. In addition, NASD Regulation expects that public customers will provide the necessary information or certifications to afford them the opportunity to purchase IPOs.

NASD Regulation also is maintaining the interval required for verification at one year. The SIA, Sullivan, and MSDW suggested lengthening the verification period from one year to every two or three years. By contrast, NASAA suggested shortening the verification period to something significantly shorter than one year, to reflect possible changes in ownership that could occur within that period. NASD Regulation believes that as a matter of policy, allowing members to wait longer between verifying that their customers are eligible to purchase new issues undermines the effectiveness of the rule. Currently, under the Interpretation, verification is required as frequently as before every sale or as long as every 18 months. With the streamlined documentation procedures and the availability of electronic and oral communications, NASD Regulation believes that an annual verification requirement strikes an appropriate balance between benefit and burden. We anticipate that in light of the clarifications made above, the commenters generally will agree with NASD Regulation that the burdens of ensuring that customers are eligible to purchase IPOs on an annual basis are not unreasonable. NASAA's concerns are addressed by the fact that a member may not rely on a representation that it has reason to believe is inaccurate.

Several commenters, including Cadwalader and Ropers, were concerned about how the documentation requirement would apply in light of the fact that a customer's status or percentage ownership in a collective investment account may change over the course of a year. NASD Regulation recognizes that the potential exists for a customer's status under the rule to change, but believes that members may rely upon information obtained as part of the ordinary, annual verification process, so long as the member does not believe or have reason to believe that an account is restricted. Currently, under the Interpretation, NASD Regulation allows members to rely upon certain certifications dated not more than 18 months prior to the date of sale of the hot issue. Under the proposed rule change, members would be able to rely, in good faith, on representations dated not more than twelve months prior to the date of sale of the new issue.

On the issue of intent, Schwab stated that the rule should not impose a strict liability standard. Specifically, Schwab believed that a member should not be in violation of the proposed rule change if the member is unaware that an account is beneficially owned by a restricted person because the customer provided false information. On this point, we agree. As stated in the October 1999 filing, a member may rely upon the information it has received from a customer unless it believes, or has reason to believe, that the information is inaccurate. The proposed rule change has been amended to expressly include this standard.

Several commenters, particularly law firms such as Katten, Schulte, Rosenman, and Sullivan, sought guidance on what type of information a member would be required to review to determine whether an account is beneficially owned by restricted persons, especially in a fund of funds context. The proposed rule change allows an account holder, or a person authorized to represent the beneficial owners of the account, to represent that an account is eligible to purchase new issues. So long as a member has no reason to believe that the representation is not accurate, it may rely upon the representation. Alternatively, a registered representative may ask questions of a customer to allow him or her to determine whether an account is eligible to purchase new issues under the rule. The application of the rule would be the same for a fund of funds. In that case, a member could secure a representation from a person authorized to represent the beneficial owners of the fund that is purchasing the new issue from the member (such as the fund's general partner) that the account is eligible to purchase new issues. Naturally, the ability of a general partner to make such a representation will be contingent on his or her receiving similar representations from general partners of the other funds investing in the fund, or by reviewing information about the investors in such funds. However, unlike the current Interpretation, there are no provisions requiring certifications by attorneys or certified public accountants. While members may wish to rely upon counsel or an accountant to investigate the status of an account, such an approach is no longer required by the rule.

NASD Regulation will announce in the Notice to Members announcing approval of Rule 2790 that members may use negative consent letters in all but the initial account verification. Several commenters, including MSDW, believed that the ability to use negative consent letters would greatly ease the burden of complying with the rule without undermining its effectiveness. NASD Regulation believes that once a member firm verifies the status of an account, it may use negative consent procedures for each subsequent, annual verification.

Finally, the SIA asked NASD Regulation to explore an automated means of updating certain account information regarding restricted person status. While NASD Regulation does not currently intend to develop such a system, NASD Regulation is not opposed to third party vendors compiling or aggregating information about the status of persons under the rule. If a private vendor developed a reliable automated application to track the status of purchasers under the rule, NASD Regulation believes that members generally could rely upon data from such a vendor.

(v) *De Minimis Exemption.* As stated above, one purpose behind the proposed rule change is to streamline the rule. One area in which NASD Regulation believes that it can benefit investors without sacrificing the integrity and protections of the rule is with respect to certain *de minimis* owners. The *de minimis* ownership exemption avoids imposing on investors the burden of creating segregated accounts in those instances where restricted persons have only a nominal and passive interest in an account that purchases new issues. Commenters appreciated the efficiencies that the *de minimis* exemption would provide and generally urged that it be expanded.

Several commenters asked NASD Regulation to expand the *de minimis* exemption to include a collective investment account that is owned 10% or more by restricted persons. NASD Regulation, however, does not support an expansion. One of the rationales for the *de minimis* exemption was to alleviate the impact of the October 1999 filing's decision to treat portfolio managers as restricted persons. As discussed in the previous section, that issue has been addressed separately. Thus, a large class of persons for whom the *de minimis* exemption was intended have already been excluded from the rule. In view of this change, NASD Regulation is maintaining the *de minimis* level at 5%. This comports with recommendations by Katten, Schulte, and Rosenman, which supported a 5% de mimimis level so long as portfolio managers were excluded.

Northern noted that as originally proposed, the *de minimis* exemption may "tempt some brokers to favor hedge funds that permit the brokers themselves or their senior executives or friends to invest in the hedge funds, which would cut against the purposes of the NASD proposal." In response to this comment and to ensure that the *de minimis* exemption is consistent with the purposes of the rule and the public interest, NASD Regulation has revised the *de minimis* exemption to impose a strict numerical limit of 100 shares on the number of shares that any one person can purchase under the *de minimis* exemption. In complying with the 100 share limit, members may look through an investing entity to a person's beneficial interest. The numerical limit reduces the incentive for self-dealing and the appearance that restricted persons are receiving shares at the expense of public investors. Under Amendment No. 2, the *de minimis* exemption also requires that a restricted person does not manage or otherwise direct investments in the account.

Members should be aware that the de minimis exemption does not allow restricted persons to purchase 100 shares directly. The *de minimis* exemption was developed as an accommodation to collective investment accounts with only a small percentage of restricted persons. Because the sale of IPOs to such a collective investment account principally benefits non-restricted persons, NASD Regulation believes, for administration purposes, it should not be necessary to carve-out the restricted persons or exclude the account altogether. On the other hand, direct purchasers of IPOs by restricted persons do not in any way facilitate a public distribution and will continue to be prohibited under the proposed rule change.

Several commenters, such as Cadwalader, Ropes, Covington, and Fried, suggested a variation on the *de minimis* exemption in that the proposed rule change should be amended to exempt all passive investors in a collective investment account, regardless of the size of their interest. While passive investors have no control over the investment decisions made by a collective investment account, their participation in a particular account may be known or inferred by the member allocating new issues. A passive investor exemption would allow restricted persons to circumvent the purposes of the rule by having such purchases made on their behalf by a portfolio manager. For these reasons, NASD Regulation is not proposing to exempt all passive investors.

NASD Regulation also disagrees with MSDW's recommendation that the *de minimis* exemption be amended to apply if a collective investment account invests less than 10% of its assets in new issues. For many collective investment accounts, and certainly all large accounts, such a limitation would be tantamount to no limitation at all. MSDW's recommendation would allow a fund comprised solely of broker/dealer personnel to invest up to 10% of their assets in new issues. NASD Regulation believes that such an expansion of the *de mininis* exemption is unwarranted and would be inconsistent with the purposes of the rule.

Sidley asked whether the proposed rule change and the creation of the *de minimis* exemption eliminated the ability for collective investment accounts to create carve-out accounts that segregate the interests of restricted persons. NASD Regulation did not intend for the proposed rule change to eliminate the ability of a collective investment account that does not meet the *de minimis* exemption to create a separate account and carve out the interests of restricted persons from the account investing in new issues. Accordingly, an account that wishes to purchase a greater number of shares such that a restricted person's *pro rata* allocation would exceed 100 shares, or an account that wishes to allow restricted persons to own collectively more than 5% of the fund's assets, would be able to use carve-out procedures and segregate the new issue activity from restricted persons to keep it below the threshold in the proposed rule. However, unlike the current Interpretation, the proposed rule change does not contain detailed procedures concerning how an account is required to carve-out the interests of restricted persons. A member's obligation under the proposed rule change is to receive a representation from the account holder, or a person authorized to represent the beneficial owners of the account, that the account is not

restricted from purchasing new issues under the rule. At this time, NASD Regulation does not intend to regulate the manner in which an account carves out restricted persons. If NASD Regulation has reason to believe that closer scrutiny of carve-out accounts is necessary, it will consider additional rulemaking in this area.

Sidley also asked NASD Regulation to revise the proposal to permit funds to transfer securities from a carve-out account to a general account without undertaking a secondary market transaction, which it argued is inefficient and unnecessarily costly. Sidley correctly noted that current NASD Regulation policy requires a transfer from a carve-out account with non-restricted persons to a fund's general account that is beneficially owned by restricted person to be effected in a market transaction. Under the proposed rule change a fund manager would be permitted to determine how best to transfer new issues that he or she intends to keep for investment purposes from one account to another, consistent with all other applicable laws and regulations. NASD Regulation cautions that where a carve-out account purchases new issues with a view towards distributing such shares to another account, that such carve-out account may be viewed as an "underwriter" under section 2(a)(11) of the Securities Act of 1933.

(vi) *Owners of Broker/Dealers.* NASD Regulation has substantially revised the restrictions on owners of broker/dealers. The October 1999 filing treated as restricted persons affiliates of a broker/dealer and natural persons, and certain members of their immediate family, who owned 10% or more, or contributed 10% or more of the capital of a broker/dealer. Many of the commenters, including Willkie, Colish, Sidley, and the SIA, stated that this approach was too broad. Several commenters stated that reaching all companies that are under common control with a broker/dealer, and in particular sister companies, would reach entities without any nexus to the securities industry. The commenters also were concerned about the impact on affiliates in light of the repeal of the restrictions on affiliation among banks, insurance companies and securities firms under the Gramm-Leach-Bliley Act of 1999.[14]

Amendment No. 2 adopts a new approach and treats as restricted persons owners of broker/dealers as defined in Schedule A of Form BD, with at least a 10% ownership interest,[15] and as defined in Schedule B of Form BD. NASD Regulation believes that this approach is desirable from a compliance perspective because the definitions are understood by members and the information is already required to be maintained. NASD Regulation opted to use existing ownership standards rather than create a new concept for purposes of this rule. From a technical standpoint, this approach no longer treats affiliates of broker/dealers as restricted persons per se. The ownership provisions look only at the direct and indirect owners of a broker/dealer. Moreover, the standard of control for indirect owners in Schedule B of Form BD is a 25% interest, not a 10% interest as proposed in the October 1999 filing. In this regard, Amendment No. 2 is narrower in scope than the October 1999 filing.

The rationale for applying the rule to owners of broker/dealers is straightforward. A prohibition on a broker/dealer could be easily circumvented if IPOs could be purchased by the broker/dealer's parent. Similarly, to avoid circumventing the restriction on the owners and the broker/dealer itself, it is necessary for the rule to prohibit sales of new issues to any account in which the owner or broker/dealer has a beneficial interest. If the rule did not restrict any account in which a restricted person had a beneficial interest, restricted persons could purchase new issues in downstream affiliates and flow the profits back up to the restricted person. The application of the rule to all accounts in which a restricted person has a beneficial interest is a fundamental principle of the proposed rule change and the Interpretation.

The net effect of these provisions is that both upstream and downstream affiliates, including sister companies, are restricted persons. Although commenters may view this approach as unnecessarily broad, NASD Regulation believes that it is necessary to effectuate the purposes of the rule. However, NASD Regulation has made a number of reforms that we believe address many of the commenters' concerns.

The primary source of relief comes from NASD Regulation's decision to exempt sales to and purchases by nearly all publicly traded companies. The commenters generally supported the exemption in the October 1999 filing for publicly traded companies. Sullivan, for example, stated "that a blanket exemption * * * for sales to publicly traded corporations would substantially lighten the administrative burden of implementing the rule without undermining the underlying objectives of the rule in any meaningful way."

Amendment No. 2 expands the exemption for publicly traded companies to now include all publicly traded companies listed on a national securities exchange or traded on the Nasdaq National Market, even those that are affiliates of a broker/dealer.[16] NASD Regulation believes that purchases of new issues by this class of publicly traded companies, which in turn have broad public ownership and whose securities may be purchased by any investor, is not the type of activity the rule is designed to prevent. Purchases in these instances benefit public investors in much the same way that IPO purchases by mutual funds benefit their shareholders. To ensure that purchases by publicly traded companies do in fact benefit their shareholders, the exemption requires that the gains or losses from the IPOs must be passed on to shareholders.

The decision to exempt publicly traded companies in Amendment No. 2 greatly minimizes the rule's impact on many financial services conglomerates and industrial companies that own a broker/dealer. Where the owner is a publicly traded company with a broker/dealer subsidiary, the rule would no longer apply, either at the parent level or at the downstream affiliate level. Thus, for example, a manufacturing unit of an exchange listed financial services holding company would not be a restricted person. For publicly traded companies, therefore, Amendment No. 2 would exempt sales to and purchases by affiliates.

NASD Regulation is not, however, expanding the exemption for owners of broker/dealers that are private companies. The purchase of IPOs in this case does not reach public investors because ownership of private companies is not open to the public. NASD Regulation also is not expanding the exemption to include owners of broker/dealers listed solely on a foreign exchange. Sidley was concerned that limiting the exemption to publicly traded companies listed on a domestic exchange would disadvantage publicly owned foreign companies without a U.S. listing. Despite these concerns, NASD Regulation does not believe at this time that foreign publicly traded companies should be exempt from the proposed rule change. Foreign jurisdictions have various listing standards and levels of regulatory oversight. As such, there is greater potential that a foreign publicly traded company could be used to circumvent the purposes of the rule. NASD Regulation will, however, consider its experience under the proposed rule change and may in the future consider whether it is appropriate to extend the exemption to publicly traded companies listed or traded solely on foreign markets.

Amendment No. 2 also contains an exemption for the purchase of new issues by a bank common trust fund or an insurance company general, separate or investment account, provided that the account has investments from 1,000 or more investors, and is not limited principally to restricted persons. These exemptions will allow, for example, private banks and mutual and private insurance companies with broker/dealer subsidiaries to purchase new issues for these accounts. NASD Regulation believes that, collectively, these restrictions on the owners of broker/dealers will address many commenters' concerns about the application of the rule to broker/dealer affiliates.

The SIA was concerned that the proposed rule change would adversely affect "asset management affiliates that manage discretionary accounts as well as accounts for unaffiliated persons." The SIA stated that to the extent that affiliates of broker/dealers become restricted persons under the rule, the rule should more clearly exempt certain classes of accounts maintained by broker/dealers affiliates. The SIA's concerns appear unfounded. To the extent that broker/dealers affiliates manage accounts for non-restricted persons, such accounts would not be restricted under the proposed rule change. On the other hand, if the SIA is concerned about accounts at broker/dealers affiliates that are owned by restricted persons, NASD Regulation believes that the rule should apply.

In proposing to allow purchases by publicly traded companies that are affiliates of broker/dealers, NASA Regulation is relying in part on the restrictions on a member engaged in a fixed price offering under Rule 2750, Transactions with Related Persons. Specifically, Rule 2750 prohibits a member from selling any securities in a fixed price offering to any person or account that is a related person of the member. NASD Regulation believes that Rule 2750 addresses the potential for self-dealing in allocating new issues to a publicly traded affiliate of a broker/dealer.

Finally, Sullivan asked why immediate family members of owners of broker/dealers were treated differently than immediate family members of associated persons of a broker/dealer. NASD Regulation did not intend for different treatment of such family members and has corrected the proposed rule change.

(vii) *Beneficial Interest Definition.* At its own initiative, NASD Regulation is revising the definition of "beneficial interest." The term beneficial interest was defined in the October 1999 filing as "any ownership or other direct financial interest." NASD Regulation is aware that members found the reference to ownership as distinct from a financial interest misleading. Because the rule is intended to prohibit sales of new issues to certain persons who stand to profit from them, legal ownership, such as that held by a trustee for beneficiaries, or a hedge fund for its limited partners, is not the type of interest that is the focus of the rule.

NASD Regulation also is recommending eliminating the term "direct" from the definition. In determining whether an account is beneficially owned by restricted persons, members are often required to look through a number of investment vehicles. For instance, if Fund A invests in Fund B, a member may not sell new issues to Fund B unless it determines the sale is consistent with the rule, taking into account the status of each beneficial owner of Fund A. To some, the owners of Fund A may be viewed as having an "indirect" ownership in Fund B.

Rosenman stated that the definition of beneficial interest should specifically exclude management or performance based fees that are deferred for bona fide taxation reasons. Rosenman was concerned of the effect that deferred management or performances fees may have on a hedge fund manager's interest in a collective investment account that he or she manages. Because NASD Regulation has eliminated the restrictions on a hedge fund manager with respect to a collective investment account that he or she manages, we do not believe it is necessary to amend the definition of beneficial interest as Rosenman suggests.

Finally, as a result of the amendments to the definition of beneficial interest and the definition of restricted person, the conditions that gave rise to the need for the exemption for joint back office broker/dealers in the October 1999 filing have been removed. By clarifying that beneficial ownership means a financial interest, such as the right to share in gains or losses, we have clarified that a hedge fund broker/dealer's legal ownership of securities does not constitute a beneficial interest for purposes of the rule. As a result, the rule no longer needs a separate exemption for joint back office broker/dealers.[17]

(viii) *Issuer-Directed Share Programs.* In the October 1999 filing, NASD Regulation proposed amendments to the exemption for securities distributed as part of an issuer-directed share program to all employees and directors of the issuer, or an entity that controls, is controlled by, or is under common control with the issuer. NASD Regulation proposed expanding the scope of employees and directors of the issuer that are covered by the exemption to include employees and directors of sister companies. NASD Regulation also proposed eliminating the requirement for a three-month lock up for those issuer-directed shares that are sold to restricted persons. Schwab supported the elimination of the lock-up and stated that it provides substantive relief to members who will no longer be required to investigate the status of employee or director participants.

Issuer-directed share programs are a valuable tool in employee development and retention, and are often an integral part of the employer/employee relationship. In recent years, issuer-directed share programs have become more popular, and issuers have sought to expand the lists of persons invited to participate in an IPO to include business contacts, family and friends. In general, NASD Regulation believes that sales directed by an issuer are outside the scope of activities that the proposed rule change is designed to address. Accordingly, Amendment No. 2 proposes to exempt IPO shares that specifically are directed by the issuer to such persons as employees, directors, and friends and family of the issuer. NASD Regulation believes, however, that whether directed by the issuer or

[14] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[15] Schedule A of Form BD lists all direct owners with ownership interests of 5% or more in a broker/dealer. The ownership level is indicated by various "ownership codes": A for 5% but less than 10%, B for 10% but less than 25%, and so on. For purposes of Rule 2790, only persons with a 10% or more interest, as indicated by ownership codes B and higher will be restricted persons.

[16] The exemption does not apply to a broker/dealer itself. NASD Regulation continues to believe that broker/dealers, even publicly traded broker/dealers, should not purchase or withhold IPOs. As discussed below, NASD Regulation believes that an exemption for publicly traded companies, even affiliates of a broker/dealer, was appropriate in light of protections against self-dealing under NASD Rule 2750, which applies to related persons of the broker/dealer, but not the broker/dealer itself.

[17] The rationale for the joint back office broker/dealer exemption was that a collective investment account registered as a broker/dealer or with a broker/dealer subsidiary would be precluded from purchasing new issues even if none of its investors were restricted persons. Under the revised definition of beneficial interest, such a collective investment account would no longer be restricted.

otherwise, broker/dealers, broker/dealer personnel and their immediate family, and certain persons acting as finders or in a fiduciary capacity to the managing underwriter, should not purchase IPOs, unless such persons are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or members of the immediate family of an employee or director of the issuer.[18] Similarly, NASD Regulation disagrees with MSDW that all non-underwritten securities directed by the issuer should be exempt from the proposed rule change. NASD Regulation believes that a general exclusion for all issuer-directed or all non-underwritten securities would be readily susceptible to abuse. Consequently, NASD Regulation will continue its practice of holding a managing underwriter responsible for ensuring that all securities that are part of the public offering are distributed in accordance with the rule.

As recommended by Testa, the proposed rule change now expressly states that for purposes of the issuer-directed exemption only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security or has the power to sell or direct 50% or more of a class of voting securities of the subsidiary. NASD Regulation does not agree with Sullivan that a 10% ownership standard should apply for this exemption. NASD Regulation believes that it is not uncommon for a member through its merchant banking activities or otherwise to make venture capital investments in issuers that exceed 10% of the issuer's securities. In such cases, all employees of the member would be able to purchase the new issue. NASD Regulation does not believe that exempting broker/dealer personnel by virtue of venture capital investments is consistent with the purposes of the rule or the issuer-directed exemption.[19]

[18] NASD Regulation proposes allowing an employee or director of an issuer to direct shares in the issuer's initial public offering to members of his or her immediate family, even if such persons are otherwise restricted persons. In recent years, the staff has been presented with situations in which, for example, an employee of a issuer wanted to direct shares to his or her parent, but was unable to do so because the parent was a restricted person (and not an employee or director of the issuer). As amended, the proposed rule change would allow directed shares to be sold to, for example, a parent of an issuer's employee.

[19] The proposed rule change contains separate provisions that permit venture capital investors to participate in IPOs to avoid dilution in a public offering. NASD Regulation believes that going beyond these protections for venture capital investors would be inconsistent with the purposes of the proposed rule change.

NASD Regulation believes that Amendment No. 2 strikes the correct balance between providing issuers with flexibility to direct shares while preserving the objectives of the rule. NASD Regulation also believes that the issuer-directed exemption should apply only when shares are in fact directed by the issuer; if a member firm asks or otherwise suggests that an issuer direct securities to a restricted person, NASD Regulation does not believe that such securities should be exempt from the rule.

Sidley suggested that the scope of permissible purchasers under the issuer-directed share provisions should be amended to conform with the permitted categories of offerees set forth in Rule 701 of the Securities Act of 1933. Rule 701 provides an exemption for private companies to sell securities to their employees without a need to file a registration statement. Rule 701 provides an exemption from the registration provisions of the Securities Act of 1933 for offers and sales of securities under certain compensatory benefit plans or written agreements relating to compensation. NASD Regulation believes that this approach is potentially less broad and is far more difficult for members to implement.

The SIA, Sullivan, and MSDW all believed that the proposed rule change should exclude exchange offers, rights offerings and offerings made pursuant to a merger or acquisition. MSDW stated that "[i]f rights or other securities are offered to existing shareholders, particularly shareholders of a publicly traded company, it would seem the purpose of the [proposed rule change] (*i.e.*, to assure a bona fide public distribution of securities) is achieved." Sullivan noted that the NASD has previously stated that the Interpretation does not apply to "exchange offers" and "offerings made pursuant to an merger or acquisition." SIA and MSDW noted with approval the exemptive relief NASD Regulation staff has granted in connection with certain rights offerings. NASD Regulation agrees with the commenters and has amended the proposed rule change to exclude from the definition of public offering, exchange offers, rights offerings and offerings made pursuant to a merger or acquisition. NASD Regulation also has codified the staff's existing exemptive positions regarding certain directed share programs. The conditions imposed on such offerings in the proposed rule change generally tract those in the exemptive letters and continue to ensure that these offerings are conducted in a manner that is consistent with the purposes of the proposed rule.

(ix) *Limited Business Broker/Dealers.* The proposed rule change, like the Interpretation, does not apply to persons associated with a limited business broker/dealer. The proposed rule change defined a limited business broker/dealer as a broker/dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities. Several commenters believed that this definition was too narrow. The CBOE believed that its market-makers and floor brokers also should be treated as limited business broker/dealers.[20] The CBOE stated that "[a]n options market-maker typically is not a professional equities trader and is generally removed from the equities side of trading." The CBOE also stated that the "functions of a floor broker on the CBOE * * * are limited to the execution of orders for other market professionals or public customers of other broker/dealers. Floor brokers, with the exception of a transaction effected for their error accounts, do not effect principal transactions." Despite these limited activities, NASD Regulation does not believe that market-makers and floor brokers should be treated as limited business broker/dealers. Notwithstanding the limited nature of their activities, NASD Regulation believes that market-makers and floor brokers are in a position to direct business to a member. The CBOE also appeared to recognize the potential for these individuals to direct business to a member in seeking to exclude from the exemption an "IPO [that] is underwritten by the broker/dealer which clears and carries the member's professional CBOE business." NASD Regulation also believes that the relationships between market-makers and member firms and floor brokers and member firms, even in the absence of an established clearing relationship, may give rise to preferential allocations of new issues. Moreover, the potential to direct business to a member in exchange for IPOs is just one of the reasons for restricting broker/dealers. As noted in the October 1999 filing, the proposed rule change also is designed to ensure that industry insiders do not take advantage of their insider position in the industry to purchase IPOs for their own benefit at the expense of public customers. NASD Regulation believes that options market-makers and options floor brokers are integral to the functioning of an exchange and properly characterized and perceived as industry insiders.

[20] The CBOE also stated that members that lease out their seats and who are not engaged in a securities business should not be restricted persons. NASD Regulation agrees. NASD Regulation does not believe that a person who merely leases out a seat to a broker/dealer should be treated as a restricted person.

Colish, Washington, and Fried also believed the definition of limited business broker/dealers should be expanded. They suggested including broker/dealers that do not have any involvement in the capital formation or underwriting business, such as market-makers and electronic communications networks. Colish suggested including broker/dealers that engage in private placements. Washington suggested that the proposed rule change should apply only to broker/dealers that engage in an equity securities business.[21] NASD Regulation disagrees. NASD Regulation believes that persons associated with members engaged in these activities are, like persons associated with other broker/dealers, in a position to direct business to, and to enter into reciprocal arrangements with, other members. They also are industry insiders. While it is undoubtedly true that not every person associated with a member engaged in these activities is in a position to enter into reciprocal arrangements, many persons are. The proposed rule change, like the current Interpretation, is a prophylactic rule. It achieves its goals by applying across a class of persons to whom sales of IPOs may violate the purposes of the rule.

In general, the SIA agreed with NASD Regulation that reciprocal arrangements between industry members in the allocation of public offerings must be prevented. The SIA, however, stated that a rule targeted towards "conduct which has the purpose or effect of creating reciprocal arrangements, rather than one [that is] * * * based on complex definitions of status in the industry, would better serve the capital markets and would be more fair to industry members, their relatives, and other market participants." The SIA did not offer any suggestion on how such a rule would operate in practice. NASD Regulation believes that a rule that requires members to determine whether a particular individual is engaged in reciprocal arrangements with a broker/dealer would be difficult both from an administration and examination standpoint, and would eliminate the certainty sought by the proposed rule change.

(x) *Elimination of Conditionally Restricted Persons.* Another significant reform in the proposed rule change was the elimination of the so-called "conditionally restricted" status[22] and the decision to treat persons as either restricted or non-restricted. Commenters generally supported the decision to eliminate the conditionally restricted status. The proposed rule change continues to treat persons as either restricted or non-restricted as NASD Regulation continues to believe that this bright-line approach best serves investors and members.

(xi) *ERISA Plans.* NASD Regulation has further simplified the restrictions on Employee Retirement Income Security Act ("ERISA") plans. The October 1999 filing proposed exempting tax-qualified plans under ERISA, so long as such plans were not sponsored by a broker/dealer or an affiliate. A number of commenters, including SIA, MSDW, and Sullivan, believed that this exemption was unnecessarily narrow and would exclude a large number of non-restricted plan participants in plans sponsored by financial services companies. The commenters added that ERISA plans are already subject to a separate regulatory scheme and that they were unaware of any perceived or actual abuses to cause NASD Regulation to narrow the exemption for ERISA plans from the current Interpretation.

NASD Regulation agrees with the commenters that the treatment of ERISA plans in the October 1999 filing could reach many non-restricted persons participating in a plan sponsored by an affiliate of a broker/dealer. Amendment No. 2 exempts an ERISA plan that is qualified under section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker/dealer.

(xii) *Foreign Investment Companies.* The October 1999 filing proposed an exemption for foreign investment companies that is substantially similar to the Interpretation. Specifically, it stated that a foreign investment company is exempt from the proposed rule change if: (1) It has 100 or more investors; (2) it is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; (3) no more than 5% of its assets are invested in a particular hot issue; and (4) no person owning more than a 5% interest in such company is a restricted person.

MSDW suggested exempting all foreign investment companies that are traded on a "designated offshore securities market" as defined in Rule 902(b) under the Securities Act of 1933.[23] NASD Regulation believes that such an exemption would be too broad. The standards for inclusion in Rule 902(b) do not appear related to the concerns underlying the proposed rule change. Although inclusion in Rule 902(9b) requires oversight by a governmental or self-regulatory body, NASD Regulation is not confident that such regulation would prevent restricted persons from suing foreign investment companies to circumvent the rule. The NASD continues to believe that it is often difficult to assess the comparability of a foreign country's investment company statutes and regulation to those in the United States, particularly as it relates to the purposes of this rule, and believes, therefore, that it is necessary to impose certain conditions.

Colish and Sullivan suggested that NASD Regulation eliminate the fourth condition—a requirement that no person owning more than 5% of the foreign investment company is a restricted person—because it is often difficult to ascertain the ownership of a foreign investment company. Despite these concerns, NASD Regulation believes that this requirement is necessary to avoid purchases of new issues by funds with concentrated ownership interests of restricted persons.

However, in response to concerns generally about the exemption for foreign investment companies, NASD Regulation has simplified the exemption by eliminating the 100 person requirement and the limitation on the size of the purchase in relation to the size of the investment company. The 100 person condition basically

[21] These requests are similar to requests previously considered by NASD Regulation. As noted in Notice to Members 97–30, NASD Regulation continues to believe that persons associated with firms engaged solely in proprietary trading or investment or merchant banking activities may enter into reciprocal arrangements with other members that would violate the purposes of the rule. In Notice to Members 97–30, NASD Regulation stated that the limited business broker/dealers definition should not be expanded to include such firms "because of the difficulty in defining those firms" and because "such broker/dealers may influence or be involved in various aspects of the underwriting process." Further, NASD Regulation was concerned that "such firms may enter into reciprocal arrangements with other members that would violate the intent of the Interpretation."

[22] Under the Interpretation, conditionally restricted persons can purchase hot issues "if the member is prepared to demonstrate that the securities were sold to such persons in accordance with their normal investment practice, that the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public and that the amount sold to any one of such persons is insubstantial in amount."

[23] This is similar to a request made during the 1994 rulemaking when the exemption for foreign investment companies was first proposed.

addressed the same concerns about concentration of ownership as condition (4) and, therefore, was eliminated. The limitation on the size of the purchase in relation to the size of the investment company appeared unnecessary and was potentially burdensome for members to calculate. Moreover, for very large funds, the limitation was meaningless inasmuch as 5% of their total assets would often exceed the size of the entire IPO. The other conditions are maintained.

(xiii) *Minor or Technical Revision.* In addition to the changes discussed above, NASD Regulation made a number of minor or technical amendments in response to the comment letters.

Testa stated that the anti-dilution provisions, which were similar in scope to the venture capital provisions of paragraph (g) of the Interpretation, applied to natural persons only. Testa believed that entities as well as natural persons that have a prior equity ownership interest in an issuer, should be able to avail themselves of the anti-dilution provisions. The omission of entities in the anti-dilution provisions was inadvertent and has been changed. The anti-dilution provisions thus allow an entity or a natural person investing in such entity to retain the percentage equity ownership in the issuer at a level up to the ownership interest as of three months prior to the filing of the registration statement.

Testa also stated that, as a general matter, family members of a restricted person who receive "material support" from the restricted person should be treated similarly to the restricted person. Testa noted that the proposed rule change in some cases made an exemption for a restricted person to purchase new issues, but did not extend the exemption to the restricted person's immediate family members. NASD Regulation believes that an exemption for a restricted person also should be available to an immediate family member who is restricted under the rule, and it has amended the proposed rule change accordingly.

Several commenters, including Colish and Washington, stated that the use of the word "includes" in the definition of restricted person creates uncertainty by suggesting that the list is non-exclusive. NASD Regulation agrees and has removed the word "includes" from the definition of restricted person.

Schwab stated that the definition of restricted person should exlude consultants or contractors of a broker/dealer member who are not engaged in securities-related activities. Schwab stated that the policy concerns underlying the rule do not require restricting these individuals from participating in new issues. NASD Regulation agrees that consultants or contractors of a broker/dealer should not be restricted persons unless they are engaged in the investment banking or securities business. If, for example, Schwab hires a contractor or consultant to perform photocopying services or a compensation survey, it should not preclude such contractor or consultant from purchasing new issues. The definition of restricted person has been revised to exclude agents of a broker/dealer who are not engaged in the investment banking or securities business.

Schwab also supported the addition of a bright line definition of "material support" but believed that the 10% threshold for support is too low and recommended that a time frame be established for measuring support. NASD Regulation agrees and has revised the definition of "material support" to providing more than 25% of a person's income in the current or prior calendar year. Separately, NASD Regulation recommends clarifying that members of the immediate family living in the same household will be deemed to be providing each other with material support. Using this language makes clear that the proposed rule change establishes a bright line test, and NASD Regulation will not evaluate material support issues on a case-by-case basis.

2. Statutory Basis

NASD Regulation believes that Amendment No. 2 is consistent with the provisions of section 15A(b)(6) of the Act,[24] and, in general, to protect investors and the public interest. NASD Regulation believes that the provision of Amendment No. 2 protect investors and the public interest by ensuring that members make a bona fide public offering of securities at the public offering price; ensuring that members do not withhold securities in a public offering for their own benefit or use such securities to reward certain persons who are in a position to direct future business to the member; and ensuring that industry "insiders," including members and their associated persons, do not take advantage of their "insider" position in the industry to purchase new issues for their own benefit at the expense of public customers.

[24] 15 U.S.C. 78o–3(b)(6).

B. Self-Regulatory Organizotions Statement on Burden on Competition

NASD Regulation does not believe that Amendment No. 2 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Commission received twenty-four comment letter. NASD Regulation responded to those comment letters with Amendment No. 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies therof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–60 and should be submitted by December 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30976 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–M

[25] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3309]

State of Oklahoma

As a result of the President's major disaster declaration on November 27, 2000, I find that Caddo and Grady Counties in the State of Oklahoma constitute a disaster area due to damages caused by severe storms and flooding beginning on October 21, 2000 and continuing through October 29, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 26, 2001, and for loans for economic injury until the close of business on August 27, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Blaine, Canadian, Cleveland, Comanche, Custer, Garvin, Kiowa, McClain, Stephens, and Washita in the State of Oklahoma.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 330911 and for economic injury the number is 9J7900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–31062 Filed 12–5–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No.: 09/79–0416]

Notice of Surrender of License

Notice is hereby given that Sundance Venture Partners II, L.P., located at 5030 E. Sunrise Drive, Suite 200, Phoenix, Arizona 85044, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Sundance Venture Partners II, L.P., was licensed by the Small Business Administration on 05/04/98. Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was acted on this date, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 29, 2000.

Donald A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–31063 Filed 12–5–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

If your Leverageable Capital is:	Then your maximum Leverage is:
(1) Not over $18,100,000	300 percent of Leverageable Capital
(2) Over $18,100,000 but not over $36,300,000	54,300,000 + [2 × (Leverageable Capital—$18,100,000)]
(3) Over $36,300,000 but not over $54,400,000	$90,700,000 + (Leverageable Capital—$36,300,000)
(4) Over $54,400,000	$108,800,000

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: November 30, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–31064 Filed 12–5–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3489]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the forty-four letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 28, 2000.

William J. Lowell,

Director, Office of Defense Trade Controls.

October 23, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of two(2) S–70B–6 helicopters to the Government of Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 081–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 29, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in South Korea of twenty-five (25) F100–STW–229 Engine Partial Knockdown Kits (PKDs), forty-three (43) Engine Module Sets and related support equipment.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 130–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of proposed Technical Assistance Agreements with Germany and Italy.

The transaction described in the attached certification involves the design and manufacture of a prototype Medium Extended Air Defense System to provide the militaries of the United States, Germany, and Italy with protection from short and medium range ballistic missiles, cruise missiles, and aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 070–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Belgium of F–16 vertical stabilizer assemblies, dorsal fairing panels, dorsal fairing structure assemblies, and aft fuselage assemblies for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 140–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services for the demonstration, manufacturing, and in-service support phases of the Airborne Electronic Reconnaissance System known as Project EXTRACT for end use by the United Kingdom Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 122–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles and services to the Commonwealth of Australia for the development of an Air Combat Training System for the Royal Australian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 123–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data for the manufacture of F–15 parts and components and assemblies, to include the horizontal tail assembly, in Israel.

The United States Government is prepared to license the export of these items having taken into account political, military,

economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 136–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense articles to Greece related to the AN/TPQ–37(V)3 Artillery Weapon Locating Radar system for end use by the Greek Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 116–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction described in the attached certification involves the transfer of technical data and assistance for the production, test and repair of inertial measurement units, to include gyros, accelerometers and other subassemblies that will be returned to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 133–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of one shipset of the MK 41 Vertical Launch System for use by the Japanese Maritime Self-Defense Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 137–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in The Netherlands of F–16 center fuselages, wing leading edge flaps, wing trailing edge panels, wing flaperons, and main landing gear doors for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 138–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Belgium of F–16 flaperon seals, leading edge flap seals, wing assemblies, and vertical fin skins for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 139–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of four (4) photographic reconnaissance pods and an image processing ground system to Taiwan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 104–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in South Korea of an additional 350, X1100–5A3 transmissions for the K95 Mobile Howitzer for Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTCk 109–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Israel of F–16 structural components and kits for the air forces of the United States, Belgium, Denmark, Greece, Israel, Korea, The Netherlands, Norway, Portugal, and Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 075–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of a Galaxy III commercial communications satellite to French Guiana for launch of an Ariane or Sea Launch for launch on a Zenit. Upon orbit, the satellite will be operated by PamAmSat of Greenwich, Connecticut.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin, *Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 103–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction contained in the attached certification involves the export of defense services and technical data for the production and overhaul of Crew Escape System Propellant Actuated and Mechanical Devices (PAD) and components in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin, *Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 93–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Canada of technical data and assistance to ensure the proper integration of the Advanced Imaging Multi-Spectral Sensor (AIMS) in U. S. Navy and U. S. Customs P–3 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 102–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data for engineering, intermediate-level maintenance, and logistical training, to support the integration and operation of equipment being installed on remanufactured AH–64A aircraft, in Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 129–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Italy.

The transaction described in the attached certification involves the transfer of technical data, hardware and assistance in the production of PAVEWAY II Laser Guided Bomb Kits for end use by the Italian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 052–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services to support the development of the long range Airborne Stand-Off Radar (ASTOR) surveillance and target acquisition system.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 087–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the sale and support of fourteen (14) LANTIRN targeting pods and related pylons, support equipment and spares to the Royal Danish Air force for use in F–16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 99–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the design, manufacture, and support of the NSS–6 commercial communications satellite for The Netherlands. To be launched from French Guiana, the satellite will provide commercial communication services to Australia, South East Asia, China, North East Asia, India, the Middle East and parts of Africa.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 112–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services to support the integration of the AGM–65 Maverick Weapon system with United Kingdom MoD aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 119–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36 (c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services to services to support the production of STANDARD missile control actuation systems for end use in the United Kingdom and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 121–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36 (c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services to support the Upgrade of thirty-four (34) F/A–18 C/D in Switzerland.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 125–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction contained in the attached certification involves the transfer of technical data and assistance in the development of the Joint Biological Point Detection System (JBPDS) for end use by the Government of the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 120–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to support the Upgrade of thirty-four (34) F/A–18 C/D in Switzerland.

The United States Government is prepared to license the export of these items having

taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 131–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36 (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves the transfer of technical data and assistance for the manufacture, test and repair of the AN/ASQ–81 Magnetic Anomaly Detection (MAD) equipment for end use by the Government of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. 134–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to assemble, test, integrate and sell the AN/SQQ–32 Minehunting Sonar System in Spain.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arm control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 042–00
The Honorable J. Dennis Hastert, Speaker of the House of Representative.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c)(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to improve the overall manufacture and production process of the L–159 Trainer/Light Combat Fighter Aircraft, and the manufacture of small parts and components for the AV–8B, C–17, F–15, F/A–18 and T–45 aircraft, in the Czech Republic.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 67–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale to the United Kingdom of upgraded avionics equipment for eight CH–47 Mk3 helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 097–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the sale of five (5) shipsets of an AEGIS-derived integrated weapon system to Spain for installation on anti-submarine warfare frigates for end use by the Norwegian Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 100–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the sale and support of ten (10) LANTIRN targeting pods and related pylons, support equipment and spares to the Royal Netherlands Air Force for use on F–16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 101–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Technical Assistance Agreement with Mexico.

The transaction described in the attached certification involves the transfer of proprietary information, technical expertise and defense services to Mexico to develop the design for, and manufacture of facilities materials, specification items and outfitting materials for U.S. Navy Strategic Sealift T–AKR 310, LMSR, MPF (E) and T–ADC(X) class vessels.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 107–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, assistance and defense articles for the manufacture, assemble and overhaul in South Korea of XTG411–2A transmissions for the Government of South Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 110–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) & (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction described in the attached certification involves the manufacture of the Model 2093 minehunting sonar towed body for the navies of Australia, Belgium, Canada, France, Italy, Germany, Japan, Netherlands, Portugal, Saudi Arabia, Spain, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 128–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 19, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and services for the operation and sale of a GE–6 commercial communications satellite to Argentina.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 108–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 18, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing and Technical Assistance Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense services for Co-Production of the Mk 45 Model 4, Five Inch, 62 Caliber Naval Gun System, in the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. 016–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the sale of the Anik F2 commercial telecommunications satellite to Canada for launch either from French Guiana or from international waters using the Sea Launch program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 094–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Germany for the Cooperative Rolling Airframe Missile (RAM) MK 31 Guided Missile Weapon System Program for end use by the Governments of Germany and United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 055–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Germany of technical data, defense services and classified hardware kits in support of the radar upgrade for the PATRIOT Air Defense System.

The United States Government is prepared to license the export of these items having taken into account

political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 083–00

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

September 8, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services for the production of various products, systems, and subsystems for commercial and military aircraft, in Singapore and Germany.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely;

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 89–00

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed License for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of ship engineering and design services to Spain for the construction of a new class of Corvette for the Turkish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 105–00

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 00–31074 Filed 12–5–00; 8:45 am]

BILLING CODE 4710–25–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–212]

WTO Consultations Regarding Countervailing Duty Measures Concerning Certain Products From the European Communities

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on November 13, 2000, the United States received from the European Communities (EC) a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The request relates to the continued application by the United States of countervailing duties based upon the "change in ownership" methodology used by the U.S. Department of Commerce (Commerce). The measures identified by the EC (including the relevant Commerce case number) are as follows:

- Original Imposition of Countervailing Duties
- Stainless Steel Sheet and Strip in Coils from France (C–427–815)
- Certain Cut-to-Length Carbon Quality Steel from France (C–427–817)
- Certain Pasta from Italy (C–475–819)
- Stainless Steel Sheet and Strip in Coils from Italy (C–475–825)*
- Certain Stainless Steel Wire Rod form Italy (C–475–821)*
- Stainless Steel Plate in Coils from Italy (C–475–823)*
- Certain Cut-to-Length Carbon-Quality Steel Plate from Italy (C–475–827)

(With respect to those cases marked with an asterisk, the correct case numbers are provided, as opposed to the incorrect case numbers included in the EC's request for consultations.)

- Administrative Reviews
- Cold-Rolled Carbon Steel Flat Products from Sweden (C–401–401)
- Cut-to-Length Carbon Steel Plate from Sweden (C–401–804)
- Grain-Oriented Electrical Steel from Italy (C–475–812)

(With respect to case C–475–812, the EC consultation request identifies the "Preliminary determination, plus final sunset results".)

- Sunset Reviews
- Cut-to-Length Carbon Steel Plate from the United Kingdom (C–412–815)
- Certain Corrosion-Resistant Carbon Steel Flat Products from France (C–427–810)
- Cut-to-Length Carbon Steel Plate from Germany (C–428–817)
- Cut-to-Length Carbon Steel Plate from Spain (C–469–804)

The EC alleges that the continued application of Commerce's change in ownership methodology in these countervailing duty proceedings violate Articles 10, 19 and 21 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), because, according to the EC, there is no proper determination of a benefit to the producer of the goods under investigation, as required by Article 1.1(b) of the SCM Agreement. Under Article 4.3 of the WTO Dispute Settlement Understanding (DSU), consultations are to take place within a period of 30 days from the date of receipt of the request, or within a period otherwise mutually agreed between the United States and the EC. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 15, 2001, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Change in Ownership Methodology Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508. Telephone: (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the EC

In its consultation request, the EC alleges that in United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products, WT/DS138/AB/R, the WTO Appellate Body found Commerce's change in ownership methodology to be inconsistent with the SCM Agreement. The EC also alleges that the Appellate Body found that a change of ownership at fair market value eliminated the benefit of any prior subsidies to the privatized company. Therefore, the EC alleges that the continued application of Commerce's change in ownership methodology, and the continued imposition of countervailing duties based upon that methodology, violate Articles 10, 19 and 21 of the SCM Agreement. According to the EC, if the United States had properly examined the nature of the change in ownership in each of the countervailing duty proceedings identified in the EC's request for consultations, the amount of countervailing duty would have been greatly reduced or, in some cases, found to be zero.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–212, Change in Ownership Methodology Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,
Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–31068 Filed 12–5–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Austin-Bergstrom International Airport, Austin, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Austin for Austin-Bergstrom International Airport under the provisions of Title 49, U.S.C., Chapter 475 and CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On April 5, 1999, the FAA determined that the noise exposure maps submitted by the City of Austin for Austin-Bergstrom International Airport under part 150 were in compliance with applicable requirements. Subsequently, the City submitted a revised 2004 noise exposure map, which the FAA approved on May 8, 2000. On November 7, 2000, the Administrator approved the noise compatibility program. The measures requiring Federal approval of the program were approved.

DATES: The effective date of the FAA's approval of the noise compatibility program for Austin-Bergstrom International Airport is November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5607. Documents reflecting this FAA action maybe reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the City of Austin for Austin-Bergstrom International Airport effective November 7, 2000.

Under Title 49 U.S.C., section 47504 (hereinafter referred to as "Title 49"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or

disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, §150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for program grants must be submitted to the FAA Airports Division Office in Forth Worth, Texas.

The City of Austin submitted to the FAA on May 25, 2000, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 1998 through May 2000. On April 5, 1999, the FAA determined that the noise exposure maps submitted by the City of Austin for Austin-Bergstrom International Airport under part 150 were in compliance with applicable requirements. Notices of these determinations were published in the **Federal Register** on April 20, 1999, and May 25, 2000, respectively.

The Austin-Bergstrom International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on May 8, 2000, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise mitigation on and off the airport that requested FAA approval. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 7, 2000.

Outright approval was granted for the three proposed action elements in the noise compatibility program where the City of Austin requested federal approval. Approved action elements included a "Fly Quiet Program" involving a voluntary preferential runway use policy and flight track management procedures, land use mitigation measures involving a land acquisition program and a sound insulation program, and program management measures involving a flight track and noise monitoring system, and provisions for updating the noise exposure map and noise compatibility program. These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 7, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available at the FAA office listed above and at the administrative offices of: City of Austin, Department of Aviation, Austin-Bergstrom International Airport, 3600 Presidential Boulevard, Austin, Texas 78719.

Issued in Fort Worth, Texas, November 20, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–31088 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee, Revised Agenda

The December 13 RTCA Free Flight Steering Committee meeting announced in the **Federal Register**, 65 FR 70869 (Tuesday, November 28, 2000), has been revised.

The revised agenda reads as follows: The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Report from FAA: (a) Free Flight Phase 1 Operational Assessment Update; (b) End-to-End Checklist for Safe Flight 21 Applications; (c) FAA Primary En Route Radar Restructuring Program; (4) Report and Recommendations from the Free Flight Select Committee: (d) National Airspace System Concept of Operations; (e) Addendum 4: Free Flight Phase 2; (5) CNS/ATM Focus Team Data Link Report; (6) National Airspace System Operational Evolution Plan; (7) Other Business; (8) Date and Location of Next Meeting; (9) Closing Remarks.

Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile).

Issued in Washington, DC on November 30, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–31092 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to a Passenger Facility Charge (PFC) at Killeen Municipal Airport, Killeen, TX and Use the Revenue at Killeen Municipal Airport and Robert Gray Army Airfield

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose at Killeen Municipal Airport and use the revenue from a PFC at Killeen Municipal Airport and Robert Gray Army Airfield under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 5, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, PFC Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Don O. Christian, Manager of Killeen Municipal Airport at the following address: Mr. Don O. Christian, Director of Aviation, Killeen Municipal Airport, 1525 Airport Drive, Box A, Killeen, TX 76543–5536.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, PFC Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Killeen Municipal Airport and use the revenue at Killeen Municipal Airport (ILE) and Robert Gray Army Airfield (GRK) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 22, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 24, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50

Proposed charge effective date: May 1, 2001.

Proposed charge expiration date: July 1, 2005.

Total estimated PFC revenue: $2,570,000.

PFC application number: 01–05–C–00–ILE.

Brief description of proposed project(s):

Projects To Impose and Use PFC's:

1. Construct Partial Parallel Taxiway to Runway 15–33 (GRK).
2. Terminal Facilities Site Work, Utilities and Access Road (GRK).
3. Construct Terminal Building and Apron (GRK).
4. Acquire Additional Land for Terminal (GRK).
5. Runway Safety Area Improvements (ILE).

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Killeen Municipal Airport.

Issued in Forth Worth, Texas on November 22, 2000.

Naomi L. Saunders,

Manoger, Airports Division.

[FR Doc. 00–31089 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Noise Screen

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of change in air traffic noise screen policy.

SUMMARY: This action changes the FAA Air Traffic Noise Screen (ATNS) policy to incorporate an administrative change in the procedures to conduct the ATNS. This action is issued as a Final Notice without prior notice because this change is administrative and/or required by statute. Also, the current adoption of the policy change is in the public interest.

DATES: Effective January 5, 2001.

FOR FURTHER INFORMATION CONTACT: William J. Marx, Environmental Programs Division, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone: (202) 267–3705.

SUPPLEMENTARY INFORMATION:

Background

In 1987 the Federal Aviation Administration (FAA) implemented the Expanded East Coast Plan (EECP). At that time air traffic proposed actions above 3,000 feet above ground level (AGL) were considered non-controversial by nature and were categorically excluded from further environmental review under the National Environmental Policy Act of 1969. When the EECP was categorically excluded from further environmental review, populations in New Jersey reacted strongly. The action became highly controversial, and Congress mandated that an Environmental Impact Statement (EIS) be completed by the FAA. At that time, there was no precedence for analyzing noise effects from aircraft above 3,000 feet AGL.

In 1991 Air Traffic Services began the Congressionally mandated EIS of air traffic procedural actions associated with the EECP. Populations in the study area were analyzed for noticeable changes (±5 decibels on an average annual basis) in their exposure to aircraft noise due to the EECP.

The FAA chose to model predicted change in noise exposure up to 18,000 feet AGL to insure that communities with predicted 45 decibel (dB) Day Night Level (DNL) (average aircraft noise level over a 24 hour period averaged over the course of a year) noise footprints were included in the study area. The resulting Air Traffic Noise Screen (ATNS) was created to address airspace changes that may cause controversy on environmental grounds at altitudes between 3,000 feet AGL and 18,000 feet AGL. It was a factor to be considered in determining whether actions normally categorically excluded from further environmental review should be reviewed as part of an environmental assessment because of the potential for community annoyance and reaction.

Since the EECP EIS, Air Traffic Services has used 18,000 feet AGL as the altitude ceiling when screening for potentially controversial noise exposures that could be expected from proposed air traffic actions. In 1999 the FAA's Office of Air Traffic Airspace Management initiated a scientific study

of the ATNS to rigorously analyze predicted noise exposures using different altitude ceilings. Using a research and development tool, FAA analyzed data from a major airspace project and proposed alternative that reflected the largest proposed changes to the current area airspace design. The science-based study provided analysis on the difference in noise screening results by comparing results using an 18,000 feet AGL altitude ceiling with results using 10,000, 12,000, 14,000, and 16,000 feet AGL. Completed in July 1999, the results revealed equivalent predicted noise exposure values using a 10,000 feet ceiling as were predicted using a 18,000 feet ceiling. In addition, since the ATNS was implemented, proposals to change air traffic procedures have not identified 5 decibel or greater changes at altitudes above 10,000 feet AGL.

The results of this analysis confirm that an altitude cut-off of 10,000 feet AGL has materially the same predictive capability as the ATNS run to 18,000 feet AGL. The FAA has determined that the public interest is served by this action. The policy change enables the Air Traffic Service to avoid unproductive agency resource use; further, the policy change enables resource allocation to more timely analysis of environmental conditions for proposed airspace projects without changing environmental protection and consideration to affected communities.

Air Traffic Noise Screen Policy

Beyond the airport environs, aircraft following air traffic routes and procedures normally do not significantly influence the noise environment of underlying land uses. Air traffic procedures for operations over 3,000 feet AGL are normally categorically excluded from environmental assessment requirements delineated in FAA Order 1050.1, Environmental Impacts: Policies and Procedures.

At the same time, in recognition that some actions that are normally categorically excluded can be highly controversial on environmental grounds, the FAA has developed the ATNS which allows air traffic specialists and planners to evaluate potential noise impacts from proposed air traffic changes. The ATNS is a computerized noise screening procedure that provides guidance to air traffic managers in identifying air traffic changes that will increase aircraft noise exposure, and the possible need for an environmental assessment.

The ATNS will be used to evaluate proposed changes in arrival procedures between 3,000 feet and 7,000 feet and departure procedures between 3,000 and 10,000 feet AGL, for large civil jet aircraft weighing over 75,000 pounds. Where a proposed change would cause an increase in noise of 5 dB DNL or greater, FAA considers whether there are extraordinary circumstances in accordance with Order 1050.1 that warrant preparation of an environmental assessment.

Issued in Washington, DC November 30, 2000.

Nancy B. Kalinowski,

Deputy Program Director for Air Traffic Airspace Management, ATA–1.

[FR Doc. 00–31090 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Pilot Program To Permit Cost-Sharing of Air Traffic Modernization Projects

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final program guidance; request for sponsors' expressions of interest for air traffic modernization cost-sharing projects for fiscal years 2001, 2002, and 2003.

SUMMARY: On August 14, 2000, the FAA issued proposed program guidance on Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21), which authorizes a pilot program for cost-sharing of air traffic modernization projects. The FAA is now issuing final program guidance and is requesting sponsors' expressions of interest for cost-sharing projects for fiscal years 2001, 2002, and 2003. The comments that the FAA received on the proposed guidelines and FAA's responses can be found below under the heading **SUPPLEMENTARY INFORMATION.** The purpose of Section 304 is to improve aviation safety and enhance mobility by encouraging non-Federal investment on a pilot program basis in critical air traffic control facilities and equipment. Under the pilot program, the Secretary of Transportation may make grants to eligible project sponsors for not more than ten eligible projects, with each project limited to Federal funding of $15,000,000 and a 33 percent Federal cost share. A project sponsor may be a public-use airport (or a group of public-use airports), or a joint venture between a public-use airport (and a group of public-use airports) and one or more U.S. air carriers.

DATES: Initial sponsors' expressions of interest should be received by the FAA's Air Traffic System Requirements Service on or before January 19, 2001.

ADDRESSES: Sponsors' expressions of interest should be mailed or delivered, in duplicate, to the Federal Aviation Administration, Air Traffic System Requirements Service (ARS–1), Room 8206, 400 7th Street, SW, Washington, DC 20590. Electronic submissions of expressions of interests will not be accepted. Deliveries may be made between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays. An electronic copy of this notice may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

FOR FURTHER INFORMATION CONTACT: Ward Keech (202–267–3312) or Charles Monico (202–267–9527), Office of Aviation Policy and Plans (APO), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION

1. Background

In performing its mission of providing a safe and efficient air transportation system, the FAA operates and maintains a complex air traffic control system infrastructure. Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21) authorizes a pilot program to permit cost-sharing of air traffic modernization projects, under which airports and airport/airline joint ventures may procure and install facilities and equipment in cooperation with the FAA. The purpose of Section 304 is to improve aviation safety and enhance mobility in the air transportation by encouraging non-Federal investment on a pilot program basis in critical air traffic control facilities and equipment. The pilot program is intended to allow project sponsors to achieve accelerated deployment of eligible facilities or equipment, and to help expand aviation infrastructure.

This notice responds to congressional direction that the FAA issue advisory guidelines on implementation of the pilot program.

2. Responses to Comments Requested in August 14, 2000 Federal Register Notice

The August 14, 2000, notice requested comments on FAA's proposed program guidance. The comments that the FAA received on the proposed guidelines and FAA's responses to those comments are summarized below:

a. A commenter suggested that the guidance should clearly allow and explicitly acknowledge that project facilities, equipment and automation tools may or may not be transferred to the FAA for operation and maintenance. The commenter points out that the proposed guidance did not exclude the possibility that certain pilot projects will not be transferred to the FAA for operation and maintenance. The FAA agrees with this comment. It was not the intent of the stature or the FAA to require project transfer. The FAA has changed the guidance to clarify that the project sponsor may elect to transfer or not transfer the project to the FAA. The FAA has also clarified the requirement that, at the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect. The FAA has also clarified the requirement that, if the project is not transferred to the FAA, the sponsor remains liable for all operations and maintenance costs, including the costs of capital sustainment.

b. A commenter objected to the proposed criterion that the project be consistent with FAA's air traffic equipment/systems infrastructure and architecture. The FAA does not concur. It is essential that a pilot project be compatible and consistent with FAA's air traffic equipment/systems infrastructure and architecture because FAA is statutorily liable for operating and maintaining the project if the sponsor elects to transfer it to the FAA.

c. A commenter objected to the proposed criterion that the project be a validated project of an FAA program. The FAA does not concur. By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 48101(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. Given that there are no specifically appropriated funds for the pilot program, FAA has chosen to limit pilot program eligibility to validated projects of FAA programs. To do otherwise could result in Federal funding of pilot program projects at the expense and exclusion of non-pilot program projects which are generally expected to yield greater returns to the safety and efficiency of the air transportation system.

d. A commenter expressed concern about the proposed criterion that project hardware have a useful and expected life of ten years or more. The commenter noted that the requirement is impractical as applied to commercial off-the-shelf computers which cannot be maintained cost-effectively for more than 5 years or so after the purchase date. The FAA acknowledges the merit of this comment. The FAA has changed the criterion to "the project should have a useful and expected life of ten years or more, notwithstanding the possible need to replace project components during its operating life."

3. Final Program Guidance

This section restates the statutory language of AIR–21 Section 304 and outlines FAA's supplementary criteria for the pilot program. FAA's evaluation and screening criteria are outlined in Section 3.6 of this notice.

3.1 Eligible Project Sponsors

3.1.1 Statutory Provisions for Sponsor Eligibility

The term "project sponsor" means a public-use airport or a joint venture between a public-use airport and one or more air carriers.

3.1.2 Supplementary FAA Criteria for Sponsor Eligibility

An eligible project sponsor is a public-use airport (or group of airports), either publicly or privately owned, acting on its own or in a joint venture with one or more U.S. air carriers. All landing facilities meeting these criteria are eligible, including but not limited to commercial service airports, reliever airports, general aviation airports, heliports, etc. All eligible sponsors are encouraged to participate.

3.2 Eligible Projects

3.2.1 Statutory Provisions for Project Eligibility

The term 'eligible project' means a critical project relating to the Nation's air traffic control system that is certified or approved by the Administrator and that promotes safety, efficiency, or mobility. Such projects may include:

a. airport-specific air traffic facilities and equipment, including local area augmentation systems, instrument landings systems, weather and wind shear detection equipment, lighting improvements, and control towers;

b. automation tools to effect improvements in airport capacity, including passive final approach spacing tools and traffic management advisory equipment; and

c. facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

The statute limits the pilot program to 10 eligible projects.

3.2.2 Supplementary FAA Criteria for Project Eligibility

a. The project should be consistent with FAA's air traffic equipment/systems infrastructure and architecture and should be a validated project of an FAA program. The project should be initiated within two years of project approval and completed/commissioned within five years of project approval (allowing for an environmental impact study (if necessary), acquisition, supply support, training programs, etc.).

b. Equipment and facilities should meet applicable FAA advisory circulars nad specifications. New or modified computer software is eligible if it meets all other criteria.

c. The project should serve the general welfare of the flying public; it should not be used for the exclusive interest of a for-profit entity.

d. Any facility/equipment acquired under the project should be a new asset, not an asset that the sponsor has already acquired or committed to acquiring. Either the FAA or the sponsor may use its acquisition authority and acquisition vehicles to procure and install facilities and equipment under the pilot program. In the case where the FAA manages the procurement, existing FAA contracts will be used where possible. Unless otherwise stipulated in the agreement executed between the sponsor and the FAA, liability for cost over-runs will be shared between the FAA and the sponsor in accordance with their project cost shares (however, the FAA's total cost share is limited by statute to $15,000,000 per project). Equipment in FAA's inventory that has not been previously adopted qualifies as eligible equipment.

e. The project should have a useful and expected life of ten years or more, notwithstanding the possible need to replace project components during its operating life.

f. If a sponsor submits more than one project nomination, each project should form part or all of an integrated system.

g. A project may not be co-mingled with other FAA cost-sharing programs (*e.g.*, the provisions of AIR–21 Section 131 that authorize cost-sharing programs for airport traffic control tower operations and construction).

h. All equipment and structures should meet OSHA standards for employee safety and fire protection. Where land is involved, the property should meet all environmental compliance requirements, including noise, hazardous material, property access, and zoning rights.

i. A project may not create an increase in the controller or airways facility workforces during the pre-transfer period (see section below titled "Transfer of Facility or Equipment to FAA").

3.3 Funding

3.3.1 Statutory Provisions for Funding

The Federal share of the cost of an eligible project carried out under the pilot program shall not exceed 33 percent. No project may receive more than $15,000,000 in Federal funding under Section 4810(a) of Title 49, United States Code (FAA's Facilities and Equipment appropriation). The Secretary shall use amounts appropriated under Section 48101(a) for fiscal years 2001 through 2003 to carry out the program.

The sponsor's share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to Section 40117 of Title 49, United States Code (passenger facility charges).

3.3.2 Supplementary FAA Criteria for Funding

FAA is not obligated to fund one-third of the total projects costs; rather, FAA's share may not exceed this threshold. The project sponsor must provide two-thirds or more of the total project cost. The Federal and non-Federal shares of project cost may take the form of in-kind contributions. If selected for the pilot program, a sponsor may use passenger facility charge (PFC) revenues to acquire and install eligible facilities and equipment, but not to fund their operation or maintenance. Normal PFC processing procedures under Federal Aviation Regulation 14 CFR Part 158 will be used to approve the imposition of a PFC or the use of PFC revenue as the non-Federal share of a pilot program project.

Project funding may be effected through a grant, a cooperative agreement, or other applicable instrument. Non-Federal matching contributions applied to any other Federal project or grant may not be used to satisfy the sponsor's cost share under this pilot program. FAA may utilize equipment in its inventory that has not been previously deployed.

The following criteria apply to the calculation of the cost-sharing ratio:

a. Project costs are limited to those costs that the FAA would normally incur in conventional facilities and equipment funding (*e.g.*, if land/right-of-way must be acquired or leased for a project, its cost can be included in the cost-sharing ratio only if FAA would otherwise incur it in conventional program funding).

b. Operations and maintenance costs of the project, both before and after any sponsor-elected project transfer to the FAA, will not be considered as part of the cost-share contribution.

c. Non-federal funding may include cash, substantial equipment contributions that are wholly utilized as an integral part of the project, and personnel services dedicated to the proposed project prior to commissioning, as long as such personnel are not otherwise supported with Federal funds. The non-federal cost may include in-kind contributions (*e.g.*, buildings). In-kind contributions will be evaluated as to whether they present a cost that FAA would otherwise incur in conventional facilities and equipment funding.

d. Aside from in-kind contributions, only funds expended by the sponsor after the project approval date will be eligible for inclusion in the cost-sharing ratio.

e. Unless otherwise specified by these criteria, the principles and standards for determining costs should be conducted in accordance with OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments.

f. As with other U.S. DOT cost-sharing grants, it is inappropriate for a management/administrative fee to be included as part of the sponsor's contribution. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to support the project.

By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 48101(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. FAA funding decisions will be made in concert with the project evaluation and project selection processes discussed later in this notice. FAA may choose to use specifically appropriated funds, to re-program funds from within existing facilities and equipment project appropriations, or to fund from within existing budget line items.

The U.S. Department of Transportation and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal and non-Federal contributions for selected projects. Sponsors should maintain sufficient documentation during negotiations and during the life of the project to substantiate costs.

3.4 Transfer of Facility or Equipment to FAA

3.4.1 Statutory Provisions for Facility or Equipment Transfer

Notwithstanding any other provision of law, project sponsors may transfer, without consideration, to the FAA, facilities, equipment, and automation tools, the purchase of which was assisted by a grant made under this section. The FAA shall accept such facilities, equipment, and automation tools, which shall thereafter be operated and maintained by the FAA in accordance with criteria of the FAA.

3.4.2 Supplementary FAA Criteria for Facility or Equipment Transfer

Project transfer to the FAA will be at the sponsor's election. At the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect. If the project is not transferred to the FAA, the sponsor remains liable for all operations and maintenance costs, including the costs of capital sustainment.

In the event of transfer, software code, data rights, and support tools should be provided to the FAA at no cost to the FAA.

3.5 Application Procedures

Application to the pilot program consists of two phases, as described below. The purpose of Phase 1 is to allow the FAA to gauge the level of interest, to provide preliminary responses to potential sponsors without causing applicant sponsors to expend excessive resources on project applications that have very limited chances of acceptance because of need or cost, and to plan for subsequent program implementation. In Phase 2, sponsors will provide more detailed applications, and final FAA evaluations/project selections will be completed.

3.5.1 Phase 1: Sponsor's Expression of Interest

A Phase 1 expression of interest should reflect a meaningful proposal and should not be submitted by a potential sponsor as a placeholder. The Phase 1 submission is not binding but it should reflect accurate estimates of project cost and sponsor contributions. Sponsors should submit written expressions of interest in accordance with the sections captioned **ADDRESSES** and **DATES** earlier in this notice. Electronic submissions will not be accepted. A sponsor's initial expression of interest should include the following:

a. Identity of sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures.

b. Description and location of the proposed project.

c. Statement of need for the project, including a brief assessment of the projected benefits—site-specific, regional, and the national airspace system.

d. Preferred project schedule, including start date, completion date, and any significant interim milestone dates.

e. Statement of intent to transfer the project to the FAA, including envisioned date, or intent not to transfer the project to the FAA.

f. Schedule of estimated project costs, including, (1) Up-front costs divided into proposed shares between the sponsor and the FAA, and (2) annual life-cycle operations and maintenance costs (both before and after transfer if the sponsor elects to transfer the project to the FAA).

g. Self-assessment of the ability to acquire and commit the non-Federal share of funding.

The FAA will review and evaluate the expressions of interest submitted during Phase 1, using a panel of technical program experts. The FAA will contact the sponsor if it has questions or has suggestions on how the sponsor may improve its proposal. Following its evaluations and preliminary selections, the review panel will recommend to the Director of FAA's Airway Facilities Service and the Director of FAA's Office of System Architecture and Investment Analysis those applicant sponsors who should be invited to participate in Phase 2, as described below. These officials will notify and invite selected sponsors to participate in Phase 2.

3.5.2 Phase 2: Formal Application and Selection of Projects

During Phase 2 each sponsor that has been invited to participate should submit an expanded application with the following elements: Project Description, Economic Analysis, Schedule, Financial Plan, Letter of Commitment, and a Letter of Acknowledgment/Support from the applicable State Department of Transportation and/or other appropriate jurisdiction. The following subsections describe the information needed by the FAA to evaluate the merits of each application.

a. Project Description: The project description should contain: (1) The identity of the submitting sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures; (2) project name and location; and (3) a detailed project description.

b. Economic Analysis: All applications should describe the need for the project and demonstrate its safety, efficiency, capacity, productivity, and other benefits, as applicable, at the airport, regional, and system-wide levels. The sponsor may conduct its own analysis, may opt to summarize existing analyses from FAA's acquisition management system, and/or may use the investment criteria in FAA Order 7031.2C, Airway Planning Standard Number One. The analysis should include a schedule of project costs, including: (1) Up-front costs broken down into proposed shares between the sponsor and the FAA; and (2) annual and life-cycle operations and maintenance costs before and after transfer to the FAA (if the sponsor elects to transfer). The level of effort devoted to the analyses should be tailored to the scope and cost of the project. The economic analyses should be consistent with FAA guidance contained in Report FAA–APO–98–4, Economic Analysis of Investment and Regulatory Programs—Revised Guide, and Report FAA–APO–98–8, Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs.

c. Schedule: the Schedule should list all significant proposed project dates, including the start date, completion date, date of project transfer to the FAA (if applicable), and key interim milestone dates. Sponsors are reminded that, at the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect.

d. Financial Plan: The Financial Plan should contain: (1) The proposed local and Federal cost shares, (2) evidence of the sponsor's ability to provide funds for its cost share (*e.g.*, approved local appropriation or Memorandum of Agreement); and (3) any commitment the sponsor might choose to offer for the assumption and liability of cost overruns aside from the liability criterion provided earlier in this notice.

e. Letter of Commitment: Sponsors should demonstrate a commitment to the project, as evidenced by a Letter of Commitment signed by all project participants (including any participating air carriers). The letter should, at a minimum, include a list of the participating agencies and organizations in the proposed project; the roles, responsibilities and relationship of each participant; and the name, address, and telephone number of the individual representing the sponsor.

f. Letter of Acknowledgement/Support: The application should include a letter of acknowledgment/support from the applicable State Department of Transportation and/or other appropriate jurisdiction (to avoid circumventing State and metropolitan planning processes).

The FAA will review and evaluate the Phase 2 applications using a panel of technical program experts, based on the criteria outlined below in Section 3.6. Following its evaluations, the review panel will prioritize and recommend to the FAA's Associate Administrator for Air Traffic Services and the Associate Administrator for Research and Acquisition those applications that it believes should be accepted. If the FAA selects a project for inclusion in the pilot program, an agreement will be executed between the sponsor and the FAA.

3.5.3 Subsequent Application and Selection Cycles (if any)

If fewer than the statutorily-limited ten projects have been approved following the initial round of Phase 1 and 2 applications, FAA will repeat the Phase 1 and 2 application processes on an annual basis, until the earlier of: May 15, 2003, or that point in time when the ten project limit is reached (see Schedule Summary in Section 3.7 below). The May 15, 2003, cutoff date is based on an allowance of time for FAA to process Phase 2 applications and make selections prior to the statutory authorization expiring at the end of fiscal year 2003. FAA cannot and does not extend any assurance or implication that any residual authority will remain following the first round of Phase 1 and 2 applications.

3.6 Application Evaluation and Screening Criteria

The FAA will consider the following elements in evaluating applications:

a. Compliance with statutory criteria, FAA's supplemental criteria, and application procedures

b. Degree to which the project relates to FAA's strategic goals for safety,

efficiency and mobility, as well as the national airspace system architecture

c. Impact on the airport, region, and national airspace system

d. Likelihood of project success

e. Availability of FAA resources

f. Ease of administration (acquisition, installation, etc.)

g. Ability of sponsor to provide its cost share

h. Evidence that the project can be implemented in a timely manner

i. Equity and diversity with respect to project type, geography, and population served

j. Degree of Federal leveraging (degree to which the proposal minimizes the ratio of Federal costs to total project costs)

k. Cost to the FAA: (1) up-front cost-share; and, if applicable, (2) post-transfer life-cycle operating and maintenance costs

3.7 Schedule Summary

Milestone	Date
First-Round of Applications:	
Phase 1 Applications due to FAA	1/19/2001
FAA Responses to Sponsors' Phase 1 Applications	3/16/2001
Phase 2 Applications due to FAA	6/1/2001
FAA Announcement of First-Round Approvals	7/13/2001
Second-Round of Applications (if needed):	
Phase 1 Applications due to FAA	12/14/2001
FAA Responses to Sponsors' Phase 1 Applications	2/15/2002
Phase 2 Applications due to FAA	5/15/2002
FAA Announcement of Second-Round Approvals	7/15/2002
Third-Round of Applications (if needed):	
Phase 1 Applications due to FAA	12/13/2002
FAA Responses to Sponsors' Phase 1 Applications	2/14/2003
Phase 2 Applications due to FAA	5/15/2003
FAA Announcement of Third-Round Approvals	7/15/2003

3.8 Project Implementation Information

During the life of the project, the FAA may collect data from the sponsor and conduct (with non-project funds) independent evaluations of the project's impact on safety, efficiency, and mobility objectives. This will allow the FAA to ascertain the success of the pilot program. The life of the program is currently limited by AIR–21 to the end of fiscal year 2003.

4. Impact of Final Guidelines

Potential costs and benefits of the final guidelines have been reviewed consistent with the intent of Executive Order 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act of 1980, Executive Order 13132 (Federalism), Office of the Secretary of Transportation direction on evaluation of international trade impacts, and the Unfunded Mandates Reform Act of 1995.

With respect to the focus of Executive Order 12866, there are no significant costs imposed by the guidelines. The benefit of the guidelines is efficient communication between the FAA and potential project sponsors about the basis and timing which the FAA will employ in selecting pilot program projects and the type of information needed by the FAA to evaluate proposed projects. Potential pilot program project sponsors will only apply for consideration if they believe that they will benefit from consideration. To minimize the costs of application, the guidelines encourage sponsors to provide information wherever possible from existing studies, plans, and other documents. Further, the guidelines request that initial project proposals provide limited detail about the project. Potential sponsors will be asked for additional information only if the FAA believes that the proposal meets the objective of the pilot program based on the limited initial information submission. Facilities and equipment currently incorporated in the federal airport and airway system architecture and approved for acquisition will be implemented, regardless of whether they are selected as a pilot project. Further, in implementing the pilot program, the FAA will not alter the sequence of implementation of system architecture in a manner that would delay achieving overall safety or efficiency benefits. Therefore, the FAA believes that the benefits of the final guidelines exceed their costs.

Airports that are considered small entities may apply to sponsor or participate in pilot projects. Small airports are defined by the Small Business Administration as airports owned by local governments for areas with populations of 200,000 or less. Program participation is voluntary and, as explained above, the cost of application is not considered significant. Because, by statute, the majority of project funding must be provided by the sponsor, few small airports or airlines are likely to elect to participate in the pilot program. Therefore, the FAA certifies that the final guidelines will not have a significant economic impact on a substantial number of small entities.

The FAA has analyzed the final guidelines under the principles and criteria of Executive Order 13132, Federalism. With few exceptions, States do not directly own or operate airports, but public airports are frequently owned and operated by either regional transportation authorities or local governments. The pilot program authorized by Congress which is the subject of these guidelines does not require participation by States, regional transportation authorities, or local governments, but rather permits the formation of a voluntary partnership between the FAA, airports, and airlines on projects considered to be of mutual benefit. These projects will ultimately be paid for by air passengers and shippers, either through fares or freight tariffs, airport charges, or aviation user taxes. FAA facilities and equipment are currently financed by passenger and shippers through aviation user taxes. Program guidelines described in this notice are intended to facilitate communication necessary to implement the pilot projects. By entering into these cooperative relationships, the FAA will not abrogate its responsibilities for the provision and maintenance of air traffic control and airway facilities and equipment, but rather may expedite the implementation of such facilities and equipment. In the absence of the pilot program, the facilities and equipment would ultimately be provided by the federal government and paid for by airline passengers and shippers. Once completed, the projects will be operated and maintained as a part of the federal airway system, if the sponsor elects to transfer the project to the FAA. The FAA has determined that this action does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that these guidelines do not have federalism implications.

The final guidelines will not impose a competitive advantage or disadvantage on either U.S. air carriers operating abroad or on foreign carriers operating to and from the United States. Further, these guidelines, *per se*, will have no effect on the sale of foreign aviation products or services in the United States, nor will they have any effect on the sales of U.S. aviation products in foreign countries. To the extent that pilot program projects improve aviation safety and airport and airway system efficiency, both domestic and foreign commerce will generally be enhanced.

The final guidelines do not create a federal mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

5. References

The following list outlines references cited above:

OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments, revised August 29, 1997.

Report FAA–APO–98–4, Economic Analysis of Investment and Regulatory Programs—Revised Guide. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm.*

Report FAA–APO–98–8, Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http//api.hq.faa.gov/apo_pubs.htm.*

FAA Order 7031.2C, Airway Planning Standard Number One, through Change 12. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308.

FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities. Available upon request from the FAA's NAS Operations Program Office, telephone 202–267–3034.

Issued in Washington, DC on November 30, 2000.

Nan Shellabarger,

Deputy Director, Office of Aviation Policy and Plans.

[FR Doc. 00–31091 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33955]

Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—CSX Transportation, Inc.

Ohio Southern Railroad, Incorporated (OSRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by purchase from CSX Transportation, Inc. (CSXT) and operate approximately 1.5-route miles of rail line, including connecting track, located between milepost 16.7 and milepost 18.2, in Zanesville, Muskingum County, OH (Subject Line). In addition, OSRR will acquire incidental overhead trackage rights over approximately 2.4 miles of CSXT's main line track and access over the transfer tracks in the Zanesville area.[1]

The transaction was scheduled to be consummated on November 22, 2000, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33955, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: November 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary:

[FR Doc. 00–30656 Filed 12–5–00; 8:45 am]

BILLING CODE 4915–00–P

[1] In a related proceeding, OSRR has agreed to grant certain overhead trackage rights over the Subject Line to CSXT to enable CSXT to continue providing service to its existing customers. *See* STB Finance Docket No. 33962, *CSX Transportation, Inc.—Trackoge Rights Exemption—Ohio Southern Railroad, Incorporated.*

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 27, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 5, 2001, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0089.
Form Number: None.
Type of Review: Extension.
Title: Implementing Regulations: Government Securities Act of 1986, as Amended.
Description: The regulations require government securities broker/dealers to make and keep certain records concerning government securities activities, to submit financial reports and make certain disclosures to investors. The regulations also require depository institutions to keep certain records of non-fiduciary custodial holdings of government securities. The regulations and associated collections are fundamental to customer protection and financial responsibility.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 16,931.
Estimated Burden Hours Per Respondent/Recordkeeper: 21 hours, 50 minutes.
Frequency of Response: On occasion, Monthly, Quarterly, Annually, Other.
Estimated Total Reporting/Recordkeeping Burden Hours: 369,620 hours.
OMB Number: 1535–0104.
Form Number: PD F 2066.
Type of Review: Extension.
Title: Application by Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as Amended.
Description: PD F 2066 is used as an application by survivors for payment of a bond or check issued under the Armed Forces Leave Act of 1946 to veterans of WW II.
Respondents: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 200 hours.
OMB Number: 1535–0105.
Form Number: PD F 2481.
Type of Review: Extension.
Title: Application for Recognition as Natural Guardian of Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities.
Description: The form is used by the natural guardian of a minor not under legal guardianship to request disposition of securities erroneously registered in the name of the minor.

Respondents: Individuals or households.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 13 hours.

OMB Number: 1535–0108.

Form Number: PD F 2471.

Type of Review: Extension.

Title: Certificate to Support Application for Relief on Account of Lost, Stolen or Destroyed United States Securities.

Description: The form is executed by individuals to support an application for relief on account of lost, stolen or destroyed United States Securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 200 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–30967 Filed 12–5–00; 8:45 am]

BILLING CODE 4810–40–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 29, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 5, 2001 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545–0002.

Form Number: IRS FORM CT–2.

Type of Review: Extension.

Title: Employee Representative's quarterly Railroad Tax Return.

Description: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 28.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/Schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling and sending the form to the IRS
941	9 hr., 19 min	40 min	1 hr., 46 min	16 min.
941/V	14 min	00 min	00 min	00 min.
941/V (Over the Counter	12 min	00 min	01 min	00 min.
941/Line 17	57 min	00 min	01 min	00 min.
941 (Schedule B)	2 hr., 37 min	06 min	09 min	00 min.
941–PR	6 hr., 42 min	18 min	25 min	00 min.
941–PR/Line 17	57 min	00 min	01 min	00 min.
941–PR (Schedule B)	37 min	06 min	09 min	00 min.
941–SS	6 hr., 56 min	18 min	25 min	00 min.
941–SS/Line 17	57 min	00 min	01 min	00 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 315,935,261 hours.

OMB Number: 1545–0138.

Form Number: IRS Form 2063.

Type of Review: Extension.

Title: U.S. Departing Alien Income Tax Statement.

Description: Form 2063 is used by departing resident aliens against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax liability. the data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Respondents: Individuals or households.

Recordkeeping—13 min.
Learning about the law or the form—13 min.
Preparing the form—24 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 127 hours.

OMB Number: 1545–0029.

Form Number: IRS Forms 941, 941–PR, and 941–SS; Schedule B (Form 941), Schedule B (Form 941–PR).

Type of Revenue: Extension.

Title: Employer's Quarterly Federal Tax Return; American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands (941, 941–PR and 941–SS); and Employer's Record of Federal Tax Liability (Schedule B (941 and 941–PR)).

Description: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. The 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 5,798,054.

Estimated Burden Hours Per Respondent/Recordkeeper:

Estimated Number of Respondents/Recordkeepers: 20,540.

Estimated Burden Hours Per Respondent/Recordkeeper:

	minutes
Recordkeeping	7
Learning about the law or the form	3
Preparing the form	26
Copying, assembling, and sending the form to the IRS	14

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 17,048 hours.

OMB Number: 1545–0240.

Form Number: IRS form 6118.

Type of Review: Extension.

Title: Claim for Refund of Income Tax Return Preparer Penalties.

Description: Form 6118 is used by preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 10,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form.	16 min.
Preparing the form	10 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10,400 hours.

OMB Number: 1545–0390.

Form Number: IRS Form 5306.

Type of Review: Extension.

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

Description: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirements accounts or annuities. The data collected is used to determine if plans may be approved.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 600.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	11 hr., 43 min.
Learning about the law or the form.	35 min.
Preparing and sending the form to the IRS.	49 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 7,878 hours.

OMB Number: 1545–0790.

Form Number: IRS Form 8082.

Type of Review: Extension.

Title: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

Description: Internal Revenue Code (IRC) sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222) and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs. Also, sections 6241 and 6034–A(c) extend this requirement to partners in electing large partnerships and beneficiaries of estates and trusts.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 10,600.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	4 hr., 18 min.
Learning about the law or the form.	1 hr., 23 min.
Preparing and sending the form to the IRS.	1 hr., 31 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 76,532 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–30968 Filed 12–05–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 29, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 5, 2001 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545–0951.

Form Number: IRS Forms 5434 and 5434–A.

Type of Review: Extension.

Title: Application for Enrollment (Form 5434); and Application for Renewal of Enrollment (Form 5434–A).

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 38 minutes.

Frequency of Response: Other (once every 3 years).

Estimated Total Reporting/Recordkeeping Burden: 3,800 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–30969 Filed 12–5–00; 8:45 am]

BILLING CODE 4830–01–P

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Corrections

Federal Register
Vol. 65, No. 235
Wednesday, December 6, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

The President

3 CFR

Proclamation 7382 of November 30, 2000

Correction

In Presidential document 00–31011 beginning on page 75851 in the issue of Monday, December 4, 2000, make the following correction:

On page 75852, the FR document line is corrected to read "[FR Doc. 00–31011 Filed 12–1–00 11:09 am]".

[FR Doc. C0–31011 Filed 12–5–00; 8:45 am]

BILLING CODE 1505–01–D



Federal Register

Wednesday,
December 6, 2000

Part II

Environmental Protection Agency

40 CFR Part 60
New Source Performance Standards for New Small Municipal Waste Combustion Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6899–6]

RIN 2060–AI51

New Source Performance Standards for New Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action reestablishes new source performance standards (NSPS) for new small municipal waste combustion (MWC) units. The NSPS for small MWC units contain stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). Some of those pollutants can cause toxic effects such as eye, nose, throat, and skin irritation, and blood cell, heart, liver, and kidney damage. The NSPS for small MWC units were originally promulgated in December 1995, but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish NSPS for small MWC units. The NSPS contained in this final rule are equivalent to the 1995 NSPS for small MWC units.

DATES: *Effective date.* June 6, 2001.

The incorporation by reference of certain publications listed in this rule are approved by the Director of the Office of Federal Register as of June 6, 2001.

Applicability Date. The NSPS apply to small MWC units that commenced construction after August 30, 1999 and small MWC units that commenced reconstruction or modification after June 6, 2001.

ADDRESSES: Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for the NSPS. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code-6102), 401.M Street SW, Washington, DC 20460, or by calling (202) 260–7548. The dockets are located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland at (919) 541–5265, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: copland.rick@epa.gov.

SUPPLEMENTARY INFORMATION: Public Comments. The NSPS and companion emission guidelines for small MWC units were proposed on August 30, 1999 (64 FR 47276), and 48 comment letters were received on the proposals. Verbal comments were also received at the October 5, 1999 public hearing. The comment letters and a transcript of the public hearing are available in Docket No. A–98–18. A summary of and responses to the public comments are contained in "Small Municipal Waste Combustors: Background Information Document for New Source Performance Standards and Emission Guidelines-Public Comments and Responses (EPA–453/R–00-001)." In response to the public comments, EPA adjusted the final NSPS where appropriate. A copy of the background information document is located in Docket No. A–98–18.

World Wide Web

Electronic versions of this action, the regulatory text, and other background information, including the response to comments document, are available at the Technology Transfer Network Web site (TTN Web) that EPA has established for the NSPS for small MWC units: "http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html." For assistance in downloading files, call the EPA's TTN Web Help Line at (919) 541–5384.

Regulated Entities

The NSPS will affect the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

The above list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to regulate with the NSPS for small MWC units. Not all facilities classified under the NAICS and SIC codes are affected. Other types of entities not listed could also be affected. To determine whether your facility is regulated by the NSPS, carefully examine the applicability criteria in §§ 60.1010 through 60.1045 of the NSPS.

Judicial Review

Today's action of adopting a final rule for small MWC units constitutes final administrative action on the proposed NSPS for small MWC units. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 5, 2001. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce the requirements.

Organization of This Document

The following outline is provided to aid in locating information in this preamble.

I. Background Information
II. Summary of the NSPS
A. Sources Regulated by the NSPS
B. Pollutants Regulated by the NSPS
C. Format of the Emission Limits
D. Summary of the NSPS
III. Changes to the NSPS
IV. Impacts of the NSPS
A. Air Impacts
B. Cost and Economic Impacts
V. Companion Rule for Existing Small MWC Units
VI. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 13132: Federalism
C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act

Abbreviations and Acronyms Used in This Document

ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
CFR Code of Federal Regulations
EIA Economic Impact Analysis
EPA U.S. Environmental Protection Agency
FR **Federal Register**
ICR Information Collection Request kg/year Kilograms per year
Mg/year Megagrams per year
MACT Maximum achievable control technology
MSW Municipal solid waste
MWC Municipal waste combustion
NAICS North American Industrial Classification System
NSPS New source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OP Office of Policy
Pub. L. Public Law
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SD/FF/CI Spray dryer/fabric filter/carbon injection
SIC Standard Industrial Classification
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code

I. Background Information

On December 19, 1995, EPA promulgated NSPS for large and small MWC units under 40 CFR part 60, subpart Eb. The NSPS covered new MWC units located at plants with an aggregate plant combustion capacity greater than 35 megagrams per day of municipal solid waste (MSW) (approximately 39 tons per day of MSW). The 1995 NSPS divided the MWC unit population into MWC units located at large MWC plants and MWC units located at small MWC plants. Plant size was based on the total aggregate capacity of all individual MWC units at the MWC plant.

Litigation followed the promulgation of the 1995 NSPS. In 1997, the U.S. Court of Appeals for the District of Columbia Circuit ruled that EPA must develop regulations for small MWC units (units with an individual MWC capacity of 250 tons per day or less) separately from regulations for large MWC units (units with an individual MWC unit capacity greater than 250 tons per day), indicating that the 1995 NSPS were not consistent with section 129 of the CAA. The court directed EPA to revise the 1995 NSPS so that they applied only to large MWC units, and the court vacated the 1995 NSPS as they applied to small MWC units. In response to the court ruling, EPA amended the 1995 NSPS on August 25, 1997 so that they applied only to new large MWC units. Then, on August 30, 1999, EPA proposed NSPS for small MWC units with an individual unit capacity of 35 to 250 tons per day.

Today's final rule reestablishes NSPS for new small MWC units with capacities of 35 to 250 tons per day of MSW under 40 CFR part 60, subpart AAAA.

II. Summary of the NSPS

The following summarizes the final NSPS for small MWC units, including identification of the subcategories used in the final NSPS. Overall, there are no significant changes in the final NSPS compared to the proposed NSPS. The following two subcategories are used in the NSPS for small MWC units: Class I units are small MWC units located at plants with aggregate plant capacities greater than 250 tons of MSW per day while Class II units are small MWC units located at plants with aggregate plant capacities less than or equal to 250 tons of MSW per day.

A. Sources Regulated by the NSPS

Today's NSPS apply to each new MWC unit that has a design combustion capacity of 35 to 250 tons per day of MSW and commenced construction after August 30, 1999 or commenced modification or reconstruction after June 6, 2001. The NSPS for new, modified, or reconstructed MWC units will become effective on June 6, 2001. Small MWC units that commenced construction on or before August 30, 1999 are not covered under the NSPS (subpart AAAA). Those units will be subject to the emission guidelines for existing small MWC units (subpart BBBB) which are published separately in today's **Federal Register**.

B. Pollutants Regulated by the NSPS

Section 129 of the CAA requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

> * * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *

Therefore, in addition to the emission limits, EPA is establishing requirements for MWC unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also establishing requirements for the control of fugitive ash emissions. All of those requirements were contained in the 1995 NSPS.

C. Format of the Emission Limits

The format of the emission limits is identical to the format of the 1995 NSPS: emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements are the same as the 1995 NSPS. In addition to controlling stack emissions, the NSPS incorporate good combustion practice requirements (*i.e.*, operator training, operator certification, and MWC unit operating requirements).

D. Summary of the NSPS

A concise summary of the NSPS can be found in Tables 1 and 2 of subpart AAAA.

III. Changes to the NSPS

There are no substantial changes in the final NSPS relative to the NSPS proposed in 1999. A summary of and responses to the public comments are contained in the background information document described earlier under "Public Comments." The final emission limits are consistent with the 1995 NSPS. Based on an evaluation of the best controlled units within the small MWC unit population, EPA has concluded that the performance of a spray dryer/fabric filter air pollution control system continues to represent the maximum achievable control technology (MACT) floor for new small MWC units.

IV. Impacts of the NSPS

The following describes the impacts (*i.e.*, air, water, solid waste, energy, cost, and economic impacts) of the NSPS for new small MWC units. The impact analysis conducted to evaluate the 1995 NSPS still applies because the air pollution control requirements in the

final NSPS are the same as the 1995 NSPS. The 1995 analysis is available at 59 FR 48198. The discussion in this preamble focuses only on the air, cost, and economic impacts of the NSPS.

In the preamble for the 1995 NSPS, EPA determined that the water, solid waste, and energy impacts associated with the NSPS were not significant. Because the NSPS are the same as the 1995 NSPS, the water, solid waste, and energy impacts are the same and continue to be judged as not significant.

For further information on the impacts of the NSPS, refer to "Economic Impact Analysis (EIA): Small Municipal Waste Combustion Units—Emission Guidelines and New Source Performance Standards," March 2000, EPA–452/R–00–001.

A. Air Impacts

As discussed in the EIA, approximately 90 small MWC units located at 41 plants are operating in the United States. Based on trends in small MWC unit construction over the past several years, EPA projects that about one new small MWC plant will be constructed each year. It is estimated that most new plants with small MWC units will have, on average, two small MWC units onsite. The 5th year impacts are, therefore, based on the construction of 10 new small MWC units over a 5-year period.

Table 1 of this preamble presents the national air emissions reductions for new small MWC units that would result from full implementation of the NSPS in the 5th year compared to a baseline scenario without the NSPS.

TABLE 1.—NATIONAL AIR EMISSION IMPACTS OF THE NSPS FOR SMALL MWC UNITS

Pollutant	Air emissions reduction	Percent reduction [a]
Dioxins/Furans [b]	0.2 kg/year	99
Cadmium	169 kg/year	99
Lead	15 Mg/year	99
Mercury	386 kg/year	97
Particulate Matter	238 Mg/year	98
Sulfur Dioxide	189 Mg/year	83
Hydrogen Chloride	137 Mg/year	90
Nitrogen Oxides	[c]	[c]

[a] Percent national emissions reduction relative to national baseline emissions that would occur in the absence of the NSPS.
[b] Total mass of tetra-through octachlorinated dibenzo-p-dioxins through dibenzofurans.
[c] For Class I units, nitrogen oxides emissions reductions are expected to be approximately 40 percent. Class II units are not expected to have any reductions in nitrogen oxides emissions. Since the future distribution of new Class I and II units is unknown, mass reductions of nitrogen oxides are not presented.

B. Cost and Economic Impacts

To estimate the costs of the NSPS for new small MWC units, EPA has taken into account the various air pollution control equipment that would need to be installed at new small MWC plants to achieve the NSPS. The cost estimates presented here are the projected costs that a new MWC plant with two small MWC units would incur to comply with the NSPS. Those costs are based on new small MWC units installing spray dryer/fabric filter/carbon injection as the air pollution control device system. The EPA projects that the total annual cost (including annualized capital and operating costs) for a single MWC plant would be approximately $1.6 million, and the total annualized cost of the NSPS would be $8.1 million in the 5th year after promulgation. For more details on the cost and economic analysis, refer to the EIA.

V. Companion Rule for Existing Small MWC Units

A companion rule to establish emission guidelines for existing small MWC units is being published separately in today's **Federal Register**. The emission guidelines for existing small MWC units are contained in 40 CFR part 60, subpart BBBB.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant," and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is not a "significant regulatory action" and, therefore, is not subject to OMB review. The EPA submitted the 1995 rulemaking package (which included requirements for new and existing large MWC units and requirements for new and existing small MWC units) to OMB for review (60 FR 65405, December 19, 1995) and OMB approved the rulemaking package for adoption. The NSPS promulgated today only apply to new small MWC units and are projected to have an impact of approximately $8.1 million annually in the 5th year after promulgation of the NSPS.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because the NSPS do not preclude States from adopting and implementing their own performance standards. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule. Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with State and local officials in developing this final rule. A list of those consultations is provided in the preamble to the 1995 NSPS (60 FR 65405–65412, December 19, 1995).

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further, it is based on technology performance and not on health and safety risks.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the NSPS do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The EIA shows that the total annual costs of the NSPS is about $8.1 million per year in the 5th year after the rule is promulgated. Thus, today's NSPS are not subject to the requirements of sections 202 and 205 of the UMRA. Although the NSPS are not subject to UMRA, EPA prepared a cost-benefit analysis under section 202 of the UMRA for the 1995 NSPS. For a discussion of how EPA complied with the UMRA for the 1995 NSPS, including its extensive consultations with State and local governments, see the preamble to the 1995 NSPS. Because today's final NSPS are equivalent to the 1995 NSPS, no additional consultations were necessary.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a

small entity is defined as: (1) A small business in the regulated industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that few small entities use MWC units for municipal solid waste disposal. The vast majority of small entities use municipal solid waste landfills for disposal. A small entity considering a new small MWC unit would have the opportunity to switch to an alternative municipal solid waste disposal method, such as municipal solid waste landfills, if the costs to comply with the NSPS were considered prohibitive. Thus, the number of small entities that will be significantly impacted by this final rule is not substantial.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this final rule on small entities by establishing different requirements for Class I and Class II MWC units and establishing provisions for less frequent testing for Class II MWC units. In addition, EPA involved representatives of small entities in the development of the NSPS.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements in the NSPS under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0423; and ICR #1900.01.

The information will be used by EPA to identify new, modified, or reconstructed units subject to the NSPS and to ensure that those units undergo a preconstruction impact analysis. The information will also be used by EPA to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports enable EPA to identify small MWC units that might not be in compliance with the NSPS. Based on reported information, EPA will decide which small MWC units should be inspected and what records or processes should be inspected. Records that owners and operators of small MWC units maintain indicate to EPA whether personnel are operating and maintaining control equipment properly.

The recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

For the information collection request (ICR), a 3-year impact period was analyzed. The NSPS are projected to affect six MWC units located at three MWC plants during the first 3 years immediately following promulgation. The estimated average annual burden to owners of new small MWC units for the first 3 years after promulgation of the NSPS would be approximately 8,600 person-hours annually at a total cost of $219,000 for capital start-up costs and O&M costs per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annualized burden to the government implementing the final NSPS would be approximately 500 hours during the first 3 years at a cost of $21,000 (including travel expenses).

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information collection requirements contained in this final rule.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards applicable to the NSPS for small MWC units that could be used in process and emissions monitoring. The search for emissions monitoring procedures identified 29 voluntary consensus standards that initially appeared to have possible use in lieu of EPA standard reference methods. After reviewing the available standards, EPA determined that 21 of the candidate consensus standards identified for measuring emissions or surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The seven remaining candidate consensus standards are under development or currently under EPA review. The EPA plans to follow, review and consider adopting those standards after their development and further review by EPA is completed.

One consensus standard, American Society for Testing and Materials (ASTM) D6216–98, is practical for EPA use in EPA Performance Specification 1 (PS–1) (40 CFR part 60, appendix B). The ASTM D6216 can best be used in place of the design specification verification procedures currently in sections 5 and 6 of PS–1. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824). Comments from the proposal have been addressed, and EPA expects to complete that action in the near future. For the above reasons, EPA does not in this final rulemaking adopt ASTM D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from another rulemaking activity already undergoing promulgation, and because ASTM D6216 does not address all of the requirements specified in PS–1.

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for MWC unit load level (steam output); designing, constructing, installing, calibrating, and using nozzles and orifices; and MWC plant operator certification requirements.

One consensus standard by the American Society of Mechanical Engineers (ASME) was identified for potential use in this final rule for the measurement of MWC unit load level (steam output). The EPA believes the standard is practical to use in this final rule as the method to measure MWC unit load. The EPA has already incorporated by reference "ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)" in 40 CFR 60.17(h)(2).

A second consensus standard by ASME was identified for potential use in this final rule for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes the standard is practical to use for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA has already incorporated by reference "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)" in 40 CFR 60.17(h)(3).

A third consensus standard by ASME (QRO–1–1994) was identified for potential use in this final rule for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes the standard is practical to use in the emission guidelines that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME. The EPA has already incorporated by reference (QRO–1–1994) in 40 CFR 60.17(h)(1).

Tables 3, 4 and 5 of subpart AAAA list the EPA testing methods and performance standards included in this final rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of subpart A of part 60, the standard also allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in the rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective June 6, 2001.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Municipal waste combustion, Reporting and recordkeeping requirements.

Dated: November 3, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart A—[Amended]

2. Section 60.17 is amended by revising paragraphs (h)(1), (h)(2) and (h)(3) to read as follows:

§ 60.17 Incorporations by reference.

* * * * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.56a, 60.54b(a). 60.54b(b), 60.1185(a), 60.1185(c)(2), 60.1675(a), and 60.1675(c)(2).

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), 60.1320(a)(3) and 60.1810(a)(3).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), 60.1320(a)4), and 60.1810(a)(4).

* * * * *

3. Part 60 is amended by adding a new subpart AAAA to read as follows:

Subpart AAAA—Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001

Sec.

Introduction

60.1000 What does this subpart do?
60.1005 When does this subpart become effective?

Applicability

60.1010 Does this subpart apply to my municipal waste combustion unit?
60.1015 What is a new municipal waste combustion unit?
60.1020 Does this subpart allow any exemptions?
60.1025 Do subpart E new source performance standards also apply to my municipal waste combustion unit?
60.1030 Can the Administrator delegate authority to enforce these Federal new source performance standards to a State agency?
60.1035 How are these new source performance standards structured?
60.1040 Do all five components of these new source performance standards apply at the same time?
60.1045 Are there different subcategories of small municipal waste combustion units within this subpart?

Preconstruction Requirements: Materials Separation Plan

60.1050 Who must submit a materials separation plan?
60.1055 What is a materials separation plan?
60.1060 What steps must I complete for my materials separation plan?
60.1065 What must I include in my draft materials separation plan?
60.1070 How do I make my draft materials separation plan available to the public?
60.1075 When must I accept comments on the materials separation plan?
60.1080 Where and when must I hold a public meeting on my draft materials separation plan?
60.1085 What must I do with any public comments I receive during the public comment period on my draft materials separation plan?
60.1090 What must I do with my revised materials separation plan?

60.1095 What must I include in the public meeting on my revised materials separation plan?
60.1100 What must I do with any public comments I receive on my revised materials separation plan?
60.1105 How do I submit my final materials separation plan?

Preconstruction Requirements: Siting Analysis

60.1110 Who must submit a siting analysis?
60.1115 What is a siting analysis?
60.1120 What steps must I complete for my siting analysis?
60.1125 What must I include in my siting analysis?
60.1130 How do I make my siting analysis available to the public?
60.1135 When must I accept comments on the siting analysis and revised materials separation plan?
60.1140 Where and when must I hold a public meeting on the siting analysis?
60.1145 What must I do with any public comments I receive during the public comment period on my siting analysis?
60.1150 How do I submit my siting analysis?

Good Combustion Practices: Operator Training

60.1155 What types of training must I do?
60.1160 Who must complete the operator training course? By when?
60.1165 Who must complete the plant-specific training course?
60.1170 What plant-specific training must I provide?
60.1175 What information must I include in the plant-specific operating manual?
60.1180 Where must I keep the plant-specific operating manual?

Good Combustion Practices: Operator Certification

60.1185 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?
60.1190 After the required date for operator certification, who may operate the municipal waste combustion unit?
60.1195 What if all the certified operators must be temporarily offsite?

Good Combustion Practices: Operating Requirements

60.1200 What are the operating practice requirements for my municipal waste combustion unit?
60.1205 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

Emission Limits

60.1210 What pollutants are regulated by this subpart?
60.1215 What emission limits must I meet? By when?
60.1220 What happens to the emission limits during periods of startup, shutdown, and malfunction?

Continuous Emission Monitoring

60.1225 What types of continuous emission monitoring must I perform?
60.1230 What continuous emission monitoring systems must I install for gaseous pollutants?
60.1235 How are the data from the continuous emission monitoring systems used?
60.1240 How do I make sure my continuous emission monitoring systems are operating correctly?
60.1245 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?
60.1250 What is my schedule for evaluating continuous emission monitoring systems?
60.1255 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?
60.1260 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?
60.1265 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?
60.1270 What is required for my continuous opacity monitoring system and how are the data used?
60.1275 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?
60.1280 What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?

Stack Testing

60.1285 What types of stack tests must I conduct?
60.1290 How are the stack test data used?
60.1295 What schedule must I follow for the stack testing?
60.1300 What test methods must I use to stack test?
60.1305 May I conduct stack testing less often?
60.1310 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

Other Monitoring Requirements

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Introduction

§ 60.1000 What does this subpart do?

This subpart establishes new source performance standards for new small municipal waste combustion units.

§ 60.1005 When does this subpart become effective?

This subpart takes effect June 6, 2001. Some of the requirements in this subpart apply to municipal waste combustion unit planning and must be completed before construction is commenced on the municipal waste combustion unit. In particular, the preconstruction requirements in §§ 60.1050 through 60.1150 must be completed prior to commencing construction. Other requirements (such as the emission limits) apply when the municipal waste combustion unit begins operation.

Applicability

§ 60.1010 Does this subpart apply to my municipal waste combustion unit?

Yes, if your municipal waste combustion unit meets two criteria:

(a) Your municipal waste combustion unit is a new municipal waste combustion unit.

(b) Your municipal waste combustion unit has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

§ 60.1015 What is a new municipal waste combustion unit?

(a) A new municipal waste combustion unit is a municipal waste combustion unit that meets either of two criteria:

(1) Commenced construction after August 30, 1999.

(2) Commenced reconstruction or modification after June 6, 2001.

(b) This subpart does not apply to your municipal waste combustion unit if you make physical or operational changes to an existing municipal waste combustion unit primarily to comply with the emission guidelines in subpart BBBB of this part. Such changes do not qualify as reconstruction or modification under this subpart.

§ 60.1020 Does this subpart allow any exemptions?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* You are exempt from this subpart if you meet four requirements:

(1) Your municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(2) You notify the Administrator that the unit qualifies for the exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You keep daily records of the amount of municipal solid waste combusted.

(b) *Small power production facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit qualifies for the exemption.

(4) You provide the Administrator with documentation that the unit qualifies for the exemption.

(c) *Cogeneration facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit qualifies for the exemption.

(4) You provide the Administrator with documentation that the unit qualifies for the exemption.

(d) *Municipal waste combustion units that combust only tires.* You are exempt from this subpart if you meet three requirements:

(1) Your municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You notify the Administrator that the unit qualifies for the exemption.

(3) You provide the Administrator with documentation that the unit qualifies for the exemption.

(e) *Hazardous waste combustion units.* You are exempt from this subpart if you get a permit for your unit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* You are exempt from this subpart if your unit combusts waste mainly to recover metals. Primary and secondary smelters qualify for the exemption.

(g) *Co-fired combustors.* You are exempt from this subpart if you meet four requirements:

(1) Your unit has a federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) You notify the Administrator that the unit qualifies for the exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You record the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* You are exempt from this subpart if you meet four requirements:

(1) Your pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under "Definitions" (§ 60.1465).

(2) You record the weights, each quarter, of plastics, rubber, and rubber tires processed.

(3) You record the weights, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) You keep the name and address of the purchaser of those feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* You are exempt from this subpart if you meet two requirements:

(1) Your unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units.

(2) Your unit does not combust any other municipal solid waste.

(j) *Cement kilns.* You are exempt from this subpart if your cement kiln combusts municipal solid waste.

(k) *Air curtain incinerators.* If your air curtain incinerator (see § 60.1465 for definition) combusts 100 percent yard waste, you must meet only the requirements under "Air Curtain Incinerators That Burn 100 Percent Yard Waste" (§§ 60.1435 through 60.1455).

§ 60.1025 Do subpart E new source performance standards also apply to my municipal waste combustion unit?

If this subpart AAAA applies to your municipal waste combustion unit, then subpart E of this part does not apply to your municipal waste combustion unit.

§ 60.1030 Can the Administrator delegate authority to enforce these Federal new source performance standards to a State agency?

Yes, the Administrator can delegate all authorities in all sections of this

subpart to the State for direct State enforcement.

§ 60.1035 How are these new source performance standards structured?

These new source performance standards contain five major components:

(a) Preconstruction requirements.
(1) Materials separation plan.
(2) Siting analysis.
(b) Good combustion practices.
(1) Operator training.
(2) Operator certification.
(3) Operating requirements.
(c) Emission limits.
(d) Monitoring and stack testing.
(e) Recordkeeping and reporting.

§ 60.1040 Do all five components of these new source performance standards apply at the same time?

No, you must meet the preconstruction requirements before you commence construction of the municipal waste combustion unit. After the municipal waste combustion unit begins operation, you must meet all of the good combustion practices, emission limits, monitoring, stack testing, and most recordkeeping and reporting requirements.

§ 60.1045 Are there different subcategories of small municipal waste combustion units within this subpart?

(a) Yes, this subpart subcategorizes small municipal waste combustion units into two groups based on the aggregate capacity of the municipal waste combustion plant as follows:

(1) *Class I Units.* Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (See the definition of "municipal waste combustion plant capacity" in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(2) *Class II Units.* Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. (See the definition of "municipal waste combustion plant capacity" in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) The requirements for Class I and Class II units are identical except for two items:

(1) Class I units have a nitrogen oxides emission limit. Class II units do not have a nitrogen oxides emission limit (see Table 1 of this subpart). Additionally, Class I units have continuous emission monitoring, recordkeeping, and reporting requirements for nitrogen oxides.

(2) Class II units are eligible for the reduced testing option provided in § 60.1305.

Preconstruction Requirements: Materials Separation Plan

§ 60.1050 Who must submit a materials separation plan?

(a) You must prepare a materials separation plan for your municipal waste combustion unit if you commence construction of a new small municipal waste combustion unit after December 6, 2000.

(b) If you commence construction of your municipal waste combustion unit after August 30, 1999 but before December 6, 2000, you are not required to prepare the materials separation plan specified in this subpart.

(c) You must prepare a materials separation plan if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

§ 60.1055 What is a materials separation plan?

The plan identifies a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling.

§ 60.1060 What steps must I complete for my materials separation plan?

(a) For your materials separation plan, you must complete nine steps:

(1) Prepare a draft materials separation plan.

(2) Make your draft plan available to the public.

(3) Hold a public meeting on your draft plan.

(4) Prepare responses to public comments received during the public comment period on your draft plan.

(5) Prepare a revised materials separation plan.

(6) Discuss the revised plan at the public meeting for review of the siting analysis.

(7) Prepare responses to public comments received on your revised plan.

(8) Prepare a final materials separation plan.

(9) Submit the final materials separation plan.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the materials separation requirements of this subpart.

§ 60.1065 What must I include in my draft materials separation plan?

(a) You must prepare and submit a draft materials separation plan for your municipal waste combustion unit and its service area.

(b) Your draft materials separation plan must identify a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling. A materials separation plan may include such elements as dropoff facilities, buy-back or deposit-return incentives, programs for curbside pickup, and centralized systems for mechanical separation.

(c) Your materials separation plan may include different goals or approaches for different subareas in the service area.

(d) Your materials separation plan may exclude materials separation activities for certain subareas or, if warranted, the entire service area.

§ 60.1070 How do I make my draft materials separation plan available to the public?

(a) Distribute your draft materials separation plan to the main public libraries in the area where you will construct the municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve two areas:

(1) The area where you will construct the municipal waste combustion unit.

(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.
(2) The time of the public meeting.
(3) The location of the public meeting.
(4) The location of the public libraries where the public can find your materials separation plan. Include the normal business hours of each library.
(5) An agenda of the topics that will be discussed at the public meeting.
(6) The beginning and ending dates of the public comment period on your draft materials separation plan.

§ 60.1075 When must I accept comments on the materials separation plan?

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

§ 60.1080 Where and when must I hold a public meeting on my draft materials separation plan?

(a) You must hold a public meeting and accept comments on your draft materials separation plan.

(b) You must hold the public meeting in the county where you will construct the municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your draft materials separation plan available to the public.

(d) You may combine the public meeting with any other public meeting required as part of any other Federal, State, or local permit review. However, you may not combine it with the public meeting required for the siting analysis under "Preconstruction Requirements: Siting Analysis" (§ 60.1140).

(e) You are encouraged to address eight topics at the public meeting for your draft materials separation plan:

(1) Expected size of the service area for your municipal waste combustion unit.

(2) Amount of waste you will collect in the service area.

(3) Types and estimated amounts of materials proposed for separation.

(4) Methods proposed for materials separation.

(5) Amount of residual waste for disposal.

(6) Alternate disposal methods for handling the residual waste.

(7) Where your responses to public comments on the draft materials separation plan will be available for inspection.

(8) Where your revised materials separation plan will be available for inspection.

(f) You must prepare a transcript of the public meeting on your draft materials separation plan.

§ 60.1085 What must I do with any public comments I receive during the public comment period on my draft materials separation plan?

You must do three steps:

(a) Prepare written responses to any public comments you received during the public comment period. Summarize the responses to public comments in a document that is separate from your revised materials separation plan.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting.

(c) Prepare a revised materials separation plan for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

§ 60.1090 What must I do with my revised materials separation plan?

You must do two tasks:

(a) As specified under "Reporting" (§ 60.1375), submit five items to the Administrator by the date you submit the application for a construction permit under 40 CFR part 51, subpart I, or part 52. (If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or part 52, submit five items to the Administrator by the date of your notice of construction under § 60.1380):

(1) Your draft materials separation plan.

(2) Your revised materials separation plan.

(3) Your notice of the public meeting for your draft materials separation plan.

(4) A transcript of the public meeting on your draft materials separation plan.

(5) The document that summarizes your responses to the public comments you received during the public comment period on your draft materials separation plan.

(b) Make your revised materials separation plan available to the public as part of the siting analysis procedures under "Preconstruction Requirements: Siting Analysis" (§ 60.1130).

§ 60.1095 What must I include in the public meeting on my revised materials separation plan?

As part of the public meeting for review of the siting analysis, as specified under "Preconstruction Requirements: Siting Analysis" (§ 60.1140), you must discuss two areas:

(a) Differences between your revised materials separation plan and your draft materials separation plan discussed at the first public meeting (§ 60.1080).

(b) Questions about your revised materials separation plan.

§ 60.1100 What must I do with any public comments I receive on my revised materials separation plan?

(a) Prepare written responses to any public comments and include them in the document that summarizes your responses to public comments on the siting analysis.

(b) Prepare a final materials separation plan that includes, as appropriate, changes made in response to any public comments you received on your revised materials separation plan.

§ 60.1105 How do I submit my final materials separation plan?

As specified under "Reporting" (§ 60.1380), submit your final materials separation plan to the Administrator as part of the notice of construction for the municipal waste combustion unit.

Preconstruction Requirements: Siting Analysis

§ 60.1110 Who must submit a siting analysis?

(a) You must prepare a siting analysis if you commence construction of a small municipal waste combustion unit after December 6, 2000.

(b) If you commence construction on your municipal waste combustion unit after August 30, 1999, but before December 6, 2000, you are not required to prepare the siting analysis specified in this subpart.

(c) You must prepare a siting analysis if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

§ 60.1115 What is a siting analysis?

The siting analysis addresses how your municipal waste combustion unit affects ambient air quality, visibility, soils, vegetation, and other relevant factors. The analysis can be used to determine whether the benefits of your proposed facility significantly outweigh the environmental and social costs resulting from its location and construction. The analysis must also consider other major industrial facilities near the proposed site.

§ 60.1120 What steps must I complete for my siting analysis?

(a) For your siting analysis, you must complete five steps:

(1) Prepare an analysis.

(2) Make your analysis available to the public.

(3) Hold a public meeting on your analysis.

(4) Prepare responses to public comments received on your analysis.

(5) Submit your analysis.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the siting analysis requirements of this subpart.

§ 60.1125 What must I include in my siting analysis?

(a) Include an analysis of how your municipal waste combustion unit affects four areas:

(1) Ambient air quality.
(2) Visibility.
(3) Soils.
(4) Vegetation.

(b) Include an analysis of alternatives for controlling air pollution that

minimize potential risks to the public health and the environment.

§ 60.1130 How do I make my siting analysis available to the public?

(a) Distribute your siting analysis and revised materials separation plan to the main public libraries in the area where you will construct your municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve two areas:

(1) The area where you will construct your municipal waste combustion unit.

(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.

(2) The time of the public meeting.

(3) The location of the public meeting.

(4) The location of the public libraries where the public can find your siting analysis and revised materials separation plan. Include the normal business hours of each library.

(5) An agenda of the topics that will be discussed at the public meeting.

(6) The beginning and ending dates of the public comment period on your siting analysis and revised materials separation plan.

§ 60.1135 When must I accept comments on the siting analysis and revised materials separation plan?

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

§ 60.1140 Where and when must I hold a public meeting on the siting analysis?

(a) You must hold a public meeting to discuss and accept comments on your siting analysis and your revised materials separation plan.

(b) You must hold the public meeting in the county where you will construct your municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your siting analysis and revised materials separation plan available to the public.

(d) You must prepare a transcript of the public meeting on your siting analysis.

§ 60.1145 What must I do with any public comments I receive during the public comment period on my siting analysis?

You must do three things:

(a) Prepare written responses to any public comments on your siting analysis and the revised materials separation plan you received during the public comment period. Summarize the responses to public comments in a document that is separate from your materials separation plan and siting analysis.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting for the siting analysis.

(c) Prepare a revised siting analysis for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

§ 60.1150 How do I submit my siting analysis?

As specified under "Reporting" (§ 60.1380), submit four items as part of the notice of construction:

(a) Your siting analysis.

(b) Your notice of the public meeting on your siting analysis.

(c) A transcript of the public meeting on your siting analysis.

(d) The document that summarizes your responses to the public comments you received during the public comment period.

Good Combustion Practices: Operator Training

§ 60.1155 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the U.S. Environmental Protection Agency (EPA) or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

§ 60.1160 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) Those employees must complete the operator training course by the later of three dates:

(1) Six months after your municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

§ 60.1165 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

§ 60.1170 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit initial startup.

(2) December 6, 2001.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) Six months after your municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

§ 60.1175 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable requirements in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit in compliance with the requirements contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

§ 60.1180 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Good Combustion Practices: Operator Certification

§ 60.1185 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) Six months after the municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of three dates:

(1) Six months after the municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 60.1190 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certifications, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 60.1195 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the period when the certified chief facility operator and certified shift supervisor are offsite and include that information in the annual report as specified under § 60.1410(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Good Combustion Practices: Operating Requirements

§ 60.1200 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under "Definitions" (§ 60.1465).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under "Definitions" (§ 60.1465).

(c) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using equation 4 or 5 in § 60.1460(f).

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).
(3) During the 2 weeks preceding your annual tests for dioxins/furans.
(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).
(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:
(i) Evaluate system performance.
(ii) Test new technology or control technologies.
(iii) Perform diagnostic testing.
(iv) Perform other activities to improve the performance of your municipal waste combustion unit.
(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 60.1205 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.
(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Emission Limits

§ 60.1210 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:
(a) *Organics.* Dioxins/furans.
(b) *Metals.*
(1) Cadmium.
(2) Lead.
(3) Mercury.
(4) Opacity.
(5) Particulate matter.
(c) *Acid gases.*
(1) Hydrogen chloride.
(2) Nitrogen oxides.
(3) Sulfur dioxide.
(d) *Other.*
(1) Carbon monoxide.
(2) Fugitive ash.

§ 60.1215 What emission limits must I meet? By when?

You must meet the emission limits specified in Tables 1 and 2 of this subpart. You must meet the limits 60 days after your municipal waste combustion unit reaches the maximum load level but no later than 180 days after its initial startup.

§ 60.1220 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.
(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.
(c) A maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.
(d) During startup, shutdown, or malfunction periods longer than 3 hours, emissions data cannot be discarded from compliance calculations and all provisions under § 60.11(d) apply.

Continuous Emission Monitoring

§ 60.1225 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:
(a) Install continuous emission monitoring systems for certain gaseous pollutants.
(b) Make sure your continuous emission monitoring systems are operating correctly.
(c) Make sure you obtain the minimum amount of monitoring data.
(d) Install a continuous opacity monitoring system.

§ 60.1230 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, you must also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) at the outlet of the air pollution control device.
(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in § 60.13.
(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.
(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required, and you must follow the requirements in § 60.1255.
(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install continuous emission monitoring systems for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.
(f) If you prefer to use an alternative sulfur dioxide monitoring method, such as parametric monitoring, or cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, you can apply to the Administrator for approval to use an alternative monitoring method under § 60.13(i).

§ 60.1235 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the emission limits specified in Tables 1 and 2 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1290.

§ 60.1240 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.
(b) Complete your initial evaluation of the continuous emission monitoring systems within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.
(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in Table 3 of this subpart. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 4 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.
(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.1245 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:
(a) Section 2.3 of Performance Specification 3 in appendix B of this part (relative accuracy requirement).
(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

§ 60.1250 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 13 months after the previous evaluation was conducted.
(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.1255 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring systems. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:
(a) Use EPA Reference Method 3A or 3B in appendix A of this part to determine oxygen concentration at the location of your carbon dioxide monitor.
(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.
(c) Use the fuel-factor equation in EPA Reference Method 3B in appendix A of this part to determine the relationship between oxygen and carbon dioxide.

§ 60.1260 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides, and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).
(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.
(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.
(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1410(e).
(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1265.

§ 60.1265 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?

(a) Use the equation in § 60.1460(a) to calculate emissions at 7 percent oxygen.
(b) Use EPA Reference Method 19 in appendix A of this part, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19 in appendix A of this part, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.
(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.
(d) Use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 60.1270 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.
(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13.
(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of this part. Complete the evaluation within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no more than 180 days after its initial startup.
(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 13 months after the previous evaluation.
(e) Use tests conducted according to EPA Reference Method 9 in appendix A of this part, as specified in § 60.1300, to determine compliance with the opacity limit in Table 1 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the opacity limit.

§ 60.1275 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in Table 4 of this subpart.

§ 60.1280 What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?

Refer to Table 4 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Stack Testing

§ 60.1285 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 60.1290 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the emission limits in Table 1 of this

subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1235.

§ 60.1295 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 60.1285 within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(b) Conduct annual stack tests for the same pollutants after the initial stack test. Conduct each annual stack test no later than 13 months after the previous stack test.

§ 60.1300 What test methods must I use to stack test?

(a) Follow Table 5 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all the pollutants consist of at least three test runs, as specified in § 60.8. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the emission limits in Table 1 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1230.

(d) Use the equations in § 60.1460(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in Table 5 of this subpart for other required equations.

(e) You can apply to the Administrator for approval under § 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Administrator has determined are adequate for demonstrating compliance, waive the requirement for a performance test because you have demonstrated by other means that you are in compliance, or use a shorter sampling time or smaller sampling volume.

§ 60.1305 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In that case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every 3rd year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over 3 consecutive years show compliance with the emission limit for that pollutant. The provision applies to all pollutants subject to stack testing requirements: dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

(b) You can test less often for dioxins/furans emissions if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all those municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 7 nanograms per dry standard cubic meter (total mass) for 2 consecutive years. In that case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant. The provision only applies to stack testing for dioxins/furans emissions.

(1) Conduct the stack test no more than 13 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxins/furans emissions less than or equal to 7 nanograms per dry standard cubic meter (total mass), you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxins/furans emissions greater than 7 nanograms per dry standard cubic meter (total mass), conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxins/furans emission levels less than or equal to 7 nanograms per dry standard cubic meter (total mass) for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 60.1310 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 13-month testing schedules specified in §§ 60.1295(b) and 60.1305(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Other Monitoring Requirements

§ 60.1315 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

§ 60.1320 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms (or pounds) per hour.

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)," section 4 (incorporated by reference in § 60.17(h)(2)).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters," 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17(h)(3)).

(5) Before each dioxins/furans stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, or, if your municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 60.1325 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 60.1330 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxins/furans and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste, and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 60.1335 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement and you must notify the Administrator according to § 60.1410(e).

Recordkeeping

§ 60.1340 What records must I keep?

You must keep five types of records:

(a) Materials separation plan and siting analysis.

(b) Operator training and certification.

(c) Stack tests.

(d) Continuously monitored pollutants and parameters.

(e) Carbon feed rate.

§ 60.1345 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 60.1350 What records must I keep for the materials separation plan and siting analysis?

You must keep records of five items:

(a) The date of each record.

(b) The final materials separation plan.

(c) The siting analysis.

(d) A record of the location and date of the public meetings.

(e) Your responses to the public comments received during the public comment periods.

§ 60.1355 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of the operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(2) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause those people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1360 What records must I keep for stack tests?

For stack tests required under § 60.1285, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in Table 1 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxins/furans emissions.

(d) The calendar date of each record.

§ 60.1365 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items:

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutant or parameter levels recorded in paragraph (b) of this section or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1260 and 60.1335. Record the dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took, or are taking, to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part. Keep the records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

(h) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1370 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate in kilograms (or pounds) per hour during all stack tests for dioxins/furans and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (or pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using equation 4 or 5 in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1335.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

Reporting

§ 60.1375 What reports must I submit before I submit my notice of construction?

(a) If you are required to submit an application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, you must submit five items by the date you submit your application.

(1) Your draft materials separation plan, as specified in § 60.1065.

(2) Your revised materials separation plan, as specified in § 60.1085(c).

(3) Your notice of the initial public meeting for your draft materials separation plan, as specified in § 60.1070(b).

(4) A transcript of the initial public meeting, as specified in § 60.1080(f).

(5) The document that summarizes your responses to the public comments you received during the initial public comment period, as specified in § 60.1085(a).

(b) If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, you must submit the items in paragraph (a) of this section with your notice of construction.

§ 60.1380 What must I include in my notice of construction?

(a) Include ten items:

(1) A statement of your intent to construct the municipal waste combustion unit.

(2) The planned initial startup date of your municipal waste combustion unit.

(3) The types of fuels you plan to combust in your municipal waste combustion unit.

(4) The capacity of your municipal waste combustion unit including supporting capacity calculations, as specified in § 60.1460(d) and (e).

(5) Your siting analysis, as specified in § 60.1125.

(6) Your final materials separation plan, as specified in § 60.1100(b).

(7) Your notice of the second public meeting (siting analysis meeting), as specified in § 60.1130(b).

(8) A transcript of the second public meeting, as specified in § 60.1140(d).

(9) A copy of the document that summarizes your responses to the public comments you received during the second public comment period, as specified in § 60.1145(a).

(10) Your final siting analysis, as specified in § 60.1145(c).

(b) Submit your notice of construction no later than 30 days after you commence construction, reconstruction, or modification of your municipal waste combustion unit.

§ 60.1385 What reports must I submit after I submit my notice of construction and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1395, 60.1405, and 60.1420. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 60.1400, 60.1410, and 60.1425 onsite for 5 years.

§ 60.1390 What are the appropriate units of measurement for reporting my data?

See Tables 1 and 2 of this subpart for appropriate units of measurement.

§ 60.1395 When must I submit the initial report?

As specified in § 60.7(c), submit your initial report within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

§ 60.1400 What must I include in my initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1365(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in Table 2 of this subpart):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxins/furans emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxins/furans and mercury emissions. Include supporting calculations as specified in § 60.1370(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

§ 60.1405 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the Clean Air Act (CAA), the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

§ 60.1410 What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1360(a):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Particulate matter.
(6) Opacity.
(7) Hydrogen chloride.
(8) Fugitive ash.

(b) A list of the highest average levels recorded, in the appropriate units. List the values for five pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base the value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1365(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.
(2) The lowest 8-hour block average carbon feed rate recorded during the year.
(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.
(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using equation 4 or 5 in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year, if you are eligible for alternative scheduling (§ 60.1305(a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 60.1305(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year which gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

§ 60.1415 What must I do if I am out of compliance with the requirements of this subpart?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 60.1420 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 60.1425 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.
(3) Concentration of carbon monoxide emissions.
(4) Load level of your municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.
(6) Average 6-minute opacity level. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

(b) If the results of your annual stack tests (as recorded in § 60.1360(a)) show emissions above the limits specified in Table 1 of this subpart for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test (as specified in § 60.1370(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.
(ii) Reasons for occurrences of low carbon feed rates.
(iii) The corrective actions you have taken to meet the carbon feed rate requirement.
(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.
(ii) Required quarterly usage of carbon.
(iii) Reasons for not meeting the required quarterly usage of carbon.
(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.
(v) The calendar date.

§ 60.1430 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) for procedures to seek approval to change your reporting date.

Air Curtain Incinerators that Burn 100 Percent Yard Waste

§ 60.1435 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

§ 60.1440 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in § 60.1465.

(b) Clean wood that is exempt from the definition of "municipal solid waste" in § 60.1465.

§ 60.1445 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

If your air curtain incinerator combusts 100 percent yard waste, you must meet only the emission limits in this section.

(a) Within 60 days after your air curtain incinerator reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.
(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 60.1450 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 in appendix A of this part to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 13 calendar months following the date of your previous test.

§ 60.1455 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.
(2) Your planned initial startup date.
(3) Types of fuels you plan to combust in your air curtain incinerator.
(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1460(d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c)).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 60.1460 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using equation 1 of this section:

$$C_{7\%} = C_{unc} * (13.9) * (1/(20.9 - CO_2)) \quad \text{(Eq.1)}$$

Where:

$C_{7\%}$ = concentration corrected to 7 percent oxygen.
C_{unc} = uncorrected pollutant concentration.
CO_2 = concentration of oxygen (percent).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using equation 2 of this section:

$$\%P_{Hg} = (E_i - E_o) * (100/E_i) \quad \text{(Eq. 2)}$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions
E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis
E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HCl}$) using equation 3 of this section:

$$\%P_{HCl} = (E_i - E_o) * (100/E_i) \quad \text{(Eq. 3)}$$

Where:

$\%P_{HCl}$ = percent reduction of the potential hydrogen chloride emissions
E_I = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis
E_O = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

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(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate continuously for 24-hour periods, calculate the municipal waste combustion unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxins/furans or mercury limits, calculate the required quarterly usage of carbon using equation 4 of this section for plant basis or equation 5 of this section for unit basis:

(1) Plant basis.

$$C = \sum_{i=1}^{n} f_i * h_i \qquad \text{(Eq. 4)}$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h \qquad \text{(Eq. 5)}$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Definitions

§ 60.1465 What definitions must I know?

Terms used but not defined in this section are defined in the CAA and in subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 (or 366 consecutive days for leap years) consecutive days starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustion unit. That person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Class II units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) "Yard waste," which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of "municipal solid waste" in this section.

Co-fired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a co-fired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system *that continuously measures the emissions of a pollutant from a municipal waste combustion unit.*

Dioxins/furans mean tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4:00 a.m.

(2) 4:00 a.m. to 8:00 a.m.

(3) 8:00 a.m. to 12:00 noon.

(4) 12:00 noon to 4:00 p.m.

(5) 4:00 p.m. to 8:00 p.m.

(6) 8:00 p.m. to 12:00 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Materials separation plan means a plan that identifies a goal and an approach for separating certain components of municipal solid waste for a given service area in order to make the separated materials available for recycling. A materials separation plan may include three items:

(1) Elements such as dropoff facilities, buy-back or deposit-return incentives, curbside pickup programs, or centralized mechanical separation systems.

(2) Different goals or approaches for different subareas in the service area.

(3) No materials separation activities for certain subareas or, if warranted, the entire service area.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxins/furans emissions that demonstrates compliance with the limits specified in this subpart.

Medical/infectious waste means any waste meeting the definition of "medical/infectious waste" in § 60.51c of subpart E, of this part.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. That includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed after June 6, 2001 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which new source performance standards have been established under section 129 or section 111 of the CAA. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in the determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under Applicability (§ 60.1015(a)and (b)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are subject to subparts Ea or Eb of this part, or this subpart.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion

units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under Applicability (§ 60.1020(h) and (i)). Municipal waste combustion units also do not include cement kilns that combust municipal solid waste as specified under Applicability (§ 60.1020(j)). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured using EPA Reference Method 5 in appendix A of this part and the procedures specified in § 60.1300.

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). The feed materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. The feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins after June 6, 2001.

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate those costs, see the definition in this section of "municipal waste combustion unit."

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20 °C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 in appendix A of this part and the procedures specified in § 60.1300.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in this section.

(2) Clean wood that is exempt from the definition of "municipal solid waste" in this section.

Tables

TABLE 1 OF SUBPART AAAA—EMISSION LIMITS FOR NEW SMALL MUNICIPAL WASTE COMBUSTION UNITS

For the following pollutants	You must meet the following emission limits[a]	Using the following averaging times	And determine compliance by the following methods
1. Organics			
Dioxins/Furans (total mass basis).	13 nanograms per dry standard cubic meter.	3-run average (minimum run duration is 4 hours).	Stack test.
2. Metals:			
Cadmium	0.020 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test.
Lead	0.20 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test.
Mercury	0.080 milligrams per dry standard cubic meter or 85 percent reduction of potential mercury emissions.	3-run average (run duration specified in test method).	Stack test.
Opacity	10 percent	Thirty 6-minute averages	Stack test.
Particulate Matter	24 milligrams per dry standard cubic meter	3-run average (run duration specified in test method).	Stack test.
3. Acid Gases:			
Hydrogen Chloride	25 parts per million by dry volume or 95 percent reduction of potential hydrogen chloride emissions.	3-run average (minimum run duration is 1 hour).	Stack test
Nitrogen Oxides (Class I units)[b].	150 (180 for 1st year of operation) parts per million by dry volume.	24-hour daily block arithmetic average concentration.	Continuous emission monitoring system.
Nitrogen Oxides (Class II units)[c].	500 parts per million by dry volume	See footnote[d]	See footnote[d]
Sulfur Dioxide	30 parts per million by dry volume or 80 percent reduction of potential sulfur dioxide emissions.	24-hour daily block geometric average concentration or percent reduction.	Continuous monitoring emission system.
4. Other:			
Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period.	Three 1-hour observation periods	Visible emission test.

[a] All emission limits (except for opacity) are measured at 7 percent oxygen.
[b] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.
[c] Class II units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity no more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.
[d] No monitoring, testing, recordkeeping, or reporting is required to demonstrate compliance with the nitrogen oxides limit for Class II units.

TABLE 2 OF SUBPART AAAA—CARBON MONOXIDE EMISSION LIMITS FOR NEW SMALL MUNICIPAL WASTE COMBUSTION UNITS

For the following municipal waste combustion units	You must meet the following carbon monoxide limits[a]	Using the following averaging times[b]
1. Fluidized-bed	100 parts per million by dry volume	4-hour.
2. Fluidized bed, mixed fuel, (wood/refuse-derived fuel)	200 parts per million by dry volume	24-hour.[c]
3. Mass burn rotary refractory	100 parts per million by dry volume	4-hour.

TABLE 2 OF SUBPART AAAA—CARBON MONOXIDE EMISSION LIMITS FOR NEW SMALL MUNICIPAL WASTE COMBUSTION UNITS—Continued

For the following municipal waste combustion units	You must meet the following carbon monoxide limits [a]	Using the following averaging times [b]
4. Mass burn rotary waterwall	100 parts per million by dry volume	24-hour.
5. Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour.
6. Mixed fuel-fired (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour.
7. Modular starved-air and excess air	50 parts per million by dry volume	4-hour.
8. Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel).	150 parts per million by dry volume	24-hour daily.
9. Stoker, refuse-derived fuel	150 parts per million by dry volume	24-hour daily.

[a] All limits (except for opacity) are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.
[b] Block averages, arithmetic mean. See § 60.1465 for definitions.
[c] 24-hour block average, geometric mean. See § 60.1465 for definitions.

TABLE 3 OF SUBPART AAAA—REQUIREMENTS FOR VALIDATING CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

For the following continuous emission monitoring systems	Use the following methods in appendix A of this part to validate pollutant concentration levels	Use the following methods in appendix A of this part to measure oxygen (or carbon dioxide)
1. Nitrogen Oxides (Class I units only) [a]	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A.
2. Sulfur Dioxide	Method 6 or 6C	Method 3 or 3A.
3. Carbon Monoxide	Method 10, 10A, or 10B	Method 3 or 3A.

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.

TABLE 4 OF SUBPART AAAA—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

For the following pollutants	Use the following span values for your CEMS	Use the following performance specifications in appendix B of this part for your CEMS	If needed to meet minimum data requirements, use the following alternate methods in appendix A of this part to collect data
1. Opacity	100 percent opacity	P.S. 1	Method 9.
2. Nitrogen Oxides (Class I units only) [a].	Control device outlet: 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit.	P.S. 2	Method 7E.
3. Sulfur Dioxide	Inlet to control device: 125 percent of the maximum expected sulfur dioxide emissions of the municipal waste combustion unit. Control device outlet: 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit.	P.S. 2	Method 6C.
4. Carbon Monoxide	125 percent of the maximum expected hourly potential carbon with monoxide emissions of the municipal waste combustion unit.	P.S. 4A	Method 10 alternative interference trap.
5. Oxygen or Carbon Dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B.

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.

TABLE 5 OF SUBPART AAAA—REQUIREMENTS FOR STACK TESTS

To measure the following pollutants	Use the following methods in appendix A of this part to determine the sampling location	Use the methods in appendix A of this part to measure pollutant concentration	Also note the following additional information
1. Organics:			
Dioxins/Furans	Method 1	Method 23 [a]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
2. Metals:			
Cadmium	Method 1	Method 29 [a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29 [a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.

TABLE 5 OF SUBPART AAAA—REQUIREMENTS FOR STACK TESTS—Continued

To measure the following pollutants	Use the following methods in appendix A of this part to determine the sampling location	Use the methods in appendix A of this part to measure pollutant concentration	Also note the following additional information
Mercury	Method 1	Method 29 [a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Method 9	Method 9	Use Method 9 to determine compliance with opacity limit. 3-hour observation period (thirty 6-minute averages).
Particulate Matter	Method 1	Method 5 [a]	The minimum sample Matter volume must be 1.0 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14°C. The minimum sampling time is 1 hour.
3. Acid Gases: [b]			
Hydrogen Chloride	Method 1	Method 26 or 26A [a]	Test runs must be at least 1 hour long while the municipal waste combustion unit is operating at full load.
4. Other: [b]			
Fugitive Ash	Not applicable	Method 22 (visible emissions).	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B in appendix A of this part.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for quality assurance requirements in Appendix F of this part.

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Part III

Environmental Protection Agency

40 CFR Part 60
Emission Guidelines for Existing Small Municipal Waste Combustion Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6899–5]

RIN 2060–AI51

Emission Guidelines for Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action reestablishes emission guidelines for existing small municipal waste combustion (MWC) units. The emission guidelines contain stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). Some of those pollutants can cause toxic effects such as eye, nose, throat, and skin irritation, and blood cell, heart, liver, and kidney damage. Emission guidelines for small MWC units were originally promulgated in December 1995, but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish emission guidelines for small MWC units. The emission guidelines contained in this final rule are equivalent to the 1995 emission guidelines for small MWC units.

DATES: *Effective date.* February 5, 2001.

The incorporation by reference of certain publications listed in this rule are approved by the Director of the Office of the Federal Register as of February 5, 2001.

Applicability date. The emission guidelines apply to small MWC units that commenced construction on or before August 30, 1999.

ADDRESSES: Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for the emission guidelines. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code-6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. The dockets are located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland at (919) 541–5265, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: copland.rick@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Comments

Emission guidelines and companion new source performance standards (NSPS) for small MWC units were proposed on August 30, 1999 (64 FR 47276), and 48 comment letters were received on the proposals. Verbal comments were also received at the October 5, 1999 public hearing. The comment letters and a transcript of the public hearing are available in Docket No. A–98–18. A summary of and responses to the public comments are contained in "Small Municipal Waste Combustors: Background Information Document for New Source Performance Standards and Emission Guidelines-Public Comments and Responses (EPA–453/R–00–001)." In response to the public comments, EPA adjusted the final emission guidelines where appropriate. A copy of the background information document is located in Docket No. A–98–18.

World Wide Web

Electronic versions of this action, the regulatory text, and other background information, including the response to comments document, are available at the Technology Transfer Network web site (TTN Web) that EPA has established for the emission guidelines for small MWC units: "http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html." For assistance in downloading files, call the EPA's TTN Web Help Line at (919) 541–5384.

Regulated Entities

No entities are directly regulated by this action because these are emission guidelines. Additional State or Federal action is required for implementation of the emission guidelines. However, adoption of State or Federal plans implementing the emission guidelines will affect the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/local/tribal governments.	562213, 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

The above list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to be regulated by applicable State or Federal plans implementing the emission guidelines for small MWC units. Not all facilities classified under the NAICS and SIC codes will be affected. Other types of entities not listed could also be affected. To determine whether your facility will be regulated by State or Federal plans implementing the emission guidelines, carefully examine the applicability criteria in §§ 60.1550 through 60.1565 of the emission guidelines.

Judicial Review

Today's action of adopting a final rule for small MWC units constitutes final administrative action on the proposed emission guidelines for small MWC units. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 5, 2001. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce the requirements.

Organization of This Document

The following outline is provided to aid in locating information in this preamble.

I. Background Information
II. Summary of the Emission Guidelines
A. Sources Regulated by the Emission Guidelines
B. Subcategorization of the Small MWC Unit Population
C. Pollutants Regulated by the Emission Guidelines
D. Format of the Emission Limits
E. Summary of the Emission Guidelines
III. Changes to the Emission Guidelines
IV. Impacts of the Emission Guidelines
A. Air Impacts
B. Cost and Economic Impacts
V. Companion Rule for New Small MWC Units
VI. Amendments to 40 CFR Part 60, Subpart B
VII. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 13132: Federalism
C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act

Abbreviations and Acronyms Used in This Document

ASME American Society of Mechanical Engineers
CFR Code of Federal Regulations
EIA Economic Impact Analysis
EPA U.S. Environmental Protection Agency
FR **Federal Register**
ICR Information Collection Request
kg/year Kilograms per year
MACT Maximum achievable control technology
Mg/year Megagrams per year
MSW Municipal solid waste
MWC Municipal waste combustion
NAICS North American Industrial Classification System
NSPS New source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OP Office of Policy
Pub. L. Public Law
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SIC Standard Industrial Classification
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code

I. Background Information

On December 19, 1995, EPA promulgated emission guidelines for large and small MWC units under 40 CFR part 60, subpart Cb. The emission guidelines covered existing MWC units located at plants with an aggregate plant combustion capacity greater than 35 megagrams per day of municipal solid waste (MSW)(approximately 39 tons per day of MSW). The 1995 emission guidelines divided the MWC unit population into MWC units located at large MWC plants and MWC units located at small MWC plants. Plant size was based on the total aggregate capacity of all individual MWC units at a MWC plant.

Litigation followed the promulgation of the 1995 emission guidelines. In 1997, the U.S. Court of Appeals for the District of Columbia Circuit ruled that EPA must develop regulations for small MWC units (units with an individual MWC capacity of 250 tons per day or less) separately from regulations for large MWC units (units with an individual MWC unit capacity greater than 250 tons per day), indicating that the 1995 emission guidelines were not consistent with section 129 of the CAA. The court directed EPA to revise the 1995 emission guidelines so that they applied only to large MWC units, and the court vacated the 1995 emission guidelines as they applied to small MWC units. In response to the court ruling, EPA amended the 1995 emission guidelines on August 25, 1997 so that they applied only to existing large MWC units. Then, on August 30, 1999, EPA proposed emission guidelines for small MWC units with an individual unit capacity of 35 to 250 tons per day.

Today's final rule reestablishes emission guidelines for existing small MWC units with capacities of 35 to 250 tons per day of MSW under 40 CFR part 60, subpart BBBB.

II. Summary of the Emission Guidelines

The following summarizes the final emission guidelines for small MWC units, including identification of the subcategories used in the final emission guidelines. Overall, the emission guidelines for small MWC units are equivalent to the 1995 emission guidelines for small MWC units.

A. Sources Regulated by the Emission Guidelines

Today's emission guidelines do not directly regulate any MWC units, but they require States to develop plans to limit air emissions from existing small MWC units. In subpart BBBB and in associated State plans, the emission limits and requirements will apply to each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of MSW and commenced construction on or before August 30, 1999. Small MWC units that commenced construction after August 30, 1999 are not covered under the emission guidelines (subpart BBBB). Those units will be subject to the NSPS for new small MWC units (subpart AAAA) which are published separately in today's **Federal Register**.

B. Subcategorization of the Small MWC Unit Population

Within the emission guidelines, the small MWC unit population is subcategorized based on aggregate capacity of the plant where the individual small MWC unit is located. The resulting subcategories are as follows: Class I units are small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW; Class II units are small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

C. Pollutants Regulated by the Emission Guidelines

Section 129 of the CAA requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

> * * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *.

Therefore, in addition to emission limits, EPA is establishing requirements for MWC unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also establishing requirements for the control of fugitive ash emissions. All of those requirements were contained in the 1995 emission guidelines.

D. Format of the Emission Limits

The format of the emission limits is identical to the format of the emission limits in the 1995 emission guidelines: emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements are the same as the 1995 emission guidelines. In addition to controlling stack emissions, the emission guidelines incorporate good combustion practice requirements (*i.e.*, operator training, operator certification, and MWC unit operating requirements).

E. Summary of the Emission Guidelines

A concise summary of the emission guidelines can be found in Tables 2 through 4 of subpart BBBB.

III. Changes to the Emission Guidelines

For the majority of small MWC units that will be subject to emission guideline requirements, the final emission guidelines are identical to the emission guidelines proposed in August 1999. However, one change made in the final emission guidelines affects requirements for about five MWC plants. That change is summarized in the following three paragraphs and is also discussed in the background information document described earlier under "Public Comments."

In the proposal, different emission limits were proposed for MWC units in Class A and Class B. Class A MWC units were nonrefractory MWC units located at MWC plants with an aggregate plant capacity greater than 250 tons per day. Class B MWC units were refractory units located at MWC plants with an aggregate plant capacity greater than 250 tons per day. The 1999 proposal included different emission limits for Class A and Class B units because it had been brought to EPA's attention that different flue gas flow rates per ton of MSW combusted were expected to occur at Class A and Class B units. The 1995 emission guidelines did not make the distinction in flue gas flow rates and treated Class A and Class B units as a combined class with the same requirements.

Some comments on the proposal indicated that the proposed subcategorization with different control requirements for Class A and Class B was appropriate. However, other comments on the proposal indicated that the technical bases for the Class A and Class B subcategorization was no longer valid for today's MWC units and the subcategory was inappropriate. The EPA reanalyzed the issue and has concluded that the flue gas flow rates for Class A and Class B MWC units are not significantly different. As a result, the Class A units and the Class B units are combined into a single Class I category in the final emission guidelines as had been done in the 1995 emission guidelines.

Maximum achievable control technology (MACT) floors were then calculated for the Class I units, and then new MACT limits were selected. Uniform emission limits now apply to all Class I MWC units. With the exception of nitrogen oxides, the final emission limits for Class I units are identical to the 1995 emission limits for Class I units. The full set of final emission limits for Class I and Class II can be found in Tables 2, 3 and 4 of Subpart BBBB. See the background information document for a discussion of other comments on the proposed emission guidelines.

IV. Impacts of the Emission Guidelines

The following describes the impacts (*i.e.*, air, water, solid waste, energy, cost, and economic impacts) of the emission guidelines for small MWC units. The impact analysis conducted to evaluate the 1995 emission guidelines still applies because the air pollution control requirements in the final emission guidelines are the same as the 1995 emission guidelines. The 1995 analysis is available at 59 FR 48228. The discussion in this preamble focuses only on the air, cost, and economic impacts of the final emission guidelines.

As discussed in the preamble for the 1995 emission guidelines, EPA determined that the water, solid waste, and energy impacts associated with the emission guidelines were not significant. Today's action affects only a subset of the MWC units that were addressed in the earlier impact analysis. Accordingly, EPA has concluded that the water, solid waste, and energy impacts associated with today's action are not significant.

For further information on the impacts of the emission guidelines, refer to "Economic Impact Analysis (EIA): Small Municipal Waste Combustion Units—Emission Guidelines and New Source Performance Standards" March 2000 (EPA–452/R–00–001).

A. Air Impacts

As discussed in the EIA, the EPA estimates that 90 small MWC units operating at 41 plants will be affected by the emission guidelines. The total MSW combustion capacity of the 90 units was 8,551 tons per day in 1998.

Table 1 of this preamble presents the national air emission reductions for existing small MWC units that will result from full implementation of the emission guidelines compared to 1998 baseline levels without the emission guidelines.

TABLE 1.—NATIONAL AIR EMISSION IMPACTS OF THE EMISSION GUIDELINES FOR SMALL MWC UNITS

Pollutant	Air emissions reduction	Emission level[a]
Dioxins/ Furans[b].	2.7 kg/year	97
Cadmium	310 kg/year	85
Lead	12.9 Mg/year	92
Mercury	4.1 Mg/year	95
Particulate Matter.	369 Mg/year	77
Sulfur Dioxide	1,368 Mg/year ..	56
Hydrogen Chloride.	2,456 Mg/year ..	88
Nitrogen Oxides.	384 Mg/year	9

[a] Percent reduction from 1998 baseline.
[b] Percent national emission reduction relative to national baseline emissions that would occur in the absence of the emission guidelines.
[c] Total mass of tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

B. Cost and Economic Impacts

To estimate the costs of the emission guidelines, EPA has taken into account all of the existing air pollution control equipment currently in operation at small MWC units. The cost estimates presented here are incremental costs over the control equipment already in use. For more details on the cost and economic analysis, refer to the EIA.

The total annual cost (including annualized capital and operating costs) of the final emission guidelines would be approximately $68 million, which is equivalent to $25.30 per ton of MSW combusted.

V. Companion Rule for New Small MWC Units

A companion rule to reestablish NSPS for new small MWC units is being published separately in today's **Federal Register**. The NSPS for new small MWC units are contained in 40 CFR part 60, subpart AAAA.

VI. Amendments to 40 CFR Part 60, Subpart B

Also included in today's **Federal Register** is a rule to amend subpart B of part 60, "Adoption and Submittal of State Plans for Designated Facilities." The EPA proposed two amendments to subpart B, which are fully described in the proposal to reestablish emission guidelines for small MWC units (64 FR 47241). The EPA received no comments on the amendments to subpart B; therefore, the amendments are being promulgated as proposed.

VII. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant," and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is not a "significant regulatory action" and, therefore, is not subject to OMB review. The EPA submitted the 1995 rulemaking package (which included requirements for new and existing large MWC units and requirements for new and existing small MWC units) to OMB for review (60 FR 65405, December 19, 1995) and OMB approved the rulemaking package for adoption. The emission guidelines promulgated today only apply to small MWC units and are projected to have an impact of approximately $68 million annually.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State plans are used to implement the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule. Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with State and local officials in developing this final rule. A list of those consultations is provided in the preamble to the 1995 emission guidelines (60 FR 65405–65412, December 19, 1995).

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further, it is based on technology performance and not on health and safety risks.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final

rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the emission guidelines do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The EIA shows that the total annual costs of the emission guidelines is about $68 million per year, starting on the 5th year after the rule is promulgated. Thus, today's emission guidelines are not subject to the requirements of sections 202 and 205 of the UMRA. Although the emission guidelines are not subject to UMRA, EPA prepared a cost-benefit analysis under section 202 of the UMRA for the 1995 emission guidelines. For a discussion of how EPA complied with the UMRA for the 1995 emission guidelines, including its extensive consultations with State and local governments, see the preamble to the 1995 emission guidelines. Because today's final emission guidelines are equivalent to the 1995 emission guidelines, no additional consultations were necessary.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business in the regulated industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined in a regulatory flexibility analysis that eight existing small MWC units (operated by one small business and seven small governments) that would be subject to the emission guidelines are considered "small entities" according to the Small Business Administration's definitions for the affected industries. Also in the initial analysis, EPA calculated compliance costs as a percentage of sales for business and a percentage of income (total household income) for the relevant population of owning governments for the MWC units that are considered small entities. The estimated annual compliance cost as a percentage of income is 0.03 percent for the seven small potentially affected government entities and 39 percent for the one small business. For the seven potentially affected government entities, the maximum compliance cost was 0.25 percent. None of the governmental impacts are considered significant. The impact on the one small business is considered significant but one small business is not a substantial number of entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this final rule on small entities by establishing different requirements for Class I and Class II MWC units and establishing provisions for less frequent testing for Class II MWC units. In addition, EPA involved representatives of small entities in the development of the emission guidelines.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements in the emission guidelines under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0424.

The information will be used to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to identify small MWC units that might not be in compliance with the emission guidelines. Based on reported information, the implementing agency will decide which small MWC units should be inspected and what records or processes should be inspected. Records that owners and operators of small MWC units maintain indicate whether personnel are operating and maintaining control equipment properly.

The recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The emission guidelines are projected to affect approximately 90 small MWC units located at 41 plants. The estimated average annual burden for industry for the first 3 years after promulgation of the emission guidelines would be 1,297 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 773 hours with a cost of $30,869 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by OMB for various regulations to list the information collection requirements contained in this final rule.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards applicable to the small MWC emission guidelines that could be used in process and emissions monitoring. The search for emissions monitoring procedures identified 29 voluntary consensus standards that initially appeared to have possible use in lieu of EPA standard reference methods. After reviewing the available standards, EPA determined that 21 of the candidate consensus standards identified for measuring emissions or surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The seven remaining candidate consensus standards are under development or currently under EPA review. The EPA plans to follow, review and consider adopting those standards after their development and further review by EPA is completed.

One consensus standard, American Society for Testing and Materials (ASTM) D6216–98, is practical for EPA use in EPA Performance Specification 1 (PS–1) (40 CFR part 60, appendix B). The ASTM D6216 can best be used in place of the design specification verification procedures currently in sections 5 and 6 of PS–1. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824). Comments from the proposal have been addressed, and EPA expects to complete that action in the near future. For the above reasons, EPA does not in this final rulemaking adopt ASTM D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from another rulemaking activity already undergoing promulgation, and because ASTM D6216 does not address all of the requirements specified in PS–1.

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for MWC unit load level (steam output); designing, constructing, installing, calibrating, and using nozzles and orifices; and MWC plant operator certification requirements.

One consensus standard by the American Society of Mechanical Engineers (ASME) was identified for potential use in this final rule for the measurement of MWC unit load level (steam output). The EPA believes the standard is practical to use in this final rule as the method to measure MWC unit load. The EPA has already incorporated by reference "ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)" in 40 CFR 60.17(h)(3).

A second consensus standard by ASME was identified for potential use in this final rule for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes the standard is practical to use for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA has already incorporated by reference "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)" in 40 CFR 60.17(h)(3).

A third consensus standard by ASME (QRO–1–1994) was identified for potential use in this final rule for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes the standard is practical to use in the emission guidelines that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME. The EPA has already incorporated by reference (QRO–1–1994) in 40 CFR 60.17(h)(1).

Tables 5, 6 and 7 of subpart BBBB list the EPA testing methods and performance standards included in this final rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of subpart A of part 60, the standard also allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in the final rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective February 5, 2001.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Municipal waste combustion, Reporting and recordkeeping requirements.

Dated: November 3, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart A—General Provisions

2. Section 60.17 is amended by revising paragraphs (h)(1), (h)(2) and (h)(3) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.56a, 60.54b(a), 60.54b(b), 60.1675(a), and 60.1675(c)(2).

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), and 60.1810(a)(3).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), and 60.1810(a)(4).

* * * * *

Subpart B—Adoption and Submittal of State Plans for Designated Facilities

3. Section 60.24 is amended by revising paragraph (e)(1) to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(e)(1) Any compliance schedule extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. Unless otherwise specified in the applicable subpart, increments of progress must include, where practicable, each increment of progress specified in § 60.21(h) and must include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward final compliance.

* * * * *

4. Section 60.27 is amended by revising paragraph (f) to read as follows:

§ 60.27 Actions by the Administrator.

* * * * *

(f) Prior to promulgation of a plan under paragraph (d) of this section, the Administrator will provide the opportunity for at least one public hearing in either:

(1) Each State that failed to hold a public hearing as required by § 60.23(c); or

(2) Washington, DC or an alternate location specified in the **Federal Register.**

4. Part 60 is amended by adding a new subpart BBBB to read as follows:

Subpart BBBB—Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999

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60.1510 Is a State plan required for all States?
60.1515 What must I include in my State plan?
60.1520 Is there an approval process for my State plan?
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60.1530 Is there an approval process for a negative declaration letter?
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60.1540 Are there any State plan requirements for this subpart that supersede the requirements specified in subpart B?
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Introduction

§ 60.1500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from existing small municipal waste combustion units. The pollutants addressed by the emission guidelines are listed in Tables 2, 3, 4, and 5 of this subpart. The emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act (CAA) and subpart B of this part.

§ 60.1505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more existing small municipal waste combustion units that commenced construction on or before August 30, 1999, you must submit a State plan to the U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA by December 6, 2001.

§ 60.1510 Is a State plan required for all States?

No, you are not required to submit a State plan if there are no existing small municipal waste combustion units in your State and you submit a negative declaration letter in place of the State plan.

§ 60.1515 What must I include in my State plan?

(a) Include nine items:

(1) Inventory of affected municipal waste combustion units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected municipal waste combustion units in your State.

(3) Compliance schedules for each affected municipal waste combustion unit.

(4) Good combustion practices and emission limits for affected municipal waste ombustion units that are at least as protective as the emission guidelines contained in this subpart.

(5) Stack testing, continuous emission monitoring, recordkeeping, and reporting requirements.

(6) Certification that the hearing on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the CAA sections 111(d) and 129 State plan.

(b) Your State plan can deviate from the format and content of the emission guidelines contained in this subpart. However, if your State plan does deviate, you must demonstrate that your State plan is as protective as the emission guidelines contained in this subpart. Your State plan must address

regulatory applicability, increments of progress for retrofit, operator training and certification, operating practice, emission limits, continuous emission monitoring, stack testing, recordkeeping, reporting, and air curtain incinerator requirements.

(c) Follow the requirements of subpart B of this part in your State plan.

§ 60.1520 Is there an approval process for my State plan?

The EPA will review your State plan according to § 60.27.

§ 60.1525 What if my State plan is not approvable?

If you do not submit an approvable State plan (or a negative declaration letter), EPA will develop a Federal plan, according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of municipal waste combustion units not covered by an approved and currently effective State plan must comply with the Federal plan. The Federal plan is an interim action and, by its own terms, will cease to apply when your State plan is approved and becomes effective.

§ 60.1530 Is there an approval process for a negative declaration letter?

No, the EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing small municipal waste combustion unit is identified in your State, the Federal plan implementing the emission guidelines contained in this subpart will automatically apply to that municipal waste combustion unit until your State plan is approved.

§ 60.1535 What compliance schedule must I include in my State plan?

(a) Your State plan must include compliance schedules that require small municipal waste combustion units to achieve final compliance or cease operation as expeditiously as practicable but not later than the earlier of two dates:

(1) December 6, 2005.

(2) Three years after the effective date of State plan approval.

(b) For compliance schedules longer than 1 year after the effective date of State plan approval, State plans must include two items:

(1) Dates for enforceable increments of progress as specified in § 60.1590.

(2) For Class I units (see definition in § 60.1940), dioxins/furans stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 60.1790.

(c) Class I units that commenced construction after June 26, 1987 must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 of this subpart by the later of two dates:

(1) One year after the effective date of State plan approval.

(2) One year following the issuance of a revised construction or operation permit, if a permit modification is required.

§ 60.1540 Are there any State plan requirements for this subpart that supersede the requirements specified in subpart B?

Subpart B of this part establishes general requirements for developing and processing CAA section 111(d) plans. This subpart applies instead of the requirements in subpart B of this part, for two items:

(a) *Option for case-by-case less stringent emission standards and longer compliance schedules.* State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all municipal waste combustion units to comply no later than December 6, 2005. That requirement applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f).

(b) *Increments of progress requirements.* For Class II units (see definition in § 60.1940), a State plan must include at least two increments of progress for the affected municipal waste combustion units. The two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5). That requirement applies instead of the requirement of § 60.24(e)(1) that would require a State plan to include all five increments of progress for all municipal waste combustion units. For Class I units under this subpart, the final control plan must contain the five increments of progress in § 60.24(e)(1).

§ 60.1545 Does this subpart directly affect municipal waste combustion unit owners and operators in my State?

(a) No, this subpart does not directly affect municipal waste combustion unit owners and operators in your State. However, municipal waste combustion unit owners and operators must comply with the State plan you developed to implement the emission guidelines contained in this subpart. Some States may incorporate the emission guidelines contained in this subpart into their State plans by direct incorporation by reference. Others may include the model rule text directly in their State plan.

(b) All municipal waste combustion units must be in compliance with the requirements established in this subpart by December 6, 2005, whether the municipal waste combustion unit is regulated under a State or Federal plan.

Applicability of State Plans

§ 60.1550 What municipal waste combustion units must I address in my State plan?

(a) Your State plan must address all existing small municipal waste combustion units in your State that meet two criteria:

(1) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(2) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(b) If an owner or operator of a municipal waste combustion unit makes changes that meet the definition of modification or reconstruction after June 6, 2001 for subpart AAAA of this part, the municipal waste combustion unit becomes subject to subpart AAAA of this part and the State plan no longer applies to that unit.

(c) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with your State plan, subpart AAAA of this part (New Source Performance Standards for New Small Municipal Waste Combustion Units) does not apply to that unit. Such changes do not constitute modifications or reconstructions under subpart AAAA of this part.

§ 60.1555 Are any small municipal waste combustion units exempt from my State plan?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from your State plan if four requirements are met:

(1) The municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(2) You are notified by the owner or operator that the unit qualifies for the exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(b) *Small power production units.* Units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You are notified by the owner or operator that the unit qualifies for the exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for the exemption.

(c) *Cogeneration units.* Units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You are notified by the owner or operator that the unit qualifies for the exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for the exemption.

(d) *Municipal waste combustion units that combust only tires.* Units are exempt from your State plan if three requirements are met:

(1) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You are notified by the owner or operator that the unit qualifies for the exemption.

(3) You receive documentation from the owner or operator that the unit qualifies for the exemption.

(e) *Hazardous waste combustion units.* Units are exempt from your State plan if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* Units are exempt from your State plan if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(g) *Co-fired units.* Units are exempt from your State plan if four requirements are met:

(1) The unit has a federally enforceable permit limiting municipal solid waste combustion to 30 percent of the total fuel input by weight.

(2) You are notified by the owner or operator that the unit qualifies for the exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* Units are exempt from your State plan if four requirements are met:

(1) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under "Definitions" (§ 60.1940).

(2) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(3) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from your State plan if two requirements are met:

(1) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(2) The unit does not combust any other municipal solid waste.

(j) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt from your State plan.

(k) *Air curtain incinerators.* If an air curtain incinerator (see § 60.1940 for definition) combusts 100 percent yard waste, then those units must only meet the requirements under "Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste" (§§ 60.1910 through 60.1930).

§ 60.1560 Can an affected municipal waste combustion unit reduce its capacity to less than 35 tons per day rather than comply with my State plan?

(a) Yes, an owner or operator of an affected municipal waste combustion unit may choose to reduce, by your final compliance date, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste rather than comply with your State plan. They must submit a final control plan and the notifications of achievement of increments of progress as specified in § 60.1610.

(b) The final control plan must, at a minimum, include two items:

(1) A description of the physical changes that will be made to accomplish the reduction.

(2) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

(c) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

§ 60.1565 What subcategories of small municipal waste combustion units must I include in my State plan?

This subpart specifies different requirements for different subcategories of municipal waste combustion units. You must use those same two subcategories in your State plan. Those two subcategories are based on the aggregate capacity of the municipal waste combustion plant as follows:

(a) *Class I units.* Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (*See* the definition of "municipal waste combustion plant capacity" in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) *Class II units.* Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. (*See* the definition of "municipal waste combustion plant capacity" in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

Use of Model Rule

§ 60.1570 What is the "model rule" in this subpart?

(a) The model rule is the portion of the emission guidelines (§§ 60.1585 through 60.1905) that addresses the regulatory requirements applicable to small municipal waste combustion units. The model rule provides the requirements in a regulation format.

(b) In the model rule, "you" means the owner or operator of a small municipal waste combustion unit.

§ 60.1575 How does the model rule relate to the required elements of my State plan?

The model rule may be used to satisfy the State plan requirements specified in § 60.1515(a)(4) and (5). Alternative language may be used in your State plan, but only if you can demonstrate that the alternative language is as protective as the model rule.

§ 60.1580 What are the principal components of the model rule?

The model rule contains five major components:

(a) Increments of progress toward compliance.
(b) Good combustion practices:
(1) Operator training.
(2) Operator certification.
(3) Operating requirements.
(c) Emission limits.
(d) Monitoring and stack testing.
(e) Recordkeeping and reporting.

Model Rule—Increments of Progress

§ 60.1585 What are my requirements for meeting increments of progress and achieving final compliance?

(a) *Class I units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet five increments of progress:

(1) Submit a final control plan.

(2) Submit a notification of retrofit contract award.

(3) Initiate onsite construction.

(4) Complete onsite construction.

(5) Achieve final compliance.

(b) *Class II units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet two increments of progress:

(1) Submit a final control plan.

(2) Achieve final compliance.

§ 60.1590 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress for Class I and II units. (*See* § 60.1940 for definitions of classes.)

§ 60.1595 What must I include in the notifications of achievement of my increments of progress?

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with the increment of progress (§§ 60.1610 through 60.1630).

(c) The notification must be signed by the owner or operator of the municipal waste combustion unit.

§ 60.1600 When must I submit the notifications of achievement of increments of progress?

Notifications of the achievement of increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

§ 60.1605 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the specified date in Table 1 of this subpart for achieving that increment of progress. The notification must inform the Administrator that you did not meet the increment. You must include in the notification an explanation of why the increment of progress was not met and your plan for meeting the increment as expeditiously as possible. You must continue to submit reports each subsequent month until the increment of progress is met.

§ 60.1610 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must complete two items:

(a) Submit the final control plan, including a description of the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this subpart.

(b) You must maintain an onsite copy of the final control plan.

§ 60.1615 How do I comply with the increment of progress for awarding contracts?

You must submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. Submit the copy of the contracts with the notification that the increment of progress has been achieved. You do not need to include documents incorporated by reference or the attachments to the contracts.

§ 60.1620 How do I comply with the increment of progress for initiating onsite construction?

You must initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

§ 60.1625 How do I comply with the increment of progress for completing onsite construction?

You must complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

§ 60.1630 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete two items:

(a) Complete all process changes and complete retrofit construction as specified in the final control plan.

(b) Connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

§ 60.1635 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?

(a) If you close your municipal waste combustion unit but will reopen it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.1585.

(b) If you close your municipal waste combustion unit but will restart it after your final compliance date, you must complete emission control retrofit and meet the emission limits and good combustion practices on the date your municipal waste combustion unit restarts operation.

§ 60.1640 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

(a) If you plan to close your municipal waste combustion unit rather than comply with the State plan, you must submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

(b) If the closure date is later than 1 year after the effective date of State plan approval, you must enter into a legally binding closure agreement with the Administrator by the date your final control plan is due. The agreement must specify the date by which operation will cease.

Model Rule—Good Combustion Practices: Operator Training

§ 60.1645 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

§ 60.1650 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) Those employees must complete the operator training course by the later of three dates:

(1) One year after the effective date of State plan approval.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) The requirement in paragraph (a) of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

(d) You may request that the EPA Administrator waive the requirement in paragraph (a) of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

§ 60.1655 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.
(b) Shift supervisors.
(c) Control room operators.
(d) Ash handlers.
(e) Maintenance personnel.
(f) Crane or load handlers.

§ 60.1660 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after the effective date of State plan approval.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) One year after the effective date of State plan approval.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

§ 60.1665 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable requirements in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit in compliance with the requirements contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

§ 60.1670 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Model Rule—Good Combustion Practices: Operator Certification

§ 60.1675 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) For Class I units, 12 months after the effective date of State plan approval. For Class II units, 18 months after the effective date of State plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of the following dates:

(1) For Class I units, 12 months after the effective date of State plan approval. For Class II units, 18 months after the effective date of State plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 60.1680 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certification, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 60.1685 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include the information in the annual report as specified under § 60.1885(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Model Rule—Good Combustion Practices: Operating Requirements

§ 60.1690 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under "Definitions" (§ 60.1940).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under "Definitions" (§ 60.1940).

(c) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using equation 4 or 5 in § 60.1935(f).

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 60.1695 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Model Rule—Emission Limits

§ 60.1700 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.

(d) *Other.*

(1) Carbon monoxide.

(2) Fugitive ash.

§ 60.1705 What emission limits must I meet? By when?

(a) After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), you must meet the applicable emission limits specified in the four tables of this subpart:

(1) For Class I units, see Tables 2 and 3 of this subpart.

(2) For Class II units, see Table 4 of this subpart.

(3) For carbon monoxide emission limits for both classes of units, see Table 5 of this subpart.

(b) If your Class I municipal waste combustion unit began construction, reconstruction, or modification after June 26, 1987, then you must comply with the dioxins/furans and mercury emission limits specified in Table 2 of this subpart as applicable by the later of the following two dates:

(1) One year after the effective date of State plan approval.

(2) One year after the issuance of a revised construction or operating permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than December 6, 2005, even if the date 1 year after the issuance of a revised construction or operation permit is later than December 6, 2005.

§ 60.1710 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

(c) A maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

(d) During startup, shutdown, or malfunction periods longer than 3 hours, emissions data cannot be discarded from compliance calculations and all provisions under § 60.11(d) apply.

Model Rule—Continuous Emission Monitoring

§ 60.1715 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

§ 60.1720 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in § 60.13.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required and you must follow the requirements in § 60.1745.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install continuous emission monitoring systems for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

(f) If you prefer to use an alternative sulfur dioxide monitoring method, such as parametric monitoring, or cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, you can apply to the Administrator for approval to use an alternative monitoring method under § 60.13(i).

§ 60.1725 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the applicable emission limits specified in Tables 2, 3, 4, and 5 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1780.

§ 60.1730 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in Table 6 of this subpart. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 7 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.1735 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of Performance Specification 3 in appendix B of this part (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

§ 60.1740 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 13 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.1745 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring systems. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3A or 3B in appendix A of this part to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B in appendix A of this part to determine the relationship between oxygen and carbon dioxide.

§ 60.1750 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1885(e).

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1755.

§ 60.1755 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

(a) Use the equation in § 60.1935(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19 in appendix A of this part, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19 in appendix A of this part, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 60.1760 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of this part. Complete the evaluation by 180 days after your final compliance date.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 13 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9 in appendix A of this part, as specified in § 60.1790, to determine compliance with the opacity limit in Table 2 or 4 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the opacity limit.

§ 60.1765 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in Table 8 of this subpart.

§ 60.1770 What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?

Refer to Table 8 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Model Rule—Stack Testing

§ 60.1775 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 60.1780 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in Tables 2 and 4 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1725.

§ 60.1785 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 60.1775 by 180 days after your final compliance date.

(b) Conduct annual stack tests for the same pollutants after the initial stack test. Conduct each annual stack test no later than 13 months after the previous stack test.

§ 60.1790 What test methods must I use to stack test?

(a) Follow Table 8 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all the pollutants consist of at least three test runs, as specified in § 60.8. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits in Tables 2 and 4 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1720.

(d) Use the equations in § 60.1935(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in Table 6 of this subpart for other required equations.

(e) You can apply to the Administrator for approval under § 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Administrator has determined are adequate for demonstrating compliance, waive the requirement for a performance test because you have demonstrated by other means that you are in compliance, or use a shorter sampling time or smaller sampling volume.

§ 60.1795 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In that case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every 3rd year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over 3 consecutive years show compliance with the emission limit for that pollutant. The provision applies to all pollutants subject to stack testing requirements: dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

(b) You can test less often for dioxins/furans emissions if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all those municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for 2 consecutive years. In that case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant. The provision only applies to stack testing for dioxins/furans emissions.

(1) Conduct the stack test no more than 13 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxins/furans emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxins/furans emissions levels less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 60.1800 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 13-month testing schedules specified in §§ 60.1785(b) and 60.1795(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Model Rule—Other Monitoring Requirements

§ 60.1805 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

§ 60.1810 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms (or pounds) per hour.

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)," section 4 (incorporated by reference in § 60.17(h)(2)).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters," 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17(h)(3)).

(5) Before each dioxins/furans stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion units do not generate steam, or, if your municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 60.1815 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 60.1820 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxins/furans and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste

and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 60.1825 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement, and you must notify the Administrator according to § 60.1885(e).

Model Rule—Recordkeeping

§ 60.1830 What records must I keep?

You must keep four types of records:

(a) Operator training and certification.

(b) Stack tests.

(c) Continuously monitored pollutants and parameters.

(d) Carbon feed rate.

§ 60.1835 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 60.1840 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(2) When all certified chief facility operators and certified shift supervisors are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause those people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1845 What records must I keep for stack tests?

For stack tests required under § 60.1775, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in Table 2 or 4 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxins/furans emissions.

(d) The calendar date of each record.

§ 60.1850 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items.

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutant or parameter levels recorded in paragraph (b) of this section or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1750 and 60.1825. Record those dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part. Keep those records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

(h) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1855 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate in kilograms (or pounds) per hour during all stack tests for dioxins/furans and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (or pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using equation 4 or 5 in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1825.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

Model Rule—Reporting

§ 60.1860 What reports must I submit and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1870, 60.1880, and 60.1895. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 60.1875, 60.1885, and 60.1900 onsite for 5 years.

§ 60.1865 What are the appropriate units of measurement for reporting my data?

See Tables 2, 3, 4 and 5 of this subpart for appropriate units of measurement.

§ 60.1870 When must I submit the initial report?

As specified in § 60.7(c), submit your initial report by 180 days after your final compliance date.

§ 60.1875 What must I include in my initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1850(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily

geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in Table 2 or 4 of this subpart):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxins/furans emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxins/furans and mercury emissions. Include supporting calculations as specified in § 60.1855(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

§ 60.1880 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the CAA, the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

§ 60.1885 What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1845(a):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.

(b) A list of the highest average levels recorded, in the appropriate units. List those values for five pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base the value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1850(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.
(2) The lowest 8-hour block average carbon feed rate recorded during the year.
(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.
(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using equation 4 or 5 in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year which gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

§ 60.1890 What must I do if I am out of compliance with the requirements of this subpart?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 60.1895 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 60.1900 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.
(3) Concentration of carbon monoxide emissions.
(4) Load level of your municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.
(6) Average 6-minute opacity level. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

(b) If the results of your annual stack tests (as recorded in § 60.1845(a)) show emissions above the limits specified in Table 2 or 4 of this subpart as applicable for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test (as specified in § 60.1855(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.
(ii) Reasons for occurrences of low carbon feed rates.
(iii) The corrective actions you have taken to meet the carbon feed rate requirement.
(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.
(ii) Required quarterly usage of carbon.
(iii) Reasons for not meeting the required quarterly usage of carbon.
(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.
(v) The calendar date.

§ 60.1905 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) for procedures to seek approval to change your reporting date.

Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste

§ 60.1910 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

§ 60.1915 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in § 60.1940.

(b) Clean wood that is exempt from the definition of "municipal solid waste" in § 60.1940.

§ 60.1920 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

If your air curtain incinerator combusts 100 percent yard waste, you must only meet the emission limits in this section.

(a) By 180 days after your final compliance date, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 60.1925 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 in appendix A of this part to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 13 calendar months following the date of your previous test.

§ 60.1930 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.
(2) Your planned initial startup date.
(3) Types of fuels you plan to combust in your air curtain incinerator.
(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1935(d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c)).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 60.1935 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using equation 1 of this section:

$$C_{7\%} = C_{unc} * (13.9) * \left(1 / \left(20.9 - CO_2\right)\right) \qquad \text{(Eq. 1)}$$

Where:

$C_{7\%}$ = concentration corrected to 7 percent oxygen.

C_{unc} = uncorrected pollutant concentration.

CO_2 = concentration of oxygen (percent).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using equation 2 of this section:

$$\%P_{Hg} = \left(E_i - E_o\right) * \left(100 / E_i\right) \qquad \text{(Eq. 2)}$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HCl}$) using equation 3 of this section:

$$\%P_{HCl} = \left(E_i - E_o\right) * \left(100 / E_i\right) \qquad \text{(Eq. 3)}$$

Where:

$\%P_{HCl}$ = percent reduction of the potential hydrogen chloride emissions

E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate continuously for 24-hour periods, calculate the municipal waste combustion unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxins/furans or mercury limits, calculate the required quarterly usage of carbon using equation 4 of this section for plant basis or equation 5 of this section for unit basis:

(1) Plant basis.

$$C = \sum_{i=1}^{n} f_i * h_i \qquad \text{(Eq. 4)}$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h \qquad \text{(Eq. 5)}$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Definitions

§ 60.1940 What definitions must I know?

Terms used but not defined in this section are defined in the CAA and in subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 (or 366 consecutive days in leap years) consecutive days starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustion unit. That person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Class II units mean small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) "Yard waste," which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of "municipal solid waste" in this section.

Co-fired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a co-fired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

Dioxins/furans mean tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Effective date of State plan approval means the effective date that the EPA approves the State plan. The **Federal Register** specifies the date in the notice that announces EPA's approval of the State plan.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60; 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4:00 a.m.

(2) 4:00 a.m. to 8:00 a.m.

(3) 8:00 a.m. to 12:00 noon.

(4) 12:00 noon to 4:00 p.m.

(5) 4:00 p.m. to 8:00 p.m.

(6) 8:00 p.m. to 12:00 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxins/furans emissions that demonstrates compliance with the limits specified in this subpart.

Medical/infectious waste means any waste meeting the definition of "medical/infectious waste" in § 60.51c.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. That includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed after June 6, 2001 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which new source performance standards have been established under section 129 or section 111 of the CAA. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in the determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under Applicability of State Plans (§ 60.1550(a)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of this part.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under Applicability of State Plans (§ 60.1555(h) and (i)). Municipal waste combustion units do not include cement kilns that combust municipal solid waste as specified under Applicability of State Plans (§ 60.1555(j)). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured using EPA Reference Method 5 in appendix A of this part and the procedures specified in § 60.1790.

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). The feed materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. The feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins after June 6, 2001.

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate the costs, see the definition in this section of "municipal waste combustion unit."

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20 °C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to sections 111(d) and 129(b)(2) of the CAA and subpart B of this part, that implements and enforces this subpart.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 in appendix A of this part and the procedures specified in § 60.1790.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in this section.

(2) Clean wood that is exempt from the definition of "municipal solid waste" in this section.

Tables

TABLE 1 OF SUBPART BBBB—MODEL RULE—COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin onsite construction)	Increment 4 (Complete onsite construction)	Increment 5 (Final compliance)
1. All Class I units[a b]	(Dates to be specified in State plan).	(Dates to be specified in State plan).	(Dates to be specified in State plan).	(Dates to be specified in State plan).	(Dates to be specified in State plan)[c d].
2. All Class II units[a c]	(Dates to be specified in State plan).	Not applicable	Not applicable	Not applicable	(Dates to be specified in State plan)[c].

[a] Plant specific schedules can be used at the discretion of the State.

[b] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.
[c] The date can be no later than 3 years after the effective date of State plan approval or December 6, 2005.
[d] For Class I units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxins/furans and mercury limits by the later of two dates:
1. One year after the effective date of State plan approval.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required.
3. Final compliance with the dioxins/furans limits must be achieved no later than December 6, 2005, even if the date one year after the issuance of a revised construction or operation permit is after December 6, 2005.
[e] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See § 60.1940 for definitions.

TABLE 2 OF SUBPART BBBB—MODEL RULE—CLASS I EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNITS [a]

For the following pollutants	You must meet the following emission limits [b]	Using the following averaging times	And determine compliance by the following methods
1. Organics:			
Dioxins/Furans (total mass basis).	30 nanograms per dry standard cubic meter for municipal waste combustion units that do not employ an electrostatic precipitator-based emission control system -or-. 60 nanograms per dry standard cubic meter for municipal waste combustion units that employ an electrostatic precipitator-based emission control system.	3-run average (minimum run duration is 4 hours).	Stack test.
2. Metals:			
Cadmium	0.040 milligrams per dry standard cubic meter	3-run average (run duration specified in test method).	Stack test.
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method).	Stack test.
Mercury	0.080 milligrams per dry standard cubic meter	3-run average (run duration specified in test method).	Stack test.
	85 percent reduction of potential mercury emissions.		
Opacity	10 percent	Thirty 6-minute averages	Stack test.
Particulate Matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method).	Stack test.
3. Acid Gases:			
Hydrogen Chloride	31 parts per million by dry volume 95 percent reduction of potential hydrogen chloride emissions.	3-run average (minimum run duration is 1 hour).	Stack test.
Sulfur Dioxide	31 parts per million by dry volume 75 percent reduction of potential sulfur dioxide emissions.	24-hour daily block geometric average concentration percent reduction.	Continuous emission monitoring system.
4. Other:			
Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period.	Three 1-hour observation periods.	Visible emission test.

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.
[b] All emission limits (except for opacity) are measured at 7 percent oxygen.

TABLE 3 OF SUBPART BBBB—MODEL RULE—CLASS I NITROGEN OXIDES EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNITS [a,b,c]

Municipal waste combustion technology	Limits for class I municipal waste combustion units
1. Mass burn waterwall	200 parts per million by dry volume.
2. Mass burn rotary waterwall	170 parts per million by dry volume.
3. Refuse-derived fuel	250 parts per million by dry volume.
4. Fluidized bed	220 parts per million by dry volume.
5. Mass burn refractory	350 parts per million by dry volume.
6. Modular excess air	190 parts per million by dry volume.
7. Modular starved air	380 parts per million by dry volume.

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.
[b] Nitrogen oxides limits are measured at 7 percent oxygen.
[c] All limits are 24-hour daily block arithmetic average concentration. Compliance is determined for Class I units by continuous emission monitoring systems.

TABLE 4 OF SUBPART BBBB—MODEL RULE—CLASS II EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNIT [a]

For the following pollutants	You must meet the following emission following determine limits [b]	Using the following averaging times	And determine compliance by the following methods
1. Organics:			
Dioxins/Furans (total mass basis)	125 nanorgrams per dry standard cubic meter.	3-run average (minimum run duration is 4 hours).	Stack test.
2. Metals:			
Cadmium	0.10 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test.
Lead	1.6 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test.
Mercury	0.080 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test.
	85 percent reduction of potential mercury emissions.		
Opacity	10 percent	Thirty 6-minute average	Stack test.
Particulate Matter	70 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test.
3. Acid Gases:			
Hydrogen Chloride	250 parts per million by volume -or-. 50 percent reduction of potential hydrogen chloride emissions.	3-run average (minimum run duration is 1 hour).	Stack test.
Sulfur Dioxide	77 parts per million by dry volume -or-. 50 percent reduction of potential sulfur dioxides emissions.	24-hour daily block geometric average concentration -or- percent reduction.	Continuous emission monitoring system.
4. Other:			
Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period.	Three 1-hour observation periods.	Visible emission test.

[a] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See § 60.1940 for definitions.
[b] All emission limits (except for opacity) are measured at 7 percent oxygen.
[c] No monitoring, testing, recordkeeping or reporting is required to demonstrate compliance with the nitrogen oxides limit for Class II units.

TABLE 5 OF SUBPART BBBB—MODEL RULE—CARBON MONOXIDE EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNITS

For the following municipal waste combustion units	You must meet the following carbon monoxide limits [a]	Using the following averaging times [b]
1. Fluidized bed	100 parts per million by dry volume	4-hour.
2. Fluidized bed, mixed fuel, (wood/refuse-derived fuel)	200 parts per million by dry volume	24-hour [c].
3. Mass burn rotary refractory	100 parts per million by dry volume	4-hour.
4. Mass burn rotary waterwall	250 parts per million by dry volume	24-hour.
5. Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour.
6. Mixed fuel-fired, (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour.
7. Modular starved-air and excess air	50 parts per million by dry volume	4-hour.
8. Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel).	200 parts per million by dry volume	24-hour daily.
9. Stoker, refuse-derived fuel	200 parts per million by dry volume	24-hour daily.

[a] All emission limits (except for opacity) are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.
[b] Block averages, arithmetic mean. See § 60.1940 for definitions.
[c] 24-hour block average, geometric mean.

TABLE 6 OF SUBPART BBBB—MODEL RULE—REQUIREMENTS FOR VALIDATING CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

For the following continuous emission monitoring systems	Use the following methods in appendix A of this part to validate poollutant concentratin levels	Use the following methods in appendix A of this part to measure oxygen (or carbon dioxide)
1. Nitrogen Oxides (Class I units only)[a]	Method 7, 7A, 7B,7C, 7D, or 7E	Method 3 or 3A.
2. Sulfur Dioxide	Method 6 or 6C	Method 3 or 3A.
3. Carbon Monoxide	Method 10, 10A, or 10B	Method 3 or 3A.

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.

TABLE 7 OF SUBPART BBBB—"MODEL RULE—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

For the following pollutants	Use the following span values for CEMS	Use the following performance specifications in appendix B of this part for your CEMS	If needed to meet minimum data requirements, use the folloiwng alternate methods in appendix A of this part to collect data
1. Opacity	100 percent opacity	P.S. 1	Method 9.
2. Nitrogen Oxides (Class I units only).	Control device outlet: 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit.	P.S. 2	Method 7E.
3. Sulfur Dioxide	Inlet to control device: 125 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit. Control device outlet: 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit.	P.S. 2	Method 6C.
4. Carbon Monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit.	P.S. 4A	Method 10 with alternative interference trap.
5. Oxygen or Carbon Dioxide.	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B.

TABLE 8 OF SUBPART BBBB—MODEL RULE—REQUIREMENTS FOR STACK TESTS

To measure the following pollutants	Use the following methods in appendix A of this part to determine the sampling location	Use the following methods in appendix A of this part to measure pollutant concentration	Also note the following additional information
1. Organics			
Dioxins/Furans	Method 1	Method 23[a]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
2. Metals			
Cadmium	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Mercury	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Method 9	Method 9	Use Method 9 to determine compliance with opacity limits. 3-hour observation period (thirty 6-minute averages).
Particulate Matter	Method 1	Method 5 or 29	The minimum sample volume must be 1.0 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14 °C. The minimum sampling time is 1 hour.
3. Acid Gases[b]			
Hydrogen Chloride	Method 1	Method 26 or 26A[a]	Test runs must be at least 1 hour long while the municipal waste combustion unit is operating at full load.
4. Other[b]			

TABLE 8 OF SUBPART BBBB—MODEL RULE—REQUIREMENTS FOR STACK TESTS—Continued

To measure the following pollutants	Use the following methods in appendix A of this part to determine the sampling location	Use the following methods in appendix A of this part to measure pollutant concentration	Also note the following additional information
Fugitive Ash	Not applicable	Method 22 (visible emissions).	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B in appendix A of this part.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for quality assurance requirements in Appendix F of this part.

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Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6899–9]

RIN 2060–AH68

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes amendments to the "generic" maximum achievable control technology (MACT) standards to add national emission standards for hazardous air pollutants (NESHAP) for four additional source categories: Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production. The generic MACT standards provide a structural framework allowing source categories with similar emission types and MACT control requirements to be covered under one subpart, thus promoting regulatory consistency in NESHAP development. The EPA has identified these four source categories as major sources of hazardous air pollutants (HAP), including cyanide compounds, acrylonitrile, acetonitrile, carbonyl sulfide, carbon disulfide, benzene, 1,3 butadiene, toluene, and 2,4 toluene diisocyanate (TDI). Benzene is a known human carcinogen, and 1,3 butadiene is considered to be a probable human carcinogen. The other pollutants can cause noncancer health effects in humans. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of MACT.

DATES: *Comments.* Submit comments on or before February 5, 2001.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 26, 2000, a public hearing will be held on January 5, 2001.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–17, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. All technical comments pertaining solely to individual source categories should be submitted to the dockets established for the individual source categories (see *Docket* for individual docket numbers). The EPA requests a separate copy also be sent to Mr. Mark Morris (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, beginning at 10:00 a.m.

Docket. Docket No. A–97–17 contains supporting information used in developing the generic MACT standards. Dockets established for each of the source categories proposed to be assimilated under the generic MACT standards with this proposal include: Cyanide Chemicals Manufacturing (Docket No. A–2000–14), Carbon Black Production (Docket No. A–98–10), Ethylene Production (Docket No. A–98–22), and Spandex Production (Docket No. A–98–25). These dockets include source category-specific supporting information. All dockets are located at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed NESHAP, contact the following at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711:

Information type	Contact	Group	Phone/facsimile/e-mail address
General	Mark Morris	Organic Chemicals Group	(919) 541–5416/(919) 541–3470/ morris.mark @epa.gov.
Cyanide chemicals manufacturing	Keith Barnett	Organic Chemicals Group	(919) 541–5605/(919) 541–3470/ barnett.keith @epa.gov.
Carbon black production	John Schaefer	Organic Chemicals Group	(919) 541–0296/(919) 541–3470/ schaefer.john @epa.gov.
Ethylene production	Warren Johnson	Organic Chemicals Group	(919) 541–5267/(919) 541–3470/ johnson.warren @epa.gov.
Spandex production	Elaine Manning	Waste and Chemical Processes Group.	(919) 541–5499/(919) 541–3470/ manning.elaine @epa.gov.
Public hearing	Maria Noell	Organic Chemicals Group	(919) 541–5607/(919) 541–3470/ noell.maria @epa.gov.

SUPLLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the appropriate docket number (see **ADDRESSES**). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mark Morris, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell (see **FOR FURTHER INFORMATION CONTACT**) at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket

The docket is an organized and complete file of the record compiled by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW)

In addition to being available in the docket, an electronic copy of this proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules: http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	325188, 325199	2819, 2869	Producers and coproducers of hydrogen cyanide and sodium cyanide.
	325182	2895	Producers of carbon black by thermal-oxidative decomposition in a closed system, thermal decomposition in a cyclic process, or thermal decomposition in a continuous process.
	325110	2869	Producers of ethylene from refined petroleum or liquid hydrocarbons.
	325222	2824	Producers of spandex by reaction spinning.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1104 of the proposed subpart. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in this preamble is organized as follows:

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B. What criteria are used in the development of NESHAP?
C. Why is the EPA proposing to include today's standards in the generic MACT standards?
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C. Rationale for Selecting the Proposed Standards for Cyanide Chemicals Manufacturing
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D. Summary of Environmental, Energy, Cost, and Economic Impacts
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E. Unfunded Mandates Reform Act of 1995
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
G. National Technology Transfer and Advancement Act
H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

I. Background

A. What is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The categories of major sources covered by today's proposed NESHAP were listed on the following dates: Cyanide Chemicals Manufacturing, July 16, 1992 (57 FR 31576); Carbon Black Production, June 4, 1996 (61 FR 28197); Ethylene Production, June 4, 1996 (61 FR 28197); and Spandex Production,

July 16, 1992 (57 FR 31576). A major source of HAP is defined as any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 9.1 megagrams per year (Mg/yr) (10 tons per year (TPY)) or more of any single HAP or 22.7 Mg/yr or more (25 TPY) of multiple HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires us to establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, NESHAP cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The NESHAP for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, nonair quality health and environmental impacts, and energy requirements.

C. Why is the EPA Proposing to Include Today's Standards in the Generic MACT Standards?

We are proposing NESHAP for the Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production source categories under the generic MACT standards to reduce the regulatory burden associated with the development of separate rulemakings. An owner or operator should consult the generic MACT standards for information on applicability of the standards to their source, compliance schedules, and standards. The generic MACT standards generally refer the owner or operator to other subparts for requirements necessary to demonstrate compliance.

We are proposing to include the NESHAP for the Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production source categories in the generic MACT standards to simplify the rulemaking process, to minimize the potential for duplicative or conflicting requirements, to conserve limited resources, and to ensure consistency of the air emissions requirements applied to similar emission points. We believe that the generic MACT regulatory framework is appropriate for these source categories because it allows us to incorporate specific applicability and control requirements that reflect our decisions on these source categories while also utilizing generic requirements previously established for similar emission sources that we have determined are also applicable here.

Section 112(d) of the CAA requires that emission standards for control of HAP be prescribed unless, in our judgement, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards. These conditions are: (1) If the HAP cannot be emitted through a conveyance device, or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then we may instead promulgate equipment, work practice, design, or operational standards, or a combination of them.

Common formats for emission standards include a percent reduction, concentration limit, or mass emission limit. In some instances, adoption of an emission standard may be feasible for certain sources within a category or subcategory and not for other sources within the same category or subcategory. In such cases, we may adopt both an emission standard and an alternative equipment, design, work practice, or operational standard, but only one type of standard will apply to a given source depending on the nature and configuration of that source.

Because today's proposed standards reference several other subparts to control emissions, the format of the standards (*i.e.*, emission standard or work practice) for each emission type is that of the subparts which are referenced. We developed the formats of the standards proposed today based on the development of the formats for the existing generic standards.

D. What Are the Proposed Amendments to Subpart YY and the Subparts Referenced By It?

We are proposing to add sections to subpart YY and the subparts referenced by it that specify who has the authority to implement and enforce the subparts. These sections specify the authorities that will be retained by the EPA Administrator and the authorities that may be delegated to a State, local, or tribal agency. These proposed sections do not affect the stringency of the standards, nor would they increase the burden on a State, local, or tribal agency.

The proposed amendments clarify appropriate methods for demonstrating compliance with percent reduction requirements and emission concentration limits on combustion devices. The proposed amendments allow owners and operators to use either Method 25, 25A (under certain specific conditions), or 18 to demonstrate compliance with the HAP percent emission reduction requirement. However, if Method 18 is used, we clarify that only HAP that are present in the inlet to the device can be used to characterize the percent reduction across the device. Additionally, you must first determine which HAP are present in the inlet gas stream (*i.e.*, uncontrolled emissions) using process knowledge or a screening procedure. When using Method 25 or 25A, you must measure the inlet and outlet mass emissions as carbon.

We provided this clarification because when organic compounds are controlled by combustion processes, the organic pollutants emitted at the outlet of the device are not the same as those entering the inlet to the device and are typically unknown. Method 18, which measures specific, known compounds, will not yield accurate results unless it can be used to determine the percent reduction of known compounds across the device. Conversely, Method 25 measures total non-methane organic compounds and can be used to determine percent reduction across the combustion device regardless of how the combustion process affects the inlet and outlet streams. Under certain conditions (*i.e.*, controlled emissions concentrations less than 50 parts per million by volume (ppmv)), Method 25A may be used in lieu of Method 25 for determining the reduction across a combustion device.

In demonstrating compliance with the outlet concentration standard, you may use Method 18 or Method 25A. If Method 18 is used, the resulting concentration must be reported as the compound or compounds measured; however, if Method 25A is used, the concentration must be reported as carbon.

II. Cyanide Chemicals Manufacturing

A. Introduction

1. What Are the Primary Sources of Emissions and What Are the Emissions?

We have identified the following HAP emission sources at cyanide chemicals manufacturing facilities: (1) Process vents, (2) storage vessels, (3) equipment leaks, (4) transfer operations, and (5) wastewater treatment operations. We estimate that HAP emissions from process vents and equipment leaks account for more than 96 percent of the total HAP emissions from the source category.

We estimate nationwide HAP emissions from the cyanide chemicals manufacturing industry to be 239 Mg/yr (263 TPY). The predominant HAP emitted from this source category include cyanide compounds (hydrogen cyanide (HCN) and sodium cyanide), acrylonitrile, and acetonitrile.

2. What Are the Health Effects Associated With the HAP Emitted?

In the following paragraphs, we present a discussion of the effects of inhalation exposure to cyanide compounds, acrylonitrile, and acetonitrile.

Cyanide Compounds. Acute inhalation exposure to high concentrations of cyanide compounds can be rapidly lethal. Acute inhalation of HCN at lower concentrations can cause a variety of adverse health effects in humans, such as weakness, headache, nausea, increased rate of respiration, and eye and skin irritation. Chronic inhalation exposure to cyanide compounds can result in effects on the central nervous system, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. Other chronic exposure effects in humans include cardiovascular and respiratory effects, an enlarged thyroid gland, and irritation to the eyes and skin.

Acrylonitrile. Acute inhalation exposure of workers to acrylonitrile has been associated with the occurrence of low-grade anemia, cyanosis, leukocytosis, kidney irritation, mild jaundice, and labored breathing. Symptoms include mucous membrane irritation, headaches, dizziness, nausea, apprehension and nervous irritability, muscle weakness, and convulsions.

Chronic inhalation exposure of workers to acrylonitrile has been associated with headaches, nausea, and weakness. There are also several studies that indicate a statistically significant increase in the incidence of lung cancer of workers with chronic inhalation exposure to acrylonitrile.

Acetonitrile. Acute inhalation exposure of humans to acetonitrile in concentrations up to 500 ppmv can cause irritation of mucous membranes, and higher concentrations have been associated with weakness, nausea, convulsions and death. Chronic inhalation exposure to acetonitrile results in cyanide poisoning from metabolic release of cyanide after absorption. The major effects associated with cyanide poisoning consist of headaches, numbness, and tremors.

B. Summary of Proposed Standards for Cyanide Chemicals Manufacturing

1. What Is the Source Category To Be Regulated?

The Cyanide Chemicals Manufacturing source category includes facilities that are engaged in the manufacture of HCN or sodium cyanide: (1) By reaction of methane and ammonia over a catalyst (the Blausaure Methane Anlage (BMA) process), (2) by reaction of methane and ammonia in the presence of oxygen over a catalyst (the Andrussow process), or (3) as a by-product of the acrylonitrile production process (the Sohio production process). The source category also includes facilities that manufacture sodium cyanide via the neutralization process, sometimes referred to as the "wet process," in which HCN reacts with sodium hydroxide solution, usually in a system that includes the evaporation of water and crystallization of the product.

2. What Is the Affected Source?

For the Cyanide Chemicals Manufacturing source category, the affected source includes each cyanide chemicals manufacturing process unit, along with associated wastewater streams and equipment, that is located at a major source. A cyanide chemicals manufacturing process unit is the equipment assembled and connected by hard-piping or duct work that processes raw materials to manufacture, store, and transport a cyanide chemicals product. The proposed definition of "cyanide chemicals manufacturing process unit" also contains a list of equipment that is part of the process unit. This list includes reactors and associated unit operations; associated recovery devices; feed, intermediate, and product storage vessels; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices.

We have identified four distinct processes used to produce cyanide chemicals. Therefore, the definition of affected source for cyanide chemicals manufacturing specifies that a cyanide chemicals manufacturing process unit may be any one of the following: an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio HCN process unit. The definitions of each of these types of process units describes the process and delineates where the process unit begins and ends.

The Andrussow and BMA process units begin with (and include) the raw material storage tanks and end at the point at which refined HCN enters a reactor in a downstream process or is shipped offsite.

A Sohio HCN process unit, in which HCN is produced as a byproduct of acrylonitrile, begins at the point where the HCN leaves the unit operation where the HCN is separated from acrylonitrile. This unit operation is often referred to as the "light ends column." As with all the other HCN process units, the Sohio HCN process unit ends at the point at which refined HCN enters a reactor in a downstream process or is shipped offsite.

The sodium cyanide process unit begins just prior to the unit operation where refined HCN is reacted with sodium hydroxide and ends at the point just prior to where the solid sodium cyanide product is shipped offsite or enters a reactor in a downstream process.

3. What Are the Emission Limits, Operating Limits, and Other Standards?

We are proposing NESHAP that would regulate HAP emissions from process vents from continuous unit operations, storage vessels storing HCN product, transfer operations, wastewater, and equipment leaks (from compressors, agitators, pressure relief devices, pumps, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems). We are proposing the same requirements for existing and new sources, except for wastewater. The following are summaries of the proposed requirements for each type of emission point.

a. *Process Vents from Continuous Unit Operations.* For process vents from continuous unit operations, we are proposing different standards for each of the four types of cyanide chemicals manufacturing process units. For each

process unit type, we are proposing that overall HAP emissions from the process vents within the process unit be reduced by a specified amount. The required emissions reductions would depend on the type of process unit. The owner or operator would have the option of controlling some vents and not others; or controlling all vents to different levels, as long as the overall process unit process vent HAP emissions standard is achieved. We are also proposing that owners or operators may comply by reducing emissions of HAP from each individual process vent to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). The proposed emissions reductions requirements are summarized below by type of cyanide chemicals manufacturing process.

Andrussow and BMA HCN production process unit. Except during periods of startup, shutdown and malfunction, we are proposing that HAP emissions from process vents from Andrussow and BMA HCN production process units be reduced by 99 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

During periods of startup, shutdown or malfunction, we are proposing that process vent HAP emissions be vented through a closed vent system to a flare, or reduced from each process vent by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

Sohio HCN production process unit. For process vents from Sohio HCN production process units, we are proposing that overall process vent HCN emissions from the process unit be reduced by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or by venting emissions to a flare.

Sodium cyanide production process units (wet-end and dry-end process vents). In the proposed rule, we define wet-end process vents as process vents that originate from the reactor, crystallizer, or any other unit operation in the wet end of the sodium cyanide process unit; and we define dry-end process vents as process vents originating from the drum filter or any other unit operation in the dry end of a sodium cyanide manufacturing process unit. We are proposing that overall HAP emissions from wet-end process vents be reduced by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or by venting emissions to a flare. We are proposing requirements that overall HAP emissions from dry-end process vents be reduced by 98 weight-percent.

b. *Storage Vessels.* We are proposing that HAP emissions from storage vessels that contain HCN be vented through a closed vent system to a flare or any combination of control devices that reduces HAP emissions by 98 weight-percent.

c. *Transfer Operations.* We are proposing requirements to control emissions for each transfer rack that is used to load HCN into tank trucks or rail cars by venting emissions through a closed vent system to a flare or any combination of control devices that reduces emissions of HCN by 98 weight-percent.

d. *Equipment Leaks.* We are proposing requirements to control HCN emissions through the implementation of a leak detection and repair (LDAR) program for equipment that contains or contacts HCN and operates 300 hours or more per year.

We are proposing that an owner or operator may comply with the rule by complying with either 40 CFR part 63, subpart TT, National Emission Standards for Equipment Leaks—Control Level 1; or 40 CFR part 63, subpart UU, National Emission Standards for Equipment Leaks—Control Level 2. The provisions of these subparts control emissions from equipment leaks by work practices (*e.g.*, inspection for leaks, instrument monitoring) and equipment specifications. Both of these subparts require that you inspect equipment for leaks and repair detected leaks.

e. *Wastewater.* We are proposing control requirements for HAP emissions from process wastewater streams at new facilities where the process water contains HAP that are discarded from a cyanide chemicals manufacturing process unit. We are proposing that the HAP emissions from the process wastewater must be suppressed while the wastewater is being conveyed to a treatment device, and we are specifying requirements for the controls to reduce the HCN and acetonitrile concentration in the process wastewater. We are proposing that the treatment device achieve 95 percent removal of HAP, and that vents on the treatment device be controlled to reduce HAP emissions by 98 percent.

4. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for emission point sources similar to those for which standards are being proposed today. For example, we are proposing control applicability determination procedures, performance tests, and test methods to determine whether a process vent stream is required to apply control devices and to demonstrate that the allowed emission levels are achieved when controls are applied. The proposed requirements are dependent on the control device selected.

We are proposing control applicability determination procedures to measure process vent flow rate and process vent HAP concentration measurement. The proposed test methods parallel what we have used for process vent organic HAP emission point sources in previous standards (*e.g.*, the Hazardous Organic NESHAP (HON)). For measuring vent stream flow rate, we propose the use of Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream HAP concentration to determine whether it is below a specified level, we propose the use of Method 18 of 40 CFR part 60, appendix A.

Additionally, we are proposing to require initial performance tests for all control devices other than flares and certain boilers and process heaters used as control devices for HAP emissions from process vents. As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 megawatts (MW) (150 million British thermal units per hour (Btu/hr)) because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, greater than 98 weight-percent of organic HAP emissions are reduced, or an outlet concentration of 20 ppmv organic HAP is achieved. For flares, a percent reduction or outlet concentration measurement is not feasible. Therefore, we determined that a performance test is not necessary if the control device is a boiler, a process heater larger than 44 MW (150 million Btu/hr), or a flare. For all other types of control devices, the proposed NESHAP require the owner or operator to conduct a performance test to demonstrate that the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. The proposed requirements for cyanide chemicals manufacturing list the parameters that can be monitored for combustion devices. For other control devices, we require that an owner or operator establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status report and operating permit. Parameters selected are required to be good indicators of continuous control device performance.

In addition to testing and monitoring of emissions control equipment, we are also proposing that the closed vent system that routes emissions to control equipment be initially and annually tested for HAP emission leaks (*i.e.*, measurement greater than 500 ppmv). If a leak is detected, we would require that you eliminate the leak and monitor equipment (no later than 15 calendar days after the leak is detected).

5. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are proposing notification, recordkeeping, and reporting requirements in accordance with the General Provisions (40 CFR part 63, subpart A) and other previously promulgated NESHAP for similar source categories.

We are proposing that owners or operators of cyanide chemicals manufacturing affected sources submit the following four types of reports: (1) Initial Notification, (2) Notification of Compliance Status, (3) periodic reports, and (4) other reports. Records of reported information and other information necessary to document compliance with the standards would be required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification, we are proposing that you list the cyanide chemicals manufacturing processes at your facility, and which provisions may apply. The Initial Notification must also state whether your facility can achieve compliance by the specified compliance date. You must submit this notification within 1 year after the date of promulgation for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status report, we are proposing that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. For each test method that you use for a particular kind of emission point (*e.g.*, process vent), you must submit one complete test report. This notification must also include the specific range established for each monitored parameter for each emission point for demonstrating continuous compliance, and the rationale for why this range indicates proper operation of the control device.

For periodic reports, we are proposing that you report periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status report. For process vents, records of continuously monitored parameters must be kept. For some emission source types, such as storage vessels, equipment (*e.g.*, valves, pumps), and certain control devices (*e.g.*, flares), periodic inspections or measurements are required instead of continuous monitoring. Records that such inspections or measurements were performed must be kept, but results are included in your periodic report only if there is problem. For example, for equipment associated with a cyanide chemicals manufacturing process unit, inspections and/or leak detection monitoring records must be kept. However, the results of such monitoring must be submitted in the periodic report only if a leak is detected. We are proposing that the owner or operator submit these reports semiannually, unless monitored parameter values for a particular emission point are outside the established range greater than a specified percentage of the operating time, or if a problem is found during periodic inspections or measurements, whereby quarterly reporting is required.

Other proposed reporting requirements include reports to notify the regulatory authority before or after a specific event (*e.g.*, if a process change is made, requests for extension of repair period).

C. Rationale for Selecting the Proposed Standards for Cyanide Chemicals Manufacturing

1. How Did EPA Select the Source Category?

On February 12, 1998 (63 FR 7155), we combined the HCN production and sodium cyanide production source categories into a new major source category called Cyanide Chemicals Manufacturing. Some facilities produce sodium cyanide and HCN in the same process train (i.e., using the same or linked equipment); therefore, we decided to combine these two source categories because it makes more sense to have facilities subject to one rule rather than two separate rules for different parts of their process.

The Cyanide Chemicals Manufacturing source category includes facilities that manufacture HCN using any of the following methods: The BMA production process, the Andrussow production process, and as a byproduct of the Sohio HCN production process. The source category also includes facilities that manufacture sodium cyanide via the neutralization process (or the "wet process"). We defined the source category to include these specific production processes because these are the only processes we identified that manufacture HCN and sodium cyanide in the United States.

Section 112(d)(1) of the CAA gives us the authority to "* * * distinguish among classes, types, and sizes of sources within a category * * *" when developing standards. Subcategories, or subsets of similar emission sources within a source category, may be defined if technical differences in emissions characteristics, processes, control device applicability, or opportunities for pollution prevention exist within the source category (57 FR 31576). Specific examples of these differences include the types of products, process equipment differences, the type and level of emission controls, emissions sources, and any other factors that would impact a MACT standard.

We did not identify differences in the four cyanide chemicals manufacturing processes (the Andrussow process, the BMA process, the Sohio HCN production process, and the sodium cyanide process) included in the source category that we believe meet the criteria presented above for subcategorization. All four processes emit cyanide chemicals (HCN and sodium cyanide), acetonitrile, and/or acrylonitrile. In addition, facilities using each process type commonly utilize some form of combustion to reduce HAP emissions from point sources. Furthermore, the type of cyanide chemicals manufacturing process does not affect the ability of a facility to reduce fugitive HAP emissions. Therefore, because these processes have similar emissions characteristics, control device applicability, and opportunities for pollution prevention, we determined that it was not necessary to divide this source category into subcategories.

2. How Did EPA Select the Affected Source?

The affected source is the group of unit operations, equipment, and emission points that are subject to the proposed NESHAP. The affected source can be defined as narrowly as a single item of equipment or as broadly as all equipment at the plant site that is used to manufacture the product that defines the source category. A major factor that we considered in selecting the affected source for the Cyanide Chemicals Manufacturing source category was the relationship between the affected source definition and the format of the standards.

The format of the standards for process vents is a process-unit-wide emission limit (*i.e.*, specified percent emissions reductions from all process vents in the process unit). This provides an owner or operator the option of selecting the most cost-effective level of control for each individual process vent, as long as the overall emissions limit is achieved. To accommodate this format, it was necessary to define the affected source to include all process vents in a process unit.

The affected source also defines the collection of equipment that you would evaluate to determine whether replacement of components at an existing affected source would qualify as reconstruction. If we define the affected source narrowly, it could affect whether some parts of a process unit would be subject to new source or existing source requirements. Since we are proposing the same requirements for existing and new sources for cyanide chemicals manufacturing emission points, the only implication for narrowly defining the cyanide chemicals manufacturing affected source would be when the source would have to comply with the standards.

We are proposing the process unit that manufactures cyanide chemicals as the foundation for the affected source. We are proposing a definition of the cyanide chemicals manufacturing process unit as a collection of equipment, assembled and connected by hard-piping or duct work, that is used to process raw materials to manufacture, store, and transport a cyanide chemicals product.

Of the five types of emission points at facilities that manufacture cyanide chemicals (process vents, storage vessels, equipment leaks, transfer operations, and wastewater), all except wastewater are typically located within a cyanide chemicals production process unit. Wastewater that is generated within a process unit is often routed outside the unit for treatment and discharge. In addition, some equipment (*i.e.*, pumps, valves, compressors, etc.) that is used to transport chemicals may be located outside of the cyanide chemicals manufacturing process unit. Therefore, we have proposed a definition of the affected source to include each cyanide chemicals manufacturing process unit and all associated waste management units, maintenance wastewater, and equipment in HAP service.

Cyanide chemicals production process units are seldom "stand-alone" facilities. Rather, the production of cyanide chemicals is usually part of an integrated facility. Therefore, the point at which a cyanide chemicals manufacturing process unit begins and ends is not always obvious. Because of this, it is necessary to define the boundaries of the affected source.

As discussed previously, four distinct processes are included in the source category. The proposed rule specifies that a cyanide chemicals manufacturing process unit can be either an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio HCN production process unit. The boundaries of the affected source are described in the definitions of the individual types of process units. We determined that a common demarcation of the end point of the affected source is appropriate for all four process types, but the beginning point needs to be defined separately for each type of process unit.

Cyanide chemicals product is either loaded into a tank truck or railcar, or is used as a raw material in another process at the plant site or an adjacent plant site. Other production processes for which HCN may be used as a raw material include processes that produce acetone cyanohydrin (an intermediate of the methyl methacrylate production process), adiponitrile, chelating agents, or cyanuric chloride. We considered including downstream production process HCN emission points under the cyanide chemicals affected source. However, we determined that production processes where HCN is used as a raw material are covered, or will be covered, by other 40 CFR part 63 subparts. For example, chelating agents production will be covered by the Miscellaneous Organic Chemical Manufacturing NESHAP, scheduled for proposal in the summer of 2000. Cyanuric chloride is an intermediate product and will be covered by either the Pesticide Active Ingredients NESHAP (40 CFR part 63, subpart MMM) or the Miscellaneous Organic Chemical Manufacturing NESHAP. Acetone cyanohydrin and adiponitrile production are subject to the HON (40 CFR part 63, subpart F).

Therefore, we determined that the affected source should end at the point that the cyanide chemicals product is either shipped offsite or is used as a raw material in a downstream process. This means that piping and associated equipment (pumps, valves, etc.) up to the point where the cyanide chemicals are used in the downstream process (*i.e.*, at the reactor) would be included in the cyanide chemicals affected source. We believe that this is necessary to ensure that potential HAP emissions from this equipment are covered by a 40 CFR part 63 subpart.

As noted above, we believe that the starting point of the affected source needs to be defined for each type of process. The Andrussow and BMA processes are straightforward because raw materials are reacted to produce HCN. Therefore, for these two processes, we defined the beginning of the affected source as the point at which raw materials are stored.

In the Sohio HCN production process, the primary product produced is acrylonitrile, and HCN is manufactured as a byproduct. The acrylonitrile production process is covered under the HON, although HCN emissions are not subject to control under the HON. Therefore, we needed to determine the point in the Sohio HCN production process where the Cyanide Chemicals Manufacturing source category begins.

We considered including all parts of the Sohio production process that contained HCN. However, because the Sohio production process is covered under the HON, many of the streams containing HCN may already be controlled to the HON level of control. Although HCN is not covered by the HON (*i.e.*, HCN is not included in table 2 to 40 CFR part 63, subpart F), the types of control devices (*i.e.*, combustion devices) utilized by Sohio facilities to comply with the HON also reduce HCN emissions. As a result, we concluded that the burden of overlapping standards would not justify the very small potential for additional HCN reductions.

We wanted to define a point so that there would be no overlap between a HON affected source and a cyanide chemicals affected source. There is a point in the Sohio production process where the HCN is separated from the acrylonitrile, typically in a unit operation referred to as the "light ends column." Therefore, we defined the beginning of the Sohio HCN production process unit as the point the HCN leaves the unit operation where the HCN is separated from the acrylonitrile. Because of our concern about the potential for overlapping requirements affecting a Sohio production process unit, we are specifically requesting comment on our proposed definition for the cyanide chemicals manufacturing affected source.

A primary raw material used in the production of sodium cyanide is HCN. Hydrogen cyanide that is produced in an Andrussow, BMA, or Sohio production process unit can be fed directly into a process to make sodium cyanide. Therefore, it was necessary to delineate the boundaries between an HCN process unit and a sodium cyanide process unit. Most commonly, HCN is refined in the HCN process and then fed into a reactor, where it is reacted with sodium hydroxide to form sodium cyanide. Therefore, we defined the beginning of the sodium cyanide process unit as the unit operation where refined HCN is reacted with sodium hydroxide. However, some facilities do not refine the HCN prior to reacting it with sodium hydroxide. In these cases, raw HCN is usually sent to an absorber, where it is absorbed into a sodium hydroxide solution to form sodium cyanide. Since the emission stream from this absorber is comparable to the emission stream from an absorber in a HCN process, we considered this absorber to be part of the HCN process unit, rather than part of the sodium cyanide process unit. Therefore, in situations where raw HCN is reacted with sodium hydroxide prior to being refined, we clarified that the sodium hydroxide process begins at the point that the aqueous sodium cyanide stream leaves the unit operation where the sodium cyanide is formed.

Additionally, in order to define the point at which the sodium cyanide production process begins, we are proposing definitions for raw HCN and refined HCN. In the proposed NESHAP, we have defined raw HCN as HCN that has not been through the refining process and usually has an HCN concentration less than 10 percent. We have also proposed a definition of refined HCN to mean the HCN that has been through the refining process and usually contains an HCN concentration greater than 99 percent. We are specifically requesting comments on the proposed definitions for raw HCN and refined HCN, as well as the point at which the sodium cyanide production process begins.

3. How Did EPA Select the Basis and Level of the Proposed NESHAP for Existing and New Sources?

We identified 16 facilities that manufacture cyanide chemicals which we believe represent the entire industry in the United States. For existing sources, the CAA requires us to establish emission standards that are at least as stringent as "* *ensp;* the average emission limitation achieved by the best performing five sources * * *" for categories or subcategories with fewer than 30 sources. For new sources, emission standards "* * * shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source."

The term "average" is not defined in section 112(d)(3) of the CAA. We have the discretion within the statutory framework to set MACT floors at appropriate levels, and we have interpreted the term "average" to mean the mean, median, mode, or some other measure of central tendency (59 FR 29196).

We chose the median (the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude) as the measure of central tendency in this MACT floor analysis for existing sources. We found that, for this source category, the arithmetic mean resulted in a level of control that was not representative of any actual control technology. Using a median allowed us to select a MACT floor that corresponds directly to the level of control represented by a particular control device. Also, because the data set we used in our MACT floor analysis consists of data from only 16 facilities, we did not use a mode, which is more appropriate for large data sets.

We also considered whether to separate emission sources into groups by emission source type (*e.g.*, tanks, process vents, fugitive emission sources) based on equipment type, equipment size, equipment contents, stream characteristics, or control device applicability. Because of differences in emissions characteristics and vent stream characteristics, we separated the emission points in the Cyanide Chemicals Manufacturing source category by emission source type. We grouped the emission points into one of the following: Process vents, storage vessels, wastewater streams, equipment leaks, or transfer operations.

In addition, we may make grouping decisions within each emission source type based on equipment type, equipment size, equipment contents, stream characteristics, or other elements that could affect the emission potential of an emission point or the ability to reduce emissions from that emission point. We evaluated whether the different types of cyanide chemicals manufacturing processes should be considered for each emission source type. We concluded that for storage vessels, equipment leaks, wastewater, and transfer operations, the elements that can affect the emission potential of an emission point or the ability to reduce emissions from the emission point were not influenced by the type of process. For example, the ability to control HCN emissions from a storage vessel is not dependent on the type of process.

We did create groupings for process vents. Because of similarities in the types of unit operations and types of control devices being used in the Andrussow and BMA production processes, we grouped and analyzed these two processes together to determine the MACT floor for process vents. We did not include process vents from the Sohio HCN production process in this group, primarily because of the differences in process operations and controls. Specifically, the Sohio HCN production process vents typically have much lower emissions and are typically controlled by using a flare, while emissions from process vents in the Andrussow and BMA processes are somewhat higher and are typically controlled by a boiler.

Process vents in the sodium cyanide process were separated into wet-end process vents and dry-end process vents to determine the MACT floor. We did this primarily because emissions from dry-end process vents are particulate cyanide chemicals (*i.e.*, solid sodium cyanide), rather than gaseous emissions. Therefore, the types of controls used in the dry end may be different from those used in the wet end.

As previously discussed, the Cyanide Chemicals Manufacturing source category has fewer than 30 sources, so the MACT floor must be based on the best performing five sources. We determined the best performing cyanide chemicals manufacturing process units for each emission source type: Process vents (Andrussow/BMA process, Sohio HCN production process, wet-end sodium cyanide process vents, and dry-end sodium cyanide process vents), storage vessels, transfer operations, equipment leaks, and wastewater. If data were not available for each emission source type at five or more facilities, we determined the MACT floor based on the number of facilities for which data were available. The

following paragraphs discuss the MACT floor analysis for each emission source type.

a. *Process Vents.* We considered two basic measures of performance for determining the best performing sources. We considered a HAP emission factor, expressed as HAP emissions per unit of production. We also considered an overall process unit HAP emission reduction, expressed as a percent HAP reduction. Emission factors were calculated for each cyanide chemicals manufacturing process unit, but we rejected these factors for determining the MACT floor because we could not verify information on production rates, and the accuracy and bases of the emission rates were not always apparent. We, therefore, used the percent emission reduction across the process as the basis for ranking facilities within each process type because a percent emission reduction is less sensitive to the mass emission rate and does not rely on production rate. This approach was selected to determine the MACT floor levels of control for process vents, and the proposed standard is expressed as a required percent HAP emission reduction.

The following discussion presents the results of our MACT floor analysis for process vents for each type of cyanide chemicals manufacturing process.

Andrussow/BMA process. In our MACT floor analysis, we considered nine facilities that use the Andrussow or BMA process. All nine facilities reported that they use combustion to control HAP emissions from process vents. Of these nine facilities, we had control efficiency data for seven facilities. The emission reduction for all of the five best performing facilities is 99 weight-percent or greater. Therefore, we concluded that the MACT floor for existing sources is 99 weight-percent.

To determine the MACT floor for new sources, we attempted to determine the best performing source. We evaluated the reported control efficiencies for the five best performing sources in this group. All of the sources apply some form of combustion; however, we were unable to identify any technical basis for the reported differences in control efficiencies for these combustion devices. Therefore, we selected the MACT floor for new sources as 99 weight-percent.

All of the five best performing sources controlled emissions during startup, shutdown, or malfunction events using a flare. In general, we assume that a properly operated flare will achieve an emission reduction of 98 weight-percent. Therefore, we determined that the MACT floor for startup, shutdown, or malfunction events for new and existing process vents is a flare or a 98 weight-percent emission reduction.

To select the proposed MACT for process vents from the Andrussow/BMA process, we considered above-the-floor options for existing and new sources. As previously discussed, we could not identify the technical basis for the differences in reported emissions reductions for the combustion devices represented by the MACT floor. Thus, all of the combustion devices included in the MACT floor analysis were considered to be equivalent. Therefore, we did not identify a control technology more stringent than the MACT floor for process vents in the Andrussow or BMA processes. We are proposing that MACT for process vents from the Andrussow/BMA production process is the level of control represented by the MACT floor (*i.e.*, a 99 weight-percent emission reduction).

Sodium cyanide (wet-end) process. We had information for three sodium cyanide facilities that have wet-end process vents. One facility had uncontrolled process vents, and the other two facilities each had an emission reduction of 98 weight-percent based on the use of combustion devices and a median emission reduction of 98 weight-percent. Therefore, we determined that the MACT floor for new and existing sources is 98 weight-percent based on the use of a combustion device.

To select MACT for wet-end process vents, we considered the impacts of above-the-floor options for existing and new sources. As shown above, two of the three sodium cyanide facilities included in the MACT floor analysis are controlled, and we believe that the incremental costs (and the associated cost effectiveness) of achieving a small emission reduction greater than 98 weight-percent would be disproportional to the additional HAP emission reduction that would be achieved (*i.e.*, it would not be cost effective to require a facility to remove an existing combustion device and replace it with one that gets an additional 1 percent emission reduction). As a result, we did not perform an analysis of above-the-floor control technologies for wet-end process vents at sodium cyanide production facilities. Therefore, we are proposing that MACT for process vents in the wet end of sodium cyanide production facilities for existing and new sources is a 98 weight-percent emission reduction (i.e., the MACT floor).

Sodium cyanide (dry-end) process. Information was available for two sodium cyanide facilities with dry-end process vents. We had control efficiency data for both of these facilities. The control efficiencies were 83 weight-percent based on a cyclonic dust collector and 98 weight-percent based on a caustic scrubber, with the average emission reduction being 90 weight-percent. Therefore, we determined that the MACT floor for existing sources is 90 weight-percent and the MACT floor for new sources is 98 weight-percent.

To select MACT for dry-end process vents at existing sources, we evaluated the impacts of the MACT floor for new sources. We estimate that the incremental cost effectiveness associated with raising the existing source dry-end process vent emission reduction requirement from 90 weight-percent to 98 weight-percent is reasonable; therefore, we selected 98 weight-percent as MACT for existing sources.

We did not identify an option more stringent than the MACT floor for new sources. Therefore, we are proposing that MACT for dry-end process vents at new sources is the MACT floor.

Sohio HCN production process. There are five facilities using the Sohio HCN production process that were considered in the MACT floor analysis. Of these five facilities, we have control efficiency data for four facilities. The emission reduction ranges from 97.8 to 98 weight-percent. The median emission reduction for facilities for which there is available data is 98 weight-percent. Therefore, we determined that the MACT floor for new and existing sources is 98 weight-percent.

To select MACT for process vents from the Sohio HCN production process, we considered the impacts of above-the-floor options for existing and new sources. Several of the facilities included in the MACT floor analysis are controlled, and we believe that the incremental costs (and the associated incremental cost effectiveness) of achieving a small emission reduction greater than 98 weight-percent would be disproportional to the additional HAP emission reduction that would be achieved (i.e., it would not be cost effective to require a facility to remove an existing combustion device and replace it with one that gets an additional 1 percent emission reduction). As a result, we did not perform an analysis of above-the-floor control technologies for process vents at Sohio HCN production facilities. Therefore, we are proposing that MACT for process vents in Sohio HCN production facilities for existing and new sources is the MACT floor.

Alternative standards and compliance options (all process vents). Many of the facilities for which we have data control every process vent to a degree that would meet the proposed level of control. Clearly, the overall reduction would comply with the required reduction if each vent was achieving the required emission reduction. In this situation, we did not believe that owners or operators needed to calculate a process-unit-wide emission reduction. Therefore, we added the option that each process vent could be controlled to the required level. We believe that this would reduce the burden of demonstrating compliance for owners and operators in this situation.

In the preamble to the proposed New Source Performance Standards (NSPS) for Air Oxidation Unit Process (48 FR 48932, October 21, 1983), we stated that 20 ppmv is the lowest outlet concentration achievable by combustion of low concentration streams (i.e., streams with concentrations less than around 2,000 ppmv). In addition, we expanded the application of this lower bound concentration performance standard to control/recovery devices other than incinerators (61 FR 43698, August 26, 1996) controlling volatile organic compounds. Therefore, for all instances where the selected level of control is a specified percent reduction, we are proposing an alternative that would allow compliance by achieving an outlet concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions) for each individual emission point (*i.e.*, this option is not allowed if you are complying with a process-unit-wide process vent requirement). We believe that 20 ppmv is a reasonable level achievable for low-concentration streams. The exceptions to this are the requirements for sodium cyanide dry-end process vents. Since the emissions from these dry-end vents are particulate, the rationale for the 20 ppmv alternative is not applicable.

Forms of the standards (all process vents). The proposed standards for process vents include a combination of forms. For process vent streams controlled by control devices other than a flare, we selected the form of a numerical emission limitation (a weight-percent reduction or a concentration), either on an individual vent basis, or process-wide. This form was chosen based on the controls used at cyanide chemicals manufacturing facilities and the data available for our MACT analysis.

For vent streams controlled by a flare, we selected a form consisting of equipment and operating specifications, consistent with the form for flare requirements that we have specified for other industries. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

b. *Storage Tanks.* Information was available for HCN storage vessels at eight facilities. The HCN storage vessels are controlled at all eight facilities: Five with a flare as the primary control device, which we assume achieves 98 weight-percent emission reduction; one with a scrubber, which was reported to achieve an emission reduction of 98 weight-percent; one with a scrubber and flare in series; and one with a gas absorption column. We did not have control efficiency data for the facility with the scrubber and flare in series or for the facility with the gas absorption column; therefore, these facilities were not considered in the MACT floor analysis for storage vessels. The remaining facilities were ranked by emission reduction, and the five best performing facilities were determined to be those with the highest percentage emission reduction. The emission reduction associated with all of the top five facilities was 98 weight-percent. Thus, we determined the MACT floor for new and existing storage vessels to be an emission reduction of 98 weight-percent through the use of a flare or other control device.

To select the proposed MACT for storage vessels, we did not identify any control technologies more stringent than the MACT floor that would be applicable. Although combustion technologies exist that could achieve an emission reduction higher than the MACT floor level of 98 weight-percent, we believe that due to the intermittent nature of storage vessel emissions, flares are the most appropriate combustion control technology available for this emission source type. Thus, we did not perform an above-the-floor analysis for storage vessels. Therefore, we are proposing that MACT for storage vessels for existing and new sources is the level of control represented by the MACT floor.

The proposed storage vessel provisions include a combination of forms. For storage vessels that contain HCN that are controlled by a control device other than a flare, we are proposing an emission limitation in the form of a specified weight-percent requirement. We selected this form to give owners and operators the flexibility to install an applicable control technology to meet the MACT floor.

For storage vessels controlled by venting emissions to a flare, we have selected a form consisting of equipment and operating specifications, consistent with the format for flare requirements that we have specified for other industries. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

c. *Equipment Leaks.* We have information regarding equipment leak emission control programs for ten facilities. Four of these facilities are subject to the equipment leaks NSPS in 40 CFR part 60, subpart VV. Six facilities are subject to State equipment leak requirements. To define the five best performing facilities, we compared the State rules to subpart VV and concluded that subpart VV was either equivalent to, or more stringent than, the State rules. Therefore, the median facility was determined to be a facility subject to subpart VV. Thus, we determined that the MACT floor for new and existing equipment leaks is subpart VV.

We identified one alternative that is more stringent than the MACT floor for equipment leaks. The equipment leak provisions in the HON are more stringent than the subpart VV level of control. The level of control in subpart VV is equivalent to the Generic MACT control level 1, which is contained in 40 CFR part 63, subpart TT. The HON level of control is equivalent to the Generic MACT control level 2, which is contained in 40 CFR part 63, subpart UU.

The basic elements of both the level 1 and level 2 equipment leak programs are the same; however, level 2 requires connector monitoring and has a significantly lower leak definition. Due to the wide range of compliance options and performance-based incentives that reduce the monitoring frequencies, it is difficult to assess the incremental difference in costs between these two levels of control. In addition, due to the highly lethal nature of HCN, cyanide chemicals manufacturing process units are much more rigorously maintained than process units producing other, less lethal chemicals. Because of these factors, we do not believe that the additional emission reduction would justify the costs associated with requiring a cyanide manufacturing facility to comply with the HON program. Therefore, we concluded that it is not appropriate to require that existing and new sources comply with 40 CFR part 63, subpart UU.

However, we recognize that many cyanide chemicals manufacturing process units are collocated with HON facilities. In fact, HCN produced in a

Sohio HCN production process is actually a byproduct of a HON process. For the sake of consistency, some owners or operators of cyanide chemicals manufacturing process units may prefer to comply with the HON equipment leak program. Therefore, we are proposing the option of complying with either 40 CFR part 63, subpart TT or UU.

The form of the provisions for equipment leaks consists of work practice and equipment specifications. We have determined that it is not feasible to prescribe or enforce emission standards because emissions cannot be emitted through a conveyance device, and the application of a measurement methodology is not practicable due to technological or economic limitations (57 FR 62608).

We considered whether it is appropriate to require owners and operators to monitor all equipment components (i.e., connectors, flanges, valves). We concluded that there could be situations where the costs of monitoring equipment with very low HAP emission potential are not reasonable. Therefore, we are proposing an applicability cutoff for equipment components based on the amount of time the equipment contains or contacts HAP. We are proposing an applicability cutoff of 300 hours per year. We selected this cutoff based on what has been adopted under previously promulgated NESHAP for equipment containing or contacting organic HAP (i.e., the HON) because we had insufficient data on equipment leak emissions and control at cyanide manufacturing facilities.

We are proposing to exempt open ended lines that contain HCN or acrylonitrile from the requirements of 40 CFR part 63, subparts TT and UU. According to industry representatives, closing open ended lines that contain or contact HCN or acrylonitrile could potentially lead to trapped volumes of these chemicals, which could polymerize and raise significant safety concerns.

d. *Transfer Operations.* We have information for HCN transfer operations at three cyanide chemicals facilities. Two of these facilities control emissions from transfer operations using a flare. The third facility routes HCN emissions from transfer operations to a vent scrubber with a flare as a backup. The emission reduction for all three of these facilities with transfer operations is reported to be 98 weight-percent. Thus, we determined the MACT floor for new and existing transfer operations to be an emission reduction of 98 weight-percent through the use of a flare or other device.

To select the proposed MACT for transfer operations, we did not identify any control technologies more stringent than the MACT floor that would be applicable. Although combustion technologies exist that could achieve an emission reduction higher than the MACT floor level of 98 weight-percent, we believe that the intermittent nature of transfer operation emissions make flares the most appropriate combustion control technology for this emission source type. Thus, we did not perform an above-the-floor analysis for transfer operations. Therefore, we are proposing that MACT for transfer operations for existing and new sources is the level of control represented by the MACT floor.

The proposed standards for transfer operations include a combination of forms. For transfer racks that are used to load HCN into tank trucks and rail cars that are controlled by control devices other than a flare, we are proposing an emission limitation in the form of a specified weight-percent requirement. This form was chosen based on controls used at cyanide chemicals manufacturing facilities and the data available for our MACT analysis. We selected this form to give owners and operators the flexibility to implement an applicable control technology to meet the MACT floor.

For transfer racks controlled by a flare, we selected a form consisting of equipment and operating specifications, consistent with the form for flare requirements that we have specified for other industries and emission points. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

e. *Wastewater Treatment Operations.* Wastewater is generated from the Andrussow and BMA cyanide manufacturing processes. We had information available on the wastewater handling practices for seven facilities in the Cyanide Chemicals Manufacturing source category. All seven of these facilities have wastewater treatment units in place at their facility necessary to meet either their National Pollutant Discharge Elimination System (NPDES) permit requirements if they are allowed to discharge directly to a body of navigable water, or to meet the requirements for discharging to a publicly owned treatment works facility if they have an indirect discharge permit. Therefore, the median of the top five facilities has a wastewater treatment system in place to meet permitted effluent discharge limits. These wastewater treatment systems are comprised of a series of tanks used for settling, neutralization, clarification, and in some cases, biodegradation (most commonly found at facilities with NPDES permits). All of these wastewater treatment tanks are open to the atmosphere.

The wastewater generated from these cyanide chemicals manufacturing facilities tends to enter a collection system (typically a sewer) through drains, sumps, trenches, and hotwells in the process area. The collection system carries the wastewater from the process down to the wastewater treatment system. Our information on these cyanide manufacturing facilities does not indicate that there are controls in place to suppress HAP emission losses from the wastewater en route to the wastewater treatment plant. Therefore, the collection and drain system design is presumed to be typical of that found in other SOCMI facilities, in which these HAP emissions vent to the atmosphere through conveyance points such as junction boxes, man holes, and lift stations. The tanks in the wastewater treatment plant are open to the atmosphere, where further HAP losses occur through a combination of evaporation and mechanical agitation. Six of these seven facilities report that they have a biological treatment tank or open pond.

We are aware that biological treatment units at SOCMI facilities are capable of achieving HAP emissions reductions. However, the biological treatment units at these cyanide manufacturing facilities were installed to meet requirements associated with discharge of the effluent. These units were not designed for the purpose of reducing HAP emissions to the ambient air, and we believe that any associated reductions of air emissions are insignificant. For this component of the wastewater treatment system to achieve significant reductions in air emissions, the wastewater in the drain and conveyance systems, both within the process and going down to the wastewater treatment system, must be designed such that HAP emissions are suppressed so that they can reach the biological treatment system. In addition, the tanks in the wastewater system prior to the biotreatment tank must also employ suppression controls.

Site specific variability in performance of biotreatment tanks is significant. Although all of these facilities report a high level of removal of known HAP across their wastewater treatment systems, how much of the HAP that are actually destroyed, as opposed to stripped to the air, is unknown. The degree that HAP removal occurs through biological destruction is a function of many factors, including

the aeration rate, the biomass, the retention time in the tank, the biological degradation rate, and surface area. As noted in the promulgation preamble to the HON, "* * * the variability in performance makes it difficult to quantify a required emission reduction for the purpose of setting a standard. Emission reductions for biological treatment systems can only be determined on a site-specific basis * * *" (59 FR 19423). Moreover, given the site-specific nature of these systems, it would be difficult to develop even a qualitative work practice standard based on the median of the top five of these facilities that would both be achievable across the source category and consistent with continued compliance with effluent discharge permits. For these reasons, we have determined that the MACT floor for existing sources is no further control requirements for wastewater beyond current practices.

Two of the top five facilities report that they treat their process wastewater using stripping technology. One of these facilities sends their wastewater to a steam stripper, and the stripper effluent then goes to their wastewater treatment system. The other facility uses an air stripper and sends the stripper effluent to an ozonation step and then on to the wastewater treatment system. Both facilities control the vents on the strippers by 98 percent through thermal oxidation. The steam stripper is achieving 95 percent removal across the stripper. The air stripping system reports similar performance, although steam stripper performance is better understood in terms of its ability to remove HAP from wastewater and is generally considered a more widely applicable control technology for removing HAP from wastewater. Therefore, we have identified steam stripping achieving 95 percent HAP removal with 98 percent control of the stripper vent to be the MACT floor for new sources. We do not have any information that would aid us in setting an applicability cutoff for wastewater streams based on flow rate and HAP concentration. We do have information on the specifically-named wastewater streams being sent to the steam stripper. Therefore, the new source MACT floor also specifies the streams that must be controlled.

We are unaware of any technologies capable of performing at a higher control level than the steam stripping system representing the new source MACT floor. For this reason, we are not going beyond-the-floor to set MACT for new sources. We then considered whether this same stripping technology with control of the stripper vent is an appropriate control technology beyond-the-floor for existing sources. Since these cyanide manufacturing processes are similar to other SOCMI type processes previously regulated under other subparts, we evaluated what levels of wastewater flow and HAP concentration were considered necessary to yield a reasonable cost effectiveness beyond-the-floor. Our available information on cyanide manufacturing wastewater indicates that the flow rates and HAP concentrations fall well below applicability cutoffs established under these previously issued subparts. For that reason, we believe that the cost effectiveness of going beyond-the-floor for existing cyanide manufacturing sources is not reasonable.

We did not evaluate wastewater air emissions from sodium cyanide manufacturing wastewater. These process units typically have some type of water treatment that is part of the actual process unit. Vents from these treatment processes are considered to be part of the wet end production unit process vents and are regulated in the process vent portion of this proposed rule. We had no data indicating that the streams exiting these process units contain any HAP except for sodium cyanide, which is not volatile.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts YY, SS, TT, UU, and WW to demonstrate and document compliance with the cyanide chemicals manufacturing standards. The procedures and methods set out in these subparts are, where appropriate, based on procedures and methods that we previously developed for use in implementing standards for emission point sources similar to those being proposed for the Cyanide Chemicals Manufacturing source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (§§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply control. These requirements are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.*, HAP concentration cutoff level, above which, control is required).

We selected emission point and/or control device-specific monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirement subparts promulgated for storage vessels (40 CFR part 63, subpart WW); equipment leaks (40 CFR part 63, subpart UU or TT); and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous HAP. The rationale for the establishment of these subparts and requirements contained within each subpart is presented in the proposal preamble for the source category requirements previously promulgated under 40 CFR part 63, subpart YY (63 FR 55186–55191).

We believe that the compliance, monitoring, recordkeeping, and reporting requirements of subparts YY, SS, TT, and UU are appropriate for demonstrating and documenting compliance with the requirements proposed for the Cyanide Chemicals Manufacturing source category. This is because these requirements were established for standards with similar form and similar emission points with pollutant streams of gaseous HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

D. Summary of Environmental, Energy, Cost, and Economic Impacts?

1. What Are the Air Quality Impacts?

Nationwide baseline HAP emissions from the Cyanide Chemicals Manufacturing source category are estimated to be 238 Mg/yr (263 TPY). These proposed NESHAP will reduce HAP emissions by approximately 106 Mg/yr (117 TPY). This is a 45 percent reduction from the baseline level for this source category and a 58 percent reduction for those facilities required to install controls to comply with the proposed NESHAP.

We also estimate that the proposed NESHAP for the Cyanide Chemicals Manufacturing source category will reduce emissions of volatile organic compounds (VOC) by 102 Mg/yr (113 TPY). We estimate that the proposed NESHAP will result in an increase in sulfur oxide (SO_X) emissions of 7.3 Mg/

yr (8 TPY), an increase in nitrogen oxide (NO_X) emissions of 10.3 Mg/yr (11.4 TPY), an increase in carbon monoxide (CO) emissions of 42.1 Mg/yr (46.4 TPY), and an increase in particulate matter (PM) emissions of 0.3 Mg/yr (0.3 TPY). The increases in emissions result from the on-site combustion of fossil fuels and emission streams as part of control device operations.

2. What Are the Cost and Economic Impacts?

The total estimated capital cost of the proposed NESHAP for the Cyanide Chemicals Manufacturing source category is $939,000. The total estimated annual cost of the proposed NESHAP is $2.4 million (fourth quarter 1998 dollars).

We prepared an economic impact analysis to evaluate the impacts the proposed NESHAP would have on the cyanide manufacturing market, consumers, and society. The total annualized social cost (in 1998 dollars) of the proposed NESHAP on the industry is $2.4 million, which is much less than 0.001 percent of total baseline revenue for the affected sources. A screening analysis indicates that no individual firm affected by the proposed NESHAP would experience costs in excess of 0.001 percent of sales. For this reason, we believe that the impact of the proposed NESHAP will be minimal. No facility closures are expected as a result of the proposed NESHAP.

3. What Are the Nonair Health, Environmental, and Energy Impacts?

We believe that there would not be significant adverse nonair health, environmental, or energy impacts associated with the proposed NESHAP for the Cyanide Chemicals Manufacturing source category. This is supported by impacts analyses associated with the application of the control and recovery devices required under the proposed NESHAP. We determine impacts relative to the baseline that is set at the level of control in absence of the standards.

Control of equipment leaks will reduce the amount of HAP-containing material that could be discharged to a facility's wastewater treatment stream through equipment washdowns or from stormwater runoff. The use of a scrubber for HAP control from vents results in an effluent wastewater stream from the scrubber that would add a small amount of wastewater to that already being handled at the facility's wastewater treatment system.

There are minimal solid or hazardous waste impacts associated with the proposed NESHAP. A small amount of solid waste may result from replacement of equipment such as seals, packing, rupture disks, and other equipment components, such as pumps and valves. A minimal amount of solid or hazardous waste could be generated from the use of steam strippers to control wastewater emissions. The possible sources include organic compounds recovered in the steam stripper overheads condenser or solids removed during feed pretreatment.

The energy demands associated with the control technologies for the proposed NESHAP include the need for additional electricity, natural gas, and fuel oil. The storage tank, transfer operations, equipment leak, and wastewater controls are not expected to require any additional energy. The total nationwide energy demands that would result from implementing the process vent controls are approximately 3.1×10^{14} Joules per year.

III. Carbon Black Production

A. Introduction

1. What Are the Primary Sources of Emissions and What Are the Emissions?

We evaluated the following potential HAP emission sources at carbon black facilities: (1) Process vents, (2) equipment leaks, (3) storage vessels, and (4) wastewater. Based on available information, we have discerned that process vents from the main unit filter comprise most of the HAP emissions from carbon black facilities. Process vent emissions consist of tailgas from the reactors. The reactor tailgas is sent to a baghouse where the carbon black is separated from the tailgas. The main unit filter is where the carbon black is separated from the tailgas. After separation of the carbon black product, most of the tailgas is emitted to the atmosphere or sent to a combustion control device. The process vents after the main unit filter consist of vents from unit operations involved in the processing of the carbon black into final product. Hazardous air pollutant emissions may occur from process vents after the main unit filter, but the amount of HAP emitted from these vents is very small compared to the amount emitted from process vents from the main unit filter.

In our evaluation of equipment leaks, we found that leaks were not a significant source of HAP emissions for the Carbon Black Production source category. One of the reasons for this is the low vapor pressures of the raw materials used in the production process (*i.e.*, the typical carbon black feedstock is less than 0.05 kilopascals).

As with equipment leaks, our evaluation of the potential for HAP emissions from storage vessels indicated that they were not a significant source of emissions from carbon black production facilities. This is because the typical feedstock oil used in the carbon black production process is heavy fuel oil, which, because of its low vapor pressure, is not likely to be emitted to the atmosphere under normal operating conditions. In addition, the feedstock oil is nearly solid under standard pressure and temperature and typically needs to be heated to (and maintained at) 120 degrees Fahrenheit to allow it to flow as a liquid.

In our evaluation of wastewater, we did not identify any wastewater emissions of consequence as a result of the carbon black production process. The process uses a quench tower to capture the product, and the effluent guidelines applicable to this source category require that there be no discharge of process wastewater to navigable waters from carbon black production facilities.

We estimate 1996 baseline HAP emissions from the Carbon Black Production source category to be 7,000 Mg/yr (7,700 TPY). This estimate reflects emissions from process vents.

2. What Are the Health Effects Associated With the HAP Emitted?

The principal HAP that we have identified as being associated with carbon black production facilities include carbon disulfide, carbonyl sulfide, and hydrogen cyanide. In the following paragraphs, we present a discussion on the effects of inhalation exposure to these compounds.

Carbon disulfide. Acute (short-term) inhalation exposure of humans to carbon disulfide has caused changes in breathing and chest pains. Acute human inhalation exposure to carbon disulfide has also been associated with nausea, vomiting, dizziness, fatigue, headache, mood changes, lethargy, blurred vision, delirium, and convulsions.

Chronic (long-term) carbon disulfide human exposure and inhalation studies indicate the potential for adverse neurologic effects. There is also a potential for reproductive effects in humans, such as decreased sperm count and menstrual disturbances, that have had chronic inhalation exposure to carbon disulfide. Developmental effects, including toxic effects to the embryo and malformations and functional and behavioral disturbances in offspring, have been observed in studies on laboratory animals with chronic inhalation exposure to carbon disulfide.

Carbonyl sulfide. Acute inhalation exposure to carbonyl sulfide in high concentrations may cause narcotic effects in humans and may irritate eyes and skin. No information is available on the chronic effects of carbonyl sulfide in humans.

Cyanide compounds. Acute inhalation exposure to high concentrations of cyanide compounds can be rapidly lethal. Acute inhalation of hydrogen cyanide at lower concentrations can cause a variety of adverse health effects in humans, such as weakness, headache, nausea, increased rate of respiration, and eye and skin irritation. Chronic inhalation exposure to cyanide compounds can result in effects on the central nervous system, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. Other chronic inhalation exposure effects in humans include cardiovascular and respiratory effects, an enlarged thyroid gland, and irritation to the eyes and skin.

B. Summary of Proposed Standards for Carbon Black Production

1. What Is the Source Category To Be Regulated?

We have defined the Carbon Black Production source category to include any facility that produces carbon black by the furnace black process, thermal black process, or the acetylene decomposition process. The furnace black process is a closed system thermal-oxidative decomposition process, the thermal black process is a cyclic thermal decomposition process, and the acetylene black process is a continuous thermal decomposition process. Carbon black is primarily used as a reinforcing agent for rubber. The largest use of carbon black is in the manufacture of automotive and truck tires.

2. What Is the Affected Source?

We have defined the affected source to include each carbon black production process unit, along with associated process vents and equipment that are located at a major source, as defined in section 112(a) of the CAA. We define a carbon black production process unit as the equipment assembled and connected by hard-piping or duct work to process raw materials used to manufacture, store, and transport a carbon black product.

3. What Are the Emission Limits, Operating Limits, and Other Standards?

For existing and new sources, we are proposing the same requirements for process vents. For process vents that are associated with the main unit filter, we are proposing requirements to control HAP emissions by venting emissions through a closed vent system to a flare, or by venting emissions through a closed vent system to any combination of control devices that reduces emissions of HAP by 98 weight-percent. As an alternative to meeting a 98 percent by weight HAP emission limit, we are proposing that an owner or operator may comply with the NESHAP by reducing emissions of HAP from their process vents from continuous unit operations to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

4. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for emission points similar to those for which we are proposing standards with this action. For example, we are proposing applicability determination procedures to determine whether a process vent stream is required to apply control, and performance tests and test methods to demonstrate that the emission limits are achieved when controls are applied. The proposed requirements are dependent on the control device selected.

We are proposing control applicability determination procedures to measure process vent flow rate and process vent HAP concentration. The proposed test methods parallel what we have used for process vent organic HAP emission point sources in previous standards. For measuring vent stream flow rate, we propose the use of Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream HAP concentration to determine whether the vent stream HAP concentration is below a specified level, we propose the use of Method 18 of 40 CFR part 60, appendix A.

Additionally, we are proposing to require initial performance tests for all control devices other than flares and certain boilers and process heaters used as control devices for HAP emissions from process vents. As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 MW (150 million Btu/hr) because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, greater than 98 weight-percent of organic HAP emissions are reduced, or an outlet concentration of 20 ppmv organic HAP is achieved. For flares, a percent reduction and outlet concentration measurement is not feasible. Therefore, we determined that a performance test is not necessary if the control device is a boiler, a process heater larger than 44 MW (150 million Btu/hr), or a flare. We proposed performance tests that ensure that a control device can achieve the required control level and help establish operating parameters that are indicative of proper operation and maintenance.

We are proposing that continuous compliance with emission standards for process vents be demonstrated by monitoring control device operating parameters established during the performance tests or specified in the standards (as applicable). The proposed requirements for carbon black production list the parameters that can be monitored for the common types of combustion devices. For other control devices, we would require that an owner or operator establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status report and operating permit. Parameters selected are required to be good indicators of continuous control device performance.

In addition to testing and monitoring of emissions control equipment, we are also proposing that the closed vent system that routes emissions to control equipment be initially and annually tested for HAP emissions leaks (*i.e.*, a measurement greater than 500 ppmv. If a leak is detected, we would require that you eliminate the leak and monitor equipment (no later than 15 calendar days after the leak is detected).

5. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are proposing notification, recordkeeping, and reporting requirements that parallel the General Provisions (40 CFR part 63, subpart A), and requirements to document compliance that are similar to those previously developed and used for similar emission points.

We are proposing that owners or operators of carbon black production affected sources submit the following four types of reports: (1) Initial Notification, (2) Notification of Compliance Status, (3) periodic reports, and (4) other reports. Records of reported information and other information necessary to document compliance with the proposed NESHAP

would be required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification, we are proposing that you list the carbon black production processes at your facility and the provisions that may apply. The Initial Notification would also be required to include a statement as to whether your facility can achieve compliance by the specified compliance date. This notification would be required to be submitted within 1 year after the date of promulgation for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status report, we are proposing that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. We provide information on the requirements and information to be provided to us for performance tests and other methods of compliance determination for process vents and equipment. For each test method used for a particular kind of emission point (*e.g.*, process vent), one complete test report would be required to be submitted. This notification would also be required to include the specific range for each monitored parameter for each emission point for determining continuous compliance, and the rationale for why this range indicates proper operation of the control device.

For periodic reports, we are proposing that you report periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status report. For process vents, records of continuously monitored parameters must be kept. For equipment leaks, inspections and/or leak detection monitoring records must be kept. These records would only be required to be submitted in the periodic report if a leak is detected. We are proposing that these reports be submitted semiannually, or quarterly if monitored parameter values for a particular emission point are outside the established range by a given percentage of the operating time.

Other reports that we are proposing to require include reports to the regulatory authority before or after a specific event (*e.g.*, if a process change is made, requests for extension of repair period).

C. Rationale for Selecting the Proposed Standards for Carbon Black Production

1. How Did EPA Select the Source Category?

We listed Carbon Black Production as a category of major sources of HAP on June 4, 1996 (61 FR 28197). We listed this category due to potential emissions of carbon disulfide, carbonyl sulfide, and hydrogen cyanide. When we originally listed the Carbon Black Production source category, we stated that it included facilities that manufacture carbon black using the channel, thermal, or furnace process (61 FR 28197). In gathering and evaluating more extensive information on the production of carbon black, we determined that the furnace black process is the dominant production process utilized in this source category. The other types of production processes we identified that are currently used in the United States to produce carbon black are the thermal, acetylene, and lampblack processes. Therefore, in our proposed definition of carbon black production, we specify the furnace black, thermal, acetylene, and lampblack processes.

The CAA allows us to define subcategories, or subsets of similar emission sources within a source category, if technical differences in emissions characteristics, processes, control device applicability, or opportunities for pollution prevention exist within the source category (57 FR 31576). Specific examples of these differences include the types of products, process equipment differences, the type and level of emission control, emissions sources, and any other factors that would impact a MACT standard. We did not identify differences between the four carbon black production processes included in the source category that we believe meet the criteria presented above for subcategorization. They all have the same basic unit operations, HAP emission sources, and ability to control the HAP emissions. Thus, we determined that it was not necessary to divide this source category into subcategories.

2. How Did EPA Select the Affected Source?

The affected source is the group of unit operations, equipment, and emission points that are subject to the proposed NESHAP. We can define the affected source as narrowly as a single item of equipment or as broadly as all equipment at the plant site that is used to manufacture the carbon black product. The affected source defines the collection of equipment that you would evaluate to determine whether replacement of components at an existing affected source would qualify as a reconstruction. If we define the affected source narrowly, it could affect whether some parts of a process unit would be subject to new source requirements or existing source requirements. We are proposing the same requirements for existing and new sources for carbon black production emission points. Therefore, the only implication for narrowly defining the carbon black production affected source would be when the source would have to comply with the standards.

We selected the process unit that manufactures carbon black as the foundation for the affected source. We defined the carbon black production process unit as the collection of equipment, assembled and connected by hard-piping or duct work, that is used to process raw material to manufacture the carbon black product. We evaluated the potential HAP emission sources at carbon black production facilities and determined that most HAP emissions occur from a single point. This point is the process vent from the main unit filter, which includes the "tailgas" from the reactor, along with miscellaneous streams from other unit operations.

Based on the available information, we concluded that HAP emissions from storage vessels, equipment leaks, and wastewater were not significant. In fact, no HAP emissions or HAP emission controls were reported by industry for storage vessels and wastewater at any carbon black facility. Therefore, we have not included storage vessels and wastewater streams as part of the affected source.

In summary, we are proposing that the affected source for carbon black production include each carbon production process unit located at a major source, including all process vents from the main unit filter, and equipment (*i.e.*, connectors, pumps, valves) after the reactor that contains or contacts HAP that are associated with the carbon black production process unit.

3. How Did EPA Determine the Basis and Level of The Proposed NESHAP for Existing and New Sources?

Eight companies operate 22 carbon black production facilities in the United States. For a source category with under 30 sources, section 112(d)(3) of the CAA directs that the MACT floor for existing sources be based on the average emission limitation achieved by the best performing five sources. The MACT floor for new sources in a source

category is required to reflect the level of control being achieved by the best controlled similar source. The term "average" is not defined in the CAA. On June 6, 1994 (59 FR 29196), we announced our conclusion that Congress intended "average," as used in section 112(d)(3), to be the mean, median, mode, or some other measure of central tendency. We also concluded that we retain substantial discretion within the statutory framework to set MACT floors at appropriate levels, and that we construe the word "average" (as used in section 112(d)(3)) to authorize us to use any reasonable method, in a particular factual context, of determining the central tendency of a data set.

We chose the median as the measure of central tendency in our MACT floor analysis for process vents and equipment after the reactor for existing sources. We chose the median because the arithmetic mean resulted in a level of control that did not correspond to any actual control technology. Using a median allowed us to select a MACT floor level of control that corresponds to the level of control represented by an existing control device. Additionally, since our MACT floor analysis consisted of data from only 22 facilities, choosing the mode as the measure of central tendency did not make sense, since the mode is more appropriately used when there is a large data set.

One decision that we must make is how to "group" emission sources in the MACT floor analysis. We often separate emission sources into groups by emission source type (*e.g.*, tanks, process vents, fugitive emission sources). For the Carbon Black Production source category, we identified the process vent from the main unit filter as a group for purposes of determining MACT.

For process vents from the main unit filter, we determined the MACT floor for existing sources to be a 98-weight-percent HAP emission reduction. This floor level of control represents the five best performing facilities that achieved the highest level of emissions reductions and had the lowest reported uncontrolled (inlet) total HAP concentrations (considering vent flow rate) for the main unit filter process vent. Since all combustion devices in our database achieve a 98-weight-percent HAP emission reduction, we based the best controlled facilities on those facilities that control the lowest inlet concentration streams (considering vent flow rate). We believe, based on engineering judgement, that these low uncontrolled (inlet) total HAP concentrations represent the most difficult main unit filter process vent emission streams to control in the Carbon Black Production source category.

For process vents from the main unit filter, we were unable to identify a method of control in practice that would achieve a greater level of HAP emissions control than the MACT floor levels for existing sources. Therefore, we determined that the MACT floor for new sources for process vents from the main unit filter is the same as the MACT floor for existing sources (*i.e.*, a 98-weight-percent HAP emission reduction).

For process vents from the main unit filter, we estimated and evaluated the impacts of above-the-floor options for existing and new sources. We did not identify a viable above-the-floor option for process vents from the main unit filter for existing or new sources. Therefore, we are proposing that MACT for process vents from the main unit filter for existing and new sources is the level of control represented by the MACT floor (*i.e.*, a 98-percent HAP emission reduction).

In our evaluation of control options for carbon black facilities for process vents after the main unit filter, we determined that the MACT floor for existing and new sources is no control. This floor level of control represents the five best performing facilities that achieved the highest level of emissions reductions and had the lowest reported uncontrolled (inlet) total HAP concentrations (considering vent flow rate) for process vents after the main unit filter. Four of the five facilities did not indicate any air emissions control after the main unit filter. One facility reported process modifications that reduce the residual HAP levels in the process after the main unit filter by 98 weight-percent. Since this facility's level of control does not correspond to a control type, we determined that the MACT floor for both existing and new sources was no control.

We estimated and evaluated the impacts of above-the-floor options for process vents after the main unit filter. We evaluated controlling process vents after the main unit filter to 98 weight-percent as an above-the-floor option. We determined that the cost effectiveness of this option is unreasonable. Therefore, we selected the MACT floor level of control for process vents located after the main unit filter process to be MACT (*i.e.*, no control).

In determining MACT for process vents, we considered whether it was appropriate to apply a 98 weight-percent emission reduction requirement to all process vents from main unit filters. We determined that for low-concentration streams (*i.e.*, streams with concentrations less than around 1,000 ppmv), a 98 weight-percent reduction may not be achievable for all process vents from the main unit filter. Therefore, we are proposing an alternative to the 98 weight-percent reduction requirement for main unit filter process vents at existing and new affected sources. This alternative standard is a HAP or total organic compound (TOC) concentration limit of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), which we have determined is a reasonable level achievable for low-concentration streams.

In determining MACT for process vents from the main unit filter, we also selected a control applicability cutoff for existing and new sources, below which the vent would not be subject to control requirements. We selected an applicability cutoff for existing and new sources that represents the lowest inlet concentration reported at one of the best controlled facilities. The proposed cutoff is 260 ppmv.

The standards that we are proposing for process vents from the main unit filter in the carbon black production source category have various forms. These forms consist of a combination of emission standards and equipment, design, work practice, and operational requirements consistent with requirements promulgated for similar emission points and emission characteristics. For process vent streams controlled by control devices other than a flare, we selected the form of a numerical emission limitation (a weight-percent reduction and a concentration). This form was chosen based on the controls used at carbon black facilities and the data available for our MACT analysis.

For vent streams controlled by a flare, we selected a form consisting of equipment and operating specifications, consistent with the form for flare requirements that we have specified for other industries. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts SS, UU, and YY to demonstrate and document compliance with the carbon black production standards. The procedures and methods set out in these subparts are, where appropriate, based

on procedures and methods that we previously developed for use in implementing standards for emission point sources similar to those being proposed for the Carbon Black Production source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (*i.e.*, §§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply controls. These procedures are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.*, a HAP concentration cutoff level, above which control is required).

We selected monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirement subparts promulgated for equipment leaks (40 CFR part 63, subpart UU), and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous organic HAP. The rationale for the establishment of these subparts and requirements contained within each subpart is presented in the proposal preamble for the source category requirements previously promulgated under 40 CFR part 63, subpart YY (63 FR 55186–55191).

The compliance, monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts SS, UU, and YY, are appropriate for demonstrating and documenting compliance with the requirements proposed for the Carbon Black Production source category. This is because these requirements were established for standards with similar forms and similar emission points, and with pollutant streams of gaseous organic HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

D. Summary of Environmental, Energy, Cost, and Economic Impacts

1. What Are the Air Quality Impacts?

For the Carbon Black Production source category, we estimate that the proposed NESHAP would reduce HAP emissions by 1830 Mg/yr (2,020 TPY). This is a 26 percent reduction from the total baseline HAP emissions for this source category and a 95 percent reduction for those facilities that would be required to install controls to meet the standards.

We estimate that the proposed NESHAP for the Carbon Black Production source category would reduce CO emissions by 474,000 Mg/yr (522,000 TPY), VOC by 16,900 Mg/yr (18,600 TPY), hydrogen sulfide (H_2S) by 10,300 Mg/yr (11,300 TPY), and PM by 740 Mg/yr (820 TPY). We estimate that the proposed NESHAP would increase SO_X emissions by 32,900 Mg/yr (36,200 TPY) and NO_X by 1,140 Mg/yr (1,260 TPY) as a result of on-site combustion of fossil fuels. However, the air quality benefits of the proposed NESHAP (*i.e.*, reductions in HAP, CO, VOC, and H_2S emissions) outweigh the negative impacts associated with the anticipated increases in emissions of SO_X and NO_X.

2. What Are the Cost and Economic Impacts?

The total estimated capital cost of the proposed NESHAP for the Carbon Black Production source category is $54.9 million. The total estimated annual cost of the proposed NESHAP is $10.6 million. These costs represent fourth quarter 1998 dollars.

We prepared an economic impact analysis to evaluate the impacts these proposed NESHAP would have on the carbon black production market, consumers, and society. The total annualized social cost (in 1997 dollars) of the proposed NESHAP to the industry is $10.6 million, which is less than 0.001 percent of total baseline revenue for the affected sources. A screening analysis suggests only one of the firms affected by the proposed NESHAP would experience costs in excess of 1 percent of sales, and no firm would experience costs in excess of 1.5 percent of sales. For this reason, we believe the impact of the proposed NESHAP will be minimal. We expect no facility closures as a result of the proposed NESHAP.

3. What Are the Nonair Health, Environmental, and Energy Impacts?

We believe that there would not be significant adverse nonair health, environmental or energy impacts associated with the proposed NESHAP for the Carbon Black Production source category. This is supported by impacts analyses associated with the application of the control and recovery devices required under the proposed NESHAP. We determine impacts relative to the baseline that is set at the level of control in absence of the proposed NESHAP.

There are no water pollution and solid waste impacts from the use of air emission control devices in the Carbon Black Production source category. An increase in energy consumption will result from the use of combustion control systems. We estimate that the Carbon Black Production source category will consume an additional 186 million cubic feet of natural gas per year to meet the regulatory requirements of the proposed NESHAP. This would represent an increase in total domestic natural gas consumption of less than 1/100th of one percent.

E. Solicitation of Comments

Representatives of the carbon black industry have expressed concern with requirements in the proposed NESHAP to monitor for leaks from air stream conveyance systems. Under 40 CFR part 63, subpart SS, we are requiring facility owners/operators to monitor for HAP leaks from connectors and other equipment involved in the conveyance of HAP containing air emission streams required to be controlled by the proposed NESHAP.

Industry concern so far has centered around two issues: (1) That the large amount of nitrogen in carbon black facility air streams may provide false positive readings; and (2) that EPA Method 21 (the required test method) may not detect the nonorganic HAP present in the gas stream for a carbon black facility and, therefore, may not be an effective monitoring procedure. We are soliciting further industry comments and data on these two issues in order to more effectively address them in the final NESHAP.

Many carbon black production facilities use flares to control HAP emissions. The flares used by the industry are commonly called hydrogen flares due to the presence of large amounts of hydrogen in emission streams being controlled. On May 4, 1998, we published a direct final rule (63 FR 24436) to add operating requirements designed to ensure that a 98 weight-percent destruction of organic HAP and VOC is achieved by hydrogen flares. We are aware that some members of the carbon black industry use flare designs that differ from the flare type used to establish our current requirements for hydrogen flares. While some industry flares may not meet our current operating procedures, they might meet the required 98 weight-percent level required by the proposed NESHAP.

We are soliciting test data collected by industry that would show that flare types used by the carbon black industry achieve 98 weight-percent control. If we determine the data submitted to be adequate, a revision to the hydrogen flare requirements could be promulgated. This revision potentially would allow the use of certain flares meeting the required destruction efficiency, yet operating outside of the parameters we established in the May 4, 1998, **Federal Register** notice to be used to meet the requirements of the proposed NESHAP.

IV. Ethylene Production

A. Introduction

1. What Are the Primary Sources of Emissions and What Are the Emissions?

The following emission types (*i.e.*, emission points) are the primary sources of emissions being covered by the proposed NESHAP: Equipment (including pumps, compressors, pressure relief devices, valves, and connectors); storage vessels; transfer racks; process vents; heat exchange systems; and waste operations. We address pyrolysis furnaces and decoking operations, but there are no specific control requirements for these two emission types.

A variety of HAP are emitted during the ethylene manufacturing process. The HAP emitted by the facilities covered by the proposed NESHAP include benzene, 1,3 butadiene, toluene, naphthalene, hexane, and xylene. The proposed standards regulate emissions of these compounds, as well as other incidental organic HAP that are emitted during the manufacture of ethylene.

2. What Are the Health Effects Associated With the HAP Emitted?

The data available to us indicate that the primary HAP emitted by ethylene manufacturing are benzene and 1,3 butadiene. Emissions of benzene and 1,3 butadiene are more than 80 percent of the total HAP emissions from the manufacture of ethylene/propylene. The HAP that would be controlled with today's proposed NESHAP are associated with a variety of adverse health effects.

Benzene. Acute (short-term) exposure to benzene in air can cause dizziness, headaches, and unconsciousness. Exposure to high levels of benzene can result in death. Lower concentrations may irritate the skin, eyes, and lungs. Chronic (long-term) exposure to benzene in occupational settings has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in workers exposed to benzene. The EPA has classified benzene as a Group A, known human carcinogen.

1,3 butadiene. Acute inhalation of 1,3 butadiene results in irritation of the eyes, nasal passages, throat, and lungs, and causes neurological effects such as blurred vision, fatigue, headache, and vertigo. Epidemiological studies have reported a possible association between chronic 1,3 butadiene exposure and cardiovascular diseases. Animal studies have reported the development of tumors following inhalation exposure to 1,3 butadiene. The EPA has classified 1,3 butadiene as a Group B2, probable human carcinogen.

The effects of these HAP vary in severity based on the level and length of exposure and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (*e.g.*, presence of pre-existing disease), and lifestyle. To the extent the adverse effects do occur, the proposed NESHAP will substantially reduce emissions and exposures to the level achievable with MACT. The seriousness of risks remaining after impositions of the final MACT standards will be examined at a later date, as provided for under section 112(f) of the CAA.

B. Summary of Proposed Standards for Ethylene Production

1. What Is the Source Category To Be Regulated?

There are 37 ethylene production plants operating in the United States. We estimate that 30 or more facilities are major sources. The proposed NESHAP apply to all major sources that produce ethylene. Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source. Area sources are not subject to the proposed NESHAP.

The Ethylene Production source category includes any facility which manufactures ethylene as a primary product or an intermediate product. Ethylene is produced by either a pyrolysis process (hydrocarbons subjected to high temperatures in the presence of steam) or by separation from a petroleum refining stream. The ethylene production process includes the separation of ethylene from associated streams such as product made from compounds composed of four carbon atoms (C4), pyrolysis gasoline, and pyrolysis fuel oil. The ethylene production process does not include the manufacture of synthetic organic chemicals, such as the production of butadiene from the C4 stream and aromatics from pyrolysis gasoline. Propylene is often produced as a product during the ethylene production process, but the separation of propylene from a refinery gas stream does not in itself cause the process unit or the equipment used for the separation to be included in this source category.

In addition to ethylene and propylene, other products from an ethylene manufacturing process unit (EMPU) may include, but are not limited to: (1) Hydrogen and methane containing streams, (2) ethane and propane streams, (3) mixed C4+ pyrolysis products, (4) pyrolysis fuel oil, and (5) specialty products such as acetylene and methylacetylene-propadiene. For purposes of discussion in this preamble, the term ethylene will be used to describe the source category and the associated process unit equipment even though other products, such as propylene, may be produced in addition to and in greater or lesser quantities than ethylene.

2. What Is the Affected Source?

We have defined the affected source to include each EMPU, along with associated process equipment (including storage vessels, process vents, transfer racks, waste streams, piping, and heat exchange systems) located at a plant site that is a major source as defined in section 112(a) of the CAA. The affected source does not include associated equipment that does not contain HAP, stormwater from segregated sewers, water from firefighting and deluge systems in segregated sewers, water from testing deluge systems, water from safety showers, spills, storage vessels and transfer racks that contain organic HAP as impurities, or vapor balancing transfer equipment. We define EMPU as a process unit specifically utilized for the production of ethylene/propylene including all separation and purification processes. The affected source does not include pieces of equipment currently included in other source categories.

3. What Are the Emission Limits, Operating Limits, and Other Standards?

The following discussion briefly summarizes the proposed control requirements for the affected emission types.

a. *Equipment leaks.* The equipment leak emission type represents emissions from specific components within the ethylene manufacturing process. These components include pumps, compressors, pressure relief devices, gas valves, light liquid valves, heavy liquid valves, and connectors. For equipment containing or contacting HAP in amounts of 5 percent or greater, HAP emissions are required to be controlled through the implementation of LDAR program for affected equipment. Monitoring frequency is based on the percent of leaking equipment. Requirements are the same for both existing and new sources.

b. *Process vents.* For process vents from continuous unit operations having an average flow rate greater than or equal to 0.008 standard cubic meters per minute (scmm) and an average HAP concentration of 30 ppmv or greater, HAP emissions are required to be controlled by routing emissions through a closed vent system to one of the following: (1) A flare, or (2) an enclosed combustion device that reduces HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). Recovery devices can be used in certain situations to meet the 98 weight-percent reduction or 20 ppmv requirement. Requirements are the same for both existing and new sources.

c. *Storage Vessels.* For storage vessels storing liquid containing HAP and having a vapor pressure greater than or equal to 3.4 kilopascals (0.5 pounds per square inch absolute (psia)) but less than 76.6 kilopascals (11.1 psia), requirements are based on capacity. For storage vessels with capacity greater than 4 cubic meters (1,000 gallons) but less than 95 cubic meters (25,000 gallons), HAP emissions are required to be controlled by filling the vessel through a submerged pipe or by complying with the requirements for storage vessels with capacities greater than or equal to 95 cubic meters (25,000 gallons). For storage vessels with capacity of 95 cubic meters (25,000 gallons) or more, HAP emissions are required to be controlled by equipping the vessel with an internal floating roof or external floating roof with seals and controlled fittings or by routing emissions through a closed vent system to a flare, a fuel gas system or process, or a control device that reduces HAP emissions by 95 weight-percent. Vessels storing materials with vapor pressures of 11 psia or greater must be equipped with a closed vent system routed to a flare or control device that reduces HAP emissions by 95 weight-percent. Requirements are the same for both existing and new sources.

d. *Transfer Racks.* For transfer racks loading 76 cubic meters (20,000 gallons) or more per day of HAP-containing material (averaged over any consecutive 30-day period) and having a vapor pressure greater than or equal to 3.4 kilopascals (0.5 psia), HAP emissions are required to be controlled by equipping the transfer rack with one of the following: (1) A closed vent system designed to collect the regulated material displaced during loading and route it to a flare or other control device that reduces HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or (2) process piping designed to collect the regulated material displaced during loading and route it to a process, a fuel gas system, or a vapor balance system. Requirements are the same for both existing and new sources.

e. *Heat Exchange Systems.* The HAP emissions from heat exchange systems occur when a leak in a heat exchanger allows HAP to be introduced to the cooling water and released when the cooling water is exposed to the atmosphere. The HAP emissions are required to be controlled by implementing procedures to monitor cooling water and repair equipment upon detection of a leak. Cooling water is monitored monthly for heat exchange systems at existing sources and weekly for heat exchange systems at new sources.

f. *Waste Operations.* To control emissions from waste streams, HAP in the stream must be reduced by 99 weight-percent or to 10 ppmv. The HAP reduction of 99 weight-percent must be achieved using suppression followed by steam stripping, biotreatment, or other treatment processes. Vents from steam strippers and other waste management or treatment units are required to be controlled by a control device achieving 98 weight-percent emission reduction or 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions) at the outlet of the control device. The term "waste" includes wastewater streams. This term is used because the proposed 40 CFR part 63, subpart XX, references the Benzene Waste Operations NESHAP (BWON) for controlling emissions from wastes (including wastewater). Requirements are the same for both existing and new sources.

As discussed later in this preamble, the requirements for waste operations are based on the BWON. The BWON includes three compliance options in addition to the standard requirements. These compliance options are not included in the requirements for ethylene production sources. The BWON compliance options set limits based on a total annual benzene (TAB) quantity. Because the requirements for ethylene production sources are for controlling HAP emissions, requirements including a TAB quantity would not be appropriate. We do not have adequate data to convert the TAB limits into HAP emission limits. Additionally, calculation of such a quantity is a complicated and time-consuming process. In complying with the BWON, a TAB quantity is calculated regardless of the compliance option selected because a TAB quantity is used to determine overall applicability of the BWON. No such quantity is needed for the ethylene production waste requirements because they apply to all ethylene production sources located at major sources. Excluding the compliance options simplifies the requirements for ethylene production sources by not requiring a TAB or a HAP-based quantity to be calculated.

4. What Are the Testing, Monitoring, Inspection, Recordkeeping and Reporting Requirements?

The testing, monitoring, inspection, recordkeeping, and reporting requirements specified in the proposed NESHAP are used to assure and document compliance with the standards. The testing, monitoring, inspection, recordkeeping, and reporting requirements included in the proposed NESHAP are based on such requirements that we previously developed for sources similar to those for which standards are being proposed today. The testing, monitoring, inspection, recordkeeping, and reporting requirements for each emission type are based on those in the Petroleum Refineries NESHAP, the BWON, the HON, and/or other rules as appropriate. These testing, monitoring, inspection, recordkeeping, and reporting requirements are the same as the generic standards for storage vessels (40 CFR part 63, subpart WW); equipment leaks (40 CFR part 63, subparts TT and UU); and process vents (40 CFR part 63, subpart SS).

As discussed later in this preamble, the proposed 40 CFR part 63, subpart XX, specifies that monitoring of HAP concentration in waste streams after treatment or process parameters that indicate proper operation of treatment systems must be conducted continuously. Facilities that currently perform concentration monitoring of waste streams do so on a monthly basis as required by the BWON. We do not believe that monthly concentration monitoring is sufficient to ensure continuous compliance. Rules developed under section 112 of the CAA include monitoring strategies that incorporate the concepts of enhanced monitoring that were established in section 114(a)(3) of the CAA. This approach is designed to ensure that monitoring procedures developed for section 112 standards provide data that can be used to determine compliance with applicable standards, including emission standards on a continual basis. Since the waste requirements of the proposed 40 CFR part 63, subpart XX, primarily refer to provisions in 40 CFR part 61, subpart FF, that were developed prior to the CAA Amendments, the provisions do not ensure that monitoring data are available to prove compliance on a continual basis in all cases. Therefore, today's proposal requires either continuous monitoring of HAP concentration of the waste stream exiting the treatment process or continuous monitoring of process parameters for the waste treatment process/unit that would indicate proper system operation. Facilities that comply with the monitoring requirements of the proposed 40 CFR part 63, subpart XX, are not required to comply with the monitoring requirements of the BWON.

5. What Are the Startup, Shutdown, and Malfunction Requirements?

The startup, shutdown, and malfunction requirements included in the proposed NESHAP are, where appropriate, based on startup, shutdown, and malfunction requirements developed for the part 63 General Provisions and previously incorporated in 40 CFR part 63, subpart YY. Subpart YY requires that minimization of emissions from startup, shutdown, and malfunctions be addressed in a startup, shutdown, and malfunction plan. The plan must also establish reporting and recordkeeping of such events. The existing startup, shutdown, and malfunction requirements have been reviewed and were determined to be appropriate for ethylene production sources.

Also, during development of the proposed NESHAP, we determined that decoking is a shutdown activity and will be addressed through a facility's startup, shutdown, and malfunction plan. The decoking process is similar to other shutdown activities as defined in subpart YY. Including decoking in a facility's startup, shutdown, and malfunction plan will require owners and operators of an EMPU to include procedures for decoking that will minimize emissions. By including decoking as a shutdown activity, owners and operators will be afforded flexibility in addressing decoking emissions while ensuring that they will be minimized.

6. How Are the Proposed NESHAP Related to Other Rules?

We recognize that the potential exists for regulatory overlap between the proposed NESHAP and other rules previously developed under the CAA. Therefore, we have clarified the applicability of 40 CFR part 63, subpart YY, as it relates to other 40 CFR parts 60, 61, and 63 rules that apply to ethylene production sources in the general applicability section of the proposed NESHAP (§ 63.1100). Areas of overlap may occur with other NESHAP applicable to storage vessels, process vents, transfer operations, and equipment leaks, such as 40 CFR part 60, subparts Ka, Kb, VV, NNN, and RRR; 40 CFR part 61, subpart V; and 40 CFR part 63, subpart G.

The requirements for equipment leaks, storage vessels, process vents, and transfer racks are similar to the requirements for these emission types under both the HON and the Petroleum Refineries NESHAP. Thus, we expect that most ethylene manufacturing facilities are currently implementing many of the proposed requirements for a process unit at the plant site, which will lessen the burden to owners and operators. In addition, the proposed monitoring, recordkeeping, reporting, and testing requirements are also similar to those required by the HON and the Petroleum Refineries NESHAP.

Further, the proposed NESHAP reference several other subparts which have established requirements for equipment leaks, storage vessels, process vents, and waste operations. We made the decision to reference other subparts in order to expedite the rulemaking process and to encourage standardization of requirements for facilities subject to numerous NESHAP. It is not our intent to broadly apply standards that have been promulgated previously by the Agency without thorough consideration of the appropriateness of such an approach. We determined the appropriate standards for each emission type at ethylene manufacturing facilities prior to making the decision to reference other subparts for emission control standards.

C. Rationale for Selecting the Proposed Standards for Ethylene Production

1. How Did EPA Select the Source Category?

In the early listing of source categories, we intended to regulate ethylene processes with the SOCMI. We did not do this because we had insufficient data to support that ethylene processes and SOCMI processes were similar sources for MACT determination. The ethylene processes were, therefore, specifically not covered by NESHAP for the SOCMI source category (HON). Consequently, we listed ethylene processes as a separate category of major sources of HAP on June 4, 1996 (61 FR 28197).

2. How Did EPA Select the Affected Source?

We determined the affected source by first recognizing that ethylene manufacturing processes generally exist as a follow-on chemical process to petroleum refining and as a precursor to the production of other chemicals, most of them SOCMI chemicals. Concerned about overlap, we considered the combination of equipment used in the manufacture of ethylene, and the associated by-products and co-products, as the subject of this proposal, from the point at which feed stocks from refinery processes are received by an EMPU to the point where chemical product streams are either received by a unit covered by another MACT standard, like the HON, or leave the manufacturing site as product or waste. Not all streams in the affected source contain HAP, and the primary products of the EMPU are typically ethylene and propylene, neither of which are HAP. Hence, not all streams required control, only those containing HAP. To simplify the process of determining where to apply controls, the following emission types (*i.e.*, emission points) were identified as the sources of emissions within the EMPU: Equipment (including pumps, compressors, pressure relief devices, valves, and connectors); storage vessels; transfer racks; process vents; heat exchange systems; and waste operations. We also identified pyrolysis furnaces and decoking operations, but there are no specific control requirements for these two emission types.

3. How Did EPA Determine the Basis and Level of the Proposed NESHAP for Existing and New Sources?

We are aware of 36 existing facilities in this source category, 31 of which are located in just two States, Texas and Louisiana. Although we surveyed only

11 of the facilities in Texas and Louisiana, the MACT levels of control were relatively predictable and largely driven by existing State programs.

For this source category, the selection of the best performing facilities upon which to determine the MACT floor used a point value approach, whereby the floor decisions were driven by the facilities that have the best LDAR program for equipment leaks. The information we collected indicates that equipment leaks are the largest source of HAP emissions at ethylene affected sources.

To determine the existing MACT floor using the point value approach, it was necessary to determine the emission limitations achieved by the best performing 12 percent of sources (*i.e.*, five facilities) in the ethylene manufacturing industry. The five best performing facilities were determined on a facilitywide basis. For each emission type (equipment leaks, storage vessels, waste operations, heat exchange systems, process vents, and transfer racks), information on the control devices and emission reduction techniques in place at each facility was used to identify the most controlled sources. A "point system" was used to rank the facilities in order of most to least controlled. Facilities received points for each emission type for which they were among the best controlled. The points received for an emission type were weighted based on the relative contribution to total emissions to reflect the impact that control of the emission type has on the total emissions from a facility. All points for a facility were totaled. The facilities with the five highest point totals are considered to be the best performing overall sources.

After we identified the top five performing sources, we used the information on the emission reduction techniques and control devices in place at those facilities to determine the "average" emission limitation achieved for each emission type. For each emission type, the five best performing facilities were ranked, in order of emission limitation achieved. The MACT floor for existing sources is the emission limitation achieved by the median facility. For EMPU emission types, determining the median reduction achieved, rather than the arithmetic mean, was found to be the most appropriate approach, since the median is associated with specific control technologies. The MACT floor for new sources is the emission limitation achieved by the best performing facility.

Although the five best performing facilities were determined on a facilitywide basis, it is important to note that this analysis does not result in a facilitywide level of emission reduction that is being achieved by the best performing sources. Adequate information, specifically data on emissions before control techniques are applied, is not available to estimate facilitywide emissions reductions. It is unlikely that an accurate measure of the emission limitations achieved could be made. It is even less likely that such a limit could be used as the basis for a rule. Typically, MACT rules refer to a control device or practice as the basis of the standards because the MACT floor and MACT must be technically achievable. This would not be possible if an estimated facilitywide emission reduction was used as the basis for the standards. Additional information on selection of the five best performing facilities and documentation on the MACT floor methodology and determination of MACT is included in Docket No. A–98–22.

As a check against whether we had properly identified the appropriate MACT floor level of control for the other HAP emission source types (*i.e.*, storage vessels, process vents, wastewaters, cooling water, and furnaces), we then independently evaluated the best level of performance for each emission type. In other words, we performed a cursory analysis using the "plank-type" approach in determining the floor for these other emission types, as described in the preamble of the HON (59 FR 19402, April 22, 1994). We did not need to reevaluate equipment leak best performers since our point value approach already emphasized best performing LDAR programs.

To further verify that we had made the right floor selections, we visited the Texas Natural Resources Conservation Commission to review the permits for the facilities in Texas and were able to confirm that the Texas facilities among the 11 surveyed are the best performing facilities in Texas. We also found that the levels of controls for all of these emission source types were a function of compliance with either Texas or Louisiana permit conditions, NSPS for Air Oxidation and/or SOCMI Distillation (40 CFR part 60, subparts III and NNN), or the Benzene Waste NESHAP (40 CFR part 61, subpart FF). Since the best performing sources within each emission source type that we identified through the point value approach were the sources complying with the most stringent applicable State or Federal requirements, we concluded that we would arrive at the same MACT floor level of control for each emission source type through either the point value approach or through the "plank-type" approach. A detailed discussion of the determination of the MACT floor and MACT for each emission type follows.

a. *Process Vents.* To establish the MACT floor for process vents, we determined both the level of control required and the vents to which control must be applied. All vents at the best performing facilities are being controlled using a flare or other combustion device. It is generally accepted that combustion devices achieve a 98 weight-percent reduction in HAP emissions; therefore, this is the MACT floor level of control for both new and existing sources.

Only two of the best performing facilities reported having any process vents, and the volumetric flow rates and HAP concentrations of the vents are not known. The information available was supplemented with information from the regulations and the permit condition with which the two facilities are complying in order to determine the applicability criteria for control. These requirements include: Texas regulation 30 Texas Air Control (TAC) Chapter 115 Subchapter B; 40 CFR part 60, subparts NNN and RRR. These regulations and the applicable permit condition all require the same level of control: Reduction of organic compounds by 98 weight-percent or to a concentration of 20 ppmv. The only differences in the applicable requirements are the cutoffs for determining whether control is required.

Both facilities that reported having vents are subject to the Texas regulation, whereas only one facility is subject to the requirements of 40 CFR part 60, subparts NNN and RRR. Therefore, the requirements of the Texas regulation are considered to represent the median level of control. The Texas regulation provides both a VOC concentration and flow rate cutoff for vents that must be controlled. The regulation requires that vents with a flow rate greater than or equal to 0.011 scmm and a VOC concentration greater than or equal to 500 ppmv must be controlled. Based on vent composition data provided by the surveyed facilities, approximately 10 percent of the VOC in process vent streams are HAP. Thus, we determined that the MACT floor for existing sources is to control process vents with a flow rate greater than or equal to 0.011 scmm and a HAP concentration greater than or equal to 50 ppmv by reducing HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

For new sources, the most stringent applicable regulation is the basis for the control applicability cutoffs. Subpart NNN requires vents with a flow rate greater than or equal to 0.008 scmm to be controlled. Subpart NNN of 40 CFR part 63 does not specify a concentration cutoff, but analysis of vents that are required to be controlled based on the total resource effectiveness index indicated that vents with TOC concentrations less than 300 ppmv are not likely to be required to be controlled (see the memorandum "Process Vent Applicability Criteria" in the Consolidated Federal Air Rule Docket A–96–01 for a discussion of this analysis). Because it is assumed that TOC content is approximately equal to VOC content for ethylene vents and that 10 percent of the VOC in these process vent streams are HAP, the MACT floor for new sources is to control process vents with a HAP concentration greater than or equal to 30 ppmv and a flow rate greater than or equal to 0.008 scmm by reducing HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

More stringent applicability cutoffs for control of process vents were considered in identifying above-the-floor options for both new and existing sources. One option more stringent than the MACT floor for new sources is to lower the flow rate control applicability criteria to 0.005 scmm as used in the HON. This cutoff is not significantly different than the new source MACT floor cutoff. Considering that there are so few process vents at ethylene manufacturing facilities, it is unlikely that many additional vents would be controlled or that additional emissions reductions would be achieved by lowering the cutoff. Therefore, the applicability criteria for the new source MACT level of control are the same as the new source MACT floor level of control.

For existing sources, the control applicability criteria for the new source MACT were considered as an above-the-floor option. Because there are relatively few process vents at ethylene manufacturing facilities and the difference between the existing source MACT floor and new source MACT is so small, it is unlikely that many additional vents, if any, would be required to be controlled if the new source applicability criteria are used. Therefore, it is expected that there will be minimal to no difference in the cost of controls. We believe that the benefit of simplifying the proposed NESHAP by having the same control applicability cutoffs for process vents at new and existing sources greatly simplifies the requirements for vents and outweighs any additional cost. Thus, we determined that the process vent component of MACT is the same for existing sources as it is for new sources.

We do not have adequate data to prove this assumption and are soliciting comments and data to: (1) Support or refute the assumption that there are few vents with flow rates between 0.008 and 0.011 scmm and HAP concentrations between 30 and 50 ppmv, (2) aid in estimating the cost of controlling these vents if they do exist, and (3) support or refute that there is a benefit associated with simplifying the proposed NESHAP.

b. *Storage Vessels.* For storage vessel emissions, the five best performing facilities were ranked in order of the emissions reductions achieved through control equipment to determine the median facility. In establishing the storage vessel component of the MACT floor, we also determined the vessels to which controls would be applied.

It was not possible to construct the entire storage vessel component of the MACT floor based on the vessels at the median facility because it does not represent the full range of vapor pressures of stored materials or sizes of storage vessels. Additional information was obtained from applicable regulations and permit conditions. We determined that control requirements apply to storage vessels containing liquids with vapor pressures greater than or equal to 3.4 kilopascals (0.5 psia) and less than 76.6 kilopascals (11.1 psia). The level of control is based on storage vessel size. For storage vessels with capacities greater than 4 cubic meters (1,000 gallons) and less than 95 cubic meters (25,000 gallons), a submerged pipe must be used for filling the vessel unless more stringent controls are in place. For storage vessels with capacities greater than or equal to 95 cubic meters (25,000 gallons), the following equipment comprises the MACT floor at existing sources:

- An internal floating roof (IFR), an external floating roof (EFR), or fixed roof with a closed vent system routed to a process, fuel gas system, or control device.
- If the vessel has an IFR, a mechanical shoe or liquid-mounted primary seal, or a vapor-mounted primary seal with a rim-mounted secondary seal.
- If the vessel has an EFR, a mechanical shoe or liquid-mounted primary and rim-mounted secondary seal.
- If the vessel has a vapor recovery system routed to a control device, the device must control HAP emissions by 95 weight-percent.
- Covers and gaskets on all access hatches, which are to be bolted.

The overall storage control efficiency for the two sources that perform better than the median facility was considered in determining the new source storage vessel component of the MACT floor. Storage vessels at the best performing facilities have the same control as the median facility except that all fittings on most of the storage vessels are controlled.

Requirements can be made more stringent than the existing source storage vessel component of the MACT floor by requiring controls that achieve a higher control efficiency. We determined that for vessels with capacities greater than or equal to 95 cubic meters (25,000 gallons), the MACT level of control for existing sources is the MACT floor level of control with the addition of control for all fittings. This determination is based on a reasonable incremental cost effectiveness for the addition of controlled fittings. We determined that it is more cost effective to implement control of all fittings than it is to implement the storage vessel component of the MACT floor requirements alone. No options more stringent than the MACT floor for new sources were identified. Therefore, the MACT level of control for new sources is the same as the MACT level of control for existing sources.

c. *Transfer Racks.* Only one of the best performing facilities has transfer racks, and emissions are not controlled. Due to the limited amount of information available, it is not possible to address how transfer of different materials or at different rates would be controlled by the best performing facilities using only survey responses. For this reason, we supplemented the survey response data with information from an applicable State regulation. The control requirements of Texas regulation 30 TAC Chapter 115 Subchapter C, Volatile Organic Compound Transfer Operations, Loading and Unloading of Volatile Organic Compounds, would apply to four of the five best performing facilities if they transfer materials having vapor pressures and at rates that meet or exceed the control applicability cutoffs of the proposed NESHAP.

Subchapter C requires control of loading greater than or equal to 20,000 gallons per day of VOC with a true vapor pressure greater than or equal to

0.5 psia. Loading racks meeting the control requirement applicability threshold are to be controlled with a vapor recovery system that achieves a 90 percent recovery or a vapor balancing system that maintains a pressure equal to or greater than 1.5 psia. It is assumed that the efficiency achieved for VOC emission control is the same as the efficiency achieved for HAP control in the case of ethylene manufacturing transfer racks. Subchapter C also includes requirements for transport vessels, lines, and connection systems. Because four of the five facilities are subject to the requirements of subchapter C and none of them are subject to or are controlling to levels more stringent than subchapter C, we determined that the transfer rack component of the MACT floor for new and existing sources is the set of requirements included in subchapter C.

One above-the-floor option for existing sources is requiring a greater reduction in emissions. The HON and 40 CFR part 61, subpart BB (Benzene Transfer Operations NESHAP), require 98 weight-percent control of HAP emissions from transfer racks. We determined it is appropriate to require more stringent control, specifically 98 weight-percent control of HAP emissions or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). Because an EMPU is either equipped with a flare or has access to a common flare, if a facility decides to equip transfer racks with a closed vent system and a control or recovery device, the most cost-effective option would be to route emissions to an existing flare. This is supported by the fact that all transfer racks at ethylene manufacturing facilities that we estimate are controlled use a flare as a control device. Routing emissions to the flare would not cost more than routing emissions to another control device and would cost less than constructing a new control or recovery device. It is generally accepted that flares achieve a 98 weight-percent reduction in HAP emissions. Since emissions can be reduced by 98 weight-percent at the same cost as reducing them by 90 weight-percent, we have determined that the appropriate MACT level of control for existing sources is 98 weight-percent reduction in HAP emissions (if a closed vent system and control device are used) or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). The same logic applies to new sources. The least expensive control option for a new source would be to route transfer emissions to an existing flare or new flare that must be constructed anyway. Therefore, the MACT level of control for new sources is the same as the level of control for existing sources.

d. *Waste.* According to the survey responses, all of the best performing facilities are controlling to comply with the requirements of the BWON. Therefore, the MACT floor for both new and existing sources is based on the control level achieved at the best performing facilities. Although the purpose of the BWON is to control benzene emissions, the control technologies in use to comply with the BWON also result in the control of other HAP. Based on data received in the survey responses, waste streams from each EMPU that contain benzene also contain other HAP, primarily 1,3-butadiene, cumene, ethyl benzene, hexane, naphthalene, styrene, toluene, and xylene. These HAP are similar to benzene in solubility and volatility. Therefore, we expect that these HAP are controlled to a similar level as benzene by management and treatment of the waste streams.

The treatment requirements of the BWON require removal of benzene from the waste stream to 10 ppmw or by 99 weight-percent. For each closed vent system and control device used to comply with the requirements of the BWON, a benzene reduction of 98 weight-percent must be achieved. Because facilities controlling waste under the BWON are also achieving equal control of other HAP with physical properties similar to benzene, the control requirements of the MACT floor are the control requirements of the BWON for benzene as applied to total HAP. Thus, the waste component of the MACT floor requires removal of total HAP from the waste stream to 10 ppmw or by 99 weight-percent, and for each closed vent system and control device used to comply with the requirements of the proposed NESHAP, a total HAP reduction of 98 weight-percent must be achieved.

Today's proposed standards include control applicability cutoffs which are also based on the BWON. We considered whether the best performing facilities control all waste streams, and whether we could determine a HAP concentration cutoff and flow rate cutoff as part of the MACT floor. Generally, the BWON does not require management or treatment of waste streams containing less than 10 ppmw benzene or having a flow rate less than 0.02 liters per minute. We considered using the same cutoffs for the proposed NESHAP. However, facilities controlling waste for benzene are also achieving concurrent control of other HAP with physical properties similar to benzene. In addition, expressing the cutoff concentration in today's proposal as a benzene concentration could result in a cutoff that might exclude from control some waste streams that are similar in terms of HAP concentration as those being controlled at the floor. Since 10 ppmw benzene is approximately the same as 10 ppmw HAP for most of the waste streams, we are expressing the cutoff for the MACT floor as not requiring control of streams containing less than 10 ppmw total HAP or with a flow rate less than 0.02 liters per minute.

Finally, the BWON applies to facilities with a TAB quantity of 10 Mg/yr or greater. If a facility's waste streams have less than 10 Mg/yr benzene, the facility does not have to manage or treat waste to comply with the BWON. This cannot apply to MACT because MACT is a technology-based standard, and the MACT floor is based on the control technology performance for control of HAP at the best performing facilities. All of the best performing facilities are controlling HAP from waste streams. Therefore, the MACT floor level of control applies at each EMPU, regardless of the TAB. We have identified no rationale to support the subcategorization of waste operations based on the TAB.

One above-the-floor option is to have no control applicability cutoffs. We have determined that the emissions reductions that would be achieved by the management and treatment of all waste streams would result in considerably higher costs that cannot be justified.

Additional above-the-floor control options include more stringent management and treatment requirements. However, the management requirements of the BWON are already comprehensive and include all equipment used to transport waste. Similarly, the treatment requirements are quite stringent: removal of total HAP from the waste stream to 10 ppmw or by 99 weight-percent. We have not identified more stringent requirements for waste treatment. Therefore, we have determined that MACT for both new and existing sources is the MACT floor level of control.

e. *Heat Exchange Systems.* No control devices for cooling water were reported by the best performing sources. However, using the survey data, a relationship was found between HAP emissions and how often a facility monitors cooling water for the presence of compounds that would indicate a leak. This relationship likely exists because once a leak is detected, actions are taken to repair the leak or take the leaking equipment out of service, thereby minimizing emissions from cooling water. Three of the five best performing facilities monitor monthly, one monitors weekly, and one reported using an on-line head space analyzer (a head space analyzer does not provide adequate indication of leaks to cooling water and was not considered in determining the heat exchange system component of the MACT floor).

We have determined that the heat exchange system component of the MACT floor for existing sources is a cooling water LDAR program that includes monthly monitoring because this is the frequency of monitoring at the median facility. The heat exchange system component of the MACT floor for new sources includes weekly monitoring because this is the most frequent monitoring performed.

One above-the-floor option is to require weekly monitoring at existing sources. Other above-the-floor options, which are not currently in place at any of the surveyed ethylene manufacturing facilities, are monitoring of the cooling water on a daily basis or monitoring continuously.

We have determined that the MACT levels of control are the floor levels of control for new and existing sources: a LDAR program with monthly monitoring for existing sources and weekly monitoring for new sources. Based on the information we have, the average monitoring frequency in practice by the best performing 12 percent of the affected sources is monthly. We found only one facility monitoring more frequently (weekly). Based on these findings, cost considerations and anticipated emissions reductions, we believe that, for existing sources, monthly monitoring is an adequate frequency to satisfy MACT.

If a leak is detected, repair is required to be completed within 15 calender days unless delay is required for reasons specified in the proposed standards. The time allowed for repair is consistent with the time allowed for repair for other leaking equipment at an EMPU, and we have determined that it is an appropriate amount of time to allow for repair to heat exchange equipment as well.

In addition to specifying the frequency of cooling water monitoring required, the proposed standards specify procedures for collecting and analyzing the samples. The test methods specified are based on the requirements of the HON which covers SOCMI sources having heat exchange system processes similar to ethylene production facilities. The requirements for where to obtain a cooling water sample are unique to an EMPU. Ethylene production requires a relatively high cooling water usage, approximately eight times that for a SOCMI unit. We are concerned that, due to the high total flow rate of cooling water, a leak in an EMPU would result in a concentration so low it would go undetected. To address this concern, we are requiring that cooling water be sampled at the inlet and outlet of each heat exchanger. This will ensure that the cooling water will be tested at the lowest possible flow rate, where leaks will be the least diluted. To reduce the burden that this requirement will cause, only heat exchangers used to cool fluids containing 5 percent HAP or greater are required to be tested. This is the same cutoff used to determine which components must be monitored as part of the LDAR program for equipment leaks.

f. *Equipment Leaks.* The equipment leak emission types include emissions from specific components (pumps, compressors, pressure relief devices, gas valves, light liquid valves, heavy liquid valves, and connectors) of the process. A method for estimating controlled and uncontrolled equipment leak emissions from facilities in the SOCMI was used to quantify the effectiveness of control strategies in use at the five best performing facilities. This method is described in the 1995 Protocol for Equipment Leak Emission Estimates (EPA document 453/R–95–017).

The median control effectiveness is achieved by control strategies at three of the five best performing facilities. These three control strategies are considered to represent the equipment leak component of the MACT floor for existing sources. The median is expressed as the control effectiveness achieved by control strategies at three facilities because the control effectiveness achieved by these facilities is equivalent. The control strategies used by the three median facilities include an LDAR program that requires monitoring of valves, connectors, and in some cases compressors, pumps, and pressure relief devices. Emissions from compressors, pumps, and pressure relief devices that are not monitored are routed to control devices. The level of emissions used by the facilities to indicate a leak is 500 ppmv.

Review of control strategies in use, permit requirements, and regulations for similar sources did not reveal any equipment leak control strategies more stringent than the MACT floor for existing sources. This is not unexpected considering the stringency of the MACT floor at existing sources. The equipment leak portion of the MACT floor requires all components to be monitored or controlled, so no additional components could be added to the requirements. The leak definition of the floor, 500 ppmv, is the lowest used in the ethylene manufacturing industry, with one exception. One facility is using a 300 ppmv leak definition. We do not have adequate data to determine how emissions would be impacted by using a leak definition of 300 ppmv rather than 500 ppmv. The Protocol for Equipment Leak Emission Estimates document (EPA–453/R–95–017) does not include emission factors for leak definitions less than 500 ppmv. Due to the level of accuracy of the sampling and testing methods and the relatively small difference in leak definitions, the difference in emissions is likely to be minimal. We have not identified any options more stringent than the equipment leak floor component for existing sources. Therefore, the MACT level of control for equipment leaks at new and existing sources is based on the floor level of control for existing sources.

g. *Furnaces.* Typically, the ethylene production process involves converting large hydrocarbon molecules into smaller molecules through a process referred to as "thermal cracking." This takes place in the ethylene cracking furnace. Based on information provided in survey responses, the furnaces are fired with natural gas, refinery gas, off-gas from the production process, or a combination of the three. Ethylene cracking furnaces are expected to have relatively low HAP emissions. The fuels burned in cracking furnaces contain relatively little HAP, and most organic HAP are destroyed in the combustion process. In fact, process heaters are used as control devices for process vents containing HAP. We decided to consider standards for gas-fired process heaters because HAP emissions can result from incomplete combustion, and natural and refinery gas combustion has been shown to result in emissions of formaldehyde. Ethylene cracking furnaces could have been included in separate MACT standards that are currently being considered for process heaters. However, we decided to include cracking furnaces in the proposed NESHAP for ethylene manufacturing in order to establish comprehensive MACT standards that

cover all of the HAP emission types within an ethylene manufacturing process unit.

None of the surveyed facilities reported controlling HAP emissions from furnaces using an add-on control device. In addition to add-on controls, we considered control techniques that may minimize HAP emissions. As combustion destroys most organic HAP, it is assumed that those furnaces operated with optimal combustion conditions would have the lowest HAP emissions. One difficulty in pursuing a level of good combustion as a regulatory requirement is in determining a parameter that accurately indicates good combustion. Excess oxygen has been suggested as a parameter that indicates whether good combustion is being achieved. Based on survey responses and discussions with industry representatives, the majority of ethylene furnaces are equipped with monitors for excess oxygen. At least one facility has automatic controls for excess oxygen. Generally, excess oxygen is monitored to ensure that adequate oxygen is available for combustion, and that efficient combustion is being achieved. Oxygen levels may also be monitored to ensure that they do not exceed a level that would result in excessive NO_X emissions. Because excess oxygen is typically controlled by closing and opening dampers by hand, it is not precisely controlled, but rather allowed to fluctuate within an acceptable range. There is no evidence to suggest that any of the facilities have determined the relationship between excess oxygen and HAP emissions. Theoretically, three different furnaces, one with automatic excess oxygen controls, one with an excess oxygen monitor without automatic controls, and one without excess oxygen monitors could have the same level of HAP emissions because none of them are being operated to specifically control HAP emissions. Data are not available to determine whether HAP emissions reductions are actually being achieved by facilities monitoring and/or controlling excess oxygen. Therefore, we cannot require the use of excess oxygen monitors for controlling HAP emissions from ethylene cracking furnaces.

Further, we have not identified any add-on controls or control techniques currently in use to control HAP emissions from ethylene cracking furnaces. The MACT floor for ethylene cracking furnaces is no control, and there are no known above-the-floor options. Thus, although ethylene cracking furnaces were considered in developing the proposed NESHAP, no regulatory requirements for them are included.

h. *Decoking.* Coke is periodically removed from the coils within an ethylene cracking furnace through a process referred to as "decoking." During the decoking process, the furnace is isolated from the rest of the ethylene manufacturing process, and steam is used to strip the coke from the coils. The steam, products of combustion, and coke that exit the furnace coils are typically cooled, either with quench water or in a heat exchanger. Water and coke particles are removed with a knock-out pot or other mechanical control device. The resulting water stream is routed back into the process or is discarded. The non-condensed stream is emitted to the atmosphere or in some cases, routed into the furnace firebox.

None of the facilities that received the section 114 survey reported having any test data for emissions from coke combustion. We were not able to locate any test data or published emission factors for coke combustion. There are reasons to believe HAP emissions from decoking are relatively low. It is not likely that the coke contains much volatile material, and volatile material should be destroyed during the combustion phase of the decoking process. However, the conditions within the coils are not expected to be conducive to good combustion, which may result in volatile material not being destroyed. Additionally, HAP emissions may be created in the decoking process. Another reason that it is important to consider emissions from decoking is the frequency with which it occurs. A typical furnace may be decoked between 8 and 12 times per year. A typical ethylene unit may comprise eight furnaces. Assuming a decoke lasts 36 hours, a typical ethylene unit may have a decoke of one of its furnaces occurring 40 percent of the time.

Due to the potential for HAP emissions and the frequency of decoking, we believe that it is necessary to address decoking in the proposed NESHAP. We have determined that decoking is a shutdown activity and will, therefore, be addressed through a facility's startup, shutdown, and malfunction plan. The definition for a shutdown in the proposed NESHAP includes "the cessation of operation of a regulated source and equipment required or used to comply with this subpart * * * for purposes of * * * periodic maintenance * * *." During decoking, the cracking process ceases in order to allow the furnace to be decoked, which is essentially a maintenance activity. Defining decoking as a shutdown activity requires decoking operations to be included in a facility's startup, shutdown, and malfunction plan. This will require owners and operators of ethylene units to include in their plan procedures for decoking that will minimize emissions. This requirement is not expected to be burdensome to owners and operators as it is expected that most facilities already have written decoking procedures.

Although it has been determined that the most appropriate way to address decoking is to consider it a shutdown activity, we reviewed information available to determine if it would be possible to establish a MACT emission limit for decoking. In the survey responses, two facilities reported routing decoking emissions from all furnaces to the furnace firebox. This technique may control HAP emissions from decoking, if there are any. However, its effectiveness is unknown. We are not aware of any test data for emissions before or after routing through the furnace firebox. Based on the information available, if a MACT analysis were performed for decoking, it is likely that the floor level of control would be no control. Routing emissions to the firebox could be considered as an above-the-floor option. However, it would be difficult to evaluate this option because its effectiveness is unknown. The results of the review of information available for decoking confirmed our decision to regard decoking as a shutdown activity.

In addition to air emissions resulting from decoking operations, it is also possible that HAP may be present in the condensate stream that results when the steam, products of combustion, and coke are cooled and condensed. If the condensate stream is not recycled into the process and is discarded, it will be covered under the waste requirements that are also proposed today. Therefore, all possible sources of emissions from decoking operations are covered by the proposed NESHAP.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts YY, SS, TT, UU, and WW, to demonstrate and document compliance with the proposed NESHAP for ethylene production. The procedures and methods set out in these subparts are, where appropriate, based on procedures and methods that we previously developed for use in implementing standards for emission point sources similar to those being proposed for the Ethylene Production source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (§§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply control. These requirements are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.*, HAP concentration cutoff level, above which, control is required).

We selected emission point and/or control device-specific monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirements in subparts promulgated for storage vessels (40 CFR part 63, subpart WW); equipment leaks (40 CFR part 63, subpart UU or TT); and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous HAP.

We believe that the compliance, monitoring, recordkeeping, and reporting requirements of subparts YY, SS, TT, and UU are appropriate for demonstrating and documenting compliance with the requirements proposed for the Ethylene Production source category. This is because these requirements were established for standards with similar form, and similar emission points with pollutant streams of gaseous HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

D. Summary of Environmental, Energy, Cost, and Economic Impacts

1. What Are the Air Quality Impacts?

We estimate that the proposed NESHAP will decrease HAP emissions by 992 Mg/yr (1,090 TPY) (a 60 percent reduction) and decrease VOC emissions by 9,271 Mg/yr (10,188 TPY) (a 64 percent reduction).

2. What Are the Cost Impacts?

The cost of implementing the control techniques is expected to vary widely between ethylene manufacturing facilities. The cost of control techniques for some facilities will be minimal because they already have in place the work practices, equipment, and control devices required to comply with the proposed NESHAP. The highest costs will be incurred by facilities that are not currently complying with the BWON and will have to add waste management and treatment equipment to comply with the proposed NESHAP. We estimate the average cost of controls for these facilities to be $1.03 million. For facilities that already have waste management and treatment equipment, we estimate the average cost to be $7,600.

3. What Are the Economic Impacts?

The economic impact analysis for the proposed NESHAP for ethylene production shows that the annual compliance costs are less than 0.01 percent of the sales for the 22 affected firms. In fact, seven firms are expected to experience small savings in costs as a result of implementing the proposed NESHAP. Therefore, no adverse impact is expected to occur for these firms in the ethylene manufacturing industry. Estimation of the cost and economic impacts of the proposed NESHAP is detailed in memoranda included in the docket for the proposed NESHAP (Docket No. A–98–22).

4. What Are the Nonair Health, Environmental and Energy Impacts?

We believe that there would not be significant adverse nonair health, environmental, or energy impacts associated with the proposed NESHAP for the Ethylene Production source category. This is based on the types of control techniques expected to be used to comply with the proposed NESHAP. The majority of control techniques are either work practices, such as an LDAR program for equipment leaks and cooling water; or equipment standards, such as floating roofs for storage vessels which do not cause increases in water pollution; or solid waste. Because most of the control techniques expected to be used to comply with the proposed NESHAP are either work practices or equipment standards, minimal increases in energy use are expected.

E. Solicitation of Comments

Representatives of the ethylene industry have reviewed our MACT floor approach and suggested that the MACT floor should not include connector monitoring. Industry does not refute that facilities are complying with State requirements for connector monitoring, or that the best performing facilities are those with the most stringent LDAR programs. However, industry believes the emissions from connectors are inflated due to the fact that we rely upon the SOCMI emission factors, which they believe are not appropriate for connectors in the ethylene industry. Industry representatives have submitted data to support their position that emissions from connectors are very low and, therefore, routine connector monitoring at ethylene facilities does not result in reduced emissions. Industry has concluded that the use of different ethylene industry-derived emission factors for connectors would mean that the determination of the best performing 12 percent of facilities would not be as heavily influenced by connector emissions as it is in our analysis. They suggest that a different set of five facilities (equivalent to the best performing 12 percent of facilities) would be among the best performers than the five facilities upon which the MACT floor for this proposal was determined.

The data provided by industry, along with correspondence from industry representatives and summaries of stakeholder meetings have been placed in the docket (Docket No. A–98–22). We are soliciting comment on these data and industry's conclusions. We did not receive industry's data in time for evaluation prior to this proposal.

We are also soliciting comments and data to support the determination of the process vent component of the MACT for existing sources. The MACT floor level of control for existing sources requires that vents with flow rates greater than or equal to 0.011 scmm and HAP concentrations greater than or equal to 50 ppmv must be controlled to reduce HAP emissions by 98 weight-percent or to 20 ppmv. An above-the-floor option considered is to require vents with flow rates greater than or equal to 0.008 scmm and HAP concentration of 30 ppmv or greater to be controlled. This option is based on 40 CFR part 60, subpart NNN—Distillation Operations NSPS, which applies to one of the best performing facilities and is the same as the process vent component of the MACT for new sources. We do not have data to assess the cost effectiveness of lowering the control applicability cutoffs for existing sources, but we believe the cost would be minimal because there are relatively few process vents, and the cutoffs being considered are so similar to the MACT floor. Additionally, having the same cutoffs for new and existing sources would simplify compliance with, and enforcement of, the proposed NESHAP. We are soliciting comments and data to:

(1) Support or refute the assumption that there are few vents with flow rates between 0.008 and 0.011 scmm and HAP concentrations between 30 and 50 ppmv, (2) aid in estimating the cost of controlling these vents if they do exist, and (3) support or refute that there is a benefit associated with simplifying the proposed NESHAP by having the same requirements for vents at new and existing sources.

We are also soliciting comments on the monitoring requirements for heat exchangers. The proposed standards require that cooling water samples must be collected at the inlet and outlet of each heat exchanger that cools process fluids with 5 percent HAP or greater. An alternative option that was considered would allow samples to be collected at the entrance and exit of each heat exchange system, or at locations where the cooling water enters and exits each heat exchanger, or any combination of heat exchangers as long as the cooling water flow rate at the sampling point does not exceed a specified value. We do not have data to determine the maximum flow rate to ensure that leaks will be detected with the test methods used. We are soliciting comments and flow rate data to support or refute the proposed requirements for sampling cooling water at EMPU heat exchangers. We are also soliciting comment to support or refute the assumption that the applicability criteria of 5 percent HAP is appropriate for determining which heat exchangers must be monitored for leaks.

V. Spandex Production

A. Introduction

1. What Are the Primary Sources of Emissions and What Are the Emissions?

The HAP emission points covered by the proposed NESHAP include process vents, storage vessels, and fiber spinning lines. The HAP emitted from spandex production facilities include toluene and TDI. The proposed NESHAP would regulate emissions of these compounds, as well as other incidental organic HAP that are emitted during the manufacture of spandex fiber. The 1997 baseline HAP emissions estimate for the facilities using the reaction spinning process is 303 Mg/yr (334 TPY). The majority of these emissions are from process vents and fiber spinning lines.

2. What Are the Health Effects Associated With the HAP Emitted?

The principle HAP associated with spandex production facilities is toluene; another HAP emitted in very small quantities is TDI.

Toluene. Effects on the central nervous system have been reported from acute (short-term) and chronic (long-term) exposure to toluene and include dysfunction, fatigue, sleepiness, headaches, and nausea. Reported effects from short-term high level exposures also include cardiovascular symptoms in humans. Additional long-term exposure effects include irritation of the eye, throat and respiratory tract. Studies of workers occupationally exposed and animals exposed in the laboratory have reported adverse affects on the developing fetus. Due to a lack of information for humans and inadequate animal evidence, EPA does not consider toluene classifiable as to human carcinogenicity.

TDI. Acute exposure to high levels of TDI can result in severe irritation of the skin and eyes and affects the respiratory, gastrointestinal, and central nervous systems. Chronic exposure of workers on the job has resulted in significant decreases in lung function and an asthma-like reaction characterized by wheezing, dyspnea, and bronchial constriction. Animal studies have reported significantly increased incidences of tumors of the pancreas, liver, and mammary glands from exposure to TDI via gavage (experimentally placing the chemical in the stomach). The EPA has not evaluated TDI for carcinogenicity, however, the International Agency for Research on Cancer has classified TDI as a possible human carcinogen.

B. Summary of Proposed Standards for Spandex Production

1. What Is the Source Category To Be Regulated?

The Spandex Production source category includes any facility that manufactures spandex fiber by the reaction spinning process. Spandex fiber is a long-chain, synthetic polymer comprised of at least 85 percent by mass of a segmented polyurethane. The spandex production process involves the reaction of a diisocyanate with a polyol (polyester or polyether glycol) to generate diisocyanate-terminated prepolymer. The prepolymer is extruded (or spun) while simultaneously reacting with a chain-extender in a spin bath to generate spandex fiber.

There are two spandex production facilities in the United States that use the reaction spinning process, and both are presently major sources. The proposed NESHAP would apply to any major sources that produce spandex fiber by reaction spinning. Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source. Area sources would not be subject to the proposed NESHAP.

In reaction spinning: (1) The spandex prepolymer is extruded into spinning baths containing HAP solvent, (2) the baths are covered with hoods and are open to the room air, (3) the hoods and room air are vented to an emission control device, (4) the spandex polymer is generated simultaneously with extrusion, (5) drying is a separate process step, and (6) there are large quantities of HAP emissions.

2. What Is the Affected Source?

The affected source consists of all process vents, storage vessels, and fiber spinning lines that are associated with reaction spinning spandex production processes located at a major source of HAP emissions, as defined in 40 CFR part 63, subpart A.

3. What Are the Emission Limits, Operating Limits, and Other Standards?

The following discussion briefly summarizes the proposed control requirements for the affected emission points.

a. *Process Vents.* For process vents, HAP emissions are required to be controlled by routing emissions through a closed vent system to one of the following: (1) A flare, (2) an enclosed combustion device that reduces HAP emissions by 95 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or (3) a recovery device that reduces HAP emissions by 95 weight-percent or to a concentration of 20 ppmv. Requirements are the same for both new and existing sources.

b. *Storage Vessels.* Storage vessels with capacity greater than 47.3 cubic meters (12,500 gallons) that store materials with a maximum true vapor pressure of organic HAP greater than or equal to 3.4 kilopascals (0.5 psia) are required to control organic HAP emissions by using an external floating roof equipped with specified primary and secondary seals, by using a fixed roof with an internal floating roof equipped with specified seals, or by venting emissions through a closed vent system to a control device achieving 95 weight-percent control. Requirements are the same for both new and existing sources.

c. *Fiber Spinning Lines.* For fiber spinning lines, HAP emissions are required to be captured and vented through a closed vent system to a control device achieving 95 weight-percent control or 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). Requirements are the same for both new and existing sources.

4. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for emission points similar to those for which we are proposing NESHAP with this action.

For continuous compliance, you must install continuous parameter monitoring systems (CPMS) and conduct a performance evaluation of the CPMS. You must identify a relevant parameter that will indicate the control device is operating properly and then continuously monitor the selected parameter.

5. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you are subject to requirements under the Generic MACT standards subpart, you would be required to comply with general notification, recordkeeping, and reporting requirements.

You must submit one-time reports of the (1) start of construction for new facilities, (2) anticipated and actual start-up dates for new facilities, and (3) physical or operational changes to existing facilities. You are also required to maintain all records for a period of at least 5 years.

If you own or operate an affected source that has an initial startup date before the promulgation date of standards for that affected source under the Generic MACT standards subpart, you must submit a one-time initial notification. You must submit this notification within 1 year after the promulgation date of standards for an affected source under the Generic MACT standards subpart (or within 1 year after the affected source becomes subject to the Generic MACT standards subpart).

For sources constructed or reconstructed after the effective date of the relevant standards, the General Provisions require that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control that will be used for each potential HAP emission point.

The information in the Initial Notification and the application for construction or reconstruction will enable enforcement personnel to identify the number of sources subject to, or are already in compliance with, the standards.

You must also submit a Notification of Compliance Status report. You must have this notification signed by a responsible company official who certifies its accuracy and that the affected source has complied with the relevant standards. You must submit the results of any required performance tests (as applicable) as part of the Notification of Compliance Status report. You must submit the Notification of Compliance Status report within 60 days after the compliance date specified for an affected source subject to the Generic MACT standards subpart.

For CPMS, you must submit a report of the performance evaluation results to the delegated authority. You must also submit reports of parameter monitoring deviations and CPMS performance deviations to the delegated authority semiannually.

C. Rationale for Selecting the Proposed Standards for Spandex Production

1. How Did EPA Select the Source Category?

We listed Spandex Production as a category of major sources of HAP on July 16, 1992 (57 FR 31576). Today's proposed standards apply to reaction spinning processes only.

2. How Did EPA Determine the Affected Source?

The affected source is the combination of all regulated operations at a spandex production facility. The following regulated operations are typically performed at spandex production facilities and are part of the affected source: process vents, storage vessels, and fiber spinning lines. These are the typical operations found at spandex production facilities, and we determined MACT for these operations.

3. How Did EPA Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

There are two spandex production facilities in the United States that produce spandex fiber by reaction spinning; these facilities are owned by one company. Both are major sources as defined under section 112(a) of the CAA.

For a source category with fewer than 30 major sources, section 112(d)(3) of the CAA directs that the MACT floor be based on the average emission limitation achieved by the best performing five sources. The MACT floor for new sources in a source category is required to reflect the level of control being achieved by the best controlled similar source. In setting the MACT for spandex production using reaction spinning, we looked at the level of control presently in place at the two reaction spinning major source facilities.

At reaction spinning process spandex production facilities, there are a number of process vent streams containing HAP. The process vent types include vents associated with prepolymer reactors, dryers, and the solvent recovery system. The floor for process vents at reaction spinning processes requires 95 percent control by venting through a closed vent system to a control device. The two reaction spinning process facilities already have emission controls in place for process vents that are equivalent to those required by the Generic MACT NESHAP. We are not aware of any additional controls that would get further emissions reductions that would be more effective or reasonable for beyond-the-floor control for process vents. Therefore, MACT for process vents is the floor level of control.

The storage vessel control requirements in 40 CFR part 63, subpart WW, also called "Level 2" storage vessel controls, require the vessels to be equipped with a floating roof or covered and vented through a closed vent system to a control device. The two reaction spinning process facilities already have Level 2 emission controls on their storage vessels, and this level of control is considered to be the floor. We are not aware of any additional controls that would get further emissions reductions and be more effective or reasonable for beyond-the-floor control for storage vessels. Therefore, MACT for storage vessels at reaction spinning process spandex production facilities is the MACT floor.

During the fiber spinning step, HAP are volatilized from the spin bath solvent tanks, washing tanks, and the wet belt dryers. The solvent tanks, wash tanks, and wet belt dryers are covered with hoods and vented to an emission control device. There are also emissions into the room air, and room air is vented to an emission control device. At the two facilities in this source category, emissions from the fiber spinning lines are controlled by capture and subsequent routing to an emission control device. The floor for fiber spinning lines is capture of emissions around the spinning, washing and wet belt dryer areas of the spinning line and

venting to a control device that reduces HAP emissions by 95 weight-percent. We are not aware of any additional controls that would get further emissions reductions and be more effective or reasonable for beyond-the-floor control for fiber spinning lines. Therefore, MACT for fiber spinning lines is the floor level of control.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts SS and WW, to demonstrate and document compliance with the spandex production standards. The procedures and methods set out in these subparts are, where appropriate, based on procedures and methods that we previously developed for use in implementing standards for emission point sources similar to those being proposed for the Spandex Production source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (*i.e.*, §§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply control. These procedures are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.*, a HAP concentration cutoff level, above which control is required).

We selected monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirements in subparts promulgated for storage vessels (40 CFR part 63, subpart WW), and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous organic HAP. The rationale for the establishment of these subparts and requirements contained within each subpart is presented in the proposal preamble for the Generic MACT standards in 40 CFR part 63, subpart YY (63 FR 55186–55191).

We believe that the compliance, monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts WW and SS, are appropriate for demonstrating and documenting compliance with the requirements proposed for the Spandex Production source category. This is because these requirements were established for standards with similar formats and similar emission points with pollutant streams of gaseous organic HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

D. Summary of Environmental, Energy, Cost, and Economic Impacts

1. What Are the Air Quality Impacts?

There are no additional emissions reductions achieved by the proposed NESHAP. The level of control required by the proposed NESHAP is already in place at the two affected reaction spinning facilities.

2. What Are the Cost Impacts?

The total estimated annual compliance cost of the proposed NESHAP for the Spandex Production source category is $78,040. This estimate includes annualized capital costs for monitoring equipment purchased. Annual costs also include monitoring, recordkeeping, and reporting costs. Costs were not included for control equipment since this is already in place at the two reaction spinning process facilities.

The capital costs are estimated to be $32,820 (in 1998 dollars). The capital costs are for purchase of thermocouples and liquid flow transducers for CPMS equipment, and closed vent systems leak detection monitors. These costs are more than likely an overestimate since the two affected facilities already have monitors on their carbon adsorbers.

3. What Are the Economic Impacts?

The goal of the economic impact analysis is to estimate the market response of the spandex production facilities to the proposed NESHAP and to determine the economic effects that may result from the proposed NESHAP. The Spandex Production source category contains five facilities, but only the two facilities that use the reaction spinning process are affected by the proposed NESHAP. These potentially affected facilities are owned by one company.

Spandex fiber production leads to potential HAP emissions from fiber spinning lines, storage tanks, and process vents; however, the emission sources are well controlled by the affected spandex manufacturing facilities. The mandated levels of control are met at these sources; therefore, no costs are expected to be incurred by the spandex facilities in order to comply with the proposed NESHAP. Instead, the compliance costs for the proposed NESHAP relate primarily to monitoring, reporting, and recordkeeping activities. The estimated total annualized costs for the proposed NESHAP are $78,040, which represents less than 0.01 percent of the revenues of the companies that own the spandex manufacturing facilities. The proposed NESHAP are, therefore, expected to have a negligible impact on the Spandex Production source category.

The economic impacts at the facility and company levels are measured by comparing the annualized compliance costs for each entity to its revenues. A cost-to-sales ratio is first calculated and then is multiplied by 100 to convert the ratio into percentages. For the proposed NESHAP, a cost-to-sales ratio exceeding 1 percent is determined to be an initial indicator of the potential for a significant facility impact. Revenues at the facility level are not available, therefore estimated facility revenues received from the sale of spandex fiber are used. Both affected facilities are expected to incur positive compliance costs. The ratio of costs to estimated revenues range from a low of 0.22 percent to a high of 0.35 percent. Thus, on average, the economic impact of the proposed NESHAP is minimal for the facilities producing spandex fibers.

The share of compliance costs to company sales are calculated to determine company level impacts. One company owns the two affected facilities, so only one firm faces positive compliance costs from the proposed NESHAP. The ratio of costs to company revenues is 0.10 percent. At the company level, the proposed NESHAP are not anticipated to have a significant economic impact on companies that own and operate the spandex fiber facilities. For more information, consult the economic impact analysis report entitled Economic Impact Analysis: Spandex Production, which is in the docket for the spandex source category.

4. What Are the Nonair Health, Environmental and Energy Impacts?

We believe that there would not be significant adverse environmental or energy impacts associated with the proposed NESHAP for the Spandex Production source category. The industry's baseline level of control is high, and the proposed NESHAP are currently being achieved for the emission point types. Environmental impacts from the application of the control or recovery devices proposed for the Spandex Production source category are also expected to be minimal for secondary air pollutants. In general, we determine impacts relative to the baseline that is set at the level of control in absence of the proposed NESHAP.

There is no incremental increase in emissions related to water pollution or solid waste as a result of today's proposed NESHAP.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed NESHAP are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the proposed NESHAP have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1983.01) and a copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at "farmer.sandy@epa.gov," or by calling (202) 260–2740. A copy may also be downloaded from the internet at "http://www.epa.gov/icr."

Information is required to ensure compliance with the proposed NESHAP. If the relevant information were collected less frequently, EPA would not be reasonably assured that a source is in compliance with the proposed NESHAP. In addition, EPA's authority to take administrative action would be reduced significantly.

The proposed NESHAP would require owners or operators of affected sources to retain records for a period of 5 years. The 5 year retention period is consistent with the provisions of the General Provisions of 40 CFR part 63 and with the 5 year record retention requirement in the operating permit program under title V of the CAA.

The recordkeeping and reporting requirements of the proposed NESHAP are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, "Confidentiality of Business Information."

The EPA expects the proposed NESHAP to affect a total of 75 facilities over the first 3 years. The EPA assumes that no new facilities will become subject to the proposed NESHAP during each of the first 3 years. The EPA expects 75 existing facilities to be affected by the proposed NESHAP, and these existing facilities will begin complying in the third year.

The estimated average annual burden for the first 3 years after promulgation of the NESHAP for the industries and the implementing agency is outlined below. You can find the details of this information collection in the "Standard Form 83 Supporting Statement for ICR No. 1983.01," in Docket No. A–97–17.

Affected entity	Total hours	Labor costs (10^3 $)	Capital costs (10^3 $)	Operating and maintenance costs (10^3 $)	Total costs (10^3 $)
Industry	33,926	1,510	4,901	16	6,427
Implementing agency	3,465	117	0	0	117

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 6, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by January 5, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure

"meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed rule. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed NESHAP will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No facilities subject to the proposed NESHAP are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the proposed NESHAP. Furthermore, EPA is directed to develop the proposed NESHAP by section 112 of the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed NESHAP.

D. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, we are required by Executive Order 13084 to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed NESHAP do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments are believed to be affected by the proposed NESHAP. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the proposed NESHAP.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed NESHAP do not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $22.2 million per year. The proposed NESHAP contain no mandates affecting State, local, or tribal governments. Thus, today's proposed NESHAP are not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that the proposed NESHAP contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 1000 employees (500 for the Carbon Black source category); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. There are no small entities affected by this proposed rule.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed NESHAP involve technical standards. The EPA proposes to use EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 18, 25, 25a, 26, 26a, 316, and 320. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. One voluntary consensus standard was identified as applicable and EPA proposes to use it in the proposed NESHAP.

The American Society for Testing and Materials (ASTM) consensus standard, ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in the proposed NESHAP in addition to EPA Methods. Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 where: (1) The target compounds are those listed in Section 1.1 of ASTM D6420–99, and (2) the target concentration is between 150 parts per billion by volume and 100 ppmv.

For target compounds not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compounds not listed in Table 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

The EPA proposes to incorporate by reference ASTM 6420–99 into 40 CFR 63.14 for application to subpart SS of part 63. The EPA will also cite Method 18 as a GC option in addition to ASTM D6420–99. This will allow the continued use of other GC configurations.

For EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 25, 25a, 26, 26a, 316, and 320, no applicable voluntary consensus standards were found at this time. The search and review results have been documented and are placed in the Generic MACT docket (Docket No. A–97–17).

The EPA requests comment on compliance demonstration requirements proposed today and specifically invites the public to identify potentially applicable voluntary consensus standards. Comments should explain why the proposed NESHAP should adopt these voluntary consensus standards in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301 of 40 CFR part 63, appendix A, is used).

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, the proposed NESHAP are not economically significant as defined by Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 3, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is proposed to be amended by adding a new subpart XX to read as follows:

Subpart XX—National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste

Sec.

Introduction

63.1080 What does this subpart do?
63.1081 When must I comply with the requirements of this subpart?

Applicability for Heat Exchange Systems

63.1082 Does this subpart apply to my heat exchange system?

63.1083 What heat exchange systems are exempt from the requirements of this subpart?

Heat Exchange System Requirements

63.1084 What are the general requirements for heat exchange systems?

Monitoring Requirements for Heat Exchange Systems

63.1085 How must I monitor for leaks to cooling water?
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Repair Requirements for Heat Exchange Systems

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Recordkeeping and Reporting Requirements for Heat Exchange Systems

63.1089 What records must I keep?
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Background for Waste Requirements

63.1091 What do the waste requirements do?
63.1092 What are the major differences between the requirements of 40 CFR part 61, subpart FF, and the waste requirements for ethylene production sources?

Applicability for Waste Requirements

63.1093 Does this subpart apply to my waste streams?
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Waste Requirements

63.1095 What specific requirements must I comply with?
63.1096 What requirements must I comply with if I transfer waste offsite?

Definitions for Waste Requirements

63.1097 What definitions do I need to know?

Implementation and Enforcement

63.1098 Who implements and enforces this subpart?

Tables to Subpart XX

Table 1 to Subpart XX—Hazardous Air Pollutants
Table 2 to Subpart XX—Specific Differences in Requirements of this subpart and 40 CFR Part 61, Subpart FF
Table 3 to Subpart XX—Sections of 40 CFR Part 61, Subpart FF, that are not Included in the Requirements of this Subpart

Introduction

§ 63.1080 What does this subpart do?

This subpart establishes requirements for controlling emissions of hazardous air pollutants (HAP) from heat exchange systems and waste streams at new and existing ethylene manufacturing process units.

§ 63.1081 When must I comply with the requirements of this subpart?

You must comply with the requirements of this subpart according to the schedule specified in § 63.1102(a).

Applicability for Heat Exchange Systems

§ 63.1082 Does this subpart apply to my heat exchange system?

The provisions of this subpart apply to your heat exchange system if you own or operate an ethylene manufacturing process unit expressly referenced to this subpart XX from subpart YY of this part.

§ 63.1083 What heat exchange systems are exempt from the requirements of this subpart?

Your heat exchange system is exempt from the requirements in §§ 63.1084 and 63.1085 if it meets at least one of the criteria in paragraphs (a) through (f) of this section.

(a) Your heat exchange system operates with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(b) Your heat exchange system contains an intervening cooling fluid, containing less than 5 percent by weight of HAP, between the process and the cooling water. This intervening fluid must serve to isolate the cooling water from the process fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(c) The once-through heat exchange system is subject to a National Pollution Discharge Elimination System (NPDES) permit with an allowable discharge limit of 1 part per million by weight (ppmw) or less above influent concentration or 10 percent or less above influent concentration, whichever is greater.

(d) Your once-through heat exchange system is subject to a NPDES permit that meets the conditions in paragraphs (d)(1) through (4) of this section.

(1) The permit requires monitoring of a parameter or condition to detect a leak of process fluids to cooling water.

(2) The permit specifies or includes the normal range of the parameter or condition.

(3) The permit requires monthly or more frequent monitoring for the parameters selected as leak indicators.

(4) The permit requires you to report and correct leaks to the cooling water when the parameter or condition exceeds the normal range.

(e) Your recirculating heat exchange system cools process fluids that contain less than 5 percent by weight of HAP.

(f) The once-through heat exchange system cools process fluids that contain less than 5 percent by weight of HAP.

Heat Exchange System Requirements

§ 63.1084 What are the general requirements for heat exchange systems?

Unless you meet one of the requirements for exemptions in § 63.1083, you must meet the requirements in paragraphs (a) through (d) of this section.

(a) Monitor the cooling water for the presence of substances that indicate a leak according to §§ 63.1085 and 63.1086.

(b) If you detect a leak, repair it according to § 63.1087 unless repair is delayed according to § 63.1088.

(c) Keep the records specified in § 63.1089.

(d) Submit the reports specified in § 63.1090.

Monitoring Requirements for Heat Exchange Systems

§ 63.1085 How must I monitor for leaks to cooling water?

You must monitor for leaks to cooling water according to the requirements in paragraphs (a) through (e) of this section.

(a) Monitor the cooling water for HAP (either in total or speciated) or other representative substances (*e.g.*, total organic carbon or volatile organic compounds (VOC)) that indicate the presence of a leak in the heat exchange system.

(b) Monitor the cooling water monthly for heat exchange systems at existing sources; weekly for heat exchange systems at new sources.

(c) Determine the concentration of the monitored substance in the cooling water using any method listed in 40 CFR part 136, as long as the method is sensitive to concentrations as low as 10 ppmw. Use the same method for both entrance and exit samples. Alternative methods may be used upon approval by the U.S. Environmental Protection Agency (EPA) Administrator.

(d) Take a minimum of three sets of samples at each entrance and exit as defined in § 63.1086(a).

(e) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the 0.05 level of significance, if the exit mean concentration is at least 1 ppmw or 10 percent of the entrance mean, whichever is greater, you have detected a leak.

§ 63.1086 Where must I monitor for leaks to cooling water?

You must collect samples at the entrance and exit of each nondirect-contact heat exchanger in the ethylene manufacturing process unit used to cool fluids containing 5 percent by weight organic HAP (or other mentioned substances) or greater.

Repair Requirements for Heat Exchange Systems

§ 63.1087 What actions must I take if a leak is detected?

If a leak is detected, you must comply with the requirements in paragraphs (a) and (b) of this section unless repair is delayed according to § 63.1088.

(a) Repair the leak as soon as practical but not later than 15 calender days after you received the results of monitoring tests that indicated a leak. You must repair the leak unless you demonstrate that the results are due to a condition other than a leak.

(b) Once the leak has been repaired, confirm that the heat exchange system has been repaired according to the monitoring requirements in §§ 63.1085 and 63.1086 within 7 calender days of the repair or startup, whichever is later.

§ 63.1088 In what situations may I delay leak repair, and what actions must I take for delay of repair?

You may delay repair of heat exchange systems for which leaks have been detected if the leaking equipment is isolated from the process. You may also delay repair if repair is technically infeasible without a shutdown, and you meet one of the conditions in paragraphs (a) through (c) of this section.

(a) If a shutdown is expected within 15 calendar days of determining delay of repair is necessary, you are not required to have a special shutdown before that planned shutdown.

(b) If a shutdown is not expected within 15 calendar days of determining delay of repair is necessary, you may delay repair if a shutdown for repair would cause greater emissions than the potential emissions from delaying repair until the next shutdown of the process equipment associated with the leaking heat exchanger. You must document the basis for the determination that a shutdown for repair would cause greater emissions than the emissions likely to result from delay of repair. The documentation process must include the activities in paragraphs (b)(1) through (3) of this section.

(1) Specify a schedule for completing the repair as soon as practical.

(2) Calculate the potential emissions from the leaking heat exchanger by multiplying the concentration of HAP (or other monitored substances) in the cooling water from the leaking heat exchanger by the flowrate of the cooling water from the leaking heat exchanger and by the expected duration of the delay.

(3) Determine emissions from purging and depressurizing the equipment that will result from the unscheduled shutdown for the repair.

(c) If repair is delayed for reasons other than those specified in paragraph (a) or (b) of this section, you may delay repair a maximum of 30 calendar days. You must demonstrate that the necessary parts or personnel were not available.

Recordkeeping and Reporting Requirements for Heat Exchange Systems

§ 63.1089 What records must I keep?

You must keep the records in paragraphs (a) through (c) of this section, according to the requirements of § 63.1109(c).

(a) Monitoring data required by § 63.1085 that indicates a leak, the date the leak was detected, or, if applicable, the basis for determining there is no leak.

(b) The dates of efforts to repair leaks.

(c) The method or procedures used to confirm repair of a leak, and the date the repair was confirmed.

(d) Documentation of delay of repair as specified in § 63.1088.

§ 63.1090 What reports must I submit?

If you delay repair for your heat exchange system, you must report the delay of repair in the semiannual report required by § 63.1110(e). If the leak remains unrepaired, you must continue to report the delay of repair in semiannual reports until you repair the leak. You must include the information in paragraphs (a) through (e) of this section in the semiannual report.

(a) The fact that a leak was detected, and the date that the leak was detected.

(b) Whether or not the leak has been repaired.

(c) The reasons for delay of repair. If you delayed the repair as provided in § 63.1088(b), documentation of emissions estimates.

(d) If a leak remains unrepaired, the expected date of repair.

(e) If a leak is repaired, the date the leak was successfully repaired.

Background for Waste Requirements

§ 63.1091 What do the waste requirements do?

The waste requirements in this subpart require you to comply with requirements of 40 CFR part 61, subpart FF, National Emission Standards for Benzene Waste Operations. Because the requirements of subpart FF of 40 CFR part 61 regulate benzene emissions and this subpart regulates HAP, there are some differences between the ethylene production waste requirements and those of subpart FF of 40 CFR part 61. Additionally, some compliance options available in subpart FF of 40 CFR part 61 do not apply to ethylene production sources.

§ 63.1092 What are the major differences between the requirements of 40 CFR part 61, subpart FF, and the waste requirements for ethylene production sources?

The major differences between the requirements of 40 CFR part 61, subpart FF and the requirements for ethylene production sources are listed in paragraphs (a) through (c) of this section.

(a) The requirements for ethylene production sources apply to all ethylene production sources that are part of a major source. The requirements do not include a provision to exempt sources with a total annual benzene quantity less than 10 megagrams per year, or any similar cutoff, from control requirements.

(b) The requirements for ethylene production sources apply to waste streams containing any of the HAP listed in Table 1 to this subpart, not only waste streams containing benzene.

(c) The requirements for ethylene production sources do not include the compliance options at 40 CFR 61.342(c)(3)(ii), (d) and (e).

Applicability for Waste Requirements

§ 63.1093 Does this subpart apply to my waste streams?

The waste stream provisions of this subpart apply to your waste streams if you own or operate an ethylene production facility expressly referenced to this subpart XX from 40 CFR part 63, subpart YY.

§ 63.1094 What waste streams are exempt from the requirements of this subpart?

The types of waste described in paragraphs (a) and (b) of this section are exempt from this subpart.

(a) Waste in the form of gases or vapors that is emitted from process fluids.

(b) Waste that is contained in a segregated storm water sewer system.

Waste Requirements

§ 63.1095 What specific requirements must I comply with?

For waste containing the HAP listed in Table 1 to this subpart, you must

comply with all of the requirements of 40 CFR part 61, subpart FF, as modified by paragraphs (a) through (c) of this section.

(a) Use the term "HAP" instead of "benzene" everywhere "benzene" appears in 40 CFR part 61, subpart FF, unless Table 2 to this subpart instructs an alternate substitution for a phrase containing "benzene," as discussed in paragraph (b) of this section. For the purposes of the waste requirements of this subpart, *HAP* means any of the compounds listed in Table 1 to this subpart.

(b) *Apply the wording differences listed in Table 2 to this subpart as specified in paragraphs* (b)(1) and (2) of this section.

(1) Table 2 to this subpart gives a referenced section of 40 CFR part 61, subpart FF, and a phrase that appears in that section. Instead of the phrase in 40 CFR part 61, subpart FF, use the phrase in the last column of Table 2 to this subpart to produce the requirements for ethylene production sources.

(2) If a section of 40 CFR part 61, subpart FF, references another section of subpart FF, you must comply with the referenced section, except use the wording differences specified in Table 2 to this subpart to produce the requirements for ethylene production sources.

(c) Table 3 to this subpart shows the sections of 40 CFR part 61, subpart FF, that are not included in the waste requirements of this subpart.

§ 63.1096 What requirements must I comply with if I transfer waste offsite?

If you elect to transfer waste offsite, you must comply with the requirements in paragraphs (a) through (d) of this section.

(a) Include a notice with the shipment or transport of each waste stream. The notice shall state that the waste stream contains organic HAP that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator initially and whenever there is a change in the required treatment.

(b) You may not transfer the waste stream unless the transferee has submitted to the EPA a written certification that the transferee will manage and treat any waste stream received from a source subject to the requirements of this subpart in accordance with the requirements of this subpart. The certifying entity may revoke the written certification by sending a written statement to the EPA and you giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph (b). Upon expiration of the notice period, you may not transfer the waste stream to the treatment operation.

(c) By providing this written certification to the EPA, the certifying entity accepts responsibility for compliance with the regulatory provisions in paragraph (b) of this section with respect to any shipment of waste covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of those provisions by owners or operators of sources.

(d) Written certifications and revocation statements to the EPA from the transferees of waste shall be signed by the responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable by the treater.

Definitions for Waste Requirements

§ 63.1097 What definitions do I need to know?

(a) Unless defined in paragraph (b) of this section, definitions for terms used in this subpart are provided in the Clean Air Act, § 63.1103(e), or § 61.341, except use the wording differences specified in Table 2 to this subpart to produce the definitions for ethylene production sources.

(b) The following definitions apply to terms used in this subpart:

Process wastewater means water which comes in contact with any of the HAP listed in Table 1 to this subpart during manufacturing or processing operations conducted within an ethylene manufacturing process unit. Process wastewater is not organic wastes, process fluids, product tank drawdown, cooling water blowdown, steam trap condensate, or landfill leachate. Process wastewater includes direct-contact cooling water.

Implementation and Enforcement

§ 63.1098 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1084, 63.1085 and 63.1095, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

TABLES TO SUBPART XX

TABLE 1 TO SUBPART XX.—HAZARDOUS AIR POLLUTANTS

Hazardous air pollutant[a]	CAS number[a]
Benzene	71432
1,3-Butadiene	106990
Cumene	98828
Ethyl benzene	100414
Hexane	110543
Naphthalene	91203
Styrene	100425
Toluene	108883
o-Xylene	95476
m-Xylene	108383
p-Xylene	106423

[a] Includes all isomers of listed pollutant although isomers may have a different CAS number.

TABLE 2 TO SUBPART XX.—SPECIFIC DIFFERENCES IN REQUIREMENTS OF THIS SUBPART AND 40 CFR PART 61, SUBPART FF

To comply with 40 CFR part 63, subpart XX, in * * *	Instead of the phrase:	Use the phrase *:
§ 61.341	benzene	any HAP.
§ 61.342(c)	at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr as determined in paragraph (a) of this section.	to which the wastewater requirements of this subpart XX apply.
§ 61.342(c)(1)	benzene	any HAP.
§ 61.342(c)(2)	benzene concentration	total HAP concentration.
§ 61.342(c)(3)	either paragraph (c)(3)(i) or (ii) of this section	paragraph (c)(3)(i) of this section.
§ 61.348(a)(1)(i)	level	total level.
§ 61.348(b)(2)(i)	benzene	total HAP.
§ 61.349(a)(2)(i)(A)	reduce the organic emissions vented to it by 95 weight percent or greater.	reduce the HAP or total organic compound emissions vented to it by 98 weight percent or greater.
§ 61.349(a)(2)(ii)	recover or control the organic emissions vented to it with an efficiency of 95 weight percent or greater, or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater.	recover or control the HAP or total organic compound emissions vented to it with an efficiency of 98 weight percent or greater.
§ 61.349(a)(2)(iv)(A)	the device shall recover or control the organic emissions vented to it with an efficiency of 95 weight percent or greater, or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater.	the device shall recover or control the HAP or total organic compound emissions vented to it with an efficiency of 98 weight percent or greater.
§ 61.349(a)(2)(iv)(B)	the control device will achieve an emission control efficiency of either 95 percent or greater for organic compounds or 98 percent or greater for benzene.	the control device will achieve an emission control efficiency of 98 percent or greater for HAP or total organic compounds.
§ 61.354(a)(1)	at least once per month by collecting and analyzing one or more samples using the procedures specified in § 61.355(c)(3).	continuously.
§ 61.354(c)(6)(i)	either the concentration level of the organic compounds or the concentration level of benzene.	the concentration level of the organic compounds.
§ 61.354(c)(7)(i)	either the concentration level of the organic compounds or the benzene concentration level.	the concentration level of the organic compounds.
§ 61.354(c)(8)	either the concentration level of the organic compounds or the benzene concentration level.	the concentration level of the organic compounds.
§ 61.354(d)	either the concentration level of the organic compounds or the concentration level of benzene.	the concentration level of the organic compounds.
§ 61.354(d)	either the organic concentration or the benzene concentration.	the organic concentration.
§ 61.355(c)(3)(v)	benzene	total HAP.
§ 61.355(e)(3)	benzene	total HAP.
§ 61.355(e)(4)	benzene	total HAP.
§ 61.355(f)(3)	benzene	total HAP.
§ 61.355(f)(4)(iii)	C=Concentration of benzene	C=Sum of concentrations of HAP measured in the exhaust, ppmv.
§ 61.355(f)(4)(iii)	K=Conversion factor=3.24 kg/m^3[1] for benzene	K=Weighted average density of HAP at standard conditions, kg/m^3.
§ 61.355(g)	benzene concentration	total HAP concentration.
§ 61.355(i)	either the organic reduction efficiency requirement or the benzene reduction efficiency requirement specified under § 61.349(a)(2).	the HAP or total organic compound reduction efficiency specified under § 61.349(a)(2).
§ 61.355(i)(3)(iii)	benzene concentration	concentration of HAP i.
§ 61.355(i)(3)(iii)	molecular weight of benzene	molecular weight of HAP i.
§ 61.355(i)(3)(iii)	number of organic compounds in the vent stream	number of organic compounds or HAP in the vent stream.
§ 61.355(i)(4)	benzene	total HAP.
§ 61.356(b)(1)	waste stream identification, water content, whether or not the waste stream is a process wastewater stream, annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity.	waste stream identification, whether or not the waste stream is a process wastewater stream, range of HAP concentrations, and annual average flow-weighted HAP concentrations.
§ 61.356(j)(8)	organics or concentration of benzene	organics.
§ 61.356(j)(8)	organics or the concentration of benzene	organics.
§ 61.356(j)(9)	organics or the concentration of benzene	organics.
§ 61.357(a)	within 90 days after January 7, 1993	as part of the initial notification report required in paragraph (c) of § 63.1110.
§ 61.357(a)	§ 61.342	40 CFR part 63, subpart XX.
§ 61.357(a)	the report shall include the following information:	the report shall include the information in paragraphs (a)(2) and (a)(3) except (a)(3)(i) of this section.

TABLE 2 TO SUBPART XX.—SPECIFIC DIFFERENCES IN REQUIREMENTS OF THIS SUBPART AND 40 CFR PART 61, SUBPART FF—Continued

To comply with 40 CFR part 63, subpart XX, in * * *	Instead of the phrase:	Use the phrase*:
§61.357(a)(3)(iii)	Annual waste quantity for the waste stream	If the stream is managed or treated in an exempt unit according to §61.348(b), annual waste quantity for the waste stream.
§61.357(a)(4)	paragraphs (a)(1), (2), and (3)	paragraphs (a)(2) and (a)(3) except (a)(3)(i) of this section.
§61.357(d)	if the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr, then the owner or operator.	the owner or operator to which the wastewater requirements of 40 CFR part 63, subpart XX apply.
§61.357(d)(1)	within 90 days after January 7, 1993	with the Notification of Compliance Status report required by paragraph (d) of §63.1110.
§61.357(d)(2)	paragraphs (a)(1) through (3) of this section	paragraphs (a)(2) and (a)(3) except (a)(3)(i) of this section.
§61.357(d)(7)(iii)	concentration of benzene	total concentration of HAP.

*For the purpose of this table and the waste requirements of this subpart, HAP means any of the compounds listed in Table 1 to this subpart.

TABLE 3 TO SUBPART XX.—SECTIONS OF 40 CFR PART 61, SUBPART FF, THAT ARE NOT INCLUDED IN THE REQUIREMENTS FOR THIS SUBPART

Section	Paragraphs
61.340	all.
61.342	(a), (b), (c)(3)(ii), (d), (e), (f).
61.348	(d)(3), (d)(4).
61.355	(a), (j), (k).
61.356	(b)(2)(ii),(b)(3) through (5).
61.357	(a)(1), (a)(3)(i), (b), (c), (d)(3) through (5).

Subpart SS—[Amended]

3. Section 63.983 is amended by:

a. Revising paragraphs (a)(3)(i) and (ii);

b. Revising the heading for paragraph (b); and

c. Adding paragraph (b)(4).

The revisions and addition read as follows:

§63.983 Closed vent systems.

* * * * *

(a) * * *

(3) * * *

(i) Properly install, maintain, and operate a flow indicator that is capable of taking periodic readings. Records shall be generated as specified in §63.998(d)(1)(ii)(A). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. Records shall be generated as specified in §63.998(d)(1)(ii)(B).

* * * * *

(b) *Closed vent system inspection and monitoring requirements.* * * *

(4) For each bypass line, the owner or operator shall comply with paragraph (b)(4)(i) or (ii) of this section.

(i) If a flow indicator is used, take a reading at least once every 15 minutes.

(ii) If the bypass line valve is secured in the non-diverting position, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position, and the vent stream is not diverted through the bypass line.

* * * * *

4. Section 63.992 is added to read as follows:

§63.992 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§63.983(a) and (d), 63.984, 63.685(a), 63.986(a), 63.987(a), 63.988(a), 63.990(a), 63.993(a), 63.994(a), and 63.995(a) under §63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under §63.7(e)(2)(ii) and (f) and as defined in §63.90.

(4) Approval of major alternatives to monitoring under §63.8(f) and as defined in §63.90.

(5) Approval of major alternatives to recordkeeping and reporting under §63.10(f) and as defined in §63.90.

5. Section 63.996 is amended by adding paragraphs (c)(7) through (10) as follows:

§63.996 General monitoring requirements for control and recovery devices.

* * * * *

(c) * * *

(7) For each CPMS, the owner or operator must meet the requirements in paragraphs (c)(7)(i) through (iii) of this section.

(i) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(ii) To calculate a valid hourly average, there must be at least four equally spaced values for that hour, excluding data collected during the periods described in paragraph (c)(5) of this section.

(iii) Calculate a daily average using all of the valid hourly averages for each day.

(8) For each temperature monitoring device, meet the requirements in paragraphs (c)(8)(i) through (viii) of this section.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) For a noncryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 °C or 0.75 percent of the temperature value, whichever is larger.

(iii) For a cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 °C or 2 percent of the temperature value, whichever is larger.

(iv) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(v) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11 °C.

(vi) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7 °C of the process temperature sensor's reading.

(vii) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(viii) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(9) For each pressure measurement device, the owner or operator must meet the requirements in paragraphs (c)(9)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check pressure tap pluggage daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(10) For each pH measurement device, the owner or operator must meet the requirements in paragraphs (c)(10)(i) through (iv) of this section.

(i) Locate the pH sensor in a position that provides a representative measurement of pH.

(ii) Ensure the sample is properly mixed and representative of the fluid to be measured.

(iii) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(iv) At least monthly, inspect all components for integrity and all electrical connections for continuity.

* * * * *

6. Section 63.997 is amended by:

a. Revising paragraph (e)(2)(ii);

b. Revising paragraph (e)(2)(iii) introductory text;

c. Revising paragraph (e)(2)(iii)(D);

d. Adding paragraph (e)(2)(iii)(E);

e. Revising paragraph (e)(2)(iv) introductory text;

f. Removing paragraphs (e)(2)(iv)(B)(*2*) and (*3*); and

g. Adding paragraphs (e)(2)(iv)(F) through (K).

The revisions and additions read as follows:

§63.997 Performance test and compliance assessment requirements for control devices.

* * * * *

(e) * * *

(2) * * *

(ii) *Gas volumetric flow rate.* The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate.

(iii) *Total organic regulated material or TOC concentration.* To determine compliance with a parts per million by volume total organic regulated material or TOC limit, the owner or operator shall use Method 18 or 25A of 40 CFR part 60, appendix A, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A to this part may be used. The procedures specified in paragraphs (e)(2)(iii)(A) through (E) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions.

* * * * *

(D) To measure the total organic regulated material concentration at the outlet of a combustion control device, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference). For a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream using process knowledge or the screening procedure described in Method 18. In conducting the performance test, analyze samples collected at the outlet of the combustion control device as specified in Method 18 or ASTM D6420–99 for the regulated material compounds present at the inlet of the control device.

(E) To measure the TOC concentration of the outlet vent stream, use Method 25A of 40 CFR part 60, appendix A, according to the procedures in paragraphs (e)(2)(iii)(E)(*1*) through (*4*) of this section.

(*1*) Calibrate the instrument on the predominant regulated material compound.

(*2*) The test results are acceptable if the response from the high level calibration gas is at least 20 times the standard deviation for the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale.

(*3*) The span value of the analyzer must be less than 100 parts per million by volume.

(*4*) Report the results as carbon, calculated according to Equation 25A–1 of Method 25A.

(iv) *Percent reduction calculation.* To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18, 25, or 25A of 40 CFR part 60, appendix A, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A to this part may be used. The procedures specified in paragraphs (e)(2)(iv)(A) through (K) of this section shall be used to calculate percent reduction efficiency.

* * * * *

(F) To measure inlet and outlet concentrations of total organic regulated material, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference as specified in §63.14). In conducting the performance test, collect and analyze samples as specified in Method 18 or ASTM D6420–99. You must collect samples simultaneously at the inlet and outlet of the control device. If the performance test is for a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream (*i.e.*, uncontrolled emissions) using process knowledge or the screening procedure described in Method 18. Quantify the emissions for the regulated material compounds present in the inlet gas stream for both the inlet and outlet gas streams for the combustion device.

(G) To determine inlet and outlet concentrations of TOC, use Method 25 of 40 CFR part 60, appendix A. Measure the total gaseous non-methane organic (TGNMO) concentration of the inlet and outlet vent streams using the procedures

of Method 25. Use the TGNMO concentration in Equations 4 and 5 of paragraph (e)(2)(iv)(B) of this section.

(H) Method 25A may be used instead of Method 25 to measure inlet and outlet concentrations of TOC if the condition in either paragraph (e)(2)(iv)(H)(*1*) or (*2*) of this section is met.

(*1*) The concentration at the inlet to the control system and the required level of control would result in exhaust TGNMO concentrations of 50 parts per million by volume or less.

(*2*) Because of the high efficiency of the control device, the anticipated TGNMO concentration of the control device exhaust is 50 parts per million by volume or less, regardless of the inlet concentration.

(I) To measure hydrogen halide and halogen concentrations, use Method 26 in appendix A to 40 CFR part 60. Use a minimum sampling time of 1 hour. Use Method 26A in lieu of Method 26 when measuring emissions at the outlet of a scrubber where the potential for mist carryover exists.

(J) If the uncontrolled or inlet gas stream to the control device contains formaldehyde, you must conduct emissions testing according to paragraph (e)(2)(iv)(J)(*1*) or (*2*) of this section.

(*1*) If you elect to comply with a percent reduction requirement and formaldehyde is the principal regulated material compound (*i.e.*, greater than 50 percent of the regulated material compounds in the stream by volume), you must use Method 316 or 320 of appendix A to this part to measure formaldehyde at the inlet and outlet of the control device. Use the percent reduction in formaldehyde as a surrogate for the percent reduction in total regulated material emissions.

(*2*) If you elect to comply with an outlet total organic regulated material concentration or TOC concentration limit, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (by volume) formaldehyde, you must use Method 316 or 320 of appendix A to this part to separately determine the formaldehyde concentration. Calculate the total organic regulated material concentration or TOC concentration by totaling the formaldehyde emissions measured using Method 316 or 320 and the other regulated material compound emissions measured using Method 18 or 25/25A.

(K) You may use ASTM D6420–99 (incorporated by reference as specified in § 63.14) in lieu of Method 18 of 40 CFR part 60, appendix A, if a minimum of one sample/analysis cycle is completed at least every 15 minutes, and the condition in paragraph (e)(2)(iv)(K)(*1*) or (*2*) of this section is met.

(*1*) The target compounds are listed in Section 1.1 of ASTM D6420–99, and the target concentration is between 150 parts per billion by volume and 100 parts per million by volume.

(*2*) The target compounds are not listed in Section 1.1 of ASTM D6420–99, but are potentially detected by mass spectrometry. In this case, an additional system continuing calibration check after each run, as detailed in Section 10.5.3 of ASTM D6420–99, must be followed, documented, and submitted with the performance test report even if you do not use a moisture condenser or the compound is not considered soluble.

* * * * *

Subpart TT—[Amended]

7. Section 63.1000 is amended by adding paragraph (b) to read as follows:

§ 63.1000 Applicability.

* * * * *

(b) *Implementation and enforcement.* This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(1) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1)(i) through (v) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(i) Approval of alternatives to the non-opacity emissions standards in §§ 63.1003 through 63.1015, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(ii) [Reserved]

(iii) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(iv) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(v) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Subpart UU—[Amended]

8. Section 63.1019 is amended by adding paragraphs (f) and (g) to read as follows:

§ 63.1019 Applicability.

* * * * *

(f) *Implementation and enforcement.* This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(g) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (g)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1022 through 62.1034, under § 63.6(g), and the standards for quality improvement programs in § 63.1035. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Subpart WW—[Amended]

9. Section 63.1067 is added to read as follows:

§ 63.1067 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1062 and 63.1063(a) and (b) for alternative means of emission limitation, under § 63.6(g).

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Subpart YY—[Amended]

10. Section 63.1100 is amended by:

a. Revising the first sentence of paragraph (a);

b. Adding four entries in alphabetical order and two footnotes to Table 1;

c. Revising paragraphs (g)(1)(ii), (g)(2), and (g)(5) and

d. Adding paragraph (g)(6).

The revisions and additions read as follows:

§ 63.1100 Applicability.

(a) *General.* This subpart applies to source categories and affected sources specified in § 63.1103(a) through (h).

* * *

* * * * *

TABLE 1 TO § 63.1100(A).—SOURCE CATEGORY MACT[a] APPLICABILITY

Source category	Storage vessels	Process vents	Transfer racks	Equipment leaks	Waste-water streams	Other	Source category MACT requirements
Carbon Black Production	No	Yes	No	No	No	No	§ 63.1103(f)
Cyanide Chemicals Manufacturing.	Yes	Yes	Yes	Yes	Yes	No	§ 63.1103(g)
Ethylene Production	Yes	Yes	Yes	Yes	Yes	Yes[c]	§ 63.1103(e)
Spandex Production	Yes	Yes	No	No	No	Yes[d]	§ 63.1103(h)

[c] Heat exchange systems as defined in § 63.1103(e)(2).
[d] Fiber spinning lines.

* * * * *

(g) * * *

(1) * * *

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a storage vessel that is part of an existing source that must be controlled according to the storage vessel requirements of this subpart, and that must be controlled according to the storage vessel requirements of subpart Ka or Kb of 40 CFR part 60 is required to comply only with the storage vessel requirements of this subpart.

(2) *Overlap of subpart YY with other regulations for process vents.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a process vent that is part of an existing source that must be controlled according to the process vent requirements of this subpart, and that must be controlled according to the process vent requirements of subpart G (the HON) of this part is in compliance with this subpart if it complies with either the process vent requirements of this subpart or subpart G of this part, and the owner or operator has notified the Administrator in the Notification of Compliance Status report required by § 63.1110(a)(4).

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a process vent that is part of an existing source that must be controlled according to the process vent requirements of this subpart, and that must be controlled according to the process vent requirements of subpart RRR or NNN of 40 CFR part 60 is required to comply only with the process vent requirements of this subpart.

* * * * *

(5) *Overlap of subpart YY with other regulations for wastewater for source categories other than ethylene production.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to the wastewater requirements of this subpart and the wastewater requirements of subparts F and G of this part (the HON) shall be deemed to be in compliance with the requirements of this subpart if it complies with either set of requirements. In any instance where a source subject to this subpart is collocated with a Synthetic Organic Chemical Manufacturing Industry (SOCMI) source, and a single wastewater treatment facility treats both Group 1 wastewaters and wastewater residuals from the source subject to this subpart and wastewaters from the SOCMI source, a certification by the treatment facility that they will manage and treat the waste in conformity with the specific control requirements set forth in §§ 63.133 through 63.147 will also be deemed sufficient to satisfy the certification requirements for wastewater treatment under this subpart. This paragraph does not apply to the ethylene production source category.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to control requirements in the Benzene Waste Operations NESHAP (subpart FF of 40 CFR part 61) and this subpart is required to comply with both rules. This paragraph (g)(5)(ii) does not apply to the ethylene production source category.

(6) *Overlap of subpart YY with other regulations for waste for the ethylene production source category.*

(i) After the compliance date specified in § 63.1102, a waste stream that is conveyed, stored, or treated in a

wastewater stream management unit, waste management unit, or wastewater treatment system that receives streams subject to both the control requirements of § 63.1103(e)(2) for ethylene production sources and the provisions of §§ 63.133 through 63.147 shall comply as specified in paragraphs (g)(6)(i)(A) through (C) of this section. Compliance with the provisions of this paragraph (g)(6)(i) shall constitute compliance with the requirements of this subpart for that waste stream.

(A) Comply with the provisions in §§ 63.133 through 63.137 and 63.140 for all equipment used in the storage and conveyance of the waste stream.

(B) Comply with the provisions in §§ 63.1103(e), 63.138, and 63.139 for the treatment and control of the waste stream.

(C) Comply with the provisions in §§ 63.143 through 63.148 for monitoring and inspections of equipment and for recordkeeping and reporting requirements. The owner or operator is not required to comply with the monitoring, recordkeeping, and reporting requirements associated with the treatment and control requirements in §§ 61.355 through 61.357.

(ii) After the compliance date specified in § 63.1102, compliance with § 63.1103(e) shall constitute compliance with the Benzene Waste Operations NESHAP (subpart FF of 40 CFR part 61) for waste streams that are subject to both the control requirements of § 63.1103(e)(2) for ethylene production sources and the control requirements of 40 CFR part 61, subpart FF.

11. Section 63.1101 is amended by:

a. Adding a sentence at the end of the introductory text;

b. Adding a sentence to the end of the definition of "process vent;"

c. Revising the definitions of "shutdown" and "total organic compounds."

The revisions read as follows:

§ 63.1101 Definitions.

* * * The definitions in this section do not apply to waste requirements for ethylene production sources.

* * * * *

Process vent * * * This definition does not apply to ethylene production sources. Ethylene manufacturing process vents are defined in § 63.1103(e)(2).

* * * * *

Shutdown means the cessation of operation of a regulated source and equipment required or used to comply with this subpart, or the emptying and degassing of a storage vessel. For the purposes of this subpart, shutdown includes, but is not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. Shutdown includes the decoking of ethylene manufacturing process unit furnaces.

* * * * *

Total organic compounds or (TOC) means the total gaseous organic compounds (minus methane and ethane) in a vent stream, with the concentrations expressed on a carbon basis.

* * * * *

12. Section 63.1102 is revised to read as follows:

§ 63.1102 Compliance Schedule.

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production; § 63.1103(b)(1)(i) for acrylic and monacrylic fiber production; § 63.1103(c)(1)(i) for hydrogen fluoride production; § 63.1103(d)(1)(i) for polycarbonate production; § 63.1103(e)(1)(i) for ethylene production; § 63.1103(f)(1)(i) for carbon black production; § 63.1103(g)(1)(i) for cyanide chemicals manufacturing; or § 63.1103(h)(1)(i) for spandex production shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart according to the schedule in paragraph (a)(1) or (2) of this section, as appropriate. Proposal and effective dates are specified in Table 1 to this section.

(1) *Compliance dates for new and reconstructed sources.* (i) The owner or operator of a new or reconstructed affected source that commences construction or reconstruction after the proposal date, and that has an initial startup before the effective date of standards for an affected source, shall comply with this subpart no later than the applicable effective date in Table 1 to this section.

(ii) The owner or operator of a new or reconstructed affected source that has an initial startup after the applicable effective date in Table 1 to § 63.1102 shall comply with this subpart upon startup of the source.

(iii) The owner or operator of an affected source that commences construction or reconstruction after the proposal date, but before the effective date in Table 1 to § 63.1102, shall comply with this subpart no later than the date 3 years after the effective date if the conditions in paragraphs (a)(1)(iii)(A) and (B) of this section are met.

(A) The promulgated standards are more stringent than the proposed standards.

(B) The owner or operator complies with this subpart as proposed during the 3-year period immediately after the effective date of standards for the affected source.

(2) *Compliance dates for existing sources.* (i) The owner or operator of an existing affected source shall comply with the requirements of this subpart within 3 years after the effective date of standards for the affected source.

(ii) The owner or operator of an area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source shall be subject to the relevant standards for existing sources under this subpart. Such sources shall comply with the relevant standards within 3 years of becoming a major source.

TABLE 1 TO § 63.1102.—SOURCE CATEGORY PROPOSAL AND EFFECTIVE DATES

Source category	Proposal date	Effective date
1. Acetal Resins Production	October 14, 1998	June 29, 1999.
2. Acrylic and Modacrylic Fibers Production	October 14, 1998	June 29, 1999.
3. Hydrogen Fluoride Production	October 14, 1998	June 29, 1999.
4. Polycarbonate Production	October 14, 1998	June 29, 1999.
5. Ethylene Production	December 6, 2000	[DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER].
6. Carbon Black Production	December 6, 2000	[DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER].
7. Cyanide Chemicals Manufacturing	December 6, 2000	[DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER].

TABLE 1 TO § 63.1102.—SOURCE CATEGORY PROPOSAL AND EFFECTIVE DATES—Continued

Source category	Proposal date	Effective date
8. Spandex Production	December 6, 2000	[DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER].

* * * * *

13. Section 63.1103 is amended by adding paragraphs (e) through (h), and adding Tables 7 through 10 as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(e) *Ethylene production applicability, definitions, and requirements*—(1) *Applicability.*—(i) *Affected source.* For the ethylene production (as defined in paragraph (e)(2) of this section) source category, the affected source shall comprise all emission points listed in paragraphs (e)(1)(i)(A) through (F) of this section that are associated with an ethylene manufacturing process unit located at a major source, as defined in section 112(a) of the Act.

(A) All storage vessels (as defined in § 63.1101) that store liquids containing organic HAP.

(B) All process vents (as defined in paragraph (e)(2) of this section) from continuous unit operations.

(C) All transfer racks (as defined in paragraph (e)(2) of this section) that load HAP-containing material.

(D) Equipment (as defined in § 63.1101) that contains or contacts organic HAP.

(E) All waste streams (as defined in paragraph (e)(2) of this section) associated with the ethylene production process.

(F) All heat exchange systems (as defined in paragraph (e)(2) of this section) associated with the ethylene production process.

(ii) *Exceptions.* The emission points listed in paragraphs (e)(1)(ii)(A) through (I) of this section are in the ethylene production source category but are not subject to the requirements of paragraph (e)(3) of this section.

(A) Equipment that is located within an ethylene manufacturing process unit that is subject to this subpart but does not contain organic HAP.

(B) Stormwater from segregated sewers.

(C) Water from fire-fighting and deluge systems in segregated sewers.

(D) Spills.

(E) Water from safety showers.

(F) Water from testing of deluge systems.

(G) Vessels storing organic liquids that contain organic HAP as impurities.

(H) Transfer racks, loading arms, or loading hoses that only transfer liquids containing organic HAP as impurities.

(I) Transfer racks, loading arms, or loading hoses that vapor balance during all transfer operations.

(iii) *Compliance schedule.* The compliance schedule for affected sources as defined in paragraph (e)(1)(i) of this section is specified in § 63.1102.

(2) *Definitions. Ethylene manufacturing process vent* means a gas stream containing greater than 0.005 weight-percent and 20 parts per million by volume HAP that is continuously discharged during operation of an ethylene manufacturing process unit, as defined in this section. Ethylene manufacturing process vents are gas streams that are discharged to the atmosphere (or the point of entry into a control device, if any) either directly or after passing through one or more recovery devices. Ethylene manufacturing process vents do not include relief valve discharges; gaseous streams routed to a fuel gas system; leaks from equipment regulated under this subpart; episodic or nonroutine releases such as those associated with startup, shutdown, and malfunction; and in situ sampling systems (online analyzers).

Ethylene manufacturing process unit means a process unit that is specifically utilized for the production of ethylene/propylene, including all separation and purification processes.

Ethylene production means the process by which ethylene/propylene is produced as a product or an intermediate by either a pyrolysis process (hydrocarbons subjected to high temperatures in the presence of steam) or separation from a petroleum refining stream. The ethylene production process includes the separation of ethylene/propylene from associated streams such as products made from compounds composed of four carbon atoms (C4), pyrolysis gasoline, and pyrolysis fuel oil. The ethylene production process does not include the manufacture of synthetic organic chemicals such as the production of butadiene from the C4 stream and aromatics from pyrolysis gasoline.

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water). A heat exchange system can include an entire recirculating or once-through cooling system.

Transfer rack means the collection of loading arms and loading hoses, at a single loading rack, that are associated with an ethylene manufacturing process unit subject to this subpart and are used to fill tank trucks and/or railcars with organic HAP. Transfer rack includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves. Transfer rack does not include racks, arms, or hoses that contain organic HAP only as impurities; or racks, arms, or hoses that vapor balance during all loading operations.

Waste means any material resulting from industrial, commercial, mining, or agricultural operations, or from community activities, that is discarded or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled, or discharged.

Waste stream means the waste generated by a particular process unit, product tank, or waste management unit. The characteristics of the waste stream (*e.g.*, flow rate, HAP concentration, water content) are determined at the point of waste generation. Examples of a waste stream include process wastewater, product tank drawdown, sludge and slop oil removed from waste management units, and landfill leachate.

(3) *Requirements.* Table 7 to this section specifies the ethylene production source category requirements for new and existing sources. The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in Table 7 to § 63.1103. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, excluding paragraphs (d), (g), (h), (i), (j), (l)(1), and (n). An owner or operator must perform the applicability assessment procedures and methods for equipment leaks specified in § 63.1107. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting

and recordkeeping of such events. Procedures for approval of alternate means of emission limitations are specified in §63.1113.

TABLE 7 TO §63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *
1. A storage vessel (as defined in §63.1101) that stores liquid containing organic HAP.	The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals and the capacity of the vessel is ≥4 cubic meters but <95 cubic meters.	a. Fill the vessel through a submerged pipe; or b. Comply with the requirements for storage vessels with capacities ≥95 cubic meters.
2. A storage vessel (as defined in §63.1101) that stores liquid containing organic HAP.	The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥95 cubic meters	a. Comply with the requirements of subpart WW of this part; or b. Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in §63.982(a)(1).
3. A storage vessel (as defined in §63.1101) that stores liquid containing organic HAP.	The maximum true vapor pressure of total organic HAP is ≥76.6 kilopascals.	Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in §63.982(a)(1).
4. A process vent (as defined in paragraph (e)(2) of this section) from continuous unit operations.	The vent stream has an average flow rate ≥ 0.011 scmm; and the vent stream has a total organic HAP concentration ≥50 parts per million by volume.	Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in §63.982(a)(2).
5. A transfer rack (as defined in paragraph (e)(2) of this section).	Materials loaded have a true vapor pressure of total organic HAP ≥3.4 kilopascals; and ≥ 76 cubic meters per day (averaged over any consecutive 30-day period) of HAP-containing material is loaded.	a. Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices as specified in §63.1105; or process piping designed to collect the HAP-containing vapors displaced from tank trucks or railcars during loading and to route it to a process, a fuel gas system, or a vapor balance system, as specified in §63.1105.
6. Equipment (as defined in §63.1101) that contains or contacts organic HAP.	The equipment contains or contacts ≥5 weight-percent organic HAP; and the equipment is in service ≥300 hours per year; and the equipment is not in vacuum service	Comply with the requirements of subpart UU of this part.
7. Processes that generate process wastewater or maintenance wastewater (as defined in paragraph (e)(2) of this section).	The wastewater contains any of the following HAP: Benzene, cumene, ethyl benzene, hexane, methyl ethyl ketone, naphthalene, phenol, styrene, toluene, o-xylene, m-xylene, p-xylene, or 1,3-butadiene.	Comply with the waste requirements of subpart XX of this part. For ethylene manufacturing process unit waste stream requirements, words have the meanings specified in subpart XX.
8. A heat exchange system (as defined in paragraph (e)(2) of this section).	.....	Comply with the heat exchange system requirements of subpart XX of this part.

(f) *Carbon black production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the carbon black production source category (as defined in paragraph (f)(2) of this section), the affected source shall include each carbon black production process unit located at a major source, as defined in section 112(a) of the Act. The affected source shall also include all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit.

(ii) *Compliance schedule.* The compliance schedule for the carbon black production affected source, as defined in paragraph (f)(1)(i) of this section, is specified in §63.1102.

(2) *Definitions.*

Carbon black production means the production of carbon black by either the furnace, thermal, acetylene, or lampblack processes.

Carbon black production process unit means the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a carbon black product. For the purposes of this subpart, a carbon black production process unit includes reactors and associated operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A carbon black production process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

Dryer means a rotary-kiln dryer that is heated externally and is used to dry wet pellets in the wet pelletization process.

Main unit filter means the filter that separates the carbon black from the tailgas.

Miscellaneous process vents means all process vents associated with a carbon black production process unit other than the main unit filter, process filter, purge filter, and dryer process vents.

Process filter means the filter that separates the carbon black from the conveying air.

Purge filter means the filter that separates the carbon black from the dryer exhaust.

(3) *Requirements.* Table 8 of this section specifies the carbon black production standards for existing and new sources. Applicability assessment procedures and methods are specified in §63.1104. An owner or operator of an affected source is not required to perform applicability tests, or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in §63.1113.

TABLE 8 TO §63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CARBON BLACK PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *
A main unit filter process vent	The HAP concentration of the emission stream is equal to or greater than 260 parts per million by volume[a].	a. Reduce emissions of total HAP by using a flare meeting the requirements of subpart SS of this part; or b. Reduce emissions of total HAP by 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in §63.982(a)(2).

[a] The weight-percent organic HAP is determined according to the procedures specified in §63.1104(e).

(g) *Cyanide chemicals manufacturing applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the cyanide chemicals manufacturing source category, the affected source shall include each cyanide chemicals manufacturing process unit located at a major source, as defined in section 112(a) of the Act. The affected source shall also include all waste management units, maintenance wastewater, and equipment (as defined in §63.1101) that contain or contact cyanide chemicals that are associated with the cyanide chemicals manufacturing process unit.

(ii) *Compliance schedule.* The compliance schedule for the affected source, as defined in paragraph (f)(1)(i) of this section, is specified in §63.1102.

(2) *Definitions.*

Andrussow process unit means a process unit that produces hydrogen cyanide by reacting methane and ammonia in the presence of oxygen over a platinum/rhodium catalyst. An Andrussow process unit begins at the point at which the raw materials are stored and ends at the point at which refined hydrogen cyanide is utilized as a raw material in a downstream process or is shipped offsite. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide, prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the Andrussow process unit.

Blausaure Methane Anlage (BMA) process unit means a process unit that produces hydrogen cyanide by reacting methane and ammonia over a platinum catalyst. A BMA process unit begins at the point at which raw materials are stored and ends at the point at which refined hydrogen cyanide is used as a raw material in a downstream process or is shipped offsite. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide, prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the BMA process unit.

Byproduct means a chemical that is produced coincidentally during the production of another chemical.

Cyanide chemicals manufacturing process unit or *CCMPU* means the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a cyanide chemicals product. A cyanide chemicals manufacturing process unit may be any one of the following: an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio hydrogen cyanide process unit. For the purpose of this subpart, a cyanide chemicals manufacturing process unit includes reactors and associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A cyanide chemicals manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

Cyanide chemicals product means either hydrogen cyanide or sodium cyanide.

Dry-end process vent means a process vent originating from the drum filter or any other unit operation in the dry end of a sodium cyanide manufacturing process unit. For the purposes of this subpart, the dry end of the sodium cyanide process unit begins in the unit

operation where water is removed from the sodium cyanide, usually in the drum filter, and ends when the sodium cyanide is used as a raw material in a downstream process, or is shipped offsite.

Raw hydrogen cyanide means hydrogen cyanide that has not been through the refining process. Raw hydrogen cyanide usually has a hydrogen cyanide concentration less than 10 percent.

Refined hydrogen cyanide means hydrogen cyanide that has been through the refining process. Refined hydrogen cyanide usually has a hydrogen cyanide concentration greater than 99 percent.

Refining process means the collection of equipment in a cyanide chemicals manufacturing processing unit used to concentrate raw hydrogen cyanide from a concentration less than 10 percent to refined hydrogen cyanide at a concentration greater than 99 percent.

Sodium cyanide process unit means a process unit that produces sodium cyanide by reacting hydrogen cyanide and sodium hydroxide via the neutralization, or wet, process. A sodium cyanide process unit begins at the unit operation where refined hydrogen cyanide is reacted with sodium hydroxide and ends at the point the solid sodium cyanide product is shipped offsite or used as a raw material in a downstream process. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide prior to the refining process, the unit operation where sodium cyanide is formed is not considered to be part of the sodium cyanide process unit. For this type of process, the sodium cyanide process unit begins at the point that the aqueous sodium cyanide stream leaves the unit operation where the sodium cyanide is formed.

Sohio hydrogen cyanide process unit means a process unit that produces hydrogen cyanide as a byproduct of the acrylonitrile production process when acrylonitrile is manufactured using the Sohio process. A Sohio hydrogen cyanide process unit begins at the point the hydrogen cyanide leaves the unit operation where the hydrogen cyanide is separated from the acrylonitrile (usually referred to as the light ends column). The Sohio hydrogen cyanide process unit ends at the point refined hydrogen cyanide is used as a raw material in a downstream process or is shipped offsite. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide, prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the Sohio hydrogen cyanide process unit.

Wet-end process vent means a process vent originating from the reactor, crystallizer, or any other unit operation in the wet end of the sodium cyanide process unit. For the purposes of this subpart, the wet end of the sodium cyanide process unit begins at the point at which the raw materials are stored and ends just prior to the unit operation where water is removed from the sodium cyanide, usually in the drum filter.

(3) *Requirements.* Table 9 of this section specifies the cyanide chemicals manufacturing standards applicable to existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests, or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

(4) *Determination of overall HAP emissions reductions for a process unit.* (i) The owner or operator shall determine the overall HAP emissions reductions for process vents in a process unit using Equation 1 of this section. The overall organic HAP emissions reductions shall be determined for all process vents in the process unit.

$$RED_{CCMPU} = \left(\frac{\sum_{i=1}^{n} \left(E_{unc,i}\right)\left(\frac{R_i}{100}\right)}{\sum_{i=1}^{n} \left(E_{unc,i}\right) + \sum_{j=1}^{m} \left(E_{unc,j}\right)} \right) * 100 \qquad \text{(Eq. 1)}$$

Where:

RED_{CCMPU} = Overall HAP emission reduction for the group of process vents in the CCMPU, percent.

$E_{unc,i}$ = Uncontrolled HAP emissions from process vent i that is controlled by using a combustion, recovery, or recapture device, kg/hr.

n = Number of process vents in the process unit that are controlled by using a combustion, recovery, or recapture device.

R_i = Control efficiency of the combustion, recovery, or recapture device used to control HAP emissions from vent i, determined in accordance with paragraph (g)(4)(ii) of this section.

$E_{unc,j}$ = Uncontrolled HAP emissions from process vent j that is not controlled by using a combustion, recovery, or recapture device, kg/hr.

m = Number of process vents in the process unit that are not controlled by using a combustion, recovery, or recapture device.

(ii) The control efficiency, R_i, shall be assigned as specified in paragraph (g)(4)(i)(A) or (B) of this section.

(A) If the process vent is controlled using a flare in accordance with the provisions of § 63.987, or a combustion device in accordance with the provisions of § 63.988(b)(2), for which a performance test has not been conducted, the control efficiency shall be assumed to be 98 percent.

(B) If the process vent is controlled using a combustion, recovery, or recapture device for which a performance test has been conducted in accordance with the provisions of § 63.997, the control efficiency shall be the efficiency determined from the performance test.

TABLE 9 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *
1. A storage vessel	The storage vessel contains refined hydrogen cyanide.	a. Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or b. Reduce emissions of hydrogen cyanide by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(1) or (d).
2. One or more process vents from continuous unit operations in an Andrussow or BMA process unit.	.....	During all periods, except periods of startup, shutdown, and malfunction, either: a. Reduce overall emissions of total HAP from the collection of process vents from continuous unit operations in the process unit by 99 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements of § 63.982(a)(2); or b. Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by 99 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).
3. One or more process vents from continuous unit operations in an Andrussow or BMA process unit.	.....	During periods of startup, shutdown, and malfunction, either: a. Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by using a flare meeting the requirements of § 63.982(b); or b. Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by 98 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).
4. One or more process vents from continuous unit operations in a Sohio hydrogen cyanide process unit.	.....	a. Reduce overall emissions of hydrogen cyanide from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements specified in § 63.982(a)(2); or b. Reduce emissions of hydrogen cyanide from each process vent from a continuous unit operation in the process unit by using a flare meeting the requirements of § 63.982(b); or c. Reduce emissions of hydrogen cyanide from each process vent from a continuous unit operation in the process unit by 98 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).

TABLE 9 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate * * *	And if * * *	Then you must * * *
5. One or more wet-end process vents, as defined in paragraph (g)(2) of this section, in a sodium cyanide process unit.	.....	a. Reduce overall emissions of total HAP from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements § 63.982(a)(2); or b. Reduce emissions of total HAP from each wet-end process vent in the process unit by using a flare meeting the requirements of § 63.982(b); or c. Reduce emissions of total HAP from each wet-end process vent in the process unit by 98 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).
6. One or more dry-end process vents, as defined in paragraph (g)(2) of this section, in a sodium cyanide process unit.	.....	a. Reduce overall emissions of sodium cyanide from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements of § 63.982(a)(2); or b. Reduce emissions of sodium cyanide from each dry-end process vent in the process unit by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).
7. A transfer rack	The transfer rack is used to load refined hydrogen cyanide into tank trucks and/or rail cars.	a. Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or b. Reduce emissions of hydrogen cyanide by 98 weight-percent or a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements specified in § 63.982(c)(1), (c)(2), or (d).
8. A new cyanide chemicals manufacturing process unit that generates process wastewater.	The process wastewater is from HCN purification, ammonia purification, or flare blowdown.	Achieve a combined removal and control of HAP from the wastewater of 93 weight-percent.
9. A cyanide chemicals manufacturing process unit that generates maintenance wastewater.	The maintenance wastewater contains hydrogen cyanide or acetonitrile.	Comply with the requirements of § 63.1106(b).
10. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii)..	Comply with the requirements in Table 35 of subpart G of this part.
11. Equipment, as defined under § 63.1101	The equipment contains or contacts hydrogen cyanide and operates equal to or greater than 300 hours per year.	Comply with either subpart TT or UU of this part, with the exception that open-ended lines that contain or contact hydrogen cyanide are not to be capped.

(h) *Spandex production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the spandex production (as defined in paragraph (h)(2) of this section) source category, the affected source shall comprise all emission points listed in paragraphs (h)(1)(i)(A) through (C) of this section that are associated with a reaction spinning spandex production process unit located at a major source, as defined in section 112(a) of the Act.

(A) All process vents (as defined in § 63.1101).

(B) All storage vessels (as defined in § 63.1101) that store liquids containing organic HAP.

(C) All spandex fiber spinning lines using a spinning solution having organic HAP.

(ii) *Exceptions.* The emission points listed in paragraphs (h)(1)(ii)(A) and (B) of this section are in the spandex production source category but are not subject to the requirements of paragraph (h)(3) of this section.

(A) Equipment that is located within a spandex production process unit that is subject to this subpart but does not contain organic HAP.

(B) Vessels storing organic liquids that contain organic HAP as impurities.

(iii) *Compliance schedule.* The compliance schedule for affected sources, as defined in paragraph (h)(1)(i) of this section, is specified in paragraph (b) of § 63.1102.

(2) *Definitions.*

Spandex or Spandex fiber means a manufactured synthetic fiber in which the fiber-forming substance is a long-chain polymer comprised of at least 85 percent by mass of a segmented polyurethane.

Spandex production means the production of synthetic spandex fibers.

Spandex production process unit means a process unit that is specifically used for the production of synthetic spandex fibers.

Fiber spinning line means the group of equipment and process vents associated with spandex fiber spinning operations. The fiber spinning line includes the blending and dissolving tanks, spinning solution filters, spinning units, spin bath tanks, and the equipment used downstream of the spin bath to wash, draw, or dry on the wet belt the spun fiber.

(3) *Requirements.* Table 10 to this section specifies the spandex production source category requirements for new and existing sources. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, excluding paragraphs (b)(1), (d), (g), (h), (i), (j), (l)(1), and (n). General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. Procedures for approval of alternate means of emission limitations are specified in § 63.1113.

TABLE 10 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A SPANDEX PRODUCTION PROCESS UNIT AT A NEW OR EXISTING SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *
1. A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	The maximum true vapor pressure of the organic HAP is ≥ 3.4 kilopascals; and. The capacity of the vessel is ≥ 47 cubic meters.	a. Comply with the requirements of subpart WW of this part; or b. Reduce emissions of organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(1).
2. A process vent	.....	Reduce emissions of organic HAP by 95 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(2).
3. A fiber spinning line	.....	Operate the fiber spinning line such that emissions are captured and vented through a closed vent system to a control device that complies with the requirements of subpart SS of this part, as specified in § 63.982(a)(2). If a control device other than a flare is used, HAP emissions must be reduced by 95 weight-percent; or total organic HAP or TOC must be reduced to a concentration of 20 parts per million by volume, whichever is less stringent.

14. Section 63.1104 is amended by:

a. Revising the last sentence of paragraph (a);

b. Revising the first sentence of paragraph (e);

c. Revising the first sentence of paragraph (f)(1);

d. Revising the last sentence of paragraph (k) introductory text; and

e. Revising the first sentence of paragraph (m)(2)(i) introductory text.

The revisions read as follows:

§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.

(a) * * * The owner or operator of a process vent is not required to determine the criteria specified for a process vent that is being controlled in accordance with the applicable weight-percent, TOC concentration, or organic HAP concentration requirement in § 63.1103.

* * * * *

(e) *TOC or organic HAP concentration.* The TOC or organic HAP concentrations, used for TRE index value calculations in paragraph (j) of this section, shall be determined based on paragraph (e)(1) or (k) of this section, or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. * * *

(f) * * *

(1) Use Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate. * * *

* * * * *

(k) * * * If a process vent flow rate or process vent organic HAP or TOC concentration is being determined for

comparison with the applicable flow rate or concentration value presented in the tables in § 63.1103 to determine control requirement applicability, engineering assessment may be used to determine the flow rate or concentration for the representative operating conditions expected to yield the highest flow rate or concentration.

* * * * *

(m) * * *

(2) *Process change.*

(i) Whenever a process vent becomes subject to control requirements under this subpart as a result of a process change, the owner or operator shall submit a report within 60 days after the performance test or applicability assessment, whichever is sooner.* * *

* * * * *

15. Section 63.1105 is added to read as follows:

§ 63.1105 Transfer racks.

(a) *Design requirements.* The owner or operator shall equip each transfer rack with one of the control options listed in paragraphs (a)(1) through (4) of this section.

(1) A closed vent system designed to collect HAP-containing vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a flare. The owner or operator must meet the requirements of § 63.982(a)(3).

(2) A closed vent system designed to collect HAP-containing vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a control device other than a flare. The owner or operator must meet the requirements of § 63.982(a)(3).

(3) Process piping designed to collect the HAP vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a process where the HAP vapors shall predominantly meet one of, or a combination of, the ends specified in paragraphs (a)(3)(i) through (iv) of this section or to a fuel gas system. The owner or operator must meet the requirements of § 63.982(a)(3).

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not HAP;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(4) Process piping designed to collect the HAP vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a vapor balance system. The vapor balance system must be designed to route the collected HAP vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected HAP vapors to a process.

(b) *Operating requirements.* An owner or operator of a transfer rack shall operate it in such a manner that emissions are routed through the equipment specified in paragraph (a) of this section.

(c) *Control device operation.* Whenever HAP emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(d) *Tank trucks and railcars.* The owner or operator shall load HAP-containing materials only into tank trucks and railcars that meet the requirement in paragraph (d)(1) or (2) of this section, and shall maintain the records specified in paragraph (i) of this section.

(1) Have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months as determined by the procedures in paragraph (h) of this section. Vapor-tight means that the pressure in a truck or railcar tank will not drop more than 750 pascals (0.11 pound per square inch) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.63 pound per square inch).

(e) *Pressure relief device.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the loading equipment of each tank truck or railcar shall begin to open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to the requirements of this paragraph.

(f) *Compatible system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall load HAP-containing materials only to tank trucks or railcars equipped with a vapor collection system that is compatible with the transfer rack's closed vent system or process piping.

(g) *Loading while systems connected.* The owner or operator of a transfer rack subject to this subpart shall load HAP-containing material only to tank trucks or railcars whose collection systems are connected to the transfer rack's closed vent system or process piping.

(h) *Vapor tightness procedures.* For the purposes of demonstrating vapor tightness to determine compliance with paragraph (d)(2) of this section, the procedures and equipment specified in paragraphs (h)(1) and (2) shall be used.

(1) The pressure test procedures specified in Method 27 of appendix A to 40 CFR part 60.

(2) A pressure measurement device that has a precision of ± 2.5 millimeters of mercury (0.10 inch) or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(i) *Recordkeeping.* The owner or operator of a transfer rack shall record that the verification of DOT tank certification or Method 27 of appendix A to 40 CFR part 60 testing required in § 63.84(c) has been performed. Various methods for the record of verification can be used such as: A check off on a log sheet, a list of DQT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on-site that do not have the appropriate documentation.

* * * * *

16. Subpart YY is proposed to be amended by adding § 63.1114 to read as follows:

§ 63.1114 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the nonopacity emissions standards in § 63.1103(a)(3), (b)(3) through (5), (c)(3), (d)(3), (e)(3), (f)(3), (g)(3) and (4), and (h)(3) under § 63.6(g). Follow the requirements in § 63.1113 to request permission to use an alternative means of emission limitation. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

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Federal Register

Wednesday,
December 6, 2000

Part V

Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Proposed Rule

Department of Agriculture
Nuclear Regulatory Commission
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Tennessee Valley Authority
Department of State
Agency for International Development
Department of Justice
Department of Labor
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum and Library Services
Corporation for National and Community Service
Department of Transportation

DEPARTMENT OF AGRICULTURE
7 CFR Parts 15, 15b
RIN 0566–AB78

NUCLEAR REGULATORY COMMISSION
10 CFR Part 4
RIN 3130–AG65

DEPARTMENT OF ENERGY
10 CFR Part 1040
RIN 1901–AA86

SMALL BUSINESS ADMINISTRATION
13 CFR Parts 112, 117
RIN 3245–AE58

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
14 CFR Parts 1250, 1251, 1252
RIN 2700–AC41

DEPARTMENT OF COMMERCE
15 CFR Parts 8, 8b, 20
RIN 0690–AA30

TENNESSEE VALLEY AUTHORITY
18 CFR Parts 1302, 1307, 1309
RIN 3316–AA20

DEPARTMENT OF STATE
22 CFR Parts 141, 142, 143
RIN 1400–AB17

AGENCY FOR INTERNATIONAL DEVELOPMENT
22 CFR Parts 209, 217, 218
RIN 0412–AA45

DEPARTMENT OF JUSTICE
28 CFR Part 42
RIN 1190–AA49

DEPARTMENT OF LABOR
29 CFR Parts 31, 32
RIN 1291–AA31

DEPARTMENT OF VETERANS AFFAIRS
38 CFR Part 18
RIN 2900–AK13

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 7
RIN 2020–AA43

GENERAL SERVICES ADMINISTRATION
41 CFR Parts 101–6, 101–8
RIN 3090–AH33

DEPARTMENT OF THE INTERIOR
43 CFR Part 17
RIN 1090–AA77

FEDERAL EMERGENCY MANAGEMENT AGENCY
44 CFR Part 7
RIN 3067–AD14

NATIONAL SCIENCE FOUNDATION
45 CFR Parts 605, 611, 617
RIN 3145–AA38

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
National Endowment for the Arts
45 CFR Parts 1110, 1151, 1156
RIN 3135–AA17

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
National Endowment for the Humanities
45 CFR Parts 1110, 1170
RIN 3136–AA24

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
Institute of Museum and Library Services
45 CFR Part 1110
RIN 3137–AA11

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
45 CFR Parts 1203, 1232
RIN 3045–AA29

DEPARTMENT OF TRANSPORTATION
49 CFR Parts 21, 27
RIN 2105–AC96

Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCIES: Department of Agriculture; Nuclear Regulatory Commission; Department of Energy; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Tennessee Valley Authority; Department of State; Agency for International Development; Department of Justice; Department of Labor; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency; National Science Foundation; National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities; Corporation for National and Community Service; Department of Transportation (collectively, "the Agencies").

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Agencies propose to amend their regulations implementing Title VI of the Civil Rights Act of 1964 ("Title VI"), Section 504 of the Rehabilitation Act of 1972 ("Section 504"), and the Age Discrimination Act of 1975 ("Age Discrimination Act"). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act ("CRRA") added definitions of "program or activity" and "program" to Title VI and added a definition of "program or activity" to Section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. This proposed regulation incorporates the CRRA's definition of "program or activity" and "program" into Title VI, Section 504, and Age Discrimination Act regulations of the Agencies, and promotes consistent and adequate enforcement of these statutes by the Agencies.

DATES: We must receive your comments on or before January 5, 2001.

ADDRESSES: Address all comments about these proposed regulations to Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66560, Washington, D.C. 20035–6560, facsimile (202) 307–0595.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, (202) 307–2222 voice, (202) 307–2678 TTY, (202) 307–0595 fax.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 ("Regulatory Planning and Review") and its overall requirement of reducing regulatory burdens that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of these Federal civil rights requirements.

During and after the comment period, you may inspect all public comments about these proposed regulations at the Coordination and Review Section, 1425 New York Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 307–2222 voice or (202) 307–2678 TTY.

Overview

The Agencies propose to amend their civil rights regulations to conform to provisions of the Civil Rights Restoration Act of 1987 ("CRRA"), Pub. L. 100–259, regarding the scope of coverage under civil rights statutes they administer. These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.* ("Title VI"); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 ("Section 504"); and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.* ("Age Discrimination Act"). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance; Section 504 prohibits discrimination on the basis of disability in all programs or activities that receive Federal financial assistance; and the Age Discrimination Act prohibits discrimination on the basis of age in all programs or activities that receive Federal financial assistance. (Note that the CRRA does not affect coverage under federal employment nondiscrimination statutes, such as Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.)

Background Information

The principal proposed conforming change is to amend each of these regulations to add a definition of "program or activity" or "program" that reflects the statutory definition of "program or activity" or "program" enacted as part of the CRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of beneficiaries, recipients, government entities, and other interested parties about the scope of civil rights coverage. This proposal also conforms to a final rule under Title IX of the Education Amendments of 1972, as amended, to establish common regulations for 21 Federal agencies published on August 30, 2000. 65 Fed. Reg. 52857. That common rule incorporated the statutory definitions of "program or activity" and "program" enacted as part of the CRRA.

When originally issued and implemented, the Agencies' civil rights regulations were interpreted by the Agencies to mean that acceptance of Federal assistance by a recipient resulted in broad coverage of an entity. The Supreme Court, however, interpreted "program or activity" in restrictive terms. *Grove City College* v. *Bell*, 465 U.S. 555, 570–74 (1984). The Court concluded in *Grove City College* that Federal student financial assistance provided to a college established jurisdiction under Title IX only over the college's financial aid program, not the entire college. Since Title IX was patterned after Title VI, this interpretation significantly narrowed the prohibitions of Title VI and two other statutes based on it: the Age Discrimination Act and Section 504. See S. Rep. No. 100–64, at 2–3, 11–16, *reprinted in* 1988 U.S.C.C.A.N. at 3–5, 13–18. Following the Supreme Court's decision in *Grove City*, the Agencies changed their interpretation, but not the language, of the governing regulations to be consistent with the Court's restrictive, program-specific definition of "program or activity."

In 1988, Congress enacted the CRRA to restore the prior consistent and long-standing executive branch interpretation and "broad, institution-wide application" of those laws as previously administered. S. Rep. No. 100–64, at 4, *reprinted in* 1988 U.S.C.C.A.N. at 6. Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of these laws. At that time, the Agencies reinstated their broad interpretation to be consistent with the CRRA, again without changing the language of the regulations. To the extent there was any inconsistency between the language of the regulations and the language of the CRRA, it was and remains the Agencies' interpretation that the CRRA superseded the regulations and, therefore, the regulations must be read in conformity with the CRRA. This interpretation was consistent with the understanding of Congress as expressed in the legislative history of the CRRA that the statutory definition of "program or activity" would take effect immediately without the need for Federal agencies to amend their existing regulations. S. Rep. No. 100–64, at 32, *reprinted in* 1988 U.S.C.C.A.N. at 34.

The proposed regulatory changes set out in this notice are designed to address an issue recently raised by the Third Circuit Court of Appeals in *Cureton* v. *NCAA*, 198 F.3d 107 (3d Cir. 1999). The Third Circuit determined that, because the Departments of Health and Human Services and Education did not amend their Title VI regulations after the enactment of the CRRA, application of the Departments' Title VI regulations to disparate impact discrimination claims is "program specific" (*i.e.*, limited to the particular program receiving Federal financial assistance), rather than institution-wide (*i.e.*, applicable to all of the operations of the institution regardless of the use of the Federal funds). *See id.* at 114–16. As noted above, however, the Agencies have, since the passage of the CRRA, consistently interpreted the coverage of their Title VI regulations to reach those programs that fall within the broad statutory definition of "program or activity." The *Cureton* decision would thwart clearly expressed congressional intent by giving continued effect to a judicial interpretation that Congress intended to override. In any event, the proposed regulatory changes would address the concerns raised by the Third Circuit in that the regulations would track the CRRA's statutory language and apply to both disparate impact and disparate treatment forms of discrimination. ("Disparate treatment," *i.e.*, intentional discrimination, refers to policies or practices that treat individuals differently based on their race, color, national origin, disability, or age, as applicable. Discrimination that involves such disparate treatment is barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant adverse effect on individuals based on race, color, national origin, disability, or age, as applicable. Such criteria or practices constitute impermissible discrimination if there is no substantial legitimate justification for those criteria or practices. However, even where such a justification exists, if there is an equally

effective but less discriminatory alternative, that alternative must be adopted.)

Pursuant to Executive Order 12250 ("Leadership and Coordination of Nondiscrimination Laws"), the Department of Justice ("DOJ") requested that the Agencies jointly issue amendments to their regulations implementing Title VI, Section 504, and the Age Discrimination Act to incorporate the CRRA definitions of "program" and "program or activity." The two federal agencies implicated in the *Cureton* decision—the Department of Education ("ED") and the Department of Health and Human Services ("HHS")—are promulgating separate rules to incorporate the CRRA's expanded definition of "program or activity" and "program" in their regulations. DOJ is participating in and coordinating the promulgation of amendments to 22 other agencies' Title VI, Section 504, and Age Discrimination Act regulations. Again, while DOJ views these modifications to be merely technical in nature, public comments are invited on these modifications. These proposed changes are summarized in the sections below.

Definition of "Program or Activity" and "Program"

The statutory definition, which is being incorporated into the regulations, addresses the scope of coverage for four broad categories of recipients: (1) State or local governmental entities; (2) colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies, systems of vocational education, and other school systems; (3) private entities, such as corporations, partnerships, and sole proprietorships; and (4) entities that are a combination of any of those groups. *See* 42 U.S.C. 2000d–4a.

Under the first part of the definition, when State and local governmental entities receive financial assistance from a Federal agency, the "program or activity" or "program" in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the Federal assistance is extended. If, for example, a State or local agency receives Federal assistance for one of many functions of the agency, all of the operations of the entire agency are subject to the nondiscrimination provisions of these regulations. Furthermore, if the aid is given to an entity or unit of government that subsequently distributes the assistance to a second agency, the entire entity to which the assistance was initially given is subject to the regulations. *See* 42 U.S.C. 2000d–4a(1); S. Rep. No. 100–64, at 16, reprinted in 1988 U.S.C.C.A.N. at 18.

Under the second portion of the definition of "program or activity," when covered educational institutions receive Federal financial assistance, all of their operations are subject to the nondiscrimination requirements of the funding agency's regulations. *See* 42 U.S.C. 2000d–4a(2).

Under the third part of the definition, the degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, or how the entity is structured (*e.g.*, physically separate offices or plants). Each of the operations of private businesses that are principally engaged in education, health care, housing, social services, or parks and recreation is considered a "program or activity" for purposes of these regulations. *See* 42 U.S.C. 2000d–4a(3)(A)(ii). S. Rep. No. 100–64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 100–64, at 16–20, *reprinted in* 1988 U.S.C.C.A.N. at 19–21. In addition, if Federal financial assistance is extended to a private entity "as a whole" and the private entity is not principally engaged in the business of education, health care, housing, social services, or parks and recreation, all of the private entity's operations at all of its locations would be covered. If the private entity receives general assistance, that is, assistance that is not designated for a particular purpose, that would be considered Federal financial assistance to the private entity "as a whole." In other instances where financial assistance is extended directly to a geographically separate facility of an entity described in the third part of this definition, then coverage would be limited to the geographically separate facility that receives the assistance. *See* 42 U.S.C. 2000d–4a(3).

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. *See* 42 U.S.C. 2000d–4a(4).

The proposed amendments will incorporate the CRRA definition of "program or activity" and "program" into the agencies' regulations. When Congress amended Title VI in the CRRA, it added definitions of both "program or activity" and "program" to the statute. Therefore, we have proposed to amend each agency's Title VI regulations to incorporate the definition of both "program or activity" and "program." However, when Congress amended Section 504 and the Age Discrimination Act in the CRRA, it added a definition of the term "program or activity," but did not add a similar definition of the term "program." Thus, we have amended the agencies' Section 504 and Age Discrimination Act regulations to incorporate a new definition of "program or activity" only.

As explained below, in order to conform with the CRRA definitions of "program or activity" and "program," the proposed regulations also would modify or delete some existing sections of the Agencies' regulations that have become superfluous or incorrect following enactment of the CRRA. These proposed modifications would not change the requirements of the existing regulations.

It is important to note that the proposed changes would not in any way alter the requirement of the CRRA that a fund termination be limited to the particular programs "or part[s] thereof" that discriminate, or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20, *reprinted in* 1988 U.S.C.C.A.N. at 22 ("The [CRRA] defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

Assurances

Several agencies' Title VI regulations include an assurance requirement that has created confusion with regard to the scope of "program or activity" under these regulations. In general, these assurances, which are legal agreements between the government and recipients of Federal financial assistance, are designed to ensure that recipients of Federal financial assistance comply with nondiscrimination laws and do not discriminate in their programs or activities. However, some agencies have assurance provisions that are confusing in light of the CRRA because they incorrectly state that, in some circumstances, certain parts of a program will not be covered by civil rights laws. For example, DOJ's assurance provision, which is very similar to the corresponding assurance requirements in other agencies' Title VI regulations, provides in part: "[t]he assurance * * * shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution * * * will in no way affect its practices in the program of the institution * * * for which Federal financial assistance is sought. * * * " 28 CFR 42.105(c)(2). In order to avoid any further confusion, the proposed rule would delete the above provision and similar provisions in the regulations of other agencies that incorrectly suggest that some parts of a program will not be covered under certain circumstances. This change will ensure that agency regulations reflect the broad scope of coverage of a program or activity that was contemplated by the CRRA..

Several Federal agencies' Title VI regulations provide illustrative examples or applications that refer to the waiver language contained in the assurance provision. Because the waiver language in relevant assurance provisions should be deleted, similar language and references in illustrative applications and examples also should be deleted. These proposed deletions would not affect the reach of the statutes or regulations.

Other References to "Program" and "Program or Activity"

We are also proposing to delete references to "program" and "program or activity" in the existing regulations that do not conform to the broadened CRRA definition of "program" and "program or activity." For example, in some instances, we have proposed to substitute "Federal financial assistance" for "program" or "program or activity" where the phrase refers to Federal financial assistance. In other instances, we have proposed to substitute the phrase "aid, benefit, or service" if that is the intended meaning. We have also proposed revisions when the terms "program" and "program or activity" are used too narrowly, *i.e.*, when they are used to indicate only a specific portion of a program that directly receives assistance. The nomenclature tables, which are charts designed to provide an easy method for viewing the words to be removed or replaced, show these proposed conforming changes for each agency. In some instances, we would change the phrase "program *and* activity" to "program *or* activity" to conform the regulations to the term as defined in the CRRA. We have not proposed to modify the term "activity" when it appears separately from the phrase "program or activity" and is used in a manner unrelated to the CRRA phrase "program or activity."

Although we have generally proposed to delete all references to "program" and "program or activity" where such references do not conform to the CRRA, we have not done so when the regulation is merely copying statutory language. For example, the regulations for some agencies contain a compliance provision that requires the agency to report any order for fund termination to the congressional committee with jurisdiction over the "program" involved. In this case, the term "program" clearly refers to the Federal financial assistance, but we have not proposed to replace the word because the copied statutory language itself uses the term "program."

In other instances in which the term "program" is used in a manner inconsistent with the CRRA, we have proposed to capitalize the word in order to distinguish it from the term defined by the CRRA. For example, we have proposed to capitalize certain terms of art (*e.g.*,"Historic Preservation Program," "Individualized Education Program") or names of types of Federal financial assistance (*e.g.*, "School Lunch Program") to avoid confusion.

Other Conforming Changes

Other proposed changes include modifications to some agencies' definition of "recipient." A few agencies define this term to include an entity that "benefits from" Federal financial assistance. Likewise, many agencies' Section 504 and Age Discrimination Act regulations use the phrase "receives or benefits from Federal financial assistance." The phrase "or benefits from" in this context should be deleted as it is superfluous in light of the CRRA.

Because the proposed changes are limited to those that are related to the CRRA definition of "program" and "program or activity," we are not proposing to make additional technical corrections unless the provision is already subject to a CRRA-related change. Likewise, we do not propose to make other technical corrections to outdated agency or office names, with one notable exception. Since the regulations for the Department of Energy require that age discrimination complaints be filed with a specific office, we have updated the regulations to reflect the new name of that office, thereby reducing confusion for individual complainants.

Although we did not propose to amend the content of the Agencies' appendices, the headings and introductory text describing the content were amended to conform with the CRRA. Additional conforming changes to the body of the various agency appendices will be published in the **Federal Register** in a separate document at a later date.

Period for Public Comment

Because these proposed changes merely incorporate statutory language and do not alter the Agencies' consistent position that the regulations must be read in conformity with the CRRA, the Agencies view these proposed changes as technical in nature. However, the Agencies are inviting public comment on the proposed changes, consistent with their policy of involving interested members of the public in the rulemaking process. We have decided to use a 30-day comment period because we do not anticipate receiving a large volume of comments on the limited technical changes in this proposed rule.

Coordination With the Department of Education

The Department of Education ("ED")—one of two agencies that were implicated in the *Cureton* decision and that have decided to promulgate separate rules to incorporate the CRRA's expanded definition of "program or activity" in their regulations—published its proposed rule on May 5, 2000, at 65 FR 26464. Among other modifications, ED's proposed amendments contain several conforming changes to the following three subparts of its Section 504 regulations: (1) Preschool, Elementary, and Secondary Education; (2) Postsecondary Education; and (3) Health, Welfare, and Social Services.

Eight other Federal agencies have Section 504 regulations containing sections similar to all or a portion of the provisions in the above three subparts. Because we believe that it is particularly important to maintain consistency among Federal agencies with respect to these subparts, we have, with a few minor exceptions, followed ED's lead when amending these sections for the other eight agencies—Department of Agriculture, Department of Commerce, Department of Interior, Department of State, Department of Veterans Affairs, Agency for International Development, National Endowment for the Humanities, and National Science Foundation—that have similar regulations.

Differences Among Agencies

Some agencies lack regulations implementing Section 504 or the Age Discrimination Act. In accordance with the limited scope of this proposed regulation, we have not proposed to add Section 504 or Age Discrimination Act sections to agencies that lack such regulations. Outlined below are the agencies that do not have such implementing regulations, as well as agencies that have comprehensive rules

implementing several statutes in one set of regulations or that follow the regulations of another Federal agency.

Agencies that do not have regulations implementing the Age Discrimination Act and, therefore, are amending only their regulations implementing Title VI and Section 504 are: the Department of Agriculture, the Department of Labor, the Department of Defense, the Environmental Protection Agency, and the Department of Transportation. The Federal Emergency Management Agency ("FEMA") does not have regulations applying Section 504 to recipients of Federal financial assistance but, instead, operates in accordance with Section 504 regulations developed by HHS. Therefore, FEMA will amend only its regulations implementing Title VI and the Age Discrimination Act. Likewise, the Small Business Administration does not have regulations applying Section 504 to recipients of Federal financial assistance and, therefore, will only be amending its Title VI and Age Discrimination Act regulations.

In addition, the Corporation for National and Community Service ("the Corporation") lacks regulations applying the Age Discrimination Act, Title VI, and Section 504 to recipients of Federal financial assistance. Instead, the Corporation, which is the successor of ACTION, operates in accordance with Title VI and Section 504 regulations promulgated by ACTION and will amend only those regulations. Similarly, the National Endowment for the Arts, the National Endowment for the Humanities ("NEH"), and the Institute of Museum and Library Services ("IMLS"), which together constitute the National Foundation on the Arts and the Humanities ("NFAH"), operate in accordance with Title VI regulations developed jointly by these three agencies and thus are amending their Title VI regulations jointly. However, NEA is separately amending its Section 504 and Age Discrimination Act regulations, while NEH, which lacks an Age Discrimination Act regulation, is amending its Section 504 regulation only. IMLS, which operates in accordance with NEH's Section 504 regulations and does not have regulations implementing the Age Discrimination Act, is not issuing any separate amendments.

Applicable Executive Orders and Regulatory Certifications Executive Order 12067

These proposed conforming changes have been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

Executive Order 12250

These proposed conforming changes to the Title VI and Section 504 regulations have been reviewed and approved by the Attorney General pursuant to Executive Order 12250.

Executive Order 12866

These proposed conforming changes have been drafted and reviewed in accordance with section 1(b) of Executive Order 12866. This regulation is not a significant regulatory action under section 3(f)(4) of Executive Order 12866.

1. Potential Costs and Benefits

Under Executive Order 12866, the Agencies have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those that the Agencies have determined are necessary for administering these Federal financial assistance statutes effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, the Agencies have determined that there probably will be no cost impacts because this regulatory action, which implements congressional amendments, merely clarifies longstanding policy of the Agencies and does not change the Agencies' practices in addressing issues of discrimination.

The Agencies have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998, on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Agencies invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of a nomenclature table) aid or reduce their clarity?
- Could the description of the proposed regulations in the **SUMMARY** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Agencies could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Age Discrimination Act of 1975

The Age Discrimination Act of 1975 and the Department of Health and Human Services' ("HHS") general, government-wide implementing regulations give the Secretary of HHS the authority to review changes to the Age Discrimination Act regulations of federal agencies. This authority has been delegated to the Office for Civil Rights ("OCR"), which has reviewed and approved these proposed conforming changes.

Small Business Regulatory Enforcement Fairness Act of 1996

It has been determined that this rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

All recipients of Federal funding have been bound by these standards of liability since the passage of the CRRA, when the Agencies reinstated their broad interpretation of the terms "program or activity" and "program" and applied these regulations on an institution-wide basis without changing the language of the regulations. The joint rule merely makes the regulations track the statutory language of the CRRA, both for disparate impact and disparate treatment forms of discrimination. These regulations implement statutory amendments and longstanding agency policy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian tribal governments or the private sector. *See* 15 U.S.C. 1532.

These amendments make technical changes to existing regulations that enforce statutory prohibitions on discrimination on the basis of race, color, national origin, age, or disability. Therefore, these amendments will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and they will not significantly or uniquely affect small governments. The participating agencies certify that no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Agencies, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), have reviewed these regulations and certify that these regulations will not have a significant economic impact on a substantial number of small entities, in large part because these regulations do not impose any new substantive obligations on Federal funding recipients. All recipients of Federal funding have been bound by these standards of liability since the passage of the CRRA, when the Agencies reinstated their broad interpretation of the terms "program or activity" and "program" and applied these regulations on an institution-wide basis without changing the language of the regulations. The joint rule merely makes the regulations track the statutory language of the CRRA, both for disparate impact and disparate treatment forms of discrimination. These regulations implement statutory amendments and longstanding agency policy.

Paperwork Reduction Act

The Agencies certify that this proposed rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not subject Federal funding recipients to new obligations. The proposed regulations amend and clarify existing regulations that are required by statute pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Therefore, in accordance with section 6 of Executive Order 13132, the Agencies have determined that these amendments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects

7 CFR Part 15

Aged, Civil rights, Religious discrimination, Sex discrimination.

7 CFR Part 15b

Civil rights, Equal employment opportunity, Grant programs—education, Individuals with disabilities.

10 CFR Part 4

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 1040

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Individuals with disabilities, Sex discrimination.

13 CFR Part 112

Civil rights, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 117

Aged, Civil rights, Reporting and recordkeeping requirements.

14 CFR Part 1250

Civil rights.

14 CFR Part 1251

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

14 CFR Part 1252

Aged, Civil rights.

15 CFR Part 8

Civil rights.

15 CFR Part 8b

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements.

15 CFR Part 20

Administrative practice and procedure, Aged, Civil rights.

18 CFR Part 1302

Civil rights, Reporting and recordkeeping requirements.

18 CFR Part 1307

Administrative practice and procedure, Civil rights, Individuals with disabilities.

18 CFR Part 1309

Aged, Civil rights.

22 CFR Part 141

Civil rights.

22 CFR Part 142

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

22 CFR Part 143

Aged, Civil rights.

22 CFR Part 209

Civil rights.

22 CFR Part 217

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

22 CFR Part 218

Aged, Civil rights.

28 CFR Part 42

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Grant programs, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

29 CFR Part 31

Civil rights, Reporting and recordkeeping requirements.

29 CFR Part 32

Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements.

38 CFR Part 18

Aged, Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Veterans.

40 CFR Part 7

Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

41 CFR Part 101–6

Civil rights, Government property management.

41 CFR Part 101–8

Administrative practice and procedure, Civil rights, Government property management, Individuals with disabilities, Reporting and recordkeeping requirements.

43 CFR Part 17

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

44 CFR Part 7

Administrative practice and procedure, Aged, Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 605

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 611

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 617

Administrative practice and procedure, Aged, Civil rights.

45 CFR Part 110

Civil rights.

45 CFR Part 1151

Civil rights, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 1156

Administrative practice and procedure, Aged, Civil rights, Grant programs, Investigations, Reporting and recordkeeping requirements.

45 CFR Part 1170

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 1203

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 1232

Civil rights, Grant programs—social programs, Individuals with disabilities.

49 CFR Part 21

Civil rights, Reporting and recordkeeping requriements.

49 CFR Part 27

Administrative practice and procedure, Airports, Civil rights, Highways and roads, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements.

Proposed Adoption of Joint Rule

The proposed agency adoptions of this joint rule are set forth below:

DEPARTMENT OF AGRICULTURE

7 CFR Subtitle A

RIN 0566–AB78

Authority and Issuance

For the reasons set forth in the joint preamble, USDA proposes to amend 7 CFR subtitle A, parts 15 and 15b as set forth below:

PART 15—NONDISCRIMINATION

1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

2. Section 15.2 is amended by revising paragraph (k) to read as follows:

§ 15.2 Definitions.

* * * * *

(k) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

* * * * *

3. In § 15.3, the headings for paragraphs (d)(1) through (d)(10) are revised to read as follows:

§ 15.3 Discrimination prohibited.

* * * * *

(d) * * *

(1) *Cooperative Agricultural Extension Program.* * * *

(2) *Rural Electrification and Rural Telephone Programs.* * * *

(3) *Direct Distribution Program.* * * *

(4) *National School Lunch Program.* * * *

(5) *Food Stamp Program.* * * *

(6) *Special Milk Program for Children.* * * *

(7) *Price Support Programs carried out through producer associations or cooperatives or through persons who are required to provide specified benefits to producers.* * * *

(8) *Forest Service Programs.* * * *

(9) *Farmers Home Administration Programs.* * * *

(10) *Cooperative State Research Programs.* * * *

4. Section 15.4 is amended by revising paragraph (c) to read as follows:

§ 15.4 Assurances required.

* * * * *

(c) *Assurances from institutions.* The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Amend the appendix to subpart A of part 15 as follows:

a. In the heading, by removing the words "USDA-Assisted Programs" and adding, in their place, the words "Federal Financial Assistance From USDA";

b. In the introductory text, by removing the word "Programs" and adding, in its place, the words "The types of Federal financial assistance"; and by removing the words "in which Federal financial assistance is rendered"; and

c. In the chart, by removing the column heading "Program" and adding, in its place, the column heading "Type of Federal Financial Assistance".

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column, and add the text shown in the right column:

Section	Remove	Add
15.1(b)(3)	under any such program	
15.2(e)	for any program,	
15.2(e)	under any such program	
15.2(f)	for the purpose of carrying out a program	
15.3(b)(3)	activities or programs	programs or activities
15.3(d), introductory text, first sentence	programs and activities	types of Federal financial assistance
15.3(d), introductory text, third sentence	program	type of Federal financial asistance
15.3(d), introductory text, third sentence	it	a program
15.3(d), introductory text, last sentence	listed program	listed type of Federal financial assistance
15.3(d)(1)(ii)	activity of	activity funded by
15.3(d)(3)(i)	direct distribution program	Direct Distribution Program
15.3(d)(3)(iii)	program	Program
15.3(d)(4)(i)	program	Program
15.3(d)(4)(ii)	program	Program
15.3(d)(5)(i)	program	Program
15.3(d)(6)(i)	program	Program
15.3(d)(6)(iv)	program	Program
15.3(d)(7)(v)	price support program	Price Support Program
15.3(d)(10)(ii)	cooperative research program	Cooperative Research Program
15.4(a)(1), first sentence	to carry out a program	
15.4(a)(1), first sentence	except a program	except an application
15.4(b)	to carry out its program for or activity involving	
15.5(a), second sentence	programs	Federal financial assistance
15.5(a), second sentence	program	
15.5(b), second sentence	of any program under	in
15.5(d)	program under	program for
15.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
15.10(f)	under the program involved	to which this regulation applies
15.10(f)	assistance will	assistance to which this regulation applies will
15.10(f)	under such program	
15.12(a), introductory text, first sentence	under such program	

PART 15—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

7. The heading for part 15b is revised to read as set forth above.

8. The authority citation for part 15b continues to read as follows:

Authority: 29 U.S.C. 794.

9. Section 15b.3 is amended by revising paragraph (p) and adding a new paragraph (s) to read as follows:

§ 15b.3 Definitions.

* * * * *

(p) For purposes of § 15b.18(d), Historic Preservation Programs are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

* * * * *

(s) *Program or activity* means all of the operations of any entity described in paragraphs (s)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (s)(1), (2), or (3) of this section.

§ 15b.4 [Amended]

10. In § 15b.4, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

11. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

* * * * *

12. Section 15b.18 is amended by revising the heading and first sentence of paragraph (a), the heading of paragraph (e), and the first sentence of paragraph (e)(1) to read as follows:

§ 15b.18 Existing facilities.

(a) *Accessibility.* A recipient shall operate each assisted program or activity so that when each part is viewed in its entirety it is readily

accessible to and usable by qualified handicapped persons. * * *

* * * * *

(e) *Historic Preservation Programs; application for waiver of accessibility requirements.* (1) A recipient shall operate each assisted program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

§ 15b.27 [Amended]

13. Section 15b.27 is amended by removing from the heading of paragraph (b) the words "Program delivery" and adding, in their place, the word "Delivery", and by removing from the heading of paragraph (c) the words "Program materials" and adding, in their place, the word "Materials".

§ 15b.28 [Amended]

14. The heading for § 15b.28 is amended by removing the word "programs".

15. The heading for subpart F is revised to read as follows:

Subpart F—Other Aid, Benefits, or Services

Appendix A to Part 15b [Amended]

16. Amend appendix A to part 15b as follows:

a. In the heading, by removing the words "USDA-Assisted Programs" and adding, in their place, the words "Federal Financial Assistance From USDA";

b. In the introductory text, by removing the word "Programs" and adding, in its place, the words "The types of Federal financial assistance"; and by removing the words "in which Federal financial assistance is rendered"; and

c. In the chart, by removing the column heading "Program" and adding, in its place, the column heading "Type of Federal Financial Assistance".

17. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
15b.2, first sentence	programs and activities	programs or activities
15b.2, last sentence	tailored to specific programs	more specifically tailored
15b.4(b)(1)(v)	program	program or activity
15b.4(b)(3)	programs or activities	aid, benefits, or services
15b.4(b)(4)(ii)	program	program or activity
15b.4(b)(5)(i)	or benefits from	
15b.4(b)(6)	or benefiting from	
15b.4(c)	the benefits of a program	aid, benefits, or services
15b.4(c)	from a program	from aid, benefits, or services
15b.5(a), first sentence	for a program or activity	
15b.5(a), first sentence	the program will	the program or activity will
15b.7(a), second sentence	programs and activities	programs or activities
15b.8(a)(3)(i)	program	program or activity
15b.8(a)(3)(ii)	program	program or activity
15b.8(a)(3)(iii)	program	program or activity
15b.10	programs	programs or activities
15b.11	programs and activities	programs or activities
15b.12(a)(3), last sentence	apprenticeship programs	apprenticeships
15b.12(b)(8)	social	those that are social
15b.12(b)(8)	programs	
15b.13(a)	program	program or activity
15b.13(c), introductory text	programs	programs or activities
15b.13(c)(1)	program	program or activity
15b.16	programs and activities	programs or activities
15b.18(b), last sentence	offer programs and activities to	serve
15b.18(b), last sentence	to obtain the full benefits of the program	
15b.18(d)	program accessibility	accessibility
15b.18(d)	the program	the program or activity
15b.18(e)(1), introductory text, last sentence	program	
15b.18(e)(1)(iv), first sentence	program	
15b.18(e)(1)(iv), first sentence	historic preservation program	Historic Preservation Program
15b.18(e)(1)(iv), last sentence	program accessibility	accessibility
15b.18(e)(2), introductory text, first sentence	program	
15b.18(e)(2), introductory text, last sentence	program	
15b.18(e)(2)(iii)	program	program or activity
15b.18(g)(3)	program accessibility	accessibility under paragraph (a) of this section
15b.20	programs and activities	programs or activities
15b.21, introductory text	program	program or activity
15b.22(a)	program	program or activity
15b.22(b)(2)	individualized education program	Individualized Education Program
15b.22(b)(3), first sentence	in	
15b.22(b)(3), first sentence	to a program	for aid, benefits, or services
15b.22(b)(3), first sentence	the one	those
15b.22(b)(3), first sentence	operates	operates or provides
15b.22(c)(1), second sentence	to a program	for aid, benefits, or services
15b.22(c)(1), second sentence	operated	operated or provided
15b.22(c)(1), second sentence	the program	aid, benefits, or services
15b.22(c)(2)	person in	person
15b.22(c)(2)	to a program	for aid, benefits, or services
15b.22(c)(2)	not operated	not operated or provided
15b.22(c)(2)	the program	aid, benefits, or services
15b.22(c)(3)	placement in	
15b.22(c)(3)	program	placement
15b.22(c)(4), last sentence	such a program	a free appropriate education
15b.24(a)	program shall	program or activity shall
15b.24(a)	a regular or special education program	regular or special education
15b.25, first sentence	operates a	provides
15b.25, first sentence	education program	education
15b.26(c)(1), first sentence	programs and activities	aid, benefits, or services
15b.26(c)(1), last sentence	in these activities	
15b.27(a), first sentence	operates an	provides
15b.27(a), first sentence	program or activity receiving assistance from this Department	
15b.27(a), first sentence	from the program or activity	
15b.27(a), last sentence	under the program or activity	
15b.27(b)(1), first sentence	program services	aid, benefits, or services
15b.27(b)(2), first sentence	program services	aid, benefits, or services
15b.27(b)(2), second sentence	program benefits	aid, benefits, or services
15b.27(b)(3), first sentence	program services	aid, benefits, or services
15b.27(b)(3), second sentence	program benefits	aid, benefits, or services
15b.27(c), first sentence	program	
15b.28(a), first sentence	operates a	provides
15b.28(a), first sentence	program receiving assistance from this Department	
15b.28(a), first sentence	from such program	
15b.29	programs and activities	programs or activities
15b.31(a)	program or activity	aid, benefits, or services
15b.31(d)	programs and activities	programs or activities
15b.32(a), second sentence	program or	
15b.32(c)	in its program	
15b.32(d)(1)	under the education program or activity operated by the recipient	
15b.35(a)(1), first sentence	programs and activities	aid, benefits, or services
15b.36	programs and activities	aid, benefits, or services
15b.39, first sentence	activity for	activity that provides aid, benefits, or services for
15b.39, first sentence	program, or activity	program or activity
15b.40(a), first sentence	operate	provide
15b.40(a), first sentence	service programs assisted by this Department	services
15b.41(a)	a multi-family rental housing program	multi-family rental housing
15b.41(b)(2)	program	
15b.41(c), first sentence	program	
15b.41(c), last sentence	program	

Dated: November 9, 2000.

Peter G. Parham,

Acting Director, Office of Civil Rights, Department of Agriculture.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

RIN 3130–AG65

Authority and Issuance

For the reasons set forth in the joint preamble, NRC proposes to amend 10 CFR chapter I, part 4 as set forth below:

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

1. The heading for part 4 is revised as set forth above.

2. The authority citation for part 4 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d—2000d–7); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891).

Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)).

Subpart C also issued under Title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101).

Subpart E also issued under 29 U.S.C. 794.

3. Section 4.4 is amended by revising paragraph (g) to read as follows:

§ 4.4 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private

organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.3, introductory text, second sentence	programs	types of Federal financial assistance
4.3, introductory text, third sentence	under any program or activity	
4.3, introductory text, fourth sentence	a program	a type of Federal financial assistance
4.3, introductory text, fourth sentence	the program	a program or activity
4.4(f)	for the purpose of carrying out a program	
4.4(h)	for any program,	
4.4(h)	under any such program	

Subpart A—Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974

5. The heading of § 4.22 is revised to read as follows:

§ 4.22 Continuing Federal financial assistance.

* * * * *

6. Section 4.24 is amended by revising paragraph (b) to read as follows:

§ 4.24 Assurances from institutions.

* * * * *

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.12(a), introductory text	under any program	
4.13(a), first sentence	a program of	the
4.13(a), first sentence	assistance	assistance to a program
4.13(a), second sentence	such programs	such Federal financial assistance
4.13(a), second sentence	fellowship programs	fellowships
4.21(a), first sentence	under a program	
4.21(a), first sentence	except a program	except an application
4.21(a), fifth sentence	for each program	
4.21(a), fifth sentence	in the program	
4.21(b), third sentence	program	statute
4.22	to carry out a program involving	for
4.32(b)	of any program under	in
4.34	program under which	program for which
4.51(a)(4)	, under the program involved	
4.64, first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
4.64, last sentence	programs subject to this subpart are	this regulation is
4.74, first sentence	under the program involved	to which this regulation applies
4.74, first sentence	assistance will	assistance to which this regulation applies will
4.74, first sentence	under such program	
4.91, introductory text, first sentence	under such program	

Subpart B—Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as Amended

8. The heading of § 4.126 is revised to read as follows:

§ 4.126 General requirement concerning accessibility.

* * * * *

9. Section 4.127 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 4.127 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

10. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.121(a)	or benefits from	

Section	Remove	Add
4.121(b)(1)(v)	program	program or activity
4.121(b)(2)	programs or activities	aid, benefits, or services
4.121(b)(3)(ii)	program	program or activity
4.121(b)(4)(i)	or benefits from	
4.121(c)	the benefits of program	aaid, benefits, or services
4.121(c)	a program	aid, benefits, or services
4.121(d)	programs and activities	programs or activities
4.122(a)	or benefits from	
4.122(c)(8)	social	those that are social
4.122(c)(8)	programs	
4.122(d), last sentence	apprenticeship programs	apprenticeships
4.123(a)	program	program or activity
4.123(c), introductory text	program	program or activity
4.123(c)(1)	program	program or activity
4.126	or benefits from	
4.127(b), last sentence	offer programs and activities to	serve
4.127(d)(3)	program accessibility	accessibility under paragraph (a) of this section
4.231(a), first sentence	for a program or activity	
4.231(a), first sentence	the program	the program or activity
4.231(c)(3)(i)	program	program or activity
4.231(c)(3)(ii)	program	program or activity
4.232(a), second sentence	programs and activities	programs or activities

Subpart C—Regulations Implementing the Age Discrimination Act of 1975, as Amended

11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.313, introductory text, first sentence	program of activity	program or activity
4.321, first sentence	programs and activities	programs or activities
4.321, second sentence	programs and activities	programs or activities
4.334(a)(2), last sentence	program	
4.336(c)(2), first sentence	Federal	
4.338(c)	program	program or activity
4.339(b)(2)	program or activity	Federal financial assistance
4.341(b)	programs	programs or activities
4.341(c)	programs	programs or activities
4.341(d)	programs	programs or activities

Dated: August 25, 2000.

William D. Travers,

Executive Director for Operations, Nuclear Regulatory Commission.

DEPARTMENT OF ENERGY

10 CFR Chapter X

RIN 1901–AA86

Authority and Issuance

For the reasons set forth in the joint preamble, DOE proposes to amend 10 CFR chapter X, part 1040 as set forth below:

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

1. The heading for part 1040 is revised to read as set forth above.

2. The authority citation for part 1040 is revised to read as follows:

Authority: 20 U.S.C. 1681–1686; 29 U.S.C. 794; 42 U.S.C. 2000d to 2000d–7, 3601–3631, 5891, 6101–6107, 7101 *et seq.*

Subpart A—General Provisions

3. Section 1040.3 is amended by revising paragraph (u) to read as follows:

§ 1040.3 Definitions—General.

* * * * *

(u) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (u)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education,

health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (u)(1), (2), or (3) of this section.

* * * * *

4. Section 1040.4 is amended by revising paragraph (d) and the heading of paragraph (f) to read as follows:

§ 1040.4 Assurances required and preaward review.

* * * * *

(d) *Assurances from government agencies.* In the case of any application from any department, agency or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section is to extend to any other department, agency, or office of the same governmental unit.

* * * * *

(f) *Continuing Federal financial assistance.* * * *

* * * * *

5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.1, first sentence	the program or activity	the Federal financial assistance
1040.1, first sentence	program services	services
1040.2(a), second sentence	Programs	Types of Federal financial assistance
1040.2(a), fourth sentence	under any program or activity	
1040.2(a), last sentence	a program	a type of Federal financial assistance
1040.2(a), last sentence	the program	that a program or activity
1040.3(a)	program	aid, benefit, service
1040.3(t)	for the purpose of carrying out a program	
1040.4(a), first sentence	for a program or activity	
1040.4(f), introductory text	administering a program which receives	applying for
1040.4(f)(1)	program	program or activity
1040.5(b), first sentence	or programs	or activity
1040.5(b), second sentence	programs	programs or activities
1040.5(b), last sentence	broadcast program	broadcast
1040.5(b), last sentence	the program	the program or activity
1040.5(b), last sentence	opportunity program	opportunity program or activity
1040.5(c), first sentence	program	program or activity
1040.6(a) second sentence	programs and activities	programs or activities
1040.7(b)	a program that will	to

Subpart B—Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974, as Amended; and Section 401 of the Energy Reorganization Act of 1974

6. Section 1040.13 is amended by revising paragraph (e) to read as follows:

§ 1040.13 Discrimination prohibited.

* * * * *

(e) For the purpose of this section, the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

* * * * *

7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.11(b), first sentence	administering,	administering or
1040.11(b), first sentence	or substantially benefiting from	
1040.12(b), first sentence	programs and activities	programs or activities
1040.13(b), introductory text	under any program	
1040.13(c)	program objectives	objectives of the program
1040.13(g), first sentence	from programs	from benefits
1040.13(g), last sentence	the benefits of a program	benefits
1040.13(g), last sentence	programs funded	Federal financial assistance provided
1040.14(a)(1), introductory text, first sentence	mobility programs	mobility projects

Subpart D—Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as Amended

§ 1040.63 [Amended]

8. In § 1040.63, the heading of paragraph (c) is amended by removing the word "Programs," and adding, in its place, the words "Aid, benefits, or services".

§ 1040.71 [Amended]

9. The undesignated center heading immediately preceding § 1040.71 is amended by removing the word "Program".

10. Section 1040.72 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 1040.72 Existing facilities.

(a) *Accessibility.* A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. * * *

* * * * *

11. Section 1040.74 is amended by revising the section heading, the heading and first sentence of paragraph (a), and the headings of paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 1040.74 Accessibility in historic properties.

(a) *Methods to accomplish accessibility.* Recipients shall operate each program or activity involving historic properties so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

(1) *Methods to accomplish accessibility without building alterations or structural changes.* * * *

(2) *Methods to accomplish accessibility resulting in building alterations.* * * *

(3) *Methods to accomplish accessibility resulting in structural changes.* * * *

* * * * *

12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.61(b)	or benefits from	
1040.63(a)	or benefits from	
1040.63(b)(1)(v)	program	program or activity
1040.63(b)(3)	program or activities	aid, benefits, or services
1040.63(b)(4)(ii)	program	program or activity
1040.63(b)(6)	or benefiting from	
1040.63(c)	the benefits of a program	aid, benefits, or services
1040.63(c)	from a program	from aid, benefits, or services
1040.63(d)	programs of activities	programs or activities
1040.64(c), first sentence	under any program to which	under any program or activity to which
1040.64(c), first sentence	assistance under any program for	assistance for
1040.66(a)(3), last sentence	apprenticeship programs	apprenticeships
1040.66(b)(8)	social	those that are social
1040.66(b)(8)	programs	
1040.67(a)	program	program or activity
1040.67(c), introductory text	program	program or activity
1040.67(c)(1)	program	program or activity
1040.72(b), last sentence	offer programs and activities to	serve
1040.72(d)(3)	program accessibility	accessibility under § 1040.72(a)
1040.74(a), introductory text, second sentence	program	
1040.74(a), introductory text, last sentence	program	
1040.74(a)(1)(i)	programs	aid, benefits, or services
1040.74(a)(1)(iii)	programs or activities	aid, benefits, or services
1040.74(a)(1)(iv)	programs	aid, benefits, or services
1040.74(a)(2), first sentence	program	
1040.74(a)(2), first sentence	Program	
1040.74(a)(3), first sentence	program	
1040.74(a)(3), first sentence	Program	

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as Amended

13. The authority citation for subpart E is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

Appendix A to Subpart E to Part 1040 [Amended]

14. Appendix A to subpart E to part 1040 is amended by removing the words "or program" from the sixth column heading.

15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.81, last sentence	programs and activities	programs or activities
1040.82(a)	or benefits from	
1040.83(i)	programs and activities	programs or activities
1040.88(a)	Office of Equal Opportunity (OEO)	Office of Civil Rights and Diversity
1040.88(c)	program	program or activity
1040.89–1, first sentence	program and activities	programs or activities
1040.89–5(a), third sentence	Office of Equal Opportunity (OEO)	Office of Civil Rights and Diversity
1040.89–5(a), last sentence	OEO	Office of Civil Rights and Diversity
1040.89–5(b), introductory text	OEO	Office of Civil Rights and Diversity
1040.89–5(c), first sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(b), second sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(c), second sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(e)	OEO	Office of Civil Rights and Diversity
1040.89–7(a)(1)	OEO	Office of Civil Rights and Diversity
1040.89–7(a)(3)	OEO	Office of Civil Rights and Diversity
1040.89–7(b), first sentence	OEO	Office of Civil Rights and Diversity
1040.89–9(a), introductory text	Programs	Programs or Activities
1040.89–9(a)(1), first sentence	under the program or or activity involved where	for a program activity in which
1040.89–9(c)(1)	OEO	Office of Civil Rights and Diversity

Section	Remove	Add
1040.89–9(c)(2), first sentence	Federal	
1040.89–11	OEO	Office of Civil Rights and Diversity
1040.89–12(b)(2)	program or activity	Federal financial assistance
1040.89–13(b), introductory text	OEO	Office of Civil Rights and Diversity

Dated: October 4, 2000.

T.J. Glauthier,

Deputy Secretary, Department of Energy.

SMALL BUSINESS ADMINISTRATION

13 CFR Chapter I

RIN 3245–AE58

Authority and Issuance

For the reasons set forth in the joint preamble, SBA proposes to amend 13 CFR chapter I, parts 112 and 117 as set forth below:

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 112 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1).

2. Section 112.2 is amended by adding paragraph (e) to read as follows:

§ 112.2 Application of this part.

* * * * *

(e) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1),(2), or (3) of this section.

Appendix A to Part 112 [Amended]

3. The chart in appendix A to part 112 is amended by removing the heading "Name of program" and adding, in its place, the heading "Name of Federal financial assistance'; by removing the heading "Financial Programs" and adding, in its place, the heading "Federal Financial Assistance Involving Grants of Funds"; and by removing the heading "Nonfinancial Programs" and adding, in its place, the heading "Other Federal Financial Assistance".

4. The note immediately following appendix A to part 112 is amended by removing the word "programs" and adding, in its place, the words "types of Federal financial assistance".

5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
112.2(a)	assistance under programs	Federal financial assistance
112.3(b)(3), first sentence	the program	a program
112.8, last sentence	for each program	
112.8, last sentence	in the program	

PART 117—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF SBA—EFFECTUATION OF THE AGE DISCRIMINATION ACT OF 1975, AS AMENDED

6. The heading for part 117 is revised to read as set forth above.

7. The authority citation for part 117 continues to read as follows:

Authority: Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

8. Section 117.2 is amended by revising paragraph (a) to read as follows:

§ 117.2 Application of this part.

(a) This part applies to all recipients of Federal financial assistance administered by the Small Business Administration, whether or not the specific type of Federal financial assistance administered is listed in appendix A.

* * * * *

9. Section 117.3 is amended by redesignating paragraphs (j) through (m) as paragraphs (k) through (n), and adding a new paragraph (j) to read as follows:

§ 117.3 Definitions.

* * * * *

(j) The term *program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

* * * * *

Appendix A to Part 117 [Amended]

10. The chart in appendix A to part 117 is amended by removing the words "Name of program" and adding, in their place, the words "Type of Federal financial assistance".

11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
117.1	programs	programs or activities
117.3(j), first sentence	under any program	
117.4(b)(2)	programs	programs or activities
117.5(b), first sentence	in a program	
117.6(b)	business or program	program or activity
117.6(c)	program	program or activity
117.7, first sentence	under any program	
117.7, last sentence	for each program,	
117.7, last sentence	in the program	
117.8(a), first sentence	programs and activities	programs or activities
117.8(c)	its program beneficiaries	the beneficiaries of its programs or activities
117.15(a)(3), first sentence	program	
117.17(f)	under the programs involved	to which this regulation applies
117.17(f)	assistance will	assistance to which this regulation applies will
117.17(f)	under such program	
117.19(a)(9)	program	program or activity
117.20, first sentence	programs	programs or activities

Dated: August 23, 2000.

Fred P. Hochberg,

Acting Administrator, Small Business Administration.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR CHAPTER V

RIN 2700–AC41

Authority and Issuance

For the reasons set forth in the joint preamble, NASA proposes to amend 14 CFR chapter V, parts 1250, 1251, and 1252 as set forth below:

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 1250 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d–1 and the laws listed in appendix A to this part.

2. Section 1250.102 is amended by revising paragraph (h) to read as follows:

§ 1250.102 Definitions.

* * * * *

(h) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

3. Section 1250.103–4 is amended by revising paragraph (b) to read as follows:

§ 1250.103–4 Illustrative applications.

* * * * *

* * * * *

(b) In a research or training grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited and the prohibition extends to the entire university.

* * * * *

4. Section 1250.103–5 is amended by revising the heading to read as follows:

§ 1250.103–5 Special benefits.

* * * * *

5–6. Section 1250.104 is amended by revising paragraph (c)(2) and by removing paragraph (d)(2) and the paragraph designation (d)(1), to read as follows:

§ 1250.104 Assurances.

* * * * *

(c) * * *

(2) The assurances from such an applicant shall be applicable to the entire organization of the applicant.

* * * * *

7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1250.101(a)(1), first sentence	federally-assisted programs and activities	types of Federal financial assistance
1250.101(a)(1), second sentence	program or activity	type of Federal assistance
1250.101(a)(1), second sentence	such program	a program
1250.101(a)(1), last sentence	programs	types of Federal financial assistance
1250.101(a)(2)	under any such program	
1250.101(b)(2)	extended under any such program	extended
1250.101(b)(3)	beneficiary under any such program	beneficiary
1250.101(b)(5)	programs	types of Federal financial assistance
1250.101(b)(6)	programs	types of Federal financial assistance
1250.102(f)	for the purpose of carrying out a program	
1250.102(i)	for any program	
1250.102(i)	under any such program	
1250.103–2(a), introductory text	under any program	
1250.103–3(b)	programs	types of Federal financial assistance
1250.103–4(a)	programs	services
1250.103–5	the benefits of a program	benefits
1250.104(a), first sentence	to carry out a program	
1250.104(e), second sentence	under a program of	with
1250.104(e), last sentence	program	statute
1250.105(b), last sentence	of any program under	in
1250.105(d)	program under	program for
1250.108(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1250.109(f)	under the program involved	to which this regulation applies
1250.109(f)	assistance will	assistance to which this regulation applies will
1250.109(f)	under such program	
1250.111(a), first sentence	under such program	

PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

8. The authority citation for part 1251 continues to read as follows:

Authority: 29 U.S.C. 794.

9. Section 1251.102 is amended by adding paragraph (k) to read as follows:

§ 1251.102 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

§ 1251.103 [Amended]

10. In § 1251.103, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

11. The heading of subpart 1251.3 of part 1251 is revised to read as follows:

Subpart 1251.3—Accessibility

12. In § 1251.301, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 1251.301 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which his part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

13. In the table below, for each section indicated in the left column, remove the text shown in the middle column, and add the text shown in the right column:

Section	Remove	Add
1251.101	or benefits from	
1251.103(a)	or benefits from	
1251.103(b)(1)(v)	program	program or activity
1251.103(b)(3)	program	program or activity
1251.103(b)(3)	or benefiting from	
1251.103(b)(4)	programs or activities	aid, benefits, or services
1251.103(b)(5)(ii)	program	program or activity
1251.103(b)(6)(i)	or benefits from	
1251.103(b)(7)	or benefiting from	
1251.103(c)	the benefits of a program	aid, benefits, or services
1251.103(c)	from a program	from aid, benefits, or services
1251.104(a), first sentence	for a program activity	
1251.104(a), first sentence	the program	the program or activity
1251.105(a)(3)(i)	program	program or activity
1251.105(a)(3)(ii)	program	program or activity
1251.105(a)(3)(iii)	program	program or activity
1251.107(a), second sentence	programs and activities	programs or activities
1251.200(a)(2)	programs	programs or activities
1251.200(a)(4), last sentence	apprenticeship programs	apprenticeships
1251.200(b)(8)	social	those that are social
1251.200(b)(8)	programs	
1251.200(d), last sentence	apprenticeship programs	apprenticeships
1251.201(a)	program	program or activity
1251.201(c), introductory text	program	program or activity
1251.201(c)(1)	program	program or activity
1251.301(b), last sentence	offer programs and activities to	serve
1251.301(d)(3)	program accessibility	accessibility under paragraph (a) of this section

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

14. The heading for part 1252 is revised to read as set forth above.

15. The authority citation for part 1252 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR part 90).

16. Section 1252.102 is amended by revising the heading to read as follows:

§ 1252.102 To what programs or activities do these regulations apply?

* * * * *

17. Section 1252.103 is amended by adding paragraph (n) to read as follows:

§ 1252.103 Definitions.

* * * * *

(n) *Program or activity* means all of the operations of any entity described in paragraphs (n)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (n)(1), (2), or (3) of this section.

18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1252.100, last sentence	programs and activities	programs or activities
1252.102(a)	or benefits from	
1252.203	program	program or activity
1252.300	programs and activities	programs or activities
1252.403(a)(2), last sentence	program	
1252.405(b), first sentence	program activity	program or activity
1252.405(c)(2), first sentence	Federal	
1252.409(b)(2)	program or activity	Federal financial assistance

Dated: September 11, 2000.

Daniel S. Goldin,

Administrator, National Aeronautics and Space Administration.

DEPARTMENT OF COMMERCE

15 CFR Subtitle A

RIN 0690–AA30

Authority and Issuance

For the reasons set forth in the joint preamble, DOC proposes to amend 15 CFR subtitle A, parts 8, 8b, and 20 as set forth below:

PART 8—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF COMMERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 8 continues to read as follows:

Authority: Sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1).

2. Section 8.3 is amended by revising paragraph (g) to read as follows:

§ 8.3 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

3. Section 8.5 is amended by revising paragraph (b)(10) to read as follows:

§ 8.5 Nondiscrimination clause.

* * * * *

(b) * * *

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.

* * * * *

4. Section 8.6 is amended by revising the heading of paragraph (a) to read as follows:

§ 8.6 Applicability of this part to Department assisted programs.

* * * * *

(a) *Assistance to support economic development.* * * *

* * * * *

Appendix A to Part 8 [Amended]

5. The heading for appendix A to part 8 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
8.2(a), first sentence	federally assisted programs	types of Federal financial assistance
8.2(a), last sentence	under any such program	
8.2(b)(2)	under any such program	
8.2(b), second sentence	a program	a type of Federal financial assistance
8.2(b), second sentnece	such program	a program
8.2(b), last sentence	programs	types of Federal financial assistance
8.3(i), first sentence	for or in connection with any program	
8.3(i), last sentence	under any program	
8.3(j)	for the purpose of carrying out a program	
8.4(b)(1), introductory text	under any program to which this part applies	
8.4(b)(1)(vii)	where a program is applicable thereto	
8.4(b)(2)	under any program	
8.4(b)(2)	such program, or the class of persons to whom	program, or the class of persons to whom
8.4(c)(1), third sentence	program	plan
8.5(a), first sentence	to carry out a program	
8.5(b)(3)	That in a program involving	When
8.5(b)(3)	assistance,	assistance is involved,
8.5(b)(5), third sentence	program	statute
8.6, introductory text, second sentence	program	type of Federal financial assistance
8.6(b), second sentence	student training programs	instances of student training
8.7(b), last sentence	of any program under	in
8.7(d)	program under which	program for which
8.12(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
8.13(f)	under the program involved	to which this regulation applies
8.13(f)	assistance will	assistance to which this regulation applies will

Section	Remove	Add
8.13(f)	under such program	
8.15(a), introductory text, first sentence	under such program	

PART 8b—PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF THE DEPARTMENT OF COMMERCE

7. The heading for part 8b is revised to read as set forth above.

8. The authority citation for part 8b is revised to read as follows:

Authority: 29 U.S.C. 794.

9. Section 8b.3 is amended by redesignating paragraphs (h) through (l) as paragraphs (i) through (m), respectively; and adding a new paragraph (h) to read as follows:

§ 8b.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

10. Section 8b.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 8b.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

Subpart C of 8b [Amended]

11. The heading for subpart C of part 8b is amended by removing the word "Program."

12. Section 8b.17 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 8b.17 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. * * *

* * * * *

12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
8b.1, first sentence	or benefiting from	
8b.1, last sentence	programs and activities	programs or activities
8b.1, last sentence	or benefiting from	
8b.2, first sentence	program	program or activity
8b.2, first sentence	or benefiting from	
8b.2, last sentence	program	program or activity
8b.4(a)	or benefits from	
8b.4(b)(1)(v)	program	program or activity
8b.4(b)(3)	programs or activities	aid, benefits, or services
8b.4(b)(4)(ii)	program	program or activity
8b.4(b)(5)(i)	or benefits from	
8b.4(b)(6)	or benefiting from	
8b.4(b)(7)(i)	under programs of Federal financial assistance	
8b.4(c)	the benefits of a program	aid, benefits, or services
8b.4(c)	from a program	from aid, benefits, or services
8b.4(d)	programs and activities	programs or activities
8b.5(a), first sentence	for a program or activity	
8b.5(a), first sentence	the program	the program or activity
8b.5(b)(3)	program	program or activity
8b.5(d)	a program	the objectives of Federal financial assistance
8b.5(d)	programs and activities	programs or activities
8b.6(a)(3)(i)	program	program or activity
8b.6(a)(3)(ii)	program	program or activity
8b.8(a), second sentence	programs and activities	programs or activities
8b.10(a)	programs	programs or activities
8b.11(a)(1)	or benefits from	
8b.11(a)(3), last sentence	apprenticeship programs	apprenticeships
8b.12(a)	program	program or activity

Section	Remove	Add
8b.12(b)(1)	program	program or activity
8b.12(c), introductory text	program	program or activity
8b.12(c)(1)	program	program or activity
8b.12(e)	program	program or activity
8b.17(a), third sentence	program	aid, benefit, or service
8b.17(a), last sentence	Program accessibility	Accessibility
8b.17(a), last sentence	program	aid, benefit, or service
8b.17(b), last sentence	offer programs and activities to	serve
8b.17(e)(3)	program accessibility	accessibility under § 8b.17(a)
8b.19	programs and activities	programs or activities
8b.19	or benefit from	
8b.21(a)	program or activity	aid, benefits, or services
8b.21(d)	programs and activities	program or activity
8b.22(a), second sentence	program of	
8b.22(c)	in its program	
8b.22(d)(1), first sentence	under the education program or activity operated by the recipient	
8b.25(a)(1), first sentence	programs and activities	aid, benefits, or services

PART 20—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

15. The authority citation for part 20 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6101 *et seq.* and the government-wide regulations implementing the Act, 45 CFR Part 90.

16. The heading of § 20.2 is revised to read as follows:

§ 20.2 Programs or activities to which these regulations apply.

* * * * *

17. Section 20.3 is amended by redesignating paragraphs (j) through (n) as paragraphs (k) through (o), respectively; and adding a new paragraph (j) to read as follows:

§ 20.3 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1),(2), or (3) of this section.

* * * * *

18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
20.1, last sentence	programs and activities	programs or activities
20.2(a)	or benefits from	
20.4(d)	program	program or activity
20.7, introductory text	programs and activities	programs or activities
20.7(a), first sentence	program	program or activity
20.13(a)(2),last sentence	program	
20.15(a)(1), last sentence	program	program or activity
20.15(b)	program and activity	program or activity
20.15(c)(2), first sentence	Federal	
20.18(b)(2)	program or activity	Federal financial assistance

Dated: August 11, 2000.

Lawrence N. Self,

Acting Director, Office of Civil Rights, Department of Commerce.

TENNESSEE VALLEY AUTHORITY

18 CFR Chapter XIII

RIN 3316–AA20

Authority and Issuance

For the reasons set forth in the joint preamble, TVA proposes to amend 18 CFR chapter XIII, parts 1302, 1307, and 1309 as set forth below:

PART 1302—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 1302 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933), as amended, 16 U.S.C. 831–831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–1.

2. Section 1302.3 is amended by adding a new paragraph (e) to read as follows:

§ 1302.3 Definitions.

* * * * *

(e) *Program or activity* and *program* refer to all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

3. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1302.2, introductory text, first sentence	program in which	program for which
1302.2, introductory text, second sentence	programs	types of Federal financial assistance
1302.2(b)	under any such program	
1302.2(c)	under any such program	
1302.2, concluding text, first sentence	a program	a type of Federal financial assistance
1302.2, concluding text, first sentence	such program	a program
1302.2, concluding text, last sentence	programs	types of Federal financial assistance
1302.4(b)(1), introductory text	under any program or activity	
1302.5(a), last sentence	in the program	
1302.5(b), first sentence	through a program of	with
1302.5(b), second sentence	under a program of	with
1302.5(b), third sentence	program	statute
1302.6(b), last sentence	of any program under	in
1302.6(d)	program under which	program for which
1302.7(b)(3)(ii)	program	programs
1302.7(c)(3)(ii)(B)	program	programs
1302.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1302.10(f)	under the program involved	to which this regulation applies
1302.10(f)	assistance will	assistance to which this regulation applies will
1302.10(f)	under such program	
1302.12(a), introductory text, first sentence	under such program	

PART 1307—NONDISCRIMINATION WITH RESPECT TO HANDICAP

4. The authority citation for part 1307 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831–831dd (1976) and sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 29 U.S.C. 794 (1976; Supp. II 1978).

5. Section 1307.1 is amended by adding paragraph (k) to read as follows:

§ 1307.1 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private

organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

6. The heading of § 1307.4 is revised to read as follows:

§ 1307.4 Discrimination prohibited.

* * * * *

7. Section 1307.6 is amended by revising the section heading and the first sentence of paragraph (b)(1) to read as follows:

§ 1307.6 Accessibility.

* * * * *

(b) * * *

(1) Each program or activity subject to this part shall be operated so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. * * *

* * * * *

8. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1307.3, first sentence	program in which	program or activity for which
1307.3, first sentence	under any program	
1307.3, first sentence	under any such program	
1307.4(b)(1), introductory text	under any program	
1307.4(b)(1)(i)	program	program or activity
1307.4(b)(1)(ii)	program	program or activity
1307.4(b)(1)(iii)	program	program or activity
1307.4(b)(1)(iv)	program	program or activity
1307.4(b)(1)(v)	program	program or activity
1307.4(b)(1)(vi)	program	program or activity
1307.4(b)(1)(vii)	program	program or activity
1307.4(b)(2)	program	program or activity
1307.4(b)(2)	activities	aid, benefits, or services
1307.4(b)(3)(ii)	program	program or activity
1307.4(b)(4)	program,	program or activity,
1307.4(b)(4)(i)	program	program or activity
1307.4(c)	the benefits of a program	aid, benefits, or services
1307.4(c)	from a program	from aid, benefits, or services
1307.4(d), first sentence	programs and activities	programs or activities
1307.4(d), last sentence	programs	aid, benefits, or services
1307.5(c)(8)	social	those that are social
1307.5(c)(8)	programs	
1307.5(d)	apprenticeship programs	apprenticeships
1307.5(e)(2)(i)	programs	programs or activities
1307.6(a)	program	program or activity
1307.6(b)(1), third sentence	program	
1307.6(b)(1), last sentence	programs or activities	aid, benefits, or services
1307.6(b)(2), introductory text, second sentence	make covered programs or activities in existing facilities recipient accessible	comply with paragraph (b)(1) of this section
1307.6(c), second sentence	program	
1307.6(c), fourth sentence	program	
1307.6(d)(1)	program	program or activity
1307.7(a), last sentence	in the program	
1307.7(b), first sentence	through a program of	with
1307.7(b), second sentence	under a program of	with
1307.7(b), third sentence	program	statute
1307.8(b), last sentence	of any program under	in
1307.8(d)	program under which	program or activity for which
1307.10(c), last sentence	program	program or activity
1307.11(e) first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1307.12(f)	under the program involved	to which this regulation applies
1307.12(f)	assistance will	assistance to which this regulation applies will
1307.12(f)	under such program	
1307.13(a)(2)	program	program or activity
1307.13(b), first sentence	programs	programs or activities

PART 1309—NONDISCRIMINATION WITH RESPECT TO AGE

9. The authority citation for part 1309 continues to read as follows:

Authority: TVA Act of 1933, 48 Stat. 58 (1933), as amended, 16 U.S.C. 831–831dd (1976), and sec. 304 of the Age Discrimination Act of 1975, 89 Stat. 729 (1975), as amended, 42 U.S.C. 6103 (1976).

10. Section 1309.1 is amended by adding paragraph (m) to read as follows:

§ 1309.1 What are the defined terms in this part and what do they mean?

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

11. The heading for § 1309.4 is revised to read as follows:

§ 1309.4 What programs or activities are covered by the Act and this part?

* * * * *

12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1309.2, last sentence	programs and activities	programs or activities
1309.9(a), last sentence	in the program	
1309.9(b), second sentence	under a program of	with
1309.9(b), third sentence	program	statute
1309.10(a), first sentence	programs and activities	programs or activities
1309.12(a), last sentence	of any program under	in
1309.12(c)	program under which	program or activity for which
1309.14(a), third sentence	program	
1309.14(d)(2), last sentence	program	
1309.15(b), first sentence	program	program
139.15(c)(2), first sentence	the TVA program	the program
1309.16, last sentence	program or activity	Federal financial assistance
1309.17(e), first sentence	programs	Federal statutes, authorities, of other means by which Federal financial assistance is extended and
1309.17(f)(3)	under the program involved	to which this regulation applies
1309.17(f)(3)	assistance will	assistance to which this regulations applies will
1309.17(f)(3)	under such program	
1309.18(c)	program	program or activity

Dated: August 30, 2000.

Franklin E. Alford,

Manager, Supplier and Diverse Business Relations, Tennessee Valley Authority.

DEPARTMENT OF STATE

22 CFR Chapter I

RIN 1400–AB17

Authority and Issuance

For the reasons set forth in the joint preamble, the Department of State proposes to amend 22 CFR chapter I, parts 141 through 143 as set forth below:

PART 141—NONDISCRIMINATION IN FEDERALLY–ASSISTED PROGRAMS OF THE DEPARTMENT OF STATE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 141 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, sec. 4, 63 Stat. 111, as amended; 42 U.S.C. 2000d–1, 22 U.S.C. 2658.

2. Section 141.3 is amended by revising the heading of paragraph (c) to read as follows:

§ 141.3 Discrimination prohibited.

* * * * *

(c) Special benefits: * * *

* * * * *

3. Section 141.4 is amended by revising paragraph (b)(2) to read as follows:

§ 141.4 Assurances required.

* * * * *

(b) * * * (2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

4. Section 141.12 is amended by revising paragraph (f) to read as follows:

§ 141.12 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or (ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

Appendix A to Part 141 [Amended]

5. The heading for appendix A to part 141 is amended by removing the words "Grants and Activities" and adding, in their place, the words "Federal Financial Assistance".

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
141.2, first sentence	federally-assisted programs and activities.	types of Federal financial assistance
141.2, second sentence	under any such program	
141.2(b)	under any such program	
141.2(c)	under any such program	
141.2, penultimate	program or activity	type of Federal financial assistance
141.2, penultimate	such program	a program sentence
141.3(b)(1), introductory text	under any program	
141.3(c)	the benefits of a program	benefits
141.4(a)(1), first sentence	to carry out a program	
141.4(a)(2), third sentence	a program of	
141.4(a)(3), first sentence	for each program,	
141.4(a)(3), first sentence	in the program	
141.4(b)(1)	a student loan program	student loans
141.5(b), last sentence	of any program under	in
141.5(d)	program under which	program for which
141.8(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
141.9(f)	under the program involved	to which this regulation applies
141.9(f)	assistance will	assistance to which this regulation applies will
141.9(f)	under such program	
141.12(c)	the program extending	
141.12(g)	for any program,	
141.12(g)	under any such program	
141.12(h)	for the purpose of carrying out a program	

PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

7. The heading for part 142 is revised to read as set forth above.

8. The authority citation for part 142 continues to read as follows:

Authority: 29 U.S.C. 794.

9. Section 142.3 is amended by adding paragraph (m) to read as follows:

§ 142.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

10. Section 142.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 142.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

11. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

12. Section 142.16 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 142.16 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

Appendix to Part 142 [Amended]

13. The heading for appendix A to part 142 is amended by removing the words "Grants and Activities" and adding, in their place, the words "Federal Financial Assistance".

14. The introductory text for appendix A to part 142 is amended by removing the words "Programs of" and adding, in their place, the words "Types of Federal".

15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
142.2, introductory text, first sentence	all programs	all programs or activities
142.2, introductory text, first sentence	federally-assisted programs and activities	types of Federal financial assistance
142.2, introductory text, second sentence	under any such program	
142.2(b)	under any such program	
142.2(c)	under any such program	
142.2(d), last sentence	program	Federal financial assistance
142.4(a)	or benefits from	
142.4(b)(1)(v)	recipients program	recipient's program or activity
142.4(b)(3)	programs or activities	aid, benefits, or services
142.4(b)(4)(ii)	program	program or activity
142.4(b)(5)(i)	or benefits from	
142.4(b)(6)	or benefiting from	
142.4(c)	the benefits of a program	aid, benefits, or services
142.4(d)	programs and activities	programs or activities
142.4(e)	programs and activities	programs or activities
142.5(a), first sentence	for a program or activity	
142.5(a), first sentence	program will	program or activity will
142.6(a)(3)(i)	program	program or activity
142.6(a)(3)(ii)	program	program or activity
142.8(a), second sentence	programs and activities	programs or activities
142.11(a)(3), last sentence	apprenticeship programs	apprenticeships
142.11(b)(8)	social	those that are social
142.11(b)(8)	programs	
142.12(a)	program	program or activity
142.12(c), introductory text	program	program or activity
142.12(c)(1)	program	program or activity
142.16(b), last sentence	offer programs and activities to	serve
142.16(d)(3)	program accessibility	accessibility under paragraph (a) of this section
142.41	programs and activities	programs or activities
142.41	or benefit from	
142.43(a)	program or activity	aid, benefits, or services
142.43(b)	programs activities	programs or activities
142.43(d)	programs and activities	programs or activities
142.44(a), second sentence	program of	
142.44(c)	in its program	
142.44(d)(1)	under the education program or activity operated by the recipient	
142.47(a)(1), first sentence	programs and activities	aid, benefits, or services
142.61	programs and activities	programs or activities
142.61	or benefit from	

PART 143—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

16. The authority citation for part 143 is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 22 U.S.C. 2658; 45 CFR part 90.

17. The heading of § 143.2 is revised to read as follows:

§ 143.2 To what programs or activities do these regulations apply?

* * * * *

18. Section 143.3 is amended by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and adding a new paragraph (b)(2) to read as follows:

§ 143.3 Definitions.

* * * * *

(b) * * *

(2) *Program or activity* means all of the operations of any entity described in paragraphs (b)(2)(i) and (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government;

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20),

system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity which is established by two or more of the entities described in paragraph (b)(2)(i), (ii), or (iii) of this section.

* * * * *

Appendix A to Part 143 [Amended]

19. The heading for appendix A to part 143 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

20. The undesignated center heading in appendix A to part 143 is amended by removing the words "Programs of" and adding, in their place, the words "Types of Federal".

Appendix B to Part 143 [Amended]

21. The heading for appendix B to part 143 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

22. The undesignated center heading in appendix B to part 143 is amended by removing the words "Programs of" and adding, in their place, the words "Types of Federal".

Appendix C to Part 143 [Amended]

23. The heading for appendix C to part 143 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

24. The undesignated center heading in appendix C to part 143 is amended by removing the words "Program of" and adding, in their place, the words "Types of Federal".

25. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
143.1, last sentence	programs and activities	programs or last activities
143.2	or benefits from	
143.21	programs and activities	programs or activities
143.34(a)(2), last sentence	program	
143.36(c)(2), first sentence	Federal	
143.39(b)(2)	program or activity	Federal financial assistance

Dated: August 24, 2000.

Bonnie Cohen,

Under Secretary of State for Management.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Chapter II

RIN 0412–AA45

Authority and Issuance

For the reasons set forth in the joint preamble, AID proposes to amend 22 CFR chapter II, parts 209, 217, and 218, as set forth below:

PART 209—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 209 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, and sec. 621, Foreign Assistance Act of 1961, 75 Stat. 445; 22 U.S.C. 2402.

2. Section 209.3 is amended by revising paragraph (g) to read as follows:

§ 209.3 Definitions.

* * * * *

(g) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

3. Section 209.5 is amended by revising paragraph (b)(2) to read as follows:

§ 209.5 Assurance required.

* * * * *

(b) * * *

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
209.2, first sentence	federally assisted programs and activities	types of Federal financial assistance
209.2, second sentence	under any such program	
209.2(b)	under any such program	
209.2(c)	under any such program	
209.2, last sentence	program	Federal financial assistance
209.3(f)	for the purpose of carrying out a program	
209.3(h)	for any program,	
209.3(h)	under any such program	
209.4(b)(1), introductory text	under any program	
209.5(a)(1), first sentence	to carry out a program	
209.5(a)(1), first sentence	except a program	except an application
209.5(a)(1), fifth sentence	for each program	
209.5(a)(1), fifth sentence	in the program	
209.5(a)(2), first sentence	through a program of	with
209.5(a)(2), second sentence	under a program of	with
209.5(a)(2), third sentence	program	statute
209.5(b)(1)	for a student assistance program	for student assistance
209.6(b), last sentence	of any program under	in
209.6(d)	under	for
209.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
209.10(e)	under the program involved	to which this regulation applies
209.10(e)	assistance will	assistance to which this regulation applies will
209.10(e)	under such program	
209.12(a),first sentence	under such program	
209.13	programs	Federal financial assistance

PART 217—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

5. The heading for part 217 is revised to read as set forth above.

6. The authority citation for part 217 continues to read as follows:

Authority: 29 U.S.C. 794, unless otherwise noted.

7. Section 217.3 is amended by adding a new paragraph (l) to read as follows:

§ 217.3 Definitions.

* * * * *

(l) *Program or activity* means all of the operations of any entity described in paragraphs (l)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (l)(1), (2), or (3) of this section.

8. Section 217.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 217.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

Subpart C of Part 217 [Amended]

9. The heading for subpart C is amended by removing the word "Program".

10. Section 217.22 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 217.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
217.2, first sentence	programs carried	programs or activities carried
217.2, first sentence	federally assisted programs and activities	types of Federal financial assistance
217.2, second sentence	under any such program	
217.2(b)	under any such program	
217.2(c)	under any such program	
217.2, last sentence	program	Federal financial assistance

Section	Remove	Add
217.4(a)	or benefits from	
217.4(b)(1)(v)	program	program or activity
217.4(b)(3)	programs or activities	aid, benefits, or service
217.4(b)(4)(ii)	program	program or activity
217.4(b)(5)(i)	or benefits from	
217.4(b)(6)	or benefiting from	
217.4(c)	the benefits of a program	aid, benefits, or services
217.4(c)	from a program	from aid, benefits, or services
217.5(a), first sentence	for a program or activity	
217.5(a), first sentence	the program	the program or activity
217.6(a)(3)(i)	program	program or activity
217.6(a)(3)(ii)	program	program or activity
217.6(a)(3)(iii)	program	program or activity
217.8(a), second sentence	programs and activities	programs or activities
217.11(a)(3), last sentence	apprenticeship programs	apprenticeships
217.11(b)(8)	social	those that are social or recreational
217.11(b)(8)	programs	
217.12(a)	program	program or activity
217.12(c), introductory text	program	program or activity
217.12(c)(1)	program	program or activity
217.14(b)	programs	program
217.22(b), last sentence	offer programs and activities to	serve
217.22(d)(3)	program accessibility	accessibility under § 217.22(a)
217.41	programs and activities	programs or activities
217.41	or benefit from	
217.43(a)	program or activity	aid, benefits, or services
217.43(d)	programs and activities	program or activity
217.44(a), second sentence	program of	
217.44(c)	in its program	
217.44(d)(1)	under the education program or activity operated by the recipient	
217.47(a)(1), first sentence	programs and activities	aid, benefits, or services

PART 218—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

12. The authority citation for part 218 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90; 22 U.S.C. 2658, unless otherwise noted.

13. The heading for § 218.02 is revised to read as follows:

§ 218.02 To what programs or activities do these regulations apply?

* * * * *

14. Section 218.03 is amended by adding paragraph (b)(4) to read as follows:

§ 218.03 Definitions.

* * * * *

(b) * * *

(4) *Program or activity* means all of the operations of any entity described in paragraphs (b)(4)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity which is established by two or more of the entities described in paragraph (b)(4)(i), (ii), or (iii) of this section.

Appendices A, B, and C to Part 218 [Amended]

15. The headings for appendices A, B, and C to part 218 are amended by removing the words "Affected Programs" and adding, in their place, the words "Types of Federal Financial Assistance".

16. The undesignated center headings immediately following the headings for appendices A and B to part 218 are amended by removing the words "Programs of" and adding, in their place, the word "Federal".

17. The undesignated center heading immediately following the heading for Appendix C to part 218 is amended by removing the words "Program of" and adding, in their place, the word "Federal".

18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
218.01, last sentence	programs and activities	programs or activities
218.02	or benefits from	
218.21	programs and activities	program or activities
218.34(a)(2), last sentence	program	
218.36(c)(2)	Federal	
218.39(b)(2)	program or activity	Federal financial assistance

Dated: August 23, 2000.

Jessalyn L. Pendarvis,

Director, Office of Equal Opportunity Programs, Agency for International Development.

DEPARTMENT OF JUSTICE

28 CFR Chapter I

[A.G. Order No. 2334–2000]

RIN 1190–AA49

Authority and Issuance

For the reasons set forth in the joint preamble, DOJ proposes to amend 28 CFR chapter I, part 42 as set forth below:

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964 [1]

[1] See also 28 CFR 5. Guidelines for enforcement of Title VI, Civil Rights Act.

1. The authority citation for subpart C is revised to read as follows:

Authority: 42 U.S.C. 2000d—2000d–7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

2. Section 42.102 is amended by revising paragraph (d) to read as follows:

§ 42.102 Definitions.

* * * * *

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

* * * * *

3. Section 42.104 is amended by revising paragraph (b)(4) to read as follows:

§ 42.104 Discrimination prohibited.

* * * * *

(b) * * *

(4) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

* * * * *

4. Section 42.105 is amended by revising paragraph (b), paragraph (c)(2), and the heading of paragraph (d) to read as follows:

§ 42.105 Assurance required.

* * * * *

(b) *Assurances from government agencies.* In the case of any application from any department, agency, or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(c) * * *

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility.

(d) *Continuing Federal financial assistance.* * * *

* * * * *

5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.102(f)	for any program,	
42.102(f)	under any such program	
42.102(g)	for the purpose of carrying out a program	
42.103, introductory text, second sentence	under any such program	
42.104(b)(1), introductory text	under any program	
42.105(a)(1), first sentence	to carry out a program	
42.105(a)(1), fourth sentence	for each program	

Section	Remove	Add
42.105(a)(1), fourth sentence	in the program	
42.105(a)(2), first sentence	through a program of	with
42.105(a)(2), second sentence	under a program of	with
42.105(a)(2), last sentence	program	statute
42.105(d), introductory text	administering a program which receives	applying for
42.106(b), last sentence	of any program under	in
42.106(d)	program under which	program for which
42.109(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
42.110(f)	under the program involved	to which this regulation applies
42.110(f)	assistance will	assistance to which this regulation applies will
42.110(f)	under such program	

6. The heading for subpart G is revised to read as follows:

Subpart G—Nondiscrimination Based on Handicap in Federally Assisted Programs or Activities—Implementation of Section 504 of the Rehabilitation Act of 1973

7. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 29 U.S.C. 706, 794; E.O. 12250.

§ 42.520 [Amended]

8. The undesignated center heading immediately preceding § 42.520 is amended by removing the word "Program."

9. Section 42.521 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 42.521 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

10. Section 42.540 is amended by revising paragraph (h) to read as follows:

§ 42.540 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h) (1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

Appendix A to Subpart 6 of Part 42 [Amended]

11. The Note in appendix A to subpart G is amended by removing the word "program" and adding, in its place, the words "program or activity."

12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.501	program	program or activity
42.502, first sentence	program	program or activity
42.502, first sentence	or benefiting from	
42.502, last sentence	program	program or activity
42.503(a)	program	program or activity
42.503(a)	or benefiting from	
42.503(b)(1), introductory text	program	program or activity
42.503(b)(1)(i)	program	program or activity
42.503(b)(1)(ii)	program	program or activity
42.503(b)(1)(iv)	program	program or activity
42.503(b)(1)(vi)	program	program or activity
42.503(b)(2)	program	program or activity
42.503(b)(2)	program	aid, benefits, or services
42.503(b)(3)	program	program or activity
42.503(b)(4)	program	program or activity
42.503(b)(5)	a program	aid, benefits, or services
42.503(b)(5)	any program	any program or activity
42.503(b)(6)	program	entity
42.503(c)	programs	aid, benefits, or services

Section	Remove	Add
42.503(d)	programs	programs or activities
42.503(f), first sentence	program	program or activity
42.504(a), first sentence	program	program or activity
42.504(a), second sentence	for each of its assistance programs	
42.504(a), second sentence	program	program or activity
42.504(b)	program	program or activity
42.505(a), last sentence	program	program or activity
42.505(b)	program	program or activity
42.505(f)(1), second sentence	programs	programs or activities
42.510(a)(1)	program	program or activity
42.510(a)(1)	or benefiting from	
42.510(a)(2)	program	program or activity
42.510(a)(3), last sentence	apprenticeship programs	apprenticeships
42.510(b)(7)	social	those that are social
42.510(b)(7)	programs	
42.511(a)	program	program or activity
42.511(c), introductory text	program	program or activity
42.511(c)(1)	program	program or activity
42.520	program	program or activity
42.521(b), first sentence	in making its program accessible to its program accessible	in making its program or activity accessible
42.521(b), last sentence	offer programs to	serve
42.521(b), last sentence	to obtain the full benefits of the program	
42.521(d)(1)	program	program or activity
42.521(d)(3)	program accessibility	accessibility under§ 42.521(a)
42.530(a), first sentence	programs	programs or activities
42.530(b)	programs	programs or activities
42.530(c)	programs	programs or activities
42.540(i), first sentence	programs programs or	activities

13. The heading for subpart I is revised to read as follows:

Subpart I—Nondiscrimination on the Basis of Age in Federally Assisted Programs or Activities; Implementation of the Age Discrimination Act of 1975

14. The authority citation for subpart I continues to read as follows:

Authority: 42 U.S.C. 6103(a)(4); 45 CFR part 90.

15. Section 42.702 is amended by revising the definition of "Program or activity" to read as follows:

§ 42.702 Definitions.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

16. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.701(b)	programs	programs or activities
42.710(b), last sentence	program	program or activity
42.712(a)(2)	program	program or activity
42.712(b)(2)	program	program or activity
42.712(c)	program	program or activity
42.713(b), last sentence	program	program or activity
42.714	program	program or activity
42.720, first sentence	program	program or activity
42.724(b)	program	program or activity
42.725	programs and activities	programs or activities
42.733(b)(1)(i)(A)	program	program or activity
42.733(b)(2), last sentence	programs	programs or activities

Section	Remove	Add
42.733(b)(3), last sentence	program	program or activity

Dated: October 31, 2000.

Janet Reno,

Attorney General.

DEPARTMENT OF LABOR

29 CFR Subtitle A

RIN 1291–AA31

Authority and Issuance

For the reasons set forth in the joint preamble, DOL proposes to amend 29 CFR subtitle A, parts 31 and 32 as set forth below:

PART 31—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF LABOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 31 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 501, 29 U.S.C. 49k, 5 U.S.C. 301.

2. Section 31.2 is amended by revising paragraph (g) to read as follows:

§ 31.2 Definitions.

* * * * *

(g) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

3. Section 31.3 is amended by revising the heading of paragraph (d)(1) to read as follows:

§ 31.3 General standards.

* * * * *

(d) * * *

(1) *Employment service.* * * *

* * * * *

4. Section 31.6 is amended by revising the heading of paragraph (b) to read as follows:

§ 31.6 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
31.2(f)	for the purpose of carrying out a program	
31.2(h)	for any program,	
31.2(h)	under any such program	
31.3(b)(1), introductory text	under any program	
31.3(d), introductory text, first sentence	programs and activities	types of Federal financial assistance
31.3(d), introductory text third sentence	particular program	particular type of Federal financial assistance
31.3(d), introductory text, last sentence	listed program	listed type of Federal financial assistance
31.3(d), introductory text, last sentence	that program	that assistance
31.3(d), introductory text, last sentence	other programs or activities	programs or activities receiving other types of Federal financial assistance
31.5(b), last sentence	of any program under	in
31.5(d)	under	for
31.6(a)(1), first sentence	to carry out a program	
31.6(a)(1), first sentence	to carry out such program	
31.6(a)(1), first sentence	except a program	except an application
31.6(a)(1), second sentence	Every program	Every award
31.6(a)(1), sixth sentence	for each program	
31.6(a)(1), sixth sentence	in this program	
31.6(a)(2), second sentence	under a program of	with
31.6(a)(2), third sentence	program under	statute under
31.6(b), introductory text	to carry out a program involving	for
31.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
31.10(e)	under the program involved	to which this regulation applies
31.10(e)	assistance will	assistance to which this regulation applies will
31.10(e)	under such program	
31.12(a), first sentence	under such program	

PART 32—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

6. The heading for part 32 is revised to read as set forth above.

7. The authority citation for part 32 continues to read as follows:

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); secs. 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; Executive Order 11914, 41 FR 17871.

8. Section 32.2 is amended by revising paragraph (a) to read as follows:

§ 32.2 Application.

(a) This part applies to each recipient of Federal financial assistance from the Department of Labor, and to every program or activity that receives such assistance.

* * * * *

9. Section 32.3 is amended by adding, in alphabetical order, a definition of *Program or activity* to read as follows:

§ 32.3 Definitions.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

10. Section 32.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 32.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, services, or training limited by Federal law.* * * *

* * * * *

11. Section 32.5 is amended by revising paragraph (d) to read as follows:

§ 32.5 Assurances required.

* * * * *

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency, and where the grant obligates the recipient agency to comply with the rules and regulations of the Department applicable to that grant the provisions of this part shall apply to programs or activities operated with such funds.

12. The heading for subpart B is revised to read as follows:

Subpart B—Employment Practices and Employment Related Training Participation

13. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

14. Section 32.27 is amended by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 32.27 Accessibility.

(a) *Purpose.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. * * *

* * * * *

15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
32.1	or benefiting from	
32.1, last sentence	programs and activities	programs or activities
32.3, definition of Facility	program	program or activity
32.3, definition of Qualified handicapped individual, paragraph (b).	program	program or activity
32.3, definition of Qualified handicapped individual, paragraph (c).	programs	
32.3, definition of Qualified handicapped individual, paragraph (c).	in the program	in the program or activity
32.3, definition of Reasonable accommodation, introductory text, first sentence.	training program	training
32.3, definition of Reasonable accommodation, introductory text, first sentence.	an employment	employment
32.3, definition of Reasonable accommodation, introductory text, first sentence.	recipient's program	recipient's program or activity
32.3, definition of Reasonable accommodation paragraph (a).	where the program	where the program or activity
32.4(a)	or benefits from	
32.4(b)(1)(v)	program	program or activity
32.4(b)(2)	services and training	services or training
32.4(b)(3)	programs or activities	aid, benefits, services, or training
32.4(b)(4)(ii)	program	program or activity

Section	Remove	Add
32.4(b)(5)(i)	or benefits from	
32.4(b)(6)	or benefiting from	
32.4(b)(7)(i), first sentence	under programs of	receiving
32.4(b)(7)(i), second sentence	programs of employment	employment
32.4(c)	the benefits of a program	aid, benefits, program services, or training
32.4(c)	individuals from a program	individuals from aid, benefits, services, or training
32.4(d)	programs and activities	programs or activities
32.5(a), first sentence	for a program or activity	
32.5(a), first sentence	program will	program or activity will
32.5(b)(3)	program	program or activity
32.6(a)(3)(i)	program	program or activity
32.6(a)(3)(ii)	program	program or activity
32.8(a), second sentence	programs and activities	programs or activities
32.10(a)	programs	programs or activities
32.12(a)(1), last sentence	programs	under programs or activities
32.12(a)(3), last sentence	apprenticeship programs	apprenticeships
32.12(b)(8)	social	those that are social
32.12(b)(8)	programs	
32.13(a)	program	program or activity
32.13(b), introductory text	program	program or activity
32.13(b)(1)	program	program or activity
32.13(b)(2)	training program	training
32.13(d)	program	program or activity
32.15(c)(1), second sentence	training programs	training
32.17(a), last sentence	programs of	programs or activities receiving
32.27(a), third sentence	particular program	particular aid, benefit, service, or training
32.27(a), third sentence	program must	aid, benefit, service, or training must
32.27(a), fourth sentence	program accessibility	Accessibility
32.27(a), fourth sentence	program accessible	program or activity accessible
32.27(b)(1)	including	including those involving
32.27(b)(1)	when	when each part is
32.27(b)(2), second sentence	programs	
32.27(c), last sentence	offer programs and activities to	serve
32.27(e)(3)	program accessibility	accessibility under § 32.27(a)
32.44(b), second sentence	programs	programs or activities
32.44(b), last sentence	of any program under	in
32.46(c)(2), last sentence	program	program or activity
32.47(c)	programs	programs or activities

Alexis M. Herman,
Secretary, Department of Labor.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Chapter I

RIN 2900–AK13

Authority and Issuance

For the reasons set forth in the joint preamble, VA proposes to amend 38 CFR chapter I, part 18 as set forth below:

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General

1. The authority citation for subpart A continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1) and the laws referred to in Appendix A.

2. Section 18.4 is amended by revising the heading of paragraph (b) and paragraph (d) to read as follows:

§ 18.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

* * * * *

(d) *Extent of application to institution or facility.* In the case where any assurances are required from an academic, a medical care, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.

3. Section 18.13 is amended by revising paragraph (f) to read as follows:

§ 18.13 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.2, first sentence	the federally assisted programs and activities	the types of Federal financial assistance
18.2, second sentence	under any such program	
18.2(b)	under any such program	
18.2(c)	under any such program	
18.2, penultimate sentence	program or activity	type of Federal financial assistance
18.2, penultimate sentence	such program	a program
18.2, last sentence	programs	types of Federal financial assistance
18.3(b)(1), introductory text	under any program	
18.4(a)(1), first sentence	to carry out a program	
18.4(a)(1), first sentence	except a program	except an application
18.4(a)(1), second sentence	program	award
18.4(a)(1), sixth sentence	for each program,	
18.4(a)(1), sixth sentence	in the program	
18.4(b), introductory text, first sentence	to carry out a program involving	for
18.4(b), introductory text, first sentence	programs	types of Federal financial assistance
18.4(b), concluding text	Under a continuing program	
18.6(b), second sentence	of any program under	in
18.6(d)	program under	program for
18.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
18.10(f)	under the program involved	to which this regulation applies
18.10(f)	assistance will	assistance to which this regulation applies will
18.10(f)	under such program	
18.12(a), first sentence	under such program	
18.13(h)	for any program,	
18.13(h)	under any such program	

5. The heading for subpart D is revised to read as follows:

Subpart D—Nondiscrimination on the Basis of Handicap

6. The authority citation for subpart D is revised to read as follows:

Authority: 29 U.S.C. 706, 794.

7. Section 18.403 is amended by adding paragraph (m) to read as follows:

§ 18.403 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

§ 18.404 [Amended]

8. In § 18.404, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

9. Section 18.405 is amended by revising paragraph (c) to read as follows:

§ 18.405 Assurances required.

* * * * *

(c) *Extent of opplication to institution or facility.* An assurance shall apply to the entire institution or facility.

* * * * *

§ 18.421 [Amended]

10. The undesignated center heading before § 18.421 is amended by removing the word "Program".

11. In § 18.422, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 18.422 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

12. The heading of § 18.438 is revised to read as follows:

§ 18.438 Adult education.

* * * * *

13. The heading of § 18.439 is revised to read as follows:

§ 18.439 Private education.

* * * * *

14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.402	or benefits from	
18.403(h)(1)	a program of	
18.404(a)	or benefits from	
18.404(b)(1)(v)	program	program or activity
18.404(b)(3)	programs or activities	aid, benefits, or services
18.404(b)(4)(ii)	program	program or activity
18.404(b)(5)(i)	or benefits from	
18.404(b)(6)	or benefiting from	
18.404(c)	a program	aid, benefits, or services
18.405(a)	for a program or activity	
18.405(a)	the program	the program or activity
18.406(a)(3)(i)	program	program or activity
18.406(a)(3)(ii)	program	program or activity
18.406(a)(3)(iii)	program	program or activity
18.408(a), second sentence	programs and activities	programs or activities
18.411(a)(3), last sentence	apprenticeship programs	apprenticeships
18.411(b)(8)	social	those that are social
18.411(b)(8)	programs	
18.412(a)	program	program or activity
18.412(c), introductory text	program	program or activity
18.412(c)(1)	program	program or activity
18.422(b), last sentence	offer programs and activities to	serve
18.422(c), last sentence	programs	programs or activities
18.422(e)(3)	program accessibility	accessibility under paragraph (a) of this section
18.431	programs and activities	programs or activities
18.431	or benefit from	
18.433(b)(2)	individualized education program	Individualized Education Program
18.433(b)(3), first sentence	in	
18.433(b)(3), first sentence	to a program	for aid, benefits, or services
18.433(b)(3), first sentence	the one	those
18.433(b)(3), first sentence	operates	operates or provides
18.433(c)(1), second sentence	in	
18.433(c)(1), second sentence	to a program	for aid, benefits, or services
18.433(c)(1), second sentence	operated	operated or provided
18.433(c)(1), second sentence	the program	the aid, benefits, or services
18.433(c)(2)	in	
18.433(c)(2)	to a program	for aid, benefits, or services
18.433(c)(2)	operated	operated or provided
18.433(c)(2)	the program	the aid, benefits, or services
18.433(c)(4), last sentence	such a program	a free appropriate public education
18.435(a)	education program	education program or activity
18.435(a)	in a regular or special program	in regular or program special education
18.435(b), introductory text	programs and activities	programs or activities
18.435(b), introductory text	or benefit from	
18.437(a)(1)	or benefit from	
18.437(b)	or benefit from	
18.437(c)(1), first sentence	programs and activities	aid, benefits, or services
18.437(c)(1), first sentence	or benefits from	
18.437(c)(1), last sentence	in these activities	
18.438, first sentence	operates an	provides
18.438, first sentence	program or activity	
18.438, first sentence	from the program or activity	
18.438, last sentence	under the program or activity	
18.439(a)	operates a	provides
18.439(a)	education program	education
18.439(a)	from that program	
18.439(a)	the recipient's program	that recipient's program or activity
18.439(c)	operates	provides
18.439(c)	programs shall operate those programs	shall do so
18.441	programs and activities	programs or activities
18.441	or benefit from	
18.443(a)	program or activity	aid, benefits, or services
18.443(d)	programs and activities	program or activity
18.444(a), last sentence	program of	
18.444(c)	in its program	
18.444(d)(1)	under the education program or activity operated by the recipient	

Section	Remove	Add
18.447(a)(1), first sentence	programs and activities	aid, benefits, or services
18.451	programs and activities	programs or activities
18.451	or benefit from	
18.454, first sentence	program or activity	program or activity that provides aid, benefits, or services

Subpart E—Nondiscrimination on the Basis of Age

15. The authority citation for subpart E continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90 (1979).

16. Section 18.503 is amended by redesignating paragraphs (j) through (l) as paragraphs (k) through (m), and adding a new paragraph (j) to read as follows:

§ 18.503 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

Appendix B to Subpart E to Part 18 [Amended]

17. The heading for appendix B to subpart E to part 18 is amended by removing the word "Programs".

18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.501, last sentence	programs and activities	programs or activities
18.531	programs and activities	programs or activities
18.532	programs and activities	programs or activities
18.544(a)(2), last sentence	program	
18.546(b), first sentence	program and activity	program or activity
18.546(c)(2), first sentence	Federal	
18.549(b)(2)	program or activity	Federal financial assistance

Dated: August 14, 2000.

Hershel W. Gober,

Acting Secretary, Department of Veterans Affairs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

RIN 2020–AA43

Authority and Issuance

For the reasons set forth in the joint preamble, EPA proposes to amend 40 CFR chapter I, part 7 as set forth below:

PART 7—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

1. The heading for part 7 is revised to read as set forth above.

2. The authority citation for part 7 is revised to read as follows:

Authority: 42 U.S.C. 2000d to 2000d–7; 29 U.S.C. 794; 33 U.S.C. 1251 nt.

3. Section 7.25 is amended by adding the new definition of "Program or activity" in alphabetical order to read as follows:

§ 7.25 Definitions.

* * * * *

Program or activity and *program* mean all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

§ 7.55 [Amended]

4. The heading for § 7.55 is amended by removing the word "programs" and adding, in its place, the words, "aid, benefits, or services".

5. In § 7.65, the first sentence of paragraph (a) introductory text and the heading for paragraph (b) are revised to read as follows:

§ 7.65 Accessibility.

(a) *General.* A recipient shall operate each program or activity receiving EPA assistance so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

(b) *Methods of ensuring compliance in existing facilities.* * * *

* * * * *

Appendix A to Part 7 [Amended]

6. The heading for appendix A to part 7 is amended by removing the word "Programs" and inserting the words "Types of" immediately before the word "EPA".

7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.20(a)	compliance programs	means of ensuring compliance
7.25, undesignated definition of Project Officer	program	
7.35(a)(1)	program	program or activity
7.35(a)(2)	program	program or activity
7.35(a)(3)	program	program or activity
7.35(a)(4)	program	program or activity
7.35(a)(5)	program	program or activity
7.35(a)(6)	any program	any program or activity
7.35(a)(6)	the EPA assistance program	EPA assistance
7.35(b)	program	program or activity
7.35(c)	program	program or activity
7.50(a)(1)	program	program or activity
7.50(a)(3)	program	program or activity
7.50(a)(5)	program	program or activity
7.50(b)	or benefits from	
7.50(e)	programs	aid, benefits, or services
7.55	program	program or activity
7.55	programs	programs or activities
7.60(a)	or benefits from	
7.60(c)(8)	social	those that are social
7.60(c)(8)	programs	
7.60(d)	apprenticeship programs	apprenticeships
7.60(e)	program	program or activity
7.65(b)	offer program benefits to	serve
7.65(c)(2) first sentence,	make a program or activity accessible	comply with paragraph (a) of this section
7.65(d)	assisted program	
7.65(e), last sentence	program	statute
7.75, introductory text	program	program or activity
7.75(a)(3)	program accessibility	accessibility under § 7.65(a)
7.85(b), first sentence	programs	programs or activities
7.95(a), first sentence	programs	programs or activities
7.130(b)(4)	program	program or activity

Dated: October 16, 2000.

Carol M. Browner,

Administrator, Environmental Protection Agency.

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

RIN 3090–AH33

Authority and Issuance

For the reasons set forth in the joint preamble, GSA proposes to amend 41 CFR chapter 101, parts 101–6 and 101–8 as set forth below:

PART 101–6—MISCELLANEOUS REGULATIONS

Subpart 101–6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

1. The authority citation for subpart 101–6.2 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

2. Section 101–6.204–3 is amended by revising the heading to read as follows:

§ 101–6.204–3 Special benefits.

* * * * *

3. Section 101–6.205–2 is amended by revising the heading to read as follows:

§ 101–6.205–2 Continuing Federal financial assistance.

* * * * *

4. Section 101–6.205–4 is amended by revising paragraph (b) to read as follows:

§ 101–6.205–4 Applicability of assurances.

* * * * *

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Section 101–6.216 is amended by revising paragraph (f) to read as follows:

§ 101–6.216 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of nay other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–6.201	52	42
101–6.201	2000d—2000d–4	2000d—2000d–7
101–6.203(a), last sentence	programs involving	
101–6.203(b)	the programs involving	
101–6.203(c)	programs	types of Federal financial assistance
101–6.204–2 (a)(4), first sentence	the program	a program
101–6.204–3	the benefits of a program	benefits
101–6.205–1(a), first sentence	to carry out a program	
101–6.205–1(a), first sentence	except a program	except an application
101–6.205–1(a), fifth sentence	for each program	
101–6.205–1(a), fifth sentence	in the program	
101–6.205–1(b), second sentence	under a program of	with
101–6.205–1(b), third sentence	program	statute
101–6.205–1(d)	programs	Federal financial assistance
101–6.205–2	to carry out a program involving	for
101–6.205–4(c)	under a program	
101–6.206(b), second sentence	except as provided in paragraph (b) of § 101–6.205–4	in
101–6.206(d)	subject to the provisions of § 101–6.205–4(b)	program for
101–6.209–2, last sentence	of any program under	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
101–6.209–4	program under	to which this regulation applies
101–6.212–5, first sentence	programs	assistance to which this regulation applies will
101–6.213–6	under the program involved	
101–6.213–6	assistance will	
101–6.213–6	under such program	
101–6.215–1, introductory text, first sentence	under such program	
101–6.216(h)	for any program,	
101–6.216(h)	under any such program	
101–6.216(i)	for the purpose of carrying out a program	

PART 101–8—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

7. The heading for part 101–8 is revised to read as set forth above.

Subpart 101–8.3—Discrimination Prohibited on the Basis of Handicap

8. Section 101–8.301 is amended by adding a new paragraph (f) to read as follows:

§ 101–8.301 Definitions.

* * * * *

(f) The term *program or activity* means all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private

organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1),(2), or (3) of this section.

9. Section 101–8.309 is amended by revising the section heading and the heading and first sentence of paragraph (b) to read as follows:

§ 101–8.309 Accessibility.

* * * * *

(b) *Accessibility.* A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

10. Section 101–8.311 is amended by revising the section heading and the heading and the first sentence of the introductory text of paragraph (b)(1) to read as follows:

§ 101–8.311 Historic Preservation Programs.

* * * * *

(b) * * * (1) *Accessibility.* A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–8.300(b)	or benefits from	
101–8.302	or benefits from	
101–8.303(a)(5)	program	program or activity
101–8.303(c)	programs or activities	aid, benefits, or services
101–8.303(d)(2)	program	program or activity
101–8.303(f)	or benefitting from	
101–8.303(g)	the benefits of a program	aid, benefits, or services
101–8.303(g)	from a program	from aid, benefits, or services
101–8.303(d), first sentence	programs and activities	programs or activities
101–8.305(c), last sentence	apprenticeship programs	apprenticeships
101–8.305(d)(8)	social	those that are social
101–8.305(d)(8)	programs	
101–8.306(a)	program	program or activity
101–8.306(c), introductory text	program	program or activity
101–8.306(c)(1)	program	program or activity
101–8.309(a)	or benefits from	
101–8.309(c), last sentence	offer programs and activities to	serve
101–8.309(f)(3)	program accessibility	accessibility under paragraph (a) of this section
101–8.311(a), introductory text	the term	
101–8.311(a)(1)	*preservation programs*	*Preservation Programs*
101–8.311(a)(1)	means programs receiving	are those that receive
101–8.311(b)(1), introductory text, last sentence	program	
101–8.311(b)(1)(iv)	program accessibility	accessibility
101–8.311(b)(1), concluding paragraph	historic preservation program	Historic Preservation Program
101–8.311(b)(1), concluding paragraph	program accessibility	accessibility
101–8.311(b)(2), introductory text	program	
101–8.311(b)(2)(iii)	program	program or activity

Subpart 101–8.7—Discrimination Prohibited on the Basis of Age:

12. The authority citation for subpart 101–8.7 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*

13. Section 101–8.703 is amended by redesignating paragraph (k) as paragraph (l) and by adding a new paragraph (k) to read as follows:

§ 101–8.703 Definitions of terms.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a state or of a local government;

(ii) The entity of such state and local government that distributes such assistance and each such department or agency (and each other state or local government entity) to which the assistance is extended, in the case of assistance to a state or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

* * * * *

14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–8.701, last sentence	Federal financial assistance	Federally assisted
101–8.701, last sentence	programs and activities	programs or activities
101–8.702(a)	that benefits from GSA Federal financial assistance	
101–8.703(g)(2)	program	policy
101–8.703(j)	for the purpose of carrying out a program	
101–8.703(l)	for any program	
101–8.703(l)	under any such program	
101–8.709	program	program or activity
101–8.710, first sentence	program	program or activity
101–8.710, second sentence	programs	
101–8.710, second sentence	provide provides	
101–8.710, last sentence	"Child Care Center" program	Child Care Center Program
101–8.710, last sentence	two programs	two types of Federal financial assistance
101–8.711, first sentence	programs and activities	programs or activities
101–8.712(b)	program	
101–8.718(a), third sentence	program	
101–8.720(b), first sentence	program and activity	program or activity
101–8.720(c)(2), first sentence	Federal	
101–8.721(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
101–8.725(b)	program or activity	Federal financial assistance

Dated: August 22, 2000.

Thurman M. Davis, Sr.,

Deputy Administrator, General Services Administration.

DEPARTMENT OF THE INTERIOR

43 CFR Subtitle A

RIN 1090–AA77

Authority and Issuance

For the reasons set forth in the joint preamble, DOI proposes to amend 43 CFR subtitle A, part 17 as set forth below:

PART 17—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR

Subpart A—Nondiscrimination on the Basis of Race, Color, or National Origin

1. The authority citation for subpart A continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; and the laws referred to in Appendix A.

2. Section 17.3 is amended by revising the heading of paragraph (d) to read as follows:

§ 17.3 Discrimination prohibited.

* * * * *

(d) *Benefits for Indians, natives of certain territories, and Alaska natives.* * * *

3. Section 17.4 is amended by revising the heading of paragraph (b) and paragraph (d)(2) to read as follows:

§ 17.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

4. Section 17.12 is amended by revising paragraph (f) to read as follows:

§ 17.12 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

Appendix B to Subpart A [Amended]

5. The introductory text for appendix B to subpart A is amended by removing the word "programs" and adding, in its place, the words "Federal financial assistance."

6. In the table below, for each section indicated in the left column, remove the

text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.2(a), second sentence	under any such program	
17.2(a)(2)	under any such program	
17.2(a)(3)	under any such program	
17.3(b)(1), introductory text	under any program	
17.3(c)(1), first sentence	a program of	the
17.3(c)(1), first sentence	assistance	assistance to a program
17.3(d), first sentence	the benefits of a program	benefits
17.3(d), first sentence	is limited	are limited
17.3(d), first sentence	the program is addressed	the benefits are addressed
17.3(d), last sentence	programs	benefits
17.4(a)(1), first sentence	to carry out a program	
17.4(a)(1), first sentence	except a program	except an application
17.4(a)(1), second sentence	program of	award of
17.4(a)(1), sixth sentence	for each program,	
17.4(a)(1), sixth sentence	in the program	
17.4(a)(2), second sentence	under a program of	with
17.4(a)(2), third sentence	program	statute
17.4(b)(1), introductory text	to carry out a program involving	for
17.4(d)(1)	a student assistance program	student assistance
17.5(b), last sentence	of any program under	in
17.5(d)	program under which	program for which
17.8(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
17.9(g)	under the program involved	to which this regulation applies
17.9(g)	assistance will	assistance to which this regulation applies will
17.9(g)	under such program	
17.11(a), first sentence	under such program	
17.12(h)	for any program,	
17.12(h)	under such program	
17.12(i)	for the purpose of carrying out a program	

Subpart B—Nondiscrimination on the Basis of Handicap

7. The authority citation for subpart B continues to read as follows:

Authority: 29 U.S.C. 794.

8. Section 17.202 is amended by adding a new paragraph (q) to read as follows:

§ 17.202 Definitions.

* * * * *

(q) *Program or activity* means all of the operations of any entity described in paragraphs (q)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (q)(1), (2), or (3) of this section.

9. Section 17.203 is amended by revising the heading of paragraph (c) to read as follows:

§ 17.203 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

10. The heading for § 17.216 is revised to read as follows:

§ 17.216 Accessibility.

* * * * *

11. Section 17.217 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 17.217 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

12. Section 17.260 is amended by revising the section heading, the introductory text of paragraph (a), and the first sentence of paragraph (b)(1) introductory text to read as follows:

§ 17.260 Historic Preservation Programs.

(a) *Definitions.* For the purposes of this section, Historic Preservation Programs are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

* * * * *

(b) * * *

(1) A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

13. The section heading and the introductory text of § 17.270 are revised to read as follows:

§ 17.270 Recreation.

This section applies to recipients that operate, or that receive Federal financial assistance for the operation of programs or activities involving recreation.

* * * * *

14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.201	or benefits from	
17.202(i)	recreation and program spaces	spaces, including those used for recreation,
17.202(m)	programs	the recipient
17.202(m)	should be available	should make its aid, benefits, or services available
17.202(n)	programs	programs or activities
17.203(a)	or benefits from	
17.203(b)(1)(v)	program	program or activity
17.203(b)(3)	programs or activities	aid, benefits, or services
17.203(b)(4)(ii)	program	program or activity
17.203(b)(5)(i)	or benefits from	
17.203(b)(6)	or benefiting from	
17.203(c)	the benefits of a program	aid, benefits, or services
17.203(c)	from a program	from aid, benefits, or services
17.204(a), first sentence	for a program or activity	
17.204(a), first sentence	the program	the program or activity
17.204(c)(4), first sentence	to carry out a program involving	for
17.204(c)(4)(i)	program	program or activity
17.204(c)(4)(ii)	the program	the program or activity
17.204(c)(4)(ii)	under such program	
17.205(a)(3)(i)	program	program or activity
17.205(a)(3)(ii)	program	program or activity
17.207(a), second sentence	programs and activities	programs or activities
17.210(a)(2)	programs	programs or activities
17.210(a)(4), last sentence	apprenticeship programs	apprenticeships
17.210(b)(8)	social	those that are social
17.210(b)(8)	programs	
17.211(a)	program	program or activity
17.211(c), introductory text	program	program or activity
17.211(c)(1)	program	program or activity
17.217(b), last sentence	offer programs and activities to	serve
17.217(e)(3)	program accessibility	accessibility under paragraph (a) of this section
17.220, first sentence	programs and activities	programs or activities
17.220, first sentence	or benefit from	
17.232, first sentence	programs and activities	programs or activities
17.232, first sentence	or benefit from	
17.250, introductory text	programs and activities	programs or activities
17.250, introductory text	or benefit from	
17.252, first sentence	activity for	activity that provides aid, benefits, or services for
17.260(b)(1), introductory text, last sentence	program	
17.260(b)(1)(iv)	program	
17.260(b)(1), concluding text	historic preservation program	Historic Preservation Program
17.260(b)(1), concluding text	program accessibility	accessibility
17.260(b)(2), introductory text, first sentence	program	
17.260(b)(2), introductory text, last sentence	program	
17.260(b)(2)(iii)	program	program or activity
17.270(a)(1)	programs	aid, benefits, or services
17.270(a)(2)	programs or activities	aid, benefits, or services
17.270(a)(5)	program or activity	aid, benefits, or services

Subpart C—Nondiscrimination on the Basis of Age

15. The authority citation for subpart C continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

16. The heading of § 17.302 is revised to read as follows:

§ 17.302 To what programs or activities do these regulations apply?

* * * * *

17. Section 17.303 is amended by redesignating paragraphs (j) through (m) as paragraphs (k) through (n) and adding a new paragraph (j) to read as follows:

§ 17.303 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

* * * * *

18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.300, first sentence	programs and activities	programs or activities
17.300, last sentence	programs and activities	programs or activities
17.301, last sentence	programs and activities	programs or activities
17.302(a)	or benefits from	
17.313	program	program or activity
17.314	program	program or activity
17.320, first sentence	programs and activities	programs or activities
17.321(b)	program	
17.333(a)(2), last sentence	program	
17.335(c)(2), first sentence	Federal	
17.338(b)(2)	program or activity	Federal financial assistance

Dated: September 11, 2000.

John Berry,

Assistant Secretary—Policy, Management, and Budget, Department of the Interior.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Chapter I

RIN 3067–AD14

Authority and Issuance

For the reasons set forth in the joint preamble, FEMA proposes to amend 44 CFR chapter I, part 7 as set forth below:

PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)

1. The heading for subpart A is revised to read as follows:

Subpart A—Nondiscrimination in FEMA-Assisted Programs—General

2. The authority citation for subpart A continues to read as follows:

Authority: FEMA Reg. 5 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000 d–1; 42 U.S.C. 1855–1855g; 50 U.S.C. 404.

3. Section 7.2 is amended by revising paragraph (d) to read as follows:

§ 7.2 Definitions.

* * * * *

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

* * * * *

4. Section 7.3 is revised to read as follows:

§ 7.3 Application of this regulation.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this regulation applies.

5. Section 7.9 is amended by revising paragraph (b) to read as follows:

§ 7.9 Assurances from institutions.

* * * * *

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.2(f)	for any program,	
7.2(f)	under any such program	
7.2(g)	for the purpose of carrying out a program	
7.4, second sentence	under any such program	
7.4(b)	under any such program	
7.4(c)	under any such program	
7.5(a), introductory text	under any program	
7.7, first sentence	to carry out a program	
7.7, fifth sentence	for each program,	
7.7, fifth sentence	in the program	
7.10(b), last sentence	of any program under	in
7.10(d)	program under which	program for which
7.13(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
7.14(f)	under the program involved	to which this regulation applies
7.14(f)	assistance will	assistance to which this regulation applies will
7.14(f)	under such program	
7.16(a), first sentence	under such program	

7. The heading for subpart E is revised to read as follows:

Subpart E—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From FEMA

8. The authority citation for subpart E is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

9. The heading for § 7.912 is revised to read as follows:

§ 7.912 To what programs or activities does this regulation apply?

* * * * *

10. Section 7.913 is amended by adding, in alphabetical order, a definition of "Program or activity" to read as follows:

§ 7.913 Definition of terms used in this regulation.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.910	programs and activities	programs or activities
7.911, last sentence	programs, activities	programs or activities
7.912(a)	or benefits from	
7.925	program	program or activity
7.926	program	program or activity
7.930, first sentence	programs and activities	programs or activities
7.931(b)	program	
7.943(a)(2), last sentence	program	
7.945(b), first sentence	program and activity	program or activity
7.945(c)(2), first sentence	Federal	
7.948(b)(2)	program or activity	Federal financial assistance

Pauline C. Campbell,
Director, Office of Equal Rights, Federal Emergency Management Agency.

NATIONAL SCIENCE FOUNDATION

45 CFR Chapter VI

RIN 3145–AA38

Authority and Issuance

For the reasons set forth in the joint preamble, NSF proposes to amend 45 CFR chapter VI, parts 605, 611, and 617 as set forth below:

PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The heading for part 605 is revised to read as set forth above.

2. The authority citation for part 605 continues to read as follows:

Authority: 29 U.S.C. 794.

3. Section 605.3 is amended by adding a new paragraph (m) to read as follows:

§ 605.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

§ 605.4 [Amended]

4. In § 605.4, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

Subpart C to Part 605 [Amended]

5. The heading for subpart C is amended by removing the word "Program".

6. In § 605.22, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 605.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped persons. * * *

* * * * *

§ 605.38 [Amended]

7. The heading for § 605.38 is amended by removing the word "programs".

§ 605.39 [Amended]

8. The heading for § 605.39 is amended by removing the word "programs".

9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
605.0, first sentence	programs and activities	programs or activities
605.2	or benefits from	
605.3(k)(5), second sentence	programs	aid, benefits, or services
605.3(k)(5), third sentence	program	
605.4(a)	or benefits from	
605.4(b)(1)(v)	recipients program	recipient's program or activity
605.4(b)(3)	programs or activities	aid, benefits, or services
605.4(b)(4)(ii)	program	program or activity
605.4(b)(5)(i)	or benefits from	
605.4(b)(6)	or benefiting from	
605.4(c)	the benefits of a program	aid, benefits, or services
605.4(c)	from a program	from aid, benefits or services
605.5(a)	under a program or activity	
605.5(a)	programs	programs or activities
605.6(a)(3)(i)	program	program or activity
605.6(a)(3)(ii)	program	program or activity
605.8(a), second sentence	programs and activities	programs or activities
605.11(a)(2)	programs	programs or activities
605.11(a)(4), last sentence	apprenticeship programs	apprenticeships
605.11(b)(8)	social	those that are social
605.11(b)(8)	programs	
605.12(a)	program	program or activity
605.12(c), introductory text	program	program or activity
605.12(c)(1)	program	program or activity
605.22(b), last sentence	offer programs and activities to	serve
605.22(e)(3)	program accessibility	accessibility under paragraph (a) of this section
605.31	programs and activities	programs or activities
605.31	or benefit from	
605.33(b)(2)	individualized education program	Individualized Education Program

Section	Remove	Add
605.33(b)(3), first sentence	in	
605.33(b)(3), first sentence	to a program	for aid, benefits, or services
605.33(b)(3), first sentence	the one	those
605.33(b)(3), first sentence	operates	operates or provides
605.33(c)(1), second sentence	in	
605.33(c)(1), second sentence	to a program	for aid, benefits, or services
605.33(c)(1), second sentence	operated	operated or provided
605.33(c)(1), second sentence	program	aid, benefits, or services
605.33(c)(2)	person in	person
605.33(c)(2)	to a program	for aid, benefits, or services
605.33(c)(2)	operated	operated or provided
605.33(c)(2)	the program	the aid, benefits, or services
605.33(c)(3)	placement in	
605.33(c)(3)	program	placement
605.33(c)(4), last sentence	such a program	a free appropriate public education
605.35(a)	program	program or activity
605.35(a)	a regular or special education program	regular or special education
605.37(c)(1), first sentence	programs and activities	aid, benefits, or first sentence services
605.37(c)(1), last sentence	in these activities	
605.38	operates a	provides
605.38	day care program or activity	day care
605.38	an adult education program or activity	adult education
605.38	from the program or activity	
605.38	under the program or activity	
605.39(a)	operates a	provides
605.39(a)	education program	education
605.39(a)	from such program	
605.39(a)	the recipient's program	that recipient's program or activity
605.39(c), first sentence	operates	provides
605.39(c), first sentence	programs shall operate such programs	shall do so
605.41	programs and activities	programs or activities
605.41	or benefit from	
605.43(a)	program or activity	aid, benefits, or services
605.43(d)	programs and activities	program or activity
605.44(a), second sentence	program of	
605.44(c)	in its program	
605.47(a)(1), first sentence	programs and activities	aid, benefits, or services
605.51	programs and activities	programs or activities
605.51	or benefit from	
605.54, first sentence	activity for	activity that provides aid, benefits, or services for

PART 611—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE NATIONAL SCIENCE FOUNDATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

10. The authority citation for part 611 continues to read as follows:

Authority: Sec. 11(a), National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a); 42 U.S.C. 2000d–1.

11. Section 611.4 is amended by revising paragraph (c)(2) to read as follows:

§ 611.4 Assurances required.

* * * * *

(c) * * *

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

12. Section 611.5 is amended by revising the example 2. to read as follows:

§ 611.5 Illustrative applications.

* * * * *

2. In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

13. Section 611.13 is amended by revising paragraph (f) to read as follows:

§ 611.13 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private

organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
611.2, first sentence	Federally assisted programs and activities	types of Federal financial assistance
611.2, second sentence	under any such program	
611.2(b)	under any such program	
611.2(c)	under any such program	
611.2, penultimate sentence	program or activity	type of Federal financial assistance
611.2, penultimate sentence	such program	a program
611.2, last sentence	programs	types of Federal financial assistance
611.3(b)(1), introductory text	under any program	
611.3(c)(2)	Programs	Types of Federal financial assistance
611.4(a)(1), first sentence	to carry out a program	
611.4(a)(1), fourth sentence	for each program	
611.4(a)(1), fourth sentence	in the program	
611.4(a)(2), second sentence	under a program of	with
611.4(a)(2), third sentence	program	statute
611.5, introductory text, first sentence	programs of	programs aided by
611.5, example 1., first sentence	In programs for	For
611.5, example 4., first sentence	grant programs	grants
611.6(b), last sentence	of any program under	in
611.6(d)	program under	program for
611.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
611.10(f)	under the program involved	to which this regulation applies
611.10(f)	assistance will	assistance to which this regulation applies will
611.10(f)	under such program	
611.12(a), first sentence	under such program	
611.13(h)	for any program,	
611.13(h)	under any such program	
611.13(i)	for the purpose of carrying out a program	

PART 617—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM NSF

15. The authority citation for part 617 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90.

§ 617.2 [Amended]

16. In § 617.2, the list is amended by adding, in alphabetical order, the term "Program or activity."

17. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
617.1, last sentence	programs and activities	programs or activities
617.8, first sentence	program or activities	program or activity
617.11(a)(2), last sentence	program	
617.12(a), first sentence	under	for
617.12(c), first sentence	program	program or activity
617.12(e), first sentence	Federal	
617.12(f)(2)(ii)	program or activity	Federal financial assistance

Dated: August 16, 2000.

Lawrence Rudolph,

General Counsel, National Science Foundation.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Chapter XI

RIN 3135–AA17, RIN 3136–AA24, RIN 3137–AA11

Authority and Issuance

For the reasons set forth in the joint preamble, NFAH, composed of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services, proposes to amend 45 CFR chapter XI, part 1110, as set forth below:

PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

1. The authority citation for part 1110 is revised to read as follows:

Authority: 42 U.S.C. 2000d—2000d–7.

2. Section 1110.4 is amended by revising the heading of paragraph (b) and paragraph (d)(2) to read as follows:

§ 1110.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance* * * *

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

3. Section 1110.5 is amended by revising paragraph (a) to read as follows:

§ 1110.5 Illustrative applications.

* * * * *

(a) In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

4. Section 1110.13 is amended by revising paragraph (g) to read as follows:

§ 1110.13 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1110.2, first sentence	federally assisted programs and activities	types of Federal financial assistance
1110.2, second sentence	under any such program	
1110.2, fifth sentence	program or activity	type of Federal financial assistance
1110.2, fifth sentence	that such program	that a program
1110.2, last sentence	programs	types of Federal financial assistance
1110.4(a)(1), first sentence	to carry out a program	
1110.4(a)(1), third sentence	for each program	
1110.4(a)(1), third sentence	in the program	
1110.4(a)(2), first sentence	through a program of	with
1110.4(a)(2), second sentence	under a program of	with
1110.4(a)(2), third sentence	program	statute
1110.4(b)	to carry out a program involving	for
1110.6(b), last sentence	of any program under	in
1110.6(d)	program under which	program for which
1110.9(e), first sentence	programs	Federal statutes, authorities, or other means by which authorities, or other means by which Federal financial assistance is extended and
1110.10(f)	under the program involved	to which this regulation applies
1110.10(f)	assistance will	assistance to which this regulation applies will
1110.10(f), first sentence	under such program	
1110.13(i)	for any program,	
1110.13(i)	under any such program	
1110.13(j)	for the purposes of carrying out a program	

Dated: August 21, 2000.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

Dated: September 11, 2000.

Laura S. Nelson,

Assistant General Counsel, National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

Dated: August 8, 2000.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Chapter XI

RIN 3135–AA17

Authority and Issuance

For the reasons set forth in the joint preamble, NEA proposes to amend 45 CFR chapter XI, parts 1151 and 1156, as set forth below:

PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

1. The authority citation for part 1151 continues to read as follows:

Authority: 29 U.S.C. 794.

2. Section 1151.3 is amended by adding a new paragraph (h) to read as follows:

§ 1151.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

§ 1151.21 [Amended]

3. The undesignated center heading immediately preceding § 1151.21 is amended by removing the word "Program".

4. Section 1151.22 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1151.22 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons.

* * * * * * *

5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1151.2	or benefits from	
1151.4(a), second sentence	programs and activities	programs or activities
1151.16(a)	or benefits from	
1151.16(b)	the benefits of a program	aid, benefits, or services
1151.16(c)	program	program or activity
1151.16(c)	or benefiting from	
1151.16(e)	programs and activities	programs or activities
1151.17(a), introductory text	benefit, service, or program	benefit, or service
1151.17(a)(1)	program,	
1151.17(a)(5)	program	program or activity
1151.17(b)	programs or activities	aid, benefits, or services
1151.17(c)(2)	program	program or activity
1151.17(d)(1)	or benefits from	
1151.17(e)	or benefiting from	
1151.18(a)(3)	for a specific program offered	and offering, for example, a specific event
1151.18(a)(3)	that program	that specific event
1151.18(b)	programs	aid, benefits, or services
1151.18(d)	benefits of the programs and activities	aid, benefits, or services
1151.18(d)	programs and activities	aid, benefits, or services
1151.18(e)	programs and activities	programs or activities
1151.22(b), last sentence	offer programs and activities to	serve
1151.22(c)	to make programs or, activities in existing facilities accessible	
1151.22(d)(3)	program accessibility	accessibility under paragraph (a) of this section
1151.31(a)	or benefits from	
1151.31(c), last sentence	apprenticeship programs	apprenticeships
1151.31(d)(8)	social	those that are social
1151.31(d)(8)	programs	
1151.32(a)	program	program or activity
1151.32(c), introductory text	program	program or activity
1151.32(c)(1)	program	program or activity

Section	Remove	Add
1151.41(a), first sentence	for a program or activity	
1151.41(a), first sentence	the program	the program or activity

PART 1156—NONDISCRIMINATION ON THE BASIS OF AGE

6. The authority citation for part 1156 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

§ 1156.2 [Amended]

7. Section 1156.2 is amended by removing the words "and to each program or activity that receives or benefits from such assistance" in paragraph (a).

8. Section 1156.3 is amended by redesignating paragraphs (h) through (n) as paragraphs (i) through (o), respectively; and by adding a new paragraph (h) to read as follows:

§ 1156.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1156.1, last sentence	programs and activities	programs or activities
1156.7(c)	program	program or activity
1156.10, first sentence	programs and activities	programs or activities
1156.17(a)(2), last sentence	program	
1156.19(c)(2), first sentence	Federal	
1156.20(b)(2)	program or the activity	Federal financial assistance

Dated: August 21, 2000.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment For the Humanities

45 CFR Chapter XI

RIN 3136–AA24

Authority and Issuance

For the reasons set forth in the joint preamble, NEH proposes to amend 45 CFR chapter XI, part 1170 as set forth below:

PART 1170—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

1. The heading for part 1170 is revised to read as set forth above.

2. The authority citation for part 1170 continues to read as follows:

Authority: 29 U.S.C. 794.

3. Section 1170.3 is amended by revising paragraph (g) to read as follows:

§ 1170.3 Definitions.

* * * * *

(g) The term *program or activity* means all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the

entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

Subpart D to Part 1170 [Amended]

4. The heading for subpart D is amended by removing the word "Program".

5. Section 1170.32 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 1170.32 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1170.2	or benefits from	
1170.3(a)	, and	
1170.3(a)	95–602	95–602, and by the Civil Rights Restoration Act of 1987, Pub.L. 100–259
1170.3(d)	program	program or activity
1170.11	or benefits from	
1170.12(a)(5)	program	program or activity
1170.12(b)	programs or activities	aid, benefits, or services
1170.12(c)(2)	program	program or activity
1170.12(d)(1)	or benefits from	
1170.12(e)	the benefits of a program	aid, benefits, or services
1170.12(e)	from a program	from aid, benefits, or services
1170.12(f)	programs and activities	programs or activities
1170.13(a)(3)	programs	aid, benefits, or services
1170.13(a)(3)	program	aid, benefit, or service
1170.13(a)(4), first sentence	of a program's	
1170.13(c)	the programs and activities	the program or activity
1170.13(c)	museum programs and activities	museum aid, benefits, or services
1170.13(d)	programs and activities	programs or activities
1170.21(a)	or benefits from	
1170.21(c), last sentence	apprenticeship programs	apprenticeships
1170.21(d)(8)	social	those that are social
1170.21(d)(8)	programs	
1170.22(a)	program	program or activity
1170.22(c), introductory text	program	program or activity
1170.22(c)(1)	program	program or activity
1170.32(b), last sentence	offer programs and activities to	serve
1170.32(d)(3)	program accessibility	accessibility under paragraph (a) of this section
1170.41	programs and activities	programs or activities
1170.41	or benefit from	
1170.43(a)	program or activity	aid, benefit, or service
1170.43(d)	programs and activities	program or activity
1170.44(a), second sentence	program of	
1170.44(c),	in its program	
1170.44(d)(1)	under the education program or activity operated by the recipient	
1170.47(a)(1), first sentence	programs and activities	aid, benefits, or services
1170.51(a), first sentence	for a program or activity	
1170.51(a), first sentence	the program	the program or activity
1170.52(a)(3)(i)	program	program or activity
1170.52(a)(3)(ii)	program	program or activity
1170.54(a), second sentence	programs and activities	programs or activities

Dated: September 11, 2000.

Laura S. Nelson,

Assistant General Counsel, National Endowment for the Humanities.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XII

RIN 3045–AA29

Authority and Issuance

For the reasons set forth in the joint preamble, the Corporation proposes to amend 45 CFR chapter XII, parts 1203 and 1232 as set forth below:

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 1203 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

2. Section 1203.3 is amended by revising paragraph (e) to read as follows:

§ 1203.3 Definitions.

* * * * *

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

* * * * *

3. Section 1203.5 is amended by revising paragraph (b), paragraph (c)(2), and the heading of paragraph (d) to read as follows:

§ 1203.5 Assurances required.

* * * * *

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(c) * * *

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility.

(d) *Continuing Federal financial assistance.* * * *

* * * * *

Appendix A to Part 1203 [Amended]

4. The heading for appendix A to part 1203 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

Appendix B to Part 1203 [Amended]

5. The heading for appendix B to part 1203 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1203.2(a), introductory text, first sentence	federally assisted programs	types of Federal financial assistance
1203.2(a), introductory text, second sentence	under a program	
1203.2(a)(2)	under a program	
1203.2(a)(3)	under a program	
1203.2(a), concluding text, first sentence	a program	a type of Federal financial assistance
1203.2(a), concluding text, first sentence	the program	a program
1203.2(a)(4) concluding text last sentence	programs	types of Federal financial assistance
1203.2(b)	as part of the program receiving that assistance	
1203.3(d)	for the purpose of carrying out a program	
1203.3(f)	for any program,	
1203.3(f)	under a program	
1203.4(b)(1), introductory text	under a program	
1203.4(c)(1), first sentence	a program of	the
1203.5(a)(1), first sentence	to carry out a program	
1203.5(a)(1), first sentence	except a program	except an application
1203.5(a)(1), second sentence	program	award
1203.5(a)(1), fifth sentence	for each program,	
1203.5(a)(1), fifth sentence	in the program	
1203.5(a)(2), second sentence	under a program of	with
1203.5(a)(2), third sentence	program	statute
1203.5(d), introductory text	to carry out a program involving	for
1203.5(d), introductory text	programs	types of Federal financial assistance
1203.6(b), second sentence	of a program under	in
1203.6(d)	program under which	program for which
1203.9(e), first sentence	programs	Federal statutes,authorities, or other means by which Federal financial assistance is extended and
1203.10(f)	under the program involved	to which this regulation applies
1203.10(f)	assistance will	assistance to which this regulation applies
1203.10(f)	under the programs	
1203.12(a), first sentence	under a program	

PART 1232—NONDISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

7. The heading for part 1232 is revised to read as set forth above.

8. The authority citation for part 1232 continues to read as follows:

Authority: 29 U.S.C. 794.

9. Section 1232.3 is amended by adding a new paragraph (m) to read as follows:

§ 1232.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

Subpart C of Part 1232 [Amended]

10. The heading for subpart C of part 1232 is amended by removing the word "Program".

§ 1232.13 [Amended]

11. The heading for § 1232.13 is amended by removing the word "program".

12. Section 1232.14 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. * * *

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to comply with paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

* * * * *

13. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1232.2, first sentence	or benefits from	
1232.2, first sentence	including volunteer programs such as	including, but not limited to
1232.3(k)	under any programs	as
1232.4(b)(1)(v)	program	program or activity
1232.4(b)(2)	programs or activities	aid, benefits, or services
1232.4(b)(3)(ii)	program	program or activity
1232.4(b)(4)(i)	or benefits from	
1232.4(c)	the benefits of a program	aid, benefits, or services
1232.4(c)	from a program	from aid, benefits, or services
1232.4(d)	programs and activities	programs or activities
1232.4(f)	program	program or activity
1232.4(f)	or benefiting from	
1232.5(a), first sentence	for a program or activity	
1232.5(a), first sentence	program	program or activity
1232.5(c)	volunteer program	program or activity
1232.7(a)(3)(i)	program	program or activity
1232.7(a)(3)(ii)	program	program or activity
1232.7(a)(3)(iii)	program	program or activity
1232.9(a)	or benefits from	
1232.9(c)(8)	social	those that are social
1232.9(c)(8)	programs	
1232.9(d), last sentence	apprenticeship programs	apprenticeships
1232.9(f)	volunteer program	program or activity
1232.10(a)	program	program or activity
1232.10(c), introductory text	program	program or activity
1232.10(c)(1)	program	program or activity

Dated: November 6, 2000.

Frank Trinity,

Acting General Counsel, Corporation for National and Community Service.

DEPARTMENT OF TRANSPORTATION

49 CFR Subtitle A

RIN 2105–AC96

Authority and Issuance

For the reasons set forth in the joint preamble, DOT proposes to amend 49 CFR subtitle A, parts 21 and 27 as set forth below:

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 2000d–2000d–7.

2. Section 21.7 is amended by removing the fifth sentence of paragraph (a)(1) and by revising the heading of paragraph (b) to read as follows:

§ 21.7 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

3. Section 21.23 is amended by revising paragraph (e) to read as follows:

§ 21.23 Definitions.

* * * * *

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

* * * * *

4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
21.3(a), introductory text, first sentence	federally assisted programs and activities	types of Federal financial assistance
21.3(a), introductory text, second sentence	under any such program	
21.3(a)(2)	under any such program	
21.3(a)(3)	under any such program	
21.3(a), concluding text, first sentence	program or activity	type of Federal financial assistance
21.3(a), concluding text, first sentence	such	a
21.3(a), concluding text, last sentence	programs	types of Federal financial assistance
21.5(b)(1), introductory text	under any program	
21.5(b)(6)	programs of	types of Federal financial assistance administered by
21.5(c)(1), first sentence	a program of	the
21.5(c)(1), first sentence	assistance	assistance to a program
21.7(a)(1), first sentence	to carry out a program	
21.7(a)(1), first sentence	except a program	except an application
21.7(a)(1), second sentence	program	award
21.7(a)(1), sixth sentence	for each program	
21.7(a)(1), sixth sentence	in the program	
21.7(a)(2), second sentence	under a program of	with
21.7(a)(2), third sentence	program	statute
21.7(b)	to carry out a program involving	for
21.7(b)	programs	types of Federal financial assistance
21.9(b), second sentence	of any program under	in
21.9(d)	under	for
21.15(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
21.17(f)	under the program involved	to which this regulation applies
21.17(f)	assistance will	assistance to which this regulation applies will
21.17(f)	under such programs	
21.21(a), first sentence	under such program	
21.23(d)	for the purpose of carrying out a program	
21.23(f)	for any program,	
21.23(f)	under any such program	

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

5. The heading for part 27 is revised to read as set forth above.

6. The authority citation for part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

Subpart A—General

7. Section 27.5 is amended by revising the definition of *Primary recipient* and adding, in alphabetical order, a definition of Program or activity to read as follows:

§ 27.5 Definitions.

* * * * *

Primary recipient means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

8. Section 27.7 is amended by revising the heading for paragraph (d) to read as follows:

§ 27.7 Discrimination prohibited.

* * * * *

(d) *Aid, benefits, or services limited by Federal law.* * * *

9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.3(a)	or benefits from	
27.5, definition of *Qualified handicapped person*, paragraph (2).	activities	services
27.5, definition of *Recipient*	for any Federal program,	
27.5, definition of *Recipient*	under any such program	
27.7(a)	or benefits from	
27.7(b)(1)(v)	program	program or activity
27.7(b)(3)	programs or activities	aid, benefits, or services
27.7(b)(4)(ii)	program	program or activity
27.7(b)(5)(i)	or benefits from	
27.7(b)(6)	or benefitting from	
27.7(d)	In programs	For aid, benefits, or services
27.9(a), first sentence	to carry out a program	
27.9(a), first sentence	program will	program or activity will
27.9(b)(4)	program	program or activity
27.11(a)(3)(i)	program	program or activity
27.11(a)(3)(ii)	program	program or activity

10. The heading of subpart B is revised to read as follows:

Subpart B—Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.71(b), last sentence	programs	programs or activities
27.77	Essential Air Service program	Essential Air Service Program

Subpart C—Enforcement

12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.121(b), last sentence	of any program under	in
27.121(d)	program	program or activity
27.125(b)(2)	program	program or activity
27.127(f), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
27.129(e), first sentence	under the program involved	to which this first regulation applies
27.129(e), last sentence	assistance	assistance to which this regulation applies

Dated: August 25, 2000.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 00–29358 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–94–P, 7590–01–P, 6450–01–P, 8025–01–P, 7510–01–P, 3510–BP–P, 4710–10–P, 6116–01–P, 4410–13–P, 4510–23–P, 8320–01–P, 6560–50–P, 6820–34–P, 4310–RE–P, 6718–01–P, 7555–01–P, 7536–01–P, 7536–01–P, 7036–01–P, 6050–28–P, 4910–62–P

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Part VI

Department of Housing and Urban Development

24 CFR Part 30

Treble Damages for Failure to Engage in Loss Mitigation; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 30

[Docket No. FR 4553–A–01]

RIN 2501–AC66

Treble Damages for Failure To Engage in Loss Mitigation; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice announces HUD's intention to issue a proposed rule to amend HUD's Civil Money Penalty regulations to provide for damages of three times the amount of any mortgage insurance benefit claimed by the mortgagee for any mortgage as to which the mortgagee failed to engage in loss mitigation actions. Current regulations provide that HUD may initiate a civil money penalty action against mortgagees and lenders for certain prohibited conduct, including failure to service FHA insured mortgages in accordance with FHA regulations. However, in 1998, Congress amended the National Housing Act, as more particularly described below, to add a triple penalty to the existing civil money penalty system for a mortgagee's failure to engage in loss mitigation. Specifically, HUD seeks comments regarding the best regulatory procedures and structures for implementing this Congressional mandate. This notice therefore solicits public comment on the subject prior to publication of a proposed rule.

DATES: Comment Due Date: February 5, 2001.

ADDRESSES: Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: Jack Tautges, Office of The Deputy Assistant Secretary for Single Family Housing, Room 9184, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C., 20410, telephone (202) 708–1672 (this is not a toll-free number). Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 601(f), (g) and (h) of the Department of Veteran's Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (1999) (Pub. L. 105–276, approved October 21, 1998) amended sections 230, 536(a), and 536(b)(1) of the National Housing Act ("NHA")(12 U.S.C. 1715u, 12 U.S.C. 1735f–14(a)(2) and 12 U.S.C. 1735f–14(b)(1), respectively) to add a triple penalty for failure to engage in loss mitigation to the existing civil money penalty system. Among other things, the statute now requires that, upon the default of a single family mortgage insured under Title II of the National Housing Act, it is mandatory for the mortgagee to engage in loss mitigation actions (including, but not limited to, special forbearance, loan modification, and deeds in lieu of foreclosure) for the purpose of providing alternatives to foreclosure. Also, added to the actions in section 536(b) for which the Secretary "may impose a civil money penalty on the mortgagee or lender" is "failure to engage in loss mitigation actions as provided in section 230(a) of this Act [*i.e.*, the NHA]." *See* section 536(b)(1)(I), 12 U.S.C. 1735f–14(b)(1)(I). In the case of such failure, "the penalty shall be in the amount of three times the amount of any insurance benefits claimed by the mortgagee with respect to any mortgage" as to which such failure occurred. *See* section 536(a)(2), 12 U.S.C. 1735f–14(a)(2).

The regulation relating to civil money penalties for mortgagees who engage in prohibited acts is found at 24 CFR 30.35. This regulation was promulgated in its current form on September 24, 1996 (61 FR 50215) and technically amended on February 26, 1998 (63 FR 9742). The regulation currently provides for a maximum penalty of $5,500 for each violation, up to a maximum of $1,100,000 for all violations committed within any one-year period. A variety of prohibited acts are covered, including, generally, a failure to service a mortgage in accordance with 24 CFR part 203. *See* 24 CFR 30.35(a)(10). The requirement to engage in loss mitigation is set forth primarily at 24 CFR 203.501, which cross-references actions including, but not limited to, deeds in lieu of foreclosure (24 CFR 203.357); special forbearance (24 CFR 203.471, 203.614); partial claims (24 CFR 203.414); assumptions (24 CFR 203.512); and recasting of mortgages (24 CFR 203.616). In addition, regulations require lenders to engage in a loss mitigation evaluation to determine which loss mitigation options are appropriate (24 CFR 203.605).

Ordinary civil penalties will remain in effect for failure to engage in a variety of required servicing functions, including, but not limited to: pre-foreclosure review to ensure that all servicing requirements have been met (24 CFR 203.606); giving each mortgagor in default the notice of default (24 CFR 203.602); and monthly reporting concerning all properties that are 90 days or more delinquent (24 CFR 203.332).

This Advance Notice of Proposed Rulemaking

HUD plans to issue a proposed rule implementing the new requirement to assess treble damages when a mortgagee fails to engage in any loss mitigation activities with cooperative and qualified mortgagors. HUD's goals are to foster an increase in loss mitigation efforts by lenders, to decrease losses to FHA's insurance fund, to help borrowers retain their homes, to integrate the pre-existing civil money penalty system with the new requirement of treble damages, and to avoid punishing lenders who have overall good records.

To that end, HUD plans to propose a rule that would assess treble damages considering both single-loan performance and overall portfolio performance. As to a single loan that goes into default, HUD proposes to regard a lender as having failed to engage in loss mitigation if the lender has failed to perform the loss mitigation evaluation under 24 CFR 203.605 and then take the appropriate loss mitigation action(s). In that case, the lender would be potentially subject to treble damages. As a further step, HUD proposes to establish a system of analyzing a mortgagee's loss mitigation efforts portfolio-wide by using a tiered scoring system based on performance ratios of loss mitigation actions divided by Real Estate Owned ("REO"). Based on the loss mitigation/REO ratio established, HUD plans to propose to group lenders in four tiers in relation to the mean or some other identified score. HUD plans to propose a system in which lenders in the top three tiers, *i.e.*, those who have relatively good records of making loss mitigation efforts, would not be subject to treble damages, and those in the bottom tier who violate the regulation would be subject to treble damages.

HUD specifically invites comments on this proposed tiering system, including comments regarding the specific tier structure based on performance ratios of loss mitigation actions to REO. HUD also welcomes suggestions regarding other factors, if any, that commenters believe should be included in the ratio.

In addition, HUD welcomes general comments regarding the proposed rule. HUD will review all public comments submitted in connection with preparing the proposed rule on this subject. HUD will promulgate a proposed rule that implements a system for assessing treble damages against mortgagees who fail to engage in loss mitigation with cooperative and qualified borrowers.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this advance notice of proposed rulemaking (ANPR) under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Dated: November 29, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

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December 6, 2000

Part VII

Department of Education

Career Clusters—Cooperative Agreements; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.051B]

Career Clusters—Cooperative Agreements; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The purpose of the Career Clusters Initiative, formerly known as the Building Linkages Initiative, is to enable States to establish linkages among State educational agencies, secondary and postsecondary educational institutions, employers, industry groups, other stake holders and Federal agencies. Through these linkages, States will be able to develop curricular frameworks designed to prepare students for a successful transition from high school to postsecondary education, employment in a career area, or both. For each Career Cluster project, representatives from these partner entities, agencies, or groups, will form a Career Cluster Advisory Consortium that represents all aspects of each Career Cluster area. (See Appendix A) From each Advisory Consortium an Executive Committee will be selected to provide leadership and direction for project activities. Through cooperative agreements funded under the Career Clusters Initiative, recognized academic and skill standards will be identified and/or established by each consortium, along with assessments that are organized around each Career Cluster area, with the goal of providing secondary schools of States participating in each consortium with the information needed to establish curriculum guidelines that meet the education and training needs of their students.

Eligible Applicants: "Eligible agencies" as defined in Section 3(9) of the Perkins Act are eligible to apply for funds under this program.

An eligible applicant may apply for more than one Career Cluster cooperative agreement award.

Deadline for Transmittal of Applications: January 5, 2001.

Deadline for Intergovernmental Review: January 5, 2001.

Available Funds: $2,200,000 for the first 12 months of the 24-month project period. Funding for the second 12-month period of the 24-month project period is subject to the availability of funds and to a grantee meeting the EDGAR requirements of (34 CFR 75.253).

Estimated Amount of Awards: The estimated amount of each award made under this competition is $200,000 for each Career Cluster project.

Estimated Average Size of Awards: $200,000 for the first 12 months.

Estimated Number of Awards: The Secretary hopes to fund 11 Career Cluster projects. Each eligible applicant may apply to carry out more than one project, as stated in the "Estimated Range of Awards" section.

Note: The Department is not bound by any estimates in this notice.

Project Period: 24 months.

Applicable Statute and Regulations:

(a) The relevant provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), 20 U.S.C. 2301 *et seq.*, in particular, section 114(c)(6)(A) of Perkins III (20 U.S.C. 2324(c)(6)(A)).

(b) The Education Department General Administrative Regulations (EDGAR), as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug and Alcohol Abuse Prevention).

(9) 34 CFR Part 97 (Protection of Human Subjects).

(10) 34 CFR Part 98 (Student Rights In Research, Experimental Programs and Testing).

(11) 34 CFR Part 99 (Family Educational Rights and Privacy).

SUPPLEMENTARY INFORMATION:

Background

The Career Clusters Initiative began in 1996 as the Building Linkages Initiative and was a collaborative effort between the U.S. Department of Education, the Office of Vocational and Adult Education (OVAE), the National School-to-Work Office (NSTWO) and the National Skill Standards Board (NSSB). The purpose of the Initiative was to establish linkages among State educational agencies, secondary and postsecondary educational institutions, employers, industry groups, other stakeholders and Federal agencies. The goal was to create curricular frameworks in broad career clusters, designed to prepare students to transition successfully from high school to postsecondary education and employment in a career area, or both. Two Career Cluster projects (Health Science and Manufacturing) have completed their final year of development. Arts/Audio Video Technology and Communications, Information Technology and the Transportation/Distribution, and Logistics projects were funded by contract and began in the fall of 1999, under authority of the Carl D. Perkins Act of 1990 (Perkins II).

The Career Clusters Initiative continues to evolve and expand based on lessons learned from these earlier efforts. The creation of curricular models within the context of broad career clusters ensures the alignment of academic and technical instructional strategies with the requirements of postsecondary education and the expectations of employers in increasingly academic and technologically demanding careers.

Education officials across the country are continuously being challenged to demonstrate that their students are achieving high levels of academic and technical competency. Curriculum strategies, developed through the Career Clusters Initiative, can increase student achievement by providing a context in which challenging math, science, language arts and other academic subjects can be made relevant to students and to their postsecondary education and career choices. Students who, in addition to meeting State academic requirements, can also meet standards related to their Career Cluster will be well prepared to transition to postsecondary education, employment in their career of choice, or both.

The vocational education field has historically responded to the needs of the national economy by preparing individuals to enter jobs in demand. Vocational education played a vital role helping our nation transition from an agricultural economy to an industrial economy through education and training. Today, schools are faced with the new challenge of helping our nation and its people transition from an industrial economy to a "new knowledge" economy. In response to this challenge, OVAE recently adopted

16 Career Clusters that redefine the role of vocational education. Organizing schools around Career Clusters provides an ideal mechanism for high school reform efforts and establishes a structure that promotes and sustains the components of school-to-work.

Through the cooperative agreements awarded under this Career Clusters competition, the U.S. Department of Education, in cooperation with the National School-to-Work Office, will facilitate the completion of the remaining 11 Career Clusters. The Secretary will fund these cooperative agreements under authority of section 114(c)(6)(A) of Perkins III. Under this provision, the Secretary is authorized to carry out demonstration vocational and technical education programs, to replicate model vocational and technical education programs, to disseminate best practices information, and to provide technical assistance upon the request of a State, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing vocational and technical education programs assisted under Perkins III.

By awarding cooperative agreements under section 114(c)(6)(A) of Perkins III, the Secretary hopes to work more closely with State consortia to assist them in their development of vocational education curricular frameworks. It is the Secretary's intent that the curricular frameworks developed by States for the eleven career areas listed in Appendix A to this notice will serve to better meet the academic and training needs of students seeking postsecondary education, or employment in one of these career areas, or both.

The projects funded through these cooperative agreements will be required to use the established standards-based Career Cluster framework (see "Required Activities") for Career Clusters previously funded, as the blueprint for development activities.

Required Activities

(a) Under this competition, for each Career Cluster project, grantees must carry out thirteen tasks which, when completed, form the Career Cluster Framework:

(1) Establish an Advisory Consortium and an Executive Committee. The appropriate selection of these partners is crucial to ensure an end product that is recognized by all stakeholders and of value for States.

(2) Identify the education and industry certificates, as well as postsecondary degree options (including entry-level through management/professional career opportunities) available to students and recognized by employers.

(3) Organize or subdivide the occupations, within each cluster, into pathways or concentrations that group the cluster occupations based on commonalities.

(4) Identify existing and/or establish broad career-cluster-related standards with specific content standards for the cluster, as well as for the pathways that are State-recognized.

(5) Establish suggested curriculum guidelines for cluster and pathway content standards.

(6) Select a minimum of ten high schools to pilot the established cluster and pathway content standards.

(7) Conduct pilot testing of the cluster and pathway content standards.

(8) Connect existing and/or develop State assessment instruments agreed upon by the States for cluster and pathway content standards that are recognized by both employers and postsecondary education institutions.

(9) Establish a portable skill certification program agreed upon by the States that documents student mastery of cluster and pathway content standards that are recognized by employers and postsecondary education institutions.

(10) Conduct pilot testing of the assessment instruments and portable skill certificate processes at the selected pilot sites.

(11) Develop rollout strategies for implementing the completed cluster project to other States and to territories.

(12) Establish a structure and strategies for ensuring sustainability of the Advisory Consortium and Executive Committee after completion of the Career Cluster project.

(13) Develop strategies for professional development and teacher preparation within the Career Cluster.

Priorities

Invitational Priorities

The Secretary is especially interested in applications that meet the following priorities:

Invitational Priority 1

Applications that propose to align products and services to be provided with the 11 industry-based career areas identified in this notice and required as the reporting framework for the new student enrollment form which is part of the Consolidated Annual Report (CAR) required for basic grants under Perkins III. (These career areas are discussed in the supplementary information section of this notice and are defined in Appendix A to this notice.)

Invitational Priority 2

Applications that propose to develop products and services that assist State and local users to achieve student outcomes established by performance measurement and accountability systems under development by Federal and State educational agencies, vocational education agencies, and in workforce development programs.

Under 34 CFR 75.105(c)(1), the Secretary does not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new cooperative agreements under this competition. The Secretary awards a total possible score of 100 points. The maximum possible score for each criterion is indicated in parentheses.

(1) *Advisory Consortium and Executive Committee Experience and Commitment (Maximum Total of 40 points).*

(a) The application includes evidence of commitment and support from the proposed members of the Advisory Consortium and Executive Committee for the utilization of Career Clusters in both education and employer settings. (10 points)

(b) The application demonstrates broad representation of consortium partners from all levels of postsecondary education, as well as employers and industry groups and other relevant stakeholders representing local, state and national perspectives. (10 points)

(c) The application includes evidence of consortium support from consortium partners in the form of funding from non-Federal sources and/or "in kind"contributions. (10 points)

(d) The application includes strategies for sustainability of the Career Cluster project after the initial development. (10 points)

(2) *Technical Approach (Maximum 35 points).*

(a) The applicant demonstrates a clear understanding of the Career Clusters Framework purpose and scope of the project. (15 points)

(b) The applicant comprehensively addresses all specified required activities in the application, clearly defining the activities to be undertaken to accomplish each activity. (15 points)

(c) The proposed project is described in a clear and comprehensive manner that is appropriate to the required program activities. The applicant identifies design improvements and

additional activities that may enhance the proposed project and describes any anticipated problems and recommends solutions. (5 points)

(3) Management Plan (Maximum 15 points).

(a) The application includes a description, in a clear and sequential fashion, of the plan for managing the project. The plan provides credible evidence that the management of personnel, physical resources, activities, and work production will result in orderly and timely completion of work within the project performance period. (10 points)

(b) The time commitments of the Project Director and Executive Committee are appropriate to the tasks assigned. (5 points)

(4) *Executive Committee (Maximum 10 points).*

The Project Director and Executive Committee possess clearly identified and documented qualifications, competencies, and experiences that are appropriate for the tasks to be carried out under this cooperative agreement.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedures established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963), or you may view the latest SPOC list on the web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants*

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372–CFDA No: 84.051B, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Waiver of Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, in order to make timely cooperative agreement awards in FY 2001, the Secretary has decided to issue this application notice with program requirements and selection criteria without first publishing the notice for public comment. These requirements and criteria will apply to the FY 2001 cooperative agreement competition. The Secretary takes this action under authority of section 437(d)(1) of the General Education Provisions Act (GEPA). Section 437(d)(1) of GEPA exempts from formal rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The program authority for Vocational Education National Activities was substantially revised on October 31, 1998 by Public Law 105–332. Any requirements or criteria that the Department establishes in future years, will be published in proposed form in the **Federal Register** with an opportunity for interested parties to comment.

Instructions for Transmitting Applications

If you want to apply for a cooperative agreement and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*—

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA No: 84.051B), Washington, D.C. 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing Stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S Postal Service.

(b) *If You Deliver Your Application by Hand*—

You must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline to: U.S. Department of Education, Application Control Center, Attention: (CFDA No: 84.051B), Room #3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(c) *If You Submit Your Application by Courier*—You must deliver the original and two copies of your application to the courier service on or before the deadline date. You must show as proof of delivery to the courier service a dated shipping label, invoice, or receipt from the courier service.

The courier service must deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA No: 84.051B), Room #3633, Regional Office Building 3, 7th & D Streets, S.W, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A courier delivering an application must show identification to enter the building.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Cooperative Agreement Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9494.

You *must* indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED Form 424; revised January 12, 1999) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications. Please organize the parts and additional materials in the following order:

Application for Federal Education Assistance (ED 424 (Rev. 1/12/99)) and instructions.

Budget Information—Non-Construction Programs (ED Form 524 and instructions.

Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97)

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7/97)) (if applicable) and instructions.

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award a cooperative agreement unless we have received a completed application form.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Hess, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4329, Mary E. Switzer Building), Washington, DC 20202–7241. Telephone (202) 205–9422. If you are using a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Additionally, this notice, as well as other documents concerning the implementation of the Carl D. Perkins Vocational and Technical Education Act of 1998, is available on the World Wide Web at the following site: *http://www.ed.gov/offices/OVAE/VocEd/InfoBoard/legis.html*

Dated: November 30, 2000.

Robert Muller,

Deputy Assistant Secretary, Office of Vocational and Adult Education.

Appendix A—Eleven Career Areas

Definitions

(a) *Agriculture and Natural Resources,* comprised of courses and/or programs related to planning, managing and performing agricultural production and horticulture and landscaping services and related professional and technical services, mining and extraction operations, and managing and conserving natural resources and related environmental services;

(b) *Architecture and Construction,* comprised of courses and/or programs relating to designing, planning, managing, building, and maintaining physical structures and the larger building environment including roadways and bridges and industrial, commercial and residential facilities and buildings;

(c) *Wholesale/Retail Sales and Services,* comprised of courses and/or programs related to planning, managing and performing wholesaling and retailing services and related marketing and distribution support services including merchandise/product management and promotion;

(d) *Finance,* comprised of courses and/or programs related to planning, managing and providing banking, investment, financial planning, and insurance services;

(e) *Hospitality and Tourism,* comprised of courses and/or programs related to hospitality and tourism and to planning, managing and providing lodging, food, recreation, convention and tourism, and related planning and support services such as travel-related services;

(f) *Business and Administration,* comprised of courses and/or programs related to planning, managing, and providing administrative support, information processing, accounting, and human resource management services and related management support services;

(g) *Human Services,* comprised of courses and/or programs related to planning, managing, and providing human services including social and related community services;

(h) *Law and Public Safety,* comprised of courses and/or programs related to planning, managing and providing judicial, legal, and protective services, including professional and technical support services in the fire protection and criminal justice systems;

(i) *Scientific Research and Engineering,* comprised of courses and/or programs related to planning, managing, and providing scientific research and professional and technical services (*e.g.*, physical science, social science, engineering), including laboratory and testing services, and research and development services;

(j) *Education and Training,* comprised of courses and/or programs related to planning, managing and providing education and training services, and related learning support services, including assessment and library and information services; and

(k) *Government and Public Administration,* comprised of courses and/or programs related to planning, managing and providing government, legislative, administrative and regulatory services and related general purpose government services at the Federal, State and local levels.

Instructions for Part II—Budget Information Sections A and B—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid to personnel for each budget year.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits for each budget year.

3. *Travel:* Indicate the amount requested for both local and out of State travel of Project Staff for each budget year. Include funds for at least two trips per year for two people to attend the Project Directors' Workshop.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a cost of $5,000 or more per unit for each budget year.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period for each budget year.

6. *Contractual:* Show the amount to be used for: (1) Procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) subcontracts for each budget year.

7. *Construction:* Not Applicable

8. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants and capital expenditures for each budget year.

9. *Total Direct Cost:* Show the total for Lines 1 through 8 for each budget year.

10. *Indirect Costs:* Indicate the rate and amount of indirect costs for each budget year.

11. *Training/stipend Cost:* Not applicable. This item pertains only to student and institutional allowances.

12. *Total Costs:* Show total for lines 9 through 11 for each budget year.

Part III: Budget Narrative

Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Part IV: Program Narrative

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, why, and how, of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is based on the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and EDGAR regulations governing this program, eligibility requirements, priorities, and the selection criteria for this process.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly suggests that you limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively ALL pages in your application.

You may include supporting documentation as appendices to the program narrative. Be sure that this material is concise and pertinent to this program.

You are advised that—

(a) The Secretary considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the selection criteria contained in this notice.

(c) Letters of support included as appendices to an application, that are of direct relevance to or contain commitments that pertain to the established selection criteria, such as commitment of resources, will be reviewed by the panel. As noted above in paragraph (a), letters of support sent separately from the formal application package are not considered in the review by the technical review panel. (34 CFR 75.217)

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in Braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1830–0546. (Expiration date: 11–30–2003). The time required to complete this information collection is estimated to average 40 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this grant application, please write to: U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this grant application, write directly to: Mr. Scott Hess, Division of Vocational and Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 4329, Mary E. Switzer Building), Washington D.C. 20202–7242.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:
Address:
City | State | County | ZIP Code + 4
Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 8 4 0 5 1 B → Title: Career Clusters Cooperative Agreements
5. Project Director:
Address:
City | State | ZIP Code + 4
Tel. #: ( ) - Fax #: ( ) -
E-Mail Address:
6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
7. Type of Applicant *(Enter appropriate letter in the box.)*
A State H Independent School District
B County I Public College or University
C Municipal J Private, Non-Profit College or University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Private, Profit-Making Organization
G Special District N Other *(Specify)*:
8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction
10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.
11. Proposed Project Dates: Start Date: ___/___/___ End Date: ___/___/___
12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #:
OR
b. Assurance of Compliance #:
c. IRB approval date: ___ ☐ Full IRB or ☐ Expedited Review
13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) - Fax #: ( ) -
d. E-Mail Address:
e. Signature of Authorized Representative | Date: ___/___/___

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

11.	Signature: _____
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

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Federal Register

Wednesday,
December 6, 2000

Part VIII

Department of Education

Office of Elementary and Secondary Education—Public Charter Schools Program (PCSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.282A]

Office of Elementary and Secondary Education—Public Charter Schools Program (PCSP); Notice inviting applications for new awards for fiscal year (FY) 2001

Purpose of Program: The purpose of the PCSP is to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools; evaluating the effects of charter schools; and disseminating information about charter schools and successful practices in charter schools.

Eligible Applicants: (a) State educational agencies (SEAs) in States with a specific State statute authorizing the establishment of charter schools. The Secretary awards grants to SEAs to enable them to conduct charter school programs in their States. SEAs use their PCSP funds to award subgrants to "eligible applicants," as defined in this notice, for planning, program design, and initial implementation of a charter school; and to support the dissemination of information about, and successful practices in, charter schools. A charter school may apply for funds to carry out dissemination activities, whether or not the charter school has applied for or received funds under the PCSP for planning or implementation, if the charter school has been in operation for at least three consecutive years and has demonstrated overall success, including—

(1) Substantial progress in improving student achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

(b) An authorized public chartering agency in partnership with a charter school developer is eligible to receive funding directly from the U.S. Department of Education (Department) if the SEA in the State elects not to participate in the PSCP or does not have an application approved under the program. If an SEA's application is approved in this competition, applications received from non-SEA eligible applicants in that State will be returned to the applicants. In such a case, the non-SEA eligible applicant should contact the SEA for information related to its subgrant competition.

Note: The following States currently have approved applications under this program: Alaska, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Kansas, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, Utah, Virginia, and Wisconsin. In these States, only the SEA is eligible to receive an award under this competition. Eligible applicants in these States should contact their respective SEAs for information about participation in the State's charter school subgrant program. Non-SEA eligible applicants in States that are not listed above must apply directly to the Department on or before the *Deadline for Transmittal of Applicotions* in order to be considered for funding in this competition.

Applications Available: December 7, 2000.

Deadline for Transmittal of Applications: February 9, 2001.

Deadline for Intergovernmental Review: April 7, 2001.

Estimated Available Funds: $90,000,000.

Note: The amount of funds, if any, available under this competition is contingent upon congressional appropriation of FY 2001 funds for these purposes.

Estimated Range of Awards: State educational agencies: $500,000–$5,000,000 per year.

Other eligible applicants: $25,000–$150,000 per year.

Estimated Average Size of Awards: State educational agencies: $3,000,000 per year.

Other eligible applicants: $150,000 per year.

Estimated Number of Awards: State educational agencies: 10–12.

Other eligible applicants: 30–50.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: State educational agencies: Up to 36 months.

Other eligible applicants: Up to 36 months.

Note: Grants awarded by the Secretary directly to non-SEA eligible applicants or subgrants awarded by SEAs to eligible applicants will be awarded for a period of up to 36 months, of which the eligible applicant may use—

(a) Not more than 18 months for planning and program design;

(b) Not more than two years for the initial implementation of a charter school; and

(c) Not more than two years to carry out dissemination activities.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except § 75.210), 76, 77, 79, 80, 81, 82, 85, 86, 97, and 99. Title X, Part C, Elementary and Secondary Education Act of 1965 (ESEA), *as amended*, 20 U.S.C. 8061–8067.

SUPPLEMENTARY INFORMATION: As part of wider education reform efforts to strengthen teaching and learning, charter schools can be an innovative approach to improving public education and expanding public school choice. While there is no one model, public charter schools are exempted from most statutory and regulatory requirements in exchange for performance-based accountability. They are intended to stimulate the creativity and commitment of teachers, parents, students, and citizens and contribute to better student academic achievement.

Congress reauthorized the PCSP in October 1998, by enacting the Charter School Expansion Act of 1998. Under the new legislation, SEA applicants for funding are required to include in their applications descriptions of how the SEA will (a) inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate; (b) ensure that each charter school in the State receives the charter school's commensurate share of Federal education funds that are allocated by formula each year, including during the charter school's first year of operation (see December 22, 1999 final regulations at 64 Fed. Reg. 71,964); and (c) disseminate best or promising practices of charter schools to LEAs in the State. The new legislation also added a requirement that SEA applicants as well as non-SEA eligible applicants include in their applications descriptions of how charter schools that are considered to be LEAs under State law and LEAs in which a charter school is located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act. Additional information regarding the required contents of applications, diversity of projects, and waivers are provided in the application package for this program.

The following definitions, selection criteria, priority criteria, amount criteria, authorized uses of funds for dissemination activities, and allowable activities are taken from the Public Charter Schools Program authorizing statute, in Title X, Part C of the ESEA. They are being repeated in this application notice for the convenience of the applicant.

Definitions

The following definitions apply to this program:

(a) *Charter school* means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals With Disabilities Education Act;

(8) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless the requirements are specifically waived for the purposes of this program;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law; and

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(b) *Developer* means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(c) *Eligible applicant* means an authorized public chartering agency participating in a partnership with a developer to establish a charter school in accordance with this program.

(d) *Authorized public chartering agency* means a State educational agency, local educational agency, or other public entity that has the authority under State law and is approved by the Secretary to authorize or approve a charter school.

Selection Criteria for SEAs

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an SEA, the Secretary considers the following criteria:

(a) The contribution that the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State content standards, State student performance standards, and, in general, a State's education improvement plan (20 points).

(b) The degree of flexibility afforded by the SEA to charter schools under the State's charter schools law (20 points).

(c) The ambitiousness of the objectives for the State charter school grant program (20 points).

(d) The quality of the strategy for assessing achievement of those objectives (20 points).

(e) The likelihood that the charter schools grant program will meet those objectives and improve educational results for students (20 points).

(f) The number of high quality charter schools created under this part in the State (20 points).

(g) In the case of State educational agencies that propose to use grant funds to support dissemination activities under section 10302(c)(2)(C) of the ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

Selection Criteria for Non-SEA Eligible Applicants

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an eligible applicant other than an SEA the Secretary considers the following criteria:

(a) The quality of the proposed curriculum and instructional practices (20 points).

(b) The degree of flexibility afforded by the SEA and, if applicable, the local educational agency to the charter school (20 points).

(c) The extent of community support for the application (20 points).

(d) The ambitiousness of the objectives for the charter school (20 points).

(e) The quality of the strategy for assessing achievement of those objectives (20 points).

(f) The likelihood that the charter school will meet those objectives and improve educational results for students (20 points).

(g) In the case of an eligible applicant that proposes to use grant funds to support dissemination activities under section 10302(c)(2)(C) of the ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

Priority Criteria

In awarding grants for FYs 1999, 2000, and 2001 from funds appropriated under section 10311 of the ESEA that are in excess of $51 million for the FY, the Secretary gives priority under this competition to States to the extent that the State meets the criteria described in paragraph (a) below, and one or more of the criteria described in paragraphs (b) through (d) below (20 points).

(a) The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) The State has demonstrated progress, in increasing the number of high quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which a State educational agency or eligible applicant applies for a grant under this competition.

(c) The State—

(1) Provides for one authorized public chartering agency that is not a local educational agency, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to such State law; or

(2) In the case of a State in which local educational agencies are the only authorized public chartering agencies, allows for an appeals process for the

denial of an application for a charter school.

(d) The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

Amount Criteria

In determining the amount of a grant to be awarded under this competition to a State educational agency, the Secretary shall take into consideration the number of charter schools that are operating or approved to open in the State.

Allowable Activities

An eligible applicant receiving a grant or subgrant under this program may use the grant or subgrant funds only for—

(a) Post-award planning and design of the educational program, which may include—

(1) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and

(2) Professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include—

(1) Informing the community about the school;

(2) Acquiring necessary equipment and educational materials and supplies;

(3) Acquiring or developing curriculum materials; and

(4) Other initial operating costs that cannot be met from State or local sources.

Use of Funds for Dissemination Activities

A State educational agency may reserve not more than 10 percent of the grant funds to support dissemination activities. A charter school may use such funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(a) Assisting other individuals with the planning and startup of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement.

For Applications and Further Information Contact: Donna M. Hoblit, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C148, Washington, DC 20202–6140. Telephone (202) 205–9178. Internet address: Donna_Hoblit@ed.gov

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Program Authority: 20 U.S.C. 8061–8067.

Dated: December 1, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

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Federal Register

Wednesday,
December 6, 2000

Part IX

The President

Proclamation 7383—To Implement Title V of the Trade and Development Act of 2000 and To Modify the Generalized System of Preferences

Executive Order 13177—National Commission on the Use of Offsets in Defense Trade and President's Council on the Use of Offsets in Commercial Trade

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7383 of December 1, 2000

To Implement Title V of the Trade and Development Act of 2000 and To Modify the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Title V of the Trade and Development Act of 2000 (Public Law 106–200) (the "Act") modifies the tariff treatment of certain imported wool articles.

2. Section 501(a)(1) of the Act amends the Harmonized Tariff Schedule of the United States (HTS) to create a new heading, 9902.51.11, for imports of certain worsted wool fabrics with average fiber diameters greater than 18.5 microns. Section 501(d) of the Act limits the quantity of imports under heading 9902.51.11, on an annual basis, to 2,500,000 square meter equivalents or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Act.

3. Section 501(b)(1) of the Act amends the HTS to create a new heading, 9902.51.12, for imports of certain worsted wool fabrics with average fiber diameters of 18.5 microns or less. Section 501(d) of the Act limits the quantity of imports under heading 9902.51.12, on an annual basis, to 1,500,000 square meter equivalents or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Act.

4. Section 501(b)(2) of the Act authorizes the President to proclaim a reduction in the rate of duty applicable to imports of worsted wool fabrics classified under heading 9902.51.12 of the HTS that is necessary to equalize such rate of duty with the most favored nation rate of duty applicable to imports of such worsted wool fabrics into Canada.

5. Section 501(e) of the Act provides that in implementing the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the HTS, the President, consistent with U.S. international obligations, shall take such action as he determines appropriate to ensure that such fabrics are fairly allocated to persons who cut and sew men's and boys' worsted wool suits and suit-type jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year.

6. Section 503(a) of the Act requires the President to proclaim 8-digit tariff categories for certain wool yarn and wool fabrics with an average fiber diameter of 18.5 microns or less, and men's or boys' suits, suit-type jackets, and trousers of worsted wool fabric, made of wool yarn with an average diameter of 18.5 microns or less. Section 503(b) of the Act authorizes the President to make conforming changes in the HTS to take into account the new tariff categories proclaimed under section 503(a).

7. Section 504(a) of the Act requires the President to monitor market conditions in the United States, including domestic demand, domestic supply, and increases in domestic production, of worsted wool fabrics and their components in the market for (i) men's or boys' worsted wool suits, suit-type jackets, and trousers, (ii) worsted wool fabrics and yarn used in the manufacture of such apparel articles, and (iii) wool used in the production of such fabrics and yarn.

8. Section 504(b)(1) requires the President, on an annual basis, to consider requests from domestic manufacturers of apparel products made of worsted wool fabrics described in section 504(a) to modify the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the HTS.

9. Section 504(b)(3) of the Act authorizes the President, after taking into account the market conditions set forth in section 504(b)(2) of the Act, to modify the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the HTS, provided that any such modification shall not exceed 1,000,000 square meter equivalents annually for each heading, and to proclaim any such modifications.

10. Section 504(c) requires the President to issue regulations to implement the provisions of section 504.

11. I have determined that it is appropriate to authorize the Secretary of Commerce (Secretary) to perform certain functions specified in sections 501(e) and 504(b) of the Act.

12. I have determined that it is appropriate to authorize the United States Trade Representative (USTR) to perform certain functions specified in section 504(a) of the Act.

13. Sections 501 and 502 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2461 and 2462), authorize the President to designate countries as beneficiary developing countries and as least-developed beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

14. Pursuant to Executive Order 11888 of November 24, 1975, Western Samoa was designated as a beneficiary developing country for purposes of the GSP. I have determined that the designation of Western Samoa as a beneficiary developing country under the GSP should be modified so that the designation applies to Samoa. Furthermore, pursuant to section 502 of the 1974 Act, and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Samoa as a least-developed beneficiary developing country for purposes of the GSP.

15. Proclamation 6425 of April 29, 1992, suspended the application of duty-free treatment under the GSP for certain handloomed cotton fabrics imported from India. On September 14, 2000, the United States Government and the Government of India entered into a Memorandum of Understanding in which the United States agreed to restore GSP treatment for certain handloomed cotton fabrics. Pursuant to section 501 of the 1974 Act, I have determined that it is appropriate to restore GSP treatment for these articles to give effect to the Memorandum of Understanding.

16. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, title V of the Act, and sections 501, 502, and 604 of the 1974 Act, do proclaim that:

(1) In order to provide separate tariff treatment for the articles specified in section 503(a) of the Act, the HTS is modified as provided in section A of the Annex to this proclamation.

(2) In order to make conforming changes to take into account the new permanent tariff categories established in section A of the Annex to this proclamation, the HTS is further modified as provided in section B of the Annex to this proclamation.

(3) The Secretary is authorized to exercise the authority set forth in section 501(e) of the Act to allocate the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12. Any determination by the Secretary under this paragraph shall be set forth in a notice or notices that the Secretary shall cause to be published in the **Federal Register**.

(4) The Secretary is authorized to monitor the most favored nation rate of duty applicable to imports into Canada of worsted wool fabrics of the kind classified under heading 9902.51.12 of the HTS and shall notify the President of any reduction, effective on or after May 18, 2000, in the Canadian most favored nation rate of duty on such imports. The Secretary shall cause to be published in the **Federal Register** a notice describing any such reduction.

(5) The Secretary is authorized to exercise the authority set forth in section 504(b)(1) of the Act to consider, on an annual basis, requests from domestic manufacturers of apparel products made of worsted wool fabrics described in section 504(a) to modify the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the HTS.

(6) The Secretary is authorized to determine, under section 504(b)(3) of the Act, whether the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the HTS should be modified and to recommend to the President that appropriate modifications be made.

(7) The Secretary is authorized to issue regulations to implement the provisions of sections 501 and 504(b) of the Act, the implementation of which have been delegated to the Secretary pursuant to paragraphs 3, 4, 5, and 6 of this proclamation.

(8) The USTR is authorized to exercise the authority set forth in section 504(a) of the Act to monitor market conditions in the United States for the worsted wool articles specified in that section.

(9) In order to reflect a change in the name of a designated beneficiary developing country for purposes of the GSP, general note 4(a) to the HTS is modified by striking "Western Samoa" and by inserting in alphabetical sequence in lieu thereof "Samoa" in the enumeration of independent beneficiary developing countries.

(10) Samoa is designated as a least-developed beneficiary developing country for purposes of the GSP and title V of the 1974 Act. In order to reflect such designation, general note 4(b)(i) to the HTS, enumerating those countries designated as least-developed beneficiary developing countries for purposes of the GSP, is modified by inserting in alphabetical sequence "Samoa."

(11) In order to provide that India is again treated as a beneficiary developing country with respect to certain certified handloomed cotton fabrics for purposes of the GSP program, the HTS is modified as provided in section C of the Annex to this proclamation.

(12) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(13) This proclamation is effective on the date of signature of this proclamation, except that the designation of Samoa as a least-developed beneficiary developing country shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 60 days from the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

Billing code 3195–01–P

ANNEX

Section A. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation, the Harmonized Tariff Schedule of the United States (HTS) is modified as set forth herein, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special" and "Rates of Duty 2", respectively:

(1) Chapter 51 of the HTS is modified–

(a) by striking subheadings 5107.10.00 and 5107.20.00 and by inserting in lieu thereof the following new provisions, with the new superior text at the same level of indentation as the article description of subheading 5106.20.00:

[5107	Yarn...(con.):]			
"5107.10	Containing 85 percent or more by weight of wool:			
5107.10.30	Of wool fiber with an average fiber diameter of 18.5 microns or less	7.2%	Free (CA,IL,MX)	55.5%
5107.10.60	Other	7.2%	Free (CA,IL,MX)	55.5%
5107.20	Containing less than 85 percent by weight of wool:			
5107.20.30	Of wool fiber with an average fiber diameter of 18.5 microns or less	7.2%	Free (CA,IL,MX)	55.5%
5107.20.60	Other	7.2%	Free (CA,IL,MX)	55.5%"

Conforming changes: Subheadings 5107.10.30 and 5107.10.60 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 5107.10.00, and subheadings 5107.20.30 and 5107.20.60 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 5107.20.00.

(b) by striking subheadings 5109.10.60 and 5109.90.60 and by inserting in lieu thereof the following new provisions, with each new superior text at the same level of indentation as the article description of subheading 5109.10.40:

[5109	Yarn...(con.):]			
[5109.10	Containing...(con.):]			
	[Other:]			
	"Other:			
5109.10.80	Of wool fiber with an average fiber diameter of 18.5 microns or less	7.2%	Free (CA,IL,MX)	55.5%
5109.10.90	Other	7.2%	Free (CA,IL,MX)	55.5%"
[5109.90	Other:]			
	[Other:]			
	"Other:			
5109.90.80	Of wool fiber with an average fiber diameter of 18.5 microns or less	7.2%	Free (CA,IL,MX)	55.5%
5109.90.90	Other	7.2%	Free (CA,IL,MX)	55.5%"

Conforming changes: Subheadings 5109.10.80 and 5109.10.90 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 5109.10.60, and subheadings 5109.90.80 and 5109.90.90 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 5109.90.60.

(c) by striking subheading 5112.11.20 and by inserting in lieu thereof the following new provisions, with the new superior text at the same level of indentation as the article description of subheading 5112.11.10:

[5112	Woven...(con.):]			
	[Containing...(con.):]			
[5112.11	Of...(con.):]			
	"Other:			
5112.11.30	Of wool yarns with an average fiber diameter of 18.5 microns or less	29.4%	Free (CA,IL,MX)	68.5%
5112.11.60	Other	29.4%	Free (CA,IL,MX)	68.5%"

Conforming changes: Subheadings 5112.11.30 and 5112.11.60 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 5112.11.20.

(d) by striking subheading 5112.19.90 and by inserting in lieu thereof the following new provisions, with the new superior text at the same level of indentation as the article description of subheading 5112.19.20:

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[5112	Woven...(con.):]			
	[Containing...(con.):]			
[5112.19	Other:]			
	"Other:			
5112.19.60	Of wool yarns with an average fiber diameter of 18.5 microns or less	29.4%	Free (CA,IL,MX)	68.5%
5112.19.95	Other	29.4%	Free (CA,IL,MX)	68.5%"

Conforming changes: Subheadings 5112.19.60 and 5112.19.95 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 5112.19.90.

(2) Chapter 62 of the HTS is modified--

(a) by striking subheadings 6203.11.10 and 6203.11.20 and by inserting in lieu thereof the following new provisions, with each new superior text inserted at the same level of indentation as the article description of subheading 6203.12.10:

[6203	Men's...(con.):]			
	[Suits (con.):]			
[6203.11	Of...(con.):]			
	"Containing 30 percent or more by weight of silk or silk waste:			
6203.11.15	Of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less	7.5%	Free (CA,IL,MX)	65%
6203.11.30	Other	7.5%	Free (CA,IL,MX)	65%
	Other:			
6203.11.60	Of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less	21.2¢/kg + 18.9%	Free (CA,IL,MX)	52.9¢/kg + 58.5%
6203.11.90	Other	21.2¢/kg + 18.9%	Free (CA,IL,MX)	52.9¢/kg + 58.5%"

Conforming changes: (i) Subheading 9906.98.02 is modified by striking "6203.11.10, 6203.11.20," and by inserting in lieu thereof "6203.11.15, 6203.11.30, 6203.11.60, 6203.11.90,"; and (ii) subheadings 6203.11.60 and 6203.11.90 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 6203.11.20.

(b) by striking subheading 6203.21.00 and by inserting in lieu thereof the following new provisions, with the new superior text inserted at the same level of indentation as the superior text designated as 6203.19:

[6203	Men's...(con.):]			
	[Ensembles:]			
"6203.21	Of wool or fine animal hair:			
6203.21.30	Suits, suit-type jackets and trousers, the foregoing of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less	The rate applicable to each garment in the ensemble if separately entered	Free (CA,IL) The rate applicable to each garment in the ensemble if separately entered (MX)	The rate applicable to each garment in the ensemble if separately entered
6203.21.90	Other	The rate applicable to each garment in the ensemble if separately entered	Free (CA,IL) The rate applicable to each garment in the ensemble if separately entered (MX)	The rate applicable to each garment in the ensemble if separately entered"

Conforming changes: (i) subheading 9906.98.02 is modified by striking " 6203.21.00," and by inserting in lieu thereof "6203.21.30, 6203.21.90,"; and (ii) effective with respect to goods of Mexico under the terms of general note 12 that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003, subheadings 6203.21.30 and 6203.21.90 are each amended by striking "The rate applicable to each garment in the ensemble if separately entered (MX)" and by inserting in the Special subcolumn in alphabetical sequence in the parenthetical expression for each such subheading ".MX".

(c) by striking subheading 6203.31.00 and by inserting in lieu thereof the following new provisions, with the new superior text inserted at the same level of indentation as the superior text designated as 6203.32:

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[6203	Men's...(con.):]			
	[Suit-type...(con.):]			
"6203.31	Of wool or fine animal hair:			
6203.31.50	Of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less	19.3%	Free (CA,IL) 6.6% (MX)	59.5%
6203.31.90	Other	19.3%	Free (CA,IL) 6.6% (MX)	59.5%"

Conforming changes: (i) subheading 9906.98.02 is modified by striking "6203.31.00," and by inserting in lieu thereof "6203.31.50, 6203.31.90,"; and (ii) subheadings 6203.31.50 and 6203.31.90 shall each be accorded the same staged reductions in General rates of duty and in the Special rates of duty accorded to goods of Mexico under the terms of general note 12 to the tariff schedule as were previously proclaimed for subheading 6203.31.00.

(d) by striking subheading 6203.41.15 and by inserting in lieu thereof the following new provisions, with the new superior text inserted at the same level of indentation as the article 6203.41.05:

[6203	Men's...(con.):			
	[Trousers,...(con.):]			
[6203.41	Of...(con.):]			
	[Trousers,...(con.):]			
	"Other:			
6203.41.12	Trousers of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less	46.3¢/kg + 18.2%	Free (CA,IL,MX)	52.9¢/kg + 58.5%
6203.41.18	Other	46.3¢/kg + 18.2%	Free (CA,IL,MX)	52.9¢/kg + 58.5%"

Conforming change: Subheadings 6203.41.12 and 6203.41.18 shall each be accorded the same staged reductions in General rates of duty as were previously proclaimed for subheading 6203.41.15.

Section B. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2001, the headings in the first column set forth below are each modified by striking from the parenthetical references in the article descriptions the provisions in the second column set forth below, and by inserting in lieu thereof in numerical sequence the provisions in the third column set forth below:

9902.51.11	"5112.11.20, or 5112.19.90"	"5112.11.60 or 5112.19.95"
9902.51.12	"5112.11.20, or 5112.19.90"	"5112.11.30 or 5112.19.60"
9902.51.13	"5107.10.00"	"5107.10.30"

Section C. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation, the HTS is further modified as follows:

(1) General note 4(d) to the HTS is modified by striking the following HTS subheadings and the country listed opposite them:

"5208.31.20.....India	5208.52.10.....India
5208.32.10.....India	5209.31.30.....India
5208.41.20.....India	5209.41.30.....India
5208.42.10.....India	5310.90.00.....India"
5208.51.20.....India	

(2) Each of the following HTS subheadings is modified by striking, from the parenthetical expression in the Rates of Duty 1-Special subcolumn, the symbol "A*," and by inserting in lieu thereof "A,":

5208.31.20	5208.42.10	5209.31.30
5208.32.10	5208.51.20	5209.41.30
5208.41.20	5208.52.10	5310.90.00

[FR Doc. 00-31229
Filed 12-5-00; 8:45 am]
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Presidential Documents

Executive Order 13177 of December 4, 2000

National Commission on the Use of Offsets in Defense Trade and President's Council on the Use of Offsets in Commercial Trade

By the authority vested in the President by the Constitution and the laws of the United States of America, including Public Law 106-113 and the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), and in order to implement section 1247 of Public Law 106-113 (113 Stat. 1501A-502) and to create a parallel "President's Council on the Use of Offsets in Commercial Trade," it is hereby ordered as follows:

Section 1. *Membership.* Pursuant to Public Law 106-113, the "National Commission on the Use of Offsets in Defense Trade" (Commission) comprises 11 members appointed by the President with the concurrence of the Majority and Minority Leaders of the Senate and the Speaker and the Minority Leader of the House of Representatives. The Commission membership includes: (a) representatives from the private sector, including one each from (i) a labor organization, (ii) a United States defense manufacturing company dependent on foreign sales, (iii) a United States company dependent on foreign sales that is not a defense manufacturer, and (iv) a United States company that specializes in international investment; (b) two members from academia with widely recognized expertise in international economics; and (c) five members from the executive branch, including a member from the: (i) Office of Management and Budget, (ii) Department of Commerce, (iii) Department of Defense, (iv) Department of State, and (v) Department of Labor. The member from the Office of Management and Budget will serve as Chairperson of the Commission and will appoint, and fix the compensation of, the Executive Director of the Commission.

Sec. 2. *Duties.* The Commission will be responsible for reviewing and reporting on: (a) current practices by foreign governments in requiring offsets in purchasing agreements and the extent and nature of offsets offered by United States and foreign defense industry contractors; (b) the impact of the use of offsets on defense subcontractors and nondefense industrial sectors affected by indirect offsets; and (c) the role of offsets, both direct and indirect, on domestic industry stability, United States trade competitiveness, and national security.

Sec. 3. *Commission Report.* Not later than 12 months after the Commission is established, it will report to the appropriate congressional committees. In addition to the items described in section 2 of this order, the report will include: (a) an analysis of (i) the collateral impact of offsets on industry sectors that may be different than those of the contractor paying offsets, including estimates of contracts and jobs lost as well as an assessment of damage to industrial sectors; (ii) the role of offsets with respect to competitiveness of the United States defense industry in international trade and the potential damage to the ability of United States contractors to compete if offsets were prohibited or limited; and (iii) the impact on United States national security, and upon United States nonproliferation objectives, of the use of co-production, subcontracting, and technology transfer with foreign governments or companies, that results from fulfilling offset requirements, with particular emphasis on the question of dependency upon foreign nations for the supply of critical components or technology; (b) proposals for unilateral, bilateral, or multilateral measures aimed at reducing any detrimental

effects of offsets; and (c) an identification of the appropriate executive branch agencies to be responsible for monitoring the use of offsets in international defense trade.

Sec. 4. *Administration, Compensation, and Termination.* (a) The Department of Defense will provide administrative support and funding for the Commission and Federal Government employees may be detailed to the Commission without reimbursement.

(b) Members of the Commission who are not officers or employees of the Federal Government will be compensated at a rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in performance of the duties of the Commission. Members of the Commission who are officers or employees of the Federal Government will serve without compensation in addition to that received for their services as officers or employees of the Federal Government.

(c) Members of the Commission will be allowed travel expenses, including per diem in lieu of subsistence, under subchapter 1 of chapter 57 of title 5, United States Code, while on business in the performance of services for the Commission.

(d) The Commission will terminate 30 days after transmitting the report required in section 1248(b) of Public Law 106-113 (113 Stat. 1501A-505).

Sec. 5. *Establishment and Membership.* (a) There is established, pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App.), the "President's Council on the Use of Offsets in Commercial Trade" (Council).

(b) The Council shall be composed of the appointed members of the Commission or their designees.

Sec. 6. *Duties and Report of the Council.* The Council shall review and report to the President, through the Director of the Office of Management and Budget, on the use of offsets in commercial trade, including their impact on the United States defense and commercial industrial base. The Council shall consult with and, as appropriate, provide information to the Commission.

Sec. 7. *Administration.* (a) The Department of Defense shall provide administrative support and funding for the Council.

(b) The heads of executive departments and agencies shall, to the extent permitted by law, provide to the Council such information as it may require for the purpose of carrying out its duties.

(c) Members of the Council shall serve without compensation.

Sec. 8. *General.* (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Department of Defense in accordance with guidelines that have been issued by the Administrator of General Services.

(b) The Council shall terminate on the date of the transmission of the report required by section 1248(b) of Public Law 106-113 (113 Stat. 1501A-505).

William J. Clinton

THE WHITE HOUSE,
December 4, 2000.

[FR Doc. 00-31252
Filed 12-5-00; 8:45 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 2346/P.L. 106–521
To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment. (Nov. 22, 2000; 114 Stat. 2438)

H.R. 5633/P.L. 106–522
District of Columbia Appropriations Act, 2001 (Nov. 22, 2000; 114 Stat. 2440)

S. 768/P.L. 106–523
Military Extraterritorial Jurisdiction Act of 2000 (Nov. 22, 2000; 114 Stat. 2488)

S. 1670/P.L. 106–524
To revise the boundary of Fort Matanzas National Monument, and for other purposes. (Nov. 22, 2000; 114 Stat. 2493)

S. 1880/P.L. 106–525
Minority Health and Health Disparities Research and Education Act of 2000 (Nov. 22, 2000; 114 Stat. 2495)

S. 1936/P.L. 106–526
Bend Pine Nursery Land Conveyance Act (Nov. 22, 2000; 114 Stat. 2512)

S. 2020/P.L. 106–527
To adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes. (Nov. 22, 2000; 114 Stat. 2515)

S. 2440/P.L. 106–528
Airport Security Improvement Act of 2000 (Nov. 22, 2000; 114 Stat. 2517)

S. 2485/P.L. 106–529
Saint Croix Island Heritage Act (Nov. 22, 2000; 114 Stat. 2524)

S. 2547/P.L. 106–530
Great Sand Dunes National Park and Preserve Act of 2000 (Nov. 22, 2000; 114 Stat. 2527)

S. 2712/P.L. 106–531
Reports Consolidation Act of 2000 (Nov. 22, 2000; 114 Stat. 2537)

S. 2773/P.L. 106–532
Dairy Market Enhancement Act of 2000 (Nov. 22, 2000; 114 Stat. 2541)

S. 2789/P.L. 106–533
To amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board. (Nov. 22, 2000; 114 Stat. 2545)

S. 3164/P.L. 106–534
Protecting Seniors From Fraud Act (Nov. 22, 2000; 114 Stat. 2555)

S. 3194/P.L. 106–535
To designate the facility of the United States Postal Service located at 431 North George Street in Millersville, Pennsylvania, as the "Robert S. Walker Post Office". (Nov. 22, 2000; 114 Stat. 2559)

S. 3239/P.L. 106–536
To amend the Immigration and Nationality Act to provide special immigrant status for certain United States international broadcasting employees. (Nov. 22, 2000; 114 Stat. 2560)

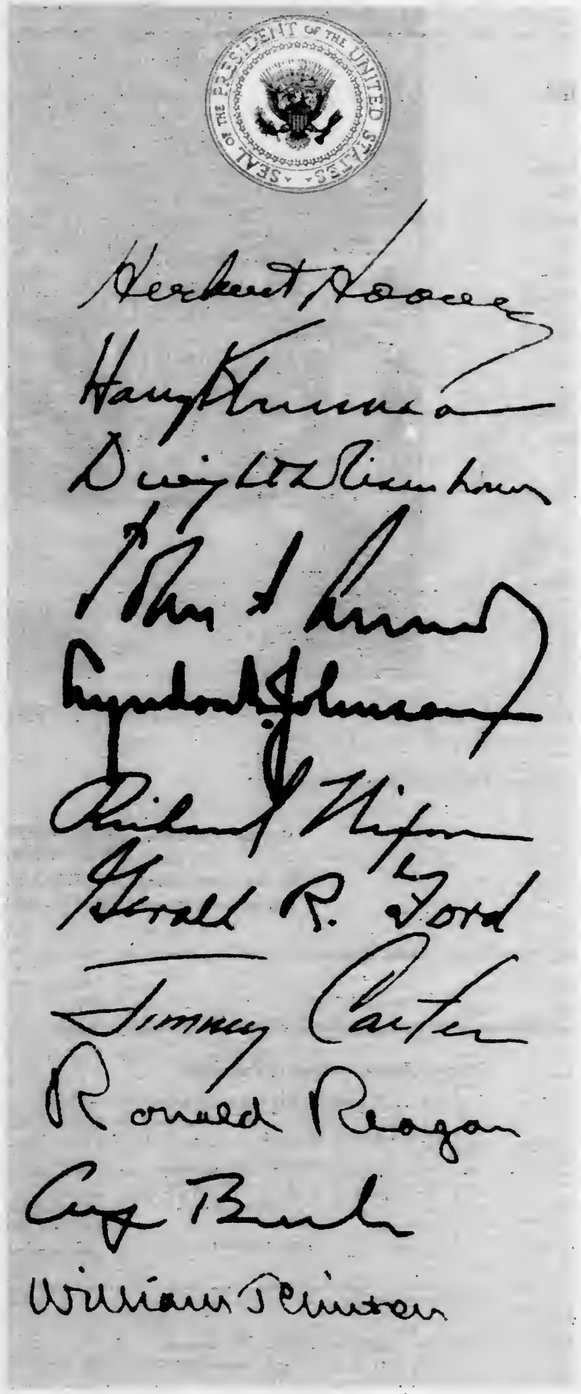
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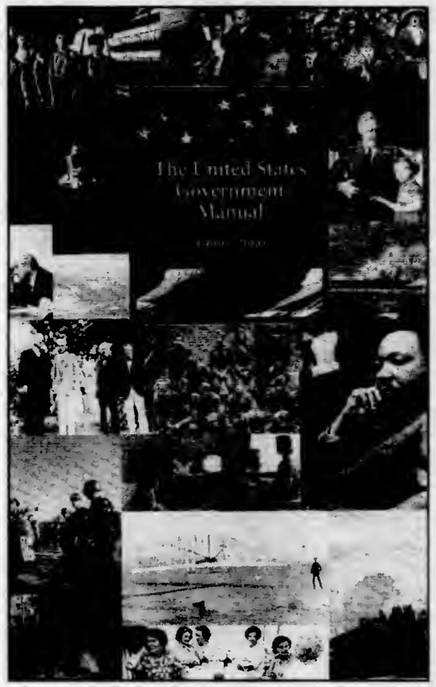
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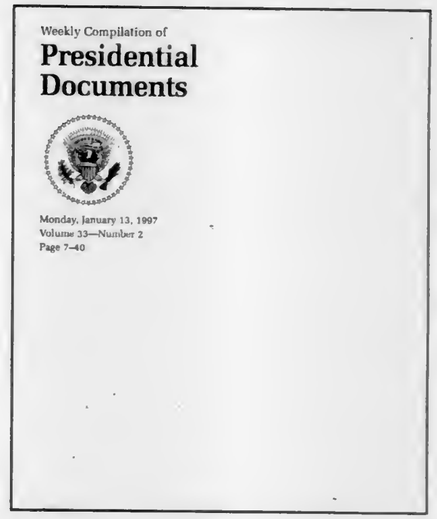
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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 736 and 744

[Docket No. 001128335–0335–01]

RIN 0694–AC38

General Order Concerning Shaykh Hamad bin Ali bin Jaber Al-Thani, Gulf Falcon Group, Ltd., and Related Entities

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is issuing General Order No. 3 which imposes a license requirement for exports and reexports of all items subject to the Export Administration Regulations (EAR) that are on the Commerce Control List destined to or for Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates. This order also prohibits the use of License Exceptions for exports and reexports of all items subject to the EAR that are listed on the Commerce Control List to these entities. This rule amends the EAR to implement General Order No. 3.

EFFECTIVE DATE: This rule is effective December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 2000, Shaykh Hamad bin Ali bin Jaber Al-Thani delivered to Baghdad, Iraq, a Boeing 747 aircraft to Iraqi President Saddam Hussein as a gift. This action violated the United Nations Security Council resolution restricting trade with Iraq. To guard against further such diversions to Iraq, the Department of Commerce is issuing General Order No. 3 imposing a license requirement for exports and reexports of all items subject to the EAR that are listed on the Commerce Control List destined to or for Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates. This order also prohibits the use of License Exceptions (see part 740 of the EAR) for exports and reexports of items subject to the EAR that are listed on the Commerce Control List to such entities. This rule amends the EAR to implement General Order No. 3.

To assist readers in finding in the EAR these additional end-users subject to special restrictions with respect to exports and reexports, this rule also adds a new section 744.15 to part 744, "Control Policy: End-User and End-Use Based," which provides a cross reference to the prohibitions contained in the general orders in Supplement No. 1 to part 736.

Saving Clause

Shipments of items subject to the requirements of General Order No. 3 that are removed from License Exception or NLR eligibility as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard carrier to a port of export or reexport pursuant to actual orders for export on December 7, 2000 may be exported or reexported under the previous License Exception or NLR provisions up to and including December 14, 2000. Any such items not actually exported or reexported before midnight December 14, 2000, require a license in accordance with General Order No. 3.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 736

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 736 and 744 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 736—[AMENDED]

1. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. Supplement No. 1 to Part 736 is amended by adding and reserving General Order No. 2 and adding General Order No. 3 to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 2 [Reserved]

General Order No. 3 of December 7, 2000; Imposition of license requirements and prohibition on use of any License Exceptions for exports and reexports of items subject to the EAR that are listed on the Commerce Control List to Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates.

(a) *License requirements.* Effective December 7, 2000, a license is required for all items subject to the EAR that are listed on the Commerce Control List destined to or for: Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates.

(b) *License Exceptions.* No License Exceptions are available for exports or reexports to the entities described in paragraph (a) of this General Order.

(c) *Licensing policy.* Items will be reviewed on a case-by-case basis to determine whether there is a risk of diversion contrary to United Nations sanctions or U.S. law.

PART 744—[AMENDED]

3. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 9, 2000 (65 FR 68063, November 13, 2000); Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

4. Part 744 is amended by adding section 744.15 to read as follows:

§ 744.15 Restrictions on exports and reexports to persons named in General Orders.

Supplement No. 1 to part 736 of the EAR names certain persons (individuals and other legal entities) subject to special restrictions with respect to exports and reexports subject to the EAR. You may not violate any order issued under or made a part of the EAR, per General Prohibition nine of part 736 of the EAR.

Dated: November 27, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–31101 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–43651; File No. S7–12–98]

RIN 3235–AH41

Regulation of Alternative Trading Systems; Extension of Temporary Stay of Effectiveness

AGENCY: Securities and Exchange Commission.

ACTION: Extension of temporary stay of effectiveness.

SUMMARY: The Securities and Exchange Commission extends the stay of effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2001. These provisions relate to alternative trading systems that trade certain categories of debt securities. This stay is necessary to provide sufficient time for a reporting system to be developed that would compile and publish data for investment grade and non-investment grade corporate debt instruments. The other alternative trading system rules, which were published in 63 FR 70844 on December 22, 1998, remain effective as previously stated.

DATES: 17 CFR 242.301(b)(5)(i)(D) and (E) and 242.301(b)(6)(i)(D) and (E) are stayed until December 1, 2001.

FOR FURTHER INFORMATION CONTACT: John Polise, Senior Special Counsel, at (202) 942–0068, Gordon Fuller, Special Counsel, at (202) 942–0792, or Steven Johnston, Special Counsel at (202) 942–0795, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1998, the Securities and Exchange Commission ("Commission") adopted new rules and rule amendments to allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume.[1] The effective date for most of these new rules and rule amendments was April 21, 1999. The Commission stated in the adopting release that Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) would become effective on April 1, 2000. Specifically, for alternative trading systems trading 20 percent or more of the average daily trading volume in either investment grade or non-investment grade corporate debt securities over at least four of the preceding six months, the fair access and systems capacity, security, and integrity requirements were to take effect on April 1, 2000. On March 31, 2000, the Commission issued a temporary stay of effectiveness for Rules 301(b)(5)(i)(D) and (E) until December 1, 2000.[2]

II. Extension of Temporary Stay of Effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E)

In the Adopting Release and the Stay of Effectiveness Release, we noted that volume data for investment grade and non-investment grade corporate debt was not yet being compiled or published. Accordingly, market participants and regulators had no mechanism to determine the aggregate daily trading volume for either investment grade corporate bonds or non-investment grade corporate bonds for purposes of complying with or enforcing the rules. While efforts are ongoing to complete such a system, no comprehensive reporting system is currently in place. The Commission believes that extending the stay of effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2001 should provide sufficient time for a system to be developed and implemented that would compile and publish data for both market segments.[3]

By the Commission.

Dated: December 1, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31136 Filed 12–06–00; 8:45 am]

BILLING CODE 8010–01–P

[1] Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (December 22, 1998) ("Adopting Release").

[2] Securities Exchange Act Release No. 42603A (March 31, 2000), 65 FR 18868 (April 10, 2000) ("Stay of Effectiveness Release").

[3] The Commission, however, believes that good business practice dictates that alternative trading systems adopt the standards of systems capacity, security, and integrity, regardless of their trading volume.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

RIN 1076–AD95

Financial Assistance and Social Services Programs; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations which were published Friday, October 20, 2000 (65 FR 63144). The regulations amended the existing regulations to incorporate new service delivery systems within the Financial Assistance and Social Service program.

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Blair, (202) 208–2479.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede regulations, 25 CFR part 20, last published in 1985. These regulations conform to changes in public assistance payments procedures as well as expand service delivery systems to conform to existing conditions.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 20, 2000, of the final regulations which were the subject of FR Doc. 00–26703, is corrected as follows:

§ 20.100 [Corrected]

1. On page 63160, in the second column, in § 20.100, in the second definition the term "adult assistance care" is corrected to read "adult care assistance".

§ 20.206 [Corrected]

2. On page 63163, in the first column, in § 20.206, the second sentence of the introductory text is corrected by removing the word "or."

§ 20.334 [Corrected]

3. On page 63166, in the third column, in § 20.334(b), the first sentence is corrected by removing the words "social services worker" and adding the words "Bureau Line Officer."

§ 20.335 [Corrected]

4. On page 63166, in the third column, § 220.335 is correctly designated as § 20.335.

§ 20.403 [Corrected]

5. On page 63167, in the second column, in § 20.403, paragraph (a)(4)(ii), is corrected by removing the reference to "(d)(1)" and adding in its place the reference "(b)(1)."

§ 20.603 [Corrected]

6. On page 63170, in the second column, in § 20.603(a), the first sentence is corrected to add after the word "requested" the words "and all recipients will be redetermined for eligibility every 6 months."

7. On page 63170, in the second column, in § 20.603(c), the first sentence is corrected by removing the word "Superintendent" and adding the words "social services worker" in its place.

8. On page 63170, in the second column, in § 20.603(d) introductory text, correct the word "Superintendent" to read "social services worker."

9. On page 63170, in the second column, in § 20.603(d)(2), correct the word "Superintendent" to read "social services worker."

§ 20.701 [Corrected]

10. On page 63171, in the first column, in § 20.701, the section heading is corrected by removing the words, "an applicant or" and adding the word "a" in its place.

Dated: November 30, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31093 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–052G]

RIN 1218–AB90

Occupational Exposure to Cotton Dust

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: OSHA is issuing a direct final rule amending its occupational health standard for Cotton Dust, which was issued in 1978 and amended in 1985, to add cotton washed in a batch kier system to the types of washed cotton partially exempt from the cotton dust standard. This direct final rule follows the recommendation of the Task Force for Byssinosis Prevention, formerly known as the Industry/Government/Union Task Force for Washed Cotton Evaluation, which studies the health effects associated with the processing and use of washed cotton. This direct final rule is also consistent with a finding of OSHA's review of the cotton dust standard conducted pursuant to Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866. See also the companion documents published in the Proposed Rules and Notices sections of today's **Federal Register**.

DATES: This direct final rule will be effective April 6, 2001 unless significant adverse comments are received by February 5, 2001.

OSHA will publish a document in the **Federal Register** at least 30 days before the effective date of the direct final rule. The document will either confirm the effective date of the final rule or, if significant adverse comments are received, will withdraw the final rule.

ADDRESSES: Comments should be sent in quadruplicate to Docket No. H–052G, Docket Office, Room N2625; Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., NW.,

Washington DC 20210, (202–693–2350). Alternatively, one paper copy and one disc (3½ inch floppy in WordPerfect 6.0, 8.0 or ASCII) may be sent to the Docket Office mailing address; or one copy faxed to 202–693–1648 and 3 paper copies mailed to the Docket Office mailing address, or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket mailing address.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Bayard, Director of the Office of Risk Assessment, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2275.

SUPPLEMENTARY INFORMATION:

Introduction

This direct final rule adds one additional method of washing cotton to the methods the rule already permits employers to use to achieve partial exemption from the cotton dust standard (see paragraph (n), 29 CFR 1910.1043). The additional method of washing cotton addressed by this notice is called batch kier washing, and a partial exemption from the standard for cotton washed using this method is supported by extensive scientific research, which has been published by the National Institute for Occupational Safety and Health in "Current Intelligent Bulletin 56—WASHED COTTON. A Review and Recommendations Regarding Batch Kier Washed Cotton" (Ex. 3–3Q, Docket H–052F).

The change to the cotton dust standard achieved by this direct final rule find is supported by the relevant government agencies, industry groups, and the union representing textile workers. OSHA also considered this issue when it conducted its recent Regulatory Flexibility Act review (a section 610 "lookback" review) of the cotton dust standard which involved the publication of a **Federal Register** notice, the receipt of comments from interested parties, and the holding of public meetings. OSHA is aware of no opposition to the change that would be made by this direct final rule.

Therefore, OSHA considers this issue one that is appropriately addressed through the direct final rule process. However, if OSHA receives significant adverse comments on this direct final rule, it will withdraw the rule. OSHA would then proceed with the proposal on this matter published in the Proposed Rules section of today's **Federal Register**. Pursuant to that document, the Agency will consider all comments and evidence and determine whether to issue a subsequent final rule on this matter.

Background

In 1971, the Occupational Safety and Health Administration (OSHA) adopted a 1-mg/m3 (total dust) permissible exposure limit (PEL) for cotton dust. Subsequent OSHA rulemaking led to the promulgation of a comprehensive Federal occupational health standard for cotton dust in 1978 at 29 CFR 1910.1043 (43 FR 27351, June 23, 1978). In the 1978 standard, OSHA established different 8-hr time-weighted average (TWA) PELs for gravimetrically measured airborne cotton dust for different work areas of textile mills and included monitoring, medical, recordkeeping and other requirements.

Based on "the effectiveness of the washing process in significantly reducing or eliminating the biological effects of cotton dust," a provision of the 1978 standard exempted from the standard cotton "thoroughly washed in hot water" and "known in the cotton textile trade as purified or dyed" cotton (43 FR 27351, June 23, 1978).

However, not all washing methods are effective in significantly reducing the biological effects of raw cotton, and some washing methods leave the cotton unworkable for spinning or weaving. In 1980, the tripartite "Industry/Government/Union Task Force for Washed Cotton Evaluation," currently known as the "Task Force for Byssinosis Prevention," was organized to study the issue of washed cotton and byssinosis and to find methods of washing that reduce cotton's biological effects yet leave the cotton workable. The Task Force includes representatives from the National Institute for Occupational Safety and Health (NIOSH), the Agriculture Research Service (U.S. Department of Agriculture), Cotton Incorporated, the Cotton Foundation (National Cotton Council), the American Textile Manufacturers Institute, the Union of Needletrades, Industrial and Textile Employees (UNITE) (the successor union to the Amalgamated Clothing and Textile Workers Union (ACTWU)), and OSHA.

In 1985, on the basis of a review of the existing data, comments, and Task Force recommendations, OSHA substantially revised the washed cotton provision (1910.1043(n)) in the cotton dust standard (50 FR 51120, Dec. 13, 1985). The revised standard provides a complete exemption only for "medical grade (USP) cotton, that has been scoured, bleached and dyed, and mercerized yarn" (Paragraph (n)(3)). In addition, the 1985 standard provides partial exemptions for cotton washed in a continuous system, but provides no exemptions for batch kier washed cotton.

Exemption from all requirements of the standard except for medical surveillance, medical recordkeeping and certain appendices is provided for higher grade cotton (low middling light spotted, or better, *i.e.*, color grade code 52 or better and leaf grade code 5 or better according to the current classification system (USDA 1993a)) that is washed: (1) On a continuous batt system or rayon rinse system, (2) with water, (3) at a temperature of no less than 60°C, (4) with a water-to-fiber ratio of no less than 40:1, and (5) with bacterial levels in the wash water controlled to limit bacterial contamination of cotton (paragraph (n)(4) of the standard).

Lower grade cotton (i.e., below color grade code 52 or below leaf grade code 5 by the current classification system) that is washed as specified in the preceding paragraph for higher grade washed cotton and that is also bleached is exempted from all requirements of the standard except for medical surveillance, recordkeeping, exposure monitoring and compliance with a 500 µg/m3 PEL for airborne dust measured by the vertical elutriator sampler, and certain appendices (paragraph (n)(5)). With respect to washed cotton of mixed grades, the 1985 revised standard specifies that the requirements for the grade with the most stringent requirements would apply (paragraph (n)(6)).

Early batch kier washing trials were performed on systems involving hand loading of cotton fiber without prior mechanical opening or prewetting. Use of this approach resulted in the incomplete wetting of cotton fibers during the washing process, which probably explains the higher dust levels and the human reactivity observed in these early studies of batch kier washing.

In 1988, Task Force investigators visited two companies utilizing batch kier processes with automated systems for mechanically opening and thoroughly wetting cotton fiber during the kier-loading process (Perkins & Berni, 1991, Ex.3–30). To evaluate the effectiveness of batch kier washing using this state-of-the-art opening and wetting technology, arrangements were made to wash cotton on one of these commercial systems for comparison with the same cotton washed using the continuous process partially exempted by the revised 1985 standard. Washings in the batch kier system were done under two different sets of conditions: (1) at 60 °C with a 50:1 water-to-fiber ratio, and (2) at 93 °C with a 17:1 water-to-fiber ratio. The study used cotton of grade code 52 to serve as a worst case test.

The study demonstrated that washing in the batch kier system under the conditions described above resulted in a substantial and statistically significant reduction (a reduction of at least 50%) of card-generated airborne cotton dust under both conditions. In addition, the three different wash treatments (two types of batch kier and continuous batt) were highly effective and statistically equivalent in reducing the endotoxin content of card-generated airborne elutriated dust. As a result, the concentration of airborne endotoxin was very effectively reduced by all three washing methods, from more than 300 ng/m3 for the unwashed cotton (at a dust level of 1.98 mg/m3) to less than 10 ng/m3 for each of the washed cottons (at dust levels ranging from 0.35 mg/m3 to 0.89 mg/m3).

These low airborne endotoxin levels generated during card processing of the washed cottons were all below a relative "threshold" for acute airway response in humans described previously by NIOSH investigators in this same setting (Castellan et al. 1987, Ex. 3–5). Most investigators believe that keeping endotoxin levels low is crucial to avoiding byssinosis.

To further assess the effectiveness of washing cotton in modern batch kier systems, another blend of predominantly color grade code 52 and leaf grade code 5 cotton (grown in Texas) was washed on a batch kier system operated by another company (Jacobs et al. 1993, Ex. 3–19; Perkins and Olenchock 1995, Ex. 3–31). Washing, done at 60 °C and using a 40:1 water-to-fiber ratio, as stipulated in the revised 1985 standard for continuous wash systems, and at 93 °C and a 17:1 water-to-fiber ratio, resulted in a reduction of at least 50% in dust-generating capacity (compared with that of the unwashed cotton) under identical carding rates and ventilation conditions.

On the basis of human ventilatory responses to experimental exposures to dust from this washed cotton, Jacobs and colleagues concluded that these results "suggest that modern batch kier systems can effectively remove the acute pulmonary toxicity of cottons washed at 60 °C and a 40:1 water-to-fiber ratio" (Jacobs et al. 1993, Ex. 3–19, p. 276).

A substantial body of experimental evidence now exists on this issue. The evidence indicates that, with respect to the removal of potential respiratory toxicity, cotton washed in batch kier systems (using modern equipment that assures thorough wetting of the cotton fiber and no reuse of wash or rinse water) is equivalent to cotton washed on a continuous batt system, which was approved by OSHA for partial exemption under the washed cotton provisions (paragraph (n)) of the current cotton dust standard.

During OSHA's review of the Cotton Dust standard pursuant to Section 610 of the Regulatory Flexibility Act and E.O. 12866, OSHA requested comment on the washed cotton issue (63 FR 34140, June 23, 1998). OSHA received written comment from interested parties on the standard generally and on this issue, and held two public meetings in connection with the review. Based on the evidence discussed above, both the industry/government/union "Task Force for Byssinosis Prevention" Ex. (3–5F) and NIOSH (Ex. 3–3) submitted comments recommending that cotton washed in a batch kier system be treated by the standard in the same way as cotton mildly washed in a continuous system. The National Cotton Council of America urged OSHA in written comments and at a public meeting to amend the standard to partially exempt cotton washed in a batch kier system (Ex. 3–5). These comments and the Task Force report (Ex. 3–5Q) are located in OSHA's Docket Office, Docket No. H–052–F.

OSHA has now completed its lookback review of the cotton dust standard pursuant to the RFA and E.O. 12866. The Notices section of today's **Federal Register** announces the availability of the final report of that review, "Regulatory Review of OSHA's Cotton Dust Standard." That review concludes that the Agency is justified in extending the washed cotton partial exemption in the cotton dust standard to include cotton mildly washed in a batch kier system (Ex., p. 58).

The studies demonstrate that raw cotton washed in the batch kier process according to the specified protocol results in the elimination or a substantial reduction in the significant risk of byssinosis, if employers using such washed cotton comply with the medical surveillance and certain recordkeeping requirements of the standard, and with Appendices B, C, and D of the standard. The batch kier process is as effective in this regard as other washing methods that OSHA has already partially exempted from the cotton dust standard. This conclusion is supported by NIOSH, and by the joint government, union, and industry Task Force for Byssinosis Prevention.

Accordingly, OSHA is amending the cotton dust standard to add washing in a modern batch kier system as an acceptable method of washing cotton under paragraph (n)(4) of the 1985 cotton dust standard, which will qualify cotton washed in this system for partial exemption from that standard. This amendment is being issued as a direct final rule because doing so is widely endorsed, well supported, and non-controversial.

In order to accomplish this change, OSHA is amending paragraph (n)(4) of 29 CFR 1910.1043 to include the new partial exemption for batch kier washed cotton. The standard will continue to partially exempt cotton washed through the continuous batt or rayon rinse systems. OSHA is also reorganizing paragraph (n)(4) to improve clarity.

By this action OSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that Agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. Reliance on the direct final rule approach is also an example of OSHA's Reinvention Initiative which emphasizes flexible and efficient methods of achieving results.

Economic and Technical Feasibility

OSHA concludes that adding the batch kier washed cotton method to the list of methods already partially exempted by paragraph (n)(4) of the cotton dust standard (29 CFR 1910.1043) is both economically and technically feasible. The addition creates no new requirements and imposes no new compliance obligations on employers. Instead, it merely permits an additional type of washing to qualify for partial exemption from the cotton dust standard based on evidence that batch kier washing is as effective as other partially exempted washing methods in protecting employee health. No one is required to use the new method. Employers may choose to use the newly approved method, but they are not required to use it if they do not believe it is more advantageous than existing practices. Thus, this regulatory action reduces the burden on employers wishing to avail themselves of it, but continues to provide protections for employees. Accordingly, no further analysis of the feasibility of this direct final rule is required by the OSH Act.

Regulatory Flexibility Act: Certification of No Significant Impact

In accordance with the Regulatory Flexibility Act, as amended (5 U.S.C.

601–612), OSHA has evaluated the effects of the batch kier washing amendment on small entities. No small business is required to adopt this washing method or to purchase cotton washed by this method and all employers may continue to use their existing practices to comply with the cotton dust standard. A small business may choose to adopt this method of washing cotton or to purchase cotton washed by this method if it finds that a cost saving or other advantage is created by doing so. Based on this finding, OSHA certifies that this amendment to paragraph (n)(4) of 29 CFR 1910.1043 will not have a significant impact on a substantial number of small entities.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons just discussed, this direct final rule causes none of these impacts. Some cotton mills may choose to use cotton washed by this newly permitted method to save control costs otherwise required by the cotton dust standard. Consequently, this direct final rule is not a significant regulatory action and therefore does not require an Economic Analysis under Executive Order 12866.

Unfunded Mandates

This direct final rule, which amends a paragraph of the Cotton Dust standard, has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (U.S.C. 1501 et seq.). For the purposes of the UMRA, the Agency certifies that the final standard does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

Federalism

This amendment has been reviewed under Executive Order 13132 (Aug. 11, 1999) on Federalism. That order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSHA Act) expresses Congress' intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. When such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions.

This amendment to paragraph (n)(4) of the cotton dust standard was developed based on scientific research and merely grants an extra option and increased flexibility to cotton processors and textile mills. In connection with the Regulatory Flexibility Act review, OSHA held a public meeting in Atlanta, GA which is in the region where most textile industry facilities are located. State Plan states are free to adopt this amendment or an alternative that is at least as effective in protecting worker health.

State Plan Standards

The 25 States with their own OSHA approved occupational safety and health plans must adopt an equivalent amendment or one that is at least as protective to employees within six months of the publication date of this final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming.

Paperwork Reduction Act

The information requirements contained in the cotton dust standard have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–30). The approval is in effect until January 31, 2002 pursuant to OMB Control No. 1218–0061 (29 CFR 1910.8). The approval covers the paperwork required to achieve a washed cotton partial exemption from the standard. This amendment adds no additional information collection requirements and instead merely adds an alternative method for achieving the washed cotton exemption. Consequently, the Paperwork Reduction Act of 1995 does not require OSHA to take any further action on this matter at this time.

Public Participation

Interested persons are requested to submit written data, views and arguments concerning this direct final rule. These comments must be received by February 5, 2001 and submitted in quadruplicate to Docket No. H–052G, Docket Office; Room N2625; Occupational Safety and Health Administration; U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210.

Alternatively, one paper copy and one disc (3½ inch floppy in Wordperfect 6.0, 8.0 or ASCII) may be sent to that address, or one copy faxed to (202) 693–1648 and 3 paper copies mailed to the Docket Office mailing address; or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket Office mailing address.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

OSHA requests comments on all issues related to granting cotton washed in the batch kier system with a partial exemption from OSHA's cotton dust standard and on the Agency's findings that there are no negative economic, environmental or other regulatory impacts of this action on the regulated community. OSHA is not requesting comment on any issues or opening the record for any issue other than those related to this amendment to paragraph (n)(4) of 29 CFR 1910.1043.

If OSHA receives no significant adverse comment on this amendment, OSHA will publish a **Federal Register** document confirming the effective date of this direct final rule. Such confirmation may include minor stylistic or technical changes to the amendment that appear to be clearly justified. For the purposes of legal review, OSHA views the date of confirmation of the effective date of this amendment as the date of issuance.

If OSHA receives significant adverse comments on this amendment, it will withdraw the amendment and proceed with the proposed rule addressing the batch kier washing issue published in the Proposed Rules section of today's **Federal Register**.

List of Subjects in 29 CFR Part 1910

Cotton dust, Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC. 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000) and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of December, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below:

PART 1910—(AMENDED)

1. The authority citation for Subpart Z of Part 1910 is revised to read as follows:

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111) or 3–2000 (65 FR 50017) as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, and Table Z–1, Z–2, and Z–3 and 1910.1043 (n) also issued under 5 U.S.C. 553.

Section 1910.1000, and Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1018, 1910.1029 and 1910.1200 are also issued under 29 U.S.C. 653.

2. Paragraph (n)(4) of § 1910.1043 is revised to read as follows:

§ 1910.1043 Cotton dust.

* * * * *

(n) * * *

(4) *Higher grade washed cotton.* The handling or processing of cotton classed as "low middling light spotted or better" (color grade 52 or better and leaf grade code 5 or better according to the 1993 USDA classification system) shall be exempt from all provisions of the standard except the requirements of paragraphs (h) medical surveillance, (k)(2) through (4) recordkeeping—medical records, and Appendices B, C, and D of this section, if they have been washed on one of the following systems:

(i) On a continuous batt system or a rayon rinse system including the following conditions:

(A) With water;

(B) At a temperature of no less than 60 °C;

(C) With a water-to-fiber ratio of no less than 40:1; and

(D) With the bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

(ii) On a batch kier washing system including the following conditions:

(A) With water;

(B) With cotton fiber mechanically opened and thoroughly prewetted before forming the cake;

(C) For low-temperature processing, at a temperature of no less than 60 °C with a water-to-fiber ratio of no less than 40:1; or, for high-temperature processing, at a temperature of no less than 93 °C with a water-to-fiber ratio of no less than 15:1;

(D) With a minimum of one wash cycle followed by two rinse cycles for each batch, using fresh water in each cycle, and

(E) With bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

* * * * *

[FR Doc. 00–31186 Filed 12–6–00; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0239; FRL–6875–8]

Final Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 9, 2000. This limited approval and limited disapproval action will incorporate Rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10, 29 and 30 of Ventura County Air Pollution District (District) into the federally approved State Implementation Plan (SIP).

The intended effect of finalizing this limited approval is to strengthen the federally approved SIP by incorporating these rules and by satisfying Federal requirements for an approvable nonattainment area new source review (NSR) SIP for the District. While strengthening the SIP, however, this SIP revision contains deficiencies which the District must address before EPA can grant full approval under section 110(k)(3). Thus, EPA is finalizing simultaneous limited approval and limited disapproval as a revision to the California SIP under provisions of the Act regarding EPA action on SIP submittals, and general rulemaking authority.

In addition to the above action, we are removing District Rules 18, 21, and 25 from the SIP, and deleting the conditions identified by us in 1981 for the District's 1981 NSR rule.

DATE: This action is effective on January 8, 2001.

ADDRESSES: Copies of the state submittal and other supporting information used in developing the final action are available for public inspection (Docket Number CA 022–0239) at EPA's Region IX office during normal business hours and at the following locations:

• Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

• California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1261.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Action Is EPA Finalizing?

EPA is finalizing limited approval and limited disapproval of Rules 1–15, 15.1, 16, 23–24, 26, 26.1–26.10, 29 and 30. These rules are being approved into the California SIP. EPA is also removing Rules 18, 21, and 25 from the California SIP.

TABLE 1.—RULES SUBJECT TO TODAY'S FINAL ACTION

Rule No.	Existing sip title	SIP approval date	Current rule title	Adoption date
10	Permits Required	6/18/82	Permits Required	6/13/95
11	Application Contents	6/18/82	Definitions for Regulation II	6/13/95
12	Statement by Engineer or Application Preparer	2/3/89	Application for Permits	6/13/95
13	Statement by Applicant	6/18/82	Action on Applications for an Authority to Construct.	6/13/95
14	Trial Test Runs	9/22/72	Action on Application for a Permit to Operate	6/13/95
15	Permit Issuance	4/17/87	Standards for Permit Issuance	6/13/95
15.1	none		Sampling and Testing Facilities	10/12/93
16	Permit Contents	6/18/82	BACT Certification	6/13/95
18	Permit to Operate-Application Required for Existing Equipment.	9/22/72	none—Deleted	6/13/95
21	Expiration of Applications and Permits	6/18/82	none—Deleted	6/13/95
23	Exemptions from Permits	6/18/82	Exemptions from Permit	7/9/96
24	Source Recordkeeping & Reporting	6/18/82	Source Recordkeeping & Reporting	9/15/92
25	Action on Applications	6/18/82	none—Deleted	6/13/95
26	New Source Review	7/1/82	New Source Review	10/22/91
26.1	All New & Modified Stationary Sources	7/1/82	New Source Review (NSR) Definitions	1/13/98
26.2	All New & Modified Stationary Sources-Attainment Pollutants.	7/1/82	Requirements	1/13/98
26.3	All New & Modified Stationary Sources Non-Attainment Pollutants.	7/1/82	Exemptions	1/13/98
26.4	None		Emission Banking	1/13/98
26.5	Power Plants	7/1/82	Community Bank	1/13/98
26.6	Air Quality Impact Analysis & Modification	7/1/82	Calculations	1/13/98
26.7	none		NSR-Notification	12/22/92
26.8	none		NSR-Permit to Operate	10/22/91
26.9	none		Power Plants	10/22/91
26.10	none		Prevention of Significant Deterioration (PSD)	1/13/98
29	Conditions on Permit	6/18/82	Conditions on Permits	10/22/91
30	Permit Renewal	5/3/84	Permit Renewal	5/30/89

II. Background

On March 9, 2000, in 65 FR 12495, EPA proposed limited approval and limited disapproval for the above listed District rules. In addition EPA proposed to delete four obsolete rules from the SIP and a 1981 condition that no longer applies. We also solicited comments on the District's public notification requirements for its permitting actions. Please note that in EPA's March 9, 2000 proposal, there was a typographic error in Table 1 where the rule number for Rule 26.10 (Prevention of Significant Deterioration) was erroneously shown as Rule 26.1.

In our proposal for limited approval and limited disapproval, we identified the following deficiencies in this set of permitting and NSR rules:

1. Rule 10 does not require an authority to construct (ATC) for emission units relocating within five miles within the District.

2. Rule 26 does not specify that emissions offsets must be surplus at the time of use.

3. Rule 26 provides authority to the District to deny a permit for violating National Ambient Air Quality Standards (NAAQS) but it does not provide for denial of a permit for sources that may violate PSD increments.

4. Rule 26 relies entirely on California Environmental Quality Act (CEQA) for implementing alternatives analysis required by the CAA.

III. Public Comments and EPA Response

A 30-day public comment period was provided on EPA's proposed rulemaking at 65 FR 12495. EPA only received two comments, both from the District. The District commented on one of the rule deficiency issues, and on public notification requirements. EPA's response follows a brief summary of the District comments.

Comment #1: The District disagreed with EPA's interpretation that CAA Section 173(c) requires Ventura County emission reduction credits ("ERCs") to be "surplus at the time of use", (see Rule Deficiency #2 above). The District contends:

• An emission reduction that generates an ERC is surplus because the District's attainment plan does not rely on that emission reduction to show attainment. All emission reductions submitted for ERCs are reduced to the amount to that the attainment plan identifies for the emission control that produced the emission reduction. Any amended attainment plan does not rely on reduction of banked ERCs.

• An emission reduction that generates an ERC is creditable because it is not "otherwise required by this Act". Ventura County's ERCs are binding through local requirements established for the purpose of creating ERC. This local authority is separate from any requirements of CAA. Furthermore, the emission reduction that generated the ERC is not relied on for attainment.

Response #1: We understand that the District has not relied on the banked emission reductions in developing its attainment or Air Quality Management Plan (AQMP) and on that basis considers all banked ERCs to be surplus to the requirements of the CAA. However, the CAA requirement for ERCs to be surplus from other requirements of the CAA is independent from the District's obligation to meet the National Ambient Air Quality Standards (NAAQS). See Section 173 (c)(2) of the CAA. 42 U.S.C. § 7503(c)(2). EPA has interpreted this provision to require emissions reductions used as offsets to satisfy Section 173(c)(2), to be surplus to all other requirements of the CAA at the time the offset is used. See "Response to Request for Guidance on Use of Pre–1990 ERC's and Adjusting for RACT at Time of Use" from Seitz to Howekamp, (August 26, 1994) at page 2, Note 1. We do not agree that any ERC banked in the District is automatically and always surplus because it is not relied upon for attainment. An ERC may be surplus at the time of generation but it not necessarily surplus at the time of use (or disbursement) because, for example, a Reasonably Available Control Technology (RACT) requirement that did not apply at the time the ERC was generated by a source category, becomes statutorily applicable before or at the time the ERC is used. In such a case, Sections 172(c) and 173(c)(2) of the CAA require discounting the ERC to RACT levels prior to use.

We recognize that at the time of issuance (or banking), the District discounts ERCs under its Rule 26.4.C. However, this discounting procedure does not ensure that these ERCs are surplus to all requirements of the Act as set forth in Section 172(c), 42 U.S.C. § 7502 (c), at the time of use. For example some VOC compounds are also hazardous air pollutants (HAPs). In these situations, at the time of use of an ERC for VOC, there may be a requirement for the HAP reduction pursuant to a MACT standard. Since a portion of the VOC is a HAP, and the reduction is required by a MACT standard under the CAA, the portion of the ERC associated with the HAP is not surplus simply because the District has not relied upon the reductions for Reasonable Further Progress (RFP), Rate of Progress (ROP) or the attainment demonstration. See August 26, 1994, Seitz Memo at page 3, Note 5. In sum, ERCs are not automatically surplus. Therefore it is important to ensure that ERCs are surplus to all requirements of the Act at the time they are used, even though they were discounted at the time of generation and even though the District has not relied on the ERCs for its attainment demonstration.

Comment #2: In proposing this rule, EPA requested comments on the District's threshold for public notification of its permitting actions. Only the District commented on this subject.

The District's rule provides public notice only for those permit actions that involve emission units with a combined potential to emit (PTE) in excess of one of the thresholds listed in its Rule 26.7. The District believes that PTE is the best measure of the "size" of project that should be subject to public notice. The District also clarified that the PTE thresholds for public comment are not based on the net emission increase from the emission units. It is, therefore, misleading to compare the public notice thresholds to the federal significance levels (which are based on net emission increases).

Response #2: EPA solicited comments on the public notice thresholds to gauge public interest in being notified of permit actions for projects with a lower combined PTE than the rule's thresholds. The fact that we only received one comment (from the District) indicates that the District's requirements are sufficient for providing opportunity for public review and comment on its on permitting actions. Therefore, we agree with the District's comment on this subject and will finalize approval of Rule 26.7 for incorporation into the SIP.

IV. EPA Evaluation and Final Action

For the reasons explained above, the comments submitted by the District have not changed our evaluation of the rules as described in our proposed action. EPA is, therefore, finalizing its limited approval and limited disapproval of District Rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10, and 29–30. Our final action is a limited approval and limited disapproval because the Rules contain deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. The District must revise its Rules 10 and 26 to address the following deficiencies:

• Rule 10 must be clarified or set specific conditions for the exemption from an authority to construct (ATC) permit for relocating emission units. The rule must be made clear to avoid potential circumvention of BACT and public notice requirements for an ATC. The rule must specify that only very small units are eligible for this exemption for relocation within five miles in the District. The District must also revise Section A.3 of its Rule 26.3 (NSR exemption for relocated units) to reflect revisions made to Rule 10 in correcting the deficiency.

• Rule 26 must be revised to address the following three deficiency issues:

Emission Reduction Credits must be surplus at the time of use.

This rule must be revised to ensure that ERCs required for offsetting air emission increases are surplus to reductions otherwise required by the CAA. Section 173(c)(2) of the CAA requires that sources provide offsets in order to obtain an ATC permit. Further, the Act requires that offsetting emission reductions must be federally enforceable at the time that the NSR permit is issued (section 173(a)), and in effect by the time the source commences operation (section 173(c)(1)). In addition, section 173(c)(2) requires that the offsets be surplus of all other requirements of the Act. The CAA does not allow the use of ERCs which were surplus some years ago when they were generated, but which are no longer surplus (for example to RACT or MACT requirements) at the time that the ERC is used. Thus, the District is required to amend its rule to provide for adjusting all ERCs to ensure that the requirement of section 173(c)(2) for surplus ERCs is met at the time that the ERCs are used.

To be corrected, Rules 26.2.B and 26.6.D.7.b must prohibit the use of the ERCs that are not surplus to the CAA requirements at the time of use. The District must revise Rules 26.2.B and 26.6.D.7 to add this requirement. The District must also revise the definition of major modification in Rule 26.1.16, to add that in calculating contemporaneous net emission

increases, ERCs that are not surplus at the time of use shall not be included.

Violation of Ambient Air Increments

Rule 26 must also be revised to provide authority to the District to deny a permit to operate to any source which would cause increases in pollution concentrations over the baseline concentration and would cause a violation of ambient air increments.

Alternative Analysis

Rule 26's reliance on California Environmental Quality Act (CEQA) for the alternatives analysis required by Section 173(a)(5) of the Act must be revised. The alternatives analysis must not be circumvented by qualifying for a statutory or categorical exemptions, or a negative declaration pursuant to CEQA. The District must revise the rule to remove any exemptions. The District may revise the rule so that the District bases its independent conclusions for the alternatives analysis on materials developed under CEQA. However, the District must independently conclude that the alternatives analysis whether based on CEQA or other information demonstrates the benefits of the proposed source significantly outweigh the environmental and social cost.

Because these rule deficiencies are inappropriate for inclusion in the SIP, EPA cannot grant full approval of these rules under section 110(k)(3). Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA is granting final limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The final approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is finalizing limited approval and limited disapproval of District rules under sections 110(k)(3) and 301(a) of the CAA. It should be noted that the rules covered by this final rulemaking have been adopted by the District and are currently in effect in the District. EPA's final limited disapproval action does not prevent the District or EPA from enforcing these rules. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Next Action

The District will have 18 months from the effective date of this final action to correct the deficiencies delineated by EPA in Section IV above, to avoid federal sanctions. See section 179(b) of the CAA. The District's failure to correct the deficiencies will also trigger the Federal implementation plan requirements under 110(c).

VI. Administrative Requirements

1. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

2. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

3. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

4. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

5. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

6. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

7. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

8. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

9. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 5, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (b)(5), (c)(56)(ii)(C), (c)(95)(ii)(C), (c)(179)(i)(D)(*2*), (c)(187)(i)(B)(*4*), (c)(188)(i)(D)(*4*), (c)(190)(i)(A)(*3*), (c)(193)(i)(E), (c)(196)(i)(B)(*2*), (c)(225)(i)(G)(*2*), (c)(241)(i)(C)(*3*), and (c)(255)(i)(G) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(5) Ventura County Air Pollution Control District.

(i) Previously approved on September 22, 1972 and now deleted without replacement Rule 18.

* * * * *

(c) * * *

(56) * * *

(ii) * * *

(C) Previously approved on June 18, 1982 and now deleted without replacement Rule 25.

* * * * *

(95) * * *

(ii) * * *

(c) Previously approved on June 18, 1982 and now deleted without replacement Rule 21.

* * * * *

(179) * * *

(i) * * *

(D) * * *

(*2*) Rule 30 adopted on May 30, 1989.

* * * * *

(187) * * *

(i) * * *

(B) * * *

(*4*) Rules 26.A ("General"), 26.8 and 26.9 adopted on October 22, 1991.

* * * * *

(188) * * *
(i) * * *
(D) * * *.
(*4*) Rule 29 adopted on October 22, 1991.
* * * * *
(190) * * *
(i) * * *
(A) * * *
(*3*) Rule 24 adopted on September 15, 1992.
* * * * *
(193) * * *
(i) * * *
(E) Ventura County Air Pollution Control District
(1) Rule 26.7 adopted on December 22, 1992.
* * * * *
(196) * * *
(i) * * *
(B) * * *
(*2*) Rule 15.1 adopted on October 12, 1993.
* * * * *
(225) * * *
(i) * * *
(G) * * *
(*2*) Rules 10, 11, 12, 13, 14, 15 and 16 adopted on June 13, 1995.
* * * * *
(241) * * *
(i) * * *
(C) * * *
(*3*) Rule 23 adopted on July 9, 1996.
* * * * *
(255) * * *
(i) * * *
(G) Ventura County Air Pollution Control District.
(*1*) Rules 26.1, 26.2, 26.3, 26.4, 26.5, 26.6 and 26.10 adopted on January 13, 1998.
* * * * *

[FR Doc. 00–31050 Filed 12–6–00; 8:45 am]
BILLING CODE 6560–60–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[USCG–1999–6095]
RIN 2115–AF88

Citizenship Standards for Vessel Ownership and Financing; American Fisheries Act

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends citizenship requirements for fishing vessels of less than 100 feet in length that are eligible for a fishery endorsement, by increasing the percentage of interest in a vessel required to be owned and controlled by U.S. citizens in corporations. The percentage increased is from more than 50 percent to at least 75 percent. We add provisions making fishery endorsements of documented fishing vessels chartered or leased to a person who is not a citizen or to an entity which is ineligible to own a documented fishing vessel invalid. We also prohibit fishery endorsement for a fishing vessel mortgaged to a trustee if the mortgage interest is issued, assigned, transferred, or held in trust for a person not eligible to own a documented fishing vessel, even if the trustee is eligible to own a documented fishing vessel.

DATES: This final rule becomes effective on October 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–6095 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Patricia J. Williams, Coast Guard, telephone 304–271–2400. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 27, 2000, we published a notice of proposed rulemaking entitled Citizenship Standards for Vessel Ownership and Financing; American Fisheries Act [USCG–1999–6095] in the **Federal Register** (65 FR 46137). No public hearing was requested and none was held.

Background and Purpose

For reasons and purposes as discussed in the NPRM the Coast Guard amends its fishery endorsement regulations as mandated by the 105th U.S. Congress (Pub. L. 105–277) outlining fishery endorsement eligibility for fishing vessels less than 100 feet in length. The American Fisheries Act (AFA) requires a real, effective, and enforceable U.S. ownership threshold for U.S.-flag fishing vessels. Under this Act, U.S. citizens must own and control at least 75 percent of the ownership interest in any U.S.-flag fishing vessel. The Act is intended to ensure that vessels with a fishery endorsement are truly controlled by citizens of the United States. The Act also increases the penalties for fishery endorsement violations and is intended to discourage willful noncompliance with the new requirements.

Discussion of Comments and Changes

The Coast Guard received 12 comments from two respondents addressing the proposed changes to the citizenship requirements for U.S.-flag fishing vessels with a fishery endorsement. Each respondent highlighted several different items within the proposed rule.

One comment felt that the proposed change to § 67.11 goes too far by eliminating the fishing vessel exemption on selling, mortgaging, leasing, chartering, delivering, or otherwise transferring of the vessel to a non-U.S. citizen without the prior approval of the Maritime Administration. The Coast Guard agrees. Our initial intent was to ensure full compliance with the American Fisheries Act and to ensure there is no confusion among the regulated community. By removing paragraphs (b)(1) and (b)(3) we inadvertently exceeded the scope of the mandate. We have added a paragraph (c) to this section that clarifies vessels less than 100 feet must comply with the Fishery Endorsement requirements of the part, and vessels 100 feet and greater must comply with the requirements found in 46 CFR part 356.

Both respondents stated our proposed restrictions on chartering should apply only to fish harvesting vessels, and not to fish processing or fish tender vessels. We have reviewed the issue, as well as the regulations applicable to larger vessels, implemented by the Maritime Administration (MARAD), the agency with the authority of administering the AFA on vessels greater than or equal to 100 feet in length. We have determined that the regulations regarding chartering of vessels less than 100 feet should be the same as those regarding larger vessels. Thus, we have added language to § 67.21(d)(3) that will not restrict time or voyage charters to Non-Citizens of dedicated Fish Processing or Fish Tender Vessels. This change will bring the regulations for vessels less than 100 feet into symmetry with the regulations for larger vessels, while still invalidating fishery endorsements whenever a fish harvesting vessel is chartered to a Non-Citizen. Bareboat charters of any fishing industry vessel to Non-Citizens will also invalidate the vessel's fishery endorsement.

Both respondents questioned the efficiency of having the Commandant review and approve every loan by a Non-Citizen that is secured by a mortgage, regardless of vessel length. Both suggested that the Coast Guard accept arrangements approved by MARAD for vessels greater than or equal to 100 feet. This has always been the intent of the Coast Guard. We have added to 46 CFR 67.21(f) in order to clarify this intent and prevent confusion among the regulated industry. Additionally, we are adding language to that same section that will allow owners of vessels less than 100 feet to presume Commandant approval of standard loan and mortgage agreements from Non-Citizen lenders, that have received general approval under MARAD's regulations. For those vessels under 100 feet that are entering into non-standard loan and mortgage agreements with Non-Citizen lenders, Commandant approval will proceed on a case-by-case basis.

One comment raised a concern that redefining "control" in § 67.31 "Stock or equity interest requirements" would unnecessarily subject non-fishing industry vessels to the more stringent requirements included in the AFA. The Coast Guard agrees with this comment. In order to ensure the AFA definition of control is not applied to non-fishing industry vessels, we have split the definition into §§ 67.31(b) and (c), and moved the current § 67.31(c) to § 67.31(d).

Both respondents noted that certain larger vessels that were "grandfathered" by the AFA have been given a 15-day period to correct an invalid fishery endorsement. MARAD spelled out the procedures for such a correction in 46 CFR 356.47(b). We did not address the issue in our proposed regulations because we no longer have authority over these vessels. However, it has always been our intention to accept a determination by MARAD that a correction had occurred, and thus continue to recognize a vessel's fishery endorsement. Additionally, the Coast Guard plans to work closely with the Maritime Administration to ensure that notification of a vessel's fishery endorsement ineligibility takes place in a timely and uniform manner.

Both respondents noted that our proposed changes did not include reference to the five vessels specifically granted exemptions by Congress in section 203(g) of the AFA. These vessels were not included in our proposal because they are all over 100 feet in length, and thus outside of our authority. MARAD listed these vessels in 46 CFR 356.51(c) as exempt from the AFA requirements. All are eligible for documentation.

One comment expressed confusion regarding the application procedures outlined in § 67.141. The regulation requires that all vessels, regardless of length, submit certain materials for documentation. This includes the citizenship oath on the CG–1258 documentation application form. Vessels greater than or equal to 100 feet in length must also meet the requirements MARAD has established in 46 CFR part 356, subpart C, including the more extensive citizenship affidavit. Vessels not under MARAD's jurisdiction (less than 100 feet in length) do not need to complete the more extensive form.

One comment noted, as a technicality, that the term "Exclusive Economic Zone" was not being used consistently in our proposed rule. We have made the necessary changes in §§ 67.142(b)(3) and 67.142(c) to ensure consistent usage.

The Coast Guard made two additional changes from the proposed language. In § 67.350, we reworded paragraph (b)(1) in order to clarify the evidence needed to obtain a petition for an exemption from the citizenship requirements. This language change does not affect the substance of the rule; it clarifies that the required evidence must show the ownership of the vessel as of October 1, 2001, whether you are submitting your petition before, on, or after that date.

In § 67.21 we re-designated proposed paragraph (e) as paragraph (f), and added a new paragraph (e) exempting vessels engaged in the fisheries in the exclusive economic zone (EEZ) under the authority of the Western Pacific Fishery Management Council, and certain vessels operating under the authority of the South Pacific Regional Fisheries Treaty, as set forth in the American Fisheries Act. We did not include this provision in the NPRM because a review of vessels under the authority of the Council and Treaty showed all such vessels to be greater than 100 feet and therefore outside our authority. We now include this provision to ensure full compliance with the American Fisheries Act and to ensure there is no confusion among the regulated community.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Marine Safety Management System (MSMS) shows that about 36,000 vessels have fishery endorsements. This regulation impacts documented vessels with fishery endorsements that are less than 100 feet. About 35,500 vessels with fishery endorsements are less than 100 feet. Of these, we researched a random sample of 1,010 vessels in order to achieve a 95 percent confidence level. We found that the change to minimum U.S. ownership requirements from "more than 50 percent" to "at least 75 percent" affects one of the vessels in the random sample. This means that 0.099 percent of the random sample do not meet the requirement. The margin of error is plus or minus 3.04 percent. Applying this percentage to the population, we expect that the owner of 35 vessels will not meet the change in owner citizenship requirement if current ownership levels in each company remain the same (0.099 percent of 35,500 vessels).

In the random sample, there are 843 vessels (83 percent of the affected population) that are owned by individual persons and 167 vessels (17 percent of the affected population) that are owned by corporations or companies. All individual owners are already required to be U.S. citizens in order to document a vessel. Therefore, these vessels and individuals are considered to meet the citizenship requirement, and have 100 percent U.S. ownership. Corporations, partnerships or limited liability companies are required to attest to the level of ownership by U.S. citizens by checking a box in the application for documentation. The "Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Redocumentation" (CG–1258 (REV.9–97)) has four choices for reporting the level of ownership by U.S. citizens in a corporation. The choices are: less than 50 percent, at least 50 percent, more than 50 percent but less than 75 percent, and 75 percent or more. One hundred sixty six (166) corporations certified that the ownership level by U.S. citizens is 75 percent or more. One certified that its corporation's percentage of stock owned by U.S. citizens who are eligible to document vessels was more than 50 percent but less than 75 percent.

Costs: For further analysis, we assume that the 35 adversely affected vessel owners have more than 50 but less than 75 percent of stock owned by U.S. citizens. We further assume that each vessel owner prefers to continue fishing in the Exclusive Economic Zone of the United States. Therefore, we expect each vessel owning company will make changes to its U.S. ownership level. The change of U.S. ownership level could entail the following: adding an additional investor, selling stock to U.S. citizens, adding a partner, or removing a partner.

Once each vessel owning company has met the ownership criteria, the vessel's fishery endorsement will be renewed, as it will be in any other year. Thus, the cost of this rulemaking is directly associated with the change of U.S. ownership level made by each of the 35 vessel owning companies. We assume that each company will hire a law firm to complete the articles of incorporation or any other documents needed to reflect the changes to the ownership levels, and that the law firm will charge about $600 for its services. The one time cost of changing the ownership structure for the 35 companies is $21,000.

We do not expect the restriction to leases and charters by non-U.S. citizens to impact any vessel owners. Similarly, we do not expect the restriction on foreign controlled mortgages to impact any vessels. Therefore, these regulations cause no additional cost to vessel owners, operators, or managers.

Benefits: The changes in the law necessitate this rulemaking. The regulation gives U.S. citizens a higher level of ownership in the vessels that harvest fish in the U.S. Exclusive Economic Zone. Consequently, more of the profits from the fishery industry will accrue to U.S. citizens.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule will have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule impacts the owners of about 35,500 vessels that are documented with fishery endorsements. These vessels are less than 100 feet in length, and we considered each one to be owned by a small entity. As shown by the sample statistics, we expect 35 entities to be adversely affected by the rulemaking. We do not consider the number of adversely affected entities to be a substantial number for they represent 0.099 percent of all entities that would have to comply with the requirements.

The Small Business Administration has determined that the size standard for small businesses involved in the fishing industry is $3 million in annual revenues (Standard Industry Codes 0912, 0913, 0919, and 0921). The imposed burden of $600 represents 0.02 percent for entities with $3 million in annual revenues. For entities with $60,000 and $30,000 in annual revenues, the burden represents 1 percent and 2 percent of annual revenues, respectively. We do not consider this cost to create a significant economic impact on the affected entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rulemaking adds a new collection of information burden to companies that no longer meet the threshold of at least 75 percent ownership by U.S. citizens. This regulation allows these companies to apply for an exemption from the 75 percent U.S. ownership level. The application and related submissions comprise a new collection of information burden.

We presented an estimate of the burden this rulemaking will cause for public comment in the NPRM. No comments were received regarding the collection of information, and we perceive this to mean acceptance of the burden by the public.

The information collection requirements of the rule are addressed in the previously approved OMB collection titled "Vessel Documentation" (OMB 2115–0110).

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has not approved the collection, and we will publish its approval when it occurs. The section numbers are §§ 67.350 and 67.352.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

We have analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132, ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship or on the current distribution of power and responsibilities among various local officials. Therefore, consultation with the State and local officials was not necessary.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 67

Citizenship; Fishery endorsements, Fishing vessels, Mortgages, Penalties, Vessel Documentation.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C 9118; 46 U.S.C. 2103, 2107, 2110, 10102; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

2. Amend § 67.11 by adding paragraph (c) to read as follows:

§ 67.11 Restriction on transfer of an interest in documented vessels to foreign persons; foreign registry or operation.

* * * * *

(c) The exemption in paragraph (b) of this section does not relieve all vessels from meeting the fishery endorsement requirements of this part. If your vessel is less than 100 feet in length and is a fishing vessel, fish processing vessel, or fish tender vessel as defined in 46 U.S.C. 2101, you must meet the fishery endorsement requirements set out in this part. Each vessel 100 feet and greater in length applying for a fishery endorsement is regulated by the Maritime Administration requirements found in 46 CFR part 356.

* * * * *

3. Amend § 67.21 by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 67.21 Fishery endorsement.

* * * * *

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section loses that eligibility during any period in which it is:

(1) Owned by a partnership which does not meet the requisite citizenship requirements of § 67.35(b);

(2) Owned by a corporation which does not meet the citizenship requirements of § 67.39(b); or

(3) Chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement, except that time charters, voyage charters and other charters that are not a demise of the vessel may be entered into with Non-Citizens for the charter of dedicated Fish Tender Vessels and Fish Processing Vessels that are not engaged in the harvesting of fish or fishery resources without the vessel losing its eligibility for a fishery endorsement.

(e) A vessel operating with a fishery endorsement on October 1, 1998, under the authority of the Western Pacific Fishery Management Council, or a purse seine vessel engaged in tuna fishing outside of the EEZ of the United States or pursuant to the South Pacific Regional Fisheries Treaty may continue to operate as set out in 46 U.S.C. 12102(c)(5), provided that the owner of the vessel continues to comply with the fishery endorsement requirements that were in effect on October 1, 1998.

(f) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible if an instrument or evidence of indebtedness, secured by a mortgage of the vessel, to a trustee eligible to own a vessel with a fishery endorsement is issued, assigned, transferred, or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Commandant determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee:

(1) Is organized as a corporation that meets § 67.39(b) of this part, and is doing business under the laws of the United States or of a State;

(2) Is authorized under those laws to exercise corporate trust powers which meet § 67.36(b) of this part;

(3) Is subject to supervision or examination by an official of the United States Government or a State;

(4) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(5) Meets any other requirements prescribed by the Commandant.

For vessels greater than or equal to 100 feet in length, approval of such an arrangement from the Maritime Administration will be accepted as evidence that the above conditions are met and will be approved by the Commandant. For vessels less than 100 feet, a standard loan and mortgage agreement that has received general approval under 46 CFR 356.21 will be accepted as evidence that the above conditions are met and will be approved by the Commandant.

4. Revise §§ 67.31(b) and (c), and add § 67.31(d) to read as follows:

§ 67.31 Stock or equity interest requirements.

* * * * *

(b) For the purpose of stock or equity interest requirements for citizenship under this subpart, control of non-fishing industry vessels includes an absolute right to: Direct corporate or partnership business; limit the actions of or replace the chief executive officer, a majority of the board of directors, or any general partner; direct the transfer or operations of any vessel owned by the corporation or partnership; or otherwise exercise authority over the business of the corporation or partnership. Control does not include the right to simply participate in these activities or the right to receive a financial return, e.g., interest or the equivalent of interest on a loan or other financing obligations.

(c) For the purpose of this section, control of a fishing industry vessel means having:

(1) The right to direct the business of the entity that owns the vessel;

(2) The right to limit the actions of or to replace the chief executive officer, the majority of the board of directors, any general partner, or any person serving in a management capacity of the entity that owns the vessel;

(3) The right to direct the transfer, the operation, or the meaning of a vessel with a fishery endorsement.

(d) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the trade endorsement sought.

5. In § 67.35, revise the introductory text and paragraph (b) to read as follows:

§ 67.35 Partnership.

A partnership meets citizenship requirements if all its general partners are citizens, and:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, at least 75 percent

of the equity interest in the partnership, at each tier of the partnership and in the aggregate, is owned by citizens.

* * * * *

6. Amend § 67.36 by revising the introductory text of paragraphs (a), (b), and (c) and by revising paragraph (b)(2) to read as follows:

§ 67.36 Trust.

(a) For the purpose of obtaining a registry or recreational endorsement, a trust arrangement meets citizenship requirements if:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a trust arrangement meets citizenship requirements if:

* * * * *

(2) At least 75 percent of the equity interest in the trust, at each tier of the trust and in the aggregate, is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lake endorsement or both, a trust arrangement meets citizenship requirements if:

* * * * *

7. Revise § 67.37 to read as follows:

§ 67.37 Association or joint venture.

(a) An association meets citizenship requirements if each of its members is a citizen.

(b) A joint venture meets citizenship requirements if each of its members is a citizen.

8. Revise § 67.39 by revising the introductory text of paragraphs (a), (b), and (c) and by revising paragraph (b)(2) to read as follows:

§ 67.39 Corporation.

(a) For the purpose of obtaining a registry or a recreational endorsement, a corporation meets citizenship requirements if:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a corporation meets citizenship requirements if:

* * * * *

(2) At least 75 percent of the stock interest in the corporation, at each tier of the corporation and in the aggregate, is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a corporation meets citizenship requirements if:

* * * * *

9. Remove § 67.45.

§ 67.45 [Removed]

10. Amend § 67.141 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 67.141 Application procedure; all cases.

* * * * *

(b) Each vessel 100 feet and greater in length applying for a fishery endorsement must meet the requirements of 46 CFR part 356 and must submit materials required in paragraph (a) of this section.

(c) Upon receipt of the Certification of Documentation and prior to operation of the vessel, ensure that the vessel is marked in accordance with the requirements set forth in subpart I of this part.

11. Add § 67.142 to read as follows:

§ 67.142 Penalties.

(a) An owner or operator of a vessel with a fishery endorsement who violates Chapter 121 of Title 46, U.S. Code or any regulation issued thereunder is liable to the United States Government for a civil penalty of not more than $10,000. Each day of a continuing violation is a separate violation.

(b) A fishing vessel and its equipment are liable to seizure and forfeiture to the United States Government—

(1) When the owner of the fishing vessel, or the representative or agent of the owner, knowingly falsifies applicable information or knowingly conceals a material fact during the application process for or application process to renew a fishery endorsement of the vessel;

(2) When the owner of the fishing vessel, or the representative or agent of the owner, knowingly and fraudulently uses a vessel's certificate of documentation;

(3) When the fishing vessel engages in fishing [as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)] within the Exclusive Economic Zone after its fishery endorsement has been denied or revoked;

(4) When a vessel is employed in a trade without an appropriate trade endorsement;

(5) When a documented vessel with only a recreational endorsement operates as a fishing vessel; or

(6) When a vessel with a fishery endorsement is commanded by a person who is not a citizen of the United States.

(c) In addition to penalties under paragraphs (a) and (b) of this section, the owner of a vessel with a fishery endorsement is liable to the United States Government for a civil penalty of up to $100,000 for each day in which the vessel has engaged in fishing within the Exclusive Economic Zone, if the owner of the fishing vessel, or the representative or agent of the owner, knowingly falsifies applicable information or knowingly conceals a material fact during the application process for or application process to renew a fishery endorsement of the vessel.

12. Revise § 67.233(b) to read as follows:

§ 67.233 Restrictions on recording mortgages, preferred mortgages, and related instruments.

* * * * *

(b) A mortgage of a vessel 100 feet or greater in length applying for a fishery endorsement is eligible for filing and recording as a preferred mortgage only if it meets the requirements of this part and the requirements of 46 CFR 356.19.

* * * * *

13. Add subpart V to read as follows:

Subpart V—Exemption From Fishery Endorsement Requirements Due to Conflict With International Agreements

Sec.

67.350 Conflicts with international agreements.
67.352 Applicability.

Subpart V—Exception From Fishery Endorsement Requirements Due to Conflict With International Agreements

§ 67.350 Conflicts with international agreements.

(a) If you are an owner or mortgagee of a fishing vessel less than 100 feet in length and believe that there is a conflict between 46 CFR part 67 and any international treaty or agreement to which the United States is a party on October 1, 2001, and to which the United States is currently a party, you may petition the National Vessel Documentation Center (NVDC) for a ruling that all or sections of part 67 do not apply to you with respect to a particular vessel, provided that you had an ownership interest in the vessel or a mortgage on the vessel on October 1, 2001. You may file your petition with the NVDC before October 1, 2001, with respect to international treaties or agreements in effect at the time of your petition which are not scheduled to expire before October 1, 2001.

(b) If you are filing a petition for exemption with the NVDC for reasons stated in paragraph (a) of this section, your petition must include:

(1) Evidence of the ownership structure of the vessel petitioning for an exemption as of October 1, 2001, and any subsequent changes to the ownership structure of the vessel;

(i) If you are filing your petition before October 1, 2001, you may substitute evidence of the ownership structure as it exists on the date you file your petition;

(2) A copy of the provisions of the international agreement or treaty that you believe is in conflict with this part;

(3) A detailed description of how the provisions of the international agreement or treaty conflict with this part;

(4) For all petitions filed before October 1, 2001, a certification that the owner intends to transfer no ownership interest in the vessel to a non-U.S. citizen for the following year.

(5) For all petitions filed after October 1, 2001, a certification that no ownership interest was transferred to a non-U.S. citizen after September 30, 2001.

(c) You must file a separate petition for each vessel requiring an exemption unless the NVDC authorizes consolidated filing. Petitions should include two copies of all required materials and should be sent to the following address: National Vessel Documentation Center, 792 TJ Jackson Drive, Falling Water, West Virginia, 25419.

(d) Upon receipt of a complete petition, the NVDC will review the petition to determine whether the effective international treaty or agreement and the requirements of this part are in conflict. If the NVDC determines that this part conflicts with the effective international treaty or agreement, then the NVDC will inform you of the guidelines and requirements you must meet and maintain to qualify for a fisheries endorsement.

(e) If the vessel is determined through the petition process to be exempt from all or sections of the requirements of this part, then you must annually, from the date of exemption, submit the following evidence of its ownership structure to the NVDC:

(1) The vessel's current ownership structure;

(2) The identity of all non-citizen owners and the percentages of their ownership interest in the vessel;

(3) Any changes in the ownership structure that have occurred since you last submitted evidence of the vessel's ownership structure to the NVDC; and

(4) A statement ensuring that no interest in the vessel was transferred to a non-citizen during the previous year.

§ 67.352 Applicability.

The exemption in this subpart shall not be available to:

(a) Owners and mortgagees of a fishing vessel less than 100 feet in length who acquired an interest in the vessel after October 1, 2001; or

(b) Owners of a fishing vessel less than 100 feet in length, if any ownership interest in that vessel is transferred to or otherwise acquired by a non-U.S. citizen after October 1, 2001.

Dated: November 22, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–31094 Filed 12–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014-0137-02; I.D. 113000E]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Virginia has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Virginia for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Virginia that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Virginia.

DATES: Effective 0001 hours, December 7, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, or 2,368,546 lb (1,074,354 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1999, a total of 2,130,553 lb (966,403 kg) were landed in Virginia, creating a 9,857 lb (4,471 kg) overage that was deducted from the amount allocated for landings in the State during 2000 (65 FR 33486, May 24, 2000). The resulting 2000 quota for Virginia is 2,358,689 lb (1,069,883 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Virginia has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 7, 2000, further landings of summer flounder in Virginia by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 7, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Virginia for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Bruce C. Morehead
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 00–31233 Filed 12–06–00; 8:45 am]
BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014-0137-02; I.D. 113000D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective 0001 hours, December 16, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:
Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 849,672 lb (385,405 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New York has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 16, 2000, further landings of summer flounder in New York by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 16, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 00–31234 Filed 12–06–00; 8:45 am]
BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325-0063-02; I.D. 112700C]

Fisheries of the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of standard prices and fee percentage for North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

SUMMARY: The National Marine Fisheries Service publishes IFQ standard prices and notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQs with information to calculate the payments required for IFQ cost recovery fees due by January 31, 2001.

DATES: The IFQ cost recovery fees for calendar year 2000 are due on or before January 31, 2001.

FOR FURTHER INFORMATION CONTACT: Kristie Balovich, Fee Coordinator, 907-586-7344.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act, section 304(d)(2)(A), was amended (Pub.L. 104-297) to require the Secretary of Commerce to "collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program." Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or of quota share (QS) by entry-level and small-vessel fishermen.

NMFS published, on December 27, 1999 (64 FR 72302), a proposed rule to implement the IFQ Cost Recovery Program and published the final rule on March 20, 2000 (65 FR 14919). The final regulations implementing the IFQ Cost Recovery Program are set forth at 50 CFR 679.45.

Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Fee Percentage

Three percent of the ex-vessel value of IFQ halibut and IFQ sablefish harvested is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. Regulations at § 679.45(d) allow the Administrator, Alaska Region, NMFS (Regional Administrator) to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. In this event, the Regional Administrator will publish a notification of any adjustment of the IFQ fee percentage in the **Federal Register** pursuant to § 679.45(d)(4).

For 2000, the Regional Administrator has determined that a fee of 1.8 percent (0.018) is necessary to recover the actual management and enforcement costs. Therefore, the Regional Administrator is adjusting the cost recovery fee applicable to years 2000 IFQ landings from 3 percent (0.03) to 1.8 percent (0.018).

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish).

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value, "actual ex-vessel value" and "standard ex-vessel value." "Actual ex-vessel value" is the amount of money an IFQ permit holder received as payment for his or her IFQ fish sold. "Standard ex-vessel value" is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using "actual ex-vessel value" if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars, per IFQ equivalent pound, for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and as headed and gutted ("net") weight for halibut. NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. The standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2000 IFQ SEASON

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
CORDOVA	March 31	*	*
	April 30	$2.50	*
	May 31	$2.52	$2.63
	June 30	$2.24	*
	July 31	$2.47	*
	August 31	$2.50	*
	September 30	*	*
	October 31	*	*
	November 30	*	*
DUTCH HARBOR	March 31	*	*
	April 30	*	*
	May 31	$2.32	$2.79
	June 30	$2.18	$2.87
	July 31	$2.25	*
	August 31	$2.26	$2.11
	September 30	$2.27	*
	October 31	$2.27	*
	November 30	$2.27	*
HOMER	March 31	$2.86	*
	April 30	$2.61	$2.45
	May 31	$2.62	$2.31
	June 30	$2.53	*
	July 31	$2.65	$2.08
	August 31	$2.59	*
	September 30	$2.61	$2.20
	October 31	$2.61	$2.20
	November 30	$2.61	$2.20

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2000 IFQ SEASON—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
KODIAK	March 31	$2.86	*
	April 30	$2.48	$2.06
	May 31	$2.51	$2.17
	June 30	$2.33	*
	July 31	$2.36	*
	August 31	$2.46	*
	September 30	$2.49	$2.40
	October 31	$2.49	$2.40
	November 30	$2.49	$2.40
PETERSBURG	March 31	$2.80	*
	April 30	$2.52	*
	May 31	$2.58	*
	June 30	$2.41	$2.23
	July 31	$2.51	*
	August 31	$2.56	*
	September 30	$2.60	*
	October 31	$2.60	*
	November 30	$2.60	*
SEWARD	March 31	$2.95	$2.40
	April 30	$2.49	$2.49
	May 31	$2.51	$2.36
	June 30	$2.41	$2.22
	July 31	$2.48	$2.26
	August 31	$2.55	*
	September 30	$2.52	*
	October 31	$2.52	*
	November 30	$2.52	*
SITKA	March 31	*	*
	April 30	$2.50	*
	May 31	$2.55	*
	June 30	$2.55	*
	July 31	$2.58	*
	August 31	*	*
	September 30	*	*
	October 31	*	*
	November 30	*	*
[1]BERING SEA	March 31	*	*
	April 30	$2.39	$2.35
	May 31	$2.21	$2.26
	June 30	$2.16	$2.26
	July 31	$2.20	$2.01
	August 31	$2.22	$2.03
	September 30	$2.22	$2.10
	October 31	$2.22	$2.10
	November 30	$2.22	$2.10
[2]CENTRAL GULF	March 31	$2.89	$2.50
	April 30	$2.53	$2.48
	May 31	$2.51	$2.35
	June 30	$2.41	$2.26
	July 31	$2.51	$2.09
	August 31	$2.49	$2.25
	September 30	$2.52	$2.39
	October 31	$2.52	$2.39
	November 30	$2.52	$2.39
[3]SOUTHEAST	March 31	$2.83	$3.09
	April 30	$2.56	$2.62
	May 31	$2.60	$2.43
	June 30	$2.51	$2.23
	July 31	$2.50	$2.21
	August 31	$2.61	$2.34
	September 30	$2.63	$2.40
	October 31	$2.63	$2.40
	November 30	$2.63	$2.40

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2000 IFQ SEASON—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
[4]ALL-ALASKA	March 31	$2.86	$2.76
	April 30	$2.54	$2.56
	May 31	$2.50	$2.37
	June 30	$2.38	$2.25
	July 31	$2.38	$2.11
	August 31	$2.41	$2.25
	September 30	$2.48	$2.35
	October 31	$2.48	$2.35
	November 30	$2.48	$2.35
[5]ALL	March 31	$2.86	$2.76
	April 30	$2.54	$2.56
	May 31	$2.50	$2.37
	June 30	$2.38	$2.25
	July 31	$2.38	$2.11
	August 31	$2.41	$2.25
	September 30	$2.48	$2.35
	October 31	$2.48	$2.35
	November 30	$2.48	$2.35

[1]Landing locations Within Port Group - Bering Sea: Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[2]Landing Locations Within Port Group - Central Gulf of Alaska: Anchor Point, Anchorage, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez.

[3]Landing Locations Within Port Group - Southeast Alaska: Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[4]Landing Locations Within Port Group - All Alaska: All landing locations included in 1, 2, and 3.

[5]Landing Locations Within Port Group - All Alaska: All landing locations included in 1, 2, and 3. Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Stanwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

*Data not available or not presented to protect confidentiality of data submissions.

This action is required by § 679.45 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 30, 2000.

Clarence Pautzke,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31032 Filed 12–06–00; 8:45 am]

BILLING CODE: 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 236
Thursday, December 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–037–2]

RIN 0579–AB15

Citrus Canker; Payments for Recovery of Lost Production Income

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. These proposed lost production payments, which would serve to complement our October 16, 2000, interim rule that provides for the payment of tree replacement funds to eligible owners of commercial citrus groves, would help to reduce the economic effects of the citrus canker quarantine on affected commercial citrus growers.

DATES: We invite you to comment on this docket. For comments on all portions of this proposed rule except the rule's information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act, consideration will be given only to comments received on or before January 8, 2001. For comments on the Paperwork Reduction Act requirements of this proposed rule, consideration will be given only to comments received on or before February 5, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–037–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–037–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants that render the fruit unmarketable, and can cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–15 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. The regulations currently list parts of Broward, Collier, Dade, Hendry, Hillsborough, and Manatee Counties, FL, as quarantined areas for citrus canker.

On October 16, 2000, we published in the **Federal Register** (65 FR 61077–61080, Docket No. 00–037–1) an interim rule that amended the regulations by adding a new section (§ 301.75–15) to provide for the payment of tree replacement funds to eligible owners of commercial citrus groves who have had citrus trees destroyed because of citrus canker. In that interim rule, we noted that we anticipated that additional funds would be made available to allow us to provide payments to the owners of commercial citrus groves for losses in production income resulting from the destruction of trees due to citrus canker. In this document, we are proposing to amend the regulations by adding another new section, § 301.75–16, that would address the payment of funds to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker. That proposed new section is explained in detail below.

Definitions (Section 301.75–1)

We are proposing to amend § 301.75–1, "Definitions," by adding a definition for the term *ACC coverage*, which would be used in proposed new § 301.75–16. We would define *ACC coverage* as "the crop insurance coverage against Asiatic citrus canker (ACC) provided under the Florida Fruit Tree Pilot Crop Insurance Program authorized by the Federal Crop Insurance Corporation" (FCIC). This crop insurance pilot covers 29 Florida counties, including the 6 counties that currently contain citrus canker quarantined areas, and allows growers to insure covered citrus tree varieties against both standard perils (losses resulting from freezes, wind, and excess moisture) and losses due to citrus canker (referred to by FCIC as Asiatic citrus canker or ACC). Eligibility for the two sets of perils (standard and ACC) is determined separately; thus, an insured grower may qualify for coverage against the standard perils but not against ACC. While growers located in counties that do not contain quarantined areas qualify for ACC coverage automatically, growers located in counties that do contain quarantined areas are required to obtain an ACC underwriting certification, which describes the status of citrus trees with respect to citrus canker, from APHIS or from the Florida Department of Food and Consumer Services' Division of Plant Industry (DPI). If a grower's trees are certified by APHIS or DPI as being infected with or exposed to citrus canker, the trees are not eligible for ACC coverage under the crop insurance pilot.

Payments for the Recovery of Lost Production Income (Proposed Section 301.75–16)

The introductory text of proposed § 301.75–16 would provide that our ability to make payments to commercial citrus producers to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker is contingent upon the availability of funds appropriated for that purpose. Because the Secretary of Agriculture has not found it necessary to declare an extraordinary emergency with respect to citrus canker in Florida, the Animal and Plant Health Inspection Service (APHIS) does not have the authority under the Plant Protection Act to establish a compensation program to cover losses associated with the current citrus canker outbreak in that State. Therefore, we may provide payments for the recovery of lost production income only if appropriated funds are made available for that purpose. Such funds have been made available in section 203(e) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224), which provides that $25 million shall be used by the Secretary to compensate commercial growers for losses due to Pierce's disease, plum pox, and citrus canker. In additional, $58 million were made available for payments to commercial citrus and lime producers in Florida in the Department's fiscal year (FY) 2001 appropriation. Specifically, paragraphs (a) through (e) of section 810 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387) state the following:

(a) The Secretary of Agriculture shall pay Florida commercial citrus and lime growers $26 for each commercial citrus or lime tree removed to control citrus canker in order to allow for tree replacement and associated business costs. Payments under this subsection shall be capped in accordance with the following trees per acre limitations:

(1) In the case of grapefruit, 104 trees per acre;

(2) In the case of valencias, 123 trees per acre;

(3) In the case of navels, 118 trees per acre;

(4) In the case of tangelos, 114 trees per acre;

(5) In the case of limes, 154 trees per acre; and

(6) in the case of other or mixed citrus, 104 trees per acre.

(b) The Secretary of Agriculture shall compensate Florida commercial citrus and lime growers for lost production, as determined by the Secretary of Agriculture, with respect to trees removed to control citrus canker.

(c) To receive assistance under this section, a tree referred to in subsection (a) or (b) must have been removed after January 1, 1986, and before September 30, 2001.

(d) In the case of a removed tree that was covered by a crop insurance tree policy, compensation for lost production under subsection (b) with respect to such a tree shall be reduced by the indemnity received with respect to such a tree. In the case of a removed tree that was not covered by a crop insurance tree policy, although such insurance was available for the tree, compensation for lost production under subsection (b) with respect to such a tree shall be reduced by 5 percent.

(e) The Secretary of Agriculture shall use $58,000,000 of the funds of the Commodity Credit Corporation to carry out this section, to remain available until expended.

Eligibility

Under paragraph (a) of proposed § 301.75–16, the owner of a commercial citrus grove would be eligible to receive payments to recover net income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995. Although the current citrus canker infestation was detected in Florida on September 28, 1995, the State of Florida has identified five commercial citrus groves in Manatee and Highlands Counties that were destroyed to control citrus canker during a limited outbreak of the disease that occurred between 1986 and 1990. The proposed eligibility period would ensure that lost production payments could be made to those growers affected during that limited outbreak in Manatee and Highlands Counties as well as those growers affected during the current outbreak.

Per-Acre Payments

Proposed § 310.75–16(b)(1) would provide the per-acre amounts that would be paid to the owners of eligible commercial citrus groves. The amount that would be paid per acre of destroyed commercial citrus groves would vary, depending on the type of citrus trees that constituted a particular grove.

The per-acre payments that we are proposing in this document are based on the estimated per-acre loss in value of the destroyed groves. This loss in value is the difference between the net present value (NPV) of the original (destroyed) grove before it was infected with or exposed to citrus canker minus the NPV of the replanted grove for its entire productive life.[1] To calculate the NPV of a grove (both original and replanted groves), we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period. Each year's net income is discounted back to a present worth figure at the appropriate, market-derived discount rate. The valuation model can be expressed in the following equation form, where Y = net income, r = discount rate, and n = number of years in the discount period:

$$NPV = \frac{Y_1}{(1+r)^1} + \frac{Y_2}{(1+r)^2} + \frac{Y_3}{(1+r)^3} + \ldots + \frac{Y_n}{(1+r)^n}$$

To calculate NPV using the above equation, we had to determine net income, the discount rate, and the number of years in the discount period. Each of these inputs is discussed below. A more detailed analysis may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Net income. To determine the per-acre net income for each variety of fruit, we multiplied the yield (number of boxes) per tree by the price per box, then subtracted the production cost per tree to arrive at the cash flow per tree; the cash flow per tree was then multiplied by the number of trees per acre to determine per-acre net income. The values used for the variables in our calculations, which are based on information obtained from the Florida

[1] The expected productive life of a lime grove is 25 years; for other varieties of citrus, the expected productive life of a grove is 36 years. The age of the trees destroyed to date has been mixed, even within individual groves; based on available information, we have determined that the average (mean) age of the trees that have been destroyed was 14 years for grapefruit, 12 years for tangelos, Valencia oranges, and navel oranges, and 4 years for limes.

Agricultural Statistics Service and the University of Florida's Institute of Food and Agricultural Services, are as follows:

GRAPEFRUIT *

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 1.95	Years 6–8 3.19	Years 9–13 4.20	Years 14–19 4.91	Years 20–36 5.28
Price per box	$3.58					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $1.852 per box	
Trees per acre	104					

* In our October 16, 2000, interim rule, this category was referred to as "Grapefruit, red seedless." It is referred to as "Grapefruit" in this proposed rule to conform with the language used in Sec. 810 of Public Law 106–387.

ORANGE, VALENCIA

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 1.18	Years 6–8 2.09	Years 9–13 2.30	Years 14–19 3.64	Years 20–36 4.38
Price per box	$5.29					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $2.134 per box	
Trees per acre	123					

ORANGE, NAVEL **

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 1.23	Years 6–8 2.69	Years 9–13 3.56	Years 14–19 4.71	Years 20–36 5.67
Price per box	$4.14					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $1.853 per box	
Trees per acre	118					

** In our October 16, 2000, interim rule, this category of oranges was referred to as "Orange, early/midseason/navel." It is referred to as "Orange, navel" in this proposed rule to conform with the language used in Sec. 810 of Public Law 106–387.

TANGELO

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 0.87	Years 6–8 1.90	Years 9–13 2.51	Years 14–19 3.32	Years 20–36 4.00
Price per box	$3.88					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $1.852 per box	
Trees per acre	114					

LIME

Yield (88-lb. boxes per tree)	Year 1 0.16	Year 2 0.60	Year 3 1.07	Year 4 1.38	Year 5 1.83	Year 6 2.11	Year 7 2.48	Yrs 8–25 2.61
Price per box	$9.11							
Production costs	Year 1 $12.57 per tree			Year 2 $7.79 per tree			Years 3–25 $6.55 per box	
Trees per acre	154							

Discount rate. The discount rate used in the equation differed for original groves and replanted groves. Based on information provided by extension economists in Florida and citrus industry economists, we have applied the following discount rates when calculating the NPV of replanted groves, as replanting would not be expected to occur until the production area is free from citrus canker: 14 percent for grapefruit; 14.5 percent for tangelos and Valencia and navel oranges; and 13.5 percent for limes. Based on the discount rates applied to production in areas free from citrus canker, we estimated that the following discount rates would be appropriate for income that could be earned from a grove in an area where citrus canker is present: 15 percent for grapefruit; 15.5 percent for tangelos and Valencia and navel oranges; and 14.5 percent for limes. These higher discount rates reflect the increased risk that would be associated with citrus production in an area known to have citrus canker.

Number of years in discount period. The NPV was calculated using a life cycle approach.

The revenues and costs were calculated over a period equal to the expected productive life of a replanted grove, which, as noted previously, is 25 years for lime groves and 36 years for other varieties of citrus.

Based on the recommendations of extension economists and sources within the citrus industry, payments for the recovery of lost production income would be made on a per-acre basis, rather than on a per-tree basis, because output per acre is approximately the same, regardless of the number of trees per acre. Paying on a per-tree basis would likely result in underpayments to growers with older groves, which normally have fewer, but larger and more productive, trees, and in overpayments to growers with newer groves, which normally have more trees that are smaller and produce less fruit per tree than the larger trees. The trend in the industry is to plant more trees per acre; smaller trees allow for easier harvesting, making it easier to find workers willing to do this type of work.

Using the information and methodology set forth in the preceding paragraphs, we have calculated the per-acre NPV for each variety of citrus considered in this proposed rule. The NPV includes the lost production component considered in this proposed rule as well as the tree replacement component addressed in our October 16, 2000, interim rule that established § 301.75–15, "Funds for the replacement of commercial citrus trees." Because the regulations in § 301.75–15 already provide for tree replacement payments, we have subtracted those tree replacement payments (*i.e.*, $26 times the number of trees per acre) from the NPV to arrive at the proposed per-acre lost production payments presented in the following table:

Citrus variety	Trees per acre*	Per-tree payment*	Tree replacement payment (per acre)*	Lost production payment (per acre)	NPV (per acre)
Grapefruit	104	$26	$2,704	$2,925	$5,629
Orange, Valencia	123	26	3,198	5,729	8,927
Orange, navel	118	26	3,068	5,693	8,761
Tangelo	114	26	2,964	1,666	4,630
Lime	154	26	4,004	4,829	8,833
Other or mixed citrus**	104	26	2,704	2,925	5,629

* Trees per acre, pre-tree payment, and tree replacement payment per acre reflect the limitations established in Sec. 810(a) of Public Law 106–387.

** Records provided by the State of Florida list approximately 32 acres of "other, unidentified" citrus trees as having been destroyed due to citrus canker before December 31, 1999. Under this proposed rule, the payment for those "other, unidentified" citrus trees would be the same as that for grapefruit. Since the time those initial records were provided by Florida, we have been able to determine that the "other, unidentified" category of citrus groves is a mix of trees not conveniently categorized. The mix of trees may include grapefruit, oranges, and specialty crops. Based on the fact that 82 percent of the acreage destroyed before December 31, 1999, consisted of grapefruit, APHIS used grapefruit production and cost data to estimate the value of the "other, unidentified" groves.

Payment Adjustments

Paragraph (b)(2) of proposed § 301.75–16 would provide for adjustments to be made to the per-acre payments discussed above in those cases where ACC coverage had been available for the destroyed trees. Specifically, under proposed § 301.75–16(b)(2)(i), if the owner of a commercial citrus grove had obtained ACC coverage for trees in his or her grove and had received crop insurance payments following the destruction of the insured trees, the payment provided for under paragraph (b)(1) of this section will be reduced by the total amount of the crop insurance payments received by the commercial citrus grove's owner for the insured trees. This proposed adjustment would enable us to deduct any indemnity for destroyed trees that may have been received by a grower through crop insurance, thus ensuring that the grove owner did not receive two payments for the same destroyed trees.

If the owner of a commercial citrus grove had been eligible to obtain ACC coverage for the trees in his or her grove, but that owner had not obtained the available coverage, proposed § 301.75–16(b)(2)(ii) would provide that the per-acre lost production payment would be reduced by 5 percent, as required by Sec. 810(d) of Public Law 106–387. This would respond to concerns that if APHIS provided full lost production payments to insurance-eligible commercial growers who elected not to obtain ACC coverage against citrus canker losses, those full payments would likely undermine the intent and effectiveness of the Federal crop insurance program by making it appear that crop insurance was not necessary.

How To Apply

Paragraph (c) of proposed § 301.75–16 would provide information on how to apply for lost production payments. This paragraph would state that the form necessary to apply for payments could be obtained from any local citrus canker program office or from the USDA Citrus Canker Eradication Project office in Miami, FL. Completed claim forms would have to be sent to the USDA Citrus Canker Eradication Project office in Winter Haven, FL, which is where the DPI records necessary to validate claims are located. This paragraph would also state that an applicant should, when submitting a completed application, include with the form a copy of the public order that directed the destruction of the trees, the order's accompanying inventory that describes the acreage, number, and variety of trees removed, and documentation verifying that the destruction of trees had been completed and the date of that destruction. Claims for losses attributable to the destruction of trees on or before the effective date of the final rule implementing the provisions of this proposed rule would have to be received within 60 days after the effective date of the final rule. Claims for losses attributable to the destruction of trees after the effective date of the

final rule would have to be received within 60 days after the destruction of the trees.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The following economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

This proposed rule would amend the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. These proposed lost production payments, which would serve to complement our October 16, 2000, interim rule that provides for the payment of tree replacement funds to eligible owners of commercial citrus groves, would help to reduce the economic effects of the citrus canker quarantine on affected commercial citrus growers.

As shown in the table below, the United States produced approximately 16,990 tons of oranges, grapefruit, limes, tangerines, and tangelos worth $2.25 billion in 1998, with Florida producing nearly half of that total.

Fruit	1998				
	U.S. production (tons)	Value of U.S. production (millions)	Florida production (tons)	Value of Florida production (millions)	Florida share of production (%)
Oranges	13,857	$1,930.5	6,051	$843.0	43.67
Tangerines	360	96.1	228	61.0	63.41
Grapefruit	2,626	211.9	2,001	161.4	76.20
Limes	19	4.3	14	3.1	72.72
Tangelos	128	11.7	128	11.7	100.00
Total	16,990	2,254.5	8,422	1,080.2	.....

Source: USDA, National Agricultural Statistics Service, *Agricultural Statistics*, 1999.

Removing the infected and exposed trees protects a substantial investment in other citrus groves. While the entire value of citrus produced is not at risk immediately from citrus canker, the disease would, if left unchecked, continue to spread. In time, the entire industry would be at risk.

According to the data provided to APHIS by the State of Florida, approximately 8,418 acres of commercial citrus trees have been destroyed to control citrus canker by November 15, 2000. This figure includes an estimated 7,814 acres of commercial citrus that have been destroyed since the current citrus canker outbreak was detected in September 1995, as well as approximately 604 acres of grapefruit trees from 5 groves in Manatee and Highlands Counties that were destroyed between 1986 and 1990 to control citrus canker during a limited outbreak of the disease during that period.

As shown in the following table, which was prepared using the acreage estimates provided by the State of Florida and the proposed per-acre payments contained in this proposed rule, lost production payments for commercial citrus trees destroyed by November 15, 2000, would total between about $29.1 to $36.5 million. The uncertainty in this estimate is attributable to the fact that, of the 8,418 acres estimated to have been destroyed by November 15, 2000, there are about 1,806 acres that have not yet been broken out by variety in the data available to us. To account for that acreage, we have multiplied the acreage (1,806.38) by the lowest ($1,666) and highest ($5,729) of the proposed per-acre payments to identify the entire range of possible total claims.[2]

Variety	Estimated acreage destroyed by 11/15/00	Proposed per-acre payment	Estimated lost production claims
Grapefruit	3,201.00	$2,925	$9,362,925
Oranges, Valencia	58.30	5,729	334,001
Oranges, navel	380.22	5,693	2,164,592
Tangelos	11.13	1,666	18,543
Limes	2,929.00	4,829	14,144,141
Other or mixed citrus	31.97	2,925	93,512
Subtotal	6,611.62	.....	26,117,714
Variety not yet identified	1,806.38	1,666–5,729	3,009,429–10,348,751

[2] We believe that figure provided in the table for limes—2,929 acres—accounts for all lime acreage destroyed by November 15, 2000, so the presently unidentified acreage can be expected to consist of a mix of grapefruit, Valencia and navel oranges, and tangelos, which collectively account for approximately 3,650 acres in the table. Of that 3,650 acres, grapefruit accounts for 87.6 percent, Valencia oranges for 1.6 percent, navel oranges for 10.4 percent, and tangelos for 0.4 percent. Applying those same percentages to the 1,806.38 acres of currently unidentified citrus would translate to lost production claims of about $5.876 million for that acreage, which would result in total lost production claims for acreage destroyed by November 15, 2000, of about $31.993 million.

Variety	Estimated acreage destroyed by 11/15/00	Proposed per-acre payment	Estimated lost production claims
Total	8,418	.....	29,127,143–$36,466,465

Effects on Small Entities

This proposed rule would establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. Therefore, the entities who would be affected by this proposed rule would be citrus growers. The Regulatory Flexibility Act requires that the Agency specifically consider the economic effects of its rules on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as "small" if it has less than $500,000 in annual receipts. While the majority of citrus growers in Florida would be considered small entities under those SBA guidelines, those growers who would not be classified as small entities account for the majority of the citrus-growing acreage in the State. Based on available information, it appears that most of the citrus canker-related losses in Florida have been incurred by those larger citrus producers. Regardless of the size of the entities affected, we expect that this proposed rule would benefit those commercial citrus growers who are eligible for lost production payments by helping to defray some of the losses and expenses that they have incurred as a result of the ongoing State and Federal efforts to eradicate citrus canker in Florida.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–037–2. Please send a copy of your comments to: (1) Docket No. 00–037–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. Implementing this program would necessitate the use of an information collection activity in the form of an application for funds.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Eligible commercial citrus grove owners in Florida.

Estimated annual number of respondents: 65.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 65.

Estimated total annual burden on respondents: 10 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained by calling Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would be revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A-293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400.

2. Section 301.75–1 would be amended by adding a definition of *ACC coverage* to read as follows:

§ 301.75–1 Definitions.

ACC coverage. The crop insurance coverage against Asiatic citrus canker (ACC) provided under the Florida Fruit Tree Pilot Crop Insurance Program authorized by the Federal Crop Insurance Corporation.

* * * * *

3. In Subpart—Citrus Canker, a new § 301.75–16 would be added to read as follows:

§ 301.75–16 Payments for the recovery of lost production income.

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive payments in accordance with the provisions of this section to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker.

(a) *Eligibility.* The owner of a commercial citrus grove may be eligible to receive payments to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Calculation of payments.* (1) The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive payments to recover lost production income will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Citrus variety	Payment (per acre)
Grapefruit	$2,925
Orange, Valencia	5,729
Orange, navel	5,693
Tangelo	1,666
Lime	4,829
Other or mixed citrus	2,925

(2) *Payment adjustments.*

(i) In cases where the owner of a commercial citrus grove had obtained ACC coverage for trees in his or her grove and received crop insurance payments following the destruction of the insured trees, the payment provided for under paragraph (b)(1) of this section will be reduced by the total amount of the crop insurance payments received by the commercial citrus grove's owner for the insured trees.

(ii) In cases where ACC coverage was available for trees in a commercial citrus grove but the owner of the grove had not obtained ACC coverage for his or her insurable trees, the per-acre payment provided for under paragraph (b)(1) of this section will be reduced by 5 percent.

(c) *How to apply for lost production payments.* The form necessary to apply for lost production payments may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Project, 10300 SW 72nd Street, Suite 150, Miami, FL 33173. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the acreage, number, and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Project, Attn: Lost Production Payments Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for losses attributable to the destruction of trees on or before [the effective date of this rule] must be received within 60 days after [the effective date of this rule]. Claims for losses attributable to the destruction of trees after [the effective date of this rule] must be received within 60 days after the destruction of the trees.

Done in Washington, DC, this 1st day of December 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–31142 Filed 12–4–00; 11:17 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 208

[INS No. 2092–00; AG Order No. 2339–2000]

RIN 1115–AF92

Asylum and Withholding Definitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations that govern establishing asylum and withholding eligibility. This rule provides guidance on the definitions of "persecution" and "membership in a particular social group," as well as what it means for persecution to be "on account of" a protected characteristic in the definition of a refugee. It restates that gender can form the basis of a particular social group. It also establishes principles for interpretation and application of the various components of the statutory definition of "refugee" for asylum and withholding cases generally, and, in particular, will aid in the assessment of claims made by applicants who have suffered or fear domestic violence. The Service believes these issues require further examination after the Board of Immigration Appeals (Board) decision in *In re R–A–*, Interim Decision 3403 (BIA 1999). Further, the rule clarifies that the factors considered in cases in the Court of Appeals for the Ninth Circuit regarding membership in a particular social group are not determinative. Finally, the rule clarifies procedural handling of asylum and withholding claims in which past persecution has been established. This proposed rule has been prepared and is published in conjunction with the final rule on asylum procedures, which incorporates both the interim rule amending the Department of Justice (Department) regulations to implement the Illegal Immigration Reform and Immigrant Responsibility Act, 62 FR 10312 (1997), and the proposed past persecution rule, 63 FR 31945 (1998).

DATES: Written comments must be submitted on or before January 22, 2001.

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2092–00 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Dorothea Lay, 425 I Street, NW, Washington, D.C. 20536, telephone number (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees (1951 Convention) contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin "who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality,

membership in a particular social group, or political opinion." Section 101(a)(42) of the Immigration and Nationality Act (Act) (8 U.S.C. 1101(a)(42)). (The definition was amended by section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009, to include a provision on coercive family planning practices.) In order to establish eligibility for a discretionary grant of asylum under section 208 of the Act, 8 U.S.C. 1158, an alien must meet the definition of "refugee" under section 101(a)(42) of the Act. To qualify for withholding of removal under section 241(b)(3) of the Act, an alien must meet a higher burden of proof: That it is more likely than not that the alien would be persecuted on account of one of the five grounds listed within the definition of "refugee." 8 U.S.C. 1231.

A sizable body of interpretive case law has developed about the meaning of the refugee definition. Historically, much of this case law has addressed more traditional asylum and withholding claims based on an applicant's political opinion. In recent years, however, the United States increasingly has encountered asylum and withholding applications with more varied bases, related, for example, to an applicant's gender or sexual orientation. Many of these new types of claims are based on the ground of "membership in a particular social group," which is the least well-defined of the five grounds within the refugee definition. As the Court of Appeals for the Seventh Circuit noted in *Lwin* v. *INS*, "[t]he legislative history behind the term * * * is uninformative, and judicial and agency interpretations are vague and sometimes divergent. As a result, courts have applied the term reluctantly and inconsistently." 144 F.3d 505, 510 (7th Cir. 1998).

Some of these cases have raised difficult analytical questions about the interpretation of the refugee definition, questions that have not always been addressed consistently through the administrative adjudication and judicial review process. This rule sets out a number of generally applicable principles to promote uniform interpretation of the relevant statutory provisions. Though applicable to all asylum and withholding cases, these principles are also designed to provide guidance for the resolution of novel issues in some of the asylum and withholding claims that the Department has encountered in recent years.

One of these novel issues is the extent to which victims of domestic violence may be considered to have been persecuted under the asylum laws. The Board considered and rejected such a persecution claim in its decision in *In re R-A-*. This proposed rule removes certain barriers that the *In re R-A-* decision seems to pose to claims that domestic violence, against which a government is either unwilling or unable to provide protection, rises to the level of persecution of a person on account of membership in a particular social group. The proposed rule does not specify how a claim of persecution based on domestic violence should be fashioned—in particular, it does not set forth what the precise characteristics of the particular social group might be. The Department has taken this approach in part because it recognizes that the way in which a victim of domestic violence who believes she has been persecuted may characterize the particular social group of which she is a member likely will vary depending upon the social context in her country. The Department also recognizes that whether domestic violence can be so characterized in a given case will turn on difficult and subtle evaluations of particular facts. Given these realities, it seems ill-advised to try to establish a universal model for persecution claims based on domestic violence. The Department has instead decided to propose a rule that states generally applicable principles that will allow for case-by-case adjudication of claims based on domestic violence or other serious harm inflicted by individual non-state actors.

The Department solicits comments both on the questions that we have left open and on whether the Department should seek to provide more direct guidance to adjudicators and the public on their resolution. We expect the questions addressed during the comment period would include: How persecution claims based on domestic violence might be conceptualized and evaluated within the framework of asylum law; how asylum officers, immigration judges, and the Board should determine whether a particular victim of domestic violence (or other acts of persecution by an individual non-state actor) has suffered this treatment "on account of" membership in a particular social group (*e.g.*, gender or status of being in a domestic relationship); and whether, in view of the fact that claims based on harm inflicted by individual non-state actors are relatively new in the United States, such claims raise distinct issues concerning statutory eligibility or the exercise of discretion in granting asylum.

The Meaning of Persecution

A fundamental question in any asylum or withholding adjudication is whether the harm that an applicant has suffered or fears amounts to persecution. Neither the 1951 Convention nor the Refugee Act of 1980 defines "persecution." Two years before enacting the Refugee Act, Congress specifically debated whether to include a definition of "persecution" in the Act in the related context of a bill that eventually added the deportation ground aimed at Nazi persecutors (now section 241(a)(4)(D) of the Act). Congress rejected adding a definition of "persecution" to the immigration laws, concluding that the meaning of the term was well-established by administrative and court decisions and meant "the infliction of suffering or harm, under government sanction, upon persons who differ in a way regarded as offensive (*e.g.*, race, religion, political opinion, etc.), in a manner condemned by civilized governments. The harm or suffering need not be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life." H.R. Rep. 95–1452 at 5 (1978).

The Board adopted this meaning as well. *Matter of Acosta*, 19 I. & N. Dec. 211, 220 (BIA 1985), *modified on other grounds*, *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987). The courts, too, generally have accepted this definition, describing "persecution" as "'the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.'" *Duarte de Guinac* v. *INS*, 179 F.3d 1156, 1161 (9th Cir. 1999) (quoting *Korablina* v. *INS*, 158 F.3d 1038, 1043 (9th Cir. 1998)); *accord Miranda* v. *INS*, 139 F.3d 624, 626 (8th Cir. 1998); *Fisher* v. *INS*, 79 F.3d 955, 961 (9th Cir. 1996) (en banc); *Abdel-Maieh* v. *INS*, 73 F.3d 579, 583 (5th Cir. 1996); *Schellong* v. *INS*, 805 F.2d 655, 661–62 (7th Cir. 1986). This definition recognizes that "persecution is an extreme concept that does not include every sort of treatment our society regards as offensive." *Fatin* v. *INS*, 12 F.3d 1233, 1243 (3d Cir. 1993); *see also Bastanipour* v. *INS*, 980 F.2d 1129, 1133 (7th Cir. 1992) (distinguishing persecution "as distinct from mere discrimination or harassment"). These cases sometimes defined "persecution" as including other, separate elements of the "refugee" definition, such as the requirement that the persecution be "on account of" a protected characteristic. This rule is intended to provide

guidance on the meaning of persecution, to clarify that persecution includes objective and subjective components, as well as an analysis of state action or state inability or unwillingness to protect.

It has sometimes been suggested that persecution entails a subjective intent on the part of the persecutor to "inflict harm" or "punish" the victim. In *Matter of Acosta*, the Board found that, to be persecution, the harm or suffering must be inflicted upon an individual in order to punish. Some circuits have followed this early approach to defining persecution. *See, e.g., Osaghae* v. *INS*, 942 F.2d 1160, 1163 (7th Cir. 1991) ("'Persecution' means, in immigration law, punishment for political, religious, or other reasons that our country does not recognize as legitimate."). Certainly, in more traditional claims involving political persecution, such a "punitive" or "malignant" intent to visit harm upon the victim is usually present. In recent years, however, applicants have successfully presented novel claims in which the claimed persecution is not necessarily inflicted with the subjective intent to cause harm. In 1996, for example, the Board decided that a young woman from Togo qualified for asylum based on her fear of being subjected to female genital mutilation (FGM). *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996) (*en banc*). This case squarely raised the question whether a subjective intent to harm the victim is a necessary component of an asylum or withholding claim, because, presumably, most practitioners of FGM believe that they are performing an important cultural rite that bonds the individual to society, not that they are punishing or harming the victim. In *Matter of Kasinga*, the Board held that a "subjective 'punitive' or 'malignant' intent is not required for harm to constitute persecution." *Id.* at 365.

In its 1997 decision in *Pitcherskaia* v. *INS*, 118 F.3d 641 (9th Cir. 1997), the Ninth Circuit further advanced this concept. In that case, a lesbian woman claimed that she had been forced to undergo psychiatric treatments and threatened with institutionalization in the 1980s by officials of the Soviet Union in an effort to change her sexual orientation. The Board held that the psychiatric measures taken by the officials did not constitute persecution because they were intended to "cure" her, not to punish her. On review, the Ninth Circuit reversed this portion of the Board's decision, and remanded the case for further consideration of other aspects of the case.[1] The Ninth Circuit, citing *Matter of Kasinga*, decided by the Board after the Board's decision in *Pitcherskaia*, concluded that an intent to harm or punish is not required for persecution to exist, and that the "definition of persecution is objective, in that it turns not on the subjective intent of the persecutor but rather on what a reasonable person would deem 'offensive.'" *Pitcherskaia*, 118 F.3d at 646.

This rule addresses the definition of persecution by clarifying that it includes both objective and subjective elements. First, the proposed rule defines persecution in § 208.15(a) as "the infliction of objectively serious harm or suffering." This general definition does not diminish the level of harm that has been recognized by the Board and generally sustained by the Courts of Appeals as sufficiently serious to constitute persecution. The definition does not preclude reference to other sources for guidance on what type of harm can constitute persecution. *See, e.g.*, United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook), para. 51 (re-edited 1992) ("From Article 33 of the 1951 Convention it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights—for the same reasons—would also constitute persecution."). This proposed language in § 208.15(a), consistent with the Ninth Circuit's approach in *Pitcherskaia*, imposes an objective standard on the concept of persecution by requiring that the harm must be recognizable as serious harm. Generally, persecution cannot be established simply upon a showing of discrimination, harassment, or the denial of equal protection of the laws. Guided by existing case law, the decision-maker will deduce from the nature of the claim whether or not the harm is serious enough to constitute persecution.

The proposed language also provides that harm is persecution only if it is "experienced as serious harm by the applicant, regardless of whether the persecutor intends to cause harm." The Department believes that it is appropriate to codify an interpretation that is drawn from the conclusion reached by both the Board in *Kasinga* and the Ninth Circuit in *Pitcherskaia:* that the existence of persecution does not require a "malignant" or "punitive" intent on the part of the persecutor. At the same time, the Department believes that it is necessary to emphasize that the victim must experience the treatment as harm in order for persecution to exist. For example, there are many women from cultures that practice FGM who view the process positively and believe that they are acting in the victim's best interests, even as the victim experiences the action as harmful. For the purpose of asylum and withholding adjudications, a key question is whether the applicant at hand would experience or has experienced the procedure as serious harm, not whether the perpetrator means it as punitive. Generally, an applicant's own testimony would be the best evidence in determining whether that applicant subjectively experienced or would experience the treatment as harm.

State Action Requirement

Inherent in the meaning of persecution is the long-standing principle that the harm or suffering that an applicant experienced or fears must be inflicted by either the government of the country where the applicant fears persecution, or a person or group that government is unable or unwilling to control. *See, e.g., Matter of Villalta*, 20 I. & N. Dec. 142, 147 (BIA 1990); *Matter of H–*, 21 I. & N. Dec. 337 (BIA 1996); *Matter of Kasinga, supra*; *Matter of Acosta, supra*. This is also consistent with the understanding of Congress two years before the Refugee Act was passed that "persecution" is "the infliction of suffering or harm, under government sanction," H.R. Rep. 95–1452 at 5, and with the position of UNHCR and Convention-based interpretations of the meaning of persecution. *See* UNHCR Handbook, para. 65.[2]

U.S. court and administrative decisions have looked to a variety of factors in considering the requirement that an applicant must show that the harm or suffering is inflicted by the government or a person or group the government is "unable or unwilling to control." Courts have concluded the government is "unable or unwilling to control" the infliction of harm or suffering if the applicant has shown a pattern of government unresponsiveness. *See Mgoian* v. *INS*, 184 F.3d 1029, 1036–37 (9th Cir. 1999). Both courts and the Board have also looked to whether an applicant has shown government complicity in the face of persecution. *See Korablina*, 158 F.3d at 1045. Courts have often considered the applicant's attempts to obtain protection from government officials and the government response or lack thereof. *See Surita* v. *INS*, 95 F.3d 814, 819–20 (9th Cir. 1996) (finding persecution where the police refused to respond to the applicant's request for assistance or provide a reasonable explanation for their failure to respond); *Singh* v. *INS*, 134 F.3d 962, 968 (9th Cir. 1998) (holding that the applicant failed to establish persecution, in part because the police responded to her call even though police took no further action). In the recent case of *In re S–A–*, Interim Decision 3433 (BIA 2000), the Board considered the applicant's testimony and country conditions information in concluding that any attempts by the applicant to seek protection would be futile and potentially dangerous. Other Board decisions illustrate the relevance of government responses to persecution by non-state actors. *See, e.g., Matter of V–T–S–*, 21 I. & N. Dec. 792 (holding that the record did not support claim that the government was unable or unwilling to protect when evidence indicated that the government mounted massive rescue efforts to find kidnapped family members); *In re O–Z– & I–Z–*, Interim Decision 3346 (BIA 1998) (finding that the government was unable or unwilling to control the respondent's attackers and protect him or his son from the anti-Semitic acts of violence when the respondent reported at least three incidents of harm to the Ukrainian government, which took no action beyond writing a report). The UNHCR Handbook emphasizes that the inability to seek government protection may arise from circumstances beyond the applicant's control, such as grave disruptions within the country, or may result from a denial of protection to the applicant. UNHCR Handbook, para. 98. When assessing whether a government has denied protection, one factor to consider is whether the applicant has been denied services (*e.g.*, refusal of a national passport) normally accorded to other nationals of that country. UNHCR Handbook, para. 99.

Section 208.15(a)(1) of this rule provides further guidance as to what is meant by the state action requirement and, specifically, the requirement that the government be "unable or unwilling to control" non-government persecutors. The proposed rule states that "[i]n evaluating whether a government is unwilling or unable to control the infliction of harm or suffering, the immigration judge or asylum officer should consider whether the government takes reasonable steps to control the infliction of harm or suffering and whether the applicant has reasonable access to the state protection that exists." The rule goes on to provide a non-exclusive list of evidentiary considerations that may be considered as helpful in determining whether a government is "unable or unwilling" to control the non-state actor. This new language codifies existing administrative interpretations and provides further guidance on this relatively undeveloped area of the law. This proposed list of evidentiary considerations is not intended to change the law, but merely to illustrate what types of evidence may be relevant in evaluating whether a government is unable or unwilling to control the infliction of suffering or harm. Of course, no government is able to guarantee the safety of each of its citizens at all times. This is not the standard for determining that a government is "unable or unwilling to control" the infliction of harm or suffering. *See, e.g., Aguilar-Solis* v. *INS*, 168 F.3d 565, 573 (1st Cir. 1999) ("Although action by non-governmental entities can constitute persecution, the law requires at least some showing that the alleged persecutors are not subject to the government's control.") (citations omitted). Rather, the decision-maker should consider the government's policies with respect to the harm or suffering at issue, and what steps, if any, the government has taken to prevent the infliction of such harm or suffering. In addition, the decision-maker should consider what kind of access the individual applicant has to whatever protection is available, and any steps the applicant has taken to seek such protection. Any attempts by an applicant to seek protection within the country of persecution are relevant but are not determinative of the state's inability or unwillingness to control the infliction of suffering or harm. An applicant's failure to attempt to gain access to protection is not in itself determinative of the state's inability or unwillingness to control nor does this failure bar an applicant from establishing by other evidence the state's inability or unwillingness to control the infliction of suffering or harm. The adequacy of access to protection may vary within a given society depending on the individual applicant's circumstances and general country conditions. For example, in some countries, there generally may be reasonable access to state protection, but an applicant's access to such protection may be limited if the persecutor is influential with government officials. As another example, in some countries a female victim of spousal abuse may be able to obtain state protection if she has the support of her family of origin in seeking it, but her access to such protection may be more limited without such support. In each case, all factors relevant to the availability of and access to state protection should be examined in determining whether the government of the country in question is unwilling or unable to protect the applicant from a non-state persecutor. It is the applicant's burden to come forward with the evidence that the harm or suffering is inflicted by the government, or an entity that the government is unable or unwilling to control.

The "on account of" Requirement in General

Even if it is determined that the harm an applicant has suffered or fears may constitute persecution, the applicant may qualify for asylum or withholding only if that persecution is inflicted "on account of" the applicant's race, religion, nationality, membership in a particular social group, or political opinion. The Supreme Court has held that, in order for persecution to be "on account of" one of these protected grounds, there must be evidence that the persecutor seeks to harm the victim on account of the victim's possession of the characteristic at issue. *INS* v. *Elias-Zacarias*, 502 U.S. 478, 482 (1992). As administrative decision-makers and the courts have applied this test to individual cases, the determination about when persecution is inflicted "on account of" a protected ground has raised difficult interpretive issues. This rule provides guidance on several of these issues.

Under long-standing principles of U.S. refugee law, it is not necessary for an applicant to show that his or her possession of a protected characteristic is the sole reason that the persecutor seeks to harm him or her. Both the Board and the federal courts have recognized that a persecutor may have mixed motivations, and have stated that the "on account of" requirement is satisfied if the persecutor acts "at least in part" because of a protected characteristic. *See, e.g., Matter of T–M–B–*, 21 I. & N. Dec. 775 (BIA 1997), *overruled on other grounds sub nom.*

[1] *Pitcherskaia* was remanded to the immigration court, where the case is currently pending.

[2] "Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."

Borja v. *INS*, 175 F.3d 732 (9th Cir. 1999) (*en banc*). Some court decisions provide conflicting interpretations of the extent to which the persecutor's motivation must relate to a protected characteristic. *Compare Singh* v. *Ilchert*, 63 F.3d 1501, 1509 (9th Cir. 1995) ("[T]he BIA failed to recognize that persecutory conduct may have more than one motive, and so long as one motive is one of the statutorily enumerated grounds, the requirements have been satisfied."); *with Gebremichael* v. *INS*, 10 F.3d 28, 35 (1st Cir. 1993) (alien must show that one of the five characteristics is "at the root of persecution, such that [the characteristic] itself generates a 'specific threat to the [applicant]'") (internal quotations and citation omitted). This rule proposes new language at § 208.15(b) that would require an applicant to show that the protected characteristic is central to the persecutor's motivation to act. Consistent with current law, this language allows for the possibility that a persecutor may have mixed motives. It does not require that the persecutor be motivated solely by the victim's possession of a protected characteristic. It does, however, require that the victim's protected characteristic be central to the persecutor's decision to act against the victim. For example, under this definition it clearly would not be sufficient if the protected characteristic was incidental or tangential to the persecutor's motivation.

A refugee is traditionally an individual as to whom the bonds of trust, loyalty, protection, and assistance existing between a citizen and his country have been broken and have been replaced by the relationship of an oppressor to a victim. Inherent in the concept of refugee status is the principle that an individual requires international protection because his country of origin or of habitual residence is not safe for him, or cannot protect him, because of persecution on account of one of the five grounds specified in the definition of "refugee." *See, e.g., Matter of Acosta*, 19 I. & N. Dec. at 234–35; 1 A. Grahl-Madsen, *The Status of Refugees In International Law* 97, 100 (1966). The proposed language that the protected characteristic of the refugee be central to the persecutor's motivation is thus supported by the purposes of the 1951 Convention.

The proposed language also incorporates the doctrine of "imputed political opinion" into the regulation. Under this doctrine, an applicant may establish persecution on account of political opinion if he or she can show that the persecutor was or is inclined to persecute because the persecutor perceives the applicant to possess a particular political opinion, even if the applicant does not in fact possess such an opinion. *See, e.g., Sangha* v. *INS*, 103 F.3d 1482, 1489 (9th Cir. 1997). The proposed language provides that an applicant may satisfy the "on account of" requirement by showing that the persecutor acts against him or her "on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion, or on account of what the persecutor perceives to be the applicant's race, religion, nationality, membership in a particular social group, or political opinion." Thus, this language codifies the existing doctrine of imputed political opinion, as well as the existing administrative interpretation that this doctrine also extends to the protected grounds other than political opinion.

In re R–A–

The proposed new language in § 208.15(b) is intended to address analytical issues that have arisen in the context of some claims based on domestic violence, and in particular in the Board's decision in *In re R–A–*, Interim Decision 3403 (BIA 1999). In that case, the Board denied asylum to a Guatemalan woman who had been the victim of severe domestic violence by her husband in Guatemala and who feared that she would be at risk of continuing violence if she returned there. Certain elements of the Board's analysis in this case affect the "on account of" inquiry in asylum and withholding cases in general, and the "particular social group" cases especially. This rule sets forth a modified statement of the principles governing the "on account of" inquiry.

The applicant in *In re R–A–* presented alternative claims of persecution on account of political opinion (the applicant's opposition to male domination) and on account of membership in a particular social group (defined as "Guatemalan women who have been intimately involved with Guatemalan male companions, who believe that women are to live under male domination"). *Id.* at 10–14. The Board found that the applicant's husband did not seek to harm her either on account of her political opinion or on account of her membership in a particular social group. *Id.* at 14.

The Board's analysis of the political opinion claim is consistent with long-standing principles of asylum law and is not altered by this rule. The Board reasoned that the abuse in this case was not on account of the applicant's political opinion because there was no evidence that the applicant's husband was aware of the applicant's opposition to male dominance, or even that he cared what her opinions on this matter were. Rather, he continued to abuse her regardless of what she said or did. *Id.* at 13–14. This portion of the decision is consistent with the Supreme Court's reasoning in *Elias-Zacarias*, *supra*, and with the Board's own precedent that harm is not on account of political opinion when it is inflicted *regardless* of the victim's opinion rather than *because* of that opinion. *See Matter of Chang*, 20 I. & N. Dec. 38, 44–45 (BIA 1989), superceded on other grounds, *Matter of X–P–T–*, 21 I. & N. Dec. 634 (BIA 1996).

The Board's particular social group analysis in *In re R–A–*, however, requires some clarification. The Board found that the violence in this case was not "on account of" the applicant's membership in the particular social group asserted—essentially Guatemalan women intimately involved with abusive Guatemalan men.[3] *Id.* at 17. The Service argued, and the Board agreed, that there was no indication that the applicant's husband would harm any other member of the asserted particular social group. In other words, there was no evidence that he would seek to harm other women who live with other abusive partners. *Id.* This was an important factor in the Board's decision that the harm in that case was not on account of membership in a particular social group. The Board did consider other factors in reaching its conclusion that no nexus had been shown between the husband's violence and the claimed particular social group. However, the Board's reasoning on this point could be construed to foreclose the possibility of satisfying the "on account of" requirement when the persecutor does not seek to harm other members of the asserted particular social group.

As an evidentiary matter, it often would be reasonable to expect that a person who is motivated to harm a victim because of a characteristic the victim shares with others would be prone to harm or threaten others who share the targeted characteristic. Such a showing should not necessarily be required as a matter of law, however, in order for an applicant to satisfy the "on account of" requirement. In some cases, a persecutor may in fact target an individual victim because of a shared characteristic, even though the persecutor does not act against others who possess the same characteristic. For example, in a society in which members of one race hold members of another race in slavery, that society may expect that a slave owner who beats his own slave would not beat the slave of his neighbor. It would nevertheless be reasonable to conclude that the beating is centrally motivated by the victim's race. Similarly, in some cases involving domestic violence, an applicant may be able to establish that the abuser is motivated to harm her because of her gender or because of her status in a domestic relationship. This may be a characteristic that she shares with other women in her society, some of whom are also at risk of harm from their partners on account of this shared characteristic. Thus, it may be possible in some cases for a victim of domestic violence to satisfy the "on account of" requirement, even though social limitations and other factors result in the abuser having the opportunity, and indeed the motivation, to harm only one of the women who share this characteristic, because only one of these women is in a domestic relationship with the abuser.

To allow for this possibility, this rule provides that, when evaluating whether an applicant has met his or her burden of proof to establish that the harm he or she suffered or fears is "on account of" a protected characteristic, "[b]oth direct and circumstantial evidence may be relevant to the inquiry." The rule further provides that "[e]vidence that the persecutor seeks to act against other individuals who share the applicant's protected characteristic is relevant and may be considered but shall not be required."

In every asylum or withholding case, of course, it remains the applicant's burden to establish that the specific persecutor involved in her claim is motivated to act against her because of her possession or perceived possession of a protected characteristic. As this rule underscores, both direct and circumstantial evidence may be relevant to this determination. As in any asylum or withholding case, evidence about the persecutor's statements and actions will be considered. In addition, evidence about patterns of violence in the society against individuals similarly situated to the applicant may also be relevant to the "on account of" determination. For example, in the domestic violence context, an adjudicator would consider any evidence that the abuser uses violence to enforce power and control over the applicant because of the social status that a woman may acquire when she enters into a domestic relationship. This would include any direct evidence about the abuser's own actions, as well as any circumstantial evidence that such patterns of violence are (1) supported by the legal system or social norms in the country in question, and (2) reflect a prevalent belief within society, or within relevant segments of society, that cannot be deduced simply by evidence of random acts within that society. Such circumstantial evidence, in addition to direct evidence regarding the abuser's statements or actions, would be relevant to determining whether the abuser believes he has the authority to abuse and control the victim "on account of" her status in the relationship.

Further, a claim involving domestic violence in which the applicant has satisfied the "on account of" requirement remains subject to the full range of generally applicable requirements under the asylum and withholding laws. For example, as in any other case, the fear of future abuse cannot be speculative, it must be "well-founded." A woman who is not in an abusive relationship, for example, would not have a "well-founded" fear of domestic violence even if there is a high incidence of domestic violence in her country of origin. The harm feared must be serious enough to constitute persecution; isolated incidents of discrimination or lesser forms of harm would not qualify as persecution. As in any asylum or withholding case in which the persecutor is not the state itself, the applicant would have to show that the state is unwilling or unable to protect her. Generally, an applicant's claim based on domestic violence will rest on personal experiences not addressed in general country conditions information. General country conditions information may, however, support such a claim. The applicant should come forward with testimony regarding her personal experience, and, if available, documentary evidence relating to her claim.

This rule will also affect the analysis of asylum or withholding claims made by alleged abusers. A perpetrator of domestic violence serious enough to be persecution, who has abused the victim because of the victim's membership in a particular social group, would be barred from seeking asylum under section 101(a)(42) of the Act. 8 U.S.C. 1101(a)(42). The Service will consider ways to identify these individuals. Of course, if removable, these individuals would normally be entitled to a full hearing prior to removal, during which all evidence relevant to eligibility could be presented and considered. This will allow the government to protect our asylees and residents against persecutors.

Membership in a Particular Social Group

Once an applicant has established that the harm he or she has suffered or fears is "on account of" the characteristic asserted, the applicant must establish that the characteristic qualifies as race, religion, nationality, membership in a particular social group, or political opinion. Membership in a particular social group is perhaps the most complex and difficult to understand of these five grounds. There is relatively little precedent about the meaning of "a particular social group," and that which exists has at times been subject to conflicting interpretations. This rule sets out the requirements for determining what qualifies as "a particular social group," clarifies the relevance of past experience, and provides a list of non-determinative factors to be considered.

The key Board decision on the meaning of "a particular social group" requires that members of the group share a "common, immutable" trait. *Matter of Acosta*, 19 I. & N. Dec. at 233. This rule codifies this basic approach at § 208.15(C)(1), by providing that "[a] particular social group is composed of members who share a common, immutable characteristic, such as sex, color, kinship ties, or past experience, that a member either cannot change or that is so fundamental to the identity or conscience of the member that he or she should not be required to change it." The crucial aspect of this definition is that, to be immutable, the common trait must be unchangeable or truly fundamental to an applicant's identity. Gender is clearly such an immutable trait, is listed as such in *Matter of Acosta*, and is incorporated in this rule. Further, there may be circumstances in which an applicant's marital status could be considered immutable. This would be the case, for example, if a woman could not reasonably be expected to divorce because of religious, cultural, or legal constraints. Any intimate relationship, including marriage, could also be immutable if the evidence indicates that the relationship is one that the victim could not reasonably be expected to leave. Thus, this rule further provides in § 208.15(C)(1) that "[i]n determining whether an applicant cannot change, or should not be expected to change, the shared characteristic, all relevant evidence should be considered, including the applicant's individual circumstances and country conditions information about the applicant's society."

[3] To the extent that the asserted particular social group in *In re R–A–* could be interpreted to have been defined by the persecution feared, this rule clarifies below that a social group must exist independently of the feared persecution.

This rule also includes the principle that the particular social group in which an applicant claims membership cannot be defined by the harm which the applicant claims as persecution. It is well-established in the case law that this type of circular reasoning does not suffice to articulate a particular social group. *See Gomez* v. *INS*, 947 F.2d 660, 664 (2d Cir. 1991) (rejecting the applicant's claim to membership in a particular social group of women who have been previously battered and raped by Salvadoran guerrillas). It is also supported by Convention-based understandings of the definition of membership in a particular social group. *See, e.g., Islam* v. *Secretary of State for the Home Department*, 2 App. Cas. 629 (H.L. 1999) (United Kingdom) ("It is common ground that there is a general principle that there can only be a 'particular social group' if the group exists independently of the persecution") (Lord Steyn).

Proposed § 208.15(c)(2) provides that, "[w]hen past experience defines a particular social group, the past experience must be an experience that, at the time it occurred, the member either could not have changed or was so fundamental to his or her identity or conscience that he or she should not have been required to change it." This is consistent with current case law that recognizes that past experiences can be the basis for membership in a particular social group. *See Matter of Fuentes*, 19 I. & N. Dec. 658, 662 (BIA 1988). The regulatory language preserves the key requirement from *Matter of Acosta, supra*, that the trait defining a particular social group must be a fundamental one, which an individual should not be required to change. In reality, of course, no past experience can be changed, as it has already occurred. But not all past experiences should qualify as traits which, if shared by others, can define a particular social group for asylum and withholding purposes. The experience of joining a violent gang in the past, for example, cannot be changed. At that point in the past, however, that experience could have been avoided or changed. In other words, the individual could have refrained from joining the group. Certainly, it is reasonable for any society to require its members to refrain from certain forms of illegal activity. Thus, for example, under this language, persons who share the past experience of having joined a gang would not constitute a particular social group on the basis of a past experience.

The requirement in § 208.15(C)(1) that the persecution exist independently of the harm is equally applicable to claims of membership in a particular social group based on past experience. At least in theory, a shared past experience that defines a social group could be harm suffered by the applicant and other group members in the past. In such a claim however, the past harm that defines the social group cannot be the same harm that the applicant claims as persecution. Rather, in order for persecution to be "on account of" membership in such a group, the past experience must exist independently of the persecution. In fact, the past experience must be the reason the persecutor inflicted or is inclined to inflict the persecution on the applicant.

Finally, the proposed language in § 208.15(C)(3) provides a non-exclusive list of additional factors that may be considered in determining whether a particular social group exists. These factors are drawn from existing administrative and judicial precedent on the meaning of the "particular social group" ground. These precedents have been subject to conflicting interpretations, however, and this provision resolves those ambiguities by providing that, while these factors may be relevant in some cases, they are not requirements for the existence of a particular social group.

The first three factors in this section are drawn from the Ninth Circuit's decision in *Sanchez-Trujillo* v. *INS*, 801 F.2d 1571 (9th Cir. 1986). In that case, the Ninth Circuit stated that "the phrase 'particular social group' implies a collection of people closely affiliated with each other, who are actuated by some common impulse or interest," *id.* at 1576, and that "[o]f central concern is the existence of a voluntary associational relationship among the purported members," *id.* These factors have often been interpreted as prerequisites for the existence of a particular social group in the Ninth Circuit. The Ninth Circuit clarified the significance of these factors in the recent case of *Hernandez-Montiel* v. *INS*, 225 F.3d 1084 (9th Cir. 2000). The court held that its decision in *Sanchez-Trujillo* should be interpreted as consistent with the Board's decision in *Matter of Acosta* and that the voluntary associational test is an alternative basis for establishing membership in a particular social group. *See* 225 F.3d at 1093 n.6. Other circuits have not applied this factor, and, instead have simply relied on the Board's determination that the group must share a "common, immutable" characteristic. *See, e.g., Fatin* v. *INS*, 12 F.3d 1233, 1239 (3d Cir. 1993) (quoting *Matter of Acosta*, 19 I. & N. Dec. at 233). In cases arising outside the Ninth Circuit, the Board has decided that a particular social group may exist without reference to these factors. *See, e.g., Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 820–21 (BIA 1990) (Cuban homosexuals are a particular social group); *Matter of Kasinga*, 21 I. & N. Dec. at 365 (young women who belong to a specific Togolese tribe and who oppose FGM are a particular social group). To ensure uniform and fair administrative adjudications of particular social group asylum claims, this rule clarifies that the Department views the *Sanchez-Trujillo* factors as considerations that may be relevant in some cases, but not as requirements for a particular social group.

Similarly, the next three factors in this proposed section are drawn from the Board's decision in *In re R-A-*. In that case, the Board found it highly significant for "particular social group" analysis that the applicant had not shown that the group she asserted "is a group that is recognized and understood to be a societal faction, or is otherwise a recognized segment of the population, within Guatemala," or that "the victims of spouse abuse view themselves as members of this group." *Id.* at 15. The Board also focused on whether "it is more likely that distinctions will be drawn within the society between those who share and those who do not share the characteristic" at issue. *Id.* at 16. This, of course, could be an important inquiry in asylum and withholding cases. The Board did not characterize these elements as requirements, however. This rule incorporates them as factors, but confirms that they are considerations, which, while they may be relevant in some cases, are not determinative of the question of whether a particular social group exists.

In applying the factor at § 208.15(c)(3)(vi)—whether members of a given group are distinguished for different treatment—it would be relevant to consider any evidence about societal attitudes toward group members or about harm to group members, including whether the institutions of the society at hand offer fewer protections or benefits to members of the group than to other members of society. In *In re R-A-*, for example, evidence presented that would be relevant to this inquiry included the applicant's testimony that the police did not respond to her calls for help, and that, when she appeared before a judge, he told her that he would not interfere in domestic disputes. Further, the Board's conclusion that documentary country conditions evidence indicates that "Guatemalan society still tends to view domestic violence as a family problem" would also be relevant. This type of evidence may be considered in determining whether, because the applicant possesses a particular characteristic, harm inflicted on the applicant may be tolerated by society while it would not be tolerated if inflicted on members of the society at large.

The Department has elected at this point to propose that the relationship of *In re R-A-* and domestic violence claims to the definition of "refugee" be addressed by articulating broadly applicable principles to guide adjudicators in applying the refugee definition and other statutory and regulatory provisions generally. The Department has tentatively concluded that this approach would be more useful than simply announcing a categorical rule that a victim of domestic violence is or can be a refugee on account of that experience or fear, or that persons presenting such claims may be found eligible for relief or granted relief as a matter of discretion in certain specified circumstances. The current proposal of the Department would encourage development of the law in the area of domestic violence as well as in other new claims that may arise. Asylum and withholding cases are typically highly fact specific. A case-by-case approach would reflect that reality, and would also leave the refinement of applicable principles open to further development. The Department is nonetheless seeking comments on the relative merits of this approach, and other possible approaches, to providing for consideration of domestic violence claims as a basis for asylum and withholding of removal.

This rule does not modify the definition of "firm resettlement." The rule merely changes its placement to § 208.15(d) of the regulations.

Burden of Proof

Under U.S. law, a showing of past persecution qualifies an applicant for refugee status. Section 101(a)(42) of the Act, (8 U.S.C. 1101(a)(42)). A showing of past persecution is also strongly indicative of the possibility of future harm. Under the current regulations as modified by the final rule on asylum procedures published in conjunction with this rule, a presumption of well-founded fear applies to applicants who qualify as refugees based on past persecution. The presumption places the burden on the U.S. government to show by a preponderance of the evidence that a refugee no longer has a well-founded fear of future persecution. The Department believes that this allocation of the burden generally is appropriate in light of the applicant's refugee status.

The final rule on asylum procedures published in conjunction with this rule broadens the evidence with which the government can rebut the presumption of well-founded fear. The presumption can be rebutted by evidence of a fundamental change in circumstances, including country conditions information, or a showing of a reasonable internal relocation alternative. The Department recognizes that some cases involving past persecution by non-government persecutors may present questions about whether the presumption of a well-founded fear of future persecution is appropriate. For example, to some commenters, the presumption of internal relocation may seem less warranted in cases involving non-government actors, or especially in those cases involving individual non-government actors, for which there may be more reason to believe that the victim could relocate. Some commenters may believe that certain types of individual non-government actor cases warrant a presumption more than others and should therefore be treated differently.

The Violence Against Women Office of the Department of Justice has offered the following observations about domestic violence, based on its experience in the U.S. as well as with foreign governments and non-governmental organizations:

> It is our experience that domestic violence manifests similar characteristics across all racial, ethnic and socioeconomic groups, and that many cultures have a variety of ways in which they condone and perpetuate domestic violence. *See, e.g.*, Lori J. Heise, Violence Against Women: The Hidden Health Burden (World Bank Discussion Papers 1994); Ending Violence Against Women, 27 Population Reports 5 (Johns Hopkins School of Public Health, Dec. 1999) (summarizing surveys from many countries discussing domestic violence). *See generally* H.R. Rep. 103–395, at 25–28 (1993) (congressional findings of fact about domestic violence). First, in relationships involving domestic violence, past behavior is a strong predictor of future behavior by the abuser. *See*, e.g., United States Department of Justice, Understanding Domestic Violence: A handbook for Victims and Professionals. Victims report patterns of abuse—rather than single, isolated incidents—that tend to include the repeated use of physical, sexual and emotional abuse, threats, intimidation, isolation and economic coercion. *See*, e.g., Anne L. Ganley, "Understanding Domestic Violence," in Improving The Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers 15 (Debbie Lee *et al.* eds., 1996). Second, both domestically and internationally, domestic violence centers on power and control over the victim. *See*, e.g., Violence against Women in the International Community, 7 Cardozo J. Int'l & Comp. L. 205–318 (multiple authors discussing violence against women internationally). *See generally* Violence Against Women: An International and Interdisciplinary Journal (multiple volumes). Consequently, when victims attempt to flee the abusive relationship, or otherwise assert their independence, abusers often pursue them and escalate the violence to regain or reassert control. *See, e.g.*, United States Department of Justice, Stalking and Domestic Violence: The Third Annual Report to Congress under the Violence Against Women Act (1998); *see also* Barbara J. Hart, "The Legal Road to Freedom," in Battering and Family Therapy: A Feminist Perspective 13 (Marsali Hansen & Michele Harway eds., 1993) (citing a variety of studies on separation violence). The risk of lethality to the victim is typically greatest when she attempts to escape the abuse and, in contrast to other persecution cases where the persecutor's desire to harm the victim may wane if the victim leaves, the victim's attempt to leave typically increases the abuser's motivation to locate and harm her. *See, e.g.*, Kerry Healey *et al.*, Batterer Intervention: Program Approaches and Criminal Justice Strategies (United States Department of Justice, National Institute of Justice, Feb. 1998); 27 Population Reports 7 (discussing this issue in foreign countries); Evan Stark & Anne Flintcraft, "Violence Among Intimates: An Epidemiological Review," in Handbook of Family Violence 293 (Vincent B. Van Hasselt *et al.* eds., 1988); Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issues of Separation, 90 Mich. L. Rev. 1, 64–65 (1991). Third, because of the abuser's intimate relationship with the victim, he is likely to possess important information about where the victim could go or to whom she would turn for assistance.

These observations seem to support retaining the presumption of well-founded fear of future persecution for those applicants who have established past persecution by an individual non-state actor in the domestic violence context. The Department recognizes however, that this rule does not address other types of individual, non-state actor cases that may arise in the future. Therefore, the Department solicits suggestions as to whether it should continue to maintain the presumption of well-founded fear of future persecution, including the presumption of internal relocation, in cases involving persecutors who are non-state actors. The Department welcomes the views of the public on the merits of the approach proposed in this rule and will carefully weigh all comments in articulating the final rule.

In all cases of past persecution the government may rebut the presumption of well-founded fear of future persecution. The Department recognizes that, especially if the general rule concerning burden of proof is retained for cases involving individual non-state actors, some of the new types of claims

based on persecution by individuals may present a question of production of evidence useful to rebuttal that may be uniquely in the hands of the applicant claiming persecution. Moreover, whether or not the burden of proof is retained in this context, the Department has concluded that it would be appropriate to codify long-standing principles of law relating to the applicant's burden of production in asylum and withholding cases. For example, in the domestic violence context, an applicant's claim will rest on direct evidence regarding her experiences with the persecutor that are not addressed in general country conditions information. Circumstantial evidence, such as general country conditions information also may support such a claim. Under current case law, evidence relating to the applicant's personal experiences or personal knowledge of the likelihood of future harm should be provided by the applicant if reasonably available, or an explanation should be given as to why such information was not presented. This is well-established in the case law. *See Matter of S–M–J–*, 21 I. & N. Dec. 722, 724 (BIA 1997)(*en banc*). Furthermore, "where there are significant, meaningful evidentiary gaps, applications will ordinarily have to be denied for failure of proof." *Matter of Dass*, 20 I. & N. Dec. 120, 124 (BIA 1989) (citing 8 CFR 208.5, 242.17(c)(1988)).

Being accorded the presumption of well-founded fear does not relieve the applicant of the burden of producing testimony or documentation reasonably available, especially evidence within the knowledge of the applicant. Failure to do so can be considered in (1) making a factual determination that the presumption has been rebutted, (2) in credibility determinations, and (3) in the exercise of discretion in granting asylum. The inquiry of an immigration judge or asylum officer considering evidence relevant to a discretionary grant of asylum or a grant of withholding will normally include factors relating to future persecution even in cases where past persecution has been shown. For example, the adjudicator should make inquiries into factors such as whether there has been a fundamental change in circumstances, the ability of the applicant to relocate, the location and status of the persecutor if known, and any evidence of a pattern of pursuit by the persecutor. This is consistent with the adjudicator's ability to consider all facts he or she deems relevant to an asylum or withholding claim.

Finally, this proposed rule adds language to §§ 208.13(b)(1)(ii) and 208.16(b)(1)(ii) clarifying the procedural handling of asylum and withholding claims in cases where the government has the burden of rebutting a presumption of well-founded fear of persecution or likelihood of future threat to life or freedom. The final regulations on asylum procedures published in conjunction with this proposed rule provide that, when an applicant for asylum establishes that he or she suffered past persecution, the applicant will be presumed also to have a well-founded fear of persecution, unless a preponderance of the evidence establishes that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or the applicant could reasonably avoid future persecution by relocating to another part of the applicant's country or, if stateless, the applicant's country of last habitual residence. *See* 8 CFR 208.13(b)(1)(i). A similar presumption applies to applicants for withholding of removal. *See* 8 CFR 208.16(b)(1) (upon showing of past persecution, presumption arises that it is more likely than not that applicant will face future persecution, unless a preponderance of the evidence demonstrates fundamental change of circumstances or that it would be reasonable for the applicant to relocate within the country of persecution).

Confusion has arisen concerning the proper disposition of cases in which a finding of no past persecution is reversed on appeal. This rule will codify a principle that, when an immigration judge or the Board finds that the applicant has failed to establish past persecution, the question of fundamental changed circumstances and reasonable internal relocation shall be deemed reserved, and the Service shall not be required to present evidence on fundamental changed circumstances or reasonable internal relocation to preserve the issues. Accordingly, if the immigration judge's or Board's finding of no past persecution is set aside, the Service will remain free on remand to present evidence and argument on the question of changes in country conditions or internal relocation.

This rule is consistent with established rules governing judicial review of agency action and of civil procedure. When a federal court reviews final agency action such as a decision of the Board:

> [i]f the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation. The reviewing court is not generally empowered to conduct a *de novo* inquiry into the matter being reviewed and to reach its own conclusions based on such an inquiry.

Florida Power & Light Co. v. *Lorion*, 470 U.S. 729, 744 (1985). Similarly, in ordinary civil litigation, absent a contrary order in the particular case, if a party moves for, or a district court grants, summary judgment for a party on one of a number of potentially dispositive grounds, that ruling does not mean that the party is abandoning or the court is addressing *sub silentio* possible alternative grounds of decision. And, if that narrow grant of summary judgment is reversed on appeal, the court of appeals does not proceed to enter summary judgment for the opposing party on a ground that was not addressed by the district court's ruling. Rather, the case is remanded for further proceedings.

We have concluded that a similar approach should be made explicit in the context of immigration judge or Board decisions finding an absence of past persecution—the immigration judge's or Board's silence on the question of fundamental changed circumstances or reasonable internal relocation should not be considered an implicit resolution of the question, and the case should be remanded for the presentation of evidence and a decision by the Board or immigration judge in the first instance. The contrary practice is not only inconsistent with ordinary practice, but encourages the Board, immigration judges, and the Service to engage in potentially wasteful expenditures of resources litigating and deciding issues that may not ever need to be resolved in the proceeding if the initial finding of no past persecution is sustained.

This rule, once final, will apply to all cases currently pending before the asylum office, the immigration courts and the Board of Immigration Appeals.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because this rule involves the process for adjudication of certain requests for asylum and withholding of removal. This process affects individuals and not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the states, on the relationship between the national Government and the states, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 208 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.13 is amended by revising paragraphs (b)(1) and (b)(1)(ii)(B) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(b) * * *

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to or avail himself or herself of the protection of that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded. Although a presumption of future persecution is raised by a finding of past persecution, this does not relieve the applicant of the burden of producing testimonial evidence or, where reasonably available to the applicant, documentary evidence relating to future persecution, including to a fundamental change in circumstances or the reasonableness of internal relocation.

(i) * * *

(ii) * * *

(B) When the immigration judge or Board finds that the applicant has failed to establish past persecution, the questions of fundamental changed circumstances and reasonable internal relocation shall be deemed reserved and the Service shall not be required to present evidence to preserve the issues. If that finding is set aside, the Service and the applicant shall be permitted on remand to submit evidence and argument on the questions of fundamental changed circumstances and reasonable internal relocation before any ruling on these matters is issued.

* * * * *

3. Section 208.15 is revised to read as follows:

§ 208.15 Definitions.

(a) *Persecution.* Persecution is the infliction of objectively serious harm or suffering that is subjectively experienced as serious harm or suffering by the applicant, regardless of whether the persecutor intends to cause harm. Inherent in the meaning of the term persecution is that the serious harm or suffering that an applicant experienced or fears must be inflicted by the government of the country of persecution or by a person or group that government is unwilling or unable to control. In evaluating whether a government is unwilling or unable to control the infliction of harm or suffering, the immigration judge or asylum officer should consider whether the government takes reasonable steps to control the infliction of harm or suffering and whether the applicant has reasonable access to the state protection that exists. Evidence of the following are pertinent and may be considered: Government complicity with respect to the infliction of harm or suffering at issue; attempts by the applicant, if any, to obtain protection from government officials and the government's response to these attempts; official action that is perfunctory; a pattern of government unresponsiveness; general country conditions and the government's denial of services; the nature of the government's policies with respect to the harm or suffering at issue; and any steps the government has taken to prevent infliction of such harm or suffering.

(b) *On account of the applicant's protected characteristic.* An asylum applicant must establish that the persecutor acted, or that there is a reasonable possibility that the persecutor would act, against the applicant on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion, or on account of what the persecutor perceives to be the

applicant's race, religion, nationality, membership in a particular social group, or political opinion. In cases involving a persecutor with mixed motivations, the applicant must establish that the applicant's protected characteristic is central to the persecutor's motivation to act against the applicant. Both direct and circumstantial evidence may be relevant to the inquiry. Evidence that the persecutor seeks to act against other individuals who share the applicant's protected characteristic is relevant and may be considered but shall not be required.

(c) *Membership in a particular social group.*

(1) A particular social group is composed of members who share a common, immutable characteristic, such as sex, color, kinship ties, or past experience, that a member either cannot change or that is so fundamental to the identity or conscience of the member that he or she should not be required to change it. The group must exist independently of the fact of persecution. In determining whether an applicant cannot change, or should not be expected to change, the shared characteristic, all relevant evidence should be considered, including the applicant's individual circumstances and information country conditions information about the applicant's society.

(2) When past experience defines a particular social group, the past experience must be an experience that, at the time it occurred, the member either could not have changed or was so fundamental to his or her identity or conscience that he or she should not have been required to change it.

(3) Factors that may be considered in addition to the required factors set forth in paragraph (b)(2)(i) of this section, but are not necessarily determinative, in deciding whether a particular social group exists include whether:

(i) The members of the group are closely affiliated with each other;

(ii) The members are driven by a common motive or interest;

(iii) A voluntary associational relationship exists among the members;

(iv) The group is recognized to be a societal faction or is otherwise a recognized segment of the population in the country in question;

(v) Members view themselves as members of the group; and

(vi) The society in which the group exists distinguishes members of the group for different treatment or status than is accorded to other members of the society.

(d) *Firm resettlement.* An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(1) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(2) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

4. Section 208.16 is amended by revising paragraphs (b)(1) and (b)(1)(ii)(B) to read as follows:

§ 208.16 Withholding of removal under section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(b) * * *

(1) *Past threat to life or freedom.* (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence that paragraph (b)(1)(i)(A) or (B) of this section applies. If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm. Although a presumption of future persecution is raised by a finding of past persecution, this does not relieve the applicant of the burden of producing testimonial evidence, or where reasonably available to the applicant, documentary evidence, relating to future persecution, including to a fundamental change in circumstances or the reasonableness of internal relocation.

(i) * * *

(ii) * * *

(B) When the immigration judge or Board finds that the applicant has failed to establish past persecution, the questions of fundamental change in circumstances and reasonable internal relocation shall be deemed reserved and the Service shall not be required to present evidence to preserve the issues. If that finding is set aside, the Service and the applicant shall be permitted on remand to submit evidence and argument on the questions of fundamental change in circumstances and reasonable internal relocation before any ruling on these matters is issued.

* * * * *

Dated: November 22, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–30602 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–052G]

Occupational Exposure to Cotton Dust

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: OSHA is proposing to amend the Cotton Dust Standard to add batch kier washed cotton to the types of washed cotton granted partial exemption from the Cotton Dust Standard, because those methods greatly reduce the risk of byssinosis when that cotton is spun and woven. This amendment is based on the recommendation of the industry/government/union Task Force for Byssinosis Prevention and supported by published studies and government, union, and industry experts.

Because OSHA believes the amendment is not controversial, the Agency is issuing it as a direct final rule published in the Final Rules section of today's **Federal Register**. If no significant adverse comment is received on the direct final rule, OSHA will confirm the effective date of the final rule. If significant adverse comment is received, OSHA will withdraw the direct final rule and proceed with rulemaking on this proposal. A subsequent **Federal Register** document will be published to announce OSHA's action.

DATES: Written comments and requests for a hearing on this proposed rule must be submitted or sent electronically by February 5, 2001.

ADDRESSES: Comments and requests for a hearing may be sent in quadruplicate to Docket No. H–052G, Docket Office, Room N2625; Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington D.C. 20210 (202–693–2350).

Alternatively, one paper copy and one disc (3½ inch floppy in WordPerfect 6.0, 8.0 or ASCII) may be sent to the Docket mailing address; or one copy faxed to 202–693–1648 and 3 paper copies mailed to the Docket mailing address; or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket mailing address.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Bayard, Director of Office Risk Assessment, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 693–2275.

SUPPLEMENTARY INFORMATION:

Background

OSHA is today publishing a Direct Final Rule (DFR) adding batch kier washing to the types of washed cotton receiving partial exemption from the Cotton Dust Standard. A complete discussion of that amendment is published in the preamble to the DFR. The DFR is published in the Final Rules section of today's **Federal Register**. That discussion includes the scientific basis for the amendment, the regulatory text, and other supporting information. That discussion is incorporated as part of this proposal.

Public Participation

Any persons with significant adverse comments must submit those comments to the DFR by the dates specified in that document published in the Final Rules section of today's **Federal Register**.

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be received by February 5, 2001 and submitted in quadruplicate to the Docket No. H–052G, Docket Office; Room N2625; Occupational Safety and Health Administration; U.S. Department of Labor, 200 Constitution Ave., N.W., Washington DC 20210.

Alternatively, one paper copy and one disc (3½ inch floppy in WordPerfect 6.0, 8.0 or ASCII) may be sent to that address, or one copy faxed to (202) 693–1648 and 3 paper copies mailed to the Docket mail address or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket mail address.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

OSHA requests comments on all issues related to granting cotton mildly washed in the batch kier system partial exemption from OSHA's cotton dust standard and findings that there are no negative economic, environmental or other regulatory impacts. OSHA is not requesting comment on any other issues nor opening the record for any other issues except for this amendment to paragraph (n)(4).

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in the same manner as comments to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;

2. The objections must be mailed by January 22, 2001;

3. The objections must specify with particularity the grounds upon which the objection is based;

4. Each objection must be separately numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who object to the proposed amendment or have changes to recommend may, of course, make those objections and their recommendations in their written comments and OSHA will fully consider them. There is no need to file formal "objections" separately unless the interested person requests a public hearing.

OSHA recognizes that there may be interested persons who through their knowledge of health or their experience in the operations involved, would wish to endorse or support the amendment. OSHA welcomes such supportive comments, in order that the record of this rulemaking may present a balanced picture of the public response on the issues involved.

List of Subjects in 29 CFR Part 1910

Cotton dust, Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C 653, 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911. Part 1910, Title 29, Code of Federal Regulations, is proposed to be amended as set forth below.

Signed at Washington, DC, this 4th day of December, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby proposed to be amended as set forth below:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 is proposed to be amended to read as follows:

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6 (b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000 Z–1, Z–2, Z–3, and 1910.1043(n) also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1018, 1910.1029 and 1910.1200 are also issued under 29 U.S.C. 653.

2. OSHA proposes to amend § 1910.1043 by revising paragraph (n) (4) as follows:

§ 1910.1043 Cotton dust.

* * * * *

(n) * * *

* * * * *

(4) *Higher grade washed cotton.* The handling or processing of cotton classed as "low middling light spotted or better" (color grade 52 or better and leaf grade code 5 or better according to the 1993 USDA classification system) shall be exempt from all provisions of the standard except the requirements of paragraphs (h) medical surveillance, (k) (2) through (4) recordkeeping—medical records, and Appendices B, C, and D of this section, if they have been washed on the following systems.

(i) On a continuous batt system or a rayon rinse system including the following conditions:

(A) With water;

(B) At a temperature of no less than 60° C;

(C) With a water-to-fiber ratio of no less than 40:1; and

(D) With the bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

(ii) On a batch kier washing system including the following conditions:

(A) With water;

(B) With cotton fiber mechanically opened and thoroughly prewetted before forming the cake;

(C) For low-temperature processing, at a temperature of no less than 60° C with a water-to-fiber ratio of no less than 40:1; or, for high-temperature processing at a temperature of no less than 93° C with a water-to-fiber ratio of no less than 15:1;

(D) With a minimum of one wash cycle followed by two rinse cycles for each batch, using fresh water in each cycle, and

(E) With bacteria levels in the wash water controlled to limit bacterial contamination of the cotton.

* * * * *

[FR Doc. 00–31187 Filed 12–6–00; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Emergency Medical Services and Evacuation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by adding a prescription and clause requiring contractors to make all arrangements for emergency medical services and evacuation for its employees when performing a NASA contract outside the United States or in remote locations in the United States. The clause also requires the contractor to reimburse the Government for costs that are incurred in cases where the Government is requested by the contractor, and the Government agrees to provide the medical services or evacuation.

DATES: Comments should be submitted on or before February 5, 2001.

ADDRESSES: Interested parties should submit written comments to Joseph Le Cren, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments also may be submitted by e-mail to: *jlecren@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Le Cren, (202) 358–0444, or *jlecren@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

There have been some cases where contractor employees were required to receive emergency medical services and be evacuated while performing on NASA contracts outside the United States. Although not responsible for providing the emergency medical or evacuation services, NASA believed that the interests of the contractor employees were paramount. However, this resulted in situations where NASA incurred significant costs, which ultimately were reimbursed by the contractor, but possibly could have been disputed. NASA desires to eliminate such situations which could have a significant adverse financial impact on the agency. The proposed clause notifies offerors and contractors that they are responsible for making all arrangements for providing emergency medical services and evacuation, if necessary, for their employees when performing NASA contracts outside the United States. The proposed clause also recognizes that similar situations may occur in remote locations in the United States. In addition, the clause recognizes that certain situations could arise where the Government would be requested to provide emergency medical services or evacuate contractor employees. The clause makes it clear that, if the Government provides such services or evacuation, the contractor will reimburse the Government for the costs incurred.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the small number of contracts awarded to small businesses involving contract performance outside the United States or in remote locations in the United States.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1842 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1842 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION AND AUDIT PROCEDURES

2. Amend Part 1842 by adding section 1842.7003 to read as follows:

1842.7003 Emergency medical services and evacuation.

The contracting officer must insert the clause at 1852.242–78, Emergency Medical Services and Evacuation, in all solicitations and contracts when employees of the contractor are required to travel outside the United States or to remote locations in the United States.

3. Amend Part 1852 by adding section 1852.242–78 to read as follows:

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.242–78 Emergency Medical Services and Evacuation.

As prescribed in 1842.7003, insert the following clause:

Emergency Medical Services and Evaluation (XXXX)

The Contractor shall be responsible for making all arrangements for emergency medical services and evacuation, if required, for its employees while performing work under this contract outside the United States or in remote locations in the United States. If necessary to deal with certain emergencies, the Contractor may request the Government to provide medical or evacuation services. If the Government provides such services, the Contractor shall reimburse the Government for the costs incurred.

(End of clause)

[FR Doc. 00–31102 Filed 12–6–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000323080-0329-02; I.D. 031500A]

RIN 0648-AN97

Atlantic Highly Migratory Species (HMS); Atlantic Tunas Reporting, Fishery Allocations and Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic HMS fisheries to require mandatory dealer reporting of all purchases of Atlantic bigeye, albacore, yellowfin, and skipjack (BAYS) tunas; adjust the north-south dividing line for the Atlantic bluefin tuna (BFT) Angling category subdivisions; adjust associated subquota percentages allocated to each area; modify regulatory text to clarify the requirement that imports, exports, and re-exports of bluefin tuna (both Atlantic and Pacific subspecies) must be accompanied by a Bluefin Tuna Statistical Document (BSD); and modify regulatory text to facilitate enforcement of, and compliance with, the regulations. The proposed regulatory amendment is necessary to comply with the United States' obligations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act (ATCA), and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). NMFS will hold public hearings to receive comments from fishery participants and other interested parties regarding the proposed regulatory amendment.

DATES: Written comments must be received on or before January 30, 2001.

The public hearing dates are:

1. December 11, 2000, 7–9 p.m., Ocean City, MD.

2. December 12, 2000, 7–9 p.m., Cape May, NJ.

ADDRESSES: Written comments on the proposed regulatory amendment should be sent to Christopher Rogers, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Comments also may be sent via facsimile (fax) to (301) 713-1917. Comments will not be accepted if submitted via e-mail or the Internet. Comments regarding the collection of information requirements contained in this proposed rule should be sent to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC, 20503 (Attention: NOAA Desk Officer).

The public hearing locations are:

1. Cape May—The Inn of Cape May, 7 Ocean St, Cape May, NJ 08204.

2. Ocean City—Ocean City Rec & Parks Dept., 200–125th Street, Ocean City, MD 21842.

FOR FURTHER INFORMATION CONTACT: Pat Scida, (978) 281–9208.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

BAYS Dealer Reporting

On May 28, 1999, NMFS published in the Federal Register (64 FR 29090) final regulations implementing the HMS FMP that was adopted and made available to the public in April 1999. The implementing regulations require dealers that receive Atlantic swordfish and Atlantic sharks from U.S. vessels to report to NMFS all Atlantic tunas (including BAYS) received from U.S. vessels (50 CFR 635.5(b)(1)(i)). The regulations require dealers to report BAYS tunas only when received together with sharks and swordfish. As BAYS tunas are usually landed and sold along with other species, and because many dealers voluntarily report their BAYS purchases (dealers are often permitted in several fisheries and record all purchases on a consolidated HMS reporting form), the lack of mandatory reporting of BAYS tunas has not likely resulted in significant underreporting. Recently, however, several new dealers in the U.S. Virgin Islands and Puerto Rico have obtained dealer permits, and most of these dealers are handling BAYS tunas only. In order to collect data from these new dealers and to ensure that U.S. data on BAYS tunas are complete, NMFS needs to require that all purchases of BAYS tunas be reported, regardless of whether other regulated HMS are purchased. NMFS, therefore, proposes to amend the HMS regulations to require dealers to report all purchases of BAYS tunas, regardless of whether they also purchase Atlantic sharks or swordfish. Similar to current reporting regulations for sharks and swordfish, NMFS proposes to require dealers to submit negative reports for reporting periods in which they do not purchase and/or receive BAYS tunas.

BFT Angling Category Geographical Division

In response to quota reductions in 1992, two management areas were created for the BFT Angling category fishery. The north-south division line is located at 38°47' N. latitude (Delaware Bay). The geographic split was designed to enable NMFS to manage the early season (June/July off the Virginia to Delaware coasts) and late season (August/September off the New Jersey to Massachusetts coasts) to manage BFT fisheries under separate quotas, corresponding with the summer feeding migration of school, large school, and small medium BFT.

For the last several BFT fishing seasons, NMFS has received comments that an adjustment to the Angling category BFT north-south division line is warranted. Specifically, vessels fishing for BFT from ports in southern New Jersey, which is in the northern area, tend to utilize fishing areas located in the southern area (*i.e.*, offshore of Ocean City, Maryland). This pattern of activity raises two concerns with respect to the dividing line for the southern and northern areas. First, when the southern and northern areas are both open, a significant number of fish caught in the southern area are landed in the northern area and counted against the applicable northern area subquotas. Second, when the southern area is closed, vessels from southern New Jersey are effectively excluded from the school BFT fishery because the fish are generally

distributed too far north to accommodate single-day trips.

Because of differing opinions on where a new dividing line should be placed and on the associated reallocation of subquotas, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on April 10, 2000 (65 FR 18960), requesting public comments regarding the geographical division of the BFT Angling category fishery and whether an adjustment of the north-south division line and an associated adjustment of the BFT subquota percentages allocated to each area is warranted.

During the comment period, NMFS received 13 comments on the ANPR, and NMFS staff attended an industry-sponsored meeting regarding the ANPR in Ocean City, MD. The comments received as well as the recommendations from the meeting indicate an industry preference for adjustment of the north-south dividing line to Ocean City, NJ, at 39o18' N. lat., just north of Great Egg Inlet. Moving the line to this location would effectively isolate the recreational fisheries, since virtually all vessels fishing for BFT from Ocean City, NJ, and areas south fish in the southern, early season fishery (as suggested to NMFS in previous public comments). Adjustment of the line may reduce confusion regarding fishing areas and catch limits and may prevent vessels from being excluded from participating in the fishery, particularly when seasonal retention limits are different in the two areas. Thus, NMFS proposes to move the line to this new location and has preliminarily determined that this proposed action would ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the Angling category quota.

Angling Category BFT Subquotas

Public comment on an appropriate subdivision of Angling category quota between the two areas was less consistent than on the location of the dividing line. Several comments supported the status quo, whereas other comments suggested a transfer of a small amount of quota (i.e., 2 to 5 metric tons (mt)) from the north to south. However, most comments suggested switching the current allocation percentage from 52.8 percent in the north and 47.2 percent in the south to 47.2 percent to the north and 52.8 percent to the south. Comments generally supported the notion that any change be fair and equitable based on the geographic extent of the adjustment to the dividing line.

However, the geographic distance involved in the movement of the dividing line is slight (31 nautical miles), and at this fine spatial resolution, data are insufficient to determine the precise changes in landings for the respective areas. Nevertheless, as a consequence of moving the dividing line, additional catch is now expected to be applied against the southern area (with a corresponding decrease in the north), and some change in quota allocation is appropriate between these two areas. Therefore, NMFS proposes to reverse the Angling category subquota allocations to 47.2 percent for the north and 52.8 percent for the south. Thus, as an example, if the total Angling category quota for school-size BFT were 100 mt, the reallocation from the north to the south would be approximately 5.6 mt. Public comment is specifically requested on the proposed reallocation of quota, as well as any suggestions for alternative quota reallocations.

BSD Requirements

On March 17, 1995, NMFS published final regulations requiring an appropriately completed, approved BSD as a condition for import, export, or re-export of bluefin tuna into or from the United States (60 FR 14381). Because the Atlantic and Pacific stocks of northern bluefin tuna are of the same species subject to the ICCAT recommendations, implementation of, and compliance with, the ICCAT BSD program also applies to Pacific bluefin tuna. Implementing regulations for the HMS FMP, published on May 28, 1999 (64 FR 29090), were not intended to alter the applicability of the BSD regulations, but due to the definitions and acronyms used to define Atlantic bluefin tuna (i.e., BFT) and all species of northern bluefin tuna (i.e., bluefin tuna), the regulatory text requires clarification. The proposed revision would clarify that the BSD requirements, consistent with ICCAT recommendations, apply to all northern bluefin tuna (i.e., northern bluefin tuna from both the Atlantic and Pacific oceans), not just BFT.

Facilitation of Enforcement and Compliance

Tagging and Offloading of BFT

Current regulations specify that large medium and giant BFT caught and retained by vessels in a commercial Atlantic tunas vessel permit category must be tagged upon offloading. Numerous vessels that are not permanently docked at any particular port, but that are brought to a launch site by a trailer, are used to fish for BFT under the General category quota. Current regulations can be interpreted to allow vessels to be removed from the water and trailered away from the landing port, with an untagged BFT inside the vessel. This proposed rule would amend the regulations to require that, for trailered vessels, BFT be tagged immediately upon the vessel being removed from the water.

Definition of Pelagic Longline Gear

The regulatory text for the final rule implementing the DeSoto Canyon, east Florida coast, and Charleston Bump closures (65 FR 47214, August 1, 2000) defines pelagic longline gear in a manner designed to avoid applying the vessel monitoring system requirement and fishing restrictions to vessels fishing with bottom longline gear. The regulations define pelagic longline gear as a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. It consists of five components: a power-operated longline hauler, a mainline, high-flyers, floats capable of supporting the length of the mainline, and leaders (gangions) with hooks. Those regulations further state that the removal of any one of these components from a vessel constitutes the removal of pelagic longline gear. Vessel operators removing one or all of the listed components would be eligible to fish in the closed areas and would not be required to operate a VMS while at sea.

Since publication of the time and area requirements, NMFS has become aware that it is possible to use a longline that is suspended by floats without the use of high-flyers. Fishing vessels could potentially utilize the remaining components of pelagic longline gear in the areas when closed to target HMS with pelagic longlines in the closed areas, thereby undermining the objective of bycatch reduction and reducing the benefits of the closures. Removal of the term "high-flyer" from the list of components constituting pelagic longline gear would avoid this potential problem. This measure would have no measurable impact on the environment or fishermen, since the intent of the closures is to prohibit all pelagic longline fishing by vessels with HMS fishing permits when the areas are closed. The environmental, economic, and social impacts associated with the closures were previously considered and are discussed in detail in the HMS FMP and Final Supplemental Environmental Impact Statement issued for the August 1, 2000, final rule.

Swordfish Minimum Size

In 1991, ICCAT adopted a prohibition on the taking and landing of swordfish, in the entire Atlantic Ocean, weighing less than 25 kg (55 lbs) or measuring less than 125 cm (approximately 50 inches) Lower Jaw Fork Length (LJFL), with a tolerance of 15 percent undersized fish. In 1996, the United States adopted an alternative minimum size of 119 cm (47 inches) LJFL, with no tolerance for undersized fish in order to better enforce the regulation and protect small swordfish. In recent regulations, NMFS converted the minimum size to a cleithrum to keel measurement which relates to the manner in which commercially-landed swordfish are dressed for resale (61 FR 27304, May 31, 1996).

The recreational swordfish fishery is re-emerging, particularly on the East Coast of Florida, and NMFS seeks to provide recreational fishermen with a size limit that is easy to estimate while the fish is still in the water, thereby facilitating release of undersized swordfish. Therefore, NMFS proposes to modify the existing regulations to also specify the existing size limit in terms of LJFL. This change to the regulations would specify that the LJFL of a retained swordfish must be no less than 119 cm or 47 inches. The specification of the minimum size in this manner would facilitate compliance by recreational fishermen, while allowing for retention of legal-sized swordfish in the fishery.

Collection of Scientific or Management Information

In addition to the measures here, this proposed rule would restore a prohibition on assaulting or impeding NMFS employees or contractors collecting scientific or management information on Atlantic HMS that was inadvertently omitted when the HMS regulations were consolidated under 50 CFR part 635 (64 FR 29090, May 28, 1999).

Public Hearings and Special Accommodations

Participants at the public hearings are expected to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (i.e., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

The public hearing sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Pat Scida (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

After reviewing the public comments and additional information or data that may be available, NMFS will, if appropriate, make final determinations regarding the consistency of these proposed measures with the Magnuson-Stevens Act and its national standards, ATCA, the objectives of the HMS FMP, and other applicable law.

Classification

This proposed regulatory amendment is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq., and ATCA, 16 U.S.C. 971 et seq. Preliminarily, the AA has determined that the regulations contained in the proposed regulatory amendment are consistent with the Magnuson-Stevens Act, ATCA, and the HMS FMP.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed regulatory amendment, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed regulatory amendment would amend the highly migratory species regulations to require mandatory dealer reporting of all purchases of BAYS tunas, change the north/south dividing line (and quota distribution) for the Angling category BFT fishery, clarify regulations regarding BSD reporting requirements, and modify regulatory text to facilitate enforcement of, and compliance with, the regulations. Because the proposed regulations would only: (1) modify and/or clarify reporting requirements; (2) require permitted Atlantic tuna dealers to submit reports at estimated annual burden of less then 2 hours per year; (3) implement a minor change to the geographic division of the BFT Angling category division line (by approximately 30 nautical miles) and subquota allocation (by less than 10 mt); and (4) modify regulations to facilitate enforcement of, and compliance with, regulations, there is no anticipated change in revenues that would accrue to small businesses in the fishery overall, and the amendment would not alter current fishing practices in any significant way.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed regulatory amendment has been determined to be not significant for purposes of Executive Order 12866.

This proposed regulatory amendment would not significantly change the operations of any HMS fishery. Since the proposed regulatory amendment would modify reporting requirements and would not alter fishing practices, it is not expected to increase endangered species or marine mammal interaction rates.

NMFS reinitiated formal consultation for all Atlantic HMS commercial fisheries on November 19, 1999, under section 7 of the Endangered Species Act. NMFS issued a Biological Opinion (BO) on June 30, 2000, and concluded that the Atlantic pelagic longline fishery for tunas, swordfish, and sharks is likely to jeopardize the continued existence of leatherback and loggerhead sea turtles, and may adversely affect, but is not likely to jeopardize, the continued existence of other listed and protected species. Additionally, NMFS concluded that other components of the Atlantic tunas fisheries (purse seine, handgear, traps) may adversely affect, but are not likely to jeopardize, the continued existence of listed and protected species. The BO determined reasonable and prudent alternatives to avoid jeopardizing the continued existence of any protected species and incorporated an incidental take statement listing reasonable and prudent measures and terms and conditions to implement those measures that would serve to reduce takes.

Since the June 30, 2000, BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS has re-initiated consultation. NMFS anticipates completing the consultation and issuing a new BO in early 2001. Until the consultation is completed and appropriate long-term measures can be determined, NMFS has implemented emergency measures in the short-term to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery. The regulations proposed in this document, if implemented, would not likely increase takes of listed species and would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources, as they would only modify reporting

requirements and would not alter fishing practices.

The area affected by this proposed action has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of NMFS. It is not anticipated that this action will have any adverse impacts on EFH, and, therefore, no consultation is required.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains a new collection-of-information requirement and restates several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirement has been submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0648-0013.

The new requirement that has been submitted to OMB for approval is an extension of dealer reporting requirements to Atlantic tunas, with an estimated public reporting burden of 12 minutes per response for dealers who would otherwise have been required to file a negative report (if permitted for swordfish or shark), 15 minutes for other dealers reporting purchases, and 3 minutes for other dealers to file.

This proposed rule also restates a number of collection-of-information requirements that have been approved by OMB. These requirements and their OMB control numbers and estimated response times are: swordfish and shark dealer reports (15 minutes; 0648-0013); negative reports by swordfish and shark dealers (3 minutes; 0648-0013); swordfish import dealer reports (15 minutes; 0648-0363) and swordfish certificates of eligibility (1 hour; 0648-0363); bluefin tuna landing reports (2 minutes; 0648-0239); Atlantic tuna bi-weekly dealer report (15 minutes; 0648-0239); affixing tags to bluefin tunas and transferring tag numbers to documents (10 minutes; 0648-0239).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: (1) the need for the proposed collection of information for the proper performance of the functions of the agency, including the practical utility of the information; (2) the accuracy of the burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: November 30, 2000.

William T. Hogarth,

Deputy Assistant Administration for Fisheries, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii),(b)(2)(i),(b)(2)(ii)(A) and (b)(2)(ii)(B) are revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) *Atlantic HMS.* (i) Dealers that receive Atlantic tunas, Atlantic swordfish, and Atlantic sharks from U.S. vessels must report all such species received on forms available from NMFS.

(ii) Dealers that import bluefin tuna or swordfish must report all such species imported on forms available from NMFS.

(iii) Reports of Atlantic tunas, Atlantic swordfish, and Atlantic sharks received by dealers from U.S. vessels, or reports of bluefin tuna and swordfish imported, on the first through the 15th of each month, must be postmarked not later than the 25th of that month. Reports of such fish received or imported on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. For swordfish imports, a dealer must attach a copy of each certificate of eligibility to the report required under paragraph (b)(1)(ii) of this section. If a dealer issued an Atlantic tunas, swordfish or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be postmarked for the applicable reporting period as specified in this section.

* * * * *

(2) Requirements for bluefin tuna--(i) Dealer reports--(A) Landing reports. Each dealer issued an Atlantic tunas permit under § 635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) to a number designated by NMFS not later than 24 hours after receipt of the BFT. The landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report.

(B) Biweekly reports. Each dealer issued an Atlantic tunas permit under § 635.4 must submit a bi-weekly report on forms supplied by NMFS for BFT received from U.S. vessels and for imports of bluefin tuna. For BFT received from U.S. vessels and for bluefin tuna imported on the first through the 15th of each month, the dealer must submit the bi-weekly report forms to NMFS postmarked not later than the 25th of that month. Reports of BFT received and bluefin tuna imported on the 16th through the last day of each month must be postmarked not later than the 10th of the following month.

(ii) * * *

(A) Affixing dealer tags. A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received from a U.S. vessel immediately upon offloading the BFT. If a vessel is placed on a trailer, the dealer or dealer's agent must affix the dealer tag to the BFT immediately upon the vessel being removed from the water. The dealer tag must be affixed to the BFT between the fifth dorsal finlet and the caudal keel.

(B) Removal of dealer tags. A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported bluefin tuna must remain on the fish until it is cut into portions. If the bluefin tuna or bluefin tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on the outside of any package containing the tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

* * * * *

3. In § 635.20, in paragraph (f)(1), the first two sentences are revised to read as follows:

§ 635.20 Size limits.

* * * * *

(f) Swordfish. (1) No person shall take, retain, or possess a north or south Atlantic swordfish taken from its management unit that is less than 29 inches (73 cm), CK, 47 inches (119 cm), LJFL, or 33 lb (15 kg) dressed weight. A swordfish that is damaged by shark bites may be retained only if the remainder of the carcass is at least 29 inches (73 cm) CK, 47 inches (119 cm), LJFL, or 33 lb (15 kg) dw. * * *

* * * * *

4. In § 635.21, in paragraph (c) introductory text, the first sentence is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(c) Pelagic longlines. For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. * * *

* * * * *

5. In § 635.27, paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(2) * * *

(i) Under paragraph (a)(7)(ii) of this section, 52.8 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 39°18' N. lat.;

(ii) An amount equal to 52.8 percent of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat.;

(iii) An amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat.

* * * * *

6. In the following sections, remove the word "tuna", each time it appears, and add in its place the words "bluefin tuna".

§ 635.42 [Amended]

a. Section 635.42, paragraphs (a)(1), (a)(2), (a)(3), and (b)(3).

§ 635.43 [Amended]

b. Section 635.43, paragraphs (a)(2), and (a)(12).

7. In the following sections, remove the acronym "BFT", each time it appears, and add in its place the words "bluefin tuna".

§ 635.41 [Amended]

a. Section 635.41 introductory text, paragraph (a) introductory text, paragraphs(a)(1), (a)(2), and (b).

§ 635.42 [Amended]

b. Section 635.42, paragraph (a) heading, paragraphs (a)(1), (a)(2), (a)(3), (b) heading, (b)(1), (b)(2), and (b)(3).

§ 635.43 [Amended]

c. Section 635.43, paragraphs (a)(2), (a)(5), (b), and (c).

d. Section 635.44, paragraphs (a) and (b).

§ 635.44 [Amended]

e. Section 635.45.

§ 635.45 [Amended]

f. Section 635.47

§ 635.47 [Amended]

g. Section 635.71 paragraphs (a)(24),(b)(25), and (b)(26).

8. In § 635.71, paragraph (a)(35) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(35) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic HMS.

* * * * *

[FR Doc. 00–31104 Filed 12–1–00; 4:58 pm]

BILLING CODE: 3510–22–S

Notices

Federal Register
Vol. 65, No. 236
Thursday, December 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

[Docket No. 00–045–1]

Office of the Secretary; Declaration of Emergency Because of Rabies

Wildlife is the dominant reservoir for rabies in the United States. Rabies transmission from wildlife carnivores poses a serious threat to animal and human health in the United States. Rabid raccoons, foxes, and coyotes attack large farm animals not normally considered prey, such as cattle. Larger farm animals often survive these attacks and become infected with rabies. Humans who work in close contact with infected livestock, as well as other animals that come in contact with such livestock, are at risk of exposure to rabies. In addition, the agricultural environment often provides food and refuge that are attractions for wildlife that may in turn directly place farmers, ranchers, their families, and other people in rural communities at risk of exposure to rabies.

If new rabies strains such as those transmitted by raccoons, gray foxes, and coyotes are not prevented from spreading to broader areas of the United States, the health threats and costs associated with rabies are expected to increase substantially. In the area that stretches west from the leading edge of the current distribution of raccoon rabies (which stretches from Alabama northeastward along the western edge of the Appalachian Mountains to Maine) to the Rocky Mountains, and north from the distribution of gray fox and coyote rabies in Texas, there are more than 111 million livestock animals—including cattle, horses, mules, swine, goats, and sheep—valued at $42 billion. If raccoon, gray fox, or coyote rabies were to spread into the above described area, the livestock there would be at risk to these specific rabies variants. Additionally, raccoon, coyote, and fox rabies-related costs for human health care, education, vaccination, and animal control in the United States currently exceed $450 million annually. These costs are expected to increase substantially if rabies is allowed to spread into the described area.

In recent years, the Animal and Plant Health Inspection Service (APHIS) and the States affected by rabies have been working cooperatively to address rabies outbreaks by implementing an oral rabies vaccination program (ORVP), which establishes and maintains immunization barriers to control the disease within the outbreak zone and prevent its spread to new areas. APHIS contributed $1.3 million in FY 1998 and $1.5 million in FY 1999 and FY 2000 toward these rabies control efforts. While vaccination barriers have been established, reduced State funding in Texas and rapid expansion of raccoon rabies in the northeastern and midwestern portions of the United States threaten to compromise the established ORVP barriers.

The Texas ORVP

Since the program's inception in 1995, the Texas ORVP has been successful in controlling the outbreak of rabies in coyotes, but the rabies outbreak in gray foxes presents a more complex challenge. The objective of the gray fox program has been to encircle the outbreak with a barrier of vaccinated foxes and then move inward, reducing the geographic distribution of fox rabies within the outbreak zone. So far, the program has been successful in halting the spread of the disease. No rabies cases have developed in gray foxes beyond the established ORVP barrier. However, these program gains and any potential advances are in jeopardy. Due to reduced State funding levels this year, the State of Texas is unable to maintain the entire ORVP barrier for gray foxes. The State has enough funds to maintain only the eastern side of the ORVP barrier. This limitation compromises the health and safety of livestock, other animals, and humans. Reestablishing the entire ORVP barrier for gray foxes and continuing to eliminate rabies within the outbreak zone are critical.

The Ohio, Pennsylvania, and West Virginia ORVP

Since 1998, APHIS and the State of Ohio have been working cooperatively to establish a vaccination barrier against raccoon rabies on the State's eastern border. The current Ohio barrier extends from Lake Erie to East Liverpool and was strategically placed to halt the westward spread of raccoon rabies. A recent case of raccoon rabies on the West Virginia side of the Ohio River, however, suggests that the current barrier is inadequate and should be expanded. APHIS and State officials have determined that an effective barrier would require widening the existing barrier and extending it south to meet the Appalachian Ridge in West Virginia, where the mountainous habitat can also act as a geographical barrier to prevent the spread of rabies. By bridging the gap between the current Ohio barrier and the Appalachian Mountains, the program will reduce the risk of the disease entering the midwestern region of the United States, where it would increasingly threaten livestock, human populations, and other animals, and significantly raise the control costs throughout the region.

The Northeastern United States and Canadian Border ORVP

APHIS has also been working with the Departments of Health in Vermont and New York, several New York counties, Cornell University, and the Canadian Provinces of Quebec and Ontario to establish a rabies vaccination barrier along the U.S.-Canadian border. The northern border ORVP zone currently extends from Niagara Frontier in western New York to the St. Lawrence River, through the upper Lake Champlain Valley, and terminates in northern central Vermont. A gap in the barrier needs to be filled from its eastern point to the Connecticut River Valley in eastern Vermont and New Hampshire. APHIS and its cooperators have an opportunity to contain the movement of the disease by bridging the gaps in the barriers before the currently vaccinated area is compromised. This area is particularly susceptible due to the abundant raccoon populations present along the river systems. The further north and west the disease moves, the more likely it is that livestock, humans, and other animals will become exposed to infected wildlife. Vaccinating in these new corridors and adding sufficient width to existing barriers are critical to containing the northward spread of raccoon rabies.

So far, Ohio, Texas, and New York have provided the majority of funds for the cooperative programs. Pennsylvania and West Virginia do not have the resources to contribute to this effort or to conduct independent rabies control programs. The total amount of funding needed in FY 2000 to begin reestablishing an adequate ORVP in Texas and expanding existing ORVP's in the northeastern region of the United States and in Ohio is estimated to be $4.1 million ($0.4 million in New York, $0.3 million in Ohio, $1.5 million in Pennsylvania and West Virginia, $1.7 million in Texas, and $0.2 million in Vermont).

APHIS has insufficient funds to expand the ORVP in New York, Ohio, Pennsylvania, Texas, Vermont, and West Virginia. With additional funds, APHIS can continue the ORVP in these States, which is necessary to prevent the spread of rabies.

Therefore, in accordance with the provisions of the Act of September 25, 1981, as amended (7 U.S.C. 147b), I declare that there is an emergency that threatens the agricultural production industry in the United States, and I authorize the transfer and use of $4.1 million from the Commodity Credit Corporation of the United States Department of Agriculture for the continuation of the ORVP.

Effective Date: This declaration of emergency shall become effective November 3, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–31146 Filed 12–6–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 001127332–0332–01]

RIN Number 0607–XX60

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2000 Annual Surveys in the Manufacturing Area. The 2000 Annual Surveys consist of the Current Industrial Reports surveys, the Annual Survey of Manufactures, the Survey of Industrial Research and Development, and the Survey of Plant Capacity Utilization. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Bostic, Jr., Chief, Manufacturing and Construction Division, Census Bureau, on (301) 457–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), Sections 61, 81, 182, 224, and 225. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for the year 2002. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of surveys.

SURVEY TITLE	
MA313F	Yarn Production.
MA313K	Knit Fabric Production.
MA314Q	Carpets and Rugs.
MA315D	Gloves and Mittens.
MA321T	Lumber Production and Mill Stocks.
MA325F	Paint and Allied Products.
MA325G	Pharmaceutical Preparations, except Biologicals.
MA316A	Footwear Production.
MA327C	Refractories.
MA327E	Consumer, Scientific, Technical, and Industrial Glassware.
MA331A	Iron and Steel Castings.
MA331B	Steel Mill Products.
MA331E	Nonferrous Castings.
MA335J	Insulated Wire and Cable.
MA333A	Farm Machinery and Lawn and Garden Equipment.
MA333D	Construction Machinery.
MA333F	Mining Machinery and Mineral Processing Equipment.
MA333L	Internal Combustion Engines.
MA333M	Refrigeration, Air-conditioning, and Warm Air Equipment.
MA333P	Pumps and Compressors.
MA333U	Vending Machines (Coin-Operated).
MA332Q	Antifriction Bearings.
MA334R	Computers and Office and Accounting Machines.
MA335A	Switchgear, Switchboard Apparatus, Relays, and Industrial Controls.
MA335E	Electric Housewares and Fans.
MA335F	Major Household Appliances.
MA335H	Motors and Generators.
MA335K	Wiring Devices and Supplies.
MA334M	Consumer Electronics.
MA334P	Communication Equipment.
MA334Q	Semiconductors, Printed Circuit Boards, and Electronic Components.
MA334B	Selected Instruments and Related Products.
MA334S	electromedical and Irradiation Equipment.

The following list of surveys represent annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

SURVEY TITLE	
M311H	Animal and Vegetable Fats and Oils (Stocks).
M311J	Oilseeds, Beans, and Nuts (Primary Producers).
M311L	Fats and Oils; (Renderers).
M311M	Animal and Vegetables Fats and Oils (Consumption and Stocks).
M311N	Animal and Vegetables Fats and Oils (Production, Consumption, and Stock).
M313P	Consumption on the Cotton System.
M327G	Glass Containers.
M331J	Inventories of Steel Producing Mills.
M336G	Civil Aircraft and Aircraft Engines.
M336L	Truck Trailers.
MQ311A	Flour Milling Products.
MQ313D	Consumption on the Woolen System and Worsted Combing.
MQ313T	Broadwoven Fabrics (Gray).
MQ315A	Apparel.
MQ314X	Bed and Bath Furnishings.
MQ325A	Inorganic Chemicals.
MQ325B	Fertilizer Materials.
MQ325C	Industrial Gases.
MQ327D	Clay Construction Products.
MQ332E	Plumbing Fixtures.
MQ333W	Metalworking Machinery.
MQ335C	Fluorescent Lamp Ballasts.

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total

value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series. Four data items in the survey provide interim statistics collected in the Census Bureau's Economic Censuses. These items (total company sales, total company employment, and total expenditures and Federally-funded expenditures for research and development conducted within the company) are collected on a mandatory basis under the authority of Title 13, U.S.C. Responses to all other data collected for the NSF are voluntary.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the 2000 Annual Surveys under the following OMB Control Numbers: Current Industrial Reports—0607–0206, 0607–0392, 0607–0393, 0607–0395, 0607–0476, and 0607–0776; Annual Surveys of Manufactures—0607–0449; Survey of Industrial Research and Development—3145–0027; and, Survey of Plant Capacity Utilization—0607–0175. We will provide copies of the form upon written request to the Director, Census Bureau, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: December 1, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 00–31170 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 8, 2000, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers three producers/exporters of subject merchandise. The period of review is November 1, 1998, through October 31, 1999.

We invited interested parties to comment on our preliminary results. We received no comments and have made no changes to our preliminary results for these final results. The final dumping margin is listed in the section entitled "Final Results of the Review."

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3931 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are at 19 CFR part 351 (1999).

Background

On August 8, 2000, the Department published the preliminary results of the administrative review (65 FR 48464) of the antidumping duty order on fresh garlic from the People's Republic of China (the PRC) (59 FR 59209, November 16, 1994). We invited parties to comment on our preliminary results. We received no comments and have made no changes to our preliminary results for the final results of review.

We have conducted this administrative review in accordance with section 751 of the Act and 19 CFR 351.213.

Scope of Review

The products subject to this antidumping duty administrative review are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Use of Facts Otherwise Available

Our use of facts otherwise available in this review has not changed from the preliminary results, in which we assigned a PRC-wide rate of 376.67 percent since the three respondents did not respond to our requests for information. For a detailed discussion of our application of facts otherwise available, see our preliminary results at 65 FR 48464 (August 8, 2000).

Final Results of the Review

We determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise as the PRC-entity for the period November 1, 1998, through October 31, 1999. The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

Cash-Deposit Requirements

The following deposit rates will be effective upon publication of this notice of final results of administrative review for all shipments of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) For all PRC exporters, all of which were found not to be entitled to separate rates, the cash-deposit rate will be 376.67 percent; and (2) for all non-PRC exporters of subject merchandise from the PRC, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement, pursuant to 19 CFR 351.402(f)(3), could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 and 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. See 19 CFR 351.306 and 19 CFR 354.3.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31235 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from respondent Canada Pipe Company Limited ("Canada Pipe"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on iron construction castings ("ICCs") from Canada. The period of review ("POR") is March 1, 1999, through February 28, 2000. This review covers imports of ICC from one producer, Canada Pipe.

We have preliminarily determined the dumping margin for Canada Pipe to be 7.07 percent.

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4243.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations at 19 CFR part 351 (2000).

Background

On March 5, 1986, the Department published in the **Federal Register** (51 FR 7600) the antidumping duty order on ICC from Canada. On March 16, 2000, the Department published in the **Federal Register** (65 FR 14242) a notice of opportunity to request an administrative review of this antidumping duty order. On March 31, 2000, in accordance with 19 CFR 351.213(b)(1), the respondent Canada Pipe requested that the Department conduct an administrative review of its exports of subject merchandise to the United States. We published the notice of initiation of this review on May 1, 2000 (65 FR 25303).

Scope of the Review

The merchandise covered by the order consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010, 7325.10.0020, and 7325.10.0025. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

Product Comparisons

The ICC exported by Canada Pipe to the United States includes manhole sets, catch basin sets, and trench gates and is the identical merchandise sold by Canada Pipe in its home market in Canada. Therefore, we have compared U.S. sales to contemporaneous sales of identical or similar merchandise in Canada.

Export Price

Section 772(a) of the Act defines export price ("EP") as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States.

Canada Pipe sells subject merchandise directly to its customers in the United States and uses its affiliate Bibby USA as the importer of record. The sales documentation on the record in this proceeding indicates that Canada Pipe's U.S. sales occurred in Canada between Canada Pipe and the unaffiliated U.S. purchaser. Specifically, we have found the following facts: (1) Bibby USA does not contact the U.S. customers; (2) Bibby Ste-Croix in Canada contacts the U.S. customers; (3) the U.S. customers send the purchase

order to Canada Pipe; (4) Canada Pipe makes all arrangements for shipping and delivery to the U.S. customers directly in Canada; (5) Canada Pipe invoices are issued and the U.S. customers pay Canada Pipe directly in Canada; and (6) Canada Pipe retains title to the merchandise until the point of delivery to the U.S. customers. Given these facts, we preliminarily determine that these sales were made in Canada by Canada Pipe and, thus, should be treated as EP transactions (*see Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, Final Results of Administrative Review*, 65 FR 13359 (March 13, 2000) and accompanying Decision Memorandum at Comment 12; and *Porcelain-on-Steel Cookware from Mexico, Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Decision Memorandum at Comment 2).

We calculated an EP for all of Canada Pipe's sales because the merchandise was sold directly by Canada Pipe to the first unaffiliated purchaser in the United States prior to importation, and constructed export price ("CEP") was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, in accordance with section 773(a)(1)(B) of the Act, we based normal value ("NV") on home market sales, all of which were to unaffiliated customers.

We calculated monthly weighted-average NVs based on ex-works or delivered prices to unaffiliated customers. We made adjustments to the starting price, where appropriate, for billing adjustments. We made deductions, where appropriate, from the starting price for early payment discounts, inland insurance, and inland freight. We made circumstance of sale ("COS") adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act, for direct selling expenses, including credit expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. With respect to U.S. price and EP transactions, the LOT is the level of the sale to the unaffiliated customer, and with respect to CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level, and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Canada Pipe reported that during the POR it sold subject merchandise through three channels of distribution in the home market: sales made by Canada Pipe directly to original equipment manufacturers (OEM) (Channel 1), sales from Canada Pipe directly to end-users (Channel 2), and sales from Canada Pipe to distributors (Channel 3). In examining the record, we found that Canada Pipe performs substantially similar selling functions (*e.g.* sales planning, advertising, technical service, etc.) for all three reported channels of distribution. Due to the proprietary nature of the examined selling functions, see *Preliminary Determination: Level of Trade Analysis (Preliminary LOT Memorandum)*, dated concurrently with this notice, on file in Room B–099 of the main Department of Commerce Building, the Central Records Unit ("CRU"). Based upon an analysis of the information provided on the record, we conclude that there is no difference in the selling functions performed by Canada Pipe in making sales through these three channels of distribution. Therefore, using the information on the record, the Department preliminarily determines that Canada Pipe makes all sales at the same LOT in the home market.

See Preliminary LOT Memorandum

Canada Pipe reported two channels of distribution (*i.e.* sales to OEMs and sales to distributors) in the United States during the POR. In examining the record, we found that Canada Pipe performs substantially similar selling functions (*e.g.* sales planning, advertising, technical service, etc.) for both reported channels of distribution. Due to the proprietary nature of the examined selling functions, see *Preliminary LOT Memorandum*. Based upon an analysis of the information provided on the record, we conclude that there is no significant difference in the selling functions performed by Canada Pipe in making sales through both channels of distribution. Therefore, the Department preliminarily determines that Canada Pipe makes all sales at the same LOT in the United States market. *See Preliminary LOT Memorandum*.

In order to determine whether sales in the United States are at a different LOT than sales in the home market, we reviewed the selling activities associated with the LOT in each market. We compared Canada Pipe's selling activities for U.S. EP transactions to the selling activities performed for the home market LOT sales by Canada Pipe (*e.g.* sales planning, advertising, technical service, etc.). We found that there was no significant difference in the selling functions performed for Canada Pipe's EP sales than for sales at the home market LOT, sufficient to constitute a difference in LOT. *See Preliminary LOT Memorandum*.

As such, we have preliminarily determined that a LOT adjustment is not appropriate. *See Preliminary LOT Memorandum*.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a 7.07 percent dumping margin exists for Canada Pipe for the period March 1, 1999, through February 29, 2000. The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would also provide the Department with an additional copy of the public versions of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer specific duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Where the importer-specific assessment rate is above *de minimus*, we will instruct Customs to assess duties on that importer's entries of subject merchandise. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of ICC from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Canada Pipe will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value ("LTFV") investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 14.67 percent, the "all-others" rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31236 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmostpheric Administration

Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: NOAA's Damage Assessment and Restoration Program (DARP) is announcing new indirect cost rates and a policy on the recovery of indirect costs for its component organizations invovled in natural resource damage assesment and restoration activities. These new rates and the DARP policy are effective as of October 1, 2000. More information on these rates and the DARP policy can be found at the DARP web site (www.darp.noaa.gov), or from the address provided below.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193; (FAX: 301–713–4387; e-mail: Eli.Reinharz@noaa.gov), or Linda Burlington, 301–713–1217 (FAX: 301–713–1229; e-mail: Linda.B.Burlington@noaa.gov).

SUPPLEMENTARY INFORMATION: The mission of the DARP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), or physical injuries in Naitonal Marine Sanctuaries under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The NOAA DARP consists of three component organizations: The Damage Assessment Center (DAC) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Services; and the Office of the General Counsel for Natural Resources (GCNR). The DARP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

When addressing NRDA incidents, the costs of the damage assessment are recoverable from responsible parties who are potentially liable for an incident. Costs include direct and indirect costs. Direct costs are costs for activities that are clearly and readily attributable to a specific output. In the context of the DARP, outputs may be associated with damage assessment cases, or may be represented by other program products such as damage assessment regulations. In contrast, indirect costs reflect the costs for activities that collectively support the DARP's mission and operations. For example, indirect costs include general administrative support and traditional overheads. Although these costs may not be readily traced back to a specific direct activity, indirect costs may be allocated to direct activities using an indirect cost distribution rate.

Consistent with Federal accounting requirements, the DARP is required to account for and report the full costs of its programs and activities. Further, the DARP is authorized by law to recover

reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARP's Indirect Cost Effort

In December 1998, the DARP hired the public account firm Rubino & McGeehin, Chartered (R&M), to: (1) Evaluate the cost accounting system and allocation practices; (2) recommend the appropriate indirect cost allocation methodology; and, (3) determine the indirect cost rates for the three organizations that comprise the DARP.

The DARP requested an anlysis of its indirect costs for fiscal years (FY) where cost information was considered adequate to conduct such an analysis. Consequently, indirect cost rates were developed for the DAC and GCNR for FYs 1993 through 1999, and for the RC for FYs 1997 through 1999 (see Table below). The goal was to develop the most appropriate indirct cost rate allocation methodology and rates for each of the DARP component organizations.

R&M concluded that the cost accounting system and allocation practices of the DARP component organizations are consistent with Federal accounting requirements. R&M also determined that the most appropriate indirect allocation method was the Direct Labor Cost Base for all three DARP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. The indirect costs rates that R&M computed for each of the three DARP component organizations were further assessed as being fair and equitable. A report on R&M's effort, their assessment of the DARP's cost accounting system and practice, and their determination respecting the most appropriate indirect cost methodology and rates can be found on the DARP web site at: *www.darp.noaa.gov*. The report is entitled "Indirect Cost Rates Incurred by the National Oceanic and Atmospheric Administration Damage Assessment and Restoration Program."

The DARP's Indirect Cost Policy

The DARP will include the costs of program policy work and techniques and methods development in indirect cost pools of its component organizations, but will monitor these activities annually to control costs. The indirect cost pools also include the cost of general management and administrative support and preparedness for spill response work.

The DARP will apply the revised rates recommended by R&M for the respective fiscal years for each of the DARP component organizations as provided in the following table:

DARP unit	Fiscal years (FY) (in percent)						
	FY93	FY94	FY95	FY96	FY97	FY98	FY99
DAC	226.63	247.83	285.33	306.58	250.08	249.81	161.33
RC	N/A	N/A	N/A	N/A	139.70	142.82	203.24
GCNR	107.10	107.24	147.05	286.82	173.30	191.12	239.08

N/A—Not applicable. Rates were not calculated for these years.

The revised rates identified in this policy will be applied to all damage assessment and restoration case costs as of October 1, 2000, using the Direct Labor Cost Base allocation methodology. For cases that have settled and for cost claims paid prior to October 1, 2000, the DARP will not re-open any resolved matters for the purpose of applying the revised rates in this policy. For cases not settled and not cost claims not paid prior to October 1, 2000, costs will be recalculated using the revised rates in this policy. The DARP will use the FY 1999 rates for future fiscal years until year-specific rates can be developed.

Dated: December 1, 2000.

Margaret Davidson,

Assistant Administrator for Ocean Services and Coastal Zone Managmenet.

[FR Doc. 00–31021 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.113000C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for an enhancement permit (1273); issuance of permits (1254).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from the North Carolina Aquarium Division (NCAD)(1273); NMFS has issued permit 1254 to Central Hudson Gas& Electric Corporation/Dynergy Danskammer, L.L.C.& Dynergy Roseton, L.L.C. (CHGE/DD & DR) (1254).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m: eastern standard time on January 8, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits (1273, 1254), Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 301-713-1401.

FOR FURTHER INFORMATION CONTACT: For permits 1273: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Fish

Shortnose sturgeon (*Acipenser brevirostrum*).

New Applications Received

Application 1273: The North Carolina Aquarium Division proposes to continue to maintain 17 endangered shortnose sturgeon for the purposes of public education through species enhancement as identified in the Final Recovery Plan for Shortnose Sturgeon.

Permits and Modifications Issued

Permit 1254: Notice was published on June 28, 2000 (65 FR 39869) that Central Hudson Gas& Electric Corporation/ Dynergy Danskammer, L.L.C.& Dynergy Roseton, L.L.C. applied for a scientific research permit (1254). The applicant has requested a scientific research permit to conduct a monitoring study as part of an incidental take permit for the operation of the Roseton and Danskammer Point power plants. The applicant will be collecting larvae, juvenile and adult shortnose sturgeon in various location in the Hudson River between the estuary and River mile 65. Permit 1254 was issued on November 29, 2000, authorizing take of listed species. Permit 1254 expires August 31, 2005.

Dated: December 1, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–31232 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers; Grant of Partially Exclusive License

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(b)(1)(i), announcement is made of a prospective partially exclusive license of U.S. Patent No. 5,202,034 entitled "Apparatus and Method for Removing Water from Aqueous Sludges," issued April 13, 1993.

DATES: Written objections must be filed not later than February 5, 2001.

ADDRESSES: United States Army Corps of Engineers Research and Development Center, Cold Regions Research and Engineering Laboratory, ATTN: CEERD–RV–1 (Ms. Sharon Borland), 72 Lyme Road, Hanover, NH 03755–1290.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Borland, ATTN: CEERD–RV–1; (603) 646–4735, FAX (603) 646–4448; Internet *Sharon.L.Borland@erdc.usace.army.mil;* U.S. Army Corps of Engineers Research and Development Center, Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290

SUPPLEMENTARY INFORMATION: Patent No. 5,202,034 entitled "Apparatus and Method for Removing Water from Aqueous Sludges," issued April 13, 1993. The concrete armor unit was invented by Dr. C. James Martel. The United States of America owns the rights to this technology. The United States of America as represented by the Secretary of the Army intends to grant a partially exclusive license for all fields of use, in the manufacture, use, and sale of the patented technology in the territories and possessions of the U.S.A. and Canada, and in the field of use in the pulp and paper industry globally, to 3131807 Canada, Inc., a consortium comprising two companies: Le Groupe STEICA, Inc. of Sherbrooke, Quebec, and BESTH20, Inc. of La Prairie, Quebec, with principal offices at 170, rue des Pivoines, Le Prairie, Quebec, Canada J5R 5J6. Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Richard L. Frenette,

Counsel.

[FR Doc. 00–31184 Filed 12–6–00; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: December 1, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: Education Longitudinal Study of 2002 (ELS 2002).
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 51,597. Burden Hours: 59,497.
Abstract: Year 2001 field test of 50 schools in five states, students, parents, teachers, and librarians. The main study in Spring 2002 in all 50 states and District of Columbia will constitute the baseline of a longitudinal study of school effectiveness and impact on postsecondary and labor market outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy_Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31144 Filed 12–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision; JEA Circulating Fluidized Bed Combustor Project, Jacksonville, Duval County, FL

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) has prepared an environmental impact statement (EIS) (DOE/EIS–0289) to assess the environmental impacts associated with a proposed project that would be cost-shared by DOE and JEA (formerly the Jacksonville Electric Authority) under DOE's Clean Coal Technology (CCT) Program. The project would demonstrate circulating fluidized bed (CFB) combustion technology at JEA's existing Northside Generating Station in Jacksonville, Florida. After careful consideration of the potential environmental impacts, along with program goals and objectives, DOE has decided that it will provide approximately $73 million in federal funding support (about 24% of the total cost of approximately $309 million) to design, construct, and demonstrate the CFB technology proposed by JEA.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the CFB combustor project or the EIS, contact Dr. Jan Wachter, National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone: (412) 386–4809, fax: (412) 386–4726, or e-mail: jan.wachter@netl.doe.gov. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: (202) 586–4600, leave a message at (800) 472–2756, or fax: (202) 586–7031.

SUPPLEMENTARY INFORMATION: DOE has prepared this Record of Decision pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508) and DOE NEPA regulations (10 CFR Part 1021). This Record of Decision is based on DOE's final EIS for the JEA Circulating Fluidized Bed Combustor Project (DOE/EIS–0289, June 2000).

NEPA Strategy for the Clean Coal Technology Program

For the CCT Program, DOE developed a strategy that is consistent with CEQ and DOE regulations for compliance with NEPA and which includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. This strategy, called tiering (40 CFR 1508.28), refers to the consideration of general issues in a broader EIS (*e.g.*, for the CCT Program), followed by more focused environmental impact statements or other environmental analyses that incorporate by reference the general issues and concentrate on those issues specific to the proposals under consideration.

The DOE strategy has three principal elements. The first element involved preparation of a comprehensive Programmatic EIS for the CCT Program (DOE/EIS–0146, November 1989) to address the potential environmental consequences of widespread commercialization of each of 22 successfully demonstrated clean coal technologies.

The second element involved preparation of a pre-selection, project-specific environmental review of proposed CCT projects based on project-specific environmental data and analyses in accordance with DOE NEPA regulations (10 CFR 1021.216). For the proposed CFB combustor project, JEA supplied DOE with environmental data as part of their proposal. DOE reviewed the potential site-specific environmental, health, safety, and socioeconomic issues associated with the proposed project before selecting JEA's proposal for further consideration. In its review, DOE analyzed the environmental advantages and disadvantages of the proposal and alternative sites and processes reasonably available to JEA.

The third element consists of preparing site-specific NEPA documents for each selected project. For the JEA proposed project, DOE determined that an EIS should be prepared. As part of the overall NEPA strategy for the CCT Program, the JEA EIS draws upon the Programmatic EIS and pre-selection environmental reviews.

On November 13, 1997, DOE published in the **Federal Register** (62 FR 60889) a Notice of Intent to prepare the JEA EIS and hold a public scoping meeting. The Notice of Intent invited comments and suggestions on the proposed scope of the EIS, including environmental issues and alternatives, and encouraged participation in the NEPA process. DOE held the scoping meeting in Jacksonville, Florida, on December 3, 1997. DOE received 3 oral responses and 20 written responses from interested parties. The responses helped DOE to establish the issues to be analyzed in the EIS and the level of analysis warranted for each issue.

In August 1999, DOE issued the draft EIS for public review and invited comments on the adequacy, accuracy, and completeness of the EIS. As part of the review, DOE held a public hearing in Jacksonville, Florida, on September 30, 1999. DOE received 1 oral comment and 59 written comments, which helped to improve the quality and usefulness of the EIS. In June 2000, DOE issued the final EIS, which considered and, as appropriate, incorporated public comments on the draft EIS. Among the issues raised in the comments were concerns about (1) reliability of CFB combustion technology in meeting expected air emissions rates for particulate matter, sulfur dioxide (SO_2), and oxides of nitrogen (NO_X), in view of limited large-scale operating experience; (2) air emissions of heavy metals, radionuclides, carcinogenic chemicals, and carbon dioxide (CO_2); (3) potential effects of cooling water discharge on the St. Johns River; (4) potential entrainment of juvenile sea turtles, such as endangered green sea turtles, in the cooling water intake; (5) potential effects on manatees and other endangered species; (6) potential effects on Essential Fish Habitat, such as estuarine emergent wetlands; (7) potential effects on cultural resources; (8) disposal of ash, including whether the planned ash marketing would be successful; (9) noise levels from construction, operation, and rail transportation; (10) electromagnetic fields; and (11) traffic congestion.

Project Location and Description

The site for the proposed project is located in Jacksonville, Florida, about 9 miles northeast of the downtown area, at JEA's existing Northside Generating Station. This 400-acre industrial site is situated along the north shore of the St. Johns River, approximately 10 miles west of the Atlantic Ocean. The local terrain is flat and there is a mix of industrial, commercial, residential, and agricultural land use in the vicinity. The industrial 1,650-acre St. Johns River Power Park borders Northside Generating Station to the northeast, and the 46,000-acre Timucuan Ecological and Historic Preserve borders the site to the east. Blount Island, located immediately to the southeast in the St. Johns River, is a major port with facilities for docking, loading, and unloading large ocean-going vessels. The most striking environmental feature associated with the area is the nearby presence of estuarine salt marsh backwaters of the St. Johns River.

Northside Generating Station, which currently employs 265 people, has operated since November 1966 when the 297.5-megawatt (MW) Unit 1 came on-line. The 297.5-MW Unit 2 and the 564-MW Unit 3 started operation in March 1972 and June 1977, respectively. Unit 2 has been out of service since 1983 because of major boiler problems associated with the volume of its furnace being inadequate to accommodate the heat generated. The Unit 2 steam turbine is currently idle and the Unit 2 furnace and stack have recently been dismantled and removed. Units 1 and 3 can burn both natural gas and oil [No. 6 fuel oil or No. 2 fuel oil (diesel)]. Units 1 and 3 have no air pollution control with the exception of low-NO_X burners on Unit 3. Once-through cooling water is withdrawn from and discharged into the St. Johns River. Existing facilities currently occupy about 200 acres of the 400-acre property. The property contains a number of wetland areas, especially in the perimeter areas.

The proposed project would repower the idle Unit 2 steam turbine to generate nearly 300 MW of electricity using a new coal- and petroleum coke-fired combustor to demonstrate CFB combustion technology. The new combustor would be located adjacent to the existing Unit 3. Piping and related infrastructure would be constructed to link the combustor with the Unit 2 steam turbine. The proposed project and related infrastructure would occupy about 75 acres of the Northside Generating Station property.

CFB combustion technology is an advanced method for burning coal and other fuels efficiently while removing pollutants from air emissions inside the sophisticated combustor system. CFB technology provides flexibility in utility operations because a wide variety of solid fuels can be used, including high-sulfur, high-ash coal and petroleum coke. In a CFB combustor, coal or other fuels, air, and crushed limestone or other sorbents are injected into the lower portion of the combustor for initial burning of the fuel. The combustion actually occurs in a bed of fuel, sorbent, and ash particles that are fluidized by air from nozzles in the bottom of the combustor. The air expands the bed, creates turbulence for enhanced mixing, and provides most of the oxygen necessary for combustion of the fuel. As the fuel particles decrease in size through combustion and breakage, they are transported higher in the combustor where additional air is injected. As the particles continue to decrease in size, unreacted fuel, ash, and fine limestone particles are swept out of the combustor, collected in a particle separator (also called a cyclone), and recycled to the lower portion of the combustor. This is the "circulating" nature of the combustor. Drains in the bottom of the combustor remove a fraction of the bed composed primarily of ash while new fuel and sorbent are added. The combustion ash is suitable for beneficial uses such as road construction material, agricultural fertilizer, and reclaiming surface mining areas.

The heated combustor converts water in tubes lining the combustor's walls to high-pressure steam. The steam is then superheated in tube bundles placed in the solids circulating stream and the flue gas stream. The superheated steam drives a steam turbine-generator to produce electricity in a conventional steam cycle.

The injected limestone could capture up to 98% of the sulfur impurities released from the fuel. When heated in the CFB combustor, the limestone, consisting primarily of calcium carbonate ($CaCO_3$), converts to calcium oxide (CaO) and CO_2. The CaO reacts with SO_2 from the burning fuel to form calcium sulfate ($CaSO_4$), an inert material that is removed with the combustion ash. The combustion efficiency of the CFB combustor allows the fuel to be burned at a relatively low temperature of about 1,650EF, thus reducing NO_X formation by approximately 60% compared with conventional coal-fired technologies. Greater than 99% of particulate emissions in the flue gas are removed downstream of the combustor by either an electrostatic precipitator or a fabric filter (baghouse).

In addition to the CFB technology, the proposed project would use a polishing scrubber in combination with the CFB combustor to attain a 98% SO_2 removal rate. The polishing scrubber is a conventional scrubbing system that would use lime in a dry flue gas desulfurization process downstream of the combustor to convert SO_2 chemically to calcium sulfite and calcium sulfate. It is called a polishing scrubber because the CFB combustor would remove 85–90% of the SO_2 and the polishing scrubber would remove or "polish off" the remainder. This design is driven by economic rather than technical considerations (*i.e.*, the CFB combustor alone could achieve a 98% SO_2 removal rate but the operating cost would be greater).

Another addition to the CFB combustion technology is that the proposed project would use a selective non-catalytic reduction system to further reduce NO_X emissions. Aqueous ammonia, the reagent for this system, would be injected into the CFB combustor exhaust gas to convert NO_X emissions to nitrogen gas and water via a chemical reduction reaction. Atmospheric emissions of ammonia can occur if the amount supplied to reduce NO_X in the flue gas is not used up (ammonia slip). However, excess ammonia in the stack gas can typically be reduced by optimizing the amount of ammonia that is injected. For the proposed project, stack emissions of

ammonia slip would not exceed 40 ppm.

A CFB combustor has several advantageous operating characteristics that differentiate it from more conventional technologies. Because the fuel and sorbent being added represent only a small fraction of the total fuel and sorbent available in the bed, the combustor reacts more slowly to variations in fuel or sorbent quality. Steam characteristics and furnace temperatures are more uniform, which usually results in easier operation, fewer upset conditions and emission spikes, and more consistency in the quality of combustion ash. As a consequence of bed fluidization and recycling of particles back to the lower portion of the combustor, enhanced mixing is achieved at more uniform temperatures, which allows more complete combustion and sorbent reaction. Another advantage of the combustor is the efficient transfer of heat due to the physical contact between the particles in the bed and the heat exchanger tubes in the walls. The technology also has lower operating and maintenance costs and a shorter "down time" for maintenance than conventional coal-fired technologies.

During the demonstration, Unit 2 would be operated on several different types and blends of coal and petroleum coke to explore the flexibility of the CFB technology. The coal would be transported by ship (from areas such as Columbia and Venezuela), by train (primarily from the central Appalachian region such as West Virginia and eastern Kentucky), and by a combination of train and ship (train from West Virginia and eastern Kentucky to Newport News, Virginia, and ship from Newport News to Jacksonville). The petroleum coke would be transported by ship from oil refineries in Venezuela and the Caribbean region. Limestone for the CFB combustor probably would be transported by ship from the Caribbean region and the Yucatan Peninsula of Mexico.

Alternatives

Congress directed DOE to pursue the goals of the CCT Program by means of partial funding of projects owned and controlled by nonfederal-government sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted because the agency must focus on alternative ways to accomplish its purpose that reflect both the application before it and the function the agency plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

Based on the foregoing principles, the only reasonable alternative to the proposed action is the no-action alternative, including three scenarios that could reasonably be expected to result as a consequence of the no-action alternative. Other alternatives that did not meet the goals and objectives of the CCT Program or of the applicant were dismissed from further consideration.

Proposed Action

The Department's proposed action is to provide approximately $73 million (about 24% of the total cost of approximately $309 million) for the design, construction, and operation of facilities to demonstrate CFB combustion technology at JEA's Northside Generating Station in Jacksonville, Florida. The new CFB combustor would use coal and petroleum coke to generate nearly 300 MW of electricity by repowering the existing Unit 2 steam turbine (the 297.5–MW unit that has been out of service since 1983). In doing so, the proposed project is expected to demonstrate emission levels of SO_2, NO_X, and particulate matter that would be lower than Clean Air Act limits while at the same time producing power more efficiently and at less cost than conventional technologies using coal. The proposed project would demonstrate CFB technology for electric power generation at a size sufficient to allow utilities to make decisions regarding commercialization of the technology.

In addition, JEA plans to repower the currently operating Unit 1 steam turbine without cost-shared funding from DOE. The Unit 1 steam turbine would be essentially identical to the turbine for Unit 2 and would be repowered about 6 to 12 months after the Unit 2 repowering. Although the proposed project consists of only the Unit 2 repowering (because DOE would provide no funding for the Unit 1 repowering), the JEA EIS evaluates the Unit 1 repowering as a related action.

JEA's management has established a target of a 10% reduction in annual stack emissions of each of 3 pollutants (SO_2, NO_X, and particulate matter) from Northside Generating Station (Units 1, 2, and 3), as compared to emissions during a recent typical 2-year operating period (1994–95) of the station (Units 1 and 3). Also targeted for a 10% reduction is the total annual groundwater consumption of Northside Generating Station, as compared to 1996 levels. These reductions are to be accomplished while increasing the total annual energy output of the station.

JEA, the project participant, is responsible for obtaining all applicable permits for the proposed project and would comply with all applicable laws, regulations, and ordinances. JEA plans to enter into a contract with Foster Wheeler Corporation, which would perform the design, engineering, procurement, and construction of the CFB combustor and air emissions control equipment. JEA and Foster Wheeler conceived and proposed the technology in response to the DOE solicitation under the CCT Program; DOE's role is limited to providing the cost-shared funding for the proposed project. In addition, DOE and JEA have different objectives to be attained through the proposed project: DOE's objective is to demonstrate CFB technology, while JEA's intent is to meet its future demand for electricity.

No Action

Under the no-action alternative, DOE would not provide cost-shared funding for the proposed CFB combustor project. The Programmatic EIS for the CCT Program (DOE/EIS–0146) evaluated the programmatic consequences of no action. Under the no-action alternative for the proposed project, three reasonably foreseeable scenarios could result.

First, JEA could repower the existing Unit 2 steam turbine without DOE funding, thereby accepting more of the financial risk associated with demonstrating the CFB combustor (at its own risk, JEA has in fact begun initial construction activities without DOE funding). JEA would also proceed with the related action of repowering Unit 1. Under this scenario, construction materials and activities and project operations would be the same as for the proposed project. The same amount of electricity would be generated. Fuel requirements would be similar except that the blend of coal to petroleum coke might be slightly different, particularly during the first 2 years of operation. Under this scenario, more of the solid fuel used could be petroleum coke.

Second, rather than repowering Unit 2, JEA could construct and operate a new gas-fired combined cycle facility at Northside Generating Station or at one of its other existing power plants. The natural gas would drive a gas combustion turbine and the heat from combustion would be used to produce steam that would drive a steam turbine. Based on modeling projections by JEA, the facility would be expected to generate approximately 230 MW of electricity.

Under this scenario, Northside Unit 1 would remain in its current oil-and gas-fired configuration, and JEA would not proceed with the related action of repowering Unit 1. Based upon the projected cost of natural gas and the combined cycle unit efficiency, the cost of generating electricity at the new combined cycle facility was projected to be in the same range as the existing oil-fired units. This resulted in the new combined cycle unit being projected to operate at about a 60% capacity factor. (the percentage of electricity actually generated by a unit during a year compared with the unit's maximum capacity). The difference in generating output between the proposed combined cycle unit operating at a 60% capacity factor and the two proposed CFB combustors operating at a 90% capacity factor would be supplied by operating the existing units at higher capacity factors, by purchasing electricity from other utilities, or most likely by a combination of these two options. If the existing Northside units were to remain operating at their historical levels, then the addition of a combined cycle unit would result in an increase in JEA emissions. The more likely scenario is that the existing units would operate at higher capacity factors than in recent years, resulting in a larger increase in emissions compared with historical levels and an even larger increase of most pollutants compared with JEA emissions expected following the repowering of Units 1 and 2 with CFB combustors. Therefore, even though air emissions of most pollutants from the combined cycle facility alone would be less than corresponding emissions from a CFB combustor alone, the emissions from the existing oil-fired units would result in greater overall emissions under the combined cycle facility scenario.

Construction activities and operations would be similar for the gas-fired combined cycle facility and the CFB combustors but with notable differences related to fuel, sorbent, and ash handling and storage facilities. Under the combined cycle facility scenario, natural gas would be delivered by pipeline; no coal, petroleum coke, limestone, or lime would be used. No combustion ash would be generated. This scenario would not contribute to the CCT Program goal of demonstrating advanced, more efficient, economically feasible, and environmentally acceptable coal technologies.

Third, rather than repowering Unit 2, JEA could purchase electricity from other utilities to meet JEA's projected demand. Under this scenario, no construction activities or changes in current operations would occur within the JEA system of power plants, including Northside Generating Station. JEA would not proceed with the related action of repowering Unit 1. There could be construction activities or changes in operations at the other utilities providing electricity to JEA if the needed electricity capacity were not already available.

This scenario would not contribute to the CCT Program goal, would not provide employment for construction workers in the Jacksonville area, and would not result in reductions of atmospheric emissions or groundwater use at Northside Generating Station. Moreover, existing Units 1 and 3 might be required to operate at capacity factors greater than historical levels if JEA were unable to purchase sufficient electricity from other utilities. Under those circumstances, annual air emissions and groundwater consumption would increase.

Major Environmental Impacts and Mitigation Measures

Potential impacts that could result from construction and operation of the proposed project are evaluated in the JEA EIS for resource areas including air quality, surface water, groundwater, floodplains and wetlands, ecological resources, noise, transportation, solid waste, and cultural and socioeconomic resources. The following summary provides key findings for areas of potential concern.

Air Quality

A computer-based air dispersion model was used to estimate maximum increases in ground-level concentrations of SO_2, nitrogen dioxide (NO_2), and particulate matter that would occur at any location as a result of emissions from the CFB combustor and limestone dryers for the proposed project (the Unit 2 repowering). Results indicate that maximum modeled increases are always less than 15% of their corresponding Prevention of Significant Deterioration (PSD) Class II increments (standards in the ambient air for increases in pollutant concentrations). One set of allowable increments exists for Class II areas, which cover most of the United States, and a much more stringent set of allowable increments exists for Class I areas, which include many national parks, monuments, and wilderness areas. Maximum concentrations generally occur at locations along, or very close to, the site boundary, often within 0.6 mile of the proposed CFB combustor stack. Dispersion of pollutants would reduce atmospheric concentrations at the nearest PSD Class I areas (more than 30 miles from the proposed facility) to only a small fraction of the maximum modeled increases near the site. The increases in pollutant concentrations at the nearest PSD Class I areas would be expected to be only small fractions of the corresponding Class I increments.

The combination of the proposed project and related action would result in emissions from the new 495-ft twin-flued stack that would be twice those considered in the analysis of the proposed project alone. However, as part of the related action, the elimination of emissions from the existing 250-ft stack serving Unit 1 would more than compensate for the added emissions. Compared to existing emissions at Northside Generating Station, a net decrease in maximum hourly emissions of SO_2, NO_X, and particulate matter would result from the addition of the repowered Unit 2 and the limestone dryers and the replacement of the existing Unit 1 with the repowered Unit 1. Therefore, a decrease in ground-level concentrations of these pollutants would be expected most of the time at most locations in the surrounding area (the overall effect would be beneficial). However, pollutant concentrations would not decrease for all averaging times at all locations; maximum ground-level concentrations at some locations could increase because the characteristics and location of the proposed new stack would be different from those of the stack currently serving Unit 1. The net impacts could be positive or negative on any particular day at any particular location.

Air dispersion modeling also was used to evaluate maximum adverse impacts possible from the proposed project in conjunction with the related action. Maximum modeled increases in ground-level concentrations are very similar to those for the proposed project alone. Maximum increases are always less than 15% of their corresponding Class II increments. Because the nearest PSD Class I areas are more than 30 miles away, pollutants from Northside Generating Station would be well mixed in the atmosphere, and stack characteristics would have little effect on ground-level pollutant concentrations in these areas. Therefore, a net decrease in pollutant emissions resulting from the proposed project in conjunction with the related action would be expected to improve air

quality, albeit by a very small amount, at the nearest PSD Class I areas.

Regarding potential cumulative air quality impacts, results of modeling regional sources and the proposed project indicate that no exceedances of national or state ambient air quality standards would be expected if the proposed project were implemented. Florida standards are the same as the National Ambient Air Quality Standards (NAAQS) except for annual and 24-hour standards for SO_2, for which the Florida standards are more stringent. During the 6-to 12-month transition period before the Unit 1 repowering, the 24-hour average SO_2 concentration is estimated to be as high as 97% of the corresponding Florida standard. This large concentration results from aerodynamic downwash effects caused by the proposed 200-ft tall combustor structure that would induce downward motion on the exhaust gas emitted from the 250-ft stack serving the existing Unit 1 and the 350-ft stack serving the existing Unit 3 (exhaust gas from the proposed 495-ft CFB combustor stack would not be subjected to appreciable downwash because the stack is taller). During the 6- to 12-month transition period before the Unit 1 repowering, JEA has committed to reduce maximum hourly SO_2 emissions from the existing Unit 1 by nearly 93% when operations commence for the proposed project. This reduction, which would be accomplished by using natural gas and fuel oil with an SO_2 emission rate averaging no more than 0.143 lb/MBtu (effectively, a blend with a sulfur content averaging no more than 0.13%), would assure that the maximum 24-hour average SO_2 concentration would not exceed the Florida standard.

Estimated SO_2 concentrations for other averaging periods are less than 60% of their respective standards. The annual average NO_2 concentration is less than 40% of its NAAQS. The 24-hour and annual averages of particulate matter are less than 65% of the NAAQS, even though ambient background particulate concentrations for both averaging periods are over 40% of the NAAQS.

Results of modeling regional sources and the proposed project in conjunction with the related action of repowering the existing Unit 1 indicate that maximum concentrations are always less than corresponding concentrations without the related action. For example, the 24-hour average SO_2 concentration for regional sources and the proposed project in conjunction with the related action is 91% of the Florida standard, compared to 97% for regional sources and the proposed project without the related action.

Ozone (O_3) concentrations during 1993–97 at the nearest monitor located about 5 miles north-northwest of Northside Generating Station were always less than 90% of the 1-hour NAAQS. Because changes in NO_X and volatile organic compound (VOC) emissions from the proposed project alone or in conjunction with the related action would be less than 1% of emissions in Duval County, they would not be expected to lead to any exceedances of the 1-hour NAAQS for O_3 at that monitoring location.

Regarding toxic air pollutants, findings indicate that the proposed project alone or in conjunction with the related action would not lead to any exceedances of, or close approaches to, guideline values for noncarcinogenic effects from toxic materials. Further, including both the inhalation and ingestion pathways, the maximum annual cancer risk to a member of the public resulting from dioxins, furans, and other carcinogenic substances emitted during operations was estimated to be less than 1 in 1 million (risk from lifetime of exposure estimated to be less than 3 in 100,000); given the upper-bound assumptions in the estimate, the risk would probably be less.

Water Resources

Because Unit 2 has not operated since 1983, the proposed project would increase the demand for cooling water. After Unit 2 is repowered, the demand by the entire 3-unit plant would be approximately the same as when the three units operated together from approximately 1978 until 1980. The sustained flow of the back channel of the St. Johns River would not be depleted by this diversion because nearly all of the withdrawn cooling water would be returned to the river after passing through the condensers. The amount of heat discharged to the St. Johns River would also increase as a consequence of the proposed project. However, the size of the thermal plume would not increase because simultaneous operation of all three units would increase the discharge velocity and enhance mixing.

Operation of the proposed project would reduce by 10% the groundwater consumption from the upper Floridan aquifer by Northside Generating Station, which would decrease the rate of decline of the potentiometric surface of that aquifer. As a result, more groundwater would be available to local users, and water quality of the aquifer would be stabilized because of reduced influx of brackish or saline groundwater from deeper aquifers.

Floodplains and Wetlands

No impacts from flooding would be expected to occur, and proposed activities would have a negligible effect on floodplain encroachment. A category 3, 4, or 5 hurricane in Jacksonville is a low-probability event that, if it occurred, would have serious consequences for Northside Generating Station. Although the effects of storm surge and waves that would occur along the beaches would partially be mitigated at Northside Generating Station by (1) its inland location, (2) the presence of the beach ridge along the dune line, and (3) Blount Island, the first floor of the station could be inundated by this unlikely event.

Ecological impacts to wetlands from the proposed project would be minor because no more than 1.8 acres of isolated hardwood wetland habitat would be lost during construction of the ash storage area, and disturbance of salt marsh habitats during construction of the solid fuel delivery system would be negligible. Wetlands associated with the upper salt marsh communities would not be measurably affected because nearly all of the conveyor system for solid fuel delivery would span these habitats using existing structures and would involve no clearing or earthmoving activities. Although some pilings might need to be installed at the upper fringes of the salt marsh and in San Carlos Creek, any impacts resulting from piling installation would be very localized and temporary and should not measurably affect the normal structural and functional dynamics of the salt marsh and nearby estuarine ecosystems.

As a mitigation measure to offset the loss of 1.8 acres of wetlands, JEA would purchase slightly greater than 3 acres of wetlands from an offsite mitigation bank and would restore 1 acre of salt marsh, which together would result in a net gain in the amount of wetlands. In addition, JEA plans to set aside and preserve 15 acres of undisturbed, uplands maritime oak hammock along the west bank of San Carlos Creek. By preserving the land, JEA would maintain habitat for wildlife, help protect the water quality of the creek, and leave a high-quality forested buffer area in a developing industrial area.

Ecological Resources

With regard to threatened and endangered species, manatees are of the most concern. Impacts on this species from construction of a new fuel and limestone unloading dock are unlikely because manatees probably would not regularly frequent the dock area due to the paucity of submerged vegetation such as seagrasses and emergent cordgrasses in the immediate vicinity of the dock. Potential impacts resulting from operational activities such as docking of vessels would also be unlikely. The potential for manatees to be trapped and pinned between the dock and a vessel are minimal because the dock would be supported by widely spaced support pilings rather than consisting of one long continuous structure. Because manatees generally avoid swift currents and prefer slow-moving or stagnant water, they would not frequent the main discharge area in the back channel of the St. Johns River where currents are relatively swift. In addition, it is very unlikely that all units for both the St. Johns River Power Park and Northside Generating Station would be shut down simultaneously, thereby minimizing the probability that manatees would be harmed by a cold shock event.

Four or five juvenile loggerhead, Kemps Ridley, and/or green sea turtles (a listed endangered species) became trapped in the Northside Generating Station intake basin on one occasion during summer 1997 (the turtles were released unharmed). In order to prevent any further occurrences of juvenile turtles entering the intake structure, where they might become trapped, JEA installed on the intake trash rakes a finer grid of mesh bars (welded wire screen on 6-in. centers contrasted to the old 12-in. centers). The denser grid has excluded turtles of sizes similar to those observed from entering the intake basin and becoming trapped.

Cultural Resources

Because the area in the vicinity of the proposed project is rich in archaeological resources and the excavation of undisturbed land could affect important archaeological artifacts, both a cultural resources assessment survey of the proposed project site and a follow-up Phase II investigation were conducted. These studies found that there are no potentially significant historic or archaeological sites located in the area that would be disturbed by the proposed project. Under the terms of the Submerged Lands & Environmental Resource Permit that would be issued by the Florida Department of Environmental Protection (FDEP), JEA would be required to notify the appropriate agencies [the St. Johns River Water Management District, the FDEP, and the State Historic Preservation Officer] immediately upon discovery of any archaeological artifacts on the project site [Rule 62–330.200(2)(c), Florida Administrative Code].

Socioeconomic Resources and Environmental Justice

Construction and operation of the proposed project would not result in major impacts to population, employment, income, housing, local government revenues, or public services in Duval County. The percentage of Blacks and Asians in Duval County is greater than for Florida as a whole. Because there are relatively few people in poverty or Blacks and Asians living in the census tracts surrounding the proposed site, no disproportionately high and adverse impacts to low income or minority populations would occur. In particular, because of the relatively low number of minority and low-income residents in the vicinity of the proposed project, very few members of these groups would experience the adverse effects associated with increased road and rail traffic and related noise.

Transportation

Construction-induced traffic during the peak traffic hour would not exceed available capacity except for the section of Heckscher Drive from State Route 9A to Drummond Point (just west of Eastport Road). Without mitigation the congestion experienced on this segment would be significant. Accordingly, JEA has committed to encourage carpooling and suggest alternate routes to and from the site. The increased traffic would also result in noticeable congestion on New Berlin Road, especially at the intersection of Ostner and New Berlin Roads. To avoid a significant impact, JEA has committed to monitor traffic at the above-mentioned intersection and to place a police officer at the intersection to direct traffic during peak times, if needed. Should the presence of a police officer prove inadequate to control project-induced traffic, JEA has further committed to pursue authorization of a temporary traffic signal at that intersection.

Based on current projections, marine transportation would be the most economic means of delivering solid fuel and limestone for the proposed project. Consequently, no more than one 90-car train per week would be required to transport coal for the proposed project, and this could be offset by decreased rail deliveries and corresponding increased waterborne deliveries for operations at the St. Johns River Power Park. However, in the less likely event that all necessary coal would be transported by rail, up to 3 additional trains per week would be required for a total of 6 new one-way trips by 90-car unit trains. If all coal were transported by train, the 6 new one-way train trips per week would exacerbate impacts associated with noise, vibration, and blocked roads at on-grade rail crossings resulting from existing train traffic. These impacts are a source of concern for residents of Panama Park, North Shore, and San Mateo. Project-induced train traffic would increase total movement on the CSX line paralleling U.S. 17 by about 5% and would increase traffic on the spur line from U.S. 17 to the St. John River Power Park and Blount Island by approximately 8%. Additional train traffic could be minimized by relying more heavily on barges and ships for coal transport. As mentioned earlier, economic projections indicate that the marine fuel delivery mode is more likely.

Noise

During construction of the proposed project, noise levels would increase from the present operational levels. Construction would primarily occur adjacent to the existing turbine building. The noisiest periods of construction would be during steam blowouts and during the operation of a pile driver and other construction equipment. Except possibly during steam blowouts and possibly during operation of equipment used to construct a nearby segment of a conveyor, construction noise should not appreciably change the background noise of nearby residences, interfere with outside voice communications, or exceed the limitations of Rule 4, Noise Pollution Control, promulgated by the Jacksonville Environmental Protection Board (1995). This rule limits daytime construction noise levels to 65 dB(A) at residential property.

JEA likely would perform continuous, low-pressure, high-velocity steam blowouts. Although this activity would be conducted around the clock, noise levels at the nearest residences should be below levels of concern, because this type of blowout, uses low-pressure steam rather than high-pressure steam. However, because JEA's steam blowout plan has not been finalized, JEA has committed to installing mufflers if high-pressure steam blowouts are conducted, or, if mufflers are not installed, JEA has committed to measuring the noise levels at the nearest residences and ensuring that the levels would conform to the Noise Pollution Control ordinance limits.

The project-induced increased movement of trains through the local area would be accompanied by high-decibel train whistles and rattling rail cars. Train noise is a source of concern for residents of Panama Park, North

Shore, and San Mateo. One local resident has reported the level of train whistles as being 108 dB(A) and the level of rattling rail cars as being up to 85 dB(A). As mentioned in the transportation section above, additional train noise could be minimized by relying more heavily on barges and ships for coal transport.

Waste Management

The preferred alternative for management of the combustion ash would be to sell it as a by-product to offsite customers. An aggressive marketing program would be implemented to maximize the quantity sold. If more than approximately 70% of the ash could be sold over the 30-year lifetime of Northside Generating Station, the 40-acre storage site would be sufficient for complete containment, and disposal of the material would not be an issue. Additional permanent disposal space would be required if JEA cannot sell more than 70% of the ash. In the unlikely event that none can be sold, an additional 80 to 100 acres of disposal space would be required over the 30-year operating life of the facility. If additional space were required, potential locations for disposal include the property directly north of the Northside property, available land at the St. Johns River Power Park, and existing offsite landfills. Four large landfill sites that are permitted to dispose of nonhazardous industrial wastes have been identified in northeastern Florida and southeastern Georgia.

No-Action Alternative

Under the no-action alternative, DOE would not provide cost-shared funding for the proposed project; three reasonably foreseeable scenarios could result (see Alternatives above). Under the first scenario, in which JEA would repower the existing Unit 2 steam turbine without DOE funding, environmental impacts would generally be very similar to those of the proposed project. However, more of the solid fuel used could be petroleum coke, which would be brought to the site by waterborne transport. If current projections about the economic advantages of marine transportation change and rail transport is the primary means of moving coal to the project site, the increased use of petroleum coke under this scenario would result in less train traffic and more marine traffic to deliver the fuel as compared with the proposed project. As a result, there would be fewer train trips through the neighborhoods in the vicinity of Northside Generating Station, which would reduce potential problems with noise, vibration, and blocked roads at on-grade rail crossings.

Under the second scenario, in which JEA would construct and operate a new gas-fired combined cycle facility at Northside Generating Station or at one of their other existing power plants, there would be no train, marine, or truck traffic associated with fuel and sorbent delivery. No combustion ash would be generated and there would be no truck traffic to remove ash from the site. Consequently, impacts related to traffic noise and disruptions would be minimized. Air emissions would be expected to increase compared with historical levels because of the operation of the combined cycle facility in addition to the existing Northside units operating at the same or higher capacity factors. Therefore, air emissions under this scenario would generally be greater than those for the proposed project. Changes in concentrations of pollutants in the ambient air would depend on the location and project-specific nature of the facility (*e.g.*, stack height and exit temperature and velocity). Impacts to cultural resources could be less if there were less disruption to construct conveyors and other facilities on previously undisturbed land; conversely, impacts could be greater if more onsite and/or offsite land were disturbed because of a need to construct or upgrade a pipeline supplying natural gas to the facility.

Under the third scenario, in which JEA would purchase electricity from other utilities to meet JEA's projected demand, there would be no change in current environmental conditions at the site, and the impacts would remain unchanged from the baseline conditions. It is possible that existing Units 1 and 3 would operate at capacity factors greater than historical levels if JEA were unable to purchase sufficient electricity from other utilities. Consequently, annual air emissions and groundwater consumption would increase. In addition, some impacts to resources could result in the geographical area of the other utilities, particularly if a new facility were built to meet the JEA demand or if additional fuel were transported to the other site or sites to generate additional electricity. The level of any such impacts would depend on the project-specific characteristics of any facility construction, the fuel required by the facility, and the affected resources in the area.

Environmentally Preferred Alternative

The environmentally preferred alternative would likely be the first scenario under the no-action alternative. This scenario is nearly identical to the proposed project [*e.g.*, in both cases there would be a 10% reduction in annual stack emissions of each of 3 pollutants (SO_2, NO_X, and particulate matter) from Northside Generating Station and a 10% reduction in the total annual groundwater consumption of the station]. Consequently, under the first scenario, environmental impacts would be very similar to those of the proposed project except that there could be less train traffic and more ship and barge traffic to deliver the fuel because more of the solid fuel used could be petroleum coke. Assuming that there would be fewer train trips, the potential impacts associated with train noise, vibration, and blocked crossings would be reduced under the first scenario.

Under the second scenario of the no-action alternative, even though air emissions of most pollutants from the combined cycle facility alone would be less than corresponding emissions from a CFB combustor alone, the emissions from the existing oil-fired units would result in greater overall emissions compared to those of the proposed project. This environmental drawback would tend to outweigh the scenario's environmental benefits (*e.g.*, no train-, ship and barge-, or truck-related noise from traffic associated with fuel and sorbent delivery or ash removal).

The third scenario of the no-action alternative would not result in reductions of atmospheric emissions or groundwater use at Northside Generating Station. Moreover, there could be potential impacts from construction activities or changes in operations at the other utilities providing electricity to JEA if the electricity were not already available. Therefore, this scenario is not considered the environmentally preferred alternative.

Comments on the Final EIS

DOE received comments from the Marine Mammal Commission; the Florida Department of Transportation; the Florida Department of State, Division of Historical Resources; the United States Environmental Protection Agency (EPA), Region 4; and a member of the local community.

The Marine Mammal Commission expressed concern about potential harm to northern right whales from collisions with ocean-going vessels, and recommended that DOE consult with the National Marine Fisheries Service to assess what mitigation measures might be needed to protect northern right whales from injuries due to project-related vessel traffic. The Commission also expressed concern about potential harm to manatees during routine delivery of fuel to the plant, and recommended that DOE consult with the U.S. Fish and Wildlife Service to determine whether the use of propeller guards should be required to protect manatees.

In regard to the protection of northern right whales from collisions with project-related vessels, approximately 50 to 60 ocean-going vessels are expected to deliver solid fuel, fuel oil, and limestone to Northside Generating Station annually after both units are repowered. In comparison, about 65 vessels delivered fuel oil to the station in 1998. However, some of these vessels were smaller river barges that did not enter into the Atlantic Ocean, which contains critical habitat for northern right whales from the shoreline out to as far as 15 nautical miles. As an upper-bound estimate, the annual increase in traffic in the Atlantic Ocean after both units are repowered would be about 50 vessels, which is less than 2.5% of the 2,047 round-trips made by vessels traveling between the St. Johns River and the Atlantic Ocean in 1999. The ocean-going vessels are not expected to travel at speeds greater than about 12 knots. Because (1) the trips (about 1 per week) would be relatively infrequent, (2) the number of trips would be a small percentage of current traffic, and (3) the vessels would travel slower than the threshold speed of 14 knots above which most serious injuries to whales occur, no mitigation measures would be necessary to protect northern right whales from collisions with project-related vessels. Staff with the National Marine Fisheries Service have concurred with this assessment.

In regard to the use of propeller guards to protect manatees from vessels delivering fuel to Northside Generating Station, currently propeller guards are not used on vessels in the St. Johns River. However, with the implementation of the mitigation measures discussed in the EIS (*e.g.*, the dock design would allow sufficient space between vessels and the dock structure such that manatees could easily avoid being trapped), it is unlikely that the proposed project would cause harm to a significant number of manatees, even without propeller guards on project-related vessels. Staff with the U.S. Fish and Wildlife Service have concurred with this assessment.

The Florida Department of Transportation stated that the project may have a direct impact on the State Transportation System and requested that JEA submit all site plans and access plans to the Jacksonville permit engineer. JEA has contacted the Jacksonville permit engineer cited in the comment and both parties agree that, because project-related construction would not occur along Heckscher Drive and because the only access for construction personnel would be located at the New Berlin Road entrance to the facility, JEA is not required to submit site plans and access plans for the proposed project to the Florida Department of Transportation.

The Florida Department of State, Division of Historical Resources stated that the JEA EIS addresses their concerns in regard to the potential impact on historic properties listed, or eligible for listing, in the National Register of Historic Places. The Division of Historical Resources also stated their opinion that no historic resources would be affected by the proposed action.

The U.S. EPA, Region 4, stated that their initial comments/concerns on the draft EIS have been satisfactorily addressed and that they appreciate the mitigation measures that JEA has agreed to employ in order to address potential impacts. EPA further stated that they continue to have environmental concerns about potential process releases and project impacts. DOE believes that by implementing the mitigation measures described in this Record of Decision it will address EPA's concerns.

A member of the local community expressed concerns regarding groundwater use, particulate emissions, and construction worker safety. Regarding groundwater use, as discussed above under Water Resources, JEA has committed to a 10% reduction in total annual groundwater consumption at Northside Generating Station after Units 1 and 2 are repowered (as compared to 1996 levels). Similarly for particulate emissions (see Air Quality above), JEA has established a target of a 10% reduction in annual stack emissions of particulate matter from Northside Generating Station (Units 1, 2, and 3), as compared to emissions during a recent typical 2-year operating period (1994–95) of the station (Units 1 and 3). These reductions are to be accomplished while increasing the total annual energy output of the station. In regard to the concerns expressed about construction worker safety, DOE believes that this concern reflects an accident that occurred in July 2000, while JEA was constructing (at its own risk) the solid fuel storage dome associated with the proposed project. In the response to the accident, JEA completed a root cause analysis to ensure that worker safety is not compromised. The analysis concluded that wind speeds during the incident exceeded the design threshold of the dome anchoring system during construction. Consequently, the construction process has been redesigned to use additional anchors and to delay installation of most of the dome covering until after the entire structural frame is permanently anchored.

Decision

DOE will implement the proposed action of providing approximately $73 million in cost-shared federal funding support to design, construct, and demonstrate the CFB technology proposed by JEA. The project is intended to demonstrate the combined removal of SO_2, NO_X, and particulate matter in a promising technology that is ready to be commercialized within the range that is most desired by utilities (250 to 400 MW). The project is expected to generate sufficient data from design, construction, and operation to allow private industry to assess the potential for commercial application of the CFB technology. This decision to provide cost-shared funding for the proposed project was made after careful review of the potential environmental impacts, as analyzed in the EIS.

Mitigation Action Plan

In accordance with § 1021.331(a) of the DOE NEPA regulations, DOE will prepare a Mitigation Action Plan that addresses mitigation commitments expressed in this ROD. Copies of the Mitigation Action Plan may be obtained from Dr. Jan Wachter, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone: (412) 386–4809.

Issued in Washington, D.C., on this 29th day of November, 2000.

Robert S. Kripowicz,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 00–31160 Filed 12–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration

AGENCY: Department of Energy.

ACTION: Issuance of the Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications

Involving Research, Development and Demonstration.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its intention to issue the Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration (herein referred to as Broad Based Solicitation), DE–PS36–01GO90000.

DATES: Supplemental Announcements to the Broad Based Solicitation will be issued throughout the year. Each Supplemental Announcement will contain technology specific information, anticipated programmatic funding levels, any specific eligibility requirements, any specific application instructions, evaluation criteria, any cost sharing requirements, Program Policy Factors, application deadlines, and any other requirements specific to obtaining Financial Assistance Awards.

ADDRESSES: Copies of the Fiscal Year 2001 Broad Based Solicitation, consisting of the first part and all Supplemental Announcements, will be posted on the DOE Golden Field Office Home Page at http://www.golden.doe.gov/businessopportunities.html, under "Solicitations."

SUPPLEMENTARY INFORMATION: Under this announcement, the U.S. Department of Energy (DOE) is announcing its intention to issue the Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration (herein referred to as Broad Based Solicitation), DE–PS36–01GO90000. The Broad Based Solicitation expresses the Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy's (EERE), continuing interest in receiving Applications for Financial Assistance Awards (Grants and Cooperative Agreements) in support of renewable energy and energy efficiency basic research, applied research, cooperative demonstrations, and related activities. The Broad Based Solicitation will consist of two parts: the first part which establishes guidelines and requirements for submitting Applications in response to individual Supplemental Announcements; the second part will consist of individual Supplemental Announcements and will be specific to designated technology areas of interest. These individual Supplemental Announcements will contain technology specific information, anticipated programmatic funding levels, any specific eligibility requirements, any specific application instructions, evaluation criteria, any cost sharing requirements, application deadlines, and any other requirements specific to obtaining Financial Assistance Awards. The Broad Based Solicitation, consisting of the first part and all Supplemental Announcements, will be posted on the DOE Golden Field Office Home Page at http://www.golden.doe.gov/businessopportunities.html, under "Solicitations."

DOE intends to issue Supplemental Announcements to this document throughout Fiscal Year 2001. Each Supplemental Announcement will be posted on the Golden Field Office Home Page. A notice to release Supplemental Announcements will be published in the **Federal Register** and, if appropriate, in the Commerce Business Daily or other publications. Any application that is submitted in response to this Broad Based Solicitation must also be in direct response to a specific Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: All questions concerning the Broad Based Solicitation must be submitted in writing to: Ruth E. Adams, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393 or transmitted via facsimile to Ruth E. Adams at (303) 275–4788, or electronically to ruth_adams@nrel.gov. Responses to questions will be made by Amendment to this Broad Based Solicitation and posted on the DOE Golden Field Office Home Page. Questions specific to individual Supplemental Announcements should be directed to the point of contact indicated in the Supplemental Announcement, and answers will be posted as Amendments to the Supplemental Announcement on the Golden Field Office Home Page.

Issued in Golden, Colorado, on November 22, 2000.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 00–31161 Filed 12–6–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science; Continuation of Solicitation for the Office of Science Financial Assistance Program—Notice 01–01

AGENCY: Department of Energy.

ACTION: Annual notice of continuation of availability of grants and cooperative agreements.

SUMMARY: The Office of Science of the Department of Energy hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Advanced Scientific Computing, Fusion Energy Sciences, Biological and Environmental Research, and Energy Research Analyses. On September 3, 1992, (57 FR 40582), DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program (now called the Office of Science Financial Assistance Program), 10 CFR part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR part 605.

DATES: Applications may be submitted at any time in response to this Notice of Availability.

ADDRESSES: Applications must be sent to: Director, Grants and Contracts Division, Office of Science, SC–64, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. When preparing applications, applicants should use the Office of Science Financial Assistance Program Application Guide and Forms located on the World Wide Web at http://www.science.doe.gov/production/grants/grants.html. Applicants without Internet access may call 301–903–5212 for information.

SUPPLEMENTARY INFORMATION: This notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science, usually published after the beginning of the fiscal year. This annual Notice 01–01 succeeds Notice 00–01, which was published November 5, 1999.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in FY 2001. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

In addition, the following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science areas and their objectives are as follows:

(a) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, condensed matter physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences.

Program Contact: (301) 903–5804.

(c) Engineering Research

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output performance, and environmental quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Long-term research topics of current interest include: foundations of bioprocessing of fuels and energy related wastes, micro- and nano-scale energy transport, fracture mechanics, fundamental studies of multiphase flows and heat transfer, robotics and intelligent machines, nanotechnology, and diagnostics and control for plasma processing of materials.

Program Contact: (301) 903–3427.

(d) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of those geologic processes related to energy and environmental quality. The emphasis is on disciplinary areas of geophysics, geomechanics, hydrogeology and geochemistry with a focus on the upper levels of the earth's crust. Particular emphasis is on rock-fluid systems and interactions emphasizing processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: High resolution geophysical imaging; rock physics, physics of fluid transport, and fundamental properties and interactions of rocks, minerals, and fluids.

Program Contact: (301) 903–5804.

(e) Energy Biosciences

The primary objective of this program is to generate the fundamental understanding of biological mechanisms in the areas of botanical and microbiological sciences that will support technological developments related to DOE's mission. The research serves as the basic information foundation with respect to an environmentally responsible renewable resource production for fuels and chemicals, microbial conversions of renewable materials and biological systems for the conservation of energy. This program has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the program regarding these requirements.

Program Contact: (301) 903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: Experimental research, theoretical research, and technology R&D in support of the high energy physics program.

Program Contact: (301) 903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

Program Contact: (301) 903–3613.

3. Advanced Scientific Computing Research

This program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

Mathematical, Information, and Computational Sciences

This subprogram supports a spectrum of fundamental research in applied mathematical sciences, computer science, and networking from basic through prototype development. Results of these efforts are used to form partnerships with users in scientific disciplines to validate the usefulness of the ideas and to develop them into tools. Testbeds on important applications for DOE are supported by this subprogram. Areas of particular focus are:

Applied Mathematics: Research on the underlying mathematical understanding and numerical algorithms to enable effective description and prediction of physical systems such as fluids, magnetized plasmas, or protein molecules. This includes, for example, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

Computer Science: Research in computer science to enable large scientific applications through advances in massively parallel computing such as very lightweight operating systems for parallel computers, distributed computing such as development of the Parallel Virtual Machine (PVM) software package which has become an industry standard, and large scale data management and visualization. The development of new computer and computational science techniques will allow scientists to use the most advanced computers without being

overwhelmed by the complexity of rewriting their codes every 18 months.

Networking: Research in high performance networks and information surety required to support high performance applications—protocols for high performance networks, methods for measuring the performance of high performance networks, and software to enable high speed connections between high performance computers and networks. The development of high speed communications and collaboration technologies will allow scientists to view, compare, and integrate data from multiple sources remotely.

Program Contact: (301) 903–5800.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology and, thereby the knowledge base needed for an economically and environmentally attractive fusion energy source. The Office of Fusion Energy Sciences (OFES) supports basic and applied research, encourages technical connectivity with the broader U.S. science community, and uses international collaboration to accomplish this mission.

(a) Research Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program toward its goals. Research into physics issues associated with medium to large-scale confinement devices is essential to studying conditions relevant to the production of fusion energy. Experiments on this scale of devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) Reducing plasma energy and particle transport at high densities and temperatures, (2) understanding the physical laws governing confinement of high pressure plasmas, (3) investigating plasma wave interactions, and (4) studying and controlling impurity particle transport and exhaust in plasmas.

Research is also carried out in the following areas: (1) Basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) theoretical research to provide the understanding of fusion plasmas necessary for interpreting results from present experiments, planning future experiments, and designing future confinement devices; (3) critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments; (4) supporting research on innovative confinement concepts; and (5) research on issues that support the development of Inertial Fusion Energy, for which target development is carried out by the Office of Defense Programs in the Department of Energy's National Nuclear Security Agency.

Program Contact: (301) 903–4095.

(b) Facilities and Enabling Technologies Division

This Division is responsible for overseeing the facility operations and enabling research and development activity budgets within the OFES. Grant program opportunities are in the enabling research and development activity. (Grants for scientific use of the facilities operated/maintained by this Division should be addressed to the Research Division.) The enabling technologies program supports the advancement of fusion science in the nearer-term by carrying out research on technological topics that: (1) Enable domestic experiments to achieve their full performance potential and scientific research goals; (2) permit scientific exploitation of the performance gains being sought from physics concept improvements; (3) allow the U.S. to enter into international collaborations gaining access to experimental conditions not available domestically; and (4) explore the science underlying these technological advances.

The enabling technologies program supports pursuit of fusion energy science for the longer-term by conducting research aimed at innovative technologies, designs and materials to point toward an attractive fusion energy vision and affordable pathways for optimized fusion development.

Program Contact: (301) 903–3068.

5. Biological and Environmental Research Program

For over 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed to identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use.

(a) Life Sciences Research

Research is focused on using DOE's unique resources and facilities to develop fundamental biological information and advanced technologies to understand and mitigate potential health effects of energy development, energy use, and waste cleanup. The objectives are: (1) To create and apply new technologies and resources in sequencing, comparative genomics, and bioinformatics to characterize the human genome; (2) to develop and support DOE national user facilities for use in fundamental structural biology; (3) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins; (4) to characterize and exploit the genomes and diversity of microbes with potential relevance for energy, bioremediation, or global climate; (5) to understand and characterize the risks to human health from exposures to low levels of radiation; and (6) to anticipate and address ethical, legal, and social implications arising from genome research.

Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Science

The research is designed to develop beneficial applications of nuclear and other energy-related technologies for medical diagnosis and treatment. The research is directed at discovering new applications of radiotracer agents for medical research as well as for clinical diagnosis and therapy. A major emphasis is placed on application of the latest concepts and developments in genomics, structural biology, computational biology, and instrumentation. Much of the research seeks breakthroughs in noninvasive imaging technologies such as positron emission tomography. The measurement science activities focus on research in the basic science of chemistry, physics and engineering as applied to bioengineering.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

The research is primarily focused on the fundamental biological, chemical, geological, and physical processes that must be understood for the development and advancement of new, effective, and efficient processes for the remediation and restoration of the Nation's nuclear weapons production sites. Priorities of this research are bioremediation and operation of the William R. Wiley Environmental Molecular Sciences Laboratory (EMSL). Bioremediation activities are centered on the Natural and Accelerated Bioremediation Research (NABIR) program, a basic research program focused on determining the conditions under which bioremediation will be a reliable, efficient, and cost-effective technique. This subprogram also includes basic research in support of pollution prevention, sustainable technology development and other fundamental research to address problems of environmental contamination.

Program Contact: (301) 903–3281.

(d) Environmental Processes

The program seeks to understand the basic physical, chemical, and biological processes of the Earth's atmosphere, land, and oceans and how these processes may be affected by energy production and use. The research is designed to provide data that will enable an objective assessment of the potential for and consequences of global warming at global and regional scales. The program is comprehensive with an emphasis on understanding and simulating the radiation balance from the surface of the Earth to the top of the atmosphere (including the effect of clouds, water vapor, trace gases, and aerosols) and on enhancing the quantitative models necessary to predict possible climate change at global and regional scales.

The Climate Change Technology (CCT) research seeks the understanding necessary to exploit the biosphere's natural carbon sequestration processes to enhance the sequestration of carbon dioxide in terrestrial systems and the ocean and to understand its potential environmental implications. The CCT includes research that can lead to the development of approaches to reduce or overcome the environmental and biological factors or processes that limit the sequestration of carbon in these systems to enhance the net sequestration of carbon in terrestrial and ocean systems. The research includes studies on terrestrial and ocean carbon sequestration and disposal, including research to modify the carbon sequestration capacity and rate by marine and terrestrial organisms and to understand the potential environmental implications of purposeful policies intended to enhance the natural sequestration of carbon in terrestrial and marine systems and/or dispose of carbon by deep ocean injection.

Program Contact: (301) 903–3281.

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts. Consistent with these overall objectives, this program conducts numerous research studies to assess directions in science and to identify and assess new and improved approaches to science management.

Program Contact: (202) 586–9942.

7. Experimental Program To Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addresses basic research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described in this notice. The EPSCoR program is restricted to applications, which originate in nineteen states (Alabama, Alaska, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that only a limited number of new competitive research grants will be awarded under this program subject to the availability of funds.

Program Contact: (301) 903–3427.

Issued in Washington, DC on: November 30, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–31159 Filed 12–6–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–113–000]

Algonquin Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 707 and First Revised Sheet No. 708, to be effective on January 1, 2001.

Algonquin states that the purpose of this filing is to revise the phone number of the person to whom complaints should be directed regarding Algonquin's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on Algonquin's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

Algonquin states that copies of its filing has been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31130 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–114–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, Algonquin LNG, Inc. (ALNG)

tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 82, to be effective on January 1, 2001.

ALNG states that the purpose of this filing is to revise the phone number of the person to whom complaints should be directed regarding ALNG's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on ALNG's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31131 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–414–000]

Consumers Energy Company Michigan Electric Transmission Company; Notice of Filing

November 30, 2000.

Take notice that on November 13, 2000, Consumers Energy Company (Consumers) and Michigan Electric Transmission Company (Michigan Transco), tendered for filing a Michigan Transco Open Access Transmission Tariff (OATT) which is to supersede, for the most part, Consumers' OATT (Consumers FERC Electric Tariff No. 6). The revision is to reflect the proposed transfer of Consumer's transmission assets to Michigan Transco. Copies of the filing were served upon all customers under Consumers' OATT and upon the Michigan Public Service Commission.

Consumers and Michigan Transco request that the filed OATT be allowed to take effect on the date of the transfer of those assets, expected to occur approximately February 1, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or December 8, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31125 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–116–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 170, to be effective on January 1, 2001.

East Tennessee states that the purpose of this filing is to revise the phone number of the person to whom complaints should be directed regarding East Tennessee's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on East Tennessee's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31133 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1053–004]

Maine Public Service Company; Notice of Filing

December 1, 2000.

Take notice that on November 3, 2000, Maine Public Service Company (MPS), tendered for filing Original Sheet No. 196 inadvertently omitted from the open access transmission tariff filed with the Commission on October 13, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or December 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, *http://www/ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31128 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–115–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, Maritimes & Northeast Pipeline, L.L.C.; (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 301, to be effective on January 1, 2001.

Maritimes states that the purpose of this filing is to revise the title of the person to whom complaints should be directed regarding Maritimes' compliance with the Commission's gas marketing affiliate rules and to provide for the posting on Maritimes' Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

Maritimes states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims. htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31132 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–16–000]

Pontook Operating Limited Partnership, Complainant, v. Public Service Company of New Hampshire, Respondent; Notice of Complaint

December 1, 2000.

Take notice that on November 30, 2000, Pontook Operating Limited Partnership (Pontook) filed a complaint and request for relief under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e(2000), alleging that its transmission agreement with PSNH subjects it to unjust and unreasonable transmission rates in violation of section 205 of the FPA and the Commission's transmission pricing policies.

Pontook requests that the Commission (1) terminate its transmission agreement with PSNH effective November 1, 2000, or in the alternative, terminate its transmission agreement with PSNH effective immediately; (2) allow it to take transmission service under the New England Power Pool (NEPOOL) Open Access Transmission Tariff and Northeast Utilities' (NU) Open Access Transmission Tariff; and (3) order PSNH to refund to Pontook all transmission charges that Pontook paid pursuant to the Transmission agreement since the Commission's 1992 order approving PSNH's merger with NU; or in the alternative, order PSNH to refund to Pontook transmission charges that PSNH collected improperly from Pontook purportedly pursuant to the Transmission Agreement since (a) the Commission's May 1996 issuance of Order No. 888, or (b) the December 1996 filing of the NEPOOL Tariff, or (c) November 1, 2000—the natural termination date of the transmission agreement between Pontook and PSNH.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the

Public Reference Room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before December 20, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31163 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP93–148–001, et al.]

Sea Robin Pipeline Company; Notice of Compliance Filing

December 1, 2000.

Take notice that on November 6, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing, as part of its FERC Gas Tariffs, First Revised Volume No. 1 and Original Volume No.2, revised tariff sheets to comply with ordering paragraph (A) of the Federal Energy Regulatory Commission's April 1, 1993, Order Approving Abandonment in the referenced dockets. Sea Robin's tariff sheets reflect cancellation of Rate Schedules X–14, X–15, X–16, X–17, X–21, X–24, X–27, X–28, and X–32.

Sea Robin states that a copy of this filing is available for public inspection during regular business hours at Sea Robin's office at 5444 Westheimer Road, Houston, Texas 77056–5036. In addition, copies of this filing are being served on parties to the proceeding and appropriate state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 384.214 of the Commission's Rules of Practices and Procedures. All such motions or protests must be filed not later than December 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Applicant's designated contact person is Anna Cochrane at 202–293–5794. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31126 Filed 12–06–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–41–000; ER01–42–000]

Sithe Fore River Development LLC and Sithe Mystic Development LLC; Notice of Issuance of Order

December 1, 2000.

Sithe Fore River Development LLC and Sithe Mystic Development LLC (together, "Applicants") submitted for filing rate schedules under which Applicants will engage in wholesale electric power and energy transactions at market-based rates. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On November 29, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 358.211 and 385.214).

Absent a request for hearing within this period, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purpose of the Applicants, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31123 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3760–000]

Southern Company Energy Marketing L.P., et al.; Notice of Issuance of Order

December 1, 2000.

Southern Company Energy Marketing L.P., *et al.* (SCEM) submitted for filing a rate schedule under which SCEM will engage in wholesale electric power and energy transactions at market-based rates. SCEM also requested waiver of various Commission regulations. In particular, SCEM requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by SCEM.

On November 21, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SCEM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SCEM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SCEM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 21, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31124 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–553–002]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 1, 2000.

Take notice that on November 22, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain pro forma revised tariff sheets to comply with the Commission's Order issued on October 27, 2000 in Docket Nos. RM96–1–14 and RP00–553–000.

Transco states that the purpose of the instant filing is to comply with the Commission's October 27 Order in the referenced dockets to file tariff sheets within 30 days of the order describing how imbalance netting and trading will be performed on the Transco system when such trading becomes operational. Transco anticipates that it will propose to implement, among other things, imbalance netting and trading when it files to revise its tariff to reflect its new, state of the art, internet-based, service delivery computer system, 1Linesm. This new computer system will replace Transco's current computer system and therefore, the pro forma tariff sheets and explanation of Transco's proposed imbalance netting and trading service contained herein necessarily include related tariff changes that Transco will propose as part of its complete service delivery tariff filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31134 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–30–000, et al.]

Canal Emirates Power International, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Canal Emirates Power International, Inc. and IPP Energy LLC

[Docket No. EC01–30–000]

Take notice that on November 22, 2000, Canal Emirates Power International, Inc. (Canal) and IPP energy LLC (IPP) (collectively, Applicants), hereby request that the Commission grant approval of the transfer of the Binghamton generating facility and its associated generator step-up transformer and interconnection equipment owned by Canal to IPP. Applicants request confidential treatment of Exhibit H of the Application.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. AES NewEnergy, Inc., NEV East, L.L.C., NEV Midwest, L.L.C., NEV California, L.L.C.

[Docket No. EC01–31–000]

Take notice that on November 22, 2000, AES NewEnergy, Inc., NEV East, L.L.C., NEV Midwest, L.L.C. and NEV California, L.L.C. tendered for filing with the Federal Energy Regulatory Commission an application for approval of the disposition of jurisdictional facilities under section 203 of the Federal Power Act in the above-referenced docket, that will be part of an intra-corporate reorganization. These jurisdictional facilities are wholesale power contracts and the associated books and records that will be assigned to AES NewEnergy, Inc.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company and Avista Corporation

[Docket No. EC01–32–000]

Take notice that on November 20, 2000, Idaho Power Company and Avista Corporation tendered for filing an Application for Authorization Under Section 203 of the Federal Power Act. Specifically, Idaho Power seeks to sell, and Avista seeks to purchase, jurisdictional transmission facilities consisting of a 20.23 mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.

Applicants are also filing concurrently applications for amendment of Idaho Power's license for Project No. 1971 (deleting from the license the facilities to be transferred), and amendment of Avista's transmission line minor-part license for Project No. 2261 (adding to the license the facilities to be transferred).

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER01–99–4415–005]

Take notice that on November 24, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, submitted for filing a Refund Report as required by the Letter Order of October 12, 2000 in Docket Nos. ER99–4415–000, *et al.*

Illinois Power states that a copy of the Refund Report has been served on all parties in Docket Nos. ER99–4415–000,

et al. and the Illinois Commerce Commission.

Comment date: December 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. DTE Energy Services, Inc., DTE Georgetown, LLC, DTE Georgetown Holdings, Inc.

[Docket No. EC01–29–000]

Take notice that on November 21, 2000, DTE Energy Services, Inc., DTE Georgetown, LLC (Georgetown) and DTE Georgetown Holdings, Inc. (Applicants) tendered for filing an application for authorization pursuant to Section 203 of the Federal Power Act for an intra-corporate change in the upstream ownership of Georgetown. Also, on November 22, 2000, the Applicants submitted Attachment D (draft of the limited partnership agreement) which was inadvertently left off of the Application.

A copy of this Application and Attachment D have been served on the Michigan Public Service Commission.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. GenPower Anderson, LLC

[Docket No. EG01–34–000]

Take notice that on November 22, 2000, GenPower Anderson, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to construct an approximate 640 MW natural gas-fired combined cycle independent power production facility in Anderson, South Carolina (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. GenPower Keo, LLC

[Docket No. EG01–35–000]

Take notice that on November 22, 2000, GenPower Keo, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to construct an approximate 240 MW natural gas-fired combined cycle independent power production facility in Keo, Arkansas (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31122 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER001–511–000, et al.]

Williams Energy Marketing & Trading Company, et al.; Electric Rate and Corporate Regulation Filings

November 30, 2000.

Take notice that the following filings have been made with the Commission:

1. Williams Energy Marketing & Trading Company

[Docket No. ER01–511–000]

Take notice that on November 27, 2000, Williams Energy Marketing & Trading Company (Williams EM&T), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994) and Part 35 of the Commission's Regulations, 18 CFR 35, revised Reliability Must-Run Service Agreements (RMR Agreements) between Williams EM&T and the California Independent System Operator Corporation (ISO) for certain RMR units located at the Alamitos, Huntington Beach, and Redondo Beach Generating Stations.

The purpose of the filing is to comply with the Commission Order issued in Docket Nos. ER98–441–022, et al., accepting an Offer of Settlement filed by Williams EM&T and other parties on August 14, 2000, 93 FERC ¶ 61,089 (October 26, 2000).

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER01–495–000]

Take notice that on November 21, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin Public Service Corporation (WPSC), tendered for filing a revised partial requirements service agreement with Manitowoc Public Utilities (MPU). First Revised Service Agreement No. 5 provides MPU's contract demand nominations for January 2001—December 2005, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER01–494–000]

Take notice that on November 21, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing Thirty-four (34) signatory pages of parties to the Operating Agreement.

PJM requests an effective date on day after this Notice is received by FERC.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER01–493–000]

Take notice that on November 21, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted changes to Market Rules and Procedures 3–A, 5, and 11, and informed the Commission of a delay in the implementation of electronic dispatch. A waiver of the Commission's notice requirements has been requested to permit the revisions to Market Rules 3–A and 5 to become effective as of December 16, 2000 and December 21, 2000 respectively.

A February 21 effective date has been requested for the revisions to Market Rule 11.

In addition, NEPOOL has notified the Commission that the implementation of electronic dispatch within the NEPOOL Control Area has been delayed from December 5 to December 16, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER01–492–000]

Take notice that on November 21, 2000, Carolina Power & Light Company (CP&L), tendered for filing a First Revised Service Agreement No. 197 (Revised Agreement) between CP&L and North Carolina Electric Membership Corporation (NCEMC) under CP&L's market-based rate tariff, FERC Electric Tariff Volume No. 4. The Revised Agreement included an amendment to the assignment provision in Section 11.7.

CP&L requested that the Revised Agreement become effective on January 1, 2001.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and NCEMC.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER01–491–000]

Take notice that on November 21, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with El Paso Merchant Energy, L.P., (El Paso).

Northern Indiana has requested an effective date of November 21, 2000.

Copies of this filing have been sent to El Paso, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER01–490–000]

Take notice that on November 21, 2000, Arizona Public Service Company (APS), tendered for filing a Transmission Service Agreements to provide Non-Firm Point-to-Point Transmission Service to the Navajo Tribal Utility Authority under APS' Open Access Transmission Tariff.

A copy of this filing has been served on the Navajo Tribal Utility Authority and the Arizona Corporation Commission.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service Company

[Docket No. ER01–489–000]

Take notice that on November 21, 2000, Xcel Energy Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Sunflower Electric Power Corporation (Sunflower). This umbrella service agreement provides for Southwestern's sale and Sunflower's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. DPL Energy

[Docket No. ER01–56–001]

Take notice that on October 20, 2000, DPL Energy (DPLE), tendered for filing an amended long-term transaction agreement with The Dayton Power and Light Company to comply with Order No. 614.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. American Transmission Company LLC

[Docket No. ER01–488–000]

Take notice that on November 21, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Network Operating Agreement between ATCLLC and Madison Gas and Electric Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER01–487–000]

Take notice that on November 21, 2000, Excel Energy Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an umbrella service agreement between Southwestern and Northern States Power Corporation under Southwestern's Rate Schedule for the Sale Assignment, or Transfer of Transmission Rights.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER01–486–000]

Take notice that on November 21, 2000, Commonwealth Edison Company (ComEd), tendered for filing two amended Network Service Agreements (NSA) between ComEd and MidAmerican Energy Company (MEC), and between ComEd and Nicor Energy, L.L.C. (Nicor). ComEd asks that the MEC NSA supersede and be substituted for the NSA with MEC previously filed on November 17, 1999 in Docket No. ER00–589–000. ComEd asks that the Nicor NSA supersede and be substituted for the NSA with Nicor previously filed on December 22, 1999 in Docket No. ER00–884–000. The NSAs have been amended to change the termination date set forth in Section 3.2. The NSAs govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 1, 2000 and December 10, 2000 for the MEC and Nicor NSAs, respectively, and therefore seeks waiver of the Commission's notice requirements.

Copies of this filing were served on MEC and Nicor.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–485–000]

Take notice that on November 21, 2000, Allegheny Energy Service Corporation on behalf of Allegheny

Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 102 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of October 26, 2000 for NRG Power Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. American Transmission Company LLC

[Docket No. ER01–484–000]

Take notice that on November 21, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Power & Light Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. American Transmission Company LLC

[Docket No. ER01–483–000]

Take notice that on November 21, 2000, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Agreement between ATCLLC and Wisconsin Power & Light Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. DPL Energy Resources, Inc.

[Docket No. ER01–462–000]

Take notice that on November 16, 2000, DPL Energy Resources, Inc. (DPLER), a wholly owned subsidiary of DPL Inc., tendered for filing a rate schedule to engage in sales at market-based rates. DPLER included in its filing a proposed code of conduct.

Comment date: December 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER98–702–002]

Take notice that on November 22, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business and hereinafter referred to as GPU Energy) reported changes in status that reflect a departure from the facts relied upon by the Commission in its grant of market-based authority to GPU Energy.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER99–1331–003]

Take notice that on November 24, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, submitted for filing a Refund Report as required by the Letter Order of November 24, 2000 in docket No. ER99–1331–000.

Illinois Power states that a copy of the Refund Report has been served on all parties in Docket No. ER99–1331–000 and to the Illinois Commerce Commission.

Comment date: December 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. American Electric Power Service Corporation

[Docket No. ER00–3517–001]

Take notice that on November 22, 2000, American Electric Power Service Corporation, tendered for filing, on behalf of the operating companies of the American Electric Power System (AEP), a Compliance Filing in the above-referenced Docket.

Copies of the filing have been served upon AEP's transmission customers and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER01–62–001]

Take notice that on November 22, 2000, Entergy Services, Inc. (Entergy) filed an exhibit to the filing previously submitted to the Federal Energy Regulatory Commission by Entergy on October 6, 2000 in the above-referenced proceeding.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Public Service Corporation

[Docket No. ER01–118–001]

Take notice that on November 22, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin public Service Corporation (WPSC) tendered for filing a revised partial requirements service agreement with Washington Island Electric Cooperative (WIEC). First Revised Service Agreement No. 9 provides WIEC's contract demand nominations for January 2001—December 2005, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Energy Delta, L.L.C. Southern Energy Potrero, L.L.C.

[Docket No. ER01–362–001]

Take notice that, on November 22, 2000, Southern Energy Delta, L.L.C. and Southern Energy Potrero, L.L.C. filed certain errata to their November 3, 2000 filing in the above-referenced docket, in the form of corrected tariff sheets to the filing as well as redlined pages showing the changes made.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Consumers Energy Company

[Docket No. ER01–496–000]

Take notice that on November 22, 2000, Consumers Energy Company (Consumers) tendered for filing an executed Service Agreement for Firm and Non-Firm Point to Point Transmission Service Agreement with Quest Energy, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

Consumers is requesting an effective date of October 25, 2000. Customer is taking service under the Service Agreement in connection with Consumers' Electric Customer Choice Plan.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Company

[Docket No. ER01–498–000]

Take notice that on November 22, 2000, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, PSEG Energy Resources & Trade LLC. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of November 14, 2000 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Commonwealth Edison Company

[Docket No. ER01–497–000]

Take notice that on November 22, 2000, Commonwealth Edison Company (ComEd) submitted for filing three executed Non-Firm Transmission Service Agreements with the Ameren Energy Marketing (AEM), Consumers Energy Company (CEC), and Upper Peninsula Power Company (UPP); one unexecuted Non-Firm Transmission Service Agreement with LS Power, LLC (LSP); ten executed Short-Term Transmission Service Agreements with Aquila Energy Marketing Corporation (AEMC), Ameren Energy Marketing (AEM) Florida Power Corporation (FPC), Griffin Energy Marketing, L.L.C. (GEM), Minnesota Power, Inc. (MP), New York State Electric & Gas Corporation (NYSEG), City of Rochelle, Illinois (ROCH), Strategic Energy, L.L.C. (SEL), Upper Peninsula Power Company (UPP), and Williams Energy Marketing & Trading Company (WEMT) under the terms of ComEd's Open Access Transmission Tariff (OATT).

Upon the request of AEMC and WEMT, ComEd is submitting re-executed Agreements for AEMC and WEMT that reflect the new names of these companies. The Agreement with AEMC was previously filed in Docket No. ER98–446–000, granted an effective date of October 8, 1997 and designated Service Agreement No. 195. The Agreement with WEMT was previously filed in Docket No. ER98–3779–000, granted an effective date of June 21, 1998 and designated Service Agreement No. 296. ComEd respectfully requests that the re-executed Agreements for AEMC and WEMT be granted the same effective dates as was accorded them in Docket Nos. ER98–446–000 and ER98–3779–000 proceedings. Good cause supports ComEd's request as the re-execution of these Agreements is being done at the request of AEMC and WEMT so as to reflect the new names of AEMC and WEMT. See Central Hudson Gas & Electric Company, 60 FERC 61,106(1992).

ComEd also submitted for filing an updated Index of Customers reflecting name changes for current customers Aquila Power renamed Aquila Energy Marketing Corporation (AEMC), Ameren Services Company renamed Ameren Energy Inc. (AEI), Public Service Electric and Gas Company renamed PSEG Energy Resources & Trade LLC (PSEG ER&T), Calpine Power Services Company renamed Calpine Energy Services, L.P. (CES), Amoco Energy Trading Corporation renamed BP Energy Company (BP), Minnesota Power and Light Company renamed Minnesota Power, Inc. (MP), Citizens Power LLC renamed Edison Mission Marketing & Trading, Inc. (EMMT), and Williams Energy Services Company renamed Williams Energy Marketing & Trading Company (WEMT).

ComEd requests an effective date of November 22, 2000 for the Non-Firm-Agreements with AEM, CEC and LSP; and effective date of November 9, 2000 for the Non-Firm Agreement with UPP to coincide with the first day of service, and an effective date of November 22, 2000 for the Short-Term Firm Agreements with AEMC, AEM, FPC, GEM, MP, NYSEG, ROCH, SEL, UPP and WEMT and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Xcel Energy Operating Companies, Northern States Power Company, Northern States Power Company (Wisconsin)

[Docket No. ER01–499–000]

Take notice that on November 22, 2000, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Alliant Energy Corporate Services Inc. NSP proposes the Agreement be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, Original Volume No. 2, as Service Agreement 176–NSP, pursuant to Order No. 614.

NSP requests that the Commission accept the agreement effective November 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. ER01–500–000]

Take notice that on November 22, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Wabash Valley Power Association, Inc. (WVPA).

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. California Independent System Operator Corporation

[Docket No. ER01–501–000]

Take notice that on November 22, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a notice concerning the termination of the Participating Generator Agreement (PGA) between the ISO and Burney Forest Power.

The ISO requests that the PGA be terminated effective as of October 13, 2000.

The ISO states that copies of this filing have been served on Burney Forest Power and the California Public Utilities Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. California Independent System Operator Corporation

[Docket No. ER01–502–000]

Take notice that on November 22, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a notice concerning the termination of the Meter Service Agreement for ISO Metered Entities (MSA–ME) between the ISO and Burney Forest Power (Burney).

The ISO requests that the MSA–ME be terminated effective as of October 13, 2000.

The ISO states that copies of this filing have been served on Burney and the California Public Utilities Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Entergy Services, Inc.

[Docket No. ER01–503–000]

Take notice that on November 22, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing an Interconnection and Operating Agreement with TPS Dell LLC, f/k/a/ GenPower Dell LLC (TPS Dell), and a Generator Imbalance Agreement with TPS Dell.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Southwestern Electric Power Company

[Docket No. ER01–504–000]

Take notice that on November 22, 2000, Southwestern Electric Power Company (SWEPCO) filed a Restated and Amended Electric System Interconnection Agreement (Agreement) between SWEPCO and Louisiana Generating LLC (LaGen). The Agreement supersedes in its entirety the 1988 Electric System Interconnection Agreement, as amended, between SWEPCO and Cajun Electric Power Cooperative (Cajun). In March 2000, LaGen acquired Cajun.

SWEPCO seeks an effective date of June 15, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on LaGen and on the Louisiana Public Service Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. NEV California, L.L.C.

[Docket No. ER01–505–000]

Take notice that on November 22, 2000, NEV California, L.L.C. (NEV California) tendered for filing a notice of cancellation in operations pursuant to 18 CFR 35.14 in order to reflect the cancellation of its market-rate tariff originally accepted for filing by the Commission in Docket No. ER97–4653–000.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. NEV East, L.L.C.

[Docket No. ER01–506–000]

Take notice that on November 22, 2000, NEV East, L.L.C. (NEV East) tendered for filing a notice of cancellation in operations pursuant to 18 CFR 35.15 in order to reflect the cancellation of its market-rate tariff originally accepted for filing by the Commission in Docket No. ER97–4652–000.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. AES New Energy, Inc.

[Docket No. ER01–507–000]

Take notice that on November 22, 2000, AES New Energy, Inc. (AES New Energy) tendered for filing a notice of succession in operations pursuant to 18 CFR 35.16, in order to reflect its name change from New Energy Ventures, Inc.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. NEV Midwest, L.L.C.

[Docket No. ER01–508–000]

Take notice that on November 22, 2000, NEV Midwest, L.L.C. (NEV Midwest) tendered for filing a notice of cancellation in operations pursuant to 18 CFR 35.15, in order to reflect the cancellation of its market-rate tariff originally accepted for filing by the Commission in Docket No. ER97–4654–000.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Entergy Services, Inc.

[Docket No. ER01–509–000]

Take notice that on November 22, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with Duke Energy Southaven, LLC (Duke Southaven), and a Generator Imbalance Agreement with Duke Southaven.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER01–510–000]

Take notice that on November 24, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and El Paso Merchant Energy, L.P. (El Paso Power), dated November 22, 2000. This Service Agreement specifies that El Paso Power has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and El Paso Power to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 22, 2000 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers

Secretary.

[FR Doc. 00–31121 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–12–000]

El Paso Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line No. 2039 Pipeline Relocation Project and Request for Comments on Environmental Issues

December 1, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line No. 2039 Relocation Project involving construction and operation of facilities by El Paso Natural Gas Company (El Paso) in Maricopa County, Arizona.[1] These facilities would consist of about 6.88 miles of 16-inch-diameter pipeline and one meter station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right to eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice El Paso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

Summary of the Proposed Project

El Paso wants to relocate a portion of the Line No. 2039 Pipeline located on the southwest side of Phoenix, Arizona, in order to avoid residential and industrial encroachment on the existing pipeline and meet DOT class requirements in the future. In addition, El Paso wants to increase the diameter of the pipe to satisfy increased gas demand expected from the expanded West Phoenix Power Plant at the north end of this pipeline.

El Paso seeks authority to abandon 6.88 miles of the existing 16-inch-diameter Line No. 2039 Pipeline and relocate it up to 2700 feet to the east on new right-of-way (ROW). The Line No. 2039 Pipeline would be abandoned in place, including those sections under roads, for about 2.9 miles, and would be abandoned by removal for about 4.0 miles. Four tap and valve assemblies with appurtenant facilities located on the existing Line No. 2039 Pipeline would be abandoned either in place or by removal. The existing Southern Avenue Meter Station would be abandoned by removal and relocated onto the new Line No. 2039 Pipeline in the northwest quadrant of Southern Avenue and 43rd Avenue Pig launching and receiving facilities would be installed at the Laveen Meter Station on Elliot Road and at the West Phoenix Meter Station north of Buckeye Road. The Salt River would be crossed using the open-trenching method. A block valve would be installed on each side of the Salt River. A 3,800–foot-long section of the new Line No. 2039 Pipeline from milepost 7.18 to 7.90 was installed in June 2000 under El Paso's blanket authority and would be tied into the proposed Line No. 2039 Pipeline.

The location of the project facilities is shown in appendix 1, figures 1 and 2.

Land Requirements for Construction

Replacement of the proposed facilities would require the use of 105 acres of land, primarily agricultural, with some residential land. This includes 73 acres of previously undisturbed ROW for the new pipeline, road, rail, and canal crossings, the new Southern Avenue Meter Station and associated staging area, and pigging facilities. Previously disturbed ROW in the amount of 32 acres would be required for abandoning sections of pipeline by removal.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land Use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by El Paso. This preliminary list of issues may be changed based on your comments and our analysis.

- A 1750-foot-long, open trench crossing of the Salt River would use a 30- to 75-foot-wide trench to bury the pipeline 25 feet below the river bed.
- Construction would be within 50 feet of four residences on Elliot Road and 43rd Avenue.
- Construction would disturb habitat potentially suitable for the federally listed endangered Yuma clapper rail located in the Salt River floodplain.
- The project area crosses several sites that may eligible to the National Register of Historic Places, including historic and prehistoric irrigation systems. The historic Farmers Canal system would be crossed in the vicinity of Buckeye Road. El Paso proposes to avoid adversely effecting the currently used historic Roosevelt Canal by boring beneath it.

Public Participation

You can make a difference by providing us with your specific

[1] El Paso's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative [locations/routes]), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of (Gas 2).
- Reference Docket No. CP00–012–000.
- Mail your comments so that they will be received in Washington, DC on or before January 2, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by the other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–31127 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

December 1, 2000.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2100.

c. *Date filed:* November 22, 2000.

d. *Applicant:* California Department of Water Resources (DWR).

e. *Name of Project:* Oroville Project (Feather River Project).

f. *Location:* On the Feather River, in Butte County, California. The project occupies federal lands within the Plumas and Lassen National Forests.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Viju Patel, Executive Manager, Power Systems at (916) 653–5913 or Rick Ramirez, State Water Project Analysis Office at (916) 653–1095.

i. *FERC Contact:* James Fargo at (202) 219–2848; e-mail james.fargo@ferc.fed.us

j. *Deadline for Comments:* January 8, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. The Oroville facilities consist of the existing Oroville Dam and Reservoir, the Edward Hyatt Powerplant, Thermalito Powerplant, Thermalito Diversion Dam Powerplant, Thermalito Forebay and Afterbay, and associated recreational and fish and wildlife facilities. The project has a total installed capacity of 762,000 kilowatts.

l. DWR has shown that it has made an effort to contact most federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. DWR has also shown that a consensus exists that the use of alternative procedures is appropriate in this case. DWR has submitted a proposed communications protocol that is supported by many of the stakeholders.

The purpose of this notice is to invite any additional comments on DWR's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. DWR will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review process into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

DWR has met with federal and state resources agencies, NGOs, elected officials flood control and downstream interests, environmental groups, business and economic development organizations, the boating industry, and members of the public regarding the Oroville Project. DWR intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by January 31, 2005.

David P. Boergers,

Secretary.

[FR Doc. 00–31129 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 1, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP00–14–000—11/20/00—Tim Drake
2. Project No. 2042—11/21/00—Timothy Welch
3. CP00–6–000—11/27/00—Jon Schmidt
4. CP00–6–000—11/22/00—Jim Martin
5. CP00–6–000—11/20/00—Jim Martin
6. Project No. 2114—11/20/00—Lynn R. Miles
7. CP98–150–002—11/7/00—Donald J. Stauber
8. CP00–452–000—11/20/00—Ed Martinez
9. CP98–150–000—11/13 & 11/14/00—Juan Polit
10. Project Nos. 5931 and 7282—11/29/00—Donald B. Koch
11. Project No. 8657—11/27/00—CDL Perkins
12. CP00–141–000—11/28/00—Ann Garrett
13. CP00–14–000—11/6, 11/7, 11/8, and 11/9/00—John Wisniewski

Prohibited

1. EL00–95, EL00–98 and EL00–107—11/25/00—Mike Rothkopf

David P. Boergers,

Secretary.

[FR Doc. 00–31135 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100163; FRL–6757–5]

Arctic Slope Regional Corporation (ASRC) Aerospace; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Arctic Slope Regional Corporation (ASRC) Aerospace in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). ASRC Aerospace has been awarded a contract to perform work for OPP, and access to this information will enable ASRC Aerospace to fulfill the obligations of the contract.

DATES: ASRC Aerospace will be given access to this information on or before December 12, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–W0–0102, work assignment 002, the contractor will perform the following:

The EPA Office of Pesticide Programs (OPP) maintains the OPP Public Docket in the Public Response Section of the Public Information and Records Integrity Branch (PIRIB) Information Resources and Services Division (IRSD). The OPP Docket supports the Agency's rulemaking activities as announced in the **Federal Register**, and Agency announcements concerning Special Reviews and Reregistration.

The Docket is open to the public and Agency staff from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The contractor shall identify himself/herself as a contractor to all visitors. The contractor shall be conversant about the history of the

docket, the purpose of the docket, and regulatory mechanisms which trigger docketing requirements. The contractor shall assist Docket visitors in using Docket indices and locating documents, and in using Docket resources such as the PR Notice collection, the Compact Label File, the copier and microfiche reader.

The contractor will manage and maintain the OPP Public Regulatory Docket in PIRIB.

The contractor must have access to CBI in order to conduct records management activities associated with the OPP's Public Regulatory Docket.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with ASRC Aerospace, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ASRC Aerospace is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to ASRC Aerospace until the requirements in this document have been fully satisfied. Records of information provided to ASRC Aerospace will be maintained by EPA Project Officers for the contract. All information supplied to ASRC Aerospace by EPA for use in connection with the contract will be returned to EPA when ASRC Aerospace has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: November 28, 2000.

Joanne Martin,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–31195 Filed 12–6–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6913–5]

Notice of Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of hearing.

SUMMARY: This Notice announces that Kanoria Chemicals and Industries, Ltd., (Kanoria), has filed objections to a Notice of Intent to Suspend Registration of Pesticide Product(s) Containing Lindane, namely Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2), and has requested a hearing thereon. The Notice of Intent to Suspend was issued for Kanoria's alleged failure to comply with a Lindane Data Call-In Notice dated March 31, 1997, issued under Section 3(c)(2)(B) of the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA). This Notice also announces that a hearing will commence in Washington D.C. on January 9, 2001, pursuant to Kanoria's request for hearing.

DATES: Motions to intervene in the hearing announced by this Notice must be received by the Office of the Hearing Clerk at the address provided below by December 15, 2000. The hearing will commence on January 9, 2001, and will continue if necessary on January 10–12, 2001.

ADDRESSES: Motions to intervene, identified by FIFRA Data Docket No. 216, must be filed with Bessie Hammiel, Headquarters Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; and copies served by mail on: (1) Chief Administrative Law Judge Susan L. Biro, Mail Code 1900L, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; (2) Scott B. Garrison, Pesticides and Toxic Substances Law Office, Office of General Counsel, Mail Code 2333A, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; and (3) Peter E. Seley, Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Avenue, N.W., Washington D.C. 20036–5306.

The hearing will be held in the Ariel Rios Building, Room 7208, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Bessie Hammiel, Headquarters Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Office location: Office of the Hearing Clerk, Room C400, 401 M St. S.W., Washington D.C. 20460. Telephone: (202) 260–4865.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

Under Section 3(c)(2)(B) of FIFRA, if EPA determines that additional data are required to maintain in effect an existing registration of a pesticide, EPA notifies all existing registrants of the pesticide in a "FIFRA Data Call-in Notice," requiring each registrant to provide evidence within ninety days that it is taking appropriate steps to secure the additional data. If a registrant fails to comply, EPA may issue a notice of intent to suspend the registration of the pesticide for which additional data was required. The suspension becomes final and effective thirty days from receipt by the registrant of the notice of intent to suspend, unless within that time period: (1) The registrant demonstrates that it has fully complied with the requirements that served as a basis for the notice to suspend, or (2) a request for hearing is made by a person adversely affected by the notice. FIFRA Section 3(c)(2)(B)(iv).

II. Hearing Procedures

Pursuant to Section 3(c)(2)(B)(iv) of FIFRA, if a hearing is requested, the hearing shall be conducted in accordance with FIFRA section 6(d). Regulations implementing the hearing procedures are set forth in 40 C.F.R. part 164, subpart B.

A. Issues To Be Adjudicated

Pursuant to Section 3(c)(2)(B)(iv) of FIFRA, two issues to be adjudicated are: (1) Whether Kanoria has failed to comply with the terms of a Data Call-In Notice dated March 31, 1997, as to Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2); and (2) whether EPA's prohibition on distribution, sale, use offering for sale, holding for sale, shipping, delivering for shipment, receipt and (having so received) delivering or offering to deliver existing stocks of Ljndane Technical Crystals and Lindane Technical Powder, is inconsistent with the terms of FIFRA. The Notice of Intent to Suspend, dated October 10, 2000, provides that after the suspension becomes final and effective, the registrant, including all supplemental registrants of Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2), are subject to the prohibition.

B. Participation in the Hearing

Any interested person may file a motion for leave to intervene in the hearing. Such motion must set forth the grounds for the proposed intervention, the position and interest of the movant in the proceeding and documents proposed to be filed relating to the Notice of Intent to Suspend the Registration of Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2). Such motion must be filed on or before December 15, 2000, or it must also set forth a statement of good cause for the failure to file the motion prior to that date. If leave to intervene is granted, the movant becomes a party to the proceeding with the full status of the original parties. If leave is denied, the movant may request that the ruling be certified to the Environmental Appeals Board, pursuant to § 164.200. 40 CFR § 164.31.

Persons not parties to the proceeding may file amicus briefs upon motion granted by the Administrative Law Judge. Such motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. *Id.*

C. Scheduling

Section 3(c)(2)(B)(iv) of FIFRA requires that a hearing shall be held and a determination issued within seventy-five (75) days after receipt of a request for hearing. The petitioner's request for hearing was received on or about November 13, 2000. In order to fulfill the 75-day time limit, the hearing is scheduled to commence on January 9, 2001. Accordingly, the parties are scheduled to submit prehearing exchanges on December 15, 2000, and rebuttals thereto on December 22, 2000. Pre-trial motions, stipulations and verified statements are due on December 29, 2000.

The 75-day period may be extended if all parties to the proceeding stipulate to such an extension. The date for commencement of the hearing, and the prehearing schedule, are subject to postponement, continuation or cancellation upon short notice. Such dates should be confirmed by contacting Bessie Hammiel at (202) 260–4865.

III. Public Docket

The public docket containing the case file in the matter referenced above (FIFRA Data Docket No. 216) is located at: Office of the Hearing Clerk, Room C400, 401 M St. S.W., Washington D.C. 20460. The case file can be viewed from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

(Authority: 38 FR 19371, 40 CFR 164.8)

Susan L. Biro,

Chief Administrative Law Judge.

[FR Doc. 00–31193 Filed 12–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6912–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Voda Petroleum Superfund Site, Clarksville City, Texas with the parties referenced in the **SUPPLEMENTARY INFORMATION** portion of this Notice.

The settlement requires the Settling Parties to pay a total of $589,200.00 in reimbursement of Past Response Costs, to the Hazardous Substance Superfund. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may withdraw or withhold its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before January 8, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden (6SF–AC), U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6713. Comments should reference the Voda Petroleum Superfund Site, Clarksville City, Texas and EPA Docket Number 6–13–00. Comments should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Boydston (6RC–S), U.S. Environmental Protection Agency 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–7376.

SUPPLEMENTARY INFORMATION:

Ark-LA-Tex Waste Oil Company
Baxter's Oil Service Inc.
Clements Oil Corporation
Lucent Technologies Inc.
Mobil Oil Corporation and its subsidiaries
SBC Holding, Inc.
Texas Utilities Mining Company; Texas Utilities Generating Company; and TXU Electric Company

Dated: November 24, 2000.

Julie Jensen,

Acting Regional Administrator, Region 6.

[FR Doc. 00–31194 Filed 12–6–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 28, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0933.

Title: Community Broadband Deployment Database Reporting Form.

Form No.: FCC Form 460.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, federal government, state, local or tribal government.

Number of Respondents: 150 respondents.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 37 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to section 410(b) of the Communications Act of 1934, as amended, on October 8, 1999, the Commission convened a Federal-State Joint Conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment efforts is being established. The collection of information from respondents is entirely voluntary. The information will be used by the Commission to prepare reports that help inform consumers and policy makers at the state and federal levels of the status of deployment of broadband services. The Commission will use this information to better inform our understanding of broadband deployment in conjunction with our Congressionally required Section 706 reports. Absent this information collection, the Commission will lack an essential tool for assisting it in determining the effectiveness of its policies and fulfilling its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31172 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 30, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Sections 80.385, 80.475, and 90.303, Automated Marine Telecommunications Service (AMTS).

Form No.: N/A.

Type of Review: Existing collection in use without OMB control number.

Respondents: Individuals or households and businesses or other for-profit.

Number of Respondents: 20.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 10 hours.

Total Annual Cost: N/A.

Needs and Uses: The reporting requirements are necessary to require licensees of Automated Maritime Telecommunications System (AMTS) stations to notify TV stations and two organizations (the American Radio Relay League (ARRL), and Interactive Systems, Inc.) that maintain databases of AMTS locations for the benefit of amateur radio operators of the location of AMTS fill-in stations. Amateur radio operators use some of the same frequencies (219–220 MHz) as AMTS stations on a secondary, non-interference basis for digital message forwarding systems. Reporting requirements are necessary to require amateurs proposing to operate within close proximity of an AMTS station to notify the AMTS licensee as well as the ARRL. The information is used to update databases concerning AMTS locations for the benefit of amateur radio operators. If the collection of this information was not conducted, the database would become inaccurate and the ability to avoid interference problems would deteriorate.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31173 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 1, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0491.

Title: Section 74.991 Wireless cable application procedures.

Form No.: FCC 330/FCC 304.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Hours Per Response: 4.5 hours (0.5 respondent/4 hours attorney).

Frequency of Response: On occasion.

Cost to Respondents: $116,240.

Estimated Total Annual Burden: 50 hours.

Needs and Uses: Section 74.991 requires that a wireless cable application be filed on FCC Form 330 (3060–0062), Sections I and V, with a complete Form 494 appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. The applicant must also, within 30 days of filing its application give local public notice in a newspaper. The specific data that must be included in the newspaper publication is contained in Section 74.991(c). The notice must be published twice a week for two consecutive weeks. The data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use. The data is also used to insure that applicants are qualified to become a Commission licensee and that proposals do not cause interference.

OMB Approval No.: 3060–0490.

Title: Section 74.902 Frequency assignments.

Form No.: FCC 330/FCC 327.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5.

Estimated Hours Per Response: 0.5 hours.

Frequency of Response: On occasion.

Cost to Respondents: $0.

Estimated Total Annual Burden: 2.5 hours.

Needs and Uses: Section 74.902 dictates that when a point-to-point ITFS station on the E and F MDS channels is involuntarily displaced by an MDS applicant, that the MDS applicant files the appropriate application for suitable alternative spectrum. The applications that would be used would be the FCC 327 (3060–0055) and the Form 330 (3060–0062). The burdens for these involuntarily displaced ITFS stations are included in the estimates for the FCC 327 and FCC 330. Additionally, Section 74.902(i) requires that a copy of this application be served on the ITFS licensee to be moved. The data will be used by the ITFS licensee to oppose the involuntary migration if the proposal would not provide comparable ITFS service and to ensure that the public interest is served.

OMB Control No: 3060–0939.

Title: E911–Second Memorandum and Order.

Form No: N.A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Frequency of Response: Occasional reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: 0.

Needs and Uses: Commercial Mobile Radio Service carriers and Public Safety Answering Points who can't agree on the choice of enhanced 911 transmission means and related technologies may ask the Commission to assist in reaching an accord. The requested information will be used by the Commission to enable it to fully participate in negotiations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31227 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 28, 2000..

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0684.

Title: Amendment to the Commission's Rules Regarding a Plan for Sharing Costs of Microwave Relocation, WT Docket No. 95–157, FCC No. 00–123

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 2,000.

Estimate Time Per Response: 54 mins. (avg.).

Frequency of Response: Biennial and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,790 hours.

Total Annual Costs: $862,000.

Needs and Uses: On April 5, 2000, the FCC adopted an Order on Reconsideration which revised its rules to effectuate the relocation of fixed microwave incumbents from the 2 GHz band to clear spectrum for the development of PCS. In doing so, the FCC implemented its plan for PCS relocators and subsequent PCS licensees to share the costs of relocating existing 2 GHz microwave facilities, thus providing for a fair and efficient relocation process. These rules, which govern both the relocation and cost-sharing plans, foster the development of competitive broadband PCS service throughout the country, while permitting incumbent providers of microwave service to relocate to higher spectrum bands. This information collection facilitates dispute resolution for PCS relocators and microwave licensees independent of the Commission and assists PCS relocators and microwave licensees when they negotiate relocation agreements. Furthermore, the information collection helps two industry clearinghouses maintain a national database, determine reimbursement obligations of subsequent PCS entities under the Commission's cost-sharing rules, and notify subsequent PCS entities of their obligations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31171 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 1, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0192.

Title: Section 87.103, Posting Station License.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Recordkeeping.

Number of Respondents: 47,800.

Estimate Time Per Response: 15 mins.

Frequency of Response: Recordkeeping.

Total Annual Burden: 11,950 hours.

Total Annual Costs: None.

Needs and Uses: The recordkeeping requirement in 47 CFR Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, No. 2020 of the International Radio Regulations, and Article 30 of the Convention on International Civil Aviation. This requirement facilitates the quick resolution of any harmful interference problems and ensures that the station is operating in accordance with the appropriate rules, statutes, and treaties.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31228 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2452]

Petitions for Reconsideration of Action in Rulemaking Proceeding

November 29, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by December 22, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Amendment of 73.202(b) Table of Allotments FM Broadcast Stations (Windthorst, Texas).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31174 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Request for public comment on a proposed classification methodology for determining level of review for genetic tests.

SUMMARY: The Secretary's Advisory Committee on Genetic Testing (SACGT) was chartered to advise the Department of Health and Human Services on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. SACGT recently completed its first report, Enhancing the Oversight of Genetic Tests (available at *http://www4.od.nih.gov/oba/sacgt.html*). One of SACGT's major recommendations was that all new genetic tests be reviewed by the Food and Drug Administration (FDA) before they are used for clinical care or public health purposes through "new and innovative oversight mechanisms that will not limit the development of new tests or inordinately delay their availability." SACGT also recommended that FDA correlate the level of review applied to each genetic test with the level of scrutiny warranted by the test.

To assist FDA in determining which tests warrant greater scrutiny, SACGT is developing a classification methodology. A SACGT Working Group on Genetic Test Classification, composed of SACGT members and ad hoc experts, met on August 3, 2000, to identify criteria for assessing the risks and benefits of genetic tests that could serve as the basis for a classification scheme. The full Committee endorsed the working group's approach on August 4, 2000. Due to further analysis of the proposed approach and concerns raised by professional genetics and laboratory organizations about its practicality, SACGT revisited the initial proposal at its November 2–3 meeting. SACGT modified the methodology and agreed that additional input from public and professional organizations should be gathered. It is now seeking public comments on the rationale and feasibility of the proposed test classification methodology and several specific questions.

DATES: The public is encouraged to submit written comments on the proposed classification methodology by January 25, 2001 in order for SACGT to consider the comments at its next meeting in February 2001. The following mailing address should be used: SACGT, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 103, Bethesda, Maryland, 20892. SACGT's facsimile number is 301–496–9839. Comments can also be sent via e-mail to *hagas@od.nih.gov*. All public comments received will be available for public inspection at the SACGT office between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Questions about this request for public comment can be directed to Dr. Susanne Haga, by e-mail (*hagas@od.nih.gov*) or telephone (301–496–9838). The methodology will also be posted on SACGT's website for review and comment.

SUPPLEMENTARY INFORMATION:

Background

Decades of genetics research have brought about many important medical and public health advances. The pace of discovery in this area has enabled scientists to make rapid progress in understanding the role of genetics in many common yet complex diseases and conditions, such as heart disease, cancer, and diabetes. It also has increased knowledge that may lead to the development of new tests to identify these disease conditions in individuals, sometimes before symptoms occur. According to GeneTests, a genetic testing laboratory directory, genetic testing is clinically available for more than 400 diseases or conditions in more than 200 laboratories in the United States, and investigators are exploring the development of tests for an additional 338 diseases or conditions. However, most of the current genetic testing is for single gene disorders such as Huntington disease and cystic fibrosis.

Genetic tests can be performed for a number of purposes. Moreover, a test can be used in more than one way, such as when a test used for diagnostic purposes is also used to predict risk of disease. SACGT included the following types of testing within its definition: (1) an analysis performed on human DNA, RNA, genes, and/or chromosomes to detect heritable or acquired genotypes, mutations, phenotypes, or karyotypes that cause or are likely to cause a specific disease or condition; and (2) the analysis of human proteins and certain metabolites, which are predominantly used to detect heritable or acquired genotypes, mutations, or phenotypes. The purposes of both these types of genetic tests include predicting risks of disease, screening of newborns, directing clinical management, identifying carriers, and establishing prenatal or clinical diagnoses or prognoses in individuals, families, or populations. Not included in this definition are tests that are used primarily for other purposes, but that may contribute to diagnosing a genetic disease (*e.g.*, blood smear, certain serum chemistries), and tests conducted exclusively for forensic identification purposes.

In the past, many tests were developed to detect or confirm rare genetic diseases. More recently, tests have been developed to detect mutations that may be involved in or contribute to more common, complex conditions (such as breast, ovarian, and colon cancer and cardiovascular disease), the effects of which generally do not appear until later in life. Optimally, these tests are used to predict a person's predisposition to disease where there is a family history of the disease, and in general, such tests are not recommended for individuals without such a history. However, in the future, the use of predictive tests may expand and be offered to individuals without a family history of certain diseases and conditions, *e.g.*, common adult-onset disorders.

In Enhancing the Oversight of Genetic Tests, SACGT recommended that all new genetic tests be reviewed by the Food and Drug Administration (FDA) before they are used for clinical care or public health purposes. The Committee suggested that FDA's review be accomplished through "new and innovative oversight mechanisms that will not limit the development of new tests or inordinately delay their availability." Determining the level of review required of a particular genetic test is crucial to ensuring that a test receives the appropriate level of review based on the characteristics of the test and its target disease or condition. In order to determine the appropriate level of review for genetic tests, SACGT concluded that a classification methodology was needed.

To assist FDA in determining the appropriate level of review, a working group on genetic test classification was convened in August, composed of SACGT members and ad hoc experts. The goal of the working group was to

develop criteria for assessing the risks and benefits of genetic tests that would serve as the basis for a classification scheme. In classifying genetic tests by the level of review warranted, the working group explored a number of factors that could be used, including test characteristics (analytical validity, clinical validity, and clinical utility), availability of safe and effective treatments, and the social consequences of a diagnosis or identification of risk status. They also considered whether the test would be for a common or an orphan (rare) disease or mutation; whether the test will be used for population-based screening or testing of individuals; whether the test is used to detect germline or somatic mutations; whether the test is primarily used for predictive or diagnostic purposes; the complexity of the test; the level of difficulty in interpreting test results; whether the mutation being tested for is highly or weakly penetrant (the likelihood of developing a disease or condition); and the availability of independent methods of confirmation to reduce the occurrence of false-positive test results.

Proposed Test Classification Methodology for Determining Level of Review for Genetic Tests

In SACGT's August draft of the classification methodology, the working group developed two levels of review and four criteria to be used in the determination of review level for genetic tests. The four criteria related to test volume; whether a test is to be used for population-based screening; the purpose of the test (predictive or diagnostic); and for predictive tests, the availability of an intervention, the predictive value of the testing process, or significant medical or social risks associated with the test. After further deliberation and discussion of the proposed test classification methodology, SACGT modified the methodology at its November meeting. The modified approach maintains the two levels of review initially proposed (Level I and Level II) but revises and reduces the number of criteria. The revised criteria relate to analytical validity, population-based screening, and frequency of disease. SACGT is seeking public comment on this revised test classification methodology.

Classification Structure and Levels of Review

SACGT determined that two levels of review would provide the most straightforward review process for all new genetic tests. In SACGT's proposed classification methodology, tests for rare diseases or conditions, with the exception of those used for population screening, would receive a Level I review and all other new genetic tests would receive a Level II review. While details of the review processes have yet to be fully defined, the Committee has outlined its expectations for each review level.

A Level I review would be a streamlined review process that would involve assurances of pre-test/post-test information according to a standard template and, possibly, data collection from existing resources. SACGT currently proposes that pre-test information include a description of the purpose of the test, the clinical condition for which the test is performed, the definition of the test (specific laboratory protocol), and evidence of analytical and clinical validity. Less evidence of data would be permitted in Level I. The Level II review process would include a detailed review of pre-test/post-test information and, possibly, new data collection initiatives.

SACGT suggests that both review levels consider the use of standards developed in consultation with professional organizations, consumer representatives, and other relevant groups; post-market adverse event reporting; and assurances for informed consent as appropriate. SACGT also suggests that, as appropriate, peer-reviewed literature could be used to substantiate claims of analytical and clinical validity.

Classification Criteria

The three criteria SACGT proposes to use in determining the level of review of a genetic test are analytical validity, population screening, and frequency of disease. The first criterion is an essential feature that all genetic tests should be able to demonstrate. The two other criteria classify genetic tests according to the number of people who may be affected by the disease or condition.

SACGT believes that all tests should be analytically valid and that no test should be considered for further review unless shown to be so. Analytical validity is defined as the ability of a test to measure or detect the analyte it is intended to measure or detect. An analyte is defined as the substance measured by a laboratory test, *e.g.*, DNA—mutation, allele, or chromosome, metabolites, or enzyme activity. Analytical validity includes analytical sensitivity (the probability that a test will detect an analyte when it is present in the sample) and analytical specificity (the probability that a test will be negative when an analyte is absent from a sample).

Population screening is the second criterion in the classification methodology. Population screening affects large numbers of people, most of whom are currently healthy. The risks of false-positive and false-negative test results need to be carefully evaluated. The type of follow-up for individuals who test positive must be clear and proven. In this schema, the definition of a population-based test is a test intended for use on a cluster of individuals who are identified as a group or population (>1000) on the basis of shared ethnicity, class, geographical location, gender, age, or other characteristics such as pregnancy, behavior (*e.g.*, smoking), physical traits (*e.g.*, baldness or height), or occupation in which the frequency of the disease allele or predispositional risk to be determined is higher than the frequency or risk in the general population. Carrier screening for Tay-Sachs disease in the Ashkenazi Jewish population would be considered a population-based test. Another example would be a test used for all newborns.

The third criterion SACGT proposes to include in the classification methodology is the frequency of the disease. This criterion would divide tests according to whether they test for a common disease or rare disease. SACGT proposes to define a rare disease or condition as having a prevalence of less than one in 2,000 individuals or an incidence less than one in 10,000 individuals.

There were a number of reasons why SACGT chose to divide genetic tests on the basis of whether it was for a rare disease versus a common disease. The Committee believes that tests for common diseases or conditions should receive a higher level of review for two reasons. First, the molecular and metabolic basis of common diseases is often complex. Recent findings have shown that the genetic etiology of common diseases and conditions is not as straightforward as traditional Mendelian disorders and likely involve the consideration of a number of other factors such as environment, lifestyle, and other genetic factors. For this reason, a higher level of review and larger clinical studies may be necessary to demonstrate the accuracy and validity of tests for common diseases or conditions. Second, tests for common diseases or conditions have the potential to affect a greater number of people.

The Committee wishes to make recommendations that will facilitate the continued development and availability of tests for rare diseases and conditions. SACGT would not want to see the cost of, and time required for, review to become barriers to the provision of genetic tests for rare diseases, particularly those provided in the academic setting, given the limited financial resources and income of these laboratories.

Applying the Classification Methodology

These three criteria would be considered in a step-wise manner leading to a determination of the appropriate level of review warranted by a particular genetic test (see figure). When determining the level of review for a particular test, SACGT proposes that a test's analytical validity be ascertained first. If a test was shown to be not analytically valid, it would be automatically rejected. If a test was shown to be analytically valid, it would move on to the next criterion of population screening. In the Committee's view, tests used for population screening should receive a higher level of review because of the large number of people it would affect. If a test is to be used for population screening, it would receive a Level II review. If a test is not to be used for population screening, the third criterion would be applied. If the test is used to detect a rare disease or condition, it would receive a Level I review. Since it may take many years to gather large numbers of affected individuals for study, a Level I review would permit smaller data sets. Documentation would need to be provided to support the claim that a test is for a rare disease or condition. References may include peer-reviewed literature citations, specialized medical society proceedings, or governmental statistical publications. When no such studies or literature citations are available, the applicant may be able to demonstrate prevalence or incidence by providing credible conclusions from appropriate research or surveys. A rare disease test may sometimes warrant a Level II review. All other tests would receive a Level II review.

Questions on Which Comment Is Being Solicited

In order to ensure that a comprehensive and appropriate classification methodology is developed, SACGT would appreciate receiving public comment on the rationale and feasibility of the proposed test classification methodology. In addition, SACGT is interested in receiving input on the following specific questions:

1. Is the number of review levels appropriate? Should there be more than two levels? Should all genetic tests receive the same level of review?
2. Are the criteria of analytic validity, population screening, and frequency of disease appropriate for determining the proper review level? Should other criteria, such as the intended use of a genetic test (*e.g.*, diagnostic, predictive, carrier, prenatal, etc.) or clinical utility, be considered in the classification of tests? If so, how should they be incorporated into the methodology?
3. Are the proposed definitions for population and rare diseases appropriate?
4. SACGT has not proposed a specific threshold or minimum standard for analytical validity. Should a threshold for analytical validity be defined? If so, what should the standard be?
5. What characteristics of a rare disease test would raise the level of review from Level I to Level II?

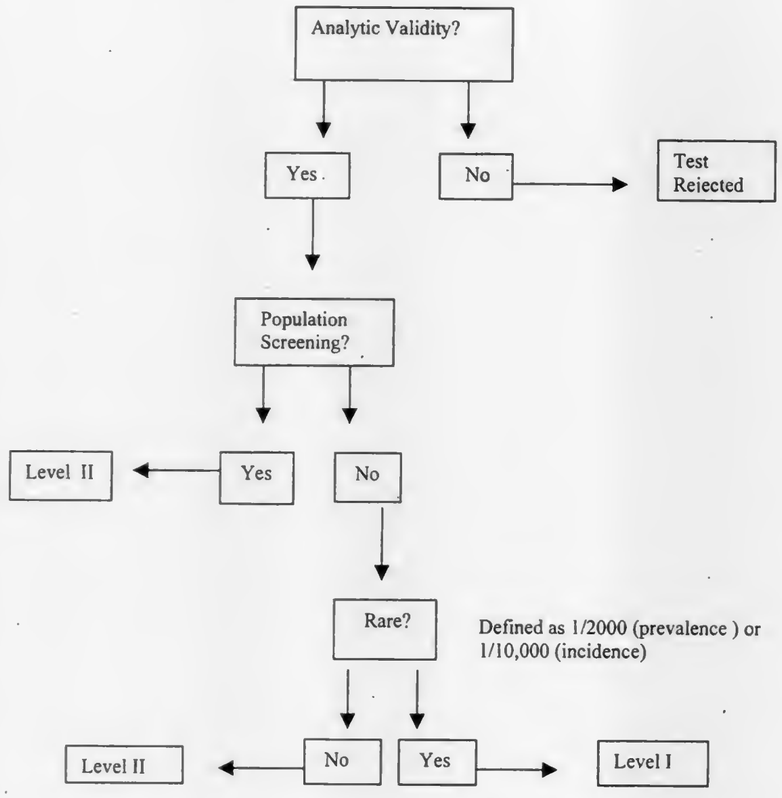
Dated: November 29, 2000.

Sarah Carr,

Executive Secretary, SACGT.

BILLING CODE 4140–01–P

Proposed Test Classification Scheme for Determining Level of Review of Genetic Tests



[FR Doc. 00–31218 Filed 12–6–00; 8:45 am]
BILLING CODE 4140–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protections Advisory Committee

AGENCY: Office of Public Health and Science, Office for Human Research Protections, HHS.

ACTION: Notice of first meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below. Individuals planning on attending the meeting and who want to ask questions must submit their questions in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on December 20–21, 2000. The meeting will convene from 8:30 a.m. to its recess at 4:30 p.m. on December 20th and resume at 9 a.m. to 3 p.m. EST on December 21st.

ADDRESSES: Bethesda Marriott-Pooks Hill, 515 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897–9400.

FOR FURTHER INFORMATION CONTACT: Mr. Garey Rice, Administrative Officer, Office for Human Research Protections, 6100 Executive Boulevard, Room 310B (MSC 7507), Rockville, Maryland 20892–7507, (301) 402–6003. The electronic mail address is: *gr66s@nih.gov*.

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000 to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Dated: November 30, 2000.
Greg Koski,
Director, Office for Human Research Protections.
[FR Doc. 00–31162 Filed 12–6–00; 8:45 am]
BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Final PHS Policy for Instruction in the Responsible Conduct of Research

AGENCY: Office of the Secretary, HHS.

ACTION: Announcement of Final "PHS Policy for Instruction in the Responsible Conduct of Research."

SUMMARY: The Office of Research Integrity (ORI) in collaboration with the Agency Research Integrity Liaison Officers for each of the Public Health Service (PHS) Operating Divisions, announced on July 21, 2000, (65 FR 45381) the availability for public comment of a Draft PHS Policy for Instruction in the Responsible Conduct of Research (RCR) for extramural institutions receiving PHS funds for research or research training. The comment period closed on September 21, 2000.

In response to public comment, ORI and the PHS agencies have made substantial revisions to the draft policy and hereby announce the final "PHS Policy on Instruction in the Responsible Conduct of Research." The final policy, a summary of comments and revisions to the policy made in response thereto, a list of available resources for RCR education programs, and Frequently Asked Questions and Answers on the policy are located at <http://ori.hhs.gov> or may be obtained from ORI at 5515 Security Lane, Suite 700, Rockville, Maryland 20852, Phone: 301–443–5300. Public comments on the draft policy are available for public inspection on ORI's premises from Monday-Friday between 9 a.m. and 5 p.m. Please call ORI for an appointment time.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, J.D., Senior Program Analyst, Division of Education and Integrity, Office of Research Integrity, Rockwall II, Suite 700, 5515 Security Lane, Rockville, MD 20852, 301–443–5300.

Chris B. Pascal,
Director, Office of Research Integrity.
[FR Doc. 00–31152 Filed 12–6–00; 8:45 am]
BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1504]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry on How to Use E–Mail to Submit Information to the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on How to Use E–Mail to Submit Information to the Center for Veterinary Medicine" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 2000 (65 FR 57192), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0454. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: November 28, 2000.
Margaret M. Dotzel,
Associate Commissioner for Policy.
[FR Doc. 00–31150 Filed 12–6–00; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–667]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Alternate Quality Assessment Survey; *Form No.:* HCFA–667 (OMB# 0938–0650); *Use:* The HCFA–667 is used in lieu of an onsite survey for those Clinical Laboratories Improvement Amendment (CLIA) laboratories with good performance as determined by their last onsite survey. This form is designed to determine current CLIA compliance as well as prepare laboratories for future onsite surveys; *Frequency:* Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government; *Number of Respondents:* 4,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 10,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–31180 Filed 12–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–0108]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare coverage of liver transplants; *Form No.:* HCFA–R–108 (OMB# 0938–0580); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of liver transplants performed on medicare beneficiaries.; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 12; *Total Annual Responses:* 12; *Total Annual Hours:* 2,110.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 29, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–31181 Filed 12–06–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–0170]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Lung Transplants; *Form No.:* HCFA–R–170 (OMB# 0938–0670); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of lung transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 6; *Total Annual Responses:* 6; *Total Annual Hours:* 900.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Division of HCFA Enterprise Standards.

[FR Doc. 00–31182 Filed 12–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day; Proposed Collection: IHS Scholarship Program Application

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

Title: 0917–0006, "IHS Scholarship Program Application." This collection was formerly titled, "Application for Participation in the IHS Scholarship Program". *Type of Information Collection Request:* 3-year extension, with change, of previously approved information collection, 0917–0006, "Application for Participation in the IHS Scholarship Program" which expires April 4, 2001. *Form Number(s):* IHS–856, 856–2, through 856–8, IHS–815. IHS–816, IHS–818, D–02, F–02, F–04, G–02, G–04, H–07, H–08, J–06, J–07, K–03, K–04, and L–03. Reporting formats are contained in an IHS Scholarship Program application booklet. *Need and Use of Information Collection:* The IHS Scholarship Branch needs this information for program administration and uses the information to solicit, process and award IHS Pre-Graduate, Preparatory and/or Health Professions Scholarship grantees and monitor the academic performance of awardees, to place awardees at payback sites, and for awardees to request additional program. The IHS Scholarship Program is streamlining the application to reduce the time needed by applicants to complete and provide the information, and plans on using information technology to make the application electronically available on the Internet.

Affected Public: Individuals, not-for-profit institutions and State, local or Tribal Government.

Type of Respondents: Students pursuing health care professions.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response*	Annual burden hours
Scholarship Application (IHS–856)	875	1	875	1.50 (90 min)	1,312
Checklist (856–2)	875	1	875	0.13 (8 min)	114
Course Verification (856–3)	875	1	875	0.70 (42 min)	613
Faculty/Employer Application (856–4)	1,750	1	1,750	0.83 (50 min)	1,453
Justification (856–5)	875	1	875	0.75 (45 min)	656
Federal Debt (856–6)	875	1	875	0.13 (8 min)	114
MPH only (856–7)	50	1	50	0.83 (50 min)	42
Accept/Decline (856–8)	875	1	875	0.13 (8 min)	114
Stipend Checks (D–02)	100	1	100	0.13 (8 min)	13
Enrollment (F–02)	1,400	1	1,400	0.13 (8 min)	182
Academic Problem/Change (F–04)	100	1	100	0.13 (8 min)	13
Request Assistance (G–02)	217	1	217	0.13 (8 min)	28
Summer School (G–04)	193	1	193	0.10 (6 min)	19
Contract (818)	1,400	1	1,400	0.27 (16 min)	378
Placement (H–07)	250	1	250	0.18 (11 min)	45
Graduation (H–08)	250	1	250	0.17 (10 min)	43
Site Preference (J–04)	150	1	150	0.13 (8 min)	20
Travel Reimb (J–05)	150	1	150	0.10 (6 min)	15
Status Report (K–03)	250	1	250	0.25 (15 min)	63
Preferred Assignment (K–04)	200	1	200	0.75 (45 min)	150
Deferment (L–03)	20	1	20	0.13 (8 min)	3
Total	11,730				5,390

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information; (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

SEND COMMENTS AND REQUESTS FOR FURTHER INFORMATION: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601 or call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: lhodahkw@hqe.ihs.gov.

COMMENT DUE DATE: Your comments regarding this information collection are best assured of having their full effect if received on or before February 5, 2001.

Dated: November 29, 2000.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 00–31153 Filed 12–6–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request; Revision of OMB No. 0925–0001/exp.02/28/01, "Research and Research Training Grant Applications and Related Forms"

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Extramural Research, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Research and Research Training Grant Applications and Related Forms.

Type of Information Collection Request: Revision, OMB 0925–0001, Expiration Date 02/28/01. Form

Numbers: PHS 398, 2590, 2271, 3734 and HHS 568.

Need and Use of Information Collection: The application is used by applicants to request Federal assistance for research and research-related training. The other related forms are used for trainee appointment, final invention reporting, and to relinquish rights to a research grant.

Frequency of response: Applicants may submit applications for published receipt dates. If awarded, annual progress is reported and trainees may be appointed or reappointed.

Affected Public: Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Type of Respondents: Adult scientific professionals. The annual reporting burden is as follows:

Estimated Number of Respondents: 114,407;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: 12.040; and

Estimated Total Annual Burden Hours Requested: 1,377,548. The estimated annualized cost to respondents is $48,214,180.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Jan Heffernan, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 1196, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0940, or E-mail your request, including your address to: *Heffernj@OD.NIH.GOV*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 5, 2001.

Dated: November 29, 2000.

Carol Tippery,

Acting Director, OPERA, NIH, GOV.

[FR Doc. 00–31213 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Call for Nominations for the National Cancer Institute Director's Liaison Group

The National Cancer Institute (NCI), the federal government's primary agency for cancer research, is seeking nominations for five new members of the NCI Director's Consumer Liaison Group (DCLG) who will be appointed in July 2001. The DCLG helps NCI to identify appropriate advocates to serve on its program and policy advisory committees, and it serves as a channel for consumer advocates to voice their views and concerns. The DCLG is a federal chartered advisory committee of the National Cancer Institute (NCI). It consists of 15 consumer advocates who are involved in cancer advocacy and who reflect the diversity among those whose lives are affected by cancer.

NCI brings together these advocates from many communities to advise and make recommendations to the Director, NCI from the consumer advocate perspective on a wide variety of issues, programs and research priorities. All DCLG members must be U.S. citizens. Specifically the DCLG members:

- Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.
- Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programmatic and research priorities.
- Establish and maintain strong collaborations between the NCI and the cancer advocacy community to reach common goals.

Eligibility Requirements for Individual Members

To serve on the DCLG, a member must meet the following minimum eligibility requirements:

- Be involved in the cancer experience as a cancer survivor, a person affected by the suffering and consequences of cancer, or a professional or volunteer who works with survivors or those affected.
- Represent a constituency (formally or informally) with whom she or he communicates regularly on cancer issues and be able to serve as a conduit for information both to and from his/her constituency.

DCLG members must be committed to participating in all activities of the DCLG which includes at least two meetings a year in Bethesda.

Criteria for Evaluating Individual Candidates

Nominees who meet the minimum eligibility requirements will be further assessed based on the following criteria:

- Cancer Advocacy experience
- Ability to communicate effectively
- Ability to represent broad issues, think "globally"
- Ability to contribute to an effective group process
- Leadership ability

Characteristics of the DCLG

In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are intended to ensure that it reflects the breadth and diversity of the consumer advocacy community:

- Multicultural diversity
- A broad mix of cancer sites
- Representation of the medically underserved
- Men and women
- A range of organizations (local/regional and national)
- Age diversity
- Geographic diversity (rural/urban mix)

Selection Process

A call for nominations is disseminated annually to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. All nominees are screened for eligibility, then evaluated according to the criteria. A list of highly qualified candidates who reflect balance and diversity of representation is forwarded to the Director, NCI, who selects the DCLG members. The original members of the DCLG endorsed this process, which will be used to select future members.

NCI encourages nomination of candidates reflecting the diversity sought on the DCLG. Nominations can be made by organizations, including local/regional and national groups, or individuals, including self-nominations. To receive a nomination package for the DCLG, send your name, advocacy/voluntary organization affiliation (if any), address and phone number to the Office of Liaison Activities, NCI, c/o Palladian Partners, 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, FAX (301) 650 8676. Nominations must be postmarked by February 15, 2001.

Dated: November 30, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 00–31197 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immunoglobulin-G Constant Region Fusion Proteins as Molecular Weight Markers

Stephen V. Angeloni, Ph.D. (NIDDK)
DHHS Reference No. E–292–00/0, Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

The technology portrayed in this invention is available through a Biological Materials License as a research tool and for use in diagnostic tests. Current methods of protein detection and size determination can be made more efficient by the utilization of more stable protein markers that cover a wider range of molecular weights for western blotting and other diagnostics applications. As embodied in this invention, construction of recombinant proteins containing constant regions of Immunoglobulin-G from mouse, rabbit and other species, allow the production of protein standards that can be detected simultaneously on the same western blot as the sample proteins. Such markers will increase the accuracy in determining sample protein size and in combination with recombinant or chemically labeled second antibodies, will allow the detection of an increased number of sample proteins simultaneously on the same blot.

A Forward Mutational Assay for Use With PhiX174 Transgenic Mice

Carrie R. Valentine (FDA), Heinrich V. Malling (NIEHS), Bentley A. Fane (Univ. of Arizona)
DHHS Reference No. E–254–00/0 filed 11 July, 2000, Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; email: ms482m@nih.gov

The aforementioned invention is currently available through a Biological Materials License as a research tool. This assay can detect 19 different base substitutions at 13 different sites in gene A of the PhiX174 transgene present in the transgenic Malling mouse and is an improvement over the previous reversion assay, which was limited to mutation at a single site. The ability to detect mutations at multiple sites will allow the detection of mutagenic test compounds with affinity for different sequence contexts, while retaining the advantage of the inexpensive recovery of this transgene, which is by electroporation.

The evaluation of new drugs for their potential for inducing mutations is a necessary part of evaluating the safety of pharmaceuticals or environmental chemicals. One advantage of this assay is that it may be automated to be performed in microplate dishes. In addition, this assay has the potential to be utilized in a microarray system because of the limited number of possible mutations. Therefore, it would be more rapid and less expensive than the currently used transgenic systems.

Adult Human Dental Pulp Stem Cells in vitro and in vivo

Dr. Songtao Shi *et al.* (NIDCR)
DHHS Reference No. E–233–00/0 filed 21 July 2000, Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Many individuals with ongoing and severe dental problems are faced with the prospect of permanent tooth loss. Examples include dentinal degradation due to caries or periodontal disease; (accidental) injury to the mouth; and surgical removal of teeth due to tumors associated with the jaw. Clearly, a technology that offers a possible alternative to artificial dentures by designing and transplanting a set of living teeth fashioned from the patient's own pulp cells would greatly improve the individual's quality of life.

The NIH announces a new technology wherein dental pulp stem cells from an individual's own postnatal dental pulp tissue (one or two wisdom teeth) can potentially be used to engineer healthy living teeth. This technology is based upon the discovery of a subpopulation of cells within normal human dental pulp tissue that has the ability to grow and proliferate in vitro. These (dental pulp) stem cells can be induced under defined culture conditions to form calcified nodules in vitro and have been shown to differentiate into a dentin/pulp like structure in vivo.

PTH2 and PTH1 Receptor Ligands

Ted B. Usdin and Samuel R. Hoare (NIMH)
DHHS Reference No. E–123–99/1 filed 15 June 2000, Licensing Contact: Norbert Pontzer; 301/496–7735, ext. 284; e-mail: pontzern@od.nih.gov

Parathyroid hormone receptors found on osteoblasts in bone and renal tubule cells in kidney elevate blood calcium levels when stimulated by parathyroid hormone (PTH) and PTH-related protein (PTHrP). Excessive secretion of PTH from the parathyroid gland results in primary hyperparathyroidism. Production of PTHrP by various tumors results in humoral hypercalcemia of malignancy. In both of these conditions, excessive blood calcium levels lead to clinically significant morbidity. A parathyroid hormone antagonist could therefore have therapeutic value.

Until now, no effective antagonists for the classical parathyroid hormone receptor (PTH1 receptor) were known. This invention describes a peptide which binds with high affinity ($K_d = 1.3 \pm 0.1$ nM, dissociation $T_{1/2} = 14$ min.) and acts as purely competitive antagonist at the PTH1 receptor. This novel peptide is related to

tuberoinfundibular peptides of 39 residues (TIP39), also described in this invention, which binds to a related receptor. Deletion of amino acids from the N-terminus of TIP39 resulted in the high affinity PTH1 receptor antagonist peptide described here. This peptide may be used therapeutically to treat excessive blood calcium caused by PTH or PTHrP, other pathology caused by PTHrP, to demonstrate the utility of parathyroid hormone receptor antagonism in the treatment of hypercalcemia or other conditions, or to help screen for other antagonists at the parathyroid hormone receptor.

Dated: November 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–31216 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel NCCAM AIDS SEP–H08.

Date: December 12, 2000.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Democracy II, Ste. 106, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cecelia Maryland, Grants Technical Assistant, National Center for Complementary and Alternative Medicine, National Institutes of Health, Building 31, Room 5B50, Bethesda, MD 20892, (301) 480–2419.

Dated: November 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31206 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, SCOR-Impact of Injury on the Immature Pulmonary Circulation.

Date: January 10, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Deborah P. Beebe, PhD, Chief, Rockledge Center II, 6701 Rockledge Drive, Suite 7178, Bethesda, MD 20892–7924, 301/435/0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31199 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: January 7–9, 2001.

Time: 7 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P Clark, PhD, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301/435–0310.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31200 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Close Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–7]2.

Date: December 21, 2000.

Time: 3:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK/DEA/Review Branch, 2 Democracy Boulevard, 6707 Democracy Boulevard, MSC 5452, Room #659, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31205 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 6, 2000.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the require and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institute of Health, HHS)

Dated: December 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31198 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: January 9, 2001.

Time: 2:00 pm to 4:30 pm.

Agenda: To review and evaluate contract proposals.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, Phd, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31204 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 11, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Henry J. Haigler, Phd., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31208 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–12, Review of R03 Grants.

Date: December 7, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–23, Review of R01s.

Date: December 12, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–11, Review of R13 Grants.

Date: December 14, 2000.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–13, Review F32 & R03 Grants.

Date: December 18, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–22, Review of R01s.

Date: January 24, 2001.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31209 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Special Emphasis Panel.

Date: December 8, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism National Instituted of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31212 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: December 18, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Milton Corn, MD, Associate Director, Office of Extramural Programs, National Library of Medicine, National Institutes of Health, One Rockledge Centre, Suite 301, 6705 Rockledge Drive, MSC 6075, Bethesda, MD 20892–6075, 301–496–4621.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31196 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Fact CT–MR Registration For Image Guided Procedures.

Date: December 19, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Milton Corn, MD, Associate Director, Office of Extramural Programs, National Library of Medicine, Rockledge One, Suite 301, 6705 Rockledge Drive, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31211 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 20, 2000, 4 pm to November 20, 2000, 5 pm, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on November 17, 2000, 65 FR 69568–69570.

The meeting will be held on December 4, 2000. The time and location remain the same. The meeting is closed to the public.

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31202 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 28, 2000, 1 pm to November 28, 2000, 2:30 pm, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on November 17, 2000, 65 FR 69568–69570.

The meeting times have been changed to 3:30 pm to 4:30 pm. The date and location remain the same. The meeting is closed to the public.

Dated: November, 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31201 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 5, 2000.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Micheal Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 5, 2000.

Time: 2:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Anne Schaffner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892, (301) 435–1239, schaffna@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 13, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14–15, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, (301) 435–1789.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jerry L. Klein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Heath, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, (301) 435–1159, ameros@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 2000.

Time: 10:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla D. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31207 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals association with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 4, 2000.

Time: 3:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 4:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–435–1017, leving@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 13, 2000.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David M. Monsees, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 19, 2000.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7844, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2000.

Time: 10:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institues of Helath, HHS)

Dated: November 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31210 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Methods and Compositions for the Detection and Treatment of Insulin Dependent Diabetes

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: US Patent Application Serial Number 08/548,159 filed 10/95 by McClaren, Notkins, Lan, and Li, and foreign counterparts, and US Patent Application Serial Number 08/514,213 filed 8/95, and foreign counterparts, by McClaren, Notkins, and Lan—both entitled "Methods and Compositions for the Detection and Treatment of Insulin Dependent Diabetes" to BioSeek Inc., of New York, NY. The United States of America is an assignee of the patent rights to these inventions.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 5, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: John Rambosek, Ph.D. Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Su9ite 325, Rockville, MD 20852–3804; Email:jr312d@nih.gov; Telephone: (301) 496–7056, ext. 270; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: Insulin-dependent diabetes mellitus (IDDM) affects close to one million people in the United States. It is autoimmune disease in which the immune system produces antibodies that attack the body's own insulin-manufacturing cells in the pancreas. Patients require daily injections of insulin to regulate blood sugar levels. The invention identifies two proteins, named IA–2 and IA–2β, that are important markers for type I (juvenile, insulin-dependent) diabetes. IA–2/IA–2β, when used in diagnostic tests, recognized autoantibodies in 70 percent of IDDM patients. Combining IA–2 and IA–2β with other known markers increased the level of identification to 90 percent of individuals with IDDM. Moreover, the presence of autoantiboides to IA–2 and IA–2β in otherwise normal individuals was highly predictive in identifying those at risk of ultimately developing clinical disease. It is now possible to develop a rapid and effective test that can screen large populations for IDDM. In addition, IA–2 and IA–2β are candidates for immune tolerance and prevention of disease development. The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be limited to use of the invention for diagnostic and therapeutic uses in the detection and treatment of diabetes. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–31215 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Compositions and Methods for the Stimulation of Proliferation and Differentiation of Pancreatic Cells Ex Vivo

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any U.S. patents 5,888,705 (03/30/1999) and 5,587,309 (12/24/1996) or foreign applications corresponding to PCT Patent Application PCT/US95/00521, entitled "Compositions and Method of Stimulating the Proliferation and Differentiation of Human Fetal and Adult Pancreatic Cells Ex Vivo" published as WO 95/29989 (11/09/1995) to PanCel Corp., of California. The prospective exclusive license may be limited to the development of therapeutic applications, including compositions and methods using adult pancreatic cells, to be used in the treatment of diabetes.

DATES: Only written comments and/or applications for a license which are received by NIH on or before February 5, 2001, will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comment and other materials relating to the contemplated license should be directed to Susan S. Rucker, J.D., Patent and Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext 245; fax: 301/402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patents and patent applications describe the use of the compound Hepatocyte Growth Factor/Scatter Factor (HGF/SF) for the stimulation of proliferation and differentiation of pancreatic cells. Upon exposure to HGF/SF the pancreatic cells proliferate and differentiate and are able to produce insulin. The ability to stimulate pancreatic cells to proliferate and differentiate into cells capable of producing insulin may provide a means for improving the treatment of Type I and Type II diabetes.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license (*i.e.*, a completed "Application for License to Public Health Service Inventions") in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 35 U.S.C. 552.

Dated: November 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–31217 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Proposed Collection; Comment Request; Customer and Other Partners Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Warren Grant Magnuson Clinical Center (CC), the National Institutes of Health, (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Generic Clearance for Satisfaction Surveys of Customer and Other Partners.

Type of Information Collection Request: Extension (OMB control number: 0925–0458).

Need and Use of Information Collection: The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization.

Frequency of Response: The participants will respond yearly.

Affected public: Individuals and households; businesses and other for profit, small businesses and organizations.

Types of respondents: These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows:

TABLE 1.—THREE YEAR BURDEN ESTIMATE

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
Clinical Center Patients	Questionnaire Telephone	11,100	66	20	2436.6
Family Members of Patients	Questionnaire/ Post Card	8500	38	10	533.3
Visitors to the Clinical Center	Questionnaire/ Post Card	3500	15	10	87.5
Former physician employees and trainees	Electronic	650	35	10	38.2
Guest workers/Guest researchers	Electronic	950	60	22	210
Extramural collaborators	Electronic	600	30	15	45
Vendors and Collaborating Commercial Enterprises	Questionnaire/ Fax Back	9500	17	18	475
Professionals and Organizations Referring Patients	Fax Back	9000	30	28	1250
Regulators	Fax Back	85	82	19	22
Volunteers	Questionnaire	850	58	28	230
Total (3 Years)			n=16,812		5,327.6
Total (1 Year)			n=5,604		1,776.0

Estimated costs to the respondents consists of their time; time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance is requested is $24,531 annually. A contract has been let with a vendor to provide assistance in survey administration. The estimated annual cost of this contract is $25,000. There is no capital costs to report.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, to obtain a copy of the data collection plans and instruments, or to submit comments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C 146, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free: (301) 496–3515, or e-mail your request or comments, including your address to dhenderson@cc.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 5, 2001.

Dated: November 18, 2000.

David K. Henderson,

Deputy Director for Clinical Care, CC.

[FR Doc. 00–31214 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4621–N–02]

Community Planning and Development Formula Programs: Assisting Persons With Disabilities—Recipients' Affirmatively Furthering Fair Housing Responsibilities and Involvement of Persons With Disabilities in Planning Actions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, and Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reemphasize the responsibility of Community Planning and Development formula grant program recipients to: (1) Affirmatively further fair housing which includes analyzing compliance with the multifamily design and construction requirements of the Fair Housing Act (the Act); and (2) include individuals with disabilities in the citizen participation process for the development of Consolidated Plans and Annual Action Plans.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1145 (this is not a toll-free number), or Terry Buss, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2504 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Every three to five years, each State and local government that is a recipient of HUD formula grant funds through the Community Development Block Grant Program, HOME Investment Partnerships Program, Housing Opportunities for Persons With AIDS Program or the Emergency Shelter Grant Program must submit a complete Consolidated Plan that assesses its priority housing and homeless needs, including the needs of persons with disabilities, and establishes a strategic plan for addressing these needs. (In this notice, the term "jurisdictions" (or "jurisdiction") refers to States and local governments that are recipients of this funding.)

Annually, jurisdictions must submit the Action Plan component of the Consolidated Plan which describes how these funds will be used. When preparing its Consolidated Plan and its Action Plans, the jurisdiction must include the participation of its citizens in accordance with its citizen participation plan. The citizen participation plan must provide for and encourage citizens to participate in the development of the Consolidated Plan, including any substantial amendments to the Consolidated Plan, and preparation of the Annual Performance Report. Jurisdictions are also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

In its annual submission to HUD, each recipient jurisdiction must submit a certification required by the Community Development Block Grant regulations (24 CFR 570.601(a)(2)) and the Consolidated Plan regulations (24 CFR 91.225(a)(1), 91.325(a)(1) [States) and 91.425(a)(1) [Consortia]) that it will affirmatively further fair housing. The jurisdiction's affirmatively furthering certification means that the jurisdiction will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions taken. If the jurisdiction is not undertaking these actions, the Department may reject the certification and disapprove the Consolidated Plan.

The analysis of impediments (AI) to fair housing choice includes an assessment of conditions, both public and private, affecting fair housing choice. The amendments to the Act in 1988 made it unlawful to discriminate against persons because of disability, including the failure to make multifamily residential structures built for first occupancy after March 13, 1991 accessible to persons with disabilities. The Act requires that all units in an elevator building with four or more units be accessible to persons with disabilities. In a non-elevator building with four or more units, all ground floor units must be accessible to such persons. These requirements apply whether the building is privately or publicly constructed and owned.

Recommended Actions To Meet These Responsibilities

HUD encourages jurisdictions that are recipients of funds covered by the Consolidated Plan to make outreach efforts to ensure that persons with disabilities are consulted and have an equal opportunity to participate in developing the jurisdiction's analysis of needs and plans for the use of Federal and other resources. HUD staff in the State and Area Community Planning and Development and Fair Housing and Equal Opportunity Offices can be consulted in helping develop outreach efforts and a significant amount of information is found on HUD's homepage on the Internet at www.hud.gov.

During the new five-year Consolidated Plan cycle that begins in Fiscal Year 2001, Consolidated Plan jurisdictions are strongly encouraged to periodically review and update their AIs, as appropriate, to give the same attention to impediments to fair housing choice for persons with disabilities as is provided for other bases of discrimination such as race that have been prohibited by the Act since its inception in 1968. HUD in its review of Annual Action Plan submissions and during on-site reviews, will consider whether jurisdictions are giving appropriate attention in their Action Plans to compliance with the accessibility requirements of the Act by both private and public housing providers.

Jurisdictions are also encouraged to take other actions to advance fair housing choice for persons with disabilities in support of their certification to affirmatively further fair housing. Recent HUD House Appropriations report language would direct HUD, when reviewing Consolidated Plans, to take into consideration a community's adoption of a building code that satisfies the Act's accessibility requirements along with the community's other efforts to remove impediments to fair housing (see H. Rep. 106–674).

With respect to building codes, HUD encourages elected officials and those engaged in housing and community development programs to determine whether the jurisdiction's building code is inconsistent in any respect with the Act's accessibility requirements. HUD's recently completed review of the four model building codes for consistency with the Act can assist with this determination because most local building codes are derived from one or more national model codes. HUD's final report reviewing the model building codes was published in the **Federal Register** on March 23, 2000 (65 FR 15740).

In its March 23, 2000 final report, HUD identified those areas of the model building codes that were not consistent with the accessibility requirements of the Act, and included recommended language for addressing these variations. Since that time, HUD has been working with the model code organizations and other interested persons in developing proposed code language to address the findings in the Department's final report with respect to the International Building Code 2000.

HUD also encourages jurisdictions to find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Act.

Dated: December 1, 2000.

Joseph A. D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 00–31120 Filed 12–6–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Zoological Society of San Diego, San Diego, CA, PRT–036157

The applicant requests a permit to import three male and three female captive born Przewalski's wild horse (*Equus p. przewalskii*) from the Calgary Zoo, Calgary Alta, Canada for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Bell Bud, Houston, TX, PRT–036529

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Triple S Game Farm, Edmond, OK, PRT–35441

The applicant requests a permit to export biological samples of the following endangered pheasant species: imperial (*Lophura imperialis*), Edward's (*Lophura edwardsi*), Swinhoe's (*Lophura swinhoii*), white-eared (*Crossoptilon crossoptilon*), brown-eared (*Crossoptilon mantchuricum*), cheer (*Catreus wallichi*), Elliot's (*Syrmaticus ellioti*), bar-tailed (*Syrmaticus humiae*), mikado (*Syrmaticus mikado*); to Dr. Ettore Randi, National Institute of Wildlife, Ozzano Emilia, Italy, for scientific research for the purpose of enhancement of the survival of the species.

Applicant: Marc A. Cheramie, Golden Meadow, LA, PRT–036303

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jeffrey R. Powell, Yale University, Dept. of Ecology and Evolutionary Biology, New Haven CT, PRT–036010

The applicant requests a permit to re-export 171 blood samples collected from Galapagos tortoises (*Geochelone nigra*) to Michel C. Milinkovitch, Unit of Evolutionary Genetics, Dept. of Molecular Biology, Free.University of Belgium, Gosselies, Belgium, for the purpose of scientific research. The samples were originally collected by the applicant from wild tortoises in the Galapagos Islands, Ecuador, and imported to the United States under permit no. US784934.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–811776

The applicant requests re-issuance of a permit to import feathers dropped from wild and captive-born birds, which are obtained through various international institutions and through collecting conducted during field studies, for the purpose of the scientific research. This notification covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Bryce W. Smith, Bay City, OR, PRT–036348

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Applicant: J. Herbert Fisher, Jr., Lancaster, PA, PRT–032816

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the, M'Clintock Channel polar bear population, Canada, for personal use. On September 19, 2000 (65 FR 56588), the permit request was mistakenly published as a sport-hunted bear from the Lancaster Sound population.

Applicant: Nathan P. Newbern, Ft. Worth, TX, PRT–035772

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada, for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 1, 2000.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–31222 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On September 21, 2000, a notice was published in the **Federal Register**, Vol. 64, No. 184, Page 57205, that an application had been filed with the Fish and Wildlife Service by Larry Martin for a permit (PRT–032405) to import one polar bear (*Ursus maritimus*) trophy taken from the M'Clintock Channel population, Canada for personal use.

Notice is hereby given that on November 14, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On October 4, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 193, Page 59197, that an application had been filed with the Fish and Wildlife Service by Chicago Zoological Society, Brookfield, IL, for a permit (PRT–032510) to import one captive born polar bear (*Ursus maritimus*) from the Jardin Zoo, Quebec, Canada for the purposes of public display and conservation education.

Notice is hereby given that on November 24, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Rm. 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: December 1, 2000.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–31223 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Great Lakes Panel will meet from 1 pm to 5 pm on Tuesday, December 12, 2000, and 8 am to 12 noon on Wednesday, December 3, 2000.

ADDRESSES: The Great Lakes Panel meeting will be held at the Holiday Inn, North Campus, 3600 Plymouth Road, Ann Arbor, Michigan, 48105.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Project Manager, Great Lakes Commission, at 734–665–9135 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon_gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Great Lakes Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Great Lakes Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, provides the following:

(a) Identify priorities for the Great Lakes Region with respect to aquatic nuisance species;

(b) Make recommendations to the Task Force regarding programs to carry out zebra mussel programs;

(c) Assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(d) Coordinate, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

(e) Provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(f) Submit an annual report describing activities within the Great Lakes region related to aquatic nuisance species prevention, research, and control.

The focus of this meeting will be to: Review panel activities for the past year, hear updates of ongoing activities, and review the Great Lakes Action Plan.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: December 1, 2000.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 00–31119 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petitions for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) notice is hereby given that the following groups have each filed a letter of intent to petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. Each letter of intent was received by the Bureau of Indian Affairs (BIA) on the date indicated, and was signed by members of the group's governing body.

Ozark Mountain Cherokee Tribe of Arkansas and Missouri, *c/o* Mr. Terry D. Smith, P.O. Box 271, Melbourne, Arkansas 72556. October 19, 1999.

Creek-Euchee Band of Indians of Florida, *c/o* Chris Sewell, P.O. Box 157, Bristol, Florida 32321. November 23, 1999.

Ooragnak-Indian Nation, *c/o* Mr. William Blake, 8181 Deadstream Road, Honor, Michigan 44640. December 1, 1999.

Saponi Nation of Missouri, *c/o* Mr. John Trullinger, 3445, CR 4990, Willow Springs, Missouri 65793–9728. December 14, 1999.

Maconce Village Band of Ojibwa, *c/o* Mr. Ernest I. Young, 6300 Church Road, Ira Township, Michigan 48023. March 7, 2000.

Traditional Choinumni Tribe, *c/o* Ms. Angie Osborne, 2787 North Piedra Road, Sanger, California 93657. March 29, 2000.

Federation of Old Plimoth Indian Tribes, Inc., *c/o* Rodney Joseph, 558 Wareham Road, Plymouth, Massachusetts 02360. May 16, 2000.

Honey Lake Maidu, *c/o* Ronnie Morales, 1101 Arnold Street, Susanville, California 96130. June 1, 2000.

United Cherokee Indian Tribe of Virginia, *c/o* Samuel H. Penn, Sr., P.O. Box 1104, Madison Heights, Virginia 24572. July 31, 2000.

Cherokee River Indian Community, *c/o* Steven Bison, 11271 County Road 7, Moulton, Alabama 35650. August 3, 2000.

Wicocomico Indian Nation, *c/o* Al Byrd, 2054 Newmans Neck Road, Heathsville, Virginia 22473. August 28, 2000.

Cherokee's of Lawrence County, Tennessee, *c/o* Joe Harlan White, 393 Rabbit Trail Road, Leoma, Tennessee 38468. September 14, 2000.

Wiquapaug Eastern Pequot Tribe, *c/o* Byron O. Brown, P.O. Box 1148, Hope Valley, Rhode Island 02832. September 15, 2000.

North Valley Yokut Tribe, *c/o* Katherine Perez, 1234 Luna Lane, Stockton, California 95206. September 22, 2000.

Tejon Indian Tribe, *c/o* Dick Montes, 2234 Fourth Street, Wasco, California 93280. October 27, 2000.

This is a notice of receipt of these letters of intent to petition and does not constitute notice that the petitions are under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under section 83.9(a) of the Federal regulations, third parties may submit factual and/or legal arguments in support of or in opposition to each group's petition and may request to be kept informed of all general actions affecting the petition. Third parties should provide copies of their submissions to the petitioner. Any information submitted will be made available on the same basis as other information in the BIA's files. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petitions may be examined, by appointment, in the Department of the Interior, BIA, Branch of Acknowledgment and Research, MS: 4660–MIB, 1849 C Street, N.W., Washington, D.C. 20240; Telephone: (202) 208–3592.

Dated: November 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31147 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1430–ET; NMNM 25016–30]

Public Land Order No. 7470; Partial Revocation of Executive Order Dated April 17, 1926; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 39.91 acres of land withdrawn for the Bureau of Land Management's Public Water Reserve No. 107. The land does not meet the criteria for a public water reserve. This action will open the land to surface entry and nonmetalliferous mining. The Executive order did not close any of the land to metalliferous mining or to mineral leasing.

EFFECTIVE DATE: January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 20 S., R. 28 E.,
Sec. 1, lot 1.
The area described contains 39.91 acres in Eddy County.

2. At 10 a.m. on January 8, 2001, the land described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of

applicable law. All valid applications received at or prior to 10 a.m. on January 8, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on January 8, 2001, the land described in paragraph 1 will be opened to nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land for nonmetalliferous minerals under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 14, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–31183 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–862 (Final)]

Certain Expandable Polystyrene Resins From Korea

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On November 16, 2000, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation (65 FR 69284). Accordingly, pursuant to § 207.40(a) of the Commission's rules of practice and procedure (19 CFR 207.40(a)), the antidumping investigation concerning certain expandable polystyrene resins from Korea (Investigation No. 731–TA–862 (Final)) is terminated.

EFFECTIVE DATE: November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: December 1, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31178 Filed 12–06–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities, Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of currently approved information collection; Complaint Form, Coordination and Review Section, Civil Rights Division, Department of Justice.

The Department of Justice, Civil Rights Division has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 11, 2000, page 54861–54862, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until January 8, 2001. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Office, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of Currently Approved Collection.

(2) Title of the Form/Collection: Complaint Form, Coordination and Review Section, Civil Rights Division, Department of Justice.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No form number. Coordination and Review Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Individuals or Households.

The information collection is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral is necessary, and to provide information needed to initiate investigation of the complaint. Respondents are individuals alleging discrimination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1560 responses per year; ½ hour per response. The information will be submitted by the respondent only once. Thus, there will be approximately 1560 total yearly responses at ½ hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 780 annual burden hours.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: November 30, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc: 00–31177 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Application for registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); and Affidavit for Chain Renewal (DEA Form 224B).

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until February 5, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James A. Pacella, 202–307–7250, Registration and Program Support Section, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); and Affidavit for Chain Renewal (DEA Form 224B).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: DEA Form 224, DEA Form 224a and DEA Form 224B. Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households, Not-for-profit institutions and State, Local or Tribal Government. Abstract: All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances and is used to monitor their activities. A revision made to the subject forms requires the respondent to submit their Tax Identification Number or Social Security Number as required by the Debt Collection Improvement Act of 1996 (PL 104–134).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Regarding DEA Form 224 and DEA Form 224a: 374,701 respondents, .20 hours per response. A respondent will take an estimate of 12 minutes per year to complete a DEA Form 224 or DEA 224a. Regarding DEA Form 224B: 12 respondents, 5 hours per response. A respondent will take an estimate of 5 hours per year to complete a DEA Form 224B.

6. *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW., Washington, DC 20530.

Dated: November 30, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–31117 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Application for registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); and Affidavit for Chain Renewal (DEA Form 225B).

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until February 5, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. James A. Pacella, 202–307–7250, Registration and Program Support Section, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including the validity of the methodology and assumptions used;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); and Affidavit for Chain Renewal (DEA Form 225B).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Numbers: DEA Form 225, DEA Form 225a and DEA Form 225B. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other-for-profit. Other: Individuals or households, Not-for-profit institutions and State, Local or Tribal Government. Abstract: The Controlled Substances Act requires all firms and individuals who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain. A revision made to the subject forms requires the respondent to submit their Tax Identification Number or Social Security Number as required by the Debt Collection Improvement Act of 1996 (PL 104–134).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Regarding DEA Form 225 and 225a: 9,800 respondents, .5 hours per response. A respondent will take an estimate of 30 minutes to complete a DEA Form 225 or DEA Form 225a. Regarding DEA Form 225B: 7 respondents, 1 hour per response. A respondent will take an estimate of 1 hour each year to complete a DEA Form 225B.

6. *An estimate of the total public burden (in hours) associated with the collection:* 4,907 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: November 30, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–31118 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection Comment Request

ACTION: Notice of Information Collection Under Review; Revision of a currently approved collection; Local Law Enforcement Block Grants Program Request for Drawdown.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 8, 2000, page 54562 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until January 8, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Local Law Enforcement Block Grants Program Request for Drawdown.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: None

The Local Law Enforcement Block Grants Act of 1996 authorizes the Director of the Bureau of Justice Assistance to make funds available to local units of government in order to reduce crime and improve public safety.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will request the one-lump sum drawdown of their annual LLEBG grant funds by completing the no more than sixty minutes on-line process.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the application is 3,500.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: November 30, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–31176 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–052F]

Occupational Exposure to Cotton Dust: Notice of the Availability of a Lookback Review Pursuant to the Regulatory Flexibility Act and Executive Order 12866

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has completed a lookback review of its Cotton Dust Standard, 29 CFR 1910.1043, pursuant to Sec. 610 of the Regulatory Flexibility Act and Sec. 5 of Executive Order 12866. That review, "Regulatory Review of OSHA's Cotton Dust Standard, September 2000," indicates: that the standard has reduced byssinosis rates from 12% to 1%; that the standard cost one-quarter to one-half of various estimates and increased productivity; that the standard does not impose a significant impact on small business; and that public commenters agree that the standard should remain in effect. Based on this review, OSHA concludes that the Cotton Dust Standard should be continued without change except that the washed cotton partial exemption to the standard should be expanded based on new studies and recommendations from industry, unions and government experts. See the Final Rules section of today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joanna Dizikes Friedrich, Directorate of Policy Rm. N3641, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1939. Direct technical inquiries about the Cotton Dust Standard to Gail Brinkerhoff, Rm. N3603, telephone (202) 693–2190, or visit the OSHA Homepage at *www.OSHA.dol.gov*. Direct press inquiries to Bonnie Friedman, Director of Information and Consumer Affairs, Rm. N–3647, telephone (202) 693–1999.

ADDRESSES: Copies of the entire report may be obtained from the OSHA Publication Office, Rm. N–3101, 200 Constitution Avenue, NW., Washington, DC 20210, tel. (202) 693–1888, Fax (202) 693–2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, Docket No. H–052F, Rm. 2625, 200 Constitution Ave., NW. Washington, DC 20210, tel. (202) 693–2119. The main text of the report will become available on the OSHA web page at *www.OSHA.dol.gov*.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) issued its final Cotton Dust Standard June 23, 1978 (43 FR 27351) and amended it December 12, 1985 (50 FR 51120). That standard is codified at 29 CFR 1910.1043.

OSHA has completed a "Lookback" review of the Cotton Dust Standard titled, "Regulatory Review of OSHA's Cotton Dust Standard, September 2000." This **Federal Register** notice announces the availability of that review and briefly summarizes it.

The purpose of the Cotton Dust Standard is to greatly reduce the significant risk of byssinosis (brown lung disease), a disabling lung disease. Prior to the standard more than 50,000 cotton textile workers suffered from the disease at any one time.

The Cotton Dust Standard sets maximum permissible exposure limits (PELs) for cotton dust which vary by operation. It includes requirements for monitoring, medical surveillance, work practices and other requirements. It includes partial exemptions for the processing of cotton washed according to various protocols which greatly reduce the cotton's biological reactivity. Certain sections of the industry, such as knitting, are partially or completely exempt from the standard because those sections do not present significant risk of byssinosis.

In 1998, the Occupational Safety and Health Administration (OSHA) began a review of its Cotton Dust Standard under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601, 610) and Section 5 of Executive Order (EO) 12866 on Regulatory Planning and Review.

The purpose of a review under Section 610 of the Regulatory Flexibility Act (RFA):

"(S)hall be to determine whether such rule should be continued without change, or should be rescinded, or amended consistent with the stated objectives of applicable statutes to minimize any significant impact of the rules on a substantial number of small entities."

"The Agency shall consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule."

The review requirements of Section 5 of EO 12866 require agencies:

To reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.

To carry out these reviews, on June 23, 1998, OSHA asked the public for comments on all issues raised by these provisions (63 FR 34140). Among other things, OSHA requested comments on: the benefits and utility of the rule in its current form; the continued need for the rule; the complexity of the rule; and whether, and to what extent, the rule overlaps, duplicates, or conflicts with other Federal, State, and local government rules. OSHA also asked for comments on new developments in technology, economic conditions, or other factors affecting the ability of covered firms to comply with the Cotton Dust Standard and on alternatives to the rule that would minimize significant impacts on small businesses while achieving the objectives of the Occupational Safety and Health Act.

OSHA accepted written comments from June 23, 1998 through August 31, 1998. OSHA also conducted two public meetings, on July 24 and July 30, 1998,

in Atlanta, Georgia, and Washington, DC, respectively. Comments were received from employers, trade associations, the National Institute for Occupational Safety and Health, U.S. Department of Agriculture, the joint industry/government/union Task Force for Byssinosis Prevention, trade unions and textile workers. OSHA also considered the many published studies and reports on relevant issues. All documents, studies and comments received relevant to the review, transcripts of the oral hearings and documents discussed in this report are available at the OSHA Docket Office, Docket No. H–052F, Room N–3625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–2350.

Conclusions: Based on the comments and testimony of participants in this lookback review process and the studies and other evidence submitted to the public docket, OSHA concludes as discussed in depth in "Regulatory Review of OSHA's Cotton Dust Standard, Sept. 2000," that the Agency's standard should be continued without change (except for an expansion of the washed cotton exemption discussed below). The evidence also demonstrates that the standard does not need to be rescinded or amended to minimize significant impacts on a substantial number of small entities.

OSHA also finds that the Cotton Dust standard is necessary to protect employee health, is compatible with other OSHA standards, is not duplicative or in conflict with other Federal, State, or local government rules, is not inappropriately burdensome, and is consistent with the President's priorities and the principles of EO 12866. Further, no changes have occurred in technological, economic, or other factors that would warrant revision of the standard at this time.

The major impact of the Cotton Dust Standard is on firms in the cotton-using 4 digit SIC sectors of the textile industry. These are firms which open and process raw cotton, spin that cotton into cotton and cotton blend yarn and thread, and turn that yarn and thread into cotton and cotton blend fabrics. (The report also discusses other sectors and operations where the standard has some impact.)

It is estimated that there are approximately 466 cotton using establishments in these textile sectors. It also can be estimated that between 70,000 and 105,000 employees work in these establishments.

It is estimated that the prevalence rate of byssinosis among cotton textile workers was approximately 20% in the early 1970's. The completion of studies confirming these rates and OSHA's announcement of regulatory activities led some firms to lower exposures leading to an estimated prevalence rate of 12% just before OSHA issued the Cotton Dust Standard in 1978.

The provisions of the Cotton Dust Standard, lowering workers' exposure to cotton dust and requiring medical surveillance, transfer to lower exposure areas, work practices, etc., helped reduce the byssinosis prevalence rate to approximately 0.68%. The number of workers with byssinosis has been reduced to approximately 700 from approximately 12,000 in 1978 and 50,000 in 1970 (when the number of exposed workers was higher). The cotton dust standard has been highly successful in protecting the health of cotton textile workers from byssinosis and achieving the stated objective of the OSH Act.

OSHA had estimated that the capital cost of the Cotton Dust Standard would be $550 million in 1977 dollars, which was the low end of varying estimates. The actual cost was $243 million in 1982 dollars or $153 million in 1977 dollars.

The reason for the lower costs was that the standard encouraged industry to invest in more productive equipment to come into compliance. Industry purchased such things as automated opening equipment and air-jet looms to come into compliance rather than utilizing add-on ventilation.

A further result was that the Cotton Dust Standard contributed to increasing industry productivity growth, which was 2.5% per year in the 1972–79 period and increased to 3.5% per year in the 1979–1991 period. It is clear that the technological changes since the standard was issued have been positive for the industry and the standard has encouraged those positive technological developments.

It is also clear that the rule did not have any significant negative economic impact on a substantial number of small businesses. The large majority of firms affected are small businesses as defined by the Small Business Administration (SBA). Sales in the major cotton-using SICs increased from $20 billion in 1982, to $27 billion in 1992 to $38 billion in 1996 to $40 billion in 1998. Sales of small businesses as defined by the SBA in those SICs increased from $34 billion in 1996 to $36.5 billion in 1998. Sales of the smallest firms in that period increased from $6 billion to $10 billion.

Further evidence of the health of the small business sector is the entry of new small businesses into the cotton using SICs. The number of *establishments* with 1–19 employees increased 21% from 1977 to 1992, and the number of *firms* with 1–19 employees increased 55% from 1990 to 1996. (Different statistical series were available for the different periods.)

There is a continuing need for the Cotton Dust Standard. Without the exposure limits, medical surveillance, and other requirements of the standard, byssinosis prevalence rates would increase. All commenters supported the retention of the Cotton Dust Standard, and there were no criticisms that it was too complex. The stakeholders understand the standard, and its more technical requirements are necessary for effective medical surveillance and accurate monitoring.

The Cotton Dust Standard does not conflict with other Federal or state rules. Most of the cotton textile industry is located in states with their own state OSHA's. Those states have adopted cotton dust standards which are virtually identical to the Federal standard (they must adopt standards that are at least as effective as the Federal standard), and those states enforce their state standards.

Some commenters recommended minor technical changes to the Cotton Dust Standard. Those are discussed and OSHA conclusions stated in chapter VI. 5 of the full review. OSHA concluded that some of the suggestions, such as technical changes to the medical protocol, were for provisions that are working effectively and it was not worth regulatory resources to propose minor changes. Some of the other recommended minor changes, such as on monitoring frequency, were quite controversial with many opposing such changes. Consequently OSHA concluded it was not appropriate to propose such changes absent meaningful new evidence which was not presented.

The "Reg Flex" and Executive Order reviews did bring convincingly to OSHA's attention one change to the Cotton Dust Standard that appears strongly justified. Consequently OSHA is issuing that change by direct final rule in today's **Federal Register**.

Washing cotton according to certain protocols reduces the bioactivity of that cotton and its ability to cause byssinosis. Not all washing processes reduce the bioactivity, and cotton washed by certain processes can not be spun and woven into quality textiles. The 1985 amendments to the Cotton Dust Standard give a partial exemption for processing cotton washed according to certain protocols based on studies showing such cotton has greatly reduced bioactivity.

The industry/government/union Task Force for Byssinosis Prevention sponsors research to develop washing techniques which reduce bioactivity and create processable cotton. That Task Force has recommended that OSHA add an additional washing process, batch kier processing, to those that receive partial exemption, because batch kier processing, according to a specified protocol, greatly reduces bioactivity. That recommendation is supported by studies and recommendations of the National Institute for Occupational Safety and Health, the U.S. Department of Agriculture, industry groups and unions. Consequently, OSHA is taking prompt action to implement that recommendation and increase the flexibility available to the cotton textile industry while protecting textile worker health.

Signed at Washington, DC, this 18th day of October, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–31188 Filed 12–6–00; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 4, 2000.

TIME AND DATE: 2 p.m., Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Northern Illinois Steel Supply Co., Docket No. LAKE 99–78–RM, etc. (Issues include whether Northern Illinois Steel Supply Company is an "operator" under section 3(d) of the Mine Act).

TIME AND DATE: The Commission meeting will commence following upon the conclusion of the Commission meeting to consider Northern Illinois Steel Supply Co., Docket No. LAKE 99–78–RM, etc., which commences at 2 p.m. on Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 55b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a majority vote of the Commission that the Commission considered and act upon the following in closed session:

1. Disciplinary Proceeding, Docket No. D 2000–1.

TIME AND DATE: 10 a.m., Wednesday, December 13, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider its general procedures for handling requests to vacate defaults and requests to reopen matters that have become final Commission orders under section 105(a) of the Mine Act.

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR §§ 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–31354 Filed 12–5–00; 3:57 pm]

BILLING CODE 6735–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 11 a.m., local time on Wednesday, December 13–15, 2000, in the Safety Board's Boardroom and Conference Center at 429 L'Enfant Plaza SW, Washington, DC 20594 concerning Alaska Airlines Flight 261 off the coast of California near Port Hueneme on January 31, 2000. For more information, contact Dick Rodriquez, NTSB Office of Aviation Safety at (202) 314–6317 or Terry N. Williams NTSB Office of Public Affairs at (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Carolyn Dargan on 202–314–6305 by Friday December 8, 2000.

Dated: December 4, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–31169 Filed 12–6–00; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity to Comment on the Proposed Information Collection Initiative

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has prepared a proposed initiative for the *voluntary* submittal of information by external stakeholders about the impact that licensing actions and other regulatory activities have on maintaining safety and reducing unnecessary regulatory burden for commercial nuclear power plants. The purpose of this initiative is to obtain information to assist the Office of Nuclear Reactor Regulation (NRR) staff in (1) allocating staff resources and (2) measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden. The staff is requesting comments on this proposed information collection initiative.

DATES: The comment period expires January 22, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted in person or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, U.S. NRC, Mail Stop T6–D59, Washington, DC 20555–0001.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Pat Madden, Mail Stop O8E6, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2854, email *pmm@nrc.gov.*

SUPPLEMENTARY INFORMATION: As applicants submit requests for regulatory deliverables (*e.g.*, license amendment approvals, topical report reviews, rulemaking petitions), they would voluntarily provide information

about the impact their request would have on maintaining safety and reducing unnecessary regulatory burden. Ideally, measures for safety impact would include changes in person-rem dose or changes in core damage frequency (CDF). Similarly, measures for regulatory burden reduction would include changes in licensee costs or power production capability. However, the staff recognizes that it may not be possible or practical to provide actual risk metrics or dollar savings, and that more qualitative measurements may be more realistic. The staff invites comments from our external stakeholders to ensure that the measures are uniform, practical, and meaningful, and provide the appropriate yardstick for measuring the impact that a proposed activity has on safety and regulatory burden. This information would be collected for many types of external stakeholder submittals including license amendments, topical reports, rulemaking petitions, and license renewal applications. The staff encourages suggestions on what other submittals such information should be collected for in response to this initiative. Recognizing that there are many factors that could inhibit licensees and other stakeholders from providing such information, we invite comments to obtain an understanding of what the factors are and how they may be overcome.

The information described above would assist NRR in (1) allocating staff resources and (2) measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden. The staff is requesting comments on this proposed information collection initiative.

With respect to the first purpose, allocating staff resources, NRR would use the information collected to improve its effectiveness by pursuing those regulatory activities that maintain safety (or involve acceptable reductions in margin) but provide the highest return in reducing unnecessary regulatory burden. NRR is establishing a "work planning center" to centralize the planning and scheduling of NRR work activities, including the prioritization of specific work items. The priority factors include consideration of public health and safety, operational significance, statutory significance, and stakeholder standing and merit. Also factored into the work prioritization process is the required responsiveness (*e.g.*, normal, increased, or immediate). The information collected through this initiative would become part of the input for this work planning and scheduling.

This use of information provided by licensees in order to prioritize agency work is similar to a regulatory approach employed by the agency and licensees in the early 1990's for cost beneficial licensing actions (CBLAs). In this approach, licensees identified for the agency those licensing actions that had high economic benefits, minimal impact on safety, and required minimal agency review time. Such actions were termed CBLAs, and the agency afforded these actions higher priority treatment. One difference between this proposed information collection initiative and the CBLA approach is that the latter was limited in its scope to licensing actions meeting the above criteria. A second, more important distinction between the two is that this proposed initiative has another purpose, which we describe in the following paragraph.

With respect to the second purpose, measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden, the information collected would support the agency's efforts toward becoming a performance-based organization. This is consistent with the enactment of the Government Performance and Results Act (GPRA). The agency has established a framework for implementing the performance-based approach called the Planning, Budgeting, and Performance Management (PBPM) process. This PBPM process consists of setting the strategic direction, budgeting resources, and measuring and assessing performance. The agency reports the measures and assessment of performance in yearly reports to the President and the Congress. The information collected as described in this initiative would be used in these yearly reports to demonstrate to stakeholders that safety is being maintained even as the staff allows for unnecessary burden reduction. The staff would also use the information collected to demonstrate to stakeholders what the staff has accomplished with the resources that we have been given. This type of information would allow the staff to better align its outputs (*e.g.*, license amendments) to NRR performance goals (*e.g.*, maintain safety). By compiling this type of information over the fiscal year, instead of simply stating that the NRR staff completed 1500 licensing actions per year (outputs), the staff can also quantify such performance measures as direct cost savings to licensees, person-rem savings, and reduced shutdown risk that resulted from approval of those licensing actions (outcomes).

The success of this voluntary initiative is dependent on industry's willingness to provide the information. The staff realizes that there may be concerns with how we will use the information collected to prioritize work within NRR. The staff invites comments and suggestions such that we may directly address such concerns. We also recognize that this information collection initiative should be as simple as possible while still providing meaningful information. We encourage comments on how to most simply characterize the safety and regulatory burden impact such that this information collection initiative does not become time-consuming or resource-intensive.

After receiving formal comments in response to this **Federal Register** notice, the staff plans to hold a public meeting to develop a consensus as to the type of voluntary information that could be used to measure impact on safety and reduction in unnecessary regulatory burden. This meeting is currently planned for February 2001. Finally, if reasonable and acceptable metrics can be developed and made available to all stakeholders, the staff expects to begin using voluntary information submitted under this initiative after October 1, 2001.

Dated at Rockville, Maryland, this 1st day of December, 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing and Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31155 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

In the Matter of Mr. William Kimbley Mrs. Joan Kimbley; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. William Kimbley and Mrs. Joan Kimbley were previously officers of Midwest Testing, Inc., an entity that was a holder of NRC License No. 13–24866–02 issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. The license authorized the possession and use cesium-137 and americium-241 as sealed sources in moisture density gauges. The license was issued on August 19, 1992, and was terminated on June 12, 1995.

On June 12, 1995, a Confirmatory Order was issued prohibiting Mr. William Kimbley and Mrs. Joan Kimbley from engaging in licensed activities for five years from June 2, 1995. The Order was issued due to deliberate violations of NRC requirements involving: The failure to provide personnel monitoring devices to individuals using licensed material; the failure to perform leak tests of nuclear moisture density gauges; the storage of licensed material at an unauthorized location; the failure to request a license amendment to name a new Radiation Protection Officer; and, the use of nuclear moisture density gauges with an expired license.

II

In 1998, the NRC, during a review of retired license files, identified that NRC License No. 13–24866–01, issued to Midwest Testing, Inc., contained inadequate documentation regarding the disposition of three nuclear moisture density gauges. License No. 13–24866–01 was superseded with License No. 13–24866–02. License No. 13–24866–02 was terminated on June 12, 1995.

A review of records indicated that during a November 18, 1994, telephone conversation with NRC staff, Mr. William Kimbley stated that two of his gauges were gone, sold to other authorized users. However, on November 23, 1994, Mr. Kimbley stated that he was unable to sell the gauges but would transfer the gauges to an authorized user. On December 14, 1998, NRC staff contacted Mr. William Kimbley to determine the final disposition of the nuclear gauges. During this telephone conversation, Mr. William Kimbley stated that Midwest Testing, Inc. was no longer in business and that one gauge was at a repair shop and the other two gauges were in California being refurbished. A subsequent NRC review of the license files identified the companies that received the gauges. The first company stated that they received one gauge, which was held by them for nonpayment of repair service fees and subsequently was sold to another company licensed to possess nuclear moisture density gauges. A second company stated that they received the other two gauges for storage on December 1, 1994, and returned the gauges to Mr. William Kimbley on January 15, 1997. It was then determined that a third company received these two gauges from Mr. William Kimbley for refurbishment on May 14, 1997, and returned both gauges to Mr. Kimbley on June 16, 1997. Due to the uncertainty of the whereabouts of these two gauges, a special inspection was conducted January 5, 1999.

During this special inspection, Mr. William Kimbley stated that he did not have the gauges. After additional discussion with Mr. William Kimbley, the NRC found the two nuclear moisture density gauges at the residence of Mr. William Kimbley and Mrs. Joan Kimbley. It was verified by the NRC on January 8, 1999, that these two gauges were transferred to a licensee authorized to possess the gauges. NRC concluded that Mr. William Kimbley and Mrs. Joan Kimbley apparently had possessed these gauges from January 15, 1997, to May 14, 1997, and from June 16, 1997 to January 7, 1999, without a valid license and contrary to the June 12, 1995, Confirmatory Order.

The NRC Office of Investigations initiated an investigation on January 5, 1999, to determine whether Mr. William Kimbley and Mrs. Joan Kimbley deliberately possessed licensed material in violation of NRC requirements and the June 12, 1995, Confirmatory Order. The investigation also reviewed whether Mr. William Kimbley made false statements to NRC staff. As a result of the investigation, it was determined that Mr. William Kimbley and Mrs. Joan Kimbley deliberately possessed licensed material in violation of NRC requirements and the June 12, 1995, Confirmatory Order. In addition, the investigation determined that Mr. William Kimbley deliberately provided inaccurate information to NRC staff on November 18, 1994, December 14, 1998, and January 5, 1999, when he denied he had possession of the nuclear moisture density gauges.

A predecisional enforcement conference was conducted with Mr. William Kimbley on September 8, 2000, to discuss the possession of nuclear moisture density gauges in apparent deliberate violation of NRC requirements and the June 12, 1995, Confirmatory Order. Mr. William Kimbley stated the gauges had been stored at a licensed facility and were subsequently shipped to the gauge manufacturer for refurbishment. Mr. William Kimbley stated that the manufacturer returned the gauges to him without informing him that they were being returned. Mr. Kimbley stated he had difficulty selling the gauges due to their age and subsequently moved them to his home where they were found by the NRC. Mr. Kimbley stated he knew the gauges were required to be stored in a licensed facility and had tried to keep them there. Mr. Kimbley also stated that he did not consider whether possessing the gauges violated the June 12, 1995, Confirmatory Order.

III

Based on the above, it appears that Mr. William Kimbley and Mrs. Joan Kimbley deliberately violated Section 81 of the Atomic Energy Act of 1954, as amended (Act); 10 CFR 30.3; and the June 12, 1995, Confirmatory Order. Section 81 of the Act and 10 CFR 30.3 require, in part, that no person possess byproduct material except as authorized in a general or specific license. Specifically, the NRC has concluded that Mr. William Kimbley and Mrs. Joan Kimbley deliberately violated NRC requirements and the June 12, 1995, Confirmatory Order since they knowingly possessed two nuclear moisture density gauges containing byproduct material without an NRC license between January 15, 1997, and May 14, 1997, and between June 16, 1997 and January 7, 1999. In addition, it appears that Mr. William Kimbley deliberately violated 10 CFR 30.10. 10 CFR 30.10 requires, in part, that a person may not deliberately submit to NRC information that the person knows to be incomplete or inaccurate. Mr. William Kimbley deliberately violated 10 CFR 30.10 on November 18, 1994, December 14, 1998, and January 5, 1999, when he denied possessing nuclear moisture density gauges. Consequently, in light of the nature of the violations, the length of time the violations existed, and the deliberate nature of the violations, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. William Kimbley and Mrs. Joan Kimbley were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. William Kimbley and Mrs. Joan Kimbley be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. William Kimbley and Mrs. Joan Kimbley are required to notify the NRC of their first employment in NRC-licensed activities for a period of five years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. William Kimbley's and Mrs. Joan Kimbley's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended,

and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, 10 CFR 30.10, and 10 CFR 150.20, It Is Hereby Ordered, Effective Immediately, That:

1. Mr. William Kimbley and Mrs. Joan Kimbley are prohibited for five years from the date of this Order from engaging in NRC-licensed activities and from possessing licensable byproduct materials. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. William Kimbley and Mrs. Joan Kimbley are currently involved with another licensee in NRC-licensed activities, they must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of five years after the five-year period of prohibition has expired, Mr. William Kimbley and Mrs. Joan Kimbley shall, within 20 days of their acceptance of their first employment offer involving NRC-licensed activities or their becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where they are, or will be, involved in the NRC-licensed activities. In the notification, Mr. William Kimbley and Mrs. Joan Kimbley shall include a statement of their commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that they will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. William Kimbley and Mrs. Joan Kimbley of good cause.

V

In accordance with 10 CFR 2.202, Mr. William Kimbley and Mrs. Joan Kimbley must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. William Kimbley and Mrs. Joan Kimbley or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to Mr. William Kimbley and Mrs. Joan Kimbley if the answer or hearing request is by a person other than Mr. William Kimbley or Mrs. Joan Kimbley. If a person other than Mr. William Kimbley or Mrs. Joan Kimbley requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. William Kimbley or Mrs. Joan Kimbley or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. William Kimbley and Mrs. Joan Kimbley, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An Answer or a Request for Hearing Shall Not Stay The Immediate Effectiveness of this Order.

Dated this 28th day of November, 2000.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 00–31156 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC; Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–43 issued to the Nuclear Management Company, LLC (NMC or the licensee), for operation of the Kewaunee Nuclear Power Plant (KNPP or Kewaunee), located in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The proposed action would increase the number of fuel assemblies that can be stored in the Kewaunee spent fuel pools (SFPs) from 990 fuel assemblies to 1,205 fuel assemblies, an increase of 215 fuel assemblies, by installing 215 new spent fuel storage racks in the new north canal pool. In addition, the new spent fuel storage racks will use Boral as the neutron absorber material.

The proposed action is in accordance with the licensee's application for amendment dated November 18, 1999, as supplemented by letter dated August 7, 2000.

The Need for the Proposed Action

KNPP is a pressurized water reactor (PWR) which commenced commercial operation in 1974, and its current operating license will expire in December 2013. Initially, KNPP was designed to accommodate 168 spent fuel assemblies (SFAs). The last phase of re-racking the SFP at KNPP was completed in 1987, which provided for the current storage capacity of 990 SFAs. Currently, KNPP has two storage pools. The larger south pool contains racks with a storage capacity for 720 SFAs, and the smaller north pool contains racks with a storage capacity for 270 SFAs. There are presently 718 SFAs stored in the south pool and 106 SFAs stored in the north pool. As a result of the present unavailability of an off-site spent fuel storage facility and the current rate of fuel discharge (approximately 40 assemblies per cycle), KNPP will currently lose full-core reserve capability after the Fall 2001 outage. The addition of the 215 storage locations in the new north canal pool will extend the full-core reserve capability until after the 2009 outage, and increase the total capacity to 1205 SFAs.

The proposed action is needed to provide additional spent fuel storage capacity to extend the full-core reserve capability beyond the Fall 2001 outage.

Environmental Impacts of the Proposed Action

Radioactive Wastes

The Kewaunee Nuclear Power Plant uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated December 1972. The proposed SFP expansion will not involve any change in the waste treatment systems described in the FES.

Radioactive Material Released into the Atmosphere

The expanded fuel storage capacity obtained by installing new fuel racks into the transfer canal is not expected to affect the release of radioactive gases from the SFP. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases are released to the reactor coolant from the small number of fuel assemblies which are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the SFP and are subsequently released into the air of the spent fuel building. Gaseous releases from the fuel storage area are combined with other plant exhausts. If radio-iodine levels become too high, the air can be diverted to charcoal filters for the removal of radio-iodine before release to the environment. Normally, the radioactive gas contribution from the fuel storage area is negligible compared to the gaseous releases from other areas of the plant. Since the frequency of refueling (and therefore the number of freshly off loaded spent fuel assemblies stored in the SFP at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased SFP fuel storage capacity.

Tritium gases contained in the SFP are produced from two sources. The first source is the tritium from the reactor coolant system (RCS), which is a result of neutron capture in the reactor core by Boron-10. Tritium produced in this manner can only enter the spent fuel pool during refueling outages when the SFP and the RCS are interconnected. Since the proposed amendment does not increase the frequency of refueling outages, this source of tritium does not change. The second source of tritium is a result of neutron capture by Boron-10 in the SFP water. The decay neutron flux from the old fuel in the SFP is considerably smaller than the neutron flux in the core of an operating reactor. Due to the small neutron flux associated with the fuel to be stored in the new racks, the effect on tritium production will be insignificant. Therefore, the release of tritium from the storage of additional spent fuel assemblies in the transfer canal will be insignificant.

In addition, the plant radiological effluent Technical Specifications, which are not being changed by this action, restrict the total releases of gaseous activity from the plant (including the SFP).

Solid Radioactive Wastes

Independent of the proposed modification, the concentration of radionuclides in the SFP is controlled by the filters and demineralizer of the SFP purification system as well as by the decay of short-lived isotopes. Spent resins are generated by the processing of SFP water through the SFP purification system. Both spent resins and filters are disposed of as solid radioactive waste. Since the frequency of refueling outages is unchanged by the proposed action, the activity in the SFP is not expected to increase significantly above its current value. Thus, the radioactivity collected on the spent fuel resins and filters is not expected to significantly increase above its current value as a result of the storage capacity increase. The cumulative amount of radioactivity collected on the spent fuel resins over time will increase slightly with an increase in the amount of spent fuel that is added to the SFP; however, this increase is expected to be insignificant.

The licensee will use a vacuum to clean the floor of the fuel transfer canal following the drying of the canal prior to installing the new fuel racks. Vacuuming of the canal floor will remove any extraneous debris and crud. Filter bags from the vacuum will be disposed of as solid radioactive waste. Depending on the waste characterization of these filters, the licensee will dispose of them utilizing shielded canisters and high integrity containers which will then be stored onsite or shipped for burial accordingly. However, this amount of solid radioactive waste is expected to be negligible in comparison with other sources of solid radioactive wastes generated at the plant (it is expected that the total volume of low level radioactive waste generated due to this project will be less than 50 cubic feet).

Therefore, the staff does not expect that the additional fuel storage capacity made possible by the addition of fuel racks in the north portion of the Kewaunee fuel transfer canal will result in a significant change in the generation of solid radwaste at the Kewaunee Nuclear Power Plant.

Liquid Radioactive Wastes

The SFP ion exchanger resins that are part of the SFP water cleanup system remove soluble radioactive materials from the SFP water. When the resins are changed out, the small amount of resin sluice water which is released is processed by the liquid radwaste system before any water is discharged to Lake Michigan. The resin in the spent fuel pool demineralizer is typically replaced every 12 to 15 months. It is possible that fuel movement may stir up a small amount of settled contamination during loading of the fuel into the new racks. However, it is expected that this will have an insignificant effect on the frequency of resin change out. Therefore, the installation of the new fuel racks is not expected to increase the amount of liquid radioactive wastes generated at the Kewaunee Nuclear Power Plant.

In addition, the plant radiological effluent Technical Specifications, which are not being changed by this action, restrict the total releases of activity in liquids from the plant.

Radiological Impact Assessment

Radiation protection personnel will provide constant coverage, including dose monitoring, for the majority of the work. Since this license amendment does not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to utilize divers to remove any interferences which may impede the installation of the new fuel racks, the licensee will equip each diver with radiation detectors with remote, above surface, readouts which will be continuously monitored by Radiation Protection personnel. The total occupational dose to plant workers as a result of the SFP expansion operation is estimated to be between 0.7 and 1.3

person-rem. This dose estimate is lower than doses for SFP modifications performed at other plants. The upcoming SFP rack installation will follow detailed procedures prepared with full consideration of as low as reasonably achievable (ALARA) principles.

On the basis of our review of the licensee's proposal, the staff concludes that the KNPP SFP expansion can be performed in a manner that will ensure that doses to workers will be maintained as low as is reasonably achievable and within the limits of 10 CFR part 20. The estimated dose of 0.7 to 1.3 person-rem to perform the proposed SFP expansion operation is a small fraction of the annual collective dose accrued at the Kewaunee Nuclear Power Plant.

Furthermore, as stated previously, the concentration of radionuclides in the SFP is not expected to increase beyond its present value as a result of the proposed action. Therefore, doses to workers are not expected to increase above their current values. However, since additional spent fuel will be added to the SFP, cumulative doses over time may increase slightly, although this increase is expected to be insignificant with annual doses remaining below regulatory limits.

Accident Considerations

The licensee evaluated criticality safety calculations for normal conditions, criticality safety calculations for accident conditions, long-term reactivity changes, calculation of the transient decay heat load in the SFPs, calculation of the resulting maximum SFPs bulk temperature, calculation of the time-to-boil after a loss of forced cooling or makeup water capability, rack seismic/structural evaluations, rack fatigue analysis, SFP structural evaluation, bearing pad analysis, and liner integrity analysis, shallow drop event, deep drop event, and object drop event. The proposed modification increases the spent fuel storage capacity, but it does not change the frequency or probability or method for handling spent fuel assemblies.

The proposed expansion of the SFP will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and therefore will not result in an increase in the doses from a postulated fuel handling accident.

Environmental Impact Conclusions

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with this action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. To date, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping the spent fuel to the DOE repository is not considered an alternative to increased onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from Kewaunee is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipping the Fuel Offsite to Another Utility, another NMC Site, or Private Fuel Storage Facility

The shipment of fuel to another utility or transferring fuel to another of the licensee's facilities would provide short-term relief from the problems at Kewaunee. The Nuclear Waste Policy Act of 1982, Subtitle B, Section 131(a)(1), however, clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The SFPs at the other reactor sites were designed with capacity to accommodate spent fuel from those particular sites. Therefore, transferring spent fuel from Kewaunee to other sites would create storage capacity problems at those locations. The shipment of spent fuel to another site or transferring it to another NMC site is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

The shipment of fuel to a private fuel storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, a private fuel storage facility is not licensed at this time. Therefore, shipping the spent fuel to a private fuel storage facility is not considered an alternative to increased onsite fuel storage capacity at this time.

Alternatives Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the need for special security provisions and high cost. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing new spent fuel pools is not practical for Kewaunee because such an effort would require about 10 years to complete and would be an expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers affecting the fuel transfers, require additional security measures that are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the SFPs and thus, increase the amount of time before the maximum storage capacities of the SFPs are reached. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer off-loads would be necessary. This is not an alternative for resolving the loss of full core off-load capability that will occur as a result of the Kewaunee refueling outage scheduled for the Fall 2001, because the spent fuel to be transferred to the pool for storage has almost completed its operating history in the core. In addition, operating the plant at a reduced power level would not make effective use of available resources and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

Also, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Kewaunee.

Agencies and Persons Contacted

In accordance with its stated policy, on October 12, 2000, the NRC staff consulted with the Wisconsin State official, S. Jenkins of the Wisconsin Public Service Commission, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 18, 1999, as supplemented by letter dated August 7, 2000, which are available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 30th day of November, 2000.

For the Nuclear Regulatory Commission,

Claudia M. Craig,

Section Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31157 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 October 25, 2000 (65 FR 63903). Individual authorities established or revoked under Schedule C between October 1, 2000, and October 31, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

The following Schedule C authorities were established during October 2000:

Department of Agriculture

Confidential Assistant to the Director, Office of Communications. Effective October 23, 2000.

Special Assistant to the Administrator, Foreign Agriculture Service. Effective October 23, 2000.

Department of Commerce

Director of Advance to the Deputy Chief of Staff for External Affairs. Effective October 4, 2000.

Confidential Assistant to the Deputy Chief of Staff for External Affairs. Effective October 4, 2000.

Policy Advisor for International and Economic Affairs to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 11, 2000.

Department of Defense

Defense Fellow to the Special Assistant for White House Liaison. Effective October 13, 2000.

Department of Education

Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Constituent Relations and Corporate Liaison. Effective October 4, 2000.

Confidential Assistant to the Deputy Assistant Secretary, Regional Services, Office of Intergovernmental and Interagency Affairs. Effective October 4, 2000.

Special Assistant to the Counselor to the Secretary. Effective October 23, 2000.

Department of Energy

Special Assistant to the Chief Financial Officer. Effective October 11, 2000.

Special Assistant to the Director, Office of Scheduling and Advance. Effective October 26, 2000.

Special Assistant to the Director, Secretary of Energy Advisory Board. Effective October 27, 2000.

Department of Health and Human Services

Confidential Assistant to the Executive Secretary to the Department of Health and Human Services. Effective October 27, 2000.

Department of Housing and Urban Development

General Deputy Assistant Secretary for Housing to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective October 4, 2000.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 13, 2000.

Department of Justice

Assistant to the Attorney General (Director of Scheduling). Effective October 27, 2000.

Department of Labor

Advisor to the Secretary of Labor. Effective October 24, 2000.

Staff Assistant to the Director of Scheduling and Advance. Effective October 27, 2000.

Director of Scheduling and Advance to the Chief of Staff. Effective October 27, 2000.

Department of State

Staff Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective October 27, 2000.

Department of Transportation

Deputy Assistant Administrator to the Assistant Administrator for Government and Industry Affairs. Effective October 4, 2000.

Office of National Drug Control Policy

Staff Assistant (Office Automation) to the Chief of Staff, Office of National Drug Control Policy. Effective October 4, 2000.

Staff Assistant (Office Automation) to the Director, Office of National Drug Control Policy. Effective October 4, 2000.

Small Business Administration

Senior Advisor to the Associate Administrator for Veteran's Business Development. Effective October 11, 2000.

Confidential Advisor to the Deputy Administrator and Director of External Affairs. Effective October 16, 2000.

Speechwriter and Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective October 27, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–31148 Filed 12–6–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a computer matching program between the OPM and the Social Security Administration (SSA) for public comment.

SUMMARY: OPM is publishing notice of its computer matching program with SSA to meet the reporting and publication requirements of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity computation. The purpose of this match is to identify these beneficiaries.

DATES: This matching program will become effective in November 2000, or 40 days after the agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget (OMB), unless either the Congress or OMB objects thereto. Any public comment on this matching program must be submitted on or before January 8, 2001.

ADDRESSES: Any interested party may submit written comments to William J. Washington, Acting Assistant Director for Systems, Finance and Administration, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street NW., Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA have concluded an agreement to conduct a computer matching program between the two agencies. The purpose of the agreement is to establish the conditions under which SSA agrees to the disclosure of Social Security benefit and/or tax information to OPM. OPM, as specified in 5 U.S.C. 8332(j)(1), has an obligation to use post 1956 earnings data in redetermining and recomputing annuities for certain CSRS and FERS annuitants. Section 1106 of the Social Security Act (42 U.S.C. 1306) requires that SSA disclose the needed data to OPM.

Office of Personnel Management.

Janice R. Lachance,

Director.

Report of Computer Matching Agreement Between the Office of Personnel Management and the Social Security Administration

A. Participating Agencies

OPM and SSA

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code (U.S.C.), provide the basis for computing annuities under the Civil Service Retirement System and the Federal Employees' Retirement System respectively, and require release of information by SSA in order to administer post 1956 data exchanges. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity calculation. The purpose of this match is to identify these beneficiaries.

C. Authority for Conducting the Match Program

Chapters 83 and 84, title 5, United States Code, section 1106 of the Social Security Act (42 U.S.C. 1306) and the Internal Revenue Code (26 U.S.C. 6103).

D. Categories of Records and Individuals Covered by the Match

SSA will disclose information from its Master Beneficiary Record (MBR) and its Earnings Recording and Self-Employment Income System (MEF) and manually extracted post 1956 military wage information from SSA's "1086" microfilm file when required. SSA has published routine uses for these systems of records, last published for the MBR, 60–0090 (SSA/OSR) on January 6, 1995 at 60 FR 2144 and for the MEF, 60–0059 (SSA/OSR), on December 5, 1994 at 59 FR 62407.

OPM's records consist of annuity data from its system of records entitled OPM/Central-1, Civil Service Retirement and Insurance Records, last published in the **Federal Register** at 64 FR 54930, October 8, 1999, as amended May 3, 2000 (65 FR 25775).

E. Description of Matching Program

OPM provides a monthly electronic finder file to SSA containing data on those individuals for whom OPM requests post 1956 military service benefit information. These elements will be matched against SSA records. SSA furnishes OPM by electronic reply file benefit information on these individuals, including the amount of the SSA benefit attributable to the post 1956 military service (which constitutes the CSRS or FERS annuity reduction amount).

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988". Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe from access by unauthorized personnel during duty hours as well as nonduty hours or when not in use. Records used in this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records.

Both OPM and SSA have the right to make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

F. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Congress and OMB. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either Congress or OMB, and the mandatory 30 day public notice period for comment for this **Federal Register** notice expires, with no significant receipt of adverse public comments resulting in a contrary determination, then this computer matching program becomes effective. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 00–31149 Filed 12–6–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24778; File No. 812–12194]

Advantus Series Fund, Inc., et al.

November 30, 2000.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), for exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Advantus Series Fund, Inc. ("Advantus Fund"), an open-end, management investment company, and Advantus Capital Management, Inc. ("Advantus Capital"), the investment adviser of Advantus Fund.

SUMMARY OF APPLICATION: Applicants seek an order granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of any current or future series of the Advantus Fund and of any future open-end investment companies for which Advantus Capital or any affiliated person of Advantus Capital serves as investment adviser, manager, principal underwriter, or sponsor (collectively, "the Future Funds," collectively with Advantus Fund, the "Funds" or individually a "Fund") to be sold to and held by (a) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (the separate accounts, hereinafter "Separate Accounts," and the life insurance companies, hereinafter "Participating Life Insurance Companies"), and (b) qualified plans outside of the separate account context (including, without limitation, those trusts, plans, accounts, contracts or annuities described in Sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), or 501(c)(18) of the Internal Revenue Code of 1986, as amended (the "Code")), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817.5(f)(3)(iii) ("Qualified Plans" or "Plans"). Applicants request that the exemptive relief being requested apply to any series of shares of the Funds that may be created in the future. The only registered open-end management investment company that currently intends to rely on the requested order is Advantus Fund.

Filing Date: The application was filed on July 31, 2000, and amended and restated on November 15, 2000 and November 28, 2000.

Hearing or Notificotion of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Minnesota Life Insurance Company, c/o Donald F. Gruber, Esq., Assistant General Counsel, 400 Robert Street North, St. Paul, Minnesota 55101–2098.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. Advantus Fund is a no-load, open-end, management investment company registered under the 1940 Act. Advantus Fund is organized as a Minnesota corporation established under Minnesota law on February 21, 1985. Prior to a change in Advantus Fund's name in 1997, Advantus Fund was known as the MIMLIC Series Fund, Inc.

2. Advantus Fund is a series company, consisting of nineteen separate portfolios, each with its own investment objectives (each a "Portfolio"). Each Portfolio issues a

separate series of Advantus Fund's common stock. The investment advisor of Advantus Fund is Advantus Capital, a Minnesota corporation. Prior to May 1, 1997, Advantus Fund obtained advisory services from MIMLIC Asset Management Company, formerly the parent company of Advantus Capital.

3. Advantus Capital commenced its business in June 1994, and provides investment advisory services to eleven other Advantus funds and various private accounts. Advantus Capital was incorporated in Minnesota in June 1994, and is a wholly owned subsidiary of Minnesota Life Insurance Company ("Minnesota Life"), a Minnesota corporation that formerly was known as The Minnesota Mutual Life Insurance Company.

4. Shares of Advantus Fund are currently offered to a number of Separate Accounts of Minnesota Life to fund benefits under variable annuity and variable life insurance contracts issued by it and the Separate Accounts. Five of those Separate accounts are registered as unit investment trusts under the 1940 Act. Shares of Advantus Fund currently are not sold directly to the public. Shares of the Funds may, in the future, be sold to other separate accounts or to other issuers of variable annuity and variable life insurance contracts. The Separate Accounts referred to above invest in shares of the relevant Portfolios in accordance with allocation instructions received from the variable annuity contract owners or variable life insurance policy owners of Minnesota Life.

5. Advantus Fund intends to offer shares of its existing Portfolios and future investment portfolios to Separate Accounts of Participating Insurance Companies (defined below), in order to serve as the investment vehicle for various types of insurance products which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, modified single premium variable life insurance policies, and flexible premium variable life insurance contracts (collectively referred to herein as "variable contracts").[1] Participating Insurance Companies will be those insurance companies that purchase shares of the Funds, or of any of their Portfolios or future Portfolios, for such purposes. The Funds also may offer shares of their existing Portfolios and future investment portfolios directly to Qualified Plans outside of the separate account context.

6. The Participating Insurance Companies will establish their own Separate Accounts and design their own variable contracts. Each participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such insurance company under the Federal securities laws. It is anticipated that Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well. The role of each of the Funds, so far as the Federal securities law are applicable, will be limited to that of offering its Portfolio shares, as described below, to Separate Accounts of various insurance companies and to Qualified Plans, and fulfilling any conditions the Commission may impose upon granting the order requested herein.

7. The Separate Accounts of the Participating Insurance Companies will invest in shares of the Funds in accordance with allocation instructions received from the contract owners of the variable contracts (collectively, the "contract owners"). Additional information regarding Advantus Fund is contained in its prospectus and statement of additional information, copies of which are included in Advantus Fund's registration statement under the Securities Act of 1933, as amended, and the 1940 Act (File Nos. 2–96990 and 811–4279), which is incorporated herein by reference.

8. As noted above, the Funds may also sell their shares directly to Qualified Plans. As described below, changes in the tax law have created an opportunity for a Fund to increase its asset base through the sale of its shares to such Qualified Plans.

9. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in segregated asset accounts. The Code provides that a variable contract shall not be treated as an annuity or life insurance contract for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. The Treasury Department has issued regulations (Treas. Reg. 1.817—5) (the "Treasury Regulations") which establish diversification requirements for the investment portfolios underlying variable contracts. The Treasury Regulations provide that, in order to rely on certain look-through provisions of the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, also contain certain exceptions to this requirement, one of which allows shares in the investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by insurance company separate accounts (Treas. Reg. 1.817–5(f)(3)(iii).

10. The promulgation of Rules 6e–2(b)(15) and 63–3(T)(b)(15) under the 1940 Act preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Applicants submit that the sale of shares of the same investment company to Separate Accounts and to Qualified Plans would not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) given the then-current tax law.

11. Applicants submit further that the relief requested in the order should not be affected by the proposed sale of shares of the Funds to Qualified Plans and, in fact, may allow for the development of larger pools of assets resulting in greater cost efficiencies. Accordingly, Applicants are requesting relief from Sections 9(a), 13(a), 15(a) and 15(b) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to, and held by, Qualified Plans as well as insurance company separate accounts.

Applicants' Legal Analysis

1. In connection with the funding of variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b). Section 9(a) provides that it is unlawful for any company to serve as an investment advisor or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2), Rules 6e–2(b)(15)(i) and (ii) provide partial exemptions from Section 9(a). Rule 6e–2(b)(15)(iii) provides a partial exemption from Sections 13(a), 15(a), and 15(b), to the extent those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account[2] by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a variable life insurance separate account that owns shares of a management company that also offers its shares (a) to a variable annuity separate account of any insurance company (*i.e.*, to engage in "mixed funding"), (b) to a variable life insurance or variable annuity separate account of any unaffiliated life insurance company (*i.e.*, to engage in "shared funding"), or (c) directly to Qualified Plans.

2. Applicants submit that the relief granted by Rule 6e–2(b)(15) is in no way affected by the sale of Fund shares in connection with mixed or shared funding or by direct sales to Qualified Plans. Applicants, therefore, are seeking an order to permit the Participating Insurance Companies to rely on the relief granted in Rule 6e–2(b)(15). Applicants submit that, if the Funds were to sell their shares only to Qualified Plans, that no exemptive relief would be necessary. None of the relief provided for in Rule 6e–2(b)(15) relates to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. It is only because the Separate Accounts investing in the Funds are themselves investment companies which desire to rely upon Rule 6e–2 that the Applicants are seeking the order. Accordingly, an order is requested exempting variable life insurance Separate Accounts (and, to the extent necessary, any principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a), and 15(b), and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit the sale of Funds shares to (a) variable annuity Separate Accounts and variable life insurance Separate Accounts of the same life insurance company or of affiliated life insurance companies; (b) Separate Accounts of unaffiliated life insurance companies; and (c) Qualified Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 13(a), 15(a), and 15(b) to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. In addition, Rule 6e–3(T)(b)(15) provides a partial exemption from Section 9(a) to the extent that such section would render a company ineligible to serve an investment advisor or principal underwriter of any registered open-end management investment company, where an officer, director, employee or affiliated person of such company is subject to a disqualification enumerated in Section 9(a), but the individual subject to such disqualification does not participate directly in the management or administration of the underlying registered management investment company. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled (premium variable life insurance) contracts or flexible (premium variable life insurance) contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis supplied). Applicants note that, therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions, but does not permit shared funding or sales to Qualified Plans.

4. Applicants submit that the relief granted by Rule 6e–3(T)(b)(15) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, in that the relief under Rule 6e–3(T)(b)(15) is available only where shares are offered exclusively to separate accounts, Applicants believe that additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans. Applicants, therefore, are seeking the order to permit the Participating Insurance Companies to rely on the relief granted in Rule 6e–3(T)(b)(15).

5. Accordingly, Applicants are requesting the order granting flexible premium variable life insurance Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Applicants from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit the sale of Fund shares to (a) variable annuity Separate Accounts and variable life insurance Separate Accounts of the same life insurance company or of affiliated life insurance companies; (b) Separate Accounts of affiliated life insurance companies; and (c) Qualified Plans.

6. Applicants state that, consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes or persons and transactions, their application requests relief for the class consisting of insurers and Separate Accounts' investing in the Funds (and principal underwriters and depositors of such accounts). Applicants maintain that there is ample precedent, in a variety of contexts, for granting exemptive relief not only to the applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. The Applicants state that the Commission has granted class exemptions in the context of mixed and shared funding similar to the class relief requested herein where the underlying mutual fund used for funding variable contracts also would be sold to qualified pension and retirement plans.

7. Section 6(c) of the 1940 Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

8. Applicants represent that they are not aware of any stated rationale for excluding Participating Insurance Companies and Separate Accounts from the exemptive relief requested herein because the Funds also may sell their shares to Qualified Plans. Applicants maintain that, if the Funds were to sell their shares only to Qualified Plans, no exemptive relief would be necessary. Applicants state that the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability

[1] Applicants state that some Separate Accounts to which the Fund may offer its shares may be exempt from registration under the 1940 Act.

[2] Applicants state that the exemptions provided by Rule 6e–2 also are available to the investments advisor, principal underwriter, and sponsor or depositor of the separate account.

to sell its shares to such plans. Applicants note that exemptive relief is requested in this application only because the Separate Accounts investing in the Funds are themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Funds sell their shares to Qualified Plans.

9. Applicants submit that the same policies and considerations that led the Commission to grant such exemptions to other applicants are present here. Moreover, for the reasons stated below, Applicants submit that the exemptions requested are appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants, therefore, request that the Commission issue an order under Section 6(c) of the 1940 Act granting the exemptions requested.

10. Section 9(a) provides that it is unlawful for any company to serve as investment advisor or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

11. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) provide, in effect, that the fact that an individual disqualified under Section 9(a)(1) or Section 9(a)(2) is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of Section 9(a)(3), disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company.

12. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) provide, in effect, that the fact that any company disqualified under Section 9(a)(1) or Section 9(a)(2) is affiliated with the insurance company would not, by virtue of Section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

13. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e– 3(T)(b)(15) from the requirements of Section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants maintain that these 1940 Act rules recognize that it is not necessary to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants also state that these 1940 Act rules further recognize that it is also unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts. Applicants submit that there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. Applicants represent that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds, and that those individuals who participate in the management or administration of Advantus Fund and, it is expected, of any Future Fund, will remain the same regardless of which Separate Accounts or insurance companies use such Funds. Applicants submit that applying the monitoring requirements of Section 9(a) because of investment by Separate Accounts of other insurers would be unjustified and would not serve any regulatory purpose. Applicants also state that the increased monitoring costs would reduce the net rates of return realized by contract owners.

14. With respect to Qualified Plans, Applicants submit that the relief requested herein from Section 9(a) in no way will be affected by the proposed additional use of the shares of the Funds in connection with Qualified Plans. Applicants maintain that the insulation of the Funds from those individuals who are disqualified under 1940 Act remains in place. Applicants state that, since the Qualified Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief from Section 9(a), with respect to Qualified Plans, is necessary.

15. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants represent that pass-through voting privileges will be provided by Participating Insurance Companies with respect to all variable contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for variable contract owners.

16. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed.

17. Applicants furthermore state that Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rule 6e–2 and 6e–3(T)).

18. Applicants state that Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that, with respect to registered management investment companies whose shares are held by a separate account of an insurance company, the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such investment company's investment policies, principal underwriter, or any investment advisor (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

19. Applicants note that, in the case of such a change in the investment company's investment policies, the insurance company, in order to disregard contract owner voting instructions, must make a good-faith determination that such a change either would: (a) Violate state law, or (b) result in investments that either (i) would not be consistent with the investment objectives of the separate account or (ii) would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Applicants state that voting instructions with respect to a change in an investment advisor or principal underwriter may be disregarded only if the insurance company makes a good-faith determination that: (a) The advisor's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed advisor may be expected to employ investment techniques that vary from the general techniques used by the current advisor; or (c) the proposed advisor may be expected to manage the investment company's investments in a manner that would be inconsistent with the investment company's investment objectives or in a manner that would result in investments that vary from certain standards.

20. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants believe that, in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisors, or principal underwriters. Applicants maintain that the Commission also expressly has recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Applicants note that the Commission, therefore, deemed such exemptions necessary "to ensure the solvency of the life insurer and performance of its contractual obligation by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." [3] Applicants state that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Applicants therefore maintain that the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

21. Applicants believe that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding. Applicants not that such mixed and shared funding does not compromise the goals of the insurance regulatory authorities or of the Commission. Applicants state that, while the Commission may have wished to reserve wide latitude with respect to the once unfamiliar variable annuity product, that product is now familiar and there appears to be no reason for the maintenance of prohibitions against mixed and shared funding arrangements. Applicants further state that, indeed, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies that are easier to implement and promoting other economies of scale.

22. Applicants maintain that their proposal also to sell shares of the Funds to Qualified Plans will not have any impact on the relief requested in this regard. Applicants represent that shares of the Funds would be held by the trustees of Qualified Plans as mandated by Section 403(a) of ERISA. Applicants note that Section 403(a) also provides that the trustee(s) of a qualified pension or retirement plan must have exclusive authority and discretion to manage and control the plan with two exceptions: (a) when the plan expressly provides that the trustee(s) is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee is subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment mangers pursuant to Section 402(c)(3) of ERISA. Applicants state that, unless one of the two exceptions stated in Section 403(a) applies, qualified pension and retirement plan trustees have the exclusive authority and responsibility for voting proxies. Applicants further state that, when a named fiduciary appoints an investment manger, the investment manager has the responsibility to vote the shares held by the plan unless the right to vote such shares is reserved to the trustees or the named fiduciary and that, in any event, there is no pass-through voting to the participants in such qualified pension and retirement plans.

23. Accordingly, since Qualified Plan participants are not entitled to pass-through voting privileges, Applicants submit that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans.

24. Applicants state that the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. Applicants note that when Rule 6e–2 was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Applicants maintain that, at the time of the adoption of Rule 6e–2, the Commissions staff therefore contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. Applicants state that the Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners, and that there also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund and to affect the investment decisions of public shareholders. Applicants maintain that, for reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (September 25, 1981) effectively deprived variable annuities funded by publicly-available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly-available mutual funds as an investment medium for variable contracts (including variable life contracts). Applicants state that Section 817(h) of the Code of 1986, in effect, requires that the investment made by variable annuity and variable life insurance separate accounts be "adequately diversified." If a separate account is organized as a unit investment trust that invests in a single fund or series, then the separate account will not be diversified. Applicants note that, in this situation, however, Section 817(h) of the Code, in effect, provides that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *." Applicants state that, accordingly, a unit investment trust separate account that invests solely in a publicly-available mutual fund will not be adequately diversified. In addition, Applicants state that any

[3] Investment Company Act Release No. 9104 (December 30, 1975) (proposing Rule 6e–2 under the 1940 Act).

underlying mutual fund, including any fund that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Applicants conclude that, consequently, there will be no public shareholders of the Funds.

25. Applicants state that the rights of an insurance company or of a state insurance regulator to disregard the voting instructions of contract owners are not inconsistent with either mixed funding of different insurance products or shared funding by unaffiliated insurers.

26. Applicants state that the Commission's primary concern with respect to mixed and shared funding issues is that of potential conflicts of interest. Applicants submit that, as discussed below, no increased conflicts of interest would be present if the Commission grants the requested relief.

27. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants maintain that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

28. Applicants state that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Applicants note that affiliated insurers may be domiciled in different states and be subject to differing state law requirements, and that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Applicants submit that, in any event, the conditions discussed below (which, according to the Applicants, are adapted from the conditions included in Rule 6e–3(T)(b)(15) and are virtually identical to the conditions imposed in connection with other mixed and shared funding orders) are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. Applicants state that, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in the affected fund. Applicants represent that this requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the Funds.

29. Applicants maintain that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners, and that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants state that, under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Applicants further state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment advisor initiated by contract owners. According to the Applicants, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

30. Applicants note that, nevertheless, a particular insurer's disregard of voting instructions could conflict with the majority of contract owner voting instructions. Applicants state that the insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. Applicants further state that, if the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Fund's election, to withdraw its Separate Account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. Applicants represent that this requirement will be provided for in the agreements entered into with respect to participation by insurance companies in the Funds.

31. Applicants submit that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Applicants note that each type of insurance product is designed as a long-term investment program.

32. Applicants represent that each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. Applicants state that there is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance and variable annuity contracts,will lead to different investment policies for different types of variable contracts. First, Applicants state that minimum death benefit guarantees generally are specifically provided for by particular charges, and always are supported by general account reserves as required by state insurance law. Second, Applicants state that certain variable annuity contracts also have minimum death benefit guarantees and that, to the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case. Third, Applicants note that the sale, persistency, and ultimate success of all variable insurance products depend, at least in part, on satisfactory investment performance, which provides an incentive for the insurer to optimize investment performance. Fourth, Applicants maintain that, under existing statutes and regulations, an insurance company and its affiliates can offer a variety of variable annuity and life insurance contracts, some with death benefit guarantees of different types and significance (and different degrees of risk for the insurer), some without death benefit guarantees, all funded by a single mutual fund.

33. Applicants assert that, furthermore, no one investment strategy can be identified as appropriate to a particular insurance product. According to the Applicants, each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. Applicants state that a fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants maintain that permitting mixed and shared funding will provide economic justification for the continuation of Advantus Fund and, it is expected, of any Future Fund. Applicants state that, in addition, permitting mixed and shared funding also will facilitate the establishment of additional portfolios serving diverse goals, and that the broader base of contract owners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies.

34. In connection with the proposed sale of shares of the Funds to Qualified Plans, Applicants submit that either there are no conflicts of interest or there exists the ability by the affected parties to resolve any such conflicts without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans. Section 817(h) of the Code is the culmination of a series of Revenue Rulings aimed at the investment control of variable contract owners. Section 817 is the only section in the Code where separate accounts are discussed, and Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Applicants state that Treasury Regulation 1.817–5(f)(3)(iii), which establishes the diversification requirements for such portfolios, specifically permits, among other things, interests held by Trustees of a "qualified pension or retirement plan" and separate accounts to share the same underlying management investment company. Applicants, therefore, conclude that neither the Code nor the Treasury Regulations or Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity Separate Accounts, and variable life insurance Separate Accounts all invest in the same management investment company.

35. Applicants maintain that, while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts, and Qualified Plans, the tax consequences of distributions from variable contracts and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds. Applicants state that, when distributions are to be made, and the Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the affected Fund at its net asset value. Applicants represent that the Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan, and that the life insurance company will surrender values from the separate account into the general account to make distributions in accordance with the terms of the variable contract.

36. Applicants state that, with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to separate account contract owners and to Qualified Plans. Applicants further state that the transfer agent for each fund will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their holdings. According to the Applicants, the Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

37. Applicants submit that the ability of the Funds to sell their shares directly to Qualified Plans does not create a "senior security" with respect to any variable annuity or variable life contract owner as opposed to a participant under a Qualified Plan. Applicants note that the term "senior security" is defined under Section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." Applicants state that, regardless of the rights and benefits of participants under the Qualified Plans or contract owners under variable contracts, the Qualified Plans and the Separate Accounts, respectively, have rights only with respect to their respective shares of the Funds. Applicants state that the Qualified Plans and the Separate Accounts can redeem such shares of the Funds only at the net asset value of the shares, and that no shareholder of a Fund will have any preference over any other shareholder of such Fund with respect to distribution of assets or payment of dividends.

38. Applicants maintain that there are no conflicts between the contract owners of the Separate Accounts and the participants under the Qualified Plans with respect to the state insurance commissioners veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. Applicants state that the basic premise of shareholder voting is that not all share holders agree with a particular proposal. According to the Applicants, this does not mean that there are any inherent conflicts of interest between shareholders. Applicants state that the state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot comply redeem their separate accounts out of one fund and invest in another. Applicants note that time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants state that, on the other hand, the trustees of Qualified Plans can quickly make the decisions and implement the redemption of their plans' shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that, even if there should arise issues where the interests of Qualified Plans are in conflict, these issues can be resolved almost immediately in that the trustees of the Qualified Plans can, on their own, redeem the shares out of the Funds.

39. Applicants submit that, regardless of the type of shareholder in a Fund, the responsible advisor will continue to manage a Portfolio's investments solely and exclusively in accordance with each such Portfolio's investment objectives and restrictions as well as with any guidelines established by the Board of that Fund. Applicants note that individual Portfolio manager work with a pool of money and do not take into account the identity of the shareholders. Applicants represent that Advantus Fund thus is, and any Future Fund will be, managed in the same manner as any other mutual fund. Applicants state that, if shareholders are not pleased with a mutual fund's investment results, or the manner in which the mutual fund is being operated, these shareholders may redeem their shares. Applicants note that, since Advantus Fund is, and any Future Fund is expected to be, sold without the imposition of any sales load, such redemption is to net asset value without the imposition of any other charge or fee. According to the Applicants, it is the duty of the management of a mutual fund, including its board of directors or trustees, as the case may be, to keep shareholders informed through updated prospectuses and annual and semi-annual reports. Applicants state that these periodic communications to shareholders function as these communications are intended. Applicants represent that Qualified Plans, as well as contract owners, thus will be given up-to-date information necessary for them to make informed investment decisions.

40. Applicants state that the difference between a Qualified Plan shareholder and a contract owner whose variable contract invests in a Fund is that the Qualified Plan shareholder immediately can redeem its shares in the fund and reinvest the proceeds of

such a redemption, while the contract owner either must wait for the Participating Insurance Company to find another suitable investment medium or must exchange contracts, both of which strategies require multiple steps and some period of time.

41. Applicants maintain that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. Applicants state that these factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Applicants note that, for example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants state that use of the Funds as common investment media for variable contracts, as well as for Qualified Plans, would reduce or eliminate these concerns. Applicants further state that mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Also, Applicants maintain that Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of the responsible advisors and their affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. According to the Applicants, mixed and shared funding, including the sale of shares of a Fund to Qualified Plans, also would permit a greater amount of assets available for investment by such Fund, thereby promoting economies of scale, permitting increased safety through greater diversification, and making the addition of new Portfolios to a Fund more feasible. Therefore, Applicants believe that making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and that this should result in increased competition with respect to both variable contract design and pricing, which in turn can be expected to result in more product variation and lower charges.

42. Accordingly, Applicants submit that the relief requested herein is fully consistent with the policy and purpose of the 1940 Act. In connection with the proposed sale of shares of the Funds to Qualified Plans in particular, Applicants further submit that the intended use of the Funds with Qualified Plans is not that dissimilar from the intended use of the Funds with variable contracts, in that Qualified Plans, like variable contracts, are generally long-term retirement vehicles. Applicants further submit that the sale of shares of the Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts to such Funds or to the participating Separate Accounts.

43. Applicants see no significant legal impediment to permitting mixed and shared funding. Applicants note that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding will have any adverse Federal income tax consequences.

44. Applicants submit that the Commission has issued numerous orders permitting mixed and shared funding, including ones where shares of the underlying mutual fund used for funding variable contracts also would be sold to qualified pension and retirement plans. Therefore, Applicants maintain that, as the Commission has tacitly acknowledged, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), or 15(b) or Rules 6e–2 or 6e–3(T).

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of each Fund's Board shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filed by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board of each Fund will monitor that Fund for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all Separate Accounts and the participants of all Qualified Plans investing in that Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of Qualified Plans; (f) a decision by a Participating Insurance company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with the Fund, including agreement to comply with the conditions set forth herein to the extent applicable. A Qualified Plan shareholder will execute an application with each Fund that contains an acknowledgment of this condition at the time of the Qualified Plan's initial purchase of shares of such Fund.

4. Participating Insurance Companies, the responsible advisors, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (collectively, the "Participants") will report any potential or existing conflicts to the respective responsible Board(s). Participants will be responsible for assisting the Boards in carrying out the responsibilities of the Boards under these conditions by providing the Boards with all information reasonably necessary for the Boards to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the respective responsible Board(s) whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts to and to assist the Boards will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contract owners and, if applicable, Qualified Plan participants.

5. If it is determined by a majority of a Board, or a majority of the disinterested, directors or trustees, as appropriate, of a Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Companies and Qualified Plans, at their expense and to their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors or trustees, as the case may be), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the affected Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of such Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of the Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, or, if applicable, a decision by a trustee of a Qualified Plan to disregard Qualified Plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer or Qualified Plan may be required, at the affected Fund's election, to withdraw the insurer's Separate Account's investment in the Fund or the Qualified Plan's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and all Qualified Plans under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of contract owners and participants in the Qualified Plans, as applicable.

For purposes of this Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will a Fund or its advisor be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition 5 to establish a new funding medium for any variable contract if any materially and offer to do so has been declined by vote of a majority of the contract owners adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 5 to establish a new funding medium for the Plan if: (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline that offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes that decision without a Plan participant vote.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all variable contact owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Funds held in their Separate Accounts in a manner consistent with voting instructions timely-received from contract owners. Each Participating Company will vote shares of a Fund held in the Participating Insurance Company's Separate Accounts for which no voting instructions from contract owners are timely-received, as well as shares of a Fund which the Participating Insurance Company itself owns, in the same proportions as those shares of the Fund for which voting instructions from contract owners are timely-received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in the Funds calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Funds shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Funds. Trustees of Qualified Plans will vote shares held by Qualified Plans in accordance with the terms of those Qualified Plans.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which for these purposes, shall be persons having a voting interest in their respective Portfolios), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Fund shall disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and certain qualified pension and retirement plans, (b) material irreconcilable conflicts possibly may arise due to differences of tax treatments and other considerations, and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. Each Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

10. If, and to the extent that, Rule 6e–2 or Rule 6e–3(T) under the 1940 Act are amended, or Rule 63–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2, 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, shall submit to each Fund's Board such reports, materials, or data as the Board reasonably may request so that the directors or trustees, as appropriate, of the Fund may fully carry out the obligations imposed upon the Board by the conditions contained in this application and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to a Fund's Board, when the Board so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31164 Filed 12–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43643; File No. SR–Amex–00–59]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") field with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Part II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions approved by the Commission on June 2, 2000.[3] Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions inequity options.[4] The pilot program entities a floor broker to, under certain conditions, cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowed at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for market—and the crowd then wants to part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the almost six months since the pilot program began, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

Because the pilot program is due to expire on November 29, 2000, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–00–59 and should be submitted by December 28, 2000.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will allow the pilot program, otherwise due to expire on November 29, 2000, to remain effective and in place uninterrupted while revisions are being considered, and does not raise any new regulatory issues.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through February 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31138 Filed 12–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43639; File No. SR–CBOE–00–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Membership Fees

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend the New Member Orientation fee imposed by the Exchange, which is currently set forth in the Exchange's Membership Fee Circular. The Exchange further proposes to add certain clarifying language to the Membership Fee Circular with respect to the application of the Corporation/Partnership/LLC fee. The text of the proposed rule change is available at the Office of the Secretary of the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000). The pilot program was subsequently extended for an additional 90 days, ending November 29, 2000. *See* Securities Exchange Act Release No. 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provided specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000)

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra*, note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase from $200 to $500 the fee that it charges applicants seeking membership as a Market-Maker or Floor Broker for the three-day Orientation Program provided to applicants by the Exchange. The Exchange states that the purpose of this proposed fee increase is to cover the costs of the Orientation Program, which are no longer adequately covered by the current $200 fee. The change to the New Member Orientation Fee is proposed to take effect on January 1, 2001.

The Exchange further proposes to amend its Membership Fee Circular to clarify the application of the Corporation/Partnership/LLC fee. This fee is imposed by the Exchange on each new firm applicant for membership on the Exchange. It is also applicable to a member organization that changes its legal structure (*e.g.*, from partnership to corporation or the reverse, from partnership to LLC or the reverse, or from corporation to LLC or the reverse).

The clarification concerns the applicability, when a member organization changes its legal structure, of certain other membership and membership application fees generally imposed by the Exchange. These include a General Partner fee, and Executive Officer fee, an LLC Manager fee, a Principal Shareholder fee, a Limited Partner fee, and an LLC Member fee.

The Exchange proposes to amend the Membership Fee Circular to clarify that if a member organization changes its legal structure or in the event of a merger between current CBOE member organizations, General Partners, Executive Officers, LLC Managers, Principal Shareholders, Limited Partners and LLC Members listed on the Uniform Application for Broker-Dealer Registration Form ("Form BD") of the member organization(s) prior to the change will not be assessed any fees in connection with the change. This proposed revision to the Membership Fee Circular codifies the current practice of the Exchange in addressing this situation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–54, and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31137 Filed 12–6–00; 8:45 am]

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[3] 15 U.S.C. 78f(b).
[4] 15 U.S.C. 78f(b)(4).
[5] 15 U.S.C. 78s(b)(3)(A).
[6] 17 CFR 240.19b–4(f)(2).
[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43640; File No. SR–DTC–00–19]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Depository Trust Company Relating to a New Tax Service Called DALI

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on November 20, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC has filed a proposed rule change to implement a new tax service called "DALI" (an acronym for data link for intermediaries). DALI is a communications hub to be used by U.S. payors such as banks, broker-dealers and foreign customers to exchange data in order to determine the proper withholding amount and to report U.S. withholding tax on payments such as dividends and interest made to a foreign payee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change consists of the addition of DALI to DTC's tax services. DALI is a communications hub that will allow financial institutions (typically, a U.S. paying institution and its foreign customer payee) to exchange the data necessary to determine correct withholding and reporting of U.S. tax on payments such as dividends and interest to a foreign payee. DALI will also provide a storage facility for payment allocation information necessary for tax reporting. At a later stage, DALI will be expanded to also serve as a document repository for payee tax documentation and a storage facility for payment allocation information necessary for tax reporting at a beneficial owner level.

Background

Changes in U.S. tax regulations concerning U.S. withholding tax and reporting on payments of U.s. source income made to foreign payees will become effective on January 1, 2001.[3] The new withholding regulations require U.S. withholding agents, such as banks and broker-dealers that pay dividends and interest to foreign customers, to determine the appropriate withholding tax rates for such payments based upon the tax status of the beneficial owner of the payment and to allocate the payments among each beneficial owner or classes of owners for annual reporting to the Internal Revenue Service. As a consequence, when the U.S. financial institution's foreign customer is not the beneficial owner (for example, a foreign intermediary holding securities on behalf of its customers), the U.S. financial institution, in its capacity as U.S. withholding agent, must obtain payment allocation information from its direct foreign intermediary customer, based upon the identity of tax status of the ultimate beneficial owners of each payment made by the U.S. financial institution to its foreign customer.

Development of DALI

DTC was asked to provide the DALI service by several of its participants (referred to here as the "Consortium") that sought a common solution to enable them to comply with the new withholding tax regulations. The Consortium also consulted with Price WaterhouseCoopers ("PWC") concerning the feasibility of developing a centralized and standardized software system that could be shared among the Consortium. At the request of the Consortium and industry groups, DTC agreed to act as a project manager for the development of the DALI software system and to operate and maintain the completed system as a DTC service. DTC and the Consortium retained PWC to develop the core DALI software. The Consortium agreed to pay PWC's software development costs and DTC's out-of-pocket product development costs such as hardware and operating software. The Consortium expects to recoup these costs over time from the proceeds of excess user service fees.[4]

Description of DALI System

DALI is a communications hub that withholding agents and foreign payees can use to transmit and receive the information necessary for tax withholding and reporting under the new tax regulations. DALI will be available to participants and non-participant customers for use with respect to withholding on varying types of payments and not restricted to position in securities held at DTC. DALI may be accessed by File Transfer Protocol and through the Internet at DTC's website.

In its simplest form, a typical message flow through DALI would proceed as follows:

(1) A U.S. financial institution notifies its foreign customer of a forthcoming payment and requests payment allocation information on the payment.

(2) The foreign intermediary responds with allocation information based upon the characteristics of the beneficial owners of the payment; and

(3) The U.S. financial institution confirms allocation instructions.

DALI will later be used to also validate, track, and retain required payee tax documentation such as IRS Forms W–8 and W–9 and to aggregate information for recordkeeping and tax reporting.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3) of the Act[5] and the rules and regulations thereunder because it will promote foreign investments in U.S. securities by facilitating the exchange of information necessary for payors of U.S. income to determine the correct withholding tax treatment of payments made to foreign payees. DTC also believes that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Representatives of several of DTC's participants that comprise DTC's Foreign Taxes Legal Working Group requested at a meeting held on January 24, 2000, that DTC provide a service to facilitate compliance with the new U.S. tax withholding regulations effective January 1, 2001. This request was made in writing by memorandum to DTC dated February 1, 2000, from the group of financial institutions then comprising the DALI Consortium (Morgan Stanley, Dean Witter, Goldman Sachs, Merrill Lynch, Prudential Securities, Salomon Smith Barney/Citibank, Pershing/DLJ, Chase Manhattan Bank, Brown Brothers Harriman, and Bear Stearns). Except as set forth above, DTC has not solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(4)[7] thereunder because the rule change (1) effects a change in an existing service of EMCC that does not adversely affect the safeguarding of securities or funds in the DTC's custody or control or for which it is responsible and (2) does not significantly affect DTC's respective rights or obligations or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule

[1] 15 U.S.C. 78s(b)(1).
[2] The Commission has modified the text of the summaries prepared by DTC.
[3] Sections 1441, *et seq.*, of the Internal Revenue Code and regulations promulgated thereunder.
[4] The proposed fee schedule for users of the DALI service is being developed and will be filed with the Commission shortly.
[5] 15 U.S.C. 78q–1(b)(3).
[6] 15 U.S.C. 78s(B)(3)(A)(iii).
[7] 17 CFR 19b–4(f)(4).

change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–00–19 and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31139 Filed 12–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43641; File No. SR–PCX–00–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Audit Committee Requirements for Listed Companies

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. The Exchange filed Amendment No. 1 to the proposed rule change on November 22, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCXE proposes to amend its rules pertaining to composition of audit committees of listed companies as recommended by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees. The text of the proposed rule change is set forth below. New text is in italics. Deletions are in brackets.

Corporate Governance

Rule 5.3(a) Conflicts of interest—No change.

Rule 5.3(b) Independent Directors/Audit Committee

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Such issuer must maintain an audit committee. [a majority of which] *All audit committee members* must be independent directors *that satisfy the audit committee requirement set forth below.*

(1) Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and

(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

(2) Composition/Expertise Requirement of Audit Committee Members.

(i) Each audit committee will consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent");

(ii) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and

(iii) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

(3) Independence Requirement of Audit Committee Members. In addition to the definition of Independent provided in 5.36(2)(i), the following restrictions shall apply to every audit committee member:

(i) Employees: A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(ii) Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a direct pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated. "Business relationships" can include commercial, industrial, banking consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(iii) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(iv) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(v) Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(4) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(ii) the financial literacy of the audit committee member;

(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(iv) the annual review and reassessment of the adequacy of the audit committee charter.

(5) "Officer" has the meaning specified in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

(6) Initial Public Offering. Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualifier member in place within twelve months of listing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCXE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change modifies PCXE Rule 5.3(b), on audit committee requirements of listed domestic issuers, to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other SROs.[4] The proposed rule change specifies four requirements for a qualified audit committee, defines certain terms for purposes of the proposed audit committee requirements, and sets forth requirements for companies listing on the Exchange in conjunction with an initial public offering.

First, proposed Rule 5.3(b)(1) requires the board of directors of companies listed on the Exchange to adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify: (i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; (ii) that the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and (iii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company; that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor; and for recommending that the board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

Second, proposed Rule 5.3(b)(2) sets forth the composition and expertise requirements of audit committee members. The proposal requires: (i) Each audit committee to consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent"); (ii) each member of the audit committee to be financial literate, as such qualification is interpreted by the company's board of directors in its business judgment, or to become financially literate within a reasonable period of time after his or her appointment to the audit committee; and (iii) at least one member of the audit committee to have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

Third, proposed Rule 5.3(b)(3) provides the independence requirements of audit committee members. In addition to the definition of Independent provided in Rule 5.3(b)(2)(i), the following restrictions apply to every audit committee member.

(i) *Employees.* A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(ii) *Business Relationship.* A director (a) who is a partner, controlling

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[1] 15 U.S.C. 7s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter dated November 20, 2000 from Cindy L. Sink, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). Amendment No. 1 specifies an implementation plan for the proposed rule change.

[4] *See* Securities Exchange Act Release Nos. 42231 (Dec. 14, 1999), 64 FR 71523 (Dec. 21, 1999) (approving SR–NASD–99–48); 42232 (Dec. 14, 1999), 64 FR 71518 (Dec. 21, 1999) (approving SR–AMEX–99–38); and 42233 (Dec. 14, 1999), 64 FR 71529 (Dec. 21, 1999) (approving SR–NYSE–99–39). The proposed rule changes were, in large part, adapted from NYSE Listed Company Manual Sections 303.00, 303.01, and 303.02.

[8] 17 CFR 200.30–3(a)(12).

shareholders, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (*e.g.*, a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated. "Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-reference board of director's determination after three years following the termination of, as applicable, either (a) The relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(iii) *Cross Compensation Committee Link.* A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(iv) *Immediate Family.* A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(v) Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv) of Rule 5.3(b), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

Fourth, proposed Rule 5.3(b)(4) sets forth on ongoing written affirmation requirement. The proposal provides that as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provided the Exchange written confirmation regarding: (i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above; (ii) the financial literacy of the audit committee number; (iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and (iv) the annual review and reassessment of the adequacy of the audit committee charter.

Proposed Rule 5.3(b)(5) defines "Officer" to have the meaning specified in Rule 16a–1(f) under the Act, or any successor rule. Moreover, proposed Rule 5.3(b)(6) provides that companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing.

Finally, the Exchange proposes to implement a transition period in order to provide its issuers with sufficient time to come into compliance with the proposed rule change.[5] Specifically, the Exchange proposes (i) to "grandfather" all public company audit committee members qualified under current PCX rules until they are re-elected or replaced and (ii) give companies eighteen months from the date of SEC approval of this rule filing to recruit the requisite members for their audit committees. Issuers listed on the Exchange as of the effective date of the proposed rule change will have six months to adopt a formal written audit committee charter.

[5] *See* Amendment No. 1, *supra* note 3.

2. Statutory Basis

The PCXE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCXE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCXE did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[6] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–00–40 and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretory.

[FR Doc. 00–31140 Filed 12–6–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3491]

Bureau of Educational and Cultural Affairs; College and University Affiliations Program for Algeria; Request for Grant Proposals

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program to support the development of programs of instruction and faculty training at one or more universities in Algeria in business management and entrepreneurship, public administration, or another field with significant potential impact on the Algerian economy. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in partnership with (an) Algerian institution(s) with support from the College and University Affiliations Program. The means for achieving the objectives of the applicant and its partner(s) may include mentoring, teaching, consultation, research, distance education, internship training, and professional outreach to public and private sector managers and entrepreneurs.

Overview and Project Objectives: The project is designed to assist one or more Algerian universities to develop a modern curriculum and program in business management or public administration to facilitate the development of business activity and the quality, efficiency and integrity of the private and public sectors in Algeria. While priority will be given to competitive proposals in business management, proposals in public administration and other fields are also eligible if the proposals demonstrate their potential impact on the Algerian economy.

In business management, proposals emphasizing practical strategies to assist the faculty to develop a new curriculum in business management focusing in accounting, finance, banking, and entrepreneurship are particularly encouraged.

In public administration proposals with potential economic impact through assistance with curriculum reform and faculty training in fields such as taxation, financial management, land registry/ownership and property rights are also eligible. All proposals should explain potential impact on the Algerian economy.

For each project, applicants are encouraged to develop outreach to and collaboration with practitioners by including them, together with junior and senior instructors, in working groups for faculty development and curriculum design and development.

Bureau policy stipulates that awards to organizations with less than four years' experience in conducting international exchanges are limited to $60,000. The Bureau anticipates awarding one or two grants from a total of $240,000 that is expected to be available to support this program. Funds will be awarded for a period up to three years to defray the costs of exchanges, to provide educational materials, and to increase library holdings and improve Internet connections. Up to 25% of the grant total may be used to defray the costs of project administration. Indirect administrative costs are not an eligible expense for Bureau funding under this competition, but may be presented as part of the U.S. institutional contribution.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators or graduate students for any appropriate combination of teaching, mentoring, internships, in-service training and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester for participants from Algeria are strongly encouraged and program activities must be tied to the goals and objectives of the program. Proposals may also include English language training for selected participants whose prior knowledge of English needs to be activated or refreshed. Visits by representatives of the American partner institution to Algeria are not required, but short visits may be proposed for eventual implementation should conditions permit. All applicants should read the U.S. Department of State Travel Warning for Algeria dated March 31, 2000.

U.S. Institution and Participant Eligibility: In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools, as well as to other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. Secondary U.S. partners may include governmental and non-governmental organizations, as well as non-profit service and professional organizations. The lead U.S. university in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

Participants representing the U.S. institution must be U.S. citizens. With the exception of an outside consultant reporting on the degree to which project objectives have been achieved, participants who are traveling under the Bureau's grant funds must be teachers, advanced graduate students, who are teaching or research assistants, or administrators from the participating institution(s). Advanced graduate students are eligible for Bureau-funded participation in this program only if they are working under the direction of an accompanying faculty participant.

Algerian Institution and Participant Eligibility: In Algeria, the partner must be a recognized institution of post-secondary education. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with issues in business development or public administration training in Algeria.

Foreign participants must be citizens or permanent residents of Algeria and qualified to receive a J–1 visa.

Budget Guidelines: Applicants may submit a budget of up to $240,000. Requests for amounts smaller than the maximum are eligible. Budget and budget notes should carefully justify the amounts needed. There must be a summary budget as well as a breakdown reflecting the program and administrative budgets including unit costs. Cost sharing will be considered an important indicator of institutional commitment.

Please refer to the Solicitation Package for complete guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau of Educational and Cultural Affairs concerning this RFGP should reference the above title "College and University Affiliations Program in Algeria" and reference number ECA/A/S/U–01–13.

FOR FURTHER INFORMATION CONTACT: Contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone (202) 619–5289, fax: (202) 401–1433, e-mail: mpizarro@pd.state.gov to request a Solicitation Package.

The Solicitation Package contains detailed award criteria, required application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the above reference number on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfgps. Please read all information before downloading.

Deadline of Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, March 30, 2001. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates: Grants should begin on or about August 1, 2001.

Duration: August 1, 2001–August 31, 2004.

Submissions: The U.S. institutional partner must submit the proposal. Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Ref.: ECA/A/S/U–01–13, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

All copies should include the documents specified under Tabs A through E in the "Project Objectives, Goals, and Implementation" (POGI) section of the Solicitation Package. The documents under Tab F of the POGI should be submitted with the original application and with one of the ten copies.

Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" Sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section of the U.S. Embassy in Algiers for its review, with the goal of reducing the time it takes to get the Embassy's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content.

Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: State Department officers in Washington, D.C. and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighed.

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and resourcefulness. Proposals should exhibit sensitivity to the region, and have reasonable and feasible project objectives that are relevant to the needs of an Algerian university. Proposals should describe projected benefits to the institutions involved as well as to wider communities of educators and practitioners in Algeria.

2. *Program Planning:* Proposals should include creative, realistic and feasible program plans for the development of working groups for faculty and curriculum development; a detailed schedule, which should include a well-reasoned combination of useful and appropriate mentoring, teaching techniques and outreach activities supporting the project objectives.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

4. *Institutional Capacity and Commitment:* Proposals should demonstrate significant understanding of the needs and capacities of the Algerian university as well as the needs and capacity of the U.S. institution, and should demonstrate a strong commitment to on-going cooperation during and after the period of the grant activity. Relevant factors include: the match between participating organizations or departments, and availability of sufficient number of faculty and/or administrators willing and able to participate in project activities. Proposals should demonstrate a promise of long-term impact and a plan for follow-on activities.

5. *Institutional Record/Ability:* Proposals should demonstrate an institutional record of administering successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the State Department's contracts officers. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, commitment and experience relative to the goals and activities of the project plan.

6. *Project Evaluation:* The proposal should outline a methodology to assess progress toward the achievement of project goals. The final evaluation should include an external component and observations about anticipated long-term impact on the Algerian economy.

7. *Cost-Effectiveness:* Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of commitment to the pursuit of project objectives.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the U.S. North African Economic Partnership.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 29, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–31076 Filed 12–6–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3490]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Summer Institute on Education Reform for Nigerian Tertiary Education Administrators and Policy Makers

SUMMARY: The African Programs Branch of the Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for a Summer Institute on Education Reform for Nigerian Tertiary Education Administrators and Policy Makers. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide a six-week program for up to 25 Nigerian tertiary level education administrators and government officials responsible for making and implementing education policy. Requested Bureau funding must not exceed $200,000.

All Summer Institute programming and logistics including design and implementation of the academic, cultural, and administrative components will be the responsibility of the grantee. These responsibilities include (1) an academic component that adheres closely to the goals and objectives set forth in the RFGP, (2) a cultural component that complements and reinforces material covered in the academic component, and includes a stay of up to a week in Washington and a trip to another major U.S. city, and 3) an administrative component to provide for the comfort and well-being of the participants which includes arranging and budgeting for housing, meals, transportation in the U.S., allowances for incidental expenses, books, and excess baggage.

Proposals must conform to requirements set forth in the Solicitation Package, that is, the program information and guidelines stated in this Request for Grant Proposals (RFGP) as well as the standard Proposal Submission Instructions (PSI). Applications not adhering to the conditions set forth herein may be deemed technically ineligible.

The guidelines set forth in this RFGP are specific to the program mentioned above and are in addition to the standard guidelines outlined in the PSI. In any instance that there is a perceived disparity between the standard or program-specific guidelines, the program-specific guidelines listed in the RFGP are to be the dominant reference. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

A. Proposal Submission Information

1. Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/AF–01–02.

2. Application Submission Deadline

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Thursday, February 1, 2001. Faxed documents will not be accepted at any time. Documents postmarked on the due date but received on a later date will not be accepted.

Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven (7) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/AF–01–02*, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

3. For Further Information or To Request a Solicitation Package

Please contact the program officer, Carol Herrera, by mail at: African

Programs Branch, Office of Academic Exchanges (ECA/A/E/AF)—Rm. 232, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Ph: (202) 619–5405, F: (202)619–6137, E-mail: *cherrera@pd.state.gov.*

4. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Note: Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

5. Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Fulbright-Hays Act.

6. Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

B. Program Information

1. Background

Since 1998 the Clinton Administration has launched several special initiatives for education in Africa to further African integration into the global community by improving the quality of, and technology for, education in Africa. As a result of President Clinton's recent visit to Nigeria, the Africa Programs Branch seeks to create a Summer Institute on Education Reform for Nigerian Tertiary Education Administrators and Policy Makers. Under the Fulbright banner the program further seeks to promote mutual understanding between the peoples of the United States and Nigeria.

Over the past two decades, large increases in the number of students at every level of the education system coupled with diminishing resources provided by Nigeria's military rulers dramatically decreased the quality of education in Nigeria. The proposed program seeks to engage Nigerian tertiary education administrators, government policy makers and other stakeholders in a detailed review of major reform issues in the U.S. that will help the participants identify and explore potential areas of reform within the Nigerian education system and approaches to instituting reforms.

2. Program Description

The Summer Institute seeks to encourage key stakeholders and decision makers to promote a bolder vision for the future of Nigerian tertiary education and establish long-term educational reform goals that benefit the nation as a whole. The six-week program is intended to improve the quality of tertiary education in Nigeria by (1) helping participants identify and examine potential areas of reform in Nigerian tertiary education by thoughtfully reviewing American experiences, (2) promoting cooperation, coordination, and cross-fertilization of ideas among the participants and with U.S. facilitators and counterparts, (3) through case studies, site visits and other experiential means, examining American examples of educational reform efforts applicable to a Nigerian context and, (4) strengthening participants' leadership, management, and organizational skills.

The 25 participants will be selected not only from among university administrators but from policy makers as well.

Half of the group will be composed of senior university administrators representing federal and state universities, polytechnics, teacher colleges, and a new private university. The rest of the group will be education policy makers from the Federal Ministry of Education, some state governments, important commissions such as the Examination Council (WAEC), the National Universities Commission (NUC), the Committee of the Colleges of Education and the National Assembly's Education Committee. The entire participant selection process will be carried out in Nigeria by the Public Affairs Section of the American Embassy.

3. Program Objectives

3.1 Identifying and Examining Potential Areas of Reform in Nigerian Tertiary Education

Although the program will reference American examples of education reform, the wide disparity between the American and Nigerian contexts demands that the focus be on the Nigerian education system. Any American examples that are used must have relevance and applicability to the realities of Nigeria. It is not enough that the host institution provide a menu of recent American reform efforts and examples of successes and failures with the hope that the participants will glean what they need from the American model. This should not be perceived to be an American Studies program on Education Administration but an Education Administration program specifically designed for Nigerian education stakeholders. Specific topics may include but will not be limited to: establishing coordination among the various components of the higher education system, turning policy into practice, education funding and fundraising, accreditation, testing, teacher training, certification, setting admissions standards, hiring practices, staff development, community outreach, legislative oversight, publications, student government, etc.

The host institution will prepare a needs assessment to be carried out prior to the participants arrival in the U.S. to determine what areas the participants identify as most relevant and develop the program around those perceived priorities. The approach should be one that provides in-depth content on a few selected topics rather than cursory information on a wide variety of topics.

3.2 Promoting Cooperation, Coordination, and Cross-fertilization of Ideas Among the Participants and With U.S. Facilitators and Counterparts

Sessions and activities should be designed to enable the participants to use critical and creative thinking skills and teamwork in developing solutions and approaches to effect realistic and implementable reform goals in the areas of interest identified in the needs assessment.

3.3 Examining American Examples of Educational Reform Efforts Applicable to a Nigerian Context

Through case studies, site visits and other experiential means, the participants will study examples of American education reform that correspond to the areas of interest identified in the needs assessment. Activities should include but are not limited to visits to a selection of universities; pertinent government offices, both federal and state; federal and state legislative education committees; meetings with university administrators such as presidents, vice presidents, and deans.

Examples used should, as closely as possible, demonstrate challenges similar to those that confront the Nigerian administrators; *i.e.,* lack of funding, poorly trained staff, low staff morale due to insufficient pay, overcrowded classes, student unrest, etc.

3.4 Strengthening Participants' Leadership, Management, and Organizational Skills

Potential topics may include but are not limited to: participatory planning; developing clear, implementable goals and objectives; assessment and analysis; formulating action plans; monitoring and evaluation (of faculty, staff, students, curriculum, etc.); staff development; accountability and the ethical dimensions of leadership; building a constituency for change; promoting ownership and commitment; interpreting and adapting to a changing environment; being responsive to constituencies, etc.

4. Program Specific Guidelines

4.1 Program Duration/ Dates

The program will be approximately six weeks in length and should begin and end between the dates of June 1, 2001 and September 30, 2001. These dates will include the arrival and departure dates of the participants.

4.2 Number/Types of Participants

There will be a maximum of 25 participants, approximately half of whom will be university administrators and half of whom will be policy makers. They will come from various parts of Nigeria and various ethnic groups and will likely be predominantly male. Applicants may wish to take this into consideration in planning and logistics. If the number of women in the group is small, efforts may be needed to ensure their full inclusion and participation. Most, but not all, will have at least some overseas experience, having attended international conferences, participated in international visitors programs, etc. Some will have spent time studying abroad, primarily in the U.K. but other countries as well including the U.S. Minimum qualifications for all participants will be the equivalent of BA/BS degrees from their national educational system.

4.3 Grantee Administrative Responsibilities

The following are the responsibilities of the grantee that will be covered under the terms of the grant and must be included in the budget submission. Please refer to the next section in this document (Section 5, Budget Guidelines) and PSI Budget Guidelines for further details.

• Travel/transportation in the U.S. Participants will arrive and begin their program in Washington, DC. The host institution will arrange all domestic transportation (excluding travel from Washington, DC to program site if by air) to and from airports and for cultural and educational activities provided under this project. For travel between Washington, DC and the Summer Institute site, the host institution may propose to substitute travel by bus or by train for travel by commercial air carrier, if ground transportation is a feasible, cost-effective travel alternative. However, if the host institution opts to use ground transportation between Washington, DC and the program site, the cost must be included in the budget proposal.

It is expected that the grantee will make arrangements to meet the participants upon arrival in Washington. Departures for return travel to Nigeria will be from the program site.

• Lodging: Accommodations in faculty guest quarters with single rooms or suites are preferred. Kitchen facilities for food storage and preparation to accommodate 25 participants should be provided. Lodging should be within reasonable walking distance to location of classes and/or readily accessible to university transportation system. Easy access to public transportation that enables participants to venture out into the larger community is desirable.

• Meals: A system of cash subsistence payments that allow participants to shop for and prepare their own meals is preferred. Cafeteria meal plans that can accommodate African preferences are possible. If using a meal plan exclusively, show clearly how the cost of meals will be covered when participants' travel away from campus or campus cafeterias are closed.

• Incidentals allowance: Each participant will receive an incidentals allowance of $15 per day for the full number of days of the Summer Institute including at the host institution, while in Washington, DC and/or other U.S. city visited.

• Book Allowance: The project will provide each participant with a supplemental book allowance of $150 per person. The institution should plan to assist participants in selection, acquisition and shipment of materials for their needs. The institution should develop a plan that allows participants to stretch their book allowance as far as possible through institutional or publishers' discounts.

• Health Coverage Administration: Although the Bureau assumes the responsibility of providing limited accident and sickness insurance coverage for participants, the grantee is responsible for enrolling all participants in the Bureau's health coverage program. A plan on providing participants with ready access to medical care should be included in the proposal.

4.4 Bureau Administrative Responsibilities

The following are the responsibilities of the Bureau and will not be covered under the terms of the grant and should not be included in the budget submission:

• Selection of Participants: The selection process will be carried out by the U.S. Public Affairs Section (PAS) in Nigeria. The Bureau will be responsible for and facilitate all communications between the PAS and the institution. The Bureau will provide the grantee with participants' curriculum vitae and other relevant information.

• International Travel: The Bureau is responsible for participants' international travel. The Bureau, in coordination with the U.S. Embassy in Abuja, will make international airline reservations and purchase round-trip international airline tickets for all participants from Nigeria to the site of the Summer Institute via Washington, D.C.

The Bureau will advise the host institution of the group's arrival/departure schedules.

• Health Coverage: The Bureau provides limited accident and sickness insurance coverage for participants in the Summer Institute and will provide the grantee with the necessary instructions and forms to complete prior to the participants' arrival.

• Visas: Participants will travel on J–1 visas, Program number G–1–5, issued by the U.S. Consulate in Lagos. Program must comply with J–1 visa regulations. Please refer to Proposal Submission Instructions for further information.

5. Budget Guidelines

Applicants must submit a comprehensive budget for the entire program, not to exceed $200,000. The Bureau plans to award one grant at a level of approximately $200,000. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

In addition to the guidelines provided here, applicants should refer to the Budget Guidelines section of the PSI.

5.1. Allowable Costs

Allowable costs for the program include:

• Instructional costs, *i.e.*; instructors' salaries, honoraria for outside speakers, educational course materials

• Lodging, meals, and incidentals for participants

• Expenses associated with cultural activities, *i.e.*; admission fees, transportation

• Administrative costs as necessary

5.2 Line-item Budget

Divide the Line-item budget into *Program* and *Administration* sections. The line-item budget should include and elaborate on the categories listed below.

5.2.1 Program Section. The program section of the budget includes (1) academic program costs, (2) participant maintenance and allowances, and (3) cultural activities and other related costs

5.2.1.1 Academic program costs. The Institution may choose to itemize academic program costs (I.A.1) or set a fee per participant (I.A.2)

—Itemized academic program costs. (I.A.1)

• Instructors' salaries as appropriate. Salaries, benefits, and services for instructors' salaries for the Institute classes. Identify each position and provide position title, role in the Institute, and, as appropriate, annual salary and percent of effort used for the Institute. Benefit costs should be stated separately from salary costs. Identify how benefits and services were computed.

• Honoraria and per diem for outside speakers, if any. (List names and amounts).

• Film and video rentals, educational materials, curricular needs (*i.e.* texts, course packs for classes), as appropriate.

—Fee per participant (I.A.2)

If the institution chooses to budget academic program costs as a fee per participant, please state what services are provided within that fee.

5.2.1.2 Costs for maintenance and other allowances for participants. (Clearly indicate the unit cost of each item.)

• Lodging. Housing may be in graduate dormitories, faculty residences, or other, as appropriate. Single rooms preferred.

• Meals. Meals may be provided through cash subsistence payments to participants, cafeteria meal plans, or a combination of both. If using a meal plan exclusively, show clearly how the cost of meals will be covered when participants travel away from campus or campus cafeterias are closed.

• Incidentals allowance. Include an incidentals allowance of $15 per person per day for full number of days of the Summer Institute at the host institution.

• Supplemental book allowance of $150 per person.

• Excess baggage allowance of $150 per person.

Note: Per diem rate for lodging and meals may not exceed published U.S. government allowance rates for the site of the Institute. Institutions may use per diem rates that are lower than official government rates.

5.2.1.3 Cultural activities and other program-related costs

• Cultural activities: entrance fees, overnight lodging, meals not provided for in B.2.

• Costs for Washington cultural and educational tour.

• Lodging for participants. It is acceptable for participants to share rooms on trips away from primary institute site.

• Meals for participants away from regular site.

• Incidentals allowance for participants. (Include a $15 per person per day incidental allowance for full number of days in Washington and/or other city.)

• Transportation: Ground transportation for group cultural and educational activities; ground transportation for airport arrival and departure.

• Escort Staff: Domestic transportation costs and per diem (or lodging and subsistence) for grantee escort staff for overnight cultural activities and Washington visit.

Note: The Bureau will provide round-trip international air tickets (from home country to Washington, D.C. to Institute site, and return to home country) for participants. The cost of travel for participants from Washington, D.C. to the institute site should *not* be included in a budget unless the institution opts to use ground transportation. If travel by means other than commercial airline are proposed, show transportation costs in the budget.

5.2.2 Administration Costs

• Staff requirements.

• Benefits.

• Other direct administrative expenses.

• Indirect expenses.

6. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion; geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

7. Proposal Preparation

Applicants should submit a complete and thorough proposal describing the program in a convincing and comprehensive manner. Since there is no opportunity for applicants to meet with reviewing officials, the proposal should respond to the criteria set forth in the solicitation package as clearly as possible. Proposals should address succinctly, but completely, the elements described below and must follow all format requirements.

Proposals should include the following items:

Table of Contents
(Tab A) Assistance Award Proposal Cover Sheet
(Tab B) Executive Summary
(Tab C) Narrative
(Tab D) Budget Submission
(Tab E) Supporting documentation
(Tab F) Standard forms

Guidelines on specific sections follow.

7.1 Table of Contents

List all attachments.

7.2 Assistance Award Proposal Cover Sheet (Tab A)

One additional copy of the application cover sheet must be included in an envelope marked "Attention: ECA/EX/PM."

7.3 Executive Summary (Tab B)

In one double-spaced page, provide the following information about the project:

• Name of organization/participating institutions

• Beginning and ending dates of the program

• Proposed theme

• Nature of activity

• Funding level requested from the Bureau, total program cost, total cost-sharing from applicant and other sources—Scope and Goals

• Number and description of participants

• Wider audience benefiting from program (overall impact)

• Anticipated results (short and long-term)

7.4 Narrative (Tab C)

In 20 double-spaced, single-sided pages, provide a detailed description of the project addressing the areas listed below.

• Statement of need, objectives, goals, and benefits

Provide a well-defined, overarching vision of the program and a description of the steps/activities to be undertaken to create from the various components a well integrated whole. The rationale, goals and objectives articulated in the RFGP should be the foundation upon which the program proposal is built.

In keeping with the Bureau's goal of establishing long-term academic partnerships, the program should be crafted as part of a potential continuum of academic exchange opportunities that build upon and complement one another. The program should be seen as mutually beneficial to participants and program implementers, although the benefits may differ significantly.

• The host institution's qualifications in education administration and African school systems and relevance of past experience to this program.

• Implementation Approach and Strategy

The narrative should include a clear description of the general strategy and specific approach proposed to implement the program. As much as possible the program should be participant-focused incorporating adult learner strategies and oriented toward authentic learning outcomes and capacity-building in relation to real-world problem-solving. The program should be geared more toward enhancing participants' skills and less on providing information and materials.

• Participating Organizations (if applicable)

Provide a brief description of any other entities that are to play significant roles in the performance of this contract and how they fit into implementation.

• Work plan/Time Frame

The program should be approximately 6 weeks in length and should begin and end between the dates of June 1, 2001 and September 30, 2001. The work plan should clearly identify the number of hours dedicated to the various program components.

• Academic Component

Provide a description of the specific learning activities undertaken to meet goals and objectives of the program.

• Cultural Component

Include a description of those activities not directly related to the academic component and geared toward providing an American experience for the participants. To the extent possible, cultural activities should complement the goals and objectives of the academic component but should not be limited to only those with academic significance. Program days in Washington, DC and other major U.S. city should be included here.

• Provide a description of housing, maintenance and logistics including health care provisions for participants.

• Participant monitoring

Include a plan for measuring participant performance and tracking the individual's progress in meeting learning objectives.

• Follow-on plan

Include a description of short-term, mid-term and long-term goals in continuing the partnership between the host institution and the participants beyond the provisions of the summer institute grant. Although additional Bureau support would not be available for the short-term goals, mid-term and long-term goals could be considered for additional funding.

• Program Evaluation

The evaluation plan should identify anticipated outcomes and performance requirements clearly related to program goals and activities and include procedures for ongoing monitoring and corrective action when necessary. The identification of best practices relating to project administration is also encouraged, as is the discussion of unforeseen difficulties.

• Program Calendar

Include all academic, cultural and administrative activities.

7.5 Budget Submission (Tab D)

The cost to the Bureau for the Summer Institute for Nigerian Educators for 25 participants should not exceed $200,000. The final budget may be adjusted to reflect the actual number of participants.

Note: Please review carefully Standard Budget Preparation guidelines in Proposal Submission Instructions in regard to a Summary Budget and a detailed Line-Item Budget and descriptions and limitations of each type of administration cost. Use notes where further explanation of line items is required to clarify how the figures were derived.

7.6 Supporting Documentation (Tab E)

• Letters of endorsement

• Resumes

All program staff resumes should be included in the submission. No resume should exceed two pages.

7.7 Standard Forms (Tab F)

• "Additional Information" Form

• Copy of IRS notification of current tax-exempt status

• Four Required Certification Forms

• Certification of Compliance with Federal Forms

• Other attachments, if applicable

8. Review Process and Criteria

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals are reviewed for adherence to legal and budgetary requirements by Bureau offices responsible for these functions. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein. For program content, cost-effectiveness, and other criteria spelled out in the RFGP, the review is conducted by an advisory, assistance award-review panel composed of Bureau and Department officers. Additional officers, including

geographic area personnel, also review proposals for feasibility as well as potential for short- and long-term impact. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with a Bureau Grants Officer. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

8.1 Quality of Program Conceptualization and Planning

Proposals should exhibit substance, precision, and relevance to the Bureau's mission as well as adherence to all guidelines and objectives described in the RFGP. Proposals should provide a clear description of the general strategy and specific approach to implement the program. Proposals should also demonstrate effective use of community and regional resources to enhance both the educational and cultural experiences of the participants. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity.

8.2 Ability to Achieve Program Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

8.3 Area Expertise

Proposals should demonstrate significant institutional and staff experience in and knowledge of Africa as well as expertise in education in developing countries.

8.4 Multiplier Effect/Impact

Proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. To ensure that Bureau supported programs are not isolated events, a detailed post-institute plan (that does not require Bureau support) for follow-on activities that promote continued communication/involvement and build upon program achievements between the host institution and participants and/or the institutions they represent, should be incorporated into the proposal.

8.5 Program Monitoring/Evaluation

Proposals should include a plan to monitor program and participant progress through the course of the program and evaluate the overall success upon completion of the program. The Bureau recommends that the proposal include a participant needs assessment or other technique plus description of a methodology to link outcomes to original project objectives.

8.6 Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in both the American and African context. Program administrators should strive for diversity among Institute staff, student assistants, and host community contacts. Cultural, ethnic, and religious diversity of the participants should also be a consideration in program planning.

8.7 Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic and cultural program. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8.8 Cost-effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 30, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–31075 Filed 12–6–00; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3492]

Bureau of Educational and Cultural Affairs; Project in Curriculum Development and Faculty Training at the University of Pristina, Kosovo; Request for Grant Proposals

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support the development of programs of instruction and faculty training at the University of Pristina in one or both of the following two fields: (1) Business management and entrepreneurship; and (2) public administration. Organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals that address one or both of these objectives. The means for achieving these objectives may include mentoring, teaching, consultation, research, distance education, internship training, and professional outreach to public and private sector managers, entrepreneurs, and local government administrators in Kosovo.

Overview and Project Objectives: The project is designed to assist the University of Pristina to develop a modern program in business management education to facilitate the development of entrepreneurial and business activity in Kosovo. The project is also designed to enable the University of Pristina to develop a program of instruction in public administration to increase efficiency and accountability in the administration of the public sector in Kosovo. Applicants may submit proposals focusing on either, or both of the two disciplines.

In business management, proposals should emphasize practical strategies to assist the faculty to develop a new curriculum in business management focusing on accounting, finance, banking, entrepreneurship, and the role of women in business. In public administration, proposed activities should assist with curriculum design and faculty training in local government administration, taxation, financial management, land registry/ownership and property rights. The inclusion of organizational development and personnel management among proposed activities is also encouraged. Proposals should include an emphasis on providing practical training and hands-on experience in local government administration as well as techniques for drafting legislation. Proposals should explain how the public administration program will equip the University to promote concepts of accountability and transparency in the administration of the public sector in Kosovo.

Bureau policy stipulates that awards to organizations with less than four years experience in conducting international exchanges are limited to $60,000. The Bureau anticipates awarding either two grants not to exceed $221,300 (one grant for each one of the two designated disciplines), or one grant not to exceed $442,600 to work in both disciplines. Funds will be awarded for a period up to two years to defray the costs of exchanges, to provide educational materials, and to increase library holdings and improve Internet connections. Up to 30% of the grant total may be used to defray the costs of project administration.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students for any appropriate combination of teaching, mentoring, internships, in-service training and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Kosovo are strongly encouraged and program activities must be tied to the goals and objectives of the program. The strategy may include intensive English language training for selected participants, whose prior knowledge of English may need to be refreshed.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

U.S. Institution and Participant Eligibility: In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools, as well as to other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. The lead U.S. organization in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

With the exception of an outside consultant reporting on the degree to which project objectives have been achieved, participants who are traveling under the Bureau's grant funds must be teachers, advanced graduate students, who are teaching or research assistants, or administrators from the participating institution(s). Advanced graduate students are eligible for Bureau-funded participation in this program only if they are working under the direction of an accompanying faculty participant.

Kosovo Institutional and Participant Eligibility: In Kosovo, the partner is the University of Pristina. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with issues in business development and/or public administration training in Kosovo. Foreign participants will be selected in consultation with the U.S. Office in Pristina and must be instructors at the University of Pristina, or persons preparing to become instructors at the University of Pristina, who are eligible to receive a J–1 visa.

Budget Guidelines: Applicants may submit a budget up to $221,300 for projects focusing on one discipline, or a budget up to $442,600 for projects focusing on both of them. Requests for amounts smaller than the maximum are eligible. Budget notes should carefully justify the amounts needed. There must be a summary budget as well as a breakdown reflecting the program and administrative budgets including unit costs. Applicants submitting a budget for the combined program must separate budgets for each sub-project. Cost-sharing will be considered an important indicator of institutional commitment. Please refer to the Solicitation Package for complete guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau of Educational and Cultural Affairs concerning this RFGP should reference the above title "Project in Curriculum Development and Faculty Training at the University of Pristina" and reference number ECA/A/S/U–01–04.

FOR FURTHER INFORMATION CONTACT: Contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone (202) 619–5289, fax: (202) 401–1433, e-mail: affiliation@pd.state.gov to request a Solicitation Package.

The Solicitation Package contains detailed award criteria, required application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the above reference number on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download A Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfgps. Please read all information before downloading.

Deadline of Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington DC time on Wednesday, March 14, 2001. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates: Grants should begin on or about August 1, 2001.

Duration: August 1, 2001–August 30, 2003.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Ref.: ECA/A/S/U–01–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

All copies should include the documents specified under Tabs A through E in the "Project Objectives, Goals, and Implementation" (POGI) section of the Solicitation Package. The documents under Tab F of the POGI should be submitted with the original application and with one of the ten copies.

Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" Sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will

transmit these files electronically to the U.S. Office in Pristina for its review, with the goal of reducing time it takes to get the post's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the U.S. Office in Pristina. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: State Department officers in Washington, DC and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighted.

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and resourcefulness. Proposals should exhibit sensitivity to the region, and have reasonable and feasible project objectives that are relevant to the needs of the University of Pristina. Proposals should describe projected benefits to the institutions involved as well as to wider communities of educators and practitioners in Kosovo.

2. *Program Planning:* Proposals should include creative, realistic and feasible program plans to achieve project objectives and a detailed schedule, which should include a well-reasoned combination of useful and appropriate mentoring, teaching training and methodology workshops, and outreach activities supporting the project objectives.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

4. *Institutional Capacity and Commitment:* Proposals should demonstrate significant understanding of the institutional needs and capacities at the University of Pristina as well as the U.S. institution's capacities, and should demonstrate a strong commitment, during and after the period of the grant activity, to on-going cooperation. Relevant factors include: The match between participating organizations or departments, and availability of sufficient number of faculty and/or administrators willing and able to participate in project activities. Proposals should demonstrate the promise of sustainability and long-term impact, as reflected in a plan for follow-on activities.

5. *Institutional Record/Ability:* Proposals should demonstrate an institutional record of administering successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the State Department's contracts officers. The Bureau will consider the past performance of prior award recipients and the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, commitment and experience relative to the goals and activities of the project plan.

6. *Project Evaluation:* The proposal should outline a methodology to assess progress toward the achievement of project goals. The final evaluation should include an external component and observations about anticipated long-term impact on business conditions and/or public sector administration in Kosovo.

7. *Cost-Effectiveness:* Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of the applicant's commitment to the pursuit of project objectives.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Support for East European Democracy (SEED) Act of 1989.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Projects must conform with Bureau requirements and guidelines outlined in the solicitation package. The POGI, a document describing this project's objectives, goals, and implementation, is included in the solicitation package.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 29, 2000.

William B. Bader,

Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–31077 Filed 12–6–00; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Services will hold a meeting on December 12, 2000, from 9 a.m. to 12 noon. The meeting will be opened to the public from 9 a.m. to 10 a.m., and closed to the public from 10 a.m. to 12 noon.

DATES: The meeting is scheduled for December 12, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Conference Room 1414, located at 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Holderman, (202) 482–0345, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (principal contact), or Dominic Bianchi, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the "Status Report on WTO General Agreement on Trade in Services (GATS) Work Program and Preparation for Future GATS Negotiating Meetings" will be discussed.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–31141 Filed 12–6–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 19, 2000, at 65 FR 56609. No comments were received.

DATES: Comments must be submitted on or before January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen, Office of National Security Plans, Maritime Administration, MAR–620, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5990 or FAX 202–488–0941. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Voluntary Tanker Agreement.

OMB Control Number: OMB 2133–0505.

Type of Request: Extension of currently approved collection.

Affected Public: The respondents are tanker companies that operate in international trade and who have agreed to participate in this agreement.

Form (S): None.

Abstract: The collection consists of a request from MARAD that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered, or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

Annual Estimated Burden Hours: One hour per respondent.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC. 20503, Attention MARAD Desk Officer.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on December 4, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–31221 Filed 12–6–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket 98–4957 Notice 23]

Extension of Existing Information Collection: Public Comment Request and OMB Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for Public Comment and OMB Approval.

SUMMARY: This is the second notice of requests for public participation in the Office of Management and Budget (OMB) approval process for extension of an existing Research and Special Programs Administration (RSPA) collection of information. RSPA is requesting OMB approval of information collection 2137–0596, National Pipeline Mapping System (NPMS) under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320. RSPA published its first request in the **Federal Register** on September 7, 2000 (65 FR 54336). The Paperwork Reduction Act gives the public a second chance to provide comments on information collection requests.

DATES: Comments on this notice must be received by January 8, 2001 to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments directly to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503 Attn: Desk Officer for DOT. Please identify the docket and notice numbers shown in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Pipeline Mapping System.

Type of Request: Extension of existing information collection.

Abstract: RSPA's Office of Pipeline Safety (OPS), along with state agencies, has been working with natural gas and hazardous liquid pipeline operators to develop NPMS. When complete, this system will depict and provide data on all natural gas transmission and hazardous liquid pipeline systems operating in the United States. OPS is extending its volunteer pilot program to all regulated transmission operators. OPS will be compensating the states and regional repositories for their startup and operating costs. Four commenters, three hazardous gas pipeline operators and one trade association provided comments. The following is a summary of their comments and OPS's response to their concerns.

OPS has worked with the pipeline industry since November 1994 on the development of a voluntary NPMS. This process has included two government/industry mapping teams who worked together to identify the most cost effective way for the pipeline industry to share data with OPS and the states. Additionally OPS has conducted four mapping workshops. OPS has made every effort to develop its voluntary mapping system which is flexible offering the opportunity for either hard copy or digital submissions from operators.

NPMS is important for regulatory oversight by both the states and the Federal government. Additionally, it is essential for the public's right-to-know. A few commenters questioned OPS' estimates of the time required to provide mapping data. OPS has revised upwards its initial estimate of 20 hours per operator to 30 hours. OPS notes that a commentor suggested that the required estimate could be up to 5,200 hours. OPS believes that this represents operators converting from hand drawn maps to digital mapping. This is not what is being requested by OPS. OPS is accepting hand drawn maps.

Some commenters questioned the need for a NPMS. One purpose for NPMS is to standardize the maps and reduce the burdens of operators responding to different requests from state officials.

Some commenters had concerns with the definition of transmission lines. This is outside the scope of this information collection.

One commenter questioned the accuracy goal of ±500 feet. OPS believes that the data submitted is much more accurate than this goal. The accuracy level is generally from 40–100 feet.

One commenter had concerns about the security of providing pipeline mapping. OPS believes that the limited pipeline data provided OPS does not pose a security threat.

Estimate of Burden: 30 hours per operator.

Respondents: Gas transmission and hazardous liquid operators.

Estimated Number of Respondents: 1350.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 40,500 hours.

This document can be reviewed between 10 a.m.–5 p.m. Monday through Friday, except Federal holidays, at the Dockets Facility, DOT, Room PL–401, 400 Seventh St., SW., Washington, DC 20590.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 1, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31225 Filed 12–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Docket RSPA–98–4957; Notice 24 Notice of Request To Extend Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for public comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is publishing its intention to combine two existing information collections into one. OPS is combining Management Information System (MIS) Standardized Data Collection and Reporting of Drug Testing Materials (2137–0579) and Alcohol Testing (2137–0587). The purpose of this notice is to allow the public to comment. The combined information collection will be titled Drug and Alcohol Testing (2137–0579).

OPS believes that alcohol and drug testing requirements are an important tool for operators to monitor drug and alcohol usage in the industry. OPS has found that drug and alcohol use in the pipeline industry is less than 1% of employees.

DATES: Comments on this notice must be received by February 5, 2001 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed to Dockets Facility, Plaza 401, U.S. Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20590 or by e-mail to *http://dms.dot.gov*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6205 or by electronic mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Drug and Alcohol Testing.

OMB Number: 2137–0579.

Type of Request: Extension of an existing information collection.

Abstract: Drug and alcohol abuse is a major societal problem and it is reasonable to assume the problem exists in the pipeline industry as it does in society as a whole. The potential harmful effect of drug and alcohol abuse on safe pipeline operations warrants imposing comprehensive testing regulations on the pipeline industry. These rules are found in 49 CFR 199. These regulations require annual information collection of the results.

DOT is rewriting its drug and alcohol testing regulations in 49 CFR Part 40. As a result, the bulk of the burden hours that were accounted for by the modes will now be accounted for in a new information collection issued by DOT.

OPS is using this opportunity to combine its information collections for drug and alcohol testing information collections.

Respondents: Pipeline operators.

Estimated Number of Respondents: 2,419.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 2,963 hours.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, DOT, 400 Seventh Street, SW., Washington, DC 20590 from 9:00 a.m. to 5:00 p.m. Monday through Friday except Federal holidays. They also can be viewed over the Internet at *http://dms.dot.gov*

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on December 1, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31226 Filed 12–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33964]

V and S Railway, Inc.—Acquisition and Operation Exemption—Central Kansas Railway, L.L.C.

V and S Railway, Inc. (V&S), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and to operate the Medicine Lodge Subdivision (line) of Central Kansas Railway, L.L.C. The line extends between milepost 0+1016', in Attica, and the end of the line at milepost 41.0, in Sun City, serving the intermediate points of Sharon, Medicine Lodge, and Lake City, a distance of approximately 41 miles in Harper and Barber Counties, KS.

The transaction was scheduled to be consummated on or after November 28, 2000.

This transaction is related to STB Finance Docket No. 33965, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—V and S Railway, Inc.*, wherein Kern W. Schumacher and Morris H. Kulmer have concurrently filed a verified notice to continue in control of V&S upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33964, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30943 Filed 12–6–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33953]

County of Coahoma, MS—Acquisition Exemption—Line of Illinois Central Railroad Company

The County of Coahoma, Mississippi (Coahoma), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire approximately 32.46 miles of rail line known as the Swan Lake Line from Illinois Central Railroad Company (IC) extending between milepost L–74.00 at Lyon, MS, and milepost L–79.00 at Clarksdale, MS, and between milepost 104.00 at Swan Lake, MS, to the connection with the Lyon-Clarksdale line at Clarksdale near milepost 76.54. The line is currently operated by Mississippi Delta Railroad (MSD), an affiliate of Gulf & Ohio Railways, Inc. (G&O), a noncarrier.[1] In addition, Coahoma will acquire approximately 1.39 miles of incidental trackage rights over IC's line from milepost 104.00 to the connection with IC's main line at milepost 105.39 so that the operator of the Swan Lake Line can reach IC's main line and conduct interchange at Swan Lake. Coahoma certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

The transaction was expected to be consummated on or shortly after November 16, 2000.

Coahoma states that, following consummation of this transaction, MSD is expected to continue operations until July 1, 2001. Coahoma further states that, if MSD should discontinue operations, it would be replaced by another rail operator, and that it is also possible that MSD and Coahoma could reach an agreement under which MSD would continue to operate the line after July 1, 2001. According to Coahoma, it will seek the Board's approval for any authority needed in connection with MSD's discontinuance of operations or a replacement operator's commencement of operations.[2]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33953, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, Esq., Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 30, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31230 Filed 12–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Gulf & Ohio Railways, Inc.—Exemption Form 49 U.S.C. 11301, 10901 and 11322,* Finance Docket No. 30683 (ICC served Nov. 6, 1985), wherein G&O leased a line of railroad from IC.

[2] MSD operates a contiguous rial line owned by G&O from milepost 55.40 at Lulu, MS, to milespost 74.00 at Lyon, MS, which connects to the Swan Lake Line. *See* Finance Docket No. 30683. G&O and Coahoma are currently negotiating the potential sale of this rail line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33965]

Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—V and S Railway, Inc.

Kern W. Schumacher and Morris H. Kulmer, individuals (collectively applicants), have filed a verified notice of exemption to continue in control of the V and S Railway, Inc. (V&S), upon V&S's becoming a Class III railroad.

The transaction was scheduled to be consummated on or after November 28, 2000.

This transaction is related to STB Finance Docket No. 33964, *V and S Railway, Inc.—Acquisition and Operation Exemption—Central Kansas Railway, L.L.C.*, wherein V&S seeks to acquire a line of railroad approximately 41 miles long in Harper and Barber Counties, KS.

Applicants currently indirectly control two existing Class III railroads: Tulare Valley Railroad Company, operating in the State of California; and Kern Valley Railroad Company, operating in the State of Colorado.[1]

Applicants state that (i) the rail line of V&S will not connect with any other lines of railroads under their control or within their corporate family, (ii) the transaction is not part of a series of transactions that would connect the railroads with each other or any railroad in applicants' corporate family, and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33965, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30942 Filed 12–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Kern Valley Railroad Company's acquisition and operation of a line of railroad in Colorado was previously exempted by the Board in *Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc.*, STB Finance Docket No. 33956 (STB served Nov. 21, 2000). That line of railroad is the subject of a notice of exemption for abandonment in *Trinidad Railway, Inc.—Abandonment Exemption—in Las Animas County, CO*, STB Docket No. AB–573X (STB served Sept. 21, 2000). On November 28, 2000, the Rails to Trails Conservancy filed a petition to revoke the exemption in STB Finance Docket No. 33956 and in the alternative a petition to dismiss the notice of exemption in STB Docket No. AB–573X.

Federal Register

Thursday,
December 7, 2000

Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142
National Primary Drinking Water Regulations; Radionuclides; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[FRL–6909–3]

RIN 2040–AC98

National Primary Drinking Water Regulations; Radionuclides; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, EPA is finalizing maximum contaminant level goals (MCLGs), maximum contaminant levels (MCLs), and monitoring, reporting, and public notification requirements for radionuclides. Today's rule is only applicable to community water systems. Today's rule includes requirements for uranium, which is not currently regulated, and revisions to the monitoring requirements for combined radium-226 and radium-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. Based on an improved understanding of the risks associated with radionuclides in drinking water, the current MCL for combined radium-226/-228 and the current MCL for gross alpha particle radioactivity will be retained. Based on the need for further evaluation of the various risk management issues associated with the MCL for beta particle and photon radioactivity and the flexibility to review and modify standards under the Safe Drinking Water Act (SDWA), the current MCL for beta particle and photon radioactivity will be retained in this final rule, but will be further reviewed in the near future.

Some parts of EPA's 1991 proposal, including the addition of MCLGs and the National Primary Drinking Water Regulation (NPDWR) for uranium, are required under the SDWA. Other portions were intended to make the radionuclides NPDWRs more consistent with other NPDWRs, *e.g.*, revisions to monitoring frequencies and the point of compliance. Lastly, some portions were contingent upon 1991 risk analyses, *e.g.*, MCL revisions to the 1976 MCLs for combined radium-226 and -228, gross alpha particle radioactivity, and beta particle and photon radioactivity. The portions required under SDWA and the portions intended to make the radionuclides NPDWRs more consistent with other NPDWRs are being finalized today. The portions contingent upon the outdated risk analyses supporting the 1991 proposal are not being finalized today, in part based on updated risk analyses.

DATES: This regulation is effective December 8, 2003. The incorporation by reference of the publications listed in today's rule is approved by the Director of the Federal Register as of December 8, 2003. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Time on December 7, 2000.

ADDRESSES: The record for this regulation has been established under the docket name: National Primary Drinking Water Regulations for Radionuclides (W–00–12). The record includes public comments, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket. The record is available for inspection from 9 a.m. to 4 p.m., Eastern Standard Time, Monday through Friday, excluding Federal holidays, at the Water Docket, 401 M Street SW, East Tower Basement (Room EB 57), Washington, DC 20460. For access to the Docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact David Huber, Standards and Risk Management Division, Office of Ground Water and Drinking Water, EPA (MC–4607), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 260–9566. For general inquiries, the Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. The Safe Drinking Water Hotline toll free number is (800) 426–4791.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this rule are public water systems that are classified as community water systems (CWSs). Community water systems provide water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serve an average of at least 25 people year-round. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Privately-owned community water systems.
State, Tribal, Local, and Federal Governments.	Publicly-owned community water systems.

This table is not intended to be exhaustive, but rather, provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.26(a)(1)(i), 141.26(a)(1)(ii), 141.26(b)(1), and 141.26(b)(2) of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Acronyms Used in This Document

ASTM: American Society for Testing and Materials
AWWA: American Water Works Association
BAT: Best available treatment
BEIR: Biological effects of ionizing radiation
CFR: Code of Federal Regulations
CWS: Community water systems
EDE: Effective dose equivalent
EML: Environmental Measurements Laboratory
FR: Federal Register
ICRP: International Commission on Radiological Protection
IE: Ion exchange
kg: Kilogram
L/day: Liter per day
LET: Low energy transfer
LOAEL: Lowest observed adverse effect level
MCL: Maximum contaminant level
MCLG: Maximum contaminant level goal
mg/L: Milligram per liter
µg/L: Microgram per liter
mGy: MilliGray
mrem: Millirem
mrem/yr: Millirem per year
NBS: National Bureau of Standards
NDWAC: National Drinking Water Advisory Committee
NIRS: National Inorganic and Radionuclide Survey
NIST: National Institute of Standards and Technology
NODA: Notice of Data Availability
NPDWRs: National Primary Drinking Water Regulations
NRC: National Research Council
NTIS: National Technical Information Service
NTNC: Non-transient, non-community
NTNCWS: Non-transient, non-community water systems
pCi: Picocurie
pCi/L: Picocurie per liter
PE: Performance evaluation
PNR: Public Notification Rule
POE: Point-of-entry
POU: Point-of-use
PQL: Practical quantitation level
PT: Performance testing
RADRISK: A computer code for radiation risk estimation
RfD: Reference dose
RO: Reverse osmosis
SM: Standard methods
SMF: Standardized monitoring framework
SSCTL: "Small Systems Compliance Technology List"
SWTR: Surface Water Treatment Rule
TAW: Technical Advisory Workgroup
UCMR: Unregulated Contaminant Monitoring Rule
UNSCEAR: United Nations Scientific Committee on the Effects of Atomic Radiation
USDOE: United States Department of Energy
USEPA: United States Environmental Protection Agency
USGS: United States Geological Survey

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I. Background and Summary of the Final Rule

A. What Did EPA Propose in 1991?

In 1991, EPA proposed a number of changes and additions to the radionuclides NPDWRs. Among other things, EPA proposed to:

- Set a maximum contaminant level goal (MCLG) of zero for all radionuclides.
- Set a maximum contaminant level (MCL) of 20 µg/L or 30 pCi/L for uranium (with options of 5 pCi/L to 80 µg/L).
- Change the radium standard from a combined limit for radium-226 and 228 of 5 pCi/L to separate standards at 20 pCi/L.
- Remove radium-226 from the radionuclides included in the definition

of gross alpha, while keeping the gross alpha MCL at 15 pCi/L, since the proposed radium-226 MCL was greater than the gross alpha MCL.

- Change dose limit from critical organ dose (millirems) to "weighted whole body dose" (millirems-effective dose equivalent).
- Require community water systems which are determined by the State to be vulnerable or contaminated to monitor for beta particle and photon radioactivity, rather than at all surface water systems serving a population over 100,000 people (as under the current 1976 rule).
- Establish a monitoring framework more in line with the standardized monitoring framework used for other contaminants.
- Exclude compositing for beta particle and photon emitters.
- Include non-transient, non-community water systems (NTNCWSs) in the regulation.
- Require that each entry point to the distribution system be monitored to ensure that each household in the system received water protective at the MCL.

B. Why Did EPA Propose Changes to the Radionuclides Drinking Water Regulations in 1991?

In 1976, National Interim Primary Drinking Water Regulations were promulgated for radium-226 and -228, gross alpha particle radioactivity and beta particle and photon radioactivity. The health risk basis for the 1976 radionuclides MCLs was described in the recent radionuclides Notice of Data Availability (NODA), (65 FR 21575, April 21, 2000). The 1986 reauthorization of the Safe Drinking Water Act (SDWA) required EPA to promulgate MCLGs and National Primary Drinking Water Regulations (NPDWRs) for the above radionuclides, radon and uranium. Also in 1986, EPA published an Advance Notice of Proposed Rulemaking for the radionuclides NPDWRs (EPA 1986), which stated EPA's intent to accomplish this goal. In 1991, EPA proposed changes to the current radionuclides standards and new standards for radon and uranium. EPA determined that both combined radium-226 and -228 and uranium could be analytically quantified and treated to 5 pCi/L. However, EPA concluded that, given the much greater cost-effectiveness of reducing risk through radon water treatment relative to radium and uranium, the feasible levels were 20 pCi/L each for radium-226 and -228 and 20 µg/L (or 30 pCi/L) for uranium. Between 1986 and 1991, EPA made risk estimates based on then-current models and information, as described in the NODA (EPA 2000e) and its Technical Support Document (USEPA 2000h). The 1991 risk estimates [1] indicated that the proposed MCL changes would result in lifetime cancer risks within the risk range of 10^{-6} and 10^{-4} (one in one million to one in ten thousand) that EPA considers in establishing NPDWRs. The 1991 proposed uranium MCL was based on both kidney toxicity risk and cancer risk. All MCLGs for radionuclides were proposed as zero pCi/L, based on a linear no-threshold cancer risk model for ionizing radiation. A summary of the difference between the 1976 rule and the 1991 proposal are presented in Table I–1. The detailed differences between the 1976 rule and the 1991 proposal can be found in the record for this rulemaking (EPA 1976; 1986; 1991; 2000a).

TABLE I–1.—COMPARISON OF THE 1976 RULE, 1991 PROPOSAL, AND 2000 FINAL RULE

Provision	1976 rule (current rule)	1991 proposal	2000 final rule
Affected Systems	CWS	CWS + NTNC	CSW.
MCLG for all radionuclides.	No MCLG	MCLG of zero	MCLG of zero.
Radium MCL	Combined Ra-226 + Ra-228 MCL of 5pCi/L.	Ra-226 MCL of 20 pCi/L Ra-228 MCL of 20 pCi/L	Maintain current MCL based on the newly estimated risk level associated with the 1991 proposed MCL.
Beta/Photon Radioactivity MCL.	• ≤ 4 mrem/y to the total body or any given internal organ • Except for H-3 and Sr-90, derived radionucide-specific activity concentrations yielding 4 mrem/y based on NSB Handbood 69 and 2L/d • H-3 = 20,000 pCi/L; Sr-90 = 8 pCi/L • Total dose from co-occurring beta/photon emitters must be ≤ 4 mrem/y to the total body of any internal organ	• 4 mrem/y effective dose equivalent (ede) • Re-derived radionuclide-specific activity concentrations yielding 4 mrem/y ede based on EPA RADRISK code and 2 L/d • Total dose from co-occurring beta/photon emitters must be < 4 mrem/y ede	Maintain current MCL based on the newly estimated risk level associated with the 1991 proposed MCL. This MCL will be reviewed within 2 to 3 years based on a need for further re-evaluation of risk management issues.
Gross alpha MCL	15 pCi/L excluding U and Rn, but including Ra-226.	"Adjusted" gross aplha MCL of 15 pCi/L, excluding Ra-226, radon, and uranium.	Maintain current MCL based on the newly estimated risk level associated with the 1991 proposed MCL.
Polonium-210	Included in gross alpha	Included in gross alpha	Included under gross alpha, as in current rule. Monitoring required under the UCMR rule. Further action may be proposed at a later date.
Lead-210	Not Regulated	Included in beta particle and photon radioactivity; concentration limit proposed at 1 pCi/L.	No changes to current rule. Monitoring required under the UCMR rule. Further action may be proposed at a later date.
Uranium MCL	Not Regulated	20 g/L or 30 pCi/L w/ option for 5 pCi/L–80 g/L.	30 µ/L.

[1] The 1991 cancer risk estimates were based on the now-outdated RADRISK model (see the NODA and its Technical Support Document, USEPA 2000e and h).

TABLE I–1.—COMPARISON OF THE 1976 RULE, 1991 PROPOSAL, AND 2000 FINAL RULE—Continued

Provision	1976 rule (current rule)	1991 proposal	2000 final rule
Ra-224	Part of gross alpha, but sample holding time too long to capture Ra-224.	Part of gross alpha, but sample holding time too long to capture Ra-224.	No changes to current gross alpha rule. Will collect national occurrence information; further action may be proposed at a later date.
Radium monitoring	Ra-226 linked to Ra-228; measure Ra-228 if Ra-226 > 3 pCi/L and sum.	Measure Ra-226 and -228 separately	Measure Ra-226 and -228 separately.
Monitoring baseline	4 quarterly measurements. Monitoring reduction based on results: > 50% of MCL required 4 samples every 4 yrs; < 50% of MCL reguired 1 sample every 4 yrs	Annual samples for 3 years; Std Monitoring Framework: > 50% of MCL required 1 sample every 3 years; < 50% of MCL enabled system to apply for waiver to 1 sample every 9 years.	Implement Std Monitoring Framework as proposed in 1991. Four initial consecutive quarterly samples in first cycle. If initial average level > 50% of MCL: 1 sample every 3 years; < 50% of MCL: 1 sample every 6 years; Non-detect: 1 sample every 9 years. (beta particle and photon radioactivity has a unique schedule—see section III, part—K) States will have discretion in data grandfathering for establishing initial monitoring baseline.
Beta particle and photon emitters monitoring.	Surface water systems > 100,000 population Screen at 50 pCi/L; vulnerable systems screen at 15 pCi/L.	Ground and surface water systems within 15 miles of source screen at 30 or 50 pCi/K.	CWSs determined to be vulnerable by the State screen at 50 pCi/L.
Gross alpha monitoring.	Analyze up to one year later	Six month holding time for gross alpha samples; Annual compositing of samples allowed.	As proposed in 1991.
Analytical Methods	Provide methods	Method updates proposed in 1991; Current methods were updated in 1997.	Current methods with clarifications.

C. What New Information Has Become Available Since 1991? Overview of the 2000 Notice of Data Availability (NODA)

EPA published a Notice of Data Availability (NODA) on April 21, 2000. This NODA described the new information that has become available since the 1991 proposal and the basis for today's final regulatory decisions. The most significant source of new information is Federal Guidance Report-13 (FGR–13) (USEPA 1999b), "Cancer Risk Coefficients for Environmental Exposure to Radionuclides," which provides the numerical factors used in estimating cancer risks from low-level exposures to radionuclides. The risk coefficients in FGR–13 are based on state-of-the-art methods and models and are a significant improvement over the risk coefficients that supported the 1991 radionuclides proposal. FGR–13 is the latest report in a series of Federal guidance documents that are intended to provide Federal and State agencies technical information to assist their implementation of radiation protection programs. FGR–13 was formally reviewed by EPA's Science Advisory Board and was peer-reviewed by academic and government radiation experts. An interim version of the report was published for public comment in January of 1998. Comments were provided by Federal Agencies, including the Nuclear Regulatory Commission and the Department of Energy, State Agencies, and the public. The final version (September 1999) reflects consideration of all of these comments. The risk analyses supporting today's regulatory decisions are described in detail in the NODA (EPA 2000e) and its Technical Support Document (USEPA 2000h).

The NODA also reported the results from a June 1998 USEPA workshop held to discuss non-cancer toxicity issues associated with exposure to uranium from drinking water. At this workshop, a panel of experts reviewed and evaluated new information regarding kidney toxicity was examined. The findings from this workshop can be found in the NODA's Technical Support Document (USEPA 2000h).

Other important new information includes the results from a 1998 U.S. Geological Survey study which targeted the occurrence of radium-224 and beta particle/photon radioactivity (USEPA 2000e and h). Previously, it was assumed that the alpha-emitting radium-224 isotope rarely occurred in drinking water. If present in drinking water, because of its short half-life (3.6 days) and estimated low occurrence, it was thought that sufficient time would elapse to allow the isotope to decay to low levels before entry into the distribution system. Hence, radium-224 was not thought to appreciably occur in drinking water. This new information indicates that radium-224 significantly (positively) correlates with both radium-228 (correlation coefficient of 0.82) and radium-226 (correlation coefficient of 0.69), suggesting that radium-224 should be evaluated as a potential drinking water contaminant of national concern (USEPA 2000h). The impact of this and other information on decisions regarding radium-224 is discussed in part D of this section. In addition to the radium-224 occurrence information, the USGS study also determined that the majority of the beta particle/photon radioactivity in the samples collected was due to the presence of radium-228 and potassium-40, both naturally occurring contaminants. Since radium-228 is regulated under the combined radium-226/-228 standard and potassium-40 is not regulated, this suggests that most situations in which the beta/photon screening level is exceeded will not result in MCL violations. Of more concern, minor contributions from naturally occurring lead-210 were also reported. Lead-210 occurrence will be studied under the Unregulated Contaminant Monitoring Rule (UCMR).

In addition to this new technical information, the NODA also described the 1996 changes to the statutory framework for setting drinking water NPDWRs. The SDWA, as amended in 1996, requires EPA to review and revise,

as appropriate, each national drinking water regulation at least once every six years. The Act also requires that any revision to an NPDWR "maintain, or provide for greater, protection of the health of persons" (section 1412(b)(9)).

Regarding the setting of new NPDWRs, the SDWA as amended in 1996 gives EPA the flexibility to set an MCL at a level less stringent than the feasible level, if the Administrator determines that the benefits do not justify the costs at the feasible level. If the Administrator makes this finding, the Act directs EPA to set the MCL at a level that "maximizes health risk reduction benefits at a cost that is justified by the benefits" (section 1412(b)(6)). This provision applies to uranium only, since it is the only contaminant for which a new MCL is being established by today's regulatory action.

D. What Are the Rationales for the Regulatory Decisions Being Promulgated Today?

As previously discussed, EPA is retaining the current MCLs for combined radium-226 and 228, gross alpha particle radioactivity, and beta particle and photon radioactivity and is promulgating a new standard for uranium. The following is a discussion of the rationales supporting these decisions. In addition to the responses to major comments in the following section, responses to each individual comment are in the comment response document which is available for review in the docket for this final rule.

1. Retaining the Combined Radium-226 and Radium-228 MCL

The 1991 proposed changes to the MCLs for combined radium-226 and radium-228 were premised on a cost-effectiveness trade-off between radium mitigation and radon mitigation (a radon standard was also included in the 1991 proposal). This cost-effectiveness argument was used to support a proposal to raise the combined radium-226/-228 MCL of 5 pCi/L to individual MCLs of 20 pCi/L for each isotope. At the time, it was thought that the risks associated with 20 pCi/L of radium-226 and radium-228 were within the 10^{-6} to 10^{-4} risk range. However, current risk analyses based on Federal Guidance Report-13 (see Part C of this section) indicate that these higher MCLs have associated risks that are well above the 10^{-6} to 10^{-4} risk range. For details on the basis and findings of this risk analysis, see the NODA (USEPA 2000e) and its Technical Support Document (USEPA 2000h). Since this proposed change would introduce higher risks than envisioned in the original 1976 rule, approaching lifetime cancer risks of one in one thousand (10^{-3}) for occurrence at or near the 1991 proposed MCLs, EPA believes that its decision to retain the current combined radium-226/-228 MCL of 5 pCi/L is justified. Under the 1996 Amendments to the Safe Drinking Water Act, EPA is required to ensure that any revision to a drinking water regulation maintains or provides for greater protection of the health of persons (section 1412(b)(9)).

a. Major Comments Regarding Retention of the Combined Radium-226 and Radium-228 MCL

The major comments and responses concerning the retention of the combined radium-226 and radium-228 MCL are summarized in part E of this section ("What are the health effects that may result from exposure to radionuclides in drinking water?").

2. The Final Uranium MCL

a. What Is the Final MCL for Uranium and the Rationale for That Regulatory Level?

With today's rule, EPA is promulgating a uranium MCL of 30 µg/L. The SDWA generally requires that EPA set the MCL for each contaminant as close as feasible to the MCLG, based on available technology and taking costs to large systems into account. The 1996 amendments to the SDWA added the requirement that the Administrator determine whether or not the quantifiable and non-quantifiable benefits of an MCL justify the quantifiable and non-quantifiable costs based on the Health Risk Reduction and Cost Analysis (HRRCA) required under section 1412(b)(3)(C). The 1996 SDWA amendments also provided new discretionary authority for the Administrator to set an MCL that is less stringent than the feasible level if the benefits of an MCL set at the feasible level would not justify the costs (section 1412(b)(6)). This final rule establishing an MCL for uranium of 30 µg/L is the first time EPA has invoked this new authority.

In conducting this analysis, EPA considered all available scientific information concerning the health effects of uranium, including various uncertainties in the interpretation of the results, as well as all costs and benefits, both quantifiable and non-quantifiable. As discussed in more detail below, all health endpoints of concern were considered in this analysis. For some of these, the risk can currently be quantified (*i.e.*, expressed in numerical terms); and for some, it cannot. Similarly, there are a variety of health and other benefits attributable to reductions in levels of uranium in drinking water, some of which can be monetized (*i.e.*, expressed in monetary terms) and others that cannot yet be monetized. All were considered in this analysis. A detailed discussion of each of the principal factors considered follows.

b. MCLG and Feasible Level for Uranium

Since uranium is radioactive and EPA uses a non-threshold linear risk model for ionizing radiation, today's rule sets the MCLG (non-enforceable health-based goal) for this contaminant at zero. The Safe Drinking Water Act requires EPA to set the MCL as close to the MCLG as is feasible, where this is defined as "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration) * * *" [section 1412(b)(4)(D)]. EPA proposed a feasible level of 20 µg/L in its 1991 proposal. In doing so, EPA determined that uranium may be treatable and quantifiable at levels below 20 µg/L, however, levels below 20 µg/L were not considered feasible under the Safe Drinking Water Act. EPA believes the feasible level is still 20 µg/L.

c. Basis for 1991 Proposed MCL and Cancer Risk from Uranium

EPA is required by the Safe Drinking Water Act (section 1412(b)(2)) to regulate uranium in drinking water. In 1991, EPA proposed a uranium MCL of 20 µg/L ("mass concentration") based on health effects endpoints of kidney toxicity and carcinogenicity. In the proposal, EPA estimated that 20 µg/L would typically [2] correspond to 30 pCi/L ("activity"), based on an assumed mass:activity ratio of 1.5 pCi/µg. While such values are known to occur in ground water, this conversion factor does not reflect our "best estimate" today. The best estimate of a geometric average mass:activity ratio is 0.9 pCi/µg for values near the MCL, based on data from the National Inorganics and Radionuclides Survey (see USEPA 2000h). Given the closeness of this

[2] The actual relationship between mass concentration (µg/L) and activity (pCi/L) varies somewhat in drinking water sources, since the relative amounts of the radioactive isotopes that make up naturally occurring uranium (U–238, U–235, and U–234) vary between drinking water sources. The typical conversion factors that are observed in drinking water range from 0.67 up to 1.5 pCi/µg.

value to unity (1 pCi/µg), the available data suggests that, to a first approximation [3], the mass:activity ratio is 1:1 for typical systems. The 1991 proposed MCL of 20 µg/L was determined, at that time, to correspond to a "drinking water equivalent level" (DWEL [4]) with respect to kidney toxicity for a lifetime exposure. The corresponding 30 pCi/L level (based on the 1991 mass to activity conversion) was estimated to have a lifetime cancer risk of slightly below the 10^{-4} level.

Because the kidney toxicity health effects and the corresponding non-quantifiable kidney toxicity benefits are a very important consideration in setting the MCL, we first provide background on these effects before discussing the rationale for setting the uranium MCL.

d. Uranium Health Effects: Kidney Toxicity

Each kidney consists of over a million nephrons, the filtration functional units of the kidney. The nephron consists of glomeruli, which filter the blood, and renal tubules (proximal, distal, collecting duct, etc.), which collect the fluid that passes through the glomeruli (the "filtrate"). After the filtrate flows into renal tubules, glucose, proteins, sodium, water, amino acids, and other essential substances are reabsorbed, while wastes and some fraction of electrolytes are left behind for later excretion. The efficiency of this process can be monitored by analyzing urine ("urinalysis"), which reveals the concentrations of the various constituents making up the urine. For example, protein or albumin in the urine (proteinuria or albuminuria) indicates reabsorption deficiency or leakage of albumin, a class of proteins found in blood and which are responsible for maintaining fluid balance between blood and body cells. In the case of uranium toxicity, it is not clear whether long-term exposure may lead to marked albumin loss.

The level of proteinuria in urine is an indication of the degree of kidney toxicity: levels are divided into "trace", "mild", "moderate", or "marked", which are defined by increasing levels of proteinuria. Increased excretion of protein in the urine could be the result of tubular damage, inflammation, or increased glomerular permeability. It should be noted that a gradual loss of nephrons is asymptomatic until the loss is well advanced; the kidneys normally have the ability to compensate for nephron-loss. For example, chronic renal failure occurs when there is around 60% nephron loss. During the gradual loss of functioning nephrons, the remaining nephrons appear to adapt, increasing their capacity for filtration, reabsorption, and excretion.

Uranium has been identified as a nephrotoxic metal (kidney toxicant), exerting its toxic effects by chemical action mostly in the proximal tubules in humans and animals. However, uranium is a less potent nephrotoxin than the classical nephrotoxic metals such as cadmium, lead, and mercury. Uranium has an affinity for renal proximal tubular cells and interferes with reabsorption of proteins, as previously described. Specifically, uranium-induced renal tubular dysfunction in humans is marked by mild proteinuria, due to reduced reabsorption in the proximal renal tubules. Furthermore, the pathogenesis of the kidney damage in short-term animal studies indicates that regeneration of the tubular cells may occur upon discontinuation of exposure to uranium. We do not know if uranium-induced proteinuria is an indicator of the beginning of an adverse effect or whether it is a reversible effect that does not typically result in kidney disease. Based on the uncertainty involved in the ultimate effects, the scientists at our experts workshop (discussed next) treated this effect as an indicator of an incipient change in kidney function that may lead ultimately to frank adverse effects such as breakdown of kidney tubular function. For general information on proteinuria, kidney function, and kidney disease, see the fact sheets at "http://www.niddk.nih.gov/health/kidney/pubs/ proteinuria/proteinuria.htm", "http://www.niddk.nih.gov/health/kidney/pubs/yourkids/index.htm", and "http://www.niddk.nih.gov/health/kidney/kidney.htm" (NIH 2000a, NIH 2000b, and NIH 2000c).

e. New Kidney Toxicity Analyses Announced in the NODA

Since the 1991 radionuclides proposal, EPA has re-evaluated the available kidney toxicity data and, based on the results of an experts workshop (see the NODA, USEPA 2000e, for details), has estimated the DWEL to be 20 µg/L. The DWEL is derived from the Reference Dose (RfD), which is an estimate of a daily ingestion exposure to the population, including sensitive subgroups, that is likely to be without an appreciable risk of deleterious effects during a lifetime. The RfD (in µg of uranium per kg of body mass per day; µg/kg/day) for uranium was calculated from the Lowest Observed Adverse Effects Level ("LOAEL"), which is the lowest level at which adverse effects were observed to occur. The LOAEL is taken directly from health effects data. The RfD is calculated by dividing the LOAEL by a numerical uncertainty factor which accounts for areas of variability in human populations because of uncertainty in the uranium health database. EPA followed the recommended methodology of the National Academy of Sciences in estimating the uncertainty factor.

As described in the NODA, we reported that our best-estimate of the LOAEL is 60 µg/kg/day, based on rat data. In support of this estimate of the DWEL, EPA has some human data which demonstrates that mild proteinuria has been observed at drinking water levels between 20 and 100 µg/L. In estimating the RfD, we have used an uncertainty factor of 100 (rounded from the product of 3 for intra-species variability, 10 for inter-species variability, and 3 for the use of a LOAEL). Using this uncertainty factor, the RfD is calculated to be 0.6 µg/kg/day. The estimated uncertainty in the RfD spans an order of magnitude (a factor of ten). The 20 µg/L DWEL is calculated by using this RfD and assuming that an adult with a body mass of 70 kilograms drinks 2 liters of water per day [5] and that 80% of exposure to uranium is from water. These calculations are described in more detail in the NODA's Technical Support Document (USEPA 2000h).

The Agency believes that 30 µg/L is protective against kidney toxicity. While 20 µg/L is the Agency's best estimate of the DWEL, there are several reasons, in the Agency's judgment, that demonstrate that there is not a predictable difference in health effects due to exposure between the DWEL of 20 µg/L and a level of 30 µg/L. For instance, variability in the normal range for proteinuria in humans is very large and there is additional variability in proteinuria levels observed at uranium

[3] This is mentioned since, for the sake of simplicity, the reader may thus easily convert between µg/L and pCi/L. However, in current calculations, we use the geometric mean from the NIRS data, which is 0.9 pCi/µg. We reiterate that conversion factors ranging from 0.67 up to 1.5 pCi/µg do occur in drinking water sources.

[4] The drinking water equivalent level (DWEL) (µg/L) is the best estimate of the drinking water concentration that results in the Reference Dose (µg/kg/day), assuming a water ingestion rate of 2 L/day and a body mass of 70 kg.

[5] The standard assumptions for the DWEL are conservative, since the ingestion rate is at the 90th percentile, while the body mass is more typical. Conservative assumptions are used to ensure that the resulting exposure level is protective of individuals that consume significantly more water than typical and children (low body masses).

exposures large enough to induce the effect. In the existing few epidemiology studies, each of which are based on small study populations, there were some persons exposed to over five times the DWEL of 20 µg/L without the observation of effects more serious than mild proteinuria (within the high end of the normal range). An MCL of 30 µg/L represents a relatively small increase over the DWEL compared to the over-all uncertainty in the RfD and the uncertainty in the importance of the mild proteinuria observed for uranium exposures from high drinking water levels (keeping in mind that, as discussed previously, the DWEL is based on the RfD and is an estimate of a no effect level for a population). While it is assumed that risk of an effect (here a mild effect) increases as exposure increases over the RfD, it is not known at what exposure an effect is likely. Given that the uncertainty factor of 100 provides a relatively wide margin of safety, the likelihood of any significant effect in the population at 30 µg/L is very small. EPA, thus, believes that the difference in kidney toxicity risk for exposures at 20 µg/L versus 30 µg/L is insignificant.

f. Costs and Benefits From Regulating Uranium in Drinking Water

As discussed in the NODA, EPA has estimated the risk reductions, monetized benefits, and costs associated with compliance with an MCL of 20 µg/L, 40 µg/L, and 80 µg/L. In the NODA, EPA solicited comment on using its statutory authority provided in section 1412(b)(6) of the Safe Drinking Water Act to set the uranium MCL at a level higher than the proposed level of 20 µg/L, based on its analysis of costs and benefits.

The monetized costs and benefits associated with various MCL options are discussed further in section IV of today's notice and in more detail in the economic analysis support document (USEPA 2000g). Table I–2 shows incremental annual cancer risk reductions, total national annual compliance costs and monetized benefits (excluding kidney toxicity benefits), and the numbers of community water systems predicted to have MCL violations for MCLs of 80, 30, and 20 µg/L (assuming the 0.9 pCi/µg conversion factor for estimating cancer risk reductions and benefits). Keeping in mind that the monetized benefits and risk reductions exclude kidney toxicity benefits, several things can be noted from the analysis. Focusing on the MCL change from 30 µg/L to 20 µg/L (see lower part of table I–2), one can see that the incremental benefits for implementing an MCL of 30 µg/L are three times greater than the incremental benefits for a lower MCL of 20 µg/L, while the incremental annual costs are much closer in magnitude ($54 million vs. $39 million). In terms of incremental cancer cases avoided, the estimated number of cancer cases avoided for an MCL of 30 µg/L is 0.8 annually, while lowering the MCL to 20 µg/L would result in an additional 0.2 cases avoided annually (25% reduction) at an additional cost of $39 million annually (75% increase). Approximately 37% of systems predicted to have MCL violations occur between 30 µg/L and 20 µg/L, resulting in significant increases in annual compliance costs (42% of national compliance costs occur between 30 µg/L and 20 µg/L), while the number of cancer cases avoided increases much less significantly (only 20% of cancer risk reduction occurs between 30 µg/L and 20 µg/L).

Since the kidney benefits are not quantified, this is an incomplete picture, but EPA believes that the uncertainties in the analysis of health effects are such that it is not known whether the risk of mild proteinuria are appreciably different between 20 µg/L and 30 µg/L. Assuming that there is a risk increase, it would be expected to be negligible compared to the risk increase that occurs between the highest uranium levels that occur in drinking water (*i.e.*, approximately 200 µg/L) and an MCL of 30 µg/L. Considering only cancer risk reduction benefits, the annual net benefits [6] for a uranium MCL of 20 µg/L are negative $90 million [7] and for an MCL of 30 µg/L are negative $50 million. Since the cancer risk reduction net benefits are higher at 30 µg/L than at 20 µg/L and the non-quantified kidney toxicity benefits are expected to be substantially the same at 20 µg/L and 30 µg/L, EPA believes an MCL of 30 µg/L maximizes the benefits at a cost justified by the benefits. EPA does not believe that uranium levels above 30 µg/L are protective of kidney toxicity with an acceptable margin of safety. (EPA believes that the margin of safety associated with a 30 µg/L are comparable with those at 20 µg/L.) Further, EPA believes that the net kidney toxicity benefits of an MCL greater than 30 µg/L would be less than those at 30 µg/L. Finally, EPA believes that 30 µg/L is protective of the general population, including children and the elderly.

TABLE I–2.—INCREMENTAL COSTS AND BENEFITS FOR URANIUM MCLS OF 80 µG/L, 30 µG/L, AND 20 µG/L

Uranium MCL	Exposure change	Incremental annual cancer cases avoided	Incremental annual compliance costs (in millions)	Incremental annual monetized cancer benefits (kidney benefits not monetized) (in millions)	Incremental number of community water systems impacted
80 µg/L	∞–80 µg/L	0.5	$16	$2	100
30 µg/L	80–30 µg/L	0.4	38	1	400
20 µg/L	30–20 µg/L	0.2	39	1	290
Incremental Costs and Benefits for Uranium MCLs of 30 µg/L (µg/L) and 20 µg/L only					
30 µg/L	∞–30 µg/L	0.8	54	3	500
20 µg/L	30–20 µg/L	0.2	39	1	290

Note: Numbers are rounded, so numbers resulting from addition and subtraction of the numbers shown may appear to yield incongruous results. However, the numbers shown are calculated using more significant figures and rounded after, which is the appropriate approach for numbers with large uncertainties.

[6] Not incremental net benefits, but net benefits: "Benefits for an MCL in isolation"—"Cost of an MCL in isolation".

[7] Annual net benefits for an MCL of 20 µg/L = $4 million—$93 million, which rounds to negative $90 million; annual net benefits for an MCL of 30 µg/L = $3 million—$54 million, which rounds to negative $50 million. See Table IV–1, "Summary of Costs and Benefits for Community Water Systems Predicted to Be Impacted by the Regulatory Options Being Considered for Finalization", in today's notice and the supporting Economic Analysis (USEPA 2000g) for more details.

g. Administrator's Decision To Promulgate MCL Higher Than Feasible Level

Based on the relatively modest annual cancer risk reductions and the expected modest kidney toxicity risk reductions between 30 µg/L and 20 µg/L (see Table I–2) and the high annual compliance costs for an MCL of 20 µg/L, the Administrator has determined that the benefits do not justify the costs at the feasible level. Furthermore, as previously described, the Administrator has determined that an MCL of 30 µg/L maximizes the health risk reduction benefits at a cost justified by the benefits. In summary, this finding is based on the fact that potential uranium MCLs lower than 30 µg/L have substantially higher associated compliance costs and only modest additional cancer risk reduction and kidney toxicity benefits. EPA has not selected a higher MCL for several reasons. Higher uranium MCLs would still incur implementation and monitoring costs, with benefits greatly diminished because uranium does not occur significantly at levels much higher than 30 µg/L. Additionally, EPA believes that a uranium MCL of 30 µg/L is appropriate since it is protective of kidney toxicity and cancer with an adequate margin of safety. We do not believe that MCL options higher than 30 µg/L afford a sufficient measure of protection against kidney toxicity.

Assuming a conversion factor of 0.9 pCi/µg, an MCL of 30 µg/L will typically correspond to 27 pCi/L, which has a lifetime radiogenic cancer risk of slightly less than one in ten thousand, within the Agency's target risk range of one in one million to one in ten thousand. EPA is aware that circumstances may exist in which more extreme conversion factors (> 1.5 pCi/µg) apply. EPA does not have extensive data on these ratios at local levels, but believes these higher ratios to be rare. In these rare circumstances, uranium activities in drinking water may exceed 40 pCi/L. Although these concentrations are still within EPA's target risk ceiling of 1×10^{-4}, EPA recommends that drinking water systems subject to extreme pCi/µg conversion factors mitigate uranium levels to 30 pCi/L or less, to provide greater assurance that adequate protection from cancer health effects is being afforded.

In today's final rule, the Administrator is exercising her authority to set an MCL at a level higher than feasible (section 1412(b)(6)), based on the finding that benefits do not justify the costs at the feasible level (20 µg/L) and that the net benefits are maximized at a level (30 µg/L) that is still protective of kidney toxicity and carcinogenicity with an adequate margin of safety. EPA believes that there are considerable non-quantifiable benefits associated with ensuring that kidney toxicity risks are minimized and has weighed these non-quantifiable benefits in its decision to exercise its discretionary authority under SDWA section 1412(b)(6).

In invoking the discretionary authority of section 1412(b)(6) to set an MCL level higher than feasible, the Agency is in compliance with the provisions of section 1412(b)(6)(B). This provision provides that the judgment with respect to when benefits of the regulation would justify the costs under subparagraph (6)(A) is to be made based on assessment of costs and benefits experienced by persons served by large systems and those other systems unlikely to receive small system variances (*e.g.* systems serving up to 10,000 persons). In effect, the costs to systems likely to receive a small system variance are not to be considered in judging the point at which benefits justify costs. Subparagraph (6)(B) also provides, however, that this adjusted assessment does not apply in the case of a contaminant found "almost exclusively" in "small systems eligible" for a small system variance. Because the contaminants addressed in today's rule are found almost exclusively in small systems and because the Agency has identified affordable treatment technologies for small systems that would need to comply with today's rule (*i.e.*, we do not contemplate granting small system variances), the Agency has not adjusted the proposed MCL pursuant to subparagraph (B).

h. California Drinking Water Regulation

Approximately one-third of the community water systems that are expected to be impacted by the uranium MCL are located in California. Thus, current and likely future practices of these systems is of particular interest. The State of California currently has a drinking water standard for uranium of 20 pCi/L (enforced as 35 µg/L), which it adopted in 1989. EPA has used comments and information from the State of California in considering its MCL for uranium. The California standard is based on the California Department of Health Services' 1989 estimate of the DWEL for kidney toxicity, 35 µg/L. While California has recently proposed revising its non-enforceable public health goal for uranium in drinking water, it is not currently known what the final estimate will be. In response to the NODA, representatives of the California Department of Health Services commented that at uranium levels of 35 µg/L, most of its small water systems were able to use alternate sources of water (new wells) as a means of complying with the standard, but that 20 µg/L would lead to many of these small systems having to install treatment, which, because of waste disposal issues (*i.e.*, inability to safely dispose of hazardous radioactive wastes), could lead to a significant number of small systems being unable to come into compliance through treatment. EPA believes that these comments lend support to the choice of an MCL of 30 µg/L as being both protective of kidney toxicity and a standard that allows for significant use of non-treatment options by small systems, reducing the need for dealing with radioactive waste handling and disposal.

i. Summary of Major Comments on the Uranium Options

(1) Costs and Benefits of Uranium MCLs of 20, 40, and 80 µg/L or pCi/L: Most commenters stated that the benefits of an MCL of 20 µg/L or pCi/L did not justify the costs and suggested that EPA should exercise its authority under SDWA section 1412(b)(6) to set an MCL higher than the feasible level. As discussed previously in this section, EPA agrees that the benefits of an MCL at 20 µg/L do not justify the costs and has exercised its SDWA authority by setting the uranium MCL at a level of 30 µg/L, a level at which EPA believes the benefits do justify the costs.

(2) The Calculation of the Safe Level for Uranium in Water: One commenter suggested that the use of 70 kg as the reference body mass with a "90th percentile ingestion rate" of 2 L/day will lead to a kidney toxicity DWEL that is more protective than the 90th percentile. EPA agrees that it is possible that 20 µg/L is more protective than the 90th percentile value for the general population. EPA has performed a preliminary Monte Carlo analysis of the safe level that replaces point estimates for consumption rate and body mass with distributions based on the available data. Based on this analysis the 90th percentile (for the general population) equivalent level could be as high as 30 µg/L.

(3) Compliance Options for Small Systems for an MCL of 20 µg/L or pCi/L: Several commenters stated that an MCL of 20 µg/L or pCi/L would force small systems to install water treatment, rather than allowing other compliance options like installing new wells or blending water. The commenters

suggested that an MCL of 20 µg/L or pCi/L would pose a significant hardship on small systems with little benefit, including significant costs and technical problems associated with waste disposal. Commenters also suggested that a higher MCL would allow a larger fraction of small systems to use compliance options other than treatment, most notably, new well installation. EPA agrees that a lower MCL does decrease the probability that some non-treatment options could be used, including new well installation and blending. EPA agrees that the benefits of the MCL of 20 µg/L or pCi/L do not justify the costs and thus has chosen a higher MCL. EPA also believes that an MCL of 30 µg/L should allow a greater fraction of small systems to use non-treatment options for compliance, avoiding waste disposal issues and excessive treatment costs.

(4) The Use of a Dual Standard for Uranium: Commenters suggested that the use of a dual standard for uranium to ensure protectiveness of both kidney toxicity and carcinogenicity, *i.e.*, one in µg/L and one in pCi/L, would be unnecessarily complicated, since it would require that both uranium isotopic analyses and mass analyses be performed by each water system. EPA agrees that a dual standard would be unnecessarily complicated and has chosen a single standard expressed in µg/L that is protective of both kidney toxicity and carcinogenicity.

3. Retaining Beta Particle and Photon Radioactivity MCL

With today's rule, EPA is retaining the existing MCL for beta and photon emitters and the methodology for deriving concentration limits for individual beta and photon emitters that is incorporated by reference. The concentrations for these contaminants were derived from a dosimetry model used at the time the rule was originally promulgated in 1976. When these risks are calculated in accordance with the latest dosimetry models described in Federal Guidance Report 13, the risks associated with these concentrations, while varying considerably, generally fall within the Agency's current risk target range for drinking water contaminants of 10^{-4} to 10^{-6}. Accordingly, we are not changing the MCL for beta particle and photon radioactivity at this time.

We also are concerned that under the regulatory changes for the beta particle and photon radioactivity MCL proposed in 1991 [8]) the concentrations of many individual radionuclides have associated lifetime cancer morbidity (and mortality) risks that exceed the Agency's target risk range. A newly proposed MCL expressed in mrem-ede could result in a more consistent risk level within the Agency's target risk range. However, in today's final rule, we are ratifying the current standard since it is protective of public health. At the same time, we believe a near future review of the beta particle and photon radioactivity MCL and the methods for calculating individual radionuclide concentration limits is appropriate. We intend to reevaluate the MCL under the authority of section 1412(b)(9) of the SDWA to ensure that the MCL reflects the best available science. This review will be performed as expeditiously as possible (expected to be 2 to 3 years).

Particular questions that we believe warrant examination as part of such a reevaluation process would include, but are not limited to, the following:

- What additional beta and photon emitters should be regulated?
- What is the appropriate aggregate MCL expression for this category of radionuclides?
- What new information concerning occurrence, analytical methods, health effects, treatment, costs, and benefits would have a bearing on this reevaluation?
- Is there an advantage to setting individual radionuclide concentration limits using a "uniform risk level MCL"?
- If the basis of the current MCL changes, is there an advantage to and legal basis for setting concentration limits for individual beta particle and photon emitters within a guidance document that can be readily updated as scientific understanding improves?
- To what degree, in keeping with the provisions of sections 1412(b)(9) and 1412(b)(3)(A), can the existing methodology for calculating the concentration limits of individual beta and photon emitters be adjusted in accordance with the best available scientific models and information and still meet the requirement that revised regulations provide "greater or equivalent protection to the health of persons"?
- How would any adjustments be reconciled with the requirement that MCLs be set "as close as feasible" to MCLGs?

Finally, we note that there should be no assumption, from the outset of this reevaluation, that the process will necessarily lead to a different set of individual beta and photon emitter concentration limits than those that result from the methodology incorporated by reference in the current and final rule. This reevaluation will involve a complicated set of legal, regulatory, and technical information that will need to be carefully considered.

a. Summary of Major Comments Regarding the Decision To Retain the Current Beta Particle and Photon Radioactivity MCL

Of the 70 commenters who responded to the April 21, 2000 NODA, approximately 14 commented on the MCL for beta particle and photon radioactivity. The commenters represented Federal agencies, State governments, local governments, water utilities, water associations, nuclear institute representatives and public interest groups. Seven commenters support EPA's proposal to retain the current MCL and several of these commenters agreed that it was appropriate to review the standard under the six year review process [9]. The commenters that supported EPA's proposal to maintain this MCL felt there was no appreciable occurrence of man-made beta emitters in drinking water, so it was not a pressing public health concern to revise the MCL. Several of these commenters also felt it was appropriate to delay action on lead-210 until more occurrence information becomes available.

Three of the 14 commenters objected to EPA's proposal to retain the current standard and to defer re-evaluation to the statutorily required six year process. These commenters felt that the Agency should propose to update the models used as the basis for the MCL on a shorter time-frame than the six year review process. The commenters felt that deferring the reevaluation of beta/photons to the six year review process would increase and perpetuate the uncertainty involved with standards which are used in waste management and cleanup decisions. One commenter pointed out that most DOE sites with

[8] 4 mrem ede with a look-up table of concentrations different from those calculated using the current MCL and the methodology incorporated by reference in the current rule.

[9] Six Year Review Process—Under the Safe Drinking Water Act (SDWA), the U.S. Environmental Protection Agency (EPA) must periodically review existing National Primary Drinking Water Regulations (NPDWRs) and, if appropriate, revise them. This requirement is contained in section 1412(b)(9) of SDWA, as amended in 1996, which reads, "The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this title. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons."

radiological contamination are moving towards the final Record of Decision (ROD) stage (as required as part of site clean-up under the Superfund Program). The commenter felt that delaying the re-evaluation of this MCL until the next six year review process (2002–2008) would occur after most RODs were already in place and it would be too late to incorporate a new MCL into the RODs. The commenter further stated that some ROD commitments will be using clean up standards based on the 1976 values and if the standards are eventually relaxed, the committed RODs (which were based on the 1976 values) will be extremely expensive and may not be justifiable. EPA agrees that review of the MCL for beta particle and photon radioactivity is a priority and, as previously discussed in this section, the Agency intends to review this standard within the general time frame established for the U.S. Department of Energy's (DOE) submission of the licensing application for the Yucca Mountain site.

4. Retaining the Current Gross Alpha Particle Activity MCL

In 1991, EPA proposed excluding radium-226 from adjusted gross alpha particle activity, which is currently defined as the gross alpha particle activity result minus the contributions from uranium and radon (in practice, it is not necessary to exclude radon, since it volatilizes before analysis). The 1991 proposal to increase the combined radium-226/-228 MCL from 5 pCi/L combined to 20 pCi/L each made the adjusted gross alpha definition necessary, since the radium-226 MCL exceeded the adjusted gross alpha particle activity MCL. Besides addressing this inconsistency, at the time EPA believed that the unit risk from radium-226 was small enough that the change in the definition of adjusted gross alpha particle activity would not result in a significant change in health protectiveness. As discussed in the NODA, the 1991 risk analysis was based on the EPA RADRISK model, which is now outdated.

The most current risk analyses are based on FGR–13, discussed previously in today's preamble and in detail in the NODA and its Technical Support Document. These new radionuclide cancer risk coefficients greatly improved health effects analyses indicate that the unit risk from radium-226 is too significant to exclude radium-226 from adjusted gross alpha particle activity without an appreciable loss in health protectiveness. For this reason, today's rule does not change the definition of adjusted gross alpha from the current rule.

Also, as discussed in the NODA, further occurrence data will be collected for polonium-210 and radium-224 (discussed in more detail next) and, based on findings, EPA may propose in the future to address these and/or other contaminants that contribute to gross alpha particle activity through changes to the definition of adjusted gross alpha particle activity. Regardless of the findings concerning polonium-210 and radium-224 occurrence, the gross alpha particle activity standard will be reviewed under the required six year regulatory review process.

a. Summary of Major Comments Regarding the Decision to Retain the Current Definition of the (Adjusted) Gross Alpha Particle Activity MCL

Of the 70 commenters who responded to the April 21, 2000 NODA, approximately 23 commented on issues regarding the gross alpha particle activity MCL and/or whether or not to regulate polonium-210 and/or radium-224 separately. The summary of the comments regarding radium-224 is discussed further in the next section. The commenters represented State governments, local governments, water associations, water utilities, associations of elected officials and public interest groups. Of these 23 commenters, 14 stated that EPA should not regulate polonium-210 and/or radium-224 separately. Some commenters felt either the occurrence of these radionuclides is rare in water supplies or they felt that not enough occurrence data was available to warrant separate limits. EPA agrees that occurrence information should be collected before proposing separate standards. Commenters felt that occurrence information should be gathered under an unregulated contaminant monitoring mechanism, which EPA is doing in the case of polonium-210. Only one commenter supported an immediate separate standard for polonium-210 and quick gross alpha particle activity analysis to ensure that radium-224 was included in gross alpha particle activity measurement. EPA points out that a proposal would be necessary for such actions and that a proposal would require adequate occurrence information. Of those commenters who commented on retaining the current definition of the gross alpha particle activity MCL, including radium-226, most supported retaining the standard as is. However, three commenters stated that radium-226 should not be included in the gross alpha particle activity MCL, since it is already regulated in the combined radium-226/-228 standard. EPA points out that the contribution from radium-226 to the over-all risk from gross alpha particle activity is significant and that removing it would reduce the health protectiveness of the gross alpha particle activity standard. Also, two commenters felt that gross alpha particle activity should only be used as a screening tool (versus a standard) since the commonly occurring alpha emitting radionuclides are already covered under other standards. EPA points out polonium-210 is not regulated under any other standard at this time. The gross alpha particle activity standard will be reviewed under six year review and these and other considerations will be taken into account.

5. Further Study of Radium-224

As discussed in section I.C., recent studies show that there is a positive correlation between radium-228 and radium-224 (correlation coefficient of 0.82, approximately 1:1). This correlation means that in most situations in which a system has high radium-224 levels, it will also have high radium-228 levels and, with a less degree of certainty, high radium-226 levels. More details on this relationship, including the summary statistics, can be found in the NODA and its Technical Support Document (USEPA 2000e and 2000h). The expected result of these correlations is that high radium-224 levels will be mitigated by enforcement of the combined radium-226/-228 MCL, keeping in mind that treatment for radium does not differentiate between the different isotopes. Since radium-228 is estimated to be eight times more radiotoxic than radium-224, it appears that radium-224 may not be a pressing public health concern compared to the co-occurring regulated contaminant radium-228. The Agency plans to collect additional national occurrence information for radium-224, which may involve coordination with the USGS, and will evaluate whether future regulatory action or guidance is necessary. Radium-224 occurrence data collection activities are not as high a priority as addressing other radionuclide commitments such as the review of the beta particle and photon radioactivity MCL.

For several reasons, a change in the gross alpha particle activity holding time has been determined to be an inappropriate regulatory solution. First, the uncertainty in the national occurrence data does not allow EPA to determine the number of systems out of compliance with the gross alpha particle activity standard due to radium-224 if a

48–72 hour holding time is required. Since this change may result in a significant number of systems out of compliance with the current gross alpha particle activity MCL, EPA would need to issue a proposed amendment before making such a change. Such a proposal would require national level occurrence data for radium-224 in drinking water. Since EPA's next course of action is to collect such data to determine if a proposal is needed, EPA believes that this course of action is the appropriate one.

a. Summary of Major Comments on Radium-224

(1) The Use of a Short Gross Alpha Particle Activity Sample Holding Time to Measure Radium-224: Several commenters stated that the use of a short gross alpha sample holding time to measure radium-224 would raise technical difficulties and would be costly. Several commenters stated that there was not enough information to warrant a change to the gross alpha holding time or to regulate radium-224 separately. EPA agrees with this comment and, as stated in the Notice of Data Availability (NODA; USEPA 2000e), will not change the gross alpha holding time or regulate radium-224 separately in today's final rule. Some commenters stated that it would not be appropriate to change the holding time or to issue a separate standard in the final rule without a proposal. This is in agreement with what the Agency stated in the NODA.

(2) The Need to Regulate Radium-224: One commenter suggested that the radium-224 cancer mortality risk coefficient from Federal Guidance Report-13 (FGR–13) warranted a health concern and warranted regulating radium-224. While EPA agrees that radium-224 is a health concern, the radium-224 cancer mortality unit risk is eight times less than the radium-228 cancer mortality unit risk. In other words, it would take 40 pCi/L of radium-224 to present an equal cancer mortality risk as 5 pCi/L of radium-228. Since the correlation between radium-224 and radium-228 is approximately one-to-one (1:1) in the areas known to be of concern, one would typically expect to find 5 pCi/L of radium-224 associated with 5 pCi/L of radium-228. Since radium-226 and radium-228 also significantly co-occur, EPA believes that in most situations in which radium-224 occurs it would be present at levels lower than 5 pCi/L for systems in compliance with the combined radium-226/-228 standard. Table I–3 shows the predicted increase in risk for water systems in areas in which radium-224 is known to co-occur with radium-228, assuming a 1:1 correlation. This table shows that the presence of radium-224 increases the over-all combined radium risk by 5%–13%, depending on the relative contributions of radium-226 to radium-228 to the MCL of 5 pCi/L. EPA believes that this situation indicates that radium-224 may be of concern in some areas, but also believes that collecting data to determine if radium-224 is of national concern is the appropriate next step for determining if radium-224 should be regulated separately.

TABLE 1–3.—TYPICAL INCREASE IN COMBINED RADIUM RISK DUE TO PRESENCE OF RA-224 FOR WATER SYSTEMS WITH COMBINED RA-226/-228 LEVELS OF 5 PCI/L, ASSUMING A 1:1 CORRELATION OF RA-224 AND RA-228

Ra–226 (pCi/L)	Ra–228 (pCi/L)	Ra–224 (pCi/L)	Percent increase in risk due to presence of Ra–224
5	0	0	0%
4	1	1	5%
3	2	2	8%
2	3	3	10%
1	4	4	12%
0	5	5	13%

6. Entry Point Monitoring and the Standardized Monitoring Framework

The changes to the existing distribution system-based monitoring scheme proposed in 1991 are promulgated in today's final rule. New monitoring must be performed at entry points to the distribution system, which is meant to ensure that all customers are protected by the radionuclides NPDWRs. The 1976 monitoring scheme ensured that "average customers" were protected, but did not ensure that all customers were served by water at or below the MCL for the various radionuclides.

While EPA is finalizing a change to the point of compliance from a representative distribution system sampling point to all points of entry to the distribution system, EPA realizes that unless data grandfathering is allowed, many systems will have to re-establish monitoring baselines that have been established for many years. The "monitoring baseline" refers to the average contaminant level analytical result that is used for determining the future monitoring frequency. For this reason, EPA is allowing primacy entities (States, Tribes, and other) the option of developing data grandfathering plans that are suited to their individual situations (*e.g.*, occurrence patterns, water system configurations, and other factors) as a part of their primacy packages. This situation will allow primacy entities flexibility to grandfather historical data for determining future monitoring frequencies, while allowing EPA oversight of the process to ensure that the goal of having each entry point in compliance with the MCLs is met. Since future monitoring will be conducted at each entry point, this approach will ensure that compliance is achieved at every entry point.

The new requirements for uranium and radium-228 will mean that initial monitoring baselines for determining future monitoring frequencies will need to be established. Only community water systems that have gross alpha particle activity screening levels greater than 15 pCi/L will be required to monitor for uranium. Thus, many systems will be able to use historical gross alpha data to determine future monitoring frequency under the uranium standard. And, since the current monitoring requirements for gross alpha particle activity already require systems with gross alpha particle activity levels greater than 15 pCi/L to quantify uranium levels (to subtract out the uranium contribution to the gross alpha particle activity), EPA expects that many of these water systems will also be able to grandfather historical uranium data. Given this situation, EPA does not expect uranium monitoring requirements to be overly burdensome to community water systems or drinking water programs.

Community water systems without historical radium-228 data (expected to be those with gross alpha particle activity levels less than 5 pCi/L and radium-226 levels less than 3 pCi/L) will need to establish an initial monitoring baseline to determine future monitoring frequency. Four consecutive quarterly samples will be required to establish this baseline. However, States and Tribes may waive the last two quarterly samples and determine the initial monitoring baseline on the first two samples if the results for the first two samples are below the detection limit (1 pCi/L), which would be considered a non-detect and would be reported as "zero" (this discussion assumes that radium-226 levels are also non-detects and are reported as zero). Systems with non-detects for radium-228 and radium-226 would have to monitor once every nine years after the initial monitoring period. Other monitoring requirements are discussed in section I.J.

7. Separate Monitoring for Radium-228 and Change to Systems Required To Monitor for Beta Particle and Photon Radioactivity

Separate monitoring for radium-228, proposed in 1991, is promulgated in today's rule. The need for separate monitoring of radium-228 is supported by the occurrence studies supporting the 1991 proposal and new occurrence studies (USEPA 2000e and i), which indicate that the 1976 radium-228 screens are not robust. Since the unit risks for radium-228 are higher than for radium-226 (described in the NODA and its Technical Support Document, USEPA 2000e and h), EPA believes that separate monitoring for radium-228, as proposed in 1991, is essential to enforcing the combined radium-226/-228 standard.

In addition, today's rule eliminates the previous requirement that all surface water systems serving more than 100,000 persons must monitor for beta particles and photon radioactivity. Beta particle and photon radioactivity monitoring will be performed only by community water systems designated by the State as "vulnerable" or "contaminated". In 1976, the Agency was concerned about nuclear fallout contaminating surface water sources. The Agency anticipated that large surface water systems (*i.e.* systems serving greater than 100,000 persons) would be vulnerable to becoming contaminated by nuclear testing activities. Therefore, the radionuclides regulation required all surface water systems serving more than 100,000 persons and any other systems determined by the State to be vulnerable to monitor for beta and photon emitters.

Since that time above-ground testing of nuclear weapons has been banned, and sources of man-made radiation are not expected, thus, large surface water systems are not automatically vulnerable to beta and photon emitters. As a result, the Agency has reevaluated the 1975 approach, and in today's rule, as proposed in 1991, is removing the requirement for all large surface water systems to monitor for beta and photon emitters, unless they have been designated as vulnerable by the State. The Agency believes that States are in the best position to determine which systems are vulnerable to beta and photon emitters. The EPA is also encouraging States to reevaluate a system's vulnerability to beta photon emitters when conducting source water assessments and provide immediate notification to those systems that have been deemed vulnerable.

8. Future Actions Regarding the Regulation of Radionuclides at Non-Transient Non-Community Water Systems

EPA will not regulate NTNC water systems with today's rule, but may propose to do so in the future. As described in the NODA (USEPA 2000e), EPA considered regulating non-transient non-community (NTNC) water systems for today's final rule, as proposed in 1991. The NODA also described EPA's analysis of the risks faced by customers of NTNC water systems, potential risk reductions, and compliance costs. EPA stated that several options were being considered for finalization: (1) Not regulating NTNC water systems; (2) regulating all NTNC water systems under the same requirements faced by CWSs; (3) regulating targeted NTNC water systems, based on occurrence potential, typical lengths of exposure, the age distribution of typical customers, and other factors; (4) issuing guidance recommending that States require that targeted NTNC systems monitor, and in some cases, mitigate to acceptable levels.

EPA's rationale for not regulating NTNC water systems at this time is based upon consideration of several factors. EPA summarized the results of a conservative Monte Carlo analysis of risks at NTNC water systems in the NODA and discussed the analysis in more detail in its Technical Support Document (USEPA 2000h). After evaluating the available information and the various comments on the NODA, EPA does not believe that exposure to radionuclides by consumers of water from NTNC systems poses an unacceptable health risk. This conclusion is based on consideration of the total pattern of exposure of individuals, considering their consumption of both NTNC water and water from other types of water systems. However, EPA's information for these radionuclides is limited and will be the subject of additional future analyses and reevaluation, together with any new data that can be obtained.

In the immediate future and in consultation with the National Drinking Water Advisory Committee (NDWAC), EPA will further evaluate various approaches to regulating NTNCs generally (including radionuclides). This further analysis will involve examination of additional data and information and will include further analysis of a full range of possible options. In this evaluation, EPA will consider risk analyses for adults and children, occurrence patterns, the national distribution of NTNC water systems, and other factors. In determining the appropriate action, EPA will consider the issue of consistency between the various regulations for chronic contaminants applicable to NTNC water systems, including future rules.

a. Summary of Major Comments on NTNCWSs and EPA Responses

Of the 70 commenters who responded to the April 21, 2000 NODA, approximately 31 commented on the issue of NTNC water systems and the options presented in the NODA. About 75 percent of these 31 commenters oppose regulation of NTNC water systems. While several of the commenters felt that EPA should only require targeted monitoring, many commenters felt that monitoring of NTNC water systems should be left to the discretion of the States. A few commenters felt that EPA should treat NTNC water systems like CWSs and require regulation and some commenters felt partial coverage of targeted NTNC water systems would be appropriate.

Those opposed to the regulation of NTNC water systems felt the cost/benefit and risk analyses presented in the NODA did not support a requirement to regulate. Some of those opposed to regulating NTNC water systems believe EPA needs to gather more information about the occurrence of radionuclides, the amount and percentage of water consumed, and the duration of exposure at NTNC water systems. Many commenters felt that EPA should allow States the flexibility or discretion to determine whether or not to regulate NTNC water systems and leave it to the States to target specific NTNC water systems. Some commenters

suggested that EPA issue guidance that recommends targeted NTNC water systems monitor and meet the CWS MCLs. In addition, some commenters stated that EPA should be consistent in all their rules when considering whether or not to regulate NTNC water systems. EPA believes that all of these comments have merit and that the regulation of radionuclides at NTNC water systems deserves further evaluation along with an analysis of additional data and information. If EPA proposes to regulate NTNC water systems in the future, stakeholders will have future opportunity to comment. Regarding State discretion, States may at any time choose to regulate NTNC water systems, either under a targeted rule or otherwise.

E. What Are the Health Effects That May Result From Exposure to Radionuclides in Drinking Water?

Radioactive drinking water contaminants differ from one another in ways that determine their harmfulness. Each radionuclide has a particular half-life and emits characteristic forms of radiation (alpha particles, beta particles, and/or photons). A radionuclide's half-life and concentration determine its radioactivity, *i.e.*, the number of radioactive "decay events" that occur in a particular unit of time. These factors, concentration, half-life, form of radioactive decay, and radiation energy, all determine a particular radionuclide's potential for impacting human health. For a discussion of half-life and the different forms of radioactive decay, see Appendix I ("Fundamentals of Radioactivity in Drinking Water") to the Radionuclides NODA's Technical Support Document (USEPA 2000h).

The potential for harmful health effects from exposure to radioactive compounds results from the ability of ionizing radiation to chemically change the molecules that make-up biological tissues (*e.g.*, stomach, liver, lung) through a process called "ionization." The radiation (alpha and beta particles and photons) emitted by radionuclides is called "ionizing radiation" because the radiation has sufficient energy to strip electrons from nearby atoms as they travel through a cell or other material. Ionization may result in significant chemical changes to biologically important molecules. For example, ionizing radiation can damage important molecules like DNA. DNA is the elementary building block for genes and the chemical that carries genetic information involved in many fundamental biological processes. Damage to the DNA of an individual gene may cause the gene to mutate, changing a cell's genetic code. Such mutation can lead to cancer. Since ionizing radiation may damage genes, it can adversely affect individuals directly exposed as well as their descendants. While much of this cellular damage is repaired by the body, restoring proper biological functions, the net result of an increase in exposure to ionizing radiation is an increase in the risk of cancer or harmful genetic mutations that may be passed on to future generations. (See, EPA's fact sheets on ionizing radiation and associated health effects at http://www.epa.gov/radiation/ionize.htm and in the record of this final rulemaking; (USEPA 1998a and1998c)).

Alpha emitters and beta/photon emitters differ in the magnitude of their biological effects. Alpha particles interact very strongly with matter (*e.g.*, human tissues), transferring their energy through these interactions. Beta particles interact less strongly, which allows them to travel further through tissue before being absorbed. The difference of interest is in the concentration of tissue damage. Alpha particles may damage many molecules over a short distance, while beta particles may damage molecules spread out over a greater distance. The actual number of potentially damaged molecules depends upon the energy of the alpha particle or beta particle (which differs between individual alpha emitters and beta emitters). Photon emissions may also interact with tissues, but they interact over much longer distances (they can pass through the body entirely). Exposure to any of these forms of radiation increases the risk of cancer.

All people are chronically exposed to background levels of radiation present in the environment. Many people also receive additional chronic exposures, including exposure to radionuclides in drinking water, and/or relatively small acute exposures, for example from medical X-rays. For populations receiving such exposures, the primary concern is that radiation could increase the risk of cancers or harmful genetic effects.

The likelihood of developing cancer or genetic mutations from short-term exposure to the concentrations of radionuclides found in drinking water supplies is negligible. However, long-term exposures may result in increased risks of genetic effects and other effects such as cancer, precancerous lesions, benign tumors, and congenital defects. For example, an individual that is exposed to relatively high levels of radium-228 (*e.g.*, 20 pCi/L) in drinking water over the course of a lifetime is projected to have a significantly increased chance of developing fatal cancer (roughly a one in one thousand increased risk if exposed to radium-228 at 20 pCi/L over a lifetime of 70 years).

The probability of a radiation-caused cancer or genetic effect is related to the total amount of radiation accumulated by an individual. Based on current scientific models, it is assumed that any exposure to radiation may be harmful (or may increase the risk of cancer); however, at very low exposures (*e.g.*, drinking water exposures below the MCL), the estimated increases in risk are very small and uncertain. For this reason, cancer rates in populations receiving very low doses of radiation may not show increases over the rates for unexposed populations.

For information on effects at high levels of exposure, scientists largely depend on epidemiological data on survivors of the Japanese atomic bomb explosions and on people receiving large doses of radiation for medical purposes. These data demonstrate a higher incidence of cancer among exposed individuals and a greater probability of cancer as the exposure increases. In the absence of more direct information, that data is also used to estimate what the effects could be at lower exposures. Where questions arise, scientists extrapolate from information obtained from cellular and molecular studies, but these extrapolations are acknowledged to be only estimates. Professionals in the radiation protection field prudently assume that the chance of a fatal cancer from radiation exposure increases in proportion to the magnitude of the exposure.

In the case of uranium in drinking water, we must consider not only carcinogenic health effects but also damage to the kidneys that may result from ingestion. When uranium radioactively decays in the body, it results in increased cancer risks. However, natural uranium isotopes have long half-lives, which means that uranium tends to persist in the body until it is excreted or stored in tissue. As discussed in detail in the Notice of Data Availability (USEPA 2000e), its Technical Support Document (USEPA 2000h), and the Toxicological Review of Uranium (USEPA 2000b) this persistent uranium may result in kidney toxicity. See section I.D.2 for a brief summary of kidney (renal) function and uranium toxicity.

1. Major Comments

Most comments on Health Effects related to three areas of risk estimation: (1) The use of a linear, non-threshold model, (2) not finding a threshold for radium, and (3) not promoting claimed beneficial effects of ionizing radiation.

a. Linear Non-threshold Model: Some commenters suggested that the Agency abandon the linear nonthreshold (LNT) model it employs to estimate radiation induced carcinogenesis. They suggest a new paradigm should be used.

The Agency disagrees and believes its position is based on weight of evidence and support from national and international groups of experts interested in radiation protection. EPA classifies all radionuclides as Group A (known human) carcinogens. This classification is based on the considerable weight of epidemiological evidence that exposure to high doses of ionizing radiation causes cancer in humans and on the fact that all radionuclides emit ionizing radiation. Radiation has been shown to induce unique DNA damage, mutations, and transformation of cells in culture. The monoclonal nature of cancers is evidence that a single "wild" cell can give rise to a cancer. For alpha particles, it has been shown experimentally that a single alpha passing through a cell is sufficient to induce a mutational event; there are strong theoretical reasons to expect that the same is true for low energy transfer (LET) radiation such as gamma rays. Since a single particle traversal of a cell is the minimum event for radiation exposure, a prudent assumption is that there is no threshold for radiation induced mutations.

To estimate radiogenic cancer risks and to regulate low-dose radiation exposures from continuous intakes of radionuclides in environmental media, EPA uses a linear, non-threshold (LNT) dose-response model. The LNT model permits direct extrapolation of low-dose cancer risks from high-dose exposures—allowing for adjustments, as needed, for differences in radiation quality, dose rate, and exposed populations, including such factors as age at exposure, time since exposure, baseline cancer rates, and gender and assumes that there is no threshold for effects; *i.e.*, it is assumed that exposure to any amount of radioactivity has a finite potential to induce cancers in humans. As noted above, support for the LNT model comes in part from the linear dose-response relationships observed for most types of cancers in the intermediate- to high-dose range for atomic bomb survivors, and from results of molecular and cellular studies. Several such studies have shown that a single radiation track traversing a cell nucleus can cause unrepaired or misrepaired DNA lesions and chromosomal aberrations. Other studies have shown that DNA lesions and chromosomal aberrations can lead to cancer. From these studies, it is assumed that the probability of DNA damage and carcinogenesis is linearly proportional to the dose.

EPA's application of the LNT model to estimate and regulate cancer risks from environmental exposures to radionuclides is entirely consistent with all past and current observations and recommendations of the International Commission on Radiological Protection (ICRP), the National Council on Radiation Protection and Measurements (NCRP), the National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation (BEIR), and the United Nations Scientific Committee on the Effect of Atomic Radiation (UNSCEAR), and the National Radiation Protection Board (NRBP). Citing the recommendations of these national and international advisory bodies, the U.S. Department of Energy, the U.S. Nuclear Regulatory Commission, and other Federal and State agencies with regulatory authority over radioactive materials also apply the LNT model as the basis for setting regulations and guidelines for radiation protection. However, to address these limitations and the uncertainties associated with this model and improve its radiation risk assessments, EPA is actively supporting national and international studies of radiation dosimetry and dose reconstruction, radionuclide biokinetics, quantitative techniques for uncertainty analyses, and long-term follow-up epidemiological studies of populations exposed chronically to low-dose radiation. The Agency also continues to review its policies and positions as new reports and data are published so that the best science is applied.

b. Radium Carcinogenicity Threshold: Some commenters have suggested that there is a threshold for radium carcinogenicity. They generally base this conclusion on the "Radium Dial Painter" studies.

The Agency disagrees. While the "Radium Dial Painter" studies are interesting, they are of limited value for the estimation of risk. First, no one knows the quantity of radium ingested in those studies, so dose estimates are speculative. The intake estimates are based on the body burden the first time the subjects were measured and back-calculated with biokinetics modeling. Moreover, the quantities of radium ingested by the subjects was great enough to cause extensive skeletal pathology and interfere with normal bone metabolism. In addition to problems of radium dosimetry, the high mortality in some groups, and the small numbers of subjects in all exposure groups, would impair use of the data to develop dose response relationships.

Only a small fraction of persons known to have been exposed to radium have been located and their radium content at that time measured. Of 6,675 subjects identified above as being in the data base and as having been exposed to radium, 2,383 have been measured to determine their radium-226 burden. (21 of the 85 osteosarcomas occurred in subjects who had never been measured for radium burden.) Since the radium intake in dial painters is unknown, body burden is known only from the date of first radioassay (usually many years after the radium intake), and metabolism is estimated from other sources, estimates of the radiation dose must be based on a series of poorly verified assumptions. In spite of these inherent problems in the data set, efforts have been made to use the radium dial workers, or some subset of them, to establish a "practical threshold" for radium or other internal emitter exposure.

The "practical threshold" concept is derived from studies of chemical carcinogenesis which include dose levels causing extensive life shortening. Plots of the mean age at tumor onset vs dose indicates an increase in tumor latency with decreasing dose. Extrapolation of these curves to environmental dose levels has led some investigators to conclude at these dose levels tumor latency would exceed the human life span. This "practical threshold" is as an argument for a threshold and against LNT models. The "practical threshold" model has been examined and rejected by experts at the International Agency for Research on Cancer (IARC). The IARC warned in their discussion regarding mean tumor latency or mean age at tumor onset that "care must be taken not to extrapolate the observed tendency for the mean age at onset to increase with decreasing dose below the dose range in which most animals get cancer. Failure to observe this restriction has led to the unjustified speculation that progressively lower and lower human doses of environmental contaminants will produce cancers only at age 200 or 300 years; for refutation, see Peto (1978)."

Even if there were no problems with intake, dose, metabolism, extensive pathology, etc., as mentioned above, the radium dial studies would be uninformative on the subject of the dose response relationship at environmental exposure levels. The number of subjects and their distribution in dose categories is too small. The number of subjects

needed to show a given risk increases as the square of the decrease in dose. For example, if 10 subjects are required to show an radiogenic risk at dose level x, 250 would be needed to show the same risk at dose level x/5, and 1000 at dose level x/10. There just are not enough subjects at lower dose levels to show the risk, giving the illusion of a threshold.

The claims regarding a possible "practical threshold" addressed above are based solely on the bone cancer data. However, bone cancer constitutes only a fraction of the estimated risk from ingested radium. Radium-226 has also been found to induce epithelial cancers in sinuses in the head (due to radon-222 released into the sinus air spaces from the decay of radium-226 in bone). The data in the dial painter study is inadequate to develop a dose response relationship for sinus cancers, however the number of epithelial cancers expected in the dial painters is about the same as the number of bone cancers. The number of bone cancers in the Agency's radium-226 risk model is doubled to get an estimate of combined bone and sinus cancers. In addition to bone cancer, patients treated with radium-224 were found to have significant increases in breast cancer, soft tissue sarcomas, liver cancer, thyroid cancer, cancers of urinary organs, and leukemia. Given our understanding of radium metabolism and the effects of alpha irradiation, it is expected that ingestion of any of the radium isotopes will increase the risks for various types of cancer other than bone. EPA's risk estimates include all these potential sites.

c. "Beneficial Effects" of Radiation: One commenter suggests there are beneficial effects of radiation, "Hormesis" (small doses of radiation are good for you) and "Adaptive Response" (relatively small doses of radiation protect against large doses of radiation).

The Agency finds that, based on available scientific evidence, these phenomena are not relevant to environmental radiation protection. Neither has been shown to occur at environmental dose levels. Neither has been shown to influence the dose response for induction of radiation induced cancer. Hormesis has not been demonstrated in normal healthy active populations of mammals, much less in humans. Adaptive response may have some application in radiotherapy (very high radiation doses), but it is not relevant to environmental exposure levels.

Hormesis is a non-specific phenomenon. Biological, chemical, or physical agents may stimulate hormesis; thus, cold, physical stress, toxic chemicals, antibiotics, as well as ionizing radiation, can be hormetins. Hormesis originally was used to describe a stimulatory effect, which was not inherently good or bad. Recent usage of the term "Radiation Hormesis" implies the discussion relates to beneficial effects. It should not, however, imply absence of radiation carcinogenesis.

The "adaptive response" is also a nonspecific response to stress, which has been observed at the cellular level. An "adaptive response" is observed experimentally when a "conditioning" exposure is given, followed at some later time by a "challenge" exposure, and the response in the "conditioned" organism or cell culture is less than in controls; that is, the conditioning exposure was "protective" against the challenge. In typical studies where cells in culture are given a conditioning dose of radiation in the range of 0.2 to 20 rad (2 to 200 milliGray or mGy), a dose of 100 to 200 rad (1000 to 2000 mGy) given later causes only about 50% as great an effect as that observed in controls with no conditioning exposure. However several points are noteworthy: not all cells respond, effects may be different for cells at different stages in the cell cycle, not all conditioning doses give the same response (sometimes instead of protection there is synergism between doses), the "adaptive" effects are transient, and the timing of the challenge dose may be critical to response. Given these limitations, EPA does not believe it is appropriate at this time to consider such an adaptive response in its assessment of the risks from environmental levels of radiation.

F. Does This Regulation Apply to My Water System?

The NPDWRs for combined radium-226 and radium-228, gross alpha particle radioactivity, beta particle and photon radioactivity, and uranium apply to all community water systems.

G. What Are the Final Drinking Water Regulatory Standards for Radionuclides (Maximum Contaminant Level Goals and Maximum Contaminant Levels)?

The maximum contaminant level goals (non-enforceable health-based target, MCLGs) and maximum contaminant levels (enforceable regulatory limits, MCLs) are listed in table I–4. For the reasons already described, EPA is retaining the existing MCLs for combined radium-226 and radium-228, gross alpha, and beta particle and photon radioactivity. EPA is finalizing an MCL of 30 µg/L for uranium, based on kidney toxicity and cancer risk endpoints. The final MCLGs are zero for all radionuclides, based on the no-threshold cancer risk model for ionizing radiation.

TABLE I–4.—MCLGS AND MCLS FOR RADIONUCLIDES IN DRINKING WATER (OTHER THAN RADON)

Contaminant	MCLG (pCi/L)	MCL
Combined Radium-226 and Radium-228	Zero	5 pCi/L.
Gross Alpha (Excluding radon and uranium)	Zero	15 pCi/L.
Beta Particle and Photon Radioactivity	Zero	4 mrem/year.
Uranium	Zero	30 µg/L.

H. What Are the Best Available Technologies (BATs) for Removing Radionuclides From Drinking Water?

Under the SDWA, EPA must specify the best available technology (BAT) for each MCL that is set. PWSs that are unable to achieve an MCL may be granted a variance if they use the BAT and meet other requirements (see section I.M for a discussion of variances and exemptions). Table I–5 lists the best available technologies (BATs) for complying with the radionuclides MCLs.

TABLE I–5.—BEST AVAILABLE TECHNOLOGIES (BATS) FOR RADIONUCLIDES IN DRINKING WATER

Contaminant	BAT
Combined radium-226 and radium-228	Ion Exchange, Lime Softening, Reverse Osmosis.

TABLE I–5.—BEST AVAILABLE TECHNOLOGIES (BATS) FOR RADIONUCLIDES IN DRINKING WATER—Continued

Contaminant	BAT
Gross alpha (excluding radon and uranium)	Reverse Osmosis.
Beta particle and photon radioactivity	Ion Exchange and Reverse Osmosis.
Uranium	Ion Exchange, Lime Softening; Reverse Osmosis, Enhanced Coagulation/Filtration.

In addition to BATs, the SDWA, as amended in 1996, requires EPA to list small system compliance technologies (the requirements are described in section I.M). EPA published a list of small systems compliance technologies for the existing radionuclide MCLs in 1998 (63 FR 42032) and issued a guidance document on their use (USEPA 1998f). EPA took comment on small system compliance technologies for uranium in the NODA (USEPA 2000e; 65 FR 21576). Table I–6 is a compilation of all of the small systems compliance technologies for radionuclides, including limitations, required operator skill, raw water quality ranges, and other considerations. Table I–7 shows the small systems compliance technologies listed for: combined radium-226 and radium-228, gross alpha particle radioactivity, beta particle and photon radioactivity, and uranium.

TABLE I–6.—LIST OF SMALL SYSTEMS COMPLIANCE TECHNOLOGIES FOR RADIONUCLIDES AND LIMITATIONS TO USE

Unit technologies	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range & considerations [1]
1. Ion Exchange (IE)	(a)	Intermediate	All ground waters.
2. Point of Use (POU[2]) IE	(b)	Basic	All ground waters.
3. Reverse Osmosis (RO)	(c)	Advanced	Surface waters usually require pre-filtration.
4. POU[2] RO	(b)	Basic	Surface waters usually require pre-filtration.
5. Lime Softening	(d)	Advanced	All waters.
6. Green Sand Filtration	(e)	Basic	
7. Co-precipitation with Barium Sulfate	(f)	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/Electrodialysis Reversal.		Basic to Intermediate	All ground waters.
9. Pre-formed Hydrous Manganese Oxide Filtration.	(g)	Intermediate	All ground waters.
10. Activated alumina	(a), (h)	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	(i)	Advanced	Can treat a wide range of water qualities.

[1] 1 National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, DC 1997.

[2] 2A POU, or "point-of-use" technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000 NODA for more details.

Limitations Footnotes to Table I–6: Technologies for Radionuclides

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR Compliance Technologies Table.

[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

[h] Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i] Assumes modification to a coagulation/filtration process already in place.

TABLE I–7.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR RADIONUCLIDE NPDWRS

Contaminant	Compliance technologies [1] for system size categories (population served)		3,300–10,000
	25–500	501–3,300	
Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9
Gross alpha particle activity	3, 4	3, 4	3, 4
Beta particle activity and phton activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4

TABLE I–7.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR RADIONUCLIDE NPDWRs—Continued

Contaminant	Compliance technologies [1] for system size categories (population served)		3,300–10,000
	25–500	501–3,300	
Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11

Note: (1) Numbers correspond to those technologies found listed in the table I–6 above.

I. What Analytical Methods Are for Compliance Monitoring of Radionuclides?

The approved methods for compliance monitoring of radionuclides are listed in § 141.25. These methods are shown in Table I–8. A large portion of the approved methods for radionuclides were added after the 1991 proposed rule (56 FR 33050). There, the Agency proposed to approve fifty-six methods for the measurement of radionuclides in drinking water (excluding radon). Fifty-four of the fifty-six were actually promulgated in the March 5, 1997 final methods rule (62 FR 10168). In addition to these fifty-four, EPA also promulgated 12 radiochemical methods in the March 5, 1997 final methods rule, which were submitted by commenters after the 1991 proposed rule.

In the March 5, 1997 final methods rule for radionuclides (62 FR 10168), the Agency approved several methods for the analysis of uranium. Specific analysis for uranium can be performed by radiochemical methods, alpha spectrometry, fluorometric (mass), or laser phosphorimetry (mass) (see Table I–8). The radio-chemical method separates and concentrates uranium from potentially-interfering radionuclides and non-radioactive sample constituents. The resulting concentrate, depending on the method, can then be counted by gas flow proportional counting, alpha scintillation, or alpha spectrometry. Results from proportional counting or alpha scintillation counting accurately determine the alpha emission rate from total uranium in the sample; however, the uranium isotope ratio (uranium-234/uranium-238) cannot be determined and the uranium mass cannot be estimated unless an empirical conversion factor is applied to the measured count rate. The use of alpha spectrometry allows for the determination of individual isotopes of uranium and the accurate calculation of the mass of uranium-238 present in the sample. Additionally, the concentration of uranium-234 can be accurately measured, if necessary to assess the radiotoxicity of this isotope.

Both the fluorometric and the laser phosphorimetry methods measure the mass of uranium-238 present in the sample; a conversion factor must be used to convert the mass measurement to an approximate radioactivity concentration in picoCuries. The computed radioactivity is only approximate because the ratio of uranium isotopes must be assumed. The use of mass-type methods is acceptable provided a conversion factor of 0.67 pCi/µg is used to convert the fluorometric or laser phosphorimetry uranium-238 mass result from micrograms to picoCuries. This conversion factor is conservative and is based on a 1:1 ratio of uranium-234 to uranium-238 in uranium-bearing minerals. The scientific literature indicates that the activity ratio varies in ground water from region to region (typically from 0.67 to 1.5 pCi/µg).

EPA recognizes that the mass conversion factor is conservative in that the calculated uranium alpha emission rate based on the mass measurement may be biased low (*i.e.*, underestimated). The use of this conversion factor may result in a larger net gross alpha (gross alpha less the calculated uranium gross alpha contribution), which may require additional testing to resolve. Conversely, the calculated mass of uranium based on gross alpha could be biased high and result in an overestimation, which may require additional testing to resolve. Both situations are protective in that the bias requires additional testing to resolve when the uranium concentration in a sample is near the proposed MCL regardless of which method is used to measure the uranium.

1. Major Comments

a. Request for ICP-MS Method for Uranium: In response to the NODA, several commenters asked EPA to consider the approval of an Inductively Coupled Plasma Mass Spectrometry (ICP-MS) method for uranium analysis (a mass method). Many commenters stated that the ICP-MS method (*i.e.*, EPA 200.8 or SM 3125) is more cost-effective, less labor-intensive and offers greater sensitivity than some of the currently approved methods for uranium analysis. EPA is currently reviewing the ICP-MS method for uranium and will publish a proposal and a final in a future rulemaking.

b. Detection Limit for Uranium: In 1976, the NPDWRs defined the "detection limit" (DL) as the "concentration which can be counted with a precision of plus or minus 100 percent at the 95 percent confidence level (1.96 σ, where σ is the standard deviation of the net counting rate of the sample)." The detection limits for gross alpha, radium-226, radium-228, gross beta and other radionuclides are listed at § 141.25 and reproduced in Table I–9. In the NODA, EPA stated that it would maintain the use of detection limits as the required measures of sensitivity for radiochemical analysis, instead of using the method detection limit (MDL), the practical quantitation level (PQL) and acceptance limits, as was proposed in 1991. Although no comments were submitted about EPA's decision to maintain the use of the detection limits listed in § 141.25, several commenters submitted comments about the appropriate measure of sensitivity for uranium.

Since uranium was not previously regulated, no detection limit is listed in the CFR and none was proposed in 1991. In 1991, the Agency only proposed a PQL (5 pCi/L) and an acceptance limit (±30%) for uranium. Because the NODA was not the appropriate mechanism to propose a detection limit for uranium, the Agency stated that it "may have to adopt the PQL for uranium until a detection limit is proposed." Several commenters disagreed with the use of a PQL and acceptance limits for uranium. They felt that EPA should be consistent with other regulated radionuclides and set a detection limit for uranium as the required measure of sensitivity. The Agency agrees with the commenters and will propose a detection limit for uranium in a future rulemaking before the compliance date of this rule to be consistent with the sensitivity measures used for other radionuclides.

TABLE I–8.—ANALYTICAL METHODS APPROVED BY EPA FOR RADIONUCLIDE MONITORING (§ 141.25)

Contaminant	Methodology	Reference (method or page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Naturally occurring:										
Gross alpha [11] and beta	Evaporation	900.0	p 1	00–01	p 1	302, 7110 B		R–1120–78		
Gross alpha [11]	Co-precipitation	.....		00–02		7110 C				
Radium 228	Radon emanation	903.1	p 16	Ra-04	p 19	7500-Ra C	D 3454–91	R–1141–76	Ra-05	N.Y. [9]
	Radiochemical	903.0	p 13	Ra-03		304, 305, 7500-Ra B	D 2460–90	R–1140–76		
Radium 228	Radiochemical	904.0	p 24	Ra-05	p 19	304, 7500-Ra D		R–1142–76		N.Y. [9] N.J. [10]
Uranium [12]	Radiochemical	908.0				7500-U B				
	Fluorometric	908.1				7500-U C (17th Ed.)	D 2907–91	R–1180–76 R–1181–78	U-04	
	Alpha spectrometry	.....		00–07	p 33	7500-U C (18th or 19th Ed.)	D 3972–90	R–1182–78	U-02	
	Laser phosphorimetry	.....					D 5174–91			
Man-made:										
Radioactive cesium	Radiochemical	901.0	p 4			7500-Cs B	D 2459–72	R–1111–76		
	Gamma ray spectrometry	901.1			p 92	7120	D 3649–91	R–1110–76	4.5.2.3	
Radioactive iodine	Radiochemical	902.0	p 8			7500–1 B				
			p 9			7500–1 C	D 3649–91			
						7500–1 D				
	Gamma ray spectrometry	901.1			p 92	7120 (19th Ed.)	D 4785–88		4.5.2.3	
Radioactive Strontium 89, 90.	Radiochemical	905.0	p 29	Sr-4	p. 65	303, 7500-Sr B		R–1160–76	Sr-01 Sr-02	
Tritium	Liquid scintillation	906.0	p 34	H-2	p. 87	306,7500–3H B	D 4107–91	R–1171–76		
Gamma emitters	Gamma ray spectrometry	901.1			p 92	7120 (19th Ed.)	D 3649–91	R–1110–76	4.5.2.3	
		902.0				7500-Cs B	D 4785–88			
		901.0				7500-I B				

[1] "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA 600/4–80–032 , August 1980. Available at U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.
[2] "Interim Radiochemical Methodology for Drinking Water," EPA 600/4–75–008 (revised), March 1976. Available at NTIS, ibid. PB 253258.
[3] "Radiochemistry Procedures Manual", EPA 520/5–84–006, December 1987. Available at NTIS, ibid. PB 84–215581.
[4] "Radiochemical Analytical Procedures for Analysis of Environmental Samples," U.S. Department of Energy, March 1979. Available at NTIS, ibid. EMSL LV 053917.
[5] Standard Methods for the Examination of Water and Wastewater, 13th, 17th, 18th, 19th Editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7110 C, 7500-Ra B, 7500-Ra C, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 750–9I C, 7500–D, 7500-Sr B, 7500–3H B are in the 17th, 18th and 19th editions. Method 7500-U C Fluorometric Uranium is only in the 17th Edition, and 7500-U C Alpha spectrometry is only in the 18th and 19th editions. Method 7120 is only in the 19th edition. Methods 302, 303, 304, 305 and 306 are only in the 13th edition.
[6] Annual Book of ASTM Standards, Vol. 11.02, 1994; American Society for Testing and Materials; any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.
[7] "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments," Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at U.S. Geological Survey Information Services, Box 25286, Federal-Center, Denver, CO 80225–0425.
[8] "EML Procedures Manual", 27th Edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.
[9] "Determination of Ra-226 and Ra-228 (Ra-02)," January 1980; Revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.
[10] "Determination of Radium 228 in Drinking Water," August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.
[11] Natural uranium and thorium-230 are approved as gross alpha-particle activity calibration standards for the gross alpha co-precipitation and evaporation methods; americium-241 is approved for use with the gross alpha co-precipitation methods.
[12] If uranium (U) is determined by mass-type methods (*i.e.*, fluorometric or laser phosphorimetry), a 0.67 pCi/µg uranium conversion factor must be used. This conversion factor is conservative and is based on the 1:1 activity ratio of U-234 to U-238 that is characteristic of naturally-occurring uranium in rock.

TABLE I–9.—REQUIRED REGULATORY DETECTION LIMITS FOR THE VARIOUS RADIOCHEMICAL CONTAMINANTS (§ 141.25)

Contaminant	Detection Limit (pCi/L)
Gross Alpha	3
Gross Beta	4
Radium-226	1
Radium-228	1
Cesium-134	10
Strontium-89	10
Strontium-90	2
Iodine-131	1
Tritium	1,000
Other Radionuclides and Photon/Gamma Emitters.	1/10th of the rule.

J. Where and How Often Must a Water System Test for Radionuclides?

1. Monitoring Frequency for Gross Alpha, Radium 226, Radium 228, and Uranium

The monitoring scheme being finalized today provides for more frequent, but less sample-intensive (on a per compliance site basis), monitoring for systems with a demonstrated inherent vulnerability and reduced monitoring for systems with low contaminant levels, which will apply to most systems. Instead of the current monitoring framework for radionuclides of four samples every four years for results above 50% of the MCL and one sample every 4 years for those at or below 50% (at State discretion), the revised rule calls for one sample every three years for compliant systems with average contaminant levels above 50% of the MCL but at or below the MCL, one sample every 6 years for systems with levels above the detection limit and at or below 50% of the MCL, and every 9 years for systems with levels below the detection limit.

2. Monitoring Frequency for Beta Particle and Photon Radioactivity

Beta particle and photon radioactivity monitoring will be performed only by community water systems designated by the State as "vulnerable" or "contaminated". A community water systems (both surface and ground water) designated by the State as vulnerable must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the State. Systems already designated by the State must continue to sample until the State reviews and either reaffirms or removes the designation. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average less than or equal to 50 pCi/L (screening level), the system may reduce the frequency of monitoring at that sampling point to once every 3 years.

Community water systems (both surface and ground water) designated by the State as utilizing waters contaminated by effluents from nuclear facilities must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the State. Systems already designated by the State as systems using waters contaminated by effluents from nuclear facilities must continue to sample until the State reviews and either reaffirms or removes the designation. If the gross

beta particle activity beta minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average less than or equal to 15 pCi/L (screening level), the system may reduce the frequency of monitoring at that sampling point to every 3 years.

For CWS in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the State determines if such data is applicable to a particular water system. Community water systems designated by the State to monitor for beta particle and photon radioactivity can not apply to the State for a waiver from the monitoring frequencies.

Several USGS studies, including the study entitled Gross-beta Activity in Ground Water: Natural Sources and Artifacts of Sampling and Laboratory Analysis, have found that Potassium-40 and Radium-228 appear to be the primary sources of beta activity in ground water. EPA recognizes that naturally occurring potassium could trigger many systems into conducting expensive beta speciation analysis due to exceedance of the screening level. Therefore, as noted above, naturally occurring Potassium-40 analyzed from the same or equivalent sample used for the gross beta analysis may be subtracted from the total gross beta activity to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with § 141.66(d). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

The regulatory language in § 141.26(b)(6) of today's rule requires systems to monitor monthly at sampling points which exceed the maximum contaminant levels in § 141.66(d) beginning in the next month after the exceedance occurred. There are many circumstances that may arise from this requirement such as collecting and obtaining the results in two separate months, however, the EPA intended this to require all systems to collect the initial monthly sample no later than 30 days following the collection date of the initial MCL exceedance.

The EPA believes that States have evaluated the vulnerability of systems to potential beta emitting sources under the existing rule. Therefore, States should use the existing vulnerability assessments to notify systems of their status and monitoring requirements if they have not provided that notification previously. The EPA is also encouraging States to reevaluate a systems vulnerability to beta photon emitting sources when conducting a systems source water assessment and provide immediate notification to those systems that have been deemed vulnerable.

3. Sampling Points and Data Grandfathering

Because the current radionuclide NPDWRs have been in effect for almost 25 years, States have much historical distribution system data for the regulated radionuclides at most community water systems and have data regarding occurrence patterns at various scales. The monitoring scheme is an attempt to balance two opposing goals: first, to ensure that every entry point is in compliance, and second, to allow States and drinking water systems to make maximal use of the existing distribution system historical data.

To meet the first goal, today's final rule requires that all new monitoring be at the entry point to the distribution system. This will ensure that all entry points are in compliance with the MCLs from now on. But, rather than narrowly prescribing specific criteria for grandfathering existing distribution system data, today's rule provides flexibility to States to devise a grandfathering plan applicable to their own circumstances. In particular, States may devise a plan for determining which systems will need to analyze new samples from each entry point to establish initial monitoring baselines for the currently regulated radionuclides and which can rely on the existing distribution system data for the same purpose (including existing uranium data). EPA had considered more prescriptive options, such as allowing grandfathering for systems with fewer than three entry points, systems serving fewer than 3,300 persons, systems drawing from aquifers of certain characteristics, etc. However, the many competing variables present at the local level make generalizations impractical at the national level. Since the grandfathering plans will be a part of the primacy packages approved by the EPA Regions, EPA will have oversight over these plans. EPA expects that the plans would allow grandfathering only for situations in which it is to be expected that every entry point is in compliance with the MCLs. For example, if a system with five entry points (all of significant flows) has gross alpha monitoring data from a representative point in the distribution system and the result is 75% of the MCL (11 pCi/L), EPA expects that this data would not be grandfathered, since it can not be ruled out that at least one of the entry points has a contaminant level greater than the MCL. On the other hand, if the distribution system sample baseline result is below the detection limit and the State determines that, based on aquifer and other characteristics, the entry points are expected to have fairly uniform contaminant levels, then a State could reasonably determine that this water system should be able to grandfather its distribution system data. EPA will provide an Implementation Guidance to further explain this issue after today's rule is final.

4. Does the Rule Allow Compositing of Samples?

Compositing allows a system to have combined samples analyzed to reduce the costs of monitoring. Compositing of samples is done in the laboratory. The 1976 rule allowed compositing for gross alpha and allowed (but did not recommend) some compositing for beta/photon emitters. Compositing is essentially an issue for the initial round of monitoring for systems without data to grandfather. Once decreased monitoring is in effect, only a single sample will be required and compositing will not be an issue. In general, there are three kinds of compositing: combining samples taken from the same sampling point from different quarters (temporal compositing), samples taken in the same quarter from different sampling points within a system (spatial compositing), and samples taken from different water systems each having one well (inter-system compositing). Inter-system and spatial compositing are not allowed in today's rule, since this kind of compositing defeats the purpose of monitoring at each entry point to the distribution system.

Because compositing lessens the burden on systems and allows for adequate monitoring reliability in some situations, temporal compositing is allowed under circumstances in which the detection limit is low compared to the MCL. In particular, temporal compositing is allowed for uranium, gross alpha radium-226 (provided a DL of 1 pCi/L is met) and radium-228 (provided a DL of 1 pCi/L is met). While compositing is allowed under these circumstances, compositing of several samples taken at different times provides less information than individual analysis of the samples. For example, if contaminant levels vary appreciably with pumping rates and pumping rates are seasonal, compositing will hide this potentially significant variance. Additionally, if a State allows a system with low contaminant levels to base compliance on two results from different quarters, compositing may not be desirable. If a State wishes to be more stringent and use the highest result of four initial samples to set future monitoring frequency, compositing is not appropriate. However, under some conditions, States may wish to allow water systems to have their samples composited before analysis.

Commenters generally agreed that spatial monitoring was impractical, since it would provide limited information on contaminant levels at individual entry points. Some commenters suggested that the six month holding time for gross alpha would necessitate compositing twice, two samples in the first six months and two in the second six months. Although this type of compositing would be allowed, EPA disagrees that this is necessary, since, for statistical reasons, analysis of four composited samples taken in four different quarters will achieve results of comparable quality (assuming that the analysis is done within the same year that the first sample is taken) to individual analyses of four samples using six month holding times. For this reason, annual compositing at a single entry point is allowed for gross alpha. While several commenters were desirous of maximum compositing flexibility, the technical limitations described rule out some types of compositing, specifically spatial and inter-system compositing.

5. Interpretation of Analytical Results

The Agency recognizes that States have interpreted radionuclide analytical results in a variety of ways, including adding or subtracting standard deviations from the analytical results. The Agency believes that compliance and reduced monitoring frequencies should be calculated based on the "analytical result(s)" as stated in § 141.26(c)(3). It is EPA's interpretation that the analytical result is the number that the laboratory reports, not including (*i.e.* not adding or subtracting) the standard deviation. For example, if a laboratory reports that the gross alpha measurement for a sampling point is 7 ± 2 pCi/L, then compliance and reduced monitoring would be calculated using a value of 7 pCi/L.

K. Can My Water System Use Point-of-Use (POU), Point-of-Entry (POE)[10], or Bottled Water To Comply With This Regulation?

EPA has listed: (1) POU ion exchange and POU reverse osmosis as small system compliance technologies for combined radium-226 and radium-228, and beta particle and photon radioactivity; and (2) POU reverse osmosis as a small systems compliance technology for gross alpha particle activity (63 FR 42032; on August 6, 1998, also see Table I–6 and I–7)). While these POU technologies are not considered BAT for large systems, they may be used as BAT under sections 1412 and 1415 of the Act for systems serving 10,000 persons or fewer. Guidance documents were published to support the small systems compliance technology lists ("Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996," USEPA 1998f). The small system compliance technology list described in section I.H., table I–6, of today's final rule is identical to the 1998 list, with the exception of the addition of small systems compliance technologies for uranium. See section I.H. for details about the lists. POE technologies are not being listed as small systems compliance technologies since they are considered emerging technologies and due to concerns regarding waste disposal and costs. POE technologies (and other technologies) may be added in the future through small system compliance technology updates.

The authority for listing POU technologies as small system compliance technologies comes from section 1412(b)(4)(e)(ii) of the SDWA, which identifies both Point-of-Entry (POE) and Point-of-Use (POU) treatment units as options for compliance technologies. The SDWA identifies requirements that must be met when POU or POE units are used by a water system to comply with an NPDWR. Section 1412(b)(4)(e)(ii) stipulates that "point-of-entry and point-of-use treatment units shall be owned, controlled, and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the MCL or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems." Other conditions in this section of the SDWA include the following: "If the American National Standards Institute has issued product standards applicable to a specific type of POE or POU treatment unit, individual units of that type shall not be accepted for compliance with a MCL or treatment technique unless they are independently certified in accordance with such standards."

In order to list POU treatment units as compliance technologies, EPA had to withdraw the part of § 141.101 that prohibited POU devices being used to comply with an MCL. To this end, a final rule was published in the **Federal Register** on June 11, 1998 (EPA 1998g). For more details on POU and POE devices, see the supporting guidance document for the small system compliance technology lists (USEPA 1998f).

Public water systems are not allowed to use bottled water to comply with an MCL (63 FR 31932; June 11, 1998). Bottled water may only be used on a temporary basis to avoid unreasonable risks to health, *e.g.*, as negotiated with the State or other primacy agency as part of the compliance schedule period for an exemption or variance.

L. What Do I Need To Tell My Customers?

1. Consumer Confidence Reports

On August 19, 1998, EPA issued Subpart O, the final rule requiring community water systems to provide annual reports on the quality of water delivered to their customers (63 FR 44512). The first Consumer Confidence Reports (CCRs) were to be made available to customers by October 19, 1999, and now they are due each year by July 1 (§ 141.152(a)). In these reports, systems must provide, among other things, the levels and sources of all detected contaminants and a description of the potential health effects of any contaminant found at levels that violate EPA or State rules, as part of a broader description of the violation and efforts to remedy it. For MCL or treatment technique violations, specific "health effects language" in Appendix A of Subpart O must be included verbatim in the report. Today's rule updates the Appendix to include health effects language and "likely source"

[10] Point-of-entry (POE) treatment units treat all of the water entering a household or other building, with the result being treated water from any tap. Point-of-use (POU) treatment units treat only the water at a particular tap or faucet, with the result being treated water at that one tap, with the other taps serving untreated water. POE and POU treatment units often use the same technological concepts employed in the analogous central treatment processes, the main difference being the much smaller scale of the device itself and the flows being treated.

information for uranium. This language is consistent both with previously published health effects language for other radionuclides and with the language now required by the Public Notification Rule. Table I–10 shows the health effects language required for the radionuclides for the purposes of CCR and public notification.

TABLE I–10.—STANDARD HEALTH EFFECTS LANGUAGE FOR CCR AND PUBLIC NOTIFICATION

Contaminant	Standard health effects language for CCR and public notification
Beta/photon emitters	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha Emitters	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined Radium (–226 & –228)	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

2. Public Notification

Sections 1414(c)(1) and (c)(2) of the SDWA, as amended in 1996, require that public water systems notify their customers when they are in violation of NPDWRs. In the case of the radionuclides NPDWRs, this only applies to community water systems. On May 4, 2000, EPA revised the minimum requirements that public water systems must meet for public notification of violations of EPA's drinking water standards and other situations that pose a risk to public health from the drinking water. These revisions were promulgated under the Public Notification Rule (PNR), under 40 CFR Part 141, Subpart Q. Water systems must begin to comply with the new regulations on October 31, 2000 (if they are in jurisdictions where the program is directly implemented by EPA), or on the date a primacy State adopts the new requirements (but not later than May 6, 2002). Until the effective date of the new requirements, water systems must continue to comply with the requirements under § 141.32. Subsequent EPA drinking water regulations that affect public notification requirements will amend the PNR as a part of each individual rulemaking.

Public notification of drinking water violations is an important part of the "public right to know" provisions of the 1996 Amendments to the Safe Drinking Water Act. The PNR sets the requirements that public water systems must follow regarding the form, manner, frequency, and content for public notifications. These requirements apply to owners and operators of, in the case of the radionuclides NPDWRs, community water systems. The PNR requires that any regulated system notify its customers when: (1) A violation of a NPDWR occurs; (2) the system obtains a variance or an exemption from a NPDWR; or (3) the system is facing another situation posing a significant risk to public health.

Depending on the severity of the situation, water suppliers have from 24 hours to one year to notify their customers after a violation occurs. EPA specifies three categories, or tiers, of public notification. Depending under which tier a violation situation falls, water systems have different amounts of time to distribute and ways to deliver the notice:

- Immediate Notice (Tier 1): Any time a situation occurs where there is the potential for human health to be immediately impacted, water suppliers have 24 hours to notify people who may drink the water of the situation. Water suppliers must use media outlets such as television, radio, and newspapers, post their notice in public places, or personally deliver a notice to their customers in these situations.
- Notice "as soon as possible" (Tier 2): Any time a water system provides water with levels of a contaminant that exceed EPA or State standards or that hasn't been treated properly, but that does not pose an immediate risk to human health, the water system must notify its customers as soon as possible, but within 30 days of the violation. Notice may be provided via the media, posting, or through the mail.
- Annual Notice (Tier 3): When water systems violate a drinking water standard that does not have a direct impact on human health (for example, failing to take a required sample on time) the water supplier has up to a year to provide a notice of this situation to its customers. The extra time gives water suppliers the opportunity to consolidate these notices and send them with annual water quality reports (consumer confidence reports (CCR)), if the CCR meets the PNR timing, content, and distribution requirements.

The PNR lists the currently regulated radionuclides (combined radium-226 and radium-228, gross alpha, and beta particle and photon radioactivity) as being subject to "Tier 2" public notice requirements for MCL violations and "Tier 3" public notice requirements for violations of the monitoring and testing procedure requirements. Today's rule does not change this designation for the currently regulated radionuclides and adds uranium to the list of contaminants subject to Tier 2 requirements for MCL violations and Tier 3 requirements for violations of the monitoring and testing procedure requirements.

The elements to be included in each public notice are specified under § 141.205(a). All notices must include:

- A description of the violation that occurred, including the potential health effects (as specified in appendix B to subpart Q for MCL violations and the standard language under § 141.205(d)(2) for monitoring violations);
- The population at risk and if alternate water supplies need to be used;
- What the water system is doing to correct the problem;
- Actions consumers can take;
- When the violation occurred and when the system expects it to be resolved;
- How to contact the water system for more information; and
- Standard language encouraging broader distribution of the notice.

The standard health effects language used for public notification is the same as that for CCR, which is provided in Table I–10.

The public notice requirements under 40 CFR 141.203(b)(1) are such that the public water system must provide a Tier 2 public notice to persons served as soon as practical, but no later than 30 days after the system learns of the violation. Posted notices are required to remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The PNR under § 141.203(b)(2) also requires the public water system to repeat the notice every three months for as long as the violation persists. In contrast, the current rule requires a newspaper notice within 14 days, a notice mailed to all bill-payers within forty-five days, and a repeat notice mailed every three months thereafter until the violation is resolved.

The public notification requirement gives the primacy agency discretion, in appropriate circumstances, to extend the time period allowed for the Tier 2 notice from 30 days to up to three months for the initial notice and to allow repeat notice less frequently than every three months (but no less than once per year). Permission must be granted in writing. Although the discretion given to the primacy agency is fairly broad, the rule specifically disallows extensions of the 30-day deadline for the initial public notice for any unresolved violation. The PNR also does not allow primacy agencies to establish regulations or policies that automatically give "across-the-board" extensions or reductions in the repeat notice frequency for all the other violations.

For the most up-to-date version of the CCR and PNR tables that will be published in the July edition of the Code of Federal Regulations (appendix A to subpart O, and appendices A and B to subpart Q of 40 CFR part 141), visit EPA's Office of Ground Water and Drinking Water's website at "http://www.epa.gov/safewater/tables.html." These on-line tables incorporate changes on an on-going basis.

M. Can My Water System Get a Variance or an Exemption From an MCL Under Today's Rule?

There are two kinds of variances applicable to public water systems: "regular variances," which are usually referred to simply as "variances," and "small systems variances." The currently regulated radionuclides are already subject to the provisions for variances and exemptions and nothing in today's rule changes these provisions. The regular variances and exemptions provisions will be discussed later in this section.

As discussed in the NODA, the "Small Systems Compliance Technology List" (SSCTL) for combined radium-226 and -228, gross alpha particle activity, and beta particle/photon emitter radioactivity was published in the **Federal Register** on August 6, 1998 (63 FR 42032), as required by the amended SDWA. The SSCTL list for uranium was published for comment in the radionuclides NODA.

The 1996 SDWA identifies three categories of small drinking water systems, those serving populations between 25–500, 501–3,300, and 3,301–10,000. In addition to BAT determinations, the SDWA directs EPA to make technology assessments for each of the three small system size categories in all future regulations establishing an MCL or treatment technique. Two classes of small systems technologies are identified for future NPDWRs: small system compliance technologies and small system variance technologies.

Small system compliance technologies ("compliance technologies") may be listed for NPDWRs that promulgate MCLs or treatment techniques. In the case of an MCL, "compliance technology" refers to a technology or other means that is affordable for the appropriate small systems (if applicable) and that achieves compliance. Possible compliance technologies include packaged or modular systems and point-of-entry (POE) or point-of-use (POU) treatment units, as described previously.

Small system variance technologies ("variance technologies") are only specified for those system size/source water quality combinations for which no technology meets all of the criteria for listing as a compliance technology (section 1412(b)(15)(A)). Thus, the listing of a compliance technology for a size category/source water combination prohibits the listing of variance technologies for that combination. While variance technologies may not achieve compliance with the MCL or treatment technique requirement, they must achieve the maximum reduction that is affordable considering the size of the system and the quality of the source water. Variance technologies must also achieve a level of contaminant reduction that is "protective of public health" (section 1412(b)(15)(B)). The process for determining small system compliance technologies and small system variance technologies is described in more detail in the guidance document, "Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996" (USEPA 1998f).

In the case of the currently regulated radionuclides, *i.e.*, combined radium-226 and -228, gross alpha particle activity, and total beta particle and photon radioactivity, there are no variance technologies allowable since the SDWA (section 1415(e)(6)(A)) specifically prohibits small system variances for any MCL or treatment technique which was promulgated prior to January 1, 1986. The Variance and Exemption Rule describes EPA's interpretation of this section in more detail (see 63 FR 19442; April 20, 1998).

Stakeholders provided input regarding the small system compliance technologies for combined radium-226 and -228, gross alpha emitters, and beta particle and photon radioactivity, and uranium that are listed in section I.H. The small system compliance technologies for the radionuclides regulated since 1976 were listed and described in the **Federal Register** on August 6, 1998 (63 FR 42032) and in an accompanying guidance manual (EPA 1998b). Small systems compliance technologies for uranium were evaluated subsequent to the 1998 list, and presented in the Small Systems Compliance Technology List for the Radionuclides Rule (USEPA 1999a). Small systems compliance technologies for uranium were evaluated in terms of each technology's removal capabilities, contaminant concentration applicability ranges, other water quality concerns, treatment costs, and operational/maintenance requirements. This list was published for comment in the April 21, 2000, Notice of Data Availability (USEPA 2000e). No comments were received.

Small system compliance technology lists are technology specific, but not product (manufacturer) specific. Product specific lists were determined to be inappropriate due to the potential resource intensiveness involved. Information on specific products will be available through another mechanism. EPA's Office of Research and Development has a pilot project under the Environmental Technology Verification (ETV) Program to provide treatment system purchasers with performance data from independent third parties.

The currently regulated radionuclides are already subject to the provisions for "regular variances" and exemptions. Uranium will be subject to the same provisions. Variances generally allow a system to provide drinking water that may be above the maximum contaminant level on the condition that the quality of the drinking water is still protective of public health. The SDWA (1415(a)) requires that any system obtaining a variance must enter into a compliance schedule with the primacy entity as a condition of the variance. An exemption, on the other hand, is intended to allow a system with compelling circumstances an extension of time before the system must comply with applicable SDWA requirements.

An exemption is limited to three years after the otherwise applicable compliance date, although extensions up to a total of six additional years may be available to small systems under certain conditions.

N. How Were Stakeholders Involved in the Development of This Rule?

EPA has consulted with a broad range of stakeholders and technical experts. EPA held a two-day stakeholders meeting on the radionuclides rule in Washington, DC on December 11–12, 1997. The meeting was announced in the **Federal Register** and open to any one interested in attending in person or by phone. During the meeting, EPA discussed a range of regulation development issues with the stakeholders, including the statutory requirements, the stipulated agreement, MCLs for each of the radionuclides, new scientific information on health effects, occurrence, analytical methods, treatment technologies, and the current and proposed monitoring framework. The presentations generated useful discussion and provided feedback to EPA regarding technical issues, stakeholder concerns and possible regulatory options. Participants in EPA's stakeholder meeting included representatives from the Association of Metropolitan Water Agencies (AMWA), Association of State Drinking Water Administrators (ASDWA), American Water Works Association (AWWA), National Association of Water Companies, State departments of environmental protection, State health department, State drinking water programs, Federal agencies, environmental groups, and local water systems. The public docket for this final rulemaking contains the meeting summary for EPA's stakeholder meeting on radionuclides in drinking water.

In addition, during the regulation development process, EPA gave presentations on the radionuclides regulation at meetings of the AWWA, ASDWA and EPA State/Regional conferences, and met with States from Regions 2, 3, 7, and 8 regarding radionuclides issues and the upcoming final rule. EPA participated in AWWA's Technical Advisory Workgroup (TAW), which meets annually to discuss technical issues including treatment, occurrence, and health risks. State public health departments and drinking water program representatives of both large and small drinking water districts participated in TAW meetings. EPA also held frequent conference calls with interested State drinking water programs about the development of the rule. In addition, EPA made presentations and received input at Tribal meetings in Nevada, Alaska, and California. Finally, EPA held a one-day meeting with associations that represent State, county, and local government elected officials on May 30, 2000, and discussed five upcoming drinking water regulations, including radionuclides. See section V.I "Executive Order 13132" for more information about the meeting.

The Agency utilized the feedback received from the stakeholders during all these meetings in developing today's final rule.

O. What Financial Assistance Is Available for Complying With This Rule?

Various Federal programs exist to provide financial assistance to State, local, and Tribal governments to administer and comply with this and other drinking water rules. The Federal government provides funding to States and Tribes that have a primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision (PWSS) Grants program. Additional funding is available from other programs administered either by EPA or other Federal agencies. These include the Drinking Water State Revolving Fund (DWSRF) and Housing and Urban Development's Community Development Block Grant Program. For example, the SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF assists public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Each State has considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs. States may also, on a matching basis, use up to ten percent of their DWSRF allotments for each fiscal year to assist in running the State drinking water program.

Under PWSS Program Assistance Grants, the Administrator may make grants to States to carry out public water system supervision programs. States may use these funds to develop primacy programs. States may "contract" with other State agencies to assist in the development or implementation of their primacy program. However, States may not use program assistance grant funds to contract with regulated entities (*i.e.*, water systems). PWSS Grants may be used by States to set-up and administer a State program which includes such activities as: public education, testing, training, technical assistance, developing and administering a remediation grant and loan or incentive program (excludes the actual grant or loan funds), or other regulatory or non-regulatory measures.

P. How Are the Radionuclides MCLs Used Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)?

The framework for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) includes the expectation that contaminated ground waters will be returned to beneficial uses whenever practicable (see § 300.430(a)(1)(iii)(F)). Section 121(d) of CERCLA requires on-site remedial actions to attain MCLGs and water quality standards under CWA when relevant and appropriate. The NCP (§ 300.430(e)(2)(i)(B) and (C) clarify that MCLs or non-zero MCLGs established under SDWA will typically be considered relevant and appropriate cleanup levels for ground waters that are a current or potential source of drinking water.

EPA's guidance on complying with these requirements are contained in an EPA document entitled "Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites, Final Guidance," (October 1996. OSWER Directive 9283.1–12). A discussion of the flexibility of EPA's guidance under CERCLA on the attainment of drinking waters in ground water is contained in section 2.6 "Areas of Flexibility in Cleanup Approach" (pp 15–19) of the 1996 OSWER directive. The discussion in the 1996 OSWER directive regarding monitored natural attenuation and determining beneficial uses of groundwater has been updated by the following EPA guidance documents: (1) "Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites" (April 1999. Final OSWER Directive 9200.4–17P), and (2) "The Role of CSGWPPs in EPA Remediation Programs" (April 4, 1997, OSWER Directive 9283.1–09).

Q. What Is the Effective Date and Compliance Date for the Rule?

Much of today's rule will involve retaining current elements of the radionuclides NPDWR. Those portions of the final rule that are unaffected by the upcoming regulatory changes are already in effect. MCLs for gross alpha, beta particle and photon radioactivity, and combined radium-226 and -228 will be unchanged and are already in effect. Regarding water systems that are currently out of compliance with the existing NPDWRs for gross alpha, combined radium-226 and -228, and/or beta particle and photon radioactivity, States with primacy and EPA will renegotiate, as necessary, enforcement actions that put systems on compliance schedules as expeditiously as possible.

Under the Safe Drinking Water Act, the final rule becomes effective three years after promulgation December 8, 2003. Under the Standard Monitoring Framework (SMF), systems usually have three years to complete the initial monitoring cycle of four consecutive quarterly samples. In order to synchronize the monitoring periods for radionuclides with the Standardized Monitoring Framework and alleviate potential laboratory capacity problems, the end of the initial monitoring period will be December 31, 2007. EPA expects that States will phase-in monitoring over this period and determine compliance upon completion of each water system's initial monitoring schedule. For example, the fraction of water systems that begin monitoring in the first year would have compliance determinations made at the end of the first year, based upon the average results of the four quarterly samples. New monitoring includes initial monitoring for uranium, the new monitoring requirements for radium-228, and new initial monitoring under the requirements for entry points. Data grandfathering discretion for existing monitoring data to determine future monitoring schedules is discussed in sections I.D and I.J. Combined radium-226 and radium-228 MCL violations which result from the new requirement for separate radium-228 monitoring will be treated as "new violations" and will be on the same schedule as other new violations (e.g. uranium). Water systems with existing monitoring data for radium-228 and uranium that demonstrate that they are not in compliance with the MCL will be out of compliance on the effective date of the rule.

R. Has EPA Considered Laboratory Approval/Certification and Laboratory Capacity?

The ultimate effectiveness of the approved regulations depends upon the ability of laboratories to reliably analyze contaminants at relatively low levels. The Drinking Water Laboratory Certification Program is intended to ensure that approved drinking water laboratories analyze regulated drinking water contaminants within acceptable limits of performance. The Certification Program is managed through a cooperative effort between EPA's Office of Ground Water and Drinking Water and the Office of Research and Development. The program stipulates that laboratories analyzing drinking water compliance samples must be certified by U.S. EPA or the State. The program also requires that certified laboratories must analyze Proficiency Testing (PT) samples [formerly called Performance Evaluation (PE) samples], use approved methods and pass periodic on-site audits.

1. Laboratory Approval/Certification

As discussed in the April 21, 2000 NODA, EPA recently privatized the PT program, including the Water Supply (WS) studies. The decision to privatize the PT studies programs was announced in the **Federal Register** on June 12, 1997 (62 FR 32112). The notice indicated that in the future the EPA would issue standards for the operation of the program, while the National Institute of Standards and Technology (NIST) would develop standards for private sector PT suppliers and would evaluate and accredit PT suppliers. The private sector would develop and manufacture PT samples and conduct PT studies.

2. Laboratory Capacity: Laboratory Certification and PT Studies

The availability of laboratories is also dependent on laboratory certification efforts in the individual States with regulatory authority for their drinking water programs. Until June of 1999, a major component of many of these certification programs was their continued participation in the current EPA Water Supply (WS) PT program. As discussed previously, NIST is administering the program to accredit a provider for PT samples for radionuclides. States also have the option of approving their own PT sample providers. The extent to which the PT program will affect short-term and long-term laboratory capacity for radionuclides will be assessed after PT providers are approved by NIST or the States. However, EPA anticipates that radionuclide PT samples will be available in time to allow for laboratory certification before compliance monitoring is required.

3. Summary of Major Comments Regarding Laboratory Capacity and EPA Responses

In the April 21, 2000 NODA, the Agency stated that it is difficult to ascertain how and if externalization of the PT program will affect radiochemical laboratory capacity and the cost of radiochemical analyses. In the absence of definitive information, the Agency solicited public comments on this subject. The Agency stated in the NODA that it recognized that PT externalization may be an implementation issue for at least three reasons:

- The externalization of the radionuclides PT studies program may cause short-term disruption in laboratory accreditation;
- Requiring NTNCWSs to monitor under the Standard Monitoring Framework will add approximately 20,000 systems to the universe of systems that are already required to monitor;
- And the radon rule will be implemented at approximately the same time as the radionuclides rule.

To alleviate potential laboratory capacity problems that could result, the Agency solicited comments on whether or not to extend the initial monitoring period to four years (instead of three years). Of the 70 commenters who provided comments on the radionuclides NODA, 15 commented on laboratory externalization and its related issues. The major concerns raised by the commenters and the Agency's responses to them are provided below.

a. Laboratory Certification, Availability of PT Samples and Costs of PT Samples: Several commenters noted there is currently no certification process through which laboratories can receive State certification for radionuclide analyses due to the lack of availability of PT samples. Some commenters noted that only one PT provider has volunteered to provide PT samples for radionuclides and based on their inquiries, PT sample costs are too high. Commenters believe the high costs of PT samples will affect the resulting costs of the radiochemical analyses (by increasing operational costs). Several commenters felt EPA should reconsider the privatization of PT program. Commenters stated that EPA must ensure that an adequate number of laboratories are available to perform accurate measurements and provide data of good quality for compliance and enforcement efforts.

After evaluating public comment, EPA published its final decision about the externalization of the PT Program in the June 12, 1997 final notice (62 FR 32112). Currently, the PT program for radionuclides is being privatized, *i.e.*, operated by an independent third party provider accredited by the National Institute of Standards and Technology (NIST). EPA believes this program will

ensure the continued viability of the existing PT programs, with EPA maintaining oversight. NIST is in the process of approving a provider for PT samples for radionuclides. To alleviate concerns about the costs of PT samples, States have the option to approve PT sample provider(s) themselves. The Agency anticipates that radionuclide PT samples will be available in time to allow for laboratory certification before compliance monitoring is required.

b. Laboratory Capacity: Commenters stressed the impact that the externalization of the PT program, this regulation and the radon regulation would have on laboratory capacity and workloads of the laboratories. Some commenters felt the externalization and high costs of PT samples would decrease the number of radiochemical laboratories and in affect decrease laboratory capacity. Also, commenters felt that if EPA required 48–72 hour turn around times for gross alpha (to catch the alpha particle contribution from radium-224) or monitoring of regulated radionuclides by NTNCWSs, radiochemical laboratories would not be able to address the additional demand for analytical services. EPA agrees that laboratory capacity could be effected by the externalization of the PT program. In an effort to alleviate potential laboratory capacity problems, EPA has agreed to extend the initial monitoring period from three to four years. Extending the initial monitoring period will spread the burden on the laboratories as well as the costs associated with the monitoring. In addition, EPA is allowing systems to grandfather existing data on currently regulated radionuclides and composite under certain circumstances (for more information on compositing and grandfathering, see section I.J. In addition, because EPA has decided not to require a 48 to 72 hour turn around time for gross alpha particle activity nor to regulate NTNCWSs, the potential burden on laboratory capacity should be alleviated.

II. Statutory Authority and Regulatory Background

A. What Is the Legal Authority for Setting National Primary Drinking Water Regulations (NPDWRs)?

The SDWA requires EPA to promulgate regulations pertaining to public water systems. Specifically, section 1412(b)(4) requires that EPA set a health-based goal called a maximum contaminant level goal (MCLG) as a target for setting an enforceable standard, the maximum contaminant level (MCL). The MCLG is determined by studies of the health effects of contaminants on animals under laboratory conditions or humans via epidemiological studies. The MCLG is the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. The Safe Drinking Water Act requires EPA to set the MCL as close to the MCLG as is "feasible," which is defined as "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration) * * *" [section 1412(b)(4)(D)]. Additionally, section 1412(b)(6) provides that if the Administrator determines that at the feasible level, the benefits do not justify the costs, EPA can set a standard which maximizes the health risk reduction benefits at a cost that is justified by the benefits. In today's rule, EPA is invoking these authorities with respect to the uranium standard. Section 1412 (b)(9) requires that any revisions to NPDWRs maintain or provide for greater protection of the health of persons.

B. Is EPA Required To Finalize the 1991 Radionuclides Proposal?

The SDWA requires that EPA issue MCLGs for the currently regulated radionuclides in drinking water and establish a NPDWR for uranium. When EPA failed to finalize the 1991 proposal, a citizen group brought suit to establish a schedule for finalizing the appropriate portions of the proposal. Following the 1996 amendments to the SDWA, the plaintiffs and EPA agreed on a schedule for completing the revisions to the radionuclides rulemaking by either finalizing applicable parts of the 1991 proposal or affirming the validity of the current rule with an explanation of why the current rule is preferable. With respect to uranium, EPA has no current rule, and is required to finalize a uranium regulation on the same schedule as gross alpha particle activity, combined radium-226 and -228, and beta particle and photon radioactivity. This agreement was reflected in a stipulation of the parties in litigation in U.S. District Court in Oregon.

III. Rule Implementation

A. What Are the Requirements for Primacy?

This section describes the regulations and other procedures and policies primacy entities have to adopt, or have in place, to implement today's final rule. States must continue to meet all other conditions of primacy in 40 CFR part 142.

Section 1413 of the SDWA establishes requirements that primacy entities (States or Indian Tribes) must meet to maintain primary enforcement responsibility (primacy) for its public water systems. These include:

(1) Adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under sections 1412(a) and 1412(b) of the Act,

(2) Adopting and implementing adequate procedures for enforcement,

(3) Keeping records and making reports available on activities that EPA requires by regulation,

(4) Issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by sections 1415 and 1416, and

(5) Adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the Public Water Supply Supervision Program, as authorized under section 1413 of the Act. In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required by § 142.12 to include these regulation-specific provisions in an application for approval of their program revisions. These State primacy requirements apply to today's final rule, along with the special primacy requirements discussed below.

To implement today's final rule, States are required to adopt revisions to § 141.25—Analytical methods for radioactivity; § 141.26—Monitoring frequency and compliance requirements for radioactivity in community water systems; appendix A to subpart O—Regulated contaminants; appendix A to subpart Q—NPDWR violations and other situations requiring public notice; appendix B to subpart Q—Standard health effects language for public notification; § 142.16—Special primacy requirements; and new requirements § 141.55—Maximum contaminant level goals for radionuclides; and § 141.66—Maximum contaminant levels for radionuclides.

B. What Are the Special Primacy Requirements?

In addition to adopting drinking water regulations at least as stringent as the Federal regulations listed above, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA.

The State's request for approval must contain the following:

(1) If a State chooses to use grandfathered data in the manner described in § 141.26(a)(2)(ii)(C) of this chapter, then the State must describe the procedures and criteria which it will use to make these determinations (whether distribution system or entry point sampling points are used).

(i) The decision criteria that the State will use to determine that data collected in the distribution system are representative of the drinking water supplied from each entry point to the distribution system. These determinations must consider:

(A) All previous monitoring data.

(B) The variation in reported activity levels.

(C) Other factors affecting the representativeness of the data (*e.g.* geology).

(2) A monitoring plan by which the State will assure all systems complete the required monitoring within the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted for the requirements in § 142.16(e)(5) under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (*i.e.* the Phase II/V Rules). States may note in their application any revision to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

There are many ways that a State may satisfy the special primacy requirements. The Agency intends to issue guidance regarding ways to satisfy these requirements, but States have the flexibility to develop individual programs appropriate for the circumstances within each State.

C. What Are the Requirements for Record Keeping?

The current regulations in § 142.14 require States with primacy enforcement responsibility to keep records of analytical results to determine compliance, system inventories, sanitary surveys, State approvals, vulnerability determinations, monitoring requirements, monitoring frequency decisions, enforcement actions, and the issuance of variances and exemptions. These records include:

(1) Any determination of a system's vulnerability to contamination by beta and photon emitters (§ 142.14(d)(4)); and

(2) Any determination that a system can reduce or increase monitoring frequency for gross alpha particle activity, gross beta particle and photon radioactivity, uranium, radium-226 and 228. The records must include the basis for the decision, and the repeat monitoring frequency (§ 142.14(d)(5)).

Since these requirements are generally included in § 142.14(d)(4) and (5), revisions to the rule are not necessary.

D. What Are the Requirements for Reporting?

Currently, States must report to EPA information under § 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. These reporting requirements remain unchanged and apply to the radionuclides as with any other regulated contaminant.

E. When Does a State Have To Apply for Primacy?

The State must submit a request for approval of program revisions that adopts the uranium MCL, implementing regulations, and other revisions promulgated in today's final rulemaking within two years of the publication date of today's rule unless EPA approves an extension per § 142.12(b). To maintain primacy for the Public Water Supply Supervision (PWSS) Program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's rule. Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

F. What Are Tribes Required To Do Under This Regulation?

Currently, no federally recognized Indian tribes have primacy to enforce any of the drinking water regulations. EPA Regions implement the rules for all Tribes under section 1451(a)(1) of SDWA. Tribes would need to submit a primacy application in order to have the authority to implement the radionuclides NPDWRs. Tribes with primacy for drinking water programs are eligible for grants and contract assistance (section 1451(a)(3)). Tribes are also eligible for grants under the Drinking Water State Revolving Fund Tribal set aside grant program authorized by SDWA section 1452(i) for public water system expenditures.

IV. Economic Analyses

Under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the finalized changes to the Radionuclides NPDWRs and submit the impact analysis to the Office of Management and Budget (OMB) as part of the rulemaking process. EPA has prepared an Economic Analysis (USEPA 2000g) to comply with the requirements of this Order. This section provides a summary of the information from the economic analysis regarding estimates of the costs and benefits related to the changes to the existing radionuclides NPDWRs and the uranium NPDWR being finalized today. The economic analysis is an update to the Health Risk Reduction and Cost Analysis (USEPA 2000f) announced in the NODA (USEPA 2000e) and summarized in the NODA's Technical Support Document (USEPA 2000h). The updates to the economic analysis reflect comments received on the NODA. This section will not repeat all of the material presented in the NODA and in some cases will refer back to that notice. Changes made in response to comments will be highlighted.

A. Estimates of Costs and Benefits for Community Water Systems

Two requirements under today's rule are expected to incur costs and benefits: the adoption of the uranium MCL of 30 µg/L and the requirement for separate monitoring of radium-228, which is expected to result in additional systems in violation of the combined radium-226/-228 MCL of 5 pCi/L. EPA estimates that these requirements will result in annual compliance costs of $81 million in 1999 dollars, with $25 million of this annual cost being due to mitigation of systems newly in violation of the radium-226/-228 standard due to new monitoring requirements, $51 million due to mitigation of systems in violation of a uranium MCL of 30 µg/L, $ 4.9 million due to monitoring and reporting by CWSs, and $ 0.06 million due to new implementation costs for States. While these represent new compliance costs, most water systems will experience reduced compliance costs in the long-term because of reduced monitoring frequency for systems with low contaminant levels under the Standardized Monitoring Framework. The basis for these estimates, and

alternate cost estimates using different assumptions are described later in this section.

State implementation and CWS start up costs are estimated to be $10 million annually for the first three years. Of this $10 million, approximately $ 0.25 million are State start up costs with the remainder being comprised by CWS start up costs (USEPA 2000d). Over the first twenty-three year period, the implementation costs for States and CWSs are estimated to be $ 4.9 million annually (included in the annual compliance costs reported previously). These costs include preparation of the primacy application, training, planning, and other compliance preparations, and monitoring and reporting costs for PWSs.

The treatment/non-treatment compliance unit costs and national costing assumptions used in the Economic Analysis (USEPA 2000g) are standard and are consistent with those used for estimating the costs of compliance the other recently proposed drinking water rules. The updated Technologies and Costs document (USEPA 2000i) provides unit capital and "operations & maintenance" costs for water treatment plants, including residuals disposal costs. Typical model small system treatment costs ranged from $ 0.25 to $ 3 per kilogallon of water treated, with associated annual per household costs ranging from $20 to $250, with the value depending upon water system size and water quality. Large system model unit costs ranged from $0.17 to $ 0.28 per kilogallon treated, with associated annual per household costs ranging from $14 to $23.

For various reasons (see the NODA's Technical Support Document for details, USEPA 2000h), the estimate of monetized benefits associated with compliance of today's rule are more uncertain than the costs estimates. In the case of the requirement for separate monitoring for radium-228, cancer risk reduction benefits of $1.7 million annually are expected. While the net benefits for this monitoring change are expected to be negative, this monitoring change is essential for enforcing the combined radium-226/-228 standard. In the case of the uranium standard, the benefits are difficult to monetize, since the number of kidney toxicity cases avoided cannot be estimated using current risk models. For this reason, the uranium kidney toxicity benefits are considered to be "non-quantified benefits" for this rule. As discussed in detail in part D of section I ("Rationale for the Final Uranium MCL"), we consider these non-quantified kidney benefits to be a significant part of this assessment of costs and benefits.

The uranium cancer risk reduction benefits are estimated to be $3 million annually, which, we reiterate, do not include the non-quantified kidney toxicity risk reduction benefits. As discussed in the NODA, there are significant uncertainties associated with any estimate of drinking water benefits, including uncertainties in the unit risks used to estimate risk reductions and the various health endpoints that cannot yet be fully quantifitied.

Other non-quantified benefits include those related to the technologies used to remove radium and uranium from ground water (*e.g.*, water softening technologies like ion exchange, lime softening, and membrane softening and iron removal technologies like green sand filtration and oxidation/filtration). EPA does not have enough information to estimate these benefits, but believes that they could be significant. Examples of benefits related to water softening include reductions in excessive calcium and manganese carbonate scaling in distribution systems, water heaters, and boilers and reductions in soap and detergent use. Examples of benefits related to iron removal include improvements in color and taste and reduction in staining of clothes, sinks, and basins.

B. Background

1. Overview of the 1991 Economic Analysis

Many of the options proposed in 1991 economic analysis are not being finalized today. Today's discussion will focus on the analysis of costs and benefits of the options that are being finalized: a final uranium standard and separate monitoring for radium-228. The 1991 economic analysis (USEPA 1991) estimated the annual cost of compliance with a uranium MCL of 20 µg/L to be $55 million, affecting approximately 1,500 systems, the vast majority of them being small systems. The 1991 estimate of the annual cost of compliance with a uranium MCL of 40 µg/L was $23 million. The current estimate of the cost of compliance with a uranium MCL of 20 µg/L is $93 million, impacting 900 systems, most of them small.

2. Summary of the Current Estimates of Risk Reductions, Benefits, and Costs

Table IV–1 shows the summarized results for EPA's analysis of risk reductions, benefits valuations, and costs of compliance (see USEPA 2000g for more detailed break-downs of the risk reductions, costs, and benefits by system size). The risk reductions and cost estimates are based on the estimated range of numbers of community water systems predicted to be out of compliance with the uranium MCL of 30 µg/L and the systems that are predicted to be out of compliance with the current combined radium-226/-228 standard of 5 pCi/L because of the new requirement for separate radium-228 monitoring. The best estimate values shown are the midpoints from ranges that are based on the two occurrence model methodologies described in the NODA (USEPA 2000e), the "direct proportions" and "lognormal model" approaches. As described in the NODA, these two approaches are expected to serve as "low-end" and "high-end" occurrence estimates, respectively.

Eliminating the combined radium-226/-228 monitoring deficiency [11] is predicted to lead to 295 (range of 270 to 320) systems out of compliance with an MCL of 5 pCi/L, affecting 420,000 persons (range 380,000 to 460,000). A uranium MCL of 30 µg/L is predicted to impact 500 systems (range 400 to 590), affecting 620,000 persons (range 130,000 to 1,100,000). The estimates of occurrence and risk reductions for a uranium MCL of 30 µg/L are based on the assumption that the activity-to-mass ratio in drinking water is 0.9 µg/pCi. Based on the available information, the average activity-to-mass ratio for the various uranium isotopes in drinking water typically varies from 0.7 to 1.5 pCi/µg.

The estimated cancer morbidity risk reduction for the option addressing the combined radium monitoring deficiency is 0.4 (0.3 to 0.5) cancer cases avoided annually, with an associated annual monetized benefit of $1.7 million (range of $1.2 to $2.2 million). The annual cancer morbidity risk reduction estimated for a uranium MCL of 30 µg/L is 0.9 cases/year (range 0.1 to 1.6). The associated annual monetized benefit related to uranium cancer risk reduction is $3 million (range from $0.2 to $6 million) [12]. The risk reductions and

[11] The monitoring deficiency is corrected by requiring the separate analysis of radium-228 for systems with gross alpha levels below 5 pCi/L and radium-226 levels below 3 pCi/L.

[12] The Agency has agreed to consider the July 27, 2000 recommendations of its Science Advisory Board (SAB) concerning discounting of benefits in future drinking water regulations. In particular, the SAB recommended that quantitative adjustments to benefits be considered with respect to timing of risk (*e.g.*, consideration of a lag or latency period before the resulting cancer fatality) and income growth. The SAB also recommended that other possible adjustments to benefits estimates be considered in a qualitative manner. We have not made any such adjustments to the benefits associated with today's rule since the principal benefits are non-quantifiable (avoidance of kidney toxicity due to reductions in exposure to uranium). We do not believe that adjustments to these monetized cancer avoidance benefits estimates for either timing or income growth would materially affect our benefits assessment or decisions resulting from overall consideration of the benefits and costs of the regulatory standard.

benefits shown for uranium do not include those related to kidney toxicity, which are non-quantifiable (cases avoided cannot be estimated). As discussed in section I.D.2 of today's final rule, these non-quantifiable benefits are projected to be preventing a series of adverse affects on the functioning of the kidney such as proteinuria (*e.g.*, reabsorption deficiency or leakage of albumin), that could ultimately lead to a more widespread breakdown in kidney tubular function. Such effects on tubular function would be manifested by an impaired ability of the kidneys to filter and reabsorb nutrients and to excrete urine.

Annual compliance costs are estimated to be $25 million (range $16 to $35 million) for the option addressing the combined radium monitoring deficiencies. Annual compliance costs for the uranium NPDWR are predicted to be $51 million (range from $9 to $92 million). In addition to these mitigation related compliance costs, water systems are expected to incur $4.9 million annually in monitoring and reporting costs. As demonstrated by this analysis the estimated range of central-tendency annual compliance costs exceed the ranges of central-tendency annual monetized benefits for both provisions finalized today.

TABLE IV–1.—SUMMARY OF COSTS AND BENEFITS FOR COMMUNITY WATER SYSTEMS PREDICTED TO BE IMPACTED BY THE REGULATORY OPTIONS BEING CONSIDERED FOR FINALIZATION

Options	Numbers of systems impacted [1] (population exposed above MCL)	Estimated lifetime radiogenic cancer morbidity risk at MCL [2,3,4]	Total cancer cases avoided annually (fatal cases)	Best-estimate value of avoided cancer cases, in millions of $/year)	Best-estimate of annual compliance costs, in millions of $/year)
Systems predicted to be impacted by corrections to the monitoring deficiencies for combined radium-226 and -228					
Eliminate combined radium monitoring deficiency.	295 systems (420 K persons).	1×10^{-4}	0.4 (0.3)	1.7	25
Systems predicted to be out of compliance with proposed options for uranium MCL					
Uranium at 30 µg/L	500 systems (620 K persons).	1×10^{-4} (assumes 30 pCi/).	0.9 (0.6) (Total Number of kidney toxicity cases cannot be accurately estimated, but expected to be substantial)	3.0 Kidney toxicity benefits range from prevention of mild proteinurea to possible more serious impaired kidney tubular function	51

Notes: Compliance costs do not include monitoring and reporting costs, which comprise an additional $5 million annually. Ranges based on directly proportional versus lognormal distribution approach.

[1] Compared to the initial baseline (*i.e.*, occurrence data are adjusted to eliminate existing MCL violations) for combined radium. Occurrence data is unadjusted for uranium options.

[2] 1×10 is equivalent to "one in ten thousand", EPA's usual upper limit of acceptable cancer incidence (morbidity) risk for contaminants in drinking water.

[3] These risk estimates are based on several simplifying assumptions and are only meant to be illustrative. The reported combined radium risk is based on an "occurrence weighted average" for radium-226 and radium-228 (2.3×10^{-5} per pCi/L). The "best-estimate" for a particular situation would depend on the actual levels of Radium226 and Radium228 that comprise the combined level of 5 pCi/L. Regarding uranium risks, since the individual uranium isotopes that make up naturally-occurring uranium have cancer morbidity risks that are similar in magnitude (6.4 to 7.1×10^{-11} per pCi), the assumptions about isotopic prevalence are not important. Here, we assumed that the simple average applied (3.83×10^{-6} per pCi/L).

[4] Kidney toxicity is not considered in this estimate of risk or monetized benefits.

3. Uncertainties in the Estimates of Benefits and Cost

The models used to estimate costs and benefits related to regulatory measures have uncertainty associated with the model inputs. The types and uncertainties of the various inputs and the uncertainty analyses for risks, benefits, and costs are qualitatively discussed in this section.

a. Uncertainties in Risk Reduction and Benefits Estimates

For each individual radionuclide, EPA developed a central-tendency risk coefficient that expresses the estimated probability that cancer will result in an exposed individual per unit of radionuclide activity (*e.g.*, per pCi/L) over the individual's lifetime (assumed to be 70 years). Two types of risks are considered, cancer morbidity, which refers to any incidence of cancer (fatal or non-fatal), and cancer mortality, which refers to a fatal cancer illness. For this analysis, we used the draft September 1999 risk coefficients developed as part of EPA's revisions to Federal Guidance Report 13 (FGR–13, EPA 1999e). FGR–13 compiled the results of several models predicting the cancer risks associated with radioactivity. The cancer sites considered in these models include the esophagus, stomach, colon, liver, lung, bone, skin, breast, ovary, bladder, kidney, thyroid, red marrow (leukemia), as well as residual impacts on all remaining cancer sites combined.

There are substantial uncertainties associated with the risk coefficients in FGR–13 (EPA 1999e): researchers estimate that some of the coefficients may change by a factor of more than 10 if plausible alternative models are used to predict risks. While the report does not bound the uncertainty for all radionuclides, it estimates that the central-tendency risk coefficients for uranium-234 and radium-226 may change by a factor of seven depending on the models employed to estimate

risk.[13] Ranges that reflect uncertainty and variability in the risk coefficients have been used to conduct a sensitivity analysis of risk reductions and benefits, the results of which are reported in Economics Analysis (USEPA 2000g).

Since the available occurrence data do not provide information on the contribution of individual radionuclides or isotopes to the total activities of gross alpha or uranium, there is uncertainty involved in the assumptions about isotopic ratios. These and other uncertainties related to occurrence information (*e.g.*, uncertainty in extending the NIRS database results to the national level) also contribute to uncertainty in the estimates of impacts. Other inputs that were used in the sensitivity analysis of risk reductions and benefits are the age- and gender-dependent distributions of water ingestion, which are used in estimating lifetime exposure, and the credible range for the "value of a statistical life."

b. Uncertainty in Compliance Cost Estimates

Regarding uncertainty in the compliance cost estimates, these estimates assume that most systems will install treatment to comply with the MCLs, while recent research suggests that water systems usually select compliance options like blending (combining water from multiple sources), developing new ground water wells, and purchasing water (USEPA 2000g). As discussed in the NODA, preliminary data (202 compliance actions from 14 States) on nitrate violations suggest that only around a quarter (25%) of those systems taking action in response to a nitrate violation installed treatment, while roughly a third developed a new well or wells. The remainder either modified the existing operations (10–15%), blended (15%), or purchased water (15–20%). Similar data for radium violations from the State of Illinois (77 compliance actions) indicate that around a quarter of systems taking action installed treatment, while the majority (50–55%) purchased water, with the remainder (20–25%) either installing a new well, blending, or stopping production from the contaminated well or wells. EPA will continue to gather information regarding the prevalence of treatment versus non-treatment options for compliance for other contaminants. At this time, this data is considered preliminary and will be used for comparisons only.

[13] Table 2.4, Uncertainty Categories for Selected Risk Coefficients. Federal Guidance Report 13 (1999).

To evaluate the potential variability in the compliance cost estimates, EPA has performed a sensitivity analysis for uncertainties in the decision tree by varying the assumed percentages for the modeled compliance options. Since per system costs are much higher for very large systems, the assumptions used in the large water system size categories can be expected to dominate the variability in national costs. The sensitivity analysis results are reported in the Economic Analysis (USEPA 2000g).

4. Major Comments

Following is a summary of the major comments received on the analysis of costs and benefits for the finalization of the radionuclides rule.

a. Retention of radium-226/-228 MCL of 5 pCi/L: Several commenters suggested that the costs and benefits of compliance with the existing radium-226/-228 MCL should be included in the analysis of the costs and benefits of the finalization of today's rule, because "systems currently in non-compliance with the combined radium MCL are in that situation because of EPA's proposed rule changes in 1991." EPA disagrees with this comment since all of MCLs for the currently regulated radionuclides, including radium-226/-228 have been fully enforceable since 1976. While some may argue that the radionuclides rules were "National Interim Primary Drinking Water Regulations" (NIPDWRs) between 1976 and 1986, NIPDWRs were fully enforceable. In addition, six years elapsed between the re-authorization of the Safe Drinking Water Act (1986), which finalized all NIPDWRs, and the 1991 proposal. Given the fact that 25 years have elapsed since this MCL became an enforceable standard, EPA believes that it is appropriate to consider only the costs and benefits of the changes that are being made in the current standards. In view of the fact that 25 years have elapsed since this MCL became an enforceable standard, EPA believes that is appropriate to consider only the costs and benefits of the changes that are made to the current radium standards as a cost of today's rule. EPA further believes that any costs incurred by facilities that are required to comply with the 1976 rule represent deferred costs that those facilities elected not to expend until now.[14]

[14] It is difficult to estimate these costs due to recent efforts by many CWSs to comply with the current radium rule, however, we would expect approximately 200–400 systems would spend in the range of $18–36 million annually to comply with the current standard. (Low estimate in range is based on recent SDWIS data; high estimate is based on 1984 NIRS occurrence database.)

b. Cost/Benefit Analysis Requirements: One commenter suggested that the analysis of costs and benefits, as presented in the Notice of Data Availability (USEPA 2000e) omitted some information required under section 1412(b)(4)(C) of the 1996 SDWA. EPA disagrees with this comment. All of the required information relevant to the analysis of costs and benefits for the options considered are found in the draft Health Risk Reduction and Cost Analysis (HRRCA, USEPA 2000f), which was announced by and described in the NODA. In the HRRCA, EPA did meet the requirements of the Safe Drinking Water Act for performing analyses of costs and benefits. For compliance with each regulatory option being considered, EPA updated the analysis supporting the 1991 radionuclides proposal, including estimates of quantifiable and non-quantifiable health risk reduction benefits, quantifiable and non-quantifiable health risk reduction benefits likely to occur from reductions in co-occurring contaminants (excluding those associated with compliance with other proposed or promulgated regulations), quantifiable and non-quantifiable costs, the incremental costs and benefits for the uranium options, the effects of the contaminant on the general population and on sensitive groups within the population (*e.g.*, children), and other relevant factors. In addition to the HRRCA, EPA is supporting today's final actions with a Economic Analysis (USEPA 2000g) that builds on the HRRCA, including some changes made in response to comments received.

c. Cumulative Affordability: Several commenters suggested that EPA consider the cumulative impact of its regulations on the affordability of water service, as opposed to looking at affordability one regulation at a time. EPA agrees that it would be best to look at "cumulative affordability," since this is the only realistic indicator of affordability. For this reason, EPA includes a "water bill baseline" in its affordability assessments, which includes cumulative impacts from existing regulations. When a rule is promulgated, the water bill baseline increases and the estimate of affordability decreases, the details of which depend on the percentages of systems impacted and the estimates of the annual per household costs associated with the regulation. The affordability assessment supporting the uranium small systems compliance technology list is based on the current baseline, which is described in "Variance Technology Findings for Contaminants Regulated Before 1996", which can be downloaded at "http://www.epa.gov/OGWDW/standard/varfd.pdf." As future rules are promulgated that impact small water systems (including this one), this baseline will be revised.

d. Disposal costs: One commenter suggested that EPA "did not adequately address the disposal of waste stream residuals" in the NODA and that waste disposal costs are a "significant factor" in estimating costs. EPA agrees that waste disposal considerations are very important when considering the implementation of this rule. Since the only MCL that EPA is finalizing today is the uranium MCL (the others are existing regulations), this is the only MCL that could be impacted by this consideration. In estimating the compliance costs for today's actions, EPA did include waste disposal costs in its estimate of treatment costs, including estimated waste-related capital costs, operations and maintenance costs, and residuals disposal. EPA believes that its estimate of residuals disposal are adequate and are based on the best available information.

e. Discounting of Costs and Benefits: One commenter stated that it is "appropriate and standard practice to ensure that costs and benefits be evaluated on the same basis to avoid apples and oranges comparison," further stating that EPA should discount both or neither. EPA agrees that costs and benefits should be evaluated in such a way that they can be compared.

One approach to accomplish this is to annualize the costs and benefits of the regulation. In such instances, the capital costs, paid up front, need to be spread out across the life of the equipment. To do that, one needs to reflect the time value of resources. The analyst must ask the question: What is the annual payment that could finance the capital investment? Such a calculation would reflect the social discount rate. Annual operations and maintenance (O&M) costs would not have to be annualized, since these costs are assumed to be accrued on a continual basis each year.

Ideally, the analysis would also annualize the benefits using the same techniques. As noted previously, we have not made any such adjustments to the benefits associated with today's rule for uranium since the principal benefits are non-quantifiable (avoidance of kidney toxicity due to reductions in exposure to uranium). We do not believe that adjustments to these benefits estimates for either timing or income growth would materially affect our benefits assessment or decisions resulting from overall consideration of the benefits and costs of the regulatory standard.

f. Use of MCLs for Ground Water Protection Needs to be Evaluated as Part of this Rulemaking: One commenter stated that, since linkages are made between drinking water standards and "clean-up standards" for radioactively contaminated sites, the costs and benefits of applying drinking water standards to clean-up efforts should be evaluated as part of this rulemaking. EPA disagrees that clean-up costs and benefits should be used to influence the setting of drinking water MCLs. EPA does, however, agree that cross-program costs and benefits should be considered when appropriate. In this case, it is inappropriate to consider clean-up and ground water protection costs since MCLs are set specifically and solely with drinking water exposures in mind. If another program or Agency applies these MCLs for other purposes (*e.g.*, clean-up standards), then the costs and benefits of that application should be considered when evaluating that application.

V. Other Required Analyses and Consultations

A. Regulatory Flexibility Act (RFA)

The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. sec. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be CWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations, EPA requested comment on an alternative definition of "small entity" in the preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the Small Business Administration's Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998), EPA expressed its intention to use this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this final rulemaking.

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the 1991 proposed rule (see 56 FR 33050). Since the proposed rule (July 18, 1991) pre-dated the 1996 Amendments to the RFA, EPA did not convene a Small Business Advocacy Review Panel for this rule.

We also prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket and is summarized below.

The RFA requires EPA to include the following when completing an FRFA:

(1) A succinct statement of the need for, and objectives of the rule;

(2) A summary of the significant issues raised by the public comments on the IRFA, and a summary of the assessment of those issues, and a statement of any changes made to the proposed rule as a result of those comments;

(3) A description of the types and number of small entities to which the rule will apply and the impact they will experience, or an explanation why no estimate is available;

(4) A description of reporting, record keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the rule and the type of professional skills necessary for preparation of reports or records; and

(5) A description of the steps the Agency has taken to minimize the significant impact on small entities consistent with the stated objectives of

the applicable statutes, including a statement of the factual, policy, and legal reasons why we selected the chosen alternative in the final rule and why the other significant alternatives to the rule were rejected.

EPA has considered and addressed all of the requirements. The following is a summary of the FRFA. The need for and objectives for the rule are discussed in sections I.A, I.B, I.C and II.A of this preamble. Requirements "2" through "4" are addressed in the subsections that follow. The fifth requirement is discussed in sections I.D and I.J., which provide information about steps EPA has taken that will lessen impacts on small systems, including: (1) The selection of the less stringent uranium MCL, (2) overall reduced monitoring frequencies for systems with radionuclides levels less than the MCL, (3) allowance of grandfathering of data and State monitoring discretion for determining initial monitoring baseline, and (4) exclusion of NTNCWS from the regulation. Sections I.C. and I.B provide the rationale for the retention of the MCLs for radium-226 and -228, gross alpha, and photon/beta emitters.

The significant issues raised in public comments were the high cost of compliance for small systems and high cumulative costs for water contaminant testing. EPA understands these concerns and has made several changes to the proposed rule that will reduce cost impacts to small systems. In addition, commenters disagreed with the proposal to include NTNC water systems in the rule. Based on several factors, including these comments and the analyses of risks faced by NTNC customers, risk reductions, benefits, and costs, EPA has decided that additional future analyses and reevaluation, together with any new data that can be obtained is needed before regulating radionuclides at NTNC drinking water systems (see section I.D.8. for further discussion). This information will be collected and future regulatory action will be assessed under the regulatory review process. A complete summary of comments received and EPA's responses can be obtained from the docket (USEPA 2000a).

For many small entities, today's final rule will reduce long-term monitoring costs because the rule provides for less frequent follow-up monitoring (relative to the 1976 rule) for systems if they have radionuclides levels (e.g., gross alpha and radium-226 and -228) below the MCLs (most small systems). For example, under the 1976 rule, a system with a gross alpha level less than the MCL but greater than ½ MCL is required to monitor four times in a four year period. The revised monitoring scheme will allow this system to reduce the monitoring frequency to one sample every three years or less. In addition, EPA is giving States discretion in using historical monitoring data (grandfathering) to determine the initial monitoring baseline for systems. Therefore, systems with sufficient data may not be required to take four quarterly samples for the initial monitoring period and may immediately begin reduced monitoring (*e.g.*, one sample per three years, six years, or nine years) after the rule is effective (*e.g.*, three years after the rule is promulgated). See sections I.D "How has this new information impacted the regulatory decisions being promulgated today?" and I.J "Where and how often must a water system test for radionuclides?" for additional information about monitoring. A small percentage (<1.5%) of systems are expected to exceed the radium-226 and-228 and uranium MCLs and will be required to take action to come into compliance.

The number of small entities subject to today's rule is shown in Table V–1.

TABLE V–1.—SUMMARY OF ANALYSIS RESULTS

From the "Economic Analysis of the Radionuclides NPDWR" (USEPA 2000g)

Community water system size class (25 to 10,00)	Ground water systems						Surface water systems			
	Combined radium loop-hole		Uranium (20µg/L)		Uranium (40 µg/L)		Uranium (20 µg/L)		Uranium (40 µg/L)	
	Number of systems	Cost/ Rev-enue [1]	Number of systems	Cost/ Rev-enue [1]	Number of systems	Cost/ Rev-enue [1]	Number of systems	Cost/ Rev-enue [1]	Number of systems	Cost/ Rev-enue [1]
Total	270–310	[2] 1–2	820–900	[2] 1–3	300–400	[2] 1–3	< 10–40	[2] 1–3	0–20	[2] 0–3

Notes:
[1] As reported in the economic analysis support document (USEPA 2000g), the revenue portion of the cost per revenue estimates are based on data collected the 1992 Census of Governments. The Agency then estimated average revenues for small governments.
The reported ranges represent results using the directly proportional approach followed by results using the lognormal distribution approach.
"0" indicates that no systems in this category are expected to be out of compliance with the MCL.
Revenue estimates are taken from Exhibit 6–3 of the economic analysis support document (USEPA 2000g).
See Appendix G of the economic analysis support document (USEPA 2000g) for information regarding the number of affected for the 25 to 10,000 size class and the associated costs. Detail does not add to totals due to rounding.
[2] Percent.

Small systems are also required to provide information in the Consumer Confidence Report or other public notification if the system exceeds one of the MCLs. As is the case for other contaminants, required information on radionuclides levels must be provided by affected systems and is not considered to be confidential. The professional skills necessary for preparing reports are the same skill level required by small systems for current reporting and monitoring requirements for other drinking water standards.

In addition to the public comments on the proposal, the Agency considered comments received through an outreach process that obtained input from small entities, including a Stakeholders meeting, Tribal consultations, and other consultations. After considering all the input from stakeholders as well as its own analyses, the Agency has included several measures in today's rule that should reduce the burden on small drinking water systems: (1) A revised monitoring scheme with long-term monitoring reduction for most small systems; (2) State discretion for grandfathering existing monitoring data; (3) the decision not to regulate non-transient, non-community water systems, which are generally very small water systems; and (4) the selection of a uranium MCL that is less stringent than the 1991 proposed feasible level. The uranium MCL is still protective of public health with an adequate margin of safety, but will impact fewer small systems, reducing the number of systems that may face waste disposal issues, and increasing the likelihood that non-treatment options for achieving compliance may be used. These items are discussed in more detail in sections I.D and I.J.

EPA also is preparing a small entity compliance guide to help small entities comply with this rule. Small entities will be able to access a copy of this guide at: *http://www.epa.gov/sbrefa/* (to be available within 60 days of the publication of the rule in the **Federal Register**).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number—2040–0228

Under this rule, respondents to the monitoring, reporting, and recordkeeping requirements include the owners and operators of community water systems and State officials that must report data to the Agency. Monitoring for radium-228, uranium, and beta and photon emitters will be required at each entry point to the distribution system under the final radionuclides rule. States will have discretion in grandfathering existing data for determining initial monitoring baselines for the currently regulated contaminants, combined radium-226/-228, gross alpha particle activity, and beta particle and photon radioactivity.

EPA has estimated the burden associated with the specific information collection, record keeping and reporting requirements of the proposed rule in the accompanying Information Collection Request (ICR). The ICR for today's final rule compares the current requirements to the revised requirements for information collection, reporting and record-keeping. There are several activities that the State and the CWSs must perform in preparing to comply with the revised Radionuclides Rule. Start-up activities include reading the final rule to become familiar with the requirements and training staff to perform the required activities.

For PWSs, the number of hours required to perform each activity may vary by system size. This rule only applies to community water systems. As shown in Table V–2, there are approximately 53,121 CWSs and 56 States and territories considered in this ICR (a total of 53,177 respondents). During the first three years after promulgation of this rule, the average burden hours per respondent per year is estimated to be 6 hours for PWSs and 115 hours for States. During this period, the total burden hour per year for the approximately 53,177 respondents covered by this rule is estimated to be 342,873 hours to prepare to comply with this revised Radionuclide Rule. There are no new monitoring, record-keeping, reporting or equipment costs for CWSs during the first three-year period, hence no responses are expected from the CWSs. The average number of responses for the States is expected to be 37 per year during the first three year period. Total annual labor costs during this first 3 year period are expected to be about $10 million per year for CWS.

TABLE V–2.—AVERAGE BURDEN, RESPONDENTS, AND RESPONSES DURING THE THREE-YEAR ICR APPROVAL PERIOD

	CWSs	States	Total (each year)
Average Burden Hours per Year	336,433	6,440	342,873
Average Respondents per Year	53,121	56	53,177
Average Burden Hours per Respondent per Year	6	115	121
Average Responses per Year	[1] 0	33	33
Average Burden Hours per Response per Year	[1] 0	17	17
Average Responses per Respondent per Year	[1] 0	[2] .66	.66

[1] Preparation only.
[2] Two over 3-year period.

TABLE V–3.—SUMMARY OF BURDEN AND COSTS FOR THE RADIONUCLIDES RULE FOR THE ICR APPROVAL PERIOD

Respondent Category	Number of respondents annually	Number of responses annually	Total annual burden (hours)	Total annual labor costs ($ dollars)	Total annual capital cost	Total annual O&M cost
CWSs	53,121	([1])	336,433	$9,925,042	0	0
States	56	[2] 37 (2 per respondent over 3 year period)	6,440	247,905	0	0
Total	53,177	33	342,873	10,172,947	0	0

[1] Preparation only.
[2] Two per respondent over 3-year period.

Three years after the promulgation date, community water systems will begin collecting mandatory monitoring data as described earlier in this section. As reported in the ICR (using a 7% discount rate over a 23 year period), EPA estimates that today's revisions to monitoring will result in a national annual monitoring, reporting and record keeping burden of $ 4.85 million (25,197 hours) for all CWSs and an average annual programmatic burden of $63,723 (4,170 hours) for States (total for all 56 jurisdictions) over the first 23 years after promulgation of this rule (see Table V–4).

TABLE V–4.—SUMMARY OF BURDEN AND COSTS FOR THE RADIONUCLIDES RULE FOR THE POST-ICR APPROVAL PERIOD

Respondent category	Number of respondents annually	Number of responses annually	Total annual burden (hours)	Total annual labor costs	Total annual capital cost	Total annual O&M cost (monitoring)
CWSs	53,121	50,394	25,197	$537,574	0	$4,855,439
States	56	224	4,170	63,723	0	63,723
Total	53,177	50,618	29,367	601,297	0	4,919,162

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing procedures to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of the currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Unfunded Mandates Reform Act

1. Summary of UMRA Requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The estimated total annual compliance costs of the final rule is 83 million (See section IV. Economic Analyses for additional information). Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. This rule will establish requirements that affect small community water systems. EPA has determined that this rule may contain regulatory requirements that significantly or uniquely affect small governments. As described in part A of this section, EPA has provided all public water systems (including small systems) with opportunities to provide input into the development of this rule and to be informed about the requirements for compliance.

D. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Pub. L. 104–113, section 12(d), 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards, thus, NTTAA does not apply to this rule. It should be noted, however, that systems complying with this rule need to use previously approved technical standards already included in § 141.25. Currently, a total of 89 radiochemical methods are approved for compliance monitoring of radionuclides in drinking water. Of these methods, twenty-four (24) are approved by the Standard Methods Committee and are described in the "Standard Methods for the Examination of Waste and Wastewater (13th, 17th, 18th, and 19th editions)," which was prepared and published by the American Public Health Association. In addition, twelve of the approved radiochemistry methods are from the American Society for Testing and Materials (ASTM) and are described in the Annual Book of ASTM Standards. These methods and their references are provided in Table I–8 (shown in section I of this preamble).

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," (59 FR 7629, February 16, 1994) establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice-related issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders by convening a stakeholder meeting via video conference specifically to address environmental justice issues.

As part of EPA's responsibilities to comply with E.O. 12898, the Agency held a stakeholder meeting via video conference on March 12, 1998, to highlight components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meeting by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water programs. The major objectives for the 1998 meeting were:

(1) Solicit ideas from Environmental Justice (EJ) stakeholders on known issues concerning current drinking water regulatory efforts;

(2) Identify key issues of concern to EJ stakeholders; and

(3) Receive suggestions from EJ stakeholders concerning ways to increase representation of EJ communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulations. A meeting summary for the March 12, 1998 Environmental Justice stakeholders meeting (USEPA 1998J) is available in the public docket for this final rulemaking.

The radionuclides rule applies to all community water systems, which will provide equal health protection for all minority and low-income populations served by systems regulated under this rule from exposure to radionuclides.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Was initiated after April 21, 1997, or for which a Notice of Proposed Rulemaking was published after April 21, 1998; (2) is determined to be "economically significant" as defined under E.O. 12866, and (3) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets all three criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because EPA published a notice of proposed rulemaking before April 21, 1998. However, EPA's policy since November 1, 1995 is to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decision making process including the setting of standards to protect public health and the environment.

Today's action primarily involves retaining the current MCLs for the regulated radionuclides, rather than adopting the less stringent 1991 proposed MCLs for the regulated radionuclides. In addition, an MCL for uranium, currently unregulated, is promulgated in today's rule. Since today's rule involves the decision to retain the more stringent current MCLs and to adopt a uranium MCL that is protective of both kidney toxicity and radiological carcinogenicity, today's action is consistent with greater protection of children's health.

The cancer risks estimated and presented in today's final rule explicitly account for differential cancer risks to children. In the case of uranium kidney toxicity, there is no information that suggests that children are a sensitive subpopulation. However, as discussed in the Notice of Data Availability (USEPA 2000e), the Agency does have reason to believe that radionuclides in drinking water present higher unit risks to children than to adults, since there is evidence that children are more sensitive to radiation than adults. Because of this, we have explicitly considered the risks to children in evaluating the lifetime risks associated with the current MCLs and 1991 proposed MCLs. In other words, the lifetime risks that are reported for each MCL are integrated over the entire lifetime of the individual and include the risks incurred during childhood.

In more detail, the per unit dose risk coefficients used to estimate lifetime risks are age-specific and organ-specific and are used in a lifetime risk model that applies the appropriate age-specific sensitivities throughout the calculation. The model also includes age-specific changes in organ mass and metabolism, which further incorporates age-specific effects pertinent to age sensitivity. The risk estimate at any age is the best estimate of risk for an individual of that age, so the summation of these age-specific risk estimates over all ages is best estimate of the lifetime risk for an individual. In developing the lifetime risks, the model calculates the risks over an age distribution for a stationary population to simulate the lifetime risk of an individual. The model also accounts for competing causes of death and age-specific survival rates. These adjustments make the lifetime risk estimate more realistic. At the same time, consumption rates of food, water and air are different between adults and children. The lifetime risk estimates for radionuclides in water use age-specific water intake rates derived from average

national consumption rates when calculating the risk per unit intake.

While radiation protection organizations have developed the concept of committed dose, the dose to an organ or tissue from time of intake to end of life, there is no equivalent for risk. If we define "committed risk" as the lifetime risk from a given intake, then it will be easier to compare the risks of intakes at different times of life. In Table V–5, the "committed risk" is given for 5 isotopes and 5 periods of life and continuous lifetime exposure. If the radionuclide concentration in the water is kept constant, the fraction of the lifetime risk committed during any age interval will also remain constant. Unless the intake is restricted in an age-specific manner, the fraction of the lifetime risk contributed by any age interval is a constant.

TABLE V–5.—LIFETIME RISKS AND FRACTIONS OF LIFETIME RISK PER AGE GROUP

Age (yrs)	0–6	6–18	18–30	30–70	70–110	0–110
Lifetime risk for intake of water containing 1 Bq/L during several different age intervals						
Ra-224	2.3e–05	3.3e–05	1.1e–05	1.5e–05	9.8e–07	8.4e–05
Ra-226	2.9e–05	8.6e–05	5.0e–05	5.1e–05	2.9e–06	2.2e–04
Ra-228	1.1e–04	2.6e–04	1.2e–04	1.1e–04	5.1e–06	6.1e–04
U-238	6.7e–06	1.2e–05	6.1e–06	9.8e–06	3.7e–07	3.4e–05
H-3	3.9e–09	8.5e–09	6.2e–09	9.6e–09	6.7e–10	2.9e–08
Percentage of lifetime risk committed for water intake during the age interval						
Ra-224	28	40	13	18	1	100
Ra-226	13	39	23	23	1	100
Ra-228	17	43	20	19	1	100
U-238	19	33	18	28	1	100
H-3	13	29	21	33	2	100

In summary, today's decision to retain the current more stringent MCLs for radionuclides and to establish an MCL for uranium in drinking water is consistent with the protection of children's health. In making this decision, EPA evaluated the lifetime radiogenic cancer risks associated with the current and final MCLs, which are based on age-specific cancer risk models that explicitly consider children's higher per unit dose risks.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute if it significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or if EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

EPA does not believe that today's rule significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on these communities. The provisions of today's rules apply to all community water systems. Tribal governments may be owners or operators of such systems, however, nothing in today's provisions uniquely affects them. EPA believes that the final rule will not significantly burdens most Tribal systems, and in some cases, will be less burdensome than the current radionuclides rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Nonetheless, EPA did inform and involve Tribal governments in the rulemaking process. EPA staff attended the 16th Annual Consumer Conference of the National Indian Health Board on October 6–8, 1998 in Anchorage, Alaska. Over nine hundred attendees representing Tribes from across the country were in attendance. During the conference, EPA conducted two workshops for meeting participants. The objectives of the workshops were to present an overview of EPA's drinking water program, solicit comments on key issues of potential interest in upcoming drinking water regulations, and to solicit advice in identifying an effective consultative process with Tribes for the future.

EPA, in conjunction with the Inter Tribal Council of Arizona (ITCA), also convened a Tribal consultation meeting on February 24–25, 1999, in Las Vegas, Nevada to discuss ways to involve Tribal representatives, both Tribal council members and tribal water utility operators, in the stakeholder process. Approximately twenty-five representatives from a diverse group of Tribes attended the two-day meeting. Meeting participants included representatives from the following Tribes: Cherokee Nation, Nezperce Tribe, Jicarilla Apache Tribe, Blackfeet Tribe, Seminole Tribe of Florida, Hopi Tribe, Cheyenne River Sioux Tribe, Menominee Indian Tribe, Tulalip Tribes, Mississippi Band of Choctaw Indians, Narragansett Indian Tribe, and Yakama Nation.

The major meeting objectives were to:

(1) Identify key issues of concern to Tribal representatives;

(2) Solicit input on issues concerning current OGWDW regulatory efforts;

(3) Solicit input and information that should be included in support of future drinking water regulations; and

(4) Provide an effective format for Tribal involvement in EPA's regulatory development process.

EPA staff also provided an overview on the forthcoming radionuclides rule at the meeting. The presentation included the health concerns associated with radionuclides, EPA's current position on radionuclides in drinking water, and specific issues for Tribes. The following questions were posed to the Tribal representatives to begin discussion on radionuclides in drinking water:

(1) What are the current radionuclides levels in your water systems?

(2) Are you treating for radionuclides if they exceed the MCL? Is it effective and affordable?

(3) What are Tribal water systems affordability issues in regard to radionuclides?

(4) Would in home treatment units be an acceptable alternative to central treatment?

(5) What level of monitoring is reasonable?

The summary for the February 24–25, 1999 meeting was sent to all 565 Federally recognized Tribes in the United States.

EPA also conducted a series of workshops at the Annual Conference of the National Tribal Environmental Council which was held on May 18–20, 1999 in Eureka, California. Representatives from over 50 Tribes attended all, or part, of these sessions. The objectives of the workshops were to provide an overview of forthcoming EPA regulations affecting water systems; discuss changes to operator certification requirements; discuss funding for Tribal water systems; and to discuss innovative approaches to regulatory cost reduction. Meeting summaries for EPA's Tribal consultations are available in the public docket for this rulemaking (USEPA 1999c, USEPA 1999d).

I. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications'are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local elected officials in the process of developing this final regulation. On May 30, 2000, EPA held a one-day meeting in Washington, DC with representatives of elected State and local officials to discuss how upcoming drinking water regulations may affect State, county, and local governments. The rules discussed were: Arsenic, Radon, Radionuclides, Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule, and the Ground Water Rule. EPA invited associations which represent elected officials, including National Governors' Association (NGA), National League of Cities (NLC), Council of State Governments (CSG), U.S. Conference of Mayors, International City/County Management Association (ICMA), National Association of Counties (NACO), National Association of Towns and Townships, and National Conference of State Legislators (NCSL). EPA also invited the National Association of Attorneys General (NAAG), the Association of State and Territorial Health Officials (ASTHO), the Environmental Council of States (ECOS), and the Southern Govenors' Association (SGO). With the invitation letter, EPA provided an agenda and background information about the five upcoming drinking water rules, including today's rule.

Ten representatives of elected officials participated in the one-day meeting, which included State of Florida—Governor Bush's Office, State of Ohio-Governor Taft's Office, NGA, NACO, NAAG, NLC, ECOS, ICMA, SGO, and ASTHO. The meeting encompassed presentation and discussion about each of the five rules. The purpose of the meeting was to:

- Provide information about the five upcoming drinking water regulations;
- Consult on the expected compliance and implementation costs of these rules for State, county, and local governments; and
- Gain a better understanding of State, county, and local governments' and their elected officials' views.

Following the meeting, EPA sent the materials presented and distributed at the meeting to the organizations that were not able to attend, in order to provide them additional information about the upcoming regulations. EPA has prepared a meeting summary which provides in more detail the participants' concerns and questions regarding each rule. This summary is available in the public docket supporting this rulemaking (USEPA 2000c).

This meeting was not held sooner due to the relatively recently signed Executive Order and the need to consider how to best comply with its terms and conditions. Thus, many of the issues associated with today's rulemaking were in relatively advanced stages of development by the time of the May 30, 2000 meeting. Nevertheless, we endeavored to accommodate each of the comments received from elected officials or their representatives to the maximum extent possible, within the constraints imposed by our statutory mandate to protect public health through the promulgation of drinking water standards.

The principal concerns of these officials were the overall burden of the rule and the potentially high costs of compliance with its provisions. In particular, they expressed concerns about the affordability for the rule for small systems and costs for disposal of treatment residues that may be considered hazardous due to radioactivity. In response, we took several steps to address these particular concerns as well as actions in response to the generalized concern about the overall burden of the rule.

EPA believes that today's regulatory action is necessary to reduce kidney toxicity and cancer health risks from uranium, as well as to maintain public health protection resulting from the current radionuclide National Primary Drinking Water Regulations. The Agency understands the officials' concerns about regulatory burden and have addressed them in several ways. First, EPA selected a less stringent MCL for uranium of 30 µg/L by invoking the discretionary authority for the Administrator to set an MCL less stringent than the feasible level if the benefits of an MCL set at the feasible level would not justify the costs (section 1412(b)(6)). As a result, fewer water systems will be in violation of the uranium MCL, reducing the number of systems that may face radioactive waste disposal issues, and resulting in the ability of a higher percentage of water systems to use non-treatment options for achieving compliance (*e.g.*, new wells, blending of water sources, modifying existing operations, etc.).

To further mitigate impacts on water systems and State drinking water programs, EPA is allowing State discretion in grandfathering data for determining initial monitoring frequency. Since the data grandfathering plan will be a part of a State's primacy package, EPA will have oversight over the data grandfathering process. EPA believes that this approach provides flexibility for States to consider their

particular circumstances, while allowing EPA to ensure that goals are met. Under this approach, many systems will be able to use existing monitoring data to establish initial monitoring baselines, which will be used to determine future monitoring frequency under the Standardized Monitoring Framework. Water systems that do not have adequate data to grandfather will be required to follow the requirements for new monitoring. The details of these requirements can be found in part J of section I, "Where and how often must a water system test for radionuclides?" EPA expects that there will be overall reduced monitoring burden in the long-term, with monitoring relief being targeted towards those water systems that have low radionuclide levels. Today's final rule will not apply to non-transient, non-community water systems (*e.g.*, schools, state parks, nursing homes), which are primarily small ground water systems.

EPA will provide guidance to small water systems on complying with today's rule. This will include information on monitoring, treatment technology and other compliance options, including information on the disposal of water treatment residuals. Regarding the cost of treatment, EPA agrees that treatment technologies can be expensive for small water systems. However, EPA expects that many small water systems will rely on other compliance options, *e.g.*, alternate source, purchasing water, and point-of-use devices. In cases in which small water systems have no other option and cannot afford to install treatment, they may apply to the State for exemptions (see part M of section I, "Can my water system get a variance or an exemption?"), which gives them extra time. An exemption is limited to three years after the otherwise applicable compliance date, although extensions up to a total of six additional years may be available to small systems under certain conditions. If a water system has very high contaminant levels and no compliance options other than treatment, the water system can apply for a variance, under the requirements described in part M of section I. In addition, there are various sources of funding for State and local governments, including the Drinking Water State Revolving Fund, which is described in part M of section I, "What financial assistance is available for complying with the rule?"

J. Consultation With the Science Advisory Board and the National Drinking Water Advisory Council

In accordance with section 1412(d) and (e) of SDWA, EPA consulted with the Science Advisory Board and National Drinking Water Advisory Council and considered their comments in developing this rule. See the OW Docket for additional information.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 8, 2003.

VI. References

NIH 2000a. "Kidney Diseases: Publications On-Line." National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). June 2000. National Institutes of Health.

NIH 2000b. "Proteinuria." National Kidney and Urologic Diseases Information Clearinghouse. June 2000. National Institutes of Health.

NIH 2000c. "Your Kidneys and How They Work." National Kidney and Urologic Diseases Information Clearinghouse. June 2000. National Institutes of Health.

USEPA 1991. "Regulatory Impact Analysis of Proposed National Primary Drinking Water Regulations for Radionuclides (Draft dated June 14, 1991). Prepared by Wade Miller Associates.

USEPA 1994. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994.

USEPA 1998a. "A Fact Sheet on the Health Effects from Ionizing Radiation." Prepared by the Office of Radiation & Indoor Air, Radiation Protection Division. EPA 402–F–98–010. May 1998.

USEPA 1998b. Announcement of Small System Compliance Technology Lists for Existing National Primary Drinking Water Regulations and Findings Concerning Variance Technologies, 63 FR 42032, August 6, 1998.

USEPA 1998c. "Ionizing Radiation Series No. 1." Prepared by the Office of Radiation & Indoor Air, Radiation Protection Division. EPA 402–F–98–009. May 1998.

USEPA 1998d. National Primary Drinking Water Regulations: Consumer Confidence; Proposed Rule 63 FR 7605, February 13, 1998.

USEPA 1998e. National Primary Drinking Water Regulation: Consumer Confidence Reports; Final Rule, 63 FR 44511, August 19, 1998.

USEPA 1998f. "Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996." EPA–815–R–98–002. September 1998.

USEPA 1999a. "Small Systems Compliance Technology List for the Radionuclides Rule." Prepared by International Consultants, Inc. Draft. April 1999.

USEPA 1999b. Cancer Risk Coefficients for Environmental Exposure to Radionuclides, Federal Guidance Report No. 13. US Environmental Protection Agency, Washington, DC, 1999.

USEPA 1999c. "Inter Tribal Council of Arizona, Inc.: Ground Water and Drinking Water Tribal Consultation Meeting." Executive Summary. February 24–25, 1999.

USEPA 1999d. "OGWDW Tribal Consultations: Workshops at the Annual Conference of the National Tribal Environmental Council." May 18–20, 1999.

USEPA 2000a. "Comment/Response Document for the Radionuclides Notice of Data Availability and 1991 Proposed Rule." Prepared by Industrial Economics, Inc. for EPA. November 2000.

USEPA 2000b. "Draft Toxicological Review of Uranium." Prepared by the Office of Science and Technology. Draft. June 6, 2000.

USEPA 2000c. Government Dialogue on U.S. EPA's Upcoming Drinking Water Regulations. Meeting Summary. May 30, 2000.

USEPA 2000d. "Information Collection Request for National Primary Drinking Water Regulations: Radionuclides". Prepared by ISSI Consulting Group, for EPA. September 22, 2000.

USEPA 2000e. National Primary Drinking Water Regulations; Radionuclides; Notice of Data Availability; Proposed Rule. 65 FR 21577. April 21, 2000.

USEPA 2000f. "Preliminary Health Risk Reduction and Cost Analysis: Revised National Primary Drinking Water Standards for Radionuclides." Prepared by Industrial Economics, Inc. for EPA. Draft. January 2000.

USEPA 2000g. "Economic Analysis of the Radionuclides National Primary Drinking Water Regulations." Prepared by Industrial Economics, Inc. for EPA. November 2000.

USEPA 2000h. "Technical Support Document for the Radionuclides Notice of Data Availability." Draft. March, 2000.

USEPA 2000i. "Technologies and Costs for the Removal of Radionuclides from Potable Water Supplies." Draft. Prepared by Malcolm Pirnie, Inc. June, 2000.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: November 21, 2000.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, 40 CFR parts 9, 141, and 142 are amended as follows:

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326–1330, 1324, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by:

(a) Removing the entry for 141.25–141.30 and adding new entries for 141.25(a)–(e), 141.26 (a)–(b), and 141.27–141.30;

(b) Removing the entry for 142.14(a)–(d)(7) and adding new entries for 142.14(a)–(d)(3), 142.14(d)(4)–(5), and 142.14(d)(6)–(7); and

(c) Removing the entry for 142.15(c)(5)–(d) and adding new entries for 142.15(c)(5), 142.15(c)(6)–(7), and 142.15(d).

The additions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Primary Drinking Water Regulations	
* * * * *	
141.25(a)–(e)	2040–0090
141.26(a)–(b)	2040–0228
141.27–141.30	2040–0090
* * * * *	
142.14(a)–(d)(3)	2040–0090
142.14(d)(4)–(5)	2040–0228
142.14(d)(6)–(7)	2040–0090
* * * * *	
142.15(c)(5)	2040–0090
142.15(c)(6)–(7)	2040–0228
142.15(d)	2040–0090

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—[Amended]

§§ 141.15 and 141.16 [Removed]

2. Sections 141.15 and 141.16 are removed.

Subpart C—[Amended]

3. Section 141.25 is amended by:

a. Revising paragraph (a) introductory text (the table remains unchanged),

b. Revising paragraph (c)(1),

c. Revising paragraph (c)(2) and redisgnating Table B in paragraph (c)(2) as Table C and

d. Revising paragraph (d).

The revisions read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with § 141.66 (radioactivity) in accordance with the methods in the following table, or their equivalent determined by EPA in accordance with § 141.27.

* * * * *

(c) * * *

(1) To determine compliance with § 141.66(b), (c), and (e) the detection limit shall not exceed the concentrations in Table B to this paragraph.

TABLE B.—DETECTION LIMITS FOR GROSS ALPHA PARTICLE ACTIVITY, RADIUM 226, RADIUM 228, AND URANIUM

Contaminant	Detection limit
Gross alpha particle activity	3 pCi/L.
Radium 226	1 pCi/L.
Radium 228	1 pCi/L.
Uranium	Reserve

(2) To determine compliance with § 141.66(d) the detection limits shall not exceed the concentrations listed in Table C to this paragraph.

* * * * *

(d) To judge compliance with the maximum contaminant levels listed in § 141.66, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

* * * * *

4. Section 141.26 is revised to read as follows:

§ 141.26 Monitoring frequency and compliance requirements for radionuclides in community water systems

(a) Monitoring and compliance requirements for gross alpha particle activity, radium-226, radium-228, and uranium.

(1) Community water systems (CWSs) must conduct initial monitoring to determine compliance with § 141.66(b), (c), and (e) by December 31, 2007. For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity in drinking water, "detection limit" is defined as in § 141.25(c).

(i) Applicability and sampling location for existing community water systems or sources. All existing CWSs using ground water, surface water or systems using both ground and surface water (for the purpose of this section hereafter referred to as systems) must sample at every entry point to the distribution system that is representative of all sources being used (hereafter called a sampling point) under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source or the State has designated a distribution system location, in accordance with paragraph (a)(2)(ii)(C) of this section.

(ii) Applicability and sampling location for new community water systems or sources. All new CWSs or CWSs that use a new source of water

must begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source. CWSs must conduct more frequent monitoring when ordered by the State in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

(2) Initial monitoring: Systems must conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

(i) Systems without acceptable historical data, as defined below, must collect four consecutive quarterly samples at all sampling points before December 31, 2007.

(ii) Grandfathering of data: States may allow historical monitoring data collected at a sampling point to satisfy the initial monitoring requirements for that sampling point, for the following situations.

(A) To satisfy initial monitoring requirements, a community water system having only one entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(B) To satisfy initial monitoring requirements, a community water system with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(C) To satisfy initial monitoring requirements, a community water system with appropriate historical data for a representative point in the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003, provided that the State finds that the historical data satisfactorily demonstrate that each entry point to the distribution system is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between entry points. The State must make a written finding indicating how the data conforms to the these requirements.

(iii) For gross alpha particle activity, uranium, radium-226, and radium-228 monitoring, the State may waive the final two quarters of initial monitoring for a sampling point if the results of the samples from the previous two quarters are below the detection limit.

(iv) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the State.

(3) Reduced monitoring: States may allow community water systems to reduce the future frequency of monitoring from once every three years to once every six or nine years at each sampling point, based on the following criteria.

(i) If the average of the initial monitoring results for each contaminant (*i.e.*, gross alpha particle activity, uranium, radium-226, or radium-228) is below the detection limit specified in Table B, in § 141.25(c)(1), the system must collect and analyze for that contaminant using at least one sample at that sampling point every nine years.

(ii) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below ½ the MCL, the system must collect and analyze for that contaminant using at least one sample at that sampling point every six years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the detection limit but at or below ½ the MCL, the system must collect and analyze for that contaminant using at least one sample at that sampling point every six years.

(iii) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above ½ the MCL but at or below the MCL, the system must collect and analyze at least one sample at that sampling point every three years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above ½ the MCL but at or below the MCL, the system must collect and analyze at least one sample at that sampling point every three years.

(iv) Systems must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods (*e.g.*, if a system's sampling point is on a nine year monitoring period, and the sample result is above ½ MCL, then the next monitoring period for that sampling point is three years).

(v) If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the State.

(4) Compositing: To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. States will treat analytical results from the composited as the average analytical result to determine compliance with the MCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than ½ MCL, the State may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(5) A gross alpha particle activity measurement may be substituted for the required radium-226 measurement provided that the measured gross alpha particle activity does not exceed 5 pCi/l. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/l.

The gross alpha measurement shall have a confidence interval of 95% (1.65σ, where σ is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, ½ the detection limit will be used to determine compliance and the future monitoring frequency.

(b) *Monitoring and compliance requirements for beta particle and photon radioactivity.*

To determine compliance with the maximum contaminant levels in § 141.66(d) for beta particle and photon radioactivity, a system must monitor at a frequency as follows:

(1) Community water systems (both surface and ground water) designated by the State as vulnerable must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the State. Systems already designated by the State must continue to sample until the State reviews and either reaffirms or removes the designation.

(i) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 50 pCi/L (screening level), the State may reduce the frequency of monitoring at that sampling point to once every 3 years. Systems must collect all samples required in paragraph (b)(1) of this section during the reduced monitoring period.

(ii) For systems in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the State determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with paragraph (b)(1) of this section.

(2) Community water systems (both surface and ground water) designated by the State as utilizing waters contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the State. Systems already designated by the State as systems using waters contaminated by effluents from nuclear facilities must continue to sample until the State reviews and either reaffirms or removes the designation.

(i) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

(ii) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As ordered by the State, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(iii) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

(iv) If the gross beta particle activity beta minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L, the State may reduce the frequency of monitoring at that sampling point to every 3 years. Systems must collect all samples required in paragraph (b)(2) of this section during the reduced monitoring period.

(v) For systems in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the State determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with paragraph (b)(2) of this section.

(3) Community water systems designated by the State to monitor for beta particle and photon radioactivity can not apply to the State for a waiver from the monitoring frequencies specified in paragraph (b)(1) or (b)(2) of this section.

(4) Community water systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82.

(5) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with § 141.66(d)(1), using the formula in § 141.66(d)(2). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(6) Systems must monitor monthly at the sampling point(s) which exceed the maximum contaminant level in § 141.66(d) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of 3 monthly samples, that the MCL is being met. Systems who establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in paragraph (b)(1)(ii) or (b)(2)(i) of this section.

(c) General monitoring and compliance requirements for radionuclides.

(1) The State may require more frequent monitoring than specified in paragraphs (a) and (b) of this section, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

(2) Each public water systems shall monitor at the time designated by the State during each compliance period.

(3) Compliance: Compliance with § 141.66 (b) through (e) will be determined based on the analytical result(s) obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(ii) For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance with the MCL immediately.

(iii) Systems must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(iv) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(v) If a sample result is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, ½ the detection limit will be used to calculate the annual average.

(4) States have the discretion to delete results of obvious sampling or analytic errors.

(5) If the MCL for radioactivity set forth in § 141.66 (b) through (e) is exceeded, the operator of a community water system must give notice to the

State pursuant to § 141.31 and to the public as required by subpart Q of this part.

Subpart F—[Amended]

5. A new § 141.55 is added to subpart F to read as follows:

§ 141.55 Maximum contaminant level goals for radionuclides.

MCLGs for radionuclides are as indicated in the following table:

Contaminant	MCLG
1. Combined radium-226 and radium-228.	Zero.
2. Gross alpha particle activity (excluding radon and uranium).	Zero.
3. Beta particle and photon radioactivity.	Zero.
4. Uranium	Zero.

Subpart G—National Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels

6. The heading of subpart G is revised as set out above.

7. A new § 141.66 is added to subpart G to read as follows:

§ 141.66 Maximum contaminant levels for radionuclides.

(a) [Reserved]

(b) *MCL for combined radium-226 and -228.* The maximum contaminant level for combined radium-226 and radium-228 is 5 pCi/L. The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.

(c) *MCL for gross alpha particle activity (excluding radon and uranium).* The maximum contaminant level for gross alpha particle activity (including radium-226 but excluding radon and uranium) is 15 pCi/L.

(d) *MCL for beta particle and photon radioactivity.* (1) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year (mrem/year).

(2) Except for the radionuclides listed in table A, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents must be calculated on the basis of 2 liter per day drinking water intake using the 168 hour data list in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," NBS (National Bureau of Standards) Handbook 69 as amended August 1963, U.S. Department of Commerce. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this document are available from the National Technical Information Service, NTIS ADA 280 282, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 mrem/year.

TABLE A.—AVERAGE ANNUAL CONCENTRATIONS ASSUMED TO PRODUCE: A TOTAL BODY OR ORGAN DOSE OF 4 MREM/YR

1. Radionuclide	Critical organ	pCi per liter
2. Tritium	Total body	20,000
3. Strontium-90	Bone Marrow	8

(e) *MCL for uranium.* The maximum contaminant level for uranium is 30 µg/L.

(f) *Compliance dates.* (1) Compliance dates for combined radium-226 and -228, gross alpha particle activity, gross beta particle and photon radioactivity, and uranium: Community water systems must comply with the MCLs listed in paragraphs (b), (c), (d), and (e) of this section beginning December 8, 2003 and compliance shall be determined in accordance with the requirements of §§ 141.25 and 141.26. Compliance with reporting requirements for the radionuclides under appendix A to subpart O and appendices A and B to subpart Q is required on December 8, 2003.

(g) *Best available technologies (BATs) for radionuclides.* The Administrator, pursuant to section 1412 of the Act, hereby identifies as indicated in the following table the best technology available for achieving compliance with the maximum contaminant levels for combined radium-226 and -228, uranium, gross alpha particle activity, and beta particle and photon radioactivity.

TABLE B.—BAT FOR COMBINED RADIUM-226 AND RADIUM-228, URANIUM, GROSS ALPHA PARTICLE ACTIVITY, AND BETA PARTICLE AND PHOTON RADIOACTIVITY

Contaminant	BAT
1. Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening.
2. Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration.
3. Gross alpha particle activity (excluding Radon and Uranium)	Reverse osmosis.
4. Beta particle and photon radioactivity	Ion exchange, reverse osmosis.

(h) *Small systems compliance technologies list for radionuclides.*

TABLE C.—LIST OF SMALL SYSTEMS COMPLIANCE TECHNOLOGIES FOR RADIONUCLIDES AND LIMITATIONS TO USE

Unit technologies	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range and considerations.[1]
1. Ion exchange (IE)	(a)	Intermediate	All ground waters.
2. Point of use (POU[2]) IE	(b)	Basic	All ground waters.
3. Reverse osmosis (RO)	(c)	Advanced	Surface waters usually require pre-filtration.
4. POU[2] RO	(b)	Basic	Surface waters usually require pre-filtration.
5. Lime softening	(d)	Advanced	All waters.
6. Green sand filtration	(e)	Basic.	
7. Co-precipitation with Barium sulfate	(f)	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/electrodialysis reversal		Basic to Intermediate	All ground waters.
9. Pre-formed hydrous Manganese oxide filtration.	(g)	Intermediate	All ground waters.
10. Activated alumina	(a), (h)	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	(i)	Advanced	Can treat a wide range of water qualities.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

[2] A POU, or "point-of-use" technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000 NODA for more details.

Limitations Footnotes: Technologies for Radionuclides:

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR Compliance Technologies Table.

[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

[h] Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i] Assumes modification to a coagulation/filtration process already in place.

TABLE D.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR RADIONUCLIDE NPDWR'S

Contaminant	Compliance technologies [1] for system size categories (population served)		
	25–500	501–3,300	3,300–10,000
1. Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7. 8, 9.
2. Gross alpha particle activity	3, 4	3, 4	3, 4.
3. Beta particle activity and photon activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4.
4. Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11.

Note: [1] Numbers correspond to those technologies found listed in the table C of 141.66(h).

Subpart O—[Amended]

8. The table in appendix A to subpart O is amended under the heading "Radioactive contaminants" by revising the entries for "Beta/photon emitters (mrem/yr)", "Alpha emitters (pCi/l)", and "Combined radium (pCi/l)" and adding a new entry for "Uranium (pCi/L)" to read as follows:

Appendix A to Subpart O—Regulated Contaminants

Contaminant units	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
.	.	.	.	.	.	.
Radioactive contaminants:						
Beta/photon emitters (mrem/yr).	4 mrem/yr	–	4	0	Decay of natural and man-made deposits.	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particle and photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters (pCi/L).	15 pCi/L	–	15	0	Erosion of natural deposits.	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/L).	5 pCi/L	–	5	0	Erosion of natural deposits.	Some people who drink water containing radium-226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (pCi/L)	30 µg/L	–	30	0	Erosion of natural deposits.	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
.	.	.	.	.	.	.

Subpart Q—[Amended]

9. Appendix A to subpart Q under I.F. "Radioactive contaminants" is amended by:

a. Revising entries 1, 2, and 3;

b. Adding entry 4;

c. Redesignating endnotes 9 through 17 as endnotes 11 through 19; and

d. Adding new endnotes 9 and 10.

Appendix A to Subpart Q—NPDWR Violations and Other Situations Requiring Public Notice [1]

Contaminant	MCL/MRDL/TT Violations [2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR) [3]				
.	.	.	.	.
F. Radioactive contaminants				
1. Beta/photon emitters	2	141.66(d)	3	141.25(a) 141.26(b)
2. Alpha emitters	2	141.66(c)	3	141.25(a) 141.26(a)
3. Combined radium (226 and 228)	2	141.66(b)	3	141.25(a) 141.26(a)
4. Uranium	[9]2	141.66(e)	[10]3	141.25(a) 141.26(a)
.	.	.	.	.

Appendix A—Endnotes

* * * * *

1. Violations and other situations not listed in this table (e.g., reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primary agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under Sec. 141.202(a) and Sec. 141.203(a).

2. MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique.

3. The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

* * * * *

9. The uranium MCL Tier 2 violation citations are effective December 8, 2003 for all community water systems.

10. The uranium Tier 3 violation citations are effective December 8, 2000 for all community water systems.

* * * * *

10. Appendix B to Subpart Q is amended by:

a. Redesignating entries 79 through 84 and 86 through 88 as 80 through 85 and 87 through 89, respectively, and entries 85a and 85b as 86a and 86b, respectively;

b. Adding a new entry 79 for uranium under "G. Radioactive contaminants";

c. Redesignating endnote entries 16 through 21 as 17 through 22; and

d. adding a new endnote 16.

Appendix B to Subpart Q—Standard Health Effects Language for Public Notification

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR)			
.	.	.	.
G. Radioactive contaminants			
.	.	.	.
79. Uranium[16]	Zero	30 µg/L	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
.	.	.	.

Appendix B—Endnotes

1. MCLG—Maximum contaminant level goal

2. MCL—Maximum contaminant level

* * * * *

16. The uranium MCL is effective December 8, 2003 for all community water systems.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—Primary Enforcement Responsibility

2. Section 142.16 is amended by adding and reserving paragraphs (i), (j), and (k) and adding a new paragraph (l) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(i)–(k) [Reserved]

(l) An application for approval of a State program revision for radionuclides which adopts the requirements specified in § 141.26(a)(2)(ii)(C) of this chapter must contain the following (in addition to the general primacy requirements enumerated in this part, including that State regulations be at least as stringent as the Federal requirements):

(1) If a State chooses to use grandfathered data in the manner described in § 141.26(a)(2)(ii)(C) of this chapter, then the State must describe the procedures and criteria which it will use to make these determinations (whether distribution system or entry point sampling points are used).

(i) The decision criteria that the State will use to determine that data collected in the distribution system are representative of the drinking water supplied from each entry point to the distribution system. These determinations must consider:

(A) All previous monitoring data.

(B) The variation in reported activity levels.

(C) Other factors affecting the representativeness of the data (e.g. geology).

(ii) [Reserved]

(2) A monitoring plan by which the State will assure all systems complete the required monitoring within the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted for the requirements in § 142.16(e)(5) under the national primary drinking water regulations for the inorganic and organic contaminants (*i.e.* the phase II/V rules). States may note in their application any revision to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

Subpart G—[Amended]

3. Section 142.65 is added to read as follows.

§ 142.65 Variances and exemptions from the maximum contaminant levels for radionuclides.

(a)(1) Variances and exemptions from the maximum contaminant levels for combined radium-226 and radium-228, uranium, gross alpha particle activity (excluding Radon and Uranium), and beta particle and photon radioactivity. (i) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the radionuclides listed in § 141.66(b), (c), (d), and (e) of this chapter, for the purposes of issuing variances and exemptions, as shown in Table A to this paragraph.

TABLE A.—BAT FOR RADIONUCLIDES LISTED IN § 141.66

Contaminant	BAT
Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening.
Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration.
Gross alpha particle activity (excluding radon and uranium)	Reverse osmosis.
Beta particle and photon radioactivity	Ion exchange, reverse osmosis.

(ii) In addition, the Administrator hereby identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the radionuclides listed in § 141.66(b), (c), (d), and (e) of this chapter, for the purposes of issuing variances and exemptions to small drinking water systems, defined here as those serving 10,000 persons or fewer, as shown in Table C to this paragraph.

TABLE B.—LIST OF SMALL SYSTEMS COMPLIANCE TECHNOLOGIES FOR RADIONUCLIDES AND LIMITATIONS TO USE

Unit technologies	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range & considerations [1]
1. Ion exchange (IE)	(a)	Intermediate	All ground waters.
2. Point of use (POU [2]) IE	(b)	Basic	All ground waters.
3. Reverse osmosis (RO)	(c)	Advanced	Surface waters usually require pre-filtration.
4. POU [2] RO	(b)	Basic	Surface waters usually require pre-filtration.
5. Lime softening	(d)	Advanced	All waters.
6. Green sand filtration	(e)	Basic.	
7. Co-precipitation with barium sulfate	(f)	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/electrodialysis reversal		Basic to Intermediate	All ground waters.
9. Pre-formed hydrous manganese oxide filtration.	(g)	Intermediate	All ground waters.
10. Activated alumina	(a), (h)	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	(i)	Advanced	Can treat a wide range of water qualities.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

[2] A POU, or "point-of-use" technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000 NODA for more details.

Limitations Footnotes: Technologies for Radionuclides:

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR compliance technologies table.

[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

[h] Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i] Assumes modification to a coagulation/filtration process already in place.

TABLE C.—BAT FOR SMALL COMMUNITY WATER SYSTEMS FOR THE RADIONUCLIDES LISTED IN § 141.66

Contaminant	Compliance technologies [1] for system size categories (population served)		
	25–500	501–3,300	3,300–10,000
Combined radium-226 and radium-228	1, 2, 3; 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9.
Gross alpha particle activity	3, 4	3, 4	3, 4.
Beta particle activity and photon activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4.
Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11.

[1] **Note:** Numbers correspond to those technologies found listed in the table B to this paragraph.

(2) A State shall require community water systems to install and/or use any treatment technology identified in Table A to this section, or in the case of small water systems (those serving 10,000 persons or fewer), Table B and Table C of this section, as a condition for granting a variance except as provided in paragraph (a)(3) of this section. If, after the system's installation of the treatment technology, the system cannot meet the MCL, that system shall be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act.

(3) If a community water system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment technologies identified in this section would only achieve a de minimus reduction in the contaminant level, the State may issue a schedule of compliance that requires the system being granted the variance to examine other treatment technologies as a condition of obtaining the variance.

(4) If the State determines that a treatment technology identified under paragraph (a)(3) of this section is technically feasible, the Administrator or primacy State may require the system to install and/or use that treatment technology in connection with a compliance schedule issued under the provisions of section 1415(a)(1)(A) of the Act. The State's determination shall be based upon studies by the system and other relevant information.

(5) The State may require a community water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption from the requirements of § 141.66 of this chapter, to avoid an unreasonable risk to health.

(6) Community water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of § 141.66 of this chapter must meet the requirements specified in either § 142.62(g)(1) or § 142.62(g)(2) and (g)(3).

(7) Community water systems that use point-of-use or point-of-entry devices as a condition for obtaining a variance or an exemption from the radionuclides NPDWRs must meet the conditions in § 142.62(h)(1) through (h)(6).

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Federal Register

Thursday,
December 7, 2000

Part III

Department of Commerce

United States Patent and Trademark Office

37 CFR Part 1

Rules to Implement Optional Inter Partes Reexamination Proceedings; Final Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB04

Rules to Implement Optional Inter Partes Reexamination Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Patent and Trademark Office (the Office) is amending its rules of practice in patent cases to provide revised procedures for the reexamination of patents and thereby implement certain provisions of the American Inventors Protection Act of 1999. The American Inventors Protection Act of 1999 included an amendment to the Patent Act to authorize the extension of reexamination proceedings via an optional *inter partes* (multiparty) reexamination procedure in addition to the present *ex parte* (single party) reexamination procedure as a means for improving the quality of United States patents. The Office intends, through this amendment of its rules, to provide patent owners and the public with guidance on the procedures that the Office will follow in conducting optional *inter partes* reexamination proceedings in addition to the present *ex parte* reexamination proceedings.

The American Inventors Protection Act of 1999 also made other miscellaneous changes to the Patent Act which relate to reexamination, and it is intended that this amendment of the Office's rules will implement those changes relating to reexamination.

DATES: *Effective Date:* February 5, 2001.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Schor or Gerald A. Dost, Senior Legal Advisors. Kenneth M. Schor may be contacted (a) by telephone at (703) 305–1616; (b) by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, D.C. 20231, marked to the attention of Kenneth M. Schor; (c) by facsimile transmission to (703) 872–9408, marked to the attention of Kenneth M. Schor; or (d) by electronic mail message over the Internet addressed to *reexam.rules@uspto.gov* and titled "*Inter Partes* Reexamination." Gerald A. Dost may be contacted (a) by telephone at (703) 305–1616; (b) by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, D.C. 20231, marked to the attention of Gerald A. Dost; (c) by facsimile transmission to (703) 308–6916, marked to the attention of Gerald A. Dost; or (d) by electronic mail message over the Internet addressed to reexam.rules@uspto.gov and titled "*Inter Partes* Reexamination."

SUPPLEMENTARY INFORMATION:

Background

This final rule sets forth distinct procedures directed toward determining and improving the quality and reliability of United States patents. The procedures provide for the optional *inter partes* reexamination procedures in addition to the present *ex parte* reexamination procedures for the reexamination of patents as provided for by the American Inventors Protection Act of 1999 as part of the conference report (H. Rep. 106–479) on H.R. 3194, Consolidated Appropriations Act, Fiscal Year 2000. The text of the American Inventors Protection Act of 1999, is contained in title IV of S. 1948, the Intellectual Property and Communications Omnibus Reform Act of 1999 (Public Law 106–113), the Act which is incorporated by reference in Division B of the conference report. The procedures also provide for implementation of other miscellaneous changes to the reexamination of patents also provided for in Public Law 106–113.

In August 1995, the Office published proposed rules in anticipation of H.R. 1732, 104th Cong., 1st Sess. (1995), a predecessor of the present *inter partes* reexamination statute. H.R. 1732 did not, however, mature into a statute. The August 1995 Notice of Proposed Rulemaking entitled "Rules of Practice in Patent Cases; Reexamination Proceedings," was published in the **Federal Register** at 60 FR 41035 (August 11, 1995) and in the *Official Gazette* at 1177 Off. Gaz. Pat. Office 130 (August 22, 1995). Sixteen sets of written comments were received in response to the August 1995 Notice of Proposed Rulemaking. A public hearing was held at 9:30 a.m. on September 20, 1995. Eight individuals offered oral comments at the hearing.

In response to the 1999 Public Law 106–113, a notice of proposed rulemaking was published in the **Federal Register** on April 6, 2000, at 65 FR 18154–18186, and in the *Official Gazette* on May 23, 2000, at 1234 O.G. 93–123. The 2000 notice of proposed rulemaking addressed, and took into consideration, the comments received in response to the 1995 proposed rules. A public hearing was not held.

Discussion of General Issues Involved

This final rule is in response to Public Law 106–113, the Act which resulted from suggestions and comments to the Administration by the public, bar groups, and the August 1992 Advisory Commission on Patent Law Reform suggesting more participation in the reexamination proceeding by third party requesters. Under the *inter partes* reexamination rules set forth in this final rule notice, third party requesters will have greater opportunity to participate in reexamination proceedings in keeping with the spirit and intent of the new law. At the same time, participation will be limited to minimize the costs and other effects of reexamination requests on patentees, especially individuals and small businesses.

Ex parte reexamination proceedings filed under chapter 30 of 35 U.S.C. (both before and after the effective date, November 29, 1999, of the new law) will continue to be governed by 37 CFR 1.510–1.570. The final rules for optional *inter partes* reexamination proceedings under chapter 31 of 35 U.S.C. have been numbered 37 CFR 1.902–1.997.

The effective date of the statute with respect to the optional *inter partes* reexamination proceedings as well as to the existing *ex parte* reexamination proceedings is complex. With the exception of the amendments to 35 U.S.C. 41(a)(7) directed to the revival of terminated *ex parte* and *inter partes* reexamination proceedings, the new statute and the conforming amendments to the present statute take effect on the date of enactment, November 29, 1999. The changes, however, only apply to a reexamination of a patent that issues from an original application which was filed in the United States on or after November 29, 1999. Thus, for *inter partes* reexaminations, the effective date language (in section 4608 of S. 1948) limits the applicability of the new *inter partes* reexamination chapter 31 of 35 U.S.C., and that of the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, to any patent that issues from an original application filed in the United States on or after November 29, 1999, the effective date of Public Law 106–113. For *ex parte* reexaminations filed under chapter 30 of 35 U.S.C., the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, apply only to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application that is filed in the United States on or after November 29, 1999. The conforming amendments to 35 U.S.C. 134, 141, 143 and 145, correspondingly, will not apply to *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application filed in the United States prior to November 29, 1999. An "original application" filed in the United States prior to November 29, 1999, is defined in the notice entitled "Guidelines Concerning the Implementation of Changes to 35 U.S.C. 102(g) and 103(c) and the Interpretation of the Term 'Original Application' in the American Inventors Protection Act of 1999" which notice was published in the *Official Gazette* at 1233 Off. Gaz. Pat. Office 54 (April 11, 2000). The phrase "original application" is interpreted to encompass utility, plant and design applications, including first filed applications, continuations, divisionals, continuations-in-part, continued prosecution applications and the national stage phase of international applications. Therefore, the optional *inter partes* reexamination, and the application of the conforming amendments to 35 U.S.C. 134, 141, 143 and 145 for both *inter partes* and *ex parte* reexamination proceedings is applicable to patents which issue from all applications (except for reissue applications) filed on or after November 29, 1999. A patent which issues from an application filed prior to November 29, 1999, with a request for continued examination (defined in section 4403 of the Act) made on or after May 29, 2000, however, is not eligible for the optional *inter partes* reexamination procedure nor application of the conforming amendments discussed above, because a request for continued examination is not a filing of an application.

The conforming amendments also amend 35 U.S.C. 41(a)(7) to include the words "any reexamination proceeding" under the "unintentional" revival provisions of the statute to provide the patent owner with a remedy for an unintentionally delayed response in any reexamination proceeding. These words "any reexamination proceeding" clearly make this section applicable to both *ex parte* reexaminations and *inter partes* reexaminations. The effective date of this amendment to 35 U.S.C. 41(a)(7) is one year after the date of enactment of the Act, or November 29, 2000. See section 4608 of S. 1948. Thus, as of November 29, 2000, any *ex parte* or *inter partes* reexamination filed before, on, or after November 29, 2000, is subject to the "unintentional" revival provisions of the statute.

Regarding the reexamination fee, 35 U.S.C. 41(d) requires the Commissioner of the United States Patent and Trademark Office (the Commissioner) to set the fee for the new optional *inter partes* reexamination at a level which will recover the estimated average cost of the reexamination proceeding to the Office. The estimated average cost is $8,800 for an *inter partes* reexamination proceeding. The difference in the cost between an *ex parte* reexamination ($2,520) and an *inter partes* reexamination ($8,800) takes into account that the Office will expend substantially more resources for examination, supervision, training, etc., where the third party requester participates in an *inter partes* reexamination proceeding, and takes into account the additional processing steps that are expected during an *inter partes* reexamination proceeding.

Discussion of the Major Specific Issues Involved (1999 Statute)

The rules relating to *inter partes* reexamination proceedings are directed to the provisions set forth in chapter 31 of title 35 of the United States Code (35 U.S.C. 311–318). This Chapter provides for the filing of requests for *inter partes* reexamination, decisions on such requests, *inter partes* reexamination, appeal from *inter partes* reexamination decisions, and the issuance of a certificate at the termination of the *inter partes* reexamination proceedings.

This final rule contains a number of changes to the text of the rules that were proposed for comment. The significant changes (as opposed to grammatical corrections) are discussed below. Familiarity with the Notice of Proposed Rulemaking is assumed.

Section 4732 of the American Inventors Protection Act of 1999 changed (among other things) the title "Commissioner" to "Director." In the Notice of Proposed Rulemaking the title "Commissioner" was revised to read "Director" in the current rules, or portions of the current rules, that were proposed to be amended; and in the proposed new rules the new title "Director" was used in place of the former title "Commissioner." In this final rule, however, the title "Commissioner" is not being changed to "Director" where it appears in the current rules of practice involved in this final rule, and the title "Commissioner" and not "Director" is used in the new rules adopted in this final rule. This is because legislation is pending before Congress that (if enacted) would restore the former title "Commissioner." *See* Intellectual Property Technical Amendments Act of 2000, H.R. 4870, 106th Cong. (2000).

The USPTO received 10 sets of written comments (from Intellectual Property Organizations, Law Firms, Businesses and Patent Practitioners) in response to the Notice of Proposed Rulemaking. The written comments have been analyzed. General comments are addressed as a group separately from the specific rules. Comments directed to specific rules and the response to each comment are provided with the discussion of the specific rule. Comments in support of proposed rules generally have not been reported in the responses to comments section.

Discussion of General Comments

General Comment 1: Examiner Assignment (selection of examiner)

Two comments were received directed to the selection of the examiner who will be assigned the *inter partes* reexamination. One comment suggested that the "rules" rather than policy should provide that an *inter partes* reexamination be handled by an examiner other than the one who originally examined the application.

The second comment expressed support for the Office's announced intention to adopt a policy that a different examiner, other than those actually involved in the examination and issuing of the patent, will be assigned the *inter partes* reexamination.

Response to General Comment 1

The Office's intention to adopt a policy that a different examiner, other than those actually involved in the examination and issuing of the patent, will be assigned the *inter partes* reexamination was announced in the proposed rules. *See* Notice of proposed rulemaking, Rules to Implement Optional Inter Partes Reexamination Proceedings, 65 FR 18154, 18157–58 (April 6, 2000), 1234 OG 93, 96 (May 23, 2000), Response to Issue 4, first paragraph. As noted therein, studies conducted by the Office as to the selection of the examiner have not shown any examiner bias irrespective of whether the same or a different examiner handles the reexamination. The same examiner should not be biased toward confirming patentability, because a reexamination is not a rehash of old issues, but rather, the resolution of a new question of patentability. In spite of these findings, the Office is, for the most part, adopting the comments suggesting assignment of the reexamination to an examiner other than the one who originally examined and issued the patent. The new policy is being adopted in order to eliminate any perception by the public of bias by the original examiner who handled the patent. The change in the manner of examiner selection, however, will be implemented as a matter of policy,

rather than by rule change. Specific guidance as to policies, practice and procedure as they will apply to examiner selection in *inter partes* reexamination proceedings will be forthcoming in a separate *Official Gazette* notice to be published in conjunction with the final rules on *inter partes* reexamination.

General Comment 2: Panel Review of Examiner Actions

Two comments were received directed to the review of the examiner's actions during the examination process. One comment expressed support for the Office's announced intention to adopt a policy to hold a panel review of the examiner's proposed action at selected times during the examination. The comment suggested that such a review, however, be conducted of each action by the examiner that includes an action on the merits of the claims rather than the announced intention of holding such a review just prior to the decision to order reexamination and at the close of prosecution.

The second comment expressed support for the proposed policy for better review of the (single) examiner's decision during the reexamination. The comment, however, erroneously identified the announced change in policy as a rule proposal.

Response to General Comment 2

The Office's intention to adopt a policy to hold a patentability review conference (panel review) during the examination process was announced in the proposed rules. *See* Notice of proposed rulemaking, Rules to Implement Optional Inter Partes Reexamination Proceedings, 65 FR 18154, 18158 (April 6, 2000), 1234 OG 93, 96 (May 23, 2000), Response to Issue 4, last paragraph. It was noted therein that, in order to provide a thorough review by a team of examiners, a practice was being considered to hold a panel review just prior to when the decision on the request for reexamination (order/denial) is issued and at the close of prosecution (*i.e.*, just prior to "allowance" of the reexamination or just prior to issuing a right of appeal notice and final rejection). The panel review would be similar to the appeal conference review done in an application on appeal to the Board of Patent Appeals and Interferences. Upon reconsideration, it has been decided that a panel review will not be conducted just prior to the decision on the request for reexamination (order/denial) and just prior to the "allowance" of the reexamination, *i.e.*, issuance of a Notice of Intent to Issue a Reexamination Certificate (NIRC). A panel review is not necessary at the time of the initial determination to order/deny the request for *inter partes* reexamination. If reexamination is ordered, prosecution proceeds, and both the patent owner and the third party requester will have the opportunity to address the position of the examiner set forth in the first Office action. Further, patentability panel reviews will be conducted later in the examination of the case. If the reexamination request is denied, the third party requester has the opportunity under § 1.927 to request a *de novo* review by the TC Group Director of the examiner's decision denying reexamination. A panel review is not necessary at the time of the "allowance" of the reexamination because the "allowance" of the reexamination in an *inter partes* reexamination proceeding is essentially a ministerial act performed (a) after patent owner fails to respond to an Office action and no claims have been found patentable, (b) after a "right of appeal notice and final rejection" is issued, where neither party timely appeals (or the appeal is dismissed), or (c) after a final decision by the Board of Patent Appeals and Interferences or the court where no further appeal is timely taken. Accordingly, no panel review is needed just prior to the decision on the request for reexamination (order/denial) and just prior to issuance of the NIRC. Rather, the two panel reviews will be held at the critical stages of the proceeding or just prior to issuing an action closing prosecution and just prior to issuing a right of appeal notice and final rejection. Specific guidance as to policies, practice and procedure as they will apply to panel review of examiner's actions in *inter partes* reexamination proceedings will be forthcoming in a separate Official Gazette Notice to be published in conjunction with the final rules on *inter partes* reexamination.

It should further be noted that appeal conferences are already mandatory in *ex parte* reexamination proceedings just prior to issuance of an examiner's answer to an appeal to the Board of Patent Appeals and Interferences. Such appeal conferences will also be mandatory in *inter partes* reexamination proceedings. The two patentability panel reviews coupled with the appeal conference will provide three instances of multi-examiner reviews available in any *inter partes* reexamination proceeding which is prosecuted to the appeal stage.

As to the first comment's suggestion that a panel review be conducted of "each" action by the examiner that includes an action on the merits of the claims, the Office plans to provide oversight by a legal advisor for each such action (as discussed below in general comment 3) in order to ensure that the examiner addresses each issue presented by parties to the proceeding. This oversight, coupled with the three multi-examiner reviews available in any *inter partes* reexamination proceeding which is prosecuted to the appeal stage, should ensure a high-quality, multi-dimensional examination of the proceeding.

As to the second comment supporting the "rule proposal" for better review of the examiner's decisions, it should be noted that a "rule" was not proposed for implementation of this practice. The Notice of Proposed Rulemaking stated the practice would be implemented as a matter of policy rather than by rule.

General Comment 3: Where Reexamination is Conducted in Office

Three comments were directed to where in the Office, and by whom, the reexamination will be conducted. The first comment suggested that the *inter partes* reexamination proceeding should be conducted by a council system comprising experienced examiners.

The second comment suggested that a special Reexamination Corps be established for conducting the *inter partes* reexamination proceeding. The examiners in the special Reexamination Corps would have an independent status such as that of the members of the Board of Patent Appeals and Interferences.

The third comment expressed support for the Office's announced intention to consider the creation of a special group of legal advisors to assist the patent examiner in an *inter partes* reexamination proceeding.

Response to General Comment 3

As to the first and second comments suggesting a council system of multiple examiners, or a special "Board" status for the examiner, the comments are not adopted in view of the Office's intention to provide oversight by legal advisors as set forth below.

The third comment supports oversight of the examiners by legal advisors consistent with the Office's intention as announced in the proposed rules. *See* Notice of Proposed Rulemaking, Rules to Implement Optional Inter Partes Reexamination Proceedings, 65 FR 18154, 18158 (April 6, 2000), 1234 OG 93, 96 (May 23, 2000), Response to Issue 4, second paragraph. As noted therein, the Office is considering the creation of a special group/unit having legal advisors trained in *inter partes* reexamination procedures to oversee the examination of the *inter partes* reexamination by the patent examiner in the examining group. For technical expertise, an examiner selected from the examining group will be assigned the reexamination. The advantage of providing oversight to ensure timely, full, and appropriate treatment of all issues is that it will include (a) an examiner familiar with the technology to make the patentability decisions, and (b) legal advisors to provide uniformity of the reexamination practice and procedure. Specific guidance as to policies, practice and procedure as they will apply to policy oversight of examiner's actions in *inter partes* reexamination proceedings will be forthcoming in a separate *Official Gazette* notice to be published in conjunction with the final rules on *inter partes* reexamination.

General Comment 4: Definition of the Statutory Term "Privies"

One comment was received directed to the statutory term "privies." The term is used in 35 U.S.C. 317 to dictate which parties are prohibited from filing a reexamination, based upon action by other parties with whom they are in privity. The comment states that this important statutory term is not defined in either the statute or the rules, and is dangerously ambiguous without a definition.

Response to General Comment 4

To the extent that the comment proposed that "privies" be defined in the rules package, it is not adopted. The Office, as the sole agency that administers the patent statute, properly interprets statutory language in the first instance, subject to review by the courts. The question of whether a party is a privy must be decided on a case-by-case basis, evaluating all the facts and circumstances of each individual situation. It would not be appropriate at this time to provide an "all encompassing" definition, that might not account for facts which could arise in the future, which facts cannot be anticipated.

It should be noted that the Office generally will not have a need to resolve the factual issue of whether or not one party is a privy of another party. Section 1.915(b)(7) requires a third party requester to certify that the estoppel provisions of § 1.907 do not prohibit the filing of the *inter partes* reexamination request, and the Office does not intend to look beyond this required certification. It is only in the rare instance where a challenge to the accuracy of the certification is raised by the patent owner, that the question would then need to be addressed.

General Comment 5: Incorporation of Certain Case Law Into the Rules

One comment asked whether the rules would codify the case law relating to claim construction, claim scope, the burden of establishing facts and the burden of persuasion (and their standards) as they apply to reexamination.

Response to General Comment 5

The comment is not adopted. The rules will not state how the Office should view claim construction, claim scope, the burden of establishing facts and the burden of persuasion (and their standards) in reexamination. Rather, the Office's view of these issues and other like issues will continue to track the case law which is a continually evolving body of law. Instructions to the examiner on these issues will continue to be provided in *Official Gazette* Notices and in the Manual of Patent Examining Procedure.

Discussion of Specific Rules and Response to Comments

Section 1.4(a)(2) is being amended to include *inter partes* reexamination under §§ 1.902–1.997. No comment was received on this section. It is adopted as proposed.

Section 1.6(d)(5) is being amended to include filing a request for *inter partes* reexamination under § 1.913 as an exception to the use of facsimile transmission. No comment was received on this section. It is adopted as proposed.

The Notice of Proposed Rulemaking included a proposed amendment to § 1.17 to implement § 4605(a) of the American Inventors Protection Act of 1999. This proposed amendment has, however, already been made in the final rule to implement eighteen-month publication of patent applications. See Changes to Implement Eighteen-Month Publication of Patent Applications, Final Rule, 65 FR 57024 (September 20, 2000); 1239 Off. Gaz. Pat. Office 63 (October 10, 2000). Accordingly, it is no longer necessary to make that amendment of the rule in the present *inter partes* reexamination rule package. Section 1.17 was amended in the final rule to implement eighteen-month publication so that the title includes a reference to reexamination to clearly indicate that the enumerated fees may apply to reexaminations as well as to patent applications. Section 1.17(l) was amended to reflect the fact that in the case of reexaminations, petitions for revival of a reexamination proceeding terminated for an unavoidable failure of the patent owner to timely respond will require the fees of $55 for a small entity and $110 for a large entity. Also, § 1.17(m) was amended to reflect the fact that in the case of reexaminations, petitions for revival of a reexamination proceeding terminated for an unintentional failure to timely respond will require the fees of $605 for a small entity and $1,210 for a large entity. Note, however, that the unintentional revival provisions of the statute are not effective in any reexamination until November 29, 2000. No comment was received on this section. Sections 1.17(l) and (m) as proposed in the Notice of Proposed Rulemaking for the present rule package were adopted in the final rule to implement eighteen-month publication of patent applications.

Section 1.20(c) is being amended to reflect the fact that a request for an *ex parte* reexamination under § 1.510(a) will require a filing fee of $2,520; and that a request for an *inter partes* reexamination under § 1.915(a) will require a filing fee of $8,800. For any request for *inter partes* reexamination filed prior to the effective date of this final rule, the request must be accompanied by the $2,520.00 fee for a request for reexamination set forth in § 1.20(c) (as in effect prior to the effective date of this final rule). The $6,280.00 balance of the $8,800.00 fee set forth in § 1.20(c)(2) will be due on the effective date of this final rule in any *inter partes* reexamination still pending on the effective date of this final rule. Three comments were received and directed to this section.

Comments: The first comment noted that the Office reduced the filing fee of $11,000, proposed in the 1995 proposed rules, to $8,800 in the 2000 Notice of Proposed Rulemaking, but gave no explanation for the reduction. The comment opines that the reason for the reduction was the many objections to the high fee. The comment recommends that the Office consider further reducing the fee or at least make arrangements for conducting a review of the actual costs involved in *inter partes* reexaminations after the procedure has been in effect for a reasonable amount of time.

The second comment suggested that considering the advantages and disadvantages to the third party requester involved in reexamination, the *inter partes* reexamination is not significantly more advantageous to the third party requester than is *ex parte* reexamination. The comment noted the difference between the $2,520 fee for *ex parte* reexamination and the $8,800 fee for *inter partes* and opined that the high fee will severely curtail the use of *inter*

partes reexamination. The comment suggested the third party requester should not be burdened with the full cost of *inter partes* reexamination, and that an appropriate reexamination filing fee would be less than $4,000.

The third comment suggested the $8,800 *inter partes* reexamination filing fee will be an effective barrier to an intended aim of *inter partes* reexamination, *i.e.*, to provide a viable alternative to the great cost and uncertainty of patent litigation.

Response to Comment: The first comment speculates as to why the filing fee was reduced from $11,000 as proposed in the 1995 Notice of Proposed Rulemaking to $8,800 as proposed in the 2000 Notice of Proposed Rulemaking. The fee was readjusted when, upon further analysis, the Office realized that the proposed $11,000 fee should not have included projected costs incurred by the Board of Patent Appeals and Interferences and the Solicitor's Office. Appeal fees are set by statute under 35 U.S.C. 41(a)(6) and thus are not cost recoverable as part of the reexamination filing fee under 35 U.S.C. 41(d). Accordingly, the proposed filing fee was adjusted downwardly.

As to the first comment suggesting re-evaluating the filing fee after the procedure has been in effect for a reasonable amount of time, this is required by statute. Section 4606 of S. 1948 requires the Commissioner. not later than November 29, 2004, to submit to the Congress a report evaluating whether the *inter partes* reexamination proceedings established by this legislation is inequitable to any of the parties. Such evaluation would include an analysis of the filing fee, and its burden on the third party requester.

The second comment suggests (1) that the third party requester should not be burdened with the full cost of the *inter partes* reexamination, and (2) that a reduced fee of less than $4,000 be set. The statute, however, requires that the third party requester pay the reexamination filing fee established by the Commissioner in accordance with 35 U.S.C. 41(d). Further, the reexamination fees must under 35 U.S.C. 41(d) fully recover the cost of the reexamination and the full amount of the estimated fee must be charged.

As to the second and third comments asserting that the high fee would severely curtail the use of *inter partes* reexamination, it is noted that the overall costs of requesting and participating in an *inter partes* reexamination would include, in addition to the $8,800 filing fee, the attorney/agent fees throughout the proceeding (including appeal costs) and other prosecution-related costs (testing, declarations, etc.). *Inter partes* reexaminations will be hotly-contested, adversarial proceedings. The estoppel provisions of the statute will maximize the third party requester's incentives to prevail in the reexamination. The overall cost of such proceedings to the third party requester could easily reach $50,000 to $150,000, the amount varying depending on variables such as parties, number of claims, type of evidence needed, etc. The $8,800 filing fee is not perceived to be excessive in light of the potential overall cost of an *inter partes* reexamination proceeding, and thus the filing fee would not in itself be a deterrent to the filing of a request for *inter partes* reexamination. In those instances where a member of the public deems the $8,800 cost of an *inter partes* reexamination too high for his or her needs or purposes, the filing of an *ex parte* reexamination remains available at a relatively low filing fee of $2,520. The comments are not adopted, and the section is adopted as proposed.

Section 1.25(b), which provides for charging fees to deposit accounts, is being amended to include a reference to *inter partes* reexaminations under § 1.913. No comment was received on this section. It is adopted as proposed.

Section 1.26 is being amended so as to reflect the refund to the reexamination requester where the Commissioner decides not to institute a reexamination proceeding. For *ex parte* reexaminations filed under § 1.510, a refund of $1,690 will be made to the reexamination requester. For *inter partes* reexaminations filed under § 1.913, a refund of $7,970 will be made to the reexamination requester. In both cases, $830 of the filing fee will be retained, which amount reflects the estimated average cost of the reexamination proceeding through the denial of the reexamination request. No comment was received on this section. It is adopted as proposed.

Section 1.112 is being amended to also provide that after the patent owner response under § 1.945 and the third party requester comments under § 1.947, the patent undergoing *inter partes* reexamination will be reconsidered and again examined: Section 1.112 is being further amended so that the last sentence reflects the fact that in the case of *inter partes* reexaminations, the right to reply may be limited by an action closing prosecution under § 1.949 (prior to the final action) or by a right of appeal notice under § 1.953 (which is a final action). No comment was received on this section. It is adopted as proposed.

Sections 1.113 and 1.116. Section 1.113, which provides for a final rejection or action, is being amended to limit its applicability to applications and *ex parte* reexaminations filed under § 1.510. For final rejections or actions in an *inter partes* reexamination filed under § 1.913, new § 1.953 will control. Section 1.116 is being amended so that the title includes a reference to an action closing prosecution and a right of appeal notice in *inter partes* reexaminations. Section 1.116(b), which provides for amendments after final action, is being amended to apply to amendments filed by the patent owner after an action closing prosecution in *inter partes* reexaminations filed under § 1.913. Also, § 1.116(b) is being amended to preclude amendments after the right of appeal notice under § 1.953 except as provided for in § 1.116(d). Section 1.116(d), which provides for amendments after the decision on appeal, is being amended to provide for amendments after the decision on appeal in an *inter partes* reexamination. One comment was directed to these sections.

Comment: The comment notes that the proposed amendments to §§ 1.113 and 1.116 are based on a version of those rules that is no longer in effect. Sections 1.113 and 1.116 were amended by virtue of the May 29, 2000 interim rule published March 20, 2000, at 65 FR 14865 to refer, *inter alia*, to the new § 1.114 and requests for continued examination. The comment suggests that it is not the intent of the reexamination rules to obviate the changes made by the May 29, 2000, interim rule and therefore the changes made by the reexamination rules should be based on the language of §§ 1.113 and 1.116 as amended by the interim rule of May 29, 2000.

Response to Comment: The comment is adopted. The final rules of this package have been revised to amend the most current version of the rules of practice.

Section 1.121(i), which provides for the manner of making amendments to the description and claims in reexamination proceedings, is being amended to specify that such amendments are made in accordance with §§ 1.530(d)—(j) in both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913. No comment was received on this section. It is adopted as proposed, other than to change the subsection designations for conformance with the most current version of the rules of practice as needed.

Sections 1.136(a)(2) and (b), which provide for filing extensions of time in applications, are being amended to make it clear that § 1.956 is controlling for extensions of time in *inter partes* reexaminations. No comment was received on this section. It is adopted as proposed.

The notice of proposed rulemaking included a proposed amendment to § 1.137 to implement § 4605(a) of the American Inventors Protection Act of 1999. This proposed amendment has, however, already been made in the final rule to implement eighteen-month publication of patent applications. See Changes to Implement Eighteen-Month Publication of Patent Applications, Final Rule, 65 FR 57024 (September 20, 2000); 1239 Off. Gaz. Pat. Office 63 (October 10, 2000). Accordingly, it is no longer necessary to make that amendment of the rule in the present *inter partes* reexamination rule package. Section 1.137, which provides for revival of abandoned applications or lapsed patents, was amended in the final rule to implement eighteen-month publication to provide for revival of *ex parte* reexamination proceedings terminated under § 1.550(d), for revival of *inter partes* reexamination proceedings terminated under § 1.957(b), or for revival of rejected claims terminated under § 1.957(c) in an *inter partes* reexamination proceeding where further prosecution has been limited to claims found allowable at the time of the failure to respond.

In the final rule to implement eighteen-month publication, the title was amended to include a terminated reexamination proceeding. Section 1.137(a) was amended to include revival of unavoidably terminated reexamination proceedings. The unavoidable delay provisions of 35 U.S.C. 133 are imported into, and are applicable to, reexamination proceedings by 35 U.S.C. 305 and 314. See In re Katrapat, 6 USPQ2d 1863, 1865 (Comm'r Pat. 1988). Section 1.137(b) was amended to provide for revival of unintentionally terminated reexamination proceedings. The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to all reexamination proceedings by section 4605 of S. 1948. Note that these changes pertain to *all* reexaminations (*i.e.*, both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913) and were stated by statute to become effective on November 29, 2000 (one year after enactment of the statute). Section 1.137(d) was amended to provide that extensions of time for requesting reconsideration of a decision dismissing or denying a petition requesting revival of a terminated reexamination proceeding under §§ 1.137(a) or (b) must be filed under § 1.550(c) for a terminated *ex parte* reexamination proceeding, or under § 1.956 for a terminated *inter partes* reexamination proceeding. No comment was received on this section. Section 1.137 was adopted in the final rule to implement eighteen-month publication of patent applications in the manner as proposed in the notice of proposed rulemaking for the present rule package.

Sections 1.181(a) and (c) are being amended to reflect the fact that a petition thereunder may be filed in both *ex parte* and *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

Section 1.191, which provides for appeal to the Board of Patent Appeals and Interferences by the patent owner from any decision adverse to patentability, is being amended so as to be applicable to applications and *ex parte* reexaminations filed under § 1.510 but not to *inter partes* reexamination proceedings filed under § 1.913. Specifically, § 1.191 points out that appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981, and that §§ 1.191 through 1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913. No comment was received on this section. It is adopted as proposed.

Section 1.191 is further being amended to distinguish between (1) *ex parte* reexamination proceedings filed under § 1.510 for reexamination of patents that issued from an original application filed prior to November 29, 1999 (where an appeal is permitted when claims have been twice or finally rejected), and (2) *ex parte* reexamination proceedings filed for reexamination of patents that issued from an original application filed on or after November 29, 1999 (where an appeal is only possible when claims have been finally rejected and is not possible where claims have been twice rejected but not finally rejected). This date distinction is necessitated by the effective date of the conforming amendments made to 35 U.S.C. 134 in S. 1948 being keyed to the original filing date of the application which issued as the patent under reexamination. The effective date language in section 4608 of S. 1948 limits the applicability of the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, to a reexamination of a patent that issues from an original application which is filed on or after November 29, 1999. Thus, the conforming amendments to 35 U.S.C. 134, 141, 143 and 145 apply only to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed on or after November 29, 1999. The conforming amendments do not apply to *ex parte* reexamination proceedings filed under § 1.510 for patents that have issued or will issue from an original application which was filed prior to November 29, 1999. No comment was received on this section. It is adopted as proposed.

Section 1.301, which provides for appeal by the patent owner in a reexamination proceeding to the U.S. Court of Appeals for the Federal Circuit, is being amended to be applicable to *ex parte* reexamination proceedings filed under § 1.510 and also to indicate, that for *inter partes* reexamination proceedings filed under § 1.913, § 1.983 is controlling. No comment was received on this section. It is adopted as proposed.

Section 1.303(a) and (b), which provide for remedy by civil action under 35 U.S.C. 145 for the patent owner in a reexamination proceeding, are being amended so as to be applicable only to *ex parte* reexaminations filed under § 1.510 for patents that issue from an original application which is filed prior to November 29, 1999. This date distinction is necessitated for reasons analogous to those set forth in the discussion of § 1.191 above. Section 1.303 is further amended by adding a new subsection (d) to clearly note that no remedy by civil action under 35 U.S.C. 145 is available to the patent owner for *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed on or after November 29, 1999, and for any *inter partes* reexamination proceedings filed under § 1.913. No comment was received on this section. It is adopted as proposed.

Section 1.304, which provides for the time for appeal by the patent owner in a reexamination proceeding to the U.S. Court of Appeals for the Federal Circuit, is being amended so as to make it applicable to *inter partes* reexamination proceedings filed under § 1.913. No comment was received on this section. It is adopted as proposed.

The section heading (title) to subpart D and the undesignated center headings for subpart D are being amended by inserting "*Ex Parte*" before "Reexamination" to provide that the reexamination rules in this subpart generally apply to *ex parte* reexamination proceedings. Where an *ex parte* rule also applies to *inter partes*

reexamination, it is explicitly incorporated by reference into the *inter partes* reexamination rules, *e.g.*, § 1.933 (patent owner duty of disclosure) incorporates § 1.555; and § 1.943 (requirement of responses, comments and briefs) incorporates §·1.52. No comment was received on these changes. They are adopted as proposed.

Section 1.501(a), which provides for citations of prior art in patent files, is being amended to provide that a citation shall be entered in the patent file except as set forth in § 1.502 (newly created) and § 1.902. Section 1.501(a) is further amended by deleting the criteria for the processing of a prior art citation filed during an *ex parte* reexamination, and moving that criteria to § 1.502 newly created for that purpose. One comment was received directed to § 1.501.

Comment: The comment suggests the Office should re-address the prohibition on a third party from submitting prior art patents and printed publications for entry into an *ex parte* reexamination proceeding after the order to reexamine has been mailed with the prohibition applying, even where the prior art was unavailable to a third party requester at the time the *ex parte* request was filed, or known only to another member of the public. The comment argues that the present system which requires the third party to file another *ex parte* request for reexamination (which includes the new prior art) and that merger of the reexamination proceedings is a cumbersome, burdensome and time-delaying system as compared to, for example, simply permitting the entry of the new prior art and providing for one more reexamination Office action and response for new prior art found to be relevant.

Response to Comment: When promulgating the reexamination rules in 1981, it was the position of the Office that an *ex parte* proceeding best served the interests of all, and best complied with the intent of the 1980 statute. To preserve the *ex parte* nature of the proceeding, it was decided that consideration of citations of prior art submitted after the reexamination order will be delayed until the reexamination proceeding has terminated, unless the citation is submitted by the patent owner or a third party requester in a separate reexamination request or in a reply to the patent owner's statement. While the filing of a separate request for reexamination can add some delay to the proceeding, this delay would not be extensive. In contrast, permitting a third party to file citations at any time for consideration by the examiner could seriously delay the reexamination proceeding and militate against the "special dispatch" requirement of the statute.

New § 1.502 provides for the processing of prior art citations submitted during an *ex parte* reexamination proceeding. The substance of § 1.502 was previously contained in § 1.501(a), but was separated out as a new section for clarity. Once *ex parte* reexamination has been ordered, only citations by the patent owner under § 1.555 and by a third party requester in a filing under either § 1.510 or § 1.535 will be entered during the pendency of the reexamination proceeding. Citations by other parties (who are not a party to the reexamination) filed during the pendency of the reexamination proceeding will not be entered into the patent file or the reexamination file until the reexamination proceeding is concluded unless made as a part of a request for reexamination under § 1.510.

The titles of §§ 1.510–1.570 are being amended by revising them to be limited to *ex parte* reexamination where applicable. No comment was received on these changes. They are adopted as proposed.

Section 1.510(a) is being amended to limit the section to *ex parte* reexamination proceedings. The notice of proposed rulemaking included a proposed amendment to § 1.510(b)(4) which relates to the contents of the reexamination request. This proposed amendment has, however, already been made in the final rule to implement the Patent Business Goals. See Changes to Implement the Patent Business Goals, Final Rule, 65 FR 54604 (September 8, 2000); 1238 Off. Gaz. Pat. Office 77 (September 19, 2000). Section 1.510(b)(4) was amended to delete the requirement of mounting the copy of the patent to be reexamined in single column format. Instead, a copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent will be required. All copies must have each page plainly written on only one side of a sheet of paper. Section 1.510(b)(4) is now being revised so that it applies to both *ex parte* reexamination and *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

Sections 1.515, 1.520, 1.525, 1.530, 1.535, and 1.540 are being amended to recite the reexamination as "*ex parte*" reexamination where appropriate, to eliminate any potential for confusion. No comment was received on these changes. They are adopted as proposed.

Section 1.530(d) is being revised so that it (and §§ 1.530(e)–(k)) apply to both *ex parte* reexamination and *inter partes* reexamination proceedings. No comment was received on this section: It is adopted as proposed.

A new § 1.530(l), directed to correction of inventorship of a patent, was added in the final rules to implement the Patent Business Goals. *See* Changes to Implement the Patent Business Goals, Final Rule, 65 FR 54604 (September 8, 2000); 1238 Off. Gaz. Pat. Office 77 (September 19, 2000). Section 1.530(l) is now being revised so that it applies to both *ex parte* reexamination and *inter partes* reexamination proceedings. Section 1.530(l) is also being revised to state "on petition of all the parties set forth in § 1.324(b)(1)–(3)" rather than "on petition of all the parties" to make it clear that all "parties" to the proceeding (*e.g.*, an *inter partes* reexamination third party requester) need not, and should not, join in the petition to correct inventorship.

Section 1.550, which provides for the conduct of the reexamination proceeding, is being amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.550(d) is being amended to clarify that the failure to file a written statement of an interview as required under § 1.560(b) shall be the basis for terminating a reexamination proceeding. Section 1.550(e)(1) specifically provides for the revival of terminated *ex parte* reexamination proceedings under the unavoidable delay provisions of § 1.137(a). The unavoidable delay provisions of 35 U.S.C. 133 are imported into and are applicable to *ex parte* reexamination proceedings by 35 U.S.C. 305. Section 1.550(e)(2) provides for the revival of terminated *ex parte* reexamination proceedings under the "unintentional" provisions of § 1.137(b). The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to *ex parte* and *inter partes* reexamination proceedings by section 4605 of S. 1948. Note, however, that the unintentional delay provisions of 35 U.S.C. 41(a)(7) only become effective in reexamination proceedings on November 29, 2000 (one year after enactment of the statute). No comment was received on this section. It is adopted as proposed.

Section 1.552, which provides for the scope of reexamination in *ex parte* reexamination, is being amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.552(a) and (b) are being amended to more clearly specify that all of the claims (new claims and amended patent claims) will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112. Sections 1.552 and 1.906 of the present rule package were drafted to parallel the text of § 1.906 as it was presented in the August 1995 Notice of Proposed Rulemaking entitled "Rules of Practice in Patent Cases; Reexamination Proceedings." Section 1.552(c) is further being amended to preclude the examiner from independently discovering and noting issues other than those indicated in §§ 1.552(a) and (b). In this regard, § 1.552(c) is being amended by changing the phrase "If such questions are discovered during a reexamination proceeding," to now read "If such issues are raised by the patent owner or third party requester." The examiner should only note an issue under § 1.552(c) after careful consideration, and should only note the raised issue once. Patent owners could then file a reissue application if they wish such issue to be resolved. It would not be appropriate for the examiner *sua sponte* to raise issues directed to the patentability of a claim of a patent which may not be resolved in the reexamination. No comment was received on this section. It is adopted as proposed.

Section 1.555, which sets forth the patent owner's duty of disclosure in reexamination, is being amended to clearly apply to both *ex parte* and *inter partes* reexaminations. In addition, § 1.552(c) is being amended to preclude the examiner from independently discovering and noting issues relating to patent owner's compliance with its duty of disclosure. In this regard, § 1.552(c) is being amended by changing the phrase "If questions of compliance with this section are discovered during a reexamination proceeding, * * *" to now read "If questions of compliance with this section are raised by the patent owner or third party requester during a reexamination proceeding, * * *." It would not be appropriate for the examiner *sua sponte* to raise issues directed to the issue of patent owner's compliance with its duty of disclosure which may not be resolved in the reexamination. No comment was received on this section. It is adopted as proposed.

Section 1.560, which provides for interviews in reexamination proceedings, is being amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. Note, however, that there will be no interviews which address the issues of the proceeding permitted in *inter partes* reexamination proceedings under § 1.913. See § 1.955. In addition, § 1.560(b) is being amended to clarify that the patent owner must file a written statement of an interview after an interview is held. The written statement may be filed either as a separate paper within one month after the date of the interview, or as a separate part of a response to an outstanding Office action, whichever is later. One comment was received and directed to this section.

Comment: The comment suggests that when reexamination is requested by a third party, there is usually litigation directed to the patent for which reexamination is requested involving severely conflicting interests between the patent owner and the third party requester. The comment asserts that during reexamination, the examiner is required to maintain neutrality, and therefore the scope of the interview should be limited to that needed to deepen the examiner's understanding of the technology and to clarify points of contention and that the examiner should be prohibited from discussing amendment proposals during an interview with the patent owner.

Response to Comment: The statute, 35 U.S.C. 305, provides that reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In a very real sense, the intent of reexamination is to start over and reexamine the patent and examine new and amended claims as they would have been examined in the original application of the patent. Section 132 permits the patent owner to propose amendments to the claims which will be reexamined by the examiner. The procedures established for initial examination under section 132 permit the patent owner to propose amendments either by written response or during an interview with the examiner. See section 713.01 of the Manual of Patent Examining Procedure which provides guidance as to the submission of amendments in conjunction with interviews, and the rationale therefor. In both cases, the examiner is obligated to consider such amendment proposals when conducting his or her examination of the claims in light of the prior art. The comment is not adopted, and the section is adopted as proposed.

Section 1.565, which provides for concurrent Office proceedings, is being amended to limit the reexamination proceedings of the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.565(e) is being amended to change "examiner-in-chief" to "administrative patent judge" to reflect the current title. Also, the appropriate references for concurrent proceedings which include an *inter partes* reexamination proceeding have been added. Section 1.565(c) is being amended to make it clear that after prosecution has been terminated in a pending reexamination proceeding (e.g., by the issuance of a Notice of Intent to Issue a Reexamination Certificate) there is no right of merger of any subsequently filed reexamination request. No comment was received on this section. It is adopted as proposed.

Section 1.570 is being amended to recite the reexamination as "*ex parte*" reexamination where appropriate, to eliminate any potential for confusion. No comment was received on this section. It is adopted as proposed.

A new title Subpart H—Inter Partes Reexamination of Patents (Applicable to any Patent that Issues from an Original Application Filed in the United States on or after November 29, 1999) has been added which provides that the reexamination rules in this subpart generally apply to *inter partes* reexamination proceedings on patents having a filing date on or after November 29, 1999. Some of the *inter partes* reexamination rules specifically incorporate *ex parte* reexamination rules, e.g., § 1.943 (requirement of responses, comments and briefs) incorporates § 1.52, and § 1.933 (patent owner duty of disclosure) incorporates § 1.555. One comment was received directed to this section.

Comment: The comment suggested that the heading "Subpart H Reexamination of Patents" as proposed in the Notice of Proposed Rulemaking be amended to add "(Applicable to Patents having an Original United States Filing date On or After November 29, 1999)." The comment notes that the effective date of the statute with respect to optional *inter partes* reexamination is complex, and it would be helpful to practitioners and those considering *inter partes* reexamination if they are clearly advised of what patents are subject to such proceedings.

Response to Comment: The comment is adopted in part. The heading has been amended to add "(Applicable to any Patent that Issues from an Original Application Filed in the United States on or after November 29, 1999.)" This language more closely tracks the language of the statute than does the language suggested in the comment.

New § 1.902 provides for the processing of prior art citations during

an *inter partes* reexamination proceeding and is analogous to new § 1.502 which deals with prior art citations during an *ex parte* reexamination proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.903 provides that the patent owner and the third party requester shall be sent copies of all Office actions, and that the patent owner and the third party requester must serve copies of all papers on all other parties in the *inter partes* reexamination proceeding or they may be refused consideration by the Office. This is analogous to the provisions of § 1.550(e). No comment was received on this section. It is adopted as proposed.

New § 1.904 provides that a notice of the filing of an *inter partes* reexamination request will be published in the *Official Gazette* under § 1.11(c) and that such a notice will be considered to be constructive notice to the patent owner. No comment was received on this section. It is adopted as proposed.

New § 1.905 provides that, unless otherwise provided for, a submission of papers by the public other than third party requesters in an *inter partes* reexamination proceeding will not be considered in the proceeding and will be treated in accordance with the requirements of a prior art submission under § 1.902 if it complies with the requirements of § 1.501. Submissions not in accordance with § 1.501 will be returned to the sender. No comment was received on this section. It is adopted as proposed.

New § 1.906 covers the scope of reexamination in an *inter partes* reexamination proceeding. While it is not intended that examiners will routinely complete a new search when conducting an *inter partes* reexamination, examiners may conduct additional searches and cite and apply additional prior patents and printed publications when they consider it appropriate and beneficial to do so. Section 1.906(a) provides that the examination is only on the basis of patents or printed publications and, with respect to subject matter added or deleted during the *inter partes* reexamination, on the basis of the requirements of 35 U.S.C. 112. Section 1.906(b) provides that claims in a reexamination proceeding must not enlarge the scope of the claims of the patent and must not introduce new matter. Section 1.906(c) provides that issues relating to matters other than those indicated in §§ 1.906(a) and (b) of this section (*e.g.*, on sale, public use, duty of disclosure, etc.) will not be resolved in a reexamination proceeding, but will be noted by the examiner as being an open issue in the record if such issues are raised by the patent owner or the third party requester. The examiner should only note an issue under § 1.906(c) after careful consideration, and should only raise the noted issue once. Patent owners could then file a reissue application if they wish such issue to be resolved. It would not be appropriate for the examiner *sua sponte* to raise issues directed to the patentability of a claim of a patent which may not be resolved in the reexamination. No comment was received on this section. It is adopted as proposed.

New § 1.907 sets forth prohibitions on the filing of an *inter partes* reexamination request. The basis for this section is 35 U.S.C. 317. Under § 1.907(a), once an order for an *inter partes* reexamination has been issued, neither the third party requester, nor any of its privies, may file a subsequent request for an *inter partes* reexamination of the patent until an *inter partes* reexamination certificate is issued, unless such filing is authorized by the Commissioner. Under § 1.907(b), once a final decision has been entered against a party in a civil action that the party has not sustained its burden of proving invalidity of any patent claim in suit, then that party, and its privies, are thereafter precluded from requesting an *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such civil action; and an *inter partes* reexamination requested by that party, or its privies, on the basis of such issues may not thereafter be maintained by the Office. Under § 1.907(c), if a final decision in an *inter partes* reexamination proceeding instituted by a third party requester is favorable to patentability of any patent claim, then that party, or its privies, may not thereafter request an *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such *inter partes* reexamination proceeding. Two comments were received directed to this section.

Comments: The first comment, directed to § 1.907(b), suggests that if the Office intends to determine on a case-by-case basis whether the third party requester could have raised an issue in a civil action, the phrase "or could have raised" should be deleted from § 1.907(b). The second comment directed to §§ 1.907(b) and (c) suggests that the words "could have raised" should be changed to "had become or should have become known to that party upon reasonable inquiry at the time the *inter partes* reexamination was ordered." The comment argues the "could have raised" language would theoretically bar a third party from requesting a new reexamination based on any existing patent or printed publication, even those remotely located in another file of the third party.

Response to Comments: As to the first comment, under § 1.915(b)(7), a third party requester is required to include a certification that the estoppel provisions of § 1.907 do not prohibit the filing of the *inter partes* reexamination request. The Office does not intend to look beyond that certification. The Office does not plan to make a case-by-case determination. It is only in the rare instance where a challenge to the accuracy of the certification is raised by the patent owner, that the question would then need to be addressed.

As to the second comment addressing §§ 1.907(b) and (c), the statute, 35 U.S.C. 317, recites "on the basis of issues which that party or its privies raised or could have raised in such civil action or *inter partes* reexamination proceeding." The rule merely tracks the statutory language. Adoption of the suggested language would appear to enlarge the scope of the statutory estoppel. The interpretation of the statutory language is subject to statutory construction on a case-by-case basis depending on the particular facts of the individual case. As noted above, the Office does not intend to make such a determination in each reexamination, but will rely upon the certification by the third party requester under § 1.915(b)(7). The comments are not adopted, and the section is adopted as proposed.

New § 1.913 provides for any person (unless the estoppel provisions of § 1.907 apply) to file a request under 35 U.S.C. 311 for an *inter partes* reexamination of a patent which issued from an original application filed on or after November 29, 1999. The time period for filing such a request is limited to the period of enforceability of the patent for which the request is filed. The language "other than the patent owner or its privy" has been deleted from § 1.913. One comment was received addressed to this section.

Comment: Section 1.913, as proposed in the Notice of Proposed Rulemaking, excluded the patent owner or its privies from those persons who may file an *inter partes* request for reexamination. The comment suggests the Office has exceeded its authority in excluding the patent owner or its privies. The comment argues that Congress intended that the patent owner could be

permitted to file an *inter partes* reexamination because 35 U.S.C. 311(c), which requires the Commissioner to send a copy of the request to the patent owner, explicitly relieves the Commissioner of that obligation when the *inter partes* requester is the patent owner. The comment notes that a patent owner may feel the chances of staying a pending litigation are increased by requesting an *inter partes* reexamination, as compared to an *ex parte* reexamination, because of the provisions of 35 U.S.C. 318 (stay of litigation).

Response to Comment: The Office does not agree with the statutory interpretation presented in the comment. Portions of the language contained in sections 311, 312, 314, and 317 of the 1999 statute which suggests that the patent owner may file an *inter partes* request for reexamination are regarded as inadvertent legislative drafting errors created through the evolution of the final version of the 1999 statute. The language of the 1980 *ex parte* reexamination statute, which was used as the basis for the 1999 statute, includes language which permits either the patent owner or a third party to file a request for *ex parte* reexamination. The earlier versions of the 1999 statute merely proposed to amend the 1980 statute by making the *ex parte* reexamination more *inter partes* in nature. The final version of the 1999 statute was re-drafted at the last moment and for the first time created separate *ex parte* (chapter 30) and *inter partes* (chapter 31) reexamination statutes by modeling the *inter partes* practice on the *ex parte* practice. The drafters, however, inadvertently did not remove the language of the 1980 statute directed to patent owner filings of reexamination requests, even though an *inter partes* procedure is clearly inappropriate for a reexamination initiated by a patent owner. Note further that legislation is pending before Congress in which the noted language has been deleted or changed. *See* the Intellectual Property Technical Amendments Act of 2000, H.R. 4870, 106th Cong. (2000), which clearly limits the parties who may file an *inter partes* request for reexamination to be third parties other than the patent owner. Accordingly, the Office does not agree with the comment that the statute permits a patent owner to file an *inter partes* reexamination request.

In the interest of being consistent with the statute, the phrase "other than the patent owner or its privies" has been deleted from the section. The change is being made solely for the purpose of more closely following the language of the statute.

New § 1.915(a) requires payment of the fee for requesting an *inter partes* reexamination which is set forth in § 1.20(c)(2). Section 1.915(b) indicates what each request for *inter partes* reexamination must include. The requirements are analogous to the requirements of § 1.510(b) for filing an *ex parte* reexamination request with the most notable difference being that the third party requester must be identified in an *inter partes* reexamination request. Section 1.915(c) indicates that requests for an *inter partes* reexamination may be filed by attorneys or agents on behalf of a third party requester, but it is noted that the real party in interest must be identified. Section 1.915(d) provides that if the request for *inter partes* reexamination does not meet all the requirements of § 1.915(b), the third party requester may be given an opportunity to complete the *inter partes* reexamination request to avoid having the proceeding vacated. One comment was received directed to this section.

Comment: The comment noted that § 1.915(b)(8) requires any person requesting *inter partes* reexamination to specify the "real party in interest" in a statement. The comment asks whether this language coupled with the requirement of § 1.915(c) prohibits an attorney filing the request from being the real party in interest.

Response to Comment: Section 1.915(c) requires an attorney or agent who files a request for *inter partes* reexamination on behalf of another party to have a power of attorney or to be acting in a representative capacity under § 1.34(a). Section 1.915(c) does not preclude an attorney from filing a request for *inter partes* reexamination on behalf of himself or herself as the real party in interest. The section is adopted as proposed.

New § 1.919 indicates that the date on which the entire fee for a request for *inter partes* reexamination is received will be considered to be the filing date of the request for *inter partes* reexamination. No comment was received on this section. It is adopted as proposed.

New § 1.923 provides for a determination by the examiner as to whether the request has presented a substantial new question of patentability under 35 U.S.C. 312 and requires that the determination be made within three months of the filing date of the request. One comment was received directed to this section.

Comment: The comment notes that section 4607 of S. 1948 provides that a third party who requests *inter partes* reexamination is estopped from challenging at a later time, in any civil action, any fact determined "during the process of" such reexamination. Section 1.923 provides that if the examiner determines no substantial new question of patentability is present, the examiner will deny the request and not order reexamination. The comment argues that facts determined in the decision ordering or denying reexamination are not facts determined "during the process of" such reexamination because a decision denying reexamination is not a decision made after full submission of all of the evidence and arguments. The comment suggests that the following sentence should be added at the end of the section in order to clearly point this out: "Such determination does not constitute a finding of fact under the estoppel provisions of Section 4607."

Response to Comment: Whether or not facts determined in deciding to deny or order reexamination are facts "determined during the process of such reexamination" is a question to be answered by the Federal courts. By statute, the estoppel arises in a civil action, not in an Office proceeding. The comment is not adopted, and the section is adopted as proposed.

New § 1.925 provides for a refund under § 1.26(c) of a portion of the filing fee if *inter partes* reexamination is not ordered. See the discussion of § 1.26(c) above as to the amount of the refund. No comment was received on this section. It is adopted as proposed.

New § 1.927 provides for review by petition to the Commissioner of a decision denying *inter partes* reexamination. No comment was received on this section. It is adopted as proposed.

New § 1.931 provides for ordering *inter partes* reexamination where a substantial new question of patentability has been found pursuant to § 1.923. Section 1.931(b) places a limitation on the selection of the examiner by the Office in that the same examiner whose decision denying *inter partes* reexamination was reversed on petition filed under § 1.927 ordinarily will not conduct the *inter partes* reexamination ordered in the decision granting the petition. No comment was received on this section. It is adopted as proposed.

New § 1.933 covers the duty of disclosure by a patent owner in an *inter partes* reexamination proceeding. The rule provides that the patent owner's duty in an *inter partes* reexamination proceeding is the same as the duty in an *ex parte* reexamination proceeding set forth in § 1.555(a) and (b), and is satisfied by filing a paper in compliance

with § 1.555(a) and (b). In addition, § 1.933(b) is being amended to preclude the examiner from independently raising and noting issues relating to patent owner's compliance with its duty of disclosure. In this regard, § 1.933(b) is being amended by changing the phrase "If questions of compliance with this section are discovered during a reexamination proceeding, * * *" to now read "If questions of compliance with this section are raised by the patent owner or third party requester during a reexamination proceeding, * * *" It would not be appropriate for the examiner *sua sponte* to raise issues directed to the issue of patent owner's compliance with its duty of disclosure which may not be resolved in the reexamination. No comment was received on this section. It is adopted as amended.

New § 1.935 provides that the initial Office action on the merits will usually accompany the *inter partes* reexamination order. When reexamination is ordered, the initial paper from the examiner will normally comprise two parts. The first part will address the issue as to whether the cited art raises a substantial new question of patentability (SNQ). If the examiner determines that the prior art does raise an SNQ, reexamination will be ordered. In this situation, a second part of the initial Office action would usually be issued, which would address the patentability issues and will constitute the first Office action on the merits. If the examiner determines that the cited art does not raise an SNQ, reexamination is denied. No patentability question would be addressed by the examiner. One comment was received directed to this section. (This comment was also addressed to § 1.945 relating to patent owner's response to Office actions. The discussion below relates to both §§ 1.935 and 1.945.)

Comment: The comment notes that if the examiner refuses to adopt a ground of rejection proposed by the third party, the patent owner is not required to address this issue prior to the appeal stage. Consequently, if the refusal to adopt the ground of rejection is reversed on appeal to the Board of Patent Appeals and Interferences (Board), at that time the patent owner is given an opportunity to amend the claim. The comment suggests that, prior to the appeal stage, the patent owner should be required to respond to all of the issues raised by the requester. The comment points out that if this suggestion is implemented, the opportunity for amendment after the Board decision and the need for remand would then become unnecessary, even if the Board adopts any ground proposed by the third party requester.

Response to Comment: The patent owner has no legal compulsion to amend a claim based solely on a ground of rejection raised by the third party requester. Only after the ground of rejection is adopted by the examiner or the Board of Patent Appeals and Interferences must the patent owner consider amending the claim. The comment is not adopted, and § 1.935 is adopted as proposed. (See discussion of § 1.945.) New § 1.937 covers the basic items relating to the conduct of *inter partes* reexamination proceedings. Section 1.937(a) provides that, in accordance with 35 U.S.C. 314(c), unless otherwise provided by the Commissioner for good cause, all *inter partes* reexamination proceedings will be conducted with special dispatch. Section 1.937(b) provides that all *inter partes* reexamination proceedings will be conducted according to the procedures established for initial examination under §§ 1.104–1.116. These proceedings will generally follow the procedures for examining patent applications. Section 1.937(c) provides that all communications between the Office and the parties to the *inter partes* reexamination which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.939 provides for the return of unauthorized papers filed in an *inter partes* reexamination, and provides that, unless otherwise authorized, no paper shall be filed, by any party, in an *inter partes* reexamination before the initial Office action on the merits. No comment was received on this section. It is adopted as proposed.

New § 1.941 provides that amendments made by the patent owner in an *inter partes* reexamination must be made in accordance with the requirements of §§ 1.530(d)–(k) and 1.943. No comment was received on this section. It is adopted as proposed.

New § 1.943(a) provides that the form of responses, briefs, appendices, and other papers must be in accordance with § 1.52. Section 1.943(b) establishes page limits for responses by the patent owner and written comments by the third party requester (other than briefs). Amendments, appendices of claims, and reference materials such as prior art references would not be included in the page count. Section 1.943(c) provides for page limits and total word limits for briefs. No comment was received on this section. It is adopted as proposed.

New § 1.945 provides that a patent owner will be given at least 30 days to respond to any Office action on the merits. While the Office ordinarily intends to set a two-month period for the patent owner to respond to an Office action on the merits, the minimum period set will always be at least 30 days. One comment was received directed to this section. This comment was also addressed to § 1.935 relating to the patent owner's response to the initial Office action. The comment is not adopted, and § 1.945 is adopted as proposed.

New § 1.947 provides that each time a patent owner files a response to any Office action on the merits, the third party requester may once file written comments if those comments are received in the Office within a period of 30 days from the date of service of the patent owner's response. Since 35 U.S.C. 314(b)(3) statutorily imposes this period for third party requester comments, this time period cannot be extended. Thus, any third party comments received in the Office after expiration of 30 days from the date of service of the patent owner's response shall be considered to be untimely and unauthorized, and thus will be returned to the third party in accordance with § 1.939. Three comments were received directed to this section.

Comments: The first and second comments suggest that it will be difficult for a foreign third party requester to timely comment within a period of 30 days from the date of service of the patent owner's response. The first comment suggests that a third party comment period of 60 days should be set. The second comment suggests that some way should be devised for receiving a substantial extension to the 30-day period.

The third comment suggests that it is unfair for the patent owner to not be able to respond to the third party comments and thereby have the last word. The comment suggests that the patent owner should have the right of last comment.

Response to Comments: As to the first comment, the statute (35 U.S.C. 314(b)(3)) specifically requires that the third party requester comments be received by the Office within 30 days after the date of service of the patent owner's response to an Office action. The rules cannot provide a period for comments that would give the third party more time to comment than that explicitly stated in the statute.

As to the second comment, because the statute specifically requires that third party requester comments be received by the Office within 30 days after the date of service of a patent owner's response to the Office action, the rules cannot extend the period for comments in order to give the third party more time in which to file the written comments. The Office recognizes the shortness of this time period. While no relief can be granted by enlarging or extending the statutory 30-day period, a measure of relief has been granted to the third party requester in that the rule is being amended to provide that the date of Office "receipt" of third party requester comments will be construed to be the date of mailing if the provisions of § 1.8 are complied with when submitting the written comments.

As to the third comment, providing the patent owner with an opportunity to reply to third party comments would unduly prolong the pendency of the proceeding, contrary to the "special dispatch" required by 35 U.S.C. 314(c). It should also be noted that an owner response to the third party comments could be considered a (supplemental) patent owner response to the Office action which would trigger a further right to third party comment under 35 U.S.C. 316(b)(3) and thus create an endless cycle. The comments are not adopted. The rule is adopted as proposed, but amended as indicated above.

New § 1.948 provides that third party requester prior art submissions as defined under § 1.501 may be filed after the *inter partes* reexamination order only if they are submitted as part of a comments submission under §§ 1.947 or 1.951(b), and are limited to: (1) Prior art necessary to rebut a finding of fact made by the examiner; (2) prior art necessary to rebut a position taken by the patent owner in a response; or (3) prior art which for the first time became known or available to the third party requester after the filing of the *inter partes* request for reexamination where a discussion of the pertinency of each reference to the patentability of at least one claim is included. Limiting later filed prior art submissions to newly discovered or newly available prior art (except when used for rebuttal purposes) will encourage the third party requester to submit all known pertinent prior art along with the initial request for *inter partes* reexamination. Later submission of previously known or available prior art would only be permissible to rebut a position taken by the examiner or the patent owner, or through the filing of an *ex parte* reexamination request which, if ordered, would be merged with the *inter partes* reexamination proceeding.

Permitting the third party requester to timely submit newly discovered or previously unavailable prior art during the *inter partes* reexamination proceeding will obviate the need for the third party requester to file an *ex parte* request for reexamination. To prevent harassment of the patent owner due to frequent submissions of prior art citations during a reexamination proceeding, such submissions may only be filed together with written comments by the third party requester in response to a patent owner response to an Office action on the merits, or after an action closing prosecution. No comment was received on this section. The conjunction "and" has been replaced by "or" in the recitation "§§ 1.947, 1.951(a), or 1.951(d)" for grammatical clarity. The reference to § 1.951(a) has been deleted and § 1.951(d) has been changed to § 1.951(b) to reflect the changes made to § 1.951 pursuant to the comments. The section is adopted as amended.

New § 1.949 provides for the close of prosecution on the second or subsequent Office action which precedes a final action, a final rejection and/or a final decision favorable to patentability. The distinction between a final action and an action closing prosecution is important, since appeal rights to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 (b) and (c) mature only with a final action. One comment was received directed to this section.

Comment: The comment suggests that the examiner should be precluded from closing prosecution whenever a new ground of rejection is made, irrespective of whether a prior amendment made the new ground necessary. The comment argues that a reexamination is different from an application where the applicant is permitted to refile the application and introduce new claims, evidence and argument, because the patent owner in a reexamination cannot abandon the reexamination and file a continuing proceeding.

Response to Comment: The third party request for reexamination sets forth the grounds of rejections raised by the third party requester. The initial Office action on the merits addresses the grounds and arguments raised in the request, and sets forth the examiner's grounds of rejection including those raised by the third party requester and those raised by the examiner. The Office action also includes the examiner's reasons for not adopting other grounds of rejection proposed by the third party requester. Patent owner may consider and respond to the initial Office action, and provide amended claims ranging from the broadest claim patent owner considers to be patentable over the prior art to the narrowest claim patent owner is willing to accept. Thus, prior to the close of prosecution, the issues are well developed, patent owner is aware of the issues and positions of the third party requester and the examiner, and patent owner has the right to present evidence and argument in light of the third party arguments and the examiner's rejections and to present amended claims. While patent owner may not refile a reexamination after the close of prosecution and "start over" as can be done in a regular application after a final rejection, the reexamination rules do not leave the patent owner without any relief at this stage of the proceeding. In this regard, after the close of prosecution the patent owner may file comments and/or amendments under § 1.951 which will be governed by the standards of § 1.116. Under § 1.116(c), amendments may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented. This strikes a balance between timely presenting amendments and providing relief when warranted. It also provides for an orderly and timely proceeding under the special dispatch requirement of the statute. In addition, the statute does not preclude the patent owner from filing an *ex parte* request for reexamination with amended claims and/or new evidence. Once ordered, the reexamination proceedings would be merged, and the newly submitted material would be addressed in the merged proceeding. The comment is not adopted, and the section is adopted as proposed.

New § 1.951 sets forth the options available to the parties after an Office action closing prosecution. Under § 1.951(a), the patent owner may once file comments limited to issues raised in the action closing prosecution, which comments may also include proposed amendments (subject to the criteria of § 1.116 as to whether or not the amendments shall be admitted). Under § 1.951(b), when the patent owner does file comments, the third party requester may once file comments in response to the patent owner's comments. One comment was received directed to this section.

Comment: Section 1.951 as proposed in the Notice of Proposed Rulemaking included subsections (a)–(d). Proposed subsection (a) permitted the third party requester to once file comments limited to issues raised in the action closing prosecution. Proposed subsection (b) permitted the patent owner to once file comments in response to the third party requester's comments. Simultaneously to the filing of these submissions, proposed subsection (c) permitted the

patent owner to once file comments limited to issues raised in the action closing prosecution, and proposed subsection (d) permitted the third party requester to once file comments in response to the patent owner's comments. The comment suggests that the comments filed by the third party requester under proposed § 1.951(a) after the close of prosecution do not comply with the statute because they are not filed in reply to a patent owner's response to an Office action on the merits. The comment asserts that such "direct" requester comments are not consistent with the statute as the statute makes it clear that the third party requester's right to comment only matures with the filing of a patent owner response to an Office action on the merits, and nowhere in the statute does it permit third party requester comments without there first being a patent owner response.

Response to Comment: The comment has been adopted. Proposed subsection (a) which permitted the third party requester to once file comments limited to issues raised in the action closing prosecution, and proposed subsection (b) which permitted the patent owner to once file comments in response to the third party requester comments have been deleted. Proposed subsections (c) and (d) have been re-named (a) and (b), respectively. The purpose of proposed subsections (a) and (b) was to provide the third party requester an opportunity to better focus the issues prior to filing an appeal. Such issues may now be addressed by the requester after appeal in the appellant brief which, if persuasive, will result in the examiner adopting requester's arguments and reopening prosecution, if appropriate. While waiting until after appeal to permit "direct" third party requester arguments may result in protracting the proceeding, such direct third party input is consistent with the statute which permits the third party requester to appeal any final decision favorable to patentability, and be a party to any appeal taken by the patent owner to the Board of Patent Appeals and Interferences. 35 U.S.C. 315(a) and (b). The comment is adopted as amended.

New § 1.953 provides for issuance of a right of appeal notice. Section 1.953(a) provides that, following the responses or expiration of the time for response in § 1.951, the examiner may issue a right of appeal notice which shall include a final rejection and/or final decision favorable to patentability in accordance with 35 U.S.C. 134. The intent of limiting the appeal rights until after the examiner issues a right of appeal notice is to specifically preclude the possibility of one party attempting to appeal prematurely while prosecution before the examiner is being continued by the other party. Section 1.953(b) provides that any time after the initial Office action on the merits in an *inter partes* reexamination, the patent owner and all third party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final decision favorable to patentability, and may request the issuance of a right of appeal notice. If the examiner determines that no other issues are present or should be raised, a right of appeal notice limited to the identified issues shall be issued. The request for an expedited notice will enable the parties to accelerate the *inter partes* reexamination proceeding. Section 1.953(c) provides that the right of appeal notice shall be a final action, which would include a final rejection and/or a final decision favorable to patentability, and prohibits amendments under § 1.116 in response to the right of appeal notice. The right of appeal notice shall set a one-month time period for either party to appeal. If no appeal is filed, the reexamination proceeding will be terminated, and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the right of appeal notice. No comment was received on this section. It is adopted as proposed.

New § 1.955 provides that interviews which discuss the merits of the proceeding will not be permitted in *inter partes* reexamination proceedings. Thus, in an *inter partes* reexamination proceeding, no separate *ex parte* interviews will be permitted, and no *inter partes* interviews will be permitted; nor will an informal amendment be accepted as that would be tantamount to an *ex parte* interview. All communications between the Office and the patent owner which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding. The Office has reconsidered its initial position, taken in the August 11, 1995, Notice of Proposed Rulemaking, to permit owner-initiated interviews in which the patent owner and the third party requester would participate. Accordingly, neither the patent owner nor the third party requester in an *inter partes* reexamination is permitted to initiate, or participate in, an *ex parte* interview or an *inter partes* interview which discusses the merits of the proceeding. Four comments were received directed to this section.

Comments: The first comment asserts that because the *inter partes* reexamination may result in the cancellation of patent claims or the estoppel of one or more third party defenses in a civil action, the examiner should have access to all matters that may be necessary to reach a decision, including the testimony of experts, particularly in the face of cross-examination. Further, the comment suggests that the patent owner is forced into an *inter partes* reexamination and should not be deprived of patent rights without due process of law. The comment suggests that interviews should be provided during which each party should be permitted to present its case orally to the examiner, to present its experts and to question the other party and the other party's experts in front of the examiner, and that the examiner, in turn, should have the opportunity to question both parties and their experts.

The second comment recognizes the concerns of the Office but concludes that since the rule could be waived in appropriate circumstances, the rule does not amount to an absolute prohibition. The comment suggests interviews be permitted, particularly if they could be handled through the assistance of a special group of legal advisors trained in conducting *inter partes* hearings. The comment further suggests a rule be imposed that any oral or electronic contact with Office officials responsible for an *inter partes* proceeding be handled through a conference call with all relevant parties represented.

The third comment suggests that it is unnecessary to ban interviews across the board because an interview can be useful to help the examiner understand the points of contention, particularly so when the art is complex. If the presence of a third party requester would complicate the interview, the examiner could simply interview the parties separately. The comment suggests that since there are usually severely conflicting interests between the patent owner and the third party requester, the interview should be limited to deepening the examiner's understanding of the technology and to clarifying points of contention; the examiner should be prohibited from discussing amendment proposals.

The fourth comment suggests that while the prohibition against interviews would seem to be quite beneficial to the third party requester, a countervailing problem for the examiner and the patent owner will be an inability of the examiner to resolve complex technological issues by direct questions and answers (in an interview). The comment suggests that guidelines to the examiner on how to address such issues in the form of written questions should be provided in the Manual of Patent Examining Procedure (MPEP).

Response to Comments: The comments suggest various formats for providing an interview including: a formal hearing format, interview oversight by trained legal advisors, conference calls, separate interviews for both parties, and limitations on the examiner from discussing amendments during an interview. While the suggested formats would tend to ease the problems associated with *inter partes* interviews, the remaining problems would still outweigh the benefits of an interview on the merits. No matter what the structure of the interview, the presence of a third party requester (or a separate interview with the requester) will complicate the reexamination proceeding and significantly delay it. Past history has shown *inter partes* interviews to be both resource intensive and unwieldy. *Inter partes* interviews are difficult to arrange, conduct, and control. Inevitable interaction between the patent owner's representative and its experts, the third party's representative and its experts, the examiner, and the "senior level official" would be difficult to regulate and control. Recording the substance of the interview would be difficult, and providing cross-transcripts would result in delay and complications. In addition, the time to arrange and conduct the interview would greatly extend the *inter partes* proceeding time line, which would be clearly contrary to the "special dispatch" required by 35 U.S.C. 314(c) for the *inter partes* reexamination proceeding. The suggestion as to providing guidelines on instructing the examiner on how to draft written questions is a matter to be addressed in a future MPEP revision. The comments are not adopted, and the section is adopted as proposed.

New § 1.956 relates to patent owner extensions of time for responding to a requirement of the Office in *inter partes* reexamination proceedings. As in *ex parte* reexamination practice, a patent owner may only obtain an extension of time for sufficient cause, and the request for such extension must be filed on or before the end of the period for response. Note that the time for the third party requester to file comments to patent owner responses may not be extended, as set forth in § 1.947. No comment was received on this section. It is adopted as proposed.

New § 1.957(a) provides that a third party requester's submission in *inter partes* reexamination may be refused consideration if it is untimely or is inappropriate. Sections 1.957(b) and (c) relate to the patent owner's failure to timely or appropriately respond in *inter partes* reexamination proceedings. In this event, if no claims are found patentable, the proceeding shall be terminated and a reexamination certificate shall be issued. If claims are found patentable, further prosecution shall be limited to the patentable claims, and any additional claims that do not expand the scope of the patentable claims. New § 1.957(d) provides that when the action by the patent owner is a bona fide attempt to respond and to advance the case, and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, an opportunity to explain and supply the omission may be given. No comment was received on this section. It is adopted as proposed.

New § 1.958(a) provides for the revival of terminated *inter partes* reexamination proceedings under the unavoidable delay provisions of § 1.137(a). The unavoidable delay provisions of 35 U.S.C. 133 are imported into and are applicable to *inter partes* reexamination proceedings under 35 U.S.C. 314. New § 1.958(b) provides for the revival of terminated *inter partes* reexamination proceedings under the unintentional provisions of § 1.137(b). The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to *inter partes* reexamination proceedings under section 4605 of S. 1948. Note, however, the unintentional delay fee provisions of 35 U.S.C. 41(a)(7) only become effective in reexamination proceedings on November 29, 2000 (one year after enactment of statute). No comment was received on this section. It is adopted as proposed.

New § 1.959 relates to appeals and cross appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. Both patent owners and third party requesters are given appeal rights in accordance with 35 U.S.C. 315. No comment was received on this section. It is adopted as proposed.

New § 1.961 relates to time of transfer of the jurisdiction of the appeal over to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.962 relates to the definition of appellant and respondent in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.963 relates to the time periods for filing briefs in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.965 relates to the requirements of the appellant brief in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.967 relates to the requirements of the respondent brief in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.969 relates to the examiner's answer. An examiner's answer may not include a new ground of rejection nor a new decision favorable to patentability. In either case (if there is to be a new ground of rejection or a new decision favorable to patentability), prosecution should be reopened. One comment was received directed to this section.

Comment: The comment questioned whether the examiner's answer should be optional especially when the appeal is by the patent owner.

Response to Comment: Although § 1.969(a) indicates that an examiner's answer "may" be furnished, common practice as set out in the procedure of the Manual of Patent Examining Procedure, is to furnish an examiner's answer. When an appeal goes forward, an examiner's answer will be mandatory. If the examiner, however, changes his or her position to issue a new ground of rejection or (when the third party participates in the appeal) to make a new finding of patentability, an examiner's answer would not be issued and prosecution would be reopened. The word "may" is used to cover those situations where prosecution is reopened and an examiner's answer is not issued. The word "may" does not authorize an examiner to send a proceeding to the Board of Patent Appeals and Interferences without issuing an examiner's answer. Section 1.969(c) is being modified by deleting "Where a third party requester is a party to the appeal" and a new § 1.969(d) is being added which provides clarification that any new ground of rejection or new determination not to make a proposed rejection must be made in an action reopening prosecution in accordance with the discussion of proposed § 1.969 in the notice of proposed rulemaking. The comment is not adopted and the section is adopted as modified in new § 1.969(d).

New § 1.971 gives any appellant one opportunity to file a rebuttal brief following the examiner's answer. The rebuttal brief filed by an appellant who is the patent owner is limited to the issues raised in the examiner's answer

and/or in any respondent brief. The rebuttal brief filed by an appellant who is a third party requester is limited to the issues raised in the examiner's answer and/or in the patent owner's respondent brief. The rebuttal brief of a third party requester may not be directed to the respondent brief of any other third party requester. No new ground of rejection can be proposed by a third party requester appellant. One comment was received directed to this section.

Comment: The comment, notes that the time for filing the rebuttal brief is within one month of the examiner's answer and suggests that since the examiner's answer is not required by the rules, tying one deadline date to another date for an event that may never occur may create a problem.

Response to Comment: Although § 1.969(a) indicates that an examiner's answer "may" be furnished, common practice as set out in the procedure of the Manual of Patent Examining Procedure, is to furnish an examiner's answer. When an appeal goes forward, an examiner's answer will be mandatory. See the discussion set forth in response to the comment on § 1.969 above. The comment is not adopted and the section is adopted as proposed.

New § 1.973 relates to the oral hearing in *inter partes* reexamination proceedings. One comment was received directed to this section.

Comment: The comment points out that the request for oral hearing may be filed "within one month of the examiner's answer," and that the rules provide that the examiner "may" issue an examiner's answer under 1.969(a). The comment questions what happens if the examiner does not issue an examiner's answer? The comment suggests the rule should be modified to provide that a request for oral hearing be due "within two months after the date of the examiner's answer or the period within which the examiner's answer must be furnished."

Response to Comment: Although § 1.969(a) indicates that an examiner's answer "may" be furnished, common practice as set out in the procedure of the Manual of Patent Examining Procedure, is to furnish an examiner's answer. When an appeal goes forward, an examiner's answer will be mandatory. See the discussion set forth in response to the comment on § 1.969 above. The comment is not adopted and the section is adopted as proposed.

New § 1.975 relates to affidavits or declarations after appeal in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.977 relates to the decision by the Board of Patent Appeals and Interferences (Board) in *inter partes* reexamination proceedings. This section generally tracks § 1.196 which governs the Board's decision in an appeal in an application. Section 1.977(a) provides that a reversal of an examiner's decision favorable to patentability (*i.e.*, the reversal of the examiner's decision not to make a rejection proposed by the third party requester) constitutes a decision adverse to patentability which will be set forth as a new ground of rejection under § 1.977(b). Section § 1.977 as set forth in the notice of proposed rulemaking included a § 1.977(c) which permitted the Board to include a statement that a claim may be allowable in amended form if newly revised as proposed by the Board. Proposed § 1.977(c), however, has been deleted in light of the comment and discussion that follows.

Comment: The comment notes that under 1.977(c), as proposed, the Board of Patent Appeals and Interferences (Board) may suggest an amendment for allowing a claim. The comment suggests that procedures would be too complicated to implement in the *inter partes* proceeding.

Response to Comment: The comment is adopted. Providing for patent owner and third party comment on a Board determination of the patentability of a hypothetical amended claim appears to be unduly complicated so late in the proceedings. Section 1.977(c) as proposed in the notice of proposed rulemaking has been deleted. Sections 1.977(d)–(h) as proposed in the notice of proposed rulemaking have been redesignated §§ 1.977(c)–(g), respectively, and references to these subsections in other sections have been revised to reflect these changes.

New § 1.979 relates to the procedure following the decision or dismissal by the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.981 relates to the procedure for the reopening of prosecution following the decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.983 relates to the patent owner's right to appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination proceedings. Under 35 U.S.C. 141, the patent owner in *inter partes* reexamination proceedings may appeal the decision of the Board of Patent Appeals and Interferences only to the United States Court of Appeals for the Federal Circuit. Under 35 U.S.C. 134(c), the third party requester in *inter partes* reexamination proceedings may not appeal the decision of the Board of Patent Appeals and Interferences. No comment was received on this section. It is adopted as proposed.

New § 1.985 relates to notification of prior or concurrent proceedings in *inter partes* reexamination proceedings. Section 1.985(a) requires the patent owner to notify the Office of any prior or concurrent proceeding involving the patent under *inter partes* reexamination. Section 1.985(b) permits any member of the public to notify the Office of any prior or concurrent proceeding involving the patent under *inter partes* reexamination. Such notice, however, must be limited to merely providing notice without discussion of the issues in the *inter partes* reexamination. Any notice that includes a discussion of the issues will be returned to the sender. No comment was received on this section. It is adopted as proposed.

New § 1.987 provides that when a patent involved in an *inter partes* reexamination is concurrently involved in litigation, the Commissioner shall determine whether or not to suspend the *inter partes* reexamination proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.989 relates to the merger of concurrent reexamination proceedings. One comment was received directed to this section.

Comment: The comment suggests that if a third party requester in an *inter partes* reexamination files a subsequent *ex parte* reexamination request, the proceedings should not be merged, but rather the *ex parte* reexamination should be stayed. The comment argues that a third party requester in an *inter partes* reexamination should not be permitted to end-run the prohibition of 35 U.S.C. 317(a) (which prohibits a subsequent *inter partes* reexamination during the pendency of an ongoing *inter partes* reexamination) by filing a subsequent *ex parte* reexamination request.

Response to Comment: As to the suggestion that the subsequent *ex parte* reexamination be stayed, this would be in direct violation of the special dispatch requirement of the *ex parte* reexamination statute. *Ethicon* v. *Quigg*, 849 F.2d 1422, 7 USPQ2d 1152 (Fed. Cir. 1988). Moreover, the filing of an *ex parte* reexamination request by an *inter partes* third party requester is not an "end-run" of the prohibition of 35 U.S.C. 317(a), because the two proceedings are of a different nature, and thus, the filing of the *ex parte* reexamination is not the same as the filing of a second *inter partes* reexamination. The comment is not adopted and the section is adopted as proposed.

New § 1.991 relates to the merger of a concurrent reissue application and an *inter partes* reexamination proceeding. Two comments were received directed to this section.

Comments: The first comment suggests that if the patent owner is permitted to request an interview in a merged reissue and *inter partes* reexamination, then the third party requester should be permitted to do so equally as well.

The second comment notes that the third party requester is permitted by rule in a merged reexamination and reissue to participate to the extent permitted by the reexamination rules and be limited to issues within the scope of *inter partes* reexamination. The comment questions whether this is realistic and asks (1) whether this limitation precludes a third party from acting as a protestor in the merged reissue application regarding the full scope of issues raised in the merged proceeding; and (2) since the patent owner filed the reissue, why should the third party be precluded from participating as a protestor? The comment suggests a better approach would be to permit the third party to comment on any issue, so long as it was in accord with the procedures adopted for the conduct of the merged proceeding for third parties or protestors.

Response to Comments: The first comment suggests that if the patent owner is permitted to request an interview in a merged reissue and *inter partes* reexamination, the Office should also permit the third party requester to initiate an interview in the merged proceeding. The suggestion is moot, since the patent owner will not be permitted to request an interview in a merged reissue and *inter partes* reexamination for the reasons set forth in the discussion of § 1.955 above.

As to the second comment, the rule does not preclude the third party requester from filing a protest under § 1.291 in the reissue application in the merged proceeding directed to any issue, including issues other than those relating to patent and printed publications. Such protests would be governed by the procedures adopted for protestors set forth in Chapter 1900 of the Manual of Patent Examining Procedure (MPEP). Participation in issues raised under § 1.291 will be governed by § 1.291 and the procedures adopted for protestors in MPEP 1901 through 1907. To the extent that the second comment would permit the third party requester to "comment" (as opposed to filing a protest) on any issue, so long as it was in accord with the procedures adopted for the conduct of the merged proceeding for third parties or protestors, the comment will not be adopted. The right to file a protest is limited as stated in MPEP chapter 1900. Thus, the permitted challenge to the patent on "any issue" is limited. To permit third party requester "comments" on "any issue" would increase the pendency of the proceeding contrary to special dispatch required by the statute, and would permit harassment of the patent owner on "any issue" in ways that the Chapter 1900 limitations on protest submissions are designed to prevent (i.e., multiple submissions on the same issue). The comments are not adopted.

New § 1.993 relates to the suspension of a concurrent interference or an *inter partes* reexamination proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.995 relates to the third party requester's participation rights being preserved in a merged proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.997 provides for the issuance of the reexamination certificate under 35 U.S.C. 316 after conclusion of an *inter partes* reexamination proceeding. The certificate will cancel any patent claims determined to be unpatentable, confirm any patent claims determined to be patentable, and incorporate into the patent any amended or new claims determined to be patentable. Once all of the claims have been canceled from the patent, the patent ceases to be enforceable for any purpose. Accordingly, any pending reissue proceeding or other Office proceeding relating to a patent for which a certificate that canceled all of the patent claims has been issued will be terminated. This provides a degree of assurance to the public that patents with all the claims canceled via *inter partes* reexamination proceedings will not again be asserted. No comment was received on this section. It is adopted as proposed.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this notice will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rulemaking implements the provisions of title IV, subtitle F (§§ 4601 through 4608) of the American Inventors Protection Act of 1999, which permits a third party requester to participate more extensively during the reexamination proceeding as well as giving them appeal rights. The changes in this notice will provide procedures for a third party to request optional *inter partes* reexamination of a patent. The new *inter partes* proceedings are similar to the *ex parte* proceedings, although they are more complicated procedurally to accommodate the presence of the third party.

Taking into account the overall similarities and additional complexity, it is reasonable to assume that a similar proportion of small entities will request *inter partes* reexamination as have requested *ex parte* reexamination. Furthermore, it is anticipated that *inter partes* reexamination requests will be filed by third party requesters, while patent owners will continue to file *ex parte* reexamination requests. Approximately 400 *ex parte* reexamination filings have been received each year since 1992, of which 55 percent or 220 have been filed by third party requesters. Since the beginning of the reexamination procedure, about 22.5 percent of the *ex parte* reexamination requesters have been small entities. If all 220 of the third party-filed reexamination requests were filed as requests for *inter partes* reexaminations, approximately 50 requests (22.5%) would come from small entities. The higher cost of the *inter partes* reexamination fee ($8,800) compared to the *ex parte* reexamination fee ($2,520) reflects the greatly expanded participation available to the third party requester. In the *inter partes* proceeding, the third party requester has the right to comment on every response by the patent owner to the USPTO, to be a party to any appeal by the patent owner to the Board of Patent Appeals and Interferences, and to appeal any determination of patentability to the Board of Patent Appeals and Interferences. In the *ex parte* proceeding, the third party requester's role is limited to the request for reexamination and a single reply to the patent owner's response. The third party requester also has no appeal rights in an *ex parte* reexamination. Therefore, the number of small businesses affected by these proposed optional *inter parte* reexamination rules is not significant, and the impact on each business,

considering the benefits of greater participation throughout the *inter partes* proceeding, is not significant.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice of rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice of rulemaking has been reviewed and previously approved by OMB under OMB control number 0651–0033.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the U.S. Patent and Trademark Office has submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control number 0651–0033. The U.S. Patent and Trademark Office is submitting this information collection to OMB for its review and approval because this notice of rulemaking will add the request for optional *inter partes* reexamination of a patent to that collection.

The title, description, and respondent description of the information collection is shown below with an estimate of the annual reporting burdens. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice of rulemaking is to implement the changes to Office practice necessitated by title IV, subtitle F (§§ 4601 through 4608) of the American Inventors Protection Act of 1999 (enacted into law by § 1000(a)(9), division B, of Public Law 106–113).

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.

Type of Review: Approved through September of 2000.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 172,475.

Estimated Time Per Response: 0.3 hour.

Estimated Total Annual Burden Hours: 51,593.5 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th St. NW, Room 10235, Washington, DC 20503, Attention: Desk Officer for the U.S. Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to or shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out in the preamble and under the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 2(b)(2), part 1 of title 37 CFR is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.4(a)(2) is revised to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of *ex parte* reexaminations of patents in subpart D, §§ 1.501 to 1.570; of interferences in subpart E, §§ 1.601 to 1.690; of extension of patent term in subpart F, §§ 1.710 to 1.785; of *inter partes* reexaminations of patents in subpart H, §§ 1.902 to 1.997; and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.6(d)(5) is revised to read as follows:

§ 1.6 Receipt of Correspondence.

* * * * *

(d) * * *

(5) A request for reexamination under § 1.510 or § 1.913;

* * * * *

4. Section 1.20(c) is revised to read as follows:

§ 1.20 Post-issuance and reexamination fees.

* * * * *

(c) In reexamination proceedings

(1) For filing a request for *ex parte* reexamination (§ 1.510(a))—$2,520.00

(2) For filing a request for *inter partes* reexamination (§ 1.915(a))—$8,800.00

* * * * *

5. Section 1.25(b) is revised to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with a particular paper filed. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee. An authorization to charge fees under § 1.16 in an application submitted under § 1.494 or § 1.495 will be treated as an authorization to charge fees under § 1.492. An authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b). An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or § 1.913 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination.

6. Section 1.26(c) is revised to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, for *ex parte* reexaminations filed under § 1.510, a refund of $1,690 will be made to the reexamination requester. For *inter partes* reexaminations filed under § 1.913, a refund of $7,970 will be made to the reexamination requester. The reexamination requester should indicate the form in which any refund should be made (e.g., by check, electronic funds transfer, credit to a deposit account, etc.). Generally, reexamination refunds will be issued in the form that the original payment was provided.

7. Section 1.112 is revised to read as follows:

§ 1.112 Reconsideration before final action.

After reply by applicant or patent owner (§ 1.111 or § 1.945) to a non-final action and any comments by an *inter partes* reexamination requester (§ 1.947), the application or the patent under reexamination will be reconsidered and again examined. The applicant, or in the case of a reexamination proceeding the patent owner and any third party requester, will be notified if claims are rejected, objections or requirements made, or decisions favorable to patentability are made, in the same manner as after the first examination (§ 1.104). Applicant or patent owner may reply to such Office action in the same manner provided in § 1.111 or § 1.945, with or without amendment, unless such Office action indicates that it is made final (§ 1.113) or an appeal (§ 1.191) has been taken (§ 1.116), or in an *inter partes* reexamination, that it is an action closing prosecution (§ 1.949) or a right of appeal notice (§ 1.953).

8. Section 1.113(a) is revised to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for *ex parte* reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an *inter partes* reexamination filed under § 1.913, see § 1.953.

* * * * *

9. Sections 1.116(b) and (d) are revised to read as follows:

§ 1.116 Amendments after final action, action closing prosecution, right of appeal notice, or appeal.

* * * * *

(b) After a final rejection or other final action (§ 1.113) in an application or in an *ex parte* reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an *inter partes* reexamination filed under § 1.913, amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination from termination. No amendment can be made in an *inter partes* reexamination proceeding after the right of appeal notice under § 1.953 except as provided for in paragraph (d) of this section.

* * * * *

(d) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in §§ 1.198 and 1.981, or to carry into effect a recommendation under § 1.196 or § 1.977.

10. Section 1.121(i) is revised to read as follows:

§ 1.121 Manner of making amendments.

* * * * *

(i) *Amendments in reexamination proceedings:* Any proposed amendment to the description and claims in patents involved in reexamination proceedings in both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913 must be made in accordance with § 1.530(d)–(j).

11. Sections 1.136(a)(2) and (b) are revised to read as follows:

§ 1.136 Extensions of time.

(a) * * *

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197; § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; and § 1.645 for extensions of time in interference proceedings.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.645 for extensions of time in interference proceedings; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; and

§ 1.956 for extensions of time in *inter partes* reexamination proceedings.

* * * * *

12. Sections 1.181(a) and (c) are revised to read as follows:

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and

(3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

* * * * *

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

* * * * *

13. Section 1.191(a) is revised to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, and every owner of a patent under *ex parte* reexamination filed under § 1.510 for a patent that issued from an original application filed in the United States before November 29, 1999, any of whose claims has been twice or finally (§ 1.113) rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee set forth in § 1.17(b) within the time period provided under §§ 1.134 and 1.136 for reply. Notwithstanding the above, for an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issued from an original application filed in the United States on or after November 29, 1999, no appeal may be filed until the claims have been finally rejected (§ 1.113). Appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981. Sections 1.191 through 1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913.

* * * * *

14. Section 1.301 is revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in any *ex parte* reexamination proceeding filed under § 1.510, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the U. S. Patent and Trademark Office, file a written notice of appeal directed to the Commissioner (see §§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. For *inter partes* reexamination proceedings filed under § 1.913, § 1.983 is controlling.

15. Section 1.303 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (d) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant or any owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States before November 29, 1999, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may, instead of appealing to the U.S. Court of Appeals for the Federal Circuit (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an *ex parte* case or an owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States before November 29, 1999, has taken an appeal to the U.S. Court of Appeals for the Federal Circuit, he or she thereby waives his or her right to proceed under 35 U.S.C. 145.

* * * * *

(d) For an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States on or after November 29, 1999, and for an *inter partes* reexamination proceeding filed under § 1.913, no remedy by civil action under 35 U.S.C. 145 is available.

16. Sections 1.304(a)(1) and (a)(2) are revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.197(b), § 1.658(b), or § 1.979(a), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences the time for filing a cross-appeal or cross-action expires:

(i) Fourteen days after service of the notice of appeal or the summons and complaint; or

(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

(2) The time periods set forth in this section are not subject to the provisions of § 1.136, § 1.550(c), § 1.956, or § 1.645(a) or (b).

* * * * *

17. The section heading for subpart D is revised to read as follows:

Subpart D—Ex Parte Reexamination of Patents

* * * * *

18. Section 1.501 is amended by revising paragraph (a) to read as follows:

§ 1.501 Citation of prior art in patent files.

(a) At any time during the period of enforceability of a patent, any person may cite, to the Office in writing, prior art consisting of patents or printed publications which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of the patent. If the citation is made by the patent owner, the explanation of pertinency and applicability may include an explanation of how the claims differ from the prior art. Such citations shall be entered in the patent file except as set forth in §§ 1.502 and 1.902.

* * * * *

19. New § 1.502 is added to read as follows:

§ 1.502 Processing of prior art citations during an *ex parte* reexamination proceeding.

Citations by the patent owner under § 1.555 and by an *ex parte* reexamination requester under either § 1.510 or § 1.535 will be entered in the reexamination file during a reexamination proceeding. The entry in the patent file of citations submitted after the date of an order to reexamine pursuant to § 1.525 by persons other than the patent owner, or an *ex parte* reexamination requester under either § 1.510 or § 1.535, will be delayed until the reexamination proceeding has been terminated. See § 1.902 for processing of prior art citations in patent and reexamination files during an *inter partes* reexamination proceeding filed under § 1.913.

20. The undesignated center heading immediately preceding § 1.510 is revised as follows:

Request for *Ex Parte* Reexamination

21. Section 1.510 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.510 Request for *ex parte* reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for an *ex parte* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501. The request must be accompanied by the fee for requesting reexamination set in § 1.20(c)(1).

* * * * *

22. Section 1.515 is amended by revising its heading and the text to read as follows:

§ 1.515 Determination of the request for *ex parte* reexamination.

(a) Within three months following the filing date of a request for an *ex parte* reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the person requesting reexamination.

(b) Where no substantial new question of patentability has been found, a refund of a portion of the fee for requesting *ex parte* reexamination will be made to the requester in accordance with § 1.26(c).

(c) The requester may seek review by a petition to the Commissioner under § 1.181 within one month of the mailing date of the examiner's determination refusing *ex parte* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

23. Section 1.520 is amended by revising its heading and the text to read as follows:

§ 1.520 *Ex parte* reexamination at the initiative of the Commissioner.

The Commissioner, at any time during the period of enforceability of a patent, may determine whether or not a substantial new question of patentability is raised by patents or printed publications which have been discovered by the Commissioner or which have been brought to the Commissioner's attention, even though no request for reexamination has been filed in accordance with § 1.510 or § 1.913. The Commissioner may initiate *ex parte* reexamination without a request for reexamination pursuant to § 1.510 or § 1.913. Normally requests from outside the Office that the Commissioner undertake reexamination on his own initiative will not be considered. Any determination to initiate *ex parte* reexamination under this section will become a part of the official file of the patent and will be mailed to the patent owner at the address as provided for in § 1.33(c).

24. The undesignated center heading following § 1.520 is revised to read as follows:

Ex Parte Reexamination

25. Section 1.525 is amended by revising its heading and the text of paragraphs (a) and (b) to read as follows:

§ 1.525 Order for *ex parte* reexamination.

(a) If a substantial new question of patentability is found pursuant to § 1.515 or § 1.520, the determination will include an order for *ex parte* reexamination of the patent for resolution of the question. If the order for *ex parte* reexamination resulted from a petition pursuant to § 1.515(c), the *ex parte* reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.515(a).

(b) The notice published in the *Official Gazette* under § 1.11(c) will be considered to be constructive notice and *ex parte* reexamination will proceed.

26. Section 1.530 is amended by revising its heading and paragraphs (a), (b), (c), (d) introductory text, and (l) to read as follows:

§ 1.530 Statement by patent owner in *ex parte* reexamination; amendment by patent owner in *ex parte* or *inter partes* reexamination; inventorship change in *ex parte* or *inter partes* reexamination.

(a) Except as provided in § 1.510(e), no statement or other response by the patent owner in an *ex parte* reexamination proceeding shall be filed prior to the determinations made in accordance with § 1.515 or § 1.520. If a premature statement or other response is filed by the patent owner, it will not be acknowledged or considered in making the determination.

(b) The order for *ex parte* reexamination will set a period of not less than two months from the date of the order within which the patent owner may file a statement on the new question of patentability, including any proposed amendments the patent owner wishes to make.

(c) Any statement filed by the patent owner shall clearly point out why the subject matter as claimed is not anticipated or rendered obvious by the prior art patents or printed publications, either alone or in any reasonable combinations. Where the reexamination request was filed by a third party requester, any statement filed by the patent owner must be served upon the *ex parte* reexamination requester in accordance with § 1.248.

(d) *Making amendments in a reexamination proceeding.* A proposed amendment in an *ex parte* or an *inter partes* reexamination proceeding is made by filing a paper directing that proposed specified changes be made to the patent specification, including the claims, or to the drawings. An amendment paper directing that proposed specified changes be made in a reexamination proceeding may be submitted as an accompaniment to a request filed by the patent owner in accordance with § 1.510(e), as part of a patent owner statement in accordance with paragraph (b) of this section, or, where permitted, during the prosecution of the reexamination proceeding pursuant to § 1.550(a) or § 1.937.

* * * * *

(l) *Correction of inventorship in an ex parte or inter partes reexamination proceeding.*

(1) When it appears in a patent being reexamined that the correct inventor or inventors were not named through error without deceptive intention on the part

of the actual inventor or inventors, the Commissioner may, on petition of all the parties set forth in § 1.324(b)(1)–(3), including the assignees, and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b), or on order of a court before which such matter is called in question, include in the reexamination certificate to be issued under § 1.570 or § 1.977 an amendment naming only the actual inventor or inventors. The petition must be submitted as part of the reexamination proceeding and must satisfy the requirements of § 1.324.

(2) Notwithstanding the preceding paragraph (1)(1) of this section, if a petition to correct inventorship satisfying the requirements of § 1.324 is filed in a reexamination proceeding, and the reexamination proceeding is terminated other than by a reexamination certificate under § 1.570 or § 1.977, a certificate of correction indicating the change of inventorship stated in the petition will be issued upon request by the patentee.

27. Section 1.535 is revised to read as follows:

§ 1.535 Reply by third party requester in *ex parte* reexamination.

A reply to the patent owner's statement under § 1.530 may be filed by the *ex parte* reexamination requester within two months from the date of service of the patent owner's statement. Any reply by the *ex parte* requester must be served upon the patent owner in accordance with § 1.248. If the patent owner does not file a statement under § 1.530, no reply or other submission from the *ex parte* reexamination requester will be considered.

28. Section 1.540 is revised to read as follows:

§ 1.540 Consideration of responses in *ex parte* reexamination.

The failure to timely file or serve the documents set forth in § 1.530 or in § 1.535 may result in their being refused consideration. No submissions other than the statement pursuant to § 1.530 and the reply by the *ex parte* reexamination requester pursuant to § 1.535 will be considered prior to examination.

29. Section 1.550 is revised to read as follows:

§ 1.550 Conduct of *ex parte* reexamination proceedings.

(a) All *ex parte* reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office. After issuance of the *ex parte* reexamination order and expiration of the time for submitting any responses, the examination will be conducted in accordance with §§ 1.104 through 1.116 and will result in the issuance of an *ex parte* reexamination certificate under § 1.570.

(b) The patent owner in an *ex parte* reexamination proceeding will be given at least thirty days to respond to any Office action. In response to any rejection, such response may include further statements and/or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.

(c) The time for taking any action by a patent owner in an *ex parte* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. See § 1.304(a) for extensions of time for filing a notice of appeal to the U. S. Court of Appeals for the Federal Circuit or for commencing a civil action.

(d) If the patent owner fails to file a timely and appropriate response to any Office action or any written statement of an interview required under § 1.560(b), the *ex parte* reexamination proceeding will be terminated, and the Commissioner will proceed to issue a certificate under § 1.570 in accordance with the last action of the Office.

(e) If a response by the patent owner is not timely filed in the Office,

(1) The delay in filing such response may be excused if it is shown to the satisfaction of the Commissioner that the delay was unavoidable; a petition to accept an unavoidably delayed response must be filed in compliance with § 1.137(a); or

(2) The response may nevertheless be accepted if the delay was unintentional; a petition to accept an unintentionally delayed response must be filed in compliance with § 1.137(b).

(f) The reexamination requester will be sent copies of Office actions issued during the *ex parte* reexamination proceeding. After filing of a request for *ex parte* reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party in the reexamination proceeding in the manner provided by § 1.248. The document must reflect service or the document may be refused consideration by the Office.

(g) The active participation of the *ex parte* reexamination requester ends with the reply pursuant to § 1.535, and no further submissions on behalf of the reexamination requester will be acknowledged or considered. Further, no submissions on behalf of any third parties will be acknowledged or considered unless such submissions are:

(1) in accordance with § 1.510 or § 1.535; or

(2) entered in the patent file prior to the date of the order for *ex parte* reexamination pursuant to § 1.525.

(h) Submissions by third parties, filed after the date of the order for *ex parte* reexamination pursuant to § 1.525, must meet the requirements of and will be treated in accordance with § 1.501(a).

30. Section 1.552 is revised to read as follows:

§ 1.552 Scope of reexamination in *ex parte* reexamination proceedings.

(a) Claims in an *ex parte* reexamination proceeding will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112.

(b) Claims in an *ex parte* reexamination proceeding will not be permitted to enlarge the scope of the claims of the patent.

(c) Issues other than those indicated in paragraphs (a) and (b) of this section will not be resolved in a reexamination proceeding. If such issues are raised by the patent owner or third party requester during a reexamination proceeding, the existence of such issues will be noted by the examiner in the next Office action, in which case the patent owner may consider the advisability of filing a reissue application to have such issues considered and resolved.

31. Section 1.555 is amended by revising its heading and paragraph (c) to read as follows:

§ 1.555 Information material to patentability in *ex parte* reexamination and *inter partes* reexamination proceedings.

* * * * *

(c) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are raised by the patent owner or the third party requester during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

32. Section 1.560 is revised to read as follows:

§ 1.560 Interviews in *ex parte* reexamination proceedings.

(a) Interviews in *ex parte* reexamination proceedings pending before the Office between examiners and the owners of such patents or their attorneys or agents of record must be conducted in the Office at such times, within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner. Interviews for the discussion of the patentability of claims in patents involved in *ex parte* reexamination proceedings will not be conducted prior to the first official action. Interviews should be arranged in advance. Requests that reexamination requesters participate in interviews with examiners will not be granted.

(b) In every instance of an interview with an examiner in an *ex parte* reexamination proceeding, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the patent owner. An interview does not remove the necessity for response to Office actions as specified in § 1.111. Patent owner's response to an outstanding Office action after the interview does not remove the necessity for filing the written statement. The written statement must be filed as a separate part of a response to an Office action outstanding at the time of the interview, or as a separate paper within one month from the date of the interview, whichever is later.

33. Section 1.565 is revised to read as follows:

§ 1.565 Concurrent office proceedings which include an *ex parte* reexamination proceeding.

(a) In an *ex parte* reexamination proceeding before the Office, the patent owner must inform the Office of any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissues, *ex parte* reexaminations, *inter partes* reexaminations, or litigation and the results of such proceedings. See § 1.985 for notification of prior or concurrent proceedings in an *inter partes* reexamination proceeding.

(b) If a patent in the process of *ex parte* reexamination is or becomes involved in litigation, the Commissioner shall determine whether or not to suspend the reexamination. See § 1.987 for *inter partes* reexamination proceedings.

(c) If *ex parte* reexamination is ordered while a prior *ex parte* reexamination proceeding is pending and prosecution in the prior *ex parte* reexamination proceeding has not been terminated, the *ex parte* reexamination proceedings will be consolidated and result in the issuance of a single certificate under § 1.570. For merger of *inter partes* reexamination proceedings, see § 1.989(a). For merger of *ex parte* reexamination and *inter partes* reexamination proceedings, see § 1.989(b).

(d) If a reissue application and an *ex parte* reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to suspend one of the two proceedings. Where merger of a reissue application and an *ex parte* reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171 through 1.179, and the patent owner will be required to place and maintain the same claims in the reissue application and the *ex parte* reexamination proceeding during the pendency of the merged proceeding. The examiner's actions and responses by the patent owner in a merged proceeding will apply to both the reissue application and the *ex parte* reexamination proceeding and be physically entered into both files. Any *ex parte* reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent. For merger of a reissue application and an *inter partes* reexamination, see § 1.991.

(e) If a patent in the process of *ex parte* reexamination is or becomes involved in an interference, the Commissioner may suspend the reexamination or the interference. The Commissioner will not consider a request to suspend an interference unless a motion (§ 1.635) to suspend the interference has been presented to, and denied by, an administrative patent judge, and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set. For concurrent *inter partes* reexamination and interference of a patent, see § 1.993.

34. The undesignated center heading following § 1.565 is revised to read as follows:

Ex Parte Reexamination Certificate

35. Section 1.570 is revised to read as follows:

§ 1.570 Issuance of *ex parte* reexamination certificate after *ex parte* reexamination proceedings.

(a) Upon the conclusion of *ex parte* reexamination proceedings, the Commissioner will issue an *ex parte* reexamination certificate in accordance with 35 U.S.C. 307 setting forth the results of the *ex parte* reexamination proceeding and the content of the patent following the *ex parte* reexamination proceeding.

(b) An *ex parte* reexamination certificate will be issued in each patent in which an *ex parte* reexamination proceeding has been ordered under § 1.525 and has not been merged with any *inter partes* reexamination proceeding pursuant to § 1.989(a). Any statutory disclaimer filed by the patent owner will be made part of the *ex parte* reexamination certificate.

(c) The *ex parte* reexamination certificate will be mailed on the day of its date to the patent owner at the address as provided for in § 1.33(c). A copy of the *ex parte* reexamination certificate will also be mailed to the requester of the *ex parte* reexamination proceeding.

(d) If an *ex parte* reexamination certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with that patent or any reissue applications or any reexamination requests relating thereto.

(e) If the *ex parte* reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.565(d), the reissued patent will constitute the *ex parte* reexamination certificate required by this section and 35 U.S.C. 307.

(f) A notice of the issuance of each *ex parte* reexamination certificate under this section will be published in the *Official Gazette* on its date of issuance.

36. A new subpart H is added to read as follows:

Subpart H—*Inter Partes* Reexamination of Patents That Issued From an Original Application Filed in the United States on or After November 29, 1999

Sec.

Prior Art Citations

1.902 Processing of prior art citations during an *inter partes* reexamination proceeding.

Requirements for *Inter Partes* Reexamination Proceedings

1.903 Service of papers on parties in *inter partes* reexamination.

1.904 Notice of *inter partes* reexamination in Official Gazette.

1.905 Submission of papers by the public in *inter partes* reexamination.

1.906 Scope of reexamination in *inter partes* reexamination proceeding.

1.907 *Inter partes* reexamination prohibited.
1.913 Persons eligible to file request for *inter partes* reexamination.
1.915 Content of request for *inter partes* reexamination.
1.919 Filing date of request for *inter partes* reexamination.
1.923 Examiner's determination on the request for *inter partes* reexamination.
1.925 Partial refund if request for *inter partes* reexamination is not ordered.
1.927 Petition to review refusal to order *inter partes* reexamination.

Inter Partes Reexamination of Patents

1.931 Order for *inter partes* reexamination.

Information Disclosure in *Inter Partes* Reexamination

1.933 Patent owner duty of disclosure in *inter partes* reexamination proceedings.

Office Actions and Responses (Before the Examiner) in *Inter Partes* Reexamination

1.935 Initial Office action usually accompanies order for *inter partes* reexamination.
1.937 Conduct of *inter partes* reexamination.
1.939 Unauthorized papers in *inter partes* reexamination.
1.941 Amendments by patent owner in *inter partes* reexamination.
1.943 Requirements of responses, written comments, and briefs in *inter partes* reexamination.
1.945 Response to Office action by patent owner in *inter partes* reexamination.
1.947 Comments by third party requester to patent owner's response in *inter partes* reexamination.
1.948 Limitations on submission of prior art by third party requester following the order for *inter partes* reexamination.
1.949 Examiner's Office action closing prosecution in *inter partes* reexamination.
1.951 Options after Office action closing prosecution in *inter partes* reexamination.
1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

Interviews Prohibited in *Inter Partes* Reexamination

1.955 Interviews prohibited in *inter partes* reexamination proceedings.

Extensions of Time, Termination of Proceedings, and Petitions To Revive in *Inter Partes* Reexamination

1.956 Patent owner extensions of time in *inter partes* reexamination.
1.957 Failure to file a timely, appropriate or complete response or comment in *inter partes* reexamination.
1.958 Petition to revive terminated *inter partes* reexamination or claims terminated for lack of patent owner response.

Appeal to the Board of Patent Appeals and Interferences in *Inter Partes* Reexamination

1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in *inter partes* reexamination.
1.961 Jurisdiction over appeal in inter partes reexamination.
1.962 Appellant and respondent in *inter partes* reexamination defined.
1.963 Time for filing briefs in *inter partes* reexamination.
1.965 Appellant's brief in *inter partes* reexamination.
1.967 Respondent's brief in *inter partes* reexamination.
1.969 Examiner's answer in *inter partes* reexamination.
1.971 Rebuttal brief in *inter partes* reexamination.
1.973 Oral hearing in *inter partes* reexamination.
1.975 Affidavits or declarations after appeal in *inter partes* reexamination.
1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in *inter partes* reexamination.
1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.
1.981 Reopening after decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination.

Patent Owner Appeal to the United States Court of Appeals for the Federal Circuit in *Inter Partes* Reexamination

1.983 Patent owner appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

Concurrent Proceedings Involving Same Patent in *InterPartes* Reexamination

1.985 Notification of prior or concurrent proceedings in *inter partes* reexamination.
1.987 Suspension of *inter partes* reexamination proceeding due to litigation.
1.989 Merger of concurrent reexamination proceedings.
1.991 Merger of concurrent reissue application and *inter partes* reexamination proceeding.
1.993 Suspension of concurrent interference and *inter partes* reexamination proceeding.
1.995 Third party requester's participation rights preserved in merged proceeding.

Reexamination Certificate in *Inter Partes* Reexamination

1.997 Issuance of inter partes reexamination certificate.

Subpart H—*Inter Partes* Reexamination of Patents That Issued From an Original Application Filed in the United States on or After November 29, 1999

Prior Art Citations

§ 1.902 Processing of prior art citations during an *inter partes* reexamination proceeding.

Citations by the patent owner in accordance with § 1.933 and by an *inter partes* reexamination third party requester under § 1.915 or § 1.948 will be entered in the *inter partes* reexamination file. The entry in the patent file of other citations submitted after the date of an order for reexamination pursuant to § 1.931 by persons other than the patent owner, or the third party requester under either § 1.915 or § 1.948, will be delayed until the *inter partes* reexamination proceeding has been terminated. See § 1.502 for processing of prior art citations in patent and reexamination files during an *ex parte* reexamination proceeding filed under § 1.510.

Requirements for *Inter Partes* Reexamination Proceedings

§ 1.903 Service of papers on parties in *inter partes* reexamination.

The patent owner and the third party requester will be sent copies of Office actions issued during the *inter partes* reexamination proceeding. After filing of a request for *inter partes* reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the patent owner or the third party requester to serve documents may result in their being refused consideration.

§ 1.904 Notice of *inter partes* reexamination in Official Gazette.

A notice of the filing of an *inter partes* reexamination request will be published in the *Official Gazette*. The notice published in the *Official Gazette* under § 1.11(c) will be considered to be constructive notice of the *inter partes* reexamination proceeding and *inter partes* reexamination will proceed.

§ 1.905 Submission of papers by the public in *inter partes* reexamination.

Unless specifically provided for, no submissions on behalf of any third parties other than third party requesters as defined in 35 U.S.C. 100(e) will be considered unless such submissions are in accordance with § 1.915 or entered in the patent file prior to the date of the order for reexamination pursuant to § 1.931. Submissions by third parties, other than third party requesters, filed after the date of the order for reexamination pursuant to § 1.931, must meet the requirements of § 1.501 and will be treated in accordance with § 1.902. Submissions which do not meet the requirements of § 1.501 will be returned.

§ 1.906 Scope of reexamination in *inter partes* reexamination proceeding.

(a) Claims in an *inter partes* reexamination proceeding will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112.

(b) Claims in an *inter partes* reexamination proceeding will not be permitted to enlarge the scope of the claims of the patent.

(c) Issues other than those indicated in paragraphs (a) and (b) of this section will not be resolved in an *inter partes* reexamination proceeding. If such issues are raised by the patent owner or the third party requester during a reexamination proceeding, the existence of such issues will be noted by the examiner in the next Office action, in which case the patent owner may desire to consider the advisability of filing a reissue application to have such issues considered and resolved.

§ 1.907 *Inter partes* reexamination prohibited.

(a) Once an order to reexamine has been issued under § 1.931, neither the third party requester, nor its privies, may file a subsequent request for *inter partes* reexamination of the patent until an *inter partes* reexamination certificate is issued under § 1.997, unless authorized by the Commissioner.

(b) Once a final decision has been entered against a party in a civil action arising in whole or in part under 28 U.S.C. 1338 that the party has not sustained its burden of proving invalidity of any patent claim-in-suit, then neither that party nor its privies may thereafter request *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such civil action, and an *inter partes* reexamination requested by that party, or its privies, on the basis of such issues may not thereafter be maintained by the Office.

(c) If a final decision in an *inter partes* reexamination proceeding instituted by a third party requester is favorable to patentability of any original, proposed amended, or new claims of the patent, then neither that party nor its privies may thereafter request *inter partes* reexamination of any such patent claims on the basis of issues which that party, or its privies, raised or could have raised in such *inter partes* reexamination proceeding.

§ 1.913 Persons eligible to file request for *inter partes* reexamination.

Except as provided for in § 1.907, any person may, at any time during the period of enforceability of a patent which issued from an original application filed in the United States on or after November 29, 1999, file a request for *inter partes* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501.

§ 1.915 Content of request for *inter partes* reexamination.

(a) The request must be accompanied by the fee for requesting *inter partes* reexamination set forth in § 1.20(c)(2).

(b) A request for *inter partes* reexamination must include the following parts:

(1) An identification of the patent by patent number and every claim for which reexamination is requested.

(2) A citation of the patents and printed publications which are presented to provide a substantial new question of patentability.

(3) A statement pointing out each substantial new question of patentability based on the cited patents and printed publications, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.

(4) A copy of every patent or printed publication relied upon or referred to in paragraphs (b)(1) through (3) of this section, accompanied by an English language translation of all the necessary and pertinent parts of any non-English language document.

(5) A copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent. All copies must have each page plainly written on only one side of a sheet of paper.

(6) A certification by the third party requester that a copy of the request has been served in its entirety on the patent owner at the address provided for in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy of the request must be supplied to the Office.

(7) A certification by the third party requester that the estoppel provisions of § 1.907 do not prohibit the *inter partes* reexamination.

(8) A statement identifying the real party in interest to the extent necessary for a subsequent person filing an *inter partes* reexamination request to determine whether that person is a privy.

(c) If an *inter partes* request is filed by an attorney or agent identifying another party on whose behalf the request is being filed, the attorney or agent must have a power of attorney from that party or be acting in a representative capacity pursuant to § 1.34(a).

(d) If the *inter partes* request does not meet all the requirements of subsection 1.915(b), the person identified as requesting *inter partes* reexamination may be so notified and given an opportunity to complete the formal requirements of the request within a specified time. Failure to comply with the notice may result in the *inter partes* reexamination proceeding being vacated.

§ 1.919 Filing date of request for *inter partes* reexamination.

(a) The filing date of a request for *inter partes* reexamination is the date on which the request satisfies the fee requirement of § 1.915(a).

(b) If the request is not granted a filing date, the request will be placed in the patent file as a citation of prior art if it complies with the requirements of § 1.501.

§ 1.923 Examiner's determination on the request for *inter partes* reexamination.

Within three months following the filing date of a request for *inter partes* reexamination under § 1.919, the examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art citation. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the third party requester. If the examiner determines that no substantial new question of patentability is present, the examiner shall refuse the request and shall not order *inter partes* reexamination.

§ 1.925 Partial refund if request for *inter partes* reexamination is not ordered.

Where *inter partes* reexamination is not ordered, a refund of a portion of the fee for requesting *inter partes* reexamination will be made to the requester in accordance with § 1.26(c).

§ 1.927 Petition to review refusal to order *inter partes* reexamination.

The third party requester may seek review by a petition to the Commissioner under § 1.181 within one month of the mailing date of the examiner's determination refusing to order *inter partes* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that

no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

Inter Partes Reexamination of Patents

§ 1.931 Order for *inter partes* reexamination.

(a) If a substantial new question of patentability is found, the determination will include an order for *inter partes* reexamination of the patent for resolution of the question.

(b) If the order for *inter partes* reexamination resulted from a petition pursuant to § 1.927, the *inter partes* reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.923.

Information Disclosure in *Inter Partes* Reexamination

§ 1.933 Patent owner duty of disclosure in *inter partes* reexamination proceedings.

(a) Each individual associated with the patent owner in an *inter partes* reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding as set forth in § 1.555(a) and (b). The duty to disclose all information known to be material to patentability in an *inter partes* reexamination proceeding is deemed to be satisfied by filing a paper in compliance with the requirements set forth in § 1.555(a) and (b).

(b) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section, and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are raised by the patent owner or the third party requester during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.906(c).

Office Actions and Responses (Before the Examiner) in *Inter Partes* Reexamination

§ 1.935 Initial Office action usually accompanies order for *inter partes* reexamination.

The order for *inter partes* reexamination will usually be accompanied by the initial Office action on the merits of the reexamination.

§ 1.937 Conduct of *inter partes* reexamination.

(a) All *inter partes* reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office, unless the Commissioner makes a determination that there is good cause for suspending the reexamination proceeding.

(b) The *inter partes* reexamination proceeding will be conducted in accordance with §§ 1.104 through 1.116, the sections governing the application examination process, and will result in the issuance of an *inter partes* reexamination certificate under § 1.997, except as otherwise provided.

(c) All communications between the Office and the parties to the *inter partes* reexamination which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding.

§ 1.939 Unauthorized papers in *inter partes* reexamination.

(a) If an unauthorized paper is filed by any party at any time during the *inter partes* reexamination proceeding it will not be considered and may be returned.

(b) Unless otherwise authorized, no paper shall be filed prior to the initial Office action on the merits of the *inter partes* reexamination.

§ 1.941 Amendments by patent owner in *inter partes* reexamination.

Amendments by patent owner in *inter partes* reexamination proceedings are made by filing a paper in compliance with §§ 1.530(d)–(k) and 1.943.

§ 1.943 Requirements of responses, written comments, and briefs in *inter partes* reexamination.

(a) The form of responses, written comments, briefs, appendices, and other papers must be in accordance with the requirements of § 1.52.

(b) Responses by the patent owner and written comments by the third party requester shall not exceed 50 pages in length, excluding amendments, appendices of claims, and reference materials such as prior art references.

(c) Appellant's briefs filed by the patent owner and the third party requester shall not exceed thirty pages or 14,000 words in length, excluding appendices of claims and reference materials such as prior art references. All other briefs filed by any party shall not exceed fifteen pages in length or 7,000 words. If the page limit for any brief is exceeded, a certificate is required stating the number of words contained in the brief.

§ 1.945 Response to Office action by patent owner in *inter partes* reexamination.

The patent owner will be given at least thirty days to file a response to any Office action on the merits of the *inter partes* reexamination.

§ 1.947 Comments by third party requester to patent owner's response in *inter partes* reexamination.

Each time the patent owner files a response to an Office action on the merits pursuant to § 1.945, a third party requester may once file written comments within a period of 30 days from the date of service of the patent owner's response. These comments shall be limited to issues raised by the Office action or the patent owner's response. The time for submitting comments by the third party requester may not be extended. For the purpose of filing the written comments by the third party requester, the comments will be considered as having been received in the Office as of the date of deposit specified in the certificate under § 1.8.

§ 1.948 Limitations on submission of prior art by third party requester following the order for *inter partes* reexamination.

(a) After the *inter partes* reexamination order, the third party requester may only cite additional prior art as defined under § 1.501 if it is filed as part of a comments submission under § 1.947 or § 1.951(b) and is limited to prior art:

(1) which is necessary to rebut a finding of fact by the examiner;

(2) which is necessary to rebut a response of the patent owner; or

(3) which for the first time became known or available to the third party requester after the filing of the request for *inter partes* reexamination proceeding. Prior art submitted under paragraph (a)(3) of this section must be accompanied by a statement as to when the prior art first became known or available to the third party requester and must include a discussion of the pertinency of each reference to the patentability of at least one claim.

(b) [Reserved].

§ 1.949 Examiner's Office action closing prosecution in *inter partes* reexamination.

Upon consideration of the issues a second or subsequent time, or upon a determination of patentability of all claims, the examiner shall issue an Office action treating all claims present in the *inter partes* reexamination, which may be an action closing prosecution. The Office action shall set forth all rejections and determinations not to make a proposed rejection, and the grounds therefor. An Office action will not usually close prosecution if it includes a new ground of rejection which was not previously addressed by the patent owner, unless the new ground was necessitated by an amendment.

§ 1.951 Options after Office action closing prosecution in *inter partes* reexamination.

(a) After an Office action closing prosecution in an *inter partes* reexamination, the patent owner may once file comments limited to the issues raised in the Office action closing prosecution. The comments can include a proposed amendment to the claims, which amendment will be subject to the criteria of § 1.116 as to whether or not it shall be admitted. The comments must be filed within the time set for response in the Office action closing prosecution.

(b) When the patent owner does file comments, a third party requester may once file comments responsive to the patent owner's comments within 30 days from the date of service of patent owner's comments on the third party requester.

§ 1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

(a) Upon considering the comments of the patent owner and the third party requester subsequent to the Office action closing prosecution in an *inter partes* reexamination, or upon expiration of the time for submitting such comments, the examiner shall issue a Right of Appeal Notice, unless the examiner reopens prosecution and issues another Office action on the merits.

(b) Expedited Right of Appeal Notice: At any time after the patent owner's response to the initial Office action on the merits in an *inter partes* reexamination, the patent owner and all third party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final determination favorable to patentability, and may request the issuance of a Right of Appeal Notice. The request must have the concurrence of the patent owner and all third party requesters present in the proceeding and must identify all the appealable issues and the positions of the patent owner and all third party requesters on those issues. If the examiner determines that no other issues are present or should be raised, a Right of Appeal Notice limited to the identified issues shall be issued. Any appeal by the parties shall be conducted in accordance with §§ 1.959–1.983.

(c) The Right of Appeal Notice shall be a final action, which comprises a final rejection setting forth each ground of rejection and/or final decision favorable to patentability including each determination not to make a proposed rejection, an identification of the status of each claim, and the reasons for decisions favorable to patentability and/or the grounds of rejection for each claim. No amendment can be made in response to the Right of Appeal Notice. The Right of Appeal Notice shall set a one-month time period for either party to appeal. If no notice of appeal is filed, the *inter partes* reexamination proceeding will be terminated, and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the Right of Appeal Notice.

Interviews Prohibited in *Inter Partes* Reexamination

§ 1.955 Interviews prohibited in *inter partes* reexamination proceedings.

There will be no interviews in an *inter partes* reexamination proceeding which discuss the merits of the proceeding.

Extensions of Time, Termination of Proceedings, and Petitions To Revive in *Inter Partes* Reexamination

§ 1.956 Patent owner extensions of time in *inter partes* reexamination.

The time for taking any action by a patent owner in an *inter partes* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. *See* § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

§ 1.957 Failure to file a timely, appropriate or complete response or comment in *inter partes* reexamination.

(a) If the third party requester files an untimely or inappropriate comment, notice of appeal or brief in an *inter partes* reexamination, the paper will be refused consideration.

(b) If no claims are found patentable, and the patent owner fails to file a timely and appropriate response in an *inter partes* reexamination proceeding, the reexamination proceeding will be terminated and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the last action of the Office.

(c) If claims are found patentable and the patent owner fails to file a timely and appropriate response to any Office action in an *inter partes* reexamination proceeding, further prosecution will be limited to the claims found patentable at the time of the failure to respond, and to any claims added thereafter which do not expand the scope of the claims which were found patentable at that time.

(d) When action by the patent owner is a *bona fide* attempt to respond and to advance the prosecution and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, an opportunity to explain and supply the omission may be given.

§ 1.958 Petition to revive terminated *inter partes* reexamination or claims terminated for lack of patent owner response.

(a) If a response by the patent owner is not timely filed in the Office, the delay in filing such response may be excused if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A grantable petition to accept an unavoidably delayed response must be filed in compliance with § 1.137(a).

(b) Any response by the patent owner not timely filed in the Office may be accepted if the delay was unintentional. A grantable petition to accept an unintentionally delayed response must be filed in compliance with § 1.137(b).

Appeal to the Board of Patent Appeals and Interferences in *Inter Partes* Reexamination

§ 1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in *inter partes* reexamination.

(a)(1) Upon the issuance of a Right of Appeal Notice under § 1.953, the patent owner involved in an *inter partes* reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to the final rejection of any claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 1.17(b).

(2) Upon the issuance of a Right of Appeal Notice under § 1.953, a third party requester involved in an *inter partes* reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 1.17(b).

(b)(1) Within fourteen days of service of a third party requester's notice of appeal under paragraph (a)(2) of this section and upon payment of the fee set forth in § 1.17(b), a patent owner who has not filed a notice of appeal may file

a notice of cross appeal with respect to the final rejection of any claim of the patent.

(2) Within fourteen days of service of a patent owner's notice of appeal under paragraph (a)(1) of this section and upon payment of the fee set forth in § 1.17(b), a third party requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent.

(c) The notice of appeal or cross appeal in an *inter partes* reexamination proceeding must identify the appealed claim(s) and must be signed by the patent owner, the third party requester, or their duly authorized attorney or agent.

(d) An appeal or cross appeal, when taken, must be taken from all the rejections of the claims in a Right of Appeal Notice which the patent owner proposes to contest or from all the determinations favorable to patentability, including any final determination not to make a proposed rejection, in a Right of Appeal Notice which a third party requester proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal is decided.

(e) The times for filing a notice of appeal or cross appeal may not be extended.

§ 1.961 Jurisdiction over appeal in *inter partes* reexamination.

Jurisdiction over the *inter partes* reexamination proceeding passes to the Board of Patent Appeals and Interferences upon transmittal of the file, including all briefs and examiner's answers, to the Board of Patent Appeals and Interferences. Prior to the entry of a decision on the appeal, the Commissioner may *sua sponte* order the *inter partes* reexamination proceeding remanded to the examiner for action consistent with the Commissioner's order.

§ 1.962 Appellant and respondent in *inter partes* reexamination defined.

For the purposes of *inter partes* reexamination, appellant is any party, whether the patent owner or a third party requester, filing a notice of appeal or cross appeal. If more than one party appeals or cross appeals, each appealing or cross appealing party is an appellant with respect to the claims to which his or her appeal or cross appeal is directed. A respondent is any third party requester responding under § 1.967 to the appellant's brief of the patent owner, or the patent owner responding under § 1.967 to the appellant's brief of any third party requester. No third party requester may be a respondent to the appellant brief of any other third party requester.

§ 1.963 Time for filing briefs in *inter partes* reexamination.

(a)An appellant's brief in an *inter partes* reexamination must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross appeal or, if any party to the *inter partes* reexamination is entitled to file an appeal or cross appeal but fails to timely do so, the expiration of time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant's brief may not be extended.

(b) Once an appellant's brief has been properly filed, any brief must be filed by respondent within one month from the date of service of the appellant's brief. The time for filing a respondent's brief may not be extended.

(c) The examiner will consider both the appellant's and respondent's briefs and may prepare an examiner's answer under § 1.969.

(d) Any appellant may file a rebuttal brief under § 1.971 within one month of the date of the examiner's answer. The time for filing a rebuttal brief may not be extended.

(e) No further submission will be considered and any such submission will be treated in accordance with § 1.939.

§ 1.965 Appellant's brief in *inter partes* reexamination.

(a)Appellant(s) may once, within time limits for filing set forth in § 1.963, file a brief in triplicate and serve the brief on all other parties to the *inter partes* reexamination proceeding in accordance with § 1.903. The brief must be signed by the appellant, or the appellant's duly authorized attorney or agent and must be accompanied by the requisite fee set forth in § 1.17(c). The brief must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) A party's appeal shall stand dismissed upon failure of that party to file an appellant's brief, accompanied by the requisite fee, within the time allowed.

(c) The appellant's brief shall contain the following items under appropriate headings and in the order indicated below, unless the brief is filed by a party who is not represented by a registered practitioner. The brief may include an appendix containing only those portions of the record on which reliance has been made.

(1) *Real Party in Interest.* A statement identifying the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences in the pending appeal.

(3) *Status of Claims.* A statement of the status of all the claims, pending or canceled. If the appellant is the patent owner, the appellant must also identify the rejected claims whose rejection is being appealed. If the appellant is a third party requester, the appellant must identify the claims that the examiner has made a determination favorable to patentability, which determination is being appealed.

(4) *Status of Amendments.* A statement of the status of any amendment filed subsequent to the close of prosecution.

(5) *Summary of Invention.* A concise explanation of the invention or subject matter defined in the claims involved in the appeal, which shall refer to the specification by column and line number, and to the drawing(s), if any, by reference characters.

(6) *Issues.* A concise statement of the issues presented for review. No new ground of rejection can be proposed by a third party requester appellant.

(7) *Grouping of Claims.* If the appellant is the patent owner, for each ground of rejection in the Right of Appeal Notice which appellant contests and which applies to a group of two or more claims, the Board of Patent Appeals and Interferences shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together; and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of this group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the bases therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate, numbered heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, or for each determination favorable to patentability, including a determination not to make a proposed rejection under 35 U.S.C. 112, first paragraph, which appellant contests, the argument shall specify the errors in the rejection or the determination and how the first paragraph of 35 U.S.C. 112 is complied with, if the appellant is the patent owner, or is not complied with, if the appellant is a third party requester, including, as appropriate, how the specification and drawing(s), if any,

(A) Describe, if the appellant is the patent owner, or fail to describe, if the appellant is a third party requester, the subject matter defined by each of the appealed claims; and

(B) Enable, if the appellant is the patent owner, or fail to enable, if the appellant is a third party requester, any person skilled in the art to make and use the subject matter defined by each of the appealed claims.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 112, second paragraph, which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or the determination, if the appellant is a third party requester, and how the claims do, if the appellant is the patent owner, or do not, if the appellant is a third party requester, particularly point out and distinctly claim the subject matter which the inventor regards as the invention.

(iii) For each rejection under 35 U.S.C. 102 or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 102 which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third party requester, and why the appealed claims are, if the appellant is the patent owner, or are not, if the appellant is a third party requester, patentable under 35 U.S.C. 102, including any specific limitations in the appealed claims which are or are not described in the prior art.

(iv) For each rejection under 35 U.S.C. 103 or for each determination favorable to patentability, including a determination not to make a proposed rejection under 35 U.S.C. 103 which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third party requester. If appropriate, also state the specific limitations in the appealed claims which are or are not described in the prior art and explain how such limitations render the claimed subject matter obvious, if the appellant is a third party requester, or unobvious, if the appellant is the patent owner, over the prior art. If the rejection or determination is based upon a combination of references, the argument shall explain why the references, taken as a whole, do or do not suggest the claimed subject matter. The argument should include, as may be appropriate, an explanation of why features disclosed in one reference may or may not properly be combined with features disclosed in another reference. A general argument that all the limitations are or are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section or for each determination favorable to patentability, including any determination not to make a proposed rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third party requester, and the specific limitations in the appealed claims, if appropriate, or other reasons, which cause the rejection or determination to be in error.

(9) *Appendix.* An appendix containing a copy of the claims appealed by the appellant.

(10) *Certificate of Service.* A certification that a copy of the brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's appeal will stand dismissed.

§ 1.967 Respondent's brief in *inter partes* reexamination.

(a) Respondent(s) in an *inter partes* reexamination appeal may once, within the time limit for filing set forth in § 1.963, file a respondent brief in triplicate and serve the brief on all parties in accordance with § 1.903. The brief must be signed by the party, or the party's duly authorized attorney or agent, and must be accompanied by the requisite fee set forth in § 1.17(c). The brief must state the authorities and arguments on which respondent will rely. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown. The respondent brief shall be limited to issues raised in the appellant brief to which the respondent brief is directed. A third party respondent brief may not address any brief of any other third party.

(b) The respondent brief shall contain the following items under appropriate headings and in the order here indicated, and may include an appendix containing only those portions of the record on which reliance has been made.

(1) *Real Party in Interest.* A statement identifying the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the respondent, the respondent's legal representative, or assignee (if any) which will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences in the pending appeal.

(3) *Status of claims.* A statement accepting or disputing appellant's statement of the status of claims. If appellant's statement of the status of claims is disputed, the errors in appellant's statement must be specified with particularity.

(4) *Status of amendments.* A statement accepting or disputing appellant's statement of the status of amendments. If appellant's statement of the status of amendments is disputed, the errors in appellant's statement must be specified with particularity.

(5) *Summary of invention.* A statement accepting or disputing appellant's summary of the invention or subject matter defined in the claims involved in the appeal. If appellant's summary of the invention or subject matter defined in the claims involved in the appeal is disputed, the errors in appellant's summary must be specified.

(6) *Issues.* A statement accepting or disputing appellant's statement of the issues presented for review. If

appellant's statement of the issues presented for review is disputed, the errors in appellant's statement must be specified. A counter statement of the issues for review may be made. No new ground of rejection can be proposed by a third party requester respondent.

(7) *Argument.* A statement accepting or disputing the contentions of the appellant with each of the issues. If a contention of the appellant is disputed, the errors in appellant's argument must be specified, stating the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading. An argument may be made with each of the issues stated in the counter statement of the issues, with each counter-stated issue being treated under a separate heading. The provisions of § 1.965 (c)(8)(iii) and (iv) of these regulations shall apply to any argument raised under 35 U.S.C. 102 or sec. 103.

(8) *Certificate of Service.* A certification that a copy of the respondent brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(c) If a respondent brief is filed which does not comply with all the requirements of paragraph (b) of this section, respondent will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the respondent does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the respondent brief will not be considered.

§ 1.969 Examiner's answer in *inter partes* reexamination.

(a) The primary examiner in an *inter partes* reexamination appeal may, within such time as directed by the Commissioner, furnish a written statement in answer to the patent owner's and/or third party requester's appellant brief or respondent brief including, as may be necessary, such explanation of the invention claimed and of the references, the grounds of rejection, and the reasons for patentability, including grounds for not adopting a proposed rejection. A copy of the answer shall be supplied to all parties to the reexamination proceeding. If the primary examiner finds that the appeal is not regular in form or does not relate to an appealable action, he or she shall so state.

(b) An examiner's answer may not include a new ground of rejection.

(c) An examiner's answer may not include a new determination not to make a proposed rejection of a claim.

(d) Any new ground of rejection, or any new determination not to make a proposed rejection, must be made in an Office action reopening prosecution.

§ 1.971 Rebuttal brief in *inter partes* reexamination.

Within one month of the examiner's answer in an *inter partes* reexamination appeal, any appellant may once file a rebuttal brief in triplicate. The rebuttal brief of the patent owner may be directed to the examiner's answer and/or any respondent brief. The rebuttal brief of any third party requester may be directed to the examiner's answer and/or the respondent brief of the patent owner. The rebuttal brief of a third party requester may not be directed to the respondent brief of any other third party requester. No new ground of rejection can be proposed by a third party requester. The time for filing a rebuttal brief may not be extended. The rebuttal brief must include a certification that a copy of the rebuttal brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

§ 1.973 Oral hearing in *inter partes* reexamination.

(a) An oral hearing in an *inter partes* reexamination appeal should be requested only in those circumstances in which an appellant or a respondent considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Patent Appeals and Interferences as an appeal decided after oral hearing.

(b) If an appellant or a respondent desires an oral hearing, he or she must file a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months after the date of the examiner's answer. The time for requesting an oral hearing may not be extended.

(c) An oral argument may be presented at oral hearing by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board of Patent Appeals and Interferences.

(d) If an appellant or a respondent has requested an oral hearing and has submitted the fee set forth in § 1.17(d), a hearing date will be set, and notice given to all parties to the reexamination proceeding, as well as the primary examiner. The notice shall set a non-extendable period within which all requests for oral hearing shall be submitted by any other party to the appeal desiring to participate in the oral hearing. A hearing will be held as stated in the notice, and oral argument will be limited to thirty minutes for each appellant and respondent who has requested an oral hearing, and twenty minutes for the primary examiner unless otherwise ordered before the hearing begins. No appellant or respondent will be permitted to participate in an oral hearing unless he or she has requested an oral hearing and submitted the fee set forth in § 1.17(d).

(e) If no request and fee for oral hearing have been timely filed by an appellant or a respondent, the appeal will be assigned for consideration and decision on the written record.

§ 1.975 Affidavits or declarations after appeal in *inter partes* reexamination.

Affidavits, declarations, or exhibits submitted after the *inter partes* reexamination has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

§ 1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in *inter partes* reexamination.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's determination not to make a rejection proposed by the third party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Board of Patent Appeals and Interferences as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not raised in the appeal for rejecting any pending claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a new ground of rejection of the claim. A decision which includes a new ground of rejection shall not be considered final for purposes of judicial review. When the Board of Patent Appeals and Interferences makes a new ground of rejection, the patent owner, within one month from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal proceeding as to the rejected claim:

(1) The patent owner may submit an appropriate amendment of the claim so rejected or a showing of facts relating to the claim, or both.

(2) The patent owner may file a request for rehearing of the decision of the Board of Patent Appeals and Interferences under § 1.979(a).

(c) Where the patent owner has responded under paragraph (b)(1) of this section, any third party requester, within one month of the date of service of the patent owner response, may once file comments on the response. Such written comments must be limited to the issues raised by the decision of the Board of Patent Appeals and Interferences and the patent owner's response. Any third party requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 1.17(b) and (c), respectively, which must accompany the comments or reply.

(d) Following any response by the patent owner under paragraph (b)(1) of this section and any written comments from a third party requester under paragraph (c) of this section, the reexamination proceeding will be remanded to the examiner. The statement of the Board of Patent Appeals and Interferences shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground of rejection. The examiner will consider any response under paragraph (b)(1) of this section and any written comments by a third party requester under paragraph (c) of this section and issue a determination that the rejection should be maintained or has been overcome.

(e) Within one month of the examiner's determination pursuant to paragraph (d) of this section, the patent owner or any third party requester may once submit comments in response to the examiner's determination. Within one month of the date of service of comments in response to the examiner's determination, any party may file a reply to the comments. No third party requester reply may address the comments of any other third party requester reply. Any third party requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 1.17(b) and (c), respectively, which must accompany the comments or reply.

(f) After submission of any comments and any reply pursuant to paragraph (e) of this section, or after time has expired, the reexamination proceeding will be returned to the Board of Patent Appeals and Interferences which shall reconsider the matter and issue a new decision. The new decision will incorporate the earlier decision, except for those portions specifically withdrawn.

(g) The time period set forth in paragraph (b) of this section is subject to the extension of time provisions of § 1.956. The time periods set forth in paragraphs (c) and (e) of this section may not be extended.

§ 1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.

(a) Parties to the appeal may file a request for rehearing of the decision within one month of the date of:

(1) The original decision of the Board of Patent Appeals and Interferences under § 1.977(a),

(2) The original § 1.977(b) decision under the provisions of § 1.977(b)(2),

(3) The expiration of the time for the patent owner to take action under § 1.977(b)(2), or

(4) The new decision of the Board of Patent Appeals and Interferences under § 1.977(f).

(b) Within one month of the date of service of any request for rehearing under paragraph (a) of this section, or any further request for rehearing under paragraph (c) of this section, any party to the appeal may once file comments in opposition to the request for rehearing or the further request for rehearing. The comments in opposition must be limited to the issues raised in the request for rehearing or the further request for rehearing.

(c) If a party to an appeal files a request for rehearing under paragraph (a) of this section, or a further request for rehearing under this section, the Board of Patent Appeals and Interferences will issue a decision on rehearing. This decision is deemed to incorporate the earlier decision, except for those portions specifically withdrawn. If the decision on rehearing becomes, in effect, a new decision, and the Board of Patent Appeals and Interferences so states, then any party to the appeal may, within one month of the new decision, file a further request for rehearing of the new decision under this subsection.

(d) Any request for rehearing shall state the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought.

(e) The patent owner may not appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983 until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board of Patent Appeals and Interferences is final and appealable by the patent owner.

(f) An appeal by a third party requester is considered terminated by the dismissal of the third party requester's appeal, the failure of the third party requester to timely request rehearing under § 1.979(a) or (c), or a final decision under § 1.979(e). The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the decision of the Board of Patent Appeals and Interferences is final. An appeal by the patent owner is considered terminated by the dismissal of the patent owner's appeal, the failure of the patent owner to timely request rehearing under § 1.979(a) or (c), or the failure of the patent owner to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983. The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the time for the patent owner's appeal to the U.S. Court of Appeals for the Federal Circuit expires. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, the patent owner's appeal is considered terminated when the mandate is received by the Office. Upon termination of an appeal, if no other appeal is present, the reexamination proceeding will be terminated and the Commissioner will issue a certificate under § 1.997.

(g) The times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.

§ 1.981 Reopening after decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination.

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.977 without the written authority of the Commissioner, and then only for the

consideration of matters not already adjudicated, sufficient cause being shown.

Patent Owner Appeal to the United States Court of Appeals for the Federal Circuit in *Inter Partes* Reexamination

§ 1.983 Patent owner appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

(a) The patent owner in a reexamination proceeding who is dissatisfied with the decision of the Board of Patent Appeals and Interferences may, subject to § 1.979(e), appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

(1) In the U. S. Patent and Trademark Office, file a timely written notice of appeal directed to the Commissioner in accordance with §§ 1.302 and 1.304; and

(2) In the Court, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the Court.

Concurrent Proceedings Involving Same Patent in *Inter Partes* Reexamination

§ 1.985 Notification of prior or concurrent proceedings in *inter partes* reexamination.

(a) In any *inter partes* reexamination proceeding, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved, including but not limited to interference, reissue, reexamination, or litigation and the results of such proceedings.

(b) Notwithstanding any provision of the rules, any person at any time may file a paper in an *inter partes* reexamination proceeding notifying the Office of a prior or concurrent proceedings in which the same patent is or was involved, including but not limited to interference, reissue, reexamination, or litigation and the results of such proceedings. Such paper must be limited to merely providing notice of the other proceeding without discussion of issues of the current *inter partes* reexamination proceeding. Any paper not so limited will be returned to the sender.

§ 1.987 Suspension of *inter partes* reexamination proceeding due to litigation.

If a patent in the process of *inter partes* reexamination is or becomes involved in litigation, the Commissioner shall determine whether or not to suspend the *inter partes* reexamination proceeding.

§ 1.989 Merger of concurrent reexamination proceedings.

(a) If any reexamination is ordered while a prior *inter partes* reexamination proceeding is pending for the same patent and prosecution in the prior *inter partes* reexamination proceeding has not been terminated, a decision may be made to merge the two proceedings or to suspend one of the two proceedings. Where merger is ordered, the merged examination will normally result in the issuance of a single reexamination certificate under § 1.997.

(b) An *inter partes* reexamination proceeding filed under § 1.913 which is merged with an *ex parte* reexamination proceeding filed under § 1.510 will result in the merged proceeding being governed by §§ 1.902 through 1.997, except that the rights of any third party requester of the *ex parte* reexamination shall be governed by §§ 1.510 through 1.560.

§ 1.991 Merger of concurrent reissue application and *inter partes* reexamination proceeding.

If a reissue application and an *inter partes* reexamination proceeding on which an order pursuant to § 1.931 has been mailed are pending concurrently on a patent, a decision may be made to merge the two proceedings or to suspend one of the two proceedings. Where merger of a reissue application and an *inter partes* reexamination proceeding is ordered, the merged proceeding will be conducted in accordance with §§ 1.171 through 1.179, and the patent owner will be required to place and maintain the same claims in the reissue application and the *inter partes* reexamination proceeding during the pendency of the merged proceeding. In a merged proceeding the third party requester may participate to the extent provided under §§ 1.902 through 1.997, except that such participation shall be limited to issues within the scope of *inter partes* reexamination. The examiner's actions and any responses by the patent owner or third party requester in a merged proceeding will apply to both the reissue application and the *inter partes* reexamination proceeding and be physically entered into both files. Any *inter partes* reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.

§ 1.993 Suspension of concurrent interference and *inter partes* reexamination proceeding.

If a patent in the process of *inter partes* reexamination is or becomes involved in an interference, the Commissioner may suspend the *inter partes* reexamination or the interference. The Commissioner will not consider a request to suspend an interference unless a motion under § 1.635 to suspend the interference has been presented to, and denied by, an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set.

§ 1.995 Third party requester's participation rights preserved in merged proceeding.

When a third party requester is involved in one or more proceedings, including an *inter partes* reexamination proceeding, the merger of such proceedings will be accomplished so as to preserve the third party requester's right to participate to the extent specifically provided for in these regulations. In merged proceedings involving different requesters, any paper filed by one party in the merged proceeding shall be served on all other parties of the merged proceeding.

Reexamination Certificate in *Inter Partes* Reexamination

§ 1.997 Issuance of *inter partes* reexamination certificate.

(a) Upon the conclusion of an *inter partes* reexamination proceeding, the Commissioner will issue a certificate in accordance with 35 U.S.C. 316 setting forth the results of the *inter partes* reexamination proceeding and the content of the patent following the *inter partes* reexamination proceeding.

(b) A certificate will be issued in each patent in which an *inter partes* reexamination proceeding has been ordered under § 1.931. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

(c) The certificate will be sent to the patent owner at the address as provided for in § 1.33(c). A copy of the certificate will also be sent to the third party requester of the *inter partes* reexamination proceeding.

(d) If a certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with that patent or any reissue applications or any reexamination requests relating thereto.

(e) If the *inter partes* reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.991, the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 316.

(f) A notice of the issuance of each certificate under this section will be published in the *Official Gazette*.

Dated: November 21, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–30425 Filed 12–6–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part IV

Environmental Protection Agency

Control of Emissions From New Nonroad Spark-Ignition Engines Rated Above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines; Notice

40 CFR Parts 86, et al.

Control of Emissions From Nonroad Large Spark Ignition Engines, Recreational Engines (Marine and Land-Based), and Highway Motorcycles; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6907–5]

RIN 2060–AI11

Control of Emissions From New Nonroad Spark-Ignition Engines Rated Above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final finding.

SUMMARY: We find that land-based nonroad spark-ignition (SI) engines rated above 19 kilowatts (kW), as well as all land-based recreational nonroad spark-ignition engines, cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area. We also find that particulate matter (PM) emissions from these engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. This finding does not address marine propulsion engines.

DATES: This finding becomes effective February 5, 2001.

ADDRESSES: Materials related to this action are contained in Public Docket A–98–01, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Anyone may inspect the docket from 8:00 a.m. until 5:30 p.m., Monday through Friday. You can reach the Air Docket by telephone at (202) 260–7548, and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

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Introduction

We have established emission standards for several nonroad engine categories. The categories of nonroad engines for which standards currently exist cover a variety of applications, including farm and construction equipment, marine vessels, locomotives, and lawn and garden equipment. We have established standards for SI engines rated at or below 19 kW. These emission standards target lawn and garden engines and generally do not apply to engines used in recreational vehicles such as off-road motorcycles, "all terrain" vehicles (ATVs) and snowmobiles.

In contrast, nonroad spark-ignition engines (used in nonrecreational applications such as forklifts and airport ground service equipment) rated above 19 kW (25 hp) and all spark-ignition engines used in land-based recreational applications (off-road motorcycles, "all terrain" vehicles (ATVs) and snowmobiles) are not currently subject to federal emission standards.[1] With this finding, we are beginning the process leading to proposal of emission standards for these engines by finding that emissions of HC, NO_X, and CO from these engines and vehicles, as a group, cause or contribute to ozone or CO concentrations in more than one ozone or CO nonattainment area, and emissions of PM from these engines and vehicles cause or contribute to air pollution that we have previously determined may reasonably be anticipated to endanger public health or welfare. These findings are appropriate whether we include all large nonroad SI in one category or whether we examine emissions from nonrecreational nonroad spark-ignition engines above 19 kW and emissions from recreational vehicles separately.

[1] For the purposes of this document, all references to spark-ignition engines rated above 19 kW include marine auxiliary engines, but exclude marine propulsion engines. Most engines used in recreational applications were explicitly excluded from the rule promulgating emission standards for engines rated at or below 19 kW.

I. Statutory Authority

Section 213(a)(1) of the Clean Air Act, 42 U.S.C. 7547(a), requires that we study the emissions from all categories of nonroad engines and equipment (other than locomotives) to determine, among other things, whether these emissions "cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and welfare." Section 213(a)(2) further requires us to determine, through notice and comment, whether the emissions of carbon monoxide (CO), volatile organic compounds (VOCs), and oxides of nitrogen (NO_X) found in the above study significantly contributes to ozone or CO concentrations in more than one ozone or CO nonattainment area. With such a determination of significance, section 213(a)(3) requires us to establish emission standards for classes or categories of new nonroad engines and vehicles that cause or contribute to such air pollution. Thus, the finding is really a two step process. The first step, as required under section 213(a)(2), requires us to determine whether the emissions from all nonroad mobile sources contribute significantly to ozone or CO nonattainment. The second step, and the one with which this notice is concerned, requires us, under section 213(a)(3), to look at specific classes or categories of new nonroad vehicles and engines in order to identify those classes or categories that contribute to such air pollution. Moreover, if we determine that emissions from all new nonroad engines contribute significantly to any other type of air pollution, we may promulgate emission standards under section 213(a)(4) regulating emissions from classes or categories of new nonroad engines that we find contribute to such air pollution. This process, which in this final finding concerns PM emissions, is a separate process from that contained in sections 213(a)(2) and (3) regarding ozone and CO nonattainment.

As directed by the Clean Air Act, we conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991.[2] Based on the results of that study, referred to as the Nonroad Engine and Vehicle Emission Study (NEVES), we determined that emissions of NO_X, HC, and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994).[3] Given this determination, section 213(a)(3) of the Act requires us to promulgate emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We are finding in this document that nonroad SI engines rated above 19 kW and all land-based recreational nonroad SI vehicles "cause or contribute" to such air pollution.

[2] "Nonroad Engine and Vehicle Emission Study—Report and Appendices," EPA–21A–201, November 1991 (available in Air docket A–96–40).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes us to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that we determine cause or contribute to such air pollution, taking into account cost, noise, safety and energy factors associated with the application of technology used to meet the standards. We have made this determination for emissions of particulate matter (PM) and smoke from nonroad engines (see 59 FR 31306, June 17, 1994). In that rulemaking, we found that smoke emissions from nonroad engines significantly contribute to such air pollution based on smoke's relationship to the particulate matter that makes up smoke as well as smoke's effect on visibility and soiling of urban buildings and other property. Particulate matter can be inhaled into the lower lung cavity, posing a potential health threat. We cited recent studies associating PM with increased mortality.[4] We also promulgated standards for emissions of PM and smoke from land-based nonroad diesel engines in that rulemaking. With this document, we are finding that emissions of PM from nonroad SI engines rated above 19 kW and all land-based recreational nonroad SI engines "cause or contribute" to such air pollution.

II. Background

We previously published a Notice of Proposed Finding regarding emissions from nonroad spark-ignition (SI) engines (Large SI engines) rated above 19 kilowatts, as well as all land-based recreational nonroad spark-ignition engines.[5] In that notice we proposed to find that emissions from these engines cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide nonattainment area. We also proposed to find that PM emissions from those engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In today's notice we are finalizing those proposed findings.

As was previously discussed, the term "nonroad" encompasses a broad range of engines and equipment. In implementing the requirements of section 213(a) for nonroad engines and equipment we divided the nonroad realm into several major categories. These categories include land-based compression ignition (CI) engines (*e.g.*, farm and construction equipment), small land-based spark-ignition (SI) engines (*e.g.*, lawn and garden equipment, string trimmers), marine engines (including CI and SI, propulsion and auxiliary, commercial and recreational), locomotives, and large land-based SI engines, including engines used in nonrecreational equipment (*e.g.*, forklifts, airport ground service equipment) and engines used in recreational vehicles (off-road motorcycles, "all terrain" vehicles (ATVs) and snowmobiles).

The Clean Air Act itself does not provide a definition or specific guidance on how to define specific "classes or categories of new nonroad engines, vehicles, and equipment" for purposes of determining whether such classes or categories cause or contribute to pollution in nonattainment areas. Thus, as we divided the nonroad realm into separate categories for the purposes of regulation we had discretion to define the classes or categories as we believed appropriate, in a manner that reasonably furthers the purposes of section 213(a). The legislative history of the Act, however, provides some instruction that we should not subdivide categories into small subcategories. Information from the Senate Report indicates that Congress did not want us to subdivide source categories into such small divisions that no subcategory by itself would contribute significantly, despite the fact that nonroad engines as a whole contribute significantly to pollution.[6] The final version of the Act, in fact, does not require a finding of "significant contribution," but merely "contribution," for individual categories of nonroad engines. In general, we chose to group engines and equipment together based on common characteristics such as combustion cycle, fuel, usage patterns, power rating, and equipment type. By dividing nonroad engines and equipment into separate categories based on these characteristics we are able to devise the most appropriate regulatory programs for each category which take into account the specific characteristics of the engines and equipment, as well as the unique traits and needs of the affected vehicle and equipment manufacturing industries and the end users of the vehicles and equipment. In addition, it avoids the danger recognized in the legislative history of dividing nonroad engines into so many small categories that none would contribute meaningfully to air pollution.

The approach to categorizing nonroad engines and equipment just discussed has worked well from the perspective of regulatory program development. As can be seen from Tables 1 and 2, nonroad emissions inventories as a whole are significant. Currently, nonroad inventories of HC, CO and NO_X are from one-third to one-half of the total mobile source inventories. Nonroad inventories of PM are roughly two-thirds of the total mobile source PM inventory. In addition, each of the classes and categories of nonroad engines has been shown to contribute to ozone and CO pollution in more than one nonattainment area.

Manufacturers and users of snowmobiles provided comments in this rulemaking indicating that snowmobiles should not be regulated for ozone precursors because snowmobiles are used during cold weather, when ozone is less of a health concern. Snowmobiles are not a separate category of nonroad engines, but are part of a broader category that clearly contributes to ozone concentrations in more than one nonattainment area. Moreover, even reviewing snowmobile emissions by themselves, they emit substantial amounts of HC in several nonattainment areas, which would increase ozone levels in those areas. However, we recognize that contribution to ozone concentrations is less important if it occurs during portions of the year when exceedances of the ozone NAAQS are unlikely to occur. We will bear this issue in mind as we move forward with a proposed and final rule to address the larger category of large non-road SI engines.

In the Advance Notice of Proposed Rulemaking (ANPRM), published elsewhere in this issue of the **Federal Register**, which accompanies this Final Finding, we specifically request

[3] The terms HC (hydrocarbon) and VOC (volatile organic carbon) refer to similar sets of chemicals and are generally used interchangeably.

[4] The nonroad study (NEVES) found that nonroad sources are responsible for approximately 5.55% of the total anthropogenic inventory of PM emissions and over one percent of total PM emissions in six to ten of the thirteen nonattainment areas surveyed.

[5] 64 FR 6008, February 8, 1999.

[6] Senate Report 101–228, pp. 104–105.

comment on whether we should distinguish snowmobiles from other recreational vehicles in regulating ozone precursors. Based in part on the comments we receive on the ANPRM, we intend to evaluate further the extent to which emissions of ozone precursors (*e.g.*, HCs) from snowmobiles contribute to ozone non-attainment. However, CAA section 213 allows us to regulate emissions from nonroad engines that cause or contribute to other air pollution in addition to ozone. As discussed in the ANPRM, these engines emit high levels of HCs, which contain hazardous air pollutants and can increase indirect PM emissions. Unburned HCs are also emitted as direct particulate matter. We have requested comment in the ANPRM on personal exposure issues as well as nonattainment and plan to consider this further as we develop our proposed rule.

III. Emission Modeling

A. National Inventories

For this finding we used the latest version of our NONROAD emissions model, which computes nationwide, state and county emission levels for a wide variety of nonroad engines. The model incorporates information on emission rates, operating data, and population to determine annual emission levels of various pollutants. Population and operating data, including load factor and operating rate, are determined separately for dozens of different applications. Load factor refers to the degree to which an engine's rated power is, on average, utilized, with full-power operation indicated by a load factor of 1.0. In addition to gasoline, Large SI engines can operate on liquefied petroleum gas (LPG) or compressed natural gas (CNG). EPA memoranda describe the detailed inputs and methodology for this modeling.[7]

We made changes from the proposed finding in the national inventories for nonrecreational Large SI engines and all engines used in land-based recreational vehicles. For the Large SI engines we revised our HC and CO emission factors (per-engine emission rates) to include an adjustment for transient operation which is common in the equipment using these engines. This has resulted in an increase in our projected inventories for these engines. The load factors, annual usage rates and vehicle populations for recreational vehicles were revised in response to new information provided to us in the public comments, as well as additional information we gathered. We also updated our emission factors for 4-stroke off-road motorcycles based on available emission testing data. These recreational vehicle changes, and the reasons for them, are documented in an EPA memorandum in the docket for this finding.[8] These modeling input changes have resulted in lower inventory estimates for snowmobiles and higher inventory estimates for off-road motorcycles and ATVs than those in our proposed finding. In another change to the land-based recreational vehicle modeling, for the purposes of emissions modeling for this finding we have limited the category to just off-road motorcycles, ATVs and snowmobiles, eliminating such sources as mopeds and go-carts, as well as golf carts and other specialty vehicles. This is because the vehicles we eliminated from the recreational category are already either currently covered under existing regulations or would be more appropriately categorized as nonrecreational large SI engines. For example, engines typically used in go-carts and golf carts are currently regulated under our provisions for small land-based SI engines. Mopeds are on-highway vehicles and, while not generally regulated under our on-highway provisions due to their small engine size, are typically licensed for operation on roads and not used in the same manner as off-road motorcycles. Therefore, mopeds are not properly considered nonroad emission sources. Finally, "specialty vehicles," which includes such sources as ice resurfacing machines and industrial carts, are more appropriately considered a subset of nonrecreational large SI engines and have been placed there for purposes of emissions inventory estimation.

Removing these vehicles from the recreational group also resulted in a reduction in the recreational vehicle inventories compared to those in the proposed finding. Despite these changes to the emissions inventories, the inventory data support our finding that these vehicles and engines contribute to air pollution.

Emission inventory estimates for the years 2000 and 2007 are summarized in Tables 1 and 2.[9] These tables show relative contributions of the different mobile source categories to the overall emissions mobile source inventory. Of the total emissions from mobile sources, nonroad SI engines rated above 19 kW contribute 2 percent, 2 percent, 3 percent, and 0.2 percent of HC, NO_X, CO, and PM emissions in the year 2000. The results for land-based recreational engines reflect the impact of the significantly different emissions characteristics of two-stroke engines. These engines are estimated to contribute 8 percent of mobile source HC emissions, 5 percent of CO emissions, and 0.2 percent of NO_X emissions. PM emissions from land-based recreational engines amount to 0.8 percent of total mobile source emissions. Since highway engines account for a large fraction of mobile source emissions, as shown in Tables 1 and 2, the contribution of these engines as a percentage of total nonroad emissions will be significantly higher than that from total mobile sources emissions.

These emission figures are projected to change somewhat by 2007. Population growth and the effects of other regulatory control programs are factored into these later emissions estimates. Table 2 shows that the relative importance of uncontrolled engines grows over time as other engines reduce their emission levels. The effectiveness of all control programs is offset by the anticipated growth in engine populations. Further information regarding these emissions estimates, including modeling assumptions, can be found in the docket memo referenced in footnote 9.

[7] "Emission Modeling for Recreational Vehicles," EPA memorandum from Linc Wehrly to docket A–98–01, November 14, 2000, and "Updated Emission Modeling for Large SI Engines," EPA memorandum from Alan Stout to docket A–98–01, November 10, 2000.

[8] "Emission Modeling for Recreational Vehicles," EPA memorandum from Linc Wehrly to docket A–98–01, November 14, 2000.

[9] Further information is provided in "Emission Modeling for Recreational Vehicles," EPA memorandum from Linc Wehrly to docket A–98–01, November 14, 2000.

TABLE 1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2000

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for sources in finding	327	2	712	10	6,525	8	7.2	1.0
Nonrecreational nonroad SI > 19 kW[a]	306	2	125	2	2,294	3	1.6	0.2
Recreational SI[a]	21.3	0.16	587	8	4,231	5	5.6	0.8
Nonroad SI < 19 kW	106	0.8	1,460	20	18,359	23	50	7
Marine SI	32	0.2	928	12	2,144	3	38	5
Nonroad CI	2,625	20	316	4	1,217	2	253	36
Marine CI	1,001	7	31	0	133	0.2	42	6
Locomotive	1,192	9	47	1	119	0.2	30	4
Aircraft	178	1	183	2	1,017	1	39	6
Total Nonroad	5,461	41	3,677	49	29,514	37	459	66
Total Highway	7,988	59	3,772	51	49,701	63	240	34
Total Mobile Sources	13,449	100	7,449	100	79,215	100	699	100
Total Man-Made Sources	24,553	.....	18,395	.....	101,294	.....	3,095	.....
Mobile Source percent of Total Man-Made Sources	55	.....	40	.....	78	.....	23	.....

[a] Sources covered by finding.

TABLE 2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2007

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for sources in finding	391	4	757	14	6,962	9	7.8	1.3
Nonrecreational nonroad SI > 19 kW[a]	369	4	141	3	2,517	3	1.9	0.3
Recreational SI[a]	22.4	0.22	616	12	4,445	6	5.9	0.9
Nonroad SI < 19 kW	96	0.9	933	18	21,406	28	58	9
Marine SI	42	0.4	733	14	2,056	3	33	5
Nonroad CI	2,253	22	214	4	1,128	1	226	36
Marine CI	1,018	10	33	1	142	0.2	44	7
Locomotive	773	8	43	1	119	0.2	27	4
Aircraft	200	2	205	4	1,200	2	41	7
Total Nonroad	4,773	46	2,918	56	33,013	43	437	70
Total Highway	5,529	54	2,317	44	44,276	57	186	30
Total Mobile Sources	10,302	100	5,235	100	77,289	100	623	100
Total Man-Made Sources	20,290	.....	15,359	.....	100,805	.....	2,971	.....
Mobile Source percent of Total Man-Made Sources	51	.....	34	.....	77	.....	21	.....

[a] Sources covered by finding.

B. Nonattainment Areas

We used our NONROAD model to show that nonrecreational nonroad spark-ignition engines over 19 kW and recreational SI engines contribute to air pollution in nonattainment areas. There are currently 31 ozone nonattainment areas, 17 CO nonattainment areas, and 76 PM nonattainment areas. Table 3 lists eight areas for which we present emission modeling estimates for the year 2000. While we believe these sources contribute to air pollution in all nonattainment areas, we chose these eight areas to explore how land-based Large SI and recreational vehicles and engines contribute to pollution in a cross section of nonattainment areas. (1) Phoenix, Arizona is a nonattainment area for both ozone (serious) and CO (serious). The nonattainment area consists only of Maricopa County. (2) El Paso, Texas is a nonattainment area for both ozone (serious) and CO (moderate). The nonattainment area consists only of El Paso County. (3) All eight counties in Connecticut constitute a single nonattainment area for ozone (serious). The modeling estimates show statewide emission levels in Connecticut. (4) In New Jersey, 18 of 21 counties are part of the nonattainment areas for New York City (severe for ozone, moderate for CO) or Philadelphia (severe for ozone). The modeling estimates show statewide emission levels in New Jersey. (5) Fairbanks, Alaska is a nonattainment area for CO (serious). (6) Spokane, Washington is a nonattainment area for CO (serious). (7) The Denver, Colorado area is a nonattainment area for CO (serious). (8) The six county Milwaukee, Wisconsin area is a nonattainment area for ozone (severe).

TABLE 3.—EMISSION LEVELS OF NONROAD NONRECREATIONAL SI ENGINES >19KW AND RECREATIONAL SI ENGINES IN SELECTED NONATTAINMENT AREAS (SHORT TONS) IN 2000

Area and application	CO	NO_X	HC	PM
Maricopa County, Arizona:				
Large SI	25,244	2,637	1,267	14
Recreational	13,304	72	1,426	3
Total	38,548	2,708	2,693	17
El Paso County, Texas:				
Large SI	4,229	664	240	3
Recreational	4,309	23	418	1
Total	8,538	688	659	4
Connecticut:				
Large SI	31,465	4,483	1,726	23
Recreational	24,031	129	2,394	5
Total	55,496	4,612	4,120	27
New Jersey:				
Large SI	65,601	8,964	3,563	46
Recreational	56,251	304	5,886	11
Total	121,852	9,267	9,450	57
Fairbanks, AK:				
Large SI	116	12	6	0
Recreational	2,511	13	329	3
Total	2,626	25	335	3
Spokane County, WA:				
Large SI	2,736	357	148	2
Recreational	5,012	25	706	6
Total	7,749	382	854	8
Denver County, CO:				
Large SI	4,988	649	267	3
Recreational	1,060	5	168	2
Total	6,047	654	435	5
Milwaukee, WI:				
Large SI	21,816	3,295	1,218	16
Recreational	12,802	53	3,168	55
Total	34,618	3,348	4,386	71

Additionally, the California Air Resources Board has published emission modeling estimates for nonroad spark-ignition engines. They specifically project that nonroad spark-ignition engines over 19 kW (25 hp) preempted from state regulation will contribute four tons of $HC+NO_X$ emissions per day in the South Coast Air Basin in 2010 (relative to two tons per day with federal emission regulations anticipated by California).[10] This includes farm and construction equipment such as chippers, balers, industrial saws, and welders. California's State Implementation Plan for the South Coast, Sacramento, Ventura, and Southeast Desert areas assumes federal regulation of these engines as part of their strategy to attain the ozone air quality standards. This four tons $HC+NO_X$ per day projection is relative to California's projection of 14 tons $HC+NO_X$ per day for non-preempted equipment in the South Coast Air Basin in 2010.

[10] California Air Resources Board, Staff report for Large SI proposed rulemaking, Table 12, p. 42, September 3, 1998.

IV. Conclusion

Based on the national and local inventory numbers described in this document, and the information contained in the docket for this finding, we find that emissions of HC, NO_X, and CO from nonroad spark-ignition engines rated above 19 kW and from nonroad land-based spark-ignition recreational engines contribute to ozone or carbon monoxide concentrations in more than one ozone or CO nonattainment area, and emissions of PM from such engines cause or contribute to air pollution that we have previously determined may reasonably be anticipated to endanger public health or welfare. This finding is appropriate whether we include all large nonroad SI engines in one category or whether we look at engines used in nonrecreational applications separately from engines used in recreational vehicles.

V. Public Participation

Several parties commented on our February 8, 1999 Notice of Proposed Finding. We fully considered these comments in developing today's final finding. A full analysis of the comments and our response to them is contained in the docket for this finding.[11] The majority of the comments received concerned the inputs used for modeling the emissions from engines used in land-based recreational vehicles. The revised modeling inputs that we used were based on the comments we received and additional information we gathered. We also received several comments concerning the appropriateness of our conclusions in our proposed finding. These comments are also addressed in the response to comments document contained in the docket for this finding.

[11] "Summary and Analysis of Comments for Notice of Proposed Finding: Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines," EPA memorandum from John Mueller to docket A–98–01, November 17, 2000.

VI. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, we must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have submitted this finding to the Office of Management and Budget.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

We have determined that this action will not have a significant adverse impact on a substantial number of small entities. This finding involves no requirements that would impose any burden on industry or other segments of society. It is therefore not necessary to prepare a regulatory flexibility analysis in connection with this finding. A finding that these engines cause or contribute to air pollution in at least two nonattainment areas, however, will lead us to initiate a rulemaking to set emission standards for these engines. In that separate rulemaking, we will review whether the proposed regulations would have a significant economic impact on a substantial number of small entities. The subsequent rulemaking will provide ample opportunity for notice and comment.

C. Paperwork Reduction Act

This finding contains no requirements for collecting, storing, or reporting information.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this finding does not contain federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The finding does not impose any enforceable duties on State, local, or tribal governments. This finding also contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, there will be no economic effects resulting from this finding. Thus, this finding is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This finding involves no technical standards.

F. Protection of Children

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to a rule that is determined to be "economically significant," as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

This finding is not subject to Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

G. Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have

federalism implications" is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This finding will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This finding creates no mandate on state, local or tribal governments. It imposes no enforceable duties on these or other entities. Thus, the requirements of section 6 of the Executive Order do not apply to this finding.

H. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This finding would not significantly or uniquely affect the communities of Indian tribal governments. This finding is to be implemented at the federal level and will impose no compliance obligations on any party. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this finding.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this finding and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the finding in the **Federal Register**. This finding is not a "major rule" as defined by 5 U.S.C. 804 (2).

Dated: November 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–30106 Filed 12–6–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86, 94, 1048 and 1051

[FRL–6907–6]

Control of Emissions From Nonroad Large Spark Ignition Engines, Recreational Engines (Marine and Land-Based), and Highway Motorcycles

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: With this advance notice of proposed rulemaking (ANPRM), we are continuing with our process of establishing standards for nonroad engines and vehicles that cause or contribute to air pollution. The ANPRM addresses nonroad engines and vehicles that have yet to be regulated by EPA, including: Large spark ignition (SI) engines such as those used in forklifts and airport tugs; Recreational vehicles using spark ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and Recreational marine diesel engines and marine spark ignition sterndrive and inboard engines.

These engines and vehicles contribute to ozone, carbon monoxide (CO), and particulate matter (PM) nonattainment. We are also concerned in some cases about personal exposure to high levels on CO, air toxics, and PM to persons operating or close to this equipment. With this ANPRM, we invite early input to the process to establishing standards and programs for these nonroad sources.

We are also seeking comment on whether EPA should pursue rulemaking to establish more stringent emissions standards for highway motorcycles. While standards are in place for highway motorcycles, the current standards were established more than twenty years ago. Since off-highway motorcycles are included this ANPRM as part of nonroad recreational vehicles, we believe it may be appropriate to consider standards for both types of motorcycles together.

DATES: We request comment on this Advance Notice by February 5, 2001.

ADDRESSES: You may send written comments in paper form and/or by e-mail. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. You may also submit comments via e-mail to "nranprm@epa.gov". In your correspondence, refer to Docket A–2000–01.

EPA's Air Docket makes materials related to this rulemaking available for review in Dockets A–2000–01 and A–98–01. These materials are located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone: (734) 214–4334, Fax: (734) 214–4050, e-mail: borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Copies of Documents

This document is also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. The electronic version of this document is made available on the day of publication on the primary web site listed below. We also publish **Federal Register** documents and related documents on the secondary web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA-AIR/* (either select desired date or use search feature)

2. *http://www.epa.gov/otaq/* (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Overview

A. History of Nonroad Engine Regulations

The process of establishing standards for nonroad engines began in 1991 with a study to determine whether emissions of carbon mononxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from new and existing nonroad engines, equipment, and vehicles are significant contributors to ozone and CO concentrations in more than one area that has failed to attain the national ambient air quality standards for ozone and CO.[1] In 1994, EPA finalized its finding that nonroad engines as a whole "are significant contributors to ozone or carbon monoxide concentrations" in more than one ozone or carbon monoxide nonattainment area.[2]

Upon this finding, EPA was tasked by the Clean Air Act (CAA or the Act) to establish standards for all classes or categories of new nonroad engines that cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area. Since the finding in 1994, EPA has been engaged in the process of establishing programs to control emissions from nonroad engines used in many different applications. Nonroad categories already regulated include:

- Land-based compression ignition (CI) engines (e.g., farm and construction equipment),
- Small land-based spark-ignition (SI) engines (e.g., lawn and garden equipment, string trimmers),
- Marine engines (outboards, personal watercraft, CI commercial)
- Locomotive engines

B. Today's ANPRM

Today's ANPRM provides an initial overview of possible regulatory strategies for nonroad vehicles and engines that have yet to be regulated under EPA's nonroad engine programs. It is a continuation of the process of establishing standards for nonroad engines and vehicles, as required by CAA section 213(a)(3). If, as expected, standards for these engines and vehicles are established, essentially all new nonroad engines will be required to meet emissions control requirements. The rulemaking that begins with this ANPRM therefore is the final round of initial regulations for nonroad engines. The ANPRM covers diesel engines used in recreational marine applications. The ANPRM also covers several nonroad spark ignition (SI) engine applications, as follows:

- Land-based recreational engines (for example, engines used in snowmobiles,

[1] "Nonroad Engine and Vehicle Emission Study—Report and Appendices," EPA–21A–201, November 1991 (available in Air docket A–91–24). It is also available through the National Technical Information Service, referenced as document PB 92–126960.

[2] 59 FR 31306 (July 17, 1994).

off-highway motorcycles, and all-terrain vehicles (ATVs))

- Marine sterndrive and inboard (SD/I) engines [3]
- Land-based engines rated over 19 kw (Large SI) (for example, engines used in forklifts); this category includes auxiliary marine engines, which are not used for propulsion.

We have found that the nonroad engines included in this ANPRM cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area.[4] CAA section 213(a)(3) requires EPA to establish standards that achieve the greatest degree of emissions reductions achievable taking cost and other factors into account. We plan to propose emissions standards and related programs consistent with the requirements of the Act and, with this ANPRM, are seeking early input from interested parties.

In addition to the nonroad vehicles and engines noted above, today's ANPRM also reviews EPA requirements for highway motorcycles. The emissions standards for highway motorcycles were established twenty-three years ago. California recently adopted new emissions standards for highway motorcycles and new standards have also been proposed internationally. There may be opportunities to reduce emissions in a way that also allows manufacturers to benefit from harmonized requirements, which may reduce product lines and production costs. In addition, we believe it is important to consider the emissions standards for highway motorcycles in the context of setting standards for off-highway motorcycles. We are interested in providing regulatory programs for off-highway and highway motorcycles that are consistent, and which may also allow for the transfer of technology across product lines for manufacturers.

This ANPRM covers engines and vehicles that vary in design and use, and many readers may only be interested in one or two of the applications. There are various ways we could group the engines and present information. For purposes of this ANPRM, we have chosen to group engines by common applications (*e.g.*, recreational land-based engines, marine engines, large spark ignition engines used in commercial applications). We have attempted to organize the document in a way that allows each reader to focus on the applications of particular interest. The Air Quality discussion which follows in section II is general in nature and applies to all the categories covered by the ANPRM. Sections III through VI of the ANPRM present self-contained discussions of standards and programs for each of the vehicle and engine categories. While some of the information may be repetitive among the discussions, we hope that this structure helps the reader focus on the categories and information of interest. The remaining sections VII through X are generally applicable to all of the engines and vehicles.

II. Air Quality

A. Overview

As directed by the Act, EPA has set National Ambient Air Quality Standards for, among other pollutants, ground-level carbon monoxide, ozone, NO_2, and particulate matter.[5] States are divided into discrete areas for air quality planning purposes. Currently, 17 areas around the U.S. are classified as CO nonattainment areas. Additionally, 31 areas are not in attainment with ozone air quality standards.

State and local governmental organizations charged with designing and implementing emission control programs to bring specific areas into attainment with these air quality standards have mounted significant efforts in recent years to reduce CO and ozone concentrations. Their state implementation plans, combined with federal stationary and mobile source emission control programs, have yielded encouraging signs of success. Emissions of the targeted pollutants have been significantly reduced in many areas. Average carbon monoxide and ozone levels, as well as the number of nonattainment areas, are beginning to decrease. We project, however, that emission increases accompanying general growth and economic expansion will eventually outpace per-source emission rate reductions. Increases in the number of sources, as well as increased use of existing sources, mean that even full implementation of current emission control programs may fall short of that needed to achieve long term attainment and maintenance of the air quality standards.

In addition to nonattainment concerns, we are also concerned about hazardous air pollutants (air toxics). In August 2000, we proposed a list of Mobile Source Air Toxics (MSATs) of concern, including those emitted from nonroad engines.[6] These pollutants are known or suspected to have serious health impacts. The engines and vehicles included in this ANPRM are sources of MSATs which are included on the proposed list, including diesel exhaust and several components of VOC emissions.

B. Public Health and Welfare Concerns

The nonroad engines included in this ANPRM and highway motorcycles all contribute to air pollution with a wide range of adverse health and welfare impacts. The following sections contain a brief description of some of the health effects associated with ozone, PM, air toxics and CO and the importance of continuing to reduce the associated emissions. This section also contains a brief description of issues that are unique to the engines and vehicles being considered in this document. The NPRM will contain a more detailed discussion of the health and welfare benefits which can be expected from a program regulating these engines.

1. Ozone and its Precursors

Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the presence of heat and sunlight. Ozone forms readily in the lower atmosphere, usually during hot, summer weather. VOCs are a broad group of compounds composed mainly of hydrocarbons (HC). Aldehydes, alcohols, and ethers are also present, but in small amounts. VOCs are emitted from a variety of sources, including motor vehicles, chemical plants, refineries, factories, consumer and commercial products, and other industrial sources. NO_X is emitted largely from motor vehicles, nonroad equipment, power plants, and other sources of combustion.

Ozone is a highly reactive chemical compound which can damage both biological tissues and man-made materials. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. In addition to human health effects, ozone adversely affects crop yield, vegetation and forest growth, and the durability of materials. Because ground-level ozone interferes with the ability of a plant to produce and store food, plants become more susceptible to disease, insect attack, harsh weather and other environmental stresses. Ozone causes noticeable foliar damage in many crops, trees, and ornamental plants (*i.e.*, grass, flowers, shrubs, and trees) and causes reduced growth in plants. Studies indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems (including habitat for native animal species).

Besides their role as an ozone precursor, NO_X emissions produce a wide variety of health and welfare effects.[7,8] Nitrogen dioxide can irritate the lungs and lower resistance to respiratory infection (such as influenza). NO_X emissions are an important precursor to acid rain and may affect both land and water ecosystems. Atmospheric deposition of nitrogen leads to excess nutrient enrichment problems ("eutrophication") in the Chesapeake Bay and several nationally important estuaries along the East and Gulf Coasts. Eutrophication can produce multiple adverse effects on water quality and the aquatic environment, including increased algal blooms, excessive phytoplankton growth, and low or no dissolved oxygen in bottom waters. Eutrophication also reduces sunlight, causing losses in submerged aquatic vegetation critical for healthy estuarine ecosystems.

Need for NO_X and VOC Control. Photochemical modeling highlights the fact that ozone pollution is a regional problem, not simply a local or state problem. Ozone and its precursors are transported long distances by winds and other meteorological events. Thus, achieving ozone attainment for an area, and thereby protecting its citizens from ozone-related health effects, often depends on the ozone and precursor emission levels of upwind areas. For many areas with persistent ozone problems, attainment of the ozone NAAQS will require control strategies for both NO_X and VOC that extend beyond the areas' boundaries.

We expect that reducing NO_X and HC emissions from engines that would be regulated under this potential program would help reduce the health and welfare effects of ozone.[9] Manufacturers and users of snowmobiles provided comments during the "finding" rulemaking indicating that snowmobiles should not be regulated for ozone precursors because snowmobiles are used during cold weather, when ozone is less of a health concern.[10] However, ozone precursors are also responsible for other pollution problems including air toxics, discussed below, and indirect PM. We are examining the need to reduce precursors of ozone in the context of this rulemaking and request comment. In particular, we request comment on whether EPA should distinguish snowmobiles from other recreational vehicles in regulating ozone precursors and whether emissions of ozone precursors such as NO_X and VOC should in any case be regulated due to other pollution problems.

2. Particulate Matter

Particulate matter (PM) is the general term used for a mixture of solid particles and liquid droplets found in the air. These particles, which come in a wide range of sizes, originate from many different stationary and mobile sources as well as from natural sources. They may be emitted directly by a source (direct emissions) or formed in the atmosphere by the transformation of gaseous precursor emissions such as sulphur dioxide (SO_2), nitrogen oxides (NO_X), or organic compounds (secondary particles). Their chemical and physical compositions vary depending on source location, time of year and meteorology.

Scientific studies show a link between inhalable PM (alone, or combined with other pollutants in the air) and a series of significant health effects. Inhalable PM includes both fine and coarse particles. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse particles are those with an aerodynamic diameter between 2.5 and 10 microns. All particles 10 microns or smaller are called PM_{10}. The health and environmental effects of PM are strongly related to the size of the particles.

Diesel particles are a component of both coarse and fine PM, but fall mostly in the fine range. Both coarse and fine particles can accumulate in the respiratory system and are associated with numerous health effects. Exposure to coarse fraction particles is primarily associated with the aggravation of respiratory conditions such as asthma. Fine particles are more deeply inhaled into the lungs than course particles. They are most closely associated with such health effects as decreased lung function, increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, and premature death. Sensitive groups that appear to be at greatest risk to such effects include the elderly, individuals with cardiopulmonary disease such as asthma, and children.

In addition, PM causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States, including many of our National Parks. Other environmental impacts occur when particles deposit onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. An ecosystem condition known as "nitrogen saturation," where addition of nitrogen to soil over time exceeds the capacity of the plants and microorganisms to utilize and retain the nitrogen, has already occurred in some areas of the United States. When deposited in sufficient quantities such as near unpaved roads, tilled fields, or quarries, particles block sunlight from reaching the leaves, stressing or killing plants. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues.

Recreational marine diesel engines tend to be concentrated in specific areas of the country (ports, coastal areas, lakes and rivers), so the emissions contribution of these engines in local areas can be more important. Consequently addressing PM and other emissions from recreational marine diesel engines can be an important tool toward the goal of reducing health and environmental hazards.

Considerations For PM From Recreational Two-Stroke Gasoline Engines. Two-stroke engines used in land-based recreational vehicles generally use a fuel and oil mixture to both produce power while lubricating the engine. As much as 30 percent of the intake charge passes through the engine unburned and exhausts to the atmosphere. As a consequence, PM emissions from these engines can be very high. Two stroke gasoline engines are commonly used in off-highway motorcycles and snowmobiles.

Snowmobile engine emissions are of particular concern in environmentally

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[3] As a shorthand notation in this document, we are using "recreational marine engines" to mean recreational marine diesel engines and all gasoline SD/I engines, even though some SD/I applications could be commercial.

[4] See Final Finding, "Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines" elsewhere in today's Federal Register for EPA's finding for Large SI engines and recreational vehicles. EPA's findings for marine engines are contained in 61 FR 52088 (October 4, 1996) for gasoline engines and 64 FR 73299 (December 29, 1999) for diesel engines.

[5] See 42 U.S.C. 7409.

[6] 65 FR 48058, August 4, 2000.

[7] "U.S. EPA (1995), Review of National Ambient Air Quality standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information," OAQPS Staff Paper, EPA–452/R–95–005.

[8] "U.S. EPA (1993), Air Quality Criteria for Oxides of Nitrogen," EPA/600/8–91/049aF.

[9] The emissions inventory contributions for these sources are provided in the Final Finding document referenced in footnote 4.

[10] International Snowmobile Manufacturers Association, Docket A–98–01, document IV–D–03.

sensitive areas, such as Yellowstone National Park. Snowmobiles are typically powered by 2-stroke engines that have high emissions of hydrocarbons (HC), carbon monoxide (CO) and PM compared to 4-stroke engines. Recent studies have concluded that particulate emission rates from a snowmobile engine are more comparable to those of older, pre-control diesel engines.[11,12] Particle diameters were found to be typically less than 0.1 microns, which is of respirable size and able to be delivered into the deepest and most sensitive areas of the human lung. While formation rates of secondary PM may be lower in the winter months, PM concentrations can be elevated under some meteorological conditions (*e.g.*, low mixing heights). We request comment on the health benefits of reducing PM emissions from recreational vehicle 2-stroke gasoline engines.

3. Air Toxics

These engines are also sources of a number of chemical species which we have proposed to list as mobile source air toxics (MSATs), that are known or suspected human or animal carcinogens, or have serious noncancer health effects.[13] They include pollutants such as diesel exhaust, benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein, described in more detail below. While the harmful effects of air toxics are of particular concern in areas closest to where they are emitted, they can also be transported and affect other geographic areas. Some can persist for considerable time in the environment.

Many of the air toxics discussed below are components of VOC and we expect that the HC standards discussed in this document would reduce exposure to air toxics and therefore reduce the incidence of cancer and noncancer health effects related to emissions from these engines. We request comment on the need to control air toxics emissions from the engines and vehicles included in this document.

Considerations for Diesel Exhaust. Diesel exhaust emissions are a by-product of incomplete combustion and include gaseous and particulate components. Gaseous components of diesel exhaust include organic compounds, sulfur compounds, carbon monoxide, carbon dioxide, water vapor, and excess air (nitrogen and oxygen). Particulate components include many organic compounds that are mutagenic as well as several trace metals (including chromium, manganese, mercury and nickel) that may have general toxicological significance (depending on the specific chemical species). In addition, small amounts of dioxins have been measured in diesel exhaust, some of which may partition to the particle phase.

Because the chemical composition of diesel exhaust includes hazardous air pollutants, or air toxics, diesel exhaust emissions are of concern to the agency. There have been health studies specific to diesel exhaust emissions which indicate potential hazards to human health that appear to be specific to this emissions source. For chronic exposure, these hazards include respiratory system toxicity and carcinogenicity. Acute exposure also causes transient effects (a wide range of physiological symptoms stemming from irritation and inflammation mostly in the respiratory system) in humans though they are highly variable depending on individual human susceptibility.

The EPA draft Health Assessment Document for Diesel Exhaust was reviewed in a public session by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board on October 12–13, 2000.[14] The CASAC, in public session, found that the Agency's conclusion that diesel exhaust is likely to be carcinogenic to humans by inhalation, was scientifically sound. The comments provided by CASAC on the draft Assessment are being incorporated into the final Assessment to be released in late 2000 or early 2001. California EPA has identified diesel PM as a toxic air contaminant.[15] Several other agencies and governing bodies have also designated diesel exhaust or diesel PM as a "potential" or "probable" human carcinogen.[16,17,18] The International Agency for Research on Cancer (IARC) considers diesel exhaust a "probable" human carcinogen and the National Institutes for Occupational Safety and Health have classified diesel exhaust a "potential occupational carcinogen". Thus, the concern for the health hazard resulting from diesel exhaust exposures is widespread. We request comment on the health benefits of reducing PM emissions from marine diesel engines.

Benzene. Benzene is an aromatic hydrocarbon which is present as a gas in both exhaust and evaporative emissions from motor vehicles. Benzene in the exhaust expressed as a percentage of total organic gases (TOG), varies depending on control technology (e.g., type of catalyst) and the levels of benzene and aromatics in the fuel, but is generally about four percent from gasoline engines. The benzene fraction of gasoline evaporative emissions also depends on control technology (i.e., fuel injector or carburetor) and fuel composition (e.g. benzene level and Reid Vapor Pressure or RVP) and is generally about one percent.

The EPA has recently reconfirmed that benzene is a known human carcinogen by all routes of exposure (including leukemia at high, prolonged air exposures), and is associated with additional health effects including genetic changes in humans and animals and increased proliferation of bone marrow cells in mice.[19] Respiration is the major source of human exposure. Long-term exposure to high levels of benzene in the air has been shown to cause cancer of the tissues that form white blood cells. Among these are acute nonlymphocytic leukemia, chronic lymphocytic leukemia and possibly multiple myeloma (primary malignant tumors in the bone marrow). A number of adverse noncancer health effects, blood disorders such as preleukemia and aplastic anemia, have also been associated with low-dose, long-term exposure to benzene. People with long-term exposure to benzene may experience harmful effects on the blood-forming tissues, especially the bone marrow. Many blood disorders associated with benzene exposure may occur without symptoms.

OSHA recently conducted an industrial hygiene survey to examine park employee exposures during winter at Yellowstone National Park.[20] They reported exposure to benzene above the NIOSH recommended exposure levels (REL) of 0.10 ppm. Since exhaust emission benzene levels generally decrease as HC emissions decrease, we expect new emission control technology to substantially reduce ambient benzene levels.

1,3-Butadiene. 1,3-butadiene is formed in engine exhaust by incomplete combustion of fuel. It is not present in evaporative and refueling emissions, because it is not present in any appreciable amount in gasoline fuel. 1,3-butadiene accounts for 0.4 to 1.0 percent of total exhaust TOG, depending on control technology and fuel consumption. Nonroad mobile sources contribute 15.2 percent to the 1,3-butadiene inventory (baseline NTI).

The Environmental Health Committee of EPA's Scientific Advisory Board (SAB), in reviewing the draft document, issued a majority opinion that 1,3-butadiene should be classified as a probable human carcinogen.[21,22] The Agency has revised the draft Health Risk Assessment of 1,3-butadiene based on the SAB and public comments. The draft Health Risk Assessment of 1,3-butadiene will undergo the Agency consensus review, during which time additional changes may be made prior to its public release and placement on the Integrated Risk Information System (IRIS).

Formaldehyde. Nonroad mobile sources contribute 23 percent to the formaldehyde inventory (baseline NTI). EPA has classified formaldehyde as a probable human carcinogen based on evidence in humans and in rats, mice, hamsters, and monkeys.[23] Epidemiological studies in occupationally exposed workers suggest that long-term inhalation of formaldehyde may be associated with tumors of the nasopharyngeal cavity, nasal cavity and sinus. Formaldehyde exposure also causes a range of noncancer health effects, including irritation of the eyes (tearing of the eyes and increased blinking) and mucous membranes. Sensitive individuals may experience these adverse effects at lower concentrations than the general population. In persons with bronchial asthma, the upper respiratory irritation caused by formaldehyde can precipitate an acute asthmatic attack.

The OSHA industrial hygiene survey at Yellowstone, described above, reported exposure to formaldehyde at 0.033 ppm, which is above the NIOSH recommended exposure level of 0.016 ppm.

Acetaldehyde. Nonroad mobile source emissions are responsible for 27 percent of the total acetaldehyde inventory (Baseline NTI). Acetaldehyde is classified as a probable human carcinogen and humans are exposed by inhalation, oral, and intravenous routes. The primary acute effect of exposure to acetaldehyde vapors is irritation of the eyes, skin and respiratory tract. At high concentrations, irritation and pulmonary effects can occur, which could facilitate the uptake of other contaminants.

Acrolein. Nonroad mobile source emissions are responsible for 11 percent of the total acrolein invenory (Baseline NTI). Acrolein is extremely toxic to humans when inhaled, with acute exposure resulting in upper respiratory tract irritation and congestion. The Agency has developed a reference concentration for inhalation (RfC) of acrolein of 0.02 micrograms/m^3. Although no information is available on its carcinogenic effects in humans, EPA considers acrolein a possible human carcinogen based on laboratory animal data.[24]

4. Carbon Monoxide (CO)

Carbon monoxide (CO) is a colorless, odorless gas produced through the incomplete combustion of carbon-based fuels. Carbon monoxide enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

Several recent epidemiological studies have shown a link between CO and premature morbidity (including angina, congestive heart failure, and other cardiovascular diseases). Several studies in the United States and Canada have also reported an association of ambient CO exposures with frequency of cardiovascular hospital admissions, especially for congestive heart failure (CHF). An association of ambient CO exposure with mortality has also been reported in epidemiological studies, though not as consistently or specifically as with CHF admissions. EPA is reviewing these studies as part of the CO Criteria Document process.

The toxicity of CO effects on blood, tissues and organs have also been topics of substantial research efforts. Such studies provided information for establishing the NAAQS for CO. The current primary NAAQS for CO are 35 parts per million for the one-hour average and 9 parts per million for the eight-hour average. There are currently 17 designated CO nonattainment areas, with a combined population of 31 million. EPA estimated that emissions from nonroad gasoline engines and vehicles have increased by 24 percent from 1980 to 1998.[25]

In addition to concerns related to air quality standards for broad areas, exhaust emissions from indoor applications can cause CO poisoning from individual human exposure. These engines (for example, engines used in forklifts) routinely operate in warehouses and production facilities. Unregulated industrial SI engines frequently have exhaust CO concentrations over 30,000 ppm (3 percent). The maximum allowable time-weighted average 8-hour workplace exposure set by the Occupational Safety and Health Administration is 50 ppm. Manufacturers in some cases may adjust engine calibration for somewhat lower CO emission levels. Also, engines used indoors are often fueled with LPG, which typically has lower CO exhaust concentrations than gasoline-fueled engines. However, improper maintenance or poor calibrations can lead to even higher levels than the 30,000 ppm level noted above from any industrial SI engine.

The typical snowmobile, which utilizes a two-stroke engine, produces significantly more CO than a modern automobile on a unit of work basis. There has been an increasing concern that snowmobile emissions in and around some national parks are reaching significant levels. During the winters of 1994–95 and 1995–96, studies were conducted at Yellowstone, Flagg Ranch, and Grand Teton National Park which indicated that snowmobile tourists are potentially exposed to significant CO

[11] "Characterization of Snowmobile Particulate Emissions conducted for Yellow Stone Park Foundation Inc.," James N. Carroll and Jeff J. White, Southwest Research Institute, June 1999.

[12] "Emissions from Snowmobile Engines using bio-based fuels and lubricants conducted for the Montana department of Enviroomental Quality," Jeff J. White and James N. Carroll, Southwest Research Institute, October 1998.

[13] 65 FR 48058, August 4, 2000.

[14] U.S. EPA(2000) Health Assessment Document for Diesel Exhaust: SAB Review Draft EPA/600/8–90/057 Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/dieslexh.htm.

[15] "Proposed Identification of Diesel Exhaust at a Toxic Air Contaminant, Health risk assessment for diesel exhaust," California Environmental Protection Agency, April 1998.

[16] "Carcinogenic effects of exposure to diesel exhaust," NIOSH Current Intelligence Bulletin 50. DHHS, Publication No. 88–116, 1988.

[17] "Diesel and gasoline engine exhausts and some nitroarenes," Vol. 46, Monographs on the evaluation of carcinogenic risks to humans, International Agency for Research on Cancer, World Health Organization, 1989.

[18] "Diesel fuel and exhaust emissions: International program on chemical safety," World Health Organization, 1996.

[19] "U.S. EPA, Carcinogenic Effects of Benzene: An Update," National Center for Environmental Assessment, Washington, D.C. 1998.

[20] "U.S. Department of Labor, Industrial Hygiene Survey of Park Employee Exposures During Winter Use at Yellowstone National Park," February, 2000.

[21] "U.S. EPA Health Risk Assessment of 1,3–Butadiene," EPA/600/P–98/001A, February 1998.

[22] "An SAB Report: Review of the Health Risk Assessment of 1,3–Butadiene," EPA–SAB–EHC–98, August 1998.

[23] "U.S. EPA Assessment of health risks to garment workers and certain home residents from exposure to formaldehyde," Office of Pesticides and Toxic Substances, April 1987.

[24] "U.S. EPA Integrated Risk Assessment System (IRIS)," Office of Health and Environmental Assessment, Cincinnati, OH, 1993.

[25] U.S. EPA (March 2000). "National Air Pollutant Emission Trends, 1900–1998," Office of Air Quality and Standards.

levels.[26] While the studies did not record official exceedances of the CO NAAQs, levels near and in some cases above the 35 ppm NAAQS standard were observed. These measurements were not considered NAAQS exceedances because sampling methods and measurement locations did not meet the criteria for NAAQS measurements. However, the measurements were reported to be scientifically valid and an indication of potentially significant exposure to CO.

A study of snowmobile rider exposure conducted at Grand Teton National Park showed that CO levels when trailing a single snowmobile at distances of 25–125 feet at speeds of 10–40 mph ranged from 0.5–23 ppm, with a maximum level of 45 ppm (as compared to the current NAAQS for CO of 35 ppm).[27] Since snowmobile riders typically travel in large groups, the riders towards the back of the group are likely to experience significantly higher exposures to CO. An additional consideration is that the risk to health from CO exposure increases with altitude, especially for un-acclimated individuals. Therefore, a park visitor who lives at sea level and then rides his or her snowmobile on trails at high-altitude is more susceptible to the effects of CO than local residents. In addition, the OSHA industrial hygiene survey mentioned earlier reported a peak CO exposure of 268 ppm for a Yellowstone employee, in exceedance of the NIOSH peak recommended exposure limit of 200 ppm.

The U.S. Coast Guard reported cases of CO poisoning caused by recreational boat usage.[28] These Coast Guard investigations into recreational boating accident reports between 1989 to1998, show that 57 accidents were reported, totaling 87 injuries and 32 fatalities, that involved CO poisoning. We believe that controlling CO emissions from marine engines could provide some benefits to boaters.

C. National Emissions Inventory

We have estimated the contribution of the sources included in this ANPRM to the nationwide emissions inventories for the 2000 and 2007 calendar years, as shown in Table II–1.[29]

TABLE II–1.—ESTIMATED NATIONWIDE ANNUAL EMISSION LEVELS

[in thousand short tons (percent of mobile source inventory)]

	NO_x		HC		CO		PM	
	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent
Year 2000:								
Nonroad Sources in ANPRM	371	2.8	822	11.0	7,157	9.0	8.4	1.2
Highway Motorcycles	22	0.2	21	0.3	147	0.2	0.4	0.1
Year 2000 Total	393	3.0	843	11.3	7,304	9.2	8.8	1.3
Year 2007:								
Nonroad Sources in ANPRM	444	4.3	870	16.6	7,536	9.7	9.2	1.5
Highway Motorcycles	25	0.2	26	0.5	171	0.2	0.5	0.1
Year 2007 Total	469	4.5	896	17.1	7,707	9.9	9.7	1.6

III. Recreational Vehicles

A. Background

1. What Recreational Vehicles Would be Included in This Rulemaking?

The vast majority of vehicles that fall into the land-based recreational vehicles category are snowmobiles, off-highway motorcycles (e.g., dirt bikes), and all terrain vehicles (ATVs).[30] The engines used in these vehicles are a subset of nonroad SI engines.[31] Engines used in recreational vehicles include both Small SI (at or below 19 kW) and Large SI engines (above 19 kW). These engines, however, were excluded from our Small SI program (for lawn mowers, chain saws, etc.) because they have different design characteristics and usage patterns than other engines in the Small SI category. This suggests that the recreational engines covered by this ANPRM should be tested differently than Small SI engines. We would similarly expect to treat them separately from our Large SI engine program (discussed later in this ANPRM). We therefore request comment on whether engines used in recreational vehicles should be tested and regulated differently from other small and Large SI engines.

In our rulemaking regulating Small SI engines (defined as nonroad SI engines below 19 kW), we established criteria that effectively excluded the types of engines used in the recreational vehicles listed above.[32] These criteria, such as normal range of operating engine rpm, can greatly affect the basic engine design and the opportunities for emissions control. Engines used in some other types of recreational vehicles may be covered by the Small SI standards, depending on the characteristics of the engines. For example, lawnmower-type engines used in go carts would typically be covered by the Small SI standards. Engines used in golf carts are also typically included in the Small SI program due to their design and operating characteristics being similar to lawnmower-type applications.

There may be other types of recreational vehicles that should be included in the recreational vehicles program in addition to snowmobiles, off-highway motorcycles, and ATVs. For example, some small mopeds or motor scooters could be included in the program depending on their characteristics.[33] We are interested in information and request comment about other types of vehicles that may exist so that we may consider them in developing our proposals.

There may be some uncertainty surrounding the use of "recreational" in distinguishing between vehicle types and in determining which set of standards a vehicle or engine must meet. ATVs, for example, may have some utility aspects to their use. We request comment how to best differentiate among engines types. We could establish a definition for "recreational", for example, based on the primary intended use of the vehicle model. Under such an approach, vehicles primarily intended for utility or work use by the manufacturer would be part of either the Small or Large SI programs, as applicable. We could also differentiate engines based solely upon engine design and operating characteristics without regard to usage; this option might eliminate potential confusion over whether a particular engine should be appropriately certified as a "recreational" or "utility" engine.

Hobby engines. The Small SI rule categorized engines used in model cars, boats, and airplanes as recreational engines and exempted them from the Small SI program.[34] Historically, we have exempted hobby engines from our regulations. The nonroad diesel engine final rule exempted hobby engines due to feasibility, testing, and compliance concerns related to regulating such small engines. Also noted in the nonroad diesel engine rule, because hobby engines are very small with very low power output relative to other nonroad engines and have low annual usage rates, they contribute very little to emissions inventories.[35] We request comment on how to proceed for SI hobby engines, including data and information that would allow us to further consider the potential for establishing standards for them or for exempting them from this rule.

2. Who Makes Recreational Vehicles?

Based on industry information available to us, the recreational vehicle industry appears to be dominated by eight manufacturers. Of these eight manufacturers, seven of them manufacture a combination of two or more of the three recreational vehicle sub-categories: off-highway motorcycles, ATVs, and snowmobiles. For example, there are four major companies that manufacture both off-highway motorcycles and ATVs. There are three major companies that manufacture ATVs and snowmobiles and one major company that manufactures all three. These eight companies represent approximately 95 percent of all domestic sales of recreational vehicles.

We are aware of five major companies that dominate sales of off-highway motorcycles. Four of these companies, Honda, Kawasaki, Suzuki, and Yamaha, are long established, major corporations that manufacture a number of products including highway and off-highway motorcycles. They have dominated the off-highway motorcycle market for over thirty years. The fifth major company, KTM, is also long established but has had a major impact in domestic sales over the last 10 to 15 years. These five companies account for approximately 90 to 95 percent of all domestic sales for off-highway motorcycles. There are also several relatively small companies that manufacture off-highway motorcycles, many of which specialize in racing or competition machines.

Based on available industry information, four major manufacturers, Arctic Cat, Bombardier (also known as Ski-Doo), Polaris, and Yamaha, account for approximately 99 percent of all domestic snowmobile sales. The remaining percent comes from very small manufacturers who tend to specialize in unique designs or racing machines. The ATV sector has the broadest assortment of major manufacturers. With the exception of KTM, all of the companies noted above for off-highway motorcycles and snowmobiles are significant ATV producers. These seven companies represent over 95 percent of total domestic ATV sales. The remaining 5 percent come from importers who tend to import inexpensive, youth-oriented ATVs from China and other Asian nations.

3. What Types of Engines Are Used in the Vehicles?

The engines used in recreational vehicles tend to be small, air- or liquid-cooled, reciprocating Otto-cycle engines that operate on gasoline.[36] They are designed to be used in vehicles, where engine performance is characterized by highly transient operation, with a wide range of engine speed and load capability. Maximum engine speed is typically well above 5,000 rpm. Also, the vehicles are equipped with transmissions to ensure performance under a variety of operating conditions.

These engines can be separated into two-stroke and four-stroke designs. The distinction between two-stroke and four-stoke engines is important for emissions because two-stroke engines tend to emit much greater amounts of unburned hydrocarbons (HC) and particulate matter (PM) than four-stroke engines of similar size and power. Two-stroke engines also have greater fuel consumption resulting in poorer fuel economy than four-stroke engines, but they also tend to have higher power output per unit displacement, lighter weight, and better cold starting performance. These advantages combined with a simple design and lower manufacturing costs tend to make two-stroke engines a popular choice as the power unit for recreational vehicles. Currently, snowmobiles use two-stroke engines almost exclusively, whereas about 63 percent of all off-highway motorcycles (predominantly in high performance, youth, and entry-level bikes) and 12 percent of all ATVs sold in the United States use two-stroke engines. Engine displacement for off-highway motorcycles and ATVs typically range from 50 cubic centimeters (cc) to 500 cc for two-stroke engines, and 50 cc to 650 cc for four-stroke engines. Snowmobile engines range from 100 cc to over 1,000 cc.

The basis for the differences in engine and exhaust emissions performance between two-stroke and four-stroke engines can be found in the fundamental differences in how two-stroke and four-stroke engines operate. Four-stroke operation takes place in four distinct steps: intake, compression, power, and exhaust. Each step corresponds to one up or down "stroke" of the piston or 180° of crankshaft rotation. The first step of the cycle is for an "intake" valve in the combustion chamber to open during the intake stroke allowing a mixture of air and fuel to be drawn into the cylinder while the piston moves down the cylinder. The intake valve then closes and the momentum of the crankshaft causes the

[26] Exposure to Snowmobile Riders to Carbon Monoxide, Park Science Volume 17—No. 1, National Park Service, U.S. Department of the Interior.

[27] Snook and Davis, 1997, "An Investigation of Driver Exposure to Carbon Monoxide While Traveling Bebind Another Snowmobile."

[28] Summarized in an e-mail Phil Cappel of the U.S. Coast Guard to Mike Samulski of the U.S. Environmental Protection Agency, October 19, 2000.

[29] Inventory data is further provided in Tables 1 and 2 of the Final Finding (see footnote 4).

[30] ATVs are typically four-wheeled vehicles that are straddled by the operator.

[31] Almost all recreational vehicles are equipped with SI engines. Any diesels used in these applications must meet our nonroad diesel engine standards.

[32] See 40 CFR 90.1(b)(5) for the list of criteria.

[33] The definition of motor vehicle excludes "any vehicle that cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces" (see 40 CFR 85.1703(a)(1)). Such vehicles are therefore considered nonroad vehicles.

[34] 80 FR 24292, April 25, 2000.

[35] 63 FR 56971, October 23, 1998.

[36] Otto cycle is another name for a spark-ignition engine which utilizes a piston with homogenous external or internal air and fuel mixture formation and spark ignition.

piston to move back up the cylinder compressing the air and fuel mixture. At the very end of the compression stroke, the air and fuel mixture is ignited by a spark from a spark plug, and begins to burn. As the air and fuel mixture burns, increasing temperature and pressure cause the piston to move back down the cylinder. This is referred to as the "power" stroke. At the bottom of the power stroke, an exhaust valve opens in the combustion chamber and as the piston moves back up the cylinder, the burnt gases are pushed out through the exhaust valve to the exhaust manifold, and the cycle is complete.

In a four-stroke engine, combustion and the resulting power stroke only occur once every two revolutions of the crankshaft. In a two-stroke engine, on the other hand, combustion occurs in every revolution of the crankshaft. Two-stroke engines eliminate the intake and exhaust strokes, leaving only compression and power strokes. This is due to the fact that two-stroke engines do not use intake and exhaust valves. Instead, they have intake and exhaust "ports" in the sides of the cylinder walls. With a two-stroke engine, as the piston approaches the bottom of the power stroke, it uncovers exhaust ports in the wall of the cylinder. The high pressure combustion gases blow into the exhaust manifold. As the piston gets closer to the bottom of the power stroke, the intake ports are uncovered, and fresh mixture of air and fuel are forced into the cylinder while the exhaust ports are still open. Exhaust gas is "scavenged" or forced into the exhaust by the pressure of the incoming charge of fresh air and fuel. In the process, however, some mixing between the exhaust gas and the fresh charge of air and fuel takes place, so that some of the fresh charge is also emitted in the exhaust. The loss of part of the fuel out of the exhaust during scavenging is one of the major reasons for the very high hydrocarbon emission characteristics of two-stroke engines. The other major reason for high HC emissions from two-stroke engines is their tendency to misfire under low load conditions due to greater combustion instability.

4. What Are the Pollutants of Interest for Each Type of Vehicle?

Recreational vehicles utilizing two-stroke engines, such as snowmobiles and some models of off-highway motorcycles and ATVs, emit significant quantities of fine particulate matter (PM), unburned hydrocarbons (HC), and carbon monoxide (CO). Recreational vehicles utilizing four-stroke engines, such as some models of off-highway motorcycles and most ATVs, also emit significant quantities of CO, however, they tend to emit considerably lower levels of HC and PM than their two-stroke counterparts. Both engine types emit oxides of nitrogen (NO_X). Two-stroke engines tend to emit very low levels of NO_X whereas four-stroke engines emit greater quantities, similar to four-stroke HC emission levels. Exhaust hydrocarbon emissions also include significant quantities of toxic air contaminants including benzene, formaldehyde, acetaldehyde, and 1,3 butadiene. The most important source of recreational vehicle emissions is the engine exhaust, but HC emissions are also produced from the crankcase in four-stroke engines, by evaporation from the fuel system, and by vapor displacement during refueling.

5. What Programs Are in Place in California and Elsewhere To Control Emissions from Recreational Vehicles?

California established standards for off-highway motorcycles and ATVs which took effect in January 1997 (1999 for vehicles with engines of 90 cc or less). The standards, shown in Table III–1, are based on the highway motorcycle chassis test procedures. Manufacturers may certify ATVs to optional standards, also shown in Table III–1, which are based on the utility engine test procedure.[37] This is the test procedure over which Small SI engines are tested. The stringency level of the standards was based on the emissions performance of 4-stroke engines and advanced 2-stroke engines equipped with a catalytic converter. California anticipated that the standards would be met initially through the use of high performance 4-stroke engines.

TABLE III–1.—CALIFORNIA OFF-HIGHWAY MOTORCYCLE AND ATV STANDARDS FOR MODEL YEAR 1997 AND LATER

[1999 and later for engines at or below 90 cc]

	HC	NO_X	CO	PM
Off-highway motorcycle and ATV standards (g/km)	[a] 1.2		15	
	HC + NO_X		CO	PM
Optional standards for ATV engines below 225 cc (g/bhp-hr)	[a] 10.0		300	
Optional standards for ATV engines below 225 cc (g/bhp-hr)	[a] 12.0		300	
Optional standards for ATV engines at or above 225 cc (g/bhp-hr)	[a] 10.0		300	

[a] Corporate-average standard.

California revisited the program in the 1997 time frame because a lack of certified product from manufacturers was reportedly creating economic hardship for dealerships. The number of certified off-highway motorcycle models was particularly inadequate.[38] In 1998, California revised the program, allowing the use of uncertified products in off-highway vehicle recreation areas with regional/seasonal use restrictions. Currently, noncomplying vehicles can be legally sold in California and used in attainment areas year-round and in nonattainment areas during months when exceedances of the state ozone standard are not expected. For enforcement purposes, certified and uncertified products are identified respectively with green and red stickers. Only about one-third of off-highway motorcycles sold in California are certified. All certified products are powered by 4-stroke engines.

California has not adopted standards for snowmobiles. In addition, EPA is not aware of emission control programs for nonroad recreational vehicles that have been adopted in other countries.

[37] Notice to Off-Highway Recreational Vehicle Manufacturers and All Other Interested Parties Regarding Alternate Emission Standards for All-Terrain Vehicles, Mail Out #95–16, April 28, 1995, California Air Resources Board (Docket A–2000–01, document II–D–06).

[38] Initial Statement of Reasons, Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-highway Recreational Vehicles and Engines, State of California Air Resources Board, October 23, 1998 (Docket A–2000–01, II–D–08).

B. Technology

1. What Are the Baseline Technologies and Emissions Levels?

As discussed earlier, recreational vehicles are equipped with relatively small high performance two- or four-stroke engines that are either air- or liquid-cooled.[39] The fuel system used on these engines are almost exclusively carburetors. Two-stroke engines lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary 2-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Four-stroke engines inject oil via a pump throughout the engine as the means of lubrication. With the exception of those vehicles certified in California, most of these engines are unregulated and thus have no emission controls. In fact, because performance and durability are such important qualities for recreational vehicle engines, they all operate with a "rich" air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling which promotes longer lasting engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of raw HC.

TABLE III–2.—TYPICAL RANGE OF EXHAUST EMISSIONS FOR RECREATIONAL VEHICLES

Recreational vehicle type	Engine type	HC	CO	NO_X	PM	Units
Snowmobiles	2-stroke	67–200	196–400	0.3–1.62	0.7–6.1	g/hp-hr
Off-highway Motorcycles/ATVs	2-stroke	8–26	16–37	0.01–0.1	0.002–0.025	g/km[a]
	4-stroke	0.4–3	7–50	0.03–0.2	0.006–0.025	g/km

[a] Emission measurement for motorcycles is in grams per kilometer rather than grams per mile because the motorcycle industry, as well as Federal, California, and international motorcycle emission standards use "Système International d'Unités" or SI units, which measure distance in kilometers rather than miles.

2. What Technology Approaches Are Available To Control Emissions?

A number of approaches are available to control emissions from recreational vehicles. The simplest approach would consist of modifications to the base engine, fuel system, cooling system, and recalibration of the air and fuel mixture. These could, for example, consist of changes to valve timing for four-stroke engines, changing from air to liquid cooling, and the use of advanced carburetion techniques and electronic fuel injection (EFI) in lieu of traditional carburetion systems. Other approaches could include using an oxidation catalyst alone or in conjunction with secondary air. The engine technology that may have the most potential for maximizing emission reductions from two-stroke engines is the use of direct fuel injection (DI). Direct fuel injection is able to reduce or even eliminate scavenging losses by pumping only air through the engine and then injecting fuel into the combustion chamber after the intake and exhaust ports have closed. The use of oxidation catalysts in conjunction with direct injection could potentially reduce emissions even further. Finally, because four-stroke engines emit significantly lower levels of HC than two-stroke engines, the conversion of two-stroke engine technology to four-stroke engine technology could be a desirable approach.

We request comment as to whether there are any other approaches to emission reduction for recreational vehicles that have not been discussed here. We are interested in information on feasibility, cost and corresponding emission reduction potential, and other issues associated with the above and other technologies. Specifically, we request comment on the effectiveness and durability of oxidation catalysts for these applications, the cost, corresponding emission reductions, and feasibility of direct fuel injection for two-stroke engine applications, and the cost and feasibility of switching from 2-stroke to 4-stroke engines. Any data on engines similar to those used in recreational equipment using these technologies is also requested.

3. What Level of Control May Be Feasible?

Calibration changes and engine modifications can reduce HC and CO emissions somewhat, in the range of 10 to 30 percent. While the precise level of control anticipated from recreational vehicles is not yet known, further HC reductions in the 70 to 90 percent range may be achievable from current two-stroke engines. We expect that the bulk of the HC reductions would occur through the elimination of scavenging losses, with additional reductions possible through the use of an oxidation catalyst. Because four-stroke engines already have low HC emissions relative to two-stroke engines, we would expect more modest HC reductions from four-stroke engines as a result of new emission standards. Control strategies that would reduce HC emissions would also generally reduce PM and toxics. This is especially true for 2-stroke engines where high levels of PM and toxics are the result of scavenging losses.

We believe that similar levels of control can be expected for CO emissions as for HC emissions. The bulk of CO reductions will come from improvements to the fuel system, either through enleanment (i.e., less fuel) of the air and fuel mixture, from now on referred to as A/F ratio, or the improvement of fuel atomization (i.e., smaller fuel droplets), with additional reductions possible through the use of an oxidation catalyst.[40–41] Such strategies are also likely to reduce HC and PM emissions as well.

The NO_X levels emitted from recreational vehicles, especially for those equipped with two-stroke engines, are very low since most recreational vehicles typically operate using a "rich" calibration (i.e., with excess fuel) for performance and durability purposes.

Some emission reduction techniques such as changes in engine design and calibration aimed at reducing HC and CO emissions may increase NO_X. However, we expect that any increases

[39] The engines are small relative to automotive engines. For example, automotive engines typically range from one liter to well over five liters in displacement, whereas off-highway motorcycles would range from 0.05 liters to 0.65 liters.

[40–41] Fuel atomization refers to the size of individual fuel droplets. The smaller the fuel droplet is, the better it is combusted or burned.

resulting from HC and CO standards would be minimal. To ensure continued low NO_X performance, we request comment on the appropriateness of setting a capping standard for NO_X emissions or combining NO_X control with HC by setting a HC + NO_X standard.

We request comment on the various strategies available to reduce emissions and the costs and potential corresponding emissions reductions of those strategies.

C. Standards and Program Approaches

Although off-highway motorcycles, ATVs, and snowmobiles are all categorized as recreational vehicles, we expect to establish separate emissions standards for them. The most fundamental reason for varying standards is that the operating characteristics are significantly different. Since we typically try to evaluate and control emissions performance under normal operating conditions, it is likely we will adopt different test procedures for the different applications. Also, the level of stringency and the timing of the standards may vary depending on the types of emissions control technology available, cost impacts, industry make-up, and other factors that we must consider in establishing the program. We request comments on the appropriateness of separate emission standards for off-highway motorcycles, ATVs, and snowmobiles.

Generally, we will be considering what level of emissions control is appropriate and the lead-time necessary for manufacturers to achieve those emissions reductions. There are a number of approaches that have been used in programs for other nonroad engines to effectively reduce emissions, both in the near term and long term. These approaches often incorporate some level of flexibility into the program which has allowed manufacturers to achieve lower overall emissions levels, perhaps at less cost. Programs have been tailored to the particulars of the engine categories and industries being regulated to achieve the overall goals of the program.

In many programs, we have established either a single set (tier) of standards, or multiple tiers of standards that progressively achieve further reductions over a number of years. We have also established corporate-average standards, including declining fleet averages where manufacturers must calculate fleet average emissions levels and reduce those emissions incrementally each year over several model years. Also, in some cases, standards have been phased-in over a number of years as a percentage of sales or by an engine characteristic such as size. Some programs also include averaging, banking and trading, discussed below in section III.C.4.

We have used such mechanisms, in part, to allow manufacturers to plan their research, development, and product introductions. Such program approaches may allow manufacturers to achieve long-term emission reductions that may not otherwise be achievable. For example, a declining fleet average approach over several years may provide near term reductions and also provide manufacturers with lead-time needed to employ advanced technology in an orderly and efficient manner. Also, averaging can provide flexibility by allowing manufacturers to certify some engines to levels above the standard as long as excess emissions are offset by sales of engines certified to emissions levels below the standard. However, such approaches may be of limited value to small businesses or companies offering only a few models and may not be justified for some programs. We encourage you to consider these approaches, and any others, in commenting on the standards discussed below.

1. Off-Highway Motorcycles and ATVs

We are considering establishing HC, NO_X, and CO standards for off-highway motorcycles and ATVs. PM is discussed separately in section III.C.3, below. We expect the largest benefit in terms of reducing the ozone precursors NO_X and HC to come from reducing HC emissions from two-stroke engines. Two-stroke engines have very high HC emissions levels. Baseline NO_X levels are relatively low for engines used in these applications and therefore initial NO_X standards may serve to cap NO_X emissions. CO reductions can be expected from both 2-stroke and 4-stroke engines, as CO levels are somewhat similar for the two engine types.

HC Standard. In the current off-highway motorcycle and ATV market, consumers can choose between 2-stroke and 4-stroke models in most sizes and categories. Each engine type offers unique performance characteristics. Some manufacturers specialize in 2-stroke or 4-stroke models while others offer a mix of models.

The HC standard is likely to be a primary determining factor for what technology manufacturers choose to employ to meet emissions standards overall. As described in the previous section, a variety of technological approaches appear promising to control HC emissions. HC emissions can be reduced substantially by switching from 2-stroke to 4-stroke engines. The California emissions control program for off-highway vehicles provides ample data on the emissions performance capability of 4-stroke engines in off-highway motorcycles and ATVs. Off-highway motorcycles certified to California standards for the 2000 model year have HC certification levels ranging from 0.4 to 1.0 g/km. The motorcycles have engines ranging in size from 50 cc to 650 cc and none of these motorcycles are equipped with catalyst technology.

Technologies are also available for the two stroke engine that may reduce HC emissions levels to near those provided by 4-stroke engines. Technologies such as direct fuel injection and catalysts have been applied to 2-stroke engines used in other applications, such as personal watercraft and outboard marine engines, in response to emissions control requirements. However, only vehicles equipped with 4-stroke engines have been certified to the California standards. Two stroke models are sold in California, but only under California's allowance for the sales and use of uncertified products under certain circumstances (discussed above in section III.A.5).

In determining what standards to propose, we will be carefully examining the feasibility and cost of both 2-stroke and 4-stroke technologies. Modest reductions (up to 30 percent) appear feasible through the use of engine modifications and calibration changes. We are also interested in approaches that would reduce HC emissions substantially (for example, 75 to 90 percent) from baseline 2-stroke engine levels. Clearly, switching to 4-stroke engines achieves this goal and some manufacturers would likely choose this approach to meeting such standards.

However, some manufacturers may want an opportunity to achieve HC reductions through the use of advanced technology 2-stroke engines. This approach may require more time and investment in research and development than switching to 4-stroke engines entirely, but could result in more cost effective emissions control in the long term. Also, if such engines were developed, consumers may benefit from having a variety of engine types from which to choose. We request comment on whether EPA should attempt to set standards in a manner that would encourage the development of clean 2-stroke technology, and if so, how that objective could best be accomplished.

We request comments on the appropriate level of HC control for off-highway motorcycles and ATVs. We are interested in perspectives on whether an HC standard should be based on the capabilities of 4-stroke or 2-stroke engine emissions control technologies. We are also interested in comment on establishing separate standards for the two engine types. In making their recommendations, commenters are encouraged to consider the level of emission reductions currently achieved under the California emissions control program, described above, and the need and opportunity for further emissions reductions. Commenters are also encouraged to consider the benefits of aligning highway motorcycle HC standards, discussed in section IV below, with the HC standards for off-highway motorcycles and ATVs. We are interested in comments on technology, cost, corresponding emission reduction potential, necessary lead-time, phase-in, and performance implications, including supporting rationale and data, where possible. Commenters are also invited to address the cost and corresponding emissions reductions of various other potential strategies.

As described above, we may propose averaging approaches such as corporate-average standards and averaging, banking, and trading. We request comment on the appropriateness of averaging ATVs and off-highway motorcycles together, assuming they are required to meet the same standards, or standards of similar stringency. Comments on other aspects of averaging as it might apply to HC compliance are requested (for example, averaging recreational vehicles with other engines identified in this document).

NO_X standard. While the focus of the program would be on achieving HC reductions, we also request comment on the need for and appropriateness of NO_X control for these engines. We are considering standards in the form of HC plus NO_X. We would expect a small NO_X increase when going from uncontrolled two-stroke engines to engine designs which meet new emissions standards. This NO_X increase is due to engine efficiency improvements and emission control strategies available for 2-stroke engines. A NO_X plus HC standard recognizes this trade-off. Also, 4-stroke engines typically have higher NO_X emissions than 2-stroke engines.

When we established the HC plus NO_X standard for personal watercraft, we adjusted the level of the standard to account for the inclusion of NO_X. We request comment on this approach for establishing an HC plus NO_X limit for motorcycles and ATVs. We also request comment on how much of an adjustment to the standard is needed to account for NO_X emissions or what level would be appropriate for a NO_X cap. We also request comment on a NO_X plus HC standard in the context of averaging approaches for compliance. Finally, we request comment on the cost implications and corresponding emission reduction potential of NO_X control strategies.

CO standard. We expect to establish a CO limit for motorcycles and ATVs, along with HC and NO_X standards. We will be considering the levels established by California for these vehicles and the standards for highway motorcycles. We request comment on what level of CO control would be appropriate for these vehicles, considering costs (and other statutory factors). We also request comment on whether or not the CO standard should be established as a separate technology driver or based on the performance of technologies likely to be needed to achieve low HC emissions levels. We request comment on the cost implications and corresponding emission reduction potential of CO control strategies. As with HC and NO_X, we are interested in the usefulness of considering averaging approaches for CO emissions compliance.

Test procedures. The form and numeric level of the standards depend on the test procedures and test cycle over which emissions are measured. As described above in section III.A.5., California off-highway motorcycle and ATV standards are based on the highway light-duty vehicle test procedure (the FTP). This is a chassis-based test procedure, which requires the vehicle to be tested rather than only the engine.

Some manufacturers have noted that they do not currently have chassis-based test facilities capable of testing ATVs. California provides manufacturers with the option of certifying ATVs using the engine-based, utility engine test procedure (SAE J1088), and most manufacturers use this option for certifying their ATVs. Manufacturers have facilities to chassis test motorcycles and therefore California does not provide an engine testing certification option for motorcycles. Manufacturers have noted that requiring chassis-based testing for ATVs would require them to invest in additional testing facilities which can handle ATVs, since ATVs do not fit on the same roller(s) as motorcycles used in chassis testing.

Currently, for off-highway motorcycles and ATVs, we are planning to use the FTP test cycle, as it appears to be the best available test cycle for these vehicles. We will be carefully examining the potential pros and cons of using an engine-based test procedure for ATVs and request comment on this issue. We request comment on whether or not the approach taken by California is suitable for the federal program, including the use of the above test procedures and their effectiveness in ensuring in-use emissions reductions.

We are particularly interested in comments on the use of the utility engine cycle for ATVs, and whether or not a different engine-based test cycle, such as the one being considered for snowmobiles (discussed below), may be more suitable. The utility engine cycle is a 5-mode steady-state test cycle which includes testing at only one engine speed (85 percent of rated speed). Such a test procedure is appropriate for engines used in lawn and garden applications, but may not be appropriate for engines used in vehicle applications. The snowmobile engine test procedure is also a 5-mode steady-state test procedure but the engine speed varies by mode along with torque. We believe this is generally more representative of how an engine behaves in a vehicle application.

2. Snowmobiles

Emissions standards established by EPA through this rulemaking will be the first for snowmobiles. Unlike off-highway motorcycles and ATVs, there are no emissions standards for snowmobiles in California to use as a point of reference. Snowmobiles are almost entirely equipped with two-stroke engines which have very high HC and CO emission levels. Our focus for snowmobiles will be to reduce those emission levels. NO_X emissions are much less of a concern because of the seasonal nature of snowmobile use and low baseline levels.

CO standard. CO emissions may be a larger concern for snowmobiles than for off-highway motorcycles and ATVs due to their high CO emissions levels and the general concern of high ambient CO level in some areas during cold weather. In initial discussions with the International Snowmobile Manufacturers Association (ISMA), manufacturers have suggested setting standards that would result in CO reductions of 10 to 30 percent, phased in over model years 2004–2006. As described in section III.B. above, promising technologies are available which have the potential to reduce emissions to significantly lower levels. These technologies go beyond minor engine modifications and calibration changes and may require additional lead time to implement. However, with

appropriate lead time, further CO emission reductions may be reasonably achievable.

We will be evaluating potential technologies and the costs of those technologies during the development of our proposal for snowmobiles. We will consider the timing of the standards in the context of the level of stringency we propose, recognizing that more lead-time would likely be needed to apply and prove-out the application of certain advanced technologies. Also, as described above, we will consider the value of implementation flexibilities such as averaging and phase-in schedules in allowing manufacturers to meet more stringent standards in an orderly manner. We request comment on what level of CO emissions control is feasible and appropriate for snowmobiles, on the cost and corresponding emissions reduction potential of various strategies, on the lead time needed to achieve new standards, and on the usefulness of implementation flexibility in meeting the standards.

HC standard. As mentioned in section II, we received comments indicating that HC control for snowmobiles for purposes of reducing ozone may not be necessary due to their seasonal use. However, we believe that there may be a need to control HC emissions from snowmobiles. In particular, even if we accept the commenters' argument regarding ozone, HC emissions may result in increased exposure to air toxics. As discussed in section II, hydrocarbons are made up of numerous components, some of which have been identified as toxic air pollutants.

We anticipate that many of the technology approaches available to manufacturers to reduce CO emission levels would also reduce HC emissions levels. The two-stroke engines used in snowmobiles have very high HC levels and we believe that establishing standards to reduce those levels would be appropriate. Manufacturers have suggested an HC reduction of up to 30 percent by 2008, in addition to the 30 percent reduction in CO by 2006, discussed above. As with CO, we believe technology is likely to be available to achieve a greater degree of control, especially with several years lead time or phase-in. Reductions in CO and HC of 70 percent or more may be feasible.

We request comment on what level of HC emissions control is feasible and appropriate for snowmobiles, the cost and corresponding emissions reductions associated with such levels of emissions control, the lead time needed to achieve new standards, and the usefulness of implementation flexibility in meeting the standards. In particular, we request comment on the appropriateness of requiring any control of HC for snowmobiles given the seasonal nature of their use versus air toxic concerns for riders.

Test Procedures. Snowmobile manufacturers, in conjunction with Southwest Research Institute, have developed a test procedure for measuring snowmobile emissions.[42] This effort was undertaken due to increasing interest in snowmobile engine emission levels and a lack of a test procedure based on a representative duty-cycle. The test cycle is a 5-mode steady-state cycle, with different engine speed and torque points chosen and weighted to reflect in-use engine operation (see table below). The study also found that the utility engine cycle (J1088), which had previously been used, was not appropriate for snowmobiles.

TABLE III–3.—SNOWMOBILE ENGINE TEST CYCLE
(SAE paper 982017)

mode	1	2	3	4	5
normalized speed	1.0	0.85	0.75	0.65	idle
normalized torque	1.0	0.51	0.33	0.19	0
Weight, %	12	27	25	31	5

We request comment on the use of this test procedure as the basis of future snowmobile standards. This test procedure appears to be the best currently available for snowmobiles, but we request comment on the need for additional tests or test modes to ensure in-use emissions control. For example, idle CO emissions have been highlighted as a particular concern for snowmobiles and we request comment on the need for additional emphasis on idle CO emissions within the test procedure.

3. The Need for PM Standards

As discussed in section II, Air Quality, we are very concerned about current high particulate matter levels in snowmobile exhaust. High PM levels are primarily attributable to the use of traditional 2-stroke engines. PM emissions are also a concern for off-highway motorcycles and ATVs to the extent that 2-stroke engines are used in those applications.

We believe that the technology changes that would be needed to significantly reduce CO and HC levels, such as direct injection or 4-stroke engines, may also dramatically reduce PM levels. If HC and CO standards were established at a level only requiring minor modifications to the engines, PM could remain a problem for snowmobiles and a PM standard may be necessary. We request comment on whether or not we should establish a PM standard for snowmobile engines and what level of stringency would be appropriate. We also request comment on the cost implications (equipment costs, etc.) associated with measuring PM as part of the certification procedure.

4. Averaging, Banking, and Trading

Depending on the structure of the proposed program, the level of stringency of the proposed standards, and other considerations, we may propose averaging, banking, and trading provisions (ABT) for recreational vehicles/engines. We have established ABT programs in many of our engine-based emissions control programs in cases where we have set standards that require significant technology changes. The ABT programs allow manufacturers to earn credits by introducing clean engines sooner than required or by certifying engines to levels below the standards. Manufacturers may use the credits to certify engines to levels above the standards in the same model year (averaging), keep the credits for use in a later model year (banking), or transfer the credits to another manufacturer (trading).

In some cases, we have not established ABT programs because we believed the standards we were adopting were achievable without the additional flexibility. In such cases, EPA found that the added complexity inherent in having an ABT program, both for EPA and the manufacturers, would outweigh the potential benefits of the program.

ABT can be beneficial in providing incentive to manufacturers for the early introduction of new technologies, allowing certain engine families to be trail blazers for new technology. This flexibility can allow us to consider a more stringent program than would otherwise be appropriate under CAA section 213. The programs also provide flexibility to manufacturers for product planning and can provide opportunity for more cost effective introduction of product lines. ABT is tailored to meet the specific needs of standards and programs being established. This is necessary to avoid issues such as windfall credits and the potential of stockpiling credits which could result in a significant delay of the standards being adopted or future standards not yet considered. We request comment on integrating ABT into the programs for recreational vehicles. We are interested in comment on the scope of ABT, including any particular issues we should consider in developing such a program, and whether or not credit trading among different vehicle types should be allowed.

D. Additional Program Considerations

1. Competition Off-Highway Motorcycles

Currently, a large portion of off-highway motorcycles are marketed as competition/racing motorcycles. These models often represent a manufacturer's high performance offerings in the off-highway market. Most such motorcycles are of the motocross variety,[43] although some high performance enduro models[44] are marketed for competition use. These high performance motorcycles are largely powered by 2-stroke engines, though some 4-stroke models have been introduced in recent years.

When used for competition, motocross motorcycles are mostly involved in closed course or track racing. Other types of off-highway motorcycles are usually marketed for trail or open area use. When used for competition, these models are likely to be involved in point-to-point competition events over trails or stretches of open land. There are also specialized off-highway motorcycles that are designed for competitions such as ice racing, drag racing, and observed trials competition. A few races involve professional manufacturer sponsored racing teams. Amateur competition events for off-highway motorcycles are also held frequently in many areas of the U.S.

Clean Air Act sections 216 (10) and (11) exclude engines and vehicles "used solely for competition" from nonroad engine and vehicle regulations. For purposes of past nonroad engine emissions control regulatory programs (for example, the nonroad CI, recreational marine, and Small SI programs), EPA has defined the term "used solely for competition" as follows:

Used solely for competition means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

If retained for the recreational vehicles program, the above definition may be useful for identifying certain models that are clearly used only for competition. For example, there are motorcycles identified as "observed trials" motorcycles which are designed without a standard seat because the rider does not sit down during competition. This feature would make recreational use unlikely. Most motorcycles marketed for competition, however, do not appear to have physical characteristics that constrain their use to competition. Without such distinguishing characteristics, determining that a vehicle is used solely for competition becomes more challenging.

Manufacturers have recommended that EPA use the definition for competition motorcycle that EPA has previously established for purposes of exempting motorcycles from its noise regulations, as follows:

Competition motorcycle means any motorcycle designed and marketed solely for use in closed course competition events.[45]

Manufacturers further recommended that closed course competition include "any organized competition event covering a closed, repeated, or defined route intended for easy viewing of the route by spectators. Such events could include, but are not limited to, motocross, enduro, hare scrambles, observed trials, short track, dirt track, drag race, hill climb, ice race, and land speed trials * * *". Manufacturers recommended that EPA require labels designating the vehicles for competition use only.[46]

Based on confidential sales information, we believe that vehicles designated for competition by manufacturers could exceed 50 percent of total sales under their recommended approach. We believe that many "competition" style motorcycles are likely to also be used, at least by many end users, primarily or often for recreational riding. Section 216(10) of the Act excludes from the definition of nonroad engines vehicles used solely for competition. We are concerned that the approach suggested by manufacturers may be overly broad and therefore would not meet the conditions of this exclusion.

In a recent rulemaking for marine diesel engines, we addressed competition engines by providing exclusions for engines used in professional competitions only.[47] Engines used for amateur competition or occasional competition are not excluded under that rule. The exclusion is available both to manufacturers and to someone modifying an engine for professional competition use (normally, we would prohibit someone from making changes to a certified engine in ways that adversely affect emissions control). This would be one possible

[42] "Development and Validation of a Snowmobile Engine Emission Test Procedure," Christopher W. Wright and Jeff J. White, SAE Paper 982017.

[43] A motocross bike is typically a high performance off-highway motorcycle that is designed to be operated in motocross competition. Motocross competition is defined as a circuit race around an off-highway closed-course. The course contains numerous jumps, bills, flat sections, and bermed or banked turns. The course surface usually consists of dirt, gravel, sand, and mud. Motocross bikes are designed to be very light for quick handling and easy manueverability. They also come with large knobby tires for traction, high fenders to protect the rider from flying dirt and rocks, aggressive suspension systems that allow the bike to absorb large amounts of shock, and are powered by high performance engines. They are not equipped with lights.

[44] An enduro bike is very similar in design and appearance to a motocross bike. The primary difference is that enduros are equipped with lights and have slightly different engine performance that is more geared towards a broader variety of operation than a motocross bike. An enduro bike needs to be able to cruise at high speeds as well as operate through tight woods or deep mud.

[45] 40 CFR 205.151(a)(3).

[46] "MIC Recommended Definitions for Pending EPA Recreation Vehicle Exhaust Emissions Proposal," Motorcycle Industry Council, Draft, June 1, 2000. Docket A–2000–01.

[47] 64 FR 73305, December 29, 1999.

approach to address the competition use issue for recreational vehicles.

We are very interested in receiving input on the competition exemption issue described above. We request comment on ways the program can be established to provide an exclusion for motorcycles used solely for competition, consistent with the Act, without excluding vehicles that are often used for other purposes. Ideally, the program can be established in a way that provides reasonable certainty at time of certification. However, approaches could include reasonable measures at time of sale or in-use that would provide assurance that the competition exemption is being applied appropriately. We request information and data on the use of off-highway motorcycles for competition and recreation that would inform the rulemaking process.

2. Crankcase Emissions From Recreational Vehicles

We will be considering proposing the elimination of crankcase emissions from recreational vehicles. Venting the crankcase to the atmosphere is a source of HC emissions that has been cost effectively controlled in many other engine applications. Rather than venting these emissions to the atmosphere, they can be routed back to the engine for combustion. We believe that any effect on exhaust emission levels due to the additional hydrocarbons which are routed to the engine through the crankcase emissions control system can be substantially reduced, if not eliminated, through the recalibration of the engine. We are not aware of any issues particular to closing the crankcase on engines used in recreational vehicles. California has required the elimination of crankcase emissions on off-highway motorcycles and ATVs as part of their program. We request comments on the costs, emission reductions, and any other issues associated with requiring the elimination of crankcase emissions from recreational vehicles.

3. Compliance Measures

Along with emissions standards, we will be considering requirements to ensure in-use compliance with those standards over the useful life of the recreational vehicles/engines. The goal of these measures would be to promote high quality engine design, production, and in-use emissions performance. Compliance programs typically include certification, production line testing, and in-use testing components. Under these programs, manufacturers must submit data and other information prior to introducing the engine into commerce certifying that the engine meets applicable standards, and there is the ability to verify compliance through engine testing at the production line and in-use. We expect to examine the structure and effectiveness of compliance programs contained in other nonroad emissions control programs in determining what types of measures would be most appropriate for recreational vehicles.

Because of similarities in the applications, engine characteristics, and production volumes, we will carefully consider whether the compliance programs for recreational vehicles should be modeled after the programs adopted to control emissions from marine outboard engines and personal watercraft.[48] Some manufacturers making these marine products also make recreational vehicles, and are therefore familiar with the structure of the marine engines program.

We encourage interested parties to review the compliance program in place for outboard engines and personal watercraft and provide input to EPA on the potential for applying the same types of compliance measures to these other recreational vehicles. In particular, we are interested in comments on requirements for manufacturer production line and in-use testing. For outboard engines and personal watercraft, the production line testing program requires manufacturers to test engines as they leave the production line. This process is used to provide a quality control check on the manufacturer's production processes to ensure that engines are routinely assembled in a way such that they continue to meet emission performance requirements when coming off the assembly line. The manufacturer in-use testing program requires manufacturers to select engines from the in-use fleet and test a portion of their engine families each year. These requirements focus resources on ensuring in-use compliance and are key components to the overall compliance program we have established for recreational marine engines.

4. Consumer Modifications

We are aware that consumers sometimes modify engines and exhaust systems on their recreational vehicles. Some of these changes are done to enhance operating performance. Others are to maintain optimal performance under varying operating conditions (*i.e.*, changes in altitude, weather, etc.). We request information on the types of modifications that are common for the different types of recreational vehicles and any information on their impact on emission performace. We are especially interested in those modifications that would affect the emissions performance of the vehicle, and could be considered tampering under the Act for engines certified to emissions standards. We also request information that would help us better understand how common these practices are for the different types of vehicles. Understanding the scope of these practices will help us establish standards and program requirements that achieve in-use emissions reductions.

5. Useful Life

For highway motorcycles, we currently have three distinct useful life categories that are based on engine displacement. The useful life for all three categories are five years or 12,000 km, 18,000 km, or 30,000 km depending on which category the motorcycle falls under. California has established a useful life of 5 years or 10,000 km for off-highway motorcycles and ATVs. For some of our nonroad engine regulations, we have based useful life on time (*i.e.*, hours). We request information that would help us determine the most appropriate method for establishing useful life for recreational vehicles. For example, a certain number of hours may be appropriate for snowmobiles and possibly ATVs, whereas a useful life similar to that used for highway motorcycles or California off-highway motorcycles may be more appropriate for off-highway motorcycles. We request comment on what the appropriate useful life levels and values would be for the various types of recreational vehicles.

6. Consumer Labeling

We request comment on the potential for a consumer labeling program for recreational vehicles. We are also interested in comment on this topic for recreational marine engines, as discussed in section V.E.10. The purpose of a labeling program would be to educate consumers so that they could make informed decisions concerning engine emissions when they purchase a recreational vehicle. One example of a consumer labeling program is the California Air Resources Board's requirement that personal watercraft and outboard engines sold in California starting in 2001 be labeled as either low, very-low, or ultra-low depending on their emission levels.

We request comment on the merit and cost of including such a program in our proposal for recreational vehicles and whether the program should be voluntary or mandatory. We also request comment on programmatic aspect of labeling such as the content of the label, the number of tiers that would be useful in distinguishing among recreational vehicle models, and the pollutant(s) that should be used in establishing those tiers. Finally, we request comment on any other appropriate incentives for introducing new clean technologies that may be available.

[48] 61 FR 52088, October 4, 1996.

IV. Highway Motorcycles

In addition to the nonroad vehicles and engines noted above, today's ANPRM also reviews EPA requirements for highway motorcycles. The emissions standards for highway motorcycles were established twenty-three years ago. California recently adopted new emissions standards for highway motorcycles and new standards have also been proposed internationally. There may be opportunities to reduced emissions in a way that also allows manufacturers to benefit from harmonized requirements, which may reduce product lines and production costs. In addition, we believe it is important to consider the emissions standards for highway motorcycles in the context of setting standards for off-highway motorcycles. We are interested in providing regulatory programs for off-highway and highway motorcycles that are consistent, which may also allow for the transfer of technology across product lines for manufacturers. Consequently, we request comment on the appropriateness of examining and potentially revising the highway motorcycle emission standards in the same time frame, and in the same rulemaking, in which we plan to address emission standards for recreational vehicles.

A. What Is a Highway Motorcycle, and Who Makes Them?

Motorcycles come in a variety of two- and three-wheeled configurations and styles. For the most part, however, they are two-wheeled self-powered vehicles. Federal regulations currently define a motorcycle as "any motor vehicle with a headlight, taillight, and stoplight and having: two wheels, or three wheels and a curb mass less than or equal to 680 kilograms (1499 pounds)." (See 40 CFR 86.402–86.478). Vehicles that otherwise meet the motorcycle definition but have engine displacements less than 50 cubic centimeters (cc) (generally, youth motorcycles, most mopeds, and some motor scooters) are currently not covered by federal regulations. Also currently excluded are motorcycles which, "with an 80 kg (176 lb) driver, * * * cannot: (1) Start from a dead stop using only the engine; or (2) Exceed a maximum speed of 40 km/h (25 mph) on level paved surfaces' (*e.g.*, some mopeds). Most scooters and mopeds have very small engine displacements and are typically used as short-distance commuting vehicles. Motorcycles with larger engine displacement are more typically used for recreation (racing or touring) and may travel long distances. Both EPA and California regulations further sub-divide highway motorcycles into classes based on engine displacement. Table IV–1 shows how these classes are defined.

The currently regulated highway category includes motorcycles termed "dual-use" or "dual-sport," meaning that their designs incorporate features that enable them to be reasonably competent on and off road. Dual-sport motorcycles generally can be described as street-legal dirt bikes, since they tend to bear a closer resemblance in terms of design features and engines to true off-highway motorcycles than to highway cruisers or sport bikes. However, another category of motorcycle, referred to as "enduros," are very similar in appearance to dual-sport motorcycles, but are typically equipped with higher performance engines and have traditionally been categorized as nonroad motorcycles and not been subject to the highway emission standards. Therefore, we request comment as to how we can better determine which motorcycles are street-legal and which are not.

Throughout this ANPRM the term "highway motorcycle" is intended to include all motorcycles covered by the current federal regulations; thus, dual-sport motorcycles are included in this definition. We currently believe that all highway motorcycle engines sold in the U.S., including those that power dual-sport motorcycles, are four-stroke engines.

TABLE IV–1.—MOTORCYCLE CLASSES

Motorcycle class	Engine displacement (cubic centimeters)
Class I	50—169.
Class II	170—279.
Class III	280 and greater.

Highway motorcycles are dominated by larger engines, with engine displacements exceeding 1000 cc for the most powerful "superbikes." According to the Motorcycle Industry Council (MIC), in 1998 there were about 5.4 million highway motorcycles in use in the United States (only 565,000 of these were dual-sport), more than three-fourths of which had an engine displacement of over 449 cc.[49] Sixty percent had an engine displacement greater than 749 cc. Inclusion of the dual-sport motorcycles in this figure tends to skew the numbers somewhat, even despite the fact that their total numbers are relatively small, because their dirt bike heritage leads them to be weighted towards smaller engines. According to the MIC data, three-fourths of dual-sport motorcycles had an engine displacement of less than 350 cc, whereas two-thirds of the remaining motorcycles (those purely designed for road use) had a displacement of over 749 cc. Total sales in 1998 of highway motorcycles was estimated to be about 411,000, or about 72 percent of motorcycle sales. About 13,000 of these were dual-sport motorcycles. The remaining 28 percent of sales were strictly off-highway motorcycles, which are currently unregulated.

We are aware of a half-dozen companies, Honda, Harley Davidson, Yamaha, Kawasaki, Suzuki, and BMW, which account for near 95 percent of all motorcycles sold. Dozens of other minor players make up the remaining few percent. Based on available information, over half of all motorcycles sold in 1998 were made by Honda and Harley Davidson, with the two companies maintaining almost equal market shares of about 25 percent each.

B. What Is the Regulatory History?

1. Environmental Protection Agency Regulations

In 1974 EPA issued an advance notice of proposed rulemaking that discussed the possible implementation of emission controls for highway motorcycles for the first time and requested comment on a number of issues. Taking into account the comments received on the ANPRM, EPA issued an NPRM the following year for the control of exhaust and crankcase emissions from new motorcycles. The proposal addressed standards for HC, CO, and NO_X, proposing a set of interim standards for 1978 and 1979 and final standards equivalent to the light-duty vehicle standards in effect at that time. The NPRM was followed by a Final Rule promulgated in 1977 (42 FR 1126, Jan. 5, 1977) which established interim standards effective for the 1978 and 1979 model years and ultimate standards effective starting with the 1980 model year. The interim standards ranged from 5.0 to 14.0 g/km HC depending upon engine displacement,

[49] "1999 Motorcycle Statistical Annual," Motorcycle Industry Council.

while the CO standard of 17.0 g/km applied to all motorcycles. The 1980 standards, which were more lenient than those that were proposed and which lacked a NO_X standard, are essentially those that remain in effect today. While the final standards did not differ based on engine displacement, the useful life over which these standards must be met ranged from 12,000 km (7,456 miles) for Class I motorcycles to 30,000 km (18,641 miles) for Class III motorcycles. These standards were updated in 1989 to include methanol-fueled motorcycles starting with the 1990 model year, then again in 1994 to include natural gas-fueled and liquefied petroleum gas-fueled motorcycles starting with the 1997 model year. Crankcase emissions from motorcycles are also prohibited. There are no current federal standards for evaporative emissions from motorcycles. The current federal standards are shown in Table IV–2.

TABLE IV–2.—CURRENT FEDERAL EXHAUST EMISSION STANDARDS FOR MOTORCYCLES

Engine size	HC (g/km)	CO (g/km)
All	5.0	12.0

2. Regulation by the California Air Resources Board

Motorcycle emission standards in California were originally identical to the federal standards that applied to the 1978 through 1981 model years. The definitions of motorcycle classes used by California continue to be identical to the federal definitions. However, California has revised their standards several times to bring them to their current levels. In 1982 the standards were modified to reduce the HC standard from 5.0 g/km to 1.0 or 1.4 g/km, depending upon engine displacement. California adopted an evaporative emission standard of 2.0 g/test for 1983 and later model year motorcycles. In 1984 California amended the regulations for 1988 and later model year motorcycles to further lower emission standards and provide additional compliance flexibility to manufacturers. The 1988 and later standards could be met on a corporate-average basis, and the larger (Class III) bikes (280 cc and above) were split into two separate categories: 280 cc to 699 cc and 700 cc and greater. These are the standards being met in California today. Like the federal standards, there are no currently applicable NO_X standards for highway motorcycles in California. Under the corporate-averaging scheme, no individual engine family is allowed to exceed a cap of 2.5 g/km. Like the federal program, California also prohibits crankcase emissions.

TABLE IV–3.—CURRENT CALIFORNIA HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Engine size (cc)	HC (g/km)	CO (g/km)
50–279	1.0	12.0
280–699	1.0	12.0
700 and above	1.4	12.0

In 1998 the California Air Resources Board (CARB) proposed new standards for Class III highway motorcycles that would take effect in two phases—a "Tier 1" to start with the 2004 model year, followed by a "Tier 2" that would take effect starting with the 2008 model year. These standards were finalized with minor modifications on November 22, 1999. Existing California standards for Class I and II motorcycles remained unchanged. As with the current standards, manufacturers will be able to meet the requirements on a corporate-average basis. Perhaps most significantly, this recent CARB action brings some level of NO_X control to motorcycles by establishing a combined $HC+NO_X$ standard. No changes were made by the CARB action to the CO standard, which remains at 12.0 g/km. In addition, CARB is providing an incentive program to encourage the introduction of motorcycles compliant with the Tier 2 standard prior to the 2008 model year. This incentive program allows the accumulation of credits that manufacturers can use to meet the 2008 standards. Like the federal program, these standards will also apply to dual sport motorcycles.

TABLE IV–4.—TIER 1 AND TIER 2 CALIFORNIA CLASS III HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Model year	Engine displacement	$HC+NO_X$ (g/km)	CO (g/km)
2004 through 2007 (Tier 1)	280 cc and greater	1.4	12.0
2008 and subsequent (Tier 2)	280 cc and greater	0.8	12.0

California also adopted a new definition of small volume that would take effect with the 2008 model year. Historically, California had a definition of small volume that applied to the 1984 through 1987 model years (5,000 units per model year), but no definition that has applied since. Thus, for the 1988 through 2007 model years, all manufacturers must meet the standards, regardless of production volume. Small volume manufacturers, defined in CARB's recent action as a manufacturer with combined California sales of Class I, Class II, and Class III motorcycles not greater than 300 units, do not have to meet new standards until the 2008 model year, at which point the Tier 1 standard applies. CARB intends to evaluate whether the Tier 2 standard should be applied to small volume manufacturers in the future.[50]

3. European Regulations

The European Commission recently proposed a new phase of motorcycle standards, which would start in 2003, and are considering a second in 2006. Whereas the current European standards make a distinction between two-stroke and four-stroke engines, the proposed standards would apply to all motorcycles regardless of engine type, leading to a technology-independent regulatory framework. The 2003 standards would require emissions to be below the values shown in Table IV–5, as measured over the European ECE–40 test cycle. The phase of standards being considered for 2006 are still in a draft form and have not yet been officially proposed, but in addition to taking another step in reducing motorcycle emissions, the 2006 standards are expected to incorporate an improved motorcycle test cycle, as noted in Section IV.D.2 below.

[50] CARB, October 23, 1998 "Proposed Amendments to the California On-Road Motocycles Regulation" Staff Report: Initial Statement of Reasons.

TABLE IV–5.—EUROPEAN COMMISSION PROPOSED 2003 MOTORCYCLE EXHAUST EMISSION STANDARDS

HC (g/km)	CO (g/km)	NO_X (g/km)
1.2	5.5	0.3

C. Highway Motorcycle Emission Control Technology

1. Federal Standards

While highway motorcycles have had to apply some low-level control technologies to meet the current standards, the current federal standards require a technology mix comparable to the pre-catalyst stage for passenger cars. The standards that took effect starting in the 1980 model year precipitated the elimination of highway two-stroke engines and a transition to a fleet composed entirely of four-stroke engines. In general, the standards prompted the use of leaner air-fuel mixtures, electronic ignition systems, improvements in manufacturing tolerances in the carburetor and fuel handling systems, PCV valves to control crankcase emissions, and some engine redesign and modifications (changes to the camshaft, valve and ignition timing, and combustion chamber design).

2. California Standards

Despite the greater stringency of the current California standards (*i.e.*, those that apply in the current model year), most manufacturers have been able to comply without the use of catalytic converters, and only a few expensive high-performance motorcycles have used fuel injection systems. The majority of motorcycles have been able to meet these standards by using, in addition to the measures noted above for the federal standards, engine modifications and more advanced calibration strategies, with air injection systems being commonly used in the larger motorcycle models. A few models have been certified with 3-way catalytic converters and fuel injection systems.

The Tier 1 and Tier 2 standards taking effect in California in 2004 and 2008, respectively, will require some additional technologies.[51] Many of the control technologies that have been applied successfully to four-stroke engines in passenger cars may have some potential application to four-stroke motorcycle engines. Some, such as fuel injection and catalytic converters, have already been successfully used on some motorcycle engines, as noted above. Other passenger car technologies may arrive on motorcycles soon due to the upcoming California requirements. However, California did not base the Tier 1 standard effective in 2004 on the widespread application of catalytic converters. California has determined the 1.4 g/km $HC+NO_X$ standard will be largely feasible by reducing engine-out emissions using mostly engine systems (*e.g.*, fuel injection, pulse air injection, valve overlap changes), rather than relying on catalytic after-treatment. According to California, the Tier 2 standard will be more of a challenge to industry and existing technologies are likely to be modified and optimized for motorcycle application to achieve 0.8 g/km $HC+NO_X$. They claim that such technologies could include computerized fuel injection, high-efficiency closed-loop two- or three-way catalytic converters, precise air-fuel ratio controls, programmed secondary pulse-air injection, low-thermal capacity exhaust pipes, and others which are available today or in the foreseeable near future. California has also suggested that some manufacturers may be able to meet the Tier 2 standards on some models without the use of catalytic converters.

[51] California Air Resources Board, "Final Statement of Reasons for Rulemaking," December 10, 1998.

D. Standards and Program Approaches

We have identified a number of key issues and decision points that may impact any action we may take regarding standards for highway motorcycles. We request detailed comments and data regarding the issue areas described in this section.

1. Exhaust Emission Standards

In general we request comment on the technological feasibility, cost, and appropriateness of implementing new more stringent emission standards for highway motorcycles. We also request comment on technologies that might enable reductions in motorcycle emissions, and the potential magnitude of such reductions. We request comment on the appropriate time frame for implementing new emission standards for highway motorcycles. In addition, we request detailed comments on the following specific issue areas.

Harmonization with California. In many program areas, including light-duty and heavy-duty vehicles and engines, harmonization with California has frequently been a significant objective, and is often a desirable outcome for industry. When federal and California compliance programs are harmonized, manufacturers are more easily able to produce engine families that comply with both programs, rather than having to consider whether or how to design and market engine families separately for California and the remaining 49 states. In addition, historically any time the California program is significantly more stringent than the federal program there is a possibility that some individual states will elect to enforce the California program (as several states currently do with light-duty vehicles), further complicating compliance, marketing, and distribution for the manufacturers. Given that California has recently put in place technologically challenging standards for Class III motorcycles in a time frame that we would be likely to consider for a possible federal program, we are likely to look very closely at the pros and cons of harmonizing the federal program with the recently finalized California standards. We request comment on all aspects of the California program and whether the California standards are appropriate for a nationwide federal program. Commenters should address technological feasibility, cost, corresponding potential emissions reductions, appropriate time frame, structure (*e.g.*, a fleet average approach vs. something else), and potential advanced emission control technologies associated with California-level standards and with any other level of standards a commenter may consider appropriate.

As noted earlier, the recent action by California did not address emissions from Class I and Class II motorcycles. We request comment on the need to consider emission reductions from all classes of motorcycles, including Class I and Class II.

Harmonization with off-highway motorcycles. Since we will be promulgating emission standards for off-highway motorcycles for the first time, it may make sense to have standards that apply to both, off-highway and on-highway motorcycles. This could be beneficial for manufacturers that produce both types of motorcycles, since they could spread their resources across both programs. In addition, the experience and knowledge used in developing emission compliant highway motorcycles could possibly be transferred to off-highway motorcycle applications. However, we also acknowledge that many off-highway motorcycles use two-stroke engines, where two-stroke engines are no longer used in highway applications and some of the information used in meeting highway standards may not be applicable. Therefore, we request comment on the appropriateness of harmonization of highway and off-

highway motorcycle emission standards and the costs and corresponding emissions reductions associated with this approach.

2. Test Cycle

The test cycle currently used to for compliance with the motorcycle emission standards, in both the federal and California programs, is the FTP–75. Motorcycles are tested on a specialized motorcycle chassis dynamometer on the traditional FTP, the same cycle used for light-duty vehicles and trucks, although the driving schedule speeds and accelerations are reduced for Class I and II motorcycles. It is now widely acknowledged that the traditional FTP does not adequately represent some high-emission modes that vehicles experience in actual use. When the cycle was first adopted for passenger cars in the early 1970's, the limited capabilities of the chassis dynamometers at that time made it necessary to limit the speeds and acceleration rates of the driving cycle. Thus, the top speed and acceleration rates seen on the FTP are much less than most vehicles—especially motorcycles—can achieve on the road. Consequently, we request comment on whether the existing US06 driving cycle for light-duty vehicles and trucks—or some other more representative driving cycle—may be appropriate for highway motorcycles, and if so, what standards might be appropriate. We request data on how motorcycles are driven in actual use that might support or reject the appropriateness of a high-speed/high-acceleration driving cycle for motorcycles.

In addition, there is an effort underway under the auspices of the United Nations/Economic Commission for Europe (UN/ECE) to develop a global harmonized world motorcycle test cycle (WMTC). The objective of this work is to develop a scientifically supported test cycle that accurately represents the in-use driving characteristics of motorcycles. The United States is also a participating member of UN/ECE. EPA has stated that present levels of environmental protection will not be lowered in order to achieve regulatory harmonization. In its recent proposal, the European Commission has announced its intention to consider a global test cycle for the second phase of its proposed standards, expected to take effect in 2006. We request comment on all issues related to pursuing a globally harmonized test cycle.

3. Evaporative Emission Standards

As noted earlier, the existing federal program does not require compliance with a limit on evaporative emissions from motorcycles, while California does. We request comments and supporting information on the appropriateness of harmonization with the California evaporative standards or whether other evaporative emission standards might be an appropriate element of the federal program. We also request comment on the costs and corresponding emissions reductions associated with adopting evaporative emission standards.

E. Additional Program Considerations

1. Addressing Currently-Excluded Vehicles

In addition, we may consider developing appropriate standards for those types of vehicles now excluded from compliance with emission standards. This would include mopeds and scooters that are under 50 cc or that otherwise can not meet the applicability criteria in the regulations (a mix of two- and four-stroke engines). As noted earlier, some of these vehicles do not meet the regulatory definition of motor vehicle by not being able to exceed 25 mph, thus it may be appropriate to consider such vehicles as nonroad vehicles and may be appropriate to regulate them under the recreational vehicle regulations. We request comment on the appropriateness, technological feasibility, and cost of implementing emission standards for these currently unregulated vehicles. We request comment on approaches to reducing emissions from these types of vehicles, and on the technologies that might be used to reduce emissions, both for two- and four-stroke models.

2. Consumer Modifications

A significant issue that emerged in the context of the new California standards is the rate at which consumers make modifications to their motorcycles, often using aftermarket parts, to enhance performance, sound, and/or appearance. The Motorcycle Industry Council expressed a concern to California that standards which result in the widespread use of catalysts will achieve less benefits than projected due to consumer tampering with the exhaust systems. Such tampering, which can frequently involve the replacement of exhaust pipes that may include the removal of the catalytic converter, can clearly offset a significant portion of the emission benefits. We request comment on this issue, and in particular request any data that may demonstrate the magnitude of these consumer practices. We request comment on approaches to standard-setting that may mitigate this problem while also enabling motorcycles to take advantage of proven technologies such as catalytic converters.

3. Small Volume Manufacturers

The issue of how to define a small volume manufacturer by regulation was also a significant one that arose in the context of the new California standards. Motorcycle manufacturers with fewer than 500 employees meet the current definition of a small business under the classifications established by the Small Business Administration. The current federal regulations define a small volume motorcycle manufacturer as one whose projected U.S. sales of motorcycles is less than 10,000 units. We request comment on how the existing federal definition may interact with the new California definition, and whether, in the context of the new California definition (described earlier), any inequities are created between the two motorcycle compliance programs. We request comment on the appropriateness of the existing federal definition, and, in the context of revised federal standards, what types of compliance flexibilities might be appropriate for those manufacturers defined as small volume.

4. Useful Life

As noted earlier, the current federal standards were put in place more than twenty years ago. An important aspect of the overall emission standards, in addition to the numerical limits, is the vehicle useful life over which applicability with the standards must be demonstrated when the vehicle is certified. The current useful life definitions, like the numerical emission limits, were put in place twenty years ago. In conjunction with evaluating the possibility of revising emission standards for highway motorcycles, we believe it may be appropriate to reevaluate the useful life definitions in the context of current technology and driving habits. As is clearly the case with passenger cars, motorcycles may have evolved in the last twenty years to last longer and be driven more miles. Congress found it necessary to increase the useful life of passenger cars in the 1990 Clean Air Act Amendments from 50,000 miles to 100,000 miles based on the longevity of newer passenger cars. It may be time for a similar adjustment for highway motorcycles as design and manufacturing improvements may have extended the typical operating life of highway motorcycles. We request comments and supporting data that may support or refute the need to evaluate and possibly extend the useful life of highway motorcycles. The current useful life definitions are shown in Table IV–6.

TABLE IV–6.—USEFUL LIFE DEFINITIONS FOR MOTORCYCLE CLASSES

Motorcycle class	Useful life
Class I	5 years or 12,000 km (7,456 miles).
Class II	5 years or 18,000 km (11,185 miles).
Class III	5 years or 30,000 km (18,641 miles).

V. Recreational Marine Engines

A. Background

1. What Marine Engines Are Already Covered by EPA Programs?

We originally proposed emission standards for all marine engines in 1994.[52] This included outboard and personal watercraft engines, sterndrive and inboard spark-ignition engines, and recreational and commercial compression-ignition engines. EPA then decided to set standards for marine diesel engines in a separate rulemaking because of the many unique issues related to those engines. Because uncontrolled sterndrive and inboard spark-ignition engines appeared to be a low-emission alternative to outboard engines in the marketplace, even after outboard emission standards were fully phased in, we decided to set emission standards only for outboard and personal watercraft engines.[53] Outboard and personal watercraft engines were almost all two-stroke engines with much higher emission rates compared to the sterndrive and inboard engines which were all four-stroke engines. We are now working to conclude the effort to set emission standards for SI marine engines as we develop a different set of requirements for sterndrive and inboard SI engines.

Following the 1994 proposal, we set Tier 2 and Tier 3 standards for land-based nonroad diesel engines and marine diesel engines rated below 37kW.[54] This led us to propose comparable emission control requirements for larger marine diesel engines.[55] Although all marine diesel engines were included in the 1998 ANPRM, EPA decided to subdivide marine diesel engines further to accommodate the special concerns that apply to engines used in recreational marine applications.[56] These special concerns included high power-to-weight ratios needed for planing vessels and potential small business impacts. We have finalized emission standards for commercial marine diesel engines and are now developing requirements for recreational marine diesel engines.[57]

2. What Marine Engines Are Included in This Rulemaking?

In this action, we are giving advance notice for our proposal to establish emission standards for new spark-ignition sterndrive and inboard marine engines and new compression-ignition recreational marine engines at or above 37 kW. For spark-ignition engines, this includes jet boat and air boat engines, as these can be similar to sterndrive and inboard engines and thus are part of the sterndrive/inboard (SD/I) class. These are the only recreational marine engines for which we have not yet promulgated emission standards.

For the compression-ignition engines, we are focusing on reductions in oxides of nitrogen and particulate matter emissions. For the spark-ignition engines we are focusing on reductions in oxides of nitrogen and hydrocarbon emissions.

References to "marine diesel engines" in this document are intended to cover compression-ignition marine engines. CI engines are typically operated on diesel fuel although other fuels, such as compressed natural gas, may also be used. Similarly, all references to "gasoline marine engines" in this document are intended to include all spark-ignition marine engines regardless of fuel type. For SI engines, we include all of the engines listed above without making a distinction between recreational and commercial applications. However, as a shorthand for this document, we are using "recreational marine engines" to mean recreational marine diesel engines and all of the gasoline SD/I engines.

Boat builders could also be affected by this emission control program. If engine changes significantly increase the external size, increase heat rejection, or reduce the power of the engine, boat builders could have to change the packaging of the engine in the vessel. Engine builders may raise the price of the engine to boat builders to cover the increased costs of developing, certifying and building new compliant engines. Also we are requesting comment on evaporative emission control which could affect boat designs.

B. Technology

1. What Technologies Appear To Be Available for Recreational Marine Diesel Engines?

We anticipate that significant emissions reductions from recreational marine diesel engines can be achieved primarily with technology that will be applied to land-based nonroad engines and commercial marine engines. Much of this technology already has been established in highway applications and is being used in some land-based nonroad and marine applications.

If emissions standards were not to go into place until the 2005–2006 time frame, engine manufacturers would have substantial lead time for developing, testing, and implementing emission control technologies. This lead time, coupled with the opportunity to use emission control technologies already developed for land-based nonroad engines, should allow time for a comprehensive program to integrate the most effective emission control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption. We request comment on the amount of lead time that would be appropriate for emission standards for recreational marine diesel applications.

Engine manufacturers have already shown some initiative in producing limited numbers of low-NO_x marine diesel engines. More than 80 of these engines have been placed into service in California through demonstration programs.[58] [59] Through the demonstration programs, we were able to gain insight into what technologies can be used to achieve significant emission reductions. Emission data from these engines supported adoption of emission standards for commercial marine diesel engines (see Table V–1).

Highway engine manufacturers have been the leaders in developing and applying new emission control technology for diesel engines. Because of the similar engine designs in land-based nonroad and marine diesel engines, we expect that much of the technological development that has led to lower emitting highway engines can be transferred or adapted for use on land-based nonroad and marine engines. Much of the improvement in emissions

[52] *See* 59 FR 55929 (November 9, 1994).
[53] *See* 61 FR 52088 (October 4, 1996).
[54] *See* 63 FR 56968 (October 23, 1998).
[55] *See* 63 FR 68508 (December 11, 1998).
[56] *See* 63 FR 28309 (May 22, 1998).
[57] *See* 64 FR 73300 (December 29, 1999).
[58] Memorandum from Jeff Carmody, Santa Barbara County Air Pollution Control District, to Mike Samulski, U.S. Environmental Protection Agency, "Marine Engine Replacement Programs," July 21, 1997 (Docket A–97–50; document II–G–10).
[59] Facsimile from Eric Peterson, Santa Barbara County Air Pollution Control District, to Mike Samulski, U.S. Environmental Protection Agency, "Marine Engine Replacement Programs," April 1, 1998 (Docket A–97–50; document II–D–14).

from these engines comes from "internal" engine changes such as variation in fuel injection variables' (injection timing, injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Other technological developments that are expected to be used on land-based nonroad engines would require a greater degree of development before they could be applied to marine diesel engines. Turbocharging is widely used now in marine applications because it improves power and efficiency by compressing the intake air. Turbocharging may also be used to decrease particulate emissions in the exhaust. Today, marine engine manufacturers generally have to rematch the turbocharger to the engine characteristics of the marine version of a nonroad engine and often will add water cooling (jacketing) around the turbo housing to keep surface temperatures low. Once the Tier 2 nonroad engines are available to the marine industry, matching the turbochargers for the engines would be an important step in achieving low emissions.

Aftercooling is a well established technology that can be used to reduce NO_X by reducing the temperature of the charge air after it has been heated during compression. Reducing the charge air temperature directly reduces the peak cylinder temperature during combustion, which is the primary cause of NO_X formation. Air-to-water and water-to-water aftercoolers are well established for land-based applications. For engines in marine vessels, there are two different types of aftercooling used: jacket-water and raw-water aftercooling. With jacket-water aftercooling, the coolant to the aftercooler is cooled through a heat exchanger by ambient water. This cooling circuit may be either the same circuit used to cool the engine or a separate circuit. By moving to a separate circuit, marine engine manufacturers would be able to achieve further reductions in the intake charge temperature. This separate circuit could result in even lower temperatures by using raw water as the coolant. This means that ambient water is pumped directly to the aftercooler. Raw-water aftercooling is currently being used widely in recreational applications. Because of the access that marine engines have to a large ambient water cooling medium, we anticipate that marine CI engine manufacturers will largely achieve reductions in NO_X emissions through the use of aftercooling.

To meet potential emission standards, recreational marine diesel engine manufacturers could use many of the strategies discussed above. Electronic controls also offer great potential for improved control of engine parameters for better performance and lower emissions. Unit pumps or injectors would allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Marine engine manufacturers should be able to take advantage of modifications to the routing of the intake air and the shape of the combustion chamber of nonroad engines for improved mixing of the fuel-air charge. Separate circuit jacket- and raw-water aftercooling will likely gain widespread use in turbocharged engines to increase performance and lower NO_X. We request comment on the technological approaches discussed here and on other emission control technology that could effectively be used on recreational marine diesel engines. We also request comment on the costs associated with these technologies.

2. What Technologies Appear To Be Available for Spark Ignition SD/I Marine Engines?

At least three primary technologies could be used by marinizers to reduce emissions from SD/I engines.[60] These three technologies are electronic fuel injection, exhaust gas recirculation, and two-way or three-way catalysts. Electronic control gives manufacturers more precise control of the air/fuel ratio in each cylinder thereby giving them greater flexibility in how they calibrate their engines. With the addition of an oxygen sensor, electronics give manufacturers the ability to use closed loop control which is especially valuable when a catalyst is used. Three-way catalysts operate best near stoichiometric conditions in the exhaust.

Exhaust gas recirculation can be used for meaningful reductions in NO_X. The recirculated gas acts as a diluent in the fuel-air mixture which reduces combustion temperature. These lower temperatures significantly reduce formation rate of NO_X, but HC is increased slightly due to lower temperatures for HC burn-up during the late expansion and exhaust strokes. Depending on the burn rate of the engine and the amount of recirculated gases, EGR can improve fuel consumption. Although EGR slows the burn rate (which tends to decrease peak power), it can offset this effect with some benefits for engine efficiency. EGR reduces pumping work since the addition of recirculated gas increases intake pressure. Because the burned gas temperature is decreased, there is less heat loss to the exhaust and cylinder walls. In effect, EGR allows more of the chemical energy in the fuel to be converted to useable work.

Most engines sold to the marine market are primarily designed for automotive use. Marinizers then take the basic engine blocks and adapt them to be better suited for the marine environment. These engines are generally already equipped with a port in the manifold for EGR. This port is capped because EGR is not currently used in marine engines. However, EGR has been used as an effective NO_X control strategy in automotive applications for more than 20 years. Today's automotive applications use levels of 15–17 percent EGR. Through the use of high swirl, high turbulence combustion chambers, manufacturers could increase the burn rate of the engine. By increasing the burn rate, the amount of EGR could be increased to 20–25 percent. In our lab, we calibrated a heavy-duty highway gasoline engine for emissions over the ISO E4 marine duty cycle.[61] We achieved a 47 percent reduction in NO_X without significantly changing HC or CO emissions. The result was 9.9 g/kW-hr HC+NO_X and 24.3 g/kW-hr CO.

With regard to emissions reductions through catalytic control, we are considering various designs that involve packaging small catalysts in the exhaust manifold with only small changes in the size of the exhaust manifold. By placing the catalysts here, costs to the manufacturer may be reduced compared to a large catalyst downstream especially when considering the packaging of the system in a boat. Engine manufacturers water jacket the exhaust manifold to meet temperature safety protocol then mix the water into the exhaust to protect the exhaust couplings and muffle noise. By placing the catalyst in the exhaust manifold, it is upstream of where the water and exhaust mix. However, placing the catalyst in the exhaust manifold limits the catalyst size. Using a small catalyst, in turn, limits potential emissions reductions. We request comment on the potential emission reductions available by a small catalyst placed in or directly adjacent to the exhaust manifold.

There have been concerns that aspects of the marine environment could result in unique durability problems for catalysts. The primary aspects that could affect catalyst durability are sustained operation at high load, salt water effects on catalyst efficiency, thermal shock from cold water coming into contact with a hot catalyst, engine vibration, and shock effects in rough water associated with marine applications.

Three-way catalysts may be an effective control strategy for gasoline marine engines. Three-way catalysts act as both an oxidation catalyst to reduce HC, CO and as a reduction catalyst to control NO_X. They are most effective when coupled with an oxygen sensor and a feedback loop to maintain a stoichiometric exhaust mixture. As an alternative, a two-way oxidation catalyst could be used effectively with less precise control of the air fuel ratio in the exhaust. Today's catalysts perform well at temperatures higher than would be seen in a marine exhaust manifold and have been shown, in the lab, to withstand the thermal shock of being immersed in water. Use of catalysts in automotive, motorcycle, and hand-held equipment has shown that catalysts can be packaged to withstand the vibration in the exhaust manifold in varied applications. We request comment on how the operation of marine engines would affect catalyst durability.

The key to using this technology in these marine applications is to ensure that salt water does not reach the catalyst so that salt does not accumulate on the catalyst and reduce its efficiency. Placement of the catalyst close to the exhaust manifolds may help protect it from salt water. Manufacturers already strive to design their exhaust systems to prevent water from reaching the exhaust ports. If too much water reaches the exhaust ports in today's designs, significant durability problems would result from corrosion or hydraulic lock. We request comment on potential design modifications which could eliminate or significantly minimize water intrusion into the exhaust which could deteriorate the performance of the catalyst.

In highway applications, catalysts are designed to operate in gasoline vehicles for more than 100,000 miles. This translates to about 5,000 hours of use on the engine/catalyst. We estimate that, due to low annual hours of operation (50–100 hours/year), the average running time of SD/I engines is less than one-third of this value. This is another reason we believe catalysts are likely to be durable in marine applications. However, unlike cars, boats often experience shock effects from waves even when the engine is not running which could affect the durability of a catalyst that was not packaged appropriately.

We have been working with the U.S. Coast Guard to identify potential safety problems with using catalysts in marine applications. The Coast Guard has told us that they have two concerns. First, they want to make sure that any additional heat load in the engine compartment will not add to the risk of fires, other safety hazards, or other detrimental impacts on the engine or components. Second, they want to make sure that exhaust systems with catalysts will not lead to CO leaks due to additional joints in or maintenance of the exhaust system.

Through a joint effort with the California Air Resources Board (ARB), Southwest Research Institute (SwRI), engine manufacturers/marinizers, catalyst manufacturers, and a marine exhaust manifold manufacturer, we are in the process of developing and testing a comprehensive emissions control system on a SD/I engine. This system includes both EGR and catalyst technology. The goal of this testing is proof of concept, but as part of this testing, temperatures and pressures relevant to safety, durability, and performance will be measured. Also, we are focusing on an exhaust manifold design that will prevent water reversion to the catalyst.

We request comment on the feasibility of applying electronic fuel injection, exhaust gas recirculation, and catalysts on SD/I engines and on other technology that could effectively be used to reduce emissions from these engines. We also request comment on the costs and corresponding potential emission reductions from using such technology, as well as the potential effects on engine performance, safety and durability using these technologies.

C. Standards and Program Approaches

1. Recreational Marine Diesel Engines

One approach for reducing emissions from recreational CI marine engines would be to propose standards similar to the Tier 2 standards for commercial CI marine engines. The commercial marine emission limits are presented in Table V–1 and are based on the ISO E3 duty cycle. For recreational marine engines the ISO E5 duty cycle may be more appropriate because it is designed for smaller craft. Recreational CI marine engines can likely use the same technologies projected for the Tier 2 commercial marine standards. Many recreational CI marine engines are already using these technologies including electronic fuel management, turbocharging, and separate circuit aftercooling. In fact, because recreational engines have much shorter design lives than commercial engines, it is likely to be easier to apply raw water aftercooling to these engines.

TABLE V–1.—EMISSION STANDARDS FOR COMMERCIAL MARINE DIESEL ENGINES OVER 37 KW

Subcategory	HC+NO_X g/kW-hr	PM g/kW-hr	CO g/kW-hr
disp < 0.9	7.5	0.40	5.0
0.9 ≤ disp < 1.2	7.2	0.30	5.0
1.2 ≤ disp < 5.0	7.2	0.20	5.0

Engine manufacturers will generally increase the fueling rate in recreational engines, compared to commercial engines, to gain power from a given engine size. This extra power from a given sized engine helps bring a planing vessel on to the water surface and increases the maximum vessel speed without increasing the weight of the vessel. This difference in how recreational engines are designed and used has an effect on emissions. However, as discussed in the technology section below, emission data suggest that recreational marine diesel engines can meet the levels required for commercial marine engines. We request comment on the appropriateness of the commercial marine emission limits for recreational marine engines. We also

[60] We use the term "marinizers" to mean manufacturers who take engine blocks designed for land-based applications and prepare them for marine applications.

[61] Memo from J. McDonald and M. Samulski, "EGR Test Data from a Heavy-Duty Gasoline Engine on the E4 Duty Cycle," July 12, 1999.

request comment on the appropriate test duty cycle for these limits.

Diesel engine manufacturers have commented that they would need time after the commercial marine standards go into place to transfer technology from commercial to recreational marine engines. The standards for the commercial marine rule go into effect in the following model years by engine cylinder displacement: 2004 for 0.9 to 2.5 liters per cylinder, 2005 for smaller engines, and 2007 for larger engines. These dates are after those for the nonroad land-based standards which gives manufacturers time to transfer the land-based technology to marine applications.

An implementation date of 2005 for engines with displacement less than 2.5 liters/cylinder would give a year of lead time beyond the emission standards for commercial engines. However, this lead time may not be necessary because much of the technology that could be used to reduce emissions is already used in some recreational marine diesel engine models; these engines would just need to be calibrated for reduced emissions. Many recreational marine diesel engines with displacement over 2.5 liters/cylinder in many cases also already use the anticipated emission-control technologies. An implementation date of 2007 for these engines may therefore provide adequate lead time, even though the emission standards for commercial engines start at the same time. We request comment on appropriate implementation dates for recreational marine diesel engines.

2. SD/I Marine Engines

In determining potential $HC+NO_X$ standards for sterndrive and inboard SI marine engines, we will be evaluating emission reductions that can be achieved using electronic fuel injection, exhaust gas recirculation, and catalysts designed to work in marine applications. Catalyst exhaust systems designed for marine applications would have to ensure that salt-water did not reach the catalyst. In addition, it would be preferable for the exhaust system to be compact so that it would fit in current boat designs. This may necessitate locating a small catalyst in the exhaust manifold or directly adjacent to it, limiting the catalyst size and therefore its ability to reduce engine emissions.

Even if only a small, low-efficiency catalyst could be packaged into SD/I exhaust systems, an $HC+NO_X$ standard of 5–7 g/kW-hr may be feasible based in the ISO E4 duty cycle. Given the information in Table V–1, a standard of 7.2 g/kW-hr for $HC+NO_X$ would provide some level of equity of emission control for gasoline and diesel engines. However, if larger, more efficient catalysts were used such as in automotive applications, much larger emission reductions could be achieved. In its September 19, 2000 workshop, the California Air Resources Board proposed standards of 9.4 g/kW-hr $HC+NO_X$ and 134 g/kW-hr CO in 2003 and 4 g/kW-hr $HC+NO_X$ and 50 g/kW-hr CO in 2007. We request comment on the potential use of larger, more efficient catalysts in SD/I applications and on appropriate emission limits.

We are in the process of developing and testing a catalyst system for SD/I engines, but we do not have data from the tests at the time of this notice. Our projected emission reductions from catalyst systems are based on our evaluation of information from catalyst manufacturers and observations of the success of catalytic control in land-based applications. Because we do not yet have complete data, we request comment on basing emissions standards on technology packages with and without catalytic control. Using electronic fuel injection and exhaust gas recirculation, an emission limit of 9–10 g/kW-hr of $HC+NO_X$ may be appropriate.

We will be evaluating varying levels of CO control. With the application of electronic fuel injection and electronic control, CO from SD/Is can be reduced, potentially to the range of 40–50 g/kW-hr. If manufacturers can produce engines that achieve these CO emission reductions over many years of operation, this may reduce the exposure of individual boaters to elevated ambient CO concentrations. In particular, this could reduce the occurrence of CO poisoning from people on or swimming near a boat while the engine is idling. Because reducing CO emissions could help reduce incidents of CO poisoning among boaters, we are also considering the need for a CO standard which would achieve significant CO reductions. With a catalyst, CO could be reduced further, perhaps to the range of 15–20 g/kW-hr. At a minimum, we see no reason for expecting emissions to increase. Therefore, we request comment on capping CO emission at baseline levels, approximately 130 g/kW-hr, to prevent backsliding. We also request comment on the technical feasibility and benefits from reducing CO levels and on what appropriate CO standards would be for SI SD/I engines.

We are considering the 2005 or 2006 time frame for the implementation of standards for SD/I engines. These dates are similar to the ones discussed above for recreational marine diesel engines. However, we recognize that SD/I marinizers would need time to apply new technologies to their engines and optimize the systems for emissions control. Depending on the level of eventual standards, this may be especially difficult for SD/I manufacturers because they may need to apply technologies, such as EGR and catalysts, that they have never applied to their engines. Therefore, we request comment on what lead time would be appropriate for SD/I engines.

D. Additional Program Considerations

1. Not-To-Exceed Requirements

Our goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur on a recreational marine engine so that real-world emission control is achieved, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. Therefore we are requesting comment on extending the not-to-exceed requirements in place for commercial marine engines to recreational marine engines.

The not-to-exceed (NTE) concept includes an area under the torque map where an engine could reasonably be expected to operate in use. Within this area the engine can not exceed a fixed limit. The limit may be different for different areas of the NTE zone. The NTE zone not only includes a wide range of operation, but also a wide range of ambient conditions.

We expect that NTE requirements for recreational CI marine engines would be very similar to those for commercial CI marine engines (64 FR 73300) because the engines are similar. However, the limits may need to be different within the NTE zone due to differences in the engine applications. For example, a higher limit near full power may be necessary for recreational engines. For SI engines, the NTE zone would likely need to be a different shape to coincide with the differences between the ISO E5 and ISO E4 test procedures. Also, because EGR technology is not as efficient at high power as at lower power, a higher limit may be necessary at high power. We request comment on how the NTE concept could be applied to recreational marine engines. We also request comment on alternative approaches for ensuring real world emission control from recreational marine engines.

2. Evaporative Emissions

We request comment on whether or not we should propose evaporative emission requirements for recreational marine engines and what those requirements should be. Vessels using gasoline marine engines emit high amounts of volatile hydrocarbons per gallon of fuel consumed. According to our calculations, these evaporative emissions are several times higher than exhaust HC emissions. For diesel engines, evaporative emissions are very low due to the low vapor pressure of diesel fuel.

When the fuel is subject to increasing temperatures, such as daily temperature variation or engine heat, lighter hydrocarbon molecules evaporate and, if not stored or trapped in some fashion, will escape into the atmosphere. Marine fuel tanks are vented to the atmosphere to prevent pressure build up in the tank. Vapor levels on a boat can be so high that, for fire safety reasons, blowers are often needed to remove gasoline vapors from the engine compartment prior to starting the engine. Also vapors are displaced from the gas tank to the atmosphere during refueling. Finally, some emissions come from spillage during refueling.

In automotive applications, vapors generated in the fuel system are passed through a canister designed to capture evaporated hydrocarbons. When the engine is running, these hydrocarbons are drawn back into the engine and burned. However, this emission control technology would not be practical for marine applications. A boat may sit for weeks without being used while typical automotive canisters are only designed to capture a few hot days worth of evaporative emissions. After this amount of time, the canister must be purged to the engine. A canister/fuel system that could collect weeks worth of vapors and burn them in a few hours of operation probably would not be practical due to the canister size required.

Still, there may be practical alternatives to a canister system for boats. One such system could be a bladder-type fuel tank such as those used in race cars. The bladder contracts as the fuel is used to prevent a vapor space from forming.

Another technology that could reduce evaporative emissions to a lesser degree are non-permeable fuel lines. By replacing rubber fuel lines with non-permeable lines, the evaporative emissions through the fuel lines can be prevented. An added benefit is that these non-permeable lines are non-conductive and can prevent the buildup of static charges. Although non-permeable lines are used in automotive applications, these fuel lines would have to meet Coast Guard specifications for flame resistance and flexibility to be used in marine applications. We request comment on if non-permeable fuel lines exist that would meet the Coast Guard specifications and what their cost would be.

Currently, fuel systems on boats are vented to the atmosphere to prevent pressure buildup. The Coast Guard requires that fuel systems not be pressurized. If a low-pressure (2 psi) pressure relief valve were used with a closed system, much of the evaporative emissions could be reduced. This would still prevent the fuel system from building up too much pressure. We request comment on the effectiveness of this strategy with respect to ambient temperature, especially on hot days when the fuel tank pressure may be higher. Note that any eventual requirements related to fuel system pressure would need to be consistent with Coast Guard policies and requirements.

We request comment on safe pressures in fuel tanks and what typical fuel tank pressures would be if they were not vented to the atmosphere. We also request comment on the cost and effectiveness of non-permeable fuel lines, pressure relief valves, and other systems for reducing evaporative emissions. We also request comment on potential strategies for reducing emissions due to refueling or spillage. We request comments on any evaporative emission control systems such as those described above as well as comment on potential strategies for reducing emissions due to refueling or spillage.

Additionally, we request comment on how we could structure provisions to confirm the effectiveness of these systems. We would prefer to set up a performance-based standard such as the test procedures already in place for automobiles because it gives a better indication of control effectiveness that a design-based standard and it gives more design flexibility to the manufacture. However, we request comment on appropriate performance-based test procedures and on an appropriate design-based requirement.

3. Crankcase Emissions

We are requesting comment on whether or not to require that new recreational marine engines be built with closed crankcases to eliminate crankcase emissions. Crankcase controls have been required on cars and trucks. Controlling crankcase vapors requires a fairly simple and inexpensive technological strategy. A line is routed from the crankcase to the intake manifold with a pressure control valve which will prevent crankcase overpressure and will prevent air from flowing into the crankcase. Some SI marine engine already route crankcase vapor to the air intake to minimize vapor buildup in the engine compartment.

For turbocharged diesel engines, there is some concern that routing the crankcase vapor upstream of the turbocharger could foul the turbocharger. In addition, it would be more costly to route the low pressure crankcase vapor downstream of the turbocharger because an extra pump would be necessary. An alternative would be to allow turbocharged recreational compression-ignition marine engines to be built with open crankcases, provided the crankcase ventilation system is designed to allow crankcase emissions to be measured. For engines with open crankcases, we could require crankcase emissions to be either routed into the exhaust stream to be included in the exhaust measurement, or to be measured separately and added to the measured exhaust mass. These measurement requirements might not add significantly to the cost of testing, especially where the crankcase vent is simply routed into the exhaust stream prior to the point of exhaust sampling. This concept is consistent with our previous regulation of crankcase emissions from such diverse sources as commercial marine engines, locomotives and passenger cars. We request comment on the above concepts.

4. Regulatory Flexibility

Marinizers are engine manufacturers that take land-based engines and convert them to be used in marine applications. In some cases, marinizers use certified land-based engines and make changes without changing their emission levels. We consider these marinizers to be "engine dressers," and we believe that forcing these manufacturers to certify their engines may be unnecessary. We intend to offer similar engine dresser provisions for recreational marine engine marinizers as exist for commercial marine engine marinizers who are not required to certify (40 CFR part 94). We request comment on these provisions as they apply to recreational marine engine marinizers.

The scope of this advance notice also includes a number of engine marinizers that have not been subject to our regulations or certification process and would not qualify as engine dressers.

The majority of these marinizers are small businesses for which a typical regulatory program may be overly burdensome. One challenge of this rule is to implement a flexible regulatory program while still ensuring significant emission reductions. We request comment on appropriate regulatory flexibility strategies for small volume engine marinizers that will minimize harmful impact on the environment.

We request comment on what should be the definition of a small volume engine manufacturer/marinizer for the purpose of potential regulatory flexibility. The Small Business Administration defines a small business (manufacturing internal combustion engines) as one that employs less than 1000 people. Because the purpose of the regulatory flexibility is to reduce the burden on companies for which fixed costs cannot be distributed over a large number of engines, we believe that the small volume engine manufacturer definition should also consider the number of engines for sale in the U.S. in a year. This production count would include all engines (automotive, other nonroad, etc.) and not just recreational marine engines. Based on confidential sales information supplied by engine marinizers and our own evaluations of certification and development costs, we estimate that the upper limit for the numbers of engines that a company could produce and still be considered a small volume engine manufacturer might be in the range of 8,000 to 12,000 units per year. This would include the majority of marinizers. To establish this threshold, we would make an assessment of the ability of these companies to amortize development costs over smaller sales volumes.

The large number of boat builders and their relative inexperience with emission control requirements also suggest a need for a flexible implementation process. Although boat builders would not be directly subject to emission standards under a potential program unless evaporative emission control were required, it would still be possible for them to need to redesign the engine compartments on some boats if engine designs were to change significantly. We request comment on how to best determine the extent to which engine technologies discussed above would necessitate changes in boat design. We also request comment on regulatory flexibility strategies for small volume boat builders that will minimize harmful impact on the environment.

We request comment on what should be the definition of a small volume boat builder for the purpose of potential regulatory flexibility. Because the flexibility is designed to reduce the burden on companies for which fixed costs cannot be distributed over a large number of vessels, we believe it may be appropriate to include in the definition of a small volume boat builder an upper limit on the production of boats for sale in the U.S. in one year. This production count would include all power craft recreational boats. We request comment on this approach.

We have been in contact with several small volume engine marinizers and boat builders in an attempt to develop concepts that would reduce the burden of emissions standards while minimizing environmental loss. In fact, we convened a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. To date, these efforts have identified several flexibility concepts for small volume engine manufacturers and for small volume boat builders. We presented several flexibility concepts to small-business representatives during the SBREFA process.[62] These concepts are listed in Table V–2. We request comment on the appropriateness of these ideas and on others for minimizing burden on small businesses while still reaching the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy, and safety factors.

TABLE V–2.—SMALL BUSINESS REGULATORY FLEXIBILITY CONCEPTS FOR RECREATIONAL MARINE

Small volume engine marinizers	Small volume boat builders
Broaden engine families	Percent of production exemption.
Minimize compliance requirements	Small volume allowance.
	Existing inventory and replacement engine allowance.
Expand engine dresser flexibility	
Design-based certification	Hardship provisions
Delay standards for 5 years	
Hardship provisions	
Use of emission credits	

[62] "Preliminary EPA Staff Assessment of Small Business Flexibility Concepts," June 16, 1999, Docket A–2000–01, document II–B–03.

5. Definition of Recreational CI Marine Engines

When we finalized standards for commercial marine engines last year, we included a definition of recreational compression-ignition marine engines. This was based on the U.S. Coast Guard definition of recreational vessels. This definition states that a compression-ignition propulsion marine engine intended by the manufacturer to be installed on a recreational vessel and labeled as a recreational engine would be considered recreational for EPA regulations in 40 CFR part 94. A recreational vessel is one that is intended by the vessel manufacturer to be operated primarily for pleasure but does not include the following vessels:

—Vessels less than 100 gross tons that carry six or more paying passengers
—Vessels greater than 100 gross tons that carry one or more paying passengers
—Vessels used solely for competition

Diesel engine manufacturers have since commented that they would like to see a less restrictive definition of recreational vessel. Their proposed definition is as follows: "Recreational marine engine means a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel. Recreational vessel means a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure." We request comment on the appropriate definition of a recreational marine engine.

6. Useful Life

When we set emission standards, we require that manufacturers produce engines that comply over their full useful life. For recreational marine engines, a useful life that lasts either ten years or until the engine accumulates at least 500 operating hours (or some other value of hours specified in a certificate of conformity), whichever occurs first, may be appropriate. In general, we would expect that the regulatory useful life should be at least as long as the operating lifetime for which the engine is designed. We request comment on this view.

Our current view that the appropriate minimum useful life may be at least 500 hours is based on manufacturer comments that typical recreational marine engines are used about 50 hours per year and for at least 10 years. However, Coast Guard survey data suggests that typical recreational marine engines are used about 100 hours per year.[63] In addition, we expect that typical recreational marine diesel engines are used more than this, especially those rated at several hundred horsepower. Purchasers of the more powerful marine diesel engines usually choose them over lower cost gasoline engines because diesel engines are generally designed to be more durable. Actual useful lives of existing engines are likely to vary with respect to application as well. Thus, we could propose a series of minimum useful life values based on rated application, engine cycle (*e.g.*, spark-ignited or diesel), or rated horsepower. However, we request information on in-use engine life and comment on the appropriate emissions compliance useful life for SI engines and CI engines; these useful life values may vary with engine size, especially for diesel engines.

In our emissions inventory calculations presented earlier in this document, we used a function of the engine population, load factors, annual hours of use, rated power, emission factors, turnover, and growth rates. For CI engines we used 200 hours per year and for SD/I engines, we used 48 hours per year. We are interested in more information, especially data, on the appropriateness of these estimates. Studies and industry comments have shown a wide range of average annual use—from 50 to 500 hours per year. We request information, especially reliable field data, on the annual and lifetime operating hours for these engines which may depend on SI versus CI design, engine size, and application.

7. Averaging, Banking, and Trading Credit Programs

We are considering an emissions averaging, banking and trading (ABT) program for recreational marine engines. This is a voluntary program which would allow a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more engine families certified below the applicable standards. The average of all emissions for a particular manufacturer's production would have to be at or below the level of the applicable emission standards. In addition, credits could be traded with other companies or banked for future use.

An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 213 of the Clean Air Act. ABT would allow us to consider a lower emissions standard, or one that otherwise results in greater emissions reductions, because ABT reduces the cost and improves the technological feasibility and cost-effectiveness of achieving a standard. For example, it could help to ensure the attainment of the standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. ABT also creates an incentive for the early introduction of new technology, which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology before manufacturers need apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

For recreational marine diesel engines, an ABT program would be similar to the one for commerciai marine engines. We request comment on all aspects of an ABT program that would apply for recreational marine diesel engines.

We are concerned that an ABT program may not be appropriate for SI SD/I marine engines for three primary reasons. First, there are many small businesses which produce SI engines for the recreational marine market. There are also very few large businesses producing SI engines for this market. While the large businesses tend to have broad product offerings and could readily take advantage of the provisions of an ABT program, the small businesses tend to have much narrower product lines and would therefore be unlikely to benefit from ABT provisions. We are concerned that this situation would allow the large businesses a competitive advantage.

Similarly, we are concerned that most manufacturers of recreational SI engines do not have a broad enough product line to take advantage of an ABT program. Therefore, it may not be useful to the majority of businesses.

Third, the emission control technology discussed above appear to be equally applicable to all engines. Therefore, an ABT program may not be necessary except, perhaps, as a tool to help phase-in new technology. Adopting an ABT program in the long term may make sense if we were to conclude that a more stringent standard is feasible at least for some engines. We request comment on whether we should consider an ABT program for SI engines, and what, if any, restrictions we should place on such a program.

[63] "1998 National Recreational Boating Survey Data Book," ISI Research & Training Institute, prepared for the U.S. Coast Guard, February 2000.

8. Applicability of MARPOL Annex VI

On September 27, 1997, the International Maritime Organization (IMO) adopted a new Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and opened the Annex for acceptance by its members. This Annex, which contains regulations for the prevention of air pollution from ships, will go into force internationally one year after fifteen countries, representing at least 50 percent of the gross tonnage of the world's merchant shipping fleet, have ratified it. The Annex will acquire the force of law in the United States after it goes into force internationally and it is ratified by the United States, following approval of the Senate.

Regulation 13 of Annex VI requires that each diesel engine with a power output of more than 130 kW which is installed on a ship constructed on or after 1 January 2000, or each diesel engine with a power output of more than 130 kW which undergoes a major conversion on or after 1 January 2000 meet the NO_X limits described by the following formula:

17.0 g/kW-hr when n is less than 130 rpm
45.0 * $n^{(-0.2)}$ g/kW-hr when 130 ≤ n < 2000 rpm
9.8 g/kW-hr when n ≥ 2000 rpm
Where n is rated engine speed (crankshaft revolutions per minute)

One of the issues that will be considered in our notice of proposed rulemaking is how these emission limits affect recreational engines and vessels. Because recreational vessels are included in the MARPOL definition of "ship," prudent recreational vessel manufacturers should have begun installing MARPOL-compliant engines in their newly-constructed vessels on January 1, 2000, even though the Annex has not yet gone into force.[64] This is because the Annex may be enforceable retroactive to January 1, 2000 once it goes into effect internationally. To facilitate this process, EPA established a voluntary compliance program whereby engine manufacturers may obtain a Statement of Voluntary Compliance from EPA after they provide evidence

[64] Article 2 of MARPOL 73/78 defines "ship" as "a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms."

that their engine meets the Annex VI NO_X limits.[65]

To help us prepare our proposal for recreational engine emission requirements, we request comment on several questions. First, we request input on the extent to which recreational vessel builders are aware of the MARPOL requirements for marine diesel engines, and the extent to which they are attempting to comply with them. Second, we request comment on how many times a vessel with a marine diesel engine over 130 kW can be expected to change owners over its life. This information is important for compliance purposes. Third, we request comment on whether meeting the Annex VI NO_X limits will interfere with an engine manufacturer's ability to meet the more stringent national recreational marine diesel emission standards under consideration.

9. Harmonization With the European Commission

The European Commission has proposed emission limits for recreational marine engines, including both diesel and gasoline engines. These requirements would apply to all new engines sold in member countries. The numerical emission limits, shown in Table V–2, consist of the Annex VI NO_X limit for small marine diesel engines and the rough equivalent of Tier 1 nonroad emission levels for HC and CO. Emission testing is to be conducted using the ISO D2 duty cycle for constant-speed engines and the ISO E5 duty cycle for all other engines. Table V–2 also includes the proposed limits for gasoline engines tested on the ISO E4 duty cycle.

Industry and others have commented to us on the value of harmonization of emission standards. Manufacturers who sell engines in several countries can minimize costs by designing to a single set of standards. In setting standards under section 213 of the Act, EPA is required to consider technology, cost, energy, and other factors to achieve the greatest degree of emissions reductions achievable. We are concerned that these standards would do no more than cap emissions at baseline levels and are not the kind of appropriate technology-forcing standards that would allow us to achieve the greatest achievable reductions from this category. According to our data on 20 recreational CI marine engines (tested for both NO_X and PM) and 10 SI SD/I engines, average baseline emission levels already meet the proposed European limits. These baseline averages are included in Table V–3. We request comment on the level of stringency of the proposed European emission limits.

TABLE V–3.—PROPOSED EUROPEAN EMISSION LIMITS AND EPA BASELINE DATA FOR RECREATIONAL MARINE ENGINES (G/KW-HR)

Pollutant	CI limit[a]	CI baseline	SI limit[b]	SI baseline
NO_X	9.8	8.9	15	9.2
PM	1.4	0.2	.....	.....
HC	1.5	0.3	6.4	5.7
CO	5.0	1.3	152	145

[a] HC limit increases slightly with increasing engine power rating.
[b] For 300 kW engine; HC and CO limits increase slightly with decreasing power rating.

10. Consumer Labeling

We request comment on the need for, effectiveness of, and alternatives to a consumer labeling program. The purpose of this program would be to educate consumers so that they could make informed decisions concerning engine emissions when they purchase a boat. One example of a consumer labeling program is the California Air Resources Board's requirement that personal watercraft and outboard engines sold in California starting in 2001 be labeled as either low, very-low, or ultra-low depending on their emission levels. We request comment on whether or not a program such as this should be voluntary or mandatory. We also request comment on how this should be implemented considering that most boats and engines are produced by separate manufacturers.

VI. Large Spark Ignition Engines

A. Background

1. What Engines Are Included in This Rulemaking?

This section applies to most nonroad spark-ignition engines rated over 19 kW ("Large SI engines"). These engines power equipment such as forklifts, sweepers, pumps, and generators. This would include marine auxiliary engines, but not marine propulsion engines or engines used in snowmobiles, motorcycles, or other recreational applications. The applications not addressed in this section are addressed elsewhere in this document.

Our most recent rulemaking for nonroad diesel engines finalized a definition of "compression-ignition" that was intended to include diesel-derived natural gas engines under that program.[66] However, according to the manufacturers of these engines, they do not meet the definition of compression-ignition engines. All nonroad engines are defined as either compression-ignition or spark-ignition engines. So, if these natural gas engines are not subject to emission standards for nonroad diesel engines, they will instead be covered by the emission standards for Large SI engines. We are currently reviewing the claims of these manufacturers regarding how their engines should be classified. We request comment on whether we should revise the definitions that differentiate between these types of engines.

Most Large SI engines have a total displacement greater than one liter. The design and application of the few Large SI engines currently being produced with displacement less than one liter are very similar to those of engines rated below 19 kW, which are typically used for lawn and garden applications. As described in the most recent rulemaking for these smaller engines, we intend to propose that manufacturers may certify engines above 19 kW with total displacement of one liter or less to the requirements we have already adopted in 40 CFR part 90 for engines below 19 kW.[67] These engines would then be exempt from the requirements contemplated in this document. This would be consistent with the California ARB rulemaking. This approach would allow manufacturers of small air-cooled engines to certify their engines rated over 19 kW with the program adopted for the comparable engines with slightly lower power ratings.

We are concerned that treating all engines less than one liter as Small SI engines may be inadequate. For example, lawn and garden engines generally don't use turbochargers or other technologies to achieve very high power levels. However, it may be possible for someone to design an engine under one liter with unusually high power, which would more appropriately be grouped with other Large SI engines rather than with Small SI engines. To address this concern, we may propose a maximum power level for engines to qualify for treatment as Small SI engines. A power rating of 30 kW seems to represent a maximum reasonable power output that is possible from SI engines under one liter with technologies typical of lawn and garden engines. We request comment on the suggested power threshold and on any other approaches to addressing the concern for properly constraining this provision.

2. Who Makes Large SI Engines?

The companies producing Large SI engines are typically subsidiaries of automotive companies. In most cases, these companies modify car and truck engines for industrial applications. However, the Large SI industry has historically taken a much less centralized approach to designing and producing engines. Engine manufacturers often sell dressed engine blocks without manifolds or fuel systems. Fuel system suppliers have played a big role in designing and calibrating nonroad engines, sometimes participating directly in engine assembly. Several equipment manufacturers, mostly forklift producers, also play the role of an engine manufacturer by calibrating engine models and completing engine assembly.

Sales volumes are another important contrast with automotive production. Total Large SI engine sales are about 150,000 per year in the U.S. Sales are distributed rather evenly among several companies, so typical sales volumes for each company range generally from 10,000 to 25,000 engines per year. These sales volumes and the overall size of the companies limit the amount of research and development available to meet new emission standards.

3. What Is the Regulatory History?

Currently no federal emission standards exist for Large SI engines. We have, however, adopted successively more stringent standards for the automotive engines from which most Large SI engines are derived. Heavy-duty highway otto-cycle engines provide the most direct comparison. We have adopted emission standards for 2005 and later model year engines and proposed more stringent standards for 2007 and later model year engines. We request comment on the degree to which these technologies can be readily transferred or adapted to the counterpart nonroad engines.

The California ARB in 1998 adopted requirements that apply to new Large SI engines produced for California starting in 2001. We are considering similar requirements for these engines in the near term. In the longer term, we are also considering revised emission standards reflecting the emission reductions achievable with available technology, as described below.

While we have not yet set emission standards for this category of engines, the industry has some experience complying with standards through the requirements for forklifts set by Underwriters Laboratories.[68] These standards, which focus primarily on ensuring safety, require the industry to conduct testing and submit plans for approval, much like certifying to emission standards.

An additional important consideration for Large SI engines is the workplace air contaminant limits adopted by the Occupational Safety and Health Administration for CO and NO_2. Facility managers, not engine or equipment manufacturers, are responsible for meeting these limits. However, concerns for high indoor pollutant concentrations have created a small but distinct demand for aggressive emission controls on forklifts. These emission controls have become commonplace in Europe, even in the absence of emission standards.

B. Technology

Although Large SI engines are often derived from automotive engines, manufacturers have generally not incorporated the technological advances from cars and trucks. Most fuel systems in gasoline engines have carburetors with no feedback controls. LPG and natural gas engines typically use mixer technology that has changed little over the last several decades.

Some Large SI engine models have no automotive counterpart; many of these use air-cooling instead of a conventional radiator system. Air-cooled engines can use the same emission-control technologies as water-cooled engines, but they have operating characteristics that can increase the challenge of reaching low emission levels. For example, uneven heating of the engine block can cause distortion of the cylinders, increasing the possibility of hydrocarbon emissions from unburned fuel.

The standards for spark-ignition engines would apply for all fuel types. The majority of Large SI engines use liquefied petroleum gas (LPG). Engines running on LPG can use fuel cylinders or draw fuel directly from a pipeline. Gasoline is also used in many applications. Natural gas is less common, but serves in several niche markets.

The California ARB emission standards were developed based on the expected capabilities of three-way catalytic converters with electronic fueling systems to control emissions. A limited number of forklifts have been operating with these emission-control technologies for several years. In addition to controlling emissions, these emission-control technologies can significantly reduce fuel consumption. In a high-use application, the fuel savings can fully offset the increased price for the emission controls within one year or less. The redesigned engines also hold promise for improving engine performance, for example with more reliable starting and better torque characteristics.

Both EPA and California ARB have pursued emission testing to determine the capabilities of emission-control technologies for Large SI engines. This effort will also help us establish emission standards that correspond with the degree of emission control achievable from the anticipated technologies over the full operating life of industrial equipment. We believe that manufacturers can optimize their engines to substantially reduce CO, NO_X, and HC emissions at a reasonable cost with these redesigned engines.

C. Standards and Program Approaches

We are considering emission standards for Large SI engines based on what manufacturers can achieve with available technology. This may include a combination of near-term standards similar to California ARB's and long-term standards for optimized systems. In addition, we are considering new procedures for measuring emissions, including a transient duty cycle and

[65] See the fact sheet "Frequently Asked Questions: MARPOL 73/78 Annex VI Marine Diesel Engine Requirements," EPA420–F–99–038, October 1999, www.epa.gov/otaq/marine.htm.

[66] See 63 FR 56968 (October 23, 1998).

[67] See 65 FR 24268 (April 25, 2000).

[68] "Industrial Trucks, Internal Combustion Engine-Powered," UL558, ninth edition, June 28, 1996.

provisions to test for "off-cycle" emissions. These are described further in the following sections.

We do not presently intend to propose particulate matter emission standards because of the low levels of particulate matter associated with well maintained SI engines, as well as the substantial cost of technologies designed to regulate particulate matter directly from these engines. However, we expect that the incorporation of the projected emission-control technologies would reduce particulate matter emissions. This is similar to the approach we have taken for highway gasoline engines.

We request comment on this approach to setting standards, including the technology basis for controlling emissions, the combination of near-term and long-term standards, and the approach to addressing PM emissions.

1. Near-Term Emission Standards

We are considering near-term emission standards, including standards consistent with those adopted by California ARB. These standards are 4 g/kW-hr (3 g/hp-hr) for NMHC+ NO_X emissions and 50 g/kW-hr (37 g/hp-hr) for CO emissions. California ARB specifies the ISO C2 duty cycle for measuring emissions from variable-speed engines, and the ISO D2 duty cycle for testing constant-speed engines. The C2 duty cycle consists mostly of intermediate-speed points, while all the D2 test points are at rated speed. We request comment on establishing standards consistent with those in California, including using the duty cycles in the same way. We also request comment on the appropriateness of requiring certification testing on both of these duty cycles for engine models that may ultimately be used in both variable-speed and constant-speed applications.

California ARB adopted its emission standards based on the capabilities of three-way catalytic converters and electronically controlled fuel systems. These systems would be similar to those used for many years in highway applications, but not necessarily with the same degree of sophistication. Adopting California ARB's emission standards would allow near-term introduction of low-emission technologies for substantial emission reductions. The manufacturers would in this case also be able to more easily amortize their development costs by spreading these costs over larger production volumes.

The California ARB standards will be fully phased in by 2004. With a current expectation of completing an EPA final rule by September 2002, we believe manufacturers may have enough lead time to expand production of California-compliant engines to a nationwide market. If EPA and California standards were consistent, manufacturers may not need to do any additional development work or repeat any certification testing to meet the federal standards. We request comment on whether we should propose near-term standards for 2004 model year engines, or if manufacturers will need additional time to manage full production of low-emission engines.

As described for the long-term standards below, we are interested in the possibility of adopting standards based on total hydrocarbon emissions, rather than nonmethane hydrocarbon. We request comment on proposing standards based on total hydrocarbon measurement. This would potentially save manufacturers the expense of measuring methane emissions for certification, production-line, or in-use testing. Since methane is largely nonreactive in the atmosphere, we have often set emission standards excluding methane measurement. We could adjust the standard as needed to reflect typical methane concentrations in controlled engines. This would apply to gasoline- and LPG-fueled engines. Natural gas-fueled engines would continue to have a standard based on nonmethane emissions because the large majority of their total hydrocarbon emissions consist of methane. We request comment on this approach.

2. Long-Term Duty-Cycle Emission Standards

We believe that, given additional time, manufacturers would be able to optimize designs to control emissions to lower levels using the same emission-control technologies used to meet the near-term standards. Therefore, we are also requesting comment on more stringent emission standards using more robust measurement procedures, as described below.

General standards. Manufacturers have used electronically controlled fuel systems with three-way catalysts in automotive applications for many years. During this time, these systems and components have undergone substantial improvements in their ability to reduce emissions with minimal degradation during field operation. Recent testing by Southwest Research Institute shows that these systems can reduce NO_X, HC, and CO emissions by 90 percent or more over several thousand hours of normal operation.[69-70] While the test data help us select emission standards, we first need to address several open issues. These issues are summarized here and described in greater detail in the technical memoranda referenced in this document.

—*The combination of duty cycles for testing.* Emission measurements at Southwest Research Institute have shown that engines can achieve effective control on a wide variety of duty cycles, but that good performance on one duty cycle does not guarantee good performance on another. Thus, it is important that we select the appropriate duty cycles to provide a reasonable assurance that systems will control emissions when operating in the field.

—*Consideration of cold-start effects.* Engine emissions immediately after starting can be much higher than emissions from a hot engine. We need to determine the appropriate treatment of cold-start effects in the test procedure before we can propose emission standards.

—*The achievable precision of control software.* Electronic systems for automotive applications have reached a high level of sophistication for monitoring a wide variety of engine variables to maintain effective control of combustion and after treatment processes. While Large SI engine manufacturers can benefit from these developments, the cost and complexity of these systems at some point may no longer be appropriate for the more cost-sensitive, low-volume nonroad applications.

—*Fuel specifications.* As described further below, we need to evaluate in-use fuel quality before proposing fuel specifications for emission testing.

With this wide range of test and design variables, we request comment on long-term emissions standards ranging from 1.5 to 2.5 g/kW-hr (1 to 2 g/hp-hr) HC+ NO_X and from 4 to 10 g/kW-hr (3 to 7.5 g/hp-hr) CO. We are interested in comments as to potentially appropriate standards within these ranges, as well as comments on the appropriateness of the ranges themselves. The range of possible CO emission standards is especially wide because CO emission levels are sensitive to the degree of engine warm-up at the beginning of the test. This range of standards is based on test data showing the emission levels that Large SI engines can achieve with steady-state and transient duty cycles.[71] We request comment on the capability of Large SI

[69-70] "Evaluation of Emissions Durability of Off-Road LPG Engines Equipped with Three-Way Catalysts," by Vlad Ulmet, Southwest Research Institute, November 2000, (Docket A-2000-01, document II-A-07).

[71] *See* "Emission Data and Procedures for Large SI Engines" for more information (Docket A-2000-01; document II-B-1).

engines to meet these emission levels, on the associated costs for these emission-control systems, and on the corresponding estimated emission reductions estimated to be achieved therefrom. We also request comment on the applicability of the underlying test data.

In another rulemaking, we are pursuing even lower emission levels for heavy-duty highway engines starting in 2008, including otto-cycle (or spark-ignition) engines. We have proposed changing these emission standards to 0.20 g/hp-hr (0.26 g/kW-hr) for NO_X emissions and 0.14 g/hp-hr (0.19 g/kW-hr) for NMHC emissions.[72] We request comment on whether Large SI engines would be able to apply the associated highway-engine technologies at a reasonable cost.

Emission standards for different fuel types. Most of the emission data on which we are likely to base the proposed emission standards was generated from engines using liquefied petroleum gas (LPG). We could take California ARB's approach of applying the same numerical emission standards regardless of fuel, except for the special treatment of methane emissions from natural gas engines. Gasoline engines have very different fuel systems than LPG or natural gas engines. Engines built from automotive engine blocks can readily adopt port fuel injection, which provides a great advantage over gaseous mixer technology in controlling emissions. Also, the emission levels described above are consistent with the requirements that apply to heavy-duty highway otto-cycle engines starting in 2005.

A possible exception to common emission standards may be for CO emissions. Uncontrolled CO emission levels from gasoline engines can be much higher than are typically found from LPG engines. We believe, however, that a separate CO standard for gasoline engines may not be necessary for two reasons. First, highway gasoline engines have been controlling CO emissions to lower levels for many years. Second, fuel systems and catalysts can be designed and calibrated for a very high CO conversion efficiency. We request comment on the need to accommodate higher CO emission levels from gasoline engines. Data supporting such an argument should include engine-out CO emission levels at stoichiometric operation and information regarding conversion efficiencies available for gasoline engine emission-control equipment. We also request comment on the advantages of having identical standards for all fuels.

Special cases. The above discussion applies generally to Large SI engines. However, there are special concerns that warrant further attention.

Air-cooled engines. Some air-cooled engines are designed to operate in applications where water-cooled engines may not function effectively. These engines are most commonly used in industrial saws or chippers where ambient dust levels prevent the use of radiators to cool the engine. Air-cooled Large SI engines share some important design features and operating characteristics with smaller air-cooled engines that are commonly used in lawn and garden applications. As described above, air-cooled engines face unique constraints for controlling emissions. These constraints seem to be especially problematic for CO emissions, causing manufacturers to add a greater degree of emission-control technology than that needed for water-cooled engines to meet California ARB standards.

We have identified three possible approaches to proposing emission standards for air-cooled engines. First, we could require them to meet the same emission standards as water-cooled engines. Especially for any long-term emission standards, this would require an extensive development effort to apply emission-control technologies in a way that would adequately control emissions. This would prevent any unfair competitive advantages by giving special treatment to a higher-emitting engine type.

Second, we could propose that all air-cooled engines meet the emission standards we have adopted for nonroad SI engines under 19 kW. The largest engines under 19 kW (nonhandheld Class II) must meet standards of 12.1 g/kW-hr for NO_X+HC emissions and 610 g/kW-hr for CO emissions. Since engines under 19 kW are almost all air-cooled, they share some important design characteristics with Large SI engines that are air-cooled.

Third, we could propose the same NO_X+HC for both air-cooled and water-cooled engines, but to allow air-cooled engines to meet less stringent CO emission standards. To avoid giving air-cooled engines a broad competitive advantage in applications where they are seldom used today, we could limit this less stringent CO standard to engines used predominantly in severe-duty applications. Under this approach, we would consider an application severe-duty if the majority of engines used in that application do not use water-cooling systems. Currently available data would suggest an adjusted CO standard of 75 to 100 g/kW-hr (55 to 75 g/hp-hr) CO for these engines.

We request comment on these and other potential approaches to proposing emission standards from air-cooled engines.

Equipment Used Predominantly Indoors. Operators of Large SI engines can today install emission-control systems with extremely low CO emission levels. CO emission levels can be especially low in these current systems where manufacturers are not required to simultaneously control for NO_X and HC emissions. We are concerned that emission standards requiring simultaneous control of all the regulated pollutants will limit manufacturers ability to continue to supply engines with very low CO emission levels. With increased concern for exposing individuals to engine exhaust in confined spaces, this may be especially problematic. We therefore request comment on alternate long-term standards that would allow the manufacturer to better balance emission levels of the various pollutants to offer low-CO engines for predominantly indoor applications.

One possible scenario would be increasing the HC+NO_X emission standard somewhat (for example, to 3 or 4 g/kW-hr), while tightening the CO emission standard (for example, to 1 or 2 g/kW-hr). We request comment on the need for such an alternate standard and on the emission standards that should apply. We also request comment on whether there would be any need to (1) adopt provisions to ensure that these engines are indeed operated predominantly in sensitive, indoor applications; (2) limit the number of these engine sales; or (3) adopt any other provisions to ensure that these alternate emission standards are not used to avoid the general standards.

Another alternative would be to adopt fuel-specific standards. Since LPG and natural gas are more likely to be used in enclosed areas, we could focus on adopting very stringent CO emission levels for these engines, with less of an emphasis on NO_X and HC emission levels. Since gasoline engines are not commonly used indoors, their emission standards could maximize NO_X and HC reductions, with less aggressive control of CO emissions. We request comment on adopting fuel-specific emission standards to address concerns for indoor air quality.

3. Supplemental Emission Standards

To address concerns for controlling emissions outside of the discrete procedures adopted for certification, we

[72] *See* 65 FR 35430 (June 2, 2000).

are considering requirements that would apply to a wider range of normal engine operation. We generally refer to this as off-cycle emissions.

Our goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur in a Large SI engine to achieve real-world emission control, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. No single test procedure can cover all real-world applications, operations, or conditions. Yet, to ensure that emission standards are providing the intended benefits in use, we should have a reasonable expectation that emissions under real-world conditions reflect those measured on the test procedure.

Because the projected duty-cycles include specific operating modes (engine speeds and loads), we are concerned that an engine designed only to duty-cycle standards would not necessarily have the same emission performance in use. In contrast, an engine operating in any given piece of equipment may often operate at speed and load combinations not included in the certification duty cycle. Emission levels at speed and load points not represented in the duty cycles could be significantly higher than those measured with the duty cycles. Also, if manufacturers design engines to control emissions only under relatively narrow laboratory conditions, this does not ensure that the engines will control emissions under the wide range of ambient temperature, pressure, and humidity the engines will experience in the field. Testing by Southwest Research Institute highlighted this concern, showing that steady-state emission levels can increase ten-fold or more at speed-load points not included in the duty cycles.[73]

"Not-to-exceed" testing would be one option for ensuring that emissions are controlled from Large SI engines over the full range of speed and load combinations seen in the field. Under not-to-exceed testing, we would specify an emission standard that applies more broadly than the traditional duty-cycle standard. The not-to-exceed standard would apply to all regulated pollutants (NO_X, HC, and CO) during a wide range of normal operation. In other programs where we have adopted not-to-exceed standards, the testing includes a broad range of in-use ambient conditions (*i.e.*, temperature, pressure, and humidity), but excludes measurement during any kind of abnormal operation.

The recent testing at Southwest Research Institute (SwRI) would appear to support not-to-exceed emission standards of 1.0 to 3.5 g/kW-hr (1.3 to 2.6 g/hp-hr) for NO_X+HC emissions and 7 to 13 g/kW-hr (5 to 10 g/hp-hr) for CO emissions. We would intend to allow considerable development time for manufacturers to meet any not-to-exceed provisions. If we adopt alternate emission standards for severe-duty engines, gasoline engines, or engines used in indoor applications, as described above, any corresponding not-to-exceed emission standards would be higher than the duty-cycle standards to serve as a cap on varying emission levels that result from different engine operation or ambient conditions.

D. Additional Program Considerations

1. Compliance Program Elements

In general, we expect to align our certification and compliance programs with those adopted by California ARB to the greatest extent possible. In particular, any near-term emission standards we may adopt should require no additional development or testing beyond what manufacturers are already doing to produce compliant engines for California. While long-term standards and other additional provisions may go beyond what California has already adopted, we expect to design the program to limit the additional burden. Nevertheless, these additional requirements would be important enhancements and would lead to a much more effective control program.

We request comment on the details of the compliance program adopted by California ARB, and whether the details of the compliance program are appropriate for use in the federal program. This includes several elements, such as production-line testing and in-use testing by manufacturers; useful life, deterioration factors, and warranty requirements; and several other provisions. The principal provisions under consideration that California ARB has not already adopted include:

—Procedures for testing emissions in the field in lieu of laboratory dynamometer testing.
—Specification of basic engine diagnostics to keep engines operating in their certified configuration.
—Concepts for manufacturers to control evaporative emissions.
—Provisions for engine rebuilders to bring engines back to their low-emission configuration when they are rebuilt.

2. Field Testing

One possible provision that should be highlighted is the possibility of adopting field-measurement procedures. As described above, we are considering proposing California ARB's requirement for manufacturers to test their in-use engines. Under this program, manufacturers remove in-use engines from equipment for testing in the laboratory. However, if we adopt field-measurement procedures, manufacturers would be allowed to show that they meet emission standards with in-use engines by measuring emissions directly from engines without removing them from the equipment. There are significant advantages to testing engines in the field. The reduced testing effort could substantially reduce the cost of in-use emission testing, both for manufacturers and for the Agency. Also, testing would capture real in-use engine operation, rather than relying on a surrogate duty cycle in the laboratory. We request comment on the desirability of developing measurement procedures to allow field testing of Large SI engines.

One constraint of measuring emissions in the field is the difficulty in measuring methane. Because of this, we are interested in proposing emission standards based on total hydrocarbon measurements, at least for field testing. We request comment on proposing total hydrocarbon standards also for laboratory testing. For gasoline and LPG engines, methane generally accounts for less than 10 percent of uncontrolled emissions, so this can easily be accounted for in selecting emission standards. As described above, we would need to rely on a nonmethane hydrocarbon emission standard for natural gas engines. This may limit the possibility of testing natural gas engines in the field.

3. In-Use Fuel Quality

In addition, manufacturers have raised the concern that in-use LPG fuels have highly varying quality. It is not clear that different LPG fuel compositions would have a direct effect on tailpipe emission levels. However, lower-quality fuels have a tendency to cause fuel condensation, and eventually gumming, on fuel system components. Since fuel systems play a central role in an engine's emission control system, this can eventually affect an engine's ability to accurately meter fuel, resulting in increased emission levels. We request comment on the need for and possibility of developing an industry-wide specification for in-use LPG fuels to address this problem. In addition, we request comment on the possibility of applying engine technology to limit condensation of impurities or heavy-end hydrocarbon molecules from lower-quality fuel.

[73] See "Emission Data and Procedures for Large SI Engines" for more information (Docket A–2000–01; item II–B–1).

VII. Public Participation

We are committed to a full and open regulatory process with input from a wide range of interested parties. As part of any rulemaking, opportunities for input will include a formal public comment period and a public hearing.

With today's action, we open a comment period for this advance notice. We will accept comments until February 5, 2001. We encourage comment on all issues raised here, and on any other issues you consider relevant. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. All comments, with the exception of proprietary information, should be directed to the docket (see **ADDRESSES**). If you wish to submit proprietary information for consideration, you should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If you want us to use a submission of confidential information as part of the basis for a proposal, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed and in accordance with the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission, it will be made available to the public without further notice to the commenter.

VIII. Regulatory Flexibility

Section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* requires the Administrator to assess the economic impact of proposed rules on small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, amended the RFA to strengthen its analytical and procedural requirements and to ensure that small entities are adequately considered during rule development. The Agency accordingly requests comment on the potential impacts on a small business of the program described in this notice. These comments will help the Agency meet its obligations under SBREFA and will suggest how EPA can minimize the impacts of this rule for small companies that may be adversely affected.

Depending on the number of small entities identified prior to the proposal and the level of any contemplated regulatory action, we may convene a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act as amended by SBREFA. The purpose of the Panel (or multiple Panels, as necessary) would be to collect the advice and recommendations of representatives of small entities that could be affected by the eventual rule. If we determine that a panel is not warranted, we would intend to work on a less formal basis with those small entities identified.

We request information on small entities potentially affected by this rulemaking. Information on company size, number of employees, annual revenues and product lines would be especially useful. Confidential business information may be submitted as described in section VII. The following sections address several specific issues for different industries.

A. Recreational Vehicles and Highway Motorcycles

We anticipate that industries related to recreational vehicles and highway motorcycles that may be affected by this rulemaking will largely fall within the categories listed in Table VIII–1 below. We request comment on the completeness and accuracy of the list, and on the suitability for this rulemaking of the definitions of small business established by SBA. We may propose to change these definitions, if such changes would better suit the particular industries and regulations being considered.

TABLE VIII–1.—RECREATIONAL VEHICLE INDUSTRIES WITH SMALL BUSINESSES

Industry	NAICS[a] codes	Defined by SBA as a Small Business If:[b]
Gasoline engine and parts manufacturers	336312	<750 employees.
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Snowmobile and ATV manufacturers	336999	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.

Notes:
a. North American Industry Classification System.
b. According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

B. Large SI

Table VIII–2 lists the industry segments that relate to companies that may need to meet emission standards and other requirements for Large SI engines. Two engine manufacturers qualify as small businesses. Both of these companies plan to produce engines that meet the standards adopted by California ARB in 2004. Since we don't expect the near-term standards contemplated in this document to add any significant requirements to the California ARB program, these standards would impose very little new burden for these and other manufacturers. If we adopt long-term standards, this would require manufacturers to do additional calibration and testing work. If we adopt new test procedures (including transient operation), there may also be a cost associated with upgrading test facilities. If we set emission standards to mirror the levels proposed for 2007 highway heavy-duty engines, this would also require extensive hardware and product development to reduce emissions.

In addition, we are considering recordkeeping requirements for companies that rebuild Large SI engines. These would be very similar to the requirements we have already adopted for highway engines, nonroad diesel engines, and commercial marine diesel engines. Many of these companies qualify as small businesses, but we expect the added burden to be very small.

TABLE VIII–2.—LARGE SI INDUSTRIES WITH SMALL BUSINESSES

Industry	NAICS code	Defined by SBA as a small business if:
Nonroad SI engines	333618	<1,000 employees.
Industrial trucks	333924	<750 employees.
Engine repair and maintenance	811310	<$5 million revenues.

C. Recreational Marine

The recreational marine sector includes a variety of engine and boat manufacturers that are small businesses. We convened a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. We describe the rulemaking issues related to these small businesses in section V.D.4.

IX. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order.

The order defines "significant regulatory action" as any regulatory action (including an advance notice of proposed rulemaking) that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Advance Notice was submitted to OMB for review. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this Notice.

X. Statutory Provisions and Legal Authority

Section 213(a)(1) of the Clean Air Act, 42 U.S.C. 7547(a), requires that we study the emissions from all categories of nonroad engines and equipment (other than locomotives) to determine, among other things, whether these emissions "cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and welfare." Section 213(a)(2) further requires us to determine, through notice and comment, whether the emissions of carbon monoxide (CO), volatile organic compounds (VOCs), and oxides of nitrogen (NO_X) found in the above study significantly contributes to ozone or CO concentrations in more than one ozone or CO nonattainment area. With such a determination of significance, section 213(a)(3) requires us to establish emission standards applicable to CO, VOC, and NO_X emissions from classes or categories of new nonroad engines and vehicles that cause or contribute to such air pollution. Moreover, if we determine that any other emissions from new nonroad engines contribute significantly to air pollution, we may promulgate emission standards under section 213(a)(4) regulating emissions from classes or categories of new nonroad engines that we find contribute to such air pollution.

As directed by the Clean Air Act, we conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991.[74] Based on the results of that study, referred to as NEVES, we determined that emissions of NO_X, HC, and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994).[75] Given this determination, section 213(a)(3) of the Act requires us to promulgate emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have found that the nonroad engines included in this ANPRM "cause or contribute" to such air pollution.[76]

Where we determine that other emissions from nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes us to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that we determine cause or contribute to such air pollution, taking into account cost, noise, safety and energy factors associated with the application of technology used to meet the standards. We have made this determination for emissions of particulate matter (PM) and smoke from nonroad engines (see 59 FR 31306, June 17, 1994). In that rulemaking, we found that smoke emissions from nonroad engines significantly contribute to such air pollution based on smoke's relationship to the particulate matter that makes up smoke as well as smoke's effect on visibility and soiling of urban buildings and other property. Particulate matter can be inhaled into the lower lung cavity, posing a potential health threat. We cited recent studies associating PM with increased mortality.[77] We also promulgated standards for emissions of PM and smoke from nonroad diesel engines in that rulemaking. We have also found that emissions of PM from nonroad engines included in this ANPRM "cause or contribute" to such air pollution.

Section 202 (a)(3)(E) provides EPA with authority to revise highway motorcycle emissions standards, establishing standards which reflect the greatest degree of emission reduction achievable, taking cost and other factors into consideration. EPA may promulgate new standards based on the effects of the air pollutants on public health and welfare. EPA may also reclassify motorcycles as light-duty vehicles or classify them as a separate class or

[74] "Nonroad Engine and Vehicle Emission Study—Report and Appendices," EPA–21A–201, November 1991 (available in Air docket A–96–40).

[75] The terms HC (hydrocarbon) and VOC (volatile organic carbon) refer to similar sets of chemicals and are generally used interchangeably.

[76] *See* Final Finding, "Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines" elsewhere in today's Federal Register for EPA's finding for Large SI engines and recreational vehicles. EPA's findings for marine engines are contained in 61 FR 52088 (October 4, 1996) for gasoline engines and 64 FR 73299 (December 29, 1999) for diesel engines.

[77] The nonroad study (NEVES) found that nonroad sources are responsible for approximately 5.55 percent of the total anthropogenic inventory of PM emissions and over one percent of total PM emissions in six to ten of the thirteen nonattainment areas surveyed.

category. In such case that motorcycles are a separate class or category, the Act directs EPA to consider the need to achieve equivalency or emission reductions between motorcycles and other vehicles to the maximum extent practicable. We request comment on how any potential regulatory programs would be consistent with these sections.

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

40 CFR Part 1048

Environmental protection, Administrative practice and procedure, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 1051

Environmental protection, Administrative practice and procedure, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–30105 Filed 12–6–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1000, et al.

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity to File Written Exceptions to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
1030	Upper Midwest ...	AO–361–A34
1032	Central	AO–313–A43
1033	Mideast	AO–166–A67
1124	Pacific Northwest	AO–368–A27
1126	Southwest	AO–231–A65
1131	Arizona-Las Vegas.	AO–271–A35
1135	Western	AO–380–A17

SUMMARY: This tentative decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000. A hearing was held May 8–12, 2000, in Alexandria, Virginia, to consider proposals submitted by the industry to change the formulas. The material issues on the record of the hearing relate to the elements of the Class III and Class IV pricing formulas, including: commodity prices, manufacturing (make) allowances, factors related to product yield, role of producer costs of production, and the issue of whether to omit a recommended decision.

The major changes in the decision would reduce the cheese make allowance used in the Class III component price calculations, increase the make allowances used in the Class IV component price calculations, provide for separate Class III and Class IV butterfat prices, and remove the butterfat adjustment factor from the protein price formula. In addition, the decision requires that processes be undertaken to determine if producers approve issuance of the amended orders on an interim basis.

DATE: Comments are due on or before February 5, 2001.

ADDRESSES: Comments (six copies) should be filed with the Hearing clerk, Room 1081, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501).

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this regulatory flexibility analysis. When preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This final regulatory flexibility analysis considers these points and the impact of this final regulation on small entities. The legal basis for this action is discussed in the preceding section.

The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses constitute approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as "small businesses," constituting about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this initial

regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts.

One of the principal issues considered at the hearing was the source of price data that should be used to generate prices for milk components and, thereby, prices to be paid to producers. The options considered were the National Agricultural Statistics Service (NASS) surveys of selling prices of manufactured dairy products, Chicago Mercantile Exchange (CME) prices, and producer costs of production. The decision selects the NASS-reported prices as the most appropriate for use in determining product prices because of the considerably larger volume of product represented in those prices series than in the CME price data. Producer cost of production was not included in the calculation of prices because assuring dairy farmers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products.

Various proposals to reduce or increase the levels of the manufacturing (make) allowances of butter, nonfat dry milk, cheddar cheese and dry whey were considered. This decision adjusts these make allowances from their current levels on the basis of data and testimony contained in the hearing record. Most of the adjustments are minimal. Primarily, manufacturing cost surveys done by USDA's Rural Cooperative Business Service and the California Department of Food and Agriculture were used to determine the most appropriate levels of make allowance for the products used in calculating Federal order class prices.

The only other actual collection of manufacturing cost data for cheddar cheese and dry whey that was cited in the hearing record was a survey of cheddar cheese and dry whey manufacturing costs arranged for by the National Cheese Institute. This survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from having overstated costs included in the results, and as a result has less reliability than the two studies used to determine the cheddar cheese make allowance. In addition, one nonfat dry milk manufacturer testified to costs of manufacture that exceeded those of the two studies by a significant amount, mostly in the areas of return on investment and marketing costs. The data did not include any information about the pounds of product manufactured, and could not have been weighted with the data from the two other studies.

Several proposals to change the factor reflecting the yield of nonfat dry milk from nonfat solids in milk would have increased the nonfat solids price, and the Class IV skim price, but ignored the need to reflect the generally lower price and higher manufacturing cost of buttermilk powder that also must be considered in calculating the Class IV nonfat solids price. Testimony and data in the record was used to determine a factor more representative of nonfat dry milk yield and the effect of buttermilk powder price and cost. The alternatives to the formula adopted did not include consideration of the price, cost, and volume of buttermilk powder relative to those of nonfat dry milk.

Proposals were made to reduce the butter and cheese product prices used in calculating the Class IV butterfat price and the Class III prices. The record of this proceeding continues to support the use of the product prices adopted in the final rule in the Federal milk order reform process as representing accurately the values of these products. In the case of adjusting the Grade AA butter price to reflect the value of Grade A butter, the record fails to reveal any source of information for obtaining current prices for Grade A butter. In the case of proposals to remove the 3-cent adjustment between the barrel and 40-pound block cheese prices, there was no testimony about the actual difference in cost between the two types of packaging that overcame testimony that 3 cents is the actual cost difference, or data that indicates that the customary price difference is at least 3 cents.

Proposals to reconsider the class price relationships in the orders were considered, although a proposal to use a weighted average of the Class III and Class IV prices as a Class I price mover was not noticed for hearing in this proceeding. The hearing record supports the continued relationships between the Class IV and Class II prices, and between the higher of the manufacturing class prices and the Class I price.

A proposal that the Class II differential be changed to negate any changes in the Class IV price formula that would affect the current price relationship between nonfat dry milk and Class II failed to consider that the Class II-Class IV price difference adopted in Federal order reform is based on the difference in the value of milk used to make dry milk and the value of milk used to make Class II products.

Proposals that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices did not address the rationale for the current Class I price differentials above the manufacturing price levels for the purpose of obtaining an adequate supply of milk for fluid (drinking) use.

The changes to the Class III and Class IV price formulas included in this decision should have no special impact on small handler entities. All handlers manufacturing dairy products from milk

classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing are required by the Agricultural Marketing Agreement Act and should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to comment on the probable regulatory and informational impact of the amended provisions of this decision on small businesses. Also, parties may suggest modifications of this decision for the purpose of tailoring the applicability of the provisions to small businesses.

An analysis was done on the effects of the alternatives selected, and is summarized below.

Analysis

In order to assess the impact of changes in Federal order milk pricing formulas, the Department conducted an economic analysis. While the primary purpose of this decision is to amend the product pricing formulas used to price milk regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also affect the prices of regulated milk classified as Class I and Class II.

The modifications in this decision are analyzed simultaneously as a change from the current set of formulas. This analysis focuses on impacts on milk marketed under all Federal milk marketing orders, and treats the Federal order system as a single entity. Milk marketed in California, milk marketed under other state regulations and unregulated milk are treated separately. The hard manufactured dairy product markets are national.

Scope of Analysis

Impacts were measured as changes from the model baseline as adapted from the USDA dairy baseline published in February 2000. The USDA baseline is a national, annual projection of the supply-demand-price situation for milk and dairy products. Baseline assumptions are: (1) The price support program would end on December 31, 2000; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue as reformed on January 1, 2000.

It was necessary to make the following simplifying assumptions in order to conduct the analysis. The Federal order share of U.S. milk marketings is about 67 percent. About 60 percent of all milk manufactured (Classes II, III, and IV) is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly, the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices.

California stands out as the state with the highest production and has its own market regulations. California milk marketings are estimated as a function of the California pool price. Non-California milk marketings are estimated as a function of an all-milk price that incorporates the Federal order pool price and over-order payment estimates. The Federal order share of those non-California marketings is estimated as a function of the Federal order all-milk price relative to the estimated value of manufactured milk.

Cooperatives manufacture about 40 percent of the cheese and about 70 percent of the butter and nonfat dry milk manufactured nationally, and sell such dairy products in wholesale and retail markets in competition with other manufacturers. A baseline assumption is that a cooperative passes through to its members the best price and best return on investment that it can. A higher minimum Federal order price could result in cooperatives paying higher monthly prices for milk, but would result in lower returns on investments paid at the end of the year. Total cash receipts for member milk marketings processed by cooperatives would be changed only by changes in wholesale product prices.

Specifically, it is assumed that changes in pay prices and cash receipts to cooperative members for raw milk marketed by cooperatives, or to non-members for milk marketed to proprietary handlers would be fully reflected by lower or higher Federal minimum class prices. Changes in pay prices and cash receipts to cooperative members for milk manufactured by cooperatives would be fully reflected by the manufacturing milk price that moves with changes in manufactured product prices only. This applies to 40 percent of the Class III milk and 70 percent of the Class IV milk. In the case of cooperatives, it is assumed that differences between the model generated average value for manufactured milk and the average of the Class II, Class III, and Class IV prices would be passed on to producer-members in the form of higher or lower pay prices. In the case of proprietary plants, it is assumed that the plants would retain the differences. However, in the case of a loss, proprietary manufacturing plants could de-pool milk to equalize their margins with cooperative plant margins. In the model, this is accounted for by an equation that estimates the Federal order share of non-California marketings as a function of the ratio of the Federal order all-milk price relative to the estimated value of manufactured milk. The Federal order share increases as the price ratio increases.

In addition to altering the sharing of manufacturing proceeds between manufacturing plants and producers the decision's formula changes have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on Class I prices depend upon the effect on the Class III price relative to the Class IV price. Class I prices are based on the higher of the Class III or Class IV prices.

Retail prices of fluid milk and Class II soft manufactured products are assumed to respond penny for penny to changes in the milk cost of these products. Wholesale and retail margins are assumed unchanged from baseline. Demands for Class I and Class II products are functions of price, per capita consumption and population. Wholesale prices for cheese, butter and nonfat dry milk reflect supply and demand for these products. The milk supply for manufacturing these hard products is the result of milk marketings minus the volumes demanded for Class I and Class II products. The remaining volume is allocated to Class III and Class IV according to returns to manufacturing in each class. Demands for products in these classes are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of price, income, and the proportion of food expenditures spent away from home.

Summary of Results

The results of the amendments to the Class III and Class IV formulas are summarized using five-year, 2001–2005, average changes from the model baseline. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

In addition, the advanced Class I base price is driven by the higher of the Class III or Class IV prices. With the amended formulas, the Class I base price is the Class IV price in all years of the analytical period. In each year, the Class I price, at the class average test of 2 percent butterfat, is slightly above the baseline. This results in a small reduction in the demand for skim milk, and to a lesser extent butterfat, for Class I use. Milk generally shifts from Class I use to the production of butter, nonfat dry milk, and cheese in generally the same proportions as in the baseline. As a result, the wholesale prices of butter, nonfat dry milk and cheese each decrease slightly.

Producers. Over the five-year period, the changes taken as a whole result in a small increase of about $0.007 per hundredweight in the Federal order minimum blend price for milk at test. Including the effect of premiums, the average milk price received by Federal order producers is expected to average up $0.009 per hundredweight. Federal order marketings increase by an average 139 million pounds and cash receipts increase by $30 million (0.18 percent) from baseline receipts of $16,414 million. U.S. milk marketings increase by an average 24 million pounds annually, and cash receipts increase by $15.5 million (0.07 percent) from baseline receipts of $23,841 million.

There is an increase of $0.007 per hundredweight in the five-year annual average U.S. all-milk price.

Milk Manufacturers and Processors. For 2001, the Class III price at test (3.61 percent butterfat) is increased by $0.02 per hundredweight under the amended marketing orders. For the second year, Class III is unchanged from baseline and then decreases slightly in 2003–2005. For the five-year period, Class III at test averages down about $0.015 per hundredweight.

The major change is the five-year annual average increase in the minimum Class III butterfat price of about $0.73 per pound, and a decline in the average minimum Class III skim milk price of about $2.72 per hundredweight. The estimated NASS cheese price, at 38 percent moisture, decreases an average $0.003 per pound (0.2 percent).

Butterfat prices for Class II and Class IV average down slightly ($0.008 per pound) for the five-year period, while skim milk prices increase about $0.11 per hundredweight. This results in an increased Class II milk cost, at test, to processors of about 0.12 percent. The butter price decreases an average 0.5 percent while the average nonfat dry milk price decreases by about 0.3 percent for the period.

The average U.S. value of milk in manufactured products decreases by about $0.03 per hundredweight for the period.

Class I costs to fluid processors (at the class average butterfat of 2 percent) average about $0.03 per hundredweight (0.23 percent) higher, as a result of higher skim milk prices each year.

Consumers. The expected $0.03 per hundredweight increase in the Class I price for 2001–2005 results in about a $0.0025 increase in the price per gallon of fluid milk for consumers. Consumer costs for fluid milk are estimated to increase on average by about $10.4 million annually over the five-year period.

The price of butter is estimated to decrease on average $0.006 per pound for the period. Cheese is estimated to decrease $0.003 per pound. Consumer expenditures on butter are estimated to decrease by about $5.6 million, and on American cheese, decrease by about $10.6 million annually over the five-year period.

A complete economic analysis is available upon request from Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7091, e-mail address howard.mcdowell@usda.gov

Civil Rights Impact Statement

This decision is based on the record of a public hearing held May 8–12, 2000, in Alexandria, Virginia, in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that required the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000.

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who choose to deliver milk to handlers regulated under a Federal order will receive the minimum blend price. It also was concluded that "one of the reasons for success of the Federal milk order program is that all producers benefit through assistance in developing steady, dependable markets, reducing price instability and unnecessary price fluctuations, and assurances of a minimum price for their milk. With this assurance, producers are more willing to make the significant cost investments in milk cows and equipment needed to produce high-quality milk. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers."

The issues addressed at the May 2000 hearing are issues that were addressed as part of Federal milk order consolidation and reform. Establishing representative make allowances in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. The decision should result in no differential benefits in dividing the pool among all producers delivering milk to those regulated handlers. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently that the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. The hearing notice in this proceeding invited interested persons to address any possible civil rights impact of the proposals being considered in testimony at the hearing. No such testimony was received.

Copies of the Civil Rights Impact Analysis done for the final decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: www.ams.usda.gov/dairy/.

Prior documents in this proceeding: *Notice of Hearing:* Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, by the 60th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The Hearing notice specifically invited interested persons to present evidence concerning the probably regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions.

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501). The findings and conclusions set forth below are based on the record of a public hearing to consider proposals submitted by the industry to change the pricing formulas in the marketing agreements and the orders regulating the handling of milk in the Northeast and ten other marketing areas held in Alexandria, Virginia, on May 8–12, 2000. Notice of such hearing was issued on April 6, 2000 and published on April 14, 2000 (65 FR 20094).

Brief Summary of Changes to Class III and IV Formulas

As instructed by the legislation requiring this proceeding, the Class III and IV pricing formulas, and all of the elements of the formulas, were re-considered in developing this decision. The changes made in the Class IV component formulas are minimal. The product prices used in the Class IV formulas (butterfat and nonfat solids) are unchanged. The make allowances for butter and nonfat dry milk are increased slightly, by .1 cents for butter and .3 cents for nonfat dry milk. The divisor used in the Class IV butterfat component formula is unchanged, while the 1.02 divisor used in the nonfat solids price formula to reflect the relative values and yields of buttermilk powder and nonfat dry milk is eliminated.

The Class III component price formulas are changed to a greater degree. The most substantive change is to calculate a Class III butterfat price on the basis of the value of butterfat in cheese, not on its value in butter. At the same time, the protein price formula would reflect the value of protein in cheese, without including a butterfat factor in the formula to adjust for the differential value of butterfat used in butter and cheese. The product price for cheese is changed to reflect a 38-percent moisture adjustment in the barrel cheese price to place that price on the same moisture basis as the block cheese price. The dry whey price, for computing the other solids price, is unchanged. The change in the make allowance for cheese is minimal, and the whey powder make allowance is increased only enough to remain the same as that for nonfat dry milk. As with the current component prices, the Van Slyke formula is used to determine the yield effects of both the Class III protein and butterfat prices.

The material issues on the record of the hearing relate to:

1. Role of producer costs of production.
2. Commodity prices (CME vs. NASS).
3. Commodity and component price issues.
   a. General approaches on make allowances.
   b. Class IV butterfat and nonfat solids prices.
   c. Class III butterfat, protein and other nonfat solids prices.
   d. Effects of changes to Class III and Class IV price formulas.
4. Class price relationships.
5. Class I price mover.
6. Miscellaneous and conforming changes.
   a. Advance Class I butterfat price.
   b. Classification.
   c. Distribution of butterfat value to producers.
   d. Inclusion of Class I other source butterfat in producer butterfat price computation.
7. Issue of whether to omit a recommended decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Role of Producer Costs of Production

Proposal 29 in the hearing notice proposed that producers' costs of production be incorporated into the Class III and Class IV pricing formulas. A number of dairy farmer witnesses testified that, just as manufacturing processors are assured that their costs of processing milk products will be covered, dairy farmers should also have some assurance that they will be able to continue to operate their dairy farms without losing money. Under the current system, according to the National Farmers Union (NFU) witness, incorporating a make allowance for processors but not for producers leaves dairy farmers to bear the entire burden of changes in supply and demand.

Unfortunately, as explained in both the proposed and final rules under Federal order reform, assuring producers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products. As noted by the DFA witness, although pricing proposals incorporating cost of production have been noticed and reviewed several times in the last decade without success, if a sound mechanical concept could be advanced that overcomes the objections relative to supply and demand, it should be considered.

The witnesses testifying on behalf of NFU and National Farmers Organization (NFO) both supported the concept of variable make allowances, in which the allowances would be adjusted for changes in supply and demand as a means of addressing the problem of manufacturers being insulated from changes in supply and demand by their fixed make allowances. In other words, increases in dairy farmers' costs of production would be reflected in reductions in manufacturers' margins. Both proposals would divide Class III and Class IV values by dairy farmers' costs of production. The NFU proposal would use an average national cost of production, presumably as published by USDA's Economic Research Service, and the NFO proposal would use the CDFA milk production cost index.

Although the concept of assuring that as costs of production increase, manufacturing allowances would decline to the extent product prices do not also increase has appeal, it is difficult to believe that such a proposal would be in the best long-term interests of dairy farmers, processors, or consumers. It certainly could easily fail to cover processors' costs to the extent that would keep them operating. It is easy to construct a situation in which milk production costs increase because of feed shortages, resulting in reduced make allowances to processors. When the manufacturers' make allowances decline to the point the variable costs of processing are not covered, they would have little choice but to cease processing. At that point, dairy farmers who are facing high costs of production would have to find alternative outlets for their milk. If many processors reach the point at which they must make the decision to cease operating near the same time, there likely would be very disorderly conditions among dairy farmers looking for outlets for their milk. In addition, consumers would be likely to find shortages in the availability of dairy products.

This proceeding must join the list of those in which cost of production proposals have been considered and found wanting in terms of being able to reflect both the supply and demand sides of the market for dairy products. There is no evidence in the record that either the ERS or the CDFA index has been used to price milk. As noted by the NFO witness, the current pricing system uses the interaction of supply and demand for milk products as an indirect method of meeting the pricing requirements of the Agricultural Marketing Agreement Act of 1937 for milk. According to the witness, producer milk has a value before it is processed. In today's market, it is hard to agree that milk has a market value to consumers without being pasteurized, at least.

2. Commodity Prices (CME vs. NASS)

As recommended in the proposed rule and adopted in the final rule on Federal order reform (published on September 1, 1999 (64 FR 47898)), commodity prices determined by surveys conducted by USDA's National Agricultural Statistics Service (NASS) are currently being used in the component price formulas that replaced the BFP. This decision makes no changes in the source of product price data.

Several proposals (1, 5, 10 and 19) were considered during the current proceeding that recommended using prices reported by the Chicago Mercantile Exchange (CME) instead of the NASS surveys to determine commodity prices. Both the CME and the NASS surveys were supported by testimony at the hearing and in briefs. The CME is a cash market where speculators, producers, and processors can buy and sell products. It is a mechanism for establishing prices on which the dairy industry relies. Thus, a lot of contracts to buy and sell dairy products are based on CME prices. A USDA witness testified that he is unaware of any other indices used to price cheese in the U.S. According to several witnesses, cheese and butter processors generally base their contract sales on CME prices.

The NASS price survey gathers selling prices of cheddar cheese, Grade AA butter, nonfat dry milk and dry whey from a number of manufacturers of these products nationwide. At the time the proposed rule on Federal order reform was published (January 30, 1998), the NASS survey included prices for cheddar cheese only. This survey had begun in March 1997. In September 1998, before the final decision was published in April 1999, NASS began surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. In developing these commodity surveys, input was obtained from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out, or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound. NASS Dairy Products Prices reports wholesale cheddar cheese prices for both 500-pound barrels and 40-pound blocks, USDA Grade AA butter, USDA Extra Grade or USPH Grade A non-fortified dry milk and USDA Extra Grade edible non-hygroscopic dry whey. A more-detailed description of the surveys can be found in the final decision of April 2, 1999 (64 FR 16093).

The proponents of proposal 1, Western States Dairy Producers Trade Association, et al. (WSDPTA), a group of several trade associations and cooperatives, proposed that the NASS commodity prices for butter, cheese, and nonfat dry milk that currently are used for computing the Federal order component prices be replaced with prices determined by trading on the CME. Dry whey was not included in the proposal because there is no dry whey cash contract traded on the CME. A witness from WSDPTA did not oppose the collection and reporting of NASS data, but expressed the opinion that while it serves an important function as information, it should not be used to establish prices. The proponents presented several benefits of using the CME over the NASS survey for commodity prices.

Proponents explained that by using CME prices in the formulas, prices would be known immediately rather than a week later when the NASS prices are published, reflecting more quickly the supply-demand conditions for dairy products. The one-week delay is caused by the time necessary to collect data. A witness for National Farmers Organization noted that interested persons are able to check the CME value of products on a daily basis and use the reported prices as a factor to establish what they're going to be paying or paid for cheese.

A witness from WSDPTA went on to explain that buyers, sellers, and speculators trade the CME, trying to obtain a price in their favor, while the price actually is determined by supply and demand forces. He described the rules as fair and the results as transparent, with participants having a number of interests. The witness continued by noting that the CME price result is instant and results cannot be altered. In contrast, he stated, NASS prices are reported by sellers only, who are not disinterested parties. He argued that NASS respondents can modify their numbers or file an initial report after calculating the price impact of the latest reports.

The proponents also concluded that the urging by many hearing participants that the NASS price series include mandatory participation and be audited proves that the NASS series is not reliable enough to be used as a price-discovery method.

Finally, the witness from WSDPTA expressed the view that the NASS price series would feed on itself and result in price setting, not price discovery. He continued by noting that plants and their buyers will obtain prices one week and sell the commodity in the following week at a price derived in large part from the price obtained in the prior week. The witness compared the NASS survey to the California State survey of powder prices which, he claimed, results in a circular pricing system that is mathematically incapable of fully reflecting the top of the market price for powder because so little of the survey volume is priced off of the spot market. Proponents expressed the belief that this circularity causes prices to remain lower than they would without it, and that prices would increase more slowly and decrease more rapidly than would prices on the CME, causing overall lower prices for dairy farmers.

Opponents of changing from NASS to CME prices to compute component prices included International Dairy Foods Association (IDFA), Dairy Farmers of America (DFA), and National Milk Producers Federation (NMPF). Witnesses for these parties argued that the NASS survey includes pricing based

on a significantly larger volume of product than does the CME. In the case of the nonfat dry milk market, the table of 1999 monthly Chicago Mercantile Exchange Cash Markets data from the 1999 Annual Dairy Market Statistics showed that there were no sales reported for either extra grade or Grade A in the year 1999.

According to a witness from IDFA, the volume of cheddar cheese in the NASS survey is equal to 26.4 percent of all cheddar cheese production in the U.S. for the period September 1998 through February 2000. During the same period, the CME volume of cheddar cheese traded represented only 1.7 percent of U.S. cheddar cheese production. The witness stated that for the same 18-month period, the NASS survey volumes represented 14.4 percent of all U.S. butter production while CME trading consisted of only 2.6 percent. He also noted that switching from the NASS survey data to the CME data would result in a change from a very broad to an extremely thin representation of actual product transactions.

Opponents to the proposal to use CME prices also pointed out that prices at the CME are Chicago or Midwest prices based on the delivery location specification of the contract. Therefore, they argued, the scope of the reported prices for cheese, butter, and nonfat dry milk are not national. A witness for Kraft noted that reliance on the CME alone would exclude the substantial and growing volume of cheese produced in the western United States (U.S.), particularly California. A witness for Northwest Dairy Association suggested that a transportation credit would need to be used with CME prices, at least in the West, to reduce the value of the CME to a more representative level. Opponents went on to explain that since the NASS survey contains data from plants located all over the United States, NASS prices represent a national scope of the prices of each of the particular commodities.

According to the testimony in the record and a number of the briefs, the cheese and butter sellers and buyers look to the CME to identify the most current price levels. As a result, prices move in response to supply and demand conditions in the marketplace as reflected at the CME. Since the transaction prices of commodities are based off of the CME, it is difficult to see how the NASS survey can cause, or result in, circularity. The NASS prices reflect the CME prices with a short lag, but are based on a much greater volume, enhancing the stability of the price series. Continued use of the NASS price survey appears to be the best method of obtaining reliable data about commodity prices.

As stated in the final decision on Federal order reform, NASS data traditionally have been collected via a survey with voluntary participation. The price information, like most NASS data, is not audited. NASS, however, applies various statistical techniques and cross-checking with other sources to provide the most reliable information available. The issue of mandatory and audited NASS data, however, will not be discussed further as NASS is not authorized to conduct such activities, and these issues are not within the scope of this rulemaking.

3. Commodity and Component Price Issues

a. General Approaches on Make Allowances

Changes to the make allowances for each of the product formulas used in calculating component prices were proposed and discussed at length during this proceeding. Except in the case of dry whey, make allowances adopted in the component price formulas in this decision are calculated using a weighted average of the most recent California cost of production study and the Rural Business Cooperative Services (RBCS) study. A marketing cost of $.0015 per pound is added to both the California costs and the RBCS costs, as in the Final Rule, and the California value for return on investment is used to adjust the RBCS cost. This is generally the same approach used to determine the appropriate make allowances in the current orders, and results in values that differ little from the formulas in the current orders.

For the calculation of the Class III "other nonfat solids" price, neither the California nor RBCS studies included information on the cost of making dry whey, and a survey done for this proceeding under the auspices of IDFA was not considered sufficiently reliable for use in establishing a make allowance. Consequently, the "other solids" make allowance should continue to be the same as that used for nonfat dry milk.

A number of the proposals considered in this proceeding would change the manufacturing, or make, allowances adopted for the pricing formulas under Federal order reform. There was considerable testimony on the appropriate factors to be considered in establishing make allowances, and several sources of data were cited as the most accurate to use for such a purpose. In addition, a number of witnesses testified about the philosophical basis for determining appropriate manufacturing allowances for milk pricing formulas.

Two surveys of product manufacturing costs that were averaged for use in calculating make allowances under Federal order reform were the California Department of Food and Agriculture (CDFA) study, which is done annually and includes nearly 100 percent of dairy products manufactured in California, and the Rural Business Cooperative Service (RBCS) study, which is conducted annually by USDA as an in-plant benchmark study for participating cooperative associations. These two surveys had both been updated since earlier versions had been used in determining the manufacturing allowances used in the current component pricing formulas. In addition, the National Cheese Institute (NCI), an affiliate of the International Dairy Foods Association (IDFA), contracted with a third party to conduct a survey of the costs of manufacturing cheese and whey powder for use in this proceeding.

A witness for National Milk Producers Federation (NMPF) stated that make allowances should reflect the costs incurred by average plants manufacturing the particular dairy product used in the component/Class price formulas: butter, nonfat dry milk, cheese, and dry whey. The witness went on to explain that the procedure used by the Secretary for determining the make allowances for the Final Rule, using an average of the California cost of production studies and the Rural Business Cooperative Services (RBCS) study, was sound and that the same procedure should be used as a result of this hearing, using the updated data from both surveys. In calculating an appropriate make allowance, the witness supported addition of a marketing cost of $.0015 per pound to both the California costs and the RBCS costs, as in the Final Rule, and the California value for return on investment used to adjust the RBCS costs in the Final Rule. The witness explained that both of these factors should be included as they are legitimate and necessary costs incurred in operating manufacturing plants.

The witness for IDFA supported inclusion of the California cost studies in the computation of the make allowance; however, the witness stated that the appropriate procedure for computing the make allowance for cheese was to compute a weighted average of the California cost studies and the NCI survey. The witness explained that the RBCS study does not include all the necessary costs that must be recovered in the make allowance, and that the NCI survey is needed to determine what the additional cost values should be. The costs that the IDFA witness pointed out that are not included in the RBCS survey, but are included in the NCI survey, are general plant administrative costs, such as the plant manager's salary and corporate overhead; return on investment or capital costs; and marketing costs.

The IDFA representative testified that the danger inherent in regulated prices is setting the manufacturing allowance at a level too low to assure that manufacturers will be able to recover their costs of manufacturing finished products and have the money needed to invest in new plants. The witness pointed out that an inadequate make allowance would force manufacturers either to move to areas that do not have regulated pricing or go out of business. At the very least, the witness explained, the manufacturers would not invest in new plants and equipment, which in the long run would cause a decline in the productivity of the dairy industry. A number of briefs filed on the basis of the hearing transcript emphasized the importance of covering all of handlers' costs of manufacturing, and not just average costs.

The IDFA witness explained that if make allowances are established at too low a level, proprietary plants are placed at a competitive disadvantage relative to cooperative-owned plants. The witness explained that since cooperatives do not have to pay their producers the minimum order price, as proprietary plants are required to do, cooperative plants can reduce the prices paid to member producers to make up the difference in cost.

The IDFA witness explained further that the problem with a make allowance established below the amount needed to cover plant costs occurs because the plant sells the finished product at the same price that is used in the formula for establishing the minimum price the plant must pay for the raw material, milk. The manufacturing allowances are the only place the plant has the opportunity to cover its costs, and those allowances are fixed in the formula that determines the raw material price.

The witness for IDFA asserted that there was very little risk in setting a make allowance too high. He explained that if the make allowance is established at a level above plant costs, the additional revenue stream will be corrected through market forces by requiring the plant operators to pay competitive over-order premiums to milk suppliers to obtain an adequate supply of milk.

A witness for Western States Dairy Producers Trade Association, *et al.* (WSDPTA), explained that the most important part of determining a manufacturing allowance is to pick a method and stick with that method. The witness testified that the appropriate method is to use the results of the RBCS study with adjustments to include factors for marketing costs and for capital costs. The witness pointed out that use of the RBCS study is appropriate because the study is voluntary, represents the costs of making the particular commodities, and the plants are geographically widely dispersed. The WSDPTA witness stated that including the results of the California study in the computation of the make allowance for pricing Federal order milk is inappropriate since there is no logical reason for considering the manufacturing costs of plants that do not procure any of the milk that would be priced using those costs.

A witness for the National Farmers Organization (NFO) proposed a variable make allowance using the RBCS make allowances as a base adjusted by the relationship between the particular commodity prices for butter, nonfat dry milk, dry whey, and cheese, and the California Department of Food and Agriculture (CDFA) milk production cost index. The witness explained that a fixed make allowance, as contained in the current pricing system, does not vary with market conditions and creates a situation in which manufacturers will not respond to market signals since the manufacturers will receive a profit no matter what the supply and demand is for the finished products. The witness explained that as long as the make allowance allows manufacturers a sufficient return the manufacturers will continue to produce the finished product even if there is limited demand for the product, thus resulting in a continued low price paid to producers for their milk. The witness characterized a variable make allowance tied to the cost of producing milk as a market-oriented system.

A witness for National Farmers Union (NFU) also proposed a variable make allowance composed of the weighted average RBCS and California manufacturing cost surveys, without a marketing allowance, adjusted by the national average cost of production. The witness explained that the current system does not have market accountability, since there is no incentive for a manufacturer to restrict production when declining prices indicate reduced demand for the product. As a result, according to the witness, the pricing system effectively isolates the manufacturing side of the industry from supply and demand forces, leaving the producers left to bear the burden of changes in supply and demand. The witness explained that the California system, in which manufacturers' production costs are covered by producers through the make allowance, continues to produce a large quantity of lower-valued products because the pricing system makes the manufacturer immune to the supply of and demand for the products. The witness blamed the California make allowance system for the traditionally low milk prices in California, that, he claimed, result in expansion of dairy herds to make up for reduced cash flow. The witness predicted that if the Federal order system follows the same pricing path, the same production patterns as witnessed in California would follow in the rest of the United States.

Most hearing participants agreed that the make allowance should cover the cost of converting milk to a finished manufactured dairy product. However, several participants disagreed with the IDFA contention that there is very little risk in setting the make allowance too high. They argued that if the make allowance is set in excess of the cost to manufacture finished products, the additional revenue would be kept by the manufacturing plants as higher profits and not distributed to the producers supplying milk to the plant. They explained that in many parts of the country there is little if any competition for the dairy farmers' milk and therefore no incentive for a plant to pay above the minimum Federal order price. These plants, according to the witnesses, could be expected to keep the extra make allowance for themselves.

Several witnesses opposed the idea of setting make allowances at levels that guarantee plants a profit, or at least a return on investment, when the dairy farmers supplying milk to the manufacturing plants have no similar assurances for covering the costs of producing milk. These witnesses pointed to the Agricultural Marketing Agreement Act of 1937, Sec. 608c(18), as justification for setting a lower make allowance for plants, resulting in higher milk prices that would come closer to covering dairy farmers' costs of producing milk.

As supported by most of the hearing participants, the make allowances incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. In part, this

approach is necessary because pooled handlers must be able to compete with processors whose milk receipts are not priced in regulated markets. The principal reason for this approach, however, is to assure that the market is cleared of reserve milk supplies.

Although the RBCS survey does not include such costs as general plant administrative costs, return on investment or capital costs, and marketing costs, it is a survey that has been done for sixteen years with the same fundamental methodology, and with some continuity of participants. Because the survey is done for the benefit of the participating organizations (cooperatives) to help them identify their costs and compare them with those of their peer group, there is every reason to believe that the costs provided are as accurate as possible. In addition, the years of experience with the survey have enabled USDA to shape the questions to obtain more accurate results.

When the RBCS survey results are adjusted to include the factors that were mentioned above as not included by using the values for those factors from the CDFA survey, the two surveys' costs are comparable, especially considering that the RBCS survey represents manufacturing plants with a wide distribution around the U.S., while the CDFA survey includes only California plants. The CDFA survey is also done every year, and is done according to a published procedure manual, with the costs being audited by personnel employed by the State for that purpose. Although no CDFA employee was available to respond to questions about the conduct of the survey, official notice was taken of the procedure manual and of California publications associated with manufacturing cost data. In addition, several witnesses who are deeply involved with the California dairy industry testified regarding the perceived reliability of the survey results.

In contrast to the RBCS and CDFA surveys, the survey of cheese and whey powder manufacturing costs arranged for by NCI was developed solely for the purpose of establishing costs to be used in determining make allowances for this proceeding. The survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from having overstated costs included in the results. No one who actually conducted the survey was made available to testify, and although the IDFA witness stated that survey participants would testify regarding their responses to the survey later in the hearing, none of the participating firms' witnesses would respond to questions about their firms' results. Although less weight must be given the NCI survey than either the RBCS or the CDFA surveys for the reasons stated above, the NCI survey's resulting manufacturing costs for cheese are not considerably different from a weighted average of the RBCS and the CDFA surveys. In fact, although the IDFA hearing participants went to great lengths to discredit the RBCS study for use in identifying an appropriate level of manufacturing costs, the hearing record reflects that the NCI survey of cheese and dry whey manufacturing costs used the RBCS 1996 survey results to identify outliers (plus or minus 10 percent) in the study commissioned by NCI.

As a result of the differences in conduct of the three surveys, manufacturing costs used to determine appropriate make allowances for cheddar cheese, butter and nonfat dry milk in this proceeding are calculated primarily from a weighted average of the RBCS and CDFA surveys, with a check against the NCI survey cost of manufacturing cheddar cheese. The cost of manufacturing nonfat dry milk continues to be used as the cost of making whey powder due to the nature of the information in the hearing record about the actual costs of drying whey.

One proposal included in the hearing notice would have eliminated any marketing allowance from the make allowances, and a number of witnesses' testimony objected to the inclusion of return on investment. The American Farm Bureau witness questioned the need for a marketing allowance since producers already pay a 15-cent assessment for promotion and research. A brief filed by the proponent of eliminating the marketing allowance stated that the allowance appears to be an "adjustment" or a "hedge," since it is not defined in the final rule.

There was general agreement among those testifying that a marketing allowance should be included in manufacturing costs, but no consensus about the appropriate number. Some of the costs covered by the marketing allowance include maintaining and staffing warehouses, supporting a marketing and sales staff, transporting product to market, and accounting costs associated with the sale of products. The NCI survey identified a marketing cost of $.0011 per pound of product, while the Dairy Farmers of America (DFA) witness stated that DFA's costs were approximately $.0018. The DFA witness testified that because the costs included in the activities designated as marketing generally fall within a common department under common management, it is appropriate to apply the same allowance to each product.

A witness for Northwest Dairy Association, a cooperative association in the Pacific Northwest, stated that their marketing costs are $.0026, but identified costs associated with the aging of cheese as included in that number. Since the NASS survey price does not include cheese intended for aging, the marketing allowance certainly should not include costs of aging cheese. The Associated Milk Producers, Inc., (AMPI) witness used a $.0024 marketing allowance in the calculation of AMPI's proposed make allowance for nonfat dry milk. The witness for Agri-Mark, Inc., a large Northeast cooperative association with several processing plants, stated that Agri-Mark's estimates of marketing costs ranged from $.0025 to $.005.

The costs identified as those included in a marketing allowance are necessarily incurred in getting a product to market, and are not related to the consumer education and advertising activities covered by the National Dairy Board assessment. Since the marketing cost determined by NCI is the only one of the estimates included in the hearing record that is supported by a survey, and it varies from the $.0015 rate included in the Final Rule by only 4 one-hundredths of a cent and applies only to cheese and dry whey, there seems to be no solid basis for making any change to the current marketing allowance.

Some producer witnesses objected to the inclusion of any allowance for return on investment in manufacturing allowances on the basis that dairy farmers are assured of no such return. The CDFA manufacturing cost surveys include allowances for depreciation, included in the non-labor processing costs; and for return on investment, which represents the opportunity cost of the processors' resources invested in the business. These costs are supported by audited data.

Both the marketing allowance and return on investment factors should be included in the manufacturing allowances provided in the component price formulas at the rates supported by the California data. If processors are not provided enough of a manufacturing allowance to market the product they process, or to earn any return on investment, they will not continue to provide processing capacity for producers' milk. At the same time, the manufacturing allowances incorporated in the formulas will not provide enough of an allowance to assure that every processor, no matter how inefficient or high-cost, will earn a profit. Allowances set at such a level certainly could result in the situation warned of by producer groups in which processors manufacture greater volumes of product than the market demands because they are guaranteed a profit on all their production. As a result, the only way to market all of the product would be to reduce prices, with a profit still locked in through the make allowance, which would result in decreasing prices paid to producers. In addition, manufacturers who are assured a profit on all of their output would have no incentive to make a sufficient quantity of milk available for fluid use—a basic goal of the Federal milk order program.

One area addressed by several hearing participants in testimony and in briefs as appropriate to consider in establishing make allowances or yields was the loss of milk components during manufacturing processes. The orders have always provided an allowance for shrinkage, and continue to do so, but inflating costs of production or reducing yield factors to reflect shrinkage would not properly reflect the value of producers' milk used in manufactured products. Processing costs determined by the surveys described above, which underlie the manufacturing costs incorporated in the pricing formulas, are expressed in cents per pound of end product manufactured, not in the cost per hundredweight of milk of converting milk to manufactured products. The component pricing formulas are based on the content of those components in the finished products for which a manufacturing cost per pound has been established. Both the CDFA and RBCS cost surveys allocate all plant costs to actual end product, a process which should take shrinkage into account. Similarly, the yield factors in the formulas refer to the amount of finished product resulting from the processing of a given volume of input. Both of these factors in the pricing formulas include consideration of shrinkage.

The detailed explanation of each product's manufacturing allowance is included with the description of its primary component's pricing formula later in this decision.

b. Class IV Butterfat and Nonfat Solids Prices.

Class IV Butterfat Price. This decision continues to use the NASS price for Grade AA butter for calculating the Class IV butterfat price, and changes the manufacturing allowance in the butterfat price formula by 1/10 of a cent per pound of butter. The .82 divisor in the price formula is unchanged.

Several proposals were heard that would reduce butterfat prices, either by reducing the butter price used in the computation of the butterfat prices for all classes, or subtracting a fixed amount from the butterfat price computed for Class IV. Proposals also were made that would change the make allowance used in calculation of the butterfat prices. There were no proposals to change the butterfat divisor of .82, although one witness representing a western cooperative association suggested that it be reconsidered as he felt it didn't include a shrinkage factor.

Product Price (Butter). Several witnesses for proprietary processor proponents of the proposal to deduct six cents from the butter price before computing the butterfat price stated that historically the value of butterfat in the Federal milk orders has been based on the price of Grade A butter. The witnesses explained that an equivalent price determination had been issued in 1998 when the CME discontinued trading Grade A butter that nine cents would be subtracted from the Grade AA butter price for use in calculating Federal order butterfat prices. This equivalent price, according to the witnesses, was found to be "essential" to the continued operation of the Federal milk order program and continued the policy of basing butterfat pricing under the Federal milk orders on a value below that of Grade AA butter.

The witnesses complained that under Federal order reform the butterfat value is determined by using the NASS Grade AA price of butter, which effectively increases the butterfat value under Federal milk orders. According to proponents' calculations, the increase does not amount to a full nine cents, but is tempered by the use of the NASS Grade AA price, which has averaged approximately three cents below the CME Grade AA price, in the butterfat pricing formula. Therefore, they stated, the actual increase in the butter price used to calculate butterfat prices is approximately six cents. According to the witnesses, subtraction of six cents from the NASS butter price would return the relationship between the butterfat value under the orders and the selling price of butter to the relationship that existed prior to Federal order reform.

Several witnesses explained that when handlers must pay for butterfat on the basis of the Grade AA butter market they cannot then sell cream or finished products at a price that would allow them to recover their costs. They testified that cream is sold at a price that is termed a "multiple" of the butter price, and that the multiples used when the butterfat price was calculated from the Grade A butter price have not adjusted to the new pricing formula using Grade AA butter.

The IDFA witness pointed out that the IDFA proposal to subtract six cents from the NASS Grade AA butter price would apply not only to the butterfat formula for Class II, Class III, and Class IV but would apply to the advance butterfat formula used for computing the Class I butterfat price. The witness testified that by applying the same formula to all classes of butterfat the current relationship between the class prices would be maintained. The witness contended that there is no justification for changing the relationships between the class prices, particularly if the adjustment would widen the class price spreads or, in effect, increase the Class I and Class II differentials.

Witnesses for National Milk Producers Federation (NMPF) and several large cooperative associations testified in support of NMPF's proposal to reduce the calculated butterfat price by six cents, with the reduction applied to Class IV butterfat only. Under this proposal, the computation of the butterfat prices for other classes would not contain the six-cent adjustment. Several witnesses representing cooperative associations that process butter explained that butter manufacturers incur additional costs when procuring cream used for manufacturing butter as opposed to the cost of converting producer milk to butter. The witnesses explained that these additional costs include transportation, additional handling, and additional pasteurization. The witness for Land O'Lakes (LOL) testified that the additional costs amounted to 4.57 cents per pound of butterfat for transportation and .4 cents per pound for receiving, storing, and repasteurization. A witness for Agri-Mark stated that Agri-Mark's transportation costs are slightly less than LOL's, probably due to the proximity of the Agri-Mark plant to the sources of cream, but that the other additional costs are slightly higher than the LOL costs, at .5 cents per pound of butterfat.

The proponents of reducing the Class IV butterfat value also referred to the computation of the California Class 4a butterfat price, which involves a subtraction of 4.5 cents per pound from the CME Grade AA butter price to adjust for the costs of moving butter from the west coast to the Midwest.

Those parties who favored reducing the butter price before using the butterfat price formula to calculate any of the butterfat prices disagreed vehemently with the proposal to reduce only the Class IV butterfat price. They

argued that such a reduction would distort the relationship between the Class II and Class IV prices, resulting in a greatly-increased price for Class II butterfat in relation to Class IV butterfat.

Specifically, the projected increase in the Class II-Class IV butterfat price difference was cited as 6.7 cents per pound (from the current difference of .7 cents). These parties argued that butterfat values would most appropriately be reduced to the same degree in all classes.

The Class IV butterfat price should be computed by subtracting a make allowance of .115 dollars per pound from the monthly average NASS Grade AA butter price and dividing the result by .82. The Class II butterfat price should continue to be the Class IV butterfat price plus .007 cents, while the Class I butterfat price will be the higher of the advance Class III and advance Class IV butterfat prices plus the applicable Class I differential.

Contrary to the belief stated by some witnesses, whether qualified experts or not, the use of the Grade AA butter price for computing the butterfat price under Federal order reform was not an "oversight." Trading of Grade A butter on the CME was ended (not by USDA, as implied in one brief, but by the CME) because the volume of Grade A butter traded was not great enough to warrant maintaining a trading venue. Although one brief argued that the Grade A butter price represents a minimum price, and that there is no need for concern that there will not be an available market for Grade A and Grade B butter, with the end of trading in Grade A butter on the CME there is no published (or any other known) source for obtaining a price for Grade A butter.

The use of the Grade AA butter price for establishing butterfat prices is appropriate since that is the only grade of butter that has significant enough trading volume to warrant a publicly-reported price. Grade AA butter prices are the only butter prices regularly available, and represent the vast majority (about 95 percent) of the butter sold. Although the "multiples" of the butter price apparently had not adjusted to the use of the Grade AA price during the first 4 months of experience under the revised orders, and probably should not be expected to adjust during the period in which this proceeding is under consideration, the marketplace should, in time, make the needed adjustments.

Various witnesses estimated that Grade A and Grade B butter combined make up 3–7 percent of the butter in the U.S. Although a witness noted that the Minnesota-Wisconsin (M–W) price for non-Grade A milk continued to be surveyed even after the percentage of milk eligible for the survey had fallen below a 5-percent level, it was widely recognized for some time that a pricing alternative to the M–W must be found because the M–W eventually would no longer provide a representative price for a large volume of unregulated milk. Similarly, with the decline of Grade A butter (and the unavailability of prices for that product), the only alternative available for determining price is Grade AA butter. A finding in the equivalent price determination that a Grade A butter price was "essential" to continued operation of the orders referred solely to the fact that the Grade A price was specified in all of the orders at that time, not that the butterfat value under Federal milk orders could never be based on any other price.

Making an adjustment to a clearly valid price series to approximate a price series that has been discontinued for several years due to insufficient volume for trading is inappropriate. In any case, it is impossible to determine what the current difference between these prices would be because there are no reports of the Grade A price available. The vast majority of butter made and sold in the U.S. is Grade AA, and that is the appropriate product to which to look for a value of butterfat used in butter. The 3-cent average difference between the CME and NASS butter prices makes up ⅔ of the 4.5-cent adjustment made by California in calculating the value of butterfat used in butter. An additional 6 cents deducted from the Class IV butterfat price calculated from the NASS price would much more than make up the remaining 1.5-cent difference. Also, the 4.5-cent California adjustment is made for the purpose of reflecting the cost of moving butter from California to Chicago. The butterfat price calculated under the Federal order program is not intended to apply to only one state. The NASS price is a nationwide survey, and likely includes a significant representation of California butter prices. If there are additional costs involved in making butter, they would more appropriately be included in the make allowance for butter.

Make Allowance (Butter). The make allowance factor in the Class IV butterfat formula should be derived from a combination of the manufacturing costs determined by the California Department of Food and Agriculture (CDFA) and by USDA's Rural Business Cooperative Service (RBCS), as they were in the final decision. The CDFA cost data is divided into two groups representing high cost and low cost butter plants, with the 4 plants in the high cost group manufacturing, on average, about the same average number of pounds of butter as the 7 plants in the RBCS study. Use of the data for the California high-cost group of butter plants is more appropriate than use of the weighted average cost for all of the CDFA plants because it is more likely that the high-cost plants, like the plants in the RBCS survey, serve a predominately balancing function.

When the RBCS data is adjusted to reflect the same packaging cost, general and administrative costs, and return on investment as the CDFA data for the high cost group, and a marketing allowance of $0.0015 is added to both sets of data, the weighted average of the two data sets is $0.115. This butter manufacturing allowance is very close to the current allowance of $0.114, and should continue to provide a representative level of the costs of making butter in plants that serve a balancing function.

The increased costs of making butter, not including transportation, cited by the proponents of reducing the Class IV butterfat price are expected to be included in this manufacturing allowance, which exceeds the low cost group in the CDFA survey by 3 cents per pound. The only class of use for which adjustments for transportation have regularly been included under Federal order regulation is Class I. Assuring that the order provides an allowance for moving milk for use in manufactured products would interfere with provisions designed to assure an adequate supply of milk for fluid use.

Yield (Butter). Although one witness suggested that the divisor in the butter price formula that reflects the butterfat content of butter be reconsidered, he did not indicate any number more appropriate than the .82 divisor used in the current formula. There was no other testimony in the record questioning the butter content factor. In fact, the only data in the record applicable to the issue was a CDFA report on butter and powder yields at California plants in 1996 that was included in an exhibit. This report shows a 1.2213 weighted average butter yield (1 pound of butterfat results in 1.2213 pounds of butter), which corresponds to the use of the .82 divisor.

The record does not support adoption of a Class IV butterfat price that is not reflected directly in the Class II butterfat price. There was testimony from several witnesses that the current Class IV-Class II price relationship is rational and appropriate, and an adjustment to the Class IV butterfat price that is not reflected in the Class II butterfat price would disrupt the current relationship.

In addition, it would seem reasonable that some of the extra costs claimed by butter manufacturers, such as transportation costs for supplemental cream supplies, butterfat standardization of outside cream sources, and additional pasteurization would be as applicable for Class II manufacturers of high-fat products using surplus cream as for butter makers. Accordingly, reduction of the Class IV butterfat price only is not considered appropriate.

Class IV Nonfat Solids Price. This decision maintains the use of the NASS survey price reported for nonfat dry milk and increases the make allowance for nonfat dry milk from 13.7 cents to 14 cents per pound of nonfat dry milk. In addition, the 1.02 divisor used in the current nonfat solids price formula to reflect the incorporation of dry buttermilk (with a lower product price and higher make allowance) in the nonfat solids price formula is changed to 1; or, in other words, eliminated.

Six proposals to change some part of the nonfat solids price formula were considered at the hearing. Three of the proposals dealt with the manufacturing allowance for nonfat dry milk (NFDM), with two of the proposals advocating use of the RBCS survey results and one proposal supporting an increase in the make allowance. The other three proposals supported changes in the yield factor of the nonfat solids price formula that would reflect greater powder yield from a pound of nonfat solids. Two of the proposals to change yield factors included using CME NFDM prices instead of the NASS survey. As discussed earlier in this decision, the product prices used in the component pricing formulas should continue to be obtained from the NASS survey.

Product Price (Nonfat dry milk). No proposals were considered that would have changed the product price used in the nonfat solids price formula, and the record contains no basis for making any change in this formula factor.

Make Allowance (Nonfat dry milk). At the time the hearing notice was issued, the most recent RBCS data were not available, and those costs were not specified in the proposals. By the time the hearing was held, however, the RBCS data had been released and were included in the information introduced at the hearing. National Milk Producers Federation (NMPF) supported continued use of a weighted average of the California and the RBCS manufacturing cost surveys, with inclusion of a marketing allowance and the California factor for return on investment. NMPF proposed that the NFDM make allowance be $0.140.

South East Dairy Farmers Association also proposed that the RBCS survey be used to determine a make allowance for NFDM, but did not propose that a marketing allowance be included. The necessity of including a marketing allowance is discussed earlier in this decision.

Associated Milk Producers, Inc. (AMPI), proposed that the NFDM manufacturing allowance be increased from $0.137 to $0.1563, a rate based on AMPI's cost of making NFDM at its own three plants in the upper Midwest over a 5-year period. The AMPI witness stated that in addition to a processing and packaging cost of $0.1254, the make allowance should include a marketing allowance of $0.0024 and return on investment of $0.026, for a total allowance of $0.1538, modified from the level proposed in the hearing notice. The witness testified that the three AMPI plants operate at approximately 80 percent of capacity.

On the basis of the data and testimony included in the hearing record, the manufacturing cost level that appears to be most appropriate for use in the pricing formula for nonfat solids is $0.14. This value is calculated by using a weighted average of the RBCS survey and the two less-cost California groups of plants, adding the California General and Administrative costs and Return on Investment expenses for those two groups to the RBCS numbers, and a $0.0015 marketing allowance to both sets of data. The basis for using the two lower-cost groups of California plants are that the mid-cost group is of a similar average size as the group included in the RBCS survey, and that the lowest-cost California group has a very similar total cost to the mid-cost group. These three groups of plants (the RBCS plants and the two California groups) are similar enough in size and cost to consider as fairly representative, and should encompass those plants that perform a market balancing function. The highest-cost California group should not be included, as its average cost is more than ten cents per pound of NFDM above the RBCS group or either of the other two California groups.

The AMPI cost numbers cannot be included in the weighted average since the number of pounds of NFDM associated with those costs is not available. When the AMPI marketing allowance and return on investment estimates are replaced with the more moderate numbers used in the make allowance calculation, the AMPI manufacturing costs do not differ much from the other two sources. This is true even of a comparison between the RBCS data and the AMPI data despite the wide discrepancy in the capacity utilization percentage estimates for the two data sets (80 percent for the AMPI plants versus less than 50 percent for the plants in the RBCS survey). Inclusion of the AMPI costs in the RBCS survey would have included a larger representation of NFDM manufactured outside California. However, the record indicates that a high percentage of the NFDM manufactured in the U.S. comes from California, and the proportion of cost data representing California in the manufacturing allowance is reasonable.

Yield (Nonfat solids). A considerable portion of the testimony dealing with the nonfat solids pricing formula pertained to the divisor of 1.02, which is intended to reflect the amount of nonfat solids in NFDM, with an adjustment for the small amount of buttermilk powder that is made in conjunction with the manufacture of butter and NFDM. Testimony by a number of witnesses asserted that the product price minus the make allowance should be either multiplied by a number greater than 1 (such as 1.02) or divided by a number smaller than 1 (such as .99 or .975) to reflect the fact that more than 1 pound of NFDM can be expected to be manufactured from 1 pound of nonfat solids due to the moisture content of NFDM.

Many of the hearing participants supported the current 1.02 divisor, and expressed understanding of the approach of adjusting the "yield" of NFDM to compensate for the fact that some of the powdered product made from Class IV milk is buttermilk powder (BMP). Although 1.03 to 1.05 pounds of NFDM generally can be obtained per pound of nonfat solids, the formula also recognizes a lower value and higher manufacturing cost for BMP.

Several witnesses correctly assessed an alternate solution to the dilemma of calculating a component price from two commodities with different prices and different make allowances as one requiring addition of dry buttermilk as another component price in the Federal milk order pricing system. As described by at least one witness, such an undertaking would require adding dry buttermilk to the NASS price survey, determining a separate make allowance, and calculating a yield factor. This procedure would be a burdensome undertaking for very little benefit, since dry buttermilk represents only about 5 percent of the dry products resulting from the manufacture of butter and nonfat dry milk. The issue that remains is how best to reflect the value of nonfat solids used in both NFDM and BMP in the same component pricing formula.

The IDFA witness testified that for the 19-month period beginning with September 1998, the central states' dry buttermilk average price had averaged $0.798 per pound, while the central states' "mostly" price for NFDM averaged $1.043. The Land O'Lakes witness similarly testified that the 1999 Northeast "mostly" price for NFDM averaged $1.0389, while the BMP price was $0.7686 per pound. On the basis of these numbers, it would appear that the price of BMP is roughly 75% that of NFDM. However, comparison of BMP and NFDM prices for the years of 1996 through 1999 and into 2000 reflects a more complex relationship between these prices than the hearing testimony would indicate. The BMP price as a percentage of the nonfat dry milk price (using Western prices) was 100.9% in 1996, 94.5% in 1997, 88 percent in 1998, and 71% in 1999. During the first third of 2000, BMP prices generally averaged less than 70% of NFDM prices. As the year 2000 has progressed, however, the percentage has increased, being at levels up to 100% in late July.

The witness representing Agri-Mark stated that Agri-Mark employees engaged in manufacturing operations had estimated that the costs of producing BMP range from 1 to 3 cents more per pound than those of producing NFDM. Given that the manufacturing costs estimated by the Agri-Mark witness for other products were somewhat higher than those supported by the bulk of the hearing record, it is reasonable to consider the extra cost of manufacturing BMP to be generally not more than 2 cents in excess of the cost of manufacturing NFDM. In addition, it is difficult to justify increasing the powder make allowance for all of the powdered product represented in the make allowance since the RBCS witness testified that manufacturing costs of BMP manufactured at the plants included in the RBCS survey are included in the powder costs reported by RBCS.

Testimony regarding actual yields of NFDM and BMP were provided by only one witness representing a manufacturing plant operator. The numbers provided, while not complete enough for an exact accounting of the ultimate disposition of the plant's receipts of producer milk, indicate strongly that the approximate loss of nonfat solids used in the manufacture of NFDM at the specific plant was 3 percent, with 16 percent lost in the manufacture of BMP; a weighted average loss of more than 3.5 percent. In comparison, data published by the State of California showed a weighted average loss of solids not fat of 2.13 percent in the manufacture of butter and powdered products.

The California data indicate a weighted average powder yield of 1.0252 pounds of NFDM and BMP from 1 pound of nonfat solids. One witness discounted this data by observing that the "high" California yield was reported as 1.0406, which would represent a higher-than-allowable moisture content. This number is undoubtedly influenced by the "high" reported BMP yield of .0749.

As noted above, the general impression conveyed by testimony in the hearing record, that BMP is worth considerably less than NFDM and that the cost of processing it is significantly greater than that of processing NFDM, is misleading. The average BMP price over the period 1996–July 2000 is approximately 87 percent of the NFDM price, and the cost of manufacturing BMP is, on the basis of the information available, no more than 2 cents in excess of the $0.14 recommended as the NFDM make allowance. These small adjustments to the product price and the make allowance used in the nonfat solids formula apply to little more than 5 percent of powder manufactured. It is apparent from the information contained in the record of this proceeding that the 1.02 factor, as a divisor, is excessive.

The following information from the hearing record was used to determine a multiplier or divisor for the total nonfat solids pricing formula that would result in a minimum price for nonfat solids while incorporating the data and testimony in the record about the manufacture of NFDM and BMP. To assure that the result represents a minimum price, the low or high areas of ranges of numbers related to the manufacture of these two products were used. The CDFA report on butter and powder yield in California plants in 1996 was used in making some of the calculations regarding this factor.

a. The price of BMP represents roughly 80 percent of the price of NFDM (80 percent is less than the average historical relationship of these prices over the past 5 years).

b. The cost of manufacturing BMP is not more than 2 cents greater than the make allowance for manufacturing NFDM.

c. Using a theoretical yield of 1.03 pounds of powder containing 3 percent moisture made from milk containing 8.62 percent nonfat solids would result in .054 pounds of BMP and .976 pounds of NFDM.

d. Adjusting the theoretical yield of 1.03 pounds to minimal yield of 1.01 pounds (the "low" yield in the CDFA report) and prorating the BMP and NFDM to 1.01 pounds instead of to 1.03 pounds, the amount of BMP manufactured from a pound of nonfat solids used in butter/powder is approximately .053 pounds. When the NFDM yield is prorated, the resulting minimum yield is .957 pounds.

Using a NFDM price of $1.03 per pound, a make allowance of $0.14 cents per pound of NFDM, and a divisor (or multiplier) of 1, the resulting calculation is: $1.03 − $0.14 = $0.89 per pound of nonfat solids. The same result is achieved through a more complicated calculation using both product prices and make allowances, as follows:

Buttermilk powder:

($1.03 × .80) − $0.16 = $0.664; $0.664 × .053 = $0.03519 + Nonfat dry milk:

$$\$1.03 - \$.014 = \$0.89;\ \$0.89 \times .957 = \frac{\$0.85173}{\$0.88692}$$

(Rounded to $0.89)

Therefore, no multiplier or divisor is necessary in this formula.

c. Class III Butterfat, Protein and Other Nonfat Solids Prices

In a change from the current orders, a Class III butterfat price is calculated from the value of butterfat in cheese rather than using the same butterfat price as is used in Class IV that is calculated from the value of butter. The Class III butterfat price, like the protein price, is calculated to represent the value of the component in the NASS cheddar cheese price. The only modification made to the specifications of the cheese price, currently a weighted average of the prices of cheese sold in 40-pound blocks and 500-pound barrels (with a 3-cent addition to the barrel price) is to adjust the price of 500-pound barrels to 38 percent moisture instead of the 39 percent moisture price currently reported by NASS.

This decision would reduce the make allowance for cheese from 17.02 to 16.5 cents per pound. Using the Van Slyke cheese yield formula to represent the effects of butterfat and protein on cheese yield, the cheese price minus the make allowance is multiplied by 1.582 to calculate the Class III butterfat price, while the cheese price minus the make allowance is multiplied by 1.405 to calculate the protein price. The portion of the current protein price formula that adjusts the protein price to accommodate the differential value of butterfat in cheese, as opposed to butter, is eliminated. Both the protein and butterfat components of milk used to make cheese should track the cheese price much more closely than has been the case using the current Class III component pricing formulas.

The other nonfat solids price would continue to be calculated by subtracting the make allowance from the NASS-reported price for dry whey and dividing by .968. However, the make allowance is increased from 13.7 cents to 14 cents per pound of dry whey.

Class III Product Price (Cheese). Several proposals included in the hearing notice would, if adopted, change the NASS cheese price used in the Class III pricing formulas. One proposal would limit the cheese prices included to 40-pound blocks reported by the Chicago Mercantile Exchange (CME), while another would add 640-pound blocks to the prices surveyed by NASS for inclusion in the cheddar cheese price. A third proposal would replace the current 3-cent price adjustment between 500-pound barrel prices and 40-pound block prices to a value that reflects the actual differential industry cost of making 40-pound blocks over 500-pound barrels. Still another proposal would adjust 40-pound block cheese prices for moisture, as 500-pound barrel prices are adjusted.

As discussed above, CME commodity prices should not be used as the basis for calculating component prices. Eliminating 500-pound barrels, which represent approximately two-thirds of the cheese represented in the NASS survey, from calculation of the market value of cheddar cheese would reduce greatly the degree to which the current product prices represent U.S. cheddar cheese prices. The record of this hearing provides no support for relying solely on prices for 40-pound blocks to identify a market price of cheddar cheese.

The NASS weighted average cheese price should not include the value of 640-pound block cheese. Several parties testified that including 640's in the cheese price computation would improve the reliability of the average cheese price by adding a substantial quantity of cheese to the price survey. Witnesses' estimates of the percentage of U.S. cheddar cheese production represented by 640-pound blocks ranged from 20 to 27 percent. Witnesses testified that the increased volume would better reflect the true value of cheese and additionally would reduce the potential for price distorting manipulation by individual handlers.

Opponents to inclusion of the 640's in the cheese price computation explained that the vast majority of 640's are made on a custom basis to customers' specifications, and therefore are not sufficiently uniform to have a standard identity.

Without a standard identity for the product, standardized pricing cannot be developed. At the beginning of the NASS survey, price data for 640-pound blocks initially was collected, but was discontinued due to lack of volume and too few participants to allow disclosure of data. Even earlier (1995–96), the former National Cheese Exchange attempted to include trading in 640-pound blocks, but discontinued doing so because of lack of interest. Several of the witnesses who testified in favor of including 640-pound blocks in the NASS survey also indicated that the 640-pound blocks manufactured by their organizations are used internally. Thus, the prices represented by these products would not be eligible for inclusion in the NASS survey.

Several witnesses at the hearing and comments contained in post-hearing briefs advocated reducing the three-cent adjustment that is added to the barrel price for computing the weighted average cheese price to one cent or eliminating it altogether. The witnesses argued that since the barrel cheese price is adjusted to 39 percent moisture and block cheese is approximately 38 percent moisture, at least 2 cents of the observed difference in price between 40-pound blocks and 500-pound barrels is due to moisture and has nothing to do with actual differences in costs. In fact, they argued that there is no difference in packaging costs between block and barrel cheese.

The witness for DFA, a cooperative that manufactures cheese packaged in both 40-pound blocks and 500-pound barrels, testified that three cents is an acceptable and reasonable spread between blocks and barrels and that there is no compelling reason to change the three-cent addition to the barrel price. The witness for LOL testified that the three cents is an appropriate difference between blocks and barrels and that adding three cents to the barrel price when computing the weighted cheese price is an appropriate adjustment. A brief filed on behalf of DFA and the Association of Dairy Cooperative in the Northeast argued that the record supports a conclusion that the 3-cent adjustment of the barrel price is attributable to volume utility and cost differences in packaging and handling.

The National Cheese Institute, which proposed reducing or eliminating the 3-cent adjustment, argued that the adjustment should include only the actual cost differences involved in manufacturing and packaging the two sizes of cheese. Although a number of witnesses representing cheese manufacturers testified in favor of reducing or eliminating the adjustment, including one whose employer makes both sizes of cheddar, none of them addressed the actual cost differences of packaging and manufacturing 40-pound blocks and 500-pound barrels. Instead, the only testimony that was offered involved attributing a 2-cent difference to the moisture-adjusted value of the two sizes of cheese packages.

If the difference between the block and barrel prices were due to the difference in moisture, the difference between the prices should widen as the cheese price increases since the moisture adjustment is based on the price and moisture of the cheese. An analysis of historical cheese prices indicates that the difference between the block cheese and barrel cheese prices does not change with changes in price level. In fact, three of the largest differences between the block and barrel prices occurred at approximately the 40-month NASS weighted average monthly prices.

The record contains no basis for concluding that the actual cost of manufacturing and packaging the two sizes of cheese is not the historical 3-cent price spread. In fact, during the period September 1998 through June 2000 the difference between the block and barrel prices has been 4.4 cents per pound. The record of this proceeding does not support reducing or eliminating the 3-cent addition to the barrel cheese price.

An expert witness, and several other witnesses, testified that the moisture content of the cheese used for determining the NASS cheese prices and the moisture content used in the Van Slyke cheese yield formula used for computing the "yield" coefficients in the protein formula should be the same. The witnesses explained that failure to align the formula and the moisture

content represented by the cheese price survey would result in over or understating the formula coefficients.

The expert witness explained that the barrel cheese price is reported at 39 percent moisture after being adjusted from the actual moisture, while the block cheese price is reported at an unknown moisture level. The only testimony dealing with the actual moisture level of block cheese indicates that it averages about 38 percent.

The coefficients originally used for determining the Class III protein price and the Class III butterfat price, and used in the formulas in this decision, were derived from using the Van Slyke cheese yield formula at 38 percent moisture. Therefore, it is appropriate to use cheese prices that reflect cheese containing 38 percent moisture. The current practice of using the 40-pound block cheese price unadjusted for moisture and the 500–lb barrel price adjusted for moisture should be continued, but with the barrel price adjusted to 38 percent moisture instead of 39.

The hearing record provides no basis for altering the composition of cheese prices surveyed for use in the Class III pricing formulas, or for changing the calculation of the NASS weighted average cheese price, other than the moisture adjustment to 38 percent for 500-pound barrels.

Several witnesses testified that types of cheeses other than cheddar should be included in the NASS price survey as a more comprehensive basis for identifying a cheese price, although such a proposal was not included in the hearing notice. The cheddar cheese included in the NASS survey meets certain standard criteria that makes prices for the reported cheese sales comparable. If the survey included other descriptions of cheddar and other types of cheese, such as mozzarella, it would not be possible to consider the reported price as representative of the value of any particular product. Further, the manufacturing costs surveyed are, to a great extent, limited to the costs of processing cheddar cheese.

Class III Make Allowance (Cheese). Several proposals to adjust the manufacturing allowance for cheese were included in the hearing notice and considered at the hearing. The NMPF witness testified that the organization had determined that the most appropriate cheese make allowance would be a weighted average of the updated RBCS and CDFA surveys, with addition of a marketing allowance, and modified the Federation's proposal accordingly, supporting adoption of a cheese make allowance of $0.1536. Several witnesses representing cooperative associations supported the NMPF $0.1536 proposal and the inclusion of cost factors for a marketing allowance and return on investment. One witness testified that the make allowance should be based on data from actual plant operations through the surveys conducted by RBCS and CDFA and testimony from individual plant operators; that it should include California data, as California plants represent a large proportion of cheese manufacture; and that it should be generous enough to assure adequate plant capacity for continued manufacture of cheese.

The witness representing NCI testified that the cheese make allowance should be no less that $0.1687, the weighted average of the NCI-sponsored and CDFA surveys with the addition of a marketing cost of $0.0011. He stated that such an allowance would represent the production of 24 cheese plants and 53% of U.S. cheese. Several cheese manufacturer representatives supported use of the NCI-supported make allowance, stressing the importance of adoption of an allowance that covers *all* of the costs of manufacturing cheese.

A witness representing Farmers Union and the American Farm Bureau witness both supported adoption of a make allowance of $0.1521, as a weighted average of RBCS and CDFA data, and a witness for National Farmers Organization supported a make allowance of $0.141 composed of the RBCS cost with the addition of a marketing allowance and return on investment.

The make allowance used for computing the Class III protein and butterfat prices, $.165, was determined by combining the CDFA plant survey with the RBCS survey. As was pointed out by several witnesses at the hearing, several cost factors that are necessary to maintain the viability of processing plants are not represented in one or both of the RBCS and the CDFA studies. These cost factors include marketing costs, return on investment, and general and administrative expenses. A discussion of these expenses is included earlier in this decision. Neither the CDFA nor the RBCS survey included a marketing cost, so the $0.0015 marketing allowance was added to both studies. In addition, the CDFA return on investment cost of $0.0103 and general and administrative expense of $0.0190 was added to the RBCS study, which included neither factor. The resulting adjusted costs for each survey are $0.1708 for RBCS and $0.15996 for CDFA. A weighted average of the two studies was computed using the respective adjusted make allowances and the pounds of cheese reported in each study; 466,396,548 for the CDFA study and 633,142,812 for the RBCS study, to arrive at the Class III price make allowance of $0.165.

Class III Butterfat Price (and effect of butterfat on cheese yield). Testimony at the hearing and analysis of the relationship between the current cheese, butterfat and protein prices revealed that the current Class III pricing formulas cause inequities in producer payments based on the relationship between producers' butterfat and protein tests. The inequities were attributed to the use of the 1.28 factor used in the portion of the protein price formula that is designed to incorporate the butterfat value of milk used in cheese that is not already accounted for by the Class III and IV butterfat price. Further analysis also revealed that there is very little relationship between the current butterfat price and the cheese price or between the current protein price and the cheese price.

Under the current system, market distortions occur due to using the Class IV butterfat price, calculated from the value of butterfat in butter, to also represent the value of butterfat in cheese, (Class III), and trying to incorporate the difference in value in the protein price. As a result, instances have occurred when the protein price declines while, at the same time, the cheese price is increasing. This outcome is completely contrary to the concept of pricing components on the basis of the value of the products in which they are used. The same inverse price scenario has affected the butterfat price, with occurrences in which the Class III butterfat price increases because the butter price has increased while the cheese market has been declining. For example, in April of 2000 the protein price was $1.7399, based on a cheese price of $1.1011, while in May the cheese price increased slightly to $1.1022 but the protein price declined approximately $0.18 to $1.5514. The decline in the protein price was directly attributable to the increase in the butter price and the resulting increase in the butterfat price.

The reasons for using the same butterfat price in Class III and Class IV under Federal order reform have been outweighed by the outcome of that decision. The pricing concept of reflecting the value of a manufactured product in the prices for the milk components that are instrumental in the yield of that product require that the Class III protein and butterfat prices be tied more directly to their value in the cheese that is produced using those components. Therefore, it is necessary to separate the value of butterfat used in the manufacture of cheese from the value of that component in butter. The pricing system contained in this decision will eliminate the distorted relationships between the Class III butterfat and protein prices and the cheese price.

Calculating the Class III butterfat price on the basis of the effect of butterfat on cheese yield, as described in the Van Slyke cheese yield formula, rather than from the butter price makes alternative uses based on price differences clearly visible. The Class III butterfat price formula should be:

(NASS weighted average cheese price − .165) ×1.582. Adoption of more logical relationships between the value of butterfat and its various uses will allow butterfat to move to the use with best return.

Protein price (and effect of protein on cheese yield). The method of computing the protein price described in this decision results in a protein price that, like the recommended Class III butterfat price, has a 100 percent correlation with the cheese market. In addition, the recommended formula eliminates many of the problems discussed at the hearing concerning the current formula. The protein price formula will be modified by removing the butterfat portion of the formula. Removal of the butterfat pricing factor from the protein price formula eliminates the contentious issue of the 1.28 butterfat-to-protein ratio.

As contained in this decision, the protein price will be: (NASS weighted average cheese price − .165) ×1.405.

Class III—Other Nonfat Solids Price (Dry Whey)

This decision continues to calculate the price of the nonfat solids other than protein in milk used to make cheese by subtracting a manufacturing allowance from the NASS dry whey price and dividing the result by the content of these "other nonfat solids" in dry whey. No change is made, or was proposed, in the dry whey product price or divisor in the formula. The manufacturing allowance for dry whey is increased from 13.7 cents to 14 cents per pound of dry whey to reflect the increase in the NFDM make allowance. The decision would snub the other nonfat solids price at zero rather than allowing it to become a negative factor in determining payments to producers.

The hearing included several proposals that would change the dry whey or other solids price formula by changing the make allowance. Although the hearing notice included a proposal to use the CME average dry whey price, the proponent withdrew support for the proposal when it became apparent that the CME has no cash exchange market for dry whey. The NASS survey that currently is being used to identify commodity prices has included price data on dry whey since September 1998. There were no proposals to change the 0.968 yield factor in the other solids price formula. The 0.968 factor reflects the solids content of dry whey, given a 3.2 percent moisture content.

Make Allowance (Dry Whey). Since the most recent CDFA and RBCS cost surveys did not include costs for drying whey, there is no information from those two studies to use for computing the dry whey make allowance. A witness from the National Milk Producers' Federation suggested using the nonfat dry milk manufacturing cost allowance for dry whey since both products involve similar processing equipment, and then adding $0.01 per pound to reflect the additional energy and higher equipment costs incurred in drying whey. Since the proposed make allowance for nonfat dry milk is $0.140, this procedure would result in a dry whey make allowance of $0.150.

Dairy Farmers of America (DFA) proposed a dry whey make allowance of $0.1478 per pound based on costs at its plant at Smithfield, Utah. The plant is a cheddar block plant running throughout the year that condenses and dries whey from the cheese manufactured in this Smithfield plant only. The DFA costs include both direct and indirect costs, and return on investment and marketing cost data.

A witness from WSDPTA testified that there is no reason to change the other solids price computation from the current formula, and that it is a necessary component of the cheese pricing formula. He noted that the use of dry whey as a commodity is correct and that the 0.968 factor in the pricing formula reflects 96.8 pounds of solids in 100 pounds of dry whey.

Most witnesses who testified about the cost of drying whey expressed the belief that drying whey costs more than drying nonfat dry milk. Two cooperative association witnesses testified that their organizations have determined that the returns from whey powder with the current make allowance would not cover the costs associated with building and operating whey powder plants.

IDFA presented the results of the survey, discussed earlier in this decision, contracted for by NCI. The IDFA witness testified that the survey showed a dry whey make allowance of at least $0.1592. The IDFA witness testified that using the nonfat dry milk make allowance significantly understates the manufacturing cost of dry whey due to the relatively higher percentage of water in liquid whey compared to skim milk, and the additional crystallization process required.

A witness representing Leprino Foods testified on the differences in the manufacturing processes for dry whey and nonfat dry milk that result in higher costs to produce whey powder. The witness concluded that the cost of making dry whey is $0.02559 above the cost of drying nonfat dry milk.

The brief submitted by Leprino argued that the additional costs of processing whey powder over those of processing nonfat dry milk should include additional staffing, cleaning, and maintenance associated with the additional equipment for whey product.

A witness from Kraft agreed that the dry whey manufacturing costs are about 2.6 cents per pound greater than the nonfat dry milk manufacturing costs. Although Kraft described its Tulare plant as large and efficient, it also represents a recent capital investment, meaning that depreciation costs are likely higher than average.

Although a number of witnesses testified that the cost of drying whey is greater than that of drying nonfat milk, the record does not provide clear support for any particular differential over the NFDM make allowance. The differential costs of manufacturing whey powder over those of nonfat dry milk do not provide close enough agreement with the NCI-sponsored survey to use either means of determining a make allowance with any confidence. Neither of the witnesses who testified that the extra costs of drying whey are 2.6 cents greater than the costs of drying nonfat dry milk testified about the total costs of the operations they were describing. Therefore, the make allowance used to calculate the other solids price should continue to be the same as that used in the total nonfat solids component price formula. The other solids price will be computed by subtracting the make allowance of $0.14 from the NASS dry whey survey price and dividing the result by .968.

The other solids price should be snubbed at zero. This means that if the NASS dry whey price minus the make allowance results in a negative number, the other solids price would become zero. A brief filed by Michigan Milk Producers Association (MMPA) supported the inclusion of such a "snubber" concept for the whey price. The brief cited testimony in which the DFA witness referred to the difficulty of explaining to producers a negative component price.

The value of other solids used in the Class III milk price should add to the value of milk and not be allowed to subtract from the milk value. Snubbing the other solids price to zero will prevent it from negatively affecting the value of other Class III components or having a negative impact on the producer price differential.

d. Effects of Changes to Class III and Class IV Price Formulas

The changes to the Class III and Class IV component price formulas discussed above would result not only in changes to the respective component prices, but to the resulting Class III and Class IV skim milk and hundredweight milk prices at 3.5 percent butterfat. With the exception of the 38-percent moisture adjustment to barrel cheese prices, all of the differences calculated between the current prices and the proposed prices are due to changes in the formulas' make allowances and/or the "yield" coefficients.

It is important to note that these calculated class price differences are based on historical product price data, and not on product prices that will occur in the future. The price differences calculated in this portion of the decision cannot be used to calculate or estimate changes in revenue that would have occurred or may occur in the future, as changing intersections of supply and demand for each product result in different prices.

All of the comparisons that follow are calculated based on the NASS weighted average commodity prices from September 1998 through June 2000. NASS weighted average commodity prices for this time period were available, and no estimates of the relevant commodity prices need to be made. Although this time period is relatively short, a number of interesting price relationships occurred in the data series. For instance during this period the cheese market went from a record high of $1.8643 per pound to $1.1011 per pound, which is just over the $1.10 per pound support price for 40-pound blocks of cheddar. During this same 22-month period the NASS weighted average nonfat dry milk price showed almost no movement, ranging from $1.0864 per pound to $1.0071 per pound, approximately two cents below the support price. In fact, the nonfat dry milk price has stayed below the support price since March 1999. Unlike the cheese and nonfat dry milk market, the butter price has not traded anywhere near the butter support price of $0.65, trading in a range from $2.6726 per pound to a low of $0.8820 per pound. It is important to keep in mind that since all milk is priced on the basis of butterfat and skim or nonfat components under Federal orders, focusing on the calculated hundredweight prices at 3.5 percent butterfat that are announced for comparison purposes can result in misleading conclusions.

Changing the Class IV butterfat price make allowance from $0.114 to $0.115 results in a calculated average decline in the Class IV butterfat price of $0.0012 over the 22-month period studied. The two changes to the Class IV nonfat solids formula, increasing the make allowance from $0.137 to $0.140 and eliminating the 1.02 divisor, would result in a net increase of $0.0144 per pound in the Class IV nonfat solids price in the absence of any other changes. Since the Class II prices are to continue to be computed on the basis of the Class IV formulas plus the Class II differential of $0.70, changes to the Class II prices will be the same as the changes to the Class IV prices. The calculated Class IV skim milk price would increase by an average of $0.13 per hundredweight. The calculated 3.5 percent Class IV milk price would increase by an average of $0.12 per hundredweight, reflecting the net difference between the $0.13 increase in the skim milk price and the very small decline in the Class IV butterfat price.

As a result of the 38-percent moisture adjustment to barrel cheese prices, the NASS weighted average cheese price used for computing the Class III protein and Class III butterfat price would be calculated to have increased by $0.014 per pound over the 22-month period September 1998 thru June 2000.

The changes to the formulas used to compute the Class III component prices would result in fairly significant changes to the component prices, as might be expected. For instance, since the current Class III butterfat price is based on the butter market and the proposed butterfat price is based on the cheese market, the proposed Class III butterfat price would average $0.4651 per pound above the current Class III butterfat price over the 22-month period if cheese and butter prices had been the same. However, the component prices are expected to track the underlying commodity prices to a much greater extent than they did previously.

The change in the protein formula over the past 22 months would result in a calculated protein price averaging approximately 53 cents below the current protein price. At the same time, the increase from $0.137 to $0.14 in the dry whey make allowance for calculating the other solids price results in a calculated decline in the other solids price of $0.003 over the 22-month period. The combination of the reductions in both the protein price and the other solids price would have resulted in an average $1.65 decrease in the Class III skim milk price over the 22-month period if cheese and dry whey prices were unchanged.

The calculation of the Class III price at 3.5 percent butterfat, based on the formulas contained in this decision, would have averaged $0.02 per hundredweight above the 3.5 percent Class III price based on the current Class III formulas.

4. Class Price Relationships

The price relationships between classes established in the Final rule under the Federal order reform process should be maintained. One proposal heard in this proceeding would have reduced the Class IV butterfat price without affecting the computation of other butterfat or product prices. That proposal is addressed specifically in the section of this decision dealing with Class IV Butterfat price.

Several witnesses testified as to what the class price relationships should be if changes were made to any of the Class III or Class IV component price formulas. The current pricing system uses the same formulas for computing the advance component prices used to compute the Class I skim milk and butterfat prices and Class II skim milk price as are used to calculate the Class III and Class IV component prices. The witness for IDFA and several other parties stated that any changes to the Class III and Class IV formulas should also apply to the advance price formulas used for computing the Class I and Class II prices. The witness explained that failure to use the same formulas between the related classes of use would result in a direct impact on the Class I and Class II differentials which was clearly not the intent of Congress when Congress instructed the Secretary to conduct a rulemaking proceeding concerning the Class III and Class IV price formulas.

A witness for Hershey Foods pointed out that the Secretary went to great lengths to justify the seventy-cent Class II differential above the Class IV price. The witness said that there is no justification or new evidence for changing the current price relationship that exists between the manufactured products (butter and nonfat dry milk) and the Class II price if the Class IV formulas were revised as suggested in several proposals. The witness stated that such changes in price relationships clearly were not the intent of Congress. A brief filed on behalf of IDFA stated that the correct price relationship between NFDM and Class II is 70 cents, and that the record provides no basis for changing that relationship. Actually, as explained in the final decision on Federal order reform, 70 cents represents the correct price relationship between milk used to make dry milk powder and milk used in Class II, as nearly as can be determined from the information available.

A proposal by two parties that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices was supported in testimony by one of the parties, who argued that any increases in the Class I price mover should be balanced with reductions in Class I differentials. The witness stated that the proponents want to be sure that Class I prices are not further decoupled from Class III and Class IV pricing formulas, or that Class I prices are not artificially inflated.

Neither the price relationships established in the final decision between milk used in Class III or Class IV and milk used in Classes I and II should be changed. To the extent that there may be differences in the Class III or Class IV prices between the current prices and those adopted in this decision as a result of adjustments to the component pricing formulas, those changes should be reflected in the Class I and Class II prices. Any reevaluation of the formulas used to price the components used in manufactured products should be carried through to the class prices that are based on those component prices. A change in the computation of the nonfat solids price, for instance, is intended to better reflect the value of those solids in dry milk products. If the new nonfat solids price formula results in an increase in the Class IV price, the record provides no basis for changing the difference in the value of the milk used in those solids between Class IV and Class II use. Similarly, the availability of milk for use in Class I is related to the higher of the alternative manufacturing values for that milk. The current relationships should be maintained.

5. Class I Price Mover

Although not included in the hearing notice, a proposal was made by Family Dairies, USA, to change the Class I price mover from the higher of the Class III and Class IV prices to a weighted average of the two. The witness for Family Dairies testified that the results of the current regulation are disturbing and unanticipated with the unexpected strength of the Class IV price relative to Class III. He complained that 10 percent of production under Federal orders (milk used to make nonfat dry milk) has been driving the (Class I) price of 40% of the milk. As a result, he testified, milk production for fluid purposes is encouraged in markets with high Class I differentials and relatively high Class I use at a time when marketing conditions (an oversupply of milk) should have the opposite effect. As fluid-oriented markets are receiving increased prices relative to markets in which cheese is the dominant use, he complained, inequities in blend prices between markets are increasing.

A group representing upper Midwest producer interests filed a brief that described the recent movement of milk from the Upper Midwest pool onto the Central and Mideast marketwide pools as disorderly marketing caused by increases of Class I prices in these higher-Class I use markets. This shift in the pooling of milk from the upper Midwest to higher-valued markets has been a long-sought outcome on the part of upper Midwest producer groups. It is difficult to understand why it is now seen as a manifestation of disorderly marketing.

A brief filed by another group representing fluid milk handlers suggested that USDA should give careful consideration to the proposal to use a weighted average of the Class III and Class IV prices to move Class I prices. Any means of reducing Class I prices to handlers should meet with the approval of these processors, regardless of the economic merits of the proposal.

In several briefs it was argued that the Regulatory Impact Analysis (RIA) published with the final decision on Federal order reform stated that the price formulas adopted therein were expected to generate a sufficient quantity of milk, and that both the adoption of Class I pricing option IA and use of the higher of the Class III and IV prices as the price mover have worked to enhance Class I price levels. It should be noted that use of the higher of the Class III and IV prices was included in that decision and considered in the RIA, not added later by Congress, as was the change in the Class I pricing surface.

Another brief argued that since the 1960's the dairy industry has used a Class I mover tied to a market-clearing price represented by a weighted average of milk used in butter, cheese and powder. The price referred to, first the Minnesota-Wisconsin price series, and later that price adjusted by a weighted average of current product prices for the products mentioned, was specific to the upper Midwest area and included very little powder, as that area manufactures a higher percentage of cheese, relative to NFDM, than the rest of the U.S. The current pricing system is much more representative of national supply and demand for manufactured dairy products than either of the versions of the former Class I mover.

As explained in the final decision on Federal order reform, the higher of the Class III or Class IV prices are used to move the Class I price to assure that fluid plants will be better able to attract milk away from manufacturing uses. Use of the weighted average of the two prices when there is a significant difference between them would provide no assurance that milk would be available as needed for fluid uses, and would be more likely to result in Class price inversions (where the Class I price falls below one or more of the manufacturing class prices). In addition, use of a weighted average Class I price mover would increase the occurrence of the blend price falling below the Class III or IV price in markets with low Class I utilization.

Aside from the fact that the proposal to use a weighted average of the Class III and Class IV prices as the Class I mover was not noticed for consideration in this proceeding, it should be rejected on the basis of its lack of merit.

6. Miscellaneous and Conforming Changes

a. Advanced Class I Butterfat Price

Because of changes in the Class III and Class IV pricing formulas made in this decision, especially the adoption of different butterfat prices for the two classes, a conforming change should be made to the procedure for calculating the Class I butterfat and hundredweight prices. The advanced butterfat price used for pricing Class I butterfat would be the butterfat price used in calculating the higher of the advanced Class III or Class IV prices on a 3.5 percent butterfat basis.

b. Classification

As a conforming change to the development of different prices for butterfat used in Class III and Class IV products, the classification of anhydrous milkfat, butteroil, and plastic cream should be changed from Class III to Class IV. The record contains a plethora of testimony about the use of these products as substitutes for butterfat, and therefore for butter, in manufactured products. In a pricing plan where butterfat used in Class III products has the same value as butterfat used in Class IV products, a difference between the classification of these products, which have a very high

butterfat content, and butter should not cause any market dislocation. However, as extensively pointed out in testimony, continuing to classify these products as Class III when the Class III butterfat price is changed to reflect the value of butterfat in cheese, rather than its value in butter, would place the manufacturers of these products at a significant competitive disadvantage to manufacturers of butter.

c. Distribution of Butterfat Value to Producers

There were several responses to the issue of whether the butterfat price paid to producers should be the result of pooling butterfat prices from the different classes or continue to reflect the value of butterfat in Class III. A witness from Northwest Dairy Association testified that being able to line up the Class III price to plants with the component value calculation for producers is helpful, especially with regard to forward pricing. A brief filed on behalf of DFA and ADCNE supported continued use of the Class III butterfat price as the producer butterfat price. According to the brief, changes in direct pricing to the producer are not prudent at this time, and any change between the Class III and Class IV butterfat price should be settled through the producer price differential mechanism in the market order pools. The brief continued that the producer price differential is a blending of various debits and credits in the pooling process and the additional equalizing of any butterfat pricing adjustments through this procedure currently makes the most sense.

The post-hearing brief filed by National All-Jersey urged that USDA retain the current practice of using Class III milk component values to price producer component values. The brief noted that this scenario makes it easier to use accepted hedging tools, such as Class III futures contracts, and helps simplify pricing for producers. The brief further stated that the current procedure maintains the same producer butterfat price in all Federal orders with multiple component pricing.

Although hearing participants supported continuing to use the same butterfat price for Class III milk and producer payments, the butterfat values of the 4 classes should be pooled in calculating the value of butterfat received from producers. Producers should see the classified use value of the butterfat portion of their milk reflected in the value they receive for that component of their milk. Pooling the butterfat values would accomplish this principle. In addition, potential large differences between the Class III and Class IV/II butterfat prices as a result of the Class III component prices calculated from the formulas in this decision would be likely to result in significant distortions in the effect of those differences on the producer price differential. It is possible that pool calculations in some markets would result in a negative producer price differential if the producer butterfat price is not changed to represent a blend of the values of butterfat in the four classes of use.

Pooling butterfat values will also have the effect of providing more consistency among the orders. Currently, the four orders that do not have component pricing pool the class use butterfat values and return a weighted average butterfat price to producers. In the component pricing orders, butterfat values are not pooled and producers receive the Class III butterfat value. Pooling butterfat values to producers will result in producers sharing in the class use value of butterfat.

d. Inclusion of Class I Other Source Butterfat in Producer Butterfat Price Computation

In pooling the class butterfat values to determine butterfat prices to producers, the value associated with the occasional classification of other source milk as Class I should be included. This change should be made so that the value of all of the butterfat in the pool will be reflected in the producer butterfat price.

In addition, a change in the component pricing orders should be made in the paragraph in which the "Handler's value of milk" is calculated by replacing the differential value of other source milk allocated to Class I with the Class I value of that milk. These orders currently subtract the Class III value of such milk from its Class I value in the "Handler's value of milk computation," include that differential value in the "Computation of producer price differential," and credit the handler for the other source milk that was classified in Class I at the producer price differential in "Payments to the producer-settlement fund."

With the adoption of a producer butterfat price that can be expected to differ from the Class III butterfat price, however, it is more appropriate to include in the "Handler's value of milk" the entire Class I value of other source milk classified as Class I, deduct the portion of its producer value that does not include the producer price differential during the computation of the producer price differential, and credit the handler for the milk's value at producer prices in the calculation of "Payments to the producer-settlement fund."

7. Issue of Whether To Omit a Recommended Decision

The statute requiring that this proceeding be held to reconsider the Class III and Class IV pricing formulas also requires that a final decision be published by December 1, 2000, with any amendments to the orders to be effective January 1, 2001.

A number of hearing participants indicated understanding of the difficulty in issuing a recommended decision, allowing for comments and exceptions on the decision, and then issuing a final decision by the deadline of December 1, 2000. However, the hearing record reflects unanimity among those addressing the issue that the industry should be afforded the opportunity to comment on a decision before its content results in a final rule.

Therefore, USDA is issuing this Tentative Final Decision, which will require producer approval before the included proposed amendments become effective in an Interim Final Rule, with a subsequent Final Decision and Final Rule to follow. This procedure will allow industry comment on the content of this decision, while allowing USDA to comply with the statutorily-imposed timetable.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders;

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Referendum Order To Determine Producer Approval; Determination of Representative Periods; and Designation of Referendum Agents

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the Northeast and Mideast marketing areas is approved or favored by producers, as defined under each of those orders, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be May 2000 for the Northeast order and September 2000 for the Mideast order.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Periods for All Other Orders

May 2000 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas are approved or favored by producers, as defined under the terms of each of those orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

September 2000 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest, Central, Pacific Northwest, Southwest, Arizona-Las Vegas and Western marketing areas are approved or favored by producers, as defined under the terms of each of those orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Dated: November 29, 2000.

Enrique E. Figueroa,

Deputy Under Secretary, Marketing and Regulatory Programs.

Interim Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674, 7253, P.L. 106–113, 115 Stat. 1501.

PART 1000–GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by removing and reserving paragraph

(c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(c) * * *

(1) * * *

(ii) [Reserved]

* * * * *

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter, plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text and paragraphs (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), (p)(1), and (q)(3) and adding paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the Class IV butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the advanced Class III or advanced Class IV skim milk price used in the calculation of the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced Class III or advanced Class IV butterfat price used in the calculation of the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the Class IV butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the Class III butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the Class IV butterfat price.

* * * * *

(l) *Class III and Class IV butterfat prices.*

(1) The Class III butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(i) Compute a weighted average of the following prices:

(A) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(B) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(ii) Subtract 16.5 cents from the price computed pursuant to paragraph (l)(1)(i) of this section and multiply the result by 1.582;

(2) *The Class IV butterfat price* per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month less 11.5 cents, with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 14 cents.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed by subtracting 16.5 cents from the price computed pursuant to paragraph (l)(1)(i) of this section and multiplying the result by 1.405;

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 14 cents, with the result divided by 0.968. The other solids price shall not be less than zero.

(p) * * *

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (l)(1)(i) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) Calculate the advanced Class III and advanced Class IV butterfat prices as follows:

(i) The advanced Class III butterfat price shall be calculated by subtracting 16.5 cents per pound from a weighted average of the 2 most recent U.S. average NASS survey prices for 40-lb.block cheese and for 500-pound barrel cheddar cheese (at 38 percent moisture) plus 3 cents announced before the 24th day of the month, with the result multiplied by 1.582;

(ii) The advanced Class IV butterfat price shall be calculated by subtracting 11.5 cents from a weighted average of the 2 most recent U.S. average NASS AA butter survey prices announced before the 24th day of the month, with the result divided by 0.82.

(4) Calculate the advanced Class III and advanced Class IV prices as follows:

(i) The advanced Class III price shall be the sum of the value calculated pursuant to paragraph (q)(1) of this section multiplied by .965 plus the value calculated pursuant to paragraph (q)(3)(i) of this section multiplied by 3.5, rounded to the nearest cent.

(ii) The advanced Class IV price shall be the sum of the value calculated pursuant to paragraph (q)(2) of this section multiplied by .965 plus the value calculated pursuant to paragraph (q)(3)(ii) of this section multiplied by 3.5, rounded to the nearest cent.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. Section 1001.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1001.61, is revised to read as follows:

§ 1001.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1001.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.*

(1) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1001.60(a) through (g) and § 1001.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1001.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1001.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1001.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1001.61(b).

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1001.75 applicable at the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

1. Section 1005.60 is amended by revising paragraph (e) to read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1005.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1005.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other

source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraghs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

1. Section 1006.60 is amended by revising paragraph (e) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1006.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1006.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1006.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

1. Section 1007.60 is amended by revising paragraph (e) to read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1007.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1007.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1007.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1030.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1030.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1030.60(a) through (h) and § 1030.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1030.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1030.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1030.61(b).

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1030.60(i) by the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1030.75 applicable at the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated

under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1032.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1032.60(a) through (h) and § 1032.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1032.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * * *

(e) The producer butterfat price;

* * * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1032.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1032.61(b).

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1032.75 applicable at the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated

under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1033.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1033.60(a) through (h) and § 1033.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1033.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * * *

(e) The producer butterfat price;

* * * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1033.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1033.61(b).

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1033.71 Payments to the producer—settlement fund.

* * * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1033.75 applicable at the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * * *

2. Section 1124.61, including the section heading, is revised to read as follows:

§ 1124.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1124.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Producer price differential. (1) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1124.60(a) through (g) and § 1124.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1124.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1124.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1124.61(b).

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1124.75 applicable at the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. Section 1126.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1126.61, is revised to read as follows:

§ 1126.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1126.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1126.60(a) through (h) and § 1126.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1126.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1126.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1126.61(b).

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1126.75 applicable at the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1131—MILK IN THE ARIZONA-LAS VEGAS MARKETING AREA

1. Section 1131.60 is amended by revising paragraph (e) to read as follows:

§ 1131.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1131.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1131.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1131.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. Section 1135.60 is amended by revising paragraphs (c)(3), (d)(2) and (h) to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1135.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1135.60(a) through (g) and § 1135.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1135.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1135.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1135.61(b).

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1135.75 applicable at the location of the plant from which received.

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the respective butterfat prices for the month;

* * * * *

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§_____ [1] to _____, all inclusive, of the order regulating the handling of milk in the (_____ Name of order _____) marketing area (7 CFR PART _____ [2]) which is annexed hereto; and

II. The following provisions: § _____ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ [4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

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Part VI

Department of Transportation

Federal Transit Administration

49 CFR Part 611

Major Capital Investment Projects; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR PART 611

[Docket No. FTA 99–5474]

RIN 2132–AA63

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) requires the Federal Transit Administration (FTA) to issue regulations on the manner in which candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems ("new starts") will be evaluated and rated. This rule describes the procedures that FTA will use in the project evaluation and rating process. This rule will enable FTA and Congress to identify those new starts projects that should be considered for funding, in part, by the Federal government.

DATES: This rule will become effective on February 5, 2001, except for paragraphs (a)(1)(i)–(ii) and (d) of Appendix A to Part 611 which will become effective on September 1, 2001. Affected parties do not have to comply with the information collection requirements until FTA publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements.

FOR FURTHER INFORMATION CONTACT: For program issues, John Day, Office of Policy Development, FTA, (202) 366–4060. For legal issues, Scott A. Biehl, Assistant Chief Counsel, FTA, (202) 366–4063.

SUPPLEMENTARY INFORMATION:

Electronic Access

Electronic access to this and other documents is available through FTA's home page on the World Wide Web, at http://www.fta.dot.gov.

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, via the Docket Management System (DMS) on the DOT home page, at http://dms.dot.gov. The DMS is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's (GPO) Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page, at *http://www.nara.gov/fedreg*, and the GPO database, at http://www.access.gpo.gov/nara.

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I. Background

The Federal Transit Administration (FTA) is issuing this rule to carry out the requirements of section 3009(e)(5) of TEA–21. This rule defines the process FTA will use to evaluate candidate new starts projects proposed for funding under 49 USC § 5309.

The Notice of Proposed Rulemaking (NPRM) for this Rule was issued on April 7, 1999 (64 FR 17062). The period for public comment closed on July 6, 1999, though late-filed comments were accepted through July 19. See docket #FTA–99–5474.

These procedures replace those in force since the December 19, 1996 **Federal Register** Notice (61 FR 67093), and the November 12, 1997 amendments to this Notice (62 FR 60756), which described the measures used by FTA to evaluate candidate projects for discretionary new starts funding under the statutory criteria in effect at that time.

This rule, together with the FTA/Federal Highway Administration (FHWA) planning and environmental regulations at 23 CFR parts 450 and 771, will flesh out the requirements of 49 USC 5309(e) under TEA–21. The statute now requires candidate projects to be "(A) based on the results of an alternatives analysis and preliminary engineering, (B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies, and (C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension." This rule sets forth the approach FTA will use to evaluate candidate projects in terms of their justification and local financial commitment. Consistent with 49 USC 5309(e)(6), as amended by section 3009(e) of TEA–21, these procedures will be used to approve candidate projects for entry into preliminary engineering and final design. These procedures will also be used to evaluate projects in order to make recommendations for funding in the annual report to Congress required by 49 USC 5309(o)(1).

This rule describes the project evaluation and rating process; it does not define the process by which FTA determines annual project funding recommendations, nor does it define the process by which FTA enters into funding commitments through Full Funding Grant Agreements (FFGAs). These processes are beyond the scope of this rule. The ratings developed under this rule are intended to denote overall project merit, and will form the basis for such funding decisions; however, actual funding decisions will also involve consideration of the amounts of new starts funding available under section 5309 (both annually and over the authorization period), proposed projects' phase of project development, geographical factors, and any outstanding issues that may affect the viability of a proposed project. For purposes of annual budget recommendations to Congress, proposed new starts projects must also be likely to have completed enough of final design that cost estimates are firm and be likely to have in place a fully committed financial plan by the close of the fiscal year for which recommendations for new Full Funding Grant Agreements (FFGAs) are being made.

II. History

Since the early 1970's, the Federal government has provided a large share of the Nation's capital investment in urban mass transportation, particularly for "new starts" (major new fixed guideway transit systems or extensions to existing fixed guideway systems). By the mid-1970's, because of the magnitude of the new start commitments being proposed, the

Department found it useful to publish a statement of Federal policy to ensure that the available resources would be used in the most prudent and effective manner.

A. The First Policy Statement (1976)

The first policy statement was issued in 1976 (41 FR 41512 (September 22, 1976)). It introduced a process-oriented approach with the requirement that new start projects be subjected to an analysis of alternatives, including a Transportation System Management (TSM) alternative that used no-capital and low-capital measures to make the best use of the existing transportation system. The Statement also required projects to be "cost-effective."

B. Policy on Rail Transit (1978)

The original policy was supplemented in 1978 by a "Policy on Rail Transit" (43 FR 9428 (March 7, 1998)). This Statement reiterated the requirement for alternatives analysis, established requirements for local financial commitments to the project, established the concept of a contract providing for a multi-year commitment of Federal funds, with a maximum limit of Federal participation (the Full Funding Grant Agreement—FFGA), and required that local governments undertake supporting local land use actions. This was supplemented by a 1980 policy statement that linked the alternatives analysis requirement to the Environmental Impact Statement development process (45 FR 71986 (October 30, 1980.))

C. Statement of Policy on Major Urban Mass Transportation Capital Investments (1984)

These principles were reiterated and refined in a May 18, 1984, Statement of Policy on Major Urban Mass Transportation Capital Investments (49 FR 21284). The major feature of this policy statement was the introduction of an approach for making comparisons between competing projects. To do so, a rating system was established under which projects were evaluated in terms of a cost effectiveness index of forecast incremental cost per incremental rider for the build alternative, compared with the TSM alternative as the base. Further, index threshold values were established which projects had to pass in order to be considered for funding. In addition, the criteria to be used to judge local financial commitment were spelled out.

D. Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)

The principles of the 1984 policy statement were later incorporated into law with enactment by Congress of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17). This act established in law a set of criteria which new starts projects had to meet in order to be eligible for Federal discretionary grants. Specifically, projects had to be "cost-effective" and "supported by an adequate degree of local financial commitment." STURAA also added a requirement for an annual report to Congress laying out the Department's recommendations for discretionary funding for new starts for the subsequent fiscal year.

To effectuate the requirements set forth in STURAA, on April 25, 1989 FTA (then the Urban Mass Transportation Administration) issued a Notice of Proposed Rulemaking (54 FR 17878). This Proposed Rule would have codified the requirements of the 1984 Policy Statement and made the "Cost Per New Rider" Index and threshold values regulatory. However, in the FY 1990 and FY 1991 Appropriations Acts, Congress directed that this rulemaking not be advanced (See the Department of Transportation and Related Agencies Appropriations Act, 1990 (Pub. L. 101–164) and Department of Transportation and Related Agencies Appropriations Act, 1991 (Pub. L. 101–516)). Consequently, on February 3, 1993, this proposed rulemaking was withdrawn (58 FR 6948).

E. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made substantial changes to the legislative basis for the criteria used to evaluate candidate projects. Specifically, the original requirement that a project be "cost-effective" was expanded; the new requirement specified that projects be "justified, based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, and operating efficiencies." In addition, certain "considerations" and "guidelines" were established that were to be taken into account in determining how well a project met the criteria.

F. Executive Order 12893 (1994)

On January 26, 1994, the President issued Executive Order 12893 (59 FR 4233), describing the principles which Federal agencies are to apply in determining how to invest in all forms of infrastructure, including transportation. The Executive Order requires a systematic analysis of the costs and benefits of proposed investments, and sets out the parameters for such analysis. It calls for efficient management of infrastructure, including a focus on the operation and maintenance of facilities, as well as the use of pricing to manage demand, and calls for comparison of a comprehensive set of options and consideration of quantifiable and qualitative measures of benefits for all programs.

G. Policy Discussion Paper (1994)

Thereafter, in September 1994, FTA circulated a "policy discussion paper" to the transit industry and other stakeholders for comment. This paper detailed various approaches for evaluating proposed projects under the ISTEA criteria, and requested comment on nine specific issues. Interest was extensive, and a period of public comment, further analysis, additional industry input, and additional analysis ensued.

H. The 1996 Statement of Policy

On December 19, 1996, FTA issued a Notice in the **Federal Register** that formally adopted the ISTEA project justification criteria (61 FR 67093). This Notice defined the criteria, established the process, and described the measures that would be used to evaluate candidate projects for discretionary new starts funding. This Notice also established a multiple-measure method of project evaluation, in a manner consistent with Executive Order 12893.

This Statement of Policy was amended on November 12, 1997, to incorporate Departmental guidance establishing a Department-wide standard for valuing travel time, and made other technical corrections (62 FR 60756).

III. Transportation Equity Act for the 21st Century (TEA–21)

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) was enacted. TEA–21 leaves much of past law and policy regarding new starts intact, including the basic project justification criteria and the multiple-measure method of project evaluation. However, a number of significant changes were introduced.

A. Significant Changes

- Integration of the Major Investment Study (MIS) requirement into the FTA/FHWA planning and environmental regulations (23 CFR part 450 and 23

CFR part 771), elimination of the MIS as a separate requirement (see section 1308 of TEA–21), and required streamlining of the environmental process (see section 1309 of TEA–21);

- The requirement for FTA to establish overall project ratings of "highly recommended," "recommended," or "not recommended;"
- The requirement for FTA approval for a project to advance to the final design stage of the project development process; and
- The requirement that FTA publish regulations on the manner in which proposed projects will be evaluated and rated (the purpose of this rule).

B. Other Changes

- Several additional statutory "considerations" have been added to the project evaluation process, including the cost of sprawl, infrastructure cost savings due to compact land use, population density and current transit ridership in a corridor, and the technical capacity of the grantee to undertake the project.
- TEA–21 expressly prohibits FTA from considering the dollar value of mobility improvements (see section 3010).
- The ISTEA exemptions from the FTA statutory project evaluation process, for proposed projects that require less than one-third of the project funding from 49 U.S.C. 5309 or are part of a State Improvement Plan for air quality, were eliminated. The exemption remains for projects requiring less than $25 million in 49 U.S.C. 5309 funding.
- For evaluating local financial commitment, the consideration for local funding beyond the required non-Federal share has been incorporated into statute.
- A second annual report to Congress, in addition to the existing *Report on Funding Levels and Allocations of Funds*, is now required. This new "Supplemental New Starts Report," due each August, will include updated ratings for projects that have completed the alternatives analysis and preliminary engineering stages of development since the date of the last *Report on Funding Levels and Allocations of Funds.*

IV. Government Performance and Results Act of 1993

The Government Performance and Results Act (GPRA) was enacted in 1993 to provide for the establishment of strategic planning and performance measurement in the Federal Government. It is primarily intended to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.

In the NPRM for this rule, FTA indicated an intent to develop performance measures to evaluate our administration of the new starts program, and to measure the performance of Federal new starts investments. Both of these measures would be incorporated into FTA's management of new starts projects. The NPRM invited specific comment on these issues, including recommendations as to which measures and indicators would be appropriate, as well as appropriate timeframes for evaluation.

Comment. FTA received a total of three comments on the GPRA issues, from two interest groups and one transit industry trade association. On the subject of FTA's performance in administering the new starts program, two of the commenters recommended that performance be measured according to factors under FTA's control, such as timeliness in responding to grantee inquiries, reporting to Congress, uniformity of guidance, approval actions, and the extent to which funding recommendations are based on project ratings. One commenter saw no benefit to evaluating FTA's performance in this regard.

Only two of the three commenters addressed the subject of new starts follow-up evaluations, the industry trade association and one of the two interest groups. Both supported the general concept of follow-up evaluations, but provided little additional comment. The interest group recommended that reviews not occur until at least after the first year of revenue service, and not later than 15 years, suggesting ratings at 2 and 7 years. The trade association recommended that projects be evaluated against objectives set at time of the decision to implement the project; ratings should encompass a 5–10 year operating period, and should focus on overall performance, not ridership and cost.

Response. The wording of the section on GPRA in the preamble to the NPRM may have led to confusion regarding what FTA intends to measure, which may account for the fact that few comments were submitted on this issue. In evaluating FTA's administration of the new starts program, the intent was to establish measures for determining the degree to which projects remain on schedule and on budget once a commitment to fund the project has been made (*i.e.*, an FFGA has been executed), and to measure the success of new starts projects once they are in operation. This rule incorporates a two-step data collection process to meet both of these goals. For those new starts that are put under FFGAs, FTA will combine before-and-after data with planning projections to evaluate the project in terms of four areas of interest: Capital costs, operating costs, system utilization (including ridership levels, service levels, user characteristics, trip purposes, demographics, etc.), and external factors relevant to the project. These data collection activities will be considered an eligible part of the project for funding purposes. Prior to the execution of an FFGA, project sponsors, as part of their final design efforts; will have to submit a complete plan for collection of the "before" data to FTA. The actual collection of data by project sponsors will be required before construction begins. The FFGA will contain a requirement for the project sponsors to collect the "after" data, two years after the project opens for revenue service. FTA will then compare the "after" data with the "before" data, as well as with the projections of costs, ridership, and system utilization characteristics made during the project development process, to evaluate the success of the project. Project sponsors will also be asked to report on any external factors that might have influenced the costs, ridership, and utilization factors, such as unexpected increases or decreases in gasoline prices, employment trends, etc.

The intent of this evaluation process is to help to develop a greater understanding of the actual benefits of new starts, and support improvements to the forecasting process. FTA recognizes that this evaluation will provide only a short-term "snapshot" of the performance of a new fixed-guideway system, and that many of the benefits, particularly in terms of land use, are long-term in nature. Project sponsors are of course encouraged to continue their data collection efforts beyond the period two years after opening. However, given the nature of the appropriations and authorization process, there is also a need for short-term data to provide an initial indication of the benefits of a project.

V. Outreach

The development of this Rule began with a series of outreach sessions conducted during the months of September and October 1998. Three workshops were held around the country: One in Portland, Oregon, in conjunction with the RailVolution Conference on September 14, 1998; one in Washington, DC on September 25, 1998; and one in New York City, in conjunction with the Annual Meeting of the American Public Transit Association (APTA) on October 8, 1998.

The purpose of these outreach sessions was to describe the changes made by TEA–21 to the new starts program, discuss how we plan to implement them, and solicit general comment on FTA's policies and procedures in managing the new starts program.

The comments received during this outreach process were generally supportive of our proposed approach to this rule, including the retention of the basic principles of the 1996 Statement of Policy.

The NRPM for this rule was issued on April 7, 1999. The docket was open for public comment through July 6, 1999, though late-filed comments were accepted through July 19, 1999. Comments were received from a total of 41 individuals and organizations. During the comment period, FTA held three additional public outreach workshops to solicit comment on the proposed rule; one in Toronto, Ontario on May 24, 1999, in conjunction with the 1999 American Public Transit Association's Commuter Rail/Rapid Transit Conference; one in Oakland, California on June 3, 1999; and one in Washington, DC on June 8, 1999. Notes from these workshops have been placed in the docket for this rule (#FTA–99–5474–48).

VI. Section-by-Section Analysis

A. Section 611.1: Purpose and Contents

This section states that this rule is issued to meet the statutory requirement of Title 49, United States Code, section 5309(e)(5).

This rule establishes the methodology by which FTA will evaluate proposed new starts projects as required by 49 U.S.C. 5309(e). The data collected as part of the planning and project development processes and related regulations, conducted under 23 CFR part 450 and 23 CFR part 771, will provide the basis for this evaluation. Applicants must follow these rules to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions ("new starts").

The results of this evaluation will be used by FTA to make the findings required by statute for proposed projects to advance into the preliminary engineering and final design stages of project development, and to develop funding recommendations for the President's annual budget request. They will also be used to determine which projects are eligible for funding commitments under Full Funding Grant Agreements.

The information collected and ratings developed under this rule will form the basis for the annual Report on Funding Levels and Allocations of Funds, as required under 49 U.S.C. 5309(o)(1), and the "Supplemental Report on New Starts," as required by 49 U.S.C. 5309(o)(2). The NPRM to this Rule proposed cutoff dates for information to be included in these reports; however, FTA has reconsidered the need for dates, as we strive for more real-time information. Thus, the cutoff dates for these reports have been dropped from this rule.

B. Section 611.3: Applicability .

This section states that this rule applies only to the evaluation of projects seeking Federal capital investment funds for new transit fixed guideway and extension projects ("new starts") under 49 U.S.C. 5309.

It also states that proposed projects are exempt from evaluation under this rule if the total amount of funding under 49 U.S.C. 5309 is less than $25,000,000, or if they are specifically exempt by statute. Such projects must still meet the planning requirements under 23 CFR part 450 and environmental review requirements under 23 CFR part 771, as well as the project development process described in this rule.

Title 49, U.S.C. 5309(e)(7) requires new starts projects to be carried out through a Full Funding Grant Agreement (FFGA), and also requires FTA to base the decision to issue an FFGA on the results of the evaluations and ratings process. Thus, any proposed project that is not evaluated will not be eligible for an FFGA. Sponsors of proposed projects that they believe to be exempt are therefore strongly urged to submit project evaluation information to FTA. FTA will carefully review projects for which sponsors are claiming exemptions under this rule. Such projects will still be approved for entry into preliminary engineering and final design, based on planning and project development requirements. If the proposed share of project funding from the section 5309 new starts program passes the $25 million level at any time, FTA will expect the project sponsor to develop the information required to be evaluated under this rule, and will require that such a project be funded using an FFGA.

This section also notes that projects for which an FFGA has already been executed are not subject to reevaluation under this rule. However, extensions and/or modifications to projects with existing FFGAs will be subject to evaluation and rating under this rule.

Comment. FTA received six comments on the issue of project exemptions, expressing general confusion and opposition to FTA's position on exempt projects. One transportation consultant and one transit operator argued that all exempt projects should be assigned a default rating of "medium," which could be raised by the submission of data for evaluation; the transit operator also expressed the opinion that small projects (*i.e.*, <$25 million in new starts funds) do not generate great benefits, and therefore should not be required to submit data for evaluation. One State DOT recommended that FTA simply set aside $500 million annually for exempt projects.

Three commenters also expressed some degree of confusion regarding the treatment of exempt projects. One attendee at the Washington, DC workshop wondered whether project sponsors would attempt to "cheat" the process by claiming exemptions and another at the Oakland, CA workshop expressed confusion about continued eligibility of exempt projects for funding. One industry interest group commented that, since TEA–21 already contains language exempting projects under existing FFGAs from re-evaluation under the revised criteria, including the same language in the Final Rule would be confusing.

Response. FTA is not prepared to set aside half (or any amount) of the annual new starts funding authorization for exempt projects, and rejects the assertion that Congress intended such projects to be exempt from the evaluation process because they have no measurable benefits. The Final Rule retains the NPRM language strongly encouraging sponsors of projects they believe to be exempt to submit data for project evaluation. This encouragement does not and is not intended to eliminate the provisions in TEA–21 exempting certain projects from the evaluation process, as many of the commenters seem to have surmised. Any proposed project that meets these provisions is still exempt from the evaluation and rating process; however, submitting data will give FTA an empirical basis on which to make funding recommendations to Congress. It will also maintain a proposed project's eligibility for an FFGA. Indeed, 49 U.S.C. 5309(e)(7) requires new starts projects to be carried out through a Full Funding Grant Agreement, and also requires FTA to base the decision to execute an FFGA on the results of the

evaluations and ratings process. Thus, any proposed project that is not evaluated will not be eligible for an FFGA. FTA will of course allocate any funds appropriated by Congress for such projects. However, we believe project sponsors will find the more predictable and reliable funding provided through an FFGA to be to their advantage. Therefore, project sponsors are encouraged to submit data for evaluation to retain their eligibility for an FFGA.

Finally, FTA acknowledges that there may be a temptation to circumvent the project evaluation process, as noted during the Washington, D.C. workshop. For example, it is conceivable that project sponsors may officially maintain a low level of section 5309 new starts funds throughout a project's development, only to "discover" that additional funds will be needed as the development process draws to a close. FTA also recognizes that not all such instances will result from deliberate attempts to manipulate the process; occasionally, further engineering and design will uncover a legitimate need for additional funds during the project development process, or local funding may not materialize as initially proposed. However, due to the fact that project evaluation is a condition of eligibility for an FFGA, and that an FFGA offers more stability in terms of funding than relying on annual Congressional appropriations, FTA believes that deliberate attempts to evade project evaluation will be few and far between.

Although projects proposed as "exempt" are not subject to evaluation against the new starts project justification and local financial commitment criteria, such projects must still request FTA approval for entrance into preliminary engineering and final design. The decision to approve advancement in the project development process for such projects is based on compliance with basic planning, environmental, project management, and other requirements which apply to all projects pursuing section 5309 new starts funding, regardless of the amount. It is at the preliminary engineering and final design approval points that FTA works with the project sponsor to determine if the proposed "exempt" project appears to be at risk for requiring new starts funding at an amount greater that $25 million, and to seek assurances that local or other Federal formula funds will be pursued if a project's cost or funding strategy changes. Once again, in order to preserve maximum funding flexibility, FTA strongly encourages the sponsors of proposed projects that they believe to be exempt to nonetheless submit data for evaluation.

C. Section 611.5: Definitions

This section defines key terms used in this part.

Comment. Four commenters to the proposed rule expressed concern that the definition of "fixed guideway" was unnecessarily narrow, and may perhaps exclude many bus rapid transit (BRT), ferry boat, commuter rail and light rail systems that would operate along a shared right-of-way.

Response. FTA has re-examined the definition used in the NPRM, and agrees that it could be read as excluding some BRT and ferry projects that would otherwise be eligible under the new starts program. The definition used in this rule has been modified to address this uncertainty. Definitions for "bus rapid transit" and "BRT" have also been added, consistent with the definition used in FTA's Request for Participation in the Bus Rapid Transit Demonstration Program (63 FR 68347 (December 10, 1998)).

FTA has also added a definition for "Transportation System User Benefits" and removed the definition for the "Transportation System Management alternative," as discussed later in the preamble to this Rule.

D. Section 611.7: Relation to Planning and Project Development Processes

New start projects, like all transportation investments in metropolitan areas, must emerge from a regional multimodal transportation planning process in order to be eligible for Federal funding. In addition, 49 U.S.C. 5309(e)(1) specifies that discretionary grants or loans for new starts may only be approved if a proposed project is based on the results of alternatives analysis and preliminary engineering, and that certain project justification and financial criteria have been met.

As part of the metropolitan planning process, local project sponsors must perform a corridor-level analysis of mode and alignment alternatives in corridors for which projects may be proposed for section 5309 new starts funding. This alternatives analysis will provide information on the benefits, costs, and impacts of alternative strategies, leading to the selection of a locally-preferred alternative to the community's mobility needs.

The approach taken in this rule envisions alternatives analysis as a key planning tool to be undertaken within the multimodal metropolitan and statewide planning processes, supplemented by subsequent project development analyses, for determining appropriate solutions to transportation issues. FTA and FHWA are currently modifying their joint planning and environmental regulations to better reflect the planning and project development provisions of TEA–21. To the extent possible, the development of these regulations has been coordinated with the development of this final rule on major transit capital investments. However, FTA may amend this rule, if necessary, when the joint planning and environmental Final Rule is issued.

Federal financial support for the planning process is derived from a number of sources, including the Metropolitan Planning Program under 49 U.S.C. 5303, the State National Planning and Research Program under 49 U.S.C. 5313, and planning programs administered by the Federal Highway Administration. FTA Urbanized Area Formula funds under 49 U.S.C. 5307 and flexible funds under the Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality (CMAQ) Program may also be used to support certain planning activities. Given the significant demands placed on the new start program, FTA does not support the use of 49 U.S.C. 5309 funds for initial planning activities. Moreover, as amended by TEA–21, 49 U.S.C. 5309(m)(2) limits the amount of new starts funding that can be used for purposes other than final design and construction to not more than 8 percent of funds appropriated. In evaluating the local financial commitment to a proposed project, FTA will consider the degree to which initial planning activities are conducted without funding from section 5309.

The alternatives analysis study (also known as a major investment study—MIS—or multimodal corridor analysis) evaluates several modal and alignment options for addressing mobility needs in a given corridor. It is intended to provide information to local officials on the benefits, costs, and impacts of alternative transportation investments. Potential local funding sources for implementing and operating the investment are to be identified and studied, and information in response to the FTA new starts project evaluation criteria is to be developed. Involvement of a wide range of stakeholders—including the general public—in the alternatives analysis study process is strongly encouraged. At local discretion, the alternatives analysis may include the undertaking of a Draft Environmental Impact Statement (DEIS) or Environmental Assessment (EA). Alternatives analysis is considered

complete when a locally preferred alternative (LPA) is selected by local and regional decisionmakers and adopted by the metropolitan planning organization (MPO) in its financially-constrained metropolitan transportation plan.

At this point, the local project sponsor may submit a request to the FTA regional office to initiate the preliminary engineering phase of project development. The request must provide information that demonstrates the readiness of the project to advance into preliminary engineering, including the adoption of the project into the metropolitan transportation plan and the programming of the preliminary engineering study in the Transportation Improvement Plan (TIP), and information demonstrating the technical capability of project sponsors to undertake the preliminary engineering effort. The request must also address the project justification and local financial commitment criteria outlined below. (This information is normally developed as part of an alternatives analysis.) FTA will then evaluate the proposed project as required by 49 U.S.C. 5309(e)(6) and determine whether or not to advance the project into preliminary engineering. FTA approval to initiate preliminary engineering is not a commitment to fund final design or construction.

Where the sponsoring agency believes that a proposed project is exempt from evaluation under this rule, submission of project justification and financial commitment information to FTA is not required. However, exempt projects must still meet all planning, environmental, project management, and other requirements which demonstrate their readiness to advance into preliminary engineering. In addition, without information to support the justification of and local financial commitment to a proposed project, FTA will have no basis for decisions on whether to recommend Federal funding commitments. Therefore, sponsors of exempt projects are strongly encouraged to submit information on project justification and financial commitment.

During the preliminary engineering phase, local project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. Preliminary engineering results in estimates of project costs, benefits and impacts in which there is a much higher degree of confidence. A comprehensive preliminary engineering effort will also address the evaluation criteria described in this rule. In addition, NEPA requirements must be met (for new starts, this usually includes the completion of a Final Environmental Impact Statement), project management plans and fleet management plans are finalized, and local funding sources are committed to the project (if they have not already been committed). Information on project justification and the degree of local financial commitment will be updated and reported as appropriate. As part of their preliminary engineering activities, localities are encouraged to consider policies and actions designed to enhance the benefits of the project and its financial feasibility.

Project sponsors should also ensure that safety considerations are weighed during the preliminary engineering phase. With regard to rail projects that will be subject to Federal Railroad (FRA) safety jurisdiction, FTA will notify FRA of pending new starts at the earliest date practicable, as important decisions affecting rail safety must be made at the outset of the planning and grant development process. FRA will forward any recommendations it has to FTA, which will forward them to the project sponsor.

Preliminary engineering is typically financed with 49 U.S.C. § 5303 and § 5307 funds, local revenues, and flexible funds under the STP and CMAQ programs.

Preliminary engineering is considered complete when FTA has issued a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), as required by NEPA.

Proposed projects that have completed preliminary engineering must request FTA approval to enter the final design phase of development. The request must provide information that demonstrates to FTA the technical capability and financial capacity of the local project sponsor to advance the project into final design. Like the approval to enter into preliminary engineering, this approval is based upon a review and evaluation of the costs, benefits, and impacts under the statutory project evaluation criteria. Final design is the last phase of project development, and includes right-of-way acquisition, utility relocation, and the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents. Final design is typically eligible for 49 U.S.C. 5309 new start funds.

Comment. In the NPRM to this rule, FTA asked for public comment on the relationship between the alternatives analysis requirement and the planning and project development processes. A total of nine comments addressed this issue. Two respondents, a transit industry trade association and a large transit operator, objected to the fact that an alternatives analysis is required for transit new starts, but not for highway projects. Another transit operator objected to alternatives analysis as "outside" of the "normal" corridor study process, topheavy and burdensome, and inconsistent with planning regulations.

Response. It is in fact true that Federal highway programs do not require an analysis of alternatives in the same manner as the new starts program. However, this is a fact of law, not Departmental policy. The new starts program is a discretionary funding program; alternatives analyses are required to develop information for decisionmaking purposes. Conversely, the Federal highway program is a formula program; no Federal decisionmaking is required. Neither FTA nor DOT are at liberty to remove the requirement for alternatives analysis from the new starts program, or to impose a similar requirement on the Federal highway program. To do so would require a change in the law by Congress. As for the perceived inconsistency with planning regulations, the joint FTA/FHWA planning regulations are designed to be consistent for both agencies' major capital investment programs; they neither require FHWA-funded projects to undergo alternatives analysis, nor prevent FTA-funded new starts from meeting the statutory requirement that an alternatives analysis be conducted.

Comment. One transit operator commented that the issuance of this rule should be delayed until the revisions required by TEA–21 to the FTA/FHWA planning and project development regulations have been issued.

Response. This rule applies only to FTA's own evaluations of proposed new starts, which does not feed into the planning process; rather, FTA's new starts evaluations rely upon the data and information derived from the planning process. Therefore, FTA is not persuaded that formal implementation of the TEA–21 new starts provisions should be delayed further. Should the final planning rule require changes to the new starts project development process, however, this rule will be amended accordingly.

Comment. Two commenters expressed confusion regarding the "demise" of the Major Investment Study (MIS), and requested clarification.

Response. Section 1308 of TEA–21 eliminated the separate requirement for an MIS and integrated its basic concepts into the joint planning and

environmental regulations issued by FTA and FHWA (23 CFR parts 450 and 771). Existing MIS activities will still satisfy the requirement for an alternatives analysis, and project sponsors who wish to follow the principles of the multimodal MIS to conduct new alternatives analyses are encouraged to do so. The joint planning and environmental regulations will more fully describe how the MIS concepts will be integrated into the process.

Comment. The NPRM noted that FTA does not support the use of section 5309 new starts funds for initial planning activities, given the demands placed on the program and the availability of funds from other FTA programs for this purpose, and stated that FTA would consider this when evaluating local financial commitment. Six comments were received on this issue. Four commenters objected to what they viewed as "penalizing" project sponsors for using new starts funds for planning activities relating to proposed new starts projects; one commenter asked for clarification as to whether such projects would be penalized; and one (a transit operator) supported limiting the use of new starts funds for planning. One transit operator, citing the statutory 8 percent limit on program funding for activities other than final design and construction, noted that Congress "clearly intended" for section 5309 funds to be used for alternatives analysis and preliminary engineering. A local government entity claimed that there was no "statutory basis" for including the use of section 5309 funds for planning purposes as part of the project evaluation process, and noted that it would be inappropriate to "penalize" projects that Congress saw fit to earmark. This same commenter suggested measuring such uses of funds against the 8% limit established in TEA–21.

Response. The Final Rule retains the principle that FTA will consider the degree to which initial planning activities are conducted without funding from section 5309 as part of our evaluation of the local financial commitment. This is not intended as a "penalty" for project sponsors who seek and secure Congressional earmarks for these activities. Rather, it is intended to give a degree of recognition to the efforts of sponsors who make use of existing sources of Federal, State, and local planning funds, such as those noted above. Further, making such considerations is consistent with Congressional direction. The conference report to the FY 1999 appropriations act instructed FTA to consider the extent to which new starts project sponsors make use of the appreciable increases in formula funding for alternatives analysis and preliminary engineering, when evaluating the local financial commitment of proposed new starts.

Comment. Twelve comments addressed the issue of the statutory requirement for FTA approval to advance into preliminary engineering and final design. Most expressed some degree of discomfort with the notion of such approvals, and noted a need for more guidance and better definitions of the stages of project development and the development process itself. The strongest objection was expressed by a transit operator who asserted the project development process is separate and distinct from the evaluation process, and that proposed new starts projects should therefore simply be permitted to proceed without FTA approval.

Response. In most cases, the "newness" of this approval requirement seems to be responsible for much of the confusion. The requirement for FTA approval to enter final design was added to the new starts program by TEA–21; this rule simply implements that requirement. FTA is not at liberty to change the law through this or any other rulemaking process. FTA approval has long been required to enter into preliminary engineering, though the role of the project ratings process was not as large.

Comment. Four of those commenting on the approval requirement, including a transit industry trade association, requested clarification of what is required to fulfill the requirements for completion of the various stages of development.

Response. The language concerning alternatives analysis, preliminary engineering, and final design has been revised in both the text of this rule and the preamble to better describe these activities. In addition, FTA issued guidance in September 1999 which clarifies the project development and approval process.

Comment. The industry trade association also suggested that local financial commitment not be considered for approval to enter the next stage, a comment echoed by a transit operator. Another transit operator and the trade association suggested that different requirements be established for approval to enter preliminary engineering than for final design. The apparent fear is that worthy projects may be denied approval to enter preliminary engineering simply because adequate information on costs and benefits is not available with a high level of certainty so early in the development process.

Response. Section 5309(e)(6) clearly states that FTA may only approve the advancement of a proposed project to the next stage of development if it meets the statutory project evaluation criteria, and is likely to continue to do so. However, FTA recognizes that the level of information available and the degree of certainty varies according to the stage of project development; the earlier in the process a proposed project is, the less certain the forecasts and estimates. For this reason, FTA sets different standards for high, medium, and low ratings for preliminary engineering than for final design; the further a proposed project is in the process, the higher the standard. In the case of local financial commitment, for example, it may be sufficient to simply demonstrate a reasonable financial plan that identifies proposed sources of local funds needed to construct the project (*i.e.*, to show that the sponsors have considered how they intend to pay for it) when seeking approval to enter preliminary engineering. It is not reasonable to expect ballot measures to have passed and funds to have been programmed at this stage. However, by the time a proposed project is ready to enter final design, most or all of the local funds should be committed, including provisions for cost overruns. It has been a longstanding FTA practice in the management of the new starts program and the project evaluation process to make such distinctions among the stages of project development; this practice has been discussed in the Annual Report on New Starts and its predecessor, the annual Report on Funding Levels and Allocations of Funds, since the May 1991 edition. Further, FTA cannot assign project ratings during alternatives analysis, as there is essentially no project to evaluate until the locally-preferred alternative is selected. Project sponsors need not worry that they will "fail" the evaluation process simply because their proposed project is still in the early development stages.

Comment. The trade association and three other commenters also requested language clarifying that projects already in preliminary engineering at the time the final rule is issued have met the requirement for alternatives analysis, as have prior Major Investment Studies (MISs).

Response. This rule in no way revokes prior FTA approvals for preliminary engineering (or final design). Language to this effect has been added to § 611.7, Relation to planning and project development processes.

Comment. One commenter requested a regulation to define "major investment studies."

Response. The discussion of alternatives analysis earlier in the preamble to this rule has been revised to better address this issue. The pending joint FTA/FHWA planning and environmental regulations will more fully describe the integration of the MIS into the planning and environmental process under TEA–21.

E. Section 611.9: Project Justification Criteria

Section 5309(e)(1)(B) requires the Secretary to determine that a proposed new starts project is justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies. To make this determination, FTA will evaluate information developed through the planning and project development processes. The method used to make these determinations is a multiple measure approach in which the merits of candidate projects will be evaluated against a set of measures. The ratings for each measure will be updated annually for purposes of the annual report on funding levels and allocations of funds required by section 5309(o)(1), the supplemental report required by section 5309(o)(2), and as required for FTA approvals to enter into preliminary engineering, final design, or FFGAs. As a candidate project proceeds through the stages of the project development process, a greater degree of certainty is expected with respect to these measures. Measures have been established for each of the following criteria:

1. Mobility improvements;
2. Environmental benefits;
3. Operating efficiencies;
4. Transportation System User Benefits (Cost Effectiveness);
5. Existing land use, transit supportive land use policies, and future patterns; and
6. Other factors, including:

(a) The degree to which the policies and programs (*e.g.*, parking policies, etc.) are in place as assumed in the forecasts;

(b) Project management capability; and

(c) Additional factors relevant to local and national priorities and relevant to the success of the project.

For each proposed project, FTA will assign one of five descriptive ratings ("high," "medium-high," "medium," "low-medium," or "low") for each of the first five criteria; information on "other factors" will be reported as appropriate.

The measures for the project evaluation criteria are described in Appendix A to this rule. FTA may amend or modify these measures in response to the results of ongoing research into methods for evaluating the benefits of transit investments.

Comment. In the NPRM for this Rule, FTA proposed that in all cases, the proposed new start would be evaluated against both a no-build and Transportation System Management (TSM) alternative. The retention of the TSM was the subject of substantial comment in response to the NPRM. A total of 13 comments were submitted on this issue, all of them opposed. Most of the commenters felt that it was unnecessarily burdensome to maintain a TSM alternative for what they viewed as solely FTA's purposes, noting that certain incremental system improvements will occur whether the new start is constructed or not; *i.e.*, it is no longer appropriate to view the no-build alternative as a "do nothing" scenario. The most common suggestion was that, if the TSM requirement is retained, it should be dropped after alternatives analysis has resulted in the selection of a locally-preferred alternative.

Response. FTA accepts the argument that it is no longer appropriate to assume that a no-build alternative presents a "do nothing" scenario. The realities of modern urban and suburban planning, transportation, and economic development make it virtually impossible to assume that no improvements will occur if a proposed new start is not implemented. At the same time, however, a consistent baseline is needed to ensure a fair evaluation of proposed new starts projects nationwide. The TSM alternative has served well in this regard.

In response to comments submitted on this issue and in recognition of the desire to simplify the new starts process, this Rule eliminates the requirement for separate no-build and TSM alternatives, and instead requires that the proposed new start be evaluated against a single "baseline alternative." The baseline alternative is best described as transit improvements lower in cost than the proposed new start, which result in a better ratio of measures of transit mobility compared to cost than the no build alternative; the "best you can do" without the new start investment. The purpose of the baseline comparison is to isolate the costs and benefits of the proposed major transit investment. At a minimum, the baseline alternative must include in the project corridor all reasonable cost-effective transit improvements short of investment in the new start project.

Depending on the circumstances and through prior agreement with FTA, the baseline alternative can be defined appropriately in one of three ways. First, where the adopted financially constrained regional transportation plan includes within the corridor all reasonable cost-effective transit improvements short of the new start project, a the no-build alternative that includes those improvements may serve as the baseline. Second, where additional cost-effective transit improvements can be made beyond those provided by the adopted plan, the baseline will incorporate those cost-effective transit improvements as well. Third, where the proposed new start project is part of a multimodal alternative that includes major highway components, the baseline alternative will be the preferred multimodal alternative without the new start project and associated transit services. Prior to submittal of a request to enter preliminary engineering for the new start project, grantees must obtain FTA approval of the definition of the baseline alternative.

Consistent with the requirement that differences between the new start project and the baseline alternative measure only the benefits and costs of the project itself, planning factors external to the new start project and its supporting bus service must be the same for both the baseline and new start project alternatives. Consequently, the highway and transit networks defined for the analysis must be the same outside the corridor for which the new start project is proposed. Further, policies affecting travel demand and travel costs, such as land use, transit fares and parking costs, must be applied consistently to both the baseline alternative and the new start project alternative.

The Final Rule has been rewritten to substitute "baseline alternative" wherever "no-build and TSM alternatives" appeared in the NPRM, and a definition for "baseline alternative" has been added.

"Existing land use, transit supportive land use policies, and future patterns" is not listed among the project justification criteria contained in 49 U.S.C. 5309(e)(1)(B), but is listed as one of the "considerations" under 49 U.S.C. 5309(e)(3) that FTA must take into account when determining a proposed project's "justification." Consistent with past practice, we have included land use among the project justification

criteria for a number of reasons. Transit-supportive land use, whether it is a factor of existing patterns, existing local policies, or planned future development which targets development around the Federally-assisted project, has been an important indicator of future project success. Additionally, TEA–21 added two new land-use-related considerations to the project evaluation process: The reduction in local infrastructure costs achieved through compact land use development (49 U.S.C. 5309(e)(3)(B)), and the cost of suburban sprawl (49 U.S.C. 5309(e)(3)(C)). This appears to be a clear intent by Congress to give additional attention to this issue. The NPRM for this Rule labeled the land use criteria as "transit supportive existing land use policies and future patterns." This has been changed to "existing land use, transit supportive land use plans, and future patterns" in this Rule, to more accurately reflect FTA's practices in evaluating land use issues relating to proposed new starts. The underlying factors described in paragraph (e) of Appendix A to this rule have been revised in response to this change.

In making the determination of project justification, 49 U.S.C. 5309(e)(3) requires the FTA to consider a variety of factors, as follows:

1. The direct and indirect costs of relevant alternatives;
2. Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;
3. Existing land use, mass transportation-supportive land use policies, future patterns, and the cost of suburban sprawl;
4. The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;
5. Population density and current transit ridership in the corridor;
6. The technical capability of the grant recipient to construct the project;
7. Differences in local land, construction, and operating costs; and
8. Other factors that the Secretary determines appropriate.

This represents a modest expansion of the "considerations" established by ISTEA. Specifically, section 3009(e) of TEA–21 added the consideration for the cost of suburban sprawl noted in (3) above; for population density and current transit ridership in the corridor in (5) above; and for the technical capacity of the grantee to carry out the proposed project in (6) above. The "considerations" serve to illustrate the project justification criteria, providing further detail on specific information that should be collected and how the criteria should be evaluated. Much of the data required to consider these factors is already developed as part of the existing planning and project development processes, however, as required under 23 CFR part 450 and 23 CFR part 771. FTA believes these considerations are already adequately addressed by the current project justification criteria and measures.

When evaluating proposed new starts projects, FTA will apply these criteria to the project as proposed for Federal funding under 49 U.S.C. section 5309. This means that if local project sponsors are seeking new starts funding at this time for a segment of a larger planned transit investment, only that specific segment will be evaluated.

Comment. FTA received 24 comments relating to the criteria for mobility improvements. Of these, 15 addressed the issue of mobility for low-income households. Ten commenters recommended revising the low-income mobility measure to include destinations, such as employment areas, within ½-mile of boarding points, in addition to the existing measure for households. Two commenters recommended expanding the low-income household measure to include other populations that tend towards transit-dependence, such as senior citizens, students, and persons with disabilities. One recommended accounting for discretionary riders, and another suggested eliminating the measure for low-income mobility, perceiving that it perpetuated an image of transit as a carrier of poor people that persons of middle-class status would not want to ride. One commenter suggested that low-income mobility be separated from the measure for mobility improvements.

Other comments on this measure included two recommendations to incorporate a consideration for congestion, two requests to incorporate a measure for delays and "incidents" on the transit system, various calls for "better measures," and recommendations that different measures be applied to different modes of transit (*i.e.*, light rail versus commuter rail).

Response. FTA recognizes that a system that is located near low-income households is of little use to residents unless it can also provide access to employment centers and other activity centers. Therefore, a factor for destinations within a ½-mile radius of new stations has been added to the measure for mobility improvements.

FTA is required by section 5309(e)(3)(D) to "consider the degree to which the (proposed) project increases the mobility of the mass transportation dependent population, or promotes economic development." For a variety of reasons, low-income households were chosen as a surrogate for measuring the transit dependent population. Chief among these is the fact that transit dependence is often a factor of income. Many people rely on transit service for basic mobility—some by necessity, and some by economic choice; many residents of upscale central city neighborhoods simply choose not to own an automobile. There is value in considering all of these people in the measure for basic mobility; however, were transit service suddenly eliminated, those riders with an economic choice would find other alternatives available to them. Further, many of those riders who ride transit by choice do so because it permits them to bypass congestion on highways and city streets. These benefits would already be accounted for in the measure for travel time savings. The focus on low income households provides a clearer—though still imperfect—assessment of how well the proposed project would serve those who do not have the ability to choose; *i.e.*, the mass transit dependent population specified in the statute.

The comments calling for better measures to assess the mobility improvements of a proposed project are well taken; unfortunately, no recommendations for new measures or methodologies accompanied those comments. FTA is as interested as the transit industry in advancing the state of the art of transit planning, and is conducting research into better ways to measure the various benefits of transit service, particularly high-quality rail systems. Beginning on September 1, 2001, this Rule employs a revised measure of travel benefits based on a multimodal measure of perceived travel times faced by all users of the transportation system. As new measures and methods become available, FTA may amend or modify this rule.

Comment. Ten comments were received on the criterion for environmental benefits; no two were alike. One interest group suggested that impacts on areas where energy is generated (*i.e.*, the location of a remote generating plant) be incorporated into the evaluation, and that energy comparisons be made on a passenger-mile basis. One transit operator recommended incorporating "non-scientific 'quality of life'" factors. Two interest groups objected to the use of BTUs, with one suggesting the use of vehicle miles traveled (VMT) instead and the other suggesting that if it is retained, the measure should be limited to non-renewable energy sources and should include energy used in construction. Two commented that greater weight should be given to proposed projects in nonattainment areas, and one individual commenter recommended that other benefits should be included, such as reduced parking demand which would reduce parking lot runoff. One local government recommended that the evaluation consider wetlands and endangered species habitats.

Response. It should be noted that this evaluation does not represent the only relationship between the new starts process and environmental considerations. All proposed new starts projects must meet NEPA requirements as a condition of eligibility for funding. Thus, factors such as runoff, wetlands, and the habitat of endangered species are already considered. In addition, EPA classifications for attainment/nonattainment are also considered as part of the evaluation of environmental benefits for all proposed new starts projects.

To the extent that "greater weight" can be given to proposed projects in nonattainment areas, 49 USC 5309(e)(8)(B) provides expedited procedures for FTA decisionmaking and prohibits any limitations on the simultaneous evaluation of proposed projects in at least two corridors in such cases. This is reflected in paragraph (c) under § 611.3 of this rule. It should be noted that previously, these projects were also exempt from evaluation under the new starts criteria; this provision was among those eliminated by TEA–21.

Quality of life issues, to the extent that they can be identified and defined for individual projects, are more appropriately addressed in the "other factors" criteria than as part of the measures for environmental benefits.

BTUs were chosen as the measure for reporting energy consumption because they represent a universal and universally-accepted measure of energy. While it may be possible to evaluate changes in energy consumption in terms of gallons of gasoline, gallons of diesel fuel, barrels of crude oil, kilowatt-hours of electricity, or tons of coal, a universal measure is needed to compare these energy sources to each other and to evaluate the benefits of one project in comparison to others.

Comment. Three comments were submitted on the measures for evaluating operating efficiencies. One operator of a major northeastern transit system commented that the change in operating cost per passenger mile would give high marks for crowding and penalize proposed projects that would mitigate crowding, a topic that was raised by others in comments relating to the measure for cost effectiveness. One interest group recommended no changes to the measure, but suggested that the TSM alternative be dropped after entry into preliminary engineering and proposed language for incorporation into the rule. One individual commenter opined that cost per passenger mile is easily manipulated, costs vary across the country, and recommended the establishment of thresholds for number of peak and off-peak passengers, with a pass/fail rating.

Response. Concerns regarding the "ease" with which information for this measure might be "manipulated" are noted, but they are ultimately not relevant to the process. Project sponsors are required to certify to FTA that the information submitted under the project evaluation criteria is developed in compliance with FTA's technical guidance. Any attempt at manipulation of data would likely be discovered during the evaluation and approval process. This measure is but one of the many criteria under which proposed new starts are evaluated, and will not by itself "make or break" a project. The other comments are addressed elsewhere in the preamble to this rule.

Comment. FTA received a total of 32 comments on the measure for cost effectiveness. The NPRM for this rule solicited comment on the retention of FTA's historical "cost per new rider" (or more properly, incremental cost per incremental rider) measure to indicate cost effectiveness, and asked if there were other measurements. Twenty-three comments were submitted in response this request. An additional nine commenters addressed this issue as part of their general comments on the NPRM. All were unanimous in their assertion that the cost effectiveness measure should "roll up" additional benefits beyond incremental cost per incremental rider. The consensus was that focusing on new riders alone ignores benefits to other riders, and thus biases the measure against older cities with "mature" transit systems where the focus of a proposed new start would be on improving service, not attracting new riders. Most recommended a measure based on "cost per benefiting rider" or simply "cost per rider." The most common examples of benefits given in comments were reductions in crowding and travel time savings. A trade group representing the transit industry recommended the formation of a committee to study the issues. One transit operator recommended a "full-cost accounting approach" incorporating the full range of societal impacts, including local policy decisions on land use and parking; another operator recommended a measure based on transit system throughput. Others recommended including cost per new trip, new riders attracted to the existing system by the new start, total annualized cost per rider, travel time savings, and accounting for the conversion of multimodal trips to transit trips, and single-occupant vehicle (SOV) trips to multimodal trips.

Response. It is important to note that the measure for cost effectiveness is not intended to be a single, stand-alone indicator of the merits of a proposed new starts project. It is but one part of the multiple measure method that FTA uses to evaluate project justification under the statutory criteria. While cost effectiveness is an important consideration, so are mobility improvements, environmental benefits, and the other factors described both in TEA–21 and elsewhere in this rule.

However, FTA is aware that the cost effectiveness measure is often interpreted by project sponsors, State and local decisionmakers, and even elsewhere within the Executive and Legislative branches of the Federal government as "the" measure that will "make or break" a proposed new start. In light of this, and in response to the unanimous call by commenters for a "better" measure of cost effectiveness, FTA has developed a measure of "transportation system user benefits" to more accurately address the criteria for cost effectiveness. In simple terms, the basic goal of any major transportation investment is to reduce the amount of travel time and out-of-pocket costs that people incur for taking a trip; the cost of mobility. The new Transportation System User Benefits measure of cost effectiveness measures the change in these costs, and accounts for changes to transit, highway, and other modes of travel.

This new cost effectiveness measure replaces the current "dollars per new rider" figure that can be—and often is—perceived as "subsidy per new rider." This approach de-emphasizes new riders and measures not only the benefits to people who change modes, but also accounts for benefits within modes (*i.e.*, benefits to existing riders and highway users).

The Transportation System User Benefits measure is not new to FTA or to the new starts project evaluation process. A similar combination of cost

and travel time savings for new and existing riders was identified as a measure for cost effectiveness in the 1984 Statement of Policy on Urban Mass Transportation Major Capital Investments.

User benefits are a good measure of the effectiveness of a major transit investment; however, the Transportation System User Benefits measure should not be interpreted as a single measure of all of the expected benefits of a new starts project. Those in search of a single measure that "rolls up" the overall benefits expected of a proposed new start should direct their attention towards the overall rating for project justification; the Transportation System User Benefits measure of cost effectiveness is but a single component.

This rule has been revised to reflect this new approach. In addition, FTA will publish guidance describing how project sponsors should calculate and report the new cost effectiveness measure for evaluation purposes. The new Transportation System User Benefits measure of cost effectiveness will be phased in over time, becoming effective on September 1, 2001.

Comment. FTA received a total of 19 comments relating to the land use criterion. In general, the comments reflected a general concern over how land use will be measured and used as a factor for project evaluation.

While there was no clear pattern to the comments, a number of recurring themes were apparent. One of these themes was "flexibility." A transit industry trade association and a new starts interest group supported the measure in general, but noted that its application should be flexible enough to account for regional differences, and that guidance would be essential; one recommended that FTA undertake a study of the "cost of sprawl" and suggested alternative language for the final rule. One transit operator submitted comments in support of the trade association.

The second theme that arose from the comments concerned the application of the land use measure. Five commenters expressed confusion or concern over a perceived vagueness of the land use criterion, terming it "nebulous," "vague" and "ambiguous." Two commenters noted that land use issues would already be captured by other project justification measures or through the modeling process, and two others expressed concerns over a perceived reporting burden. Two more commented that land use would vary greatly by alternative and alignment. One transit operator in a major northeastern city and one commenter at the Oakland, CA workshop expressed concern that the measure for land use would bias the new starts process in favor of suburban projects. One transit operator in a southwestern city that does not have zoning ordinances recommended incorporating a consideration for voluntary actions by the community to coordinate station area development, and objected to the elevation of land use considerations to the "status" of the other statutory criteria. An operator in another southwestern city in the same State commented that ratings should be based only on factors over which transit operators have control, and noted that similar evaluation criteria should be applied to FHWA funds. In contrast, a council of governments from a city in the Pacific Northwest recommended that FTA give significant weight to regions with a history of containing sprawl.

The final common theme among some of the commenters was to question the connection between land use and transportation planning. One commenter noted that the criterion assumes coordination between transportation and planning, and two questioned or flatly rejected any correlation between transportation and land use.

Response. This rule does not represent a substantial change from existing FTA policy or practice. Even prior to TEA–21, FTA included land use among the primary evaluation criteria. As noted earlier in this preamble, while land use is not one of the project justification criteria specified in Federal transit law, it is included among the factors that FTA is to consider when applying those criteria. Additionally, TEA–21 added two new land use considerations to the evaluation process; a clear intent by Congress to give additional attention to this issue. Contrary to those comments that questioned the link between transportation and land use, FTA has found that transit supportive local land use policies have been an important indicator of the future success of Federally-assisted new starts projects.

In response to the comment that highway projects should be subject to a similar evaluation of land use, FTA is tempted to agree. However, as noted in response to a similar comment on the alternatives analysis requirement, highway projects are funded under a formula program and are not subject to the same evaluation process as transit new starts, which are funded under a discretionary program, and FTA is not at liberty to change the law or otherwise impose such a requirement.

Finally, in terms of flexibility in the application of the land use criteria, FTA finds that the existing process, which will continue under this rule, offers an acceptable balance between the need for comparability among proposed projects and the desire to permit project sponsors in each region to highlight their own successes in linking transit and land use planning. This can and often does include privately-sponsored transit-oriented development. A new starts investment requires a regional commitment by a variety of State and local agencies, as well as the community at large; those who have a stake in the financing and construction of a new start also have a stake in its ultimate success. Thus, it is not unreasonable to expect the same degree of commitment to regional planning as to project funding.

Reflecting that same concept of local commitment, this Rule also incorporates an element for pedestrian mobility into the land use measure. Pedestrian mobility has been a component of FTA's land use evaluation, as described in guidance issued each year at the beginning of the data collection process. This Rule formalizes that approach. Pedestrian facilities represent the basic, common link among all modes of transportation; therefore, a regional emphasis on pedestrian facilities and systems as part of land use planning will enhance the mobility of the population and the utility of the planned transit investment. Language has been added to appendix A of this Rule to specify that the land use measure will include consideration of existing and planned pedestrian facilities, which are expected to reflect curb ramp transition plans and milestones as required under 28 CFR 35.150(d)(2).

F. Section 611.11: Local Finoncial Commitment

Section 5309(e)(1)(C) requires that proposed projects also be supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain and operate the system or extension. This proposed rule retains the following measures for evaluation of the local financial commitment to a proposed project:

1. The proposed share of total project costs from sources other than the section 5309 new starts program, including Federal formula and flexible funds, the local match required by Federal law, any additional capital funding ("overmatch"), and the degree to which initial planning activities have been carried out without relying on funds from § 5309.

Comment. Three commenters expressed confusion over whether "non-5309 funds" included only local funds, or whether other Federal funds would be counted as part of "local" funding.

Response. Paragraph (a) under the heading, "Local Financial Commitment" in Appendix A to this rule has been revised to specify that the proposed local share of project costs is defined as the percentage of capital costs to be met using funds from sources other than the new starts program under 49 U.S.C. 5309. Thus, the use of flexible funds from other Federal sources will not be considered as part of the "Federal share" for purposes of evaluation under this Rule (though for purposes of funding eligibility the statutory ratio of at least 20 percent local funding must still be met using other than Federal funds).

2. The stability and reliability of the proposed capital financing plan (rated "high," "medium-high," "medium," "low-medium," or "low").

3. The stability and reliability of the sponsoring agency to fund the operating needs of the entire transit system as planned once the guideway project is built. Ratings of "high," "medium-high," "medium," "low-medium," or "low" will be used to describe stability and reliability of operating revenue.

The measures for these criteria are carried over intact from those used previously, and are more fully explained in Appendix A. The only changes are that "overmatch" was added as a statutory consideration by TEA–21, and an acknowledgement was added that FTA will consider whether adequate provisions have been made to fund the capital needs of the entire transit system as planned, including key station plans and milestones as required by the Americans with Disabilities Act.

Comment. Eleven commenters expressed varying opinions and made numerous recommendations on the local financial commitment criteria, but no clear theme emerged. A transit industry trade group urged FTA to consider not only the strength of the funding plan, but also the degree of commitment, the level of policy commitment to the project and funds already secured, and recommended addressing the level of commitment to the overall capital program. One transit operator from the mid-Atlantic region expressed support for the trade association's position. An industry interest group requested more detailed, prescriptive requirements. One State DOT that is also a Statewide transit operator wrote in support of their trust-fund-supported Statewide intermodal system, and stated that projects in such States should not be judged inferior to those that rely on project-specific ballot measures.

Response. The existing project evaluation and rating process, already accounts for factors such as the strength of the local commitment, the level of policy commitment to the proposed project, the level of commitment to the overall capital program. This practice would continue under this rule. Contrary to the comment implying that Statewide trust funds would be judged "inferior" to other financing plans, such dedicated funding sources offer a distinct advantage in the rating process. It should be noted, however, that the mere existence of a dedicated Statewide funding source is not sufficient to achieve a high rating; as a project proceeds through preliminary engineering and final design, evidence that sufficient funds have been committed and programmed to the project will also be required. The comment that this Rule is not prescriptive enough is puzzling; Federal agencies are more often criticized for being too prescriptive and inflexible. This Rule is intended to strike a balance between the need to apply a consistent standard, and the need to allow for the differences inherent in locally-derived projects.

G. Section 611.13: Overall Project Ratings

Perhaps the most significant change to this process brought by TEA–21 is the requirement that FTA establish summary recommendations for each project, in addition to the ratings for each of the project justification criteria. Section 5309(e)(6) requires FTA to "evaluate and rate (each) project as 'highly recommended,' 'recommended,' or 'not recommended,'" based on the results of the project evaluation process. It also requires that ratings be assigned to each of the individual evaluation criteria.

FTA will combine the ratings for each of the financial rating factors and project justification criteria into overall "finance" and "justification" ratings of "high," "medium-high," "medium," "low-medium," or "low." These ratings will then be combined into the single, overall project ratings required by TEA–21. For a proposed project to be rated as "recommended," it must be rated at least "medium" in terms of both finance and justification. To be "highly recommended," a proposed project must be rated at least "medium-high" for both finance and justification. Proposed projects not rated at least "medium" in both finance and justification will be rated as "not recommended." These ratings will be used both to approve entry into preliminary engineering and final design, as input to recommend proposed projects for Federal funding commitments, and for purposes of the Annual and Supplemental Reports on New Starts under section 5309(o)(1) and (2). A proposed project must receive a rating of at least "recommended" in order to be approved for any of these purposes.

Comment. A total of 14 comments addressed the overall project ratings. Virtually all of them expressed discomfort with the terms, particularly the term, "not recommended." The most common concern was that a meritorious project would be rated "not recommended" simply because it had not been sufficiently developed to be rated. Nine commenters suggested renaming the "not recommended" rating or creating a separate rating such as "not ready for recommendation," "not rated," "not ready," "incomplete," or "not currently recommended." One commenter at the Washington, DC workshop noted that proposed projects that "fail" should be provided with information explaining the rationale for the ratings. There was also substantial discussion at all three workshops concerning the permanence of the ratings, opportunities to change ratings, and so forth.

Response. The terms used for the overall project ratings—"highly recommended," "recommended" and "not recommended" " are established in law by TEA–21, and FTA is not at liberty to change them. We can, however, elaborate. While the names used for the overall ratings will continue to be given as "highly recommended," "recommended" and "not recommended," in the case of the "not recommended" rating we will indicate the reason for the rating. In order to be rated at least "recommended," a proposed new starts project must be rated at least "medium" for both project justification and local financial commitment. In order to be rated at least "medium" for local financial commitment, a proposed project must be rated at least "medium" in terms of the stability and reliability of operating funds, and the stability and reliability of capital funding. When a proposed project is rated "not recommended," FTA will indicate which of these areas requires improvement: "J" for project justification, "O" for the operating funding plan, and "C" for the capital funding plan. Thus, a proposed new

start that was found to need improvement in the capital plan would be rated "not recommended (C)." This will provide project sponsors, State, local, and Federal decisionmakers, and the public at large with a simple means to identify the basis for the project rating. In addition, the Annual and Supplemental Reports on New Starts, as well as all project-specific FTA correspondence, will contain language that discusses the reasoning behind the rating and note that all ratings are subject to change.

Comment. Three commenters recommended that the ratings be tied to a proposed project's stage of development; *i.e.*, different standards for preliminary engineering and final design.

Response. FTA has historically applied different rating standards for different stages of project development, recognizing that it is not possible to expect the same level of detail or degree of certainty for proposed projects that are in preliminary engineering as for those nearing the end of final design and contemplating FFGAs. Each edition of the Annual Report on New Starts contains tables describing the standards applied for each of the criteria at each stage of development. This Rule does not change FTA's historical approach.

It is important to note that a *rating* of "recommended" does not translate directly into a *funding* recommendation in any given fiscal year. Rather, the overall project ratings are intended to reflect overall project merit. Proposed projects that are rated "recommended" or "highly recommended," *and* have been sufficiently developed for consideration of a Federal funding commitment (i.e., FFGA), will be *eligible* for funding recommendations in the Administration's proposed budget for a given fiscal year.

Comment. A transit industry trade association expressed concern that proposed projects in the early stages of development would be rated "not recommended" because sufficient information has not been developed to address the justification criteria, and/or local funding is not in place. This, they advise, would compromise the future of such projects. They therefore suggested that the statutory ratings of "highly recommended," "recommended," and "not recommended" be used only in the context of annual funding recommendations to Congress.

Response. The distinction between a rating of "recommended" and a funding recommendation continues to be the subject of much confusion. The comments submitted by the trade association are most illustrative of this confusion. They are concerned that projects that are "not ready" to be rated will be unfairly given a "not recommended" rating simply because they are still early in the development process. They therefore suggest that the overall ratings be used only for purposes of FTA's annual funding recommendations to Congress, and not as an indicator of overall merit. Were FTA to adopt this suggestion, however, it would guarantee that all projects for which FTA did not recommend funding in the President's budget request would receive a summary rating of "not recommended," regardless of merit; *i.e.*, it would actually cause the effect the trade association wishes to avoid, and would increase, not decrease, the degree of confusion over these ratings. FTA is convinced that Congress intended for the overall ratings to be used to denote project merit, and that FTA's practice of applying different rating standards at different stages of project development already prevents the difficulties imagined by the trade association. Further, FTA would like to remind the transit industry, Federal, State and local decisionmakers, and the public at large that proposed new starts projects are re-rated at least annually for the Annual Report on New Starts, as well as at the time approval is sought for entry into preliminary engineering, final design, and entry into an FFGA. The overall ratings are not permanent judgements of project worth.

Comment. One transit operator objected to the statutorily-required approval to enter preliminary engineering and final design, urging that proposed projects be permitted to proceed regardless of funding recommendations. This same operator also objected to the requirement that proposed projects be rated at least "medium" for both finance and justification, claiming that one category should be sufficient.

Response. This comment also reflects confusion regarding the annual funding recommendations versus a rating of "recommended." Neither FTA's project funding recommendations nor annual appropriations earmarks have any bearing on FTA's approval for a proposed project to enter the next phase of development. FTA is not persuaded by the argument that a rating of at least "medium" for either justification or finance is sufficient, and will continue to require both. To do otherwise would be to suggest that enough money can offset a poorly justified project, or that the inability of project sponsors to secure adequate funding would not be a barrier if the proposed project is "good enough." Clearly neither is the case. It takes a worthy project with a sound local financial commitment to ensure a successful new start.

VII. Response to Request for Comments on Particular Issues

The NPRM specifically solicited comment on four issues: (1) Should FTA establish "threshold" or "pass/fail" values for evaluating each of the project evaluation criteria, and if so, what values would be appropriate; (2) Are there other means for measuring cost effectiveness than the current "cost per new rider" measure; (3) How should FTA evaluate the "technical capability" of project sponsors, and what "other factors" might be appropriate; and (4) How much relative attention should be given to each of the criteria in establishing the overall project ratings. A total of 31 individuals or organizations submitted comments on one or more of these questions.

Question 1: Threshold Values. Consistent with FTA's 1996 Statement of Policy and prior practice, this proposed rule does not establish "threshold" values for the statutory project justification criteria. Instead, we rate each project as "high," "medium-high," "medium," "low-medium," or "low" according to its individual merits under each of the measures. Should FTA establish "threshold" or "pass/fail" values for evaluating each of these criteria? If so, what thresholds are appropriate for each criterion?

Comment. Of the 16 responses received on this issue, 12 opposed the establishment of any type of threshold or pass/fail values for the criteria. One interest group and one local government entity dissented, supporting such requirements. One transit operator supported thresholds, but only on the condition that FTA revise the cost effectiveness measure to account for additional benefits such as travel time savings. One commenter at the Oakland, CA workshop commented that any thresholds would have to account for geographic differences. One operator noted that if thresholds are deemed necessary, they should be based on the mean or lowest value for prior "recommended" projects, or ranges should be established.

Response. This rule does not establish threshold values for rating purposes.

Question 2: Cost Effectiveness. FTA has historically relied on the measure of "cost per new rider" (more precisely, incremental cost per incremental rider) to indicate cost effectiveness, an approach retained in this proposed rule. Are there other means for measuring the cost effectiveness of a proposed new starts project?

Comment. The 23 comments that specifically addressed this question were unanimous in the assertion that the cost effectiveness measure should "roll up" additional benefits beyond incremental cost per incremental rider. The consensus was that focusing on new riders alone ignores benefits to other riders, and thus biases the measure against older cities with "mature" transit systems where the focus of a proposed new start would be on improving service, not attracting new riders. Most recommended a measure based on "cost per 'benefiting' rider" or simply "cost per rider." The most common examples of benefits given in comments were reductions in crowding and travel time savings. A trade group representing the interests of the transit industry recommended the formation of a committee to study the issues. One transit operator recommended a "full-cost accounting approach" incorporating the full range of societal impacts, including local policy decisions on land use and parking; another operator recommended a measure based on transit system throughput.

Response. In response to the near-universal call for a new measure of cost effectiveness, FTA has developed a new Transportation System User Benefits measure. This measure is described more fully in the section of the preamble to this rule that discusses comments to the cost effectiveness measure. It should be repeated, however, that the Transportation System User Benefits Measure will be used to evaluate cost effectiveness; the overall measure for project justification represents the "roll-up" of anticipated benefits.

Question 3: Technical Capability/Other Factors. 49 U.S.C. 5309(e)(3) establishes a number of "factors" that FTA must consider when evaluating proposed projects under the justification criteria. In particular, 49 U.S.C. 5309(e)(3)(F) directs us to "consider the technical capability of the grant recipient to construct the project," and 49 U.S.C. 5309(e)(3)(H) directs FTA to consider "other factors" as "appropriate." How should FTA evaluate the "technical capability" of project sponsors? What "other factors" might be appropriate?

Comment. Of the 18 commenters who responded to this question, 14 recommended that technical capacity be based on factors related to the project sponsor's experience or "track record" with prior new starts, the strength of the project's management plan, or some combination of these factors. One interest group and one transit operator noted that most project sponsors lack the technical expertise to implement a new start, which is why they hire contractors; one of these commenters asserted that any technical capacity measure would therefore favor existing systems with their own technical staff. However, seven commenters recommended that the experience of contractors, management teams, and/or other agency resources be considered. Two commenters recommended an evaluation including sponsors' prior success in obtaining local funds. One commenter at the Oakland workshop expressed confusion regarding the difference between a measure for technical capacity and the triennial review process.

Response. FTA intends to use the technical capacity factor as an indicator of the ability of the project sponsor(s) to successfully implement a proposed new start, as well as an indicator of project "readiness." To successfully implement a new starts project, the project sponsor(s) must meet the same basic legal, financial, and eligibility requirements for all FTA grants; have an adequate project management plan in place, and have adequate resources available to carry out the project management plan. By "readiness," we mean that there are no outstanding issues that remain to be resolved before a funding commitment can be considered. Such outstanding issues might include unresolved environmental or mitigation issues, outstanding engineering or right-of-way issues, upcoming referenda or board actions that are crucial to the financing plan, and issues relating to other basic requirements including Title IV of the Civil Rights Act; Environmental Justice; key station, fleet accessibility, complimentary paratransit, and other requirements under the Americans with Disabilities Act of 1990; and consistency with National Intelligent Transportation Systems Architecture.

Comment. Six commenters offered suggestions regarding "other factors" that should be considered. Two of these recommended incorporating a factor for "smart growth" or "livable communities," with one further recommending that forecasts used for such a measure be grounded in MPO forecasts and that "extra credit" be given to projects which support national priorities. One transit industry trade group recommended that "other factors" be open-ended. Other recommendations included measures for new ridership, "willingness to commit funds," and advancement of multimodal choice.

Response. Many of the suggestions submitted by commenters to the NPRM, such as smart growth, livable communities, and "willingness to commit funds," are already captured in the primary criteria. FTA intends for the "other factors" category to be used as a means of portraying factors about a proposed project that the other evaluation criteria do not adequately address. Each new start is unique, each has its own "story;" the "other factors" category will permit project sponsors and FTA to consider elements of the proposed project that may otherwise be ignored in the evaluation process. FTA has therefore taken a more "open-ended" approach to the use of "other factors" in this Rule, and has not defined specific factors for this category.

Question 4: Relative Attention to Criteria. FTA also seeks comment on how much relative attention should be given to each of the project justification criteria (mobility improvements, environmental benefits, operating efficiencies, cost effectiveness, land use and other factors) to establish the overall project ratings.

Comment. Of the 16 comments received on this issue, nine supported some kind of weighting of the criteria in general, but few were specific as to which should be weighted more or less, or what those specific weights should be. Two commenters noted that the relative importance of the criteria should vary over time, either over the course of project development or as national priorities change. Three indicated that different weights should apply according to geographic area or local conditions; the citizens' advisory committee from a transit operator in a major northeastern city recommended that cost effectiveness not be considered at all in that city. Only two comments, one from a State DOT and one from an individual member of the public, recommended specific weights for specific criteria. Four comments specifically stated that there should be no weighting at all, with one major northeastern transit operator stating that the "weights" already used by FTA, as reported in a recent GAO report, be discontinued.

Response. This rule does not establish specific weights for specific project evaluation criteria.

VIII. Other Comments

Additional comments were submitted to the docket concerning a variety of issues that are not easily categorized. These included issues such as concerns regarding definitions of terms used in the NPRM, to regional concerns, to the relationship with the pending FTA/FHWA joint planning rule, to objections

regarding the differences between FTA and FHWA capital programs.

Comment. Four commenters expressed concerns that the FTA new starts process complicates the design-build or "turnkey" approach. Two additional, related comments recommended that FTA approve FFGAs as early as possible in final design, or perhaps late in preliminary engineering.

Response. Nothing in this rule prevents project sponsors from proceeding with a new start under a design-build approach. No existing FFGA requirements will be changed or waived to accommodate the design-build process. FTA will provide guidance to project sponsors to clarify how the design-build process can be integrated with the new starts project development process and the FFGA requirements.

Comment. Two transit operators, one large and one small, commented that the approach proposed in the NPRM biases the process against "established systems in mature cities," calling again for more emphasis on benefits to existing riders and "preservation of high market shares."

Response. The Transportation System User Benefits measure for cost effectiveness moves away from the perceived emphasis on new riders and takes a much broader view of the benefits of transit. In addition, project sponsors are reminded that the cost effectiveness measure was not and is not intended as a single indicator of project merit. Established systems in mature cities may not be able to claim as many new riders as a brand-new system may expect, for example, but they have a distinct advantage under the land use criteria.

Comment. One large operator objected to the evaluation of "segments" as separate projects, recommending that segments also be considered in relation to an entire proposed system. Another operator recommended consideration of how well a proposed new start would complement other Federal investments.

Response. In many cases, local project sponsors propose an extensive regional fixed guideway transit system that must be implemented in phases over time, as Federal, State, and local funding permits. To ascribe all of the projected benefits of an entire such system to an initial segment overstates the benefits of that segment and prevents equitable comparison with other proposed new starts. Taken to its logical conclusion, it could be argued that measuring the same systemwide benefits for subsequent segments would double-count those benefits. FTA will continue to evaluate new starts projects as they have been proposed to us for funding. This Rule retains the existing requirement that segments be evaluated as individual projects.

Comment. One interest group claimed that alternatives analyses lack independence and objectivity, recommending that the process instead require a vote on options or an independent poll upon circulation of the Draft Environmental Impact Study (DEIS).

Response. Alternatives analysis is intended to be a means whereby the local community identifies a transportation problem and evaluates alternative solutions, eventually selecting one that best meets local needs—the locally-preferred alternative. It is incumbent upon the community to ensure that adequate opportunity for public involvement is provided, and to take advantage of those opportunities to be part of the process.

Comment. One small transit operator recommended that the final rule include a schedule of deadlines for approval of proposed projects to advance, and a list of FTA contacts.

Response. The comment regarding schedules and deadlines for approval assumes that all proposed new starts projects in TEA–21 will be implemented, will all be found to be justified and rated as "recommended" or higher, and will all proceed at the same rate of progress. FTA understands the desire by one commenter for a list of FTA contacts to be published as a part of this rule. However, to do so would require an amendment to this rule, including issuance of an NPRM and a minimum 60-day period for public comment, for each change in personnel. Project sponsors are instead encouraged to contact the appropriate FTA Regional Office for their area, as follows:

- Region 1 (ME, VT, NH, MA, RI, CT): Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093. Phone 617–494–2055.
- Region 2 (NY, NJ): One Bowling Green, Room 429, New York, NY, 10004–1415. Phone 212–668–2170.
- Region 3 (PA, MD, WV, VA, DC): 1760 Market Street, Suite 500, Philadelphia, PA, 19103–4124. Phone 215–656–7100.
- Region 4 (KY, TN, NC, SC, GA, FL, AL, MS, PR): Atlanta Federal Center, 61 Forsyth Street, SW, Suite 17T50, Atlanta, GA, 30303. Phone 404–562–3500.
- Region 5 (MN, WI, MI, IL, IN, OH): 200 West Adams Street, 24th Floor, Suite 2410, Chicago, IL, 60606–5232. Phone 312–353–2789.
- Region 6 (NM, TX, OK, AR, LA): Fritz Lanham Federal Building, 819 Taylor Street, Room 8A36, Fort Worth, TX, 76102. Phone 817–978–0550.
- Region 7 (NE, IA, KS, MO): 901 Locust Street, Suite 404, Kansas City, MO, 64106. Phone 816–329–3920.
- Region 8 (MT, ND, SD, WY, UT, CO): Columbine Place, 216 16th Street, Suite 650, Denver, CO, 80202–5120. Phone 303–844–3242.
- Region 9 (CA, NV, AZ, HI, AS, GU): 201 Mission Street, Suite 2210, San Francisco, CA, 94105–1831. Phone 415–744–3133.
- Region 10 (WA, OR, ID, AK): Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA, 98174–1002. Phone 206–220–7954.

Comment. An advisory committee to a large northeastern transit operator recommended that the criteria account for "Congressional funding anomalies."

Response. "Congressional funding anomalies," such as annual appropriations for new starts projects that do not follow the amounts committed under the FFGA for a particular project in a given year, are only a factor in the case of projects for which FFGAs have already been issued. The execution of an FFGA represents the conclusion of the project rating process. Therefore, appropriations shortfalls do not affect the project rating process. When making annual funding recommendations for new starts, FTA attempts to adjust its funding requests to account for prior year shortfalls, but this requires no changes to the project rating criteria, measures, or process. No change to this rule has been made in response to this comment.

IX. Regulatory Evaluation

The Federal Transit Administration (FTA) has evaluated the industry-wide costs and benefits of the rule, Major Capital Investment Projects, which is required by section 3009(e) of TEA–21. This rule sets forth the process that FTA will use to evaluate and rate major capital investments under the statutory criteria in 49 U.S.C. section 5309(e), which requires FTA to establish overall project ratings of "highly recommended," "recommended," or "not recommended," and to consider new criteria elements. The changes required by TEA–21 to FTA's pre-existing statutory criteria are relatively minor and affect FTA program management operations more than a recipient's operations. The final regulatory evaluation is available for public inspection in the docket established for this rulemaking.

X. Regulatory Process Matters

A. Executive Order 12688

The FTA has evaluated the industry costs and benefits of the major capital investments rule and has determined that it is a significant rule under E.O. 12688 because of the significant policy issues involved in federally funding major capital investments. This rule will not, however, have an impact on the economy of $100 million or more.

FTA estimates the costs associated with this Rule to be minimal. This Rule implements specific changes required under TEA–21 in the administration of the new starts program under 49 U.S.C. 5309.

The following tables show the costs associated with this Rule. The first table indicates the costs associated with the collection, reporting and analysis of data for the project evaluation and rating process. These costs are associated with activities that are already required as part of the new starts project development process; they do not represent new costs associated with this Rule. Costs are based on estimates of the number of proposed new starts projects that are expected to perform each task listed in the table below.

New starts data submission, evaluation and ratings	Estimated total cost		Total project sponsor cost		
Task	Hours	$	Avg. hrs per	Hours	$
(A) PE Request	7,590	$632,028	450	6,750	$337,500
(B) Annual New Starts Report	8,480	622,416	150	6,000	300,000
(C)Supplemental Report	.....	.....	0	.....	.....
(D) Final Design Request	2,424	204,221	150	1,800	90,000
(E) FFGA Approval	370	16,004	50	250	12,500
Subtotal	18,864	1,474,669	.....	14,800	740,000

NOTE: Difference between Total Cost and Project Sponsor Cost is FTA Cost.

The second table indicates the costs associated with the GPRA data collection requirements contained in this rule. As these requirements are new to the new starts process, the associated costs represent additional costs to FTA and to new starts project sponsors. The estimated total costs include costs to both FTA and to new starts project sponsors who enter into FFGAs. The total project sponsor costs are based on projections that five new FFGAs will be issued per year, and represents the total of the costs to all five project sponsors (*i.e.*, the average cost to each project sponsor is expected to be $1,670,000 / 5, or $334,000).

GPRA-FFGA data collection	Estimated total cost		Total project sponsor cost		
Task	Hours	$	Avg. hrs per	Hours	$
(A) Data Collection Plan	480	$42,336	80	400	$40,000
(B) Before Data Collection	15,200	755,840	3000	15,000	750,000
(C) Documentation of Forecasts	880	42,336	160	800	40,000
(D) After Data Collection	15,200	755,840	3000	15,000	750,000
(E) Analysis and Reporting	1,600	101,680	240	1,200	90,000
Subtotal	.....	1,698,032	.....	32,400	1,670,000

NOTE: Difference between Total Cost and Project Sponsor Cost is FTA Cost.

The third table sums the total costs for both the project evaluation and rating data collection and analysis process, and the GPRA data collection and analysis process.

All data collection and analysis activities	Estimated total cost		Total project sponsor cost		
Task	Hours	$	Avg. hrs per	Hours	$
New Starts Data Submission, Evaluation and Ratings	18,864	$1,474,669	.....	14,800	$740,000
GPRA-FFGA Data Collection	.....	1,698,032	.....	32,400	1,670,000
Total	.....	3,172,701	.....	47,200	2,410,000

NOTE:Difference between Total Cost and Project Sponsor Cost is FTA Cost.

B. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures. Because the purpose of this rule is to establish how the Secretary will rate various major capital investment projects, it concerns an important departmental policy and will likely generate a great deal of public interest.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, the FTA has evaluated the effects of this rule on small entities. Based on this evaluation, the FTA hereby certifies that

this action will not have a significant economic impact on a substantial number of small entities because this rule concerns only major capital investments in new fixed-guideway transit systems and extensions, which are not typically undertaken by small entities.

D. Paperwork Reduction Act

FTA will publish an estimate of the paperwork burden required by this Rule in the **Federal Register**, providing a sixty-day period for interested parties to submit comments on FTA's proposed information collection methods. Upon completion of the sixty-day period, FTA will submit its summary of the comments received and any resulting change in the information collection methods to OMB. Upon submission to OMB, FTA will provide an additional thirty days to provide comments on FTA's finalized methods to OMB. Once OMB has reviewed this data for compliance with the Paperwork Reduction Act, OMB will provide FTA with a control number authorizing FTA to collect the requested information. Affected parties will not have to comply with the information collection requirements of this Rule until FTA publishes the OMB control number in the **Federal Register**.

E. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 and it has been determined that the proposed rule will not have federalism implications that impose substantial direct compliance costs on state and locai governments.

F. National Environmental Policy Act

The agency has determined that this proposed rule, if adopted, will have positive effects on the environment by encouraging the use of mass transit, which may reduce the use of single occupancy vehicles.

G. Energy Act Implications

This regulation should have a positive effect on energy consumption because, through the Federal investment mass transit projects, it would increase the use of mass transit.

H. Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more in any one year.

List of Subjects in 49 CFR Part 611

Government contracts; Grant programs—Transportation; Mass transportation

A new part 611 is added to read as follows:

PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

Sec.

611.1 Purpose and contents.
611.3 Applicability.
611.5 Definitions.
611.7 Relation to planning and project development processes.
611.9 Project justification criteria for grants and loans for fixed guideway systems.
611.11 Local financial commitment criteria.
611.13 Overall project ratings.
Appendix A to Part 611—Description of Measures for Project Evaluation.

Authority: 49 U.S.C. 5309; 49 CFR 1.51

§ 611.1 Purpose and contents.

(a) This part prescribes the process that applicants must follow to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions to existing systems ("new starts"). Also, this part prescribes the procedures used by FTA to evaluate proposed new starts projects as required by 49 U.S.C. 5309(e), and the scheduling of project reviews required by 49 U.S.C. 5328(a).

(b) This part defines how the results of the evaluation described in paragraph (a) of this section will be used to:

(1) Approve entry into preliminary engineering and final design, as required by 49 U.S.C. 309(e)(6);

(2) Rate projects as "highly recommended," "recommended," or "not recommended," as required by 49 U.S.C. 5309(e)(6);

(3) Assign individual ratings for each of the project justification criteria specified in 49 U.S.C. 5309(e)(1)(B) and (C);

(4) Determine project eligibility for Federal funding commitments, in the form of Full Funding Grant Agreements;

(5) Support funding recommendations for this program for the Administration's annual budget request; and

(6) Fulfill the reporting requirements under 49 U.S.C. 5309(o)(1), Funding Levels and Allocations of Funds, Annual Report, and 5309(o)(2), Supplemental Report on New Starts.

(c) The information collected and ratings developed under this part will form the basis for the annual reports to Congress, required by 49 U.S.C. 5309(o)(1) and (2).

§ 611.3 Applicability.

(a) This part applies to all proposals for Federal capital investment funds under 49 U.S.C. 5309 for new transit fixed guideway systems and extensions to existing systems.

(b) Projects described in paragraph (a) of this section are not subject to evaluation under this part if the total amount of funding from 49 U.S.C. 5309 will be less than $25 million, or if such projects are otherwise exempt from evaluation by statute.

(1) Exempt projects must still be rated by FTA for purposes of entering into a Federal funding commitment as required by 49 U.S.C. 5309(e)(7). Sponsors who believe their projects to be exempt are nonetheless strongly encouraged to submit data for project evaluation as described in this part.

(2) Such projects are still subject to the requirements of 23 CFR part 450 and 23 CFR part 771.

(3) This part does not apply to projects for which a Full Funding Grant Agreement (FFGA) has already been executed.

(c) Consistent with 49 U.S.C. 5309(e)(8)(B), FTA will make project approval decisions on proposed projects using expedited procedures as appropriate, for proposed projects that are:

(1) Located in a nonattainment area;

(2) Transportation control measures as defined by the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(3) Required to carry out a State Implementation Plan.

§ 611.5 Definitions.

The definitions established by Titles 12 and 49 of the United States Code, the Council on Environmental Quality's regulation at 40 CFR parts 1500–1508, and FHWA–FTA regulations at 23 CFR parts 450 and 771 are applicable. In addition, the following definitions apply:

Alternatives analysis is a corridor level analysis which evaluates all reasonable mode and alignment alternatives for addressing a transportation problem, and results in the adoption of a locally preferred alternative by the appropriate State and local agencies and official boards through a public process.

Baseline alternative is the alternative against which the proposed new starts project is compared to develop project justification measures. Relative to the no build alternative, it should include transit improvements lower in cost than the new start which result in a better ratio of measures of transit mobility compared to cost than the no build alternative.

BRT means bus rapid transit.

Bus Rapid Transit refers to coordinated improvements in a transit system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on fixed guideways and urban roadways. The intention of Bus Rapid Transit is to reduce bus travel time, improve service reliability, increase the convenience of users, and ultimately, increase bus ridership.

Extension to existing fixed-guideway system means a project to extend an existing fixed guideway system.

FFGA means a Full Funding Grant Agreement.

Final Design is the final phase of project development, and includes (but is not limited to) the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents.

Fixed guideway system means a mass transportation facility which utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, or uses a fixed catenary system and a right of way usable by other forms of transportation. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, ferry boat service, and fixed-guideway facilities for buses (such as bus rapid transit) and other high occupancy vehicles. A *new fixed guideway system* means a newly-constructed fixed guideway system in a corridor or alignment where no such system exists.

FTA means the Federal Transit Administration.

Full Funding Grant Agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions.

Major transit investment means any project that involves the construction of a new fixed guideway system or extension of an existing fixed guideway system for use by mass transit vehicles.

NEPA process means those procedures necessary to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), at 23 CFR part 771; the NEPA process is completed when a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) is issued.

New start means a new fixed guideway system, or an extension to an existing fixed guideway system.

Preliminary Engineering is the process by which the scope of the proposed project is finalized, estimates of project costs, benefits and impacts are refined, NEPA requirements are completed, project management plans and fleet management plans are further developed, and local funding commitments are put in place.

Secretary means the Secretary of Transportation.

TEA–21 means the Transportation Equity Act for the 21st Century.

§ 611.7 Relation to Planning and Project Development Processes

All new start projects proposed for funding assistance under 49 USC 5309 must emerge from the metropolitan and Statewide planning process, consistent with 23 CFR part 450. To be eligible for FTA capital investment funding, a proposed project must be based on the results of alternatives analysis and preliminary engineering.

(a) *Alternatives Analysis.* (1) To be eligible for FTA capital investment funding for a major fixed guideway transit project, local project sponsors must perform an alternatives analysis.

(2) The alternatives analysis develops information on the benefits, costs, and impacts of alternative strategies to address a transportation problem in a given corridor, leading to the adoption of a locally preferred alternative.

(3) The alternative strategies evaluated in an alternatives analysis must include a no-build alternative, a baseline alternative, and an appropriate number of build alternatives. Where project sponsors believe the no-build alternative fulfills the requirements for a baseline alternative, FTA will determine whether to require a separate baseline alternative on a case-by-case basis.

(4) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan planning organization's financially-constrained long-range regional transportation plan.

(b) *Preliminary Engineering.* Consistent with 49 USC 5309(e)(6) and 5328(a)(2), FTA will approve/disapprove entry of a proposed project into preliminary engineering within 30 days of receipt of a formal request from the project sponsor(s).

(1) A proposed project can be considered for advancement into preliminary engineering only if:

(i) Alternatives analysis has been completed

(ii) The proposed project is adopted as the locally preferred alternative by the Metropolitan Planning Organization into its financially constrained metropolitan transportation plan;

(iii) Project sponsors have demonstrated adequate technical capability to carry out preliminary engineering for the proposed project; and

(iv) All other applicable Federal and FTA program requirements have been met.

(2) FTA's approval will be based on the results of its evaluation as described in §§ 611.9–611.13.

(3) At a minimum, a proposed project must receive an overall rating of "recommended" to be approved for entry into preliminary engineering.

(4) This part does not in any way revoke prior FTA approvals to enter preliminary engineering made prior to February 5, 2001.

(5) Projects approved to advance into preliminary engineering receive blanket pre-award authority to incur project costs for preliminary engineering activities prior to grant approval.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for this project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(c) *Final Design.* Consistent with 49 USC 5309(e)(6) and 5328(a)(3), FTA will approve/disapprove entry of a proposed project into final design within 120 days of receipt of a formal request from the project sponsor(s).

(1) A proposed project can be considered for advancement into final design only if:

(i) The NEPA process has been completed;

(ii) Project sponsors have demonstrated adequate technical capability to carry out final design for the proposed project; and

(iii) All other applicable Federal and FTA program requirements have been met.

(2) FTA's approval will be based on the results of its evaluation as described in Parts §§ 611.9–611.13 of this Rule.

(3) At a minimum, a proposed project must receive an overall rating of "recommended" to be approved for entry into final design.

(4) Consistent with the Government Performance and Results Act of 1993, project sponsors seeking FFGAs shall submit a complete plan for collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during development of the project.

(i) The plan shall provide for: Collection of "before" data on the current transit system; documentation of the "predicted" scope, service levels, capital costs, operating costs, and ridership of the project; collection of "after" data on the transit system two years after opening of the new start project; and analysis of the consistency

of "predicted" project characteristics with the "after" data.

(ii) The "before" data collection shall obtain information on transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics. The "after" data collection shall obtain analogous information on transit service levels and ridership patterns, plus information on the as-built scope and capital costs of the new start project.

(iii) The analysis of this information shall describe the impacts of the new start project on transit services and transit ridership, evaluate the consistency of "predicted" and actual project characteristics and performance, and identify sources of differences between "predicted" and actual outcomes.

(iv) For funding purposes, preparation of the plan for collection and analysis of data is an eligible part of the proposed project.

(5) Project sponsors shall collect data on the current system, according to the plan required under § 611.7(c)(4) as approved by FTA, prior to the beginning of construction of the proposed new start. Collection of this data is an eligible part of the proposed project for funding purposes.

(6) This part does not in any way revoke prior FTA approvals to enter final design that were made prior to February 5, 2001.

(7) Projects approved to advance into final design receive blanket pre-award authority to incur project costs for final design activities prior to grant approval.

(i) This pre-award authority does not extend to right of way acquisition or construction, nor does it constitute a commitment by FTA that future Federal funds will be approved for this project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(d) *Full funding grant agreements.* (1) FTA will determine whether to execute an FFGA based on:

(i) The evaluations and ratings established by this rule;

(ii) The technical capability of project sponsors to complete the proposed new starts project; and

(iii) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed new starts project.

(2) An FFGA shall not be executed for a project that is not authorized for final design and construction by Federal law.

(3) FFGAs will be executed only for those projects which:

(i) Are rated as "recommended" or "highly recommended;"

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize Federal new starts funds, consistent with available program authorization.

(4) In any instance in which FTA decides to provide financial assistance under section 5309 for construction of a new start project, FTA will negotiate an FFGA with the grantee during final design of that project. Pursuant to the terms and conditions of the FFGA:

(i) A maximum level of Federal financial contribution under the section 5309 new starts program will be fixed;

(ii) The grantee will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated;

(iii) FTA and the grantee will establish a schedule for anticipating Federal contributions during the final design and construction period; and

(iv) Specific annual contributions under the FFGA will be subject to the availability of budget authority and the ability of the grantee to use the funds effectively.

(5) The total amount of Federal obligations under Full Funding Grant Agreements and potential obligations under Letters of Intent will not exceed the amount authorized for new starts under 49 U.S.C. § 5309.

(6) FTA may also make a "contingent commitment," which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g), 5338(b), and 5338(h).

(7) Consistent with the Government Performance and Results Act of 1993 (GPRA), the FFGA will require implementation of the data collection plan prepared in accordance with § 611.7(c)(4):

(i) Prior to the beginning of construction activities the grantee shall collect the "before" data on the existing system, if such data has not already been collected as part of final design, and document the predicted characteristics and performance of the project.

(ii) Two years after the project opens for revenue service, the grantee shall collect the "after" data on the transit system and the new start project, determine the impacts of the project, analyze the consistency of the "predicted" performance of the project with the "after" data, and report the findings and supporting data to FTA.

(iii) For funding purposes, collection of the "before" data, collection of the "after" data, and the development and reporting of findings are eligible parts of the proposed project.

(8) This part does not in any way alter, revoke, or require re-evaluation of existing FFGAs that were issued prior to February 5, 2001.

§ 611.9 Project justification criteria for grants and loans for fixed guideway systems

In order to approve a grant or loan for a proposed new starts project under 49 U.S.C. 5309, and to approve entry into preliminary engineering and final design as required by section 5309(e)(6), FTA must find that the proposed project is justified as described in section 5309(e)(1)(B).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through preliminary engineering and final design.

(1) The method used to make this determination will be a multiple measure approach in which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The measures for these criteria are specified in Appendix A to this rule.

(3) The measures will be applied to the project as it has been proposed to FTA for new starts funding under 49 U.S.C. 5309.

(4) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: "high," "medium-high," "medium," "low-medium," or "low."

(b) The criteria are as follows:

(1) Mobility Improvements.

(2) Environmental Benefits.

(3) Operating Efficiencies.

(4) Transportation System User Benefits (Cost-Effectiveness).

(5) Existing land use, transit supportive land use policies, and future patterns.

(6) Other factors. Additional factors, including but not limited to:

(i) The degree to which the programs and policies (e.g., parking policies, etc.) are in place as assumed in the forecasts,

(ii) Project management capability, including the technical capability of the grant recipient to construct the project, and

(iii) Additional factors relevant to local and national priorities and relevant to the success of the project.

(c) In evaluating proposed new starts projects under these criteria:

(1) As a candidate project proceeds through preliminary engineering and final design, a greater degree of certainty is expected with respect to the scope of the project and a greater level of commitment is expected with respect to land use.

(2) For the criteria under § 611.9(b)(1)–(4), the proposed new start will be compared to the baseline alternative.

(d) In evaluating proposed new starts projects under these criteria, the following factors shall be considered:

(1) The direct and indirect costs of relevant alternatives;

(2) Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed, and recognize reductions in local infrastructure costs achieved through compact land use development;

(3) Existing land use, mass transportation supportive land use policies, and future patterns;

(4) The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;

(5) Population density and current transit ridership in the corridor;

(6) The technical capability of the grant recipient to construct the project;

(7) Differences in local land, construction, and operating costs; and

(8) Other factors as appropriate.

(e) FTA may amend the measures for these criteria, pending the results of ongoing studies regarding transit benefit evaluation methods.

(f) The individual ratings for each of the criteria described in this section will be combined into a summary rating of "high," "medium-high," "medium," "low-medium," or "low" for project justification. "Other factors" will be considered as appropriate.

§ 611.11 Local financial commitment criteria.

In order to approve a grant or loan under 49 U.S.C. 5309, FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by section 5309(e)(1)(C). The local financial commitment to a proposed project will be evaluated according to the following measures:

(a) The proposed share of project capital costs to be met using funds from sources other than the section 5309 new starts program, including both the non-Federal match required by Federal law and any additional capital funding ("overmatch"), and the degree to which planning and preliminary engineering activities have been carried out without funding from the section 5309 new starts program;

(b) The stability and reliability of the proposed capital financing plan for the new starts project; and

(c) The stability and reliability of the proposed operating financing plan to fund operation of the entire transit system as planned over a 20-year planning horizon.

(d) For each proposed project, ratings for paragraphs (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: "high," "medium-high," "medium," "low-medium," or "low." For paragraph (a) of this section, the percentage of Federal funding sought from 49 U.S.C. § 5309 will be reported.

(e) The summary ratings for each measure described in this section will be combined into a summary rating of "high," "medium-high," "medium," "low-medium," or "low" for local financial commitment.

§ 611.13 Overall project ratings.

(a) The summary ratings developed for project justification local financial commitment (§§ 611.9 and 611.11) will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of "highly recommended," "recommended," and "not recommended," as required by 49 U.S.C. 5309(e)(6), to each proposed project.

(1) These ratings will indicate the overall merit of a proposed new starts project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by section 5309(o)(1), and as required for FTA approvals to enter into preliminary engineering, final design, or FFGAs.

(c) These ratings will be used to:

(1) approve advancement of a proposed project into preliminary engineering and final design;

(2) Approve projects for FFGAs;

(3) Support annual funding recommendations to Congress in the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(o)(1); and

(4) For purposes of the supplemental report on new starts, as required under section 5309(o)(2).

(d) FTA will assign overall ratings for proposed new starts projects based on the following conditions:

(1) Projects will be rated as "recommended" if they receive a summary rating of at least "medium" for both project justification (§ 611.9) and local financial commitment (§ 611.11);

(2) Projects will be rated as "highly recommended" if they receive a summary rating higher than "medium" for both local financial commitment and project justification.

(3) Projects will be rated as "not recommended" if they do not receive a summary rating of at least "medium" for both project justification and local financial commitment.

Appendix A to Part 611—Description of Measures Used for Project Evaluation.

Project Justification

FTA will use several measures to evaluate candidate new starts projects according to the criteria established by 49 U.S.C. 5309(e)(1)(B). These measures have been developed according to the considerations identified at 49 U.S.C. 5309(e)(3) ("Project Justification"), consistent with Executive Order 12893. From time to time, FTA has published technical guidance on the application of these measures, and the agency expects it will continue to do so. Moreover, FTA may well choose to amend these measures, pending the results of ongoing studies regarding transit benefit evaluation methods. The first four criteria listed below assess the benefits of a proposed new start project by comparing the project to the baseline alternative. Therefore, the baseline alternative must be defined so that comparisons with the new start project isolate the costs and benefits of the major transit investment. At a minimum, the baseline alternative must include in the project corridor all reasonable cost-effective transit improvements short of investment in the new start project. Depending on the circumstances and through prior agreement with FTA, the baseline alternative can be defined appropriately in one of three ways. First, where the adopted financially constrained regional transportation plan includes within the corridor all reasonable cost-effective transit improvements short of the new start project, a no-build alternative that includes those improvements may serve as the baseline. Second, where additional cost-effective transit improvements can be made beyond those provided by the adopted plan, the baseline will add those cost-effective transit improvements. Third, where the proposed new start project is part of a multimodal alternative that includes major highway components, the baseline alternative will be the preferred multimodal alternative without the new start project and associated transit services. Prior to submittal of a request to enter preliminary engineering for the new start project, grantees must obtain FTA approval of the definition of the baseline alternative. Consistent with the requirement that differences between the new start project and the baseline alternative measure only the benefits and costs of the project itself, planning factors external to the new start project and its supporting bus service must be the same for both the baseline and new start project alternatives. Consequently, the highway and transit networks defined for the analysis must be the same outside the corridor for which the new start project is proposed. Further, policies affecting travel demand and travel costs, such as land use, transit fares and parking costs.

must be applied consistently to both the baseline alternative and the new start project alternative. The fifth criterion, "existing land use, transit supportive land use policies, and future patterns," reflects the importance of transit-supportive local land use and related conditions and policies as an indicator of ultimate project success.

(a) Mobility Improvements.

(1) The aggregate travel time savings in the forecast year anticipated from the new start project compared to the baseline alternative. This measure sums the travel time savings accruing to travelers projected to use transit in the baseline alternative, travelers projected to shift to transit because of the new start project, and non-transit users in the new start project who would benefit from reduced traffic congestion.

(i) After September 1, 2001, FTA will employ a revised measure of travel benefits accruing to travelers.

(ii) The revised measure will be based on a multi-modal measure of perceived travel times faced by all users of the transportation system.

(2) The absolute number of existing low income households located within ½-mile of boarding points associated with the proposed system increment.

(3) The absolute number of existing jobs within ½-mile of boarding points associated with the proposed system increment.

(b) Environmental Benefits.

(1) The forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated in terms of annual tons for each criteria pollutant or gas (forecast year), compared to the baseline alternative;

(2) The forecast net change per year (forecast year) in the regional consumption of energy, ascribable to the proposed new investment, expressed in British Thermal Units (BTU), compared to the baseline alternative; and

(3) Current Environmental Protection Agency designations for the region's compliance with National Ambient Air Quality Standards.

(c) Operating Efficiencies. The forecast change in operating cost per passenger-mile (forecast year), for the entire transit system. The new start will be compared to the baseline alternative.

(d) Transportation System User Benefits (Cost-Effectiveness).

(1) The cost effectiveness of a proposed project shall be evaluated according to a measure of transportation system user benefits, based on a multimodal measure of perceived travel times faced by all users of the transportation system, for the forecast year, divided by the incremental cost of the proposed project. Incremental costs and benefits will be calculated as the differences between the proposed new start and the baseline alternative.

(2) Until the effective date of the transportation system user benefits measure of cost effectiveness, cost effectiveness will be computed as the incremental costs of the proposed project divided by its incremental transit ridership, as compared to the baseline alternative.

(i) Costs include the forecast annualized capital and annual operating costs of the entire transit system.

(ii) Ridership includes forecast total annual ridership on the entire transit system, excluding transfers.

(e) Existing land use, transit supportive land use policies, and future patterns. Existing land use, transit-supportive land use policies, and future patterns shall be rated by evaluating existing conditions in the corridor and the degree to which local land use policies are likely to foster transit supportive land use, measured in terms of the kinds of policies in place, and the commitment to these policies. The following factors will form the basis for this evaluation:

(1) Existing land use;

(2) Impact of proposed new starts project on land use;

(3) Growth-management policies;

(4) Transit-supportive corridor policies;

(5) Supportive zoning regulations near transit stations;

(6) Tools to implement land use policies;

(7) The performance of land use policies; and

(8) Existing and planned pedestrian facilities, including access for persons with disabilities.

(f) Other factors. Other factors that will be considered when evaluating projects for funding commitments include, but are not limited to:

(1) Multimodal emphasis of the locally preferred investment strategy, including the proposed new start as one element;

(2) Environmental justice considerations and equity issues,

(3) Opportunities for increased access to employment for low income persons, and Welfare-to-Work initiatives;

(4) Livable Communities initiatives and local economic activities;

(5) Consideration of alternative land use development scenarios in local evaluation and decision making for the locally preferred transit investment decision;

(6) Consideration of innovative financing, procurement, and construction techniques, including design-build turnkey applications; and

(7) Additional factors relevant to local and national priorities and to the success of the project, such as Empowerment Zones, Brownfields, and FTA's Bus Rapid Transit Demonstration Program.

Local Financial Commitment

FTA will use the following measures to evaluate the local financial commitment to a proposed project:

(a) The proposed share of project capital costs to be met using funds from sources other than the 49 U.S.C. 5309 new starts program, including both the local match required by Federal law and any additional capital funding ("overmatch"). Consideration will be given to:

(i) The use of innovative financing techniques, as described in the May 9, 1995, **Federal Register** notice on *FTA's Innovative Financing Initiative* (60 FR 24682);

(ii) The use of "flexible funds" as provided under the CMAQ and STP programs;

(iii) The degree to which alternatives analysis and preliminary engineering activities were carried out without funding from the § 5309 new starts program; and

(iv) The actual percentage of the cost of recently-completed or simultaneously undertaken fixed guideway systems and extensions that are related to the proposed project under review, from sources other than the section 5309 new starts program (FTA's intent is to recognize that a region's local financial commitment to fixed guideway systems and extensions may not be limited to a single project).

(b) The stability and reliability of the proposed capital financing plan, according to:

(i) The stability, reliability, and level of commitment of each proposed source of local match, including inter-governmental grants, tax sources, and debt obligations, with an emphasis on availability within the project development timetable;

(ii) Whether adequate provisions have been made to cover unanticipated cost overruns and funding shortfalls; and

(iii) Whether adequate provisions have been made to fund the capital needs of the entire transit system as planned, including key station plans as required under 49 CFR 37.47 and 37.51, over a 20-year planning horizon period.

(c) The stability and reliability of the proposed operating financing plan to fund operation of the entire transit system as planned over a 20-year planning horizon.

Issued: November 29, 2000.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 00–30921 Filed 12–6–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Temporary Approval of Tin Shot as Nontoxic for Hunting Waterfowl and Coots During the 2000–2001 Season; Final Rule

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018–AH67

Migratory Bird Hunting; Temporary Approval of Tin Shot as Nontoxic for Hunting Waterfowl and Coots During the 2000–2001 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) amends 50 CFR 20.21(j) to grant temporary approval of tin shot as nontoxic for hunting waterfowl and coots during the 2000–2001 season only. Acute toxicity studies revealed no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with tin shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tin administered to adult mallards did not adversely affect them or the offspring they produced. The tin shot application was submitted by the International Tin Research Institute, Ltd. (ITRI) of Uxbridge, Middlesex, England.

DATES: This rule takes effect on December 7, 2000.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Suite 634, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act)(16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

The purpose of this rule is to allow the hunting public to temporarily use tin shot for hunting waterfowl and coots during the 2000–2001 hunting season only. Accordingly, we amend 50 CFR 20.21, which describes illegal hunting methods for migratory birds. Paragraph (j) of § 20.21 pertains to prohibited types of shot. We amend § 20.21(j) to allow temporary use of tin shot (99.9 percent tin, with <1 percent residual lead) as nontoxic shot for waterfowl and coot hunting during the 2000–2001 hunting season only.

Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel, bismuth-tin, tungsten-iron, tungsten-polymer, and tungsten-matrix shot are approved as nontoxic. We previously granted temporary approval for tin shot during the 1999–2000 hunting season (August 19, 1999; 64 FR 45400). Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000). We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot material has a density of approximately 7.3 g/cm^3, and is 99.9 percent tin, with a low level of iron pickup due to the steel production equipment. The tin shot application from ITRI contains a description of the shot, a toxicological report (Thomas 1997), results of a 30-day toxicity study (Wildlife International, Ltd. 1998), and results of a 150-day reproductive/chronic toxicity study (Gallagher *et al.* 2000). On August 19, 1999 (64 FR 45400) we published a detailed literature review on toxicity, environmental fate, and known effect of tin on birds, as well as results from ITRI's 30-day toxicity testing of tin shot. On September 25, 2000 (65 FR 57586) we published results from ITRI's reproductive/chronic toxicity study which revealed no adverse effects of tin shot on adult mallards, or the offspring they produced.

Nontoxic Shot Approval

The nontoxic shot approval process contains a tiered review system and outlines three conditions for approval of shot types. The first condition for nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests discussed above, we conclude that tin shot does not pose a significant danger to migratory birds or other wildlife.

The second condition for approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and incorporated this requirement in the new approval process. ITRI has documented that tin shot meets this requirement.

The third condition for approval involves law enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated our position that a noninvasive field detection device to distinguish lead from other shot types was an important component of the nontoxic shot approval process. At that time, we stated that final approval of bismuth-tin shot would be contingent upon the development and availability of a noninvasive field detection device (60 FR 43315). We incorporated a requirement for a noninvasive field detection device in the revised nontoxic shot approval process published on December 1, 1997 (62 FR 63608); 50 CFR 20.134(b)(6). A field detection method to distinguish tin shot from lead currently is being developed by ITRI. Granting temporary approval for tin shot during the 2000–2001 hunting season will facilitate completion of development of such a device. However, we will not consider either additional temporary approvals, or final approval, of tin shot beyond the 2000–2001 season until a reliable and acceptable field detection method is developed and is readily available to law enforcement personnel.

As stated previously, this rule amends 50 CFR 20.21(j) by temporarily approving tin shot as nontoxic for hunting waterfowl and coots during the 2000–2001 hunting season only. It is based on the toxicological report, acute toxicity study, and the reproductive/chronic toxicity study submitted by ITRI. Results of these studies indicate the absence of any deleterious effects of tin shot when ingested by captive-reared mallards.

In the amendatory language of the proposed rule published on September 25, 2000 (65 FR 57588), we incorrectly stated the chemical composition of tungsten-iron shot as 55 parts tungsten and 45 parts iron. The correct composition is 40 parts tungsten and 60 parts iron.

Public Comments and Responses

The September 25, 2000, proposed rule published in the **Federal Register** (65 FR 57586) invited public comments from interested parties. We indicated that the public comment period had been shortened to 30 days to expedite the availability of tin shot to hunters during the current hunting season (65 FR 57587). The **DATES** section of the proposed rule incorrectly stated that public comments should be submitted no later than November 24, 2000, instead of October 24, 2000. On October 23, 2000, we published a notice in the **Federal Register** to correct the closing date for comments (65 FR 63225). We received three comments during the comment period.

ITRI expressed their appreciation for extension of temporary approval of tin shot, which will facilitate development of a field detection device. The Wisconsin Department of Natural Resources did not support granting temporary approval of tin shot at this time, due to the lack of a noninvasive field detection device to distinguish tin from lead shot. A private individual inquired whether or not ITRI manufactures tin shot, and whether the Service possessed any specific tin shot which it proposes to approve as nontoxic. The individual also opposed the approval of tin shot due to the low density of tin; which the individual believes will increase the incidence of crippling of waterfowl. Finally, the individual recommended that Service revise its nontoxic shot approval process to incorporate a lethality component.

Service Response: We understand the concern of wildlife agencies regarding the lack of a noninvasive field detection device. ITRI is currently developing such a device, and granting temporary approval of tin shot for an additional year will facilitate completion of such development. However, tin shot shells currently on the market clearly are labeled as such, which will aid in field detection. We reiterate that we will not consider either additional temporary approvals, or final approval, of tin shot beyond the 2000–2001 season until a reliable and acceptable field detection method is developed and is readily available to law enforcement personnel.

With regard to whether or not ITRI manufactures tin shot, there is no requirement for an applicant for nontoxic shot approval to physically manufacture the shot themselves. ITRI submitted a five pound sample of the candidate shot with its original application. Because tin shot is 99.9 percent tin, it is essentially a generic tin shot and its nontoxic characteristic is not dependent on the manufacturer. With regard to the ballistic performance of tin shot, the density of tin shot (approximately 7.3 g/cm^3) is only slightly less than that of approved steel shot (7.9 g/cm^3). Previously, we reviewed the ballistic performance of steel shot versus lead shot, and concluded that steel shot was suitable for hunting waterfowl (U.S. Fish and Wildlife Service 1976, 1986). As with any shot type, we recommend that hunters restrict shooting to shorter distances to reduce crippling and maximize the number of waterfowl that are retrieved. We solicited public input on our proposed revision to the nontoxic shot approval process on January 26, 1996 (61 FR 2470). We received no public comments requesting that a lethality component be incorporated in the revised approval process. Finally, we note that tin shot has already been approved as nontoxic for hunting waterfowl in Canada.

References

Anderson, W.L., S.P. Havera, and B.W. Zercher. 2000. Ingestion of lead and nontoxic shotgun pellets by ducks in the Mississippi Flyway. J. Wildl. Manage. 64:848–857.

Gallagher, S.P., J.B. Beavers, R. Van Hoven, M. Jaber. 2000. Pure tin shot: A chronic exposure study with the mallard including reproductive parameters. Wildlife International, Ltd. Project No. 476–102. Easton, Maryland. 322pp.

Thomas, V.G. 1997. Application for approval of tin shot as non-toxic for the hunting of migratory birds. 26 pp.

U.S. Fish and Wildlife Service. 1976. Final Environmental Impact Statement: Proposed use of steel shot for hunting waterfowl in the United States. Department of the Interior. Washington, DC. 276pp.

U.S. Fish and Wildlife Service. 1986. Final Supplemental Environmental Impact Statement: Use of lead shot for hunting migratory birds in the United States. Department of the Interior. Washington, DC. 549pp.

Wildlife International, Ltd. 1998. Tin shot: An oral toxicity study with the mallard. Project No. 476–101. 158 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment (EA) for temporary approval of tin shot in October, 2000. Based on review and evaluation of the information contained in the EA, we have determined that amending 50 CFR 20.21(j) to provide temporary approval of tin shot as nontoxic for waterfowl and coot hunting during the 2000–01 season would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on this action is not required. The EA is available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" We have completed a Section 7 consultation under the ESA for this rule. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. This rule approves an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this rule would provide one shot type in addition to the existing five that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. This rule has not been reviewed by the Office of Management and Budget (OMB) review under Executive Order 12866.

Executive Order 12866

This rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. OMB makes the final determination under E.O. 12866. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the

SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018–0067; expires 10/31/2003) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Effective Date

Under the APA (5 U.S.C. 551–553) our normal practice is to publish policies with a 30-day delay in effective date. But in this case, we are using the "good cause" exemption under 5 U.S.C. 553(d)(3) to make this policy effective upon publication for the following reasons: This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. It is in the best interest of small retailers who have stocked tin shot for the current season. The Services believes another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) introductory text and adding paragraph (j)(1) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that this restriction applies only to the taking of Anatidae (ducks, geese, (including brant) and swans), coots (*Fulica americana*) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, and further provided that:

(1) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 2000–2001 hunting season only.

(2) [Reserved]

Dated: November 24, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–30957 Filed 12–06–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part VIII

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Hazardous Materials: Temporary Reduction of Registration Fees; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Because there is an unexpended balance in the Hazardous Materials Emergency Preparedness grants fund, RSPA proposes to temporarily lower the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials. RSPA also proposes to require all not-for-profit organizations to pay the same registration fee as a small business and to refer to the size standards in the North American Industry Classification System (NAICS) as the criteria for a small business.

DATES: Comments must be received by February 2, 2001.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number, RSPA–00–8439 (HM–208D) at the beginning of your comments and submit two copies. If you wish to receive confirmation of receipt of your comments, include a self-addressed stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" to obtain instructions for filing the document electronically.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You can view public dockets between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You can also view comments on-line at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Proposal

Since 1992, RSPA has conducted a national registration program for persons engaged in the offering for transportation or transporting certain categories and quantities of hazardous materials in intrastate, interstate, or foreign commerce. This program is carried out under the mandate in 49 U.S.C. 5108 and the authority delegated to RSPA at 49 CFR 1.53(b)(1). The purposes of the registration program are to (1) gather information about the transportation of hazardous material and (2) fund the Hazardous Materials Emergency Preparedness (HMEP) grants program which supports hazardous material emergency response planning and training activities by States, local governments, and Indian tribes and related activities. See 49 U.S.C. 5018(b), 5116.

Until 2000, the annual registration fee was set at the minimum level of $250 provided in the statute (plus a processing fee of $50), and the requirement to register applied only to those persons offering or transporting the categories and quantities for which registration was required by the law. 49 U.S.C. 5108(g)(2)(A). In each of the eight registration years from 1992–1993 through 1999–2000, RSPA received approximately 27,000 registration statements and an average of $6.8 million to support the HMEP grants program, or less than 50% of the total $14.3 million intended by Congress for training and planning grants and grant-related activities. See the discussion in the final rule published February 14, 2000 in Docket No. HM–208C (RSPA–99–5137), 65 FR 7297, 7299. In order to increase the funds collected from the registration program for the registration years beginning with 2000–2001, in the February 14, 2000 final rule, RSPA (1) expanded the requirement to register to all persons who offer for transportation or transport hazardous materials required to be placarded (with a limited exception for farmers), and (2) adopted a two-tiered fee schedule of $275 (plus a $25 processing fee) for persons meeting criteria of the U.S. Small Business Administration (SBA) for a "small business," and $1,975 (plus a $25 processing fee) for all other registrants. RSPA also allowed registration for one, two or three years under a single registration statement. 65 FR at 7309–10.

RSPA estimated that, by requiring persons to register if they offer for transportation or transport hazardous materials required to be placarded, the total number of registrants would increase to a number in the range of 42,000 to 45,000. 65 FR at 7308. Based on the registrations to date, RSPA now estimates that a total of approximately 40,000 persons will register for the 2000–2001 registration year, and that the number of registrants may increase slightly in the future. Based on a careful review of census data concerning establishments identified by Standard Industrial Classification (SIC) Codes corresponding to operations involving the likely manufacture, distribution, or sale (wholesale and retail) of hazardous materials, RSPA estimated that about 1,500 (3%) of the shippers, carriers, and offerors of hazardous materials would not qualify as a SBA small business. 65 FR at 7304. However, to date, approximately 5,800 (or more than 15%) of the registrants for the 2000–2001 registration year have paid the higher $2,000 fee applicable to persons who are not small businesses.

As a result of the much greater than anticipated number of persons paying the higher registration fee applicable to larger businesses, RSPA has collected more than $21 million in registration fees. (This total includes registration fees received since October 1, 1999 for prior registration years, but it does not include the fees paid for future registration years, 2001–2002 and 2002–2003.) In addition, another $1.5 million is available in the account established under 49 U.S.C. 5116(i) to fund the HMEP grants and related activities primarily from funds not used by States. Because the current annual grants program obligations are limited to the $14.3 million designated by Congress, this leaves a surplus (or unexpended balance) of approximately $8.5 million in the account established under section 5116(i). The law requires DOT to adjust the amount of the annual registration fee "to reflect any unexpended balance in the account established under section 5116(i)," but it does not require refunds if there is a surplus in that account. 49 U.S.C. 5116(g)(2)(B).

For the reasons discussed below, RSPA is proposing to lower the registration fee for all registrants for the next six registration years (2001–2002 through 2006–2007) in order to eliminate the unexpended balance (or surplus) in the HMEP grants fund. During this period, small businesses and non-profit organizations (regardless of their size) would pay $250 (plus a $25 processing fee), and all other persons required to register would pay $475 (plus a $25 processing fee). Any person who has already registered for future registration years (2001–2002 and 2002–2003) would receive a refund of the excess paid for those future registration years. RSPA is also proposing to amend its reference to the SBA small business criteria to reflect SBA's recent replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System (NAICS). In addition, RSPA proposes to allow payment by additional credit cards than previously authorized.

II. Temporarily Reducing the Registration Fees

As explained more fully in a preliminary regulatory evaluation placed in the public docket, RSPA has considered the following alternatives for temporarily adjusting the registration fees in accordance with 49 U.S.C. 5108(g)(2)(B):

(1) Temporarily reduce the registration fee for all persons required to register.

(2) Temporarily reduce the registration fee for those persons who do not meet the SBA's criteria for a small business.

(3) Temporarily reduce the fee to eliminate the surplus and establish a permanent fee for future years.

(4) Revise the registration criteria by temporarily eliminating the requirement that all persons who offer for transportation or transport hazardous materials required to be placarded be registered.

(5) Provide a refund or a credit for future registrations.

(6) Temporarily revise the fee structure so that everyone pays the same fee.

We invite comments from interested parties on these alternatives, the most appropriate time period, and other possible methods for eliminating the unexpended balance in the HMEP grants fund. All comments should be as detailed as possible with estimates of the total amount that would be collected based on the number of registrants and the registration fee.

In the final rule in Docket No. HM–208C, we concluded that the registration program should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses; (3) ensure the adequacy of funding for the HMEP grants program; and (4) be consistent with the law. See 65 FR at 7303. We found that the most appropriate way to meet these objectives was to expand the category of persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (with a limited exception for farmers) and to adopt a two-tiered fee schedule under which persons meeting the SBA criteria for defining a small business would pay a lower fee than larger businesses.

For all the reasons discussed in the February 14, 2000 final rule, we still believe that these findings and conclusions are justified and should be followed in adjusting registration fees to reflect the unexpended surplus in the HMEP grants fund. All persons who offer or transport in commerce a quantity of hazardous materials that requires placarding should be required to register and pay a registration fee. It would not be appropriate to revert to a "flat" fee for all registrants, unless the number of registrants increases to a level that $14.3 million would be collected by charging all registrants the minimum $250 fee. So long as there is a significant unexpended balance in the HMEP grants fund, any person that is a small business should pay the minimum $250 fee. We have also concluded that all non-profit organizations, regardless of their size, should pay the same lower registration fee as paid by those for profit businesses meeting the SBA criteria for a small business, as explained in Section III. The SBA size criteria are the most appropriate for determining a small business and, as discussed in Section IV, we propose to replace our reference to SIC codes with a reference to NAICS because SBA recently changed its regulations in this regard.

With a two-tier fee system and approximately 40,000 registrants, it will take more than one year to eliminate the unexpended balance in the HMEP fund. Stretching this process over several years also will give RSPA better information on how many persons are required to register and whether a substantial number of registrants have paid the larger (non-small business) fee by mistake. Therefore, RSPA is proposing to eliminate the unexpended balance over six years, by reducing the registration fees for all registrants by amounts that will enable RSPA to collect approximately $12.8 million in registration fees in each of the next six registration years. (This assumes that RSPA will continue to collect $1.3 million per year in prior year registrations.) In other words, registration fees would be set at amounts that would produce an annual deficit of approximately $1.5 million from the $14.3 million authorized for HMEP grants and related purposes (*i.e.*, $14.3 million − $1.5 million = $12.8 million in annual collections). This would be accomplished by lowering the annual registration fee, for six years, to:

—$250 (plus a $25 processing fee) for persons who meet the definition of a small business or a not-for-profit entity, and

—$475 (plus a $25 processing fee) for all other persons who are required to register.

In response to requests from industry, in the February 14, 2000 final rule in Docket No. HM–208C, RSPA provided that a person could register for up to three years in one registration statement. 49 CFR 107.612(c), 65 FR at 7309–10. To date, approximately 5,000 persons have elected to register for multiple years. If RSPA lowers the registration fee for the 2001–2002 and 2002–2003 registration years, each person who has already registered for one or both of those years at the higher fee level will receive a refund of the difference.

Though RSPA is temporarily lowering the registration fees for six years, we realize that a permanent change may be required after the surplus is expended. RSPA is not making a permanent change to the registration fees at this time because of uncertainty in the final registration numbers in terms of total registrants and the percentage of large and small businesses. Instead, within three years, RSPA will reevaluate the registration fee levels to determine what changes are needed in future years based on any remaining surplus, changes in the number of registrants, the number of registrants that are not a small business, and other relevant factors.

III. Not-for-Profit Organizations

The SBA criteria for small business size standards apply to business entities organized for profit. 13 CFR 121.105(a). Therefore, non-profit organizations do not technically qualify as a small business. RSPA decided for registration purposes to apply SBA size criteria for appropriate SIC Codes to non-profit organizations. However, nearly all of the non-profit organizations that are currently registered, which are mostly educational institutions and hospitals, exceed the SBA size standards for a small business. Because non-profit organizations generally are operated for educational, religious, charitable and other similar purposes, RSPA is interested in helping them to minimize their costs of operation. Accordingly, for registration year 2001–2002 and thereafter, RSPA is proposing to establish the fee level for a non-profit

organization at the same level as for a small business operated for a profit, *i.e.*, $250.00 (plus a $25 processing fee) for the next six registration years, and $275 (plus a $25 processing fee) thereafter. RSPA is proposing to define a not-for-profit organization as an organization exempt from taxation under 26 U.S.C. 501(a). RSPA is asking for comments on the appropriateness of this definition, in particular as to whether this definition is broad enough or there is a more appropriate definition that RSPA should adopt.

IV. Definition of a Small Business

In the February 14, 2000 final rule in Docket No. HM–208C, RSPA referenced SBA's size standards as they existed at that time, which were based on the SIC code system. At that time, RSPA noted that SBA had proposed to change from SIC codes to the NAICS, and we indicated that this change should not result in many instances in which an entity would lose its status as a small business. 65 FR at 7304.

On May 15, 2000, SBA published a final rule in the **Federal Register** that adopted a new table of small business size standards for industries as defined in NAICS. 65 FR 30836. SBA published a corrected table in the **Federal Register** on September 5, 2000, which became effective on October 1, 2000. 65 FR 53533. Our further review of the SIC codes and NAICS confirms our earlier conclusion that very few entities would lose their small business status; however, we invite comments on the effect of changing from SIC codes to NAICS. Accordingly, for registration year 2001–2002 and thereafter, RSPA is proposing to change the reference in 49 CFR 107.612 from the SIC code system to NAICS to correspond to the current SBA regulations.

A list of size criteria under NAICS is provided on the SBA Internet site at: http://www.sba.gov/size/NAICS-matched-with-size-stds-umbrella.htm.

A keyword search engine for NAICS is provided by the U.S. Census Bureau at its Internet site at: *http://www.census.gov/epcd/naics/framesrc.htm.*

Additional information on NAICS, including tables showing the correspondences between the two numbering systems is provided at: *http://www.census.gov/epcd/www/naics.html.*

Registrants unfamiliar with NAICS should find these sites useful in determining the appropriate code.

V. Petition from the Petroleum Marketers Association of America (PMAA)

On October 12, 2000 we received a Petroleum Marketers Association of America (PMAA) petition (P–1405) asking that intrastate marketers of petroleum and heating oil whose activities are within SIC codes 5171, 5172, and 5983 be excepted from the requirement to register and that the registration fee for all interstate carriers be reduced to the minimum $250. In accordance with 49 CFR 106.33(c), RSPA denies PMAA's petition.

In its petition, a copy of which is made part of this docket, PMAA stated that it continues to believe that a "clear reading" of the statute exempts intrastate carriers. PMAA states that "commerce" is defined as "trade or transportation in the jurisdiction of the United States between a place in a State and a place outside of the State; or that affects trade or transportation between a place in a State and place outside of the State." (49 U.S.C. § 5102(1)(A)(B)). PMAA contends that, "in this section, it seems Congress has defined "commerce" as interstate operations to which the fee applies." PMAA also states that the "hazardous materials (hazmat) transportation program was designed to allow interstate carriers to travel between states without paying each state's hazmat fee and was designed to preempt state taxes." PMAA stated that RSPA will still be able to meet its HMEP grants funding levels if it maintains the two-tiered fee system and removes petroleum marketers from the registration program.

RSPA disagrees with PMAA's statements that Congress intended "to include only interstate carriers in the hazardous materials fee program" and that "the overfunding resulting from this extension to small, local carriers of propane, diesel and heating oil ensured overfunding of the program." In the July 9, 1992 final rule in Docket No. HM–208, RSPA found that the registration provisions now set forth in 49 U.S.C. 5108(a)

make no distinction between interstate and intrastate carriers and shippers of hazardous materials. Further, it would be illogical to presume that intrastate offerors and carriers are excepted from the registration program when they will be primary recipients of the enhanced emergency response capabilities derived from the national emergency response training and planning grant program for States and local governments. 57 FR at 30622.

Moreover, RSPA has received registration statements from only about 3,900 persons in the three SIC codes specified in PMAA's request. This represents less than $1.1 million in registration fees (not including the $25 processing fee), or a small fraction of the unexpended balance in the HMEP fund (assuming that all these persons are "small, local carriers of propane, diesel and heating oil" as characterized by PMAA). PMAA's separate suggestion that "all interstate carriers" should pay only the $250 minimum registration fee conflicts with RSPA's finding that the amount of the fee should not be the same for small and other than small businesses.

PMAA's statement that interstate carriers are somehow insulated from paying "each state's hazmat fee" or "state income or other local taxes" seems to ignore the fact that the registration program under 49 U.S.C. 5108 "has no preemptive effect" on the ability of "States, local governments or Indian tribes to impose their own fees or registration or permit requirements on interstate, intrastate or foreign offerors or carriers of hazardous materials." 57 FR at 30626. Preemption of non-Federal hazardous material registration or permit requirements is governed by the criteria set forth in 49 U.S.C. 5125.

VI. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule, if adopted, would not be considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). RSPA has prepared a preliminary regulatory evaluation which is available for review in the public docket.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The registration requirements do not impair the ability of States, local governments, or Indian tribes to impose their own fees or registration or permit requirements on persons who offer or transport hazardous materials in commerce. RSPA encourages States, local governments, and Indian tribes to adopt and enforce requirements in the HMR and the Federal registration requirement, in order to enhance compliance with a nationally uniform set of regulations on the transportation of hazardous materials.

The consultation and funding requirements of Executive Order 13132 do not apply because this proposed rule would not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on State and local governments; or

(3) Preempts state law.

C. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities.

In the February 14, 2000 final rule in Docket No. HM–208C, RSPA certified that that final rule did affect a significant number of small entities, but that the economic impact on these small entities will not be significant. 65 FR at 7308–7309. This proposed rule affects the same small entities that Docket HM–208C did and, therefore, this proposed rule would affect a significant number of small entities. See 65 FR at 7307. Although this proposed rule is providing a $25 reduction in the combined annual fee that small businesses must pay, that reduction does not constitute a significant economic impact on a substantial number of small entities. Therefore, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not, if adopted, result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.612, paragraph (b) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 107.612 Amount of fee.

* * * * * *

(b) *Registration year 2000–2001.* For the registration year 2000–2001, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect prior to October 1, 2000 (see 13 CFR revised as of January 1, 1999), applicable to the standard industrial classification (SIC) code that describes that person's primary commercial activity, must pay an annual fee of $275 and the processing fee required by paragraph (b)(3) of this section.

(2) *Other than a small business.* Each person that does not meet the criteria specified in paragraph (b)(1) of this section must pay an annual fee of $1,975 and the processing fee required by paragraph (b)(3) of this section.

(3) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

* * * * *

(c) *Registration years 2001–2002 through 2006–2007.* For registration years 2001–2002, 2002–2003, 2003–2004, 2004–2005, 2005–2006, and 2006–2007, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect on or after October 1, 2000, applicable to the North American Industry Classification System (NAICS) that describes that person's primary commercial activity, must pay an annual fee of $250 and the processing fee required by paragraph (c)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual fee of $250 and the processing fee required by paragraph (c)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or a not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (c)(1) or (c)(2) of this section must pay an annual fee of $475 and the processing fee required by paragraph (c)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(d) *Registration years 2007–2008 and following.* For each registration year beginning with 2007–2008, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect on or after October 1, 2000, applicable to the North American Industry Classification System (NAICS) that describes that person's primary commercial activity, must pay an annual fee of $275 and the processing fee required by paragraph (d)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual fee of $275 and the processing fee required by paragraph (d)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual fee of $1,975 and the processing fee required by paragraph (d)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

3. In § 107.616, paragraph (b) is revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(b) Payment must be made by certified check, cashier's check, personal check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the "Hazmat Registration Fee" or by a credit card authorization completed and signed on the registration statement.

* * * * *

Issued in Washington, DC, on December 1, 2000, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–31044 Filed 12–6–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part IX

Nuclear Regulatory Commission

10 CFR Part 72
List of Approved Spent Fuel Storage Casks: NAC–UMS Revision; Final Rule and Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG57

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International (NAC) Universal Storage System (NAC–UMS) listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). This amendment will allow holders of power reactor operating licenses as general licensees to store PWR design basis fuel assemblies in accordance with revised technical specifications and Maine Yankee site-specific spent fuel in the NAC–UMS. The changes for Amendment No. 1 to the NAC–UMS CoC include: changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); editorial clarifications to the technical specifications (TS); and deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug.

DATES: The final rule is effective February 20, 2001, unless significant adverse comments are received by January 8, 2001. If the rule is withdrawn timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

All publicly available documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may also be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC's Public Document Room Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to pdr@nrc.gov.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML003754655.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, telephone (301) 415–5252, e-mail, KKM@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on October 19, 2000 (65 FR 62581) that approved the NAC–UMS cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (1015).

Discussion

On July 16, 1999, the certificate holder (NAC) submitted an application to the NRC to amend CoC No. 1015 to allow holders of power reactor operating licenses to store spent fuel in the cask under revised conditions. Amendment No. 1 includes: (1) changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; (2) changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; (3) authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); (4) editorial clarifications to the technical specifications; and (5) deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug. No other changes to the NAC–UMS cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request which is summarized in the paragraph below.

The NAC–UMS cask was evaluated against the regulatory standards in 10 CFR Part 72. NAC demonstrated the structural adequacy of the Maine Yankee site-specific fuels (MYSSF) that are intact (with and without damaged assembly hardware), consolidated, damaged, and high-burnup. The thermal evaluation verified that the cladding (including high-burnup) and cask component temperatures were acceptable for all authorized spent fuel contents and configurations under normal, off-normal and accident conditions. The shielding evaluation determined that the site-specific spent fuels and various configurations, including fuel assembly hardware, are either bounded by the design basis fuel or were acceptable for meeting the applicable regulatory requirements. The criticality evaluation demonstrated that, for all proposed MYSSF configurations, the criticality requirements of 10 CFR Part 72 are met. The original NAC–UMS confinement evaluation remains valid since the design is "leak-tight." The TS were revised and identify the necessary specifications to provide reasonable assurance that the NAC–UMS cask will allow safe storage of all authorized contents.

The staff found that the changes stated above do not reduce the safety margin. In addition, the NRC staff has determined that changes do not pose any increased risk to public health and safety. A full discussion of the staff's evaluation is set out in its SER which can be found under ADAMS Accession No. ML003754655.

This direct final rule revises the NAC–UMS cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1015. The amendment consists of changes to the TS identified in the NRC staff's SER for Amendment No. 1.

The amended NAC–UMS cask system, when used under the conditions specified in the CoC, the TSs, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

CoC No. 1015, the revised Technical Specifications, and the underlying SER for Amendment No. 1, and the Environmental Assessment are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the CoC may be obtained from Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5252, email *KKM@nrc.gov*.

Discussion of Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate No. 1015 is revised by adding the effective date of the initial certificate and the effective date of Amendment Number 1.

Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1015 and does not include other aspects of the NAC–UMS cask system design. The NRC is using the "direct final rule procedure" to promulgate this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial; adequate protection of public health and safety continues to be ensured. This amendment is not considered to be a significant amendment by the NRC staff. The amendment to the rules will become effective on February 20, 2001. However, if the NRC receives significant adverse comments by January 8, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Federal Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will amend the CoC for the NAC–UMS cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment No. 1 includes: (1) changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; (2) changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; (3) authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); (4) editorial clarifications to the technical specifications; and (5) deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Electronic copies of the environmental assessment and finding of no significant impact can be found in the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. Single copies are available from Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5252, email KKM@nrc.gov.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC–UMS cask system design list in § 72.214

(List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask system designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On October 19, 2000, (65 FR 62581), the NRC issued an amendment to Part 72 that approved the NAC–UMS design by adding it to the list of NRC-approved cask designs in § 72.214. On July 16, 1999, the certificate holder (NAC), submitted an application to the NRC to amend CoC No. 1015. Amendment No. 1 includes: (1) changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; (2) changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; (3) authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); (4) editorial clarifications to the technical specifications; and (5) deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate the problems described above and is consistent with previous Commission actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the operation of nuclear power plants, independent spent fuel storage facilities, and NAC. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.

Initial Certificate Effective Date: November 20, 2000.

Amendment No. 1 Effective Date: February 20, 2001.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC–UMS.

* * * * *

Dated at Rockville, Maryland, this 22nd day of November 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–31097 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG57

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International (NAC) Universal Storage System (NAC–UMS) listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). This amendment will allow holders of power reactor operating licenses as general licensees to store PWR design basis fuel assemblies in accordance with revised technical specifications and Maine Yankee site-specific spent fuel in the NAC–UMS. The changes proposed for Amendment No. 1 to the NAC–UMS CoC include: changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); editorial clarifications to the technical specifications (TS); and deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug.

DATES: Comments on the proposed rule must be received on or before January 8, 2001.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These documents may also be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found in ADAMS under Accession No. ML003754655. For more information, contact the NRC's Public Document Room Reference Staff at 1–800–397–4209, 301–415–4737 or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, telephone (301) 415–5252, e-mail, KKM@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

The NRC is also publishing this proposed rule as a direct final rule because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial; adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on February 20, 2001. However, if the NRC receives significant adverse comments on the direct final rule by January 8, 2001, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.

Initial Certificate Effective Date: [November 20, 2000].

Amendment No. 1 Effective Date: February 20, 2001.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC-UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.
Model Number: NAC–UMS.
* * * * *

Dated at Rockville, Maryland, this 22nd day of November, 2000.

For the Nuclear Regulatory Commission.
William D. Travers,
Executive Director for Operations.
[FR Doc. 00–31098 Filed 12–6–00; 8:45 am]
BILLING CODE 7590–01–P

Federal Register

Thursday,
December 7, 2000

Part X

The President

Executive Order 13178—Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

Federal Register
Vol. 65, No. 236
Thursday, December 7, 2000

Presidential Documents

Title 3—

The President

Executive Order 13178 of December 4, 2000

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106-513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, it is ordered as follows:

Section 1. *Preamble.* The world's coral reefs—the rain forests of the sea—are in serious decline. These important and sensitive areas of biodiversity warrant special protection. While United States waters contain approximately 3 percent of the world's coral reefs, approximately 70 percent of U.S. coral reefs are in the Northwestern Hawaiian Islands. The 3.5 million acres of coral reefs around the remote, mostly uninhabited Northwestern Hawaiian Islands are spectacular and almost undisturbed by humans. The approximately 1,200 mile stretch of coral islands, seamounts, banks, and shoals are unquestionably some of the healthiest and most extensive coral reefs in the United States. In their own right, the spectacular coral reefs and lands provide an amazing geological record of volcanic and erosive powers that have shaped this area. This vast area supports a dynamic reef ecosystem that supports more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This incredibly diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. In addition, this area has great cultural significance to Native Hawaiians as well as linkages to early Polynesian culture—making it additionally worthy of protection and understanding. This is truly a unique and special place, a coral reef ecosystem like no place on earth, and a source of pride, inspiration, and satisfaction for all Americans, especially the people of Hawaii. It is fully worthy of our best efforts to preserve a legacy of America's natural wonders for future generations. Due to the special significance of this area, I have determined that it is in the best interest of our Nation, and of future generations, to provide strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands.

On May 26, 2000, I directed the Secretaries of Commerce and the Interior, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fishery Management Council, to develop recommendations for a new, coordinated management regime to increase protection of the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use of the area. Upon consideration of their recommendations and comments received during the public visioning process on this initiative, and based on the statutory authorities set forth above, I am issuing this Executive Order.

Sec. 2. *Purpose.* The purpose of this Executive Order is to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands.

Sec. 3. *Establishment of Coral Reef Ecosystem Reserve.* There is hereby established in the Northwestern Hawaiian Islands a coral reef ecosystem reserve to be known as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Reserve shall include submerged lands and waters of the Northwestern Hawaiian Islands, extending approximately 1,200 nautical miles (nm) long and 100nm wide. The Reserve shall be adjacent to and seaward of the seaward boundaries of the State of Hawaii and the Midway Atoll National Wildlife Refuge, and shall overlay the Hawaiian Islands National Wildlife Refuge to the extent that it extends beyond the seaward boundaries of the State of Hawaii. The boundaries of the Reserve are described in section 6 of this order.

Sec. 4. *Management Principles.* The Secretary of Commerce, or his designee, (hereafter "Secretary") shall, subject to section 10(b) of this order, manage the Reserve in accordance with the following principles:

(a) The principal purpose of the Reserve is the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character;

(b) The Reserve shall be managed using available science and applying a precautionary approach with resource protection favored when there is a lack of information regarding any given activity, to the extent not contrary to law;

(c) Culturally significant, noncommercial subsistence, cultural, and religious uses by Native Hawaiians should be allowed within the Reserve, consistent with applicable law and the long-term conservation and protection of Reserve resources;

(d) The Reserve shall be managed using, when appropriate, geographical zoning and innovative management techniques to ensure that the Reserve resources are protected from degradation or harm;

(e) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to support, promote, and coordinate appropriate scientific research and assessment, and long-term monitoring of Reserve resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve these resources and species for future generations;

(f) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to enhance public awareness, understanding, and appreciation of Reserve resources, and the impacts or threats thereto from human and other activities;

(g) The Reserve shall be managed to further restoration and remediation of degraded or injured Reserve resources; and

(h) The Reserve shall be managed to facilitate coordinated management among Federal and State agencies and other entities, as appropriate, to provide comprehensive (looking beyond jurisdictional boundaries) conservation of the coral reef ecosystem and related marine resources and species throughout the Northwestern Hawaiian Islands, consistent with applicable authorities and the Management Principles of this section.

Sec. 5. *Implementation.* (a) Management of the Reserve. The Secretary shall manage the Reserve under the National Marine Sanctuaries Act and in accordance with this order.

(b) *Reserve Operations Plan.* The Secretary, in consultation with the Secretary of the Interior and the Governor of Hawaii, shall develop an operations plan to govern the management of the Reserve. In developing the Reserve Operations Plan the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (c) of this section.

The Reserve Operations Plan shall be directed at priority issues and actions that, at a minimum, provide for:

(1) Coordinated management among the Reserve, Hawaiian Islands National Wildlife Refuge, Midway Atoll National Wildlife Refuge, and the State of Hawaii, consistent with relevant authorities;

(2) Coordination among Federal agencies and the Director of the National Science Foundation to make vessels and other resources available for conservation and research activities for the Reserve;

(3) The cleanup and prevention of marine debris in the Reserve;

(4) The restoration or remediation of any degraded or injured resources of the Reserve;

(5) Research, monitoring, and assessment of the Reserve;

(6) Education and outreach about the Reserve and its resources and efforts to conserve them;

(7) Enforcement and surveillance for the Reserve, including the use of new technologies and coordination with the United States Coast Guard and other relevant agencies;

(8) Identification and coordination with Native Hawaiian interests, regarding culturally significant, noncommercial subsistence, cultural, and religious uses and locations within the Reserve;

(9) Identification of potential tourism, recreational, and commercial activities within the Reserve and actions necessary to ensure that these activities do not degrade the Reserve's resources or diminish the Reserve's natural character;

(10) Use of vessel monitoring systems for any vessel entering or transiting the Reserve, if warranted. To this end, the Secretary in consultation with the Department of State, United States Coast Guard, and the Department of Defense, shall evaluate the need for the establishment of vessel monitoring systems and, if warranted, shall initiate the steps necessary to have the appropriate domestic agencies, and request that the International Maritime Organization, adopt a vessel monitoring system requirement for the Reserve;

(11) Any regulations, in addition to the conservation measures and Reserve Preservation Areas established under this order, that the Secretary determines are necessary to manage the Reserve in accordance with this order; and

(12) Coordination of all relevant activities with the process to designate the Reserve as a National Marine Sanctuary, as provided under paragraph (f) of this section.

(c) *Conservation Measures.* The Reserve Operations Plan shall also include the conservation measures in section 7 of this order and the Reserve Preservation Areas in section 8 of this order.

(d) *Memorandum of Agreement.* To further paragraph (b)(1) of this section, and subject to section 10(b) of this order, and in particular to promote coordinated management of the entirety of the shallow areas of the coral reef ecosystem throughout the Northwestern Hawaiian Islands, the Secretary shall work with the Secretary of the Interior and Governor of the State of Hawaii to enter into one or more memoranda of agreement for the coordinated conservation and management of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawaii submerged lands and waters within the Northwestern Hawaiian Islands.

(e) *National Marine Sanctuary.* The Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (16 U.S.C. 1433, 1434). In doing so the Secretary shall supplement or complement the existing Reserve. The Secretary shall, in consultation with the Governor of the State of Hawaii, determine whether State submerged lands and waters should be included as part of the sanctuary. In designating and managing the

sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.

(f) *Council.* After considering input from the Secretary of the Interior and Governor of the State of Hawaii, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. The Council shall include:

(1) Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

(2) Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

(A) Marine mammal science.

(B) Coral reef ecology.

(C) Native marine flora and fauna of the Hawaiian Islands.

(D) Oceanography.

(E) Any other scientific discipline the Secretary determines to be appropriate.

(3) Three representatives from nongovernmental wildlife/marine life, environmental, and/or conservation organizations.

(4) One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(5) One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(6) One representative from the ocean-related tourism industry.

(7) One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

(8) One citizen-at-large representative.

(9) One representative from the State of Hawaii as appointed by the Governor.

(10) One representative each, as nonvoting, *ex officio* members, from the Department of the Interior, United States Coast Guard, Department of Defense, Department of State, the National Marine Fisheries Service, the Hawaiian Islands Humpback Whale National Marine Sanctuary, National Science Foundation, Marine Mammal Commission, and Western Pacific Regional Fishery Management Council.

(g) *Report.* The Secretary shall provide a progress report on the implementation of this order to the Chair of the Council on Environmental Quality within 1 year from the date of this order.

Sec. 6. *Area of the Reserve.* The Reserve includes the waters and submerged lands of the Northwestern Hawaiian Islands as follows:

(a) The seaward boundary of the Reserve is 50nm from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50nm areas that lie around such areas shall delimit the remainder of the Reserve.

(b) The inland boundary of the Reserve around each of the areas named in subparagraph (a) of this section is the seaward boundary of Hawaii State waters and submerged lands, and the seaward boundary of the Midway Atoll National Wildlife Refuge, as appropriate.

(c) The Reserve boundary is generally depicted on the map attached to this order. The Secretary, after consultation with the Governor of the State of Hawaii, may make technical modifications to the boundary of the Reserve, including providing straight-line boundaries for the Reserve for clarity and ease of identification, as appropriate.

Sec. 7. *Protection and Conservation Measures.* The conservation measures in this section apply throughout the Reserve.

(a) (1) *Commercial Fishing.* All currently existing commercial Federal fishing permits and current levels of fishing effort and take, as determined by the Secretary and pursuant to regulations in effect on the date of this order, shall be capped as follows:

(A) No commercial fishing may occur in Reserve Preservation Areas pursuant to section 8 of this order;

(B) There shall be no increase in the number of permits of any particular type of fishing (such as for bottomfishing) beyond the number of permits of that type in effect the year preceding the date of this order;

(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing in the years preceding the date of this order, as determined by the Secretary, provided that the Secretary shall equitably divide the aggregate level into individual levels per permit, and further provided that the Secretary may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(D) There shall be no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of this order; and

(E) The type of fishing gear used by any permit holder may not be changed except with the permission of the Secretary, as provided under paragraph 3 of this section.

(2) *Recreational Fishing.* All currently existing (preceding the date of this order) levels of recreational fishing effort, as determined by the Secretary and pursuant to regulations in effect on the day of this order, shall be capped (i.e., no increase of take levels or levels of fishing effort, species targeted, or change in gear types) throughout the Reserve. However, fishing is further restricted as provided in section 8 of this order.

(3) The Secretary, after consultation with the Secretary of the Interior and Governor of the State of Hawaii, and after public review and comment and consideration of any advice or recommendations of the Reserve Council and Western Pacific Regional Fishery Management Council, may further restrict the fishing activities under subparagraphs (a)(1) and (a)(2) of this section if necessary to protect Reserve resources, or may authorize or require alternate gear types if such gear would offer equal or greater protection for Reserve resources.

(b) In addition to the conservation measures in paragraph (a) of this section, the following activities are prohibited throughout the Reserve:

(1) Exploring for, developing, or producing oil, gas, or minerals;

(2) Having a vessel anchored on any living or dead coral with an anchor, an anchor chain, or an anchor rope when visibility is such that the seabed can be seen;

(3) Drilling into, dredging, or otherwise altering the seabed; or constructing, placing, or abandoning any structure, material, or other matter on the seabed, except as an incidental result of anchoring vessels;

(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust; and

(5) Removal, moving, taking, harvesting, or damaging any living or nonliving Reserve resources, except as provided under paragraph (a) of this section and sections 8(a) and 9 of this order.

(c) The Secretary may conduct, or authorize by permit the activities listed in subparagraphs (b)(3)-(5) of this section to the extent that they are necessary for research, monitoring, education, or management activities that further the Management Principles of section 4 of this order.

Sec. 8. *Reserve Preservation Areas.*

(a) To further protect Reserve resources, the following areas are hereby established as Reserve Preservation Areas until some or all are made permanent after adequate public review and comment, within which all activities referred to in paragraph (b) of this section are prohibited.

(1) From the seaward boundary of Hawaii State waters and submerged lands to a mean depth of 100 fathoms (fm) around:

(A) Nihoa Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(B) Necker Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(C) French Frigate Shoals;

(D) Gardner Pinnacles, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(E) Maro Reef, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(F) Laysan Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(G) Lisianski Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(H) Pearl and Hermes Atoll; and

(I) Kure Island.

(2) Twelve nautical miles around the approximate geographical centers of:

(A) The first bank immediately east of French Frigate Shoals;

(B) Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately west;

(C) St. Rogatien Bank, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately east, provided further that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment;

(D) The first bank west of St. Rogatien Bank, east of Gardner Pinnacles;

(E) Raita Bank; and

(F) Pioneer Bank, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment.

(b) Activities Prohibited Within Reserve Preservation Areas.

(1) In addition to the conservation measures in section 7 of this order, which are applicable to the entire Reserve, the following activities are prohibited within the Reserve Preservation Areas listed in paragraph (a) of this section, except as expressly otherwise stated in this paragraph and sections (8)(a) and 9 of this order:

(A) Commercial and recreational fishing;

(B) Anchoring in any area that contains available mooring buoys, or anchoring outside an available anchoring area when such area has been designated by the Secretary;

(C) Any type of touching or taking of living or dead coral;

(D) Discharging or depositing any material or other matter except cooling water or engine exhaust; and

(E) Such other activities that the Secretary identifies after adequate public review and comment, and after consideration of any advice and recommendations of the Reserve Council.

(2) Notwithstanding the prohibitions in this paragraph, the Secretary may conduct, or authorize by permit, research, monitoring, education, or management activities within any Reserve Preservation Area that further the Management Principles of section 4 of this order.

(3) The Reserve Preservation Areas in this section are approximated using fathoms. The Secretary will develop straight line boundaries based on longitude and latitude coordinates to encompass each Reserve Preservation Area, to provide for clarity and ease of identification. The Secretary may make technical modifications to any such boundaries.

Sec. 9. *Native Hawaiian Uses.* Native Hawaiian noncommercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas identified under section 8 of this order. The Secretary shall work with Native Hawaiian interests to identify those areas where such Native Hawaiian uses of the Reserve's resources may be conducted without injury to the Reserve's coral reef ecosystem and related marine resources and species, and may revise the areas where such activities may occur after public review and comment, and consideration of any advice and recommendations of the Reserve Council.

Sec. 10. *National Wildlife Refuges.*

(a) The Secretary of the Interior, in managing, through the U.S. Fish and Wildlife Service the Hawaiian Islands and Midway Atoll National Wildlife Refuges pursuant to the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other applicable laws, shall follow the Management Principles of section 4 of this order, to the extent consistent with applicable law.

(b) Wherever the Reserve overlaps the Hawaiian Islands National Wildlife Refuge, the Reserve shall be managed to supplement and complement management of the Refuge to ensure coordinated conservation and management of the Reserve and the Refuge, consistent with the purposes and policies of the National Marine Sanctuaries Act, the National Marine Sanctuaries Amendments Act of 2000, and this order, and the authorities of the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other laws with respect to management of the Refuge. Nothing in this order shall enlarge or diminish the jurisdiction or authority of the Secretary or Secretary of the Interior in managing the Reserve or Refuge, respectively.

(c) The Secretary of the Interior, through the U.S. Fish and Wildlife Service, shall coordinate with the Secretary and the Governor of the State

of Hawaii, as provided under section 5(b) of this order, to ensure coordinated protection and management among the Reserve, Refuges, and State, consistent with relevant authorities.

Sec. 11. *Administration and Judicial Review.*

(a) *International Law.* Management of the Reserve and any regulations issued pursuant thereto and all other provisions of this order shall be applied consistently with the 1983 Presidential Proclamation on the Exclusive Economic Zone, the 1988 Presidential Proclamation on the Territorial Sea, and the 1999 Presidential Proclamation on Contiguous Zone and in accordance with generally recognized principles of international law, and with the treaties, conventions, and other agreements to which the United States is a party. The Secretary shall consult with the Department of State in implementing this order.

(b) *Agency Responsibilities.* All Federal agencies whose actions may affect the Reserve and any National Marine Sanctuary established by the Secretary pursuant to this order shall carry out such actions in accordance with applicable laws, regulations and Executive Orders, including Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000.

(c) *National Security and Emergency Actions.* Consistent with applicable law, nothing in this order is intended to apply to military activities (including those carried out by the United States Coast Guard), including military exercises, conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000. Further, nothing in this order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security as determined by the Secretary of Defense, consistent with applicable law. In addition, consistent with applicable law, nothing in this order shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(d) *United States Coast Guard.* Nothing in this order is intended to limit the authority of the United States Coast Guard to enforce any Federal law, or install or maintain aids to navigation.

(e) *Funding.* This order shall be carried out subject to the availability of appropriated funds and to the extent permitted by law.

(f) *Territorial Waters.* Nothing in this order shall enlarge or diminish the jurisdiction or authority of the State of Hawaii or the United States over submerged or other lands within the territorial waters off the coast of Hawaii.

(g) *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
December 4, 2000.

[FR Doc. 00–31313
Filed 12–6–00; 8:45 am]
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Federal Register

Thursday,
December 7, 2000

Part XI

The President

Proclamation 7384—National Drunk and Drugged Driving Prevention Month, 2000

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Presidential Documents

Title 3—

The President

Proclamation 7384 of December 4, 2000

National Drunk and Drugged Driving Prevention Month, 2000

By the President of the United States of America

A Proclamation

Driving is an integral part of American culture and daily living; but it is also a privilege that carries great responsibility. To protect ourselves and others, we must always be safe, sober, and drug-free behind the wheel.

As a Nation, we have made steady progress in reducing alcohol-related deaths through stronger laws, tougher enforcement, and increased public awareness. Last year, alcohol-related traffic fatalities reached a historic low. But even one death is still one too many; that is why I was pleased to sign into law this October a nationwide impaired-driving standard of .08 blood alcohol content (BAC). Once all 50 States set their BAC limits to .08, we can save hundreds of lives and prevent thousands of injuries each year on America's streets and highways.

There are other measures we are taking to reduce the incidence of drunk driving. Last December, the Department of Transportation unveiled the "You Drink and Drive. You Lose." campaign, an effort to promote greater public awareness of the dangers of impaired driving. In just 1 year, hundreds of communities and law enforcement agencies have joined the campaign, helping to reach nearly 100 million Americans with this simple but lifesaving message.

In memory of the thousands of victims who have lost their lives to alcohol- and drug-impaired drivers, I ask all motorists to participate in "National Lights On for Life Day" on December 15, 2000, by driving with their vehicle headlights illuminated. By doing so, we will call attention to this devastating national problem and remind others on the road of their responsibility to drive sober and drug-free.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2000 as National Drunk and Drugged Driving Prevention Month. I urge all Americans to acknowledge the dangers of impaired driving, to make the right choice by designating a sober driver, to prevent impaired family members and friends from getting behind the wheel, and to help teach our young drivers the importance of alcohol- and drug-free driving. I also call on all State, county, and local leaders to make safety a top priority and to work together to make our Nation's transportation system the safest it can be.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–31353
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H.J. Res. 126/P.L. 106–537

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 5, 2000; 114 Stat. 2562)

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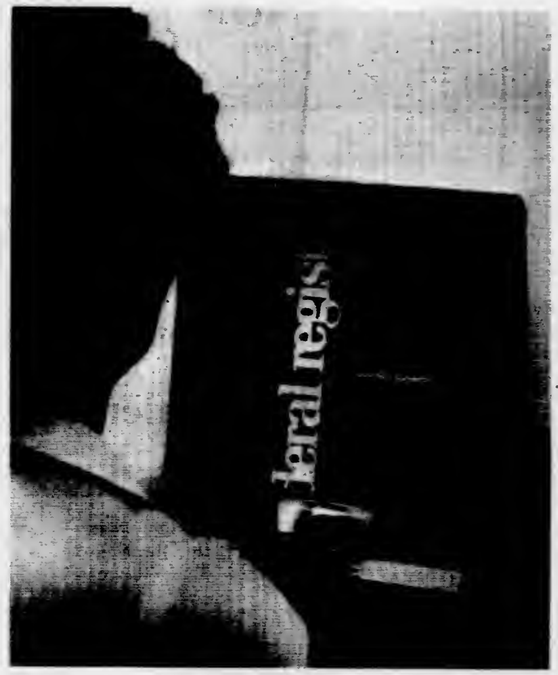
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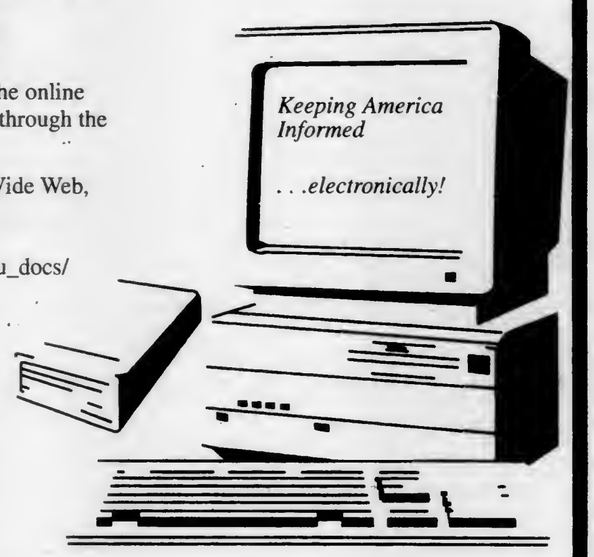
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1792

RIN 0572–AB47

Seismic Safety

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Services (RUS) is amending its regulation to update and simplify the requirements of the agency. This final rule provides RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB. These revisions will identify model codes and standards found to provide a required level of seismic safety.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–9102. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with state and local offices. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeals procedure, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS and RTB loan programs provide borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0572–0099, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., Stop 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs covered by this rule are listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans; 10.760, Water and Waste Disposal System for Rural Communities; 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans.

This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS requires borrowers and grant recipients to meet applicable requirements mandated by Federal statutes and regulations to obtain RUS financing. One such requirement is compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., pg. 269).

Subpart C of this part codifies the policies and requirements that RUS and RTB borrowers and grant recipients must meet for new building construction when using funds

provided or guaranteed by RUS or RTB (or when obtained through a lien accommodation or subordination approved by RUS or RTB).

The Executive Order requires all Federal agencies to ensure that any new building which is leased for federal users or purchased or constructed with federal assistance is designed and constructed in accordance with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings. The Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) with recommending appropriate and cost-effective seismic design, construction standards and practices.

The ICSSC has identified several model codes and standards that provide an acceptable level of seismic safety. The existing regulation in this subpart is revised to identify new model codes or standards which are equivalent to the 1994 NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings.

A proposed rule was published May 26, 2000, at 65 FR 34125, with the comment period ending July 25, 2000. No comments were received in response to the proposed rule.

List of Subjects in 7 CFR Part 1792

Buildings and facilities, Electric power, Grant programs, Loan programs, Reporting and recordkeeping requirements, Rural area, Seismic safety, Telephone.

For reasons contained in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1792—COMPLIANCE WITH OTHER FEDERAL STATUTES, REGULATIONS, AND EXECUTIVE ORDERS

1. The authority citation for this part is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*, and 42 U.S.C. 7701 *et seq.*

Subpart C—Seismic Safety

2. Section 1792.101 is amended by revising paragraph (b) and removing paragraphs (c), (d), and (e), to read as follows:

§ 1792.101 General.

* * * * *

(b) This subpart identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) (or through lien accommodations or subordinations approved by RUS or RTB).

3. Section 1792.102 is amended by revising the definitions for "RUS" and "Seismic," removing "REA," and adding the definition of "Model Code" to read as follows:

§ 1792.102 Definitions.

* * * * *

Model Code—A building code developed for the adoption of local or state authorities or to be used as the basis of a local or state building code.

* * * * *

RUS—Rural Utilities Service, and for the purposes of this subpart, shall include the Rural Telephone Bank. For the purposes of RTB borrowers, as used in this subpart, RUS means RTB and Administrator means Governor.

Seismic—Related to or caused by earthquakes.

* * * * *

4. Sections 1792.103 and 1792.104 are revised to read as follows:

§ 1792.103 Seismic design and construction standards for new buildings.

(a) In the design and construction of federally assisted buildings, the borrowers and grant recipients must utilize the seismic provisions of the most recent edition of those standards and practices that are substantially equivalent to or exceed the seismic safety level in the most recent or immediately preceding edition of the NEHRP Recommended Provisions for the Development of Seismic Regulation for New Buildings.

(b) Each of the following model codes or standards has been found to provide a level of seismic safety substantially equivalent to that provided by the use of the 1994 NEHRP Recommended Provisions and appropriate for federally assisted new building construction:

(1) 1997 International Conference of Building Officials (ICBO) Uniform Building Code. Copies are available from ICBO, Austin Regional Office, 9300 Jollyville Road, Suite 101, Austin, Texas 78759–7455.

(2) 1995 American Society of Civil Engineers (ASCE) 7, *Minimum Design Loads for Buildings and Other Structures*. Copies are available from ASCE, 345 East 47th Street, New York, New York 10017–2398.

(c) The NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings is available from the Office of Earthquakes and Natural Hazards, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

§ 1792.104 Seismic acknowledgments.

For each applicable building, borrowers and grant recipients must provide RUS a written acknowledgment from a registered architect or engineer responsible for the design stating that seismic provisions pursuant to § 1792.103(b) will be used in the design of the building. This acknowledgement will include the identification and date of the model code or standard that is used for the seismic design of the seismic design of the building project and the seismic factor for the building location.

Dated: December 1, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–31296 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 28, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201(May 14, 1987)). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 2000, through September 30, 2001, the fees in this notice will become effective October 1, 2000. The fees will apply to fiscal year 2001 annual charges for the use of government lands.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 804(2).

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Financial Services Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2885.

SUPPLEMENTARY INFORMATION:

Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
- CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
- RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 2000, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as follows.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In Part 11, Appendix A is revised to read as follows:

Appendix A To Part 11—Fee Schedule for FY 2001

STATE	COUNTY	RATE PER ACRE
ALABAMA	ALL COUNTIES	$25.35
ARKANSAS	ALL COUNTIES	19.02
ARIZONA	APACHE	6.32
	COCHISE	
	GILA	
	GRAHAM	
	LA PAZ	
	MOHAVE	
	NAVAJO	
	PIMA	
	YAVAPAI	
	YUMA	
	COCONINO NORTH OF COLORADO RIVER	
	COCONINO SOUTH OF COLORADO RIVER	25.35
	GREENLEE	
	MARICOPA	
	PINAL	
	SANTA CRUZ	
CALIFORNIA	IMPERIAL	12.68
	INYO	
	LASSEN	
	MODOC	
	RIVERSIDE	
	SAN BERNARDINO	
	SISKIYOU	19.02
	ALAMEDA	31.69
	ALPINE	
	AMADOR	
	BUTTE	
	CALAVERAS	
	COLUSA	
	CONTRA COSTA	
	DEL NORTE	
	EL DORADO	

STATE	COUNTY	RATE PER ACRE
	FRESNO	
	GLENN	
	HUMBOLDT	
	KERN	
	KINGS	
	LAKE	
	MADERA	
	MARIPOSA	
	MENDICINO	
	MERCED	
	MONO	
	NAPA	
	NEVADA	
	PLACER	
	PLUMAS	
	SACRAMENTO	
	SAN BENITO	
	SAN JOAQUIN	
	SANTA CLARA	
	SHASTA	
	SIERRA	
	SOLANO	
	SONOMA	
	STANISLAUS	
	SUTTER	
	TEHAMA	
	TRINITY	
	TULARE KINGS	
	TUOLUMNE	
	YOLO	
	YUBA	
	LOS ANGELES	38.05
	MARIN	
	MONTEREY	
	ORANGE	
	SAN DIEGO	
	SAN FRANCISCO	
	SAN LUIS OBISPO	
	SAN MATEO	
	SANTA BARBARA	
COLORADO	ADAMS	6.32
	ARAPAHOE	
	BENT	
	CHEYENNE	
	CROWLEY	
	ELBERT	
	EL PASO	
	HUERFANO	
	KIOWA	
	KIT CARSON	
	LINCOLN	
	LOGAN	
	MOFFAT	
	MONTEZUMA	
	MORGAN	
	PUEBLO	
	SEDGEWICK	
	WASHINGTON	
	WELD	
	YUMA	
	BACA	12.68
	DOLORES	
	GARFIELD	
	LAS ANIMAS	
	MESA	
	MONTROSE	
	OTERO	
	PROWERS	
	RIO BLANCO	
	ROUTT	
	SAN MIGUEL	
	ALAMOSA	25.35
	ARCHULETA	

STATE	COUNTY	RATE PER ACRE
	BOULDER	
	CHAFFEE	
	CLEAR CREEK	
	CONEJOS	
	COSTILLA	
	CUSTER	
	DENVER	
	DELTA	
	DOUGLAS	
	EAGLE	
	FREMONT	
	GILPIN	
	GRAND	
	GUNNISON	
	HINSDALE	
	JACKSON	
	JEFFERSON	
	LAKE	
	LA PLATA	
	LARIMER	
	MINERAL	
	OURAY	
	PARK	
	PITKIN	
	RIO GRANDE	
	SAGUACHE	
	SAN JUAN	
	SUMMIT	
	TELLER	
CONNECTICUT	ALL COUNTIES	6.32
FLORIDA	BAKER	38.05
	BAY	
	BRADFORD	
	CALHOUN	
	CLAY	
	COLUMBIA	
	DIXIE	
	DUVAL	
	ESCAMBIA	
	FRANKLIN	
	GADSDEN	
	GILCHRIST	
	GULF	
	HAMILTON	
	HOLMES	
	JACKSON	
	JEFFERSON	
	LAFAYETTE	
	LEON	
	LIBERTY	
	MADISON	
	NASSAU	
	OKALOOSA	
	SANTA ROSA	
	SUWANNEE	
	TAYLOR	
	UNION	
	WAKULLA	
	WALTON	
	WASHINGTON	
	ALL OTHERS COUNTIES	63.38
GEORGIA	ALL COUNTIES	38.05
IDAHO	CASSIA	6.32
	GOODING	
	JEROME	
	LINCOLN	
	MINIDOKA	
	ONEIDA	
	OWYHEE	
	POWER	
	TWIN FALLS	19.02
	ADA	
	ADAMS	

STATE	COUNTY	RATE PER ACRE
	BANNOCK	
	BEAR LAKE	
	BENEWAH	
	BINGHAM	
	BLAINE	
	BOISE	
	BONNER	
	BONNEVILLE	
	BOUNDARY	
	BUTTE	
	CAMAS	
	CANYON	
	CARIBOU	
	CLARK	
	CLEARWATER	
	CUSTER	
	ELMORE	
	FRANKLIN	
	FREMONT	
	GEM	
	IDAHO	
	JEFFERSON	
	KOOTENAI	
	LATAH	
	LEMHI	
	LEWIS	
	MADISON	
	NEZ PERCE	
	PAYETTE	
	SHOSHONE	
	TETON	
	VALLEY	
	WASHINGTON	
ILLINOIS	ALL COUNTIES	19.02
INDIANA	ALL COUNTIES	31.69
KANSAS	MORTON	12.68
	ALL OTHER COUNTIES	6.32
KENTUCKY	ALL COUNTIES	19.02
LOUISIANA	ALL COUNTIES	38.05
MAINE	ALL COUNTIES	19.02
MICHIGAN	ALGER	19.02
	BARAGA	
	CHIPPEWA	
	DELTA	
	DICKINSON	
	GOGEBIC	
	HOUGHTON	
	IRON	
	KEWEENAW	
	LUCE	
	MACKING	
	MARQUETTE	
	MENOMINEE	
	ONTONAGON	
	SCHOOLCRAFT	
	ALL OTHER COUNTIES	25.35
MINNESOTA	ALL COUNTIES	19.02
MISSISSIPPI	ALL COUNTIES	25.35
MISSOURI	ALL COUNTIES	19.02
MONTANA	BIG HORN	6.32
	BLAINE	
	CARTER	
	CASCADE	
	CHOUTEAU	
	CUSTER	
	DANIELS	
	MECONE	
	MEAGHER	
	DAWSON	6.32
	FALLON	
	FERGUS	
	GARFIELD	
	GLACIER	

STATE	COUNTY	RATE PER ACRE
	GOLDEN VALLEY	
	HILL	
	JUDITH BASIN	
	LIBERTY	
	MUSSELSHELL	
	PETROLEUM	
	PHILLIPS	
	PONDERA	
	POWER RIVER	
	PRAIRIE	
	RICHLAND	
	ROOSEVELT	
	ROSEBUD	
	SHERIDAN	
	TETON	
	TOOLE	
	TREASURE	
	VALLEY	
	WHEATLAND	
	WIBAUX	
	YELLOWSTONE	
	BEAVERHEAD	19.02
	BROADWATER	
	CARBON	
	DEER LODGE	
	FLATHEAD	
	GALLATIN	
	GRANITE	
	JEFFERSON	
	LAKE	
	LEWIS & CLARK	
	LINCOLN	
	MADISON	
	MINERAL	
	MISSOULA	
	PARK	
	POWELL	
	RAVALLI	
	SANDERS	
	SILVER BOW	
	STILLWATER	
	SWEET GRASS	
NEBRASKA	ALL COUNTIES	6.32
NEVADA	CHURCHILL	3.16
	CLARK	
	ELKO	
	ESMERALDA	
	EUREKA	
	HUMBOLDT	
	LANDER	
	LINCOLN	
	LYON	
	MINERAL	
	NYE	
	PERSHING	
	WASHOE	
	WHITE PINE	
	CARSON CITY	31.69
	DOUGLAS	
	STORY	
NEW HAMPSHIRE	ALL COUNTIES	19.02
NEW MEXICO	CHAVES	6.32
	CURRY	
	DE BACA	
	DONA ANA	
	EDDY	
	GRANT	
	GUADALUPE	
	HARDING	
	HIDALGO	
	LEA	
	LUNA	
	MCKINLEY	

STATE	COUNTY	RATE PER ACRE
	OTERO	
	QUAY	
	ROOSEVELT	
	SAN JUAN	
	SOCORRO	
	TORRENCE	12.68
	RIO ARRIBA	
	SANDOUAL	
	UNION	
	BERNALILLO	25.35
	CATRON	
	CIBOLA	
	COLFAX	
	LINCOLN	
	LOS ALAMOS	
	MORA	
	SAN MIGUEL	
	SANTA FE	
	SIERRA	
	TAOS	
	VALENCIA	
NEW YORK	ALL COUNTIES	25.35
NORTH CAROLINA	ALL COUNTIES	38.05
NORTH DAKOTA	ALL COUNTIES	6.32
OHIO	ALL COUNTIES	25.35
OKLAHOMA	BEAVER	12.68
	CIMARRON	
	ROGER MILLS	
	TEXAS	
	LE FLORE	19.02
	MC CURTAIN	
	ALL OTHER COUNTIES	6.32
PENNSYLVANIA	ALL COUNTIES	25.35
OREGON	HARNEY LAKE	6.32
	MALHEUR	
	BAKER	12.68
	CROOK	
	DESCHUTES	
	GILLAM	
	GRANT	
	JEFFERSON	
	KLAMATH	
	MORROW	
	SHERMAN	
	UMATILLA	
	UNION	
	WALLOWA	
	WASCO	
	WHEELER	
	COOS	19.02
	CURRY	
	DOUGLAS	
	JACKSON	
	JOSEPHINE	
	BENTON	25.35
	CLACKAMAS	
	CLATSOP	
	COLUMBIA	
	HOOD RIVER	
	LANE	
	LINCOLN	
	LINN	
	MARION	
	MULTNOMAH	
	POLK	
	TILLAMOOK	
	WASHINGTON	
	YAMHILL	
PENNSYLVANIA	ALL COUNTIES	25.35
PUERTO RICO	ALL	38.05
SOUTH DAKOTA	BUTTE	19.02
	CUSTER	
	FALL RIVER	

STATE	COUNTY	RATE PER ACRE
	LAWRENCE	
	MEAD	
	PENNINGTON	
	ALL OTHER COUNTIES	6.32
SOUTH CAROLINA	ALL COUNTIES	38.05
TENNESSEE	ALL COUNTIES	25.35
TEXAS	CULBERSON	6.32
	EL PASO	
	HUDSPETH	
	ALL OTHER COUNTIES	38.05
UTAH	BEAVER	6.32
	BOX ELDER	
	CARBON	
	DUCHESNE	
	EMERY	
	GARFIELD	
	GRAND	
	IRON	
	JUAB	
	KANE	
	MILLARD	
	SAN JUAN	
	TOOELE	
	UINTAH	
	WAYNE	
	WASHINGTON	12.68
	CACHE	19.02
	DAGGETT	
	DAVIS	
	MORGAN	
	PIUTE	
	RICH	
	SALT LAKE	
	SANPETE	
	SEVIER	
	SUMMIT	
	UTAH	
	WASATCH	
	WEBER	
VERMONT	ALL COUNTIES	25.35
VIRGINIA	ALL COUNTIES	25.35
WASHINGTON	ADAMS	12.68
	ASOTIN	
	BENTON	
	CHELAN	
	COLUMBIA	
	DOUGLAS	
	FRANKLIN	
	GARFIELD	12.68
	GRANT	
	KITTITAS	
	KLICKITAT	
	LINCOLN	
	OKANOGAN	
	SPOKANE	
	WALLA WALLA	
	WHITMAN	
	YAKIMA	
	FERRY	19.02
	PEND OREILLE	
	STEVENS	
	CLALLAM	25.35
	CLARK	
	COWLITZ	
	GRAYS HARBOR	
	ISLAND	
	JEFFERSON	
	KING	
	KITSAP	
	LEWIS	
	MASON	
	PACIFIC	
	PIERCE	

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STATE	COUNTY	RATE PER ACRE
	SAN JUAN	
	SKAGIT	
	SKAMANIA	
	SNOHOMISH	
	THURSTON	
	WAHKIAKUM	
	WHATCOM	
WEST VIRGINIA	ALL COUNTIES	25.35
WISCONSIN	ALL COUNTIES	19.02
WYOMING	ALBANY	6.32
	CAMPBELL	
	CARBON	
	CONVERSE	
	GOSHEN	
	HOT SPRINGS	
	JOHNSON	
	LARAMIE	
	LINCOLN	
	NATRONA	
	NIOBRARA	
	PLATTE	
	SHERIDAN	
	SWEETWATER	
	FREMONT	
	SUBLETTE	
	UINTA	
	WASHAKIE	19.02
	BIG HORN	
	CROOK	
	PARK	
	TETON	
	WESTON	
ALL OTHER ZONES		6.35

[FR Doc. 00–31277 Filed 12–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 514, and 558

[Docket No. 99N–1591]

Animal Drug Availability Act; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to implement the veterinary feed directive (VFD) drugs section of the Animal Drug Availability Act of 1996 (ADAA). A VFD drug is intended for use in animal feed. Its use is permitted only under the professional supervision of a licensed veterinarian in the course of the veterinarian's professional practice. This new regulation states the requirements for distribution and use of a VFD drug and animal feed containing a VFD drug.

DATES: This rule is effective January 8, 2001.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651, e-mail: ggraber@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 2, 1999 (64 FR 35966), FDA proposed regulations to establish the requirements relating to distribution and use of VFD drugs and animal feeds containing VFD drugs. We provided 90 days for comment on the proposed rule.

Prior to 1996, we had only two options for regulating the distribution of animal drugs: (1) Over-the-counter (OTC), and (2) prescription. However, we determined that certain new animal drugs, vital to animal health, should be approved for use in animal feed, only if these medicated feeds were administered under a veterinarian's order and professional supervision. For example, veterinarians are needed to control the use of certain antimicrobials. This control is critical to reducing unnecessary use of such drugs in animals and to slowing or preventing any potential for the development of bacterial resistance to antimicrobial drugs. Safety concerns relating to difficulty of diagnosis of disease conditions, high toxicity, or other reasons may also dictate that the use of a medicated feed be limited to use by order and under the supervision of a licensed veterinarian.

Regulation of animal drugs for use in medicated feeds under traditional prescription systems has proven unworkable. The prescription legend invokes the application of State pharmacy laws. As a practical matter, the application of State pharmacy laws to medicated feeds would burden State pharmacy boards and impose costs on animal feed manufacturers to such an extent that it would be impractical to make these critically needed new animal drugs available for animal therapy.

After considerable deliberation with, and support from, the Coalition for Animal Health, an organization that represents major sectors of animal agriculture, and with support from State regulatory agencies, Congress enacted legislation in 1996 that amended the Federal Food, Drug, and Cosmetic Act (the act) in ways intended to facilitate the approval and marketing of new animal drugs and medicated feed. This legislation, the ADAA (Public Law 104–250), among other things, established a new class of restricted feed use drugs that may be distributed without invoking State pharmacy laws (21 U.S.C. 354).

Although statutory controls on the use of VFD drugs are similar in some respects to those for prescription animal drugs regulated under section 503(f) of the act (21 U.S.C. 353(f)), the implementing VFD regulations are tailored to the unique circumstances relating to the manufacture and distribution of medicated animal feeds. This final rule will ensure the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible.

To date, we have approved one VFD drug, tilmicosin, an antimicrobial approved for administration via animal feed for control of swine respiratory diseases (§ 558.618 (21 CFR 558.618)). The current regulation for tilmicosin, at § 558.618(d)(4), specifies required cautionary labeling for the VFD drug and any feed manufactured from the VFD drug and describes the information that the attending veterinarian must provide as part of the VFD. The proposed cautionary labeling in § 558.6(f) was in substance the same as the tilmicosin cautionary labeling but had minor word differences. To assure consistency in cautionary labeling for tilmicosin and any future VFD drugs, we have revised our proposed cautionary labeling in § 558.6(f) to conform to tilmicosin cautionary language in § 558.618(d)(4). Section 558.618(d)(4) is therefore being removed as its provisions are now a part of this final rule at §§ 558.6(a)(4) [content of VFD] and 558.6(f) [cautionary labeling].

II. Comments on the Proposed Rule

We received eight letters commenting on the proposed rule. One was from a feed manufacturer. The balance were from associations representing the veterinary profession, feed manufacturers, the animal health industry, animal producers, and feed control regulators. Generally, the comments were quite supportive of the VFD concept. Significant issues addressed in the comments involved the means of transmission of VFD's, the length of time a VFD would be valid, the appropriateness of refills or reorders, and our proposed automatic classification of VFD drugs as Category II drugs.

Following is our response to comments, grouped by issue:

A. Transmission of VFD's

(Comment 1) All eight comments mentioned this issue. Comments were evenly split, with the veterinary profession, producers, and drug industry desiring maximum use of paper, facsimile, phone, e-mail, and new technology as it develops. The feed industry and feed control regulators opted for paper copy with the possibility of facsimile transmission with proper safeguards. They did not support phone transmission.

Objections to facsimile and other electronic transmission of VFD's were based on a perceived lack of security of transmitted information, difficulty in substantiating authenticity of the VFD, and ability of the client to forward a VFD to multiple distributors. In the case of phone transmission, comments stressed the possibility of fraudulent orders, risk of error in reducing the order to writing, and the burden placed on the manufacturer/distributor to authenticate the VFD order. One comment stated that the oversight by the veterinarian is the underlying reason that Congress created VFD drugs. The comment contended that this oversight is lost when we allow a VFD feed to be distributed in the absence of a signed, original VFD physically present at the distributor at the time of distribution.

Proponents of the use of a wide range of methods for VFD transmission suggest that distribution would be unnecessarily delayed for lack of a written and signed form physically present at the distributor. Two comments suggested that FDA be open to new innovations in electronic transmission such as a web-based server that would require the use of secure user (veterinarian owned) accounts using user-names, passwords, and electronic signatures. We are not opposed to the use of new innovations and technologies. We would not object to a system that can be demonstrated as being in compliance with applicable regulations and practices that govern such systems.

We believe we must accommodate those situations where prompt hand delivery of a VFD is not possible, but immediate delivery of a VFD feed is necessary. To accomplish this, we will allow transmission by facsimile or other electronic means provided safeguards are in place to prevent misuse. The industry must provide assurances that these technologies, as appropriate, are in compliance with part 11 (21 CFR part 11). Using a computer as a web-based server to create, modify, maintain, or transmit required records as well as using electronic signatures for those records is subject to part 11. It would be up to industry to prove that a system is capable of its intended purpose. Part 11 "applies to all records in electronic form that are created, modified, maintained, archived, retrieved, or transmitted under record requirements in any of the agency's regulations or records submitted to the agency," unless specifically excepted by regulation(s). In order for electronic records to be used in lieu of paper records, they must be in compliance with the provisions stated in § 11.2. These electronic records and signatures, computer systems (including hardware and software), controls, and accompanying documentation must be readily available for and subject to inspection by FDA.

We disagree with the comment that facsimile transmission of the VFD poses a significant problem as the client may reproduce the copy to place multiple orders. While the possibility exists that a client may submit the copy of the VFD to several distributors to obtain additional VFD feed, the distributor will become aware of the irregularity when an original VFD doesn't arrive within 5 days. Such a violation is difficult to hide.

One comment asked who is held responsible, the veterinarian, feeder (client), or feed distributor, if the actual VFD is not properly distributed. While all bear responsibility, the veterinarian is most in control. Thus, we believe it is the veterinarian's obligation to assure that the original VFD is distributed to the feed distributor with the timeliness required by § 558.6(b)(4). The client has responsibility for notifying the veterinarian where to send the original VFD. We recognize there may be instances where a VFD may not be presented to a distributor for several days, and there may be instances where the VFD is issued but never used. If it is determined that a VFD may be refilled, it is possible that the VFD may be required by one distributor first and later by another for refill. In these situations, the client must keep the issuing veterinarian advised when a VFD is moved from one distributor to another, to ensure that the original VFD is moved to the new distributor or a new VFD is issued.

Regarding telephone orders, one comment stated that there is precedence for telephone orders in that veterinarians currently telephone in prescription drug orders. The orders are reduced to writing by the pharmacist without a followup hard copy of the prescription being sent. We do not agree that the situations are the same. The pharmacist who fills a prescription has

extensive training in drug use and potential misuse. Further, a limited amount of information is required in a typical prescription order. Conversely, an extensive amount of information is required in a VFD. A feed mill employee, while skilled in manufacturing feed, may not have the necessary skills to routinely assure a complete and accurate transmission of a VFD or to recognize a potentially inaccurate VFD order. We believe that allowing a telephone order to the feed mill would jeopardize the integrity of the VFD process. Therefore, we have not included telephone orders as an option for transmitting a VFD and have added § 558.6(b)(5) to state that a VFD may not be transmitted by phone.

B. Refills and Length of Time VFD is Valid

(Comment 2) One comment suggested that FDA determine whether refills or reorders are appropriate. Another comment suggested that the veterinarian should be allowed to determine when refills or reorders are necessary. Two comments stated that a single VFD could cover multiple production groups when a disease outbreak is anticipated in subsequent groups of animals passing through a production facility. Concerning the length of time a VFD is valid, two comments stated that the VFD should be valid for up to 6 months. Two other comments stated the opinion that the duration of a VFD should be determined on a case-by-case basis as part of the VFD drug approval process.

We believe that there are situations when refills and expiration dates, possibly of several months, are appropriate to medicate multiple production groups and provide efficient treatment of sick animals. We further believe that allowances of this type will vary considerably depending on the drug and its use. Since we cannot predict what types of drugs and disease situations will be presented in the future, the issues of refills and reorders and the duration of time a VFD can be valid need to be considered on a drug-by-drug basis as part of the new animal drug approval process. We recognize this could result in different conditions for different VFD drugs, which is additional support for the role of the professional (veterinarian) and the need for a complete VFD. Therefore, we have not attempted to specify the allowable number of refills or reorders, or the duration of time a VFD can be valid. This will be dealt with when the new animal drug application (NADA) for the VFD drug is reviewed during the approval process.

C. Classification of VFD Drugs as Category II Drugs

(Comment 3) Two comments asked that we reexamine our decision to automatically classify VFD drugs as Category II drugs. We continue to believe that classifying VFD drugs as Category II drugs is appropriate. Classifying a drug as Category II adds additional regulatory controls because feed manufacturing facilities must possess a medicated feed mill license and be registered with FDA in order to manufacture a Type B or Type C medicated feed from a Category II, Type A medicated article. Registered feed mills are required to be inspected at least every 2 years. Such inspections will help the agency ensure that VFD requirements are met.

Therefore, our decision to automatically classify VFD drugs as Category II drugs remains and is so reflected in the final rule.

D. Responses to Remaining Comments

(Comment 4) Two comments suggested that the "notification letter" of proposed § 558.6(d)(1) and the "acknowledgment letter" of § 558.6(d)(2) be combined into a single letter to reduce the paperwork burden. We are unable to agree to this because these letters serve different purposes and are sent to different entities. The notification letter is sent by the distributor to FDA to notify the agency that the distributor has begun distributing VFD feeds. In contrast, the acknowledgment letter is sent to the distributor by a purchaser stating that it will sell the VFD feed only to a producer with a valid VFD, or to another distributor who provides a similar acknowledgment letter.

We are, however, combining § 558.6(d)(2)(i) and (d)(2)(ii) of the proposed rule, which required in paragraph (d)(2)(i) that a distributor obtain an acknowledgment letter and in paragraph (d)(2)(ii) that a distributor obtain a statement affirming that a consignee-distributor has complied with "distributor notification" requirements. Both requirements may now be met in a single letter under § 558.6(d)(2).

(Comment 5) Two comments asked for other changes in the VFD. One comment asked that § 558.6(a)(3) be changed to read: "You must complete all of the information required on the VFD in writing, and sign it; VFD's that contain incomplete information will be considered invalid." A similar comment asked that we consider as unacceptable a VFD that is not filled out completely. We agree with these suggestions and have incorporated them into § 558.6(a)(3) and (a)(4) in the final rule.

(Comment 6) Two comments asked that the VFD drug sponsor provide VFD forms in triplicate to the veterinarian and that the veterinarian be required to use them. We agree with this comment in part. We addressed it in the proposed rule by revising the new animal drug regulations at § 514.1(b)(9) (21 CFR 514.1(b)(9)) to require the sponsor of a VFD drug to include in the NADA a format for a VFD form as described in § 558.6(a)(4) of this regulation. One comment additionally suggested that using the VFD drug sponsor's VFD form would eliminate the problem of partially completed forms generated by a veterinarian. While we have not made it mandatory that the VFD drug sponsor provide copies of this form for use by the veterinary profession, we believe that they will make the forms available in triplicate for the sake of efficiency and completeness of the veterinarian's VFD transmissions. Nevertheless, we continue to give the veterinarian the option of creating his/her own VFD.

(Comment 7) One comment asked that we clarify what we mean by the term "immediately" in § 558.6(b)(4), relating to length of time a veterinarian has to provide the signed original VFD to the distributor as followup to a facsimile or electronic transmission. One comment suggested that we use the term "promptly." Another comment suggested that the time be 24 hours. We have revised the regulation to read, "the distributor receives the original signed VFD within 5 working days of receipt of the facsimile or other electronic order." We feel this is sufficient time for the client to place the order and the distributor to receive the signed original mailed by the veterinarian.

Additionally, a comment suggested that the client should not be required to wait to receive the VFD medicated feed until the distributor receives the original VFD. We agree, but to alleviate concern that a client may receive medicated feed containing a VFD drug without receiving a copy of the VFD, we have added § 558.6(c)(4) that reads: "All involved parties must have a copy of the VFD before distribution of a VFD feed to the ultimate user." The copy need not be an original and may be transmitted by facsimile or other electronic means.

(Comment 8) One comment recommended that the facsimile of the VFD order be on company letterhead. We anticipate that when veterinarians do not use the VFD drug sponsor's VFD, they will be issuing the VFD on their or their own firm's stationary. However, even if they do not use letterhead paper, the veterinarian is required to include his/her name (and signature), address, and license number on the VFD. Therefore, we do not think it is necessary to require them to use company stationary.

(Comment 9) One comment objected to our inclusion of VFD drugs in § 510.300(a)(4) (21 CFR 510.300(a)(4)) because doing so would essentially confer prescription drug status on VFD drugs for submission of promotional materials. Proposed modifications to § 510.300 do not make a VFD drug a prescription drug. Section 504(c) of the act (21 U.S.C. 354(c)) states that VFD drugs cannot be prescription articles. Section 504(b) of the act establishes misbranding criteria for both labeling and advertising for VFD's. Thus, routine requirements for submitting advertising for VFD drug experience reports under § 510.300(a)(4) should be the same as requirements for submitting labeling. We have not changed the proposed provision in the final rule.

(Comment 10) One comment suggested that FDA consider a provision to revoke a veterinarian's right to order use of VFD drugs if the veterinarian fails to have a valid veterinarian-client-patient relationship (VCPR) or fails to provide complete VFD information to the feed distributor. Normally, this type of action would be handled by State veterinary license authorities. However, the act does provide FDA with other regulatory options.

Section 504 of the act states "* * * When labeled, distributed, held, and used in accordance with this section, a veterinary feed directive drug and any animal feed bearing or containing a veterinary feed directive drug shall be exempt from section 502(f) [of the act]." Under section 502(f) of the act (21 U.S.C. 352(f)) a drug or device is misbranded unless its labeling bears adequate directions for lay use. (See 21 CFR 201.5.)

VFD drugs and animal feed bearing or containing veterinary feed directive drugs are exempt from the statutory requirements for adequate directions for lay use only when they are distributed under a VFD issued by a licensed veterinarian within the confines of a valid VCPR and contain complete and accurate information as required by § 558.6.

If the order for a VFD drug is not based upon a valid VCPR or fails to provide complete information as required by § 558.6, then the VFD drug is subject to section 502(f) of the act. Since a VFD drug, by its very nature, cannot bear adequate directions for lay use, a VFD drug subject to 502(f) of the act is misbranded and the veterinarian who issued the VFD may be held responsible for causing the misbranding of the VFD drug or the feed containing the VFD drug in violation of the act.

We have made nonsubstantive wording and restructuring changes to §§ 514.1(b)(9), 558.3(b)(6), and 558.6(a)(2), (c)(1), (c)(2), and (c)(3) for the sake of clarity.

III. Conforming Changes

FDA has made conforming changes to §§ 514.1(b)(9) and 510.300, and is removing § 558.618(d)(4).

IV. Environmental Impact

We have carefully considered the potential environmental effects of this final rule and have determined that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VI. Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant impact on a substantial number of small entities. As this final rule will not impose significant new costs on any firms under the Regulatory Flexibility Act (5 U.S.C. 605(b)), we certify that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of the anticipated costs and benefits before requiring any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule, because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Animal Drug Availability Act; Veterinary Feed Directive

Description: FDA is publishing this final rule to implement provisions of the ADAA which, by adding section 504 to the act, created a new class of animal drugs called VFD drugs. This final rule establishes regulatory requirements for the distribution and use of VFD drugs. VFD drugs are new animal drugs intended for use in or on animal feed whereby such use is permitted only under the professional supervision of a licensed veterinarian operating within the confines of a valid VCPR.

The VFD ordered by the veterinarian must be issued in accordance with the format described under § 558.6(a). We are amending the new animal drug regulations at § 514.1(b)(9) to require the VFD drug sponsor to submit such format as part of the NADA. The format may be used by the sponsor to produce forms in triplicate for use by the veterinarian or it may be supplied to the veterinarian for use in preparing a practice-specific form. Veterinarians are required to complete the VFD in triplicate, authorizing a client-recipient to obtain and use a medicated feed containing a VFD drug. The original copy of the VFD must be forwarded either by the veterinarian or the client-recipient to the distributor providing the VFD. In addition, the veterinarian issuing the VFD and the client-recipient of the VFD must retain a copy of each VFD for 2 years from date of issuance. Any person who distributes medicated feed containing VFD drugs must file with us a one time notification letter of intent to distribute, and retain a copy of each VFD serviced or each consignee's acknowledgment letter for 2 years. Distributors are also required to keep records of receipt and distribution of medicated animal feeds containing VFD drugs for 2 years. An acknowledgment letter must be provided to a distributor by a consignee who is not the ultimate user of the medicated feed containing a VFD drug. The acknowledgment letter affirms that the consignee will not ship such medicated animal feed to an animal production facility that does not have a VFD, and will not ship such feed to another distributor without receiving a similar acknowledgment letter. To maintain an accurate data base for distributors of VFD drugs, a distributor is required to notify us of any change in name or business address.

In response to a comment, we combined § 558.6(d)(2)(i) and (d)(2)(ii) of the proposed rule, which required in paragraph (d)(2)(i) that a distributor obtain an acknowledgment letter and in paragraph (d)(2)(ii) that a distributor obtain a statement affirming that a consignee-distributor has complied with "distributor notification" requirements. Both requirements may now be met in a single letter under § 558.6(d)(2). This change does not entail a substantive modification to the reporting burden, so the estimates in table 1 of this document have not changed.

Description of Respondents: Veterinarians, distributors of animal feeds containing VFD drugs, and clients using medicated feeds containing VFD drugs. In the **Federal Register** of July 2, 1999 (64 FR 35966), FDA requested comments on the proposed collection of information. No comments were received on the estimated annual burdens. The annual burden estimates therefore remain unchanged.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
558.6(a)(3) through (a)(5)	15,000	25	375,000	0.25	93,750
558.6(d)(1)(i) through (d)(1)(iii)	5,000	1	5,000	0.25	1,250
558.6(d)(1)(iv)	100	1	100	0.25	25
558.6(d)(2)	5,000	1	5,000	0.25	1,250
514.1(b)(9)	1	1	1	3	3
Total Hours					96,278

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
558.6(c)(1) and (d)(2)	112,500	10	1,125,000	0.0167	18,788
558.6(e)(ii)	5,000	75	375,000	0.0167	6,263
Total Hours					25,051

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Individuals and organizations may submit comments on this burden estimate or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. The information collection provisions in this final rule have been approved under OMB control number 0910–0363. This approval expires October 31, 2002. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 514, and 558 are amended to read as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.300 [Amended]

2. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is amended in paragraph (a)(4) by adding the phrase "or a veterinary feed directive drug" following "if it is a prescription new animal drug".

PART 514—NEW ANIMAL DRUG APPLICATIONS

3. The authority citation for part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

4. Section 514.1 is amended by adding paragraph (b)(9) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(9) *Veterinary feed directive.* Three copies of a veterinary feed directive (VFD) must be submitted in the format described under § 558.6(a)(4) of this chapter.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

6. Section 558.3 is amended by revising paragraph (b)(1)(ii) and by adding paragraphs (b)(6) through (b)(11) to read as follows:

§ 558.3 Definitions.

* * * * *

(b) * * *

(1) * * *

(ii) Category II—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved, or are regulated on a "no-residue" basis or with a zero tolerance because of a carcinogenic concern regardless of whether a withdrawal period is required, or are a veterinary feed directive drug.

* * * * *

(6) A "veterinary feed directive (VFD) drug" is a new animal drug approved under section 512(b) of the Federal Food, Drug, and Cosmetic Act (the act) for use in or on animal feed. Use of a VFD drug must be under the professional supervision of a licensed veterinarian.

(7) A "veterinary feed directive" is a written statement issued by a licensed veterinarian in the course of the veterinarian's professional practice that orders the use of a veterinary feed directive (VFD) drug in or on an animal feed. This written statement authorizes the client (the owner of the animal or animals or other caretaker) to obtain and use the VFD drug in or on an animal feed to treat the client's animals only in accordance with the directions for use approved by the Food and Drug Administration (FDA). A veterinarian may issue a VFD only if a valid veterinarian-client-patient relationship exists, as defined in § 530.3(i) of this chapter.

(8) A "medicated feed" means a Type B medicated feed as defined in paragraph (b)(3) of this section or a Type C medicated feed as defined in paragraph (b)(4) of this section.

(9) For the purposes of this part, a "distributor" means any person who distributes a medicated feed containing a VFD drug to another distributor or to the client-recipient of the VFD.

(10) An "animal production facility" is a location where animals are raised for any purpose, but does not include the specific location where medicated feed is made.

(11) An "acknowledgment letter" is a written communication provided to a distributor by a consignee who is not the ultimate user of medicated feed containing a VFD drug. An acknowledgment letter affirms that the consignee will not ship such medicated animal feed to an animal production facility that does not have a VFD, and will not ship such feed to another distributor without receiving a similar written acknowledgment letter.

7. Section 558.6 is added to subpart A to read as follows:

§ 558.6 Veterinary feed directive drugs.

(a) What conditions must I meet if I am a veterinarian issuing a veterinary feed directive (VFD)?

(1) You must be appropriately licensed.

(2) You must issue a VFD only within the confines of a valid veterinarian-client-patient relationship (see definition at § 530.3(i) of this chapter).

(3) You must complete the VFD in writing and sign it or it will be invalid.

(4) You must include all of the following information in the VFD or it will be invalid:

(i) You and your client's name, address and telephone and, if the VFD is faxed, facsimile number.

(ii) Identification and number of animals to be treated/fed the medicated feed, including identification of the species of animals, and the location of the animals.

(iii) Date of treatment, and, if different, date of prescribing the VFD drug.

(iv) Approved indications for use.

(v) Name of the animal drug.

(vi) Level of animal drug in the feed, and the amount of feed required to treat the animals in paragraph (a)(4)(ii) of this section.

(vii) Feeding instructions with the withdrawal time.

(viii) Any special instructions and cautionary statements necessary for use of the drug in conformance with the approval.

(ix) Expiration date of the VFD.

(x) Number of refills (reorders) if necessary and permitted by the approval.

(xi) Your license number and the name of the State issuing the license.

(xii) The statement: "Extra-label use, (i.e., use of this VFD feed in a manner other than as provided for in the VFD drug approval) is strictly prohibited."

(xiii) Any other information required by the VFD drug approval regulation.

(5) You must produce the VFD in triplicate.

(6) You must issue a VFD only for the approved conditions and indications for use of the VFD drug.

(b) What must I do with the VFD if I am a veterinarian?

(1) You must give the original VFD to the feed distributor (directly or through the client).

(2) You must keep one copy of the VFD.

(3) You must give the client a copy of the VFD.

(4) You may send a VFD to the client or distributor by facsimile or other electronic means provided you assure that the distributor receives the original signed VFD within 5 working days of receipt of the facsimile or other electronic order.

(5) You may not transmit a VFD by telephone.

(c) What are the VFD recordkeeping requirements?

(1) The VFD feed distributor must keep the VFD original for 2 years from the date of issuance. The veterinarian and the client must keep their copies for the same period of time.

(2) All involved parties must make the VFD available for inspection and copying by FDA.

(3) All involved parties (the VFD feed distributor, the veterinarian, and the client) must keep VFD's transmitted by facsimile or other electronic means for a period of 2 years from date of issuance.

(4) All involved parties must have a copy of the VFD before distribution of a VFD feed to the ultimate user.

(d) What are the notification requirements if I am a distributor of animal feed containing a VFD drug?

(1) You must notify FDA only once, by letter, that you intend to distribute animal feed containing a VFD drug.

(i) The notification letter must include the complete name and address of each business site from which distribution will occur.

(ii) A responsible person from your firm must sign and date the notification letter.

(iii) You must submit the notification letter to the Center for Veterinary Medicine, Division of Animal Feeds (HFV–220), 7500 Standish Pl., Rockville, MD 20855, prior to beginning your first distribution.

(iv) You must notify the Center for Veterinary Medicine at the above address within 30 days of any change in name or business address.

(2) If you are a distributor who ships an animal feed containing a VFD drug to another consignee-distributor in the absence of a valid VFD, you must obtain an "acknowledgment letter," as defined in § 558.3(b)(11), from the consignee-distributor. The letter must include a statement affirming that the consignee-distributor has complied with "distributor notification" requirements of paragraph (d)(1) of this section.

(e) What are the additional recordkeeping requirements if I am a distributor?

(1) You must keep records of receipt and distribution of all medicated animal feed containing a VFD drug.

(2) You must keep these records for 2 years from date of receipt and distribution.

(3) You must make records available for inspection and copying by FDA.

(f) What cautionary statements are required for VFD drugs and animal feeds containing VFD drugs? All labeling and advertising must prominently and conspicuously display the following cautionary statement: "Caution: Federal law limits this drug to use under the professional supervision of a licensed veterinarian. Animal feed bearing or containing this veterinary feed directive drug shall be fed to animals only by or upon a lawful veterinary feed directive issued by a licensed veterinarian in the course of the veterinarian's professional practice."

§ 558.618 [Amended]

8. Section 558.618 *Tilmicosin* is amended by removing paragraph (d)(4).

Dated: November 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31151 Filed 12–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Moxidectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations to correctly reflect the tolerance for moxidectin in cow's milk. This document amends the regulations to state the correct tolerance is 40 parts per billion (ppb). This action is being taken to improve the accuracy of the agency's regulations. Changes to a current format are also being made.

DATES: This rule is effective December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION:

Moxidectin solution is approved for topical use in cattle for the treatment and control of infections and infestations of certain internal and external parasites. When the November 2, 1999, approval of the use of moxidectin in lactating dairy cows was published in the **Federal Register** of June 9, 2000 (65 FR 36616), the tolerance for parent moxidectin in the milk of cattle was incorrectly listed. At this time, the regulations are being amended in 21 CFR 556.426 to state the correct tolerance is 40 ppb and, editorially, to reflect current format.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.426 is amended by revising paragraph (b) to read as follows:

§ 556.426 Moxidectin.

* * * * *

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue)*. The tolerance for parent moxidectin (the marker residue) is 200 parts per billion (ppb).

(ii) *Muscle*. The tolerance for parent moxidectin (the marker residue) is 50 ppb.

(iii) *Milk*. The tolerance for parent moxidectin (the marker residue in cattle milk) is 40 ppb.

(2) [Reserved]

Dated: November 29, 2000.

David R. Newkirk,

Acting Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–31248 Filed 12–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 00P–1343]

Medical Device; Exemption From Premarket Notification; Class II Devices; Barium Enema Retention Catheters and Tips With or Without a Bag

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order granting a petition requesting exemption from the premarket notification requirements for barium enema retention catheters and tips with or without a bag with certain limitations. This rule will exempt from premarket notification barium enema retention catheters and tips with or without a bag. FDA is publishing this order in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This rule is effective December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Linda L. Dart, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance that the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Petition

On June 13, 2000, FDA received a petition requesting an exemption from premarket notification for the barium enema retention catheters and tips with or without a bag. Barium enema retention catheters and tips with or without a bag are currently classified under 21 CFR 876.5980 as a gastrointestinal tube and accessory. In the **Federal Register** of August 8, 2000 (65 FR 48527), FDA published a notice announcing that this petition had been received and providing opportunity for interested persons to submit comments on the petition by September 7, 2000. FDA received no comments. FDA has reviewed the petition and has determined that barium enema retention catheters and tips with or without a bag used as a gastrointestinal tube and accessory meet the criteria for exemption from the notification requirements. The exemption is limited to barium enema retention catheters and tips with or without a bag, as described, and is also subject to the general limitations on exemptions from premarket notification for therapeutic devices as described in 21 CFR 876.9. FDA also notes that all latex containing devices, including barium enema retention catheters and tips with or without a bag, and other devices that are exempt from the premarket notification requirements of the act, are subject to the labeling regulation found in 21 CFR 801.437 (User labeling for devices that contain natural rubber).

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule will relieve a burden and simplify the marketing of these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rules does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rules does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY—UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.5980 is amended by revising paragraph (b)(1) to read as follows:

§ 876.5980 Gastrointestinal tube and accessories.

* * * * *

(b) *Classification.* (1) Class II (special controls). The barium enema retention catheter and tip with or without a bag that is a gastrointestinal tube and accessory is exempt from the premarket notification procedures in subpart E of this part subject to the limitations in § 876.9.

* * * * *

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31292 Filed 12–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8889]

RIN 1545–AV10

Guidance Regarding Claims for Certain Income Tax Convention Benefits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8889) which were published in the **Federal Register** on Monday, July 3, 2000 (65 FR 40993). The final regulations relate to claims for certain income tax convention benefits.

DATES: This correction is effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn R. Pringle (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 894 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8889) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8889),which was the subject of FR Doc. 00–16761, is corrected as follows:

1. On page 40996, column 2, in the preamble under the paragraph heading "D. Treatment of Complex Trusts", paragraph 2, line 13 from the bottom of the paragraph, the language "the hands of the interest holder are" is corrected to read "the hands of the interest holder are not".

2. One page 40997, column 1, in the preamble under the paragraph heading "Special Analyses", paragraph 1, line 2, the language "treasury decision not a significant" is corrected to read "Treasury decision is not a significant".

§ 1.894–1 [Corrected]

3. On page 40997, column 1, correct the amendatory instruction for Par. 2. to read as follows:

Par. 2. Section 1.894–1 is amended as follows:

1. Paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added.

2. In newly designated paragraph (e), add a sentence at the end of the paragraph.

The additions read as follows:

4. On page 40999, column 2, § 1.894–1(d)(5), paragraph (i) of *Example 7.*, line 10, the language "legal personality of the arrangement, A is not" is corrected to read "legal personality in Country X of the arrangement, A is not".

5. On page 40999, column 2, § 1.894–1(d)(5), paragraph (i) of *Example 7.*, lines 11 and 12, the language "liable to tax at the entity level of Country X and is not a resident within the meaning of" is corrected to read "liable to tax as a person at the entity level in Country X and is thus not a resident within the meaning of".

6. On page 40999, column 2, § 1.894–1(d)(5), paragraph (ii) of *Example 7.*, line 9, the language "is not considered a resident of Country X" is corrected to read "is not considered a person in Country X and thus not a resident of Country X".

7. On page 40999, column 2, § 1.894–1(d)(5), paragraph (ii) of *Example 7.*, line 12, the language "derive the income for purposes of the U.S.-" is corrected to read "derive the income as a resident of Country X for purposes of the U.S.-".

8. On page 41000, column 1, § 1.894–1(d)(5), paragraph (i) of *Example 11.*, the last line of the paragraph, the language "subject to tax by Country X." is corrected to read "taxed by Country X.".

9. On page 41000, column 2, § 1.894–1, after paragraph (d)(6), add a sentence at the end of paragraph (e) to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(e) * * * See paragraph (d)(6) of this section for applicability dates for paragraph (d) of this section.

10. On page 41000, column 2, a new amendatory instruction Par. 3. is added to read as follows:

§ 1.894–1T [Removed]

Par. 3. Section 1.894–1T is removed.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 00–31255 Filed 12–7–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC66

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Update of Documents Incorporated by Reference—API Specification 14A, Tenth Edition

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is updating one document incorporated by reference in regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). The new edition of this document incorporated by reference will ensure that lessees use the best available and safest technologies while operating in the OCS. The updated document, issued by the American Petroleum Institute (API), is API Specification 14A, Tenth Edition, November 2000, ISO 10432:1999, Petroleum and natural gas industries—Downhole equipment—Subsurface safety valve equipment, Stock No. G14A09.

DATES: This rule is effective January 8, 2001. The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Gray, Operations Analysis Branch, at (703) 787–1027.

SUPPLEMENTARY INFORMATION: We use standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry for establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations without increasing the volume of the Code of Federal Regulations (CFR). The legal effect of incorporation by reference is that the material is treated as if it was published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators/lessees accountable for complying with the documents incorporated by reference in our regulations. The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition or specific edition and supplement or addendum cited in the regulations.

The International Organization for Standardization (ISO) is a worldwide federation of national standards bodies (ISO member bodies). Founded in the mid-1940's, ISO is a non-profit agency based in Geneva, Switzerland, whose purpose is to promote the development of international standards and related activities to facilitate the global exchange of goods and services. The American National Standards Institute (ANSI) is the official United States member body to ISO.

The work of preparing international standards is normally carried out through an ISO technical committee (TC). Each member body interested in a subject for which a TC has been established has the right to be represented on that committee. ANSI relies on various United States trade and industry associations, such as the API, for support on industry-specific standards. This standard was developed by ISO/TC 67, "Materials, equipment and offshore structures for petroleum and natural gas industries." API has been appointed by ANSI to administer the US ISO/TC 67 delegation, known as the US Technical Advisory Group (US TAG). MMS has been an active participant in the US TAG since August 1998.

This second edition of the international standard cancels and replaces the first edition (ISO 10432:1993) and includes the changes in the similar API standard, API specification 14A, Ninth Edition, 1994, and its supplement dated December 15, 1997. ISO 10432:1999 was released as a Final Draft International Standard (FDIS) on June 3, 1999. Voting to advance the FDIS to a full international standard occurred on August 3, 1999, and the standard was published as an international standard in November 1999.

ISO permits a national adoption of its international standards with or without the inclusion of regional-specific annexes to account for regional or local conditions. The API procedures to effect the adoption of this international standard with a regional annex included a balloting and comment period to ensure consensus among users, manufacturers, regulatory agencies, and other interested parties. API balloting of the international standard with U.S. annexes, including an annex addressing the API quality specification and an independent test agency, occurred on June 9, 2000, and the API version of the international standard was published in October 2000.

This standard was formulated to provide the minimum acceptable requirements for subsurface safety valve (SSSV) equipment—the SSSV is a downhole safety device used to shut off flow of oil and gas in the event of an emergency. MMS views this important piece of equipment as the last opportunity to secure the well and/or prevent pollution of the environment. The standard covers SSSVs, safety valve locks, safety valve landing nipples, and all components that establish tolerances and/or clearances that may affect performance or interchangeability of the SSSV equipment.

We currently incorporate by reference the ninth edition (July 1994) of API specification 14A, without Supplement 1. Until now, we have not included API Specification 14A, Supplement 1, in the documents incorporated by reference in our regulations. Among other things, API Specification 14A, Supplement 1, deleted a 3-year requalification test requirement for SSSVs.

We have been involved in a series of meetings and discussions with oil and gas operating companies, representatives of oil and gas associations, equipment manufacturers, quality assurance auditors, independent third-party testing and research facilities, and MMS offshore inspectors to consider the relative merits of the 3-year requalification test requirement. We specifically requested public comment on the potential impacts of deleting the 3-year requalification testing requirement for SSSVs in the Notice of Proposed Rulemaking (65 FR 9232) published in the **Federal Register** on February 24, 2000. Comments were also sought on the suitability of including an international standard among the documents incorporated by reference in our regulations.

In response to our request for public comment on the 3-year requalification test requirement, we received five comments supportive of deleting the 3-

year requalification test requirement and two comments that did not support deletion of the 3-year requalification test requirement. Comments were received from three oil and gas associations, three equipment manufacturers, and one test agency. We have considered all the comments received in our analysis, and have determined that the newly issued API version of the international standard, which does not include a 3-year requalification test requirement, should be incorporated into the MMS regulations. Comments were also generally in favor of using the API standard in lieu of the international standard since the API standard contained the regionally specific annexes appropriate for OCS use.

Procedural Matters

This is a very simple rule to update one document previously incorporated by reference. The addition of the new document, API Specification 14A, Tenth Edition, ISO 10432:1999, Petroleum and natural gas industries—Downhole equipment—Subsurface safety valve equipment, will not have a significant effect on any offshore lessee/operator (small or large). One entity, which serves as the only independent test agency for initial design verification testing and 3-year requalification testing, will be negatively affected by the deletion of the 3-year requalification test requirement. Four U.S. manufacturers, with six U.S. facilities manufacturing SSSVs, will benefit from the elimination of costs associated with the 3-year requalification test requirement.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The rule would have no significant economic impact because the document does not contain any significant revisions that will cause lessees or operators to change their business practices. The document will not require the retrofitting of any facilities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act (RF Act)

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Incorporating the new document into MMS regulations would allow SSSVs with design verification approval to be manufactured and placed into service without the need for a requalification test every 3 years. Thus, incorporating the new document will not impose new costs on the offshore oil and gas industry but rather may reduce costs to the industry in that manufacturers of SSSVs will not incur the costs of a requalification test every 3 years.

Incorporating the new document will also not impose new costs on the manufacturers of the offshore equipment, as previously stated. There are four U.S. companies that manufacture SSSVs for service on the OCS, none of whom could be classified as a small entity, who will benefit from cost savings attributable to the deletion of the 3-year requalification test requirement.

The test agency that will be negatively affected by the deletion of the 3-year requalification test requirement is an independent, nonprofit, applied research and development organization. The test agency has recently reported annual revenues in excess of $300 million and employment of over 2500 staff. The test agency does not qualify as a small entity.

The Department also determined that the indirect effects of this rule on small entities that provide other support functions for offshore activities are insignificant (in effect zero).

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the new document and revisions to some operating procedures. The revisions to operating procedures will actually result in significant costs savings, in that manufacturers of SSSVs will not incur the costs of a requalification test every 3 years.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. The rule does not substantially and directly affect the relationship between the Federal and State governments because it concerns the manufacturing requirements for specific equipment used in offshore oil and gas wells. The rule only affects manufacturers and users of such equipment. This rule does not impose costs on States or localities, as it only affects manufacturers and users of specific equipment used in offshore oil and gas wells.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant Takings Implications. MMS determined this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implications Assessment is not required under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Paperwork Reduction Act of 1995

There are no information collection requirements associated with this rule.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, and tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: November 14, 2000.

Sylvia Baca,

Assistant Secretary, Land and Minerals Management.,

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.198, in the table in paragraph (e), the entry for "API Spec 14A" is revised to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
. . . . .	
API Spec 14A, Tenth Edition, November 2000, ISO10432:1999, Petroleum and Natural Gas Industries—Downhole Equipment—Subsurface Safety Valve Equipment, API Stock No. G14A09.	§ 250.806(a)(3).
. . . . .	

3. In § 250.806, the last sentence in paragraph (a)(3) is revised and new paragraph (a)(4) is added to read as follows:

§ 250.806 Safety and pollution prevention equipment quality assurance requirements.

(a) * * *

(3) * * * All SSSVs must meet the technical specifications of API Specification 14A.

(4) For information on all standards mentioned in this section, see § 250.198.

* * * * *

[FR Doc. 00–30694 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–106]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1084.6, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: Commander, Seventh Coast Guard District is temporarily changing the regulations governing the West 79th Street Causeway Bridge, mile 1084.6 across the Atlantic Intracoastal Waterway at Miami, Florida. This temporary rule establishes scheduled openings on the hour and half hour, Monday through Saturday, from 7 a.m. to 6:30 p.m., and allows the bridge to remain closed from 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. The drawbridge will open on demand during all other periods including federal holidays and Sundays. This action is necessary to facilitate drawbridge rehabilitation to resolve related vehicle traffic flow problems during rush hour.

DATES: This rule is effective from November 21, 2000, to February 28, 2001. Comments must be received by December 31, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–00–106] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S. E. 1st Avenue, Room 406, Miami, FL 33131, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, at (305) 415–6730.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is impracticable and contrary to the public interest because rehabilitation is underway.

Further, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Rehabilitation is underway and a delayed effective date is impracticable.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–00–106),

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indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES**, explaining why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The West 79th Street Causeway Drawbridge, mile 1084.6, across the Atlantic Intracoastal Waterway, has a vertical clearance of 19.5 feet at mean high water and a horizontal clearance of 90 feet between fenders. This bridge normally operates under 33 CFR 117.5, which requires the bridge to open promptly and fully for the passage of vessels when a request to open is given. However, on May 9, 2000, the Florida Department of Transportation (FDOT) requested that drawbridge operations be temporarily changed to allow for rehabilitation of the drawbridge. On June 6, 2000, the Coast Guard issued temporary regulations with request for comment to allow a 30-minute opening schedule on Monday through Saturday, from 7 a.m. to 6 p.m. (65 FR 35826).

Discussion of Comments and Changes

We received one comment during the comment period. FDOT requested additional restrictions due to vehicle congestion caused by the rehabilitation of the drawbridge. In addition to the existing temporary regulations that allow the drawbridge to open on the hour and half hour, Monday through Saturday, from 7 a.m. to 6:30 p.m., FDOT asked to be able to allow the bridge to remain closed from 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. This is necessary to resolve vehicular traffic congestion that is a result of the bridge rehabilitation. The drawbridge will open on demand during all other periods including federal holidays and Sundays. All of the above provisions are included in this revised temporary rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be minimal because the bridge will only be closed two hours in the morning and two hours in the evening on weekdays the bridge will still open 30 minute intervals and on demand during other periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities; owners or operators of vessels intending to transit the Intracoastal waterway at mile 1084.6. Although this temporary rule will be in effect for four months, vessel traffic can still pass through the drawbridge every 30 minutes during weekdays and Saturday, except during the weekday morning and afternoon vehicle traffic rush hours of 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m. The drawbridge will open on demand during all other periods including federal holidays and Sundays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning is provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations for the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Suspend existing temporary § 117.261(rr) from November 21, 2000, through February 28, 2001.

3. From November 21, 2000, through February 28, 2001, in § 117.261, a new paragraph (vv) is temporarily added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(vv) West 79th Street Causeway Drawbridge, mile 1084.6, Miami, Florida. The draw need open only on the hour and half-hour, Monday through Saturday, from 7 a.m. to 6:30 p.m., beginning November 21, 2000, through February 28, 2001, except the draw may remain closed from 7:30 a.m to 9:30 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. The draw will open on demand during all other periods including federal holidays and Sundays.

Dated: November 21, 2000.

T.W. Allen,

U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–31095 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AJ49

Outer Burial Receptacles

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute the Department of Veterans Affairs (VA) is authorized to provide a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner. This document establishes a mechanism for implementing these provisions.

DATES: *Effective Date:* This final rule is effective December 8, 2000.

Applicability Date: The provisions of Public Law 104–275 were enacted on October 9, 1996, and the provisions of this regulation shall be retroactive to this date.

FOR FURTHER INFORMATION CONTACT: Deanna Wilson, Program Analyst, Communications Management Service (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5154 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 18, 2000 (65 FR 20787), we proposed to establish a mechanism for providing a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner.

We provided a 60-day comment period that ended June 19, 2000. We received 20 comments. All were in favor of the proposed rule.

Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule without change.

Regulatory Flexibility Act

The Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will not affect the sale of outer burial receptacles. Further, the basic provisions of the rule reflect statutory requirements. Accordingly, pursuant to 5 U.S.C. 605(b), the rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Number for programs affected by this regulation is 64.201.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, wages.

Approved: October 31, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.629 is added to read as follows:

§ 1.629 Monetary allowance in lieu of a Government-furnished outer burial receptacle.

(a) *Definitions—Outer burial receptacle.* For purposes of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) *Purpose.* This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner.

(c) *Second interments.* In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the national cemetery director determines that the already interred casket will not be damaged.

(d) *Payment of monetary allowance.* VA will pay a monetary allowance for each burial in a VA national cemetery where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on and after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996 through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person privately purchased the outer burial receptacle (however, if a person who is

not listed as the next of kin provides evidence that he or she privately purchased the outer burial receptacle, the allowance will be paid instead to that person). No application is required to receive payment of a monetary allowance.

(e) *Amount of the allowance.* (1) For calendar year 2000 and each calendar year thereafter, the allowance will be the average cost, as determined by VA, of Government-furnished graveliners, less the administrative costs incurred by VA in processing and paying the allowance.

(i) The average cost of Government-furnished graveliners will be based upon the actual average cost to the Government of such graveliners during the most recent fiscal year ending prior to the start of the calendar year for which the amount of the allowance will be used. This average cost will be determined by taking VA's total cost during that fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation shall exclude both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners.

(ii) The administrative costs incurred by VA will consist of those costs that relate to processing and paying an allowance, as determined by VA, for the calendar year ending prior to the start of the calendar year for which the amount of the allowance will be used.

(2) For calendar year 2000 and each calendar year thereafter, the amount of the allowance for each calendar year will be published in the "Notices" section of the **Federal Register**. The **Federal Register** Notice will also provide, as information, the determined average cost of Government-furnished graveliners and the determined amount of the administrative costs to be deducted.

(3) The published allowance amount for interments which occur during calendar year 2000 will also be used for payment of any allowances for interments which occurred during the period from October 9, 1996 through December 31, 1999.

(Authority: 38 U.S.C. 2306(d)).

[FR Doc. 00–31289 Filed 12–7–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–054–200027(a); FRL–6910–6]

Approval and Promulgation of Implementation Plans: Revision to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on August 10, 2000, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). Included in this document are revisions to clarify the definition of "New Source," delete outdated rule 335–3–4–.08(4), revise rule 335–3–14–.05(2)(i) to be consistent with the Federal requirements for the Review of New Sources and Modifications, and change the numbering system to comply with the Alabama Administrative Procedures Act.

DATES: This direct final rule is effective February 6, 2001, without further notice, unless EPA receives adverse comment by January 8, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Sean Lakeman at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404)562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On August 10, 2000, the State of Alabama through ADEM submitted revisions to chapters 335–3–1, 2, 3, 4, 5, 6, 9, 12, 14, 15, and 16. In chapter 335–3–1 the definition of "New Source" is being clarified to indicate that it is not applicable to the definitions of new source in chapters 335–3–10 Standards of Performance for New Stationary Sources and chapter 11 National Emission Standard for Hazardous Air Pollutants, which are not part of the federally enforceable state implementation plan (SIP).

ADEM combined rule 335–3–5–.03(5) and 335–3–5–.03(6) to be consistent with Alabama Administrative Procedures Act, and revised rule 335–3–14–.05(2)(i) to be consistent with 40 CFR 51, subpart I. ADEM deleted rule 335–3–4–.08(4) pertaining to emissions from wood waste boilers at pulp mills in Autauga County. International Paper (formally Union Camp) operates the only pulp mill in Autauga County which has been upgraded and no longer requires a bubble. The Union Camp boilers are subject to other emission limits in the federally approved SIP.

ADEM revised the numbering system in chapters 335–3–1, 2, 3, 4. 5, 6, 9, 12, 14, 15, and 16 to comply with numbering system required by the Legislative Reference Service under Alabama Administrative Procedures Act.

II. Final Action

EPA is approving the aforementioned change to the State of Alabama's SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective February 6, 2001, without further notice unless the Agency receives adverse comments by January 8, 2001.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 6, 2001 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 6, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead, Intergovernmental relation, Reporting and record keeping requirements.

Dated: November 8, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Section 52.50(c) is amended:

a. Under Chapter No. 335–3–1 by revising entries "Section 335–3–1-.02" and "Section 335–3–1-.08."

b. Under Chapter No. 335–3–2 by revising entry "Section 335–3–2-.02."

c. Under Chapter No. 335–3–3 by revising entries "Section 335–3–3-.01" and "Section 335–3–3-.03."

d. Under Chapter No. 335–3–4 by revising entries "Section 335–3–4-.08" and "Section 335–3–4-.09."

e. Under Chapter No. 335–3–5 by revising entries "Section 335–3–5-.03" and "Section 335–3–5-.04."

f. Under Chapter No. 335–3–6 by revising entries "Section 335–3–6-.06" and "Section 335–3–6-.16."

g. Under Chapter No. 335–3–9, the second entry for "Section 335–3–9–.01" is redesignated as "Section 335–3–9–.02" and revised; the existing entry for "Section 335–3–9–.02" is redesignated as "Section 335–3–9–.03", and revised; and the entry "Section 335–3–9–.06" is revised.

h. Chapter 335–3–3–14 is redesignated as Chapter 335–3–14.

i. Under Chapter No. 335–3–14 by deleting entries "Section 335–3–14-.04(ff-gg)" and "Section 335–3–14-.04(8)(m)."

j. Under Chapter No. 335–3–14 by revising entries "Section 335–3–14-.03," "Section 335–3–14–04" and "Section 335–3–14-.05."

k. Under Chapter No. 335–3–15 by revising entry "Section 335–3–15-.02."

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal register notice
Chapter No. 335–3–1—General Provisions				
Section 335–3–1–1–.02	Definitions	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–1–.08	Prohibition of Air Pollution	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–2—Air Pollution Emergency				
Section 335–3–2–.02	Episode Criteria	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–3—Control of Open Burning and Incineration				
Section 335–3–3–.01	Open Burning	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–3–.03	Incineration of Wood, Peanut, and Cotton Ginning Waste.	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–4—Control of Particulare Emissions				
Section 335–3–4–.08	Wood Waste Boilers	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–4–.09	Coke Ovens	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–5—Control of Sulfur Compound Emissions				
Section 335–3–5–.03	Petroleum Production	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–5–.04	Kraft Pulp Mills	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–6—Control of Organic Emissions				
Section 335–3–6–.06	Bulk Gasoline Terminals	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–6–.16	Test Methods and Procedures	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–9—Control of Emissions from Motor Vehicles				
Section 335–3–9–.02	Ignition System and Engine Speed.	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–9–.03	Crankcase Ventilation Systems	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–9–.06	Other Prohibited Acts	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–14—Air Permits				

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title subject	Adoption date	EPA approval date	Federal register notice
Section 335–3–14–.03	Standards for Granting Permits	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–14–.04	Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD)).	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–14–.05	Air Permits Authorizing Construction in or Near Nonattainment Areas.	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–15—Synthetic Minor Operating Permits				
Section 335–3–15–.02	General Provisions	August 10, 2000	12/8/00	65 FR 76940

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[FR Doc. 00–30635 Filed 12–7–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6913–9]

RIN 2060–A177

National Emission Standards for Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 1, 1995, we promulgated the National Emission Standards for Aerospace Manufacturing and Rework Facilities. On January 24, 2000, we proposed to amend the standards to include a separate emission limit for exterior primers used for large commercial aircraft at existing facilities that produce fully assembled, large commercial aircraft. This action finalizes those proposed amendments.

In addition, we are making a minor correction to the monitoring requirements section of the aerospace emission standards. The amendment helps correct regulatory language that erroneously made reference to a list of requirements for initial compliance demonstrations when using incinerators and carbon adsorbers.

EFFECTIVE DATE: December 8, 2000.

ADDRESSES: Docket No. A–92–20 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5340, facsimile (919) 541–0942, electronic mail address pagan.jaime@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Categories and entities potentially affected by this action include:

Category	SIC[a]	NAICS[b]	Regulated entities.
Industry	3721	336411	Facilities which are major source of hazardous air pollutants and manufacture large commercial aircraft.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technical Support Document

A summary of the public comments received on the proposed amendments and our response to those comments is included in a memorandum in the docket for this rule (Docket No. A–92–20). The title of the memorandum is "Summary of Comments and Responses for the Proposed Amendments to the Aerospace Manufacturing and Rework Facilities NESHAP."

Judicial Review

Under section 307(b) of the Clean Air Act (CAA), judicial review of these final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 6,

2001. Under section 307(d)(7)(B) of the CAA, only an objection to these amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. What Is the Background for the Amendments?

On September 1, 1995 (60 FR 45948), we promulgated the National Emission Standards for Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG) under section 112(d) of the CAA. The rule includes standards to control organic hazardous air pollutants (HAP) and volatile organic compounds (VOC) emissions from primers with an organic HAP and VOC content level of 350 grams per liter (g/L) (2.9 pounds per gallon (lb/gal)) or less (§ 63.745(c)(1) and (2)). These limits applied where no add-on control systems were used. Alternatively, an affected source could use a control system to reduce the organic HAP and VOC emissions to the atmosphere by 81 percent or greater (§ 63.745(d)).

On January 24, 2000, we proposed to amend the promulgated emission limits contained in § 63.745(c)(1) and (2) for primer operations with no add-on control systems by proposing a separate emission limit of 650 g/L (5.4 lb/gal) or less of organic HAP and VOC for exterior primers, as applied to large commercial aircraft components (parts or assemblies) or fully assembled, large commercial aircraft at existing affected sources that produce fully assembled, large commercial aircraft (65 FR 3642). Our basis for the proposed amendments was data submitted to us by a manufacturer of large commercial aircraft and a reevaluation of the original data used to establish the MACT floor for primer application operations (e.g., the primer containing 1,1,1-trichloroethane (TCA) that was evaluated and included in the floor determination is no longer available).

Today's action finalizes those amendments based on comments received on the proposed amendments and our response to those comments. Five comment letters were received on the proposed amendments. Two of the comment letters were supportive of the proposal and the decisions we made with respect to the applicability, definitions and the revised HAP and VOC content limits. One commenter submitted information on the potential use of a chemical in coating formulations to meet organic HAP and VOC content limits. Another commenter disagreed with our proposal by stating that there is add-on control technology available to help reduce emissions to the currently required levels. Finally, one commenter expressed the opinion that the proposal should apply to both original equipment manufacturers and rework facilities, and that a definition of large commercial aircraft components should be added to the standards.

We carefully considered each of the public comments and concluded that no changes to the proposed amendments were warranted. A complete summary of the public comments received on the proposed amendments and our responses to those comments is included in a memorandum in the docket (Docket No A–92–20). Our responses to the public comments are briefly summarized here. First, with regard to new coating formulations, we appreciate the information and encourage the development of new coatings, but the coatings described by the first commenter are still in the testing and development stages for aerospace applications. With regard to the information on add-on controls provided by the second commenter, we did not change our decisions about the basis for the standards; but the standards do still provide for the option to use add-on controls to meet the emission limitations. Likewise, we were not persuaded based on information from the third commenter that the amendments should be extended to rework operations, especially given supportive comments from a company with similar operations. Lastly, we considered adding a definition of "large commercial aircraft components". The term "large commercial aircraft" was already defined in the proposal, but we were unable to create a definition of "aircraft components" that is all inclusive and that would not be subject to change in the future. Further, we believe that the definition of exterior primer included in the amendments provides a clear explanation of where the primer is to be applied.

In addition to the amendments described above, we are making a minor correction to the monitoring requirements section of the aerospace emission standards. This revision helps correct regulatory language that erroneously made reference to a list of requirements for initial compliance demonstrations when using incinerators and carbon adsorbers. In § 63.751, requirements for initial compliance demonstrations are listed in paragraphs (b)(1) through (12). The introductory language of paragraph (b) indicates that the requirements in paragraphs (b)(1) through (7) apply when using carbon adsorbers. Then, the introductory language in paragraph (b) incorrectly indicates that paragraphs (b)(9) through (12) apply when using incinerators. The revision that we are making in this action clarifies the paragraph to correctly state that paragraphs (b)(8) through (12) apply when using incinerators.

Although the revision to § 63.751 described above was not part of the proposal in 65 FR 3642, section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for finalizing this revision without prior proposal and opportunity for comment because the change corrects an inadvertent mistake in an introductory paragraph referencing a list of requirements for initial compliance demonstrations. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. What Are the Impacts Associated With These Amendments?

This action will not significantly affect the estimated emissions reductions or the control costs for the standards promulgated for aerospace manufacturing and rework facilities. Only one company has been identified as being affected by the proposed amendments. These amendments address significant technical concerns regarding this aircraft manufacturer's ability to achieve the promulgated 350 g/L (2.9 lb/gal) HAP and VOC content limit requirements when using exterior primers.

Finally, the amendment that we are making to the monitoring requirements section of the aerospace emission standards is a minor correction needed to revise an inadvertent mistake in the regulatory language of the original regulation. As such, there are no impacts associated with this correction.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that OMB determines is likely to result in a rule that may:

(1) Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If the EPA complies by consulting, Executive Order 13132 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of the EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when the EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the EPA must include a certification from the Agency's Federalism Official stating that the EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

These amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to these amendments.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal governments, or if the EPA consults with those governments. If the EPA complies by consulting, the EPA is required to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, the EPA is required to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

These amendments do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that (1) OMB determines is "economically significant," as defined under Executive Order 12866, and (2) the EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental, health, or safety aspects of the rule on children and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. Furthermore, these amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-

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costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There is no cost associated with these amendments. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments do not contain regulatory requirements that might significantly or uniquely affect small governments because they do not contain requirements that apply to such governments or impose obligations upon them. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

Because these amendments do not include a Federal mandate and are estimated to result in expenditures less than $100 million in any 1 year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments would not be significantly or uniquely affected by these amendments, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's amendments to the final rule on small entities, small entity is defined as: (1) A small business that has fewer than 1,500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, it has been determined that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. It affects only manufacturers of large commercial aircraft. There are no small-entity manufacturers of large commercial aircraft.

G. Paperwork Reduction Act

These proposed amendments would not impose any new information collection requirements that would result in changes to the currently approved collection. The OMB approved the information collection requirements contained in the Aerospace Manufacturing and Rework Facilities NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 2060–0314.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

These amendments do not require the use of any new technical standards, therefore section 12(d) does not apply.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the corrections amendments, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing these amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action does not constitute a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects for 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 4, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

2. Section 63.742 is amended by adding in alphabetical order definitions for "*Exterior primer*" and "*Large commercial aircraft*" to read as follows:

§ 63.742 Definitions.

* * * * *

Exterior primer means the first layer and any subsequent layers of identically formulated coating applied to the exterior surface of an aerospace vehicle or component where the component is used on the exterior of the aerospace vehicle. Exterior primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent exterior topcoats. Coatings that are defined as specialty coatings are not included under this definition.

* * * * *

Large commercial aircraft means an aircraft of more than 110,000 pounds, maximum certified take-off weight manufactured for non-military use.

* * * * *

3. Section 63.745 is amended by revising paragraphs (c)(1) and (2) to read as follows:

§ 63.745 Standards: Primer and topcoat application operations.

* * * * *

(c) * * *

(1) Organic HAP emissions from primers shall be limited to an organic HAP content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water), as applied, for general aviation rework facilities; or 650 g/L (5.4 lb/gal) of exterior primer (less water), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled, large commercial aircraft at existing affected sources that produce fully assembled, large commercial aircraft; or 350 g/L (2.9 lb/gal) of primer (less water), as applied.

(2) VOC emissions from primers shall be limited to a VOC content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water and exempt solvents), as applied, for general aviation rework facilities; or 650 g/L (5.4 lb/gal) of exterior primer (less water and exempt solvents), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled, large commercial aircraft at existing affected sources that produce fully assembled, large commercial aircraft; or 350 g/L (2.9 lb/gal) of primer (less water and exempt solvents), as applied.

* * * * *

4. Section 63.751 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.751 Monitoring requirements.

* * * * *

(b) *Incinerators and carbon adsorbers-initial compliance demonstrations.* Each owner or operator subject to the requirements in this subpart must demonstrate initial compliance with the requirements of §§ 63.745(d), 63.746(c), and 63.747(d) of this subpart. Each owner or operator using a carbon adsorber to comply with the requirements in this subpart shall comply with the requirements specified in paragraphs (b)(1) through (7) of this section. Each owner or operator using an incinerator to comply with the requirements in this subpart shall comply with the requirements specified in paragraphs (b)(8) through (12) of this section.

* * * * *

[FR Doc. 00–31331 Filed 12–7–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6913–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the University of Minnesota Rosemount Research Center Superfund Site from the National Priorities List (NPL).

SUMMARY: EPA Region 5 announces the deletion of the University of Minnesota Rosemount Research Center Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substance Pollution Continency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA). EPA and the Minnesota Pollution Control Agency (MPCA) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: This "direct final" action will be effective February 6, 2001 unless EPA receives dissenting comments by January 8, 2001. If written dissenting comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd., (SR–6J), Chicago, IL 60604. Requests for comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repository at the following location: The Minnesota Pollution Control Agency, Administrative Records, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (SR–6J), U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, IL, (312) 886–7253, FAX (312) 886–4071, e-mail beard.gladys@epa.gov

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion
V. Action

I. Introduction

EPA Region 5 announces the deletion of the releases from the University of Minnesota Rosemont Research Center Site, Rosemount, Dakota County, Minnesota, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Minnesota have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on this notice thirty days after publication of this notice in the **Federal Register**.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the University of Minnesota Site and explains how the Site meets the deletion criteria. Section V states EPA's action to delete the releases of the Site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state,

whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if the release is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the Site will be conducted at least every five years after the initiation of the remedial action at the Site to ensure that the Site remains protective of public health and the environment. In the case of this Site, EPA conducted a Five-Year Review in June, 1997 and a second one is due June 2002. Based on these reviews, EPA determined that conditions at the Site remain protective of public health and the environment. As explained below, the Site meets the NCP's deletion criteria listed above. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of releases from the Site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) the Minnesota Pollution Control Agency concurred with the proposed deletion decision; (3) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and, (4) all relevant documents have been made available for public review in the local Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete.

For deletion of releases from the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a release from a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The University of Minnesota Rosemount Research Center (UMRRC) is located within the city limits of Rosemount in Dakota County, approximately 20 miles southeast of the Minneapolis/St. Paul metropolitan area. The UMRRC covers approximately five square miles and is used by some light manufacturing and service companies. Within the confines of the UMRRC, the UMRRC Site consists of three industrial disposal sites: the George's Used Equipment (GUE) site, the Porter Electric and Machine Company (PE) site, and the U.S. Transformer (UST) site. The University also burned discarded laboratory chemicals in a burn pit area on the Site.

The University and the MPCA signed a Response Action Agreement on May 30, 1985, under the Minnesota Environmental Response and Liability Act (MERLA) for the cleanup of the UMRRC Site groundwater and soil. In December 1987, the UMRRC Site was placed on the National Priority List. Remedial Investigation (RI) activities were conducted under the Agreement from 1984 through 1988.

The RI determined that soil and concrete at all three disposal sites were contaminated by polychlorinated biphenyls (PCBs). In addition, the GUE site was also found to be contaminated with lead and copper. PCBs in the soil were as high as 63,000 parts per million (ppm) and lead was as high as 40,000 ppm. Groundwater at the site was found to be contaminated with chloroform from the burn pit area. The highest concentration of chloroform found was 72 parts per billion (ppb) in a monitoring well one mile from the burn pit.

The GUE site was used as an electrical storage and salvage facility, as well as a general salvage facility between 1968 and 1985. Activities at this site resulted in soil and concrete contamination by lead and PCBs. The PE site was used for storage and reconditioning of used industrial electrical equipment. Soil at this site is contaminated with PCBs. The UST site was used for dismantling and salvaging electrical transformers. Soil and concrete at the UST site was contaminated with PCBs.

After reviewing the results of the RI/Feasibility Study (FS), the MPCA completed a ROD on June 11, 1990; EPA concurred with the ROD on June 29, 1990. The selected remedy had five major components:

1. Excavating approximately 6,500 cubic yards of soil and concrete contaminated with greater than 25 ppm PCBs and approximately 2,600 cubic yards of soil contaminated with copper and lead where the soil exceed 1,000 ppm lead;

2. Consolidating approximately 15,000 cubic yards of soil from the three disposal sites contaminated with PCBs which ranged in concentration from 10 to 25 ppm PCBs at GUE and restricting access;

3. Thermally destroying the PCBs in the soil and concrete;

4. Transporting the soil contaminated with lead and copper to an off-site Resource Conservation and Recovery Act (RCRA)-permitted landfill; transporting lead contaminated soil which also contained PCBs to a Toxic Substances Control Agency (TSCA)/RCRA-permitted landfill; and

5. Backfilling with clean soil, grading and establishing vegetation.

The ROD also included a groundwater pump and treatment system for the chloroform contaminated groundwater. It should be noted that the groundwater pump and treatment system was in place and operating at the time the ROD was written. The pump and treatment system had already been completed by the University as a part of its response under the MERLA Response Action Agreement.

During July and August 1990, the University disposed of soil contaminated with lead and copper. The soil contaminated with lead and copper was disposed of at the Adams Center Landfill located in Ft. Wayne, Indiana, a RCRA-permitted landfill. Lead contaminated soil containing greater than 49 ppm PCBs was disposed of at the Chemical Waste Management, Inc., Landfill in Emelle, Alabama, a TSCA/RCRA-permitted landfill.

Based on a request from the University, the ROD was modified in August 1991 with the completion of an Explanation of Significant Difference (ESD) by the MPCA and EPA. The changes approved in the ESD were:

1. Allowing the University the option of using either on-site incineration or the previously approved alternative of thermal desorption to vaporize and destroy the PCB's;

2. Allowing the University to restrict access to the three disposal sites with soil PCB levels which ranged between 10 and 25 ppm PCBs rather than consolidating this soil; and

3. Requiring the University to perform a review of the effectiveness of the remedial action three years after completion of the remedy rather than three years after the approval of the remedial action clean-up plan.

In order to operate a thermal destruction unit in the State of Minnesota, the MPCA issued the University an " Authorization to Install and Operate a Thermal Destruction Unit, University of Minnesota Rosemount Research Station," (Authorization to Burn) on December 27, 1991. The Authorization to Burn was modified on February 3, 1992, and August 17, 1992. These modifications reduced the scope of the Authorization to Burn based on additional information received from the University and from Roy F. Weston, Inc. (Weston), the University's clean-up contractor.

The University chose to destroy the PCBs using the on-site incineration option. Weston began site activities on June 30, 1992; began incinerating contaminated soil at the Site in March 1993; and completed the thermal destruction of soil and concrete in July 1993.

The MPCA approved the shutdown of the pump and treatment system on October 30, 1991. This was in part due to the Minnesota Department of Health (MDH) changing its Recommended Allowable Limit (RAL) for chloroform from 5 to 57 ppb. The groundwater was also found to meet other state groundwater drinking water criteria.

On June 1, 1993, the University requested that it be allowed to consolidate PCB contaminated soil which ranged between 10 and 25 ppm at GUE as originally described in the ROD. The University decided that it was now more feasible to consolidate the soil than was envisioned at the time of the first ESD. The ESD also indicated that all remaining soil contaminated with one to 10 ppm PCBs will be covered with 10 inches of clean fill in order to comply with the TSCA PCB Spill Policy and to provide unrestricted access to these areas. The MPCA prepared a second ESD to address these changes and EPA concurred with the ESD on October 1, 1993.

On September 24, 1993, the EPA and the MPCA performed the preliminary site inspection. At that time, the remedy was substantially complete with the exception of consolidating a small amount of soil into the GUE depression and also transporting a small quantity of soil to an off-site landfill. A final site inspection was conducted on September 20, 1994, and all construction activities were found to be completed.

V. Action

The remedy selected for this Site has been implemented in accordance with the Record of Decision and subsequent Explanation of Significant Difference. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, human health and potential environmental impacts have been minimized. EPA and the State of Minnesota find that the remedies implemented continue to provide adequate protection of human health the environment.

The MPCA concurs with EPA that the criteria for deletion of releases have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective February 6, 2001. However, if EPA receives dissenting comments by January 8, 2001, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 28, 2000.

Elissa Speizman,

Acting Regional Administrator, EPA, Region 5.

Part 300, title 40 of chapter 1 of the Code of Federal Regulations is amended as follows:

Part 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to Part 300 is amended by removing the site for "University of Minnesota Rosemount, Res Cen, Rosemount, Minnesota."

[FR Doc. 00–31191 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2681, MM Docket No. 00–97; RM–9865]

Digital Television Broadcast Services; Richmond, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Central Virginia Educational Telecommunications Corporation, licensee of noncommercial station WCVE–TV, substitutes DTV Channel *42 for station WCVE–TV's assigned DTV Channel *24a at Richmond, Virginia. *See* 65 FR 36808, June 12, 2000. DTV Channel *42 can be allotted to Richmond at coordinates (37–30–46 N. and 77–36–06 W.) with a power of 100, HAAT of 327 meters and with a DTV service population of 1097 thousand.

With this action, this proceeding is terminated.

DATE: Effective January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–97, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia, is amended by removing DTV Channel *24d and adding DTV Channel *42 at Richmond.

Federal Communications Commission.
Barbara A. Kreisman,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30972 Filed 12–7–00; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 98–204 and 96–16, FCC 00–338]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification; petition for partial reconsideration.

SUMMARY: This document grants in part, and denies in part, both one petition for partial reconsideration and clarification and one petition for expedited clarification of the Commission's new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The document also considers certain issues pertaining to the EEO rules on the motion of the Commission, primarily as a result of informal inquiries from the public. In addition, the document amends the EEO rules to clarify that data concerning the gender, race and ethnicity of a broadcaster's or cable entity's workforce will not be used to assess its compliance with the rules. The intended effect is to clarify the Commission's EEO rules for the broadcasting and cable industries.

DATE: Effective January 8, 2001.

FOR FURTHER INFORMATION CONTACT: EEO Staff, (202) 418–1450.

SUPPLEMENTARY INFORMATION: 1. This is a synopsis of the Commission's Memorandum Opinion and Order (MO&O) in MM Docket Nos. 98–204 and 96–16, adopted September 11, 2000, and released November 22, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202–857–3800, CY–B400, 445 12th St., SW., Washington, D.C.

Synopsis of Memorandum Opinion and Order

2. In this MO&O, the Commission addresses petitions for reconsideration and clarification of the Report and Order in this proceeding, 65 FR 7448, February 15, 2000, in which it adopted new broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church—Missouri Synod* v. *FCC*, 141 F.3d 344 (D.C. Cir. 1998), pet. for reh'g denied, 154 F.3d 487, pet. for reh'g en banc denied, 154 F.3d 494 (D.C. Cir. 1998). The EEO rules include broad and inclusive outreach requirements designed to ensure that all qualified applicants have the opportunity to compete for jobs in the broadcast and cable industries on an equal basis.

3. Under Option A of the Commission's EEO rules, broadcasters are required to implement two supplemental recruitment measures: (1) Notification of job vacancies to any recruitment organization that requests such notification; and (2) outreach activities such as job fairs, internship programs, training programs, scholarship programs, mentoring programs, and participation in educational and community activities relating to broadcast employment. Broadcasters with five to ten full-time employees must perform two activities every two years, while larger broadcasters must perform four activities every two years. The MO&O clarifies that broadcasters may implement half of two activities and combine the two halves to count as one of the four required activities (or two in the case of stations with five to ten employees), *e.g.*, by combining attendance at two (rather than four) job fairs and sponsorship of one (rather than two) community events.

4. The MO&O reiterates that a broadcaster may use the internet as one of several recruitment tools, but not as its only recruitment source. It also retains the requirement that broadcasters with web sites post their public file report on those sites, and clarifies that there is no requirement that the public file report include the names of interviewees or applicants.

5. The MO&O clarifies the filing schedule for the initial statement of compliance (FCC Form 397) so that beginning in 2001, all radio and television stations will file a statement of compliance on the second, fourth or sixth anniversary of the filing of their last renewal application. Beginning February 1, 2001, low power television stations and Class A television stations with five or more full-time employees will file statements of compliance in accordance with the schedule for television stations.

6. The MO&O also clarifies that broadcasters and cable entities have the discretion of electing either Option A or B of the Commission's EEO rules, and any state law interpreted as removing that discretion would be inconsistent with the rules. The MO&O further clarifies the extent to which broadcasters may engage in joint recruitment measures under Option A. In addition, the MO&O clarifies that broadcasters have good faith discretion in defining what constitutes an applicant and their market/community under the EEO rules. The MO&O also addresses how the Commission will monitor religious broadcasters' compliance with the EEO rules.

7. Finally, the MO&O retains the requirement that broadcasting and cable entities file annual employment reports which include data on the gender, race and ethnic status of the entity's workforce. The MO&O reiterates that the data will be used only for purposes of analyzing industry trends and reporting to Congress, and not for assessing an entity's compliance with the Commission's EEO rules. Accordingly, the MO&O amends the rules to reflect this fact.

Paperwork Reduction Act of 1995 Analysis

The actions contained in this Memorandum Opinion and Order have been duly analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified information collection requirements.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996), requires that a final regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." (Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business" "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration. In addition to stating various clarifications to the Commission's EEO rules, this MO&O incorporates into the rules a policy announced in the Report and Order that data concerning the gender, race and ethnicity of a broadcaster's or cable entity's workforce will not be used to assess compliance with our EEO rules. This rule change merely retains the status quo, and for clarity restates the existing policy in a Note to the rules. Therefore, we certify that the rule change adopted in this MO&O will not have a significant economic impact on a substantial number of small business entities.

Report to Congress: The Commission will send a copy of the MO&O, including this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the MO&O, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the MO&O and certification will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Add Note to § 73.3612 to read as follows:

§ 73.3612 Annual employment report.

* * * * *

Note to § 73.3612: Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's compliance with the equal employment opportunity requirements of § 73.2080.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

4. Section 76.77 is amended by:

(a) Adding a note to paragraph (a).

(b) Designating the note following paragraph (d)(1) as "Note to paragraph (d)(1)."

(c) Designating the note following paragraph (d)(6) as "Note to paragraph (d)(6)."

(d) Designating the note following paragraph (d)(13) as "Note to paragraph (d)(13)."

(e) Designating the note following paragraph (d)(15) as "Note to paragraph (d)(15)."

The addition reads as follows:

§ 76.77 Reporting requirements.

* * * * *

Note to paragraph (a): Data concerning the gender, race and ethnicity of a cable entity's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual cable entity's compliance with the equal employment opportunity requirements of §§ 76.73 and 76.75.

[FR Doc. 00–31308 Filed 12–7–00; 8:45 am]
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Proposed Rules

Federal Register
Vol. 65, No. 237
Friday, December 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This proposal would require inspection of the bolts on the hinge fittings that attach the spring tab and the servo tab to the rear spar of the elevators for evidence of loosening; inspection of the region of the hinge fittings on the spring tab for interference of the bonding jumpers attached to the hinge fittings with the leading edge of the spring tab; and corrective action, if necessary. The proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. The action specified by the proposed AD is intended to prevent the spring tab or the servo tab from becoming disconnected, resulting in structural failure. The action is also intended to prevent damage to the leading edge of the spring tab, which could result in loss of control of the elevator.

DATES: Comments must be received by January 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–256–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Viswa Padmanabhan, Aerospace Engineer, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6049; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–256–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC reported an instance of the loosening of the bolts on the hinge fittings which attach the spring tab and the servo tab to the rear spar of the elevators and indicated that the resulting loss of attachment rigidity may lead to undesirable levels of vibration. The DAC also notified the FAA that the bonding jumpers held in position by bolts on the hinge fittings may interfere with the leading edge of the spring tab.

The actions specified by the proposed AD are intended to prevent the spring tab or the servo tab from becoming disconnected, resulting in structural failure. The actions are also intended to prevent damage to the leading edge of the spring tab, which could result in loss of control of the elevator.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–55–0009, Change No. 02, dated May 19, 2000, which describes procedures for a one-time inspection of the bolts on the hinge fittings that attach the spring tab and the servo tab to the rear spars of the elevators for evidence of loosening. The service bulletin also describes procedures for a one-time inspection of the region of the hinge fittings on the spring tab for interference of the bonding jumpers with the leading edge of the spring tab.

If no discrepancies are found, operators must perform follow-up repetitive inspections as specified in the service bulletin. If discrepancies are found, operators must perform modifications, such as replacing the bolts with improved bolts, installing washers, installing lockwire or changing its position, and changing the position of the bonding jumpers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DAC issued Brazilian airworthiness directive 98–05–02, dated May 28, 1998, which referred to Embraer Service Bulletin 145–55–0009, initial release or further revisions approved by the Brazilian airworthiness authority.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between Proposed Rule and Service Bulletin/Brazilian Airworthiness Directive

The intervals between repetitive inspections in the proposed AD (stated in flight hours) differ from those recommended in the manufacturer's service bulletin (stated to coincide with operators' "A" checks). However, because regularly scheduled maintenance intervals, such as "A" checks, may vary from operator to operator, there would be no assurance that the inspections would be accomplished during the maximum intervals proposed by this AD. These intervals are intended to maintain an adequate level of safety within the fleet.

Another difference concerns the compliance time for accomplishment of the terminating action. The manufacturer's service bulletin recommends that, if no discrepancy is found during the initial inspection described in Part I, the terminating action described in Part II, III, or IV may be accomplished at any time, at the operator's discretion. However, the FAA has determined that requiring a specific compliance time is necessary to adequately address the identified unsafe condition. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet. In light of these factors, the FAA finds a compliance time of 2,000 flight hours for accomplishing the terminating actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Finally, Brazilian airworthiness directive 98–05–02 refers to EMBRAER Service Bulletin 145–55–0009, initial release, or further revision approved by the Brazilian airworthiness authority. The proposed AD refers to EMBRAER Service Bulletin 145–55–0009, Change No. 2, dated May 19, 2000, which includes procedures for repetitive inspections for interference between the bonding jumpers and the leading edge of the spring tab.

Cost Impact

The FAA estimates that 71 airplanes of U.S. registry would be affected by this proposed AD.

The initial inspection would take 2 work hours per airplane at an average labor rate of $60 per hour. Based on these figures, the cost impact on U.S. operators of the initial inspection (Part I) specified in the proposed AD is estimated to be $8,520, or $120 per airplane.

The cost impact on U.S. operators of follow-on actions is specified in the following table:

COST OF FOLLOW-ON ACTIONS

Action	Work hours	Cost of labor/ airplane	Cost of parts/ airplane	Cost/airplane
Corrective action/ Part II	6	$360	$71	$431
Corrective action/ Part III	6	360	2	362
Repetitive inspection/ Part IV	3	180	0	180

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2000–NM–256–AD.

Applicability: Model EMB–145 series airplanes; serial numbers 145004 through 145103 inclusive, 145105 through 145111 inclusive, and 145113 through 145117 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the spring tab or the servo tab from becoming disconnected, resulting in structural failure, and to prevent damage to the leading edge of the spring tab, which could result in loss of control of the elevator, accomplish the following:

Inspection

(a) Within 200 flight hours after the effective date of this AD, conduct a detailed visual inspection, as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–55–0009, Change No. 02, dated May 19, 2000.

(1) For airplanes having serial numbers 145004 through 145055 that have not been modified in accordance with EMBRAER Service Bulletin 145–55–0009, dated April 7, 1998: Inspect the bolts attaching the spring tab and servo tab hinge fittings to the rear spar of the left-hand and right-hand elevators for evidence of loosening.

(2) For airplanes having serial numbers 145004 through 145103, 145105 through 145111, and 145113 through 145117: Inspect the region of the hinge fittings on the spring tab for interference of the bonding jumper on the attaching bolts with the leading edge of the spring tab.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Modification

(b) Perform follow-on corrective actions, as applicable, in accordance with EMBRAER Service Bulletin 145–55–0009, Change No. 02, dated May 19, 2000, as shown in the following table:

TABLE 1.—FOLLOW-ON CORRECTIVE ACTIONS

If * * *	And * * *	And * * *	Then * * *
(1) No discrepancy is found	.....	.....	Prior to further flight, seal the bolt heads and adjacent hinge fitting surfaces.
(2) Any loose bolt or any interference of the bonding jumpers with the leading edge of the spring tab is found.	The airplanes have serial numbers 145004 through 145055, inclusive.	The airplanes have not been modified in accordance with EMBRAER Service Bulletin 145–55–0009, dated April 7, 1998.	Prior to further flight, accomplish Part II of the service bulletin, including replacing bolts, adding washers, and changing the position of the lockwire and the bonding jumpers.
	The airplanes have serial numbers 145004 through 145055, inclusive, and 145056 through 145076, inclusive.	The airplanes have been modified in accordance with EMBRAER Service Bulletin 145–55–0009, dated April 7, 1998.	Prior to further flight, accomplish Part III of the service bulletin, including adding washers and changing the position of the lockwire and the bonding jumpers.
	The airplanes have serial numbers 145077 through 145103, inclusive; 145105 through 145111, inclusive; and 145113 through 145117, inclusive.	.....	Prior to further flight, accomplish Part IV of the service bulletin, including adding washers and changing the position of the lockwire and the bonding jumpers.

Repetitive Inspections

(c) Repeat the detailed visual inspection specified in paragraph (a) of this AD, at intervals not to exceed 400 flight hours.

Terminating Action

(d) Within 2,000 flight hours from the effective date of this AD, accomplish Part II, III, or IV, as applicable, of the service bulletin.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: A portion of the subject of this AD is addressed in Brazilian airworthiness directive No. 98–05–02, dated May 28, 2000.

Issued in Renton, Washington, on December 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31318 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–17–AD]

Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD) for Societe Nationale Industrielle Aerospatiale (currently Eurocopter France) Model AS350 and AS355 series helicopters. That AD requires inspecting the fuselage frame (frame) for a crack at the fuselage-to-tailboom interface and replacing or repairing, as necessary. That AD also requires a fastener torque check and retorquing, as necessary. This action would retain the requirements of the existing AD but would increase the inspection interval from 1,200 hours time-in-service (TIS) to 2,500 hours or 6 years TIS, whichever occurs first. This proposal would revise the time interval for inspecting the frame at the fuselage-to-tailboom interface to coincide with the inspection interval specified in the maintenance manual. The actions specified by the proposed AD are intended to eliminate confusion and unnecessary costs and to prevent a cracked frame, tailboom failure, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before February 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Federal Register between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 28, 1985, the FAA issued AD 85–14–06, Amendment 39–5089 (50 FR 28561, July 15, 1985) to require repetitive inspections and to repair or replace the fuselage frame at the fuselage tailboom interface. On August 8, 1985, the FAA issued AD 85–14–06 R1, Amendment 39–5121 (50 FR 37173, September 12, 1985), to require repetitive visual inspections and to repair or replace the frame, as necessary. That AD also requires fastener torque checks and re-torquing, as necessary. That action was prompted by reports of cracked frames at the fuselage-to-tailboom interface. The requirements of that AD are intended to prevent a cracked frame, tailboom failure, and subsequent loss of control of the helicopter.

Since the issuance of that AD, we have been notified that the inspection interval of the frame at the fuselage-to-tailboom interface in the current AD does not coincide with the maintenance manual. The FAA has determined that this may create confusion among operators as to when the inspections are required.

We have identified an unsafe condition that is likely to exist or develop on other Eurocopter France Model AS350 and AS355 helicopters of these same type designs. The proposed AD would supersede AD 85–14–06 R1 and would require the same actions as the existing AD except to increase the inspection interval from 1,200 hours TIS to 2,500 hours or 6 years TIS, whichever occurs first, to coincide with the maintenance manual to eliminate confusion and unnecessary costs. To compensate for the increase in the inspection interval, we propose that the initial inspection interval be reduced from 100 hours TIS to 30 hours TIS and that the visual inspection be changed to a dye-penetrant inspection.

The FAA estimates that 475 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is

estimated to be $228,000 assuming no cracked frames are discovered.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5089 (50 FR 28561, July 15, 1985) and Amendment 39–5121 (50 FR 37173, September 12, 1985), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 2000-SW–17-AD. Supersedes AD 85–14–06, Amendment 39–5089, and 85–14–06 R1, Amendment 39–5121, Docket No. 85-ASW–15.

Applicability: Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To eliminate confusion and unnecessary costs and to prevent a cracked fuselage frame (frame), tailboom failure, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the fuselage-to-tailboom attachment bolts in accordance with paragraph (d) within 30 hours time-in-service (TIS).

(b) Inspect the fuselage-to-tailboom attachment bolts in accordance with paragraph (d) within 30 hours TIS of replacing or reinstalling a tailboom.

(c) Repeat the inspection in accordance with paragraph (d) at intervals not to exceed 2500 hours or 6 years TIS, whichever occurs first.

(d) Inspect the fuselage-to-tailboom attachment bolts for proper torque range and the frame, part number 350A21–1247–00, for a crack at the fuselage-to-tailboom interface.

(1) Procedure for inspecting proper torque range:

(i) Using a fine-point felt tip pen, mark the position of the nut relative to the assembly.

(ii) One at a time, slightly loosen each nut. Do not allow the corresponding bolt to rotate relative to the assembly.

(iii) Tighten the nut with a properly calibrated torque wrench until the mark on the nut lines up with the mark on the assembly.

(iv) Record the torque value required to line up the two marks.

(2) Interpretation of the recorded torque values for each nut:

(i) If the torque value is less than 0.3 mdaN (26 in-lbs) on any nut:

(A) Remove the tailboom.

(B) Perform a dye-penetrant inspection for a crack in the bending radius of the frame.

(C) If a crack is found, repair or replace the frame with an airworthy frame before further flight.

(ii) If the torque value is between 0.3 mdaN and 1 mdaN (26 to 88 in-lbs), re-torque to 0.75 mdaN to 0.9 mdaN (67 to 79 in-lbs).

(iii) If the torque value is equal to or greater than 1 mdaN (88 in-lbs), remove the nut and bolt and replace them with a new nut and bolt. Torque the nut to 0.75 mdaN to 0.9 mdaN (67–79 in-lbs).

Note 2: Aerospatiale Service Bulletins AS 355 No. 05.14 and AS 350 No. 05.16 pertain to the subject of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 30, 2000.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–31319 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–122–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Pennsylvania's responses to comments we made in regard to a proposed amendment to the Pennsylvania permanent regulatory program under the Surface Mining Control and Reclamation Act of 1997 (SMCRA). The amendment, submitted on July 29, 1998, (Administrative Record No. PA–841.07), proposed changes to the Pennsylvania program with regard to the mine subsidence control, subsidence damage repair or replacement, and water supply replacement provisions of SMCRA. The amendment submission included changes to the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) made through Act 54 and changes to regulations at 25 PA Code Chapter 89. After reviewing the amendment, we sent two letters to Pennsylvania requesting clarification of numerous issues. The letters were sent on June 21, 1999, (Administrative record number PA 841.32) and June 23, 2000, (Administrative record number PA 841.40). Pennsylvania responded to the first letter on June 1, 2000, (Administrative record number PA 841.39) and to the second on July 14, 2000, (Administrative record number PA 841.41). We are reopening the comment period to allow public input into Pennsylvania's responses to the two letters.

DATES: Written comments must be received on or before 4:00 p.m. (local time), on December 26, 2000.

ADDRESSES: Mail, hand-deliver or e-mail your written comments to Mr. Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below.

You may review copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, e-mail: *bbiggi@osmre.gov*

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the July 31, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the Pennsylvania program and previous amendments are codified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated July 29, 1998 (Administrative Record Number PA 841.07), the Pennsylvania Department of Environmental Resources (PADEP) submitted an amendment to its approved permanent regulatory program pursuant to the Federal regulations at 30 CFR 732.17(b).

The proposed rulemaking was published in the August 25, 1998, **Federal Register** (63 FR 45199). The first public comment period closed on September 24, 1998. In response to requests from several people, the comment period was reopened on September 25, 1998, (63 FR 51324).

This second comment period closed on October 19, 1998. A public hearing was held on October 13, 1998, at Washington, Pennsylvania (Administrative record numbers PA 841.21, 841.22, and 841.31). After reviewing the public comments and the information received at the public hearing and conducting our own review of the amendment, we sent Pennsylvania the two letters described above to request clarification of numerous issues. The sections of the BMSLCA that we asked Pennsylvania for additional information on are: 5.1(a)(1)—(3), 5.1(b), 5.2(a)(1) and (2), 5.2(a)(2), 5.2(b)(2), 5.2(d), 5.2(e)(1)—(3), 5.2(g), 5.2(g)(1), 5.2(h), 5.2(i), 5.2(k), 5.3(a), 5.3(c), 5.4(a)(1), 5.4(a)(2), 5.4(a)(3), 5.4(c), 5.5(a), 5.5(b), 5.5(c), 5.5(e), 5.5(g), 5.6(a), 5.6(c), and 9.1(b).

The sections of Pennsylvania's regulations at 25 PA Code Chapter 89 that we asked Pennsylvania for additional information on are: § 89.5, definitions of the terms, "de minimis cost increase," "permanently affixed appurtenant structures," and "public buildings and facilities," § 89.35, § 89.67(b), § 89.141(d), § 89.141(d)(2), § 89.141(d)(3), § 89.141(d)(6), § 89.141(d)(9), § 89.142a(a)(3), § 89.142a(b)(1), § 89.142a(b)(2), § 89.142a(c)(2), § 89.142a(c)(3), § 89.142a(e), § 89.142a(f)(1), § 89.142a(f)(2), § 89.142a(g)(2)—(4), § 89.143a(b), § 89.145a(a)(1), § 89.145a(a)(3), § 89.145a(b), § 89.145a(d), § 89.145a(e), § 89.145a(e)(2), § 89.145a(f)(1), § 89.145a(f)(3), § 89.146a(a), § 89.146a(b)(4), § 89.152(b), § 89.154(a), § 89.154(a)(5) and (6).

The full text of our letters and Pennsylvania's responses can be obtained at the Harrisburg Field Office at the address listed above.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments only on Pennsylvania's responses to our two letters.

Written Comments

If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. PA–122–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining

operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 2000.

George J. Rieger,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–31324 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–006]

RIN 2115–AE47

Drawbridge Operation Regulations; Longboat Pass and New Pass, Longboat Key, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Commander, Seventh Coast Guard District issued a notice of proposed rulemaking on 25 August 2000, to change the regulations governing the operation of the State Road 789 drawbridge across Longboat Pass, Manatee County, and the New Pass bridge, Sarasota County, in Longboat Key, Florida. The comment period expired on October 24, 2000. The Coast Guard has received several requests for additional time to submit comments on the proposed rule. As a result, the Coast Guard is reopening the comment period for an additional 60 days.

DATES: Comments must be received on or before February 6, 2001.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or deliver them to room 406 at the above address between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District 909, SE 1st Avenue, room 406, Miami, FL 33131, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, at (305) 415–6743.

SUPPLEMENTARY INFORMATION: On August 25, 2000, the Coast Guard published a notice of proposed rulemaking (65 FR 51787). The NPRM proposed to change the regulations governing the operation of the State Road 789 drawbridge across Longboat Pass, Manatee County, and the New Pass bridge, Sarasota County, in Longboat Key, Florida. The comment period ended on October 24, 2000. The Coast Guard has received requests from the U.S. Army Corps of Engineers, Manatee County, the town of Longboat Key, and the city of Sarasota for additional time to comment on this proposed rule. The Coast Guard believes additional time to comment on this notice of proposed rulemaking would be beneficial. Therefore, the Coast Guard is reopening the comment period for 60 days. All comments must be received by February 6, 2001.

Dated: November 27, 2000.

T.W. Allen,

U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–31047 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AJ86

Loan Guaranty: Advertising and Solicitation Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) loan guaranty regulations by prohibiting advertisements or solicitations from lenders that falsely state or imply that they were issued by or at the direction of VA or any other entity of the United States Government. These provisions appear to be necessary to ensure that lenders do not provide misleading information.

DATES: Comments must be received on or before February 6, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to "RIN 2900–AJ86." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: R. D. Finneran, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under the authority of 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to eligible veterans to purchase, construct, improve, or refinance their homes (the term veteran as used in this document includes any individual defined as a veteran under 38 U.S.C. 101 and 3701 for the purpose of housing loans). This document proposes to amend VA's loan guaranty regulations for both manufactured homes and conventionally built homes by adding new advertising and solicitation disclosure requirements.

We have become aware of written advertisements and solicitations from private lenders that appear to falsely state or imply that they came from VA. For example, one solicitation from a private lender stated that it was from the "Government Loans Programs" and contained a reference to a VA case number. Another solicitation from a private lender stated that "[I]n accordance with regulations determined by the Department of Veterans Affairs this notice is officially issued to * * *" Another solicitation from a private lender stated that "The Veterans Benefit Administration known as VA, a division of the United States Department of Veterans Affairs is working with lenders to inform you * * *" Other solicitations from private lenders stated that they were from the "V.A. Loan Department," "Veterans Department," "Direct VA Streamline Department," "Authorized VA Loan Center," and "VA Conversion Center." One solicitation from a private lender not only stated on the envelope that it was from the "Department of Veterans" but included the statement "Official Business, Penalty For Private Use, $300."

Further, we have recently become aware of written advertisements and solicitations from private lenders that appear to falsely state or imply that they have been given special authority by VA to offer a unique loan product. For example, one solicitation from a private lender stated that "you are now eligible to take advantage of the Exclusive VA STREAMLINE refinance program." Another solicitation from a private lender stated that "The Veterans Administration in conjunction with * * * Mortgage offers a unique program * * *"

To address these issues regarding advertisements and solicitations, we are proposing to establish advertising and solicitation requirements. We propose that any advertisement or solicitation in any form (*e.g.*, written, electronic, oral) from private lenders concerning housing loans to be guaranteed or insured by the Secretary must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States and must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

If the proposed requirements are adopted, noncompliance may lead to suspension, debarment, or limited denial of participation in the VA housing loan program pursuant to 38 CFR part 44. Also, under 38 CFR part 44, such action could affect the lender's ability to participate in other governmental programs.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would not have more than a minuscule effect on any small entities. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: October 31, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. Section 36.4227 is added immediately after the authority citation at the end of § 36.4226 to read as follows:

§ 36.4227 Advertising and solicitation requirements.

Any advertisement or solicitation in any form (e.g., written, electronic, oral) from a private lender concerning manufactured housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and

(b) Must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

(Authority: 38 U.S.C. 3703, 3704)

3. Section 36.4365 is added immediately after § 36.4364 to read as follows:

§ 36.4365 Advertising and Solicitation Requirements.

Any advertisement or solicitation in any form (e.g., written, electronic, oral) from a private lender concerning housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and

(b) Must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

(Authority: 38 U.S.C. 3703, 3704)

[FR Doc. 00–31291 Filed 12–7–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–054–200027(b); FRL–6910–7]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on August 10, 2000, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). On August 10, 2000, the State of Alabama through ADEM submitted revisions to chapters 335–3–1, 2, 3, 4, 5, 6, 9, 12, 14, 15, and 16. In chapter 335–3–1 the definition of "New Source" is being clarified to indicate that it is not applicable to the definitions of new source in chapters 335–3–10 Standards of Performance for New Stationary Sources and chapter 11 National Emission Standard for Hazardous Air Pollutants, which are not part of the federally enforceable state implementation plan (SIP).

ADEM combined rule 335–3–5–.03(5) and 335–3–5–.03(6) to be consistent with Alabama Administrative Procedures Act, and revised rule 335–3–14–.05(2)(i) to be consistent with 40 CFR 51, subpart I. ADEM deleted rule 335–3–4–.08(4) pertaining to emissions from wood waste boilers at pulp mills in Autauga County. International Paper (formally Union Camp) operates the only pulp mill in Autauga County which has been upgraded and no longer requires a bubble. The Union Camp boilers are subject to other emission limits in the federally approved SIP.

ADEM revised the numbering system in chapters 335–3–1, 2, 3, 4, 5, 6, 9, 12, 14, 15, and 16 to comply with numbering system required by the Legislative Reference Service under Alabama Administrative Procedures Act.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 8, 2001.

ADDRESSES: Written comments should be addressed to Sean Lakeman, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the EPA Region 4, Air Planning Branch at (404) 562–9043 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: November 8, 2000.

A. Stanley Meiburg,

Acting Regionol Administrator, Region 4.

[FR Doc. 00–30636 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6913–8]

RIN 2060–AH82

National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for the Polyvinyl Chloride (PVC) and Copolymers Production source category. These proposed NESHAP require that PVC and copolymers production facilities, which already must comply with the existing Vinyl Chloride NESHAP, continue to comply with that existing NESHAP. This proposed rule reflects EPA's determination that the hazardous air pollutants (HAP) control level resulting from compliance with the existing Vinyl Chloride NESHAP already reflects the application of maximum achievable control technology (MACT) and, thus, meets the requirements of section 112(d) of the Clean Air Act (CAA) for the PVC and Copolymers Production source category. The EPA has determined that this source category includes facilities that are major sources of HAP, including vinyl chloride, vinylidene chloride (1,1 dichloroethylene), and vinyl acetate. The EPA has classified vinyl chloride as a known human carcinogen and vinylidene chloride as a possible human carcinogen. All of these HAP can cause noncancer health effects in humans. By proposing compliance with the Vinyl Chloride NESHAP as MACT, the EPA is promoting regulatory consistency and eliminating the costs that would be incurred by enforcing a new set of standards that likely would result in no additional HAP emissions reductions.

DATES: *Comments.* Submit comments on or before February 6, 2001.

Public Hearing: If anyone contacts the EPA requesting to speak at a public hearing by December 28, 2000, a public hearing will be held on January 8, 2001.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–40, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing: If a public hearing is held, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket: Docket No. A–99–40 contains information supporting today's action. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Warren Johnson, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5124, johnson.warren@epa.gov. For public hearing information, contact Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5607, noell.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–99–40. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Warren Johnson, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Noell to verify the time, date, and location of the hearing. The address, telephone number, and e-mail address for Ms. Noell are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. If a public hearing is held, it will provide interested parties the opportunity to present data, views, or arguments concerning today's action.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review (see section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials. In addition to being available in the docket, an electronic copy of today's action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of affected entities
Industry	325211	2821	Facilities that polymerize vinyl chloride monomer to produce polyvinyl chloride and/or copolymer products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.211 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What is the history of the source category?
D. What are the health effects associated with the pollutants emitted from the PVC and Copolymers Production source category?
II. Summary of the Proposed NESHAP

A. What source category is affected by these proposed NESHAP?
B. What is PVC and copolymers production and what are the primary sources of emissions?
C. What is the affected source?
D. What are the compliance requirements in the proposed NESHAP?
E. When must an affected source comply with these proposed NESHAP?
III. Rationale for Selecting the Proposed Standards
A. What controls are used to limit HAP emissions?
B. How did we determine the basis and level of the proposed standards for new and existing sources?
C. What is the relationship of today's proposed NESHAP to other rules?
IV. Summary of Environmental, Energy, and Economic Impacts
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review.
B. Executive Order 13132, Federalism.
C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments.
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks.
E. Unfunded Mandates Reform Act of 1995.
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act.
H. National Technology Transfer and Advancement Act of 1995.

I. Background

A. What is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of all major sources and some area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The major sources covered by today's proposed NESHAP are new and existing sources that produce PVC and copolymers. Major sources of HAP are those that are located within a contiguous area and under common control and have the potential to emit 9.1 megagrams per year (Mg/yr) (10 tons/yr) or more of any one HAP or 22.7 Mg/yr (25 tons/yr) or more of any combination of HAP.

B. What Criteria are Used in Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. In considering whether to establish standards more stringent than the floor, we must consider cost, non-air quality health and environmental impacts, and energy requirements.

C. What is the History of the Source Category?

The EPA recognized that PVC and copolymer production would not be addressed by the Hazardous Organic NESHAP (HON) (40 CFR part 63, subparts G, F and H), which address the requirements of section 112(d) of the CAA for the manufacturing of synthetic organic chemical manufacturing industry (SOCMI) chemicals, including ethylene dichloride (EDC) and vinyl chloride monomer (VCM). Therefore, on July 16, 1992 (57 FR 31576), the EPA listed PVC and Copolymers Production as a separate source category. This source category was listed because we had not yet evaluated whether the existing part 61 NESHAP, specifically the Vinyl Chloride NESHAP (40 CFR part 61, subpart F) was sufficient as MACT. Now that we have evaluated it and are proposing to find it adequate, the requirements constitute MACT in accordance with CAA section 112(d) and (q)(1). In addition, as with other NESHAP issued under the authority of CAA section 112(d), today's proposed NESHAP will also be subject to CAA section 112(f).

D. What are the health effects associated with the pollutants emitted from the PVC and Copolymers Production source category?

Polyvinyl chloride and copolymer products are not considered toxic, but the VCM feedstock is toxic, and the copolymer feedstocks, when they are used, may also be toxic chemicals (*i.e.*, vinyl acetate and vinylidene chloride).

Acute (short-term) exposure to high levels of vinyl chloride in air has resulted in central nervous system effects, such as dizziness, drowsiness, and headaches in humans. Chronic (long-term) exposure to vinyl chloride through inhalation and oral exposure in humans has resulted in liver damage. There are positive human and animal studies showing adverse effects which raise a concern about potential reproductive and developmental hazards to humans from exposure to vinyl chloride. Cancer is a major concern from exposure to vinyl chloride via inhalation, as vinyl chloride exposure has been shown to increase the risk of a rare form of liver cancer in humans. The EPA has classified vinyl chloride as a Group A, known human carcinogen. In addition, VCM is explosive when airborne in concentrations between 4 and 22 percent by volume. For these reasons, special care (*e.g.*, nitrogen blankets and polymerization inhibitors) must be taken in storage and shipment of VCM, and manufacturing processes using VCM must control the VCM emissions, worker exposure, and the residual content of VCM in products.

The primary acute (short-term) effects in humans from vinylidene chloride (1,1 dichlorethylene) exposure are on the central nervous system, including central nervous system depression and symptoms of inebriation, convulsions, spasms, and unconsciousness at high concentrations. Low-level, chronic (long-term) inhalation exposure of vinylidene chloride in humans may affect the liver. Animal studies indicate that chronic exposure to vinylidene chloride can affect the liver, kidneys, central nervous system, and lungs. No studies were located regarding developmental or reproductive effects in humans, but birth defects have been reported in offspring of pregnant animals that had inhaled vinylidene chloride. Human data are considered inadequate in providing evidence of cancer from exposure to vinylidene chloride. Limited animal cancer data have shown an increase in kidney and mammary tumors, while other studies have not shown an increase in tumors. Vinylidene chloride has been classified as a Group C, possible human carcinogen.

Acute (short-term) inhalation exposure of workers to vinyl acetate has resulted in eye and upper respiratory tract irritation. Chronic (long-term) occupational exposure results in upper respiratory tract irritation, cough, and/or hoarseness. Nasal epithelial lesions and irritation and inflammation of the respiratory tract were observed in mice and rats chronically exposed by inhalation. No information is available on the reproductive, developmental, or carcinogenic effects of vinyl acetate in humans. Some limited animal data suggest reduced body weight, fetal growth retardation, and minor skeletal fetal defects at high exposure levels. An increased incidence of nasal cavity tumors has been observed in rats exposed by inhalation. The EPA has not classified vinyl acetate for carcinogenicity.

II. Summary of the Proposed NESHAP

A. What Source Category Is Affected by These Proposed NESHAP?

The PVC and Copolymers Production source category includes all sources that are new and existing major sources that polymerize vinyl chloride monomer alone, or in combination with other materials, to produce PVC and copolymers.

We estimate there are 28 PVC and copolymer manufacturing plants operating in the United States. This source category was listed under CAA section 112 because it contains major sources of HAP. Although today's proposal applies only to these major sources in the source category, the existing part 61 NESHAP make no distinction between major and area sources and, therefore, continue to apply to both. Likewise, the existing part 61 NESHAP make no distinction between new and existing sources and, therefore, require the same emission standards for both. Rationale for why we decided that new source MACT should be the same as existing source MACT in today's proposed NESHAP is discussed in section III.B.

Although demand for PVC and copolymers has increased slightly in the last year, this increase and anticipated future increases are within the capacity of the current facilities. For this reason, we anticipate near zero growth of this source category beyond the existing sources over the next 5 years.

B. What Is PVC and Copolymers Production and What Are the Primary Sources of Emissions?

Polyvinyl chloride and copolymer products have a large number of commercial and industrial applications. It is the manufacture of the resins used to make these products that is considered PVC and copolymers production. The resins are produced in a variety of mediums resulting from one of four basic polymerization process types: suspension, emulsion, bulk, and solution. Producing these resins involves batch reactor processes where VCM is polymerized with itself as a homopolymer or copolymerized with varying amounts of vinyl acetate, ethylene, propylene, vinylidene chloride, or acrylates. The resulting resins are generally dried into nontoxic powders or granules that are compounded with auxiliary ingredients and converted into a variety of plastic end products. These end products can be used in a large number of applications, including latex paints, coatings, adhesives, clear plastics, rigid plastics, and flooring.

The PVC is not a HAP, but manufacturing PVC requires VCM, which is a HAP, as a primary feedstock, and trace amounts of unreacted VCM may linger in the PVC product. There are basically two ways for HAP to be introduced to the atmosphere from these processes: either the HAP is released from an opening or leak in the process equipment, or the residual HAP (*i.e.*, unreacted VCM) in the product become airborne. Stripping at the production stage to recover unreacted feedstock reduces the air emissions from the product by reducing the residual HAP in the product.

C. What Is the Affected Source?

The affected source is the collection of all equipment and activities necessary to produce PVC and copolymers. To determine whether a facility is affected by today's action, you should examine the applicability criteria at 40 CFR 61.60(a)(3), (b) and (c).

The following emission types (*i.e.*, emission points) are currently covered by the existing part 61 NESHAP: reactor opening losses, equipment leaks, storage vessels, process vents, hoses and lines, wastewater operations, and major releases from process upsets.

D. What Are the Compliance Requirements in the Proposed NESHAP?

As provided under the authority of CAA section 112(d) and (q), we are proposing that you comply with all the requirements of the Vinyl Chloride NESHAP, as specified at 40 CFR part 61, subpart F. The Vinyl Chloride NESHAP sets forth emission standards in the forms of numerical emission limits and work practices. The Vinyl Chloride NESHAP also sets forth all requirements for monitoring, test methods, recordkeeping, and reporting.

E. When Must an Affected Source Comply With These Proposed NESHAP?

All existing sources, as defined at 40 CFR 61.02, should already be in compliance with today's proposed NESHAP since we are proposing that owners or operators comply with all the requirements of the Vinyl Chloride NESHAP.

Therefore, we believe that the requirement to set a compliance date that is as expeditious as practicable is satisfied by setting the compliance date on [the effective date for the final rule] for existing sources. A new source must be in compliance with the NESHAP on [the effective date of the final rule] or at start up, whichever is later.

III. Rationale for Selecting the Proposed Standards

A. What Controls Are Used To Limit HAP Emissions?

Although the existing part 61 NESHAP contain standards for alternative controls, stripping is the primary control used for limiting VCM and other HAP emissions.

Through stripping operations, residual unreacted VCM in the PVC and copolymers is minimized before subsequent process steps (*e.g.*, product drying) occur. Stripping is also an economical way to recover unreacted feeds, primarily VCM, following the polymerization process. In stripping out the VCM from the product, other residual HAP are also removed. As a result, the stripping really controls all HAP by removing the unreacted chemicals from the PVC and copolymers before the product is exposed to the atmosphere during later processing steps, which typically include drying. It is important that these HAP be removed before drying, not only because dryers efficiently convey dilute HAP emissions to the atmosphere, but also because these HAP are explosive under certain conditions.

In addition to stripping, other HAP control measures include operating under a closed-vent system with add-on control (*e.g.*, flare) to incinerate HAP gases not returning to the process, minimizing the presence of HAP before opening a reactor or piece of process equipment containing VCM and other HAP, ongoing leak detection and repair (LDAR), ongoing area monitoring to sample the ambient air for the presence of VCM as a precautionary early warning of a major release, and other special care.

B. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

Because there are fewer than 30 sources in this source category, to identify the existing source MACT floor, we look at the average emission limitation achieved by the five best

performing sources. Since all 28 sources are subject to the existing part 61 NESHAP, we did not identify a group of five sources as best performers. Rather, we have identified the existing part 61 NESHAP as the existing source MACT floor.

We are aware that some States have added numerical emission limits in facilities' permits that are lower than the numerical limits specified in the part 61 NESHAP. We do not believe, however, that using these lower State limits is an appropriate basis for identifying a group of five best performers in setting a new, lower emission limit within the context of a part 63 NESHAP.

These lower State numbers are in addition to the limit in the part 61 NESHAP, and they correspond to a longer averaging time. Unlike other NESHAP which may allow quarterly or annual averaging times to achieve a limit, the part 61 NESHAP require daily compliance with the limit on an instantaneous basis. Since process variability is inherent in even normal operations in the batch processes where PVC and copolymers are produced, facilities must set operational parameters below regulatory limits to ensure that the instantaneous limits are not exceeded.

Also, these State limits are set based on the products each facility is manufacturing since PVC and copolymers vary in their ability to be stripped based on their morphology and resistance to sheer. Depending on the resins being produced, State operating permits generally stipulate lower numerical limits over a longer averaging time, in addition to the instantaneous daily limits required by the part 61 NESHAP. These permit conditions are good practice on the part of the State permitting authorities for ensuring control consistency over longer periods for the specific facilities. However, we do not believe that new part 63 NESHAP, based on the average of the best quarterly or yearly limits, would result in any greater emissions reductions beyond the current levels resulting from the part 61 NESHAP since we would have to factor in the wide range of product variability to set limits achievable across the source category.

We are also proposing new source MACT equivalent to existing source MACT. Although some processes may be able to strip and achieve a HAP concentration lower than the limit specified in the Vinyl Chloride NESHAP, such a lower limit would not be applicable across the source category due to variations in the processes and product characteristics.

After stripping, some unreacted VCM will remain suspended in the product. The amount of VCM remaining in a product varies with the product design. Excessive stripping could sheer some of the products while other products can strip to very low levels of residual HAP. Also, these residual HAP generally provide a necessary part of the product design characteristics. The existing part 61 NESHAP took this into account when requiring residual VCM to be limited to below 400 parts per million (ppm) for all cases except for certain dispersion resins.

We have also not identified any work practice standards more stringent than those required by the Vinyl Chloride NESHAP, which require that equipment be vapor tight and any HAP release to the atmosphere be less than 10 ppm VCM. In comparison to LDAR provisions or low concentration cutoffs (typically at 20 ppm) in other NESHAP, the Vinyl Chloride NESHAP work practice standards are more stringent.

C. What Is the Relationship of Today's Proposed NESHAP to Other Rules?

The Vinyl Chloride NESHAP apply to sources that manufacture EDC, VCM, and PVC and copolymers. The sources that manufacture EDC and VCM are not the subject of today's proposal because they are already subject to the HON, which is the NESHAP for the source category that produces SOCMI chemicals. The PVC and copolymers are not considered SOCMI chemicals since they are produced in batch process reactors, which are distinctly different than the continuous process units employed by the SOCMI chemical manufacturers. Hence, PVC and copolymers were not included in the HON applicability because they are a separate source category and unique to SOCMI.

Since the Vinyl Chloride NESHAP reside in 40 CFR part 61, and since today's proposal incorporates the existing standards, it is appropriate that the General Provisions to part 61 continue to apply. Today's proposed NESHAP affect only new and existing "major sources," which is a concept not used in part 61. Therefore, in order to properly address applicability as it pertains to part 63 standards, certain terms and provisions in the General Provisions of part 63 that delineate MACT applicability, construction and reconstruction (specifically, provisions in §§ 63.1 and 63.5) would also need to apply. Since today's proposed NESHAP require that reconstructed sources comply with the new source MACT requirements, they would be subject to the new source requirements under part 61 even though the term "reconstruction" is not used in part 61. Within §§ 63.1 and 63.5, the provisions in § 63.1(a)(9) through (12) regarding notices, time periods, and postmarks; and the references in §§ 63.5, 63.6, 63.9 and 63.10 regarding administrative compliance, notification and recordkeeping procedures should be disregarded since these procedures are already defined in the part 61 General Provisions.

We anticipate that all existing sources (an estimated 28 sources) are major sources, and that any new sources will also be major sources, as defined by the CAA. Part 70 requires that all major sources retain reports and records for 5 years under § 70.6(a)(3)(ii)(B), even though the 40 CFR part 61 NESHAP only require that reports and records be retained for 3 years. Under part 70, affected sources are expected to be in compliance with applicable standards on a continuous basis, and exceedances or excursions outside the established limits or parameter ranges, including those that occur during periods of startup, shutdown or malfunction, are considered deviations under § 70.6(a)(3)(iii)(B).

The 40 CFR part 61 NESHAP do not rely on the recent publication of performance specification (PS) 8 for volatile organic compound (VOC) continuous emissions monitoring system (CEMS), PS 9 for gas chromatographic CEMS, or the quality assurance requirements for VOC measurement in 40 CFR part 60, appendix F, procedure 1. We are soliciting comment on whether or not we should require PS 8 and 9, and appendix F in lieu of, or as an option to, the monitoring requirements in § 61.68.

IV. Summary of Environmental, Energy, and Economic Impacts

There are no environmental, energy or economic impacts anticipated from these proposed NESHAP beyond the current requirements of 40 CFR part 61, subpart F, which are already in effect.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed NESHAP. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed NESHAP.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate PVC and copolymer production facilities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's proposed NESHAP.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based solely on technology performance. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-

burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There are no cost burdens introduced by today's proposed rule. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business whose parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined, following discussions with State and industry representatives, that the scope of today's proposed rule includes no small entities as defined above. But, even if a small entity was within the scope of today's proposed rule, no adverse impact to the small entity would result, since today's proposed rule creates no new requirements or burdens for any of the affected entities.

The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 61, subpart F (Vinyl Chloride NESHAP) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0071. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 186.08), and a copy may be obtained from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr*.

Today's proposed NESHAP (*i.e.*, proposed 40 CFR part 63, subpart J) require that PVC and copolymers production facilities continue to comply with 40 CFR part 61, subpart F. Therefore, today's proposed NESHAP add no additional information collection burden. Consequently, no ICR has been prepared for today's proposed NESHAP.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposal references 40 CFR part 61, subpart F. Since there are no new standard requirements in these proposed NESHAP, and there are no new requirements resulting from specifying subpart F of part 61, EPA is not proposing/adopting any voluntary consensus standards in today's proposed NESHAP.

The EPA takes comment on proposed compliance demonstration requirements proposed in this rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this proposed rule should adopt them in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A, was used).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is proposed to be amended by adding subpart J to read as follows:

Subpart J—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

Sec.

What This Subpart Covers

63.210 What is the purpose of this subpart?
63.211 Am I subject to this subpart?
63.212 What parts of my facility does this subpart cover?
63.213 When do I have to comply with this subpart?

Standards and Compliance Requirements

63.214 What are the requirements I must comply with?

Other Requirements and Information

63.215 What General Provisions apply to me?
63.216 Who administers this subpart?
63.217 What definitions apply to this subpart?

What This Subpart Covers

§ 63.210 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for polyvinyl chloride (PVC) and copolymers production.

§ 63.211 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a PVC plant, as defined in 40 CFR 61.61(c) that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions.

(b) You are a major source of HAP emissions if you own or operate a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

§ 63.212 What parts of my facility does this subpart cover?

(a) This subpart applies to each new or existing affected source at PVC and copolymer production operations.

(b) The affected source subject to this subpart is the collection of all equipment and activities necessary to produce PVC and copolymers. This subpart applies to the PVC and copolymers production operations that meet the applicability criteria at 40 CFR 61.60(a)(3).

(c) An affected source does not include portions of your PVC and copolymers production operations that meet the criteria at 40 CFR 61.60(b) or (c) .

(d) An affected source is a new affected source if you commenced construction or reconstruction of the affected source after December 8, 2000.

(e) An affected source is existing if it is not new.

§ 63.213 When do I have to comply with this subpart?

(a) If you have a new affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section:

(1) If you startup your affected source before [the effective date of this subpart], then you must comply with the standards in this subpart no later than [the effective date of this subpart].

(2) If you startup your affected source after [the effective date of this subpart], then you must comply with the standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must be in compliance with the standards in this subpart by [the effective date of this subpart].

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) An area source that meets the criteria of a new affected source as specified at § 63.212(d) must be in compliance with this subpart upon becoming a major source.

(2) An area source that meets the criteria of an existing affected source as specified at § 63.212(e) must be in compliance with this subpart upon becoming a major source.

Standards and Compliance Requirements

§ 63.214 What are the requirements I must comply with?

You must meet all the requirements in 40 CFR part 61, subpart F, as they pertain to processes that manufacture polymerized vinyl chloride. These requirements include the emission standards and compliance, testing, monitoring, notification, recordkeeping, and reporting requirements.

Other Requirements and Information

§ 63.215 What General Provisions apply to me?

(a) All the provisions in 40 CFR part 61, subpart A, apply to this subpart.

(b) The provisions in subpart A of this part also apply to this subpart as specified in (b)(1) through (3) of this section.

(1) The general applicability provisions in § 63.1(a)(1) through (8) and (13) through (14).

(2) The specific applicability provisions in § 63.1(b) through (e) except for the reference to § 63.10 for recordkeeping procedures.

(3) The construction and reconstruction provisions in § 63.5 except for the references to § 63.6 for compliance procedures and the references to § 63.9 for notification procedures.

§ 63.216 Who administers this subpart?

(a) This subpart can be administered by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the primary authority to administer and enforce this subpart. You should contact your EPA Regional Office to find out if the authority to implement and enforce this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the Administrator of EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.211, 63.212 and 63.214 under 40 CFR 61.12(d) . Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under 40 CFR 61.13(h) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under 40 CFR 61.14(g) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under 40 CFR 61.10 and as defined in § 63.90.

§ 63.217 What definitions apply to this subpart?

Terms used in this subpart are defined in: the Clean Air Act; 40 CFR 61.02 of this chapter, the NESHAP General Provisions; 40 CFR 61.61, the Vinyl Chloride NESHAP; and, § 63.2, in regard to terms used in §§ 63.1 and 63.5.

[FR Doc. 00–31332 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6913–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed deletion of the University of Minnesota Rosemount Research Center Superfund Site (Site) from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the releases from the University of Minnesota Rosemount Research Center Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to Part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by January 8, 2001.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repository at the following location: the Minnesota Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard Associate Remedial Project Manager at (312) 886–7253, written correspondence can be directed to Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR., 1987 Comp.; p. 193.

Dated: November 28, 2000.

Elissa Speizman,

Acting Regional Administrator, EPA Region V.

[FR Doc. 00–31192 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–257; RM–9664; FCC 00–370]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this document, the Commission proposes to amend the rules governing Automated Maritime Telecommunications Systems (AMTS) and high seas public coast stations. The Commission proposes, among other things, to designate licensing regions and authorize one licensee for each currently unassigned AMTS frequency block on a geographic basis; to allow partitioning and disaggregation for AMTS geographic licensees, disaggregation for site-based AMTS licensees, and partitioning for most high seas public coast station licensees; and to establish competitive bidding procedures to resolve mutually exclusive applications for AMTS and high seas public coast spectrum. These proposed rules should increase the number and types of communications services available to the maritime community.

DATES: Comments are due February 6, 2001, Reply Comments are due March 8, 2001.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. The Commission's Third Notice of Proposed Rule Making (3rd NPRM), PR Docket No. 92–257, FCC 00–370, adopted October 13, 2000, and released on November 16, 2000. The full text of this 3rd NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2000/fcc00370.txt.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the 3rd NPRM

2. The Commission proposes a transition from the site-based licensing approach to geographic area licensing because such an approach would speed assignment of subsequent AMTS licenses, reduce processing burdens on the Commission, facilitate the expansion of existing AMTS systems and the development of new AMTS systems, eliminate inefficiencies arising from the intricate web of relationships created by site-specific authorization, and enhance regulatory symmetry.

3. The Commission seeks comment on whether the use of band manager licensing may be an appropriate alternative method of accomplishing the objectives that it strives to achieve through its partitioning and disaggregation rules. Band managers would be a class of Commission licensee that would engage in the business of making spectrum available for use by others through private, written contracts.

4. The Commission seeks comment, in light of its continuing commitment to take measures to ensure that the current and future communications needs of the public safety community are addressed, on whether it should take any steps to facilitate use of AMTS spectrum by public safety entities, including setting aside some channels for public safety use.

5. The Commission proposes to modify the requirement that AMTS stations must serve a waterway because it is inconsistent with geographic licensing and could prevent service from being offered in some licensing areas. Therefore, the Commission seeks comment on its proposal that stations may be placed anywhere within a licensee's service area so long as marine-originating traffic is given priority and incumbent operations are protected. It also seeks comment on its proposal that licensees whose service areas encompass certain major waterways be required to provide coverage to those waterways, as is required of VHF public coast geographic licensees.

6. The Commission proposes to authorize two geographic area licensees in each licensing area, with each licensee authorized to use one of the two AMTS frequency blocks because it concludes that this will promote competition in the maritime CMRS marketplace. Under this proposal, incumbent AMTS licensees would be permitted to operate their systems indefinitely, and incumbents and geographic licensees would have to afford each other interference protection.

7. The Commission proposes to license HF public coast station radiotelephone frequency pairs individually, rather than in blocks, due to this frequency's propagation characteristics and insufficient demand.

8. The Commission also proposes to redistribute radiotelephone frequency pairs by permitting MF private coast stations to use unassigned public coast. station radiotelephone frequency pairs in the 2 MHz band for non-CMRS services because it will promote the more efficient use of maritime spectrum and reduce congestion for MF private coast licensees.

9. Finally, the Commission concludes that the engineering study requirement for new AMTS stations that are not fill-in stations should not be eliminated because it continues to be a critical mechanism for protecting television reception.

Regulatory Flexibility Analysis

10. As required by the RFA, the Commission has prepared this present IRFA of the possible significant economic impact on small entities of the policies and rules proposed in the Third Further Notice of Proposed Rule Making (3rd FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the 3rd FNPRM provided in the item. The Commission will send a copy of the 3rd FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the 3rd FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. See id.

A. Need for, and Objectives of, the Proposed Rules

11. Our objective is to determine whether it is in the public interest, convenience, and necessity to simplify our licensing process for AMTS and high seas public coast stations. These proposals include (1) converting licensing of AMTS coast station spectrum from site-based to geographic area licensing, (2) simplifying the AMTS licensing procedures and rules, (3) increasing AMTS and high seas public coast station licensee flexibility to provide service over a wide area, and (4) employing the Commission's Part 1 standardized competitive bidding procedures to resolve mutually exclusive applications. In addition, we temporarily suspend the acceptance and processing of certain AMTS and high seas public coast station applications because we believe that after the public has been placed on notice of our proposed rule changes, continuing to accept new applications under the current rules would impair the objectives of this proceeding. These proposed rules and actions should increase the number and types of communications services available to the maritime community.

B. Legal Basis:

1. Authority for issuance of this item is contained in sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

14. The proposed rules would affect licensees using AMTS and high seas public coast spectrum. In the Third Report and Order in this proceeding, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See,* Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812). Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected. Any entity that is capable of providing radiotelephone service is eligible to hold a public coast license. Therefore, we seek comment on the number of small entities that use AMTS and high seas public coast spectrum and the number of small entities that are likely to apply for licenses under the various proposals described herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. We will award licenses by competitive bidding where mutually exclusive applications are filed. Prior to auction, all applicants, including small businesses, will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. If we use small business definitions for the purpose of providing bidding credits to auction participants, then all small businesses that choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under part 1, Subpart Q of the Commission's Rules. *See* 47 CFR part 1, Subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make

the general financial disclosures necessary to establish that the small business is in fact small. The estimated time for filling out an FCC Form 175 is 45 minutes. Each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and, if claiming eligibility for bidding credits, financial information demonstrating that the applicant qualifies as a small business. Applicants that do not have audited financial statements available will be permitted to certify the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business to file an application on its own using the short form application preparation guidelines that are made available by the Commission before any auction. When an applicant wins a license, it will be required to submit an FCC Form 601 license application, which will require technical information regarding the applicant's proposals for providing service and other information. This application will require information provided by an engineer who will have knowledge of the system's design. The estimated time for completing an FCC Form 601 is one hour and fifteen minutes.

E. Significant Alternatives Minimizing the Economic Impact on Small Entities

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

17. In the 3rd FNPRM, the Commission proposes that the part 1 unjust enrichment provisions will govern partitioning and disaggregation arrangements involving AMTS licenses owned by small businesses that were afforded a bidding credit and later elect to partition or disaggregate their licenses to an entity that does not qualify as a small business. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefited from the special bidding provisions for small businesses to become unjustly enriched by partitioning or disaggregating its licenses to parties that do not qualify for such benefits.

18. The 3rd FNPRM solicits comment on a variety of alternatives set forth herein. Any significant alternative presented in the comments will be considered.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects 47 CFR Parts 13 and 80

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31309 Filed 12–7–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2762; Notice 3]

RIN 2137–AD24

Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to change some of the corrosion control standards for hazardous liquid and carbon dioxide pipelines. The proposed changes are based on our review of the adequacy of the present standards compared to similar standards for gas pipelines and acceptable safety practices. The proposed changes are intended to improve the clarity and effectiveness of the present standards and reduce the potential for pipeline accidents due to corrosion.

DATES: Persons interested in submitting written comments on the proposed rules must do so by February 6, 2001. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically at the following web address: *http://dms.dot.gov.* See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging onto http://dms.dot.gov, click on "Electronic Submission." You can read comments and other material in the docket at this Web address: http://dms.dot.gov. General information about our pipeline safety program is available at this address: http://ops.dot.gov.

Background

We have reviewed the corrosion control standards in 49 CFR part 195 for hazardous liquid and carbon dioxide pipelines to see if any standards need to be made clearer, more effective, or consistent with acceptable safety practices. Although the likelihood of corrosion-caused accidents harming people or the environment is relatively low, we undertook the review because corrosion is the second leading cause of reported accidents on hazardous liquid pipelines, and improving the standards has the potential to reduce the number of future accidents.[1]

The review began September 8, 1997, when we held a public meeting on how the part 195 corrosion control standards and the corrosion control standards for gas pipelines in 49 CFR part 192 might be improved (62 FR 44436; Aug. 21, 1997). To attract participation by corrosion experts, we held the public meeting in Oakbrook, Illinois, in conjunction with meetings of NACE International, a professional technical society dedicated to corrosion control.

[1] For the period 1986 through 1999, corrosion caused 25 percent of all incidents reported under Part 195; 3 percent of all deaths; 2 percent of all injuries; and 19 percent of all property damage.

The Oakbrook meeting focused on whether we should incorporate by reference NACE Standard RP0169–96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," as a substitute for all or some of the part 192 and part 195 standards. Two other significant topics were whether part 192 and part 195 corrosion control standards need to be updated to ensure safety, and whether gas, hazardous liquid, and carbon dioxide pipelines should be subject to the same corrosion control standards.

For technical and other reasons, including the document's non-mandatory style, most meeting participants and subsequent commenters opposed incorporating the entire NACE Standard RP0169–96 by reference. But participants agreed universally that part 192 and part 195 corrosion control standards are largely sufficient, and although some changes may be needed, the standards should be generally the same.

Toward this end, we began to consider whether the more comprehensive part 192 standards, possibly with some changes, would be appropriate for hazardous liquid and carbon dioxide pipelines. For technical input, we met from time to time with representatives of NACE, the pipeline industry, and state pipeline safety agencies. At these meetings, we also examined whether the part 192 standards need to be more effective or clearer. As guidance for this assessment, the meeting participants developed the following principles:

- Evaluate existing data and use the evaluation to assess the need to change standards.
- Continue to improve public safety and environmental protection.
- Assess the need for corrosion control standards throughout the national pipeline system based on the risk associated with different parts of the system.
- Upgrade regulations to allow for future changes in pipeline industry technology and operating practices as appropriate.
- Strive for uniform interpretation/enforcement.
- To the extent practicable, involve all interested parties in assessing the need to change standards.
- Use the new cost/benefit policy framework being developed for RSPA's pipeline safety advisory committees in determining the costs and benefits of potential changes to standards.
- Achieve balance between performance and prescriptive language.
- Develop performance measures to assess the effectiveness of corrosion control programs.
- Focus on managing corrosion to maintain pipeline integrity.
- Provide adequate regulatory flexibility to allow operators to implement alternative measures that meet the performance requirements of the corrosion regulations.

The meetings left us with various concerns about the total effectiveness and clarity of the part 192 corrosion control standards and the suitability of applying those standards to hazardous liquid and carbon dioxide pipelines. We also knew that the National Association of Pipeline Safety Representatives (NAPSR), the Gas Piping Technology Committee (GPTC), and the National Transportation Safety Board (NTSB) had at various times recommended changes to part 192 and part 195 corrosion control standards. So, to get public comment on our concerns and the recommended changes, we held another public meeting on April 28, 1999, in San Antonio, Texas (64 FR 16885; April 7, 1999). We also invited comments on the idea of allowing operators to follow their own corrosion management plans or NACE Standard RP0169–96 as an alternative to all or part of the part 192 or part 195 corrosion control standards.

San Antonio Meeting

At least 180 persons attended the San Antonio public meeting. However, only a few persons made oral statements, which are summarized as follows:

The Interstate Natural Gas Association of America (INGAA) said that based on the record of low numbers of deaths and injuries, not much change in the part 192 standards is needed, even if corrosion is the second leading cause of reported pipeline incidents. INGAA attributed the good safety record to proper management of risk, saying it would be nonproductive if changes to generally applicable safety standards caused operators to shift their limited resources away from higher risk areas. INGAA emphasized the use of cost/benefit assessment in determining the need for new or revised standards. At least two other meeting participants (Enron and Columbia Gulf) expressed support for INGAA's views.

The American Gas Association (AGA) and American Public Gas Association (APGA) jointly made a statement similar to INGAA's and pointed out that DOT safety statistics do not justify changes in the present standards. AGA/APGA further noted that corrosion is not the second leading cause of incidents on gas distribution lines, but the last cause, resulting in about 4 percent of all reported incidents. The views of AGA/APGA were supported by at least one other meeting participant (Columbia Gulf) and by a majority of the persons who submitted written comments to the docket after the meeting. These subsequent written comments are condensed below under the "Comments after San Antonio" subheading.

Another participant, Global Cathodic Protection, submitted a statement, backed by 72 corrosion control practitioners, that cathodic protection criteria in appendix D of part 192 are preferred to the criteria in NACE Standard RP0169–96.

Equilon Enterprises, an operator of petroleum pipelines, did not support the alternative of corrosion management plans, because of the burden of review by government and the possibility that government reviewers and operator personnel may not be equally qualified to evaluate the plans. In addition, Equilon said that removing unnecessary differences between part 192 and part 195 standards would minimize confusion and disagreements between operators and government inspectors. On other points raised in the meeting notice, Equilon preferred that part 195 not refer to NACE Standard RP0169–96. But, Equilon did support the need for qualification requirements for bosses who lead corrosion control programs, and it thought the part 192 standards should disallow the use of bare unprotected pipe.

An engineering consultant said the "instant-off" approach to measuring cathodic protection was excessive. Similarly, the Equilon representative said that across-the-board use of the negative 850 mV criterion with instant-off readings is not productive, and that the 100 mV criterion is more cost-effective in many cases. A university professor said that corrosion control technicians do not do instant-off tests the same way. But another engineering consultant noted that NACE has a companion standard that covers instant-off tests: TM0497–97, Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems.

Comments Submitted After the San Antonio Meeting

Following the San Antonio public meeting, the docket remained open to receive written comments on the matters addressed in the meeting notice. Sixty-two persons filed written comments. These commenters included pipeline safety agencies in Arizona and Iowa, two corrosion control firms (Corrosion Control International and Global Cathodic Protection), two

operators of petroleum pipelines (Mobil Corporation and Tosco Refining Company), seven pipeline trade associations (American Gas Association (AGA), American Public Gas Association (APGA), Interstate Natural Gas Association of America, New England Gas Association, New York Gas Group, Ohio Gas Association, and American Petroleum Institute), six operators of interstate gas pipelines (CMS Energy, Columbia Energy Group, Duke Energy, Enron Gas Pipeline Group, KN Energy, and Phillips Pipe Line Company), and 43 local gas distribution companies.

General Comments. Most of the written comments specifically address RSPA concerns and other topics in the San Antonio meeting notice. Still, there were some general comments: Two gas distribution operators said that requiring operators to cathodically protect cast iron or ductile iron pipe would have a big impact on the distribution industry. These operators also suggested that small fittings made of copper or brass and steel fittings with a corrosion resistant coating should be exempt from cathodic protection requirements. Other rule changes they suggested were intended to yield savings by specifying that electronic or remote data collection can be used to meet the monitoring requirements and by extending the interval for monitoring rectifiers from every 2 months to twice a year, particularly for newly manufactured devices.

AGA/APGA welcomed minor rule changes that address clarity, consistency, technology, but said that sweeping changes are not justified by the safety data. They advised us to use cost/benefit assessment and non-regulatory approaches to perceived problems. Of the 62 commenters, 42 expressed support for the joint comments of AGA/APGA. Others, such as Mobil Corporation, Enron, and the New England Gas Association, similarly expressed doubt that substantial changes to the standards were warranted in view of the incident record. One commenter, Kansas Gas Service, backed up its claim that the present standards are adequate by referring to its own record: no reported incidents for the period 1989–98. Tosco Refining stated that making the corrosion control maintenance requirements in Parts 192 and 195 alike would mitigate compliance difficulties for companies that operate both gas and petroleum pipelines.

Comments on RSPA Concerns: This section of the preamble includes summaries of comments that specifically address RSPA's concerns about whether certain provisions of Part 192 corrosion control standards need to be improved. The AGA/APGA comments are identified because many commenters supported the AGA/APGA views. Summaries of comments on changes recommended by NAPSR, GPTC, and NTSB, on alternatives, and on topics included in the "Public Participation" section of the meeting notice are discussed afterward.

Section 192.453 Personnel Qualification

RSPA Concern: In view of the proposed rules on qualification of pipeline personnel (63 FR 57269; Oct. 27, 1998)[2], are more specific qualification standards needed for individuals who direct or carry out corrosion control procedures?

Comments: All 23 comments on this concern opposed changing § 192.453. They said either the existing rule is adequate or the proposed rules on personnel qualification are sufficient. Most of these commenters also opposed establishing specific technical qualifications for company managers. They said these personnel need more business than technical knowledge to assure that corrosion and other maintenance problems are handled economically. AGA/APGA suggested that any remaining qualification issues be addressed in a non-regulatory way through ongoing discussions with industry training representatives at DOT's Transportation Safety Institute.

Section 192.455 External Corrosion: New Pipelines

RSPA Concern: Should a cathodic protection system be installed on offshore pipelines in less than one year after the pipeline is constructed, for example, 60 days, because of the strong corrosiveness of salt water?

Comments: The two comments on this concern favored a 60-day installation period.

RSPA Concern: Is it in the interest of safety to exempt pipelines in particular environments and temporary pipelines from the coating and cathodic protection requirements?

Comments: Three commenters opposed the present exemptions, either because corrosion leaks can happen rapidly or because the installations are so varied they should be handled by waivers rather than general exemption. At the same time, three commenters supported the exemptions, contending that corrosion is usually a long term problem, many environments are not conducive to corrosion, and required monitoring would detect incipient problems. AGA/APGA said that safety data do not suggest the present exemptions have been detrimental to safety.

Section 192.457 External Corrosion: Existing Pipelines

RSPA Concern: Should existing compressor, regulator, and measuring station piping continue to be excluded from the requirement to cathodically protect effectively coated transmission line pipe?

Comments: Five commenters said the piping should not be excluded, arguing that it does not differ from pipe that must be protected and that failures at these locations may have serious consequences. Three other commenters said they cathodically protect all their compressor, regulator, and measuring station piping.

RSPA Concern: Is the present requirement to cathodically protect certain older existing pipelines only in areas of "active corrosion" adequate for public safety? If not, what would be a cost-effective alternative standard?

Comments: Only one commenter opposed the present rule. This commenter contended that the entire pipeline needs protection because spot protection moves the corrosion problem to other places on the line. However, 13 commenters, including AGA/APGA, supported the present rule, saying that it is a cost-effective approach to protecting older lines, particularly since not all corrosion is detrimental to safety. Another commenter thought that adding cathodic protection to old bare lines in mildly corrosive or non-corrosive soils could accelerate the rate of any localized corrosion that might exist.

RSPA Concern: Is the meaning of "active corrosion" clear and technically sound? If not, how should it be changed?

Comments: None of the 12 comments advocated changing the present definition of "active corrosion." Five commenters, including AGA/APGA, thought that possible changes would be more prescriptive, less flexible, or not appropriate for all areas.

Section 192.461 External Corrosion: Coating

RSPA Concern: Should the implicit requirement to coat field joints and repairs be expressly stated?

Comments: Four commenters said this requirement should be expressly stated. But four other commenters worried that singling out any item would raise questions about items not listed.

[2] After the San Antonio meeting, RSPA adopted final rules on personnel qualification that closely paralleled the proposed rule (64 FR 46853; Aug. 27, 1999).

Similarly, another commenter thought the implicit requirement was adequate for field joints.

RSPA Concern: Does coating need to be compatible with the anticipated service conditions, including the effects of temperature?

Comments: Four commenters agreed that such service compatibility is necessary. And one of these commenters suggested that a performance standard would improve the effectiveness of the existing rule in this regard. However, another commenter said the existing rule is adequate because service compatibility is implied.

RSPA Concern: For offshore pipelines, during installation, are special measures necessary to protect against damage to coating, including field joint coating; and, to avoid mechanical damage, are special coatings needed on J-tubes, I-tubes and pipelines installed by the bottom tow method?

Comments: There were no comments on this concern.

Section 192.463 External Corrosion: Cathodic Protection Criteria

RSPA Concern: Are the cathodic protection system criteria in appendix D of part 192, 300 mV shift and E-log-I, obsolete, since they are not in section 6 of NACE Standard RP0169–96? If so, should operators be allowed to continue to use them on existing pipe, but not new pipe?

Comments: Three commenters favored dropping these two criteria or at least E-log-I from appendix D. Six other commenters said they would support dropping the criteria only if the criteria were known to be ineffective or no longer in use. One commenter acknowledged using E-log-I and two others said the two criteria are adequate and should be allowed. AGA/APGA and one other commenter said the NACE standard recognizes the use of other successful criteria, such as those in appendix D, and that safety data do not show that the 300 mV shift and E-log-I criteria result in higher leak rates or incidents.

Section 192.465 External Corrosion: Monitoring

RSPA Concern: Does the sampling basis prescribed for inspecting short sections of mains or transmission lines not in excess of 100 feet and separately protected service lines provide effective corrosion control, particularly as it applies to service lines that supply gas to public buildings?

Comments: Two commenters thought the present rule is ineffective, asserting that a single inspection is not enough to assess safety over a 10-year period, no matter if public buildings are involved. However, four commenters argued that because corrosion is slow, there has been no problem in sampling pipe to detect corrosion before it becomes critical. And two commenters said sampling is a cost-effective way to monitor scattered sites. AGA/APGA and two other commenters said that safety data do not show that sampled pipe has more corrosion-caused leaks than other pipe. Several commenters foresaw difficulties in defining a "public building." Only one commenter thought that more frequent monitoring is needed for lines leading to public buildings because of the increased potential for serious consequences.

Section 192.467 External Corrosion: Electrical Isolation

RSPA Concern: What remedial action is needed when an electrical short in a casing results in inadequate cathodic protection of the pipeline outside the casing?

Comments: Five commenters said these shorts should be cleared because other options are ineffective and imposing more current to offset the short could have adverse effects. But two other commenters said that clearing shorts can be costly if the line must be taken out of service or replaced, and that there is no consensus on adequate remediation. Another observation by one commenter was that the electrical isolation requirements are not needed since cathodic protection has to meet the criteria for adequacy.

RSPA Concern: Should newly constructed offshore pipelines be electrically isolated from bare steel platforms unless both are protected as a single unit?

Comments: The lone commenter who addressed this concern said that isolation is needed, yet concluded that a rule change was not needed because annual surveys will identify any problem.

RSPA Concern: Is electrical isolation needed where contact with aboveground structures would adversely affect cathodic protection?

Comments: One commenter said we should require isolation in all such cases. Three commenters argued that while isolation is needed a rule change is not, because annual surveys will identify any problem. Three other commenters argued that isolation is not needed if the alternative of sufficient local protection is applied.

Section 192.471 External Corrosion: Test Leads

RSPA Concern: Are accessible test leads needed on offshore risers that are electrically isolated and not accessible for testing?

Comments: The two commenters who addressed this concern said the present rule is adequate because operators must demonstrate adequate cathodic protection, which necessitates test leads.

RSPA Concern: For aluminum pipelines, should all test leads be insulated aluminum conductors and installed to avoid harm to the pipe?

Comments: There were two comments on this concern. One said test leads and connection material must be compatible with aluminum. The other said test leads must be insulated aluminum conductors and installed to avoid harm to the pipe.

Section 192.473 External Corrosion: Interference Currents

RSPA Concern: Where light rail systems exist, should operators specifically be required to identify and test for stray currents and keep records of the test results?

Comments: Four commenters said such a specific requirement was needed for light rail. But three commenters disagreed, arguing the present rule is adequate because it requires operators to test for all sources of stray current, including large junk yard magnets and electric cranes.

Section 192.475 Internal Corrosion

RSPA Concern: Are special requirements needed to deal with the problem of internal corrosion in storage field piping, as evidenced by piping leaks in West Virginia and several Midwestern states?

Comments: Three commenters felt the present rule is adequate for all situations and specific requirements for storage fields are not needed. In contrast, one commenter thought the rule should specifically recognize the problems posed by such piping and require more coupons or traps where liquid might collect, pipe design that avoids liquid collection, use of lined pipe, periodic pigging, or dehydration. Another commenter thought operators should have to prepare a procedure and follow it to minimize internal corrosion.

Section 192.479 Atmospheric Corrosion: General

RSPA Concern: Should new and existing pipelines be subject to the same protection requirements?

Comments: One commenter saw no need to change the distinction between new and existing pipelines.[3] Six others

[3] For new aboveground pipelines, protection is required everywhere the pipeline is exposed to the

Continued

supported treating all aboveground pipelines alike regardless of age, but two of these commenters said the rule should apply only to "active corrosion," not to all corrosion.

RSPA Concern: Is protection needed where corrosion is a light surface oxide or where corrosion will not likely affect the safe operation of the pipeline before the next scheduled inspection?

Comments: Six commenters thought the rule should be changed to exclude surface oxide because it does not affect pipe integrity. However, one commenter thought surface oxide indicates a coating problem that operators should identify and track through continuing surveillance. One other commenter said that even if corrosion is more than superficial, if there is no question of safety before the next inspection, then there is no present need for remedial action. Another commenter recommended limiting the rule to "active corrosion" to exclude both superficial corrosion and corrosion that would not likely advance to an unacceptable stage before the next inspection.

RSPA Concern: Is special protection needed in the splash zone of offshore pipelines and at soil to air interfaces of onshore pipelines?

Comments: Three of the four comments on this concern thought the existing corrosion rules for buried and aboveground protection are adequate. The fourth commenter said any need for special protection would be recognized during required inspections.

Section 192.481 Atmospheric Corrosion: Monitoring

RSPA Concern: Should the inspection interval for onshore pipelines be extended beyond 3 years in view of the generally low incidence of serious problems on protected pipelines?

Comments: Two commenters said the present 3-year monitoring cycle is not too burdensome. In contrast, seven commenters recommended extending the inspection period beyond 3 years, saying that atmospheric corrosion is a long-term process. Six of these commenters recommended inspection every 5 years, an interval coincident with the interval of gas leakage surveys. One other commenter suggested the rule let operators determine what inspection intervals are appropriate for the pipelines involved.

RSPA Concern: For onshore pipelines, are more frequent inspections needed at soil-to-air interfaces, under thermal insulation, at disbonded coatings, and at pipe supports?

Comments: The consensus of the four comments on this concern was that no more frequent inspections than annual are needed at these locations. Two commenters said the corrosion problem at these locations is too site-specific for a general inspection rule requiring removal of coating or jackets.

RSPA Concern: For offshore pipelines, are more frequent inspections needed under poorly bonded coatings and at splash zones, support clamps, and deck penetrations?

Comments: There were no comments on this concern.

Section 192.491 Records

RSPA Concern: Should operators keep records of findings of non-corrosive conditions if

Section 192.455 Is Changed To Remove the Benefit of Such Findings?

Comments: Two commenters agreed that if records of non-corrosive conditions no longer have a purpose, the recordkeeping requirement should be removed. But another commenter thought records of exposed pipe inspections under § 192.459 should be kept even if no corrosion is found. This commenter thought such records would be useful in surveillance under § 192.613 and in evaluating the significance of damaged pipe or coating.

RSPA Concern: Is the period for keeping corrosion control monitoring records, "as long as the pipeline remains in service," necessary for safety or accident investigation? If not, what is an appropriate period?

Comments: One commenter believed the present retention period is needed to provide a very helpful general history of pipelines. But another commenter said that old records are never used once adverse conditions are corrected. Two commenters suggested the retention period could be reduced to 5 years or two inspection cycles, whichever is longer. A similar comment was 5 years or the next inspection cycle, whichever is longer.

Recommendations To Change Standards

National Association of Pipeline Safety Representatives

Recommendation: With regard to §§ 192.457 and 192.465, NAPSR recommended changes to clarify the meaning of an "electrical survey" and where alternatives to electrical surveys may be used.

Comments: Three commenters reported that the State-Industry Regulatory Review Committee (SIRRC) had reached a consensus on "electrical survey" and alternatives. SIRRC was formed by NAPSR and industry representatives to work out differences of opinion over NAPSR's 1992 recommendations to revise part 192.[4] In a report transmitted to RSPA by a letter dated May 3, 1999, SIRRC concludes that electrical surveys are seldom used on distribution systems, so there is no advantage to requiring electrical surveys as a preferred corrosion inspection method on distribution systems. SIRRC further concludes that if electrical surveys are not used, all available information should be used to determine if active corrosion exists. Set out below are SIRRC's suggested revisions of § 192.457(b)(3) and § 192.465(e). SIRRC also said that in the suggested revision, "pipeline environment" refers to whether soil resistivity is high or low, wet or dry, contains contaminants that may promote corrosion, or has any other known condition that might influence the probability of active corrosion.

[192.457(b)(3)] Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment. For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

[192.465(e)] (i) For transmission pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where an electrical survey is impractical, by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(ii) For distribution pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(iii) For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

Recommendation: With regard to § 192.459, NAPSR recommended we require operators to record the condition of protective coatings whenever they inspect exposed portions of buried pipeline, arguing the records would provide a useful history of the condition of the pipelines as well as evidence that exposed pipe had been inspected as required.

Comments: Three commenters reported that SIRRC reached a consensus on recording the condition of coating when inspecting exposed pipe. SIRRC said that coating condition is important in evaluating the overall condition of a pipeline, and that this information helps meet continuing surveillance and active corrosion rules. SIRRC's suggested revision of § 192.459 follows:

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined to determine the condition of the coating, or if the pipeline is bare or the coating is deteriorated, the exterior condition of the pipe. A record of the examination results shall be made in accordance with § 192.491(c). If external corrosion is found, remedial action must be taken to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, or 192.489.

Recommendation: With regard to § 192.467(d), NAPSR recommended changes that would require operators to test pipeline casings annually for electrical isolation, and to clarify what must be done to minimize pipeline corrosion if isolation is not achieved.

Comments: Three commenters reported that SIRRC did not agree on whether shorted casings are a problem or on the need to test casings, but agreed that § 192.483 should be amended to include options for dealing with shorted casings. SIRRC said its suggested options are consistent with common industry practice. SIRRC also recognized that the options were not intended as a substitute for proper cathodic protection of pipe under § 192.463. SIRRC's suggested revision of § 192.483 follows:

(d) If it is determined that a casing is electrically shorted to a pipeline, the operator shall: (1) clear the short, if practical; (2) fill the casing with a corrosion inhibiting material; (3) monitor for leakage with leak detection equipment at least once each calendar year at intervals not exceeding 15 months; or (4) conduct an initial inspection with an internal inspection device capable of detecting external corrosion in a cased pipeline, and repeat at least every 5 years at intervals not to exceed 63 months.

Recommendation: With regard to § 192.479(b), NAPSR recommended that regardless of the date of installation, all aboveground pipelines or portions of a pipeline that are exposed to the atmosphere be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion, unless the pipeline is in a non-corrosive atmosphere.

Comments: Two commenters reported that SIRRC reached a consensus that all aboveground pipe should be subject to the same protection requirement. SIRRC's suggested revision of § 192.479, which would remove the present distinction between pipelines installed before and after particular dates, is set forth below. SIRRC also explained that the term "active corrosion" does not include non-damaging corrosive films.

[192.479] (a) Each aboveground pipeline or portion of a pipeline that is exposed to the atmosphere must be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application that active corrosion does not exist.

(b) If active corrosion is found on an aboveground pipeline or portion of pipeline, the operator shall (1) take prompt remedial action consistent with the severity of the corrosion to the extent required by the applicable paragraphs of §§ 192.485, 192.487, or 192.489; and (2) clean and either coat or jacket the areas of atmospheric corrosion with a material suitable for the prevention of atmospheric corrosion.

Recommendation: With regard to the provision in § 192.487(a) that permits general corrosion in distribution line pipe to be repaired instead of replaced, NAPSR recommended that the provision refer to generally accepted guidelines for determining what corroded areas may be repaired.

Comments: Two commenters reported that SIRRC did not address this issue. In addition, these commenters suggested we allow operators to assess the serviceability of distribution line pipe that has wall thickness less than 30 percent of nominal wall thickness instead of requiring the replacement of such pipe.

Recommendation: With regard to § 192.489(b), NAPSR recommended that we clarify that internal sealing is not an appropriate method of strengthening graphitized pipe.

Comments: Two commenters reported that SIRRC agreed to drop this recommendation, since advances in technology may produce strength enhancing liners.

Gas Piping Technology Committee

The following recommendations are from an April 1995, rulemaking petition by GPTC:

Recommendation: Remove from § 192.467 the requirement that pipe be electrically isolated from metallic casings. GPTC argued there are no safety benefits from clearing shorted casings.

Comments: There were no comments on this recommendation. But see the comments above on § 192.467.

Recommendation: Amend §§ 192.465 and 192.481 to allow operators to take up to 39 months to carry out inspections of unprotected pipelines that must be done at 3-year intervals. GPTC said the extra time would add flexibility to the standards, with no reduction in safety.

Comments: The one comment on this recommendation supported the 39-month period but preferred a 5-year interval to match the interval of leakage surveys. Also, see the comments above on §§ 192.465 and 192.481.

National Transportation Safety Board

As a result of a 1996 accident on a butane pipeline operated by Koch Pipeline Company near Lively, Texas, NTSB recommended two changes to the Part 195 corrosion control standards:

Recommendation: Revise Part 195 to require pipeline operators to determine the condition of pipeline coating whenever pipe is exposed and, if degradation is found, to evaluate the coating condition of the pipeline. (P–98–35)

Comments: There were no comments on this recommendation. But see the SIRRC comment above on § 192.459.

Recommendation: Revise Part 195 to include performance measures for the adequate cathodic protection of liquid pipelines. (P–98–36)

Comment: The only comment favored adding to Part 195 either Appendix D or NACE cathodic protection criteria.

Alternatives

In the San Antonio meeting notice, we suggested two alternatives to the present corrosion control standards: corrosion management plans and NACE Standard RP0169–96. Many operators get excellent results by applying pipeline-specific plans that contain corrosion control methods and management techniques not required by Part 192 or Part 195 standards. NACE Standard

atmosphere, unless the operator can demonstrate that a corrosive atmosphere does not exist. For old pipelines, protection is required only where harmful corrosion is found.

[4] NAPSR's recommendations were published in Notice 2 of Docket No. PS–124 (58 FR 59431; Nov. 9, 1993).

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RP0169–96 is widely accepted as the most authoritative source of up-to-date pipeline corrosion control practices.

Comments: Two commenters favored corrosion management plans, saying they would be consistent with the risk-based approach to regulation and cost-effective, since many operators already use them. They also said that to qualify a pipeline for exemption from the standards, the plans should be designed to produce equal or better results than the standards. However, another commenter opposed the plan alternative, arguing that the review and evaluation process would further dilute government and industry resources and detract from higher priority safety matters. And the American Petroleum Institute opposed the plan alternative, saying that corrosion should be treated as part of an overall integrity management plan that may be developed after the conclusion of RSPA's risk management demonstration projects.

Topics 4 and 6 under the next heading drew additional comments on the alternatives.

Topics of Particular Interest

1. Whether any existing standards deter or disallow the use of new technologies, and, if so, how.

Comments: The two comments on this topic were that while none of the standards disallows the use of new technology, unclear standards may deter such use.

2. The costs and benefits of any suggested changes to standards and alternatives to standards.

Comments: The only comment was that we should apply cost/benefit analysis to any suggested changes.

3. The amount of time operators may need to prepare for compliance with any suggested standards or alternatives.

Comments: The only comment was that the time needed for compliance depends on the suggested rule change.

4. With regard to the corrosion management plan and NACE Standard alternatives—

a. The bases for evaluating the adequacy of corrosion management plans.

Comments: Two commenters said the primary basis should be whether corrosion is mitigated by the plan. AGA/APGA and another commenter suggested we defer further consideration of the plan alternative until completion of work by the State/Industry/DOT Regulatory Alternative Feasibility Team, which is considering risk-based alternatives to safety standards.

b. The best way to facilitate agency review of operator decisions under the alternatives (*e.g.*, prior notification, reporting, recordkeeping).

Comments: Both comments on this topic were that we should review the decisions the same as we review decisions in operators' operating and maintenance plans.

c. Whether NACE Standard RP0169–96 is adequate for pipeline corrosion control and, if so, should we incorporate it by reference in our corrosion control standards?

Comments: Only one commenter thought NACE Standard RP0169–96 would be a cost-effective alternative to existing corrosion control standards. Although another commenter said it would be all right to reference NACE Standard RP0169–96, the commenter also said it would be better to use it as a basis for changing the standards. Ten other commenters opposed using NACE Standard RP0169–96. Of these, two said the document is not adequate by itself, and it would complicate the standards if only parts were referenced. AGA/APGA and two other commenters said NACE Standard RP0169–96 is too conservative and too costly to apply, but AGA/APGA and another two commenters thought it could serve as guidance for corrosion management plans. The reason given by one commenter for opposing NACE Standard RP0169–96 was that it does not distinguish non-hazardous corrosion from corrosion detrimental to public safety.

5. For hazardous liquid pipelines—

a. Whether additional standards are needed to further reduce the possibility of damage to environmentally sensitive areas.

Comments: One commenter thought Part 195 should cross reference Appendix D or NACE RP0169 criteria for cathodic protection.

b. If Part 192 standards were applied to hazardous liquid pipelines, the changes, if any, that would be needed to account for differences between gas and liquid pipelines.

Comments: There were no comments on this topic.

6. For gas distribution systems—

a. Root causes of corrosion leaks on coated, uncoated, protected, and unprotected metallic lines.

Comments: AGA/APGA and one other commenter said that corrosion leaks on distribution lines have a low probability of resulting in reportable incidents. Three additional commenters said that corrosion leaks on properly protected pipe are rare, and that most corrosion leaks occur on unprotected bare steel that is too costly to protect. These commenters contended the best approach to combating corrosion leaks is through aggressive leak surveys.

b. Descriptions of operating/maintenance practices to minimize corrosion leaks on cathodically unprotected lines.

Comments: Six commenters reported the use of a ranking system to prioritize segments of bare steel pipe for replacement, based on age, location, leaks, size, and cathodic protection. Other practices included replacement rather than repair of bare steel, and not uprating or reconnecting cast iron, ductile iron, or bare steel pipe. Another commenter said its practices are designed to enhance economic value rather than just meet Part 192 requirements.

c. Descriptions of risk-based corrosion management programs.

Comments: The only commenter said a plan should preserve the intent of the code but allow for geography and operating condition differences.

d. The best approach to monitoring corrosion control in urban wall-to-wall paved areas.

Comments: One commenter suggested taking readings at test stations no further than one block (660 feet) apart, while another advised 1200 feet apart. Still another commenter stressed the importance of creating access openings.

7. The amount of buried piping at compressor, regulator, and measuring stations that is not cathodically protected.

Comments: Three commenters said all their piping in these locations is protected. AGA/APGA said the data are not available, but the piping poses a low risk.

8. Explicit examples of adequate compliance with particular standards that have had varied interpretations.

Comments: AGA/APGA reported that while government compliance personnel interpret some standards inconsistently, the safety statistics support adequate compliance.

9. To provide an acceptable level of safety on existing pipelines, must cathodic protection preserve the pipeline indefinitely or merely slow the rate of corrosion until the pipeline has to be rehabilitated or replaced?

Comments: Two commenters said the decision should be based on a cost/benefit assessment, considering the possible use of new materials and the future need to move or replace a pipeline due to construction by others. One other comment was that corrosion can only be mitigated and to try to do otherwise would be too expensive.

Proposed Subpart H—Corrosion Control

In view of the above concerns, recommendations, and comments, we are proposing to add to part 195 a new subpart H called Corrosion Control. Subpart H would prescribe corrosion control standards for new and existing steel pipelines to which Part 195 applies. Concerns, recommendations, and comments that pertain primarily to the corrosion control standards in Part 192 will be addressed in a future rulemaking proceeding on gas pipelines.

Because commenters showed little enthusiasm for the alternatives of NACE Standard RP0169–96 and corrosion management plans, we did not include either alternative in proposed Subpart H (except as provided in proposed § 195.567 regarding cathodic protection criteria). Nevertheless, because NACE Standard RP0169–96 is so widely respected, we would like to keep the floor open for further discussion of the merits of adopting it as an overall corrosion control standard for pipelines. In this regard, we invite interested persons to comment again on the pros and cons of referencing the entire NACE Standard RP0169–96 as an alternative to proposed Subpart H. This request for comment is not a rulemaking proposal. We recognize that a further notice of proposed rulemaking would be required before the entire NACE Standard RP0169–96 could be incorporated by reference as a Part 195 safety standard.

Proposed Subpart H includes many standards that are identical to present corrosion control requirements in Part 195 and standards that are substantially like present requirements in Part 192. The proposed subpart also includes standards that, while based on present Part 192 requirements, include changes we think are beneficial improvements, considering acceptable safety practices. We do not intend that proposed subpart H results in a lessening of current requirements. Each of the sections in proposed Subpart H is discussed below.

Section 195.551 Scope.

Proposed § 195.551 characterizes the activities that are covered by the proposed standards in subpart H (i.e., protecting steel pipelines against external, internal, and atmospheric corrosion). Section 195.551 is informational in nature and would not impose any obligations.

Like the present corrosion control standards in part 195 (§§ 195.236, 195.238, 195.242, 195.244, 195.414, 195.416, and 195.418), proposed Subpart H would apply only to steel pipelines. In contrast, comparable corrosion control standards for gas pipelines (subpart I of Part 192) apply to pipelines made of any metal. However, because hazardous liquid and carbon dioxide pipelines are made of steel almost exclusively, such broad coverage is not warranted for pipelines regulated by part 195.

Nevertheless, under § 195.8, operators must give us an opportunity to review the safety of any pipeline that is to be constructed with a material other than steel. In the case of a non-steel metallic pipeline, that review would include the operator's plans for corrosion control.

You should note that "breakout tanks" [5] come within the scope of proposed subpart H, because part 195 defines "pipeline" to include breakout tanks (§ 195.2). Consistent with the convention stated in § 195.1(c), proposed subpart H standards applicable to breakout tanks include standards that concern breakout tanks specifically and, to the extent applicable, standards that concern pipeline systems, or pipelines, generally. Proposed standards that concern only pipe, such as §§ 195.583 and 195.585, do not apply to breakout tanks because these standards do not affect parts of pipelines other than pipe.

Section 195.553 Qualification of Supervisors

The new personnel qualification standards in subpart G of part 195 (64 FR 46866; Aug. 27, 1999) apply to individuals who perform covered tasks on pipelines, including regulated corrosion control activities. However, supervision of covered tasks is not, itself, a covered task. So supervision of corrosion control activities does not come under Subpart G.

We know that prevention of corrosion-caused accidents does not depend solely on how well personnel perform covered tasks on pipelines. Prevention also depends on the correctness of critical decisions that flow from those tasks. Indeed, many Part 195 corrosion control standards require operators not only to perform tasks on pipelines, but to decide if corrective action is needed as a result of the tasks. For example, under § 195.416(d), operators must periodically inspect bare pipe and then determine if cathodic protection is needed.

Individuals assigned to perform covered corrosion control tasks on pipelines, such as collecting pipe-to-soil data, may be qualified under subpart G without knowing what corrective action, if any, should be taken as a result of the tasks. Generally these critical corrosion control decisions are made by supervisory personnel who are in charge of carrying out the corrosion control procedures under § 195.402(c). It is reasonable, we think, that individuals who direct others to carry out corrosion control procedures should have sufficient knowledge of the procedures so they understand what they are directing.

At present, § 195.403(c) regulates the qualifications of individuals assigned to supervise the performance of corrosion control procedures. This rule requires each operator to "require and verify that its supervisors maintain a thorough knowledge of that portion of the procedures established under § 195.402 for which they are responsible to insure compliance." However, § 195.403(c) has been changed. On October 28, 2002, this rule will apply only to supervisors of emergency response procedures (64 FR 46866). Consequently, we are proposing, under § 195.553, to preserve the substance of § 195.403(c) as it now applies to supervisors of corrosion control procedures.

Section 195.555 External Corrosion Control; Applicability

Proposed § 195.555 designates the pipelines covered by proposed §§ 195.557, 195.559, and 195.561. As stated below, these three proposed standards are identical to the present corrosion control standards in §§ 195.238, 195.242, and 195.244 governing coating, cathodic protection, and test leads. Like the standards they would replace, the proposed standards would apply only to pipelines constructed, relocated, replaced, or otherwise changed after §§ 195.238, 195.242, and 195.244 went into effect and to certain converted pipelines (see § 195.5(b)). The effective dates of §§ 195.238, 195.242, and 195.244 are given in § 195.401(c) and vary by pipeline. Proposed § 195.555 cross-references §§ 195.401(c) and 195.5(b).

One other existing corrosion control standard, § 195.236, applies to the same pipelines as §§ 195.238, 195.242, and 195.244. But this standard, which requires protection against external corrosion, is written in terms that may be too general. We think the standard adds nothing substantive to the more specific requirements for external corrosion protection in §§ 195.238 and 195.242. So we are proposing to drop § 195.236 and not include it in proposed subpart H.

[5] "Breakout tank" is defined in § 195.2 as "a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquids transported by a pipeline for reinjection and continued transportation by pipeline."

Section 195.557 External Corrosion Control; Protective Coating

Proposed § 195.557 is identical to § 195.238, which prescribes standards for external coating on certain buried or submerged pipeline components.

Section 195.559 External Corrosion Control; Cathodic Protection System

Proposed § 195.559 is identical to § 195.242, which requires certain buried or submerged facilities to be cathodically protected.

Section 195.561 External Corrosion Control; Test Leads

Proposed § 195.561 is substantially the same as § 195.244, which prescribes standards for the installation of test leads to measure cathodic protection on certain onshore pipelines. However, we are also proposing that at the connection to the pipeline, each bared test lead wire and bared metallic area must be coated with an electrical insulating material compatible with the pipe coating and the insulation on the wire. This provision is now in effect for gas pipelines under § 192.471(c).

Section 195.563 External Corrosion Control; Additional Cathodic Protection Requirements

Proposed § 195.563 is comparable to § 195.414(a), which requires all effectively coated pipelines to be cathodically protected, except for piping in breakout tank areas and pump stations. To avoid any duplication of proposed § 195.559, proposed § 195.563 would apply only to pipelines that are not protected under proposed § 195.559. Also, we omitted the compliance dates in § 195.414(a) from proposed § 195.563 because the dates have passed.

Section 195.565 External Corrosion Control; Examination of Buried Pipeline When Exposed

Proposed § 195.565 is comparable to existing § 195.416(e), which requires operators to investigate the extent of active corrosion found on exposed pipelines. We recently revised a parallel standard, § 192.459, to clarify the means and bounds of corrosion investigations on exposed gas pipelines (64 FR 56978; Oct. 22, 1999). In view of this rule change, we used § 192.459 as a model for proposed § 195.565 to provide the same clarity for similar investigations required on hazardous liquid and carbon dioxide pipelines. We believe this proposal and the associated recordkeeping under proposed § 195.587 are consistent with SIRRC's suggested changes to § 192.459 quoted above in the discussion of NAPSR's § 192.459 recommendation. Under proposed § 195.565, operators may use indirect methods, including electrical surveys or smart pigs, besides excavation and observation to look for corrosion in the vicinity of an exposed portion of pipeline.

During the course of looking for corrosion on an exposed pipeline, operators observe the condition of protective coating on the pipeline. Proposed § 195.565 would codify this inherent step by requiring operators to first see if the coating is deteriorated before they examine the exposed pipeline for corrosion. Operators' records of inspections preserve information about examinations of exposed pipe for future use, such as assessing the condition of the pipeline for purposes of corrosion control. We think the combination of proposed § 195.565 and records of examinations of exposed pipe would provide an adequate response to NTSB recommendation P–98–35 that part 195 require operators to determine the condition of external coating on exposed pipelines. Proposed § 195.587 (see below) would require operators to keep records of examinations of exposed pipe for as long as the pipe remains in service rather than 2 years as now required by § 195.404(c)(3).

Section 195.567 External Corrosion Control; Cathodic Protection Criteria

NTSB has recommended that Part 195 include performance measures for the adequacy of cathodic protection (recommendation P–98–36). We support NTSB's recommendation. Consequently, we are proposing, in § 195.567, that cathodic protection comply with the criteria and other considerations in section 6 of NACE Standard RP0169–96.

In developing this proposal, we considered that in our experience operators universally apply either NACE criteria or criteria in appendix D of part 192 to determine the adequacy of cathodic protection on pipelines that come under part 195. Similarly, the comments we received on performance measures for cathodic protection were divided between the NACE criteria and the appendix D criteria. And in its April 1995 report of a review of the part 195 standards, NAPSR supported either set of criteria.

While NACE and Appendix D criteria overlap in many respects, two Appendix D criteria (300 mV shift and E-log-I) are not among the NACE criteria. We believe they were omitted because they are outmoded and lack technical validation; and the comments did not dissuade us of this concern. Given our uncertainty about appendix D, we felt compelled to limit our proposal to section 6 of NACE Standard RP0169–96.

Still it is important to recognize that under proposed § 195.567 operators would not have to use only criteria included in section 6 of NACE Standard RP0169–96. Paragraph 6.2.1 of NACE Standard RP0169–96 permits operators to use any criteria that achieves corrosion control comparable to that attained with criteria included in section 6. In addition, paragraph 6.2.1 permits operators to continue to use on existing pipelines criteria that have been successfully applied to those pipelines. Thus proposed § 195.567 would not deny operators the opportunity to use appendix D criteria that are not included in section 6 of NACE Standard RP0169–96 as long as the operators can meet the tests of comparability or successful application stated in paragraph 6.2.1 for the use of alternative criteria. Although section 6 of NACE Standard RP0169–96 does not provide measures of comparability or successful application, to comply with paragraph 6.2.1, we believe there would have to be an absence of corrosion leaks on the pipeline between cathodic protection inspections. And, if the integrity of the pipeline has been checked between cathodic protection inspections by an internal inspection device, pressure testing, or direct examination, there would have to be no signs of metal loss due to corrosion.

On the issue of correct application of the negative (cathodic) 0.85 volt criterion, we find no difference between the NACE and appendix D criteria. Both require that voltage drops other than those across the structure-to-electrolyte boundary must be "considered" for valid interpretation of measurements taken for the negative (cathodic) 0.85 volt criterion. NACE explains that consideration means the application of sound engineering practice in determining the significance of voltage drops by methods such as measuring or calculating the voltage drop, reviewing the historical performance of the cathodic protection system, evaluating the physical and electrical characteristics of the pipe and its environment, and determining whether or not there is physical evidence of corrosion.

Section 195.569 External Corrosion Control; Monitoring

Proposed § 195.569(a) is substantially the same as § 195.416(a), which requires annual tests of the adequacy of cathodic protection. The only difference is that proposed § 195.569(a) references proposed § 195.567 as the measure of adequacy. Proposed § 195.569(b) is identical to § 195.416(c), which requires bimonthly inspections of cathodic protection rectifiers. Although proposed § 195.569(d) has no parallel in part 195, it is comparable to § 192.465(c), which requires periodic inspections of items critical to cathodic protection. We think such inspections are common practice on pipelines subject to part 195. Proposed § 195.569(e) is identical to § 195.416(j), which requires inspections of systems used to protect the bottoms of aboveground breakout tanks.

Proposed § 195.569(c) is comparable to existing § 195.416(d), which requires electrical inspection of unprotected "bare pipe"[6] at least every 5 years to determine if protection is needed. However, like § 192.465(e), proposed § 195.569(c) would clarify that the purpose of the inspections is to detect "active corrosion" and would allow operators to use alternative means of determining active corrosion where an electrical survey is impractical. The term "active corrosion" would be defined essentially as it is in § 192.457(c), but with the additional consideration of risk to the environment. Moreover, as SIRRC recommended for gas pipelines under § 192.465(e) (see above), the alternative means of determining active corrosion would have to include an analysis and review of the pipeline's condition, based on leak repair history, exposed pipe inspection records, and the pipeline environment. In accordance with SIRRC's recommendation, we also included definitions of "electrical survey" and "pipeline environment" in proposed § 195.569(c).

Another difference between proposed §§ 195.569(c) and 195.416(d) is that, like § 192.465(e), proposed § 195.569(c) would require inspections of all unprotected pipelines, not just unprotected bare pipe. The impact of this change would be on unprotected buried piping in breakout tank areas and pump stations. At present, part 195 does not have a periodic inspection requirement for corrosion on unprotected piping in breakout tank areas and pump stations.[7] Only minor costs should result from this change in coverage, for we believe that periodic inspection of unprotected piping in breakout tank areas and pump stations is a common industry practice. The requirements for initial electrical inspection of bare pipelines (§ 195.414 (b)) and of piping in breakout tank areas and pump stations (§ 195.414(c)) have not been included in proposed Subpart H because the periods allowed for compliance have expired.

We have not proposed to increase the minimum frequency of inspections from every 5 years to every 3 years, which is the minimum frequency required by § 192.465(e) for inspecting unprotected gas pipelines. Our safety data do not show that increasing the minimum frequency to every 3 years would be likely to result in fewer reported corrosion-caused accidents on hazardous liquid or carbon dioxide pipelines. Moreover, the ASME B31.4 Code, a set of voluntary safety standards widely followed by operators of pipelines subject to part 195, specifies a minimum frequency of every 5 years for inspecting unprotected pipelines. While NACE Standard RP0169–96 requires periodic inspections to determine the need to protect unprotected pipelines, it does not prescribe the frequency of those inspections.

We also considered the need to propose a standard comparable to § 192.465(d), which requires gas pipeline operators to take "prompt" remedial action to correct any deficiencies detected by monitoring external corrosion control. But we decided such a proposal is unnecessary because § 195.401(b) requires operators to correct within a reasonable time any condition that could adversely affect safe operation, and if an immediate hazard exists, to cease operating the affected facility until the condition is corrected. Also, § 195.401(b) regulates the timing of corrective responses to any unsafe corrosion control deficiency, not just deficiencies in external corrosion control.

Section 195.571 External Corrosion Control: Electrical Isolation

Proposed § 195.571 is comparable to § 192.467, which requires electrical isolation on gas pipelines to provide for adequate cathodic protection and safeguards for insulating devices. Such isolation is also a common practice on pipelines subject to part 195. However, we are not proposing to include the requirements of § 192.467(c) concerning isolation of pipelines from metallic casings. We agree with GPTC and commenters who believe the safety need to clear shorted casings is not apparent. Therefore, we have not included in proposed Subpart H SIRRC's recommended measures to remedy shorted casings.

Section 195.573 External Corrosion Control: Test Stations

Proposed § 195.573 is identical to § 195.416(b), which requires maintenance of test leads to provide for monitoring the adequacy of cathodic protection.

Section 195.575 External Corrosion Control: Interference Currents

Proposed § 195.575 is comparable to § 192.473, which requires operators to minimize the detrimental effects of interference currents on gas pipelines and adjacent structures. Although at present there are no standards in part 195 concerning interference problems, we believe that most operators already have a testing program to minimize interference problems. Proposed § 195.575 has minor editorial differences from the wording of § 192.473.

Section 195.577 Internal Corrosion Control

Proposed § 195.577 is comparable to § 195.418, which requires protective measures to mitigate the effects of internal corrosion. However, proposed § 195.577(d) differs somewhat from § 195.418(d), which requires operators to investigate the extent of general corrosion found inside pipe that is removed from a pipeline. Proposed § 195.577(d) would clarify the required investigation by adopting wording similar to that of proposed § 195.565, which concerns the extent of external corrosion on exposed pipe. Also, under proposed § 195.577(d), an investigation would be required if the removed pipe is corroded to the extent that it must be remedied under proposed § 195.583, rather than if the pipe is generally corroded such that the wall thickness is less than that required by the pipe's specification tolerances, as § 195.418(d) now requires. This change would allow operators to take full advantage of criteria for determining the strength of corroded pipe (see proposed § 195.585). The change would also require consideration of the effect of corrosion pitting as well as general corrosion, consistent with the parallel requirement for gas pipelines in § 192.475(b).

Another difference between the proposed and existing standards is that proposed § 195.577(d) drops the remedial measures § 195.418(d) prescribes for corroded pipe. Remedial measures for corroded pipe would be governed by proposed § 195.583. This change would improve the present rule by basing the need for remediation on the strength of corroded pipe and by allowing the use of qualified repair

[6] The term "bare pipe" refers to pipe that is bare and to pipe that is ineffectively coated (see § 195.414(a)).

[7] Bare pipe and piping in breakout tank areas and pump stations are treated separately under § 194.414. So we do not consider unprotected piping in breakout tank areas and pump stations to come under the requirements of § § 194.416(d) concerning the periodic inspection of bare pipe.

methods that are not allowed under § 195.418(d).

Section 195.579 Atmospheric Corrosion Control; General

Proposed § 195.579 is comparable to § 195.416(i), which requires that all pipelines exposed to the atmosphere must be protected against atmospheric corrosion by a suitable coating. The comments indicate § 195.416(i) may be overly burdensome, because it does not give operators leeway to avoid coating pipelines that have only a harmless light surface oxide or other mild form of corrosion that is unlikely to harm the pipeline before the next scheduled inspection. So proposed § 195.579 includes an exception for these circumstances. The test, investigation, or experience used to justify an exception must be appropriate to the environment of the particular pipeline facility. In addition, this exception would not apply to splash zones of offshore pipelines or to soil-to-air interfaces of onshore pipelines.

We did not adopt SIRRC's recommendation regarding comparable § 192.479 (see above) to except all but "active corrosion" from the atmospheric corrosion protection requirement. The intent of the recommendation is to distinguish harmless rust from serious metal loss, but we believe this objective is better accomplished by more descriptive wording.

Section 195.581 Atmospheric Corrosion Control; Monitoring

Proposed § 195.581 is comparable to § 192.481, which requires operators of gas pipelines to reevaluate the adequacy of atmospheric corrosion protection at least every 3 years on onshore pipelines and at least every year on offshore pipelines. Although § 195.416(i) requires maintenance of protection on hazardous liquid and carbon dioxide pipelines, this standard may be too general because it lacks minimum inspection frequencies.

In deciding what inspection frequency is most appropriate for onshore pipelines, we considered the majority of comments on § 192.481 that favored lengthening the minimum inspection frequency from every 3 years to every 5 years. But we gave section 463.3 of the ASME B31.4 Code greater weight. This voluntary code, which is widely followed by operators of pipelines subject to Part 195, specifies a minimum 3-year inspection frequency for atmospheric corrosion protection onshore. We also considered that GPTC, in its recommendation regarding § 192.481, did not suggest extending the minimum 3-year frequency more than a marginal amount to provide flexibility. Also, two commenters said the present 3-year frequency is not too burdensome. There were no comments on the frequency of inspection offshore, and the ASME B31.4 Code does not specify a minimum frequency.

Proposed § 195.581 would require periodic "inspection" rather than "reevaluation" to avoid the possibility that decisions about the adequacy of protection might not be based on current observations. The proposed rule also recognizes the importance of paying special attention during inspections to particular pipeline areas that have historically been sources of corrosion problems, such as splash zones and pipe surfaces underneath thermal insulation. We feel that most operators already inspect aboveground pipelines for corrosion at the proposed frequencies and give careful attention to potential problem areas.

Section 195.583 Remedial Measures; General

Proposed § 195.583(a) is comparable to § 195.416 (f), which regulates the repair of pipe that has general corrosion.[8] But proposed § 195.583(a) reflects the wording of § 192.485(a), a repair rule similar to § 195.416(f) that bases the need for corrective action on whether the remaining wall thickness supports the maximum allowable operating pressure. At present, § 195.416 (f) bases the need for corrective action on whether the remaining wall thickness is within the pipe specification tolerances. The revised wording would allow operators to take full advantage of criteria for determining the strength of corroded pipe (see proposed § 195.585). Proposed § 195.583(b) is identical to § 195.416(g), which regulates remedial measures for localized corrosion pitting.

Section 195.585 Remedial Measures; Remaining Strength

Proposed § 195.585 is substantially the same as § 195.416(h), which authorizes the use of widely accepted criteria for determining the remaining strength of corroded pipe.

Section 195.587 Records

For hazardous liquid and carbon dioxide pipelines, requirements to keep records related to corrosion control are in § 195.404. Under § 195.404(a), operators must maintain current maps and records that identify and show the location of facilities that are cathodically protected. In addition, § 195.404(c)(3) requires operators to keep records of required inspections and tests for at least 2 years or until the next inspection or test, whichever is longer.

We are proposing to adopt new recordkeeping requirements for hazardous liquid and carbon dioxide pipelines comparable to those for gas pipelines in § 192.491. Under proposed § 195.587(a), operators would have to keep current records or maps of the location of cathodically protected piping (as they must now under § 195.404(a)), of cathodic protection facilities, and of bonded structures. Also, under proposed § 195.587(b), operators would have to keep a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by proposed Subpart H in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. Records required by § 195.587(b) would have to be retained for at least 5 years, except that records related to determining the adequacy of, or need for, external or internal corrosion control (records related to proposed §§ 195.565, 195.569(a) and (c), and 195.577(c) and (d)) would have to be kept as long as the pipeline is in service.

The majority of comments on the appropriate period to keep records related to determining if external or internal corrosion control is adequate or needed did not support keeping these records for as long as the pipeline remains in service. Instead they mostly suggested a retention period of 5 years or the next one or two monitoring cycles, whichever is longer. But we agree with the single commenter who said keeping such records for the service life of the pipeline provides a very helpful general history. In our experience, a history of corrosion control monitoring is very useful in assessing the condition of a pipeline. If corrosion problems emerge on a pipeline, its monitoring history is considered in deciding the extent and kind of remedial action needed.

As for other records under proposed § 195.587(b) (*e.g.*, records of rectifier inspections under proposed § 195.569(b)), we believe the retention period must be compatible with the normal cycle of routine compliance investigations by government inspection personnel and long enough to provide meaningful history for investigation of an accident or safety problem. A minimum 5-year retention requirement would assure that the records are available during routine inspection visits, and provide a more complete history for analyzing problems.

Proposed § 195.587(a)(2), which is based on § 192.491(a), would require operators to have current records or maps identifying the location of cathodic protection facilities, galvanic anodes, and structures bonded to cathodic protection systems. Such records are not now required by Part 195, and although operators may have them, to minimize the recordkeeping burden, the records would only be required for installations made after the final rule goes into effect.

The record retention times proposed by § 195.587(b) would only apply to records of actions that occur after Subpart H takes effect. The retention times now required by § 195.404(c)(3) would continue to apply to records of corrosion tests and inspections done before Subpart H takes effect.

[8] Section 195.416(f) was revised by Amendment 195–68 (64 FR 69660; Decemeber 14, 1999).

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

We prepared a Draft Regulatory Evaluation of the proposed rules and a copy is in the docket. The evaluation states that the proposed rules are, on the whole, comparable either to existing safety standards currently in part 195 for hazardous liquid pipelines or to existing safety standards in part 192 for gas pipelines. The evaluation also states that the information presented at public meetings and meetings with industry and state representatives strongly suggests that imposing gas pipeline safety standards for corrosion control on hazardous liquid pipelines would not require a significant departure from customary safety practices on liquid pipelines.

An important feature of the proposed rules not found in part 192 or part 195 is the reference to cathodic protection criteria in NACE Standard RP0169–96. The evaluation states that these criteria are well known and widely followed throughout the industry, as indicated by meetings with industry representatives and by the voluntary standards in the ASME B31.4 Code. The evaluation further states that operators who do not now apply the NACE criteria are likely to apply the criteria in appendix D of part 192. The proposed rules would allow use of appendix D criteria under conditions stated in the NACE standard.

The evaluation concludes there should be only minimal additional cost, if any, for operators to comply with the proposed rules. If you disagree with this conclusion, please provide information to the public docket described above.

Regulatory Flexibility Act

The proposed rules are consistent with customary practices for corrosion control in the hazardous liquid and carbon dioxide pipeline industry. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant impact on a substantial number of small entities. If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket described above.

Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Paperwork Reduction Act

Section 195.587 proposes minor additional information collection requirements. Operators would be required to record the location of certain newly installed protection facilities, and keep the records for as long as the pipeline concerned is in service. In addition, records of inspections, tests, and surveys would have to be kept for as long as the pipeline is in service or for 5 years, depending on the nature of the information recorded. The present minimum retention period for these records is 2 years or the prescribed interval of test or inspection, whichever is longer (up to 5 years in some cases).

However, we believe operators already maintain records of the location of their protection facilities for as long as the pipeline is in service to be able to find the facilities for their own purposes and to carry out existing monitoring requirements in part 195. Also, we believe the burden of retaining inspection, test, and survey records for the longer period proposed would be minimal. These records are largely computerized. Maintaining these records on a floppy disk or computer file represents very minimal costs. So, because the additional paperwork burdens of this proposed rule are likely to be minimal, we believe that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary. If you disagree with this conclusion, please submit your comments to the public docket.

Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements or practices, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket as described above.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to "Y2K" or related computer problems. The proposed rules would not mandate business process changes or require modifications to computer systems. Because the proposed rules would not affect the ability of organizations to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

Executive Order 13132

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism").

The proposed rules do not propose any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, during our review of the existing corrosion control standards, representatives of state pipeline safety agencies gave us advice both in private sessions and in the two public meetings we held. In addition, our pipeline safety advisory committees, which include representatives of state governments, were, on two occasions in 1999, briefed on the corrosion control review project.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.3 would be amended by adding paragraphs (b)(8) and (c)(7) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(b) * * *

(8) NACE International, 1440 South Creek Drive, Houston, TX 77084.

(c) * * *

(7) NACE International (NACE):

(i) NACE Standard RP0169–96, "Control of External Corrosion on Underground or Submerged Metallic Pipeline Systems" (1996).

(ii) [Reserved]

3. Section 195.5(b) would be revised to read as follows:

§ 195.5 Conversion to service subject to this part.

* * * * *

(b) A pipeline which qualifies for use under this section need not comply with the corrosion control requirements of subpart H of this part until 12 months after it is placed in service, notwithstanding any earlier deadlines for compliance. The requirements of §§ 195.557, 195.559, and 195.561 apply to each pipeline which substantially meets those requirements before it is placed in service or which is a segment that is replaced, relocated, or substantially altered.

* * * * *

4. Section 195.402(c)(3) would be revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

* * * * *

§ 195.404 [Amended]

5. In § 195.404, paragraph (a)(1)(v) would be removed, and paragraphs (a)(1)(vi) through (a)(1)(viii) would be redesignated as paragraphs (a)(1)(v) through (a)(1)(vii).

§§ 195.236, 195.238, 195.242, 195.244, 195.414, 195.416, 195.418 [Removed]

6. The following sections would be removed and reserved: §§ 195.236, 195.238, 195.242, 195.244, 195.414, 195.416, and 195.418.

7. Subpart H would be added to read as follows:

Subpart H—Corrosion Control

Sec.

195.551 Scope.
195.553 Qualification of supervisors.
195.555 External corrosion control; Applicability.
195.557 External corrosion control; Protective coating.
195.559 External corrosion control; Cathodic protection system.
195.561 External corrosion control; Test leads.
195.563 External corrosion control; Additional cathodic protection requirements.
195.565 External corrosion control; Examination of a buried pipeline when exposed.
195.567 External corrosion control; Cathodic protection criteria.
195.569 External corrosion control; Monitoring.
195.571 External corrosion control; Electrical isolation.
195.573 External corrosion control; Test stations.
195.575 External corrosion control; Interference currents.
195.577 Internal corrosion control.
195.579 Atmospheric corrosion control; General.
195.581 Atmospheric corrosion control; Monitoring.
195.583 Remedial measures; General.
195.585 Remedial Measures; Remaining strength.
195.587 Records.

Subpart H—Corrosion Control

§ 195.551 Scope.

This subpart prescribes minimum requirements for protecting steel pipelines against corrosion.

§ 195.553 Qualification of supervisors.

Each operator must require and verify that its supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402 for which they are responsible for insuring compliance.

§ 195.555 External corrosion control; Applicability.

The requirements of §§ 195.557, 195.559, and 195.561 apply only to—

(a) Pipelines constructed, relocated, replaced, or otherwise changed after the applicable date in § 195.401(c); and

(b) Converted pipelines, if required by § 195.5(b).

§ 195.557 External corrosion control; Protective coating.

(a)(1) No component of a pipeline may be buried or submerged unless that component has an external protective coating that—

(i) Is designed to mitigate corrosion of the buried or submerged component;

(ii) Has sufficient adhesion to the metal surface to prevent under film migration of moisture;

(iii) Is sufficiently ductile to resist cracking;

(iv) Has enough strength to resist damage due to handling and soil stress; and

(v) Supports any supplemental cathodic protection.

(2) In addition, if any insulating-type coating is used, it must have low moisture absorption and provide high electrical resistance.

(b) All pipe coating must be inspected just prior to lowering the pipe into the ditch or submerging the pipe, and any damage discovered must be repaired.

§ 195.559 External corrosion control; Cathodic protection system.

(a) A cathodic protection system must be installed for all buried or submerged facilities to mitigate corrosion that might result in structural failure. A test procedure must be developed to determine whether adequate cathodic protection has been achieved.

(b) A cathodic protection system must be installed not later than 1 year after completing the construction.

(c) For the bottoms of aboveground breakout tanks with greater than 500 barrels (79.5 m^3) capacity built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor Standard 12C), the installation of a cathodic protection system under paragraph (a) of this section after October 2, 2000, must be in accordance with API Recommended Practice 651, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

(d) For the internal bottom of aboveground breakout tanks built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor Standard 12C), the installation of a tank bottom lining after October 2, 2000, must be in accordance with API Recommended Practice 652, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 652 is not necessary for the safety of a particular breakout tank.

§ 195.561 External corrosion control; Test leads.

(a) Except for offshore pipelines, electrical test leads used for corrosion control or electrolysis testing must be installed at intervals frequent enough to obtain electrical measurements indicating the adequacy of the cathodic protection.

(b) Test leads must be installed as follows:

(1) Enough looping or slack must be provided to prevent test leads from being unduly stressed or broken during backfilling.

(2) Each lead must be attached to the pipe so as to prevent stress concentration on the pipe.

(3) Each lead installed in a conduit must be suitably insulated from the conduit.

(4) Each bared test lead wire and bared metallic area at point of connection to the pipeline must be coated with an electrical insulating material compatible with the pipe coating and the insulation on the wire.

§ 195.563 External corrosion control; Additional cathodic protection requirements.

(a) Each pipeline not subject to § 195.559 that has an effective external surface coating material must be cathodically protected. This requirement does not apply to breakout tank areas and buried pumping station piping.

(b) For the purposes of this subpart, a pipeline does not have an effective external coating and shall be considered bare if the current required to cathodically protect it is substantially the same as if it were bare.

§ 195.565 External corrosion control; Examination of a buried pipeline when exposed.

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion, if the pipe is bare or if the coating is deteriorated. If external corrosion requiring remedial action under § 195.583 is found, the operator must investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion.

§ 195.567 External corrosion control; Cathodic protection criteria.

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in section 6 of NACE Standard RP0169–96.

§ 195.569 External corrosion control; Monitoring.

(a) Each operator must, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each buried, in contact with the ground, or submerged pipeline facility in its pipeline system that is under cathodic protection to determine whether the protection is adequate under § 195.567.

(b) Each operator must, at intervals not exceeding 2½ months, but at least six times each calendar year, inspect each of its cathodic protection rectifiers.

(c) Each operator must, at intervals not exceeding 5 years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey, or where an electrical survey is impractical, by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. In this section:

(1) *Active corrosion* means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety or the environment.

(2) *Electrical survey* means a series of closely spaced pipe-to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

(3) *Pipeline environment* includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

(d) Each reverse current switch, each diode, and each interference bond whose failure would jeopardize structural protection must be electrically checked for proper performance six times each calendar year, but with intervals not exceeding 2½ months. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding 15 months.

(e) For aboveground breakout tanks where corrosion of the tank bottom is controlled by a cathodic protection system, the cathodic protection system must be inspected to ensure it is operated and maintained in accordance with API Recommended Practice 651, unless the operator notes in the procedure manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

§ 195.571 External corrosion control; Electrical isolation.

(a) Each buried or submerged pipeline must be electrically isolated from other metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.

(b) One or more insulating devices must be installed where electrical isolation of a portion of a pipeline is necessary to facilitate the application of corrosion control.

(c) Inspection and electrical tests must be made to assure that electrical isolation is adequate.

(d) An insulating device may not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(e) Where a pipeline is located in close proximity to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it must be provided with protection against damage due to fault currents or lightning, and protective measures must also be taken at insulating devices.

§ 195.573 External corrosion control; Test stations.

Each operator must maintain the test leads required for cathodic protection in such a condition that electrical measurements can be obtained to ensure adequate protection.

§ 195.575 External corrosion control; Interference currents.

(a) Each operator whose pipeline system is subjected to stray currents must have a program to identify, test for, and minimize the detrimental effects of such currents.

(b) Each impressed current or galvanic anode system must be designed and installed to minimize any adverse effects on existing adjacent metallic structures.

§ 195.577 Internal corrosion control.

(a) No operator may transport any hazardous liquid or carbon dioxide that would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the hazardous liquid or carbon dioxide on the system and has taken adequate steps to mitigate corrosion.

(b) If corrosion inhibitors are used to mitigate internal corrosion the operator must use inhibitors in sufficient quantity to protect the entire part of the system that the inhibitors are designed to protect and shall also use coupons or other monitoring equipment to determine their effectiveness.

(c) The operator must, at intervals not exceeding 7½ months, but at least twice each calendar year, examine coupons or other types of monitoring equipment to determine the effectiveness of the inhibitors or the extent of any corrosion.

(d) Whenever pipe is removed from a pipeline, the operator must inspect the internal surface of the pipe for evidence of corrosion. If internal corrosion requiring remedial action under § 195.583 is found, the operator shall investigate circumferentially and longitudinally beyond the removed pipe (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the removed pipe.

§ 195.579 Atmospheric corrosion control; General.

Each pipeline or portion of pipeline that is exposed to the atmosphere must be cleaned and coated with a material suitable for the prevention of atmospheric corrosion. However, except for portions of pipelines in offshore splash zones and soil-to-air interfaces, protection against atmospheric corrosion is not required if the operator demonstrates by test, investigation, or experience that corrosion will be limited to a light surface oxide or else will not affect the safe operation of the pipeline before the next scheduled inspection.

§ 195.581 Atmospheric corrosion control; Monitoring.

(a) Each operator must, at intervals not exceeding 3 years for onshore pipelines or 15 months, but at least once each calendar year, for offshore pipelines, inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion. Particular attention must be given to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(b) If atmospheric corrosion is found, the operator must provide protection against atmospheric corrosion as required by § 195.579.

§ 195.583 Remedial measures; General.

(a) Any pipe that is found to be generally corroded so that the remaining wall thickness is less than that required for the maximum operating pressure of the pipeline must be replaced. However, generally corroded pipe need not be replaced if—

(1) The operating pressure is reduced to be commensurate with the strength of the pipe, based on the actual remaining wall thickness; or

(2) The pipe is repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

(b) If localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

§ 195.585 Remedial Measures; Remaining strength.

Under § 195.583, the strength of the pipe based on actual remaining wall thickness may be determined by the procedure in ASME B31G Manual for Determining the Remaining Strength of Corroded Pipelines or by the procedure developed by AGA/Battelle—A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe (with RSTRENG disk). Application of the procedure in the ASME B31G manual or the AGA/Battelle Modified Criterion is applicable to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the respective procedures.

§ 195.587 Records.

(a) Each operator must maintain current records or maps to show the location of—

(1) Cathodically protected pipelines;

(2) Cathodic protection facilities and galvanic anodes installed after [effective date of final rule]; and

(3) Neighboring structures bonded to cathodic protection systems. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each operator must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. These records must be retained for at least 5 years, except that records related to §§ 195.565, 195.569(a) and (c), and 195.577(c) and (d) must be retained for as long as the pipeline remains in service.

Issued in Washington, DC on December 1, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31224 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 65, No. 237

Friday, December 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

Authority: 42 U.S.C. 4321 *et seq.*; 36 CFR part 805.

SUMMARY: An environmental assessment on the Council's proposed revisions of its regulations implementing Section 106 of the National Historic Preservation Act was prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the Advisory Council on Historic Preservation's NEPA regulations, 36 CFR Part 805. The environmental assessment made a preliminary determination that promulgation of the revised regulations would not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement would not be necessary. Notice of the availability of the environmental assessment and preliminary determination of no significant impact, and of a 30-day public comment period was published in the **Federal Register** on July 11, 2000 (65 FR 42850). The Council has considered the comments received and has found that the proposed action will have no significant impact on the human environment. Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: Javier Marqués, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. (202) 606–8503.

Dated: December 4, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–31254 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–10–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Notice of U.S. Agency for International Development Financial Assistance Subject to Title IX of the Education Amendments of 1972, as amended.

SUMMARY: In accordance with Subpart F of the final common rule for the enforcement of Title IX of the Education Amendments of 1972, as amended ("Title IX"), this notice lists federal financial assistance administered by USAID that is covered by Title IX. Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F of the Title IX common rule requires each federal agency that awards federal financial assistance to publish in the **Federal Register** a notice of the federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by twenty-one (21) federal agencies, including USAID, on August 30, 2000, 65 FR 52857–52895). USAID's portion of the final common rule will be codified at 22 CFR part 229.

SUPPLEMENTARY INFORMATION: Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). Title IX and the Title IX common rule prohibit discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but by other entities as well.

List of Federal Financial Assistance Administered by the U.S. Agency for International Development to Which Title IX Applies

Note: All domestic recipients of federal financial assistance from USAID are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any.

Failure to list a type of federal assistance below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

The following types of federal financial assistance were derived from Appendix A of USAID's regulations effectuating Title VI of the Civil Rights Act of 1964, 22 U.S.C. Part 209, and section 504 of the Rehabilitation Act of 1973, 22 U.S.C. Part 217.

1. Assistance provided to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of less developed friendly countries.

2. Assistance provided to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of the less developed friendly countries of Latin America.

3. Assistance provided to organizations and institutions to carry out programs in the United States of research into, and evaluation of, economic development in less developed foreign countries.

4. Assistance provided to research and educational institutions in the United States to strengthen their capacity to develop and carry out programs or activities concerned with the economic and social development of developing countries.

5. Assistance provided to land grant and other qualified agricultural universities and colleges in the United States to develop their capabilities to assist developing countries in agricultural teaching, research and extension services.

6. Assistance provided to private and voluntary agencies, non-profit organizations, educational institutions and other qualifieid organizations for programs or activities in the United States to promote the economic and social development of developing countries.

7. Assistance provided to private and voluntary agencies, non-profit organizations, educational institutions and other qualified organizations for programs or activities in the United States to promote the use of lessons learned from USAID economic and social development programs in developing countries.

Dated: November 28, 2000.

Jessalyn L. Pendarvis,

Director, Office of Equal Opportunity Programs, USAID.

[FR Doc. 00–31257 Filed 12–7–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oregon

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Oregon for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue revisions to Conservation Practice Standards 327, Conservation Cover, and 328, Conservation Crop Rotation, in section IV of the State Technical Guide in Oregon. These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received until on or before January 8, 2001. Once the review and comment period is over and the standards are finalized, they will be placed in the individual Field Office Technical Guide in each field office.

ADDRESSES: Address all requests and comments to Roy M. Carlson, Jr., Leader for Technology, Natural Resources Conservation Service (NRCS), 101 SW Main Street, Suite 1300, Portland, Oregon 97204. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *roy.carlson@or.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Roy M. Carlson, Jr., 503–414–3231.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of changes will be made. In Oregon, "technical guides" refers to the Field Office Technical Guide maintained at each NRCS Field Office in Oregon.

Dated: December 4, 2000.

Roy M. Carlson, Jr.,

Acting State Conservationist, Portland, Oregon.

[FR Doc. 00–31338 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of the Release of the Comprehensive Nutrient Management Planning Technical Guidance

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Release of final Comprehensive Nutrient Management Planning Technical Guidance.

SUMMARY: The U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) released the draft *Technical Guidance For Developing Comprehensive Nutrient Management Plans (CNMPs)* for public review and comment in December 1999. Based on the comments received, the document has been revised and is now being released in final form as the *Comprehensive Nutrient Management Planning Technical Guidance.* This guidance document is intended for use by Natural Resources Conservation Service (NRCS) and conservation partner State and local field staffs, private consultants, landowners/operators, and others that either will be developing or assisting in the development of Comprehensive Nutrient Management Plans (CNMPs).

Availability: The Comprehensive Nutrient Management Planning Technical Guidance is available on the NRCS" website at: *http://www.nhq.nrcs.usda.gov/PROGRAMS/ahcwpd/ahCNMP.html.* A paper copy of the CNMP Technical Guidance can be obtained by submitting a request in writing to: Director, Animal Husbandry and Clean Water Programs Division, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, Maryland, 20705; or by calling (301) 504–2196.

DATES: This document becomes effective on December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas W. Christensen, Natural Resources Conservation Service, (301) 504–2196; fax (301) 504–2264, e-mail *thomas.christensen@usda.gov.*

SUPPLEMENTARY INFORMATION: The *Comprehensive Nutrient Management Planning Technical Guidance* is a document intended for use by those individuals (both public and private) who will be developing or assisting in the development of CNMPs. The purpose of this document is to provide technical guidance for the development of CNMPs, whether they are developed through USDA's voluntary programs or as a means to help satisfy the United States Environmental Protection Agency's (USEPA) National Pollutant Discharge Elimination System (NPDES) permit requirements.

The technical guidance is not intended as a sole source reference for developing CNMPs. Rather, it is to be used as a tool in support of the USDA, NRCS conservation planning process, as contained in the NRCS National Planning Procedures Handbook (NPPH) and various other agency technical references, handbooks, and policy directives. This technical guidance provides specific criteria that needs to be addressed in developing and implementing a CNMP. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status also is prohibited by statutes enforced by USDA. (All prohibited bases do not apply to all programs). Persons with disabilities who require alternative means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination to USDA, write USDA Director, Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW., Washington, DC 20250–9410, or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed in Washington, D.C., on December 1, 2000

Danny D. Sells,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 00–31264 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 8, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 4, April 14, July 28, October 13 and October 20, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 5492, 20135, 46425, 60903, 63057) of proposed additions to the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop
1670–01–062–6304
Line, Multi-Loop
1670–01–062–6305

Services

Administrative Services

NASA Goddard Space Flight Center, Greenbelt, Maryland

Distribution/Logistics Service

Defense Supply Center—Philadelphia, Philadelphia
Pennsylvania North Central Region Lansing, Michigan

Laundry Service

Anniston Army Depot, Anniston, Alabama

Management Services

Department of Housing & Urban Development, 909 1st Avenue, Suite 200, Seattle, Washington

Recycling Service

Naval Weapons Station, NAWS Recycling Center, China Lake, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–31320 Filed 12–7–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: January 8, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Holder, Label w/Slit
9905–01–365–2125
50% of the Government Requirement
NPA: Occupational Development Center, Inc., Thief River Falls, Minnesota

Services

Food Service, EOD Dining Facility, Eglin Air Fore Base, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida
Janitorial/Custodial, I.C. Hewgley Jr., USARC, Knoxville, Tennessee
NPA: Goodwill Industries—Knoxville, Inc., Knoxville, Tennessee
Order Processing Service, National Institute of Health, Bethesda, Maryland
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–31321 Filed 12–7–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions; Procurement List; Correction

In the document appearing on page 70549, FR Doc 00–30001, in the issue of November 24, 2000, in the first column the Committee published a proposed addition for Sorbents, Chemical and Oil. The NSN 4235–01–457–0676 was incorrect. The correct NSN is 4235–01–457–0678.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–31322 Filed 12–7–00; 8:45.am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Stainless Steel Sheet and Strip in Coils From Italy; Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of countervailing duty administrative review.

SUMMARY: In response to an August 31, 2000, request made by Acciai Speciali Terni S.p.A, a producer/exporter of stainless steel sheet and strip in coils from Italy, and Acciai Speciali Terni USA, Inc., a U.S. importer of subject merchandise, on October 2, 2000 (65 FR 58733), the Department of Commerce published the initiation of an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from Italy, covering the period November 17, 1998, through December 31, 1999. This review has now been rescinded as a result of the timely withdrawal of the request for review by Acciai Speciali Terni S.p.A and Acciai Speciali Terni USA, Inc.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2239 and (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations refer to 19 CFR part 351 (1999).

Background

On August 6, 1999, the Department published a countervailing duty order on stainless steel sheet and strip in coils from Italy (64 FR 42923). On August 31, 2000, Acciai Speciali Terni S.p.A. (AST), a producer/exporter of stainless steel sheet and strip in coils from Italy, and Acciai Speciali Terni USA, Inc. (AST USA), a U.S. importer of subject merchandise, requested an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from Italy of the relevant period. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on October 2, 2000 (65 FR 58733). On November 21, 2000, AST and AST USA withdrew their request for review.

Rescission of Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. AST withdrew its request for an administrative review on November 21, 2000, which is within the 90-day deadline. No other party requested a review of AST's sales. Therefore, the Department is rescinding this administrative review with respect to AST.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 4, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–31352 Filed 12–07–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000913258-0258-01; I.D. No 091100C]

RIN: 0648-ZA93

Announcement of Funding Opportunity for Research Project Grants

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Solicitation of proposals for undergraduate, graduate, and recently graduated students concerning career development in coastal ocean science, management, and policy.

SUMMARY: The purpose of this document is to advise the public that CSCOR/COP is soliciting 1-year and 2-year proposals for career development programs commencing in late Fiscal Year (FY 2001) with an anticipated start date of July 1, 2001. The purpose of these awards will be to support activities designed to facilitate and/or enhance the development of qualified professionals in the fields of coastal ocean science, management, and policy. The coastal ocean is inclusive of the near shore ocean, estuaries, and the Great Lakes.

This notice solicits applications for proposals from eligible non-Federal applicants. Proposals selected for funding from non-Federal researchers will be funded through a project grant. Proposals from academic institutions, particularly those that are Minority Serving Institutions (MSIs), collaborate with MSIs, or serve minority students, are strongly encouraged.

DATES: The deadline for receipt of proposals at the COP office is 3 p.m., EST, January 23, 2001. Note that late-arriving applications that were provided to a delivery service on or before January 22, 2001, with delivery guaranteed before 3 p.m., EST, on January 23, 2001, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed prior to the specified closing date and time. Subject to the availability of funds and facilities, it is anticipated that final decisions on awards will be made by early March, 2001.

ADDRESSES: Submit the original and 10 copies of your proposal to the Coastal Ocean Program Office (Career 2001), SSMC 13, 9th Floor, Station 9700, 1315 East-West Highway, Silver Spring, MD 20910. NOAA and COP Standard Form Applications with instructions are accessible on the COP Internet site (http://www.cop.noaa.gov) under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission. Forms may be viewed, and in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP with original signatures. Blue ink for original signatures is recommended but not required. If you are unable to access this information, you may call CSCOR/COP at 301-713-3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT: *Technical Information*: Susan Banahan, Career 2001 Program Manager, COP Office, 301-713-3338/ext 115, Internet: Susan.Banahan@noaa.gov;

Business Management Information: Leslie McDonald, COP Grants Administrator, 301-713-3338/ext 137, Internet: Leslie.McDonald@noaa.gov.

Further information on this program may be viewed at the COP internet site.

SUPPLEMENTARY INFORMATION:

Background

Program Description

For complete Program Description and Other Requirements for the COP, see the General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page.

CSCOR/COP supports research programs designed to address critical management issues in the Nation's estuaries, coastal waters, and the Great Lakes. Its primary objective is to provide decision makers with high quality scientific information appropriate to promoting near-term improvements in coastal ecosystem management.

In support of that objective, CSCOR/COP recognizes the need to foster the development of qualified professionals in the fields of coastal ocean science, management, and policy. It is the intent of CSCOR/COP to augment NOAA's existing programs in research and education and to increase the participation of minorities and under-represented students in coastal ocean sciences and resource management. The COP is soliciting proposals describing a coherent program designed to develop techniques and skills in professional networking, job hunting, proposal writing, and in preparation of presentations, and publishing for recent graduates, graduate or undergraduate students, including minorities or under-represented students considering careers in coastal ocean science, resource management and policy.

Examples of such activities could include, but are not limited to establishing an invited speaker series; mini-courses, workshops, or special sessions at national meetings (e.g., sessions on career options in research, management agencies, consulting, environmental education, non-governmental organizations, and so forth.); funding to support student attendance, including minority and under-represented students, at appropriate national meetings or workshops; establishing networking or instructional websites; and establishing mentoring programs and/or internships with research institutes, management offices, non-governmental agencies, etc. This announcement is not soliciting proposals for research projects.

Proposals should provide detailed descriptions and time line for proposed activities, including any reports to be generated. Where appropriate, letters indicating collaboration with other entities or investigators not named in the proposal should be included. Proposals should also include the means to evaluate and measure project effectiveness.

Part I: Schedule and Proposal Submission

This notice requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 10 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials (i.e., not 8.5 x 11 inches or 21.6 cm x 28 cm), or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for 10 proposal copies provide for a timely review process. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients must closely follow the following seven elements in the preparation of proposals. Part II: Further Supplementary Information of this Document provides additional, necessary information.

(1) *Signed summary title page*: The title page should be signed by the Principal Investigator (PI) and the institutional representative. The summary title page identifies the project's title starting with "Career 2001," a short title (less than 50 characters), and the lead PI's name and affiliation, complete address, phone, FAX, and E-mail information. The requested budget for each fiscal year should be included on the summary title page. Multi-institution proposals must include signed summary title pages from each institution.

(2) *One-page abstract/project summary*: The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction describing the program/department and institution in which the career development activities will be conducted, the career development activity(s) to be completed, and the expected outcome(s). The prescribed COP format for the Project Summary Form can be found on the COP Internet site under the COP Grants Support section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. It should be written in the third person. The summary helps compare proposals quickly and allows the respondents to summarize these key points in their own words.

(3) *Statement of work/project description*: The project description

section must not exceed eight pages. Page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart. The proposed 1- or 2-year project must be completely described, including a brief description of the academic program. The description of career development objectives, proposed activities, participants, and means of measuring effectiveness, and a brief synopsis of relevant results from any similar career development programs supervised by the proposing investigator(s) must be included.

Project management should be clearly identified with a description of the functions of each investigator, if more than one. A full justification, not a reiteration of the justifications presented in this document, must be provided. This section should also include:

(a) The objective for the period of proposed work and its expected significance and impact.

(b) The relation to other ongoing career development activities and/or programs.

(c) A discussion of how the proposed project lends value to the stated COP objectives.

(d) Potential coordination with other investigators, programs, departments, or institutions.

(e) References cited. Reference information is required. Each reference must include the names of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers, and year of publications. This section should include bibliographic citations only and should not be used to provide parenthetical information outside the 8-page project description.

(4) *Milestone chart*: Provide time lines of major tasks covering the duration of the proposed project, up to 24 months.

(5) *Budget and Application Forms*: Both NOAA and COP-specific application forms may be obtained at the COP Grants website. Forms may be viewed, and in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP; original signatures in blue ink are encouraged. If applicants are unable to access this information they may call the CSCOR/COP grants administrator listed in the section **FOR FURTHER INFORMATION CONTACT**.

At time of proposal submission, all applicants shall submit the Standard Form, SF-424 (Rev 7-97) Application for Federal Assistance, to indicate the total amount of funding proposed for the whole project period. Applicants will also submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a Summary Proposal Budget Form from each institution.

Use of this budget form will provide for a detailed annual budget and for the level of detail required by the COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with COP and can be found on the COP home page under COP Grants Support, Part D, or may be requested from the COP Grants Administrator.

All applicants shall include a budget narrative and a justification that support all proposed budget categories. The program office will review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant.

Applicants who are subsequently recommended for award will be instructed to furnish the other required standard NOAA forms provided on the COP home page.

(6) *Biographical sketch*: With each proposal, there should be an abbreviated curriculum vitae, two pages per investigator, and a list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months. If there are no collaborators, this should be so indicated. Students, post-doctoral associates, and graduate and postgraduate advisors of the PI should also be disclosed. This information helps to identify potential conflicts of interest or bias in the selection of reviewers.

(7) *Proposal format and assembly*: The original proposal should be clamped in the upper left-hand corner, but left unbound. The 10 required copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) margins at the top, bottom, left and right, and the type face standard 12 points size must be clear and easily legible.

Part II: Further Supplementary Information

(1) *Program authorities*: For a list of all program authorities for the Coastal Ocean Program, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the Federal Register (65 FR 62706, October 19, 2000) and at the COP home page. Specific authority cited for this announcement is 15 U.S.C. 1540.

(2) *Catalog of Federal Domestic Assistance Number*: 11.478 Coastal Ocean Program.

(3) *Program description*: For complete COP program descriptions, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (65 FR 62706, October 19, 2000).

(4) *Funding availability*: Funding is contingent upon the availability of Federal appropriations for FY 2001 and FY 2002. It is anticipated that up to a total of $100,000 will be available per fiscal year in FY 2001 and FY 2002 for supporting activities proposed by submissions to this announcement.

If an application is selected for funding, DOC/NOAA has no obligation to provide any additional future funding in connection with that award beyond the specified period of performance. Renewal of an award or amendment of an award to increase funding or to extend the period of performance is based on satisfactory performance and is at the total discretion of the DOC/NOAA.

Publication of this document does not obligate the COP to any specific award or to any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements*: None.

(6) *Eligibility criteria*: Eligible applicants are institutions of higher education and other non-profits. All applications will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or a cooperative agreement under the terms of this notice.

Minority Serving Institutions (MSIs) are especially encouraged to submit proposals. Other academic institutions are encouraged to collaborate with MSI(s). MSI(s) include institutions of higher education identified by the Department of Education as Historically Black Colleges and Universities, Hispanic Serving Institutions or Tribal Colleges and Universities.

DOC requirements will prevail if there is a conflict between those requirements and institutional requirements. Federal employees may not apply for funding, however Federal employees may be included in projects as unfunded collaborators.

(7) *Award period*: Full Proposals should cover a project period of 1 or 2 years, with a start date of July 1, 2001. Multi-year project period funding may be funded incrementally on an annual basis; but, once awarded, multi-year projects will not compete for funding in the subsequent year. Each award shall require a Statement of Work which represents substantial accomplishments that can be easily separated into annual increments if prospective funding is not made available, or is discontinued.

(8) *Indirect costs*: If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(9) *Project funding priorities*: For description of project funding priorities, see General Grant Administration Terms and Conditions of the COP published in the Federal Register (65 FR 62706, October 19, 2000) and at the COP home page.

(10) *Evaluation criteria*: The following criteria and assigned evaluation weights will be used for evaluating proposals:

(a) Rationale (10 percent): How well the proposed project addresses the stated objectives;

(b) Approach (10 percent): Innovativeness of the project approach to meeting its stated objectives;

(c) Program Plan (40 percent): Program plans should explain the following: the effectiveness of the proposed activities in furthering the careers of students and/or recent graduates, including minority and under-represented students, in the coastal ocean sciences, resource management, and policy; how the proposed activities will complement existing in-house programs; what new opportunities will be developed for students and the expected outcomes; how many students are expected to participate; what type of plan is developed for determining the effectiveness of the project, especially in terms of impact on student and/or recent graduates opportunities; how proposed activities will be accomplished within the grant period; and upon completion of the project, how the activities will be incorporated into the institution's programs;

(d) Qualifications of the Project Personnel (20 percent): Qualifications and demonstrated ability of the investigators within their area of expertise; the ability of the investigators to complete the proposed project successfully; previous experience of investigator in managing or designing educational enhancement programs; and participating institute has the appropriate resources to carry out the proposed activities;

(e) Linkages (10 percent): Collaboration with other programs, departments, MSI, or other educational, research, or management institutions;

(f) Costs (10 percent): The proposed budget is reasonable and adequate to accomplish the proposed work within the specified period of performance.

(11) *Selection procedures*: For complete information on selection procedures, refer to General Grant Administration Terms and Conditions of the COP published in the Federal Register (65 FR 62706, October 19, 2000) and at the COP home page. All proposals received under this specific **Federal Register** notice will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria through independent peer review. Both Federal and non-Federal experts in the field may be used in this process.

Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the DOC/NOAA prior to the award. When a decision has been made (whether an award or declination), verbatim copies of reviews and summaries of review panel deliberations, if any, will be made available to the proposer.

(12) *Other requirements*: Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." For a complete description of other requirements, see General Grant Administration Terms and Conditions of the COP published in the Federal Register (65 FR 62706, October 19, 2000) and at the COP Home Page.

(13) Pursuant to Executive Orders 12876, 12900, and 13021, DOC/NOAA is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by MSI(s) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSI to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSI(s).

(14) Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

(15) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348-0043, 0348-0044, 0348-0040 and 0348-0046.

The following requirements have been approved by OMB under control number 0648-0384; a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the Annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Leslie.McDonald@noaa.gov. Copies of these forms and formats can be found on the COP home page under Grants Support sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

Dated: December 1, 2000.

John Oliver,

Director, Management and Budget Office, National Ocean Service.

[FR Doc. 00–31328 Filed 12–7–00; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Air Force Officer Training School (OTS) Accession Forms; AETC Forms 1413 and 1422; OMB Number 0701–0080.

Type of Request: Extension.
Number of Respondents: 1,200.
Responses per Respondent: 1.
Annual Responses: 1,200.
Average Burden per Response: 1.25 hours.
Annual Burden Hours: 1,500.
Needs and Uses: These forms are used by Air Force field recruiters and education counselors in the processing of Officer Training School (OTS) applications. Respondents are civilian and active-duty candidates applying for a commission in the U.S. Air Force. These forms provide pertinent information to facilitate selection of candidates for a commission.
Affected Public: Individuals or Households.
Frequency: On Occasion.
Respondent's Obligation: Required to Obtain or Retain Benefits.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31238 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Air Force Academy Candidate Activities Record; USAF Form 147; OMB Number 0701–0063.
Type of Request: Reinstatement.
Number of Respondents: 7,010.
Responses per Respondent: 1.
Annual Responses: 7,010.
Average Burden per Response: 45 minutes.
Annual Burden Hours: 5,248.
Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy. The information collected on this form is required by 10 U.S.C. 9346. The respondents are students applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on the form is not collected, the individual cannot be considered for admittance to the Air Force Academy.
Affected Public: Individuals or Households.
Frequency: On Occasion.
Respondent's Obligation: Required to Obtain or Retain Benefits.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31239 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Family Support Center Information; AF Forms 2800, 2801, and 2805; OMB Number 0701–0070.
Type of Request: Reinstatement.
Number of Respondents: 10,000.
Responses per Respondent: 3.
Annual Responses: 30,000.
Average Burden Per Response: 5 minutes (average).
Annual Burden Hours: 2,666.
Needs and Uses: The information collection requirement is necessary to obtain demographic data about individuals and family members who utilize the services of the Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as program evaluation, service targeting, and future budgeting. In addition, the information collection provides demographic data on volunteers and tracks volunteer service. The data elements of this information collection are the basis for quarterly data gathering which is forwarded through the Major Commands to the Air Staff.
Affected Public: Individuals or Households.
Frequency: On Occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31240 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Services for Fiscal Year 2001

SUMMARY: Notice is hereby given that on September 30, 2000, the Deputy Chief Financial Officer approved the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 2001. These rates were effective October 1, 2000.

The FY 2001 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, section 1095. Due to size, the sections containing the Drug Reimbursement Rates (section IV.C.) and the rates for Ancillary Services Requested by Outside Providers (section IV.D.) are not included in this package. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: *http://www.tricare.osd.mil/ebc/rm/rm_home.html.* The Office of the Assistant Secretary of Defense (Health Affairs) point of contact is MAJ Rose Layman. She can be reached at (703) 681–8910 or DSN 761–8910. The medical and dental service rates in this package (including the rates for ancillary services and other procedures requested by outside providers) were effective October 1, 2000. Pharmacy rates are updated on an as needed basis.

Dated: December 1, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates[1 2]

Per inpatient day	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$4,144.00	$5,694.00	$6,016.00
B. Surgical Care Services (Cosmetic Surgery)	1,895.00	2,604.00	2,752.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG).[3]			

1. Average FY 2001 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Ineragency	Other (full/third party)
Large Urban	$2,986.00	$5,712.00	$6,002.00
Other Urban/Rural	3,468.00	6,633.00	7,004.00
Overseas	3,872.00	9,045.00	9,489.00

2. Overview

The FY 2001 inpatient rates are based on the cost per Diagnosis Related Group (DRG), which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA)[1] (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. Each large urban or other urban/rural Military Treatment Facility (MTF) providing inpatient care has their own ASA rate. The MTF-specific ASA rate is the published ASA rate adjusted for area wage differences and indirect medical education (IME) for the discharging hospital (see Attachment 1). The MTF-specific ASA rate submitted on the claim is the rate that payers will use for reimbursement purposes. Overseas MTFs use the rates specified in paragraph I.C.1. For providers performing inpatient care at a civilian facility for a DoD beneficiary, see note 3. For a more complete description of the development of MTF-specific ASAs and how they are applied refer to the ASA Primer at: http://www.tricare.osd.mil/org/pae/asa_primer/asa_primer.html.

An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital (Reynolds Army Community Hospital) in Other Urban/Rural areas.

a. The cost to be recovered is the MTF cost for medical services provided. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.2244. (DRG statistics shown are from FY 1999.)

c. The MTF-applied ASA rate is $6,831 (Reynolds Army Community Hospital's third party rate as shown in Attachment 1).

d. The MTF cost to be recovered is the RWP factor (2.2244) in subparagraph 3.b., above, multiplied by the amount ($6,831) in subparagraph 3.c., above.

e. Cost to be recovered is $15,195.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020 ...	Nervous System Infection Except Viral Meningitis	2.2244	8.3	5.8	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	MTF-applied ASA
Reynolds Army Community Hospital	Other Urban/Rural	.9156	1.0	$7,004	$6,831

Patient	Length of stay	Days above threshold	Relative weighted product			TPC amount***
			Inlier*	Outlier**	Total	
#1	7 days	0	2.2244	000	2.2244	$15,195
#2	21 days	0	2.2244	000	2.2244	15,195
#3	35 days	6	2.2244	.7594	2.9838	20,382

* DRG Weight.
** Outlier calculation=33 percent of per diem weight×number of outlier days.
=.33 (DRG Weight/Geometric Mean LOS)×(Patient LOS − Long Stay Threshold).
=.33 (2.2244/5.8)×(35 − 29).
=.33 (.38352)×6 (take out to five decimal places).
.12656×6 (carry to five decimal places).
.7594 (carry to four decimal places).
*** MTF-Applied ASA×Total RWP.

II. Outpatient Rates—Per Visit [1 2]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Medical Care			
BAA	Internal Medicine	$147.00	$204.00	$216.00
BAB	Allergy	80.00	111.00	117.00
BAC	Cardiology	129.00	180.00	190.00
BAE	Diabetic	105.00	146.00	154.00
BAF	Endocrinology (Metabolism)	151.00	210.00	222.00
BAG	Gastroenterology	183.00	255.00	269.00
BAH	Hematology	286.00	398.00	420.00
BAI	Hypertension	216.00	301.00	318.00
BAJ	Nephrology	221.00	307.00	324.00
BAK	Neurology	165.00	229.00	242.00
BAL	Outpatient Nutrition	69.00	96.00	101.00
BAM	Oncology	201.00	280.00	295.00
BAN	Pulmonary Disease	186.00	259.00	273.00
BAO	Rheumatology	139.00	194.00	205.00
BAP	Dermatology	115.00	160.00	169.00
BAQ	Infectious Disease	181.00	252.00	266.00
BAR	Physical Medicine	115.00	160.00	169.00
BAS	Radiation Therapy	169.00	235.00	248.00
BAT	Bone Marrow Transplant	190.00	264.00	279.00
BAU	Genetic	330.00	460.00	485.00
BAV	Hyperbaric	344.00	480.00	506.00
	B. Surgical Care			
BBA	General Surgery	215.00	299.00	316.00
BBB	Cardiovascular and Thoracic Surgery	419.00	584.00	616.00
BBC	Neurosurgery	249.00	347.00	366.00
BBD	Ophthalmology	130.00	181.00	191.00
BBE	Organ Transplant	1,106.00	1,541.00	1,625.00
BBF	Otolaryngology	149.00	207.00	219.00
BBG	Plastic Surgery	168.00	235.00	247.00
BBH	Proctology	125.00	174.00	184.00
BBI	Urology	164.00	228.00	240.00
BBJ	Pediatric Surgery	89.00	125.00	131.00
BBK	Peripheral Vascular Surgery	98.00	137.00	145.00
BBL	Pain Management	138.00	193.00	203.00
BBM	Vascular and Interventional Radiology	493.00	687.00	724.00
	C. Obstetrical and Gynecological (OB–GYN) Care			
BCA	Family Planning	76.00	106.00	111.00
BCB	Gynecology	127.00	177.00	187.00
BCC	Obstetrics	104.00	144.00	152.00
BCD	Breast Cancer Clinic	240.00	334.00	352.00

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	D. Pediatric Care			
BDA	Pediatric	92.00	128.00	134.00
BDB	Adolescent	83.00	115.00	121.00
BDC	Well Baby	63.00	87.00	92.00
	E. Orthopaedic Care			
BEA	Orthopaedic	143.00	200.00	211.00
BEB	Cast	89.00	123.00	130.00
BEC	Hand Surgery	76.00	106.00	112.00
BEE	Orthotic Laboratory	93.00	130.00	137.00
BEF	Podiatry	80.00	112.00	118.00
BEZ	Chiropractic	38.00	53.00	55.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	165.00	230.00	242.00
BFB	Psychology	115.00	160.00	169.00
BFC	Child Guidance	92.00	128.00	135.00
BFD	Mental Health	148.00	206.00	217.00
BFE	Social Work	147.00	205.00	217.00
BFF	Substance Abuse	141.00	197.00	208.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	107.00	149.00	157.00
BHA	Primary Care	109.00	151.00	160.00
BHB	Medical Examination	111.00	155.00	163.00
BHC	Optometry	72.00	100.00	105.00
BHD	Audiology	52.00	73.00	77.00
BHE	Speech Pathology	122.00	170.00	180.00
BHF	Community Health	85.00	118.00	125.00
BHG	Occupational Health	108.00	151.00	159.00
BHH	TRICARE Outpatient	74.00	104.00	109.00
BHI	Immediate Care	161.00	225.00	237.00
	H. Emergency Medical Care			
BIA	Emergency Medical	173.00	242.00	255.00
	I. Flight Medical Care			
BJA	Flight Medicine	124.00	173.00	182.00
	J. Underseas Medical Care			
BKA	Underseas Medicine	77.00	108.00	114.00
	K. Rehabilitative Services			
BLA	Physical Therapy	56.00	79.00	83.00
BLB	Occupational Therapy	75.00	104.00	110.00

III. Ambulatory Procedure Visit (APV)—Per Visit [5]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Medical Care			
BB	Surgical Care	$1,313.00	$1,829.00	$1,929.00
BE	Orthopaedic Care	1,664.00	2,319.00	2,446.00
All Other	B clinics other than BB and BE, to include those B clinics where: 1. There is an APU established within DoD guidelines AND 2. There is a rate established for that clinic in section II. Some B clinics, such as BF, BI, BJ and BL, perform the type of services where the establishment of an APU would not be within appropriate clinical guidelines.	378.00	527.00	556.00

IV. Other Rates and Charges[1 2]

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Per Each			
FBI	Immunization	$22.00	$31.00	$32.00
	B. Family Member Rate (Formerly Military Dependents Rate)			
		11.45		
	C. Reimbursement Rates for Drugs Requested by Outside Providers[6 15]			
	D. Ancillary Services Requested by an Outside Provider—Per Procedure[7 5]			
DB	Laboratory procedures requested by an outside provider CPT '00 Weight Multiplier.	15.00	22.00	23.00
DC, DI	Radiology procedures requested by an outside provider CPT '00 Weight Multiplier.	79.00	115.00	120.00
	E. Dental Rate—Per Procedure[11]			
	Dental Services ADA code weight multiplier.	73.00	112.00	117.00
	F. Ambulance Rate—Per Hour[12]			
FEA	Ambulance	81.00	113.00	120.00
	G. AirEvac Rate—Per Trip (24 Hour Period)[13]			
	AirEvac Services—Ambulatory AirEvac Service—Litter	339.00 989.00	473.00 1,379.00	499.00 1,454.00
	H. Observation Rate—Per Hour[14]			
	Observation Services—Hour	20.00	28.00	30.00

V. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT)[8]	FY 2001 charge[9]	Amount of charge
Mammaplasty—augmentation	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem or APV	(a b)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Surgical Care Per Diem or APV	(a b)
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem or APV	(a b c)
Mentoplasty (Augmentation/Reduction).	76.68, 76.67	21208, 21209	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Lipectomy Suction per region[10]	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Chemical Peel	86.24	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Arm/Thigh Dermolipectomy	86.83	15836/15832	Inpatient Surgical Care Per Diem or APV	(a b)
Refractive surgery			APV or applicable Outpatient Clinic Rate	(b c e)
Radial Keratotomy		65771		
Other Procedure (if applies to laser or other refractive surgery).		66999		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	(b c)
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in section I.B. (See notes 8 through 10, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in section III. (See notes 8 through 10, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

[d] Charge is solely determined by the location of where the care is provided and is not to be based on any other criteria. An APV rate can only be billed if the location has been established as an APU following all required DoD guidelines and instructions.

[e] Refer to Office of the Assistant Secretary of Defense (Health Affairs) Policy on Vision Correction Via Laser Surgery For Non-Active Duty Beneficiaries, April 7, 2000, for further guidance on billing for these services. It can be downloaded from: http://www.tricare.osd.mil/policy/2000poli.htm.

Notes on Reimbursement Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

MTFs without inpatient services, whose providers are performing inpatient care in a civilian facility for a DoD beneficiary, can bill payers the percentage of the charge that represents professional services as provided in [1] above. The ASA rate used in these cases, based on the absence of a ASA rate for the facility, will be based on the average ASA rate for the type of metropolitan statistical area the MTF resides, large urban, other urban/rural, or overseas (see paragraph I.C.1.). The Uniform Business Office must receive documentation of care provided in order to produce a bill.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

MEPRS Code

B: Outpatient Care (Functional Category)
BA: Medical Care (Summary Account)
BAA: Internal Medicine (Subaccount)

[5] Ambulatory procedure visit is defined in DoD Instruction 6025.8, "Ambulatory Procedure Visit (APV)," dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (or freestanding outpatient clinic) that is specially equipped, staffed, and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF established APU associated with the referring clinic. The BB and BE APV rates are to be used only by clinics that are subaccounts under these summary accounts (see [4] for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used *only* by those clinics that are *not* a subaccount under BB or BE. In addition, APV rates may only be utilized for clinics where there is a clinic rate established. For example, BLC, Neuromuscular Screening, no longer has an established rate. Therefore, an APU cannot be defined and an APV cannot be billed for this clinic.

[6] Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from MTFs that are prescribed by providers external to the MTF (*e.g.*, physicians and dentists). Eligible beneficiaries (family members or retirees with medical insurance) are not liable personally for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the DoD-wide average cost of the drug, calculated by National Drug Code (NDC) number. The prescription charge is calculated by multiplying the number of units (*e.g.*, tablets or capsules) by the unit cost and adding $6.00 for the cost of dispensing the prescription. Dispensing costs include overhead, supplies, and labor, etc. to fill the prescription.

The list of drug reimbursement rates is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

[7] The list of FY 2001 rates for ancillary services requested by outside providers and obtained at a MTF is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

Charges for ancillary services requested by an outside provider (*e.g.*, physicians and dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who

have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD-established weight for the Physicians' Current Procedural Terminology (CPT 00) code by either the laboratory or radiology multiplier (section IV.D.). Radiology procedures performed by Nuclear Medicine use the same methodology as Radiology for calculating a charge because their workload and expenses are included in the establishment of the Radiology multiplier.

Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for ancillary services.

[8] The attending physician is to complete the CPT 00 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[9] Family members of active duty personnel, retirees and their family members and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedures information is contained in section V. The patient shall be charged the rate as specified in the FY 2001 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the "Other" rate) for inpatient per diem surgical care services in section I.B., ambulatory procedure visits as contained in section III., or the appropriate outpatient clinic rate in sections II.A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[10] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[11] Dental service rates are based on a dental rate multiplied by the DoD established weight for the American Dental Association (ADA) code performed. For example, for ADA code 00270, bite wing single film, the weight is 0.15. The weight of 0.15 is multiplied by the appropriate rate, IMET, IAR, or Full/Third Party rate to obtain the charge. If the Full/Third Party rate is used, then the charge for this ADA code will be $17.55 ($117x.15 = $17.55).

The list of FY 2001 ADA codes and weights for dental services is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

[12] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in section IV.F. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes.).

[13] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient during a 24-hour period. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately.

[14] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round to the nearest hour. For example, if a patient has received 1 hour and 20 minutes of observation, then you bill for 1 hour of service. If the status of a patient changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not separately billed. If a patient is released from observation status and is sent to an APV, the charges for observation services are not billed separately but are added to the APV rate to recover all expenses.

[15] Final rule 32 CFR Part 220, published February 16, 2000, eliminated the dollar threshold for high cost ancillary services and the associated term "high cost ancillary service." The phrase "high cost ancillary service" is replaced with the phrase "ancillary services requested by an outside provider." The elimination of the threshold also eliminated the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeds $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

Attachment 1

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY

DMISID	MTF name	SERV	Full cost rate	Inter-agency rate	IMET rate	TPC rate
0003	Lyster AH—Ft. Rucker	A	$6,637	$6,286	$3,286	$6,637
0004	502nd Med Grp—Maxwell AFB	F	6,984	6,614	3,458	6,984
0005	Bassett ACH—Ft. Wainwright	A	7,152	6,774	3,541	7,152
0006	3rd Med Grp—Elmendorf AFB	F	7,041	6,668	3,486	7,041
0009	56th Med Grp—Luke AFB	F	5,986	5,697	2,978	5,986
0014	60th Med Grp—Travis AFB	F	9,912	9,387	4,907	9,912
0018	30th Med Grp—Vandenberg AFB	F	7,035	6,663	3,483	7,035
0019	95th Med Grp—Edwards AFB	F	7,004	6,633	3,468	7,004
0024	NH Camp Pendleton	N	7,614	7,245	3,787	7,614
0028	NH Lemoore	N	6,997	6,627	3,465	6,997
0029	NH San Diego	N	9,744	9,273	4,847	9,744
0030	NH Twenty Nine Palms	N	6,111	5,815	3,039	6,111
0032	Evans ACH—Ft. Carson	A	6,946	6,578	3,439	6,946
0033	10th Med Grp—USAF Academy	F	6,994	6,623	3,463	6,994
0037	Walter Reed AMC—Washington DC	A	9,010	8,574	4,482	9,010
0038	NH Pensacola	N	8,939	8,465	4,426	8,939
0039	NH Jacksonville	N	7,537	7,173	3,749	7,537
0042	96th Med Grp—Eglin AFB	F	8,309	7,869	4,114	8,309
0043	325th Med Grp—Tyndall AFB	F	7,002	6,631	3,467	7,002
0045	6th Med Grp—MacDill AFB	F	5,991	5,702	2,980	5,991
0047	Eisenhower AMC—Ft. Gordon	A	8,550	8,098	4,233	8,550
0048	Martin ACH—Ft. Benning	A	7,987	7,564	3,954	7,987
0049	Winn ACH—Ft. Stewart	A	6,644	6,292	3,289	6,644
0052	Tripler AMC—Ft. Shafter	A	9,533	9,029	4,720	9,533
0053	366th Med Grp—Mountain Home AFB	F	6,982	6,612	3,457	6,982
0055	375th Med Grp—Scott AFB	F	7,625	7,256	3,793	7,625
0056	NH Great Lakes	N	6,063	5,770	3,016	6,063

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	SERV	Full cost rate	Inter-agency rate	IMET rate	TPC rate
0057	Irwin AH—Ft. Riley	A	6,521	6,176	3,229	6,521
0060	Blanchfield ACH—Ft. Campbell	A	6,605	6,255	3,270	6,605
0061	Ireland ACH—Ft. Knox	A	6,829	6,467	3,381	6,829
0064	Bayne-Jones ACH—Ft. Polk	A	6,573	6,225	3,254	6,573
0066	89th Med Grp—Andrews AFB	F	8,062	7,672	4,010	8,062
0067	NNMC Bethesda	N	9,786	9,313	4,868	9,786
0073	81st Med Grp—Keesler AFB	F	8,772	8,308	4,343	8,772
0075	Wood ACH—Ft. Leonard Wood	A	6,539	6,193	3,237	6,539
0078	55th Med Grp—Offutt AFB	F	8,697	8,236	4,306	8,697
0079	99th Med Grp—Nellis AFB	F	6,002	5,712	2,986	6,002
0083	377th Med Grp—Kirtland AFB	F	6,971	6,602	3,452	6,971
0084	49th Med Grp—Holloman AFB	F	7,004	6,633	3,468	7,004
0086	Keller ACH—West Point	A	7,296	6,909	3,612	7,296
0089	Womack AMC—Ft. Bragg	A	7,817	7,403	3,870	7,817
0091	NH Camp LeJeune	N	6,744	6,387	3,339	6,744
0092	NH Cherry Point	N	6,788	6,429	3,361	6,788
0093	319th Med Grp—Grand Forks AFB	F	7,032	6,660	3,482	7,032
0094	5th Med Grp—Minot AFC	F	6,857	6,494	3,395	6,857
0095	74th Med Grp—Wright-Patterson AFB	F	10,371	9,822	5,135	10,371
0096	72nd Med Grp—Tinker AFB	F	6,001	5,711	2,985	6,001
0097	97th Med Grp—Altus AFB	F	6,976	6,607	3,454	6,976
0098	Reynolds ACH—Ft. Sill	A	6,831	6,469	3,382	6,831
0100	NH Newport	N	6,002	5,712	2,986	6,002
0101	20th Med Grp—Shaw AFB	F	6,964	6,595	3,448	6,964
0103	NH Charleston	N	6,879	6,514	3,406	6,879
0104	NH Beaufort	N	6,871	6,507	3,402	6,871
0105	Moncrief ACH—Ft. Jackson	A	6,961	6,592	3,446	6,961
0106	28th Med Grp—Ellsworth AFB	F	6,939	6,572	3,436	6,939
0108	Wm Beaumont AMC—Ft. Bliss	A	8,329	7,888	4,124	8,329
0109	Brooke AMC—Ft. Sam Houston	A	8,511	8,099	4,233	8,511
0110	Darnall AH—Ft. Hood	A	8,606	8,151	4,261	8,606
0112	7th Med Grp—Dyess AFB	F	6,892	6,528	3,413	6,892
0113	82nd Med Grp—Sheppard AFB	F	6,903	6,537	3,418	6,903
0117	59th Med Wing—Lackland AFB	F	8,640	8,222	4,297	8,640
0119	75th Med Grp—Hill AFB	F	5,983	5,693	2,976	5,983
0120	1st Med Grp—Langley AFB	F	5,954	5,666	2,962	5,954
0121	McDonald ACH—Ft. Eustis	A	5,649	5,376	2,810	5,649
0123	Dewitt AH—Ft. Belvoir	A	8,237	7,839	4,097	8,237
0124	NH Portsmouth	N	7,469	7,107	3,715	7,469
0125	Madigan AMC—Ft. Lewis	A	11,018	10,435	5,455	11,018
0126	NH Bremerton	N	8,165	7,733	4,043	8,165
0127	NH Oak Harbor	N	6,283	5,979	3,125	6,283
0129	90th Med Grp—F.E. Warren AFB	F	6,989	6,619	3,460	6,989
0131	Weed ACH—Ft. Irwin	A	7,003	6,633	3,467	7,003
0449	24th Med Grp—Howard	F	9,489	9,045	3,872	9,489
0606	95th CSH—Heidelberg	A	9,489	9,045	3,872	9,489
0607	Landstuhl Rgn MC	A	9,489	9,045	3,872	9,489
0609	67th CSH—Wurzburg	A	9,489	9,045	3,872	9,489
0612	121st Gen Hosp—Seoul	A	9,489	9,045	3,872	9,489
0615	NH Guantanamo Bay	N	9,489	9,045	3,872	9,489
0616	NH Roosevelt Roads	N	9,489	9,045	3,872	9,489
0617	NH Naples	N	9,489	9,045	3,872	9,489
0618	NH Rota	N	9,489	9,045	3,872	9,489
0620	NH Guam	N	9,489	9,045	3,872	9,489
0621	NH Okinawa	N	9,489	9,045	3,872	9,489
0622	NH Yokosuka	N	9,489	9,045	3,872	9,489
0623	NH Keflavik	N	9,489	9,045	3,872	9,489
0624	BH Sigonella	N	9,489	9,045	3,872	9,489
0633	48th Med Grp—RAF Lakenheath	F	9,489	9,045	3,872	9,489
0635	39th Med Grp—Incirlik AB	F	9,489	9,045	3,872	9,489
0638	51st Med Grp—Osan AB	F	9,489	9,045	3,872	9,489
0639	35th Med Grp—Misawa	F	9,489	9,045	3,872	9,489
0640	374th Med Grp—Yokota AB	F	9,489	9,045	3,872	9,489
0805	52nd Med Grp—Spangdahlem	F	9,489	9,045	3,872	9,489
0808	31st Med Grp—Aviano	F	9,489	9,045	3,872	9,489

[FR Doc. 00–31242 Filed 12–7–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States, (2000 ed.).

SUMMARY: The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States, (2000 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2000 annual review of the MCM, concern the rules of procedure applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the U.S. Air Force, Air Force Legal Services Agency, Military Justice Division, Room 202, 112 Luke Avenue, Bolling Air Force Base, Washington, DC 20332–8000, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2000, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial, (MCM) United States, (2000 ed.). On June 15, 2000, the JSC also published a Notice of Public Meeting to receive comment on its 2000 draft annual review of the Manual for Courts-Martial. On June 28, 2000, the public meeting was held. Three individuals attended and one individual provided oral comment. The JSC also received one letter commenting on the proposed amendments.

Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial. More specifically, the proposed changes: (1) Add references to Military Rule of Evidence 513, *Psychotherapist-patient privilege*, in Rule for Courts-Martial (R.C.M.) 701, *Discovery:* (2) clarify the analysis accompanying R.C.M. 707, *Speedy trial*, in light of current case law; and (3) clarify R.C.M. 1003 and R.C.M. 1107, governing the authority of a court-martial to adjudge and the convening authority to approve, the combination of both a fine and forfeitures at summary and special courts-martial.

Discussion of Comments and Changes

No substantive comment was received on the proposed amendments except for an expressed desire for a fuller rationale accompanying future changes. The JSC has considered the oral and written comment provided and is satisfied that the proposed amendments are appropriate to implement. However, the JSC has reexamined the analysis accompanying R.C.M. 707 and has modified it to more fully explain why the amendment was made. The JSC will forward the public comment and the proposed amendments, as modified, to the Department of Defense.

The oral and written comment, from the same individual, also discussed the new provision of the JSC's standard operating procedures requiring the JSC to invite members of the public to submit proposals as well as the form of that invitation in the May 15, 2000 Federal Register Notice of Proposed Amendments. The invitation provided that "proposals should include reference to the specific provision you wish changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language." The invitation also said that "[i]incomplete submissions will not be considered." The writer said that this last sentence would have a chilling effect on the submission of proposals. The writer also said that individuals or organizations may well perceive problems in the current MCM but may not have the time or expertise to prepare the type of submission required by the JSC. The writer believed that ideas for change should not be discouraged and that the burden should fall to the JSC, rather than to the public, to not only consider ideas for change but in addition take it upon itself to prepare full proposals to implement any ideas for change submitted which are deemed meritorious. The writer also believed that the invitation to the public should be clarified to note that proposals from the public which are not submitted within the public comment period will still be considered, but may not be able to be included in the next Annual Review. The writer recommended that the JSC's procedures be amended to implement the suggestions and that the rules pertaining to public participation in the MCM rulemaking process be included in appropriate DOD Directives published in the Code of Federal Regulations and in the MCM. The JSC has considered these comments and have decided to change the text of the invitation in next year's notice. To best serve the JSC in understanding the nature of the proposals, yet not chill their submission, the invitation will be changed to read "incomplete proposals may not be considered" as opposed to "will not be considered." The JSC will also receive public proposals at any time but proposals received outside the public comment period may not be received in time to be considered in the next Annual Review. The JSC has concluded that it is not necessary to incorporate the new rules inviting public proposals into DoD Directive 5500.17, Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice or the MCM. The DoD Directive will be published in the MCM in future editions.

Proposed Amendments After Consideration of Public Comment Received

The proposed amendments to the Manual for Courts-Martial are as follows:

Amend the Discussion following R.C.M. 701(a)(2)(B) to read as follows:

"For specific rules concerning mental examinations of the accused or third party patients, *see* R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513."

Amend R.C.M. 701(b)(4) to read as follows:

"*Reports of examination and tests.* If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody, or control of the defense which the defense intends to introduce as evidence in the defense case-in-chief at trial or which were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony."

Amend the Analysis accompanying R.C.M. 701(b) by inserting the following prior to the current paragraph:

"*2000 Amendment:* Subsection (b)(4) was amended to also take into consideration the protections afforded by the new psychotherapist-patient privilege under Mil. R. Evid. 513."

Amend the analysis accompanying R.C.M. 707(a) by inserting the following paragraph after the second full paragraph:

"*2000 Analysis Amendment: Burton* and its progeny were re-examined in 1993 when the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States* v. *Tibbs*, 15 C.M.A. 350, 35 C.M.R. 322 (1965). *United States* v. *Kossman*, 38 M.J. 258 (C.M.A. 1993). In *Kossman*, the Court reinstated the "reasonable diligence" standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ."

Amend R.C.M. 1003(b)(3) to read as follows:

"Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

Amend the Discussion accompanying R.C.M. 1003(b)(3) by adding the following after the second paragraph:

"Where the sentence adjudged at a special court-martial includes a fine, *see* R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence."

Amend the Analysis accompanying R.C.M. 1003(b)(3) by inserting the following before the discussion of subsection (b)(4):

"*2000 Amendment:* The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. *See generally, United States* v. *Tualla*, 52 M.J. 228 (2000)."

Add R.C.M. 1107(d)(5) as follows:

"*Limitations on sentence of a special court-martial where a fine has been adjudged.* A convening authority may not approve in its entirety a sentence adjudged at a special court-martial where, when approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, UCMJ, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial."

Amend the Analysis accompanying R.C.M. 1107(d) by inserting the following before the discussion of subsection (e):

"*2000 Amendment:* Subparagraph (d)(5). This subparagraph is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. *See generally, United States* v. *Tualla*, 52 M.J. 228, 231–32 (2000)."

Dated: November 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31247 Filed 12–7–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on March 7–8, 2001; May 16–17, 2001; and October 24–25, 2001, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. § 552b(c)(1)(1994), and that accordingly these meetings will be closed to the public.

Dated: November 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31241 Filed 12–7–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The system of records identified as DHA 05, Military Depolyment Issues Files, is being altered to add two routine uses.

DATES: The changes will be effective on January 8, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 30, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated

February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 1, 2000.

L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files (March 16, 1998, 63 FR 12786).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Military Deployment Issues Files'.

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226; DoD Deployment Health Clinical Center (including the Comprehensive Clinical Evaluation and Special Care Programs), Walter Reed Army Medical Center, Washington, DC 20307–0002; DoD Deployment Health Research Center, Naval Health Research Center, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302; DoD Deployment Health Medical Surveillance Center, Director of Epidemiology and Disease Surveillance, US Army Center for Health Promotion and Preventive Medicine, Aberdeen Proving Ground, MD 21010–5422; and US Armed Services Center for Unit Records Research, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who participated in military deployments or related operations, exercises, or tests, or served in Operation Desert Storm and/or Operation Desert Shield, the Kuwait Theater of Operations who feel they may have been exposed to biological, chemical, radiological, disease, or environmental agents.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete first three paragraphs and replace with 'Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in military deployments or related operations, exercises, or tests, perceived issues, exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical radiological, disease, or environmental agents.

The system contains information from unit and historical records, medical and hospital records, and information provided to the DoD by individuals with first-hand knowledge of reports of possible biological, chemical, radiological, disease, or environmental incidents. Information from health care providers who have evaluated patients with illnesses possibly related to military deployments is also included. Records include those documents, files, and other media that could relate to possible deployment health issues or illnesses.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, radiological, disease, or environmental agents incident to service in military deployments or related operations, exercises, or tests, or service in Gulf War deployments, to conduct scientific or related studies or medical follow-up programs, and to assist in the resolution of deployment related issues.'

ROUTINE USE(S) OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Delete paragraphs three and four, and replace with 'To the Department of Veterans Affairs and Health and Human Services, and the Centers for Disease Control and Prevention to permit investigative, scientific, medical and other analyses regarding deployment health issues and incidents and possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to service member's and veteran's health.

To the Military and Veterans Health Coordinating Board (MVHCB), which will coordinate with several agencies the clinical, research, and health risk communications issues relating to service member's (and veteran's) pre and post deployment health.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (until NARA approves retention and disposition schedule, treat records as permanent.)'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is from the individual's themselves, witnesses to a possible event, health care providers who have evaluated patients with illnesses possibly related to service in military deployments or related operations, exercises, or tests as well as extracts from official DoD records to include: Personnel files and lists, unit histories, medical records, and related sources.'

* * * * *

DHA 05

SYSTEM NAME:

Military Deployment Issues Files.

SYSTEM LOCATION:

Office of the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226;

DoD Deployment Health Clinical Center (including the Comprehensive Clinical Evaluation and Special Care Programs), Walter Reed Army Medical Center, Washington, DC 20307–0002;

DoD Deployment Health Research Center, Naval Health Research Center, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302;

DoD Deployment Health Medical Surveillance Center, Director of Epidemiology and Disease Surveillance, U.S. Army Center for Health Promotion and Preventive Medicine, Aberdeen Proving Ground, MD 21010–5422; and

U.S. Armed Services Center for Unit Records Research, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participated in military deployments or related operations, exercises, or tests, or served in Operation Desert Storm and/or Operation Desert Shield, the Kuwait Theater of Operations who feel they may have been exposed to biological, chemical, radiological, disease, or environmental agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in military deployments or related operations, exercises, or tests, perceived issues, exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical radiological, disease, or environmental agents.

The system contains information from unit and historical records, medical and hospital records, and information provided to the DoD by individuals with first-hand knowledge of reports of possible biological, chemical, radiological, disease, or environmental incidents. Information from health care providers who have evaluated patients with illnesses possibly related to military deployments is also included. Records include those documents, files, and other media that could relate to possible deployment health issues or illnesses.

Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN).

PURPOSE(S):

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, radiological, disease, or environmental agents incident to service in military deployments or related operations, exercises, or tests, or service in Gulf War deployments, to conduct scientific or related studies or medical follow-up programs, and to assist in the resolution of deployment related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

To the Department of Veterans Affairs and Health and Human Services, and the Centers for Disease Control and Prevention to permit investigative, scientific, medical and other analyses regarding deployment health issues and incidents and possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to service member's and veteran's health.

To the Military and Veterans Health Coordinating Board (MVHCB), which will coordinate with several agencies the clinical, research, and health risk communications issues relating to service member's (and veteran's) pre and post deployment health.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

RETRIEVABILITY:

Records are retrieved by case number, name, Social Security Number or service number and key words.

SAFEGUARDS:

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

RETENTION AND DISPOSAL:

Disposition pending (until NARA approves retention and disposition schedule, treat records as permanent.)

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is from the individual's themselves, witnesses to a possible event, health care providers who have evaluated patients with illnesses possibly related to service in military deployments or related operations, exercises, or tests as well as extracts from official DoD records to include: personnel files and lists, unit histories, medical records, and related sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–31246 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patents for Exclusive License

AGENCY: Army Soldier and Biological Chemical Command (SBCCOM), U.S. Army, DoD

ACTION: Notice; correction.

SUMMARY: Reference the previous **Federal Register** notice (65 FR 68128), Tuesday, November 14, 2000, the notice announces the availability of Patents for Exclusive, Partially Exclusive or Nonexclusive Licenses. However, the notice should have stated: SBCCOM gives notice that it is contemplating the grant of an exclusive license in the United States and any applicable foreign country to practice the invention embodied in Patent Number 5,538,583, "Method of Manufacturing a Laminated Textile Substrate for a Body Heating or Cooling Garment" and Patent Number 5,320,164, "Body Heating and Cooling Garment" to Columbus Apparel Associates, Inc., (CAA) having a place of business in Woburn, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 AND 37 CFR part 404. The following Patent Numbers, Titles and Issue dates are provided:

Patent Number: 5,538,583
Title: Method of Manufacturing a Laminated Textile Substrate for a Body Heating or Cooling Garments
Issue Date: July 23, 1996
Patent Number: 5,320,164

Title: Body Heating or Cooling Garment
Issue Date: June 14, 1994

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–31326 Filed 12–07–00; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patent Application for Exclusive License

AGENCY: Army Soldier and Biological Chemical Command (SBCCOM), U.S. Army, DoD.

ACTION: Notice.

SUMMARY: SBCCOM gives notice that it is contemplating the grant of an exclusive license in the United States and any applicable foreign country to practice the invention embodied in Patent Application Number 09/692,704 filed 10/19/00, entitled, "Method and Apparatus for Making Body Heating and Cooling Garments" to Columbus Apparel Associates, Inc., (CAA) having a place of business in Woburn, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. The following Patent Application Number, Title and Filing date is provided:

Patent Application Number: 09/692,704
Title: Method and Apparatus for Making Body Heating and Cooling Garments.
Filing Date: October 19, 2000.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–31325 Filed 12–7–00; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Army is altering five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 8, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 27, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 30, 2000.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0027–1 DAJA

SYSTEM NAME:

General Legal Files (July 15, 1997, 62 FR 37892).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3037 and 3072; 42 U.S.C. 10606; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–1, Legal Services, Judge Advocate Legal Services."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph "To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense."

* * * * *

A0027–1—DAJA

SYSTEM NAME:

General Legal Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army; Offices of Staff Judge Advocates; Judge Advocates; and Legal Counsels of Washington, DC 20310–2200; subordinate commands, installations, and organizations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of administrative, civil or criminal matters referred to the Office of the Judge Advocate General or to legal offices of subordinate commands, installations, and organizations for legal opinion, legal review, or other action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries with substantiating documents, personnel actions, investigations, petitions, complaints, correspondence and responses thereto.

Examples of records include: Elimination and separation proceedings; questions pertaining to entitlement to pay; allowances, or other benefits; flying evaluation boards, line of duty investigations; reports of survey; other boards of investigating officers; DA Suitability Evaluation Board cases; DA Special Review Board efficiency report appeals; petitions to the Army Board for the Correction of Military Records; matters pertaining to on-post solicitation, revocation of privileges, and bars to entry on military installations; matters pertaining to appointments, promotions, enlistments, and discharges; matters pertaining to prohibited activities and conflicts of interest for Army personnel and employees; Article 138, UCMJ complaints; private relief legislation; military justice matters including requests for delivery of service members for trial by civilian authorities; appeals from nonjudicial punishment imposed under Article 15, UCMJ; appeals under Article 69, UCMJ; Secretarial review of officer dismissal cases; petitions for clemency, requests for pardons and requests for grants of immunity for civilian witnesses; matters pertaining to civilian employees and employees of non-appropriated fund Instrumentalities

including employment, pay, allowances, benefits, separations, discipline and adverse actions, grievances, equal opportunity complaints, awards, and claims processed by other agencies; and matters pertaining to attorney professional responsibility inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3037 and 3072; 42 U.S.C. 10606; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–1, Legal Services, Judge Advocate Legal Services.

PURPOSE(S):

To ensure legal sufficiency of Army operations, policies, procedures, and personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

Information from this system of records may be disclosed to the Department of Justice for grants of immunity and requests for pardons.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To DoD 'Blanket Routine Uses' published at the beginning of the Army's complication of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY

Retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Records at the Office of the Judge Advocate General, the Office of the Chief Counsel, and the Office, Chief of Engineers are permanent; at all of other locations, records are destroyed upon obsolescence.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, General Law Branch, Office of the Judge Advocate General, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Department of the Army, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifies concerning the incident or event believed to be the basis for legal review.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves, contained in this record system should address written inquiries to the Department of the Army, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individuals should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifies concerning the incident or event believed to be the basis for legal review.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records, and other public and private records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (3) and published in 32 CFR part 505. For additional information contact the system manager.

A0195–2b USACIDC

SYSTEM NAME:

Criminal Investigation and Crime Laboratory Files (May 15, 2000, 65 FR 30974).

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new paragraph 'To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.'

* * * * *

A0195–2b USACIDC

SYSTEM NAME:

Criminal Investigation and Crime Laboratory Files.

SYSTEM LOCATION:

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th

Street, Building 1465, Fort Belvoir, VA 22060–5506. Segments exist at subordinate U.S. Army Criminal Investigation Command elements. Addresses may be obtained from the Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

An automated index of cases is maintained at the U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585 and at the Defense Security Service, Army Liaison Office, P.O. Box 46060, Baltimore, MD 21240–6060.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, civilian or military, involved in or suspected of being involved in or reporting possible criminal activity affecting the interests, property, and/or personnel of the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, date and place of birth, chronology of events; reports of investigation containing statements of witnesses, subject and agents; laboratory reports, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; Serious or Sensitive Incident Reports, modus operandi and other investigative information from Federal, State, and local investigative agencies and departments; similar relevant documents. Indices contain codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes, report number which allows access to records noted above; agencies, firms, Army and Defense Department organizations which were the subjects or victims of criminal investigations; and disposition and suspense of offenders listed in criminal investigative case files, witness identification data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 195–2, Criminal Investigation Activities; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

PURPOSE(S):

To conduct criminal investigations and crime prevention activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, detecting organized criminal activity, or criminal justice employment. Information may also be disclosed to foreign countries under the provisions of the Status of Forces Agreements, or Treaties.

To the Department of Veterans Affairs to verify veterans claims. Criminal investigative files may be used to adjudicate veteran claims for disability benefits, post dramatic stress disorder, and other veteran entitlements.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance program, regarding the investigation and disposition of an offense.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilcation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; automated indices; computer magnetic tapes, disks, and printouts.

RETRIEVABILITY:

By name or other identifier of individual.

SAFEGUARDS:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

At Headquarters, U.S. Army Criminal Investigation Command (USACIDC), criminal investigative case files are retained for 40 years after final action, except that the USACIDC subordinate elements, such files are retained from 1 to 5 years depending on the level of such unit and the data involved. Laboratory reports at the USACIDC laboratory are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individuals should provide the full name, date and place of birth, current address, telephone numbers, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individuals should provide the full name, date and place of birth, current address, telephone numbers, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Suspects, witnesses, victims, USACIDC special agents and other personnel, informants; various Department of Defense, federal, state, and local investigative agencies; departments or agencies of foreign governments; and any other individual or organization which may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is complied and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0600–37b DAPE

SYSTEM NAME:

Unfavorable Information Files (February 22, 1993, 58 FR 10002).

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 600–37, Unfavorable Information; and E.O. 9397 (SSN)."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.'

* * * * *

A0600–37b DAPE

SYSTEM NAME:

Unfavorable Information Files.

SYSTEM LOCATION:

Primary records are located at the Department of the Army Suitability Evaluation Board, Office of the Deputy Chief of Staff of Personnel, 4000 Army Pentagon, Washington, DC 20310–4000. Segments of the system may exist as Suitability Evaluation Board at Major Army Commands. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel (active, reserve, National Guard) on whom unfavorable information has been discovered, considered, referred to individual, and disposed of, to include appeals and petitions for removal or transfer of such information from the individual's performance record.

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary of unfavorable information, copy of letter of notification to individual, individual's response or appeal, summary of consideration of response or appeal, disposition determination, and voting record of Board members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 600–37, Unfavorable Information; and E.O. 9397 (SSN).

PURPOSE(S):

To record Board action and to provide pattern of subsequent unfavorable information. Information filed in the performance portion of the Official Military Personnel File is also used by Department of Army promotion/selection boards when the individual has been afforded due process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records of information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor. Buildings housing records are secured at all times.

RETENTION AND DISPOSAL:

Records are retained by the Suitability Evaluation Board for 6 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 4000 Army Pentagon, Washington, DC 20310–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves contained in this system should address written inquiries to the Deputy Chief of Staff for Personnel, Department of the Army, 4000 Army Pentagon, Washington, DC 20310–4000.

Inquirer should furnish his/her full name, Social Security Number, sufficient details concerning time and place of event to ensure locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written request to the Deputy chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–MPD, 4000 Army Pentagon, Washington, DC 20310–4000.

Inquirer should furnish his/her full name, Social Security Number, sufficient details concerning time and place of event to ensure locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 430–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Suitability Evaluation Board proceedings.

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings (April 2, 1999, 64 FR 15956).

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 1169, Regular enlisted members; limitations on discharge, 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN)."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph "To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense."

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits, rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1169, Regular enlisted members; limitations on discharge, 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by processing activities and the approval authority to determine if the member meets the requirements for retention or separation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are accessed only by designated persons having official need; in locked cabinets, in locked rooms within secure buildings.

RETENTION AND DISPOSAL:

The original of board proceedings becomes a permanent part of the member's Official Military Personnel Record. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Total Army Personnel Command, pursuant to Army Regulation 635–200, is retained by that headquarters (TAPC–PDT) for one year following decision.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

RECORD ACCESS PROCEDURES:

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Avenue, St. Louis, MO 63132–5200: proceedings will be part of the Official Military Personnel Record.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10a TAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ) (December 19, 1997, 62 FR 66606).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "A0600–8–104 TAPC".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN)."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph "To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense."

* * * * *

A0600–8–104 TAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ).

SYSTEM LOCATION:

Active and Reserve Army Commands/field operating agencies, installations, activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted, warrant and commissioned officers on active duty in the U.S. Army; enlisted, warrant and commissioned officers of the U.S. Army Reserve in active reserve (unit or non-unit) status; retired persons; commissioned/warrant officers separated after June 30, 1917 and enlisted personnel separated after October 31, 1912.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records reflecting qualifications, emergency data, enlistment and related service agreement/extension/active duty orders; military occupational specialty evaluation data; group life insurance election; record of induction; security questionnaire and clearance; transfer/discharge report/Certificate of Release or Discharge from Active Duty; language proficiency questionnaire; police record check; statement of personal history; application for ID; Department of Veterans Affairs compensation forms and related papers; dependent medical care statement and related forms; training and experience documents; survivor benefit plan election certificate; efficiency reports; application/nomination for assignment; achievement certificates; record of proceeding and appellate or other supplementary actions, Article 15 (10 U.S.C. 815); weight control records; personnel screening and evaluation records; application/prior service enlistment documents; certificate barring reenlistment; waivers for enlistment; physical evaluation board summaries; service record brief; Army School records; classification board proceedings; correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement/discipline; dependent travel and movement of household goods; personal indebtedness correspondence and related papers; documents relating to proficiency pay, promotion, reduction in grade, release, retirement (includes documents pertaining to pre-separation and job assistance needs in transition from military to civilian life), temporary duty individual flight records, physical examination records, aviator flight record, instrument certification papers, duty status, leave, and similar military documents prescribed for filing by Army regulations or directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*; Department of Defense Directive 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

Personnel records are created and maintained to manage the member's Army Service effectively, document historically the member's military service, and safeguard the rights of the member and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directories and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management to facilitate participation of Army members in civil defense

planning, training, and emergency operations pursuant to the military support of civil defense as prescribed in DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directed or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

County and city welfare organizations to provide information needed to consider applications for benefits.

Penal institutions to provide health information to aid patient care.

State, county, and city officials to include law enforcement authorities to provide information to determine benefits or liabilities, or for the investigation of claim or crimes.

Patriotic societies incorporated, pursuant to 36 U.S.C., in consonance with their respective corporate missions when used to further the welfare, morale, or mission of the soldier. Information can only be disclosed only if the agency which receives it adequately prevents its disclosure to persons other than their employees who need such information to perform their authorized duties.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated individuals whose official duties require access; they are transferred from station to station in personal possession of the individual whose record it is or, when this is not feasible, by U.S. Postal Service.

RETENTION AND DISPOSAL:

The maintenance, forwarding, and disposition of the MPRJ (DA Form 201) and its contents are governed by Army Regulations 600–8–104, Military Personnel Information Management/ Records and 635–10, Processing Personnel for Separations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Avenue, St Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–31243 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Army is altering three systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 8, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 27, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0020–1a SAIG

SYSTEM NAME:

Inspector General Investigation Files (May 11, 1999, 64 FR 25308).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph "To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim Witness Assistance Program, regarding the investigation and disposition of an offense."

* * * * *

A0020–1aa SAIG

SYSTEM NAME:

Inspector General Investigation Files.

SYSTEM LOCATION:

Primary location: Office of the U.S. Army Inspector General Agency, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

Secondary location: Offices of Inspector General at major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, against whom allegations of wrongdoing have been made related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority, that have been reviewed or investigated.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigation case files containing investigative reports, such as, preliminary inquiries and Reports of Investigation (ROIs), and administrative documents; and computer indices. ROIs include the authority for the inquiry/ investigation, matters investigate, narrative, summaries/excerpts of testimony given by witnesses and appended exhibits that may include supporting documents, documentary evidence, summaries of interviews or transcripts of verbatim testimony, or other investigative information from Federal, State, and local investigative agencies and departments. Administrative documents in the files include those that guide or facilitate inquiry/investigative activities in the cases and provide the opening, transfer, or closing data for the cases. Computerized indices contain the names/subjects of the inquiry/ investigation, opening and closing dates, codes for the type of allegations and their disposition, brief summaries of allegations, case notes, locations of the inquiries/investigations and the assigned case numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3014; 10 U.S.C. 3020; 10 U.S.C. 3065(a); Inspector General Act of 1978 (Pub L. 95–452), as amended; 42 U.S.C. 10606 et seq., Victims Rights; Department of Defense Directive 1030.1, Victim and Witness Assistance.

PURPOSE(S):

To review and conduct non-criminal law enforcement inquiries/ investigations into allegations of wrongdoing by Army personnel related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority and report the results to the Office of the Secretary of Defense, the Department of Defense Inspector General, Office of the Secretary of the Army and Army officials, and to commanders so they may discharge their responsibilities under the Inspector General Act of 1978 for maintaining discipline, law, and order.

To provide detailed information necessary for the Secretary of Defense and Secretary of the Army, Army officials and commanders to direct further investigation, effect corrective personnel or other administrative action; to provide facts and evidence upon which to base prosecution; to provide information to other investigative elements of the Army, Department of Defense, other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest; to provide information upon which determinations may be made for individuals' suitability for various personnel actions including but not limited to retention, promotion, assignment, retirement in grade or selection for sensitive or critical positions in the Armed Forces or Federal service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; electronic storage media; CD–ROM.

RETRIEVABILITY:

By individual's full name and/or other descriptive information cross-referenced to the case number.

SAFEGUARDS:

Access is limited to authorized individuals having need for the records

in the performance of their official duties. Paper files and CD–ROMs are stored in containers with locks, located in a locked room, in a secured building with controlled access. Computer indices are secured in locked rooms with limited/controlled access. Access to computerized information is controlled by a system of assigned passwords and available only to personnel responsible for system operation and maintenance.

RETENTION AND DISPOSAL:

Office of The Inspector General primary location of inquiry/investigative case files that contain allegations, that attract high public and/or Congressional Committee or Sub-Committee interest, or that are deemed to be historical significance by the Inspector General, are retained for 30 years, except that they may be offered to the National Archives after 25 years. Paper files are transferred to a Federal Records Center 2 years after completion of the inquiries/investigations and destroyed by burning upon completion of the transfer. The case files on CD–ROMs are erased by media being physically destroyed, unless retained permanently by the National Archives. Paper files of closed inquiry/investigative cases held by the secondary location Offices of The Inspector General are retained for up to 3 years, at the conclusion of which they are forwarded to the Office of The Inspector General system manager for optical scanning and retention as stated above.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Investigations Division, Office of the Inspector General, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, ATTN: Records Release Office, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a free statement. Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, ATTN: Records Release Office, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a free statement. Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material complied for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material complied solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

A0027–10a DAJA

SYSTEM NAME:

Prosecutorial Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Any individual who is the subject of a military justice investigation, a Court or Board of Inquiry, other administrative or disciplinary hearing, or pending trial by courts-material."

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to the entry "convening orders; appointment orders; investigative reports of federal, state, and local law enforcement agencies; local command investigations; immunity requests; search authorizations; general correspondence; legal research and memorandum; motions; forensic reports; pretrial confinement orders; personal, financial, and medical records; report of Article 32, UCMJ investigations; subpoenas; discovery requests; correspondence reflecting pretrial negotiations; requests for resignation or discharge in lieu of trail by court-martial; work product of trial counsel; results of trial memoranda; and forms to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program and the Victim's Rights and Restitution Act of 1990."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*, Victims' Rights; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–10, Military Justice."

PURPOSE(S):

Change to "To prosecute or otherwise resolve military justice cases; to obtain information and assistance from federal, state, local, foreign agencies, or from individuals or organizations relating to investigation, allegation of criminal misconduct, or court-material; and to provide information and support to victims and witnesses in compliance with Victim and Witness Assistance Statutes and regulations."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Add two new paragraphs "To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To attorney licensing and/or disciplinary authorities as required to support professional responsibility investigations and proceedings."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Information in the system is both classified and unclassified and located in file cabinets in the trial counsel's office or other offices in the Criminal Law section of the Staff Judge Advocate offices. Classified information is stored in locked safe drawers with the proper security measures applicable. Unclassified information is located in file cabinets accessible only to authorized personnel who are properly instructed in the permissible use of the information. Some file cabinets have locking capabilities. Automated files are password protected.

Offices are locked during non-work hours. The files are not accessible to the public or to persons within the command without an official need to know."

* * * * *

RECORD SOURCE CATEGORIES:

Add "Court-martial, Article 32; UCMJ investigations; convening authority; Federal, state, and local law enforcement agencies; witness interviews; personnel, financial, and medical records; medical facilities; financial institutions; information provided by the defense/accused; and the work-product of trial counsel and other individuals assisting them on a particular case."

* * * * *

A0027–10a DAJA

SYSTEM NAME:

Prosecutorial Files.

SYSTEM LOCATION:

Decentralized at Staff Judge Advocate Offices. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is the subject of a military justice investigation, a Court or Board of Inquiry, other administrative or disciplinary hearing, or pending trial by courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Witness statements; pretrial advice; documentary evidence; exhibits, evidence of previous convictions; personnel records; recommendations as to the disposition of the charges; explanation of any unusual features of the case; charge sheet; and criminal investigation reports; convening orders; appointment orders; investigative reports of federal, state, and local law enforcement agencies; local command investigations; immunity requests; search authorizations; general correspondence; legal research and memoranda; motions; forensic reports; pretrial confinement orders; personal, financial, and medical records; report of Article 32, UCMJ investigations; subpoenas; discovery requests; correspondence reflecting pretrial negotiations; requests for resignation or discharge in lieu of trial by court-martial; work product of trial counsel; results of trial memoranda; and forms to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program and the Victim's Rights and Restitution Act of 1990.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*, Victims' Rights; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–10, Military Justice.

PURPOSE(S):

To prosecute or otherwise resolve military justice cases; to obtain information and assistance from federal, state, local, or foreign agencies, or from individuals or organizations relating to an investigation, allegation of criminal misconduct, or court-martial; and to provide information and support to victims and witnesses in compliance with Victim and Witness Assistance Statutes and regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To attorney licensing and/or disciplinary authorities as required to support professional responsibility investigations and proceedings.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by individual's surname.

SAFEGUARDS:

Information in the system is both classified and unclassified and located in file cabinets in the trial counsel's office or other offices in the Criminal Law section of the Staff Judge Advocate offices. Classified information is stored in locked safe drawers with the proper security measures applicable. Unclassified information is located file cabinets accessible only to authorized personnel who are properly instructed in the permissible use of the information. Some file cabinets have locking capabilities. Automated filed are password protected. Offices are locked during non-work hours. The files are not accessible to the public or to persons within the command without an official need to know.

RETENTION AND DISPOSAL:

Records are destroyed two years after final review/appellate action.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Criminal Law Division, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Criminal Law Division, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, current address and telephone number, case number and office symbol of Army element which furnished correspondence to the individual, other personnel identifying data that would assist in locating the records. The inquiry must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Criminal Law Division, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, current address and telephone number, case number and office symbol of Army element which furnished

correspondence to the individual, other personal identifying data that would assist in locating the records. The inquiry must be signed.

CONTESTING RECORD PROCEDURE:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official Army records and reports, investigative documents, law enforcement agencies; Court-martial, Article 32; UCMJ investigations; convening authority; Federal, state, and local law enforcement agencies; witness interviews; personnel, financial, and medical records; medical facilities; financial institutions; information provided by the defense/accused; and the work-product of trail counsel and other individuals assisting them on a particular case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0027–10b DAJA

SYSTEM NAME:

Courts-Martial Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Courts-Martial Records and Reviews'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals having appeared as an accused before a courts-martial.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; 10 U.S.C. 3037, Judge Advocate General; and Army Regulation 27–10b, Military Justice.'

PURPOSE(S):

Delete entry and replace with 'The purpose of this system is to satisfy statutory requirements of Chapter 47 of title 10, United States Code, for maintaining records of trial of courts-martial proceedings to complete appellate review, to determine whether clemency is warranted, to answer inquires concerning the state of particular cases, to develop statistical data to guide individuals responsible for making policy decisions regarding military justice activities, to serve as a central repository of Army courts-martial records, and for related purposes.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'With respect to each courts-martial, there is an original record and from 1 to 5 copies. One copy is given to the accused and the remaining copies are used in the review of the case for legal sufficiency. The original record is disposed of as follows: All records of trial by general courts-martial and those special courts-martial records in which a bad-conduct discharge (BCD) was approved are retained in the Office of the Clerk of Court, U.S. Army Legal Service Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837, for 1–2 years after completion of appellate review. Thereafter, the records are forwarded to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 for permanent storage.

Records of trial by special courts-martial (non-BCD) and summary courts-martial are retained in the staff judge advocate office of the general courts-martial authority for 1 year after completion of supervisory review. Thereafter the records are held for 2 years in the record holding area or overseas records center. Records are then sent to National Personnel Records Center (Military Records), 9700 Page Avenue, St. Louis, MO 63132–5200, where they are retained for 7 years. Thereafter, the records are destroyed and the remaining evidence of conviction is the special (non-BCD) and summary courts-martial promulgating orders maintained in the individual's permanent records and any review(s) of the cases conducted pursuant to Articles 69 or 73, UCMJ.

The original reviews of special (non-BCD) and summary courts-martial cases and a copy of all other reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trials Division, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001, and destroyed.

Pre-decisional legal reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trials, U.S. Army Legal Services Agency, 901 North Stuart Street, Arlington, VA 22203–1837 or at the office of the Judge Advocate General, Criminal Law Division, Department of the Army, Washington, DC 20310–2200. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 and destroyed.

Courts-martial index cards from 1900–1986 are permanently stored at the Office of Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837. Arranged alphabetically by name of the accused, they identify the docket number and accession information for permanent records of trial. Since mid-July 1986, courts-martial information is accessible by computer database.'

* * * * *

A0027–10b DAJA

SYSTEM NAME:

Courts-Martial Records and Reviews.

SYSTEM LOCATION:

Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837; Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001; National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5200; and Office of the Judge Advocate General, Criminal Law Division, Department of the Army, Washington, DC 20310–2200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having appeared as an accused before a courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Certain general and all special bad conduct discharge (BCD) courts-martial records of trial that include a verbatim transcript of the trial and allied papers relating to the charged offenses and legal review of the case. General courts-martial examined pursuant to Article 69 and special non-bad conduct discharge (non-BCD) and summary courts-martial records of trial may include only a summarized transcript of the trial as well as allied papers relating to the charged offenses, but do not necessarily include all records of review pursuant to Articles 69 or 73, Uniform Code of Military Justice. Pre-decisional legal reviews pursuant to Articles 69 and 73 are separately maintained in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 801–940 (Uniform Code of Military Justice); 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; 10 U.S.C. 3037, Judge Advocate General; Army Regulation 27–10b, Military Justice; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to satisfy statutory requirements of Chapter 47 of title 10, United States Code, for maintaining records of trial of courts-martial proceedings to complete appellate review, to determine whether clemency is warranted, to answer inquiries concerning the state of particular cases, to develop statistical data to guide individuals responsible for making policy decisions regarding military justice activities, to serve as a central repository of Army courts-martial records, and for related purposes

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Courts-martial records reflect criminal proceedings ordinarily open to the public; therefore, they are normally releasable to the public pursuant to the Freedom of Information Act.

Information from these records may be disclosed to the Department of Justice, the Department of Veterans Affairs, and federal, state, and local law enforcement agencies for determination of rights and entitlements of the individuals concerned and for use in the enforcement of criminal or civil law.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in file folders; index cards; electronic storage medium; courts-martial coding sheets; and on a computer database (Army Courts-Martial Management Information System).

RETRIEVABILITY:

By individual's name and Social Security number, by court-martial number assigned to the case.

SAFEGUARDS:

All records are protected by systems of personnel screening, cipher locks, and hand receipts. During non-duty hours, military police or contract guard patrols ensure protection against unauthorized access. Access to hard disk is controlled by password and is restricted to personnel having a need to know.

RETENTION AND DISPOSAL:

With respect to each courts-martial, there is an original record and from 1 to 5 copies. One copy is given to the accused and the remaining copies are used in the review of the case for legal sufficiency. The original record is disposed of as follows:

All records of trial by general courts-martial and those special courts-martial records in which a bad-conduct discharge (BCD) was approved are retained in the Office of the Clerk of Court, U.S. Army Legal Service Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837, for 1–2 years after completion of appellate review. Thereafter, the records are forwarded to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 for permanent storage.

Records of trial by special courts-martial (non-BCD) and summary courts-martial are retained in the staff judge advocate office of the general courts-martial authority for 1 year after completion of supervisory review. Thereafter the records are held for 2 years in the record holding area or overseas records center. Records are then sent to National Personnel Records (Military Records), 9700 Page Avenue, St. Louis, MO 63132–5200, where they are retained for 7 years. Thereafter, the records are destroyed and the remaining evidence of conviction is the special (non-BCD) and summary courts-martial promulgating order maintained in the individual's permanent records and any review(s) of the cases conducted pursuant to Articles 69 or 73, UCMJ.

The original reviews of special (non-BCD) and summary courts-martial cases and a copy of all other reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trails Division, U.S. Army Legal Services Agency 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001, and destroyed.

Pre-decisional legal reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trials, U.S. Army Legal Services Agency, 901 North Stuart Street, Arlington, VA 22203–1837 or at the office of the Judge Advocate General, Criminal Law Division, Department of the Army, Washington, DC 20310–2200. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 and destroyed.

Courts-martial index cards from 1900–1986 are permanently stored at the Office of Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suit 1200, Arlington, VA 22203–1837. Arranged alphabetically by name of the accused, they identify the docket number and accession information for permanent records of trial. Since mid-July 1986, courts-martial information is accessible by computer database.

SYSTEM MANAGER(S) AND ADDRESS:

Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837.

NOTIFICATION PROCEDURE:

Requests from individuals as to whether there are any general or special bad conduct discharge (BCD) courts-

martial records in the system pertaining to them should be addressed to the Clerk of Court, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837.

Requests for information as to special non bad conduct discharge (non-BCD) and summary courts-martial records should be addressed to the staff judge advocate of the command where the record was reviewed or, if no longer there, to the National Personnel Records Center (Military Records), 9700 Page Avenue, St. Louis, MO 63132–5200.

Requests for information concerning reviews pursuant to Articles 69 or 73, UCMJ, should be addressed to the Office of the Chief, Examination and New Trails Division, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837. Written requests should include individual's full name, Social Security Number, the record file number if available, and any other personal information which would assist in locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquires to the Clerk of the Court, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837, if the type of courts-martial or reviewing command is unknown.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from almost any source may be included in the record if it is relevant and material to courts-martial proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 00–31244 Filed 12–7–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of Exclusive or Partially Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Patent Number: 5,849,984
Title: Method and System for Treating Waste Nitrocellulose
Issue Date: 12/15/98

Patent Number: 5,858,082
Title: Self-Interlocking Reinforcement Fibers
Issue Date: 1/12/99

Patent Number: 5,861,756
Title: Method of Detecting Accretion of Frazil Ice on Water
Issue Date: 1/19/99

Patent Number: 5,863,483
Title: Shock-Absorbing Block
Issue Date: 1/26/99

Patent Number: 5,864,059
Title: Self-Recording Snow Depth Probe
Issue Date: 1/26/99

Patent Number: 5,865,439
Title: Pop-Up Target System
Issue Date: 2/2/99

Patent Number: 5,888,559
Title: Press for Compacting Plastic Explosive Material
Issue Date: 3/30/99

Patent Number: 5,890,836
Title: Interlocking Blocks for Stream Erosion Control
Issue Date: 4/6/99

Patent Number: 5,900,820
Title: System and Method for Detection of Frazil Ice on Underwater Grating
Issue Date: 5/4/99

Patent Number: 5,902,939
Title: Penetrometer Sampler System for Subsurface Spectral Analysis of Contaminated Media
Issue Date: 5/11/99

Patent Number: 5,913,179
Title: Method for Spatial and Temporal Analysis of Nested Graphical Data
Issue Date: 6/15/99

Patent Number: 5,995,451
Title: Multiple Sensor Fish Surrogate Interface System for Acoustic and Hydraulic Data Collection and Analysis
Issue Date: 11/30/99

Patent Number: 6,003,251
Title: Debris Separator for Dredge or Slurry Pump
Issue Date: 12/21/99

Patent Number: 6,032,538
Title: Pressure Sensor Mounting Device for High Temperature Environments
Issue Date: 3/7/00

Patent Number: 6,047,782
Title: Assembly and Method for Extracting Discrete Soil Samples
Issue Date: 4/11/00

Patent Number: 6,053,479
Title: Self-Aligning Vortex Snow Fence
Issue Date: 4/25/00

Patent Number: 6,064,760
Title: Method for Rigorous Reshaping of Stereo Imagery with Digital Photogrammetric Workstation
Issue Date: 5/16/00

Patent Number: 6,084,393
Title: Scour Probe Assembly
Issue Date: 7/4/00

Patent Number: 6,095,052
Title: Corrosion Resistant Metal Body, Bullet Blank, and Bullet and Method for Making Same
Issue Date: 8/1/00

Patent Number: 6,104,298
Title: Roof Moisture Detection Assembly
Issue Date: 8/15/00

Patent Number: 6,109,486
Title: Dry Sand Pluviation Device
Issue Date: 8/29/00

Patent Number: 6,116,353
Title: Method and Apparatus for Installing a Micro-Well with a Penetrometer
Issue Date: 9/12/00

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until 90 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672 or Alease J. Berry, (703) 428–8160.

SUPPLEMENTARY INFORMATION: USP 5,849,984—A method for treating waste nitrocellulose, the method comprising the steps of treating nitrocellulose with acid in a hydrolysis process to break the nitrocellulose down to glucose, recovering a majority of the acid by electrodyialysis, neutralizing a remainder of the acid, and fermenting

the glucose to convert the glucose to a useful product. The invention further comprises a system for performing the above method.

USP 5,858,082—The invention's first embodiment of uses shape memory alloy (SMA) fibers that are blended into a concrete composite material as straight fibers and are made to deform themselves and anchor and interlock themselves after dispersement in the composite material resulting in a more evenly distributed and interlocked fiber reinforcement of the cementitious material. A self-shaping fiber can be imparted to the concrete material by making the fibers out of SMA such as nickel-titanium alloy known as nitinol where the cementitious composite material mixture is briefly heated above the "transition" temperature prior to hardening that causes the fibers to change shape. Nitinol fibers are used alone in place of conventional steel fibers. A second embodiment uses conventional coiled metal steel fiber combined with a SMA clip for retaining the coiled metal fiber during the blending of this clipped fiber into a cementitious material with required heating yielding a shape change of the coiled metal fibers ultimately resulting in improved reinforcement characteristics.

USP 5,861,756—The spaced plates of a capacitor are immersed in water adjacent water intake grating so that water flowing toward the grating passes between and in contact with the plates so that frazil ice may accrete on the facing surfaces of the plates. As accretion occurs, the capacitance changes to indicate the amount of accretion of frazil ice which is detected thereby providing an indication of the amount of accretion of frazil ice on the grating.

USP 5,863,483—Shock-absorbing blocks for bullet stops at firing ranges and for traffic control are made by encasing scrap rubber tires in concrete. To ensure firm attachment of the tires to the concrete, reinforcements such as wire loops are fastened to the tire. To prevent the formation of air pockets during the pouring of the concrete mixture into a mold holding the tire, vent holes are punched into the side walls of the tire. To allow the concrete mixture to flow under the tire in the mold, the tire is propped up with support blocks. Wires may be strung across the top of the tire and attached to the side walls of the mold to prevent movement of the tire while the concrete is being poured into the mold. The concrete mixture may contain an aqueous foam additive, a stabilizer, and fiber reinforcements such as steel or organic polymers.

USP 5,864,059—A snow probe device with a portable data logger that measures snow depths in snow covered areas. The snow probe components include: (i) A linear displacement magnetostrictive transducer composed of a long probe shaft with an internal magnetostrictive transducer filament that operates in conjunction with a small electronics package for signal generation and detection; (ii) a floating plate assembly that includes a magnet that slides on the probe shaft along with a floating plate that rests upon the snow's surface during a measurement event; (iii) a pointed tip designed for easy penetration of snow attached at the probe's bottom end portion; (iv) a thumb switch for actuating measurements on a cylindrical handle attached at the upper end of the probe shaft; and (v) a data logger for controlling and recording the magnetostrictive transducer measurements. Optionally, the device can include a polar fleece sleeve to thermally insulate the transducer's electronics package and a digital counter to record the number of measurements performed.

USP 5,865,439—The invention is a pop-up target system wherein a three-dimensional target is raised by a knee-like action. The target may take the form of a head and torso manufactured in two parts, a front half and a back half, which are hinged at the top of the head portion and may incorporate a thick, relatively massive material which will absorb incoming bullets. The bases of the torso halves are each mounted through hinges to two separate four-wheeled platforms or trucks which are constrained by tracks or guide cables to move linearly to move the bases of the torso halves together in an upright position or apart in a flat horizontal position. The linear relative position of the torso halves is controlled by linear moving means attached to the wheeled platforms or trucks such that at the maximum separation between the torso halves, the two halves of the target lays inclined on a brace so as to be out of horizontal alignment, preferably 5 to 10 degrees out of alignment. The slight inclination with the hinge at the head portion of the target elevated above the base assures that any lateral force will fold the two halves at the hinge rather than directing the force across two aligned members attached with a hinge.

USP 5,888,559—A press for compacting plastic explosive materials comprises a base plate, a support column upstanding from the base plate, a tubular housing mounted on an upper end of the column and extending widthwise of the column, a slide member slidably moveable in the tubular housing substantially parallel to the base plate and an elongated handle pivotally mounted at a distal end thereof on the slide member. A press piston is slidably disposed in a bore in the slide member and is slidably moveable in directions normal to the slide member, a distal end of the piston being disposed over the base plate, the piston having at a proximal end thereof a handle housing through which extends the handle, the handle housing having first and second rollers therein with the handle disposed between the rollers. Pivotal movement of the handle is operative to move the piston reciprocally toward and away from the base plate.

USP 5,890,836—Interlocking blocks for the stabilization of stream and river banks and coast lines, road bed embankments, and boat ramps, are made of concrete, and have a high proportion of open area. Interlocking connections between adjacent blocks are made by radial projecting members and recesses on the periphery of each block, the projecting members of one block fitting into the recesses on adjacent blocks. Projections and recesses are alternately provided at regular angular intervals such that blocks can be assembled in either square or an equilateral triangular patterns. A layer of filter cloth material is laid on the sloping surface and upon which the blocks are then placed; this filter cloth slows down the leaching of water through the open areas between the interlocking blocks and prevents the washing away of sand and silt by stream or river water or rainwater runoff.

USP 5,900,820—A system for detecting accretion of frazil ice on underwater gratings includes a housing for disposition beneath a water surface and spaced from but proximate an underwater intake grating. A pair of parallel electrically conducive bars are mounted side-by-side in the housing and extend therefrom. The bars are in communication with an electromagnetic wave generator in the housing. A coaxial transmission line is connected at a first end to the housing and in communication with the pair of bars for extension from the housing upwardly above the water surface. A monitoring station is disposed above the water surface for receiving signals from the bars, the monitoring station having a second end of the transmission line fixed thereto. The wave generator propagates electromagnetic waves to the bars for further travel to distal ends of the bars, and back to the housing and thence to the monitoring station. The

monitoring station is adapted to compute wave round trip travel time in the bars and to compute changes in the round trip travel time, from which is determined absence, presence, and build-up of frazil ice on the bars, thereby providing an indication of same on the grating.

USP 5,902,939—The present invention pertains to a direct push small diameter fluorescence based penetrometer system for performing in situ spectral analysis on subsurface liquid or gaseous samples. The invention is configured to collect liquid or gaseous analyte samples within the penetrometer's sample chamber through a port that is juxtaposed to a heating element that accelerates the separation of volatile chemical materials from the soil matrix. Fiber optic cables are linked to surface mounted real-time data acquisition/processing equipment from the sample chamber. The penetrometer sampling device is also equipped with a standard penetrometer electric cone sensor module containing cone and sleeve strain sensors that are used to calculate soil classification/layering in real-time during penetration. The invention integrates soil classification/layering data with spectral signature data of suspect subsurface liquid or gaseous fluids for assessing whether the subsurface soil and ground water regions are contaminated without the requirement of transporting the sample and/or analyte to the surface for analysis. Moreover, the system integrates a means for grouting the bore hole upon retrieval of the penetrometer.

USP 5,913,179—A computer implemented method for analyzing data utilizes a program and computer for processing input data in the form of digitized map representing a physical structure. The microprocessor performs the steps and stores the results of the steps in an attached storage device. The computer is programmed to employ or use various linear scales to establish critical dimensions of the curve and to analyze the dimensions in terms of orthogonal components. These are also stored for later processing or analysis to predict physical behavior associated with the structure. In a particular embodiment the curve represents a river bottom and predictions may be made about flows and the like.

USP 5,995,451—The invention is a processor based analysis system with appropriate interface that includes multiple fish surrogates that each have a plurality of piezoelectric and triaxial accelerometer sensors for emulating sensory organs of a particular fish. The multiple fish surrogate array is immersed in flowing water intakes of hydraulic structures such as intakes, intake bypasses, and diversion structures, and natural geological formation such as riffles, shoal areas, and pools. The invention is an interface system for data acquisition analysis and perspective display of acoustic and fluid dynamic data in or near these hydraulic structures and/or natural formations. To accomplish this, multiple sensors in each of the fish-shaped surrogate physical enclosures that form the array are deployed at the same time to describe a fish's aquatic environment at the hydraulic structure location. The gathered data can then be correlated with fish behavior for the purpose of developing methods of diverting fish from such areas of danger of a water intake or to attract them to a water bypass's entrance system.

USP 6,003,251—A debris separator for a dredge pump includes a body portion having a top wall, bottom wall, first and second side walls, and an aft end wall defining a separator outlet for connection to the pump, a funnel portion having an entry end defining a separator inlet and a larger discharge end fixed to a forward inlet end of the body portion. The separator further includes a door hingedly mounted on the body portion first side wall and spring biased to a closed position overlying an opening in the first side wall, and a floor in the body portion slanted toward the bottom wall and toward the first side wall opening. Thus, upon stopping of the pump, backpressure is generated in the body by backflow of water into the separator. Backpressure causes the hinged side door to open. Heavy objects which have fallen to the slanted floor, due to the reduction of flow velocity through the separator, are flushed out of the separator with discharge water. When the discharge line empties, or the pump is restarted, the door closes under the spring bias.

USP 6,032,538—A mounting device for pressure transducers comprises a housing with two chambers separated by an acoustic filter/heat sink. A blast shield having at least one opening allows communication between the measured environment and the first chamber and provides protection to the acoustic filter/heat sink film blast particles and flame. The acoustic filter/heat sink comprises a plurality of tortuous paths through a material having a high thermal conductivity and high specific gravity. The pressure transducer is located in the second chamber and is mounted on a thermally insulating mounting plate. The tortuous paths provide attenuation of high frequency, high amplitude pressure transients, cools the medium entering the filter due to the pressure transient and protects the transducer from corrosive particles and aerosols.

USP 6,047,782—An assembly for extracting discrete soil samples from subsurface soil at a plurality of selected depths includes an elongated outer tubular housing, and a soil sample tube for disposal in the outer tubular housing. The soil sample tube is movable axially in the outer tubular housing and provided with a feature thereon for locking the soil sample tube in the outer tubular housing in a fully inserted position in the outer tubular housing. The replaceable soil sample tube defines a sample chamber proximate a distal end thereof. The assembly further includes a cone tip assembly including a cone tip member and a cone tip rod, the cone tip member being fixed to a distal end of the cone tip rod. The cone tip rod is movable axially in the soil sample tube, the cone tip member having a locking feature thereon for locking the cone tip member at the distal end of the soil sample tube with a cone portion of the cone tip member extending distally beyond a distal end of the outer tubular housing. A method for extracting soil samples, utilizing the above assembly, is also contemplated.

USP 6,053,479—The invention relates to a passive snow removal system which deliberately forms vortices from a passing airflow and directs the vortices into scouring contact with snow accumulation on a target surface. The apparatus includes a base and a vortex producing plate rotatably mounted at an inclined angle relative to an upper portion of the base near the plate's center of mass. The geometry of the plate, which is preferably triangular, is used to aerodynamically form vortices from a passing airflow and direct the vortices onto a target surface. Once the vortices are in scouring contact with the target surface, they act upon the surface to dislodge and carry away any accumulated snow in the direction of the airflow and redeposit it downwind, thus removing the snow from the target surface.

USP 6,064,760—A method for rigorously reshaping a pair of overlapping digital images using a Digital Photogrammetric Workstation (DPW) is disclosed. The overlapping images are imported into the DPW as a pair of originally distorted images having an associated sensor model. The original images are triangulated to adjust sensor parameters. Orthophotos are created with a flat digital terrain matrix (DTM) to leave terrain displacements within themselves, and according to a sensor model and formula for exact projective computations. The orthophotos are aligned by rotation, and interior orientation coordinates of the equivalent vertical frame images are determined. The orthophotos are imported as a pair of overlapping equivalent vertical frame images according to the interior orientation coordinates. A digital terrain model is generated in the DPW using the overlapping equivalent vertical frame images. Another orthophoto is produced using the digital terrain model to remove the measured terrain displacements. In an alternative embodiment, the equivalent vertical frame images are aligned by using the classical pair-wise rectification method or by separately rotating each image without aligning the orthophotos by rotation during their creation. In each embodiment, the sensor model of the original distorted images is dissociated from the orthophotos for subsequently greater distribution and usage of the stereo imagery.

USP 6,084,393—A scour probe assembly comprises an elongated rigid tubular member of electrically insulative material, an anchoring structure fixed to a distal end of the tubular member, and a signal transmission device mounted on the tubular member. A pair of substantially parallel electrically conducive sensor lines are fixed to an external wall of the tubular member and extend along at least a portion of an axial length of the tubular member from a closed proximal end toward the distal end and extend through the closed proximal end to an interior of the tubular member. Electronic components are disposed in the interior of the tubular member and are interposed between ends of the sensor lines in the interior of the tubular member and the signal transmission device mounted in the tubular member.

USP 6,095,052—A bullet comprises a lead sheet and a zinc foil fixed to the lead sheet, the sheet and foil being rolled and pressure formed into a bullet having generally helical layers of the lead sheet and zinc foil. The bullet exhibits an improved environmental impact on soil, relative to all-lead bullets.

USP 6,104,298—A roof moisture detection assembly includes an imaging system for obtaining thermal and visible images of a roof surface, an imaging system support structure for mounting the imaging system in a position elevated relative to the roof surface, a reference target mounted on the roof surface, and an image-processing system adapted to compare current thermal and visible images of the roof surface with previous thermal and visible images of the roof surface and detect shapes and areas of anomalous features, and to compare the current thermal and visible images with each other and detect shapes and areas of anomalous features.

USP 6,109,486—Dry sand is "rained" or pluviated into a receptor container used in the study of soil mechanics. A supply vessel in the shape of an open-top rectangular box has four vertical side walls, a perforated bottom tray, and a slidable perforated tray in contact therewith, whereby sand flows by gravity from the supply vessel through perforations in the stationary and slidable trays and rains or pluviates into the receptor container when the slidable tray is in the "open" position, and sand is blocked from flowing from the supply vessel with the slidable tray in the "closed" position.

USP 6,116,353—A well assembly device comprises an outer tubular sleeve with a first end and second end. An inner tubular member has a first end and second end. An inner tubular member has a first end, and the inner tubular member is disposed within the outer tubular sleeve. The inner tubular member includes a screened portion at its second end. A tip is frictionally secured to the second end of the outer tubular sleeve, so that the outer tubular sleeve and the tip may selectively disengage.

Applications for an exclusive or partially exclusive license should contain the information set forth in 37 CFR 404.8. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) Manufacturing and marketing capability; (3) Time required to bring technology to market and production rate; (4) Royalties; (5) Technical capabilities; and, (6) Small Business status.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–31327 Filed 12–7–00; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–262–001]

Florida Power Corporation; Notice of Filing

December 1, 2000.

Take notice that on November 27, 2000, Florida Power Corporation (Florida Power or Company), tendered for filing two amended executed Interconnection and Operating Agreements (Interconnection Agreements): One with Shady Hills Power Company, LLC (Shady Hills) and one with Reliant Energy Osceola, LLC (Reliant-Osceola). These two amended Interconnection Agreements will replace the ones originally filed by Florida Power in the above-referenced docket number on October 30, 2000. The Company is filing these amended versions to comply with the Company's pro forma Open Access Transmission Tariff (OATT) with respect to the establishment of an independent escrow account for disputed amounts and the interest rate on unpaid balances. The Company has also included additional cost of service data for each Interconnection Agreement.

The Company requests the same effective dates originally requested: October 1, 2000 for the Shady Hills Interconnection Agreement, and November 1, 2000 for the Reliant-Osceola Interconnection Agreement.

Copies of the filing were served on the Florida Public Service Commission and on the official service list in this docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 18, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31279 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–441–024, et al.]

Geysers Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

December 1, 2000.

Take notice that the following filings have been made with the Commission:

1. Geysers Power Company, LLC

[Docket No. ER98–441–024]

Take notice that on November 27, 2000, Geysers Power Company, LLC (Geysers Power), tendered for filing its revised Must-Run Service Agreement under which Geysers Power provides reliability must-run services to the California Independent System Operator Corporation (ISO) from the Geysers Main Units. This filing is made in compliance with the Federal Energy Regulatory Commission's (Commission) letter order dated October 26, 2000, Southern California Edison Co., *et al.*, 93 FERC ¶ 61,089 (2000) (Settlement Order), approving a settlement among Geysers Power, the ISO and others (Settlement), Cabrillo Power I LLC, Cabrillo Power II LLC, Duke Energy Moss Landing LLC, Duke Energy Oakland LLC, Duke Energy South Bay LLC, El Segundo Power, LLC, Pacific Gas and Electric Company, Reliant Energy Etiwanda, LLC, Reliant Energy Mandalay, LLC, Southern Energy Delta, L.L.C., Southern Energy Potrero, L.L.C., Williams Energy Marketing and Trading Company, San Diego Gas & Electric Company, the California Electricity Oversight Board and Southern California Edison Company (Settlement).

As recognized in the Settlement Order, Geysers Power joined the Settlement as to the resolution of issues pertaining to billing and invoicing only. Therefore, this filing reflects substantive revisions only to Article 9 and to related definitions of Geysers Power's currently effective Must-Run Service Agreement. Geysers Power also reports that it owes no refunds as a result of the Settlement.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. FirstEnergy Services, Inc.

[Docket No. ER01–103–001]

Take notice that on November 28, 2000, FirstEnergy Services, Inc. (Services), tendered for filing pursuant to Section 205 of the Federal Power Act and the Federal Energy Regulatory Commission's regulations thereunder a revised Market-Based Rate Power Sales Tariff for wholesale electricity sales to become effective upon consummation of the merger of Services and FirstEnergy Trading Services, Inc.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Sierra Pacific Power Company

[Docket No. ER01–409–001]

Take notice that on November 28, 2000, Sierra Pacific Power Company (Sierra) tendered for filing with the Commission a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Morgan Stanley Capital Group Inc. The Agreement with Morgan Stanley Capital Group Inc., was referenced in Sierra's filing letter dated November 8, 2000, in the above referenced docket but was not attached thereto.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New York Independent System Operator, Inc.

[Docket No. ER01–512–000]

Take notice that on November 27, 2000, the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as the Member Systems of the New York Power Pool (Member Systems), tendered for filing revised transmission service agreements. The Member Systems state that these tariff sheets are in compliance with the Commission's October 26, 2000 order in this proceeding. Central Hudson Gas & Electric Corp., *et al.*, 93 FERC ¶ 61,091 (2000).

A copy of this filing was served upon all persons on the official service list in the captioned proceeding.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. American Transmission Company LLC

[Docket No. ER01–514–000]

Take notice that on November 27, 2000, American Transmission Company LLC (ATCLLC), tendered for filing service agreements for firm and non-firm point-to-point transmission service for the following customers under ATCLLC's Open Access Tariff.

PEPCO Energy Company
LG&E Energy Marketing, Inc.
Madison Gas & Electric Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC, Sithe Mystic LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe Power Marketing, L.P., Sithe Power Marketing, Inc.

[Docket No. ER01–513–000]

Take notice that on November 27, 2000, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC, Sithe Mystic LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe Power Marketing, L.P. and Sithe Power Marketing, Inc. (the Sithe Jurisdictional Affiliates), tendered for filing an Application For Authorization To Remove Prohibition On Inter-Affiliate Sales, Cancel Codes Of Conduct And For Expedited Action.

Comment date: December 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corp.

[Docket No. ER01–516–000]

Take notice that on November 27, 2000, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Sacramento Municipal Utility District (SMUD).

AVA requests the Service Agreements be given a respective effective date of November 13, 2000.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER01–515–000]

Take notice that on November 27, 2000, Boston Edison Company (Boston Edison), tendered for filing a local network integration transmission service agreement between Boston Edison and ANP Blackstone Energy Company (ANP Blackstone). Boston Edison states that the service agreement sets out the transmission arrangements under which Boston Edison will provide local network integration transmission service to ANP Blackstone under Boston Edison's open access transmission tariff accepted for filing in Docket No. ER00–2065–000.

Boston Edison requests waiver of the Commission's thirty (30) day notice requirement in order to allow the service agreement to become effective on October 1, 2000.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER01–518–000]

Take notice that on November 28, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Alliance Energy Services Partnership (Alliance).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Alliance pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 29, 2000.

Copies of this filing have been sent to Alliance Energy Services Partnership, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER01–519–000]

Take notice that on November 28, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and MidAmerican Energy Company (MECR).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to MECR pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 29, 2000.

Copies of this filing have been sent to MidAmerican Energy Company, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Covert Generating Company, LLC

[Docket No. ER01–520–000]

Take notice that on November 28, 2000, Covert Generating Company, LLC (Covert), tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights. Covert proposes to construct a natural gas-fired, combined cycle power plant of approximately 1,200 MW capacity in Covert Township, Van Buren County, Michigan.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. American Transmission Company LLC

[Docket No. ER01–521–000]

Take notice that on November 28, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Public Service Corporation.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31278 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–94–003]

Florida Gas Transmission Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Modified Tampa South Lateral Extension and Request for Comments on Environmental Issues

December 4, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed modified route of the Tampa South Lateral Extension (TSLE) involving construction and operation of facilities by Florida Gas Transmission Company (FGT) in Hillsborough County, Florida.[1] Specifically FGT proposes to modify its certificate in Docket No. CP99–94–000. The proposed facilities would consist of about 6.2 miles of 6– and 8-inch-diameter pipeline. This EA will be used by the Commission in its decision-making process to determine whether the proposed modified route for TSLE is preferable to the certificated route.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need

[1] FGT's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

To Know?" was attached to the FGT project notice provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

Summary of the Proposed Project

FGT wants to modify the route and pipe size of the TSLE as previously certificated by the Commission on February 28, 2000 which authorized the construction and operation of FGT's Phase IV Expansion Project. FGT seeks to change the route of the TSLE, which includes a change in the pipeline length from about 5.62 miles to 6.18 miles to transport additional natural gas to a local distribution company. Specifically FGT proposes to construct and operate:

- About 6.0 miles of 6-inch-diameter pipeline in Hillsborough County, Florida;
- About 0.2 miles of 8-inch-diameter pipeline in Hillsborough County, Florida; and
- Change the location of the National Gypsum Regulatory Station to milepost 5.97 on the modified TSLE route.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 39.9 acres of land. Following construction, about 8.3 acres would be maintained as permanent right-of-way for operational use. The remaining 31.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands,
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by FGT. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of 0.02 linear mile of proposed facilities would be within residential areas.
- The proposed project would require two major waterbody crossings greater than 100 feet in width (Alafia River and Bullfrog Creek).
- A comparison of the proposed route, the certificated route, and other route alternative that may be reasonable.

Public Participation and Scoping Meeting

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EAa and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 2.
- Reference Docket No. CP99–94–003.
- Mail your comments so that they will be received in Washington, DC on or before January 3, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERCc will conduct in the project area. The location and time for the meeting is listed below.

Date and Time: December 19, 2000 7 p.m.

Location: Gardenville Recreation Center, 6215 Symmes Road, Gibsonton, Florida 33534.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EA. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the date of the meeting, our staff will also be visiting project area. Anyone interested in participating in a site visit may contact the Commission's Office of External Affairs identified at the end of appendix 1 of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to became an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process, Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (*http://www.ferc.fed.us*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202)) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–31280 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 4, 2000.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* Two new licenses and three subsequent licenses.

b. *Project Nos.:* 2942–005, 2931–002, 2941–002, 2932–003, and 2897–003.

c. *Date Filed:* January 22, 1999.

d. *Applicant:* S. D. Warren Company.

e. *Names of Projects:* Dundee, Gambo, Little Falls, Mallison Falls, and Saccarappa.

f. *Location:* On the Presumpscot River, near the towns of Windham, Gorham, and Westbrook, in Cumberland County, Maine. These projects do not utilize any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Howard, S. D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597, 207–856–4286.

i. *FERC Contact:* Jim Haimes; james.haimes@ferc.fed.us, 202–219–2780.

j. *Deadline for Filing Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervener also must serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://www.ferc.fed.us/efi/doorbell.htm.*

k. *Status of Environmental Analysis:* These applications have been accepted for filing and are ready for environmental analysis at this time.

l. *Description of the Projects (from upstream to downstream):*

The Dundee Project consists of the following existing facilities: (1) A 1,492-foot-long dam, consisting of two, 50-foot-high earthen embankments separated by a 50-foot-long, 42-foot-high concrete spillway section, a 90-foot-long by 50-foot-high non-overflow section, and a 27-foot-long gate section; (2) a 1.7-mile-long-impoundment extending from the Dundee dam upstream to the tailwaters of the North Gorham Project, with a surface area of approximately 197 acres at normal elevation, 187.22 feet U.S. Geological Survey datum (USGS); (3) a 44-foot-wide by 74-foot-long, reinforced concrete powerhouse, which is integral to the spillway section of the dam; (4) three turbine generator units, each with a rated capacity of 800 kilowatts (kW) for a total project installed capacity of 2,400 kW; (5) a 1,075-foot-long bypassed reach; (6) a 1,075-foot-long, 30-foot-wide, by 11-foot-deep tailrace; (3) two 10-mile-long, 11-kilovolt (kV) transmission lines; and (7) other appurtenances.

The Gambo Project consists of the following existing facilities: (1) a 250-foot-long, 24-foot-high, concrete overflow section and 50-foot-long intake structure; (2) a 3.3-mile-long impoundment extending from the Gambo dam upstream to the tailwaters of the Dundee Project, with a surface area of approximately 151 acres at normal elevation, 135.13 feet USGS; (3) a 737-foot-long by 15-foot-deep, concrete-lined intake canal; (4) a 47-foot-wide by 78-foot-long, reinforced concrete and brick powerhouse; (5) two turbine generator units, each with a rated capacity of 950 kW, for a total project installed capacity of 1,900 kW; (6) a 300-foot-long bypassed reach; (7) an 8-mile-long, 11-kV transmission line; and (8) other appurtenances.

The Little Falls Project consists of the following existing facilities: (1) A 330-foot-long by 14-foot-high, reinforced concrete and masonry dam incorporating a 70-foot-long intake structure; (2) a 1.7-mile-long impoundment extending from the Little Falls dam upstream to the Gambo dam, with a surface area of approximately 29 acres at normal elevation, 108.7 feet USGS; (3) a 25-foot-wide by 95-foot-long, masonry powerhouse, which is integral to the dam; (4) four turbine generator units, each with a rated capacity of 250 kW, for a total project installed capacity of 1,000 kW; (5) a 300-foot-long bypassed reach; (6) an 11-kW transmission line tied into the

Gambo Project transmission line; and (7) other appurtenances.

The Mallison Falls Project consists of the following existing facilities: (1) A 358-foot-long by 14-foot-high, reinforced concrete, masonry and cut granite diversion dam; (2) a 0.5-mile-long impoundment extending from the Mallison Falls dam upstream to the tailwaters of the Little Falls Project, with a surface area of approximately 8 acres at normal elevation, 90.6 feet USGS; (3) a 70-foot-long headgate structure; (4) a 675-foot-long, 41-foot-wide, by 6-foot-deep, bedrock lined intake canal; (50 a 33-foot-wide by 51-foot-long, reinforced concrete and masonry powerhouse; (6) two turbine generator units, each with a rated capacity of 400 kW, for a total project installed capacity of 800 kW; (7) a 675-foot-long bypassed reach; (8) an 11-kV transmission line tied into the Gambo Project transmission line; and (9) other appurtenances.

The Saccarappa Project consists of the following existing facilities: (1) A 322-foot-long diversion dam consisting of two concrete overflow structures separated by an island; (2) a 5.0-mile-long impoundment extending from the Saccarappa dam upstream to the tailwaters of the Mallison Falls Project, with a surface area of approximately 87 acres at normal elevation, 69.96 feet USGS; (3) two bypassed reaches measuring 475 feet and 390 feet long; (4) a 380-foot-long by 36-foot-wide intake canal; (5) a 49-foot-wide by 71-foot-long, masonry powerhouse; (6) three turbine generator units, each with a rated capacity of 450 kW for a total project capacity of 1,350 kW; (7) a 345-foot-long tailrace formed by a 33-foot-high guard wall; (8) a 1-mile-long 2.3-kV transmission line/generator lead; and (9) other appurtenances.

The five projects operate continuously to generate electricity that is utilized at Warren's pulp and paper mill facilities in Westbrook, Maine. Under typical daily operations, Warren maximizes output by manually controlling of each of the five projects in response to flow inputs from Warren's upstream Eel Weir Project (FERC No. 2984), located at the outlet of Sebago Lake, and various minor tributaries to the Presumpscot River downstream of the Eel Weir Project. Daily impoundment level fluctuations of 2 feet or less typically occur at the Little Falls, Mallison Falls, and Saccarappa Projects, impoundment fluctuations of up to 1 foot per day occur at the Dundee and Gambo Projects.

m. *Locations of the Applications:* Copies of each of the five applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. The applications also may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance). Copies also are available for inspection and reproduction at the address in item h, above.

n. Filing and Service of Responsive Documents—The Commission directs pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the applications be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–31281 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00304; FRL–6759–8]

TSCA Section 8(a) Preliminary Assessment Information Rule; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), EPA is seeking public comment and information on the following Information Collection Request (ICR): TSCA Section 8(a) Preliminary Assessment Information Rule (EPA ICR No. 0586.09, OMB No. 2070–0054). This ICR involves a collection activity that is currently approved and scheduled to expire on December 31, 2000. The information collected under this ICR relates to identifying, assessing, and managing human health and environmental risks from chemical substances, mixtures, or categories. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00304 and administrative record number AR–231, must be received on or before February 6, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00304 and administrative record number AR–231 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul Campanella, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3948; fax number: (202) 260–8168; e-mail address: campanella.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a manufacturer or importer of chemical substances, mixtures, or categories. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Basic Chemical Manufacturing	3251
Resin, Synthetic Rubber and Artificial Synthetic Fibers and Filaments Manufacturing	3252
Paint, Coating, and Adhesive Manufacturing	3255
Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing	3253
Other Chemical Product and Preparation Manufacturing	3259
Petroleum Refineries	32411

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industry Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4084 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00304 and administrative record number AR–231. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00304 and administrative record number AR–231 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00304 and administrative record number AR–231. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: TSCA Section 8(a) Preliminary Assessment Information Rule.

ICR numbers: EPA ICR No. 0586.09, OMB No. 2070–0054.

ICR status: This ICR is currently scheduled to expire on December 31, 2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 8(a) authorizes EPA to promulgate rules under which manufacturers, importers and processors of chemical substances and mixtures must maintain records and submit reports to EPA. EPA has promulgated the Preliminary Assessment Information Rule (PAIR) under TSCA section 8(a). EPA uses PAIR to collect information to identify, assess, and manage human health and environmental risks from chemical substances, mixtures, or categories. PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures, or categories. Chemicals identified by EPA or any other Federal agency, for which a justifiable information need for production, use or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question.

Responses to the collection of information are mandatory (see 40 CFR part 712). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 28.45 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Manufacturers and importers of chemical substances, mixtures, or categories.

Estimated total number of potential respondents: 48.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 2.4.

Estimated total annual burden hours: 3,355.

Estimated total annual burden costs: $250,000.

VI. Are There Changes in the Estimates from the Last Approval?

There is a net decrease of 134 hours (from 3,489 hours to 3,355 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This decrease is attributable to carrying through in the burden hour totals the adjustment made to the unit burden of the CBI substantiation requirement, which is that only 75% of sites or reports are expected to make CBI claims. This adjustment was made in the unit burden calculations in the previous ICR but was not carried through in the industry totals. In addition, a few minor mathematical corrections were made to the estimates in the previous ICR.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 30, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–31335 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6913–7]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, which was filed with the United States Court of Appeals for the District of Columbia Circuit by the United States Environmental Protection Agency ("EPA") on November 21, 2000, to address a lawsuit filed by the Sierra Club and the New York Public Interest Research Group (collectively referred to as "Sierra Club"). Sierra Club filed a petition for review pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b) challenging EPA's extension of the interim approval of title V permitting programs for approximately 80 permitting authorities. *Sierra Club* v. *EPA*, No. 00–1262 (D.C. Cir.).

DATES: Written comments on the proposed settlement agreement must be received by January 8, 2001.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed settlement agreement are available from Phyllis J. Cochran, (202) 564–5566. A copy of the proposed settlement agreement was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on November 21, 1999.

SUPPLEMENTARY INFORMATION: Sierra Club alleges that EPA acted contrary to law by extending the interim approval of title V permitting programs for more than 80 permitting authorities. Under title V of the CAA, EPA promulgated regulations specifying the requirements for State operating permit programs. States, or local permitting authorities to which the States delegated authority, submitted programs to EPA for approval in the early to mid 1990's. Pursuant to section 502(g) of the Act, 42 U.S.C. 7661a(g), EPA granted interim approval of a number title V permitting programs. Subsequently, EPA extended the interim approval of programs through a series of notices in the **Federal Register**. Most recently, on May 22, 2000, EPA took final action extending the interim approval for approximately 80 title V permitting programs and Sierra Club challenged that final action.

The settlement agreement provides that Sierra Club's challenge to EPA's final action will be stayed pending several actions by the Agency. Pursuant to the key provisions of the settlement agreement, Sierra Club may request the court to lift the stay of the litigation if EPA fails to: (A) Propose by December 15, 2000, amendments to 40 CFR 70.4(d)(2)to eliminate language that could be construed to grant EPA authority to extend further interim approval of a title V permitting program; (B) take final action by June 1, 2000, promulgating such amendments; (C) notify by December 1, 2000, each permitting authority by letter that a federal program will apply if EPA has not fully approved a revised title V permit program for the area by December 1, 2001; and (D) issue by December 1, 2000, a notice informing the public that they may submit comment identifying deficiencies with approved or interim approved title V permit programs and that EPA will respond to such comments by specified dates.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the settlement agreement will be final.

Dated: December 1, 2000.

Anna Wolgast,

Acting General Counsel.

[FR Doc. 00–31334 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6913–6]

Notice of Settlement Extension: National Ambient Air Quality Standard; Sulfur Oxides Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement extension.

SUMMARY: In 1998, the United States Court of Appeals for the D.C. Circuit remanded EPA's decision to not revise the National Ambient Air Quality Standard for sulfur oxides for further explanation by EPA. *American Lung Association* v. *Browner*, 134 F. 3d 388 (D.C. Cir. 1998). Subsequently, the American Lung Association (ALA) and EPA agreed that EPA would propose a response to the court's remand by summer, 1999 and that EPA would finalize its response to the remand by the end of the year 2000. In exchange, ALA agreed to not file a petition for rehearing en banc with the court and to not pursue any mandatory duty or unreasonable delay claims regarding the remand prior to January, 2001.

In September 1999, EPA and ALA met to discuss the status of the remand and agreed to extend the summer, 1999 deadline until January 15, 2000.

Since that time EPA and ALA have continued discussions and EPA has continued to work on the remand. As a result, EPA and ALA have agreed that by the end of 2000, EPA will publish a notice in the **Federal Register** describing the status of the remand and related activities and soliciting appropriate comment. For its part, ALA has agreed not to pursue any mandatory duty or unreasonable delay claims regarding the remand prior to January, 2001.

Dated: December 1, 2000.

Anna Wolgast,

Acting General Counsel.

[FR Doc. 00–31333 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa*.

Weekly receipt of Environmental Impact Statements Filed November 27, 2000 Through December 1, 2000 Pursuant to 40 CFR 1506.9.

EIS No. 000416, DRAFT EIS, SFW, CA, Metro Air Park Habitat Conservation Plan, Issuance of an Incidental Take Permit, To Protect, Conserve and Enhance Fish, Wildlife and Plants and their Habitat, Natomas Basin, Sacramento County, CA, Due: February 6, 2001, Contact: Vickie Campbell (916) 414–6600.

EIS No. 000417, DRAFT EIS, NPS, GA, Cumberland Island National Seashore General Management Plan, Wilderness Management Plan, Commercial Services Plan, Interpretation Plan, Resource Cultural and Natural Management Plan, Implementation, St. Marys County, GA, Due: April 9, 2001, Contact: Arthur Frederick (912) 882–4336.

EIS No. 000418, FINAL EIS, AFS, MN, Little East Creek Fuel Reduction Project, Plan to Grant Access Across Federal Land to Non-Federal Landowners, Implementation, LaCroix Ranger District, Superior

National Forest, Saint Louis County, MN, Due: January 8, 2001, Contact: Jim Thompson (218) 666–0020.

EIS No. 000419, DRAFT EIS, MMS, LA, AL, MS, FL, Eastern Planning Area Outer Continental Shelf Oil and Gas Lease Sale 181 (December 2001), Gulf of Mexico, Offshore Marine Environment and Coastal Counties/ Parishes of LA, MI, AL and northwestern FL, Due: January 22, 2001, Contact: Archie Melancon (703) 787–1547.

EIS No. 000420, THIRD DRAFT SUPPLEM, NOA, Atlantic Sea Scallop Fishery Management Plan (FMP), Updated Information, Framework Adjustment 14 to adjust the annual Amendment 7 day-at-sea allocation for 2001 and 2002 and to re-open portions of the Hudson Canyon and Virginia/North Carolina Areas for Scallop Fishing, Due: January 24, 2001, Contact: Patricia Churchill (202) 482–5916.

EIS No. 000421, DRAFT EIS, COE, CA, Guadalupe Creek Restoration Project, Restore Riparian Vegetation and Native Anadromous Fish Habitat, From Almaden Expressway to Masson Dam, Implementation, Guadalupe River, Santa Clara County, CA, Due: January 22, 2001, Contact: Brad Hubbards (916) 557–7054.

EIS No. 000422, FINAL EIS, USN, NY, Naval Weapons Industrial Reserve Plant Bethpage to Nassau County, Transfer and Reuse, Preferred Reuse Plan for the Property, Town of Oyster Bay, Nassau County, NY, Due: January 2, 2001, Contact: Robert K. Ostermueller (610) 595–0759.

This Notice of Availability should have appeared in the 12/1/2000 **Federal Register**. The Official Wait Period began on 12/1/2000 and ends on 1/2/2001.

Dated: December 5, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–31349 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–COE–C35014–NJ Rating EU2, Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS for Issuance of a USCOE Section 404 Permit, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ.

Summary: EPA raised significant objections to the applicant's preferred alternative and other alternatives due to adverse impacts to wetlands and availability of less damaging alternatives. EPA requested additional information regarding alternatives, air quality impacts and compensatory mitigation plans.

ERP No. DR–IBR–K39049–CA Rating EC2, Coachella Canal Lining Water Project, Revised and Updated Information, Approval of the Transfers and Exchanges of Conserved Coachella Canal Water, Construction, Operation and Funding, Riverside and Imperial Counties, CA.

Summary: EPA requested formal responses to comments sent on the original Draft EIS in 1994, and raised additional concerns involving monitoring of water quality, modeling of area-wide impacts, and consultation with tribal governments.

ERP No. DS–IBR–K28019–CA Rating EO2, East Bay Municipal Utility District Supplemental Water Supply Project and Water Service Contract Amendment, New and Additional Information on Alternatives, American River Division of the Central Valley Project (CVP), Sacramento County, CA.

Summary: EPA expressed objections regarding the level of detail and analysis of Alternatives 4 and 8, insufficient information on the impacts of wetlands, the potential growth inducing effects of the project, the absence of an analysis of how this project ties into the broader water allocation and ecosystem protection goals of CALFED and CVPIA, and how the water quality of the selected drinking water source will be protected. EPA requested that a greater level of detail and analysis be provided on these issues.

Final EISs

ERP No. F–COE–E30041–NC, Dare County Beaches (Bodie Island Portion) Hurricane Wave Protection and Beach Erosion Control, The towns of Nags Head, Kill Devil Hills, Kitty Hawk, Dare County, NC.

Summary: EPA continues to express concern regarding the adverse effect on the nearshore ecosystem caused by maintaining a given beach profile.

ERP No. F–COE–K36129–CA, Santa Ana River Mainstem Project Including Santiago Creek, Proposal to Complete Channel Improvements along San Timoteo Creek Reach 3B to provide Flood Protection, San Bernardino County, CA.

Summary: EPA expressed continuing concerns regarding analysis of an alternative that would have less adverse impacts to San Timoteo Creek, the full extent of cumulative impacts to San Timoteo Creek from Corps of Engineers' flood control projects, and mitigation to compensate for unavoidable losses to aquatic resources.

Dated: December 05, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–31350 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00300; FRL–6747–6]

Proposed National Action Plan for Hexachlorobenzene; Notice of Availability and Solication of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: EPA has developed a draft National Action Plan to promote further voluntary reductions of releases and exposure to Hexachlorobenzene (HCB). This Notice announces the availability of the draft HCB National Action Plan for public review and comment. Hexachlorobenzene is currently formed as an inadvertent by-product at trace levels in the production of chlorinated solvents, pesticides, and in other chlorinated processes. This chemical is a persistent, bioaccumulative and toxic halogenated compound that persists in the environment and bioaccumulates in animal tissue. It is considered a probable human carcinogen and is toxic by all routes of exposure. The general population appears to be exposed to very low concentrations of HCB, primarily through ingestion of meat, dairy products, poultry and fish. The strategic approach of the Agency, therefore, will involve voluntary initiatives to reduce releases and minimize media transfers, collect information to verify sources and sinks, and increase involvement with and assistance to international groups and other countries to reduce atmospheric deposition in the United States. This plan was developed pursuant to the Agency's Multimedia Strategy for Priority PBT Pollutants.

DATES: Comments, identified by docket control number OPPTS–00300, must be received on or before January 8, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00300 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA–Hotline@epa.gov.

For technical information contact: Paul Matthai, Pollution Prevention Division, Mail Code 7409, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3385; e-mail address: matthai.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are involved in the production of chlorinated solvents, pesticides and in other chlorinated processes which could form HCB as an inadvertent by product at trace levels. This Action Plan may also be of interest to persons involved in the use of hexachloroethane in secondary aluminum operations which could release HCB. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/pbt. To access this document, on the PBT Home Page, select "What's new." You can also go directly to the **FEDERAL REGISTER** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00300. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00300 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00300. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and FEDERAL REGISTER citation.

II. What Action is the Agency Taking?

On November 16, 1998, EPA released its draft Agency-wide Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants (PBT Strategy). The goal of the PBT Strategy is to identify and reduce risks to human health and the environment from current and future exposures to priority PBT pollutants. This document serves as the Draft National Action Plan for Hexachlorobenzene (HCB), one of the 12 Level 1 priority PBT pollutants identified for the initial focus of action in the PBT Strategy.

Hexachlorobenzene (CAS number 118–74–1) is a white, crystalline solid. It has been synthesized and used from the 1940s to the late 1970s as a fungicide on grain seeds such as wheat. HCB was also used in the past as a solvent and as an intermediate and/or additive in various manufacturing processes, including the production of PVC, pyrotechnics and ammunition, dyes, and pentachlorophenol. Although HCB is no longer used directly as a pesticide, it is currently formed as an inadvertent by-product at trace levels in the production of chemical solvents, chlorine-containing compounds, and several currently used pesticides.

HCB is a highly persistent environmental toxin that degrades slowly in air and remains in the atmosphere through long range transport. It bioaccumulates in the fatty tissues and its presence in fish, plants, and wild game species can be a source of ingestion exposure for humans. HCB is considered a probable human carcinogen and is toxic by all routes of exposure. Short-term high exposures can lead to kidney and liver damage, central nervous system excitation and seizures, circulatory collapse, and respiratory depression. Based on studies conducted on animals, long-term low exposures may damage a developing fetus, cause cancer, lead to kidney and liver damage, and cause fatigue and skin irritation.

The general population appears to be exposed to very low concentrations of HCB. Ingestion of HCB-contaminated fish and other wildlife is potentially the most significant source of exposure. Additional, although significantly less, exposure may occur through inhalation or dermal contact. However, certain subpopulations may be exposed to higher levels of HCB than the general population. These include: workers occupationally exposed to HCB; individuals living near facilities where HCB is produced as a by-product; individuals living near current or former hazardous waste sites where HCB is present; recreational and subsistence fishermen who consume higher amounts of locally caught fish and bivalves (mussels, oysters, clams) from contaminated waters, and native populations (including Native American populations such as the Inuits of Alaska) who consume caribou and other game species. Finally, nursing infants in these areas may also be particularly susceptible to effects due to the singular nature of their diet.

The goal of the Action Plan is to identify and further reduce risks to human health and the environment from existing and future exposure to HCB. However, there are information gaps related to the magnitude of known and suspected sources of HCB, the extent of pollution resulting from long-range transport, and the content of HCB in sinks such as sediments and sewage sludge that may contribute to environmental cycling within Unites States boundaries. Therefore, the strategic approach of the Agency will involve voluntary initiatives to reduce releases and minimize media transfers, collect information to verify sources and sinks, and increase involvement with and assistance to international groups and other countries to reduce atmospheric deposition in the United States.

EPA considers stakeholder involvement essential to reaching the goals of the PBT Strategy. Therefore, the Agency is seeking stakeholder input and invites comment on this draft National Action Plan on the following three areas related to HCB.

1. The identification and implementation of voluntary initiatives and outreach opportunities to reduce releases of and exposure to HCB, while minimizing controlled and uncontrolled (e.g., volatilization from water to air, deposition onto soil or plants) multi-media transfers.

2. Continued information collection and integration of data across media regarding sources, sinks, releases, environmental trends, and human food and tissue levels for HCB. Data collection will occur through Binational Toxics Strategy (BNS) efforts, Maximum Achievable Control Technology (MACT) standard development, various EPA permitting and reporting processes, and industry involvement.

3. Collaborate (or partner) with international organizations and foreign governments to assess the significance of long-range transport from other countries and to foster the proliferation of pollution prevention or control technology measures that will reduce inputs of HCB to the environment.

List of Subjects

Environmental protection, PBT, National Action Plan, and HCB.

Dated: November 27, 2000.

Susan H. Wayland,

Assistant Administrator for Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 00–31336 Filed 12–7–00; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 00–2661]

The Minnesota Public Utilities Commission Petitions For Agreement To Redefine The Service Area Of Frontier Communications of Minnesota, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Common Carrier Bureau provides notice that the Minnesota Public Utilities Commission has filed a petition requesting the Commission's consent to its proposed alternative "service area" definition for Frontier Communications of Minnesota, Inc.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Public Notice in CC Docket No. 96–45 released on November 29, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

The Common Carrier Bureau provides notice that the Minnesota Public Utilities Commission (Minnesota PUC) has filed a petition, pursuant to § 54.207 of the Commission's rules, requesting the Commission's consent to its proposed alternative "service area" definition for Frontier Communications of Minnesota, Inc. (Frontier). The Minnesota PUC proposes to adopt a definition of service area that differs from Frontier's "study area" for the purpose of determining universal service obligations and support mechanisms. Specifically, the Minnesota PUC proposes to classify each of the 45 individual exchanges served by Frontier as separate service areas. The Minnesota PUC contends that, without a redefinition of Frontier's service area, the Minnesota PUC will be unable to designate another carrier as an eligible telecommunications carrier (ETC) to serve any portion of Frontier's study area, even if such designation is in the public interest. The Minnesota PUC contends that it has taken into account the recommendations of the Federal-State Joint Board, as required by the Communications Act of 1934, as amended (the Act), and Commission rules.

Commission Rules

For areas served by a rural telephone company, section 214(e)(5) of the Act provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company." Section 54.207 of the Commission's rules and the *Universal Service Order*, 62 FR 32862, June 17, 1997, set forth the procedures for consideration of petitions filed by state commissions seeking to designate service areas for rural telephone companies that are different from such companies' study areas. Specifically, § 54.207(c)(1) provides that such a petition shall contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

The Petition

On October 27, 1999, the Minnesota PUC issued an order granting preliminary approval to Minnesota Cellular Corporation, now known as Western Wireless Corporation (Western Wireless), for designation as an ETC under section 214(e) of the Act. In this order, the Minnesota PUC found that it was in the public interest to designate Western Wireless as an ETC in service areas served by rural telephone companies. At that time, the Minnesota PUC rejected the claim of Frontier that it was a rural telephone company.

On February 10, 2000, the Minnesota PUC issued an order on reconsideration finding, among other things, that Frontier was a rural telephone company under the Act. As a rural telephone company, section 214(e)(5) of the Act defines Frontier's service area as its study area, until and unless the Commission and the state establish a different definition. Accordingly, Frontier's study area would include all of Frontier's 45 existing exchanges in Minnesota. Pursuant to section 214(e)(1) of the Commission's rules, a carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanism throughout the entire service area. Because Western Wireless is licensed to serve only 29 of the 45 exchanges comprising Frontier's Minnesota study area, the Minnesota PUC rescinded its preliminary designation of Western Wireless as an ETC in areas served by Frontier.

On September 1, 2000, the Minnesota PUC issued an order concluding that Frontier's service area should be "disaggregated on an exchange by exchange basis as this would allow CLECs [competitive local exchange carriers] which are designated a federal ETC to receive future federal high-cost funds, if any, for those exchanges in which they serve." The Minnesota PUC noted that Frontier's study area is comprised of 45 non-contiguous exchanges located throughout Minnesota and concluded that Frontier's service area should be redefined into 45 separate service areas based on those individual exchanges. The Minnesota PUC reasoned that this redefinition would promote competition by allowing CLECs that are designated ETCs to receive federal high-cost funds to provide service in part or all of Frontier's current service area. The Minnesota PUC therefore authorized a petition to be filed with the Commission requesting consent to its proposed alternative service area definition for Frontier's Minnesota service territory.

Status

Section 54.207(c)(3) of the Commission's rules provides that the Commission may initiate a proceeding to consider a petition to redefine the service area of a rural telephone company within ninety days of the release date of a Public Notice. If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5) of the Act. If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures. Under § 54.207(e) of the Commission's rules, the Commission delegates its authority under § 54.207(c) to the Chief of the Common Carrier Bureau.

Federal Communications Commission.

Katherine L. Schroder,

Chief, Accounting Policy Division.

[FR Doc. 00–31351 Filed 12–7–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Bryan Family Management Trust, Bryan, Texas, and Bryan Heritage Limited Partnership, Bryan, Texas; to acquire 51 percent of the voting shares of The First National Bank of Bryan, Bryan, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Frontier Financial Corporation, Everett, Washington; to merge with Interbancorp, Inc., Duvall, Washington, and thereby indirectly acquire Inter Bank, Duvall, Washington.

Board of Governors of the Federal Reserve System, December 5, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31323 Filed 12–7–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo– und Vereinsbank AG, Munich, Germany; to acquire Bank Austria Securities, Inc., New York, New York; and thereby indirectly acquire CAIB Securities (New York) Inc., New York, New York; Creditanstalt International Asset Management, Inc., New York, New York; Bank Austria Creditanstalt Corporate Finance, Inc., Greenwich, Connecticut; Bank Austria Commercial Paper, LLC, Greenwich, Connecticut; Bank Austria Creditanstalt Community Development, Inc., Greenwich, Connecticut; Bank Austria Creditanstalt Holdings Corporation (Railcar Leasing), Greenwich, Connecticut; Bank Austria Creditanstalt Equipment Leasing, Inc., Greenwich, Connecticut; and Bank Austria Creditanstalt Property Corporation (Leasing), Greenwich, Connecticut, and thereby engage in corporate finance and commercial lending activities, pursuant to § 225.28(b)(1) of Regulation Y; investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; securities brokerage, private placement and riskless principal activities, pursuant to § 225.28(b)(7) of Regulation Y; community development activities, pursuant to § 225.28(b)(12) of Regulation Y; and in equipment leasing activities, pursuant to § 225.28(b)(3) of Regulation Y. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, December 4, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31282 Filed 12–7–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, December 13, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) to authorize financial holding companies to act as a "finder" by bringing buyers and sellers together for transactions that the parties themselves negotiate and consummate (proposed earlier for public comment; Docket No. R–1078).

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) related to potentially abusive practices in home mortgage lending. (Comments were solicited earlier on possible revisions; Docket No. R–1075.)

3. Consideration of a proposal for comment to amend Regulation Y (Bank Holding Companies and Change in Bank Control) to (a) increase the amount of nonfinancial data processing permissible for bank and financial holding companies and (b) allow financial holding companies to own companies engaged in certain data processing activities in connection with the provision of financial products and services.

4. Publication for comment of proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) that would permit financial holding companies to provide general real estate brokerage and real estate management services.

5. Proposed 2001 Federal Reserve Bank budgets.

6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend.

Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31439 Filed 12–6–00; 2:12 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 12 noon, Wednesday, December 13, 2000, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31440 Filed 12–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule (MTOR or "Rule"). The FTC is soliciting public comments on the proposal to extend through January 31, 2004 the current PRA clearance for information collection requirements contained in the Rule. That clearance expires on January 31, 2001.

DATES: Comments must be filed by January 8, 2001.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Mail or Telephone Order Merchandise Trade Regulation Rule: Paperwork comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room S–4632, 601 Pennsylvania Ave., NW., Washington DC 20580.

SUPPLEMENTARY INFORMATION: On October 3, 2000, the FTC sought comment on the information collection requirements associated with MTOR, 16 CFR Part 435 (Control Number: 3084–0106). See 65 FR 58997. No comments were received.

The Rule was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship merchandise ordered by mail on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The Rule took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem (*e.g.*, Internet sales), and the Rule was then renamed the "Mail or Telephone Order Merchandise Rule."

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the Rule requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

Burden Statement

Estimated total annual hours burden: 2,753,000 hours (rounded up to the nearest thousand).

In its 1997 PRA notice and submission to OMB regarding the Rule, FTC staff estimated that 71,560 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,000 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[1] 62 FR 63717, Dec. 2, 1997. Thus, the total estimated hours burden was 3,808,000 hours [(71,560 X 50 hours) + (1,000 X 230 hours)].

No provisions in the Rule have been amended or changed in any manner since staff's 1997 PRA submission to OMB. Thus, all of the requirements relating to disclosure and notification remain the same. However, while staff's estimate of average time required by companies to comply with the Rule is unchanged, staff has reduced its estimate of total industry hours based on more current data revealing a smaller industry population. Based on 1999 Statistical Abstract data (the most current industry data available),[2] there are approximately 45,919 existing establishments subject to the Rule.

Staff, however, has increased its estimate of the number of new

[1] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[2] Statistical Abstract of the United States, 119th edition, 1999, U.S. Department of Commerce, Economics and Statistics Administration.

companies that enter the market each year from 1,000 to 1,985. This, too, is based on 1999 Statistical Abstract data. Thus, the current total of affected firms consists of approximately 47,904 established and new companies.

Accordingly, staff estimates total industry hours to comply with the MTOR is 2,752,500 hours [(45,919 X 50 hours) + (1,985 X 230 hours)].

This is a conservative estimate. Arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Representatives from industry trade associations and other knowledgeable individials have consistently stated that compliance with the Rule is widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be voluntarily initiated by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute "burden" under the PRA [3] although the above estimates account for it as such.

In estimating PRA burden, staff considered "the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency."5 CFR 1320.3(b)(1). This includes "developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information." 5 CFR 1320.3(b)(1)(iv). Although not expressly stated in the OMB regulation implementing the PRA, the definition of burden arguably includes upgrading and maintaining computer and other systems used to comply with a rule's requirements. Conversely, to the extent that these systems are used in the ordinary course of business independent of the Rule, their associated upkeep would fall outside the realm of PRA "burden."

The mail order industry has been subject to the basic provisions of the Rule since 1976 and the telephone order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Since 1997 many businesses have upgraded the information management systems they need, in part, to comply with the Rule, and to more effectively track orders. These upgrades, however, mostly were needed to deal with growing consumer demand for merchandise resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet.

Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Nevertheless, staff conservatively assumes that the time existing and new companies devote to compliance with the Rule remains the same as in 1997.

Estimated labor costs: $31,136,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to the 1999 Statistical Abstract, average payroll for "non-store catalogue and mail order houses" and "non-store direct selling establishments" rose $0.322 per hour per year between 1991 and 1996. In 1996, average payroll was $10.34 per hour. Assuming average payroll continued to increase $0.322 per hour per year, in 1999 average payroll would have reached $11.31 per hour. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for non-store catalogue and mail order houses and non-store direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses in 1999 for Rule compliance is approximately $31,136,000 (2,753,000 hours × $11.31/hr.). Relative to direct industry sales, this total is negligible.[4]

Estimated annual non-labor cost burden: $0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, i.e., inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates. This training, however, would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

John D. Graubert,

Acting General Counsel.

[FR Doc. 00–31337 Filed 12–7–00; 8:45 am]

BILLING CODE 6750–01–M

[3] Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[4] Projecting sales for "non-store catalogue and mail order houses" and "non-store direct selling establishments" (according to the 1999 Statistical Abstract) to all merchants subject to the MTOR, staff estimates that direct sales to consumers in 1999 would have been $109.45 billion. Thus, the labor cost of compliance by existing and new businesses in 1999 would have amounted to less than .03% of sales.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–01–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c)(2)(A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

National Exposure Registry—Extension—(OMB No. 0923–0006)

Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC). The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to establish and maintain a national registry of persons who have been exposed to hazardous substances in the environment and a national registry of persons with illnesses or health problems resulting from such exposure. ATSDR created the National Exposure Registry (NER) as a result of this legislation in an effort to provide scientific information about potential adverse health effects people develop as a result of low-level, long-term exposure to hazardous substances.

The National Exposure Registry is a program that collects, maintains, and analyzes information obtained from participants (called registrants) whose exposure to selected toxic substances at specific geographic areas in the United States was documented. Relevant health data and demographic information are also included in the NER database. The NER databases furnish the information needed to generate appropriate and valid hypothesis for future activities such as epidemiologic studies. The NER also serves as a mechanism for longitudinal health investigations that follow registrants over time to ascertain adverse health effects and latency periods.

The NER is currently composed of four sub-registries of persons known to have been exposed to specific chemicals: 1,1,1,-Trichloroethane (TCA), Trichloroethylene (TCE), 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin), and benzene. In 2001, the NER will establish a new asbestos subregistry.

Participants in each subregistry are interviewed initially with a baseline questionnaire. An identical follow-up telephone questionnaire is administered to participants every three years until the criteria for terminating a specific subregistry have been met. The annual number of participants varies greatly from year to year. Two factors influencing the number of respondents per year are the number of subregistry updates that are scheduled and whether a new subregistry will be established. The addition of the new asbestos subregistry is expected to add approximately 6,000 persons to the NER. This increase is reflected in the following estimated burden table.

The following table is annualized to reflect one new subregistry (asbestos) and five updates for the requested three-year extension of OMB No. 0923–0006. There is no cost to registrants.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hrs.)	Total annualized burden (in hrs.)
One New Subregistry	2,000	1	0.50	1,000
Five updates	4,927	1	0.42	2,069
Total				3,069

Dated: December 1, 2000.

John Moore,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–31312 Filed 12–07–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

NIOSH Research Study for the Prevention of Work-related Musculoskeletal Disorders (MSDs)—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. There is evidence of causal relationships between physical job stressors (*e.g.*, repetitive or static exertion, forcefulness, awkward postures) and MSDs, and some quantitative information is available on how much rates of MSDs change at varying levels of exposure to each stressor and combination of stressors (exposure-response relationships). Additional information would foster the further development of effective strategies for prevention.

A research project is proposed to conduct a prospective cohort study to quantify the risk for upper limb and low back MSDs at varying levels of exposure to physical job stressors (repetitive, forceful exertion, awkward postures, vibration, manual handling, etc.). This research will involve multiple work sites from the service and manufacturing industries with job tasks that represent a range of exposures to physical job stressors that can result in musculoskeletal disorders of the upper limb (*e.g.*, carpal tunnel syndrome, hand-wrist tendinitis, medial and lateral epicondylitis, hand-arm vibration syndrome (HAVS)) and low back disorders. Because of the limitations of

cross-sectional and retrospective studies, it is widely agreed that a prospective study design is the best approach for the investigation of this problem. Up to 2000 workers will be enrolled into the study and will participate in three annual data collection surveys. The surveys will be comprised of a self-administered questionnaire and standard health tests to identify MSDs, including HAVS. Job tasks will be studied using uniform exposure assessment methods to quantify physical stressors. The study data will be used to test and expand existing guidelines for limiting exposure to physical job stressors, and for developing new guidelines where none exist. The results from this research study will provide practitioners in occupational health critical data that will facilitate their ability to quickly and reliably discriminate job tasks that represent low, moderate and high risk for MSDs among workers employed across different industries. In addition, the results of this study will provide guidance on effective job design to reduce the burden of work-related MSDs. The total estimated annual cost to respondents is $33,190.

Data collection activity	Number of respondents	Number of responses per respondents	Response per hour	Response burden (in hrs)
Questionnaire Administration:				
Core Questionnaire	2,000	3	45/60	4,500
Upper Limb Module	1,000	3	9/60	450
Back Module	700	3	6/60	210
HAVS Module	300	3	15/60	225
Intervention Module	225	4	6/60	90
Physical Examination:				
Upper Limb MSDs	1,000	3	45/60	2,250
Hand-Arm Vibration Syndrome	300	3	2.00	1,800
Total Respondent Burden Hours:				9,525

Dated: December 1, 2000.

John Moore,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–31315 Filed 12–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–09–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503, Written comments should be received within 30 days of this notice.

Proposed Project

National Sexually Transmitted Disease Morbidity Surveillance System—Extension—OMB No. 0920–0011 National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). The reports used for this surveillance system provide ongoing surveillance data on national sexually transmitted disease morbidity. The data are used by health care planners at the national, state, and local (including selected metropolitan and territorial health departments) levels to develop and evaluate STD prevention and control programs. In addition, there are many other users of the data including scientists, researchers, educators, and the media. Sexually transmitted disease (STD) data gathered in these reports are used to produce national statistics published in the annual STD Surveillance Report, MMWR articles, and serve as a progress report to meet objectives in Healthy People 2000: Mid-course Review and 1995 Revisions. It is important to note that these reporting forms are in the process of being phased out and replaced by electronic, line-listed STD data collected in the National Electronic Telecommunications System for Surveillance (NETSS). The total number of burden hours is 644.

Forms	Number of respondents	Number of responses/ respondent	Average burden (in hours)
CDC 73.688*	20	4	1
CDC 73.688**	21	4	1
CDC 73.998	30	12	35/60
CDC 73.2638	30	3	3

* State-level reporting: Respondents for the state-specific CDC 73.688 forms now include 26 state health departments (originally, respondents included 50 states, but 24 states have now discontinued hardcopy reporting and send all STD data as electronic line-listed records through NETSS), seven large city health departments and three outlying areas.

** City-level reporting: The health departments for the 26 states and one of the outlying regions (Puerto Rico) also prepare and submit reports for additional large cities within their jurisdictions.

Dated: December 4, 2000.

Chuck Gollmar,

Acting Associate Director for Policy Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–31314 Filed 12–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10019]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: New collection; *Title of Information Collection:* Durable Medical Equipment and Prosthetics, Orthotics and Supplies (DMEPOS) Supplier Survey; *HCFA Form Number:* HCFA–10019 (OMB approval #: 0938–NEW); *Use:* This survey is necessary to collect access, quality, and financial performance information from suppliers of durable medical equipment (hospital beds, oxygen, urologic supplies, enteral nutrition, or wound care). The information will be presented to HCFA and to Congress, who will use the results to determine whether the demonstration should be extended to other sites; *Frequency:* Once; *Affected Public:* Business or other for-profit; *Number of Respondents:* 340; *Total Annual Responses:* 340; *Total Annual Burden Hours:* 620.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: November 29, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–31256 Filed 12–7–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this

Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Mr. Anatolij Kushnir, Director, Asset & Enterprise Development Service, 181B, Department of Veterans Affairs, 811 Vermont Ave., NW., Room 419, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: November 30, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V. Federal Surplus Property Program Federal Register Report for 12/8/00

Suitable/Available Properties

Buildings (by State)

New Jersey

Holmdel Housing Site
Telegraph Hill Road
Holmdel Co: Monmouth NY 07733–
Landholding Agency: GSA
Property Number: 54200040005
Status: Excess
Comment: 12 housing units on 5.59 acres, 1196 sq. ft. each, extreme disrepair
GSA Number: 1–N–NJ–622

Former Hermann House
Tract 307–26
Mt. Salem Rd/Goldsmith Rd
Wantage Township Co: Sussex NJ 07460–
Landholding Agency: Interior
Property Number: 61200040002
Status: Excess
Comment: 1000 sq. ft., most recent use—residential, off-site use only

Former Hermann Garage
Tract 307–26
Mt. Salem Rd/Goldsmith Rd
Wantage Township Co: Sussex NJ 07460–
Landholding Agency: Interior
Property Number: 61200040003
Status: Excess
Comment: 300 sq. ft., off-site use only

New York

Naval Reserve Center
Frankfort Co: Herkimer NY
Landholding Agency: GSA
Property Number: 54200040006
Status: Excess
Comment: 23,800 sq. ft., brick, good condition, most recent use—training center
GSA Number: 1–D–NY–874

Texas

Duplex
Tract 105–71
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200040007
Status: Unutilized
Comment: 2027 sq. ft., located in Historic District, most recent use—residential, off-site use only

House
Tract 105–71
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200040008
Status: Unutilized
Comment: 2096 Sq. ft., located in Historic District, most recent use—residential, off-site use only

Rock House
Tract 105–05
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200040009
Status: Unutilized
Comment: 1966 sq. ft., located in Historic District, most recent use—office, off-site use only

Land (by State)

Pennsylvania

Gwen Site #868
Bonneauville
Smith Road
Gettysburg Co: Adams PA
Landholding Agency: GSA
Property Number: 54200040007
Status: Surplus
Comment: 13.85 acres, most recent use—to support communication
GSA Number: 4–D–PA–0788

Virginia

Land
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200040034
Status: Unutilized
Comment: 4900 sq. ft. open space

Suitable/Unavailable Properties

Buildings (by State)

Montana

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301–
Landholding Agency: VA
Property Number 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

Unsuitable Properties

Buildings (by State)

Florida

Bldg. 1801
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040035
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Bldg. 1802
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Bldg. 1803
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Bldg. 1859
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Massachusetts

Bierlich House
Tract 03–128
Lincoln Co: Middlesex MA 01773–
Landholding Agency: Interior
Property Number 61200040010
Status: Excess
Reason: Extensive deterioration

New Jersey

Bldg. 1042
Naval Air Eng. Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number 77200040039
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldg. 487
Bahl House
Great Smoky Mtns.
Indian Camp Creek Co: Sevier TN 37722–
Landholding Agency: Interior
Property Number: 61200040004
Status: Excess
Reason: Extensive deterioration

Bldg. 488
Bahl House
Great Smoky Mtns.
Indian Camp Creek Co: Sevier TN 37722–
Landholding Agency: Interior
Property Number: 61200040005
Status: Excess
Reason: Extensive deterioration

Bldg. 489
Bahl House
Great Smoky Mtns.
Indian Camp Creek Co: Sevier TN 37722–
Landholding Agency: Interior
Property Number: 61200040006
Status: Excess
Reason: Extensive deterioration

[FR Doc. 00–30990 Filed 12–7–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee; Notice of Reestablishment

This notice is published in accordance with section 9 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee. NSLRSDA was established by Congress in the Land Remote Sensing Policy Act of 1992 (Public Law 102–555), 15 U.S.C. 5601.

The purpose of the Committee is to advise the U.S. Geological Survey (USGS), Earth Resources Observation Systems (EROS) Data Center (EDC) on guidelines or rules relating to NSLRSDA archival data deposit, maintenance, and preservation as well as access management policies and procedures. The Committee will be responsible for providing advice and consultation on a broad range of technical and policy topics in guiding development of NSLRSDA.

In order for the Secretary to be advised by a broad spectrum of remote sensing data users and producers, committee membership will be composed of 15 members, as follows: two from academia, with one being a laboratory researcher-data user and one a classroom educator; four from government, with one being a Federal data user, one a State data user, one a local data user, and one a science archivist; four from industry, with one being a data management technologist, one a licensed data provider, one a value-added or other data provider, and one an end user; five others, with one being a nonaffiliated individual, one representing a nongovernmental organization, one an international representative, and two at-large, from any data user or producer sector. Expertise in information science, natural science, social science, and policy/law must be represented within the sectors listed above.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice.

Further information regarding the NSLRSDA Advisory Committee may be obtained from the Director, USGS, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the National Satellite Land Remote Sensing Data Archive Advisory Committee is necessary and in the public interest in connection with the performance of duties by the Department of Interior mandated pursuant to the Land Remote Sensing Policy Act of 1992 (Public Law 102–555), 15 U.S.C. 5601.

Dated: November 16, 2000.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 00–31288 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan for the Proposed Grand Kankakee Marsh National Wildlife Refuge in Northwestern Indiana and Northeastern Illinois

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to prepare a comprehensive conservation plan for the proposed Grand Kankakee Marsh National Wildlife Refuge in northwestern Indiana and northeastern Illinois.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to prepare a comprehensive conservation plan and an associated environmental document for the proposed Grand Kankakee Marsh National Wildlife Refuge. The Service is furnishing this notice in compliance with Service comprehensive conservation plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the environmental assessment.

DATES: Beginning in November 2000, the Service will solicit information from the public via open houses, workshops, focus groups, and written comments. Special mailings, newspaper articles and radio announcements will inform people of the times and places of public scoping meetings. The dates, times, and places of future scoping meetings will also be posted on the Service's web site at: *http://www.fws.gov/r3pao/planning/.*

FOR FURTHER INFORMATION CONTACT: Address comments and requests for more information to: Project Leader, Grand Kankakee Marsh National Wildlife Refuge, P.O. Box 189, Plymouth, Indiana 46563; telephone: 219–935–3411.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired future conditions of the refuge and how the Service will implement management strategies.

The purpose(s) of the Grand Kankakee Marsh National Wildlife Refuge (Refuge) is "for the development, advancement, management, conservation, and protection of fish and wildlife resources" (Fish and Wildlife Act of 1956) and for "the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions * * *" (Emergency Wetlands Resources Act of 1986).

The mission for the Refuge is to protect, restore, and manage ecological processes within the Kankakee River Basin that benefit threatened and endangered species, migratory birds, native fish, and diverse flora and fauna populations, while providing, to the extent possible, high quality wildlife-dependent environmental interpretation, education, and recreation experiences that build an understanding and appreciation for these resources, and the role humankind plays in their stewardship.

Dated: November 30, 2000.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 00–31284 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved extension to tribal-state gaming compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Extension of the Tribal-State Compact for the conduct of Class III Gaming between the Coushatta Tribe and the State of Louisiana executed on November 16, 2000.

DATES: This action is effective on December 8, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 1, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31305 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–073–00–1990–AC]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will convene on January 9, 2001, from 9:00 a.m. to 4:00 p.m., at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana, 59701.

The topic for the meeting will be a discussion on future issues to be addressed by the Western Montana Resource Advisory Council.

The meeting is open to the public and written comments can be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Jean Nelson-Dean, Resource Advisory Coordinator, at the Butte Field Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702–3388, telephone 406–533–7617.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, Butte Field Manager, 406–494–5059, or Jean Nelson-Dean at the above address and telephone number.

Dated: December 1, 2000.

Richard Hotaling,

Field Manager.

[FR Doc. 00–31260 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 89384; Public Land Order No. 7472]

Withdrawal of Public Land on the Beaverhead River; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,244 acres of public land from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect critical resource values along the Beaverhead River. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052, or Russ Sorensen, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725, 406–683–2337.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect critical resource values along the Beaverhead River:

Principal Meridian, Montana

Tract 1

T. 8 S., R. 10 W.,
  Sec. 35, lots 3 and 4, and NW¼SE¼.
T. 9 S., R. 10 W.,
  Sec. 1, lots 6 to 22, inclusive;
  Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
  Sec. 11, lot 1 and N½, EXCEPTING THEREFROM that tract of land described in the Deed dated June 22, 1946, recorded in Book 110 of Deeds, Page 263, Records of Beaverhead County, Montana;
  Sec. 12, NW¼NE¼, S½NE¼, NW¼, E½SW¼, NW¼SW¼, and SE¼;
  Sec. 13, N½NE¼ and NE¼NW¼, EXCEPTING THEREFROM, Certificate of Survey 889, all those portions conveyed to the State of Montana for State Highway purposes, those portions conveyed for railroad purposes, and those portions taken by the Declaration of Taking dated September 13, 1960.

Tract 2

Certificate of Survey 889, which is a parcel of land located in the NW¼ of sec. 11, sec. 2, and lots 9 and 10 of sec. 1, T. 9 S., R. 10 W.

The area described contains approximately 2,244 acres in Beaverhead County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: November 28, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–31258 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–01–1220–PA]

Notice of Availability and Comment Period for the Public Review of the Draft, BLM National Off-Highway Vehicle (OHV) Management Strategy

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM is developing a Strategy to improve management of vehicle access on the public lands. In response to the first public comment period, BLM has developed a draft strategy document. A public review copy will be available by December 4, 2000 at BLM's website http://www.blm.gov. All members of the public who submitted comments, or signed in at a "listening meeting," and provided a legible address, will receive a copy of the draft Strategy. Copies will also be available at all BLM offices.

DATES: The draft strategy was released on December 4, 2000 via the internet. Public comments should be submitted to BLM's Washington Office by close of business, January 3, 2001.

ADDRESSES: Return comments in writing to: OHV Comment Manager, Bureau of Land Management, Room 204 LS, 1849 C Street NW, Washington D.C. 20236; via the Internet by clicking on the OHV Strategy Link on *http://www.blm.gov*; or via e-mail at: ohv__comment__manager@blm.gov.

FOR FURTHER INFORMATION CONTACT: Jim Keeler at (202) 452–7771, Rodger Schmitt at (202) 452–7738, or Bob Ratcliffe at (202) 452–5040. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background

I. Public Comment Procedures

If you wish to comment, you may submit comments by any one of several methods:

- You may mail comments to: OHV Comment Manager, Bureau of Land Management, Room 204 LS, 1849 C Street NW, Washington D.C. 20240;
- Comments may be delivered to Room 401, 1620 L Street, NW, Washington, DC, 20236;
- A self-addressed mailer is available in printed copies, being sent to all members of the public who submitted comments during the initial comment period, and additional copies of the mailer are available at all BLM offices:
- You may comment via the Internet by following the Links from the BLM Homepage (*http://www.blm.gov*) or by sending comments to ohv__comment__manager@blm.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please include "Attn.: OHV Comment Manager, and your name and return address in your Internet message."

II. Background

Proper management of America's Public lands is vital for the natural ecosystems that they support and for the activities and resources they provide. The use of off-highway vehicles (OHVs) on BLM-administered public lands has increased substantially in recent years, and there has been an increasing concern about the impact of all types of recreational activities, including OHV use, on the 264 million acres of public land resources. The management challenges posed by OHV use in the fast-growing West have become very apparent, especially since the BLM's land-use plans, budgets, and staffing levels have not kept pace with OHV technology and popularity. These factors, along with litigation over OHV management issues, have created the need for a National OHV Management Strategy.

In August 2000, the BLM asked the public for ideas and proposed solutions for improving management of the OHV program. We are again requesting your participation to review this document and give us substantive comments. Because of the immense interest the public has shown in the OHV management on BLM-administered public lands, we are requesting that your comments specifically relate to this document. All comments will be fully considered and evaluated in making any necessary changes in the development of the final National Off-Highway Management Strategy.

Comments, including names and street addresses of respondents will be available for public review at the Bureau of Land Management, Equity Building, Room 204, 1620 L Street NW, Washington, DC from 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 4, 2000.

Henri Bisson,

Assistant Director Renewal Resources and Planning.

[FR Doc. 00–31283 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930; COC–64599]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 12,867 acres of National Forest System lands for 20 years to provide management alternatives. This notice closes this land to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before March 8, 2001.

ADDRESSES: Comments should be sent to the Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On November 27, 2000, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2), subject to valid existing rights:

Sixth Principal Meridian

White River National Forest

T. 5 S., R. 76 W.,
  Sec. 3, W½SE¼;

Sec. 10, W½ and W½E½;
Sec. 14, Lots 1 thru 4, inclusive, N½NW¼, SE¼NW¼, and SE¼SW¼;
Sec. 15, lots 1 and 2, W½, N½NE¼, SW¼NE¼, S½SE¾, and NW¼SE¼.
T. 7 S., R. 77 W.,
Sec. 6, W½SW¼NW¼.
T. 6 S., R. 78 W.,
Sec. 14, lots 1, 2, and 3, S½N½, NW¼SW¾, N½SE¼, and W½W½SW¼SE¼;
Sec. 15, S½N½ and S½;
Sec. 16, SE¼SE¼;
Sec. 21, E½ and E½W½;
Sec. 22;
Sec. 23, lots 1 thru 4, inclusive, S½, W½NE¾ and W½E½NE¼;
Sec. 24, lots 4 thru 7, inclusive;
Sec. 25, lots 11 thru 16, inclusive;
Sec. 26, lots 3 thru 12, inclusive, and NW¼;
Sec. 27;
Sec. 28, E½ and E½E½W½;
Sec. 29, E½NW¼SE¼;
Sec. 33, E¼.
T. 7 S., R. 78 W.,
Sec. 3, S½SW¼ and S½N½SW¼;
Sec. 4, E½E½;
Sec. 7, lands in NW¼SW¼ and SE¼SE¼;
Sec. 9, E½E½;
Sec. 10, S½, NW¼, and S½NE¼;
Sec. 11, S½SW¼ and NW¼SW¼;
Sec. 12, NW¼SE¼;
Sec. 13, NW¼NW¼;
Sec. 14, N½;
Sec. 15, N½;
Sec. 16, E½NE¼.
T. 6 S., R. 79 W.,
Sec. 27, W½NE¼NE¼, W½NE¼, N½SE¼NE¼, SW¼SE¼NE¼, E½NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, N½NW¼SE¼, SW½NW½SE¼, and NW¼NE¼SE¼;
Sec. 34, S½NW¼, NW¼NW¼, SW¼NE¼NW¼, and SW¼.
T. 7 S., R. 79 W.,
Sec. 3, NW¼, W½E½SW¼, W½SW¼, and SE¼SE¼SW¼;
Sec. 4, E½;
Sec. 9, E½;
Sec. 10, S½, NW¼, S½NW¼NE¼, SW¼NE¼, NW¼NW¼NE¼ and SW¼SE¼NE¼;
Sec. 11, S½S½, S½N½S½, and N½NW¼SW¼;
Sec. 12, S½S½ and S½N½S½;
Sec. 14, N½N½.
T. 5 S., R. 80 W.,
Sec. 19, lot 3 and 4, and E½SW¼;
Sec. 30 NW¼, W½NE¼, and N½S½.
T. 5 S., R. 81 W.,
Sec. 24, lots 1, 2,and 6 thru 13 inclusive;
Sec. 25, lots 1 thru 8, inclusive.
T. 5 S., R. 82 W.,
Sec. 22, N½NE¼, SW¼NE¼, and NW¼SE¼.

The areas described aggregate approximately 12,867 acres of National Forest System lands in Eagle and Summit Counties. This order excludes any privately owned lands within the described areas.

The purpose of this withdrawal is to allow the Forest Service management alternatives in managing these lands.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. A public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the time and place of the meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above, unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 00–31259 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Caribe General Electric Products, Inc., et al.*, Civil Action No. 002482CC (D.P.R.), was lodged on November 21, 2000, with the United States District Court for the District of Puerto Rico. The proposed consent decree resolves certain claims of the United States against two potentially responsible parties ("Settling Defendants") at the Vega Alta Public Supply Wells Superfund Site (the "Site") located in Vega Alta, Puerto Rico, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The Settling Defendants include Caribe General Electric Products, Inc. ("Caribe GE") and Unisys Corporation ("Unisys"). Caribe GE currently has manufacturing operations at the Site, and predecessors of Unisys, the Puerto Rico Card Corporation and the Sperry Rand Corporation, previously had manufacturing operations at the Site.

Under the proposed consent decree, the Settling Defendants will pay $1,119,650, plus interest accruing from July 1, 2000 through the date of payment, in reimbursement of certain past response costs incurred by the United States at the Site. The consent decree includes a covenant not to sue by the United States under Section 107 of CERCLA, 42 U.S.C. 9607, for Past Response Costs, which are defined to include all costs, including, but not limited to, direct and indirect costs, that (i) the Environmental Protection Agency ("EPA") paid at or in connection with the Site from November 30, 1993 through January 16, 1999, (ii) the Department of Justice, on behalf of EPA, paid at or in connection with the Site from September 30, 1993 through May 31, 1999, and (iii) accrued interest on all such costs.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Caribe General Electric Products, Inc., et al.*, DOJ Ref. Number 90–11–3–269/2.

The proposed consent decree may be examined at the offices of the United States Attorney for the District of Puerto Rico, Federal Building, Room 101, Carlos Chandon Avenue, Hato Rey, Puerto Rico 00918 (Contact Isabel Munoz, 787–766–5656). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044.

In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs),

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31263 Filed 12–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree in the case captioned *United States and the State of Indiana* v. *The Dow Chemical Company*, Civil Action No. IP001841–C–T/G (S.D. Ind.), was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division, on November 27, 2000, pertaining to the Dow Chemical Site (the "Site"), located near Zionsville, in Boone County, Indiana. The proposed consent decree would resolve certain civil claims of the United States and the State of Indiana against The Dow Chemical Company ("Dow") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, for damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances from the Site.

Under the proposed consent decree, Dow would donate an uncontaminated northern portion of the Site—comprising approximately 17 acres of floodplain habitat along Eagle Creek—to the Zionsville Park and Recreation Board (an agency of the Town of Zionsville, Indiana) for the purpose of restoration, replacement, or protection of natural resources similar to those found on other portions of the Site damaged by releases and threatened releases of hazardous substances. Pursuant to a conservation easement and declaration of restrictive covenants enforceable by the State of Indiana's Department of Natural Resources, the Eagle Creek property would be preserved in perpetuity for specified conservation—and recreation-related purposes.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Indiana* v. *The Dow Chemical Company*, Civil Action No. IP001841–C–T/G (S.D. Ind.) and DOJ Reference No. 90–11–3–07049.

The proposed consent decree may be examined by appointment at the Office of the United States Attorney for the Southern District of Indiana, 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204 (contact Harold Bickham (317–226–6333)). A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting copies, please refer to the referenced case and DOJ Reference Number, and enclose a check for $10.25 (41 pages at 25 cents per page reproduction cost), made payable to the Consent Decree Library.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31262 Filed 12–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and Resource Conservation and Recovery Act

Notice is hereby given that on November 27, 2000, a proposed Consent Decree in *United States* v. *Turtle Mountain Manufacturing Company* (D. North Dakota), Civil Action No. A4–00–139, was lodged with the United States District Court for the District of North Dakota.

This Consent Decree represents a settlement of claims brought against defendant ("Settling Defendant") in the above-referenced action brought under Section 309 of the Clean Water Act, 33 U.S.C. 1319, for failure to: (1) Comply with general pretreatment requirements for reporting noncompliance and other information, (2) comply with specific discharge limits under the Metal Finishing Point Source Category pretreatment standards, (3) sample and submit storm water discharge monitoring reports as required under its NPDES general permit, and (4) comply with a Section 308 information request requiring monthly monitoring and reporting of process wastewater discharges. Additionally, the proposed Consent Decree represents a settlement of claims against Settling Defendant under Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928, for failure to comply with numerous regulations pertaining to storage and management of hazardous waste and used oil applicable to generators of such items.

Under the proposed settlement, the Settling Defendant would be required to pay a civil penalty of $100,000 for violations of the Clean Water Act, and Resource Conservation and Recovery Act. The proposed settlement also requires Settling Defendant to immediately comply with all applicable general pretreatment provisions, metal finishing point source pretreatment requirements and its storm water NPDES general permit for its metal parts manufacturing facility near Belcourt, North Dakota. Additionally, the proposed settlement further requires Settling Defendant to immediately comply with all applicable requirements for generators of hazardous waste and used oil from its manufacturing facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Turtle Mountain Manufacturing Company* (D. North Dakota), D.J. Ref. 90–7–1–06492.

The Consent Decree may be examined at the Office of the United States Attorney, 655 1st Avenue, North, Suite 250, Fargo, North Dakota 58102, and at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. A copy of the Consent Decree may be also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31261 Filed 12–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal

statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
ME000001 (Feb. 11, 2000)
ME000002 (Feb. 11, 2000)
ME000003 (Feb. 11, 2000)
ME000004 (Feb. 11, 2000)
ME000005 (Feb. 11, 2000)
ME000006 (Feb. 11, 2000)
ME000007 (Feb. 11, 2000)
ME000008 (Feb. 11, 2000)
ME000009 (Feb. 11, 2000)
ME000010 (Feb. 11, 2000)
ME000011 (Feb. 11, 2000)
New York
NY000008 (Feb. 11, 2000)
NY000037 (Feb. 11, 2000)
Vermont
VT000041 (Feb. 11, 2000)

Volume II

Pennsylvania
PA000001 (Feb. 11, 2000)
PA000007 (Feb. 11, 2000)
PA000011 (Feb. 11, 2000)
PA000015 (Feb. 11, 2000)
PA000032 (Feb. 11, 2000)

Volume III

Florida
FL000009 (Feb. 11, 2000)
Mississippi
MS000057 (Feb. 11, 2000)

Volume IV

Michigan
MI000051 (Feb. 11, 2000)
MI000060 (Feb. 11, 2000)
MI000062 (Feb. 11, 2000)
MI000063 (Feb. 11, 2000)
MI000064 (Feb. 11, 2000)
MI000066 (Feb. 11, 2000)
MI000067 (Feb. 11, 2000)
MI000068 (Feb. 11, 2000)
MI000069 (Feb. 11, 2000)
MI000070 (Feb. 11, 2000)
MI000071 (Feb. 11, 2000)
MI000072 (Feb. 11, 2000)
MI000073 (Feb. 11, 2000)
MI000074 (Feb. 11, 2000)
MI000075 (Feb. 11, 2000)

Volume V

Arkansas
AR000001 (Feb. 11, 2000)
AR000003 (Feb. 11, 2000)
AR000008 (Feb. 11, 2000)
AR000023 (Feb. 11, 2000)
AR000027 (Feb. 11, 2000)
Iowa
IA000002 (Feb. 11, 2000)
IA000004 (Feb. 11, 2000)
IA000005 (Feb. 11, 2000)
IA000014 (Feb. 11, 2000)
IA000017 (Feb. 11, 2000)
Kansas
KS000008 (Feb. 11, 2000)
KS000015 (Feb. 11, 2000)
KS000016 (Feb. 11, 2000)
KS000022 (Feb. 11, 2000)
KS000069 (Feb. 11, 2000)
KS000070 (Feb. 11, 2000)
New Mexico
NM000001 (Feb. 11, 2000)
NM000005 (Feb. 11, 2000)
Oklahoma
OK000013 (Feb. 11, 2000)
OK000014 (Feb. 11, 2000)
OK000015 (Feb. 11, 2000)
OK000017 (Feb. 11, 2000)
OK000018 (Feb. 11, 2000)
OK000031 (Feb. 11, 2000)
OK000032 (Feb. 11, 2000)
Texas
TX000001 (Feb. 11, 2000)
TX000002 (Feb. 11, 2000)
TX000007 (Feb. 11, 2000)
TX000008 (Feb. 11, 2000)
TX000019 (Feb. 11, 2000)
TX000069 (Feb. 11, 2000)
TX000081 (Feb. 11, 2000)

Volume VI

Oregon
OR000001 (Feb. 11, 2000)
Washington
WA000001 (Feb. 11, 2000)
WA000002 (Feb. 11, 2000)
WA000003 (Feb. 11, 2000)
WA000005 (Feb. 11, 2000)
WA000008 (Feb. 11, 2000)
WA000011 (Feb. 11, 2000)
WA000013 (Feb. 11, 2000)
Wyoming
WY000004 (Feb. 11, 2000)
WY000008 (Feb. 11, 2000)
WY000009 (Feb. 11, 2000)

Volume VII

California
CA000001 (Feb. 11, 2000)
CA000002 (Feb. 11, 2000)
CA000004 (Feb. 11, 2000)
CA000009 (Feb. 11, 2000)
CA000028 (Feb. 11, 2000)
CA000029 (Feb. 11, 2000)
CA000030 (Feb. 11, 2000)
CA000032 (Feb. 11, 2000)
CA000033 (Feb. 11, 2000)
CA000034 (Feb. 11, 2000)
CA000035 (Feb. 11, 2000)
CA000036 (Feb. 11, 2000)
CA000037 (Feb. 11, 2000)
CA000038 (Feb. 11, 2000)
CA000039 (Feb. 11, 2000)
CA000040 (Feb. 11, 2000)
CA000041 (Feb. 11, 2000)
Nevada
NV000001 (Feb. 11, 2000)
NV000002 (Feb. 11, 2000)
NV000004 (Feb. 11, 2000)
NV000005 (Feb. 11, 2000)
NV000006 (Feb. 11, 2000)
NV000007 (Feb. 11, 2000)
NV000009 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest. since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the years, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 30th day of November 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–31019 Filed 12–7–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–140)]

NASA Advisory Committee; Notice of Establishment

AGENCY: National Aeronautics and Space Administration (NASA).

The Administrator of the National Aeronautics and Space Administration has determined that the establishment of a Planetary Protection Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Planetary Protection Advisory Committee.

Purpose and Objective: Primarily to advise on Agency programs, policies, plans and other matters pertaining to NASA's responsibilities for planetary protection. These responsibilities for planetary protection are outlined in NASA Policy Directive 8020.7E, "Biological Contamination Control for Outbound and Inbound Planetary Spacecraft." The Committee will provide a forum for advice on interagency coordination and intergovernmental planning related to planetary protection. Additionally, the Committee will review and recommend appropriate planetary protection categorizations for all bodies of the solar system to which spacecraft will be sent.

Balanced Membership Plans: The Committee will consist of 15 to 20 members selected to ensure a balanced representation among industry, academia, and Government with recognized knowledge and expertise in scientific, technological, and programmatic fields relevant to planetary protection. These programmatic fields include: astrobiology, planetary materials and environments, engineering risk analysis, risk management, risk communication, microbial ecology, molecular biology, biological containment, science/technology, science ethics, applicable law, and public health.

Duration: Continuing.

Responsible NASA Official: Dr. John D. Rummel, Planetary Protection Officer, Office of Space Science, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, telephone 202/358–0702.

Dated: December 4, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–31286 Filed 12–7–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in Federal Register notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before January 22, 2001. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for

the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@arch2.nara.gov.*

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@arch2.nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N9–136–01–1, 24 items, 24 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to overall agency administrative management and to the programs and activities of the agency's Cotton Division, Dairy Division, Fruit and Vegetable Division, Livestock and Seed Division, Poultry Division, Science and Technology Division, Tobacco Division, and Transportation and Marketing Division. Included are electronic copies associated with such records as correspondence files, directives, publications, research studies, purchase program dockets, and commodity procurement files. This schedule follows Model 2 as described in the Supplementary Information section of this notice. Recordkeeping copies of these files are included in the agency's Records Management Handbook under file codes 6000–9999.

2. Department of Health and Human Services, Agency for Healthcare Research and Quality (N9–510–01–1, 70 items, 70 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to agency administrative and program activities. Included are electronic copies associated with such records as subject files of the Administrator and Deputy Director, equal employment opportunity case files, interagency agreements, delegations of authority, grant files, reports to Congress, directives, strategic planning files, task force and committee minutes, publications, press releases, and reading files. This schedule follows Model 1 as described in the Supplementary Information section of this notice in that it adds disposition instructions for the electronic copies associated with individual file series of records. However, it only includes the titles, not the series descriptions, of the recordkeeping files. Recordkeeping copies of these files are included in Disposition Job N1–510–94–1, which may be requested in accordance with the procedures outlined in the Summary section of this notice.

Dated: November 30, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–31237 Filed 12–7–00; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Library Services; Submission for OMB Review, Comment Request; Evaluation Professional Services Program

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum Services has submitted the following public information request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35) Currently, the Institute of Museum and Library Services is soliciting comment concerning a new collections entitled, Evaluation Professional Services Program.

A copy of the proposed instrument, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director Office of Research and Technology, Rebecca Danvers (202) 606–2478. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), by (insert 30 days from publication).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaulate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Background

Type of Review: New.

Agency: Institute of Museum and Library Services.

Title: Evaluation Professional Services Program.

OMB Number: N/A.

Affected Publics: museums.

Total Respondents: 400.

Frequency: once.

Total Responses: 400.

Average Time per Response: 10–45 minutes.

Estimated Total Burden Hours: 78 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

Dated: December 4, 2000.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 00–31295 Filed 12–7–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 24 and 25, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31265 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 29 and 30, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31266 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 24, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31267 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 21 and 22, 2001, 8 a.m., to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matter are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31268 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computing-Communications Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Computing-Communications Research (1192):

Dates/Times: December 11, 2000; 8 a.m.–5 p.m.; December 15, 2000; 8 a.m.–5 p.m.; and December 18, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Mukesh Singhal, National Science Foundation, 4201 Wilson Boulevard, Room 1145, Arlington, VA 22230. Telephone: (703) 292–8918.

Type of Meeting: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate OSC CAREER proposals as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31269 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: January 6, 2001, 8:00 am–5:30 pm.

Place: Hyatt Regency Westshore Hotel, Tampa, FL.

Type of Meeting: Closed.

Contact Person: Dr. Ronald Rardin, Program Directors, DMII, (703) 292–8330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31271 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Oversight Council for the International Arctic Research Center; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Oversight Council for the International Arctic Research Center (9535).

Date/Time: January 4, 2001, 9 a.m. to 4 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Charles Myers, National Science Foundation, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–7434.

Purpose of Meeting: To provide advice and recommendations concerning further support for the International Arctic Research Center (IARC).

Agenda: To review and evaluate the current and proposed activities of the IARC.

Reason for Closing: The information being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the IARC. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31270 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

In the Matter of El Paso Electric Company (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Order Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments

I

El Paso Electric Company (EPE) holds minority ownership interests (both owned and leased) in Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, and in connection therewith is a holder of Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde. The facility is located in Maricopa County, Arizona. Other co-licensees for Palo Verde are Arizona Public Service Company (APS) (owner or lessee of 29.1 percent share of each of the three units), Salt River Project Agricultural Improvement and Power District (owner of a 17.49 percent share), Public Service Company of New Mexico (owner of a 10.2 percent share), Southern California Edison Company (owner of a 15.8 percent share), Southern California Public Power Authority (owner of a 5.91 percent share), and Los Angeles Department of Water and Power (owner of a 5.7 percent share). By letter dated September 29, 2000, the Commission approved the indirect transfer of the Public Service Company of New Mexico licenses to a new holding company, and a change of its name to Manzano Energy Corporation. The name change will become effective at the time the restructuring of Public Service Company of New Mexico is completed. APS is the licensed operator of the Palo Verde units. The remaining licensees hold possession-only licenses.

II

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, EPE filed an application dated July 6, 2000, as supplemented by letter dated July 7, 2000, from counsel for EPE, requesting approval of the indirect transfer of the Palo Verde licenses, to the extent held by EPE, to a new holding company, El Paso Electric Incorporated. El Paso Electric Incorporated was created to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62–3A–1 through 23 (1999). The proposed restructuring involves the formation of El Paso Electric Incorporated, EPE becoming a direct subsidiary of El Paso Electric Incorporated, and a change in EPE's name to MiraSol Generating Company. By application dated October 3, 2000, APS requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments to reflect in the Palo Verde licenses the name change of EPE to MiraSol Generating Company that will occur in connection with the restructuring. APS will retain its existing ownership interest in, and remain the licensed operator of, Palo Verde, after the restructuring of EPE, and is not otherwise involved in the restructuring. Similarly, none of the other co-licensees are involved in the restructuring of EPE. No physical changes to the facility or operational changes are proposed in the applications filed by EPE and APS. Notice of the applications and an opportunity for hearing was published in the **Federal Register** on November 2, 2000 (65 FR 65885, as corrected at 65 FR 70637). No written comments or hearing requests were filed.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information provided by EPE in its application, the supplement thereto, and other information before the Commission, the NRC staff has determined that the proposed restructuring will not affect the qualifications of EPE to hold the licenses referenced above to the same extent now held by EPE, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public: and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a safety evaluation dated December 4, 2000.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the proposed restructuring of EPE and indirect license transfers is approved, subject to the following conditions:

1. MiraSol Generating Company shall continue to provide decommissioning funding assurance, to be held in its decommissioning trusts for Palo Verde Nuclear Generating Station, Units 1, 2, and 3, from the date of the indirect license transfers, as represented in the respective July 6, 2000, application. In addition, MiraSol Generating Company will ensure that its contractual arrangements with its transmission and distribution affiliate to obtain necessary decommissioning funds for Palo Verde through nonbypassable charges will be established and maintained until the decommissioning trust is fully funded.

2. MiraSol Generating Company shall enter into an agreement with its transmission and distribution affiliate that shall require the deposit of funds collected for decommissioning funding from wires charges into MiraSol Generating Company's decommissioning trust accounts. A copy of the agreement shall be forwarded to the NRC before the completion of the proposed restructuring of EPE.

3. MiraSol Generating Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the July 6, 2000, application, as supplemented, and the requirements of this Order approving the respective indirect transfers, and consistent with the safety evaluation supporting this Order.

4. MiraSol Generating Company shall inform the Director of the Office of Nuclear Reactor Regulation, within 30 days of approval by, respectively, the Texas Public Utilities Commission and the New Mexico Public Regulation Commission, of the nonbypassable charge mechanism of recovering decommissioning costs. Within such 30-day period, MiraSol Generating Company shall state the total decommissioning costs subject to nonbypassable charge recovery and the schedule for funding decommissioning costs.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), license amendments, as indicated in Enclosure 2 to the cover letter forwarding this Order, to reflect the subject restructuring action and conditions of this Order are approved. The amendments shall be issued and made effective at the time the proposed restructuring action is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the application dated July 6, 2000, supplemental submittals dated July 7 and October 3, 2000, and the safety evaluation dated December 4, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link on the NRC Web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 4th day of December 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31294 Filed 12–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–9 and 72–20]

Department of Energy; Fort St. Vrain and Three Mile Island, Unit 2, Independent Spent Fuel Storage Installations; Notice of Docketing of Materials Licenses SNM–2504 and SNM–2508 Amendment Applications

By letter dated August 30, 2000, the U.S. Department of Energy (DOE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR Part 72, requesting the amendment of the Fort St. Vrain (FSV) and Three Mile Island, Unit 2 (TMI–2) independent spent fuel storage installation (ISFSI) licenses, SNM–2504 and SNM–2508, respectively. The FSV ISFSI is located at Weld County, Colorado, and the TMI–2 ISFSI is located at Idaho Falls, Idaho. In accordance with the requirements of 10 CFR 73.21(h), DOE is seeking Commission approval to use a new plan for safeguards information protection for both ISFSIs. The requested changes do not appear to affect the design, operation, maintenance, or surveillance of the ISFSIs.

These applications were docketed under 10 CFR Part 72; the ISFSI Docket No. for FSV is 72–9 and the Docket No. for TMI–2 is 72–20 and will remain the same for these actions. The amendment of both ISFSI licenses are subject to the Commission's approval and may take place under separate actions.

The Director, Office of Nuclear Material Safety and Safeguards, or his designee, will determine if the amendments present a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendments in accordance with 10 CFR 72.46(b)(2).

For further details with respect to this application, see the application dated August 30, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 30th day of November 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–31293 Filed 12–7–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27288]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 1, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 26, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 26, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–9525)

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company under the Act, and its nonutility subsidiaries National Fuel Gas Supply Corporation ("Supply"), 10 Lafayette Square, Buffalo, New York 14203; National Fuel Resources, Inc. ("Resources"), 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221; Seneca Resources Corporation ("Seneca"); and Upstate Energy, Inc. ("Upstate Energy," and together with Supply, Resources and Seneca, the "Nonutility Subsidiaries"), both located at 1201 Louisiana Street, Suite 400, Houston, Texas 77002, have filed a post-effective amendment, under sections 9(a) and 10 of the Act and rule 54 under the Act, to a previously filed application.

By order dated December 16, 1999 (Holding Co. Act Release No. 27144) ("Prior Order"), the Commission authorized NFG through its Nonutility Subsidiaries, to acquire the equity and debt securities of one or more companies that are engaged in, or that are formed to engage in, certain categories of nonutility gas-related operations outside the United States ("Foreign Energy Affiliates") through December 31, 2003 ("Authorization Period"). Specifically, the Commission authorized NFG and the Nonutility Subsidiaries to invest up to $300 million ("Investment Limitation") during the Authorization Period in the securities of Foreign Energy Affiliates. NFG and the Nonutility Subsidiaries now request that the Investment Limitation be increased to $800 million.

In accordance with the Prior Order, Seneca formed National Fuel Exploration Corporation ("Exploration"), which is NFG's only Foreign Energy Affiliate to date. NFG has invested approximately $231.6 million in the activities of Exploration. NFG and the Nonutility Subsidiaries state that they intend to use the increased investment authority as needed to enable development of Exploration's assets, which include 1.8 million undeveloped acres in Alberta, Saskatchewan, and Manitoba, Canada.

Allegheny Energy, Inc., et al. (70–9627)

Allegheny Energy, Inc. ("Allegheny"), a public utility holding company registered under the Act, Allegheny Energy Service Corporation, a service subsidiary of Allegheny, and the Potomac Edison Company ("Potomac Edison"), a wholly owned public utility electric subsidiary of Allegheny, all located at 10435 Downsville Pike, Hagerstown, Maryland 21740, and Allegheny Energy Supply Company, LLC ("Genco"), a wholly owned nonutility subsidiary of Allegheny located at R.R. 12, P.O. Box 1000, Roseytown, Pennsylvania 15601 (collectively, "Applicants"), have filed a post-effective amendment to an application-declaration under sections 9(a), 10, and 12(d) and rule 54 of the Act.

By order dated July 31, 2000 (Holding Co. Act Release No. 27205) ("Prior Order"), Potomac Edison, was authorized, among other things, to transfer Genco its undivided ownership interests in certain jointly held and certain wholly owned generating facilities and related fixed assets ("Generating Assets"), consisting of: a 25% interest in the Fort Martin Power station located in Maidsville, West Virginia; a 33% interest in the Albright Power Station located in Albright, West Virginia; a 32.76% interest in the Harrison Power Station located in Shinnston, West Virginia; a 20% interest in the Hatfield's Ferry Power Station located in Masontown, Pennsylvania; a 30% interest in the Pleasants Power Station, located in Saint Mary's, West Virginia; a 100% interest in the R. Paul Smith Station and R. Paul Smith Ash Basin both located in Williamsport, Maryland; and a 100% interest in the Millville, Dam #4 and Dam #5 hydro stations located in West Virginia.

Applicants request authority for Potomac Edison to lease from Genco all or a portion of the ownership interests in the Generating Assets previously sold by Potomac Edison to Genco in accordance with the Prior Order. Applicants state that the lease agreement will enable Potomac Edison to minimize certain taxes imposed by the state of West Virginia in connection with the distribution of electricity by Potomac Edison in that state. The amounts payable to Potomac Edison under the lease agreement will be computed at cost.

Madison Gas and Electric Company (70–9791)

Madison Gas and Electric Company ("MG&E"), a Wisconsin electric and gas utility company, currently not subject to the Act, 133 South Blair Street, P.O. Box 1231, Madison, Wisconsin 53701–1231, has filed an application ("Application") under sections 9(a)(2) and 10 of the Act.

MG&E is requesting approval of a proposed transaction in which: (i) MG&E will transfer ownership and control over its transmission assets to American Transmission Company, LLC, ("Transco"), a Wisconsin limited liability company formed on June 12, 2000, that will be a single-purpose transmission company; (ii) MG&E will receive, in exchange, member units of Transco in proportion to the value of the transmission assets transferred; (iii) MG&E will purchase Class A shares of ATC Management, Inc., ("Corporate Manager"), a Wisconsin corporation formed on June 12, 2000, in proportion to the value of the transmission assets transferred; and (iv) MG&E will purchase one Class B share of the Corporate Manager.

MG&E is a Wisconsin corporation that generates, transmits and distributes electricity in Dane County, Wisconsin, in an area covering approximately 250 square miles. MG&E also purchases, transports and distributes natural gas throughout a 1,325 square mile area in Dane and six other Wisconsin counties. MG&E is a "public utility" under section 2(a)(5) of the Act and is both an "electric utility" and a "gas utility" under sections 2(a)(3) and (4) respectively.

In 1999, the state of Wisconsin enacted legislation that facilitates the formation of Transco, which will be a single-purpose transmission company. All Transco participants will ultimately own direct or indirect interests in the Transco and the Manager in proportion to the value of the transmission assets each participant contributes to the Transco.

For the purpose of establishing relative shares of member units that contributing utilities will receive, the transferred transmission assets will be valued at their "Contribution Value," defined as original cost, less accumulated depreciation (as adjusted on a dollar-for-dollar basis for deferred taxes), excess deferred taxes and deferred investment tax credits. The resulting shares will then be adjusted based on various factors and the level of participation by transmission-dependent utilities which may acquire member units in Transco for cash based upon their 1999 Wisconsin load-ratio shares. It is expected that MGE's Contribution Value at December 31, 2000, exclusive of land rights, will be approximately $40.1 million, and its initial interest in the Transco will approximate 5.31%. These ownership percentages may fluctuate based on various factors, including the number of participants in the Transco. MG&E is currently not a holding company as defined in section 2(a)(7) of the Act, and as MG&E is not expected to own an interest of 10% or more in either the Transco or the Corporate Manager, it is not expected that MG&E will become a holding company as a result of the proposed transaction.

It is expected that the participants in Transco and the Corporate Manager ("Member Utilities") will include, in addition to MG&E, (i) WPS Resources Corporation ("WPSC"), an exempt public utility holding company; (ii) Wisconsin Public Service Corporation, one of WPSC wholly-owned public utility subsidiaries; (iii) Wisconsin Power and Light Company ("WPL"), a public utility and an exempt public utility holding company; (iv) South Beloit Water, Gas and Electric Company (a wholly owned public utility subsidiary of WPL); (v) Wisconsin Energy Corporation ("WEC"), an exempt public utility holding company; (vi) Wisconsin Electric Power Company, a wholly owned subsidiary of WEC; (vii) Edison Sault Electric Company, a wholly owned utility subsidiary of WEC; and (viii) Wisconsin Public Power, Inc., a municipal electric utility company owned by thirty Wisconsin municipalities. All the Member Utilities will ultimately own a direct or indirect interest in Transco and Corporate Manager in proportion to the value of the transmission assets each transfers to Transco. Other transmission-owning utilities may, in the future, decide to become Member Utilities. The Application seeks approval of a transaction parallel to that described in applicants filed by Wisconsin Energy Corporation, *et al.* (SEC File No. 70–9741), and WPS Resources Corporation, *et al.* (SEC File 70–9767), notices of which were issued in Holding Co. Act Release No. 27278 (November 17, 2000); by Alliant Energy Corporation, *et al.* (SEC File No. 70–9735), notice of which was issued in Holding Co. Act Release No. 27285 (November 27, 2000).

MG&E and the other Member Utilities intent to transfer their transmission assets to Transco on or about January 1,

2001 ("Operations Date"). The transmission assets that MGE plans to transfer to Transco comprise (i) transmission lines (including towers, poles, and conductors); (ii) transformers providing transformation within the bulk transmission system and between the bulk and area transmission systems; and (iii) substations that solely provide a transmission function. For purposes of establishing relative shares, the transferred transmission assets will be valued at their contribution value ("Contribution Value"), which is defined as original cost less accumulated depreciation, as adjusted on a dollar-for-dollar basis for deferred taxes, excess deferred taxes and deferred investment credits. Transco is expected to transfer operational control of its assets to the Midwest Independent System Operator by November 1, 2001.

Corporate Manager will manage Transco and will also initially hold a small portion, less than 1%, of Transco's membership interests. It will employ all personnel necessary to operate Transco and all of its expenses will be treated as Transco expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31272 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24781; 812–12150]

Nations Fund Trust, et al.; Notice of Application

December 1, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on section 12(d)(1)(G) of the Act to invest in certain securities and other financial instruments.

APPLICANTS: Nations Fund Trust ("NFT"), Nations Fund, Inc. ("NFI"), Nations Reserves ("NR"), Nations Funds Trust ("NFST"), Nations Annuity Trust ("NAT") and Nations Master Investment Trust ("NMIT") (individually, a "Company" and collectively, the "Companies"), and Banc of America Advisors, Inc. (together with any successor, "BAAI").[1]

FILING DATES: The application was filed on June 27, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Robert B. Carroll, Esq., Bank of America Corporation, One Bank Of America Plaza, NC1–002–33–31, 101 South Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Jean. E. Minarick, Senior Counsel, at (202) 942–0527, or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representation

1. The Companies are all members of the Nations Funds, a family of funds currently including more than seventy funds. Each Company is an open-end management investment company registered under the Act and is organized as a Massachusetts or Delaware business trust, or a Maryland corporation. BAAI serves as the investment adviser to each Fund (as defined below), except the Funds which are "feeder" funds that invest all of their assets in the portfolios of NMIT and have no direct investment advisory arrangement. Nations Equity Income Fund is a series of NFI. Nations Equity Income Fund seeks to provide current income and growth of capital by investing in companies with above-average dividend yields. Nations Convertible Securities Fund is a series of NR. Nations Convertible Securities Fund seeks to provide investors with a total investment return, comprised of current income and capital appreciation, consistent with prudent investment risk.

2. Nations Equity Income Fund will invest in shares of Nations Convertible Securities Fund, and will invest directly in certain debt and equity securities or other financial instruments ("Other Securities").[2] Applicants request that the relief also apply to (a) any existing or future registered open-end management investment company advised by BAAI, or any entity controlling, controlled by, or under common control with BAAI (also a "Company"), and (b) any existing of future series of any Company advised by BAAI, or any entity controlling, controlled by, or under common control with BAAI (individually, a "Fund" and collectively, the "Funds") that is a series of, or part of the same "group of investment companies" (as defined in Section 12(d)(1)(G)(ii) of the Act) as NFT, NFI, NR, NFST, NAT and NMIT (any such Company or Fund that invests in an Underlying Fund (as defined below) is an "Upper Tier Fund"). Any registered open-end management investment company (or series thereof) or registered unit investment trust whose shares are purchased by an Upper Tier Fund and which is part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Upper Tier Fund is an "Underlying Fund."[3]

3. Applicants state that BAAI may, but is not required to, reduce or waive advisory fees relating to an Upper Tier Fund's investment in shares of an Underlying Fund. Applicants further state that Nations Equity Income Fund intends to invest only in Primary A Shares of the Nations Convertible Securities Fund, which are not subject to front-end or contingent deferred sales charges, distribution fees, or shareholder servicing fees.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more that 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that an Upper Tier Fund's investments will include shares of one or more Underlying Funds as well as Other Securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting the Upper Tier Funds to invest in the Underlying Funds and Other Securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of directors of NFI (on behalf of Nations Equity Income Fund) or any other Company (on behalf of another Upper Tier Fund), including a majority of the independent directors who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract; provided, however, that no such finding will be necessary if: (a) The Upper Tier Fund pays no advisory fee on assets invested in an Underlying Fund; or (b) the Upper Tier Fund pays an advisory fee on asserts invested in an Underlying Fund and either (i) the Underlying Fund pays no advisory fee, or (ii) the advisory fee paid by the Upper Tier Fund is reduced by the proportional amount of the advisory fee paid by the Underlying Funds with respect to the shares held by the Upper Tier Fund. If a finding is necessary, the finding, and the basis upon which the finding was made, will be recorded fully in the minute books of NFI or other relevant Company (on behalf of another Upper Tier Fund).

2. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts Nations Equity Income Fund or any Upper Tier Fund from investing in Other Securities as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31274 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

[1] The term "successor" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization or other type of restructuring within the group of entities controlled by Bank of America Corporation.

[2] These investments will not include shares of any registered investment companies that are not in the same group of investment companies as the Companies.

[3] All existing investment companies that currently intend to rely on the order are named as applicants. Any registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24780; 812–12316]

Vision Group of Funds, et al.; Notice of Application

December 1, 2000.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the proposed reorganizations of eleven series (the "Acquired Funds") of Governor Funds with and into eleven series of Vision Group of Funds ("Vision Funds") (the "Acquiring Funds," and together with the Acquired Funds, the "Funds"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Vision Funds, Governor Funds, Manufacturers and Traders Trust Company ("M&T Bank"), Governor Funds, and Martindale Andres & Company LLC ("Martindale").

FILING DATES: The application was filed on November 3, 2000. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Victor R. Siclari, Esq., Federated Services Company, Federated Investors Tower—12th Floor, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Christine Y. Greenlees, Branch Chief, at (202) 942–

0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Vision Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and currently offers eighteen series (the "Vision Series"). Eleven of the Vision Series, Vision Treasury Money Market Fund, Vision Large Cap Core Fund, Vision Institutional Prime Money Market Fund, Vision Small Cap Stock Fund, Vision International Equity Fund, Vision Intermediate Term Bond Fund, Vision Institutional Limited Duration U.S. Government Fund, Vision Pennsylvania Municipal Income Fund, Vision Managed Allocation Fund—Conservative Growth, Vision Managed Allocation Fund—Moderate Growth, and Vision Managed Allocation Fund—Aggressive Growth, are Acquiring Funds. All of the Acquiring Funds except Vision Treasury Money Market Fund and Vision Large Cap Core Fund were recently organized for purposes of the proposed Reorganizations (as defined below).

2. Governor Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and currently offers eleven series, which are Acquired Funds: Governor Prime Money Market Fund, Governor U.S. Treasury Obligations Money Market Fund, Governor Established Growth Fund, Governor Aggressive Growth Fund, Governor International Equity Fund, Governor Intermediate Term Income Fund, Governor Limited Duration Government Securities Fund, Governor Pennsylvania Municipal Bond Fund, Governor Lifestyle Conservative Growth Fund, Governor Lifestyle Moderate Growth Fund, and Governor Lifestyle Growth Fund.

3. M&T Bank serves as investment adviser to each Acquiring Fund. M&T Bank is not currently required to register as an investment adviser pursuant to section 202(a)(11)(A) of the Investment Advisers Act of 1940 ("Advisers Act"). M&T Bank is the principal banking subsidiary of M&T Bank Corporation, a regional bank holding company.

4. Martindale is an investment adviser registered under the Advisers Act and serves as investment adviser to each of the Acquired Funds. In addition, Martindale will be the sub-adviser of the Vision Small Cap Stock Fund. Martindale is a subsidiary of M&T Bank Corporation. Brinson Partners, Inc., an investment adviser registered under the Advisers Act, is the current sub-adviser to the Governor International Equity Fund and will be the sub-adviser for the corresponding Vision International Equity Fund.

5. M&T Bank and/or certain affiliated persons of M&T Bank (M&T Bank and such affiliated persons are collectively referred to as "M&T Bank Affiliates") hold of record for the benefit of others, in trust, agency, custodial or other fiduciary or representative capacity, more than 5% (in some cases, more than 25%) of the total outstanding shares of certain of the Acquired Funds.

6. On August 11, 2000 and October 27, 2000, the board of trustees of Vision Funds ("Vision Board") and the board of trustees of Governor Funds ("Governor Board" and together with the Vision Board, the "Boards"), respectively, including all the trustees who are not "interested persons" of those Funds, as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), approved the respective agreements and plans or reorganization entered into between Vision Funds and Governor Funds (the "Plans"). Under the Plans, each Acquired Fund will acquire all, or substantially all, of the assets and liabilities of the corresponding Acquired Fund in exchange for Class A shares of the Acquiring Fund (each a "Reorganization," and collectively, the "Reorganizations").[1] The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of regular trading on the New York Stock Exchange on the business day preceding the day of the closing of each Reorganization ("Closing Date"). The value of the assets of the Acquired Funds will be determined according to the Acquired Funds' then-current prospectuses and statements of additional information. As soon as reasonably practicable after the Closing Date, each Acquired Fund will be liquidated by the distribution of the Acquiring Fund shares pro rata to the shareholders of the Acquired Fund.

7. Applicants state that the investment objectives and policies of each Acquired Fund are identical or substantially similar to those of the corresponding Acquiring Fund. The Acquired Funds offer two classes shares, Investor shares and S shares, and the Acquiring Funds offer Class A, Class B and Class S shares. The only shares that will be involved in the Reorganizations will be Investor shares and Class A shares. Investor shares and Class A shares of the Acquired and Acquiring Funds are subject to a front-end sales charge, except for Class A shares of Vision Treasury Money Market Fund and Vision Institutional Prime Money Market Fund and Investor shares of their corresponding Acquired Funds. Shares of each Acquired Fund and the Class A shares of each Acquiring Fund are currently not subject to a contingent deferred sales charge. The Acquired Funds' Investor shares are not subject to rule 12b–1 distribution or shareholder service fees, except for Investor shares of three of the Acquired Funds, which are subject to rule 12b–1 distribution fees. The Acquiring Funds' Class A shares are subject to rule 12b–1 distribution and shareholder services fees. Shareholders of the Acquired Funds will not be subject to a contingent deferred sales charge upon redemption of the Acquiring Fund shares that they receive in connection with the Reorganizations. No sales charges will be imposed in connection with the Reorganizations. M&T Bank will bear the costs associated with the Reorganizations.

8. The Boards, including all of the Disinterested Trustees, determined that the participation of each Acquiring and Acquired Fund in a Reorganization was in the best interests of each Fund and its shareholders, and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganizations, the Boards considered various factors, including: (a) The investment objectives, policies and strategies of each of the Acquired Funds and their corresponding Acquiring Funds; (b) the investment advisory and other fees paid by each of the Acquiring Funds and the projected expenses of each of the Acquiring Funds; (c) the terms and conditions of the Plans; and (d) the anticipated tax consequences of the Reorganizations for the Funds and their shareholders. In addition, the Governor Board considered: (a) The capabilities, resources, and experience of M&T Bank and other service providers; and (b) the shareholder services offered by Vision Funds.

9. The Reorganizations are subject to a number of conditions precedent, including that: (a) The shareholders of each Acquired Fund will have approved the Reorganization; (b) the Funds will have received opinions of counsel concerning the tax-free nature of each Reorganization; (c) applicants will have received from the Commission an exemption from section 17(a) of the Act for the Reorganizations, (d) an N–14 Registration Statement relating to each Reorganization has become effective with the Commission, and (e) each of the Acquired Funds and the Vision Treasury Money Market Fund will declare and pay on or before the Closing Date a dividend or dividends, which, together with all previous dividends, will have the effect of distributing to its shareholders substantially all of its net investment income and realized net capital gain, if any, for all taxable years ending on or before the Closing Date. The Plans may be terminated and the Reorganizations abandoned at any time prior to the Closing Date by the mutual consent of the Governor Board and the Vision Board. Applicants agree not to make any material changes to the Plans without prior approval of the Commission staff.

10. A registration statement on Form N–14 with respect to the Reorganizations, containing a proxy statement/prospectus, was filed with the Commission on November 13, 2000 and was mailed to shareholders of the Acquired Funds on November 14, 2000. A shareholders meeting of the Acquired Funds is scheduled for December 13, 2000.

Applicant's Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that rule 17a–8 not be available to exempt the Reorganizations because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors/trustees, and/or common officers. Applicants state that M&T Bank Affiliates hold of record for the benefit of others, in trust, agency, custodial or other fiduciary or representative capacity, more than 5% (in some cases, more than 25%) of the total outstanding shares of certain of the Acquired Funds. Because of these ownership positions, each Acquired Fund may be deemed to be an affiliated person of an affiliated person of its corresponding Acquiring Fund.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the terms of the Reorganizations are reasonable and fair and do not involve overreaching. Applicants state that the investment objectives and policies of each Acquired Fund are identical, or substantially similar to, those of its corresponding Acquiring Fund. Applicants also state that the Boards, including all of the Disinterested Trustees, found that the participation of the Acquired and Acquiring Funds in the Reorganizations is in the best interests of each Fund and its shareholders and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganizations will be on the basis of the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31275 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Under the Plans, the Acquired Funds will be reorganized into the Acquiring Funds as follows: Governor Aggressive Growth Fund will reorganize into Vision Small Cap Stock Fund, Governor Established Growth Fund into Vision Large Cap Core Fund, Governor Intermediate Term Income Fund into Vision Intermediate Term Bond Fund, Governor International Equity Fund into Vision International Equity Fund, Governor Lifestyle Conservative Growth Fund into Vision Managed Allocation Fund—Conservative Growth, Governor Lifestyle Growth Fund into Vision Managed Allocation Fund—Aggressive Growth, Governor Lifestyle Moderate Growth Fund into Vision Managed Allocation Fund—Moderate Growth, Governor Limited Duration Government Securities Fund into Vision Institutional Limited Duration U.S. Government Fund, Governor Pennsylvania Municipal Bond Fund into Vision Pennsylvania Municipal Income Fund, Governor Prime Money Market Fund into Vision Institutional Prime Money Market Fund and Governor U.S. Treasury Obligations Money Market Fund into Vision Treasury Money Market Fund.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—24782; 813–224]

Elfun Trusts, et al.; Notice of Application

December 1, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 6(b) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants request an order that would amend prior orders ("Prior Orders")[1] to expand the class of persons eligible to purchase shares of certain employees' securities companies to include certain specified immediate family members and grandchildren of eligible employees. In addition, the order would permit eligible employees to transfer shares of

[1] *Elfun Trust*, Investment Company Act Release Nos. 22335 (Nov. 14, 1996) (notice) and 22385 (Dec. 10, 1996) (order); *Elfun Money Market Fund*, Investment Company Act Release Nos. 17384 (Mar. 16, 1990) (notice) and 17433 (Apr. 13, 1990) (order); *Elfun Trust*, Investment Company Act Release Nos. 17039 (June 30, 1998) (notice) and 17082 (July 25, 1989) (order); *Elfun Trusts*, Investment Company Act Release Nos. 17038 (June 30, 1989) (notice) and 17083 (July 25, 1989) (order); *Elfun Diversified Fund*, Investment Company Act Release Nos. 16146 (Nov. 24, 1978) (notice) and 16186 (Dec. 22, 1987) (order); *Elfun Global Fund*, Investment Company Act Release Nos. 16042 (Oct. 8, 1987) (notice) and 16114 (Nov. 5, 1987) (order); *Elfun Income Fund*, Investment Company Act Release Nos. 13485 (Sept. 7, 1983) (notice) and 13612 (Nov. 2, 1983) (order); *General Electric S&S Long Term Interest Fund*, Investment Company Act Release Nos. 10929 (Nov. 6, 1979) (notice) and 10971 (Dec. 4, 1979 (order); *Elfun Trust*, Investment Company Act Release Nos. 10375 (Aug. 23, 1978) (notice) and 10414 (Sept. 20, 1978) (order); *Elfun Tax-Exempt Income Fund*, Investment Company Act Release Nos. 9839 (July 5, 1977) (notice) and 9879 (Aug. 2, 1977) (order); *General Electric Company*, Investment Company Act Release Nos. 4973 (May 31, 1967) (notice) and 5830 (Sept. 29, 1969) (order); and *Executives Investment Trusts and Elfun Trusts*, Investment Company Act Release No. 584 (Dec. 2, 1943) (order).

the employees' securities companies to estate planning vehicles formed for the benefit of lineal descendants of the eligible employees.

APPLICANTS: Elfun Trusts, Elfun Tax-Exempt Income Fund, Elfun Income Fund, Elfun International Equity Fund, Elfun Diversified Fund, Elfun Money Market Fund (collectively, the "Elfun Funds"), and General Electric S&S Program Mutual Fund and General Electric S&S Long Term Interest Fund (collectively, the "S&S Funds").

FILING DATES: The application was filed on December 22, 1999, and amended on December 1, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Alan M. Lewis, Esq., GE Asset Management Incorporated, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Special Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Applicants are diversified, open-end management investment companies registered under the Act. Shares of the Elfun Funds are registered under the Securities Act of 1933. Each applicant is organized and operated to meet the definition of an "employees' securities company" within the meaning of section 2(a)(13) of the Act for the benefit of employees of General Electric Company ("GE").

2. Pursuant to the Prior Orders, shares of the Elfun Funds may be purchased by: (a) members of an honor society of GE employees ("Elfun Society Members"); (b) employees of the Elfun Funds' adviser who have been employed by the adviser for at least one year ("Adviser Employees"); (c) immediate family members of both (a) and (b) above; (d) trusts whose sole beneficiaries are individuals in (a) through (c) above; (e) surviving unmarried spouses of deceased Elfun Society members; (f) members of the board of directors of GE; and (g) GE and its subsidiaries (persons in (a), (b), and (f) are "Elfun Eligible Investors").

3. The S&S Funds are part of a defined contribution profit sharing plan (the "Program") that is intended to qualify for favorable tax treatment under sections 401(a) and 401(k) of the Internal Revenue Code of 1986, as amended. Units in the S&S Funds ("Units") are offered only to employees participating in the Program ("S&S Employee Participants"). Although Units cannot be purchased outside of the Program, under certain circumstances S&S Employee Participants may hold Units outside the Program ("S&S Distributees"). (Collectively, Elfun Eligible Investors and S&S Distributees are "Eligible Employees")

4. Under the Prior Orders, the Elfun Funds have limited investment by the immediate family members of Elfun Society Members and Adviser Employees to spouses and children (including step and adoptive relationships) of such Elfun Society Members and Adviser Employees. The S&S Funds have limited the transfer of Units held outside of the Program to the immediate family members of S&S Distributees, which is limited to spouses and children (including step and adoptive relationships). Applicants propose to expand the class of immediate family members of Eligible Employees who may invest in the Elfun and S&S Funds to include any parent, spouse of a parent, child, spouse of a child, spouse, brother, sister, or grandchild (including step and adoptive relationships) ("Eligible Family Members") of Eligible Employees. In addition, the order would permit Eligible Employees to transfer shares of the Elfun and S&S Funds held by them to estate planning vehicles formed for the benefit of lineal descendants of the Eligible Employees.

Applicants' Legal Analysis

1. Section 2(a)(13) of the Act defines "employees' securities company" generally as any investment company, or similar issuer, all of the outstanding securities of which (other than short-term paper) are beneficially owned by employees or persons on retainer, former employees, and immediate family of the employees, persons on retainer, or former employees.

2. Section 6(b) of the Act provides that the Commission shall exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Applicants state that the proposal satisfies the requirements of section 6(b).

3. Applicants state that an employees' securities company is a labor-related entity that exists primarily to promote the economic welfare of its employee-investors. Applicants also state that the requested relief would permit Eligible Employees to achieve certain tax and economic goals through the effective use of estate planning tools. Applicants state that the requested relief is consistent with the protection of investors because permitting Eligible Family Members of Eligible Employees to invest in the Funds, and Eligible Employees to transfer shares of the Funds to estate planning vehicles formed for the benefit of lineal descendants of the Eligible Employees, would preserve the status of the Funds as entities designed primarily to promote the economic welfare of Eligible Employees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31273 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 11, 2000.

An open meeting will be held on Wednesday, December 13, 2000, at 10:00 a.m. in Room 1C30, the William O. Douglas Room and closed meetings will be held on Wednesday, December 13, 2000. and Thursday, December 14, 2000 at 11 a.m.

The subject matter of the open meeting will be:

The Commission will hear oral argument on an appeal by Russo Securities, Inc. ("RSI"), a registered broker-dealer, and Kimberly Kent, RSI's chief financial officer and registered financial and operations principal.

The law judge found that, on four separate dates between December 1995 and March 1996, RSI violated the Commission's net capital rule, failed to keep accurate books and records, and failed to notify the Commission of its net capital and books and records deficiencies. The law judge also found that Kent willfully aided and abetted, and caused, RSI's violations. The law judge fined RSI $100,000; suspended Kent for one year from association with a broker-dealer or a member of a national securities exchange or registered securities association, and fined Kent $25,000; and ordered RSI and Kent to cease and desist from future similar violations.

Among the issues likely to be argued are the following:

(1) Whether the stock due to RSI under its investment banking agreements was "readily convertible into cash," and thus an allowable asset under the net capital rule;

(2) Whether the net capital rule's provision for disallowing assets not "readily convertible into cash" violates due process;

(3) Whether Kent's conduct satisfied the elements of aider and abettor liability; and

(4) What sanctions; if any, are appropriate.

For further information, contact Joan Loizeaux at (202) 942–0950.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matter at the closed meeting.

The subject matter of the closed meeting scheduled for Wednesday, December 13, 2000 will be:

- Post argument discussion.

The subject matter of the closed meeting scheduled for Thursday, December 14, 2000 will be:

- Institution and settlement of injunctive actions; and
- Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 6, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31485 Filed 12–6–00; 3:44 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Net Tel International, Inc.; Order of Suspension of Trading

December 5, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Net Tel International, Inc. ("Net Tel") because of questions regarding the accuracy of publicly disseminated information concerning, among other things, letters of intent to acquire businesses entered into by Net Tel.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 1:30 p.m. EST, December 5, 2000, through 11:59 p.m. EST, on December 18, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31408 Filed 12–6–00; 11:35 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43653; File No. SR–CSE–00–08]

Self-Regulatory Organizations; The Cincinnati Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Include CSE Rule 11.9(u) and Interpretation .01 Thereunder In the Minor Rule Violation Program

December 1, 2000.

I. Introduction

On October 13, 2000, The Cincinnati Stock Exchange, Incorporated ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CSE Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to include CSE Rule 11.9(u) and Interpretation .01 thereunder, requiring CSE members to display certain market orders ("Market Order Display Rule"). The proposed rule change was published for comment in the **Federal Register** on October 27, 2000.[3] No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The CSE proposes to amend CSE Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, which provides for an alternative disciplinary regimen involving violations of Exchange rules that the Exchange determines are minor in nature. In lieu of commencing a disciplinary proceeding pursuant to Rules 8.1 through 8.14, the Minor Rule Violation Program ("Program") permits the Exchange to impose a fine, not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member or member organization ("Member") that the Exchange determines has violated a rule included in the Program. Adding a particular rule violation to the Program in no way circumscribes the Exchange's ability to address violations of those rules through more formal disciplinary rules. The Program simply provides the Exchange with greater flexibility in addressing rule violations that warrant a stronger regulatory response after the issuance of cautionary letters and yet, given the nature of the violations, do not rise to the level of requiring formal disciplinary proceedings.

The Exchange proposes to add the failure to properly expose on the Exchange or immediately price improve certain customer market orders, as provided in Interpretation .01 to Exchange Rule 11.9(u), to the list of Exchange rule violations and fines included in the Program.[4] The Exchange believes that Market Order Display Rule violations often are inadvertent and, in most cases, are best addressed in a summary fashion. However, because Interpretation .01 is predicated on the Exchange's commitment to promote customer price improvement

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43471 (October 20, 2000), 65 FR 64463 (October 27, 2000).

[4] For further discussion of the CSE's Market Order Display Rule, *see* CSE Regulatory Circular to Exchange Members 97–07 (June 17, 1997).

opportunities, violations of this Interpretation require sanctions more rigorous than a series of cautionary letters prior to formal proceedings.

Under the proposal, Exchange regulatory staff will review a sampling of Exchange members' market orders, based on appropriate market conditions, to determine if a threshold of market order exposure violations has been exceeded. Violations that exceed 2% of all eligible market orders of any Member for any calendar quarter will result in a $1,000 fine for that quarter. The second quarterly violation within a rolling 12-month period will result in a $2,500 fine. A third quarterly violation within a rolling 12-month period will result in a CSE Business Conduct Committee hearing with a staff recommendation of a $10,000 fine.[5]

The minor rule violation fine schedule is merely a recommended schedule; fines of more or less than the recommended amount can be imposed (up to a $2,500 maximum) in appropriate situations. Also, the Exchange reserves the right to proceed with formal disciplinary action when, in the Exchange's opinion, circumstances warrant a more severe level of sanction or remedial action.

III. Discussion

The Commission has reviewed carefully the CSE's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the commission finds the proposal is consistent with sections 6(b)(5),[7] 6(b)(6),[8] 6(b)(7),[9] and 6(d)(1),[10] of the Act.

Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes the proposal is consistent with section 6(b)(5) because it will augment the Exchange's ability to police its market, and will allow greater flexibility in responding to violations of the Market Order Display Rule.

Section 6(b)(6) requires that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of Commission and Exchange rules. Including violations of the Market Order Display Rule in the Program should give the Exchange the ability to treat violations of the Rule in a summary fashion, but retain the flexibility to address more egregious violations of the Rule with more severe sanctions where appropriate.

In addition, the Commission believes that the proposal provides a reasonable procedure for the discipline of Members consistent with sections 6(b)(7) and 6(d)(1) of the Act. Section 6(b)(7) requires the rules of an eschange to be in accordance with the provisions Section 6(d), and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires that, in any proceeding by an exchange to determine whether a member should be disciplined, the exchange must bring specific charges, notify the member of those charges, and give the member an opportunity to defend against the charges. Because CSE Rule 8.15 provides procedural safeguards to the Member being fined, and allows the Member who is disciplined to request full hearing on the matter, the Commission believes the proposal is both reasonable and consistent with sections 6(b)(7) and 6(d)(1).

The Commission notes that by allowing the CSE to address violations of the Market Order Display Rule under the Program, the Commission in no way minimizes the importance of compliance with the Rule, and all other Rules subject to the imposition of fines under the Program. The Commission believes that the violation of any Exchange and/or Commission Rule is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Program provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinay proceedings. The Commission expects that the CSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less the recommended amount are appropriate for violation of the Market Order Display Rule on a case by case basis, or if a violation requires formal disciplinary action.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CSE–00–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31297 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

[5] While the Exchange will collect data on a daily basis, the Exchange's initial sampling will consist of a review of data collected for two days per week—the day with the most violations, and the day with the fewest. Based on the Exchange's analysis of this information, the Exchange will determine if the violations exceed 2% of all eligible market orders for each calendar quarter. The Exchange plans eventually to determine violations based on information collected daily, rather than on a partial sample, with March 2001 as the proposed target date. *See* telephone conversation among Jeffrey Brown, Vice President, Regulation and General Counsel, CSE, James Flynn, Staff Attorney, CSE and Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC and Joseph Morra, Special Counsel, Division, SEC, November 30, 2000.

[6] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

[10] 15 U.S.C. 78f(d)(1).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43659; File No. SR–ISE–00–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the International Securities Exchange LLC, Relating to Listing Procedures

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2000, the International Securities Exchange LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the procedures by which it lists options to conform its procedures to those currently in place at the other options exchanges. The text of the proposed rule change is available at the Commission and the ISE.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to amend its listing procedures to conform to the procedures employed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. These exchanges long have followed the uniform listing procedures contained in the Joint Exchange Options Plan ("Plan"), which the Commission has approved as rules of each of those exchanges.[3] However, the Plan historically focused on the listing of new options, not the listing of options already trading on another exchange. Among other things, the Plan's procedures require an exchange listing an option to inform The Options Clearing Corporation ("OCC") of the proposed listing, as well as to provide notice of the listing to all the other markets.

The ISE adopted the Plan, with certain modifications, prior to its launch of trading. The most significant modification in the ISE's version of the Plan relates to the listing of options already trading on another exchange ("multiple-listing procedures"). While the other exchanges have followed informal procedures regarding multiple listings (primarily the requirement to provide each other with three days notice of proposed multiple listings that have been trading for more than ten days), the multiple-listing procedures are not included in the Plan. The ISE codified the multiple-listing procedures in its rules, which the Commission approved as part of the ISE's registration.[4]

The four other options exchanges recently settled an enforcement action with the Commission and an antitrust action with the Department of Justice in which the government claimed, among other things, that the Plan contains anticompetitive elements. The Commission mandated that the four exchanges work together, and with the ISE, to eliminate these anticompetitive provisions.[5] One anticompetitive provision that the Commission identified is the requirement that exchanges provide three-days notice of a proposed multiple listing. To address this concern, the other exchanges have received no-action letters from Commission staff allowing them to list a multiply-traded option with one days notice of the intention to list an option class to OCC and the other exchanges listing that option. The ISE must amend its rules to achieve this same result because it has codified the three days notice provision for multiple listings in its rules. The Proposed rule change will conform the ISE's listing procedures to those of the other exchanges by providing for one days notice to OCC and the other listing exchanges of a new multiple listing.

In addition, the ISE is also proposing to eliminate the prohibition against any exchange that was not a selecting or joining exchange commencing trading the selected option prior to the eighth business day following notification by the selecting and/or joining exchanges of the intention to certify the option. The Exchange believes that this change will conform its listing practices to those of the other options exchanges.

2. Basis

The Exchange believes the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing; and (4) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the act[7] and Rule 19b–4(f)(6)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The ISE has requested that the Commission accelerate the operative date of the proposed rule change. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will ensure that the ISE's listing procedures for multiply traded options conform to the listing procedures of the other options exchanges. For these reasons, the Commission finds good cause to designate that the proposal become immediately operative upon filing.[9]

[3] *See* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991).

[4] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (at note 144 and accompanying text).

[5] Securities Exchange Act Release No. 43268 (September 11, 2000).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of accelerating the operative data of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to the File No. SR–ISE–00–14 and should be submitted by December 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31298 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43637; File No. SR–OCC–00–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Investment of Excess Funds and to Procedures Applicable to the Safeguarding of Such Investments

November 29, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on October 5, 2000, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to amend its By-Laws to expand the types of investments that OCC may make its funds in excess of those needed for working capital and to update the procedures applicable to the safeguarding of such investments.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to expand the types of investments that OCC is permitted to make its funds in excess of those needed for working capital and to update the procedures applicable to the safeguarding of such investments.

Article IX, section 1(a) currently provides that the board of directors may invest OCC's excess funds in Government securities. The By-Laws are amended to allow the board or a committee thereof to approve the investment of OCC's funds in other securities or financial instruments. This change permits portfolio diversification and allows OCC to hedge its obligation under stock-based compensation plans. The By-Laws are further amended to explicitly allow OCC to hold securities in accounts at registered broker-dealers. Section 1(a) currently provides that one director (other than the Management Director) must act jointly with an officer of OCC to access or withdraw securities that are the property of OCC. Section 1(a) is being amended to allow withdrawals by joint action of an officer of the rank of vice president or above and the treasurer or an assistant treasurer.

The proposed rule change is consistent with the requirements of section 17A of the Act because it provides reasonable procedures governing the investment of OCC funds in excess of those needed for working capital and for the safeguarding of such investments.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chonge Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(3) thereunder as it is concerned solely with the administration of a self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–00–11 and should be submitted by December 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31276 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the text of OCC's proposed rule change and the attached exhibit are available at the Commission's Public Reference Section or through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43652; File No. SR–Phlx–00–96]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Disengage Its Automatic Execution System ("AUTO–X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO-X Minimum Guarantee for That Option

December 1, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 27, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes a systems change to "AUTO–X," the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),[4] that would disengage AUTO–X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO–X minimum guarantee for that option. During such thirty-second period, all orders received via AUTOM would be executed manually by the specialist. The Exchange proposes to implement the systems change on a six-month pilot basis initially involving fifteen to thirty options approved by the Exchange's Options Committee.[5] AUTOM users would be notified of the systems change and of the options included in the pilot program through the issuance of a regulatory circular and on the Exchange's website.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the Exchange to take a first step towards the implementation of the dissemination of options quotations with size, as expected to be made available by the Options Price Reporting Authority ("OPRA") in January, 2001. It is anticipated that the systems change would assist specialists in maintaining fair and orderly markets during peak market activity, by allowing specialists to execute orders delivered via AUTOM manually for a limited period of time after the AUTO–X minimum guarantee is met.

The Exchange's Options Committee, pursuant to its authority under Exchange Rule 1080(c),[7] has determined to propose the implementation of a limited pilot program that would include the following features:

- Once an automatic execution occurs via AUTO–X in an option, the system would begin a "counting" program, which would count the number of contracts executed automatically for that option, up to the AUTO–X guarantee, regardless of the number of executions.
- When the number of contracts executed automatically for that option meets the AUTO–X guarantee (for example, fifty contracts executed) within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO–X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.[8]
- Upon the expiration of thirty seconds, automatic executions would resume and the "counting" program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the AUTO–X guarantee.
- Again, when the number of contracts automatically executed meets the AUTO–X guarantee within a fifteen second time frame, the system would drop all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of thirty seconds.

The Exchange believes that the pilot program set forth above would enable the Exchange to take a first step towards the implementation of options quotations that include size (*i.e.*, the number of contracts generally available

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2000 ("Amendment No. 1"). In Amendment No. 1, the Phlx clarified certain aspects of the proposed rule change. Among other things, Amendment No. 1: (i) Specifies the number of, and selection criteria for, options selected for the pilot program; (ii) represents that the Exchange will post on its website a list of options included in the program and will issue a circular to this effect; (ii) clarifies that orders received by AUTO–X that exceed the minimum guarantee will receive a partial automatic execution; and (iv) clarifies that upon the implementation of quotes with size, initially size will not be decremented, and the specialist will be responsible to fill orders at its disseminated quote up to the disseminated size.

[4] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[5] *See* Amendment No. 1, *supra* note 3.

[6] *See* Amendment No. 1, *supra* note 3.

[7] Exchange Rule 1080(c) provides, in relevant part, that "[t]he Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option series." *See* Securities Exchange Act Release No. 38792 (June 30, 1997), 62 FR 36602 (July 8, 1997) (SR–Phlx–97–24).

[8] Any orders delivered in excess of the minimum AUTO–X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. *See* Amendment No. 1, *supra* note 3.

at the posted bid and ask for a given option). Currently, options quotations are disseminated without size.[9] The "counting" feature of the proposed system change would function to disengage AUTO–X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the AUTO–X guarantee for that option within a fifteen-second time frame. A similar "counting" mechanism is expected to be utilized upon the implementation of the dissemination of options quotations with size. Thus, the proposed pilot program should allow the Exchange to begin the process of moving towards the implementation of quotations with size.[10]

It is also anticipated that the system change would assist specialists in maintaining fair and orderly markets during peak market activity, by allowing specialists to execute orders delivered via AUTOM manually for a limited period of time after the AUTO–X minimum guarantee is met to enable specialists to refresh their quotes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[11] in general, and with section 6(b)(5) in particular,[12] in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling the Exchange to prepare for the dissemination of option quotes with size, and by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

[9] Currently, Exchange specialists and registered options traders ("ROTs") are required to fill orders at the best market to a minimum of ten contracts. *See* Exchange Rule 1015(a). Exchange Rule 1080(c) provides that orders with a size of up to seventy-five contracts, subject to the approval of the Options Committee, are eligible for automatic execution via AUTO–X. However, quotations disseminated for options do not currently reflect the minimum AUTO–X size guarantee for a given option, or any size. Rather, AUTOM customers are advised of the minimum size guarantee by way of regularly published memoranda that include a list of all AUTO–X eligible options and the minimum guaranteed AUTO–X size for each such option. A major OPRA enhancement to the dissemination of quotations, to include size, is anticipated in January, 2001.

[10] Specialists will be required to fill orders up to the AUTO–X guarantee size. Upon the implementation of quotes with size, initially size will not be decremented, and the specialist will be responsible to fill orders at the disseminated quote up to the disseminated size. *See* Amendment No. 1, *supra* note 3.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those thay may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Phlx–00–96 and should be submitted by December 29, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[13] The Commission believes that the proposed rule change should help the Exchange to prepare for disseminating its options quotes with size. In addition, the Commission believes that the proposal may assist specialists in maintaining fair and orderly markets during periods of peak market activity.

The Commission notes that the Exchange is implementing the proposed systems change to AUTO–X on a pilot basis in a limited number of options, which should enable the Phlx to evaluate the program's effectiveness with respect to dissemination of quotations with size, and whether the change is assisting its specialists in maintaining a fair and orderly market. Specifically, the Commission notes that the Exchange has represented that it will evaluate the pilot program by reviewing specialists' performance in the selected options, and by monitoring and complaints relating to the pilot program. Furthermore, the Commission believes that the Phlx has provided adequate notice of the proposed change to AUTO–X to members, member organizations, and the public. The Commission notes that the Exchange has represented that it will post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member organizations, participants, and participant organizations.

Finally, the Commission, pursuant to section 19(b)(2) of the Act,[14] finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.[15] The Commission believes that granting accelerated approval to this pilot program will allow Phlx to evaluate, without delay, the effectiveness of this systems change to AUTO–X and whether the change allows Phlx specialists the opportunity to update their quotes and maintain a fair and orderly market. Accordingly, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,[16] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Phlx–00–96) and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2).

[17] Id.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31299 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

[18] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB)

Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

Application Statement for Child's Insurance Benefits—0960–0010. Title II of the Social Security Act provides for payment of monthly benefits to the children of an insured retired, disabled or deceased worker, if certain conditions are met. The form SSA–4–BK is used by the Social Security Administration to collect information needed to determine whether the child or children are entitled to benefits. The respondents are children of the worker or individuals who complete this form on their behalf.

	Life claims	Death claims
Number of Respondents	925,000	815,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	10.5	15.5
Estimated Annual Burden (hours)	161,875	210,542

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. *Applicotion for Lump Sum Death Payment—0960–0013.* The information collected on form SSA–8 by the Social Security Administration is required to authorize payment of a lump-sum death benefit to a widow, widower, or children as defined in section 202(i) of the Social Security Act. The respondents are widows, widowers or children who apply for a lump-sum death payment.

Number of Respondents: 43,850.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 7,308 hours.

2. *Request for Replacement SSA–1099/SSA–1042S Social Security Benefits Statement—0960–0583.* The information requested by the Social Security Administration (SSA) via the Internet will be used to verify identity and to provide replacement copies of Form SSA–1099/SSA–1042, which are needed to prepare Federal tax returns. This Internet option to request a replacement SSA–1099/SSA–1042 will eliminate the need for a phone call to a teleservice center or a visit to a field office. The respondents are beneficiaries who request a replacement SSA–1099/1042 via the Internet.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 583 hours.

Dated: December 4, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 00–31307 Filed 12–7–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice of Waiver of Aeronautical Land-Use Assurance Lebanon Municipal Airport, West Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments. Notice of intent of waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of airport property (approximately 2.06 acres located on the South side of the Terminal Road) is no longer needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the disposal of the property. The land was acquired under FAA Project No. 9–27–006–6002 (portion of Parcel No. 7) on September 2, 1960.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** thirty (30) days before modifying the land-use assurance which requires that the property be used for an aeronautical purpose. The purpose of the release of land will provide the abutting developer more flexibility in construction of his facility by allowing the set-back lines to be closer to Airport Road.

DATES: Comments must be received on or before January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone No. 781–238–7624/Fax 781–238–7608. Documents reflecting the proposed FAA action may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts or at the Lebanon Municipal Airport, West Lebanon, New Hampshire.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA in considering the release of the subject airport property at Lebanon Municipal Airport, West Lebanon, New Hampshire. The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Burlington, Massachusetts on November 28, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–31300 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–66]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to sections 11.85 and 11.91 or part 11 of 14 CFR.

Issued in Washington, D.C., on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 30170.

Petitioner: Visiting Nurse Association.

Section of the 14 CFR Affected: 14 CFR §§ 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit VNA to conduct local sightseeing flights at Martin County Airport for the two-day Stuart Air Show in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 11/07/00, Exemption No. 7379.

Docket No.: 30048.

Petitioner: Tuscaloosa County Sheriff's Office.

Section of the 14 CFR Affected: 14 CFR § 45.29.

Description of Relief Sought/ Disposition: To permit the Sheriff's Office to operate its Cessna 182 airplane (Registration No. 163TC) displaying 2 or 3-inch-high nationality and registration markings on the tail section of the airplane instead of the 12-inch-high markings required by the regulation.

Denial, 08/11/00, Exemption No. 7311

Docket No.: 30100.

Petitioner: Ohio Council on Aeronautical Education.

Section of the 14 CFR Affected: 14 CFR § 135.251, 135.255, 135.353, and appendixes * and J to part 121

Description of Relief Sought/ Disposition: To permit OCAE to conduct local sightseeing flights at Don Scott Airport, Columbus, Ohio for a one-day Career and Aviation Education Day event in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 11/14/00, Exemption No. 7318.

[FR Doc. 00–31301 Filed 12–07–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–67]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, D.C. on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8083.

Petitioner: Monterey Bay Chapter of the International Organization of the Ninety-Nines, Inc.

Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Monterey Bay 99s to conduct local sightseeing flights at Watsonville Airport for a two-day Nickel-a-Pound airlift in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 11/07/2000, Exemption No. 7380

[FR Doc. 00–31302 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–68]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://sms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–8218.

Petitioner: Bombardier Aerospace, Inc.

Section of 14 CFR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought: To relieve Bombardier Aerospace, Inc., from the requirements of 14 CFR 25.1435(b)(1) for static testing of a complete hydraulic system to 1.5 times the design operating pressure for the CL–600–2D24 (Regional Jet CRJ–900) airplane.

[FR Doc. 00–31303 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–69]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to sections 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, D.C., on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30128.

Petitioner: EAA Warbirds of America Squadron 14, Inc.

Section of the 14 CFR Affected: 14 CFR § 61.63(d)(5) and part 125.

Description of Relief Sought: To permit Squadron 14 pilots to conduct nonstop sightseeing or demonstration flights for compensation or hire within 25 miles of the departure airport in Squadron 14's Douglas DC–3 airplane (Registration No. N2805J, Serial No. 20835) without those pilots having completed the practical test for a DC–3 type rating in actual or simulated instrument conditions.

[FR Doc. 00–31304 Filed 12–7–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Announcement of I–69 Status

AGENCY: Federal Highway Administration, DOT.

ACTION: Announcement of I–69 Status.

SUMMARY: The purpose of this announcement is to provide information on the status of Interstate 69, a transcontinental highway corridor designated by the U.S. Congress to extend from the U.S./Canadian border to the U.S./Mexican border. The public is invited to participate in FHWA NEPA process, and to contact the States through which the corridor runs for specific project information.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for addresses.

FOR FURTHER INFORMATION CONTACT: K. Lynn Berry, Community Impact Specialist, Federal Highway Administration, Southern Resource Center, 61 Forsyth Street, Suite 17T26, Atlanta, GA, 30303, Telephone: (404) 562–3618, E-mail: *klynn.berry@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) has initiated the project planning, development, and decisionmaking process for numerous transportation projects related to a transcontinental highway corridor, designated as I–69. The corridor has been defined by the United States Congress to extend from Port Huron, Michigan (bordering Sarnia, Ontario, Canada) to the Lower Rio Grande Valley in Texas at the Mexican border, a distance of more than 1600 miles.

The I–69 corridor (originally known as Corridor 18) was designated by the U.S. Congress as a High-Priority Corridor of National Significance in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). It was further defined in the National Highway System Designation Act of 1995 and the Transportation Equity Act for the 21st Century (TEA–21) in 1998. The I–69 Corridor has been identified to address the transportation needs associated with the increase in goods movements between the three partners (U.S.A., Mexico, and Canada) to the North American Free Trade Agreement of 1992. It is also a key transportation recommendation of the Clinton Administration's Delta Initiative, which is aimed at the revitalization and economic development of the Lower Mississippi Delta Region. The overall purpose of I–69 corridor is to improve international and interstate trade in accordance with national and state goals; and to facilitate economic development in accordance with state, regional, and local policies, plans and surface transportation consistent with national, state, regional, local needs and with congressional designation of the corridor.

Several studies were conducted that informed the authorizing legislation. They include the 1995 Corridor 18 Feasibility Study, a 1996 Corridor 20 Feasibility Study, and the Corridor 18 Special Issues Study, completed in 1997.

Per the legislative authorities, the current definition of I–69 stipulates the following:

- Includes the existing I–69 facility from Indianapolis to Port Huron, Michigan/Sarnia, Ontario, Canada;
- Includes the I–94 facility from Port Huron, through Detroit (including the Ambassador Bridge interchange) to Chicago, Illinois;
- A new Interstate route (I–69) from Indianapolis to the Lower Rio Grande Valley serving the following:

—Evansville, Indiana,
—Memphis, Tennessee,
—Shreveport/Bossier City, Louisiana,
—Houston, Texas.

The route would pass through Mississippi and Arkansas between Memphis and Shreveport/Bossier City.

- Requires that in Tennessee, Mississippi, Arkansas and Louisiana, the corridor follow the alignment generally identified in the "Special Issues Study" (1997); and
- Includes, in the Lower Rio Grande Valley:

—US 77 from the Mexican border to US 59 in Victoria, Texas;
—US 281 from the Mexican border to US 59, then to Victoria, Texas;
—The Corpus Christi Northside Highway and Rail Corridor from the intersection of US 77 and I–37 to US 181; and
—FM 511 from US 77 to the Port of Brownsville.

Additional studies have been conducted to refine planning efforts subsequent to ISTEA and TEA–21. The Special Environmental Studies included a report on Sections of Independent Utility (1999) and a Statement of Purpose and Need (February 2000). Related studies examined the Southwest Indiana Highway Corridor; Mississippi State Highway 304 Corridor; The Great River Bridge Crossing of the Mississippi River; The US 59 Corridor Master Plan from Diboll, Texas to Garrison, Texas; and I–69 Route Feasibility in the Houston, Texas metropolitan area.

The Statement of Purpose and Need identified benefits to the Nation that have been shown to outweigh the costs of providing the transportation facility. These benefits are related to system linkage, capacity, transportation demand, economic development, modal/freight interrelationships, safety, and roadway deficiencies. Studies considering alternative transportation modal choices have identified that an interstate highway facility would best meet the needs as identified.

The I–69 corridor and related projects fall within nine States (Michigan, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana, and Texas). The length of the corridor precludes the planning, development, and decisionmaking of the full corridor as a single construction project. For the purposes of planning, the overall length of more than 1,600 miles was divided into 32 Sections of Independent Utility (SIU). 26 of these sections form a continuous route from the Michigan/Canada border to the Texas/Mexico border, and six sections are identified as connecting routes to I–69. The SIUs were developed in a manner consistent with the FHWA memorandum dated November 3, 1993 on establishing logical termini, and have been approved for advancement to the FHWA National Environmental Policy Act (NEPA) decisionmaking process. In some cases, the FHWA NEPA process, documentation, and approvals have already been applied to projects and work activities within the corridor.

This notice also announces that the advancement of I–69 is moving from the corridor planning and feasibility study stages to the state project planning, development, and FHWA NEPA process and decisionmaking stages. Each state will study viable sections identified above, addressing state and local needs, schedules, and funding constraints in accordance with the FHWA NEPA process. State and local needs for any particular project will be considered, as well as the national legislative and administrative objectives for the movement of goods across the country. The FHWA will partner with the state departments of transportation to facilitate the examination of alternatives and impacts within the proposed corridor, and to ensure consistency in addressing the national transportation objectives relative to transcontinental trade put forth by Congress.

Interagency workshops and briefings have been conducted. The primary mechanism for working with resource agencies has been through the Southeast Natural Resource Leaders Group (SENRLG) and its counterparts in Dallas, Texas, and Chicago, Illinois. SENRLG, which will continue to serve as an advisory group to I–69 decisionmakers, is a collaboration of regional and Federal executives who lead agencies with natural resource conservation as part of their mission. In addition to the conservation, restoration, and management of resources, SENRLG is committed to promoting ecologically sustainable development. To this end, it will assist transportation officials in determining the impact of I–69 as well as opportunities for enhancing the environment. In working with the resource agencies, emphasis will be given to procedures which will facilitate the acceleration of project management, development, and decisionmaking, and which ensure public outreach, involvement and coordination with Federal, state, and local agencies.

There have been many public involvement activities and opportunities throughout the I–69 process. During the planning and feasibility study stages, a series of public meetings was held in Memphis, Tennessee, a city central to the corridor. They were held on the following dates:

November 7, 1994 to receive suggestions and comments.

September 25, 1995 to discuss results of the Feasibility Study.

August 29, 1996 to receive suggestions and comments.

May 28, 1997 to discuss the results of the Special Issues Study.

A number of advocacy groups were involved during corridor studies. Additionally, ten Metropolitan Planning Organizations have been involved in planning for I–69, and more opportunities for public involvement will continue throughout the process. Currently, state-specific studies are being conducted in accordance with each state's public involvement process.

Future public involvement activities will be conducted in each state, as I–69 projects are advanced through the FHWA NEPA process. Each state will issue a notice of intent to proceed with the FHWA NEPA process for I–69 projects in the **Federal Register**, clearly identifying the projects as part of the corridor. For information regarding opportunities to participate in the transportation decision-making process, please contact one of the representatives from the state departments of transportation or the FHWA Division offices.

	State contact	FHWA division contact
Michigan	Dave Wresinski, Manager, Project Planning Section, Michigan Department of Transportation, State Transportation Building, 425 West Ottawa, P.O. Box 30050, Lansing, MI 48913, Phone: 517–373–8258, Fax: 517–373–9255, Email: wresinskid@mdot.state.mi.us.	James J. Steele, Division Administrator, Federal Building, Room 207, 315 West Allegan Street, Lansing, Michigan 48933, Phone: 517–377–1844, Fax: 517–377–1804, Email: Michigan. FHWA@fhwa.dot.gov
Illinois	Mr. William Sunley, Deputy Director of Program Development, Division of Highways, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, IL 62764, Phone: 217–782–2972, Email: sunleyb@nt.dot.state.il.us.	Ron Marshall, Division Administrator, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone (217) 492–4600, Fax (217) 492–4621, Email: illinois.fhwa@fhwa.dot.gov
Indiana	Steve Cecil, Deputy Commissioner of Planning and Intermodal Transportation, Indiana Department of Transportation, 100 North Senate Avenue, Room N755, Indianapolis, IN 46204–2249, Phone: 317–232–5535, Fax: 317–232–0238, Email:scecil@indot.state.in.us.	John Baxter, Division Administrator, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana 46204, Phone: 317–226–7475, Fax: 317–226–7341, Email: John.Baxter@fhwa.dot.gov
Kentucky	Michael Hancock, Deputy State Highway Engineer, Kentucky Transportation Cabinet, State Office Building, Rm 1005, 501 High Street, Frankfort, KY 40622, Phone: 502–564–3730, Fax: 502–564–2277, Email: mhancock@mail.kytc.state.ky.us.	Jose Sepulveda, Division Administrator, 330 West Broadway, Frankfort, KY 40601, Phone: 502–223–6720, Fax: 502–223–6735 Email: jose.sepulveda@fhwa.dot.gov
Tennessee	Dennis Cook, Assistant Chief Engineer, Tennessee Department of Transportation, 700 James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243–0349, Phone: 615–741–3339, Fax: 615–741–0865, Email: dcook@mail.state.tn.us.	Charles S. Boyd, Division Administrator, 640 Grassmere Park Road, Suite 112, Nashville, Tennessee 37211, Phone: 615–781–5770, Fax: 615–781–5773, Email: Charles.Boyd@tn.fhwa.dot.gov
Mississippi	Marlin Collier, Director, Office of Intermodal Planning, Mississippi Department of Transportation, P.O. Box 1850, Jackson, Mississippi 39215, Phone: 601–359–7025, Fax: 601–359–7050, Email: mcollier@mdot.state.ms.us.	Andrew H. Hughes, Division Administrator, 666 North Street, Suite 105, Jackson, Mississippi 39202, Phone: 601–965–4217, Fax: 601–965–4231, E-mail: *hughes@ms.fhwa.dot.gov*
Arkansas	Steve Teague, Assistant Chief Engineer for Planning, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, AR 72203–2261, Phone: 501–569–2241, Fax: 501–569–2400, E-mail: *steve.teague@ahtd.state.ar.us.*	Sandra L. Otto, Division Administrator, 700 West Capitol Avenue, Room 3130, Little Rock, AR 72201, Phone: (501) 324–5625, Fax: (501) 324–6423, Email: sandra.otto@ar.fhwa.dot.gov
Louisiana	Mr. Kenneth A. Perret, Assistant Secretary, Office of Planning and Programming, Louisiana Department of Transportation and Development, P.O. Box 94245, Baton Rouge, LA 70804–9245, Phone: 225–379–1248, Fax: 225–379–1227, Email: kperret@dotdmail.dotd.state.la.us.	William A. Sussmann, Division Administrator, 5304 Flanders Drive, Suite A, Baton Rouge, LA 70808, Phone: 225–757–7600, Fax: 225–757–7601, Email: Louisiana.FHWA@fhwa.dot.gov
Texas	Alvin R. Luedecke, Director, Transportation Planning and Programming Division, Texas Department of Transportation, 200 East Riverside, Bldg. 118, 2nd Floor, Austin, TX 78704, Phone: 512–486–5000, Fax: 512–486–5007, Email: aluedeck@dot.state.tx.us.	C.D. (Dan) Reagan, Division Administrator, 300 E. 8th Street, Austin, TX 78701, Phone: 512–536–5900, Fax: 512–536–5990, Email: Texas.FHWA@fhwa.dot.gov

On behalf of the U.S. Department of Transportation and Federal Highway Administration, Mr. Eugene Cleckley, Director, Field Services—South, Atlanta, Georgia, has been appointed the U.S. DOT Executive Official to facilitate

coordination among the states and FHWA, and to facilitate project management, acceleration, and decisionmaking. He will provide leadership in working with a Steering Committee of transportation officials who will coordinate the I–69 initiative. The Steering Committee, chaired by Mr. Dan Flowers of the Arkansas State Highway and Transportation Department (AHTD), is comprised of eight member states. The AHTD serves as the administrative agency acting on behalf of the Steering Committee and as a central repository for documentation related to the corridor as a whole.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to the program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 1, 2000.

Eugene W. Cleckley,

Director, Field Services—South.

[FR Doc. 00–31145 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 70 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

Seventy-two individuals petitioned the FMCSA for an exemption of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are, Henry Wayne Adams, Willie F. Adams, Fernando Aquilera, Louis Edward Aldrige, Larry Neal Arrington, David Ball, Delbert Ronnie Bays, Rosa C. Beaumont, Jerry A. Bechtold, Robert F. Berry, James A. Bright, Robert R. Buis, David Dominick Bungori, Ronzie L. Carroll, Richard S. Carter, Lynn A. Childress, Kevin L. Cole, David R. Cox, Gerald Wade Cox, Dempsey Leroy Crawhorn Jr., Thomas P. Cummings, Cedric E. Foster, Rosalie A. Gifford, Eugene Anthony Gitzen, Donald Grogan, Elmer Harper, Peter L. Haubruck, Joe Marvin Hill, Brian L. Houle, Christopher L. Humphries, Craig C. Irish, Donald R. Jackson, Nelson V. Jaramillo, Daryl A. Jester, Joseph Vernon Johns, Jimmie W. Judkins, Kurth A. Kapke, Johnny M. Kruprzak, Charles R Kuderer, Thomas D. Laws, Demetrio Lozano, Wayne Mantela, Kenneth D. May, Jimmy R. Millage, Harold J. Mitchell, Gordon L. Nathan, Jerry L. New, Bernice Ray Parnell, Aaron Pennington, Clifford C. Priesmeyer, George S Rayson, Kevin D. Reece, Franklin Reed, Arthur A. Sappington, James L. Schneider, Patrick W. Shea, Carl B. Simonye, Ernie Sims, William H Smith, Paul D. Spalding, Richard Allen Strange, Steven Carter Thomas, George Walter Thornhill, Rick N. Ulrich, Roy F. Varnado, Henry Lee Walker, Larry D. Wedekind, Daniel Wilson, Emmett E. Windhorst, Wonda Lue Wooten, Thomas Long and Gary Bryan.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA evaluated the petitions on their merits and made a preliminary determination that the exemptions should be granted. On July 25, 2000, the agency published a notice of its preliminary determination and requested comments from the public (65 FR 45817). The comment period closed on August 24, 2000. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

In the case of applicant Kevin Cole, the FMCSA has denied Mr. Cole's request for an exemption from the vision requirements of 49 CFR 391.41(b)(10). Mr. Cole was notified previous to this announcement by letter of his denial. The purpose of publishing his denial here is simply to comply with 49 U.S.C. 31315(b)(4)(c), by periodically publishing in the **Federal Register** the names of persons denied exemptions and the reasons for such denials.

After the agency published its preliminary determination to grant Mr. Cole an exemption, he indicated in a conversation with a member of our staff on August 2, 2000, that he had not driven a CMV during the required 3-year period. Therefore, the FMCSA is unable to conclude that granting him an exemption is likely to achieve a level of safety equal to that existing without the exemption as required by 49 U.S.C. 31315 and 31136(e). In the case of applicant Joe Marvin Hill, Mr. Hill passed away.

Vision and Driving Experience of the Applicants

The vision requirement provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. 49 CFR 391.41(b)(10).

Since 1992, the FHWA has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 70 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 26 of the applicants were either born with their vision impairments or have had them since childhood. The 26 individuals who sustained their vision condition as adults have had them for periods ranging from 8 to 36 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL) or non-CDL to operate a CMV. Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL or non-CDL, these 70 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 42 years. In the past 3 years, the 70 drivers had 13 convictions for traffic violations among them. Eight of these convictions were for speeding. The other convictions consisted of: "Failure to obey traffic signal"; "Unauthorized towing"; "Expiration/no drivers license"; "Failure to yield the right of way to an emergency vehicle" and; "Load dropping/shifting/escaping." Four drivers were involved in accidents in their CMVs, but did not receive a citation.

Except for two applicants (Thomas J. Long and Gary Bryan), the qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a July 25, 2000, notice (65 FR 45817). The qualifications of Mr. Long were stated in an April 14, 2000, notice (65 FR 20245) and Mr. Bryan's were stated in a May 23, 2000, notice (65 FR 33406). Since docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. With three exceptions, our summary analysis of the applicants as a group is supported by the information published at 65 FR 45817, 65 FR 20245 and 65 FR 33406.

Mr. Long's speeding conviction in a CMV was not reported in the April 14, 2000, notice. The ticket showed he was driving 75 mph in a 45 mph zone. Mr. Long has no accidents or other convictions in a CMV on his driving record for the 3-year period.

A final decision regarding Mr. Bryan's application for a vision exemption was delayed pending receipt of a copy of his Utah motor vehicle record (MVR). He had held a Utah license during the 3-year review period, before moving to Montana. Mr. Bryan faxed us a copy of his Utah MVR on August 28, 2000. His official driving record from Utah and Montana show no accidents and no convictions for moving violations in a CMV for the last 3 years.

In Mr. May's case, his August 29 speeding conviction in a CMV was not reported in the July 25, 2000 notice. The citation showed he was driving 67 mph in a 55 mph zone. Mr. May has no accidents or other convictions in a CMV on his driving record for the 3-year period.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket (FHWA–98–3637).

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) That experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 70 applicants, we note that cumulatively the applicants have had only four accidents and 13 traffic violations in the last 3 years. None of the accidents resulted in the issuance of a citation against the applicant. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA

concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience provides an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 70 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, retains a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

The Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), including the driver qualification standards. Specifically, the AHAS: (1) Asks the agency to clarify the consistency of the exemption application information, (2) objects to the agency's reliance on conclusions drawn from the vision waiver program, (3) raises procedural objections to this proceeding, (4) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, (5) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by the AHAS were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000) and 65 FR 57230 (September 21, 2000). We will not address these points again herein but refer interested parties to those earlier discussions.

The Licensing Operations of the California Department of Motor Vehicles (DMV) submitted the following comments: "California is opposed to the granting of exemptions due to Federal Motor Carrier Safety Regulations (FMCSRs) Section 381.600 which states that once a waiver, exemption, or pilot program is authorized it preempts any State law or regulation that conflicts with or is inconsistent with the waiver, exemption or pilot program with respect to a person operating under the waiver or exemption or participating in the pilot program. For traffic safety, California restricts all CDL drivers who do not meet the medical requirements from operating buses, transporting any material that requires placards or markings, and interstate commerce." Although ambiguous, this appears to mean that the CDLs issued to drivers who do not comply with the physical qualification standards in 49 CFR Part 391 include special prohibitions on operating (1) buses or vehicles transporting placardable quantities of hazardous materials in intrastate commerce, and (2) all vehicles in interstate commerce. California CDL holders who fail to meet the standards in 391.41 are thus limited to intrastate commerce, but even they are not allowed to drive buses or hazmat vehicles.

The California DMV has not opposed the granting of exemptions in the past, but its Legal Branch has now concluded that once an exemption is granted, the State would not be able to continue prohibiting Federally exempted drivers holding California CDLs from operating in interstate commerce, even if they were transporting passengers or hazardous materials.

Under the Commercial Motor Vehicle Safety Act of 1986, the FMCSA sets minimum testing and licensing standards for drivers of commercial motor vehicles (CDL–CMVs), and the States issue CDLs in accordance with those standards. In most cases, a State may therefore establish more stringent CDL testing and licensing standards, as California appears to have done. However, Sec. 4007(a) of the Transportation Equity Act for the 21st Century (TEA–21), now codified at 49 U.S.C. 31315, preempts "any State law or regulation that conflicts with or is inconsistent with the * * * exemption * * *" 49 U.S.C. 31315(d). Under the normal canons of statutory interpretation, the Federal preemption statute supersedes State authority to set more stringent CDL standards because section 31315(d) is both subsequent to and more specific than the CMVSA.

A driver who intended to operate in interstate commerce and held an FMCSA vision exemption could lawfully certify to California under 49 CFR 383.71(a)(1) that he or she met the physical qualification standards of section 391.41. The preemption required by section 31315(d) and 49 CFR 381.600 means that the driver could not be denied an unrestricted CDL by California because of deficient vision or prohibited from driving any kind of vehicle in interstate commerce (though it could issue a CDL valid for no more than the period of the FMCSA exemption). California would of course be required to ensure that the applicant passed the general CDL examination and the skills/knowledge tests required for any endorsement the driver is seeking.

On the other hand, an applicant for a CDL who intended to operate in intrastate commerce could not obtain an FMCSA exemption, since the agency has jurisdiction, for purposes of the physical qualification standards, only over drivers in interstate commerce. The Motor Carrier Safety Assistance Program (MCSAP) regulations allow participating States (including California) to set lower physical qualification standards for drivers operating exclusively in intrastate commerce 49 CFR 350.341 (h), see 65 FR 15092, at 15109, March 21, 2000. They are not required to do so, however. California could therefore issue a driver who did not meet the standards of section 391.41 an intrastate CDL (*i.e.*, one valid only within the State) which prohibited the driving of buses or hazmat vehicles.

The California DMV further commented that it would continue to oppose all requests for waivers or exemptions that did not prohibit the driver from transporting passengers and hazardous materials. The FMCSA stands by its previous response to California on this issue (see 65 FR 161, January 3, 2000). We believe it is unnecessary to impose any further restrictions on these drivers, since a waiver of or exemption from 49 CFR 391.41(b)(10) expresses the agency's conclusion that the driver will likely perform just as safely as a driver who met the standard.

Notwithstanding the FMCSA's ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in the docket (FHWA–98–4334), the FMCSA must comply with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 70 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Conclusion

After considering the comments to the docket and based upon its evaluation of the 70 exemption applications in accordance with the *Rauenhorst* decision, the FMCSA exempts Henry Wayne Adams, Willie F. Adams, Fernando Aquilera, Louis Edward Aldrige, Larry Neal Arrington, David Ball, Delbert Ronnie Bays, Rosa C. Beaumont, Jerry A. Bechtold, Robert F. Berry, James A. Bright, Robert R. Buis, David Dominick Bungori, Ronzie L. Carroll, Richard S. Carter, Lynn A. Childress, David R. Cox, Gerald Wade Cox, Dempsey Leroy Crawhorn Jr., Thomas P. Cummings, Cedric E. Foster, Rosalie A. Gifford, Eugene Anthony Gitzen, Donald Grogan, Elmer Harper, Peter L. Haubruck, Brain L. Houle, Christopher L. Humphries, Craig C. Irish, Donald R. Jackson, Nelson V. Jaramillo, Daryl A. Jester, Joseph Vernon Johns, Jimmie W. Judkins, Kurth A. Kapke, Johnny M. Kruprzak, Charles R Kuderer, Thomas D. Laws, Demetrio Lozano, Wayne Mantela, Kenneth D. May, Jimmy R. Millage, Harold J. Mitchell, Gordon L. Nathan, Jerry L. New, Bernice Ray Parnell, Aaron Pennington, Clifford C. Priesmeyer, George S Rayson, Kevin D. Reece, Franklin Reed, Arthur A. Sappington, James L. Schneider, Patrick W. Shea, Carl B. Simonye, Ernie Sims, William Smith, Paul D. Spalding, Richard Allen Strange, Steven Carter Thomas, George Walter Thornhill, Rick N. Ulrich, Roy F. Varnado, Henry Lee Walker, Larry D. Wedekind, Daniel Wilson, Emmett E. Windhorst, Wonda Lue Wooten, Thomas Long, and Gary Bryan from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: December 4, 2000.

Brian M. McLaughlin,

Director, Office of Policy Plans and Regulations.

[FR Doc. 00–31347 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice announces the FMCSA's decision to renew the exemptions from the vision requirement in 49 CFR 391.41(b)(10), for two individuals.

DATES: This decision is effective December 8, 2000. We must receive your comments on or before January 8, 2001.

ADDRESSES: Please mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. You can look at and copy all the comments at the same address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joe Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*.

Background

Two individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Bruce T. Loughary and Leo L. McMurray. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA has evaluated the two petitions for renewal on their merits and made a determination to extend their exemptions for a renewable 2-year period.

On October 9, 1998, the agency published a notice of final disposition announcing its decision to exempt 12 individuals, including these two applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (63 FR 54519). The qualifications, experience, and medical condition of each applicant was stated and discussed in detail at 63 FR 30285, June 3, 1998. Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (63 FR 54519). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continues to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for an additional 2-year period. In accordance with 49 U.S.C. 31315 and 31136(e), each of the two applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519) and each has requested renewal of the exemption. These two applicants have submitted evidence showing that the vision in their better eye continues to meet the standard specified at 49 CFR 391.41(b)(10), and that the vision impairment is stable. In addition, a review of their records of safety while driving with their respective vision deficiencies over the past 2 years, indicates that each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to Bruce T. Loughary and Leo L. McMurray, subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Request for Comments

The FMCSA has evaluated the qualifications and driving performance of the two applicants here and extends their exemptions based on the evidence introduced in their applications for renewal. The agency, however, will review any comments received concerning a particular driver's safety record, evaluate any new information submitted, and determine if the exemption continues to be consistent with the requirements at 49 U.S.C. 31315 and 31136(e). We will consider all comments of this nature that we receive before the close of business on the closing day indicated in the "Dates" section.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: December 4, 2000.

Brian M. McLaughlin,

Director, Office of Policy Plans and Regulations.

[FR Doc. 00–31348 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Hazardous Materials Transportation: Status of Applications for Preemption Determination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice Regarding Preemption Determinations Delayed Beyond 180 Days.

SUMMARY: This notice advises interested parties that RSPA's Office of the Chief Counsel maintains (on its internet website and in paper form) a chart showing the current status of each administrative proceeding on applications for a determination that Federal hazardous material transportation law preempts requirements of States, political subdivisions of States, or Indian tribes. When a decision has not been issued within 180 days after publication of a notice of the application in the **Federal Register**, this chart includes the reasons why the decision is delayed and an estimate of the additional time necessary before the decision will be issued. This chart is intended to provide more up-to-date information on the status of preemption applications than a single notice in the **Federal Register** whenever a decision has not been issued within 180 days after publication of the notice of the application.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety and Research and Technology Law, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.* (the law), provides an administrative procedure in § 5125(d)(1) for DOT to issue determinations whether a State, local, or Indian tribe requirement on the transportation of hazardous materials is preempted under the criteria set forth in § 5125(a), (b)(1), and (c). RSPA's Office of the Chief Counsel tracks the status of each preemption determination proceeding (both already decided and still pending) on a chart that is kept current on its internet website *(http://rspa-atty.dot.gov)* and in paper form.

Interested parties may access the current chart at any time by going to the website and clicking on "Preemption." A printed version of the current chart may also be obtained at any time by contacting Mr. Bonekemper at the address and telephone number set forth in "For Further Information Contact" above.

RSPA also uses this chart to meet the statutory requirement in 49 U.S.C. 5125(d)(1) to advise the public of the reasons for delay, and an estimate of the time when a decision will be made, whenever a decision is not issued within 180 days after the date of publication in the **Federal Register** of a notice of having received an application for a preemption determination. Because this chart will be kept current, RSPA does not intend to publish a new notice in the **Federal Register** each time the 180-day period is exceeded in a preemption proceeding. By keeping this chart up-to-date, RSPA will be providing interested parties with more current and complete information than they would have if RSPA published only a single notice in each proceeding advising that a decision would not be issued within 180 days.

Issued in Washington, DC on December 1, 2000.

Elaine E. Joost,

Acting Chief Counsel, Research and Special Programs Administration.

[FR Doc. 00–31250 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33962]

CSX Transportation, Inc.—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated

Ohio Southern Railroad, Incorporated (OSRR) has agreed to grant overhead and local trackage rights to CSX Transportation, Inc. (CSXT), over approximately 1.5 miles of rail line and appended trackage formerly known as CSXT's Zanesville Industrial Track, located between milepost 16.7 and milepost 18.2 in Zanesville, Muskingum County, OH, as part of the sale of CSXT's interest in the line to OSRR.[1]

The transaction was scheduled to be consummated on November 29, 2000, or as soon thereafter as the parties may agree and/or the time required for any necessary labor notice is given.[2]

The purpose of the trackage rights is to allow CSXT to continue to serve the line's existing and future rail customers after the sale of the line to OSRR.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] OSRR's purchase of the track from CSXT was the subject of a notice of exemption in *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 33955.

[2] Under 49 CFR 1180.4(g)(1), a trackage rights exemption is effective 7 days after the notice is filed. Although the applicant indicated that the proposed transaction would be consummated on November 27, 2000, the notice was not filed until November 22, 2000, and thus the proposed transaction could not be consummated before the November 29, 2000 effective date. CSXT's representative has been informed by telephone that the transaction may not be consummated prior to November 29, 2000.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33962, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street (J150), Jacksonville, FL 32202.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: December 1, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31231 Filed 12–7–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 584X)]

CSX Transportation, Inc.—Discontinuance Exemption—In Hudson County, NJ[1]

On November 20, 2000, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 to discontinue service over approximately 3.84 miles of the Weehawken Branch[2] and approximately 6.95 miles of the River Line[3] in Hudson County, NJ. The

[1] The petition is related to two abandonment applications filed on November 14, 2000, by Conrail under section 308 of the Regional Rail Reorganization Act of 1973 (3–R Act), 45 U.S.C. 748, a provision added to the 3–R Act by the Northeast Rail Service Act of 1981 (Pub. L. No. 97–35). *See Conrail-Abandonment of the Weehawken Branch—in Hudson County, NJ*, STB Docket No. AB–167 (Sub-No. 766N); and *Conrail—Abandonment of the River Line—in Hudson County, NJ*, STB Docket No. AB–167 (Sub-No. 1067N). Conrail has requested that the applications be considered together because the Weehawken Branch and the River Line are operated as a single line due to changes made to track alignment and operations. Where appropriate, the two lines will be referenced as the River Line.

Notices of Insufficient Revenues were timely filed on October 31, 1983, and October 31, 1985, respectively. The Board must grant the applications within 90 days after their filing date (i.e., by February 12, 2001) unless offers of financial assistance (OFA) are filed within the 90-day period. *See* sections 308(c) and (d).

[2] The 3.84-mile segment extends from the point of switch in Jersey City (approximately MP 0.00), to the southerly R.O.W. line of Baldwin Avenue, in Weehawken (approximately MP 2.84), and includes the former DL&W Railroad Lead to the Hoboken Freight Yard in Jersey City.

[3] The 6.95-mile segment is divided into in two parts: (1) from the connection to the Passaic and

Continued

lines traverse U.S. Postal Zip Codes 07302, 07303, 07306, 07407, and 07087.

CSXT acquired the right to operate over these lines under the North Jersey Shared Assets Areas Operating Agreement approved by the Board in *CSX Corp.—Control and Operating Leases/Agreements—Conrail Inc.*, STB Finance Docket No. 33388 (Decision No. 89) (STB served July 23, 1998), *clarified and modified* (Decision No. 96) (STB served Oct. 19, 1998), *petitions for review pending sub nom. Erie Niagara Rail Steering Committee* v. *STB*, Nos. 98–4285, *et al.* (2d Cir. filed July 31, 1998).[4] Pursuant to that agreement, CSXT does not conduct freight operations over the River Line. CSXT publishes rates and maintains stations for the River Line's shippers,[5] and Conrail conducts the actual train operations in CSXT's name.

The lines do not contain federally granted rights-of-way. A large part of the real estate and track is owned by the New Jersey Transit Corporation (NJT), and the remainder is owned by Conrail.[6] Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 9, 2001.[7]

Any OFA with respect to the lines should be filed in the pertinent Conrail application proceeding under section 308(d) of the 3–R Act and 49 CFR 1152.27. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 584X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie Rosenberg, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before December 28, 2000.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

An environmental assessment (or impact statement) is normally made available in abandonment or discontinuance proceedings, but under 49 CFR 1105.6(d), the Board may modify the environmental requirements in appropriate circumstances. The requirements are being modified here. CSXT has never conducted operations over the line apart from those Conrail conducted on CSXT's behalf. Granting a carrier authority to discontinue service it has never provided appears to have no environmental impact. The requirement that the carrier submit a report and that the Board prepare an analysis are therefore superfluous.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: November 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30944 Filed 12–7–00; 8:45 am]

BILLING CODE 4915–00–P

Harismus Branch at CP "Waldo" in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken (approximately MP 4.7), including the River Yard; and (2) from (a) the south side of Clifton Road in Weehawken (approximately MP 0.00) to the northwest side of Tonnelle Avenue (excluding the portion of line, associated track, and underlying right-of-way necessary to retain access and continue service to Durkee Foods) in North Bergen (approximately MP 1.53); (b) the National Docks Secondary in Jersey City from its connection with the River Line at CP "Nave" to the east side of Newark Avenue (approximately 1,350 feet); and (c) the Weehawken Branch (Chicken Yard) in Weehawken, from its connection with the River Line on the east side of Willow Avenue to the end of the track (approximately 2,450 feet).

[4] Norfolk Southern Railway Company also acquired the same rights with respect to the River Line and filed a similar petition for exemption on November 14, 2000. *See Norfolk Southern Railway Company—Discontinuance Exemption—in Hudson County, NJ*, STB Docket No. AB–290 (Sub-No. 212X).

[5] Two shippers, Cognis Chemical Company and Dykes Lumber Company, are being served.

[6] The River Line's real estate and track was transferred to NJT on or about October 24, 1995, pursuant to the Freight Relocation and River Line Acquisition Agreement that Conrail and NJT entered into on June 8, 1989. Conrail retained a free and exclusive easement for the operation and maintenance of rail freight service.

NJT will reconstruct the River Line and dedicate it to light rail commuter passenger service. The River Line's freight operations will be transferred to Conrail's Northern Branch, which will be reconstructed to accommodate through train service and to remove "at-grade" highway and street crossings. Conrail will not terminate freight operations or consummate the abandonment of the River Line, and CSXT will not exercise the discontinuance authority, until the Northern Branch has been reconstructed.

[7] CSXT has requested that its petition for exemption be granted with an effective date of February 12, 2001, to coincide with the anticipated effectiveness of the two related Conrail abandonment applications. This request will be considered by the Board when the petition for exemption is addressed.

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Reinvestment Application.

DATES: Written comments should be received on or before February 7, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Reinvestment Application.

OMB Number: 1535–0096.

Form Number: PD F 1993.

Abstract: The information is requested to support a request that proceeds of matured Series H savings bonds be reinvested in Series HH bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–31285 Filed 12–7–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments which occurred during or prior to calendar year 2000, but after October 9, 1996.

DATES: The allowance rates are effective the date this notice appears in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Deanna L. Wilson, Program Analyst, Communications Management Services (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5154 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Public Law 104–275, section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments which occur during or prior to calendar year 2000, but after October 9, 1996, is the average cost of Government-furnished graveliners in fiscal year 1999, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $147.96 for fiscal year 1999.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $10.17 for calendar year 2000.

The net allowance payable for qualifying interments occurring during or before calendar year 2000, therefore, is $137.79.

Approved: October 13, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 00–31290 Filed 12–7–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 65, No. 237
Friday, December 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commisssion

[Docket No. RP97–288–005]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 00–30351 appearing on page 71102 in the issue of Wednesday, November 29, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–30351 Filed 12–7–00; 8:45 am]
BILLING CODE 1505–01–D

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

Correction

In notice document 00–30673 appearing on page 75301 in the issue of Friday, December 1, 2000, make the following correction:

In the second column, in the second table, the heading "Corrosion resistant" should read "Cold-rolled"

[FR Doc. C0–30673 Filed 12–7–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2090-00; AG Order No. 2336-2000]

RIN 1115-AE 26

Extension of Designation of Somalia Under Temporary Protected Status Program

Correction

In notice document 00–29546 beginning on page 69789 in the issue of Monday, November 20, 2000, make the following corrections:

1. On page 69789, in the third column, in the **SUMMARY** , in the fourth line, "September 17, 2001" should read "September 18, 2000".

2. On the same page, in the same column, under the same heading, in the seventh line, "September 17, 2000" should read "September 17, 2001".

[FR Doc. C0–29546 Filed 12–7–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No.34–43526 File No. SR–PCX–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No.1 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to Equity Housekeeping Amendments

Correction

In notice document 00–29181 beginning on page 69109 in the issue of Wednesday, November 15, 2000, make the following correction:

On page 69110, in the first column, in the fifth full paragraph "3. *PCXE Rule 5–Listings* " should read " *e. PCXE Rule 5–Listings* ".

[FR Doc. C0–29181 Filed 12–7–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
December 8, 2000

Part II

Postal Service

39 CFR Part 20

International Mail; Changes in Postal Rates, Fees, and Mail Classifications; Final Rule

POSTAL SERVICE

39 CFR Part 20

International Mail; Changes in Postal Rates, Fees, and Mail Classifications

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the comments on proposed changes in international postal rates, fees, and mail classifications, submitted in response to its request on September 26, 2000, hereby gives notice that it is implementing the proposed postal rates, fees, and mail classifications, except the Global Priority Mail variable-weight rates, recorded delivery fee, and insurance fees for Canada which have been modified as explained below. The elimination of Global Package Link is delayed until April 1, 2001.

DATES: Effective January 7, 2001.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean (703) 292–3579, or Bruce Hirt (703) 292–3588.

SUPPLEMENTARY INFORMATION: On September 26, 2000, the Postal Service published in the **Federal Register** (65 FR 57864) a notice of proposed changes in international postal rates, fees, and mail classifications. In that notice the Postal Service proposed to change its international mail classification structure from a content-based system to a speed-of-service system. Under this new system the Postal Service will provide the following categories of international mail: Global Express Guaranteed (formerly Priority Mail Global Guaranteed), Global Express Mail (formerly Express Mail International Service), Global Priority Mail, airmail, and economy. Airmail and economy mail will include letter-post and parcel post service. Rates are redesigned for these new categories and the number of rate groups are generally increased to better reflect the cost of sending mail to groups of countries with similar costs. In addition, a number of services and charges are eliminated. These are ValuePost/Canada, New Market Opportunities Program, Global Package Link, recall/change of address service, special delivery, special handling, and storage charges. Also, the book and sheet music rate will be available only for volume mailings of 50 pounds or 200 pieces of mail sent at the same time and presorted by country.

The Postal Service requested comments by October 26, 2000, and by that date received eight responses. One comment was received from a private individual, three comments were received from package mailers using Global Package Link, three comments were received from international mail consolidators, and one comment was received from a large printing and mailing firm.

The private individual questioned the increase in the number of rate groups for single piece airmail letter-post and the logic of the rates within that rate schedule. He further pointed out that certain airmail letter-post rates are higher than the rates for variable-weight Global Priority Mail items, which receive faster service. He also noted the elimination of letter-post service for items weighing over 4 pounds to Canada. Finally, he questioned the pricing of economy letter-post with the first rate increment being 16 ounces and suggested that a lower initial weight increment would be more appropriate and would allow for a lower initial rate.

The Postal Service does not agree that there should be fewer rate groups for letter-post. The Postal Service has maintained a simple rate structure for the first ounce. The rate is 60 cents for Canada and Mexico and 80 cents for all other countries. The first ounce rate increment covers the majority of letter-post items mailed. However, as weight increases costs for providing service to various countries diverge. Having more rate groups over 1 ounce allows the Postal Service to more closely align rates with the cost of providing service to various groups of countries, while maintaining rate simplicity for most users.

The Postal Service has reviewed the alignment of the variable-weight Global Priority Mail rates with the airmail letter-post rates. To maintain an appropriate rate differential based on the service value of Global Priority Mail over airmail letter-post, the Global Priority Mail variable-weight rates have been changed slightly to avoid lower rates for Global Priority Mail as compared to airmail letter-post.

Letter service is currently available to Canada for items over 4 pounds if the item is registered. The Postal Service has found that there is no customer demand for this service. Additionally, this service is provided under a bilateral agreement with Canada Post, and Canada Post is planning to eliminate letter-post service over 4 pounds.

The Postal Service carefully considered the establishment of the minimum rate for economy (surface) letter-post. This change is necessary to ensure adequate cost coverage for this category of mail. It should be noted that there is very little volume that will be affected.

The users of Global Package Link opposed the elimination of this service, stating that similar service is not available from other international carriers, and they had made substantial investment to use the service.

The Postal Service appreciates the usefulness of Global Package Link service. However, the current service has not attracted enough customers to justify its continuation in its current form. The Postal Service, therefore, is eliminating this service. The Postal Service continues to offer a wide variety of package services that it believes will generally meet the needs of all current Global Package Link customers. To ensure that current Global Package Link mailers can transition to other products, the Postal Service will defer the elimination of Global Package Link until April 1, 2001.

The international mail consolidators generally accepted the need for increases in International Priority Airmail and International Surface Air Lift, however, all three expressed concern over the size of the increases and the rates to specific countries.

One consolidator argued that the rates for bulk commercial services, International Priority Airmail and International Surface Air Lift, increased a greater percentage than single piece airmail rates and other rates such as publishers' periodicals. For example, the current airmail rate for a 3-ounce item to countries other than Canada and Mexico is $2.60 and the new rates will range from $2.30 to $2.60 depending on destination. This represents no increase in some cases and a rate decrease in some cases.

The Postal Service readily acknowledges that not all international rates have increased the same percentage. This difference is due to a number of factors. First, the new letter-post category of mail encompasses what were formerly letters, cards, and other articles such as printed matter and small packets. Second, weight increments have been combined. For example, the .5 ounce increments have been replaced by larger 1-ounce weight increments. And third, countries have been placed in more rate groups to better reflect the cost incurred in providing postal service.

One consolidator expressed concern over preparation of International Priority Airmail and whether volumes will now be subject to the International Priority Airmail non-presort worldwide rate instead of the presort rate. It is true that in certain circumstances volumes of International Priority Airmail may no longer qualify for the presort rate. However, the Postal Service believes that the amount of such mail will be minimal. Presort rates are generally applied when there are 11 pounds to a rate group. Rate groups that contain a small number of countries are generally composed of high-volume countries and mailers are likely to have at least 11 pounds to these countries.

One consolidator suggested that the International Surface Air Lift increase be spread over several years to mitigate the impact. Unfortunately, the Postal Service expects the costs for this category to continue increasing at a relatively high rate and cannot postpone reflecting these cost increases in the rates.

The printing firm requested that it be allowed to use domestic rate endorsements on international mail since it is an additional cost to remove these endorsements for international mail. The commenter noted that it will no longer be necessary to use the endorsement "printed matter" on letter-post items. In addition, the commenter agreed with the proposed rate groups, the inclusion of Canada for International Surface Air Lift, and the elimination of ValuePost/Canada.

Currently, international mail cannot bear domestic rate endorsements. The purpose of these endorsements is to show the rate of postage paid and to determine the service to be accorded to a particular piece of mail. These domestic endorsements are inappropriate for international mail and cause confusion as to whether proper international postage has been paid and how to handle the mail. Additionally, these domestic rate endorsements can cause confusion in the delivering foreign country. Accordingly, the Postal Service does not anticipate changing the permit imprint requirements for international mail.

Some of the special service fees contained in the proposed rule are based on the equivalent domestic service. The Postal Rate Commission, in its decision on R2000–1, has recommended changes to those domestic fees. Accordingly, the Postal Service will adopt the domestic equivalent fees for international mail. The fee for recorded delivery service is changed to $1.90 from $2.10. The fee for insurance for parcel post to Canada for indemnity not over $50.00 is changed from $1.35 to $1.10. The fee for each additional $100 of insurance coverage remains $1.00. If different fees are ultimately adopted by the Postal Service for domestic mail, the international fees will be adjusted accordingly.

The notice published on September 26, 2000, contained some errors. In section 261.1, if recorded delivery is used on M-bags, return receipts and restricted delivery are available. In section 282.3, Pickup Service, the fee is $10.25, not $8.25. Under section 292, 292.212 was incorrectly shown as 291.212. Exhibit 293.71 is corrected to reflect the current list of countries to which International Surface Air Lift service is available. The title of 295.41 should read "Makeup Requirements for Books and Sheet Music." The title for Exhibit 295.44 should read "Books and Sheet Music—Canada Labeling and Routing Information." In section 297.1, the reference to 292 should read "297.2."

The Postal Service is also changing the name of Express Mail International Service to Global Express Mail. The new name is used in this notice.

After reviewing and considering the comments received, the Postal Service adopts the following international rates, fees, and mail classifications and amends the International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

PART 20—[AMENDED]

1. The authority citations for 39 CFR part 20 continue to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual (IMM) is amended to incorporate the following postage rates, fees, and regulations:

International Rates and Fees

GLOBAL EXPRESS MAIL

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
.5	$15.50	$16.75	$20.00	$17.00	$19.00	$17.00	$23.00
1	16.25	20.00	24.75	21.00	22.75	19.15	26.00
2	17.00	23.70	28.75	25.00	26.05	21.65	29.00
3	18.25	27.60	32.75	29.00	30.50	24.95	32.00
4	19.25	31.10	35.75	33.00	34.90	28.15	35.00
5	20.50	34.20	38.75	36.75	39.20	31.85	38.00
6	22.75	36.40	41.75	40.05	43.45	34.95	41.20
7	25.00	38.60	44.75	43.35	47.70	38.05	44.40
8	27.25	40.80	47.75	46.65	51.95	41.15	47.60
9	29.50	43.00	50.75	49.95	56.20	44.25	50.80
10	31.75	45.20	53.75	53.25	60.45	47.35	54.00
11	34.00	47.40	56.75	56.55	64.70	50.45	57.20
12	36.25	49.60	59.75	59.85	68.95	53.55	60.40
13	38.50	51.80	62.75	63.15	73.20	56.65	63.60
14	40.75	54.00	65.75	66.45	77.45	59.75	66.80
15	43.00	56.20	68.75	69.75	81.70	62.85	70.00
16	45.25	58.40	71.75	73.05	85.95	65.95	73.20
17	47.50	60.60	74.75	76.35	90.20	69.05	76.40
18	49.75	62.80	77.75	79.65	94.45	72.15	79.60
19	52.00	65.00	80.75	82.95	98.70	75.25	82.80
20	54.25	67.20	83.75	86.25	102.95	78.35	86.00
21	56.50	69.40	86.75	89.55	107.20	81.45	89.20
22	58.75	71.60	89.75	92.85	111.45	84.55	92.40
23	61.00	73.80	92.75	96.15	115.70	87.65	95.60
24	63.25	76.00	95.75	99.45	119.95	90.75	98.80
25	65.50	78.20	98.75	102.75	124.20	93.85	102.00

GLOBAL EXPRESS MAIL—Continued

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
26	67.75	80.40	101.75	106.05	128.45	96.95	105.20
27	70.00	82.60	104.75	109.35	132.70	100.05	108.40
28	72.25	84.80	107.75	112.65	136.95	103.15	111.60
29	74.50	87.00	110.75	115.95	141.20	106.25	114.80
30	76.75	89.20	113.75	119.25	145.45	109.35	118.00
31	79.00	91.40	116.75	122.55	149.70	112.45	121.20
32	81.25	93.60	119.75	125.85	153.95	115.55	124.40
33	83.50	95.80	122.75	129.15	158.20	118.65	127.60
34	85.75	98.00	125.75	132.45	162.45	121.75	130.80
35	88.00	100.20	128.75	135.75	166.70	124.85	134.00
36	90.25	102.40	131.75	139.05	170.95	127.95	137.20
37	92.50	104.60	134.75	142.35	175.20	131.05	140.40
38	94.75	106.80	137.75	145.65	179.45	134.15	143.60
39	97.00	109.00	140.75	148.95	183.70	137.25	146.80
40	99.25	111.20	143.75	152.25	187.95	140.35	150.00
41	101.50	113.40	146.75	155.55	192.20	143.45	153.20
42	103.75	115.60	149.75	158.85	196.45	146.55	156.40
43	106.00	117.80	152.75	162.15	200.70	149.65	159.60
44	108.25	120.00	155.75	165.45	204.95	152.75	162.80
45	110.50	122.20	158.75	168.75	209.20	155.85	166.00
46	112.75	124.40	161.75	172.05	213.45	158.95	169.20
47	115.00	126.60	164.75	175.35	217.70	162.05	172.40
48	117.25	128.80	167.75	178.65	221.95	165.15	175.60
49	119.50	131.00	170.75	181.95	226.20	168.25	178.80
50	121.75	133.20	173.75	185.25	230.45	171.35	182.00
51	124.00	135.40	176.75	188.55	234.70	174.45	185.20
52	126.25	137.60	179.75	191.85	238.95	177.55	188.40
53	128.50	139.80	182.75	195.15	243.20	180.65	191.60
54	130.75	142.00	185.75	198.45	247.45	183.75	194.80
55	133.00	144.20	188.75	201.75	251.70	186.85	198.00
56	135.25	146.40	191.75	205.05	255.95	189.95	201.20
57	137.50	148.60	194.75	208.35	260.20	193.05	204.40
58	139.75	150.80	197.75	211.65	264.45	196.15	207.60
59	142.00	153.00	200.75	214.95	268.70	199.25	210.80
60	144.25	155.20	203.75	218.25	272.95	202.35	214.00
61	146.50	157.40	206.75	221.55	277.20	205.45	217.20
62	148.75	159.60	209.75	224.85	281.45	208.55	220.40
63	151.00	161.80	212.75	228.15	285.70	211.65	223.60
64	153.25	164.00	215.75	231.45	289.95	214.75	226.80
65	155.50	166.20	218.75	234.75	294.20	217.85	230.00
66	157.75	168.40	221.75	238.05	298.45	220.95	233.20
67						224.05	236.40
68						227.15	239.60
69						230.25	242.80
70						233.35	246.00

GLOBAL EXPRESS MAIL

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12
.5	$17.00	$19.00	$22.75	$28.50	$22.25
1	20.50	22.00	25.25	31.25	24.75
2	24.00	26.00	28.25	35.50	28.00
3	28.00	30.00	32.50	40.50	32.00
4	32.00	35.00	36.50	44.75	36.00
5	36.00	40.00	40.75	49.75	40.00
6	40.20	44.65	45.00	54.50	44.00
7	44.40	49.30	49.25	59.25	48.00
8	48.60	53.95	53.50	64.00	52.00
9	52.80	58.60	57.75	68.75	56.00
10	57.00	63.25	62.00	73.50	60.00
11	61.20	67.90	66.25	78.25	64.00
12	65.40	72.55	70.50	83.00	68.00
13	69.60	77.20	74.75	87.75	72.00
14	73.80	81.85	79.00	92.50	76.00
15	78.00	86.50	83.25	97.25	80.00
16	82.20	91.15	87.50	102.00	84.00

GLOBAL EXPRESS MAIL—Continued

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12
17	86.40	95.80	91.75	106.75	88.00
18	90.60	100.45	96.00	111.50	92.00
19	94.80	105.10	100.25	116.25	96.00
20	99.00	109.75	104.50	121.00	100.00
21	103.20	114.40	108.75	125.75	104.00
22	107.40	119.05	113.00	130.50	108.00
23	111.60	123.70	117.25	135.25	112.00
24	115.80	128.35	121.50	140.00	116.00
25	120.00	133.00	125.75	144.75	120.00
26	124.20	137.65	130.00	149.50	124.00
27	128.40	142.30	134.25	154.25	128.00
28	132.60	146.95	138.50	159.00	132.00
29	136.80	151.60	142.75	163.75	136.00
30	141.00	156.25	147.00	168.50	140.00
31	145.20	160.90	151.25	173.25	144.00
32	149.40	165.55	155.50	178.00	148.00
33	153.60	170.20	159.75	182.75	152.00
34	157.80	174.85	164.00	187.50	156.00
35	162.00	179.50	168.25	192.25	160.00
36	166.20	184.15	172.50	197.00	164.00
37	170.40	188.80	176.75	201.75	168.00
38	174.60	193.45	181.00	206.50	172.00
39	178.80	198.10	185.25	211.25	176.00
40	183.00	202.75	189.50	216.00	180.00
41	187.20	207.40	193.75	220.75	184.00
42	191.40	212.05	198.00	225.50	188.00
43	195.60	216.70	202.25	230.25	192.00
44	199.80	221.35	206.50	235.00	196.00
45	204.00	226.00	210.75	239.75	200.00
46	208.20	230.65	215.00	244.50	204.00
47	212.40	235.30	219.25	249.25	208.00
48	216.60	239.95	223.50	254.00	212.00
49	220.80	244.60	227.75	258.75	216.00
50	225.00	249.25	232.00	263.50	220.00
51	229.20	253.90	236.25	268.25	224.00
52	233.40	258.55	240.50	273.00	228.00
53	237.60	263.20	244.75	277.75	232.00
54	241.80	267.85	249.00	282.50	236.00
55	246.00	272.50	253.25	287.25	240.00
56	250.20	277.15	257.50	292.00	244.00
57	254.40	281.80	261.75	296.75	248.00
58	258.60	286.45	266.00	301.50	252.00
59	262.80	291.10	270.25	306.25	256.00
60	267.00	295.75	274.50	311.00	260.00
61	271.20	300.40	278.75	315.75	264.00
62	275.40	305.05	283.00	320.50	268.00
63	279.60	309.70	287.25	325.25	272.00
64	283.80	314.35	291.50	330.00	276.00
65	288.00	319.00	295.75	334.75	280.00
66	292.20	323.65	300.00	339.50	284.00
67	296.40	328.30	304.25	344.25	288.00
68	300.60	332.95	308.50	349.00	292.00
69	304.80	337.60	312.75	353.75	296.00
70	309.00	342.25	317.00	358.50	300.00

EMS corporate account: 5 percent discount from single piece rates.

GLOBAL PRIORITY MAIL

	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
Small envelope	$4.00	$4.00	$5.00	$5.00	$5.00
Large envelope	7.00	7.00	9.00	9.00	9.00

VARIABLE WEIGHT

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
.5	$6.00	$7.00	$8.00	$9.00	$8.00
1	8.00	9.00	10.00	11.00	12.00
1.5	9.00	10.00	12.00	13.00	14.00
2	11.00	13.00	15.00	16.00	17.00
2.5	12.00	16.00	18.00	19.00	21.00
3	14.00	19.00	21.00	22.00	24.00
3.5	16.00	22.00	23.00	24.00	28.00
4	18.00	25.00	26.00	27.00	31.00

Airmail

Letter-post (Aerogrammes: $0.70. Postcards: Canada and Mexico, $0.50; rest of world, $0.70).

SINGLE PIECE LETTER-POST

Weight not over (ozs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
1	$0.60	$0.60	$0.80	$0.80	$0.80
2	0.85	0.85	1.60	1.70	1.55
3	1.10	1.25	2.40	2.60	2.30
4	1.35	1.65	3.20	3.50	3.05
5	1.60	2.05	4.00	4.40	3.80
6	1.85	2.45	4.80	5.30	4.55
7	2.10	2.85	5.60	6.20	5.30
8	2.35	3.25	6.40	7.10	6.05
12	3.10	4.00	7.55	8.40	7.65
16	3.75	5.15	8.70	9.70	9.25
20	4.40	6.30	9.85	11.00	10.85
24	5.05	7.45	11.00	12.30	12.45
28	5.70	8.60	12.15	13.60	14.05
32	6.35	9.75	13.30	14.90	15.65
36	7.00	10.95	14.50	16.25	17.35
40	7.65	12.15	15.70	17.60	19.05
44	8.30	13.35	16.90	18.95	20.75
48	8.95	14.55	18.10	20.30	22.45
52	9.65	15.80	19.35	21.70	24.20
56	10.35	17.05	20.60	23.10	25.95
60	11.05	18.30	21.85	24.50	27.70
64	11.75	19.55	23.10	25.90	29.45

INTERNATIONAL PRIORITY AIRMAIL

Rate group	Per piece	Drop shipment per pound	Full service per pound
1 (Canada)	$0.25	$2.60	$3.60
2 (Mexico)	0.12	4.60	5.60
3	0.20	4.25	5.25
4	0.20	5.50	6.50
5	0.12	4.60	5.60
6	0.12	4.75	5.75
7	0.12	6.25	7.25
8	0.12	7.25	8.25
Worldwide	0.20	7.00	8.00

AIRMAIL PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
1	$13.25	$13.00	$16.00	$16.25	$15.25	$14.00	$16.50
2	13.25	15.50	20.00	20.50	19.75	15.50	19.00
3	14.25	17.75	24.00	24.50	24.50	17.50	21.75
4	15.50	20.25	28.00	29.00	29.75	20.25	24.50
5	16.75	23.00	32.00	33.50	35.00	22.75	27.25
6	17.85	25.00	35.00	36.80	39.25	25.65	30.25
7	18.95	27.00	38.00	40.10	43.50	28.55	33.25
8	20.05	29.00	41.00	43.40	47.75	31.45	36.25
9	21.15	31.00	44.00	46.70	52.00	34.35	39.25
10	22.25	33.00	47.00	50.00	56.25	37.25	42.25
11	23.35	35.00	50.00	53.30	60.50	40.15	45.25
12	24.45	37.00	53.00	56.60	64.75	43.05	48.25
13	25.55	39.00	56.00	59.90	69.00	45.95	51.25
14	26.65	41.00	59.00	63.20	73.25	48.85	54.25
15	27.75	43.00	62.00	66.50	77.50	51.75	57.25
16	28.85	45.00	65.00	69.80	81.75	54.65	60.25
17	29.95	47.00	68.00	73.10	86.00	57.55	63.25
18	31.05	49.00	71.00	76.40	90.25	60.45	66.25
19	32.15	51.00	74.00	79.70	94.50	63.35	69.25
20	33.25	53.00	77.00	83.00	98.75	66.25	72.25
21	34.35	55.00	80.00	86.30	103.00	69.15	75.25
22	35.45	57.00	83.00	89.60	107.25	72.05	78.25
23	36.55	59.00	86.00	92.90	111.50	74.95	81.25
24	37.65	61.00	89.00	96.20	115.75	77.85	84.25
25	38.75	63.00	92.00	99.50	120.00	80.75	87.25
26	39.85	65.00	95.00	102.80	124.25	83.65	90.25
27	40.95	67.00	98.00	106.10	128.50	86.55	93.25
28	42.05	69.00	101.00	109.40	132.75	89.45	96.25
29	43.15	71.00	104.00	112.70	137.00	92.35	99.25
30	44.25	73.00	107.00	116.00	141.25	95.25	102.25
31	45.35	75.00	110.00	119.30	145.50	98.15	105.25
32	46.45	77.00	113.00	122.60	149.75	101.05	108.25
33	47.55	79.00	116.00	125.90	154.00	103.95	111.25
34	48.65	81.00	119.00	129.20	158.25	106.85	114.25
35	49.75	83.00	122.00	132.50	162.50	109.75	117.25
36	50.85	85.00	125.00	135.80	166.75	112.65	120.25
37	51.95	87.00	128.00	139.10	171.00	115.55	123.25
38	53.05	89.00	131.00	142.40	175.25	118.45	126.25
39	54.15	91.00	134.00	145.70	179.50	121.35	129.25
40	55.25	93.00	137.00	149.00	183.75	124.25	132.25
41	56.35	95.00	140.00	152.30	188.00	127.15	135.25
42	57.45	97.00	143.00	155.60	192.25	130.05	138.25
43	58.55	99.00	146.00	158.90	196.50	132.95	141.25
44	59.65	101.00	149.00	162.20	200.75	135.85	144.25
45	60.75	.....	152.00	.....	205.00	138.75	147.25
46	61.85	.....	155.00	.....	209.25	141.65	150.25
47	62.95	.....	158.00	.....	213.50	144.55	153.25
48	64.05	.....	161.00	.....	217.75	147.45	156.25
49	65.15	.....	164.00	.....	222.00	150.35	159.25
50	66.25	.....	167.00	.....	226.25	153.25	162.25
51	67.35	.....	170.00	.....	230.50	156.15	165.25
52	68.45	.....	173.00	.....	234.75	159.05	168.25
53	69.55	.....	176.00	.....	239.00	161.95	171.25
54	70.65	.....	179.00	.....	243.25	164.85	174.25
55	71.75	.....	182.00	.....	247.50	167.75	177.25
56	72.85	.....	185.00	.....	251.75	170.65	180.25
57	73.95	.....	188.00	.....	256.00	173.55	183.25
58	75.05	.....	191.00	.....	260.25	176.45	186.25
59	76.15	.....	194.00	.....	264.50	179.35	189.25
60	77.25	.....	197.00	.....	268.75	182.25	192.25
61	78.35	.....	200.00	.....	273.00	185.15	195.25
62	79.45	.....	203.00	.....	277.25	188.05	198.25
63	80.55	.....	206.00	.....	281.50	190.95	201.25
64	81.65	.....	209.00	.....	285.75	193.85	204.25
65	82.75	.....	212.00	.....	290.00	196.75	207.25
66	83.85	.....	215.00	.....	294.25	199.65	210.25
67	.....	.....	.....	.....	298.50	202.55	213.25
68	.....	.....	.....	.....	302.75	205.45	216.25

AIRMAIL PARCEL POST SINGLE PIECE—Continued

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
69					307.00	208.35	219.25
70					311.25	211.25	222.25

AIRMAIL PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12	Rate group 13
1	$12.50	$14.50	$16.00	$18.00	$14.00	$17.00
2	16.00	18.75	18.50	22.00	15.50	19.00
3	20.00	23.25	21.50	26.00	17.25	22.00
4	24.25	26.75	24.00	30.00	19.25	25.00
5	28.75	32.75	26.50	34.00	21.25	28.00
6	32.65	36.50	29.50	37.50	23.75	31.25
7	36.55	40.40	32.50	41.00	26.25	34.50
8	40.45	44.30	35.50	44.50	28.75	37.75
9	44.35	48.20	38.50	48.00	31.25	41.00
10	48.25	52.10	41.50	51.50	33.75	44.25
11	52.15	56.00	44.50	55.00	36.25	47.50
12	56.05	59.90	47.50	58.50	38.75	50.75
13	59.95	63.80	50.50	62.00	41.25	54.00
14	63.85	67.70	53.50	65.50	43.75	57.25
15	67.75	71.60	56.50	69.00	46.25	60.50
16	71.65	75.50	59.50	72.50	48.75	63.75
17	75.55	79.40	62.50	76.00	51.25	67.00
18	79.45	83.30	65.50	79.50	53.75	70.25
19	83.35	87.20	68.50	83.00	56.25	73.50
20	87.25	91.10	71.50	86.50	58.75	76.75
21	91.15	95.00	74.50	90.00	61.25	80.00
22	95.05	98.90	77.50	93.50	63.75	83.25
23	98.95	102.80	80.50	97.00	66.25	86.50
24	102.85	106.70	83.50	100.50	68.75	89.75
25	106.75	110.60	86.50	104.00	71.25	93.00
26	110.65	114.50	89.50	107.50	73.75	96.25
27	114.55	118.40	92.50	111.00	76.25	99.50
28	118.45	122.30	95.50	114.50	78.75	102.75
29	122.35	126.20	98.50	118.00	81.25	106.00
30	126.25	130.10	101.50	121.50	83.75	109.25
31	130.15	134.00	104.50	125.00	86.25	112.50
32	134.05	137.90	107.50	128.50	88.75	115.75
33	137.95	141.80	110.50	132.00	91.25	119.00
34	141.85	145.70	113.50	135.50	93.75	122.25
35	145.75	149.60	116.50	139.00	96.25	125.50
36	149.65	153.50	119.50	142.50	98.75	128.75
37	153.55	157.40	122.50	146.00	101.25	132.00
38	157.45	161.30	125.50	149.50	103.75	135.25
39	161.35	165.20	128.50	153.00	106.25	138.50
40	165.25	169.10	131.50	156.50	108.75	141.75
41	169.15	173.00	134.50	160.00	111.25	145.00
42	173.05	176.90	137.50	163.50	113.75	148.25
43	176.95	180.80	140.50	167.00	116.25	151.50
44	180.85	184.70	143.50	170.50	118.75	154.75
45	184.75	188.60	146.50	174.00	121.25	158.00
46	188.65	192.50	149.50	177.50	123.75	161.25
47	192.55	196.40	152.50	181.00	126.25	164.50
48	196.45	200.30	155.50	184.50	128.75	167.75
49	200.35	204.20	158.50	188.00	131.25	171.00
50	204.25	208.10	161.50	191.50	133.75	174.25
51	208.15	212.00	164.50	195.00	136.25	177.50
52	212.05	215.90	167.50	198.50	138.75	180.75
53	215.95	219.80	170.50	202.00	141.25	184.00
54	219.85	223.70	173.50	205.50	143.75	187.25
55	223.75	227.60	176.50	209.00	146.25	190.50
56	227.65	231.50	179.50	212.50	148.75	193.75
57	231.55	235.40	182.50	216.00	151.25	197.00
58	235.45	239.30	185.50	219.50	153.75	200.25
59	239.35	243.20	188.50	223.00	156.25	203.50
60	243.25	247.10	191.50	226.50	158.75	206.75

AIRMAIL PARCEL POST SINGLE PIECE—Continued

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12	Rate group 13
61	247.15	251.00	194.50	230.00	161.25	210.00
62	251.05	254.90	197.50	233.50	163.75	213.25
63	254.95	258.80	200.50	237.00	166.25	216.50
64	258.85	262.70	203.50	240.50	168.75	219.75
65	262.75	266.60	206.50	244.00	171.25	223.00
66	266.65	270.50	209.50	247.50	173.75	226.25
67	270.55	274.40	212.50	251.00	176.25	229.50
68	274.45	278.30	215.50	254.50	178.75	232.75
69	278.35	282.20	218.50	258.00	181.25	236.00
70	282.25	286.10	221.50	261.50	183.75	239.25

AIRMAIL M-BAGS

Weight not over (lbs.)	Rate group 1 Canada	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
11	$16.50	$17.60	$27.50	$38.50	$38.50
Each additional pound or fraction of a pound	1.50	1.60	2.50	3.50	3.50

ECONOMY MAIL—LETTER-POST SINGLE PIECE

Weight not over (ozs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
16	$2.70	$4.35	$3.80	$4.05	$4.95
20	4.05	5.15	4.45	4.70	5.70
24	4.55	5.95	5.10	5.35	6.50
28	5.05	6.70	5.70	6.00	7.30
32	5.60	7.50	6.30	6.65	8.10
36	6.00	8.15	6.90	7.25	8.75
40	6.40	8.80	7.50	7.85	9.40
44	6.80	9.45	8.10	8.45	10.05
48	7.20	10.10	8.70	9.05	10.70
52	7.60	10.75	9.30	9.65	11.35
56	8.00	11.40	9.90	10.25	12.00
60	8.40	12.05	10.50	10.85	12.65
64	8.80	12.70	11.10	11.45	13.30

INTERNATIONAL SURFACE AIR LIFT

Rate group	Per piece	Drop shipment per pound	Direct shiipment per pound	Full service per pound	M-Bag drop shipment	M-Bag direct shipment	M-Bag full service
1 (Canada)	$0.25	$2.15	$2.65	$3.15	$1.40	$1.50	$1.50
2 (Mexico)	0.12	3.20	3.70	4.20	1.50	1.60	1.60
3	0.20	2.50	3.00	3.50	1.50	1.75	1.75
4	0.20	2.75	3.25	3.75	2.50	2.50	2.50
5	0.12	3.45	3.95	4.45	2.00	2.25	2.25
6	0.12	3.40	3.90	4.40	2.00	2.25	2.25
7	0.12	3.50	4.00	4.50	2.25	2.50	2.50
8	0.12	5.50	6.00	6.50	3.00	3.25	3.25

PUBLISHERS' PERIODICALS

Weight not over		Canada	Mexico	All other countries (except Canada and Mexico)
lbs.	oz.			
0	1	$0.40	$0.48	$0.44

PUBLISHERS' PERIODICALS—Continued

Weight not over	Canada	Mexico	All other countries (except Canada and Mexico)
0 2	0.46	0.60	0.55
0 3	0.52	0.78	0.71
0 4	0.59	0.90	0.83
0 5	0.65	1.13	1.05
0 6	0.72	1.13	1.05
0 7	0.78	1.36	1.27
0 8	0.85	1.36	1.27
0 9	0.91	1.57	1.50
0 10	0.98	1.57	1.50
0 11	1.04	1.80	1.71
0 12	1.11	1.80	1.71
0 13	1.17	2.03	1.93
0 14	1.24	2.03	1.93
0 15	1.30	2.26	2.15
0 16	1.37	2.26	2.15
0 18	1.43	2.46	2.36
0 20	1.49	2.68	2.56
0 22	1.55	2.88	2.77
0 24	1.61	3.10	2.98
0 26	1.67	3.30	3.19
0 28	1.73	3.52	3.39
0 30	1.79	3.72	3.60
0 32	1.85	3.94	3.81
3 0	4.00	5.38	5.13
4 0	4.64	6.82	6.45

$0.25 per pound discount for volume made up to country and tendered at the New Jersey International and Bulk Mail Center.

BOOKS AND SHEET MUSIC

Weight not over (ozs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Japan, Australia, New Zealand)	Rate group 5
0.5	$1.70	$2.85	$2.65	$2.60	$2.80
1.0	1.70	2.85	2.65	2.60	2.80
2.0	1.70	2.85	2.65	2.60	2.80
3.0	1.70	2.85	2.65	2.60	2.80
4.0	1.70	2.85	2.65	2.60	2.80
5.0	1.70	2.85	2.65	2.60	2.80
6.0	1.70	2.85	2.65	2.60	2.80
7.0	1.70	2.85	2.65	2.60	2.80
8.0	1.70	2.85	2.65	2.60	2.80
12.0	1.70	2.85	2.65	2.60	2.80
16.0	1.70	2.85	2.65	2.60	2.80
20.0	1.85	3.40	3.20	3.10	3.35
24.0	2.00	3.95	3.75	3.60	3.90
28.0	2.15	4.50	4.25	4.10	4.45
32.0	2.30	5.00	4.75	4.60	5.00
36.0	3.00	5.45	5.10	5.00	5.45
40.0	3.68	5.90	5.50	5.38	5.90
44.0	4.35	6.35	5.90	5.75	6.35
48.0	5.00	6.75	6.20	6.10	6.70
52.0	5.20	7.65	6.60	6.50	7.15
56.0	5.40	8.55	7.00	6.90	7.60
60.0	5.60	9.45	7.40	7.35	8.05
64.0	5.80	10.30	7.80	7.75	8.40

Matter for the Blind—Free.

ECONOMY PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
5	$15.25	$19.50	$23.00	$23.25	$21.25	$18.25	$22.00
6	15.75	20.75	25.00	25.00	22.75	19.35	24.00
7	16.50	22.00	27.00	26.25	24.25	20.45	26.00
8	17.25	23.00	29.00	27.75	25.75	21.55	28.00
9	17.75	24.00	31.00	29.00	27.25	22.65	30.00
10	18.25	24.75	32.75	30.25	28.75	23.75	32.00
11	18.70	25.50	34.45	31.30	30.00	24.70	33.60
12	19.15	26.25	36.15	32.35	31.25	25.65	35.20
13	19.60	27.00	37.85	33.40	32.50	26.60	36.80
14	20.05	27.75	39.55	34.45	33.75	27.55	38.40
15	20.50	28.50	41.25	35.50	35.00	28.50	40.00
16	20.95	29.25	42.95	36.55	36.25	29.45	41.60
17	21.40	30.00	44.65	37.60	37.50	30.40	43.20
18	21.85	30.75	46.35	38.65	38.75	31.35	44.80
19	22.30	31.50	48.05	39.70	40.00	32.30	46.40
20	22.75	32.25	49.75	40.75	41.25	33.25	48.00
21	23.30	32.95	51.35	41.70	42.40	34.15	49.60
22	23.85	33.65	52.95	42.65	43.55	35.05	51.20
23	24.40	34.35	54.55	43.60	44.70	35.95	52.80
24	24.95	35.05	56.15	44.55	45.85	36.85	54.40
25	25.50	35.75	57.75	45.50	47.00	37.75	56.00
26	26.05	36.45	59.35	46.45	48.15	38.65	57.60
27	26.60	37.15	60.95	47.40	49.30	39.55	59.20
28	27.15	37.85	62.55	48.35	50.45	40.45	60.80
29	27.70	38.55	64.15	49.30	51.60	41.35	62.40
30	28.25	39.25	65.75	50.25	52.75	42.25	64.00
31	28.80	39.95	67.25	51.15	53.85	43.10	65.50
32	29.35	40.65	68.75	52.05	54.95	43.95	67.00
33	29.90	41.35	70.25	52.95	56.05	44.80	68.50
34	30.45	42.05	71.75	53.85	57.15	45.65	70.00
35	31.00	42.75	73.25	54.75	58.25	46.50	71.50
36	31.55	43.45	74.75	55.65	59.35	47.35	73.00
37	32.10	44.15	76.25	56.55	60.45	48.20	74.50
38	32.65	44.85	77.75	57.45	61.55	49.05	76.00
39	33.20	45.55	79.25	58.35	62.65	49.90	77.50
40	33.75	46.25	80.75	59.25	63.75	50.75	79.00
41	34.30	46.95	82.25	60.15	64.85	51.60	80.50
42	34.85	47.65	83.75	61.05	65.95	52.45	82.00
43	35.40	48.35	85.25	61.95	67.05	53.30	83.50
44	35.95	49.05	86.75	62.85	68.15	54.15	85.00
45	36.50	.....	88.25	.....	69.25	55.00	86.50
46	37.05	.....	89.75	.....	70.35	55.85	88.00
47	37.60	.....	91.25	.....	71.45	56.70	89.50
48	38.15	.....	92.75	.....	72.55	57.55	91.00
49	38.70	.....	94.25	.....	73.65	58.40	92.50
50	39.25	.....	95.75	.....	74.75	59.25	94.00
51	39.80	.....	97.25	.....	75.85	60.10	95.50
52	40.35	.....	98.75	.....	76.95	60.95	97.00
53	40.90	.....	100.25	.....	78.05	61.80	98.50
54	41.45	.....	101.75	.....	79.15	62.65	100.00
55	42.00	.....	103.25	.....	80.25	63.50	101.50
56	42.55	.....	104.75	.....	81.35	64.35	103.00
57	43.10	.....	106.25	.....	82.45	65.20	104.50
58	43.65	.....	107.75	.....	83.55	66.05	106.00
59	44.20	.....	109.25	.....	84.65	66.90	107.50
60	44.75	.....	110.75	.....	85.75	67.75	109.00
61	45.30	.....	112.25	.....	86.85	68.60	110.50
62	45.85	.....	113.75	.....	87.95	69.45	112.00
63	46.40	.....	115.25	.....	89.05	70.30	113.50
64	46.95	.....	116.75	.....	90.15	71.15	115.00
65	47.50	.....	118.25	.....	91.25	72.00	116.50
66	48.05	.....	119.75	.....	92.35	72.85	118.00
67	.....	.....	.....	.....	93.45	73.70	119.50
68	.....	.....	.....	.....	94.55	74.55	121.00
69	.....	.....	.....	.....	95.65	75.40	122.50
70	.....	.....	.....	.....	96.75	76.25	124.00

ECONOMY PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12
5	$21.50	$28.75	$21.75	$26.25	$20.25
6	22.80	30.95	23.50	28.75	22.00
7	24.10	33.15	25.00	31.00	23.75
8	25.40	35.35	26.75	33.25	25.50
9	26.70	37.55	29.00	35.50	27.25
10	28.10	39.75	32.00	37.75	28.90
11	29.40	41.65	33.40	39.80	30.55
12	30.70	43.55	34.80	41.85	32.20
13	32.00	45.45	36.20	43.90	33.85
14	33.30	47.35	37.60	45.95	35.50
15	34.60	49.25	39.00	48.00	37.15
16	35.90	51.15	40.40	50.05	38.80
17	37.20	53.05	41.80	52.10	40.45
18	38.50	54.95	43.20	54.15	42.10
19	39.80	56.85	44.60	56.20	43.75
20	41.10	58.75	46.00	58.25	45.40
21	42.40	60.45	47.25	60.15	46.85
22	43.70	62.15	48.50	62.05	48.30
23	45.00	63.85	49.75	63.95	49.75
24	46.30	65.55	51.00	65.85	51.20
25	47.60	67.25	52.25	67.75	52.65
26	48.90	68.95	53.50	69.65	54.10
27	50.20	70.65	54.75	71.55	55.55
28	51.50	72.35	56.00	73.45	57.00
29	52.80	74.05	57.25	75.35	58.45
30	54.10	75.75	58.50	77.25	59.90
31	55.40	77.40	59.75	79.00	61.30
32	56.70	79.05	61.00	80.75	62.70
33	58.00	80.70	62.25	82.50	64.10
34	59.30	82.35	63.50	84.25	65.50
35	60.60	84.00	64.75	86.00	66.90
36	61.90	85.65	66.00	87.75	68.30
37	63.20	87.30	67.25	89.50	69.70
38	64.50	88.95	68.50	91.25	71.10
39	65.80	90.60	69.75	93.00	72.50
40	67.10	92.25	71.00	94.75	73.90
41	68.40	93.60	72.25	96.50	75.30
42	69.70	94.95	73.50	98.25	76.70
43	71.00	96.30	74.75	100.00	78.10
44	72.30	97.65	76.00	101.75	79.50
45	73.60	99.00	77.25	103.50	80.90
46	74.90	100.35	78.50	105.25	82.30
47	76.20	101.70	79.75	107.00	83.70
48	77.50	103.05	81.00	108.75	85.10
49	78.80	104.40	82.25	110.50	86.50
50	80.10	105.75	83.50	112.25	87.90
51	81.40	107.10	84.75	114.00	89.30
52	82.70	108.45	86.00	115.75	90.70
53	84.00	109.80	87.25	117.50	92.10
54	85.30	111.15	88.50	119.25	93.50
55	86.60	112.50	89.75	121.00	94.90
56	87.90	113.85	91.00	122.75	96.30
57	89.20	115.20	92.25	124.50	97.70
58	90.50	116.55	93.50	126.25	99.10
59	91.80	117.90	94.75	128.00	100.50
60	93.10	119.25	96.00	129.75	101.90
61	94.40	120.60	97.25	131.50	103.30
62	95.70	121.95	98.50	133.25	104.70
63	97.00	123.30	99.75	135.00	106.10
64	98.30	124.65	101.00	136.75	107.50
65	99.60	126.00	102.25	138.50	108.90
66	100.90	127.35	103.50	140.25	110.30
67	102.20	128.70	104.75	142.00	111.70
68	103.50	130.05	106.00	143.75	113.10
69	104.80	131.40	107.25	145.50	114.50
70	106.10	132.75	108.50	147.25	115.90

ECONOMY (SURFACE) M-BAGS

Weight not over (lbs).	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australi a, Japan, New Zealand)	Rate group 5
Regular:					
11	$11.55	$14.30	$15.95	$16.50	$16.50
Each additional pound or fraction of a pound	1.05	1.30	1.45	1.50	1.50
Books and Sheet Music and Publishers' Periodicals:					
11	8.80	8.80	9.90	11.00	11.00
Each additional pound or fraction of a pound	0.80	0.80	0.90	1.00	1.00

Special Services and Miscellaneous Fees and Charges

Fees with an asterisk are based on the equivalent domestic service.

CERTIFICATE OF MAILING*

	Fee
Individual Pieces:	
Individual articles listing, per article	$0.75
Firm mailing books (PS Form 3877), per article listed	0.25
Each individual copy of individual article listing or original mailing receipt for registered, insured, or recorded delivery (per copy)	0.75
Bulk Pieces:	
Up to 1,000 pieces (one certificate for total number)	3.50
Each additional 1,000 pieces or fraction	0.40
Duplicate copy	0.75

INSURANCE PARCEL POST

Indemnity limit not over	Canada*	All other countries
$50	$1.10	$1.85
100	2.00	2.60
200	3.00	3.60
300	4.00	4.60
400	5.00	5.60
500	6.00	6.60
600	7.00	7.60
675	8.00	.....
700	.....	8.60
Add'l. $100	.....	1.00

GLOBAL EXPRESS MAIL*

Indemnity limit not over	All countries
$500	No Fee
Add'l. $100	$1.00

REGISTERED MAIL—COUNTRIES OTHER THAN CANADA: $7.25*

Indemnity limit not over	Fee
Canada:	
$100	$7.50
500	8.25
1000	9.00

Return Receipt*: $1.50.
Restricted Delivery*: $3.20.
Recorded Delivery*: $1.90.
International Postal Money Orders—Direct (MP1): $3.25; List: $8.50 (no change).
International Reply Coupons: $1.75.
International Business Reply Service—Cards: $0.80; Envelope up to 2 ounces: $1.20.
Customs Clearance and Delivery Fee: $4.50.
Pick up Service*: $10.25.
Shortpaid Mail Charge: $0.45.

COUNTRY RATE GROUP LIST

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Afghanistan	.....	7	7	5	8
Albania	6	7	7	5	5
Algeria	11	10	11	5	8
Andorra	6	7	6	3	3
Angola	11	10	11	5	8
Anguilla	12	12	12	5	6
Antigua and Barbuda	.....	12	12	5	6
Argentina	12	13	12	5	6
Armenia	7	7	7	5	8
Aruba	12	12	12	5	6
Ascension	.....	.....	11	5	5
Australia	8	9	8	4	4
Austria	7	7	6	5	3
Azerbaijan	6	7	7	5	8
Bahamas	12	12	12	5	6
Bahrain	11	10	10	5	8
Bangladesh	9	8	8	5	8
Barbados	12	12	12	5	6
Belarus	6	6	7	5	5
Belgium	7	6	6	3	3

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Belize	12	12	12	5	6
Benin	11	10	10	5	8
Bermuda	12	13	12	5	6
Bhutan	8	9	9	5	8
Bolivia	12	13	12	5	6
Bosnia-Herzegovina	6	6	6	5	5
Botswana	10	11	11	5	8
Brazil	12	13	12	5	6
British Virgin Islands	.....	12	12	5	6
Brunei Darussalam	8	8	8	5	7
Bulgaria	6	6	7	5	5
Burkina Faso	10	10	11	5	8
Burma (Myanmar)	.....	6	6	5	8
Burundi	11	11	11	5	8
Cambodia	8	8	.....	5	7
Cameroon	10	11	11	5	8
Canada	1	1	1	1	1
Cape Verde	11	10	11	5	8
Cayman Islands	12	12	12	5	6
Central African Republic	11	11	11	5	8
Chad	10	10	.....	5	8
Chile	12	13	12	5	6
China	5	5	5	5	7
Colombia	12	12	12	5	6
Comoros Islands	.....	10	10	5	8
Congo (Brazzaville), Republic of the	11	10	10	5	8
Congo (Kinshasa), Democratic Republic of the	10	11	11	5	8
Costa Rica	12	12	12	5	6
Côte d'Ivoire (Ivory Coast)	10	11	11	5	8
Croatia	6	6	6	5	5
Cuba	.....	.....	.....	5	6
Cyprus	6	6	6	5	8
Czech Republic	7	6	7	5	5
Denmark	7	6	6	3	3
Djibouti	11	10	10	5	8
Dominica	12	12	12	5	6
Dominican Republic	12	12	12	5	6
Ecuador	12	13	12	5	6
Egypt	11	11	11	5	8
El Salvador	12	12	12	5	6
Equatorial Guinea	10	10	10	5	8
Eritrea	10	11	11	5	8
Estonia	6	7	7	5	5
Ethiopia	10	10	10	5	8
Falkland Islands	.....	.....	12	5	6
Faroe Islands	7	6	6	3	5
Fiji	8	8	8	5	7
Finland	7	6	6	3	3
France (includes Corsica & Monaco)	6	6	6	3	3
French Guiana	12	13	12	5	6
French Polynesia (includes Tahiti)	9	9	9	5	7
Gabon	11	10	11	5	8
Gambia	.....	11	11	5	8
Georgia, Republic of	7	7	7	5	8
Germany	7	6	6	3	3
Ghana	10	11	11	5	8
Gibraltar	.....	6	6	3	3
Great Britain and Northern Ireland	3	3	3	3	3
Greece	7	6	6	3	3
Greenland	.....	6	6	3	3
Grenada	12	12	12	5	6
Guadeloupe	12	13	12	5	6
Guatemala	12	12	12	5	6
Guinea	10	10	10	5	8
Guinea-Bissau	11	11	11	5	8
Guyana	12	12	12	5	6
Haiti	12	12	12	5	6
Honduras	12	13	12	5	6
Hong Kong	8	9	8	5	7
Hungary	7	6	6	5	5
Iceland	7	6	6	3	3
India	8	9	8	5	8

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Indonesia (includes East Timor)	8	8	8	5	7
Iran	.....	11	11	5	8
Iraq	11	11	11	5	8
Ireland	6	6	6	3	3
Israel	10	10	10	3	3
Italy	7	6	6	3	3
Jamaica	12	12	12	5	6
Japan	4	4	4	4	4
Jordan	10	10	10	5	8
Kazakhstan	6	6	7	5	8
Kenya	10	10	10	5	8
Kiribati	.....	8	8	5	7
Korea, Dem. People's Rep. of (North)	.....	.....	.....	5	7
Korea, Republic of (South)	8	9	8	5	7
Kuwait	11	10	10	5	8
Kyrgyzstan	6	6	7	5	5
Laos	9	9	9	5	7
Latvia	7	6	6	5	5
Lebanon	.....	10	.....	5	8
Lesotho	11	11	11	5	8
Liberia	10	10	10	5	8
Libya	.....	7	7	5	8
Liechtenstein	7	6	6	3	3
Lithuania	6	6	7	5	5
Luxembourg	6	6	6	3	3
Macao	8	9	9	5	5
Macedonia, Republic of	7	6	7	5	5
Madagascar	10	11	11	5	8
Malawi	10	11	11	5	8
Malaysia	8	8	8	5	7
Maldives	9	9	9	5	8
Mali	10	10	11	5	8
Malta	7	7	7	5	8
Martinique	12	13	12	5	6
Mauritania	10	10	11	5	8
Mauritius	10	10	10	5	8
Mexico	2	2	2	2	2
Moldova	6	7	7	5	8
Mongolia	9	9	9	5	7
Montserrat	.....	8	8	5	6
Morocco	11	10	11	5	8
Mozambique	10	11	11	5	8
Namibia	11	11	11	5	8
Nauru	8	8	8	5	7
Nepal	8	9	9	5	7
Netherlands	7	6	6	3	3
Netherlands Antilles	12	12	12	5	6
New Caledonia	9	9	9	5	7
New Zealand	8	8	8	4	4
Nicaragua	12	12	12	5	6
Niger	10	10	10	5	8
Nigeria	11	10	10	5	8
Norway	7	6	6	3	3
Oman	11	10	10	5	8
Pakistan	8	9	8	5	8
Panama	12	12	12	5	6
Papua New Guinea	8	9	9	5	7
Paraguay	12	13	12	5	6
Peru	12	13	12	5	6
Philippines	8	9	8	5	7
Pitcairn Island	.....	8	8	5	7
Poland	6	6	6	5	5
Portugal (includes Azores & Madeira Islands)	7	7	7	3	3
Qatar	11	10	10	5	8
Reunion	.....	13	12	5	8
Romania	6	7	7	5	5
Russia	7	7	7	5	5
Rwanda	10	10	11	5	8
Saint Christopher (St. Kitts) and Nevis	12	12	12	5	6
Saint Helena	.....	11	11	5	8
Saint Lucia	12	12	12	5	6
Saint Pierre & Miquelon	.....	6	6	5	6

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Saint Vincent and the Grenadines	12	13	12	5	6
San Marino	.....	9	8	3	3
Sao Tome and Principe	.....	10	10	5	5
Saudi Arabia	10	10	10	5	8
Senegal	11	10	10	5	8
Serbia-Montenegro (Yugoslavia)	7	7	7	5	5
Seychelles	10	10	11	5	8
Sierra Leone	10	10	10	5	8
Singapore	8	8	8	5	7
Slovak Republic (Slovakia)	6	6	6	5	5
Slovenia	7	6	7	5	5
Solomon Islands	8	8	8	5	7
Somalia	10	10	10	5	8
South Africa	11	11	10	5	8
Spain (includes Canary Islands)	6	7	6	3	3
Sri Lanka	8	9	8	5	8
Sudan	10	11	11	5	8
Suriname	.....	12	12	5	6
Swaziland	11	10	10	5	8
Sweden	7	7	7	3	3
Switzerland	7	6	6	3	3
Syria	10	10	10	5	8
Taiwan	8	9	8	5	7
Tajikistan	7	6	6	5	8
Tanzania	10	10	10	5	8
Thailand	9	8	8	5	7
Togo	11	10	10	5	8
Tonga	.....	8	8	5	7
Trinidad and Tobago	12	12	12	5	6
Tristan da Cunha	.....	10	11	5	8
Tunisia	11	10	10	5	8
Turkey	10	10	10	5	5
Turkmenistan	7	7	7	5	5
Turks and Caicos Islands	.....	12	12	5	6
Tuvalu	.....	8	8	5	7
Uganda	10	10	11	5	8
Ukraine	7	7	7	5	8
United Arab Emirates	10	10	10	5	8
Uruguay	12	13	12	5	6
Uzbekistan	.....	7	7	5	8
Vanuatu	8	8	8	5	7
Vatican City	.....	6	6	3	3
Venezuela	12	12	12	5	6
Vietnam	8	9	8	5	7
Wallis and Futuna Islands	.....	9	9	5	7
Western Samoa	8	8	8	5	7
Yemen	10	10	11	5	8
Zambia	10	10	11	5	8
Zimbabwe	11	11	11	5	8

[1] ISAL service not available to all countries. See Individual Country Listings for availablilty.

1 INTERNATIONAL MAIL SERVICES

110 General Information

111 Scope

This manual sets forth the conditions and procedures for the preparation and treatment of mail sent from the United States to other countries and the treatment of mail received from other countries. Its counterpart in the domestic mail service is the Domestic Mail Manual (DMM). Cross-references to the DMM are provided wherever domestic conditions and procedures apply to the preparation or treatment of international mail.

112 Mailer Responsibility

Regardless of any statement contained in this manual or the statements of any employee of the United States Postal Service, the burden rests with the mailer to ensure that he or she has complied with the prescribed laws and regulations governing domestic and international mail, both those of the United States and those of the destination country.

113 Individual Country Listings

Individual Country Listings (ICLs) provide information about conditions of mailing, postage rates, and special services for each country. ICLs are arranged alphabetically. Most subtitles are followed by a chapter citation in parentheses.

114 Availability

Customers may access this manual online at *http://pe.usps.gov*. A printed copy may be purchased from: Superintendent of Documents, U.S. Government Printing Office, 941 N. Capitol St., NE., Washington DC 20402–9371.

115 Official Correspondence

115.1 Correspondence With Headquarters

115.11 Operations

Questions regarding the proper classification, postal rates and fees, preparation requirements, claims and inquiries, special services, mailability, or any other classification aspect of international mail should be directed to local postal officials. Regulatory matters relating to international mail should be directed to the appropriate rates and classification service center (RCSC). See DMM G042 for a listing of RCSCs and service areas.

115.12 Policy and Representation

Correspondence concerning the following should be addressed to: Director, International Postal Affairs, U.S. Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260–6500.

a. Policy matters relating to international mail and international postal affairs.

b. Negotiation and interpretation of postal agreements.

c. Communications of a nonroutine nature from foreign postal officials.

d. Postal Service representation at international postal meetings.

e. Postal Service representation at meetings with other federal departments and agencies relating to international postal affairs.

f. Visits by foreign postal officials.

115.13 Transportation and Distribution

Correspondence concerning the transportation of international civil and military mail by surface and air, including the following, should be addressed to: Manager, International Operations, U.S. Postal Service, 475 L'Enfant Plz SW., Washington DC 20260–6500.

a. Containerization and plant loads.

b. Conveyance rates.

c. Designation of U.S. exchange offices.

d. Documentation.

e. Internal air conveyance, terminal, and transit charges.

f. Mode of transport.

g. Related forms and reports.

h. Routing.

i. Schedules and performance of U.S. and foreign flag carriers.

j. Distribution procedures and schemes.

115.14 Investigations

Correspondence relating to investigation of losses, depredations (robberies or riflings), and security of international mail should be addressed to: Chief Postal Inspector, Inspection Service, U.S. Postal Service, 475 L'Enfant Plz SW., Washington DC 20260–2100.

115.15 International Money Orders

Correspondence relating to international money orders, including operational procedures, accounting, cashing, and issuing, should be addressed to: International Money Order Section, Accounting Service Center, U.S. Postal Service, PO Box 14964, St. Louis, MO 63182–9421.

115.2 Correspondence With Foreign Postal Authorities

115.21 Correspondence Permitted

Correspondence is permitted between foreign postal authorities and Postal Inspectors-in-Charge and the postmasters (listed in 931.2) acting under the instructions for processing inquiries described in 928. U.S. exchange offices may correspond with their foreign counterparts only through bulletins of verification and exchanges of documentation.

115.22 Correspondence Not Permitted

In all other cases, postmasters, area offices, and other field units of the Postal Service must not correspond directly with postal officials in other countries, but must refer inquiries from those officials to Headquarters for attention. (See 115.1 for referral points for particular subjects.)

115.3 Correspondence With Foreign Individuals

115.31 Correspondence Permitted

Postmasters, area offices, and other field units of the Postal Service may reply directly to inquiries and engage in other necessary correspondence with individuals and firms in other countries.

115.32 Customer's Address

A customer's address may not be given out without the customer's consent.

120 Preparation for Mailing

121 Packaging—Sender's Responsibility

It is the responsibility of the sender to prepare items and to address them clearly and correctly. In preparing items for mailing, the sender must (1) use strong envelopes or durable packaging material, and (2) consider the nature of the articles being mailed and the distance they must travel to reach the addressee. (See DMM C010.2.0 for detailed instructions.)

122 Addressing

122.1 Destination Address

a. At least the entire right half of the address side of the envelope, package, or card should be reserved for the destination address, postage, labels, and postal notations.

b. Addresses must be printed in ink or typewritten. Pencil is unacceptable.

c. The name and address of addressee must be written legibly with roman letters and Arabic numbers, all placed lengthwise on one side of the item. For parcels, addresses should also be written on a separate slip enclosed in the parcel.

d. Addresses in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters must bear an interline translation in English of the names of the post office and country of destination. If the English translation is not known, the foreign language words must be spelled in roman characters (print or script). See 293.91 and 284.1 for an optional addressing procedure that applies only to direct country sacks of International Surface Air Lift (ISAL) mail or International Priority Airmail (IPA), respectively.

e. Mail may not be addressed to a person in one country "in care of" a person in another country.

f. The name of the sender and/or addressee may not be in initials except where they are an adopted trade name.

g. Mail may not be addressed to "Boxholder" or "Householder."

h. The following exceptional form of address, in French or a language known in the country of destination, may be used on printed matter: the addressee's name and "or Occupant." Example: MR THOMAS CLARK OR OCCUPANT

i. The house number and street address or box number must be included when mail is addressed to towns or cities.

j. The address of items sent to General Delivery (in French, "Poste Restante") must indicate the name of the addressee. The use of initials; figures; simple, given names; or fictitious names is not permitted on articles addressed for general delivery.

k. The last line of the address must show only the country name, written in full (no abbreviations) and in capital letters. For example:

MR THOMAS CLARK
117 RUSSELL DRIVE
LONDON WIP 6HQ
ENGLAND

MS C P APPLE
APARTADO 3068
46807 PUERTO VALLARTA JALISCO
MEXICO

Exception: To Canada, either of the following address formats may be used when the postal delivery zone number is included in the address:

MS HELEN SAUNDERS
1010 CLEAR STREET
OTTAWA ON K1A 0B1
CANADA

MS HELEN SAUNDERS
1010 CLEAR STREET
OTTAWA ON CANADA
K1A 0B1

122.2 Return Address

The complete address of the sender, including ZIP Code and country of origin, should be shown in the upper-left corner of the address side of the envelope, package, or card. Only one return address may be used. It must be located so that it does not affect either the clarity of the address of destination or the application of service labels and notations (postmarks, etc.). Unregistered items bearing a return address in another country are accepted only at the sender's risk. In the case of bulk mailings, the return address must be in the country of mailing. For the purpose of this section, a "bulk mailing" is 200 or more pieces mailed at the same time by the sender.

123 Customs Forms

123.1 General

Only two customs declaration forms are used, as required under 123.6, for international mail: PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label); and PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2). PS Form 2976–E, Customs Declaration Envelope CP 91, is used with PS Form 2976–A for parcel post packages.

Note: The May 1996 and December 1996 versions of PS Form 2976 may no longer be used. Postal customers are now required to use the June 1997 version, or a subsequent version, whenever a mailing transaction necessitates the affixing of PS Form 2976. Except as provided in 123.3, it is also mandatory that they present a fully completed Sender's Declaration, which specifies both the Sender's Name and Address and the Addressee's Name and Address, at the time of mailing.

123.2 Availability

Customs declaration forms are available without charge at post offices. Upon request, mailers may receive a reasonable supply for mail preparation.

123.3 Privately Printed Forms

If authorized, mailers may privately print PS Forms 2976 and 2976–A. Privately printed forms must be identical in size, design, and color to the Postal Service forms, and each form must contain a unique code 128 barcode number that can be read by Postal Service equipment. Form specifications may be obtained from: Manager Pricing Costing and Classification, International Business, US Postal Service, 475 L'Enfant Plz SW., Washington, DC 20260–6500.

For authorization, mailers must submit at least two preproduction samples to the Manager, International Pricing, Costing, and Classification, at the above address, for review and approval. If three or more items are presented at one time, the mailer may omit printing the post office copy of PS Forms 2976 and 2976–A if a manifest of the items is provided. The manifest must contain the same mailer's certification statement and edition date printed on the Postal Service forms. Entries on the manifest must be typewritten or printed in ink or by ballpoint pen. The manifest must contain the sender's name and address; the sender's print authorization (*i.e.*, barcode) number; the edition date of the privately printed PS Form 2976 that is being affixed to the mailpieces; a signed and dated reproduction of the certification statement that is printed on the USPS Sender's Declaration; and a list of the foreign recipients' names and delivery addresses.

123.4 Nonpostal Forms

Certain items must bear one or more of the forms required by the nonpostal export regulations described in chapter 5.

123.5 Place of Mailing

Except as specified below, postal items that require a completed customs declaration form may not be deposited into a street collection box or a post office lobby drop. Such items must be tendered to a USPS employee at a post office or other location as designated by the postmaster. Otherwise, they will be returned to the sender for proper entry and acceptance.

Exception: The above restriction on the deposit of customs mail does not apply to Global Express Mail (EMS) shipments paid through an Express Mail corporate account. Those items may be deposited into a designated Express Mail collection box or post office lobby drop.

123.6 Required Usage

123.61 Conditions

Customs declaration PS Forms 2976 or 2976–A and 2976–E must be used as shown in Exhibit 123.61.

Exhibit 123.61

CUSTOMS DECLARATION FORMS USAGE

Mail category	Declared value	Required form	Comment
Global Express Guaranteed (documents)	All values	Mailing label (item 11FGG1X)	
Global Express Mail (EMS)	All values	Use 2976 or 2976–A unless otherwise specified.	See Note 3 at the bottom of this exhibit and the Individual Country Listings.
Global Priority Mail (GPM) items, airmail letter-post items, and economy letter-post items that: (a) Weigh less than 16 ounces and do not have potentially dutiable contents.	N/A	None	A known mailer, as defined in 123.62, may be exempt from affixing customs forms to nondutible mailpieces that weigh 16 ounces or more.

CUSTOMS DECLARATION FORMS USAGE—Continued

Mail category	Declared value	Required form	Comment
(b) Weigh 16 ounces or more; do not have potentially dutiable contents; and are entered by a known mailer			
Global Priority Mail (GPM) items, airmail letter-post items, and economy letter-post items that:	Under $400	Use 2976*	
(a) Weigh less than 16 ounces and have potentially dutiable contents.	$400 and over	Use 2976–A*	
(b) Weigh 16 ounces or more, regardless of their contents			
Free Matter for the Blind—Economy	Under $400	2976*	
	$400 and over	2976–A*	
Parcel Post—Airmail or Economy	Regardless of value	2976–A with 2976–E	Form 2976 (green label) may not be used on parcel post packages.
M-bag—Airmail or Economy	Under $400	2976*	
(**Note:** An M-bag requires a customs form when it contains potentially dutiable printed matter, admissible merchandise items as defined in 261.22, or some combination thereof.)	$400 and over	2976–A*	

*Placement of forms: For items under $400 in value, PS Form 2976 (green label) should be used and affixed to the outside of the item. If the value of the contents is $400 and over, the upper-left section of PS Form 2976 (green label) should be attached to the outside of the item and a separate PS Form 2976–A must be completed and enclosed inside the package.

Notes:

1. See 233.3 for the customs form requirements that specifically pertain to Global Priority Mail (GPM) items.
2. Bulk business products, including International Surface Air Lift (ISAL) and International Priority Airmail (IPA), require customs forms based on package contents and weight as specified above and as required by the country of destination.
3. Global Express Mail (EMS) shipments that contain correspondence, documents, or commercial papers are subject to the following customs form requirements:
   a. When an EMS shipment with those categories of contents weighs less than 16 ounces, the determination as to whether or not to affix PS Form 2976 is dependent upon the conditions of mailing that are applicable to a particular destination country. Some countries require that a customs form be affixed to EMS shipments in that situation. Others require only that a "BUSINESS PAPERS" endorsement be placed on the wrapper of such shipments. See the Individual Country Listings for each country's specification in that area.
   b. When the EMS shipment with those categories of contents weighs 16 ounces or more, PS Form 2976 is required.

123.62 Known Mailers

A "known mailer" is defined as:

a. A business customer who tenders volume mailings through a business mail entry unit (BMEU) or other bulk mail acceptance location; completes a statement of mailing at the time of entry; pays postage through an advance deposit account; and uses a permit imprint as an indication of postage payment. International Surface Air Lift (ISAL) and International Priority Airmail (IPA) customers are considered to be known mailers for this purpose.

b. A federal, state, or local government agency whose mail is regarded as official mail.

c. A contractor who sends out prepaid mail on behalf of a military service, provided the mail is endorsed "Contents for Official Use—Exempt From Customs Requirements."

Note: For aviation security purposes a known mailer may be exempt from providing customs declaration forms (as required in 123.61) on items weighing 16 ounces or more, unless required by the destination country. A known mailer must complete the declaration on the postage statement, certifying that all items in the mailing contain no dangerous material that is prohibited by postal regulations. Known mailers and other mailers must complete the necessary customs form when sending dutiable items or merchandise. International mail with meter postage is not considered from a known mailer.

123.63 Additional Security Controls

When the chief postal inspector determines that a unique, credible threat exists, the Postal Service may require a mailer to provide photo identification at the time of mailing. The signature on the identification must match the signature on the customs declaration form.

123.7 Completing Customs Forms

123.71 PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label)

Exhibit 123.71 PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label)

[Exhibit not included.]

123.711 Preparation by Sender

A sender completes PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label), by:

a. Providing a complete description of each article in the item, even if it contains commercial samples, documents, gifts, or merchandise. General descriptions such as "food," "medicine," "gifts," or "clothing" are not acceptable. The description must be in English, although an interline translation in another language is permitted.

b. Stating the exact quantity of each article in the item.

c. Declaring the value, in U.S. dollars, of each article in the item. The sender may declare that the contents have no value (declaring no value does not exempt an item from customs examination or charges in the destination country).

d. Showing the total weight of the item, if known.

e. Indicating in the appropriate check box on the form whether the item contains gifts, merchandise, or commercial samples. If not, the sender does not check these boxes.

f. Entering the sender's full name and address and the addressee's full name and address in the blocks indicated.

g. Signing and dating in the blocks indicated on both parts of the form. The sender's signature certifies that all entries are correct and that the item contains no dangerous material prohibited by postal regulations.

h. Affixing the form to the address side of the item and presenting it for mailing.

123.712 Acceptance by Postal Employee (PS Form 2976)

The Postal Service acceptance employee must:

a. Instruct the sender how to complete, legibly and accurately, the customs declaration form, as required. Failure to complete the form properly can delay delivery of the item or inconvenience the sender and addressee. Moreover, a false, misleading, or incomplete declaration can result in the seizure or return of the item and/or in criminal or civil penalties. The United States Postal Service assumes no responsibility for the accuracy of information that the sender enters on PS Form 2976.

b. Verify that the required information is entered on the form and that the sender has signed both parts of the form (the part affixed to the item and the part separated for postal records).

c. Enter the weight of the item on the form, if not already done.

d. Remove the post office copy of PS Form 2976 and advise the customer that a copy of the declaration will be retained as a record of mailing for 30 days.

e. Round stamp any uncancelled stamps, and if postage is paid by meter, round stamp the front of the piece near the meter postage.

Note: To comply with international mail aviation security procedures, any items weighing 16 ounces or more that are not accepted by an authorized employee, or where acceptance conditions are uncertain (*e.g.*, if received through a collection box or left on an unattended dock), must be endorsed properly with "customer notification DDD–2 sticker" and "surface only" and returned to the sender by surface transportation. Consult the most recent International Aviation Security Procedures for comprehensive acceptance procedures.

123.72 PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2)

Exhibit 123.72 PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2)

[Exhibit not included.]

123.721 Preparation by Sender

A sender completes PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2), by:

a. Providing the names and addresses of the sender and addressee.

b. Providing information about the contents of the parcel or item. (If there is insufficient space on the customs declaration form to list all contents of the parcel or item, a second form is used to continue listing the contents. The first form must be annotated to indicate two forms. Both forms are placed into PS Form 2976–E (envelope).) The sender lists this information by:

(1) Providing a complete description of each article in the parcel or each item, even if it contains commercial samples, documents, gifts, or merchandise. General descriptions such as "food," "medicine," "gifts," or "clothing" are not acceptable. The description must be in English, although an interline translation in another language is permitted.

(2) Showing the exact quantity of each article in the parcel or item.

(3) Declaring the value, in U.S. dollars, of each article in the parcel or item. The sender may declare that the contents have no value (declaring no value does not exempt the parcel or item from customs examination or charges in the destination country).

(4) Showing the net weight of each article in the parcel or item.

c. Indicating in the appropriate check box on the form whether the parcel or item contains commercial samples, documents, gifts, or merchandise. If not, the sender does not check these boxes.

d. For parcel post only, providing disposal instructions in the event that a parcel cannot be delivered. The sender checks the appropriate box on the form to indicate whether the parcel is to be returned, treated as abandoned, or forwarded to an alternate address. (Undeliverable parcels returned to the sender are subject to collection of return postage on delivery and any other charge assessed by the foreign postal authorities. The sender must check the box "Abandon" for any parcel for which the sender is unwilling to pay return postage.)

e. Signing and dating the form in the block indicated. The sender's signature certifies that all entries are correct and that the parcel or item contains no dangerous material prohibited by postal regulations.

f. Presenting the parcel post package or item for mailing at a post office and affixing PS Form 2976–A according to the class of mail, as follows:

(1) For parcel post, the sender must not place PS Form 2976–A inside PS Form 2976–E (envelope) before the postal acceptance employee completes the required information described in 123.722. After the postal employee completes PS Form 2976–A, the sender places the form inside PS Form 2976–E and affixes it to the outside of the parcel.

(2) For an item other than parcel post (*i.e.*, letter-post items) valued at $400 or more, the sender places PS Form 2976–A inside the item before the postal employee accepts the item. If the sender does not want to show on the outside wrapper the contents of letter-post items, the sender affixes the upper-left part of PS Form 2976 to the wrapper and completes PS Form 2976–A and encloses it in the item.

123.722 Acceptance by Postal Employee (PS Form 2976–A)

The Postal Service acceptance employee must:

a. Instruct the sender how to complete, legibly and accurately, PS Form 2976–A, Customs Declaration and Dispatch Note, as required. Failure to complete the form properly can delay delivery of the item or inconvenience the customer. Moreover, a false, misleading, or incomplete declaration can result in the seizure or return of the item and/or in criminal or civil penalties. The United States Postal Service assumes no responsibility for the accuracy of information that the sender enters on the form.

b. Verify that the required information is entered on the form and that the sender has signed both parts of the form (the part affixed to the item and the part separated for postal records). The sender's address on the mailpiece must match the sender's address on the customs declaration.

c. Complete an insurance receipt and affix the insured number label to the package, if the contents are to be insured. The postal employee enters on the form the insured number and the insured amount in U.S. dollars and SDRs. (See Exhibit 324.22 for conversion to SDRs.)

d. Weigh the parcel and enter on the form the gross weight and the amount of postage.

e. Postmark the third copy of the form in the appropriate place.

f. Remove the post office copy of the form and advise the customer that a copy of the declaration will be retained as a record of mailing for 30 days.

g. Round stamp any uncancelled stamps and, if postage is paid by meter, round stamp the front of the piece near the meter postage.

Note: To comply with international mail aviation security procedures, any items weighing 16 ounces or more that are not accepted by an authorized employee, or where acceptance conditions are uncertain (*e.g.*, if received through a collection box or left on an unattended dock) must be endorsed properly with "customer notification DDD–2 sticker" and "surface only" and returned to the sender by surface transportation. Consult the most recent International Aviation Security Procedures for comprehensive acceptance procedures.

123.73 PS Form 2976–E, Customs Declaration Envelope CP 91

PS Form 2976–E is a transparent plastic envelope designed for carriage of PS Form 2976–A for parcel post. Upon completion of the forms, the sender inserts the form into the envelope and affixes it to the outside of the parcel.

130 Mailability

131 General

131.1 Domestic Limits

All articles that are nonmailable in domestic mail are nonmailable in international mail. See DMM C020 and C030 and Publication 52, Acceptance of Hazardous, Restricted, or Perishable Matter.

131.2 International Limits

Many articles that are mailable in domestic mail are nonmailable in international mail. See section 630 of Publication 52 and the prohibitions and restrictions in the Individual Country Listings.

131.3 Individual Country Prohibitions and Restrictions

131.31 Information Available

Information on articles that are prohibited or restricted to individual countries appears under "Prohibitions and Restrictions" in the Individual Country Listings. These prohibitions and restrictions are based on information furnished by the countries concerned. Customers should inquire at the post office about specific prohibitions or restrictions.

131.32 Prohibited and Restricted Articles

Articles that are prohibited by the destination country are nonmailable. For mail known to contain articles restricted by the destination country, the sender must be informed of the restrictions and advised that the articles are subject to the import requirements of that country.

131.33 Return or Seizure of Mail

A country may return or seize mail containing articles prohibited or restricted within that country, whether or not notice of such prohibition or restriction has been provided to or published by the Postal Service.

131.34 Foreign Customs Information

The Postal Service does not maintain or provide information concerning the assessment of customs duty in other countries. Postal employees must not attempt to inform customers whether articles (gifts or commercial shipments) will be subject to customs duty. Postal employees may suggest to customers, however, that they inform the addressees in advance of the articles they intend to mail. Addressees can then obtain information from their local customs authorities. No provision is made for prepayment of customs duty on mail addressed for delivery in foreign countries.

131.4 Mailer Responsibility

Regardless of any statement in this manual or the statement of any employee of the United States Postal Service, the burden rests with the mailer to ensure compliance with domestic, international, and individual country rules and regulations for mailability.

131.5 Preparation for Mailing

131.51 General Packaging Requirements

Parcels of articles or goods must meet the requirements of DMM C010.2.0. The size and weight limits for each of several grades of fiberboard boxes are as specified for difficult loads in DMM C010.3.1c. Reinforce boxes in each of two directions around the package (see DMM C010.3.1g).

131.52 Special Packaging Requirements

Each mailer must meet the following special packaging requirements when mailing any of the following articles:

a. Fragile articles, such as glass, must be cushioned in accordance with DMM C010.4.0 to dissipate shock and pressure forces over as much of the surface of the item as possible.

b. Liquids must be packaged in accordance with DMM C010.2.4.

c. Fatty substances that do not easily liquefy, such as ointments, soft soap, resins, etc., as well as silkworm eggs, must be packaged in an interior container (box, cloth, or plastic bag) and placed in an outer shipping container of minimum 275-grade test strength.

d. Dry, powdered dyes, such as aniline, must be enclosed in sift-proof, sturdy tin or plastic boxes in an outer sift-proof shipping container. This container must have a minimum 275-grade test strength fiberboard or equivalent (see DMM C010.3.1).

132 Written, Printed, and Graphic Matter

132.1 Domestic Limits

All written, printed, and graphic matter that is described as nonmailable in DMM C030 is nonmailable internationally. This matter includes but is not limited to:

a. Advertisements for abortion (DMM C031.4.3).

b. Advertisements for motor vehicle master keys (DMM C031.4.2).

c. Copyright violations (DMM C031.5.2).

d. Fictitious matter (DMM C031.5.1).

e. Lottery matter (DMM C031.3.0).

f. Matter inciting violence (DMM C031.5.5).

g. Solicitations in the guise of bills or statements of account (DMM C031.1.0).

h. Solicitations or inducements for mailing harmful matter, radioactive materials, controlled substances, or intoxicating liquors (DMM C031.4.0).

Note: Immoral or obscene articles and advertisements for them are nonmailable.

132.2 Reply Cards and Envelopes

Items may not contain any card or envelope intended for reply purposes (addressed for return) if postage for that reply is denoted by U.S. stamps, domestic business reply, or other domestic indicia. International Business Reply Service (IBRS) cards and envelopes may be enclosed.

133 Improperly Addressed Mail

The following items are nonmailable in international mail:

a. Unaddressed items.

b. Items whose ultimate destination cannot be determined due to insufficient, illegible, or incorrect addressing.

c. Items bearing multiple addresses to the same or different countries.

134 Valuable Articles

134.1 List of Articles

The following valuable articles may be sent only in registered letter-post mailpieces or insured parcels and are not mailable in Global Express Mail (EMS) shipments (see 211.2).

a. Coins, banknotes, and currency notes (paper money).

b. Instruments payable to bearer. (The term "instruments payable to bearer" includes checks, drafts, or securities that can be legally cashed or easily negotiated by anyone who may come into possession of them. A check or draft payable to a specific payee is not regarded as payable to bearer unless the payee has endorsed it. If not endorsed, or if endorsed in favor of another specific payee, it is not regarded as payable to bearer.)

c. Traveler's checks.

d. Manufactured and unmanufactured platinum, gold, and silver.

e. Precious stones, jewels, jewelry, and other valuable articles.

Note: The term "jewelry" is generally understood to denote articles of more than nominal value. Inexpensive jewelry, such as tie clasps and costume jewelry, containing little or no precious metal, is not considered

to be jewelry within the meaning of this section and is accepted under the same conditions as other mailable merchandise to any country. Inexpensive jewelry is accepted to countries that prohibit jewelry, but only at the sender's risk.

134.2 Prohibitions

Individual countries prohibit or restrict some or all of the valuable items listed above. See the Prohibitions and Restrictions section in the Individual Country Listings.

135 Mailable Dangerous Goods

135.1 Biological Substances

135.11 General Conditions

Infectious and noninfectious biological substances are acceptable in the international mail subject to the provisions of DMM C023.10 and under the additional conditions specified in subsections below.

135.12 Type of Mail

Such substances may be sent only in registered airmail letter-post mailpieces.

135.13 Senders and Receivers

Such substances may be sent only by authorized laboratories to their foreign counterparts in those countries that have indicated a willingness to accept them.

Note: Countries distinguish between infectious and noninfectious biological substances and may prohibit one or the other or both. See Prohibitions in the Individual Country Listings.

135.2 Authorization

135.21 Authorized Institutions

Biological substances can be sent to or received by only the following types of institutions:

a. Laboratories of local, state, and federal government agencies.

b. Laboratories of federally licensed manufacturers of biological products derived from bacteria and viruses.

c. Laboratories affiliated with or operated by hospitals, universities, research facilities, and other teaching institutions.

d. Private laboratories licensed, certified, recognized, or approved by a public authority.

135.22 Request for Authorization

Qualifying institutions wishing to mail letter packages containing biological substances must submit a written request on its organizational letterhead to the following address: Manager Pricing Costing and Classification, International Business, U.S. Postal Service, 475 L'Enfant Plz. SW. 370 IBU, Washington, DC 20260–6500.

In its letter of application, the institution must indicate the nature of its work, the identity and qualifications of the prospective recipient, and the number of packages to be mailed. On approval of the application, the requisite number of biological substance mailing labels will be furnished by the Postal Service.

135.3 Packaging

135.31 Infectious Biological Substances

Infectious biological substances are limited to 50 milliliters (ml) per outside package and must be packaged in accordance with DMM C023.10.3 and as follows:

a. The second watertight container must also be surrounded by sufficient absorbent material to absorb the entire contents in case of leakage.

b. Screw cap closures must be reinforced with pressure-sensitive tape.

c. Infectious substances shipped in a refrigerated or frozen state must not be sent in an inner container with a metal screw cap. A heat-sealed skirted stopper or metal crimp seal must be used to prevent the contents from leaking.

d. When wet ice is used as a preservative, the following procedures must be followed:

(1) The ice must be placed between the second container and the outer packaging.

(2) The outer packaging should be designed with interior supports to prevent it from collapsing after the ice melts.

(3) The entire package must be leakproof.

135.32 Noninfectious Biological Substances

Noninfectious biological substances are limited to 1,000 ml per interior primary container and 4,000 ml per outer shipping container and must be packaged in accordance with DMM C023.10.4.

Note: Dry ice (carbon dioxide solid) is not acceptable in international mail.

135.4 Marking

135.41 Infectious Biological Substances

Letter-post items that contain infectious biological substances should be identified by a black and white diamond-shaped label with the division number 6.2 in the bottom, in addition to the Etiologic Agents/Biohazard Material label. The top half of the label must bear the designated symbol for infectious substances, while the bottom half must contain the following warning: "INFECTIOUS SUBSTANCE. IN CASE OF DAMAGE OR LEAKAGE IMMEDIATELY NOTIFY THE PUBLIC HEALTH AUTHORITY."

135.42 Noninfectious Biological Substances

Letter-post items that contain noninfectious biological substances must be identified by a violet-colored label bearing the prescribed symbol and French wording for perishable biological materials: "MATIERES BIOLOGIQUES PERISSABLES."

135.43 Shipping Descriptions

The appropriate shipping description must be marked on each package (*e.g.*, for infectious substances affecting humans, "CONTAINS (NAME OF SUBSTANCE), UN2814," or for infectious substances affecting animals, "CONTAINS (NAME OF SUBSTANCE), UN2900").

135.44 Shipper's Declaration

If the material is to be transported by air, a shipper's declaration is also required. See Publication 52, Exhibit 622.1b.

135.5 Handling and Dispatch

135.51 Biological Substances

Letter-post items that contain perishable biological substances must be given careful yet expeditious handling from receipt through dispatch.

135.52 Infectious Substances

Shipments containing infectious substances must be segregated from other types of mail matter (*i.e.*, placed in separate sacks). PS Tag 44, Sack Contents Warning, must be attached to the outside of sacks to identify the hazardous nature of the contents. PS Tag 44 is for internal use only and must be removed from mail sacks, and the hazardous materials tendered to air carriers as outside pieces.

135.6 Radioactive Materials

Shipments containing radioactive materials are acceptable in the international mail subject to the provisions of DMM C023.9 (see also Publication 52, Acceptance of Hazardous, Restricted, or Perishable Matter) and under the following conditions:

a. Shipments may be sent only in registered letter-post mailpieces.

b. Shipments may be sent only to those countries that have expressed a willingness to accept radioactive materials. See Prohibitions and Restrictions in the Individual Country Listings.

c. Shipments must comply with the International Atomic Energy Agency rules and regulations.

d. Senders and recipients of radioactive materials must receive prior authorization from the appropriate regulatory authorities within their countries.

e. A white package label bearing the French words "Matieres Radioactives" (radioactive materials) must be applied to the address side of each package containing radioactive materials. Senders are responsible for supplying and affixing this label to the package.

f. The package must also bear the following endorsements in bold letters: "RETURN TO SENDER IN CASE OF NONDELIVERY" and "RADIOACTIVE MATERIALS, QUANTITIES PERMITTED FOR MOVEMENT BY POST."

136 Nonmailable Dangerous Goods

The following dangerous goods (hazardous materials, as defined in DMM C023) are prohibited in the international mail:

a. Explosives or explosive devices (DMM C023.2.0).

b. Flammable materials (DMM C023.3.0).

(1) Pyrophoric, flammable, or combustible liquids with a closed cup flash point below 200°F (DMM C023.3.1 and C023.3.2).

(2) Flammable solids, including matches (DMM C023.3.3 and C023.3.5).

c. Oxidizers (DMM C023.3.4).

d. Corrosives, liquid or solid (DMM C023.4.0).

e. Compressed gases (DMM C023.5.0).

(1) Flammable.

(2) Nonflammable with an absolute pressure exceeding 40 psi at 70° F or 104 psi at 130°F.

f. Poisons, irritants, controlled substances, and drug paraphernalia (DMM C023.6.0, C023.7.0, and C023.8.0).

g. Magnetized material with a magnetic field strength of .002 gauss or more at a distance of 7 feet (DMM C023.11.1).

h. Dry ice (carbon dioxide solid) (DMM C023.11.2).

137 Other Restricted Materials

The items listed under DMM C024.7.0 through C024.14.0 are prohibited in the international mail, except as specified in the Individual Country Listings. This includes intoxicating liquor, matter emitting obnoxious odor (liquids and powders), motor vehicle master keys, battery-powered devices, odd-shaped items in envelopes, and abortive and contraceptive devices.

138 Firearms, Knives, and Sharp Instruments

The items listed under DMM C024.1.0 through C024.5.0 may be mailed to certain countries under the conditions specified in the Individual Country Listings. See 540 for U.S. Department of State licensing requirements applicable to the international mailing of arms or implements of war, component parts, and related technical data.

139 Perishable Matter

139.1 Animals

All live or dead animals are nonmailable, except the following:

a. Live bees, leeches, and silkworms (DMM C022.3.7 and C022.3.8).

b. Dead insects or reptiles, when thoroughly dried.

c. Parasites and predators of injurious insects, if the following conditions are met:

(1) They are admissible in the domestic mail.

(2) They are useful in controlling harmful insects.

(3) They are exchanged by officially recognized scientific or health agencies.

(4) They are sent in letter-post packages.

(5) Mailable animals must be in containers conforming to the requirements in the DMM.

139.2 Plants

139.21 General Restrictions

Plants, seeds, and plant materials, including fruits and vegetables, are subject to the provisions of DMM C022; Publication 14, Prohibitions and Restrictions on Mailing Animals, Plants, and Related Products; and the quarantine regulations of the country of destination. Customers can obtain information from the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) Programs at: USDA Aphis PPQ, 4700 River Rd., Riverdale, Md 20737–1228.

139.22 Tobacco Seeds and Tobacco Plants

It is unlawful to export any tobacco seed or live tobacco plants without a written permit granted by the U.S. Secretary of Agriculture. See 560 for procedures and processing requirements.

139.3 Eggs

139.31 Restrictions

Eggs may be sent only by parcel post. See 550 for nonpostal regulations on dried whole eggs.

139.32 Packaging

Eggs must be packaged in the following manner:

a. Eggs mailed to any country except Canada must be placed in a metal egg container. Each egg must be packed in cushioning material. The metal egg container must be enclosed in an outer container of wood with cushioning packed between the two containers.

b. Eggs mailed to Canada may be packed either as prescribed in 139.32a or in a box of rigid material with a tight-fitting lid. Each egg must be wrapped in protective material and placed on end. Vacant spaces in the box must be filled with packing material to prevent the eggs from striking each other or the box.

139.4 Food and Other Perishable Articles

Fruits, vegetables, fresh meats, and other articles that easily decompose or that cannot reasonably be expected to reach their destination without spoiling are nonmailable.

140 International Mail Categories

141 Definitions

141.1 General

There are five principal categories of international mail that are primarily differentiated from one another by speed of service. They are Global Express Guaranteed (GXG), Global Express Mail (EMS), Global Priority Mail (GPM), airmail, and economy mail.

141.2 Global Express Guaranteed

Global Express Guaranteed is the U.S. Postal Service's premium international mail service. GXG is an expedited delivery service that is the product of a business alliance between the U.S. Postal Service and DHL Worldwide Express, Inc. It provides reliable, high-speed, time-definite service from designated U.S. ZIP Code areas to locations in most destination countries and territorial possessions. GXG is guaranteed to meet destination-specific delivery standards or the postage will be refunded. If a shipment is lost or damaged, liability for document reconstruction is limited to a maximum of $100. The maximum weight is 70 pounds to all destinations.

141.3 Global Express Mail

The next level of service, in terms of speed and value-added features, is Global Express Mail (EMS). EMS is an expedited mail service that can be used to send documents and merchandise to most of the country locations that are individually listed in this publication. EMS insurance coverage against loss, damage, or rifling, up to a maximum of

$500, is provided at no additional charge. Additional merchandise insurance coverage up to $5,000 may be purchased at the sender's option. However, document reconstruction insurance coverage is limited to a maximum of $500 per shipment. Return receipt service is available, at no additional charge, for EMS shipments that are sent to a limited number of countries. See 211.4. Country specific maximum weight limits range from 22 pounds to 70 pounds. See the Individual Country Listings. Although EMS shipments are supposed to receive the most expeditious handling available in the destination country, they are not subject to a postage refund guarantee if a delivery delay occurs.

141.4 Global Priority Mail

Global Priority Mail is an accelerated airmail service that provides customers with a reliable and economical means of sending correspondence, documents, printed matter, and light-weight merchandise items to the foreign destinations that are listed in 231.42. GPM items receive priority handling within the U.S. Postal Service and the postal administration of the country of destination. Senders can pay flat-rate postage by placing their contents into a standardized GPM envelope; or they can elect to pay variable weight postage by affixing a GPM sticker to a tyvek envelope, box, or other customer-furnished packaging. The maximum weight limit for GPM items is 4 pounds. Special services, such as registry, return receipt, recorded delivery, and insurance, are not available in combination with GPM service.

141.5 Airmail

Subject to the following definitions, airmail service may be used to send both letter-post items and parcel post packages to most foreign countries. Letter-post is a generic term for mailpieces of differing shapes, sizes, and contents, which weigh 4 pounds or less, that are subject to the provisions of the Universal Postal Union Convention. Letter-post items may contain any mailable matter that is not prohibited by the destination country. At the sender's option, special services, such as registry, return receipt, and recorded delivery, may be added on a country-specific basis.

Note: The letter-post classification encompasses all of the classes of international mail (*i.e.*, letters and letter packages, post and postal cards, aerogrammes, printed matter, and small packets) that were formerly categorized as LC (letters and cards) and AO (other articles) respectively. Parcel post, which is otherwise referred to as CP mail, is differentiated from letter-post because it is governed by the provisions of the UPU Postal Parcels Agreement. That classification is primarily designed to accommodate larger and heavier shipments, whose size and/or weight transcend the established limitations for letter-post items. It also affords senders the opportunity to obtain optional mailing services, such as insurance coverage and return receipt, which would otherwise be unavailable.

141.6 Economy Mail

Mailpieces that are classified as letter-post or parcel post can also be entered as economy mail. Under that classification, they are subject to the same regulatory requirements and conditions of mailing as the airmail items. The substantive differences between the two levels of service primarily relate to mode of transportation (air or surface), speed of service, and price.

142 Envelope and Card Specifications

142.1 Color

Only light-colored envelopes and cards that do not interfere with the reading of the address and postmark should be used. Do not use brilliant colors.

142.2 Quality

Envelopes and cards should be constructed of paper strong enough to withstand normal handling. Highly glazed paper or paper with an overall design is not satisfactory.

142.3 Shape

Rectangular.

142.4 Minimum Size

a. Length: 5½ inches.
b. Height: 3½ inches.

142.5 Window Envelopes

Window envelopes may be used under the following conditions:

a. The address window must be parallel with the length of the envelope.

b. The address window must be in the lower portion of the address side.

c. Nothing but the name, address, and any key number used by the mailer may appear through the address window.

d. The return address should appear in the upper-left corner. If there is no return address and the delivery address does not show through the window, the piece will be handled as undeliverable mail.

e. The address disclosed through the window must be on white paper or paper of a very light color.

f. When used for registered mail, window envelopes must conform with the conditions in DMM S911.3.7.

g. Open panel envelopes (*i.e.*, those in which the panel is not covered with a transparent material) are not acceptable in international mail.

142.6 Bordered Envelopes and Cards

Envelopes and cards that have green-colored bars or red- and blue-striped borders may be used for the sending of airmail letter-post items.

143 Official Mail

143.1 Mailings by Federal Agencies

Official mail (sent by federal agencies and departments listed in USPS Handbook DM–103, Official Mail) that bears the indicia prescribed in DMM E060.6.0 through E060.8.0 may be sent to foreign destinations. Such items are subject to the postage payment requirements, weight and size limits, customs form requirements, and general conditions for mailing that otherwise apply to the class and category of the international mail being sent.

143.2 USPS Mailings

International mailpieces that are sent by or on behalf of the U.S. Postal Service must bear the prescribed G–10 permit indicia. USPS official mail is subject to a 66-pound weight limit except for Global Express Mail (EMS) shipments going to Austria, Haiti, and Serbia-Montenegro and Global Express Guaranteed (GXG) shipments going to all authorized destination countries, which have a 70-pound weight limit.

143.3 Mail of a Former President and Surviving Spouse of a Former President

All nonpolitical mail of former U.S. Presidents, and of the surviving spouse of a former President, must be accepted without prepayment of postage if it bears the written signature of the sender, or a facsimile signature and the words "POSTAGE AND FEES PAID" in the upper-right corner of the address side.

143.4 General Secretariat of the Organization of American States

a. Ordinary (unregistered) economy mail and airmail letter-post items bearing the return address of the Organization of American States (OAS) General Secretariat and weighing not more than 4 pounds are accepted without postage when addressed to the OAS member countries listed in 143.4c.

b. Airmail service for items other than letter-post items and other special services may not be provided for OAS General Secretariat official mail without the prepayment of air postage or the fee for the special service requested.

c. The following countries are members of the OAS:

Antigua and Barbuda
Argentina
Bahamas
Barbados
Bolivia
Brazil
Canada
Chile
Colombia
Costa Rica
Dominica
Dominican Republic
Ecuador
El Salvador
Grenada
Guatemala
Haiti
Honduras
Jamaica
Mexico
Nicaragua
Panama
Paraguay
Peru
St. Christopher and Nevis
St. Lucia
St. Vincent and the Grenadines
Suriname
Trinidad and Tobago
United States
Uruguay
Venezuela

143.5 Pan American Sanitary Bureau Mail

a. Ordinary (unregistered) economy mail and all letter-post items bearing the return address of the bureau and weighing not more than 4 pounds is accepted without postage affixed when addressed to an OAS member country listed in 143.4c or to Cuba.

b. Airmail service for items other than letter-post items and other special services may not be provided for bureau official mail without prepayment of air postage or of the fee for the special service requested.

150 Postage

151 Postage Rates

See Individual Country Listings.

152 Payment Methods

152.1 Prepayment

Each item must be fully prepaid to ensure prompt dispatch and to avoid assessment of charges against the addressee. For the treatment of shortpaid and unpaid mail, see 420.

152.2 Stamps

a. Postage and fees for special services (see chapter 3) may be paid by means of U.S. postage stamps, postage meter stamps, or postage validation imprinter (PVI) labels. PVIs are acceptable for all international mail transactions.

b. Precanceled stamps may be used under the conditions applicable to domestic mail (see DMM P023).

c. Airmail stamps may not be used on economy items.

d. Postal customers may affix nondenominated postage stamps (*e.g.*, the "G" stamp) to international mailpieces except for those that bear a uniquely domestic rate marking, such as First-Class Presort, Bulk Rate, Presorted Standard, or Nonprofit Organization. The nondenominated Breast Cancer Research semipostal stamp, which has a postage value that is equivalent to the domestic rate for a 1-ounce First-Class letter, may also be used for international mailing purposes. See DMM P022.1.6.

Note: See DMM P022.2.2 for stamps not valid as postage.

152.3 Permit Imprint

Exhibit 152.3 Permit Imprints

[Exhibit not included.]

152.31 Conditions of Use

Postage may be paid by permit imprints, subject to the general conditions stated in DMM P040 and P710.2.4. Postage charges are computed on PS Form 3651, International Statement of Mailing with Permit Imprints, or other postage statements as required.

152.32 Minimum Number of Pieces

A single mailing must consist of not less than 200 pieces identical in size and weight and addressed to foreign destinations, unless otherwise specified.

Note: The pieces comprising the mailing do not have to be addressed to a single country.

Exception: See 293.2.

152.33 Required Format

Permit imprints for international mail must be prepared in one of the forms shown in Exhibit 152.3. No variations or additions such as Bulk Rate, Presorted Standard, Enhanced Carrier Route Sort, Automation Rate, or Nonprofit Organization are allowed.

152.4 Publishers' Periodicals

Postage on publishers' periodicals (Periodicals Mail) mailed by publishers or registered news agents who are domestic Periodicals Mail permit holders may be paid as provided in 242.22 and 242.23.

153 Placement of Postage

a. Postage stamps and postage-paid impressions must be applied to the address side of mail in the upper-right corner. The postage meter stamp, postage validation imprinter (PVI) label, or permit may be affixed directly on the mailpiece or on the wrapper when plastic wrap is used.

b. Nonpostage stamps, labels resembling postage stamps, or impressions resembling postage-paid impressions must not be placed on the address side of international mailpieces.

154 Remailed Items

New postage is required when mailpieces are reentered after having been returned to the sender by a foreign postal administration.

2 CONDITIONS FOR MAILING

210 Global Express Guaranteed

* * * * *

220 Global Express Mail

221 Description

221.1 General

Global Express Mail (EMS) is a reliable high-speed mail service available to certain countries (see Individual Country Listings for service availability). There is no service guarantee for Global Express Mail. Global Express Mail is available at designated postal facilities who are authorized to accept Express Mail.

221.2 Allowable Contents

Any item not prohibited in international mail is allowed in EMS. Refer to the Country Conditions for Mailing in the Individual Country Listings for individual country prohibitions. International postal money orders are admissible in EMS. However, they are negotiable only if the proper form is used. The following items are prohibited in all EMS shipments: coins; banknotes; currency notes (paper money); securities of any kind payable to bearer; traveler's checks; platinum, gold, and silver (manufactured or not); precious stones; jewelry; and other valuable articles.

221.3 Insurance and Indemnity

Global Express Mail items are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the U.S. Postal Service as provided in DMM S010 and S500. However, Global Express Mail items are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

221.31 EMS Merchandise Insurance

Global Express Mail merchandise insurance coverage against loss, damage, or rifling is provided up to $500 at no additional charge. Additional insurance coverage above $500 may be purchased

at the sender's option. The fee for optional Global Express Mail merchandise insurance coverage is $1.00 for each $100 or fraction thereof, up to a maximum of $5,000 per shipment. See the Individual Country Listings for the applicable Global Express Mail insurance fees.

221.32 Purchase of Additional Insurance

When a mailer wants to insure an EMS merchandise shipment for more than $500, the insurance fee is entered in the block marked "Insurance" on the mailing label. Coverage is limited to the actual value of the contents, regardless of the fee paid, or the highest insurance value increment for which the fee is fully paid, whichever is lower. See DMM S500.

221.33 Document Reconstruction Insurance

Nonnegotiable EMS documents are insured against loss, damage, or rifling at no additional cost to the mailer. Document reconstruction insurance coverage is limited to a maximum of $500 per shipment. Additional coverage beyond the $500 indemnity limit is not available. See DMM S010 and S500.

Note: EMS indemnity payments are subject to the provisions of DMM S010, DMM S500, and IMM 935. Neither indemnity payments nor postage refunds are payable for delayed delivery.

221.4 Return Receipt Service

Return receipt service is available for Global Express Mail items only to the following countries at no additional charge (see 340 for preparation procedures):

Argentina
Australia
Bahrain
Belgium
Germany
Greece
Guinea-Bissau
Hong Kong
Korea, Republic of (South)
Kuwait
Liechtenstein
Pakistan
Qatar
Singapore
South Africa
Spain
Switzerland
Taiwan
Tunisia

222 Postage

222.1 Rates

222.11 Country Rates

See the Individual Country Listings for countries that offer Global Express Mail.

222.12 Express Mail Corporate Account Rates

Global Express Mail (EMS) rates will be reduced by 5 percent for all payments made through an Express Mail corporate account (EMCA) or through the federal agency payment system. The discount applies only to the postage portion of EMS rates. It does not apply to the pickup service charge, additional merchandise insurance coverage fees, or shipments made under an International Customized Mail agreement.

222.2 Payment of Postage

222.21 Methods of Payment

Global Express Mail items may be paid for with postage stamps, postage validation imprinter (PVI) labels, postage meter stamps, or through the use of an Express Mail corporate account.

222.22 Application for Corporate Account

A written application is required before mailing can be made under a corporate account (see DMM P500).

222.23 Official Mail

222.231 Mailings by Federal Agencies

Global Express Mail shipments that are entered by federal agencies and departments are subject to the same postage payment requirements, weight and size limits, customs form requirements, and general conditions for mailing as EMS shipments that are originated by nongovernmental entities.

222.232 USPS Mailings

EMS shipments mailed by U.S. Postal Service entities must bear the G–10 permit indicia that is prescribed for all USPS official mail. There is a 66-pound weight limit for USPS-originated EMS shipments going to all destination countries, unless the destination country has a higher weight limit. See 143.2.

222.24 Pickup Service

On-call and scheduled pickup services are available for an added charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, domestic Priority Mail, international parcel post, and/or domestic Parcel Post is picked up at the same time. No pickup fee will be charged when Global Express Mail is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010.

223 Weight and Size Limits

223.1 Weight Limits

See the Individual Country Listings for countries that offer Global Express Mail.

223.2 Size Limits

a. Maximum length: 36 inches.
b. Maximum length and girth combined: 79 inches.

Note: For exceptional size limits, see Individual Country Listings for countries that offer Global Express Mail.

224 Preparation Requirements

224.1 Preparation by Sender

a. Complete the "From" and "To" portions of Label 11–B, Express Mail Post Office to Addressee, for each piece of mail and affix the completed label to each piece.

b. Prepare and affix the appropriate customs form to the piece of mail. See the Individual Country Listings for countries that offer Global Express Mail for required customs declarations.

224.2 Preparation by Acceptance Employee

a. Check the address label to ensure that the sender has completed the "From" and "To" portions.

b. Verify that customer has properly completed the appropriate customs declaration form, if required.

c. Enter the originating facility ZIP Code; date and time received; weight; merchandise insurance fee, if applicable (see 211.52); total postage; and initial. Ensure that the correct amount of postage is affixed to the mailpiece.

d. Give the Customer Receipt copy to the mailer and retain the Finance Copy. Peel off the backing of the remaining portion and affix it to the item.

e. After acceptance, place each item in the appropriate working pouch and forward it to the international exchange office authorized to dispatch Global Express Mail to that destination. (See Handbook T–5, International Mail Operators.)

224.3 Customs Forms Required

See the Individual Country Listings for countries that offer Global Express Mail. Mailers are responsible for determining customs requirements and complying with them. Mailers should confirm before mailing merchandise whether an import license is required for that class of goods.

230 Global Priority Mail

231 Description

231.1 General

Global Priority Mail is an expedited airmail letter-post service providing fast, reliable, and economical delivery of all mailable items not over 4 pounds. Global Priority Mail items receive priority handling in the United States and in destination countries. Service is available only to destination countries identified in 231.42, from post offices identified in 231.41.

231.2 Allowable Contents

All items which may be sent as letter-post mail (see 241.1) are accepted in Global Priority Mail, provided that the contents are mailable and fit securely in the envelope or box. Items must fit comfortably within the envelope or box without distorting or bursting the container. Do not use excessive tape to keep the envelope or box from bursting. Use only one piece of tape to secure the flap. Global Priority Mail items may contain dutiable merchandise unless the country of destination specifically prohibits dutiable merchandise in letters. Any item that is prohibited in international mail is prohibited in Global Priority Mail. Refer to the Country Conditions for Mailing in the Individual Country Listings for individual country prohibitions.

231.3 Service Standards

Global Priority Mail is accepted at all USPS retail locations. There is a four-day delivery objective for GPM items that are deposited at postal locations linked to the USPS Eagle network (see Exhibit 231.41. When GPM items are tendered at "off-net" locations (all other locations), it generally requires an additional one to two business days to obtain delivery in the destination country. Within each of the listed service areas, prepaid GPM items may be tendered to a letter carrier, deposited in an Express Mail street collection box, or placed in a post office or lobby mail drop.

Note: GPM mailings consisting of 200 or more identical pieces, which bear a permit imprint, must be deposited at a locally designated business mail entry unit.

231.4 Service Areas

231.41 Origins

Global Priority Mail service is available only through the designated post offices and the additional post offices listed in Exhibits 231.41a and b. Pickup Service is available for an additional fee. (See 236.3.)

Exhibit 231.41a GPM Acceptance Locations Linked to the Eagle Network ("On-Net")

[Exhibit not included. Formerly Exhibit 226.32a.]

Exhibit 231.41b GPM Acceptance Locations Not Linked to the Eagle Network ("Off-Net")

[Exhibit not included. Formerly Exhibit 226.32b.]

231.42 Destinations

Global Priority Mail service is available to the destination countries listed below. Those countries that have service only to designated locations are identified with a footnote.

[Table not included.]

Exhibit 231.42 GPM Locations—China

[Exhibit not included. Formerly Exhibit 226.2.]

232 Postage

232.1 Rates

232.11 Flat-Rate Envelope Postage Rates

Each Global Priority Mail flat-rate envelope is charged at a flat rate. The rate is based on the geographic rate zone regardless of its actual weight. Postage is required for each piece. (See Exhibit 232.11.)

EXHIBIT 232.11—FLAT-RATE ENVELOPE POSTAGE RATES

Envelope	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
Small	$4.00	$4.00	$5.00	$5.00	$5.00
Large	7.00	7.00	9.00	9.00	9.00

232.12 Variable-Weight Option Postage Rates

Global Priority Mail variable-weight rates are calculated in half-pound (or fraction thereof) increments based on the weight of each piece (up to 4 pounds) and the destination geographic rate zone. Each GPM mailpiece that is paid for on that basis must have a variable-weight sticker affixed to the address side or be enclosed in a USPS-furnished flat-size (Tyvek) envelope or cardboard box that is specifically intended for the transmittal of GPM items. (See Exhibit 232.12.)

EXHIBIT 232.12—VARIABLE-WEIGHT OPTION POSTAGE RATES

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
.5	$6.00	$7.00	$9.00	$8.00	$8.00
1	8.00	9.00	11.00	10.00	12.00
1.5	9.00	10.00	13.00	12.00	14.00
2	11.00	12.00	16.00	15.00	17.00
2.5	12.00	13.00	19.00	18.00	20.00
3	14.00	15.00	22.00	21.00	23.00
3.5	16.00	17.00	24.00	23.00	25.00
4	18.00	19.00	27.00	26.00	28.00

232.2 Payment of Postage

232.21 Methods of Payment

Nonidentical-weight piece mailings must have the applicable postage affixed by adhesive stamps, meter stamps, or, if presented at a post office, postal validation imprinter (PVI labels). Identical-weight piece mailings may be paid by meter stamps, adhesive stamps, PVI labels, or permit imprint, subject to certain standards. To use a permit imprint, a mailing must consist of 200 or more identical-weight pieces. Mailers may use a permit imprint with nonidentical pieces only if authorized by the USPS under a Manifest Mailing System (MMS), as specified in DMM P710.

232.22 Permit Imprint Content and Format

All permit imprints on Global Priority Mail must show city and state, "Global Priority Mail," "U.S. Postage Paid," and permit number. They may show the mailing date, amount of postage paid, or the number of ounces.

232.23 Postage Meter Stamps

At a minimum, a meter stamp must show in the postmark the month, day, and year; city and state designation of the licensing post office; the number; and the amount of postage. See DMM P030.4.6.

233 Preparation Requirements

233.1 Addressing

All items must bear the complete delivery address of the addressee and the full name (no abbreviations) of the destination country. See 122.

233.2 Packaging

Flat-rate Global Priority Mail must be enclosed in a designated USPS envelope (EP–15A or EP–15B). Variable-weight Global Priority Mail must be tendered in a USPS Tyvek envelope (EP–15GP), a USPS Global Priority Mail box (O1099), or have a Global Priority Mail sticker (DEC–10) affixed to the address side of the mailpiece. GPM mailing supplies can be obtained by calling 800–222–1811. Unmarked pieces are subject to regular airmail letter-post rates and treatment.

233.3 Customs Form Required

If the GPM mailpiece weighs * * *	And it contains * * *	The required customs form(s) are * * *
Less than 16 ounces	Documents, business papers, or non-dutiable printed matter.	No form required.
	Dutiable printed matter or merchandise items with a value under $400.	Affix a completed PS Form 2976 (green label) to the exterior of the mailpiece.
	Merchandise items with a value of $400 or more	Place a completed PS Form 2976–A inside the packaging. Affix the upper-left section of PS Form 2976 (green label) to the exterior of the mailpiece.
16 ounces or more	Documents, business papers, dutiable and non-dutiable printed matter, or merchandise items with a value under $400.	Affix a completed PS Form 2976 (green label) to the exterior of the mailpiece.
	Merchandise items with a value of $400 or more	Place a completed PS Form 2976–A inside the packaging. Affix the upper-left section of PS Form 2976 (green label) to the exterior of the mailpiece.

Note: GPM customers who send flat-rate envelopes or variable-weight option mailpieces that weigh 16 ounces or more, bear a permit imprint, and contain correspondence, business papers, or nondutiable printed matter are eligible for the known mailer exemption that is referenced in 123.62.

234 Size and Weight Limits

234.1 Size Limits

234.11 Flat-Rate Envelope Sizes

a. Small—6 x 10 inches.
b. Large—9½ x 12½ inches.

234.12 Package Sizes for Variable-Weight Option

a. Minimum length and height: 5½ x 3½ inches.
b. Minimum depth (thickness): .007 inches.
c. Maximum length: 24 inches.
d. Maximum length, height, and depth (thickness) combined: 36 inches.

234.13 Rolls

a. Minimum length: 4 inches.
b. Minimum length plus twice the diameter combined: 6¾ inches.
c. Maximum length: 36 inches.
d. Maximum length plus twice the diameter combined: 42 inches.

234.14 Global Priority Mail Tyvek Envelope

The dimensions of the Global Priority Mail Tyvek envelope are 12 x 15½ inches.

234.2 Weight Limit

All Global Priority Mail items are subject to a 4-pound weight limit.

235 Special Services

Mailers may obtain certificates of mailing (see 310). No other special services, such as registry, insurance, restricted delivery, return receipt, or recorded delivery, are available.

236 Mail Entry

236.1 Preparation

Unless otherwise instructed by USPS acceptance personnel, customers who tender Global Priority Mail at a business mail entry unit (BMEU) must separate the items by destination rate group and by flat-rate envelope size (*i.e.*, small or large), if applicable. Mailpieces that bear a permit imprint or a postage meter impression must be faced in the same direction.

236.2 Deposit of Mail

Global Priority Mail flat-rate envelopes and variable-weight option mailpieces, which bear either stamped or metered postage, may be deposited wherever Express Mail is accepted. This includes acceptance by a retail employee at a post office counter; acceptance by a letter carrier while a delivery route is being served; deposit into an Express Mail street collection box if the mailpiece weighs less than 16 ounces; or by telephoning 800–222–1811 to request pickup at the customer's premises. Global Priority Mail that bears a permit imprint must be deposited at a business mail entry unit or other acceptance point that is authorized by the postmaster. Global Priority Mail that bears a meter stamp or impression must be deposited at a location that is under the jurisdiction of the licensing post office, except as permitted under DMM P030.

236.3 Pickup Service

On call and scheduled pickup services are available for Global Priority Mail acceptance cities. There is a charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. (See DMM D010 for standards of pickup service.) Pickup service is not available for GPM items that bear a permit imprint and that are paid for through an advance deposit account.

240 Letter-Post

241 Description

241.1 Definition

The letter-post classification encompasses all of the classes of international mail: letters and letter packages, post and postal cards, aerogrammes, printed matter, and small packets that were formerly categorized as LC (letters and cards) and AO (other articles).

241.2 Mailable Matter

Any article that is otherwise acceptable and not prohibited by the country of destination, subject to applicable weight and size limits, may also be mailed at the letter-post rate, either airmail or economy.

242 Postage

242.1 Rates

See Individual Country Listings for airmail and economy rates.

242.2 Payment of Postage

Mailers of letter-post items may pay postage with postage stamps, postage meter stamps, postage validation imprinter (PVI) label, and by permit imprint.

243 Weight and Size Limits

243.1 Weight Limit

The weight limit is 4 pounds.

243.2 Size Limits

243.21 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.
b. Minimum depth (thickness): .007 inch.
c. Maximum length: 24 inches.
d. Maximum length, height, depth (thickness) combined: 36 inches.

243.22 Rolls

a. Minimum length: 4 inches.
b. Minimum length plus twice the diameter combined: 6¾ inches.
c. Maximum length: 36 inches.
d. Maximum length plus twice the diameter combined: 42 inches.

243.23 Cards

Unenclosed cards exceeding the size limits for post cards are admissible at the letter-post rate if they do not exceed 4¾ x 9¼ inches.

243.24 Nonstandard Surcharge

A surcharge of $0.11 per article will be assessed on all outbound air and economy letter-post items weighing 1 ounce or less if:

a. Its length exceeds 11½ inches.
b. Its height exceeds 6⅛ inches.
c. Its thickness exceeds ¼ inch.
d. Its length divided by its height results in an aspect ratio that is less than 1.3 or more than 2.5.

244 Preparation Requirements

244.1 Addressing

See 122.

244.2 Marking

a. Whenever items, because of their size and manner of preparation, may be mistaken for items of another class, the sender should add the word "LETTER" or "LETTRE" on the address side.

b. The sender should mark "AIRMAIL/PAR AVION" or affix Label 19–A, Par Avion Air Mail, or Label 19–B, Air Mail Par Avion, on front and back of items paid at the airmail letter-post rate.

244.3 Sealing

Unregistered letter-post items may be sealed at the sender's option. Registered items must be sealed. (See 334.4 for sealing requirements for registered mail.)

244.4 Packaging

Items prepaid at the letter-post rate must be placed in envelopes or prepared in package form.

244.5 Customs Forms Required

244.51 Dutiable Merchandise.

a. Any merchandise sent to another country may be subject to duty under the customs regulations of that country. The Postal Service does not maintain or provide information concerning the assessment of customs duty.

b. Letter-post items may contain dutiable merchandise unless the country of destination prohibits dutiable merchandise in letters. (See Individual Country Listings.)

c. When mailing articles that may be dutiable, sender must comply with 123.61 and with special instructions under "Customs Forms Required" and "Observations" in Individual Country Listings.

244.52 Nondutiable Merchandise

Nondutiable merchandise may be mailed (at the sender's risk) to countries that do not accept dutiable merchandise. The Postal Service assumes no responsibility for the treatment such items may receive in the country of destination.

Note: Because PS Form 2976, described in 123.61, generally denotes dutiable contents, it should be omitted from letter-post mail when the sender knows the contents are not dutiable, unless the item weighs 16 ounces or more.

250 Postcards and Aerogrammes

251 Description

251.1 Postal Cards/Postcards

251.11 Definition

Postal cards and postcards consist of single cards sent without a wrapper or envelope. Folded (double) cards must be mailed in envelopes at the letter-post rate of postage.

251.12 Reply-Paid Cards

Reply-paid cards are not accepted in international mail, except as provided in 132.2.

251.13 Specifications

Postcards must be made of cardboard or paper that meets the material and color specifications in 142.

251.14 Privately Manufactured Postcards

Privately manufactured postcards, except picture postcards, must bear the heading Postcard.

251.15 Permitted Attachments

The following may be glued on the left half of the address side of a card, or on the side opposite the address side, if they are made of paper or other thin material and adhere completely to the card:

a. Clippings of any kind.
b. Illustrations or photographs.
c. Labels other than address labels.
d. Stamps of any kind, except stamps likely to be confused with postage stamps, must not be placed on the address side of the card.
e. Address labels or address tabs that may be glued to the address side of the card.

251.16 Nonpermitted Attachments

The following must not be attached to cards:

a. Cloth, embroidery, or spangles.
b. Samples of merchandise.

251.2 Aerogrammes

251.21 Definition

Aerogrammes are letter sheets that can be folded into the form of an envelope and sealed. Tape or stickers must not be used to seal aerogrammes.

251.22 Postage

Aerogrammes (bearing imprinted postage) are sold at all post offices. Approved aerogrammes (without imprinted postage) obtained from private firms must have aerogramme-rate postage affixed. However, privately printed aerogrammes sent to Canada and Mexico may bear the appropriate airmail letter-post postage rate.

251.23 Available Service

Aerogramme service is available to all countries. Registry is available for aerogrammes. Recorded delivery service is available for aerogrammes if that service is available to the country of destination. See Individual Country Listings.

251.24 Enclosures

Enclosures are not permitted in aerogrammes. Aerogrammes that contain enclosures are treated as airmail letters and are subject to air letter postage rates. Aerogrammes with enclosures on which postage has not been paid at airmail letter rates must be returned to the sender for the deficiency or treated in accordance with 423.

251.3 Aerogrammes of Private Manufacture

251.31 Authorization

Individuals or firms may be authorized by the Postal Service to manufacture aerogrammes, without imprinted postage, for their own use or for sale to the public.

251.32 Approval

Before engaging in production, the applicant must apply for an aerogramme permit, submit three printed samples of the proposed aerogramme, and obtain authorization from: Manager Pricing Costing and Classification, International Bussiness, US Postal Service, 475 L'Enfant Plz SW 370 IBU, Washington, DC 20260–6500.

A sample format may be obtained from that office.

251.33 Specifications for Submitted Samples

The samples submitted for approval and the final printing of the aerogrammes must be on 18-pound paper (500 sheets, 17 x 22 inches) of light blue color as well as the texture equivalent to the regular three-flap aerogramme issued by the U.S. Postal Service. No artificial slippery finish, such as a silicon plastic, is permitted. The sheets, when folded, must measure 7¼ x 3⁹⁄₁₆ inches and have three sealing flaps. Samples submitted for approval need not have the flaps gummed, but the areas to be gummed must be identified. The sheets must:

a. Bear the printed endorsements that appear on the address and reverse sides of the aerogramme issued by the Postal Service.

b. Contain the printed return address of the applicant, or lines on which the return address may be written if the sheets are to be reproduced for sale to the public.

c. Bear the words "AUTHORIZED FOR MAILING AS AN AEROGRAMME—P.S. PERMIT NO. * * *" (the number to be filled in when issued). These words must be printed in small, clear type and appear on the lower edge of the address side (when the sheet is folded for mailing). The permit number will be issued at the time the aerogramme is approved.

252 Postage Rates

Postal Cards/Postcards

Canada $0.50
Mexico $0.50
All other countries $0.70

Aerogrammes

All countries $0.70

253 Weight and Size Limits

253.1 Weight Limits

Postcards weigh approximately the same as postal cards. See 142.

253.2 Size Limits

253.21 Postcards

a. Minimum: 3½ x 5½ inches.
b. Maximum: 4¼ x 6 inches.

Note: See 243.23 for larger cards.

253.22 Aerogrammes

The size limit for an aerogramme is 7¼ x 3⁹⁄₁₆ inches.

254 Preparation Requirements

254.1 Addressing

See 122.

254.2 Marking—Postal Cards/Postcards

254.21 Airmail

The sender should mark postcards "Par Avion" or affix Label 19–A, Par Avion Air Mail, or Label 19–B, Air Mail Par Avion, on the left side on the front.

254.22 Right Half of Postcard

The right half of the address side of a card must be reserved for the recipient's address and postal notations or labels.

254.23 Left Half and Reverse Side

The sender may use the left half of the address side of the card and the reverse side for a message or permissible attachments. The sender must use the upper-left half of the address side for his or her return address. Unless they bear the name and address of the sender, undeliverable cards are disposed of in the country of destination.

254.3 Sealing Aerogrammes

Tape or stickers must not be used to seal aerogrammes.

260 Direct Sacks of Printed Matter to One Addressee (M-Bags)

261 General Description

261.1 Definition

Direct sacks of printed matter to a single foreign addressee, which are also known as M-bags, are subject to the following conditions of mailing:

Minimum weight: 11 pounds. (**Note:** M-bags weighing less than 11 pounds may be admitted, provided that the sender pays the applicable 11-pound postage rate.)

Maximum weight: 66 pounds (including the tare weight of the sack).

Availability: All destinations that are referenced in the Individual Country Listings.

Identification: PS Tag 158, M-Bag Addressee Tag, must be completed and attached to the neck of the sack.

Postage: The applicable airmail, economy (formerly surface), or International Surface Air Lift (ISAL) postage must be affixed to PS Tag 158.

Special services: Certificate of mailing and recorded delivery are available. Return receipts and restricted delivery are available in conjunction with recorded delivery service. Registry and insurance are not available.

261.2 Allowable Contents

261.21 Printed Matter

Printed matter is admissible in M-bags. Printed matter is defined as paper on which words, letters, characters, figures, or images, or any combination thereof, not having the character of a bill or statement of account or of actual of personal correspondence, have been reproduced by any process other than handwriting or typewriting. Articles that meet the printed matter definition include newspapers, magazines, journals, books, sheet music, catalogs, directories, commercial advertising, and promotional matter.

261.22 Merchandise

Articles of merchandise may be enclosed in M-bags under the following conditions:

a. The merchandise items being sent are limited to disks, tapes, and cassettes; commercial samples shipped by manufacturers and distributors; or other non-dutiable commercial articles or informational materials that are not subject to resale.

b. The merchandise items relate to the printed matter (see 261.21) with which they are being mailed.

c. The merchandise items are affixed to or are otherwise combined with the accompanying printed matter.

d. The weight of each mailpiece or package, which contains merchandise in combination with printed matter, may not exceed 4 pounds.

e. The M-bag must be accompanied by a fully completed PS Form 2976, Customs—CN 22 (Old C1) and Sender's Declaration.

262 Postage

262.1 Rates

See the Individual Country Listings for airmail and economy M-bag rates, and 293.71 for International Surface Air Lift (ISAL) M-bag rates.

262.2 Payment of Postage

262.21 Stamps

Postage is calculated on the weight of the sack's contents. It is payable by affixing postage stamps, meter stamps, or a postage validation imprinter (PVI) label to PS Tag 158, M-Bag Addressee Tag.

262.22 By Indicia

If a publisher or registered news agent prepares a direct sack of publishers' periodicals (Periodicals Mail matter) for one addressee and desires to pay the postage from money on deposit with the postmaster, the postage must be computed at the per-copy rate based on the report on PS Form 3541, Periodicals One Issue or One Edition; PS Form 3541–M, Periodicals—All Issues in a Calendar Month; or PS Form 3540–S, Postage Statement—Supplement. In lieu of stamped or metered postage, the accompanying M-bag tag must bear the applicable Periodicals Mail indicia.

Note: The $0.25 per pound postage rate discount that is available to publishers or registered news agents who "drop ship" their mail at the New Jersey International and Bulk Mail Center (NJI&BMC) does not apply to M-bags.

263 Weight and Size Limits

263.1 Weight Limits

The minimum weight limit is 11 pounds and the maximum weight limit is 66 pounds, including the tare weight of the sack.

Note: M-bags weighing less than 11 pounds may be admitted, provided that the sender pays the applicable 11-pound postage rate.

263.2 Size Limits

There are no defined size limits so long as articles being sent can be enclosed in the mailbag.

264 Preparation Requirements

264.1 Marking

Printed matter, or printed matter in combination with merchandise items, must be placed into one or more individual packages bearing the name and address of the sender and addressee. Each package must be marked "POSTAGE PAID—M-BAG."

264.2 Sacking and Labeling

264.21 Equipment

The sacks and mailing tags (*i.e.*, PS Tag 158) needed for M-bag entry can be obtained from the local post offices. Airmail pouches, if available, will be furnished to customers who intend to utilize that type of M-bag service.

264.22 Tagging

PS Tag 158, M-Bag Addressee Tag, must be completed and attached to the neck of the sack. It must bear the requisite amount of stamped or metered postage or the sender's authorized permit imprint or indicia (see 262.2).

264.23 Multiple Sacks to One Addressee

If multiple sacks are sent to the same foreign addressee, PS Tag 158 must be marked with an identifiable fraction such as ⅕, ⅖, ⅗, etc.

264.24 Country Destination Name

The post office must label the sack with the name of the country of destination in large letters and the name of the U.S. dispatching exchange office in small letters (for example, "Great Britain via New York"), and send it to that exchange office for dispatch to destination.

264.3 Customs Forms Required

M-bags containing merchandise items (see 261.22) or printed matter that is known to be dutiable in the country of destination must be accompanied by a fully completed PS Form 2976, Customs—CN 22 (Old C1) and Sender's Declaration.

270 Matter for the Blind

271 Description

Matter for the blind in international mail is limited to:

a. Books, periodicals, and other matter (including unsealed letters) impressed in Braille or other special type for the use of the blind.

b. Plates for embossing literature for the blind.

c. Disks, tapes, or wires bearing voice recordings and special paper intended solely for the use of the blind, provided they are sent by or addressed to an officially recognized institution for the blind.

d. Sound recordings or tapes that are mailed by a blind person.

e. Those items listed in DMM E040.2.0.

272 Postage Rates

Surface: Free.

Air: No separate airmail rates are provided for matter for the blind. If airmail service is desired, use airmail letter-post, air parcel post, or other category that meets service request. These items are subject to the weight, size, and preparation requirements of the category of mail selected.

273 Weight and Size Limits

273.1 Weight Limit

The weight limit is 15 pounds.

273.2 Size Limits

273.21 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inch.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

273.22 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

274 Preparation Requirements

274.1 Addressing

See 122.

274.2 Marking

274.21 Matter for the Blind Sent as Surface Mail

For surface mail accepted as matter for the blind, the word "FREE" must be placed in the upper-right corner, immediately above the words "MATTER FOR THE BLIND."

274.22 Name of Officially Recognized Institution

The officially recognized institution for the blind must appear in the address or the return address for the following items:

a. Disks, tapes, or wires bearing voice recordings.

b. Special paper intended solely for the use of the blind.

274.3 Sealing

Matter for the blind must not be sealed, even if registered.

274.4 Packaging

274.41 Subject to Postal Inspection

Matter for the blind is subject to postal inspection (see ASM 274), and must be prepared in such a way that the contents are protected but inspection of the contents is not hindered.

274.42 Types of Containers

The items must be placed in wrappers, in rolls, between cardboard, or in bags, boxes, unsealed envelopes, or containers. Dangerous fasteners may not be used. The articles may also be tied with string or twine in a manner that will permit them to be easily untied.

280 Parcel Post

281 General

Parcel post resembles domestic zone-rated Standard Mail (B) mail. Merchandise is permitted, but written communications having the nature of current and personal correspondence are not permitted.

Note: Parcel post is the only class of mail that may be insured (see 322).

282 Postage

282.1 Rates

See Individual Country Listings.

282.2 Mailing Locations

Parcels should be presented for mailing at a post office window.

282.3 Pickup Service

Scheduled pickup service is available for an added charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, Global Express Mail, domestic Priority Mail, Global Priority Mail, and/or domestic Parcel Post is also picked up at the same time. No pickup fee will be charged when international parcel post is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010.

283 Weight and Size Limits

283.1 Weight Limits

See Individual Country Listings.

283.2 Size Limits

283.21 Rectangular Parcels

a. Minimum length and width: 5½ x 3½ inches.

b. Maximum length: 42 inches.

c. Maximum length and girth combined: 79 inches.

283.22 Circular Parcels

Maximum girth (measured along diameter): 64 inches.

283.23 Exceptional Size Limits

Rectangular-shaped parcels with dimensions that exceed the standard 42-inch (maximum length) and 79-inch (maximum length and girth combined) size limits can be sent to Belgium, Canada, Germany, Great Britain, Hong Kong, Ireland, Japan, Liechtenstein, Macao, Sweden, and Switzerland. See the relevant Individual Country Listings for the exceptional size limits that apply to parcels addressed to each of those destination countries.

284 Preparation Requirements

284.1 Addressing

See 122. Name and address of sender and addressee should also be recorded on a separate slip enclosed in the parcel.

284.2 Marking

For air parcels, the accepting clerk must place Label 19–A or Label 19–B on the address side, below and to the left of the name of the country of destination. To preclude an airmail parcel from being handled as surface mail, accepting clerks may also put the written endorsement or Label 19–A or Label 19–B on the back lower-left of the parcel.

284.3 Sealing

284.31 Requirements

All international parcels must be sealed.

284.32 Sealing Materials

Senders must seal their own parcels. Wax, gummed-paper tape, nails, screws, wire, metal bands, or other materials may be used to seal parcels. The seal must be sufficient to allow detection of tampering.

284.4 Packaging

284.41 Packaging Requirements

Every parcel must be securely and substantially packed. In packing, the sender must consider the nature of the contents, the climate, the length of the journey, and the numerous handlings involved in the conveyance of international mail.

284.42 Types of Containers

Ordinary paperboard containers are not acceptable. Parcels must be packed in one of the following:

a. Canvas or similar material.

b. Double-faced corrugated or solid (minimum 275-pound test) fiber boxes or cases.

c. Strong wooden boxes made of lumber at least ½-inch thick or plywood of at least three plies.

284.43 Use of Wrapping Paper

Heavy wrapping paper or waterproof paper is permitted only as the outside covering of a carton.

284.44 Boxes With Screwed or Nailed Lids

If otherwise acceptable, boxes with screwed- or nailed-on lids and bags closed by sewing may be used. Heavy objects, such as cans of food, must be surrounded with other contents or packing material in order to prevent their shifting within the parcel. For illustrations or recommended packing procedures, see DMM C010.

284.45 Customs Forms Required

All parcel post packages must bear PS Form 2976–A.

284.46 Nonpostal Documentation

Forms required by nonpostal export regulations are described in chapter 5.

290 Commercial Services

291 [Reserved]

292 International Priority Airmail Service

292.1 Description

292.11 General

International Priority Airmail (IPA) service is as fast as or faster than regular international airmail service. It is available to bulk mailers of all letter-post items that are prepared by the sender in accordance with the requirements of this subchapter. Separate rates are provided for presorted mail and nonpresorted mail with drop shipment and volume discounts available.

292.12 Qualifying Mail

Any item of the letter-post classification, as defined in 141.5 and 141.6, qualifies, including aerogrammes and post cards. Items do not have to be of the same size and weight to qualify.

292.13 Minimum Quantity Requirements

292.131 Worldwide Nonpresort Mail

The mailer must have a minimum of 11 pounds of mail in the total mailing. The minimum does not apply to each country destination.

292.132 Presort Mail

The mailer must have a minimum of 11 pounds of presorted mail to a single rate group, including Canada, to qualify for the presort rate for that rate group.

Note: Mail that cannot be made up in direct country packages (292.452a), in direct country sacks (292.461), or in trays (292.465a) does not qualify for the presort rates and is subject to the worldwide nonpresort rates.

292.14 Dutiable Items

Dutiable items may be sent in accordance with the applicable rules in this subchapter for those classes of mail. Parcel post (CP) items, either ordinary or insured, may not be mailed as International Priority Airmail.

292.15 Deposit

292.151 Full Service

Mailings may be deposited and accepted at all post offices where bulk mail is accepted and the mailer holds an advance deposit account or postage meter license.

292.152 Drop Shipment

To qualify for the drop shipment rates, the mailer must tender the mail to one of the locations in 292.153. The mailer must pay postage at the drop shipment location either through an advance deposit account or postage meter license at the serving post office. As an alternative, mailers who are participating in a PVDS program (see DMM P750) may have the mail verified, accepted, and paid for at the mailer's plant or at the origin post office serving the mailer's plant if authorized under DMM P750.2.2. Plant-verified drop shipment mail must be transported by the mailer to the drop shipment location and the mail accompanied by PS Form 8125, Drop Shipment Clearance Document.

292.153 Drop Shipment Locations

Drop shipment rates are available at the following offices:

New York: John F. Kennedy Airport Mail Ctr, US Postal Service, John F. Kennedy International Airport Bldg 250, Jamaica, NY 11430–9998.

Florida: Miami International Service Ctr*, US Postal Service, 11690 NW 25th St, Miami, FL 33172–1702; Miami Processing and Distribution Ctr, US Postal Service, 2200 NW 72nd Ave, Miami FL 33152–9997.

Texas: Dallas International Service Ctr, US Postal Service, 15050 Trinity Blvd, Fort Worth, TX 76155–3203.

Illinois: Chicago O'Hare International Annex, US Postal Service, 514 Express Center Dr, Chicago IL 60688–9998.

California: San Francisco ISC, US Postal Service, 2650 Bayshore Blvd, Daly City, CA 94013–1631; Worldway Airport Mail Ctr, US Postal Service, 21750 Arnold Center Rd, Carson CA 90810–9998.

*Only plant-verified mail is transported to these facilities by the mailer.

292.16 Special Services Not Available

Items sent in this service may not be registered.

292.2 Postage

292.21 Rates

292.211 General

There are two rate options for International Priority Airmail service: A presort rate option that has eight rate groups and a worldwide nonpresort rate. For both options, there are full service rates for mail deposited at offices other than the drop shipment offices listed in 292.153, and drop shipment rates for mail deposited at one of the drop shipment offices. The per-piece rates and per-pound rates are shown in Exhibit 292.11. The per-piece rate applies to each piece regardless of its weight. The per-pound rate applies to the net weight (gross weight minus tare weight of sack) of the mail for the specific rate group. Fractions of a pound are rounded to the next whole pound for postage calculation.

EXHIBIT 292.211—INTERNATIONAL PRIORITY AIRMAIL RATES

Rate group	Per piece	Drop shipment per pound	Full service per pound
1 (Canada)	$0.25	$2.60	$3.60
2 (Mexico)	0.12	4.60	5.60
3	0.20	4.25	5.25
4	0.20	5.50	6.50
5	0.12	4.60	5.60
6	0.12	4.75	5.75
7	0.12	6.25	7.25
8	0.12	7.25	8.25
Worldwide	0.20	7.00	8.00

292.212 Volume Discount

Mailers who spend $2 million or more on IPA and ISAL in the preceding postal fiscal year may receive discounts as follows:

a. $2 million to $5 million: 5 percent discount.

b. Over $5 million to $10 million: 10 percent discount.

c. Over $10 million: 15 percent discount.

Mailers entitled to these discounts must place the full per-piece rate on each piece of mail if payment is by postage meter or mailer-precanceled stamps. The discount is calculated on the postage statement.

292.213 Qualifying for Volume Discounts

To qualify for volume discounts, mailers must apply in writing to: Manager, Marketing and Sales, International Business, US Postal Service, 475 L'Enfant Plz SW 370 IBU, Washington, DC 20260–6500.

The manager evaluates all requests and informs the mailer and the post office(s) of mailing whether discounts are approved and the level of discount. Mailers must supply the following information:

a. Postal fiscal year for the qualifying mail.

b. Permit number(s) and post office(s) where the permits are held.

c. Total revenue for the postal fiscal year.

d. Post office(s) where the discount is to be claimed.

The combined IPA and ISAL revenue is counted toward the discounts. The Postal Service will count as revenue to qualify for the volume discounts only postage paid by the permit holder. If a permit holder has more than one account, or accounts in several cities, then these revenues may be combined to qualify for discounts. Agents who prepare mail for the owner of the mail and mail paid by the owner's permit may not be included in the revenue to qualify for the discounts. Customers may be required to substantiate their request by providing copies of all postage statements for the appropriate postal fiscal year. All decisions of the Manager, Mail Order are final.

292.214 Availability

IPA service is available to all foreign countries, as listed in Exhibit 292.452, which shows the rate group assigned to each country.

292.215 Presort Rates

To qualify for the presort rates (see Exhibit 292.211), a mailing must consist of a minimum of 11 pounds to a specific rate group. This minimum applies to each rate group and not to the entire mailing. Within a rate group, all mail addressed to an individual country must be sorted into direct country packages of 10 or more pieces (or 1 pound or more of mail) and/or sacked in direct country sacks of 11 pounds or more. Mail that cannot be made up into direct country packages or direct country sacks must be sent at the worldwide nonpresort rates.

Note: There are separate preparation requirements for mail to Canada. See 292.465.

292.216 Separation by Rate Group

The mailer must specify the rate group on the back of PS Tag 115, International Priority Airmail, with 1 (Canada), 2 (Mexico), 3, 4, 5, 6, 7, 8, or WW (Worldwide), and must physically separate the sacks by rate group at the time of mailing.

292.217 Computation of Postage

Postage is computed on PS Form 3652, Postage Statement—International Priority Airmail. Postage at the worldwide nonpresort rate is calculated by multiplying the number of pieces in the mailing by the applicable per-piece rate, multiplying the net weight (in whole pounds) of the entire mailing by the applicable per-pound rate, and then adding the two totals together. Postage at the presorted rates is calculated by multiplying the number of pieces in the mailing destined for countries in a specific rate group by the appropriate per-piece rate, multiplying the net weight (in whole pounds) of those pieces by the corresponding per-pound rate, and then adding the two totals together. Volume discounts are calculated on the postage statement.

292.22 Postage Payment Methods

292.221 General

a. Postage Meter or Permit Imprint. Postage must be paid by postage meter, permit imprint, or mailer-precanceled stamps (see DMM P023.3.0), or a combination. Postage charges are computed on PS Form 3652.

b. Piece Rate Portion. The applicable per-piece postage must be affixed to each piece by meter unless postage is paid by permit imprint or mailer-precanceled stamps (see 292.223).

c. Pound Rate Portion. Postage for the pound rate portion must be paid either by meter stamp(s) attached to the postage statement or from the mailer's authorized permit imprint advance deposit account.

292.222 Postage Meter

a. Postage Endorsement. When postage is paid by meter or mailer-precanceled stamps, each piece must be legibly endorsed with the words "INTERNATIONAL PRIORITY AIRMAIL."

b. Specifications for Endorsement. The endorsement required in 292.222a must appear on the address side of each piece and must be applied by a printing press, hand stamp, or other similar printing device. It must be printed above the name of the addressee and to the left or below the postage, or it may be printed adjacent to the meter stamp in either the postal inscription slug area or ad plate area. If the postal endorsement appears in the ad plate area, no other information may be printed in the ad plate. The endorsement may not be typewritten or hand-drawn. The endorsement is not considered adequate if it is included as part of a decorative design or advertisement.

c. Unmarked Pieces. Unmarked pieces lacking the postage endorsement required by 292.222a are subject to the airmail letter-post single piece rates.

d. Drop Shipment of Metered Mail. Mailers who want to enter metered IPA mail at a post office other than where the meter is licensed must obtain a drop shipment authorization. To obtain an authorization, the mailer must submit a written request to the postmaster at the office where the mail will be entered (see DMM D072).

292.223 Permit Imprint

Mailers may use a permit imprint for mailings that contain identical weight pieces. Any of the permit imprints shown in Exhibit 152.3 are acceptable. The postage charges are computed on PS Form 3652 and deducted from the advance deposit account. Permit imprints must not denote Priority Mail, bulk mail, nonprofit mail, or other domestic or special rate mail. Mailers may use permit imprint with nonidentical weight pieces only if authorized to use postage mailing systems under DMM P710, P720, or P730.

292.3 Weight and Size Limits

See 243 for the weight and size limits for letter-post items sent in this service. Items may not weigh more than 4 pounds.

292.4 Preparation Requirements for Individual Items

292.41 Addressing

International Priority Airmail is subject to the addressing requirements contained in 122.

a. Exception: International Priority Airmail items destined for Canada must have the applicable alphanumeric postcode included in the delivery address. See 122.1k for the address formatting requirements that generally apply to mailpieces sent to Canada.

b. Exception: International Priority Airmail in direct country sacks (see 292.461) is not subject to the interline addressing requirement that is specified in 122.1d. At the sender's risk, the English translation of the destination post office or city name may be omitted from printed addresses that are in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters. An English translation of the country name (e.g., "Japan") is still required on the individual mailpieces.

292.42 Marking 292.421 Airmail

The sender should mark "PAR AVION" or "AIR MAIL" on the address side of each piece. Use of bordered airmail envelopes is optional and may be used for items sent in this service if the envelope contains the "AIR MAIL" endorsement.

292.422 Packages

Items that might be mistaken for another class of mail because of their size, weight, or appearance should be marked "LETTER" on the address side.

292.43 Sealing

Any item sent in this service may be sealed at the option of the sender.

292.44 Packaging

All items must be placed in envelopes or prepared in package form.

292.45 Sortation Requirements for IPA

292.451 Worldwide Nonpresorted Mail

a. Working Packages. IPA mail paid at the nonpresorted rate must be made up into working packages. Letters and flats must be packaged separately, although nonidentical pieces may be commingled within each of these categories. Pieces that cannot be packaged because of their physical characteristics must be placed loose in the sack.

b. Facing of Nonpresorted Mail Within Package. All pieces in the working packages must be faced the same way.

292.452 Presorted Mail

a. Direct Country Packages. When there are 10 or more pieces or 1 pound or more of mail for the same country (except Great Britain), it must be made up into a country package. Great Britain requires a finer sortation. At the mailer's option, a finer breakdown by city or postal code may be made based on sortation information provided by the postal administration of the destination country.

b. Country Package Label.

(1) The label (facing slip) for country packages that contain 10 or more pieces to a specific country (except for Great Britain and Mexico) must be completed as follows:

Line 1: Foreign Exchange Office.
Line 2: Country of Destination.
Line 3: Mailer and Mailer Location.

Example:

```
1150 VIENNA FLUG
AUSTRIA
RBA COMPANY WASHINGTON DC
```

(2) See Exhibit 292.452 for Direct Country Package Label and PS Tag 178, CN 35 Par Avion, for information.

c. Country Packages to Great Britain. When there are 10 or more pieces or 1 pound or more per separation, International Priority Airmail to Great Britain must be sorted into packages in the following manner:

Separation	Exchange office (Line 1 bundle label)
London City	London Town.
Scotland	Glasgow Fwd.
Northern Ireland	Belfast Fwd.
All Other Great Britain	Great Britain, Great Britain.

Example:

```
LONDON TOWN
GREAT BRITAIN
MAILER AND MAILER
LOCATION
```

d. Facing of Pieces Within Country Package. All pieces in the country package must be faced in the same direction and a facing slip identifying the contents of the package must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package.

Note: The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Priority Airmail.

Exhibit 292.452 Foreign Exchange Office and Country Rate Groups

[Exhibit not included, except rate groups. Formerly Exhibit 284.522.]

Country	IPA
Afghanistan	8
Albania	5
Algeria	8
Andorra	3
Angola	8
Anguilla	6
Antigua and Barbuda	6
Argentina	6
Armenia	8
Aruba	6
Ascension	5
Australia	4
Austria	3
Azerbaijan	8
Bahamas	6
Bahrain	8
Bangladesh	8
Barbados	6
Belarus	5
Belgium	3
Belize	6
Benin	8
Bermuda	6
Bhutan	8
Bolivia	6
Bosnia-Herzegovina	5
Botswana	8
Brazil	6
British Virgin Islands	6
Brunei Darussalam	7
Bulgaria	5
Burkina Faso	8
Burma (Myanmar)	8
Burundi	8
Cambodia	7
Cameroon	8
Canada	1
Cape Verde	8
Cayman	6
Central African Republic	8
Chad	8
Chile	6
China	7
Colombia	6
Comoros Islands	8
Congo (Brazzaville), Republic of the	8
Congo (Kinshasa), Democratic Republic of the	8
Costa Rica	6
Côte d'Ivoire (Ivory Coast)	8
Croatia	5
Cuba	6
Cyprus	8
Czech Republic	5
Denmark	3
Djibouti	8
Dominica	6
Dominican Republic	6
Ecuador	6
Egypt	8
El Salvador	6
Equatorial Guinea	8
Eritrea	8
Estonia	5
Ethiopia	8
Falkland Islands	6
Faroe Islands	5
Fiji	7
Finland	3
France (includes Corsica & Monaco)	3
French Guiana	6
French Polynesia (includes Tahiti)	7
Gabon	8
Gambia	8
Georgia, Republic of	8
Germany	3
Ghana	8
Gibraltar	3
Great Britain and Northern Ireland	3
Greece	3
Greenland	3
Grenada	6
Guadeloupe	6
Guatemala	6
Guinea	8
Guinea-Bissau	8
Guyana	6
Haiti	6
Honduras	6
Hong Kong	7
Hungary	5
Iceland	3
India	8
Indonesia (includes East Timor)	7
Iran	8
Iraq	8
Ireland	3
Israel	3
Italy	3
Jamaica	6
Japan	4
Jordan	8
Kazakhstan	8
Kenya	8
Kiribati	7
Korea, Dem. People's Rep. of (North)	7
Korea, Republic of (South)	7
Kuwait	8
Kyrgyzstan	5
Laos	7
Latvia	5
Lebanon	8
Lesotho	8
Liberia	8

Country	IPA
Libya	8
Liechtenstein	3
Lithuania	5
Luxembourg	3
Macao	5
Macedonia, Republic of	5
Madagascar	8
Malawi	8
Malaysia	7
Maldives	8
Mali	8
Malta	8
Martinique	6
Mauritania	8
Mauritius	8
Mexico	2
Moldova	8
Mongolia	7
Montserrat	6
Morocco	8
Mozambique	8
Namibia	8
Nauru	7
Nepal	7
Netherlands	3
Netherlands Antilles	6
New Caledonia	7
New Zealand	4
Nicaragua	6
Niger	8
Nigeria	8
Norway	3
Oman	8
Pakistan	8
Panama	6
Papua New Guinea	7
Paraguay	6
Peru	6
Philippines	7
Pitcairn Island	7
Poland	5
Portugal (includes Azores & Madeira Islands)	3
Qatar	8
Reunion	8
Romania	5
Russia	5
Rwanda	8
Saint Christopher (St. Kitts) and Nevis	6
Saint Helena	8
Saint Lucia	6
Saint Pierre & Miquelon	6
Saint Vincent and the Grenadines	6
San Marino	3
Sao Tome and Principe	5
Saudi Arabia	8
Senegal	8
Serbia-Montenegro (Yugoslavia)	5
Seychelles	8
Sierra Leone	8
Singapore	7
Slovak Republic (Slovakia)	5
Slovenia	5
Solomon Islands	7
Somalia	8
South Africa	8
Spain (includes Canary Islands)	3
Sri Lanka	8
Sudan	8
Suriname	6
Swaziland	8
Sweden	3
Switzerland	3
Syria	8
Taiwan	7
Tajikistan	8
Tanzania	8
Thailand	7
Togo	8
Tonga	7
Trinidad and Tobago	6
Tristan da Cunha	8
Tunisia	8
Turkey	5
Turkmenistan	5
Turks and Caicos Islands	6
Tuvalu	7
Uganda	8
Ukraine	8
United Arab Emirates	8
Uruguay	6
Uzbekistan	8
Vanuatu	7
Vatican City	3
Venezuela	6
Vietnam	7
Wallis and Futuna Islands	7
Western Samoa	7
Yemen	8
Zambia	8
Zimbabwe	8

292.453 Physical Characteristics and Requirements for Packages

a. Thickness. Packages of letter-size mail should be no thicker than approximately a handful of mail (4 to 6 inches thick).

b. Securing Packages. Each package must be securely tied. Placing rubber bands around the length and then the girth is the preferred method of securing packages of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing packages of flat-size mail.

c. Separation of Packages. Letter-size and flat-size mail must be packaged separately.

292.46 Sacking Requirements

292.461 Direct Country Sack (11 Pounds or More)

a. General. When there are 11 or more pounds of mail addressed to the same country (including Great Britain), the mail must be packaged and enclosed in blue international airmail sacks and labeled to the country with PS Tag 178, Airmail Bag Label LC (CN 35/AV 8) (white). All types of mail, including letter-size packages, flat-size packages, and loose items, can be commingled in the same sack for each destination and counted toward the 11-pound minimum.

b. Direct Country Sack Tags. Direct country sacks must be labeled with PS Tag 178. The tag is white and specially coded to route the mail to a specific country and airport of destination. The blocks on the tag for date, weight, and dispatch information must be completed by the Postal Service and may not be completed by the mailer. The mailer must complete the "To" block showing the destination country. PS Tag 115, International Priority Airmail, must also be affixed to the direct country sacks. PS Tag 115 is a Day-Glo pink tag that identifies the mail to ensure it receives priority handling. The mailer must designate on the back of PS Tag 115 the applicable rate group using 1 (Canada), 2 (Mexico), 3, 4, 5, 6, 7, 8, or WW (Worldwide).

292.462 Mixed Direct Country Package Sacks

a. General. The direct country packages containing 10 or more pieces or 1 pound or more of mail destined to a specific country that cannot be made up in direct country sacks must be enclosed in orange Priority Mail sacks unless other equipment is specified by the acceptance office.

b. Mixed Direct Country Sack Label. The sack label must be completed as follows. (See Exhibit 292.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code
Line 2: Contents—DRX
Line 3: Mailer and Mailer Location
Example:

```
AMC SEATTLE WA 980
INT'L PRIORITY AIRMAIL—DRX
ABC STORE SEATTLE WA
```

Exhibit 292.462 Labeling of IPA Mail to USPS Exchange Offices

[Exhibit not included. Formerly Exhibit 284.622.]

292.463 Worldwide Nonpresort Mail Sacks

a. General. The working packages of mixed country mail and loose items must be enclosed in orange Priority Mail sacks unless other equipment is specified by the acceptance office. Nonpresorted letter-size mail may be presented in trays if authorized by the acceptance office.

Note: Working packages of mixed country mail cannot be enclosed in mixed direct country package sacks.

b. Worldwide Nonpresort Mail Sack Label. The sack label must be completed as follows:

Line 1: Appropriate U.S. Exchange Office and Routing Code
Line 2: Contents—WKG
Line 3: Mailer and Mailer Location
Example:

```
ISC MIAMI FL 33112
INT'L PRIORITY AIRMAIL—WKG
ABC COMPANY MIAMI, FL
```


See Exhibit 292.462 for list of U.S. International Exchange Offices.

292.464 Tags and Weight Maximum for Sacks

a. PS Tag 115 and PS Tag 178. All IPA sacks (direct country, mixed direct country package sacks, and worldwide nonpresort mail sacks) must be labeled with PS Tag 115, International Priority Airmail. PS Tag 115 is a Day-Glo pink tag that identifies IPA mail to ensure that it receives priority treatment. PS Tag 178 (see 292.461) is a dispatching tag to be used only for direct country sacks. PS Tag 178 is white and specially coded to route the mail to a specific country and airport of destination. The Postal Service must complete the blocks on the tag for date, weight, and dispatch information. The mailer must complete only the "To" block showing the destination country. Postal tags and sacks are available from the post office.

b. Sack Weight Maximum. The maximum weight of the sack and contents must not exceed 66 pounds.

292.465 Preparation Requirements for Canada

To qualify for the presort rates for Canada, a mailer must have at least 11 pounds of mail for Canada. This includes letter-size, flat-size, and package-size items even though such items are prepared in separate equipment. If the mailing contains less than 11 pounds of mail for Canada, or if the mailer chooses to do so, mail for Canada is included in the worldwide nonpresort rate mail with mail for other countries. Worldwide nonpresort mail for Canada is prepared in accordance with 292.463. The preparation requirements of presorted mail to Canada follow.

a. Letter-Size Mail and Flat-Size Mail. Letter-size items are prepared in letter trays, either half-size or full-size, depending on volume. Flat-size items are prepared in flat trays. All items must be faced in the same direction, and all trays must be full enough to keep the mail from mixing during transportation. Do not prepare the content of the tray in packages. The mailer must label each tray to show the destination in Canada and the dispatching U.S. international exchange office in the following format:

Line 1: Canadian Destination and U.S. Exchange Office Code
Line 2: Contents
Line 3: Mailer and Mailer Location
Example:

```
TORONTO ON FWD 11430
IPA
ABC COMPANY NEW YORK NY
```

In addition, the mailer must complete PS Tag 115, International Priority Airmail. Write "Canada" on the reverse and tape the tag to the tray sleeve. All trays must be banded.

b. Packages. Items that cannot be prepared in trays because of their size or shape must be placed loose in blue airmail sacks. Use PS Tag 115, International Priority Airmail, and label to either Toronto or Vancouver, as appropriate. Attach a completed PS Tag 178. See 292.461b.

Exhibit 292.465 Canadian Labeling Information

[Exhibit not included. Formerly Exhibit 284.65.]

292.47 Customs Forms Requirements

See 123.

293 International Surface Air Lift (ISAL) Service

293.1 Definition

International Surface Air Lift (ISAL) is a bulk mailing system that provides fast, economical international delivery of letter-post items. The cost is lower than airmail and the service is much faster than surface mail. ISAL shipments are flown to the foreign destinations and entered into that country's surface or nonpriority mail system for delivery.

293.2 Qualifying Mail and Minimum Quantity Requirements

Letter-post mail as defined in 241 that meets all applicable mailing standards may be sent in this service. There is a minimum volume requirement of 50 pounds per mailing except for the Direct Shipment option, which requires a minimum 750 pounds to a single country destination. Mail is prepared as (1) direct country sacks when there are 11 pounds or more to a single country or required country separation; (2) mixed country package sacks when there are 10 or more pieces or at least 1 pound of mail to a single country, but less than 11 pounds; and (3) residual mail when there are fewer than 10 pieces or less than 1 pound of mail to a single country. Residual mail may not exceed 10 percent, by weight, of the mail presented in direct country sacks, M-bags, and mixed country package sacks. Qualifying residual mail is subject to the appropriate ISAL rate (Full Service, Direct Shipment, M-Bag, or Dropship ISC).

Note: A package is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces. Packages of letter-size pieces of mail should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds.

293.3 Service Options

293.31 Availability

ISAL service is available to the foreign countries listed in Exhibit 293.71 from all post offices where bulk mail is accepted and from the drop shipment ISCs listed in 293.32.

293.32 Drop Shipment ISAL International Service Centers

ISAL deposited at the following drop shipment ISAL ISCs qualify for the drop shipment ISC rates shown in 293.71:

New York: John F. Kennedy Airport Mail Ctr, U.S. Postal Service, John F. Kennedy International Airport Bldg 250, Jamaica, NY 11430–9998.

Florida: Miami International Service Ctr *, U.S. Postal Service, 11690 NW 25th St, Miami, FL 33172–1702; Miami Processing and Distribution Ctr, U.S. Postal Service, 2200 NW 72nd Ave, Miami, FL 33152–9997.

Texas: Dallas International Service Ctr, U.S. Postal Service, 15050 Trinity Blvd, Fort Worth, TX 76155–3203.

Illinois: Chicago O'Hare International Annex, U.S. Postal Service, 514 Express Center Dr, Chicago, IL 60688–9998.

California: San Francisco ISC, U.S. Postal Service, 2650 Bayshore Blvd, Daly City, CA 94013–1631; Worldway Airport Mail Ctr, U.S. Postal Service, 21750 Arnold Center Rd, Carson, CA 90810–9998.

* Only plant-verified mail is transported to these facilities by the mailer.

293.4 Special Services

The special services described in chapter 3 are not available for items sent by ISAL.

293.5 Customs Documentation

See 123 for the requirements for customs forms.

293.6 Permits

Mailers depositing mail at a drop shipment ISC must maintain an advance deposit account at that city if postage is paid by advance deposit account.

293.7 Postage

293.71 Rates

Rate Group	Per piece	Drop shipment per pound	Direct shipment per pound	Full service per pound	M-Bag drop shipment	M-Bag direct shipment	M-Bag full service
1 (Canada)	$0.25	$2.15	$2.65	$3.15	$1.40	$1.50	$1.50
2 (Mexico)	0.12	3.20	3.70	4.20	1.50	1.60	1.60
3	0.20	2.50	3.00	3.50	1.50	1.75	1.75
4	0.20	2.75	3.25	3.75	2.50	2.50	2.50
5	0.12	3.45	3.95	4.45	2.00	2.25	2.25
6	0.12	3.40	3.90	4.40	2.00	2.25	2.25
7	0.12	3.50	4.00	4.50	2.25	2.50	2.50
8	0.12	5.50	6.00	6.50	3.00	3.25	3.25

Exhibit 293.71 International Surface Air Lift Service Network Countries and Rates

[Exhibit not included, except rate groups. Formerly Exhibit 246.71.]

Country	ISAL rate group
Albania	5
Algeria	8
Angola	8
Argentina	6
Aruba	6
Australia	4
Austria	3
Bahrain	8
Bangladesh	8
Belgium	3
Belize	6
Benin	8
Bolivia	6
Brazil	6
Bulgaria	8
Burkina Faso	8
Cameroon	8
Canada	1
Central African Republic	8
Chile	6
China	7
Colombia	6
Congo (Kinshasa), Democratic Republic of the	8
Costa Rica	6
Côte d'Ivoire (Ivory Coast)	8
Cuba	6
Czech Republic	5
Denmark	3
Dominican Republic	6
Ecuador	6
Egypt	8
El Salvador	6
Fiji	7
Finland	3
France (includes Corsica & Monaco)	3
French Guiana	6
Gabon	8
Germany	3
Ghana	8
Great Britain and Northern Ireland	3
Greece	3
Guatemala	6
Guyana	6
Haiti	6
Honduras	6
Hong Kong	7
Hungary	5
Iceland	3
India	8
Indonesia (includes East Timor)	7
Iran	8
Ireland	3
Israel	3
Italy	3
Jamaica	6
Japan	4
Jordan	8
Kenya	8
Korea, Republic of (South)	7
Kuwait	8
Lebanon	8
Liechtenstein	3
Luxembourg	3
Madagascar	8
Malaysia	7
Mali	8
Mauritania	8
Mauritius	8
Mexico	2
Morocco	8
Mozambique	8
Netherlands	3
Netherlands Antilles	6
New Zealand	4
Nicaragua	6
Niger	8
Nigeria	8
Norway	3
Oman	8
Pakistan	8
Panama	6
Papua New Guinea	7
Paraguay	6
Peru	6
Philippines	6
Poland	5
Portugal (includes Azores & Madeira Islands)	7
Qatar	5
Reunion	5
Romania	3
Russia	8
San Marino	8
Saudi Arabia	8
Senegal	7
Singapore	8
South Africa	3
Spain (includes Canary Islands)	8
Sri Lanka	8
Sudan	6
Suriname	3
Sweden	8
Switzerland	6
Syria	6
Taiwan	7
Tanzania	8
Thailand	7
Togo	8
Trinidad and Tobago	6
Tunisia	8
Turkey	5
Uganda	8
United Arab Emirates	8
Uruguay	6
Venezuela	6
Yemen	8
Zambia	8
Zimbabwe	8

293.72 Full Service Rates

ISAL mailings presented at any post office that accepts bulk mail, other than a drop shipment ISC listed in 293.32, and not eligible for the direct shipment rate, are paid at the full-service rates. Postage for regular ISAL is paid on a per-piece and a per-pound basis. M-bags are subject to the M-bag pound rate only.

293.73 Direct Shipment Rates

Mailers are eligible for the direct shipment rates from the acceptance post office (except drop shipment ISCs) when the Postal Service is able to arrange direct transportation from the origin office to the destination country. To qualify, mailers must present a minimum of 750 pounds to each destination country. Mailers must contact the post office of mailing at least 14 days before the first desired mailing date. A postal employee must complete PS Form 3655, International Surface Airlift (ISAL) Direct Shipment Option Advisement and Confirmation of Transactions, and fax it to the distribution network office (DNO) to obtain a contract for transportation. If the DNO cannot arrange direct transportation, the direct shipment rate does not apply. The Postal Service may cancel direct shipment rates and service when direct transportation is no longer available.

293.74 Drop Shipment ISC Rates

ISAL mailings transported by the mailer to the drop shipment ISCs listed in 293.32 are eligible for the drop shipment ISC rate.

293.75 Volume Discount

293.751 General

Mailers who spend $2 million or more combined on ISAL and IPA in the preceding postal fiscal year may receive discounts off the rates shown in 293.71:

a. Over $2 million to $5 million: 5 percent discount.

b. Over $5 million to $10 million: 10 percent discount.

c. Over $10 million: 15 percent discount.

Mailers entitled to these discounts must place the full per-piece rate on each piece of mail if payment is by postage meter or mailer-precanceled stamps. The discount is calculated on the postage statement.

293.752 Qualifying for Volume Discounts

To qualify for volume discounts, mailers must apply in writing to: Manager Marketing and Sales, International Business, U.S. Postal Service, 475 L'Enfant Plz SW 370 IBU, Washington, DC 20260–6500.

The manager evaluates all requests and informs the mailer and the post office(s) of mailing whether discounts are approved and the level of discount. Mailers must supply the following information:

a. The postal fiscal year for the qualifying mail.

b. The permit number(s) and post office(s) where the permits are held.

c. The total revenue for the postal fiscal year.

d. The post office(s) where the discount is to be claimed.

The combined ISAL and IPA revenue is counted toward the discounts. The Postal Service will count as revenue to qualify for the volume discounts only postage paid by a permit holder. If a permit holder has more than one account, or accounts in several cities, then these revenues may be combined to qualify for discounts. Agents who prepare mail for the owner of the mail and mail paid by the owner's permit may not be included in the revenue to qualify for the discounts. Customers may be required to substantiate their request by providing copies of all mailing statements for the appropriate postal fiscal year. All decisions of the Manager, Mail Order are final.

293.76 Payment Methods

293.761 Postage Meter, Permit Imprint, or Mailer Precanceled Stamps

Postage must be paid by postage meter, permit imprint, or mailer-precanceled stamps. Postage is computed on PS Form 3650, Statement of Mailing—International Surface Air Lift. PS Form 3650 is required for all ISAL mailings.

293.762 Piece Rate

The applicable per-piece postage must be affixed to each piece (except M-bags) by meter or mailer-precanceled stamps, unless postage is paid by permit imprint. Mailers may use permit imprint only with identical weight pieces unless authorized under the postage mailing systems in DMM P710, P720, or P730. All of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable.

293.763 Pound Rate

Postage for the pound rate portion must be paid either by meter stamp(s) attached to the finance copy of the postage statement or from the mailer's advance deposit account.

293.8 Weight and Size Limits

Any item sent by ISAL must conform to the weight and size limits for letter-post as described in 243.

293.9 Preparation Requirements

293.91 Addressing

International Surface Air Lift mail is subject to the addressing requirements contained in 122.

a. Exception: International Surface Air Lift items destined for Canada must have the applicable alphanumeric post code included in the delivery address. See 122.1k for the address formatting requirements that generally apply to mailpieces sent to Canada.

b. Exception: International Surface Air Lift mail in direct country sacks (see 293.942a) is not subject to the interline addressing requirement that is specified in 122.1d. At the sender's risk, the English translation of the destination post office or city name may be omitted from printed addresses that are in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters. An English translation of the country name (*e.g.*, "Russia") is still required on the individual mailpieces.

293.92 Marking

For publishers' periodicals (Periodicals Mail), the imprint authorized under 244.211c(2) or 244.211c(3) may be used. Individual items paid by meter postage or mailer-precanceled stamps must be endorsed "International Surface Air Lift" or "ISAL."

293.93 Sealing and Packaging

Any item sent in this service may be sealed at the option of the sender.

293.94 Makeup Requirements for ISAL

293.941 Packaging

The following guidelines apply:

a. General. All ISAL mail must be prepared in packages within sacks as appropriate. A package is defined as 10 or more pieces of mail to the same country or separation or 1 pound or more regardless of the number of pieces. Packages of letter-size mailpieces should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds. Packages and sacks must be prepared and labeled as described below. All mailpieces in a package must be faced in the same direction (*i.e.*, arranged so that the addresses read in the same direction, with an address visible on the top piece). Pieces that cannot be bundled because of their physical characteristics may be placed loose in the sack.

b. Thickness. Packages of letter-size mail should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds. Each package must be securely tied. Placing rubber bands around the length and then the girth is the preferred method of securing packages of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing packages of flat-size mail.

c. Direct Country Packages. When there are 10 or more pieces or 1 pound or more to the same country, then such pieces must be prepared as a direct country package. If there is less than 11 pounds of mail to the same country, then the direct country package must be labeled with a facing slip showing the destination country or country separation. The facing slip must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Surface Air Lift mail.

d. Residual Packages. If there is not enough mail to prepare a direct country package (fewer than 10 pieces or less than 1 pound), the mail is considered residual mail. When there are fewer than 10 pieces to the same country, then such pieces should be combined in packages with other mail for countries within the same rate group that similarly have fewer than 10 pieces. Such mixed country packages must be

labeled with a facing slip marked "Residual, Rate Group _____." The designated rate group (1, 2, 3, 4, 5, 6, 7, or 8) must be inserted as appropriate. The facing slip must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Surface Air Lift mail.

Exception: The 10-piece criterion applies when there are fewer than 10 pieces to the same country and those pieces weigh more than 11 pounds. Such mailpieces should be packaged together as a direct country package and placed in a direct country sack. Pieces that cannot be packaged because of their physical characteristics may be placed loose in the sack.

293.942 Sacking

Once packages of ISAL mail are prepared, the packages are then placed into one of three types of designated sacks:

a. Direct Country Sack. Prepare a direct country sack if there are at least 11 pounds of mail to the same country. The mail must be packaged and enclosed in a gray plastic ISAL sack and labeled to the country with PS Tag 155, Surface Airlift Mail. The maximum weight of a direct country sack must not exceed 66 pounds.

b. Mixed Country Package Sack. Prepare a mixed country package sack for those direct country packages where there is less than 11 pounds of mail to the same country. The mail must be packaged as direct country packages, identified with a facing slip showing the destination country or country separation, and enclosed in a green pouch labeled to the dropship ISAL service center. PS Tag 155 also must be attached to the sack. Prepare a mixed country package sack for each of the respective rate groups for which there is a direct country package and label as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

c. Residual Sack. Prepare a residual sack for those packages of mail that contain fewer than 10 pieces or less than 1 pound of mail to any one country (residual packages). The mail must be packaged as residual packages, appropriately identified with a facing slip, and enclosed in a green pouch labeled to the drop shipment ISAL service center. PS Tag 155 also must be attached to the sack. The mailer must prepare a residual sack for each of the respective rate groups for which there is a residual package and label it as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

293.943 Sack Labeling

Depending on the type of sack, labels are prepared as follows:

a. Direct Country Sack. For a direct country sack, use a gray plastic ISAL sack. Use PS Tag 155 to label each sack with the destination country's name. Mailers must complete four blocks on PS Tag 155:

(1) To (Pour) Block: Enter the name of the ISAL country foreign exchange office, its three-letter exchange office code, and the country's name. See Exhibit 293.71 for the name of the foreign exchange office and its three-letter exchange office code. As an example, for Ireland, this block will be as follows: Dublin DUB Ireland

(2) Customer Permit No. Block: Enter permit number.

(3) Kg Block: Enter the combined weight of the sack and its contents in kilograms (1 pound = 0.4536 kilogram).

(4) Date Block: Enter date as shown on PS Form 3650, Statement of Mailing International Surface Air Lift. After completing the above items on PS Tag 155, attach it to the neck of the sack.

b. Mixed Country Package Sack. For a mixed country package sack, use a domestic green nylon pouch and label it to the appropriate drop shipment ISAL service center as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

Labels are prepared as follows:

Content:
Line 1: Drop Shipment ISAL Service Center
Line 2: ISAL DRX
Line 3: Mailer and Mailer Location

Example:

```
AMC KENNEDY—JFK 003
ISAL DRX
ABC Company New York NY
```

For the mixed country package sack label, use Content Identification Number (CIN) 753.

In addition, use PS Tag 155 to label each sack with the appropriate drop shipment ISAL service center. Mailers must complete four blocks on PS Tag 155:

(1) To (Pour) Block: Enter the name of the drop shipment ISAL service center and rate group:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

(2) Customer Permit No. Block: Enter your permit.

(3) Kg Block: Enter the combined weight of the sack and its contents in kilograms (1 pound = 0.4536 kilogram).

(4) Date Block: Enter date as shown on PS Form 3650.

After completing the above items on PS Tag 155, attach it to the sack.

c. Residual Sack. For a residual sack, use a domestic green nylon pouch and label it to the appropriate drop shipment ISAL service center as follows:

Rate group 1— AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

Labels are prepared as follows:

Content:
Line 1: Drop Shipment ISAL Service Center
Line 2: ISAL WKG
Line 3: Mailer and Mailer Location

Example:

```
AMC KENNEDY—JFK 003
ISAL WKG
ABC COMPANY NEW YORK NY
```

For the residual sack label, use CIN 754.

In addition, use PS Tag 155 to label each sack with the appropriate drop shipment ISAL service center. Mailers must complete three blocks on PS Tag 155:

(1) To (Pour) Block: Enter the name of the drop shipment ISAL service center and rate group:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

(2) Customer Permit No. Block: Enter your 10-digit ISAL permit or customer identification number.

(3) Kg Block: Enter the combined weight of the sack and its contents in kilograms (1 pound = 0.4536 kilogram).

(4) Date Block: Enter date as shown on PS Form 3650.

After completing the above items on PS Tag 155, attach it to the sack.

293.944 Sack Separation

When presenting an ISAL shipment to the Postal Service, the mailer must physically separate the sacks of mail by type (direct, mixed, residual) and rate group (1, 2, 3, 4, etc.) at time of mailing.

293.945 Direct Sacks to One Addressee (M–Bags) for ISAL

M-bags may be sent in the ISAL service to all ISAL destination countries. Weight, makeup, sacking, and sorting requirements must conform to 260. PS Tag 158 must show the complete address of the addressee and the sender. PS Tags 155 and 158 must be attached securely to the neck of each sack. M-bags may not contain small packets.

293.95 Mailer Notification

Mailers who wish to mail shipments that weigh over 750 pounds but who are not eligible for direct shipment rates must notify the ISAL coordinator at the office of mailing at least 14 days before the planned date of mailing. Specific country information and weight per country must be provided. No prior notification is required for mailers with 750 pounds or less.

294 Publishers' Periodicals

294.1 Description

294.11 Definition

Publishers' periodicals are domestically approved Periodicals Mail publications. See DMM E211.

294.12 Eligibility

Publishers' periodicals may be mailed only by publishers and registered news agents. When mailed by individuals, this type of publication is subject to regular printed matter postage rates.

294.2 Postage

294.21 Rates

See Individual Country Listings for rates.

294.22 Special Rates

There are no unique international postage rates that specifically apply to either nonprofit organizations or to classroom publications. If otherwise qualified, those categories of senders may enter their mail at publishers' periodicals rates. See 294.62 for the conditions of mailing governing a postage rate discount for publishers or registered news agents who drop ship their mail at the New Jersey International and Bulk Mail Center (NJI&BMC).

294.23 Sample Copies

Complete sample copies may be mailed at the rates for publishers' periodicals, whether or not the number of such sample copies exceeds 10 percent of the subscriber copies.

294.24 Single Copies Mailed to Countries Other Than Canada

Single copies of publishers' periodicals addressed to all countries except Canada must be placed in wrappers or envelopes.

294.25 Single Copies Mailed to Canada

Single copies of publishers' periodicals may be entered without envelopes or wrappers, provided the mailing is sorted and packaged in the manner prescribed in 294.4. The exemption from the wrapper requirement is not applicable to copies addressed for delivery at Canadian overseas military post offices (CFPOs).

294.26 Payment of Postage

Postage on publishers' periodicals mailed by the publisher or by a registered news agent may be paid (1) by means of postage stamps or postage meter stamp, or (2) from deposits of money made with the postmaster by the publisher or news agent. When the postage is paid from money on deposit with the postmaster, the postage charges are computed on PS Form 3541, Periodicals One Issue or One Edition; PS Form 3541–M, Periodicals—All Issues in a Calendar Month; or PS Form 3540–S, Postage Statement—Supplement; filed by the publisher or news agent and completed by the postmaster.

294.27 Postage on Mailings While Application Pending

Postage at the regular printed matter rates must be paid for mailings of publications on which an application for Periodicals Mail privileges is pending. When the application is approved, postage charges should be adjusted on reported mailings based on rates for publishers' periodicals and according to the general procedure provided in DMM E216.

294.28 Per Copy Rate of Postage

Postage at the per-copy rate must be charged on all individually addressed copies of publishers' periodicals. All copies reported on PS Forms 3541–N or 3541–R, whether addressed or unaddressed, are subject to a per-copy rate. If a publisher or registered news agent prefers, he or she may pay postage on unaddressed copies to be mailed in bulk packages by affixing the appropriate postage to the wrappers of the packages.

294.3 Weight and Size Limits

294.31 Weight Limit

The weight limit for individually addressed items is 4 pounds.

294.32 Size Limits

294.321 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inch.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

294.322 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

294.4 Makeup Requirements for Publishers' Periodicals

294.41 Sortation

Publishers' periodicals must be sorted into city and country packages as follows:

a. City packages must be prepared when six or more copies are addressed to the same city. Packages may be prepared by foreign alphanumeric postal codes. Each package must bear a facing slip showing the city and country of destination. Packages that destinate in Canada must be prepared using the Canadian postal codes that are specified in Exhibit 294.43a (standard entry) or Exhibit 294.43b (drop shipment at NJI&BMC). At the mailer's option, a finer presort based on Canadian postal codes may be used.

b. When six or more copies for the same country remain after the city packages are prepared, country packages must be prepared. Each country package must bear a facing slip showing the country of destination.

c. Copies remaining after city and country packages are prepared are

residual copies. Residual copies must be packaged and bear a facing slip marked "MIXED WORKING FOREIGN." The packages must be labeled to the appropriate international exchange office or, for Canadian-bound mail, a concentration center as instructed by the post office of mailing.

d. All pieces in a package must have the address side facing up. Each package must be securely banded or tied with rubber bands or string to withstand handling without breakage or damage and to prevent injury to postal personnel or damage to sorting equipment.

e. Single copies of publications addressed for delivery in Canada that are not enclosed in wrappers or envelopes under 294.25 must be included in packages that are protected with cardboard, fiberboard, or other protective covering. The package label (facing slip) must bear these notations:
"OPEN AND DISTRIBUTE"
"Periodicals Mail Postage Paid at * * *"

or, as applicable,
"Periodicals Mail Postage Paid at * * * and Additional Mailing Offices."

Note: Under DMM C200.12.3, the simplified endorsement "PERIODICALS MAIL" may be placed on the package label (facing slip) in lieu of either of the above.

294.42 Sacking and Labeling

294.421 Country Sacks and Labels (Except Canada)

Publishers' periodicals must be sacked and labeled when there are 11 pounds of mail to a particular country or country separation. All city and country packages must be included in the same country sack. See Exhibit 294.52 for separations, city, and routing ZIP Codes. Each sack must be labeled to show the destination, contents ("NEWS" or "PER"), and entry post office as follows:

Label color: Blue
Format:
Line 1: Destination exchange office code and routing ZIP Code for applicable USPS exchange office
Line 2: Contents ("NEWS" or "PER") and "AO"
Line 3: City and state of post office of mailing and ZIP Code

Example

TAN CHINA 945
PER AO
Alexandria VA 22315

Note: Two or more separations are required when publishers' periodicals are mailed to China, Great Britain, Japan, and Mexico (see Exhibit 294.42). For each of those four countries, the destination exchange office name is used along with the city code and the country name.

Example:

PEK BEIJING CHINA 945
PER AO
Alexandria VA 22315

294.422 Residual Sacks

After the required country sacks are prepared, the remaining city, country, and residual packages must be sacked and labeled to the international exchange office as directed by the entry post office. Each sack must be labeled as follows:

Label color: Pink
Format:
Line 1: International exchange office and routing ZIP Code for applicable USPS exchange office
Line 2: Contents ("NEWS" or "PER"), "AO" and "Mixed Working Foreign"
Line 3: City and state of post office of mailing and ZIP Code

Example

FOREIGN CTR NJ 099
NEWS AO MIXED WORKING FOREIGN
Alexandria, VA 22315

Note: See 294.62 for a sacking exception for residual mail that is applicable only to publishers or registered news agents who drop ship their mail at the New Jersey International and Bulk Mail Center (NJI&BMC).

Exhibit 294.42 Publishers' Periodicals—All Countries (Except Canada) Labeling and Routing Information

[Exhibit not included. Formerly Exhibit 244.52.]

294.43 Canadian Sacks

Sacks of publishers' periodicals for delivery in Canada must be sorted by the Canadian post code designations that are specified in Exhibit 294.43a (standard entry) or Exhibit 294.43b (drop shipment at NJI&BMC) and labeled in the following manner:

Label color: White or terra-cotta
Format:
Line 1: Name of destination office in Canada is left-justified; routing ZIP Code for applicable USPS exchange office is right-justified
Line 2: Content designation (i.e., "NEWS" or "PER") followed by "AO"
Line 3: City, state, and ZIP Code of U.S. post office of mailing

Example

OTTAWA ON FWD 099
PER AO
Bethesda MD 20815

Residual mail for Canada is prepared under 294.422, except it is labeled to the local concentration center. See 294.62 for a sacking exception for residual mail that is applicable only to publishers or registered news agents who drop ship their mail at the New Jersey International and Bulk Mail Center (NJI&BMC).

Exhibit 294.43a Publishers' Periodicals—Canada Labeling and Routing Information (Standard Entry)

[Exhibit not included. Formerly Exhibit 244.53a.]

Exhibit 294.43b Publishers' Periodicals—Canada Labeling and Routing Information (Drop Shipment at NJI&BMC)

[Exhibit not included. Formerly Exhibit 244.53b.]

294.44 Physical Characteristics and Requirements for Sacks

Sacks must meet these requirements:

a. Maximum Weight. No more than 66 pounds of mail may be placed in any one sack. The weight of tying, wrapping, and packaging materials is included in determining the weight of the mail enclosed in a sack.

b. Sacks. Disposable gray plastic sacks are recommended; however, other appropriate equipment may be provided by the post office.

c. Labels. Handbook PO–423, Requisitioning Labels, contains instructions for ordering labels. Mailers may also preprint labels if they are of the colors specified and used by the Postal Service.

294.5 Customs Forms Required

Printed matter known to be dutiable in the country of destination must have a green customs label (PS Form 2976) affixed to the address side of the articles. (See 123 for detailed requirements for customs documentation.) This requirement is applicable to dutiable printed matter mailed in a direct sack (M-bags) (see 260).

294.6 Mailing Locations

294.61 Standard Entry

Surface mail that is entered at publishers' periodicals rates must be prepared in accordance with the provisions of 244.5 and tendered at a post office or other location that has been designated by the local postmaster.

294.62 Drop Shipment

A publisher or registered news agent who deposits publishers' periodicals directly at the New Jersey International & Bulk Mail Center (NJI&BMC), under a drop shipment authorization, is eligible for a $0.25 per pound postage rate discount, when the following conditions of entry are met:

a. The mailer must obtain a drop shipment authorization (PS Form 8125, Plant-Verified Drop Shipment (PVDS) Verification and Clearance) from the post office of original/additional entry, the business mail entry unit (BMEU), or the detached mail unit (DMU) where their mailing records are maintained.

b. The mailer must bring their sorted publishers' periodicals to the postal location referenced in 294.62a, where USPS acceptance employees will check the statement of mailing to ensure proper application of the $0.25 per pound drop ship discount; confirm funds availability; and verify compliance with the prescribed mail makeup requirements.

c. Publishers' periodicals that are to be drop shipped at the NJI&BMC are subject to the mail makeup requirements contained in 294.41 and 294.42, except as specified below.

Exception: A drop shipment customer who has fewer than 11 pounds of publishers' periodicals for a particular country or country separation is required to place those residual mailpieces into a country-specific "skin" sack rather than aggregating them into a mixed working foreign sack, as specified in 294.422. Residual bundles or packages that are placed into a skin sack are subject to the sorting, sacking, and labeling requirements for country sacks that are contained in 294.41 (except 294.41c) and 294.421, for all countries except Canada, and in 294.43 for Canada only.

d. A publisher or agent who has a minimum of 250 pounds of mail for a single destination country may dispense with the use of sacks by placing the requisite presorted bundles or packages onto a strapped or shrink-wrapped pallet. To be admissible, a palletized load of discounted publishers' periodicals must conform to the mailing standards contained in DMM M041; adhere to the mail preparation requirements referenced in DMM M045, and be placarded (labeled) in accordance with the provisions of DMM M031.4.0.

e. Once the acceptance process is completed, the verified mailpieces and accompanying paperwork will be turned back to the publisher or agent who will transport the sacks or pallets to the NJI&BMC. Prior to bringing their mail to that postal facility, the publisher or agent must schedule a drop shipment appointment through the appropriate appointment control center as specified in DMM E652.3.4. The relevant statement of mailing and drop shipment authorization (PS Form 8125) must be presented at the time of entry.

f. Publishers' periodicals that are enclosed in direct sacks of printed matter to one addressee (M-bags) are not subject to the $0.25 per pound postage discount that is referenced in this section. See 245.222 for the postage payment procedures governing M-bags.

295 Books and Sheet Music

295.1 Description

295.11 Definition

This classification encompasses:

a. Books (including books issued to supplement other books) that have the following characteristics:

(1) Eight or more printed pages.

(2) Consist wholly of reading matter or scholarly bibliography, or reading matter with incidental blank spaces for notations.

(3) Contains no advertising matter other than incidental announcements of books, in the form of book pages, and other bound and loose enclosures that are permissible under the provisions of DMM E620.4.4. Advertising includes paid advertising and publishers' own advertising in display, classified, or editorial style.

b. Printed sheet music.

295.12 Minimum Quantity Requirements

To qualify for this service mailers must have a minimum of 50 pounds of mail or 200 pieces.

295.2 Postage

295.21 Rates

See Individual Country Listings for rates.

295.22 Postage Payment Methods

Nonidentical weight piece mailings must have the applicable postage affixed meter stamps. Identical-weight piece mailings may be paid by meter stamps, or permit imprint subject to certain standards. Mailers may use a permit imprint with nonidentical pieces only if authorized by the USPS under a Manifest Mailing System (MMS), as specified in DMM P710. All mailings are reported on PS Form 3651, Postage Statement—International Permit Imprint Mail.

295.3 Weight and Size Limits

295.31 Weight Limit

The weight limit for individually addressed items is 4 pounds.

295.32 Size Limits

295.321 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inch.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

295.322 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

295.4 Makeup Requirements for Books and Sheet Music

295.41 Endorsements

The sender must endorse the address side "BOOKS" or "SHEET MUSIC" on all items containing books or sheet music and paid at those rates.

295.42 Sortation

Books and sheet music must be sorted into country packages as follows:

a. Country packages must be prepared when six or more copies are addressed to the same country. Packages may be prepared according to foreign alphanumeric postal codes. Each package must bear a facing slip showing the country of destination. Packages that destinate in Canada must be prepared using the Canadian postal codes that are specified in Exhibit 295.43. At the mailer's option, a finer presort based on Canadian postal codes may be used.

b. Copies remaining after country packages are prepared are residual copies. Residual copies must be packaged and bear a facing slip marked "MIXED WORKING FOREIGN." The packages must be labeled to the appropriate international exchange office or, for Canada-bound mail, a concentration center as instructed by the post office of mailing.

c. All pieces in a package must have the address side facing up. Each package must be securely banded or tied with rubber bands or string to withstand handling without breakage or damage and to prevent injury to postal personnel or damage to sorting equipment.

295.43 Sacking and Labeling

295.431 Country Sacks and Labels (Except Canada)

Books and sheet music must be sacked and labeled when there are 11 pounds of mail to a particular country or country separation. All country packages must be included in the same country sack. See Exhibit 294.42 for separations, city, and routing ZIP Codes. Each sack must be labeled to show the destination, contents, and entry post office as follows:

Label color: Blue
Format:
- Line 1: Destination exchange office code and country routing ZIP Code
- Line 2: Contents "AO"
- Line 3: City and state of post office of mailing and ZIP Code

Example:

```
TAN CHINA 945
AO
ALEXANDRIA VA 22315
```

Note: Two or more separations are required for mail to China, Great Britain, Japan, and Mexico (see Exhibit 295.42). For each of those four countries, the destination exchange office name is used along with the city code and the country name.

Example:

```
PEK BEIJING CHINA 945
AO
ALEXANDRIA VA 22315
```

295.432 Residual Sacks

After the required country sacks are prepared, residual packages must be sacked and labeled to the international exchange office as directed by the entry post office. Each sack must be labeled as follows:

Label color: Pink
Format:
- Line 1: International exchange office and routing ZIP Code
- Line 2: Contents "AO" and "Mixed Working Foreign"
- Line 3: City and state of post office of mailing and ZIP Code

Example:

```
FOREIGN CTR NJ 099
AO MIXED WORKING FOREIGN
ALEXANDRIA VA 22315
```

Exhibit 295.432 Books and Sheet Music—All Countries (Except Canada) Labeling and Routing Information

[Exhibit not included. Same as former 244.52.]

295.44 Canadian Sacks

Sacks of books or sheet music for delivery in Canada must be sorted by the Canadian post code designations that are specified in Exhibit 295.43 and labeled in the following manner:

Label color: White or terra-cotta
Format:
- Line 1: Name of destination office in Canada is left-justified; routing ZIP Code for applicable USPS exchange office is right-justified
- Line 2: Content designation "AO"
- Line 3: City, state, and ZIP Code of U.S. post office of mailing

Example:

```
OTTAWA ON FWD 099
AO
BETHESDA MD 20815
```

Residual mail for Canada is prepared under 295.422, except it is labeled to the local concentration center.

Exhibit 295.44 Books and Sheet Music—Canada Labeling and Routing Information

[Exhibit not included. Same as former 244.53a.]

295.45 Physical Characteristics and Requirements for Sacks

Sacks must meet these requirements:

a. Maximum Weight. No more than 66 pounds of mail may be placed in any one sack. The weight of tying, wrapping, and packaging materials is included in determining the weight of the mail enclosed in a sack.

b. Sacks. Disposable gray plastic sacks are recommended; however, other appropriate equipment may be provided by the post office.

c. Labels. Handbook PO–423, Requisitioning Labels, contains instructions for ordering labels. Mailers may also preprint labels if they are of the colors specified and used by the Postal Service.

295.5 Customs Forms Required

Printed matter known to be dutiable in the country of destination must have a green customs label (PS Form 2976) affixed to the address side of the articles. (See 123 for detailed requirements for customs documentation.) This requirement is applicable to dutiable printed matter mailed in a direct sack (M-bags).

296 [Reserved]

297 International Customized Mail

297.1 Description

International Customized Mail (ICM) service is an international business mail service that is available only pursuant to an ICM service agreement between the Postal Service and a mailer meeting the requirements in 297.2. The Postal Service provides ICM service on a mailer-specific basis pursuant to the terms and conditions stipulated in a particular ICM service agreement.

297.2 Qualifying Mailers

To qualify for ICM service, a mailer must be capable, on an annualized basis, of either (1) tendering at least 1 million pounds of international mail to the Postal Service, or (2) paying at least $2 million in international postage to the Postal Service. The mailer must also be capable of tendering all of its ICM mail to the Postal Service.

297.3 ICM Service Agreements

Each ICM service agreement must set forth the following:

a. The term of the agreement, including any renewal options.

b. The type of mail to be tendered by the mailer.

c. The destination country or countries.

d. The services to be provided by the Postal Service, including any speed-of-delivery targets.

e. Minimum volume commitments for each service.

f. Postage and method of payment.

g. Weight and size limits.

h. Preparation requirements.

i. Makeup requirements.

j. Any other obligations of either party.

k. The location from which the mailer is required to tender its items to the Postal Service.

297.4 Postal Bulletin Notifications

Within 30 days of entering into an ICM service agreement, the Postal Service must publish the following information about the agreement in the *Postal Bulletin:*

a. The term of the agreement, including any renewal options.

b. The type of mail involved.

c. The destination country or countries.

d. A brief description of each of the services to be provided by the Postal Service.

e. Minimum volume commitments for each service.

f. A brief description of any worksharing to be performed by the mailer.

g. The agreed-upon rate for each service at the volume level committed to by the mailer.

3 SPECIAL SERVICES

310 Certificate of Mailing

* * * * *

312 Availability

Customers can purchase a certificate of mailing when they send unregistered letter-post, post/postal cards, matter for the blind, and uninsured parcel post or require a duplicate of an original certificate that pertained to a previously mailed item. A certificate of mailing cannot be obtained in combination with registered mail, insured parcel post, recorded delivery, or bulk mailings of 200 pieces or more that bear a permit imprint.

* * * * *

313 Fees

313.1 Individual Pieces

The fee for certificates of mailing for ordinary letter-post and ordinary parcel post is $0.75 per piece, whether the item is listed individually on PS Form 3817, Certificate of Mailing, or on firm mailing bills. Additional copies of PS Form 3817 or firm mailing bills are available for $0.75 per page. PS Form 3877, *Firm Mailing Book for Accountable Mail,* or forms printed at the mailer's expense may be used for certificates of three or more pieces of mail of any class presented at one time. If mailer-printed forms are used instead of PS Form 3877, these forms must contain, at a minimum, the same information as PS Form 3877. The fee is $0.25 per article.

313.2 Bulk Pieces

Identical pieces of ordinary letter-post mail that are paid for with regular postage stamps, precanceled stamps, or meter stamps are subject to the following certificate of mailing fees:

Pieces	Fee
Up to 1,000	$3.50
Each additional 1,000 or fraction	.40
Duplicate copy	.75

* * * * *

320 Insurance

* * * * *

322 Availability

Insurance is available only for parcel post and only to certain countries. See Individual Country Listings. Insurance is not available for letter-post items.

* * * * *

330 Registered Mail

* * * * *

332 Availability

Customers can purchase registered mail service when they send letter-post, post/postal cards, and matter for the blind. Registered mail service is not available in combination with parcel post or M-bags to one addressee. See Individual Country Listings for country-specific prohibitions and restrictions on registered mail service usage.

333 Fees and Indemnity Limits

333.1 Registration Fees

The registry fee for all countries is $7.25.

Exception: See the Individual Country Listing for Canada.

* * * * *

334 Processing Requests

* * * * *

334.2 Marking

The accepting clerk must enter the following endorsements and special markings on each registered item:

a. Affix Label 200 as noted above. All registered mail of U.S. origin must bear a Label 200.

[Items b and c are unchanged.]

* * * * *

334.3 Postmarking

334.31 Placement

Postmark registered items twice on the back, on the crossing of the upper and lower flaps. If return receipts are used, postmark partially on the receipt and partially on the flaps of the letter. Items sealed on the address side must be postmarked on the address side.

* * * * *

334.33 Registered Printed Matter or Small Packets

[Delete.]

334.4 Sealing

334.41 Sender's Responsibility

Senders must securely seal letter-post items presented for registration. * * *

* * * * *

334.43 Registered Printed Matter or Small Packets

[Delete.]

* * * * *

340 Return Receipt

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343 Fee

The fee for a return receipt is $1.50 and must be paid in addition to postage and other applicable charges. * * *

* * * * *

350 Restricted Delivery

* * * * *

353 Fee

Fee is $3.20 and is in addition to postage and other applicable fees.

* * * * *

[Delete sections 360, 370, and 380. Renumber 385 as 360.]

360 Recorded Delivery

* * * * *

362 Availability

Recorded delivery service is available in conjunction with the mailing of letter-post items, post/postal cards, aerogrammes, matter for the blind, and M-bags. Recorded delivery is not available to all countries. See the Individual Country Listing.

363 Recorded Delivery Fee

The recorded delivery fee is $1.90 and is in addition to postage and other special service fees, if applicable.

* * * * *

[Renumber 390, Supplemental Services, as 370.]

370 Supplemental Services

* * * * *

371 International Money Orders

* * * * *

371.3 Fees

There are two fees for international money orders:

a. The fee for money orders payable in countries that accept the pink International Postal Money Order Form (MP1) is $3.25 per money order. * * *

[Item b is unchanged.]

* * * * *

372 International Reply Coupons

* * * * *

372.3 Selling Price and Rate of Exchange

a. The selling price of a reply coupon in the United States is $1.75. * * *

b. International reply coupons purchased in foreign countries are exchangeable at U.S. post offices toward the purchase of postage stamps, postage meter stamps, postage validation imprinter (PVI) labels, and embossed stamped envelopes (including aerogrammes) at the rate of $0.80 per coupon, irrespective of the country where they were purchased.

* * * * *

373 International Business Reply Service

* * * * *

373.4 Fees

The fees for IBRS are as follows:

a. Envelopes up to 2 ounces: $1.20.

b. Cards: $0.80.

Note: The fee for each returned IBRS envelope and card includes the per piece charge that is applied to domestic business reply and subject to QBRM accounting procedures. It is not necessary for the sender to obtain a separate international business

reply permit to have IBRS items processed through their advance deposit account.

* * * * *

4 TREATMENT OF OUTBOUND MAIL

* * * * *

420 Shortpaid and Unpaid Mail

* * * * *

422.2 No Return Address

422.21 Letter-Post and Postcards

Unpaid letter-post and postcards with no return address must be forwarded to the appropriate exchange office. * * *

* * * * *

423 Shortpaid Mail

423.2 Exceptions

* * * * *

423.21 Letter-Post and Postcards

Shortpaid letter-post and postcards with no return address must be forwarded to the exchange office. Imprint with stock rubber stamp R–1300–4, Postage Due * * * Cents. Do not enter the amount of the deficiency.

Exception: For shortpaid letter-post and postcards to Canada having no return address, enter double the amount of the deficiency.

423.22 Printed matter and Small Packets

[Delete.]

423.23 Parcels

[Renumber as 423.22.]

423.24 Global Express Mail Shipments

[Renumber as 423.23.]

* * * * *

430 Improperly Prepared Mail

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433 Oversized Cards

Return oversized cards (those exceeding 9¼ x 4¾ inches) to the sender. If the sender is unknown, dispatch cards to the exchange office.

434 Reply-Paid Cards

a. Reply-paid cards, except International Business Reply items, are not accepted as international mail.

[Item b is unchanged.]

* * * * *

440 Special Services Mail

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442 Special Delivery

[Delete.]

* * * * *

443 Special Handling

[Delete.]

* * * * *

5 NONPOSTAL EXPORT REGULATIONS

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550 Dried Whole Eggs

* * * * *

552 Charges

A charge of $0.75 will be made for each certificate of mailing, or for each package if a single certificate covers more than one package. * * *

* * * * *

560 Tobacco Seeds and Tobacco Plants

* * * * *

562 Charges

A charge of $0.75 will be made for each permit presented by the sender and for each package when a single permit covers more than one package. * * *

* * * * *

7 TREATMENT OF INBOUND MAIL

711 Customs Examination of Mail Believed to Contain Dutiable or Prohibited Articles

* * * * *

711.3 Examination of Registered Mail and Sealed Letters

The postmaster or other designated employee must be present when registered mail and sealed letters (except unregistered sealed letter mail bearing a green customs label) are opened by customs officers for examination. After customs treatment, the customs officer will repack and reseal the mail.

* * * * *

712 Customs Clearance and Delivery Fee

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712.3 Amount of USPS Fee

The USPS fee for customs clearance and delivery for each dutiable item is $4.50.

* * * * *

713 Treatment of Dutiable Mail at Delivery Office

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713.4 Payment of Duty

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713.43 Registration of Items to be Returned to the United States

* * * * *

713.432 Certification by Postal Service Personnel

[In item c, change "$0.50" to "$0.75."]

* * * * *

730 Shortpaid Mail to the United States

731 Computation of Postage Due

a. [Unchanged.]

b. [Change "$0.42" to "$0.45."]

c. [Unchanged.]

d. [Unchanged.]

* * * * *

740 Irregular Mail

* * * * *

[Delete 742. Renumber 743, 744, and 745 as 742, 743, and 744, respectively.]

742 Stamps Not Affixed

* * * * *

750 Special Services

* * * * *

[Delete 755 and 756. Renumber 757 as 755.]

755 Recorded Delivery

* * * * *

[Delete 760. Renumber 770 through 790 as 760 through 780, respectively.]

760 Forwarding

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762 Mail of Domestic Origin

* * * * *

762.2 Undeliverable Domestic Mail Bearing U.S. Postage and a Foreign Return Address

a. [Unchanged.]

b. [Unchanged.]

c. [Change "letter class" to "First-Class."]

d. [Unchanged.]

* * * * *

770 Undeliverable Mail

* * * * *

771 Mail of Domestic Origin

* * * * *

771.5 Return Charges for Letter-Post Mail

The following charges must be collected from the sender for mail returned to the United States by foreign postal services:

a. The return charge paid by publishers or registered news agents who originally mailed publishers' periodicals to Canada is the same as the economy (surface) letter-post postage rate for an item of the same weight mailed from the United States to Canada. The airmail letter-post rate may be used if it is less than the economy letter-post rate. See Individual Country Listings for fees.

b. [Unchanged.]

c. [Unchanged.]

d. For economy letter-post the return charge is the same as economy (surface) letter-post postage rate for an item of the same weight mailed from the United States to the original country of destination. The airmail letter-post rate may be used if it is less than the economy letter-post rate. See the Individual County Listings for fees.

e. [Unchanged.]

* * * * *

772 Mail of Foreign Origin

772.1 Marking

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772.14 Method of Return

Undeliverable airmail letters and cards and all letter-post items marked "PRIORITY" are returned to origin by air. All parcels and other items are returned by surface. Any "AIRMAIL" or "PAR AVION" endorsements or label must be obliterated on undeliverable items returned by surface.

* * * * *

772.4 Storage Charges

[Delete.]

* * * * *

9 INQUIRIES, INDEMNITIES, AND REFUNDS

* * * * *

920 Inquiries and Claims

* * * * *

922 Filing of Inquiries

922.1 Time Limits

Inquiries concerning letter-post mail and parcel post are accepted within six months from the day following the date of mailing.

* * * * *

928 Processing Inquiries

* * * * *

928.2 Mail Exchanged With Countries Other Than Canada

928.21 Forms Used

928.211 PS Form 542, Inquiry About a Registered Article or an Insured Parcel or an Ordinary Parcel

* * * * *

d. The loss, rifling, damage, or delay of outbound or inbound ordinary letter-post mail.

* * * * *

928.3 Mail Exchanged With Canada

* * * * *

928.35 Recorded Delivery Service

For inquiries related to the loss, total damage, or rifling of letter-post and matter for the blind items for which the recorded delivery fee has been paid:

* * * * *

940 Postage Refunds

941 Postage Refunds for Letter-Post and Parcel Post

941.1 General

A refund may be made when postage, special service fees, or other charges have been paid on letter-post and parcel post items:

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–30809 Filed 12–7–00; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration
15 CFR Part 930
Coastal Zone Management Act Federal Consistency Regulations; Final Rule

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 930

[Docket No. 990723202–0338–02]

RIN 0648–AM88

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) revises the regulations implementing the federal consistency provision of the Coastal Zone Management Act of 1972 (CZMA). The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, as well as the Coastal Zone Protection Act of 1996, enacted June 3, 1996, amended and reauthorized the CZMA. Among the amendments were revisions to the federal consistency requirement contained in section 307 of the CZMA. Current federal consistency regulations were promulgated in 1979 and are in need of revision after 20 years of implementation. The purpose of this final rule is to make such revisions.

DATES: Effective January 8, 2001.

FOR FURTHER INFORMATION CONTACT: David W. Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Telephone: 301–713–3155, extension 144.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued under the authority of the CZMA, 16 USC 1451 *et seq.*

II. Background

The following terms are defined for the purpose of this preamble:

The term "management program" means the objectives, policies and other requirements of a State coastal management program that has been federally approved by NOAA, pursuant to CZMA § 306.

The term "State agency" means the designated federal consistency agency for a particular management program.

The term "consistency determination" means the determination provided by a Federal agency to a State agency for a Federal agency activity under CZMA § 307(c)(1) that the Federal agency determines will have reasonably foreseeable effects on any land or water use or natural resource of a State's coastal zone (such effects are also referred to as "coastal effects" or "effects on any coastal use or resource").

The term "negative determination" means the determination provided by a Federal agency to a State agency for a Federal agency activity under CZMA § 307(c)(1) that the Federal agency determines will not have reasonably foreseeable coastal effects.

The term "consistency certification" means the certification provided by an applicant for a federal approval under CZMA § (c)(3) or a State agency's or local government's certification under CZMA § 307(d).

The term "concurrence" means a State agency's approval of a consistency determination, negative determination, or consistency certification.

The term "objection" means a State agency's disagreement/disapproval of a consistency determination, negative determination, or consistency certification.

The term "enforceable policy" means a policy that is legally binding under State law and is part of that State's management program.

The term "maximum extent practicable" means that Federal agencies must conduct their activities under CZMA § 307(c)(1) in a manner that is fully consistent with the enforceable policies of a management program, unless prohibited from full consistency by the requirements of federal law applicable to the activity.

The CZMA was enacted to develop a national coastal management program that comprehensively manages and balances competing uses of and impacts to any coastal use or resource. The national coastal management program is implemented by individual State management programs in partnership with the Federal Government. The CZMA federal consistency requirement, CZMA § 307, requires that Federal agency activities be consistent to the maximum extent practicable with the enforceable policies of a management program. The federal consistency requirement also requires that non-federal activities requiring federal permits, licenses or that receive federal financial assistance, be fully consistent with a State's federally approved management program. The federal consistency requirement is an important mechanism to address coastal effects, to ensure federal consideration of State management programs, and to avoid conflicts between States and Federal agencies by fostering early consultation and coordination.

Congress strongly re-emphasized the importance of consistency in the CZMA amendments of 1990 and specifically endorsed long-standing requirements of the CZMA consistency regulations. Thus, in making regulatory changes NOAA has been careful to adhere to statutory requirements and has given deference to the long-standing consistency provisions that comport with new statutory requirements. The implementation of consistency by the States and Federal agencies and guidance by NOAA, especially in the past few years, for the most part has been based on reasonableness, objectivity, collaboration and cooperation. The strength of revised regulations and State-Federal interaction needs to further these goals and be solidly grounded in the statute and long-standing usage. With that in mind, aside from the revisions required by the changes to the CZMA, it is not NOAA's intent to fundamentally change or "weaken" the consistency requirement. NOAA's intent is to clarify certain sections, provide additional guidance where needed, and provide States and Federal agencies with greater flexibility for Federal-State coordination and cooperation.

III. Coastal Zone Act Reauthorization Amendments of 1990

This final rule codifies changes made to CZMA § 307 in 1990. The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) (Pub. L. No. 101–508) amended the CZMA to clarify that the federal consistency requirement applies when any federal activity, regardless of location, affects any land or water use or natural resource of the coastal zone. This new "effects" language was added by the CZARA to replace previous language that referred to activities "directly affecting the coastal zone," establishing:

> a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to [the consistency requirement] if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 968–975, 970 (hereinafter Conference Report). The focus of the Federal agency's evaluation should be on coastal effects, not on the nature of the activity. The Conference Report provides further clarification on the scope of the effects test:

> The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Id. at 970–71. These changes reflect an unambiguous Congressional intent that all Federal agency activities meeting the "effects" test are subject to the CZMA consistency requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the "uniform threshold standard" requires a factual determination, based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis. *Id.;* 136 Cong. Rec. H 8076 (Sep. 26, 1990).

Other changes made to the CZMA by the CZARA include the addition of § 307(c)(1)(B) which, under certain circumstances, authorizes the President to exempt a specific Federal agency activity if the President determines that the activity is in the paramount interest of the United States. This section does not require implementing regulations. The CZARA also makes clear the requirement that Federal agency activities and federal license or permit and federal assistance activities must be consistent with the enforceable policies of management programs. Finally, the CZARA made technical and conforming changes to the other existing federal consistency requirements of CZMA §§ 307(c)(3)(A) and (B), and 307(d) for the purpose of conforming these existing sections with changes made to § 307(c)(1).

IV. CZARA and *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984)

In 1984, the Supreme Court held that outer continental shelf (OCS) oil and gas lease sales by the Department of the Interior's Minerals Management Service were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984). In amending the CZMA federal consistency section in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made it clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970. Congress also intended this change to clarify that other federal activities (in or outside the coastal zone) in addition to OCS oil and gas lease sales are subject to the federal consistency requirement. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H 8068 (Sep. 26, 1990) [hereinafter Congressional Record] (incorporated into the Conference Report, *see* Conference Report at 975).

Changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably foreseeable, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, *e.g.*, activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably foreseeable effects on any coastal use or resource. *See* Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the Interior*. Congress not only rejected *Secretary of the Interior*, but eliminated the "'shadow effect" of the Court's decision (*i.e.*, its potentially erosive effect on the application of the federal consistency requirements to other Federal agency activities) * * * and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [*i.e.*, the effects test] for review." Congressional Record at H 8076.

Thus, the application of the consistency requirement is not dependent on the type of activity or what form the activity takes (e.g., rulemaking, regulation, physical alteration, plan). Consistency applies whenever a federal activity initiates a series of events where coastal effects are reasonably foreseeable. *See* H.R. Rep. No. 1012, 96th Cong., 2d Sess. 4382. The CZMA, the Conference Report, and NOAA regulations are specifically written to cover a wide range of federal functions. The only test for whether a Federal agency function is a Federal agency activity subject to the consistency requirement is an "effects test." Whether a particular federal action affects the coastal zone is a factual determination.

V. Coastal Zone Protection Act of 1996

On June 3, 1996, the President signed into law the Coastal Zone Protection Act of 1996 (CZPA), Pub. L. No. 104–150. Section 8 of the CZPA addresses the Secretarial override process whereby the Secretary of Commerce may override a State's consistency objection to a federal permit, license or funded project. Specifically, CZPA section 8 requires the Secretary to publish a notice in the **Federal Register** indicating when the decision record in a consistency appeal has closed. No later than 90 days after the date of publication of this notice, the Secretary is required to issue a final decision or publish another notice in the **Federal Register** detailing why the decision cannot be issued within the 90-day period. In the latter case, the Secretary is required to issue a decision no later than 45 days after the date of the publication of the notice. This final rule makes conforming changes in the Secretarial override regulations contained in subpart H of part 930.

VI. Purpose of This Final Rulemaking

A proposed rule to revise portions of the federal consistency regulations was published on April 14, 2000 (65 Fed. Reg. 20269–20302). The purpose of this final rule is to codify the 1990 and 1996 statutory changes to CZMA § 307, and to update the federal consistency regulations after 20 years of implementation by NOAA, States and Federal agencies. This final rule is also the result of a two year informal effort by NOAA to work with Federal agencies, State agencies, and other interested parties to identify issues and obtain comments on draft proposed revisions to the regulations. Thus, this final rule has already undergone substantial review and modification by Federal agencies, State agencies and other interested parties.

VII. Section-by-Section Discussion of Final Changes and Response to Comments on the Proposed Rule

Throughout part 930 NOAA makes a number of minor revisions, as well as a number of revisions that will implement the CZARA and the CZPA. The minor revisions include changes that will update the regulations and make them easier to use. The following is a section-specific discussion of some of these changes, as well as changes that will implement the CZARA and the CZPA. In addition, there were numerous comments on the proposed rule and NOAA. These comments are summarized under the relevant sections

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below along with NOAA's response. While many commenters suggested changes to the regulations, these same Federal agencies, State agencies and others provided comments that noted the importance of and the improvements to the regulations, and the need to finalize the regulations. NOAA greatly appreciates these comments and the assistance that the Federal agencies, State agencies and other interested parties have provided to NOAA over the past three years to develop these revised regulations. Because of the number of changes made to the regulations, 15 CFR part 930 is published in its entirety in this **Federal Register** notice.

Subpart A—General Information

Minor changes are made to clarify that the obligations imposed by the regulations are for State agencies as well as for Federal agencies and other parties, and to clarify that the purpose of the regulations is to address both the need to ensure consistency of federal actions affecting any coastal use or resource with the enforceable policies of management programs and the importance of federal programs. Changes are made to encourage State agencies and Federal agencies to coordinate as early as possible, and to allow State agencies and Federal agencies to mutually agree to consistency procedures different from those contained in the regulations, providing that public participation requirements are still met and that all relevant management program enforceable policies are considered. Minor editorial changes are not individually identified in the section-by-section analysis.

Section 930.1(c). One commenter claimed that the proposed rule complicates rather than simplifies the administrative process. NOAA does not agree. The rule clarifies existing NOAA policy that State agencies, Federal agencies and applicants may mutually agree to augment or replace the requirements of the consistency regulations with other intergovernmental coordination efforts, so long as public participation requirements are met and the State agency is adequately enforcing its management program. Such intergovernmental coordination efforts may be more efficient and effective for the particular State and specific activity. Most States already have procedures to simplify and coordinate their consistency and other permit reviews. In addition, NOAA's changes improve the clarity of some sections that are currently cause for confusion. This increased clarity will provide a more predictable and better understood process.

Another commenter noted that public participation is an important element of the CZMA and should receive a high priority in the regulation. NOAA agrees and has made the last parenthetical in subsection (c) a clause within the sentence.

Section 930.1(e). One State commented that the section should retain reference to objectives of management programs, and not just to enforceable policies. NOAA disagrees. In 1990, Congress placed great emphasis on the need for State agency consistency decisions to be based on enforceable policies. *See* CZMA § 304(6a), Conference Report at 972. The CZMA was changed, in part, to expressly require consistency with enforceable policies. CZMA §§ 307(c)(1) and (c)(3)(A). Advisory policies are still addressed in section 930.39(c). The terms objectives, standards, policies and criteria are not retained, either for the reasons stated above, or because they are redundant with enforceable policies.

Sections 930.1(h) and (i) are removed. *See* below under sections 930.132–134, and subpart I.

Section 930.2 codifies the requirement for public participation for all types of consistency reviews which was added by CZARA, CZMA § 306(d)(14). Environmental groups commented that public participation should be required for "negative determinations." NOAA disagrees. CZMA § 306(d)(14) requires that State agencies provide for public participation in the State agencies' review of consistency determinations (Federal agency activities), and other similar decisions. NOAA believes that this provision refers to consistency determinations and certifications which are submitted for activities which the project proponent reasonably expects will have coastal effects and where State agency review is required. Where a State agency decision or review is not required, public participation is not required. State agencies are required to review consistency determinations and certifications. *See* response to comment regarding section 930.3. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations, since a State agency is not required to review, and in fact may never review, a Federal agency's negative determination, which is a finding of no coastal effects. The new time frames for State agency review of negative determinations are only provided if a State agency decides to review a negative determination and to ensure that such a discretionary review occurs in a timely manner. If a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the Federal agency would submit a consistency determination pursuant to subpart C, which would be subject to public comment.

Section 930.3 was formerly located at section 930.145. Two State commenters said that this section misconstrues the CZMA claiming that State agency implementation of federal consistency is not required, but is discretionary. NOAA does not agree. Another commenter recommended that the regulations allow citizens to petition NOAA if a citizen believes a management program is not being implemented. The comments regarding State agency obligation to perform consistency reviews incorrectly interprets CZMA program development, approval and continuing review requirements; the "presumption" language in CZMA § 307; and ignores the public participation requirement added by Congress in 1990. A coastal State voluntarily participates in the CZMA program. However, to obtain management program approval a State must develop a program pursuant to CZMA and NOAA regulatory guidelines. Further, to continue to have an approvable program, the coastal State must adhere to CZMA and NOAA regulatory implementation requirements and must implement its federally-approved management program. NOAA monitors such implementation through the CZMA § 312 evaluation process. Federal consistency is one of the requirements that a State must implement. If a State is not reviewing federal activities for consistency and allowing the public to comment on the State's reviews, then the State is not adequately implementing its federally-approved management program.

The CZMA contains numerous sections that are part of the requirement for States to implement federal consistency if the States want to maintain an approvable program. For example, CZMA § 306(d) requires States to implement federally-approved management programs, particularly §§ 306(d)(1) (management program adopted pursuant to NOAA regulations), § 306(d)(2)(D) (identification of the means by which the State will exert control over coastal uses), and § 306(d)(2)(F) (the organizational structure used to implement the management program).

Moreover CZMA § 312(a) requires the Secretary to evaluate State programs to ensure that a State has adequately

"implemented and enforced" its program. If the State is not adequately implementing and enforcing its program the Secretary may suspend the State's grant for non-compliance, CZMA § 312(c)(1), and require the State to take necessary actions to remedy the non-compliance, CZMA § 312(c)(2)(A). If the State does not remedy the non-compliance, then the Secretary may withdraw program approval. CZMA § 312(d). A State cannot adequately implement its management program unless the State ensures, through federal consistency, that federal activities are consistent with the State's enforceable policies. For instance, one State waived consistency on numerous projects due to a State statute that required the State to issue all State decisions within 90 days or the State's permission is presumed. NOAA identified this as a management program implementation problem and required the State, to "seek administrative or regulatory mechanisms that ensures consistency is separate from issuance of a permit by default, or ensure consistency is conducted within the 90-day permit review period." OCRM/NOAA, Evaluation Findings for the New Jersey Coastal Management Program for the Period from September 1991 through November 1994, at 30 (June 1995). As a result, the State clarified the application of the 90-day statute and took steps to complete its consistency reviews within the 90-day State-imposed period. NOAA followed up on this issue in the State's next evaluation and required the State to provide an explanation of how it is enforcing its program in light of the 90-day State statute. OCRM/NOAA, Evaluation Findings for the New Jersey Coastal Management Program for the Period from December 1994 through November 1997, at 23 (April 1998).

In 1990 Congress added CZMA § 306(d)(14) which requires States to provide for public participation in a State's review of federal consistency determinations and other consistency decisions by a State. Thus, if a State agency receives a consistency determination from a Federal agency, the State cannot simply waive consistency review. The State agency must provide for public comment on a State review to either concur with or object to the determination. In addition, the State must implement its program and cannot do so if it ignores federal activities under CZMA § 307, which will affect the State's coastal uses or resources.

CZMA § 307 also specifies that State's must implement its program through federal consistency. For instance, § 307(c)(3)(A) provides that States "shall" establish procedures for public participation and "shall" notify Federal agencies and applicants of its concurrence or objection. The "presumption" of a State agency's concurrence in the CZMA and NOAA's regulations is not an indication of State agency discretion to be non-responsive. The "presumption" of concurrence is to ensure that consistency reviews occur in a timely fashion by providing a penalty to the State for not responding within the statutorily specified time frames. Patterns of non-compliance are remedied through the CZMA § 312 evaluation process, as described above.

NOAA's regulations also contain numerous sections requiring States to implement their federally-approved programs, including federal consistency. For example, 15 CFR section 923.1(b) requires States to comply with CZMA §§ 306 and 307 for program approval; section 923.1(c)(6) requires States to have sufficient means to implement and ensure conformance with their management programs (which includes their federal consistency programs); section 923.1(c)(7) mirrors CZMA § 306(d)(14) requiring public participation in its consistency reviews; sections 923.40(a) and (b) and 923.46 require States to have the organizational structure to implement their programs; section 923.53 requires a State to include in its program "the procedures it will use to implement the Federal consistency requirements. * * *"; section 923.133(c)(1)(i) requires that for continued management program approval that the State has "[i]mplemented and enforced the [federally approved program.]" and, under section 923(c)(2)(i)(C), the State "is effectively carrying out the provisions of Federal consistency." Finally, the criteria for invoking interim sanctions for non-compliance, under sections 923.135(a)(3)(i)(A), (D), and (E), include "ineffective or inconsistent implementation of legally enforceable policies," "ineffective implementation of Federal consistency authority," and "inadequate opportunity for intergovernmental cooperation and public participation" including input through CZMA § 306(d)(14) (public input into consistency decisions).

Federal consistency is an integral part of ensuring consistent application of State enforceable policies to all entities, be they public, private, local government or federal, and ensuring adequate implementation of the State's management program, and as such, the statute, the regulations and agency practice require States to meet the CZMA § 307 federal consistency requirements.

As for the comment regarding a process for citizen notification to OCRM of State non-compliance, the CZMA already contains such a process under the section 312 program evaluation process.

Section 930.4 clarifies the use by State agencies of conditional concurrences. Conditions of concurrence should not replace State objections and the identification of alternatives for activities that the State agency finds are inconsistent with its management program. Since conditional concurrences could seriously weaken the State authority granted by the CZMA consistency requirement, this rule only allows conditional concurrences pursuant to the following criteria: (1) Conditions must be based on specific enforceable policies, (2) the applicant must amend its federal application, and (3) the Federal agency approves the application as amended with the State conditions. If all of these requirements are not met, then the conditional concurrence is an objection.

Several Federal agencies, many State agencies and others provided comments either in support of or against this provision. The CZMA does not specifically address conditional concurrences. The CZMA provides predictability and finality by requiring the State agency to concur or object within a prescribed time period. The CZMA does not provide the State agency with the authority to enforce its concurrence (or conditions) beyond the State's consistency decision deadline (*e.g.*, six months for licenses or permits). Once a State agency has concurred, even with conditions, the State agency retains no further consistency authority over the project (unless the project has changed and not begun, *see* proposed supplemental coordination under sections 930.46, 66 and 101).

If a State agency objects, then the State agency retains its authority over the project; the Federal agency cannot issue the license or permit and a Federal agency may not be able to proceed with a Federal agency activity. Some States still prefer conditional concurrences, presumably as a more positive response to an applicant or Federal agency. However, a conditional concurrence may not provide an applicant or a Federal agency with a definitive response within the specified review periods. A conditional concurrence interjects less clarity into the consistency process. Also, when a State agency issues a conditional concurrence the Federal agency may issue the permit or, in the case of a Federal agency activity, proceed with the activity. Thus, issuing an objection and describing

alternatives provides applicants and Federal agencies with a definitive response and retains State agency authority.

A State cannot, through the CZMA, enforce its conditions after it has concurred. The State may request that the Federal agency take enforcement action or may seek a court order against the applicant. The CZMA does not require a Federal agency to adopt a State's conditions of concurrence and OCRM could not require this through regulation. A State condition may also be outside the purview of the Federal agency. The CZMA only requires that the Federal agency shall not grant its approval until the State agency has concurred, concurrence is conclusively presumed, or the Secretary overrides a State agency's objection. Also, if a State agency concurs with conditions and the Federal agency issues its approval consistent with the conditions, but the applicant later does not comply with the conditions, the Federal agency is not required to take an enforcement action. Enforcement action is a purely discretionary action by a Federal agency. *See State of New York* v. *DeLyser,* 759 F. Supp. 982 (W.D.N.Y. 1991).

However, the revised regulations do include the concept that the applicant may modify its federal permit application pursuant to State conditions and if the Federal agency approved the amended application, the Federal agency would be more likely to enforce the State's conditions (since the State conditions would be part of the federal permit). When reviewing activities under CZMA § 307(c)(3)(A), it is the responsibility of the applicant to submit a consistency certification to the State agency and therefore it is also the responsibility of the applicant to address the State's conditions in the application, rather than have the Federal agency granting the permit or license directly impose the conditions. If the applicant did not modify its federal permit application pursuant to the State conditions or the Federal agency did not approve the amended application (with the State conditions), then the concurrence would be deemed an objection. Providing for conditional concurrences in the regulations does not preclude States from issuing an objection. A discussion of whether the Federal agency can enforce the State's conditions should take place during the review period to help determine if a conditional concurrence is the best course of action. States have a choice of choosing either option on a case by case basis.

Under section 930.4, the existing time frames for State agency review of consistency certifications and consistency determinations still apply. If the State has proposed conditions and is awaiting a response from the applicant or Federal agency on proposed conditions and does not hear back within the specified review period, the State agency can still issue an objection. The State agency, applicant and Federal agency can also negotiate a new timeframe for responding to the State's proposed conditions and issuing the conditional concurrence.

Section 930.5 is added to clarify that the mediation and negotiation sections of the regulations do not preclude other State enforcement actions where the State has jurisdiction or believes it is necessary to take enforcement or judicial action. One commenter asked that mediation be mandatary. NOAA disagrees. The use of the remedial action and mediation provisions are not mandated by the statute, the existing regulations or long-standing practice. These provisions are provided in statute and regulation to provide mechanisms to resolve conflict, but are not the only possible remedies, hence the first sentence of this section referring to other possible actions. Certainly, States and Federal agencies are encouraged to attempt to resolve any differences outside of judicial review.

Section 930.6 moves the non-definitional parts of section 930.11(o) (formerly section 930.18) to a section describing the responsibilities of the State agency. Section 930.6(a) acknowledges that a State may have two separate management programs (for distinct regions) and two separate federal consistency agencies. Currently, California has two separate management agencies (the California Coastal Commission and the San Francisco Bay Conservation and Development Commission).

Section 930.6(b) simplifies consistency terminology. At present, different terms are used to describe State responses for Federal agency activities ("agreement or disagreement") and federal license or permit activities ("objection or concurrence"). Now, a State agency would either object to or concur with a consistency determination or a consistency certification. In response to one commenter, NOAA added public participation language to this subsection. While the public participation requirements are adequately covered in other sections, mention of the requirements here would be appropriate and helpful. Thus, in subsection (b), the phrase "and, where applicable, the public." is added after "local government agencies." In subsection (c), the phrase "and that applicable public participation requirements are met." is added to the end of the first sentence after "State management program policies."

Section 930.6(c) is added to clarify the role of the single State agency for coordinating federal actions and the State agency's responsibility to apply all relevant enforceable policies when conducting consistency reviews.

Several State agencies and others supported section 930.6 in their comments, while also recommending changes that were not compatible with the Statute regarding the State agency. NOAA did not make any of the suggested changes for the following reasons. For the reasons Stated above in response to comments on section 930.3, and further elaboration below, the words "uniformly and comprehensively" are retained. States are required to implement their federally approved programs and to apply all relevant enforceable policies to a particular federal activity. The CZMA requires compliance with all relevant enforceable policies of a "management program" and not a subset thereof. *See e.g.,* CZMA §§ 307(c)(3)(A), 304(12). A major criterion for management program approval is a determination that State agencies responsible for implementing the management program do so in conformance with the policies of the management program. 15 CFR section 923.40(b). *See* also section 923.41(b)(2). Networked management programs must also demonstrate that management program authorities implement the full range of policies. Section 923.43(c). The federal consistency regulations mirror the requirement for the application of enforceable policies in a comprehensive manner. Uniformity is required to ensure that States are not applying policies differently, or in a discriminatory way, among various entities for the same type of project for similar purposes, *e.g.,* holding a Federal agency to a higher standard than a local government or private citizen. Obviously, if similar projects, *e.g.,* shoreline stabilization, are proposed for different purposes, then the States review and decision will vary between the two projects.

Other sections contain information regarding Federal agency responsibilities. This section only applies to State agencies. The CZMA requires that a State have a single State agency for grant administration and management program implementation (including federal consistency). CZMA §§ 306(d)(6) and 307(c)(1)(C). Further, NOAA's program approval regulations require a single State agency charged with implementing federal consistency, section 923.53(a)(1), as does the existing federal consistency regulation, section 930.18. The need for a designated State consistency agency is to ensure: uniform application of a State's management program policies, efficient coordination of all management program requirements, comprehensive coastal management review, that all relevant enforceable policies are considered for a federal consistency review, that public participation requirements are met, and that there is a single point of contact for Federal agencies and the public to discuss consistency issues. The State agency coordinates consistency reviews, issues concurrences and objections, coordinates with Federal agencies, provides guidance on complying with the consistency requirement, handles appeals to the Secretary and mediation requests, etc. The State agency may rely on the expertise of other State agencies, but other State agencies may not be the designated State agency for consistency reviews, decisions, etc.

Regarding the use of State permits, as discussed above, the State agency must ensure that all applicable enforceable policies are applied to a consistency matter. If described in a State's management program, the issuance of relevant State permits can constitute the State agency's consistency concurrence for federal license or permit activities if the State agency ensures that the State permitting agencies (or the State agency) review individual projects in light of all applicable management program policies. The State agency must monitor such permits issued by another State agency. Monitoring does not mean that the State agency has some sort of overlord role or the ability to overrule another State agency's permit decision (although some State agencies may have this authority). Monitoring means that the State agency is aware of other State agencies' actions that affect the management program, the State agency ensures that other State agencies' decisions are consistent with the management program, and that decisions are being made within the consistency timeframes, etc.

If all management program enforceable policies are contained in State permit standards, then usually the issuance of the relevant State permit(s) will be sufficient for determining consistency. However, there may be cases where a State permit is not required, but the policies contained in a permit program are applicable to the project. In these cases, the State agency must ensure that the activity is consistent with these policies. The State agency must also ensure that public participation requirements are met.

A State agency may develop alternative consistency procedures with Federal agencies. In doing so, the State agency must still be the consistency contact and ultimate decision maker, the State must enforce its CMP, and public participation requirements must be met by the State.

In response to a comment on section 930.6, regarding compliance with State environmental review laws, as discussed above, States are required to apply relevant enforceable policies of the management program. The preparation and use of State environmental review documents, and compliance with such State environmental review laws, is governed by applicable State law, and not the CZMA or NOAA's regulations. What is required, is that the State implement its federally approved management program, as discussed above. Likewise, how the State coordinates with NEPA documents is not proscribed by the CZMA. The CZMA and NEPA are two separate statutes with distinct requirements. Often consistency reviews are coordinated through NEPA documents as a matter of administrative convenience and also to provide environmental information to support a consistency determination. NOAA encourages such practice, as previously discussed in the preamble to the proposed rule under proposed section 930.37.

Subpart B—General Definitions

The definitions have been re-designated to reduce the total number of regulation sections. There is now just a section 930.10 for the index and a section 930.11(a) through (o) for the definitions contained in subpart B.

Section 930.11(d) clarifies that associated facilities are indispensable parts of the proposed federal action. A variant of the addition was previously a comment to the 1979 regulations. 44 Fed. Reg. 37145. This addition ensures that the State agency would have sufficient information to fulfill its coastal planning and management responsibilities, and the proponent of the federal action would not be faced with the situation where there has been receipt of State agency approval regarding one element of the project with later objection to an associated facility which was not earlier reviewed with the remainder of the proposal.

Sections 930.11(b) and (g) define "any coastal use or resource" and "effect on any coastal use or resource," respectively. These terms are not intended to alter the statutory requirement which refers to any land or water use or natural resource of the coastal zone. These terms are merely a simpler description of the statutory requirement. The term "minerals" has been added to include both surface and subsurface mineral resources. Aesthetics and scenic qualities are not natural resources, but are enjoyment or use of natural resources. These concepts have been added to the definition of coastal use. Land has been added to natural resource. A sentence has also been added to include coastal uses and resources detailed in a management program. Resource creation or restoration projects has been added as a coastal use. This includes tidal and nontidal restoration and creation projects. Air and invertebrates have been added as natural resources. Since historic and cultural resources are important coastal resources under the CZMA (*see* §§ 302(e), 303(2) and 303(2)(F)), the protection of historic and cultural resources of the coastal zone is included in the examples of coastal uses.

Several States and environmental groups commented that these sections are the core of the 1990 amendments and fully supported these sections. Several commenters wanted additions or deletions to these sections and for NOAA to define "reasonably foreseeable" in subsection (g). NOAA did not make changes to these sections based on these comments. The definition for coastal uses and resources is derived primarily from CZMA § 304 (coastal uses of national significance are defined in CZMA § 304(2)). Not all coastal uses or resources can be added. The list is not exclusive, but is meant to highlight the more common uses and resources. The list includes coastal resources of national significance, which include beaches and barrier islands, as defined in CZMA § 304(2). The definition also uses the term "land" in its description of natural resources, which includes barrier islands, spits, beaches and bluffs. Therefore, NOAA disagrees that it is necessary to add these terms to the definition of coastal resource. Biological, hydrological, and geophysical systems are not resources, but processes that affect resources. The resources that are affected by these processes are included in the definition. It is also not clear why just these processes are proposed to be listed. Such a list would imply that other processes are not included. These three terms have not been added.

The definition of coastal effects is not over broad, but is consistent with the CZMA, legislative history and CEQ/

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NEPA definitions of cumulative and secondary effects. The changes to the CZMA in 1990 specifically removed application of federal consistency to "direct" effects (and likewise "significant" or "substantial" effects). *See also* response to comments regarding section 930.31(a), and the preamble to this rule. Explanation of the change in 1990 is contained in the Conference Report. The "effects" language is taken from the Conference Report. The Conference Report is persuasive authority for interpreting the CZMA. The Conference Report states that coastal effects are to be construed broadly and include both direct effects which result from the activity and occur at the same time and place, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. The Conference Report makes it clear that the test for triggering consistency is not whether the effect is significant or substantial, but whether it is reasonably foreseeable. NOAA could not put back in (or retain what is currently in) regulation that which Congress specifically removed in 1990.

Whether consistency applies is not dependent on the type of federal activity, but on reasonably foreseeable coastal effects. For example, a planning document or regulation prepared by a Federal agency would be subject to the federal consistency requirement if coastal effects from those activities are reasonably foreseeable.

Again, the application of consistency is not limited by the geographic location of a federal action; consistency applies if there are reasonably foreseeable coastal effects resulting from the activity. A federal action occurring outside the coastal zone may cause effects felt within the coastal zone (regardless of the location of the affected coastal use or resource). For example, a State's fishing or whale watching industry (which are coastal uses) could be affected by federal actions occurring outside the coastal zone. Thus, the effect on a resource or use while that resource or use is outside of the coastal zone could result in effects felt within the coastal zone. However, it is possible that a federal action could temporarily affect a coastal resource while that resource is outside of the coastal zone, *e.g.*, temporary harassment of a marine mammal, such that resource impacts are not felt within the coastal zone. As stated above, the coastal effects test is a fact-specific inquiry. NOAA is not further defining "reasonably foreseeable." Congress envisioned that Federal-State coordination through consistency would be interactive. Thus, the application of consistency, the varied State management programs, the analysis of effects, and the case-by-case nature of federal consistency precludes fast and hard definitions of effects and what is reasonably foreseeable.

The "substantial" language in sections 930.46 and 930.66 refer to supplemental coordination for proposed activities. The intent in these sections was to address situations where coastal effects have substantially changed, not to define the scope of effects to trigger initial State agency review.

The proposed definition includes cumulative and secondary effects as part of indirect effects via the following language: "indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable." The definition goes on to State that "Indirect effects resulting from incremental impact of the federal action when added to other past, present and reasonably foreseeable actions, regardless of what person(s) undertake such actions." This language is consistent with the Council on Environmental Quality's definition of cumulative effects. 40 CFR section 1508.7.

The so-called "chain of events" concept was already captured in the proposed rule under section 930.31, which is derived from legislative history discussing the scope of consistency.

Section 930.11(h) adds a definition of enforceable policy by reference to CZMA § 304(6a), and clarifies that an enforceable policy must be sufficiently comprehensive and specific to control coastal uses while not necessarily inflexibly committing the State to a particular path. *See American Petroleum Institute* v. *Knecht*, 456 F. Supp. 889, 919 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979); 15 CFR section 923.40(a); Conference Report at 972. One Federal agency, three States and the environmental groups had various comments on this definition. These comments included: the definition is too broad, enforceable policies should include federal law, the section should require compliance with State environmental review requirements, and that not all policies should have to be formally incorporated into federally approved management programs.

NOAA did not change the definition based on these comments. Changing the scope of the definition of enforceable policies would be inconsistent with the CZMA. Under CZMA § 307(c), Federal agencies are required to submit a consistency determination to the State agency if it determines that there are reasonably foreseeable effects. The consistency determination should include an evaluation of the proposed activity in light of the applicable enforceable policies in the State's Coastal Management Program (CMP). The State has the authority to then review this consistency determination and decide whether it agrees with it, including the Federal agency's interpretation of the State's enforceable policies. If the State disagrees with the consistency determination, then it must describe how the activity is inconsistent with the enforceable CMP policies and alternatives (if they exist) that would allow the activity to be conducted in a manner consistent to the maximum extent practicable. If agreement cannot be reached between the State and Federal agencies, the Federal agency may still proceed with the activity, as long as it clearly describes to the State the specific legal authority which limits the Federal agency's discretion to comply with the State CMP's enforceable policies.

The regulations encourage early discussions between the State and the Federal agency over the meaning of the State's enforceable policies. For instance, section 930.34 encourages early consultation between Federal and State agencies to obtain the State views and assistance regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the State's CMP. In addition, the definition envisions that discussions between the State and Federal agencies may be necessary in order to determine the consistency of the activity with the State's enforceable policies.

CZMA § 307(e) requires that States with approved CMPs must submit changes to the CMP for approval by OCRM before they can be considered enforceable policies under the CMP. Therefore, States cannot use enforceable policies that are not part of the State's CMP for review of activities under federal consistency. States are encouraged to send in proposed changes to their CMPs as soon as possible for review by OCRM.

The CZMA does not provide for the inclusion of federal laws into State CMPs, but rather a listing of the State enforceable policies (*e.g.*, laws, constitutional provisions, regulations and judicial decisions). Federal agencies or applicants for federal permits undertaking activities that have reasonably foreseeable coastal effects must consider the enforceable policies of the State's CMP (*see* CZMA §§ 307(c)(1)(A) and (3)(A)). This does not preclude the need for these activities to comply with relevant federal laws, but the CZMA does not grant authority to States to consider federal laws as State CMP enforceable policies when reviewing Federal agency activities or federal license or permit activities.

In addition, in order for a State law to be used under federal consistency, it must be a part of the State's approved CMP. Under CZMA § 306(d)(2)(D), the State must include a list of enforceable policies in its coastal management program. Under CZMA § 306(e)(1), it is the State's responsibility to request that OCRM consider including new or revised enforceable policies for inclusion in the State CMP. Therefore, in order for a State to add an enforceable policy to its CMP for the purposes of federal consistency, such as the California Environmental Quality Act (CEQA), the State must make that request to OCRM. Also, whether a Federal agency must be fully consistent with CEQA would depend on whether Federal law precluded full consistency, pursuant to the section 930.32 consistent to the maximum extent practicable standard.

Management measures does not refer to the "(g)" guidance for Coastal Nonpoint Programs. It is a term borrowed from the Conference Report and *American Petroleum Institute* v. *Knecht* that describes reasonable State interpretations of its enforceable policies.

Subpart C—Consistency for Federal Agency Activities

Throughout the regulations the phrase "directly affecting the coastal zone" has been changed to read "affecting any coastal use or resource." This codifies changes made to the CZMA by CZARA and includes reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.

In section 930.30 NOAA deleted "conducted or supported" to conform this section with changes made by CZARA. In addition the title of subpart C and throughout subpart C, the term "Federal activity" is changed to "Federal agency activity" to avoid confusion with federal activities under subparts D, E, and F. The phrase Federal agency activity is taken directly from the CZMA.

NOAA amended section 930.31(a) to further describe the scope of the federal consistency effects test by clarifying the term "functions." This language is derived from the CZMA's legislative history. Three Federal agencies commented that the definition is too broad and should not include certain federal activities. NOAA disagrees. Federal agency activities are not defined by the type of activity, but rather, whether the activity will have reasonably foreseeable coastal effects. Despite this clear statutory and legislative intent, there have been questions over the years as to whether a particular Federal agency action is subject to the consistency requirement. These questions have primarily arisen for rulemaking and planning activities, and that is why these activities are included in the rule. Clearly, these are Federal agency functions. A rulemaking by NMFS that limits the catch of a species of fish is a rulemaking that affects a State's fishing industry, which is an effect on a coastal use. A rulemaking by the Corps to authorize activities in navigable waters and wetlands under its Nationwide Permit Program will allow activities that affect coastal resources. Likewise, if a Federal agency takes an action that interferes with a coastal use, an "exclusion of uses," *e.g.*, prohibiting public access or fishing, that is a Federal agency activity that has a coastal effect. A Federal agency activity that initiates a series of events where coastal effects are reasonably foreseeable, is subject to consistency. Congress emphasized this as far back as 1980, H.R. Rep. No. 96–1012, 96th Cong., 2d Sess. 34 (May 16, 1980), and re-emphasized the concept in 1990 when it declared that consistency applies to Federal agency activities with cumulative and secondary direct and indirect effects. Conference Report at 970.

The question at hand is whether such actions will have reasonably foreseeable coastal effects. If so, then consistency applies. If not, then consistency does not apply. (Although the Federal agency may have to provide the State agency with a "negative determination" if: (1) The activity is listed in the management program, (2) the State agency notifies the Federal agency that the State believes that an unlisted activity will have coastal effects, (3) the Federal agency provided consistency determinations for similar activities in the past, or (4) the Federal agency conducted a thorough assessment and developed initial findings on coastal effects.) The question of coastal effects must be made on a case-by-case basis, except where States and Federal agencies have agreed that a class of activities will not have coastal effects (or will have de minimis effects as provided for in section 930.33(a)(3)), and are thus not subject to consistency. Thus, if a Federal agency does not believe that a particular rulemaking or plan will have reasonably foreseeable coastal effects, then the Federal agency does not have to provide a consistency determination.

As to the comments regarding the CZMA and the Outer Continental Shelf Lands Act ("OCSLA"), the Comment makes NOAA's case. The comment talks about activities that do not affect the coastal zone. If that is the case, then the Federal agency does not need to provide a consistency determination and may have to provide a negative determination. As for the matter of 5-year OCS plans by Interior, the position of the United States was made clear by the U.S. Department of Justice by its Office of Legal Counsel (Justice) in a letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Justice, to Mr. C.L. Haslam, General Counsel, Department of Commerce, and Mr. Leo M. Krulitz, Solicitor, Department of the Interior, dated April 20, 1979 [Justice Opinion]. In addition, the clear language of the 1990 amendments to the CZMA, and Congressional intent as described in the Conference Report for the 1990 amendments, 5-year OCS plans are subject to the CZMA federal consistency effects test, 5-year OCS plans are not exempted from the consistency requirement as a matter of law or policy, and there are efficient ways to address consistency and 5-year OCS plans if Interior determines that coastal effects are reasonably foreseeable. *See* letter from NOAA's Office of Ocean and Coastal Resource Management to Interior's Minerals Management Service, dated August 7, 1996. If Interior determines that coastal effects from the 5-year OCS plans are *not* reasonably foreseeable, then Interior should issue a negative determination.

Section 18 of the OCSLA requires that procedures be established for consideration of State coastal management programs. Interior asserts that this section and the 1978 amendments to the OCSLA deliberately reject the consistency requirement in favor of providing for consideration of State coastal management programs. NOAA believes that this interpretation of the OCSLA as applied to the CZMA is incorrect for four reasons: (1) The plain language of the conference report (and other legislative history) for the 1978 amendments to the OCSLA does not reject the consistency requirement, (2) the 1978 amendments to the OCSLA added clear language that the consistency requirement was not affected, (3) in 1979 Justice determined that pre-lease sale activities are subject to the consistency effects test, and (4)

even if the intent of the 1978 amendments to the OCSLA was to reject the consistency requirement, the 1990 amendments to the CZMA clarifies that all federal activities are subject to the consistency requirement if there are reasonably foreseeable coastal effects. Further, consideration of management program concerns to the maximum extent practicable at the 5-year OCS plan stage lays a foundation for leasing activities that will also be consistent to the maximum extent practicable.

When the CZMA and the OCSLA are read together, the OCSLA requirement for "consideration" of State coastal management programs is consistent with the CZMA requirement that Federal agencies conduct their activities consistent with State coastal management programs. If the intent of Congress was to repeal the CZMA federal consistency requirement for pre-lease sale activities then it would have specifically said so. As Justice stated:

> [T]he intention of the legislation to repeal must be clear and manifest; that every attempt must be made to reconcile the statutes involved; and that a repeal by implication will be found only where there is a "positive repugnancy" between the statutes in question. *Morton* v. *Mancari*, 417 U.S. 535, 549–551 (1974); *Borden* v. *United States*, 308 U.S. 188, 198–199 (1939).

Justice Opinion at 10. In this case, requiring Interior to conduct an effects test, and to provide a State with a consistency determination or a negative determination, where appropriate, does not interfere with Interior's pre-lease responsibility under the OCSLA.

The 1978 OCSLA conference report contains two references to the CZMA. Under "Considerations," page 103, the report states:

> The House amendment includes among the consideration for a leasing program the policies and plans under the [CZMA]. The Senate bill contains no comparable provision. The conference report follows the House amendment and contains no such specific provision as it is included within the consideration of "laws, goals, and policies of affected States."

This discussion in the conference report and the corresponding section of the OCSLA specifically require Interior to address State coastal management program requirements and says nothing about rejecting the CZMA federal consistency requirements. The second reference to the CZMA in the conference report is on page 105, and it States:

> Both versions provide for regulations as to coastal zone management applicability. The House amendment provides for regulations involving "consideration" of a program "being developed or administered" pursuant to section 305 or 306, respectively, of the [CZMA]. The Senate bill provides for "coordination" of the program with the management program being developed and also for "consistency" to the extent practicable with the management program. The conference report is the same as the House amendment. The Secretary is to establish procedures by regulation for consideration of State coastal zone management programs.

While the Senate version was more specific as to the federal consistency requirement, the House version does not reject the consistency requirement.

Section 608(a) of the 1978 OCSLA amendments expressly provides that: "[E]xcept as otherwise *expressly* provided in this Act, nothing in this Act shall be construed to modify, or repeal any provision in the CZMA" (emphasis added). This language was also included in the section-by-section analysis of section 19 in the House report. Justice Opinion at 12, *citing*, H. Rept. 5–590, at 153, n.52. No section of the OCSLA expressly repeals the CZMA and the sections on pre-lease sale activities do not expressly modify the CZMA. Thus, there is no basis to reject the CZMA consistency requirement based on the conference report language.

Justice also found, after the 1978 amendments, "that neither the [CZMA] Amendments of 1976 nor the [OCSLA] Amendments of 1978 affect the application of § 307(c)(1) to [OCSLA] pre-leasing activities." Justice Opinion at 2. Justice also reviewed the legislative history and found that it did not exempt pre-lease sale activities from consistency. *Id.* at 12. Justice found that pre-lease sale activities are subject to consistency effects test just like any other federal function. *Id.* at 2.

Lastly, the 1990 amendments clarified that any federal activity is subject to the consistency requirement if coastal effects are reasonably foreseeable. The 1990 amendments to the CZMA also specifically rejected any categorical exemptions. The only test for the application of consistency is the effects test. Thus, even if, arguendo, pre-lease sale activities were exempted, pursuant to the OCSLA amendments of 1978, from consistency, they are now, pursuant to the 1990 CZMA amendments, clearly subject to the consistency requirement.

Applying the consistency requirement to the 5-year OCS program is sound policy for several reasons. First, the CZMA consistent to the maximum extent practicable standard is not onerous (especially at an early stage of OCS development). Second, the 5-year OCS plan offers a good opportunity, early in the OCS process, to attempt to resolve State concerns. Addressing consistency at the 5-year OCS plan stage allows States to identify coastal concerns, such as the location of future lease sales, and reduces potential conflict. Third, Interior NEPA documents have determined that the 5-year plan is a major federal action with expected environmental effects which present an excellent point to determine consistency with management programs.

In 1984, the Supreme Court held that OGS oil and gas lease sales by MMS were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984). Despite NOAA regulations and Justice opinions indicating that the ruling was limited to oil and gas lease sales, other Federal agencies relied on *Secretary of the Interior* to argue that their activities were not subject to the federal consistency requirement. In amending the CZMA in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970–72. Congress also intended this change to apply to other federal activities (in and outside the coastal zone) in addition to OCS oil and gas lease sales. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H 8068 (Sep. 26, 1990) [hereinafter "Congressional Record"] (incorporated into the Conference Report, *see* Conference Report at 975). The Conference Report clearly states that changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably likely, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, e.g., activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably likely effects on any coastal use or resource. *See* Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the Interior*. Congress noted that since the Court's decision, "other federal agencies have broadly interpreted the case in a manner that would exclude their activities from [consistency]," and that "[t]he federal consistency provisions are at the heart of the Nation's coastal zone management program and it has become increasingly clear that the combination of Supreme Court dicta and federal agency belligerence are a troublesome combination." Congressional Record at H 8072–73. Congress not only rejected *Secretary of the Interior*, but eliminated the "'shadow effect' of the Court's decision (i.e., its potentially erosive effect on the application of the federal consistency requirements to other federal agency activities) * * * and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [the effects test] for review." *Id.* at H 8076.

Within the existing regulations and the proposed rule are means for Interior to provide consistency determinations, where applicable, in a reasonable and efficient manner. Briefly, the regulations would allow Interior to use the effects test to determine whether a consistency determination is required; or could note the lack of information at that 5-year OCS plan stage; and could provide a consistency determination to more than one State under the new section for determinations for activities that are national in scope or affect more than one State; and, finally, States and Interior could agree that the 5-year plan is too early in the OCSLA process, and that consistency determinations may be provided at later stages.

Section 930.31(b). One Federal agency commented that a "development project" should include a characteristic from each of the two groups of descriptors. The "and" in this section has always been interpreted as including at least one characteristic from each of the two groups. However, to make it clearer, the word "includes" has been inserted after "and".

Section 930.31(c) is added to clarify that CZMA § 307(c)(1) is a residual category. Federal actions that do not fall into subparts D, E, or F are Federal agency activities. CZMA § 307(c)(1)(A); *see* 44 Fed. Reg. 37146. One Federal agency commented that NOAA should state that fisheries licensing programs are subject to subpart C. No change is required for this section. A fisheries licensing program would continue to be under subpart C. An individual license to an applicant to conduct an activity would be under subpart D. No change is needed to continue the status quo.

Section 930.31(d) addresses the hybrid nature of general permit programs developed by Federal agencies. This occurs when a Federal agency proposes to replace the need for an applicant to obtain an individual permit with a general set of requirements which, if met by the applicant, would allow the applicant to proceed with the activity without a case-by-case approval by the Federal agency. Two examples are the Corps' Nation-wide Permit (NWP) program under the Clean Water Act § 404 and the Environmental Protection Agency's (EPA's) general National Pollutant Discharge Elimination System (NPDES) permits for discharges from OCS oil and gas facilities. The development of the general permit program is best thought of as a Federal agency activity. Even though a general permit will authorize license or permit activities, the development of the federal requirements is an action by a Federal agency, not an applicant. Moreover, there is not a discreet federal or license permit activity to review and there is not an applicant. Neither the statute nor the regulations contemplated the hybrid nature of general permits. CZMA § 307(c)(1)(A) does provide that a Federal agency is subject to § 307(c)(1) unless it is subject to paragraph (2) or (3)(license or permit activities). However, this does not resolve the matter since § 307(c)(3) does not imply or anticipate a situation where a Federal agency is an applicant for its own approval, and for general permits the Federal agency is not actually undertaking the license or permit activity covered by the general permit. Federal agencies may of course choose to subject their general permit programs to CZMA § 307(c)(3)(A).

Several commenters had various suggested changes to section 930.21(d). NOAA made corresponding changes to the rule. NOAA agrees that subpart C applies to general permit programs and not case-by-case approvals to non-Federal applicants. This was the intent of the section and clarifying language has been added. "Should" is changed to "shall" as the intent was to remove the need for case-by-case reviews where the State agency concurs with the general permit program. Language was added to address the situation where a Federal agency subjects itself to subpart D. Some Federal agencies want to subject their general permit programs to the requirements of subpart D. This gives States greater leverage over the Federal action. If Federal agencies want to do that, NOAA wants to provide them that flexibility. NOAA has added clarifying language regarding the need for State agency concurrence for an individual general permit, where the State objected to the general permit program.

Even though general permit programs are for activities that would normally be subject to subpart D, the consistent to the maximum extent practicable standard still applies since the general permit program is covered under subpart C. It may be possible, although unlikely, that a federal statute requires a Federal agency to conduct a program in such a manner that would not be fully consistent with a State's enforceable policies. The regulations already contain numerous instructions to Federal agencies regarding notice to State agencies and the content of consistency determinations.

Section 930.31(e) is added in response to a comment from a State to clarify existing NOAA interpretation that a modification to a Federal agency activity that has coastal effects and has not been subject to State agency consistency review, is a Federal agency activity subject to the consistency requirement.

NOAA amended section 930.32 to clarify the consistent to the maximum extent practicable standard. NOAA divided section 930.32(a) into 3 subsections. Subsections (1) and (2) are the existing regulations and subsection (3) is new. Minor changes were made to section 930.32(a)(1) and the last sentence in (a)(1) is moved to the end of (a)(2). These changes are made for clarity and brevity; there are no substantive changes in subsections (a)(1) and (2). The term "discretion" as included in the existing regulations and retained in the revised regulations means that the more discretion a Federal agency has under its legal requirements, the more the Federal agency must be consistent with the management program's enforceable policies. In subsection (a)(2), NOAA deleted the term "supplemental" since the CZMA requires that a management program's enforceable policies are requirements, not supplemental requirements. Also, supplemental is somewhat redundant with the rest of the sentence.

Two Federal agencies commented that the consistent to the maximum extent practicable standard was too restrictive and one State agency commented that "legislative history" is not federal legal authority. The final, proposed and pre-existing regulations all correctly describe "consistent to the maximum extent practicable" for purposes of the CZMA. Congress clearly intended Federal agencies to be consistent with State management programs (*see e.g.*, H.R. Rep. No. 92–1049, 94th Cong., 2d Sess. 18–19), the regulations have reflected this for over 20 years, courts have upheld the definition (*see e.g.*, *California Coastal Commission* v. *Navy*, No. 97cv2219 (S.D. Cal. Jan. 28, 1998),

and Congress specifically endorsed the definition in the 1990 amendments in the Conference Report.

Section 930.32(a)(3) clarifies the effect of federal appropriations law on the consistent to the maximum extent practicable standard. A lack of funding does not excuse a Federal agency from having to conduct a federal activity in a manner that is consistent with management program enforceable policies. Management program enforceable policies are, in most cases, in place long before the planning of many federal projects and in advance of budgeting for annual appropriations. A Federal agency cannot avoid any State requirement that it finds burdensome simply by not funding the required action. Advance planning and early coordination can help alleviate these concerns. If Federal agencies know what the State's enforceable policies are then costs can be factored into an agency's planning. Also, just as Federal agencies cannot avoid other federal and State law requirements (e.g., under the Clean Water or Air Acts, NEPA) due to funding constraints, they cannot avoid management program enforceable policies. State enforceable policies are developed pursuant to the CZMA, approved by the Federal Government, and applicable to Federal agencies through the CZMA federal consistency requirement.

One Federal agency commented that section 930.32(a)(3) overturns long held views of Federal agencies and NOAA or preempts the Federal budgetary process. Another Federal agency, while acknowledging that a lack of funding does not automatically render an action not practicable, it may not always be possible to plan for State requirements in advance. Several States commented that NOAA should require Federal agencies to plan for State policies and that the word "only" should be inserted. One commenter wanted NOAA to rewrite the section, and the environmental groups commented that there were contradictory statements in the section. The only modification NOAA has made is to remove the word "discretionary" as it is somewhat redundant and limiting. In response to the comments, it is NOAA's understanding that the "long held views" of the Federal agencies, with the possible exception of one or two offices within one or two Federal agencies, are compatible and in agreement with this section. Moreover, the changes made by Congress to the CZMA in 1990 carry more weight than a Federal agency's "view." NOAA must base its regulations on the statute. In this case, the definition of "consistent to the maximum extent practicable" is well-established and recognized by Federal agencies and was specifically endorsed in the 1990 CZMA changes. *See* Conference Report at 972. This section is also consistent with previous statements made by the Department of Commerce's General Counsel. The letter that the commenter refers to was a comment submitted to the Corps on the Corps' proposed regulations. *See* letter from Douglas A. Riggs, General Counsel, Department of Commerce, to the Corps (Aug. 20, 1986) (Riggs letter). The comments provided to the Corps in the Riggs letter recommend that the Corps use NOAA's regulations to define coordination between the Corps' program and the coastal States and discusses "consistent to the maximum extent practicable" consistent with NOAA's existing and proposed regulations. The reference to "appropriations" in the Riggs letter is ambiguous at best, but, if interpreted with the statute and NOAA's regulations at the time, merely mean that if something in appropriations law prohibits full consistency, then the Corps is consistent to the maximum extent practicable. Any ambiguities in the Riggs letter were replaced by the clear language of the CZMA as amended in 1990. Problems arise if Federal agencies use dollar amounts specified in appropriations law as part of the consistent to the maximum extent practicable equation. These problems are: (1) The CZMA Presidential exemption in CZMA § 307(c)(1)(B) is the only express exemption due to lack of appropriation amounts (even then, the appropriations needed for full consistency would have to be specifically requested by the President as part of the budgetary process, and Congressional appropriations would have to specifically exclude from funding the cost of being fully consistent); (2) appropriations laws often provide little guidance as to how funds are to be used; and (3) the CZMA mandates that State enforceable policies are substantive requirements. Sometimes appropriations are insufficient due to inadequate planning, failure to include the cost of CZMA compliance in a budget request, or insufficient funds from other sources. The solution is to ensure that Federal agencies plan and budget for full consistency early in the scoping process for an activity and to include specific costs for full consistency in their budgetary process.

NOAA believes the meaning of section 930.32(a)(3) is clear and has not added the word "only." NOAA has not replaced "should" with "shall" when discussing the admonition for Federal agencies to plan and budget for the costs of being consistent with State policies as there is no basis in the statute for NOAA to impose such a directive. The statute requires the Federal agency to be consistent to the maximum extent practicable with enforceable policies. How a Federal agency does this and how it funds such consistency is determined by other Federal law or each agency's planning, budgetary and policy-making processes. The language of this section is clear regarding appropriations and consistency. There is no contradiction as the section merely acknowledges that appropriation laws are Federal law which may contain specific legal prohibitions to full consistency. Absent such specific prohibitions, the Presidential exemption is the only provision which may be used by a Federal agency to make a finding that a lack of funds prohibits full consistency.

Section 930.32(b) clarifies that in an emergency, or other similar unforeseen circumstance, the Federal agency must still adhere to the consistency requirements, to the extent that exigent circumstances allow. For example, a Federal agency, responding to an emergency, must still provide a consistency determination to the State agency, if time allows. If the time frame for responding to an emergency is too short for a consistency determination, the Federal agency should coordinate with the State agency to the extent possible. To avoid uncertainty in these instances, the Federal agency and State agency may mutually agree to emergency response planning prior to an actual emergency, or develop expedited procedures or a general review for reasonably foreseeable emergency situations and activities. The phrase "exigent circumstances" is used since many agencies respond to emergencies, but they may not be mandated by law to respond within a certain time frame. Thus, their rapid response may be determined by the emergency nature of the activity (*i.e.*, the exigent circumstances), not their discretionary authority. Several State agencies commented that this section needs to be clearer regarding Federal agency responsibilities to ensure that Federal agencies deviate only when there is a true emergency and that even when there is an emergency, the Federal agency still complies with the consistency requirements if the action continues after the emergency is past. NOAA agrees that this section needed revision to better reflect the "emergency" nature of deviating from consistency. The consistency requirements should not be set aside unless absolutely necessary and if an emergency arises, then consistency should be adhered to once the emergency passes if there is still an activity occurring. NOAA has made corresponding changes to this section.

Section 930.32(c) addresses national security activities that are "classified." The 1990 changes to the CZMA make it clear that all federal activities are subject to the consistency requirement. Thus, a classified activity that will affect coastal uses or resources is subject to the consistency requirement unless exempted by the President under CZMA § 307(c)(1)(B)). However, under the consistent to the maximum extent practicable standard, the Federal agency need only provide project information that it is legally permitted to release. Despite the fact that a Federal agency may not be able to disclose certain project information, the Federal agency must still conduct the classified activity consistent to the maximum extent practicable with the management program. Concerned management programs may want to consider developing general consistency agreements with relevant Federal agencies for classified activities. The definition of "classified" is adopted from the Freedom of Information Act. Information concerning the national defense or foreign policy is protected from disclosure provided it has been properly classified in accordance with the substantive and procedural requirements of an executive order. As of October 14, 1995, the executive order in effect is E.O. 12,958, 3 CFR 333, reprinted in 50 U.S.C. § 435 note (1994). Generally, it is preferable, however, not to identify the particular executive order in the regulations, because it may be supplanted by a new order and courts have held that agencies should always apply the executive order in effect at the time the classified determination is made—*i.e.*, an agency does not have to go back through all of its old information and reclassify it pursuant to the latest executive order. One commenter said the definition of classified activity was too broad and that the rule should encourage the use of qualified third parties to review classified materials. NOAA does not agree that the language of the subsection is over broad. The subsection adequately instructs Federal agencies to withhold only classified material. NOAA agrees that using a qualified third party to review classified material is appropriate where both the Federal agency and State agency agree.

Section 930.33(a)(1) clarifies that effects on any coastal use or resource are not limited to environmental effects and that a review of relevant management program enforceable policies is necessary to determine whether the activity will affect any coastal use or resource. Two commenters recommended that NOAA add language that an activity has coastal effects if it initiates actions leading to effects (so-called "chain of events" language) and that NOAA add language regarding State-Federal consultation. NOAA has added the chain of events language from section 930.31(a) to this section as well. The sentence regarding consultation with State agencies is not added as the regulations contain sufficient direction for Federal agencies to consult with State agencies.

Section 930.33(a)(2) clarifies when federal consistency does not apply to a Federal agency activity. If there are no effects on any coastal use or resource and a negative determination is not required, then the Federal agency need not provide anything to the State. Several States and the environmental groups commented that Federal agencies should consult with State agencies even when there are no coastal effects or to provide a negative determination. NOAA added the phrase "Federal agency activity" to distinguish this section from the need to consult with State agencies for development projects. The other comments are not accepted, because the intent of this section is to clarify when Federal agencies must consult with State agencies. The CZMA does not require Federal agencies to coordinate with State agencies for activities that do not have coastal effects. To require coordination for such activities would be contrary to the CZMA, unreasonable and place an enormous burden on the Federal agencies with little or no benefit to management programs. NOAA also believes it would also be unwise to "encourage" such unnecessary coordination. The regulations do require that a Federal agency provide a State agency with a negative determination in certain circumstances, and this has been retained in the revised regulations.

Section 930.33(a)(3) provides a process whereby State agencies and Federal agencies can more efficiently address "*de minimis*" activities. *De minimis* activities cannot be unilaterally excluded from the Federal consistency requirement. Two Federal agencies commented that this section will be very useful, but suggested NOAA use a different word than "trifling." Another Federal agency commented that *de minimis* activities should be excluded, by rule, from the consistency requirement. State commenters supported the section with suggested wording changes. One environmental group commented that *de minimis* activities should only be excluded after opportunity for public comment. Other environmental groups opposed this section as contrary to Congressional intent that no activities be excluded that have coastal effects. These groups also asked that public comment be provided for if the section were retained.

NOAA has replaced the word "trifling" with "insignificant" and has also clarified that *de minimis* applies to activities with insignificant direct and indirect coastal effects. While the use of this section will be limited to activities with little or no coastal effect, NOAA agrees that States need to provide for public input before excluding such activities. NOAA believes that the CZMA provides States with the flexibility to exclude such activities with insignificant effects, by agreement with Federal agencies and with opportunity for public input. NOAA intends to foster efficient and effective administrative mechanisms. This section allows States to do that.

If Federal agencies cannot unilaterally exclude their activities from consistency, neither can NOAA on its own, by rule, exclude activities. The 1990 amendments to the CZMA clearly require that federal actions are subject to consistency if they affect coastal uses or resources. There is no distinction as to the magnitude of effects. Seemingly minor effects may have substantial coastal effects when cumulative and secondary effects are considered. Congress specifically recognized this in 1990. Conference Report at 970–72. There are several problems with listing or mandating a *de minimis* exception, as suggested by the comment. As the court noted in *Environmental Defense Fund* v. *EPA*, 82 F.3d 451 (D.C. Cir. 1996), *modified* by 92 F.3d 1209 (D.C. Cir. 1996), "[t]he ability to create a *de minimis* exemption is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design. * * * Of course, * * * a *de minimis* exemption cannot stand if it is contrary to the express terms of the statute." The express terms of the CZMA are that consistency applies to "each" federal activity "affecting" "any" coastal use or resource. Neither the CZMA nor the Conference Report specifically authorize a *de minimis* exception. Conference Report at 970–972. Rather, the Conference Report provides persuasive

authority regarding legislative design: "effects" are to be construed broadly and include reasonably foreseeable direct and indirect effects. Further, Congress amended the CZMA in 1990 to specifically guard against Federal agencies exempting their activities. Thus, any attempt to address *de minimis* activities must be done cautiously and only with the concurrence of the State agency. Finally, many States are concerned with the cumulative effect of seemingly *de minimis* activities. States are not only concerned with resource protection issues, but ensuring that their efforts to address *de minimis* activities through other planning and permitting activities are not compromised by exempting other *de minimis* activities.

The CZMA, however, allows States and Federal agencies to agree to address *de minimis* activities in a flexible manner. The proposed revisions do not provide detailed definitions of *de minimis* activities. Rather, OCRM proposes some general guidelines and then leaves it to the Federal agency and States, with opportunity for public comment, to agree as to what is *de minimis*.

Section 930.33(a)(4) allows State agencies and Federal agencies to mutually agree to exclude environmentally beneficial activities from further State agency review. Two commenters said that environmentally beneficial activities should not be excluded from review, that public comment is needed and that the section should be deleted. NOAA believes that States and Federal agencies should have the flexibility to agree to exclude activities from consistency review that will be beneficial to the environment. This is consistent with the CZMA's directives regarding administrative efficiency and effectiveness. *See* CZMA § 303(2)(G), (H) and (I). NOAA has clarified that environmentally beneficial refers to the protection and restoration of natural resources of the coastal zone. NOAA also recognizes the importance of such decisions to the public and has specifically required that any such exclusion requires public notice and comment pursuant to CZMA § 306(d)(14).

Section 930.33(c)(2) is removed. Outer continental shelf (OCS) oil and gas lease sales are Federal agency activities and are subject to the CZMA consistency requirement. *See* Sections III and IV of this proposed rule. Likewise, pre-lease sale activities are also subject to the consistency requirement if coastal effects are reasonably foreseeable. *See* 44 Fed. Reg. 37154 (comment to section 930.71); Letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Dept. of Justice, to C.L. Haslam, General Counsel, U.S. Dept. of Commerce and Leo M. Krulitz, Solicitor, U.S. Dept. of the Interior (Apr. 20, 1979).

Section 930.33(d) clarifies the CZMA federal consistency "effects test." Early Federal-State coordination is emphasized to reduce conflict, build public support, provide a smooth and expeditious federal consistency review, and to help Federal agencies avoid costly last minute changes to projects in order to comply with management program enforceable policies. The earlier the coordination, the less likely it is that conflict will arise. Early coordination also enables a Federal agency to address coastal management concerns while the agency still has the discretion to alter the activity and before substantial resources have been expended.

Section 930.34 is replaced by a new section 930.34, which contains some of the information from the original section 930.34. Other parts of the original section 930.34 are moved to section 930.36.

Section 930.34(a)(2) encourages Federal agencies and State agencies to use existing procedures to coordinate consistency reviews. However, for permit requirements in management programs that are not required of Federal agencies by federal law other than the CZMA, the Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied. NOAA has encouraged the practice of management programs using State permitting procedures as an administrative convenience to process Federal agency consistency determinations under CZMA § 307(c)(1) and (2). This results in efficient State consistency reviews by taking advantage of existing review procedures otherwise applicable to permitting actions. This new section is based on a comment in the original 1979 regulations, 44 Fed. Reg. 37147.

There were various comments on section 930.34(a) regarding a description of the nature of coordination being recommended, mandating early coordination, cross-referencing the section to section 930.36(b) and section 930.39, the meaning of the removal of the word "directly," standardizing notification and response procedures, and adding "cumulative effects" to the section. NOAA has not made any changes based on these comments. The regulations should not specify the nature of the coordination recommended as States and Federal agencies should have flexibility to determine how best to conduct such coordination. NOAA cannot require early coordination. If a State has problems conducting consistency within the specified time periods, then the State needs to make changes to State laws or processes. The State could also develop an MOU with particular Federal agencies. Cross references to other sections are redundant and not necessary. As stated earlier, all references to coastal effects refers back to the definition in section 930.11(g), which includes reasonably foreseeable direct and indirect (cumulative and secondary) effects on coastal uses or resources.

Section 930.34(b) is moved to section 930.36(b) and amended to clarify that the Federal agency must provide a consistency determination to the State while the Federal agency still has the ability to alter the activity to address management program policies.

Sections 930.34(b)(2) and (c) is deleted, with parts of these sections moved to new section 930.34(c). These sections are confusing and are not needed, because the listing provision for Federal agency activities is a recommendation and not a requirement and Federal agencies must provide a consistency determination to applicable States for activities with coastal effects regardless of whether the State has listed the activity. One commenter said that the State agency should provide for public comment before an activity is listed or de-listed. Public comment is already provided for when the State proposes to submit a listing or de-listing to NOAA as a program change, under 15 CFR part 923, subpart H.

Other comments were made on section 930.34(c) by two Federal agencies and several State agencies requesting clarification and changes to unlisted Federal agency activities. In response, NOAA added language to subsections (b) and (c) to clarify that listing of Federal agency activities is optional. Thus, time limits for State agency notification of unlisted Federal agency activities are not appropriate since a Federal agency is required by statute to provide a consistency determination when coastal effects are reasonably foreseeable. In some cases, the Federal agency may not be aware of its CZMA responsibilities and NOAA cannot, by rule, remove the consistency requirement when there may be coastal effects. If a Federal agency actually makes a determination of no effects, in many cases a negative determination will be required so that the State will receive notice with attendant time frames. If a negative determination is not required, and the Federal agency made a CZMA determination of no effects, it may so notify the State agency as a matter of comity and improved coordination. Previous language is not retained as it was confusing. Consistency is an affirmative duty for Federal agencies and, as such, the State agency listing procedure is not mandatory.

Section 930.34(d) encourages Federal agencies to seek assistance from the State agency in its determination of effects and consistency. At a minimum, State agencies must be able to provide Federal agencies with the applicable enforceable policies. Because identifying a State's enforceable policies can be difficult, Federal agencies noted the importance of this provision. Also, providing the Federal agency with the applicable policies will help focus the Federal agency's efforts on the State agency's concerns. One State agency commented that identifying enforceable policies could be problematic, because a State agency may fail to identify all applicable policies or the Federal agency may overlook policies. One State agency commented that State agencies should have flexibility to decide how to offer assistance, and one commenter said that the public or local governments should be able to identify additional policies.

NOAA did not change the rule based on these comments. The statute and regulations clearly require Federal agencies to be consistent with all applicable enforceable policies, including those that may have been overlooked at one time. Moreover, the regulation already addresses early identification of enforceable policies by stating that such identification is: "based upon the information provided to the State agency at the time of the request."

The statute and regulations are clear that the Federal agency prepares the consistency determination. If a State does not want to assist the Federal agency in the preparation, then the State loses a good opportunity to ensure that all of its relevant policies are considered and accurately interpreted. Further, NOAA believes that it is the State agency's responsibility to be able to accurately and completely identify its enforceable policies. The implementation of federal consistency at the State level is solely the responsibility of the State agency. Neither the public nor local governments can identify, or interpret, applicable management program enforceable policies for federal consistency purposes. *See* sections 930.6 and 930.11(o) (for responsibilities and definition of the State agency), and response to the comment regarding section 930.6.

Section 930.35 applies to negative determinations and clarifies existing requirements for negative determinations. Various comments were made regarding the State lists and when a negative determination should be provided. NOAA responded by adding a reference to the list in section 930.34(b). The word "relevant" is removed. NOAA has re-inserted the language from existing section 930.35(a)(3). NOAA had previously proposed to eliminate this subsection as not used and redundant. However, States provided persuasive information and examples that demonstrated that this section is used often, and used differently than the other requirements for negative determinations, and provides States with an effective notification of Federal agency activities. A consistency determination is not required if a State agency objects to a negative determination. The determination of coastal effects is made by the Federal agency and even if a State objects, the Federal agency may still rely on its no effects determination and proceed with the activity. In such cases, State and Federal agencies may enter into mediation to resolve the matter, or the State may litigate. NOAA cannot require a Federal agency to provide a consistency determination or a negative determination prior to the 90-day notification requirement. The regulations already contain sufficient encouragement for Federal agencies to consult with State agencies prior to the 90-day period and early in the planning phase of a Federal agency activity.

Section 930.35(b) clarifies the information requirements for a negative determination. A negative determination, by definition, is a finding of no effects. Thus, the information provided to the State agency for a negative determination may not be as substantial as that provided for a consistency determination. One Federal agency commented that it opposed the need to provide an evaluation of enforceable policies as part of its negative determination. A Federal agency's review of a State's enforceable policies is essential for determining coastal effects. This is emphasized in changes to section 930.33(a)(1) (Identifying Federal agency activities affecting any coastal use or resource).

Section 930.35(c) clarifies that if a State agency wishes to disagree with a Federal agency's negative determination, it must do so within 60 days or its concurrence is presumed. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations since negative determinations are not consistency determinations as contemplated by the Act. This section also clarifies that, if a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the State agency and Federal agency may agree to an alternative schedule to promote administrative efficiency. One Federal agency objected to applying the 90-day statutory notification period and the 60-day State agency response period to negative determinations. Another Federal agency asked that the section be clarified regarding State lists and the postponement of the activity by the Federal agency. Several States commented that Federal agencies should be required to postpone action until disagreements have been resolved. One commenter and the environmental groups commented that States should provide for public comment of the State agency's review of a negative determination. NOAA responded by adding language to subsection (c) to clarify that State agencies are not obligated to respond to a negative determination. As such, States are not required to provide for public participation for negative determinations under CZMA § 306(d)(14). A State could acquiesce in all negative determinations that it receives without providing any review or response. It is simply an acknowledgment of the Federal agency's determination that its activity will not have coastal effects, and that, therefore, the activity is not subject to the consistency requirement. If a State agency believes that the activity will have coastal effects and the Federal agency agrees, then the Federal agency would provide a consistency determination, which would require the State agency to provide for public participation in the State agency's review of the consistency determination. To clarify this, the final clause of the subsection from the proposed rule is deleted as it does not matter whether a new 90-day clock is started or whether an alternative schedule is agreed upon for a consistency determination, public participation would be required.

To be consistent with the change to § 930.43(d), "should postpone" is changed to "should consider postponing." A Federal agency cannot be required to postpone final action past the 90-day period. If a Federal agency

maintains that coastal effects are not reasonably foreseeable, and has met the procedural requirements of these regulations, then the Federal agency has fully met its consistency responsibilities. If a State disagrees with a negative determination, it can seek mediation where the Federal agency might agree to postpone action, or sue the Federal agency for making an arbitrary and capricious finding that coastal effects are not reasonably foreseeable. The regulations already require that a negative determination be submitted at least 90 days prior to agency action. NOAA does not intend to disturb this long-standing provision. This is based on the statutory requirement for consistency determinations since a Federal agency could determine, after input from a State, that the activity does in fact have coastal effects. The new review period, which is reasonably based on the review periods for consistency determinations, is provided to ensure that States respond in a timely fashion, if a State elects to respond. These review periods will actually provide a Federal agency with a more timely response to a negative determination, *i.e.*, within 60 days rather than 90 days. As States are not required to list Federal agency activities, neither can they be required to list activities for which negative determinations have been prepared in the past. A Federal agency could request that State do so, and it would be in the best interest of the State to provide such information, but it cannot be required.

Section 930.36 is moved to section 930.35(d). Section 930.36 incorporates existing sections 930.37 and 930.34(b) and elaborates on consistency determinations for proposed activities.

Section 930.36(c) clarifies the use of general consistency determinations. Federal agencies may provide State agencies with general consistency determinations for repetitive activities in the same manner that they provide single consistency determinations. A general consistency determination is still only allowed in a limited number of cases where the activities are repetitive and do not affect any coastal use or resource when performed separately. NOAA has added greater flexibility for State agencies and Federal agencies to mutually agree to use general determinations. The primary purpose of a general determination is for repetitive activities. Allowing a Federal agency to unilaterally provide a general determination for non-repetitive activities that have cumulative effects would be inconsistent with the 1990 CZMA changes. A general consistency determination may be used for de minimis activities only when the Federal agency and State agency have mutually agreed to do so. The terms "periodic" and "substantially similar in nature" are proposed to be deleted as the concept of "repetitive" includes these terms. One Federal agency commented that the section was vague. Several States commented that coordination with States prior to submitting a general determination should be required. Periodic consultation on a general consistency determination will vary depending on the nature of the Federal agency activity. Thus, NOAA is leaving this phrase unchanged and allowing States and Federal agencies to develop consultation periods. As is the case for non-general consistency determinations, Federal agencies cannot be required to consult with States prior to the 90-day period. It is certainly in the interest of all concerned to consult prior to submitting a general consistency determination and the regulations contain ample encouragement for early coordination.

Section 930.36(d). One Federal agency commented that a State agency should not be able to re-review earlier phases of an activity with which the State concurred. The regulation is clear that a consistency determination will be provided for each phase. By definition, the State then reviews and objects or concurs with each determination. The State cannot revisit its earlier concurrence. If the activity is substantially changed then the later phased consistency determination should cover the changes from the previous phase or new section 930.46 may require a supplemental determination.

Section 930.36(e) describes a method to efficiently address consistency requirements for a federal activity that is national or regional in scope. For example, a federal activity, such as a rulemaking or planning activity, may apply to more than one coastal State where coastal effects are reasonably foreseeable. Providing each State with a separate consistency determination may be difficult, inefficient and not cost effective, even with early coordination. The proposed regulation provides States and Federal agencies with the means to effectively coordinate, ensure adequate consideration of management programs, and provide an efficient, cost effective and timely method for meeting the consistency requirement. Two Federal agencies expressed concerns on whether national rulemaking or plans should be subject to consistency. One Federal agency commented that it was unclear how the process differed for national consistency determinations. One State commented that a State should be able to require additional information to start the consistency review period. One commenter said that a national consistency determination should require essentially the same information as that for a consistency determination submitted to one State.

NOAA disagrees that this subsection will not facilitate the development of consistency determinations that apply to multiple States. This section allows Federal agencies to send one consistency determination applicable to all States, using one discussion for coastal effects and enforceable policies that are in common among the States. There would be individual State sections in the consistency determination only for those State effects and policies that are not in common. The second sentence in subsection (e)(2) has been amended to clarify this. As discussed in response to comments on section 930.31, the CZMA makes no distinction between Federal agency activities that are local in scope and those activities, regulations, and plans, that are national or regional in scope. Whether these national activities are subject to consistency is based on whether coastal effects are reasonably foreseeable as a result of the activities. NOAA has not added language regarding additional information. Such a circumstance is already addressed in the regulations. Section 930.39 describes the content of a consistency determination. If the information required by section 930.39, in conjunction with section 930.36(e), is not provided, then the Federal agency has failed to submit a complete consistency determination and, thus, the 60-day State agency review period has not started and will not start until the information is provided. To require separate consistency determinations under this section would defeat the purpose of this section.

Section 930.37(c) is moved to section 930.36(d) and amended to clarify that phased consistency determinations refers to development projects and activities. Section 930.37 clarifies coordination of consistency with the use of NEPA documents to address consistency requirements. Federal agencies are not required to address consistency requirements in NEPA documents, but may use NEPA documents, at the Federal agency's discretion, as an efficient and effective mechanism to address the consistency requirements. The use of NEPA documents for consistency purposes does not, however, mean that a NEPA document necessarily satisfies all

consistency requirements. The Federal agency must still comply with the applicable sections in 15 CFR part 930, subpart C. Section 930.37 provides flexibility for States and Federal agencies to agree to different NEPA/consistency review procedures. Coordination between States and Federal agencies on federal consistency requirements should occur at an early stage, usually at the draft environmental impact statement (EIS) stage, and before the Federal agency reaches a significant point in its decision making and while the Federal agency still has discretion to modify the activity. A final EIS is a significant point in an agency's decision making and further modifications are much harder to do and require more resources. It is more efficient and in keeping with the intent of consistency for State agencies and Federal agencies to coordinate at the draft EIS stage. Arrangements should be made to do supplemental consistency reviews in case the project substantially changes in the final EIS or Record of Decision. Several commenters noted how useful this section will be regarding NEPA and CZMA coordination. One commenter, however, asserted that the section is flawed and is contrary to NEPA. NOAA disagrees.

NOAA has not added language to the rule regarding when to do consistency reviews in conjunction with NEPA, as many Federal agencies and States earlier commented that they want the flexibility to work out the timing of consistency and NEPA among themselves. Thus, the discussion above regarding draft EIS documents remains. This section is not flawed, and in fact, is consistent with and complements NEPA and CEQ's regulations. The CEQ regulations referred to in the comment discuss integrating NEPA, not the CZMA, into a Federal agencies decision making process. In addition, NEPA and the CZMA have different "effects tests." Thus, it may be that a NEPA document may not contain needed CZMA information or that a conclusion regarding effects for NEPA purposes will not satisfy the CZMA effects test. What this section does do is encourage government efficiency and reduce paperwork by specifically encouraging Federal agencies to use NEPA as a vehicle to address all CZMA consistency issues, as well as NEPA issues in the same environmental review document.

Section 930.38. One State asked if program changes, including additions to management programs through the incorporation of a State's Coastal Nonpoint Program, applies to this section. NOAA's response is that all enforceable policies that become part of a management program through program changes, including the program change process for Coastal Nonpoint Programs, apply for federal consistency purposes once approved by NOAA.

Section 930.39(a) is amended to clarify that the Federal agency's evaluation of the management program's enforceable policies is included in the consistency determination, and that the Federal agency's consistent to the maximum extent practicable justification accompanies the consistency determination, if the Federal agency is aware that its activity will not be fully consistent with the management program's enforceable policies. Section 930.32(a)(2) already requires a written justification to the State agency describing the legal impediments to full consistency. The State agency needs to know this information as soon as the Federal agency is aware of an inconsistency. Thus, when a Federal agency knows that it is not fully consistent prior to issuing its consistency determination, it should provide its justification to the State agency as part of its consistency determination. There are times, however, when the Federal agency believes it is fully consistent and does not learn that it is not fully consistent until after submittal of the determination. In such cases the Federal agency needs to provide its justification to the State agency as soon as it learns of the activity's inconsistency, in any event before the end of the 90-day period. The last sentence in subsection (a) is derived from the last sentence of former section 930.34(a). One Federal agency commented that this section should allow for the Federal agency's evaluation of enforceable policies in documents accompanying the consistency determination. NOAA agrees. The evaluation of relevant enforceable policies requires that the State agency identify those policies upon request. The regulations already allow a Federal agency to provide its determination in any manner it chooses. Thus the evaluation could be in an accompanying NEPA document if the document was provided to the State agency along with the consistency determination. The section has been amended to more clearly address this.

Section 930.39(b) is amended to conform to CZARA. Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if the effects are reasonably foreseeable. The last clause is deleted since it is inconsistent with CZARA and the effects test and is covered under the proposed new definition of effects. One Federal agency commented that this section incorrectly expands the consistency requirement to the effects of activities. Consistency is based on the effects of Federal agency activities. Thus, there is no expansion of consistency beyond the statutory requirement. If a Federal agency did not consider the effects from its activity, there would be no basis on which to make its consistency determination or negative determination. The last clause is deleted since it is inconsistent, perhaps redundant, with the coastal effects definition, particularly the clarifications made by CZARA. While the CZMA does not confer upon Federal agencies jurisdiction to regulate activities beyond that granted to the Federal agency by its authorities, under the CZMA "effects test" Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if coastal effects are reasonably foreseeable. This is now more appropriately covered under the new definition of effects contained in section 930.11(g).

The last sentence of section 930.39(c) is deleted, because it is redundant with the rest of section 930.39(c). One Federal agency commented that adequate consideration is vague. NOAA has deleted "adequate" as the word is vague and "consideration" provides sufficient guidance to Federal agencies regarding non-enforceable policies. By definition, a Federal agency does not have to be consistent with non-enforceable policies, but, hopefully, will at least consider such policies and satisfy the policies if possible. If a management program does not have an applicable enforceable policy, then the Federal agency need not evaluate any corresponding coastal effects. However, experience has shown that it is very rare that a management program does not have some applicable enforceable policy, albeit a broadly applicable policy.

Section 930.39(d) is amended to clarify that if a Federal agency applies its more restrictive standards, it must, under the consistent to the maximum extent practicable standard, notify the State agency that it is proceeding with the activity even though the more restrictive federal standard may not be consistent with the State standard.

Section 930.39(e) clarifies the relationship between State permit requirements and the federal consistency requirements. Federal agencies must obtain State permits (including management program permits) when required by Federal law (other than the CZMA). For example,

the Clean Water Act (CWA) requires Federal agencies to obtain State permits and certifications that regulate and control dredging and water pollution within the navigable waters of the State. *See* 33 USC §§ 1323, 1341, 1344(t); *Friends of the Earth* v. *Department of the Navy*, 841 F.2d 927 (9th Cir. 1988). However, in some instances, there may be an issue as to the scope of a State or local permit that a Federal agency is required to obtain by another federal law. To insure that such a requirement is "not enlarged beyond what the language [of the federal law] requires," *Department of Energy* v. *Ohio*, 503 U.S. 607 (1992), *citing, Eastern Transportation Co.* v. *United States*, 272 U.S. 675, 686 (1927), and to minimize conflicts in situations where the scope of the State permit requirement is an issue, Federal agencies or States should consult with the U.S. Department of Justice on the scope of the federal law. When a Federal agency is not required to obtain a State permit, the Federal agency must, pursuant to the CZMA, still be consistent to the maximum extent practicable with management program enforceable policies, including the standards that underlie a State's permit program.

Section 930.40 is amended to simplify the reference to section 930.39, by deleting subsections (b) and (c) and adding a reference to section 930.39 at the end of section 930.40.

Section 930.41(a) and (b) is amended to simplify terms used in these regulations, extend the time for State agency review of consistency determinations from 45 to 60 days, and clarify that State agency objections must be received by the last day of the 60-day review period (or last day of an extended period). Presently, a State response to a Federal agency's consistency determination is either an agreement or disagreement, and a State agency's response to an applicant's consistency certification for a federal license or permit activity is either a concurrence or an objection. The difference is largely semantic and confusing. Thus, all State responses to any consistency determination or certification are now either a concurrence or an objection. The intent of the change regarding the State agency's response is to clarify when the Federal agency may presume concurrence.

The time period for a State agency's response to a consistency determination would be increased from 45 days to 60 days to allow States to provide adequate public participation as required by CZMA § 306(d)(14) (added in 1990 by CZARA). Federal agencies must provide consistency determinations to State agencies at least 90 days prior to federal action. CZMA § 307(c)(1)(C). Currently, NOAA regulations require States to respond within 45 days of receiving the determination. Section § 930.41(a). If a State needs more time, a Federal agency must allow one 15-day extension. Section 930.41(b). These regulatory requirements were promulgated prior to the addition of CZMA § 306(d)(14). OCRM's Final Guidance implementing CZMA § 306(d)(14) did not change these requirements. 59 Fed. Reg. 30339. It will be difficult for many States to meet the public participation requirement under State law and still respond within 45 days. The likely result of this new requirement is that for most reviews of consistency determinations, States will need at least one 15 day extension, resulting in at least a 60-day review. Thus, in order for States to develop meaningful public participation procedures, and to provide greater predictability for Federal agencies as to when a State agency's consistency review will be completed, NOAA has provided States with a 60-day review period (extension provision remain the same). This should alleviate the inconsistency between current regulations and the CZMA § 306(d)(14) requirement. The total time allowed before a Federal action may commence (90 days) does not change.

Two Federal agencies and one interest group commented that they disagree with extending the State agency's response time to 60 days. One Federal agency commented that responses should be received by the last day and not postmarked. Several States commented on the wording of the section related to "postmarked" as provided for in the proposed rule. NOAA agrees that using "postmarked" may create confusion and will not provide the notification deadline that is needed for consistency reviews and which are contemplated by the statute and which has been the long-standing interpretation of the existing regulations. By statute, there must be a date whereby concurrence can be presumed. NOAA also agrees that the use of fax machines and email make it much easier for the State agency to send its response, and the Federal agency to receive it by the deadline. This change is also reasonable given the longer State agency review period for Federal agency activities. Thus, NOAA has changed "postmarked" to "receipt" in sections 930.41(a), 930.62(a), 930.78(b) and 930.155(d).

NOAA does not believe that the reduction in time between a State agency's response and the end of the 90-day period will substantially alter any necessary discussions between the State and the Federal agency. Experience shows that States and Federal agencies usually know before a State response if there is a problem. Usually a Federal agency will delay starting its activity past the 90 days to try and reach agreement with the State. If the Federal agency cannot do this, and it is consistent to the maximum extent practicable, then it can proceed at the end of the 90-day period.

The word "immediately" is retained since the Federal agency is under the impression that the 60-day review period has begun and needs to know as soon as possible if its determination and accompanying information is not complete. Even two weeks may be too long a time. There should not be a problem with networked management programs, as a completeness review is minimally substantive and should just be making sure the information required by section 930.39(a) is included. The information may not have everything the State wants, but that is not what is required by section 930.39(a) to start the review period.

Section 930.41(c) is amended to clarify that the 90-day period begins when the State agency receives the determination and that Federal agency action cannot commence prior to the end of the 90-day period unless the State agency concurs or the Federal agency and the State agree to a shorter period.

Section 930.41(d) is added to clarify that States cannot unilaterally place an expiration date on their concurrences. States must decide if they can concur with a consistency determination absent an agreement on time limits. One Federal agency commented that the language of the section is vague. States commented that the section may not be necessary and could be covered by section 930.4 (conditional concurrences). The word "modifications" has been inserted to clarify that a later action involving a previously reviewed activity could be a later phase or a modification. A cross-reference to supplemental consistency determinations under section 930.46 is also added.

There are several reasons why time limits are not acceptable. First, the CZMA requires a Federal agency to provide a consistency determination 90 days before final Federal agency approval. CZMA § 307(c)(2). The CZMA does not allow States to re-review the same activity. Second, State consistency decisions and objections must be based on the enforceable policies of a State's management program. A time limit on a State's concurrence would be based on the possibility that the activity or the State's program would change and not on enforceable policies, as required by the CZMA. Further, State agencies and Federal agencies may agree to a time limit for a State's concurrence, including concurrences for de minimis activities and general determinations. The CZMA does, however, require Federal agencies to carry out each activity in a manner that is consistent to the maximum extent practicable with a State's enforceable policies. Thus, if a project substantially changes between the time that the State reviews the activity and when the activity begins, the Federal agency must provide a new or supplemental consistency determination since the State would not have had the opportunity to review the "new" activity. This is precisely the situation section 930.46 is designed to address. Section 930.46 only applies to previously reviewed activities that have not yet begun and the coastal effects are substantially different then as originally reviewed by the State agency.

Regarding the use of a conditional concurrence under section 930.4 to impose time limits, the CZMA only authorizes one bite of the consistency apple for any particular Federal agency activity. It is a basic consistency requirement that Federal agencies provide consistency determinations for proposed activities and the States review the activity based on the information available at that time. If an activity later substantially changes, the Federal agency may have to provide a supplemental or a phased consistency determination. A conditional concurrence, therefore, cannot be used to provide for subsequent review of the same activity. For the same reasons a "time" condition would also be inconsistent with the CZMA. That is why a State should object rather than issue a conditional concurrence. Thus, NOAA has not cross-referenced section 930.4. If a State agency does issue a conditional concurrence with a time limit, and the Federal agency does not agree, the conditional concurrence automatically becomes an objection. It may also be that the objection would be invalid unless the time limitation had a basis in an enforceable policy. Under the proposed section 930.41(d), a State agency and a Federal agency may agree on a time limitation. The proposed section 930.41(d) provides for instances where a project changes or the effects change.

Section 930.41(e) clarifies that a State agency may not assess the Federal agency with a fee for the State's review of the Federal agency's consistency determination, unless such a fee is required under federal law applicable to that agency. One State commented that fees should be allowed. NOAA disagrees. The CZMA does not require Federal agencies to pay processing fees. OCRM cannot require such fees by regulation. Thus, States cannot hold up their consistency reviews or object based on a failure by a Federal agency to pay a fee. Such a requirement would require a change to the CZMA itself, or other federal laws. This is beyond the scope of these revisions to the regulations.

Section 930.42 is moved to section 930.43. New section 930.42 details the public participation requirement for Federal agency activities. Public participation for a State's review of a Federal agency's consistency determination is required by CZMA § 306(d)(14). *See* NOAA's final guidance on this requirement, 59 Fed. Reg. 30339. The statutory section requires that "[t]he management program provide for public participation in permitting processes, consistency determinations, and other similar decisions." Proposed section 930.42 is sufficiently broad to give States flexibility in developing public participation procedures that meet the intent of § 306(d)(14). NOAA reviews each State's procedures during regularly scheduled evaluations of management programs under CZMA § 312 for compliance with the public participation requirement under § 306(d)(14), and will recommend procedural changes if necessary to meet proposed section 930.42. The purpose of the requirement is to provide the public with an opportunity to comment to the State agency on the program's review of a federal activity for consistency with the enforceable policies of a management program, in addition to commenting on the activity itself. Thus, a Federal agency cannot be required to publish or pay for the notice.

A number of States commented that electronic public notices, including web sites, should be acceptable public notice. Other States had various comments on notice in remote areas, the Federal agency providing names and addresses of interested persons, notice for the affected area, and joint notices. The environmental groups commented that electronic notices should not be a procedural option. Electronic notices cannot be the only form of public notice used. Many people do not yet have ready access to a computer or the Internet. Thus, the regulations have been clarified to exclude electronic notices as the sole notice. They can be used in conjunction with other notices. Electronic means can also be used as the source of additional information since people can use public libraries and other facilities that have Internet access. In very rural areas where there are no local papers or access to State gazettes, etc., the State will have to use its best judgement as to how to adequately notify the public. In remote areas of Alaska, this may mean posting a notice in a Post Office or other public area. The current regulations allow this flexibility. Federal agencies are under no obligation to fulfill the requirements of this section regarding public comment on the State's review of a consistency determination. Thus, the Federal agency is under no obligation to provide names of interested parties as this may result in an expectation, and demand, that the Federal agency do so. NOAA has changed "in the area" to "for the area" as "for" is broader and provides the State with flexibility for providing adequate public notice, as suggested in the comment. However, NOAA reiterates that electronic notice cannot be the sole method of notice to the public. NOAA has included the language encouraging joint notices as this would not impose an additional burden on the Federal agency, and if used, should be a more efficient use of Federal and State resources.

Section 930.42(a) is re-designated as section 930.43(a) and amended to clarify that State objections must be based on the enforceable policies of an approved management program and that the objection letter must describe and cite the enforceable policies, and must state how the federal activity is inconsistent with the enforceable policy. This section also clarifies that the identification of alternatives by the State is optional, but that State agencies should describe alternatives, if they exist.

Sections 930.43, 930.63(b) and (d). One Federal agency commented that the mandatory nature of the current regulations regarding the identification of alternatives by the State agency be retained. Two commenters said that it is not clear what happens when an applicant adopts a State alternative. Several States commented that States should not have to re-design a project through describing alternatives.

While identifying alternatives is useful to States, Federal agencies and applicants, the CZMA does not require that States identify alternatives. The optional nature of alternatives was recognized in the previous regulations by the phrase "(if any)" and is necessary since the identification of an alternative does not remove the State agency's objection. An applicant would always have to go back to the State agency to

have the State agency remove the objection to allow Federal agency approval (unless the applicant appealed the State agency's objection to the Secretary). NOAA also agrees that State agencies should not be responsible for the design of a project, although States should describe alternatives with sufficient specificity to demonstrate their reasonableness. The regulations recognize this in section 930.63(d) by having the applicant determine its alternative options "in consultation with the State agency: * * *" This would allow the State agency to describe an alternative, but would still require the applicant to "design" the alternative and to consult with the State agency on whether the altered project was consistent. Then, when an applicant adopts a consistent alternative, the State would remove its objection and the Federal agency could approve the activity so long as the approval was consistent with the alternative agreed to between the State and the applicant.

Section 930.43(d) clarifies that, in the event of a State objection, the remainder of the 90-day period should be used to resolve differences and that Federal agencies should postpone agency action after the 90-day period, if differences have not been resolved. It also clarifies that, notwithstanding unresolved issues, after the 90 days a Federal agency may only proceed with the activity over a State's objection if the Federal agency clearly describes, in writing, the federal legal requirements that prohibit the Federal agency from full consistency. Several Federal agencies commented that language contained in the proposed rule regarding Federal agency obligations when the Federal agency asserts it is fully consistent was unworkable and not consistent with the statute. Several States commented that clarifying language was needed regarding when and how the Federal agency should submit its consistent to the maximum extent practicable justification. Two States commented that mediation should be required if there is a dispute and before the Federal agency proceeds with the activity. One State commented that the section should include a statement that the State may institute legal action if not satisfied with the Federal agency's response. The environmental groups commented that a Federal agency should not be able to proceed with an activity over a State's objection.

NOAA understands that there may be disagreements between a State agency and Federal agency as to whether a Federal agency is fully consistent with a management program's enforceable policies. This is particularly problematic where the State's policy is broadly worded. A Federal agency activity that is fully consistent and has met the consistency requirements should be able to proceed with the activity. A State agency may object based on its interpretation of its policies. In such cases, the State may be requiring consistency for an interpretation that is not set forth in the enforceable policies. This does not make the enforceable policy invalid, but it does create a factual issue regarding full consistency. In such cases, mediation may resolve the matter, or an MOU developed, as was the case between Alaska and the Forest Service. If this does not work, and the Federal agency elects to proceed with the activity after 90 days, then the State may choose to litigate the question of whether the Federal agency is in fact fully consistent. The section has been modified accordingly.

In response to one comment, NOAA agrees that it is the "Federal agency's belief" that it is consistent that controls its action, and has addressed this comment by including the phrase: "the Federal agency has concluded * * *" NOAA has also added a reference to the new language in section 930.39(a), requiring that the Federal agency's consistent to the maximum extent practicable justification be included in the consistency determination if the agency is aware that its activity will not be fully consistent at the time the determination is submitted to the State agency.

The use of the word "cannot" and the use of the suggested "can" may both cause misunderstanding. The intent of section 930.43(d) is to provide an appropriate mechanism for the Federal agency to examine whether it is prohibited by law from acting in a manner consistent to the maximum extent practicable. To be absolutely clear in this very important, and much discussed section, NOAA has not used "can" and has replaced the word "cannot" with specific language from the consistent to the maximum extent practicable standard in section 930.32.

Mediation under the CZMA and NOAA's regulations is optional and non-binding. NOAA cannot, by rulemaking, require a Federal agency to enter into mediation. Likewise, if a State requests mediation, the Federal agency is not required to participate. As for notice to the Federal agency regarding possible State litigation, a State may always sue a Federal agency under the Administrative Procedures Act. It is not necessary to place such language in this section, although the regulations discuss State enforcement, including legal action, in the new section 930.5.

This section does not refute the basic purpose of the federal consistency requirement. A fundamental component of federal consistency is that a Federal agency, despite a State's objection, may proceed with a Federal agency activity after the 90-day period, so long as the Federal agency describes to the State agency, in writing, the federal legal requirements that prohibit the Federal agency from being fully consistent with the enforceable policies of the State's management program. Section 930.43(d) clarifies this component of the CZMA and existing NOAA regulations. As was suggested by several commenters, the CZMA federal consistency requirement can be thought of as a limited waiver of federal supremacy. (Under Article VI, cl. 2 of the U.S. Constitution, Federal law is the supreme law of the land and State law cannot interfere with the execution of federal law. *See McCulluch* v. *Maryland*, 17 U.S. (4 Wheat) 316 (1819). Congress, as part of its legislative powers, can limit the Federal Government's supremacy and sovereign immunity.) The waiver of federal supremacy in the CZMA is the requirement to be consistent with State management programs. The limits are defined by the consistent to the maximum extent practicable standard and CZMA §§ 307(e) and (f). CZMA § 307(e) requires that the CZMA does not supersede, modify or repeal existing law. CZMA § 307(f) requires that the CZMA shall not affect the pollution control requirements of the Clean Water Act or Clean Air Act. The CZMA § 307(c)(1) requires that federal activities "be carried out in a manner that is consistent to the maximum extent practicable" with the enforceable policies of a State's management program. The phrase "be carried out" implies that the activity may proceed. The qualifier is that the activity must be carried out in a manner consistent to the maximum extent practicable with a State's enforceable policies. Further, the statute expected that federal activities could proceed after 90 days by stating that Federal agencies provide a consistency determination no later than 90 days "before final approval" of the federal activity. Congress stated that it is not anticipated that there will be many situations where as a practical matter a Federal agency cannot carry out its activities without deviating from approved management programs. H.R. Rep. No. 1049, 94th Cong., 2d Sess. 19 (1972). Congress also found that there may be instances where a Federal agency activity cannot be conducted

fully consistent with a State's enforceable policies and may proceed over a State's objection. *Id.* It is precisely this legislative intent that led, in 1979, to NOAA's regulations requiring full consistency unless full consistency is prohibited based upon existing legal authority applicable to the Federal agency's operations. Deviation from full consistency is allowed due to unforeseen circumstances which present a substantial obstacle preventing complete adherence to the management program. Further evidence of Congressional intent regarding whether a Federal agency activity may proceed over a State's objection is found in the different language in the other CZMA federal consistency sections. CZMA §§ 307(c)(3)(A), (B), and 307(d) all specifically prohibit a Federal agency from issuing its approval or funding if a State agency has objected. Because Congress included such clear language in these three other instances, it follows that Congress intentionally excluded this meaning from other sections, *i.e.*, CZMA § 307(c)(1). If Congress intended to require that a Federal agency activity proceed only with State agency agreement it would have said so.

The Presidential exemption contained in CZMA § 307(c)(1)(B) does not support the view that Federal agencies may not proceed over a State's objection. The Presidential exemption was added to address a situation where a State agency disagrees with a Federal agency's consistency determination, resolution by mediation is not likely, the State agency sues the Federal agency, and the Court finds that the activity is not in compliance with a State's enforceable policies. In those instances, the Secretary may request that the President exempt the specific activity from consistency if the President finds that the activity is in the paramount interest of the United States. The section was added to be consistent with similar extraordinary remedies of other federal statutes and to reinforce the point that no Federal agency activities are categorically exempt from the consistency requirement. Congress would not have couched a requirement that Federal agencies cannot proceed over a State agency's objection in an elaborate Presidential exemption.

NOAA's regulations further define the long-standing interpretation that Federal agencies may proceed with an activity despite a State agency's objection. NOAA's definition of consistent to the maximum extent practicable requires full consistency "unless compliance is prohibited based on the requirements of existing law applicable to the Federal agency's operations." Section 930.32(a)(existing). This interpretation is also supported by a comment to the original regulations where NOAA stated that "Federal agencies are encouraged to suspend implementation of the activity beyond the 90-day period pending resolution of the disagreement." Section 930.42(c) (44 Fed. Reg. 37149, Monday, June 25, 1979) (emphasis added). Thus, if a Federal agency asserts full consistency is prohibited and describes the legal authority which "limits the Federal agency's discretion to comply," the Federal agency may proceed with the activity at the end of the 90-day period. *Id.*; Section 930.34(b) (existing).

Section 930.46 addresses the situation where a proposed activity previously reviewed, but not yet begun, will have coastal effects substantially different than originally described to the management program. A similar section is repeated at the end of subparts D and F. *See* sections 930.66 and 930.101. Two commenters said that the State agency should be required to notify others under subsection (b). Several other States commented that there should be a rebuttable presumption that a project is subject to re-review if the project has not commenced in 5 years. One commenter asserted that this provision would put offshore projects in a never-ending loop of approval and should be re-worked to reduce this uncertainty.

NOAA has not changed the rule, based on these comments. If a proposed project has substantially changed, and the State has not reviewed the changes, then it is a new project, and a new consistency determination is required. Since the consistency test depends on whether coastal effects are reasonably foreseeable, and not on the nature of the activity, substantial new coastal effects would also trigger the consistency requirement. Thus, where an activity has not started, substantial new effects have been discovered, and the State has not had the opportunity to review the activity for consistency in light of these effects, sections 930.46, 930.66 and 930.101 would require a supplemental consistency determination or certification. This is an affirmative duty on the part of Federal agencies and applicants. However, there may be times when Federal agencies or applicants do not provide supplemental consistency statements. In such cases, subsection (b) of these sections allow a State agency to notify the Federal agency or applicant that it believes that a supplemental review is needed. Such notification is at the State agency's discretion, thus "may" is retained and "shall" is not used. States may seek compliance through negotiation, mediation or litigation. This proposed section is similar to NEPA requirements for supplemental statements. *See* 40 CFR section 1502.9(c)(1). NOAA expects that this section will be little used, but where it is used will eliminate confusion as to the consistency process and brings the regulations into conformance with the changes made by CZARA.

NOAA has not added a rebuttable presumption that if a project has not commenced within a certain amount of time, it should be subject to re-review. Time is not the issue here. The intent of this section is not to give the State agency a second bite at the consistency apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the State.

Finally, NOAA rejects the argument that supplemental review will create a never-ending loop of approval. The sections apply only to activities that have not yet begun and which are substantially different than that which the State previously reviewed. Even without these sections, Federal agency activities meeting these two criteria would be required to provide a new consistency determination and for license or permit activities, in many cases applicants would provide a new consistency certification since such changes would require a modification to the federal application that would require consistency review. Regarding offshore projects, a supplemental coordination section is not added to subpart E, since subpart E and the regulations implementing the Outer Continental Shelf Lands Act already contain a detailed process for supplemental consistency reviews when OCS plans have substantially changed. NOAA is not disturbing this existing coordination between the two statutes.

Subpart D—Consistency for Federal License or Permit Activities

Sections 930.50 and 930.51(a) are amended to be consistent with the statutory language referring to "required" federal license or permit activities. A required federal approval means that the activity could not be performed without the approval or permission of the Federal agency. The approval does not have to be mandated by federal law, it only has to be a requirement to perform the activity. One commenter suggested adding additional effects language to section 930.50. Additional effects language is not added to this section, because effects are defined in section 930.11(g), and apply throughout the regulations when discussing coastal effects.

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Section 930.51(a) clarifies that a federal lease to a non-federal applicant, *e.g.*, to use federal land for a private or commercial purpose, is a form of authorization or permission under the definition of federal license or permit, with the exception of leases issued pursuant to lease sales, *e.g.*, under the Outer Continental Shelf Lands Act, which are Federal agency activities under 15 CFR part 930, subpart C. One Federal agency commented the definition is extremely broad and that it needs to clarify the application of this subpart to OCS plans. The commenter further states that the regulation seems to ignore the importance of effects when determining whether a federal license or permit is subject to consistency. Finally, this Federal agency comment argued that OCS lease suspensions should not be subject to consistency, and the language regarding "lease sales" should be clarified to distinguish lease sales from leases. One State commented that a "lease" is a form of approval regardless of other applicable federal approvals. One State and another commenter suggested that "right-of-way" permits and "easements" be added to the definition. One commenter urged that a decision that no consistency review will take place should be subject to public comment.

The definition of license or permit has been in place and well-understood for over 20 years. In NOAA's view, an inclusive description of federal approvals is necessary to implement Congress' intent that consistency apply to all federal actions that have coastal effects. The statute is clear that OCS plans, and federal approvals described in detail in such plans, are subject to subpart E, and the section now states this.

The term "federal license or permit" refers to any required federal approval. Whether a license or permit activity is subject to the consistency requirement does depend on whether coastal effects are reasonably foreseeable and which is determined by NOAA either when the State agency lists (*see* section 930.53) a particular federal approval in its management program or when a State agency seeks to review an unlisted activity (*see* section 930.54). The same applies to OCS "lease suspensions." As stated in NOAA's letter to the California Coastal Commission, dated November 12, 1999, OCS lease suspensions are federal license or permits under NOAA's regulations. However, NOAA made no determination whether there were coastal effects resulting from the suspensions at issue and, thus, no determination whether consistency applied. If a State agency were to review a lease suspension for consistency, the State's review would be limited to the effects of the lease suspension itself and any cumulative effects that may flow from the suspension(s). Since a lease suspension is not a renewal of the lease, the State could not review the underlying lease. When requesting a suspension, a lessee is not requesting a re-leasing approval, and MMS does not re-evaluate the lease when granting or directing a suspension. If a lease were to terminate and MMS were to "re-lease" the tracts, then the re-leasing would be subject to consistency under CZMA § 307(c)(1).

In NOAA's November 12, 1999, letter, NOAA concluded that as a general matter, lease suspensions do not affect coastal uses or resources and do not generally authorize activities to occur during the suspension period that can be reasonably expected to affect coastal uses or resources. Therefore, it is highly unlikely that NOAA would approve the listing of lease suspensions in a management program as a federal license or permit subject to consistency, or approve a State agency's request to review a lease suspension as an unlisted activity. In determining whether to approve the review of a lease suspension as an unlisted activity, NOAA would examine the effect of the lease suspension in extending the term of the lease or postponing the coastal effects of the OCS activities to a point in time in the future or such other effects as are reasonably foreseeable from granting of the lease suspension(s). This effects test must be met by the State agency submitting a request to review the lease suspension(s) as an unlisted activity. NOAA cannot completely rule out the possibility that a lease suspension or set of lease suspensions could affect the uses or resources of a State's coastal zone, and thus the CZMA bars NOAA from categorically exempting suspensions from consistency. NOAA also believes that OCS lease suspensions could be removed from possible State agency review under subpart D, if MMS were to describe the expected universe of lease suspensions in detail in the OCS plans. In the alternative, specific suspensions can be addressed between lessees, MMS and coastal States as it was in the Memorandum of Understanding between MMS, Mobil and the State of North Carolina. *See* Appendix I, at I–3, Final Environmental Impact Report on Proposed Exploratory Drilling Offshore North Carolina, August 1990. If MMS were to do this, then a State agency concurrence in an OCS plan under subpart E, would also include concurrence of any lease suspensions granted for the expected reasons described in the OCS plans.

It is not correct to say that OCS activities are not subject to subpart D. It is correct that OCS plans, and federal licenses or permits described in detail in OCS plans, are subject to subpart E. However, subparts D and E are intertwined, as provided for in the statute (CZMA § 307(c)(3)(B)) which subjects subpart E reviews to CZMA § 307(c)(3)(A). Thus, OCS plans and licenses or permits described in detail in the plans are subject to subpart E, except for some information/procedural items. OCS related federal license or permits not described in detail in OCS plans are subject to subpart D and lease sales themselves are subject to subpart C.

NOAA agrees that the relationship of "leases" and "lease sales" could be clearer and has clarified that the term lease does not include leases issued pursuant to OCS lease sales. NOAA also agrees with the comment that leases that are federal license or permits as defined in this section are federal approvals regardless of whether there are other federal approvals required and has deleted the language referring to other approvals.

Rights of way and easements are not specifically included as the definition is sufficiently broad to cover these actions if they are "required federal approvals." A State agency can always list specific approvals in its management program. Public participation is not added for a decision that consistency review will not occur. A decision that consistency will not occur, either because there are no coastal effects, there is no federal application, or there is no required federal approval, means that the CZMA consistency provision does not apply, and public review is not mandated.

Section 930.51(b)(2) is amended to clarify that "management program amendments" as used in this section means any program change, *i.e.*, amendment or routine program change, approved by OCRM under 15 CFR part 923, subpart H.

Section 930.51(c) clarifies that a major amendment is not a minor change to a previously reviewed activity, but a change that affects any coastal use or resource in a way that is substantially different than effects previously reviewed by the State agency. One State commented that the section as proposed did not apply the definition of major amendment to all contexts used in subsection (b). NOAA agrees that the definition of major amendment needs to apply to all three cases under subsection (b), and has made this change.

Section 930.51(d) clarifies that a "renewal" includes subsequent re-approvals, issuances or extensions. Administrative extensions that are required must be treated like any other renewal or major amendment. Otherwise, some activities that should obtain a renewal continue to operate for years under administrative extensions. These activities may have coastal effects that have not been reviewed by management programs and which need to be consistent with a State's enforceable policies. These activities are, in a sense new activities. Renewals cannot be used to negate the consistency requirement.

Section 930.51(e) describes some parameters for how the determination of major amendments, renewals and substantially different coastal effects in section 930.51 shall be made. Whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input from all parties. However, a State agency's views should be accorded deference to ensure that the State agency has the opportunity to review coastal effects substantially different than previously reviewed.

Section 930.51(f) clarifies the ramifications to the consistency process when an applicant withdraws its application for a federal approval or if the approving Federal agency stays the application review process. If the applicant withdraws its application, then the consistency process stops (since there is no longer a federal application to trigger consistency). If the applicant re-applies, then a new consistency review is required. Likewise, if the Federal agency stays its proceeding, then the consistency review process will be stayed for the same amount of time. This will avoid confusion as to what the consistency review period is in these cases.

Section 930.52 is amended to add to the definition of "applicant" applicants from other nations for a United States required approval, and applicants filing a consistency certification under the proposed general permit consistency process under section 930.31(d). Regarding other nations, the CZMA requires any applicant for a required federal license or permit to certify consistency with management programs. There may be instances where a foreign company or individual must obtain a United States approval.

Two commenters want subpart D to apply to Federal agencies applying for federal permits. Federal agency activities are not subject to CZMA § 307(c)(3) requirements. The CZMA is clear: Federal agency activities are subject to CZMA § 307(c)(1). CZMA § 307(c)(3) applies to non-federal applicants for federal permits or licenses. Congress declared that CZMA §§ 307(c)(3)(A) and (B) and 307(d) "govern the consistency of private activities for which federal licenses or permits are required" and that the 1990 CZMA changes do "not alter the statutory requirements as currently enforced under [the CZMA]. These requirements are outlined in the NOAA regulations (15 CFR 930.50–930.66) and the conferees endorse this status quo." Conference Report at 971–72 (emphasis added).

Section 930.53(a) is removed. Thirty-three of the thirty-five eligible coastal States have federally approved management programs and the remaining two States are in the process of developing a management program. Thus, this section is no longer necessary. Also, federal involvement in the identification of federal activities is addressed in the program development regulations. *See* section 923.53.

Section 930.53(b) is moved to section 930.53(a).

Sections 930.53(a)(1) and (2) are added to clarify the review of listed federal license or permit activities occurring outside of the coastal zone. The geographic location requirement is a means of notifying applicants and Federal agencies of activities with reasonably foreseeable coastal effects and are, subject to consistency review. The most effective way for a State to review listed activities outside the coastal zone is to describe the geographic location of a State's review. States are strongly encouraged to modify their programs to include a description of the geographic location for listed activities occurring outside the coastal zone to be reviewed for consistency. This section also codifies existing administrative policy that treats listed activities outside the coastal zone (for which a State has not described a geographic location), and listed activities outside a geographically described location, as unlisted activities under this subpart. (Because a State's coastal zone boundary is a geographic location description, Federal lands located within the boundaries of a State's coastal zone are sufficiently described for federal license or permit activities occurring on those federal lands.)

Section 930.53(b). Several States commented that listing should not be required for general concurrences. One State commented that the relationship between general concurrences and federal general permit programs is not clear. The environmental groups commented that "minor" is not defined. One commenter asserted that general concurrences are misused by States and cumulative impact studies should be done with public comment and should be re-reviewed every three years.

NOAA has not changed the listing requirement. General concurrences are encouraged as a matter of administrative convenience and for more efficient consistency reviews of minor activities. If a State agency chooses to develop a general concurrence, applicants for the federal approval must be notified of the general concurrence. Since the general concurrences are tied to the federal license or permit activities listed in the management program, the State's list is an effective place to provide notice of the general concurrences. The regulations recognize that these minor activities can have cumulative effects and that the State agency can develop conditions allowing concurrence for such activities. The section already requires that prior to developing a general concurrence, the State agency provide for public notice and comment pursuant to section 930.61. This section does not affect the Nationwide permit program or other federal general permits (unless the State agency chooses to adopt a general concurrence for federal approvals under these programs). The promulgation of federal general permit programs is a Federal agency activity and is not affected by this section.

Sections 930.53(c), (d) and (e) are moved to sections 930.53(b), (c) and (d), respectively. The addition of sections 930.53(c)(1) and (2) clarify the procedures for consultation with Federal agencies and approval by the Director. One Federal agency commented that the State's notification to the Federal agency needs to adequately describe the proposed change in order for the Federal agency to respond. NOAA agrees that the State agency needs to describe what the proposed change is, thus, the phrase "should describe" is changed to "shall describe."

Section 930.54(a)(1) is amended to clarify where State agencies should look to monitor unlisted activities. Specifically, draft NEPA documents and **Federal Register** notices are key documents State agencies should review. This section also clarifies that State agency notice should be sent to the applicant, the Federal agency; and the Director of OCRM. The term "immediately" has been deleted as there is already specified a 30-day time period in which to respond. Two commenters believe this section should be clearer regarding an "application" to a Federal agency. One State commented that

Federal agencies or applicants be required to provide notice of unlisted activities.

NOAA agrees that the language in subsection (a)(1) is clear that the 30-day time period for State agencies to notify an applicant and the Federal agency is notice of an application that has been submitted. To make this perfectly clear, NOAA has added clarifying language. NOAA has not used the language in the comment since that language could be interpreted to require the State agency to act within 30 days from the date of the submission of the application, rather than 30 days from notice of an application that has been submitted. A State should have the opportunity to request review of an unlisted activity 30 days from receiving notice that an application has been submitted and not just 30 days from when the application was actually submitted to the approving Federal agency. Written notice is not required, however, in subsections (a)(1) or (2), because Federal agencies and applicants are not under an affirmative duty to notify the State agency unless the federal license or permit is listed in the management program. Such notice is encouraged, but cannot be required.

Section 930.54(b) is amended to clarify that the State agency's notification must also include a request for OCRM approval and the State agency's analysis supporting its claim that coastal effects are reasonably foreseeable.

Section 930.54(c) is amended to clarify that the Director's decision deadline may be extended by the Director for complex issues or to address the needs of one or more of the parties. This codifies existing practice which has been useful in resolving issues often leading to the State agency's withdrawal of its request. One Federal agency commented that an extension of NOAA's decision deadline be limited to a specified time.

It is unnecessary to specify a time frame for the Director's decision since the extensions, if any, may need to vary in duration depending on the issues. However, NOAA has added a sentence requiring the Director to consult with the State agency, Federal agency and applicant prior to issuing any extension. Also, the proposed revision states that the Director shall notify the parties of the expected length of the extension, therefore a specified time frame will be established for each extension.

Section 930.54(d). One commenter believes that NOAA should not assess coastal effects, but that States should do so. NOAA does not agree. NOAA's long-standing administrative process implemented through these regulations determines coastal effects for listed activities or unlisted activities. Listed activities are first approved by NOAA as part of program approval or through a program change. Once NOAA has approved a federal approval as listed in a management program, then effects are assumed. If an activity is unlisted, coastal effects must be determined, and again, it is NOAA's responsibility and role to make such a determination. Congress has endorsed this implementation of the statute and all parties, States, Federal agencies and applicants rely on NOAA to ensure consistency reviews occur only where activities have coastal effects.

Section 930.54(f) provides applicants and State agencies with the flexibility to agree to forego the unlisted activity procedure, have the applicant subject itself to consistency, and expedite the consistency process. This provision will help to resolve coastal management issues informally and avoid delays due to disagreement over whether the application should be subject to State agency consistency review. One State commented that a Federal agency and State agency should be able to agree to subject an unlisted activity to consistency.

NOAA disagrees. The consistency requirements in this subpart are for the State agency, the Federal agency and applicants. The listing requirement puts all on notice that the listed activities are subject to consistency and the State's review. Any other decision, outside of the unlisted process, that would subject an applicant to the consistency requirement, would require agreement by the applicant. The Federal agency and State agency cannot subject an applicant to consistency outside the listed and unlisted procedures. A Federal agency could notify the State agency of an application for an unlisted activity, and then the State agency could initiate the unlisted activity process.

Section 930.56(b) is moved to section 930.58(a)(2). This will consolidate all material on necessary data and information in one section. The last sentence of section 930.56 is added as State agencies need to be able to identify their enforceable policies and have an obligation to identify the applicable policies to Federal agencies and applicants. Also, since many management programs now contain substantial numbers of enforceable policies, it is more efficient and effective if States can identify the applicable policies to the applicants, rather than the applicant having to pick and choose from all the State policies.

Section 930.58 is modified to clarify information requirements and to consolidate language from other sections. Subsection 930.58(a)(1) (formerly section 930.56(b)) clarifies that the necessary data and information which applicants must provide to the State agency may include State permits or permit applications. One Federal agency commented that subsections (a)(1) and (a)(3) are duplicative and that the section should specify what an applicant should do if not satisfied that there is not adequate protection against disclosure of proprietary information. Two States requested various wording changes. One commenter believes that subsection (a)(2) should be deleted regarding State permits as necessary data and information. One commenter said that subsection (a)(2) and (c) should be integrated.

Subsections (a)(1) and (a)(3) are not duplicative. Subsection (a)(1) is identifying coastal effects and (a)(3) is an evaluation of effects in the context of enforceable policies. Subsection (c) allows applicants to disclose proprietary information if the applicant is satisfied that adequate protection against public disclosure exists. There is no conflict between subsections (a)(2) and (c) regarding proprietary information since (a)(2) is for "required" information and proprietary information is not required. NOAA has added language to subsection (a)(3) to clarify that it is the activity that must be consistent. These sections do not require an applicant to have all State permits. Management programs can, however, require that an applicant have the State permits in hand as the issuance of a State permit is, for some States, the means of demonstrating that an applicant is consistent with the underlying enforceable policies. States that require State permits conduct the federal consistency review at the same time that the State permit is being processed. This is not an obstacle as the six month CZMA review period is still in place.

Section 930.59. One commenter said that this section should require "one stop shopping." The CZMA does not require one-stop-shopping for consistency. Also there are different procedures for different federal and State programs that may not lend themselves to one-stop shopping. In addition, some projects may be complicated long-term projects and information may not be available for later phases. Thus, the later phases would be subject to consistency at a later date.

Sections 930.60(a)(1), (2) and (3) clarify when the consistency time clock may begin; the consequences of an incomplete certification; and State agency notice requirements to the applicant and the Federal agency. Where the applicant has submitted an incomplete certification and the State begins the consistency time clock, the State agency cannot later stop the time clock unless the applicant agrees. Section 930.60(a)(2) requires State agencies to notify the applicant and the Federal agency of the date when necessary certification or information deficiencies have been corrected, and the State agency's review has begun. Subsection (a)(3) allows States and applicants to mutually agree to alter the review time period.

One Federal agency commented that "certification or information deficiencies" be replaced with "missing certification or information" and that a State agency should be able to determine if information is missing in 15 days, not 30 days. One State commented that a State agency and Federal agency should be able to agree to extend the six-month time period. Another State commented that a State should be able to stop the six-month consistency time period. Several States commented that this section should address the issue of whether there is an active federal permit application. One commenter implied that under the current regulations the Federal agency determines completeness for consistency and that this is changed in the new rule.

NOAA agrees that subsection (a)(1) refers to incomplete certifications or information, and not the adequacy of the information. Thus, "missing certification or information" replaces "deficiencies." NOAA believes that 30 days to determine completeness is reasonable given a project's complexity and some programs may need to check with networked agencies. This completeness check does not extend the six-month period, if submission is complete. Because this subpart affects applicants, the State agency and the Federal agency cannot change the review period without the applicant's agreement. The statute gives States six months to review. States cannot unilaterally stop, stay or otherwise alter the review period without an applicant's agreement. *See* section 930.51(f) regarding Federal agency acceptance and processing which applies to "active" federal applications. Current regulations do not allow the Federal agency to determine completeness for consistency review; only the State agency can make such a determination. If there is a disagreement, the parties can consult and seek mediation by NOAA. This is not changed in the revised regulations.

Section 930.61. One Federal agency commented that the rule should clarify who is responsible for conducting a public hearing. Two commenters offered word changes regarding "reasonable." Three States commented that electronic notification should be allowed. The environmental groups commented that electronic notification should not be the single form of notification. One commenter encouraged NOAA to require public hearings.

NOAA has specified that the State agency is responsible for public hearings and has inserted "reasonably" and removed "reasonable." This change is also made to section 930.78(a). Electronic notification cannot be the sole source of notification. This restriction is added to this section. *See* response to comments on section 930.42 for further discussion. The statute clearly provides that State agencies have the discretion to hold public hearings, thus NOAA cannot require public hearings. CZMA § 307(c)(3)(A).

Section 930.62 is deleted and part of it moved to section 930.61(a). The following section numbers in this subpart are renumbered. One State commented that NOAA should cross-reference section 930.60(a)(3). Another commenter encouraged NOAA to shorten the six-month review period. A cross reference is not needed and would be redundant. NOAA cannot shorten the six-month review period as it is set by statute, CZMA § 307(c)(3)A).

Section 930.63(a) (redesignated as section 930.62(a)) is amended to clarify that a State agency's objection must be received before or on the last day of the six-month review period.

Section 930.62(c). Two commenters said that Federal agencies should delay denying permits, rather than processing permits. NOAA disagrees. The term "processing" is correct. While States are conducting their consistency review, Federal agencies can, and should, continue processing the federal application (but not approve) to avoid prolonging the federal process if a State concurs.

Section 930.62(d) is moved from section 930.64(c). Two commenters said to change "within three months" to "after three months." Several States commented that the three-month notification may be constructive, electronic, written or verbal.

NOAA has retained "within" three months as it is required by CZMA § 307(c)(3)(B). NOAA has also left the means of notification open as the State agency needs only to be able to document the actual notification. Notice must actual, not constructive notice.

Section 930.63. One commenter recommended that a local government coastal agency be allowed to object to a consistency certification, even if the State agency does not object. NOAA disagrees. Only the State agency can implement the State's federal consistency program. *See* sections 930.6 and 930.11(o).

Section 930.64(b) (redesignated as section 930.63(b)) is amended to clarify that State agency objections must be based on enforceable policies. Sections 930.63(b) and (d) are revised to clarify that identification of alternatives is an option for the State and to provide requirements on descriptions of alternatives if a State agency chooses to identify them. These changes recognize the fact that, even if an applicant proposes to adopt a State agency's alternative, the Federal agency cannot approve the project due to the State agency's objection. Thus, if an applicant wants the federal approval the applicant must consult with the State agency and the State agency must remove its objection, unless an applicant appeals to the Secretary and prevails.

Section 930.64(c) (redesignated as section 930.63(c)). One Federal agency commented that a State should not be able to object based on a lack of information, where the information is in addition to that required by section 930.58. NOAA disagrees. The information required by section 930.58 is the information needed to start the six-month review period. In most cases this information will provide the State agency with all information that the State agency needs for its review. However, the State agency may need additional information regarding coastal effects or the project's design during the period of the State agency's review. This information would allow the State to determine whether the activity will be consistent with the management program's enforceable policies.

Section 930.64(e) (redesignated as section 930.63(e)) is amended to clarify the notification of availability of the Secretarial override process. Since a concurrence with conditions may also become an objection, a conditional concurrence must also include similar appeal language. One State commented that this subsection refers to the CZMA as opposed to the CZMA as amended in 1990. NOAA disagrees. A reference to the "CZMA" is a reference to the existing statute. It is unnecessary to refer to various amendments.

Section 930.66 (redesignated as section 930.65) is amended to provide States with a more meaningful opportunity to address instances where the State agency claims that an activity

once found consistent or not affecting any coastal use or resource, is not being conducted as originally proposed and which will cause effects on a coastal use or resource substantially different than originally proposed. Previously, States could only request that the Federal agency take remedial action. If a Federal agency does not take remedial action the State agency can request that the Director find that the effects of the activity have substantially changed and require the applicant to submit an amended or new consistency certification and supporting information, or comply with the originally approved certification. This change mirrors the existing remedial action section of subpart E (*see* section 930.86) and, like section 930.86, is not expected to be used frequently. However, the procedure exists to ensure that federal license or permit activities continue to be conducted consistent with a management program.

Section 930.66 contains a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

Section 930.75(b) is deleted as redundant with the changes to section 930.76(b) and with section 930.58. One commenter urged that a local government coastal agency or a citizen could identify additional enforceable policies. NOAA disagrees. Only the State agency can provide a consistency response to an applicant, person or Federal agency and only the State agency can interpret the management program's enforceable policies, including local government policies that are part of the management program. *See* sections 930.6 and 930.11(o). A State agency can provide for public and local government input into its response.

Section 930.77 is deleted, because this information is redundant with section 930.58, which is referenced in section 930.76(b). The rest of the sections in this subpart are renumbered accordingly (with additional minor changes, mostly conforming with changes made in subpart D). One Federal agency commented that references to MMS regulations should be updated and noted that States should not be able to object based on a lack of information where the information is in addition to that required by section 930.58. One commenter recommended that a local government coastal agency be able to object.

The citations in section 930.77 have been updated. The information required by section 930.58 is the information needed to start the six-month review period. In most cases this information will provide the State agency with the information needed to complete its review. However, additional information may be needed regarding coastal effects or the project's design for purposes of the State agency's review.

Only the State agency can provide a consistency response to an applicant, person or Federal agency and only the State agency can interpret the management program's enforceable policies, including local government policies that are part of the management program. A State agency can provide for public and local government input into its interpretation or decision, but the local government cannot make the consistency decision. *See also* sections 930.6 and 930.11(o).

Section 930.78(b) is amended to require that the State agency's response must be received within the six-month response period.

Section 930.79(a). One Federal agency and one other commenter noted that the authority to require revisions to OCS plans rest with the Secretary of the Interior, not Commerce, through the OCSLA. NOAA agrees that the OCSLA and its implementing regulations provide specific directives regarding whether an amended plan is required and whether a consistency review is required for the amended plan.

Section 930.81. One Federal agency commented that language from section 930.62 regarding Federal agency processing should be repeated in subsection (b). One commenter voiced objection to "phasing" of OCS projects. Repeating section 930.62 is not necessary in this section since the procedural requirements of subpart D apply unless modified by subpart E. The section provides for sufficient State agency control of various OCS permits to prevent unwanted "phasing" as suggested by the comment. Thus, it is reasonable and fair to allow a person to obtain a permit with which the State agency has concurred.

Section 930.82. One Federal agency commented that the CZMA does not authorize NOAA to require OCS plan amendments. NOAA disagrees. This is an existing regulatory requirement and is mandated by the CZMA, CZMA § 307(c)(3)(B). Further, this section was clarified by adding that an amended plan is required, if the person still intends to proceed with the activity.

Sections 930.83(b)–(e) (currently section 930.84(b)–(e)) are deleted since they are unnecessary and are replaced by the new reference in revised section 930.83. One Federal agency commented that the CZMA does not authorize NOAA to require plan amendments. One commenter recommended using a six-month review period instead of three months for plan amendments. NOAA disagrees. This is an existing regulatory requirement and is mandated by CZMA § 307(c)(3)(B). Further, section 930.82 was clarified by adding that an amended plan is required, if the person still intends to proceed with the activity. The three-month review period is required by the CZMA, and cannot be extended by rule to six months. *See* CZMA § 307(c)(3)(B).

Section 930.85. One Federal agency commented that the CZMA does not authorize NOAA to require a new or amended OCS plan. NOAA disagrees. Unlike the previous section where this comment was raised, section 930.82, the CZMA specifically requires an "amended" or "new" plan be submitted to the Secretary of the Interior. CZMA § 307(c)(3)(B). Section 930.85 is an existing section that facilitates such an occurrence.

Subpart F—Consistency for Federal Assistance to State and Local Governments

Section 930.94 is amended to clarify that all federal assistance activities that affect any coastal use or resource are subject to the consistency requirement. While the intergovernmental review process is the preferred method for notifying the State agency and for State agency review, the intergovernmental review process may not provide notification for all federal assistance activities subject to the consistency requirement. Sections 930.94(b) and 930.95 provide methods to ensure adequate notification and review, by specifying a listed and unlisted procedure. One State commented that subsection (a) should clarify how this subpart applies to applications for programmatic funding. Two States commented that the subpart should clarify that a State can object for lack of information. One Federal agency commented that subsection (b)(2) should be deleted, and subsection (b)(1) amended to reflect State flexibility in determining which Federal assistance activities will be subject to consistency through the listing procedure.

While it is not clear what the distinction is between programmatic and individual funding, the same consistency requirements would apply: effects test and consistency with enforceable policies. The basis for State agency objections under this subpart are the same as that for subpart D, section

930.63, as referenced in section 930.96(b). NOAA agrees that subsection (b)(2) be deleted and (b)(1) amended.

Section 930.94(c) is added to conform to the statutory requirement that the applicant agency provide an evaluation of consistency with enforceable policies. *See* CZMA § 307(d).

Sections 930.96(c)–(e) are deleted since the reference to section 930.63 in section 930.63(b) eliminates the need for these subsections. Two commenters recommended that the section clarify that Federal agencies not delay processing an application, "as long as they do not approve" the application, and that language regarding agreeing on conditions may be out of date due to section 930.4. One State commented that a time period for State review needs to be specified.

NOAA agrees that language should be added so that Federal agencies do not inadvertently approve funding pending State agency decisions. Section 930.96(a)(2) is still applicable, even with the addition of section 930.4. State agencies, applicant agencies and Federal agencies should always attempt to agree on conditions that meet both State and Federal requirements. This will provide the applicant agency with greater assurance of State and Federal approval. NOAA agrees that section 930.98(b) is redundant with section 930.97. Thus, section 930.98(b) is deleted. CZMA § 307(d) provides that review periods for federal assistance activities shall be determined pursuant to State intergovernmental review periods. Thus, the regulations do not specify a time period—that is left up to individual State law.

The unlisted activity procedure in section 930.98 follows the unlisted activity procedures found at section 930.54, except that Director approval is not required, because the State agency, through its monitoring and review of federal assistance activities, determines if coastal effects are reasonably foreseeable. Section 930.98(b) is deleted as it is redundant with section 930.97.

Section 930.100 is amended to provide States with more meaningful opportunity to address remedial action for previously reviewed activities. *See* discussion of section 930.65.

Section 930.101 contains a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

Subpart G—Secretarial Mediation

Only minor changes were made to subpart G. Subpart G provides a process for Federal agencies and coastal States to request that the Secretary of Commerce mediate serious disputes regarding the federal consistency requirements. Subpart G also provides for more informal mediation by OCRM. Both Secretarial mediation and OCRM mediation require the participation of both agencies and are non-binding.

Section 930.110. One commenter said that including the word "negotiator" could be perceived as an advocate for the Federal agency. NOAA has deleted reference to "negotiation." It was not the intent of this language to change NOAA's role, but rather to refer to the next section on informal negotiations. However, to clarify NOAA's mediation role, "negotiation" is removed from section 930.110, the title of section 930.111 is changed to "OCRM mediation," and the title of section 930.112 is changed to "Request for Secretarial mediation."

Section 930.113(a). One commenter said that public hearings should be required for Secretarial mediation. NOAA agrees. For Secretarial mediation the CZMA requires that the Secretary hold "public hearings which shall be conducted in the local area concerned." CZMA § 307(h)(2). Thus, the language from the original regulations is retained.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

Pursuant to section 307 of the Act, no Federal agency may issue a license or permit for an activity until an affected coastal State has concurred that the activity will be conducted in a manner consistent with the management program unless the Secretary, on his own initiative or on appeal by the applicant, finds that the activity is consistent with the objectives of the Act or is otherwise necessary in the interest of national security. Subpart H sets forth the procedures applicable to such appeals and the requirements for such findings by the Secretary.

Changes were made to section 930.121(a) and (b) to ensure that the Secretary overrides a State's objection only where the activity significantly or substantially furthers the national interest and that interest outweighs the adverse coastal effects of the activity. Several commenters noted that the changes would improve the appeal process. One commenter said that States are not required to undertake consistency reviews, and said that the criteria needs to be changed so that the Secretary is not substituting his judgement for that of the State when no compelling national interest is at stake, and that there must be a strong presumption in favor of upholding the State's decision.

NOAA agrees that changes to this section are necessary to clarify the criteria established for the Secretarial override of State objections to consistency certifications. However, NOAA disagrees that the regulations need wholesale revision. The CZMA directs the Secretary to consider whether an activity that a State has determined to be inconsistent with the enforceable policies of its management program is nonetheless consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. An activity is consistent with the objectives of the CZMA only if it satisfies *each* of the three (previously four) elements of section 930.121. The Secretary's review is an independent assessment of the proposed activity and whether the proposed activity meets the objectives of the CZMA or is necessary in the interest of national security. The Secretary does not review the judgement of the State agency other than to ensure that the State's objection was properly made within the requirements of subparts D, E, F and I. Although one of the central goals of the CZMA is to encourage State management of coastal resources, the Secretary's review is available to ensure that proposals that further the national objectives articulated in the Act may be allowed to proceed notwithstanding their inconsistency with the enforceable policies of a management program. *See also* response to comment on section 930.3.

Section 930.121(a). Several States and the environmental groups commented that the phrase "one or more of" the CZMA objectives is inconsistent with the statutory language and is a mere checklist approach resulting in the appellant automatically satisfying this element. The regulatory language should refer to all the objectives. The States also commented that subsection (c) should be deleted. The States also commented that the phrase "de minimis" did not convey the importance of having the Secretary override a State's objection only where there is a national interest in the CZMA objective being addressed. One Federal agency commented that "de minimis" was confusing.

NOAA agrees with the majority of commenters that Secretarial overrides should occur only where a project furthers the national interest in a significant or substantial way. Congress acknowledged a national objective in the "effective management, beneficial use, and development of the coastal zone" and specifically chose the States as the best vehicle to further this national interest. CZMA § 302(a). The

language and structure of §§ 302 and 303 make clear that Congress chose the States, in partnership with the federal government, to further the national interest "to preserve, protect, develop and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." CZMA § 303(1). The Secretarial review function is not intended to upend the State management structure by replacing the State agency's decision with the Secretary's, for projects which are essentially local government land use decisions and which do not significantly or substantially further the national interest in the CZMA's objectives. The purpose of the Secretary's review is to ensure that projects which do significantly or substantially further the national interest in the CZMA's objectives, and where the national interest outweighs impacts to coastal uses and resources, may be federally approved notwithstanding their inconsistency with the enforceable policies of a management program. NOAA acknowledges the views of several commenters that the application of NOAA's regulations has presented the Secretary with proposed activities that, while falling under the CZMA's objectives, did not significantly or substantially contribute to the national interest in the CZMA objectives. This application of the regulations has created the appearance that the Secretary overlooked the intent of the Act to support the States' use of section 307 to require that federal license or permit activities be consistent with federally approved management programs. The proposed rule attempted to address this concern and the final rule offers the further clarification requested by all commenters.

The proposed rule introduced the concept that a proposed activity have more than a *de minimis* relationship to the national objectives articulated in §§ 302 and 303 of the Act. As stated in the preamble to the proposed rule, the purpose of the change was to allow the Secretary to focus her review on activities of national concern not local land use issues with a minimal connection to the national goals of coastal resource management. 65 Fed. Reg. 20279. However, as all of the commenters pointed out, the use of de minimis as a descriptor was insufficient to convey the need to focus the Secretary's review on proposed activities of a national import.

In response to these comments, NOAA has removed the phrase de minimis and replaced it with the phrase "furthers the national interest * * * in a significant or substantial manner" with the intent of emphasizing the need for an appellant to demonstrate that the proposed activity is of such import to the national goals for coastal resource management that, despite the will of State and local government decision makers, the Secretary of Commerce should independently review the proposed activity to determine its consistency with the CZMA. The final rule uses the same phrase as that contained in 930.121(b), "national interest," instead of "one or more of the competing objectives and purposes" to clarify the necessity that a proposed activity have a national component to its furtherance of the policies and objectives of the Act.

By adding the words significantly and substantially to describe the degree to which the proposed activity advances the national interest, NOAA intends to emphasize the importance of the relationship between the activity and the national perspective of the goals articulated in §§ 302 and 303. The dictionary definition of substantial includes "considerable in importance, value, degree, amount or extent." The American Heritage Dictionary, 1976. In other words, the activity must be more than related to one of the category of objectives described in §§ 302 or 303—it must contribute to the national achievement of those objectives in an important way or to a degree that has a value or impact on a national scale. The use of the word significant (which is defined as "important, notable, valuable") is added to convey NOAA's view that a project can be of national import without being quantifiably large in scale or impact on the national economy.

Requiring that a proposed activity demonstrate that it significantly or substantially furthers the national interest creates the appropriate relationship between the central objective of the CZMA to encourage State management of coastal resources and the Secretary's role in ensuring the national interest is fully considered in the implementation of management programs. To determine whether a project significantly or substantially furthers the national interest, NOAA encourages appellants and States to consider three factors: (1) The degree to which the activity furthers the national interest; (2) the nature or importance of the national interest furthered as articulated in the CZMA; and (3) the extent to which the proposed activity is coastal dependent.

An example of an activity that significantly or substantially furthers the national interest is the siting of energy facilities or OCS oil and gas development. Such activities are coastal dependent industries with economic implications beyond the immediate locality in which they are located. Some activities, such as a house, a restaurant, or a food store, may contribute to the economy of the coastal municipality or State, but are not coastal dependent and may not provide significant or substantial economic contributions to the national interest furthered by the objectives in §§ 302 and 303. It may be more difficult to discern whether other activities significantly or substantially further the national interest. For instance, a marina facility is coastal dependent, furthers the goals of the CZMA in public access and recreation on our coasts, but its economic effects may be purely local. Conversely, the addition of a runway to an international airport may significantly enhance the national economy while not being coastal dependent. Whether a project significantly or substantially furthers the national interest in the objectives of §§ 302 and 303, especially for the latter types of projects (the marina and airport examples), will depend on the Secretary's decision record.

Section 930.121(b). Several States commented that the national interest in subsection (b) be a compelling national interest and one State commented that the revised language weakens the current language. One State did understand NOAA's change by commenting that under the current regulation, subsection (b) can be read as meaning that if the State interest, or effects to coastal resources, and the national interest are equal, then the national interest in the activity will take precedence.

NOAA views many of the comments concerning the balancing of the national interest and the effects on coastal uses and resources to have been addressed by the change to section 930.121(a) requiring the proposed activity to further the national interest in a significant or substantial manner. *See* NOAA response above. In the final rule, NOAA reorganized the clauses in the proposed rule to address the concern that section 930.121(b) is grammatically ambiguous. It is not NOAA's intent that the cumulative benefits of a proposed activity be weighed against coastal effects. Not only could this lead to the consideration of an endless stream of benefits from the flow of commerce, it could diminish one of the essential purposes of the CZMA to assist States in planning, restoring and conserving coastal resources. The reordered language is intended to make clear that

to override a State's objection the Secretary must find that the national interest found to be furthered in a significant or substantial manner in section 930.121(a), outweighs the potential individual or cumulative effects the proposed activity may have on coastal uses and resources.

Section 930.121(c). Several States and others commented that this section should be deleted, because any activity must comply with the requirements of the Clean Air and Water Acts. NOAA agrees. Removal of this criteria does not alter in any way the Secretary's obligation to evaluate and consider the potential adverse effects of a proposed activity on coastal air and water resources. NOAA will continue to seek the views and comments of the expert agencies charged with implementation of these statutes. The deletion of this criterion simply removes the obligation of the Secretary to develop an administrative finding that a proposed activity will or will not meet the requirements of the Clean Air Act and Clean Water Act. As the commenters point out, that obligation is fulfilled by other State and Federal agencies. As provided for in CZMA § 307(f), States must include water pollution control and air pollution control requirements in their management programs and those requirements may form the basis of a State objection.

Section 930.121(d) was amended to clarify the determination by the Secretary of the availability of alternatives. Currently, under the other elements of section 930.121, the Secretary may consider many factors when determining whether an appellant has met a particular element. Regarding the element on alternatives, there is confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal. The changes to section 930.121(d) reflect the independent basis of the Secretary's decision by not restricting the scope of the Secretary's review. These changes will ensure that the Secretary's findings regarding alternatives will not be restricted, but will be informed and based on the Secretary's independent administrative record for each case. In this way, both the State and appellant will be able to provide the Secretary with information on whether an alternative is reasonable and described with sufficient specificity that might not have been available when the State issued its objection. Several States commented that this section should require that the activity can only be done at the proposed location or that alternatives for other uses of the property be considered. One Federal agency commented that the Federal permitting agency's opinion be given considerable weight when determining whether an alternative is reasonable.

NOAA disagrees with the comments. NOAA intended this provision to make clear that there is a broad range of sources from which the Secretary may draw his examination of the alternatives to the activity as proposed. The Secretary is limited in consideration to reasonable alternatives that meet in whole or at least in part the appellant's purpose. The Secretary does not consider alternatives that are unrelated to or do not meet in some reasonable way the appellant's objective in proposing the activity. NOAA does not intend this provision to deter a State, or other parties, from proposing to move the proposed activity to another site to make better use of existing infrastructure. Nevertheless, alternatives must be "reasonable." NOAA disagrees that the new rule language diminishes or in any way affects the weight the Secretary accords the comments of Federal agencies.

Section 930.125 is revised to make it consistent with the 1990 amendments to the CZMA. The changes include the requirement that an appellant pay a filing fee to the Secretary.

Section 930.126 codifies and explains the statutory requirement for the Secretary to collect fees from appellants to recover the costs of administering and processing appeals. These fees are in addition to the filing fees. *See* CZMA § 307(i).

Section 930.127 clarifies when an appellant must submit supporting data and information. This requirement is necessary so that the Secretary can meet new time limits placed on the Secretary by the 1996 amendments to the CZMA. One commenter urged that rather than listing NOAA's address, it would be better to note a source for finding the correct address. NOAA disagrees. NOAA provides the address of the Assistant General Counsel for Ocean Services for the benefit of appellants using the regulations to form and file their appeals to the Secretary. This office has been in the same location for seven years, and if it moves, mail will be forwarded and the Code of Federal Regulations may be updated in due course.

Section 930.129(a)(6). One commenter objected to subsection (a)(6) regarding dismissal of appeals due to an improperly lodged State objection. One Federal agency commented that this language was confusing and should be reworded such that if a State improperly lodges its objection, the Secretary would rule in favor of the appellant. NOAA agrees that the language is confusing and has modified the rule accordingly. In addition, this provision is now a separate provision to illustrate its difference with other grounds for dismissal. The purpose of this provision is improve the administration of the appeals process by addressing procedural deficiencies in the issuance of the State's objection early in the process before the parties and the Secretary have invested significant resources in the development of an administrative record. A State's objection is not properly issued if it fails to comply with the requirements of section 307 of the Act or with the regulations contained in subparts D, E, F and I. To dismiss an objection because the State has not followed the proper procedures is actually to override the State's objection on procedural grounds. In the event an appellant claims that a State objection has not been properly issued, the Secretary may review the question as a threshold matter and upon finding that the objection was not properly issued, may override the State's objection.

Section 930.129(d). One Federal agency commented that, while supporting this provision to remand significant new information to the State agency, a three month review period be imposed. One commenter said that this subsection would lengthen the process and be inconsistent with the 1996 CZMA amendments. One State commented that the State should have the full statutory time of six months to review significant new information.

The purpose of this part is to ensure that a State agency has an opportunity to review significant new information to determine whether in light of that new information a proposed project is consistent with the enforceable policies of its management program. The Secretarial review follows the requirements of section 930.121 and does not examine the proposed project for consistency with the management program. When new information is developed that is significant to issues raised by the State, it is appropriate for the Secretary to request the State to determine whether its objection continues or whether in light of the new information the proposed activity is consistent with the management program and the State objection can be removed. Increasingly, appeals to the Secretary result in the development of extensive administrative records containing information never reviewed by the State agency. This provision and

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those in section 930.129(b) and (c) are intended to ensure that a State agency has an opportunity to reexamine a proposed activity when significant new information is developed or provided. In addition, NOAA added a time limitation on the remand to the State to a period of three (3) months, since the remand to the State is not another consistency review. Three months is sufficient time for the State agency to review the significant new material and determine if its objection still stands.

Section 930.131(a)(2). One State commented that the Secretary should not have the authority to override a State's objection when the State objected for lack of information. NOAA disagrees. The Secretary may override a State objection based on lack of information if she finds the administrative record before her provides sufficient information to make the findings required by section 930.121. There is no authority to the contrary. This section is moved to section 930.127(d).

Section 930.131 is amended to clarify the procedures applicable to reviews initiated by the secretary on his/her own initiative. Section 930.132(b) is superseded by section 8 of the Coastal Zone Protection Act of 1996, Pub. L. 104–150. Section 8 created a new § 319 of the CZMA concerning the timing of appeals which is reflected in new section 930.130.

Sections 930.133 and 134 are deleted, because these provisions are included in other sections of subpart H.

Subpart I—Assistant Administrator Reporting and Review

Existing subpart I is deleted. This subpart has never been used, and there are other existing CZMA mechanisms for reporting and review: oversight and monitoring under CZMA section 306, evaluations under CZMA § 312, appeals under CZMA § 307, and unlisted activity review approvals.

In addition, section 930.145 is revised and moved to section 930.3.

Proposed Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

The CZARA clarified that the federal consistency trigger is coastal effects, regardless of the geographic location of the federal activity. *See* CZMA § 307; Conference Report at 970–972. Thus, federal consistency applies to all relevant federal actions, even when they occur outside the State's coastal zone and in another State. For example, State A may review a federal permit application for an activity occurring wholly within State B if State A has a federally approved coastal management program and the activity will have coastal effects. An example of this type of activity is the placement of a sewage outfall pipe in State B's waters that results in impacts to shellfish harvesting waters in State A. NOAA believes that regulations are needed so that the application of interstate consistency is carried out in a predictable, reasonable, and efficient manner. NOAA is specifically addressing interstate consistency to encourage neighboring States to cooperate in dealing with common resource management issues, and to provide States, permitting agencies, and the public with a more predictable application of the consistency requirement to these activities. Interstate resource management issues are best resolved on a cooperative, proactive basis.

Section 930.151. Two States and one other commenter commented that the CZMA does not authorize interstate consistency. One State commented that section 930.151 should be amended to include all federal activities to take into account activities in the Exclusive Economic Zone.

NOAA strongly disagrees with the comments stating that the CZMA does not authorize interstate consistency. The Secretary has previously made clear that the CZMA authorizes interstate consistency, upholding NOAA's long-standing position. For a detailed analysis on the CZMA and interstate consistency which responds to and refutes all the arguments raised by the commenters, see Secretary of Commerce, Decision and Findings in the Consistency Appeal of the Virginia Electric and Power Company from an Objection by the North Carolina Department of Environment, Health and Natural Resources, at vi and 9–18 (May 19, 1994), upheld in *North Carolina* v. *Brown*, Civil Action No. 94–1569 (TFH) (D.D.C. Sep. 27, 1994). This decision was based on a 1989 NOAA General Counsel opinion, the language of the CZMA and the Conference Report. *See also* 136 Cong. Rec. H 8077 (Sep. 26, 1990). At the time of the Secretary's 1994 decision, previous statements by the Army Corps of Engineers and the U.S. Department of Justice (Justice) that were contrary to NOAA's position were reconciled when Justice deferred to NOAA's interpretation of the CZMA regarding the application of consistency to an activity occurring in another State. Justice stated that, "we believe the department of Commerce is the agency with statutorily assigned responsibilities for administering the CZMA and therefore Commerce has the authority in the first instance to interpret the Act." Letter from Webster L. Hubbell, Associate Attorney General, Justice, to Carol C. Darr, General Counsel, Commerce (Dec. 14, 1993).

Generally, an activity, regardless of its location, that requires federal approval is subject to the CZMA § 307(c)(3)(A). The CZMA requires that: "any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall * * * [certify] that the proposed activity complies with the enforceable policies of the state's approved program * * *." CZMA § 307(c)(3)(A). Thus, federal consistency is triggered when an activity affects the coastal zone. Project location and political boundaries are, generally, irrelevant. The procedural and substantive dictates that allow the reviewing State to review an activity are the same, whether the activity is within its State boundaries, but outside the coastal zone; or located wholly in another State. Interstate consistency does not expand a coastal State's jurisdiction or affect the sovereignty of other States. Federal consistency applies only to federal actions, not State actions. If State A determines that an activity in State B would affect its coastal resources, but no federal permit or other federal action is required to undertake the activity, State A does not have any authority under the CZMA to review that activity. The CZMA also, even when there is a federal consistency trigger, does not give coastal States the authority to review the application of the laws, regulations, or policies of any other State. The CZMA only allows a State agency to review the federal approval of an activity.

This subpart deals with "interstate" activities. Thus, Federal agency activities or federal license or permit activities occurring in Federal waters are covered under subpart C and D.

Sections 930.153 and 154. One State commented that if a State followed the listing procedures why would the unlisted procedure be needed. One State objected to having to list interstate activities. One Federal agency and one State noted that the listing requirements are essential and fair.

The unlisted activity language is included in section 930.154(e) for two reasons: (1) To clarify that the unlisted procedure is not available until the State first goes through the listing procedure for those permits it wants to review, and (2) to clarify that the unlisted activity procedure is available, even after going through the listing procedure to ensure that the State agency has the opportunity to review activities with coastal effects that were not foreseen at the time of listing.

A consistency list is a reasonable interpretation of the statute as a means of providing an orderly and predictable process. The proposed interstate consistency notification/consultation/listing procedure does not add a new program requirement. States are already required to have such lists and to define the geographic area outside the coastal zone where the lists will apply. Few States have described this geographic area. To meet the interstate requirement a State may choose to not change its list, but only to add an interstate geographic scope. The proposed procedure also does not mean that a State cannot review a type of federal activity; it means that the State must first consult with neighboring States and notify potential interstate applicants and federal agencies. This consultation procedure does not require that the State prove coastal effects or that neighboring States concur with the listing and geographic location description. Thus, NOAA does not believe that meeting this requirement is burdensome. NOAA believes that it is important that States must first go through the notification and listing procedure. Only then can a State review an interstate activity. This is necessary due to the often controversial nature of reviewing interstate activities. This will help ensure that interstate consistency reviews are carried out in a reliable, predictable and efficient manner, with notification to individuals in other States potentially subject to consistency review.

Sections 930.155(c), 156(a) and (b). One Federal agency commented that there is no statutory requirement for Federal agencies to coordinate with States in developing a proposed activity, beyond the coordination required under CZMA § 307. NOAA agrees. Sections 930.155(c) and 156(a) are deleted as other subparts provide the requirements for coordination through consistency determinations and consistency certifications.

VIII. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 13132: Federalism Assessment

NOAA concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The changes in the federal consistency regulations facilitate Federal agency coordination with coastal States, and ensure that federal actions affecting any coastal use or resource are consistent with the enforceable policies of management programs. The CZMA and these revised regulations promote the principles of federalism articulated in Executive Order 13132 by granting the States a qualified right to review certain federal activities that affect the land and water uses or natural resources of State coastal zones. CZMA § 307 and these regulations effectively transfer power from Federal agencies to State agencies when Federal agencies propose activities or applicants for federal licenses or permits propose to undertake activities affecting State coastal uses or resources. Through the CZMA, Federal agencies carry out their activities in a manner that is consistent to the maximum extent practicable with federally approved management programs and licensees and permittees to be fully consistent with the management programs. The CZMA and these implementing regulations, rather than preempting a State provide a mechanism for it to object to federal activities that are not consistent with the management program. A State objection prevents the issuance of the federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance State authorities, no federalism assessment need be prepared.

Executive Order 12866: Regulatory Planning and Review

This regulatory action has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when this rule was proposed, that the rule, if adopted, would not have a significant impact on a substantial number of small entities. One comment was received regarding the substance of that certification. One Federal agency commented that there may be additional factors, which may not have been adequately considered, that could have potential impacts on small businesses, and asked that NOAA consider this information. In particular, the infrastructure needed to explore and develop the OCS requires planning in advance of an expected drilling or construction date. For example, certain types of infrastructure (such as specialized drilling rigs) are in limited supply, requiring that contracts be signed well before permitted activities commence. Many of the changes contemplated in the proposed rule involve new procedures, extensions of time for consistency review, and additional information collection and reporting requirements during the consistency review and appeals processes. These changes may cause unpredictability that could affect a substantial number of small businesses operating on the OCS. Currently, four out of five people who work on the OCS work for contractors, not large oil companies. Many of these contractors employ fewer than 500 people. The issues raised by the commenter were considered in the analysis that provided the factual basis for the certification. With respect to the issues raised in the comment, the analysis found that the changes contained in the proposed, and this final, rule regarding information, appeal and time requirements were minor. The conclusion in the analysis was that these changes should not have a significant economic impact on contractors for the applicant or cause unpredictability since these requirements are, for the most part, already part of doing business under the CZMA federal consistency requirement. Accordingly, the basis for the certification has not changed and neither an initial nor a final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0411. Public reporting burden for this collection of information is estimated to average the following times per response: 8 hours for a State objection and concurrence to consistency certifications or determinations; 12 hours for a State request to review unlisted activities; 1 hour for a public notice requirement; 12 hours for a request for remedial action and supplemental review; 1 hour for a listing notice; 6 hours for a request for Secretarial mediation; and 200 hours for an average appeal to the Secretary of Commerce. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for

reducing the burden, to NOAA and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a valid OMB Control Number.

National Environmental Policy Act

NOAA has concluded that this regulatory action is categorically excluded from NEPA as not having the potential for significant impact on the quality of the human environment pursuant to NAO 216–6.03c3(i). Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR part 930

Administrative practice and procedure, Coastal zone, Reporting and record keeping requirements.

Dated: November 30, 2000.

John Oliver,

Chief Financial Officer, National Ocean Service.

For the reasons set out in the preamble, NOAA has revised 15 CFR part 930 to read:

Final Revision of 15 C.F.R. part 930

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Subpart A—General Information

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930.4 Conditional concurrences.
930.5 State enforcement action.
930.6 State agency responsibility.

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930.11 Definitions.

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930.53 Listed federal license or permit activities.
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930.55 Availability of mediation for license or permit disputes.
930.56 State agency guidance and assistance to applicants.
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Subpart G—Secretarial Mediation

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Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

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930.151 Interstate coastal effect.
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930.157 Mediation and informal negotiations.

Authority: 16 U.S.C. 1451 *et seq.*

Subpart A—General Information

§ 930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations, provided that public participation requirements are met and applicable State management program enforceable policies are considered.

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved management programs; and

(g) To provide procedures which permit the Secretary to review federal license or permit activities, or federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security.

§ 930.2 Public participation.

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

§ 930.3 Review of the implementation of the federal consistency requirement.

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each State's implementation of the federal consistency requirement. The Director shall evaluate instances where a State agency is believed to have either failed to object to inconsistent federal actions, or improperly objected to consistent federal actions. This evaluation shall be incorporated within the Director's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

§ 930.4 Conditional concurrences

(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to § 930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

§ 930.5 State enforcement action.

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or State enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

§ 930.6 State agency responsibility.

(a) This section describes the responsibilities of the "State agency" described in § 930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the State's management program, efficiently coordinate all State coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the State's consistency responsibilities to a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State agency. A State may have two State agencies designated pursuant to § 306(d)(6) of the Act where the State has two geographically separate federally-approved management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (*see* subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (*see* subparts D, E and I of this part), and reviewing the consistency of federal assistance activities proposed by applicant agencies (*see* subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the

consistency of a proposed federal assistance activity.

(c) If described in a State's management program, the issuance or denial of relevant State permits can constitute the State agency's consistency concurrence or objection if the State agency ensures that the State permitting agencies or the State agency review individual projects to ensure consistency with all applicable State management program policies and that applicable public participation. requirements are met. The State agency shall monitor such permits issued by another State agency.

Subpart B—General Definitions

§ 930.10 Index to definitions for terms defined in part 930.

Term	Section
Act	930.11(a)
Any coastal use or resource	930.11(b)
Appellant	930.123
Applicant	930.52
Applicant agency	930.92
Assistant Administrator	930.11(c)
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Coastal zone	930.11(e)
Consistent to the maximum extent practicable.	930.32
Consistent with the objectives or purposes of the Act.	930.121
Development project	930.31(b)
Director	930.11(f)
Effect on any coastal use or resource.	930.11(g)
Enforceable policy	930.11(h)
Executive Office of the President	930.11(i)
Failure substantially to comply with an OCS plan.	930.86(d)
Federal agency	930.11(j)
Federal agency activity	930.31
Federal assistance	930.91
Federal license or permit	930.51
Federal license or permit activity described in detail.	930.71
Interstate coastal effect	930.151
Major amendment	930.51(c)
Management program	930.11(k)
Necessary in the interest of national security.	930.122
OCS plan	930.73
OCRM	930.11(l)
Person	930.72
Secretary	930.11(m)
Section	930.11(n)
State agency	930.11(o)

§ 930.11 Definitions.

(a) *Act.* The term "Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

(b) *Any coastal use or resource.* The phrase "any coastal use or resource" means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a management program.

(c) *Assistant Administrator.* The term "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities.* The term "associated facilities" means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (*e.g.*, activity, development project, license, permit, or assistance), and without which the federal action, as proposed, could not be conducted. The proponent of a federal action shall consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I).

(e) *Coastal Zone.* The term "coastal zone" has the same definition as provided in § 304(1) of the Act.

(f) *Director.* The term "Director" means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect).* The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a federal action. (The term "federal action" includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy.* "The term "enforceable policy" means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone," 16 USC 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *Executive Office of the President.* The term "Executive Office of the President" means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

(j) *Federal agency.* The term "Federal agency" means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation.

(k) *Management program.* The term "management program" has the same definition as provided in section 304(12) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

(l) *OCRM.* The term "OCRM" means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration

("NOAA"), U.S. Department of Commerce.

(m) *Secretary.* The term "Secretary" means the Secretary of Commerce and/or designee.

(n) *Section.* The term "Section" means a section of the Coastal Zone Management Act of 1972, as amended.

(o) *State agency.* The term "State agency" means the agency of the State government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

Subpart C—Consistency for Federal Agency Activities

§ 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

§ 930.31 Federal agency activity.

(a) The term "Federal agency activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. This encompasses a wide range of Federal agency activities which initiate an event or series of events where coastal effects are reasonably foreseeable, *e.g.*, rulemaking, planning, physical alteration, exclusion of uses. The term "Federal agency activity" does not include the issuance of a federal license or permit to an applicant or person (*see* subparts D and E of this part) or the granting of federal assistance to an applicant agency (*see* subpart F of this part).

(b) The term federal "development project" means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit program proposed by a Federal agency is subject to this subpart if the general permit program does not involve case-by-case approval by the Federal agency, unless a Federal agency chooses to subject its general permit program to consistency review under subpart D of this part, by providing the State agency with a consistency certification. When proposing a general permit program, a Federal agency shall provide a consistency determination to the relevant management programs and request that the State agency(ies) provide the Federal agency with conditions that would permit the State agency to concur with the Federal agency's consistency determination. State concurrence shall remove the need for the State agency to review future case-by-case uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, to the maximum extent practicable, incorporate the State conditions into the general permit. If the State conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not authorized for that State unless the State agency concurs that the activity is consistent with the enforceable policies of its management program. Accordingly, the applicants in those States shall provide the State agency with a consistency certification under subpart D of this part.

(e) The terms "Federal agency activity" and "Federal development project" also include modifications of any such activity or development project which affect any coastal use or resource, provided that, in the case of modifications of an activity or development project which the State agency has previously reviewed, the effect on any coastal use or resource is substantially different than those previously reviewed by the State agency.

§ 930.32 Consistent to the maximum extent practicable.

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

(2) Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing in such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program.

(3) For the purpose of determining consistent to the maximum extent practicable under paragraphs (a)(1) and (2) of this section, federal legal authority includes Federal appropriation Acts if the appropriation Act includes language that specifically prohibits full consistency with specific enforceable policies of management programs. Federal agencies shall not use a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being fully consistent in Federal budget and planning processes as a basis for being consistent to the maximum extent practicable with an enforceable policy of a management program. The only circumstance where a Federal agency may rely on a lack of funding as a limitation on being fully consistent with an enforceable policy is the Presidential exemption described in section 307(c)(1)(B) of the Act (16 USC 1456(c)(1)(B)). In cases where the cost of being consistent with the enforceable policies of a management program was not included in the Federal agency's budget and planning processes, the Federal agency should determine the amount of funds needed and seek additional federal funds. Federal agencies should include the cost of being fully consistent with the enforceable policies of management programs in their budget and planning processes, to the same extent that a Federal agency would plan for the cost of complying with other federal requirements.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of an emergency or other similar unforeseen circumstance ("exigent circumstance"), which presents the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. Any deviation shall be the minimum necessary to address the exigent circumstance. Federal agencies shall carry out their activities consistent to the maximum extent practicable with the enforceable policies of a management program, to the extent that the exigent circumstance allows. Federal agencies shall consult with

State agencies to the extent that an exigent circumstance allows and shall attempt to seek State agency concurrence prior to addressing the exigent circumstance. Once the exigent circumstances have passed, and if the Federal agency is still carrying out an activity with coastal effects, Federal agencies shall comply with all applicable provisions of this subpart to ensure that the activity is consistent to the maximum extent practicable with the enforceable policies of management programs. Once the Federal agency has addressed the exigent circumstance or completed its emergency response activities, it shall provide the State agency with a description of its actions and their coastal effects.

(c) A classified activity that affects any coastal use or resource is not exempt from the requirements of this subpart, unless the activity is exempted by the President under section 307(c)(1)(B) of the Act. Under the consistent to the maximum extent practicable standard, the Federal agency shall provide to the State agency a description of the project and coastal effects that it is legally permitted to release or does not otherwise breach the classified nature of the activity. Even when a Federal agency may not be able to disclose project information, the Federal agency shall conduct the classified activity consistent to the maximum extent practicable with the enforceable policies of management programs. The term classified means to protect from disclosure national security information concerning the national defense or foreign policy, provided that the information has been properly classified in accordance with the substantive and procedural requirements of an executive order. Federal and State agencies are encouraged to agree on a qualified third party(ies) with appropriate security clearance(s) to review classified information and to provide non-classified comments regarding the activity's reasonably foreseeable coastal effects.

§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.

(a) Federal agencies shall determine which of their activities affect any coastal use or resource of States with approved management programs.

(1) Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource. An action which has minimal or no environmental effects may still have effects on a coastal use (*e.g.*, effects on public access and recreational opportunities, protection of historic property) or a coastal resource, if the activity initiates an event or series of events where coastal effects are reasonably foreseeable. Therefore, Federal agencies shall, in making a determination of effects, review relevant management program enforceable policies as part of determining effects on any coastal use or resource.

(2) If the Federal agency determines that a Federal agency activity has no effects on any coastal use or resource, and a negative determination under § 930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the Act.

(3) (i) *De minimis* Federal agency activities. Federal agencies are encouraged to review their activities, other than development projects within the coastal zone, to identify *de minimis* activities, and request State agency concurrence that these de minimis activities should not be subject to further State agency review. *De minimis* activities shall only be excluded from State agency review if a Federal agency and State agency have agreed. The State agency shall provide for public participation under section 306(d)(14) of the Act when reviewing the Federal agency's *de minimis* activity request. If the State agency objects to the Federal agency's *de minimis* finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination pursuant to this subpart. OCRM is available to facilitate a Federal agency's request.

(ii) *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis*.

(4) *Environmentally beneficial activities.* The State agency and Federal agencies may agree to exclude environmentally beneficial Federal agency activities (either on a case-by-case basis or for a category of activities) from further State agency consistency review. Environmentally beneficial activity means an activity that protects, preserves, or restores the natural resources of the coastal zone. The State agency shall provide for public participation under section 306(d)(14) of the Act for the State agency's consideration of whether to exclude environmentally beneficial activities.

(5) General consistency determinations, phased consistency determinations, and national or regional consistency determinations under § 930.36 are also available to facilitate federal-State coordination.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(c)(1) Federal agency activities and development projects outside of the coastal zone, are subject to Federal agency review to determine whether they affect any coastal use or resource.

(d) Federal agencies shall broadly construe the effects test to provide State agencies with a consistency determination under § 930.34 and not a negative determination under § 930.35 or other determinations of no effects. Early coordination and cooperation between a Federal agency and the State agency can enable the parties to focus their efforts on particular Federal agency activities of concern to the State agency.

§ 930.34 Federal and State agency coordination.

(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.

(2) *Use of existing procedures.* Federal agencies are encouraged to coordinate and consult with State agencies through use of existing procedures in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens. Where necessary, these existing procedures should be modified to facilitate coordination and consultation under the Act.

(b) *Listed activities.* State agencies are strongly encouraged to list in their management programs Federal agency activities which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. Listed Federal agency activities shall be described in terms of the specific type of activity involved (*e.g.*, federal reclamation projects). In the event the State agency chooses to describe Federal agency activities that occur outside of the coastal zone, which the State agency believes will have reasonably foreseeable coastal effects, it shall also describe the geographic location of such activities (*e.g.*, reclamation projects in coastal floodplains).

(c) *Unlisted activities.* State agencies should monitor unlisted Federal agency activities (*e.g.*, by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, and the **Federal Register**) and should notify Federal agencies of unlisted Federal agency activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. The provisions in paragraphs (b) and (c) of this section are recommended rather than mandatory procedures for facilitating federal-State coordination of Federal agency activities which affect any coastal use or resource. State agency notification to the Federal agency (by listed or unlisted notification) is neither a substitute for nor does it eliminate Federal agency responsibility to comply with the consistency requirement, and to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal agency activities which the Federal agency finds affect any coastal use or resource, regardless of whether the State agency has listed the activity or notified the Federal agency through case-by-case monitoring.

(d) *State guidance and assistance to Federal agencies.* As a preliminary matter, a decision that a Federal agency activity affects any coastal use or resource should lead to early consultation with the State agency (*i.e.*, before the required 90-day period). Federal agencies should obtain the views and assistance of the State agency regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request.

§ 930.35 Negative determinations for proposed activities.

(a) If a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the State agencies with a negative determination for a Federal agency activity:

(1) Identified by a State agency on its list, as described in § 930.34(b), or through case-by-case monitoring of unlisted activities; or

(2) Which is the same as or is similar to activities for which consistency determinations have been prepared in the past; or

(3) For which the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity.

(b) *Content of a negative determination.* A negative determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects, Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a management program and include the evaluation in the negative determination. The level of detail in the Federal agency's analysis may vary depending on the scope and complexity of the activity and issues raised by the State agency, but shall be sufficient for the State agency to evaluate whether coastal effects are reasonably foreseeable.

(c) A negative determination under paragraph (a) of this section shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule. A State agency is not obligated to respond to a negative determination. If a State agency does not respond to a Federal agency's negative determination within 60 days, State agency concurrence with the negative determination shall be presumed. State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. If a State agency objects to a negative determination, asserting that coastal effects are reasonably foreseeable, the Federal agency shall consider submitting a consistency determination to the State agency or otherwise attempt to resolve any disagreement within the remainder of the 90-day period. If a Federal agency, in response to a State agency's objection to a negative determination, agrees that coastal effects are reasonably foreseeable, the State agency and Federal agency should attempt to agree to complete the consistency review within the 90-day period for the negative determination or consider an alternative schedule pursuant to § 930.36(b)(1). Federal agencies should consider postponing final Federal agency action, beyond the 90-day period, until a disagreement has been resolved. State agencies are not required to provide public notice of the receipt of a negative determination or the resolution of an objection to a negative determination, unless a Federal agency submits a consistency determination pursuant to § 930.34.

(d) In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity affects any coastal use or resource, either party may seek the Secretarial mediation or OCRM mediation services provided for in subpart G.

§ 930.36 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal agency activities which affect any coastal use or resource in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. Federal agencies should consult with State agencies at an early stage in the development of the proposed activity in order to assess whether such activities will be consistent to the maximum extent practicable with the enforceable policies of such programs.

(b) *Timing of consistency determinations.* (1) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to reasonably determine the consistency of the activity with the management program, but before the Federal agency reaches a significant point of decisionmaking in its review process, i.e., while the Federal agency has the ability to modify the activity. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

(2) Federal and State agencies may mutually agree upon procedures for extending the notification requirement beyond 90 days for activities requiring a substantial review period, and for shortening the notification period for

activities requiring a less extensive review period, provided that public participation requirements are met.

(c) *General consistency determinations.* In cases where Federal agencies will be performing repeated activity other than a development project (*e.g.*, ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (*see* § 930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(d) *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (*e.g.*, planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the management program.

(e) *National or regional consistency determinations.* (1) A Federal agency may provide States with consistency determinations for Federal agency activities that are national or regional in scope (*e.g.*, rulemaking, national plans), and that affect any coastal use or resource of more than one State. Many States share common coastal management issues and have similar enforceable policies, *e.g.*, protection of a particular coastal resource. The Federal agency's national or regional consistency determination should, at a minimum, address the common denominator of these policies, *i.e.*, the common coastal effects and management issues, and thereby address different States' policies with one discussion and determination. If a Federal agency decides not to use this section, it must issue consistency determinations to each State agency pursuant to § 930.39.

(2) Federal agency activities with coastal effects shall be consistent to the maximum extent practicable with the enforceable policies of each State's management program. Thus, the Federal agency's national or regional consistency determination shall contain sections that would apply to individual States to address coastal effects and enforceable policies unique to particular States, if common coastal effects and enforceable policies cannot be addressed under paragraph (e)(1). Early coordination with coastal States will enable the Federal agency to identify particular coastal management concerns and policies. In addition, the Federal agency could address the concerns of each affected State by providing for State conditions for the proposed activity. Further, the consistency determination could identify the coordination efforts and describe how the Federal agency responded to State agency concerns.

§ 930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination is required for ongoing Federal agency activities other than development projects initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination is required for major, phased federal development project decisions described in § 930.36(d) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider effects on any coastal use or resource not fully evaluated at the outset of the project. This provision shall not apply to phased federal decisions which were specifically described, considered and approved prior to management program approval (*e.g.*, in a final environmental impact statement issued pursuant to NEPA).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination, or provided to the State agency simultaneously with the consistency determination if the evaluation is contained in another document. Where a Federal agency is aware, prior to its submission of its consistency determination, that its activity is not fully consistent with a management program's enforceable policies, the Federal agency shall describe in its consistency determination the legal authority that prohibits full consistency as required by § 930.32(a)(2). Where the Federal agency is not aware of any inconsistency until after submission of its consistency determination, the Federal agency shall submit its description of the legal authority that prohibits full consistency to the State agency as soon as possible, or before the end of the 90-day period described in § 930.36(b)(1). The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity its effects on any coastal use or resource, associated facilities (*e.g.*, proposed siting and construction of access road, connecting pipeline, support buildings, and the effects of the associated facilities (*e.g.*, erosion, wetlands, beach access impacts), must all be consistent to the maximum extent practicable with the enforceable policies of the management program.

(c) In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable, policies of the management program. However, Federal agencies should give consideration to management program provisions which are in the nature of recommendations.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the management program, the Federal agency may continue to apply its stricter standards. In such cases the Federal agency shall inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

(e) *State permit requirements.* Federal law, other than the CZMA, may require a Federal agency to obtain a State permit. Even when Federal agencies are not required to obtain State permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program.

§ 930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in a Federal agency activity or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity, the Federal agencies may prepare one consistency determination for all the federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies and shall comply with the requirements of § 930.39.

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information. The 60-day review period begins when the State agency receives the consistency determination and supporting information required by § 930.39(a). If the information required by § 930.39(a) is not included with the determination, the State agency shall immediately notify the Federal agency that the 60-day review period has not begun, what information required by § 930.39(a) is missing, and that the 60-day review period will begin when the missing information is received by the State agency. If a Federal agency has submitted a consistency determination and information required by § 930.39(a), then the State agency shall not assert that the 60-day review period has not begun for failure to submit information that is in addition to that required by § 930.39(a).

(b) State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action shall not be taken sooner than 90 days from the receipt by the State agency of the consistency determination unless the State concurs or concurrence is presumed, pursuant to paragraphs (a) and (b), with the activity, or unless both the Federal agency and the State agency agree to an alternative period.

(d) *Time limits on concurrences.* A State agency cannot unilaterally place an expiration date on its concurrence. If a State agency believes that an expiration date is necessary, State and Federal agencies may agree to a time limit. If there is no agreement, later phases of, or modifications to, the activity that will have effects not evaluated at the time of the original consistency determination will require either a new consistency determination, a supplemental consistency determination under § 930.46, or a phased review under § 930.36(d) of this subpart.

(e) *State processing fees.* The Act does not require Federal agencies to pay State processing fees. State agencies shall not assess a Federal agency with a fee to process the Federal agency's consistency determination unless payment of such fees is required by other federal law or otherwise agreed to by the Federal agency and allowed by the Comptroller General of the United States. In no case may a State agency stay the consistency review period or base its objection on the failure of a Federal agency to pay a fee.

§ 930.42 Public participation.

(a) Management programs shall provide for public participation in the State agency's review of consistency determinations. Public participation, at a minimum, shall consist of public notice for the area(s) of the coastal zone likely to be affected by the activity, as determined by the State agency.

(b) *Timing of public notice.* States shall provide timely public notice after the consistency determination has been received by the State agency, except in cases where earlier public notice on the consistency determination by the Federal agency or the State agency meets the requirements of this section. A public comment period shall be provided by the State sufficient to give the public an opportunity to develop and provide comments on whether the project is consistent with management program enforceable policies and still allow the State agency to issue its concurrence or objection within the 60 day State response period.

(c) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency with the enforceable policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information, *e.g.*, a State agency web site; and

(4) Specify a contact for submitting comments to the State agency.

(d) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, *e.g.*, web sites. However, electronic notices, *e.g.*, web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. States shall not require that the Federal agency provide public notice. Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, to minimize duplication of effort and to avoid unnecessary delays, so long as the joint notice meets the other requirements of this section.

§ 930.43 State agency objection.

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations).

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

(b) If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information, the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program.

(c) State agencies shall send to the Director a copy of objections to Federal agency consistency determinations.

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (*see* § 930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless:

(1) the Federal agency has concluded that under the "consistent to the maximum extent practicable" standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§ 930.32(a) and 930.39(a)), or

(2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

§ 930.44 Availability of mediation for disputes concerning proposed activities.

In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G.

§ 930.45 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; or

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the management program. The State agency's request shall include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are intended to ensure that any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal license or permit activities having interstate coastal effects.

§ 930.51 Federal license or permit.

(a) The term "federal license or permit" means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to an applicant. The term does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part. The term "lease," means a lease issued by a Federal agency to a non-federal entity that authorizes or approves the use of federal property for a non-federal activity. The term lease does not include leases issued pursuant to lease sales conducted by a Federal agency (*e.g.*, outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part if coastal effects are reasonably foreseeable.

(b) The term also includes the following types of renewals and major amendments which affect any coastal use or resource:

(1) Renewals and major amendments of federal license or permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which are filed after and are subject to management program changes not in existence at the time of original State agency review; and

(3) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which will cause an effect on any coastal use or resource substantially different than those originally reviewed by the State agency.

(c) The term "major amendment" of a federal license or permit activity means any subsequent federal approval that the applicant is required to obtain for modification to the previously reviewed and approved activity and where the activity permitted by issuance of the subsequent approval will affect any coastal use or resource, or, in the case of a major amendment subject to § 930.51(b)(3), affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity.

(d) The term "renewals" of a federal license or permit activity means any subsequent re-issuance, re-approval or extension of an existing license or permit that the applicant is required to obtain for an activity described under paragraph (b) of this section.

(e) The determination of substantially different coastal effects under paragraphs (b)(3), and (c) of this section is made on a case-by-case basis by the State agency, Federal agency and applicant. The opinion of the State agency shall be accorded deference and the terms "major amendment," "renewals" and "substantially different" shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

(f) *This subpart applies to active applications.* If an applicant withdraws its application to the Federal agency, then the consistency process is terminated. If the applicant reapplies to the Federal agency, then a new consistency review process will start. If a Federal agency stops or stays the Federal license or permit application process, then the consistency review period will be stopped or stayed for the same amount of time as for the Federal application process.

§ 930.52 Applicant.

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any nation, State, or any State, regional, or local government, who, following management program approval, either files an application for a required individual federal license or permit, or who files a consistency certification for a required general federal license or permit under § 930.31(d) to conduct an activity affecting any coastal use or resource. The term "applicant" does not include Federal agencies applying for federal licenses or permits. Federal agency activities requiring federal licenses or permits are subject to subpart C of this part.

§ 930.53 Listed federal license or permit activities.

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the federal license or permit activities shall be described in terms of the specific licenses or permits involved (*e.g.*, Corps of Engineers 404 permits, Coast Guard bridge permits). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a State's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a State's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a State has not generally described the

geographic location of review, States must follow the conditions for review of unlisted activities under § 930.54 of this subpart.

(b) *General concurrences for minor activities.* To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (*see* § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor federal license or permit activities and the relevant conditions which are covered by the general concurrence. Minor federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification shall describe the proposed change and identify the regional Federal agency staff the State has contacted for consultation.

(2) A State agency must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) No federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses or permits of the requirements of this subpart.

§ 930.54 Unlisted federal license or permit activities.

(a)(1) With the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities (*e.g.*, by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, **Federal Register** notices). State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review within 30 days from notice of the license or permit application, that has been submitted to the approving Federal agency, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application.

(2) Federal agencies or applicants should provide written notice of the submission of applications for federal licenses or permits for unlisted activities to the State agency. Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse (*i.e.*, the **Federal Register**, draft or final NEPA EISs that are submitted to the State agency, or a State's intergovernmental review process). The notice, whether actual or constructive, shall contain sufficient information for the State agency to learn of the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

(b) The State agency's notification shall also request the Director's approval to review the unlisted activity and shall contain an analysis that supports the State agency's assertion that coastal effects are reasonably foreseeable. Following State agency notification to the Federal agency, applicant and the Director, the Federal agency shall not issue the license or permit until the requirements of this subpart have been satisfied, unless the Director disapproves the State agency's request to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Director regarding the State agency's request to review the activity. The sole basis for the Director's approval or disapproval of the State agency's request will relate to whether the proposed activity's coastal effects are reasonably foreseeable. The Director shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice. The Director may extend the decision deadline beyond 30 days due to the complexity of the issues or to address the needs of the State agency, the Federal agency, or the applicant. The Director shall consult with the State agency, the Federal agency and the applicant prior to extending the decision deadline, and shall limit the extension to the minimum time necessary to make its decision. The Director shall notify the relevant parties of the expected length of an extension.

(d) If the Director disapproves the State agency's request, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Director approves the State agency's request, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Director, the applicant shall amend the federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary data and information (*see* §§ 930.58, 930.62 and 930.63). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (*see* paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and necessary data and information, whichever period terminates last.

(f) The unlisted activity procedures in this section are provided to ensure that State agencies are afforded an opportunity to review federal license or permit activities with reasonably foreseeable coastal effects. Prior to bringing the issue before the Director, the concerned parties should discuss coastal effects and consistency. The applicant can avoid delay by simply seeking the State agency's expeditious concurrence rather than waiting for the Director's decision. If an applicant, of its own accord or after negotiations with the State agency, provides a consistency certification and necessary data and information to the State agency, the review shall be deemed to have received the Director's approval, and all of the provisions of this subpart shall apply and the State agency need not request the Director's approval. If an applicant for an unlisted activity has not subjected itself to the consistency process within the 30 day notification period contained in paragraph (a) of this section, the State agency must adhere to the unlisted activity review requirements of this section to preserve its right to review the activity.

§ 930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted federal license or permit activity is subject to the federal consistency requirement, either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (*see* § 930.53) or individually approved by the Director (*see* § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Director approval.

§ 930.56 State agency guidance and assistance to applicants.

As a preliminary matter, any applicant for a federal license or permit selected for review by a State agency should obtain the views and assistance of the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the applicant, the State agency shall identify any enforceable policies applicable to the proposed activity, based upon the information submitted to the State agency.

§ 930.57 Consistency certifications.

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

(b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program."

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification. Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency);

(2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include State or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material; and

(3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related federal license or permit activities affecting any coastal use or resource for State agency review. State agencies shall, to the extent practicable, provide applicants with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license or permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that:

(i) The State agency's review has not yet begun, and that its review will commence once the necessary certification or information deficiencies have been corrected; or

(ii) The State agency's review has begun, and that the certification or information deficiencies must be cured by the applicant during the State's review period.

(2) Under paragraph (a)(1) of this section, State agencies shall notify the applicant and the Federal agency, within 30 days of receipt of the completed certification and information, of the date when necessary certification or information deficiencies have been corrected, and that the State agency's

consistency review commenced on the date that the complete certification and necessary data and information were received by the State agency.

(3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the six-month review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.61 Public participation.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided for the area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. The State agency shall not require an applicant or a Federal agency to hold a public hearing. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter.

(b) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the management program.

(c) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of the coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, *e.g.*, web sites. However, electronic notices, *e.g.*, web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. The State agency may require the applicant to provide the public notice. State agencies shall not require that the Federal agency provide public notice. The State agency may rely upon the public notice provided by the Federal agency reviewing the application for the federal license or permit (*e.g.*, notice of availability of NEPA documents) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, whenever possible to minimize duplication of effort and to avoid unnecessary delays.

§ 930.62 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. The State agency may issue a general concurrence for minor activities (*see* § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not received within six months following commencement of State agency review.

(b) If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the federal permitting agency may deny approval of the federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

(d) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the federal license or permit to ensure that proposed conditions satisfy federal as well as management program requirements (*see also* § 930.4).

§ 930.63 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Director of the objection. A State agency may assert alternative bases for its objection, as described in paragraphs (b) and (c) of this section.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(d) *Alternatives.* If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives. *See* § 930.121(d) for further details regarding alternatives for appeals under subpart H of this part.

(e) A State agency objection shall include a statement to the following effect:

> Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the [Name of State] management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

§ 930.64 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the federal license or permit except as provided in subpart H of this part.

§ 930.65 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program; or

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the enforceable policies of the management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.66 Supplemental coordination for proposed activities

(a) For federal license or permit proposed activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, applicants shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the management program. State agency notification under subsection (b) does not remove the requirement under subsection (a) for applicants to notify State agencies.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are intended to ensure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved management programs.

§ 930.71 Federal license or permit activity described in detail.

The term "federal license or permit activity described in detail" means any activity requiring a federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State; the federal government; any State, regional, or local government; or any entity of such federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail federal license or permit activities.

§ 930.73 OCS plan.

(a) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail federal license or permit activities.

(b) The requirements of this subpart do not apply to federal license or permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior

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or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail federal license or permit activities affecting any coastal use or resource.

§ 930.75 State agency assistance to persons.

As a preliminary matter, any person intending to submit to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Identify all activities described in detail in the plan which require a federal license or permit and which will have reasonably foreseeable coastal effects;

(b) Submit necessary data and information pursuant to § 930.58;

(c) When satisfied that the proposed activities meet the federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification and necessary data and information. The Secretary of the Interior or designee shall furnish the State agency with a copy of the OCS plan (excluding proprietary information), necessary data and information and consistency certification.

(d) The person's consistency certification shall be in the following form:

> The proposed activities described in detail in this plan comply with (name of State(s)) approved management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.76 shall not extend the date of commencement of State agency review.

(2) To assess consistency, the State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program (*see* 30 CFR part 252) regulations and necessary data and information (*see* 15 CFR 930.58).

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with § 930.61.

§ 930.78 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Director of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the commencement of the State agency's review. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed if the State agency's response to the consistency certification is not received within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with § 930.63.

§ 930.79 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time federal applications are actually filed for the federal licenses or permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.80 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in subpart H of this part.

§ 930.81 Multiple permit review.

(a) A person submitting a consistency certification for federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related federal license or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject to State agency consistency review (*e.g.*, Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval:

(1) For those OCS-related license or permit activities found by the State agency to be consistent with the management program; and

(2) For the license or permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the management program.

§ 930.83 Review of amended OCS plans; public notice.

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§ 930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

§ 930.84 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in § 930.80 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§ 930.82 through 930.83.

§ 930.85 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail OCS plans to make certain that such activities continue to conform to both federal and State requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include: a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Director.

(c) If, after 30 days following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or State agency may file a written objection with the Director. If the Director finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Director, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Director and the Minerals Management Service, pending approval of the amended or new OCS plan. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Director finds that one or more of the activities described in detail in the OCS plan which affects any coastal use or resource are being conducted or are having an effect on any coastal use or resource substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the management program. The Director may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Director's consideration.

Subpart F—Consistency for Federal Assistance To State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are intended to ensure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

§ 930.91 Federal assistance.

The term "federal assistance" means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term "applicant agency" means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

§ 930.93 Intergovernmental review process.

The term "intergovernmental review process" describes the procedures established by States pursuant to E.O. 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of federal financial assistance to applicant agencies.

§ 930.94 State review process for consistency.

(a) States with approved management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review

process or by direct submission to the State agency, for any proposed federal assistance activity that is listed in the management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone (*see* § 930.95(a)) or within a described geographic area outside of the coastal zone (*see* § 930.95(b)).

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program.

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (*e.g.*, coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area. (*See* § 930.98.)

§ 930.96 Consistency review.

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing (so long as they do not approve) applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as well as management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to § 930.63.

§ 930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part.

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (*e.g.*, by use of the intergovernmental review process, review of NEPA documents, **Federal Register**) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the State in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in § 930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

§ 930.99 Availability of mediation for federal assistance disputes.

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

§ 930.100 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinitiate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.101 Supplemental coordination for proposed activities.

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, the applicant agency shall further coordinate with the State agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or (2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 OCRM mediation.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

§ 930.112 Request for Secretarial mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§ 930.115 Termination of mediation.

Mediation shall terminate:

(a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,

(b) If one of the agencies withdraws from mediation,

(c) In the event the agencies fail to reach a resolution of the disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or

(d) For other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

§ 930.120 Objectives.

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

A federal license or permit activity, or a federal assistance activity, is "consistent with the objectives or purposes of the Act" if it satisfies each of the following three requirements:

(a) The activity furthers the national interest as articulated in § 302 or § 303 of the Act, in a significant or substantial manner,

(b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. When determining whether a reasonable alternative is available, the Secretary may consider but is not limited to considering, previous appeal decisions, alternatives described in objection letters and alternatives and other new information described during the appeal.

§ 930.122 Necessary in the interest of national security.

A federal license or permit activity, or a federal assistance activity, is "necessary in the interest of national security" if a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant and Federal agency.

(a) The "appellant" is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.

(b) For the purposes of this subpart, the "Federal agency" is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.

§ 930.124 Computation of time.

(a) The first day of any period of time allowed or prescribed by these rules, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a Federal holiday, in which case the period runs until the next day which is not one of the aforementioned days.

§ 930.125 Notice of appeal and application fee to the Secretary.

(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project valued in excess of $1 million shall be considered a major appeal and the application fee is $500.00. All other appeals shall be considered minor appeals and the application fee is $200.00.

(c) The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; a copy of the notice of appeal to the objecting State agency; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(d) No extension of time will be permitted for the filing of a notice of appeal.

(e) The Secretary shall waive any or all fees if the Secretary concludes upon review of the appellant's fee waiver request that such fees impose an economic hardship on appellant. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit the appropriate fees to the Secretary within 20 days of receipt of the Secretary's denial. If the fees are not received by the 20th day, then the Secretary shall dismiss the appeal.

§ 930.126 Consistency appeal processing fees.

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing appeals to the Secretary under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the Federal Register Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) of the Act (16 USC 1465(a)(2)) and § 930.130 of this subpart.

§ 930.127 Briefs and supporting materials.

(a) The Secretary shall establish a schedule of dates and time periods for submission of briefs and supporting materials by the appellant and the State agency.

(b) Both the appellant and State agency shall send copies of their briefs, supporting materials and all requests and communications to the Secretary, each other, and to the Assistant General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910.

(c) The Secretary may extend the time for submission of briefs and supporting materials on his own initiative or at the request of a party so long as the request is received prior to the date prescribed in the briefing schedule. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

(d) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit

the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in sections 930.129(b) and (c).

§ 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide timely public notice of the appeal after the receipt of the notice of appeal, and payment of application fees. At a minimum, public notice shall be provided in the **Federal Register** and the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal. The public shall be afforded no less than 30 days to comment on the appeal. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section.

(c) The Secretary shall afford interested Federal agencies, including the Federal agency whose proposed action is the subject of the appeal, with an opportunity to comment on the appeal. The Secretary shall afford notice to the Federal agencies of the time for filing their comments.

(d) The Secretary may extend the time for submitting comments on his own initiative or at the written request of a party or interested Federal agency, so long as the request is received prior to the comment date identified in the public notice. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

(e) The Secretary may hold a public hearing in response to a request or on his own initiative. If a hearing is held by the Secretary, it shall be guided by the procedures described within § 930.113.

§ 930.129 Dismissal, remand, stay, and procedural override.

(a) The Secretary may dismiss an appeal for good cause. A dismissal is the final agency action. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit a brief or supporting materials within the required period;

(3) Failure of the appellant to pay a required fee;

(4) Denial by the Federal agency of the federal license, permit or assistance application; or

(5) Failure of the appellant to base the appeal on grounds that the proposed activity is either consistent with the objectives or purposes of the Act, or necessary in the interest of national security.

(b) If the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part, the Secretary shall override the State's objection. The Secretary may make this determination as a threshold matter.

(c) The Secretary may stay the processing of an appeal on her own initiative or upon request of an appellant or State agency for the following purposes:

(1) to allow additional information to be developed relevant to the analysis required of the Secretary in 930.121,

(2) to allow mediation or settlement negotiations to occur between the applicant and State agency, or

(3) to allow for remand pursuant to paragraph (d) of this section.

(d) The Secretary may stay the processing of an appeal and remand it to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, that was not provided to the State agency as part of its consistency review, is submitted to the Secretary by the appellant, the public or a Federal agency. The Secretary shall determine a time period for the remand to the State not to exceed three months. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal and shall include the significant new information in the decision record. If the State agency concurs, then the Secretary shall dismiss the appeal and notify the Federal agency that the activity may be federally approved.

§ 930.130 Closure of the decision record and issuance of decision.

(a) No sooner than 30 days after the close of the public comment period, the Secretary shall publish a notice in the Federal Register stating that the decision record is closed and that no further information, briefs or comments will be considered in deciding the appeal.

(b) No later than 90 days after the closure of the decision record the Secretary shall issue a decision or publish a notice in the **Federal Register** explaining why a decision cannot be issued at that time. The Secretary shall issue a decision within 45 days of the publication of such notice.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(e)(1) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§ 930.131 Review initiated by the Secretary.

(a) The Secretary may, on her own initiative, choose to consider whether a federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review shall only be initiated after the completion of State agency review pursuant to the relevant subpart. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the relevant Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

§ 930.150 Objectives.

(a) A federal activity may affect coastal uses or resources of a State other than the State in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the management program of each affected State.

(b) The application of the federal consistency requirement to activities

having interstate coastal effects is addressed by this subpart in order to encourage cooperation among States in dealing with activities having interstate coastal effects, and to provide States, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

§ 930.151 Interstate coastal effect.

The term "interstate coastal effect" means any reasonably foreseeable effect resulting from a federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term "affects" means have an effect on. Effects on any coastal use or resource may also be referred to as "coastal effects."

§ 930.152 Application.

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a State with a federally-approved management program, regardless of the activities' locations (including States without a federally approved management program). The federal consistency requirement does not alter a coastal State's jurisdiction. The federal consistency requirement does not give States the authority to review the application of laws, regulations, or policies of any other State. Rather, the Act allows a management program to review federal actions and may preclude federal action as a result of a State objection, even if the objecting State is not the State in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

§ 930.153 Coordination between States in developing coastal management policies.

Coastal States are encouraged to give high priority to:

(a) Coordinating State coastal management planning, policies, and programs with respect to contiguous areas of such States;

(b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and

(c) Establishing an effective mechanism, and adopting a federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

§ 930.154 Listing activities subject to routine interstate consistency review.

(a) *Geographic location of listed activities.* Each coastal State intending to conduct a consistency review of federal activities occurring in another State shall:

(1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the State intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each State must notify and consult with the State in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* State agencies shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each State submitting this program change shall include evidence of consultation with States in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other States and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal State that fails to list federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other States, until the State meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal States have the opportunity to review relevant activities occurring in other States. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at § 930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes effect. In that time a State may review an interstate activity pursuant to § 930.54 of this part. After the transition period States must comply with this subpart in order to review interstate activities.

§ 930.155 Federal and State agency coordination.

(a) Identifying activities subject to the consistency requirement. The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected States.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect on any coastal use or resource, shall notify each affected coastal State of the proposed activity. State agencies

may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each State intending to review an activity occurring in another State must notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur (either the State's management program, or if the State does not have a management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The State's notice to the parties must be received by the 30th day after receipt of the consistency determination or certification. If a State fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur, and the Director, of its intent to review the activity, then the State waives its right to review the activity for consistency. The waiver does not apply where the State intending to review the activity does not receive notice of the activity.

§ 930.156 Content of a consistency determination or certification and State agency response.

(a) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected States with approved management programs.

(b) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

§ 930.157 Mediation and informal negotiations.

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected States, relevant Federal agencies, and applicants or applicant agencies The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

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Part IV

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Bernadino Kangaroo Rat; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH07

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Bernardino Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 22,423 hectares (55,408 acres) in San Bernardino and Riverside Counties, California, are proposed as critical habitat for the San Bernardino kangaroo rat.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering. All areas proposed for designation as critical habitat for the San Bernardino kangaroo rat contain one or more of the primary constituent elements essential to the conservation of the species.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency; and, Federal agencies proposing actions that may affect the area designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will consider all comments on the proposed rule received from interested parties by February 6, 2001. Public hearing requests must be received by January 22, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California.

3. You may send comments by electronic mail (e-mail) to FW1CFWO_sbkr@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, and supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is one of 19 recognized subspecies of Merriam's kangaroo rat (*D. merriami*), a widespread species distributed throughout arid regions of the western United States and northwestern Mexico (Hall and Kelson 1959, Williams *et al.* 1993). In coastal southern California, Merriam's kangaroo rat is the only species of kangaroo rat with four toes on each of its hind feet. The San Bernardino kangaroo rat has a body length of about 95 millimeters (mm) (3.7 inches (in)) and a total length of 230 to 235 mm (9 to 9.3 in). The hind foot measures less than 36 mm (1.4 in) in length. The body color is pale yellow with a heavy overwash of dusky brown. The tail stripes are medium to dark brown and the foot pads and tail hairs are dark brown. The flanks and cheeks of the subspecies are dusky (Lidicker 1960). The San Bernardino kangaroo rat is considerably darker and smaller than either of the other two subspecies of Merriam's kangaroo rat that occur in southern California, *D. merriami merriami* and *D. merriami collinus*. The San Bernardino kangaroo rat, endemic to southern California, is one of the most highly differentiated subspecies of Merriam's kangaroo rat and, according to Lidicker (1960), "it seems likely that it has achieved nearly species rank."

The San Bernardino kangaroo rat, a member of the family Heteromyidae, was first described by Rhoades (1894) under the name *Dipodomys parvus* from specimens collected by R.B. Herron in Reche Canyon, San Bernardino County, California. Elliot reduced *D. parvus* to a subspecies of *D. merriami* (*D. merriami parvus*) in 1901, a taxonomic treatment of the species which was confirmed by Hall and Kelson (1959) and Williams *et al.* (1993). The San Bernardino kangaroo rat appears to be separated from Merriam's kangaroo rat (*D. merriami merriami*) at the northernmost extent of its range near Cajon Pass by an 8 to 13 kilometer (km) (5 to 8 mile (mi)) gap of unsuitable habitat.

The historical range of this species extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (Hall and Kelson 1959, Lidicker 1960). Within this range, the San Bernardino kangaroo rat was known from more than 25 localities (McKernan 1993). From the early 1880s to the early 1930s, the San Bernardino kangaroo rat was a common resident of the San Bernardino and San Jacinto Valleys of southern California (Lidicker 1960). At the time of listing, based on the distribution of suitable soils and museum collections of this species, we estimated that the historical range encompassed approximately 130,587 hectares (ha) (326,467 acres (ac)) (U.S. Fish and Wildlife Service unpubl. GIS maps, 1998; in 63 FR 51005). Recent studies indicate that the species occupies a wider range of soil and vegetation types than previously thought (Braden and McKernan 2000), which suggests that the species' historical range may have been larger than we estimated at the time of listing.

Although the entire area of the historical range would not have been occupied at any given time due to hydrological processes and resultant variability in habitat suitability, the San Bernardino kangaroo rat was widely distributed across the San Bernardino and San Jacinto valleys. By the 1930s, suitable habitat had been estimated to have been reduced to approximately 11,200 ha (28,000 ac) (McKernan 1997). Habitat destruction continued such that in 1997 the San Bernardino kangaroo rat was thought to occupy only 1,299 ha (3,247 ac) of suitable habitat divided unequally among seven locations

(McKernan 1997). At the time of listing, we also estimated that an additional 5,277 ha (13,193 ac) of additional habitat that was likely occupied by the San Bernardino kangaroo rat was distributed within the Santa Ana River, Lytle and Cajon creeks, and San Jacinto River. Unlike the three largest habitat blocks, we did not provide an estimate for additional habitat that was likely occupied for the smaller remnant populations at City Creek, Etiwanda alluvial fan and wash, Reiche Canyon, and South Bloomington (including Jurupa Hills). At the time of listing, we discounted approximately 1,358 ha (3,396 ac) of the 5,277 ha (13,193 ac) of additional habitat as being too mature or degraded to support San Bernardino kangaroo rats. Additional research has indicated that San Bernardino kangaroo rats occupy mature alluvial scrub, coastal sage scrub, and even chaparral vegetation types (McKernan 2000). Thus, a minimum of approximately 6,576 ha (16,440 ac) of habitat was likely occupied at the time of listing.

Additional research has expanded our knowledge on the distribution and habitat needs of the San Bernardino kangaroo rat. We are proposing critical habitat for the Santa Ana River (including City, Plunge, and San Timoteo Creeks), Lytle and Cajon Creeks, San Jacinto River and Bautista Creek, Etiwanda alluvial fan (including the Etiwanda Wash), Reche Canyon, and Jurupa Hills-South Bloomington (McKernan 1997; California Natural Diversity Data Base (CNDDB) 2000; University of California, Riverside species database 2000; database for the San Bernardino Valley-Wide Multiple Species Habitat Conservation Plan (MSHCP) 2000; and section 10(a)(1)(A) survey reports 1998–2000). The areas proposed as critical habitat are an expansion of the known locations of the San Bernardino kangaroo rat identified in the final listing rule and are within the known geographical area for this species. Other known populations of the San Bernardino kangaroo rat have not been proposed as critical habitat. We did not propose critical habitat for small scattered populations or habitats which were in areas that were highly fragmented by urban and agricultural development and/or were no longer subject to hydrological and geomorphological processes that would naturally maintain alluvial scrub vegetation.

Habitat for the San Bernardino kangaroo rat has been severely reduced and fragmented by development and related activities in the San Bernardino and San Jacinto valleys, resulting in reduced habitat patch size and increased distances between patches of suitable habitat. As noted by Andren (1994) in a discussion of highly fragmented landscapes, reduced habitat patch size and isolation exacerbate the effects of habitat loss on a species' persistence (*i.e.*, the loss of species, or decline in population size, will be greater than expected from habitat loss alone) and may preclude recolonization of suitable habitat following local extinction.

The loss of native vertebrates, including rodents, due to habitat fragmentation is well documented (Soulé *et al.* 1992, Andren 1994, Bolger *et al.* 1997). Results of habitat fragmentation on rodents may include increased extinction rates due to increased vulnerability to random demographic (population characteristics such as age and sex structure) and environmental events (Hanski 1994, Bolger *et al.* 1997). For example, isolated populations are more susceptible to local extinction by manmade or natural events, such as disease or floods, than are larger, more connected populations. Furthermore, small populations are more likely to experience detrimental effects associated with reproduction, including genetic drift, inbreeding depression, and a loss of genetic variability; factors that increase the risk of extinction (Caughley 1994, Lacy 1997). Past and ongoing causes of fragmentation of San Bernardino kangaroo rat habitat include conversion of lands to urban, industrial, agricultural, and recreational uses; construction of roads and freeways; and development of flood control structures such as dams, levees, and channels. The effect of these human-caused disturbances is two-fold—(1) they reduce the amount of suitable habitat for the San Bernardino kangaroo rat, breaking large areas into smaller patches, and (2) they act as barriers to movement between the remaining suitable habitat patches.

San Bernardino kangaroo rats are typically found on alluvial fans (relatively flat or gently sloping masses of loose rock, gravel, and sand deposited by a stream as it flows into a valley or upon a plain), flood plains, along washes, in adjacent upland areas containing appropriate physical and vegetative characteristics (McKernan 1997), and in areas with historic braided channels (McKernan *in litt.* 1999). These areas consist of sand, loam, sandy loam, or gravelly soils (McKernan 1993, Braden and McKernan 2000) that are associated with alluvial processes (*i.e.*, the deposition of clay, silt, sand, gravel, or similar material by running water such as rivers and streams; debris flows). San Bernardino kangaroo rats also occupy areas where sandy soils are at least partially deposited by winds (*e.g.*, northwest of the Jurupa Hills) (McKernan 1997). These soils allow kangaroo rats to dig simple, shallow burrow systems (McKernan 1997) and typically support alluvial sage scrub and chaparral vegetation.

Alluvial sage scrub has been described as a variant of coastal sage scrub (Smith 1980) and is also referred to as Riversidean alluvial fan scrub, alluvial fan sage scrub, cismontane alluvial scrub, alluvial fan scrub, or by Holland (1986) as Riversidian Alluvial Fan Sage Scrub. Alluvial scrub is considered a distinct and rare plant community found primarily on alluvial fans and flood plains along the southern bases of the Transverse Ranges and portions of the Peninsular Ranges in southern California (CNDDB 1993). This relatively open vegetation type is adapted to periodic flooding and erosion (Hanes *et al.* 1989) and is comprised of an assortment of drought-deciduous shrubs and larger evergreen woody shrubs characteristic of both coastal sage scrub and chaparral communities (Smith 1980).

Three phases of alluvial sage scrub have been described: pioneer, intermediate, and mature. The phases are thought to correspond to factors such as flood scour, distance from flood channel, time since last catastrophic flood, and substrate features (Smith 1980, Hanes *et al.* 1989). Under natural conditions, flood waters periodically break out of the main river channel in a complex pattern, resulting in a braided appearance to the flood plain and a mosaic of vegetation stages. Pioneer sage scrub, the earliest phase, is subject to frequent hydrological disturbance, the sparse vegetation usually renewed by frequent floods (Smith 1980, Hanes *et al.* 1989). The intermediate phase, which typically is found on benches between the active channel and mature flood plain terraces, is subject to periodic flooding at longer intervals. The vegetation of early and intermediate stages is relatively open, and supports the highest densities of the San Bernardino kangaroo rat (McKernan 1997).

The latest, or mature, phase of alluvial sage scrub is rarely affected by flooding and supports the highest plant density (Smith 1980). The mature terraces and upland areas adjacent to them supporting the oldest phase of sage scrub provide an important refugia for San Bernardino kangaroo rats during flood events. Although mature areas are generally used less frequently or occupied at lower densities than those

supporting earlier phases, these areas are critical to the long-term survival of the species (*i.e.,* prevent extinction) by providing a source population for re-colonization following catastrophic flooding events in which kangaroo rats inhabiting lower areas of the flood plain drown (McKernan, pers. comm. 2000).

Alluvial scrub vegetation includes plant species that are often associated with coastal sage scrub, chaparral, or desert transition communities. Common plant species include: Scalebroom (*Lepidospartum squamatum*), California buckwheat (*Eriogonum fasciculatum*), wooly yerba santa (*Eriodictyon crassifolium*), hairy yerba santa (*Eriodictyon trichocalyx*), our Lord's candle (*Yucca whipplei*), sugar bush (*Rhus ovata*), lemonadeberry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California juniper (*Juniperus californicus*), mulefat (*Baccharis salicifolia*), showy penstemon (*Penstemon spectabilis*), golden aster (*Heterotheca villosa*), tall buckwheat (*Eriogonum elongatum*), brittle bush (*Encelia farinosa*), prickly pear and cholla (*Opuntia* spp.), chamise (*Adenostoma fasciculatum*), holly-leaf cherry (*Prunus ilicifolia*), oaks (*Quercus* spp.), white sage (*Salvia apiana*), and annual forbs (*e.g.,* phacelia (*Phacelia* spp.), lupine (*Lupinus* spp.), and popcorn flower (*Plagiobothrys* spp.)), and native and nonnative grasses.

Similar to other subspecies of Merriam's kangaroo rat, the San Bernardino kangaroo rat prefers moderately open habitats characterized by low shrub canopy cover (McKernan 1997). However, the species uses areas of denser vegetation (Braden and McKernan 2000), and McKernan (pers. comm. 2000) stated that such areas are essential to San Bernardino kangaroo rat conservation. Research conducted by Braden and McKernan (2000) during 1998 and 1999 demonstrated that areas with late phases of the flood plain vegetation, such as mature alluvial fan sage scrub and associated coastal sage scrub and chaparral, including some areas of moderate to dense vegetation such as nonnative grasslands, are at least periodically occupied by the species.

A study of San Bernardino kangaroo rats conducted by Braden and McKernan (2000) provided additional new, specific data about the species' habitat characteristics. Braden and McKernan determined: (1) Perennial cover varies from 0 to 100 percent, (2) annual cover (primarily nonnative grasses) varies from 0 to 70 percent, (3) the proportion of surface fine sands varies from 0 to 100 percent, (4) surface cover of small rock fragments varies from 0 to 90 percent, and (5) surface cover of large rock fragments varies from 0 to 51 percent. The San Bernardino kangaroo rat has also been documented in areas of human disturbance not typically associated with the species, including nonnative grasslands separating tracts of suitable habitat, margins of orchards and out-of-use vineyards (as far as 50 m (150 feet) from adjacent, suitable sage scrub), and areas of wildland/urban interface within flood plains or terraces and adjacent to occupied habitat (McKernan, *in litt.* 2000).

Areas that contain low densities of San Bernardino kangaroo rats are important for dispersal, genetic exchange, colonization of newly suitable habitat, and re-colonization of areas after severe storm events. The dynamic nature of the fluvial (river) habitat leads to a situation where not all the habitat associated with alluvial processes is suitable for the species at any point in time. However, areas generally considered unsuitable habitat, such as out-of-production vineyards and margins of orchards, can and do develop into suitable habitat for the species by natural processes (McKernan, pers. comm. 2000).

Little is known about home range size, dispersal distances, or other spatial requirements of the San Bernardino kangaroo rat. However, home ranges for the Merriam's kangaroo rat in the Palm Springs, California, area average 0.33 ha (0.8 ac) for males and 0.31 ha (0.8 ac) for females (Behrends *et al.* 1986). Furthermore, Blair (1943) reported much larger home ranges for Merriam's kangaroo rats in New Mexico, where home ranges averaged 1.7 ha (4.1 ac) for males and 1.6 ha (3.8 ac) for females. Space requirements for the San Bernardino kangaroo rat likely vary according to season, age and sex of animal, food availability, and other factors. Although outlying areas of their home ranges may overlap, *Dipodomys* adults actively defend small core areas near their burrows (Jones 1993). Home range overlap between males and between males and females is extensive, but female-female overlap is slight (Jones 1993). The degree of competition between San Bernardino kangaroo rats and sympatric (living in the same geographical area) species of kangaroo rats for food and other resources is not presently known.

Similar to other kangaroo rats, the Merriam's kangaroo rat is generally granivorous (feeds on seeds and grains) and often stores large quantities of seeds in surface caches (Reichman and Price 1993). Green vegetation and insects are also important seasonal food sources. Insects, when available, have been documented to constitute as much as 50 percent of a kangaroo rat's diet (Reichman and Price 1993).

Wilson *et al.* (1985) reported that compared to other rodents, Merriam's kangaroo rat, and heteromyids in general, have relatively low reproductive output. Rainfall and the availability of food have been cited as factors affecting kangaroo rat populations. Droughts lasting more than a year can cause rapid declines in population numbers after seed caches are depleted (Goldingay *et al.* 1997).

Little information exists on the specific types and local abundances of predators that feed on the San Bernardino kangaroo rat. Potential native predators include the common barn owl (*Tyto alba*), great horned owl (*Bubo virginianus*), long-eared owl (*Asio otus*), gray fox, (*Urocyon cinereoargenteus*), coyote (*Canis latrans*), long-tailed weasel (*Mustela frenata*), bobcat (*Felis rufus*), badger (*Taxidea taxus*), San Diego gopher snake (*Pituophis melanoleucus annectens*), California king snake (*Lampropeltis getulus californiae*), red diamond rattlesnake (*Crotalus ruber*), and southern Pacific rattlesnake (*Crotalus viridus*). Domestic cats (*Felis cattus*) are known to be predators of native rodents (Hubbs 1951, George 1974) and have the ability to reduce population sizes of rodents (Crooks and Soulè 1999). Predation of San Bernardino kangaroo rats by domestic cats has been documented (McKernan, pers. comm., 1994). Continued fragmentation of habitat is likely to promote higher levels of predation by native animals (Bolger *et al.* 1997) and urban-associated animals (*e.g.,* domestic cats, opossums (*Didelphis virginianus*), and striped skunks (*Mephitis mephitis*)) as the interface between natural habitat and urban areas is increased (Churcher and Lawton 1987).

A limited amount of data exists pertaining to population dynamics of the San Bernardino kangaroo rat. Information is not currently available on several aspects of the species' life history such as fecundity (the capacity of an organism to produce offspring), survival, population age and sex structure, intra- and interspecific competition, and causes and rates of mortality. With respect to population density, Braden and McKernan (2000) documented substantial annual variation on a trapping grid in San Bernardino County, where densities ranged from 2 to 26 animals per hectare (2.47 acre). The reasons for these greatly disparate values, which represent the lowest and the second highest population densities recorded during the 15-month study, are unknown. These fluctuations bring to light several important aspects of the species' distribution and life history which should be considered when identifying areas essential for the conservation of the species—(1) A low population density observed in an area at one point in time does not mean the area is occupied at the same low density any other month, season, or year; (2) a low population density is not an indicator of low habitat quality or low overall value of the land for the conservation of the species; (3) an abundance of San Bernardino kangaroo rats can decrease rapidly; and (4) one or more factors (*e.g.,* food availability, fecundity, disease, predation, genetics, environment) are strongly influencing the species' population dynamics in one or more areas. High-amplitude, high-frequency fluctuations in small, isolated populations make them extremely susceptible to local extinction.

Previous Federal Action

The San Bernardino kangaroo rat was designated by the Service as a category 2 candidate species for Federal listing as endangered or threatened in 1991 (56 FR 58804). Category 2 comprised taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which data on biological vulnerability and threat(s) were not available to support a proposed rule. Based on a review of status and distribution of the San Bernardino kangaroo rat, the subspecies was upgraded to a category 1 candidate for listing in 1994 (59 FR 58982). Category 1 candidate species were those species for which the Service had sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), the Service ceased using category designations and included the San Bernardino kangaroo rat as a candidate species. The San Bernardino kangaroo rat was retained as a candidate species in the September 19, 1997, Notice of Review (62 FR 49401).

The San Bernardino kangaroo rat was emergency listed as endangered on January 27, 1998; concurrently, a proposal to make provisions of the emergency listing permanent also was published (63 FR 3835 and 63 FR 3877). On September 24, 1998, we published a final rule determining the San Bernardino kangaroo rat to be an endangered species (63 FR 51005).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is designated to be endangered or threatened. According to regulations (50 CFR 424.12(a)(1)), designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for the San Bernardino kangaroo rat was determined not to be prudent at the time of listing because an increase in the degree of threat could result (63 FR 51005). As detailed in the emergency rule listing the San Bernardino kangaroo rat (63 FR 3840), threats of intentional habitat vandalism or destruction (such as disking or blading) directed specifically at habitat for the San Bernardino kangaroo rat were documented. As indicated in the final listing rule (63 FR 51005), intentional destruction of areas occupied by the San Bernardino kangaroo rat and other listed species occurred frequently within range of the species. We determined that designation of critical habitat, including the publication of maps providing precise locations, would bring unnecessary attention to those areas of the range that are occupied by this species and would encourage acts of vandalism or intentional destruction of habitat. Moreover, the Service determined that the designation of critical habitat for the San Bernardino kangaroo rat was not prudent due to the lack of benefit to the species.

On March 4, 1999, the Southwest Center for Biological Diversity and Christians Caring for Creation filed a lawsuit in Northern District of California Federal Court against the Service and Secretary of the Department of the Interior for failure to designate critical habitat for the San Bernardino kangaroo rat and six other federally listed species. A settlement agreement was entered into on November 3, 1999, in which we would publish a proposal to withdraw the existing "not prudent" critical habitat determination and make a new prudency determination. If designation of critical habitat for the San Bernardino kangaroo rat was determined to be prudent, we would publish a proposed rule critical habitat designation by December 1, 2000.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for the San Bernardino kangaroo rat.

Due to the small number of populations, the San Bernardino kangaroo rat is vulnerable to vandalism, or other disturbance. As we indicated in the final rule (63 FR 51005), we are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time, we do not have site-specific evidence throughout its range documenting the taking, vandalism, collection, or trade of the species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will substantially increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, some benefits may exist to the designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for occupied habitat by this species likely would not change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat likely would also result in jeopardy to the species, section 7 consultation may be triggered in a few instances where critical habitat has been designated. Examples could include currently unoccupied habitat that may become occupied in the future or areas that have not been thoroughly surveyed. Moreover, we acknowledged in the final rule (63 FR 51005) that critical habitat designation, in some situations, may provide limited value to a species by identifying areas important for the conservation of the species and calling attention to those areas in special need of protection. Designating critical

habitat may also convey some educational or informational benefits to the species. Therefore, we propose that critical habitat is prudent for the San Bernardino kangaroo rat.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not result in any regulatory requirements for these actions.

The designation of critical habitat does not, in itself, lead to the recovery of a listed species. The designation of critical habitat does not create a management plan, establish a preserve, reserve, or wilderness area where no actions are allowed, it does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat.

In accordance with section 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. Not all areas containing one or more of the primary constituent elements are necessarily essential to the conservation of a threatened or endangered species. Areas that may contain one or more of the primary constituent elements to support the life cycle requirements of the San Bernardino kangaroo rat, but which are not included in proposed critical habitat, would be considered under other parts of the Act and/or other conservation laws and regulations.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under court-ordered deadlines, we often may not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we are proposing for designation only areas currently known to be essential. Essential areas already contain the features and habitat characteristics that are necessary to sustain the species. Within the geographic area occupied by the species, we are not proposing to designate areas that do not now have the primary constituent elements that provide essential life-cycle requisites of the species, as defined at 50 CFR 424.12(b). Moreover, certain known populations of the San Bernardino kangaroo rat have not been proposed as critical habitat. We did not propose critical habitat for small scattered populations or habitats which were in areas that were highly fragmented by urban and agricultural development and/or were no longer subject to hydrological and geomorphological processes that would naturally maintain alluvial scrub vegetation. The areas proposed as critical habitat are an expansion of the known locations of the San Bernardino kangaroo rat identified in the final listing rule and are within the known geographical area for this species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Based on the best available scientific and commercial data, there is no foundation upon which to make a determination that the conservation needs of the species require designation of critical habitat outside of occupied areas, so we have not proposed to designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. This policy requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that any designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat units may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the San Bernardino kangaroo rat, we used the best scientific and commercial data available. These data included research and survey observations published in peer reviewed articles; regional Geographic Information System (GIS) coverages; San Bernardino County Multiple Species Habitat Conservation Program (MSHCP) database; the University of California, Riverside, species database; and data from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Habitat loss and fragmentation resulted in blocks of habitat occupied by the San Bernardino kangaroo rat that functioned independently. Lands that support the remaining, including remnant, populations are essential to the conservation of the species. The protection of land supporting the three largest remaining populations of the San Bernardino kangaroo rat is not, by itself, sufficient to ensure the survival and recovery of the species because the status of these populations continues to be reduced by habitat loss, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, water conservation activities, urban development, and vandalism. Furthermore, the majority of animals in these populations is constrained to the flood plains where they are susceptible to extirpation during large-scale flood events.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. These physical and biological features, as outlined in 50 CFR 424.12, include but are not limited to the following:

—Space for individual and population growth, and for normal behavior;
—Food, water, or other nutritional or physiological requirements;
—Cover or shelter;
—Sites for breeding, reproduction, or rearing of offspring;
—Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering. The primary constituent elements are found in areas influenced by historic and/or current geomorphological and hydrological processes and areas of wind-blown sand that support alluvial sage scrub vegetation or a mosaic of alluvial sage scrub and associated vegetation types (*e.g.*, coastal sage scrub, chaparral) within San Bernardino and Riverside counties. Primary constituent elements associated with the biological needs of dispersal are also found in areas that provide connectivity or linkage between or within larger core areas, including open space and disturbed areas containing introduced plant species.

Primary constituent elements include:

(1) Dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the animal, *i.e.*, areas that are within active and historical flood regimes including river, creek, stream, and wash channels; alluvial fans; flood plains; flood-control berms and lands adjacent to them; flood plain benches and terraces; and historic braided channels;

(2) Historical and current alluvial processes within the historical range of the animal;

(3) Alluvial sage scrub and associated vegetation, such as coastal sage scrub and chamise chaparral. Common plant species include: Scalebroom (*Lepidospartum squamatum*), California buckwheat (*Eriogonum fasciculatum*), yerba santa (*Eriodictyon* spp., our Lord's candle (*Yucca whipplei*), sugar bush (*Rhus ovata*), lemonadeberry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California juniper (*Juniperus californicus*), mulefat (*Baccharis salicifolia*), showy penstemon (*Penstemon spectabilis*), golden aster (*Heterotheca villosa*), tall buckwheat (*Eriogonum elongatum*), prickly pear and cholla (*Opuntia* spp.), chamise (*Adenostoma fasciculatum*), popcorn flower (*Plagiobothrys* spp.), and native and nonnative grasses.

(4) Sand, loam, or sandy loam soils within the historical range of the animal;

(5) Upland areas that may provide refugia from environmental or demographic stochastic and catastrophic events; and,

(6) Moderate to low degree of human disturbance to habitat within the species' historical range, *i.e.*, lands within or immediately adjacent to flood plain terraces that have suitable habitat for the species and areas within 50 m (150 ft) of currently suitable San Bernardino kangaroo rat habitat, such as agricultural lands that are not disked annually, out-of-production vineyards, margins of orchards, areas of active or inactive industrial or resource extraction activities, and urban/wildland interfaces.

Criteria Used To Identify Critical Habitat

In identifying areas essential to the conservation of the species, we used data regarding the habitat elements essential to the species, including vegetation types, hydrology, elevation, topography, and soil type and texture. We identified suitable and necessary habitat components within the species' current and historic range, and examined the degree of existing urbanization and other forms of anthropogenic habitat disturbance, excluding those areas in which development has permanently precluded occupation by the species.

To identify critical habitat units, we first evaluated those lands containing essential habitat to determine if these lands were covered by any HCPs or other special management plans that provided protection and management for the San Bernardino kangaroo rat. We determined that none of these lands are covered by an approved HCP or other special management plan covering the San Bernardino kangaroo rat. We then evaluated those areas where ongoing habitat conservation planning efforts have resulted in the preparation of biological analyses that identify habitat important for the conservation of the San Bernardino kangaroo rat. These include the proposed Western Riverside County MSHCP and the proposed San Bernardino Valley-Wide MSHCP. We used those biological analyses in concert with data regarding (1) known San Bernardino kangaroo rat occurrences, (2) alluvial fan sage scrub and associated vegetation, (3) geomorphology, and (4) connectivity

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corridors between San Bernardino kangaroo rat populations to identify those lands that are essential for the conservation of the species within the respective planning area boundaries. Finally, we evaluated other lands for their conservation value for the San Bernardino kangaroo rat. Using similar methodology and data, we delimited a study area by selecting geographic boundaries based on the four factors described above. We determined conservation value based on the presence of, or proximity to, extant San Bernardino kangaroo rat populations and/or alluvial fan sage scrub and associated vegetation, surrounding land-uses, and the potential to allow dispersal of the species between occupied areas.

Proposed critical habitat for the San Bernardino kangaroo rat was delineated based on interpretation of the multiple sources available during the preparation of this proposed rule, including aerial photography at a scale of 1:24,000 (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map), current (2000) aerial photography prints, and projects authorized for take through section 7 consultations. These lands were divided into specific map units, *i.e.*, critical habitat units. For the purpose of this proposal, these units have been described using primarily UTM North American Datum of 1927 (NAD 27) derived from a 1–ha (2.47-ac) grid that approximated the boundaries delineated from the digital aerial photography.

In defining critical habitat boundaries, we made an effort to avoid development, such as urbanized areas (*e.g.*, cities) and similar lands that are not critical habitat. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for the San Bernardino kangaroo rat did not allow us to exclude all developed areas not likely to contain the primary constituent elements essential for conservation of the San Bernardino kangaroo rat. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Therefore, Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species and/or primary constituent elements in adjacent critical habitat. In summary, the critical habitat areas described below constitute our best assessment of areas needed for the long-term survival and conservation of the species.

We considered several qualitative criteria in the selection and proposal of specific areas, or units, for San Bernardino kangaroo rat critical habitat, including:

(1) Occupation by the San Bernardino kangaroo rat. We identified six areas that support populations of the San Bernardino kangaroo rat that we consider essential to the conservation of this species. Not all known populations of the San Bernardino kangaroo rat or suitable habitats have been proposed as critical habitat. The probability that all or most of the remaining occurrences of an endangered species will be lost to environmental or demographic stochasticity increases as the number of populations within the range of the species decreases. Only six relatively small and isolated populations remain; three (*i.e.*, Etiwanda, Reche Canyon, and Jurupa Hills) of which are so limited in abundance and distribution that extirpation is reasonably certain without immediate protection and conservation. Small, isolated populations have a high probability of extinction because they are susceptible to stochastic (*i.e.*, random, naturally occurring) events such as inbreeding, the loss of genetic variation, high variability in age and sex ratios, and catastrophes such as floods, droughts, or disease epidemics (Lande 1988, Saccheri *et al.* 1998), and isolation precludes immigration and/or re-colonization. These populations continue to be reduced by habitat loss, degradation, and fragmentation owing to sand and gravel mining operations, flood control projects, water conservation activities, urban development, and vandalism. Furthermore, the majority of animals in these populations occur in the flood plains that are highly susceptible to extirpation during large-scale flood events. As a result, areas proposed as critical habitat for the San Bernardino kangaroo rat must be protected and managed to increase the probability that environmental or demographic stochasticity will not result in the extinction of the species.

(2) The state of natural processes that rejuvenate and maintain suitable habitat. Normal periodic flooding scours the terrain, removes vegetation, and deposits debris and soil (*e.g.*, sand) to regenerate favorable conditions. Because the species appears to be adapted to more open habitat types (*e.g.*, higher population densities in open- versus closed-canopy shrub communities), the more open state promoted by periodic flooding is essential for the conservation of this animal.

(3) The presence of lands that function as upland refugia. The majority of the remaining populations of San Bernardino kangaroo rats are constrained to flood plains, where they are susceptible to extirpation during large-scale flood events. Occupied upland refugia areas may act as population sources for natural re-colonization, thereby decreasing the probability of extinction of the species.

(4) The proximity of the area to large tracts of undeveloped land that are important for population expansion, upland refugia, connectivity, providing buffers from development, perpetuation of ecosystem processes, and maintenance of a dynamic mosaic of vegetation. In addition, large tracts of land that allow for the existence of naturally functioning ecosystems with an array of native predators decrease the probability of predation by urban-associated animals such as domestic cats, which are known predators of the San Bernardino kangaroo rat.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat encompasses habitat throughout the species' remaining range in Riverside and San Bernardino counties, California. Lands proposed are under Tribal, private, State, and Federal ownership, with Federal lands including lands managed by the U.S. Forest Service, Bureau of Land Management, and Department of Defense. Six critical habitat units have been delineated. At the time of listing, we identified the Santa Ana River, Lytle and Cajon washes, and San Jacinto River as containing the largest extant concentrations of San Bernardino kangaroo rats and blocks of suitable habitat. These three areas continue to support important concentrations San Bernardino kangaroo rat and are the major strongholds of this species within its geographical range. A brief description of each unit, and reasons for proposing it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)) BY COUNTY AND LAND OWNERSHIP—ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES

County	Federal *	Local/state	Private	Tribal	Total
San Bernardino	1,501 ha (3,710 ac)	0 ha (0 ac)	16,690 ha (41,241 ac)	0 ha (0 ac)	18,191 ha. (44,951 ac).
Riverside	223 ha (550 ac)	0.8 ha (2 ac)	3,543 ha (8,756 ac)	465 ha (1,149 ac)	4,232 ha. (10,457 ac).
Total	1,724 ha (4,260 ac)	0.8 ha (2 ac)	20,233 ha (49,997 ac)	465 ha (1,149 ac)	22,423 ha. (55,408 ac).

* Federal lands include Bureau of Land Management, Department of Defense, and National Forest.

Critical Habitat Unit 1: Santa Ana River

The area proposed for critical habitat within the Santa Ana River watershed is 4,886 ha (12,074 ac). At the time of the final rule, we identified approximately 2,813 ha (6,949 ac) of suitable and occupied San Bernardino kangaroo rat habitat within the Santa Ana River flood plain. Braden and McKernan (2000) provided new information about the range and habitat affinities, including alluvial soils and vegetative cover, of the San Bernardino kangaroo rat, which indicate that the habitat used within the flood plain is larger than previously thought. Therefore, we have identified new areas of occupation and lands that are essential for maintaining habitat connectivity that were not described in the final rule. Unit 1 includes a section of Mill Creek (not discussed in the final rule) because of its contribution to the fluvial dynamics of the Santa Ana River flood plain, which is particularly important since the construction of the Seven Oaks Dam. In the final rule, only 8 ha (20 ac) along City Creek were identified as occupied. In the proposed critical habitat, Unit 1 encompasses occupied habitat along City Creek.

Unit 1, located in San Bernardino County, includes the Santa Ana River and portions of City, Plunge, Mill, and San Timoteo creeks. Bounded by Seven Oaks Dam to the northeast, the area includes San Bernardino National Forest lands and portions of the cities of San Bernardino, Redlands, Highland, and Colton. Although Seven Oaks Dam impedes sediment transport and reduces the magnitude, frequency, and extent of flood events, the system still retains partial fluvial dynamics because contributions from Mill Creek are not impeded by a dam or debris basin.

A large tract of undeveloped land in San Bernardino National Forest is partially within and adjacent to the northern and eastern portions of this critical habitat unit. In addition, Unit 1 contains upland refugia and tributaries (*i.e.*, City, Plunge, and San Timoteo creeks) that are occupied by the species, active hydrological channels, flood plain terraces, and areas of habitat immediately adjacent to flood plain terraces.

Unit 1 contains the Woolly-Star Preservation Area (WSPA), a section of the flood plain downstream of Seven Oaks Dam that was preserved by the flood control districts of Orange, Riverside, and San Bernardino counties. The WSPA was established in 1988 by the U.S. Army Corps of Engineers (Corps) in an attempt to minimize the effects of Seven Oaks Dam on the federally endangered Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*) along the Santa Ana River. Approximately 309 hectares (764 acres) of alluvial fan scrub in the wash near the low-flow channel of the river were designated for preservation as mitigation because these sections of the wash were thought to have the highest potential to maintain the hydrology necessary for the periodic regeneration of early phases of alluvial fan sage scrub. Approximately 80 ha (200 ac) of the WSPA appear to be habitat for the San Bernardino kangaroo rat (Service unpub. GIS maps, 1997).

We are now coordinating with the Bureau of Land Management, Corps, San Bernardino Valley Conservation District, Sun West Materials, Robertson's Ready Mix, and other local interests in an attempt to establish the Santa Ana River Wash Conservation Area. The objective of these discussions is to consolidate a large block of alluvial fan scrub occupied by three federally endangered species, the San Bernardino kangaroo rat, Santa Ana River woolly-star, and slender-horned spineflower (*Dodecahema leptoceras*); and one federally threatened species, the coastal California gnatcatcher (*Polioptila californica californica*). The area is envisioned to include an Area of Critical Environmental Concern or ACEC (see below) and the Corps' mitigation lands for the Santa Ana River woolly-star (*i.e.*, WSPA). This cooperative agreement would reconfigure and consolidate sand and gravel mining operations in this unit to reduce adverse effects to these listed species and remaining alluvial fan scrub communities.

In 1994, the Bureau of Land Management designated three parcels in the Santa Ana River, a total of 304 ha (760 ac), as an ACEC. The primary goal in designation was to protect and enhance the habitat of federally listed plant species occurring in the area while providing for the administration of existing valid rights. Although the establishment of this ACEC was important in regard to conservation of sensitive species and communities in this area, the administration of valid existing rights conflicts with the Bureau of Land Management's conservation abilities. Existing rights include a withdrawal of Federal lands for water conservation through an act of Congress on February 20, 1909 (Public, No. 248). The entire ACEC is included in this withdrawn land and may be used for water conservation measures such as the construction of percolation basins. These lands are not managed specifically for the San Bernardino kangaroo rat.

Critical Habitat Unit 2: Lytle and Cajon Creeks

Unit 2, which encompasses approximately 3,845 ha (20,621 ac) in San Bernardino County and includes the northern extent of this species' remaining distribution, contains habitat along and between Lytle and Cajon Creeks from the point that the creeks emanate from canyons within San Bernardino National Forest to flood control channels downstream. Unit 2 includes alluvial fans, flood plain terraces, and historic braided river channels. Alluvial sage scrub and other vegetation types that provide habitat for San Bernardino kangaroo rat occur on terraces and adjacent areas with sandy soils. Unit 2 includes Glen Helen Regional Park and portions of Muscoy.

McKernan (*in litt.* 1999) provided new information about the historic distribution, range, habitat affinities, and evidence of historic and current occupation by the San Bernardino

kangaroo rat in the western portion of this unit. At the time of listing, the Lytle-Cajon area was thought to contain approximately 3,280 ha (8,107 ac) of occupied habitat. Since the time of listing, a large historical fluvial breakout zone extending southwest from Lytle Creek and including the Etiwanda Fan (see Unit 4) has been recognized and data have been collected indicating that the species occupies a wider range of alluvial soils and vegetative cover than previously known (McKernan *in litt.* 1999). These areas are essential because of the presence of major populations of the species and habitat connectivity.

The hydro-geomorphological processes that apparently rejuvenate and maintain the dynamic mosaic of alluvial fan sage scrub are still largely intact in Lytle and Cajon Creeks (*i.e.*, stream flows are not impeded by dams or debris basins), and the remaining habitat allows dispersal between these two drainages, which is important for genetic exchange. Unit 2 is adjacent to large tracts of undeveloped land and contains upland areas occupied by the species.

The CalMat conservation bank was established in 1996 and 1997 to help conserve populations of 24 species associated with alluvial fan scrub, including the Santa Ana River woolly-star, San Bernardino kangaroo rat, and coastal California gnatcatcher in the Cajon Creek area. This conservation bank comprises approximately 244 ha (610 ac). We are working to ensure that lands within this conservation bank are purchased by the year 2006, when interim protection under a 10-year conservation easement ends. Such a purchase would contribute to the protection of more than 560 ha (1400 ac) in this area when combined with the CalMat preservation area and mitigation lands for the development of the County of San Bernardino Sheriff's training facility. These lands could form the nucleus for a larger reserve to protect the San Bernardino kangaroo rat and other listed species in this area.

Critical Habitat Unit 3: San Jacinto River-Bautista Creek

Unit 3 encompasses approximately 4,089 ha (10,104 ac) in Riverside County and includes portions of San Bernardino National Forest, Soboba Reservation, Bautista Creek, and areas along the San Jacinto River in the vicinity of San Jacinto, Hemet, and Valle Vista. This unit, which represents the southern extent of the known distribution of the species, is adjacent to San Bernardino National Forest and contains occupied upland refugia.

The species is primarily restricted to a channelized flood plain, but occupies areas outside flood control berms and westward along the river into the San Jacinto Valley and foothills of the Badlands. All lands within Riverside County proposed for designation as San Bernardino kangaroo rat critical habitat are within the planning area of the Western Riverside MSHCP.

At the time of listing, we identified approximately 547 ha (1,352 ac) of suitable and occupied San Bernardino kangaroo rat habitat within the Santa Jacinto River flood plain. Additional areas along the San Jacinto River have been identified as essential for the conservation of the San Bernardino kangaroo rat based on additional information on occupied areas, better understanding of the habitat needs and vegetation types, need for habitat connectivity, and maintenance of hydrological conditions. New information indicates that the habitat occupied within the flood plain by the San Bernardino kangaroo rat is larger than previously thought (McKernan, *in litt.* 1999, Braden and McKernan 2000), and includes areas of higher vegetation density. We have also received additional information on the distribution of the subspecies within the watershed (*e.g.*, Bautista Creek), and are including areas essential for maintaining habitat connectivity along the flood plain. This additional information further supports the identification of this area as a major concentration of San Bernardino kangaroo rat in the final listing rule and the importance of this area for the long-term conservation for this species.

Critical Habitat Unit 4: Etiwanda Alluvial Fan and Wash

Unit 4, which encompasses approximately 3,845 ha (9,502 ac), is located in western San Bernardino County and represents the approximate westernmost extent of the known range of the San Bernardino kangaroo rat. Within the northern boundary of the unit are portions of San Bernardino National Forest. Unit 4 includes lands within and between the active hydrological channels of Deer, Day, Etiwanda, and San Sevaine creeks. A large alluvial fan, flood plains, and terraces occur throughout the unit. Soils are primarily sandy or sandy loam and support alluvial fan sage scrub. Unit 4 includes portions of the cities of Rancho Cucamonga, Fontana, Rialto, and Ontario; and the 314-ha (760-ac) North Etiwanda Preserve.

McKernan (*in litt.* 1999) provided new information about the historic distribution, range, habitat affinities, and evidence of historic and current occupation by the San Bernardino kangaroo rat along the western half of the Lytle Creek Fan, including the Etiwanda Fan and Wash. The Etiwanda area was thought to contain approximately 2 ha (5 ac) of occupied habitat for the species at the time of listing. Since then, a large historical fluvial breakout zone in southwestern San Bernardino County, extending southwest from Lytle Creek and including the Etiwanda Fan, has been recognized, research has verified occupation, museum specimens that were collected in the area have been conclusively identified as the San Bernardino kangaroo rat, and data have been collected indicating that the species occupies a wider range of alluvial soils and vegetative cover (McKernan *in litt.* 1999).

Proposed lands contain a remnant population of the species and upland refugia from catastrophic flooding. Neither dams nor debris basins exist at the mouths of East Etiwanda and San Sevaine creeks, enabling natural fluvial processes to maintain favorable habitat conditions on the upper alluvial fan and in other portions of the critical habitat unit. McKernan (*in litt.* 1999) states that areas within historic flood regimes (such as western Lytle Creek fan including the Etiwanda wash) should be given equal priority as the major population areas of the Santa Ana River and Cajon Wash. Additional areas along the Etiwanda Alluvial Fan and Wash have been identified as essential for the conservation of the San Bernardino kangaroo rat based on additional information on occupied areas, better understanding of the habitat needs and vegetation types, need for habitat connectivity, and maintenance of hydrological conditions.

Critical Habitat Unit 5: Reche Canyon

Unit 5 encompasses approximately 129 ha (319 ac) in and around Reche Canyon in San Bernardino County and is directly south of and nearly adjacent to Unit 1. Reche Canyon, the type locality for the San Bernardino kangaroo rat (the geographic location from which a type specimen was collected), still contains occupied habitat for the species, including active waterways, flood plain terraces, and sage scrub. In the final rule, we estimated that 2 ha (5 ac) of habitat were occupied by the San Bernardino kangaroo rat in this area. The proposed critical habitat includes an additional 127 ha (314 ac) of habitat, encompassing known occupied areas and additional areas within Reche Canyon based on a better understanding of the habitat needs and vegetation types and maintenance of hydrological conditions needed to sustain alluvial scrub vegetation.

Unit 5 supports a remnant population of the San Bernardino kangaroo rat, and contains lands that function as refugia for the species. Potential exists for species expansion into the Badlands, which could reconnect this population with that of Unit 3 (San Jacinto).

Critical Habitat Unit 6: Jurupa Hills-South Bloomington

Unit 6 encompasses approximately 1,128 ha (2788 ac), and includes the Jurupa Hills and area eastward to and including the south portion of the city of Bloomington. The majority of Unit 6 is located in San Bernardino County (985 ha (2,435 ac)), with a small portion (143 ha (353 ac)) occurring in northern Riverside County.

In the final rule, we estimated that less than 1 ha (2 ac) of habitat in this area was occupied by the San Bernardino kangaroo. Unit 6 includes an additional 1,127 ha (2,786 ac) of habitat and encompasses areas essential for connectivity, which are necessary for dispersal.

Unit 6 is unique among the critical habitat units for this species, containing the last known example of remaining occupied habitat where sandy soils appear to be at least partially deposited by winds. In addition, the unit is completely outside of a flood plain, making it the only critical habitat unit for this species not at risk of catastrophic flooding.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect the San Bernardino kangaroo rat or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the San Bernardino kangaroo rat is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Any activity that results in changes in the hydrology of the unit, including activities associated with flood control structures and operations; construction of levees, berms, and concrete channels; flooding; sediment, sand, or gravel removal, transfer, or deposition; grading; excavation; and construction or modification of bridges;

(2) Any activity that results in development or alteration of the landscape within or immediately adjacent to fluvial systems, including water diversion, reclamation, and recharge activities; agricultural

activities; urban and industrial development; water conservation activities; off-road activity; and mechanized land clearing or disking;

(3) Any activity that results in changes to the water quality or quantity to an extent that habitat becomes unsuitable to support the San Bernardino kangaroo rat;

(4) Any activity that could lead to the introduction, expansion, or increased density of exotic plant or animal species, urban-associated domestic animals (*e.g.*, cats), or livestock into San Bernardino kangaroo rat habitat;

(5) Any activity that results in appreciable detrimental changes to the density or diversity of plant or animal populations in San Bernardino kangaroo rat habitat, such as grubbing, grading, overgrazing, mining, disking, off-road vehicle use, or the application of herbicides, rodenticides, or other pesticides; and,

(6) Any activity that could result in an appreciably decreased habitat value or quality through indirect effects, such as noise, edge effects, night-time lighting, or fragmentation.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the San Bernardino kangaroo rat is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. In addition, the Corps requires review of most or all projects requiring permits in all fluvial systems, whether San Bernardino kangaroo rats are known to be present. If occupied habitat becomes unoccupied in the future, critical habitat may provide a limited benefit in such cases.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with the Service on activities in areas known to be occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(3) Regulation of airport construction and/or improvement activities by the Federal Aviation Administration;

(4) Military activities on applicable DOD lands;

(5) Licensing of construction of communication sites by the Federal Communications Commission;

(6) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, U. S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–6158; facsimile 503–231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the ESA authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. The ESA defines incidental take as take that is "incidental to, and the purpose of, the carrying out of an otherwise lawful activity." A habitat conservation plan, or HCP, must accompany an application for an incidental take permit. The purpose of the HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species.

The State of California instituted a conservation planning program parallel to the Federal HCP program. Under the Natural Community Conservation Planning Act of 1991, a NCCP is a plan for the conservation of natural communities that takes an ecosystem approach and encourages cooperation between private and government interests. The Service and the California Department of Fish and Game work with applicants to develop plans that serve both as an HCP under the Federal Endangered Species Act as well as an NCCP under the State's NCCP Act. Much like a regional HCP, an NCCP identifies and provides for the regional or area-wide protection and perpetuation of plants, animals, and their habitats, while allowing compatible land use and economic activity. The initial focus of this program is coastal sage scrub. Within this program, the California Department of Fish and Game included the long-term conservation of alluvial scrub, which is in part occupied by the San Bernardino kangaroo rat. However, participation in NCCP is voluntary. San Bernardino and Riverside counties have signed planning agreements (memoranda of understanding (MOUs)) to develop multi-species plans that meet NCCP criteria, but have not enrolled in the NCCP program in the interim.

We are coordinating with the Bureau of Land Management, Corps, San Bernardino Valley Conservation District, Sun West Materials, Robertson's Ready Mix, and other local interests in an attempt to establish the Santa Ana River Wash Conservation Area. The objective of these discussions is to consolidate a large block of alluvial fan scrub communities occupied by four federally listed species, but as yet, we have not completed this process.

Since there are no approved HCPs/NCCPs with coverage for the San Bernardino kangaroo rat or other conservation plans that are currently completed, we did not propose to exclude any lands from this critical habitat designation on this basis.

In the event that future HCPs covering the San Bernardino kangaroo rat are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the San Bernardino kangaroo rat by either directing development and habitat modification

to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the San Bernardino kangaroo rat. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the San Bernardino kangaroo rat and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the San Bernardino kangaroo rat as a covered species is ultimately approved, the Service will reassess the critical habitat boundaries in light of the HCP. The Service will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period at that time.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of the San Bernardino kangaroo rat habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the San Bernardino kangaroo rat, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California.

3. If you would like to submit comments by e-mail, please submit e-mail comments as an ASCII file format and avoid the use of special characters and encryption. You may send comments by electronic mail (e-mail) to FW1CFWO__commat;fws.gov. Please include "Attn: RIN 1018–AE59" and your name and return address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive a confirmation from the system that we have received your e-mail message, contact us by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed designation of critical habitat. We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following:

(1) Are the requirements in the document clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with the clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

(a) This rule, as proposed, will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The San Bernardino kangaroo rat was listed as an endangered species in 1998. Since that time, we have conducted ten formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the species.

The areas proposed as critical habitat are within the geographic range occupied by the San Bernardino kangaroo rat. Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of areas within the geographic range occupied by the San Bernardino kangaroo rat has little, if any, incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat although they continue to be bound by the provisions of the Act concerning "take" of the species.

(b) This rule, as proposed, will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the San Bernardino kangaroo rat since the listing in 1998. The prohibition against adverse modification of critical habitat is not expected to impose any restrictions in addition to those that now exist because all designated critical habitat is within the geographic range occupied by the San Bernardino kangaroo rat. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule, as proposed, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat. We will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in the area of critical habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF SAN BERNARDINO KANGAROO RAT LISTING AND CRITICAL HABITAT DESIGNATION

Categories of Activities	Activities Potentially Affected by Species Listing Only [1]	Additional Activities Potentially Affected by Critical Habitat Designation [2]
Federal Activities Potentially Affected.[3].	Activities the Federal Government carries out such as removing, degrading, or destroying San Bernardo kangaroo rat habitat (as defined in primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., grubbing, grading flooding, discing, flood control, off-road vehicle use, overgrazing, construction, road building, mining, herbicide and pesticide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., noise, edge effects, night-time lighting, invasion of exotic plants or animals, or fragmentation).	May result in a limited increase in the number of section 7 consultations.
Private Activities Potentially Affected.[4].	Activities such as removing, degrading, or destroying San Bernardino kangaroo rat habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means e.g., grubbing, grading, flooding, discing, flood control, off-road vehicle use, overgrazing, construction, road building, mining, herbicide and pesticide application, etc.) an appreciably decreasing habitat value or quality through indirect effects (e.g., noise, edge effects, night-time lighting, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding).	May result in a limited increase in the number of section 7 consultations.

[1] This column represents the activities potentially affected by listing the San Bernardino kangaroo rat as an endangered species (Jan. 27, 1998; 63 FR 3835) under the Endangered Species Act.

[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule, as proposed, is not expected to result in any restrictions in addition to those currently in existence for areas of occupied habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, and local governments, and private property. Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management or U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Regulation of airport construction or improvement activities by the Federal Aviation Administration;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Construction of communication sites licensed by the Federal Communications Commission; and

(8) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat units are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of habitat occupied by the species. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will have little, if any, additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the area of proposed critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied proposed critical habitat.

(b) This rule, will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the San Bernardino kangaroo rat. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. Critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the San Bernardino kangaroo rat.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. We will coordinate any future designation of critical habitat for the San Bernardino kangaroo rat with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the San Bernardino kangaroo rat imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period if requested. The rule uses standard property descriptions and identifies the primary constituent elements within the proposed units to assist the public in understanding the habitat needs of the San Bernardino kangaroo rat.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule references permits for HCPs which contain information collection activity. The Fish and Wildlife Service has OMB approval for the collection under OMB Control Number 1018–0094. The Service may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that federally recognized Tribes must be related to on a Government-to-Government basis. We determined that there are approximately 465 ha (1,149 ac) of Tribal lands essential for the conservation of the San Bernardino kangaroo rat along the western boundary of the Soboba Indian Reservation in Riverside County. Therefore, we are proposing to designate critical habitat for the San Bernardino kangaroo rat on only this portion of Tribal lands.

In complying with our tribal trust responsibilities, we must communicate with all tribes potentially affected by the designation. Therefore, we are soliciting information during the comment period on potential effects to tribes or tribal resources that may result from critical habitat designation.

References Cited

You may request a complete list of all references cited in this proposed rule from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Nancy Kehoe, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Kangaroo rat, San Bernardino'" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
•	•	•	•	•	•	•	•
Kangaroo rat, San Bernardino Merriam's.	*Dipodomys merriami parvus.*	U.S.A. (CA)	Entire	E	632E, 645	17.95(a)	NA
•	•	•	•	•	•	•	•

3. Amend § 17.95(a) by adding critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in the same alphabetical order as this species occurs in § 17.11 (h).

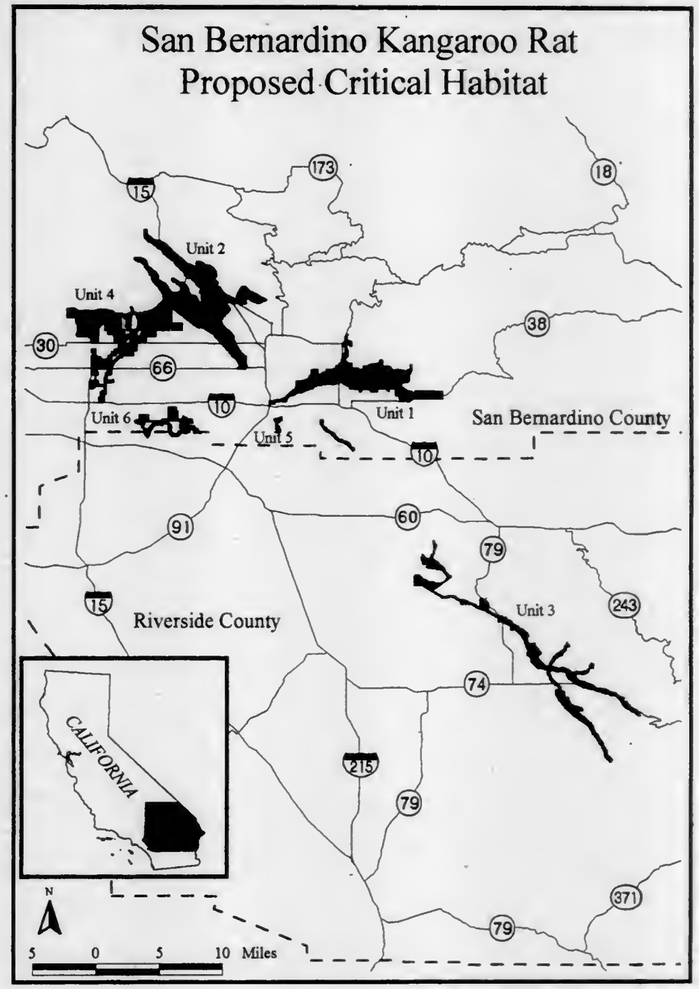
§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*).

1. Critical Habitat Units are depicted for San Bernardino and Riverside counties, California, on the maps below.



2. Within these areas, the primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering. The primary constituent elements are found in areas influenced by historic and/or current geomorphological and hydrological processes and areas of wind-blown sand that support alluvial sage scrub vegetation or a mosaic of alluvial sage scrub and associated vegetation types (*e.g.*, coastal sage scrub, chaparral) within San Bernardino and Riverside counties. Primary constituent elements associated with the biological needs of dispersal are also found in areas that provide connectivity or linkage between or within larger core areas, including open space and disturbed areas containing introduced plant species.

Primary constituent elements include:

(1) Dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the animal, *i.e.*, areas that are within active and historical flood regimes including river, creek, stream, and wash channels; alluvial fans; flood plains; flood-control berms and lands adjacent to them; flood plain benches and terraces; and historic braided channels;

(2) Historical and current alluvial processes within the historical range of the animal;

(3) Alluvial sage scrub and associated vegetation, such as coastal sage scrub and chamise chaparral. Common plant species include: Scalebroom (*Lepidospartum squamatum*), California buckwheat (*Eriogonum fasciculatum*), yerba santa (*Eriodictyon* spp.), our Lord's candle (*Yucca whipplei*), sugar bush (*Rhus ovata*), lemonadeberry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California juniper (*Juniperus*

californicus), mulefat (*Baccharis salicifolia*), showy penstemon (*Penstemon spectabilis*), golden aster (*Heterotheca villosa*), tall buckwheat (*Eriogonum elongatum*), prickly pear and cholla (*Opuntia* spp.), chamise (*Adenostoma fasciculatum*), popcorn flower (*Plagiobothrys* spp.), and native and nonnative grasses.

(4) Sand, loam, or sandy loam soils within the historical range of the animal;

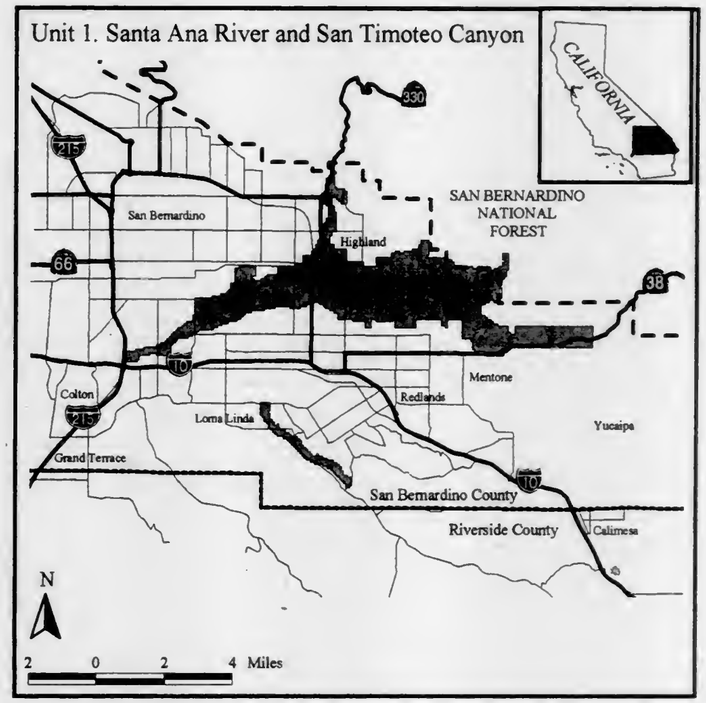
(5) Upland areas that may provide refugia from environmental or demographic stochastic and catastrophic events; and

(6) Moderate to low degree of human disturbance to habitat within the species' historical range, *i.e.*, lands within or immediately adjacent to flood plain terraces that have suitable habitat for the species and areas within 50 m (150 ft) of currently suitable San Bernardino kangaroo rat habitat, such as agricultural lands that are not disked annually, out-of-production vineyards, margins of orchards, areas of active or inactive industrial or resource extraction activities, and urban/wildland interfaces.

3. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, railroads, airports, other paved areas, lawns, other urban landscaped areas, and other features not containing primary constituent elements are not considered critical habitat.

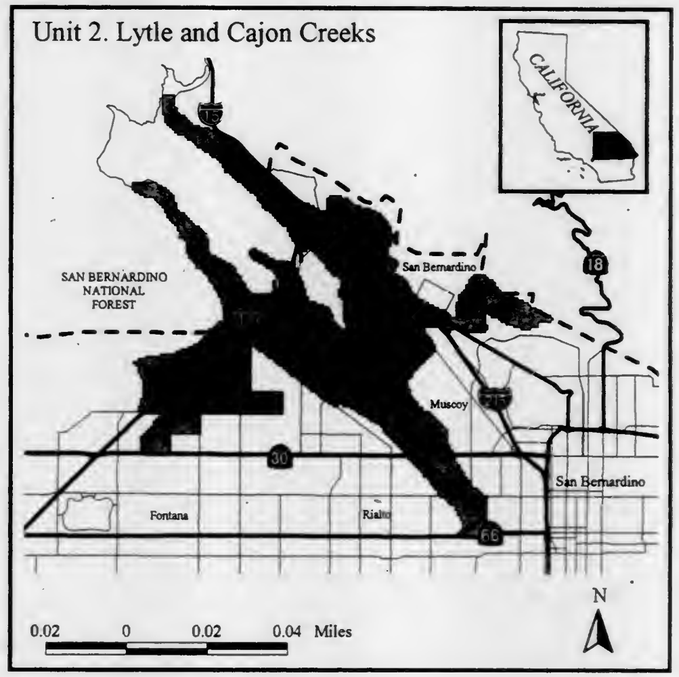
Map Unit 1: Santa Ana River and San Timoteo Canyon, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Harrison Mountain (1980), Yucaipa (1988), Redlands (1980), and San Bernardino South (1980), California, lands in the Santa Ana Wash bounded by the following Universal Transverse Mercator (UTM) North American Datum 1927 (NAD27) coordinates (X, Y): 482500, 3778300; 482700, 3778300; 482700, 3778200; 482800, 3778200; 482800, 3778100; 482700, 3778100; 482700, 3777500; 482800, 3777500; 482800, 3777400; 483200, 3777400; 483200, 3777300; 483300, 3777300; 483300, 3776700; 483000, 3776700; 483000, 3776800; 482900, 3776800; 482900, 3776900; 482800, 3776900; 482800, 3777000; 482600, 3777000; 482600, 3776600; 482700, 3776600; 482700, 3776300; 482800, 3776300; 482800, 3775400; 482600, 3775400; 482600, 3775200; 482500, 3775200; 482500, 3774800; 482700, 3774800; 482700, 3774600; 483300, 3774600; 483300, 3774000; 484100, 3774000; 484100, 3773800; 484700, 3773800; 484700, 3774200; 485400, 3774200; 485400, 3774400; 485600, 3774400; 485600, 3774500; 485800, 3774500; 485800, 3774400; 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Land in San Timoteo Canyon bounded by the following UTM NAD27 coordinates (X, Y): 479200, 3767400; 479700, 3767400; 479700, 3767000; 479600, 3767000; 479600, 3766900; 479700, 3766900; 479700, 3766600; 479800, 3766600; 479800, 3766500; 479900, 3766500; 479900, 3766300; 480000, 3766300; 480000, 3766400; 480100, 3766400; 480100, 3766200; 480200, 3766200; 480200, 3766100; 480400, 3766100; 480400, 3766000; 480600, 3766000; 480600, 3765900; 480700, 3765900; 480700, 3765800; 481000, 3765800; 481000, 3765700; 481100, 3765700; 481100, 3765600; 481200, 3765600; 481200, 3765400; 481300, 3765400; 481300, 3765300; 481400, 3765300; 481400, 3765200; 481500, 3765200; 481500, 3765100; 481600, 3765100; 481600, 3765000; 481700, 3765000; 481700, 3764900; 481900, 3764900; 481900, 3765000; 482000, 3765000; 482000, 3764900; 482200, 3764900; 482200, 3764800; 482400, 3764800; 482400, 3764700; 482700, 3764700; 482700, 3764600; 482900, 3764600; 482900, 3764500; 483000, 3764500; 483000, 3764400; 483100, 3764400; 483100, 3764200; 483200, 3764200; 483200, 3764000; 483400, 3764000; 483400, 3763900; 483600, 3763900; 483600, 3763500; 483500, 3763500; 483500, 3763400; 483300, 3763400; 483300, 3763600; 483200, 3763600; 483200, 3763700; 483100, 3763700; 483100, 3763800; 483000, 3763800; 483000, 3763900; 482900, 3763900; 482900, 3764000; 482800, 3764000; 482800, 3764100; 482700, 3764100; 482700, 3764200; 482600, 3764200; 482600, 3764300; 482400, 3764300; 482400, 3764400; 482300, 3764400; 482300, 3764500; 482200, 3764400; 482200, 3764500; 481800, 3764500; 481800, 3764600; 481600, 3764600; 481600, 3764700; 481400, 3764700; 481400, 3764800; 481300, 3764800; 481300, 3764900; 481200, 3764900; 481200, 3765000; 481100, 3765000; 481100, 3765100; 481000, 3765100; 481000, 3765200; 480900, 3765200; 480900, 3765300; 480800, 3765300; 480800, 3765400; 480700, 3765400; 480700, 3765500; 480600, 3765500; 480600, 3765600; 480500, 3765600; 480500, 3765700; 480300, 3765700; 480300, 3765800; 480000, 3765800; 480000, 3765900; 479900, 3765900; 479900, 3766000; 479800, 3766000; 479800, 3766100; 479700, 3766100; 479700, 3766200; 479600, 3766200; 479600, 3766400; 479500, 3766400; 479500, 3766500; 479400, 3766500; 479400, 3766700; 479300, 3766700; 479300, 3766800; 479200, 3766800; 479200, 3767400.



Map Unit 2: Lytle and Cajon Creeks, San Bernardino County, California. From USGS 1:24,000 quadrangle maps San Bernardino South (1980), San Bernardino North (1988), Devore (1988), and Cajon (1988), lands bounded by the following UTM NAD27 coordinates (X, Y): 456700, 3791400; 457200, 3791400; 457200, 3790900; 457300, 3790900; 457300, 3790700; 457400, 3790700; 457400, 3790600; 457600, 3790600; 457600, 3790500; 457700, 3790500; 457700, 3790400; 457800, 3790400; 457800, 3790300; 457900, 3790300; 457900, 3790200; 458200, 3790200; 458200, 3790100; 458600, 3790100; 458600, 3790000; 458800, 3790000; 458800, 3789900; 459000, 3789900; 459000, 3789800; 459200, 3789800; 459200, 3789700; 459300, 3789700; 459300, 3789600; 459500, 3789600; 459500, 3789500; 459600, 3789500; 459600, 3789400; 459800, 3789400; 459800, 3789300; 459900, 3789300; 459900, 3789200; 460000, 3789200; 460000, 3789000; 460100, 3789000; 460100, 3788900; 460200, 3788900; 460200, 3788800; 460300, 3788800; 460300, 3788700; 460400, 3788700; 460400, 3788600; 460600, 3788600; 460600, 3788500; 460700, 3788500; 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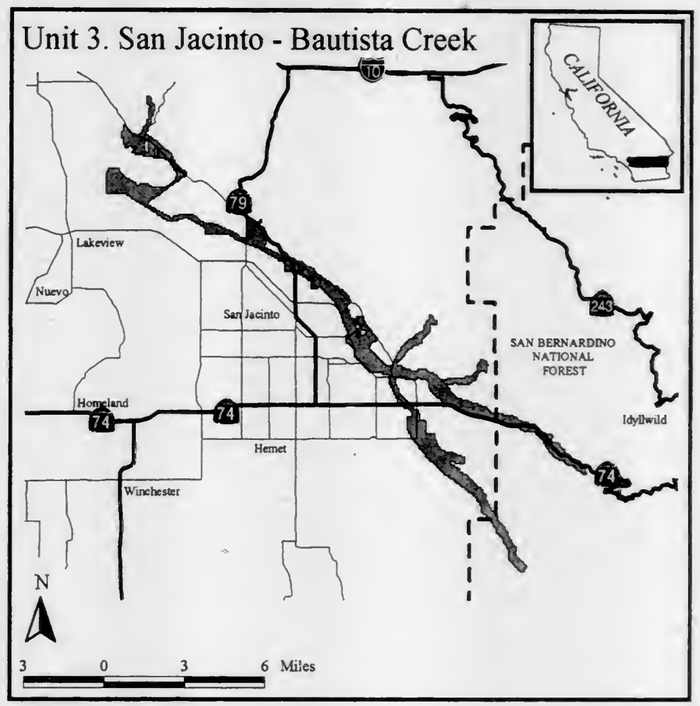


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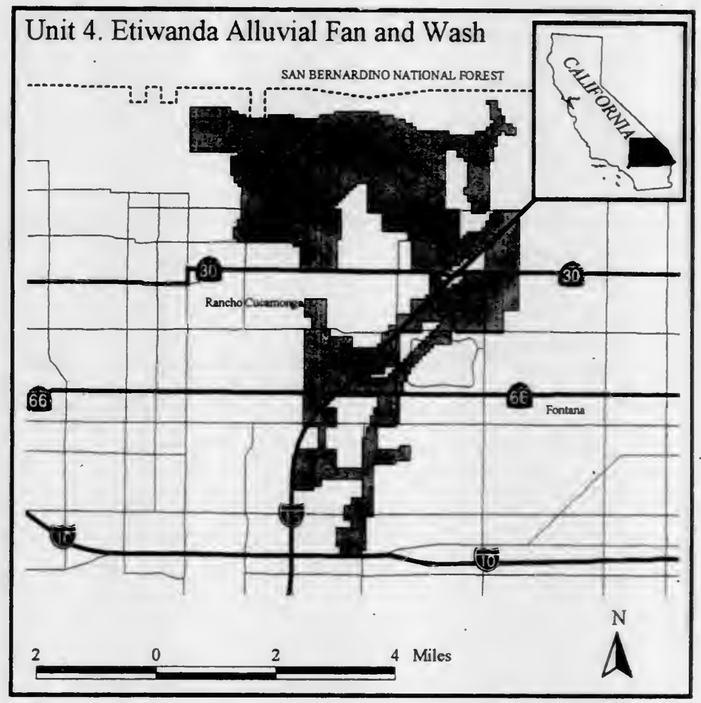
Map Unit 3: San Jacinto River and Bautista Creek, Riverside County, California. From USGS quadrangle maps Blackburn Canyon (1988), Hemet (1979), Lake Fulmor (1988), San Jacinto (1979), Lakeview (1979), and El Casco (1979), land bounded by the following UTM NAD27 coordinates (X, Y): 506300, 3739000; 506300, 3739200; 506800, 3739200; 506800, 3738900; 506900, 3738900; 506900, 3738700; 507000, 3738700; 507000, 3738600; 507100, 3738600; 507100, 3738500; 507200, 3738500; 507200, 3738400; 507300, 3738400; 507300, 3738200; 507400, 3738200; 507400, 3738100; 507500, 3738100; 507500, 3738000; 507600, 3738000; 507600, 3737800; 507500, 3737800; 507500, 3737700; 507300, 3737700; 507300, 3737600; 507200, 3737600; 507200, 3737400; 507100, 3737400; 507100, 3737300; 507200, 3737300; 507200, 3737200; 507300, 3737200; 507300, 3737100; 507400, 3737100; 507400, 3737000; 507500, 3737000; 507500, 3736900; 507600, 3736900; 507600, 3736800; 507700, 3736800; 507700, 3736700; 507800, 3736700; 507800, 3736600; 507900, 3736600; 507900, 3736500; 508000, 3736500; 508000, 3736400; 508100, 3736400; 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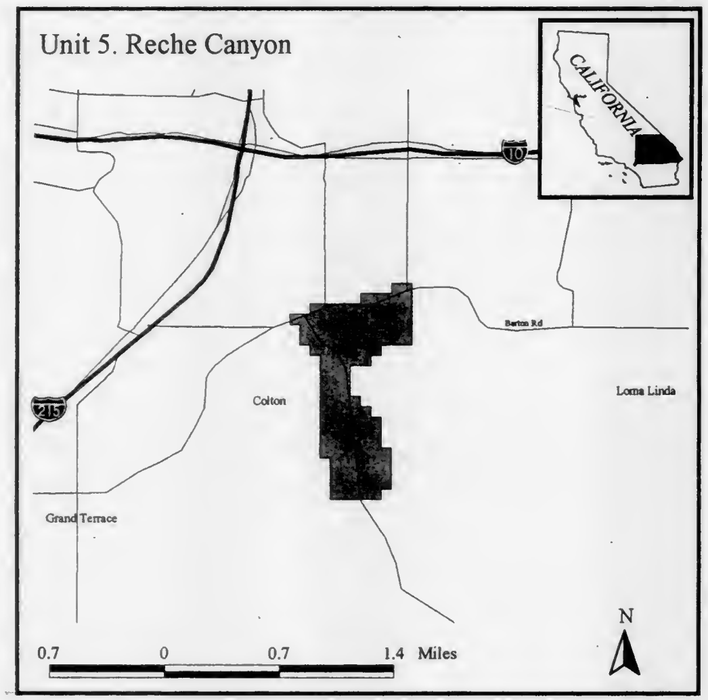
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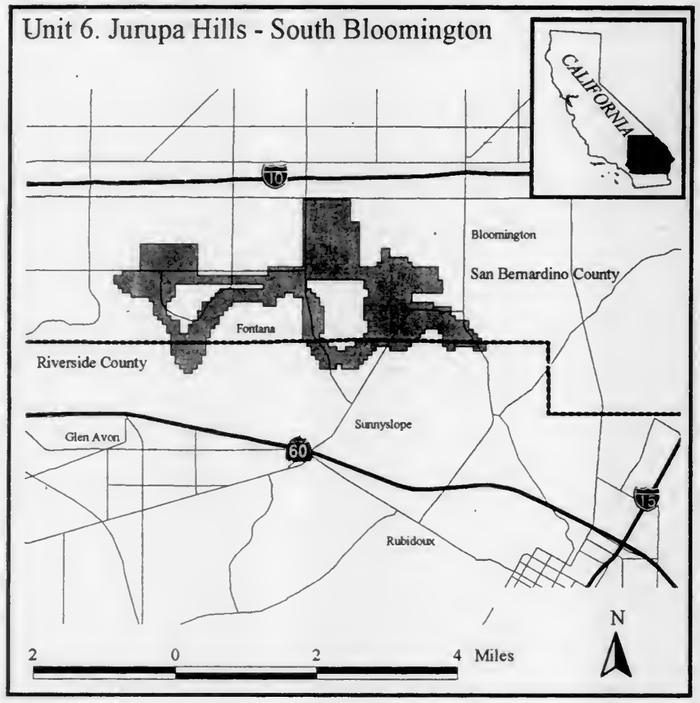
Map Unit 4: Etiwanda Alluvial Fan and Wash, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Fontana (1980), Guasti (1981), Devore (1988), and Cucamonga Peak (1988), California, land bounded by the following UTM NAD27 coordinates (X, Y): 455000, 3781700; 455300, 3781700; 455300, 3781500; 455400, 3781500; 455400, 3781300; 455500, 3781300; 455500, 3781100; 455700, 3781100; 455700, 3781000; 455800, 3781000; 455800, 3780800; 455500, 3780800; 455500, 3780900; 455400, 3780900; 455400, 3780800; 455300, 3780800; 455300, 3780500; 455200, 3780500; 455200, 3780100; 455100, 3780100; 455100, 3778800; 455000, 3778800; 455000, 3778700; 454600, 3778700; 454600, 3779000; 454500, 3779000; 454500, 3779200; 454400, 3779200; 454400, 3779400; 454500, 3779400; 454500, 3780100; 454400, 3780100; 454400, 3780200; 454200, 3780200; 454200, 3780400; 453900, 3780400; 453900, 3778800; 454300, 3778800; 454300, 3778000; 454400, 3778000; 454400, 3778100; 454500, 3778100; 454500, 3778200; 454900, 3778200; 454900, 3778300; 455000, 3778300; 455000, 3778500; 455100, 3778500; 455100, 3778700; 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Map Unit 5: Reche Canyon, San Bernardino County, California. From USGS 1:24,000 quadrangle map San Bernardino South (1980), California, land bounded by the following UTM NAD27 coordinates (X, Y): 474200, 3767800; 474400, 3767800; 474400, 3767200; 474100, 3767200; 474100, 3767100; 474000, 3767100; 474000, 3767000; 473800, 3767000; 473800, 3766700; 473900, 3766700; 473900, 3766600; 474000, 3766600; 474000, 3766500; 474100, 3766500; 474100, 3766200; 474200, 3766200; 474200, 3765800; 474100, 3765800; 474100, 3765700; 473600, 3765700; 473600, 3766100; 473500, 3766100; 473500, 3767100; 473400, 3767100; 473400, 3767200; 473300, 3767200; 473300, 3767400; 473200, 3767400; 473200, 3767500; 473400, 3767500; 473400, 3767600; 473900, 3767600; 473900, 3767700; 474200, 3767700; 474200, 3767800.



Map Unit 6: Jurupa Hills—South Bloomington, San Bernardino and Riverside Counties, California. From USGS 1:24,000 quadrangle map Fontana (1980), California, land bounded by the following UTM NAD27 coordinates (X, Y): 459800, 3769000; 460900, 3769000; 460900, 3768500; 461100, 3768500; 461100, 3767500; 461500, 3767500; 461500, 3767600; 461600, 3767600; 461600, 3767900; 461800, 3767900; 461800, 3767700; 462200, 3767700; 462200, 3767600; 462300, 3767600; 462300, 3767500; 462900, 3767500; 462900, 3767200; 463000, 3767200; 463000, 3766900; 462300, 3766900; 462300, 3766700; 462800, 3766700; 462800, 3766600; 463200, 3766600; 463200, 3766400; 463300, 3766400; 463300, 3766300; 463600, 3766300; 463600, 3766100; 463700, 3766100; 463700, 3766000; 463800, 3766000; 463800, 3765900; 463900, 3765900; 463900, 3765800; 464000, 3765800; 464000, 3765600; 463700, 3765600; 463700, 3765700; 463300, 3765700; 463300, 3765600; 463100, 3765600; 463100, 3765700; 463000, 3765700; 463000, 3766000; 462900, 3766000; 462900, 3766100; 462600, 3766100; 462600, 3766000; 462500, 3766000; 462500, 3765900; 462400, 3765900; 462400, 3765800; 462300, 3765800; 462300, 3765700; 462200, 3765700; 462200, 3765600; 461800, 3765600; 461800, 3765700; 461500, 3765700; 461500, 3765600; 461400, 3765600; 461400, 3765500; 461300, 3765500; 461300, 3765400; 461200, 3765400; 461200, 3765300; 461100, 3765300; 461100, 3765200; 460700, 3765200; 460700, 3765300; 460600, 3765300; 460600, 3765200; 460200, 3765200; 460200, 3765400; 460100, 3765400; 460100, 3765500; 460000, 3765500; 460000, 3765700; 459900, 3765700; 459900, 3765800; 459800, 3765800; 459800, 3766800; 459600, 3766800; 459600, 3766900; 459400, 3766900; 459400, 3766800; 459200, 3766800; 459200, 3766600; 458900, 3766600; 458900, 3766700; 458200, 3766700; 458200, 3766600; 458100, 3766600; 458100, 3766500; 458000, 3766500; 458000, 3766400; 457900, 3766400; 457900, 3766200; 457800, 3766200; 457800, 3766100; 457700, 3766100; 457700, 3765900; 457600, 3765900; 457600, 3765500; 457500, 3765500; 457500, 3765300; 457400, 3765300; 457400, 3765200; 457300, 3765200; 457300, 3765100; 457100, 3765100; 457100, 3765200; 457000, 3765200; 457000, 3765300; 456900, 3765300; 456900, 3765500; 456800, 3765500; 456800, 3766000; 456700, 3766000; 456700, 3766200; 456600, 3766200; 456600, 3766300; 456500, 3766300; 456500, 3766400; 456400, 3766400; 456400, 3766700; 456300, 3766700; 456300, 3766800; 455900, 3766800; 455900, 3766900; 455700, 3766900; 455700, 3767000; 455600, 3767000; 455600, 3767100; 455500, 3767100; 455500, 3767300; 455700, 3767300; 455700, 3767400; 456100, 3767400; 456100, 3768000; 457400, 3768000; 457400, 3767300; 459000, 3767300; 459000, 3767500; 459800, 3767500; 459800, 3769000; excluding land bounded by 459900, 3767200; 459900, 3767000; 460000, 3767000; 460000, 3766900; 460100, 3766900; 460100, 3766800; 460200, 3766800; 460200, 3766600; 460300, 3766600; 460300, 3766000; 460200, 3766000; 460200, 3765900; 460300, 3765900; 460300, 3765800; 460400, 3765800; 460400, 3765700; 460600, 3765700; 460600, 3765600; 460800, 3765600; 460800, 3765700; 461000, 3765700; 461000, 3765800; 461100, 3765800; 461100, 3765900; 461200, 3765900; 461200, 3766000; 461300, 3766000; 461300, 3766300; 461200, 3766300; 461200, 3766800; 461300, 3766800; 461300, 3767000; 461200, 3767000; 461200, 3767200; 459900, 3767200; and land bounded by 456900, 3767100; 456900, 3766800; 456800, 3766800; 456800, 3766700; 456700, 3766700; 456700, 3766400; 456800, 3766400; 456800, 3766300; 457000, 3766300; 457000, 3766000; 457200, 3766000; 457200, 3766200; 457300, 3766200; 457300, 3766300; 457400, 3766300; 457400, 3766500; 457500, 3766500; 457500, 3766700; 457700, 3766700; 457700, 3766800; 457800, 3766800; 457800, 3766900; 457900, 3766900; 457900, 3767000; 458900, 3767000; 458900, 3767100; 456900, 3767100.



Dated: December 1, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–31175 Filed 12–7–00; 8:45 am]

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Federal Register

Friday,
December 8, 2000

Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

Weatherization Assistance Program for Low-Income Persons; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

(RIN 1904–AB05)

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy is issuing an interim final rule to amend the regulations for the Weatherization Assistance Program for Low-Income Persons to incorporate the regulatory changes proposed in the notice of proposed rulemaking published in the **Federal Register** on January 26, 2000. The preamble of this interim final rule also discusses the new legislative amendments that Congress recently enacted which were not a part of the proposed rulemaking. These statutory amendments, as well as other clarifying language from previous rulemakings will be incorporated into the program regulations in a final rule to be issued by the Department early next year. This interim final rule adds clarifying language, deletes obsolete language, and improves the overall operation of the Program to assist State and local agencies in administering the Program.

DATES: Effective January 8, 2001. Written comments are due January 8, 2001.

ADDRESSES: Send written comments (three copies) to Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of any comments received will be available for inspection between the hours of 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays at the following address: DOE Freedom of Information Reading Room, Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–3142.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–44, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4074.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Amendments to the Weatherization Assistance Program
III. Opportunities for Public Comment
IV. Procedural Requirements
V. Other Federal Agencies
VI. The Catalog of Federal Domestic Assistance

I. Introduction

The Department of Energy (DOE or Department) amends the program regulations for the Weatherization Assistance Program for Low-Income Persons (WAP or Program). This Program is authorized by Title III of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6561 *et seq.* The changes are necessitated by the evolution of the Program since the last publication of the rule on June 5, 1995 (60 FR 29470). These changes help States by clarifying sections of the rule, thereby enhancing the interpretation and application of the program requirements. Some of the definitions in § 440.3 are clarified and, where needed, new definitions are added to provide a clearer and more concise meaning to States and local agencies who must interpret these regulations. Other sections applying to energy audits and allowable expenditures are clarified to enhance their meanings; and certain obsolete items are deleted. Other regulatory changes in today's rulemaking: add new and eliminate obsolete terms in the Program definitions; add "household with a high energy burden" and "high residential energy user" as new categories for those receiving priority service; create a separate cost category for health and safety expenditures; provide flexibility on the purchase of vehicles by local agencies; reduce the eligibility criteria for certain large multi-family buildings to 50 percent; establish new minimum energy audit criteria for the Program; and revise the date for reweatherization from 1985 to 1993.

Prior to developing and issuing this interim final rule, a proposed rulemaking was issued by DOE on January 26, 2000 (65 FR 4331) after consulting with its primary stakeholders, representatives of both State and local agencies, to listen to their concerns about what issues they wanted DOE to consider. The Program has evolved from a relatively simple approach of providing service to low-income homes with unskilled labor, installing low-cost/no cost retrofits, to a program that conducts advanced diagnostics and installs cost-effective energy conservation materials. The increased demand to maintain highly-trained crews has placed added strain on State and local agencies efforts to sustain a quality level of service to its low-income clients. Many of the changes lessen the administrative burden and provide flexibility for State and local agencies to incorporate the ever-changing technical enhancements as they become available. These changes also make State and local agencies better-suited to attract non-Federal leveraged resources into their programs. This interim final rule attempts to address as many of those concerns as possible. Many of the concerns that the stakeholders raised to DOE were not of a regulatory nature and were addressed administratively through program guidance documents.

Other concerns were statutory in nature and formed the basis of the legislative initiative proposed to the Congress. The Department proposed on September 20, 1999 several statutory changes developed during discussions with State and local stakeholders. These proposed statutory changes were enacted on November 9, 2000, as part of the Energy Policy and Conservation Act Amendments of 2000. These statutory changes: (1) Eliminate the requirement in § 440.18 that 40 percent of the funds used to weatherize a home be spent for materials; (2) restructure the method in § 440.18 by which States compute their average cost per home by increasing the average cost per home to $2,500 beginning in 2000; and (3) eliminate the separate per dwelling unit average in § 440.18 for capital intensive improvements and include capital intensive costs as a part of the average costs. The Department will issue a final rule that will incorporate these changes into the program regulations early next year.

DOE plans to include in the preamble of the final rule clarifying language on several areas of the program regulations where no actual changes were made. This action will provide States and local agencies the benefit of explanatory language used in the preambles of previous rulemakings which are still applicable today. This is necessary since many State and local staffs have changed several times over the years and much institutional knowledge has been lost. A comprehensive final rule will provide Federal, State, and local agency staff a central document for program regulatory information. This will also help in providing uniform interpretation of the regulations at all levels of the Program.

II. Amendments to the Weatherization Assistance Program

Section 440.1 Purpose and Scope

DOE deletes the first sentence in the Scope and Purpose since this information is duplicative of what is stated elsewhere in the rule. DOE amends the Purpose and Scope to add to the priority categories the terms "high residential energy user" and "household with a high energy burden." By adding these two categories, States are better able to prioritize their low-income clients by targeting those experiencing high energy costs and burden, thereby addressing those units with the greatest potential for energy savings. Additionally, by including these two categories, State and local agencies are better able to coordinate services with other Federal programs and leveraging opportunities. The current priority categories of the elderly, persons with disabilities, and families with children remain unchanged. Definitions for these two terms are discussed in § 440.3.

Section 440.3 Definitions

DOE proposed in the notice of proposed rulemaking (NOPR) to include rule language in § 440.21(h)(1) to encourage States to set the temperature(s) used to calculate heating and cooling degree data to more reasonably reflect their housing stock and climate, thereby reducing the overestimation of energy savings for most measures. By using, and defining in § 440.3, the term "balance point temperature," which is also used to describe the outside temperatures which require operation of heating or cooling equipment to maintain comfort, the proposed change was interpreted by some comments to be more substantial than DOE intended. To clarify the change described in § 440.21(e)(1) of the interim final rule, DOE is substituting a new term and definition for "base temperature" that replaces the definition of "balance point temperature" given in the NOPR.

DOE adds a definition for "electric base-load measures" to describe energy use outside of the traditional weatherization approach to heating and cooling and building envelope measures. As the Program evolves over the next several years into a whole house approach, DOE believes that electric base-load measures, which account for more than half the energy used in a typical household, are important when considering total residential energy use. Limited lighting measures are currently permitted in the Program and in the near future DOE may consider including other electric base-load measures such as the replacement of certain appliances. Most of the comments supported this change.

DOE adds the term "high residential energy user" which means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State. The definition for this category permits State and local agencies to better coordinate their activities and resources with many utility programs. Most of the comments supported this change.

DOE also adds the term "household with a high energy burden" which means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State. The definition for this category gives States and local agencies greater flexibility in determining priority service for those households that may not have traditional priority individuals such as the elderly, persons with disabilities, or families with children, but are experiencing a particular hardship due to their high energy costs.Most of the comments supported this change.

DOE substitutes the term "persons with disabilities" for the term "handicapped" to reflect the current accepted reference. The definition remains unchanged.

DOE considered both State and local agency concerns over the definition of "low-income" and the difficulties in effectively administering, coordinating, and leveraging between various Federal low-income programs using different definitions. However, in a review of the Act and the legislative history of the Program, DOE chose not to amend the existing definition. The comments were generally supportive, but stated that DOE should consider raising the eligibility criteria to be more compatible with other Federal programs. The DOE Weatherization Assistance Program was established to serve the neediest Americans. To expand the eligibility requirements to facilitate coordination with other Federal programs either through increasing eligibility to 80 percent of the poverty level, permitting census tracking of neighborhoods, or allowing area average median income levels would change the scope and purpose of the Program. More importantly, expanding the eligibility criteria would substantially increase the number of households eligible for assistance which already stands at over 29 million. DOE has addressed this issue in detail in the annual program grant guidance.

Section 440.14 State Plans

DOE reorganizes and revises § 440.14 to eliminate unnecessary and duplicative information. The comments stated that some of these requirements are no longer needed and should be eliminated to reduce paperwork and time in the production of the annual State plan. In reorganizing this section, DOE grouped items together relating to the public hearing. Items specific to the development of the State plan are also placed together. The information for the production schedule is now projected annually instead of quarterly and includes the number of previously weatherized homes expected to be weatherized.

DOE eliminates § 440.14(b)(2), (6), (7), and (b)(8)(iii). The comments agreed with DOE that this information requirement resulted in the States providing little more than meaningless estimates to DOE. States will continue to report to DOE the number of persons served in each of these groups.

DOE retains the requirement for information on the number of dwelling units expected to be weatherized for each area, but eliminates the expected number of previously weatherized units for each area. States have no idea how many previously weatherized homes can be expected to be weatherized for each area of the State.

Section 440.14(c)(6)(xi) retains from proposed § 440.14(b)(6)(xi) the requirement that States identify and describe the type of audit that meets the criteria outlined in § 440.21 and that DOE has approved. However, the reference to Project Retro-Tech or another DOE-approved audit is eliminated in this section as well as in § 440.21.

Section 440.15 Subgrantees

DOE amends § 440.15(a)(3)(iv) to eliminate the reference to "JTPA" and replace it with "other Federal or State training programs." The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220. The comments supported this change.

Section 440.16 Minimum Program Requirements

DOE adds clarifying language to § 440.16(b) to allow States to include "high residential energy user" and "household with a high energy burden" as priority groups among those receiving weatherization services. The use of the two new priority categories is not mandatory. Comments received were generally favorable to this change. Most comments stated that by adding these two categories, DOE has provided State and local agencies with expanded flexibility to choose the categories for priority which best serve their respective programs.

DOE amends § 440.16(d) to eliminate the reference to "JTPA" and replace it

with "other Federal or State training programs." The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220. States should describe any "other Federal or State training program" they will be using in their annual State plans as sources of labor. The comments supported this change.

Section 440.17 Policy Advisory Council

DOE received numerous comments expressing concern that DOE was proposing to eliminate the Policy Advisory Council (PAC). Many argued that the PAC performs very well in the States and provides a unique insight on many poverty issues, including weatherization. They stated that a State-body would not offer the same independent oversight and that the low-income would lose an important voice for the local agency in managing poverty programs. In proposing this flexibility to the State, DOE did not mean to imply that the State had the authority to replace without due cause any PAC. Rather, the State must show cause to DOE that the existing PAC is either non-existent or is not functioning as outlined in § 440.17. DOE is aware that in most instances, the PAC does work as it was intended. DOE also would give preference to any legitimate PAC that is replaced for cause by a State council or commission and then later reconstituted. DOE agrees with the comments that the traditional role played by the PAC should be protected by the regulations. However, DOE and the States are also concerned that in some States, the PAC does not function as intended and is, in some instances, simply non-existent.

Therefore, DOE amends § 440.17(a) to include the language "or a State commission or council" which meets the criteria in § 440.17 and is approved by DOE. Many State agencies which operate the DOE Weatherization Assistance Program have existing commissions or councils which review and approve policies and plans for many other Federal programs. States which opt to utilize an existing commission or council have to certify to DOE, as a part of the annual application, that the council or commission is an independent reviewer of activities for the Program, and that the State will address this issue as a part of the public hearing held on the State Plan. Therefore, any person(s) employed in any State Weatherization Program can also be a member of an existing commission or council but will have to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program.

Section 440.18 Allowable Expenditures

DOE deletes from § 440.18(b) and (b)(2)(i) references to (c)(15), the cost of eliminating health and safety hazards from the amount of funds used to determine the average cost per home. State and local agencies indicated to DOE that including the cost of health and safety into the amount of funds that can be spent on a home severely restricts their flexibility to operate effectively their programs. In providing for this flexibility, DOE agrees that excluding these costs from the average cost per home would afford States and local agencies the opportunity to fund advanced technology practices into their weatherization programs while reducing their administrative burden.

In the notice of proposed rulemaking, DOE proposed to create a separate line item for the cost of purchasing vehicles. DOE solicited comments on this proposal as well as an alternative approach which effectively deferred this large cost over both the life of the vehicle and the number of homes served during that period. DOE has decided to not create a separate line item because this distorts the actual cost of weatherization work done on a home. In accepting the alternative proposal in this interim final rule, DOE retains the cost of purchasing vehicles as a part of the amount of funds used to determine the average cost per home currently in § 440.18(c)(6).

For some local agencies, purchasing vehicles under the existing rule often forced them to seek low cost weatherization candidate homes in order to maintain their normal operation while ignoring potentially higher energy savings homes. To address the concerns expressed by State and local agencies that the cost of these vehicles and certain types of equipment included in the average cost per home calculation placed an undue burden on them, DOE amends § 440.18(b) by adding paragraph (3). This paragraph allows State and local agencies to determine the average cost per unit by excluding from the average per unit cost calculations that portion of the purchase cost of vehicles and certain types of equipment made during that particular funding year. Thus, States may amortize these costs in their average cost calculations so that only that fraction of the cost of a new vehicle or equipment purchase which was actually "used" during the current year is included.

For example, if a local agency purchases a new vehicle for $24,000 with an expected life of the vehicle of 8 years (96 months), then the cost of that vehicle could be amortized at the rate of $3,000 per year or $250 per month. This approach also affects certain types of equipment purchases having a useful life of more than one year and a cost of $5,000 or more as defined by 10 CFR part 600. It also permits local agencies to spread these costs out over the useful life of the vehicle or equipment purchase, even though the full purchase price is reported in the year in which it occurs. DOE will address the specific reporting requirements for amortized costs for vehicle and equipment purchases in program guidance.

The comments generally supported the proposed extension of the date by which a dwelling unit can be reweatherized. Therefore, DOE amends § 440.18(e)(2)(iii) by extending the date by which homes can be reweatherized from 1985 to 1993. Previously, DOE extended this date from 1975 to 1985 based on the evolution of the Program. Between 1975 and 1979, the Program addressed primarily building envelope measures. In 1985, the Program expanded to place more emphasis on mechanical measures, including furnace efficiency modifications. Since the last rulemaking which introduced new criteria for advanced energy audits, virtually all States have improved their energy auditing techniques. DOE acknowledges this overall program improvement by the States and is confident that by extending the date to 1993, those homes weatherized between 1985 and 1993 will provide an even greater opportunity to achieve increased energy efficiency. DOE also reminds States that homes which become candidates for reweatherization must have a new energy audit performed and that audit will take into consideration any previous weatherization improvements done on the home.

Section 440.19 Labor

DOE revises § 440.19 by deleting references to JTPA and replacing it with "other Federal or State training programs." The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220.

Section 440.21 Standards and Techniques for Weatherization

DOE proposed in the NOPR to rename, reorganize, and revise this entire section. The significant changes in response to public comments incorporated into this interim final rule further revise, reorganize, and renumber the paragraphs constituting § 440.21.

The proposed name change more accurately reflects the subject matter of

§ 440.21. The other major changes eliminate the base audit criteria and make the waiver audit criteria the minimum criteria for an energy audit used in the Program. In its final rule published on March 4, 1993 (58 FR 12525), DOE provided for a waiver of the 40-percent material cost requirement described in § 440.18(a) for those States that adopted advanced energy audit procedures. Today, virtually all of the States have incorporated an approved waiver audit and received a waiver of this requirement from DOE. Within the next year, all States will be using an approved waiver audit.

In the NOPR published on January 26, 2000 (65 FR 4338), DOE proposed to make the existing waiver energy audit requirements the new minimum standard for all energy audit procedures. The 40-percent material cost requirement and the waiver provisions have become unnecessary and their suggested elimination from the statute is discussed later in this rule. States and local agencies have made great strides in improving the energy auditing techniques used in their programs during this decade. Investments in time and resources have paid dividends in the form of greater energy efficiency and savings on the types of materials and the installation techniques used in the Program.

To implement this change, DOE proposed to delete all references to Project Retro-Tech audit procedures and the simplified cost-effectiveness tests used with Project Retro-Tech. DOE proposed that all energy audits require calculation of a savings-to-investment ratio for weatherization measures, and assignment of priorities based on the resulting figures consistent with the life-cycle cost methodology developed by DOE's Federal Energy Management Program and the National Institute of Standards and Technology (NIST). While the cost-effectiveness requirements for the selection of weatherization measures under the waiver audit criteria were generally not made more stringent, they were described in more detail since they were to become the minimum criteria.

Of the 71 total comments that DOE received on the NOPR, 60 contained comments regarding the proposed changes to § 440.21. A large number of comments (46) expressed the belief that § 440.21 was overly complicated, detailed, and prescriptive in contrast to the simplification afforded by the rest of the proposed rule changes. These comments suggested that much of the text in § 440.21 should be moved to policy guidance. Further, the comments suggested that the proposed language locked the program into terminology and technology that time and research may supersede.

Based on these comments, DOE agrees to simplify § 440.21 by moving many of the details describing the cost-effectiveness requirements for measure selection from the regulations to policy guidance. Only a brief, general description of the cost-effectiveness requirement remains in the rule text.

In § 440.21(f)(1) of the NOPR, DOE proposed to address the interaction of measures by including the phrase "using generally accepted engineering methods" to remind States to use reasonable energy-estimating methods and assumptions to account for the interaction among weatherization measures. Since no comments were received, § 440.21(d)(1) of the interim final rule includes this change.

In § 440.21(d) of the NOPR, DOE proposed to include the sentence, "The lifetime of materials must not exceed the remaining useful life of the dwelling," to acknowledge that the low-income housing stock served by some programs is in poor condition. A weatherization measure may appear to be cost-effective assuming the energy cost savings accrue over the entire 20-year economic life of the material, but may not be cost-effective if the energy savings accrue over a shorter period of time in light of the remaining useful dwelling life, for example, ten years.

Three comments pointed out the difficulty in determining accurately the remaining useful life of a dwelling and the possible adverse impacts related to this proposed requirement. In response to these comments as well as to other comments, DOE has agreed to remove from the rule the language containing this proposed requirement. The guidance that is eventually issued to detail the cost-effectiveness requirements will not mandate that the remaining useful life of a dwelling be used in the life-cycle cost calculations. However, States will be encouraged in the guidance to consider remaining use dwelling life when selecting the most appropriate measures in light of the legislative requirement to measure the rate of return of the total conservation investment. Determining when the remaining useful life of a dwelling may impact the cost-effectiveness calculations of weatherization measures and estimating the remaining useful life of such dwellings should be left to the discretion of the local agency.

Ten comments questioned the impact of specifying the use of FEMP life-cycle costing analysis methods to determine measure cost-effectiveness. The comments expressed concern about what would happen if FEMP did not establish standards for every material or measure that may be cost-effective in low-income households. DOE specified the FEMP annual supplement as a convenient source for the discount rate and, if used, the fuel cost escalation rates used to calculate savings-to-investment ratios since the existing rule language did not give States an easy-to-use information source. The FEMP Handbook and annual supplement discuss life-cycle costing of any and all energy conservation investments and do not address material standards. However, in simplifying § 440.21 and moving many of the cost-effectiveness details to policy guidance, references to FEMP have been removed from the rule. Annually, DOE will either distribute the FEMP annual supplement to each State, or inform the States when the supplement is published and how it may be obtained.

In § 440.21(h) of the NOPR, DOE proposed changes to the energy audit requirements that do not pertain to life-cycle costing methods. DOE proposed in paragraph (h)(1) of the NOPR to substitute the phrase "climatic data" for the existing "number of heating or cooling degree days" to acknowledge that other types of weather data besides heating and cooling degree days can be used in the estimation of fuel cost savings. Since no comments were received, this change is included in § 440.21(e)(1) of the interim final rule.

DOE proposed in § 440.21(h)(1) of the NOPR to include rule language to encourage States to set the balance point temperature(s) used in conjunction with heating and cooling degree data to more reasonably reflect the outside temperatures which require operation of heating or cooling equipment to maintain comfort. Three comments questioned how balance point temperatures would realistically be incorporated into the program, and noted that many currently approved audits did not estimate balance points as NEAT does. The use of the term "balance point temperature" instead of the more appropriate "base temperature" made the proposed change appear more substantial than DOE intended.

Heating degree days are computed by subtracting the average daily temperature from a base temperature, which has traditionally been 65°F. The traditional heating degree day base temperature assumes that the furnace needs to run at outside temperatures less than 65°F. In reality, the furnace is typically not needed until the outside temperature drops below around 60°F due to the heat generated by lights,

appliances, and people. Because of the thermal mass of a dwelling and other reasons; air conditioning is not usually required until outside temperatures exceed the traditional cooling degree day base temperature (65°F) by about 5 to 10°F.

Encouraging States to use degree day data calculated at base temperature(s) that more reasonably reflect their housing stock and climate would not only reduce the overestimation of energy savings for most measures, but would also more accurately model their true cost-effectiveness. While ideally the base temperature(s) used would be the building's balance point, DOE recognizes the prohibitive analytical burden this would impose. Instead, States are encouraged to select appropriate heating and cooling degree day base temperatures based on the validation of their energy estimating software or other reasonable basis. DOE has substituted the term "base temperature" (and definition in § 440.3) for proposed "balance point temperature" in § 440.21(e)(1) of the interim final rule and reworded this paragraph to more accurately reflect the intended change.

The State Energy Efficiency Programs Improvement Act of 1990, which amended 42 U.S.C. 6861 *et seq.*, stated that energy audit procedures should "establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency." DOE interprets this language, in part, to mean that advanced energy audit procedures should consider energy efficiency as well as total energy savings. For example, replacing an existing space heater being used to heat a single room, with a more energy efficient central furnace, capable of heating the whole house, would probably increase energy use even as it improved energy efficiency. The occupants would also be better able to use the entire dwelling unit. Unless undertaken for health and safety reasons, this measure must be cost justified by the audit. Addressing energy efficiency in this case would require a cost justification that compares the energy usage of the central unit to the energy usage of heating the entire home with space heaters.

The existing rule language addressing this issue states that energy audit procedures must "consider the rate of energy use," which does not clearly describe the need to look at both energy efficiency and total energy savings. To more directly address situations similar to the space heater example, DOE proposed instead to include the phrase "and energy requirements." This proposed change combined the requirement to determine the existing energy use with the need to determine existing energy requirements from actual energy bills or by generally accepted engineering calculations. As in the space heater example, the energy requirements of a dwelling unit may exceed its existing energy use.

The one comment addressing this proposed change agreed with the need to consider both energy efficiency and total energy savings. However, the comment expressed concern about encouraging the conversion of zone, or room, heating systems to whole-house systems. DOE realizes that these types of situations must be considered on a case-by-case basis, but believes that the proposed change clarifies the original intent of the legislation. Therefore, DOE has included this change in § 440.21(e)(2) of the interim final rule.

Proposed § 440.21(h)(7) included language to remind States that DOE would have to approve an energy audit for each major dwelling type covered by the State's weatherization program in light of the different energy audit requirements of single-family dwellings, multi-family buildings, and mobile homes. One comment expressed concern about this requirement for programs that only weatherize a few mobile homes or multifamily buildings each year. The comment stated that the requirement should only apply if mobile homes or multifamily buildings represented over five percent of the units weatherized by the State each year. Based on this comment, DOE has included in § 440.21(e)(7) of the interim final rule revised language which states, "that represents a significant portion of the State's weatherization program." Future guidance will define "significant" at an appropriate level to be determined.

Proposed § 440.21(i) included language that clarified the type of information DOE currently requires to approve State priority lists for similar dwelling units. When States submit to DOE their request for priority list approval, they often do not provide sufficient detail. For example, an adequate description of the types of dwelling units (*e.g.*, 1-story ranch, 1½-story Cape Cod) covered by the priority list(s) often is missing. The methodology used to select the representative sample of dwellings used to develop the priority list often is not explained, nor are the circumstances that will require a site-specific audit in lieu of the priority list adequately described. The increased energy savings resulting from advanced energy audit procedures could be compromised by priority lists that are not based on truly typical housing stock or used without comprehensive guidelines that tell an auditor when atypical circumstances require a site-specific audit.

Three comments disapproved of the perceived increased DOE scrutiny of priority lists. While DOE encourages the site-specific energy audit of every dwelling weatherized, it realizes that this is often not possible considering the constraints on field staff imposed by funding limitations and production pressures. The comments suggested that time spent conducting an energy audit might be better spent on increasingly sophisticated diagnostic testing to ensure that the dwelling is adequately ventilated, combustion appliances are operating safely and efficiently, and that the combustion appliances vent properly. DOE agrees that priority lists are valuable tools in reducing energy costs in the greatest possible number of low-income households. Yet, DOE is responsible for ensuring the technical soundness of priority lists in light of the substantial Federal investment. For this reason, DOE has retained in § 440.21(h) of the interim final rule the existing documentation requirements for the approval of priority lists.

One comment pointed out that proposed § 440.21(j), which requires every State to document the performance of the same presumptively cost-effective general heat waste (GHW) reduction materials, needlessly duplicates effort. The comment further noted that this documentation often comes from publications authored by DOE. The comment suggested that DOE issue an initial list of approved GHW materials as policy guidance. DOE agrees with this comment and has revised that paragraph, which is now § 440.21(g), and will issue guidance specifying approved GHW materials. States may request approval for GHW materials not listed in DOE policy guidance by providing the required documentation.

Existing regulations require priority lists to be revalidated every five years. To make the revalidation of priority lists more straightforward, DOE proposed in § 440.21(k) and (l) to require States to submit to DOE for approval every five years their complete energy audit procedures including priority lists and lists of general heat waste reduction materials. To revalidate their priority lists, States would have to re-run their energy audit on a subset of the similar dwellings that the priority list covers. Prior to the issuance of the NOPR, States have logically argued that their housing stock and typical housing types do not change significantly over a five-year

period. However, technologies, material and energy costs, and auditing tools do change. DOE encourages the continual improvement of audit tools as evidenced by new versions of NEAT over the years. The best and most current audit software should be used in developing priority lists. Additionally, since the latest version of a State's audit software may not have specific DOE approval, it makes sense for the DOE approval process to update the energy audit and priority lists every five years.

One comment supported the proposed change to include energy audit procedures in the priority list revalidation requirement. Five comments disagreed with the proposed change as well as the existing requirement to revalidate priority lists every five years. The comments against the proposed change argue that revalidation of priority lists should be based on factors that measure cost-effectiveness, such as fuel and material costs. While DOE does not wish to impose unnecessary documentation requirements on States, the Department is responsible for ensuring that only cost-effective weatherization measures be installed with DOE funds.

One comment argued that DOE-approved energy audits should stay approved until they no longer comply with the requirements. Since States constantly change and improve their energy audit practices and protocols, DOE believes it is prudent to conduct periodic technical assessments of States' entire energy auditing procedures. DOE looks at not just the energy audit software but how the State uses the software. DOE energy audit approval process reviews all of the procedures States use to select and install weatherization measures, as well as health and safety practices affecting clients and field crews.

Thirty-nine (39) comments stated that the process by which DOE reviews energy audits, including garnering State and expert input, should be described in the rule, as well as the process by which the Department will update the guidance. The comments also wanted DOE to include in the rule its plan for assuring uniform consideration by its regional offices and processes for appeals should a proposed audit be turned down. While existing guidance and review practices effectively address many of these concerns, DOE will revisit its energy audit approval process and will seek State and expert input. However, DOE believes that policy guidance is the most appropriate place to describe processes for reviewing energy audits and updating guidance since such processes are likely to change over time.

Although § 440.21(h) of the interim final rule retains the general five-year revalidation requirement, DOE has revised the proposed rule language to indicate that the policy guidance (issued after seeking State and expert input) will specify the information that States must submit and the circumstances that reduce or increase documentation requirements. The documentation required to revalidate priority lists will likely be substantially reduced in cases where the factors affecting the cost-effectiveness of weatherization measures on the priority lists (*e.g.*, housing stock, costs, energy estimating algorithms) have not changed significantly since original DOE approval.

Twenty-one (21) comments addressed the proposed § 440.21(k) requirement for States to submit to DOE for approval each new version of non-NEAT/MHEA energy audit software released subsequent to State-specific DOE approval. The comments were concerned that the requirement might stifle the adoption of evolutionary software improvements and would increase the reporting burden on States. As indicated in § 440.21(h) of the interim final rule, DOE agrees with these comments and will include in policy guidance (to be issued after seeking State and expert input) the reduced reporting requirements regarding new releases of energy audit software.

Thirty-nine comments suggested that the policy guidance should also address the manner in which new technologies will be addressed and incorporated into the program. These comments also asked how additional benefits other than energy efficiency, such as climate change benefits, will be added to the program. The Millennium Implementation Planning Committee has assembled a panel of stakeholders that is currently developing a new system to identify, assess, and incorporate advanced technology into the program in a more open and expedient manner. The non-energy benefits of the Weatherization Assistance Program are often included in overall program evaluations and program justification discussions. Perhaps the program can use these non-energy benefits to its advantage in future emissions trading systems. However, DOE believes more information on this issue needs to be explored before making a final decision.

One comment requested that the cleaning and tuning of air conditioners be added to Appendix A. The comment explained that an air conditioner clean and tune typically involves cleaning the cooling coil and straightening the fins. Under the heading "Heating and Cooling System Repairs and Tune-Ups/Efficiency Improvements," cleaning heat exchangers of heating systems is listed. DOE considers the lack of a specific listing for cleaning cooling coils an oversight that will be resolved when Appendix A is updated in the near future.

In the preamble of the proposed rule, DOE indicated the possibility of proposing in the future a requirement for States to include overhead charges (such as costs for off-site supervisory personnel, tools, vehicles, etc.) in the savings-to-investment ratio calculations for individual weatherization measures. In that discussion, DOE stated that such costs are a significant fraction of the total costs of weatherizing individual homes and should, therefore, be considered in the assessment of the relative costs and benefits of measures. DOE received five comments on this suggestion. Four of the comments were interested in accounting for overhead costs but believed that these costs should perhaps be a part of an overall State evaluation of the Program instead of impacting measure selection on a home-by-home basis. DOE will continue to urge States to consider such overhead costs in the measure cost-effectiveness calculations. However, in developing any future proposal to require the inclusion of overhead costs, DOE intends to study this issue further with the stakeholders.

Section 440.22 Eligible Dwelling Units

DOE amends § 440.22(b)(2) to add certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units are to be occupied by income-eligible households. In these large multi-family buildings, as few as 50 percent of the units would have to be certified as eligible before weatherization. This exception applys only to those large multi-family buildings where an investment of DOE funds would result in significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies are better-suited to select the most cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions. While most comments were supportive, several comments did suggest that this flexibility should be extended to cover all multi-family

buildings. In the proposed rule, DOE made it clear that this flexibility will be targeted to only these certain types of buildings because of the large investment involved and the potential for greater energy savings.

III. Opportunities for Public Comment

A. Participation in Rulemaking

The Department encourages public participation in this rulemaking. The Department has established a period of 30 days following publication of this interim final rule for persons to comment. You may review all public comments and other docket material in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice of the interim final rule.

B. Written Comment Procedures

Interested persons and organizations are invited to participate in this rulemaking by submitting data, views, or comments with respect to the interim final rule. Please provide three copies of your comments to the address indicated in the **ADDRESSES** section of this interim final rule. DOE will consider all timely-submitted comments and other relevant information before this rule becomes effective.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's interim final rule has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. DOE published a notice of proposed rulemaking to amend 10 CFR part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of low-income citizens and to make other changes designed to streamline and update DOE's Weatherization Assistance Program. The proposed rule was developed following extensive consultation with State and local stakeholders and after reviewing comments received. DOE said that the proposed rule would have not any adverse economic impact on any small governments, organizations or businesses. Accordingly, DOE certified that the proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. DOE did not receive any comments of this certification, and the addition of mandated cost sharing requirements does not warrant reconsideration of the certification.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this interim final rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE regulations implementing the National Environmental Policy Act of 1969, (42 U.S.C. 4321 *et seq.*) Specifically, this interim final rule is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021, which covers rulemakings that interpret or amend an existing regulation without changing the environmental effect of the regulation. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's interim final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The interim final rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. Today's interim final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

V. Other Federal Agencies

DOE provided draft copies of the interim final rule to the Department of Health and Human Services' Low-Income Home Energy Assistance Program and the Department of Agriculture's Farmers Home Administration. We have received no comments. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to § 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator has made no comments.

VI. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs-Energy, Grant programs-Housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on November 29, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 440 of title 10, Code of Federal Regulations, as set forth below.

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 is revised to read as follows:

Authority: 42 U.S.C. 6861 *et seq.*; 42 U.S.C. 7101 *et seq.*

2. Section 440.1 is revised to read as follows:

§ 440.1 Purpose and scope.

This part implements a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users, and households with high energy burden.

3. In § 440.3:

a. Remove the definition for "JTPA";

b. Revise the words in the definitions for "Handicapped Person" to read "Persons with disabilities" and place it in alphabetical order; and

c. Add the following definitions in alphabetical order to read as follows:

§ 440.3 Definitions.

* * * * *

Base temperature means the temperature used to compute heating and cooling degree days. The average daily outdoor temperature is subtracted from the base temperature to compute heating degree days, and the base temperature is subtracted from the average daily outdoor temperature to compute cooling degree days.

* * * * *

Electric base-load measures means measures which address the energy efficiency and energy usage of lighting and appliances.

* * * * *

High residential energy user means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State.

Household with a high energy burden means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State.

* * * * *

Non-Federal leveraged resources means those benefits identified by State or local agencies to supplement the Federal grant activities and that are made available to or used in conjunction with the DOE Weatherization Assistance Program for the purposes of the Act for use in eligible low-income dwelling units.

* * * * *

4. Section 440.14 is revised to read as follows:

§ 440.14 State plans.

(a) Before submitting to DOE an application, a State must provide at least 10 days notice of a hearing to inform prospective subgrantees, and must conduct one or more public hearings to receive comments on a proposed State plan. The notice for the hearing must specify that copies of the plan are available and state how the public may obtain them. The State must prepare a transcript of the hearings and accept written submission of views and data for the record.

(b) The proposed State plan must:

(1) Identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount of funding each will receive;

(2) Address the other items contained in paragraph (c) of this section; and

(3) Be made available throughout the State prior to the hearing.

(c) After the hearing, the State must prepare a final State plan that identifies and describes:

(1) The production schedule for the State indicating projected expenditures and the number of dwelling units, including previously weatherized units which are expected to be weatherized annually during the program year;

(2) The climatic conditions within the State;

(3) The type of weatherization work to be done;

(4) An estimate of the amount of energy to be conserved;

(5) Each area to be served by a weatherization project within the State, and must include for each area:

(i) The tentative allocation;

(ii) The number of dwelling units expected to be weatherized during the program year; and

(iii) Sources of labor.

(6) How the State plan is to be implemented, including:

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a subgrantee;

(ii) An explanation of the method used to select each area served by a weatherization project;

(iii) The extent to which priority will be given to the weatherization of single-

family or other high energy-consuming dwelling units;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program;

(viii) The average amount of the DOE funds specified in § 440.18(c)(1) through (9) to be applied to any dwelling unit;

(ix) The average amount of DOE funds applied to any dwelling unit for weatherization materials as specified in § 440.18(c)(1);

(x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in § 440.18(d);

(xi) Procedures for determining the most cost-effective measures in a dwelling unit;

(xii) The definition of "low-income" which the State has chosen for determining eligibility for use statewide in accordance with § 440.22(a);

(xiii) The definition of "children" which the State has chosen consistent with § 440.3; and

(xiv) The amount of Federal funds and how they will be used to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

5. Section 440.15 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 440.15 Subgrantees.

(a) * * *

(3) * * *

(iv) The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other Federal or State training programs.

* * * * *

6. Section 440.16 is amended by revising paragraphs (b) and (d) to read as follows:

§ 440.16 Minimum program requirements.

* * * * *

(b) Priority is given to identifying and providing weatherization assistance to:

(1) Elderly persons;

(2) Persons with disabilities;

(3) Families with children;

(4) High residential energy users; and

(5) Households with a high energy burden.

* * * * *

(d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training participants and public service employment workers, other Federal or State training program workers, to work under the supervision of qualified supervisors and foremen;

* * * * *

7. In § 440.17 paragraph (a) introductory text is revised and paragraphs (b) and (c) are added to read as follows:

§ 440.17 Policy advisory council.

(a) Prior to the expenditure of any grant funds, a State policy advisory council, or a State commission or council which serves the same functions as a State policy advisory council, must be established by a State or by the Regional Office Director if a State does not participate in the Program which:

* * * * *

(b) Any person employed in any State Weatherization Program may also be a member of an existing commission or council, but must abstain from reviewing and approving activities associated with the DOE Weatherization Assistance Program.

(c) States which opt to utilize an existing commission or council must certify to DOE, as a part of the annual application, of the council's or commission's independence in reviewing and approving activities associated with the DOE Weatherization Assistance Program.

8. Section 440.18 is amended by:

a. Revising paragraph (a);

b. Removing the phrase "and (c)(15)" in the introductory text to paragraph (b) and in paragraph (b)(2)(i);

c. Adding paragraph (b)(3);

d. Revising paragraph (c)(6); and

e. Revising "September 30, 1985" to read "September 30, 1993" in paragraph (e)(2)(iii).

The revisions and addition read as follows:

§ 440.18 Allowable expenditures.

(a) States must spend an average of at least 40 percent of the funds provided them for weatherization materials, labor and related matters listed in paragraphs (c)(1) through (9) of this section. DOE may approve a State's application to waive the 40 percent requirement under § 440.21.

* * * * *

(b) * * *

(3) For the purposes of determining the average cost per dwelling limitation, costs for the purchase of vehicles or other certain types of equipment as defined in 10 CFR part 600 may be amortized over the useful life of the vehicle or equipment.

* * * * *

(c) * * *

(6) The cost of purchasing vehicles, except that any purchase of vehicles must be referred to DOE for prior approval in every instance.

* * * * *

9. Section 440.19 is revised to read as follows:

§ 440.19 Labor.

Payments for labor costs under § 440.18(c)(2) must consist of:

(a) Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and

(b) Payments to employ labor or to engage a contractor (particularly a nonprofit organization or a business owned by disadvantaged individuals which performs weatherization services), provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other Federal or State training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

10. Section 440.21 is revised to read as follows:

§ 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraphs (c) and (d) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (e) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (f) and (g) of this section describe the use of priority lists and presumptively cost-effective general heat waste reduction materials as part of a State's energy audit procedures. Paragraph (h) of this section explains that a State's energy audit procedures and priority lists must be re-approved by DOE every 5 years.

(b) Only weatherization materials which are listed in Appendix A to this part and which meet or exceed standards prescribed in Appendix A to this part may be purchased with funds provided under this part. However, DOE may approve an unlisted material upon application from any State.

(c) Except for materials to eliminate health and safety hazards allowable under § 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. These materials must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, installation, and on-site supervisory personnel as defined by the Department. States have the option of requiring additional related costs to be included in the determination of cost-effectiveness. The cost of incidental repairs must be included in the cost of the package of measures installed in a dwelling.

(d) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to paragraph (c) of this section after:

(1) Adjusting for interaction between architectural and mechanical weatherization materials by using generally accepted engineering methods to decrease the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and

(2) Eliminating any weatherization materials that are no longer cost-effective, as adjusted under paragraph (d)(1) of this section.

(e) The energy audit procedures also must—

(1) Compute the cost of fuel saved per year by taking into account the climatic data of the area where the dwelling unit is located, where the base temperature that determines the number of heating or cooling degree days (if used) reasonably approximates conditions when operation of heating and cooling equipment is required to maintain comfort, and must otherwise use reasonable energy estimating methods and assumptions;

(2) Determine existing energy use and energy requirements of the dwelling unit from actual energy bills or by generally accepted engineering calculations;

(3) Address significant heating and cooling needs;

(4) Make provision for the use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;

(5) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under § 440.16(h);

(6) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system, and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment; and

(7) Be specifically approved by DOE for use on each major dwelling type that represents a significant portion of the State's weatherization program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes.

(f) For similar dwelling units without unusual energy-consuming characteristics, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraphs (b) through (e) of this section, site-specific energy audits of a representative subset of these dwelling units. For DOE approval, States must describe how the priority list was developed, how the subset of similar homes was determined, and circumstances that will require site-specific audits rather than the use of the priority lists. States also must provide the input data and list of weatherization measures recommended by the energy audit software or manual methods for several dwelling units from the subset of similar units.

(g) States may use, as a part of an energy audit, general heat waste reduction weatherization materials that DOE has determined to be generally cost-effective. States may request approval to use general heat waste materials not listed in DOE policy guidance by providing documentation of their cost-effectiveness and a description of the circumstances under which such materials will be used.

(h) States must resubmit their energy audit procedures (and priority lists, if applicable, under certain conditions) to DOE for approval every five years. States must also resubmit to DOE, for approval every five years, their list of general heat waste materials in addition to those approved by DOE in policy guidance, if applicable. Policy guidance will describe the information States must submit to DOE and the circumstances that reduce or increase documentation requirements.

11. Section 440.22 is amended by revising paragraph (b)(2) introductory text to read as follows:

§ 440.22 Eligible dwelling units.

* * * * *

(b) * * *

(2) Not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-family buildings) of the dwelling units in the building:

* * * * *

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Friday,
December 8, 2000

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve; Request for Comments on the President's Conservation Measures and Proposal to Make Permanent the Reserve Preservation Areas; and Call for Applications for Representatives to the Coral Reef Ecosystem Council; Notices

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Comments on the President's Conservation Measures and Proposal To Make Permanent the Reserve Preservation Areas in the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Request for comments; notice of public hearings.

SUMMARY: On December 4, 2000, President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Act). As part of the establishment of the Reserve, the President established certain conservation measures that restrict activities throughout the Reserve and created Reserve Preservation Areas around various islands and banks within the Reserve where consumptive or extractive uses are prohibited except as otherwise specified in the Executive Order. Under the Act, closure areas may become permanent after adequate public review and comment. Through this notice, the President is seeking public comment on making the Reserve Preservation Areas permanent. The President is also seeking public comment on the conservation measures established for the Reserve. These measures are to provide strong and lasting protection for the coral reef ecosystem and related marine resources and species of the Reserve (Reserve resources). The public may submit written comments to the Secretary of Commerce on the President's behalf. The President has also directed the Secretary to hold seven (7) public hearings to accept written and oral comments on his behalf.

DATES: Comments will be considered if postmarked no later than January 8, 2001.

ADDRESSES: Comments may be mailed to Roger Griffis, NOAA, Office of Policy and Strategic Planning, Room 6117, 14th & Constitution Ave NW, Washington, D.C. 20230–0001 or faxed to (301) 713–4306. Comments can also be submitted electronically via the website at hawaiireef.noaa.gov, or by email to *hawaiicomments@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: For further information, or to request an information packet on the President's proposal, please contact Roger Griffis at (866) 616–3605, or visit the web site at hawaiireef.noaa.gov

SUPPLEMENTARY INFORMATION:

On December 4, 2000 President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to section 6 of the National Marine Sanctuaries Amendments Act of 2000 (Act), Pub. L. 106–513 (11/13/00). The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce, or his or her designee (hereafter "Secretary") under the National Marine Sanctuaries Act and the Executive Order. The Secretary will also initiate the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the Executive Order that is part of the information package that may be obtained at the address above, or can be found on the web site listed above.

Conservation Measures

The Executive Order contains the following conservation measures that apply throughout the Reserve.

Commercial Fishing. The order provides that all currently existing commercial federal fishing permits and current levels of fishing effort and take, as determined by the Secretary and pursuant to regulations in effect on the date of this order shall be capped as follows:

- No commercial fishing may occur in Reserve Preservation Areas, except as expressly allowed in the Executive Order;
- There shall be no increase in the number of permits of any particular type of fishing (such as for bottomfishing) beyond the number of permits of that type in effect the year preceding the date of the Executive Order;
- The level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing over the year preceding the date of this order, as determined by the Secretary, provided that the Secretary shall equitably divide the aggregate level into individual levels per permit, and further provided that the Secretary may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;
- There shall be no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of the Executive Order;
- The type of fishing gear used by any permit holder may not be changed except as provided below.

Recreational Fishing—All currently existing (preceding the date of the Executive Order) levels of recreational fishing effort, as determined by the Secretary and pursuant to regulations in effect on the day of this order, shall be capped (*i.e.,* no increase of take levels or levels of fishing effort, species targeted, or change in gear types) throughout the Reserve. However, fishing is further restricted in Reserve Preservation Areas.

The Secretary, after consultation with the Secretary of the Interior and Governor of the State of Hawaii, and after public review and comment and consideration of any advice or recommendations of the Reserve Council and Western Pacific Regional Fishery Management Council, may further restrict fishing activities if necessary to protect Reserve resources, or may authorize or require alternate gear types if such gear would offer equal or greater protection for Reserve resources.

In addition to the conservation measures described above, the following activities are prohibited throughout the Reserve:

(1) Exploring for, developing, or producing oil, gas or minerals;

(2) Having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor line/rope when visibility is such that the seabed can be seen;

(3) Drilling into, dredging or otherwise altering the seabed; or constructing, placing or abandoning any structure, material or other matter on the seabed, except as an incidental result of anchoring vessels;

(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water and engine exhaust; and

(5) Removing, moving, taking, harvesting, or damaging any living or non-living Reserve resource, except as described above, in certain Reserve Preservation Areas, and for Native Hawaiian non-commercial subsistence, cultural or religious uses as described below.

The Executive Order provides that the Secretary may conduct, or authorize by permit, activities listed in paragraphs (3)–(5) above necessary for research, monitoring, education, or management activities that further the Management Principles of the Executive Order.

Reserve Preservation Areas

In addition to the Reserve-wide conservation measures, the Executive Order establishes fifteen (15) Reserve Preservation Areas where all consumptive activities are prohibited except as expressly provided in the Executive Order. These areas provide a greater level of protection to the coral reef ecosystem resources in certain areas in the Reserve. The President has proposed to make these Reserve Preservation Areas permanent. The Executive Order establishes the Reserve Preservation Areas as follows:

1. From the seaward boundary of Hawaii State waters and submerged lands to a mean depth of 100 fathoms around—

A. Nihoa Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 10 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

B. Necker Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 20 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

C. French Frigate Shoals;

D. Gardner Pinnacles, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 10 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

E. Maro Reef, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 20 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

F. Laysan Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 50 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

G. Lisianski Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 50 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

H. Pearl and Hermes Atoll; and

I. Kure Island.

2. 12 nautical miles around the approximate geographical centers of—

A. The first bank immediately east of French Frigate Shoals;

B. Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals, provided that the closure area shall not be closer than approximately 3 nautical miles of the next bank immediately west;

C. St. Rogatien Bank, provided that the closure area shall not be closer than approximately 3 nautical miles of the next bank immediately east, *provided further that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment;

D. The first bank west of St. Rogatien Bank, east of Gardner Pinnacles;

E. Raita Bank; and

F. Pioneer Bank, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment.

In addition to the conservation measures (described above) that apply throughout the Reserve, the Executive Order provides that the following activities are prohibited within the Reserve Preservation Areas.

(1) Commercial and recreational fishing (except existing bottomfishing where expressly allowed in the Executive Order as indicated above);

(2) Anchoring in any area that contains available mooring buoys, or anchoring outside an available anchoring area when such area has been designated by the Secretary;

(3) Any type of touching or taking of living or dead coral;

(4) Discharging or depositing any material or other matter except cooling water or engine exhaust; and

(5) Such other activities the Secretary identifies after adequate public review and comment, and after consideration of any advice and recommendations of the Reserve Council.

The Executive Order provides that the Secretary may conduct, or authorize by permit, research, monitoring, education or management activities within any Reserve Preservation Area that further the Management Principles of section 4 of the Executive Order.

The Executive Order provides that Native Hawaiian non-commercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas. The Secretary shall work with Native Hawaiian interests to identify those areas where such Native Hawaiian uses of the Reserve's resources may be conducted without injury to the Reserve's coral reef ecosystem and related marine resources and species, and may revise the areas where such activities may occur after public review and comment and consideration of any advice and recommendations of the Reserve Council.

The Executive Order provides that the Reserve Preservation Areas are approximated using fathoms, but the Secretary will develop straight-line boundaries in longitude and latitude coordinates to clearly encompass each Reserve Preservation Area and to provide clarity and ease of identification. The Secretary may make technical modifications to any such boundaries.

The following are individual descriptions of the Reserve Preservation Areas and the resources that are protected within each area.

NIHOA Island Reserve Preservation Area

Nihoa Island, also known as Bird Island, lies 130 miles (245 km) northwest of Nihau. With about 170 acres of land, it is the largest volcanic island in the northwestern chain. The island is characterized by steep slopes and sheer sea cliffs, which are clearly visible from a distance. Nihoa's submerged coral reef habitat totals approximately 142,000 acres and is the remnant of a former volcanic cone. The

northern edge of the reef is a steep cliff made up of successive layers of lava through which numerous volcanic extrusions (dikes) are visible.

Nihoa supports coral communities with very limited total habitat, most of which is not protected from the heavy and chronic wave action that strikes this small island from all directions. These habitats consist of the submerged portions of sea cliffs close to shore, caves & lava tubes, ledges, overhangs, basalt pinnacles, boulders, cobbles, sand deposits, basalt benches & slopes, trenches and shelves. All of these features have been shaped by and are constantly eroded by the pounding waves. The rigorous environment and isolated nature of Nihoa has limited the number of corals that have successfully colonized the shallow habitats encircling the island. Due to the scouring effects of sand and turbulent waves, most of the 20 species of corals only survive at depths greater than 30 feet and nowhere is coral cover greater than 25%.

Although corals are not abundant in the shallow waters around Nihoa, reef fish sharks, jacks, monks seals and other predators are common to the island. Due to a limited number of habitat types, however, species diversity of reef fishes is low when compared to other atolls and islands in the NWHI chain. Although Nihoa was inhabited during the 16th century, human disturbances have been minimal in the nearshore waters around the island in recent times.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Nihoa Island.

Necker Island Reserve Preservation Area

Necker Island is a hook-shaped dry volcanic island that includes about 45 acres of land. More than 380,000 acres of coral reef habitat are associated with the island.

With regard to reef and coral development, Necker Island resembles Nihoa Island in several respects. Necker is a small island unable to buffer the impacts of strong waves that can break along the submerged shorelines from any direction. The effects of scour (surge combined with sand and other sediments) is evident from the wave-cut bench in West Cove and the deeply cut sand channels and chasms at several locations in deeper water. The concentration of living corals on elevated surfaces is a manifestation of corals surviving better in less scour-prone environments.

Although Necker is smaller than Nihoa, deeper coral reef shelf habitat surrounding Necker is more extensive. A broad shelf extends around the island, especially to the southeast, but is not shallow enough to protect the island from wave action. Nevertheless, the number of coral species at Necker is comparable to that of Nihoa (fewer than 20) and reflects the difficulty of corals colonizing and establishing permanent communities in shallow water. Reef growth, if any, around either island is minimal and both islands have experienced the punishing effects of large waves as demonstrated by the high wave cut sea cliffs above sea level and wave planed benches and shelves below sea level. With the exception of small amounts of fishing line, there is little evidence of any human effects on the reef environments of Necker Island.

Reef fishes at Necker appear healthy and abundant. Numerous grey reef sharks, giant Trevally jacks, gray snappers, monk seals and other predators have been sighted suggesting a good natural balance of the reef fish population. Several large manta rays have also been observed along with an abundance of limpets along the island's rocky surf zone.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 20 fathoms at Necker Island.

French Frigate Shoals Reserve Preservation Area

French Frigate Shoals (FFS) is an 18 mile (34 km) wide, crescent-shaped atoll. It is approximately 1,330 km northwest of Honolulu and approximately 1,300 km southeast of Kure Atoll. The Shoals' lagoon contains two exposed volcanic rocks and 12 low sandy islets. About 67 acres of land and 230,000 acres of coral reef habitat are associated with FFS which makes it the largest atoll in the Northwestern Hawaiian Islands.

The substrates of the atoll are predominantly reef carbonates and provides for abundant coral reef habitats such as deep ocean reef slopes, ocean reef terraces, spurs and grooves and shallow perimeter reef flats.

The Shoals' semi-enclosed lagoon affords corals protection from the destructive effects of storms and waves and provides many other important reef habitats missing from exposed ocean reef environments. Dominated by algae, rubble and sand deposits, the lagoon also contains numerous pinnacles, mounds, and platforms.

Recent surveys have shown that wave action, large ocean swells and periodic storms often impact FFS coral development and tend to control extensive reef growth. Yet, due to the complexity and quantity of its habitats, coral diversity and abundance is spectacular at the atoll. The best coral development occurs near the lagoon ends of the reef where exposure to waves and storms is reduced and where the influx of clean ocean water promotes habitat diversity and good water quality. Poorer reef habitats were concentrated in the shallow eastern lagoon, which is dominated by shallow sediment deposits, strong currents, high turbidity, and poor water quality.

Because FFS is close to Johnston Atoll, where table coral species are abundant, it may be serving as the "stepping stone" for the recruitment of table corals (*Acropora*) in the Hawaiian Islands. Although in lesser abundance, four other islands near FFS (Necker Island, Gardner Pinnacles, Maro Reef, and Laysan Island) also support *Acropora*. FFS may be responsible for the distribution table coral as far as Kauai as well, where populations of *Acropora*, have also been recently reported.

Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the atoll, notably monk seals. Over the past several years, efforts have been undertaken to lessen the threat of this growing problem.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at French Frigate Shoals.

Gardner Pinnacles Reserve Preservation Area

Gardner Pinnacles consists of two volcanic peaks and spans 5 acres in total. The peaks frosted appearance indicates their importance as a roosting site and breeding habitat for 12 species of tropical seabirds. About 600,000 acres of coral reef habitat surround the pinnacles and consists mostly of relatively flat banks in the 15 to 20 fathom (30 to 40 meter) depth range. Very little survey work has been conducted over the banks surrounding Gardner, but the few observations that have been made suggest a mostly sand and algal bottom with occasional rock outcroppings.

The ocean environment at Gardner Pinnacles is turbulent most of the time and the two small islands do not offer much protection from the area's heavy waves and currents. Coral at the Pinnacles is more abundant on elevated surfaces and behind rises or mounds that are protected from wave action. The high diversity of corals reflects the variety of habitats at the Pinnacles, while its low abundance reflects the wave and scour-controlled nature of the environment. The lack of shallow water environments around the Pinnacles limits the number of reef building species that can survive the conditions at the reefs and powerful wave action reduces the growth rate of corals, coralline algae, and other reef-building organisms.

Based on occasional visual observations and satellite tag tracking data, it is known that a few monk seals haul out on Gardner's rock ledges and forage over the surrounding banks.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Gardner Pinnacles.

Maro Reef Reserve Preservation Area

Maro Reef is a largely submerged atoll, with no more than 1 acre of emergent land but about 475,000 acres of underwater coral reef habitat. Except for birds, there are no terrestrial species inhabiting the island.

Maro Reef consists of numerous coral heads and rocks amid sandy flats and channels at depths of 1 to 10 fathoms. Extensive surveys and ecological assessments conducted from the NOAA ship *Townsend Cromwell* in 2000 revealed a unique and complex reef consisting of intertwined reef spurs radiating outward from a series of lagoons. Maro's corals and coralline algae are healthy, diverse, and contribute to active reef growth on all of the island's outer barrier reefs. The coral structures of the outer barriers have much higher vertical relief than observed at French Frigate Shoals or any other NWHI atolls with coral heads. This amazing feature, along with the reef's healthy coral and algal cover and excellent visibility make the outer barriers of Maro among the more beautiful regions of the NWHI Reserve.

The series of central lagoons are noticeably different from all other lagoons surveyed at the NWHI. Tall columns of coral covered with algal turf rise from about 20 meters below sea level to about 5 meters from the water's surface. Lagoon bottoms are generally highly silty and sandy.

The deeper banks (10 to 20 fathoms, 20 to 40 meters) surrounding the shallow water reefs have also undergone extensive surveys. Like Necker Island and the Gardner Pinnacles, these relatively flat areas consist primarily of sand and algal beds with occasional rock outcroppings.

Maro Reef provides very few areas for monk seals to haul out and therefore is not considered a breeding area for the species. Monk seals are, however, occasionally seen foraging around the reef. Derelict fishing gear and other types of marine debris are, however, having a major impact on the shallow reefs and associated fauna of Maro Reef.

Laysan Island Reserve Preservation Area

Laysan Island, located approximately 1,418 km northwest of Honolulu, is the largest island in the Reserve with about 1,000 acres of land. Laysan is roughly rectangular in shape and about 3.6 sq. km in area with a large saltwater lagoon occupying about one-fifth of the island's central depression. It is well vegetated (except for its sand dunes) and contains a hyper-saline lake, which is one of only five natural lakes in the State of Hawaii.

Laysan's coral reef habitat totals approximately 145,000 acres. The fringing reef surrounding the island varies from 100 to 500 m in width and is most extensive at the northwest end of the island. Inside the reef is a narrow, shallow channel which nearly encircles the island except for the south and southeast sides.

Despite lacking much protection from the detrimental effects of waves, Laysan supports a surprisingly rich coral environment with good development along its leeward coasts. The small back reef, pass and moat near the island's western boat landing also help to diversify habitats and the number of coral species inhabiting them. Today, coral and reef growth appear to be healthy. Of interest is the fact that the table coral Acropora can be found off Laysan, which makes it the northernmost island or atoll in the Northwestern Hawaiian Islands chain that supports this particular species.

Laysan Island is one of the endangered monk seal's primary breeding sites. It also supports a very healthy reef fish abundance and diversity. Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the island. Over several years, efforts have been undertaken to lessen the threat of this growing problem.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Laysan Island.

Lisianski Island Reserve Preservation Area

Lisianski Island is a low sand and coral island with about 400 acres of land. It lies at the northern end of Neva Shoals, a large reef bank spanning about 65 square miles and totaling about 310,000 acres.

Lisianski Island is a low sand and coral island with about 400 acres of land. It lies at the northern end of Neva Shoals, a large reef bank spanning about 65 square miles and totaling about 310,000 acres.

The island is ringed mostly by sandy and sand-coral beaches with the exception of the eastern side which is dominated by an exposed ledge of reef rock and small tidal pools. A small cove present near the middle of the west beach is designated as a small boat landing on hydrographic charts. West of this landing, there are large numbers of coral heads in the lagoon, which has low visibility and a highly silty bottom.

Reef fish diversity and abundance at Lisianski appear healthy and robust as indicated by high numbers of Trevally jacks and other large marine predators. Interestingly, in a recent survey of the island it was noted that the jacks were particularly aggressive towards divers and small boats, a phenomenon that was not experienced at any of the other islands and atolls in the Reserve.

Green sea turtles can also be found on Lisianski Island as well as Hawaiian monk seals, which use the island's beaches as haul out grounds.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Lisianski Island.

Pearl and Hermes Atoll Reserve Preservation Area

Pearl and Hermes Atoll is a large, low atoll with several small islets forming about 80 acres of land and almost 200,000 acres of coral reef habitat. It is approximately 2,090 km northwest of Honolulu and 140 km east-southeast of Midway Atoll. The fringing reef is roughly 69 km in circumference and open to the west. The islets are periodically washed over when winter storms pass through.

The lagoon of the atoll is large and it is difficult to draw generalizations regarding the abundance and distribution of corals and reefs. Many areas of the shallow lagoon reef holes appear to be dominated by sediments while water circulation and exchange rates may be a factor in dictating coral development. Where circulation is sluggish, water temperatures rise during sunlit hours and may be unfavorable to corals. In contrast, where there is good mixing within pockets of the lagoon, either from tidal exchange or wave set up along the windward reefs, there are more favorable conditions for corals. Pinnacle reefs are exposed to the best of two worlds: better access to ocean water exchange and protection from the damaging effects of storms and large waves. At Pearl and Hermes, the pinnacle reefs show both high coral cover and diversity.

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Healthy spur-and-groove development along more exposed reefs is evidence that the atoll is growing. The spur and groove habitat of the north and northwest outer barrier reefs is unique among NWHI atolls in that it contains extremely deep and narrow canyons. Some semi-protected southern-facing reefs of the atoll did not display-spur and-grooves and may be growing at slower rates or not at all. The outer reef slopes of the south shore contain numerous large holes and caves, which contribute to spectacular abundance and diversity of fish at the atoll.

Pearl and Hermes has a moderately diverse assemblage of coral species, although not as high as reported for the other large atoll French Frigate Shoals. This may be attributed to the lack of table coral (*Acropora*) at Pearl and Hermes and up to six or more species being present at French Frigate Shoals.

Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the atoll. Over the past three years, efforts have been undertaken to lessen the threat of this growing problem.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Pearl and Hermes Atoll.

Kure Island Reserve Preservation Area

Kure Island is the northernmost coral atoll in the world. The atoll is nearly circular with a 6-mile (10 km) diameter, enclosing about 200 acres of emergent land. The outer reef almost completely encircles the atoll's lagoon except for passages to the southwest. The only permanent land in the atoll is crescent-shaped Green Island, located near the fringing reef in the southeastern part of the lagoon. Almost 80,000 acres of coral reef habitat are found at Kure.

Kure is a healthy growing atoll with diverse and abundant coral assemblages. Virtually all spur-and-groove formations are robust and healthy. At the north and northwest outer barrier reefs, the spur-and-groove habitat is widely separated and looks like rolling hills when compared to the steep canyons of Pearl and Hermes Atoll. Some of Kure's lagoon reefs display exceptional coral development. Back reef environments also appear to support diverse and vigorous coral growth and provide strong evidence that the hard reef is growing.

Whereas coral cover is generally low, the atoll's coral diversity is as high as any other site except French Frigate Shoals. The combination of temperature, light constraints and water conditions at Kure all contribute to a flourishing reef environment and, like Midway and Pearl & Hermes Atolls, Kure is situated far enough north that it receives increased amounts of nutrients as the subtropical front migrates south during the winter.

Kure supports unique fish and dolphin populations while nurturing monk seals with the many lobsters that occupy the well-circulated lagoon.

Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the atoll. Over the past year, efforts have been undertaken to lessen the threat of this growing problem.

"The Banks" Reserve Preservation Areas

The NWHI area contains several seamounts that are commonly referred to as "the Banks." For present purposes, the Banks consist of Raita Bank; St. Rogatien Bank; the first bank west of St. Rogatien Bank and east of Gardner Pinnacles (Bank Number 7, which remains unnamed); Pioneer Bank; Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals; and the first bank immediately east of French Frigate Shoals.

On Raita Bank the approximate minimum depth is 9 fathoms (18 meters). It is oval shaped and extends approximately 20 km NE-SW and 10 km NW-SE. The bank west of St. Rogatien lies at about 30 fathoms (60 meters) and is approximately 5 km in diameter. Pioneer Bank is another oval seamount that sits at about 17 fathoms (34 meters) and extends 20 km E-W and 11 km N-S. At St. Rogatien Bank, the top of the seamount is covered by about 12 fathoms (24 meters) of water. It too is a large oval seamount and extends approximately 7 km E-W and 10 km N-S.

In general, all of the banks have very rough bottoms with numerous outcroppings, protuberances and rock areas. Endangered Hawaiian monk seals have been observed to forage in the areas around the banks, probably traveling from breeding populations at French Frigate Shoals.

The Executive Order provides that, consistent with applicable law, nothing in the Executive Order is intended to apply to military activities (to include the U.S. Coast Guard), including military exercise conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 (June 11, 1998), and 13158 (May 26, 2000). Further, nothing in the Executive Order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security, consistent with applicable laws. In addition, consistent with applicable law, nothing in the Executive Order shall limit agency actions to respond to emergencies posing an unacceptable threat to human healthy and safety or to the marine environment and admitting of no other feasible solution.

Nothing in the Executive Order is intended to limit the authority of the U.S. Coast Guard to enforce any federal law, or install and maintain aids to navigation. Management of the Reserve shall be in accordance with generally recognized principles of international law, and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

Public Comment

Through increased measures of protection, the conservation measures and Reserve Preservation Areas will provide lasting protection for the Reserve resources. The Act provides that no closure areas around the Northwestern Hawaiian Islands shall become permanent without adequate review and comment. Accordingly, the President is requesting public comment on the Reserve Preservation Areas and his proposal to make them permanent. The President is also requesting public comment on the conservation measures for the Reserve. The comment period for this proposal closes on January 8, 2001. NOAA is receiving the comments on behalf of the President. Comments may be sent, emailed or faxed to the location provided above. The Secretary will also host, on behalf of the President, seven public hearings, six in Hawaii and one in Washington D.C., to accept oral and written comments on the President's proposal. The dates, locations and times of these meetings are as follows.

Oahu
December 11, 6 p.m., Ala Moana Hotel B Garden Lanai, 410 Atkinson Drive, Honolulu, HI, Phone: 808–955–4811.

Kona
December 11, 6 p.m., King Kamehameha Hotel, 75–5660 Palani Road, Kailua-Kona, HI, Phone: 808–329–2911.

Hilo
December 12, 6 p.m., Hilo Cooperative Extension Service, 875 Komohana Street, Conference Room A, Hilo, HI, Phone: 808–959–9155.

Kauai
December 13, 6 p.m., Kauai War Memorial Convention Hall, Ballroom B, 4191 Hardy Street, Lihue, HI.

Washington, D.C.
December 13, 1 p.m., U.S. Department of Commerce, Room 4830, 14th & Constitution Avenue NW, Phone: 202–482–5181.

Maui
December 14, 6 p.m., Wailuku Community Center, 395 Waena Street, Wailuk, HI.

Molokai
December 15, 6 p.m., Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, HI, Phone: 808–553–3204.

Authority: Pub. L. 106–513; 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

D. James Baker,

Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.

[FR Doc. 00–31167 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for Representatives to the Coral Reef Ecosystem Reserve Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: On December 4, 2000, President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The President's Executive Order requires the Secretary of Commerce or his or her designee (hereafter "Secretary") to establish a Coral Reef Ecosystem Reserve Council (Reserve Council) to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The Secretary, through the National Marine Sanctuary Program (NMSP), is seeking applicants for membership on the Reserve Council.

DATES: Completed applications must be postmarked no later than December 29, 2000.

ADDRESSES: Application kits may be obtained from Elizabeth Moore, National Marine Sanctuary System, 1305 East West Highway, N/ORM6, Room 11642, Silver Spring, Maryland, 20910, or online at: http://hawaiireef.noaa.gov.

Completed applications should be sent to the same address as above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3125 x170, or hawaiicouncil@noaa.gov, or visit the web site at: http://hawaiireef.noaa.gov.

SUPPLEMENTARY INFORMATION: On December 4, 2000, President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Order. The Secretary will also initiate the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the Executive Order, which is part of the application kit and can be found on the web site listed above.

In designating the Reserve, President Clinton directed the Secretary of Commerce to establish a Coral Reef Ecosystem Reserve Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The National Marine Sanctuary Program (NMSP) is seeking applicants for the following seats on the Reserve Council:

- Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.
- Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:
  - A. Marine mammal science
  - B. Coral reef ecology.
  - C. Native marine flora and fauna of the Hawaiian Islands.
  - D. Oceanography.
  - E. Any other scientific discipline the Secretary determines to be appropriate.
- Three representatives from non-governmental wildlife/marine life, environmental, and/or conservation organizations.
- One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the ocean-related tourism industry.
- One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.
- One citizen-at-large representative.

The Reserve Council shall also include one representative from the State of Hawaii as appointed by the Governor; the manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary as a non-voting member; and one representative each, as non-voting members, from the Department of the Interior, Department of State, National Marine Fisheries Service, Marine Mammal Commission, U.S. Coast Guard, Department of Defense, National Science Foundation, and the Western Pacific Regional Fishery Management Council. The non-voting representatives will be chosen by the agencies and other entities, respectively. The charter for the Council can be found in the application kit, or on the web site listed above.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; and philosophy regarding the conservation and management of marine resources. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's charter. Persons who are interested in applying for membership on the Council may obtain an application from either the person or website identified above. Completed applications must be sent to the address listed above and postmarked no later than December 29, 2000.

Authority: 16 U.S.C. Section 1431 et seq.; Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

John Oliver,

Chief Financial Officer, National Ocean Service.

[FR Doc. 00–31168 Filed 12–6–00; 8:45 am]

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Friday,
December 8, 2000

Part VII

Department of Housing and Urban Development

24 CFR Parts 5 and 200
Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Administrative Process for Assessment of Insured and Assisted Properties; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 200

[Docket No. FR–4452–F–02]

RIN 2501–AC45

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Administrative Process for Assessment of Insured and Assisted Properties

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes for multifamily housing certain administrative processes by which HUD will notify owners of HUD's assessment of the physical condition of their multifamily housing; the owners, under certain circumstances, will be provided an opportunity to seek technical review of HUD's physical condition assessment of the multifamily housing; and HUD may take action in certain cases where the housing is found not to be in compliance with the physical condition standards. This rule follows publication of a November 26, 1999 proposed rule and takes into consideration public comment received on the proposed rule.

DATES: *Effective Date:* January 8, 2001.

FOR FURTHER INFORMATION CONTACT: For further information about multifamily issues covered by this rule, contact: Kenneth Hannon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6274, Washington, DC 20410; telephone (202) 708–0547, ext. 2599 (this is not a toll-free number).

For further information about the scoring methodology or the technical review process, contact: Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC, 20024; telephone Technical Assistance Center at 1–888–245–4860 (this is a toll-free number).

For both offices, persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Uniform Physical Conditions Standards and Uniform Physical Inspection Protocol

This final rule follows publication of a November 26, 1999, proposed rule (65 FR 66539) and builds on the rule issued by HUD on September 1, 1998 (63 FR 46566), that established uniform physical condition standards for public housing, and housing that is insured and/or assisted under certain HUD programs (collectively, HUD properties). The September 1, 1998, final rule also established a uniform physical inspection protocol, based on computerized software developed by HUD, that allows HUD to determine compliance with these standards. The uniform physical condition standards are intended to ensure that HUD program participants carry out their legal obligations to maintain HUD properties in a condition that is decent, safe, sanitary and in good repair. The uniform inspection protocol is intended to assure that, to the greatest extent possible, there is uniformity and objectivity in the evaluation of the physical condition of HUD properties.

The preamble to the November 26, 1999, proposed rule provided a detailed overview of HUD's proposal for the administrative process for the assessment of insured and assisted housing, and the basis for HUD's proposal. The preamble to this rule does not repeat that information.

II. Significant Changes Made at This Final Rule Stage

The following highlights significant changes made to the proposed regulations at this final rule stage.

- HUD amends § 5.705 to remove paragraph (b). Paragraph (b) of this section provides that HUD will notify the public when the inspection software for HUD's physical inspection protocols and the accompanying guidebook are issued and available. This section further provides that HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available, and the notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with part 5, subpart G. The notice described by § 5.705 was published earlier in the **Federal Register**. Since HUD has published the notice in accordance with § 5.705(b), paragraph (b) is no longer relevant and is removed by this rule.
- HUD amends § 200.853, which lists the HUD multifamily programs to which HUD's physical condition standards and physical inspection protocols are applicable. For the Section 241 Program (Section 241 of the National Housing Act—Supplemental Loans for Multifamily Projects), HUD clarifies that Section 241 properties are subject to inspection, except where the primary (first or senior) loan is insured or assisted by HUD under another program listed in § 200.853. Without this clarification, the regulatory language would subject Section 241 properties to two inspections—one inspection under the Section 241 program, and one inspection under another program covered by this subpart.
- HUD amends § 200.855 to add a new paragraph (b) to clarify that for a property with more than one HUD insured loan, only the first mortgage lender is required to conduct the physical inspection. The second mortgage lender, however, must be provided a copy of the physical inspection report by the first mortgage lender.
- HUD also amends § 200.855 to add a new paragraph (c) that specifies when the responsible entity must perform the required physical inspection. For example, all annual inspections must be performed in the following calendar year and no earlier than 9 months and no later than 15 months from the date of the last inspection. Comparable time periods are provided for inspections that must occur every two years and those that must occur every three years.

This new paragraph (c) also provides that a newly endorsed multifamily property will receive its first physical inspection no earlier than 21 months but not later than 27 months from the date of final endorsement, but in no event shall the inspection be performed after the end of the calendar year following the two year anniversary date of final endorsement.

HUD is aware that linking the timing of the inspection to the calendar year may constrain the flexibility to schedule some inspections, but HUD believes that coordinating the timing of the inspection with the end of a calendar year is important to ensuring that information required to be reported by the end of a calendar year is reported by such deadline and properties are scheduled for inspection at their appropriate cycle.

On the subject of when the responsible entity must conduct its physical inspection, HUD advises in this preamble and in the notice published elsewhere in today's edition of the **Federal Register** that HUD will complete all annual inspections required of properties covered by this part through December 31, 2000. Responsible entities should begin preparations for either one year and two year cycle inspections in accordance with this rule.

- HUD amends § 200.857 to provide for designation of properties as either standard 1, standard 2, or standard 3, on the basis of fixed points, not percentile groupings as provided by the proposed rule. Properties receiving scores of 90 points or higher on a physical inspection will be designated as standard 1. Properties receiving scores of 80 points or higher but less than 90 on a physical inspection will be designated as standard 2. Properties receiving scores of less than 80 will be designated as standard 3. Because scores can include fractions (*e.g.* 89.3), a score that includes a fraction below one half point will be rounded down, and a score that includes a fraction of one half point or higher will be rounded up. For example, a property score of 89.5 or 89.6 will be rounded to 90 and the property will be designated as standard 1. A property score of 89.4 will be rounded down to 89 and the property will be designated as standard 2.

HUD received considerable comment on the method provided in the proposed rule by which properties are designated as standard 1, 2 or 3. The commenters opposed designation on the basis of percentile groupings and recommended that designation be made on the basis of fixed points. HUD agreed with the recommendations of the commenters and has made this change at this final rule stage. HUD recognizes that fixed points provide a clear standard, understandable by those being rated at the time they are rated. HUD also recognizes that fixed point scores provide additional incentive for improvement since with a fixed score, owners know that improvement to a cut point will result in a less burdensome inspection schedule. HUD welcomes any additional comments on the change from a percentile approach to a fixed point approach in the designation of properties as standard 1, 2, or 3, and may make adjustments on the basis of comments received.

- HUD amends paragraph (a) of § 200.857 to remove reference to REAC's baseline physical inspection of properties. The baseline review has been completed.
- HUD amends paragraph (c) of § 200.857 to clarify that the 72 hours to report correction of exigent health and safety violations refers to 3 business days from the date of the physical inspection.
- HUD amends paragraph (d)(4) of § 200.857 to revise the definition of "significant improvement" to mean the correction of a material error, asserted by the owner, which causes the score for the owner's property to cross an administratively significant threshold (for example, the property would be redesignated from standard 3 performing to standard 2 performing or from standard 2 performing to standard 1 performing), *or result in an increase of 10 points or more* (new language is highlighted).
- HUD amends paragraph (e) of § 200.857 to provide that if an owner requests an adjustment of the physical condition score based on considerations other than those for technical review after the physical inspection report has been submitted to the owner (either electronically through the internet or by mail), the owner must make a request for adjustment to REAC within 45 days following submission of the report to the owner by REAC. HUD may, but is not required to consider requests made after that period. However, since the items that may be requested as a basis for score adjustment are unique and not subject to addition and change from period to period, owners are strongly encouraged to request database corrections prior to inspections. In this way, the inspection results can fully consider approved corrections, eliminating score deductions for approved database corrections and the need for post report adjustments. HUD also amends this paragraph to provide that requests for database adjustments are to be directed to REAC. The proposed rule provided for requests to be submitted to the applicable HUD Field Office. Since REAC, however, is the point of contact for requests for technical review, HUD determined that REAC is also the appropriate point of contact for requests for database adjustments.
- HUD adds a new paragraph (f) to § 200.857 to clarify when an owner's physical condition score becomes final. This new paragraph also notes that final physical condition scores will be made public by HUD, and the owner must make its physical inspection information (the physical inspection report, scores) available to residents to review upon request during business hours. Paragraph (f), (g) and (h) in the proposed rule are redesignated (h), (i) and (j), respectively.
- HUD adds a new paragraph (g) to § 200.857 to require an owner to notify its residents of upcoming physical inspections of the owner's property and to clarify the documents related to the physical condition scoring process that the owner must make available to its residents and when these documents must be made available. HUD also welcomes any additional comments on new paragraph (g).
- HUD amends newly designated paragraph (h) of § 200.857 to provide that a multifamily property that receives a score of 30 points or less on its physical condition inspection will be referred to HUD's Departmental Enforcement Center for evaluation.

In addition to these changes, HUD has made certain editorial and technical changes throughout the rule for the purposes of clarity.

III. Discussion of Public Comments

At the close of the public comment period on the November 26, 1999, proposed rule, HUD received 53 public comments. The commenters included residents, resident organizations and resident advocates, two housing authorities, nonprofit housing providers and housing industry organizations and associations.

In the discussion of public comments that follows, the heading "Comment" states the issue, opinion, recommendation or question raised by the commenter or commenters, and the heading "Response" presents HUD's response to the issue, question or recommendation raised by the commenters.

Resident Involvement in the Physical Inspection Process

Many of the resident commenters on the rule stated that the rule should provide for more resident involvement in the physical inspection process. The comments on resident involvement are as follows.

Comment. The proposed rule omits almost completely resident involvement in the physical inspection process. The rule should provide for resident involvement in the physical inspection process and specifically, provide for residents to be notified of the physical inspection results, as well as be provided with copies of the inspection report, any related documents, any owner appeals, and compliance plans. The rule also should provide for the issuance of quality control reports that include the input of residents. These recommended provisions should be placed in a new regulatory section that will address how residents will participate in the physical inspection process.

Response. HUD recognizes the importance of involving residents in the physical inspection process to ensure that their housing is decent, safe, sanitary and in good repair. HUD declines, however, to adopt the suggestion that the rule require resident involvement in the physical inspection of the housing as recommended by the commenters. HUD has had many discussions with resident groups on this topic and has explained that the inspection process itself does not lend itself to conversational input. Instead,

the process relies on objective observation.

To ensure that there is sufficient opportunity for the residents to participate in seeing that all necessary repairs are made in a timely, efficient and comprehensive manner, HUD is making several changes to the rule at this final rule stage. As noted earlier in this preamble, HUD is requiring owners to notify their residents of upcoming physical inspections of their units and the housing development, generally. HUD is also requiring owners to make the physical inspection information (the physical inspection report, scores) available to residents to review upon request during regular business hours. With respect to the results of a property's physical condition, HUD will make public the results of the physical inspection scores of the properties similar to the manner in which HUD makes public the results of physical inspection scores of public housing under the Public Housing Assessment System.

Comment. Residents should have the same right of appeal of physical inspection scores that is provided to owners. Residents should have the right to appeal any and all aspects of the physical inspection finding, and appeals should not be limited to material errors.

Response. The responsibility for the physical condition of the property rests with the owner. It is the owner's responsibility to review the physical inspection report, and to submit information clearly describing the errors and omissions that have a significant impact on the physical inspection score in accordance with the conditions and requirements of the rule. However, as discussed earlier in this preamble, HUD has added a new paragraph at this final rule stage that requires owners to notify residents of upcoming physical inspections of the properties and to make documents related to the physical inspection available to the residents, and that also invites residents to submit comments directly to HUD on the condition of the housing in which they reside.

Comment. A resident representative should be present for the on-site physical inspections.

Response. HUD declines to impose this requirement in its rule. The intent of the physical inspection process is to limit the inconvenience to the owner and the residents of the property being inspected. HUD believes that increasing the number of participants in the physical inspection process could slow down the inspection (thereby increasing inconvenience) and also jeopardize the objectivity of the inspection process.

Comment. The rule should provide for residents, rather than owners and managers, to verify that any exigent health and safety violations have been corrected by the managers and owners.

Response. Again, the physical condition of the property is the owner's responsibility and correction of exigent health and safety violations (as well as other deficiencies) is the owner's responsibility, as is the verification that these violations have been corrected. The sanctions can be severe if an owner falsely certifies exigent health and safety violations have been corrected.

Comment. The rule should provide that the property inspector is required to meet with the residents of the property. The rule also should provide that the inspectors are to leave a resident a notice if a unit was inspected and no one was at home.

Response. HUD declines to adopt these suggestions. The duties of the inspector are limited to conducting the physical inspection of the property. Notification to absent residents is the owner's responsibility. This is one reason an owner's representative is required to accompany the inspector.

HUD notes that several resident commenters made suggestions about how a resident survey should be conducted. Although resident surveys were part of the rulemaking for HUD's Public Housing Assessment System (PHAS) regulations, they are not part of this rulemaking, but HUD is further considering this issue.

Physical Inspection Coverage

Comment. HUD's physical inspection software should address tenant malfeasance or nonfeasance and the owner should not be penalized for tenant noncompliance. The physical inspection needs to be limited to habitability issues, not tenant housekeeping/tenant caused conditions, unless these conditions are a direct threat to structural soundness or a safety issue.

Response. HUD's physical inspection system is objective and does not distinguish between those defects that are the fault of a resident and those that are the fault of the owner. The physical inspection system is simply a tool for observing and transmitting data regarding the physical condition of the property at the time of the inspection. An owner of HUD assisted or insured housing is contractually responsible for maintaining the physical condition of the property. HUD anticipates that owners of such assisted or insured rental properties, like all landlords, will rely on lease provisions regarding the resident maintenance or destruction of the units, and HUD encourages owner to do so in compliance with the physical condition standards. Good property management, which includes regular housekeeping and preventative maintenance inspections through the year, coupled with strict lease enforcement will result in well-maintained housing that meets the standard.

Comment. The rule should view as health and safety issues the basic accessibility design features which are required in federally funded housing units to assure all people can safely utilize the dwellings. Proper and required accessible design features contribute to the overall well being, both physically and financially of the housing. The rule also should clarify that deficiencies with any physical accessibility features of the units (or the housing, generally, will be classified as Exigent Health and Safety Deficiencies and shall require resolution.

Response. Housing design, including accessibility design, is not a feature of HUD's Uniform Physical Condition Standards. HUD's Uniform Physical Condition Standards focus on whether the housing is habitable, is decent, safe, sanitary and in good repair. HUD's Office of Fair Housing and Equal Opportunity is charged with determining compliance with accessibility requirements under the Fair Housing Act or Section 504 of the Rehabilitation Act of 1973 where complaints of violation of these statutory requirements have been alleged. (This office, however, is not responsible for ongoing inspections of maintenance of accessibility features in a unit or building.) To assist HUD's Office of Fair Housing and Equal Opportunity in its task, the inspection collects specific information related to general accessibility. This information is provided to the Office of Fair Housing and Equal Opportunity in the event such information reveals a absence of accessible features where these features should exist.

Ranking and Thresholds for Designation

The overwhelming majority of commenters who commented on the proposed performance designations (*i.e.*, Standard 1, Standard 2, Standard 3), which were based on percentile groupings, were opposed to the percentage groupings and requested that performance categorizations be based on fixed scores. The comments on this issue included the following.

Comments. The ranking classification in the proposed rule fails to provide guidance as to the numeric cut-off for each performance designation (*i.e.*, standard 1, standard 2, standard 3.). The rule should only use numeric classifications.

The issuance of grades by curving results will not work. The numeric scoring has in fact become the standard in the past 1½ years and should not be changed. A curved ranking is at odds with the possibility of a meaningful appeal.

HUD needs to explain the rationale in holding public housing to an absolute standard (under PHAS) and private HUD assisted housing to a relative standard based on an absolute grade.

HUD should not use percentages, but set a score to objectively rank properties and then conduct annual inspection only for the marginal properties in the bottom 17% or so.

With baseline results completed, to distinguish between properties that all are deemed to be satisfactory based on the percentages in the proposed rule is arbitrary and it increases lender inspection costs with no apparent benefit.

An absolute score is preferable to the standards in the proposed rule.

Response. As noted earlier in this preamble, this final rule sets the numeric standards for all three categories. As noted earlier in this preamble, HUD recognizes the need by owners for a clear standard, understandable by those being rated at the time they are rated, and fixed points provide this standard. HUD recognizes that the percentile approach was obscure in this regard.

Comment. The rule did not advise how HUD will make known the numeric thresholds for the three tiers and how often the thresholds will be evaluated. If numerical thresholds are to be applied based on national numerical thresholds or will regions have their own discrete numerical assignments on the administrative significant thresholds.

Response. All thresholds will be national. Any changes to the thresholds will be made only as needed to maintain the health of HUD's portfolio, and HUD will provide appropriate notification of any changes to the numerical thresholds.

Frequency of Inspection and Post-Inspection Processes

Comment. Physical inspections of properties should be mandatory when requested by 10% or more of the residents of a property, or when requested by a resident organization that meets HUD's standards.

Response. HUD declines to adopt this suggestion as a regulatory requirement. If there are concerns by residents of the property in which they reside, they are encouraged to contact their local HUD Field Office and relay these concerns, and HUD will make the appropriate inquiries to follow-up on these concerns.

Comment. The frequency of inspections should be determined by the property's score on the 100 point scale, rather than its score relative to other properties. It is the condition of the building that is of concern and it is only the building's condition that is within the owner's power to control—not the score relative to other projects.

Response. As noted earlier in this matter, the rule has been revised to provide for fixed point scores and the frequency of inspections is based on these fixed point scores.

Verification That Repairs Have Been Made

Comment. Owners should not be allowed to self-certify that repairs have been made. This self-certification is at odds with HUD's emphasis on strict, objective, and professional inspections. When an inspector finds violations, management is not concerned about correction of these violations because no one comes back for two or three years, and when HUD returns, it is a different inspector who does not review the previous report. The rule should require reinspections by the same inspector to confirm that repairs have been made.

Response. HUD does not agree that it is practical or necessary to require that subsequent inspections be conducted by the same person, year after year. HUD and mortgagees will generally use contract inspectors, and it is not unusual for contractors or personnel employed by contractors to change from year to year. In addition, the design of HUD's physical inspection system focuses on an inspection of the property that will produce objective, consistent results. Therefore, the person who undertakes the inspection, provided the person is trained and certified to use HUD's inspection system, is not a determining factor in the outcome of the inspection. Additionally, those properties for which there are serious physical concerns are inspected annually, not every two or three years as the comment suggests. Given how the inspection process is conducted, the certification required of owners is not at odds with HUD's inspection system. The owners' certification that repairs have been completed is part of an ongoing monitoring plan which will assist HUD in determining if conditions have improved.

Comment. HUD should take strong action against owners with seriously substandard buildings—that is the owners who fail to comply with the physical condition standards. The owner's properties should be transferred to a non-profit or to resident owners who will maintain the properties as decent, safe and affordable housing.

Response. HUD has no authority to require the transfer of owners' properties that have been found substandard, to a non-profit organization or residents or resident organization but, if these organizations have the resources to correct the problems, they may be eligible purchasers of the properties. The rule, however, provides for the full range of enforcement actions available to HUD to initiate against owners who refuse or fail to comply with HUD's physical condition standards.

Comment. With respect to administrative review of properties and enforcement actions, the rule should provide that reinspection of properties is mandatory where there is a Departmental Enforcement Center (DEC) Compliance Plan in place.

Response. HUD declines to adopt this recommendation as a regulatory requirement, but HUD notes that the DEC has the option to take this action under the rule. Properties under evaluation by the DEC as a result of physical condition deficiencies would be reinspected annually.

Properties Covered by the Rule

Comment. Nursing homes, intermediate care facilities, assisted living facilities, and board and care homes should be excluded from the rule's coverage.

Response. HUD requires inspection of these properties to determine if Federal Housing Administration (FHA) funds are at risk and if the physical condition meets the needs of the resident population. Since these properties are insured or HUD-held, a physical inspection is appropriate.

Comment. Reference to coverage of Section 241 of the National Housing Act (NHA) projects (Supplemental Loans for Multifamily Projects) in the rule should be modified to provide that these projects are to be inspected except where the underlying mortgage is insured or assisted by HUD under a program covered in this part. Without this qualification, there may be duplication of inspection.

Response. As noted earlier in the preamble (see Section II), HUD has made this clarification in this final rule.

Comment. The proposed rule does not address new construction properties. New properties in conformance with HUD's final cost certification should be

given a 3 year waiver before inspection begins.

Response. As discussed earlier in this preamble (under Section II), the final rule addresses newly endorsed properties and provides for a physical inspection to be conducted within approximately two years from final endorsement.

The Training and Qualifications of the Physical Inspectors

Comment. The training provided to inspectors is still not sufficient to ensure proper application of the physical condition standards consistently between properties. While HUD's physical condition and inspection system is clearly more objective in its design, it is still subject to wide variations in its implementation which is attributable, in part, to minimally trained inspectors looking at similar conditions and reporting them with varying degrees of severity. HUD should implement a uniform method of training and certification.

Response. The training of inspectors who are certified in the use of the HUD inspection protocol is standardized. To ensure appropriate and adequate training of inspectors, HUD sought experts in the field who would take the lead in actually presenting the materials developed by HUD and training the inspectors. In addition to selecting experts in the field to perform the training, every inspector candidate must meet the minimum qualification requirements determined by HUD. The inspector candidates also must take the required course and then take and pass a test. HUD monitors and controls all aspects of this training process through REAC.

Since the inspection under HUD's new standards and physical condition protocols began in approximately October 1998, the initial start-up involved some refining as one would expect given the size and magnitude of the portfolio to be inspected. In certain cases, problems were encountered and HUD responded to these problems. HUD believes that the process overall, however, is now running smoothly. HUD is striving to constantly improve and refine the process and will continue to do so in the future. In this regard, HUD also provides for periodic retraining of the inspectors, to ensure that the inspectors are up-to-date and familiar with any changes made to the physical condition protocol and software.

HUD acknowledges that even with qualification and training requirements imposed on inspectors, some inspectors, as is the case in any profession, perform better than others. REAC monitors the inspectors, and HUD invites owners that have concerns about an inspector's ability to contact REAC through its Technical Assistance Center (1–888–245–4860).

Comment. Inspectors need to have knowledge of local building and fire codes in order to conduct an accurate and informed inspection.

Response. HUD disagrees with this suggestion. HUD's physical inspection protocol have some basis in a national codes (e.g., fire safety) but there is too much variation among local and state codes to make the use of local code an efficient and effective alternative to HUD's physical inspection protocols. Additionally, the responsibility of HUD contract inspectors is to determine whether HUD assisted and assured housing meets HUD's Uniform Physical Condition Standards, not to ensure enforcement of local building codes.

It is the responsibility of the owner to be cognizant of and abide by all local codes. HUD notes, however, that there are allowances built into HUD's physical inspection protocols, as noted in the November 26, 1999 proposed rule, that provide for an owner to notify HUD of significant conflicts between HUD's Uniform Physical Condition Standards and local code requirements or other local requirements applicable to the property.

Comment. HUD requires the use of qualified and trained inspectors but gives no information on this process so that a lender's inspector can benefit from this training and meet HUD's qualifications.

Response. The response to an earlier comment described the requirements that individuals must meet to become HUD contract inspectors. Persons and firms that are required to comply with HUD's Uniform Physical Condition Standards may seek to have their own employees trained and certified. The common element is that the party that actually performs an inspection (to conform with HUD requirements) must complete and pass HUD's qualification training and testing for property inspectors. Each successful candidate will be issued identification from REAC as evidence that the candidate has met all requirements. It is important to note that parties that wish to better understand the REAC protocol, may participate in REAC monitored training. However, only inspectors who are working for HUD contractors, multifamily lenders or who perform inspections under independent third party contracts will be issued final identification. The information about how to become a HUD contract inspector is (and has been) available from REAC's Internet site at http://www.hud.gov/reac. Additionally, interested parties are welcome to call REAC's Technical Assistance Center at 1–888–245–4860.

Simplifying and Improving the Scoring Process

Comment. The rule should provide a simpler and abbreviated physical inspection protocol for smaller properties where property facilities are less complicated and the loan balance is small. Smaller loan balances mean lenders have less money for inspections. These properties do not have need for a complicated, multi-tiered inspection on amenities and facilities that do not exist. For smaller properties, inspections should not be more than every two years.

Response. HUD is charged with assuring all housing is decent, safe, sanitary and in good repair, not just larger properties or properties with large loan balances. HUD's physical inspection protocols are structured in a manner to adjust for size and properties that have amenities and facilities and those that do not. Additionally, HUD's rule provides for cost savings through less frequent inspections for properties that are well-maintained. HUD's obligation to ensure that its assisted and insured housing is decent, safe, sanitary and in good repair does not permit HUD to exempt a property from an annual inspection, simply because the property is a small property.

Comment. The physical inspection process would be improved if HUD requires the inspector to clearly communicate each observable deficiency and ensures that a detailed written report of deficiencies is left with the owner.

Response. HUD agrees with this comment and all inspectors have been trained to communicate the defects that the inspector records to the owner's representative during the inspection. While HUD acknowledges that the owner's representative may have differing views regarding the deficiency definitions and may express those views to the inspector, the inspectors are trained not to engage in a discussion of the merits of the deficiency definitions. Inspectors have no authority or discretion to alter the definitions of deficiencies or the severity level assigned. Inspectors must record the deficiencies in accordance with the inspection protocol. At this time, technology that would allow HUD to leave a copy of the inspection report immediately following the inspection remains too expensive. Therefore, a copy is provided to the owner within a few days of the inspection.

Comment. HUD's inspection report should show the score of each observable deficiency.

Response. HUD has revised the inspection report to show the points deducted for each observed deficiency.

Comment. HUD's physical inspection protocol should take into consideration minor routine repairs in assessment. The weighting that minor repairs receive can be as much as deferred maintenance or major repairs. Therefore, the inspection protocol software should provide a category of noted, routine repairs without a point loss and should note the difference between minor, routine repairs and deferred maintenance of capital needs, and showing the scoring effect should clarify this.

Response. HUD's protocol already takes into consideration minor defects and repair requirements by way of the scoring process. The inspection summary report notes the difference on a summary basis between routine repairs and capital needs.

Comment. The rule should define the meaning and application of "health and safety." It is unclear what HUD means when it refers to health and safety or how health and safety is scored. Clarification is important because failure to correct such a deficiency could result in demotion from standard 1 or standard 2 to standard 3.

Response. Health and safety concerns are clarified in 24 CFR 5.703(f), which this rule cross-references. Exigent health and safety deficiencies are a distinct subset of health and safety standards and are considered a risk to life. A standard 1 property for which extreme hazardous conditions are not corrected would be subject to further inspection and may change designation as a result of that reinspection.

Appeal, Technical Review, Burden of Documentation and Reinspection

Comment. It is unrealistic to require owners to use the "Items, Weights and Criticality" document to make the determination, within 15 days, that an error has occurred that if corrected would result in a significant improvement in the scoring process. The scoring process is very intricate and complicated and point values change dramatically depending on elements at each specific property.

Response. To address this concern, HUD has revised the inspection summary reports so that they will show the point value for each cited deficiency.

Comment. The requirement in § 200.857(c) to report to HUD within 72 hours of the inspection that exigent health and safety items have been mitigated is neither practical nor reasonable. HUD should allow a response of 10 working days. The rule should clarify that the 72 hour limit in § 200.857(c) means 3 business days.

Response. The final rule makes the clarification that 72 hours refers to 3 business days from the date of the physical inspection, the date the owner receives the notice of exigent health and safety deficiencies. HUD, however, declines to extend this period beyond 3 business days. This time period mirrors the critical need for the owner to repair or mitigate the most serious health and safety conditions immediately.

Comment. The 15 day time period for response and appeals is unrealistic. HUD should allow at least 30 days. The time to evaluate the complex score and report is the same in order to prepare a detailed and adequate response and appeal. HUD should provide owners with a reasonable time to challenge inspection results because they have the burden of proof and must provide substantial evidence.

Response. HUD declines to expand the response time. HUD believes 15 days is sufficient time to prepare a response and submit a request for technical review. As noted earlier, HUD requires inspectors to point out defects as they are observed on the day of the inspection to the owner's representative. The score impact of every item observed is known at the time the inspection report is issued to the owner.

Comment. Because the rule relies on owner responses in prescribed time periods following HUD's notification, the rule should state that time periods begin after the owner receives notice from HUD. HUD correspondence is received/postmarked considerably later than it is dated.

Response. To avoid delays between submission of the report to the owner and the owner's response to HUD, HUD is planning to have all inspection reports available to the owners through the Internet. For those owners without Internet capability, HUD will consider mailing the results. However, HUD allows, as an allowable project expense, the reasonable cost of an internet service provider so that over time we expect that virtually all properties will have access either on site, through the agent's off site office or a sharing arrangement with other providers.

Comment. HUD should revise communications with owners in a way that the final report presents a more realistic picture on the property. The current report focuses on what is wrong and when it is read in a vacuum, regardless of the property's score, the report presents an out-of-line picture.

Response. The report shows the potential score of all inspectable items, not just those items identified as deficiencies. HUD believes that the report which now shows the potential score for all inspectable items combined with the score for items identified as deficiencies allows a balanced view.

Comment. The rule takes the right approach in providing that reinspections are HUD's responsibility. If a mortgagee uses a HUD certified inspector and HUD's physical inspection protocols and the inspection is technically acceptable then the mortgagee has fulfilled its obligations. If the owner challenges the results, the owner will request HUD, not the mortgagee, for a reinspection.

Response. The mortgagee is responsible for performance by its employees or contractors in a manner to assess that the product transmitted to HUD is of good quality. REAC reviews all inspections and, in the event the inspection is not acceptable, the mortgagee, which commissioned the inspection, must complete the inspection even though this may mean having another inspection completed. REAC makes every effort to cure problems arising from the review. If this is not possible, REAC will notify the mortgagee of the problems and provide time to correct the errors. However, some errors such as inadequate sampling are not correctable without another visit to the property to complete the sample required.

Comment. The rule should provide a process for the owner and management agent to receive inspection related communications and to allow the owner the option to allow simultaneous electronic release of this information to additional parties, such as front line manager, legal counsel board chair, etc. This would expedite communications and allow front line operators to have maximum time to prepare needed responses.

Response. Once electronic Internet access is completed, the owner may designate personnel to act to retrieve and respond to inspection reports. HUD will, however, always look to the owner of record as the party responsible for action or inaction.

Comment. The errors for which an owner may request a technical review and have a reinspection violate the precepts of fairness. The definitions of material errors refer to obvious mistakes, but these are the exception, not the rule. An inspector's decision

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about the seriousness with which an owner would have a legitimate disagreement cannot be challenged. The degree of deficiency is subjective. Three different inspectors with the same training and manual at the same building could come up with disparate scores because of their own unique perspective. The rule should allow an owner to request a technical review in any circumstance where the property score is below a standard 1 level. The grounds for appeal should be broadened to cover serious problems with the inspection definitions and with an inspector's failure to carry out the protocol.

Response. HUD disagrees with the comments. The seriousness of a defect is not subjective. Each defect is defined and each inspector is fully trained and tested to achieve maximum objectivity in determining the severity of defects. In addition, the REAC Quality Assurance personnel are charged with reviewing work performed by inspectors at regular intervals and at random.

Comment. A percentage change in the numeric score is a better trigger for reinspection and rescoring, not a change in the standard classification.

Response. HUD disagrees. A large percentage score may not move a property out of a particular operating mode while a small point increase could change the oversight and general program eligibility of an owner.

Comment. The rule should make clear that the lender does not conduct follow-up inspections.

Response. The lender may wish to make follow-up inspections as part of its own quality assurance plan. However, if an inspection is accepted by REAC, resolution of the deficiencies is the responsibility of HUD.

Comment. An issue arises when a reinspected project may not obtain the full benefit of a higher score even if original inspection error is rectified. With the "loss limiting" algorithms built into the system because of the scoring categories, an owner cannot know if removal of one of several defects will raise the score to meet a threshold.

Response. The inspection summary includes the value of all defects and thus shows all possible points deducted. The inspection summary also shows the total possible points for the site, a given unit or a given building exterior, etc., and this allows a determination of the extent to which points lost may exceed the loss limit referred to in the comment. (Under the scoring algorithms, the points deducted for the site of an individual unit building's exterior, systems or common areas cannot exceed the possible points.) If an error is found that has significant impact on the score, the owner may request a technical review. HUD does not wish to burden the system with technical review requests that do not have a significant impact.

Comment. All errors must be corrected, even if the correction would not result in the score crossing the threshold. HUD should provide an explanation to the owner/manager of the total score that could be achieved assuming all identified errors are corrected. If HUD determines that error correction will not result in recategorization, the score should be adjusted to correct for these errors. If HUD determines a new inspection is warranted, it should be at HUD's expense. Only when the owner challenges errors that do not exist should the owner pay for the reinspection and any reinspection, if not paid by HUD, should be an allowable project expense.

Response. HUD now provides the absolute point reduction for each and every defect cited. When no defects are present, the maximum score is 100 points. The comment appears to suggest that HUD engage in evaluating owner request for technical review for even fractional points which have no effect on the property. HUD believes this process does not consider the overall objective—which is property that is decent, safe, sanitary and in good repair. HUD will require the owner to make full payment for a new inspection that is performed based on an owner's technical review request where the result does not cross a signification threshold. This remains a necessary part of the process from HUD's perspective in order not to burden the process with inconsequential request.

Comment. Upon receipt of satisfactory second round inspections, HUD should remove from the permanent project file, at the owner's request, the first round results.

Response. HUD disagrees and will not remove the results of inspection reports from the permanent project file. However, if a subsequent inspection crosses the threshold from standard 2 to standard 1, the owner will immediately be eligible for the every-three-year inspection. The administrative record will continue to hold all valid information.

Comment. The procedures for appeals should be modified in several respects to improve effectiveness and efficiency of the approval process. The procedures should be modified to allow the expense of the appeal to be covered in the budget; to place the burden on HUD to work with owners to advise them of the numerical impact of any and all elements of interest to the owner until the significant thresholds have been published and all inspection reports issued in a way to allow an owner to readily determine whether or not certain elements, if successfully appealed, would meet the administrative threshold requirement; and require HUD to reissue all inspection reports using the new end column format showing the numerical value for each deficiency at the owner's request.

Response. If a technical review is successful, HUD issues a new report. All reports now show the points deducted for each cited defect. The expenses of a reinspection that does not result in a significant improvement will remain the responsibility of the owner and will not be treated as a property expense.

Comment. HUD should be flexible in the type of documentation required for appeals. Owners may have a notarized letter from the local HUD office or from a local building code office, or a similar type of declaration in the absence of statutory language.

Response. HUD is flexible in the type of third party reasonable documentation and will continue to be so.

Comment. The term "burden of proof" is a legal standard for judicial or administrative settings with trained judges and rules with regard to submission of written and oral evidence. This term should not be used lightly without definition to control appeals from REAC inspectors. It would be appropriate to state the owner is expected to provide factual information supporting its appeal, but once HUD has that information, HUD's determination should be objective without "weighing" documentation based on HUD's interpretation of the term.

Response. While "burden of proof" is a term used in the judicial or administrative hearing context, the use of such term is not confined to those settings. HUD believes that § 200.857(d)(2) makes clear the standard of factual information and supportive document (*i.e.*, proof) that the owner must submit.

Comment. Responsibility to show errors should not rest solely with the owner but with HUD and the inspector as well. When the deficiency has a significant numeric impact and the owner cannot locate the deficiency, HUD and/or the inspector should be required to produce evidence (and visit the site to point out the deficiency). Otherwise, HUD should remove the notation and the scoring impact. During subsequent inspections, HUD should (i) reinstate the exit interview for inspectors to point out deficiencies as they enter them so owners can locate them and understand the type, (ii) make notations in the comments section of repairs done in presence of inspectors, and (iii) include the owner's statements about long range maintenance plans, etc.

Response. HUD agrees and both the proposed rule and this final rule allow for mutual resolution of the claim of a non-existent deficiency. HUD believes, however, that the first level of claim that an error has occurred must come from the owner in the form of reasonable documentation. Examples of reasonable documentation have already been provided.

Additionally, as noted earlier in this preamble, inspectors are now requested to communicate observed deficiencies orally on site. All inspectors have been trained to "call out" inspection deficiencies as they are observed. This methodology eliminates the need for the "close out conference" and provides the owner or owner's representative with a running account of what is being recorded as the inspection process is conducted. Revised definitions concerning deficiencies allow the inspector to consider specific areas that may be cured on site in the presence of the inspector. For example, if an electrical panel in a unit is blocked but the blockage (such as a picture) can be easily moved in the presence of the inspector, the defect will not be recorded. An additional example is the following—in the event that the site shows significant litter in and around a small area, the inspector will not record the defect if staff is actively working to remove the litter.

Comment. Owners should not have to bear costs of reinspection even if results do not change classification. It is punitive for owners to bear the cost of reinspection and it serves to dissuade appeals if owners bear the cost when the appeal is unsuccessful. If inspectors make technical/obvious mistakes that would improve a numeric score from 32 to 58, owners should not bear the cost. Owners should not have to pay for what in most circumstances will be an honest difference of opinion.

Response. A difference of opinion is not the same as an error. HUD does not wish to attempt to dispute an owner's opinion but is willing and able to correct errors committed by inspectors. As noted in Section II of this preamble, HUD has revised the rule at this final rule stage to include in the definition of "significant improvement" a movement of 10 points or more as a result of the technical review. Payment for reinspections that result in less than significant improvement will be the responsibility of the owner.

Comment. HUD should clarify that a third party inspection is objective evidence supporting any claim of technical error. HUD also should clarify that the evidence may be from the owner if it is reasonable and supported with more than a new allegation.

Response. If an owner believes that such an inspection meets the standard of reasonable documentation, it will be considered. However, such inspection should be comparable to the REAC inspection. The inspection should present documentation that cites specific HUD requirements not opinions.

Comment. A shortfall of the proposed rule is the inability of the owner/manager to obtain a revised higher score by completing repairs or presenting an acceptable plan for completion to HUD. The rule should permit an owner/manager to petition for reinspection based on repaired conditions, with the owner paying for all or part of the reinspection cost.

Response. The inspection protocol is intended to capture the condition of the property at a certain point in time. HUD realizes there will always be some outstanding maintenance items. Routine maintenance needs have no significant impact on the score.

Enforcement Actions

Comment. Dividing appeal decisions between REAC and HUD Field Offices makes for a complicated and confusing appeal system. REAC is responsible for the technical aspects of inspections, inputting data, scoring, and objective information. HUD Field Offices and Hubs are responsible for area specific, qualitative judgments such as local code conflicts with inspection protocol or whether the facilities are the responsibility of a third party or whether ongoing rehabilitation or maintenance should delay the inspection. Appeals should be directed to one HUD office. All appeals should be directed to the Office of Housing.

Response. HUD does not use the term "appeal" in the rule but understands that the issues the commenters are raising concern the technical review process that is under REAC's jurisdiction and the adjustment of physical condition score due to local circumstance which, the proposed rule provided was under the jurisdiction of the applicable HUD Field Office or Hub. HUD agrees with the commenters that requests for review of concerns about a property's score should all be directed to one office and the final rule provides that the office is REAC.

Comment. The rule needs to provide a standard for when the HUD Field Office determines to refer a matter to HUD's Departmental Enforcement Center (DEC).

Response. The final rule provides that a property that receives a physical inspection score of 30 or below will be referred to the DEC for evaluation. This is a clear and objective standard.

Comment. The rule is clear about the owner's responsibilities, but less clear about the owner's right to receive a copy of its file so that everyone is reviewing the same information. The file includes information and history beyond the physical inspection report.

Response. The significant information for the owner is the inspection report. To the extent other information is needed as background, the information is generally available to the owner from the local HUD Field Office.

Comment. The role of HUD's Field Offices should be clarified in the rule and Field Office staff should be encouraged to make judgments when their experience is at variance with inspection results.

Response. While HUD highly values input from its Field Office staff, the key feature of HUD's physical inspection process is to provide for an objective system. Conclusions drawn from relationships with owners and personal knowledge of the properties are inconsistent with an objective evaluation of the physical condition of a property.

Comment. The rule should provide assurance that no enforcement action would be initiated prior to a decision on appeal.

Response. HUD cannot make this commitment. Circumstances may compel HUD to take immediate enforcement action. In fact, the rule specifically provides that the administrative process described in the rule does not prohibit the Office of Housing, the Departmental Enforcement Center or HUD generally from taking whatever action may be necessary (when necessary) as authorized under existing statutes, regulations, contracts or other documents to protect HUD's interests in multifamily properties and to protect the residents of these properties. (See 24 CFR 200.857(h)(4).)

Comment. The rule states that the administrative process in the rule will not be construed to limit HUD's ability to take other enforcement actions; however the extent to which such actions can be taken should be described in the rule.

Response. HUD declines to repeat in this regulation the enforcement actions that are available to HUD and that are

listed in other HUD program regulations that may be applicable to owners (depending on the HUD program in which they participate) or contracts or other documents. Generally, HUD participants that are covered by these other requirements are familiar with them.

Comment. The rule should make clear that HUD, not the lender, is responsible for the compliance plan process. Section 200.857(h) refers to the owner's compliance action but does not refer to HUD's participation in the process.

Response. This section clearly provides for the actions and duties that the DEC may and will undertake and the DEC is a part of HUD.

Comment. HUD should establish a Departmental Evaluation Center in addition to the Departmental Enforcement Center. Section 200.857(f) of the proposed rule speaks of evaluation through administrative review. It is problematic for properties to emerge from DEC even when no fault is found and scoring problems result from complicated property situations.

Response. HUD's Departmental Enforcement Center has the expertise to perform the administrative review described in § 200.857(f). There is no need to establish a separate evaluation center.

Cost of the Physical Inspection

Comment. The rule does not specify or limit the financial burden of an inspection to be placed on lenders. The rule should state that there will be no material change in the inspection process that will materially increase costs, and the rule should define "material increase in cost" to be no greater than 5 percent.

Response. Although the rule does not specify a limitation to the financial cost of an inspection placed on lenders, as discussed in the November 1999 proposed rule, HUD has taken significant steps to minimize the costs of inspection to lenders and owners. HUD's inspection software and guidebook is distributed to HUD's program participants without cost. HUD also has placed these materials on the web so that they can be downloaded and therefore no shipping costs are incurred. Additionally, in the proposed rule, HUD advised that it would not materially alter the physical inspection requirements in a manner which would material increase the cost of performing the inspection (see 64 FR 66535, middle column.)

Comment. Section 200.857(h) in the rule should be revised to remove the word "software" because this raises concern that HUD may add features that are enhancements (provide pictures from digital camera) but not necessary to the inspection process and therefore make the software more costly.

Response. The use of the word "software" is the appropriate term. The term describes that set of stored procedures and operating instructions that allow the data collection device to function. Inspection data is already in the software. Digital pictures are not part of the functionality of the software.

Regulatory Amendments That Adversely Affect FHA Lenders

Comment. The changes to the physical inspection process proposed by the November 1999 rule would be a violation of § 207.499 and the mortgage insurance contracts. The change in the inspection process, as provided in this rule, is likely to change and increase costs for lenders in a manner not contemplated in existing mortgage insurance contracts. The changes expand the role and scope if the inspections performed to date. HUD will greatly increase the costs by requiring new computer systems and software and these new protocols may exceed the lender's service income. To control costs there must be (i) an adequate number of certified inspectors and inspection companies to ensure competition; and (ii) reduced frequency of inspections for better performing properties.

Response. The insurance contract provides for the mortgagee to perform the inspection pursuant to HUD requirements and, the insurance contract has not been adversely affected.

Comment. HUD should add a provision to this rule that states that the FHA Commissioner may amend these regulations but the amendments shall not adversely affect the interest of a mortgagee or lender under the contract of insurance.

Response. HUD declines to add this provision to the rule. HUD needs the flexibility to promulgate such amendments that HUD believes are necessary to make the housing programs effective and to fulfill the statutory obligations and objectives imposed on HUD for these programs.

Timing of Implementation of the Rule

Comment. Implementation of the rule should be four months after existing mortgagees have been provided with baseline scores and after HUD has successfully tested the computer system for scheduling and retrieving inspections.

Response. To accommodate concerns in this area, HUD has agreed to perform all inspections required through December 31, 2000. This will allow additional transition and planning time for lenders.

Comment. Because the parameters and definitions in the current baseline inspections are being refined and revised, and the baseline inspection is almost complete, it does not make sense to require new inspections to be performed during the revision process.

Response. HUD did not require any new inspections during this period of baseline inspections.

Comment. The rule should provide for retroactive application to ensure owners have fair opportunity to address scores and be on record that the score is inappropriate. Otherwise, there may be injurious results to owners and their reputation which remains permanently on the record.

Response. Owners have always had the opportunity to address scores if they believe they are inappropriate. Project Managers will ensure that any complaint, inquiry or concern is addressed. Should the Hub/Program Center Director believe a complaint about a score or anything else from an owner is valid, it should be addressed. HUD Field Office will forward the complaint to the Office of Asset Management at HUD Headquarters for review and action. Should Headquarters believe additional follow-up is necessary, Headquarters will forward to HUD's Real Estate Assessment Center for appropriate review and action. Complaints are posted in "REMS" at the Field Office level. If forwarded to Headquarters they are logged and monitored to ensure the owner receives a response by Headquarters and/or the Real Estate Assessment Center.

Entity Responsible for Inspection/ Duplicate Inspection Requirements

Comment. The rule needs to clarify that for properties with more than one HUD insured loan, only the first mortgage lender is required to conduct the physical inspection with the second mortgage lender having access to the inspection. The rule also needs to clarify that only one mortgage inspects when there is a first and second mortgage.

Response. HUD agrees and the final rule makes these clarifications.

Comment. The rule should specify the responsible party for Section 8 assisted properties. The rule does not address administrative difficulty and duplication of costs for lenders who perform inspections, and Section 8 contract administrators. For those properties with a mortgagee different from the section 8 contract administrator, the rule should provide that the Section 8 contract administrator performs the inspection.

Response. The intent of HUD is to have inspections performed no more frequently than annually and that a single inspection will suffice for all parties that have a need to perform these inspections. For the HUD insured portfolio, the lender will perform all required inspections; HUD will not duplicate this effort. Newly appointed contract administrators will not perform or arrange for property inspections. HUD will perform the property inspection if there is no mortgagee. Existing contract administrators are required to inspect annually all units in a property that they are responsible for administering. However, the oversight the contract administrator performs does not include the HUD physical inspection protocol: HUD will perform this inspection. When the contracts are renewed, the administration will be turned over to more recently appointed contract administrators, and at that time, inspections will be performed only by HUD.

Comment. HUD needs to clarify how the Comprehensive Needs Assessment, which includes a detailed inspection, interacts with the Uniform Physical Conditions Standards inspection. HUD requires owners who request Section 8 renewals to have a Comprehensive Needs Assessment. Section 8 renewals may be on a 1 to 5 year basis so the CNA is used more frequently. HUD needs to eliminate duplicate requirements.

Response. The Comprehensive Needs Assessment (CNA) and the Uniform Physical Condition Standards (UPCS) are related in that they both address property assessment but they are different types of property assessment. The CNA was designed to estimate the need for capital improvement over an extended period into the future. The CNA uses or can use the UPCS inspection results as a starting point in the CNA assessment. The result of the UPCS inspection, however, is a snapshot of the property at a specific point in time. The inspection results are statistically valid and therefore are useful as an overall evaluation of property condition at the point in time of the inspection. The CNA is not valid, in the same statistical manner as the UPCS, but the CNA is an estimate of physical needs which allows the owner to make long term plans to accumulate resources to assure the long term viability of property. The UPCS inspection will provide feedback to the owner and HUD about the CNA planning process and its validity as time passes. The two are related and should be used together but one cannot take the place of the other.

Comment. There is concern about a statement in the preamble that states other HUD offices may inspect for various purposes. The possibility of other inspections for other purposes seems duplicative and wasteful.

Response. This statement refers to HUD's statutory and regulatory requirements under other programs to monitor compliance with specific program requirements, which may include physical inspection, but generally are directed to other program requirements. For example, HUD's Office of Fair Housing and Equal Opportunity monitors owner compliance with requirements for accessibility and/or appropriate accommodations for persons with disabilities. This monitoring, however, is not a physical inspection to determine the quality and maintenance of the accessibility features, but rather one to determine that the owner has provided accessibility features and accommodations where they are required. The inspection conducted under HUD's Uniform Physical Condition Standards does not monitor compliance with accessibility requirements. Although HUD's physical inspection process collect specific data requested by HUD's Office of Fair Housing, it is important to note that this data is not part of the physical condition scoring process. Therefore, the examinations of accessibility features conducted by HUD's Office of Fair Housing and Equal Opportunity and REAC are not duplicative of one another.

Rulemaking Procedures

Comment. The inspection and scoring process, as noted in the preamble to the proposed rule was first introduced in HUD's Public Housing Assessment (PHAS) rule, which was limited to PHAs. HUD should have specifically sought comment from tenants in multifamily housing if it was considering extending that process to multifamily housing.

Response. HUD did solicit public comment from multifamily residents, owners, and lenders through publication of the November 26, 1999, proposed rule. It is the November 1999 rule that proposed a scoring process for multifamily housing properties, and the November 1999 proposed rule provided a 60-day public comment period.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The information collection requirements when approved will be assigned and OMB approval number and the public will be notified of this number. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–8000.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–8000.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. As stated in HUD's June 30, 1998, proposed rule and September 1, 1998, interim rule

on uniform physical condition standards, all HUD housing has been subject to physical condition standards and a physical inspection requirement. There are statutory directives to maintain HUD housing in a condition that is decent, safe, and sanitary. The rules on uniform physical conditions standards and uniform physical inspections do not alter these requirements, nor do they shift responsibility with respect to who conducts the physical inspection of the property. The entities and individuals responsible for the inspection of HUD subsidized properties remain responsible. This rule is a follow-up to the September 1, 1998, final rule on uniform physical inspection standards by establishing an administrative process by which multifamily housing properties are analyzed, scored and ranked. With the exception of exigent circumstances, the administrative process, as described in the preamble, allows for appropriate and reasonable notice and opportunity for review and comment, and a reasonable period for corrective action. With respect to the physical inspection process itself, in the preamble to this proposed rule, HUD reiterated its commitment to provide the software at no cost to covered entities as well as the accompanying guidebooks and to publish a notice that gives covered entities reasonable notice of when the software and guidance are available. With the implementation of any new or modified program requirement, HUD intends to provide guidance to the covered entities, particularly small entities, to assist them in understanding the changes being made.

Executive Order, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are:

14.126—Mortgage—Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d)(3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 5.701, paragraphs (a) and (b) are revised to read as follows:

§ 5.701 Applicability.

(a) This subpart applies to housing assisted under the HUD programs listed in 24 CFR 200.853(a).

(b) This subpart applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the programs listed in 24 CFR 200.853(b).

* * * * *

3. Section 5.705 is revised to read as follows:

§ 5.705 Uniform physical inspection requirements.

Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually in accordance with HUD-prescribed physical inspection procedures. The inspection must be conducted annually unless the program regulations governing the housing provide otherwise or unless HUD has provided otherwise by notice.

PART 200—INTRODUCTION TO FHA PROGRAMS

4. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715–18; 42 U.S.C. 2535(d).

5. A new subpart P is added to 24 CFR part 200 to read as follows:

Subpart P—Physical Condition of Multifamily Properties

Sec.
200.850 Purpose.
200.853 Applicability.
200.855 Physical condition standards and physical inspection requirements.
200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

Subpart P—Physical Condition of Multifamily Properties

§ 200.850 Purpose.

The purpose of this subpart is to establish the physical conditions standards and physical inspection requirements that are applicable to certain multifamily housing properties.

§ 200.853 Applicability.

This subpart applies to:

(a) Housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. "Project-based assistance" means Section 8 assistance that is attached to the structure (see 24 CFR 982.1(b)(1) regarding the distinction between "project-based" and "tenant-based" assistance);

(2) Section 202 Program of Supportive Housing for the Elderly (Capital Advances);

(3) Section 811 Program of Supportive Housing for Persons with Disabilities (Capital Advances); and

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) Housing with mortgages insured or held by HUD, or housing that is receiving insurance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) Program);

(5) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) Program);

(6) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(7) Section 231 of the NHA (Housing for Elderly Persons);

(8) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);

(9) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(10) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(11) Section 241 of the NHA (Supplemental Loans for Multifamily Projects). (Where, however, the primary mortgage of a Section 241 property is insured or assisted by HUD under a program covered in this part, the coverage by two HUD programs does not trigger two inspections); and

(12) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

§ 200.855 Physical condition standards and physical inspection requirements.

(a) *Applicable standards and requirements.* The physical condition standards and physical inspection requirements in 24 CFR part 5, subpart G, are applicable to the properties assisted or insured that are listed in § 200.853.

(b) *Entity responsible for inspection of property.* The regulations that govern the programs listed in § 200.853, or regulatory agreements or contracts, identify the entity responsible for conducting the physical inspection of the property which is HUD, the lender or the owner. For properties with more than one HUD insured loan, only the first mortgage lender is required to conduct the physical inspection. The second mortgage lender will be provided a copy of the physical inspection report by the first mortgage lender.

(c) *Timing of inspections.* (1) For a property subject to an annual inspection under this subpart, the inspection shall be conducted no earlier than 9 months and no later than 15 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the one year anniversary date of the last required inspection.

(2) For a property subject to an inspection every two years under this subpart, the inspection shall be conducted no earlier than 21 months and no later than 27 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the two year anniversary date of the last required inspection.

(3) For a property subject to an inspection every three years under this subpart, the inspection shall be conducted no earlier than 33 months and no later than 39 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the three year anniversary date of the last required inspection.

(4) For a newly endorsed multifamily property, the first inspection required under this subpart will be conducted no earlier than 21 months but not later than 27 months from the date of final endorsement. In no event, however, shall the inspection be conducted after the end of the calendar year following the two year anniversary date of final endorsement.

§ 200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

(a) *Scoring and ranking of the physical condition of multifamily housing properties.* (1) HUD's Real Estate Assessment Center (REAC) will score and rank the physical condition of certain multifamily housing insured properties listed in § 200.853 in accordance with the procedures described in this section. The physical condition inspection of the property, upon which REAC bases its score and ranking, is conducted by the responsible entity in accordance with § 200.855.

(2) Depending upon the results of its physical condition inspection, a multifamily housing property will be assigned one of three designations—standard 1 performing, standard 2 performing and standard 3 performing—in accordance with the ranking process described in paragraph (b) of this section.

(b) *Methodology for Ranking.* (1) Multifamily housing properties will be ranked in accordance with the methodology provided in this paragraph (b). Multifamily housing properties are scored on the basis of a 100 point scale. Because scores may include fractions, a score that includes a fraction below one half point will be rounded to the next lower full point and a score that includes a fraction of one half point or higher will be rounded to the next higher full point (e.g., 89.4 will be rounded to 89, 89.5 will be rounded to 90).

(i) *Standard 1 Performing Property.* If a property receives a score of 90 points or higher on its physical condition inspection, the property will be designated a standard 1 performing property. Properties designated as standard 1 performing properties will be required to undergo a physical inspection once every three (3) years.

(ii) *Standard 2 Performing Property.* If a property receives a score of 80 points or higher but less than 90 on its physical condition inspection, the property will be designated a standard 2 performing property. Properties designated as standard 2 performing properties will be required to undergo a physical inspection once every two (2) years.

(iii) *Standard 3 Performing Property.* If a property receives a score of less than 80 points, the property will be designated a standard 3 performing property. Properties designated as standard 3 performing properties will continue to undergo an annual physical inspection as currently required under covered HUD programs.

(2) Owners of multifamily housing properties scoring in a standard 1 or standard 2 range which have been cited by the REAC as having a Exigent Health and Safety (EHS) deficiency(s) must resolve the deficiency(s), as required by paragraph (c)(2) of this section, to be

classified as standard 1 and standard 2 properties.

(3) Regardless of the performance designation assigned to an owner's property, an owner is obligated to maintain its property in accordance with HUD's uniform physical condition standards as required by 24 CFR part 5, subpart G, the Regulatory Agreement and/or the Housing Assistance Payment (HAP) Contract. Good management principles require an owner to conduct routine inspections of its projects, develop improvement plans, and again, maintain its property to meet the standard of decent, safe, sanitary and in good repair.

(c) *Owner's review of physical inspection report and identification of objectively verifiable and material error.* (1) Upon completion of a physical inspection of a multifamily housing property, the REAC will provide the owner or owner's representative, on the date of the physical inspection, notice of any items classified as EHS deficiencies. REAC also will provide the owner with the entire physical inspection report (electronically through the internet or by mail approximately 10 working days from the date of the report), which provides the physical inspection results and other information relevant to the inspection, including any items classified as EHS deficiencies and already provided to the owner, on the date of the inspection (EHS deficiencies are relayed by the inspector on the date of the inspection).

(2) The owner must carefully review the physical inspection report, particularly those items classified as EHS. The owner is also responsible for conducting its own survey of the total project based on the REAC's physical inspection findings. The owner must mitigate all EHS items immediately, and the owner must file a written report with the applicable Multifamily Hub Director within 3 business days of the date of the inspection, which is the date the owner was provided with the EHS notice. The report filed by the owner must provide a certification and reasonable evidence that the EHS items have been resolved.

(3) If, following review of the physical inspection results and score, the owner reasonably believes that an objectively verifiable and material error (or errors) occurred in the inspection, which, if corrected, will result in a significant improvement in the property's overall score ("significant improvement" is defined in paragraph (d)(4) of this section), the owner may request a technical review within the following period, as applicable:

(i) 15 calendar days from the date the owner receives the physical condition score from REAC if the results and score are electronically transmitted via the Internet to the owner; or

(ii) 30 calendar days from the date the owner receives the physical condition score from REAC if the results and score are transmitted to the owner by hard copy by certified mail.

(d) *Technical review of physical inspection results.* A request for a technical review of physical inspection results must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by the REAC no later than the 15th calendar day or 30th calendar day, as applicable under paragraph (c)(3) of this section, following submission of the physical inspection report to the owner as provided in paragraph (c)(1) of this section.

(1) *Request for technical review.* The request must be accompanied by the owner's reasonable evidence that an objectively verifiable and material error (or errors) occurred which if corrected will result in a significant improvement in the overall score of the owner's property. A technical review of physical inspection results will not be conducted based on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner, the REAC will review the physical inspection and the owner's evidence. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented and that it is likely to result in a significant improvement in the property's overall score, the REAC will take one or a combination of the following actions: undertake a new inspection; correct the original inspection; or issue a new physical condition score.

(2) *Burden of proof that error occurred rests with owner.* The burden of proof rests with the owner to demonstrate that an objectively verifiable and material error (or errors) occurred in the REAC's inspection through submission of evidence, which if corrected will result in a significant improvement in the property's overall score. To support its request for a technical review of the physical inspection results, the owner may submit photographic evidence, written material from an objective source such as a local fire marshal or building code official, or other similar evidence.

(3) *Material errors.* An objectively verifiable material error must be present to allow for a technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are as follows.

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *A non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(4) *Significant improvement.* Significant improvement refers to the correction of a material error, asserted by the owner, which causes the score for the owner's property to cross an administratively significant threshold (for example, the property would be redesignated from standard 3 performing to standard 2 performing or from standard 2 performing to standard 1 performing), or to result in an increase of 10 points or more.

(5) *Determining whether material error occurred and what action is warranted.* Upon receipt of the owner's request for technical review of a property's physical inspection results, the REAC will evaluate the owner's property file and the evidence provided by the owner that an objectively verifiable and material error occurred which, if corrected, would result in a significant improvement in the property's overall score. If the REAC's evaluation determines that an objectively verifiable and material error (or errors) has been reasonably documented by the owner and if corrected would result in a significant improvement in the property's overall score, then the REAC shall take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the inspection report; or

(iii) Issue a new physical condition score.

(6) *Responsibility for the cost of a new inspection.* If a new inspection is undertaken by the REAC and the new inspection score results in a significant improvement in the property's overall score, then HUD shall bear the expense of the new inspection. If no significant improvement occurs, then the owner must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner, is not a valid project operating expense. The new inspection score will be considered the final score.

(e) *Adjustment of physical condition score based on considerations other than technical review and reinspection.* (1) Under certain circumstances, HUD may find it appropriate to review the results of a physical inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection. These circumstances include, but are not necessarily limited to, inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by variance or license or which are preexisting physical features non-conformities and are inconsistent with the HUD physical condition protocol; or cases where the owner has been scored for elements (*e.g.*, roads, sidewalks, mail boxes, resident owned appliances, etc.) that it does not own and is not responsible for maintaining.

(2) To seek a score adjustment on the basis of these circumstances as provided in paragraph (e) of this section, the owner must submit a request for an adjustment to REAC with appropriate proof of the circumstances that resulted in the incorrect physical conditions results. This process may result in a reinspection and/or rescoring of the inspection after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application.

(3) An owner may submit the request for this adjustment to REAC either prior to or after the physical inspection has been concluded. If the owner submits a request for adjustment after the physical inspection has been concluded, the owner must submit its request to REAC within 45 days following the submission of the physical inspection report, as provided in paragraph (c)(1) of this section. HUD may, but is not required to review a request made after this period has expired.

(4) This adjustment process, provided in this paragraph (g), may result in a reinspection and/or rescoring of the inspection after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application.

(f) *Issuance of final score and publication of score.* (1) The physical condition score of the property is the final score if the owner files no request for technical review, as provided in paragraph (c) of this section, or for other adjustment of the physical condition score, as provided in paragraph (e) of this section. If the owner files a request for technical review or score adjustments in accordance with paragraphs (c) and (e) of this section, the final physical condition score is the score issued by HUD after any adjustments are determined necessary and made by HUD at the conclusion of these processes.

(2) HUD will make public the final scores of the owners through posting on HUD's internet site, or through **Federal Register** publication or other appropriate means.

(g) *Owner's responsibility to notify residents of inspection; and availability of documents to residents.*

(1) *Notification to residents.* An owner must notify its residents of any planned physical inspections of their units or the housing development generally:

(2) *Availability of documents for review.* Once the technical review and database adjustment periods have expired, as provided in paragraphs (d) and (e) of this section, respectively, the owner must make its physical inspection report and all related documents available to its residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's survey plan, plan of correction, certification and related correspondence.

(i) Once the owner's final physical condition score is issued and published, the owner must make any additional information, such as the results of any reinspection, appeal requests, available for review and copying by its residents upon reasonable request during regular business hours.

(ii) The owner must maintain the documents related to the physical inspection of the property, as described in this paragraph (g)(2), available for review by residents for a period of 60 days from the date of submission to the owner of the physical condition score for the property in which the residents reside.

(3) The owner must post a notice to the residents in the owner's management office and on any bulletin boards in all common areas that advises residents of the availability of the materials described in paragraphs (g)(2) of this section. The notice should include the name, address and telephone number of the HUD Project Manager.

(4) Residents are encouraged to comment on this information provided by the owners and submit any comments directly to the applicable Field Office. Should residents discover the owner provided HUD with a false certification during the review they are encouraged to notify the Hub or Program Center where appropriate inquiry and action will be taken.

(h) *Administrative review of properties.* The file of a multifamily property that receives a score of 30 points or less on its physical condition inspection will be referred to HUD's Departmental Enforcement Center (DEC) for evaluation. The files of any of the multifamily housing properties may be submitted to the DEC or to the appropriate HUD Multifamily Hub Director (MFD) for evaluation, or both, at the discretion of the Office of Housing.

(1) *Notification to owner of submission of property file to the MFD and DEC.* The Department will provide for notification to the owner that the file on the owner's property is being submitted to the MFD and/or the DEC for evaluation. The notification will be provided at the time the REAC issues the physical inspection report to the owner or at such other time as a referral occurs.

(2) *30–Day period for owner to provide the DEC with supporting and relevant information and documentation.* The owner has 30 calendar days, from the date of the REAC notification to the owner, to provide comments, proposals, or any other information to the DEC which will assist the MFD and DEC in conducting a comprehensive evaluation of the property. A proposal provided by an owner may include the owner's plan to correct deficiencies (corrective action plan). During the 30-day response time available to the owner, the DEC may encourage the owner to submit a corrective action plan. The corrective action plan, if timely submitted during the 30-day period (whether on the owner's initiative or at the request of the DEC), may serve as additional information for the DEC to consider in determining appropriate action to take at the conclusion of the evaluation period. If not submitted during the 30-day response time, a corrective action plan may be required of the owner at the conclusion of the DEC's evaluation of the property.

(3) *Evaluation of the property.* During the evaluation period, the DEC will perform an analysis of the multifamily housing property, which may include input from tenants, HUD multifamily officials, elected officials, and others as may be appropriate. Although the MFD will assist with the evaluation, for insured mortgages, the DEC will have

primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of interested parties as described in this paragraph (h)(2). The DEC's evaluation may include a site visit to the owner's property.

(4) *Continuing responsibilities of HUD Multifamily Program Offices and Mortgagee.* During the period of DEC evaluation, HUD's multifamily program offices continue to be responsible for routine asset management tasks on properties and all servicing actions (*e.g.*, rent increase decisions, releases from reserve account approvals). In addition, during this period of evaluation, the mortgagee shall continue to carry out its duties and responsibilities with respect to the mortgage.

(i) *Enforcement action.* If, at the conclusion of the evaluation period, the DEC determines that enforcement action is appropriate, the DEC will provide notification to the owner of the DEC's decision to formally accept the property for enforcement purposes.

(1) *DEC Owner Compliance Plan.* (i) After notification to the owner of the DEC's decision, the DEC will produce a proposed action plan (DEC Compliance Plan), the purpose of which is to improve the physical condition of the owner's property, and correct any other known violations by the owner of its legal obligations. The DEC Compliance Plan will describe:

(A) The actions that will be required of the owner to correct, mitigate or eliminate identified property deficiencies, problems, hazards, and/or correct any other known violations by the owner;

(B) The period of time within which these actions must be completed; and

(C) The compliance responsibilities of the owner.

(ii) The DEC Compliance Plan will be submitted to the MFD for review and concurrence. If the MFD does not concur, the DEC Compliance Plan will be submitted to the Deputy Assistant Secretary for Housing and the Deputy Director of the DEC for review and concurrence. If the DEC Compliance Plan remains unapproved, a final decision on the plan will be made by HUD's Deputy Secretary in consultation with the General Counsel, the Assistant Secretary for Housing, and the Director of the DEC.

(iii) Following submission of the DEC Compliance Plan to the owner, the owner will be provided a period of 30 calendar days to review and accept the DEC Compliance Plan. If the owner agrees to comply with the DEC Compliance Plan, the plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(2) *Counter compliance plan proposal by owner.* The owner may submit an acceptable counter proposal to the DEC Compliance Plan. An owner's counter proposal to a DEC Compliance Plan must be submitted no later than the 30th day following submission of the DEC Compliance Plan to the owner. The DEC, in coordination with the MFD, may enter into discussions with the owner to achieve agreement to a revised DEC Compliance Plan. If the owner and the DEC agree on a revised DEC Compliance Plan, the revised plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(3) *Non-cooperation and Non-compliance by owner.* If at the conclusion of the 30th calendar day following submission of the DEC Compliance Plan to the owner, the DEC receives no response from the owner, or the owner refuses to accept the DEC Compliance Plan, or to present a counter compliance plan proposal, or if the owner accepts the DEC Compliance Plan or revised DEC Compliance Plan, but refuses to take the actions required of the owner in the plan, the DEC may take appropriate enforcement action.

(4) *No limitation on existing enforcement authority.* The administrative process provided in this section does not prohibit the Office of Housing, the DEC, or HUD generally, to take whatever action may be necessary when necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts or other documents, to protect HUD's financial interests in multifamily properties and to protect the residents of these properties.

(j) *Limitations on material alteration of physical inspection software.* HUD will not materially alter the physical inspection requirements in a manner which would materially increase the cost of performing the inspection.

Dated: December 4, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–31306 Filed 12–7–00; 8:45 am]

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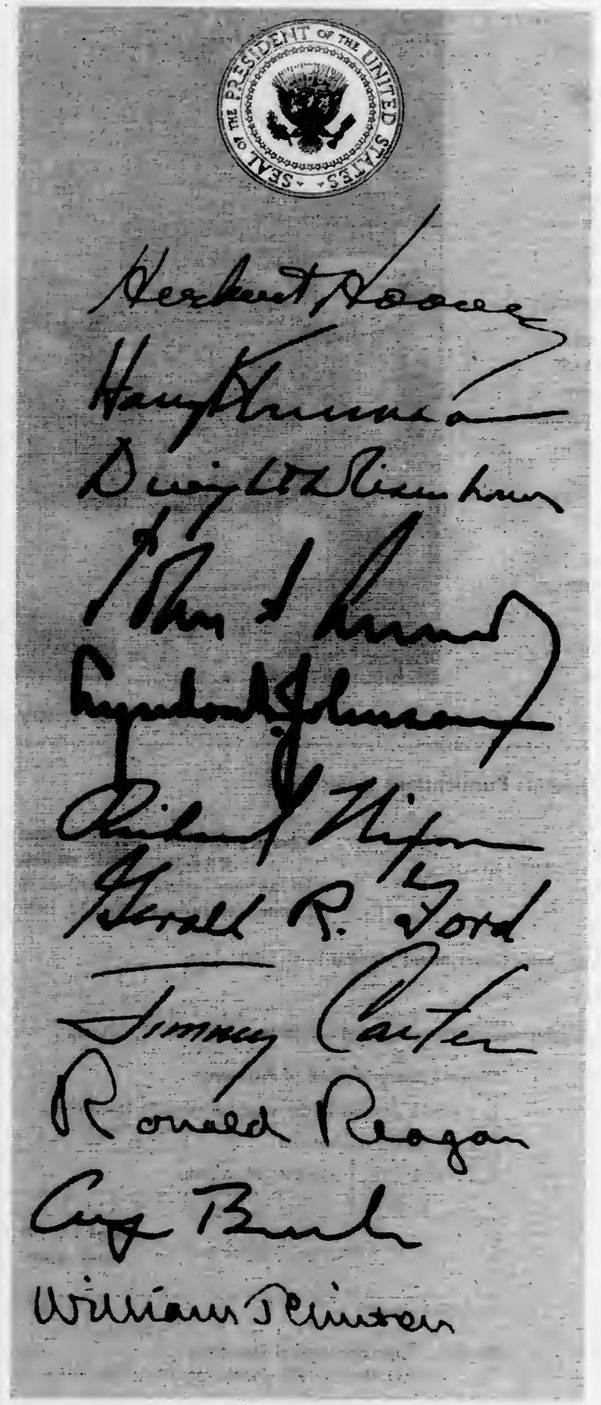
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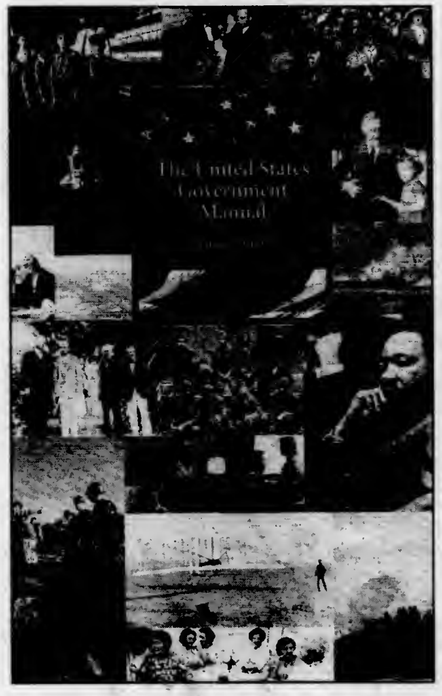
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC76

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Certification Integrity

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts an interim rule amending 7 CFR part 246 which was published on January 21, 2000, at 65 FR 3375 for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The interim rule and this final rule implement three legislative requirements that affect the application and certification process for the WIC Program. These legislative requirements can be found in the William F. Goodling Child Nutrition Reauthorization Act of 1998. In addition, this final rule implements several nondiscretionary legislative requirements in the Agricultural Risk Protection Act of 2000 that also affect the WIC application and certification process. One of these provisions was subsequently amended by the Grain Standards and Warehouse Improvement Act of 2000, Public Law 106–472, enacted November 9, 2000. Therefore, this final rule adopts requirements that WIC applicants, except in limited circumstances, present documentation of family income at certification for those individuals who are not certified based on adjunctive income eligibility procedures; present proof of residency as part of a State agency's system to prevent dual participation; and, physically present themselves at certification. In addition, this final rule allows individuals residing in a remote Indian or Native village or served by an Indian tribal organization and residing on a reservation or pueblo, to provide the name of the village and mailing address as proof of residency, and defines "remote Indian or Native village." Further, this final rule provides State agencies, in determining an applicant's eligibility for WIC, the option to exclude from consideration as income any cost-of-living allowance provided to military personnel who are on duty outside the contiguous United States. The intent of these provisions is to strengthen the integrity of the WIC certification process and to consider the needs of special populations in determining eligibility for the WIC Program.

EFFECTIVE DATE: This rule is effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Debbie Whitford at (703) 305–2746 during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. Why is This Regulation Necessary?

On January 21, 2000, the Department published an interim rule at 65 FR 3375 to implement three legislative requirements in the William F. Goodling Child Nutrition Reauthorization Act of 1998, Public Law 105–336, 112 Stat. 3143, enacted October 31, 1998, which affect the application and certification process. These provisions include, with limited exceptions, that WIC agencies require WIC applicants and participants to: (1) Provide proof or documentation of family income in cases where an individual is not determined adjunctively or automatically income eligible; (2) provide proof or documentation of an applicant's residency; and (3) physically present themselves at the WIC clinic at certification. Comments were requested by the Department on the interim rule. Comments received on the interim rule are discussed below.

Subsequently, legislation was enacted on June 20, 2000, the Agricultural Risk Protection Act of 2000, Public Law 106–224, 114 Stat. 224, which includes several nondiscretionary provisions that also affect the WIC application and certification process. One of these provisions was subsequently amended by the Grain Standards and Warehouse Improvement Act of 2000, Public Law 106–472, 114 Stat. 2058, enacted on November 9, 2000. The Agricultural Risk Protection Act of 2000 allows individuals residing in a remote Indian or Native village or served by an Indian tribal organization and residing on a reservation or pueblo, to provide their mailing address and name of the remote Indian or Native village as proof of residency. This legislation defines "remote Indian or Native village." The Agricultural Risk Protection Act of 2000, subsequently amended by the Grain Standards and Warehouse Improvement Act of 2000, also provides State agencies, in determining an applicant's eligibility for WIC, the option to exclude from consideration as income any cost-of-living allowance provided to military personnel who are on duty outside the contiguous United States. These requirements, as set forth in this final rule, are reproduced verbatim from the legislation. Thus, they are considered nondiscretionary provisions.

Section 263 of the Agricultural Risk Protection Act of 2000 requires that FNS promulgate regulations to implement the provisions as soon as practicable after the date of enactment without regard to the Administrative Procedure Act's notice and comment provisions (5 U.S.C. 553); the State of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking effective July 24, 1971 (36 FR 13804); and the Paperwork Reduction Act (44 U.S.C., chapter 35). In addition, section 172 of Public Law 106–224 requires us to promulgate regulations to carry out the Act and its amendments not later than 120 days after the date of enactment, June 20, 2000. For these reasons, and because we are obligated by law and have exercised no discretion in making the amendments set forth by Public Law 106–224, we are not taking public comment prior to promulgation of this final rule.

2. What Comments Were Received on the Interim Rule and What Provisions Have Been Added as a Result of New Legislation?

A total of 24 comment letters, faxes and emails were received on the interim rule published on January 21, 1999, at 65 FR 3375. Commenters were primarily WIC State and local agencies and staff. Other commenters represented industry, a professional health or nutrition-related group, and the general public. In

general, some commenters supported the legislative measures to improve the integrity of the WIC Program. However, the majority of commenters opposed various aspects of the requirements in the interim rule, primarily the requirements mandated by law. In addition, some commenters recommended changes to WIC eligibility, and certification requirements that were not addressed in the interim rule such as what is counted as income for WIC eligibility purposes.

The Department has carefully considered all comments in the development of this final rule and would like to thank all agencies, organizations and individuals that responded to the request for comments on the interim rule. The Department does not have the authority to eliminate or revise legislative requirements, or change other WIC requirements not addressed in the interim rule without first issuing proposed regulations and affording the public the opportunity to comment on the proposal. There are, however, several issues that need clarification, given the comments received. The following is a discussion of each provision, clarifications needed as a result of comments received, an explanation of the three nondiscretionary certification provisions contained in Public Law 106–224, with one provision subsequently amended by Pub. L. 106–472, and an explanation of the provisions in this final rule.

a. Definitions—§ 246.2

In the interim rule, the Department added new definitions for "Applicants," "Documentation" and "Individual with disabilities." One commenter recommended that the definition of "documentation" include cases where the local agency assists in obtaining the documentation such as contacting the Medicaid Program to establish eligibility for WIC adjunct income eligibility purposes. It is the Department's intention that the definition of "documentation" include situations where the applicant may bring in written information to confirm verbal statements or include, where feasible, the WIC clinic assisting the client in obtaining the required written documents. For example, WIC staff could contact the Medicaid Program or access Medicaid eligibility information to confirm that the applicant is adjunctively or automatically income eligible for WIC. No comments were received on the definitions of "Applicants" and "Individual with disabilities." As such, the three definitions included in the interim rule are not changed in this final rule.

Further, a new definition of "remote Indian or Native village" has been added as a result of the Agricultural Risk Protection Act of 2000, Public Law 106–224, 114 Stat. 224, Section 244(a). As noted below, this law adds an additional exception to the proof of residency requirement for individuals residing in a remote Indian or Native village. Therefore, as defined in the Act, "remote Indian or Native village" means an Indian or Native village that: (1) Is located in a rural area; (2) has a population of less than 5,000 inhabitants; and, (3) is not accessible year-around by means of a public road, as defined in section 101 of title 23 of the United States Code (U.S.C.). Section 101 of title 23 of the U.S.C. defines public road as "* * * any road or street under the jurisdiction of and maintained by a public authority and open to public travel." Accordingly, § 246.2 adds a new definition of "remote Indian or Native village."

b. Documentation of Family Income—§ 246.7(d)(2)(v)

The interim rule established, in accordance with legislation, that applicants, except those deemed adjunctively income eligible, must provide documentation of family income with limited exceptions. The limited exceptions include: (1) An individual for whom the necessary documentation is not available; or, (2) an individual, such as a homeless woman or child, for whom the agency determines the requirement would present an unreasonable barrier to participation. The Department also clarified in the interim rule that certain instream migrant farmworkers and their family members with expired Verification of Certification cards shall satisfy the State agency's income standard and income documentation requirements. The interim rule also addressed the Department's intent to continue to include a provision which affords State and local agencies the authority to verify an applicant's income, that is validating information provided by the applicant through an external source other than the applicant.

One commenter recommended the exceptions to the provision of documentation include individuals that have lost everything due to theft, fire, flood or other disaster. This example clearly falls within the parameters of one of the exceptions set forth in the legislation, that is an individual for whom the necessary documentation is not available.

One commenter recommended that all sources of family income be documented, not just income of one family member. It has been the Department's and State and local agencies' longstanding policy that all sources and amounts of family income are identified in determining WIC income eligibility.

Given the comments received and clarifications noted above, the interim requirements pertaining to the documentation of income are unchanged in this final rule.

c. Exclusion From Income—§ 246.7(d)(2)

Section 244(b) of Public Law 106–224 amended section 17(d)(2)(B) of the Child Nutrition Act (CNA) to make a technical correction. The technical correction is made to a provision which permits State agencies to exclude from income, in determining WIC eligibility, any basic allowance for quarters received by military personnel residing off military installations. First, Section 244(b) changes the reference from "basic allowance for quarters" to "basic allowance for housing." This change is necessary and consistent with a revision in the terminology used in referring to this military allowance. Second, Section 244(b) of Public Law 106–224, subsequently amended by Section 307(b)(1) of Public Law 106–472, adds at the end of section 17(d)(2)(B) of the CNA a new provision. Under this provision, State agencies may choose to exclude, in determining WIC income eligibility, any cost-of-living allowance (COLA) provided under section 405 of title 37 of the United State Code, to a member of a uniformed service who is on duty outside the contiguous states of the United States. This allowance is referred to as the overseas continental United States (OCONUS) COLA.

The OCONUS COLA is provided to active duty uniformed service members in designated overseas high-cost areas including Hawaii, Alaska and Guam. Ultimately, the decision to choose whether to exclude the OCONUS COLA in determining WIC income eligibility affects all WIC State agencies. This is the case because some members of a military family may remain stateside and apply and/or participate in WIC while a family member on duty overseas receives the OCONUS COLA. In areas outside the contiguous U.S., such as Hawaii, Alaska and Guam, only one COLA is provided to active duty military personnel stationed in these locations, that is the OCONUS COLA. Therefore, each WIC State agency in which applying members of a military family reside within its borders must determine whether it will include or exclude the OCONUS COLA provided to the family member who is stationed in a designated overseas high-cost area in determining WIC income eligibility. The determination to include or exclude the OCONUS COLA needs to be addressed in each State agency's policy and procedures manual.

While State agencies may choose to exclude the OCONUS COLA in determining WIC income eligibility, the amendments made by Public Laws 106–224 and 106–472 do not authorize or permit State agencies to choose whether to exclude the COLA provided to military personnel in designated high-cost areas within the continental United States. This allowance is referred to as the Continental United States (CONUS) COLA. Therefore, in all cases where a military family receives the CONUS COLA, the amount must be counted as income in determining WIC eligibility.

In reviewing military pay stubs, while some variation may exist to reflect the COLA, generally, the military pay stubs will identify whether a COLA is provided to a military person, either as an OCONUS OCOLA or a CONUS COLA. All Marines' pay stubs, whether they receive or do not receive a CONUS COLA, will reflect in the remarks section of the pay stub that the Marine is entitled to CONUS COLA; computed amount is reflected as "O" or a specific dollar amount. As indicated above, if a military family member applies for WIC and a household member receives a CONUS COLA, the amount received must be counted in determining WIC income eligibility.

Accordingly, § 246.7(d)(2)(iv)(A) is revised to change the reference from "basic allowance for quarters" to "basic allowance for housing." This section also adds the option that State agencies may choose to exclude any cost-of-living allowance provided to military personnel on duty outside the contiguous United States.

d. Dual Participation Prevention—Proof of Residency—§ 246.7(l)(2)

Public Law 105–336 addresses a renewed emphasis on State and local agencies' systems for detecting dual participation. Therefore, the interim rule, at § 246.7(l)(2), added a requirement, in addition to checking identity at certification, that State and local agencies must require each applicant at certification to present proof of residency, that is the location or address where the applicant routinely lives or spends the night. As noted, for an infant or child applicant, documentation of residency must be provided for the person with whom the infant or child resides. Further, the requirement to provide documentation of residency also applies to a person who transfers from another area or State and presents a valid Verification of Certification (VOC) card at a new WIC site. As indicated in the interim rule, a post office box does not constitute sufficient documentation of residency.

Some commenters opposed the requirement for various reasons. For example, WIC commenters indicated that WIC applicants may forget to bring in documentation or bills may not be in the name of the applicant. However, a greater, overriding factor is the need to detect and prevent dual participation. The collection of such information is an important data element in identifying dual participation and necessary to improve the integrity of the WIC Program. Further, sufficient flexibility exists for State agencies in developing procedures in this area. For example, we support a commenter's suggestion that "location" should also mean, for example, directions on a map where the applicant routinely lives or spends the night. Such procedures may be necessary, for example, in areas/towns where only post office boxes exist or in rural areas where there are no street names.

Some commenters expressed concern that some applicants may view and misinterpret the requirement as requiring proof of citizenship or alien status. We strongly encourage State and local agencies to ensure any program eligibility information to WIC applicants and participants reflects the true intent of this requirement. While for WIC regulatory and policy purposes, the Department refers to this requirement as proof of residency, WIC applicants need to understand they are being asked to provide documentation of where they routinely live or spend the night. Such clarification is extremely important to ensure misunderstanding or miscommunication of the requirement does not create a barrier to WIC participation.

The residency requirement, i.e., the location or address where the applicant routinely lives or spends the night, has no durational aspect. That is, there is no requirement on the length of time an applicant must reside at the location or address where he/she routinely lives or spends the night.

Accordingly, the general requirements pertaining to documentation of residency, as set forth in the interim rule, are retained in this final rule.

(1) Special Residency Procedures

As specified in the preamble to the interim rule, current WIC regulations at section 246.7(c)(1) require all State agencies, except Indian State agencies to require applicants to reside within the jurisdiction of the State. WIC regulations authorize Indian/Native American State agencies to establish a requirement for applicants to reside within their area or legal jurisdiction.

Further, State agencies may also establish a local service area residency requirement. The residency requirement has no durational or formal legal aspect and need to represent a legal residence. Also, length of residency cannot be a prerequisite to receiving WIC benefits.

No comments were received on these current WIC residency requirements. Therefore, these requirements are retained in WIC regulations and policy.

(2) Exceptions to the Identity and Residency Documentation Requirements

As set forth in the interim rule in § 246.7(l)(2), State agencies are permitted, when no proof of residency or identity exists, to exempt an applicant from the residency and/or identity documentation requirements. In such cases, at a minimum, State or local agencies must require the applicant to confirm in writing his/her residency or identity. As noted in the interim rule, applicants to whom an exemption may apply include a victim of theft, loss, or disaster; a homeless individual; or, a migrant farm worker. No comments were received on this portion of the interim rule. Therefore, this final rule retains these requirements.

However, sections 244(a) and (c) of Public Law 106–224 have included an additional nondiscretionary exemption from the residency requirement. Section 244(c) of the law permits an individual residing in a remote Indian or Native village, or an individual served by an Indian tribal organization and residing on a reservation or pueblo, to establish proof of residency by providing to the State agency the mailing address of the individual and the name of the remote Indian or Native village. The Department has determined that no additional requirements or standards, as authorized by the Public Law 106–224, are necessary to implement this requirement. Accordingly, at the end of § 246.7(l)(2), a new sentence has been added to reflect this legislative provision.

e. Physical Presence—§ 246.7(p)

Many commenters opposed the general requirement set forth in Public Law 105–335 that individuals seeking participation in the WIC Program must be physically present at the initial WIC certification and subsequent recertifications, except in certain limited circumstances. Some

commenters recommended additional exemptions beyond those permitted by the legislation, such as permitting a non-WIC entity/individual such as any health professional, to confirm or verify an individual's physical presence. As indicated previously, the Department does not have the authority to change or expand legislative requirements. Further, the legislative mandate reinforces the Department's long-standing position that the physical presence of an individual at certification is basic to WIC Program effectiveness.

The Department wishes to emphasize, as set forth in the preamble to the interim rule, that although an applicant may be exempt from the physical presence requirement, State and local agencies must ensure that all necessary information and documentation, including income, residency, identity, and nutrition risk, are provided in order to make a WIC eligibility determination in the absence of the applicant. The applicant's parent, caretaker or proxy can bring in the documents necessary to determine eligibility for WIC.

Therefore, the general requirement that individuals must be physically present at the initial WIC certification and subsequent recertifications, except in certain limited circumstances as discussed below, has been retained in this final rule.

(1) Mandatory Exception to the Physical Presence Requirement Due to a Disability

As set forth in Public Law 105–336 and the interim rule, State and local agencies are required to exempt from the physical presence requirement applicants who are qualified individuals with disabilities and are unable to be physically present at the WIC clinic because of their disabilities. The interim rule further clarified that this requirement also applies to applicants whose parents or caretakers are individuals with disabilities that meet this standard. The interim rule set forth examples of situations that would warrant an exception to the physical presence requirement due to a disability. Those examples included: (1) A medical condition that necessitates the use of medical equipment that is not easily transportable; (2) a medical condition that requires confinement to bed rest; and (3) a serious illness that may be exacerbated by coming in to the WIC clinic.

One commenter supported the exceptions for disability and indicated the exceptions were reasonable and represented current State agency practices. Another commenter recommended that the regulatory text be revised to include an example of a highly contagious illness that may be readily communicated to others. The interim rule and regulatory text set forth examples of situations that warranted an exception due to a disability. Therefore, some State agency flexibility exists to identify other potential conditions similar to those cited in the interim rule. Certainly, an individual with a highly contagious illness most likely would require confinement to bed rest and/or the condition may be exacerbated by coming in to the WIC clinic. Therefore, such a situation may fall under one or more of the examples set forth in the interim rule.

Further, another commenter recommended that if a person meets the conditions and is unable to be physically present, that the State or local agency should permit a caregiver or representative to present documentation of income, residency, and bloodwork data. This is the Department's intent with regard to implementation of this exception. While the applicant may be determined to be exempt from the physical presence requirement, State and local agencies would need to schedule an appointment for another family member, caregiver or representative to bring in all documents and information necessary to determine the applicant's eligibility for the WIC Program.

As indicated in the interim rulemaking, all persons with disabilities are not automatically exempt from the physical presence requirement. Only those disabilities that create a current barrier to the physical presence requirement may serve as a basis for an exception from the requirement.

Accordingly, as set forth in the interim rule, section 246.7(p)(2)(i) is retained in this final rule.

(2) State Agency Option To Exempt Certain Infants and Children From the Physical Presence Requirement

Public Law 105–336, and the interim rule, provide State agencies the option, if physical presence would present an unreasonable barrier to participation, to exempt certain infants or children from the physical presence requirement in the following situations:

An infant or child:

- Who was present at his/her initial WIC certification; and,
- Has documented ongoing health care from a provider other than the local agency; or

An infant or child:

- Who was present at his/her initial WIC certification; and
- Was present at a WIC certification or recertification determination within the 1-year period ending on the date of the most recent certification or recertification determination; and,
- Is under the care of one or more working parents or one or more primary working caretakers whose working status presents a barrier to bringing the infant or child in to the WIC clinic.

Several comments were received on the option to exempt an infant or child with ongoing health care. One commenter recommended this option be extended to children in foster or shelter care. Others opposed the provision because the provider of the health care must be an entity other than the WIC local agency. However, as indicated previously, the Department does not have the authority to expand the option or exclude one or more aspects of the requirement because they are specified in law. One commenter expressed concern that under this option, an infant could present soon after birth and never have to physically present again at a WIC certification. We support the concern raised by the commenter and would encourage WIC State agencies to consider this issue in the development of policy. A limit on the number of consecutive times this option could be used may be appropriate, as in the case identified by the commenter. This option, as set forth in the interim rule, is retained in this final rule.

Several commenters also opposed the option to exempt an infant or child of working parents. Reasons cited by commenters for opposing the provision include that it will confuse working parents, it will be difficult for parents to meet the initial physical presence requirement, and the option fails to address an essential requirement that the infant or child have ongoing health care. Because the option, as noted above, is reproduced in the regulations verbatim from the legislation, the Department does not have the authority to change or revise the option.

However, given comments received on this provision, several clarifications are necessary with regard to this option. First, as a commenter noted, the requirement that the infant or child must have been present within a 1-year period does mean that an infant or child must have been physically present at a WIC certification at least once in the previous 12 months. Second, the report language which accompanies Public Law 105–336 specifies that the exemption for working parents means that in families where there are two parents or caretakers, both individuals must be working in order for the option to apply. The exception for one working parent in the legislation and the interim rule refers to households where there is only one parent or caretaker.

As indicated above, commenters expressed concerns with both options for exempting an infant or child. However, the Department would emphasize that these are options that the State agency can determine whether or not to implement. State agencies are not required to implement these provisions. Therefore, for the reasons stated above, the option to exclude an infant or child in the case of working parents or caretakers is retained in this final rule, as set forth in the interim rule.

f. Certification Forms—§ 246.7(i)

Section 246.7(i)(3)–(i)(5) of the interim rule specifies that the certification form, which may be either paper or electronic, must reflect the type of document(s) used to determine or confirm income eligibility, residency and identity or include a copy of the document(s) in the file. Further, in those cases where there is no proof of income, the file must include a copy of the written statement by the applicant indicating why he/she cannot provide documentation of income, and in applicable cases, specify if the applicant has no income. Further, this section also requires an indication of whether the applicant is physically present at certification. Such an indication may consist of simply checking off an appropriate annotated box on a paper or electronic form. If that applicant is not physically present, the form must indicate the reason why an exception was granted or a copy of a document(s) must be placed in the file that explains the reason for the exception.

Several commenters opposed the requirements for State and local agencies to reflect the types of documents used to confirm income and residency. However, the Department believes these requirements are necessary to ensure the integrity of the WIC certification process. State agencies have been encouraged to adopt procedures to meet this requirement in a manner that imposes the least administrative burden on WIC clinic staff.

3. Procedural Matters

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Samuel Chambers, Jr., Administrator, Food and Nutrition Service, has certified that this rule would not have a significant impact on a substantial number of small entities. This rule would modify WIC certification procedures. Therefore, the effect of these changes would be primarily on State and local WIC agencies, some of which are small entities. However, the impact on small entities is not expected to be significant.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble of this final rule. Prior to any judicial challenge to the application of the provisions of the final rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 ((UMRA) (2 U.S.C. 1531–38)) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 204 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

This regulation contains information collection that is subject to review and approval by the Office of Management and Budget. The information collection contained in Section 246.7 (i)(3)—(i)(5) of this regulation is approved under OMB No. 0584–0043.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, the interim rule amending 7 CFR Part 246 which was published at 65 FR 3375 on January 21, 2000, is adopted as a final rule with the following changes:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, add a new definition of *Remote Indian or Native village* in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Remote Indian or Native village means an Indian or Native village that is located in a rural area, has a population of less than 5,000 inhabitants, and is not accessible year-round by means of a public road (as defined in 23 U.S.C. 101).

* * * * *

3. In § 246.7, revise paragraphs (d)(2)(iv)(A) and (l)(2) to read as follows:

§ 246.7 Certification of participants.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(A) In determining income eligibility, the State agency may exclude from consideration as income any:

(*1*) Basic allowance for housing received by military services personnel residing off military installations; and

(*2*) Cost-of-living allowance provided under 37 U.S.C. 405, to a member of a

uniformed service who is on duty outside the contiguous states of the United States.

* * * * *

(l) * * *

(2) At certification, the State or local agency must require each applicant to present proof of residency (*i.e.*, location or address where the applicant routinely lives or spends the night) and proof of identity. The State or local agency must also check the identity of participants, or in the case of infants or children, the identity of the parent or guardian, or proxies when issuing food or food instruments. The State agency may authorize the certification of applicants when no proof of residency or identity exists (such as when an applicant or an applicant's parent is a victim of theft, loss, or disaster, a homeless individual, or a migrant farmworker). In these cases, the State or local agency must require the applicant to confirm in writing his/her residency or identity. Further, an individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may establish proof of residency by providing the State agency their mailing address and the name of the remote Indian or Native village.

* * * * *

Dated: November 30, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–31452 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 00–33]

RIN 1557–AB88

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996.

DATES: This rule is effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Inflation Adjustment Act [1] requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on January 22, 1997,[2] and became effective that same day.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor ("CPI–U").[3] In addition, the Inflation Adjustment Act provides rules for rounding off increases,[4] and provides that any increase in a CMP applies only to violations that occur after the date of the adjustment.

Description of the Rule

This final rule adjusts the amount for each type of CMP that the OCC has jurisdiction to impose in accordance with these statutory requirements. It does so by revising the table contained in section 19.240 of our regulations. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The inflation adjustment for the CMPs was calculated by comparing the CPI–U for June 1996 (156.7) with the CPI–U for June 1999 (166.2),[5] resulting in an inflation adjustment of 6.1 percent.[6] The amount of each CMP was multiplied by the appropriate percentage and the resulting dollar amount was rounded up or down according to the rounding requirements of the statute. In some cases, rounding resulted in no adjustment to the CMP. The table below shows both the present CMPs and inflation adjusted CMPs. The table as published in the rule includes only the CMPs as of the effective date of this rule.

[1] 28 U.S.C. 2461 note.

[2] *See* 62 FR 3199, January 22, 1997.

[3] *See* 28 U.S.C. 2461 note.

[4] *See id.* The statute's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000.

[5] The Department of Labor (DOL) computes the CPI–U using two different base time periods, 1967 and 1982–1984, and the Inflation Adjustment Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC has used the DOL's CPI–U with 1982–84 as the base period because it reflects the most current method of computing the CPI–U.

[6] According to the statute, the inflation adjustment is computed by comparing the CPI–U for June of the year in which the CMPs were "last set or adjusted" with CPI–U for June "of the calendar year preceding [sic] the adjustment." 28 U.S.C. 2461 note. Therefore, a different formula is required for three CMPs that did not increase when the OCC made its initial inflation adjustment in 1997. These CMPs—the $2,000 penalties under 12 U.S.C. 164 and 12 U.S.C. 3110(c) and the 4350 [penalty under 42 U.S.C. 4012a(f)(5)—did not increase as a result to application of the rounding rules. For those penalties that were not adjusted in 1997, we have used the year in which the CMP was last set by enactment. *See* footnotes a and b to the table.

U.S. Code citation	Description	Maximum penalty	Amount of increase (6.1 percent)	Amount of increase after rounding	Adjusted maximum penalty
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F).	Tier 1	5,500	336		5,500
	Tier 2	27,500	1,678		27,500
	Tier 3	1,100,000	67,100	75,000	1,175,000
12 U.S.C. 164 and 3110(c)	Tier 1	2,000	[a]678	200	2,200
	Tier 2	22,000	1,342		22,000
	Tier 3	1,100,000	67,100	75,000	1,175,000
12 U.S.C. 1832(c) and 3909(d)(1)		1,100	67		1,100
12 U.S.C. 1884		110	7		110
12 U.S.C. 3110(a)		27,500	1,678		27,500
15 U.S.C. 78u–2(b)	Tier 1 (natural person)	5,500	336		5,500
	Tier 1 (other person)	55,000	3,355	5,000	60,000
	Tier 2 (natural person)	55,000	3,355	5,000	60,000
	Tier 2 (other person)	275,000	16,775	25,000	300,000
	Tier 3 (natural person)	110,000	6,710	10,000	120,000
	Tier 3 (other person)	550,000	33,550	25,000	575,000
42 U.S.C. 4012a(f)(5)	Per violation	350	[b]43		350
	Per year	105,000	6,405	10,000	115,000

[a] This penalty was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Pub. L. 101–73, 103 Stat. 183 (August 9, 1989). The amount did not change when the OCC adjusted the CMPs for inflation in 1997. Therefore, the percentage increase was calculated by comparing the CPI–U for June 1989 (124.1) to the CPI–U for June 1999 (166.2), resulting in an inflation adjustment of 33.9 percent. The corresponding dollar amount is $678, which would be rounded to an increase of $1,000. However, according to the Inflation Adjustment Act, the initial adjustment of a CMP may not exceed 10 percent of such penalty. Thus, the amount of the increase is capped at $200.

[b] This penalty was enacted in the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA). Pub. L. 103–325, 108 Stat. 2160 (September 23, 1994). The amount did not change when the OCC adjusted the CMPs for inflation in 1997. Therefore, the percentage increase was calculated by comparing the CPI–U for June 1994 to the CPI–U for June 1999, resulting in an increase of 12.3 percent.

Section 19.241 states that the adjustments made in section 19.240 apply only to violations that occur after December 11, 2000.

The OCC intends to readjust these amounts in the year 2004 and every four years thereafter, assuming there are no further changes to the mandate imposed by the Inflation Adjustment Act.

Public Notice and Comment and Delayed Effective Date Not Required

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are "impracticable, unnecessary, or contrary to the public interest." [7] As described earlier in the Supplementary Information, the Debt Collection Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC is, accordingly, unable to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. In that case, notice and comment are unnecessary, and there is, in the opinion of the OCC, good cause to dispense with those procedures.

Both the APA and the RCDRIA require that the effective date of the OCC's regulations generally be delayed.[8] Both statutes contain exceptions if the agency finds good cause to dispense with the delayed effective date. The amendment adopted in this regulation does not substantively affect the rights or obligations of national banks, nor does it impose any new compliance requirements upon them. It merely adjusts the maximum amounts of civil penalties according to a predetermined formula. Moreover, the timing of the adjustment is set by operation of the law that requires the OCC to publish regulations every four years following the initial adjustment.[9] Under these circumstances, the OCC finds good cause to dispense with the APA and RCDRIA delayed effective date provisions. Accordingly, the adjustment to the OCC's civil penalty schedule is effective immediately upon publication in the **Federal Register**.

[7] 5 U.S.C. 553(b)(B).

[8] *See* 5 U.S.C. 553(d)(APA), 12 U.S.C. 4802 (RCDRIA).

[9] The Inflation Adjustment Act required the initial adjustment to be made within 180 days following enactment of the statute, that is, by October 23, 1996.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[10] Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

[10] *See* 5 U.S.C. 601(2).

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93a, 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C.

2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. Subpart O is revised to read as follows:

Subpart O—Civil Money Penalty Inflation Adjustments

§ 19.240 Inflation adjustments.

The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. Code citation	Description	Adjusted maximum penalty
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F)	Tier 1	5,500
	Tier 2	27,500
	Tier 3	1,175,000
12 U.S.C. 164 and 3110(c)	Tier 1	2,200
	Tier 2	22,000
	Tier 3	1,175,000
12 U.S.C. 1832(c) and 3909(d)(1)		1,100
12 U.S.C. 1884		110
12 U.S.C. 3110(a)		27,500
15 U.S.C. 78u–2(b)	Tier 1 (natural person)	5,500
	Tier 1 (other person)	60,000
	Tier 2 (natural person)	60,000
	Tier 2 (other person)	300,000
	Tier 3 (natural person)	120,000
	Tier 3 (other person)	575,000
42 U.S.C. 4012a(f)(5)	Per violation	350
	Per year	115,000

§ 19.241 Applicability.

The adjustments in § 19.240 apply to violations that occur after December 11, 2000.

Dated: December 1, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–31165 Filed 12–8–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM175; Special Conditions No. 25–169–SC]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 777–200 series airplanes, modified by Flight Structures, Inc. The modification consists of the installation of a crew rest compartment located in the vicinity of door three in the overhead area of the passenger compartment. The crew rest compartment is to be certified for a maximum of ten occupants for use only during flight. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Transport Standards Staff, ANM–115, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2194; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1999, Flight Structures, Inc., 4407 172 Street NE, Arlington, Washington, 98223, applied for a supplemental type certificate to install an overhead crew rest compartment in Boeing Model 777–200 series airplanes. The Boeing Model 777–200 series airplane is a large twin-jet engine transport airplane with four pairs of Type A exits, a passenger capacity of 440, and a range of 5000 miles. The overhead crew rest compartment is a single compartment located above the main passenger compartment in the vicinity of door three. The crew rest compartment will contain eight private bunks and two seats, and is to be certified for a maximum of ten occupants. A stairwell entering from the door three aisle is the main entry. Two escape hatches are located on either side of the entryway door. These special conditions are written for an overhead crew rest compartment that will be occupied only in flight, not during taxi, takeoff, or landing.

Type Certification Basis

Under the provisions of § 21.101, Flight Structures, Inc., must show that the Boeing Model 777–200 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification basis for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–200

series airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been evaluated that are installed within the main passenger compartment area of the Boeing Model 777–200 and Model 777–300 series airplanes; other crew rest compartments have been installed below the passenger cabin area, within the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 airplane. The interfaces of the modification are evaluated within the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide the requirements for crew rest compartments within the overhead area of the passenger compartment for the Boeing Model 777–200 series airplanes.

This is a compartment that has never been used for this purpose in any previous Boeing Model 777–200 series airplanes. Due to the novel or unusual features associated with the installation of this crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Discussion of Comments

Notice of proposed special conditions No. 25–00–02–SC for the Boeing Model 777–200 series airplanes modified with a Flight Structures, Inc., overhead crew rest compartment was published in the **Federal Register** on September 25, 2000 (65 FR 57564). Six commenters responded to the Notice.

Special Condition No. 1

Two comments address special condition no. 1(a)(2), concerning a placard near the crew rest compartment entrance stating that occupants must be trained in crew rest compartment evacuation procedures. One commenter proposes that the placarding include the reference to the training material document. The commenter states that this would be consistent with the 747 door 5 overhead crew rest compartment special conditions.

The 747 door 5 overhead crew rest special conditions, issued November 13, 1987, do not include a requirement to have a placard near the entrance of the crew rest compartment stating that occupants must be trained in crew rest compartment evacuation procedures.

The requirement that the occupants must be trained in the evacuation procedures for the Boeing Model 777–200 series airplane crew rest compartment is contained in special condition no. 2(d). After further consideration, the FAA agrees with the recommendation to modify the placarding requirement of special condition no. 1(a)(2) to include "that are trained in the evacuation procedures for the overhead crew rest compartment," but not to include the reference to the training material document.

One comment raises the question that if lighted "No Smoking" signs are provided in addition to the "No Smoking" placarding in special condition no. 1(a)(4) then the signs and placarding could provide conflicting and confusing information. If the lighted signs are switchable then this would be confusing to the occupants of the crew rest compartment since the lighted signs when not illuminated would allow smoking and the placarding would prohibit smoking. The commenter recommends that if lighted signs are provided that they remain on at all times.

The FAA agrees that if lighted "No Smoking" signs are provided that they should remain on at all times.

Special Condition No. 2

One comment addresses special condition no. 2, concerning the requirement that the evacuation from the crew rest compartment must be rapid, which implies an undefined time restraint that is not well understood or required in other special conditions for similar designs of remote compartments. The commenter proposes removing the word "rapidly" from the special conditions.

The FAA does not agree with the comment that "rapidly" should be removed from the special conditions. The wording in the special conditions is consistent with the evacuation requirements for other remote compartments. The regulation for lower deck service compartments, 14 CFR 25.819, has the same requirement that is addressed in special condition no. 2, including the requirement for rapid evacuation from the compartment to the main deck. The crew rest compartment evacuation must be rapid to reduce the amount of time between the detection of smoke and initiation of fire fighting procedures. Also, rapid evacuation would reduce the amount of time that smoke from the crew rest compartment could enter the passenger cabin through the open evacuation route.

Two comments address special condition no. 2(a), concerning the requirement that the two evacuation routes be located on opposite sides of the crew rest compartment, with sufficient separation within the compartment to minimize the possibility of an event rendering both routes inoperative. They note the words "opposite sides of the crew rest" do not add to the level of safety for the occupants of the crew rest over that provided by the evacuation routes that have "sufficient separation within the compartment to minimize the possibility of an event rendering both routes inoperative."

Previous special conditions for overhead crew rest compartments have given the option for evacuation routes to be located on opposite sides of the crew rest, or to have sufficient separation within the compartment to minimize the possibility of an event rendering both routes inoperative. The FAA agrees with the comment that the words "opposite sides of the crew rest" do not add to the level of safety for the occupants of the crew rest when the routes must have "sufficient separation within the compartment to minimize the possibility of an event rendering both routes inoperative." Evacuation routes located on opposite sides of the crew rest compartment may be located in an area where both routes could be rendered inoperative. The final special conditions will be revised to remove the words "opposite sides of the crew rest."

Five comments address special condition no. 2(b), concerning the location of crew rest compartment evacuation paths entering the main deck. One commenter proposes clarification to the times that must be considered for normal movement of passengers that would affect the evacuation from the crew rest compartment by adding the following words "during times in which

occupancy is allowed" in the crew rest compartment. The commenter states that since the crew rest compartment is not occupied during taxi, takeoff and landing, egress from the compartment during an emergency evacuation of the airplane is not relevant.

The FAA agrees with the comment that passenger movement during in-flight conditions needs to be considered since the crew rest may only be occupied during flight. The special conditions will be revised to reflect this clarification, that normal movement by passengers when crew rest compartment occupancy is allowed must be considered.

A second commenter states that the limitations for the location of one of the two evacuation routes are too restrictive and proposes some changes. The commenter suggests that during flight the normal passenger movement would be greatest in the main aisle and galley complex areas and the movement in a cross aisle would be much less. The commenter proposes allowing the evacuation routes to open into cross aisles provided there were procedures that would require verification that area below the emergency hatch is clear of passengers before evacuating.

The FAA does not agree with the concern that requiring one evacuation route not to open into a cross aisle is overly restrictive. The special conditions require that one evacuation route be located such that normal passenger movement would not block the route, but allows the other route(s) to be located where they could be blocked by normal passenger movement. A compartment design that would allow both evacuation routes to be blocked by normal passenger movement does not provide an acceptable level of safety.

A third commenter notes that passenger movement is low enough when the crew rest compartment is occupied that the cabin crew could clear the area under or adjacent to an emergency escape route quickly, regardless of its location. The commenter proposes a change to the special conditions requiring procedures for clearing the area of the evacuation route in the event an evacuation is necessary and there is passenger movement in the evacuation route.

The FAA has considered the proposal to have the main deck cabin crew clear passengers out of the evacuation path prior to evacuation from the crew rest compartment. The reliance on the main deck cabin crew to take some action before the crew rest compartment can be evacuated is not acceptable. In cases when the main deck cabin crew is involved with an emergency, they may not be available to clear the passengers out of the area of the evacuation path. This includes evacuation paths into an aisle, cross aisle, galley complex, or over passenger seats.

A fourth commenter states that if the evacuation path is over an area where there are passenger seats, then several items need to be considered including: the number of passengers that would need to be displaced, the relocation of these displaced passengers, passenger displacement during turbulence, the possibility of the evacuees stepping on the passenger seats, and addressing the strength of these passengers seats. The fifth commenter provides some responses to the fourth commenter's concerns.

The FAA agrees that an evacuation path over an area where the passengers must be relocated is a concern. The FAA has considered this type of evacuation path and has determined that a maximum of one row of seats may be displaced.

The FAA agrees that if the evacuation procedure includes having the evacuee step on a seat, then it must be shown the seat will not be damaged to the extent that it is unsafe for the emergency landing conditions.

Special Condition No. 3

Three commenters address special condition no. 3 concerning the evacuation of an incapacitated person from the crew rest compartment. One commenter raises a concern that limiting the procedure to a single person assisting the evacuation of an incapacitated occupant was too restrictive. The commenter suggests that a procedure that requires more than one person assisting should be acceptable.

The FAA does not agree with the comment concerning the assistance of a single person to demonstrate that they can evacuate an incapacitated occupant from the crew rest compartment is too restrictive. In the event there are only two occupants of the crew rest compartment and one becomes incapacitated, the other occupant must be able to evacuate the incapacitated occupant to the main deck of the airplane.

The second commenter questions the need to have the evacuation demonstration conducted for each of the evacuation paths and proposes that the demonstration be limited to the most critical evacuation path.

The FAA does not agree with the comment that only the most critical evacuation path for the incapacitated occupant must be demonstrated, unless the paths are identical to each other including but not limited to size, assist means, access, and available room around the evacuation path. It is very difficult to evaluate which evacuation route would be the most critical path to demonstrate the evacuation of an incapacitated occupant. Therefore, the FAA will require that all routes be demonstrated.

The third commenter proposes that the evacuation procedures should be transmitted to the operator as part of the training evacuation procedure.

The FAA concurs with the comment that the procedures for the evacuation of an incapacitated occupant should be part of the training requirements for the occupants of the crew rest compartment.

Special Condition No. 4

One comment addresses special condition no. 4(a), concerning the requirement for at least one exit sign to be located near each exit. The commenter proposes that only the primary evacuation route be equipped with an exit sign meeting the requirements of § 25.812(b)(1)(i). The commenter believes that having exit signs at both primary and secondary exits may cause confusion during an evacuation.

The FAA disagrees with the comment to have an exit sign only at the primary exit path. The basic reason for the requirement to have an exit sign meeting the requirements of § 25.812(b)(1)(i) located near each exit is to identify the emergency exits. When there is an emergency that requires the evacuation of the crew rest compartment, the occupants must be provided the greatest opportunity to evacuate the compartment as quickly as possible. Identifying all of the evacuation routes with an exit sign provides the evacuees with visible signs that locate the available exits. With this knowledge they can assess the conditions and determine the best route for evacuation based on the conditions present in the compartment.

Three comments address special condition no. 4(d) concerning the illumination of the exit handles and instruction placards. Two of the commenters recommend that the special conditions be revised to clarify what instruction placards are being addressed by the special conditions.

The FAA agrees that special condition no. 4(d) should be revised to identify what instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions. The intent is to have the instruction placards for the operation and use of the escape paths be addressed by the illumination requirements of these special conditions.

The third commenter proposes that special condition no. 4(d) be deleted and special condition no. 4(c) be revised to read as follows: "Placards and exit handles must be visible and readable from a distance of 30 inches under emergency lighting conditions."

The FAA disagrees with the proposal to delete special condition no. 4(d) and revise the requirements of special condition no. 4(c) to address the visibility of the instruction placards under emergency lighting conditions. The FAA requires a specific measurable illumination level because it is the best way to eliminate judgement calls that would result from the proposal that requires the placard be readable from a distance of 30 inches under emergency lighting conditions.

Special Condition No. 7

Two comments address special condition no. 7 concerning the use of the public address and crew interphone as the means of alerting the occupants of the crew rest compartment of an emergency. The commenters state that the current public address and crew interphone designs do not differentiate between normal and emergency communications and that each airline has a protocol and procedures for emergency communications.

The FAA is concerned that during normal operation the public address system would not be active in the crew rest compartment. In an emergency, the system would need to be active in the crew rest compartment. Therefore, means need to be provided for differentiating between normal and emergency communications. The FAA also has a similar concern that the chime system on the crew interphone system does not provide an adequate means of differentiating between normal and emergency communications.

Special Condition No. 9

Two comments address special condition no. 9 concerning providing protective clothing for a person fighting a fire in the crew rest compartment. One commenter proposes that protective clothing be provided for the designated fire fighter. The other commenter argues against that type of requirement.

The FAA has determined that the minimum equipment required to fight a fire in the crew rest compartment is a fire extinguisher and protective breathing equipment.

Special Condition No. 10

One comment addresses special condition no. 10(c) concerning the smoke detection warning provided in the main passenger cabin. The commenter suggests that the special condition be changed from "A warning in the main passenger cabin * * *" to "A visual and/or aural warning in the main passenger cabin. * * *" It is the commenter's contention that both means would provide an acceptable warning.

The FAA agrees that either a visual or aural warning could be found acceptable, however, the current wording does allow both types of warnings or combinations of the warnings. Therefore, no change to the special conditions wording is required.

Special Condition No. 11

Five comments address special condition no. 11 concerning fire control in the overhead crew rest. One commenter disagrees with handling fire control without entering the overhead crew rest area. The commenter states that this does not provide an acceptable level of safety and that manual fire fighting does provide an acceptable level of safety. The commenter states that Halon stratification from a built-in system would settle in the vestibule area of the overhead crew rest and prevent proper concentration in the entire area that would be needed to control the fire.

The FAA disagrees with the comment that a built-in fire extinguishing system does not provide an acceptable level of safety. The FAA would require a test to show that for any built-in fire extinguishing system, the concentration during the initial introduction of Halon 1301 or equivalent is a minimum of five percent by volume and that it is sustained at a minimum level of three percent for the maximum diversion in still air (including an allowance for 15-minute holding and/or approach and land) for the airplane. The applicant's design must ensure that in the event the vestibule door is damaged, the extinguishing agent concentration of Halon 1301 is not compromised. The door would be placarded for crew access only and access will be limited by a mechanism to prevent "accidental opening."

One comment mentions a concern about products of thermal decomposition of Halon when exposed to a fire, and the impact of this on passengers.

The FAA agrees that the built-in fire extinguishing system must not introduce a hazard to the occupants or airplane structure. Section 25.851(b) would apply to any built-in fire extinguishing system. The issue of toxicity of fire extinguishing agents has been previously explored as in Amendment 25-74, Airplane Cabin Fire Protection, adopted: April 4, 1991, effective May 16, 1991, as published in the **Federal Register** 56 FR 15450, April 16, 1991.

One comment expresses concern over the operation of the vent system used to evacuate smoke when smoke is present in the overhead crew rest. A system that evacuates smoke during a fire would also evacuate the fire suppression agents used to control the fire in the compartment.

The FAA agrees with the comment that a ventilation system within a compartment that has a fire suppression system can have a negative affect on the fire suppression system. The design of the ventilation system would need to ensure that the ventilation flow can be controlled in such a way during a fire that the fire suppression agent used remains in the compartment. There is no requirement to clear smoke from the crew rest area, however, there is a requirement to clear the smoke that has entered the main passenger compartment during the evacuation of the crew rest compartment and/or during the process of fighting the fire.

One commenter addresses concerns regarding the access provisions required for the crew rest compartment and timely access of the crew member with the fire fighting equipment and proposes changes to the special condition. The commenter believes that "unrestricted access" is too restrictive a requirement and the "sufficient access" provides an acceptable level of safety.

The FAA disagrees with the comment that the current language is inappropriate. The use of "unrestricted access" related to "crewmembers equipped for fire fighting". The intent of this requirement is to ensure that the aircraft design will accommodate the entrance to enable "crewmembers equipped for fire fighting" to gain entrance to the crew rest area in a minimum amount of time.

One comment suggests that a built-in fire extinguishing system is not warranted.

The FAA does not concur with the comment. The special condition as written allows either a built-in system or crew entry and extinguishing of fire directly. This is left to the applicant to propose and demonstrate a suitable solution. The overhead crew rest area poses some challenges but a successful applicant should be able to design the crew rest area and associated ventilation system and smoke/detection and fire suppression system architecture to ensure that FAA requirements are met. Therefore, the FAA believes that the

current language in the special condition is appropriate.

One commenter suggests the special condition should be revised to reflect the type of fire most likely to occur within the crew rest compartment and associated detection times.

The FAA disagrees that the special conditions should be revised to reflect the type of fires most likely to occur within the crew rest compartment. The special conditions must reflect all expected fire threat scenarios. It should be noted that the crew rest area will not be carrying flammable fluids, explosives, or other dangerous cargo. The requirements to enable crewmember(s) quick entry to the crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the crew rest area. The applicant must accommodate these requirements and the appropriate Aircraft Certification Office must require suitable means of compliance and may elect to limit an investigation to a "worse case fire threat" scenario.

One commenter suggests having a trained crewmember for manual fire fighting as the most effective means for controlling a fire in an overhead crew rest compartment. The commenter recommends that only the manual fire fighting be accepted for the crew rest compartment.

The special condition allows the applicant to select an appropriate means to meet the requirement. While the presence of a "trained crewmember" may be very effective, the FAA position is that a properly designed smoke detection and fire suppression system with sufficient quantity of smoke detectors, smoke detector placement, quantity and placement of fire extinguishing nozzles, control of ventilation, etc; can provide an effective means to control and suppress a fire threat in any crew rest area.

One commenter suggests that the critical design issue for effective manual fire fighting is unrestricted access to the compartment.

The FAA concurs that the time element is a critical issue for effective control and suppression of any fire threat for both a built-in smoke detection and fire suppression system and a manual fire fighting system.

One comment states that "the time for the compartment to become smoke-filled, * * *" is vague and open to numerous interpretations.

The FAA disagrees. Performance based wording is deliberately used to convey to the applicant a broad spectrum of requirements that the regulation intends. The FAA does agree that there needs to be a common understanding of the requirements and that they need to be consistently applied to each applicant that has a similar installation.

One comment states that it is not clear if a flight test is required for the crew intervention option in special condition no. 11. The commenter believes that it is possible this may be the more limiting test condition and should therefore be required.

The FAA concurs, and an aircraft certification office may require flight testing to demonstrate an acceptable means of compliance.

One comment states that there is no evaluation of the effectiveness of fire fighting procedures. The commenter questions whether it is sufficient to determine that the option of crew intervention provides an equivalent level of safety to the installation of a fire suppression system.

The FAA concurs that the special conditions as written focus on the requirement that a crewmember be able to quickly enter the crew rest compartment prepared to locate the smoke source. Inherent in the action of locating the smoke source is the action of suppression/extinguishment of the smoke source that should be no different than utilizing a fire extinguisher in the cabin. The key issue is the response time. As previously mentioned, the time required to gain access and determine the smoke source must be short enough to prevent the fire from propagating and threatening continued safe flight and landing. The applicant must evaluate the kinds of fires likely to occur and ensure that the appropriate fire extinguishers are provided per the requirements given in § 25.851. In addition, FAA has begun internal discussions to develop guidance on acceptable means of compliance. These discussions have included issues such as the required level of smoke concentration, the possible use of a low light level source to simulate a visual cue from a "smoldering source," placement of the smoke source, and test conditions. The FAA will issue applicable guidance material when it becomes available or is required.

Special Condition No. 14

Five comments address special condition no. 14(a) concerning the manual release of the oxygen system in the crew rest compartment. Several of the comments state that the design in previous remote crew rest compartments has been an extension of the system provided in the passenger compartment. The oxygen system has an automatic and a manual release method. With the automatic release method, whenever the altitude in the cabin goes higher than a preset amount, the oxygen masks are automatically deployed. With the manual method, the flight crew can deploy the oxygen masks. The commenters question the need to have a method for the crew rest occupants to manually deploy the oxygen masks.

The FAA agrees with the commenters that the system should be similar to the main deck passenger oxygen system and there must be a means for the oxygen masks to be manually deployed from the flight deck.

One comment addresses special condition no. 14(c)(5) and (f)(7). The commenter interprets a section as a common area in the crew rest area that contains seats and/or bunks that can be closed off for privacy * * * and a smoke detection system in that section that ties into the entire crew rest smoke detection system. The commenter suggests changing the wording in the special conditions to read "Testing of the smoke detection system will demonstrate that a fire can be detected in each individual bunk."

The FAA agrees with the interpretation but disagrees with the need to adopt the suggested language. The FAA interpretation of the requirements for built-in smoke detection and fire suppression/extinguishing systems inherently includes the need for detection and for suppression/extinguishment to encompass the entire area in question.

One comment recommends a general change to the special conditions concerning the approval of all normal, abnormal and emergency procedures and their training be approved by the Authority under which the airplane is operated. The commenter proposes that a statement to that effect be included in the special conditions.

The FAA agrees with the comment that the Authority under which the airplane is operated approves all normal, abnormal and emergency procedures and their training. However, the FAA disagrees that the special conditions must include that requirement. The modification to install the overhead crew rest area would be considered a major modification that would require the approval of the Authority under which the airplane is operated to return the airplane to service after the modification. This approval to return the airplane to service would include review and approval of all normal, abnormal and emergency procedures and their training changes made as a result of the modification.

Discussion of the Special Conditions

In general, the requirements listed in these special conditions are similar to those previously approved in earlier certification programs, such as the Boeing Model 747 overhead crew rest compartment. These special conditions establish seating, communication, lighting, personal safety, and evacuation requirements for the overhead crew rest compartment. When applicable, the requirements parallel the existing requirements for a lower deck service compartment and provide an equivalent level of safety to that provided for main deck occupants.

Seats and berths must be certified to the maximum flight loads. Due to the location and configuration of the crew rest compartment, occupancy during taxi, takeoff, and landing would be prohibited, and occupancy limited to crewmembers during flight. Occupancy would be limited to either ten persons, or the combined total of approved seats and berths, whichever is less.

To preclude occupants from being trapped in the crew rest compartment in the event the main entryway is blocked, two evacuation routes, including the entryway, would be required. Each evacuation route must be designed to allow for removal of an incapacitated person from the crew rest compartment to the main deck.

In addition, passenger information signs, supplemental oxygen, and a seat or berth for each occupant of the crew rest compartment would be required. These items are necessary because of turbulence and/or decompression.

To prevent the occupants from being isolated in a dark area due to loss of the crew rest compartment lighting, either a second independent source of normal lighting or emergency lighting would be required. An emergency lighting system, which is activated under the same conditions as the main deck emergency lighting system, would also be required.

Two-way voice communications and public address speaker(s) would be required to alert the occupants to an inflight emergency. Also, a system to alert the occupants of the crew rest compartment in the event of decompression and to don oxygen masks would be required.

Special condition No. 8 requires a means, readily detectable by seated or standing occupants of the crew rest compartment, which indicates when seat belts should be fastened. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the crew rest area. It will not be essential to be visible from every possible location in the crew rest area; however, the location should not be easily obscured or remotely located.

Since the overhead crew rest compartment is remotely located from the main passenger cabin and will not always be occupied, a smoke detection system and fire-fighting equipment will be required to minimize the hazards associated with a fire in the crew rest compartment. The smoke detection system must be capable of detecting a fire in each area of the compartment created by the installation of a curtain or partition. The materials in the crew rest compartment must meet the flammability requirements of § 25.853(a), and the mattresses must meet the fire blocking requirements of § 25.853(c).

The crew rest compartment must be designed such that fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for fire fighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the fire fighting equipment, and to gain access must not exceed the time for the crew rest compartment to become smoke filled, making it difficult to locate the fire source. If the means of controlling the fire within the compartment is a Halon 1301 or equivalent fire suppression system, the system should be designed similar to a cargo compartment fire suppression system. Advisory Circular 120–42, titled "Extended Range Operation With Two-Engine Airplanes (ETOPS)" provides guidance on fire suppression systems in cargo compartments.

This special condition requirement concerning fires within the compartment was developed for, and applied to, Boeing Model 777–200 and Model 777–300 series airplanes lower lobe crew rest compartment; it was not applied to the overhead crew rest compartment in earlier certification programs such as the Boeing Model 747. The Model 747 special conditions were issued before the new flammability requirements were developed. This requirement originated from a concern that a fire in an unoccupied crew rest compartment could spread into the passenger compartment, or affect other vital systems, before it could be extinguished. The special condition would require either the installation of a manually activated fire containment system that is accessible from outside the crew rest compartment, or a demonstration that the crew could satisfactorily perform the function of extinguishing a fire under the prescribed conditions. The manually activated fire containment system would be required only if it could not be demonstrated that a crewmember responding to the alarm could not locate the fire source and successfully extinguish the fire.

These special conditions provide the regulatory requirements necessary for certification of this modification. Other special conditions may be developed, as needed, based on further FAA review and discussions with the applicant, manufacturer, and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–200 series airplanes. Should Flight Structures, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 777–200 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200 series airplanes, as modified by Flight Structures, Inc., with overhead crew rest compartments.

1. Occupancy of the overhead crew rest compartment is limited to a maximum of ten occupants. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the crew rest compartment.

(a) There must be appropriate placards, inside and outside to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the overhead crew rest compartment,

(3) That occupancy is prohibited during taxi, take-off and landing, and

(4) That smoking is prohibited in the crew rest compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the crew rest compartment.

(c) There must be a means to prevent passengers from entering the compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the crew rest compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes that could be used by each occupant of the crew rest compartment to rapidly evacuate to the main cabin. In addition—

(a) The routes must be located with sufficient separation within the compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of two evacuation routes may not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.*, main aisle, cross aisle, or galley complex) that would impede egress of the crew rest compartment. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures and the evacuation of incapacitated occupants must be established and transmitted to the operators for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the crew rest compartment to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant) may provide assistance in the evacuation. Procedures for the evacuation of an incapacitated person from the crew rest compartment must be established.

4. The following signs and placards must be provided in the crew rest compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i).

(b) An appropriate placard defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the airplane's main power system, or of the normal crew rest compartment lighting system, for emergency illumination to be automatically provided for the crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between the crewmembers on the flight deck and the occupants of the crew rest compartment. There must also be two-way communications between the occupants of the crew rest compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the crew rest compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation, for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the crew rest compartment, which indicates when seat belts should be fastened. Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position. In the event there are no seats, at least one sign must be provided to cover anticipated turbulence.

9. The following equipment must be provided in the crew rest compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) One protective breathing equipment device approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for fire fighting; and

(c) One flashlight.

10. A smoke detection system (or systems) must be provided that monitors each area within the crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flight deck within one minute after the start of a fire;

(b) An aural warning in the crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the fire fighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the crew rest compartment from entering any other compartment occupied by crewmembers or passengers. The means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers must dissipate within 5 minutes after closing the access to the crew rest compartment. Flight tests must be conducted to show compliance with this requirement.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the crew rest compartment. The system must provide:

(a) An aural and visual warning to the occupants of the crew rest compartment to don oxygen masks in the event of decompression; and

(b) A decompression warning that activates before the cabin pressure altitude exceeds 15,000 feet. The warning must sound continuously until a reset pushbutton in the crew rest compartment is depressed.

14. The following requirements apply to a crew rest compartment that is divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the crew rest compartment that accompanies automatic presentation of supplemental oxygen masks. Two supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the overhead crew rest compartment into small sections. The placard must require that the curtain(s) remain open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each crew rest section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (special condition no. 1),

(2) Emergency illumination (special condition no. 5),

(3) Emergency alarm system (special condition no. 7),

(4) Seat belt fasten signal (special condition no. 8), and

(5) The smoke or fire detection system (special conditions no.'s 10, 11, and 12).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the crew rest compartment, and must meet the requirements of § 25.812(b)(1)(i).

(e) For sections within an overhead crew rest compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit.

(f) For each smaller section within the main crew rest compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (special condition no. 1),

(2) Emergency illumination (special condition no. 5),

(3) Two-way voice communication (special condition no. 6),

(4) Emergency alarm system (special condition no. 7),

(5) Seat belt fasten signal (special condition no. 8),

(6) Emergency fire fighting and protective equipment (special condition no. 9), and

(7) Smoke or fire detection system (special conditions no.'s 10, 11, and 12).

15. The requirements of two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a), as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

Issued in Renton, Washington on December 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–31478 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–03–AD; Amendment 39–12032; AD 2000–24–25]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800A (U–125A) and Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800A (U–125A) and Hawker 800XP series airplanes, that requires inspecting the roller clearance in the nose landing gear drag stay and making

any necessary adjustments. This amendment is prompted by reports indicating multiple findings of roller clearances that are in excess of specifications. The actions specified by this AD are intended to prevent the inability to extend the nose landing gear, which could result in damage to the airplane upon landing.

DATES: Effective January 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800A (U–125A) and Hawker 800XP series airplanes was published in the **Federal Register** on August 8, 2000 (65 FR 48402). That action proposed to require inspecting the roller clearance in the nose landing gear drag stay and making any necessary adjustments.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required inspection and any necessary adjustments, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $21,000, or $420 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–25 Raytheon Aircraft Company: Amendment 39–12032. Docket 2000–NM–03–AD.

Applicability: Model Hawker 800XP and Hawker 800A (U–125A) series airplanes, as specified in Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to extend the nose landing gear due to excessive clearance of the roller in the drag stay rigging, which could result in damage to the airplane upon landing, accomplish the following:

Inspection and Adjustment

(a) Within 50 hours time-in-service after the effective date of this AD: Remove the paint from the drag stay arm of the nose landing gear at its point of contact with the stop bolt, do a check of the roller clearances, and make any necessary adjustments, in accordance with the Accomplishment Instructions of Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999.

(b) Airplanes which have had the 600-hour inspection specified in the Aircraft Maintenance Manual before the effective date of this AD or which will have the 600-hour inspection within 50 hours time-in-service after the effective date of this AD are considered to be in compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Aircraft Service Bulletin SB 32–3274, dated August 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 16, 2001.

Issued in Renton, Washington, on November 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30946 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–49–AD; Amendment 39–12030; AD 2000–24–23]

RIN 2120–AA64

Airworthiness Directives; S.N. CENTRAIR 101 Series Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain S.N. CENTRAIR 101 series gliders. This AD requires you to inspect the airbrake control system for cracks; and if cracks are detected, replace the airbrake control system. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to detect cracks in the airbrake control system and replace cracked parts with parts of improved design. A crack in the airbrake control system could prevent the pilot from using the airbrake system.

DATES: This AD becomes effective on January 27, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 27, 2001.

ADDRESSES: You may get the service information referenced in this AD from S.N. CENTRAIR, Aerodome—36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–49–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently told the FAA that an unsafe condition may exist on certain S.N. CENTRAIR 101 series gliders. The DGAC reports that a failure analysis of the welded parts of airbrake arms revealed that cracks could occur in these parts.

What Happens If You Do Not Correct the Condition?

This condition, if not corrected, could result in undetected cracks. Consequently, a crack in the airbrake control system could prevent the pilot from using the airbrake system.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain S.N. CENTRAIR 101 series gliders. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 14, 2000 (65 FR 55466). The NPRM proposed to require you to inspect the airbrake control system for cracks and if cracks are detected, replace the airbrake control system.

Was the Public Invited To Comment?

Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Gliders Does This AD Impact?

We estimate that this AD affects 41 gliders in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Gliders?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per glider	Total cost on U.S. operators
2 workhours × $60 per hour = $120.	No parts required for the inspection.	$120 per glider	$120 × 41 = $4,920.

We estimate the following costs to accomplish the replacement of the airbrake control system if necessary:

Labor cost	Parts cost	Total cost per glider
2 workhours × $60 per hour = $240	$100 per glider	$340 per glider.

Compliance Time of This AD

Why Is the Compliance Time in Calendar Time?

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly use of the affected gliders ranges throughout the fleet. For example, one owner may operate the glider 25 hours TIS in one week, while another operator may operate the glider 25 hours TIS in one year. In order to ensure that all of the owners/operators of the affected glider have inspected the airbrake control system within a reasonable amount of time, the FAA is utilizing a compliance time of 60 calendar days after the effective date of this AD.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2000–24–23 S.N. Centrair: Amendment 39–12030; Docket No. 2000–CE–49–AD.

(a) *What gliders are affected by this AD?* This AD affects Models 101, 101A, 101P, and 101AP gliders, all serial numbers up to but not including 101A0628, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above gliders must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect cracks in the airbrake control system and replace cracked parts with parts of improved design.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must do the following actions:

Actions	Compliance times	Procedures
(1) Inspect the system for cracks	Within the next 60 calendar days after January 27, 2001 (the effective date of this AD), and then every 12 calendar months inspection.	Do this action following S.N. CENTRAIR Service Bulletin No. 101–16, Revision 3, dated February 2, 1999.
(2) If you detect cracks, replace airbrake control system. (i) For gliders equipped with manual aileron and airbrake control systems, install S.N. CENTRAIR part number (P/N) $YO57D or an FAA-approved equivalent part number. (ii) For gliders equipped with an automatic aileron and airbrake control system, install S.N. CENTRAIR P/N $Y818E or an FAA-approved equivalent part number.	Before further flight after the inspection	Do this action following the S.N. CENTRAIR maintenance manual.
(3) You may stop the repetitive inspection requirement of this AD by replacing the air brake control system with the applicable part referenced in this AD.	Before further flight if found cracked as required by paragraph (d)(2) of this AD; or. At any time if the part is not cracked	Not applicable.
(4) You may not install any airbrake control system that is not of the applicable part numbers referenced in paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.	As of January 27, 2001 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each glider identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the glider to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your glider to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with S.N. CENTRAIR Service Bulletin No. 101–16, Revision 3, dated February 2, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from S.N. CENTRAIR, Aerodome—36300 Le Blanc, France. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?*

This amendment becomes effective on January 27, 2001.

Note 2: The subject of this AD is addressed in French AD 1995–261(A) R3, dated January 26, 2000.

Issued in Kansas City, Missouri, on November 28, 2000.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30945 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–42–AD; Amendment 39–12034; AD 2000–22–51]

RIN 2120–AA64

Airworthiness Directives; Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters Manufactured by Bell Helicopter Textron Inc. for the Armed Forces of the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting superseding Airworthiness Directive (AD) 2000–22–51, which was sent previously by individual letters to all known U.S. owners and operators of Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters manufactured by Bell Helicopter Textron Inc. (BHTI) for the Armed Forces of the United States. This AD requires establishing a retirement life for certain main rotor masts, creating a component history card or equivalent record, and identifying certain masts as unairworthy. This AD also requires removing the hub spring, if installed, and determining whether a main rotor mast (mast) has ever been installed on a helicopter while operated with a hub spring. Conducting certain inspections based on the retirement index number (RIN) and on whether the helicopter was ever operated with a hub spring is also required. Replacing any mast that has inadequate radius or a burr in the damper clamp splined area is also required. Finally, this AD requires sending information concerning the mast to the FAA. This amendment is prompted by the discovery of a crack in a mast with a lower RIN value than the established life limit. This action is necessary to preclude the occurrence of a fatigue crack in the damper clamp splined area of a mast. This condition, if not corrected, could result in failure of a mast or main rotor trunnion (trunnion), separation of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective December 26, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–22–51, issued on November 2, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–42–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: The FAA issued Emergency AD 2000–08–53 (Docket No. 2000–SW–08–AD) on April 26, 2000, which superseded AD 89–17–03, Amendment 39–6251, Docket No. 88–ASW–33 (54 FR 31935, August 3, 1989), which established RIN counting procedures for the mast assemblies installed on H–1 series surplus military helicopters. AD 2000–08–53 also incorporated life-hour adjustments for mast hub spring and helicopter usage. Since issuing AD 2000–08–53, the FAA has issued AD 2000–15–21, Amendment 39–11854, Docket 2000–SW–01–AD (65 FR 48605, August 9, 2000) to require removing masts, part number (P/N) 204–011–450–001 and –005, from service. The FAA also issued Emergency AD 2000–15–52, Docket No. 2000–SW–28–AD, on July 25, 2000, for the BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters, which was prompted by a report of another cracked mast, similar to the masts installed on H–1 series helicopters. Metallurgical inspection revealed that the mast cracked as a result of fatigue in snap ring groove radii that were smaller than the 0.020-inch minimum allowable dimension. Detailed takeoff and lift event data for the entire life of the mast confirm that the accumulated RIN count at the time the fatigue crack was detected was approximately 68,000 when calculated in accordance with the RIN counting procedures in effect at the time of the failure.

U.S. Army Safety of Flight Message UH–1–10, dated July 19, 2000, required inspecting masts for a minimum radius of 0.020 inch or for a burr around the

circumference of the snap ring groove and removing defective masts from service. Based on that message and a review of fatigue data and previously issued AD's, the FAA has concluded that several corrections to the RIN counting procedures are required as follows:

- Recalculating the accumulated RIN and revised hours TIS to date for certain masts to correct the inadequate factors provided in AD 2000–08–53. New RIN and frequency of event per hour factors are required to calculate the accumulated RIN and revised hours TIS to properly reflect the actual level of torque (horsepower rating of helicopter) applied to the mast when it is installed on the different helicopter models affected by this AD.
- Using the new RIN factors for each takeoff and external load lift to continue the calculations for the accumulated RIN as installed on the different helicopter models affected by this AD and changing the definition for external load lift.
- Expanding the serial number (S/N) applicability for a one-time special inspection to detect inadequate radii and burrs in the snap ring grooves to include masts with S/N 00000 through 52720, 61433 through 61444, or 61457 through 61465, regardless of prefix. This action was required based on inadequate radius and burrs detected outside the S/N applicability of the previous AD.
- Reducing the compliance time to 100,000 accumulated RIN for any affected mast for a one-time special inspection to detect burrs in the snap ring grooves.
- Adding a one-time special inspection to detect inadequate radii and burrs in the snap ring grooves for any mast that has been previously installed with a hub spring.

Since the unsafe condition described is likely to exist or develop on other Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters manufactured by BHTI for the Armed Forces of the United States, the FAA issued Emergency AD 2000–22–51 to prevent failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter. The AD requires the following:

- Within 10 hours TIS, create a component history card or equivalent record.
- Within 10 hours TIS, determine and record the accumulated RIN and revised hours TIS.
- Establish a retirement life for any mast, P/N 204–011–450–007, –105, or –109, and replace any mast that has accumulated 265,000 RIN or 15,000 or more revised hours TIS and identify the removed mast as unairworthy.
- Within 25 hours TIS, remove any hub spring.
- Determine if the mast has ever been operated with a hub spring.
- Before reaching 100,000 RIN for a mast that has never been on a helicopter operated with a hub spring:
- Inspect the upper and lower snap ring groove in the damper clamp splined area for an inadequate radius and for a burr.
- Remove the mast before exceeding 100,000 RIN if any radius is inadequate or before exceeding 170,000 RIN if a burr is found, and identify such masts as unairworthy.
- Before reaching 100,000 RIN or 400 unfactored flight hours, whichever occurs first, on a mast that was installed on a helicopter with a hub spring or if the history of a hub spring installation is unknown:
- Inspect each snap ring groove for an inadequate radius or for a burr.
- Remove any mast before further flight if any groove radius is inadequate or if a burr is found, and identify such masts as unairworthy.
- After completing the inspections, send the requested information to the FAA. The requirements for retirement life hours for the trunnion remain the same as required in superseded AD 2000–08–53, Docket 2000–SW–08–AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions listed previously are required at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 2, 2000, to all known U.S. owners and operators of Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters manufactured by BHTI for the Armed Forces of the United States. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 75 helicopters of U.S. registry will be affected by this AD. It will take approximately 10 work hours per helicopter to remove and replace the mast, if necessary; 6 work hours to remove any hub spring; and 10 work hours to inspect the mast for proper radius or a burr. The approximate time necessary for calculating the accumulated RIN and for providing the requested information to the FAA is 15 work hours per helicopter. The average labor rate is $60 per work hour. Required parts will cost approximately $9,538 to replace a mast, if necessary. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $899,850 ($11,998 per helicopter, assuming inspecting 1 mast, removing 1 hub spring, replacing 1 mast, determining the RIN calculations, and providing the requested information to the FAA).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made:

"Comments to Docket No. 2000–SW–42–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6251 (54 FR 31935, August 3, 1989) and by adding a new airworthiness directive to read as follows:

2000–22–51 Firefly Aviation Helicopter Services (Previously Erickson Air–Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (Previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Arrow Falcon Exporters, Inc. (Previously Utah State University); U.S. Helicopter, Inc.; and Western International Aviation, Inc.: Amendment 39–12034. Docket No. 2000–SW–42–AD. Supersedes Emergency AD 2000–08–53, Docket No. 2000–SW–08–AD and AD 89–17–03, Amendment 39–6251, Docket No. 88–ASW–33.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron Inc. (BHTI) for the Armed Forces of the United States, with main rotor mast (mast), part number (P/N) 204–011–450–007, –105, or –109, or main rotor trunnion (trunnion), P/N 204–011–105–001, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: This AD requires using new factors to recalculate the FACTORED flight hours and the accumulated Retirement Index Number (RIN) for masts installed on certain helicopter models. This AD also expands the serial number (S/N) applicability for the one-time special inspection of the mast.

To prevent failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) For the mast, P/N 204–011–450–007, –105, or –109:

Note 3: The next higher assembly level for the affected P/N's are the 204–040–366 mast assemblies. Check the aircraft records for the appropriate P/N and assembly level.

(1) Within 10 hours time-in-service (TIS), create a component history card or equivalent record for the mast.

(2) Within 10 hours TIS, determine and record the accumulated RIN and revised hours TIS for the mast as follows:

(i) Review the aircraft maintenance records for the mast. If the helicopter model installation history or hours TIS of the mast is unknown, remove the mast from service, identify the mast as unairworthy, and replace it with an airworthy mast before further flight.

(ii) Determine the accumulated RIN and the revised hours TIS in accordance with the Instructions in Appendix 1. For those hours TIS the mast has been installed on a BHTI Model 204B, 205A, 205A–1, 205B, or 212 helicopter, determine the accumulated RIN in accordance with the AD's issued for those helicopters.

(iii) Record the accumulated RIN and revised hours TIS for the mast on the component history card or equivalent record. Use the revised hours TIS as the new hours TIS for the mast.

(3) Before further flight after accomplishing the requirements of paragraph (a)(2) of this AD, remove from service any mast that has accumulated 265,000 or more RIN or 15,000 or more revised hours TIS and identify the mast as unairworthy. Replace the mast with an airworthy mast.

(4) Within 25 hours TIS, remove any hub spring installed on any affected helicopter.

Note 4: U.S. Army Modification Work Order (MWO) 55–1520–242–50–1 pertains to the removal of the hub spring and replacement of any required parts. U.S. Army Safety of Flight Message UH–1–00–10 dated July 19, 2000, also pertains to the subject of this AD.

(5) Determine whether a mast with S/N 00000 through 52720, 61433 through 61444, or 61457 through 61465 (regardless of prefix), has ever been installed on a helicopter while operated with a hub spring.

(i) If a mast has never been installed on a helicopter while operated with a hub spring, before reaching 100,000 RIN, inspect the upper and lower snap ring grooves in the damper clamp splined area for:

(A) A minimum radius of 0.020 inch around the entire circumference (see Figures 1 and 2), using a 100 × or higher magnification. If any snap ring groove radius is less than 0.020 inch, identify the mast as unairworthy and replace it with an airworthy mast before exceeding 100,000 RIN.

(B) A burr (see Figures 1 through 3), using a 200 × or higher magnification. If a burr is found in any snap ring groove/spline intersection, identify the mast as unairworthy and replace it with an airworthy mast before exceeding 170,000 RIN.

(ii) If a mast has ever been installed on a helicopter while operated with a hub spring or if the history of a hub spring installation is unknown, before reaching 100,000 RIN or 400 unfactored flight hours, whichever occurs first, inspect the upper and lower snap ring grooves in the damper clamp splined area for:

(A) A minimum radius of 0.020 inch around the entire circumference (see Figures 1 and 2), using a 100 × or higher magnification. If any snap ring groove radius is less than 0.020 inch, identify the mast as unairworthy and replace it with an airworthy mast before further flight.

(B) A burr (see Figures 1 through 3), using a 200 × or higher magnification. If a burr is found in any snap ring groove/spline intersection, identify the mast as unairworthy and replace it with an airworthy mast before further flight.

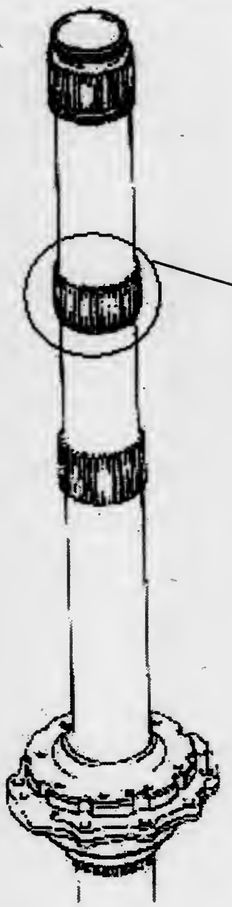
(6) After accomplishing the requirements of paragraph (a)(2) of this AD, continue to calculate the accumulated RIN for the mast by multiplying all takeoff and external load lifts by the RIN factors defined in columns (D) and (G) of Table 1 of Appendix 1 of this AD.

(7) After accomplishing the requirements of paragraph (a)(2) of this AD, continue to count the hours TIS for the mast. Any hours TIS for the mast while installed on a helicopter operated with a hub spring or if the history of a hub spring installation is unknown must be factored in accordance with the instructions in Appendix 1 of this AD.

(8) This AD establishes a retirement life of 265,000 accumulated RIN or 15,000 hours TIS, whichever occurs first, for mast, P/N 204–011–450–007, –105, and –109.

(9) Within 10 days after completing the inspections required by paragraph (a)(5) of this AD, send the information contained on the AD compliance inspection report sample format contained in Appendix 2 to the Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas 76193–0170, USA. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

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Inspect area for:

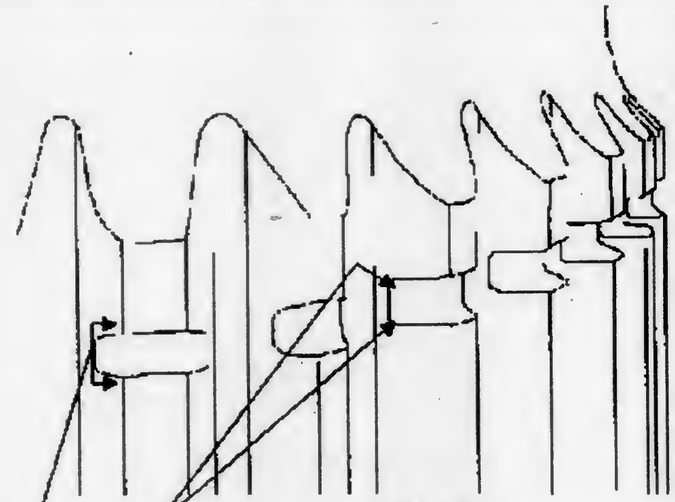
- At 100x minimum magnification
  Minimum radius of 0.020 at the snap ring groove/spline intersection
- At 200x minimum magnification
  Burrs in the snap ring groove

See view A-A for detail

View A

Figure 1

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View A-A

Inspect for minimum 0.020 radius in the snap ring groove using 100x magnification minimum (upper and lower grooves, entire circumference)
Inspect for burrs at the snap ring groove/spline intersection using 200x magnification minimum (upper and lower grooves, all places)

Figure 2
Snap Ring Groove/Spline Intersection



Cutaway View Looking Down from Inside Snap Ring Groove

Typical Burrs at Snap Ring Groove/Spline Intersection
Burrs are to be Inspected at 200x Minimum Magnification

Figure 3
Typical Burr at Snap Ring Groove

BILLING CODE 4910–13–C

(b) For the trunnion, P/N 204–011–105–001:

(1) Within 10 days, create a component history card or equivalent record for the trunnion and record the hours TIS accumulated on the trunnion. If the TIS cannot be determined, enter 900 hours for each year from the date the trunnion was installed.

(2) Remove any trunnion with 14,900 or more hours TIS from service within the next 100 hours TIS.

(3) Remove any trunnion with less than 14,900 hours TIS from service at or before 15,000 hours TIS.

Note 5: Paragraph (b) of this AD continues the requirements of the superseded AD for the trunnion.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their request through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 26, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–22–51, issued November 2, 2000, which contained the requirements of this amendment.

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APPENDIX 1

Appendix 1 to AD 2000-22-51
Instructions for Calculating RIN and Revised Hours TIS

Definitions for the Retirement Index Number:

The overall **fatigue life** of a main rotor mast is a function of the number of cycles of torque, lift, and bending loads applied to it during the various modes of operation. The mast experiences both high cycle fatigue and low cycle fatigue during operation.

The **high cycle fatigue life** of the mast is a function of high frequency but relatively low level cyclic loads, which are primarily induced by rotor rpm. The high cycle fatigue life limit for the mast is defined in terms of hours TIS because rotor rpm is basically a constant value.

The **low cycle fatigue life** of the mast is a function of the number of less frequent but relatively high level cyclic loads experienced primarily during takeoffs and external load lifts. The low cycle fatigue life limit for the mast is expressed in terms of the accumulated Retirement Index Number (RIN).

A **load cycle** is a power cycle caused by a repeating or fluctuating load that alternates from a starting power value, goes to a higher power value, and returns to the starting power value.

The **accumulated RIN** is defined as the total number of load cycles multiplied by a **RIN factor** to account for the difference in torque levels applied to the same mast (since manufactured) when installed in different helicopter models. The level of torque applied to the mast is directly proportional to the transmission output horsepower.

The ***unfactored* hours TIS** is the time from the moment a helicopter leaves the surface of the earth until it touches it at the next point of landing with no factors applied.

The **FACTORED flight hours** is the *unfactored* hours TIS multiplied by a frequency of event hour factor based on the torque (horsepower) of the helicopter model in which it was installed and the usage of the helicopter.

The **revised hours TIS** is the new hours TIS for the mast as determined by following the instructions in this appendix.

An **external load lift** is defined as a lift where the load is carried, or extends, outside of the aircraft fuselage.

Calculation of Retirement Index Number and Revised Hours TIS:

There are two methods for calculating the accumulated RIN and the revised hours TIS, depending on the available service history information for the mast. In some cases, one method will be used for a portion of the mast service history, and the other method will be used for another portion of

the mast service history. Both methods require knowledge of all the helicopter models in which the mast was installed.

Calculation of RIN and Revised Hours TIS when the Exact Number of Takeoffs and External Load Lifts is ***Known*** (Reference Tables 1 and 3):

Table 1 of Appendix 1 is the worksheet for calculating the accumulated mast RIN when the exact number of takeoffs and external load lifts *is known*. Table 3 of Appendix 1 is the worksheet that has the frequency of event hour factors to calculate the FACTORED flight hours for the *unfactored* hours TIS for the mast while installed on a helicopter operated *with* a hub spring or if the hub spring installation history *is unknown*.

The RIN factor for each external load lift is twice that specified for each takeoff because two torque events are experienced during a typical external load lift.

Using Table 1, calculate accumulated RIN as follows:

1. Enter the total number of takeoffs for the particular mast model/helicopter model combination in column (C).
2. Multiply the value entered in column (C) by the RIN factor listed in column (D), and enter the result in column (E). This is the total accumulated RIN due to takeoffs.
3. Enter the total number of external load lifts for the particular mast model/helicopter model combination in column (F).
4. Multiply the value entered in column (F) by the RIN factor listed in column (G), and enter the result in column (H). This is the accumulated RIN due to external load lifts.
5. Add the values from column (E) and column (H) and enter the result in column (I). This is the total accumulated RIN to-date for the mast for the particular mast model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various mast model/helicopter combinations in column (I) and enter the result in the space provided. This is the total accumulated RIN for the mast.

Using Table 3, calculate the revised hours TIS as follows:

7. Determine the *unfactored* hours TIS for the mast while installed on a helicopter operated *with* a hub spring or if the hub spring installation history *is unknown* for each of the particular mast model/helicopter model combinations.
8. Determine the frequency of events per hour for each of the particular mast model/helicopter model combinations dividing the combined number of takeoffs and external load lifts by the corresponding *unfactored* hours TIS.

9. Multiply the value for *unfactored* hours TIS for each of the particular mast model/helicopter model combinations by the appropriate value in column (E) of Table 3 for the frequency of event hour factor. These are the total FACTORED flight hours for the particular mast model/helicopter model combinations.
10. Add the FACTORED flight hour subtotals for each of the particular mast model/helicopter model combinations. This is the total FACTORED flight hours for the mast while installed on a helicopter operated *with* a hub spring or if the hub spring installation history *is unknown*.
11. Determine the *unfactored* hours TIS for the mast while installed on a helicopter operated *without* a hub spring.
12. Add to the total FACTORED flight hours for the mast while installed on a helicopter operated *with* a hub spring or if the hub spring installation history *is unknown* to the *unfactored* hours TIS as determined in step 11. This is the total revised hours TIS for the mast when the exact number of takeoffs and external load lifts *is known*.

Calculation of RIN and Revised Hours TIS when Exact Number of Takeoffs and External Load Lifts is ***Unknown*** (Reference Tables 2, 3, and 4):

Tables 2, 3, and 4 of Appendix 1 are the worksheets for calculating the FACTORED flight hours and accumulated mast RIN when the exact number of takeoffs and external load lifts *is unknown*.

Using Tables 2, 3, and 4, calculate the accumulated mast RIN and revised hours TIS as follows:

1. Enter the *unfactored* hours TIS for the particular mast model/helicopter model combination in column (C) of Tables 2 and 3.
2. Using service history for the mast, select the appropriate frequency of event hour factor from column (E) of Tables 2 and 3 based on the total combined number of takeoffs and external load lifts per hour shown in column (D).
3. Multiply the value for *unfactored* hours TIS entered in column (C) by the appropriate value in column (E) for the frequency of event hour factor as determined in step 2. Enter the result in column (F) of Tables 2 and 3. This is the total FACTORED flight hours for the particular mast model/helicopter model combination.
4. Enter the value for FACTORED flight hours from column (F) of Tables 2 and 3 into column (C) of Table 4.
5. Using Table 4, multiply the value for FACTORED flight hours in column (C) by the appropriate RIN conversion factor listed in column (D), by the appropriate RIN adjustment factor in column (E), and enter the result in column (F). This is the accumulated RIN to-date for the particular mast model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various mast model/helicopter model combinations in column (F) of Table 4 and enter the result in the space provided. This is the total accumulated RIN for the mast.
7. Add the factored flight hour subtotals for the various mast model/helicopter model combinations as determined in steps 1 through 4. This is the total revised hours TIS for the mast when the exact number of takeoffs and external load lifts *is unknown*.

Sample Mast Calculation

Given the following known service history for the mast:

Mast, P/N 204-011-450–007, was first purchased as a United States military surplus part with valid historical records. The mast had accumulated 550 hours military TIS on an Army UH-1H with a hub spring installed.

The mast was first installed on a restricted category UH-1H former military helicopter for 250 hours TIS. The helicopter had a rating of 1100 takeoff horsepower (T.O. hp) at sea level standard day conditions (SLS), and the operation of the helicopter *without* a hub spring cannot be determined. The helicopter was used for fire fighting operations and the exact number of takeoffs and external load lifts is unknown. It is known, however, that the helicopter averaged less than 15 combined takeoffs and external load lifts per hour.

The mast was then removed and subsequently installed on a restricted category UH-1E former military helicopter (1100 T.O. hp SLS rating) *without* a hub spring for 450 hours TIS. It is known that the helicopter was used primarily for aerial surveying for the first 200 hours of operation. The exact number of takeoffs and external load lifts is unknown, but it is known that the helicopter averaged less than 16 takeoffs per hour, with no external load lifts. It was subsequently used for repeated heavy lift operation for the next 250 hours of operation and averaged between 25 and 31 combined takeoffs and external load lifts per hour during this period of time.

The mast was then removed and installed on another restricted category UH-1H former military helicopter (1100 T.O. hp SLS rating) for a total of 150 hours TIS with accurate records indicating that it experienced 100 takeoffs and 2,450 external load lifts. A hub spring was installed on the helicopter for the first 50 hours of operation with a calculated average of 19 combined takeoffs and external load lifts per hour (as determined from aircraft records for the first 50 hours of operation). The hub spring was subsequently removed for the remaining 100 hours TIS.

Calculate the FACTORED flight hours and total accumulated RIN for the mast as follows:

FACTORED Flight Hours and Accumulated RIN while installed in U.S. military Model UH-1H:

Calculate FACTORED flight hours from Table 3 as follows:

FACTORED Flight Hours = (*unfactored* hours TIS) x (frequency of event hour factor)
= (column C) x (column E)
= (550) x (10)
= 5,500 hours

Then using Table 4, calculate the accumulated RIN as follows:

Accumulated RIN = (FACTORED flight hours) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (5,500) x (20) x (1)

= 110,000 RIN

FACTORED Flight Hours and Accumulated RIN while installed in restricted category Model UH-1H:

Calculate FACTORED flight hours from Table 3 as follows:

FACTORED Flight Hours = (*unfactored* hours TIS) x (frequency of event hour factor)
= (column C) x (column E)
= (250) x (14)
= 3,500 hours

Then using Table 4, calculate the accumulated RIN as follows:

Accumulated RIN = (FACTORED flight hours) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (3,500) x (20) x (1)

= 70,000 RIN

FACTORED Flight Hours and Accumulated RIN while installed in restricted category Model UH-1E:

Calculate FACTORED flight hours from Table 2 as follows:

FACTORED Flight Hours = (*unfactored* hours TIS) x (frequency of event hour factor)
(for first 200 hrs.) = (column C) x (column E)
= (200) x (5)
= 1,000 hours

FACTORED Flight Hours = (*unfactored* hours TIS) x (frequency of event hour factor)
(for next 250 hrs.) = (column C) x (column E)
= (250) x (10)
= 2,500 hours

Then using Table 4, calculate the accumulated RIN as follows:

Accumulated RIN = (FACTORED flight hours) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (1,000) x (20) x (1) + (2,500) x (20) x (1)
= 20,000 + 50,000

= 70,000 RIN

FACTORED Flight Hours and Accumulated RIN while installed in another restricted category Model UH-1H:

Calculate the accumulated RIN from Table 1 and the given number of takeoffs and external load lifts as follows:

Accumulated RIN = (number of takeoffs x RIN factor per takeoff) + (number of external load lifts x RIN factor per external load lifts.

= (column C) x (column D) + (column F) x (column G)
= (100) x (3) + (2,450) x (6)

= 15,000 RIN

Calculate the FACTORED flight hours for the mast while installed on a helicopter operated *with* a hub spring or if the hub spring installation history *is unknown* using the frequency of event hour factors from Table 3 as follows:

FACTORED Flight Hours = (*unfactored* hours TIS) x (frequency of event hour factor)
(w/ hub spring) = (column C) x (column E)
= (50) x (16)
= 800 hours

Unfactored Hours TIS = (*unfactored* hours TIS)
(w/o hub spring) = 100 hours

Note that the FACTORED flight hours are not used in the accumulated RIN calculations when the number of takeoffs and external load lifts *is known*.

Calculate the Total Accumulated RIN and Revised Hours TIS as follows:

The total accumulated RIN to-date for the mast is the sum of the subtotals from Tables 1 and 4.

Total Accumulated RIN = 110,000 + 70,000 + 70,000 + 15,000
= **265,000**

The total FACTORED flight hours for the mast is the sum of the subtotals from Tables 2 and 3 and the total FACTORED flight hours as determined in the preceding step 12 when the exact number of takeoff and external load lifts *is known*.

Total FACTORED Flight Hours = 5,500 + 3,500 + 1,000 + 2,500 + 800
= **13,300 hours**

The revised hours TIS to-date for the mast is the sum of the total FACTORED flight hours and the additional *unfactored* hours TIS for the mast while installed on a helicopter operated without a hub spring and the exact number of takeoffs and external load lifts *is known*.

Revised Hours TIS = 5,500 + 3,500 + 1,000 + 2,500 + 800 + 100
= 13,300 + 100
= **13,400 hours**

Both the total accumulated RIN and the revised hours TIS need to be determined and checked for exceeding the allowable life limits for the mast. Also, note that the recalculated total accumulated RIN for this sample mast would be 265,000 RIN. Therefore, this mast would be removed from service.

The values for the sample problem are shown in Tables 1 – 4 for illustration purposes only. The FACTORED flight hours TIS shown in the brackets in Table 3 are calculated for the mast while installed on a helicopter operated *with* a hub spring or if the hub spring installation history *is unknown* and the exact number of takeoffs and external load lifts *is known*. These FACTORED flight hours are not used in the accumulated RIN calculations.

Mast RIN Calculation Based on Takeoffs and External Load Lifts

Mast A/C Model Installation	Mast P/N 204-011-450	Number Of Takeoffs	RIN Factor Per Takeoff	Total Takeoff RIN	Number of External Load Lifts	RIN Factor Per External Load Lift	Total External Load Lift RIN	Accumulated RIN
(A)	(B)	(C)	(D)	(E) =(C) x (D)	(F)	(G)	(H) =(F) x (G)	(I) =(E) + (H)
Restricted Category TIS (≤700 T.O. hp SLS)	204-011-450-007		0.25			0.5		
	204-011-450-105		0.25			0.5		
	204-011-450-109		0.25			0.5		
Restricted Category TIS (700<T.O. hp SLS ≤1000)	204-011-450-007		1.5			3		
	204-011-450-105		1.5			3		
	204-011-450-109		1.5			3		
Restricted Category TIS (1000<T.O. hp SLS ≤1100)	204-011-450-007	*100*	3	*300*	*2,450*	6	*14,700*	*15,000*
	204-011-450-105		3			6		
	204-011-450-109		3			6		
Restricted Category TIS (1100<T.O. hp SLS ≤1290)	204-011-450-007		6			12		
	204-011-450-105		6			12		
	204-011-450-109		6			12		
Restricted Category TIS (>1290 T.O. hp SLS)	204-011-450-007		Contact FAA*			Contact FAA*		Contact FAA*
	204-011-450-105							
	204-011-450-109							
Total RIN=								*15,000*

*Contact FAA at (817) 222-5447

Appendix 1 - Table 1

Calculation of Mast FACTORED Flight Hours (Without a Hub Spring Installed)

Mast A/C Model Installation	Mast P/N 204-011-450 (without a hub spring installed)	*Unfactored* Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Flight Hours On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
Restricted Category TIS (≤700 T.O. hp SLS)	204-011-450-007, –105, or –109		1.0-37.00	1.00	
			37.01-46.00	1.25	
			46.01-55.00	1.50	
			55.01-63.00	1.75	
			Greater than 63.00	Contact FAA*	
			Unknown	1.75	
Restricted Category TIS (700<T.O. hp SLS ≤1000)	204-011-450-007, –105, or –109		1.0-7.00	1.00	
			7.01-13.00	2.00	
			13.01-18.00	3.00	
			18.01-30.00	5.00	
			30.01-41.00	7.00	
			41.01-52.00	9.00	
			52.01-63.00	11.00	
			Greater than 63.00	Contact FAA*	
			Unknown	11.00	
Restricted Category TIS (1000<T.O. hp SLS ≤1100)	204-011-450-007, –105, or –109		1.0-5.00	1.00	
			5.01-7.00	2.00	
			7.01-10.00	3.00	
		200	10.01-16.00	5.00	*1,000*
			16.01-24.00	7.50	
		250	24.01-31.00	10.00	*2,500*
			31.01-46.00	15.00	
			46.01-61.00	20.00	
			Greater than 61.00	Contact FAA*	
			Unknown	20.00	
Restricted Category TIS (1100<T.O. hp SLS ≤1290)	204-011-450-007, –105, or –109		1.0-5.00	2.10	
			5.01-7.00	4.00	
			7.01-10.00	6.00	
			10.01-15.00	9.00	
			15.01-19.00	12.00	
			19.01-25.00	16.00	
			25.01-31.00	20.00	
			31.01-46.00	30.00	
			46.01-60.00	40.00	
			Greater than 60.00	Contact FAA*	
			Unknown	40.00	
Military TIS	204-011-450-007, –105,				
(≤700 T.O. hp SLS)	or –109		All	1.00	
(≤1000 T.O. hp SLS)			All	2.00	
(≤1100 T.O. hp SLS)			All	3.50	
(≤1290 T.O. hp SLS)			All	7.00	
(>1290 T.O. hp SLS)			All	Contact FAA*	

*Contact FAA at (817) 222–5447

Appendix 1 - Table 2

Calculation of Mast FACTORED Flight Hours (With a Hub Spring Installed)

Mast A/C Model Installation	Mast P/N 204-011-450 (*with* a hub spring or the history of a hub spring installed is unknown)	*Unfactored* Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Flight Hours On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
Restricted Category TIS (≤700 T.O. hp SLS)	204-011-450-007, –105, or –109		1.0-6.00	10.00	
			6.01-12.00	10.25	
			12.01-21.00	10.50	
			21.01-39.00	11.00	
			39.01-63.00	11.75	
			Greater than 63.00	Contact FAA*	
			Unknown	11.75	
Restricted Category TIS (700<T.O. hp SLS ≤1000)	204-011-450-007, –105, or –109		1.0-6.00	10.00	
			6.01-15.00	12.00	
			15.01-26.00	14.00	
			26.01-37.00	16.00	
			37.01-49.00	18.00	
			49.01-63.00	21.00	
			Greater than 63.00	Contact FAA*	
			Unknown	21.00	
Restricted Category TIS (1000<T.O. hp SLS ≤1100)	204-011-450-007, –105, or –109		1.0-6.00	10.00	
			6.01-9.00	12.00	
		250	9.01-15.00	14.00	*3,500*
		<50>	15.01-21.00	16.00	*<800>*
			21.01-33.00	20.00	
			33.01-45.00	24.00	
			45.01-61.00	30.00	
			Greater than 61.00	Contact FAA*	
			Unknown	30.00	
Restricted Category TIS (1100<T.O. hp SLS ≤1290)	204-011-450-007, –105, or –109		1.0-6.00	10.00	
			6.01-11.00	15.00	
			11.01-18.00	20.00	
			18.01-26.00	25.00	
			26.01-33.00	30.00	
			33.01-40.00	35.00	
			40.01-48.00	40.00	
			48.01-60.00	50.00	
			Greater than 60.00	Contact FAA*	
			Unknown	50.00	
Military TIS					
(≤1290 hp T.O. SLS)	204-011-450-007, –105, or –109	*550*	All	10.00	*5,500*
(>1290 hp T.O. SLS)			All	Contact FAA*	

*Contact FAA at (817) 222–5447

Appendix 1 - Table 3

Mast RIN Calculation Based on Hours Time-in-Service

Mast A/C Model Installation	Mast P/N 204-011-450	FACTORED Flight Hours On Model	RIN Conversion Factor	RIN Adjustment Per AD 2000-15-52	Accumulated RIN
(A)	(B)	(C) (From Table 2 of Appendix I)	(D)	(E)	(F) =(C) x (D) x (E)
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-450-007	*12,500*	20	1	*250,000*
	204-011-450-105		20	1	
	204-011-450-109		20	1	
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-450-007	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
	204-011-450-105				
	204-011-450-109				
Total RIN=					*250,000*

*Contact FAA at (817) 222-5447

Appendix 1 - Table 4

Subtotals for the FACTORED Flight Hours and Accumulated RIN For Table 4 of the Sample Mast Calculation:

FACTORED Flight Hours			Accumulated RIN
5,500	X	20 =	110,000
3,500	X	20 =	70,000
3,500	X	20 =	70,000
12,500			250,000

BILLING CODE 4910–13–C

Appendix 2

Appendix 2 to AD 2000–22–51

AD Compliance Inspection Report (Sample Format) P/N 204–011–450–007/–105/–109 Main Rotor Mast

Provide the following information and mail or fax it to: Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas 76193–0170, USA, Fax: 817–222–5783.

Aircraft Registration No:
Helicopter Model:
Helicopter S/N:
Most P/N:
Most S/N:
Most RIN:
Mast Total TIS:

Inspection Results

Were any radii during inspection of this mast determined to be less than 0.020 inch?
If yes, what was the dimension measured?
Was a burr found in the inspected snap ring grooves?
Were cracks noted during the inspection?
Who performed this inspection?
Provide any other comments?

Issued in Fort Worth, Texas, on November 30, 2000.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–31012 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–44]

Amendment of Class E5 Airspace; Meridian, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a technical amendment to the Class E5 airspace at Meridian, MS. The Navy Meridian NDB has been decommissioned. Therefore, the airspace legal description must be amended to reflect this change.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

The Navy Meridian NDB has been decommissioned. As a result the airspace legal description must be amended. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action has no impact on users of the airspace in the vicinity of Meridian NAS-McCain Field, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E5 airspace at Meridian, MS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth

* * * * *

ASO MS E5 Meridian, MS [Revised]

Meridian, Key Field, MS
(Lat. 32°20′00″N, long. 88°45′04″W)
Meridian VORTAC
(Lat. 32°22′42″N, long. 88°48′15″W)
Joe Williams OLF
(Lat. 32°47′46″N, long. 88°49′54″W)
Meridian NAS-McCain Field
(Lat. 32°33′08″N, long. 88°33′20″W)
Meridian TACAN
(Lat. 32°34′42″N, long. 88°32′43″W)
Kewanee VORTAC
(Lat. 32°22′01″N, long. 88°27′30″W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Key Field and within 2.5 miles each side of the Meridian VORTAC 315° radial, extending from the 8-mile radious 7 miles northwest of the VORTAC, and within a 7.4-mile radius of Joe Williams OLF, and within an 8-mile radius of Meridian NAS-McCain Field, and within 4 miles each side of the 020° bearing from lat. 32°33′28″N, long. 88°33′33″W, extending from the 8-mile radius to 20 miles north of Meridian TACAN, and within a 25-mile radius of the Meridian VORTAC, extending clockwise from the 341° radial to the 040° radial, and within 8 miles north and 6 miles south of the Kewanee VORTAC 273° radial, extending from the VORTAC to long. 88°45′00″W.

* * * * *

Issued in College Park, Georgia, on December 1, 2000.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–31479 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–13–M0

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 000609170–0336–02]

RIN 0691–AA38

International Services Surveys: BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules revise regulations for the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

The BE–82 survey is mandatory and is conducted annually, in which years the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons is not conducted, by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, and under the Omnibus Trade and Competitiveness Act of 1988. The annual survey will obtain data used to update the universe data, collected the BE–80 benchmark survey, on trade in financial services, by type and by country, between U.S. financial services providers and unaffiliated foreign persons. Data from the BE–82 survey (and the benchmark survey, the BE–80) are needed to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The revised rules raise the exemption level for the 2000 survey to $10 million in covered sales or purchases transactions, from $5 million on the previous (1998) survey. Raising the exemption level will reduce respondent burden, particularly for small companies. The revised rules also combine private placement services with underwriting services, combine foreign exchange brokerage services with other brokerage services, and create a separate category for electronic funds transfers. The changes on the types of services to be reported separately mirror changes introduced in the 1999 BE–80 benchmark survey. Finally, the revised rules restate the definition of "financial services provider" using the nomenclature of the new North American Industry Classification System that has replaced the U.S. Standard Industrial Classification System.

The changes in the types of services to be reported separately reflect BEA's experience in collecting data on financial services transactions over the past 6 years. Data collected for both private placement and foreign exchange brokerage services have been very small and do not justify the continuation of separate reporting. Electronic funds transfer services, in contrast, appear to account for a large fraction of both total receipts and total payments for "other financial services," in which electronic funds transfers were previously included.

EFFECTIVE DATE: These final rules will be effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the September 21, 2000, **Federal Register**, volume 65, No. 184, 65 FR 57119–57121, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 801 to set forth revised reporting requirements for the BE–82, Annual Survey of Financial Services Transactions Between Financial Services Providers and Unaffiliated Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter "the Act", and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services, and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

BEA will conduct the BE–82 survey in years in which a BE–80 benchmark survey, or census, is not conducted. The survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers who have sales to or purchases from unaffiliated foreign persons in all covered financial services combined in excess of $10 million during the reporting year. Financial services providers meeting these criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. U.S. financial services providers that have covered transactions of less than $10 million during the reporting year are asked to provide voluntary estimates of their total sales or purchases of each type of financial service.

Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0063) has been displayed.

The survey is expected to result in the filing of reports, containing mandatory or voluntary data, from about 375 respondents. The average burden for completing the BE–82—both the mandatory and voluntary sections—is estimated to be 7 hours. Thus, the total respondent burden of the survey is estimated at 2,600 hours (375 respondents times 7 hours average burden). The actual burden will vary from reporter to reporter, depending

upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data, or that reports only in the voluntary section of the form, to 150 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0063, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international financial services transactions tend to be quite large. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The BE–82 annual survey will be required only from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $10 million during the reporting year, in all covered financial services transactions combined; the exemption level for the previous annual survey, covering 1998, was $5 million. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign Trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 27, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147; E.O. 12318, 3 CFR, 1981 Comp., p. 173; and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by revising paragraph (b)(7) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(7) BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–82, Annual Survey of Financial Services Transactions Between U:S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering companies' 1995 fiscal year and every year thereafter except when a BE–80 Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, is conducted (see § 801.11). All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.8 are applicable to this survey. Additional rules and regulations for the BE–82 survey are given in paragraphs (b)(7)(i)(A) through (D) of this section. More detailed instructions are given on the report from itself.

(A) Who must report—(*1*) Mandatory reporting. Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of $10 million during its fiscal year covered by the survey. The $10 million threshold should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $10 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, to purchases, or to both sales and purchases.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) Voluntary reporting. If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries or parts combined that are financial services providers or intermediaries, are $10,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the $10,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both sales or purchases.

(B) BE–82 definition of financial services provider. Except for Monetary Authorities (*i.e.*, Central Banks), the definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 1997. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(C) Covered types of services. The BE–82 survey covers the same types of financial services transactions that are covered by the BE–80 benchmark survey, as listed in § 801.11(c).

(D) What to file. (*1*) the BE–82 survey consists of Forms BE–82 (A) and BE–82(B). Before completing a form BE–82 (B), a consolidated U.S. enterprise (including the top parent and all of its subsidiaries and parts combined) must complete Form BE–82 (A) to determine its reporting status. If the enterprise is subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, either a separate Form BE–82(B) for each separately organized financial services subsidiary or part of a consolidated U.S. enterprise, or a single BE–82(B) representing the sum of all covered transactions by all financial services subsidiaries or parts of the enterprise combined must be completed.

(*2*) Reporters who receive the BE–82 survey from BEA, but that are not reporting data in either the mandatory or voluntary section of any BE–82(B), must return the Exemption Claim, attached to Form BE–82 (A), to BEA.

(*ii*) [Reserved]

* * * * *

[FR Doc. 00–31341 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–015; Order No. 587–M]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued November 30, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule and notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission is amending § 284.12 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines to incorporate by reference the most recent version of the standards, Version 1.4, promulgated August 31, 1999 and November 15, 1999 by the Gas Industry Standards Board (GISB). The Commission also is announcing a technical conference by Commission staff to address the issues raised by a proposal to require pipelines to permit shippers to designate and rank the contracts under which gas will flow on a pipeline's system. Version 1.4 of the GISB standards can be obtained from GISB at 1100 Louisiana, Suite 3625, Houston, TX 77002, 713–356–0060, *http://www.gisb.org*.

DATES: The rule will become effective January 10, 2001. The implementation date for the regulations is May 1, 2001. Pipelines must make filings to incorporate Version 1.4 of the GISB standards into their tariffs not less than 30 days prior to May 1, 2001.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE. Washington DC, 20426

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION:

Final Rule and Notice of Technical Conference

The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is incorporating by reference the most recent version of the consensus industry standards promulgated by the Gas Industry Standards Board (GISB), Version 1.4. Pipelines are required to implement these regulations on May 1, 2001. The Commission also is directing its staff to convene a technical conference to discuss whether to adopt the proposed regulation requiring pipelines to permit shippers to designate and rank the contracts under which gas will flow on a pipeline's system.

I. Background

In Order Nos. 587, 587–B, 587–C, 587–G, 587–H, 587–I, and 587–K the Commission adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid.[1] In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry.

On February 23, 2000, GISB filed with the Commission a letter stating it had adopted a revised version of its business practice and communication standards, Version 1.4. The Version 1.4 standards include the standards for implementing pipeline interactive Internet web sites, which pipelines were required to implement by June 1, 2000, as well as standards for critical notices, and standards for multi-tiered allocations.

GISB also reported on certain issues on which the Commission had requested reports in Order No. 587–G. Of significance here, GISB reported that its Executive Committee was unable to reach consensus on standards for cross-contract ranking and that its confirmations and cross contract ranking subcommittee is considered inactive. In a letter dated June 15, 2000, GISB filed a follow-up report on cross contract ranking. GISB reports that its Executive Committee was unable to achieve consensus with respect to cross contract ranking due to disagreement on certain policy issues and that in the opinion of the Executive Committee no further progress can be made. GISB further reported that its Executive Committee approved standards for title transfer tracking, but that these standards are awaiting the development of the technical standards for information requirements and technical mapping.

[1] Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), III FERC Stats. & Regs. Regulations Preambles ¶ 31,072 (Apr. 2, 1999).

On June 30, 2000, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to adopt Version 1.4 of the GISB standards and to adopt a regulation requiring pipelines to permit shippers to designate and rank the transportation contracts under which gas will flow on the pipeline's system.[2] The Commission stated that cross-contract ranking would enable shippers to use their transportation contracts more efficiently by enabling them to allocate gas supplies across their transportation contracts so that the shipper can choose the contract which provides for the most economical transportation.

The Commission found that while the GISB record was not entirely clear on what prevented the adoption of cross-contract ranking standards, there appeared to be agreement on a method (entity-to-entity confirmation) by which such ranking could be achieved. The disputes apparently were over the amount of supplemental information pipelines should provide to shippers and over the method of confirmation with producers, independent of the cross-contract ranking issue. The Commission solicited comments on whether these issues were integral to the cross-contract ranking standard and whether these issues could be dealt with on an individual pipeline basis rather than through a generic rulemaking.

Twenty comments were filed.[3] Pipelines supported the use of entity-to-entity confirmation, but contended the Commission should not require the provision of supplemental information or working interest owner confirmations. Local Distribution Companies (LDCs) and endusers supported the provision of supplemental information, with endusers supporting a confirmation process based on gas package identifiers. Producers supported a confirmation process with producers or their agents.

II. Discussion

A. Adoption of Version 1.4 of the Standards

The Commission is incorporating by reference into its regulations Version 1.4 of GISB's consensus standards.[4] Pipelines must implement these standards on May 1, 2001, by making compliance filings as discussed later in this order.[5]

The adoption of Version 1.4 of the standards updates and improves the standards, particularly in the areas of communication of critical notices and multi-tiered allocations.[6] GISB approved the standards under its consensus procedures.[7] No comments objected to the incorporation of these standards. As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[8]

Dynegy requests clarification regarding the implementation of the standards providing for electronic notice of critical events affecting shippers. It asserts that the pipelines should provide a transition period for testing the new communication standards for critical notices before the pipelines rely solely upon Internet communication of such notices and discontinue their current communication methods. Dynegy contends that in Order No. 587-G, the Commission found that Internet communication could be sufficient notice to shippers of operational events, because the shipper could program its computers to trigger a telephone or pager. Dynegy is concerned that before shippers have to rely solely upon Internet communication, they be given the time to test whether their software can trigger a telephone or pager. Dynegy further requests that pipelines be required to continue their current method of communication until the customers software works satisfactorily.

The Commission agrees that pipelines should provide shippers with a reasonable opportunity to test the Internet communications before the pipelines dispense with existing methods of notifying shippers of critical events. Pipelines, however, will not be required to continue existing forms of communication to individual shippers until the individual shipper has been able to configure its software correctly. The shipper should have the responsibility, within a reasonable time period, to correct problems with its own software.

Altra asks that the Commission revise the implementation date for Version 1.4 of the standards so that the implementation of Version 1.4, cross-contract ranking, and title transfer tracking can occur simultaneously. Altra maintains that implementing such changes concurrently will be more economical for software providers as well as pipelines and their customers. The Commission understands that simultaneous implementation may be more efficient and generally attempts to adopt a complete version of the GISB standards at the same time. However, in this case, the Commission finds that the benefits from adopting Version 1.4 of the GISB standard should not be delayed until an indeterminate date when standards for cross-contract ranking and title transfer tracking are adopted.

B. Cross-Contract Ranking

Cross-contract ranking refers to the ability of shippers to allocate gas supplies across transportation contracts so that the shipper can choose the contract which provides for the most economical transportation. Shippers are doing business using a variety of contracts, including their own firm and interruptible contracts, and capacity release contracts with different terms and conditions. The ability to allocate gas supplies among these contracts will enhance shipper flexibility and better

[2] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 65 FR 41885 (July 7, 2000), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,552 (June 30, 2000).

[3] Those filing comments are listed on Appendix A along with the abbreviation used throughout the order.

[4] The Commission also is amending § 284.12(b)(2) of its regulations to reflect the change in GISB's address.

[5] See the discussion of compliance procedures in Section VIII, Implementation Date, at text accompanying note 20.

[6] Pipelines previously had been required to implement the interactive Internet standards in Version 1.4 by June 1, 2000. See 18 CFR 284.12(c)(3)(i)(B). The following are the changes from the Version 1.3 standards previously adopted by the Commission. Standards that have been revised are: 1.3.24, 3.3.17, 4.2.7, 4.2.8, 4.3.2, 4.3.8, 4.3.9, 4.3.28, 4.3.29, 4.3.34, 5.3.2, and 5.3.30. New standards are: 0.1.1, 0.1.2, 0.3.1, 1.3.47 through 1.3.63, 1.3.79, 2.3.32 through 2.3.35, 3.3.23 through 3.3.25, 4.1.22 through 4.1.38, 4.2.9 through 4.2.19, 4.3.36 through 4.3.85, 5.2.2, and 5.3.31 through 5.3.42. Revised data sets are: 1.4.1 through 1.4.7, 2.4.1 through 2.4.6, and 3.4.1 through 3.4.4. New data sets are 5.4.18 and 5.4.19.

[7] This process first requires a super-majority vote of 17 out of 25 members of GISB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[8] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

enable them to manage their gas supply and capacity portfolios.[9]

In Order No. 587–G, the Commission deferred adoption of regulations regarding cross-contract ranking to give GISB an opportunity to develop standards governing this practice. GISB, however, was unable to reach consensus on appropriate standards due to policy disagreements among the industry segments, and states that it cannot proceed without further guidance from the Commission on the policy questions presented.[10] All the industry segments appear to agree that developing standards for cross-contract ranking and confirmation practices can be of benefit to the industry. Because the Commission cannot resolve these issues based solely on the comments, the Commission is directing the Commission staff to establish a technical conference at which the issues can be explored in greater detail.

1. Issues Raised by Cross-Contract Ranking

While the record GISB submitted is not entirely clear, there did appear to be agreement that cross-contract ranking could be achieved through an entity-to-entity confirmation process.[11] (Appendix B reproduces the set of standards that were considered, but not approved, by GISB's Executive Committee). Disputes developed over whether along with entity-to-entity confirmation pipelines should be required to provide supplemental information to shippers and whether pipelines should confirm with working interest owners rather than exclusively with point operators. The two standards on which agreement could not be reached are standard 2 and standard 3 of proposal CXKR–2.

Standard 2 states:

As part of the confirmation and scheduling process upon request, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

Standard 3 states:

Absent mutual agreement to the contrary between the TSP and the Operator for confirmations at a production location,[12] the TSP should support the fact that the operator will confirm with the TSP to only the upstream entity level. These upstream entities should either confirm or nominate (at the TSP's determination) at an entity level with the TSP.

In the NOPR, the Commission proposed to require pipelines to permit shippers to designate and rank the transportation contracts under which gas will flow on each pipeline's system. The Commission generally proposed that such ranking would occur based on the entity-to-entity confirmation standards included in all the GISB proposals. The Commission, however, solicited comment on whether there is a need for a uniform generic standard setting forth additional, limited information pipelines should provide to local distribution companies or shippers and whether the need for additional information applies to all pipelines or is limited only to certain pipelines that currently provide such additional information to LDCs. With respect to the standard regarding production confirmation, the Commission asked for comment addressing the need for confirmations at the working interest level, the costs and benefits of adopting such a requirement for pipelines, shippers, and the overall efficiency of the pipeline grid, and whether a uniform requirement is necessary or whether pipelines should be permitted to choose the method of confirmation with producers that best fits their systems.

2. Comments

All commenters generally support the concept of cross-contract ranking. They differ again on the necessity of requiring supplemental information and on confirmation at receipt points. Dynegy and Altra are indifferent to whether any requirements for supplemental information or producer confirmation are adopted. Altra contends that some of the other issues, such as working interest owner confirmation, are unrelated to the cross-contract ranking issue.

The LDCs[13] that filed comments contend that provision of supplemental information concerning the type of contract, which establishes scheduling priority, is necessary for LDCs to plan their system usage, particularly in light of the requirements of retail unbundling. They contend, for instance, that LDCs need to know the priority of gas nominated to their systems so they can plan for the possibility of losing gas supplies during peak periods if interruptible or secondary firm nominations are limited. They further contend that this information on priority is needed to satisfy the requirements of some state unbundling programs that marketers have primary firm capacity for deliveries to LDC city-gates. Con Edison, for instance, raises the question of how entity-to-entity confirmation will permit LDCs to confirm gas deliveries in a situation when two behind-the-city-gate marketers both purchase gas from a third marketer at a downstream market center. It contends that without contract information, the LDC would not be able to match up the information from the marketer delivering the gas to the market center and the two behind-the-city-gate marketers. Distribution argues that the necessary information could be provided through a capacity-type indicator, which would not be burdensome for the pipelines to process. In reply comments, Distribution contends that based on the comments filed, the Commission should convene a technical conference to provide further explanation of why LDCs need supplemental contract information and why providing such information should not be burdensome for the pipelines.

The End User Group supports the concept of cross-contract ranking but claims that the NOPR proposal has two problems: it does not require pipelines to follow the rankings provided by shippers; and it does not provide shippers with the information necessary to determine what packages of gas actually flowed. Rather than aggregating information, as in the entity-to-entity confirmation method, the End Users contend that the confirmation process should be further disaggregated by confirming on a package identification

[9] For example, a shipper may nominate gas from a single producer under two contracts: a firm contract with the pipeline and a capacity release contract which has a minimum volume commitment. If that shipper receives less gas from its producer than it has nominated, it might prefer to allocate more of its gas to the capacity release contract to satisfy its minimum volume commitment. Cross-contract ranking would permit the shipper to allocate its gas to the most economical contract.

[10] The Commission previously has resolved issues on which the GISB members could not reach consensus, so that GISB could move forward and develop the necessary technical standards to implement the Commission's determination. Standards For Busines Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072, 20073, 20075–78 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062, at 30,663, 30–667–72 (Apr. 16, 1998)(establishing priority for firm and interruptible transportation in intra-day nominations).

[11] See Proposed Standard 1 of CXKR–1 and CXKR–2 and New Standard S–1 of CXKR–3.

[12] Production location was defined to include wellheads, platforms, plant tailgates (excluding straddle plants) and physcial wellhead aggregation points. CXKR 1, Proposed Principle 1.

[13] See comments to Cincinnati, Con Edison, Distribution, AGA.

basis.[14] They contend that frequently a customer will be receiving multiple natural gas packages from a single seller (pursuant to different contracts) and the buyer and the seller have diametrically opposed interests. The seller wants the most expensive gas to have the highest rank, while the buyer seeks to give it the lowest. The End Users contend that unless the confirmation process provides information as to which package actually flows, the shipper cannot accurately determine the package for which it must pay.

The producers (NGSA and IPAA) support a confirmation standard that would require pipelines to confirm with producers or their agents, rather than the standard discussed at GISB that would have required confirmation with all working interest owners. They contend that confirming with producers will enhance efficiency by eliminating the inefficiency of routing all adjustments through a point operator, as is done today. They also maintain that confirmation with producers will better safeguard commercially sensitive information, because producers will no longer have to route their sensitive nomination information through point operators that may have competing financial or business interests. NGSA maintains that confirmation with producers or their agents would be far less burdensome than confirmation with working interest owners.

While the pipelines generally support the cross-contract ranking standards proposed by the Commission, they contend the Commission should not require pipelines to provide the supplemental contractual information requested by the LDCs or new standards for producer confirmation.[15] They maintain that requiring supplemental information will unnecessarily complicate the confirmation process and the LDCs have not established the need for such information. Enron, for example, contends that the entity-to-entity confirmation standard will help to streamline the confirmation process, but that requiring the provision of supplemental information will defeat the very purpose of attempting to streamline the process. Williston Basin maintains that it understands only a few LDCs seek this supplemental information in order to appease state regulatory authorities and that none of the LDCs on its system require the provision of such information. The pipelines also contend that they are not all in position to confirm gas supplies with individual working interest owners.

3. Establishment of a Technical Conference

All of the commenters find that development of standards for cross-contract ranking could benefit the industry by giving shippers more flexibility in using their capacity. It also appears from the comments that since the standards were debated at GISB, some industry members have clarified or revised their proposals or put forward new proposals. In addition, some of the comments appear to go beyond the limited issue of cross-ranking, but link the cross-contract ranking issue with other issues relating to standardization of the confirmation process.

Given the issues raised and the new proposals included in some of the comments, the Commission needs additional information to determine how best to proceed. It is, therefore, directing staff to convene a technical conference in which the industry and staff can discuss these issues to clarify what is in dispute and to determine if common ground can be found. The technical conference will be transcribed so that the Commission and those who cannot attend can be apprised of the discussion. Staff also will establish a schedule for further comments to be filed based on the discussion at the technical conference.

Among the issues that should be considered at the conference are:

- How confirmation takes place using entity-to-entity confirmation and contract confirmation.
- How package identification currently is used in nomination and confirmation processes.
- How the issues relating to cross-contract ranking differ depending on the nomination model used by the pipeline, i.e, pathed, non-pathed, or pathed non-threaded.
- Whether cross-contract ranking can be achieved efficiently without entity-to-entity confirmation.
- Whether verification of a shipper's contractual priority needs to occur on a daily basis through the confirmation process or whether priority can be verified in other ways, for example, by examining the shipper's contract or using the Index of Customers.
- Whether a uniform resolution of the need for supplemental information is needed or whether this issue can be resolved on a case-by-case basis, for example, by requiring those pipelines that previously provided contract information to continue that practice, while not imposing additional burdens on other pipelines.
- Whether, if confirmation of transportation priority is needed, a priority indicator, as Distribution suggests, would be a reasonably burden-free method of transmitting the information.
- Whether entity-to-entity confirmation has value in simplifying the confirmation process or whether further disaggregation to the gas package identification level is necessary.
- Whether gas package identification would protect customers against the possibility that the seller will allocate all gas supplies to the highest price contract or whether such protection can be better achieved through the contract between buyer and seller. For instance, even if confirmation was at the package identification level, the seller would still rank the most expensive package first.
- Whether the proposal to limit confirmations to producers, rather than working interest owners, meaningfully reduces the confirmation burden.
- Whether producers can use independent third-parties, as opposed to commercially interested point operators, to handle the confirmation process with respect to that information considered the most sensitive.

III. Notice of Use of Voluntary Consensus Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a Final Rule when the agency is seeking to issue or revise a regulation that contains a standard identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this final rule, the Commission is incorporating by reference Version 1.4 (August 31 and November 15, 1999) of the voluntary consensus standards developed by GISB.

IV. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

[14] The GISB standards define a package identifier as "a way to differentiate between discrete business transactions." Nominations Related Standards 1.2.5, 18 CFR 284.12(b)(i).

[15] See Comments by INGAA, Enron, ANR, Columbia Gulf, Kinder Morgan, Koch, Panhandle, Williams, Williston Basin.

The collections of information related to this Final Rule fall under the existing reporting requirements of: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154) and FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174). The following burden estimates are related only to this rule and include the costs of complying with GISB's version 1.4 standards. The burden estimates are primarily related to start-up for implementing the latest version of the standards and data sets and will not be on-going costs.

Public Reporting Burden: (Estimated Annual Burden)

Data collection	Number of respondents	Number of responses per respondent	Estimated burden hours per response	Total annual hours
FERC–545	93	1	38	3,534
FERC–549C	93	1	1,766	164,238

The total annual hours for collection (including recordkeeping) are estimated to be 167,772. The average annualized cost for all 93 respondents is projected to be the following:

	FERC–545	FERC–549C
Annualized Capital/ Startup Costs	$195,996	$9,108,655
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	195,996	9,108,655

In the Notice of Proposed Rulemaking (NOPR), the Commission proposed to adopt a regulation requiring pipelines to permit cross-contract ranking. However, this rule does not adopt that proposed regulation but instead directs staff to convene a technical conference to discuss whether to adopt the proposed regulation. For this reason, the burden estimates have been adjusted to remove the burden included in the NOPR for complying with the Commission's proposed regulation requiring pipelines to permit cross-contract ranking. The burden estimate for FERC–545 is unchanged because the exclusion of cross-contract ranking will not create a significant difference in the original burden estimate for tariff filings. However, the burden estimate for FERC–549C has been reduced to eliminate the burden estimate associated with the cross-contract ranking proposal in the NOPR.

The Commission regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communications of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.4, approved by GISB.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. This information also will be retained for a three year period. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of the Chief Information Officer, phone (202)208–1415, fax (202)208–2425, E-mail mike.miller@ferc.fed.us]; or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone 202–395–3087, fax (202)395–7285].

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[16] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[17] The actions taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[18] Therefore, an environmental assessment is unnecessary and has not been prepared in this final rule.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[19] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

[16] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[17] 18 CFR 380.4

[18] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[19] 5 U.S.C. 601–612.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Implementation Date

Pipelines must implement these regulations on May 1, 2001. Pipelines must file revised tariff sheets to incorporate Version 1.4 of the standards into their tariffs since their tariffs incorporated by reference an older version number.[20] To the extent pipelines have individual tariff provisions based on these standards, pipelines also will have to conform their tariffs to the new standards.[21] The tariff changes must be filed not less than 30 days prior to the date for implementing Version 1.4 of the standards.

IX. Effective Date

These regulations are effective January 10, 2001. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.12

a. Paragraphs (b)(1)(i) through (v) are revised to read as set forth below.

b. In paragraph (b)(2), remove the words "1100 Louisiana, Suite 4925" and add, in their place, the words "1100 Louisiana, Suite 3625".

§ 284.12 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.4, August 31, 1999);

(ii) Flowing Gas Related Standards (Version 1.4, August 31, 1999) with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.4, August 31, 1999);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.4, November 15, 1999) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.4, August 31, 1999).

* * * * *

Note: The following Appendices will not appear in the Code of Federal Regulations

Appendix A

COMMENTS FILED—DOCKET NO. RM96–1–015

Commenter	Abbreviation
Altra Energy Technologies, Inc.	Altra
American Gas Association	AGA
ANR Pipeline Company and Colorado Interstate Gas Company	ANR
Cincinnati Gas & Electric Company, Union Light, Heat and Power Company, and Lawrenceburg Gas Company	Cincinnati
Columbia Gulf Transmission Company	Columbia Gulf
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc	Con Edison
Duke Energy Gas Transmission (Algonquin Gas Transmission Duke Company, East Tennessee Natural Gas Company, and Texas Eastern Transmission Corporation).	Duke
Dynegy Marketing and Trade	Dynegy
El Paso Energy Corporation Interstate Pipelines (El Paso Natural Gas Company, Gulf States Transmission Corporation, Midwestern Gas Transmission Company, Mojave Pipeline Company, Southern Natural Gas Company, and Tennessee Gas Pipeline Company).	El Paso Energy
End User Group (Arizona Public Service Company, The Boeing Company, Defense Energy Support Center, Midland Cogeneration Venture Limited Partnership, Midwest Energy, Inc., Salt River Project, Phelps Dodge Corporation, and Tennessee Valley Authority).	End User Group
Enron Interstate Pipelines	Enron

[20] *See* Texas Eastern Transmission Corporation, 77 FERC ¶ 61,175, at 61,646 (1996) (pipelines incorporating standards by reference in their tariffs must include number and version).

[21] In filing to implement Version 1.4, pipelines need to change all references to GISB standards in their tariffs to Version 1.4. The version number applies to all standards contained in GISB's Version 1.4 Standards Manuals, including standards that have not changed from prior versions.

COMMENTS FILED—DOCKET NO. RM96–1–015—Continued

Commenter	Abbreviation
Independent Petroleum Association of America	IPAA
Interstate Natural Gas Association of America	INGAA
Kinder Morgan Interstate Pipelines (Natural Gas Pipeline Company of America and Kinder Morgan Interstate Gas Transmission LLC).	Kinder Morgan
Koch Gateway Pipeline Company	Koch
National Fuel Gas Distribution Corporation	Distribution
Natural Gas Supply Association	NGSA
Panhandle Eastern Pipe Line Company and Trunkline Gas Company	Panhandle
Williams Gas Pipeline Company (Transcontinental Gas Pipe Line Corporation, Texas Gas Transmission Corporation, Williams Gas Pipelines Central, Inc., Northwest Pipeline Corporation, Cove Point LNG Limited Partnership, and Kern River Gas Transmission Company).	Williams
Williston Basin Interstate Pipeline Company	Williston Basin

Appendix B

Cross-Contract Ranking Standards GISB Considered, But Did Not Adopt

Standards Considered at the November 11, 1999 GISB Executive Committee Meeting

CXKR–1

S1 Proposed Standard 1

Absent mutual agreement to the contrary, the standard level of confirmation should be entity to entity.

S2 Revised Proposed Standard 2

As part of the confirmation and scheduling process between a Transportation Service Provider (TSP) and a Local Distribution Company (LDC), upon request by the LDC, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process necessary for the LDC to meet its statutory and/or regulatory obligations. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID .

S3 Proposed Standard 3

Absent mutual agreement to the contrary between the TSP and the Operator for confirmations at a production location, the TSP should support the fact that the operator will confirm with the TSP to only the upstream entity level. These upstream entities should either confirm or nominate (at the TSP's determination) at an entity level with the TSP.

D1 Proposed Definition 1

Production locations includes wellheads, platforms, plant tailgates (excluding straddle plants) and physical wellhead aggregation points.

S4 Proposed Standard 4

When nominated quantities exceed available capacity, the Transportation Service Provider (TSP) should first utilize its tariff requirements to assign capacity to each service level for each Service Requester (SR). The TSP should then use the SR's provided scheduling ranks to determine how the available quantities should be distributed within a single service level. The SR's provided scheduling ranks (as applicable) should be used as follows:

For reductions identified at or upstream of the constraint location, the order for application of ranks is Receipt Rank (Priority), Upstream Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For reductions identified at or downstream of the constraint location, the order for application of ranks is Delivery Rank (Priority), Downstream Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

S5 Proposed Standard 5

When applying a confirmation reduction to an entity at a location, the Transportation Service Provider (TSP) should use the Service Requester's (SR's) scheduling ranks provided on all nominations for that location and entity to determine the appropriate nomination(s) to be reduced, except where superseded by the TSP's tariff, general terms and conditions, or contractual obligations. The SR's provided scheduling ranks (as applicable) should be used as follows:

For receipt side reductions, the order for application of ranks is Upstream Rank (Priority), Receipt Rank (Priority), Delivery Rank (Priority), and Downstream Rank (Priority).

For delivery side reductions, the order for application of ranks is Downstream Rank (Priority), Delivery Rank (Priority), Receipt Rank (Priority), and Upstream Rank (Priority).

P1 Proposed Principle 1

In order to effectuate cross contract ranking, the level of confirmation at a location should occur at the entity to entity level.

S6 Revised Proposed Standard 6

Transportation Service Providers should utilize Standard 1.3.7 for ranks submitted in a nomination.

CXKR–2

Retain all standards in CXKR–1 with the exception of Standard S2 which would be revised to read as follows:

S2 Amended Revised Proposed Standard 2

As part of the confirmation and scheduling process upon request, the TSP should make available, via EBB/EDM, supplemental information obtained during or derived from the nomination process. Such supplemental information, if available, should include the TSP's Service Requester Contract and, based upon the TSP's business practice may also, on a mutually agreeable basis, include (1) a derivable indicator characterizing the type of contract and service being provided, (2) Downstream Contract Identifier and/or (3) Service Requester's Package ID.

CXKR–3

P1 New Principle

In order to effectuate cross contract ranking, the level of confirmation at a location should occur at the entity-to-entity level.

S1 New Standard

The standard level of confirmation should be entity to entity.

S4 New Standard

When nominated quantities exceed available capacity on a Transportation Service Provider's (TSP's) system, such TSP should first utilize its tariff requirements to assign capacity to each service level for each Service Requester (SR). The TSP should then use the SR's provided scheduling ranks as provided in the SR's nomination to determine how the available quantities should be distributed within a single service level.

The SR's provided scheduling ranks (as applicable) should be used as follows:

For reductions identified at or upstream of the constraint location, the order for application of ranks is Receipt Rank (Priority), Upstream Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For reductions identified at or downstream of the constraint location, the order for application of ranks is Delivery Rank (Priority), Downstream Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

S5 New Standard

When applying a confirmation reduction to an entity (Service Requester (SR)) at a location, the Transportation Service Provider (TSP) should use such SR's scheduling ranks as provided on that SR's nominations at that location to determine the appropriate nominations(s) to be reduced, except where superceded by the TSP's tariff, general terms and conditions, or contractual obligations.

The SR's provided scheduling ranks (as applicable) should be used as follows:

For receipt side reductions, the order for application of ranks is Upstream Rank (Priority), Receipt Rank (Priority), Delivery Rank (Priority), Downstream Rank (Priority).

For delivery side reductions, the order for application of ranks is Downstream Rank (Priority), Delivery Rank (Priority), Receipt Rank (Priority), Upstream Rank (Priority).

[FR Doc. 00–30979 Filed 12–8–00; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 42, 47, 56, 57, and 77

RIN: 1219–AA47

Hazard Communication (HazCom)

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: MSHA is announcing a public hearing regarding the Agency's interim final rule on Hazard Communication and extending the comment period. The hazard communication requirements were published in the **Federal Register** on October 3, 2000 (65 FR 59048). The hearing will be held under section 101 of the Federal Mine Safety and Health Act of 1977.

DATES: The hearing will be held on December 14, 2000. The hearing will last from 9:00 a.m. to 5:00 p.m., but will continue into the evening if necessary. The comment period is extended until December 19, 2000.

ADDRESSES: The hearing will be held at the following location: Department of Labor, Office of Administrative Law Judges Courtroom, 800 K Street N.W., Suite 400N, Washington, D.C.

Comments may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@MSHA.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Mail comments should be clearly identified as such and sent to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Director; MSHA Office of Standards, Regulations, and Variances; phone 703–235–1910.

SUPPLEMENTARY INFORMATION: We request that you notify us of your intention to make an oral presentation prior to the hearing date, but it is not required that you do so. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting a productive hearing, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

A verbatim transcript of the proceeding will be prepared and made part of the rulemaking record. A copy of the hearing transcript will be made available for public review.

MSHA will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of post-hearing comments, the comment period is extended and the record will remain open until December 19, 2000.

Dated: December 7, 2000.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 00–31543 Filed 12–7–00; 1:20 pm]
BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–3B]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is amending its regulatory definition of a "Service" for purposes of the statutory license governing the public performance of sound recordings by means of digital audio transmissions in order to clarify that transmissions of a broadcast signal over a digital communications network, such as the Internet, are not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Procedural History

On March 16, 2000, the Copyright Office published a notice of proposed rulemaking ("NPRM") seeking comment on whether the transmission of an AM/FM radio broadcast signal over the Internet by the broadcaster that originates the AM/FM signal is exempt from copyright liability under the exemption to the digital performance right in sound recordings set forth in section 114 of the Copyright Act, title 17 of the United States Code. 65 FR 14227 (March 16, 2000). The Office initiated this rulemaking proceeding in response to a petition from the Recording Industry Association of America ("RIAA").

In its petition, RIAA asked the Office to adopt a rule "clarifying that a broadcaster's transmission of its AM or FM radio station over the Internet . . . is not exempt from copyright liability under section 114(d)(1)(A)." RIAA also believes that "until the Office rules, the parties will not agree on who qualifies for the Section 114 performance license." Petition at 7.

The Office agreed with RIAA's observation and postponed the pending rate adjustment proceeding, the purpose of which is to set the rates and terms for the public performance of a sound recording by means of digital audio transmissions under the section 114 statutory license and to establish the rates and terms for the making of an ephemeral recording in accordance with the section 112 statutory license. *See* 63 FR 65555 (November 27, 1998); 64 FR 52107 (September 7, 1999). The Office took this action because it recognized that the outcome of the rulemaking would have the effect of deciding whether the rates and terms set in that

proceeding would apply to broadcasters who stream their AM or FM radio stations over the Internet. 65 FR 14227 (March 16 , 2000).

A finding that the section 114(d)(1)(A) exemption covered a digital transmission of an AM or FM radio station made by an FCC-licensed broadcaster, including transmissions made by the broadcaster over the Internet, would likely mean that broadcasters, who are currently parties to the rate adjustment proceeding, would withdraw from the proceeding since the rates and terms to be decided would not apply to any transmission made by an FCC-licensed broadcaster. This, in turn, would narrow the scope of the issues and evidence presented to the CARP.

After the publication of the NPRM, the National Association of Broadcasters ("NAB") filed an action in the U.S. District Court for the Southern District of New York on behalf of its members, asking for a declaratory judgment that nonsubscription simultaneous transmissions of radio broadcasts via the Internet by FCC-licensed broadcasters are exempt from the limited sound recording performance right. *See National Ass'n of Broadcasters* v. *Recording Indus. Ass'n of Am.*, No. 00 Civ. 2330 (S.D.N.Y., filed March 27, 2000). The NAB then moved to suspend the rulemaking proceeding, Docket No. RM 2000–3, until the Court had ruled in this case.

Before making a decision on the merits of the motion to suspend, the Office published a second notice in which it requested comments on whether to grant the motion to suspend the rulemaking proceeding and await the decision of the U.S. District Court for the Southern District of New York. 65 FR 17840 (April 5, 2000).

For the reasons set forth herein, the Copyright Office is denying the NAB's motion to suspend this rulemaking and is announcing a final rule to clarify that a transmission by an FCC-licensed broadcaster of its AM or FM radio broadcast over the Internet is not exempt from the limited public performance right for digital transmissions under section 114(d)(1)(A).

The Commenters

In response to the NPRM, the Office received comments from the following commenters: BroadcastAmerica.com, Inc. ("BroadcastAmerica"); jointly, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. (collectively, the "Performing Rights Organizations"); Digital Media Association ("DiMA"); jointly, Balogh Broadcasting Company, Inc., Big Mack Broadcasting, Inc., Hall Communications, Inc., KSTP-AM, L.L.C., KSTP–FM, L.L.C., LBJS Broadcasting Company, L.P., Lyle Broadcasting Corporation, M&M Broadcasters, Ltd., Rice Capital Broadcasting Inc., Twin Lakes Communications, Inc., Zimmer Broadcasting Company, Inc., Zimmer Communications, Inc., Zimmer Radio of Mid-Missouri, Inc., and ZRG of Illinois, Inc. (collectively, "Broadcasters I"); jointly, AMFM, Inc., Bonneville International Corporation, CBS Corporation, Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corporation, and National Association of Broadcasters (collectively, "Broadcasters II"); State Broadcasters Associations ("State Broadcasters"); Criswell Center For Biblical Studies ("Criswell"); and jointly, The Recording Industry Association of America, Inc., Association for Independent Music, American Federation of Musicians, and American Federation of Television and Radio Artists (collectively, "Copyright Owners"), including a separate memorandum, Copyright Liability of Broadcasters for Webcasting Their AM/FM Radio Signals, prepared by Robert Gorman ("Gorman").

Reply comments were filed by Entercom Communications Corp., and five of the eight commenters: the Copyright Owners; Broadcasters I; DiMA; State Broadcasters; and Broadcasters II.

The Copyright Office's Authority To Conduct This Rulemaking

a. Authority to act. The Copyright Office stated in the NPRM that it initiated this proceeding under the rulemaking authority granted by 17 U.S.C. 702, to "interpret the statute in accordance with Congress" intentions and framework and, where Congress is silent, to provide reasonable and permissible interpretations of the statute." 65 FR 14227, citing 57 FR 3284, 3292 (January 29, 1992). Our authority to act is supported by *Satellite Broadcasting and Communications Ass'n of Am.* v. *Oman*, 17 F.3d 344 (11th Cir. 1994) ("SBCA"), and *Cablevision Sys. Dev. Co.* v. *Motion Picture Ass'n of Am., Inc.*, 836 F.2d 599 (D.C. Cir.), *cert. denied*, 487 U.S. 1235 (1988) ("Cablevision"), where the Eleventh Circuit and the D.C. Circuit expressly acknowledged the Office's authority to provide reasonable interpretations of the cable statutory license. *See*, *SBCA*, 17 F.3d at 347 ("The Copyright Office is a federal agency with authority to promulgate rules concerning the meaning and application of section 111"); *Cablevision*, 836 F.2d at 608–09(same). *See also*, *DeSylva* v. *Ballentine*, 351 U.S. 570, 577–78 (1956)(recognizing that Copyright Office's interpretation of the Copyright Act should ordinarily receive deference).

Most of the commenters do not challenge the Office's rulemaking authority in this proceeding. However, the Broadcasters suggest that the Office may be without authority to interpret the extent of the section 114(d)(1)(A) exemption. They argue that the interpretation of section 114(d)(1)(A) sought by RIAA in this proceeding—whether copyright liability does or does not attach to transmissions of radio stations over the Internet—is very different from previous rulemaking proceedings of the Office interpreting provisions of other compulsory licenses.

Specifically, the Broadcasters submit that *SBCA* and *Cablevision* are poor precedent for supporting rulemaking authority in this case. In *SBCA*, the Office determined that satellite carriers were not eligible for the cable compulsory license for their retransmission of over-the-air broadcast signals, thereby subjecting these retransmissions to copyright owners' exclusive rights. In *Cablevision*, the Office interpreted the meaning of the term "gross receipts" as it appeared in the section 111 cable compulsory license. According to the Broadcasters, the copyright liability of satellite carriers and cable systems was already established, and the Office was merely sorting out the terms of a compulsory license. In this proceeding, however, the Office is being called upon to decide whether any copyright liability exists at all for broadcasters who stream their radio signals over the Internet. If, according to the Broadcasters, there is no copyright liability for such activity because it is exempted by section 114(d)(1)(A), then the Copyright Office has no jurisdiction over that activity because it does not implicate the copyright laws. The Broadcasters conclude that the Copyright Office does not have any authority to address the status of broadcaster transmissions of radio signals over the Internet until such time as a federal court decides the issue.

If the Broadcasters' position is accepted, the Copyright Office's ability to administer section 114 of the Copyright Act will be frustrated. Section 114 treats the public performance of sound recordings by digital audio transmissions in one of three ways: the performance is either exempt from copyright liability, subject to copyright

owners' exclusive rights, or subject to statutory licensing. The Library of Congress and the Copyright Office are charged with conducting a copyright arbitration royalty panel ("CARP") proceeding to set the rates and terms of the statutory license, and the Library has already begun the CARP process (and stayed its initiation pending the resolution of this rulemaking proceeding). Many broadcasters, and the NAB, have stayed out of the proceeding on the grounds that they qualify for the section 114(d)(1)(A) exemption. If these parties are not covered by the exemption (as the Office is determining today), they should be afforded the opportunity to participate in the CARP proceeding.[1] CARP proceedings are adversarial in nature, making it critical that the interests of all affected copyright owners and users are represented in the proceeding so that the CARP has a full and complete evidentiary record on which to render its determination. Without such information, the CARP cannot render a complete and accurate decision, thereby compromising the efficiency of the section 114 license.

Under the Broadcasters' approach, copyright users of sound recordings can effectively impede a CARP proceeding by claiming that their activities are not implicated by the proceeding until a federal court determines that they are. The Copyright Office would then be forced either to go forward with the CARP proceeding with an incomplete record, or to postpone the proceeding until after a ruling has been obtained from a federal court. If no ruling is obtained through private litigation, or conflicting decisions are handed down by the federal courts, the Library may not be able to have a CARP at all. The Copyright Office concludes that Congress intended no such result.

Broadcasters distinguish the *SBCA* case by observing that the issue therein was whether a satellite carrier was a "cable system" for purposes of Section 111 compulsory licensing. In contrast, according to Broadcasters, the issue here is whether their "particular conduct falls under the purview of the Copyright Act." Broadcasters II Reply, at 9–11. They argue that because the activities of the satellite carriers in SBCA related to "particular conduct admittedly implicating copyright liability," the Office had the power to determine whether that conduct was within the scope of the cable compulsory license. But they contend that where the activity is exempt under a specific statutory provision, the conduct may not be considered further by the Office under its authority to promulgate regulations to administer a compulsory license, the scope of which, but for the exemption, would otherwise include such activity.

The Office finds this distinction artificial and unpersuasive. Here, as in SBCA, the issue is whether a particular type of activity falls within the scope of a statutory compulsory license. The fact that Broadcasters claim to be exempt from the performance right for sound recordings does not deprive the Office of the ability to determine whether they are subject to the section 114 compulsory license. In order to determine whether broadcasters transmitting performances of their broadcast signals over the Internet are subject to the compulsory license, it is necessary to address their claim that they enjoy the exemption under section 114(d)(1)(A) when they engage in that activity. If they are exempt, then the inquiry proceeds no further. If they are not exempt, then there appears to be no dispute that their activity is subject to the section 114(f) compulsory license. Broadcasters cite absolutely no authority for the proposition that an agency may not determine whether conduct falls within a particular regulatory scheme administered by the agency when a claim of exemption is made by the party whose conduct is in question.[2]

In sum, the Copyright Office concludes that it does possess the authority to conduct this rulemaking, based on our responsibility to conduct a CARP proceeding to establish rates and terms for the section 114 license, as provided in section 114 itself and chapter 8 of the Copyright Act, and the Office's general rulemaking authority granted by section 702 of the Act.

b. Advisability of acting. Most of the comments address the advisability of the Copyright Office's undertaking of this rulemaking proceeding. Not surprisingly, those commenters representing broadcasters favor postponement or cancellation of this proceeding, pending the outcome of the NAB action in the Southern District of New York. For the reasons described below, the Office believes that it is appropriate to exercise its authority and resolve this rulemaking proceeding now.

First, the Copyright Office disagrees with the assertion that a federal court is better suited at this point to determine whether broadcaster transmissions over the Internet are exempted by section 114(d)(1)(A) of the Copyright Act. We do not question the competence or expertise of the United States District Court for the Southern District of New York to interpret the copyright laws, and ultimately this issue may be resolved by the courts following the Office's ruling. But in the first instance, where the law is complex and requires clarification, the general policy is to allow the agency to complete its action, particularly "where the function of the agency and the particular decision sought to be reviewed involve exercise of discretionary powers granted the agency by Congress, or require application of special expertise." *Miss America Organization* v. *Mattel, Inc.*, 945 F.2d 536, 540 (2nd Cir. 1991), citing *McKart* v. *United States*, 395 U.S. 185 (1969); *see also, Cablevision*, 836 F.2d at 608 ("The Copyright Office certainly has greater expertise in such matters than do the federal courts.")

Moreover, the Office has a long and extensive history of administering and interpreting the Copyright Act, especially the statutory licensing provisions of the Copyright Act. *See, e.g.*, 49 FR 13029 (April 2, 1984)(definition of gross receipts under section 111 license); 57 FR 3284 (January 29, 1992)(definition of a cable system under section 111 license); 62 FR 18705 (April 17, 1997)(establishing filing regulations for SMATV systems under section 111). The Office also produced for Congress two studies on the advisability of adopting a performance right for sound recordings. Copyright Implications of Digital Audio Transmission Services: A Report of the Register of Copyrights (1991); Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary House of Representatives, 95th Cong., Performance Right in Sound Recordings (Comm. Print 1978). And the Register of Copyrights testified before both the Senate and House of Representatives on the legislation that amended sections 106 and 114. *See* Digital Performance Right in Sound Recordings Act of 1995: Hearings on S. 227 Before the Senate Comm. On the Judiciary, 104th Cong., (March 9, 1995); Digital Performance Right in Sound Recordings Act of 1995: Hearings on H.R. 1506 Before the Subcomm. On Courts and Intellectual

[1] Any broadcaster who wishes to participate and has not yet filed a notice of intention to do so in the pending proceeding should file such notice in accordance with the requirements set forth in a separate **Federal Register** notice addressing this issue.

[2] We note as well that the Broadcasters' distinction does not dispositively adjudicate the substantive rights of copyright users. In both situations, a party aggrieved by a decision of the Office can seek judicial review. Satellite carriers disagreed with the Office's negative determination of their eligibility for the section 111 license and brought the *SBCA* litigation. If broadcasters do not agree with the Office's determination in this proceeding, they likewise can seek judicial review.

Property of the House Comm. On the Judiciary, 104th Cong. (June 28, 1995). Thus, we believe we are well-suited to interpret section 114, including the extent of the section 114(d)(1)(A) exemption.

Second, not only have the commenters to the NPRM not cited any authority that the Copyright Office must defer to a federal court action, but they have not cited any cases where a government agency has deferred action to a federal court a matter before the agency. *Goya Foods, Inc.* v. *Tropicana Prods, Inc.*, 846 F.2d 848 (2d Cir. 1988), and *Nader* v. *Allegheny Airlines, Inc.*, 426 U.S. 290 (1976) are cited by the Broadcasters for the proposition that the matter of the section 114(d)(1)(A) exemption "lies within the traditional realm of judicial competence." *Goya*, 846 F.2d at 851. Neither of these cases, however, involved a government agency deferring judgment to a federal court on a matter clearly within the agency's jurisdiction. In fact, both cases involved just the opposite; a court's decision not to stay a judicial proceeding pending the resolution of an agency proceeding. There is not, therefore, any legal authority that compels or counsels the Office to stay this proceeding in deference to the court in New York.

Third, there is a need to resolve the status of broadcast transmissions over the Internet for purposes of the CARP proceeding to establish rates and terms for the section 114 statutory license as quickly as possible. As discussed above, the success of a CARP proceeding depends upon a full and complete record. This means that all parties who are potentially subject to the section 114 license must be identified and given the opportunity to participate in the CARP proceeding. The NAB/RIAA litigation in the Southern District of New York may not be resolved for several years,[3] which leaves the Copyright Office two undesirable choices: postpone the CARP until that litigation is resolved, or proceed with what we believe would be an insufficient record and receive an incomplete decision from the CARP. Neither of these choices is acceptable; therefore, the Office is now deciding whether the simultaneous transmission of an over-the-air radio broadcast transmission made by an FCC-licensed broadcaster over the Internet is exempt from the digital performance right.

Fourth, NAB has sought a declaratory judgment from the New York district court and is not currently being sued for copyright infringement. There is considerable question whether NAB has presented the district court with a live case and controversy, and the RIAA has sought dismissal of the case on jurisdictional grounds. If the suit is dismissed, there will be no opportunity for a court to interpret the meaning of the section 114(d)(1)(A) exemption, at least until such time as a copyright infringement action is brought against a broadcaster for transmitting over-the-air radio broadcasts on the Internet. The Office needs to act now to move the CARP proceeding forward.

Finally, even if the New York district court rules, and the case is appealed through the Second Circuit, that is still not the final word from the federal court system. Other suits may be brought in other federal circuits, creating the potential for conflicting determinations. Thus, we believe it makes far greater sense for the Copyright Office to address the status of broadcast transmissions over the Internet and the section 114(d)(1)(A) exemption, given that it is the expert agency entrusted with the authority to interpret the meaning of the provisions of the Copyright Act.

Scope of the Section 114(d)(1)(A) Exemption

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act ("DPRA"), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform sound recordings publicly by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt, noninteractive, digital subscription transmissions, 17 U.S.C. 114(f), and an exemption for certain nonsubscription transmissions. 17 U.S.C. 114 (d)(1)(A)(i)–(iii) (1995).

Congress passed the DPRA in response to the growth in the use of digital technology to provide recordings with superior sound quality (e.g., digital phonorecord deliveries) and the growth of digital transmission services that could offer a consumer a digital transmission of a particular sound recording on demand. Congress realized that these advancements offered new and better ways to distribute music to the consumer, but at the same time, it recognized that the current law was inadequate to protect the interests of the copyright owners whose livelihoods depend upon the revenues generated from the sales of their works. Thus, Congress created a limited performance right in sound recordings. S. Rep. No. 104–128, at 14 (1995) (hereinafter "1995 Senate Report").

In drafting the DPRA, Congress tried to balance the interests of the music industry,[4] traditional users of sound recordings,[5] and those who wished to utilize the new technologies to make transmissions of sound recordings. The expressed intent of Congress in passing the Act was "to provide copyright holders of sound recordings with the ability to control the distribution of their product by digital transmissions, without hampering the arrival of new technologies, and without imposing new and unreasonable burdens on radio and television broadcasters, which often promote, and appear to pose no threat to, the distribution of sound recordings." 1995 Senate Report at 15. This change, however, was not meant to alter or upset in any way the longstanding relationship between the record industry and broadcasters. Broadcasters II at 15, citing 1995 Senate Report, at 9; *accord* H.R. Rep. No. 104–274, at 6 (1995) (hereinafter "1995 House Report").

To strike the proper balance between these parties, Congress created three exemptions for nonsubscription transmissions, including an express exemption for a nonsubscription broadcast transmission. 17 U.S.C. 114(d)(1)(A)(i)–(iii)(1995). It is the scope of this exemption, which has been debated since the passage of the DPRA, *see* Reply Comments of the National Association of Broadcasters at 9–12 (dated June 20, 1997), submitted in Docket No. RM 97–1, that is the subject of this proceeding.

Broadcasters take a broad view of the exemption. Their position is that any transmission made by an FCC-licensed broadcaster, whether made over-the-air or over the Internet, falls within the scope of the section 114(d)(1)(A) exemption. Not surprisingly, Copyright Owners and DiMA take a different view and interpret the scope of the exemption more narrowly. Their position is that a

[3] At the time this **Federal Register** notice was prepared, RIAA's motion to dismiss NAB's claims was still pending in the court, and no further motions have been filed. It seems highly unlikely that the court will resolve the merits of the declaratory relief action in the near future.

[4] "[T]he legislation is a narrowly crafted response to one of the concerns expressed by representatives of the music community, namely that certain types of subscription and interactive audio services might adversely affect sales of sound recordings and erode copyright owners' ability to control and be paid for the use of their work." 1995 Senate Report at 15.

[5] Prior to the passage of the DPRA, FCC-licensed broadcasters, cable systems and satellite systems all transmitted or retransmitted sound recordings in their programming without incurring any copyright liability for the public performance of a sound recording. Congress, in acknowledging the promotional value to the record companies that flows to them through advertiser-supported, free over-the-air broadcasting, included specific exemptions in the law from the digital performance right for these users. *See* 17 U.S.C. 114(d)(1)(A), (B) and (C).

transmission of a radio signal over the Internet, generally referred to as a webcast, is subject to the copyright owner's public performance right, even when the transmission is made by an FCC-licensed broadcaster and is identical to an over-the-air transmission. *See* 17 U.S.C. 106(6). They further argue that Congress could not possibly have meant to exempt anything other than over-the-air broadcasts in the DPRA, because Congress had not even yet considered transmissions of sound recordings over the Internet and how they fit into the statutory scheme. This is a critical point, because the scope of the exemption did not change when Congress amended section 114 in 1998 with the passage of the DMCA.

To resolve this question, we examine the legislative history of the DPRA and the DMCA to discern what Congress intended to do and when it intended to do it. From this examination, it is clear that in 1995, Congress' focus was not on Internet transmissions of sound recordings, but rather on the emerging interactive services, *e.g.*, the pay-per-listen, audio-on-demand, or "dial-up" services for a particular recording or artist, and the existing noninteractive subscription services that offered nearly continuous play of music through cable and satellite services. *See* 1995 Senate Report at 22.

Consideration of Internet services came later once it became clear that the DPRA did not adequately address their operations. The House Manager's Report for the DMCA makes this point clearly:

> At the time the DPRSRA [Digital Performance Right in Sound Recordings Act] was crafted, Internet transmissions of music were not the focus of Congress' effort. Thus, while the DPRSRA created a statutory license for certain subscription services that existed at the time, not enough was known about how nonsubscription music services would evolve on the Internet or in other digital media. However, given the proliferation and evolution of such services as well as the licensing complexities described above, it is now appropriate to address the licensing of nonexempt nonsubscription digital audio transmissions.

Staff of the House of Representatives Comm. on the Judiciary, 105th Cong., 2d Sess., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998 at 51 (Comm. Print, Serial No. 6, 1998) (hereinafter "House Manager's Report").

It was during the DMCA debate in 1998 that Congress focused on the need to clarify how the law applied to the transmission of a sound recording by a noninteractive, nonsubscription service streaming music over the Internet. These services, now known in the industry as webcasters, had argued that they, like the broadcasters, were non-infringing users because noninteractive, nonsubscription transmissions were exempt under section 114(d)(1)(A)(i) (1995). The record industry did not agree, arguing that the transmissions were subject to the newly created digital performance right. DiMA at 4.

Congress revisited the issue and, ultimately, amended sections 114 and 112 to clarify "that the digital sound recording performance right applies to nonsubscription digital audio services such as webcasting, addresses unique programming and other issues raised by Internet transmissions, and creates statutory licensing to ease the administrative and legal burdens of constructing efficient licensing systems." House Manager's Report at 50.

These changes were part of the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105–304, which among other things, amended section 114 by creating a new statutory license for nonexempt eligible nonsubscription transmissions (*e.g.*, webcasting) and nonexempt transmissions by preexisting satellite digital audio radio services to perform sound recordings publicly in accordance with the terms and rates of the statutory license. 17 U.S.C. 114(f)(1998). The DMCA also amended section 114(d)(1)(A) to "delete two exemptions that were either the cause of confusion as to the application of the DPRA to certain nonsubscription services (especially webcasters) or which overlapped with other exemptions (such as the exemption in subsection (A)(iii) for nonsubscription broadcast transmissions). The deletion of these two exemptions [was] not intended to affect the exemption for nonsubscription broadcast transmissions." 1998 House Report at 80.

The question, however, is what constitutes a nonsubscription broadcast transmission for purposes of the DPRA, since its meaning remained unchanged when Congress amended section 114 in 1998. Both Copyright Owners and DiMA maintain that a "nonsubscription broadcast transmission" is nothing more than a traditional over-the-air broadcast made by an FCC-licensed broadcaster. Broadcasters disagree and argue that the definition of a "broadcast transmission" for purposes of the section 114 license is not so limited, but includes all transmissions of an AM or FM radio signal, even those over the Internet, if made by the FCC-licensed broadcaster.

In answering this question, Broadcasters and Copyright Owners each argue that the statutory language and licensing scheme, the legislative histories of the DPRA and the DMCA, and public policy considerations support its respective position.

Statutory Language and Legislative History

a. Statutory definitions. The DPRA established three exemptions from the digital performance right for certain nonsubscription transmissions, including an express exemption for a "nonsubscription broadcast transmission." It read, in relevant part, as follows:

> (1) Exempt Transmissions and Retransmissions.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—
>
> (A)(iii) a nonsubscription broadcast transmission.
>
> 17 U.S.C. 114(d)(1)(A)(iii) (1995).

Broadcasters assert that the statutory language is clear and unambiguous on its face and that where this is so, one need not resort to the legislative history to discern the meaning of the statutory terms. Broadcasters I at 7; Broadcasters II at 18. Broadcasters II also rely on the well-established proposition that where a term is defined by the statute, an agency and the courts are constrained to adhere to this definition when interpreting the provisions of the act, citing *Fox* v. *Standard Oil*, 294 U.S. 87, 95–96 (1935).

Using these principles, the Broadcasters analyze the statutory definitions of the relevant terms set forth in section 114(j) to determine whether a webcast of an AM/FM radio station's programming is exempt. These terms were defined in the DPRA as follows:

> A "broadcast" transmission is a transmission made by a terrestrial broadcast station licensed as such by the Federal Communications Commission.
>
> 17 U.S.C. 114(j)(2) (1995).
>
> A "digital audio transmission" is a digital transmission as defined in section 101, that embodies the transmission of a sound recording. This term does not include the transmission of any audiovisual work.
>
> 17 U.S.C. 114(j)(3)((1995).
>
> A "nonsubscription" transmission is any transmission that is not a subscription transmission.
>
> 17 U.S.C. 114(j)(5) (1995)
>
> A "transmission" includes both an initial transmission and a retransmission.
>
> 17 U.S.C. 114(j)(9) (1995).[6]

[6] The definition "transmission" was amended in the DMCA. It now reads: "A 'transmission' is either an initial transmission or a retransmission." 17 U.S.C. 114(j)(15) (1998).

All commenters agree that the statutory definitions for a "transmission," a "digital audio transmission," and a "nonsubscription transmission" are clear and that the transmissions in dispute qualify as nonsubscription, non-interactive, digital audio transmissions for purposes of the DPRA. *See* Broadcasters II at 20; Gorman at 28 n.89. The dispute lies with the definition of a "broadcast transmission." Broadcasters argue that the pivotal element in the definition is the designation of the nature of the entity making the transmission—not the method of the transmission. In other words, the fact that an FCC-licensed broadcast station makes the transmission is dispositive. Thus, Broadcasters reason that any transmission made by a terrestrial broadcast station licensed by the FCC, whether disseminated over-the-air or transmitted over the Internet, fits the statutory definition of a "nonsubscription broadcast transmission" and therefore, is expressly exempt under the section 114(d)(1)(A)(iii) (1995) exemption and remains exempt under the current section 114(d)(1)(A) (1998) provision. Broadcasters I Reply at 6; Broadcasters II Reply at 17. Furthermore, they contend that transmissions made by FCC-licensed broadcasters "do, in fact, comply with FCC content requirements to promote the public interest and serve the local community." Broadcasters II Reply at 17.

In creating a safe harbor for radio broadcasts, Congress identified key factors that "place[d] such programming beyond the concerns that animated the creation of the limited public performance right in sound recordings in Section 106(6). Specifically, radio programs that (1) are available without subscription; (2) do not rely upon interactive delivery; (3) provide a mix of entertainment and non-entertainment programming and other public interest activities to local communities to fulfill FCC licensing conditions; (4) promote, rather than replace, record sales; and (5) do not constitute "multichannel offerings of various music formats.'"' Broadcasters II at 26–27 (footnote omitted), citing 1995 Senate Report at 15. Broadcasters argue that these characteristics apply equally to the transmission of a local radio broadcast signal whether transmitted over-the-air or streamed via the Internet; and consequently, all transmissions of radio broadcasts should be exempt without regard to the method of transmission. Copyright Owners and DiMA disagree with the Broadcasters' approach. They argue that the exemption for a "nonsubscription broadcast transmission" was adopted in order to shelter broadcasters from the new digital performance right, if and when they converted their over-the-air signals from an analog to a digital format. Gorman at 9; DiMA at 3. In direct opposition to the Broadcasters' approach, Copyright Owners focus on how the word "terrestrial" and the phrase "licensed as such by the FCC" are used in the definition of a "broadcast station." *See also*, DiMA Reply at 2.

They contend that use of the word "terrestrial" limits the exemption to over-the-air transmissions made by a broadcast station and, thus, by implication, excludes from the exemption any nationwide transmissions by radio stations that broadcast via satellite. Gorman at 29. They point out numerous citations in the legislative history which make it abundantly clear that Congress meant to protect traditional over-the-air broadcast transmissions. For example,

> The sale of many sound recordings and the careers of many performers have benefitted considerably from airplay and other promotional activities provided by both noncommercial and advertiser-supported, free over-the-air broadcasting. * * * H.R. 1506 does not change or jeopardize the mutually beneficial economic relationship between the recording and traditional broadcasting industries.
>
> 1995 House Report, at 13 (emphasis added).
>
> [F]ree over-the-air broadcasts are available without subscription, do not rely on interactive delivery, and provide a mix of entertainment and non-entertainment programming and other public interest activities to local communities to fulfill a condition of the broadcasters' license. The Committee has considered these factors in concluding not to include free over-the-air broadcast services in the legislation.
>
> *Id.* (emphasis added).
>
> The classic example of such an exempt transmission is a transmission to the general public by a free over-the-air broadcast station, such as a traditional radio or television station, and the Committee intends that such transmissions be exempt regardless of whether they are in a digital or nondigital format, in whole or in part.
>
> 1995 Senate Report at 19 (emphasis added).

They also argue that use of the phrase "licensed as such by the FCC" "reflects Congressional intent to limit the scope of the exemption to those activities for which a broadcast station needs an FCC license." Gorman at 29 (footnote omitted). The focus here is on the nature of the transmission and not the characterization of the entity making the transmission. From this perspective, the only transmissions which are exempt under section 114(d)(1)(A) are those made by an FCC-licensed broadcaster under the terms of its license. In general, such transmissions are over-the-air transmissions made within the broadcaster's local service area. Webcasts of AM/FM radio signals are not so limited and, therefore, do not fit the statutory definition of a "broadcast" transmission for purposes of the DPRA. *Id.* at 29–30; *see also* DiMA Reply at 2.

Copyright Owners acknowledge that their interpretation of the exemption is narrower than the Broadcasters' but argue that the exemption for "broadcast transmissions" must be construed in this manner because the statute provides a complete exemption from the digital performance right in sound recordings. In making this argument, they rely upon the general rule of statutory construction that exemptions must be construed narrowly, "and any doubt must be resolved against the one asserting the exemption," in order to preserve the purpose of the provision. *Tasini* v. *New York Times Co.*, 206 F.3d 161, 168 (2nd Cir. 2000). Specifically, they argue that a narrow interpretation of the exemption is particularly warranted in this context "where denying the exemption would still leave AM/FM Webcasts eligible for a statutory license (rather than subjecting them to full copyright liability)." Gorman at 19.

Broadcasters dispute Copyright Owners' contention that it is appropriate to read the exemption for broadcast transmission so narrowly. They claim that Copyright Owners ignore Congress' intent to construe the digital performance right narrowly and limit the right only to certain digital transmissions of sound recordings. Broadcasters II Reply at 24–25. Broadcasters argue further that it is inconceivable that after refusing for decades to grant copyright owners of sound recordings a sound recording performance right, Congress "intended to sweep within a newly-created and narrowly-circumscribed performance right broadcaster transmissions over the Internet of their broadcast programming." Broadcasters II Reply at 21 (emphasis omitted).

Historically, the Copyright Office construes limitations on copyright narrowly, especially those rights constrained by a compulsory license. *See* 49 FR 14944, 14950 (April 16, 1984) and 57 FR 3284, 3293 (January 29, 1992). This tenet is fully consistent with the rules of statutory construction which require "[s]tatutes granting exemptions from their general operation [to] be strictly construed, and any doubt must be resolved against the one asserting the exemption." *See* 73 Am. Jur. 2d 313 (1991); *Tasini*, *supra*.

Broadcasters argue that this precept favors their interpretation, asserting that the newly created digital performance right was narrowly crafted and not meant to disturb the traditional broadcasting system in place at the time the DPRA was passed. But once created, the right is to be defined by reference to the statute, and there is no reason to depart from the general rule that the exemption to the right must be narrowly construed. The key to determining the scope of the exemption is an understanding of the meaning of the term "broadcast transmission."

As previously discussed, Broadcasters assert that the exemption from the digital performance rights applies not only to traditional over-the-air broadcast transmissions, but also to transmissions of these signals over the Internet. The Broadcasters interpret the exemption in the broadest possible manner based upon their reading of the statutory definition for a "broadcast transmission" which defines the transmission solely on the basis that it was made by an FCC-licensed broadcaster. They argue that the language is clear and unambiguous and so the analysis ends here.

The Copyright Office does not agree. The use of the descriptive phrase "terrestrial broadcast station licensed as such by the Federal Communications Commission" involves much more than the mere designation of a particular entity. In fact, as the Copyright Owners argue, Congress appears to have chosen these words not only as a convenient way in which to identify the entity entitled to make a broadcast transmission, but also as a way to circumscribe which actions the entity may legally undertake within the scope of the section 114 exemption. Even if the Broadcasters' reading of the definition is a plausible one, the Copyright Owners' more limited interpretation, seconded by DiMA, is at least equally plausible. For this reason, the Office turns to the relevant legislative history in order to understand how Congress intended the law to operate.

Turning to the legislative history is appropriate where, as here, the precise meaning is not apparent and a clear understanding of what Congress meant is crucial to an accurate determination of how Congress intended the digital performance right and the statutory scheme to operate. *See also*, 57 FR 3284, 3293 (1992). Consequently, we place great weight on the passages in the 1995 House and Senate Reports which discuss and characterize broadcast transmissions.

As noted above, Congress used the descriptive term "over-the-air" frequently to identify those broadcasts it sought to protect under the exemption. Such transmissions are made in accordance with the terms of the FCC license issued to the broadcaster. If Congress had discussed or referenced any other type of transmission made by an FCC-licensed broadcaster, we might be more inclined to support the Broadcasters' interpretation of the statutory definition. This is not the case, and the Office concludes that Congress used the phrase "licensed as such" to serve two purposes. First, it identifies the entity entitled to make a broadcast transmission under an exemption to the digital performance right; and second, it specifies which transmissions made by the broadcaster are exempt, that is, those transmissions made over-the-air by the broadcasting entity under the terms of the FCC license.

b. Additional exemptions. Copyright Owners do not limit their analysis of the statutory language to the statutory exemption under consideration. This is only their starting point. They continue their analysis of section 114 under a second well-established rule of statutory construction which requires interpretation of each provision in a section in such a way as to produce a harmonious whole. 2A Sutherland, Stat. Const. § 46.05 (6th ed. 2000); *see also* 57 FR 3284, 3292 (1992).

Of particular interest are the exemptions for a "retransmission of a radio station's broadcast transmission" set forth in sections 114(d)(1)(B) and (C) (1995). Section 114(d)(1)(B) restricts retransmissions to a 150-mile radius from the site of the radio broadcast transmitter, to the local communities served by the retransmitter, and those carried by a cable system or a noncommercial educational broadcast station. Similarly, section 114(d)(1)(C) exempts certain incidental transmissions, transmissions to and within business establishments, and those retransmissions made to deliver licensed programming to the user.

Copyright Owners argue that these provisions merely reflect congressional intent to grandfather existing retransmission services at the time of the passage of the DPRA. Gorman at 10; DiMA Reply at 2–3; *see also*, 1995 Senate Report at 22 (noting that a retransmission over the Internet which is being used to facilitate an exempt transmission or retransmission, would not qualify as an "incidental" retransmission under section 114(d)(1)(C)(1)).

Similarly, DiMA argues that Congress never intended to exempt broadcast retransmissions via the Internet; otherwise it would have enlarged these exemptions when it passed the DMCA, which it chose not to do. *See* DiMA at 5. In addition, DiMA argues that Congress would not have limited the exemption for a "retransmission" of a "broadcast transmission" by differentiating between radio transmissions made by terrestrial and non-terrestrial broadcast technologies, if it was content with exempting any transmission made by an FCC-licensed broadcaster. DiMA Reply at 2. Copyright Owners concur with DiMA on this point. In addition, they argue that the definition of an "eligible nonsubscription transmission" supports this interpretation because it includes retransmissions of broadcast signals. Had Congress meant to exempt any and all transmissions of a broadcast signal, it would not have included this wording in the definition of an "eligible nonsubscription transmission," the newly created class of transmissions subject to the statutory license. DiMA Reply at 3.

Broadcasters counter the Copyright Owners' interpretation in regard to these exemptions, noting an exception to the 150-mile limitation for nonsubscription retransmissions by "a terrestrial broadcast station." They also suggest that the limitations on retransmissions were directed only to those made by third parties, and not to a simultaneous transmission made directly by the FCC-licensed broadcaster. Broadcasters II Reply at 25. In addition, Broadcasters stress that a transmission of a radio program, even via the Internet, serves the needs and interests of the local community as required under the FCC license. For these reasons, Broadcasters argue that Congress created a specific exemption for certain retransmissions of nonsubscription radio broadcast transmissions, including those that are transmitted "by a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission."

While it is clear that a broadcast transmission is exempt, it is equally clear that a retransmission of a radio signal (though technically a transmission)[7] is exempt only under certain circumstances. This fact alone undermines the Broadcasters' assertion that any transmission made by an FCC-licensed broadcaster is immediately and totally exempt. In addition, their

[7] A "transmission" is either an initial transmission or a retransmission. 17 U.S.C. 114(j)(15).

specific arguments on this point do not withstand scrutiny.

First, the exception to the 150-mile limitation is only for retransmissions made by "a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission." 17 U.S.C. 114(d)(1)(B)(i)(I). Again, the fact that the entity making the retransmission must be licensed by the FCC sets limits on how far each retransmission can reach. In no case, however, could these retransmissions parallel the reach of the Internet or a retransmission made by a satellite. Second, the suggestion that the retransmissions discussed in section 114(d)(1)(B) refer only to those made by third parties and not to simultaneous retransmissions made by the originating broadcaster is groundless. There is no such distinction set forth in the statute. And finally, we see no significance to the fact that the retransmission of a radio signal may meet the license requirements for service to a local community, when in fact such a transmission exceeds the geographical limits established for the broadcast under the FCC license.

c. Expansion of the statutory license. Copyright Owners and DiMA contend that the original licensing scheme was conceived without any significant thought to the transmission of sound recordings by means other than the conventional over-the-air transmissions in use at the time. Copyright Owners at 12–13; DiMA at 4; *See also* House Manager's Report at 51. This became an obvious problem with the growth of the Internet and the rapid increase in the use of the new streaming technology to transmit sound recordings over the Internet.[8]

Copyright Owners contend that, in order to address this problem, Congress made a significant change to section 114 when it passed the DMCA. For example, it amended section 114(d)(2) to extend the statutory license to "eligible nonsubscription transmissions" and defined the term to include retransmissions of broadcast transmissions. 17 U.S.C. 114(j)(6). Copyright Owners argue that these changes support its position that the statutory scheme militates against exempting transmissions of AM/FM radio signals over the Internet.

First, they note that when Congress expanded the statutory license, it specifically considered the needs of the emerging services that wanted to stream sound recordings over the Internet. *See* 1998 House Report at 80, 82 and 84. They then claim that Congress never "intended to single out any class of webcasters for special treatment, or for some webcasters to be exempt and others to be liable." Gorman at 24. Instead, they argue that Congress amended the DPRA to make all webcasters, including those who are also FCC-licensed broadcasters, eligible for the statutory license.

In addition, they note that in the case where the transmitting entity does not have the right or ability to control the programming of the broadcast station, special terms apply. Congress made these transmissions subject to the compulsory license but chose not to make these transmissions immediately subject to certain restrictions otherwise applicable to a nonexempt, nonsubscription transmission, except in the case where the broadcast station regularly violates the restriction and the copyright owners give notice to the service making the retransmission. *See* 17 U.S.C. 114(d)(2)(C)(i)–(iii), (ix).

Copyright Owners argue that "[t]his language implies that where the transmitter can control the content of the signal, [it] must meet the conditions of the statutory license. Because the content of AM/FM signals can be controlled by the broadcaster, this suggests that Congress intended broadcast transmissions to be subject to the statutory license." Gorman at 25–26 (footnotes omitted). Otherwise, as DiMA points out, "why would Congress have imposed licensing and 'notice and takedown' requirements on third parties that retransmit radio broadcasts, if the broadcaster itself could transmit the same programming over the Internet without a license and without restriction?" DiMA Reply at 4 (footnote omitted).

The Copyright Office believes that the narrowly drawn safe harbors for retransmissions of radio signals illustrate Congressional intent to distinguish between a traditional over-the-air broadcast transmission of an AM/FM radio signal and a retransmission of that signal. Even though the statutory definition of a transmission includes both an initial transmission and a retransmission, Congress clearly chose to treat retransmissions of a radio signal differently. "Retransmissions of radio station broadcast transmissions * * * are exempt only if they are not part of an interactive service and fall within certain specified categories." 1995 Senate Report at 19 (emphasis added). These restrictions limit the reach of a retransmission of an AM/FM radio signal and neither suggest nor allow for retransmission of an AM/FM radio signal to a national audience. Had Congress meant to exempt without limitation a further broadcast of a radio station's signal beyond the limits prescribed by its FCC license, it would not have restricted its retransmissions beyond the 150-mile limit to only those entities who make such transmissions under the terms of an FCC license, or limited subsequent retransmissions to the reach of a terrestrial broadcast station, terrestrial translator, or terrestrial repeater. 17 U.S.C. 114(d)(B)(i).

d. Ephemeral recordings. The DMCA amended section 112 to adjust for changes Congress made to section 114. Copyright Owners argue that Congress amended section 112(a) to make clear that a broadcast radio or televison station, licensed as such by the FCC, may make a single ephemeral copy of a sound recording in furtherance of its transmissions within its local service area even when those transmissions are made in a digital format. For purposes of section 112(a)(1), the term "local service area" is used as defined in section 111(f) of the Copyright Act. *See*, H.R. Rep. No. 94–1476, at 103 (1976). This provision limits the geographic reach of the signal and makes clear that it is not subject to worldwide distribution. In addition, Congress created a second statutory license in order to give those entities eligible for a section 114 statutory license and those exempt under section 114(d)(1)(C)(iv) [9] the right to make one or more ephemeral recordings to facilitate their transmissions under the section 112 statutory license. *See* 17 U.S.C. 112(e).

Under the Copyright Owners' construction of the section 112 amendments, a broadcaster would be unable to make ephemeral recordings under the exemption set forth in section 112(a)(1) for the purpose of streaming its radio signal because the transmission could not be limited to the station's "local service area." Likewise,

[8] In fact, streaming was a novel and little recognized—much less used—technology in 1995. According to one radio analyst cited by DiMA, the number of worldwide radio broadcasts over the Internet has grown from a meager 56 stations in 1995 to more than 3500 today. DiMA Rely at 4 n.10.

[9] Section 114(d)(1)(C)(iv) provides that:

The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

(C) a transmission that comes within [] the following categor[y]—

(iv) a transmission to a business establishment for use in the ordinary course of its business: Provided, That the business recipient does not retransmit the transmission outside of its premises or the immediately surrounding vicinity, and that the transmission does not exceed the sound recording complement. 17 U.S.C. 114(d)(1)(C)(iv).

broadcasters would be ineligible for the section 112(e) statutory license if AM/FM radio transmissions are exempt, since only a transmitting organization entitled to make transmissions under the section 114 license or the section 114(d)(1)(C)(iv) business exemption can make ephemeral recordings under the statutory license. Because Congress' intent was not to prevent broadcasters from making ephemeral recordings, Copyright Owners believe the only plausible construction of the statute requires the exemption for a "nonsubscription broadcast transmission" to exclude AM/FM webcasts. Gorman at 27.

Broadcasters offer a different interpretation of the effect of the new amendments. They contend they are eligible to make an ephemeral recording under section 112(a) because the "local service area" for a transmission over the Internet is global in scope. Broadcasters II Reply at 26. DiMA agrees with the Broadcasters on this point, citing the Conference Report to the DMCA:

> The addition to section 112(a) of a reference to section 114(f) is intended to make clear that subscription music services, webcasters, satellite digital audio radio services and others with statutory licenses for the performance of sound recordings under section 114(f) are entitled to the benefits of section 112(a) with respect to the sound recordings they transmit.

1998 House Report at 79. DiMA notes that each of the listed services has a "local service area" that extends beyond the traditional local community served by a terrestrial radio station and is either "inherently national or global in scope." DiMA at 7.

Fortunately, the Copyright Office need not reach the question concerning the scope of the "local service area" for an Internet-originated program to resolve the question as it affects this proceeding, since it is the "local service area" of the FCC-licensed broadcaster that is relevant. The change to section 112(a) was made "to extend explicitly to broadcasters the same privilege they already enjoy with respect to analog broadcasts." 1998 House Report at 78. The "local service area" of a broadcaster is defined by the terms of the FCC license under which it operates. The fact that an FCC-licensed broadcaster may choose to transmit its signal simultaneously over the Internet does not, by virtue of this action, enhance the "local service area" associated with the initial broadcast of the radio signal. To do otherwise would mean that the broadcasting area for a particular radio signal as defined by the terms of an FCC license would be totally meaningless, since the simultaneous transmission of a radio signal over the Internet makes the transmission instantly available anywhere in the world.

Consequently, we agree with the Copyright Owners that section 112(a) provides an exemption for making an ephemeral recording to a broadcaster who is transmitting its signal over-the-air in a digital format. It does not allow for the making of an ephemeral recording for the purpose of streaming that same signal over the Internet unless the transmission is made under the statutory license set forth in section 114. This interpretation is consistent with our analysis of the exemption for a broadcast transmission.

Policy Considerations

Industry analysts have questioned whether it would have been logical for Congress to craft a statutory licensing scheme which subjects a third party that licenses a radio station signal for streaming purposes to the statutory licensing provisions when the radio station itself could perform the same operation without any restrictions or restraints under a general exemption. *See* David J. Wittenstein & M. Larrane Ford, The Webcasting Wars, 2 J. Internet. L. 1,8 (1998); M. Powers, Broadcasters Sue Recording Industry; http://radio.about.com/entertainment/radio/library/weekly/aa/33000b.htm) (March 30, 2000).

Copyright Owners have asked the same question and conclude that it would be illogical to allow broadcasters to stream their AM/FM radio signal under an exemption but impose copyright liability on a third party when it retransmits the identical programming. Furthermore, they argue that "[t]here is certainly nothing in the DPRA or DMCA to suggest that the right of a sound recording copyright owner to compensation should turn on whether the same transmission is made by the broadcaster or the broadcaster's agent." Gorman at 23; *see also* Wittenstein & Ford, *supra* at 8.

More importantly, however, DiMA argues that by allowing broadcasters to stream their programming over the Internet, broadcasters get a free pass to engage in the very activity that compelled Congress to pass the DPRA. For example, the law forbids an online service, subject to the statutory license, from playing multiple selections by the same recording artist during any three-hour period. DiMA states that should broadcasters be allowed to stream their programming over the Internet under the section 114(d)(1)(A) exemption, they could ignore the very program restrictions put into place to thwart unauthorized copying with impunity and gain market share—and a competitive advantage over non-broadcasting webcasters—by virtue of these practices. DiMA at 6; DiMA Reply at 4.

On the other hand, Broadcasters contend that it would be absurd to embrace the Webcasters and Copyright Owners' interpretation of the statute because it would mean that radio broadcasters would have to alter radically their programming practices in order to fit the requirements of the statutory license, negotiate voluntary licenses to do what they already do over-the-air, or cease streaming activities altogether. Broadcasters II at 13; Broadcasters II Reply at 28. They argue that such a harsh reading of the statute flies in the face of the stated intent of the DPRA because it would alter dramatically the longstanding relationship between the record industry and the broadcasters that Congress meant to preserve; a relationship which historically has had a beneficial and a promotional effect on the sale of records. Broadcasters I Reply at 11. Therefore, Broadcasters maintain that all streamed broadcasts of AM/FM radio signals made by an FCC-licensed broadcaster, whether over-the-air or via the Internet, fall within the safe harbor created in the section 114(d)(1)(A) exemption.

Broadcasters also assert that the acknowledged benefits that flow from the longstanding relationship between the record industry and broadcasters are not lost because a radio program is streamed over the Internet. "If radio broadcasts are beneficial to the record industry on a local scale due to the public exposure afforded sound recordings from their airplay, that same broadcasting activity is all the more beneficial to the record industry on a national or global scale due to the even greater public exposure (leading to increased record sales) that those recordings will receive." Broadcasters II Reply at 32 (emphasis omitted).

DiMA disagrees. It argues that a broadcaster would receive the greater benefit if allowed to transmit its radio signal over the Internet under the section 114(a) exemption because webcasts create an additional revenue stream for a broadcaster apart from the advertising revenues that flow from the traditional over-the-air broadcast. Since all services competing in the Internet market compete for the same audience share and advertising dollars, DiMA argues that they should do business on the same basis and be subject to the same licensing requirements. Broadcasters counter this argument by focusing on the restrictions placed on the type of advertising that broadcasters are allowed to do under their license, *e.g.*, restrictions on tobacco advertising and on promotions and contests, and the costs incurred in meeting their obligations to serve the needs of their communities. State Broadcasters Reply at 4. In fact, broadcasters argue that they will be at a competitive disadvantage if they cannot transmit sound recordings over the Internet under an exemption and, instead, are subject to potentially prohibitive license fees. *Id.* at 5.

Interestingly, Broadcasters rely on the fact that the programming on a transmission of an AM/FM radio signal over the Internet is identical to the programming transmitted on an over-the-air broadcast to support their position that these signals are, in both instances, exempt. They contend that Congress exempted broadcast transmissions because they "comply with FCC content requirements to promote the public interest and serve the local community." Broadcasters II Reply at 17, 22. In addition, they argue that much of the value of the Internet transmission comes from the ability to retain listener loyalty, both those within the local community served by the over-the-air transmission and those "who are traveling away from their home listening areas." Broadcasters I Reply at 3. Broadcasters also distinguish radio broadcast streams from Internet-originated programs on the basis that the radio stations generally program only a single channel, unlike the multiple channels of music programming offered by Internet-only services. Broadcasters II Reply at 27 n.14.

Yet, this distinction does not explain why a broadcaster licensed by the FCC can freely stream its radio programming over the Internet, but a third-party licensee of its content is subject to the statutory license. Both transmitting entities are providing exactly the same programming which must comply with FCC restrictions and serve the local communities. To resolve this apparent paradox, we believe that Congress defined discrete categories of transmissions (rather than transmitters), then evaluated the potential for displacement of record sales on the basis of the characteristics of those transmissions and applied the statutory restrictions and exemptions accordingly.

Using this approach, the Office has determined that the section 114(d)(1)(A) exemption does not cover transmissions of an AM/FM radio signal over the Internet. This conclusion is apparent when one considers that under the Broadcasters' entity-based interpretation, a broadcaster that created an Internet-only service indistinguishable from the services offered by non-broadcaster webcasters would be exempt from the digital public performance right, even though its transmissions are never part of an over-the-air broadcast. In fact, under the Broadcasters' interpretation, a broadcaster could cease broadcasting altogether, but continue to enjoy the exemption so long as it held the FCC license.

When Congress crafted the DPRA, it intended that the law would accommodate foreseeable technological changes and drafted the bill accordingly. At the same time, Congress understood that it could not predict how technology would develop or how it would alter the ways in which sound recordings were performed or distributed. Nevertheless, its intent was clear: "[I]t is the Committee's intention that both the rights and the exemptions and limitations created by the bill be interpreted in order to achieve their intended purposes." 1995 Senate Report at 14.

The purpose for enacting the DPRA was two-fold: "first, * * * to ensure that recording artists and recording companies will be protected as new technologies affect the ways in which their creative works are used; and second, to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services." House Manager's Report at 49.

The Copyright Office's determination to read the statutory definition of a "broadcast transmission" as including only over-the-air transmissions made by an FCC-licensed broadcaster under the terms of that license is consistent with Congress' intent in passing the DPRA. This approach preserves the traditional relationship between the record companies and the radio broadcasters as it existed in 1995. In effect, it allows for the continued transmission of an over-the-air radio broadcast signal without regard to whether the transmission is made in an analog or a digital format. Such signals, however, are limited geographically under the licensing standards of the FCC. At the same time, it subjects all other digital transmissions made by a noninteractive, nonsubscription service to the terms and conditions of the statutory license in order to compensate record companies for the increased risk that a listener may make a high-quality unauthorized reproduction of a sound recording directly from the transmission instead of purchasing a legitimate copy in the marketplace, a risk that is clearly greater when the recipient is receiving the transmission on a computer, which can instantly replicate and retransmit the transmission.

Congress' intent would be thwarted if an FCC-licensed radio broadcaster was allowed to transmit its radio signal over a digital communication network, such as the Internet, without any restrictions on the programming format. For example, as DiMA suggests, an FCC-licensed broadcaster could tailor its program to highlight a particular artist and announce its intent to do so in advance, thereby increasing the likelihood that a listener would be prepared to make a copy of the sound recording at the appointed time. Such a result would violate not only the letter of the law under our interpretation of the statute, but also the very spirit and intent of the law. For these reasons, the definition of the term "Service" shall be amended to reflect the determination of the Copyright Office that any entity that transmits an AM/FM radio signal over a digital communications network is subject to the terms of the statutory license set forth in 17 U.S.C. 114(d)(2).

List of Subjects in 37 CFR Part 201

Copyright.

In consideration of the foregoing, part 201 of 37 CFR is amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.35(b)(2) is revised to read as follows:

§ 201.35 Initial Notice of Digital Transmission of Sound Recordings under Statutory License.

* * * * *

(b) * * *

(2) A *Service* is an entity engaged in the digital transmission of sound recordings, pursuant to section 114(f) of title 17 of the United States Code, and includes, without limitation, any entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

* * * * * .

Dated: November 21, 2000.
Marybeth Peters,
Register of Copyrights.
James H. Billington,
The Librarion of Congress.
[FR Doc. 00–31457 Filed 12–8–00; 8:45 am]
BILLING CODE 1410–31–P

POSTAL SERVICE

39 CFR Part 20

Global Express Guaranteed: Changes in Postal Rates

AGENCY: Postal Service.

ACTION: Interim rule with request for comment.

SUMMARY: The Postal Service is changing the rates for Global Express Guaranteed (GXG) Document service and Global Express Guaranteed Non-Document service and announcing the inclusion of GXG in the current U.S. Postal Service collection pickup service.

EFFECTIVE DATE: The effective date will be concurrent with the effective date for the new domestic rates, tentatively set for January 7, 2001. Comments on the interim rule must be received on or before January 6, 2001.

ADDRESSES: Written comments should be mailed or delivered to Business Initiatives, Expedited/Package Services, U.S. Postal Service, 200 E. Mansell Court, Suite 300, Roswell, GA 30076–4850. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in the Expedited/Package Services office, 200 E. Mansell Court, Suite 300, Roswell, GA.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Hunt, 770–360–1104.

SUPPLEMENTARY INFORMATION: Global Express Guaranteed is the U.S. Postal Service's premium international mail service. GXG is an expedited delivery service that is the product of a business alliance between the U.S. Postal Service and DHL Worldwide Express, Inc. It provides time-definite service from designated U.S. ZIP Code areas to locations in over 200 destination countries and territories. Global Express Guaranteed consists of two mail classifications: Global Express Guaranteed Document Service and Global Express Guaranteed Non-Document Service. Regulations for Global Express Guaranteed service are currently set forth in section 215 of the International Mail Manual (IMM). These regulations were moved to IMM 210 pursuant to the notice published in the **Federal Register** on September 26, 2000. Numerous and successive expansions and changes to the service have been listed in previous **Federal Register** notices and are summarized in the final rule, which will be published in early December.

The Postal Service is changing the rates for Global Express Guaranteed service and is announcing the inclusion of this service in the current collection pickup service. The revised set of rates, set forth below, is based on experience gained with providing the service and more accurately reflects the actual costs of providing this service across the various rate groups. Additionally, the rate lanes for the Global Express Guaranteed Non-Document service are changed to an alpha character designation for clarity between the Document and Non-Document services.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment on the interim rule at the above address.

The Postal Service is implementing the following rates and amending the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended as follows to provide for the new rates and to include pickup service:

2 CONDITIONS FOR MAILING

* * * * *

210 Global Express Guaranteed

* * * * *

213.2 Destination Countries and Rate Groups

[The Individual Country Listings for Global Express Guaranteed (GXG) service rates will be amended to reflect the rate changes.]

213.3 Pickup Service

Collection service pickup is available for delivery addresses within the participating Global Express Guaranteed ZIP Codes. GXG collection service will be provided when a postal employee goes to a customer's location specifically to deliver or collect mail other than Global Express Guaranteed shipments and the employee is handed a Global Express Guaranteed shipment in addition to other mail to be collected. No pickup fee will be charged when Global Express Guaranteed shipments are picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. On-call or scheduled pickup services are currently not available for GXG Service.

* * * * *

216.1 Document Service Rates/Groups

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4
0.5	24.00	25.00	32.00	32.00
1	33.00	34.00	39.00	45.00
2	38.00	40.00	46.00	52.00
3	40.00	46.00	53.00	59.00
4	43.00	50.00	60.00	66.00
5	46.00	55.00	67.00	73.00
6	48.00	58.00	72.00	80.00
7	51.00	61.00	76.00	86.00
8	53.00	65.00	80.00	93.00
9	55.00	68.00	85.00	100.00
10	58.00	70.00	89.00	104.00
11	60.00	73.00	92.00	109.00

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4
12	62.00	76.00	96.00	115.00
13	65.00	79.00	99.00	120.00
14	67.00	81.00	103.00	125.00
15	69.00	84.00	106.00	130.00
16	72.00	87.00	109.00	136.00
17	74.00	89.00	113.00	141.00
18	76.00	92.00	116.00	146.00
19	79.00	95.00	120.00	151.00
20	81.00	97.00	123.00	156.00
21	83.00	100.00	126.00	161.00
22	85.00	102.00	130.00	166.00
23	87.00	105.00	133.00	171.00
24	90.00	108.00	137.00	176.00
25	92.00	110.00	140.00	181.00
26	94.00	113.00	143.00	186.00
27	96.00	115.00	147.00	190.00
28	98.00	118.00	150.00	195.00
29	100.00	120.00	153.00	200.00
30	103.00	124.00	158.00	207.00
31	105.00	127.00	162.00	212.00
32	107.00	129.00	165.00	217.00
33	109.00	131.00	169.00	222.00
34	112.00	132.00	172.00	227.00
35	114.00	134.00	175.00	232.00
36	116.00	136.00	179.00	236.00
37	118.00	138.00	182.00	241.00
38	120.00	140.00	186.00	246.00
39	122.00	142.00	189.00	251.00
40	124.00	144.00	192.00	256.00
41	126.00	146.00	196.00	261.00
42	130.00	148.00	199.00	266.00
43	132.00	150.00	203.00	271.00
44	134.00	151.00	206.00	276.00
45	137.00	153.00	210.00	280.00
46	139.00	155.00	213.00	285.00
47	141.00	156.00	216.00	290.00
48	143.00	158.00	220.00	295.00
49	146.00	160.00	223.00	300.00
50	148.00	163.00	229.00	308.00
51	152.00	165.00	232.00	313.00
52	154.00	167.00	236.00	318.00
53	156.00	169.00	239.00	323.00
54	159.00	170.00	243.00	328.00
55	160.00	172.00	246.00	333.00
56	162.00	173.00	250.00	338.00
57	163.00	175.00	253.00	343.00
58	164.00	176.00	256.00	348.00
59	166.00	178.00	260.00	353.00
60	167.00	180.00	263.00	358.00
61	169.00	181.00	267.00	363.00
62	170.00	182.00	270.00	367.00
63	171.00	184.00	274.00	372.00
64	172.00	185.00	277.00	377.00
65	173.00	187.00	281.00	382.00
66	174.00	188.00	284.00	387.00
67	175.00	190.00	287.00	392.00
68	176.00	192.00	291.00	397.00
69	177.00	193.00	294.00	402.00
70	178.00	194.00	298.00	407.00

Weight not over (lbs.)	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	45.00	33.00	34.00	65.00
1	52.00	47.00	46.00	75.00
2	65.00	55.00	52.00	89.00
3	79.00	62.00	60.00	101.00
4	93.00	68.00	68.00	112.00
5	106.00	75.00	75.00	124.00
6	119.00	80.00	82.00	136.00
7	131.00	86.00	89.00	148.00

Weight not over (lbs.)	Rate group 5	Rate group 6	Rate group 7	Rate group 8
8	143.00	91.00	96.00	160.00
9	156.00	96.00	103.00	172.00
10	165.00	102.00	110.00	180.00
11	175.00	105.00	116.00	191.00
12	185.00	109.00	122.00	203.00
13	195.00	113.00	127.00	215.00
14	205.00	117.00	132.00	226.00
15	214.00	121.00	137.00	238.00
16	223.00	125.00	142.00	249.00
17	231.00	129.00	147.00	260.00
18	238.00	133.00	153.00	271.00
19	246.00	137.00	159.00	282.00
20	253.00	141.00	165.00	293.00
21	260.00	144.00	171.00	302.00
22	268.00	148.00	176.00	311.00
23	275.00	152.00	181.00	318.00
24	283.00	156.00	186.00	325.00
25	290.00	160.00	191.00	333.00
26	298.00	164.00	196.00	340.00
27	305.00	168.00	201.00	347.00
28	313.00	172.00	206.00	355.00
29	320.00	176.00	211.00	362.00
30	331.00	182.00	216.00	373.00
31	338.00	186.00	221.00	381.00
32	346.00	190.00	226.00	388.00
33	353.00	194.00	231.00	396.00
34	361.00	198.00	236.00	403.00
35	369.00	202.00	241.00	411.00
36	376.00	206.00	246.00	418.00
37	384.00	210.00	251.00	426.00
38	391.00	214.00	256.00	433.00
39	398.00	218.00	261.00	440.00
40	404.00	222.00	266.00	448.00
41	411.00	226.00	271.00	455.00
42	418.00	230.00	276.00	463.00
43	425.00	234.00	281.00	470.00
44	432.00	238.00	286.00	478.00
45	439.00	242.00	291.00	485.00
46	446.00	246.00	296.00	492.00
47	452.00	250.00	301.00	500.00
48	459.00	254.00	306.00	507.00
49	466.00	258.00	311.00	515.00
50	478.00	264.00	316.00	528.00
51	485.00	264.00	321.00	543.00
52	492.00	272.00	326.00	543.00
53	499.00	276.00	331.00	559.00
54	506.00	280.00	336.00	559.00
55	513.00	283.00	341.00	572.00
56	520.00	288.00	346.00	572.00
57	527.00	291.00	351.00	584.00
58	533.00	296.00	356.00	584.00
59	540.00	299.00	361.00	597.00
60	547.00	304.00	366.00	597.00
61	554.00	307.00	371.00	612.00
62	560.00	313.00	376.00	612.00
63	568.00	315.00	381.00	627.00
64	571.00	321.00	386.00	627.00
65	582.00	323.00	391.00	642.00
66	582.00	329.00	396.00	642.00
67	593.00	331.00	401.00	657.00
68	595.00	337.00	406.00	657.00
69	604.00	339.00	411.00	672.00
70	604.00	345.00	416.00	672.00

216.2 Non-Document Service Rates/Groups

Weight not over (lbs.)	Rate group A	Rate group B	Rate group C	Rate group D
0.5	.....	.....	.....	.....
1	36.00	38.00	44.00	48.00

Weight not over (lbs.)	Rate group A	Rate group B	Rate group C	Rate group D
2	41.00	45.00	51.00	55.00
3	44.00	51.00	58.00	64.00
4	47.00	55.00	65.00	71.00
5	50.00	60.00	72.00	78.00
6	52.00	63.00	77.00	85.00
7	55.00	66.00	81.00	91.00
8	57.00	71.00	86.00	98.00
9	59.00	74.00	91.00	105.00
10	62.00	77.00	95.00	111.00
11	64.00	80.00	100.00	116.00
12	66.00	83.00	104.00	122.00
13	69.00	86.00	107.00	127.00
14	71.00	88.00	111.00	132.00
15	73.00	91.00	114.00	137.00
16	76.00	94.00	117.00	143.00
17	78.00	97.00	121.00	148.00
18	80.00	100.00	124.00	153.00
19	83.00	103.00	128.00	158.00
20	87.00	107.00	131.00	165.00
21	89.00	110.00	134.00	170.00
22	91.00	112.00	138.00	175.00
23	93.00	115.00	141.00	180.00
24	96.00	118.00	145.00	185.00
25	98.00	120.00	148.00	190.00
26	100.00	122.00	153.00	195.00
27	102.00	123.00	157.00	199.00
28	104.00	126.00	160.00	204.00
29	106.00	128.00	163.00	209.00
30	109.00	132.00	168.00	216.00
31	111.00	135.00	172.00	221.00
32	113.00	137.00	175.00	226.00
33	115.00	139.00	179.00	231.00
34	118.00	141.00	182.00	236.00
35	120.00	143.00	185.00	241.00
36	122.00	145.00	189.00	245.00
37	124.00	147.00	192.00	250.00
38	126.00	149.00	196.00	255.00
39	128.00	151.00	199.00	260.00
40	130.00	153.00	202.00	268.00
41	132.00	155.00	206.00	273.00
42	136.00	157.00	209.00	278.00
43	138.00	159.00	213.00	283.00
44	140.00	160.00	216.00	288.00
45	143.00	162.00	220.00	295.00
46	145.00	164.00	223.00	300.00
47	147.00	165.00	226.00	305.00
48	149.00	167.00	230.00	310.00
49	151.00	169.00	233.00	315.00
50	152.00	172.00	239.00	320.00
51	156.00	174.00	242.00	325.00
52	158.00	176.00	246.00	330.00
53	160.00	178.00	249.00	335.00
54	163.00	179.00	253.00	340.00
55	164.00	181.00	256.00	345.00
56	166.00	182.00	260.00	350.00
57	167.00	184.00	263.00	355.00
58	168.00	185.00	266.00	360.00
59	170.00	187.00	270.00	365.00
60	170.00	189.00	273.00	370.00
61	172.00	193.00	277.00	375.00
62	173.00	194.00	280.00	379.00
63	174.00	196.00	284.00	384.00
64	175.00	197.00	287.00	389.00
65	176.00	199.00	291.00	394.00
66	177.00	200.00	294.00	399.00
67	178.00	202.00	297.00	404.00
68	179.00	204.00	301.00	409.00
69	180.00	205.00	304.00	414.00
70	181.00	206.00	308.00	419.00

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Weight not over (lbs.)	Rate group E	Rate group F	Rate group G	Rate group H
0.5	59.00	52.00	55.00	82.00
1	59.00	52.00	55.00	82.00
2	72.00	60.00	58.00	96.00
3	86.00	67.00	63.00	109.00
4	100.00	73.00	70.00	120.00
5	113.00	80.00	77.00	134.00
6	126.00	85.00	84.00	146.00
7	138.00	91.00	91.00	158.00
8	150.00	96.00	98.00	170.00
9	163.00	101.00	105.00	182.00
10	177.00	107.00	112.00	190.00
11	187.00	112.00	118.00	206.00
12	197.00	116.00	123.00	218.00
13	207.00	120.00	129.00	230.00
14	217.00	124.00	134.00	241.00
15	229.00	131.00	139.00	253.00
16	238.00	135.00	144.00	264.00
17	246.00	139.00	149.00	275.00
18	253.00	143.00	155.00	286.00
19	261.00	147.00	161.00	297.00
20	268.00	151.00	167.00	308.00
21	275.00	154.00	173.00	317.00
22	283.00	158.00	178.00	326.00
23	290.00	162.00	183.00	333.00
24	298.00	166.00	188.00	340.00
25	305.00	170.00	193.00	348.00
26	313.00	174.00	198.00	355.00
27	320.00	178.00	203.00	362.00
28	328.00	182.00	208.00	370.00
29	335.00	186.00	213.00	377.00
30	346.00	192.00	218.00	388.00
31	353.00	196.00	223.00	396.00
32	361.00	200.00	228.00	403.00
33	368.00	204.00	233.00	411.00
34	376.00	208.00	238.00	418.00
35	384.00	212.00	243.00	431.00
36	391.00	216.00	248.00	438.00
37	399.00	220.00	253.00	446.00
38	406.00	224.00	258.00	453.00
39	413.00	228.00	263.00	460.00
40	419.00	232.00	268.00	468.00
41	426.00	236.00	273.00	475.00
42	433.00	240.00	278.00	483.00
43	440.00	244.00	283.00	490.00
44	447.00	248.00	288.00	498.00
45	454.00	252.00	293.00	505.00
46	461.00	256.00	298.00	507.00
47	467.00	260.00	303.00	515.00
48	474.00	264.00	308.00	522.00
49	481.00	268.00	313.00	530.00
50	493.00	274.00	318.00	543.00
51	498.00	276.00	323.00	558.00
52	505.00	282.00	328.00	558.00
53	512.00	286.00	333.00	574.00
54	519.00	290.00	338.00	574.00
55	526.00	293.00	343.00	587.00
56	533.00	298.00	348.00	587.00
57	540.00	301.00	353.00	599.00
58	546.00	306.00	358.00	599.00
59	553.00	309.00	363.00	612.00
60	560.00	314.00	368.00	612.00
61	567.00	317.00	373.00	627.00
62	573.00	323.00	378.00	627.00
63	581.00	325.00	383.00	642.00
64	584.00	331.00	388.00	642.00
65	595.00	333.00	393.00	657.00
66	595.00	339.00	398.00	657.00
67	606.00	341.00	403.00	672.00
68	608.00	347.00	408.00	672.00
69	617.00	349.00	413.00	687.00
70	617.00	355.00	418.00	687.00

* * * * *

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 00–31358 Filed 12–8–00; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0268; FRL–6908–1]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of a revision to the Ventura County Air Pollution Control District's (VCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on August 9, 2000 and concerns volatile organic compound (VOC) emissions from surface cleaning and degreasing. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates this emission source and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on January 10, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On August 9, 2000 (65 FR 48652), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.6	Surface Cleaning and Degreasing	11/10/98	02/16/99

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions are described below.

- Rule 74.6 contains two director's discretion clauses in Sections C and C2a which are unapprovable because they allow the APCO to change SIP requirements without going through the rulemaking process.
- Section C1f contains a reference to Rule 74.32, Electronic Manufacturing Operations, which has never been submitted for approval into the SIP. The reference creates confusion over the rule's applicability.
- Section D requires that records of a solvent's intended uses, content, mix ratio be recorded. Although the types of records that must be maintained are specified, the frequency with which records should be kept is not specified.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

Because no comments were submitted, our assessment of the rule as described in our proposed action is not changed. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the VCAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 1, 2000

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(262)(i)(B)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(262) * * *

(i) * * *

(B) * * *

(*3*) Rule 74.6, revised on November 10, 1998.

* * * * *

[FR Doc. 00–31330 Filed 12–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH–138–2; FRL–6914–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is redesignating Cuyahoga and Jefferson Counties, Ohio, to attainment for particulate matter nominally 10 microns in aerodynamic diameter and smaller (PM10). EPA is also approving Ohio's plan for maintaining air quality at levels below the applicable air quality standards.

EPA proposed these actions on July 10, 2000. One commenter submitted numerous comments, generally taking the position that the criteria for redesignation to attainment given in Clean Air Act section 107(d)(3)(E) are not met. EPA has reviewed these comments and, for the reasons set forth below, continues to believe that the redesignation criteria have been met and that these areas may be redesignated and their maintenance plans approved.

The Steubenville area includes portions of Brooke County, West Virginia, as well as Jefferson County, Ohio. For administrative convenience EPA is taking action only on the Ohio portion of this area. Nevertheless, the action reflects review of air quality for the entire area and Ohio's fulfillment of its portion of an area-wide attainment plan that it developed jointly with West Virginia. In the future, if the standard is violated in either portion of the area, such that redesignation back to nonattainment is warranted, EPA will propose to reinstate nonattainment status for the entire area.

EFFECTIVE DATE: This action will be effective on January 10, 2001.

ADDRESSES: Copies of the Ohio's submittals and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office) United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *(summerhays.john@epa.gov).*

SUPPLEMENTARY INFORMATION: The terms "we," "us," and "our" in this notice signify EPA. This notice is organized as follows:

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I. What Actions Did EPA Propose, and Why?

On July 10, 2000, EPA published rulemaking proposing to approve a maintenance plan and redesignation of Cuyahoga and Jefferson Counties, Ohio, to attainment for particulate matter, specifically for particles known as PM_{10}. (See 65 FR 43212.) This proposal was based on a request from the State of Ohio submitted in preliminary form on May 22, 2000. This action pertains to the PM_{10} standards promulgated in 1987 at 40 CFR 50.6, for which designations are published at 40 CFR 81. This action does not pertain to the PM_{10} standards promulgated in 1997 at 40 CFR 50.7, which have been vacated by the District of Columbia Circuit Court of Appeals and for which no designations have been published.

Ohio's maintenance plan relies predominantly on the emissions limits already included in its State Implementation Plan (SIP) that have been shown to limit emissions from the significant sources in these areas sufficiently to assure attainment. The attainment plan addresses maximum allowable emissions, so the plan provides for continued attainment even if source production rates grow to maximum capacity. Ohio's maintenance plan supplements this with evidence of declining impacts from other, unregulated sources, which contribute to the background concentration included in the attainment demonstration. Specifically, Ohio cited population declines in the two counties, which will lead to reduced emissions from consumer activities, and federal regulations requiring reduced emissions from diesel engines. Ohio further cited emission regulations which will reduce emissions below attainment levels at the coke batteries found in the two areas. EPA proposed to conclude on the basis of these plan elements that these counties can be expected to continue attaining the applicable PM_{10} standards for the requisite 10 years.

EPA reviewed Ohio's redesignation request on the basis of five criteria given in section 107(d)(3)(E) of the Clean Air Act. The first criterion is attainment of the air quality standards. All monitors have annual average concentrations below the annual standard. The 24-hour standard is met if the expected frequency of values above 150 $\mu g/m^3$ is 1.0 day per year or less. All the monitors in the Steubenville area and most of the monitors in Cuyahoga County have recorded no recent exceedances of this air quality standard. These monitors clearly indicate attainment of these standards. Two monitors in Cleveland have recorded values above 150 $\mu g/m^3$, requiring analysis of expected exceedances at these locations consistent with the provisions of Appendix K of 40 CFR 50. EPA found a sufficiently low expected frequency of exceedances to propose to conclude that these locations, like the rest of Cuyahoga County, are attaining the standards.

The second criterion is that EPA has fully approved the necessary air quality control plans. EPA has previously concluded that relevant requirements were met, as stated in rulemakings published on May 27, 1994, at 59 FR 27464, and June 12, 1996, at 61 FR 29662, supplementing earlier rulemakings. In acting on redesignation requests, EPA has consistently interpreted section 107(d)(3) as permitting the Agency to rely on prior approvals of SIP provisions when reviewing redesignation requests. See Memorandum from John Calcagni, Director of the Air Quality Management Division dated September 4, 1992. For a recent discussion of redesignation requirements see 65 FR 37879 (June 19, 2000) (redesignation to attainment for ozone of the Cincinnati-Hamilton moderate ozone nonattainment area).

The third criterion for redesignation is that attainment be attributable to permanent and enforceable emission reductions. EPA found that permanent and enforceable emission limits have yielded permanent emission reductions that satisfied this criterion at numerous facilities in the two counties. The fourth criterion is that EPA has approved a maintenance plan that assures continued attainment. As discussed above, EPA proposed to approve Ohio's maintenance plan. Final approval of this plan, which is part of today's action, completes the satisfaction of this criterion. The fifth criterion is that the State be found to have met applicable requirements of section 110 and Part D of the Clean Air Act. Based on various rulemakings, starting with rulemaking of April 15, 1974 (39 FR 13539) up to and including EPA's rulemaking of June 12, 1996 (61 FR 29662), EPA finds that the State met these requirements. In summary, EPA proposed to find that Ohio had met all five criteria for redesignation for PM_{10} in Cuyahoga and Jefferson Counties, and so EPA proposed to redesignate these counties to attainment.

II. What Comments Did We Receive and What Are Our Responses?

EPA received comments from one commenter, the Earthjustice Legal Defense Fund, representing the Ohio Chapter of the Sierra Club. These comments are organized according to the five criteria for redesignation listed above. The following comment summaries and EPA responses are organized accordingly.

1. Attainment

Comment: The commenter cites EPA's Air Information Retrieval System (AIRS) database as showing that one of the monitoring sites, at East 14th Street and Orange Avenue in Cleveland, "had 6 expected exceedances of the 24 hour PM_{10} standard in 1999. Moreover, AIRS data shows that the same monitor has recorded 6 expected exceedances so far in the year 2000." The commenter states that the total of 12 expected exceedances at this site means that the area has not attained the standard.

The commenter further states that "EPA seeks to discount the 6 expected exceedances in 1999 at [the above site] by citing data from other monitors that did not exceed the standard that year." The commenter states that disregarding violations based on data at other sites is not authorized in Appendix K, and EPA may not use guidance documents to amend Appendix K to grant itself this authority.

Response: The commenter summarizes air quality at the East 14th Street site by reporting a statistic from a summary of air quality data that EPA provides on the internet. By its nature, this summary statistic is derived by an oversimplified approach, and thus inaccurately reflects what the data show. This statistic in this context is derived by automated, default procedures that cannot make the case-by-case judgments involved in assessing attainment status for regulatory purposes. For example, the statistic that the commenter cites does not reflect judgments that must be made by EPA, such as whether to exempt the site from expected exceedance adjustments pursuant to Appendix K section 3.1(f) and 40 CFR 58.13. A more appropriate evaluation of the 1999 data at this site is presented in the notice of proposed rulemaking. This evaluation indicates that only approximately one exceedance is expected at that location. A similar evaluation of the 2000 data at this site, as described further below, also indicates approximately one exceedance is expected. Based on these data, EPA is determining that the 3-year average number of expected exceedances at this site is less than the 1.0 level, and thus the site is in attainment consistent with section 2.1 of Appendix K.

It is also apparent that the commenter may have misunderstood the discussion in the proposal relating to the

historically worst-case site that adjoins the East 14th Street site. Contrary to the assertion in the comment, EPA is not using data from other monitors to discount a violation at the East 14th Street site. Instead, EPA is assessing whether a violation in fact occurred at the East 14th Street site.

The East 14th Street site has two instruments—a high volume sampler, taking samples once every six days, and an instrument that takes continuous concentration readings. The high volume sampler recorded an exceedance of the 24-hour PM_{10} standard at this site in 1999 (as well as an exceedance in 2000). EPA's evaluation of these high volume sampler data appropriately considers data from the collocated continuous instrument as well as data from another nearby location. Specifically, EPA is using the additional data to evaluate the likelihood of exceedances on the other five out of six days on which the high volume sampler did not take measurements.

One element of EPA's evaluation is based on Appendix K section 3.1(f), for which EPA must consider whether everyday sampling has been conducted in accordance with 40 CFR 58.13. In 40 CFR 58.13, as it applies to sampling for this PM_{10} standard, EPA calls for everyday sampling at the area of maximum concentration. Accordingly, the notice of proposed rulemaking describes an assessment in which the application of Appendix K section 3.1(f) to the East 14th Street site is contingent on daily sampling at a nearby, maximum concentration site. As discussed in the notice of proposed rulemaking, application of Appendix K section 3.1(f) contingent on daily sampling at the East 14th Street site yields the same result. Both methods lead to treating the measured exceedance as one expected exceedance, which leads to a finding that the standard is being attained.

When EPA promulgated Appendix K, it was concerned, in part, about how to appropriately interpret data from monitors taking measurements one day out of six days when they measure just one exceedance. EPA recognized that the occasional measurement of one exceedance by such monitors often does not signify that five other exceedances would be expected to occur on the unmonitored days. Therefore, section 3.1(f) of Appendix K provides that an adjustment, that entails treating one exceedance as reflecting six (or more) expected exceedances (which is otherwise required to account for missing or incomplete data), need not be done if complete daily, representative sampling is performed and related conditions are met. If complete daily, representative sampling then shows few or no exceedances, this would validate the view that the exceedance measured during one-in-six-day sampling is better interpreted as reflecting one rather than six (or more) expected exceedances. (Conversely, if daily sampling indicates frequent exceedances, EPA would have a more solid basis for concluding that the site is not attaining.)

The monitoring at the East 14th Street site poses unique circumstances not directly addressed in Appendix K. Appendix K does not specify how to interpret data from two instruments which measure air quality at the same location. EPA has issued guidance explaining how to assess expected exceedances for both instruments in such cases. However, neither Appendix K nor EPA's guidance specifies how to conduct this assessment in cases where the sampling frequencies of the two instruments differ.

The history of Appendix K helps clarify why it does not directly address the situation found at the East 14th Street site. Appendix K was promulgated in 1987, at a time when reliable continuous instruments for measuring particulate matter concentrations were not available. Since high volume sampling and filter collection and analysis on a daily basis is resource intensive, EPA encouraged States to conduct sampling once every six days at numerous sites, with only a small number of critical sites sampling on a daily basis. When it encouraged this approach, EPA did not intend that any sampler measuring once every six days that happened to record an exceedance would automatically be treated as showing nonattainment, which is the approach reflected in the commenter's interpretation of the air quality data summary posted on the internet. EPA intended instead that such sampling sites be identified as critical sites warranting the dedication of resources necessary to conduct daily sampling, in order to determine whether the exceedance recurs with a frequency of more than once per year.

In promulgating Appendix K, EPA did not anticipate the possibility that States might simultaneously operate one sampler on a once in six days basis and operate a second sampler at the same site on a daily basis. Even today, sites with instruments measuring air quality once every six days almost never have a collocated instrument simultaneously taking daily or continuous measurements. Therefore, the one-in-six-day data are ordinarily the only basis on which to estimate the likelihood that exceedances would have been observed on the other five days. In such cases, if the site does not meet the criteria in section 3.1(f) of Appendix K that qualifies it to be exempt from expected exceedance adjustment, then EPA would view the five unmonitored days as days with missing data. Under Appendix K, for such cases, EPA takes a protective approach by assuming that the likelihood of exceedances for those five out of six days equals the likelihood of exceedances for the one in six days with actual observations. (See section 3.1(a).)

In the case of the East 14th Street site, the continuous instrument provides extensive data with potential to help EPA evaluate the likelihood that the high volume sampler would have recorded exceedances on the five out of six days it was not sampling. EPA therefore examined whether the continuous instrument data would reliably indicate whether the high volume sampler would have recorded an exceedance.

EPA compared 24-hour averages from the two instruments for days in 1998 to 2000 when both instruments had valid data. Then EPA developed what is known as a "best fit" equation, which attempts to describe, as accurately as possible, the relationship between same-day readings of the two instruments. On average, the high volume sampler reading equaled 1.05 times the continuous instrument reading plus 0.2 micrograms per cubic meter ($\mu g/m^3$), with a variance (r^2) of 0.78. In no case did the high volume sampler record any value more than 27 $\mu g/m^3$ higher than the continuous instrument. Thus, from a sampling perspective, readings from the two instruments would be considered quite similar.

Consequently, EPA concluded that data from the continuous instrument is reliable for use in assessing expected exceedances for the high volume sampler. Specifically, given the excellent agreement between the measurements produced by the two instruments, EPA believes the days with continuous instrument measurements but no high volume sampler measurements should be treated as days with valid data indicating high volume sampler concentrations. That is, consistent with the provisions of Appendix K, the best assessment of expected exceedances under these circumstances would be to consider all days with data from either instrument as days with valid data, and to treat as days with missing data only those days in which neither the high volume sampler nor the continuous instrument was operating. For purposes of this assessment, a day with only continuous instrument data is considered by EPA as having a value below the standard only if the maximum difference in instrument readings added to the continuous instrument value indicates a high volume sampler value below the level of the standard.

EPA described its assessment of the 1999 data in its notice of proposed rulemaking. Briefly, the high volume sampler recorded an exceedance during the first quarter. This first quarter included 14 days with high volume sampler values and 74 additional days with only continuous instrument values. Two days had no value from either instrument and, under Appendix K, should be considered days with missing data. The 14 days with high volume sampler values included one day with a measured exceedance and 13 days with values below the standard. For the 74 additional days with only continuous instrument values, the highest such value was 75 $\mu g/m^3$. This continuous instrument value leads to a best estimated peak value for the high volume sampler of 79 $\mu g/m^3$ (using the best fit equation), and leads to a worst case peak estimate of 102 $\mu g/m^3$ (applying the maximum difference in instrument values). Based on the explanation above, the data from all of these 74 days will be treated by EPA as valid data. In total, then, for the high volume sampler in the first quarter of 1999, one day had an exceedance, 87 days have concentrations that are well below the standard of 150 $\mu g/m^3$, and two days are lacking data. According to Appendix K, the proposed rulemaking therefore calculated an estimate of expected exceedances to be 1 + (2 * 1/88) or 1.02. Since no exceedances were measured at the site in any other quarter of 1999 or in 1998 or 1997, the total expected exceedances for 1999 is 1.02, and the three-year average of expected exceedances is 0.3.

A second unique feature of the situation at the East 14th Street site is the occurrence of a second exceedance measured by the instrument sampling once in six days. In ordinary circumstances, *i.e.*, in the absence of collocated daily sampling data, EPA assumes that the first measured exceedance often reflects only about one expected exceedance, but EPA would generally assume that a second exceedance measured by a one-in-six day sampler represents multiple expected exceedances. However, EPA does not need to rely on such assumptions at the East 14th Street site, since in this case EPA has a wealth of actual data with which to assess the likelihood of exceedances at the site.

EPA therefore estimated expected exceedances for 2000 according to the same method it used to evaluate the 1999 data. An exceedance was observed by the high volume sampler in the first quarter of 2000. The high volume sampler provided values for 15 of the 91 days. The continuous sampler provided valid data for an additional 73 days. The highest 24-hour average for these 73 days was 84 $\mu g/m^3$, suggesting a best estimated peak high volume sampler value of 88 $\mu g/m^3$ and a worst case estimated high volume sampler value of 111 $\mu g/m^3$. Three days have missing values. These data indicate that only 1 out of 88 days with valid data had an exceedance. Consequently, expected exceedances for the quarter are estimated at 1 + (3 * 1/88) or 1.03. The second quarter had no observed exceedances. Thus, the available data for 2000 at this site indicate 1.03 expected exceedances.

Appendix K does not provide for us to include a half year's worth of data results in calculating the three year average of expected exceedances. Thus, consideration of data for the first half of 2000 by necessity involves projecting likely air quality in the second half of 2000. EPA examined data at the East 14th Street site to judge the most plausible such projection. In the past, the East 14th Street site has not been prone to observe exceedances in the second half of the year. In the 7½ year history at this site, all three days with recorded exceedances have been in March. Therefore, EPA has good reason to anticipate that no further exceedances will be measured at this site in 2000. Assuming no further exceedances for the remainder of 2000 is equivalent to using data from a previous July to December period, for example constructing an assessment for 1998 to 2000 by using data from the second half of 1997 as a surrogate for projected data for the second half of 2000. This suggests a total of 1.03 expected exceedances for 2000. This result, in combination with the 1.02 expected exceedances for 1999 and zero expected exceedances for 1998, indicates a 3-year average of 0.7 expected exceedances.

The above presents EPA's evaluation of the frequency with which the high volume sampler at the East 14th Street site would have recorded exceedances had it been operating every day. One may do a similar evaluation for the continuous instrument at this site. This continuous instrument recorded no exceedances from the day it began operating in April 1998 to the present. This instrument was not operating on March 31, 1999, when the high volume sampler recorded an exceedance, but the high volume sampler data for that date suggest treating that day as a day the continuous instrument would be expected to have had an exceedance. Considering missing data according to Appendix K, this suggests 1.02 expected exceedances for the first quarter of 1999. While data are not available for a proper 3-year average of expected exceedances, the data that are available clearly suggest an average of less than 1.0 expected exceedances for this instrument. Thus, both instruments at the East 14th Street site indicate that this site is attaining the standard.

The commenter provided no rationale for using the computer-generated statistic he cited rather than applying the judgments and procedures described in the notice of proposed rulemaking, even though the two methods clearly give different results. For reasons given here and in the notice of proposed rulemaking, EPA believes that the evaluation described here is more consistent with applicable PM_{10} regulations and reflects more reasoned judgments about the air quality at the site in question. EPA is determining on the basis of this evaluation that this site, like the remainder of Cuyahoga County, is attaining the standard.

2. Fully Approved SIP

Comment: The second prerequisite for redesignation to attainment is that EPA has fully approved the applicable SIP for the area. The commenter states that this prerequisite has not been met because EPA has not fully approved either the state's new source review (NSR) programs or the motor vehicle emission budget for these areas. With respect to NSR, the commenter states that this program is "not an optional program that the state and EPA can simply waive based on claims that it is not 'needed' for attainment." With respect to conformity, the commenter cites Section 176(c) of the Clean Air Act and states that the absence of a motor vehicle emissions budget and conformity procedures means that EPA has not met all SIP requirements applicable to the area.

Response: EPA continues to believe that it has fully approved the applicable SIP for Cuyahoga and Jefferson Counties. For the requirements added in the Clean Air Act Amendments of 1990, in Subpart 4 of Part D of the Clean Air Act, EPA approved Ohio's attainment demonstration and other related plan elements on June 12, 1996, at 61 FR 29662. EPA has published several earlier rulemakings approving Ohio's SIP as meeting the various requirements enacted earlier.

With respect to NSR, EPA believes that Cuyahoga and Jefferson Counties may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Clean Air Act Amendments. This view has been set forth by EPA in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Also, see Cincinnati-Hamilton redesignation (65 FR 37879, June 19, 2000) and Grand Rapids, Michigan redesignation (61 FR 31834–31837, June 21, 1996). This policy has also been applied in ozone redesignations of Youngstown-Warren, Columbus, Canton, Cleveland-Akron-Lorain, Dayton-Springfield, Toledo, Preble County, Columbiana County, and Clinton County, Ohio, as well as Detroit, Michigan.

EPA believes that its decision not to insist on a fully approved NSR program as a prerequisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. Costle, EPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally. In this context, the issue presented is whether EPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that EPA must fully approve a SIP meeting all of the requirements applicable to an area under section 110 and part D of title I of the Clean Air Act before redesignating the area. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to Cuyahoga and Jefferson Counties at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State submit and EPA fully approve a part D NSR program meeting the requirements of the Clean Air Act before an area could be redesignated to attainment. Under EPA's de minimis authority, however, the agency may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. Therefore, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of Cuyahoga and Jefferson Counties.

EPA believes that requiring the adoption and full approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case. When an area is redesignated to attainment, a new source must satisfy prevention of significant deterioration (PSD) requirements rather than nonattainment new source review. PSD requires that new sources demonstrate that their construction will not increase ambient concentrations significantly and will not result in concentrations above the air quality standard. This may be compared to requirements under nonattainment area new source review for new sources to secure emission reductions to offset their new emissions. EPA believes that there would be trivial if any environmental value of applying nonattainment new source requirements in Cuyahoga and Jefferson Counties rather than PSD requirements.

The other purpose that requiring the full approval of a part D NSR program might serve is to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area." Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a "measure" for the control of the pertinent air pollutants.

The term "measure" is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Clean Air Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress requires that SIPs include "enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of the Act." In section 110(a)(2)(C), Congress requires that SIPs include "a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D." If the term "measures" as used in section 110 (a)(2)(A) and (C) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures and preconstruction review under parts C and D (PSD or NSR). Unless "measures" referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished "measures" from preconstruction review. On the other hand, in other provisions of the Clean Air Act, such as section 161, Congress appeared to include PSD within the scope of the term "measures."

EPA believes that the fact that Congress used the undefined term "measure" differently in different sections of the Clean Air Act is germane. This indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, EPA believes it is reasonable to interpret "measure," as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR when an area is redesignated to attainment. This distinguishes NSR from other required programs under the Clean Air Act, such as inspection and maintenance programs, which have no corollary for attainment areas. Moreover, EPA believes that those other required programs are clearly within the scope of the term "measure."

EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and is designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information, including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, the requirements of 40 CFR part 51, appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply.

With respect to conformity, the requirements cited by the commenter do not apply to PM_{10} in these areas. As stated in EPA's conformity regulations, at 40 CFR 93.102(b), the conformity requirements apply in "nonattainment and maintenance areas for transportation-related criteria pollutants" [emphasis added}. Within that section of the conformity regulations, 40 CFR 93.102(b)(2)(iii) specifies that conformity requirements apply "in PM_{10} areas [only] if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission established a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy."

Transportation-related emissions do not contribute significantly to PM_{10} concentrations in Cuyahoga and Jefferson Counties. Stationary sources are the predominant contributors to high concentrations in these areas. The attainment demonstration that EPA approved for these areas on June 12, 1996, at 61 FR 29662, documents this finding, and documents that mobile sources contribute only a few micrograms per cubic meter to airborne concentrations, i.e. only a few percent of the air quality standards. EPA and the Ohio Environmental Protection Agency agreed during the 1994 conformity consultation process that transportation sources are insignificant contributors to the nonattainment problem in Cuyahoga County and the Steubenville area. As appropriate, the SIP does not establish a budget for these emissions. EPA approved conformity rules for Ohio on May 16, 1996 (61 FR 24702) and May 30, 2000 (65 FR 34395). In accordance with applicable EPA regulations, conformity requirements under the state's rules do not apply to PM_{10} in Cuyahoga or Jefferson Counties. Rules establishing such requirements and approval of an emissions budget are not prerequisites for full SIP approval or redesignation.

Furthermore, EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating a redesignation request under section 107(d). The rationale for this interpretation has been set forth in a number of notices redesignating areas to attainment for ozone. See, for example, the Cincinnati-Hamilton redesignation at 65 FR 37879 (June 19, 2000), the Grand Rapids redesignation at 61 FR 31835–31836 (June 21, 1996), and the Cleveland-Akron-Lorain redesignation at 61 FR 20458 (May 7, 1996).

3. Permanent and Enforceable Reductions

Comment: The commenter believes that Section 107(d)(3)(E)(iii) requires that EPA or the State conduct modeling to demonstrate that air quality improvements are attributable to permanent and enforceable emission reductions rather than weather patterns, reduction in production, or other factors.

Response: When Ohio developed its attainment plan, it began by modeling existing emissions, to identify where existing air quality was problematic. This modeling identified problems consistent with the nonattainment problems identified at that time by monitoring. Ohio then conducted numerous model runs to assess alternative control strategies. The final modeling analysis demonstrated that the permanent and enforceable emission reductions which were added as requirements in the attainment plan regulations were sufficient to bring PM_{10} concentrations down to attainment levels. Since this modeling reflected emissions at allowable levels assuming full capacity plant operations, attainment is not dependent on reduced production or other transient factors. While EPA does not concede that modeling must be done to demonstrate that air quality improvements are due to permanent and enforceable reductions, in this case the type of modeling requested by the commenter was in fact done. This modeling demonstrated that the air quality improvement is due to permanent and enforceable reductions.

4. Maintenance

Due to the length and variety of comments on Ohio's maintenance plan, these comments are addressed in three parts.

Comment: The commenter states that Ohio has failed to submit a SIP revision that provides for maintenance. The commenter observes that Ohio "has merely submitted a letter asserting that the standard will be maintained. There is no SIP revision comprising the maintenance plan, and no commitment to implement or continue control strategies necessary for maintenance." The commenter further believes that "neither the state nor EPA has demonstrated that the standard will in fact be maintained for [the necessary] ten years".

The commenter acknowledges that "EPA presumes" that declining population, cleaner new vehicles, and recent regulations on coke oven emissions will maintain the standards by keeping emissions at or below levels found in the SIP to assure attainment. However, the commenter states that Cuyahoga County "violated the [air quality standards] in 1995, again in 1999, and again in 2000," demonstrating that "holding emissions to those assumed in the attainment plan most certainly does not assure attainment." The commenter believes that the above "indicators" have not been shown to be good indicators of regional emissions, and observes that "other factors—*e.g.,* increased production, construction of new pollution sources, increased per capita vehicle ownership—[may] cause emissions to rise." The commenter cites EPA rules as requiring modeling to demonstrate maintenance, "rather than the intuitive approach proposed here," and states that without "such a modeling demonstration, [EPA] cannot approve maintenance demonstrations for these areas."

Response: A maintenance plan must provide sufficient assurances that attainment of the air quality standard will continue for at least 10 years after the area is redesignated to attainment. A maintenance plan is not required to add to the set of enforceable emission limitations in the SIP. If the State can show that the air quality standard will be maintained without any additional measures beyond those that are already part of the SIP, then the maintenance plan need not add any additional measures. Also, if the maintenance plan relies in part on a previously submitted attainment demonstration, then the State need not resubmit that attainment demonstration.

Ohio's maintenance plan is in fact based on its previously submitted attainment demonstration, which EPA approved on June 12, 1996, at 61 FR 29662. This analysis assesses the sum of the impacts of significant industrial sources at their maximum allowable emissions plus other, background sources at actual emission levels. Ohio demonstrated that the sum of these impacts is concentrations below the standard.

Emissions from the significant sources will be maintained at or below maximum allowable levels. Therefore, Ohio can demonstrate maintenance simply by demonstrating that background impacts will remain at or below current levels.

Maintenance planning for PM_{10} differs from maintenance planning for ozone in this respect. Attainment plans for PM_{10} for areas like Cuyahoga and Jefferson Counties must demonstrate that attainment will occur even if sources emit their maximum allowable amount. As a result, attainment and maintenance do not depend on maintaining preexisting levels of production by facilities in the area. Since the modeled industrial sources in the area are the principal contributors to high PM_{10} levels in these counties, the maintenance plan will consist principally of the limits on these industrial sources provided in the attainment plan. The only remaining question pertains to future background concentrations. If the State can demonstrate that background concentrations will decline over the next ten years, then the maintenance demonstration will consist of that demonstration in conjunction with the previously approved attainment demonstration, and the maintenance plan's control measures will consist of the control measures in the attainment plan.

Ozone maintenance plans are different because ozone attainment plans address actual production levels. This means first that ozone maintenance plans must project any increases or decreases in future production. Such projections must consider all significant source types, and cannot be restricted to addressing background contributors. Thus, maintenance plans for PM_{10} for areas like Cuyahoga and Jefferson County are considerably less complicated and have much less potential to require additional controls than maintenance plans for ozone.

The commenter expressed concern that the "indicators" that Ohio cites are not indicative of regional PM_{10} emissions. In fact, Ohio should not be seeking to indicate trends in regional emissions. Ohio is properly relying on existing SIP limits to address the most significant regional emissions, and focusing its additional trend analyses on sources affecting "background" concentrations. Ohio need not address increased production at important industrial facilities, because all increases up to maximum production are already accommodated in the attainment/maintenance demonstration. Ohio need not address construction of new pollution sources, because PSD regulations require any significant new source to demonstrate that its emissions will not cause violations of the standards. Ohio needs to address increased vehicle ownership, but only as part of an assessment of trends in background concentrations.

Despite the relative insignificance of motor vehicle emissions, EPA has examined detailed assessments pertinent to motor vehicle emissions in Cuyahoga County. Ohio submitted extensive detail on current and projected traffic volumes in the Cleveland area as part of its maintenance plan for this area for ozone. Between 1996 and 2010, traffic volumes are projected to increase by less than one percent per year. Most of this growth is occurring in the outer counties of the area; Cuyahoga County traffic is projected to grow by less than ⅓ percent per year. Meanwhile, emissions per vehicle are declining as a result of previous regulations plus the tighter fuel and emission standards of the Tier 2 rules discussed below. Between now and 2010, emissions per vehicle are expected to decline an average of 2.5 percent per year, not including the significant emission reductions that will result from the Tier 2 rules. The net projected effect is a significant decline in motor vehicle emissions in Cuyahoga County over the next ten years. Similar information indicates a less than one percent traffic growth rate in the Steubenville area as well, so this area too will likely witness declining motor vehicle emissions.

EPA believes that Ohio has addressed important elements of the background concentrations. EPA believes that the net reduction in motor vehicle emissions plus the reduction in other emissions associated with population will yield a net decline in background concentrations. According to the attainment demonstration that EPA has approved, these background concentrations in combination with maximum allowable impacts from significant sources add up to concentrations below the standard. Consequently, EPA believes that Ohio's maintenance plan provides for maintenance of the PM_{10} standards.

Ohio does not explicitly address whether maintenance is assured for 10 years. However, Ohio's approved attainment demonstration shows that the standard will be maintained, principally due to permanent emission limits on significant sources, so long as background emissions remain at or below current levels. Ohio provided evidence that background emissions will remain at or below current levels throughout the next 10 years. Consequently, EPA is satisfied that Ohio has assured maintenance for the requisite 10 years.

Comment: The commenter cites results of an EPA analysis conducted in conjunction with adoption of Tier 2 motor vehicle emission standards, discussed in the **Federal Register** of February 10, 2000 (65 FR 6698 and 6719). The commenter states that "EPA identified Cuyahoga County as an area with a 'significant risk of failing to attain and maintain the PM10 [air quality standards] without further reductions in emissions.'" The commenter acknowledges future reductions from the Tier 2 standards but states that "EPA has not shown that these reductions will be sufficient or will occur soon enough to prevent NAAQS violations" throughout the next 10 years.

Response: In preparation for adopting its Tier 2 motor vehicle emission standards, EPA attempted a national analysis of prospective attainment with and without these standards. EPA identified eight areas as areas of "high risk of failing to attain or maintain the PM_{10} NAAQS". These areas had monitored violations in 1996 to 1998 and were projected to have continued violations in 2030 without the Tier 2 standards. These areas were all in California or neighboring States. EPA then identified five additional counties, including Cuyahoga County, as having a risk of future violations of the PM_{10} NAAQS. These counties were defined as attaining the NAAQS based on 1996 to 1998 data but projected to violate the standards in 2030 in the absence of Tier 2 regulations. The rulemaking cited by the commenter states, "There is a substantial risk that at least some of [these latter five counties] would fail to maintain without further emission reductions. The emission reductions from the Tier 2/Gasoline Sulfur program will help to keep them in 40 attainment." EPA in fact adopted the Tier 2 regulations, so projections of possible future nonattainment without these regulations are irrelevant. Contrary to the commenter's statements, EPA's analysis for the relevant scenario (with Tier 2 standards) shows continued maintenance. In addition, a projection that vehicle emissions without Tier 2 standards could reach levels sufficient to help cause violations by 2030 does not necessarily mean that violations would occur by 2010, the timeframe that is germane here. In any case, the Tier 2 rulemaking notes that "[a]fter reviewing public comments on our presentation of these modeling results, [EPA] concluded that [its analysis is] suitable for estimating PM concentration reductions for economic benefits estimation, [but] it is not a tool we can use with high confidence for predicting that individual areas that are now in attainment will become nonattainment in the future." Thus the most relevant analysis is Ohio's attainment modeling and maintenance plan information, which considers local data on the significance of motor vehicle emissions and on the population (and thus the number of drivers). This information, like the Tier 2 analysis, supports EPA's conclusion that Cuyahoga County will maintain the PM_{10} NAAQS over the next ten years.

Comment: The commenter objects that what EPA calls a maintenance plan "lacks enforcement programs and commitments of resources" as well as "legal authority." In addition, the commenter states that PM_{10} motor vehicle emissions budget is "required not only for purposes of the attainment plan, but also for a maintenance plan as well." Finally, the commenter states that "the state lacks adequate contingency plans for maintenance" pursuant to Section 175A(d). The commenter acknowledges that Ohio has contingency measures "designed to produce limited annual progress toward attainment in the event of a shortfall," but the commenter believes that these measures fail to meet a different requirement applicable to maintenance plans "to assure that the State will promptly correct any violation of the standard."

Response: The requirements under Section 110(a)(2)(E) that the commenter cites were addressed in general by Ohio in its initial SIP, submitted on January 31, 1972, and ultimately approved on April 15, 1974 (39 FR 13539). EPA's conclusion in that rulemaking remains valid, that Ohio's enforcement program, commitment of resources, and legal authority are adequate and assure that measures in the SIP (including maintenance plan measures) will be implemented. See Calcagni Memorandum cited above and Southwestern Pennsylvania Growth Alliance v. Browner, 144 F.3d 984 (6th Cir. 1998). See also discussion in Cincinnati-Hamilton redesignation notice at 65 FR 37882. If EPA were to find that SIP measures were not being implemented, for lack of the above or for any other reason, the process leading to sanctions under Section 179(a)(4) would commence.

A response above clarifies that motor vehicle emission budgets are not required for PM_{10} in areas where motor vehicles do not contribute significantly to PM_{10} nonattainment. Thus, neither the attainment plans nor the maintenance plans for Cuyahoga and Jefferson Counties need to have a motor vehicle emissions budget.

The commenter acknowledges that the Ohio SIP includes contingency measures. These measures, approved on May 6, 1996 (61 FR 20142), are triggered on the basis of air quality monitoring data irrespective of attainment status. That is, these measures are valid maintenance plan contingency measures because they take effect if violations recur for any reason after redesignation of the areas to attainment. The question of interest here, then, is whether these contingency measures are adequate to satisfy Section 175A(d).

The commenter's quote from Section 175A(d) omits a key qualifier that invokes EPA's judgment in assessing contingency measure adequacy for maintenance plan purposes. The full sentence in Section 175A(d) reads: "Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary [emphasis added] to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." Section 175A(d) does not dictate that the maintenance plan contingency measures be sufficient by themselves to correct any violation of the standard. Instead, these measures need only be sufficient in EPA's judgment to help assure that the State will promptly correct any future violation.

A variety of sources emit PM_{10}, so nonattainment can occur for a variety of reasons. EPA cannot reasonably expect maintenance plan contingency measures by themselves to address all possible future violations. Instead, EPA must judge the contingency measures in the context of the types of future violations that it views as most likely and in the context of other factors which help assure that the State will correct any future violations.

Additional factors that help assure prompt correction of any future PM_{10} violation in Cuyahoga County or the Steubenville area include provisions in Ohio's regulations that allow the State to impose additional source controls if violations occur and provisions in the Clean Air Act Section 110(h) (provisions for SIP Calls). EPA is satisfied that the contingency measures that are included in Ohio's maintenance plan for Cuyahoga and Jefferson Counties, in combination with other factors, assure that Ohio will promptly correct any future violations in these areas.

III. What Actions Is EPA Taking, and Why?

EPA is redesignating Cuyahoga and Jefferson Counties in Ohio to attainment for PM_{10} and is approving Ohio's PM_{10} maintenance plan for these counties. The redesignation action reflects EPA's judgment of Ohio's request, focusing on the five criteria given in Clean Air Act Section 107(d)(3)(E) for redesignations from nonattainment to attainment.

The first criterion is that the areas are in fact attaining the standards. The standards in question are the PM_{10} standards given in 40 CFR 50.6, promulgated in 1987. Although EPA promulgated new standards for PM_{10} into 40 CFR 50.7, these new standards have been vacated by the District of Columbia Circuit Court of Appeals, no designations have been promulgated for these new standards, and this rule addresses only the older standards.

No concentrations exceeding the applicable standards have been recorded in Jefferson County or in most of Cuyahoga County. Exceedances occurred at two sites in Cleveland. One site was found to have 2 exceedances of the 24-hour standard over 3 years, which was found to translate to 0.7 expected exceedances per year. EPA proposed this finding, no commenter challenged this finding, and EPA now concludes that the standard is being attained at this site. A second site observed 1 exceedance of the 24-hour standard in 1997 to 1999, which was found to translate to 0.3 expected exceedances per year. A commenter challenged this view, noting that EPA's AIRS database indicates 6 expected exceedances in 1999 as well as 6 expected exceedances in 2000. As discussed above in response to comments, EPA finds that the more sophisticated methods of data interpretation described in the proposed rulemaking give a better assessment of expected exceedances at this site. These methods indicate that the site had approximately one expected exceedance for 1999. A similar assessment of the data so far in 2000 also indicate approximately one expected exceedance. While it is problematic to average in data for only half of 2000, these data support a conclusion that expected exceedances averaged over 3 years is less than 1.0. Consequently, EPA finds that these two sites, as well as the rest of Cuyahoga County, are attaining the applicable PM_{10} standards.

As noted in the proposed rulemaking, Jefferson County is part of a two-state area that also includes a portion of Brooke County, West Virginia. Satisfaction of the attainment criterion requires that air quality throughout this two-state Steubenville area be attaining the standards. The West Virginia portion of this area has one monitor, which has shown no recent

exceedances. Thus, this criterion is met because the entire Steubenville area is attaining the standards.

The second criterion is that EPA has fully approved the applicable implementation plan for the areas. The most recent approval, including approval of Ohio's attainment demonstrations, was published on June 12, 1996, at 61 FR 29662. Other applicable plan elements were approved on prior occasions. EPA does not require full approval of new source review rules or conformity as a prerequisite for redesignation, and, moreover, the conformity regulations do not apply to these areas for PM_{10}. While approval of the SIP for the West Virginia portion of the Steubenville area was published separately, both SIPs have been approved on the basis of the same, jointly developed attainment strategy.

The third criterion is that the air quality improvement be due to permanent and enforceable reductions. EPA finds that air quality has significantly improved as a result of emission reductions that limits in the SIP make permanent and enforceable.

The fourth criterion is that EPA has fully approved a maintenance plan. This rule approves Ohio's maintenance plan for Cuyahoga and Jefferson Counties. Ohio held a public hearing on its maintenance plan and otherwise satisfied the procedural requirements for adopting and submitting this plan. The most important part of this plan is the continuation of SIP emission limits on major industrial sources which have been shown by modeling to assure attainment even if the sources operate at maximum capacity. Additional factors will assure that the remaining, background concentrations will remain at attainment levels, including ongoing plus forthcoming mobile source control requirements as well as population declines in the two areas. Although a commenter expressed numerous concerns about Ohio's maintenance plans, the review of those concerns discussed in the previous section lead EPA to conclude that the maintenance plans fully meet applicable requirements. With today's approval of Ohio's maintenance plans, the fourth criterion for redesignation of the two counties is satisfied.

The fifth criterion for redesignation is that the State has met all requirements under Section 110 and Part D of the Clean Air Act that apply to the areas. This criterion is similar to the second criterion, and EPA finds that Ohio has met all relevant requirements.

For the Steubenville area, EPA is taking action today only on the Ohio portion of this area. This approach is for administrative convenience and in no way signifies any splitting of the area into separate air quality planning areas. EPA's action today reflects a review of the air quality for the full Steubenville area as well as Ohio's fulfillment of its portion of an attainment plan that Ohio and West Virginia jointly developed. EPA has received no redesignation request for the West Virginia portion of the Steubenville area. EPA anticipates receiving and rulemaking on such a request in the near future. If in the future the standard is violated in either portion of the area, such that redesignation back to nonattainment is warranted, EPA will reinstate nonattainment status for the entire area.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that may have disproportionate effects on children.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 12898

Executive Order 12898 (59 FR 7629, February 16, 1994) instructs EPA to address, as appropriate, disproportionately high and adverse health or environmental effects on minority and low-income populations. EPA has found that this rulemaking is consistent with Executive Order 12898 and does not impose any disproportionately high and adverse human health or environmental effects on minority and low-income populations.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. In addition, redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 10, 2001.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, and in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and regulatory requirements.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 29, 2000.

Elissa Speizman,

Acting Regionol Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1880 is amended by removing and reserving paragraph (d) and adding paragraph (j) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

(j) Approval—EPA is approving the PM10 maintenance plan for Cuyahoga and Jefferson Counties that Ohio submitted on May 22, 2000, and July 13, 2000.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 81.336 is amended by revising the table "Ohio—PM–10" to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—PM–10

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Cuyahoga County	1/10/01	Attainment.		
Jefferson County				
The area bounded by Market Street (State Route 43) from the West Virginia/Ohio border west to Sunset Blvd. (U.S. Route 22), Sunset Blvd. west to the Steubenville Township/Cross Creek Township boundary, the Township boundary south to the Steubenville Corporation limit, the corporation boundary east to State Route 7, State Route 7 South to the Steubenville Township/Wells Township boundary, the Township boundary Unclassifiable east to the West Virginia/Ohio border, and North on the border to Market Street	1/10/01	Attainment.		
Rest of State	11/15/90	Unclassifiable.		

* * * * *

[FR Doc. 00–31329 Filed 12–8–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2713, MM Docket No. 94–29, RM–8416)

Radio Broadcasting Services; Willows and Dunnigans, California

AGENCY: Federal Communications Commission.

ACTION: Final rule: petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Marysville Radio, Inc. and Roseville Radio, Inc., of our *Report and Order*, 60 FR 55332 (October 31, 1995) which substituted Channel 288B1 for Channel 288A and reallotted Channel 288B1 from Willows to Dunnigan, California and modified the license for Station KIQS–FM accordingly. The Commission determined that a new engineering study can not be relied upon and that the *Report and Order* properly compared the existing and proposed arrrangement of allotments under the FM Priorities. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 94–29, adopted November 22, 2000 and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), at its headquarters, 445 12th Street, S.W. Washington, D.C.

The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–31398 Filed 12–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2711, MM Docket No. 99–58; RM–9461 RM–9611]

Radio Broadcasting Services; Strattanville and Farmington Township, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 267A at Strattanville, Pennsylvania, as the community's first local aural transmission service (RM–9461). *See* 64 FR 8782, February 23, 1999. At the request of Clarion County Broadcasting, Inc., we also allot Channel 291A at Farmington Township, Pennsylvania, as the community's first local aural transmission service (RM–9611). Channel 267A can be allotted at Strattanville in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) northeast to avoid a short-spacing to the licensed site of Station WORD-FM, Channel 268B, Pittsburgh, Pennsylvania. The coordinates for Channel 267A at Strattanville are 41–18–36 North Latitude and 79–13–05 West Longitude. *See* Supplementary Information, *infra*.

DATES: Effective January 15, 2001. A filing window , will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–58, adopted November 22, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Additionally, Channel 291A can be allotted to Farmington Township in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) to avoid a short-spacing to the construction permit site of Station WMKX(FM), Channel 388B1, Brookville, Pennsylvania, and the licensed and construction permit sites of Station WCTL(FM), Channel 292A Union City, Pennsylvania. The coordinates for Channel 291A at Farmington Township are 41–30–54 North Latitude and 79–18–13 West Longitude. Since Strattanville is located within 320 kilometers (200) miles of the U.S.-Canadian border, Canadian concurrence for the allotment of Channel 267A at Strattanville has been obtained. However, concurrence for the allotment of Channel 292A at Farmington Township has been requested, but not yet received. Therefore, if a construction permit is granted to Farmington Township prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement."

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Strattanville, Channel 267A; and by adding Farmington Township, Channel 291A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–31399 Filed 12–8–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 5)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2000 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board adopts its 2000 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 2000 Government salary increases plus increases to its **Federal Register** publication costs.

EFFECTIVE DATE: These rules are effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1727. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulations in 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

Because Board employees received a salary increase of 4.94% in January 2000, we are updating our user fees to recover the increased personnel costs. We also are increasing the fees to take into account an approximate increase of 4.2% in our publication costs. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d).

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update*, 4 I.C.C.2d 137 (1987). In addition, no new fees are being proposed in this proceeding. Therefore, we believe notice and comment are unnecessary for this proceeding. *See Regulations Governing Fees for Services—1990 Update*, 7 I.C.C.2d 3 (1990); *Regulations Governing Fees for Services—1991 Update*, 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees for Services—1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes being adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from Da-to-Da Office Solutions, Suite 405, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: December 4, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (b), (c) and (e)(1) and the table in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $28.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $19.00 per hour.

* * * * *

(e) * * *

(1) A fee of $49.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$8.21
GS–2	8.94
GS–3	10.08
GS–4	11.31
GS–5	12.65
GS–6	14.11
GS–7	15.67
GS–8	17.36
GS–9	19.17
GS–10	21.12
GS–11	23.20
GS–12	27.81
GS–13	33.07
GS–14	39.07
GS–15 and over	45.96

* * * * *

2. In § 1002.2, paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
Part I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic	$2,900
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303	1,400
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703.	18,300
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	3,100.
(ii) Minor amendment	70.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	300
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family	1,100
(7)–(10) [Reserved]	
Part II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings	
(11)(i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	4,800
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	1,200
(iii) Petition for exemption under 49 U.S.C. 10502	8,300
(12) (i) An application involving the construction of a rail line	49,300
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	1,200
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	49,300
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	2,600
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	4,100
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	1,200
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	4,400
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,100
(16)–(20) [Reserved]	
Part III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments)	14,600
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	2,500
(iii) A petition for exemption under 49 U.S.C. 10502	4,200
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act	300
(23) Abandonments filed by bankrupt railroads	1,200
(24) A request for waiver of filing requirements for abandonment application proceedings	1,200
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment	1,000
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	14,900
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d)	150
(28)–(35) [Reserved]	
Part IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	12,500
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	6,800

Type of proceeding	Fee
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$986,300
(ii) Significant transaction	197,200
(iii) Minor transaction	5,300
(iv) Notice of an exempt transaction under 49 CFR 118.02(d)	1,100
(v) Responsive application	5,300
(vi) Petition for exemption under 49 U.S.C. 10502	6,200
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	986,300
(ii) Significant transaction	197,200
(iii) Minor transaction	5,300
(iv) A notice of an exempt transaction under 49 CFR 118.02(d)	950
(v) Responsive application	5,300
(vi) Petition for exemption under 49 U.S.C. 10502	6,200
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	986,300
(ii) Significant transaction	197,200
(iii) Minor transaction	5,300
(iv) Notice of an exempt transaction under 49 CFR 118.02(d)	850
(v) Responsive application	5,300
(vi) Petition for exemption under 49 U.S.C. 10502	6,200
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	986,300
(ii) Significant transaction	197,200
(iii) Minor transaction	5,300
(iv) Notice of an exempt transaction under 49 CFR 118.02(d)	1,000
(v) Responsive application	5,300
(vi) Petition for exemption under 49 U.S.C. 10502	4,400
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	1,600
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	46,100
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706	
(i) Significant amendment	8,600.
(ii) Minor amendment	70
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	500
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	5,300
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	150
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act	150
(49)–(55) [Reserved]	
Part V: Formal Proceedings	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	55,000
(ii) All other formal complaints (except competitive access complaints	5,400
(iii) Competitive access complaints	150
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	5,800
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding	1,000.
(ii) All other petitions for declaratory order	1,400
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	4,700
(60) Labor arbitration proceedings	150
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d)	150
(62) Motor carrier undercharge proceedings	150
(63)–(75) [Reserved]	
Part VI: Informal Proceedings	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706	800
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	80
(78) (i) The filing of tariffs, including supplements, or contract summaries (per page, $16 minimum charge)	1
(ii) Tariffs transmitted by fax (per page)	1
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	50
(ii) Applications involving over $25,000	100
(80) Informal complaint about rail rate applications	400

Type of proceeding	Fee
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$50
(ii) Petitions involving over $25,000	100
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3)	150
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c) (per document)	27
(84) Informal opinions about rate applications (all modes)	150
(85) A railroad accounting interpretation	750
(86) An operational interpretation	950
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(iii) Third Party Complaint	75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	150
(88)–(95) [Reserved]	
Part VII: Service	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent (per delivery)	21
(97) Request for service or pleading list for proceedings (per list)	16
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a FEDERAL REGISTER notice	200
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a FEDERAL REGISTER notice	450
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	100
(ii) Practitioners' Exam Information Package	25
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	10
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	20
(iv) Public requests for *Source Codes* to the PC version URCS Phase III	500
(v) PC version or mainframe version URCS Phase II	400
(vi) PC version or mainframe version Updated Phase II databases	50
(vii) Public requests for *Source Codes* to PC version URCS Phase II	1,500
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year	450
(ii) Requests for Public Use File on R–CD Each Additional Year	150
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	650
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	450
(v) Waybill—Surface Transportation Board of State proceeding on R–CD—Second Year on different R–CD	500
(vi) User Guide for latest available Carload Waybill Sample	50

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[FR Doc. 00–31344 Filed 12–8–00; 8:45 am]
BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 65, No. 238
Monday, December 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A6; FV98–930–2]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order (order) for tart cherries and provides growers and processors with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. One amendment would clarify the current limitation on the number of Board members that may be from, or affiliated with, a single "sales constituency" by amending the definition of that term. Another would simplify the method used to establish volume regulations for tart cherries. The proposed changes are intended to improve the operation and functioning of the tart cherry marketing order program.

DATES: The referendum shall be conducted from January 15 through January 26, 2001. The representative period for the purpose of the referendum herein ordered is June 1, 1999, through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 12, 1998, and published in the November 17, 1998, issue of the **Federal Register** (63 FR 63803). Recommended Decision and Opportunity to File Written Exceptions issued on December 29, 1999, and published in the **Federal Register** on January 5, 2000 (65 FR 672).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated on the record of a public hearing held in Grand Rapids, Michigan on December 1, 1998, and in Salt Lake City, Utah on December 3, 1998. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the Board and the U.S. Department of Agriculture.

The Board proposed two amendments. One would amend the current order provision which defines the term "sales constituency" in order to clarify the intent of the Board membership limitation regarding sales constituency affiliation. The second would simplify the method used to establish volume regulations for tart cherries.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to adopt such changes as may be necessary to the order, if either or both of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on December 29, 1999, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 4, 2000.

Five exceptions and briefs were filed during the period provided regarding the two proposed revisions to the order. Two of those supported the conclusions reached in the Recommended Decision concerning the proposed revision of the definition of "sales constituency"—those filed by the Board and by James R. Jensen, President, CherrCo, Inc. Three were opposed to that amendment—those filed by Timothy O. Brian, Smeltzer Orchard Co.; Terry Dorsing, President, Washington Tart Cherry Products, Inc.; and Lee Schrepel, Chair, Oregon Tart Cherry Association. With regard to the second amendment, the proposed revision of the optimum supply formula, the Board supported and Mr. Dorsing did not object to this amendment.

The specific issues raised in the exceptions are discussed in the Small Business Considerations and Findings and Conclusions sections of this document.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less

than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses.

The record indicates that during the 1998–99 crop year, approximately 41 handlers were regulated under Marketing Order No. 930. In addition, there were about 896 producers of tart cherries in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The 1998–99 tart cherry crop was about 340 million pounds. The record indicates that of the 41 tart cherry handlers, 12 had processed tonnage of more than 10 million pounds (or 29 percent of all handlers); 4 had between 5 and 10 million pounds (10 percent); 15 had between 1 and 5 million pounds (37 percent); and the remaining 10 had less than 1 million pounds of processed tonnage (24 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities. The majority of tart cherry processors are located in Michigan. Many handle cherries grown in more than one district. Michigan accounted for 76.4 percent of the production, followed by Utah with 9.6 percent, Wisconsin with 4.3 percent, Washington with 4.0 percent, New York with 3.9 percent, Pennsylvania with 1.2 percent, and Oregon with 0.6 percent. By State, about 72.5 percent of the growers are in Michigan, 9.9 percent in New York, 5.3 percent in Utah, 4.5 percent in Wisconsin, 3.6 percent in Pennsylvania, 2.5 percent in Oregon, and 1.7 percent in Washington.

Dividing total production by the number of growers, the average grower produces about 380,000 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $76,000. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition. No record evidence was provided to indicate how many tart cherry growers produce 2.5 million pounds or more. One witness testified, however, that an estimated 150 growers (about 17 percent of the total number of growers) produce in excess of 1 million pounds, with the remainder producing less than that. With a majority of growers producing less than 1 million pounds, it follows that a majority of growers produce less than 2.5 million pounds. This supports the conclusion that the majority of tart cherry growers are small businesses. By State, however, average grower size varies considerably. The average grower in Washington accounts for roughly 910,000 pounds of cherries. Next in size is Utah with 680,000 pounds, followed by Michigan (400,000 pounds), Wisconsin (370,000 pounds), New York (150,000 pounds) Pennsylvania (130,000 pounds), and Oregon (100,000 pounds).

This decision proposes two amendments to the tart cherry marketing order. One would clarify the current limitation on the number of Board members that may represent a single "sales constituency." The second would simplify the method used to establish volume regulations for tart cherries. Both amendments would be beneficial to business entities, both large and small.

Definition of Sales Constituency

Section 930.20 of the tart cherry marketing order provides for an 18-member Cherry Industry Administrative Board to assist the Department in administering the program. That section also divides the production area into nine districts for purposes of representation on the Board and allocates membership among those districts. Five of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each are Oregon, Pennsylvania, Washington, and Wisconsin. (The eighteenth Board member is selected to represent the general public, and need not be from any specific area.)

Section 930.20 further provides that for those districts allocated more than one member, only one of those members can be affiliated with a single sales constituency. Section 930.16 currently defines a sales constituency to mean a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

The proposed amendment to § 930.16 would provide that an organization that receives consignments of cherries but does not direct where those cherries are sold would not be considered a sales constituency. The growers and handlers affiliated with such an organization would not be limited in their representation on the Board.

The record shows that one of the Board's primary responsibilities is to recommend regulations to implement the marketing order's authorities relating to supply management, or volume regulation. Volume regulations benefit all industry members, both large and small, by matching demand in primary markets with available supplies of tart cherries. These regulations also serve to expand sales in secondary markets. The result is improved grower and processor returns.

The record shows that approximately 11 of the current 18 members of the Board are affiliated in some way with CherrCo, the organization which raised the question of the intended meaning of the term sales constituency. Applying the current order limitation on the number of members representing a single sales constituency to CherrCo would result in five of the current Board members being declared ineligible to serve on the Board. All of these members represent regulated districts—four in Michigan and one in New York.

The record shows that CherrCo is a federated grower cooperative. It is comprised of 24 member cooperatives. CherrCo's members account for 75–80 percent of Michigan's tart cherry production, and a significant portion of the production in New York, Utah, Washington, and Wisconsin. CherrCo currently has no members in Oregon or Pennsylvania. The record indicates that the primary function of CherrCo is to establish minimum prices for certain tart cherry products. The record indicates that CherrCo is not directly involved in the actual sales of its members' products. There is intense competition among its members (as well as between its members and non-members) to sell tart cherries. The competition for sales is on the basis of individual handlers' reputations, on the quality and mix of the products they offer, on any special services they provide to their customers, and on whether or not their processing plants are certified to conform with certain sanitation standards.

The purpose of the sales constituency limitation is explained in § 930.20(f) of the order where it is stated that in order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board. The genesis of this limitation can be traced to the order promulgation record where it was stated that the limitation was designed to prevent the recurrence of a problem that existed under the previous tart cherry order which was in effect from 1971 through 1987. Under that order, there was no such limitation, and actions of the Board only required a simple majority vote, allowing representatives from a single sales organization to pass Board actions without support from other industry members. As was explained in the recommended decision published on January 5, 2000, concerning the amendments in this rulemaking, the tart cherry industry is comprised of many different organizations. Some were clearly meant to be covered by the sales constituency limitation, while others were not. It was clearly intended that an organization such as Cherry Central, Inc. (a cooperative) be covered. Its main purpose is to sell its members' cherries and other products. The recommended decision further explains that an organization such as the Cherry Marketing Institute was not intended to be subject to the sales constituency limitation. The formation of CherrCo, a federated grower cooperative which was not in existence when the present order was promulgated, has caused the Department and the industry to reopen this question and to consider an amendment to the definition of sales constituency. This is because an organization such as CherrCo lies somewhere between Cherry Central, Inc. and the Cherry Marketing Institute which has a primary function of conducting generic promotion activities to expand overall sales of cherries and funding and conducting research in processing techniques and product development.

Some of the exceptions and briefs filed raised issues and concerns in connection with material Issue Number 1, definition of a sales constituency, and small business considerations. The Board was of the view that this proposed amendment would not have any negative impact on small businesses and that it would in fact help small entities by allowing them to send a representative of their choice to the Board. The Board noted that the regulatory requirements of the proposed amendment were properly tailored to the size and nature of small businesses.

Two exceptions were filed that raised small business concerns. One exception from Terry Dorsing, President, Washington Tart Cherries Products, Inc., presented an overview of the functioning of the tart cherry marketing order since its inception. Mr. Dorsing stated that since the initial hearing to establish the order, it was his and his company's position that the Northwest and other small production areas would be dominated by the large production in Michigan and the impact of various provisions of the order would be detrimental to small entities. The exception also stated that a marketing order was not good for the small producer and for the tart cherry industry as a whole. While acknowledging the inclusion in the provisions of the order of a variety of safeguards to protect small producers and production areas, the exception concluded that the Board itself, in recommending further changes to the order (currently subject to a separate rulemaking action) was preparing to tear down the safeguards to the detriment of small entities.

Another exception from Lee Schrepel, Chair, Oregon Tart Cherry Association, raised concern about the size of CherrCo affiliates, noting that perhaps most of the large handlers in the industry were CherrCo affiliates. The exception argued that the proposal had the appearance of giving a greater proportion of Board control to larger handlers, as defined under the Regulatory Flexibility Act. The exception questioned whether the Department failed to make a thorough examination of all relevant small business considerations, as required by that Act. The exception also noted that there are several examples of how boards administering Federal marketing orders for other commodities have protected the small, the remote and the independent, with each of the orders limiting the degree of domination by a particular constituency in the governed industry. Finally, the exception stated the proposed amendment should be rejected, that the Department should refer the matter back to the Board for further study to craft a more suitable amendment, or that the Department should develop a compromise amendment itself taking into account the alternative proposals presented in the rulemaking proceedings. Alternatively, the exception stated that there should be an allowance for permanent exclusion of all producers and handlers in the Oregon district, an issue that has not been proposed in the proceeding.

Alternative proposals discussed at the hearing were considered and discussed in the Recommended Decision. It was determined that those proposals failed to properly address some of the fundamental issues faced by the tart cherry industry. One of these issues is that some districts are subject to volume control, while others are not. Another deals with the varying marketing and growing conditions. Probably the most important issue which alternative proposals failed to address was fair representation. Restrictions on an organization such as CherrCo could prevent growers in some of the highest volume producing areas from being adequately represented on the Board.

Material Issue Number 1 concerns a proposed amendment that would clarify the current limitation on the number of Board members that may be from, or affiliated with, a single sales constituency. This proposal is intended to be inclusive rather than exclusive. The issue presented by this proposed amendment is whether an organization or entity, such as CherrCo, should be limited in terms of membership on the Board. The Department has fully reviewed this amendment consistent with the provisions of the Regulatory Flexibility Act as well as the statutory authority for this program. In doing so, it has concluded that this proposed amendment should be favorable to both large and small entities. The two exceptions received raising small business considerations are not in agreement with this conclusion.

The exceptions raised a variety of issues and concerns regarding the proposed amendment as well as the marketing order itself. The nature and structure of a board under a marketing order program reflects the industry that is regulated. Accordingly, a marketing order may provide for one or more provisions concerning board memberships. Such provisions would be tailored to reflect the attributes of a particular industry, as appropriate. In the case of the tart cherry marketing order, a provision was crafted to prevent any single sales constituency from having control of Board decision making. The proposed amendment would clarify the application of that provision, taking into account the current state of the industry as well as the present membership on the Board. As such, the original intent of the provisions would not be changed by the clarification. Looking at this amendment in terms of its impact, we continue to conclude that the proposed amendment should be favorable to both large and small entities.

With regard to the assertion that certain safeguards in the order could be eliminated to the detriment of smaller production areas, this cannot be done by Board action alone. Any such proposed changes would be subject to a formal rulemaking process, including public

hearings and a referendum, as well as an analysis and review by the Department.

Revision of the Optimum Supply Formula

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Authority for such regulations appears in § 930.51 of the marketing order.

Volume regulations are implemented through the establishment of free and restricted percentages. Such percentages are recommended by the Board in accordance with § 930.50 of the order, and, if deemed appropriate, implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. "Free market tonnage percentage" cherries may be marketed in any outlet. "Restricted percentage" cherries must be withheld from the primary market. They may be diverted in the orchard or at the processing plant; placed into a reserve pool; or sold in secondary markets. These secondary markets include exports (except to North America), and new products. Sales of restricted percentage cherries to these specified exempt markets receive diversion credits which handlers use to fulfill their restricted obligation.

The record indicates that the primary objective of tart cherry volume regulations is to balance supplies with market demand, thereby stabilizing the market and improving grower and processor returns. A second objective is to encourage market growth by allowing restricted cherries to be sold in secondary markets (for example, most export markets). Witnesses attributed much of the improvement in recent cherry market conditions to the use of regulation in the 1997/98 and 1998/99 seasons.

The order currently sets forth, in § 930.50, an "Optimum Supply Formula" (OSF) which the Board must follow in its consideration of annual free and restricted percentages. The optimum supply is currently defined as 100 percent of the average sales of the prior 3 years, to which is added a desirable carryout inventory.

The record indicates that using 100 percent of prior years' sales results in an overstatement of the optimum supply. The record shows that including the sales of restricted cherries in the optimum supply understates the projected surplus and results in a higher free percentage than supply and market conditions warrant. This is because those total sales include not only sales to the primary market, but to secondary markets as well.

In the years that tart cherry volume regulations have been used, this issue has been addressed through use of an adjustment in order to achieve an optimum supply of cherries in the marketplace. Once a surplus has been computed (deducting the optimum from the available supply), the sales to secondary markets are added back to the surplus as an economic adjustment. The Board's recommended amendment would revise the procedures currently used in calculating the optimum supply. Under its proposal, the optimum supply would be equal to the 3-year average sales in primary markets (total sales less sales to markets eligible for diversion credit) plus the target carryout. This would simplify the method of arriving at an optimum supply figure and would be easier for tart cherry growers and processors to understand. Therefore, any regulatory impact on growers or handlers would be minimal or non-existent.

The record evidence supports the conclusion that this amendment would result in no extra costs to growers or processors in that any resulting level of volume regulation would be similar to what is currently in effect and its economic effect on the industry would be similarly analyzed in each instance. It would benefit industry members both large and small, however, because the process relating to the establishment of volume regulations would be less confusing and more readily understood by industry members. This process is used by growers and handlers in making seasonal decisions (including those relating to harvesting cherries). To the extent that this process is more readily understood, all in the industry should benefit.

Further, in its brief, the Board noted that the Department considered the impact of Material Issue Number 2 on small businesses and concluded that there would be no negative impact. The Board stated that it considered several other approaches concerning the optimum supply formula and was of the view that the proposed amendment was the best alternative available.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Findings and Conclusions; Discussion of Comments

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the January 5, 2000, issue of the **Federal Register** (65 FR 672) are hereby approved and adopted subject to the following additions and modifications:

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 1 of the Recommended Decision concerning whether the definition of "sales constituency" should be revised are amended by adding the following eight paragraphs to read as follows:

In his exception, James R. Jensen, President of CherrCo, Inc., expressed agreement with the conclusions reached in the Recommended Decision, and requested that cherry growers and handlers be given the opportunity to express their views through the referendum process. This document calls for such a referendum to be conducted.

The Cherry Industry Administrative Board also agreed with the AMS recommendation on this issue, but requested one clarification. The Recommended Decision concluded that CherrCo should not be considered a sales constituency for the purpose of Board membership limitations. The Board requested that this conclusion be expanded to include all purposes regulated by the order. The term "sales constituency" is only used in the order with respect to Board membership. It has no relevance to other order provisions. Thus, the Board's recommendation is unnecessary, and its exception is denied.

The exceptions filed by Tim O. Brian, Lee Schrepel and Terry Dorsing asked that AMS revise its decision to conclude that CherrCo is a sales constituency and that its membership on the Board should be limited.

Mr. Brian and Mr. Schrepel took exception to the statement that CherrCo does not actively arrange sales of tart cherries. They supported their position by providing a Membership and Marketing Agreement dated March 31, 1997, containing the statement that CherrCo "* * * may sell the Product itself or may license sales agents to sell the Product." Record evidence shows that CherrCo licenses sales agents to sell its members' cherries. These agents compete among themselves and with non-member sales agents to garner sales. CherrCo itself does not sell cherries. If, in the future, CherrCo takes on that function, such activities would be reviewed in light of the prohibition.

Mr. Brian also argued that CherrCo has taken on additional functions since the time of the hearing. First, it has purchased the label "CherreX" from a cherry export trading company. Second, it has been in the process of forming a supply cooperative. Whether any of the present or future activities would make industry members affiliated with CherrCo subject to the Board membership restriction would be determined on the facts in each instance. In any case, the definition amendment is generic and is not applicable only to CherrCo.

Mr. Schrepel and Mr. Dorsing claimed that CherrCo's membership should be limited because Board members affiliated with that organization have recently taken actions that are counter to the interests of industry members not affiliated with CherrCo. Both exceptions pointed to a group of marketing order amendment proposals submitted by the Board in October 1999. Included were proposals to eliminate the 15 million pound threshold used to determine whether a district is subject to volume regulation; allowing diversion credits for tart cherry juice and juice concentrate; setting assessments for all cherry products at the same level; and allowing the Board chairman to designate a person to vote at a Board meeting if neither a member nor his or her alternate is present. While it is true that a second set of amendment proposals has been recommended and an amendatory hearing was held in March and April 2000, those proposals are and will be considered in a separate formal rulemaking proceeding. Interested parties have and will be given the opportunity to express their viewpoints, and growers and handlers will be able to vote in referendum.

Mr. Schrepel argued that USDA did not adequately consider alternative proposals relating to Board membership. He pointed to the fact that other marketing orders (for example, those covering cranberries and almonds) limit the number of positions that can be held by a particular constituency. The record shows that this issue has been under consideration by the Board for many months, and this amendment was recommended as the best course of action. The public hearing held on this matter provided interested persons with the opportunity to present alternative plans related to Board membership. As previously discussed, alternatives presented at the hearing failed to address some of the fundamental issues faced by the tart cherry industry, such as adequate representation of growers in high volume producing areas. As such, AMS rejected those alternatives.

Mr. Schrepel also argues that USDA is not fulfilling its obligation under the U.S. Constitution and the Act when it permits an interest group to control the Board. He states that the percentage of Board members affiliated with CherrCo exceeds the proportion of the cherry crop CherrCo members handle. The marketing order does not guarantee CherrCo a specified number of seats on the Board. Membership is allocated among the established districts and among growers and handlers. Every tart cherry grower and handler has the opportunity to participate in the nomination process, and can vote on who should be his or her representative on the Board. All Board actions are subject to the approval of the Secretary, and any resultant rulemaking actions provide further opportunity for public participation.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin is approved or favored by growers and processors, as defined under the terms of the order, who during the representative period were engaged in the production or processing of tart cherries in the production area.

The representative period for the conduct of such referendum is hereby determined to be June 1, 1999, through May 31, 2000.

The agent of the Secretary to conduct such referendum is hereby designated to be Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Suite 2A04, Riverdale, Maryland 20737; telephone (301) 734–5243.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

Dated: December 5, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin [1]

Findings and Determinations

Thefindings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of tart cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) The marketing agreement and order, as hereby proposed to be amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on December 29, 1999, and published in the **Federal Register** on January 5, 2000, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 930, § 930.16 is revised to read as follows:

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers and growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales constituency.

3. In § 930.50, paragraph (a) is revised to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years, reduced by the average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of restricted percentage cherries, to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

[FR Doc. 00–31455 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–02–P

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–209P]

RIN 1117–AA59

Schedule of Controlled Substances: Placement of Dichloralphenazone Into Schedule IV

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to expressly list dichloralphenazone as a Schedule IV controlled substance under the Controlled Substances Act (CSA). This proposed action is based on the DEA's interpretation that dichloralphenazone is a compound containing chloral hydrate, a Schedule IV controlled substance under 21 CFR part 1308; by definition, dichloralphenazone is also a Schedule IV substance. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on those persons who handle dichloralphenazone or products containing dichloralphenazone.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Comments should be submitted in triplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is Dichloralphenazone?

Dichloralphenazone (also known as dichloralantipyrine) is a compound containing two molecules of chloral hydrate (2,2,2-trichloro-1,1-ethanediol) and one molecule of phenazone (1,2-dihydro-1,5-dimethyl-2-phenyl-3Hpyrazol-3-one); CAS No. 480–30–8. Dichloralphenazone is a sedative typically used in combination with isometheptene mucate and acetaminophen in formulating prescription pharmaceuticals for the relief of tension and vascular headaches. When dichloralphenazone is administered or placed in an aqueous solution (a liquid preparation of any substance dissolved in water) it dissociates to form chloral hydrate and phenazone.

Why Is DEA Issuing This Notice?

Schedule IV controlled substances are listed in 21 CFR 1308.14. Section 1308.14(c) lists 49 depressants, including chloral hydrate, that are Schedule IV controlled substances. The first sentence of 21 CFR 1308.14(c) states that the category of Schedule IV depressants includes "any material, compound, mixture, or preparation which contains any quantity of" the substances listed in the section. Since dichloralphenazone is a compound containing chloral hydrate, it is likewise a Schedule IV depressant.

It has come to the attention of the DEA that a large portion of the pharmaceutical industry that handles dichloralphenazone or products containing dichloralphenazone has failed to recognize that this is a compound containing chloral hydrate. To clarify this situation, the Deputy Administrator is publishing this notice proposing that dichloralphenazone be expressly listed as a Schedule IV depressant and assigned a specific DEA control number.

What Is the Effect of This Notice?

This notice clarifies the DEA's position regarding the control status for dichloralphenazone. This proposed rule, if finalized, would specifically list dichloralphenazone as a Schedule IV depressant. In addition, this notice provides an opportunity for interested persons to comment, in writing, with regard to any information they feel may have a bearing on this matter.

What Regulatory Requirements Will Be Applied to Handlers of Dichloralphenazone?

Persons currently involved with the manufacture or handling of this substance are not expected to comply with DEA regulations applicable to a Schedule IV substance until such time as a final rule is published in the **Federal Register**. If/When a final rule is published in the **Federal Register**, persons who manufacture, distribute, dispense, import, export, store or engage in research with dichloralphenazone will be provided with delayed dates for compliance with Federal regulations in order to avoid imposing any special hardship. Upon publication of a final rule, the applicable regulations and amount of time for compliance will be as follows:

1. Registration

Any person who manufactures, distributes, dispenses, imports or exports dichloralphenazone or who engages in research or conducts instructional activities or chemical analysis with respect to this preparation, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with 21 CFR part 1301 on and after 30 days from date of the publication of the final rule in the **Federal Register**. Any person who is currently engaged in any of the above activities must submit an application for registration by 30 days from date of publication of the final rule in the **Federal Register**. Any such person may then continue their activities until the DEA has approved or denied that application.

2. Disposal of Stocks

Any person who elects not to obtain a Schedule IV registration or is not entitled to such registration must surrender all quantities of currently held dichloralphenazone in accordance with procedures outlined in 21 CFR 1307.21 on or before 30 days from date of publication of the final rule in the **Federal Register**, or may transfer all quantities of currently held dichloralphenazone to a person registered under the CSA and authorized to possess Schedule IV control substances on or before 30 days from date of publication of the final rule in the **Federal Register**.

Dichloralphenazone to be surrendered to DEA must be listed on a DEA Form 41, "Inventory of Controlled Substances Surrendered for Destruction." DEA Form 41 and instructions can be obtained from the nearest DEA office.

3. Security

Dichloralphenazone must be manufactured, distributed and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74; 1301.75(b) and (c) and 1301.76 after date of publication of the final rule in the **Federal Register**.

4. Labeling and Packaging

All commercial containers of dichloralphenazone that are packaged on or after 180 days from date of publication of the final rule in the **Federal Register** must have the appropriate Schedule IV labeling and packaging as required by 21 CFR 1302.03–1302.07. Commercial containers of dichloralphenazone packaged before 180 days from date of publication of the final rule in the **Federal Register** and not meeting the requirements specified in 21 CFR 1302.03–1302.07 may be distributed until 270 days from date of publication of the final rule in the **Federal Register**. On and after 270 days from date of publication of the final rule in the **Federal Register** all commercial containers of dichloralphenazone must bear the CIV labels as specified in 21 CFR 1302.03–1302.07.

5. Inventory

Registrants possessing dichloralphenazone are required to take inventories pursuant to 21 CFR 1304.03, 1304.04 and 1304.11 after publication of the final rule in the **Federal Register**.

6. Records

All registrants must keep records pursuant to 21 CFR 1304.03, 1304.04 and 1304.21–1304.23 after publication of the final rule in the **Federal Register**.

7. Prescriptions

All prescriptions for dichloralphenazone or prescriptions for products containing dichloralphenazone are to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21–1306.26. All prescriptions for dichloralphenazone or products containing dichloralphenazone issued on or before 60 days from date of publication of the final rule in the **Federal Register**, if authorized for refilling, shall, as of that date, be limited to five refills and shall not be refilled after 180 days from date of publication of the final rule in the **Federal Register**.

8. Importation and Exportation

All importation and exportation of dichloralphenazone shall be in compliance with 21 CFR part 1312 after publication of the final rule in the **Federal Register**.

9. Criminal Liability

Any activity with dichloralphenazone not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after 30 days from date of publication of the final rule in the **Federal Register**, except as authorized in that rule.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not have a significant economic impact on a substantial number of small business entities. Most handlers of dichloralphenazone or prescription products containing this substance are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive order 13132. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, telephone (202) 307–7297.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (21 CFR 0.100), and redelegated to the Deputy Administrator of the DEA pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is proposed to be amended by redesignating the existing paragraphs (c)(15) through (c)(49) as (c)(16) through (c)(50) and by adding a new paragraph (c)(15) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(15) Dichloralphenazone	2467

* * * * *

Dated: November 30, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–31356 Filed 12–8–00; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–4B]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Petition for rulemaking, denial.

SUMMARY: On April 17, 2000, the Digital Media Association ("DiMA") filed a petition with the Copyright Office, requesting that the Office initiate a rulemaking proceeding to amend the rule that defines the term "Service" for purposes of the statutory license governing the public performance of sound recordings by means of digital audio transmissions. DiMA sought an amendment that, if adopted, would expand the current definition of the term "Service" to state that a service is not interactive simply because it offers the consumer some degree of influence over the programming offered by the webcaster. For the reasons set forth in this notice, the Copyright Office is denying the DiMA petition.

DATE: December 11, 2000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Since the enactment of the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Public Law 104–39, copyright owners of sound recordings have enjoyed an exclusive right to perform their copyrighted works publicly by means of a digital audio transmission, subject to certain limitations and exemptions. Among the limitations on the newly created digital performance right was the creation of a statutory license for nonexempt, noninteractive, digital subscription transmissions. 17 U.S.C. 114(d)(2), (3) and (f) (1995).

This license was amended in 1998 in response to the rapid growth of digital communications networks, *e.g.*, the Internet, and the confusion surrounding the question of how the DPRA applied to certain nonsubscription digital audio services. These changes, included in the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105–304, expanded the section 114 statutory license to expressly cover nonexempt eligible nonsubscription transmissions and nonexempt transmissions made by preexisting satellite digital audio radio services. 17 U.S.C. 114(f) (1998).

For purposes of the DMCA, an "eligible nonsubscription transmission" is defined as:

> a non-interactive nonsubscription digital audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

17 U.S.C. 114(j)(6) (1998). A key element of the definition is the requirement that the transmission must be "non-interactive." Unless a service meets this criterion, it is ineligible for the statutory license and, instead, must negotiate a voluntary agreement with the copyright owner(s) of the sound recordings before performing the works by means of digital audio transmissions. 17 U.S.C. 114(d)(3) (1998).

The distinction between interactive and non-interactive transmissions is central to determining whether a service that transmits performances of sound recordings is eligible to operate under the section 114 licensing scheme. Non-interactive services may make use of the statutory license, but interactive services incur full copyright liability under the digital performance right and, therefore, must conduct arms-length negotiations with the copyright owners of the sound recordings for a license before making a digital transmission of a sound recording. Congress imposed full copyright liability on interactive services because it believed "interactive services [were] most likely to have a significant impact on traditional record sales, and therefore pose[d] the greatest threat to the livelihoods of those whose income depends upon revenues derived from traditional record sales." S. Rep. No. 104–128, at 16 (1995).

Congress first defined an "interactive service" in the DPRA as a service that:

> enables a member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large does not make a service interactive. If an entity offers both interactive and non-interactive services (either concurrently or at different times), the non-interactive component shall not be treated as part of an interactive service.

17 U.S.C. 114(j)(4) (1995). The second sentence was added to make clear that "the term "interactive service" is not intended to cover traditional practices engaged in by, for example, radio broadcast stations, through which individuals can ask the station to play a particular sound recording as part of the service's general programming available for reception by members of the public at large." S. Rep. No. 104–128, at 33–34 (1995).

In the DMCA, Congress expanded this definition to include further explanation of the type of activity that does not, in and of itself, make a service interactive. Specifically, the DMCA refined the definition of an "interactive service" as follows:

> (7) An "interactive service" is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of a subscription service, by all subscribers of the service, does not make a service interactive, if the programming on each channel of the service does not substantially consist of sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

17 U.S.C. 114(j)(7) (1998). In both cases, Congress sought to identify a service as interactive according to the amount of influence a member of the public would have on the selection and performance of a particular sound recording. Neither definition, however, draws a bright line delineating just how much input a member of the public may have upon the basic programming of the service.

On April 17, 2000, the Digital Media Association ("DiMA") filed a petition with the Office, seeking clarification on this point and an amendment to the regulation defining the term "service." DiMA's proposed rule would amend 37 C.F.R. 201.35(b)(2) as follows:

> A Service making transmissions that otherwise meet the requirements for the section 114(f) statutory license is not rendered "interactive," and thus ineligible for the statutory license, simply because the consumer may express preferences to such Service as to the musical genres, artists and sound recordings that may be incorporated into the Service's music programming to the public. Such a Service is not "interactive" under section 114(j)(7), as long as: (i) Its transmissions are made available to the public generally; (ii) the features offered by the Service do not enable the consumer to determine or learn in advance what sound recordings will be transmitted over the Service at any particular time; and (iii) its transmissions do not substantially consist of sound recordings performed within one hour of a request or at a time designated by the transmitting entity or the individual making the request.

The effect of the amendment would be that a service would not be considered interactive merely because it offers a consumer some degree of influence over the streamed programming.

Shortly thereafter, the Copyright Office published a notice in the **Federal Register**, seeking comment from interested parties on two issues. First, the Office asked whether the petition articulated a proper subject for a rulemaking proceeding; and second, assuming the requested rule could be promulgated through a notice and comment proceeding, whether sufficient information existed "to promulgate a regulation that could accurately distinguish between activities that are interactive and those that are not." 65 FR 33266, 33267 (May 23, 2000).

For the reasons set forth herein, the Copyright Office denies DiMA's petition.

Comments

Comments and reply comments were filed by the Recording Industry Association of America, Inc. ("RIAA") and the Digital Media Association ("DiMA").

Is a Rulemaking Proceeding Necessary or Appropriate?

DiMA seeks its proposed amendment to the definition of the term "service" based on its understanding that a consumer-influenced webcast would not be prohibited from using the section 114 statutory license. According to DiMA, this clarification is necessary in large part because copyright holders of the sound recordings have taken the untenable position that "consumer-influenced webcasting *of any nature* is not eligible for the DMCA statutory license." DiMA comment at 4; DiMA reply at 9–11.

At the same time, DiMA states that it is impossible to discern all possible

permutations of features and functionalities that may be offered by a service which allows consumer input on programming selections. DiMA comment at 5. Nevertheless, DiMA asserts that its proposed rule establishes guidelines to be used to determine whether a specific service is interactive after a fact-intensive analysis of its activities. DiMA acknowledges, however, that the Office may determine that application of the rule, especially the guidelines set forth in the second half of the proposal, may involve evidentiary issues that bar adoption of the entire proposal. If this is the case, DiMA asks the Office to adopt, at a minimum, the first sentence of the proposed rule, which reads as follows:

> A Service making transmissions that otherwise meet the requirements for the section 114(f) statutory license is not rendered "interactive," and thus ineligible for the statutory license, simply because the consumer may express preferences to such Service as to the musical genres, artists and sound recordings that may be incorporated into the Service's music programming to the public.

DiMA reply at 7. DiMA is expressly not asking the Copyright Office to determine whether any particular service is non-interactive. *Id.*

DiMA also argues that the rulemaking is necessary in order to "define the appropriate bounds" of the Copyright Arbitration Royalty Panel ("CARP") "proceeding which will determine the statutory rates for sound recording performances (and certain reproductions) associated with webcasting." DiMA Petition at 2; DiMA comment at 4; *see also* 64 FR 52107 (September 27, 1999).

RIAA opposes the DiMA petition. It asserts that DiMA's proposed change will not clarify current law, but actually change it. RIAA argues that clear standards for determining what constitutes an "interactive service" have already been set forth in section 114(j)(7). Specifically, section 114(j)(7) requires an "interactive service" to either "enable[] a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient." 17 U.S.C. 114(j)(7).

RIAA also argues that the determination as to whether a particular service is interactive requires a fact-intensive inquiry to determine whether the service offers the type of prohibited activity characterized in section 114(j)(7). Moreover, RIAA contends that the DiMA proposal fails to define a class of service that embodies these principles, offering instead, a rule meant to cover "a myriad of services with different personalization features," which defy characterization into general categories. RIAA comment at 12. RIAA then cites potential problems with the proffered regulatory language due to the lack of precise definitions for concepts and terms such as "preferences" or "incorporated into the Service's programming." *Id.* at 6.

RIAA also takes exception to DiMA's assertions that RIAA believes any amount of consumer influence automatically makes a service interactive. In fact, RIAA acknowledges that all music programming services are likely to be influenced by their consumers' tastes. RIAA comment at 3. For this reason, RIAA purports to examine each service on a case-by-case basis, asking the question "whether the service offers 'programs specially created for the recipient' or whether it allows listeners to request particular sound recordings." RIAA reply at 2–3. Because it evaluates each service in this manner, RIAA maintains that DiMA's argument in support of this rulemaking proceeding is groundless.

The Copyright Office has considered DiMA's request to initiate a rulemaking to clarify that a service does not become interactive merely because consumers may have some influence on the music programming offered by the service and finds that this concept is not in dispute. RIAA readily acknowledges that consumers may express preferences for certain music genres, artists, or even sound recordings without the service necessarily becoming interactive. RIAA comment at 8. The Office agrees, and concurs with DiMA that certain passages from the DMCA Conference Report quoted in its comments support this interpretation. For example, the following passage in the DMCA Conference Report distinguishes between certain activities that make a service interactive and those that do not:

> [A] service would be interactive if it allowed a small number of individuals to request that sound recordings be performed in a program specially created for that group and not available to any individuals outside of that group. In contrast, a service would not be interactive if it merely transmitted to a large number of recipients of the service's transmissions a program consisting of sound recordings requested by a small number of those listeners.

H.R. Conf. Rep. No. 105–797, at 87–88 (1998) ("DMCA Conference Report").

However, the fact that some degree of consumer influence on a service's programming is permissible does not mean that a regulation to clarify that fact is necessary or even desirable. In fact, because the law and the accompanying legislative history make it clear that consumers can have some influence on the offerings made by a service without making the service interactive, there is no need to amend the regulations to make this point.

What is not clear, however, is how much influence a consumer can have on the programming offered by a transmitting entity before that activity must be characterized as interactive. The examples cited in the comments and gleaned from the legislative history are merely illustrative and do not identify with specificity those characteristics of a service that make it interactive.[1] Such a determination must be made on a case-by-case basis after the development of a full evidentiary record in accordance with the standards and precepts already set forth in the statute. DiMA appears to agree with this approach in theory and, in fact, expressly states that it does not seek a ruling on whether any particular service should be characterized as an interactive service. DiMA reply at 7.

Moreover, courts recognize that some principles must evolve over a period of time before an agency will have gathered sufficient information to formulate a general rule. *See Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 202–203 (1947) (acknowledging that "the agency may not have sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible to capture within the boundaries of a general rule."). *See also, WWHT, Inc.* v. *Federal Communications Commission*, 656 F.2d 807, 817 (D.C. Cir. 1981) (supporting agency's denial of rulemaking petition in case where rapid technological development in area makes it difficult to formulate effective regulations, or the state of development "may be such that sufficient data are not yet available on which to premise adequate regulations.").

In light of the rapidly changing business models emerging in today's digital marketplace, no rule can accurately draw the line demarcating the limits between an interactive service and a noninteractive service. Nor can one readily classify an entity which makes transmissions as exclusively interactive or noninteractive. The statutory definition of an "interactive service" and the DMCA Conference Report make it clear that a transmitting entity may offer both types of service, either concurrently or at different times, and that "the noninteractive components are not to be treated as part of an interactive service, and thus are eligible for statutory licensing." *See,* DMCA Conference Report at 88 (1998). The proposed amendment makes no mention of this nuance of the law.

Moreover, the Copyright Office is not persuaded that any new rules are necessary to discern which parties should participate in the current copyright arbitration royalty panel proceeding, the purpose of which is only to set rates and terms for the public performance of sound recordings made in accordance with the section 114 statutory license. 17 U.S.C. 114(f)(2)(A). The panel's responsibility is to establish the value of the performances and set appropriate rates, not to discern whether a particular service meets the eligibility requirements for using the license.

In short, the Office does not believe that DiMA has presented a persuasive case that a rulemaking on this issue is necessary, desirable, or feasible.

For these reasons, the Office denies DiMA's petition.

Dated: November 21, 2000.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 00–31458 Filed 12–8–00; 8:45 am]

BILLING CODE 1410–31–P

[1] RIAA and DiMA discussed the services offered by Launch Media, Inc., through its LAUNCHcast service, and MTV, through its Radio SonicNet service, to illustrate the type of offerings that are in dispute. *See* RIAA comment at 6–7; DiMA reply at 18–21. From these descriptions, there is considerable doubt whether either offering would qualify as an "interactive service."

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–6914–9]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (the Act). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before January 10, 2001.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XXII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXII. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XXII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No.A–93–16, Section XXII, Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Background Information
Why is EPA taking this action?
II. EPA's Evaluation
A. What criteria was used to evaluate rules submitted for update of 40 CFR part 55?
B. What rule requirements were submitted for update of 40 CFR part 55?

I. Background Information

Why is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What Criteria Was Used To Evaluate Rules Submitted for Update of 40 CFR Part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What Rule Requirements Were Submitted for Update of 40 CFR Part 55?

1. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the South Coast AQMD is designated as the COA:

Rule No.	Rule names	Adoption date
102	Definition of Terms	04/09/99
210	Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD.	04/10/98
218	Continuous Emission Monitoring	05/14/99
219	Equipment Not Requiring a Permit Pursuant to Regulation II	05/19/00
301	Permit Fees (except (e)(6) and Table IV)	05/19/00
304	Equipment, Materials, and Ambient Air Analyses	05/19/00
304.1	Analyses Fees	05/19/00
306	Plan Fees	05/19/00
309	Fees for Regulation XVI	05/19/00
401	Visible Emissions	09/11/98
403	Fugitive Dust	12/11/98
403.1	Wind Entertainment of Fugitive Dust	06/16/00
431.1	Sulfur Content of Gaseous Fuels	06/12/98
465	Vacuum Producing Devices or Systems	08/13/99
Reg. IX	New Source Performance Standards	05/19/00
1107	Coating of Metal Parts and Products	08/14/98
1113	Architectural Coatings	05/14/99
1121	Control of Nitrogen Oxides from Residential-Type, Natural Gas-Fired Water Heaters	12/10/99
1146	Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	06/16/00
1171	Solvent Cleaning Operations	10/08/99
1610	Old-Vehicle Scrapping	02/12/99
1612	Credits for Clean On-Road Vehicles	07/10/98
1620	Credits for Clean Off-Road Mobile Equipment	07/10/98
1701	General	08/13/99
1702	Definitions	08/13/99
1704	Exemptions	08/13/99
1706	Emission Calculations	08/13/99
2005	New Source Review for RECLAIM except (i)	04/09/99
2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions	04/09/99
2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions	04/09/99
The following new rules were submitted and are proposed for incorporation:		
112	Definition of Minor Violation and Guidelines for Issuance of Notice to Comply	11/13/98
218.1	Continuous Emission Monitoring Performance Specifications	05/14/99
218.1	Attachment A—Supplemental and Alternative CEMS Performance Requirements	05/14/99
2506	Area Source Credits for NO_X and SO_X	12/10/99
The following rules were submitted, but will not be incorporated because they are administrative:		
216	Appeals	05/19/00
222	Filing Requirements for Specific Emission Sources Not Requiring a Permit Pursuant to Regulation II	05/19/00
303	Hearing Board Fees	05/19/00
311	Air Quality Investment Program (AQIP) Fees	05/19/00

2. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the Ventura County APCD is designated as the COA:

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

Rule No.	Rule name	Adoption date
42	Permit Fees	06/13/00
74.15.1	Boilers, Steam Generators, and Process Heaters	06/13/00

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes

no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 20, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(G) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to 40 CFR Part 55 is proposed to be amended by revising paragraph (b)(7) and (b)(8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California.

* * * * *

(b) Local requirements.

* * * * *

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III):

Rule 102 Definition of Terms (Adopted 4/9/99)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 211 Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)
Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 5/19/00)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/19/00) except (e)(6)and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/19/00)
Rule 304.1 Analyses Fees (Adopted 5/19/00)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/19/00)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/19/00)
Rule 401 Visible Emissions (Adopted 9/11/98)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 403.1 Wind Entertainment of Fugitive Dust (06/16/00)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 5/19/00)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 8/14/98)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous-and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 5/14/99)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (rescinded 3/8/96)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 6/16/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive Applications (Adopted 2/13/98)
Rule 1171 Solvent Cleaning Operations (Adopted 10/8/99)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/7/95)
Rule 1303 Requirements (Adopted 5/10/96)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 6/14/96)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 4/11/97)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Adopted 2/14/97)
Rule 2004 Requirements (Adopted 7/12/96) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/9/99) except (i)
Rule 2006 Permits (Adopted 12/7/95)
Rule 2007 Trading Requirements (Adopted 12/7/95)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 4/9/99)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 4/9/99)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 2/14/97) except (B)(1)(G) and (b)(3)(B)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 11/14/97)
Rule 3004 Permit Types and Content (Adopted 11/14/97)
Rule 3005 Permit Revisions (Adopted 11/14/97)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)

Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 6/13/00)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 10/10/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

* * * * *

[FR Doc. 00–31468 Filed 12–8–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2714; MM Docket No. 00–120; RM–9902]

Radio Broadcasting Services; Meeker and Craig, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition filed on behalf of Western Slope Communications, L.L.C., permittee of Station KAYW, Channel 251C, Meeker, Colorado, requesting the reallotment of Channel 251C from Meeker to Craig, Colorado, and modification of the authorization for Station KAYW accordingly. *See* 65 FR 45017, July 20, 2000. The reallotment proposal is denied as it would remove the sole local potential service at Meeker, and would not result in a preferential arrangement of allotments pursuant to the Commission's allotment priorities. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990); and *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner or Jeffrey Sutherland (engineering issues), Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–120, adopted November 22, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–31400 Filed 12–8–00; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–8446]

TREAD Insurance Study

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces a request for comments to help the agency conduct the study of insurance data mandated by Congress in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) signed November 1, 2000.

DATES: Comments must be received no later than January 5, 2001.

ADDRESSES: Submit written comments to the Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should refer to the Docket Number (NHTSA–8446) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the docket number.

The Docket Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov/*.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Dion, Office of Plans and Policy, NPP–01, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–6779. Email: *jdion@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION: Section 3(d) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) requires NHTSA to conduct a study to determine the feasibility and utility of collecting data from insurance companies on a regular basis to help the agency in its defects investigation efforts. NHTSA is seeking input from the public to assist the agency with the study. Comments received will be evaluated and incorporated, as appropriate, into the study.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–8446) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U. S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. If you submit your comments electronically, log onto the Docket Management System website at http://dms.dot.gov and click on "Help & Information" or "Help/Info" to obtain instructions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Office of Chief Counsel, NCC–30, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW, Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW, Washington, DC from 10:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

a. Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov)*.

b. On that page, click on "search."

c. On the next page *((http://dms.dot.gov/search/)* type in the four-digit Docket number shown at the beginning of this document (8446). Click on "search."

d. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 2000.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 00–31446 Filed 12–8–00; 8:45 am]
BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 65, No. 238
Monday, December 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Research, Education, and Economics; Research Program on Health and Nutrition Effects of Popular Weight-Loss Diets: Notice of Public Meeting

AGENCY: Department of Agriculture, REE.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) (a) provides notice of a public meeting on the Research Program on Health and Nutrition Effects of Popular Weight-loss Diets (Program) (b) solicits written comments on the Program, and (c) solicits oral comments on the Program. The meeting will be held at the Jefferson Auditorium of the South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC, near the Smithsonian Metro Station. No registration is required to attend the public meeting, but pre-registration is required to provide oral comments at the public meeting. There is no fee to attend or to provide oral comments at the public meeting.

DATES: (a) Written comments can be submitted in hard copy by mail or by fax and must be received by the Agency on or before January 15, 2001. (b) The public meeting to solicit oral comments will be held on January 11, 2001, from 1 p.m. to 5 p.m. E.S.T.

For further information contact: Shanthy A. Bowman, Ph.D., USDA, Agricultural Research Service, 10300 Baltimore Boulevard, Building 005, BARC-West, Beltsville, MD 20705–2350, (301) 504–0619.

SUPPLEMENTARY INFORMATION:

General Information

A. Agenda

The agenda includes, (1) Reporting of Phase I of the USDA research, (2) Prototype of research protocols for Phase II, and (3) Oral testimony.

B. How and to Whom Do I Submit Written Comments?

You may submit written comments in hard copy by January 15, 2001, 5:00 p.m. E.S.T, to Shanthy A. Bowman, Ph.D., USDA, Agricultural Research Service, BHNRC/CNRG, 10300 Baltimore Boulevard, Building 005, Room 125, BARC-West, Beltsville, MD, 20705–2350, (301) 504–0619 (phone), 301–504–3225 (fax).

C. How Do I Register To Present Oral Testimony?

Registration is required to provide oral input at the public meeting on January 11, 2001. Requests to provide oral input at the meeting should be submitted by 5:00 p.m. E.S.T., January 9, 2001, to Shanthy A. Bowman, Ph.D., USDA, Agricultural Research Service, BHNRC/CNRG, 10300 Baltimore Boulevard, Building 005, Room 125, BARC-West, Beltsville, MD, 20705–2350, (301) 504–0619 (phone), 301–504–3225 (fax). Name of the presenter, organization affiliation (if applicable), source of funding (if applicable), and contact phone number are required for registration. There is no fee to attend the meeting and to provide oral testimony. One person per organization will be selected on first come basis. Presentations should be limited to three (3) minutes or less. Registration will also be accepted at the meeting, if time slots are available.

Dated: November 28, 2000.

Eileen T. Kennedy,

Deputy Under Secretary, Research, Education, and Economics,, Department of Agriculture.

[FR Doc. 00–30896 Filed 12–8–00; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Elkhorns Project; Including Timber Harvest and Prescribed Fire. Helena National Forest, Jefferson County, Montana.

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service is gathering information and preparing an Environmental Impact Statement (EIS) for the North Elkhorns Vegetation Project located approximately 9 air miles southeast of Helena, Montana.

The Forest Service proposes to thin, using commercial timber harvest, approximately 745 acres in the E–4 Management Area of the Elkhorn Wildlife Management Unit.

The biggest and healthiest trees would remain on the site, and the many scattered aspen stands would be revitalized through a combination of treatments, including some fence construction. The thinning treatment would require construction of about 1 mile of temporary road and reconstruction of about 6.5 miles of existing road. Following thinning, the area would be treated with low intensity fire and the temporary and reconstructed road segments would be returned to contour and revegetated.

The proposal is designed to help restore the full range of wildlife habitats in the Elkhorn Wildlife Management Unit. The project will have other benefits including the reduction of wildfire risk in the urban interface.

The project also would authorize the construction of 1500 feet of non-motorized trail to connect two existing non-motorized trails and formally designate 3.5 miles of existing road which is currently closed to motorized use as part of the non-motorized trail system.

COMMENTS: Comments concerning the proposal should be submitted to the responsible official and received in writing on or before January 25, 2001.

ADDRESSES: The responsible official is Thomas J. Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT. 59601. Phone: (406) 449–5201.

FOR FURTHER INFORMATION CONTACT: Jodie Canfield, Wildlife Biologist and Interagency Elkhorn Coordinator, Townsend Ranger District, 415 South Front, Townsend, MT 59644. Phone: (406) 266–3425.

SUPPLEMENTARY INFORMATION: The project would occur on National Forest lands of the Helena Ranger District. The activities would take place within portions of Sections 1, 2 and 12 of T.8N., R.3W. and Sections 5, 6 and 7 of T.8N., R.3W., and a portion of Section 31, T.9N., R.3W., Montana Principle Meridian.

The proposed treatments are not within a roadless area, but are within the Elkhorns Wildlife management Unit (within Management Area (E–4) of the Helena Forest Plan). This management area features an emphasis on habitat management for moose, elk and mule deer. The management standards include the implementation of wildlife habitat improvement practices, including prescribed fire and timber manipulation to maintain and enhance aspen and willow regeneration and other forested areas for wildlife habitat. (Helena Forest Plan, page III–90). The decisions to be made, based on this environmental analysis, are whether or not to treat the vegetation at this time, and if so, how would the treatments be accomplished.

This EIS will tier to the Helena Forest Plan Final EIS of April 1986, that provides program goals, objectives, and standards and guidelines for conducting management activities in this area. All activities associated with the proposal will be designed to implement the resource goals and standards identified in the Forest Plan.

The Forest Service is seeking information and comments from Federal, State, and local agencies together with organizations or individuals who may be interested in or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS.

Preparation of the EIS will include the following steps:

1. Identification of issues to be analyzed in depth.
2. Identification of additional reasonable alternatives.
3. Identification of potential environmental effects of the alternatives.

Commercial timber harvest will be used to restore important habitat that is currently nonexistant in the Wildlife Management Unit by thinning of individual trees while leaving the largest and healthiest trees on site, and by opening the stand such that fire can be reintroduced with minimal risk of killing the overstory trees. Following harvest, forests will be underburned to stimulate the regeneration of grasses, forbs, aspen and willow.

Alternatives to this proposal will include the "no action" alternative, in which none of the proposed treatments would be implemented. Other alternatives will examine variations in the location, amount and method of vegetative management.

The preliminary issues identified are:

1. What wildlife species are benefited? Are there any wildlife species at risk that would be affected?
2. What is the effect of the project on recreation?
3. What effect will be project have on reducing the risk of catastrophic wildfire in the urban interface?
4. What are the risks to nearby landowners relative to logging and burning operations?

The Forest Service will analyze and disclose in the DEIS and FEIS the environmental effects of the proposed action and a reasonable range of alternatives. The DEIS and FEIS will disclose the direct, indirect and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with Forest Service officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments to the Forest Service within 45 days of the publication of the Notice of Intent. The second review period is during the 45 day review of the DEIS when the public is invited to comment on the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February 2001. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the notice of availability is published in the **Federal Register**.

At this early stage in the scoping process, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Secondly, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is expected to be filed in July 2001.

Dated: November 22, 2000.

Thomas J. Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 00–31368 Filed 12–8–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Maudlow-Toston Post-Fire Salvage, Sale, Townsend Ranger District, Helena National Forest, Broadwater County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement on a proposal to harvest merchantable fire-damaged trees from the Maudlow—Toston wildfire area. The proposed action includes salvage timber harvest in roaded areas and stewardship project timber harvest activities in inventoried roadless areas. No new road construction or reconstruction would be conducted in inventoried roadless areas. In areas outside inventoried roadless areas, existing system roads and a few temporary roads would be used. Only dead or dying trees will be removed. The proposed action will also incorporate interim road management to

provide for big game security, silvicultural practices that can hasten post-fire recovery for wildlife and recreation and reduce future fuel loading, and other management practices to minimize accelerated erosion.

DATES: Comments concerning the proposal and scope of the analysis should be received in writing by January 15th, 2001.

ADDRESSES: All questions and/or comments should be addressed to: USDA Forest Service, Townsend Ranger District, 415 S. Front Street, Box 29, Townsend, MT 59644.

FOR FURTHER INFORMATION CONTACT: David McMorran, Team Leader or Rachel Feigley, Assistant Team Leader, at the address above or (406) 266–3425. An Open House is scheduled for December 14, 2000, 4pm to 8pm, at the library community room in Townsend, Montana.

Additional Information: The analysis will include a no action alternative which will address the effects of not harvesting in the burned area. Other alternatives will consider a range of options, including varying the locations, timing and methods of timber removal. The analysis will consider the effects of the proposed action and alternatives within the entire affected watersheds (Blacktail and Sulphur Bar drainages), but actions will be limited to the burned areas- no green tree harvest is proposed.

Anticipated issues and concerns include, but are not limited to: Longterm watershed stability and recovery; fuel loading/fuel reduction in the future; inventoried roadless character and values; longterm management goals; opportunities to integrate salvage operations with restoration activities; big game security and retention of remaining hiding cover; snag management for wildlife; scenery and recreation management, the potential for spreading noxious weeds, and opportunities to benefit local economies.

The public will be notified, via mail and news release, of the implementation of this project and of the availability of the Draft and Final Analysis. The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations that may be interested in the proposal. The Forest Service invites written comments and suggestions related to the proposal. Information received will be used in preparation of the Draft Environmental Impact Statement. The Draft Environmental Impact Statement and Record of Decision in April 2001. The official close of the comment period for the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions on the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official is Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601.

Dated: December 1, 2000

Thomas J. Clifford,

Forest Supervisor.

[FR Doc. 00–31369 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Salem, Oregon on Saturday, January 6, 2001. The meeting is scheduled to begin at 9:00 a.m., and will conclude at approximately 2:00 p.m. The meeting will be held at the Salem City Library, Louch Hall, located on 585 Liberty Street SE in Salem, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda will include refining issue statements and describing the desired future condition of the SRA.

The public comment period is tentatively scheduled to begin at 1:00 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the January 6 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: December 4, 2000.

Darrel Kenops,

Forest Supervisor.

[FR Doc. 00–31393 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, January 22, 2001. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda will include refining issue statements and describing the desired future condition of the SRA.

The public comment period is tentatively scheduled to begin at 8:00 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the January 22 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: December 4, 2000.

Darrel Kenops,

Forest Supervisor.

[FR Doc. 00–31394 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Availability of a Programmatic Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a programmatic environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), has prepared a programmatic level analysis of certain environmental effects of combustion turbines utilized for electric utility applications and offers guidance on § 1794.15 of its Environmental Policies and Procedures (7 CFR Part 1794).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1784. The E-mail address is: lwolfe@rus.usda.gov.

SUPPLEMENTARY INFORMATION: This programmatic analysis, in accordance with the National Environmental Policy Act (NEPA), is designed to reconcile RUS procedural requirements for environmental analysis with the emerging needs of a deregulating electric utility industry. Increasing demand for electricity combined with a lack of new generation and retirement of obsolete plants has produced acute shortages and price spikes in some areas of the country.

To better manage power supply needs and to prudently hedge their exposure to power market risks, RUS generation and transmission (G&T) borrowers and others have turned to combustion turbine (CT) technology. Technological advances during the 1990s produced significant improvements to economic and operational efficiencies of CTs. Nearly 90 percent of new electricity generating capacity between 1997 and 2020 is projected to be combustion turbine technology fueled by natural gas or both oil and gas.

In contrast to base load generating plants, construction and installation of CT plants typically have much shorter lead times (18–36 months) and generally cost much less. Rather than being custom constructed on site, CTs are assembled in a factory, delivered to the site substantially complete, and then are installed. CTs are not designed to be operated continuously, but rather, to meet peak load requirements. Thus, CT emissions are more infrequent and generally lower than base load facilities that are designed to run continuously.

Unlike custom built generating resources, CTs are "off-the-shelf" products that are essentially identical in the details of acquisition, installation and operation at any given power rating. These common characteristics lend themselves to a common, *i.e.*, programmatic assessment of many of the environmental effects associated with such power plants. These common characteristics and range of sizes also make it easier for power suppliers to match their needs more closely as CT modules can be added incrementally. The environmental effects of the installation of a CT on a particular site are, of course, site specific and often unique. The evaluation and resolution of those issues often determine the ultimate siting of the CT.

It is common for a power supplier to order a CT and make progress payments during its fabrication long before the site for the CT has been selected or even identified. This is partially explained by the fact that power suppliers often have alternative sites on which to install the CT in the event that an environmental review process for the preferred site leads to a different outcome. In the unlikely event that a power supplier is unable to find any suitable site for a CT that it has ordered, it may assign or otherwise liquidate its position rather than incur significant losses. By proceeding with the siting process in parallel with the fabrication of the unit, the power supplier is able to address the growing needs for an adequate and reliable supply of electricity on a more timely basis than if the power supplier proceeded sequentially.

In order to assure a reliable and affordable power supply for rural America, RUS plans to advance funds to make progress payments on an otherwise eligible CT project while the site selection process for that CT project is pending. Any funds being requested for site development work or installation of the CT would, if approved, be conditioned upon the borrower meeting all other environmental requirements, including completion of a RUS site specific environmental review. RUS will not advance any funds for the site development or installation of any CT unless and until RUS has completed its environmental analysis of the specific site and determined that such site is acceptable.

Except for site specific issues, CTs present a set of common environmental issues. CTs use similar technology, have similar environmental impacts, have the same alternatives and otherwise raise

the same environmental review questions. Except for site-specific issues, RUS has found performing individual environmental reviews for each CT is needlessly redundant and does not contribute to better environmental decisionmaking. Therefore, RUS plans to address environmental issues common to all CTs in this programmatic level analysis. RUS will perform site-specific environmental review and analyses on each proposed CT when presented with proposed siting alternatives. This tiered approach is practicable, reduces paperwork and delays and fosters better decision making (see 7 CFR 1794.16).

Along with programmatic level environmental analysis, this document offers guidance to RUS borrowers on the scope of actions permissible under 7 CFR 1794.15 that they may take pending completion by RUS of the second analytical tier, *i.e.*, the site specific environmental analysis.

This analysis finds that considering the similar characteristics of most CTs and the limited reliable and affordable alternatives presently available for addressing rural America's needs for peaking supplies of electricity, RUS should tier its environmental analysis of CTs because it is practicable, reduces paperwork and delay, and produces better decision making. This programmatic analysis considers common characteristics and alternatives. RUS intends to consider on a case-by-case basis as they arise, whether the installation or operation of any particular CT on its proposed site will result in any significant environmental impacts. In making such individual determinations, RUS will consider the findings and requirements of other governmental entities having jurisdiction over the siting, development and operation of the CT and reserves the right to update this programmatic analysis to take additional information into account or develop particular elements of the analysis more fully as may be warranted in individual circumstances. Ordinarily, however, the analysis contained in this document will be incorporated either in its entirety or in part by reference in any further RUS analysis of particular CT projects.

In determining which loan applicant activities may proceed in connection with CTs before RUS completes the second tier of its environmental review, RUS has determined that 7 CFR 1794.15 permits an applicant to take all appropriate actions necessary to assure timely acquisition of CTs. Generally, during this period, applicants will take actions that do not have an adverse impact and do not preclude the search for alternatives, *e.g.*, site acquisition, executing a purchase contract for a CT, making manufacturer's progress payments, and site planning and design. As contrasted with site development or project construction, which may have adverse environmental consequences, these purchase, planning and design activities clearly do not. Nor do the expenditures for these permissible activities preclude the search for alternatives. CTs are fungible, in limited supply, and have a broad worldwide market. In the unlikely event that an applicant can find no environmentally suitable site on which to locate a CT or otherwise changes its plans, commercially reasonable alternatives exist to effectively "unwind" the transaction in the case of a CT that has not yet been installed.

RUS believes that in the event that the proposed CT project is not approved by the Administrator, the amount of unrecoverable losses which an applicant would consequently absorb would not jeopardize the Government's security interest in existing assets or otherwise compromise the objectivity of RUS review. In such an eventuality, RUS expects that even in a worse case scenario the applicant would incur only a modest cancellation charge as the manufacturer could reasonably be expected to sell the CT to another purchaser for a similar price. Given the current demand for CTs, at least for some time to come, it appears that a proactive applicant may be able to assign its purchase rights or otherwise transfer its rights in the CT to a third party and completely avoid losses. Accordingly, these pre-installation expenditures will not compromise RUS objectivity.

In a deregulated electricity market, failure to take prudent steps to acquire reasonably priced, reliable power supply resources in a timely manner exposes RUS borrowers, Rural Electrification Act (RE Act) beneficiaries, and RUS to unacceptably high levels of market risk and thereby frustrates the objectives of the RE Act. This tiered analysis and regulation interpretation is fully consistent with NEPA and eliminates unnecessary procedural delays, costs and risks.

This programmatic environmental assessment can be reviewed at the headquarters of RUS at the address provided above. The document is also available for public inspection on the RUS website at: www.usda.gov/rus/water/ees/ea.htm.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on its proposed action for at least 30 days from the date of publication of this notice. RUS will take no final action related to this proposal until after notification of that action is published in the **Federal Register**.

Dated: December 1, 2000.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–31179 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

International Import Certificate

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Abstract

The United States and several other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the U.S. Government that he/she will import specific commodities into the United States and will not reexport such commodities except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

Data

OMB Number: 0694–0017.

Form Number: Form BXA–645P, International Import Certificate.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1,008.

Estimated Time Per Response: 16 minutes per response.

Estimated Total Annual Burden Hours: 270.

Estimated Total Annual Cost: No start-up capital expenditures.

Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 6, 2000.

Madeleine Clayton,

Departmental Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31405 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–33–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

One-time Report for Foreign Software or Technology Eligible for De Minimis Exclusion

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management Analyst, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Abstract

Section 734.4 exempts from the EAR reexports of foreign technology commingled with or drawn from controlled U.S. origin technology valued at 10% or less of the total value of the foreign technology. However, persons must submit a one-time report for the foreign software or technology to BXA prior to reliance upon this *de minimis* exclusion.

Method of Collection

Exporters intending to rely on the *de minimis* exclusion for foreign software and technology commingled with U.S. software and technology must file a one-time report for the foreign software or technology.

Data

OMB Number: 0694–0101.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 7.

Estimated Time Per Response: 25 hours.

Estimated Total Annual Burden Hours: 175.

Estimated Total Annual Cost: No start-up capital expenditures.

Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 6, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31406 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–JT–U

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 89–8A016.

SUMMARY: The Department of Commerce issued an amended Export Trade Certificate of Review to The Geothermal Energy Association ("GEA") on November 13, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on February 9, 1990 (55 FR 4647).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may,

within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89–8A016, was issued to Geothermal Energy Association on February 5, 1990 (55 FR 4647, February 9, 1990), and last amended on November 20, 1996 (61 FR 60092, November 26, 1996).

GEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Power Engineers, Inc., PO Box 1066, 3940 Glenbrook Drive, Hailey, ID 83333; BIBB & Associates, Inc., 201 South Lake Ave., Suite 300, Pasadena, CA 91101;

2. Change the listing of the company name for the current Member "Maxwell Laboratories" to the new listing "Maxwell Technologies, Inc.".

3. Delete the following as members of the Certificate: Air Drilling Services, Inc.; American Line Builders, Inc.; Ballew Tool Company; Bridwell Controls; Dames & Moore, Inc.; Baker Hughes Oilfield Operations, Inc., d.b.a. Baker Hughes Inteq; Exergy, Inc.; Geothermal Power Company, Inc.; H & H Oil Tool Company, Inc.; C.E. Holt Company; Ingram Cactus Company; Kern Steel Fabrication, Inc.; Nabors Drilling USA, Inc.; Resource Group; Union Oil of California, d.b.a. UNOCAL and/or UNOCAL Corporation; M–I Drilling Fluids L.L.C., and its controlling entity, Smith International Acquisition Corp. and Smith International, Inc.

4. Remove the following restriction from the Certificate: Any exchange or discussion of the types of information set forth in Paragraph C. 13 (b),(c),(d) and (e) that would involve (1) drill bits, roller reamers, stabilizers, hole enlargers, pilot mills, watermelon mills, scrapers or wellhead changing equipment and (2) Smith International Inc. (including entities controlled by it: M–I Drilling Fluids L.L.C. and Smith International Acquisition Corp.) and Baker Hughes Oilfield Operations, Inc. (formerly Baker Hughes INTEQ, Inc.), shall be subject to the following limitations:

1. The exchange or discussion shall take place only to meet the requirements of an actual or potential *bona fide* export transaction; and

2. Each exchange or discussion shall take place in the presence of legal counsel who will advise participants on antitrust matters and who shall take notes (or arrange to have notes taken) of the exchange or discussion. Upon request of the Secretary of Commerce on his own behalf or on behalf of the Attorney General, such notes shall be made available to the Secretary of Commerce and/or the Attorney General.

5. Add the following term and condition to the Certificate: Membership in this Certificate is terminated when a company ceases to be a member of the Geothermal Energy Association (GEA), written notice of which GEA shall promptly transmit to the Secretary of Commerce and the Attorney General. A Member may also withdraw from coverage under this Certificate at any time by giving written notice to GEA, a copy of which GEA shall promptly transmit to the Secretary of Commerce and the Attorney General.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: December 1, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–31403 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificate of Review No. 83–00024.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to U.S. Export & Trading Company. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Export & Trading Company.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on July 25, 1995 to Export & Trading Company.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10 (a) and 325.14 (c) of the Regulations).

The Department of Commerce sent to Export & Trading Company, on December 13, 1999, a letter containing annual report questions with a reminder that its annual report was due on February 6, 2000. Additional reminders were sent on May 2, 2000 and on July 19, 2000. The Department has received no written response to any of these letters.

On November 17, 2000, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify Export & Trading Company that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: December 1, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–31404 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

RIN 0651–AB25

Reopening of the Time Period for Acceptance of Comments on Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters

AGENCY: U.S. Patent and Trademark Office, Commerce.

ACTION: Reopening of time period for acceptance of comments.

SUMMARY: On Tuesday, October 17, 2000, the United States Patent and Trademark Office published a notice seeking comments on a convention being negotiated by the Hague Conference on Private International Law that is designed to create common jurisdictional rules for international recognition and enforcement of judgments issued under these rules (65 F.R. 61306 (2000)). Interested members of the public were invited to present written comments on the topics outlined in the Issues for Public Comment section of the Notice by December 1, 2000. This notice reopens the time period for submission of comments. Comments will be accepted through January 12, 2001.

EFFECTIVE DATE: All comments are due by January 12, 2001.

ADDRESSES: Persons wishing to offer written comments should address those comments to Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office; Washington, DC 20231, marked to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–7575 or by electronic mail through the Internet to *elizabeth.shaw2@uspto.gov*. All comments will be maintained for public inspection in Room 902 of Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jennifer Lucas by telephone at (703) 305–9300; by facsimile at (703) 305–8885; by electronic mail at jennifer.lucas@uspto.gov; or by mail marked to the attention of Jennifer Lucas, Attorney-Advisor, addressed to Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231.

Dated: December 5, 2000.

Albin F. Drost,

Acting General Counsel.

[FR Doc. 00–31355 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–16–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kenya and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

As required by the African Growth and Opportunity Act, these limits shall be eliminated within 30 days after the U.S. Trade Representative determines that Kenya has adopted an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	643,548 dozen.
360	4,647,847 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 13, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31389 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Mauritius and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

As required by the African Growth and Opportunity Act, these limits shall be eliminated within 30 days after the U.S. Trade Representative determines that Mauritius has adopted an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit Group 345, 438, 445, 446, 645 and 646, as a group.	238,802 dozen.
Levels not in a group	
237	307,948 dozen.
335/835	122,412 dozen.
336	144,048 dozen.
338/339	576,681 dozen.
340/640	938,509 dozen of which not more than 571,294 dozen shall be in Categories 340–Y/640–Y [1].
341/641	650,126 dozen.
347/348	1,213,889 dozen.
351/651	285,492 dozen.
352/652	2,420,963 dozen of which not more than 2,057,821 dozen shall be in Category 352.
442	12,566 dozen.
604–A [2]	484,035 kilograms.
638/639	663,186 dozen.
647/648/847	894,265 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 13, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31388 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift and partial undoing of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 60796, published on November 8, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 11, 2000, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
331	424,829 dozen pairs.
338/339	970,197 dozen.
347/348	1,405,973 dozen of which not more than 1,200,354 dozen shall be in Categories 347–W/348–W [2].
631	5,537,192 dozen pairs.
638/639	6,662,435 dozen.
647/648	5,447,962 dozen of which not more than 5,177,017 dozen shall be in Categories 647–W/648–W [3].
Within Group II Subgroup	
351	338,922 dozen.
651	517,397 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31390 Filed 12–8–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 10, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 5, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Annual Client Assistance Program (CAP) Report.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 56.
Burden Hours: 350.
Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability in the State or Territory.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO—IMG—Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31392 Filed 12–8–00; 8:45 am]

BILLING CODE 4001–01–U

DEPARTMENT OF EDUCATION

Web-Based Education Commission; Press Conference

AGENCY: Office of Postsecondary Education, Education.

SUMMARY: This notice announces the press conference of the Web-based Education Commission. Notice of this press conference is in accordance with Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend the press conference.

DATE: The press conference will be held on December 14, 2000 at 9:30 a.m. It will be held at the National Press Club, 529 14th St., NW. in Washington, DC in the Hollerman Lounge.

FOR FURTHER INFORMATION CONTACT: David Byer, Executive Director, Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8533. Telephone: (202) 219–7045. Fax: (202) 502–7675. Email: *web_commission@ed.gov*.

SUPPLEMENTARY INFORMATION: The Web-based Education Commission is authorized by Title VIII, Part J of the Higher Education Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a final report to the President and the Congress, not later than 12 months after the first meeting of the Commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The December 14 press conference is to announce the release of the Commission's final report, The Power of the Internet: Moving from Promise to Practice.

The press conference is open to the public. Records are kept of all Commission proceedings and are available for public inspection at the office of the Web-based Education Commission, Room 6131, 1990 K Street, NW., Washington, DC 20006–8533, from the hours of 9 a.m. to 5:30 p.m.

Assistance To Individuals With Disabilities

The press conference site is accessible to individuals with disabilities. Individuals who will need an auxiliary aid or service (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should contact the person listed in this notice before the scheduled date of the press conference. We will attempt to meet all requests, but cannot guarantee availability of the requested accommodation.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: *http://ocfo.ed.gov/fedreg.htm http://www.ed.gov/news/html*.

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previously mentioned sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/indes.html*.

Dated: December 5, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–31395 Filed 12–8–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation, DE–PS26–01NT41094, and award financial assistance (Cooperative Agreements) for the program entitled "Industries of the Future, Emerging Technology Deployment." Through this solicitation, the DOE/NETL seeks applications on behalf of the DOE's Office of Energy Efficiency and Renewable Energy (EERE), Office of Industrial Technologies (OIT). The DOE/NETL, by way of the Federal Financial Assistance application process, is seeking proposals for cost-shared implementation of technologies to reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts. The DOE/NETL targets, specifically, the Industries of the Future (IOF) industrial sectors for technology implementations under this solicitation. The IOF sectors consist of the following, nine major materials and processing industries: agriculture, aluminum, chemicals, forest products, glass, metalcasting, mining, petroleum, and steel.

This solicitation seeks to implement OIT-supported or non-OIT technologies that meet the following requirements: Address the needs in IOF vision documents and technology roadmaps; have completed research and development and have progressed through a demonstration at a pilot-scale or full-scale facility, with demonstrated performance benefits in energy conservation and emissions reductions; and have potential to result in significant improvements in energy efficiency, environmental performance, and economic competitiveness across the industry. Projects of most interest will be those that show significant energy savings and large market penetration either through multiple implementations within one industrial sector or broad applicability across all IOF sectors.

DATES: A draft Program Solicitation will be available on or about December 20, 2000. Comments and/or questions concerning the draft version must be submitted to, and received by the DOE Contract Specialist no later than 30 calendar days from its actual posting on DOE/NETL's Web site. The mailing and E-mail addresses are provided below.

ADDRESSES: The draft Program Solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business/solicit*. The final version of the solicitation along with all amendments will be posted at this same Internet address; applicants are therefore encouraged to periodically check this NETL address to ascertain the status of these documents. Applications must be prepared and submitted in accordance with the instructions and forms contained in the final version of this Program Solicitation.

FOR FURTHER INFORMATION CONTACT: Larry D. Gillham, MS: 921–118, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, PO Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: gillham@netl.doe.gov, Telephone Number: (412) 386–5817.

SUPPLEMENTARY INFORMATION: The DOE anticipates award of multiple cost-sharing cooperative agreements; but the DOE reserves the right to award the agreement type and number deemed in its best interest. As required in Section 3002, Title XXX of the Energy Policy Act (EPAct), offerors are advised that *mandatory* 50% cost-share will be required for each project. Not all of the necessary funds are currently available for this solicitation; the Government's obligation under any cooperative agreement awarded is contingent upon the availability of appropriated FY2001 and FY2002 funds.

It is DOE's desire to encourage the widest participation including the involvement of small business concerns, and small disadvantaged business concerns. Proposals should be submitted by the entity that would house the technology implementation. In order to gain the necessary expertise to review proposals, non-Federal personnel may be used as evaluators or advisors in the evaluation of proposals, but will not serve as members of the technical merit review committee(s).

Issued in Pittsburgh, PA on November 30, 2000.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 00–31438 Filed 12–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–01NT41104 entitled "Power Plant Improvement Initiative." A draft program solicitation, as a precursor to potentially awarding multiple financial assistance cooperative agreements, is now being developed. Following release of the draft solicitation, expected in December 2000, a comment and response session with industry and other potential partners will be conducted prior to final issuance of the program solicitation. Final issuance of the program solicitation is slated for late-January or early-February 2001 with awards expected early in fiscal year 2002. DOE will provide $95 million to fund the program, and proposers must match (or exceed) the government cost share for every project, bringing the total program value to at least $190 million. DOE anticipates making multiple awards under this program solicitation.

DATES: The draft solicitation will be available on the DOE/NETL's Internet address at http://www.netl.doe.gov/business on or about December 6, 2000.

ADDRESSES: For the contact to submit comments, where documents can be obtained, where meetings are being held, please see the **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jo Ann C. Zysk, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, E-mail Address: zysk@netl.doe.gov, Telephone Number: (412) 386–6600.

SUPPLEMENTARY INFORMATION: Work is underway at the Department of Energy's National Energy Technology Laboratory to initiate a $190 million dollar, fifty percent industry cost shared research, development and demonstration program aimed at improving thereliability of the nation's fleet of coal-fired power plants. In many regions of the United States, our expanding economy is being powered by out-of-date and undersized electric power facilities. The result has been an increasing frequency of power supply disruptions and sharp increases in the electric bills of many Americans. With more than half of our electric power being generated by coal in the United States and an abundant domestic supply of coal, projections are that coal generated power will be a major contributor to our economic expansion well into the next century. Electric power produced from coal is fundamental to a strong U.S. economy and to domestic energy security considering recent instabilities in natural gas prices and our current dependance on foreign oil supplies.

As the U.S. electric industry transitions to a new and competitive business structure, the demands on the existing fleet of coal-based electric generating facilities are changing. Power plants must operate in a fashion that reduces environmental impacts, achieves greater efficiency in operation, reduces carbon dioxide, nitric oxide, and sulfur emissions, remains cost competitive, and responds quickly to changing customer demand. This Power Plant Improvement Initiative will demonstrate advanced coal-based technologies applicable to existing and new power plants including plants capable of producing electricity and some combination of heat, fuels, and/or chemicals from coal-derived synthesis gas.

The technologies to be developed under this program will be vital to the role that coal and other solid fuels will play on the world power production scene. Production of more electricity while creating a cleaner environment at

lower cost has the potential to raise the standard of living of not only the citizens of the United States, but of the world as a whole.

The National Energy Technology Laboratory (NETL), DOE's newest national lab that oversees the department's fossil fuel programs, will manage the program. NETL manages and implements a broad spectrum of energy and environmental programs. NETL employs approximately 1,100 federal personnel and support-service contractors at its sites in Pittsburgh, PA and Morgantown, WV.

Prospective applicants who would like to be notified as soon as the draft solicitation is available should register at http://www.netl.doe.gov/business. Provide your E-mail address and click on the "Coal Liquids/Solid Fuels Feedstocks" technology choice located under the heading "Fossil Energy." Once you subscribe, you will receive an announcement by E-mail that the *draft* solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the draft solicitation package will not be accepted and/or honored. The draft solicitation will be open for public comments on December 6. A public meeting will be held on December 15, 2000 and the draft solicitation will be closed to public comments on January 5, 2001.

The final solicitation will be made available on or about January 31, 2001. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The final solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 24, 2000.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 00–31437 Filed 12–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Schultz-Hanford Area Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on the construction, operation, and maintenance of a 59-mile-long 500-kilovolt (kV) single-circuit transmission line in Kittitas, Yakima, Grant, and/or Benton Counties, State of Washington. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act.

DATES: BPA has established a 30-day scoping period. Written comments are due to the address below no later than January 25, 2001. Comments may also be made at EIS scoping meetings to be held on January 9, 10, and 11, 2001.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. To comment, phone toll-free 1–800–622–4519; send an e-mail to the BPA Internet address *comment@bpa.gov;* or mail comments to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. To be placed on the project mail list, call 1–800–622–4520.

Three EIS scoping meetings will be held: (1) Tuesday, January 9, 2001, 4 p.m. to 8 p.m., at the Sage Brush Senior Center, 442 Desert Aire Drive, Desert Aire, Washington; (2) Wednesday, January 10, 2001, 4 p.m. to 8 p.m., at the Yakima County Courthouse, Room 420, Yakima, Washington; and (3) Thursday, January 11, 2001, 4 p.m. to 8 p.m., at the Hal Holmes Community Center, 201 North Ruby Street, Ellensburg, Washington. At the informal meetings, several members of the project team will be available to answer questions and accept oral and written comments. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project.

FOR FURTHER INFORMATION CONTACT: Lou Driessen, Project Manager, Bonneville Power Administration—TNP–3, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone 503–230–5525; or e-mail *lcdriessen@bpa.gov.* You may also contact Nancy Wittpenn, Environmental Project Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone 503–230–3297; fax 503–230–5699; or e-mail *nawittpenn@bpa.gov.*

SUPPLEMENTARY INFORMATION: The proposed 59-mile-long 500–kV single-circuit transmission line would be constructed from the existing Schultz Substation near Ellensburg, Washington, to the existing Hanford or Ashe Substation on the Hanford Nuclear Reservation or to a new substation west of the reservation, near Benton Rural Electric Association's Blackrock Substation. The new line is necessary to relieve constraints on several transmission paths (lines) that move electricity across Washington. The new line would also provide more operational flexibility and meet market needs by increasing transmission capacity for additional interstate transfer of electricity. BPA has identified several possible alternative routes for the new line. The new routes have the potential to cross private land, the Yakima Firing Center, the Hanford Nuclear Reservation, the Columbia River, and the Saddle Mountain Wildlife Refuge. BPA is in the process of contacting the U.S. Department of the Army, the U.S. Bureau of Land Management, the U.S. Bureau of Reclamation, and the U.S. Fish and Wildlife Service to determine whether they would like to be cooperating agencies in the EIS process.

This action may involve floodplain and wetlands located in Kittitas, Yakima, Grant, and Benton Counties, State of Washington. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold several public comment meetings for the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on December 1, 2000.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 00–31443 Filed 12–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–124–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective January 1, 2001;

Fourth Revised Volume 1

Second Revised Sheet No. 4
Original Sheet No. 36A
Eighth Revised Sheet No. 37
Fourth Revised Sheet No. 241
Original Sheet No. 241A
Second Revised Sheet No. 243
Fourth Revised Sheet No. 245
Fourth Revised Sheet No. 247
Fourth Revised Sheet No. 248
Fifth Revised Sheet No. 940
Fourth Revised Sheet No. 942

Originol Volume No. 2

Sixth Revised Sheet No. 1B
First Revised Sheet No. 342

Algonquin asserts that the purpose of this filing is to convert its firm lateral line transportation obligation to New England Power Company from Part 157 Rate Schedule X–37 to Part 284 Rate Schedule AFT–CL pursuant to the automatic authorization conferred by Section 157.217 of the Commission's regulations.

Algonquin states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the intenet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31430 Filed 12–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–40–000]

Bitter Creek Pipelines, LLC; Notice of Petition for Declaratory Order

December 5, 2000.

Take notice that on November 30, 2000, Bitter Creek Pipelines, LLC, (Bitter Creek), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed a petition for declaratory order in Docket No. CP01–40–000, requesting that the Commission declare that certain field compressor stations located in Yuma and Logan Counties, Colorado, and Cheyenne County, Kansas to be acquired from Kinder Morgan Interstate Gas Transmission LLC (KM) would have the primary function of gathering of natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222).

Bitter Creek states that it and KM have entered into a Compressor Purchase Agreement (Agreement), dated June 5, 2000, in which KM has agreed to sell and Bitter Creek has agreed to purchase 12 field compressor stations from KM. Bitter Creek states that these field compressors are situated at the intersection of KM's interstate pipeline and with various gathering facilities located in Yuma and Logan Counties, Colorado, and Cheyenne County, Kansas. Bitter Creek states that as part of the Agreement, KM has agreed to obtain abandonment authority from the Commission for these 12 field compressors and will report the abandonment of these facilities under § 157.216 of the Commission's Regulations and KMs blanket authority.

Bitter Creek states that after the acquisition of the facilities by Bitter Creek, the operation of the facilities will not change. Bitter Creek states that the primary function of the facilities will be gathering as the only gas being compressed through the facilities is local production from wells and gathering lines connected to the facilities. Bitter Creek states that no interruption, reduction, or termination of service to parties receiving service through these compressors has occurred since Bitter Creek began operating the field compressors effective June 1, 2000. No interruption is expected to occur upon Bitter Creek's acquisition of the facilities.

Bitter Creek submits that, just as the Commission has determined in numerous prior proceedings involving the spin-off of pipeline facilities to third-party purchasers, the primary function of the facilities to be acquired in this proceeding is that of gathering, consistent with the criteria set forth in *Farmland Industries, Inc.* (23 FERC ¶ 61,063 (1983), as modified in subsequent orders, thus qualifying them as exempt gathering facilities under the NGA.

Any questions concerning this application may be directed to Bitter Creek's counsel, Robert T. Hall, III, of Thelen Reid & Priest LLP, at (202) 508–4000.

Any person desiring to be heard or to protest with reference to said petition should on or before December 26, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protectors provide copies of of their protests to the party or parties directly involved. Any person to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the

Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Bitter Creek to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–31422 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–122–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Chandeleur Pipe Line Company Pipe Line (Chandeleur) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 5, with an effective date of January 1, 2001.

Chandeleur states that it is proposing to change it's Fuel and Line Loss Allowance from 0.2% to 0.0%, to become effective January 1, 2001.

Chandeleur states that copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www. ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31420 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–137–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 5, 2000.

Take notice that on December 1, 2000, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-First Revised Sheet No. 11, with an effective date of January 1, 2001.

CIG states that the filing was made pursuant to CIG's FERC Gas Tariff, First Revised Volume No. 1, General Terms and Conditions, Article 21.5 (Account No. 858 Stranded Costs).

CIG states that copies of the filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31428 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–138–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on December 1, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filings as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2001:

Twenty-fourth Revised Sheet No. 18
Fourteenth Revised Sheet No. 18A
Twenty-fifth Revised Sheet No. 19

Columbia Gulf states that this filing is being submitted in accordance with the Federal Energy Regulatory Commission's (Commission) order issued on September 29, 1999 in Gas Research Institute's (GRI) Docket No. RP99–323–000 (Order Approving Settlement) (88 FERC ¶ 61,293), and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff, Columbia is submitting revised tariff sheets to reflect the 2000 GRI funding mechanism.

Columbia Gulf states that copies of its filing have been served upon its firm and interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31416 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–118–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 5, 2000.

Take notice that on November 28, 2000, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Eighth Revised Sheet No. 29, to become effective January 1, 2001.

El Paso states that the tendered tariff sheet revises the fuel charges applicable to transportation service on El Paso's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commisssion in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31418 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–117–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 28, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to become effective January 1, 2001:

Second Revised Volume No. 1–A

Nineteenth Revised Sheet No. 20
Thirteenth Revised Sheet No. 22
Nineteenth Revised Sheet No. 23
Twenty-Third Revised Sheet No. 24
Nineteenth Revised Sheet No. 26
Nineteenth Revised Sheet No. 27
Sixth Revised Sheet No. 37
Sixth Revised Sheet No. 38

Third Revised Volume No. 2

Forty-Eighth Revised Sheet No. 1–D.2
Forty-Second Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31424 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–136–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2001:

Forty-Fifth Revised Sheet No. 8A
Thirty-Seventh Revised Sheet No. 8A.01
Thirty-Seventh Revised Sheet No. 8A.02
Forty-First Revised Sheet No. 8B
Thirty-Fourth Revised Sheet No. 8B.01

FGT states that it is filing the above referenced tariff sheets pursuant to the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (GRI Settlement) as approved by the Federal Energy Regulatory Commission Order issued April 29, 1998 in Docket No. RP97–199–003. For the year of 2001, the funding mechanism includes the approved GRI demand charges of 9 cents per MMBtu per month (.30¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 5.5 cents per MMBtu per month (.18¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors of 50% or less and a volumetric charge of 0.70 cents per MMBtu to be applicable to all non-discounted interruptible rates and to the usage portion of two-part rates. In addition, the 2001 funding mechanism includes a volumetric charge of 1.10 cents per MMBtu to be applicable to all one-part small customer rates. This funding mechanism provides for a decrease in GRI charges as compared to the currently effective 2000 GRI charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31415 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–119–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

December 5, 2000.

Take notice that on November 28, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 7 and Sixth Revised Sheet No. 48, proposed to be effective January 1, 2001.

Great Lakes states that the tariff sheets described above reflect the revised funding surcharges for the Gas Research Institute (GRI) for the year 2001. These surcharges were approved by the Commission in its letter order issued September 19, 2000, in Docket No. RP00–313–000, in which it also approved GRI's funding for its year 2001 research, development, and demonstration (RD&D) program and its 2001–2005 five-year RD&D plan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31425 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–125–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 4A, with an effective date of January 1, 2001.

Iroquois states that, pursuant to Part 154 of the Commission's regulations and Section 12.1 of the General Terms and Conditions of its tariff, it is filing Twenty-Sixth Revised Sheet No. 4 to reflect the GRI surcharge for calendar year 2001, which the Commission approved in an order issued on September 19, 2000 in Docket No. RP00–313.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31431 Filed 12–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–127–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

December 5, 2000.

Take notice that on November 30, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective January 1, 2001:

Third Revised Sheet No. 4D

Pursuant to the Commission's Order issued September 19, 2000 in Docket No. RP00–313–000, KMIGT submits a proposed tariff sheet reflecting the required changes to the Gas Research Institute (GRI) surcharges in its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31433 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–126–000]

K N Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

December 5, 2000.

Take notice that on November 30, 2000, K N Wattenberg Transmission Limited Liability Co., (KNW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective January 1, 2001:

Third Revised Sheet No. 6

Pursuant to the Commission's Order issued September 19, 2000 in Docket No. RP00–313–000, KNW submits a proposed tariff sheet reflecting the required changes to the Gas Research Institute (GRI) surcharges in its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31432 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–39–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

December 5, 2000.

Take notice that on November 29, 2000, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP01–39–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulation under the Natural Gas Act (18 CFR Sections 157.205 and 157.211) for authorization to install new delivery point facilities in Baldwin County, Alabama in order to accommodate deliveries of natural gas to the City of Daphne, Albama (Daphine), under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance.

Koch Gateway states that the City of Daphine is currently served by the City of Fairhope, Alabama. It is explained that the proposed facilities consist of a 4-inch tap, valve and a flow computer, and it is stated that Koch Gateway will construct, own and operate the facilities. It is asserted that the facilities will have a maximum daily capacity of 7,500 Mcf. It is further asserted that Koch Gateway has sufficient capacity to make the deliveries without detriment or disadvantage to its other customers. Koch Gateway estimates the cost of the proposed facilities at $39,468. Koch Gateway states that its FERC Gas Tariff does not prohibit the addition of new delivery points. It is explained that Koch Gateway will transport gas under Section 284 of the Commission's Regulations and will make deliveries to Daphine on a firm or no notice basis.

Any questions regarding the application should be directed to Kyle Stephens, Director of Certificates, at Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas 77251–1478, (713) 544–4123.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31423 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–120–000]

Mississippi River Transmission Corporation; Notice of Tariff Filing

December 5, 2000.

Take notice that on November 29, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, the following sheets, to become effective January 1, 2001:

Thirty Eighth Revised Sheet No. 5
Thirty Eighth Revised Sheet No. 6
Thirty Fifth Revised Sheet No. 7

MRT states that pursuant to the GRI provisions of the settlement in Docket No. RP98–235, and Commission Order in Docket No. RP99–323, MRT is filing to adjust its annual GRI transportation surcharge rates established in the GRI 2001 RD&D program.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31426 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–123–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 5, 2000.

Take notice that on November 30, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, to become effective December 1, 2000.

Twenty Eighth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 34 cents per dth. In addition, Article III, Section 1 states that nay overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31429 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–121–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 5, 2000.

Take notice that on November 30, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Twenty-Ninth Revised Sheet No. 4, Fifteenth Revised Sheet No. 4A and Twelfth Revised Sheet No. 6C.

PG&E GTN states that these tariff sheets establish PG&E GTN's Gas Research Institute ("GRI") surcharge for calendar year 2001. PG&E GTN proposes that these sheets be made effective January 1, 2001.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31427 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–132–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 5, 2000.

Take notice that on November 30, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2001:

Fifty-fourth Revised Sheet No. 14
Seventy-fifth Revised Sheet No. 15
Fifty-fourth Revised Sheet No. 16
Seventy-fifth Revised Sheet No. 17
Thirty-eighth Revised Sheet No. 18

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.fer.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31411 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–128–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000 Southern Natural Gas Company (Southern) tendered for filing to become part its FERC Gas Tariff, Seventh Revised Volume No. 1, the following sheets, with an effective date of January 1, 2001:

Fifty-third Revised Sheet No. 14
Seventy-fourth Revised Sheet No. 15
Fifty-third Revised Sheet No. 16
Seventy-fourth Revised Sheet No. 17
Thirty-seventh Revised Sheet No. 18
Eighth Revised Sheet No. 22

Southern states that the proposed tariff sheets implement the Gas Research Institute's (GRI) revised surcharges for 2001. The 2001 GRI Funding Formula consists of surcharges of (i) .70¢ per Dth applicable to the commodity/usage portion of firm service rates and the interruptible rates and (ii) either 9.0¢ per Dth for high load factor customers or 5.5¢ per Dth for low load factor customers on the demand/reservation component of firm service rates. The 2001 GRI Funding Formula provides for a surcharge of 1.1¢ per Dth on service rates for small customers. The Commission authorized these surcharges in Docket No. RP00–313–00 to be effective January 1, 2001. Consistent with the Commission's order dated September 19, 2000, Southern has proposed these tariff sheets to be effective January 1, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31434 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–130–000]

Southern Natural Gas Company, Notice of Settlement Compliance Filing

December 5, 2000.

Take notice that on November 30, 2000, Southern Natural Gas Company (Southern) filed to continue the existing GSR surcharge of $.0004/Dth to be effective January 1, 2001 and to report an overcollection of GSR revenues of approximately $120,000 during 2000 which will be refundable on March 31, 2001.

Southern asserts that the purpose of this filing is to comply with the commission's Order issued on September 29, 1995, which approved the Stipulation and Agreement (Settlement) filed by Southern on March 15, 1995 in Docket Nos. RP89–224–012, *et al.* In accordance with Article VII of the Settlement, Southern has made this filing to recover a GSR volumetric surcharge based on an estimate of its 2001GSR costs. Southern also indicates, based on estimated data, a GSR surcharge refund for GSR overcollections during 2000 will be made on March 31, 2001 in the amount of approximately $120,000.

Southern states that copies of the filing were served upon Southern's customers, intervening parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the commission's Rules and Regulations. All such motions or protests must be filed on or before December 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31436 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–129–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

December 5, 2000.

Take notice that on November 30, 2000, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its seventh annual cashout report for the September 1999 through August 2000 Period.

Tennessee states that the cashout report is the second filed by Tennessee under the new cashout reconciliation methodology established pursuant to the March 25, 1999 cashout settlement on the Tennessee system. The cashout report reflects a net cashout gain during the period of $209,435. Pursuant to the March 25, 1999 cashout settlement, there is a cumulative loss carry forward from prior cashout operations of $978,801.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31435 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–134–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2001.

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect the 2001 General RD&D Funding Units authorized in the Order Approving Settlement issued by the Commission on April 29, 1998, in Docket No. RP97–149–003, *et al.*, at 83 FERC ¶ 61,093.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31413 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. RP01–135–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with an effective date of January 1, 2001.

Texas Gas states that this filing is made to implement the provisison of Article XI, Section 1(a), of the Offer of Settlement and Explanatory Statement in Docket No. RP97–344, *et al.*, and, as presented in the referenced Appendix D, page 2, of said Settlement, Texas Gas, in the instant filing, proposes to reflect the unit rate reductions, effective January 1, 2001, resulting from the termination of the HIOS T–17 contract. The attached tariff sheets reflect reductions to: NNS and FT demand rates of ($0.0006); SGT rates of ($0.0012); average STF and IT peak demand rates of ($0.0010); average STF and IT off-peak demand rates of ($0.0003); SNS 1/16 hourly flow demand rates of ($0.0006); SNS 1/16 up to 1/12 hourly flow demand rates of ($0.0008); and SNS greater than 1/12 hourly flow demand rates of ($0.0012).

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdictional customers, all parties on the Commission's official service list in this proceeding, interested state commissions, and the FERC Staff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(ii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31414 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–131–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Transcontinental Gas pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective January 1, 2001.

Transco states that the purpose of the instant filing is to reflect the 2001 GRI surcharges approved by the Commission's Order issued on September 19, 1999, in Docket No. RP00–313–000. Also, in accordance with GRI's 1993 settlement, Transco has calculated the firm transportation service load factors on the actual volumes transported during the 12 month period October 1999 through September 2000.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31410 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–139–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000 Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

124 Revised Sheet No. 5
29 Revised Sheet No. 5A
21 Revised Sheet No. 5A.02
20 Revised Sheet No. 5A.03
26 Revised Sheet No. 5B

Transwestern states that the purpose of this filing is to set forth the approved 2001 Gas Research Institute (GRI) surcharges for the 2001 calendar year to be effective January 1, 2001 in accordance with the Commission's Order approving The Gas Research Institute's Year 2001 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 29, 2000 in Docket No. RP00–313–000.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31417 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–133–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2000.

Take notice that on November 30, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective January 1, 2001:

Seventeenth Revised Sheet No. 6A

Williams states that pursuant to Order Approving Settlement, issued April 29, 1998, in Docket No. RP97–149–003, *et al.* and Williams FERC Gas Tariff, Original Volume No. 1, Article 25, Williams is filing to reflect the new GRI surcharges to be collected on nondiscounted transportation services.

Williams states that copies of this filing have been served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31412 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–136–001, et al.]

Dynegy Midwest Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 4, 2000.

Take notice that the following filings have been made with the Commission:

1. Dynegy Midwest Generation, Inc.

[Docket No. ER01–136–001]

Take notice that on November 29, 2000, Dynegy Midwest Generation, Inc. (DMG) submitted a filing containing designations pursuant to Order No. 614, in compliance with the letter order issued November 16, 2000 in Docket No. ER01–136–000 in which the Commission accepted the filing, effective January 1, 2001.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Energy Supply Company, LLC; The Potomac Edison Company, West Penn; Power Company (dba Allegheny Power)

[Docket No. ER01–432–001]

Take notice that on November 29, 2000, Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), filed Amendment No. 1 to First Revised Rate Schedule FERC No. 3. Amendment No. 1 redesignates the cover page and Table of Contents to comply with the Commission's Order No. 614 and corrects page numbers shown on Sheet No. 3.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission and all parties of record.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Valley Electric Corporation; Indiana-Kentucky Electric Corporation

[Docket No. ER01–517–000]

Take notice that on November 28, 2000, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated October 31, 2000 (the Service Agreement) between The Energy Authority, Inc. (Energy Authority) and OVEC.

OVEC proposes an effective date of October 31, 2000 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Energy Authority. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon Energy Authority.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER01–523–000]

Take notice that on November 29, 2000, Boston Edison Company (Boston Edison) tendered for filing an Interconnection Agreement between Sithe Fore River Development LLC and Boston Edison. Boston Edison has requested waiver of the Commission's regulations to permit an effective date of December 31, 2000 of the Interconnection Agreement, and that the public comment period for this proceeding to end December 25, 2000.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER01–524–000]

Take notice that on November 29, 2000, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Filing, and Mutual Netting/Closeout Agreements (Netting Agreements) with Tenaska Power Services Co. (TNSK) and Merrill Lynch Capital Services (MLCS).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER01–525–000]

Take notice that on November 29, 2000, Commonwealth Edison Company (ComEd) submitted for filing 10 Short-Term Firm Transmission Service Agreements with Constellation Power Source, Inc. (CPS), The Detroit Edison Company (DE), Edison Mission Marketing & Trading, Inc. (EMMT), LG&E Energy Marketing Inc. (LGE), MidAmerican Energy Company (MEC), Northern Indiana Public Service Company (NIPS), Reliant Energy Services, Inc. (RES), Southern Company Energy Marketing L.P. (SCEM), Southern Illinois Power Cooperative (SIPC), and The Energy Authority (TEA), under the terms of ComEd's Open Access Transmission Tariff (OATT). These Agreements have been amended to provide that Transmission Customers must confirm accepted requests for service within the reservation timing requirements established in the Commission's Order No. 638. These Agreements amend and supersede agreements already on file with the Commission.

ComEd requests an effective date of May 30, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER01–526–000]

Take notice that on November 29, 2000, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, umbrella Transmission Service Agreements with Sacramento Municipal Utility District (SMUD) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER01–527–000]

Take notice that on November 29, 2000, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and H.Q. Energy Services (U.S.) Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to H.Q. Energy Services (U.S.) Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER01–528–000]

Take notice that on November 29, 2000, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Allegheny Energy Supply Company.

Copies of this filing were served upon Allegheny Energy Supply Company and the state electric utility regulatory commissions within the PJM control area.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER01–529–000]

Take notice that on November 29, 2000, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Southern Company Energy Marketing L.P.

Copies of this filing were served upon Southern Company Energy Marketing L.P. and the state electric utility regulatory commissions within the PJM control area.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER01–530–000]

Take notice that on November 29, 2000, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc (Entergy Arkansas), tendered for filing a Long-Term Market Rate Sales Agreement between Entergy Arkansas and City of Benton, Arkansas for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. American Electric Power Service Corporation

[Docket No. ER01–531–000]

Take notice that on November 29, 2000, the American Electric Power Service Corporation (AEPSC) tendered for filing a service agreement with DTE Energy Trading, Inc. by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit this service agreement to be made effective on or prior to November 1, 2000.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER01–532–000]

Take notice that on November 29, 2000, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Mantua Creek Generating Company LP.

Copies of this filing were served upon Mantua Creek Generating Company LP and the state electric utility regulatory commissions within the PJM control area.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER01–533–000]

Take notice that on November 29, 2000, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interim interconnection service agreement between PJM and Reliant Energy Hunterstown, LLC.

Copies of this filing were served upon Reliant Energy Hunterstown, LLC and the state electric utility regulatory commissions within the PJM control area.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER01–534–000]

Take notice that on November 29, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an amendment to a long-term Service Agreement between Deseret and Constellation Power Source, Inc., designated Service Agreement No. 5 to FERC Electric Tariff, Original Volume No. 3.

Deseret requests an effective date of September 1, 2000.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Maine Independent System Administrator, Inc.

[Docket No. ER01–535–000]

Take notice that on November 29, 2000, Northern Maine Independent System Administrator, Inc., (NMISA) tendered for filing an amendment to its Market Rules, FERC Electric Rate Schedule No. 2.

NMISA requests an effective date of December 1, 2000.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC

[Docket No. ER01–536–000]

Take notice that on November 29, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 7 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply maintains the effective date of Service Agreement No. 7 of December 6, 1999 for service to Wabash Valley Power Association, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Westmoreland—LG&E Partners

[Docket No. ER01–537–000]

Take notice that on November 30, 2000, Westmoreland—LG&E Partners submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Second Amendment and Restatement of the Power Purchase and Operating Agreement which governs power sales to Virginia Electric and Power Company from the Roanoke Valley II facility. Applicant requests certain waivers of the Commission's regulations and a blanket authorization of Federal Power Act Section 204.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation

[Docket No. ER01–547–000]

Take notice that on November 27, 2000, the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as the Member Systems of the New York Power Pool (Member Systems) tendered for filing revised transmission service agreements. The Member Systems state that these tariff sheets are in compliance with the Commission's October 26, 2000 order in this proceeding. *Central Hudson Gas & Electric Corp., et al.*, 93 FERC ¶ 61,090 (2000).

A copy of this filing was served upon all persons on the official service list in the captioned proceeding.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31391 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2651–006 Indiana]

Indiana Michigan Power Company; Notice of Availability of Final Environmental Assessment

December 5, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of the Energy Projects has reviewed the application for a new license for the Elkhart Hydroelectric Project, and has prepared a final environmental assessment (FEA). The project is located on the St. Joseph River in the City of Elkhart and Elkhart County, Indiana.

On April 10, 2000, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 45 days. Comments on the DEA were filed by Walter D. Gildner, Indiana Department of Natural Resources, American Electric Power/ Indiana Michigan Power Company, and the City of Elkhart and are addressed in the FEA.

Copies of the FEA are available for review at the Commission's Public Reference Room, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. The FEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm [please call (202) 208–2222 for assistance].

David P. Boergers,

Secretary.

[FR Doc. 00–31421 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 5, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major New License.

b. *Project No.:* 2055–010.

c. *Date filed:* November 24, 1998.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* C.J. Strike Hydroelectric Project.

f. *Location:* On the Snake River, in Owyhee County, Oregon, between the towns of Grandview and Bruneau. The project occupies about 3,000 acres of Federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Lewis Wardle, Hydro Relicensing Department, Idaho Power Company, P.O. Box 70, Boise, ID 83707 (208) 388–2964.

i. *FERC Contact:* John Blair, 202–219–2845, john.blair@ferc.fed.us.

j. *Deadline for filing comments, recommendations, terms and conditions and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions and prescriptions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k.This application has been accepted, and is ready for environmental analysis at this time.

l. *The project consists of the following facilities:* (1) A 3,220-foot-long earthfill dam with a maximum height of 115 feet, which includes a 340-foot-wide and 78-foot-high reinforced concrete spillway consisting of eight 34-foot-wide bays; (2) a 55-foot-wide, 158-foot-long and 65-foot-high reinforced concrete intake structure located at the left abutment of the dam, consisting of three intakes; (3) three riveted steel penstocks connecting the intakes to the generating units; (4) a 198-foot-long, 64-foot-wide, and 68-foot-high reinforced concrete powerhouse, located at the left abutment of the dam, containing 3 vertical fixed-blade turbines with a total nameplate capacity of 82.8 megawatts; (5) a reservoir extending about 32 miles upstream on the Snake River and about 12 miles upstream on the Bruneau River, with a surface area of 7,500 acres at normal water surface elevation of 2,455 feet above mean sea level; and (6) two 138-kilovolt (kV) transmission lines extending from the project 65 miles northwesterly to the Caldwell terminal substation and about 25 miles northeasterly to the 138 kV lines at Mountain Home.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–31419 Filed 12–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

December 6, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 13, 2000, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

755th—Meeting December 13, 2000, Regular Meeting, (10 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
DOCKET# ER01–147, 000, SOUTHERN ENERGY DELTA, L.L.C. AND SOUTHERN ENERGY POTRERO, L.L.C.
CAE–2.
DOCKET# ER01–168, 000, TENASKA FRONTIER PARTNERS, LTD.
CAE–3.
DOCKET# ER01–171, 000, CONSUMERS ENERGY COMPANY AND CMS MARKETING, SERVICES AND TRADING COMPANY
CAE–4.
OMITTED
CAE–5.
DOCKET# ER00–2814, 000, COMMONWEALTH EDISON COMPANY
OTHER#S ER00–2814,001, COMMONWEALTH EDISON COMPANY
ER00–2814, 002, COMMONWEALTH EDISON COMPANY
CAE–6.
DOCKET# ER01–210, 000, PJM INTERCONNECTION, L.L.C.
CAE–7.
OMITTED
CAE–8.
OMITTED
CAE–9.
OMITTED
CAE–10.
DOCKET# ER00–2870, 000, EL PASO ELECTRIC GENERATING COMPANY
CAE–11.
OMITTED
CAE–12.
DOCKET# ER01–369, 000, ISO NEW ENGLAND INC.
CAE–13.
DOCKET# ER01–202, 000, POTOMAC POWER RESOURCES, INC.
CAE–14.
DOCKET# ER00–2064, 000, ILLINOIS POWER COMPANY
OTHER#S ER00–2064, 001, ILLINOIS POWER COMPANY
CAE–15.
DOCKET# ER00–3316, 000, AMERICAN TRANSMISSION COMPANY LLC
CAE–16.
DOCKET# ER01–123, 000, ILLINOIS POWER COMPANY
CAE–17.
OMITTED
CAE–18.
DOCKET# ER00–2062, 000, CENTRAL MAINE POWER COMPANY
OTHER#S ER00–2062, 001, CENTRAL MAINE POWER COMPANY
ER00–2062, 002, CENTRAL MAINE POWER COMPANY
ER00–2062, 003, CENTRAL MAINE POWER COMPANY
CAE–19.
DOCKET# ER00–3735, 000, PJM INTERCONNECTION, L.L.C.
CAE–20.
DOCKET# ER00–1, 002, TRANSENERGIE U.S., LTD.
OTHER#S ER00–1, 003, TRANSENERGIE U.S., LTD.
CAE–21.
DOCKET# EL00–62, 005, ISO NEW ENGLAND, INC.
OTHER#S EL00–62, 013, ISO NEW ENGLAND, INC.
CAE–22.
OMITTED
CAE–23.
DOCKET# RT01–77, 000, SOUTHERN COMPANIES SERVICES, INC.
CAE–24.
DOCKET# ER99–4113, 001, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–25.
DOCKET# EC00–138, 000, SITHE ENERGIES, INC. AND THE SITHE STOCKHOLDERS, EXELON (FOSSIL) HOLDINGS, INC., PEPCO ENERGY COMPANY AND EXELON GENERATION COMPANY, L.L.C.
CAE–26.
DOCKET# ER99–3279, 001, PJM INTERCONNECTION, L.L.C.
CAE–27.
DOCKET# ER99–3144, 003, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN

POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
OTHER#S EC99–80, 003, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
EC99–80, 004, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
EC99–80, 005, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
ER99–3144, 004, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
EC00–103, 000, CONSUMERS ENERGY COMPANY
ER00–2869, 000, CONSUMERS ENERGY COMPANY
CAE–28.
DOCKET# EG01–11, 000, MADISON WINDPOWER, LLC
CAE–29.
DOCKET# EL01–6, 000, QUIXX LINDEN, L.P.
OTHER#S QF98–3, 001, QUIXX LINDEN, L.P.
CAE–30.
DOCKET# EL01–8, 000, LG&E-WESTMORELAND HOPEWELL
OTHERtS QF88–85, 004, LG&E-WESTMORELAND HOPEWELL
CAE–31.
DOCKET# EL01–5, 000, SOWEGA POWER LLC
CAE–32.
DOCKET# EL99–42, 000, MONTAUP ELECTRIC COMPANY V. BOSTON EDISON COMPANY
OTHER#S EL99–42, 002, MONTAUP ELECTRIC COMPANY V. BOSTON EDISON COMPANY
ER00–2649, 000, MONTAUP ELECTRIC COMPANY V. BOSTON EDISON COMPANY
ER00–3749, 000, MONTAUP ELECTRIC COMPANY V. BOSTON EDISON COMPANY
CAE–33.
OMITTED
CAE–34.
DOCKET# ER01–204, 000, PJM INTERCONNECTION, L.L.C.
CAE–35.
DOCKET# EC00–141, 000, POTOMAC ELECTRIC POWER COMPANY, SOUTHERN ENERGY CHALK POINT, LLC, SOUTHERN ENERGY MID-ATLANTIC, LLC, SOUTHERN ENERGY PEAKER, LLC, SOUTHERN ENERGY POTOMAC RIVER, LLC, ALLEGHENY ENERGY SUPPLY COMPANY, LLC, PPL MONTOUR, LLC AND POTOMAC POWER RESOURCES, INC.
OTHER#S EL00–115, 000, POTOMAC ELECTRIC POWER COMPANY, SOUTHERN ENERGY CHALK POINT, LLC, SOUTHERN ENERGY MID-ATLANTIC, LLC, SOUTHERN ENERGY PEAKER, LLC, SOUTHERN ENERGY POTOMAC RIVER, LLC, ALLEGHENY ENERGY SUPPLY COMPANY, LLC, PPL MONTOUR, LLC AND POTOMAC POWER RESOURCES, INC.
ER00–3727, 000, POTOMAC ELECTRIC POWER COMPANY, SOUTHERN ENERGY CHALK POINT, LLC, SOUTHERN ENERGY MID-ATLANTIC, LLC, SOUTHERN ENERGY PEAKER, LLC, SOUTHERN ENERGY POTOMAC RIVER, LLC, ALLEGHENY ENERGY SUPPLY COMPANY, LLC, PPL MONTOUR, LLC AND POTOMAC POWER RESOURCES, INC.

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
DOCKET# RP96–312, 034, TENNESSEE GAS PIPELINE COMPANY
OTHER#S GT01–5, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–2.
DOCKET# RP01–81, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–3.
DOCKET# RP00–212, 003, NUI CORPORATION (CITY GAS COMPANY OF FLORIDA DIVISION) V. FLORIDA GAS TRANSMISSION COMPANY
CAG–4.
DOCKET# RP01–99, 000, SOUTHERN NATURAL GAS COMPANY
CAG–5.
OMITTED
CAG–6.
DOCKET# RP01–111, 000, CHANDELEUR PIPE LINE COMPANY
CAG–7.
DOCKET# RP01–103, 000, NORTHWEST ALASKAN PIPELINE COMPANY
CAG–8.
DOCKET# RP01–74, 000, DOMINION TRANSMISSION, INC.
OTHER#S RP97–406, 024, DOMINION TRANSMISSION, INC.
RP97–406, 025, DOMINION TRANSMISSION, INC.
CAG–9.
DOCKET# IS01–33, 000, ALPINE TRANSPORTATION COMPANY
CAG–10.
DOCKET# RP99–322, 000, NORTHERN BORDER PIPELINE COMPANY
OTHER#S RP96–45, 000, NORTHERN BORDER PIPELINE COMPANY
RP96–45, 009, NORTHERN BORDER PIPELINE COMPANY
RP99–322, 003, NORTHERN BORDER PIPELINE COMPANY

CAG–11.
DOCKET# RP99–176, 010, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP99–176, 007, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP99–176, 008, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–12.
DOCKET# RP00–257, 000, OZARK GAS TRANSMISSION, L.L.C.
OTHER#S RP00–257, 001, OZARK GAS TRANSMISSION, L.L.C.
CP01–21, 000, OZARK GAS TRANSMISSION, L.L.C.
CAG–13.
OMITTED
CAG–14.
DOCKET# RP00–363, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP00–363, 002, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–15.
DOCKET# RP00–553, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–16.
DOCKET# RP01–83, 000, SEAGULL MARKETING SERVICES, INC. V. COLUMBIA GULF TRANSMISSION COMPANY
CAG–17.
DOCKET# RP96–129, 008, TRUNKLINE GAS COMPANY
CAG–18.
DOCKET# RP97–369, 014, PUBLIC SERVICE COMPANY OF COLORADO AND CHEYENNE LIGHT, FUEL AND POWER COMPANY
OTHER#S GP97–3, 004, AMOCO PRODUCTION COMPANY, ANADARKO PETROLEUM CORPORATION, MOBIL OIL CORPORATION, OXY USA, INC. AND UNION PACIFIC RESOURCES COMPANY
GP97–4, 004, KANSAS SMALL PRODUCER GROUP
GP97–5, 004, MESA OPERATING COMPANY
CAG–19.
OMITTED
CAG–20.
DOCKET# RM00–6, 001 WELL CATEGORY DETERMINATIONS
CAG–21.
OMITTED
CAG–22.
DOCKET# RP98–52, 039, WILLIAMS GAS PIPLINES CENTRAL, INC.
CAG–23.
DOCKET# MG00–6, 002, DOMINION RESOURCES, INC., CONSOLIDATED NATURAL GAS COMPANY AND DOMINION TRANSMISSION INC.
OTHER#S EC99–81, 003, DOMINION RESOURCES, INC., CONSOLIDATED NATURAL GAS COMPANY AND DOMINION TRANSMISSION INC.
EC99–81, 004, DOMINION RESOURCES, INC., CONSOLIDATED NATURAL GAS COMPANY AND DOMINION TRANSMISSION INC.
MG00–6, 003, DOMINION RESOURCES, INC., CONSOLIDATED NATURAL GAS COMPANY AND DOMINION TRANSMISSION INC.
MG00–6, 004, DOMINION RESOURCES, INC., CONSOLIDATED NATURAL GAS COMPANY AND DOMINION TRANSMISSION INC.
MT00–17, 000, DOMINION RESOURCES, INC., CONSOLIDATED NATURAL GAS COMPANY AND DOMINION TRANSMISSION INC.
CAG–24.
DOCKET# RP98–206, 006, ATLANTA GAS LIGHT COMPANY
OTHER#S RP98–206, 005, ATLANTA GAS LIGHT COMPANY
CAG–25.
DOCKET# RM00–11 000, FIVE-YEAR REVIEW OF OIL PIPELINE PRICING INDEX
CAG–26.
DOCKET# CP95–168, 004, SEA ROBIN PIPELINE COMPANY

Consent Agenda—Miscellaneous

CAM–1.
DOCKET# RM99–10, 000, REVISIONS TO AND ELECTRONIC FILING OF THE FERC FORM NO. 6, AND RELATED UNIFORM SYSTEMS OF ACCOUNTS

Consent Agenda—Energy Projects—Hydro

CAH–1.
DOCKET# UL96–1, 003, BLACKSTONE MILL DEPOT STREET TRUST
CAH–2.
DOCKET# P–1980, 009, WISCONSIN ELECTRIC POWER COMPANY
CAH–3.
DOCKET# P–2074, 007, WISCONSIN ELECTRIC POWER COMPANY
CAH–4.
DOCKET# P–2073, 008, WISCONSIN ELECTRIC POWER COMPANY
CAH–5.
DOCKET# P–1759, 036, WISCONSIN ELECTRIC POWER COMPANY
OTHER#S P–1980, 009, WISCONSIN ELECTRIC POWER COMPANY
P–2072, 008, WISCONSIN ELECTRIC POWER COMPANY
P–2073, 008, WISCONSIN ELECTRIC POWER COMPANY
P–2074, 007, WISCONSIN ELECTRIC POWER COMPANY
P–2131, 020, WISCONSIN ELECTRIC POWER COMPANY
P–2471, 005, WISCONSIN ELECTRIC POWER COMPANY
P–11831, 000, WISCONSIN ELECTRIC POWER COMPANY
P–11830, 000, WISCONSIN ELECTRIC POWER COMPANY
CAH–6.
DOCKET# P–2131, 020, WISCONSIN ELECTRIC POWER COMPANY
CAH–7.
DOCKET# P–11830, 000, WISCONSIN ELECTRIC POWER COMPANY
CAH–8.
DOCKET# P–11831, 000, WISCONSIN ELECTRIC POWER COMPANY
CAH–9.
DOCKET# P–2471, 005, WISCONSIN ELECTRIC POWER COMPANY
CAH–10.
DOCKET# P–2072, 008, WISCONSIN ELECTRIC POWER COMPANY

Consent Agenda—Energy Projects—Certificates

CAC–1.
DOCKET# CP00–68, 000, QUESTAR PIPELINE COMPANY
CAC–2.
DOCKET# CP98–540, 003, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAC–3.
DOCKET# CP00–416, 000, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S CP00–417, 000, COLUMBIA NATURAL RESOURCES, INC.
CAC–4.
DOCKET# CP98–74, 003, ANR PIPELINE COMPANY V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAC–5.
DOCKET# CP00–424, 001, DISTRIGAS OF MASSACHUSETTS LLC
CAC–6.
DOCKET# CP99–600, 000, NATIONAL FUEL GAS DISTRIBUTION CORPORATION
CAC–7.
DOCKET# CP95–218, 002, TEXAS EASTERN TRANSMISSION CORPORATION
CAC–8.
DOCKET# RM99–5, 002, REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT GOVERNING THE MOVEMENT OF NATURAL GAS ON FACILITIES ON THE OUTER CONTINENTAL SHELF

Energy Projects—Hydro Agenda

H–1.
RESERVED

Energy Projects—Certificates Agenda

C–1.
RESERVED

Markets, Tariffs and Rates—Electric Agenda

E–1.
OMITTED
E–2.
DOCKET# EL00–95, 000, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE
OTHER#S EL00–95, 002, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE
EL00–95, 003, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE
EL00–98, 000, INVESTIGATION OF PRACTICES OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE EL00–98, 002, INVESTIGATION OF PRACTICES OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE

EL00–98, 003, INVESTIGATION OF PRACTICES OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE
EL00–107, 000 PUBLIC MEETING IN SAN DIEGO, CALIFORNIA EL00–97, 000 RELIANT ENERGY POWER GENERATION, INC., DYNEGY POWER MARKETING, INC. AND SOUTHERN ENERGY CALIFORNIA, L.L.C. V. CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
EL00–104, 000, CALIFORNIA ELECTRICTY OVERSIGHT BOARD V. ALL SELLERS OF ENERGY AND ANCILLARY SERVICES INTO THE ENERGY AND ANCILLARY SERVICES MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE
EL01–1, 000, CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION V. ALL JURISDICTIONAL SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE
EL01–2, 000, CALIFORNIANS FOR RENEWABLE ENERGY, INC. V. INDEPENDENT ENERGY PRODUCERS, INC., AND ALL SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; ALL SCHEDULING COORDINATORS ACTING ON BEHALF OF THE ABOVE SELLERS; CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION; AND CALIFORNIA POWER EXCHANGE CORPORATION
EL01–10, 000, PUGET SOUND ENERGY, INC. V. ALL JURISDICTIONAL SELLERS OF ENERGY AND/OR CAPACITY AT WHOLESALE INTO ELECTRIC ENERGY AND/OR CAPACITY MARKETS IN THE PACIFIC NORTHWEST, INCLUDING PARTIES TO THE WESTERN SYSTEMS POWER POOL AGREEMENT

Order on wholesale electric markets. this order may be considered at the December 13, 2000 meeting or, subject to further notice, at another date later this month.

Markets, Tariffs and Rates—Gas Agenda

G–1.
RESERVED

David P. Boergers

Secretary.

[FR Doc. 00–31533 Filed 12–7–00; 10:47 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Western Area Power Administration

Formula Rates for the Central Arizona Project 115-kV/230-kV Transmission System—Rate Order No. WAPA–88

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–88 and Rate Schedules CAP–FT1, CAP–NFT1, and CAP–NITS1 placing Formula Rates for firm point-to-point transmission service, nonfirm point-to-point transmission service, and Network Integration Transmission Service (NITS) on the Central Arizona Project (CAP) 115-kV/230-kV transmission system of the Western Area Power Administration (Western) into effect on an interim basis. The Formula Rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The Formula Rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period.

DATES: The Formula Rates will be placed into effect on an interim basis on January 1, 2001, and will be in effect until FERC confirms, approves, and places the Formula Rates in effect on a final basis for a 5-year period ending December 31, 2005, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Maher Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2768, or by e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: The CAP 115-kV/230–kV transmission system has been used primarily to provide power to the CAP water pumps. The planned construction of a number of independent powerplants in Arizona and Nevada creates a potential demand for use of surplus transmission capacity on the CAP 115-kV/230-kV transmission system.

The proposed Formula Rates for point-to-point transmission service and NITS on the CAP 115-kV/230-kV transmission system are based on a revenue requirement that recovers costs for facilities associated with providing transmission service and the non-facilities costs allocated to transmission service. The rates for point-to-point transmission service on the CAP 115-kV/230-kV transmission system are determined by combining the average annual amortization costs with the average annual operations and maintenance costs, and dividing them by the average annual contract rate of delivery for the cost evaluation period FY 2001–FY 2005. Implementing the proposed Formula Rates results in a firm point-to-point CAP 115-kV/230-kV transmission system rate of $9.83 per kilowattyear and a nonfirm point-to-point CAP 115-kV/230-kV transmission system rate of 1.12 mills/kWh.

NITS allows a transmission customer to integrate, plan, economically dispatch, and regulate its network resources to serve its native load in a way comparable to that used by the transmission provider to service its native load customers. The monthly charge methodology for NITS on the CAP 115-kV/230-kV transmission system is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling 12-month basis (12CP). The customer's load-ratio share is equal to that customers' hourly load coincident with the CAP 115-kV/230-kV transmission system monthly transmission system peak divided by the resultant value of the CAP 115-kV/230-kV transmission system's monthly transmission system peak minus the CAP 115-kV/230-kV transmission system's coincident peak for all firm point-to-point transmission service plus the CAP 115-kV/230-kV transmission system's firm point-to-point transmission service reservations.

The Formula Rates for transmission service on the CAP 115-kV/230-kV transmission system are being developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Existing Department of Energy procedures for public participation in power and transmission rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835), and have been followed by Western in the development of these provisional rates.

Rate Order No. WAPA–88, confirming, approving, and placing the proposed CAP 115-kV/230-kV transmission system Formula Rates into effect on an interim basis, is issued; and the new Rate Schedules CAP–FT1, CAP–NFT1, and CAP–NITS1 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: November 30, 2000.

T.J. Glauthier,

Deputy Secretary.

Order Confirming, Approving, and Placing the Central Arizona Project Transmission System Formula Rates into Effect on an Interim Basis

These Formula Rates are developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments are found in 10 CFR part 903. Procedures for approving Power Marketing Administration rates by FERC are found in 18 CFR part 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration (Western).
Capacity: The rated continuous electric load-carrying capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kW.
Central Arizona Project (CAP): One of three related water development projects that make up the Colorado River Basin Project.
Customer: An entity with a contract and receiving service from Western's Desert Southwest Region or from CAP.
DOE: United States Department of Energy.
DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting and rate-making procedures.
Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kWh.
FERC: Federal Energy Regulatory Commission.
Firm: A type of product and/or service that is available at the time requested by the customer.
Formula Rates: A rate which is based upon a formula calculated yearly.
FY: Fiscal year; October 1 to September 30.
kV: Kilovolt—the electrical unit of measure of electric potential that equals 1,000 volts.
kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.
kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.
kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.
Mill: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.
NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).
Nonfirm: A type of product and/or service that is not always available at the time requested by the customer.
O&M: Operation and maintenance.
Power: Capacity and energy.
Reclamation: United States Department of the Interior, Bureau of Reclamation.
Revenue Requirement: The revenue required to recover O&M expenses, transmission service expenses, interest, deferred expenses, and repayment of Federal investments, or other assigned costs.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period beginning on or after January 1, 2001, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a 5-year period ending December 31, 2005, or until superseded.

Public Notice and Comment

Existing Department of Energy procedures for public participation in power and transmission rate adjustments, 10 CFR part 903, have been followed by Western in the development of these rates. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. The proposed rate adjustment was initiated on May 23, 2000, when a letter announcing the first informal customer information forum was mailed to all Central Arizona Project (CAP) customers and interested parties. The first informal customer information forum was held on June 7, 2000, at the Desert Southwest Customer Service Regional office (DSW) in Phoenix, Arizona. At the informal customer information forum, Western and Reclamation staff explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. A **Federal Register** notice was published on May 24, 2000 (65 FR 33541), officially announcing the proposed rates for the CAP 115-kV/230-kV transmission system, initiating the public consultation and comment period, and announcing the public information and public comment forums.

3. On June 7, 2000, a brochure prepared by Western's DSW office was provided to all CAP firm transmission customers and interested parties, included in the **Federal Register** notice of May 24, 2000, and announced the times and locations for the two public forums.

4. On June 16, 2000, beginning at 10 a.m. MST, the public information forum was held at Western's DSW office in Phoenix, Arizona. At the public information forum, Western provided detailed explanations of the proposed Formula Rates for the CAP 115-kV/230-kV transmission system and provided a list of issues that could change the proposed rates, and answered questions.

Notice was given that additional information would be provided at the public comment forum. An information handout was provided at the forum.

5. On July 17, 2000, beginning at 10 a.m., the public comment forum was held at Western's DSW office in Phoenix, Arizona. At the start of the forum, Western gave the public an opportunity to comment for the record. Three customer representatives were present and declined to make oral comments.

6. Two comment letters were received during the consultation and comment period. The consultation and comment period ended August 22, 2000. All formally submitted comments have been considered in the preparation of this rate order.

Project Description

The CAP is one of three related water development projects that make up the Colorado River Basin Project. The others are the Dixie and the Upper Basin projects. The CAP was developed for Arizona and western New Mexico; the Dixie Project for southeastern Utah; and the Upper Basin Project for Colorado and New Mexico.

Congress authorized the project in 1968 to improve water resources in the Colorado River Basin. Segments of the 1968 authorization allowed Federal participation in the Navajo Generating Station, which has three coal-fired steam electric generating units for a combined capacity of 2,250 MW. Construction of the plant, located near Lake Powell at Page, Ariz., began in 1970. Navajo began generating in 1976.

The Federal share of 24.3 percent, or 546,750 kW, is used to power the pumps that move Colorado River water through CAP canals. Surplus generation is currently marketed under the Navajo Power Marketing Plan adopted on Dec. 1, 1987.

Revenue Requirement

The Revenue Requirement will be calculated each fiscal year to determine if transmission revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the CAP 115-kV/230-kV transmission system function. Repayment criteria is based on law, policies, and authorizing legislation, including DOE Order RA 6120.2.

Certification of Rate

Western's Administrator has certified that the Formula Rates for transmission service on the CAP 115-kV/230-kV transmission system, placed into effect on an interim basis herein, are the lowest possible rates consistent with sound business principles, and have been developed in accordance with administrative policies and applicable laws.

Discussion

The CAP 115-kV/230-kV transmission system has been used primarily to provide power to the CAP water pumps. The planned construction of a number of independent powerplants in Arizona and Nevada creates a potential demand for use of surplus transmission capacity on the CAP 115-kV/230-kV transmission system.

The proposed Formula Rates for point-to-point transmission service and NITS on the CAP 115-kV/230-kV transmission system are based on a Revenue Requirement that recovers costs for facilities associated with providing transmission service and for non-facilities allocated to transmission service.

Point-to-Point Transmission Service

The rate for firm point-to-point transmission service on the CAP 115-kV/230-kV transmission system is determined by combining the annual amortization costs with the annual operations and maintenance costs, and dividing them by the annual average contract rate of delivery. The nonfirm rate is determined by converting the firm annual rate into an hourly rate. Implementing the proposed rate formulas results in a firm point-to-point CAP 115-kV/230-kV transmission system rate of $9.83 per kilowattyear and a nonfirm point-to-point CAP 115-kV/230-kV transmission system rate of 1.12 mills/kWh.

Network Integration Transmission Service

NITS allows a transmission customer to integrate, plan, economically dispatch, and regulate its network resources to serve its native load in a way comparable to how a transmission provider uses its own transmission system to service its native load customers. The monthly charge methodology for NITS on the CAP 115-kV/230-kV transmission system is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling 12-month basis (12CP). The customer's load-ratio share is equal to that customers' hourly load coincident with the CAP 115-kV/230-kV transmission system's monthly transmission system peak divided by the resultant value of the CAP 115-kV/230-kV transmission system's monthly transmission system peak minus the CAP 115-kV/230-kV transmission system coincident peak for all firm point-to-point transmission service plus the CAP 115-kV/230-kV transmission system's firm point-to-point transmission service reservations. In order to ensure the collection of the transmission system's annual revenue requirement, the difference between the first two components of the resultant value outlined above constitutes the network transmission systems' monthly peak and is anticipated to be metered. Thus, a NITS customer, based on its 12-CP load, will pay its proportionate share of the revenue requirement for the month. Since point-to-point transmission service customers are charged on a reservation basis and not a usage basis, for the purpose of determining the NITS charge, the transmission system's monthly peak will coincide with the network transmission system's monthly peak.

Ancillary Service

The proposed revenue requirement includes the costs for scheduling, system control, and dispatch service. The reactive supply and voltage control ancillary service must be purchased from the Western Area Lower Colorado (WALC) control area. The transmission customer may self-supply the four remaining ancillary services or request them from WALC. These four ancillary services are regulation and frequency response service, energy imbalance service, spinning reserve service, and supplemental reserve service.

Statement of Revenue and Related Expenses

The following table provides a summary of revenues and expenses for the 5-year provisional rate period.

REVENUES AND EXPENSES

[In thousands of dollars]

	Formula rates [1]
Total Revenues	34,429
Revenue Distribution:	
O&M	6,763
Purchase Power	0
Transmission	0
Interest	19,343
Other	0
Investment Repayment	8,323
Capitalized Expenses	0
Prior-Year Adjustment	0

[1] The revenues and expenses for the Formula Rates are for 5 years.

Basis for Rate Development

This proposed rate adjustment is needed to put into place, for the first time, rate formulas to calculate the rate to be charged for the sale of surplus transmission capacity on the CAP 115-kV/230-kV transmission system. The assessed calculated rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. The Formula Rates are scheduled to go in effect on January 1, 2001, and will remain in effect through December 31, 2005.

Comments

During the public consultation and comment period, Western received two written comment letters on the rate adjustment. All comments received by the end of the public consultation and comment period, August 22, 2000, were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources: Central Arizona Project, August 21, 2000, Robert S. Lynch, Attorney at Law, August 22, 2000.

The comments received dealt with the disposition of revenues derived from the assessment of the CAP 115-kV/230-kV transmission system rates and its applicability to the Lower Colorado River Basin Development Fund (LCRBDF). All comments supported Western's efforts to establish the new CAP 115-kV/230-kV transmission system rates. The following is a summary of the comments received by the end of the consultation and comment period and Western's response to those comments.

Comment: Both commentors stated that there are significant unresolved issues regarding the disposition of any revenues received from Western's marketing of CAP transmission service, and that any revenues received should be applied in the following manner. The annual amortization cost component of the CAP rate should be deposited in the LCRBF and applied to the CAP capital investment, however, revenues derived from the operation and maintenance cost component of the CAP transmission rate should be used to offset amounts otherwise due from the Central Arizona Water Conservation District (CAWCD).

Response: Western agrees in concept with the commentors and upon approval of the provisional rates Western will evaluate its authority and ability to disburse revenues in the manner similar to that suggested by the commentor. Western will not double collect its operation and maintenance cost component through rates and through CAWCD trust funds.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Availability of Information

Information regarding this rate adjustment, including the repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the Formula Rates, is available for public review in the Office of the Power Marketing Manager, Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona.

Submission to the Federal Energy Regulatory Commission

The Formula Rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective January 1, 2001, Formula Rates under Rate Schedules CAP–NFT1, CAP–NFT1, and CAP–NITS1 for the Central Arizona Project 115-kV/230-kV transmission system of the Western Area Power Administration. The Formula Rates under the rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute rates on a final basis through December 31, 2005.

Dated: November 30, 2000.

T.J. Glauthier,
Deputy Secretary.

Central Arizona Project

Schedule of Rate(s) for Firm Point-to-Point Cap 115-kV/230-kV Transmission Service

[Rate Schedule CAP–FT1]

Effective: The first day of the first full billing period beginning on or after January 1, 2001, through December 31, 2005.

Available: In the marketing area served by the Central Arizona Project (CAP) 115-kV/230-kV transmission system.

Applicable: The transmission service customers shall compensate the CAP where firm capacity and energy are supplied to the CAP 115-kV/230-kV transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CAP 115-kV/230-kV system specified in the service contract. The formula for the annual revenue requirement used to calculate the charges for this firm service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies. The Desert Southwest Customer Service Region (DSW) may modify the charges for firm point-to-point transmission service upon written notice to the transmission customer. Any change to the charges to the transmission customer for firm point-to-point transmission, shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service contract. DSW shall charge the transmission customer in accordance with the revenue requirements then in effect.

Character and Conditions of Service: Alternating current at 60 Hertz, three-phase, delivered and metered at the

voltages and points of delivery established by contract over the CAP 115-kV/230-kV transmission system.

Formula Rate For Firm Point-to-Point Transmission Service:

Annual Rate = Five Year Average Annual Revenue Requirement divided by the Five Year Average Contract Rate of Delivery, rounded to the penny.

Monthly Rate = Annual Rate divided by 12, rounded to the penny.

Calculated Rates: For FY 2001, the annual firm rate calculates to $9.83 per kWyear, and the monthly firm rate calculates to $0.82 per kWmonth. Based on updated financial and load data, recalculated rates will go into effect on January 1 of each year during the effective rate schedule period.

Adjustments

For Reactive Power: There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm transmission obligations, such overrun shall be billed at 10 times the above rates.

Central Arizona Project

Schedule of Rate(s) for Nonfirm Point-to-Point Cap 115-kV/230-kV Transmission Service

[Rate Schedule CAP–FT1]

Effective: The first day of the first full billing period beginning on or after January 1, 2001, through December 31, 2005.

Available: In the marketing area served by the Central Arizona Project 115-kV/230-kV transmission system.

Applicable: The transmission service customer shall compensate the Central Arizona Project (CAP) for nonfirm point-to-point transmission service where capacity and energy are supplied to the CAP 115-kV/230-kV transmission system at points of interconnection with other systems, transmitted subject to the availability of the transmission capacity, and delivered less losses, to points of delivery on the CAP 115-kV/230-kV system specified in the service contract.

Character and Conditions of Service: Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract over the CAP 115-kV/230-kV transmission system.

Formula Rate for Nonfirm Point-to-Point Transmission Service: Nonfirm Point-To-Point Transmission Service Rate: Each Contractor shall be billed monthly a mills per kilowatthour rate of scheduled or delivered kilowatthours at point of delivery, established by contract, payable monthly. This rate is equal to the CAP 115-kV/230-kV Firm Transmission dollar per kilowatt-year rate then in effect divided by 8,760, multiplied by 1,000, rounded to two decimal places.

Calculated Rate: For FY 2001, the nonfirm rate calculates to 1.12 mills/kWh. Based on updated financial and load data, a recalcualted rate will go into effect on January 1 of each year during the effective rate schedule period.

Adjustments

For Reactive Power: There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Central Arizona Project

Schedule of Rate(s) for Network Integration Transmission Service

[Rate Schedule CAP–NITS1

Effective: The first day of the first full billing period beginning on or after January 1, 2001, through December 31, 2005.

Applicable: The transmission customer shall compensate the Central Arizona Project (CAP) each month for Network Integration Transmission Service (NITS) pursuant to the applicable Network Integration Transmission Service Agreement and annual revenue requirement referred to below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Desert Southwest Customer Service Region (DSW) may modify the charges for NITS upon written notice to the transmission customer. Any change to the charges to the transmission customer for NITS shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. DSW shall charge the transmission customer in accordance with the revenue requirement then in effect.

Formula Rate:

Monthly Charge = Transmission Customer's Load-Ratio Share × (Revenue Requirement/12)

Calculated Rate: The projected annual revenue requirement for FY 2001 for the CAP 115-kV/230-kV transmission system is $6,556,547. Based on updated financial and load data, a recalculated revenue requirement will go into effect on January 1 of each year during the effective rate schedule period.

[FR Doc. 00–31442 Filed 12–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Salt Lake City Area Integrated Projects Firm Power Rate Formula Adder

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension of comment and consultation period.

SUMMARY: The Western Area Power Administration's (Western) Colorado River Storage Project (CRSP) Management Center (MC) published a Notice of Proposed Salt Lake City Area Integrated Projects (SLCA/IP) Firm Power Rate Formula Adder in the **Federal Register** (65 FR 66995) on November 8, 2000. This notice extends the comment and consultation period by 3 weeks. The MC plans to have the rate formula adder become effective March 1, 2001, instead of February 1, 2001, as was previously stated in the **Federal Register**, dated November 8, 2000.

DATES: The consultation and comment period will end on December 29, 2000.

ADDRESSES: Written comments may be sent to: Mr. Dave Sabo, CRSP Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, e-mail *sabo@wapa.gov*. Western must receive written comments by the end of the consultation and comment period to assure consideration.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Loftin, Rates Manager, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–6380, e-mail *loftinc@wapa.gov*, or visit CRSP MC's home page at: *www.wapa.gov/crsp/crsp.htm*.

Procedural Requirements

Since the proposed rate formula adder constitutes a major rate adjustment as defined at 10 CFR 903.2, both public information forums and public comment forums have been held. However, the consultation and comment period has been shortened because of the financial hardship faced by the CRSP Basin Fund. After reviewing public comments, Western will recommend that the proposed rate formula adder or a revised proposed rate formula adder be approved on an interim basis by the DOE Deputy Secretary.

The proposed rate formula adder to the SLCA/IP firm power rates is being established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed rates are and will be made available for inspection and copying at the CRSP Management Center, located at 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1534.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from Congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: November 27, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–31441 Filed 12–8–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emission Certification and Participation in AB&T for Nonroad CI Engines and Nonroad SI Engines at or Below 19 kW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB): Non-road Compression-ignition Engine and On-road Heavy Duty Engine Application for Emission Certification, and Participation in the Averaging, Banking, and Trading Program, EPA ICR Number 1851.03, OMB Control Number 2060–0404, expiration date: 7/31/02, renewal; Application for Engine Emission Certification and Averaging, Banking, and Trading for New Nonroad Spark-ignition (SI) Engines At or Below 19 kilowatts, EPA Number 1695.06, OMB Control Number 2060–0338, expiring on 11/30/00, renewal.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 9, 2001.

ADDRESSES: Office of Transportation and Air Quality, Certification and Compliance Division, Engine Programs Group, Ariel Ríos Building, 1200 Pennsylvania Ave., NW., Mail Code 6403J, Washington, DC 20460. Interested persons may request a copy of the ICRs without charge from the contact person below.

FOR FURTHER INFORMATION CONTACT: Nydia Y. Reyes-Morales, tel.: (202) 564–9264; fax: (202) 565–2057; e-mail: reyes-morales.nydia@epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture nonroad compression-ignition engines or nonroad spark ignition engines at or below 19 kW.

Title: Non-road Compression-ignition Engine and On-road Heavy Duty Engine Application for Emission Certification, and Participation in the Averaging, Banking, and Trading Program, EPA ICR Number 1851.03, OMB Control Number 2060–0404, *expiration date:* 7/31/2002. Although this ICR expires in 2002, we are renewing it now to include the requirements of ICR No.1684.04, Amendment to the Information Collection Request Compression Ignition Non-Road Engine Certification Application (OMB No. 2060–0287), which expires on 11/30/00. Both ICRs include burden associated with the emission certification and AB&T programs for non-road compression-ignition engines. However, ICR No. 1851

includes the burden for engines rated over 37 kW (50 Hp), whereas ICR No. 1684 includes the burden for engines under 37 kW. There are no major differences between the two categories, except that they became regulated at different times. With this consolidation, we combine all the burden associated with the certification and AB&T programs for non-road compression-ignition engines. See below for a description of the collection.

Title: Nonroad Spark Ignition (SI) Engines At or Below 19 kilowatts Certification Application and Participation in the Averaging, Banking, and Trading Program, (OMB Control Number 2060–0338; EPA ICR No.1695.06), expiring on 11/30/00.

Abstract: Both of these information collections (ICR Nos. 1851.03 and 1695.06) are requested under the authority of Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*). Under this Title, EPA is charged with issuing certificates of conformity for those engines which comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system, and test data. This information is organized by "engine family" groups expected to have similar emission characteristics. There are also recordkeeping and labeling requirements.

Those manufacturers electing to participate in the Averaging Banking and Trading Program for either non-road compression ignition engines or spark ignition engines at or below 19 kilowatts are also required to submit information regarding the calculation of projected and actual generation and usage of credits in an initial report, end-of-the-year report and final report. These reports are used for certification and enforcement purposes. Manufacturers need to maintain records for eight years on the engine families participating in the program.

All the information requested by these collections is required for various programs' implementation and activities. The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Certification information submitted by manufacturers is held as confidential until the specific engine to which it pertains is available for purchase. Confidentiality of proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR 2, and class determinations issued by EPA's Office of General Counsel. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

TABLE I.—BURDEN STATEMENT

ICR	Estimated average burden hours/ response	Frequency	Number of respondents (#engine families)	Cost per response	Capital and start up cost	Operation/ maintenance costs	Purchase of services cost
Emission Certification:							
On-road HDE*	327.0	1	20 (152)	$23,304.00	0	$14,746.00	0
Non-road CI >50 Hp*	199.7	1	46 (202)	13,127.50	0	9.00	0
Non-road CI >50 Hp	400.0	1	23 (200)	20,000.00		9.00	
AB&T:							
On-road HDE	333	1	7	23,310.00	0	0	0
>50 Hp*	460	1	5	32,169.00	0	0	0
<50 Hp	460	1	0	32,169.00	0	0	0
SI Certification	256	1	50 (220)	16,847.50	0	9.00	0
SI AB&T	113	1	50	6,884.00	0	0	0

* Burden already approved by OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 2, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–31482 Filed 12–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6914–2]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Measuring Success of EPA Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for approval: Measuring Success of EPA Compliance Assistance ICR number 1921.01. The ICR describes the nature of the information collection, the expected burden and cost to collect the information, and the actual collection instruments.

DATES: Comments must be submitted on or before January 10, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1921.01 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1921.01. For technical questions about the ICR contact Tracy Back, Office of Compliance, (202) 564–7076.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for Compliance Assistance Tool Evaluation Surveys, EPA ICR Number 1921.01. This is a new collection.

Abstract: This will be a voluntary collection of information to gather customer satisfaction and behavioral change feedback on EPA compliance assistance, as well as data on the resulting impact on compliance.

There are two components to this voluntary collection of information. First, EPA proposes to obtain customer feedback on a variety of compliance assistance tools and activities, including: Compliance assistance products; seminars/workshops; on-site visits; telephone assistance/hotlines; and Internet Websites. In addition to assessing customer satisfaction with EPA's compliance assistance tools and activities, EPA is also interested in learning what actions were or will be taken by survey respondents to improve their compliance status and environmental performance, in whole or in part, as a result of the compliance assistance provided by EPA.

Secondly, EPA proposes to seek information from state/local regulating agencies and committees regarding the impact of EPA's compliance assistance activities on the state of compliance. The regulating agencies and state/local committees will be asked whether EPA's compliance assistance initiatives resulted in improved compliance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 10, 1999 (64 FR 43380); no comments were received.

It is estimated that approximately 317,920 entities may voluntarily complete and return a compliance assistance activity or tool assessment survey on an annual basis. EPA estimates that participating entities may need to spend between five to twenty minutes to complete either the complete compliance assistance product, seminar/workshop; on-site visit; telephone assistance/hotline; or internet website assessment survey. Therefore, a total of 28,374 person hours annually may be expended to provide EPA with data to evaluate the effectiveness of its compliance assistance tools and activities. This burden hour estimate translates to a cost of $6.24 per facility who voluntarily completes the survey and a total cost to industry of $1,966,295. The costs were calculated based on $33.00 per hour plus a 110 overhead for a total labor cost of $69.30.

In addition, EPA estimates that participating state and local governments may need to spend two hours and 55 minutes to complete the "impact of compliance activities" survey instrument. Therefore, a total of 2,306 person hours within the regulated community may be expended annually to provide EPA with data to evaluate the impact of its compliance assistance activities. This burden hour estimate translates to a cost of $1,610 per state or local government who voluntarily completes the survey and a total cost of $85,367. These costs were calculated based on labor rates of $17.48 per hour plus 110% overhead for a total labor rate of $36.71, plus $30.34 plus 110% overhead for a supervisory rate of $63.71. The labor rates were obtained from the United States of Commerce, Bureau of Labor Statistics, March 1998, Table 4: Employment Costs of State and Local Government.

Burden Statement: The average time to complete the survey for participating entities is 5–20 minutes and nearly 3 hours for state and local governments . Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: state/local agencies and participating entities that have used EPA compliance tools.

Estimated Number of Respondents: 317,920.

Frequency of Response: one time.

Estimated Total Annual Hour Burden: 30,679 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1921.01 in any correspondence.

Dated: November 28, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–31467 Filed 12–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–1]

Operating Permits Program; Notice of Comment Period on Program Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment period.

SUMMARY: The EPA is announcing a 90-day comment period for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs required by title V of the Clean Air Act (Act). The deficiencies the public claims exist can be either deficiencies in the substance of the approved program or deficiencies in how a permitting authority is implementing its program. The Agency will consider information received from the public and determine whether it agrees or disagrees with the purported deficiencies and will then publish notices of those findings. Where the Agency agrees there is a deficiency, it will publish a notice of deficiency and establish a timeframe for the permitting authority to take action to correct the deficiency.

DATES: Comments identifying possible deficiencies in State and local operating permits programs must be received by March 12, 2001.

ADDRESSES: Comments on possible operating permits program or implementation deficiencies must be mailed to the appropriate EPA Regional Office. Addresses for the EPA Regional Offices to which comments should be sent and the permitting agencies covered by each Region are as follows:

Region I: Susan E. T. Studlien, Deputy Director, Office of Ecosystem Protection, EPA Region I (WAA), #1 Congress Street, Box 1100, Boston, Massachusetts 92114 for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II: Kathleen C. Callahan, Director, Division of Environmental Planning and Protection, EPA Region II, 290 Broadway, New York, New York 10007–1866 for New Jersey, New York, Puerto Rico, and Virgin Islands.

Region III: Judith M. Katz, Director, Air Protection Division, EPA Region III (3AP00), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029 for Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV: Winston A. Smith, Director, Air, Pesticides, and Toxics Management Division, EPA Region IV, 12th Floor, 61 Forsyth Street, SW, Atlanta, Georgia 30303 for Alabama; Huntsville, Alabama; Jefferson County, Alabama; Florida; Georgia; Kentucky; Louisville-Jefferson County, Kentucky; Mississippi; North Carolina; Forsyth County, North Carolina; Western North Carolina; Mecklenburg County, North Carolina; South Carolina; Tennessee; Nashville-Davidson County, Tennessee; Hamilton County, Tennessee; Knox County, Tennessee; and Memphis-Shelby County, Tennessee.

Region V: Bharat Mathur, Director, Air and Radiation Division, EPA Region V (5A–18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604 for Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI: Carl Edlund, Director, Multimedia Planning and Permitting Division, EPA Region VI (6T), 1445 Ross Avenue Dallas, Texas 75202–2733 for Arkansas; Louisiana; New Mexico; Albuquerque, New Mexico; Oklahoma; and Texas.

Region VII: William A. Spratlin, Director, Air, RCRA, and Toxics Division, EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101–2907 for Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, Nebraska; and Omaha-Douglas County, Nebraska.

Region VIII: Richard R. Long, Director, Air and Radiation Program, EPA Region VIII (8P–AR), 999 18th Street, Suite 500, Denver, Colorado 80202–2466 for Colorado; Montana; North Dakota; South Dakota; Utah; and Wyoming.

Region IX: Amy Zimpfer, Acting Director, Air Division EPA Region IX (A–1), 75 Hawthorne Street, San Francisco, California 94105 for Arizona; Maricopa County, Arizona; Pima County, Arizona; Pinal County, Arizona; all 34 local districts in California; Nevada; Washoe County, Nevada; Clark County Nevada; and Hawaii.

Region X: Barbara McAllister, Director, Office of Air EPA Region X (AT–081), 1200 Sixth Avenue, Seattle, Washington 98101 for Alaska; Idaho; Oregon; Lane Regional, Oregon; Washington; and all seven local agencies in Washington.

FOR FURTHER INFORMATION CONTACT: Roger Powell (telephone 919–541–5331), Mail Drop 12, EPA, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina, 27711. Internet address is: powell.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 502(b) of the Act, EPA has promulgated regulations establishing the minimum requirements for State and local air agency operating permits programs. We promulgated these regulations on July 21, 1992 (57 FR 32250), in part 70 of title 40, chapter I, of the Code of Federal Regulations. Section 502(d) of the Act requires each State to develop and submit to EPA an operating permits program meeting the requirements of the part 70 regulations and requires us to approve or disapprove the submitted program. In some cases, States have delegated authority to local county or city air agencies to administer operating permits programs in their jurisdictions. These operating permits programs must meet the same requirements as the State programs. For 99 operating permits programs, we granted "interim" rather than full approval because the programs substantially met, but did not fully meet, the provisions of part 70. For interim approved programs, we identified in the notice of interim approval those program deficiencies that will have to be corrected before we will grant the program full approval. Some of those 99 programs have since been granted full approval and the remainder still have interim approval status.

After a State or local permitting program is granted full or interim approval, EPA has oversight of the program to insure that the program is implemented correctly and is not changed in an unacceptable manner. Section 70.4(i) of the part 70 regulations requires permitting authorities to keep us apprised of any proposed program modifications and also to submit any program modifications to us for approval. Section 70.10(b) requires any approved operating permits program to be implemented " * * * in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program." That section goes on to specify actions, as described more fully below, we will take if the permitting authority does not adequately implement the program.

Discussion of Action

On May 22, 2000, EPA issued a final action in the **Federal Register** extending the interim approval period for 86 operating permits programs until December 1, 2001. The Sierra Club and New York Public Interest Research Group (NYPIRG) challenged our final action in the Court of Appeals for the District of Columbia Circuit. In the context of discussing settlement of that litigation, Sierra Club and NYPIRG raised concerns that many programs with interim approval, as well as those with full approval, have program and or implementation deficiencies. Sierra Club and NYPIRG recognized that sections 70.4(i) and 70.10(b) provide authority for us to require permitting authorities to correct program or implementation deficiencies, but were concerned that we had not responded timely to petitions they had filed requesting us to require such corrections. To address the concerns raised by Sierra Club and NYPIRG, we are announcing in this notice that the public may submit comments within the 90-day comment period being provided requesting us to take action consistent with the procedures in sections 70.4(i) and 70.10(b). We are further announcing that we will respond by specific dates to those comments and any petitions that have previously been submitted and will take action under sections 70.4(i) and 70.10(b), requiring permitting authorities to correct any program or implementation deficiencies.

This action applies to all approved part 70 operating permits programs, regardless of whether they have been granted full or interim approval. Within the timeframes specified below, we will take action to respond to any claims of deficiency.

Do not include in your comments any program deficiencies that were identified as such by us when we granted the program interim approval. Those program deficiencies are already identified and permitting authorities are already taking action to correct them in order to avoid imposition of the Federal permitting program on December 1, 2001. We will not consider comments that generically assert deficiencies for multiple programs. Be specific in your comments both as to the State or local permitting program and the deficiencies being raised. With respect to program deficiencies, please note the specific provisions of concern in the permitting authority's regulations or the State statute and identify the provision or provisions in part 70 or title V with which the program conflicts. For implementation deficiencies, identify the relevant regulatory or statutory provision that is not being properly implemented and provide the bases for the claim that the permitting authority is not properly implementing that portion of the program. For example, if you assert that permits are being issued in a manner inconsistent with an element of the program, identify specific permits that you believe were incorrectly issued and the ways in which you believe those permits to be deficient.

Send comments concerning potential deficiencies to the appropriate EPA Regional Office, the addresses for which are provided above under **ADDRESSES.**

After reviewing comments received within the comment period, we will issue a notice of deficiency (NOD) for any claimed shortcoming in an operating permits program that we agree constitutes a "deficiency" within the meaning of part 70. For those alleged deficiencies with which we disagree, we will publish a notice explaining our reasons for not making a finding of deficiency. We will substantively consider all specific claims of deficiency, including claims that could have been raised during the initial approval process. For any NOD, a timeframe for correction of the deficiencies consistent with sections 70.4(i) or 70.10(b) will be specified in the notice. Consistent with section 70.4(i), in no event will a permitting authority be allowed more than 2 years to correct a program deficiency.

By December 1, 2001, we will publish NOD's for deficiencies identified for programs that have not been granted full approval as of December 11, 2000. We will at the same time also publish a notice identifying any alleged problems that we do not agree are deficiencies. For programs that have been granted full approval as of December 11, 2000, we will publish any NOD's by April 1, 2002, along with any notices of disagreement. We believe these time periods provide adequate time for us to respond to comments raised during the aforementioned comment period.

Dated: December 5, 2000

Elizabeth Craig,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 00–31483 Filed 12–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51958; FRL–6759–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 23, 2000 to October 27, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51958 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental

Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51958. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the manufacturer/importer and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51958 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51958 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**"

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 23, 2000 to October 27, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I. 18 PREMANUFACTURE NOTICES RECEIVED FROM: 10/23/00 TO 10/27/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0060	10/23/00	01/21/01	CBI	(G) Intermediate	(G) Alkyl phosphate
P–01–0061	10/23/00	01/21/01	Vantico Inc.	(S) Hardener for waterborne anticorrosive coatings;hardener for waterborne epoxy cement for civil engineering applic.	(G) Reaction products of polypropylene glycol diamine with an epoxide
P–01–0062	10/23/00	01/21/01	CBI	(S) Specialty polymer	(G) Substituted bicyclic olefin
P–01–0063	10/23/00	01/21/01	CBI	(S) Specialty polymer	(G) Substituted bicyclic olefin
P–01–0064	10/24/00	01/22/01	Samsung Information Systems America	(G) Compound in color dispersion	(G) Acrylate copolymer
P–01–0065	10/23/00	01/21/01	CBI	(G) Processing aid	(G) Alkyl phosphate derivative
P–01–0066	10/24/00	01/22/01	Vantico Inc.	(S) Hardener for waterborne anti-corrosive coatings;hardener for waterborne epoxy cement for civil engineering applic.	(G) Propanenitrile, 3-{[6-amino-2,2,4(or 2,4,4)-trimethylhexyl]amino}-, polymers with 5-amino-1,3,3-trimethylcyclohexanemethanamine, bisphenol a, bisphenol a-epichlorohydrin polymer-2,2,4(or 2,4,4)-trimethyl-1,6-hexanediamine reaction products, with glycidyl o-tolyl ether and an epoxide
P–01–0067	10/24/00	01/22/01	BASF Corporation	(G) Internal press release	(G) Substituted polyether polyurethane
P–01–0068	10/24/00	01/22/01	CBI	(G) Processing agent	(S) Fatty acids, C_{16-18}, esters with pentaerythritol
P–01–0069	10/23/00	01/21/01	Bridgestone/Firestone, Inc.	(G) Pigment for rubber compound	(G) Substitute naphtalene derivatives
P–01–0070	10/25/00	01/23/01	Kelmar Industries	(S) Plastifier or softener for pur-fine coating;paint additive for artificial leather; softener or extender for fc-impregnation	(G) Polydimethylsiloxane with aminoalkyl groups
P–01–0071	10/26/00	01/24/01	CIBA Specialty Chemicals Corporation	(S) Uv absorber for use in photographic emulsions	(G) Substituted triazine
P–01–0072	10/27/00	01/25/01	BASF Corporation	(G) Intermediate	(G) Oxyalkylated isodecyl alcohol
P–01–0073	10/27/00	01/25/01	BASF Corporation	(G) Lubricant	(G) Tall oil ester of oxyalkylated isodecyl alcohol
P–01–0074	10/26/00	01/24/01	JSR Corporation	(G) Coating agent	(G) Modified styrene acrylate polymer
P–01–0075	10/27/00	01/25/01	CIBA Specialty Chemicals Corporation	(S) Interlayer scavenger for photographic chromogenic color paper	(G) Substituted benzofuranone
P–01–0076	10/27/00	01/25/01	Eastman Chemical Company	(S) Polyester for injection molding	(G) Dimethyl terephthalate, polymer with cyclohexanedimethanol and disubstituted benzenedicarboxylic acid
P–01–0077	10/27/00	01/25/01	Eastman Chemical Company	(G) Raw material	(G) Disubstituted benzenedicarboxylic acid

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE II. 15 NOTICES OF COMMENCEMENT FROM: 10/23/00 TO 10/27/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0395	10/23/00	10/03/00	(G) Urethane acrylate
P–00–0471	10/24/00	10/17/00	(S) [1,1'-biphenyl]-2,2'-disulfonic acid, 4,4'-bis[[1-(3-aminophenyl)-4,5-dihydro-3-methyl-5-oxo-1h-pyrazol-4-yl]azo]-disodium salt, reaction products with2,2'-[1,2-ethanediylbis(oxymethylene)]bis[oxirane],2',4',5',7'tetrabromo-3',6'-dihydroxyspiro[isobenzofuran-1(3h),9'-[9h]xanthen]-3-one disodium salt and 2',4',5',7'-tetrabromo-4,5,6,7-tetrachloro-3',6'-dihydroxyspiro[isobenzofuran-1(3h),9'-[9h]xanthen]-3-one disodium salt
P–00–0555	10/24/00*	09/21/00	(S) Neodecanoic acid, ethenyl ester, polymer with ethene and ethenyl acetate
P–00–0708	10/23/00	10/18/00	(G) Chromate(2-), [3-[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1h-pyrazol-4-yl)azo]-4-hydroxy-(substituted)][2-[[(2-substituted)]]-4-nitrophenolato(2-)-n2, o1, o2]-, disodium
P–00–0738	10/24/00	10/16/00	(S) Formaldehyde, reaction products with 1,3-benzenedimethanamine and bisphenol a

TABLE II. 15 NOTICES OF COMMENCEMENT FROM: 10/23/00 TO 10/27/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0794	10/23/00	10/06/00	(G) Chloroformate
P–00–0810	10/27/00	10/01/00	(G) Heterocyclic alkyl alcohol
P–00–0819	10/23/00	10/16/00	(S) 1,1-cyclopropanedicarboxylic acid, dimethyl ester
P–00–0868	10/25/00	10/11/00	(G) Pyrazolotriazole derivative
P–00–0920	10/24/00	10/17/00	(G) Methacrylate copolymer salt
P–00–0975	10/26/00	10/16/00	(G) Polyester resin
P–00–0976	10/26/00	10/23/00	(G) Polyester resin
P–00–0991	10/24/00	10/16/00	(G) Formaldehyde, (chloromethyl)oxirane/phenol polymer, modified with organophsophorous derivative
P–98–0948	10/24/00	10/18/00	(G) Polyester polyether urethane block copolymer
P–99–0376	10/24/00	10/13/00	(G) Hydroxy alkyldiene

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 29, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–31469 Filed 12–8–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

December 5, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 10, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0942.

Title: Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 27 respondents; 108 responses.

Estimated Time Per Response: 5 hours – 60 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement and quarterly and annual reporting requirements.

Total Annual Burden: 6,677 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission took action to further accelerate the development of competition in the local and long-distance telecommunications markets, and to further establish explicit universal service support that will be sustainable in an increasingly competitive marketplace, pursuant to the mandate of the 1996 Act. The Commission requires tariff filings, quarterly and annual data filings and cost support information to be reported under the Coalition for Affordable Local and Long Distance Service (CALLS) proposal.

The burden for this information collection has been reduced by 6,081 hours due the completion of the October 15, 2000 supplemental filing. As noted in our previous submission to the Office of Management and Budget (OMB), carriers were required to make a one-time supplemental filing to update the state-approved unbundled network element (UNE)-zones.

OMB Control No.: 3060–0943.

Title: Section 54.809, Carrier Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 27.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: Third party disclosure requirement and annual reporting requirement.

Total Annual Burden: 41 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 54.809, of the Commission's rules, requires each price cap or competitive LEC that wishes to receive universal service support to file an annual certification with the Universal Service Administrative Company (USAC) and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31397 Filed 12–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

December 1, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0957.

Expiration Date: 04/30/01

Title: Wireless Entrance 911 Service, Fourth MO&O.

Form No.: N/A.

Estimated Annual Burden: 7,500.

Description: The Fourth Memorandum Opinion and Order is part of the Commission's proceeding to establish a nationwide wireless enhanced 911 emergency communications service. The burden inherent in this decision involves guidelines for filing successful requests for waiver of the E911 Phase II regulation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31402 Filed 12–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Policy Forum on Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: Chairman William E. Kennard and Commissioner Gloria Tristani of the Federal Communications Commission will host a policy forum on market entry barriers faced by small, women- and minority-owned businesses in the communications industry. The purpose of the forum is to present a series of studies that examine market entry barriers, followed by a roundtable designed to further explore and discuss the findings reached in the studies.

DATES: The meeting will be held on Tuesday, December 12, 2000, from 9:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the FCC's Commission Meeting Room, TW–C305, 445 12th Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cornell William Brooks, Sharon Bradford Franklin, or Steven C. Rangel, Office of General Counsel at (202) 418–1700. Anthony Bush, Office of Communications Business Opportunities at (202) 418–0990.

SUPPLEMENTARY INFORMATION: 1. The Federal Communications Commission ("FCC") Chairman William Kennard and Commissioner Gloria Tristani will host a policy forum on market entry barriers faced by small, women- and minority-owned businesses in the communications industry on Tuesday, December 12, 2000, from 9:30 a.m. to 1 p.m. The Policy Forum will be held in the FCC's Commission Meeting Room, TW–C305, 445 12th Street, SW, Washington, DC.

2. The purpose of the forum is to present the findings of a series of studies which examine the extent, if any, to which small, women- and minority-owned firms in the communications industry experience market entry barriers. The studies were commenced pursuant to Section 257 of the Telecommunications Act of 1996, 47 U.S.C. 257, which requires that the FCC identify and eliminate market entry barriers for entrepreneurs and other small telecommunications businesses, and Section 309(j) of the Act, which requires the FCC to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities.

3. The forum will begin with presentations by the experts who conducted studies, and will be followed by a roundtable discussion with industry practitioners, civil rights experts, and the authors to further explore and discuss the findings reached in the reports.

4. The forum is open to the public, and seating will be available on a first come, first served basis. At the end of the roundtable, we will provide the audience with an opportunity for a short question-and-answer period. All interested persons are invited to attend. Individuals with disabilities may arrange for accommodations by contacting Brian Millin at (202) 418–7426 (Voice), (202) 418–7365 (TTY), or by sending an email to *access@fcc.gov.*

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 00–31366 Filed 12–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1348–DR]

Hawaii; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–1348–DR), dated November 9, 2000, and related determinations.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 9, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Hawaii, resulting from severe storms and flooding beginning on October 28, 2000 and continuing through November 2, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the Stafford Act), as amended by Pub. L. 106–390, October 30, 2000. I, therefore, declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile III of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Hawaii to have been affected adversely by this declared major disaster:

Hawaii County for Individual and Public Assistance.

All counties within the State of Hawaii are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–31372 Filed 12–8–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1349–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1349–DR), dated November 27, 2000, and related determinations.

EFFECTIVE DATE: November 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms and flooding on October 21–29, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The State Emergency Management Agency (SEMA) will manage the Public Assistance operation, including project eligibility reviews, process control, and resource allocation. FEMA will retain obligation authority, the final approval of environmental and historic preservation reviews, and will assist SEMA to the extent that such assistance is necessary and is specifically requested by SEMA.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe D. Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Caddo and Grady Counties for Individual Assistance and Public Assistance.

Carter, Comanche, Cotton, Jefferson, Kiowa, McClain and Tillman Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–31373 Filed 12–8–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1349–DR]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1349–DR), dated November 27, 2000, and related determinations.

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 27, 2000:

Carter, Comanche, and Tillman Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–31374 Filed 12–8–00; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Michael K. Hartzer, Ph.D., Oakland University: Based on the report of an investigation conducted by Oakland University and additional analysis conducted by ORI during its oversight review, PHS found that Dr. Hartzer, former Associate Professor of Biomedical Sciences, Eye Institute, Oakland University, engaged in scientific misconduct by falsifying the status of support materials in eight National Eye Institute (NEI), National Institutes of Health (NIH), grant applications.

Specifically, Dr. Hartzer falsified the status of 11 manuscripts in eight grant applications by listing them as "accepted" or "in press" when the papers had either not been subsequently published or had been rejected. The repetition of these actions over several years indicates a pattern of knowingly misrepresenting the research record.

Dr. Hartzer has accepted the PHS finding and has entered into a Voluntary Exclusion Agreement with PHS in which he has voluntarily agreed for a period of three (3) years, beginning on November 20, 2000:

(1) That he must submit with each PHS research application, continuing application, or report a statement of certification, endorsed by an institutional official, that all manuscripts or publications are properly and accurately cited in the application; the institution must also submit a copy of the certification to ORI;

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris Pascal,

Director, Office of Research Integrity.

[FR Doc. 00–31361 Filed 12–8–00; 8:45 am]

BILLING CODE 4155–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1506]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry on How to Use E-Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on How to Use E-Mail to Submit a Notice of Final Disposition of Animals Not Intended For Immediate Slaughter" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 2000 (65 FR 57193), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0453. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31480 Filed 12–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1467]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HbsAg); and Shipment of Blood Products Known Reactive for HBsAg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 10, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HBsAg)—(21 CFR 610.40(b)); and Shipment of Blood Products Known Reactive for HBsAg—(21 CFR 610.40(d)) (OMB Control Number 0910–0168)—Extension

Under sections 351 and 361 of the Public Health Service Act (42 U.S.C. 262 and 264), FDA prescribes standards designed to ensure the safety, purity, potency, and effectiveness of biological products including blood and blood components and to prevent the transmission of communicable diseases. To accomplish this, FDA requires, among other things, that each unit of Whole Blood or Source Plasma be tested by a licensed serologic test for hepatitis

B surface antigen (HBsAg). Section 610.40(b)(4) (21 CFR 610.40(b)(4)) permits preapproved or emergency shipments of blood products for further manufacturing before the test for HBsAg is completed. To obtain approval for such shipments, the collection facility must submit a description of the control procedures to be used by the collection facility and manufacturer. Proper control procedures are essential to ensure the safe shipment, handling, and quarantine of untested or incompletely tested blood products, communication of test results, and appropriate use or disposal of the blood products based on the test results. Section 610.40(d)(1)(v) and (d)(2)(iv) requires that a collection facility notify FDA of shipments of HBsAg reactive source blood, plasma, or serum for manufacturing into hepatitis B vaccine and licensed or unlicensed in vitro diagnostic biological products, including clinical chemistry control reagents. The reporting requirements inform FDA of the shipment of potentially infectious biological products that may be capable of transmitting disease. FDA's monitoring of such activity is essential should any deviations occur that may require immediate corrective action to protect public safety.

The respondents for this information collection are the blood collection facilities that ship hepatitis B reactive products. Only a few firms are actually engaged in shipping hepatitis B reactive products and making the reports required by § 610.40. Also, there are very few to no emergency shipments per year related to further manufacturing and the only product currently shipped prior to completion of hepatitis B testing is a licensed product, Source Leukocytes. Shipments of Source Leukocytes are preapproved under the product license applications and do not require notification of shipment. Currently, there have been no respondents reporting emergency or preapproved shipments (§ 610.40(b)). However, FDA is listing one report per year for emergency or preapproved shipments to account for the possibility of future emergency shipments. The estimated number of respondents and total annual responses under § 610.40(d) are based on the annual average of reports submitted to FDA in 1999. The hours per response are based on past FDA experience.

In the **Federal Register** of September 7, 2000 (65 FR 54282), the agency requested comments on the proposed collection of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.40(b) [2]	1	1	0.5	0.5	11
610.40(d) [3]	12	1.83	22	0.5	11.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The notice involves a brief letter and an enclosure. The letter identifies who is making the shipment, to whom shipped, the nature of the emergency, the kind and quantity shipped, and date of shipment. The enclosure is a copy of the shippers written standard operating procedures for handling, labeling storage, and shipment of contaminated (contagious) product. The burden for development and maintenance of standard operating procedures is approved under OMB Control No. 0910–0116.

[3] The notice of reactive product shipment is limited to information on: The identity of the kind and amount of source material shipped, the name and address of the consignee, the date of shipment, and the manner in which the source material is labeled.

FDA has calculated no additional burden in this information collection package for the labeling requirements in § 610.40(d) because the information and statements on the label necessary for public disclosure and safety are provided by FDA in these regulations. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31481 Filed 12–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in December 2000.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b© (6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: December 11–15, 2000.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: December 11, 2000 to Adjournment.

Panel: Community Action Grants, PA 00–003 2 Committees.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: November 27, 2000.

Coral Sweeney,

Review Specialist, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–31409 Filed 12–8–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Consideration of the Accuracy of the Eastern Boundary of the Sandia Pueblo Grant and Request for Additional Information

AGENCY: Office of the Solicitor, Interior.

ACTION: Notice and request for further information.

SUMMARY: The U.S. Department of the Interior announces that it will be considering the accuracy of the eastern boundary of the Sandia Pueblo Grant to determine whether to conduct a resurvey of the boundary. The Department received a request dated November 21, 2000, from an attorney representing the County of Bernalillo and the Sandia Mountain Coalition, for a resurvey to correct the eastern boundary of the Sandia Pueblo Grant. Counsel for the County and the Coalition suggests that his request be combined with consideration of the Pueblo of Sandia's request for a resurvey, which is the subject of a remand from the U.S. District Court in *Pueblo of Sandia* v. *Babbitt* as a result of a November 17, 2000, decision of the U.S. Court of Appeals for the D.C. Circuit, dismissing the appeals from the July 18, 1998, ruling of the District Court. The Department also has a letter and legal memorandum from an attorney representing the Pueblo of Sandia, dated November 30, 2000, requesting that the boundary be corrected.

The subject of the eastern boundary of the Pueblo of Sandia has been a matter of concern and debate in the Department of the Interior for many years. In 1988, then-Solicitor Ralph Tarr issued an opinion rejecting the Pueblo's petition for a resurvey. This decision was vacated by a decision of the U.S. District Court in 1998. A substantial record has been accumulated over the years in the consideration of the boundary issue, but the Department is giving interested parties an opportunity to provide any further historical evidence or legal arguments that may be pertinent to this matter.

DATES: Interested parties may submit additional historical evidence or legal analysis to the address below on or before January 5, 2001.

ADDRESSES: Submit all information requested in this notice to: Angela M. Kelsey, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street, NW., Mailstop 6456, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Suzanne R. Schaeffer, Assistant Solicitor for Environment, Land & Minerals, Division of Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street, NW., Mailstop 6456, Washington, DC 20240. Telephone: 202–208–4361.

SUPPLEMENTARY INFORMATION: In 1983, the Pueblo of Sandia petitioned the Department of the Interior for a corrected survey designating the eastern boundary of its land grant as the "main ridge" of the Sandia Mountains, located northeast of Albuquerque, NM. The Pueblo claimed that an 1859 survey commissioned by the government erroneously set the Pueblo's eastern boundary at the base of the Sandia Mountains rather than along the Mountain's crest line, as allegedly set forth in the Pueblo's 1748 Spanish land grant confirmed by the United States Congress in 1858. In 1988 the Department rejected the Pueblo's claim, concluding that the original land survey accurately set the Pueblo's eastern boundary at the foothills of the Mountains. In the Solicitor's Opinion on the Pueblo of Sandia Boundary, 96 I.D. 331 (1988), then-Solicitor Tarr reasoned that the King of Spain, who originally granted the land to the Pueblo, intended to grant it a "formal" pueblo only, not the larger area claimed. A formal pueblo consists of four square leagues of land, the area within the extension of one league (2.6 miles) measured from the center of the settlement to the north, south, east and west.

The Pueblo sued the Secretary of the Interior and the Secretary of Agriculture, seeking a judgment designating the main ridge of the Sandia Mountains as the Pueblo's eastern boundary and directing the Secretary of the Interior to correct the 1859 survey. The Secretary of Agriculture was included in the suit because the Pueblo claims that the incorrect survey boundary excludes approximately 10,000 acres of land which is administered as part of the Cibola National Forest and the Sandia Mountain Wilderness. The District Court allowed the Sandia Mountain Coalition, a coalition of homeowners and others in the affected region, and the County of Bernalillo to intervene in the case. *See Pueblo of Sandia* v. *Babbitt*, 1996 U.S. Dist. LEXIS 20619 (D.D.C.). The court reviewed the Department of Interior's actions under the Administrative Procedure Act, and on July 18, 1998, found them to be arbitrary and capricious. The court vacated the Solicitor's Opinion and remanded the case to the Department of the Interior for action consistent with the court's opinion.

The intervenors, the County of Bernalillo and the Sandia Mountain Coalition, appealed from the court's decision, and the United States also filed a protective notice of appeal to the U.S. Court of Appeals for the D.C. Circuit. The D.C. Circuit granted the parties' joint motion to hold the proceedings in abeyance pending settlement negotiations. The Pueblo, the federal agencies, the County of Bernalillo, the Sandia Mountain Coalition, the Sandia Peak Tram Company, and the City of Albuquerque then entered into negotiations with a private mediator. The County, the Coalition, and the City withdrew from mediation in August 1999. Nevertheless, the continuing negotiations among the government, the Pueblo, and the Tram Company resulted in a settlement, which was submitted to the New Mexico Congressional delegation. This settlement requires an Act of Congress to become effective. The United States then filed a motion to dismiss the appeals, and the Court of Appeals issued its decision granting the motion and dismissing the appeals on November 17, 2000. *See Pueblo of Sandia* v. *Babbitt*, 2000 U.S. App. LEXIS 29339 (D.C. Cir.).

Part IV of the 1988 Tarr Opinion concluded that the Department had no authority to correct the boundaries of Indian reservations. On December 5, 2000, the Solicitor issued an opinion regarding the Secretary's authority to correct the boundary between the San Felipe Pueblo Grant and the El Ranchito Grant owned by the Pueblo of Santa Ana, which overrules Part IV of the Tarr Opinion. The Department has made no new decision on the eastern boundary of the Sandia Pueblo Grant, but intends to reconsider its earlier decision.

Counsel for both the Pueblo and the County of Bernalillo and Sandia Mountain Coalition have since submitted requests to the Department, asking that it correct the eastern boundary of the Sandia Pueblo. It continues to be the position of the Pueblo that approximately 10,000 acres of National Forest was wrongfully excluded from its Spanish Land Grant lands. In his letter, counsel for the Pueblo asserts that when Congress confirmed the Spanish Land Grant in 1858, it did so in reliance on an 1856 Report of the Surveyor General identifying the eastern boundary of the Sandia Pueblo Land Grant as "the main ridge called Sandia." The letter from counsel for the County and the Coalition attaches a report prepared for the U.S. Forest Service by Dr. Stanley M. Hordes, dated March 1, 1996, which, counsel asserts, establishes that there were

errors in the translation of the Land Grant and in the monumenting of the survey, and that the eastern boundary of the Pueblo, as currently recognized by federal agencies and others in maps of the area, is erroneous.

In light of these requests, and consistent with the court's remand order, the Department has decided to reevaluate its earlier decision regarding the Sandia boundary. The Department has accumulated a substantial amount of information over the years related to its consideration of these boundary issues, but is soliciting interested parties to provide any additional historical evidence or legal arguments related to these matters. The Department notes that its reconsideration of the Sandia boundary matters will necessarily not affect the title to any land held by private landowners in the area. The Secretary's resurvey authority is expressly limited by statute so that it may not be used to impair the rights and titles of good faith purchasers of public lands who may otherwise be affected by the resurvey. *See Cragin* v. *Powell*, 128 U.S. 691 (1888), *see also* 43 U.S.C. 772.

(Authority: 25 U.S.C. 176; 43 U.S.C. 772.)

Dated: December 5, 2000.

John Leshy,

Solicitor.

[FR Doc. 00–31365 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–17–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Discontinue Preparation of an Environmental Assessment for the Conversion of a Portion of Strawberry Valley Project Water from Irrigation to Municipal and Industrial Use

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to discontinue preparation of an Environmental Assessment for the conversion of a portion of Strawberry Valley Project (SVP) water from irrigation to other beneficial uses including municipal and industrial (M&I) use.

SUMMARY: Recent discussions among the Department, Strawberry Water Users Association, and the South Utah Valley Municipal Water Association have resulted in a decision to terminate work on contracts to convert Strawberry Valley Project water from agricultural to municipal and industrial use. The Department has discontinued preparation of an Environmental Assessment intended to allow the conversion of SVP water from agricultural to municipal and industrial use. The Environmental Assessment was being prepared pursuant to the National Environmental Policy Act of 1969, and in accordance with a **Federal Register** notice published February 7, 2000, (Page 5880, Volume 65, Number 25).

The SUVMWA have determined to use alternate sources for municipal and industrial water instead of SVP water. The SWUA have determined to discontinue negotiations with the Department relative to the conversion of SVP water. As a result SVP water will continue to be used only for agricultural purposes and will only be available during the irrigation season.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this Federal Register notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, (801) 379–1237, rmurray@uc.usbr.gov.

Dated: December 1, 2000.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 00–31461 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to: 1. Whether the collection of information is necessary for the proper performance of the functions of the bureaus, including whether the information will have practical utility; 2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Reporting Center for Amphibian Malformations.

OMB Approval No: 1028–0056.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals who observed malformed amphibians or who inspect substantial numbers of normal or malformed amphibians to report those observations and related information. The Web site is termed the North American Reporting Center for Amphibian Malformations. Information will be used by scientists and federal, state, and local agencies to identify areas where malformed amphibians occur and the rates of occurrence.

Estimated Completion Time: 20 minutes.

Estimated Annual Number of Respondents: 900.

Frequency: Once.

Estimated Annual Burden Hours: 300 hours.

Affected Public: Primarily U.S. and Canadian residents.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or go to the Website (http://www.npsc.nbs.gov./narcam).

Dated: December 5, 2000.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 00–31484 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–21 1A]

Extension of Approved Information Collection, OMB Number 1004–0009

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of an existing approval to collect certain information from applicants who wish to acquire a Land Use Authorization (Form 2920–1) on public lands under the Federal Land Policy and Management Act (FLPMA) of 1976. The regulations at 43 CFR 2920 provide for non-Federal use of bureau administered land via lease or permit. Uses include agriculture, trade, or manufacturing concerns and business uses such as outdoor recreation concession. BLM will determine the validity of uses proposed by private individuals and other qualified proponents from information provided by the proponent on the Land Use Application and Permit Form.

DATES: You must submit your comments to BLM at the appropriate address below on or before February 9, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0009" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review that the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 2920 to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The FLPMA of 1976 (43 U.S.C. 1732, 1740), provides for issuance of land use authorization which may include leases or permits, to eligible proponents. The BLM has implemented the provisions of this requirement through the issuance of 43 CFR 2922.2–1 which provides for the submission of the "Land Use Application and Permit," or application, Form 2920–1. BLM uses the information collected on the application to identify the proposed land use and activities, describe all facilities for which authorization is sought, to identify the location, to determine a schedule for construction and to identify access requirements. Since the information collected is unique to each application, no other suitable means of information collection has been identified which could gather the information at a lesser burden. If the BLM fails to properly collect the required information, the BLM will reject the application. Based on BLM's experience administering the activities described above, we receive approximately 620 applications (577 Permits, 43 Leases) annually. It takes an average of 30 minutes for over 94 percent of the applicants to supply the needed information. For the other 6 percent of the applicants who are applying for leases, the average burden is 121 hours to supply the necessary information. The range in burden hours is due to the fact that a lease application, because of its nature, requires more time on the part of an applicant to supply the needed information. For example, a lease application to construct a multi-million dollar ski facility could involve construction drawings, site and facility plans, other Federal and State licenses and permits, and other pre-authorizing requirements involving many days to process. Conversely, a relatively routine application (permit) to use public lands for agricultural purposes could be processes in 30 minutes. The estimated total annual burden on new respondents is about 5,955 hours.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 5, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–31362 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–960–1060–PF–01–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0042

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of an existing approval to collect certain information from those individuals requesting to adopt a wild horse or burro (43 CFR 4750). BLM needs this information to determine whether or not individuals are qualified to provide humane care and proper treatment, including transportation, feeding and handling, to an adopted wild horse or burro.

DATES: You must submit your comments to BLM at the appropriate address below on or before February 9, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0042" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bea Wade, on (775) 861–6583 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–

8330, 24 hours a day, seven days a week, to contact Ms. Wade.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 4750 to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Section 3(b)(2)(B) of the Wild Free-Roaming Horse and Burro Act requires that BLM provide health excess animals for adoption by individuals that the Secretary determines are qualified to provide humane care and proper treatment. The implementing regulations are found at 43 CFR Subpart 4750—Private Maintenance. Individuals must inform BLM of their interest and willingness to adopt. The adoption application requirement provides individuals with a mechanism to inform BLM of their interest and to submit their credentials for determining their qualifications. The Application for Adoption of Wild Horse(s) and Burro(s), Form 4710–10, is required by 43 CFR 4750.3.

BLM uses the information to determine whether individuals are qualified to provide humane care and proper treatment to one or more adopted animals. When BLM approves the application and the individual completes a Private Maintenance and Care Agreement, the individual may adopt one to four wild horses or burros at one time. There is no other source for the required information, and failure to furnish the required information will result in the applicant's not being able to adopt a wild horse or burro.

The collection of information is short and simple and not inconvenient to the applicant. Valuable dialogue normally occurs during the approval process when BLM conducts an interview with the applicant to ensure that the applicant understands the obligations and prohibited acts and that the adopter is knowledgeable about horses and burros or has access to assistance from a knowledgeable individual. Based on BLM's experience in administering the activities described above, the public reporting burden is estimated at 10 minutes per response. The estimate number of respondents is 30,000 per year, for a total estimated burden of 5,000 hours to read the instructions, gather and supply the information and send the applications to BLM.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 5, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–31363 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–241A]

Extension of Approved Information Collection, OMB Number 1004–0107

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of an existing approval to collect certain information from respondents identified in 43 CFR 2800 and 2880. This information is in addition to that collected on the Form SF–299, OMB No. 1004–0189, and is necessary for those large complex projects which require a right-of-way. On the multi-million dollar energy production and transmission projects, and complex communication sites for which a right-of-way is required, BLM needs information over and above that provided on the application form, such as construction and other plans; a more detailed map; specific certificates; permits and approvals from other agencies; and any other necessary information relative to the completion of the project.

DATES: You must submit your comments to BLM at the appropriate address below on or before February 9, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComments@blm.gov*. Please include "ATTN: 1004–0107" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide a 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 2800 and 2880 to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* BLM grants rights-of-way on public lands through the authority of Title V of the FLPMA, 90 Stat. 2776, 43 U.S.C. 1761 and the Mineral Leasing Act (MLA) of 1920, as amended, 30 U.S.C. 185. Information in addition to that collected on the right-of-way form (SF–299) is needed for large complex projects. There is no standard form for the collection of this required additional information. The information required in 43 CFR Parts 2800 and 2880 is needed to enable the BLM to determine whether or not a right-of-way may be granted, establish the terms and conditions of the grant and administer the grant when made. Additional information in the form of construction and other plans; detailed maps; certification, permits and approvals required by other agencies; and other information necessary for the completion of the project are authorized by 43 CFR 2802.4, 2881.2, and 2882.3. Each right-of-way is an individual situation and the information collected is specific to that individual proposal and only available from the applicant. BLM may require additional information in the form of a plan. This plan is a product of the NEPA requirements. It is a useful working tool that enables both the BLM and the applicant to have a common understanding on how the project will proceed. BLM may also require an as-built map. These maps show greater detail than the basic location map required to be submitted with the application. A more exact location of the holder's right-of-way and related facilities will give the holder more protection for their improvements. The BLM also requires assurances that certifications, permits, and approvals required by others and identified during the NEPA analysis process have been obtained. BLM may require a detailed description of alternative routes the applicant considered when developing the proposal. BLM uses such information to gain insight into the complexities and conflicts of the proposals. BLM may request statements of need and economic feasibility and of the environmental, social, and economic effects of the proposal to assist us in evaluating the proposal with respect to NEPA compliance. If the BLM fails to properly collect the required information including plans, construction schedules, maps specific certificates, permits, and approvals necessary for the completion of the project, the BLM will reject the right-of-way application.

Based on BLM's experience administering the activities described above, approximately 25 percent of the 4,000 applications the BLM receives annually require additional information collection. The applicants are usually large companies that seek to construct large complex projects on public lands which require a right-of-way. The public reporting burden for the information collected is estimated to average 16.8 hours per response. The frequency of response is once. The estimated total annual burden on new respondents is about 16,800 hours. BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 5, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–31364 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–1410–01; AA–82263]

Realty Action: FLPMA Sec. 302 Lease, Iliamna Lake

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease of Public Land.

SUMMARY: Mr. Ted J. Forsi has submitted an application to lease public land. The lease is to be used in conjunction with an existing Special Recreation Permit (SRP). He has held the SRP since 1992. The Permit allows him to guide hunting and fishing clients. He requests to convert the following tent structures into cabins at his existing camp:

(1) 24′ x 24′ Lodge/Cabin
(2) 14′ x 16′ Cabin
(3) 10′ x 12′ Cabin
(4) 10′ x 12′ Cabin

The proposed lease is located approximately 10 miles northwest of Iliamna Lake and is described as:

Seward Meridian, Alaska

T. 7 S., R. 40 W., Sec. 17

Containing approximately 2 acres, more or less.

The State of Alaska has selected the land for conveyance and the applicant must obtain their concurrence.

The land has been examined and found suitable for lease under the provisions of Section 302 of the Federal Land Policy Act and 43 CFR Part 2920.

The lessee shall reimburse the United States for reasonable administrative fees and monitoring of construction, operation, maintenance, and rehabilitation of the land authorized. The reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

The lease will be offered for a term of 10 years and will require the lessee to pay rent at no less than fair market value.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska, 99507–2599.

DATES: Interested parties may submit comments on or before January 25, 2001 to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of a timely objection, this proposed Realty Action will become final.

FOR FURTHER INFORMATION CONTACT: Shirley Rackley, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599; (907) 267–1289 or toll free (1–800) 478–1263.

Dated: November 28, 2000.

Stuart Hirsh,

Field Manager (Acting).

[FR Doc. 00–31460 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EQ; N–73883]

Notice of Realty Action: Commercial Lease of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Commercial lease.

SUMMARY: The Notice of Realty Action involves a long term lease of public lands administered by the Bureau of Land management in Clark County, Nevada. The lease is intended to authorize Buffalo Westcliff Ltd. Partnership (N–73883) to utilize the land for a public parking lot, in conjunction with their private land, and subject to a right-of-way granted to Nevada Power Company (N–51943).

The land has been examined and found suitable for Commercial Leasing under (43 U.S.C. 2920). The legal description of the site is as follows:

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec.28,S½NE¼SE¼.

Containing .69 acres, more or less, located at Buffalo and the south side of Summerlin Parkway.

The site will be leased on a non-competitive basis. More detailed information is available for review at the Las Vegas Field Office, Bureau of land Management, 4765 Vegas Drive, Las Vegas, Nevada 89108. Contact Naomi Hatch at 702/647–5084.

Reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Assistant Field Manager, Division of Lands, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be evaluated by the Assistant Field Manager, Division of Lands who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Assistant Field Manager, Division of Lands, this Realty Action will become the final determination of the Bureau.

Dated: November 22, 2000.

Cheryl A. Ruffridge,

Acting Assistant Field Manager, Division of Lands, Las Vegas, Nevada.

[FR Doc. 00–31370 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 2, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 26, 2000.

Paul R. Lusignan,

Acting Keeper of the National Register.

ARIZONA

Gila County:
Bullion Plaza School, 1000 Plaza Ave., Miami, 00001591

ARKANSAS

Cleburne County:
Woodrow Store, (Arkansas Highway History and Architecture MPS), AR 263, Woodrow, 00001592

FLORIDA

Polk County:
Brown, Lawrence, House, (Bartow MPS), 470 Second Ave., Bartow, 00001594

KENTUCKY

Henderson County:
Barret—Keach Farm, 1586 KY 136 W, Henderson, 00001596
Jackson—Ijames Farm, Address Restricted, Henderson, 00001593
Soaper, William, Farm, 2323 Zion Rd., Henderson, 00001595

Kenton County:
Linden Grove Cemetery, 1421 Holman Ave., Covington, 00001600
Ritte's Corner Historic District, Latonia (Boundary Increase), Approx. 3424–3601 Decoursey Ave., 9 E. Southern Ave. and CSX Railroad Property, Covington, 00001598

Letcher County:
Caudill, C.B., Store, 7822 KY 7 S, Blackey, 00001597

Madison County:
Miller, William M., Far, (Boundary Increase), 1099 Parrish Rd., Richmond, 00001599

Oldham County:
Waldeck Farm, 5900 W KY 22, Crestwood, 00001618

Owen County:
New Liberty Historic District, KY 227, roughly bet. KY 978 and KY 36, New Liberty, 00001601

MARYLAND

St. Mary's County:
U–1105 BLACK Panther (Type VIIC German Submarine), Potomac River, Piney Point, 00001602

MICHIGAN

Charlevoix County:
Horton Bary School, 04991 Boyne City-Charlevoix Rd., Bay Township, 00001603

Marquette County:
Suicide Hill (Ski Jump), Cliffs Dr., Neguanee, 00001604

MINNESOTA

Nicollet County:
St. Peter Commercial Historic District, Minnesota Ave. Bet. Broadway and Grace Sts., St. Peter, 00001610

MISSOURI

Clay County:
Arthur-Leonard Historic District, (Liberty, Clay County, Missouri MPS AD), Roughly bounded by Ford Ave., Jewell St., Choctaw St., and Missouri St., Liberty, 00001608
Clardy Heights Historic District, (Liberty, Clay County, Missouri MPS AD), 716, 736 and 758 W. Liberty Dr., Liberty, 00001609
Dougherty-Prospect Heights Historic District, (Liberty, Clay County, Missouri MPS AD), Roughly bounded by Mississippi St., Gallatin St., Schrader St., and Fairview Ave., Liberty, 00001605
Garrison School Historic District, (Liberty, Clay County, Missouri MPS AD), Roughly along N. Main St. and N. Water St., Liberty, 00001607
Jewell—Lightburne Historic District, (Liberty, Clay County, Missouri MPS AD), Roughly bounded by N. Jewell St., E. Mill St., Main St. and Gordon St., Libery, 00001606

MONTANA

Gallatin County:
Lundwall, Charles, Building, 123–125 W. Main St., Bozeman, 00001611

Rosebud County:
Wolf Mountains Battlefield, Address Restricted, Birney, 00001617

NEW YORK

Westchester County:
St. Luke's Episcopal Church, 68 Bedford Rd., Katonah, Town of Bedford, 00001612

NORTH CAROLINA

Edgecombe County:
Princeville School, US 258, 0.3 mi. E of NC 64, Princeville, 00001615

Henderson County:
Moore, Arthur W., House, 299 Sunset Dr., Horse Shoe, 00001613

McDowell County:
Ledbetter, Albertus, House, 125 Haynes Rd., Montford Cove, 00001616

Northampton County:
Church of the Saviour and Cemetery, Jct. of Church and Calhoun Sts., Jackson, 00001614

[FR Doc. 00–31476 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–00–53]

Keechelus Dam Safety of Dams Modification, Yakima Project, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings for the Keechelus Dam Safety of Dams Modification, Yakima Project, Washington, draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft environmental impact statement (Draft EIS) to examine the impacts of alternatives to correct safety deficiencies identified at Keechelus Dam. Reclamation proposes to modify the existing dam to return full capacity to Keechelus Lake.

The preferred alternative of modifying the dam would provide for the safe operation of Keechelus Dam and also maintain benefits from Keechelus Lake that include meeting existing contractual commitments for storage space for irrigators within the Yakima Project and controlling seasonal downstream flooding.

The DEIS describes and analyzes the impacts of four alternatives that would correct safety deficiencies at Keechelus Dam, as well as the No Action Alternative. This Draft EIS assesses the impacts of the interim restriction, implemented in November 1998 to protect public safety, as the No Action Alternative.

DATES: Written comments on the Draft EIS must be received no later than February 9, 2001, at the address listed in **ADDRESSES** section below.

On Thursday, January 18, 2001, two public hearings will be held to accept oral comments on the Draft EIS in Ellensburg, Washington. Each public hearing will be proceeded by an informal open house where exhibits can be viewed and discussed with agency managers and staff. The first will begin with an informal open house from 12:30 to 2 p.m., followed by the formal public hearing from 2 to 4:00 p.m. The second will begin with a 5:30 to 7 p.m. informal open house, followed by a formal public hearing from 7 to 9 p.m. The facilities are physically accessible to people with disabilities.

Please contact Mr. Kaumheimer (see below) for sign language interpretation for the hearing impaired or other auxiliary aids by January 10, 2001, so arrangements can be made.

ADDRESSES: The open houses and public hearings will be held at the Ellensburg Inn, 1700 Canyon Road, Ellensburg, Washington, telephone (509) 925–9801.

Written comments on the Draft EIS should be submitted to Mr. Dave Kaumheimer, UCA–1600, Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, WA 98901; or by fax (509) 454–5611.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Kaumheimer at (509) 575–5848, extension 232. Those wishing to obtain a copy of the Draft EIS in the form of a printed document or on compact disk (CD–ROM with reader included) or a Summary of the Draft EIS may contact Mr. Kaumheimer.

SUPPLEMENTARY INFORMATION: Keechelus Dam was completed in 1917 as part of Reclamation's Yakima Project, storing Yakima River water in central Washington for irrigation of part of 443,400 acres of prime farmland and for flood control. Recent investigations have shown that the wooden railroad trestle, used to deliver earth material and rocks while constructing the dam, has deteriorated, forming vertical paths where earthen materials within the dam can move, leaving voids in the dam. Examination of the seepage problems indicates the material is internally unstable and is subject to failure, with an associated potential for loss of life and property downstream. Because of the deficiencies identified, Keechelus Lake has been operated at a restricted pool elevation 7 feet below normal full pool elevation 2,517 feet since November 1998, with increased monitoring and surveillance at the dam.

The Safety of Dams Act of 1978 (Pub. L. 95–578) and amendments of 1984 (Pub. L. 98–404) authorize the Secretary of the Interior to analyze existing Reclamation dams for changes in the state-of-the-art criteria and additional hydrologic and seismic data developed since the dams were constructed. For dams where a safety concern exists, the Secretary is authorized to modify the structure to ensure its continued safety.

Section 3 of the Safety of Dams Act states that construction authorized by the act shall be for dam safety and not for specific purposes of providing additional conservation storage capacity or developing benefits over and above those provided by the original dams and reservoirs.

Review and Inspection of the DEIS

Copies of the DEIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW, Washington, D.C. 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98901.

Libraries

Carpenter Memorial Library, 302 N Pennsylvania Ave, Cle Elum, WA 98922; (509) 674–2313.

Central Washington University Library, 700 E 8th Ave, Ellensburg WA 98926; (509) 963–1777.

Ellensburg Public Library, 209 N Ruby, Ellensburg WA 98926; (509) 962–7250.

Yakima Valley Regional Library, 102 N 3rd St, Yakima WA 98901; (509) 452–8541.

University of Washington Campus, Suzzallo Library, Government Publications Division, Seattle WA 98195; (206) 543–1937

Internet

The DEIS is also available on the Internet at: http://www.pn.usbr.gov/

Hearing Process Information

Requests to make oral comments at the public hearings may be made at each hearing. Comments will be recorded by a court reporter. Speakers will be called in the order of their requests. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the public hearing or identified as hearing comments and mailed to be received by Mr. Kaumheimer no later than February 9, 2001 (the end of the public comment period).

Dated: December 4, 2000.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. 00–31407 Filed 12–8–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 1, 2000.

The Department of Labor (DOL) has submitted the following public

information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E–Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.
Agency: Mine Safety and Health Administration (MSHA).
Title: Gamma Radiation Exposure Records.
OMB Number: 1219–0039.
Affected Public: Business or other for-profit.
Frequency: Annually.
Number of Respondents: 2.
Number of Annual Responses: 2.
Estimated Time Per Response: 1-hour.
Total Burden Hours: 2.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systmes or purchasing services): $0.
Description: Title 30 CFR 57.5047 requires that gamma radiation surveys be conducted annually in all underground mines where radioactive ores are mined. The Standard also requires, where average gamma radiation measurements are in excess of 2.0 milliroentgens per hour in the working place, that gamma radiation dosimeters be provided for all persons affected, and that records of cumulative individual gamma radiation exposure be kept. These recordkeeping requirements are necessary to protect miners from adverse health affects resulting from occupational exposure to gamma radiation.

Ira L. Mills,
Departmental Clearance Officer.

[FR Doc. 00–31454 Filed 12–8–00; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following information collections: (1) Certification by School Official (CM–981); and (2) Records to be Kept by Employers (Fair Labor Standards Act). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 9, 2001.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

Certification by School Official (CM–981)

I. Background

In order to be a dependent who is eligible for black lung benefits, a child aged 18 to 23 must be a full-time student as described in the Black Lung Benefits Act, 30 U.S.C. 902(g), and 20 CFR 725.209 or 20 CFR 410.370. The form is partially completed by the school registrar and is used to verify full-time status of the student.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to determine continued eligibility of the student.
Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Certification by School Official (CM–981).
OMB Number: 1215–0061.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Government.
Frequency: Annually.
No. of Respondents: 1,000.
No. of Responses: 1,000.
Burden per Response: 10 minutes.
Estimated Total Burden Hours: 167.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Records To Be Kept by Employers (Fair Labor Standards Act)

I. Background

The Fair Labor Standards Act sets minimum wage, overtime pay, child labor and recordkeeping standards for employees engaged in interstate commerce or in the production of good for interstate commerce and to employees in certain enterprises. The Fair Labor Standards Act requires that all employers covered by the Act make, keep, and preserve records of employees and of wages, hours, an other conditions and practices of employment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to enforce the provisions of the Fair Labor Standards Act.
Review: Extension.
Agency: Employment Standards Administration.
Title: Records to be Kept by Employers (Fair Labor Standards Act).
OMB Number: 1215–0017.
Affected Public: Business or other for-profit; Individuals or households; Farms; Not-for-profit institutions; Federal government; State, local or Tribal government.
Total Recordkeepers: 3.7 million.
Frequency: Weekly.
Average Time per Recordkeeper: 1 hour.
Estimated Total Burden Hours: 926,156.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 5, 2000.

Margaret J. Sherrill,
Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–31453 Filed 12–8–00; 8:45 am]
BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000–9 CARP DTRA1 & 2]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notices of intent to participate; Announcement of precontroversy discovery schedule.

SUMMARY: Due to the ruling by the Copyright Office that broadcasters are not exempt from copyright liability when they retransmit over the Internet copyrighted works contained on their AM and FM radio signals, the Library of Congress is providing an additional time period for filing Notices of Intent to Participate in the above-captioned consolidated proceedings. In addition, the Library is announcing the precontroversy discovery schedule for these consolidated proceedings.

DATES: Notices of Intent to Participate are due no later than January 10, 2001.

ADDRESSES: An original and five copies of a Notice of Intent to Participate should be delivered to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax (202) 252–3423.

SUPPLEMENTARY INFORMATION: In today's **Federal Register** the Copyright Office announces a final rule in Docket No. RM 2000–3 concerning the definition of a "Service" for purposes of the statutory license governing the public performance of sound recordings by means of digital audio transmissions. The Office has determined that broadcasters retransmitting copyrighted programming contained on their AM and FM radio signals over digital communications networks, such as the Internet, are not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act. Because such retransmissions are not exempt, a public performance of a copyrighted work contained on a radio signal occurs each time it is retransmitted over a digital communications network, such as the Internet. Consequently, broadcasters must license the copyrights to the programming contained on such radio signals.

Licensing may be accomplished in one of two ways, depending upon the nature of the retransmissions. Broadcasters may enter into private licensing arrangements with the copyright holders of the programming they wish to retransmit. Or, broadcasters may be eligible for the statutory licenses under sections 114(f) and 112(e) of the Copyright Act to retransmit the works. The Library of Congress is currently conducting Copyright Arbitration Royalty Panel (CARP) proceedings to establish royalty rates and terms for these licenses.

Because today's rulemaking proceeding makes clear that broadcasters are not exempt, those broadcasters who intend to use the section 114(f) and 112(e) licenses may wish to participate in these CARP proceedings. The time periods for filing Notices of Intent to Participate in this proceeding, however, has passed. *See* 64 FR 52107 (September 27, 1999) (1998–2000 period) and 65 FR 55302 (September 13, 2000) (2001–2002 period). The Library has determined that, given the uncertainty surrounding today's rulemaking decision, it is appropriate to reopen the filing period for a limited time to allow additional participants in these proceedings.

Notices of Intent To Participate

Any interested party that has not filed a Notice of Intent to Participate in the rate proceeding for 1998–2000 or the rate proceeding for 2001–2002 may do so on or before January 10, 2001. The Notice of Intent to Participate should clearly specify whether it applies to the 1998–2000 proceeding, the 2001–2002 proceeding, or both. Failure to submit a

timely filed Notice will preclude a party from participating in these proceedings.

Consolidation of Proceedings

Concurrent with today's **Federal Register** publication, the Library is issuing an Order consolidating the 1998–2000 and 2001–2002 proceedings before a single CARP. The consolidation order may be found on the Copyright Office's website at http://www.loc.gov/copyright/carp/114schedule.html. Parties wishing to participate in the CARP proceedings should familiarize themselves with the contents of this Order.

In consolidating these two proceedings, the Office has assigned a single docket number applicable to both proceedings. Parties submitting documents to the Copyright Office should take account of the new docket number.

Schedule of Proceedings

The consolidation Order described above also announces the precontroversy discovery schedule for the CARP proceedings. For convenience, the schedule is repeated here.

Action	Date
Negotiated Protective Order.	February 1, 2001.
Filing of Written Direct Cases.	February 5, 2001.
Requests for Underlying Documents. Related to Written Direct Cases.	February 14, 2000.
Responses to Requests for Underlying Documents.	February 21, 2001.
Completion of Document Production.	February 26, 2001.
Follow-up Requests for Underlying Documents.	March 2, 2001.
Responses to Follow-up Requests.	March 8, 2001.
Motions Related to Document Production.	March 12, 2001.
Production of Documents in Response to Follow-up Requests.	March 16, 2001.
All Other Motions, Petitions and Objections.	March 21, 2001.
Initiation of Arbitration	May 21, 2001.

Dated: December 6, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–31459 Filed 12–8–00; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Meetings

TIME AND DATE: 10:00 a.m., Thursday, December 14; 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Five (5) Federal Credit Unions to Convert to Community Charters.

2. Request for an Extension of a Waiver under Part 704 for Corporate Credit Unions.

3. Community Development Revolving Loan Program for Credit Unions: Notice of Applications for Participation and Interest Rate for Loans.

4. Interim Final Rule: Part 705, NCUA's Rules and Regulations, Community Development Revolving Loan Program For Credit Unions (CDRLP).

5. National Credit Union Share Insurance Fund (NCUSIF) Operating Level for 2001.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 14, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Administrative Action under Part 708 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT. Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–31641 Filed 12–7–00; 2:39 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company, et al. (Haddam Neck Plant); Notice of Closure of the Public Comment Period for the Haddam Neck Plant License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of and has made available for public inspection and comment the License Termination Plan (LTP) for the Haddam Neck Plant (HNP) located in Haddam, Connecticut. NRC's receipt of the HNP LTP and the LTP's availability for public inspection and comment was noticed in the **Federal Register** on August 23, 2000 (65 FR 51345). A public meeting was conducted by NRC staff (65 FR 59215, dated October 4, 2000), to discuss the HNP LTP on October 17, 2000, at the Haddam-Killingworth High School, Higganum, Connecticut. The purpose of this notice is to announce that the public comment period for the HNP LTP will close on December 29, 2000.

Connecticut Yankee Atomic Power Company (CYAPCO, or the licensee) announced permanent cessation of power operations of HNP on December 5, 1996. In accordance with NRC regulations, CYAPCO submitted a Post-Shutdown Decommissioning Activities Report (PSDAR) for HNP to the NRC on August 22, 1997. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for license termination must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. CYAPCO submitted the proposed LTP for HNP by application dated July 7, 2000. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC provided notice to individuals in the vicinity of the site that the NRC was in receipt of the HNP LTP and would accept comments from affected parties (65 FR 51345, dated August 23, 2000).

The NRC staff has begun the technical review of the HNP LTP. While NRC will accept public comments at any time, comments are most helpful and the staff is best able to consider them during the LTP review, if they are received early in the review process. Therefore, NRC has decided to close the formal public comment period on December 29, 2000. The HNP LTP (ADAMS Accession Number ML003735143) may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). The LTP may also be viewed at the CYAPCO Web site at *http://www.connyankee.com.*

FOR FURTHER INFORMATION, CONTACT: Mr. Louis L. Wheeler by mail, Mail Stop O–7–C2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; telephone 301–415–1444; or e-mail *dxw@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 5th day of December 2000.

Richard F. Dudley,

Acting Chief, Decommissioning Section, Project Directorate IV and Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31396 Filed 12–11–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Appendix F to Rule 15c3–1, SEC File No. 270–440, OMB Control No. 3235–0496

Rule 17 Ad–16, SEC File No. 270–363, OMB Control No. 3235–0413.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Appendix F to Rule 15c3–1 requires a broker-dealer choosing to register as an OTC derivative dealer to develop and maintain an internal risk management system based on Value-at-Risk ("VAR") models Appendix F also requires the OTC derivatives to notify Commission staff of the system and of certain other periodic information including when the VA model deviates from the actual performance of the OTC derivatives dealers' portfolio. It is anticipated that approximately six (6) broker-dealers will spend 1,000 hours per year complying with Appendix F. The total burden is estimated to be approximately 6,000 hours. Each broker-dealer will spend approximately $76,500 per response for a total annual expense for all broker-dealers of $459,000.

Rule 176AD–16 requires a registered transfer agent to provide written notice to a qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. These recordkeeping requirements address the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

Given that there are approximately 450 respondents who submit Rule 17Ad–16 notices, the staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–16 is approximately 15 minutes per notice or 3.5 hours per year, totaling 1.575 hours industry-wide. The average cost per hour is approximately $30 per hours, with the industry-wide cost estimated at approximately $47,250. However, the information required by Rule 17Ad–16 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17AD–16 varies according to differences in business activity.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (6) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 17, 2000.

Margaret H. McFarland,

Deputy Secretory.

[FR Doc. 00–31444 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27289]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 4, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 27, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 27, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Wheeling Power Company (70–9799)

Wheeling Power Company ("Wheeling"), 51 16th Street, Wheeling, West Virginia 26003, a public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Wheeling proposes to issue from time to time through June 30, 2005 up to $20 million at any one time outstanding, unsecured promissory notes ("Notes") to one or more commercial banks, financial institutions or other

institutional investors or lenders under one or more term-loan agreements. The Notes will mature in not less than nine months nor more than ten years and will have a fixed or fluctuating rate of interest, or a combination of both. The actual rate of interest of each Note shall be subject to negotiation between Wheeling and the lender, but any fixed rate of interest will not exceed 500 basis points over the yield, at issuance, of U.S. Treasury obligations with comparable maturity dates, and a fluctuating rate will not exceed 500 basis points over the prime rate as announced from time to time by a major bank. If a bank or financial institution arranges financing with a third party, the institution may charge a placement fee not in excess of 1% of the principal amount of the borrowing. Wheeling will use the proceeds from the sale of the Notes to repay its long- and short-term debt.

Wheeling also seeks authorization to enter into hedging transactions, including anticipatory hedges, with respect to its indebtedness in order to manage and minimize interest rate costs and to lock-in current interest rates.

Wheeling requests authority to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Wheeling would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under the authority requested in this application or an applicable exemption by, in effect, synthetically (1) converting variable rate debt to fixed rate debt; (2) converting fixed rate debt to variable rate debt; and (3) limiting the impact of changes in interest rates resulting from variable rate debt. In no case would the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. The transactions would be for fixed periods. Interest rate hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, as published by a national recognized rating agency are greater than or equal to "BBB", or an equivalent rating.

In addition, Wheeling requests authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded Hedge Instruments (each a "Forward Sale"); (2) the purchase of put options on Hedge Instruments (a "Put Options Purchase"); (3) a Put Options Purchase in combination with the sale of call options on Hedge Instruments (a "Zero Cost Collar"); (4) transactions involving the purchase or sale, including short sales, of Hedge Instruments; or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Wheeling will determine the optimal structure of each Anticipating Hedge transaction at the time of execution. Wheeling may decide to lock in interest rates and/or limit its exposure to interest rate increases. Wheeling states that it will comply with standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). In addition, these financial instruments will qualify for hedge accounting treatment under FASB rules.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31379 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24784; File No. 812–12090]

American United Life Insurance Company, et al.

December 4, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities.

Applicants: American United Life Insurance Company ("AUL") and AUL American Unit Trust ("AUL Account") (collectively referred to herein as the "Applicants").

SUMMARY OF APPLICATION: Applicants request an order to permit a registered unit investment trust to substitute shares of the State Street Equity 500 Index Fund ("State Street 500 Fund"), a series of State Street Institutional Investment Trust ("State Street Trust"), for shares of the Index 500 Portfolio ("Fidelity 500 Portfolio"), a series of Variable Insurance Products Fund II ("VIP II") currently held by that unit investment trust.

Filing Date: The application was filed on May 5, 2000, and amended and restated on November 30, 2000.

Hearing Or Notification Of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Richard A. Wacker, Esq., American Untied Life Insurance Company, One American Square, Indianapolis, Indiana 46282. Copies to: Ruth S. Epstein, Esq., Dechert, 1775 Eye Street, NW., Washington, DC 20006–2401.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Branch Chief, at (202) 942–0684, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102, (tel. (202) 942–8090).

Applicant's Representations

1. AUL is an Indiana mutual life insurance company. AUL is the depositor and sponsor of the AUL Account, a separate investment account established under Indiana law.

2. The AUL Account is registered with the Commission under the 1940 Act as a unit investment trust. The assets of the AUL Account support certain group annuity contracts (collectively, the "Contracts"). Certain Contracts may allow ongoing contributions that can vary in amount and frequency, while other Contracts may allow only a single contribution to be made. All of the Contracts provide for the accumulation of values on a variable basis, a fixed basis, or both. The Contracts also provide several options for fixed annuity payments to begin on a future date.

3. The AUL Account is currently divided into thirty-five (35) sub-accounts referred to as Investment Accounts. Each Investment Account invests exclusively in shares of AUL American Series Fund, Inc., Alger American Fund, American Century Mutual Funds, Inc., American Century Quantitative Equity Funds, American Century Variable Portfolios, Inc., American Century World Mutual Funds, Inc., Calvert Variable Series, Variable Insurance Products Fund, VIP II, Invesco Dynamics Fund, Inc., Janus Aspen Series, PBHG Insurance Series Fund, Inc., SAFECO Resource Series Trust, State Street Trust, T. Rowe Price Equity Series, Inc., and Vanguard Explorer Fund, Inc. (collectively, "Funds") or in shares of specific series of a Fund. Contributions may be allocated to one or more Investment Accounts available under a Contract. Not all of the Investment Accounts may be available under a particular Contract and some of the Investment Accounts are not available for certain types of Contracts.

4. VIP II is organized as a Massachusetts business trust and is registered as an open-end management investment company under the 1940 Act. VIP II is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers shares of fourteen separate series. Only the Fidelity 500 Portfolio would be involved in the proposed substitution.

5. State Street Trust is organized as a Massachusetts business trust and is registered as an open-end management investment company under the 1940 Act. As of the date of this application, it has not commenced operations. State Street Trust is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently intends to offer five separate series of shares (each, a "Feeder"). Each Feeder currently intends to invest all of its assets in a corresponding series of State Street Master Funds (each, a "Master") that has the same investment objective as, and investment policies that are substantially similar to those of, the corresponding Feeder. As long as a Feeder remains completely invested in a Master (or any other investment company), State Street Bank and Trust Company ("State Street"), acting through its division, State Street Global Advisors (the "Adviser") is not entitled to receive any investment advisory fee with respect to the Feeder. A Feeder may withdraw its investment from the related Master at any time if State Street Trust's Board of Trustees determines that it is in the best interests of the Feeder and its shareholders to do so. State Street Trust has retained the Adviser as investment adviser to manage a Feeder's assets in the event that the Feeder withdraws its investment from its corresponding Master. Only the State Street 500 Fund would be involved in connection with the substitution transactions described below.

6. Each of the Contracts expressly reserves to the Applicants the right, subject to compliance with applicable law, to change or add investment companies. The prospectuses describing the Contracts contain appropriate disclosure of this right.

7. The AUL Account imposes no limitations on the number of transfers between investment accounts available under a contract or the fixed account and no charges on transfers. AUL reserves the right, however, at a future date, to assess transfer charges and to limit the number and frequency of transfers.

8. Applicants propose to substitute Class A shares issued by the State Street 500 Fund for the Initial Class shares issued by the Fidelity 500 Portfolio (the "Substitution").

9. The chart below shows the investment objectives of the State Street 500 Fund and the Fidelity 500 Portfolio.

Removed portfolio	Investment objective	Substituted portfolio	Investment objective
Fidelity 500 Portfolio	Seeks investment results that correspond to the total return of common stocks publicly traded in the United States, as represented by the Standard & Poor's 500 Composite Stock Price Index ("S&P 500").	State Street 500 Fund	Seeks to provide an investment return matching, as closely as possible before expenses, the performance of the S&P 500.

10. The chart below shows: (1) the management fees, operating expenses and total expenses for Initial Class shares of the Fidelity 500 Portfolio for the year ending December 31, 1999; and (b) the estimated management fees, 12b–1 fees, operating expenses and total expenses of Class A shares of the State Street 500 Fund following the proposed substitutions. The fees and expenses in the chart are presented as a percentage of average daily net assets.

	Replaced fund—fidelity 500 (percent)	Sustituted fund—state street 500 [1] (percent)
Management Fee	0.24	0.045
Distribution and Service (12b–1) Fee	0.00	0.150
Other Expenses	0.10	0.050
Total Annual Operating Expenses:		
(Before Expense waivers and reimbursements)	0.34	0.25
Minus expense waivers or reimbursements	0.06	0.000
Total Annual Operating Expenses:		

	Replaced fund—fidelity 500 (percent)	Sustituted fund—state street 500 [1] (percent)
(After expense waivers and reimbursements)	[2] 0.28	0.245

[1] The feeder fund imposes a Rule 12b–1 fee of 15 basis points and estimates other expenses of 5 basis points. The master imposes an annual unitary management fee of 4.5 basic points, which compensates State Street for its services as adviser, custodian and transfer agent, and for assuming ordinary operating expenses, including ordinary legal and audit expenses. By investing in the master fund, the feeder pays a pro rata share of the master fund expenses, based on the net asset value of its investment in the master. In other words, the State Street 500 Fund will pay the fee with respect to its pro rata share of the total assets invested in the State Street 500 Master.

[2] Effective April 18, 1998, FMR has voluntarily agreed to reimburse Initial Class Shares of the Fidelity 500 Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending costs, brokerage commissions and extraordinary expenses), as a percentage of average net assets, exceed 0.28%. This arrangement can be discontinued by FMR at any time.

11. Applicants provided, or will provide, a notice of the Substitution (the "First Notice") to Contract Owners and Participants, which describes the proposed substitution and discloses that AUL will not exercise any rights reserved under the contract to impose additional restrictions on transfers until at least thirty (30) days after the date of the substitution.

12. Upon effectiveness of the registration statement of State Street Trust, and approval of this application by the Commission, the Applicants will send Contract Owners further detailed notice concerning the proposed substitutions (the "Second Notice"). The Second Notice will inform Contract Owners and Participants that the substitutions will be carried out, identify the anticipated date of the substitutions and inform Contract Owners and Participants that AUL will not exercise any rights reserved under the Contract to impose additional restrictions on transfers until at least thirty (30) days after the date of the substitution. Together with this disclosure, all such existing Contract Owners and Participants also will be sent to prospectus for the State Street 500 Fund. New purchasers of Contracts also will be provided with the Contract prospectuses, the Second Notice, and a prospectus for the State Street 500 Fund.

13. Applicants will mail a confirmation of the substitutions to affected Contract Owners within five days after the substitutions are affected. The Confirmation will disclose (a) that the substitution was carried out and (b) that AUL will not exercise any rights reserved under the contract to impose additional restrictions on transfers until at least thirty (30) days after the date of the substitution.

14. Applicants make the following representations regarding the significant terms of the Substitution:

a. The State Street 500 Fund has investment objectives, investment strategies, and anticipated risks that are substantially similar in all material respects to those of the Fidelity 500 Portfolio.

b. At the time of the substitution, the aggregate fees and expenses of the State Street 500 Fund will be lower than those of the Fidelity 500 Portfolio. Applicants agree that AUL will not increase total separate account charges (net of any waivers or reimbursements) of the Investment Account that invests in the State Street Fund for those Contract Owners who were Contract Owners on the Substitution Date for a period of two years from the Substitution Date. Applicants further agree that if the total operating expenses for the State Street 500 Fund (taking into account expense waivers and reimbursements) ("State Street Expenses") for any fiscal quarter during the two-year period following the Substitution Date exceed on an annualized basis 0.28% of average daily net assets (the expense ratio for the Fidelity 500 Portfolio for the fiscal year ended December 31, 1999), AUL will make adjustments to the separate account charges of the Investment Account that invests in the State Street Fund for those Contract Owners who were Contract Owners on the Substitution Date, such that the State Street Expenses together with separate account expenses paid during that period will not exceed, on an annualized basis, 0.28% of average daily net assets plus the separate account expenses for the corresponding Investment Account during the fiscal year ending December 31, 1999.

c. Contract Owners and Participants may transfer assets from one Investment Account to another Investment Account available under their Contract without the imposition of any fee, charge or other penalty that might otherwise be imposed from the date of the First Notice through a date at least thirty days following the Substitution Date.

d. The substitutions, in all cases, will be affected at the net asset value of the respective shares of the Fidelity 500 Portfolio and the State Street 500 Fund in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by the Applicants, and with no change in the amount of any Contract Owner's Contract value or in the dollar value any Contract Owner's or Participant's investment in such Contract.

e. Contract Owners and Participants will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or AUL's obligations under the Contracts be altered in any way. AUL will bear all expenses incurred in connection with the proposed substitutions and related filings and notices, including legal, accounting and other fees and expenses. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract Owners or Participants to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Fidelity 500 Portfolio and State Street 500 Fund. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The substitutions will not be counted as new investment selections in determining the limit, if any, on the total number of Funds that Contract Owners or Participants can select during the life of a Contract.

h. The substitutions will not alter in any way the tax benefits, life insurance and other Contracts benefits, or any Contract obligations of the Applicants, under the Contracts.

i. Contract Owners and Participants may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Contract Owners and Participants affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Contract Owner or Participant within five days following the Substitution Date.

Applicants' Legal Analysis And Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitution. Applicants assert that the purposes, terms, and conditions of the Substitution are consistent with the protections for which Section 26(b) was designed. The Applicants assert the Substitution will benefit Contract Owners because the State Street 500 Fund will enjoy lower expenses than the Fidelity 500 Portfolio. Given the similarities in investment strategies between the Fidelity 500 Portfolio and the State Street 500 Fund, Applicants assert that the lower expense ratio of the State Street 500 Fund is likely to result in higher investment returns than those obtained by the Fidelity 500 Portfolio.

3. Contract Owners and Participants who do not want their assets allocated to the State Street 500 Fund will be able to transfer assets to any one of the other Investment Accounts available under their Contract without any transfer charge.

4. Applicants represent that the Substitution and related redemptions in kind and purchases will not result in any change in the amount of any Contract Owner's or participant's Contract value or in the dollar value of his or her investment in such Contract, or the life benefits, tax benefits or any contractual obligation of the Applicants under the Policies. Contract Owners will not incur any fees, expenses or charges as a result of the proposed transactions. Furthermore, the proposed transactions will not result in any change to the Contract fees and charges currently being paid by existing Contract Owners.

5. The Applicants will not complete the Substitution as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the Substitution under Section 26(b) of the 1940 Act.

b. The registration statement for State Street Trust shall have become effective.

c. Each Contract Owner and Participant will have been mailed the First Notice, the Second Notice and effective prospectuses for the Contracts and the State Street 500 Fund.

d. The Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of portfolios as described in this application, and the transactions can be consummated as described herein under applicable insurance laws and under the Contracts.

e. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts have been qualified for sale.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31381 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24785; File No. 812–11332]

AIG Life Insurance Company, et al.

December 5, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940, as amended ("1940 Act") approving certain substitution of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

APPLICANTS: AIG Life Insurance Company ("AIG"), AIG Life Insurance Company Varible Account I ("Variable Account I"), American International Life Insurance Company of New York ("American"), American International Assurance Company of New York Variable Account A ("Variable Account A"), ReliaStar Life Life Insurance Company of New York ("ReliaStar," and together with AIG and American, the "Variable Insurers" or the "Insurance Company Applicants"), ReliaStar Life Insurance Company of New York Variable Annuity Fund P ("Variable Annuity Fund P"), ReliaStar Life Insurance Company of New York Variable Annuity Fund Q ("Variable Annuity Fund Q," and together with Variable Annuity Fund P, the "ReliaStar Separate Accounts") (collectively, with Variable Account I and Variable Account A, the "Separate Accounts") and Alliance Variable Products Series Fund, Inc. ("AVP").

SUMMARY OF APPLICATION: Applicants request an order permitting (1) the substitution of shares of AVP's Total Return Portfolio ("Total Return Portfolio") for shares of AVP's Conservative Investors Portfolio ("Conservative Investors Portfolio") and AVP's Growth Investors Portfolio ("Growth Investors Portfolio", and (2) the substitution of shares of AVP's Money Market Portfolio ("Money Market Portfolio") and shares of the Oppenheimer Money Market Fund VA ("Money Fund") for shares of AVP's Short-Term Multi Market Portfolio ("Multi Market Portfolio"), (The Conservative Investors Portfolio, Growth Investors Portfolio and Multi-Market Portfolio are referred to herein as the "Replaced Portfolios." The Total Return Portfolio, Money Market Portfolio and Money Fund are referred to herein as the "Substitute Portfolios." The Replaced Portfolios and the Substitute Portfolios are referred to, collectively, as the "Affected Portfolios.") AIG, Variable Account I, American, Variable Account A and AVP also seek relief from Section 17(a) for purposes of effecting certain of the substitutions partially in-kind.

FILING DATE: The application was filed on May 1, 2000, and amended and restated on October 19, 2000. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants

with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Joseph B. Kittredge, Jr., Ropes & Gray, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. AIG is a stock life insurance company initially organized under the laws of Pennsylvania and reorganized under the laws of Delaware. AIG is a subsidiary of American International Group, Inc., which serves as the holding company for a number of companies engaged in the international insurance business in approximately 130 countries and jurisdictions around the world.

2. AIG's Variable Account I is a separate account of AIG that serves as a funding vehicle for a flexible premium, deferred annuity contract with a fixed investment option. Variable Account I is registered with the Commission as a unit investment trust under the 1940 Act. Variable Account I is divided into subaccounts or divisions ("Divisions"), each of which invests in shares of a different portfolio of AVP.

3. American is a stock life insurance company organized under the laws of New York. American is also a subsidiary of American International Group, Inc.

4. American's Variable Account A is a separate account that serves as a funding vehicle for a flexible premium, deferred annuity contract with a fixed investment option. Variable Account A is registered with the Commission as a unit investment trust under the 1940 Act. Variable Account A is divided into Divisions, each of which invests in shares of a different portfolio of a mutual fund, including various series of AVP.

5. ReliaStar is a stock life insurance company incorporated pursuant to the laws of New York in 1917 under the name "The Morris Plan Insurance Society." It adopted the names "Bankers Security Life Insurance Society" in 1946, "ReliaStar Bankers Security Life Insurance Company" in 1996, and "ReliaStar Life Insurance Company of New York" in 1998. It is authorized to conduct business in all fifty states, the District of Columbia and the Dominican Republic. ReliaStar is a wholly-owned indirect subsidiary of ReliaStar Financial Corp., a holding company whose subsidiaries specialize in life insurance and related financial services businesses.

6. The ReliaStar Separate Accounts are registered as unit investment trusts under the 1940 Act and are separate accounts as that term is defined in Section 2(a)(37) of the 1940 Act. Each ReliaStar Separate Account is divided into Divisions, each of which invests in shares of a different portfolio of a mutual fund, including various series of AVP.

7. AVP, organized as a Maryland corporation on November 17, 1987, is registered under the 1940 Act as an open-end management investment company and is a "series company" as described in Rule 18f–2 under the 1940 Act. AVP has issued shares of beneficial interest in nineteen series, including the Total Return Portfolio, the Conservative Investors Portfolio, the Growth Investors Portfolio, the Money Market Portfolio and the Multi Market Portfolio, each of which represents interests in a different portfolio (collectively, the "AVP Portfolios"). Each AVP Portfolio is managed by Alliance Capital Management L.P. ("Alliance").

8. Oppenheimer Variable Account Funds ("OVAF") is a multi-series open-end diversified management investment company organized as a Massachusetts business trust. The Money Fund was organized as a series of OVAF in 1983. OVAF has issued shares of beneficial interest in ten series of shares, including the Money Fund, each of which represents interests in a different portfolio. The OVAF Portfolios, including the Money Fund, are managed by Oppenheimer Funds, Inc.

9. The AVP Portfolios serve as investment vehicles for use in connection with variable life insurance contracts and variable annuity certificates and contracts (collectively, the "Contracts)" issued by the Separate Accounts. As of the date of the Application, all shares of the Substitute Portfolios are owned by the Separate Accounts.

10. Each Contract reserves to AIG, American or ReliaStar the right to replace the shares of one AVP Portfolio held by the relevant Separate Account with shares of another AVP Portfolio or with shares of another registered investment company, subject to Commission approval. Applicants represent that this substitution right is clearly disclosed in the Separate Accounts' prospectuses.

11. Applicants propose to substitute the Substitute Portfolios for the Replaced Portfolios as follows: (a) The substitution of shares of the Total Return Portfolio for shares of the Conservative Investors Portfolio and Growth Investors Portfolio (the "C&G Substitution"); (b) the substitution of shares of the Money Market Portfolio in the case of AIG and American and their Separate Accounts and shares of the Oppenheimer Money Fund, in the case of ReliaStar and its Separate Accounts, for shares of the Multi-Market Portfolio (the "MM Substitution").

12. Contracts issued by AIG and American limit contractowners to twelve free transfers a year and charge contractowners $10 for each additional transfer.

13. Applicants represent that all three C&G Substitution Affected Portfolios operate as asset allocation portfolios, each investing principally in the same asset classes (*i.e.*, stocks, bonds and money market instruments) but using slightly different mixes of those asset classes. Each C&G Substitution Affected Portfolio seeks a high total return by investing in a mix of debt and equity securities that covers a continuum, with the Total Return Portfolio's mix falling in between the Conservative Investors Portfolio, which tends to invest more in fixed-income and less in equity securities, and the Growth Investors Portfolio, which tends to invest more in equity and less in fixed-income securities. Applicants represent that each of the C&G Substitution Affected Portfolios periodically adjusts its asset mixes in response to Alliance's judgment with respect to economic and market cycles.

14. Applicants represent that all three MM Substitution Affected Portfolios seek high current income by investing either completely or predominately in money market instruments. Each MM Substitution Affected Portfolio invest in, *inter alia*, (a) certificates of deposit and bankers' acceptances and interest-bearing savings deposits issued or guaranteed by banks or savings and loan associations, (b) high-quality commercial paper issued by U.S. or foreign companies, and (c) certain types of U.S. Government securities.

15. Applicants represent that the Variable Insurers are no longer offering the Replaced Portfolios as investment options under new insurance contracts, and these Portfolios are unlikely to attract other insurance companies to utilize them as funding vehicles for variable products and therefore are unlikely to grow in the future.

16. Applicants represent that as of December 31, 1999, the total net assets of the portfolios were as follows (in millions):

	Total net assets
Replaced Portfolio:	
Conservative Investors Portfolio	$31
Growth Investors Portfolio	19
Multi-Market Portfolio	44
Substitute Portfolio:	
Total Return Portfolio	75
Money Market Portfolio	136
Money Fund	201

17. Applicants represent that, for the fiscal year ended December 31, 1999, the portfolios' expenses were as follows:

Replaced portfolio	Advisory fees	Other expenses	Total expenses	Fee waivers and/or reimbursements	Net expenses
Conservative Investors Portfolio	0.75	0.42	1.17	0.22	0.95
Growth Portfolio	0.75	0.72	1.47	0.52	0.95
Multi-Market Portfolio	0.55	2.10	2.65	1.70	0.95

Substitute portfolio	Advisory fees	Other expenses	Total expenses	Fee waivers and/or reimbursements	Net expenses
Total Return Portfolio	0.63	0.24	0.86	0.00	0.86
Money Market Portfolio	0.50	0.14	0.64	0.00	0.64
Money Fund	0.45	0.03	0.48	0.00	0.48

18. Applicants represent that Alliance has agreed to cap expenses for each AVP Substitute Portfolio for one year from the date of the substitutions at a level equal to the percentage expense level experienced by its corresponding Replaced Portfolio for the most recent fiscal year prior to the substitutions. To the extent that the expenses of any Substitute Portfolio exceed the 1999 expense level of a Replaced portfolio for each fiscal period that is no longer than a fiscal quarter during the one-year period following the substitutions, the applicable Insurance Company Applicant(s) will undertake to limit separate account expenses such that, with respect to each contractowner affected by the substitutions, the amount of the relevant surviving portfolio's operating expenses, together with its corresponding separate account's expenses, on an annualized basis, will be no greater than the sum of the corresponding Substitute Portfolio's expenses, together with its separate account's expenses, for the most recent fiscal year prior to the substitutions. Furthermore, the Insurance Company Applicants undertake not to increase account or contract expenses for each contractowner affected by the substitutions for a period of one year from the date of the substitutions.

19. The Insurance Company Applicants represent that owners of the Contracts that invest in the Replaced Portfolios ("C&G Contractowners" and "MM Contractowners," as appropriate) were sent notice, which disclosed the proposed substitutions, in the form of an amendment to the prospectuses of the relevant Separate Accounts. Within five days after the substitutions, each Insurance Company Applicant will send to its C&G Contractowners and MM Contractowners a second notice of the proposed substitutions ("Second Notice") that will indicate that shares of the Replaced Portfolios have been eliminated and that shares of the Substitute Portfolios, as applicable, have been substituted. To the extent required, each Insurance Company Applicant will include in such mailing a supplement to the prospectus of AVP that discloses the completion of the substitutions.

20. Applicants represent that C&G Contractowners and MM Contractowners will be advised in each Second Notice that they may transfer the value of their Contracts allocable to the Substitute Portfolios to any other available Separate Accounts or Divisions investing in the other AVP Portfolios or other investment options unrelated to AVP, without limitation, within sixty days after the date of the Second Notice free of charge. A copy of the current prospectus of each relevant Substitute Portfolio will be delivered to each Contractowner to whom such current prospectus has not already been delivered. The C&G Substitution and/or the MM Substitution will not be counted as a transfer under any contractual provisions of the contracts that limit allowable transfers.

21. Applicants represent that following the C&G and MM Substitutions, the C&G and MM Contractowners will be afforded the same contract rights that they currently have, including surrender and other transfer rights with regard to amounts invested under the Contracts. The C&G Substitution and the MM Substitution will have no adverse federal income tax consequences for C&G and MM Contractowners. In addition, the C&G Substitution and the MM Substitution will in no way alter the insurance benefits to C&G and MM Contractowners or the contractual obligations of AIG, American and/or ReliaStar.

22. Applicants represent that the proposed substitutions will take place at relative net asset value with no increase or decrease in the amount of policy value for any C&G or MM Contractowner. In addition, the substitutions will not result in any additional fees for C&G or MM Contractowners, nor will current charges be increased. Applicants also represent that the costs of the C&G Substitution and the MM Substitution, including any additional brokerage costs or expenses, will not be borne directly or indirectly by the C&G Contractowners or MM Contractowners.

23. Applicants anticipate that the relevant Separate Accounts will redeem, partly for cash and partly for securities as a redemption in-kind, all shares of the Conservative Investors Portfolio and the Growth Investors Portfolio attributable to C&G Contractowners at the close of business on the date

selected for the substitutions. Applicants represent that the Conservative Investors Portfolio and the Growth Investors Portfolio will effect the redemptions in-kind to the extent that the securities paid on redemption to the relevant Separate Accounts have characteristics that are consistent with the investment objective and diversification requirements applicable to the Total Return Portfolio. Applicants further represent that the in-kind redemptions and purchases will be effected pursuant to AVP's procedures for valuing portfolio securities and that portfolio securities of the Substitute and Replaced Portfolios will be valued consistently.

Applicant's Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act permitting the Separate Accounts (a) to substitute shares of the Total Return Portfolio for shares of the Conservative Investors Portfolio and the Growth Investors Portfolio held by Separate Accounts, and (b) to substitute shares of the Money Market Portfolio or the Money Fund, as applicable, for shares of the Multi-Market Portfolio held by the Separate Accounts.

2. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(b) also states that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants represent that AIG and American believe that the C&G Substitution is consistent with the interests of its Contractowners because, although they follow different asset allocation models, there are substantial similarities between the types of investments made by the Conservative Investors Portfolio, the Growth Investors Portfolio and the Total Return Portfolio. Furthermore, Applicants argue that the C&G substitution is expected to confer economic benefits on the C&G Contractowners because the Conservative Investors Portfolio's and the Growth Investors Portfolio's expenses and net redemptions are expected to make it increasingly difficult for those Portfolios to achieve competitive results, because operation of the consolidated C&G Substitution Affected Portfolios (*i.e.*, the Return Portfolio going forward) will result in economies of scale and reduced operating expenses as a result of lower management fees paid by the Total Return Portfolio, and because the size of the Total Return Portfolio suggests that the Total Return Portfolio will offer a more favorable opportunity for achieving a substantially similar investment objective while bearing lower expenses than each of the Conservative Investors Portfolio and the Growth Investors Portfolio has borne.

4. Applicants also argue that the MM Substitution is expected to confer economic benefits on the MM Contractowners because the Multi-Market Portfolio's expenses and net redemptions are expected to make it increasingly difficult for that Portfolio to achieve competitive results, because operation of the consolidated MM Substitution Affected Portfolios (*i.e.*, the Money Market Portfolio and Oppenheimer Money Fund going forward) will result in economies of scale and reduced operating expenses as a result of lower management fees paid by the Money Market Portfolio and the Oppenheimer Money Fund, and because the size of the Money Market Portfolio and the Oppenheimer Money Fund, their competitive returns and their historically higher total returns suggest that each of the Money Market Portfolio and the Oppenheimer Money Fund will offer a more favorable long-term opportunity for achieving a substantially similar investment objective while bearing lower expenses than the Multi-Market Portfolio has borne.

5. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliate of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person from purchasing any security or other property from such registered investment company.

6. AIG, Variable Account I, American, Variable Account A, and AVP (collectively, the "Section 17 Applicants") request an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act. Section 17(b) of the 1940 Act provided that the Commission may grant an order exempting a proposed transaction from Section 17(a) of the 1940 Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. The Section 17 Applicants assert that the terms of the C&G Substitution, including the consideration to be paid or received in connection with such Substitution, meet all of the requirements of Section 17(b). First, the Section 17 Applicants contend that the terms of the C&G Substitution are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants represent that the C&G Substitution will be effected pursuant to AVP's procedures for valuing portfolio securities and that portfolio securities of the Affected Portfolios are and will be valued in a consistent manner. Consequently, the Sections 17 Applicants assert that there will be no overreaching because all securities redeemed in-kind and used to purchase shares of the Total Return Portfolio will be consistently valued for all purposes. Second, the C&G Substitution as proposed is consistent with the investment policies of the C&G Substitution Affected Portfolios because the securities received by the relevant Separate Account from the Conservative Investors Portfolio and the Growth Investors Portfolio from redemptions in-kind will be selected by Alliance to correspond to the investment policies of the Total Return Portfolio. Third, the C&G Substitution is consistent with the general purposes of the 1940 Act because it will provide the C&G Contractowners with economic and other benefits.

Conclusion

Applicants submit that, for all the reasons stated above, the exemptive relief requested pursuant to Section 26(b) of the 1940 Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31445 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43646; File No. SR–CBOE–00–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Permanent Approval of Live Ammo to RAES

November 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis the system that allows an Order Book Official ("OBO") or Designated Primary Market Maker ("DPM") to designate certain booked orders to be electronically executed against market markers standing in the crowd. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 2, 2000, the Commission approved, on a pilot basis, a systems change that allows an OBO or a DPM to reroute orders on the electronic book screen that displays market orders and limit orders that improve the market ("Live Ammo") to the Retail Automatic Execution System ("RAES").[3] On October 31, 2000, the pilot was extended through December 15, 2000.[4]

The Exchange now proposes to make permanent the pilot program with respect to the processing of Live Ammo orders.[5] The Commission recently approved a system enhancement to the Exchange's Order Routing System ("ORS"), which provided for the automatic rerouting of cancel/replace orders.[6] The Exchange believes that this systems change addresses the Commission's expectation that the Exchange develop a system enhancement to ensure that RAES-eligible orders will be routed directly to RAES without the interim step of first appearing on the Live Ammo screen.[7] The Exchange expects that the enhancement to ORS will be implemented in December 2000.

Although the number of Live Ammo orders should be substantially reduced by the planned enhancement to ORS, there occasionally may still be circumstances when the OBO or DPM may have reason to reroute Live Ammo orders manually. For example, in the event that a Floor Broker becomes so busy during heavy trading conditions that he is unable to represent and execute orders in a timely manner, the Floor Broker can electronically book all non-market, non-contingency orders he holds by hitting the "book all" button on his PAR workstation. Those orders that are marketable will route to the Live Ammo screen while those that are not marketable will stay in the book. Those orders that route to the Live Ammo screen will still require an OBO or DPM to manually reroute the orders to RAES. Therefore, the Exchange proposes that the Live Ammo to RAES functionality be approved on a permanent basis to deal with such limited circumstances.

2. Basis

The Exchange believes that because the Live Ammo to RAES processing system has provided for the more timely execution of marketable orders, the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written date, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42379, 65 FR 6665 (February 10, 2000) (approving SR–CBOE–98–27 on a pilot basis until October 31, 2000) ("Pilot Order").

[4] Securities Exchange Act Release No. 43499, 65 FR 67023 (November 8, 2000).

[5] The Exchange rule pertaining to the processing of Live Ammo orders is CBOE Rule 7.4(g).

[6] Securities Exchange Act Release No. 43185 (August 21, 2000), 65 FR 51884 (August 25, 2000).

[7] *See* Pilot Order, note 3 *supra*.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–53 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31383 Filed 12–8–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43638; File No. SR–CBOE–00–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Prohibition Against Electronically Generated and Communicated Orders

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] ("Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.8A, which governs the entry of electronically generated and communicated orders. Pursuant to the proposed amendment, an order would be deemed electronically generated and communicated for purposes of the Rule even if a practice requiring minimal human intervention has been added to the process of electronically generating and communicating the order.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 12, 2000, the Commission approved a proposed rule change filed by the Exchange that prohibits the entry of certain options orders that are created and communicated electronically, without manual input, into the CBOE's Order Routing System ("ORS").[3] Specifically, the new Rule (CBOE Rule 6.8A) provides that members may not enter nor permit the entry of, orders into ORS if those orders are created and communicated electronically without manual input and if such orders are eligible for execution on Retail Automatic Execution System ("RAES") at the time they are sent.[4] To be permitted under the Rule, order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent.

In its Order approving CBOE Rule 6.8A,[5] the Commission noted that allowing the entry of electronically generated and communicated orders could undercut CBOE's business model.[6] As CBOE Rule 6.8A is currently drafted, however, it is the Exchange's view that the Rule is capable of being easily undermined. Professional traders that have developed or purchased software to electronically generate and communicate orders can easily install a simple manual step into the process in order to avoid a violation of the Rule. In fact, the Exchange has learned that professional traders have had persons enter a keystroke to electronically generate and communicate orders to an exchange's order routing system in order to circumvent the prohibition against such orders that have been adopted by other exchanges.

The one comment letter submitted to the Commission on the Exchange's proposed rule change adopting the CBOE Rule 6.8A made this same point.[7] The commenter noted, "[t]he CBOE should be free to interpret its prohibition against electronically generated and submitted orders to include orders with nominal or minimal human intervention. Otherwise, CBOE's proposal could be completely undermined."[8]

The Exchange believes that its proposed new interpretation to Rule 6.8A is an appropriate response to the potential harm that could result to its business model from those persons who can easily avoid violations of the Rule as it currently stands. The Exchange does not believe it is enough to simply prohibit orders that are sent by the entry of a single keystroke because those professional traders who determine to send electronically generated orders would, thus, be able to avoid violations by inputting two keystrokes or by inputting one touch of a computer screen. Consequently, the proposed interpretation provides some leeway for the Exchange to determine what constitutes minimal human intervention.

The Exchange will be willing to provide interpretive guidance to its members in order to help them determine what type of action will be deemed to be minimal human intervention and what type of activity will not be considered minimal human intervention. The Exchange will also be willing to provide advice to its members about whether a particular surveillance mechanism to detect violations of this Rule by its customers is adequate.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[9] in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[9] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File Number SR–CBOE–00–57 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31387 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43654; File No. SR–NASD–00–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of the Effective Date of Phase Three for Order Audit Trail System Rules

December 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend Rule 6957 to extend the effective date of the implementation of Phase Three of the Order Audit Trail System ("OATS") rules until 120 days after the SEC approves File No. SR–NASD–00–23,[3] which also proposes changes to the OATS rules. The text of the proposed rule change is available at the Office of the Secretary, NASD Regulation and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 6, 1998, the SEC approved NASD OATS Rules 6950 through 6957.[4] OATS provides a substantially enhanced body of information regarding orders and transactions that improves NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of Association rules. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the SEC relating to the settlement of an enforcement action against the NASD for failure to adequately enforce its rules.[5] Pursuant to the SEC Order, OATS is required, at

[3] *See* Exchange Act Release No. 43344 (September 26, 2000), 65 FR 59038 (October 3, 2000).

[4] *See* Exchange Act Release No. 39729, 63 FR 12559 (March 13, 1998) (order approving File No. SR–NASD–97–56).

[5] *See* In the Matter of National Association of Securities Dealers, Inc., Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3–9056 ("SEC Order").

[3] *See* Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (SR–CBOE–00–01). The Exchange's rule is similar to a rule of the International Securities Exchange ("ISE") that the Commission approved earlier. When the Commission approved ISE's application for Exchange registration, it also approved several ISE rules, including ISE Rule 717(f) regarding the entry of computer-generated orders. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000).

[4] CBOE Rule 6.8A clarifies that an order is eligible for execution on RAES if: (1) Its size is equal to or less than the maximum RAES order size for the particular option series; (2) the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent; and (3) the order has either no contingency or has a contingency that is accepted for execution by RAES.

[5] *See* note 3, *supra*.

[6] Specifically, the Commission noted: " * * * the Commission recognizes that the CBOE's business model depends on market makers for competition and liquidity. Allowing electronic order entry into ORS could give automated customers a significant advantage over market makers. This could undercut CBOE's business model." *Id.* at 56973.

[7] Letter from Joel Greenberg, Managing Director, Susquehanna Investment Group, to Jonathan G. Katz, Secretary, Commission, dated August 29, 2000.

[8] *Id.* at p. 3.

a minimum, to (1) provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and customer or counterparty and further documenting the life of the order through the process of execution, and (2) provide for market-wide synchronization of clocks used in connection with the audit trail.[6]

In general, OATS imposes obligations on member firms to record in electronic form and to report to NASD Regulation certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to a Nasdaq Stock Market, Inc. ("Nasdaq") equity security. This information is integrated with quote information and transaction information reported to the Automated Confirmation Transaction Service ("Act")[7] to provide the Association with an accurate, time-sequenced record of orders and other transactions.

The effective dates for OATS requirements are set forth in NASD Rule 6957, which provides for different phases of implementation. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, the implementation schedule required that electronic orders received at the trading department of a member that is a market maker in the subject securities and those received by electronic communications networks ("ECNs") be entered into OATS as of March 1, 1999 ("Phase One"). Not all information relating to electronic orders received by market makers was required to be reported to OATS during Phase One. Information items relating to all electronic orders, however, was required to be reported to OATS by August 1, 1999 ("Phase Two"). Under the current implementation schedule, the OATS rules will apply to all manual orders on December 15, 2000 ("Phase Three").[8]

Since the implementation of OATS, NASD Regulation has been closely reviewing OATS activities with the goal of identifying ways in which to improve OATS and enhance the effectiveness of OATS as a regulatory tool. In this regard, NASD Regulation has proposed certain changes to OATS that it believes will enhance NASD Regulation's automated surveillance for compliance with trading and market making rules such as the NASD's Limit order Protection Interpretation, the SEC's Order Handling Rules, and a member firm's best execution obligations.[9]

Several of these proposed changes would alter the requirements that will become effective as part of Phase Three under current OATS Rules. For example, one proposed change would require that a different order origination and receipt time be recorded and reported for certain orders. Another proposed amendment would change the definition of reporting member, which would eliminate OATS reporting requirements for certain firms. To provide adequate time for these proposed changes to be considered and potentially acted upon, NASD Regulation is proposing that the effective date of Phase Three implementation be 120 days after the SEC approves File No. SR–NASD–00–23.[10] NASD Regulation believes that by linking the effective date of Phase Three to SEC approval of pending proposed changes to OATS rules, members will be provided sufficient time to implement internal systems programming and other changes resulting from the rule change.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that extending the effective date of Phase Three implementation of OATS will provide the additional time necessary to fully analyze and consider the proposed changes to OATS rules and determine whether the proposed rule changes are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NASD Regulation has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder,[13] the proposed rule change has become effective upon filing as it effects a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. NASD Regulation provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date and has requested that the Commission accelerate the operative date of the proposal to become effective immediately.

The Commission finds good cause for accelerating the operative date of the proposal as of the date of this notice.[14] In order to prevent unnecessary systems changes, NASD Regulation needs to give its members as much notice as possible that the effective date of Phase Three has been extended. The Commission also notes that the previous proposal to extend the implementation date of Phase Three from October 31, 2000 to December 15, 2000 did not become operative for 30 days from the date of filing, and the Commission received no comments.[15]

[6] *Id.*

[7] ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

[8] On August 31, 2000, NASD Regulation filed a proposed amendment with the Commission for immediate effectiveness to extend the implementation date of Phase Three from October 31, 2000 to December 15, 2000. See Exchange Act Release No. 43263 (September 8, 2000), 65 FR 55661 (September 14, 2000).

[9] *See supra* note 3.

[10] In response to the **Federal Register** publication of SR–NASD–00–23, some commenters indicated that members would require 90 days from the date the OATS Technical Specifications are amended to incorporate necessary systems changes resulting from SEC approval of SR–NASD–00–23. In this regard, NASD Regulation believes that the OATS Technical Specifications will be amended within 30 days of SEC approval of SR–NASD–00–23. Accordingly, NASD Regulation believes that 120 days after the date of SEC approval of SR–NASD–00–23 should provide adequate time for the OATS Technical Specifications to be amended and published, and for members to make necessary systems and programming changes.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.16b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See supra* note 8.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–70 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31384 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43647; File No. SR–NYSE–00–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Regarding Shareholder Approval of Stock Option Plans Through February 28, 2001

November 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend, until February 28, 2001, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis ("Pilot") on June 4, 1999.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 12, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[4] On August 15, 2000, the Commission, in response to a commenter's request, extended the comment period for the 3-Year Extension Proposal until September 20, 2000.[5] On September 22, 2000, the Pilot was extended through November 30, 2000 to accommodate the extended comment period on the 3-Year Extension Proposal.[6]

The Exchange now proposes to further extend the effectiveness of the Pilot until February 28, 2001 to provide the Commission and the Exchange with additional time to review and evaluate comment letters submitted to the Commission regarding the 3-Year Extension Proposal.

2. Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5)[7] of the Act because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B, Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

[4] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) ("3-Year Extension Proposal").

[5] Securities Exchange Act Release No. 43155, 65 FR 49046 (August 23, 2000). The original comment period was schedule to expire on August 31, 2000. *See* 3-Year Extension Proposal, *supra* note 4.

[6] Securities Exchange Act Release No. 43329, 65 FR 58833 (October 2, 2000).

[7] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder.[10]

A proposed Rule change filed under rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rules change become operative on or before November 30, 2000, in order to allow the Pilot to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through November 30, 2000. The extension of the Pilot will provide the Commission with additional time to review and evaluate the 3-Year Extension Proposal.

The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions in Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to that which were effective prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately through February 28, 2001. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–52 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43658; File No. SR–NYSE–00–53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing and Trading of an Exchange Traded Fund Based on the S&P Global 100 Index

December 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission's is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of an exchange traded fund (the "Fund") based on the S&P Global 100 Index.[3] The Exchange is also proposing the amend NYSE Rule 13 to reflect procedures with respect to stop and stop limit orders for Investment Company Units traded on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, the Exchange or the Commission.

II. Self-Regulatory Organization's Statement of the Proposed of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade under Section 703.16, Investment Company Units of the LCM, shares of the Fund based on the S&P Global 100 Index (the "Index" or the "Underlying Index"). The Fund is included in the Share Trust (the "Trust"),[4] and Barclays Global Fund Advisors ("BGFA"), a subsidiary of Barclays Global Investors, N.A. ("BGI"), acts as the advisor (the "Advisor") to the Fund. Standard & Poor's ("S&P"), a division of The McGraw-Hill Companies, Inc., is the Index provider. The Index is sponsored by S&P and the Exchange, with the additional collaboration of several major exchanges from around the world.[5]

The underlying index. A detailed description of the Underlying Index for the Fund prepared by S&P was filed as Exhibit 2. This description includes, but

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Fund will be listed and traded pursuant to Section 703.16, Investment Company Units, of the Exchange's Listed Company Manual ("LCM").

[4] The Trust is registered under the Investment Company Act of 1940, as amended ("1940 Act"). The Trust has filed with the Commission a Registration Statement on the Form N–1/A under the Securities Act of 1933, as amended and under the 1940 Act relating to the Fund (File No. 333–92935 and 811–09729).

[5] The Index was developed jointly by S&P and the Exchange, and the Exchange is represented on, although it does not control, the S&P committee responsible for Index maintenance. The Commission notes that the firewall provisions proposed in SR–NYSE–00–46 will apply to this Investment Company Unit.

is not limited to, information regarding index description, component selection criteria, country representation, Index maintenance and industry group distribution by market capitalization. The Index description, including any changes thereto, may be found on the S&P Global web site at http://www.spglobal.com/ssindexmainglobal100.html.

General description of the fund. The Fund offers and issues shares ("Fund Shares") at their net asset value ("NAV") only in aggregations of a specified number of Fund Shares (referred to as a "Creation Unit"), generally in exchange for a basket of equity securities included in the Underlying Index (the "Deposit Securities"), together with the deposit of a specified cash payment (the "Cash Component").[6] Fund Shares are redeemable only in Creation Unit aggregations, and, generally, in exchange for portfolio securities and a specified cash payment. Creation Units are aggregations of 50,000 Fund Shares. The Trust reserves the right to offer a "cash" option for creations and redemptions of Fund Shares.

"Passive" or indexing investment approach. The Fund seeks investment results that before expenses correspond generally to the price and yield performance of companies in the Index.

The Advisor uses a "passive" or indexing approach in seeking to achieve the Fund's investment objective.

Representative sampling. The Fund uses representatives sampling to track the Underlying Index. This means that the Fund is invested in a representative sample of stocks in the Underlying Index, which have a similar investment profile as the Underlying Index. Stocks selected have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield), and liquidity measures similar to those of the relevant Underlying Index. A fund that uses representatives sampling generally does not hold all of the stocks included in its underlying index.

The Fund will invest at least 90% of its total assets in the stocks of the Underlying Index. The Fund may hold up to 10% of its total assets in stocks not included in the Underlying Index. For example, the Advisory may invest in stocks not included in the Underlying Index in order to reflect various corporate actions (such as mergers) and other changes in the Underlying Index (such as reconstitutions, additions and deletions). The Fund may also invest in stocks outside the underlying Index to meet the diversification requirements of a regulated investment company under the Internal Revenue Code (the "Code").[7] As long as the Fund invests at least 90% of its total assets in the stocks of the Underlying Index, it may also invest its other assets in futures contracts, options on futures contracts, options, and swaps related to the Underlying Index, as well as cash and cash equivalents.

Correlation. An index is a theoretical financial calculation while the ETF is an actual investment portfolio. The performance of the Fund and the Underlying Index will vary somewhat due to transaction costs, market impact, corporate actions (such as mergers and spin-offs) and timing variances. It is expected that over time, the correlation between the Fund's performance and that of the Underlying Index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called a "tracking error."

Industry concentration policy. The Fund will not concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries). However, the Fund will concentrate to approximately the same extent that the Underlying Index concentrates in the stocks of a particular industry or group of industries. For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

Creations and redemptions of fund shares. The Fund Shares are "created" at their NAV by specialists, large investors and institutions only in Creation Units of 50,000 Shares. A "creator" deposits into the Fund a specified portfolio of stocks closely approximating the holdings of the Fund (the "Deposit Securities") and a specified amount of cash (the "Cash Component") in exchange for 50,000 Fund Shares.

Similarly, the Fund Shares can only be redeemed in Creation Units of 50,000 Fund Shares, principally in-kind for a specified portfolio of stocks held by the Fund then comprising the Deposit Securities and the then applicable Cash Component. Except when aggregated in Creation Units, Fund Shares are not redeemable. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in proper form.

Creations and redemptions must be made through a firm that is either a member of the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant and, in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit aggregations ("Participant Agreement"). The Trust will impose transaction fees in connection with creation and redemption transactions.

Availability of information regarding fund shares and underlying indices. The list of names and amount of each security constituting the current Deposit Securities, and the Cash Component effective as of the previous business day, per outstanding share of the Fund, will be made available each business day. In addition, an amount representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis is expected to be disseminated every 15 seconds during the Exchange's regular trading hours, through the facilities of the Consolidated Tape Association ("CTA").

The value of the Underlying Index will be updated intra-day on a real-time basis as individual component securities of the Underlying Index

[6] The Cash Component is an amount equal to the Balancing Amount. The "Balancing Amount" is an amount equal to the difference between the NAV of the Fund Shares (per Creation Unit) and the "Deposit Amount." The "Deposit Amount" is an amount equal to the market value of the Deposit Securities. If the Balancing Amount is a positive number (*i.e.*, the NAV per Creation Unit exceeds the Deposit Amount), the Cash Component will be paid to the Trust by the creator. If the Balancing Amount is a negative number (*i.e.*, the NAV per Creation Unit is less than the Deposit Amount), the creator will receive cash in an amount equal to the differential.

[7] In order for the Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50 percent of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for the purpose of this calculation in respect to any one issuer to an amount not greater than 5 percent of the value of the Fund's assets and not greater than 10 percent of the outstanding voting securities of such issuer, and (2) not more than 25 percent of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other regulated investment companies.)

change in price. These intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. In addition, there will be disseminated a value for the Underlying Index once each trading day, based on closing prices in the relevant exchange market.

The Fund will make available on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit aggregation, as well as information regarding the cash-balancing amount. The NAV for the Fund will be calculated and disseminated daily. In addition, the Adviser maintains a website that provides information about the returns and methodology of various indices, and will include the Underlying Index for the Fund. The Trust also intends to maintain a website that will include the Fund prospectus and additional quantitative information that is updated on a daily basis, including daily trading volume and closing price for the Fund. There will also be disseminated a variety of data with respect to the Index on a daily basis by means of CTA including shares outstanding and cash amount per Creation Unit aggregation, which will be made available prior to the opening of the trading on the Exchange. The closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

Dissemination of indicative portfolio value. To provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem Fund Shares, and because the Fund is based on the Index which includes non-U.S. components, it is expected that there will be disseminated through the facilities of the CTA an updated indicative portfolio value ("Value") for the Fund traded on the Exchange as calculated by a securities information provider ("Value Calculator"). The Value will be disseminated on a per Fund Shares basis every 15 seconds during regular NYSE trading hours for the Fund. The equity securities values included in the Value are the values of the Deposit Securities, which are the same as the portfolio that is to be utilized generally in connection with creations and redemptions of the Fund Shares Creation Unit aggregations on that day. The equity securities included in the Value reflect the same market capitalization weighting as the Deposit Securities in the portfolio for the Fund. In addition to the value of the Deposit Securities for the Fund, the Value includes the Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time. Therefore, the Value on a per Fund Shares basis disseminated during the Exchange's trading hours should not be viewed as a real-time update of the NAV of the Fund, which is calculated only once a day. While the Value that will be disseminated at 9:30 a.m. is expected to be generally very close to the most recently calculated NAV on a per Fund Shares basis, it is possible that the value of the portfolio of securities held by the Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the Value can be expected to closely approximate the value per Fund share of the portfolio of securities for the Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in the Fund at the same time by the Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per Fund share of the actual portfolio of the Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding the Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with Fund Shares trading on the Exchange or the creation or redemption of Fund Shares.

For the Fund, the Value Calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market(s) for securities in the Fund portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during the Exchange's trading hours to reflect change in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable Cash Component for the Fund.

For foreign stocks, the principal foreign markets that have trading hours overlapping regular trading hours on the Exchange, the Value Calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Exchange is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close.

Other characteristics of the fund. The Exchange represents that a minimum of two Creation Unit aggregations for the Fund, based on the S&P Global 100 Index, will be outstanding at the commencement of trading on the Exchange. The number of shares per Creation Unit aggregation will be 50,000 shares.[8]

Fund Shares will be registered in book-entry form through the DTC. Trading in Fund Shares on the Exchange will be effected until 4:00 p.m. each business day.[9] The minimum trading increment for Fund Shares on the Exchange initially will be 1/64th of $1.00.[10]

Dividends from net investment income will be declared and paid at least annually by the Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but the Fund may make distributions on a more frequent basis to comply with distribution requirements of the Code. The Fund may make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

Original and annual listing fees. The Exchange original listing fee applicable to the listing of the Fund will be $5,000. The annual continued listing fee for the Fund will be $2,000.

Stop and stop limit orders. Since Investment Company Units issued pursuant to Section 703.16, Investment Company Units, of the LCM are derivatively priced based upon another security or index of securities, the Exchange is proposing to amend NYSE Rule 13 to provide that stop and stop limit orders to buy or sell Investment Company Units shall, with the prior approval of a Floor Governor or two Floor Officials, be elected by a quotation. Fund Shares will be eligible for this treatment. The proposed rule change would require a Floor Governor or two Floor Officials to give approval for this treatment. The Exchange believes this is an appropriate precaution given the newness of the rule to the Exchange. After a month or two of experience with the new rule, the Exchange anticipates that it will file an additional rule change to allow approval by only one Floor Official to suffice.

Trading halts. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Fund. Trading on the Exchange in the Fund Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Fund Shares inadvisable. These may include (1) the extent to which trading is not occurring in stocks in the Index or (2) other unusual conditions or circumstances detrimental to maintenance of a fair and orderly market. In addition, trading in Fund Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's "circuit breaker" rules (NYSE Rule 80A).

Surveillance procedures. The Exchange's written Surveillance procedures for Fund Shares will be similar to the procedures utilized for other Investment Company Units.

Prospectus delivery and information circular. Prior to commencement of trading in the Fund on the Exchange, the Exchange will issue an information circular informing members and member firms that investors purchasing Fund Shares shall be required to receive a prospectus prior to or concurrently with the confirmation of a transaction in Fund Shares. The information circular will also inform members and member firms of the characteristics of the Fund and of applicable Exchange Rules, including suitability rules.[11]

[8] By virtue of the Exchange's File No. SR–NYSE–00–46, submitted to the Commission for notice and approval, the number of Units required to be outstanding at the commencement of trading under Section 703.16(A)(4) will be established by the Exchenge for each series. At the commencement of trading of Fund Shares based on the S&P Global 100 Index on the Exchange, there will be required to be at least 100,000 Fund Shares outstanding. The Commission believes that in light of the Exchange's proposed rule change in SR–NYSE–00–46, and the commission's approval of a minimum number of 100,000 Fund Shares outstanding on other exchanges, it is reasonable for the Exchange to require a minimum of 100,000 Fund Shares outstanding on the S&P Global 100 Index.

[9] The Exchange expects to extend its regular hours for the trading of the Fund to 4:15 p.m. at such time that a futures contract on the Index becomes available for trading on a futures exchange in the U.S.

[10] When decimal pricing is extended to all securities traded on the Exchange, the minimum trading increment for Fund Shares based on the S&P Global 100 on the Exchange will be expressed in decimals.

[11] As per telephone conversation between James F. Duffy, Senior Vice President and Associate General Counsel, Office of the General Counsel, NYSE, and Heather Traeger, Attorney, Division of Market Regulation, Commission, November 30, 2000.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[12] in general and furthers the objectives of Section 6(b)(5) of the Act[13] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–00–53 and should be submitted by January 2, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements and of Section 6(b)(5) of the Act.[14] The Commission believes that the Exchange's proposal to list and trade shares of the Fund based on S&P Global Index will provide investors with a convenient and efficient way of participating in the securities markets, including involvement with equities issued by foreign investors. The Exchange's proposal should also provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security, at negotiated prices throughout the business day that replicates the performance of a portfolio of stocks. Accordingly, as discussed below, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[15]

Section 703.16 of the LCM provides for the listing and trading of Investment Company Units, which are shares that represent an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or similar entity. The Commission believes that the listing and trading Fund Shares based on the S&P Global 100 Index will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable underlying index. The Fund should allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

Although the Fund is not a leveraged instrument, and, therefore, does not possess any of the attributes of stock index options, its prices will be derived and based upon the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of this Fund is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the Fund is based on a portfolio of securities. Based on these factors, the Commission believes that it is appropriate to regulate the Fund in a manner similar to other equity securities. Nevertheless, the Commission believes that the nature of the Fund raises certain product design, disclosure, trading, market impact and other issues that must be addressed adequately. As discussed in more detail below, the Commission believes the Exchange has adequately addressed these concerns.

A. The Fund Generally

The Commission believes that the proposed Fund is reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon. In this regard, the Commission notes that the Fund will use an "indexing" investment approach that attempts to replicate, before expenses, the performance of the Index. The Commission notes that the Fund uses representative sampling to track the Underlying Index. The Commission also notes that the Fund will normally invest at least 90% of its total assets in stocks that comprise the Underlying Index. The Commission believes that the component selection and replacement procedures for the Fund should help to ensure that the component securities generally remain highly capitalized and actively traded.

B. Disclosure

The Commission believes that the Exchange's proposal should help to ensure that investors are adequately apprised of the terms, characteristics, and risks of trading the Fund. As noted above, all investors will receive a prospectus regarding the product, prior to or concurrently with the confirmation of a transaction therein. In addition, the Trust intends to maintain a website that will include the Fund prospectus and additional quantitative information that is updated on a daily basis.

The Commission notes that the Fund would be subject to the Exchange's rules and procedures for Investment Company Units. Because the Fund will be in continuous distribution, the delivery requirements of the Securities Act of 1933 will apply both to initial investors and to all investors purchasing such securities in secondary market transactions on the Exchange. The Commission also notes that the Exchange will issue an information circular to its members explaining the unique characteristics of this type of security prior to the commencement of trading in shares of the Fund. The circular also will address members' responsibility to deliver a prospectus or product description to all investors.

C. Listing and Trading of the Index Fund Shares

The Commission finds that adequate rules and procedures exist to govern the listing and trading of the Fund. The Fund will be subject to the full panoply of the Exchange's listing, delisting or suspension rules and procedures governing the trading of Investment Company Units. The Fund will be deemed an equity security subject to all rules governing the trading of equity securities, including, among others, rules governing trading halts, notices to members, responsiblities of the specialist, customer suitability requirements, and the election of a stop and stop limit order. The Exchange's surveillance procedures for Investment Company Units will be applicable to the Fund. The Commission believes that the Exchange's surveillance procedures are adequate to address the concerns associated with the listing and trading of this Fund, including any concerns associated with purchasing and redeeming Creation Units. The Commission further finds that permitting stop and stop limit orders to be elected by a quotation for Investment Company Units is consistent with the Act and should facilitate the trading of such securities.

In addition, the Exchange has designated that a minimum of two Creation Units, at approximately 50,000 shares each, will be required to be outstanding at the start of trading. The Commission believes this minimum number will be sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the Fund shares in book-entry form through DTC, managing the distribution of dividends from net investment income, if any, and permitting beneficial owners of the Fund to offer the DTC book-entry Dividend Reinvestment Service are characteristics of the Fund that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market.

Furthermore, the Commission believes that the Exchange's proposal to trade the Fund in minimum fractional increments of 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the Fund. Additionally, the Commission believes that the proposed original listing fee of $5,000 is reasonable as is the proposed annual fee of $2,000.

D. Dissemination of Information Regarding the Fund

The Commission believes that the Values and figures that the Exchange proposes to have disseminated for the Fund will provide investors with timely and useful information concerning the value of the Fund. The Exchange represents that the value information will be disseminated, every 15 seconds during regular trading hours, through the facilities of the CTA and will reflect currently available information concerning the value for Shares of the Fund. On a daily basis, the Exchange represents that it will disseminate the Shares outstanding, the cash amount per Creation Unit Aggregation, and the net asset value. The Exchange represents that the closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters. The intra-day value of the Underlying Index will be available from S&P.

E. Accelerated Approval

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the listing and trading standards in Section 703.16, Investment Company Unites, of the LCM, which the Commission previously approved after soliciting public comment on the proposal pursuant to Section 19(b)(1) of the Act.[16] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by

[16] 15 U.S.C. 78s(b)(1).

this new product by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[17] to approve the proposal on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–00–53), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31386 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43668; File No. SR–OCC–99–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating to Clearing Member Affiliates

December 4, 2000.

On November 2, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–99–15) and on August 11, 2000, amended the proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] Notice of the proposal was published in the **Federal Register** on September 15, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The principal purpose of the proposed rule change is allow certain affiliates of a clearing member to be designated as non-customers under the Commission's hypothecation rules[3] so that the affiliates may have their transactions and positions commingled in their clearing member's firm account and/or proprietary X–M account at OCC for the purpose of receiving more favorable clearing margin treatment.[4] The proposed rule change creates a definition of Member Affiliates that consists of the relevant portion of the existing definition of Related Person in OCC's By-Laws. (For the sake of economy of expression and consistency, OCC proposes a replace that portion of the Related Person definition used to define Member Affiliate with the term Member Affiliate.) The proposed rule change then modifies the definition of Non-Customer to include a Member Affiliate that has executed a non-conforming subordination agreement[5] that has been approved by the clearing member's designated examining authority.

Additionally, the proposed rule change modifies the definition of Related Person to eliminate redundancies and to more closely parallel 17 CFR 1.3(y), which defines "proprietary account" for the purposes of the Commodity Exchange Act's regulations.[6] The proposed rule no longer refers to spouses of "any such person" (*i.e.*, any officer, director, or general or special partner) which was redundant because the rule already covers spouses of "any non-customer of the clearing member," and the definition of Non-Customer includes officers, directors, or general or special partners. Additionally, in order to conform OCC rules with Section 1.3(y)'s definition of "proprietary account," the proposed rule change clarifies that not only are spouses and minor dependents of non-customers Related Persons but also that the spouses and minor dependents of certain employees are also Related Persons.

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. For the reasons set forth below, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act.

The proposed rule change to add and modify several definitions so that affiliates may have their transactions and positions commingled in their clearing member's firm account and/or proprietary X–M account at OCC should result in a more accurate assessment of risk and a more appropriate margin requirement thus further assuring the safeguarding the securities and funds within OCC's control. In addition the proposed rule change should provide more consistency with respect to the interplay of the Commodity Exchange Act's regulations with OCC's rules.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–99–15) be and hereby is approved.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31380 Filed 12–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43645; File No. SR–Phlx–00–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Concerning Reporting, Examination, Recordkeeping, and Disclosure Requirements Related to Off-Floor Trading Organizations and Their Affiliated Traders

November 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

[17] 15 U.S.C. 78s(b)(5).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43276, (September 11, 2000), 65 FR 56015.

[3] 17 CFR 240.8c–1 and 240.15c2/1.

[4] *See also* no-ection letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to William H. Navin, Executive Vice President and General Counsel, OCC, (June 15, 2000).

[5] Non-conforming subordination agreements are subordination agreements that do not meet the requirements of Appendix D of Rule 15c3–1.

[6] As defined, a Related Person is essentially a person whose account would be a "proprietary account" under the rules of the Commodity Futures Trading Commission, but who is nevertheless a "customer" for purposes of the Commission's hypothecation rules cited above. Market Makers who are Related Persons of a clearing member are deemed to be Associated Market Makers and are excluded from the Combined Market Maker Account under Article VI, Section 3(c) of OCC's By-Laws.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Exchange Rules 641, 642, 643, and 644 concerning reporting, examination, recordkeeping, and disclosure requirements related to off-floor trading organizations and their affiliated traders.

Specifically, the rules would require off-floor member organizations for whom the Exchange is the Designated Examining Authority ("DEA") to make affirmative inquiry of their affiliated traders regarding the sources of their funding and to disclose to the Exchange annually all borrowing, lending, investment, or other financing activity relating to the organization.

For those off-floor traders that are affiliated with off-floor member organizations and that are organized as entities other than individuals (*e.g.*, corporations or limited liability companies ("LLCs")), the proposed rules also would require that each individual trader that trades in the account of such an entity: (i) Be a direct shareholder or member of the organization; or (ii)(A) hold his or her ownership interest through an intermediate entity (such as a corporation or an LLC), (B) be the sole shareholder or member of such intermediate entity, and (C) be the sole person authorized to trade for the account identified with such individual or intermediate entity. In any case, the individual trader would be subject to the examination and registration requirements applicable to individual traders.

In addition, the proposed rules would require off-floor member firms to represent that their affiliated traders and trading entities are in compliance with certain federal and state laws. Finally, the proposed rules would allow the Exchange to conduct examinations of affiliated traders of off-floor trading firms, whether natural persons or other entities.

The text of the proposed rule change is set forth below. New language is in italics.

Rule 641. Reporting, Record Keeping and Regulatory Requirements for Off Floor Traders and Off-Floor Trading Organizations

All member organizations and participant organizations engaged in proprietary or agency trading of securities from off the floor of the Exchange for whom the Exchange is the Designated Examining Authority ("off-floor firms") shall:

(a) not less frequently than annually, make an affirmative inquiry of each individual off-floor trader or trading entity affiliated with such off-floor firm (each an "affilliated trader"), concerning (i) any and all loan or lending arrangements entered into by the individual affiliated trader or trading entity as borrower, including an inquiry of the names, addresses, and affiliations of any person or entity involved, and dollar amounts borrowed or loaned; (ii) any and all investment arrangements entered into by the individual affiliated trader whereby any person or entity has an investment or equity interest in the affiliated trader or any account over which such affiliated trader has trading authority, including an inquiry of the names, addresses, and affiliations of any person or entity involved, and the dollar amounts invested; (iii) any and all third parties, including natural persons or other entities, which share in the profits or losses of any account of an affiliated trader of such off-floor firm;

(b) make reasonable investigation as to whether any relationship disclosed as a result of the inquiry referred to in rule 641(a) (or otherwise coming to the attention of the off-floor firm) is in compliance with all the regulations set forth in Rule 641(c) below;

(c) annually certify to the Exchange, in writing, that based upon such inquiry (i) such off-floor firm has made all inquiries required pursuant to Rule 641(a); (ii) such off-floor firm and its affiliated traders are in compliance with all applicable laws, including, but not limited to, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and any applicable state laws; and (iii) that such off-floor firm or affiliated trader (A) carries no customer accounts and (B) does not trade in an account on behalf of investors or lenders who share in the profits of such account ("de facto customer account"); and

(d) maintain all records pertaining to affiliated traders and accounts of affiliated traders for a minimum of three years in a readily accessible location.

Rule 642. Examination of Off-Floor Traders

The Exchange shall have the right to conduct examinations of all off-floor trading firms, and of all affiliated traders of such off-floor trading firms, whether natural persons or other entities, including, but not limited to, affiliated traders, and any person or other entity engaged in lending, borrowing, investing, or other financing related to the off-floor trading firm and/or its affiliated traders. The terms used in this Rule shall have the same meaning as in Rule 641.

Rule 643. Ownership of Accounts. Affiliated Members of Off-Floor Trading Organizations

(a) Any affiliated trader of an off-floor trading firm engaged in off-floor trading shall be either (i) a natural person; or (ii) if not a natural person, an entity, which shall be organized and have its registered office in a state or possession of the United States or the District of Columbia, and which is 100% owned and controlled by one natural person engaged in off-floor trading for the account of such entity. With respect to Section (ii) hereof, the natural person shall be registered with the Exchange in accordance with Exchange Rule 604, and shall be required to be qualified as set forth in Exchange Rule 604(e).

(b) With respect to affiliated traders which are not natural persons, the off-floor firm shall make an annual, affirmative inquiry into the ownership status of such an entity to ensure compliance with Section (a)(ii) of this Rule, and shall report the results of such annual inquiry in writing to the Exchange. The Exchange may, in its discretion, require evidence and identification of the ultimate beneficial interest in such an entity. An entity referred to in Section (a)(ii) hereof, and any natural person engaged in off-floor trading in the account of such an entity, shall be subject to the examination and registration requirements set forth in Exchange Rule 604(e).

(c) Any off-floor firm or affiliated trader may apply for an exemption from the provisions set forth in this Rule. The Exchange shall have the right to demand the Opinion of Counsel of the off-floor firm or affiliated trader regarding the applicant's compliance with applicable laws, including, but not limited to, the Securities Exchange Act of 1934, The Investment Company Act of 1940, the Investment Advisers Act of 1940, and any applicable state laws.

Rule 644. Disclosure by Off-Floor Trading Organizations

All off-floor trading firms shall annually disclose to the Exchange, in writing:

(a) All borrowing, lending, investment, or other financing activity relating to the off-floor trading organization; and

(b) the names, addresses, and telephone numbers of all persons or other entities which engage in borrowing, lending, investment, or other financing activity relating to the off-floor firm.

(c) The Exchange may, in its discretion, demand written certification from off-floor trading organizations of their compliance with applicable laws, including, but not limited to, the Securities Exchange Act of 1934, The Investment Company Act of 1940, the Investment Advisers Act of 1940, and any applicable state laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx member firms for which the Exchange is the DEA generally do not carry public customer accounts. If a Phlx member firm carries customer accounts, it is required to become a member of a national securities association (*e.g.*, the National Association of Securities Dealers ("NASD")). Under agreements that the Phlx has entered into with other self-regulatory organizations ("SROs") in accordance with Rule 17d–2 under the Act,[3] any Phlx member that is also a member of another SRO (including the NASD) would be assigned to another DEA.

Typically, off-floor trading firms that are Phlx members are structured as LLCs. In most cases, the individual traders at the firm are also "members" of the firm and hold equity interests in the firm. These traders are not regarded as "customers" of the firm. The typical Phlx member that is an LLC has a clearing arrangement with another member firm whereby the latter clears all transactions for the LLC through a single account. Individual off-floor traders and trading entities trade as affiliated members of the LLC by way of "sub-accounts" with the LLC.

One mail purpose of the proposed new rules is to ensure that off-floor traders and trading entities affiliated with off-floor member firms for which the Exchange is the DEA are not trading on behalf of customers. The proposed rules would enable the Exchange to determine whether such affiliates have certain third-party financing arrangements in place which would cause them to be engaged in trading on behalf of customers or *de facto* customers because, for example, the "lender" or "investor" shares in the trading profits and losses of traders affiliated with the firms.[4]

The Phlx's proposal would require that, for off-floor firms for which the Phlx is the DEA, traders who are also members of the firm (in the case of firms organized as LLCs) either hold their membership interests directly or indirectly through a legal entity that is wholly owned by them, unless the firm has obtained a waiver from the Phlx. To allow a member to hold his membership interest in the LLC indirectly through a legal entity that, itself, has multiple shareholders could result in one individual trading on behalf of an unlimited number of co-owners. While the proposed rule does not preclude multiple owners,[5] the main reason why such off-floor firms are Phlx DEA members is because such firms do not carry public customer accounts. Under certain circumstances, the multiple owners of such affiliated trading firms could be deemed "customers" of the individual who is conducting trading activities on their behalf. In that event, regulatory requirements applicable to firms with "customers" would attach to such a member firm.

In addition, certain other unanticipated legal and regulatory problems could arise, such a triggering registration and other requirements under the Investment Company Act of 1940, the Investment Advisers Act of 1940, or state securities laws.

The proposed rules would allow the Exchange's Examinations Department to monitor more closely the activities of off-floor traders and off-floor trading firms for whom the Exchange is the DEA, and would require such off-floor trading firms to inquire into, and more closely monitor, the activities and financing arrangements of their affiliated individual traders and trading entities.

Another purpose of the proposed rules is to require off-floor member firms to represent to the Exchange that they will make inquiries concerning investment and other arrangements which, it undertaken by the off-floor member firms or by their affiliated traders, could legally cause such off-floor member firms or their affiliated traders to become an unregistered investment company, investment advisory firm, or broker-dealer. For example, the relationship between an individual off-floor trader and an investor who shares in the profits and losses associated with that off-floor trader's account could be construed as an advisory relationship, whereby the off-floor trader makes investment decisions on behalf of, or dispenses investment advice to, the investor. Although the Exchange does not directly enforce securities laws other than those pertaining to the Act,[6] a failure to comply with these other laws could be a threat to customers, investor protection, and the soundness of the off-floor firm, and result in violations of Exchange rules such as, without limitation, rules pertaining to books and records, net capital requirements, supervisory procedures, and margin requirements.

The proposed rules would require off-floor firms for which the Exchange is the DEA to provide annual reports to the Exchange concerning such firm's inquiries into its affiliated traders and trading entities, and to annually disclose in writing to the Exchange its borrowing, lending, investment, or other financing activities (including names, addresses, and telephone numbers of all persons or other entities who engage in such activities).[7]

[3] 17 CFR 240.17d–2.

[4] If an off-floor trading firm were engaged in trading on behalf of customers, it would be required to comply with a variety of regulatory and procedural requirements, such as Rules 15c3–1 and 15c3–3 under the Act, 17 CFR 240.15c–3 and 240.15c3–3.

[5] Any off-floor firm or affiliated trader may apply for an exemption from the single-shareholder requirement pursuant to proposed Rule 643(c).

[6] *See* Phlx Rule 960.

[7] Phlx Rule 783 requires members and member organizations to report to the Exchange any financial arrangement entered into with another member, member organization, foreign currency participant, or participant organization, or a general partner, voting shareholder, or any associated person thereof, or a non-member. A "financial arrangement" is defined in Rule 783 as: (1) The direct financing of a member or participant organization's dealings upon the Exchange with the

Continued

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with Section 6 of the Act [8] in general and Section 6(b)(5) [9] in particular in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by requiring diligence on the part of off-floor member firms for which the Exchange is the DEA in examining the financing and investment arrangements of their affiliated traders and trading entities, and by requiring off-floor member firms to report the results of such examinations to the Exchange. The Exchange believes that the proposal will help ensure that the rules and provisions of the Act that are designed to promote customer protection and the financial soundness of broker-dealers are followed, and should facilitate the Exchange's examination and enforcement functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–92 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31382 Filed 12–8–00; 8:45 am]

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exception of clearing arrangements; (2) any direct equity investment or profit sharing arrangement; (3) any consideration over the amount of $5000 that constitutes a gift, loan, salary, or bonus; and (4) the guarantee of a trading account with the exception of clearing arrangements. The proposed rules would apply to financial arrangements of affiliated traders and trading entities of the off-floor trading firms, and to the requirement of off-floor trading firms to conduct examinations of such affiliated traders and trading entities, and to report thereon to the Exchange. To the extent that en off-floor member firm has made e report of a financial arrangement pursuant to Rule 783 which is identical to a report required under the proposed rules, no such identical report would be required by the off-floor member firm. This would eliminate the unnecessary duplication of reporting by the off-floor member firm. Notwithstanding this exception, off-floor member firms subject to these proposed rules would be responsible for any other disclosure, examination, or other reporting required by the proposed rules.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3470]

Shipping Coordinating Committee; Subcommittee on Stability of Load Lines and on Fishing Vessels Safety; Notice of Meeting Cancellation

On November 15, 2000, 65 FR 69118, the United States Coast Guard published Notice #3466 to announce a meeting of the Shipping Coordinating Committee to be held on Monday, December 11, 2000. The purpose of this meeting was to review the agenda items to be considered at the forty-fourth session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF 44) of the International Maritime Organization (IMO).

This notice is to announce that the meeting is cancelled.

For further information, please contact Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: December 6, 2000.

Mira Piplani,

International Transportation and Commercial Officer.

[FR Doc. 00–31584 Filed 12–7–00; 2:26 pm]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3469]

Shipping Coordinating Committee; Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting Cancellation

On November 15, 2000, 65 FR 69118, the United States Department of State published notice #3467 to announce a meeting of the Shipping Coordinating Committee to be held on Thursday, December 14, 2000. The purpose of this meeting was to review the agenda items to be considered at the thirty-second session of the Subcommittee on Standards of Training and Watchkeeping (STW 32) of the International Maritime Organization (IMO).

This notice is to announce that the meeting is cancelled.

For further information, please contact Chief, Office of Operating and Environmental Standards, U.S. Coast Guard Headquarters, Commandant (G–MSO), room 1210, 2100 Second Street, SW, Washington, DC, 20593–0001 or by calling LCDR Luke Harden at: (202) 267–1838.

December 6, 2000.

Mira Piplani,

International Transportation and Commercial Officer.

[FR Doc. 00–31585 Filed 12–7–00; 2:26 pm]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7740 (PDA–25(R))]

Application by the Kiesel Company for a Preemption Determination as to Missouri Prohibition Against Recontainerization of Hazardous Waste at a Transfer Facility

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Reopening Period for Public Comment

SUMMARY: RSPA is reopening the period for interested parties to submit comments on an application by The Kiesel Company (Kiesel) for an administrative determination whether Federal hazardous material transportation law preempts a Missouri regulation prohibiting the recontainerization of hazardous waste by a transporter at a transfer facility.

DATES: Additional comments received on or before January 25, 2001, and rebuttal comments received on or before March 12, 2001, will be considered before issuing an administrative ruling on Kiesel's application. Rebuttal comments may discuss only those issues raised previously or by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA–00–7740 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to (1) Kiesel's attorney, Mr. Richard Greenberg, Greensfelder, Hemker & Gale, P.C., 2000 Equitable Bldg., 10 South Broadway, St. Louis, MO 63102–1774, and (2) Mr. Stephen M. Mahood, Director, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Greenberg and Mahood at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including each Inconsistency Ruling (IR) and Preemption Determination (PD) issued by DOT, are available through the home page of RSPA's Office of the Chief Counsel, at "http://rspa-atty.dot.gov." A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder (see "For Further Information Contact" below).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

In a June 28, 2000 letter, Kiesel applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the prohibition against recontainerization of hazardous waste in a regulation of the Missouri Department of Natural Resources (DNR) at 10 CSR 25–6.263(2)(A).10.H:

> Recontainerization of hazardous wastes at a transfer facility is prohibited; however, hazardous waste containers may be overpacked to contain leaking or to safeguard against potential leaking. When containers are overpacked, the transporter shall affix labels to the overpack container, which are identical to the labels on the original shipping container; * * *

In its application, Kiesel stated that it is a licensed hazardous waste transporter that has a rail siding at its facility located within the City of St. Louis, Missouri. Kiesel stated that it

> has been in discussions regarding the use of the rail siding at its facility to provide a transfer point for the off loading of hazardous waste from rail cars to tankers or vacuum trucks for transport to a disposal site in Illinois licensed to receive and dispose of hazardous waste. The transfer of hazardous waste from the rail car to a trailer or a vacuum truck would constitute recontainerization which is prohibited under Missouri regulations.

Notice of Kiesel's application was published in the **Federal Register** on August 14, 2000, and interested parties were invited to submit comments by September 28, 2000, and rebuttal comments by November 13, 2000. 65 FR 49633. In the August 14, 2000 public notice, RSPA also referred to DNR's regulations on transporters of hazardous waste set forth in 10 CSR 25–6.263; the lack of any general prohibition in the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, against the transfer of hazardous materials from one container to another; and Kiesel's argument that "an identical regulation" was found to be preempted in PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Waste Incidental to Transportation, 63 FR 62517 (Dec. 6, 1995), decision on petition for reconsideration, 65 FR 15970 (Apr. 3, 1997), petition for judicial review dismissed, *New York* v. *U.S. Dep't of Transportation*, 37 F. Supp. 2d 152 (N.D.N.Y. 1999). 65 FR at 49633. In parts II and III of the August 14, 2000 public notice, RSPA discussed the preemption provisions in 49 U.S.C. 5125 and the procedures for issuing preemption determinations. *Id.* at 49634–35.

II. Comments Received and Request to Withdraw Application

In response to the August 14, 2000 public notice, RSPA has received the following submissions:

—An August 30, 2000 letter from Kiesel clarifying that it had not been advised by DNR that transferring hazardous waste from a rail car to a motor vehicle would constitute a prohibited recontainerization of hazardous waste, contrary to RSPA's understanding from Kiesel's mention

of "discussions" in its application. *See* 65 FR at 49634. In this letter, Kiesel also stated that "the plain language of the regulation would encompass this practice as it would require that rail cars of bulk hazardous waste would be placed in new and different containers such as vacuum trucks or tank trailers."

—A September 28, 2000 comment from National Tank Truck Carriers, Inc. (NTTC) which reads the Missouri regulation to prohibit "the transfer of [a hazardous] product from one container to another." NTTC stated that it is "a national trade association composed of approximately 200 trucking companies which specialize in the transportation of hazardous materials, hazardous wastes and hazardous substances in cargo tank motor vehicles throughout the United States," and implied that at least some of its members are affected by the Missouri prohibition against recontainerization of hazardous wastes at a transfer facility. It stated that the Missouri prohibition is preempted by Federal hazardous material transportation law because "transportation" includes the "loading" and "unloading" of hazardous materials incidental to their movement, and Congress has given DOT the "exclusive power" to regulate matters involving the "packing, repacking [and] handling" of hazardous materials in transportation.

—An undated letter from DNR stating that it has informed Kiesel that "the off-loading of hazardous wastes from rail cars onto trucks, is not prohibited by 10 CSR 25–6.263(1)" and requesting an extension of the comment period "in the event that Kiesel does not withdraw" its application. With this undated letter, DNR attached a copy of its September 26, 2000 letter to Kiesel in which DNR stated that it wants to "work with Kiesel personnel to develop a manifesting protocol to insure all shipments will be accompanied by proper documentation as required by the Department of Transportation, Environmental Protection Agency [EPA], and the Department of Natural Resources (DNR)."

—An October 10, 2000 comment from Safco Safe Transport (Safco), of Seattle, Washington, objecting to an extension of the comment period and questioning whether DNR is attempting to impose additional requirements under a manifest "protocol" that goes beyond the HMR or EPA's regulations. Safco did not indicate whether it operates in Missouri.

—An October 12, 2000 letter from Kiesel stating that it had no objection to a 30-day extension of the period to comment on its application in this matter to "allow further clarification of the position of the Department of Natural Resources and determine if a preemption determination is necessary given the public position of the Department."

—An October 30, 2000 letter from Kiesel stating that it had received "written assurances" from DNR that the prohibition against recontainerization of hazardous wastes "does not apply to the transfer of hazardous wastes transferred from railcars to trucks." Kiesel did not provide a copy of the written assurances it had received from DNR. Kiesel stated that it was withdrawing its application in this matter.

—An undated note from Safco withdrawing its earlier objection to an extension of the comment period and stating that preemption occurs by "operation of law" and "cannot be withdrawn."

III. Discussion

RSPA does not have any procedure for withdrawing an application for a preemption determination. In the past, RSPA has dismissed proceedings involving a city ordinance that never went into effect, Docket No. PDA–3(RF) (Chester, West Virginia), 59 FR 4962 (Feb. 2, 1994), and a local requirement that was repealed after the application was filed, Docket No. PDA–14(R) (El Paso, Texas), 62 FR 11677 (March 21, 1996). But RSPA has never stated that an applicant can end a preemption proceeding by simply withdrawing its application when a non-Federal requirement on transporting hazardous materials remains in effect.

Unlike a lawsuit, these administrative proceedings are initiated only when RSPA publishes a notice in the **Federal Register** inviting interested persons to comment on an application. 49 U.S.C. 5125(d)(1), 49 CFR 107.203(d), 107.205(b). RSPA may dismiss an application without prejudice and return it to the applicant without publishing a notice in the **Federal Register**. *See* 49 CFR 107.207(b). Moreover, there is no "default" suffered in a preemption proceeding if the State, locality, or Indian tribe does not submit comments on an application. *See, e.g.,* PD–5(R), Massachusetts Requirement for an Audible Back-up Alarm on Bulk Tank Carriers Used to Deliver Flammable Material, 58 FR 62702 (Nov. 29, 1993), and IR–27, Colorado Regulations on Transportation of Radioactive Materials, 54 FR 16326 (Apr. 21, 1989), *aff'd, Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Any interested person may submit comments on an application for a preemption determination, unlike a lawsuit where the proceedings are limited to the named parties. 49 CFR 107.205(c). And RSPA may go beyond the application and comments to "initiate an investigation of any statements in an application and utilize * * * any relevant facts obtained by that investigation" and "may consider any other source of information." 49 CFR 107.207(a). Following issuance of a determination, any "aggrieved" person may file a petition for reconsideration, 49 CFR 107.211(a), and any party to the proceeding may "bring an action for judicial review." 49 U.S.C. 5125(f), 49 CFR 107.213.

These differences from a lawsuit are consistent with the very purpose for issuing preemption determinations. RSPA believes that the value in deciding whether a non-Federal requirement is inconsistent with (or preempted by) Federal hazardous material transportation law goes beyond the resolution of an individual controversy. At a time when hazardous materials transportation is receiving a great deal of public attention, the forum provides [RSPA] an opportunity to express its views on the proper role of State and local vis-a-vis Federal regulatory activity in this area. IR–2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas, etc., decision on appeal, 45 FR 71881, 71882 (Oct. 30, 1980).

The manner in which a non-Federal requirement is actually applied or enforced must be considered under the "obstacle" test in 49 U.S.C. 5125(a)(2), but not necessarily under the "dual compliance" test in § 5125(a)(1) or the "substantively the same as" criteria in § 5125(b)(1)(A)–(E). On this point, RSPA previously discussed an "extreme example [of] the nonimplementation or nonenforcement of a directly conflicting State requirement," and found that it "makes no sense * * * to say that since there is no enforcement there is no conflict." *Id.* at 71883. Moreover, a commenter in another proceeding has asserted that a regulation or ordinance is "enforced" whenever it remains in effect, because persons feel compelled to comply with the requirement even when there have not been citations or other "enforcement proceedings." Thus, there may be an issue whether a non-Federal requirement is an obstacle to the safe transportation of hazardous materials and the specific requirements in the HMR, even when not enforced, because the requirement may cause offerors or transporters of hazardous materials to take actions that are not required by the HMR, or refrain from actions that are permitted under the HMR.

While it may not be necessary to look at the actual application of a non-Federal requirement, except when applying the "obstacle" test, the words in the requirement always set the scope of the requirement. In some cases, terms may be defined in the statute, regulation, or ordinance. Otherwise, those terms must be given their usual and customary meaning. But RSPA cannot accept efforts to interpret a non-Federal requirement in a manner that "is in direct conflict with the plain language" of the State, local, or tribal statute, regulation, or ordinance. PD–14(R), Houston, Texas, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials, 63 FR 67506, 67510 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999).

Here, both NTTC and Safco appear to support Kiesel's position that RSPA should consider the "plain language" of Missouri's prohibition against recontainerization of hazardous waste and find that the Missouri regulation is preempted because it is not substantively the same as Federal requirements on "the packing, repacking, [and] handling * * * of hazardous material." 49 U.S.C. 5125(b)(1)(B). Kiesel also specifically refers to PD–12(R), where the applicant and other persons indicated, without contradiction, that New York's repackaging prohibition prevented a transporter "from transferring the contents of rail cars into trucks." 60 FR at 62536.

To date, very few comments have been submitted on Kiesel's application. Neither Kiesel nor DNR has provided a copy of the "written assurances" explaining why the prohibition against recontainerization in 10 CSR 25–6.263(2)(A).10.h would not apply to Kiesel's planned operations, nor has DNR submitted any comments explaining its regulation and why it is not preempted by 49 U.S.C. 5125(b)(1)(B). Under these circumstances, it is appropriate to reopen the comment period rather than simply to proceed to a determination in this proceeding.

IV. Reopening of Comment Periods

The period to submit comments on Kiesel's application is reopened to allow a new initial comment period of 45 days, followed by a 45-day period for rebuttal comments.

All comments should address whether 49 U.S.C. 5125 preempts the prohibition against recontainerization in 10 CSR 25–6.263(2)(A)10.H, and, in the context of the preemption criteria discussed in the August 14, 2000 public notice:

(1) explain the meaning of the Missouri prohibition against recontainerization of hazardous wastes and the manner in which that prohibition is applied and enforced; and

(2) address the assertions in Kiesel's August 30, 2000 letter that the Missouri prohibition against recontainerization precludes a transfer of hazardous waste from a rail car to a motor vehicle and is preempted because it is not substantively the same as RSPA's regulations on the "packing, repacking, [and] handling * * * of hazardous material." 49 U.S.C. 5125(b)(1)(B).

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on December 4, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 00–31477 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–00–8452; Notice 1]

Pipeline Safety: Intent To Approve Waiver and Environmental Assessment of Waiver for Duke Energy

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of Intent to Consider Waiver and Environmental Assessment of Waiver.

SUMMARY: The Office of Pipeline Safety (OPS) is conducting a Risk Management Demonstration Program with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. OPS selected Duke Energy (Duke) as a candidate for participation in the Demonstration Program; subsequently, OPS and Duke held discussions as part of a consultation process. During the consultation, Duke identified a portion of its system where it believed performing alternative risk control activities in lieu of compliance with current regulations would result in a comparable margin of safety and environmental protection. Duke submitted an application to OPS to temporarily waive certain regulatory requirements relating to class location changes for five locations in a 3-line system, ranging from 0.5 miles to 0.88 miles in length and totaling 12.2 miles in fifteen pipeline segments. Duke had previously reduced the operating pressure along the fifteen segments in accordance with these requirements and seeks to return the pipeline to its historical operating pressure. Duke has completed many of the proposed alternative risk control activities related to assuring integrity of the pipeline in the segments for which regulatory relief is sought. Discussions continue between OPS and Duke regarding programmatic aspects of the company's risk management demonstration project.

This Notice announces OPS's intent to approve a waiver to allow Duke to increase the allowable operating pressure in these fifteen pipe segments. OPS has reviewed the terms of this waiver and found them to be appropriate. Among the terms of the waiver that were crucial to OPS's decision to consider granting the waiver were Duke's selection as a candidate for the Risk Management Demonstration Program, Duke's subsequent participation in the consultation process with an OPS Project Review Team (PRT), the comparable margin of safety and environmental protection provided by the proposed activities, and the expectation that the continuing discussions with Duke may result in approval of their risk management demonstration project. In addition, OPS has found that the overall effect of the waiver is not inconsistent with pipeline safety. If granted, this waiver would expire upon either the approval or disapproval of Duke's risk management demonstration project.

OPS is considering whether or not additional regulations to enhance pipeline integrity in high consequence areas are warranted for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov. Within 90 days of OPS's adoption of new rules related to integrity management of natural gas pipelines,

Duke will be required to re-evaluate the effects of this waiver and report to OPS on whether the terms of the waiver continue to be appropriate and whether the overall effect of the waiver remains consistent with pipeline safety.

This Notice also provides an environmental assessment of Duke's Activities. Based on this environmental assessment, OPS has preliminarily concluded that this waiver will have no significant environmental impacts.

OPS seeks public comment on the proposed waiver and the environmental assessment, so that it may consider and address these comments before making a final decision on this matter.

ADDRESSES: OPS requests that comments to this Notice or about this environmental assessment be submitted on or before January 10, 2001, so they can be considered before a final determination is made whether to grant the waiver to Duke. Written comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number RSPA–00–8452. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. You may also submit comments to the docket electronically. To do so, log on to the DMS Web at http://dms.dot.gov. Click on Help & Information to obtain instructions for filing a document electronically.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this Notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION:

1. Background

The Accountable Pipeline Safety and Partnership Act of 1996 authorizes the Secretary of Transportation to establish risk management demonstration projects in partnership with operators of gas and liquid pipeline facilities, pursuant to U.S.C. § 60126. In 1997, OPS announced that Duke Energy (Duke) and eleven other pipeline companies would be candidates for participation in the Risk Management Demonstration Program.[1] [2] Following this announcement, a consultation process commenced, in which an OPS Project Review Team (PRT) and Duke held discussions on the potential participation of Duke in the Demonstration Program. The consultation process involved technical scrutiny by OPS of Duke's safety practices and pipeline integrity.[3]

During the course of the consultation process, Duke identified seven new Class 2 sites on their 3-line system, comprising twenty-one pipeline segments ranging from 0.5 to 2.7 miles in length where it proposed to conduct risk control alternative activities (the "Activities ") in lieu of the class location change requirements in 49 CFR 192.611. Fifteen of these segments are located in Tennessee and six are in Kentucky. Operating pressure has already been reduced for the fifteen Tennessee segments, from 1000 psig to 936 psig, pursuant to the requirements of 49 CFR 192.611. Duke submitted an application on October 5, 2000, for a waiver of the requirements of 49 CFR 192.611 for the fifteen Tennessee segments (the "waiver segments") while consultative discussions regarding Duke's proposed risk management demonstration project continue. If the waiver is approved, Duke will return the operating pressure along the waiver segments, for which most of the proposed Activities have already been completed, to 1000 psig. This document summarizes OPS's review of the Activities and evaluates the extent to which the terms of this waiver are appropriate and the overall effect of the waiver is not inconsistent with pipeline safety, pursuant to 49 U.S.C. 60118(c).

2. OPS Evaluation of Duke's Proposed Alternative Risk Control Activities

Representatives from OPS Headquarters, OPS Southern Region, and the State of Tennessee evaluated Duke's proposed Activities. OPS has evaluated Duke's current risk assessment and risk control processes, the method Duke used to identify and define the Activities, and the analysis Duke performed when comparing the protection provided by 49 CFR 192.611 to the Activities. The OPS evaluation also included an environmental assessment, which is described in Appendix A of this Notice.

The Duke System transports pressurized natural gas, which is lighter than air and flammable. If released as a result of a pipeline leak or rupture, natural gas can potentially ignite causing fires or explosions, loss of life, and/or damage to property or the environment. Protecting the public and environment through the prevention of pipeline leaks and ruptures is the highest priority for OPS and Duke. A major review criterion for this evaluation was whether the Activities Duke proposes will achieve a margin of safety and environmental protection comparable to that achieved through compliance with 49 CFR 192.611. It is the preliminary opinion of OPS that implementing the proposed Activities will result in a comparable margin of safety and environmental protection.

Once OPS has considered comments it receives in response to this Notice, OPS will make a final determination regarding whether to grant a waiver to Duke to return the operating pressure along the waiver segments to 1000 psig and implement any remaining Activities in lieu of compliance with 49 CFR 192.611.

3. Alternative Risk Control Activity Locations

The proposed Activities focus on controlling risks along fifteen pipeline segments in Tennessee. These waiver segments are located on the three parallel lines 10, 15, and 25, downstream from the Mt. Pleasant Compressor Station. The waiver segments lie in Maury and Williamson Counties, Tennessee. The waiver segments are located at the following specific milepost (M.P.) locations on Line 10, and include the adjacent sections of Lines 15 and 25 in each location:

In Maury County, 1.2 miles southwest of Hollywood, TN—From M.P. 226.47 to M.P. 227.50

In Maury County, one-half mile north of Hollywood, TN—From M.P. 228.49 to M.P. 229.21

In Maury County, one mile east of Union Grove, TN—From M.P. 238.00 to M.P. 238.65

In Maury County, 2.5 miles northwest of Rally Hill, TN—From M.P. 247.78 to M.P. 248.27

In Williamson County, 3.5 miles east-northeast of Arrington, TN—From M.P. 264.03 to M.P. 265.42

[1] *Candidates for the Pipeline Risk Management Demonstration Program* (62 FR 40135, July 25, 1997).

[2] *Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program* (62 FR 53052, October 10, 1997).

[3] The consultation process is in its final stages and the proposed Duke Energy Risk Demonstration Project has been approved by the PRT. Documentation that will formally accept Duke Energy into the Risk Management Demonstration Program is currently being prepared. That documentation will include an order requiring completion of all proposed risk control activities and implementation of measures to evaluate their continued effectiveness.

4. Description of Waiver: Alternative Risk Control Activities Designed To Provide Comparable Margin of Safety

4.1 Current Regulatory Requirements

This section describes the current regulatory requirements in 49 CFR 192.611 governing actions that must be taken by a pipeline operator when population density increases along a pipeline.

OPS categorizes all locations along natural gas pipelines according to the population densities near the pipelines (see 49 CFR 192.5). Locations with the lowest population density (10 or fewer buildings intended for human occupancy within an area that extends 220 yards on either side of the centerline of any continuous one mile length of pipeline) are designated as Class 1. As the population along a pipeline increases, the class location increases. For example, Class 2 locations have more than 10 but fewer than 46 buildings intended for human occupancy. Class 3 locations have 46 or more buildings intended for human occupancy, or are areas where a pipeline lies within 100 yards of either a building or small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12 month period. Class 4 locations are any class location unit where buildings with four or more stories above ground are prevalent (e.g. large office buildings).

All of the Duke waiver pipe segments (identified in Section 3) have changed from Class 1 to Class 2.

Pipeline safety regulations impose more stringent design and operational requirements as the class location increases. When a class location changes to a higher class (*e.g.*, from class 1 to class 2), the operator must reduce the operating pressure on the pipeline to provide an additional margin of safety. The operator may be able to avoid a pressure reduction, in some cases, if a pressure test on the pipe has confirmed that a prescribed safety margin exists. In these cases, if a previous pressure test has not confirmed the prescribed safety margin, then the operator must test the pipe to confirm the margin. In other cases, the operator must reduce the pressure or replace the pipe with new pipe. In the case of the waiver segments, Duke has lowered the operating pressure from 1000 psig to 936 psig.

Duke has stated that in order to provide reliable natural gas service to its customers, it cannot maintain the current pressure reduction along the waiver segments. Consequently, in order to increase pressure and provide reliable service, Duke would be required to replace the pipe in the fifteen waiver segments. By replacing the existing pipe with new pipe that has the prescribed design factor, Duke could eliminate the possibility that defects in the original materials and construction, as well as corrosion that may have occurred since installation, would result in a failure.

4.2 Duke's Proposed Alternative Risk Control Activities

For each waiver segment, Duke proposes to perform the following alternative risk control activities, with the objective of providing a margin of safety and environmental protection comparable to pipe replacement:

1. Internally inspect the waiver segments using geometry and magnetic flux leakage in-line inspection tools, which are not required under current regulations. These tools identify indications of wall loss (*e.g.* corrosion), as well as dents and gouges from initial construction damage or third party excavators working along the pipeline right-of-way. These internal inspections have been performed and the OPS Southern Region has reviewed the inspection results.

2. Internally inspect approximately 166 miles of additional pipe on the three parallel lines in the Mt. Pleasant Discharge. These internal inspections have been performed and the OPS Southern Region has reviewed the inspection results.

3. Investigate dents upon completion of the dent inspections for an extended length of pipe (the "extended segments") bordering and including each waiver segment to further extend the benefits of the integrity analysis. The extended segments cover a length of pipe totaling 660 feet on both ends of each waiver segment. These internal inspections have been performed and the OPS Southern Region has reviewed the inspection results.

4. Repair indications of corrosion, existing construction damage, and existing outside force damage identified by the internal inspection using conservative investigation and repair criteria. The criteria used by Duke calls for investigation and repairs of small dents and anomalies that are well below the threshold where pipeline integrity might be compromised.

5. Perform hydrostatic tests of the portions of Line 10 which have not previously been tested to 100 percent (SMYS). This includes two of the waiver segments, 2.5 miles northwest of Rally Hill in Maury County and 3.5 miles east-northeast of Arrington in Williamson County. These hydrostatic tests have been completed.

6. Implement a Communications Plan designed to inform and educate appropriate stakeholders and Duke Energy employees about risk management concepts and the purposes and expected benefits of the Duke Energy Demonstration Project.

7. Perform enhanced damage prevention activities including implementing selected recommendations from a recent study of one-call systems and damage prevention programs best practice, "Common Ground". Duke will also install, for a trial period, the TransWave monitoring system covering all of the waiver segments. This system will be tested to determine its reliability and usefulness for detecting third-party encroachments (construction, excavation, etc.) in the pipeline right-of-way.

As part of the company's risk evaluation, Duke has compared the expected risk reduction produced by increasing the operating pressure and implementing the Activities to that which would be achieved by compliance with the current regulations. OPS has reviewed this evaluation and concluded that the Activities will likely achieve a margin of safety and environmental protection comparable to the margin which would be achieved through compliance with 49 CFR 192.611.

5. OPS's Proposed Action

Based on OPS's evaluation of Duke's proposed Activities, OPS is considering granting Duke a waiver from the pressure confirmation and pipe replacement requirements of 49 CFR 192.611. This waiver would accept Duke's implementation of the Activities in lieu of compliance with this requirement and will allow Duke to return the operating pressure in the waiver segments to 1000 psig. In addition, Duke along with OPS, would be required to monitor the Activities' effectiveness.

OPS is considering whether or not additional regulations to enhance pipeline integrity in high consequence areas are warranted for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov. No more than 90 days after OPS adopts new rules related to integrity management of natural gas pipelines, Duke will be required to re-evaluate the terms and effects of this waiver and report to OPS on whether the terms of the waiver continue to be appropriate and whether

the overall effect of the waiver remains consistent with pipeline safety. If, after reviewing the Duke evaluation and report, OPS determines that the terms of the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, OPS will revoke the waiver and require Duke to comply with 49 CFR 192.611 and all other applicable regulations. This waiver will expire upon approval of Duke's risk management demonstration project or in the event that the Duke risk management demonstration project is disapproved. If either of these actions occur earlier than 90 days after OPS adopts new rules related to integrity management of natural gas pipelines, then this re-evaluation will not be required.

6. Regulatory Perspective

Why is OPS Considering This Waiver?

OPS has determined that the terms of the waiver are appropriate and that the overall effect of the waiver is not inconsistent with pipeline safety. The following factors were considered when making this determination:

1. The proposed Activities will provide a comparable margin of safety and protection for the environment and the communities in the vicinity of Duke's pipelines.

2. Duke's risk-based justification of the alternatives to the class location change regulations is technically sound.

3. The fifteen waiver segments have a good integrity history, with no leaks recorded during operation or hydrostatic testing.

4. Duke has internally inspected a total of 191 miles of pipe on the three parallel lines in the Mt. Pleasant discharge, including all of the waiver segments. These inspections provide added protection against pipeline failures from corrosion, manufacturing and construction defects, and outside third-party damage along the full 191 mile length. Compliance with 49 CFR 192.611 would require replacement of pipe within the waiver segments only (approximately 12 miles of pipe) with no added protection for the extended segments (approximately 181 miles of pipe). The proposed Activities provide added protection by including the additional pipe. Duke also conducted hydrostatic tests to 100% SMYS on Line 10. In addition, Duke has installed the TransWave system and will be evaluating it over the coming year.

5. Duke was selected as a candidate for the Risk Management Demonstration Program and has participated in a rigorous consultation process with OPS, which included an enhanced sharing with OPS of information related to the integrity Duke's pipeline. The consultation process is nearly complete and may result in acceptance of Duke into the Risk Management Demonstration Program including enforceable commitments for the additional risk control activities.

How Will OPS Oversee the Activities?

OPS retains its authority to enforce Duke's compliance with the pipeline safety regulations. OPS is only considering whether to grant a waiver from compliance with 49 CFR 192.611 at those fifteen segments where Duke has demonstrated that its proposed Activities achieve a comparable margin of safety and environmental protection. Should any information subsequently indicate that the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, then OPS retains its authority to revoke the waiver and require Duke to again comply with 49 CFR 192.611 and all other applicable regulations.

This Notice is OPS's final request for public comment before OPS makes a final decision on granting the waiver to Duke.

Issued in Washington, DC, on December 5, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31340 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–8453; Notice 1]

Pipeline Safety: Intent To Consider Waiver and Environmental Assessment of Waiver for Tennessee Gas Pipeline Company

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of intent to consider waiver and environmental assessment of waiver.

SUMMARY: The Office of Pipeline Safety (OPS) is conducting a Risk Management Demonstration Program with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. OPS selected Tennessee Gas Pipeline Company (TGP) as a candidate for participation in the Demonstration Program; subsequently, OPS and TGP held discussions as part of a consultation process. During the consultation, TGP identified a portion of its system where it believed performing alternative risk control activities in lieu of compliance with current regulations would result in a comparable margin of safety and environmental protection. TGP submitted an application to OPS to waive certain regulatory requirements relating to class location changes for four pipeline segments. TGP's application stated that TGP would carry out the proposed alternative risk control activities in lieu of compliance with these regulations.

This Notice announces OPS's intent to consider granting a waiver to allow TGP to perform the proposed alternative risk control activities. OPS has reviewed the terms of this waiver and found them to be appropriate. Among the terms of the waiver that were crucial to OPS's decision to consider granting the waiver were TGP's selection as a candidate for the Risk Management Demonstration Program and TGP's subsequent participation in a consultation process with OPS. In addition, OPS has found that the overall effect of the waiver is not inconsistent with pipeline safety, because TGP's proposed Activities achieve a margin of safety and environmental protection comparable to the margin achieved by compliance with current regulations. Within 90 days of OPS's adoption of new rules related to integrity management of natural gas pipelines [1], TGP will be required to re-evaluate the effects of its proposed alternative risk control activities and report to OPS on whether the terms of the waiver continue to be appropriate and whether the overall effect of the waiver remains consistent with pipeline safety. This Notice also provides an environmental assessment of TGP's Activities. Based on this environmental assessment, OPS has preliminarily concluded that this waiver will have no significant environmental impacts.

OPS seeks public comment on the proposed waiver and the environmental assessment, so that it may consider and address these comments before making a final decision on this matter.

ADDRESSES: OPS requests that comments to this Notice or about this environmental assessment be submitted on or before January 10, 2001, so they can be considered before a final determination is made whether to grant the waiver to TGP. Written comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number RSPA–00–8453. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You may also submit comments to the docket electronically. To do so, log on to the DMS Web at http://dms.dot.gov. Click on Help & Information to obtain instructions for filing a document electronically.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this Notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION:

1. Background

The Accountable Pipeline Safety and Partnership Act of 1996 authorizes the Secretary of Transportation to establish risk management demonstration projects in partnership with operators of gas and liquid pipeline facilities, pursuant to U.S.C. 60126. In 1997, OPS announced that Tennessee Gas Pipeline Company (TGP) and eleven other pipeline companies would be candidates for participation in the Risk Management Demonstration Program.[2] [3] Following this announcement, a consultation process commenced, in which an OPS Project Review Team (PRT) and TGP held discussions on the potential participation of TGP in the Demonstration Program. The consultation process involved technical scrutiny by OPS of TGP's safety practices and pipeline integrity.

During the course of the consultation process, TGP identified four pipeline segments in its system where it proposed to conduct risk control alternative activities (the "Activities") in lieu of the class location change requirements in 49 CFR 192.611. TGP submitted an application [4] for a waiver of the requirements of 49 CFR 192.611 for the four segments (the "waiver segments") and implementation of the Activities in lieu of compliance. This document summarizes OPS's review of the Activities and evaluates the extent to which the terms of the waiver are appropriate and the overall effect of the waiver is not inconsistent with pipeline safety pursuant to 49 U.S.C. 60118(c).

2. OPS Evaluation of TGP's Proposed Alternative Risk Control Activities

Representatives from OPS Headquarters and Southern Region evaluated TGP's proposed Activities. OPS met with TGP to discuss the current risk assessment and risk control processes TGP uses, how these processes were used to identify and define the Activities, and the analysis of the protection achieved by the Activities compared to the protection 49 CFR 192.611 provides. The evaluation also included an environmental assessment, which is described in Appendix A of this Notice. (Appendix A is available in the Dockets Facility. See the **ADDRESSES** Section above).

The TGP System transports pressurized natural gas, which is lighter than air and flammable. If released as a result of a pipeline leak or rupture, natural gas can potentially ignite causing fires or explosions. Protection of the public and environment by the prevention of pipeline leaks and ruptures is the highest priority for OPS and TGP. A major review criterion for this evaluation is whether the Activities TGP has proposed will achieve a margin of safety and environmental protection comparable to that achieved through compliance with 49 CFR 192.611. It is the preliminary opinion of OPS that implementing the proposed Activities will result in a comparable margin of safety and environmental protection.

Once OPS has considered comments it receives in response to this Notice, OPS will make a final determination regarding whether to grant a waiver to TGP to allow implementation of the Activities in lieu of compliance with 49 CFR 192.611.

3. Alternative Risk Control Activity Locations

The proposed Activities focus on controlling the risks in four pipeline segments located together in Tennessee. These waiver segments are located on the four parallel Lines 800–1, 500–1, 500–2, and 500–3, approximately 11.2 miles downstream of Compressor Station 860. The waiver segments lie in both Hickman and Dickson Counties, Tennessee. The specific milepost (M.P.) locations and lengths of the four segments are:

Line 800–1: From M.l'. 860–1+10.70 to M.P. 860–1+11.60 (4745 feet)
Line 500–1: From M.P. 559–1+10.72 to M.P. 559–1+11.58 (4521 feet)
Line 500–2: From M.P. 559–2+10.77 to M.P. 559–2+11.57 (4200 feet)
Line 500–3: From M.P. 559–3+11.35 to M.P. 559–3+11.64 (1540 feet)

4. Description of Waiver: Alternative Risk Control Activities Designed To Provide Comparable Margin of Safety

4.1 Current Regulatory Requirements

This section describes the current regulatory requirements in 49 CFR 192.611 governing actions that must be taken by a pipeline operator when population density increases along a pipeline.

OPS categorizes all locations along natural gas pipelines according to the population densities near the pipelines (see 49 CFR 192.5). Locations with the lowest population density (10 or fewer buildings intended for human occupancy within an area that extends 220 yards on either side of the centerline of any continuous one mile length pipeline) are designated as Class 1. As the population along a pipeline increases, the class location increases. For example, Class 2 locations have more than 10 but fewer than 46 buildings intended for human occupancy. Class 3 locations have 46 or more buildings intended for human occupancy, or are areas where a pipeline lies within 100 yards of either a building or small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12 month period. Class 4 locations are any class location unit where buildings with four or more stories above ground are prevalent (*e.g.* large office buildings).

All four of the TGP waiver segments (identified in Section 3) have changed from Class 2 to Class 3.

Pipeline safety regulations impose more stringent design and operational requirements as the class location increases. When a class location changes to a higher class (*e.g.*, from Class 2 to Class 3), the operator must reduce the operating pressure on the pipeline to provide an additional margin of safety. The operator may be able to avoid reducing pressure, in some cases, if a pressure test on the pipe has

[1] OPS is considering whether or not additional regulations to enhance pipeline integrity in high consequence areas is warranted for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov.

[2] Candidates for the Pipeline Risk Management Demonstration Program (62 FR 40135, July 25, 1997).

[3] Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program (62 FR 53052, October 10, 1997).

confirmed that a prescribed safety margin exists. In these cases, if a previous pressure test has not confirmed the prescribed safety margin, then the operator must test the pipe to confirm the margin. In other cases, the operator must reduce the pressure or replace the pipe with new pipe.

TGP has stated that in order to provide reliable natural gas service to its customers, it cannot permanently reduce the operating pressure along the waiver segments. Consequently, in order to meet pipeline safety regulations, TGP would be required to conduct a requalification test or replace the pipe in the four waiver segments. In some portions of the waiver segments, current regulations would require TGP to replace the pipe. In other portions, current regulations allow TGP to conduct a requalification test (TGP has already tested these portions). By replacing the existing pipe with new pipe that has the prescribed design factor, TGP could eliminate the possibility that defects in the original materials and construction, as well as corrosion that may have occurred since installation, would result in a failure. By conducting a requalification test, TGP could verify the pipeline integrity.

4.2 TGP's Proposed Alternative Risk Control Activities

For each waiver segment, TGP proposes to perform the following alternative risk control activities, with the objective of providing a margin of safety and environmental protection comparable to pipe replacement or requalification testing:

5. Internally inspect the waiver segments using geometry and magnetic flux leakage in-line inspection tools, which are not required under current regulations. These tools reliably identify indications of wall loss (*e.g.* corrosion), as well as dents and gouges from initial construction damage or third party excavators working along the pipeline right-of-way. These internal inspections have been performed and the OPS Southern region has reviewed the inspection results.

6. Internally inspect an extended length of pipe (the "extended segments") bordering each waiver segment to further extend the benefits of the integrity analysis. The extended segments cover the distance between Compressor Station 860 and mainline valves 861–1, 560–1, 560–2, and 560–3, a distance of approximately 18.2 miles on each pipeline.

7. Repair indications of corrosion, existing construction damage, and existing outside force damage identified by the internal inspection. TGP used more conservative investigation and repair criteria in the waiver segments and extended segments than is currently required by the regulations. The criteria call for investigation and repairs of small dents and anomalies that are well below the threshold where pipeline integrity might be compromised.

8. Perform close-interval surveys on the waiver segments and extended segments, as an additional method to detect possible pipeline corrosion. Close-interval surveys are not required on these segments under current regulations. TGP has performed close-interval surveys on approximately 18.2 miles of pipe on each line .

OPS has compared the expected risk reduction produced by the Activities to that which would be achieved by compliance with current regulations and concluded that the Activities will likely achieve a margin of safety and environmental protection comparable to the margin which would be achieved through compliance with 49 CFR 192.611. Furthermore, because of the resources saved by not having to replace pipe in the waiver segments, TGP will be able to assess the integrity of additional portions of its system, which reduces the overall risks along the TGP pipeline system.

5. OPS's Proposed Action

Based on OPS's evaluation of TGP's proposed Activities, OPS is considering granting TGP a waiver from the pressure confirmation and pipe replacement requirements of 49 CFR 192.611.

This waiver accepts TGP's implementation of the Activities in lieu of compliance with this requirement. In addition, TGP along with OPS, would be required to monitor the Activities' effectiveness.

No more than 90 days after OPS adopts new rules related to integrity management of natural gas pipelines, TGP will be required to re-evaluate the terms and effects of this waiver and report to OPS on whether the terms of the waiver continue to be appropriate and whether the overall effect of the waiver remains consistent with pipeline safety. If, after reviewing the TGP evaluation and report, OPS determines that the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, OPS will revoke the waiver and require TGP to comply with 49 CFR 192.611 and all other applicable regulations.

6. Regulatory Perspective

Why Is OPS Considering This Waiver?

OPS has determined that the terms of the waiver are appropriate and that the overall effect of the waiver is not inconsistent with pipeline safety. The following factors were considered when making this determination:

1. The proposed activities will provide comparable margin of safety and protection for the environment and the communities in the vicinity of TGP's pipelines;

2. The four waiver segments have a good integrity history, with no leaks recorded during operation or hydrostatic testing.

3. TGP has internally inspected and conducted close-interval surveys on a total of 72.8 miles of pipe, including the waiver segments. These activities add protection against pipeline failures from corrosion, manufacturing and construction defects, and outside third-party damage along this full 72.8 mile length. Compliance with 49 CFR 192.611 would require replacement of pipe or requalification tests within the waiver segments only (less than 3 miles of pipe), with no added protection for the extended segments (approximately 69 miles of pipe). The TGP Activities provide added protection by including the extended segments.

4. TGP was selected as a candidate for the Risk Management Demonstration Program and has participated in a consultation process with OPS, which included an enhanced sharing with OPS of information related to the integrity TGP's pipeline.

How Will OPS Oversee the Activities?

OPS retains its authority to enforce TGP's compliance with the pipeline safety regulations. OPS is only considering whether to grant a waiver from compliance with 49 CFR 192.611 at those four segments where TGP has demonstrated that its proposed Activities achieve a comparable margin of safety and environmental protection. Should any information subsequently indicate that the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, then OPS retains its authority to revoke the waiver and require TGP to again comply with 49 CFR 192.611 and all other applicable regulations.

This Notice is OPS's final request for public comment before OPS makes a final decision on whether to grant the waiver to TGP.

Issued in Washington, DC, on December 5, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31339 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–60–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33944]

Texas Pacifico Transportation, Ltd.—Lease [1] and Operation Exemption—State of Texas

Texas Pacifico Transportation, Ltd. (Pacifico), a noncarrier Texas limited partnership, has filed a notice of exemption under 49 CFR 1150.31 to lease from the State of Texas, acting by and through the Texas Department of Transportation (TxDOT), and to operate as a common carrier approximately 370.5 miles of rail line in Brewster, Coleman, Crane, Crockett, Irion, Pecos, Presidio, Reagan, Runnels, Tom Green, and Upton Counties, TX.[2] Pacifico would acquire the right to operate between milepost 1029.1 on the International Bridge near Presidio, TX, and milepost 956.7 at Paisano Junction, and between milepost 945.3, at Alpine Junction, and milepost 0 + 330 feet, near San Angelo Junction on the east, and Lampasas Subdivision milepost 373 + 4362 feet, near San Angelo Junction on the west. According to Pacifico, SORC has assigned to Pacifico, with the consent of the Union Pacific Railroad Company (UP), SORC's trackage rights over an additional 11.4 miles of UP line located between milepost 956.7 at Paisano Junction and milepost 945.3 at Alpine Junction. The operations by Pacifico would thus extend over approximately 381.9 miles. Pacifico states that its projected revenues will not exceed those of a Class III rail carrier as a result of this transaction.[3]

The transaction was expected to be consummated on or after November 29, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33944, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW (8th floor), Washington, DC 20036–1601.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: December 4, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31343 Filed 12–8–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The filed notice is captioned as an "acquisition" and operation exemption, but the described transaction involves a lease. Accordingly, this notice has been re-captioned to reflect the lease.

[2] TxDOT acquired the rail line between milepost 1029.1 and milepost 956.7 from South Orient Railroad Company, Ltd. (SORC), pursuant to the transaction that was the subject of a notice of exemption in *State of Texas Acting by and Through the Texas Department of Transportation—Acquisition and Operation Exemption—South Orient Railroad Company, Ltd.*, STB Finance Docket No. 33946 (STB served Nov. 2, 2000).

[3] Earlier this year, Pacifico had evidently planned to acquire SORC's rights to operate over these lines directly from SORC. *See Texas Pacifico Transportation, Ltd.—Acquisition and Operation Exemption—South Orient Railroad Company, Ltd.*, STB Finance Docket No. 33851 (STB served Mar. 3, 2000). According to Pacifico, the previously authorized transaction was never consummated and did not result in the initiation of railroad operations.

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

November 30, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 10, 2001.

Internal Revenue Service (IRS)

OMB Number: 1545–1151.

Form Number: IRS Form 8818.

Type of Review: Extension.

Title: Optional Form to Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.

Description: Under Internal Revenue Code section 135, if an individual redeems U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. Form 8818 can be used to keep a record of the bonds cashed so that the taxpayer can claim the proper interest exclusion.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 25,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Recordkeeping	13
Learning about the law or the form	5
Preparing the form	21

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 32,000 hours.

OMB Number: 1545–1567.

Form Number: IRS Form 8854.

Type of Review: Extension.

Title: Expatriation Information Statement.

Description: Internal Revenue Code Section 6039G requires persons who lost U.S. citizenship to provide information concerning citizenship, income tax liability, net worth, and net assets. Form 8854 is used to report this information.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 11,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Part I (in minutes)	Parts I and II
Recordkeeping	33	2 hr., 57 min.
Learning about the law or the form	13	26 min.
Preparing the form	40	1 hr., 24 min.
Copying, assembling, and sending the form to the IRS	20	35 min.

Frequency of Response: Other (Once).
Estimated Total Reporting/ Recordkeeping Burden: 23,060 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–31375 Filed 12–8–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 5, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 10, 2001, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1701.
Revenue Procedure Number: Revenue Procedure 2000–37.
Type of Review: Extension.
Title: Reverse Like-Kind Exchanges.
Description: The revenue procedure provides a safe harbor for reverse like-kind exchanges under which a transaction using a "qualified exchange accommodation agreement" will qualify for non-recognition treatment under § 1031 of the Internal Revenue Code.
Respondents: Business or other for-profit, Individuals or households, farms.
Estimated Number of Respondents/ Recordkeepers: 1,600.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: Other (one time per transaction).
Estimated Total Reporting/ Recordkeeping Burden: 3,200 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–31376 Filed 12–8–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Brewer's Operations Reports.

DATES: Written comments should be received on or before February 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to William H. Foster, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Brewer's Operations Report.
OMB Number: 1512–0052.
Form Number: ATF F 5130.9, Brewer's Report of Operations and ATF F 5130.26, Brewpub Report of Operations.
Abstract: The Internal Revenue Code requires brewers to pay excise taxes on beer they remove for consumption or sale. The tax is imposed by 26 U.S.C. 5051. Related operational requirements are imposed by Section 5415, including a requirement to report production and other elements of brewery operations to ATF. Brewers must file operations reports for various periods, depending on the quantity of beer they produce. The reports must be available for inspection by ATF officers during normal business hours. The brewers must keep the reports for a period of 3 years.

Current Actions: The Brewer's Report of Operations, ATF F 5130.9 is being reduced in size and a new form, ATF F 5130.26, Brewpub Report of Operations is being created for certain smaller brewers whose production is not more than 5,000 barrels per year and who do not bottle or keg their beer. Both forms are in the plain language style, include more extensive instructions, and eliminate current formatting deficiencies. There is an increase in burden hours.

Type of Review: Revision.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,750.
Estimated Time Per Respondent: 30 minutes for each ATF F 5130.26 and 45 minutes for each ATF F 5130.9.
Estimated Total Annual Burden Hours: 5,405.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 4, 2000.

William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–31474 Filed 12–8–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Brewer's Bonds and Continuation Certificates.

DATES: Written comments should be received on or before February 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to William H. Foster, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Brewer's Bonds and Continuation Certificates.
OMB Number: 1512–0081.
Form Number: ATF F 5130.22, Brewer's Bond, ATF F 5130.23, Brewer's Bond Continuation Certificate, ATF F 5130.25, Brewer's Collateral Bond, ATF F 5130.27, Brewer's Collateral Bond Continuation Certificate.
Abstract: The Internal Revenue Code requires brewers to give a bond to protect the revenue and to ensure compliance with the requirements of laws and regulations. Bonds and continuation certificates are required by law and are necessary to protect government interests in the excise tax revenues that brewers pay. Brewer's must keep their current bonds for as long as the brewery is in operation.
Current Actions: ATF F 5130.25, Brewer's Collateral Bond is a new form that replaces the attachments, strikeouts and insertions of the existing surety bond, ATF F 5130.22 with a correct and easy-to-use form to meet the requirements of 26 U.S.C. 5401 with collateral transactions instead of a surety bond. ATF F 5130.27, Brewer's Collateral Bond Continuation Certificate is a new form in which a brewer has the option of using this form in order to continue the collateral bond for 4 years. ATF F 5130.22, Brewer's Bond has been revised to include additional instructions that are more easily understood and the entire form has been rewritten in the plain language format. ATF F 5130.23, Brewer's Bond Continuation Certificate has been rewritten in the plain language format and the collateral option transaction has been placed in the new ATF F 5130.27. ATF estimates that the forms will reduce the burden by 25% for each individual, depending on circumstances. The total burden will increase, however, since there is a significant increase in the number of brewers since the last submission.

Type of Review: Revision.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,750.
Estimated Time Per Respondent: 45 minutes per form.
Estimated Total Annual Burden Hours: 600
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2000.

William T. Earle,
Assistant Director (Management), CFO.
[FR Doc. 00–31475 Filed 12–8–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Minimum Security Devices and Procedures.

DATES: Submit written comments on or before February 9, 2001.

ADDRESSES: *Mail:* Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0062.
Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention 1550–0062.
Facsimiles: Send facsimile transmissions to FAX Number (202) 906–7755, Attention 1550–0062; or (202) 906–6956 (if comments are over 25 pages).
E-Mail: Send e-mails to "public.info@ots.treas.gov", Attention 1550–0062, and include your name and telephone number.
Public Inspection: Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9:00 a.m. until 5:00 p.m. on business days. Comments and the related index will also be posted on the OTS Internet Site at "www.OTS.treas.gov".

FOR FURTHER INFORMATION CONTACT: Richard Riese, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6134.

SUPPLEMENTARY INFORMATION:

Title: Minimum Security Devices and Procdures.
OMB Number: 1550–0062.
Form Number: Not applicable.
Abstract: The Bank Protection Act and OTS implementing regulations

require thrifts to establish security devices and procedures. Written security programs allow OTS to evaluate whether thrifts have adopted policies and procedures to ensure compliance with the law and regulations. FDIC, OCC and FRB have substantially similar regulations.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,080.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,160 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 5, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–31473 Filed 12–8–00; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 65, No. 238

Monday, December 11, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6904–3]

Hazardous Waste Management System; Proposed Exclusion for Identification and Listing Hazardous Waste

Correction

In proposed rule document 00–29647 beginning on page 75897 in the issue of Tuesday, December 5, 2000, make the following correction:

On page 75897, in the third column, in the **DATES** section, in the last line, "January 19, 2000" should read "January 19, 2001".

[FR Doc. C0–29647 Filed 12–8–00; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212-AA58

Premium Rates; Payment of Premium

Correction

In rule document 00–30322 beginning on page 75160, in the issue of Friday, December 1, 2000, make the following corrections:

1. On page 75161, in the third column, in the first full paragraph, in the eighth line and in the 10th line, "3$^1/_{12}$" should read "$^3/_{12}$".

[FR Doc. C0–30322 Filed 12–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43614; File No. SR–Phlx–00–101]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program for Exchange Rule 98, Emergency Committee Until April 30, 2001

November 22, 2000.

Correction

In notice document 00–30667 beginning on page 75332 in the issue of Friday, December 1, 2000, the date is added to read as set forth above.

[FR Doc. C0–30667 Filed 12–8–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Monday,
December 11, 2000

Part II

Department of Education

34 CFR Part 373
Special Demonstration Programs; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 373

Special Demonstration Programs

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations governing the Special Demonstration Programs. These regulations are needed to implement changes in the Rehabilitation Act Amendments of 1998. The regulations provide definitions and requirements for grants and contracts under the expanded authority of the Special Demonstration Programs.

DATES: These regulations are effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, Ph.D., U.S. Department of Education, 400 Maryland Avenue, SW., room 3038 MES, Washington, DC 20202–2575. Telephone: (202) 205–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations implement changes to the Rehabilitation Act of 1973, as amended (Act), made by the Rehabilitation Act Amendments of 1998, enacted as part of the Workforce Investment Act of 1998 (Pub. L. 105–220), on August 7, 1998, and as further amended in 1998 by technical amendments in the Reading Excellence Act and the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1998 (hereinafter collectively referred to as the 1998 Amendments).

On June 23, 2000 we published a notice of proposed rulemaking (NPRM) for the Special Demonstration Programs in the **Federal Register** (65 FR 39252). In the preamble to the NPRM, we noted that section 303(b) of the Act, which contains the authority for these programs, had undergone considerable changes. While continuing to focus on the expansion and improvement of rehabilitation services, the Special Demonstration Programs now include the expansion and improvement of other services authorized under the Act.

In addition to reflecting this statutory change in the purpose of the Special Demonstration Programs, these regulations have been designed to give the Secretary greater flexibility in making awards that are relevant and responsive to the needs of individuals with disabilities. The following overview, which was originally contained in the preamble to the NPRM (pages 39252 and 39253), describes the benefits of the regulations:

Section 373.2 provides additional flexibility in determining eligible entities.

Section 373.4 contains terms from the Act and other terms that may be used in applying for a grant and administering a grant project.

Section 373.6 permits the Secretary to meet the current trends and needs relative to services for individuals with disabilities and on accepted methods of improving and expanding those services. In addition, the Secretary may announce priorities without further public comment. Additional information and requirements pertinent to the priorities will be announced in the **Federal Register** and in the application package for a given competition.

Section 373.11 permits the Secretary to inform the potential applicant of information the Secretary may consider, in addition to the peer review scores, when making an award.

Section 373.20 permits the Secretary to institute a matching requirement not to exceed 10 percent of the total project costs. The matching funds may be provided in cash or in-kind.

Section 373.21 informs grantees under section 306 of the Act that the Secretary may require that recipients of grants under this title submit information, including data, necessary to measure project outcomes and performance, including any data needed to comply with the Government Performance and Results Act of 1993 (GPRA). We are developing a uniform data collection instrument for future use by grantees under this program. This instrument will be published in the **Federal Register** for public comment. The inclusion of § 373.21 emphasizes the authority for the Secretary to require needed information.

Section 373.22 limits indirect cost reimbursement for grants under this program to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less.

Section 373.23 lists additional requirements for grantees.

There are no differences between the NPRM and these final regulations.

Public Comment

In the NPRM we invited comments on the proposed regulations. We did not receive any substantive comments.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy. These regulations further the objectives of this goal by implementing programs to provide vocational rehabilitation services and other services to provide increased employment opportunities for individuals with disabilities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.235 Special Demonstration Program)

List of Subjects in 34 CFR Part 373

Grant programs—education, Vocational rehabilitation.

Dated: December 5, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 373 to read as follows:

PART 373—SPECIAL DEMONSTRATION PROGRAMS

Subpart A—General

Sec.

373.1 What is the purpose of the Special Demonstration Programs?
373.2 Who is eligible for assistance?
373.3 What regulations apply?
373.4 What definitions apply?
373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?
373.6 What are the priorities and other factors and requirements for competitions?

Subpart B—How Does the Secretary Make a Grant?

373.10 What selection criteria does the Secretary use?
373.11 What other factors does the Secretary consider when making a grant?

Subpart C—What Conditions Must Be Met by a Grantee?

373.20 What are the matching requirements?
373.21 What are the reporting requirements?
373.22 What are the limitations on indirect costs?
373.23 What additional requirements must be met?
373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

Authority: 29 U.S.C. 773(b), unless otherwise noted.

Subpart A—General

§ 373.1 What is the purpose of the Special Demonstration Programs?

The purpose of this program is to provide competitive grants to, or enter into contracts with, eligible entities to expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or to further the purposes and policies in sections 2(b) and (c) of the Act by supporting activities that increase the provision, extent, availability, scope, and quality of rehabilitation services under the Act, including related research and evaluations activities.

(Authority: 29 U.S.C. 701(b) and (c), 711(c), and 773(b))

§ 373.2 Who is eligible for assistance?

(a) The following types of organizations are eligible for assistance under this program:

(1) State vocational rehabilitation agencies.

(2) Community rehabilitation programs.

(3) Indian tribes or tribal organizations.

(4) Other public or nonprofit agencies or organizations, including institutions of higher education.

(5) For-profit organizations, if the Secretary considers them to be appropriate.

(6) Consortia that meet the requirements of 34 CFR 75.128 and 75.129.

(7) Other organizations identified by the Secretary and published in the **Federal Register.**

(b) In competitions held under this program, the Secretary may limit competitions to one or more types of these organizations.

(Authority: 29 U.S.C. 711(c) and 773(b)(2))

§ 373.3 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 35 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 373.

(c) The regulations in 48 CFR part 31 (Contracts Cost Principles and Procedures).

(Authority: 29 U.S.C. 711(c))

§ 373.4 What definitions apply?

The following definitions apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

(Authority: 29 U.S.C. 701 *et seq.*)

Early intervention means a service delivery or model demonstration program for adults with disabilities designed to begin the rehabilitation services as soon as possible after the onset or identification of actually or potentially disabling conditions. The populations served may include, but are not limited to, the following:

(a) Individuals with chronic and progressive diseases that may become more disabling, such as multiple sclerosis, progressive visual disabilities, or HIV.

(b) Individuals in the acute stages of injury or illness, including, but not limited to, diabetes, traumatic brain injury, stroke, burns, or amputation.

(Authority: 29 U.S.C. 711(c))

Employment outcome is defined in 34 CFR 361.5.

(Authority: 29 U.S.C. 711(c))

Individual with a disability is defined as follows:

(a) For an individual who will receive rehabilitation services under this part, an individual with a disability means an individual—

(1) Who has a physical or mental impairment which, for that individual, constitutes or results in a substantial impediment to employment; and

(2) Who can benefit in terms of an employment outcome from vocational rehabilitation services.

(b) For all other purposes of this part, an individual with a disability means an individual—

(1) Who has a physical or mental impairment that substantially limits one or more major life activities;

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(2) Who has a record of such an impairment; or

(3) Who is regarded as having such an impairment.

(c) For purposes of paragraph (b) of this definition, projects that carry out services or activities pertaining to Title V of the Act must also meet the requirements for "an individual with a disability" in section 7(20)(c) through (e) of the Act, as applicable.

(Authority: 29 U.S.C 705(20)(A) and (B))

Individual with a significant disability means an individual—

(a) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: 29 U.S.C. 705(21)(A))

Informed choice means the provision of activities whereby individuals with disabilities served by projects under this part have the opportunity to be active, full partners in the rehabilitation process, making meaningful and informed choices as follows:

(a) During assessments of eligibility and vocational rehabilitation needs.

(b) In the selection of employment outcomes, services needed to achieve the outcomes, entities providing these services, and the methods used to secure these services.

(Authority: 29 U.S.C. 711(c))

Rehabilitation services means services provided to an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Rehabilitation services for an individual with a disability may include—

(a) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(b) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(c) Referral and other services to secure needed services from other agencies;

(d) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(e) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(f) Diagnosis and treatment of physical and mental impairments;

(g) Maintenance for additional costs incurred while the individual is receiving services;

(h) Transportation;

(i) On-the-job or other related personal assistance services;

(j) Interpreter and reader services;

(k) Rehabilitation teaching services, and orientation and mobility services;

(l) Occupational licenses, tools, equipment, and initial stocks and supplies;

(m) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(n) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(o) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(p) Supported employment services;

(q) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(r) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(s) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(1) Self-employment, business ownership, and entreprenuership;

(2) Non-traditional jobs, professional employment, and work settings;

(3) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(4) Other services as identified by the Secretary and published in the **Federal Register**.

(Authority: 29 U.S.C. 711(c) and 723(a))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's capacities and abilities.

(Authority: 29 U.S.C. 705(20)(A))

Youth or Young adults with disabilities means individuals with disabilities who are between the ages of 16 and 26 inclusive when entering the program.

(Authority: 29 U.S.C. 711(c) and 723(a))

§ 373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?

(a)(1) For projects that provide rehabilitation services or activities to expand and improve the provision of rehabilitation services and other services authorized under Titles I, III, and VI of the Act, individuals are eligible who meet the definition in paragraph (a) of an "individual with a disability" as stated in § 373.4.

(2) For projects that provide independent living services or activities, individuals are eligible who meet the definition in paragraph (b) of an "individual with a disability" as stated in § 373.4.

(3) For projects that provide other services or activities that further the purposes of the Act, individuals are eligible who meet the definition in paragraph (b) of an "individual with a disability" as stated in § 373.4.

(b) By publishing a notice in the **Federal Register**, the Secretary may identify individuals determined to be eligible under one or more of the provisions in paragraph (a) of this section.

(Authority: 29 U.S.C. 711(c) and 723(a))

§ 373.6 What are the priorities and other factors and requirements for competitions?

(a)(1) In making an award, the Secretary may limit competitions to, or otherwise give priority to, one or more of the priority projects listed in paragraph (b) of this section that are identified by the Secretary and published in a notice in the **Federal Register**.

(2) The Secretary also will identify in the notice the following:

(i) Specific required priority project activities authorized under section 303 of the Act that the applicant must conduct for the priority project to be approved for funding.

(ii) Any of the additional factors listed in paragraph (c) of this section that the Secretary may consider in making an award.

(b) Priority projects are as follows:

(1) Special projects of service delivery.

(2) Model demonstration.

(3) Technical assistance.

(4) Systems change.

(5) Special studies, research, or evaluations.

(6) Dissemination and utilization.

(7) Replication.

(8) Special projects and demonstration of service delivery for adults who are low-functioning and deaf or low-functioning and hard of hearing.

(9) Supported employment.

(10) Model transitional rehabilitation services for youth and young adults with disabilities.

(11) Expansion of employment opportunities for individuals with disabilities, as authorized in paragraph (s) of the definition of "rehabilitation services" as stated in § 373.4.

(12) Projects to promote meaningful access of individuals with disabilities to employment-related services under Title I of the Workforce Investment Act of 1998 and under other Federal laws.

(13) Innovative methods of promoting achievement of high-quality employment outcomes.

(14) The demonstration of the effectiveness of early intervention activities in improving employment outcomes.

(15) Projects to find alternative methods of providing affordable transportation services to individuals with disabilities.

(16) Other projects that will expand and improve the provision, extent, availability, scope, and quality of rehabilitation and other services under the Act or that further the purpose and policy of the Act as stated in section 2(b) and (c) of the Act.

(c) The Secretary may identify and publish in the **Federal Register** for specific projects listed in paragraph (b) of this section one or more of the following factors, including any specific elements defining any factor (*e.g.*, the Secretary may identify ages 16 through 21 to be the specific age range for a particular competition):

(1) Specific stages of the rehabilitation process.

(2) Unserved and underserved populations.

(3) Unserved and underserved geographical areas.

(4) Individuals with significant disabilities.

(5) Low-incidence disability populations.

(6) Individuals residing in federally designated Empowerment Zones and Enterprise Communities.

(7) Types of disabilities.

(8) Specific age ranges.

(9) Other specific populations and geographical areas.

(d) The Secretary may require that an applicant certify that the project does not include building upon or expanding activities that have previously been conducted or funded, for that applicant or in that service area.

(e) The Secretary may require that the project widely disseminate the methods of rehabilitation service delivery or model proven to be effective, so that they may be adapted, replicated, or purchased under fee-for-service arrangements by State vocational rehabilitation agencies and other disability organizations in the project's targeted service area or other locations.

(Authority: 29 U.S.C. 711(c) and 773(b)(4) and (5))

Subpart B—How Does the Secretary Make a Grant?

§ 373.10 What selection criteria does the Secretary use?

The Secretary publishes in the **Federal Register** or includes in the application package the selection criteria for each competition under this program. To evaluate the applications for new grants under this program, the Secretary may use the following:

(a) Selection criteria established under 34 CFR 75.209.

(b) Selection criteria in 34 CFR 75.210.

(c) Any combination of selection criteria from paragraphs (a) and (b) of this section.

(Authority: 29 U.S.C. 711(c) and 723(a))

§ 373.11 What other factors does the Secretary consider when making a grant?

(a) The Secretary funds only those applications submitted in response to competitions announced in the **Federal Register**.

(b) The Secretary may consider the past performance of the applicant in carrying out activities under previously awarded grants.

(c) The Secretary awards bonus points if identified and published in the **Federal Register** for specific competitions.

(Authority: 29 U.S.C. 711(c) and 723(a))

Subpart C—What Conditions Must Be Met By a Grantee?

§ 373.20 What are the matching requirements?

The Secretary may make grants to pay all or part of the cost of activities covered under this program. If the Secretary determines that the grantee is required to pay part of the costs, the amount of grantee participation is specified in the application notice, and the Secretary will not require grantee participation to be more than 10 percent of the total cost of the project.

(Authority: 29 U.S.C. 711(c) and 723(a))

§ 373.21 What are the reporting requirements?

(a) In addition to the program and fiscal reporting requirements in EDGAR that are applicable to projects funded under this program, the Secretary may require that recipients of grants under this part submit information determined by the Secretary to be necessary to measure project outcomes and performance, including any data needed to comply with the Government Performance and Results Act.

(b) Specific reporting requirements for competitions will be identified by the Secretary and published in the **Federal Register**.

(Authority: 29 U.S.C. 711(c) and 776)

§ 373.22 What are the limitations on indirect costs?

(a) Indirect cost reimbursement for grants under this program is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less.

(b) Indirect costs in excess of the 10 percent limit may be used to satisfy matching or cost-sharing requirements.

(c) The 10 percent limit does not apply to federally recognized Indian tribal governments and their tribal representatives.

(Authority: 29 U.S.C. 711(c))

§ 373.23 What additional requirements must be met?

(a) Each grantee must do the following:

(1) Ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented

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based on race, color, national origin, gender, age, or disabilities.

(2) Encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(3) Advise individuals with disabilities who are applicants for or recipients of the services, or the applicants' representatives or the individuals' representatives, of the availability and purposes of the Client Assistance Program, including information on means of seeking assistance under that program.

(4) Provide, through a careful appraisal and study, an assessment and evaluation of the project that indicates the significance or worth of processes, methodologies, and practices implemented by the project.

(b) A grantee may not make a subgrant under this part. However, a grantee may contract for supplies, equipment, and other services, in accordance with 34 CFR part 74, subpart C—Post-Award Requirements, Procurement Standards.

(Authority: 29 U.S.C. 711(c) and 717)

§ 373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project reporting and evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, has been obtained in writing. The Secretary or other Federal officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final products of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Authority: 29 U.S.C. 711(c))

[FR Doc. 00–31378 Filed 12–8–00; 8:45 am]

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LITTERA SCRIPTA MANET

Federal Register

Monday,
December 11, 2000

Part III

Equal Employment Opportunity Commission

29 CFR Part 1625
Waivers of Rights and Claims; Tender Back of Consideration; Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

RIN 3046–AA68

Waivers of Rights and Claims: Tender Back of Consideration

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is publishing this final regulation stating that, under the Older Workers Benefit Protection Act of 1990, employees cannot be required to tender back the consideration received under a waiver agreement before being permitted to challenge the waiver agreement in court, and addressing related issues. The regulation protects older workers' rights under the Older Workers Benefit Protection Act.

DATES: Effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, or Corbett L. Anderson, Attorney-Advisor, 202–663–4689 (voice), 202–663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Older Workers Benefit Protection Act of 1990

In Title II of the Older Workers Benefit Protection Act of 1990 (Title II or OWBPA), Congress added section 7(f) to the Age Discrimination in Employment Act of 1967, 29 U.S.C. 626(f) (ADEA), to set out requirements for ADEA waivers that would ensure that "older workers [are] not coerced or manipulated into waiving their rights under the ADEA." [1] Congress decided not to require supervision of ADEA waivers by the Equal Employment Opportunity Commission (EEOC or Commission), but emphasized "that the requirements of [T]itle II [are to] be strictly interpreted to protect those individuals covered by the Act." [2]

In the OWBPA, Congress proclaimed that "[a]n individual may not waive any right or claim * * * unless the waiver is knowing and voluntary." 29 U.S.C. 626(f)(1). An ADEA waiver is valid only "if certain threshold requirements [are met and the waiver is] otherwise shown to be knowing and voluntary." [3] The OWBPA states that the waiver agreement must be "written in a manner calculated to be understood [by the employee], or by the average individual eligible to participate"; must specifically reference ADEA rights or claims; and must advise employees to consult an attorney before signing the agreement. ADEA waivers also must be in exchange for extra consideration, and must not waive rights or claims that arise after the agreement is executed.[4] Finally, the OWBPA directs employers to give employees specified periods of time to consider waivers and to revoke them. *Id.* section 626(f)(1)(A)–(G). When employers offer waivers in connection with an exit incentive or other group employment termination program, they must give employees certain information about the termination program itself, as well as lists of the job titles and ages of individuals eligible or selected for the program and the ages of those not eligible or selected but who were in the same job classification or organizational unit. *Id.* section 626(f)(1)(H). *See also* 29 CFR Part 1625.22.

In addition, an ADEA waiver is "knowing and voluntary" only if the employee accepts it "in the absence of fraud, duress, coercion, or mistake of material fact." [5] According to the OWBPA legislative history, courts evaluating the validity of an ADEA waiver should analyze this aspect of the "knowing and voluntary" question under the "totality of the circumstances approach." Congress rejected traditional contract principles as the basis for determining if an ADEA waiver is knowing and voluntary.[6]

Congress also provided that a court of competent jurisdiction would resolve "any dispute" that may arise over whether a waiver agreement was entered in compliance with the statutory requirements. 29 U.S.C. 626(f)(3). Congress intended that a valid OWBPA waiver would act as an affirmative defense.[7] The statute directs that the employer has the burden of proving that an ADEA waiver complies with the enumerated OWBPA requirements, assuming that the employer is the party asserting the validity of the waiver. *Id.*[8] Moreover, legislative history reveals that "once that occurs, the employee may produce additional evidence to suggest that the waiver was not 'knowing and voluntary,"—*i.e.*, that the waiver is not valid due to one or more of the non-enumerated elements of the "knowing and voluntary" standard, such as fraud, duress, coercion or mistake of material fact.[9] In such a circumstance, the employer then must prove, with respect to the issues raised by the employee, that the waiver was both knowing and voluntary.[10]

B. The Negotiated Rule on Waivers of Rights and Claims Under the ADEA

In 1998, the EEOC published a final regulation on Title II of the ADEA, the product of a negotiated rulemaking under the procedures in the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* The final rule set forth the EEOC's interpretation of the standards in section 7(f) of the ADEA, covering the following subjects, among others: the wording of waiver agreements, waivers of future rights, consideration, time periods, informational requirements, waivers settling charges and lawsuits, the burden of proof, and the EEOC's enforcement powers. *See* 29 CFR 1625.22.

Some commenters on the negotiated rule had urged the Commission to address the question of whether employees can be required to tender back the consideration received under a waiver agreement before challenging the waiver agreement in court. However, about four months prior to publication

[1] 136 Cong. Rec. 27,061 (1990), *reprinted in* 1 Staff of Senate Comm. on Labor and Human Resources, 102d Cong., Legislative History of the Older Workers Benefit Protection Act (S. 1511 and Related Bills), at 23 (1991).

[2] S. Rep. No. 101–263, at 31 (1990, *reprinted in* 1 Staff of Senate Comm. on Labor and Human Resources, 102d Cong., Legislative History of the Older Workers Benefit Protection Act (S. 1511 and Related Bills), at 350 (1991) [hereinafter S. Rep. No. 101–263].

[3] *Id.* at 31–32.

[4] These requirements also apply to a waiver in settlement of an ADEA charge filed with the EEOC. 29 U.S.C. 626(f)(2).

[5] S. Rep. No. 101–263, *supra* note 2, at 31. *See also* 29 CFR 1625.22(a)(3) ("Other facts and circumstances may bear on the question of whether the waiver is knowing and voluntary, as, for example, if there is a material mistake, omission, or misstatement in the information furnished by the employer to an employee in connection with the waiver."). *Accord Bennett* v. *Coors Brewing Co.*, 189 F.3d 1221, 1228–29 (10th Cir. 1999); *EEOC* v. *Johnson & Higgins*, 5 F. Supp. 2d 181, 186 (S.D.N.Y. 1998).

[6] S. Rep. No. 101–263, *supra* note 2, at 32. For the analysis of "knowing and voluntary," the Senate Committee gave its approval to the "totality of circumstances" analysis used to uphold an ADEA waiver in *Cirillo* v. *Arco Chemical Co.*, 862 F.2d 448 (3d Cir. 1988), but disapproved of "the approach adopted in *Lancaster* v. *Buerkle Buick Honda Co.*, 809 F.2d 539 (8th Cir.), *cert. denied*, 482 U.S. 928 (1987)," which applied ordinary contract principles.

[7] S. Rep. No. 101–263, *supra* note 2, at 35 ("A waiver of rights or release of claims is generally available as an affirmative defense.")

[8] *See also* 136 Cong. Rec. 27,062 (1990) (Final Statement of Floor Managers) *reprinted in* 1 Staff of Senate Comm. on Labor and Human Resources, 102d Cong., Legislative History of the Older Workers Benefit Protection Act (S. 1511 and Related Bills), at 26 (1991).

[9] S. Rep. No. 101–263, *supra* note 2, at 35. Congress did not intend to force employers to "'prove a negative' where no evidence of fraud, duress, or coercion exists." *Id.*

[10] *Id.*

of the final negotiated rule, the Supreme Court decided the issue of tender back in *Oubre* v. *Entergy Operations, Inc.*, 522 U.S. 422 (1998). The Supreme Court held that a release that does not comply with the OWBPA requirements cannot bar an employee's ADEA claims, even if the employee did not tender back the consideration. The Commission decided, in light of *Oubre*, to address tender back and related issues in a subsequent guidance rather than in the negotiated rule.[11] The legislative rule published today fulfills that goal.

C. The EEOC's Rulemaking Authority Under the ADEA

Congress granted the EEOC authority under the ADEA to issue legislative rules that it considers "necessary or appropriate" in enforcing the Act. 29 U.S.C. 628.[12] ADEA legislative regulations are properly used to resolve statutory ambiguities or omissions, through policies that are consistent with the purposes of the Act.[13] If the ADEA does not directly address a particular matter, the EEOC may adopt any rule that is "permissible" under the Act. *Chevron* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). A legislative rule is permissible if it is a reasonable exercise of an agency's rulemaking authority. *Id.* at 844, 845, 865, 866; *Sanchez* v. *Pacific Powder Co.*, 147 F.3d 1097, 1100 (9th Cir. 1998); *Doe* v. *Dekalb County Sch. Dist.*, 145 F.3d 1441, 1448 (11th Cir. 1998). A legislative rule is not permissible if it is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron*, 467 U.S. at 843; *Arnold* v. *United Parcel Serv., Inc.*, 136 F.3d 854, 864 n.8 (1st Cir. 1998). Legislative rules have the effect of law and are binding on the general public, subject to limited review by the courts. *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956) (legislative rule has force and effect of law).

D. The Decision in Oubre v. Entergy Operations, Inc.

In *Oubre* v. *Entergy Operations, Inc.*, 522 U.S. 422 (1998), the Supreme Court addressed the question of whether the OWBPA's statutory waiver scheme permits an employer to rely on contract theories of ratification and tender back to defend an ADEA waiver that does not comply with the OWBPA. The waiver in *Oubre* did not comply with three of the OWBPA's threshold requirements,[14] but the employer argued that it nonetheless was enforceable based on contract principles of ratification and tender back. The employer maintained that Ms. Oubre ratified the defective waiver because she did not return the money paid by the employer after discovering the waiver's deficiencies. *Oubre*, 522 U.S. at 425.

Rejecting this argument, the Supreme Court held that Ms. Oubre's waiver could not be given effect because it did not comply with the OWBPA, notwithstanding contract theories of ratification and tender back. The Court reasoned that the validity of an ADEA waiver should be determined solely with reference to the statutory scheme, because "[t]he OWBPA sets up its own regime for assessing the effect of ADEA waivers, separate and apart from contract law." *Oubre*, 522 U.S. at 427. The Court explained:

> Congress imposed specific duties on employers who seek releases of certain claims created by statute. Congress delineated these duties with precision and without qualification: An employee "may not waive" an ADEA claim unless the employer complies with the statute. Courts cannot with ease presume ratification of that which Congress forbids.

The Court also explained that reliance on these contract principles would "frustrate [the OWBPA's] practical operation as well as its formal command." [15] Many discharged employees would lack the resources to return funds received for the waiver, as a condition of ADEA litigation. The Court expressed concern that "[t]hese realities might tempt employers to risk noncompliance with the OWBPA's waiver provisions * * *. We ought not to open the door to an evasion of the statute by this device." [16]

Finally, the Court observed that, in the future, lower courts may need to inquire "whether the employer has claims for restitution, recoupment, or setoff against the employee" for return of the consideration paid in exchange for the invalid waiver. The Court expressly stated that it "need not decide those issues here, however." [17] In his concurrence, Justice Breyer raised the possibility of employers seeking restitution after suit commenced.[18]

II. Review and Discussion of Public Comments

A. Introduction and General Comments

The Commission received 27 comments in response to this Notice of Proposed Rulemaking (NPRM or Rulemaking), which was published in the **Federal Register** on April 23, 1999. 64 FR 19952. Of these comments, 19 were from representatives of employers and eight were from representatives of employees or older persons. Before reviewing and discussing the public comments on specific sections of the NPRM, the Commission addresses some general comments received from representatives of employers.

First, employer representatives questioned the Commission's authority to promulgate this regulation, arguing that the EEOC cannot regulate the contents of an ADEA waiver agreement if the agreement was entered into in a "knowing and voluntary" fashion under the OWBPA. As explained in detail below, however, the Commission is regulating the content of waivers only to the extent necessary to fully effectuate the OWBPA's "knowing and voluntary" standard.

Employer commenters also asserted that the Commission does not have the authority to regulate covenants not to sue. These comments led the Commission to refine its reasoning related to covenants not to sue. For the reasons set forth below, the Commission has the authority to regulate covenants not to sue because they operate as waivers in the ADEA context. Thus, as a logical outgrowth of the proposed rule and the comments on it, the Commission has drafted the final rule to reflect a unified approach to waivers and covenants not to sue, as well as tender back and damages.

Furthermore, an employer representative contended that the proposed regulation would not be

[11] However, with regard to the administrative process, section (i)(3) of the negotiated rule provides that a waiver agreement cannot impose "any condition precedent, any penalty, or any other limitation adversely affecting" an individual's right to file a charge or complaint with the EEOC or assist the EEOC in an investigation. As noted in the preamble to the final negotiated rule, this provision forbids a requirement in a waiver agreement that an individual tender back the consideration before filing a charge or complaint of discrimination with the EEOC or assisting the EEOC in an investigation. 63 FR 30627 (1998).

[12] *See American Ass'n of Retired Persons* v. *EEOC*, 823 F.2d 600, 604 (D.C. Cir. 1987) ("It would be very difficult to find more permissive statutory language [than in 29 U.S.C. 628).").

[13] *See Pouly* v. *BethEnergy Mines, Inc.*, 501 U.S. 680, 696 (1991) ("When Congress, through express delegation or the introduction of an interpretive gap in the statutory structure, has delegated policymaking authority to an administrative agency, the extent of judicial review of the agency's policy determinations is limited.").

[14] In procuring Ms. Oubre's ADEA waiver, Entergy Operations, Inc., did not comply with OWBPA in at least three aspects: (1) it did not give her enough time to consider the waiver; (2) it did not give her seven days after she signed the waiver to change her mind; and (3) the text of the waiver did not specifically refer to ADEA claims. *Oubre*, 522 U.S. at 424–25 (majority opinion).

[15] *Oubre*, 522 U.S. at 427 (majority opinion).

[16] *Id.*

[17] *Id.* at 428.

[18] *Id.* at 433 (Breyer, J., and O'Connor, J., concurring).

entitled to judicial deference because it interprets the Supreme Court's decision in *Oubre* rather than the OWBPA itself. However, these rules do not solely interpret the decision in *Oubre*. The EEOC is construing the OWBPA through this regulation, and the regulation promulgated herein is fully supported by a reasoned interpretation of the requirements of the OWBPA. Obviously, the Commission is required to take the Supreme Court's decision in *Oubre* into account in promulgating the regulations.

Finally, several management representatives commented that this regulation may undermine the Commission's support of voluntary resolution of cases through mediation. Specifically, they contended that this regulation may discourage employers from participating in EEOC mediations because waivers entered into in conjunction with ADEA mediation settlements will be perceived as vulnerable to challenge. The Commission, however, is satisfied that this regulation will not weaken its mediation program.

According to a recent independent and comprehensive survey of employers and charging parties who have participated in the EEOC's National Mediation Program, the overwhelming majority of participants find it to be highly effective, express strong satisfaction with the process, and are willing to participate again if party to a discrimination charge.[19] These survey results reflect that, among other things, EEOC mediation is fully voluntary and is a process in which the basic interests of both parties are addressed. A mediation settlement is only achieved when the parties have addressed all of their interests and identified a mutually satisfactory solution, including agreement to any waiver provision. This is entirely distinct from the situation where an employer conditions severance, early retirement, or other benefits offered in connection with a layoff or reduction-in-force on the signing of a waiver.

B. Comments on Proposed 29 CFR 1625.23(a): Tender Back

Paragraph (a) of this rule, as proposed and published for comment in the **Federal Register**, stated:

> An individual alleging that a waiver agreement was not knowing and voluntary under the ADEA is not required to tender back the consideration given for that agreement before filing either a lawsuit or a charge of discrimination with EEOC or any state or local fair employment practices agency. Retention of consideration does not foreclose a challenge to any waiver agreement; nor does the retention constitute the ratification of any waiver. A clause requiring tender back is invalid under the ADEA.

Comments on this provision were not numerous. One employer representative stated that the provision, while perhaps unnecessary in light of the Supreme Court's holding in *Oubre*, was mostly "unobjectionable." A few employer representatives objected vigorously to aspects of the proposal, as discussed below. Employee representatives did not comment.

1. The "No Tender Back" Rule Applies to All Waiver Challenges

The basic rationale for paragraph (a) of this regulation is that the OWBPA forecloses the employer defenses of tender back and ratification [20] because these defenses would effectively result in enforcement of noncompliant OWBPA waivers despite Congress' admonition that "[a]n individual may not waive" an ADEA right or claim unless the waiver is knowing and voluntary.[21] Paragraph (a) of the proposed regulation stated that "[r]etention of consideration does not foreclose a challenge to any waiver agreement; nor does the retention constitute the ratification of any waiver." Three management representatives asserted that the "no tender back" rule should apply only if the waiver obviously fails to comply with OWBPA's enumerated statutory requirements (for example, if the waiver does not refer to the ADEA, or it does not advise legal consultation). Under this approach, it would follow that tender back *could* be required if an individual challenged a waiver on the basis of fraud, duress, or other circumstances beyond the document itself.

The Commission considered these comments but concluded, for the following reasons, that the "no tender back" rule must apply regardless of a waiver's facial OWBPA compliance. First, the validity of a waiver agreement is not always apparent from its face, even with regard to the enumerated OWBPA requirements. For example, assessing the validity of a waiver in connection with an exit incentive or a group termination program subject to the OWBPA's informational requirements generally requires an examination of the unique facts of a particular workforce reduction or termination. If the commenters' suggested approach were adopted, the tender back requirement could operate to allow employers to enforce group waivers that did not, in fact, comply with the informational requirements. Such a result would undermine enforcement of one of the OWBPA's critical components.[22]

Second, the commenters' suggestion would open the door to enforcement of OWBPA waivers that did not comply with the statute because they were tainted by fraud or duress. The Commission does not agree with the view that the OWBPA omits these common law prohibitions and, therefore, that any such challenge remains subject to ratification and tender back, even in the aftermath of *Oubre*. To the contrary, Congress contemplated that the OWBPA's standard for "knowing and voluntary" would incorporate *both* the enumerated statutory requirements *and* the requirement that the waivers be adopted "in the absence of fraud, duress, coercion, or mistake of material fact." [23] If the "no tender back" rule is necessary to effectuate the OWBPA's enumerated requirements, then it also must be applicable to enforce the fundamental requirement that OWBPA waivers be free of fraud, duress, coercion, or mistake of material fact.[24]

[19] *See* Dr. E. Patrick McDermott, Dr. Ruth Obar & Dr. Anita Jose, *An Evaluation of the Equal Employment Opportunity Commission Mediation Program* (Sept. 20, 2000) http://www.eeoc.gov/mediate/report/.

[20] *Oubre*, 522 U.S. at 430–31 (Breyer, J., and O'Connor, J., concurring) ("As a conceptuall matter, a 'tender back' requirement would imply that the worker had ratified her promise by keeping her employer's payment.").

[21] *Oubre*, 522 U.S. at 427 (majority opinion). *See also id.* at 430–31 (Breyer, J., and O'Connor, J., concurring).

[22] In enacting the OWBPA, Congress was especially concerned about protecting older employees included in group terminations. *See* S. Rep. No. 101–263, *supra* note 2, at 32 ("[E]mployees affected by these programs have little or no basis to suspect that action is being taken based on their individual characteristics. Indeed, the employer generally advises them that the termination is *not* a function of their individual status. Under these circumstances, the need for adequate information * * * before waivers are signed is especially acute.").

[23] *Id.* at 31–32 ("The unsupervised waiver must be knowing and voluntary. At a minimum, the waiving party must have genuinely intended to release ADEA claims and must have understood that he was accomplishing this goal. The individual also must have acted in the absence of fraud, duress, coercion, or mistake of material fact."). *See also id.* at 35.

[24] The Commission agrees with the conclusion reached on this point by the court in *Bennett* v. *Coors Brewing Co.*, 189 F.3d 1221, 1229 (10th Cir. 1999), in which the releases at issue complied with the express statutory requirements of the OWBPA, but the court nevertheless held that "the appellants' failure to tender back their severance benefits * * * ha(d) no effect on their ability to challenge the waivers of their ADEA claims under the OWBPA" because of fraud, duress or other reasons. *But see Reid* v. *IBM Corp.*, 95 Civ. 1755 (MBM), 1997 WL 357969 (S.D.N.Y. June 26, 1997) (holding that the principles of ratification and tender back would apply where a waiver met the minimum requirements of the OWBPA even if not knowing and voluntary for some other reason, such as fraud or duress). For the reasons discussed herein, the Commission believes that *Reid*, which predates the Supreme Court's decision in *Oubre*, was decided incorrectly.

2. Tender Back Clauses

One employer representative recommended that the Commission permit negotiation of tender back clauses as part of waiver agreements. The Commission does not adopt this recommendation, and the final rule retains the prohibition against tender back clauses.[25] Allowing a tender back clause would undermine the OWBPA, as interpreted in *Oubre*. The basic rationale for this regulation is that the OWBPA abrogates the common law doctrines of tender back and ratification because their operation opens the door to enforcement of noncompliant OWBPA waivers.[26] Prohibiting tender back by operation of law, but allowing it by operation of contract, would unacceptably undermine the statute and elevate form over substance.

One employer representative commented that the Commission's use of the word "invalid" in the NPRM as to tender back clauses "leaves open the question of whether * * * the inclusion of such provisions might somehow invalidate the ADEA waiver itself." [27] This employer representative maintained that inclusion of a tender back clause should not invalidate a waiver that otherwise was "knowing and voluntary" under the OWBPA. The final regulation does not address the question of severability because the NPRM did not present the issue, and the record on it is very limited. The Commission believes, however, that contrary to the position advanced by the employer, there is a strong argument that inclusion of an invalid provision in an ADEA waiver agreement—such as a tender back clause or a damages provision—should invalidate the entire waiver. Under this point of view, inclusion of such provisions in a waiver would make the agreement misleading in a material sense and thus violate the OWBPA's requirement that waivers be calculated to be understandable by the individual or by the average individual eligible to participate.[28]

3. Tender Back and State or Local Fair Employment Practices Agencies

Two management commenters objected to the wording of paragraph (a) where it stated that if an individual alleges that a waiver is not knowing and voluntary, tender back is not required prior to "filing either a lawsuit or a charge of discrimination with * * * any state or local fair employment practices agency." These commenters contended that the Commission lacks authority to specify the conditions required to file a complaint with state or local agencies. To clarify this regulation, the Commission incorporates the following language in the sentence referring to state and local agencies:

> * * * or any state or local fair employment agency acting as an EEOC referral agency for purposes filing the charge with EEOC.

4. Final Regulatory Language for Paragraph (a)

Accordingly, paragraph (a) of the final rule will state: [29]

> An individual alleging that a waiver agreement, covenant not to sue, or other equivalent arrangement was not knowing and voluntary under the ADEA is not required to tender back the consideration given for that agreement before filing either a lawsuit or a charge of discrimination with EEOC or any state or local fair employment practices agency acting as an EEOC referral agency for purposes of filing the charge with EEOC. Retention of consideration does not foreclose a challenge to any waiver agreement, covenant not to sue, or other equivalent arrangement; nor does the retention constitute the ratification of any waiver agreement, covenant not to sue, or other equivalent arrangement.

C. Comments on 29 CFR 1625.23(b): Covenants Not To Sue

Paragraph (b) of the proposed regulation, as published for comment in the **Federal Register**, stated:

> A covenant not to challenge a waiver agreement, or any other arrangement that imposes any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to challenge a waiver agreement, is invalid under the ADEA, whether the covenant or other arrangement is part of the agreement or is contained in a separate document. A provision allowing an employer to recover costs, attorneys' fees, and/or damages for the breach of any covenant or other arrangement is not permitted.

1. Summary of Employee Comments

Employee representatives stated that the use of covenants not to sue clearly offends Congress' intent to allow individuals to test ADEA waivers in court. One employee representative maintained that the Commission needs to implement more powerful disincentives for using covenants not to sue than simply stating that they are invalid under the OWBPA. According to this commenter, an employer that uses a covenant not to sue should be subject to: A rebuttable presumption in related litigation that the waiver was not knowing and voluntary; an automatic finding of a willful ADEA violation; and a finding of retaliation if the employer seeks to recoup past benefits or abrogate future benefits. The Commission has considered these comments but believes that the final rule reflects the commenters' concerns without unduly altering the legislative balance crafted by Congress.

2. Summary of Employer Comments

A number of management representatives acknowledged that a covenant not to sue that is part of a waiver agreement is enforceable only if the overall waiver agreement is knowing and voluntary under the OWBPA. As a corollary to this proposition, several commenters agreed with the employer representative who stated that "[i]f the employee successfully invalidates the release because it does not comply with OWBPA, an employer's breach of contract claim is worthless."

Some representatives of employers asserted that the Commission does not have the authority to regulate covenants not to sue. Employers also contended that the OWBPA does not affect the ability of the employer and employee to enter into a covenant not to sue, under which the employer is entitled to damages and/or attorneys' fees if the employee goes to court and the covenant is upheld. Commenters on behalf of employers asserted that a contrary result would encourage litigation and discourage employers from offering attractive severance packages in exchange for waivers. According to these commenters, the chilling effect of the damages provisions commonly included in such covenants is necessary to retain the OWBPA's balance between employer and employee interests.

One employer representative argued against paragraph (b) of the proposed rule because, in the commenter's view, "a prevailing defendant is already

[25] However, the rule on tender back clauses has been removed from paragraph (a) and incorporated into paragraph (b).

[26] *See Oubre*, 522 U.S. at 427 (majority opinion).

[27] This commenter made the same observation regarding the Commission's use of the phrase "not permitted" in paragraph (b) of the NPRM as to covenants not to sue, and the discussion above also applies to covenant not to see. One employee representative argued however, that inclusion of a convenant not to sue should create a rebuttable presumption in related litigation that the waiver was not knowing and voluntary.

[28] 29 U.S.C. 626(f)(1)(A).

[29] Note that paragraph (a) of the final rule uses the phrase "waiver agreement, covenant not to sue, or other equivalent arrangement" where appropriate to reflect the Commission's unified approach to waivers and covenants not to sue. Section C of the Preamble discusses covenants not to sue.

entitled as a matter of right to receive full reimbursement for all of its taxable costs (*see* 28 U.S.C. 1920), and may also be awarded its counsel fees if * * * the employee's claim 'was frivolous, unreasonable or groundless.' *Christiansburg Garment Co.* v. *EEOC*, 434 U.S. 412 (1978)." Other commenters made similar arguments. Finally, an employer representative contended that, even if the Commission ultimately concludes that the use of covenants not to sue is inconsistent with the OWBPA, the Commission should provide that only the covenant, rather than the entire waiver agreement, is unenforceable.

3. Discussion

The NPRM addressed the legality of covenants not to sue and stated that such covenants were invalid due to the chilling effect on valid ADEA claims of damages and/or attorneys' fees provisions as well as the language of the covenants themselves. Because the chilling effect of damages or attorneys' fees could give life to waiver agreements that violate the OWBPA, the final rule continues to prohibit the use of provisions allowing the recovery of damages and/or attorneys' fees simply because suit has been filed. Based on further analysis in light of the comments, however, the final rule recognizes that an ADEA promise not to sue, by itself, is the functional equivalent of a waiver and therefore subject to the OWBPA requirements and restrictions. Thus, a covenant not to sue that comports with the requirements of the OWBPA will provide the employer with a defense against the employee's ADEA claim of age discrimination, and will entitle the employer to a dismissal of the employee's suit after the covenant has been upheld. In addition, attorneys' fees and costs will continue to be available under established principles. The final rule prohibits additional damages and/or attorneys fees because they would violate the statute. The final rule adopts a unified standard for waivers and covenants not to sue (and any other equivalent arrangements), pursuant to the Commission's authority to enforce the OWBPA.

(a) *Attorneys' Fees and Damages*

(i) *Attorneys' Fees and Costs Will Continue to be Available to Employers Under Established Principles*

As noted above, a few management commenters contended that the prohibition against covenants not to sue in paragraph (b) of the NPRM was inconsistent with the established law which permits the award of attorneys' fees and costs to prevailing employers in certain circumstances. One commenter took the position that prevailing employers are entitled to attorneys' fees if the employee's claim was "frivolous, unreasonable or groundless," and to costs as a matter of right.

The courts have held that attorneys' fees are available for ADEA defendants where the plaintiff litigated in "bad faith."[30] The "frivolousness" standard suggested by one commenter is the Title VII standard and does not apply to the ADEA.[31] In any event, the Commission does not intend to displace the established principles governing attorneys' fees under the ADEA. An employer would be entitled to attorneys' fees if the employee's suit were brought in bad faith.

The Commission agrees with the commenters' point on the issue of costs and therefore has deleted references to costs from the final rule where appropriate. As with attorneys' fees, the Commission does not intend to disturb established law with respect to costs. However, employers may not recover costs beyond those available under established law in ADEA cases.

In order to clarify these matters, the Commission has added a sentence to paragraph (b) stating that the rule is "not intended to preclude employers from recovering attorneys" fees or costs specifically authorized under federal law."

(ii) *The Chilling Effect Conflicts with the OWBPA*

The Commission remains concerned about the chilling effect that the potential for attorneys' fees (other than those currently available) and damages would have on good faith OWBPA challenges. Several commenters in fact agreed that the possibility of such remedies exerts a chilling effect on ADEA litigation, although employee and employer representatives disagreed about the propriety of that chilling effect. In the Commission's view, the financial risk of pursuing an ADEA claim in the face of such remedies would, as a practical matter, discourage individuals from pursuing even cases about which they were fairly optimistic. Because the chilling effect of these penalties could give life to waiver agreements that were not compliant with the OWBPA, and thereby undermine enforcement of the statute, the Commission's final rule forbids any provision that threatens to impose any condition precedent, penalty, or other limitation that would adversely affect an individual who exercises his or her right to challenge an agreement covered by the OWBPA.

The Commission's conclusion that the chilling effect of damages or attorneys' fees is at odds with the OWBPA is supported by the Supreme Court's reasoning in *Oubre*. The Supreme Court in *Oubre* recognized the effect that financial pressure may have on an individual's willingness to bring a case. In the context of tender back, the Court reasoned that many individuals will "lack the means to tender [the] return" of funds received in exchange for the waiver and, therefore, will refrain from bringing cases they otherwise might pursue.[32] Employers' perceptions that individuals will be deterred from seeking judicial assessment of ADEA waivers, in turn, may "open the door to an evasion of the statute."[33] The same unacceptable consequences that led the Supreme Court to reject a tender back requirement in *Oubre* would result if employee litigants faced the prospect of damages and/or attorney fees for breach of covenants not to sue.[34]

The chilling effect of damages or attorneys' fees also disturbs the balance between litigation and voluntary resolution that Congress crafted in the OWBPA. Congress was concerned about protecting employee rights, particularly in the group termination context, as it allowed unsupervised ADEA waivers.[35] In the OWBPA, Congress allowed employers to offer OWBPA-compliant waivers without EEOC supervision, but at the same time vested in "a court of competent jurisdiction" the authority to resolve "any dispute that may arise" over the validity of the waiver.[36] Permitting employers to chill employees from testing unsupervised ADEA waivers, by threatening to impose damages or attorneys' fees, would impede access to judicial review and thus undermine this legislative balance.

Representatives of employers stated that a final regulation prohibiting damages and attorneys' fees would send a signal to employees that they could bring ADEA challenges "with impunity." In the Commission's view, the suggestion that such a regulation will result in a flood of litigation is not persuasive. The Commission notes that no facts have been offered in support of such a suggestion. Employees executing waivers, covenants, or equivalent arrangements will understand the consequence of the agreement—that their pursuit of ADEA discrimination claims in litigation will fail if they knowingly and voluntarily entered into their agreements. While the possibility of frivolous lawsuits always exists, the Commission believes that a knowing and voluntary process helps ensure that an employee who has signed a waiver will not view a later lawsuit as fruitful.

(iii) *The Chilling Effect of Damages Provisions Cannot Be Limited to Situations Where the Underlying Waiver Is Valid.*

Some employer representatives contended that damages provisions at least should be enforceable when they are included in waiver agreements that are found to be knowing and voluntary under the OWBPA. In this circumstance, they reasoned, OWBPA compliance would not be undermined if litigation were chilled. The Commission does not agree that the chilling effect can be limited so neatly.

These commenters assume that the validity of ADEA waivers is easily discernable from the face of the agreement. However, as discussed above with respect to tender back, compliance with the OWBPA may not be apparent from the face of the document if the statute's informational requirements are applicable, or if the individual alleges that the waiver is not knowing and voluntary on the basis of fraud, duress, coercion, or mistake of material fact. *See supra* at II.B. Additionally, as another management commenter acknowledged, even individuals who are fairly certain that an ADEA waiver is unenforceable may choose not to bring suit simply because they are unwilling to risk liability for damages or the employer's attorneys' fees.

Two management commenters asserted that the Commission's own administrative investigation of ADEA charges guarantees that the Commission will advise individuals of the validity of their OWBPA waivers before filing suit. The nature of the ADEA's enforcement mechanism, however, belies this reasoning. ADEA charging parties need not receive a "right to sue" letter before going to court. They "need only wait 60 days after filing the EEOC charge. Thus, the ADEA plaintiff can sue in court even if the EEOC has not yet completed its investigation * * *."[37] Moreover, were the Commission to assign staff attorneys to assess the legal sufficiency of all waivers presented in ADEA charges, as one commenter suggested, the waivers would then be supervised by the EEOC. However, Congress rejected proposals that EEOC supervise waivers.[38] In any event, such administrative assessment would not be determinative because ADEA litigation in court is *de novo*. *Cf.* 29 U.S.C. 626(c)(1).

(b) *ADEA Covenants Not To Sue Are Equivalents of ADEA Waivers and Therefore Subject to EEOC Regulation.*

Absent imposition of attorneys' fees and/or damages for breach, ADEA covenants not to sue are the functional equivalent of waivers. The Commission interprets the OWBPA proscription that "[a]n individual may not waive any right or claim unless the waiver is knowing and voluntary"[39] to govern covenants not to sue just as it does waivers. The Commission finds support for its unified approach in traditional contract principles,[40] the decision in *Oubre* and in other case law,[41] and in discussion in the OWBPA legislative history.[42] Common law distinctions between waivers and covenants not to sue[43] are insufficient to exclude ADEA covenants from the OWBPA requirements. Reading the statute to include covenants not to sue best respects the OWBPA's "practical operation as well as its formal command."[44] Accordingly, a covenant not to sue under the ADEA is subject to the OWBPA, as interpreted in this regulation, whether the covenant is included in a waiver agreement, is in a second document, or is standing alone. Under this analysis, an OWBPA-compliant covenant not to sue can be asserted as a defense to defeat an ADEA claim, and thus will entitle the employer to a dismissal of the employee's suit after the covenant has been upheld. (An accompanying provision for damages is not enforceable. *See supra* discussion at II.C.3.a)).

However, a point of caution is warranted with respect to such covenants. Although ADEA covenants not to sue (absent damages) operate as the functional equivalent of waivers, they carry a higher risk of violating the OWBPA by virtue of their wording. An employee could read "covenant not to sue" or "promise not to sue" as giving up not only the right to challenge a past employment consequence as an ADEA violation, but also the right to challenge in court the knowing and voluntary nature of his or her waiver agreement. The chance of misunderstanding is heightened if the covenant not to sue is added to an agreement that already includes an ADEA waiver clause. The covenant in such a case would have no legal effect separate from the waiver clause. Nonetheless, its language would appear to bar an individual's access to court.

Employers therefore must take precautions in drafting covenants not to sue so that employees understand that the covenants do not affect their right to test the knowing and voluntary nature of the agreements in court under the OWBPA. By investing "court[s] of competent jurisdiction" with the authority to resolve "any dispute that may arise over * * * the validity of a waiver,"[45] Congress manifested in the plain language of the statute its intention to permit an employee who signed an ADEA waiver, to sue his or her employer upon the belief that the waiver did not comply with the

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[30] *See Turlington* v. *Atlanto Gas Light Co.*, 135 F.3d 1428, 1437 (11th Cir.) (citing cases, and reasoning that because the ADEA borrows the attorneys' fee provision of the Fair Labor Standards Act, which speaks only in terms of attorneys' fees for plaintiffs, "a district court may award attorneys' fees to a prevailing ADEA defendant only upon a finding that the plaintiff litigated in bad faith"), *cert denied*, 119 S. Ct. 405 (1998); *Cesaro* v. *Thompson Publishing Group*, 20 F. Supp. 2d 725, 726–27 (D.N.J. 1998) (same).

[31] *Cf. Christiansburg Garment Co.* v. *EEOC*, 434 U.S. 412, 421 (1978) (under Title VII a prevailing defendant can get attorneys' fees "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, *even though not brought in subjective bad faith*") (emphasis added).

[32] *Oubre*, 522 U.S. at 427 (majority opinion).

[33] *Id.*

[34] *Cf. Oubre*, 522 U.S. at 431 (Breyer, J., and O'Connor, J., concurring) ("Courts must avoid allowing a recovery that has the effect of substantially enforcing the contract that has been declared unenforceable, since to do so would defeat the policy that lead to the rule in the first place." (quoting d. Dobbs, Law of Remedies 982 (1973))).

[35] *See* S. Rep. No. 101–263, *supra* note 2, at 31–32.

[36] *See* 29 U.S.C. 626(f)(3). *See also supra* notes 7–9.

[37] *Hodge* v. *New York College of Podiatric Medicine*, 157 F.3d 164, 168 (2d Cir. 1998) (citations omitted). *See* 29 U.S.C. 626(d).

[38] S. Rep. No. 101–263, *supra* note 2, at 31 (stating the OWBPA "provides for the first time by statute that waivers not supervised by the EEOC may be valid and enforceable").

[39] 29 U.S.C. 626(f)(1).

[40] *See* J.D. Calamari, The Law of Contracts § 21.11 (4th ed. 1998) ("[i]f the promise is one never to sue, it operates as a discharge just as does a release") (citing 5A Corbin on Contracts § 1251 (1964)); 66 Am Jur. 2d *Release* § 2 (1973).

[41] *See Oubre*, 522 U.S. at 433 (Breyer, J., and O'Connor, J., concurring) (writing interchangeably about waivers and promises not to sue); *Klee* v. *Lehigh Valley Hosp.*, No. 97–4642, 1998 WL 995850, at *4 (E.D. Pa. Nov. 5, 1998) (treating covenant not to sue as falling under the OWBPA: "We also note that the covenant not to sue in the severance agreement is valid because it comports with the requirements elucidated by the statute for a knowing and voluntary waiver of the right to sue under the ADEA."), *aff'd on other grounds*, 203 F.3d 817 (3d Cir. 1999).

[42] *Cf.* H.R. Rep. No. 101–664, at 86 (1990), *reprinted in* 1 Staff of Senate Comm. on Labor and Human Resources, 102d Cong., Legislative History of the Older Workers Benefit Protection Act (S. 1511 and Related Bills), at 293 (1991) [hereinafter H.R. Rep. No. 101–664]; S. Rep. No. 101–263, *supra* note 2, at 60 ("Employees are typically offered a substantial cash bonus to retire early in exchange for signing a waiver or release agreeing not to sue the company later for age discrimination.").

[43] "The difference [between a release and a covenant not to sue] is primarily in the effect as to third parties * * *." 66 Am Jur. 2d *Release* § 2 (1973). "A general release of one among several joint tortfeasors operates to release from liability all of them. In contrast, a covenant not to sue will only release the one to whom it is given." *Frey* v. *Independence Fire & Cas. Co.*, 698 P.2d 17, 21 (Okla. 1985).

[44] *Oubre*, 522 U.S. at 427 (majority opinion).

[45] 29 U.S.C. 626(f)(3).

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OWBPA. Thus, any provision in a waiver agreement that would cause an employee to believe that he or she could not seek a judicial determination of the validity of the waiver misrepresents the rights and obligations of the parties to the agreement. Such a misrepresentation conflicts with the OWBPA requirement that a valid waiver agreement must be "written in a manner calculated to be understood" by the employee "or by the average individual eligible to participate." 29 U.S.C. 626(f)(1)(A).

(c) *Discussion of Additional Management Recommendations.*

Management representatives also commented that the proposed regulation's reference to "other arrangements" could be read to prohibit an employer from enforcing covenants not to sue that were negotiated as part of noncompetition or trade secret clauses. The Commission did not intend its regulation to extend beyond the ADEA in this fashion. Accordingly, the Commission has revised the regulation to refer specifically to an *ADEA* waiver agreement, covenant not to sue, or other equivalent arrangement.

In addition, while the Commission takes no position on non-ADEA provisions such as non-disparagement and confidentiality clauses, it notes that settlement agreements sometimes contain such clauses along with liquidated damages provisions for breach. A reasonable employee must be able to determine that any liquidated damages provisions for breach of non-ADEA clauses have no effect on the employee's ability to bring an ADEA charge or lawsuit challenging the waiver.

4. *Final Regulatory Language for Paragraph (b)*

Accordingly, paragraph (b) of the final rule will state:

No ADEA waiver agreement, covenant not to sue, or other equivalent arrangement may impose any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to challenge the agreement. This prohibition includes, but is not limited to, provisions requiring employees to tender back consideration received, and provisions allowing employers to recover attorneys' fees and/or damages because of the filing of an ADEA suit. This rule is not intended to preclude employers from recovering attorneys' fees or costs specifically authorized under federal law.

D. Comments on 29 CFR 1625.23(c): Restitution, Recoupment, or Setoff

Paragraph (c) of the proposed regulation stated that if an employee successfully challenged a waiver and prevailed on the merits of an ADEA claim, courts have the discretion to determine whether an employer is entitled to restitution, recoupment, or setoff (hereinafter, "reduction") against the employee's damages award. These amounts never can exceed the lesser of the consideration the employee received for signing the waiver agreement or the amount recovered by the employee.

The remainder of this proposed regulation included, among other provisions, "[a] nonexhaustive list of the factors that may be relevant to determine whether, or in what amount, a reduction should be granted."

1. Summary of Employee Comments

Employee representatives endorsed the position that only setoff or recoupment should be allowed, and only to the extent that the employee wins damages based on a finding of employment discrimination. These commenters contended that employees would be chilled from bringing meritorious waiver challenges and age discrimination cases by the possibility of being required to return a severance payment under any other circumstances. They contended that this chilling effect also would discourage individuals from pursuing injunctive relief in the absence of significant damages. Even if damages were awarded, however, employee representatives favored denying recoupment or setoff when the consideration for the release was paid by a party other than the employer. For example, they stated that employers should not be allowed to recoup their consideration when it had been paid by a *bona fide* employee pension or welfare benefit plan under ERISA in the form of enhanced benefits. One employee representative also asserted that a reduction should not be permitted if the employer had willfully violated the ADEA. Finally, this commenter urged the Commission to delete employers' financial condition as a factor for courts to consider in determining whether recoupment was appropriate.

2. Summary of Employer Comments

Commenters representing employers criticized the Commission's proposal that restitution, recoupment, or setoff be permitted only to the extent that the employee is ultimately awarded damages for employment discrimination. Employers emphasized that the Supreme Court in *Oubre* did not decide the question of restitution, recoupment, or setoff, and that Justice Breyer explored the possibility of restitution in his concurrence.

Employers contended that restitution should not be limited to the lesser of the consideration or the plaintiff's recovery. They reasoned that restitution in excess of the plaintiff's recovery is "a reflection of the plaintiff's overcompensation for the satisfaction of potential claims," rather than a tender back penalty. Some employers expressed concern about the situation of the employer whose waiver is invalid but who prevails on the underlying age claim; under the Commission's proposed rule, this employer would not be entitled to restitution.

Employers also asserted that setoff should not be discretionary if damages are awarded, because existing law entitles them to a reduction of back pay awards by the amount of severance pay. Most employer representatives criticized the factors proposed by the Commission for courts to use when deciding whether to grant a reduction, or how much to grant. They contended that some of the equitable factors proposed by the Commission would result in ADEA plaintiffs receiving double recovery because the court already would have addressed the same considerations in awarding damages. Employers also criticized the Commission's proposal that courts could equitably apportion the amount paid for the waiver among the rights waived, to calculate the proper reduction in ADEA damages. Employers emphasized that they pay one amount to a departing employee in exchange for a waiver of all his or her rights under the pertinent laws, and in their view, this amount cannot be apportioned.

3. Discussion

The Commission has considered the comments submitted and, for the reasons set forth below, has not changed its position that restitution, recoupment, or setoff must be limited to the lesser of the amount of the award to the prevailing ADEA plaintiff, or the amount of consideration the employee received for the waiver. The Commission, however, has decided to delete from the final regulation the list of factors "that may be relevant to determine whether, or in what amount, a reduction should be granted." [46]

The Commission's rule on restitution, recoupment, and setoff, is based on the same statutory interpretation as the rule prohibiting employers from obtaining damages or attorneys' fees for breach of a covenant not to sue or another agreement covered by the OWBPA. Restitution can be tantamount to tender back if it is awarded in the absence of plaintiff's damages or in excess of those

[46] 64 FR at 19957.

damages.[47] If the prospect of making tender back before litigation would deter those who lack funds from pursuing good faith cases, then the prospect of making the same payment at the conclusion of litigation also would have a chilling effect. To state the obvious, plaintiffs do not know before bringing a case whether, or to what extent, they will obtain damages.

Accordingly, if restitution were not limited in the way set out in paragraph (c), employees deciding whether to bring suit would confront the possibility of not winning damages (or winning negligible damages) but still being compelled to return their full severance pay.[48] For those individuals who have used the severance pay for living expenses and lack the means to return it now or in the future, the prospect of restitution would present a large financial risk that would discourage them from moving forward. Even though this potential financial cost of bringing suit would not impose the same immediate and certain obstacle as a tender-back requirement, it nonetheless could be significant, especially for those older workers with limited or declining earning potential. As a result, older workers could be deterred from bringing age discrimination claims even though their waivers, if so challenged, might not be knowing and voluntary under the OWBPA. The Commission cannot allow this result consistent with its mandate to enforce the OWBPA.[49]

This position is consistent with the Supreme Court's interpretation of the OWBPA in *Oubre*. The majority and Justice Breyer spoke of employer claims and requests for restitution, recoupment, or setoff against the former employee.[50] The Commission is not barring claims for restitution, recoupment, or setoff. The Court in *Oubre*, however, did not rule on the availability of restitution, recoupment, or setoff. Therefore, *Oubre* does not preclude all limits on the extent to which these remedies may be available. In the Commission's view, the limits contained in this regulation are appropriate because they will reinforce compliance with the OWBPA waiver provisions. Importantly, they also are consistent with the Court's reasoning in *Oubre* that common law contract principles cannot be allowed to interfere with enforcement of the statute.[51]

The Commission, however, has deleted the list of factors for deciding whether, and to what extent, to award restitution, recoupment, or setoff. These factors were not central to the Commission's interpretation of the statute. Additionally, many of the employer comments regarding the factors were persuasive. For example, the Commission agrees that it typically would be difficult to equitably apportion a waiver payment among all the different claims waived. The Commission also understands employers' concerns about the proposed factors addressing the nature and severity of the underlying employment discrimination. Finally, the Commission understands employee representatives' comments favoring the deletion of the factor addressing the employer's financial condition.

Because the Commission is deleting this list of factors, it would be inappropriate to add new factors as suggested by employee representatives. The Commission, therefore, cannot incorporate two employee representatives' recommendation to direct courts to consider whether a release payment was provided directly by the employer or by an ERISA pension fund. While the Commission agrees that this may be an important consideration,[52] the Commission believes its significance is properly resolved by the courts.

4. Final Regulatory Language for Paragraph (c)

Accordingly, the paragraph (c) of the final rule will state:

Restitution, Recoupment, or Setoff

(1) Where an employee successfully challenges a waiver agreement, covenant not to sue, or other equivalent arrangement, and prevails on the merits of an ADEA claim, courts have the discretion to determine whether an employer is entitled to restitution, recoupment or setoff (hereinafter, "reduction") against the employee's monetary award. A reduction never can exceed the amount recovered by the employee, or the consideration the employee received for signing the waiver agreement, covenant not to sue, or other equivalent arrangement, whichever is less.

(2) In a case involving more than one plaintiff, any reduction must be applied on a plaintiff-by-plaintiff basis. No individual's award can be reduced based on the consideration received by any other person.

E. Comments on 29 CFR 1625.23(d): Abrogation

Paragraph (d) of the proposed regulation stated that:

No employer may unilaterally abrogate its duties under a waiver agreement to any signatory, even if one or more of the signatories to the agreement or EEOC successfully challenges the validity of that agreement under the ADEA.

The Commission received several comments from representatives of employers about this provision. One commenter stated that this proposed rule could be interpreted as prohibiting abrogation in circumstances in which there has not been an *ADEA* challenge. By its terms, the proposed language only pertains to the ADEA, and therefore no change is warranted.

Another commenter stated that an employer and employee should be allowed to include as part of a waiver agreement a provision stating that if the ADEA waiver is defective under the OWBPA, the employer will correct the defect and the employee will be required to execute the corrected waiver rather than file suit in court. The Commission is not persuaded by this comment. Congress could not have intended, in commanding that employees "may not waive" an ADEA claim unless the waiver satisfies the OWBPA, to allow employees' OWBPA rights to be subject to a promise which itself does not comply with the OWBPA. Accordingly, a promise to correct a defective waiver has no effect on the

[47] As stated in note 3 of the NPRM, recoupment and setoff, by definition, serve to limit the defendant's recovery to no more than the amount of plaintiff's damages. Black's Law Dictionary 1275, 1372 (6th ed. 1990).

[48] These individuals would include those who contemplate seeking primarily injunctive relief, for example, reinstatement in their former position.

[49] *Cf.* H.R. Rep. No. 101–664, *supra* note 42 at 90–91 (stating that legislation on ADEA waivers could impose, among others, the requirement that, "[i]f the waiver is set aside for any reason, any damages received through a discrimination action shall be *offset* by the consideration received for the waiver") (emphasis supplied).

[50] *Oubre*, 522 U.S. at 428 (majority); *id.* at 433 (Breyer, J., and O'Connor, J., concurring).

[51] *See id.* at 427 ("The OWBPA sets up its own regime for assessing the effect of ADEA waivers, separate and apart from contract law."). *Cf. supra* note 6, discussing legislative history showing that Congress rejected the use of contract law principles for analyzing OWBPA waivers.

The Commission is not persuaded that an employer who prevails on the merits of the ADEA discrimination claim, but who nonetheless used an invalid OWBPA waiver, should receive restitution of the amount paid for the waiver. The basic principle is that restitution generally is unavailable if the agreement is unenforceable on grounds of public policy, "unless denial of restitution would cause disproportionate forfeiture." Restatement (Second) of Contracts § 197 (1981). As one employee representative observed, the denial of restitution would not cause a disproportionate forfeiture if the employer materially violated the OWBPA waiver provisions.

[52] *See Doyne* v. *Union Elec. Co.*, 953 F.2d 447, 451 (8th Cir. 1992) ("The magistrate judge held that Doyne's back and front pay awards should be reduced by the amount of pension benefits he has received and will receive * * *. We are persuaded by the arguments of Doyne and the Equal Employment Opportunity Commission, *amicus curiae*, that the pension payments are from a collateral source and should not have been deducted.") *EEOC* v. *O'Grady*, 857 F.2d 383, 391 (7th Cir. 1988) (district court's refusal to offset pension benefits against a back pay award was not an abuse of discretion).

employee's ability to pursue an ADEA claim.

Another commenter argued for a rule stating that when an employer learns that a release is invalid under OWBPA, the employer may stop making payments due under the release, cure the defect, and offer the employee a new release in exchange for new consideration. According to this commenter, the employee in that situation would be free to sign the new release or pursue an ADEA claim. The Commission does not agree that an employer may cancel its obligation to the employee as soon as it learns that a waiver does not comply with the OWBPA.[53] The Commission agrees, however, that the employer in this circumstance may present the employee with a new ADEA waiver, independently valid under each of OWBPA's requirements, which the employee is free to accept or reject.

One commenter interpreted the language that no employer may "unilaterally" abrogate to mean that an employer may abrogate its duties with respect to an individual who has challenged the waiver as not knowing and voluntary, reasoning that the employee's action would make the abrogation bilateral. The Commission does not intend this interpretation. An employee does not abrogate a waiver agreement, covenant not to sue, or other equivalent arrangement by exercising the guaranteed OWBPA right to have the agreement's validity determined by a court.[54] As stated above, an OWBPA waiver gives the employer an affirmative defense, not a guarantee of freedom from litigation. To avoid any further misinterpretation, the Commission has removed the word "unilaterally" from the final rule.

The Commission has adopted the following final rule on abrogation in paragraph (d):

> No employer may abrogate its duties to any signatory under a waiver agreement, covenant not to sue, or other equivalent arrangement, even if one or more of the signatories or the EEOC successfully challenges the validity of that agreement under the ADEA.

This rule applies to the Commission's administrative process as well as litigation.

[53] *See Butcher* v. *Gerber Prods. Co.*, 8 F. Supp. 2d 307, 315–17 (S.D.N.Y. 1998) (interpreting Justice Breyer's concurrence in *Oubre*, and deciding that an invalid release could not permit the employer to use "self help" by withholding severance benefits from an employee who filed an ADEA claim).

[54] The Commission thus does not agree with the *Butcher* court's suggestion that if a waiver is held valid, the employer is entitled to terminate severance benefits because the employee breached the release agreement by filign suit. *Id.* at 313.

Executive Order 12866, Regulatory Planning and Review

Pursuant to section 6(a)(3)(B) of Executive Order 12866, this final rule has been reviewed by the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation is significant, but will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local or tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

EEOC certifies that the rule does not require the collection of information by EEOC or any other agency of the United States Government. The rule does not require any employer or other person or entity to collect, report, or distribute any information.

Regulatory Flexibility Act

In the NPRM, the Commission certified that the proposed regulation will not have a significant economic impact on a substantial number of small entities. The Commission reached this conclusion because the regulation does not impose a burden that is not imposed by the OWBPA. One management representative commented that the Commission did not provide a factual basis for the certification, pursuant to 5 U.S.C. 605(b).

The Commission has reconsidered the issue of certification. It continues to believe that its initial analysis is correct. It also concludes that, even assuming that the regulation imposes additional burdens on small entities, it would not have a significant economic effect on a substantial number of small entities. Between 1995 and 1999, a total of 98 charges involving waivers under the ADEA were filed against ADEA-covered small entities (those with between 20 and 499 employees)[55] with the EEOC and with state and local fair employment practices agencies, combined. This results in an average of only about 20 charges per year against small entities. An ADEA lawsuit cannot be filed without first filing an ADEA charge with the EEOC.

According to statistics published by the Small Business Administration, Office of Advocacy, there are about 530,000 ADEA-covered small entities.[56] Thus, on average each year, there is only one ADEA charge filed against a small entity challenging a waiver for every 26,500 ADEA-covered small entities. No evidence has been presented to the Commission supporting the conclusion that there would be an increase in charges against small entities. Even if, after this regulation takes effect, there is a discernable percentage increase in ADEA charges involving waivers filed against small entities, the total number of such charges will remain insignificant because the current number of charges is so small. Based on the foregoing, the Commission concludes that the rule will not have a significant economic impact on a substantial number of small entities.

[55] The size standard used by the Small Business Administration varies by industry; however, the SBA uses the "fewer than 500 employees" cut off when meking an across-the-board classification.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee benefit plans, Equal employment opportunity, Retirement.

Dated: December 5, 2000.

Ida L. Castro,

Chairwoman.

For the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends 29 CFR part 1625 as follows:

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621; 5 U.S.C. 301; Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631; Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. Section 1625.23 is added to Subpart B—Substantive Regulations, to read as follows:

§ 1625.23 Waivers of rights and claims: Tender back of consideration.

(a) An individual alleging that a waiver agreement, covenant not to sue, or other equivalent arrangement was not knowing and voluntary under the ADEA is not required to tender back the consideration given for that agreement before filing either a lawsuit or a charge of discrimination with EEOC or any state or local fair employment practices agency acting as an EEOC referral agency for purposes of filing the charge with EEOC. Retention of consideration does not foreclose a challenge to any waiver agreement, covenant not to sue, or other equivalent arrangement; nor does the retention constitute the ratification of any waiver agreement, covenant not to sue, or other equivalent arrangement.

(b) No ADEA waiver agreement, covenant not to sue, or other equivalent arrangement may impose any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to challenge the agreement. This prohibition includes, but is not limited to, provisions requiring employees to tender back consideration received, and provisions allowing employers to recover attorneys' fees and/or damages because of the filing of an ADEA suit. This rule is not intended to preclude employers from recovering attorneys' fees or costs specifically authorized under federal law.

(c) *Restitution, recoupment, or setoff.* (1) Where an employee successfully challenges a waiver agreement, covenant not to sue, or other equivalent arrangement, and prevails on the merits of an ADEA claim, courts have the discretion to determine whether an employer is entitled to restitution, recoupment or setoff (hereinafter, "reduction") against the employee's monetary award. A reduction never can exceed the amount recovered by the employee, or the consideration the employee received for signing the waiver agreement, covenant not to sue, or other equivalent arrangement, whichever is less.

(2) In a case involving more than one plaintiff, any reduction must be applied on a plaintiff-by-plaintiff basis. No individual's award can be reduced based on the consideration received by any other person.

(d) No employer may abrogate its duties to any signatory under a waiver agreement, covenant not to sue, or other equivalent arrangement, even if one or more of the signatories or the EEOC successfully challenges the validity of that agreement under the ADEA.

[56] The Commission used figures for the years 1992 through 1996, the most recent years for which statistics are available from the Small Business Administration. Although the number of small entities generally does not vary greatly from year to year, it rose slightly each year during that period, from 508,000 in 1992 to 552,000 in 1996. If that upward trend has continued, then the average number of small entities during the period of 1995 to 1999 would be somewhat higher.

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Federal Register

Monday,
December 11, 2000

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 600 and 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Atlantic Herring Fishery Management Plan; Final Rules

50 CFR Part 648

Fisheries of the Northeastern United States; Atlantic Herring Fisheries; 2000 Specifications; Adjustment; Closure; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 600 and 648

[Docket No. 000105004-0260-02; I.D. 063099A]

RIN 0648-AI78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Atlantic Herring Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in the Atlantic Herring Fishery Management Plan (FMP). These regulations implement the following measures: A target total allowable catch (TAC) level for each of three management areas, one of which is divided into inshore and offshore sub-areas; a procedure for the development and revision of annual specifications; initial specifications for the 2000 fishing year; incidental harvest limits upon closure of a management area; a vessel monitoring system (VMS) requirement for certain vessels; vessel size limits; a framework adjustment process; permitting and reporting requirements; restrictions on transfers at sea; and other measures for administration and enforcement. The intended effect of this final rule is to manage the Atlantic herring (*Clupea harengus*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of the Atlantic herring resource. This final rule also withdraws approval of the Preliminary Management Plan (PMP) for the Atlantic Herring Fishery of the Northwestern Atlantic and removes existing regulations related to Atlantic herring upon the effective date of the final rule. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: This final rule is effective December 11, 2000, except for the amendments to the following sections:

1. Sections 15 CFR 902.1, 50 CFR 600.525, 648.4, 648.5, 648.6, 648.7, 648.9, 648.11, 648.12, 648.13, 648.14(a)(103), (bb)(1)-(6), (bb)(8) and (9), (bb)(11)-(14), (bb)(17) and (18), 648.203, 648.204, and 648.205(b)-(c), which will be effective January 10, 2001; and

2. Sections 50 CFR 648.14(bb)(15) and (16) and 648.205(a), which will be effective March 12, 2001.

ADDRESSES: Copies of the FMP, its Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS), as prepared by the New England Fishery Management Council (Council), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Patricia Kurkul.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on October 27, 1999. All of the measures but four were approved. The disapproved measures and the reasons for their disapproval are described in the preamble to the proposed rule to implement the approved measures (65 FR 11956, March 7, 2000) and are not repeated here.

Details concerning the justification for and development of the FMP and the implementing regulations were also provided in the notice of availability (NOA) of the Atlantic Herring FMP (64 FR 40542, July 27, 1999) and in the preamble to the proposed rule (65 FR 11956, March 7, 2000) and are not repeated here.

Approved Measures

Annual Specifications

The FMP enacts a procedure for establishing Optimum Yield (OY) that is based on the allowable biological catch (ABC). The ABC will be determined by multiplying the estimate of current stock size by the target fishing mortality rate (F). OY cannot exceed ABC, adjusted by the Canadian Georges Bank (GB) and New Brunswick (NB) fixed gear catches, which cannot exceed 20,000 mt for the Canadian NB fixed gear harvest and 10,000 mt for the Canadian GB harvest. The FMP limits the amount of Canadian catch that will be considered when setting OY. OY also will not exceed the maximum sustainable yield (MSY), unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis. However, OY will not exceed MSY prior to the 2001 fishing year. Because of some uncertainty in the current stock size estimates, the Council recommended, for purposes of setting the initial ABC, that the current stock size be assumed to equal B_{MSY}(the biomass level that produces MSY), rather than basing it on actual estimates of current stock size, which exceed B_{MSY}. This precautionary approach will limit catches until the estimates can be improved. The resulting ABC and OY, however, are still more than twice the amount of current landings.

The FMP establishes four additional specifications: Total amount allocated to processing by foreign ships (JVPt), either in state waters (IWP) or in the exclusive economic zone (EEZ) (JVP); amount of the domestic annual processing (DAP) allocated for at-sea processing by domestic vessels that exceed the vessel size limits established in the FMP (USAP); total amount of herring that can be taken in U.S. waters and transferred to Canadian herring carriers for transshipment to Canada (BT) as authorized by the Sustainable Fisheries Act (SFA)(Pub. L. 104-297, section 105(e)); and total allowable level of foreign fishing (TALFF), if any, from that portion of OY that will not be harvested by domestic vessels. The Council and the Atlantic States Marine Fisheries Commission (Commission) will consult annually to determine the allocation of JVPt to IWP and JVP.

Initial Specifications

The FMP establishes initial specifications for the 2000 fishing year. (The FMP as submitted recommended specifications for the 1999 fishing year that would remain in effect for the 2000 fishing year, unless revised through the specification process.) Because the 1999 fishing year has passed (the fishing year coincides with the calendar year), the initial specifications for the 2000 fishing year are established at the levels specified in the FMP for the 1999 fishing year.

The approved specifications include an ABC of 300,000 mt and an OY of 224,000 mt. Because the domestic annual harvest (DAH) is equal to the OY, TALFF is specified at zero for the 2000 fishing year. Estimates of DAP are based on recent processing estimates and allow for possible errors in estimates of the bait market and increased development of processing capacity. Since no herring is allocated to USAP for the 2000 fishing year, at-sea processing by domestic vessels exceeding the proposed size limits cannot take place. Table 1 contains the initial specifications for the 2000 Atlantic herring fishery which are effective January 1, 2000, through December 31, 2000.

TABLE 1.—ANNUAL SPECIFICATIONS[1] (MT) FOR THE ATLANTIC HERRING FISHERY, JANUARY 1 THROUGH DECEMBER 31, 2000

Specification	Atlantic Herring
ABC	300,000
OY	224,000
DAH	224,000
DAP	180,000
USAP	0
BT	4,000
JVPt	
JVP–Management Area 2	10,000
JVP– Management Area 3	5,000
JVP–Subtotal	15,000
IWP	25,000
JVPt–Total	40,000
TALFF	0
Reserve	0

[1] See Table 2 for Area TACs for Fishing Year 2000.

Management Areas

The FMP establishes three management areas based on the existing areas established by the Commission's FMP and the former PMP. However, Management Area 1 is divided into inshore (Area 1A) and offshore (Area 1B) areas. The Council uses the management areas as the basis for recommending the distribution of the TAC to different spawning components and for the distribution of JVP allocations and may use the management areas as the basis for implementation of other management measures in the future.

Total Allowable Catch

The FMP established a target TAC for the 1999 fishing year that remains in effect for the 2000 fishing year, unless revised through the specification process. Because the 1999 fishing year has passed, the FMP establishes the target TAC for the 2000 fishing year at the level specified in the FMP for the 1999 fishing year. The TAC will be re-specified for each fishing year beyond 2000. The TAC for a given year is distributed to the management areas based on existing knowledge of fishing patterns, herring stock structure, and herring migration. For the 2000 fishing year, the percentage allocations for the various areas are: Area 1A - 20 percent; Area 1B - 11 percent; Area 2 - 22 percent; Area 3 - 22 percent; Area 2 TAC Reserve - 24 percent. (Note: Does not total 100 percent due to rounding. See Table 2 for resultant management area target TACs.) Each year, the Council's Herring Plan Development Team will examine available data and recommend a TAC and its distribution to the Council. The Council will then consult with the Commission before it recommends a TAC to NMFS. NMFS will review the Council's recommendations and set the TAC, publish the proposed TAC in the **Federal Register** for public comment, make a final determination, and publish the final TAC and responses to public comments in the **Federal Register**. All harvests of Atlantic herring, from both state and Federal waters, will be applied against the TAC.

The directed fishery for herring will be closed in a management area after the date on which 95 percent of the area TAC would be caught, as projected by NMFS. Closure of the directed fishery with 5 percent remaining for an area TAC will allow the incidental harvest of herring in other fisheries to continue, while minimizing the likelihood the area TAC would be exceeded. This percentage is based on estimates of the incidental harvest of herring in other fisheries. If the percentage allocated to the incidental harvest overestimates the amount caught (incidental harvests after a closure are less than 5 percent), the 5-percent remainder for a given area TAC may be reduced by NMFS during the annual specification process the following year. If the percentage allocated to the incidental harvest underestimates the amount caught (incidental harvests after a closure are more than 5 percent), the remainder for a given area TAC may be increased the following year through a framework adjustment. After an area is closed to directed fishing, vessels are allowed to possess, transfer, or land ≤ 2,000 lb (907.2 kg) of herring in or from the closed area. Vessels that harvest 2,000 lb (907.2 kg) of herring in an open area are allowed to transit the closed area, provided all gear is stowed.

The industry will be notified of the closure of the directed fishery for herring in a management area through notification published in the **Federal Register** and a variety of other methods, including news releases, and through state agencies.

Area TACs for Fishing Year 2000

Table 2 lists the area TACs for the 2000 fishing year.

TABLE 2.—AREA TACS FOR FISHING YEAR JANUARY 1, 2000, THROUGH DECEMBER 31, 2000

Management Area	TAC (mt)
Area 1A	45,000
Area 1B	25,000
Area 2	50,000
Area 3	50,000
TAC Reserve–Area 2	54,000
TAC Total	224,000

Transfers at Sea

There are no specific restrictions on transfers of herring at sea, unless a management area is closed to directed fishing for Atlantic herring (i.e., harvesting more than 2,000 lb (907.2 kg) of Atlantic herring per trip) and/or other restrictions in the regulations apply. When a management area is closed to directed fishing for Atlantic herring, transfers are limited to no more than 2,000 lb (907.2 kg) of herring per day, in or from, an area subject to the closure. A vessel may not transfer more than 2,000 lb (907.2 kg) of herring taken from a closed area, nor transfer or sell any herring taken from a closed area to a joint venture vessel.

U.S. vessels authorized pursuant to the SFA, section 105(e), may not transfer herring to Canadian herring carriers that transship U.S.-caught herring after the amount of herring transshipped equals the amount of the BT specification. Canadian herring carriers may not receive U.S.-caught herring after the amount transshipped equals the amount of the BT specification.

Vessel Size Limits

Domestic vessels ≥ 165 ft (50.3 m) in length overall (LOA), or > 750 gross registered tons (GRT)/(680.4 mt), or > 3,000 horsepower are not permitted to catch, take, or harvest herring in or from the EEZ. Domestic vessels > 165 ft (50.3 m) LOA or > 750 GRT (680.4 mt) are

allowed, however, to process or receive herring in the EEZ, but are limited to the allocated amount specified pursuant to the specification process for USAP, which is zero for the 2000 fishing year.

Roe Fishery

The harvest of Atlantic herring for roe is allowed, provided the carcasses are not discarded. The Council will monitor the development of a roe fishery and may, in the future, recommend a limit on the amount of herring that may be harvested for roe. Any restrictions or limitations on the amount of herring harvested for roe must be implemented through the amendment process or the framework adjustment process in accordance with 50 CFR 648.206.

Foreign Fishing Vessel Restrictions

Foreign fishing vessel permitting and reporting requirements are established by 50 CFR part 600, subpart F, which include regulations on harvesting by foreign fishing vessels and joint ventures and internal waters processing and support. The Council may recommend joint ventures and TALFF in all management areas, subject to an annual review. The Council may choose to determine joint venture specifications and TALFF by management area. If joint venture allocations and TALFF are specified by area, all herring supplied to the joint venture and/or TALFF must come from that management area.

Vessel Monitoring Systems

The FMP requires the installation and use of a VMS unit on vessels in the directed herring fishery that caught > 500 mt in the previous year, or vessels whose owner intends to harvest > 500 mt in the current year. A VMS helps facilitate the monitoring of area-specific TACs and assists with the enforcement of closures of management areas to directed fishing for Atlantic herring, as well as facilitating the enforcement of closures imposed under regulations implementing other FMPs. If a vessel owner does not declare the intention to harvest > 500 mt at the start of the year, and does not install a VMS unit on the vessel, the vessel may not harvest > 500 mt in that fishing year. The VMS unit must be installed no later than March 12, 2001 and/or prior to the beginning of the subsequent fishing year in order to land > 500 mt in that fishing year, unless otherwise specified by the Regional Administrator. Because in this application VMS is intended primarily to monitor areas fished as opposed to days-at-sea effort, a VMS unit must be operating any time an Atlantic herring vessel is underway, but does not have to be operating when a vessel is moored or maneuvering in a harbor. This minimizes communication costs to vessel operators and removes the necessity to provide power to a moored vessel with a VMS unit.

Permitting Requirements

All commercial vessels meeting certain eligibility criteria fishing for, possessing, or landing herring in or from the EEZ are required to obtain a Federal Atlantic herring permit. Domestic vessels ≥ 165 ft (50.3 m) LOA, or > than 750 GRT (680.4 mt), or > 3,000 horsepower are not eligible to be issued a permit to harvest or take herring. However, domestic vessels > 165 ft (50.3 m) LOA or > 750 GRT (680.4 mt), regardless of horsepower, are eligible to obtain a processing permit to process or receive herring in the EEZ, limited to the amount allocated for USAP pursuant to the specification process. Other than this restriction on vessel size, there are no restrictions or qualification criteria necessary for a domestic vessel to receive a permit. A vessel with a Federal Atlantic herring fishing permit must be marked in accordance with 50 CFR 648.8.

An Atlantic herring carrier vessel is required to obtain, in addition to a Federal Atlantic herring permit, a letter of authorization from the Regional Administrator that will allow such vessel to transport herring caught by another fishing vessel.

Operators of vessels issued an Atlantic herring fishing or processing permit are required to obtain an operator permit. There is no qualification or test for this permit. Dealers of Atlantic herring are required to obtain a dealer permit and to comply with reporting requirements.

This FMP requires Atlantic herring processors to obtain a processing permit and to comply with reporting requirements. Atlantic herring processors are defined as persons who receive or obtain unprocessed Atlantic herring for the purposes of rendering it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage. These requirements may result in a person needing both a dealer and a processor permit. For example, a person who purchases herring directly from a vessel and then sells it as bait will need both permits.

Reporting Requirements

The FMP extends the existing Vessel Trip Report (VTR) system to vessels with Atlantic herring permits. This requires the owner/operator to submit monthly reports on fishing effort, landings, and discards on forms supplied by the Regional Administrator. In addition, in order to improve real-time monitoring of the harvest, an Interactive Voice Response (IVR) system is required to be used. The FMP uses area-specific TACs to control fishing mortality. To be effective, harvests need to be closely monitored to ensure that the TAC is not exceeded. Since only vessel operators can identify where they harvest herring, the area-specific TACs cannot be monitored effectively through only the dealer reporting system. The VTR system relies on monthly reports on paper that are entered into a database. Accurate harvest statistics from this system are typically not available until 30 to 45 days after fish are landed. Given the high harvest rates in the herring fishery at certain times of the year, the delay in obtaining statistics makes it difficult to project landings accurately in a timely way. In order to improve the timely collection of harvest information, this rule requires that an owner/operator of a vessel required to be equipped with a VMS unit report its harvest (landings and discards, both of which are applied against the TACs), by area, on a weekly basis. These reports are called in (using a toll free number) to an IVR system. An owner/operator of a vessel with a VMS unit must call in a report for each week of the year, even if still at sea, including weeks it does not harvest herring. In addition, an owner/operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board, or any vessel that catches herring in or from the EEZ, but catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week, must submit an Atlantic herring catch report via the IVR system by Tuesday of the following week, even if the herring has not yet been landed. This system improves the timeliness of information on harvests of herring, which will facilitate more accurate predictions about when the TAC will be attained.

Atlantic herring dealers are required to submit weekly dealer reports by mail. Although dealers are required to submit a weekly report to an IVR system for other Northeast Region quota-managed species, Atlantic herring dealers are not required to submit a weekly report to an IVR system unless the Regional Administrator determines that there is a need for such reports.

Atlantic herring processors are required to submit annually the Fishery Products Report, U.S. Processors, Annual Survey, (NOAA Form 88-13). This report, which collects information on the uses of herring, facilitates the management of the fishery to achieve OY.

Essential Fish Habitat

The Council submitted an omnibus essential fish habitat (EFH) amendment to address EFH provisions for several FMPs for Northeastern fisheries. The omnibus EFH amendment document also included the EFH components of the Atlantic Herring FMP, which was then still under development by the Council. Although the Atlantic herring EFH components were included in the omnibus EFH amendment, they were not considered during Secretarial review of the omnibus EFH amendment. The EFH information for Atlantic herring was incorporated by reference into the FMP when that FMP was submitted for Secretarial approval. The NOA for the FMP invited comment on the approvability of the herring EFH provisions in the Council's omnibus EFH amendment. Under the framework adjustment process for Atlantic herring, measures may be added or adjusted to describe, identify, and protect EFH and designate habitat areas of particular concern within EFH.

Annual Monitoring and Framework Adjustment Measures

The FMP will be monitored on an annual basis. The status of the resource and the fishery will be reviewed by the Council's Atlantic Herring Oversight Committee in consultation with the Commission's Atlantic Herring Section. Recommendations on specifications will be developed, as well as any suggested changes to the management measures. These will be forwarded by the Herring Oversight Committee to the Council, which will take appropriate action. Specifications will be recommended to NMFS, and changes to management measures may be adopted through a framework adjustment or FMP amendment, as appropriate. This process will begin by July of each year so that changes can be implemented by January 1 of the following fishing year. The Commission is expected to implement any corresponding changes in state waters.

The framework adjustment process adopted in the FMP is identical to that used in other Northeast Region fisheries. This process allows changes to be made to the regulations in a timely manner, without going through the plan amendment process, as appropriate. It provides a formal opportunity for public comment that substitutes for the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP and if sufficient opportunity for public comment on the framework action exists, NMFS may bypass the proposed rule stage and publish a final rule in the **Federal Register.** The management measures that may be implemented and adjusted through the framework process include: (1) Management area boundaries; (2) size, timing, or location of spawning area closures; (3) closed areas other than spawning closures; (4) restrictions in the amount of fishing time; (5) a days-at-sea effort control system; (6) adjustments to specifications; (7) adjustments to the Canadian catch deducted when determining specifications; (8) distribution of the TAC; (9) gear restrictions (such as mesh size) or requirements (such as bycatch-reduction devices); (10) vessel size or horsepower restrictions; (11) closed seasons; (12) minimum fish size; (13) trip limits; (14) seasonal, area, or industry sector quotas; (15) measures to describe EFH, fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH; (16) measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP; (17) changes to the overfishing definition; (18) vessel monitoring system requirements; (19) limits or restrictions on the harvest of herring for specific uses; (20) quota monitoring tools, such as vessel, operator, or dealer reporting requirements; (21) permit and vessel upgrading restrictions; (22) implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions; (23) limited entry or controlled access system; (24) specification of the amount of herring to be used for roe; and (25) any other measure currently included in the FMP.

Clarification of Initial "Fishing-up" Period

The Council, in its discussion of specifications for the Herring FMP, referred to an initial "fishing-up" period in which OY would not exceed MSY. A complete discussion is contained in section 3.2 of Volume I of the FMP. NMFS interprets the initial "fishing-up" period to mean the 2000 fishing year.

Preliminary Management Plan for the Atlantic Herring Fishery of the Northwestern Atlantic

On July 24, 1995 (60 FR 37848), NMFS announced approval of the PMP to regulate foreign joint venture activities for Atlantic herring in the EEZ. The PMP, which set the initial specification for Atlantic herring, provided joint venture opportunities in the EEZ by allocating a portion of the allowable biological catch for joint venture processing. The PMP also established permit conditions and restrictions for foreign vessels that participate in joint ventures. Because the FMP addresses issues related to Atlantic herring foreign joint venture activities, NMFS withdraws approval of the PMP and removes existing regulations related to Atlantic herring (50 CFR 600.525) effective January 10, 2001.

Comments and Responses

Twelve sets of written comments on the FMP were received during the comment period date established by the NOA, which ended September 27, 1999. Those comments were considered by NMFS before it partially approved the FMP on October 27, 1999, and, while not specifically repeated here, those comments are characterized below.

NMFS also received 14 sets of written comments on the proposed rule, some of which included comments on the FMP, during the comment period specified in the proposed rule, which ended on April 21, 2000. Because the comment period for the proposed rule was distinct from, and followed, the comment period for the FMP, comments received during the proposed rule comment period were not considered in NMFS' determination to approve the FMP. However, the comments addressing the proposed rule itself were considered in approval and implementation of the final rule effecting the FMP and its management measures and are responded to here. Those comments specifically addressing the FMP submitted after September 27, 1999, are not responded to here, since the comment period on the FMP had closed prior to their submission.

Comment 1: A commenter expressed concern that the FMP prohibits TALFF even though the FMP acknowledges Atlantic herring is not fully harvested by the available domestic harvesting capacity. The commenter further stated that the provision on TALFF, as currently written, is not consistent with section 303(a)(4)(B) of the Magnuson-

Stevens Act and that the FMP should be revised to provide for an annual specification of TALFF even if, in any given year, it is determined that the amount should be zero.

Response: NMFS concurs and disapproved the prohibition on TALFF. Section 303(a)(4)(B) of the Magnuson-Stevens Act provides that any fishery management plan that is prepared by any Council, or by the Secretary, with respect to any fishery, shall assess and specify the portion of OY which, on an annual basis, will not be harvested by fis hing vessels of the United States and can be made available for foreign fishing.

Comment 2: A commenter reiterated EFH issues raised previously pertaining to the Northeast Omnibus EFH Amendment. The commenter also provided extensive comments on technical aspects of the Omnibus Amendment's discussion of potential impacts to EFH from oil, gas, and mineral extraction, and the recommended conservation and enhancement measures dealing with these activities.

Response: The Northeast Omnibus EFH Amendment included the EFH components of the Atlantic Herring FMP, which was then still under development by the Council. When NMFS announced approval of the EFH amendments to several fishery management plans (64 FR 19503, April 21, 1999) it stated that the EFH information for Atlantic herring would be incorporated by reference into the Atlantic Herring FMP when that FMP was submitted for Secretarial approval. NMFS responded to the commenter's comments submitted on the Northeast Omnibus EFH Amendment at that time.

Comment 3: A commenter expressed concern about the level of effort in Management Area 1A and disagreed with NMFS' concerns about the following: Discrepancies in vessel size between the Atlantic mackerel and Atlantic herring fisheries (which the commenter asked to have clarified); the lack of a real-time mechanism to monitor Canadian catch (tied to the adjustment of the TAC for Management Area 1A); and the lack of sufficient benefits from adjusting the TAC in Management Area 1A after October 1 because the fishing year ends December 31. The commenter also stated that a real-time monitoring system for the Canadian fishery does exist; that adjusting the TAC after October 1 could have substantial benefits to the eastern Maine fixed gear fishery; that date-certain spawning closures are problematic and do not protect spawning herring; that the overall strategy for protection of spawning herring is inconsistent between Federal and state waters; and that NMFS and the Council need to address the impacts of other fisheries on spawning herring, whereby vessels from other fisheries are not constrained from fishing in the spawning closures.

Response: Regarding the commenter's concern about the level of effort in Management Area 1A, the management measures are intended to reduce herring landings from this area. The FMP effects TACs, assigned by management areas, to help prevent overfishing of the resource, and Management Area 1A in particular.

NMFS approved the vessel size restrictions. Regarding the commenter's request to clarify differences in domestic vessel size restrictions between the Atlantic herring and Atlantic mackerel fisheries, the FMP states that domestic vessels ≥ 165 ft (50.3 m) in length, or > 750 GRT, or 3,000 horsepower are not permitted to catch, take, or harvest herring in or from the EEZ. Amendment 8 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan, however, provides that domestic vessels > 165 ft (50.3 m) in length and 750 GRT, or > 3,000 horsepower are not permitted to catch, take, or harvest mackerel in or from the EEZ.

Further, regarding vessel restrictions for processing, the FMP states that domestic vessels > 165 ft (50.3 m) in length, or > 750 GRT, are allowed to process or receive herring in the EEZ, but are limited to the allocated amount specified pursuant to the specification process for USAP. Amendment 8 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan, however, provides no size restrictions for processing vessels.

The differences between the mackerel and herring size specifications do not result in any practical differential impact on vessels currently subject to these specifications. Nevertheless, NMFS will continue to work with the New England and Mid-Atlantic Councils (Councils) and the Commission to resolve these minor inconsistencies in order to facilitate FMP administration.

Regarding NMFS' concern that there is no real-time mechanism to monitor Canadian catch, even if Canadian data could be obtained, there is no way to ensure that it would be provided in future years. Therefore, NMFS disapproved adjustment of the TAC for Management Area 1A if the NB, Canada, fixed gear fishery would not harvest 20,000 mt of Atlantic herring by October 1.

NMFS disapproved the spawning closures measure.

Comment 4: The Commission commented in support of the FMP's full implementation and acknowledged its close coordination with the Council during the development of the FMP.

Response: The Commission coordinated development of its Amendment 1 to its Interstate Fishery Management Plan for Atlantic Sea Herring simultaneously with the Council's development of the FMP. In its attempt to maintain consistency with the Federal FMP, the Commission adopted the Council's proposed measures, where feasible, in its own plan, which was effective in February 1999. Disapproval by NMFS of several measures of concern in the Federal FMP has resulted in inconsistencies between the Commission and Federal plans. NMFS is working with the Commission and Councils to resolve any inconsistencies as they cooperatively develop future management measures.

Comment 5: A commenter stated that the FMP fails to prevent overfishing, minimize bycatch, and protect EFH. With regard to EFH, the commenter said that the Omnibus EFH Amendment incorrectly concluded that mid-water trawls have minimal effects on EFH; the Omnibus Amendment and the FMP failed to minimize fishing gear impacts on EFH; and the FMP fails to protect herring egg beds throughout the range of the stock. The commenter also stated that the Environmental Impact Statement for the FMP fails to discuss adequately the direct, indirect and cumulative environmental impacts of the proposed action; and that NMFS failed to undertake an Endangered Species Act (ESA) Section 7 formal consultation to determine the proposed action's potential to jeopardize threatened or endangered species.

Response: The Northeast Fisheries Science Center (NEFSC) reviewed the overfishing definition for Atlantic herring for compliance with guidelines provided in 50 CFR part 600, including consideration of whether the overfishing definition has sufficient scientific merit, is likely to result in effective action to protect the stock from closely approaching or reaching an overfished status, provides a basis for the objective measurement of the status of the stock against the overfishing definition, and is operationally feasible. Based on its review, the NEFSC certified that the overfishing definition complies with 50 CFR part 600 guidelines. The NEFSC further stated that the current estimates of biological reference points for this stock complex are based on the best available scientific information but

added that the Herring Plan Development Team (PDT), Stock Assessment Review Committee (SARC)-Pelagic Working Group, and the Commission's Herring Section recognize that further work and analyses are necessary for the stock complex and its components, and revisions will probably be required. These committees will continue to work on improving estimates of Bmsy, Fmsy (the fishing mortality rate consistent with the production of MSY), and MSY for Atlantic herring and may recommend changes in the future. The NEFSC will continue to monitor abundance, recruitment, fishing mortality and other information for the Atlantic herring stock complex and fishery and will recommend adjustments, if and when necessary.

The information available on the extent of bycatch in the herring fishery is summarized in sec. E.6.4.2.6. of the FMP and is further addressed throughout the FMP. This information, while not representative of the entire fishery in all areas and seasons, indicates that the traditional purse seine and mid-water trawl herring fisheries are relatively "clean" fisheries, with limited bycatch of other species.

There is some concern over possible marine mammal interactions with the herring mid-water trawl fishery, based on experience with other mid-water trawl fisheries. For this reason, NOAA listed the herring mid-water trawl fishery as a Category II fishery (defined at § 229.2 (60 FR 45086, August 30, 1995)). This will facilitate the use of marine mammal observers to determine the extent of any interactions. Further, restrictions on the size of vessels in the herring fishery may reduce the likelihood of bycatch of marine mammals. Large pelagic trawlers in the mackerel fishery are known to have taken marine mammals. The prohibition on the catching of herring by large domestic vessels may prevent a possible recurrence of this problem.

Management of the Atlantic herring fishery relies on accurate estimates of catches, catch rates, and bycatch. The FMP contains a measure that provides NMFS (and, cooperatively, the states) with the ability to place observers on board vessels to collect this information if necessary.

With regard to EFH issues, NMFS disagrees that the omnibus amendment incorrectly concluded that mid-water trawls have minimal effects on EFH. The 1998 Auster and Langton report referenced in the Omnibus Amendment provided a literature review of all available scientific information pertaining to gear impacts on habitat. No reference was made to mid-water trawl gear. Pursuant to 50 CFR 648.2, a mid-water trawl is defined as trawl gear designed to fish for, or that is capable of fishing for, or that is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. Based upon this definition and the lack of information documenting adverse impacts to bottom habitat from mid-water trawls, the Council correctly concluded that mid-water trawls do not significantly impact the sea floor or other EFH.

The Councils approached the evaluation of impacts from fishing gears methodically. They identified the major gears used in the region based on landings, described the major gears, identified that otter trawls and scallop dredges were the most likely to have adverse impacts on habitat, appended a summary of the literature on fishing gear impacts to habitat, and described other impacts from fishing activities such as the impacts of fishing-related marine debris and lost gear, impacts of aquaculture, and impacts of at-sea fish processing. The Councils also evaluated fisheries management measures currently in place and assessed their impact on EFH. Finally, the Councils identified a number of areas that require further research in order to provide a better basis for determining fishing gear impacts, such as the spatial distribution and extent of fishing effort for gear types; the effects of specific gear types along a gradient of effort on specific habitat types; and recovery rates of various habitat types following fishing activity. Although the commenter may disagree with the manner in which the information was presented, NMFS concludes that the Councils satisfied the requirements of the Magnuson-Stevens Act and the EFH requirements (50 CFR 600.815(a)(3)) regarding the assessment of fishing gear impacts.

The Council can use the framework adjustment process to address future identified impacts to herring EFH. Based upon management measures in place in other fishery management plans, as well as those within the Herring FMP as explained in the Northeast Omnibus Amendment, the Council has satisfied its requirement under 50 CFR 600.815(a)(3)(iii) to minimize, to the extent practicable, adverse effects on EFH.

Environmental impacts of this action are discussed in section E.7.0 of the FMP. The action is not expected to have a negative impact on the biological components of the herring fishery and is expected to have a net positive impact on the economic and social components of the herring fishery. Spawning stock biomass is projected to continue to increase at the same time that landings of herring could double. In the long-term, the establishment of TACs and effort controls are expected to result in a sustainable herring fishery. The social impacts of the action are not expected to be large in scale, long-term, or far-reaching. Fishermen in the Gulf of Maine (GOM) may be the most affected, primarily by forcing a redistribution of fishing effort from the inshore area. Some fishermen in other fisheries will have the opportunity to enter the herring fishery, which may alleviate problems caused by increasing restrictions in those fisheries.

NMFS completed a biological opinion (BO), pursuant to section 7 of the ESA, on the FMP on September 17, 1999. The BO concluded that while competition with the herring fishery may affect the availability of sufficient prey for endangered whales, the complexity of ecosystem interactions and the logistical difficulties of conducting necessary sampling have hindered conclusive demonstration of the existence of competition. This opinion further concluded that the proposed Federal herring fishery is not likely to jeopardize the continued existence of threatened or endangered species or designated critical habitat. The BO also includes an Incidental Take Statement that provides the fishery with an exemption from the take prohibitions established in section 9 of the ESA.

Comment 6: A commenter expressed concern that a serious decline in the herring stock in the GOM is due to mid-water trawling and suggested closing areas in the GOM to mid-water gear.

Response: While NMFS acknowledges some concern for the inshore portion of the stock in the GOM, the stocks offshore are robust. There is no credible evidence that any decline in the herring stock in the inshore GOM is due to any particular type of gear. The FMP limits TACs in each of the established herring management areas. Attainment of the TAC, therefore, would close a management area to directed herring fishing by any gear type. The measures do not, however, include the establishment of closed areas to address fishing mortality or other concerns.

Comment 7: A commenter supported the FMP as submitted, with the following exceptions: That the spawning area closures scheme is seriously flawed and should be rejected; JVP should be disapproved; and the word "shoreside" should be added to one of the FMP objectives, to read, "To maximize domestic shoreside use and

encourage value-added product utilization."

In requesting that the Secretary reject spawning area closures, the commenter stated that the date-certain approach proposed in the FMP will eliminate fishing opportunities. The commenter added that it will also be unsuccessful in reducing spawning fish mortality if herring are not spawning during the dates that the areas are closed. The commenter further added that spawning closures should also apply to mobile, bottom-tending vessels in addition to purse seiners and mid-water trawlers. The commenter also opposed the 2,000-lb (907.2-kg) incidental catch allowance.

In requesting disapproval of JVP, the commenter argued that the FMP seriously underestimates the amount of DAP that exists to freeze, or otherwise process, herring. The commenter also raised the equity issue that a zero allocation for JVP would be consistent with the zero allocation for USAP.

The commenter requested that the word "shoreside" be added to one of the FMP objectives because the word was removed by the Council in finalizing this objective after 2 years of having been included in that objective. The commenter stated that, by eliminating this word, the Region's shoreside processors become less competitive globally than large offshore processing vessels would be, which the commenter found contrary to national standard 8.

The commenter also included suggestions for EFH, which it submitted to the Council on July 27, 1998, and other suggestions for improving management of the fishery.

Response: NMFS disapproved the spawning closures.

Regarding the request for disapproval of JVP, the amount expected to be used by DAP was estimated and subtracted from the DAH, along with herring transported to Canada (BT). The FMP provides that, if there is any DAH remaining, it may be made available for JVP. Such was the case. Regarding the comment that since USAP is zero, JVP should be zero, the Council addressed this issue by voting at its July 1999 meeting to increase USAP to 20,000 mt for the 2000 fishing year and to establish the same amount for JVPt. The Council's request and attendant analysis are under NMFS review.

In response to the commenter's request that the word "shoreside" should be added to one of the FMP objectives the Council, after public discussion, chose not to take the position that either shoreside processors or existing small freezer trawlers were more desirable than the other and decided to forward the FMP without the word "shoreside" in that objective. NMFS disagrees that the objective, as approved, violates national standard 8.

The commenter's suggestions for EFH and improving management of the fishery are acknowledged and were previously responded to in association with approval of the Northeast Omnibus EFH Amendment.

Comment 8: A commenter stated that USAP should be at least equal to JVP; the Mid-Atlantic Council should align large vessel size in the mackerel fishery with the New England Council's herring vessel size; the days out of the fishery scheme is too burdensome to be effective; and a roe fishery should not be allowed because while searching for herring with the proper roe content, large amounts of herring are discarded. The commenter added that allowing roe fishing is shortsighted because once established, the economic pressure of such a lucrative fishery would make curtailing it politically impossible.

Response: As to USAP being equal to JVP, see response to comment 7.

With regard to aligning large vessel size in the mackerel fishery with the vessel size established by this FMP, as stated previously, the Atlantic Herring and Atlantic Mackerel fishery management plans are separate from each other (neither adversely affecting the other). Their differences do not hinder either plan from meeting its respective objectives and there are no practical differential impacts on vessels currently subject to the size specifications. Nevertheless, NMFS will continue to work with the Councils and the Commission to resolve these inconsistencies in order to facilitate FMP administration as they continue to develop future management measures.

NMFS disapproved the proposed days-out-of-the-fishery provision.

After exploring alternatives for allowing a roe fishery, the Council chose to allow this activity and to monitor its development. This allows the cautious development of a fishery that takes advantage of the high value of herring roe, while at the same time protecting the resource. Furthermore, the possession of herring roe is only authorized if carcasses are retained. Should the amount of herring harvested for roe become a concern, the Council may initiate a framework adjustment action to implement additional management measures to limit the harvest of herring for roe.

Comment 9: A commenter raised the need for an ecosystem-wide, integrated approach to population assessments.

Response: NMFS acknowledges that ecosystem approaches to fishery assessment and management are desirable and is working on such approaches that may prove useful in the future. However, the current population assessment is consistent with the best available scientific information and scientific practices, is consistent with requirements of applicable law, and is adequate to manage the herring fishery effectively.

Comment 10: A commenter argued for a prohibition on bottom trawls during the spawning season and added that fixed-date spawning closures will not be effective.

Response: NMFS disapproved the spawning closures measure.

Comment 11: A commenter disagreed with the size restrictions on domestic vessels and the establishment of an "at-sea processing" sector, which could discriminate against large vessels. The commenter argued that the size restriction was included in the FMP with the intent of eliminating an existing freezer trawler. The commenter argued further that there is no analysis on "the effect or consequence of including or excluding vessels based on their length, tonnage, or horsepower either individually, all three, or a combination of any two of the specifications". The commenter concluded that the vessel size limits adversely affect the ability of those who would develop and supply the export markets for whole round frozen-at-sea herring.

Response: The Council did not intend to exclude any current participants in the herring fishery, but only to restrict the size of vessels. The Council reasoned that restricting the size of vessels entering the open access fishery would slow the increase in harvest rates. It stated that this is consistent with the 1998 SARC recommendation that the herring harvest be increased in an incremental manner until the precision of stock estimates can be improved. In actual effect, this measure allocates the herring resource to existing participants and future participants that comply with the size restrictions. For the vessels identified as having caught herring in 1997, the maximum length was 126 ft (38.4 m), the maximum horsepower was 2,100, and the maximum GRT was 246. While there are mid-water trawl vessels that exceed these criteria and may desire to participate in the fishery in the future, there were no vessels actively participating in the herring fishery during development of this FMP that exceeded the size limits specified in the FMP.

The FMP provides that vessels over the size limits for harvesting herring may participate in the fishery by processing at sea. The annual specification process, in this case, USAP, which is set at zero initially, is intended to provide a mechanism for the Council to control, if necessary, the development of large vessel at-sea processing capability for the herring fishery. While the question of excess capacity is not solely one of vessel size, given the existence of available capacity in the Northeast Region and recent attempts to reduce overall capacity in other U.S. fisheries, the Council chose not to allow large domestic vessels in the fishery until it is certain that the capacity they represent can be accommodated.

The Council set the initial specification for USAP at zero. However, it voted at its July 1999 meeting to request an increase in USAP to 20,000 mt for the 2000 fishing year. The Council request and analysis are currently under NMFS review.

Comment 12: A commenter considered the FMP to be overly broad and exceeding the intent of Congress. The commenter specifically cited the breadth of EFH designation, noting that EFH appeared to be designated over the range of the species, and in estuarine and coastal waters of the states.

Response: These concerns were addressed in the Northeast Omnibus EFH Amendment, which is incorporated into this action, and summarized here. The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the Councils used for EFH designation was primarily species distribution and relative abundance data, which is "level 2" information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Councils' EFH designation is consistent with these requirements.

Comment 13: A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the omnibus EFH amendments are neither based on the best available science, nor sufficiently supported. The commenter contended that the recommended measures do not take into consideration current practices, and are likely to be in conflict with measures being pursued under other regulatory programs. The commenter also stated that the Magnuson-Stevens Act did not empower the Councils to address non-fishing activities.

Response: NMFS disagrees. The information presented in the omnibus EFH amendments is well researched and is substantiated by the best available scientific information. The commenter did not provide examples of specific information not considered by the Councils.

Conservation and enhancement recommendations for non-fishing industries were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to "identify other actions to encourage the conservation and enhancement of [EFH]." This information is provided to assist non-fishing industries in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these recommendations are implemented.

Additionally, under section 305(b) of the Magnuson-Stevens Act, NMFS is required, and the Councils are authorized, to make conservation recommendations to any Federal or state agency regarding any activity that would adversely affect EFH. Moreover, Federal agencies are required to respond to these recommendations in writing.

Comment 14: A commenter stated that the amendment contains no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenter suggested that the consultation and conservation recommendation provisions of the Magnuson-Stevens Act will be burdensome and unworkable. The commenter also contended that the consultation procedures will be redundant with requirements of the National Environmental Policy Act (NEPA), costly, and time-consuming.

Response: The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. Adverse effects, as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that have a reasonably foreseeable adverse effect require consultation.

Consultations are not likely to be redundant or inefficient. The EFH regulations provide for streamlined consultation procedures, such as general concurrences and abbreviated consultations, that may be used when the activities at issue do not have the potential to cause substantial adverse effects on EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

Comment 15: A commenter stated that the Omnibus EFH Amendment generally failed to address the potential for significant adverse impacts of this amendment on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act (RFA).

Response: The conservation and enhancement recommendations outlined in the Omnibus EFH Amendment include a review of suggested measures for municipal, state, and Federal agencies and other organizations for the conservation and enhancement of EFH. As stated earlier, these recommendations are non-binding. Any regulatory action that may reflect these recommendations will be subject to the analysis and public review required by state or Federal law, which will be the appropriate vehicle for consideration of impacts to both fishing and non-fishing entities.

In the environmental assessment (EA) included with the Omnibus EFH Amendment, the Council found, and NMFS concurs, that there will be no significant impacts on the human environment as a result of this amendment. The EFH regulations and NOAA policy require that NMFS coordinate EFH consultations with other consultation and commenting requirements under environmental review procedures currently in place. This will eliminate duplication and ensure a workable review process. The analytical requirements of the RFA apply only to regulatory actions for which a general notice of proposed rulemaking (i.e., notice-and- comment rulemaking) is required under the Administrative Procedure Act (APA) or

another statute. The requirements of the RFA did not apply to the approval of the EFH portions of the FMP, since a general notice of proposed rulemaking was not required. Nothing related to EFH of Atlantic herring was codified in regulatory text in 50 CFR part 600, because no regulatory measures related to EFH were proposed in the FMP.

Comment 16: A commenter charged that the EFH provisions of the FMP do not comply with Magnuson-Stevens Act national standards 2 (best available scientific information), and 7 (unnecessary duplication).

Response: As a part of the Council's Omnibus EFH Amendment, the Atlantic herring section was intended to address only habitat issues, including the EFH requirements of the Magnuson-Stevens Act.

The Omnibus EFH Amendment was developed with significant input from scientists of the NEFSC and is based upon the best scientific information available. In the strategic plan portion of the amendment, the Councils clearly stated their commitment to updating the amendment as new information becomes available. NMFS finds the amendment consistent with national standard 2.

The commenter did not elaborate upon the assertion that the amendment violates national standard 7, so NMFS assumes, for the purpose of responding to this comment, that the commenter believes that the EFH consultation process is duplicative of other federally required consultation processes. NMFS has determined that the EFH amendment is consistent with the Magnuson-Stevens Act, including national standard 7. Inter-agency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act; they are not optional. Section 305(b)(2) of the Magnuson-Stevens Act states: "Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act."

Existing Federal statutes such as the Fish and Wildlife Coordination Act, the Endangered Species Act (ESA), and NEPA already require consultation or coordination between NMFS and other Federal agencies. As explained earlier, EFH consultations will be conducted to the greatest extent possible under existing review processes and within existing process time frames. NMFS is committed to a consultation process that will be effective, efficient, and to the extent possible non-duplicative. The EFH regulations at 50 CFR 600.920 suggest that NMFS be consulted as early as possible in project planning so that appropriate conservation measures can minimize the potential for adverse effects to EFH. The amendment contains conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

Comment 17: A commenter expressed concern regarding the application of a framework adjustment process to EFH. The commenter was concerned that the framework process would allow changes to these measures to be published as a final rule without first publishing them as a proposed rule. The commenter stated that non-fishing interests lack representation at Council meetings and, therefore, will not have an opportunity to comment on actions regarding EFH. The commenter asserted that the framework adjustment process will foster inconsistencies in treatment among the different NMFS Regions and the Fishery Management Councils, thereby complicating the EFH consultation process. The commenter requested that the inclusion of these measures be delayed until revision of NMFS EFH interim final regulations and guidelines.

Response: The framework adjustment process requires the Councils, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings through publication of the meeting agenda in the **Federal Register**, the proposals and the analysis, and provide an opportunity to comment on the proposals prior to, and at, the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to NMFS that the measures be published as a final rule, if certain conditions are met. NMFS may either publish the measures as a final rule, or as a proposed rule if NMFS or the Council determines that additional public comment is needed. NMFS believes that there is enough flexibility in the framework system to ensure that the affected parties will be able to participate. NMFS also believes that there is little likelihood of significant inconsistencies occurring between regions, since all measures are reviewed by NMFS Headquarters.

The list of measures that can be implemented by framework included in the FMP is inclusive to give the Councils maximum flexibility to respond quickly to fishery information as it becomes available and to adjust the regulations accordingly. As such, modifications to EFH and Habitat Areas of Particular Concern (HAPC) can be implemented in an expedited manner if circumstances warrant, based upon Council and NMFS approval. The framework adjustment process requires adherence to all applicable law.

Comment 18: A commenter recommended that the Area 1A TAC be adjusted upward, not to exceed 60,000 mt, with the condition that the combined TAC for Area 1A and 1B not exceed 70,000 mt. Other commenters asked for an upward adjustment to 55,000 mt or that Areas 1A and 1B be combined for a single quota of 70,000 mt.

Response: Since NMFS may only approve or disapprove an FMP measure, it was constrained to accept the 45,000 mt TAC for Area 1A. However, the Council voted at its May 3-4, 2000, meeting to request an inseason transfer of 15,000 mt of TAC from Area 1B (offshore) to Area 1A (inshore). The Council's request would increase the Area 1A quota to 60,000 mt and reduce the quota in Area 1B to 10,000 mt. The Council's request is currently under review.

Comment 19: A commenter stated that language should be clarified to allow landing of herring caught in any open area in an area that has been closed to directed fishing due to attainment of that area's TAC.

Response: The Council did not intend to disallow landing of herring caught in open areas in areas closed to directed fishing. Regulatory language has been clarified to allow landing of any amount of herring in areas where possession is restricted to 2,000 lb (907.2 kg) of Atlantic herring due to attainment of 95 percent of that area's TAC, provided such herring was caught lawfully in an open area and all gear is stowed and is not available for immediate use.

Comment 20: A commenter stated that the regulations prohibit transferring fish in or from closed areas, but that IWPs and USAPs in state waters are allowed to do so.

Response: The FMP allows vessels to transfer up to 2,000 lb (907.2 kg) of herring per day to other U.S. vessels in or from closed areas in Federal waters.

Comment 21: A commenter stated that the requirement that lobster and tuna fishermen who occasionally purchase bait at sea obtain permits is unnecessarily burdensome.

Response: Section 648.4(a)(10)(i)(A)(*1*) exempts a vessel that possesses herring solely for its own use as bait, providing the vessel does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, from the requirement to obtain an Atlantic herring permit. Also exempted under § 648.4(a)(10)(i)(2) is a skiff or other similar craft used exclusively to deploy the net in a purse seine operation during the fishing trip of a vessel that is duly permitted under part 648.

Comment 22: A commenter stated that defining a shore-based pump operator as a herring dealer will add confusion to dealer reporting requirements and will decrease report quality.

Response: NMFS agrees and has removed shore-based pump operators from the herring dealer definition.

Comment 23: A commenter stated that the definition for the VMS currently limits fishers to one approved system and that the regulation should provide a choice of VMS systems. Another commenter, who proposed its own VMS system as a low cost alternative to the existing NMFS-approved system, suggested that the unnecessarily high cost of the one approved VMS is inconsistent with national standard 8.

Response: To ensure efficient and expeditious implementation of the VMS requirement in the herring fishery, the Regional Administrator has determined that such requirements, at this time, should be consistent with existing VMS requirements in other fisheries, such as the Atlantic scallop fishery. The definition does not limit the fishery to one approved system. The opportunity exists for any vendor to apply to the Regional Administrator for approval of the vendor's VMS system. NMFS will annually approve VMS systems that meet the minimum performance criteria specified in § 648.9(b). Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VMS systems will be published in the **Federal Register** upon addition or deletion of a VMS from the list.

Comment 24: A commenter stated that the final rule should consider incorporating the Council's recommended 2000 specifications previously approved by the Council (decreases JVPt by 20,000 mt and increases USAP by 20,000 mt).

Response: The Council has submitted its recommended 2000 specifications with an accompanying analysis to NMFS. Its submission package is undergoing NMFS review and is being processed separately as an inseason adjustment.

Comment 25: A commenter stated that it is unfair to U.S. fishermen selling herring to Canadian carriers to be limited by the FMP. The commenter suggested that the Boat Transfer (BT) of 4,000 mt be removed from the FMP to enhance free trade. The commenter further stated that the fixed gear (weir/stop seine) sector of the U.S. herring fishery should be exempted from the Area 1 TAC, as the Canadian fixed gear fishery is in New Brunswick, at least until the sector's annual harvest becomes a significant portion of the region's herring fishery.

Response: Because the removal of herring for purposes of transferring to Canadian carriers is part of the DAH, it must be included in OY calculations and restricted accordingly. The specification of BT allows the continuation of the historic trade in herring between the U.S. and Canada, while addressing the concerns of other U.S. processors by preventing this trade from being an unlimited transfer that reduces their access to the resource. While the commenter's suggestions are directed to future management measures rather than to these regulations, upon implementation of this rule the Council will have the ability to revise the specifications and TAC distribution method. It would be appropriate for the commenter to raise his concerns in the Council forum.

Comment 26: A commenter stated that the regulations should clarify the intent of the FMP, which is that a vessel may only land 2,000 lb (907.2 kg) of herring taken in an area closed because the TAC has been reached in a given calendar day. Other commenters stated that the regulations correctly note this limit, but do not include the FMP language, which reflects the Council's intent that a vessel on a 5-day trip (for instance) would not be allowed to land 10,000 lb (4,536 kg) of herring.

Response: The regulations have been clarified.

Comment 27: A commenter stated that NMFS authorized the broad use of framework adjustments to allow for expedited rulemaking, without demonstrating a need for such a provision. The commenter stated that this violates the APA because regulations could be implemented without adequate opportunity for public comment. The commenter also stated that the framework process violates the Magnuson-Stevens Act because it fails to conform with the statutorily required FMP process for proposing regulatory changes.

Response: The FMP allows the Council to initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP, or to address gear conflicts. After a management action has been initiated, the Council develops and analyzes appropriate actions over the span of at least two Council meetings. Prior to the second Council meeting, a framework document is prepared that discusses and shows the impacts of the alternatives, which is made available to the public prior to the second or final framework meeting. The public is invited to participate and comment, in person or writing, at all pertinent Council and Committee meetings during the development of the framework action. If the Council recommends to NMFS that the action be issued as a final rule, the Council must first consider and provide support and analysis for several factors, one of which is whether there has been adequate notice and opportunity for participation by the public and members of the affected industry.

NMFS believes that there is enough flexibility in the framework system to ensure that the affected parties are able to participate. For further discussion of the framework adjustment process, see response 17.

Comment 28: A commenter stated that the final rule needs to clearly express NMFS' commitment to protecting EFH of Atlantic herring to the greatest extent practicable and that HAPC need to be identified. At a minimum, at least one of the identified herring schools in each inshore and offshore area should be managed as a no-take school. The commenter also stated that this final rule should explicitly state that the Council, through its EFH Committee, consider impacts of fishing gear and practices (as well as non-fishing impacts) to this school-as-habitat approach to EFH and HAPC for herring.

Response: As stated in the Northeast Omnibus EFH Amendment incorporated into the FMP and this action, the Council determined, and NMFS concurred, that the most appropriate way to identify EFH for herring was by using scientific studies to quantify herring abundance and distribution, and applying this information as a proxy for estimating habitat utilization. The identification of HAPC is recommended by the EFH regulations, but not required. Further, the approach proposed by the commenter appears to be more of an attempt to manage the herring fishery than a provision for conservation of herring EFH.

Comment 29: A commenter stated that the final rule should require the applicable fishery managers to factor in the dietary needs of humpback whales and other marine mammals that are feeding on the Atlantic herring resource. The commenter said that the whale watching industry has been significantly impacted by the departure of whales

from nearshore Federal waters due to the commercial removals of entire herring schools from areas such as Schoodic Ledge.

Response: The FMP states that the annual specification of OY will include consideration of economic, social, and ecological factors, which is consistent with the Magnuson-Stevens Act and national standard guidelines. For fishing year 2000, the OY has been set at 224,000 mt with a total herring biomass estimated at 2.9 million mt. It is projected that there will be a 39 percent increase in overall stock size. The 2000 specifications have been set at a conservative level well below ABC to allow for controlled industry growth. This conservative specification level also acknowledges the need to provide for an adequate forage base for marine mammals. However, the degree to which whales are dependent on the herring resource is unknown. Trophic interactions between the herring fishery and humpback and fin whales, as well as other marine mammals, were considered during the ESA consultation on the FMP. Given the complexity of ecosystem interactions, there is no demonstrated link between herring abundance and marine mammal survival and recovery. The ESA consultation recognizes that in the past the herring fishery has apparently affected the distribution of whales that eat herring. However, it also notes that the conversion of the herring fishery into a regulated fishery will benefit protected species management by the overall monitoring of effort patterns in the fishery and the designation of area-based TACs based on the health of the resource in those areas. In addition, one effect of the FMP is to limit harvest from Area 1 in the Gulf of Maine where the resource is considered fully utilized and move more of the fishery further offshore to Areas 2 and 3, where the resource is not considered fully utilized. The combination of area-based TACs and the movement of the herring fishery further offshore would benefit the whale watching industry in the nearshore Federal waters by preventing localized depletions of herring that may affect the distribution of whales in that area.

Comment 30: A commenter stated that the NEFMC/Commission meetings were held in locations that were relatively inaccessible to the fixed gear fishermen in the herring fishery. The commenter said that this resulted in unfair representation at Council meetings of some sectors of the industry.

Response: Both the Council and Commission attempt to accommodate as much as possible all sectors of the fisheries within their areas of authority. Council meetings are held throughout New England during the course of the year. In deciding upon meeting sites, the Council and Commission must balance budgetary, staff, travel, facilities and other issues. Industry representatives and members of the public have the opportunity to submit written comments for the Council to consider during its deliberations. However, at least one representative of the fixed gear sector of this fishery is a member of the Council.

Regarding the 2001 meeting schedule, the commenter may appropriately raise his concern directly with the Council and Commission.

Comment 31: A commenter stated the need to clarify vessel sizes in the regulations. Another commenter would extend this clarification to capacity, horsepower, and to discrepancies between Herring and Mackerel fishery management plans. A third commenter asked for clarification that a vessel's total (not a single engine) horsepower of its main propulsion machinery cannot exceed 3,000 horsepower.

Response: Clarifications have been made, where possible, through modification of the regulatory text in this final rule (See Changes from the Proposed Rule).

Comment 32: A commenter suggested that the Atlantic herring dealer definition include harvesters who sell herring to individuals for personal use.

Response: The definition of a dealer is not intended to identify persons who sell herring to end users, but rather to identify the person who first receives herring from a harvesting vessel. Including harvesters who sell herring to individuals for personal use in the Atlantic herring dealer definition, therefore, was not the intent of the Council, nor would it be consistent with the definition of a dealer in § 648.2.

Comment 33: A commenter stated that the definition of USAP is not clear as to whether the specification refers to the quantity of whole round herring received by vessels for processing, or the quantity of finished, processed product.

Response: The definition of USAP has been modified in this final rule to clarify that it is the quantity of whole round herring that can be received for processing by U.S. vessels issued an Atlantic herring processing permit.

Comment 34: A commenter stated that the SARC recommended that it would not be prudent to consider MSY above 200,000 mt until the sizes of recent year classes were better estimated.

Response: The Council's Herring PDT and the Commission's Technical Committee considered the SARC's recommendation. Their response and a complete discussion of this issue may be found in the Overfishing Definition Section, Volume I, section 2.6 of the FMP.

Comment 35: A commenter mentioned that, because of NMFS' rejected management measures in the proposed rule that would have protected species of concern, it must undertake an additional Section 7 formal consultation to determine if the regulations implementing the partially approved FMP jeopardize any of these listed species.

Response: On July 13, 1999, a BO on the proposed FMP concluded that the operation of the Federal Atlantic herring fishery under the FMP could adversely affect but would not likely jeopardize the continued existence of endangered and threatened species under NMFS' jurisdiction and also would not likely destroy or adversely modify right whale critical habitat.

Subsequent to completion of the BO, NMFS disapproved certain management measures in the proposed FMP. These included: (1) mandatory days out of the fishery; (2) spawning area closures; (3) adjustment of the TAC for Management Area 1A; and (4) a prohibition on specifying TALFF. Modification of the FMP does not automatically trigger reinitiating a formal Section 7 consultation. Re-initiation is only required if the consulting agency has retained involvement or control over the action, and the agency action has been modified in a manner that causes an effect to the listed species or critical habitat not considered in the BO. The FMP, as amended, will not cause an effect to listed species or critical habitat that has not been previously considered in the BO.

As stated in the BO, the primary benefit of regulating the Atlantic herring fishery will be the overall monitoring of effort patterns in the fishery and designation of area-based TACs established based on the health of the resource in those areas. An annual scientific review of the resource will allow for adjustments to the fishery as a result of fluctuations in stock size. The BO considered the adjustment of TAC in Management Area 1A, mandatory days out of the fishery and prohibition on specifying a TALFF as supporting administrative measures to the area-based TAC effort control measure. Since the method for controlling effort in the herring fishery has not been changed, disapproval of the measure for adjustment of the Area 1A TAC is not expected to result in effects to protected species or critical habitat not previously considered in the BO. Similarly, although the measure that would have required mandatory days out of the fishery has been disapproved, the trigger that closes the fishery in any one management area is still in place and is the same as what was considered in the BO. Finally, while NMFS disapproved the prohibition on establishing a TALFF, it has set the TALFF for the herring fishery at zero. Even if specified above zero, a TALFF would be specified from that portion of the OY that would not be taken in the domestic harvest. Therefore, disapproval of a prohibition on setting a TALFF is not expected to result in an effect to protected species that was not considered in the BO.

The Council included Area 1 spawning closures as an additional measure to help ensure the health of the herring resource. The Council also included a provision to add area closures by framework action. That provision of the FMP remains in place. The BO considered the effect that spawning closures would have on listed species, and concluded that spawning closures could provide some benefit to listed species. This conclusion was moderated, however, with information in the BO that the efficacy of spawning closures could be affected by the 2,000-lb (907.2-kg)/day incidental catch allowance and/or be offset by the potential for effort shifts causing amplification of any adverse effects of the fishery during the time right before and after spawning closures and in areas outside the boundaries of these closures. In addition to these considerations, the BO also examined the trophic relationships between listed species and herring in the current fishery where there are no spawning closures. Given the limited information available on these trophic relationships, the BO could only conclude that while competition with the herring fishery may affect the availability of sufficient prey for endangered whales, the complexity of ecosystem interactions and the logistical difficulties of conducting necessary sampling have hindered conclusive demonstration of the existence of competition. Since the BO did consider the effects to listed species and critical habitat in the presence and absence of spawning closures, re-initiation of the Section 7 consultation is not required. A new Section 7 consultation would not provide any additional or new information that could change the final determination of the BO.

Changes from the Proposed Rule

In § 648.2, the definition of "Atlantic herring dealer" is changed to reflect that shore-based pump operators do not automatically qualify as Atlantic herring dealers. In the proposed rule, shore-based pump operators were designated as dealers because of the difficulty in identifying all the persons who receive herring from the pump operator. These persons have since been identified and will provide fisheries managers with better and more complete data.

In § 648.2, the definition of "Atlantic herring processor" is clarified by stipulating that an Atlantic herring dealer who purchases Atlantic herring for resale as bait must do so from a fishing vessel with a Federal Atlantic herring permit to be considered an Atlantic herring processor.

In § 648.2, the definition of "Council" is modified by adding "spiny dogfish fishery" to the list of fisheries under the auspices of the Mid-Atlantic Fishery Management Council. This brings the definition up to date to reflect approval of the Spiny Dogfish Fishery Management Plan.

In § 648.2, the definition of "horsepower" is removed because, as proposed, it would have been administratively inconsistent with its use as applied to other fisheries of the Northeastern United States.

In § 648.2, the definition of "processing" is corrected by removing the words "icing, bleeding, heading or gutting" of Atlantic herring as an exception to the means of preparation of herring to render it suitable for use as bait.

In § 648.2, the definition of "U.S. at-sea processing (USAP)" is clarified to show that USAP means the specification of the total amount of herring available for processing by U.S. vessels issued an Atlantic herring processing permit.

In § 648.4, paragraph (a)(10)(i)(B) is clarified to show that the total horsepower of a vessel's main propulsion machinery cannot exceed 3,000 horsepower. Prior to this clarification, the regulation could have been interpreted to apply horsepower restrictions to a single engine, which would have allowed a multi-engine vessel to exceed the limit established in the FMP.

In § 648.4, paragraph (c)(2)(vi)(C) is revised to indicate that the VMS vendor receipt required for certain vessels must be submitted initially not later than March 12, 2001.

In § 648.6, the first sentence of paragraph (a) is corrected by substituting the word "dealers" for "purchasers." The section further retains language pertaining to small-mesh multispecies used as bait, which was added to § 648.6 after submission of the proposed rule for Atlantic herring. Atlantic herring is also added as an exemption from the requirement to possess a valid permit or letter of authorization when purchasing herring at sea if it is to be used for one's own use as bait and certain specific fishing gear is not on board.

In § 648.7, the first sentence of paragraphs (a)(3)(i) and (b)(1)(i) were proposed for revision and the heading of paragraph (b)(1)(i) was proposed for removal. However, these revisions were implemented in the final rule implementing Amendment 1 to the FMP for Atlantic Bluefish Fishery and, therefore, are not repeated in this final rule.

In § 648.7, paragraph (b)(1)(iii)(A) is clarified.

In § 648.11, paragraph (a) is corrected by substituting the word "require" for the word "request" as pertains to the Regional Administrator's authority to place sea samplers/observers aboard federally permitted fishing vessels.

In § 648.13, paragraph (e) is redesignated as paragraph (f) and is further corrected by modifying paragraph (f)(1) to reflect that persons receiving bait at sea for their own personal use are exempt from the requirement to possess a valid Atlantic herring permit or a letter of authorization from the Regional Administrator, providing certain specific fishing gear is not on board the vessel.

In § 648.14, paragraph (a)(103) is corrected to reflect that purchasers of herring at sea to be used for their own use as bait do not require an Atlantic herring dealer permit.

In § 648.200, paragraph (a) is corrected to reflect that the Atlantic Herring Plan Development Team shall meet at least annually, but no later than July, with the Commission's Atlantic Herring Plan Review Team to develop and recommend specifications for the following year to the Council. The requirement in the proposed rule to present the specifications recommendation to the Council at its July meeting is removed.

In § 648.202, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added. The new paragraph (d) corrects an inadvertent omission in the proposed rule by allowing the landing of herring in closed areas if such herring were caught in open areas. Paragraph (a) is corrected to reflect the addition of paragraph (d) and the newly re-designated paragraph (e). Paragraph (a) is also modified to clarify that once the TAC is reached, a vessel may only land 2,000 lb (907.2 kg) of herring in a given calendar day, without regard to the length of the trip.

In § 648.203, paragraph (b) is corrected to refer to the U.S. at-sea processing specification as "USAP."

In § 648.206, the title is changed from "Framework specifications" to "Framework provisions."

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control numbers for 0648-0404 for §§ 648.9 and 648.205.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

The President has directed Federal agencies to use plain language in their communications with the public including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising form the language used in this rule. Send comments to Patricia Kurkul (see **ADDRESSES**).

Classification

NMFS has determined that the FMP that this rule implements is necessary for the conservation and management of the Atlantic herring fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

Because current data indicate that the 2000 TAC this final rule implements for Management Area 1A is fast being reached, and an inseason adjustment that has been requested by the Council to address the situation cannot be considered until the 2000 specifications are in place, and given the immediate conservation benefit that would result from implementing the 2000 fishing specifications, it is contrary to the public interest to delay for 30 days the effective date of regulatory provisions establishing the specification process, management areas, TAC controls and prohibitions related to the TAC controls. Failure to implement the 2000 specifications without delay could have a negative impact on fishers and other entities dependent on a steady supply of herring. Therefore, the Assistant Administrator for Fisheries, NOAA, finds under 5 U.S.C. 553(d)(3) that good cause exists not to delay for 30 days the effective date of §§ 648.14(x)(10) and (bb)(7) and (bb)(10), 648.200, 648.201 and 648.202. In addition, §§ 648.1, 648.2 and 648.206 contain provisions which have no substantive effect and therefore 5 U.S.C. 553 does not apply.

This action has been determined to be significant for the purposes of Executive Order 12866.

The Council prepared an FEIS for the FMP; a notice of availability was published on September 24, 1999 (64 FR 51753). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to prevent overfishing; protect harbor porpoise; provide economic and social benefits to the fishing industry in the long term; and contribute to better balance in the ecosystem in terms of the herring resource.

NMFS completed a FRFA that contains the items specified in 5 U.S.C. 604(a) as follows:

Final Regulatory Flexibility Analysis

Need for and Objectives of the Final Rule

This final rule is necessary to implement approved measures contained in the Atlantic Herring FMP. The intent of this final rule is to manage the Atlantic herring fishery in compliance with the regulations pursuant to the Magnuson-Stevens Act and the FMP and to prevent overfishing of the herring resource. This final rule also withdraws approval of the Atlantic herring PMP and removes previous regulations related to Atlantic herring (50 CFR 600.525).

Public Comments

There were 12 sets of public comments on the FMP submitted during the comment period established by the NOA. Those comments were considered by NMFS before it partially approved the FMP and are characterized and responded to by NMFS in the Comments and Responses section of this final rule. NMFS also received 14 sets of written comments on the proposed rule and those comments that specifically addressed the proposed rule were considered in approval and implementation of the final rule effecting the FMP and its management measures. Responses to comments on economic impacts of the proposed rule are contained in the Response to Comments section in the preamble and are not repeated here. Most of the comments made on the proposed rule addressed the management measures in the FMP that were previously disapproved by NMFS, rather than the proposed rule itself. No significant changes to the rule were made as a result of comments received.

Number of Small Entities

The identification of the number of small entities affected by this final rule is complicated in two ways. First, vessels fishing for herring are not currently required to possess Federal herring permits. Second, while many vessels currently landing herring possess other Federal permits or letters of authorization, there are some vessels that fish for herring only in state waters that do not possess such permits or authorizations. Only those vessels that have another Federal permit are required to submit vessel trip reports and can be readily identified in the permit, vessel trip report, and dealer weighout databases.

Because some vessels may target herring for a small number of trips each year, vessels were identified as participating in a "directed" fishery for herring if they landed at least one trip of one metric ton (2,205 lb) or more of herring during 1997. There were only 61 vessels, which landed 97,300 mt, amounting to 99 percent of all herring landings in the Northeast, while 140 vessels landing herring during 1997 accounted for less than 71 mt. Expressed in terms of revenues, the 61 vessels derived about $10.7 million from herring fishing while the remaining vessels' total herring revenues did not exceed $8,000. Therefore, for RFA purposes, the set of affected vessels is limited to these 61 vessels in the directed herring fishery.

Of the 61 vessels, 17 of them derived, on average, less than $1,000 in herring revenues in 1997. The remaining 44 vessels were divided into two groups. The first group of 25 vessels derived, on average, $5,534 from herring revenues in 1997. The remaining group of 19 vessels earned, on average, $524,000 from herring revenues in 1997. The 44 vessels constitute 22 percent of the 201 vessels that landed some herring in 1997 and 72 percent of the 61 vessels in the directed herring fishery. The regulations would mostly affect the group of 19 vessels that, on average, earned $524,000 from herring revenues in 1997. These vessels alone represent 31 percent of all business entities in the directed herring fishery. Whether the affected set of vessels is defined to include only 61 vessels or all of the 201 vessels that landed herring in 1997, the regulations would affect a substantial number of the small entities in the fishery.

Cost of Compliance

Vessels, dealers, and processors would be required to obtain permits and comply with reporting requirements. Some participants in the fishery already have a Federal permit and comply with reporting requirements for another fishery. The compliance costs are primarily due to the time required to complete and submit the necessary forms. The annual costs to comply with these requirements, per vessel, are estimated at $7.80 for vessel permits, $25.32 for operator permits, $27.00 for vessel trip reports, and $52.00 (maximum) for interactive voice reports. Total annual compliance costs per vessel are thus about $112 per vessel for these measures. The total annual cost for each dealer is estimated to be $1.58 for permits and $78.70 for weekly landing reports, for an annual total of about $80 per dealer. The annual compliance costs for each processor is also estimated to be $1.58 for permits and $7.83 for an annual report, or a total of $9.41 per processor. These costs are considered insignificant relative to other costs of doing business.

Vessels that intend to harvest > 500 mt of herring per year, or that harvested > 500 mt of herring in the previous year, would be required to operate a VMS unit. The annual cost per vessel to purchase, install, and operate a VMS unit is estimated to be $2,700. Additional costs would be incurred due to burden-hour estimates of the requirements associated with VMS, estimated at an additional $111 per vessel per year. At the > 500 mt threshold, this would be approximately 4 percent of annual revenues from herring. When compared to the average herring revenues of the 19 vessels that landed most of the herring in 1997 and that would be required to have a VMS, based on their 1997 landings, this cost is equal to approximately 0.5 percent of the average revenues for this group.

Minimizing Significant Economic Impacts on Small Entities

An analysis indicated that the alternatives implemented by this final rule would minimize significant economic impacts while achieving the conservation goals and objectives of the FMP. The Council considered other alternatives but did not choose them because it determined that they would limit the ability of some smaller vessels in other fisheries to shift into the herring fishery, or would be difficult to implement or monitor accurately, or would conflict with FMP goals. For a description of the alternatives considered but rejected, see the section of the proposed rule (65 FR 11956).

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

This final rule references foreign fishing vessel activity reports, which is a collection-of-information requirement subject to the PRA that was previously approved by OMB under control number 0648-0075. These reports are estimated to require 6 minutes/response.

This final rule also contains 12 new collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB, and the OMB control numbers and the estimated time for a response are listed as follows:

Open access Atlantic herring permits, OMB control number 0648–0202 (30 minutes/response).

Operator permits, OMB control number 0648–0202 (60 minutes/response).

Dealer permits, OMB control number 0648–0202 (5 minutes/response(trip)).

Processor permits, OMB control number 0648–0202 (5 minutes/response).

Vessel trip reports, OMB control number 0648–0212 (5 minutes/response).

Interactive voice response system reports, OMB control number 0648–0212 (4 minutes/response).

Dealer logbooks reports, OMB control number 0648–0229 (2 minutes/response).

Annual processor reports, OMB control number 0648–0018 (30 minutes/response).

Vessel monitoring system verification requirement, OMB control number 0648–0404 (2 minutes/response).

Vessel monitoring system reports, OMB control number 0648–0404 (5 seconds/response).

Vessel monitoring system installation, OMB control number 0648–0404 (60 minutes/response).

Herring carrier exemption from VMS requirements authorization letter, OMB control number 0648–0404 (2 minutes/response).

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 600 and 648

Fisheries, Fishing, Foreign Vessels, Reporting and recordkeeping requirements.

Dated: November 29, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX, part 902 and 50 CFR chapter VI, parts 600 and 648 are amended as follows:

15 CFR Chapter IX

PART 902—NCAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the OMB control number in numerical order for § 648.9, and by adding in numerical order an entry for § 648.205 with a new OMB control number to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
• • •	• • •
50 CFR	
• • •	• • •
648.9	• • • -0202, -0307, and -0404
• • •	• • •
648.205	-0404
• • •	• • •

50 CFR Chapter VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

§ 600.525 [Removed]

2. Remove § 600.525.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the spiny dogfish fishery (Spiny Dogfish FMP); and the Atlantic herring fishery (Atlantic Herring FMP).* * *

* * * * *

3. In § 648.2, the definitions for "Council", "IVR system", and "Vessel Monitoring System" are revised and the definitions for "Atlantic herring", "Atlantic herring carrier", "Atlantic herring dealer", "Atlantic herring processor", "Border transfer", "JVPt", "Processing", and "U.S. at-sea-processing" are added alphabetically to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic herring means *Clupea harengus.*

Atlantic herring carrier means a fishing vessel with an Atlantic herring permit that does not have any gear on board capable of catching or processing herring and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

Atlantic herring dealer means:

(1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait; or

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port.

Atlantic herring processor means a person who receives unprocessed Atlantic herring from a fishing vessel issued a Federal Atlantic herring permit or from an Atlantic herring dealer for the purposes of processing; or the owner or operator of a fishing vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring from a fishing vessel with a Federal Atlantic herring permit for resale as bait.

* * * * *

Border transfer (BT) means the amount of herring specified pursuant to § 648.200 that may be transferred to a Canadian transport vessel that is permitted under the provisions of Pub. L. 104-297, section 105(e).

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, and the NE multispecies fisheries, and the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; the spiny dogfish fishery; and the Atlantic bluefish fishery.

* * * * *

IVR System means the Interactive Voice Response reporting system established by the Regional Administrator for the purpose of monitoring harvest levels for certain species.

* * * * *

JVPt, with respect to the Atlantic herring fishery, means the specification of the total amount of herring available for joint venture processing by foreign vessels in the EEZ and state waters.

* * * * *

Processing, or to process, in the Atlantic herring fishery means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meal or oil.

* * * * *

U.S. at-sea processing (USAP), with respect to the Atlantic herring fishery, means the specification, pursuant to § 648.200, of the amount of herring available for processing by U.S. vessels issued an Atlantic herring processing permit as described in § 648.4(a)(10)(ii).

* * * * *

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, and Atlantic herring vessels, as required by this part.

* * * * *

4. In § 648.4, the section heading is revised, and paragraphs (a)(10) and (c)(2)(vi) are added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) *Atlantic herring vessels*—(i) *Atlantic herring permit.*

(A) Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, catch, possess, transport, land, or process Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(*1*) A vessel that possesses herring solely for its own use as bait, providing the vessel does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board; or

(*2*) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part.

(B) *Eligibility.* A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, catch, take, harvest, and possess Atlantic herring in or from the EEZ unless the vessel is ≥ 165 feet (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel's total main propulsion machinery is > 3,000 horsepower.

(ii) Atlantic herring processing permit. A vessel of the United States that is > 165 feet (50.3 m) LOA, or > 750 GRT (680.4 mt) is eligible to obtain an Atlantic herring processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing (USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such vessel may not receive or process Atlantic herring caught in or from the EEZ unless the vessel has been issued and has on board an Atlantic herring processing permit.

(iii) *Atlantic herring carrier vessels—letter of authorization.* An Atlantic herring carrier vessel permitted under paragraph (a)(10)(i)(A) of this section must have been issued and have on board the vessel a letter of authorization to transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such vessel from the VMS and IVR reporting requirements as specified in subpart K, except as otherwise required by this part. An Atlantic herring carrier vessel may request and obtain a letter of authorization from the Regional Administrator.

(iv) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

* * * * *

(c) * * *

(2) * * *

(vi) An application for an Atlantic herring permit must also contain the following information:

(A) If the vessel operator caught > 500 mt of Atlantic herring in the previous fishing year, a statement so stating;

(B) If the vessel operator intends to catch > 500 mt of Atlantic herring in the current fishing year, a statement so stating;

(C) If the vessel operator either caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, a copy of a vendor installation receipt from a NMFS-approved VMS vendor, as described in § 648.9, must also be provided:

(*1*) From January 10, 2001, through March 12, 2001, not later than March 12, 2001;

(*2*) After March 12, 2001, with the application.

* * * * *

5. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ, or issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit.* * *

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* (1) All dealers of NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, and black sea bass, Atlantic surf clam and ocean quahog processors, and Atlantic herring processors or dealers as described in § 648.2, must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

(2) [Reserved]

* * * * *

7. In § 648.7, the first sentence of paragraphs (a)(1)(i), and (a)(2)(i), and paragraph (f)(3) are revised; and new paragraphs (a)(3)(iii) and (b)(1)(iii) are added, to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(2) * * *

(i) Federally permitted dealers, other than Atlantic herring dealers, purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species, other than Atlantic herring; reporting week in which species were purchased; and state of landing for each species purchased. * * *

* * * * *

(3) * * *

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

(b) * * *

(1) * * *

(iii) The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a permit for Atlantic herring subject to the requirements specified by § 648.4(c)(2)(vi)(C) that is required by § 648.205 to have a VMS unit on board must submit an Atlantic herring catch report via the IVR system each week (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board, or any vessel that catches herring in or from the EEZ, but catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

* * * * *

(f) * * *

(3) *At-sea purchasers, receivers, or processors.* All persons, except persons on Atlantic herring carrier vessels, purchasing, receiving, or processing any Atlantic herring, summer flounder, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

* * * * *

8. In § 648.9, paragraphs (c)(1) and (f) are revised and paragraph (c)(2)(iii) is added to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h), all required VMS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(2) * * *

(iii) Any VMS-equipped vessel with an Atlantic herring permit, unless required by other fishery regulations to have on board a fully operational VMS unit at all times, need not transmit a signal when the vessel is in port.

* * * * *

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, or an Atlantic herring permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

* * * * *

9. In § 648.11, the first sentence of paragraph (a) is revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may require any vessel holding any of the following permits to carry a NMFS-approved sea sampler/observer: Atlantic sea scallop, Atlantic herring, NE multispecies, monkfish, Atlantic mackerel, spiny dogfish, squid, butterfish, scup, bluefish, black sea bass, or a moratorium permit for summer flounder. * * *

* * * * *

10. In § 648.12, the first sentence of the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General Provisions), B (Atlantic Mackerel, Squid, and Butterfish Fisheries), D (Atlantic Sea Scallop Fishery), E (Atlantic Surf Clam and Ocean Quahog Fisheries), F (NE Multispecies and Monkfish Fisheries), G (Summer Flounder Fishery), H (Scup Fishery), I (Black Sea Bass Fishery), J (Atlantic Bluefish Fishery), K (Atlantic Herring Fishery), or L (Spiny Dogfish Fishery) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. * * *

* * * * *

11. In § 648.13, paragraph (f) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) *Atlantic herring.* Except for a person who purchases and/or receives Atlantic herring at sea for his own personal use as bait and who does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, any person or vessel is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, and any vessel issued an Atlantic herring permit is prohibited from transferring, receiving, or attempting to transfer or receive, Atlantic herring, unless the person or vessel complies with the following:

(1) The transferring and receiving vessels have been issued valid Atlantic herring permits and/or other applicable authorization, such as a letter of authorization from the Regional Administrator, to transfer or receive herring.

(2) The vessel does not transfer to a U.S. vessel, and a U.S. vessel does not receive, > 2,000 lb (907.2 kg) of herring per day in or from a management area closed to directed fishing for Atlantic herring.

(3) The vessel does not transfer herring in or from an area closed to directed fishing for Atlantic herring to an IWP or Joint Venture vessel.

(4) The vessel does not transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104-297 after the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200.

12. In § 648.14, paragraph (a)(103) is revised, and paragraphs (x)(10) and (bb) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(103) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or transfer, other than solely for transport, any Atlantic herring, multispecies, or monkfish, unless the dealer or transferee has a valid dealer permit issued under § 648.6. A person who purchases and/or receives Atlantic herring at sea for his own personal use as bait, and does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, is exempt from the requirement to possess an Atlantic herring dealer permit.

* * * * *

(x) * * *

(10) *Atlantic herring.* All Atlantic herring retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.

* * * * *

(bb) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, retain or land Atlantic herring, unless:

(i) The Atlantic herring are being fished for or were harvested in or from the EEZ by a vessel holding a valid Atlantic herring permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The Atlantic herring were harvested by a vessel not issued an Atlantic herring permit that was fishing exclusively in state waters; or

(iii) The Atlantic herring were harvested in or from the EEZ by a vessel engaged in recreational fishing; or

(iv) Unless otherwise specified in accordance with § 648.17.

(2) Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing Atlantic herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, Atlantic herring that were harvested in or from the EEZ, without having been issued, and in possession of, a valid Atlantic herring dealer permit.

(4) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a processor, or in the capacity of a processor, Atlantic herring from a fishing vessel with an Atlantic herring permit or from a dealer with an Atlantic herring dealer permit, without having been issued, and in possession of, a valid Atlantic herring processor permit.

(5) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any Atlantic herring, unless the vessel has been issued an Atlantic herring permit, or unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(6) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase, possess or receive, for a commercial purpose, Atlantic herring caught by a vessel without an Atlantic herring permit, unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(7) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from an area of the EEZ subject to restrictions pursuant to § 648.202(a).

(8) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from state waters subject to restrictions pursuant to § 648.202(a), if the vessel has been issued a valid Atlantic herring permit.

(9) Transfer or attempt to transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104-297 after the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200.

(10) Transit an area of the EEZ that is subject to a closure to directed fishing for Atlantic herring or restrictions pursuant to § 648.202(a) with > 2,000 lb (907.2 kg) of herring on board, unless all fishing gear is stowed as specified by § 648.23(b).

(11) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.203.

(12) Process Atlantic herring caught in or from the EEZ in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in § 648.203(b).

(13) Discard herring carcasses in the EEZ, or at sea if a federally-permitted vessel, after removing the roe.

(14) Catch, take, or harvest Atlantic herring in or from the EEZ for roe in excess of any allowed limit that may be established pursuant to § 648.204(b).

(15) Catch, take, or harvest Atlantic herring in or from the EEZ, unless equipped with an operable VMS unit if a vessel caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, as required by § 648.205(a).

(16) Catch, take, or harvest > 500 mt of Atlantic herring in or from the EEZ during the fishing year, unless equipped with an operable VMS unit as required by § 648.205(a).

(17) Receive Atlantic herring in or from the EEZ solely for transport, unless issued a letter of authorization from the Regional Administrator.

(18) Fail to comply with any of the requirements of a letter of authorization from the Regional Administrator.

13. Subpart K is added to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Sec.

Subpart K—Management Measures for the Atlantic Herring Fishery

648.200 Specifications.
648.201 Management areas.
648.202 Total allowable catch (TAC) controls.
648.203 Vessel size/horsepower limits.
648.204 Herring roe restrictions.
648.205 VMS requirements.
648.206 Framework provisions.

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually, but no later than July, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area. Recommended specifications shall be presented to the New England Fishery Management Council (Council)

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OY must be equal to or less than the allowable biological catch (ABC) minus an estimate of the expected Canadian NB fixed gear and GB herring catch, which shall not exceed 20,000 mt for the NB fixed gear harvest and 10,000 mt for the Canadian GB harvest.

(2) OY shall not exceed maximum sustainable yield (MSY), unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis; however, OY shall not exceed MSY prior to the 2001 fishing year.

(3) Factors to be considered in assigning an amount, if any, to the reserve shall include:

(i) Uncertainty and variability in the estimates of stock size and ABC;

(ii) Uncertainty in the estimates of Canadian harvest from the coastal stock complex;

(iii) The requirement to insure the availability of herring to provide controlled opportunities for vessels in other fisheries in the Mid-Atlantic and New England;

(iv) Excess U.S. harvesting capacity available to enter the herring fishery;

(v) Total world export potential by herring producer countries;

(vi) Total world import demand by herring consuming countries;

(vii) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(viii) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(ix) Increased/decreased revenues to U.S. processors and exporters; and

(x) Increased/decreased U.S. processing productivity.

(4) Adjustments to TALFF, if any, will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission and, on or about September 15, shall publish notification in the **Federal Register** proposing specifications and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section.

(d) On or about November 1 of each year, NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the **Federal Register**. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective unless revised through the specification process. NMFS shall issue notification in the **Federal Register** if the previous year's specifications will not be changed.

(e) *In-season adjustments.* (1) The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(2) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS shall propose any release of the TAC reserve in the **Federal Register** and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the **Federal Register**.

§ 648.201 Management areas.

Three management areas, which may have different management measures, are established for the Atlantic herring fishery. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(a) *Management Area 1 (Gulf of Maine)*: All U.S. waters of the Gulf of Maine (GOM) north of a line extending from the eastern shore of Monomoy Island at 41° 35' N. lat., eastward to a point at 41° 35' N. lat., 69° 00' W. long., thence northeasterly to a point along the Hague Line at 42° 53'14" N. lat., 67° 44'35" W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

AREA 1

N. Latitude	W. Longitude
41° 58'	70° 00' at Cape Cod shoreline
42°38.4'	70° 00'
42° 53'	69° 40'
43°12'	69° 00'
43°40'	68° 00'
43° 58'	67° 22' (the U.S.-Canada Maritime Boundary)
(1)	(1)

[1]Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(b) *Management Area 2 (South Coastal Area)*: All waters west of 69° 00' W. long. and south of 41° 35' N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(c) *Management Area 3 (Georges Bank)*: All U.S. waters east of 69° 00' W. long. and southeast of the line that runs from a point at 69° 00' W. long. and 41° 35' N. lat., northeasterly to the Hague Line at 67° 44'35" W. long. and 42° 53'14" N. lat.

§ 648.202 Total allowable catch (TAC) controls.

(a) If NMFS determines that catch will reach or exceed 95 percent of the TAC in a management area before the end of the fishing year, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing > 2,000 lb (907.2 kg) of Atlantic herring per trip and/or > 2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip.

(b) NMFS may raise the percent of the TAC that triggers imposition of the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section through the annual specification process described in § 648.200. Any lowering of the percent of the TAC that triggers the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section must be accomplished through the framework adjustment or amendment processes.

(c) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, providing all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(d) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, providing such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section and providing all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(e) NMFS shall implement fishing restrictions as specified in paragraph (a) of this section by publication of a notification in the **Federal Register**, without further opportunity for public comment.

§ 648.203 Vessel size/horsepower limits.

(a) To catch, take, or harvest Atlantic herring, a U.S. vessel issued an Atlantic herring permit must not exceed the specifications contained in § 648.4(a)(10)(i)(B). If any such vessel exceeds such specifications, its permit automatically becomes invalid and the vessel may not catch, take, or harvest Atlantic herring, as applicable, in or from the EEZ.

(b) A U.S. vessel issued an Atlantic herring processor permit may receive and process herring, providing such vessel is ≤ 165 feet (50.3 m) in length overall, and ≤ 750 GRT (680.4 mt). A U.S. vessel that is > 165 feet (50.3 m) in length overall, or > 750 GRT (680.4 mt), may only receive and process herring provided that the vessel is issued an "Atlantic herring processor permit" described in § 648.4(a)(10)(ii) and that the total amount of herring received or processed by such vessel does not exceed the USAP established in accordance with § 648.200.

§ 648.204 Herring roe restrictions.

(a) Retention of herring roe. Herring may be processed for roe, provided that the carcasses of the herring are not discarded at sea.

(b) Limits on the harvest of herring for roe. The Council may recommend to NMFS a limit on the amount of herring that may be harvested for roe to be implemented by framework adjustment in accordance with § 648.206.

§ 648.205 VMS requirements.

(a) Except for Atlantic herring carrier vessels, the owner or operator of any vessel issued an Atlantic herring permit that caught or landed > 500 mt of Atlantic herring in the previous fishing year, or intends to catch or land, or catches or lands > 500 mt of Atlantic herring in the current fishing year, must have an operable VMS unit installed on board that meets the requirements of § 648.9. The VMS unit must be certified, installed on board, and operable before the vessel may begin fishing.

(b) A vessel owner or operator, except an owner or operator of an Atlantic herring carrier vessel, who intends to catch and land > 500 mt of Atlantic herring must declare such intention to the Regional Administrator prior to obtaining an Atlantic herring fishing permit for the fishing year.

(c) Except for Atlantic herring carrier vessels, the owner or operator of a vessel is prohibited from landing > 500 mt of Atlantic herring caught in or from the EEZ during a fishing year, unless in compliance with § 648.205(b).

§ 648.206 Framework provisions.

(a) *Annual review.* The Herring PDT, in consultation with the Commission's PRT, shall review the status of the stock and the fishery. The PDT shall review available data pertaining to commercial and recreational catches, current estimates of fishing mortality, stock status, estimates of recruitment, virtual population analysis, and other estimates of stock size, sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys, the impact of other fisheries on herring mortality, and any other relevant information. Based on this review, the PDT shall report to the Council's Herring Oversight Committee no later than July, any necessary adjustments to the management measures and recommendations for the Atlantic herring annual specifications. The PDT, in consultation with the PRT, shall recommend the specifications, as well as an estimated TAC, as required by § 648.200, for the following fishing year.

(b) Based on these recommendations, the Herring Oversight Committee shall further recommend to the Council any measures necessary to insure that the annual specifications shall not be exceeded. The Council shall review these recommendations and any public comment received and, after consulting with the Commission, shall recommend appropriate specifications to NMFS, as described in § 648.200. Any suggested revisions to management measures may be implemented through the framework process or through an amendment to the FMP.

(c) *Framework adjustment process.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic herring FMP, or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The oversight committee shall review the options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and determine that the recommended management measures should be published as a final rule in the **Federal Register** based on the factors specified in paragraphs (c)(4)(i), (ii), (iii) and (iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(d) Possible framework adjustment measures. Measures that may be changed or implemented through framework action include:

(1) Management area boundaries or additional management areas;

(2) Size, timing, or location of new or existing spawning area closures;
(3) Closed areas other than spawning closures;
(4) Restrictions in the amount of fishing time;
(5) A days-at-sea system;
(6) Adjustments to specifications;
(7) Adjustments to the Canadian catch deducted when determining specifications;
(8) Distribution of the TAC;
(9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);
(10) Vessel size or horsepower restrictions;
(11) Closed seasons;
(12) Minimum fish size;
(13) Trip limits;
(14) Seasonal, area, or industry sector quotas;
(15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;
(16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;
(17) Changes to the overfishing definition;
(18) Vessel monitoring system requirements;
(19) Limits or restrictions on the harvest of herring for specific uses;
(20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;
(21) Permit and vessel upgrading restrictions;
(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;
(23) Limited entry or controlled access system;
(24) Specification of the amount of herring to be used for roe; and
(5) Any other measure currently included in the FMP.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000105004–0260–02 ;I.D. 120400A]

RIN 0648–AI78

Fisheries of the Northeastern United States; Atlantic Herring Fisheries; 2000 Specifications; Adjustment; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment of the 2000 Atlantic herring specifications; closure of Area 1A.

SUMMARY: NMFS adjusts the 2000 annual specifications for the Atlantic herring fishery including total joint venture processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at–sea processing (USAP), and total allowable catch (TAC) for Areas 1A and 1B. The intent is to reapportion allowable catches of herring within the fishery sectors and areas to allow for the achievement of the objectives of the Fishery Management Plan for Atlantic Herring (FMP). NMFS also announces that the directed fishery for Atlantic herring in Area 1A in the exclusive economic zone (EEZ) will be closed.

DATES: The closure of Area 1A is effective December 14, 2000 through 0001 hours, January 1, 2001. After 0001 hours, December 14, 2000, vessels may not fish for, possess, catch, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring per trip and per calendar day. Comments on the inseason adjustment must be received by January 10, 2001.

ADDRESSES: Comments on the inseason adjustment should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Inseason Adjustment of 2000 Atlantic herring specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e–mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9288, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Inseason Adjustment

The inseason adjustment adjusts the 2000 specifications for the Atlantic herring fishery by transferring 5,000 mt specified for JVP and 15,000 mt specified for IWP to USAP, and transferring 15,000 mt of Atlantic herring from the Area 1B TAC to the Area 1A TAC. This action is consistent with the FMP.

JVP is the amount of herring purchased over the side from U.S. vessels and processed by foreign vessels in the EEZ; IWP is the amount of herring purchased over the side from U.S. vessels and processed by foreign vessels at anchor in state waters; JVPt is the sum of JVP and IWP; and USAP is the amount of herring purchased over the side from U.S. vessels and processed in the EEZ by U.S. vessels of the United States that are larger than 165 ft (50.3 m) in length overall or greater than 750 gross registered tons (680.4 mt). For fishing year 2000, JVP allocations were specified for Areas 2 and 3.

Regulations at § 648.200(e) allow NMFS, after consulting with the New England Fishery Management Council (Council), to adjust annual specifications for the Atlantic herring fishery during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for public comment. Any adjustments must be consistent with the FMP objectives and other FMP provisions.

2000 Herring Specifications

The FMP, which was submitted for Secretarial review by the Council on March 8, 1999, and partially approved on October 27, 1999, contains specifications for the 1999 fishery. The 2000 specifications are unchanged from those designated as 1999 specifications in the FMP (see Table 1). The FMP and the 2000 fishery specifications were implemented through a final rule published in the final rule section of this edition of the **Federal Register**.

TABLE 1. 2000 ATLANTIC HERRING SPECIFICATIONS (UNADJUSTED)

Specification	Recommended Amount (mt)
ABC	300,000
OY	224,000
DAH	224,000
DAP	180,000
USAP	0
BT	4,000
JVPt	40,000
JVP–Area 2	10,000
JVP–Area 3	5,000
IWP	25,000
Reserve	0
TAC–Area 1A	45,000
TAC–Area 1B	25,000
TAC–Area 2	50,000 (54,000 TAC reserve)
TAC–Area 3	50,000

Since submission of the FMP, the Council has received new information that has prompted the Council to reconsider the 2000 specifications and request NMFS to adjust those specifications for the remainder of the 2000 fishery. The adjusted specifications are presented in Table 2 and discussed here.

TABLE 2. 2000 ATLANTIC HERRING SPECIFICATIONS (ADJUSTED)

Specification	Recommended Amount (mt)
ABC	300,000
OY	224,000
DAH	224,000
DAP	180,000
USAP	20,000
BT	4,000
JVPt	20,000
JVP–Area 2 and Area 3	10,000
IWP	10,000
Reserve	0
TAC–Area 1A	60,000
TAC–Area 1B	10,000
TAC–Area 2	50,000 (54,000 TAC reserve)
TAC–Area 3	50,000

Adjustment to the TAC Specification for Herring in Areas 1A and 1B

Area 1A and 1B together comprise Area 1, also referred to as the Gulf of Maine (GOM) stock component of the herring fishery. In preparing the FMP and specifications for the 1999 fishery, the Council received management advice from Stock Assessment Workshop 27 that cautioned that any increase in catch in the herring fishery should not come from Area 1. Information available at that time indicated that the historic fishery harvested, on average, approximately 70,000 mt per year from Area 1. Therefore, the Council established a TAC of 70,000 mt for Area 1, consistent with the scientific advice.

The 2000 specifications for herring contained in the FMP divided the 70,000 mt Area 1 TAC into a TAC of 45,000 mt in Area 1A and 25,000 mt in Area 1B. In setting the Area 1 TAC in the FMP, the Council noted that estimated landings from the area were relatively low in 1998 and early 1999. Area 1A landings for 1998 totaled only 43,586 mt, down from 67,608 mt in 1997. Since the majority of herring spawning occurs in Area 1A, the Council reacted to the reduction in landings in that area by specifying a TAC of only 45,000 mt TAC, to afford more protection for the spawning stock, noting that there was uncertainty as to whether the decline in 1998 was due to a drastic change in stock size or simply due to a change in availability. However, landings from Area 1A rebounded to an estimated 63,195 mt in 1999, causing the Council to reconsider the appropriate TAC for Area 1A. The Council concluded that the reduction in landings in 1998 was not a result of low herring abundance, but only in availability of fish in Area 1A in 1998. Therefore, the Council determined that there was no biological risk in increasing the TAC in Area 1A to 60,000 mt, while reducing the TAC in Area 1B to 10,000 mt. In addition, the Council noted in its request that any conservation concerns regarding spawning potential for Area 1A herring are further alleviated by the Atlantic States Marine Fisheries Commission's decision to close sub–areas in Area 1A to directed fishing during peak spawning periods.

The Council determined that the maintenance of a 45,000–mt TAC in Area 1A for the 2000 fishery could result in an unnecessary and unintended adverse economic impact, since TAC in Area 1A in 2000 would be approximately 23,000 mt less than estimated 1999 landings. In Table E.58 of the Regulatory Impact Review (RIR) accompanying the FMP, the Council estimated that a 60,000–mt TAC in Area 1A, relative to 1997 landings, would yield a gain in total revenues of $121,275, while a TAC of 45,000 mt would yield a loss in total revenue of $1,863,225, relative to 1997.

Adjustment to JVP and USAP

In July 1999, the Council approved recommendations for herring specifications for the 2000 fishery and subsequently submitted those recommendations to NMFS with an accompanying environmental analysis and RIR. The public was invited to comment on those recommendations at meetings of the Herring Committee and Council. At that time, the Council assumed that final regulations implementing the FMP would be effective prior to the beginning of the 2000 fishing year. However, in the final rule implementing the FMP, NMFS extended the 1999 specifications approved in the FMP to the 2000 fishery. NMFS informed the Council that its submission would be considered as an adjustment to the 2000 specifications, once the final rule implementing the FMP was published.

The 2000 specifications implemented by the FMP set USAP at 0 mt, JVPt at 40,000 mt, JVP at 15,000 mt, and IWP at 25,000 mt. In its submission, the Council recommended an adjustment that transfers 20,000 mt from JVPt, including 5,000 mt from JVP and 15,000 mt from IWP, to USAP, resulting in a USAP of 20,000 mt, a JVPt of 20,000 mt, and JVP and IWP of 10,000 mt each. In addition, the 10,000 mt specification of JVP now reflects the combined allocation in Areas 2 and 3, whereas, the 2000 specifications allocated 5,000 mt to Area 2 and 10,000 mt to Area 3.

There are currently no large U.S. vessels processing herring at sea in Areas 1, 2, or 3. However, the Council determined that capacity exists to process 20,000 mt. The Council does not want to deprive large U.S. vessels of the opportunity to accept herring over the side and process it at sea; large foreign boats have the potential to do this under joint venture arrangements. Specification of USAP is consistent with an objective of the FMP that directs the Council to adopt measures that would maximize domestic use and encourage value–added product utilization.

Closure of Area 1A

The regulations at 50 CFR 648.202 require NMFS to close, by notification action, the directed Atlantic herring fishery in any of the four management areas designated in the FMP, if the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated to that area. NMFS determined, based on available data, that 95 percent of the adjusted Area 1A TAC of 60,000 mt has been harvested. Therefore, NMFS

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announces that the directed fishery for Atlantic herring in Area 1A in the EEZ will be closed. The closure of Area 1A is effective December 14, 2000 through 0001 hours, January 1, 2001. After 0001 hours, December 14, 2000, vessels may not fish for, possess, catch, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring per trip. In addition, vessels may not land more than one trip or 2,000 lb (907.2 kg) of Atlantic herring per calendar day. Vessels may transit Area 1A with more than 2,000 lb (907.2 kg) of herring on board providing all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 4, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31371 Filed 12–8–00; 8:45 am]

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Federal Register

Monday,
December 11, 2000

Part V

Department of Transportation

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision; Notice

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA is publishing the names of persons denied exemptions from the vision standard in 49 CFR 391.41(b)(10) and the reasons for the denials.

FOR FURTHER INFORMATION CONTACT: For information about the applications addressed in this notice, Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, MC-PSD, (202) 366–2990; for information about legal issues related to this notice, Mr. Joe Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation (Secretary) has the authority under 49 U.S.C. 31502 and 31136 to establish standards for physical qualifications that must be met by commercial motor vehicle drivers in interstate commerce. These standards are published in Part 391 of the Federal Motor Carrier Safety Regulations. The history and delegation of authority to the Federal Motor Carrier Safety Administration (FMCSA) was published in the **Federal Register** on January 4, 2000 (65 FR 220).

Background

On June 9, 1998, the FHWA's waiver authority changed with enactment of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107. Section 4007 of TEA–21 amended the waiver provisions of 49 U.S.C. 31136(e) and 31315 to change the standard for evaluating waiver requests, to distinguish between a waiver and an exemption, and to establish term limits for both. Under revised section 31136(e), the FMCSA may grant a waiver for a period of up to 3 months or an exemption for a renewable 2-year period.

The amendments to 49 U.S.C. 31136(e) also changed the criteria for exempting a person from application of a regulation. Previously an exemption was appropriate if it was consistent with the public interest and the safe operation of CMVs. Now the FMCSA may grant an exemption if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." According to the legislative history, the Congress changed the statutory standard to give the agency greater discretion to consider exemptions. The previous standard was judicially construed as requiring an advance determination that absolutely no reduction in safety would result from an exemption. The Congress revised the standard to require that an "equivalent" level of safety be achieved by the exemption.

The FMCSA individually evaluated 247 exemption requests on their merits, as required by the decision in *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F. 3d. 715 (8th Cir. 1996), and determined that the applicants do not satisfy the criteria established to demonstrate that granting the exemptions is likely to achieve an equal or greater level of safety than exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

Two hundred and six applicants lacked sufficient recent driving experience over the past three years. Thirteen applicants lacked at least three years of experience driving a commercial motor vehicle with their respective vision deficiencies. Two applicants had no experience driving a commercial motor vehicle. Five applicants were convicted of moving violations in conjunction with accidents. An applicant for an exemption cannot be involved in an accident for which he or she received a citation for a moving violation. Two applicants could not qualify for the exemption because they were convicted of three speeding violations in a three-year period, thus exceeding the two speeding violation maximum in a three-year period to qualify for the vision exemption. Two applicants had their licenses suspended during the three-year period and, therefore, could not qualify for the exemption. Two applicants did not qualify for the vision exemption because, in addition to the vision deficiency, they have other disqualifying medical conditions, and cannot meet the physical qualifications standards found at 49 CFR 391.41. One applicant did not have sufficient peripheral vision in the better eye to qualify for an exemption. Fourteen applicants did not qualify for the exemption because they meet the vision standards at 49 CFR 391.41(b)(10).

Summary of Causes for Not Granting Exemptions

The FMCSA has denied the following petitions for exemption from the vision standard in 49 CFR 391.41(b)(10). In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), the agency is publishing the names of the applicants and the reasons for not granting exemptions.

1. Darryl P. Aalvik

Mr. Aalvik does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

2. Raymond Albernaz

Mr. Albernaz does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

3. Jesse D. Alligood

Mr. Alligood does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

4. Roberto E. Alvarado

Mr. Alvarado has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

5. Tracy Ammons

Mr. Ammons does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

6. Mike Anderson

Mr. Anderson does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

7. Melvin R. Athey, Jr.

Mr. Athey does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

8. Doug Aulbach

Mr. Aulbach does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

9. Richard M. Ault

Mr. Ault does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

10. John W. Badgley

Mr. Badgley does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

11. Stanley C. Bailey

Mr. Bailey does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

12. John E. Baker

Mr. Baker does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

13. William H. Ballew

Mr. Ballew does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

14. Michael L. Balmer

Mr. Balmer does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

15. Bobby Balusek, Sr.

Mr. Balusek does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

16. Timothy D. Barger

Mr. Barger does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

17. Ronald Becklund

Mr. Becklund does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

18. James J. Belfiore

Mr. Belfiore does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

19. Martin Bellcour

Mr. Bellcour does not have 3 years recent experience driving a commercial motor vehicle with his vision deficiency.

20. Donald Bersano

Mr. Bersano does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

21. Paul D. Berube

Mr. Berube does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

22. Walter E. Bible

Mr. Bible does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

23. John M. Bigler

Mr. Bigler does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

24. William Bonivich

Mr. Bonivich does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

25. Allen G. Bors

Mr. Bors does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

26. Claude Bowden

Mr. Bowden does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

27. Howard A. Bradeen

Mr. Bradeen does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

28. Russell Bradshaw

Mr. Bradshaw does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

29. Joe C. Briones

Mr. Briones does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

30. William R. Broman

Mr. Broman does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

31. Andrew E. Brown

Mr. Brown does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

32. Anthony D. Brown

Mr. Brown does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

33. Richard D. Brown

Mr. Brown does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

34. Saul Brown

Mr. Brown does not have sufficient driving experience over the past 3 years

under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

35. Robert J. Bruce

Mr. Bruce does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

36. Franklin Brume

Mr. Brume meets the vision requirements at 49 CFR 391.41(b)(10). According to an exam, his corrected visual acuity is 20/20 in the right eye and 20/25 in the left eye. He does not need a vision exemption.

37. Charles Buller

Mr. Buller does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

38. Clifford Burnside

Mr. Burnside does not have 3 years recent experience driving a commercial motor vehicle with his vision deficiency.

39. Joseph Cameron

Mr. Cameron does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

40. Timothy Campo

Mr. Campo does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

41. Bobby R. Carroll

Mr. Carroll does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

42. Corey J. Catt

Mr. Catt does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

43. William J. Caudill

Mr. Caudill does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

44. Charles R. Chambers

Mr. Chambers does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

45. Al Chance

Mr. Chance does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

46. John D. Chaney

Mr. Chaney does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

47. Jay A. Chapman

Mr. Chapman does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

48. James Christian

Mr. Christian does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

49. Stanley Christman

Mr. Christman does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

50. Edward Cieslik

Mr. Cieslik does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

51. Anthony T. Cinque

Mr. Cinque does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

52. Peter D. Clark

Mr. Clark does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

53. Lindon R. Coates

Mr. Coates does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

54. Robert Coates, Jr.

Mr. Coates does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

55. Roger L. Collins

Mr. Collins was charged with a moving violation on August 20, 1996, in conjunction with an accident, which disqualifies him.

56. Rusbel P. Contreras

Mr. Contreras does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

57. George E. Cooper

Mr. Cooper does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

58. Charles Cornwell

Mr. Cornwell does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

59. Randy Cowgill

Mr. Cowgill does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

60. David L. Creamer

Mr. Creamer does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

61. Jo E. Crocker

Mr. Crocker does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

62. Gerald Culverwell

Mr. Culverwell does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

63. Jefferey A. Darge

Mr. Darge does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

64. Eric Davis, Sr.

Mr. Davis does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

65. Milton Day

Mr. Day had three commercial motor vehicle speeding violations within a 3-year period while operating a commercial motor vehicle. He does not qualify since each applicant is allowed only 2 citations.

66. William A. Decker

Mr. Decker had three commercial motor vehicle speeding violations within a 3-year period while operating a commercial motor vehicle. He does not qualify since each applicant is allowed only 2 citations.

67. Bradley D. DeHaven

Mr. DeHaven meets the vision requirements at 49 CFR 391.41(b)(10) according to his most recent eye exam. His corrected visual acuity is 20/20 in the right eye and 20/40 in the left eye. He does not need an exemption.

68. George P. Deon

Mr. Deon does not have three years of experience driving a commercial motor vehicle with his vision deficiency.

69. Rod Dowden-Parrott

Mr. Dowden-Parrott does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

70. William E. Droll, Jr

Mr. Droll does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

71. George Eicholz

Mr. Eicholz does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

72. Frederick B. Ellis

Mr. Ellis does not have 3 years recent experience driving a commercial motor vehicle with his vision deficiency.

73. Van Emery, Jr.

Mr. Emery does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

74. Mitchell E. Estep

Mr. Estep meets the vision requirements at 49 CFR 391.41(b)(10) according to his most recent eye exam. The doctor was able to correct the driver's vision to 20/40 in the weaker left eye. The right eye is normal with an uncorrected visual acuity of 20/20. He does not need an exemption.

75. John Evenson

Mr. Evenson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

76. Mark Everline

Mr. Everline does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

77. Loel Faulkinham

Mr. Faulkinham does not have sufficient peripheral vision in the better eye to qualify for an exemption.

78. Thomas Ferris

Mr. Ferris does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

79. Jerald Ford

Mr. Ford does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

80. Vernon L. Forman

Mr. Forman has other medical conditions making him otherwise unqualified under the Federal Motor Carrier Safety Regulations. All applicants must meet all other physical qualifications standards in 49 CFR 391.41(b)(1–13).

81. Hyman Fowler

Mr. Fowler does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

82. Michael S. Gancasz

Mr. Gancasz does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

83. Martin E. Gard

Mr. Gard does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

84. Alexander J. Gater

Mr. Gater does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

85. William C. Greenberg

Mr. Greenberg does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

86. David J. Greenwood

Mr. Greenwood does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

87. William K. Grider

Mr. Grider does not have sufficient driving experience over the past 3 years under normal highway operating

conditions that would serve as an adequate predictor of future safe performance.

88. Mark A. Grissom

Mr. Grissom does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

89. Harold Gunter

Mr. Gunter meets the vision requirements at 49 CFR 391.41(b)(10). His corrected visual acuity is 20/20 in the right eye and 20/30 in the left eye. He does not need an exemption.

90. Jeffrey Hahn, Jr.

Mr. Hahn does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

91. James W. Harris

Mr. Harris does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

92. Johnny W. Hartley

Mr. Hartley does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

93. Calvin Hastings

Mr. Hastings does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

94. Timmie E. Headley

Mr. Headley does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

95. Thomas E. Henderson, Sr.

Mr. Henderson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

96. Terry Hendrickson

Mr. Hendrickson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

97. Robert Henrikson

Mr. Henrikson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

98. Francis K. Hill

Mr. Hill does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

99. Donn Hinkle

Mr. Hinkle does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

100. James Hoeft

Mr. Hoeft does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

101. Craig Hoffman

Mr. Hoffman does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

102. James B. Houchins

Mr. Houchins does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

103. Willie J. Howard, Jr.

Mr. Howard does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

104. Randy C. Howell

Mr. Howell does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

105. William J. Humphrey

Mr. Humphrey does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

106. Aldeny Hurst, Jr.

Mr. Hurst does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

107. Danny L. Hyde

Mr. Hyde does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

108. James Jackson

Mr. Jackson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

109. Keith W. Jackson

Mr. Jackson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

110. Kelvin C. Jackson

Mr. Jackson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

111. Monte L. Jarvis

Mr. Jarvis does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

112. Chris D. Johnson

Mr. Johnson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

113. Curtis Jones

Mr. Jones does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

114. Derek L. Jones

Mr. Jones does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

115. Harold D. Jones

Mr. Jones does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

116. Paul Jones

Mr. Jones does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

117. James J. Keranen

Mr. Keranen does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

118. Leora J. Kirby

Ms. Kirby does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

119. Mark Knochelman

Mr. Knochelman does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

120. Kelly R. Konesky

Mr. Konesky does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

121. Charles P. Landrus

Mr. Landrus does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

122. Gary B. Laramore, Sr.

Mr. Laramore does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

123. John Lawrence

Mr. Lawrence does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

124. Didge Lawson

Mr. Lawson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

125. Byron K. Leggett

Mr. Leggett does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

126. Ray P. Lenz

Mr. Lenz does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

127. Earnest W. Lewis

Mr. Lewis does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

128. Jerry P. Lindesmith

Mr. Lindesmith does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

129. James S. Loggins

Mr. Loggins does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

130. Billy W. Long

Mr. Long does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

131. William Long

Mr. Long does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

132. Michael C. Love

Mr. Love does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

133. Herman G. Lovell

Mr. Lovell does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

134. Bruce A. Lucas

Mr. Lucas does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

135. Marvin M. Lundquist

Mr. Lundquist meets vision requirements at 49 CFR 391.41(b)(10). According to a July 14, 1999, eye exam, his corrected visual acuity is 20/20 in the right eye and 20/30 in the left eye. He does not need an exemption.

136. Randall S. Lunge

Mr. Lunge does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

137. James E. Lutt

Mr. Lutt does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

138. Mervin D. Lytle

Mr. Lytle does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

139. Jacob D. Maestas

Mr. Maestas does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

140. Roland J. Mandigo

Mr. Mandigo does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

141. Michael R. Mangan

Mr. Mangan does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

142. David J. Mansfield

Mr. Mansfield does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

143. Harold W. Martin

Mr. Martin does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

144. Patrick J. Martin, Jr.

Mr. Martin does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

145. Jose L. Martinez

Mr. Martinez meets the vision requirements at 49 CFR 391.41(b)(10). His corrected visual acuity is 20/20 in the right eye and 20/30 in the left eye. He does not need an exemption.

146. Mark A. Massengill

Mr. Massengill does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

147. Jason Masterson

Mr. Masterson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

148. Walter P. Mathys

Mr. Mathys does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

149. Gerald M. McCay

Mr. McCay does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

150. Dennis M. McDaniel

Mr. McDaniel does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

151. Donald R. McGee

Mr. McGee does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

152. Bernard F. McIlonie

Mr. McIlonie does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

153. Charles O. McWhortler

Mr. McWhortler does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

154. Felipe Medina

Mr. Medina does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

155. Rosalio Mendoza

Mr. Mendoza does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

156. Nicholas Mercorella, Jr.

Mr. Mercorella does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

157. Dennis Michaelis

Mr. Michaelis meets the vision requirements at 49 CFR 392.41(b)(10). His vision is corrected to 20/40 in the right eye and 20/20 in the left eye. He does not need an exemption.

158. Charles B. Miller

Mr. Miller does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

159. Darian T. Miller

Mr. Miller does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

160. David S. Moore

Mr. Moore meets the vision requirements at 49 CFR 391.41(b)(10). According to his most recent eye exam the doctor states that his corrected visual acuity is 20/25 in the right eye and 20/40 in the left eye. He does not need an exemption.

161. Jimmy L. Moore

Mr. Moore was involved in an accident on 7/3/98 and was issued a citation for an "Improper Turn." This is a disqualifying offense. An applicant for an exemption cannot be involved in an accident for which he or she received a citation for a moving violation.

162. Philip B.Moore

Mr. Moore does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

163. Doug Moos

Mr. Moos does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

164. Benjamin C. Morris

Mr. Morris does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

165. Theodore C. Morris

Mr. Morris does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

166. David L. Norris

Mr. Norris does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

167. Guillermo G. Nuncio

Mr. Nuncio meets the vision requirements at 49 CFR 391.41(b)(10). According to his most recent eye exam, the doctor states that his corrected visual acuity is 20/25 in the right eye and 20/20 in the left eye. He does not need an exemption.

168. Will H. Ogburn

Mr. Ogburn does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

169. Howard J. Oliver, II

Mr. Oliver does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

170. Keith E. Page

Mr. Page does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

171. Jeffery A. Pate

Mr. Pate does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

172. Craig B. Peay

Mr. Peay does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

173. Randy R. Pedeferri

Mr. Pedeferri does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

174. Rafael O. Perez

Mr. Perez does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

175. Jeffrey Peterson

Mr. Peterson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

176. David A. Petsch

Mr. Petsch does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance. He does not have 3 years experience driving a commercial motor vehicle with the vision deficiency.

177. Marvin L. Pond

Mr. Pond does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

178. Vicki L. Powell

Ms. Powell does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

179. James H. Prewitt, Jr.

Mr. Prewitt does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

180. Welcome W. Pryor, Jr.

Mr. Pryor does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

181. James A. Reay

Mr. Reay does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

182. Christopher Reed

Mr. Reed does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

183. Kenion L. Reid

Mr. Reid does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

184. Elmer A. Richmeier

Mr. Richmeier does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

185. Leslie O. Roberson

Mr. Roberson's commercial driver's license was suspended in December 1996 for failing to comply with a fine for a moving violation. He does not qualify for an exemption since he had a suspension during the 3-year period.

186. William Rogers

Mr. Rogers does not have 3 years recent experience driving a commercial motor vehicle with his vision deficiency.

187. Robert L. Roy

Mr. Roy was involved in an accident on July 22, 1997, and he was convicted of "Following Improperly." He does not qualify for an exemption since he was involved in an accident for which he received a citation for a moving violation.

188. Christopher A. Roystan

Mr. Roystan does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

189. Brian K. Ruch

Mr. Ruch does not qualify for an exemption because of involvement in two serious violations and a license suspension during the 3-year period.

190. Robert L. Rundall

Mr. Rundall does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

191. Steven E. Russell

Mr. Russell does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

192. Eugene Ryals

Mr. Ryals does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

193. Robert A. Ryals

Mr. Ryals does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

194. Donald E. Sanders

Mr. Sanders does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

195. Dawna M. Saunders

Ms. Saunders does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

196. James Schaaf

Mr. Schaaf does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

197. Ted Schmidt

Mr. Schmidt does not meet all other physical qualifications standards in 49 CFR 391.41(b)(1–13) to qualify for an exemption.

198. James R. Schnaiter

Mr. Schnaiter does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

199. Jeffery Scholl

Mr. Scholl does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

200. Paul E. Schwartz

Mr. Schwartz does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

201. James A. Scott, Jr.

Mr. Scott does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

202. Robert G. Seils

Mr. Seils does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

203. Carl Sendelbach

Mr. Sendelbach does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

204. Robert Shelley

Mr. Shelley does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance..

205. Jeffery W. Shelton

Mr. Shelton does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

206. Kirk S. Shenberger

Mr. Shenberger does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

207. Jack Shropshire

Mr. Shropshire does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

208. Donald V. Sill

Mr. Sill does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

209. Gurdeep Singh

Mr. Singh does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

210. Harold E. Singley

Mr. Singley does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

211. Tony Slaughter

Mr. Slaughter does not have 3 years recent experience driving a commercial motor vehicle with his vision deficiency.

212. Gary A. Sluder

Mr. Sluder does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

213. Robert P. Smith

Mr. Smith does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

214. William C. Smith

Mr. Smith does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

215. Patrick W. Sokolik

Mr. Sokolik does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

216. John W. Sommerfeldt

Mr. Sommerfeldt does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

217. Jean Sommers

Ms. Sommers has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

218. William A. Sonderegger

Mr. Sonderegger does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

219. Marcial Soto-Rivas

Mr. Soto-Rivas was involved in an accident on August 24, 1998, in which he was cited for "Improper Lane Travel." This is a disqualifying offence. An exemption applicant is not allowed involvement in an accident where a citation is received for a moving violation.

220. W.C. Sparks

Mr. Sparks does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

221. Daren E. Switzer

Mr. Switzer does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

222. Peter B. Sylvester

Mr. Sylvester does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

223. Robert J. Szabo

Mr. Szabo does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

224. Jeffrey M. Taber

Mr. Taber does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

225. George A. Tallent

Mr. Tallent does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

226. Ralph J. Tanner

Mr. Tanner meets the vision requirements at 49 CFR 391.41(b)(10). According to his ophthalmologist, he is 20/20 in the left eye and 20/40 in the right eye uncorrected. He does not need an exemption.

227. Johann Theiss

Mr. Theiss meets the vision requirements at 49 CFR 391.41(b)(10). According to his most recent eye exam, the doctor states that his corrected visual acuity is 20/30 in his right and 20/20 his left eye. He does not need an exemption.

228. Barbara Thompson

Ms. Thompson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

229. John W. Tozer, Jr.

Mr. Tozer was involved in an accident on February 10, 1999. He was cited for speeding in connection with the accident. An applicant for an exemption cannot be involved in an accident for which he or she received a citation for a moving violation.

230. Omer E. Troyer

Mr. Troyer does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

231. Joseph Van Norman

Mr. Van Norman does not have 3 years recent experience driving a commercial vehicle with his vision deficiency.

232. Jeffery A. Voltz

Mr. Voltz does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

233. Kevin M. Walsh

Mr. Walsh does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

234. David E. Ware

Mr. Ware meets the vision requirements at 49 CFR 391.41(b)(10). His corrected visual acuity is 20/20 in the left eye and 20/40 in the right eye. On June 16, 1999, the Alabama Department of Motor Vehicles removed the intrastate restriction from his commercial license. He does not need an exemption.

235. Charles Warren

Mr. Warren does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

236. Howard N. Webster, Jr.

Mr. Webster does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

237. William K. Wells

Mr. Wells does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

238. Scott T. Welter

Mr. Welter does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

239. Thomas P. Werner

Mr. Werner does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

240. Ricky Whitaker

Mr. Whitaker meets the vision requirements at 49 CFR 391.41(b)(10). He does not need a vision exemption.

241. Matthew Whitten

Mr. Whitten does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

242. David M. Wibirt

Mr. Wibirt does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

243. David Wills

Mr. Wills does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

244. James W. Wilson

Mr. Wilson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

245. Douglas M. Worley

Mr. Worley does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

246. Donald Wright

Mr. Wright does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

247. Allen W. Wyskowski

Mr. Wyskowski does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

Authority: 49 U.S.C. 322, 31315, and 31136; 49 CFR 1.73.

Issued on: December 4, 2000.

Brian M. McLaughlin,

Director, Office of Policy Plans and Regulations.

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Part VI

The President

Executive Order 13179—Providing Compensation to America's Nuclear Weapons Workers

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Presidential Documents

Title 3—

The President

Executive Order 13179 of December 7, 2000

Providing Compensation to America's Nuclear Weapons Workers

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 106-398, the Energy Employees Occupational Illness Compensation Program Act of 2000 (Public Law 106-398, the "Act"), and to allocate the responsibilities imposed by that legislation and to provide for further legislative efforts, it is hereby ordered as follows:

Section 1. *Policy.* Since World War II, hundreds of thousands of men and women have served their Nation in building its nuclear defense. In the course of their work, they overcame previously unimagined scientific and technical challenges. Thousands of these courageous Americans, however, paid a high price for their service, developing disabling or fatal illnesses as a result of exposure to beryllium, ionizing radiation, and other hazards unique to nuclear weapons production and testing. Too often, these workers were neither adequately protected from, nor informed of, the occupational hazards to which they were exposed.

Existing workers' compensation programs have failed to provide for the needs of these workers and their families. Federal workers' compensation programs have generally not included these workers. Further, because of long latency periods, the uniqueness of the hazards to which they were exposed, and inadequate exposure data, many of these individuals have been unable to obtain State workers' compensation benefits. This problem has been exacerbated by the past policy of the Department of Energy (DOE) and its predecessors of encouraging and assisting DOE contractors in opposing the claims of workers who sought those benefits. This policy has recently been reversed.

While the Nation can never fully repay these workers or their families, they deserve recognition and compensation for their sacrifices. Since the Administration's historic announcement in July of 1999 that it intended to compensate DOE nuclear weapons workers who suffered occupational illnesses as a result of exposure to the unique hazards in building the Nation's nuclear defense, it has been the policy of this Administration to support fair and timely compensation for these workers and their survivors. The Federal Government should provide necessary information and otherwise help employees of the DOE or its contractors determine if their illnesses are associated with conditions of their nuclear weapons-related work; it should provide workers and their survivors with all pertinent and available information necessary for evaluating and processing claims; and it should ensure that this program minimizes the administrative burden on workers and their survivors, and respects their dignity and privacy. This order sets out agency responsibilities to accomplish these goals, building on the Administration's articulated principles and the framework set forth in the Energy Employees Occupational Illness Compensation Program Act of 2000. The Departments of Labor, Health and Human Services, and Energy shall be responsible for developing and implementing actions under the Act to compensate these workers and their families in a manner that is compassionate, fair, and timely. Other Federal agencies, as appropriate, shall assist in this effort.

Sec. 2. *Designation of Responsibilities for Administering the Energy Employees' Occupational Illness Compensation Program ("Program").*

(a) *Secretary of Labor.* The Secretary of Labor shall have primary responsibility for administering the Program. Specifically, the Secretary shall:

(i) Administer and decide all questions arising under the Act not assigned to other agencies by the Act or by this order, including determining the eligibility of individuals

with covered occupational illnesses and their survivors and adjudicating claims for compensation and benefits;

(ii) No later than May 31, 2001, promulgate regulations for the administration of the Program, except for functions assigned to other agencies pursuant to the Act or this order;

(iii) No later than July 31, 2001, ensure the availability, in paper and electronic format, of forms necessary for making claims under the Program; and

(iv) Develop informational materials, in coordination with the Secretary of Energy and the Secretary of Health and Human Services, to help potential claimants understand the Program and the application process, and provide these materials to individuals upon request and to the Secretary of Energy and the Attorney General for dissemination to potentially eligible individuals.

(b) *Secretary of Health and Human Services.* The Secretary of Health and Human Services shall:

(i) No later than May 31, 2001, promulgate regulations establishing:

(A) guidelines, pursuant to section 3623(c) of the Act, to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty at a Department of Energy facility or an atomic weapons employer facility, as defined by the Act; and

(B) methods, pursuant to section 3623(d) of the Act, for arriving at and providing reasonable estimates of the radiation doses received by individuals applying for assistance under this program for whom there are inadequate records of radiation exposure;

(ii) In accordance with procedures developed by the Secretary of Health and Human Services, consider and issue determinations on petitions by classes of employees to be treated as members of the Special Exposure Cohort;

(iii) With the assistance of the Secretary of Energy, apply the methods promulgated under subsection (b)(i)(B) to estimate the radiation doses received by individuals applying for assistance;

(iv) Upon request from the Secretary of Energy, appoint members for a physician panel or panels to consider individual workers' compensation claims as part of the Worker Assistance Program under the process established pursuant to subsection (c)(v); and

(v) Provide the Advisory Board established under section 4 of this order with administrative services, funds, facilities, staff, and other necessary support services and perform the administrative functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Advisory Board.

(c) *Secretary of Energy.* The Secretary of Energy shall:

(i) Provide the Secretary of Health and Human Services and the Advisory Board on Radiation and Worker Health access, in accordance with law, to all relevant information pertaining to worker exposures, including access to restricted data, and any other technical assistance needed to carry out their responsibilities under subsection (b)(ii) and section 4(b), respectively.

(ii) Upon request from the Secretary of Health and Human Services or the Secretary of Labor, and as permitted by law, require a DOE contractor, subcontractor, or

designated beryllium vendor, pursuant to section 3631(c) of the Act, to provide information relevant to a claim under this Program;

(iii) Identify and notify potentially eligible individuals of the availability of compensation under the Program;

(iv) Designate, pursuant to sections 3621(4)(B) and 3622 of the Act, atomic weapons employers and additions

to the list of designated beryllium vendors;

(v) Pursuant to Subtitle D of the Act, negotiate agreements with the chief executive officer of each State in which there is a DOE facility, and other States as appropriate, to provide assistance to a DOE contractor employee on filing a State workers' compensation system claim, and establish a Worker Assistance Program to help individuals whose illness is related to employment in the DOE's nuclear weapons complex, or the individual's survivor if the individual is deceased, in applying for State workers' compensation benefits. This assistance shall include:

(1) Submittal of reasonable claims to a physician panel, appointed by the Secretary of Health and Human Services and administered by the Secretary of Energy, under procedures established by the Secretary of Energy, for determination of whether the individual's illness or death arose out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility; and

(2) For cases determined by the physician panel and the Secretary of Energy under section 3661(d) and (e) of the Act to have arisen out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility, provide assistance to the individual in filing for workers' compensation benefits. The Secretary shall not contest these claims and, to the extent permitted by law, shall direct a DOE contractor who employed the applicant not to contest the claim;

(vi) Report on the Worker Assistance Program by making publicly available on at least an annual basis claims- related data, including the number of claims filed, the number of illnesses found to be related to work at a DOE

facility, job location and description, and number of successful State workers' compensation claims awarded; and

(vii) No later than January 15, 2001, publish in the **Federal Register** a list of atomic weapons employer facilities within the meaning of section 3621(5) of the Act, Department of Energy employer facilities within the meaning of section 3621(12) of the Act, and a list of facilities owned and operated by a beryllium vendor, within the meaning of section 3621(6) of the Act.

(d) *Attorney General.* The Attorney General shall:

(i) Develop procedures to notify, to the extent possible, each claimant (or the survivor of that claimant if deceased) whose claim for compensation under section 5 of the Radiation Exposure Compensation Act has been or is approved by the Department of Justice, of the availability of supplemental compensation and benefits under the Energy Employees Occupational Illness Compensation Program;

(ii) Identify and notify eligible covered uranium employees or their survivors of the availability of supplemental compensation under the Program; and

(iii) Upon request by the Secretary of Labor, provide information needed to adjudicate the claim of a covered uranium employee under this Program.

Sec. 3. *Establishment of Interagency Working Group.*

(a) There is hereby established an Interagency Working Group to be composed of representatives from the Office of Management and Budget, the National Economic Council, and the Departments of Labor, Energy, Health and Human Services, and Justice.

(b) The Working Group shall:

(i) By January 1, 2001, develop a legislative proposal to ensure the Program's fairness and efficiency, including provisions to assure adequate administrative resources and swift dispute resolution; and

(ii) Address any impediments to timely and coordinated Program implementation.

Sec. 4. *Establishment of Advisory Board on Radiation and Worker Health.*

(a) Pursuant to Public Law 106-398, there is hereby established an Advisory Board on Radiation and Health (Advisory Board). The Advisory Board shall consist of no more than 20 members to be appointed by the President. Members shall include affected workers and their representatives, and representatives from scientific and medical communities. The President shall designate a Chair for the Board among its members.

(b) The Advisory Board shall:

(i) Advise the Secretary of Health and Human Services on the development of guidelines under section 2(b)(i) of this order;

(ii) Advise the Secretary of Health and Human Services on the scientific validity and quality of dose reconstruction efforts performed for this Program; and

(iii) Upon request by the Secretary of Health and Human Services, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

Sec. 5. *Reporting Requirements.* The Secretaries of Labor, Health and Human Services, and Energy shall, as part of their annual budget submissions, report to the Office of Management and Budget (OMB) on their activities under this Program, including total expenditures related to benefits and program administration. They shall also report to the OMB, no later than March 1, 2001, on the manner in which they will carry out their respective responsibilities under the Act and this order. This report shall include, among other things, a description of the administrative structure established within their agencies to implement the Act and this order. In addition, the Secretary of Labor shall annually report on the total number and types of claims for which compensation was considered and other data pertinent to evaluating the Federal Government's performance fulfilling the requirements of the Act and this order.

Sec. 6. *Administration and Judicial Review.* (a) This Executive Order shall be carried out subject to the availability of appropriations, and to the extent permitted by law.

(b) This Executive Order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
December 7, 2000.

[FR Doc. 00–31692
Filed 12–8–00; 8:45 am]
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Federal Register

Monday,
December 11, 2000

Part VII

The President

Executive Order 13180—Air Traffic Performance-Based Organization

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Presidential Documents

Title 3—

The President

Executive Order 13180 of December 7, 2000

Air Traffic Performance-Based Organization

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further improve the provision of air traffic services, an inherently governmental function, in ways that increase efficiency, take better advantage of new technologies, accelerate modernization efforts, and respond more effectively to the needs of the traveling public, while enhancing the safety, security, and efficiency of the Nation's air transportation system, it is hereby ordered as follows:

Section 1. *Establishment of the Air Traffic Organization.* (a) The Secretary of Transportation (Secretary) shall, consistent with his legal authorities, move to establish within the Federal Aviation Administration (FAA) a performance-based organization to be known as the "Air Traffic Organization" (ATO).

(b) The ATO shall be composed of those elements of the FAA's Air Traffic Services and Research and Acquisition organizations that have direct connection and give support to the provision of day-to-day operational air traffic services, as determined by the Administrator of the Federal Aviation Administration (Administrator). The Administrator may delegate responsibility for any operational activity of the air traffic control system to the head of the ATO. The Administrator's responsibility for general safety, security, and policymaking functions for the National Airspace System is unaffected by this order.

(c) The Chief Operating Officer (COO) of the Air Traffic Control System, established by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Air-21) (Public Law 106-181), shall head the ATO and shall report directly to the Administrator and be subject to the authority of the Administrator. The COO, in consultation with the Air Traffic Control Subcommittee of the Aviation Management Advisory Committee, shall enter into an annual performance agreement with the Administrator that sets forth measurable organization and individual goals in key operational areas and describes specific targets and how such goals will be achieved. The COO may receive an annual bonus not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator's evaluation of the COO's performance in relation to the targets and goals described above.

(d) The COO shall develop a 5-year strategic plan for the air traffic control system, including a clear statement of the mission and objectives for the system's safety, efficiency, and productivity. This strategic plan must ensure that ATO actions are consistent with long-term FAA strategies for the aviation system as a whole.

(e) The COO shall also enter into a framework agreement with the Administrator that will establish the relationship of the ATO with the other organizations of the FAA.

Sec. 2. *Purpose.* The FAA's primary mission is to ensure the safety, security, and efficiency of the National Airspace System. The purpose of this order is to enhance that mission and further improve the delivery of air traffic services to the American public by reorganizing the FAA's air traffic services and related offices into a performance-based, results-oriented, organization. The ATO will be better able to make use of the unique procurement and personnel authorities that the FAA currently has and to better use the additional management reforms enacted by the Congress this year under Air-21. Specifically, the ATO shall:

(a) optimize use of existing management flexibilities and authorities to improve the efficiency of air traffic services and increase the capacity of the system;

(b) develop methods to accelerate air traffic control modernization and to improve aviation safety related to air traffic control;

(c) develop agreements with the Administrator of the FAA and users of the products, services, and capabilities it will provide;

(d) operate in accordance with safety performance standards developed by the FAA and rapidly respond to FAA safety and security oversight findings;

(e) consult with its customers, the traveling public, including direct users such as airlines, cargo carriers, manufacturers, airports, general aviation, and commercial space transportation providers, and focus on producing results that satisfy the FAA's external customer needs;

(f) consult with appropriate Federal, State, and local public agencies, including the Department of Defense and the National Aeronautics and Space Administration, to determine the best practices for meeting the diverse needs throughout the National Airspace System;

(g) establish strong incentives to managers for achieving results; and

(h) formulate and recommend to the Administrator any management, fiscal, or legislative changes necessary for the organization to achieve its performance goals.

Sec. 3. *Aviation Management Advisory Committee.* The Air Traffic Control Subcommittee of the Aviation Management Advisory Committee shall provide, consistent with its responsibilities under Air-21, general oversight to ATO regarding the administration, management, conduct, direction, and supervision of the air traffic control system.

Sec. 4. *Evaluation and Report.* Not later than 5 years after the date of this order, the Aviation Management Advisory Committee shall provide to the Secretary and the Administrator a report on the operation and effectiveness of the ATO, together with any recommendations for management, fiscal, or legislative changes to enable the organization to achieve its goals.

Sec. 5. *Definitions.* The term "air traffic control system" has the same meaning as the term defined by section 40102(a)(42) of title 49, United States Code.

Sec. 6. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
December 7, 2000.

[FR Doc. 00–31697
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H.J. Res. 127/P.L. 106–539

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 7, 2000; 114 Stat. 2570)

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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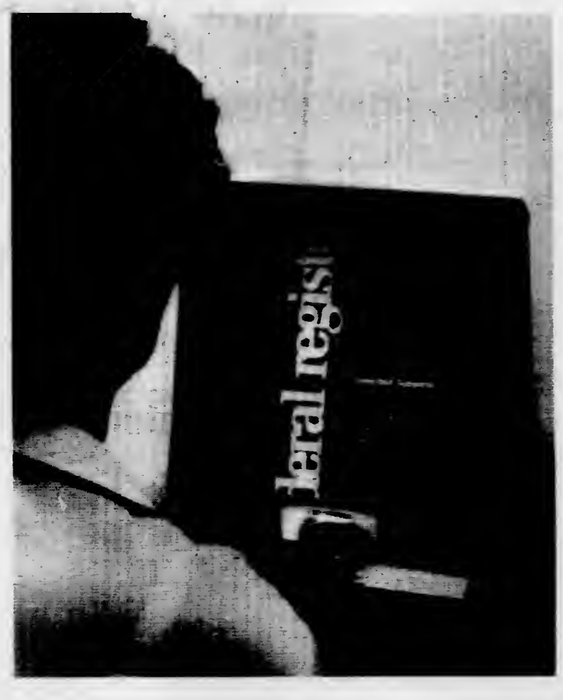
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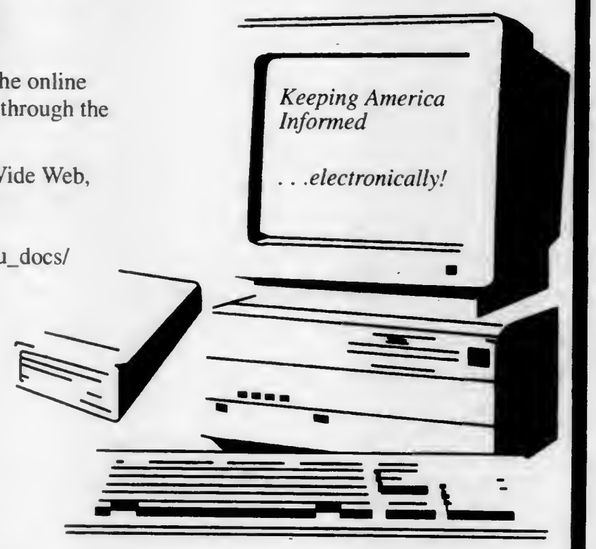
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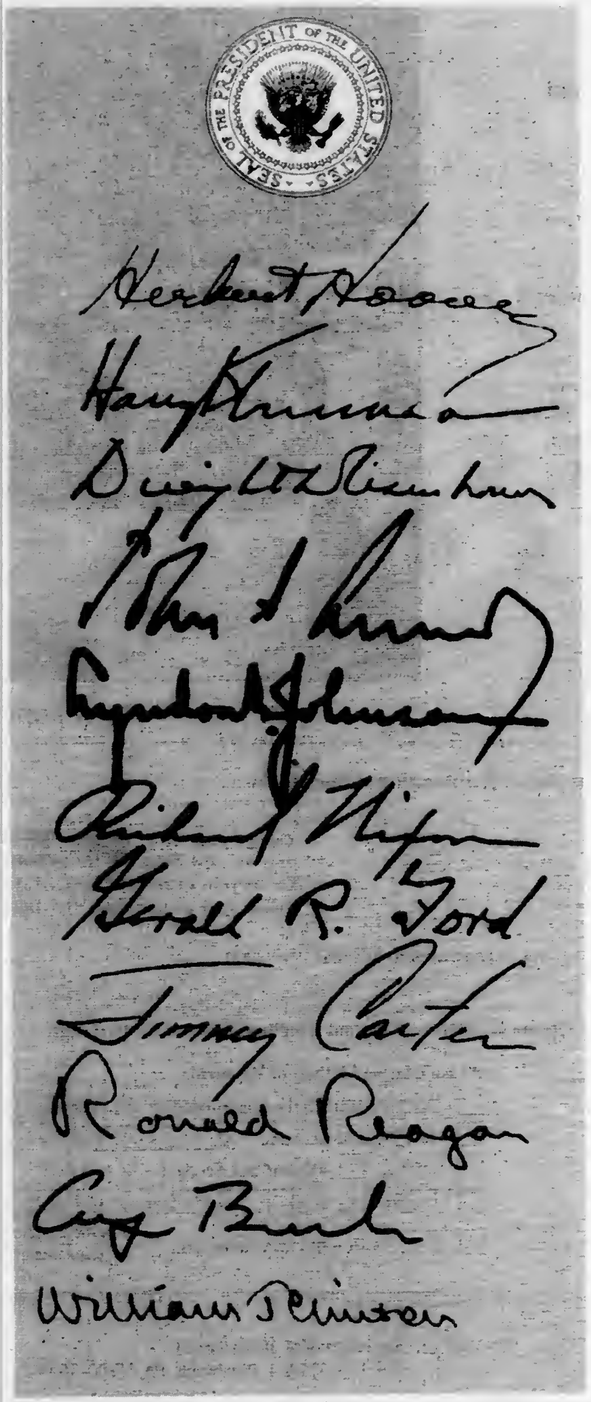
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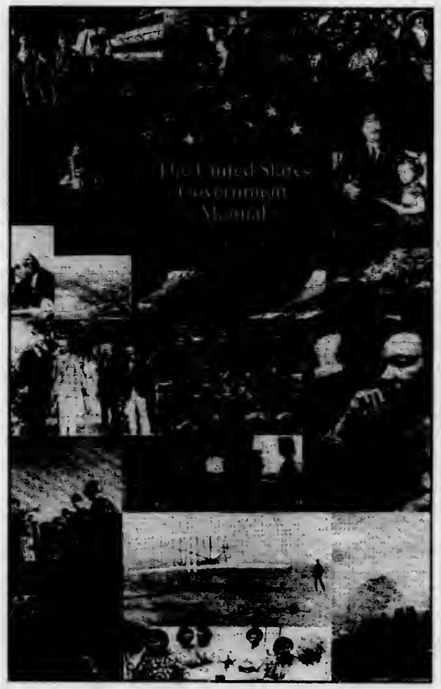
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Title 3—

The President

Proclamation 7385 of December 6, 2000

National Pearl Harbor Remembrance Day, 2000

By the President of the United States of America

A Proclamation

While the bitter winds of war raged across much of the world on the morning of December 7, 1941, the United States was still at peace. At Pearl Harbor, the 130 vessels of the U.S. Pacific Fleet lay tranquil in the Sunday silence. Then, at 7:55 a.m., that silence was shattered by the sound of falling bombs and the rattle of machine-gun fire, as the war came home to America.

In making such a devastating preemptive strike, the forces of Imperial Japan sought to weaken our national spirit and cripple our military might. But our attackers would soon learn that they had seriously misjudged the character of the American people and the strength of our democracy. Though 21 ships were sunk or badly damaged, 347 aircraft destroyed or in need of significant repair, and some 3,500 Americans dead or injured, the attack on Pearl Harbor galvanized our Nation into action, reaffirmed our commitment to freedom, and strengthened our resolve to prevail.

Following the attack on Pearl Harbor, millions of Americans volunteered to serve in the Armed Forces. Millions of others filled factories and shipyards as the great industrial engine of our free enterprise system was harnessed to produce the planes, tanks, ships, and guns that armed the forces of freedom. Many of the ships sunk during the attack on Pearl Harbor were raised and repaired to sail once again with the U.S. Pacific Fleet—the same fleet that in September of 1945 would witness the surrender of Imperial Japan.

On Veterans Day this year, America celebrated the groundbreaking for a memorial in our Nation's capital dedicated to our World War II veterans. This memorial will stand as a testament to the countless brave Americans who responded to the attack on Pearl Harbor and the threat to our freedom by answering the call to service; both at home and overseas. It will also stand as testament to the spirit of a Nation that believes profoundly in the ideals upon which it was founded, and it will serve as an enduring reminder of what Americans can accomplish when we work together to achieve our common goals.

The outpouring of support for this memorial, from young and old alike, shows that the American people's deep conviction in our Nation's values has not diminished in the intervening years. We will never forget the men and women who took up arms in the greatest struggle humanity has ever known; nor will we forget the lessons they taught us: that we must remain ever vigilant, determined, and ready to advance the cause of freedom whenever and wherever it is threatened.

The Congress, by Public Law 103–308, has designated December 7, 2000, as "National Pearl Harbor Remembrance Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 2000, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations,

and individuals to fly the flag of the United States at half- staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J Clinton

[FR Doc. 00–31759
Filed 12–11–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–26]

Amendment to Class E Airspace; Pella, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Pella, IA.

DATE: The direct final rule published at 65 FR 46240 is effective on 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 18, 2000 (65 FR 56240). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 25, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 30, 2000.

N.J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–31645 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 00N–1586]

Revision to Requirements for Licensed Anti-Human Globulin and Blood Grouping Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations applicable to microbiological controls for licensed Anti-Human Globulin (AHG) and Blood Grouping Reagents (BGR). FDA is amending the regulations to remove the requirements that the products be sterile. FDA is publishing this direct final rule because the requirement that these products be sterile is not necessary for the products to be safe, pure, and potent. FDA is issuing these amendments directly as a final rule because they are noncontroversial and there is little likelihood that FDA will receive any significant comments opposing the rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule under FDA's usual procedures for notice and comment in the event the agency receives any significant adverse comments. If FDA receives any significant adverse comment that warrants terminating the direct final rule, FDA will consider such comments on the proposed rule in developing the final rule.

DATES: This rule is effective June 11, 2001. Submit written comments on or before February 26, 2001. If FDA receives no significant adverse comments during the specified comment period, the agency intends to publish a confirmation document on or before the effective date of this direct final rule confirming that the direct final rule will go into effect on June 11, 2001. If the agency receives any significant adverse comment during the comment period, FDA intends to withdraw this direct final rule by publication in the **Federal Register** before the effective date of this direct final rule.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

AHG and BGR are used primarily for testing human blood for the detection of red cell antigens and antibodies. As defined in 21 CFR 660.20, BGR is a product that comes from blood, plasma, serum, or protein-rich fluids and consists of an antibody-containing fluid containing one or more of the blood grouping antibodies listed in 21 CFR 660.28(d).

Under 21 CFR 660.50, AHG is a serum or protein-rich fluid that consists of one or more antiglobulin antibodies identified in 21 CFR 660.55(d). AHG and BGR are biological products as defined in section 351 of the Public Health Service Act (PHS ACT) (42 U.S.C 262). These products are also devices, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321), and fall within the definition of in vitro diagnostic (IVD's) products in § 809.3(a) (21 CFR 809.3(a)).

AHG and BGR must meet the licensing requirements of section 351 of the PHS Act and the regulations in parts 600 through 660 (21 CFR parts 600 through 660). Section 351 of the PHS Act, requires that a license applicant demonstrate that the biological product that is the subject of the application is safe, pure, and potent, and that the manufacturing facilities are designed to assure that the biological product continues to be safe, pure, and potent.

AHG and BGR are also medical devices and in vitro diagnostic products as defined in § 809.3(a) and therefore are subject under the act and 21 CFR 809.20(b) to the requirements in the quality system regulation (QSR) in part

820 (21 CFR part 820). The QSR requires that a manufacturer establish appropriate manufacturing controls. A manufacturer must validate the manufacturing process in accordance with § 820.75 and establish production and process controls (§ 820.70). See also the "Guideline for the Manufacture of In Vitro Diagnostic Products" published in the **Federal Register** of January 10, 1994 (59 FR 1402).

The standards for AHG and BGR were established by final rules published in the **Federal Register** of February 11, 1985, and April 19, 1988, respectively (50 FR 5574 and 53 FR 12760). The standards in §§ 660.20(a) and 660.50(a) require BGR and AHG to be manufactured by a "method demonstrated to consistently yield a sterile product." In addition, the requirements for processing methods of BGR and AHG under §§ 660.21(a)(2) and 660.51(a)(3) state that "[o]nly that material that has been fully processed, thoroughly mixed in a single vessel, and sterile filtered shall constitute a lot," and under §§ 660.21(a)(3) and 660.51(a)(4) that "[a] lot may be subdivided into clean sterile vessels".

When the regulations were codified, the agency expected that AHG and BGR would be manufactured as sterile under the conditions understood at that time. The agency also considered that the process of sterile filtration and a sterile container and closure system, e.g., vessels, would be sufficient to yield consistently a sterile product (50 FR 5574 at 5575; 53 FR 12760 at 12761). However, current good manufacturing practices require aseptic processing controls to be in place in order to ensure a sterile product. The agency considers AHG and BGR to be microbiologically controlled IVD's, which are IVD's that are capable of supporting microorganism life and growth and may contain certain levels of microorganisms. Microbiologically controlled IVD's do not need to be manufactured under aseptic conditions; however, they should be manufactured under conditions such that the microbial level will not adversely impact product performance. Manufacturers must establish specifications for these products through testing and validation. FDA's revision of the regulations would in no way undermine the safety, potency, or purity of the products. The revisions would also not prevent a manufacturer from implementing aseptic processing controls for manufacturing AHG and BGR, if the manufacturer determines such controls are appropriate for its product. Therefore, the agency is revising the standards for AHG and BGR to remove the requirement that these products be sterile.

II. Highlights of the Direct Final Rule

FDA is amending the biologics regulations by revising §§ 660.20, 660.21, 660.50, and 660.51 to clarify the agency's requirements with regard to microbiological control in manufacturing AHG and BGR. FDA is amending the regulations by deleting all references to sterile processing techniques such as sterile filtration and sterile container and closure systems. FDA is amending §§ 660.20(a) and 660.50(a) by deleting the phrase regarding preparation "by a method demonstrated to yield consistently a sterile product" because FDA recognizes that controls to ensure a sterile product, i.e., aseptic processing controls, are not necessary to ensure that AHG and BGR meet their performance specifications. In addition, § 660.21(a)(1) and 660.51(a)(1) include requirements regarding the adequacy of the processing method. FDA is amending §§ 660.21(a)(2) and 660.51(a)(3) by deleting the term "sterile" because the manufacturer must establish those controls appropriate for its product, and it may not be necessary for microbiologically controlled IVD's to undergo sterile filtration. FDA is amending §§ 660.21(a)(3) and 660.51(a)(4) by deleting the reference to "clean, sterile vessels" because FDA believes that manufacturers are in the best position to determine the appropriate level of microbial control for container and closure systems. Appropriate process specifications must be established by the manufacturer to ensure that microbiologically controlled IVD's are manufactured under appropriate conditions and controls resulting in a product that consistently meets all of its specifications. The manufacturer must demonstrate in the license application that the appropriate level of control of microbial contamination ensures that the biological product continues to meet the licensing requirements. The change to the regulation in no way affects the testing and validation a manufacturer must perform in order to establish that the manufacturing specifications are appropriate to ensure the product will perform as intended. In addition, under the current good manufacturing practice regulations for blood and blood components, end users of AHG and BGR, such as blood banks, are required under § 606.65(c) to perform daily checks for potency and specificity of supplies and reagents used in the collection and testing of blood and blood components.

The agency also believes the change is consistent with other requirements in the biologics regulations, such as the sterility testing requirements set forth in § 610.12. This section requires sterility testing for most biological products; however, BGR and AHG are specifically exempted from the sterility testing requirements for bulk and final container material (§ 610.12(g)(4)).

The direct final rule will also remove the requirement in § 660.51(a)(4) that a manufacturer who subdivides a lot shall include this information on the protocol. FDA is making this change to reflect current agency practice. Manufacturers will still be required to submit this information in the license application. See § 601.2 regarding requirements for the submission of samples and protocols to FDA.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA has determined that this rule is appropriate for direct final rulemaking because FDA views this rule as including only noncontroversial amendments and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register**, a companion proposed rule to amend the biologics regulations by amending the existing regulations to be more consistent with current accepted practices. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comment received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA has provided a comment period on the direct final rule of 75 days after December 12, 2000. If the agency receives any significant adverse comment, FDA intends to withdraw this direct final rule action by publication of a document in the **Federal Register** before the effective date of the direct final rule. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice and comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of a significant adverse comment.

If any significant adverse comment is received during the comment period, FDA will publish, before the effective date of this direct final rule, a document withdrawing the direct final rule. If FDA withdraws the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation document, before the effective date of the direct final rule, confirming the effective date.

IV. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995

FDA has examined the impact of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distribute impact; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This direct final rule is not a significant regulatory action as defined by the Executive Order and therefore is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because the direct final rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the direct final rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act of 1995 because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. The Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VI. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this direct final rule by February 26, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 660 is amended as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

1. The authority citation for 21 CFR part 660 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 660.20 [Amended]

2. Section 660.20 *Blood Grouping Reagent* is amended in paragraph (a) by removing the words "prepared by a method demonstrated to yield consistently a sterile product and".

§ 660.21 [Amended]

3. Section 660.21 *Processing* is amended in paragraph (a)(2) by removing the word "sterile"; and in paragraph (a)(3) by removing the words "clean, sterile vessels. Each subdivision shall constitute a sublot." and adding in its place the word "sublots."

§ 660.50 [Amended]

4. Section 660.50 *Anti-Human Globulin* is amended in paragraph (a) by removing the words "and be prepared by a method demonstrated to yield consistently a sterile product".

§ 660.51 [Amended]

5. Section 660.51 *Processing* is amended in the first sentence of paragraph (a)(3) by removing the word "sterile", and in paragraph (a)(4) by removing the words "clean, sterile vessels. Each subdivision shall constitute a sublot" and adding in its the word "sublots", and in the third sentence by removing the words "and on the protocol".

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31586 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

VOL 65 ISS 239 DE 12 2000 JMI

DEPARTMENT OF THE TREASURY

31 CFR Part 29

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Treasury.
ACTION: Final rule.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing final regulations to implement the provisions of Title XI of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the Secretary of the Treasury responsibility for payment of benefits under the District of Columbia (District) retirement plan for judges regardless of when accrued and under the District retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997. The regulations establish the general rules for the Department of the Treasury's administration of its program responsibilities and the methodology for determining the amount of Federal Benefit Payments.

DATE: This final rule is effective January 11, 2001, except § 29.102(a)(3) and subpart C of part 29 are effective March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 622–1540, Department of the Treasury, Metropolitan Square Building, Room 6033, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On December 13, 1999, the Department of the Treasury published (at 64 FR 69432) proposed regulations to implement Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552. The Act transferred certain unfunded pension liabilities from the District of Columbia (District) government to the Federal Government. The Act also required the Federal Government to assume responsibility for payment of benefits under the District retirement plan for judges regardless of when accrued and under the District retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997.

The proposed regulations addressed both the general rules for the Department of the Treasury's administration of its program responsibilities and the methodology for determining the amount of Federal Benefit Payments for police, firefighters, and teachers. The Department has determined that it is impracticable to end the interim benefits administration period described in section 11041(a) of the Act until it has developed an automated data processing system that will make Federal Benefit Payments calculations in accordance with these regulations. Consequently, the effective date of the final regulations concerning the methodology for determining the amount of Federal Benefit Payments must be delayed until the automated system becomes operational, which is expected to occur on March 31, 2001. Accordingly, the regulations pertaining to the methodology for determining the amount of Federal Benefit Payments (subpart C of the proposed rules) are scheduled to become effective on March 31, 2001.

The general rules for the Department of the Treasury's administration of its program responsibilities (subparts A and B of the proposed rules) will be effective 30 days after publication of this rule, with the exception of section 29.102(a)(3), which shall become effective on March 31, 2001. The general rules establish the regulatory framework for other regulations the Department is preparing pursuant to section 11083 of the Act.

In the notice of proposed rulemaking (NPRM), subparts A through C were designated to become a new part 28 of Title 31, Code of Federal Regulations. However, before publication of the NPRM, proposed regulations on Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance were published (at 64 FR 58568) on October 29, 1999, as part 28. The final regulations on Federal Benefit Payments Under Certain District of Columbia Retirement Plans have been renumbered as part 29. The following discussion of the comments received under the proposed rule uses the old section numbers for convenience.

The Department received two comments on the proposed regulations. The Department has accepted 9 of the 10 suggestions made in the comments.

Proposed section 28.105(a) provided the rule for computing the end date for a period of time for filing documents under these regulations. One comment observed that District offices are closed on District holidays as well as Saturday, Sunday, and Federal holidays. Since the regulations generally require that documents be filed with the District, the last day of the filing must be extended by a day if the last day for filing falls on a District holiday. Section 29.105(a) has been changed to treat District holidays in the same manner as Federal holidays for filing time limits.

Proposed section 28.105(c) provided the rule for computing the amount of unused sick leave creditable for annuity computation purposes. One comment noted that paragraph (c)(1) of that section incorrectly stated the rule under the Police and Firefighters Plan. Under section 4–622 of the D.C. Code, survivors of participants who die in service do not receive credit for unused sick leave. The calculation of a survivor annuity in such cases depends only on the average salary of the policeman or firefighter at the time of death. Similarly, certain disability annuity calculations, which are based on a disability percentage rather than the length of service, do not include credit for unused sick leave. The regulatory text has been corrected by deleting references to unused sick leave in such circumstances.

Proposed section 28.106 provided for recognition of representative payees for recipients of Federal Benefit Payments under the same rules as apply to other benefits under each plan. The section includes a reference to section 4–629(b) of the DC Code as an example of a plan provision for payment to a representative payee. One comment suggested that the reference be clarified to indicate that section 4–629(b) applies to the Police and Firefighter Plan. The reference has been changed to so indicate.

Proposed section 28.203 provided that legal process to affect Federal Benefit Payments should be served upon District officials in three specific situations. The supplementary information to the proposed regulations stated that in all other situations service of process was to be made upon the United States and the Department of the Treasury. One comment requested an explanation of the extent to which legal process should be served upon the United States and the Department of the Treasury in disputes over annuity amounts.

The Department of the Treasury has reconsidered the entire issue of service of process affecting Federal Benefit Payments. The Department has concluded that legal process under section 659 of title 42, United States Code and part 581 of Title 5, Code of Federal Regulations, that is, process implementing an order for alimony or child support; or any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefit Payments as representative payees under section 29.106 must be served upon the Department of the Treasury. The address for service of these types of process has been added as an appendix to subpart B of part 29. The Department will also request the U.S. Office of Personnel Management to make a similar change to appendix A of part 581 of Title 5, Code of Federal Regulations. Any qualifying court order under chapter 30 of title 1 of the DC Code (1997) must be served upon the District of Columbia in accordance with any rules issued under section 1–3005 of the DC Code. All other process regarding Federal Benefit Payments must be served upon the United States in accordance with applicable law. Process involving retirement benefits payable by the District of Columbia must be served upon the District in accordance with applicable law.

Proposed section 28.302 defined the term disability retirement for use in subpart C of part 28. One comment noted that the definition should have referred to the statutory provision for teacher disability retirement for teachers who retired after June 30, 1946. The statutory reference in the final regulation has been changed to reflect the statute applicable to teachers who retire on disability retirement after June 30, 1946.

Proposed section 28.302 also defined the term military service for use in subpart C of part 28. One comment noted that the definition erroneously included a deposit requirement for a teacher to be eligible for credit for honorable active military service. The definition has been corrected to eliminate the error.

Proposed section 28.322 provided service credit rules concerning disability retirement after June 30, 1997. Paragraph (b) of that section also contained information about the commencing date of Federal Benefit Payments in such cases. One comment noted that paragraph (b) of that section contained an incorrect reference to proposed section 28.342 that pertains to maximum annuity calculations. The reference should have been to proposed section 28.343, which relates to the calculation of the Federal Benefit Payment in disability retirement cases. The supplementary information to the proposed regulation contained several similar errors that appear to be the result of a change in section numbering late in the drafting process. The references have been corrected in the final regulations.

One comment objected to proposed section 28.322(b) and suggested that Federal Benefit Payments should commence at separation in cases of disability retirement where the former employee has not met the criteria for optional retirement. The relevant language in the proposed regulation states:

> If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee * * * [d]oes not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age.

The suggested change would not be consistent with the statutory language that the regulation implements. Section 11012(c) of the Balanced Budget Act states, in pertinent part:

> *Special Rule Regarding Disability Benefits.*—To the extent that any portion of a benefit payment to which an individual is entitled under a District Retirement Program is based on a determination of disability made by the District of Columbia Retirement Board or the Trustee after [June 30, 1997], the Federal benefit payment with respect to the individual shall be in an amount equal to the deferred retirement benefit * * * the individual would receive if the individual left service on the day before the commencement of the disability retirement benefits.

Since the disability retiree is not entitled to any amount of deferred retirement benefit until he or she reaches the appropriate age for deferred retirement, there is no "amount equal to the deferred retirement benefit" for the period between separation and the commencing date for the deferred retirement benefit. Accordingly, the proposed regulation correctly reflects the statutory provision.

Moreover, if Federal Benefit Payments began at separation in cases of disability retirement where the employee had not yet reached the age for deferred retirement, the District government would control the commencement of such benefits by finding the employee eligible for disability retirement. This would be contrary to sections 11021 and 11035(d) of the Act, which provide that only the Secretary or the Trustee shall determine whether an individual is eligible to receive a Federal Benefit Payment under the Act.

Proposed section 28.344 provided the rule for calculating Federal Benefit Payments in cases involving death benefits. Examples 13A through 13C of appendix A to proposed part 28 illustrated the death-benefit calculations. One comment noted that no example illustrates the survivor annuity calculation in cases in which the guaranteed minimum is based on a projection of service to age 60. Example 13D has been added in the final regulations to illustrate such a case. The projection to age 60 only affects the total survivor-annuity computation. As in 40-percent guaranteed minimum cases, Federal Benefit Payments are in the same proportion to the total survivor annuity as the amount of service as of June 30, 1997, is to the amount of total service.

Example 10B in appendix A to proposed part 28 illustrated the computation of a reduced annuity to provide a survivor annuity. One comment noted an error in the amount labeled "Total Reduced." The annual amount should have been $42,374.13, but was published as $43,374.13. The annual amount has been corrected in the final regulations. The monthly amount was correctly computed based on the lower amount.

Executive Order 12866, Regulatory Review

Because this rule is not a significant regulatory action for purposes of Executive Order 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Teachers.

Department of the Treasury.

Lisa G. Ross,

Acting Assistant Secretary of the Treasury.

Accordingly, the Department of the Treasury, is amending subtitle A of title 31 of the Code of Federal Regulations to add part 29 to read as follows:

PART 29—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT OF COLUMBIA RETIREMENT PROGRAMS

Subpart A—General Provisions

Sec.

29.101 Purpose and scope.
29.102 Related regulations.
29.103 Definitions.
29.104 Schedule for Federal Benefit Payments.

29.105 Computation of time.
29.106 Representative payees.

Subpart B—Coordination With the District Government

29.201 Purpose and scope.
29.202 Definitions. [Reserved]
29.203 Service of Process.

Appendix A to Subpart B of Part 29—Addresses for Service of Process Under § 29.203

Subpart C—Split Benefits

29.301 Purpose and scope.
29.302 Definitions.

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

29.311 Credit only for service performed on or before June 30, 1997.
29.312 All requirements for credit must be satisfied by June 30, 1997.
29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

29.321 General principle.
29.322 Disability benefits.

All Requirements for Credit Must be Satisfied by June 30, 1997

29.331 General principle.
29.332 Unused sick leave.
29.333 Military service.
29.334 Deposit service.
29.335 Refunded service.

Calculation of the Amount of Federal Benefit Payments

29.341 General principle.
29.342 Computed annuity exceeds the statutory maximum.
29.343 Disability benefits.
29.344 Survivor benefits.
29.345 Cost-of-living adjustments.
29.346 Reduction for survivor benefits.

Appendix A to Subpart C of Part 29—Examples

Authority: Sections 11083 and 11251(a) of Pub. L. 105–33, 111 Stat. 730 and 756, as amended by Pub. L. 105–277, 112 Stat. 2681–530 through 2681–538.

Subpart A—General Provisions

§ 29.101 Purpose and scope.

(a) This part contains the Department's regulations implementing Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, enacted August 5, 1997, as amended.

(b) This subpart contains general information to assist in the use of this part including—

(1) Information about related regulations (§ 29.102),

(2) Definitions of terms used in more than one subpart of this part (§ 29.103), and

(3) The Department's general rules and procedures, applicable to the retirement plans for District of Columbia teachers, police and fire fighters, and judges that concern the administration of Federal Benefit Payments (§§ 29.104–29.106).

(c) This part applies to all Federal Benefit Payments made on or after October 1, 1997.

(d) This part does not apply to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division.

§ 29.102 Related regulations.

(a) This part contains the following subparts:

(1) General Provisions (Subpart A);

(2) Coordination With the District Government (Subpart B); and (3) Split Benefits (Subpart C).

(b) Part 581 of Title 5, Code of Federal Regulations, contains information about garnishment of certain Federal payments to enforce awards of alimony or child support.

(c) Part 831 of Title 5, Code of Federal Regulations, contains information about benefits under the Civil Service Retirement System.

(d) Part 870 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Group Life Insurance Program.

(e) Part 890 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Health Benefits Program.

§ 29.103 Definitions.

(a) In this part—

District government means the government of the District of Columbia.

Department means the United States Department of the Treasury.

Federal Benefit Payment means a payment for which the Department is responsible under Title XI of the Balanced Budget Act of 1997 (Public Law 105–33, 111 Stat. 251), as amended, to which an individual is entitled under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan, in such amount and under such terms and conditions as may apply under such plans.

Freeze date means June 30, 1997.

Judges Plan means the retirement program (under subchapter III of chapter 15 of title 11 of the D.C. Code) for judges of the District of Columbia Court of Appeals or Superior Court or with judicial service with the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

OPM means the United States Office of Personnel Management.

Police and Firefighters Plan means any of the retirement programs (under chapter 6 of title 4 of the D.C. Code) for members of the Metropolitan Police Force and Fire Department in effect on June 29, 1997.

Secretary means the Secretary of the United States Department of the Treasury or his or her designee.

Teachers Plan means any of the retirement programs for teachers (under chapter 12 of title 31 of the D.C. Code) in effect on June 29, 1997.

(b) In this subpart—

Legal process means—

(1) Any document that qualifies as legal process as defined in § 581.103 of Title 5, Code of Federal Regulations; or

(2) Any court order that Federal or District of Columbia law permits to cause all or any portion of a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan to be made to a former spouse under chapter 30 of title 1 of the D.C. Code (1997).

Representative payee means a fiduciary to whom a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan is made for the benefit of a plan participant or a survivor.

§ 29.104 Schedule for Federal Benefit Payments.

Federal Benefit Payments are payable on the first business day of the month following the month in which the benefit accrues. (See § 29.105(b).)

§ 29.105 Computation of time.

(a) *For filing documents.* In computing the number of days allowed for filing a document, the first day counted is the day after the action or event from which the period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, a Sunday, a Federal holiday, or a District holiday, the period runs until the end of the next day that is not a Saturday, a Sunday, or a Federal or a District holiday.

(b) *For benefit accrual.* (1) Annuity accrues on a daily basis; one-thirtieth of the monthly rate constitutes the daily rate.

(2) Annuity does not accrue on the 31st day of any month except that annuity accrues on the 31st day of the initial month if the employee's annuity commences on the 31st day of a 31-day month.

(3) For accrual purposes the last day of a 28-day month counts as 3 days and the last day of a 29-day month counts as 2 days.

(c) *For counting unused sick leave.* (1) For annuity computation purposes—

(i) The service of a participant under the Police and Firefighters Plan who retires on an immediate annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system; and

(ii) The service of a participant under the Teachers Plan who retires on an immediate annuity or dies leaving a survivor entitled to an annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system.

(2) In general, 8 hours of unused sick leave increases total service by 1 day. In cases where more or less than 8 hours of sick leave would be charged for a day's absence, total service is increased by the number of days in the period between the date of separation and the date that the unused sick leave would have expired had the employee used it (except that holidays falling within the period are treated as work days, and no additional leave credit is earned for that period).

(3) If an employee's tour of duty changes from part time to full time or full time to part time within 180 days before retirement, the credit for unused sick leave is computed as though no change had occurred.

(d) *For counting leave without pay (LWOP) that is creditable service.* (1) Under the Police and Firefighters Plan, credit is allowed for no more than 6 months of LWOP in each calendar year.

(2)(i) Under the Teachers Plan, credit is allowed for no more than 6 months of LWOP in each fiscal year.

(ii)(A) For years prior to fiscal year 1976, each fiscal year started on July 1 and ended on the following June 30.

(B) Fiscal year 1976 started on July 1, 1975, and ended on September 30, 1976.

(C) For years starting in fiscal year 1977, each fiscal year starts on October 1 and ends on the following September 30.

§ 29.106 Representative payees.

For Federal Benefit Payments, representative payees will be authorized to the same extent and under the same circumstances as each plan permits for non-Federal Benefit Payments under the plan. (See *e.g.*, section 4–629(b) of the D.C. Code (1997) (applicable to the Police and Firefighters Plan).)

Subpart B—Coordination With the District Government

§ 29.201 Purpose and scope.

This subpart contains information concerning the relationship between the Department and the District government in the administration of Title XI of the Balanced Budget Act of 1997, as amended, and the functions of each in the administration of that Act.

§ 29.202 Definitions. [Reserved]

§ 29.203 Service of Process.

To affect Federal Benefit Payments—

(a) Service must be made upon the Department at the address provided in appendix A to this subpart for—

(1) Legal process under section 659 of title 42, United States Code, and part 581 of Title 5, Code of Federal Regulations, or

(2) Any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefit Payments as representative payees under § 29.106;

(b)(1) Service must be made upon the District government in accordance with any rules issued under section 1–3005 of the D.C. Code for any qualifying court order under chapter 30 of title 1 of the D.C. Code (1997), and

(2) The District government must notify the Department and forward a copy of such an order to the address provided in appendix A to this subpart within 3 days of receipt of the order; and

(c) All other process regarding Federal Benefit Payments must be served upon the United States in accordance with applicable law.

Appendix A to Subpart B of Part 29—Addresses for Service Under § 29.203

1. The mailing address for delivery of documents described in § 29.203(a) by the United States Postal Service is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

2. The address for delivery of documents described in § 29.203(a) by process servers, express carriers, or other forms of handcarried delivery is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 655 15th Street (F Street side), NW., Washington, DC.

Subpart C—Split Benefits

§ 29.301 Purpose and scope.

(a) The purpose of this subpart is to addresses the legal and policy issues that affect the calculation of the Federal and District of Columbia portions of benefits under subtitle A of Title XI of the Balanced Budget Act of 1977, Public Law 105–33, 111 Stat. 251, 712–731, enacted August 5, 1997, as amended.

(1) This subpart states general principles for the calculation of Federal Benefit Payments in cases in which the Department and the District government are both responsible for paying a portion of an employee's total retirement benefits under the Police and Firefighters Plan or the Teachers Plan.

(2) This subpart provides illustrative examples of sample computations to show the application of the general principles to specific problems.

(b)(1) This subpart applies only to benefits under the Police and Firefighters Plan or the Teachers Plan for individuals who have performed service creditable under these programs on or before June 30, 1997.

(2) This subpart addresses only those issues that affect the split of fiscal responsibility for retirement benefits (that is, the calculation of Federal Benefit Payments).

(3) Issues relating to determination and review of eligibility and payments, and financial management, are beyond the scope of this subpart.

(c) This subpart does not apply to benefit calculations under the Judges Plan.

§ 29.302 Definitions.

In this subpart (including appendix A of this subpart)—

Deferred retirement means retirement under section 4–623 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1231(a) of the D.C. Code (1997) (under the Teachers Plan).

Deferred retirement age means the age at which a deferred annuity begins to accrue, that is, age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan.

Department service or *departmental service* means any period of employment in a position covered by the Police and Firefighters Plan or Teachers Plan. *Department service* or *departmental service* may include certain periods of military service that interrupt a period of employment under the Police and Firefighters Plan or the Teachers Plan.

Disability retirement means retirement under section 4–615 or section 4–616 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1225 of the D.C. Code (1997) (under the Teachers Plan), regardless of whether the disability was incurred in the line of duty.

Enter on duty means commencement of employment in a position covered by the Police and Firefighters Plan or the Teachers Plan.

Excess leave without pay or *excess LWOP* means a period of time in a non-pay status that in any year is greater than the amount creditable as service under § 29.105(d).

Hire date means the date the employee entered on duty.

Military service means—
(1) For the Police and Firefighters Plan, military service as defined in section 4–607 of the D.C. Code (1997) that is creditable as other service under section 4–602 or section 4–610 of the D.C. Code (1997); and
(2) For the Teachers Plan, military service as described in section 31–1230(a)(4) of the D.C. Code (1997).
Optional retirement means regular longevity retirement under section 4–618 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1224(a) of the D.C. Code (1997) (under the Teachers Plan).
Other service means any period of creditable service other than departmental service or unused sick leave. *Other service* includes service that becomes creditable upon payment of a deposit, such as service in another school system under the Teachers Plan (under section 31–1208 of the D.C. Code (1997)); and service that is creditable without payment of a deposit, such as military service occurring prior to employment under the Police and Firefighters Plan.
Pre-80 hire means an individual whose annuity is computed using the formula under the Police and Firefighters Plan applicable to individuals hired before February 15, 1980.
Pre-96 hire means an individual whose annuity is computed using the formula under the Teachers Plan applicable to individuals hired before November 10, 1996.
Sick leave means unused sick leave, which is creditable in a retirement computation, as calculated under § 29.105(c).

General Principles for Determining Service Credit to Calculate Federal Benefit Payments

§ 29.311 Credit only for service performed on or before June 30, 1997.

Only service performed on or before June 30, 1997, is credited toward Federal Benefit Payments.

§ 29.312 All requirements for credit must be satisfied by June 30, 1997.

Service is counted toward Federal Benefit Payments only if all requirements for the service to be creditable are satisfied as of June 30, 1997.

§ 29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Except as otherwise provided in this subpart, the amount of Federal Benefit Payments is computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

§ 29.321 General principle.

Any service performed after June 30, 1997, may never be credited toward Federal Benefit Payments.

§ 29.322 Disability benefits.

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee—
(a) Satisfies the age and service requirements for optional retirement, the Federal Benefit Payment commences immediately, that is, the Federal Benefit Payment is calculated as though the employee retired under optional retirement rules using only service through June 30, 1997 (See examples 7A and 7B of appendix A of this subpart); or
(b) Does not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age. (See § 29.343.)

All Requirements for Credit Must Be Satisfied by June 30, 1997

§ 29.331 General principle.

To determine whether service is creditable for the computation of Federal Benefit Payments under this subpart, the controlling factor is whether all requirements for the service to be creditable under the Police and Firefighters Plan or the Teachers Plan were satisfied as of June 30, 1997.

§ 29.332 Unused sick leave.

(a) For employees separated for retirement as of June 30, 1997, Federal Benefit Payments include credit for any unused sick leave that is creditable under the applicable plan.
(b) For employees separated for retirement after June 30, 1997, no unused sick leave is creditable toward Federal Benefit Payments.

§ 29.333 Military service.

(a) For employees who entered on duty on or before June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments under the terms and conditions applicable to each plan.
(b) For employees who enter on duty after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed as of June 30, 1997.
(c) For employees who entered on duty on or before June 30, 1997, but who perform military service after that date, the credit for military service is not included in Federal Benefit Payments.

§ 29.334 Deposit service.

(a) *Teachers Plan.* (1) Periods of civilian service that were not subject to retirement deductions at the time they were performed are creditable for Federal Benefit Payments under the Teachers Plan if the deposit for the service was paid in full to the Teachers Plan as of June 30, 1997.
(2) No credit is allowed for Federal Benefit Payments under the Teachers Plan for any period of civilian service that was not subject to retirement deductions at the time it was performed if the deposit for the service was not paid in full as of June 30, 1997.
(b) *Police and Firefighters Plan.* No credit is allowed for Federal Benefit Payments under the Police and Firefighters Plan for any period of civilian service that was not subject to retirement deductions at the time that the service was performed. (See definition of "governmental service" at D.C. Code section 4–607(15) (1997).)

§ 29.335 Refunded service.

(a) Periods of civilian service that were subject to retirement deductions but for which the deductions were refunded to the employee are creditable for Federal Benefit Payments if the redeposit for the service was paid in full to the District government as of June 30, 1997.
(b) No credit is allowed for Federal Benefit Payments for any period of civilian service that was subject to retirement deductions but for which the deductions were refunded to the employee if the redeposit for the service was not paid in full to the District government as of June 30, 1997.

Calculation of the Amount of Federal Benefit Payments

§ 29.341 General principle.

Except for disability retirements after June 30, 1997, and certain death benefits based on deaths after June 30, 1997, in which the calculation is not based upon length of service (see § 29.344); for cases in which some service is creditable on or before June 30, 1997, and some service is creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though—
(a) The employee were eligible to retire effective July 1, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the actual retirement age, including any applicable age reduction, based on the age at actual retirement);
(b) The service that became creditable after June 30, 1997, did not exist; and
(c) The average salary is the average salary at separation.

Note to § 29.341: See examples 7B, 9, and 13 of appendix A of this subpart.

§ 29.342 Computed annuity exceeds the statutory maximum.

(a) In cases in which the total computed annuity exceeds the statutory maximum:
(1) Federal Benefit Payments may equal total benefits even if the employee had service after June 30, 1997.
(2) If the employee had sufficient service as of June 30, 1997, to qualify for the maximum annuity under the plan, the Federal Benefit Payment is the maximum annuity under the plan. This will be the entire benefit except for any amount in excess of the normal maximum due to unused sick leave, which is the responsibility of the District. (See example 3, of appendix A of this subpart.)
(b) If the employee did not perform sufficient service as of June 30, 1997, to reach the statutory maximum benefit, but has sufficient service at actual retirement to exceed the statutory maximum, the Federal Benefit Payment is the amount earned through June 30, 1997. The non-Federal-Benefit-Payment portion of the total benefit consists of only the amount by which the total benefit payable exceeds the Federal Benefit Payment.

§ 29.343 Disability benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to disability benefits prior to optional retirement age.
(b) In cases involving disability benefits prior to optional retirement age, no Federal Benefit Payment is payable until the retiree reaches the age of eligibility to receive a deferred annuity (age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan). When the age for deferred annuity is reached, the Federal Benefit Payment is paid using creditable service accrued as of June 30, 1997, and average salary (computed under the rules for the applicable plan) as of the date of separation. (See examples 6 and 7 of appendix A of this subpart.)

§ 29.344 Survivor benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to death benefits that are not determined by length of service.
(b) In cases in which the amount of death benefits is not determined by length of service, the amount of Federal Benefit Payments is calculated by multiplying the amount of the total benefit payable by the number of full months of service through June 30, 1997, and then dividing by the number of months of total service at retirement (for elected survivor benefits) or death (for guaranteed-minimum death-in-service survivor benefits). (See example 13 of appendix A of this subpart.)

§ 29.345 Cost-of-living adjustments.

Cost-of-living increases are applied directly to Federal Benefit Payments, rather than computed on the total benefit and then prorated. (See example 14 of appendix A of this subpart.)

§ 29.346 Reduction for survivor benefits.

(a) If a retiree designates a base for a survivor annuity that is greater than or equal to the unreduced Federal Benefit Payment, the applicable plan's annuity reduction formula is applied to the unreduced Federal Benefit Payment to determine the reduced Federal Benefit Payment. (See example 10 of appendix A of this subpart.)
(b) If a retiree designates a base for a survivor annuity that is less than the amount of the Federal Benefit Payment, the entire survivor reduction applies to the Federal Benefit Payment to determine the reduced Federal Benefit Payment.

Appendix A to Subpart C of Part 29—Examples

This appendix contains sample calculations of Federal Benefit Payments in a variety of situations.

Optional Retirement Examples

Example 1: No Unused Sick Leave

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in October 1997. At retirement, he is age 51 with 20 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 19 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 23 years and 1 month of service, all at the 2.5 percent accrual rate. The total annuity is based on 23 years and 4 months of service, all at the 2.5 percent accrual rate.

EXAMPLE 1A.—POLICE OPTIONAL
[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 10/11/97
Department service: 20/00/03
Other service: 03/04/21
Sick leave:
.025 service: 23.333333
.03 service:
Average salary: $45,680.80
Total: $26,647.12
Total/month: $2,221.00

Federal Benefit Payment Computation

Birth date: 9/10/46
Hire date: 10/09/77
Freeze date: 06/30/97
Department service: 19/08/22
Other service: 03/04/21
Sick leave:
.025 service: 23.083333
.03 service:
Average salary: $45,680.80
Total: $26,361.61
Total/month: $2,197.00

B. In this example, the individual covered by the Police and Firefighters Plan was hired earlier than in example 1A and thus performed more service as of both June 30, 1997, and retirement in October 1997. At retirement, he is age 51 with 21 years, 11 months and 29 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 21 years, 8 months, and 18 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 25 years and 1 month of service, 1 year and 8 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 18 days of departmental service and 21 days of other service). The total annuity is based on 25 years and 4 months of service, 1 year and 11 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 29 days of departmental service and 21 days of other service).

EXAMPLE 1B.—POLICE OPTIONAL
[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 10/11/97
Department service: 21/11/29
Other service: 03/04/21
Sick leave:
.025 service: 23.416667

EXAMPLE 1B.—POLICE OPTIONAL—Continued
[Pre-80 hire]

.03 service: 1.916667
Average salary: $45,680.80
Total: $29,368.96
Total/month $2,447.00

Federal Benefit Payment Computation

Birth date: 09/10/46
Hire date: 10/13/75
Freeze date: 06/30/97
Department service: 21/08/18
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.666667
Average salary: $45,680.80
Total: $29,026.36
Total/month: $2,419.00

Example 2: Unused Sick Leave Credit

In this example, an individual covered by the Police and Firefighters Plan and hired before 1980 retires in March 1998. At retirement, she is age 48 with 24 years, 8 months, and 6 days of departmental service plus 6 months and 4 days of other service (deposit paid before June 30, 1997) and 11 months and 11 days of unused sick leave. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1968 hours (246 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 2069 hours (341 days divided by 360 days per year times 2184 hours per year). The Federal Benefit Payment begins at retirement. It is based on the 23 years, 11 months, and 23 days of departmental service performed as of June 30, 1997, and 6 months and 4 days of other service. Thus, the Federal Benefit Payment is based on 20 years departmental and 6 months of other service at the 2.5 percent accrual rate and 3 years and 11 months of service at the 3.0 percent accrual rate. The total annuity is based on 20 years and 6 months of service at the 2.5 percent accrual rate and 5 years and 7 months of service at the 3 percent accrual rate.

EXAMPLE 2.—POLICE OPTIONAL
[Pre-80 hire]

Total Annuity Computation

Birth date: 05/01/49
Hire date: 07/08/73
Separation date: 03/13/98
Department service: 24/08/06
Other service: 00/06/04
Sick leave: 00/11/11
.025 service: 20.5
.03 service: 5.583333
Average salary: $61,264.24
Total: $41,659.68
Total/month: $3,472.00

Federal Benefit Payment Computation

Birth date: 05/01/49
Hire date: 07/08/73

EXAMPLE 2.—POLICE OPTIONAL—Continued
[Pre-80 hire]

Freeze date: 06/30/97
Department service; 23/11/23
Other service: 00/06/04
Sick leave:
.025 service: 20.5
.03 service: 3.916667
Average salary: $61,264.24
Total: $38,596.47
Total/month: $3,216.00

Example 3: Calculated Benefit Exceeds Statutory Maximum

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in March 1998. At retirement, he is age 55 with 32 years and 17 days of departmental service. The Federal Benefit Payment begins at retirement. It is based on the 31 years, 3 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 11 years and 3 months of service at the 3.0 percent accrual rate. However, the annuity is limited to 80 percent of the basic salary at time of retirement. (This limitation does not apply to the unused sick leave credit.) The annuity computed as of June 30, 1997, equals the full benefit payable; therefore, the Federal Benefit Payment is the total benefit.

EXAMPLE 3A.—POLICE OPTIONAL
[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total: $64,782.34
Total/month: $5,399.00
Maximum: $61,744.00
$5,145.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 03/30/97
Department service: 31/03/17
Other service:
Sick leave:
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
$5,145.00

B. In this example, the individual in example 3A also has 6 months of unused sick leave at retirement. The sick leave credit is not subject to the 80% limitation and does not become creditable service until the date of separation. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1040 hours (130 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 1092 hours (180 days divided by 360 days per year times 2184 hours per year). Six months of unused sick leave increases the annual total benefit by 1.5 percent of the average salary, or in the example by $94 per month. The District is responsible for the portion of the annuity attributable to the unused sick leave because it became creditable at retirement, that is, after June 30, 1997.

EXAMPLE 3B.—POLICE OPTIONAL
[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total wo/sl credit: $64,782.34
Total/month: $5,399.00
Max wo/sl credit: $61,744.00
Max w/sl credit: $62,873.92
Monthly benefit: $5,239.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 06/30/97
Department service: 31/03/17
Other service:
Sick leave: none
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
Monthly benefit: $5,145.00

Example 4: Excess Leave Without Pay

In this example, an individual covered by the Teachers Plan hired before 1996 retires in February 1998. At retirement, she is age 64 with 27 years of departmental service and 6 years, 7 months, and 28 days of other service (creditable before June 30, 1997). However, only 6 months of leave in a fiscal year without pay may be credited toward retirement under the Teachers Plan. She had 3 months and 18 days of excess leave without pay as of June 30, 1997. Since the excess leave without pay occurred before June 30, 1997, the time attributable to the excess leave without pay is subtracted from the service used in both the Federal Benefit Payment and the total benefit computations. The Federal Benefit Payment begins at retirement. It is based on the 32 years and 8 months of service (32 years, 11 months, and 28 days minus 3 months and 18 days and the partial month dropped); 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 22 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service (33 years, 7 months and 28 days minus 3 months and 18 days and the partial month dropped) 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

Note: For the Teachers Plan, section 1230(a) of title 31 of the DC Code (1997) allows for 6 months leave without pay in any fiscal year. For the Police and Firefighters Plan, section 610(d) of title 4 of the DC Code (1997) allows for 6 months leave without pay in any calendar year.

EXAMPLE 4.—TEACHERS OPTIONAL
[Pre-96 hire]

Total Annuity Computation

Birth date: 11/04/33
Hire date: 03/01/71
Separation date: 02/28/98
Department service: 27/00/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.98
Total/month: $2,785.00

Federal Benefit Payment Computation

Birth date: 11/04/33
Hire date: 03/01/71
Freeze date: 06/30/97
Department service: 26/04/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 22.666667
Average salary: $53,121.00
Total: $32,713.66
Total/month: $2,726.00

Example 5: Service Credit Deposits

A. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was fully paid on or before June 30, 1997. The Federal Benefit Payment begins at retirement. It is based on the 29 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 33 years and 1 month of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 23 years and 1 month of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5A.—TEACHERS OPTIONAL
[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department Service: 30/00/03
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick Leave:
.015 service: 5
.0175 service: 5
.02 service: 23.08333; 13 days dropped
Average salary: $45,680.80
Total: $28,512.45
Total/month: $2,376.00

B. In this example, the employee in example 5A did not pay any of the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997. Thus, none of the other service is used in the computation of the Federal Benefit Payment. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was paid in full in October 1997 (at retirement). The Federal Benefit Payment begins at retirement. It is based on only the 29 years, 8 months, and 22 days of departmental service performed as of June 30, 1997; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 19 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5B.—TEACHERS OPTIONAL
[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
$0.00
Department service: 30/00/03
Other service: 03/04/21
Total deposit paid after 6/30/97
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00

C. In this example, the employee in examples 5A and B began installment payments on the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997, but did not complete the deposit until October 1997 (at retirement). The other service is not used in the computation of the Federal Benefit Payment because the payment was not completed as of June 30, 1997. Thus, the result is the same as in example 5B.

EXAMPLE 5C.—TEACHERS OPTIONAL
[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none

EXAMPLE 5C.—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00

Disability Retirement Examples

Example 6: Disability Occurs Before Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, he is age 45 with 18 years, 5 months, and 11 days of departmental service. Since he had performed less than 20 years of service and had not reached the age of eligibility for an optional retirement, the Federal Benefit Payment does not begin at retirement. When the disability annuitant reaches age 55, he satisfies the age and service requirements for deferred retirement. At that time (August 20, 2007), the Federal Benefit Payment begins. It is based on the 18 years, 1 month, and 17 days of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate.

EXAMPLE 6A.—POLICE DISABILITY IN LINE OF DUTY, AGE 45

[Pre-80 hire]

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 10/24/97
Department service: 18/05/11
Other service:
Sick leave:
.025 service: 18.416667
.03 service:
Average salary: $47,788 64
Final salary: $50,938.00
Total: $22,002.70
Total/month: $1,834.00
⅔ of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Freeze date: 06/30/97
Department service: 18/01/17
Other service:
Sick leave:
.025 service: 18.083333
.03 service:
Average salary: $47,788.64
Final salary: $50,938.00
Total: $21,604.43
Total/month: $1,800.00; deferred

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, she is age 49 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since she does not qualify for optional retirement at separation, the Federal Benefit Payment does not begin at separation. When the disability annuitant reaches age 62, she will satisfy the age and service requirements for deferred retirement. At that time (March 9, 2010), the Federal Benefit Payment begins. The time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment. Since the excess leave without pay occurred before June 30, 1997, the deferred Federal Benefit Payment is based on the 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 and 6 months of service at the 2 percent accrual rate.

EXAMPLE 6B—TEACHERS DISABILITY AGE 49

[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/48
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/48
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00; deferred

Example 7: Disability Occurs After Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, she is age 55 with 24 years, 5 months, and 11 days of departmental service. Since she was also eligible for optional retirement at the time of separation, the Federal Benefit Payment commences at retirement. It is based on the 24 years, 1 month, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 4 years and 1 month of service at the 3 percent accrual rate. The total annuity is based on the disability formula and is equal to two-thirds of average pay because that amount is higher than the 63.25 percent payable based on total service.

EXAMPLE 7A.—POLICE DISABILITY IN LINE OF DUTY AGE 55

[Pre-80 hire]

Total Annuity Computation

Birth date: 10.01/42
Hire date: 05/14/73
Separation date: 10/24/97
Department service: 24/05/11
Other service:
Sick leave:
.025 service: 20
.03 service: 4.416667
Average salary: $47,788.64
Final salary: $50,938.00
Total: $30,226.31
Total/month: $2,519.00
2/3 of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 10/01/42
Hire date: 05/14/73
Freeze date: 06/30/97
Department service: 24/01/17
Other service:
Sick leave:
.025 service: 20
.03 service: 4.083333
Average salary: $47,788.64
Final salary: $50,938.00
Total: $29,748.43
Total/month: $2,479.00

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, he is age 60 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since he qualifies for optional retirement at separation, the Federal Benefit Payment begins at retirement. Since the excess leave without pay occurred before June 30, 1997, and the total annuity is based on actual service (that is, exceeds the guaranteed disability minimum), the time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment and total benefit. The Federal Benefit Payment is based on 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6 months of service at the 2 percent accrual rate. The total annuity payable is based on 24 years of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 14 years of service at the 2 percent accrual rate.

EXAMPLE 7B.—TEACHERS DISABILITY AGE 60

[Pre-96 hire]

TotaL Annuity Computation

Birth date: 03/09/37
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/37
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00

Deferred Retirement Examples

Example 8: All Service Before June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in March 1986 with title to a deferred annuity. In November 1997, he reaches age 55 and becomes eligible for the deferred annuity based on his 15 years, 9 months, and 8 days of departmental service, all at the 2.5 percent accrual rate. The total annuity is based on the same 15 years, 9 months, and 8 days of service all at the 2.5 percent accrual rate. Since all the service is creditable as of June 30, 1997, the Federal Benefit Payment equals the total annuity.

EXAMPLE 8.—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/42
Hire date: 06/01/70
Separation date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

Federal Benefit Payment Computation

Birth date: 11/20/42
Hire date: 06/01/70
Freeze date: 03/08/86
Department service: 15/09/08

EXAMPLE 8.—POLICE DEFERRED—Continued

[Pre-80 hire]

Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

Example 9: Service Straddles June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in December 1997 with title to a deferred annuity. In November 2007, he will reach age 55 and becomes eligible to receive a deferred annuity. At that time, the Federal Benefit Payment begins. It is based on the 18 years and 1 month of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate. The total annuity begins at the same time, based on his 18 years, 6 months, and 8 days of departmental service, all at the 2.5 percent accrual rate.

EXAMPLE 9.—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/52
Hire date: 06/01/79
Separation date: 12/08/97
Department service: 18/06/08
Other service:
Sick leave:
.025 service: 18.5
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $14,072.55
Total/month: $1,173.00

Federal Benefit Payment Computation

Birth date: 11/20/52
Hire date: 06/01/79
Freeze date: 06/30/97
Department service: 18/01/00
Other service:
Sick leave:
.025 service: 18.083333
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $13,755.60
Total/month: $1,146.00; deferred

Reduction To Provide a Survivor Annuity Examples

Example 10: Survivor Reduction Calculations

Both of the following examples involve a former teacher who elected a reduced annuity to provide a survivor benefit:

A. In this example, the employee elected full survivor benefits. The Federal Benefit Payment is reduced by 2½ percent of the first $3600 and 10 percent of the balance. The total annuity is also reduced by 2½ percent of the first $3600 and 10 percent of the balance.

EXAMPLE 10A.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Reduction: $3,976.41
Total reduced: $38,487.72
Total/month: $3,207.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreducted: $41,796.28
Reduction: $3,909.63
Total reduced: $37,886.65
Total/month: $3,157.00

B. In this example, the employee elects to provide a partial survivor annuity based on $3600 per year. The Federal Benefit Payment is reduced by $90 per year. The total benefit is reduced by $90 per year.

EXAMPLE 10B.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreducted: $42,464.13
Reduction: $90.00
Total reduced: $42,374.13
Total/month: $3,531.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire Date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18

EXAMPLE 10B.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION—Continued

[Pre-96 hire]

Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreduced: $41,796.28
Reduction: $90.00
Total reduced: $41,706.28
Total/month: $3,476.00

Early Optional or Involuntary Retirement Examples

Example 11: Early Optional With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires voluntarily in February 1998, under a special program that allows early retirement with at least 20 years of service at age 50 older, or at least 25 years of service at any age. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. Since she is not eligible for optional retirement and she is eligible to retire voluntarily only because of the District-approved special program, the Federal Benefit Payment is calculated similar to a disability retirement. It does not begin until she becomes eligible for a deferred annuity at age 62. When it commences the Federal Benefit Payment will be based on the service creditable as of June 30, 1997: 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Because the Federal Benefit Payment is based on the deferred annuity, rather than the early voluntary retirement, it is not reduced by the age reduction factor used to compute the total benefit.

EXAMPLE 11.—TEACHERS EARLY OUT W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14
Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53

EXAMPLE 11.—TEACHERS EARLY OUT W/AGE REDUCTION—Continued

[Pre-96 hire]

Total/month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Reduction factor: 1.000000 no reduction
Total reduced: $40,240.80
Total/month: $3,353.00 deferred

Example 12: Involuntary With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires involuntarily in February 1998. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. The Federal Benefit Payment begins at retirement. It is based on the 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Both the Federal Benefit Payment and the total benefit are reduced by the age reduction factor.

EXAMPLE 12.—TEACHERS INVOLUNTARY W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Age reduction factor: 0.990000
Total reduced: $39,838.39
Total/month: $3,320.00

Death Benefits Example

Example 13: Death Benefits Calculation

Regardless of whether death occurs in service or after retirement, if the death benefit is not based on the length of service, the portion of a death benefit that is a Federal Benefit Payment is based on the ratio of the number of months of the deceased employee's service as of June 30, 1997, to the number of months of the deceased employee's total service. This proration will always apply to cases of death after retirement in which the survivor annuity is based on the reduction in the employee's annuity to provide the benefit. It also applies to lump-sum benefits and benefits computed under a guaranteed-minimum or a percentage-of-disability-at-retirement formula.

A. In this example, an individual covered by the Teachers Plan retires in April 1998 with 30 years of service and elects to provide a full survivor annuity. He dies in June 1998. The Federal Benefit Payment is 97½ percent (351 months/360 months) of the total survivor benefit.

EXAMPLE 13A.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/46
Hire date: 04/01/68
Separation date: 04/01/98
Death date: 06/24/98
Department service: 30/00/00
Other service:
Sick leave:
Months: 360
Annual Benefit: $12,000.00
Monthly Benefit: $1,000.00

Federal Benefit Payment Computation

Birth date: 04/01/46
Hire date: 04/01/68
Freeze date: 06/30/97
Death date: 06/24/98
Department service: 29/03/00
Other service:
Months: 351
$11,700.00
$975.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is based on the 30 years of service as of June 30, 1997. The total benefit is based on the 31 years of total service. No proration is appropriate.

EXAMPLE 12.—TEACHERS INVOLUNTARY W/AGE REDUCTION—Continued

[Pre-96 hire]

Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Age reduction factor: 0.990000
Total reduced: $39,838.39
Total/month: $3,320.00

Death Benefits Example

Example 13: Death Benefits Calculation

Regardless of whether death occurs in service or after retirement, if the death benefit is not based on the length of service, the portion of a death benefit that is a Federal Benefit Payment is based on the ratio of the number of months of the deceased employee's service as of June 30, 1997, to the number of months of the deceased employee's total service. This proration will always apply to cases of death after retirement in which the survivor annuity is based on the reduction in the employee's annuity to provide the benefit. It also applies to lump-sum benefits and benefits computed under a guaranteed-minimum or a percentage-of-disability-at-retirement formula.

A. In this example, an individual covered by the Teachers Plan retires in April 1998 with 30 years of service and elects to provide a full survivor annuity. He dies in June 1998. The Federal Benefit Payment is 97½ percent (351 months/360 months) of the total survivor benefit.

EXAMPLE 13A.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/46
Hire date: 04/01/68
Separation date: 04/01/98
Death date: 06/24/98
Department service: 30/00/00
Other service:
Sick leave:
Months: 360
Annual Benefit: $12,000.00
Monthly Benefit: $1,000.00

Federal Benefit Payment Computation

Birth date: 04/01/46
Hire date: 04/01/68
Freeze date: 06/30/97
Death date: 06/24/98
Department service: 29/03/00
Other service:
Months: 351
$11,700.00
$975.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is based on the 30 years of service as of June 30, 1997. The total benefit is based on the 31 years of total service. No proration is appropriate.

EXAMPLE 13B.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/01/39
Hire date: 07/01/67
Separation date: 06/30/98
Death date: 06/30/98
Department service: 31/00/00
Other service:
Sick leave:
Average salary: $38,787.88
Annual Benefit: $12,426.67
Monthly Benefit: $1,036.00

Federal Benefit Payment Computation

Birth date: 07/01/39
Hire date: 07/01/67
Freeze date: 06/30/97
Death date: 06/30/98
Department service: 30/00/00
Other service:
Average salary: $38,787.88
$12,000.00
$1,000.00

C. In this example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. Since the survivor annuity is based on the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13C.—TEACHERS DEATH BENEFITS

[pre-96 hire]

Total Annuity Computation

Birth date: 04/01/61
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Average salary: $36,000.00
Months: 180
Annual Benefit: $7,920.00
Monthly Benefit: $660.00

Federal Benefit Payment Computation

Birth date: 04/01/61
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department Service: 14/03/00
Average salary: $36,000.00
Months: 171
Ratio (171/180): 0.950000

$7,524.00
$627.00

D. In this example, as in the prior example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. However, in this example, the teacher was age 40 on the hire date. The amount of service used in the survivor annuity calculation equals the amount of service that the teacher would have had if the teacher continued covered employment until age 60. Since the survivor annuity is based on projected service, a form of the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13D.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/43
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Departmental Service projected to age 60: 20/00/01
.015 service: 5
.0175 service: 5
.02 service: 10
Average salary: $36,000.00
Months: 180
Annual Benefit: $7,177.50
Monthly Benefit: $598.00

Federal Benefit Payment Computation

Birth date: 04/01/43
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department service: 14/03/00
Average salary: $36,000.00
Months: 171
Ratio (171/180): 0.950000
$6,818.63
$568.00

Cost of Living Adjustment Examples

Example 14: Application of Cost of Living Adjustments

Cost of living adjustments are applied directly to the Federal Benefit Payment to determine the new rate of the Federal Benefit Payment after a cost of living adjustment.

A. In this example, the cost of living adjustment is the same for the Federal Benefit Payment and the non-Federal Benefit Payment portion of the total benefit. Effectively, the total cost of living adjustment is proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14A.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.98
Total/month: $2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00

COLA Computation

DC COLA rate 4%
Total COLA: 111
New rate: 2896
Federal COLA rate 4%
Federal COLA: 56
New rate: 1454

B. In this example, a new District plan applies a different cost of living adjustment than is provided for the Federal Benefit Payment. The Federal Benefit Payment will be unaffected by the new District plan. In such a case, the total cost of living adjustment is no longer proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14B.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00

EXAMPLE 14B.—TEACHERS COST OF LIVING ADJUSTMENT—Continued

[Pre-96 hire]

Total: $33,421.96
Total/month: $2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00

COLA Computation Variations

Variation 1

DC COLA rate 5% of total benefit:
Total COLA: $139.00
New rate: $2,924.00
Federal COLA rate 4% of Federal Benefit Payment:
Federal COLA: $56.00
New rate: $1,454.00

Variation 2

DC COLA rate 5% of DC Payment:
Total COLA: $125.00
New rate: $2,910.00
Federal COLA rate 4% of Federal Benefit Payment:
Federal COLA: $56.00
New rate: $1,454.00

Retroactive Payment of Accrued Annuity Example

Example 15: Accrual of Federal Benefit Payment

The Federal Benefit Payment begins to accrue on the annuity commencing date, regardless of whether the employee is added to the annuity roll in time for the regular payment cycle. If the employee is due a retroactive payment of accrued annuity, the portion of the retroactive payment that would have been Federal Benefit Payment (if it were made in the regular payment cycle) is still Federal Benefit Payment. In this example, a teacher retired effective September 11, 1998. She was added to the retirement rolls on the pay date November 1, 1998 (October 1 to October 31 accrual cycle). Her Federal Benefit Payment is $3000 per month and her total benefit payment is $3120 per month. Her initial check is $5200 because it includes a prorated payment for 20 days (September 11 to September 30). The Federal Benefit Payment is $5000 of the initial check ($3000 for the October cycle and $2000 for the September cycle).

EXAMPLE 15.—TEACHERS ACCRUED BENEFIT

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 09/01/66
Separation date: 09/10/98
Department service: 32/00/10
.015 service: 5
.0175 service: 5
.02 service: 22
Average salary: $62,150.00
Total: $37,445.38
Total/month: $3,120.00
Sept 11–30: $2,080.00
Oct 1–31: $3,120.00
Nov 1–30: $3,120.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 09/01/66
Freeze date: 06/30/97
Department service: 30/10/00
.15 service: 5
.0175 service: 5
.02 service: 20.833333
Average salary: $62,150.00
Total: $35,995.21
Total/month: $3,000.00
Sept 11–30: $2,000.00
Oct 1–31: $3,000.00
Nov 1–30: $3,000.00

[FR Doc. 00–31249 Filed 12–11–00; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–00–131]

RIN 2115–AE46

Special Local Regulations: Fireworks Display, Smith Bay, Saint Thomas, USVI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being established for the Wyndham New Years Fireworks display in Smith Bay, St. Thomas, USVI. These regulations are needed to provide for the safety of life on navigable waters by excluding vessels from the fireworks launching area.

DATES: This rule is effective from 11 a.m. AST on December 31, 2000, to 1 a.m. AST on January 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of the docket CGD07–00–114 and are available for inspection or copying at Coast Guard Greater Antilles Section, La Puntilla, Old San Juan, PR 00902 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes, Greater Antilles Section at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for these regulations. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public and the marine event request was recently received. Further, we anticipate numerous spectator craft in the area where the fireworks will be launched.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger associated with storing and launching fireworks near spectator craft during the fireworks display. This rule creates a regulated area that will prohibit non-participating vessels from entering the regulated area during the event.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The regulated area will only be in effect for approximately 2 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect the following entities, some of which may be small enities: the owners or operators of vessels intending to transit or anchor in a portion of Smith Bay from 11 p.m. December 31, 2000, to 1 a.m. January 1, 2001. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the rule will only be in effect for 2 hours.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[MARINE EVENTS]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–131 to read as follows:

§ 100.35T–07–131; Fireworks display, Smith Bay, Saint Thomas, USVI.

(a) *Regulated Area.* A 1500-yard radius from position 18°20′27″ N, 064°51′18″ W, and encompassing all of Smith Bay, St. Thomas, USVI. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Potrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Greater Antilles Section, San Juan, Puerto Rico.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft may remain in a spectator area to be established by the event sponsor, Moonlight Fireworks, Inc.

(d) *Dates.* This rule is effective from 11 a.m. AST on December 31, 2000, to 1 a.m. AST on January 1, 2001.

Dated: December 1, 2000.

T.W. Allen,

U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–31643 Filed 12–11–00; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 07–00–116]

RIN 2115–AE46

Special Local Regulations: BellSouth Winterfest Boat Parade, Broward County, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being established for the annual BellSouth Winterfest Boat Parade. The event will be held on December 16, 2000, on the waters of the Port Everglades turning basin and the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach Day Beacon 74 (LLNR 47230). The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 5 p.m. to 11 p.m. EST on December 16, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 07–00–116 and are available for inspection and copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami, FL 33139, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Storey, Coast Guard Group Miami Florida at (305) 535–4472.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM would be contrary to national

safety interests since immediate action is needed to minimize potential danger to the public as there will be numerous spectator craft in the area. Moreover, the event is scheduled for December 16, 2000, and the permit request was only recently received.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The BellSouth Winterfest Boat Parade is an annual nighttime parade of approximately 110 pleasure boats ranging in length from 20 feet to 200 feet decorated with holiday lights. Approximately 1000 spectator craft are anticipated. The parade will form in the staging area at the Port Everglades turning basin and proceed North on the Intracoastal Waterway (ICW) to Lake Santa Barbara where the parade will disband. The regulated area includes the staging area and the parade route. The staging area encompasses the Port Everglades turning basin, North to Dania Sound Light 35 (LLNR 42865). The Parade route encompasses the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach day beacon 74 (LLNR 47230)

Anchoring is prohibited in the staging area. Anchoring is also forbidden in the vicinity of the viewing area which extends from the Sunrise Blvd Bridge, South to the New River Sound Light 3 (LLNR 47240) West of the ICW. During the parade transit, these regulations prohibit nonparticipating vessels from approaching within 500 feet ahead of the lead vessel or 500 feet astern of the last participating vessel in the parade, and within 50 feet on either side of the parade, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations at the discretion of the Patrol Commander.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be minimal because the regulated area will only be in effect for approximately 6 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the ICW between the Port Everglades turning basin and Lake Santa Barbara from 5 to 11 p.m. on December 16, 2000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for approximately 6 hours and the event will be highly publicized.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations for unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[MARINE EVENTS]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–116 to read as follows:

§ 100.35T–07–116; BellSouth Winterfest Boat Parade, Broward County, Ft. Lauderdale, FL

(a) *Definitions.*

(1) Staging area: The staging area is the Port Everglades Turning Basin and that portion of the Intracoastal Waterway extending form Port Everglades Turning Basin to Dania Sound light 35 (LLNR 42865).

(2) Parade Route: The parade route includes the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach Daybeacon 74 (LLNR 47230)

(3) Viewing area: The Viewing area extends from the Sunrise Blvd Bridge South to the New River Sound Light 3 (LLNR 47240) West of the ICW.

(4) Coast Guard Patrol Commander. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida. The Coast Guard assumes no responsibility for the operation of the event, the safety of participants and spectators, the safety of transient craft, and the qualification and instruction of participants. These responsibilities rest solely with the sponsor of the event.

(b) *Special Local Regulations.*

(1) Staging area: Entry or anchoring in the staging area by nonparticipating vessel is prohibited, unless authorized by the Patrol Commander.

(2) Parade route: During the parade transit, nonparticipating vessels are prohibited from approaching within 500 feet ahead of the lead vessel and 500 feet astern of the last participating vessel in the parade, and within 50 feet either side of the parade unless authorized by the Patrol Commander.

(3) Viewing Area: Anchoring in the vicinity of the viewing area is prohibited.

(4) Miscellaneous: A succession of not fewer that 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately. At the discretion of the Patrol Commander, all vessels may resume normal operations after the passage of the parade participants.

(d) *Effective date.* This section is effective from 5 p.m. to 11 p.m. EST on December 16, 2000.

Dated: December 1, 2000.

T.W. Allen,

U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–31644 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Sack Preparation Changes for Periodicals Nonletter-Size Mailing Jobs That Include Automation Flat Rate and Presorted Rate Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises the standards for preparation of Periodicals nonletter-size mailing jobs that include both an automation flats mailing and a Presorted flats mailing to require use of the co-sacking preparation method in Domestic Mail Manual (DMM) M910.

EFFECTIVE DATE: January 7, 2001.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, 703–292–3645.

SUPPLEMENTARY INFORMATION: On October 30, 2000, the Postal Service published for comment in the **Federal Register** (65 FR 64643) a proposed rule to require Periodicals mailers to prepare sacked mailing jobs of nonletter-size mail that include both an automation flats rate mailing and a Presorted rate mailing using the co-sacking preparation requirements in DMM M910.

This proposal was based on cost models that suggest that handling costs for Periodicals mail will be reduced if mailers are required to prepare their mail under new DMM M910. This preparation method will reduce the number of sacks prepared and handled, and concurrently increase the number of more finely presorted sacks. The anticipated reduction in Postal Service costs from requiring use of this preparation method was incorporated in the rates resulting from the R2000–1 rate case.

This rulemaking also reorganizes Domestic Mail Manual E200 and M200 to separate the eligibility and presort requirements for Periodicals Presorted rate mailings from those of carrier route mailings. DMM E200 will now contain section E220 that pertains only to Presorted rate mailings and section E230 that pertains only to carrier route mailings. (The information published in DMM E220 in the **Federal Register** proposed rule of August 29, 2000 (65 FR 52480), "Proposed Changes to the Domestic Mail Manual to Implement Docket No. R2000–1," has been redesignated as DMM E217 in the final rule regarding that proposal.) DMM M200 will contain section M210 that pertains only to Presorted rate mailings and section M220 that pertains only to carrier route mailings. Under current standards, Presorted and carrier route are two separate mailings with separate eligibility requirements and separate packaging and sacking requirements. This reorganization does not change current requirements but reflects the separate mailing status of these two types of mailings. It also makes the DMM numbering for Periodicals consistent with the numbering system used for Standard Mail (A). The final rule also makes changes to E230 and M200 references contained throughout the DMM that appropriately change them to E220, M210, or M220 references, as appropriate.

As information, the DMM language in this final rule incorporates revisions to the DMM from three previously published **Federal Register** final rules that also will take effect January 7, 2001. These final rules are:

1. "Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets" published on July 28, 2000 (65 FR 46361).

2. "Line-of-Travel Sequencing for Basic Carrier Route Periodicals" published on July 28, 2000 (65 FR 46363).

3. "Domestic Mail Manual Changes for Sacking and Palletizing Periodicals Nonletters and Standard Mail (A) Flats, for Traying First-Class Flats, and for Labeling Pallets" published on August 16, 2000 (65 FR 50054).

Accordingly, the numbering and the language of the DMM sections in this final rule have been synchronized with those final rules and may not match the numbering and language in current DMM Issue 55.

Summary of Comments

The Postal Service received one in response to the proposed rule. This commenter who represents a mailing association expressed support for the new requirement.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U. S. C. 552(a); 39 U. S. C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

E Eligibility

* * * * *

E200 Periodicals

* * * * *

E211 All Periodicals

* * * * *

12.0 Documentation

[In E211.12.0, revise "E230" to read "E220".]

* * * * *

14.0 Basic Rate Eligibility

* * * * *

14.3 Adjustments and Discounts

[In E211.14.3, revise "E230" to read "E220, E230".]

* * * * *

[Add new E220 to read as follows:]

E220 Presorted Rates

[Add new summary to read as follows:]

Summary E220 describes the eligibility standards for mailing Presorted rate mailings (5-digit, 3-digit, and basic rates). It also describes combining multiple publications or editions.

[Add new 1.0 that copies information from E230 and deletes information pertaining to carrier route mail to read as follows:]

1.0 BASIC INFORMATION

1.1 Standards

The standards for Presorted rates are in addition to the basic standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M045, M200, M910, M920, M930, or M940. Not all combinations of presort level, automation, and destination entry discounts are permitted.

[Copy E230.1.2 as new E220.1.2 and amend to include references to new palletization options to read as follows:]

1.2 Palletized Mail

A correctly prepared package is the equivalent of a sack when palletized under M045, M920, M930, or M940. Individual pieces qualify for the presort level rate appropriate for the palletized packages in which they are placed, regardless of the destination of the pallet. Eligibility for destination entry or other zoned rates depends on the point of entry.

[Redesignate E230.1.3 as E220.1.3.]

1.4 Barcodes

[Copy E230.1.4 as E220.1.4 and amend by changing "nonautomation" to "Presorted" to read as follows:]

Any POSTNET barcode on a mailpiece in a Presorted Periodicals mailing must be correct for the delivery address and meet the standards in C840 and A950.

1.5 Documentation

[Copy E230.1.5 to E220.1.5 and amend by adding information on postage statements to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by standardized documentation meeting the basic standards in P012. Documentation of postage is not required if each piece in the mailing is of identical weight and the pieces are separated when presented for acceptance by rate, by zone (including separation by In-County and Outside-County rates), and by entry discount (e.g., DDU and DSCF).

[Add new heading 2.0 to read as follows:]

2.0 RATES

[Redesignate E230.3.0 through E230.5.0 as E220.2.1, 2.2, and 2.3, respectively.]

2.1 5–Digit Rates

[In redesignated 2.1, change the reference "M200" to "M210."]

2.2 3-Digit Rates

[In redesignated 2.2, change the reference "M200" to "M210."]

2.3 Basic Rates

[In redesignated 2.3, change the reference "M200" to M210."]

[Copy E230.7.0 as E220.3.0.]

[Revise the heading of E230 to read as follows:]

E230 Carrier Route Rates

[Amend the summary to exclude non-carrier route rates to read as follows:]

Summary E230 describes the eligibility standards for mailing at carrier route rates. It also describes combining multiple publications or editions.

1.0 BASIC INFORMATION

1.1 Standards

[Amend 1.1 to delete information on Presorted rate mail to read as follows:]

The standards for carrier route rates are in addition to the basic standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M045, M200, M910, M920, M930, or M940. Not all combinations of presort level, automation, and destination entry discounts are permitted.

[Amend 1.2 to include references to new palletization options to read as follows:]

1.2 Palletized Mail

A correctly prepared package is the equivalent of a sack when palletized under M045, M920, M930, or M940. Individual pieces qualify for the presort level rate appropriate for the palletized packages in which they are placed, regardless of the destination of the pallet. Eligibility for destination entry or other zoned rates depends on the point of entry.

[Redesignate the heading 2.1 as 1.3 and amend to read as follows:]

1.3 Carrier Route Code Accuracy

[Redesignate the text of 2.1 as 1.3 and amend to add references to the sequencing requirements to read as follows:]

Except for mailings prepared with a simplified address under A040, carrier route codes must be applied to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme, hard copy CRIS files, or another AIS product containing carrier route information, subject to A930 and A950. Carrier route information must be updated within 90 days before the mailing date. The applicable sequencing requirements in 2.2, 3.0, and M050 must also be met.

* * * * *

1.5 Documentation

[Amend 1.5 to add information on postage statement standards and to add a cross-reference to the documentation requirements in M050 for sequencing to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by standardized documentation meeting the basic standards in P012. Documentation of postage is not required if each piece in the mailing is of identical weight and the pieces are separated when presented for acceptance by rate, by zone (including separation by In-County and Outside-County rates), and by entry discount (e.g., DDU and DSCF). Documentation of sequencing and of density standards under M050 must be submitted with each mailing.

[Revise the heading of 2.0 (as set forth in the final rule published in 65 FR 50054, August 16, 2000), and add new heading 2.1 to read as follows:]

2.0 SORTATION AND SEQUENCING

2.1 Sortation

[Redesignate the contents of 2.2a (as set forth in the final rule published in 65 FR 50054, August 16, 2000) as 2.1a and b to separate letter mail standards from nonletter mail standards to read as follows:]

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M045, M200, or (nonletter-size mail only) M920, M930, or M940. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The carrier route rates for letter-size mail apply to copies that are prepared in carrier route packages of six or more pieces each that are sorted to carrier route, 5-digit carrier routes, or 3-digit carrier routes trays.

b. The carrier route rates for nonletter-size mail apply to copies of flat-size or irregular parcel-size pieces prepared in carrier route packages of six or more pieces each, and that are sorted to pallets under M045 or M920, M930, or M940, or sacked in carrier route, 5-digit scheme carrier routes, or 5-digit carrier routes sacks, and, if prepared under M920, merged 5-digit scheme sacks or merged 5-digit sacks. Preparation of 5-digit scheme carrier routes sacks or pallets is required and must be done for all 5-digit scheme destinations. Preparation of merged 5-digit sacks and merged 5-digit scheme sacks is optional but if performed must be done for all 5-digit ZIP Codes for which there is an "A" or "C" indicator in the City State Product that permits co-containerization of carrier route and 5-digit packages. Preparation of merged 5-digit pallets and merged 5-digit scheme pallets is optional but if performed must be done for all 5-digit ZIP Codes or 5-digit schemes for which those pallet levels are possible (under M920 if there is an "A" or "C" indicator in the City State Product, under M930 if the 5% threshold standard is met, and under M940 if ZIP Codes have an "A" or "C" indicator in the City State Product and if ZIP Codes with a "B" or "D" indicator in the City State Product meet the 5% threshold standards). For merged 5-digit scheme sacks or pallets, preparation also must be done for all 5-digit scheme destinations. The applicable sequencing requirements in M050 and in 2.2a or 2.2b also must be met.

[Amend the heading of 2.2 and redesignate 2.2b and c (as set forth in the final rule published in 65 FR 50054, August 16, 2000) as 2.2a and b, to read as follows:]

2.2 Sequencing Requirements

Carrier route mail must be prepared in delivery sequence as follows:

a. Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes as prescribed by the USPS (M050).

b. The high density and saturation rates apply to pieces that are eligible for carrier route rates under 2.1, are prepared in carrier walk sequence, and meet the applicable density standards in 3.0 for the rate claimed.

[Redesignate 6.0 (as set forth in the final rule published in 65 FR 50054, August 16, 2000) as 3.0; amend redesignated 3.1 by changing the reference "2.2" to "1.0 and 2.0," by changing the reference "M200" to "M220," and by changing the reference "6.4" to "3.4"; amend redesignated 3.4 by changing all references to "6.4" to "3.4."]

[Redesignate 7.0 as 4.0.]

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E250 Destination Entry

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2.0 DDU RATE

2.1 Eligibility

[Change the references "M200" to "M220."]

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M050 Delivery Sequence

1.0 BASIC STANDARDS

1.1 General

[Change the reference "M200" to "M220."]

* * * * *

4.0 DOCUMENTATION

4.2 High Density

[In 4.2a and 4.2b, change the reference "E230.6.4c" to "E230.3.4c."]

M200 Periodicals (Nonautomation)

[Add new heading M210 to read as follows:]

M210 Presorted Rate Periodicals

[Redesignate the summary of M200 as the summary of M210 and amend to delete references to carrier route mail to read as follows:]

Summary: M200 describes the basic standards for Periodicals Presorted rate mailings including package and tray preparation for letters, and package and sack preparation for flats and irregular parcels. Additional requirements for preparing mail on pallets are in M041 and M045, or M041 and M920, M930, or M940. For standards on automation rate Periodicals mailings see E240 and M810 (letters) or M820 (flats), as applicable. For standards on carrier route mailings see E230 and M220.

[Redesignate M200.1.0 as M210.1.0.]

1.0 BASIC STANDARDS

[Revise heading and text of redesignated M210.1.1 for clarity and to exclude Presorted rate sacked nonletter-size mailings that contain an automation rate mailing to read as follows:]

1.1 Basic Standards

For all letter-size mailings, for sacked mailing jobs of nonletter-size mail that do not contain an automation rate mailing or a carrier route mailing, and for all palletized mailing jobs the following standards must be met for the Presorted rate mailing:

a. All pieces in each Presorted rate Periodicals mailing must be in the same processing category.

b. Letter-size pieces must be packaged under 2.0 and prepared in trays under 3.0. Trays prepared under this section may subsequently be palletized under M041 and M045.

c. Nonletter-size pieces must be packaged under 2.0. Packages placed on pallets must meet additional packaging criteria under M045.

d. Packages of nonletter-size pieces must be sacked or palletized under one of the following:

(1) Sacked under 4.0, except that a Presorted rate mailing that is part of a mailing job that also contains an automation flats mailing must be sacked under M910 or M920 as described in 1.2; or

(2) Palletized under M041 and M045, M920, M930, or M940.

e. Sacks prepared under 4.0 may subsequently be prepared on pallets under M041 and M045.

f. All pieces must be sorted together to the finest extent required under the applicable sortation standards described above.

g. Postmasters may authorize preparation of small mailings in nonpostal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

[Move redesignated M200.1.3 to M220 and redesignate as M220.1.3, change the

title from "Basic Carrier Route and Walk Sequence" to "Sequencing Standards."]

[Redesignate 1.2 as 1.3 and add new 1.2 to read as follows:]

1.2 Additional Standards for Nonletter Sacked Mailing Jobs Containing More Than One Mailing

The following standards apply:

a. Flats and irregular parcel mailings prepared in sacks that are part of a mailing job that contains a carrier route rate mailing, an automation flat rate mailing, and a Presorted rate mailing must be prepared under one of the following options: (1) The carrier route mailing must be prepared under E230 and M220 and the automation rate and Presorted rate mailings must be prepared under M910; or (2) all three mailings in the mailing job must be prepared under M920.

b. Flats and irregular parcel mailings prepared in sacks that are part of a mailing job that contain only an automation flats mailing under E240 and a Presorted rate mailing under E220 must be presorted under the co-sacking standards in M910.

c. Sacked mailing jobs that contain only a carrier route mailing and a Presorted rate mailing may be separately sacked under M210 and M220, or may be prepared using the merged sacking option under M920.

d. Sacked mailing jobs that contain only a carrier route mailing and an automation rate mailing may be separately sacked under M220 and M820, or may be prepared using the merged sacking option under M920.

* * * * *

1.3 Documentation

[Insert text of redesignated 1.3.]

1.4 Firm Packages

[Insert text of redesignated 1.4.]

1.5 Low-Volume Packages and Sacks

[Amend redesignated 1.5 to change internal references and to correct the names of applicable pallet levels to read as follows:]

As a general exception to 2.2a through 2.2c and 4.0a through 4.0d, nonletter-size Periodicals may be prepared in 5-digit and 3-digit packages containing fewer than six pieces when the publisher determines that such preparation improves service, provided those packages are placed in 5-digit, 3-digit, and SCF sacks. These low-volume packages may be placed on 5-digit scheme, 5-digit, 3-digit, and SCF pallets under M045, or on merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, or SCF pallets under M920, M930, and M940.

[Delete 1.6.]

[Redesignate 1.7 as 1.6 and amend by deleting "or pallets" from the end of the first sentence, by deleting "sacks or" from the end of the second sentence, by changing the section number references, and by adding a new last sentence to read as follows:]

1.6 Merged Palletization of Nonletter-Size Carrier Route, Automation Rate, and Presorted Rate Mail

Under the standards in M920, nonletter-size firm and 5-digit packages that are prepared under 1.0 and under 2.2a and 2.2b may be co-sacked with nonletter-size firm and carrier route packages prepared under M220 and with nonletter-size 5-digit packages at automation rates prepared under M820 in merged 5-digit sacks and in merged 5-digit scheme sacks. Under the standards in M920, M930, or M940, nonletter-size firm and 5-digit packages that are prepared under 1.0, 2.2a, and 2.2b may be copalletized with nonletter-size firm and carrier route packages prepared under M220 and with nonletter-size 5-digit packages at automation rates prepared under M820 on merged 5-digit pallets and on merged 5-digit scheme pallets. See 1.2a for information on when preparation under M920 may be required.

2.0 PACKAGE PREPARATION

2.1 General

Package preparation is subject to M020 and the specific standards below.

[Delete 2.2 and 2.3; redesignate 2.4 as 2.2 and amend to delete information on carrier route packages to read as follows:]

2.2 Package Preparation

Package size, preparation sequence, and labeling:

a. Firm: optional (two-piece minimum); blue Label F or optional endorsement line (OEL).

b. 5-digit: required (six-piece minimum, fewer not permitted except under 1.5); red Label D or OEL; labeling optional for mail placed in full 5-digit trays.

c. 3-digit: required (six-piece minimum, fewer not permitted except under 1.5); green Label 3 or OEL.

d. ADC: required (six-piece minimum, fewer not permitted); pink Label A or OEL.

e. Mixed ADC: required (no minimum); tan Label MXD or OEL.

[Redesignate 3.0 as 4.0 and redesignate 4.0 as 3.0, amend redesignated 3.0 and 4.0, respectively, by consolidating former subsections into a single section for trays and a single section for sacks to read as follows:]

3.0 TRAY PREPARATION (LETTER-SIZE PIECES)

Tray size, preparation sequence, and labeling (Line 1 and 2):

a. 5-digit: required at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: "LTRS 5D NON BC."

b. 3-digit: required at 24 pieces (no minimum for required origin/optional entry 3-digit(s)), optional with one six-piece package minimum.

(1) Line 1: use L002, Column A.

(2) Line 2: "LTRS 3D NON BC."

c. ADC: required at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use L004.

(2) Line 2: "LTRS ADC NON BC."

d. Mixed ADC: required (no minimum).

(1) Line 1: use "MXD" followed by the city/state/ZIP of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004.

(2) Line 2: "LTRS NON BC WKG."

4.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

For mailing jobs that also contain an automation rate mailing see 1.2 and M910 or M920. For other mailing jobs, the following are the sack size, preparation sequence, and lines 1 and 2 labeling:

a. 5-digit: required at 24 pieces, optional with one six-piece package minimum except under 1.5.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: "PER" or NEWS," as applicable, followed by "FLTS" or "IRREG," as applicable, and "5D NON BC."

b. 3-digit: required at 24 pieces, optional with one six-piece package minimum except under 1.5.

(1) Line 1: use L002, Column A.

(2) "PER" or "NEWS," as applicable, followed by "FLTS" or "IRREG," as applicable, and "5D NON BC."

c. SCF: required at 24 pieces, optional with one six-piece package minimum except under 1.5.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS," as applicable, followed by "FLTS" or "IRREG," as applicable, and "SCF NON BC."

d. Origin/entry SCF: required for the SCF of the origin (verification) office, optional for the SCF of an entry office other than the origin office, (no minimum); for Line 1 use L002, Column C.

(1) Line 1: use L002, Column C.

(2) Line 2: "PER" or "NEWS," as applicable, followed by "FLTS" or "IRREG," as applicable, and "SCF NON BC."

e. ADC: required at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use L004.

(2) Line 2: "PER" or "NEWS," as applicable, followed by "FLTS" or "IRREG," as applicable, and "ADC NON BC."

f. Mixed ADC: required (no minimum).

(1) Line 1: use "MXD" followed by the city/state/ZIP of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004.

(2) Line 2: "PER" or "NEWS," as applicable, followed by "FLTS" or "IRREG," as applicable, and "NON BC WKG."

* * * * *

[Add new M220 to read as follows:]

M220 Carrier Route Periodicals Mail

Summary M220 describes the basic standards for Periodicals carrier route mailings including package and tray preparation for letters, and package and sack preparation for flats and irregular parcels. Additional requirements for preparing mail on pallets are in M041 and M045, or M041 and M920, M930, or M940. For standards on automation rate Periodicals mailings see E240 and M810 (letters) or M820 (flats), as applicable. For standards on Presorted rate mailings see E220 and M210.

1.0 BASIC STANDARDS

1.1 General Preparation Standards

The following standards must be met for carrier route mailings:

a. All pieces in each carrier route Periodicals mailing must be in the same processing category.

b. Letter-size pieces must be packaged under 2.0 and prepared in trays under 3.0. Trays prepared under this section may subsequently be palletized under M041 and M045.

c. Nonletter-size pieces must be packaged under 2.0. Packages placed on pallets must meet additional packaging standards under M045.

d. Packages of nonletter-size pieces must be sacked or palletized under one of the following:

(1) sacked under 4.0 or, if eligible, under M920; or

(2) palletized under M041 and M045, M920, M930, or M940.

e. Sacks prepared under 4.0 may subsequently be prepared on pallets under M041 and M045.

d. All pieces must be sorted together to the finest extent required under the applicable sortation standards described above.

e. Postmasters may authorize preparation of small mailings in non-postal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

[Copy former M200.1.2 as M210.1.2 and add the following as the last sentence:]

1.2 Documentation

* * * Documentation of sequencing and of density standards under M050 must be submitted with each mailing.

[Change the title of redesignated 1.3 from "Basic Carrier Route and Walk Sequence" to "Sequencing Standards."]

[Copy former M200.1.4 as M220.1.4.]

1.5 Low-Volume Packages and Sacks

As a general exception to 2.4b and 4.0b and 4.0c, nonletter-size Periodicals may be prepared in carrier route packages containing fewer than six pieces when the publisher determines that such preparation improves service, provided those packages are placed in 5-digit scheme carrier routes, or 5-digit carrier routes sacks. Low-volume carrier route packages prepared under DMM M920 may also be placed in merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, and 5-digit carrier routes sacks. These low-volume packages also may be placed on 5-digit scheme carrier routes, 5-digit carrier routes, 3-digit, and SCF pallets under M045, or on merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, 5-digit carrier routes, 3-digit and SCF pallets under M041 and M920, M930, or M940.

[Copy current M200.1.7 as M220.1.6 and amend by deleting "or pallets" from the end of the first sentence, by adding a new second sentence, by deleting "sacks or" from the end of the third sentence, and by changing the section number references, to read as follows:]

1.6 Merged Containerization of Nonletter-Size Carrier Route, Automation Rate, and Presorted Rate Mail

Under the standards in M920, nonletter-size firm and carrier route packages that are prepared under 1.0 and 2.4 may be co-sacked with nonletter-size 5-digit packages at Presorted rates prepared under M210 and with nonletter-size 5-digit packages at automation rates prepared under M820 in merged 5-digit sacks and in merged 5-digit scheme sacks or pallets. For sacked mailing jobs of nonletters that contain an automation and a Presorted rate mailing as well as a carrier route mailing, mailers are required to prepare the automation and Presorted rate mailings under M910 (see M210.1.2a) and prepare the carrier route mailing under M220, unless they elect to prepare the mailings under M920. Under the standards in M920, M930, or M940, nonletter-size firm and carrier route packages that are prepared under 1.0 and 2.4 may be copalletized with nonletter-size 5-digit packages at Presorted rates prepared under M210 and with nonletter-size 5-digit packages at automation rates prepared under M820 on merged 5-digit pallets and on merged 5-digit scheme pallets.

2.0 PACKAGE PREPARATION

2.1 General

Package preparation is subject to M020 and the specific standards below.

2.2 Optional Higher Package Minimums

A mailer may choose to prepare carrier route packages at a higher level of route saturation (for example, only if there are at least 15 pieces per route). Under this option, smaller groups of six or more pieces per carrier route not prepared in carrier route packages for carrier route rates must be prepared for and paid at another applicable rate.

2.3 Walk-Sequence Identification

In addition to the package label showing carrier route type and number under 2.4, each package of Periodicals walk-sequence mail must show that the mail is walk sequenced and the level of sequencing. A facing slip with the phrase "HIGH DENSITY WALK-SEQUENCED CARRIER ROUTE MAIL" or "SATURATION WALK-SEQUENCED CARRIER ROUTE MAIL" (as applicable) may be placed on the top of each package of walk-sequence mail. It may be an address label with the required information placed on a sample mailpiece that is the top piece in the package, or a slip of paper affixed to the top of the package. If packages are prepared without facing slips, an optional endorsement line or carrier route information line must be placed on each piece in the package to provide the equivalent information.

2.4 Package Preparation

Package size, preparation sequence, and labeling:

a. Firm: optional (two-piece minimum); blue Label F or optional endorsement line (OEL). s

b. Carrier route: optional but required for rate eligibility (six-piece minimum, fewer not permitted except under 1.5); labeling required except for packages placed in a direct carrier route tray or sack (facing slip, OEL, or CR information line).

3.0 TRAY PREPARATION (LETTER-SIZE PIECES)

Tray size, preparation sequence, and Line 1 and 2 labeling:

a. *Carrier route:* required for rate eligibility at 24 pieces, optional with one six-piece package minimum.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: "PER" or "NEWS," as applicable, followed by "LTRS," followed by "WSS" for saturation rate mail, or "WSH" for high density rate mail, or "CR" for basic rate mail, and followed by the route type and number.

b. *5-digit carrier routes:* required for rate eligibility if full tray, optional with minimum one six-piece package.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: "PER" or "NEWS," as applicable, followed by "LTRS CR–RTS."

c. *3-digit carrier routes:* optional with minimum one six-piece package for each of two or more 5-digit areas.

(1) Line 1: use the city/state/ZIP shown in L002, Column A that corresponds to the 3-digit ZIP Code prefix of packages.

(2) Line 2: "PER" or "NEWS," as applicable, followed by "LTRS 3D CR–RTS."

4.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

Sack size, preparation sequence, and Line 1 and 2 labeling:

a. *Carrier route:* required for rate eligibility at 24 pieces, fewer pieces not permitted.

(1) Line 1: use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR–RTS."

[Copy current M200.5.0 and add as M220.5.0.]

[Copy current M200.6.0 and add as M220.6.0.]

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M800 All Automation Mail

M820 Flat-Size Mail

1.0 BASIC STANDARDS

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1.8 Exception—Periodicals Preparation

[Amend 1.8 by replacing the last sentence with the following:]

These low-volume packages may be placed on 5-digit scheme, 5-digit, 3-digit, and SCF pallets under M041 and M045, or on merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF pallets under M041 and either M920, M930, or M940. They may also be placed in merged 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF sacks prepared under M920.

1.9 Co-Traying, Co-Sacking, or Copalletizing with Presorted Rate Mail

Packages of First-Class and Standard Mail (A) prepared under 1.0 and either 2.1 or 4.1, as applicable, may be co-trayed or co-sacked with Presorted rate mail that is part of the same mailing job and mail class at all levels of tray or sack under the provisions of M910. For sacked mailings of Periodicals nonletters, packages of Periodicals automation flats mail prepared under 1.0 and 3.1 that are part of the same mailing job as a Presorted rate mailing of nonletters must be co-sacked under M910, unless the mailing job also contains a carrier route mailing and is eligible for and prepared under M920. See M210.

* * * * *

3.0 PERIODICALS

* * * * *

3.2 Sack Preparation

[Revise the first sentence of 3.2 to read as follows:]

For mailing jobs that also contain a Presorted rate mailing see 1.9 and M910. For other mailing jobs, the following are the sack size, preparation sequence and line 1 labeling: * * *

* * * * *

M900 Advanced Preparation Options

[Amend the heading M910 to read as follows:]

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Rate Flats-Mailings

* * * * *

2.0 PERIODICALS

2.1 Basic Standards

[Amend 2.1d and 2.1e by replacing "E230" with "E220."]

* * * * *

2.2 Package Preparation

[Amend 2.2 by replacing "M200" with "M210."]

2.3 Low-Volume Packages in Sacks or on Pallets

[Amend 2.3 by replacing "M200" with "M210" and by replacing "M200.1.4" with M210.1.4.]

* * * * *

[Amend the heading of M920 to read as follows:]

M920 Merged Containerization of Flats Packages Using the City State Product

* * * * *

1.0 PERIODICALS MAIL

1.1 Basic Standards

[Amend 1.1g, 1.1h, and 1.1i to change the reference numbers to read as follows:]

Carrier route packages of nonletter-size pieces in a carrier route rate mailing may be placed in the same sack or on the same pallet (a merged 5-digit sack or pallet, or a merged 5-digit scheme sack or pallet) as nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing under the following conditions:

* * * * *

g. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E220.

h. For sacked mailings, the rates for pieces in the carrier route mailing are based on the criteria in E230, the rates for pieces in the automation rate mailing are applied based on the number of pieces in the package and the level of package to which they are sorted under E240, and the rates for pieces in the Presorted rate mailing are based on the number of pieces in the package and the level of sack to which they are sorted under E220.

i. For palletized mailings, the rates are based on the level of package and the number of pieces in the package under E220, E230, and E240.

* * * * *

1.2 Package Preparation

[Amend 1.2a to reflect new reference numbers to read as follows:]

Packages must be prepared as follows:

a. Sacked Mailings. The carrier route mailing must be packaged and labeled under M220. The automation rate mailing must be packaged and labeled under M820. The Presorted rate mailing must be packaged and labeled under M210.

* * * * *

1.3 Low-Volume Packages in Sacks or on Pallets

[Amend 1.3 to reflect new reference numbers to read as follows:]

Carrier route and 5-digit packages prepared under M210, M220, and M820 that contain fewer than six pieces must be placed in sacks under 1.4a through 1.4f or in 3-digit and SCF sacks under 1.4g, or on pallets under 1.5a through 1.5h, when the publisher determines that such preparation improves service. Pieces in such low-volume packages must claim the applicable basic rate, except that, as provided under M210.1.4 and M220.1.4, some firm packages may be eligible for carrier route rates and for 5-digit and 3-digit Presorted rates.

1.4 Sack Preparation and Labeling With Scheme Sort

[Change the reference "M200.3.0" to "M210.4.0."]

* * * * *

[Amend the heading M930 to read as follows:]

M930 Merged Palletization of Flats Packages Using a 5% Threshold

* * * * *

1.0 PERIODICALS MAIL

1.1 Basic Eligibility Requirements

[Amend 1.1f, 1.1g, and 1.1k to change the reference numbers to read as follows:]

Nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet or a merged 5-digit scheme pallet) as carrier route packages of nonletter-size pieces in a carrier route rate mailing under the following conditions:

* * * * *

f. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E220.

g. The rates are based on the level of package and the number of pieces in the package under E220, E230, and E240.

* * * * *

k. Portions of the mailing job that cannot be palletized must be prepared in sacks under M210, M220, M820, M910, or M920.

* * * * *

1.3 Low-Volume Packages on Pallets

[Amend 1.3 by changing "M200" to "M210, M220."]

1.4 5% Threshold Standard

[Amend 1.4f to reflect new reference numbers to read as follows:]

Mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme or merged 5-digit pallet under 1.5 if all of the following conditions are met:

* * * * *

f. Copies in firm packages claimed as one piece for rate purposes will be considered a single piece when performing the 5% limit calculation under 1.4a through 1.4d. As provided in M210.1.4 and M220.1.4, some firm packages claimed as one piece may be eligible for carrier route rates, 5-digit rates, or basic rates. The sortation level of each firm piece (package) for purposes of applying the 5% limit will be considered to be carrier route if the firm piece (package) is eligible for the carrier route rate under M220.1.4. Otherwise the firm package will be considered to be a 5-digit sorted piece (even if the basic rate must be paid on that piece).

* * * * *

[Amend the heading M940 to read as follows:]

M940 Merged Palletization of Flats Packages Using the City State Product and a 5% Threshold

1.0 PERIODICALS MAIL

1.1 Basic Standards

[Amend 1.1g, 1.1h, and 1.1l to change the reference numbers to read as follows:]

Nonletter-size 5-digit packages from an automation rate mailing and nonletter-size 5-digit packages from a Presorted rate mailing may be placed on the same pallet (a merged 5-digit pallet or a merged 5-digit scheme pallet) as carrier route packages of nonletter-size pieces under the following conditions:

* * * * *

g. The carrier route mailing must meet the eligibility criteria in E230, the automation rate mailing must meet the eligibility criteria in E240, and the Presorted rate mailing must meet the eligibility criteria in E220.

h. The rates are based on the level of package and the number of pieces in the package under E220, E230, and E240.

* * * * *

l. Portions of the mailing job that cannot be palletized must be prepared in sacks under M210, M220, M820, M910, or M920.

* * * * *

1.3 Low-Volume Packages on Pallets

[Amend 1.3 by changing "M200" to "M210, M220."]

1.4 5% Threshold Standard

[Amend 1.4f to reflect new reference numbers to read as follows:]

For 5-digit ZIP Codes with a "B" or "D" indicator in the City State Product, mailers may place 5-digit packages with carrier route packages on the same merged 5-digit scheme or merged 5-digit pallet under 1.5 if all of the following conditions are met:

* * * * *

f. Copies in firm packages claimed as one piece for rate purposes will be considered a single piece when performing the 5% limit calculation under 1.4a through 1.4d. As provided in M210.1.4 and M220.1.4, some firm packages claimed as one piece may be eligible for carrier route rates, 5-digit rates, or basic rates. The sortation level of each firm piece (package) for purposes of applying the 5% limit will be considered to be carrier route if the firm piece (package) is eligible for the carrier route rate under M220.1.4. Otherwise the firm package will be considered to be a 5-digit sorted piece (even if the basic rate must be paid on that piece).

* * * * *

This change will be published in a future issue of the Domestic Mail Manual. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–31360 Filed 12–11–00; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 207

[Docket No. MARAD–2000–8464]

RIN 2133–AB43

Statistical Data for Use in Operating-Differential Subsidy Application Hearings

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is removing Part 207—Statistical Data for Use in Operating-Differential Subsidy Application Hearings (part 207). Statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the operating-differential subsidy (ODS) program. Moreover, Congress withdrew MARAD's authority to grant new ODS contracts.

DATES: This final rule is effective on December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Fitzgerald, Office of Insurance and Shipping Analysis, (202) 366–2400. You may send mail to Mr. Fitzgerald at Maritime Administration, Office of Insurance and Shipping Analysis, Room 8117, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

This final rule is a result of a review of our regulations pursuant to Executive Order 12866 Regulatory Planning and Review and the Department of Transportation's Regulatory Policies and Procedures. Both directives require review of our existing regulations to determine whether they need to be revised or removed. We are removing part 207 because it is no longer necessary. Statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the ODS program (46 App. U.S.C. 1185a). We find good cause under 5 U.S.C. 553(b) of the Administrative Procedure Act to forgo notice and public comment because these procedures would be impracticable and unnecessary. We also find good cause to make this rule effective upon the date of publication as it presents no substantive issue.

The Merchant Marine Act of 1936, as amended (the Act), established various programs aimed at fostering and maintaining a U.S. merchant marine capable of meeting the needs of U.S. commerce and national defense. One of the key programs under the Act was the payment of ODS to qualified U.S.-flag shipping companies for the operation of ships in essential foreign commerce for the United States. This program sought to equalize the disparity in operating costs between American ships and their foreign competitors relative to wages of officers and crews, insurance, and maintenance and repairs not covered by insurance.

Part 207 identified the basic statistical data and reports required by the Maritime Subsidy Board in hearings held under section 605(c) of the Act for ODS applications and provided procedures for the production of these data and reports. The ODS program largely expired at the end of 1997 and was replaced by the Maritime Security Program (MSP) authorized in the Maritime Security Act of 1996 (46 App. U.S.C. 1185a; 1187 *et seq.*).

We are removing part 207 because statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the ODS program. The statistical data were used in hearings to determine if existing U.S.-flag service was adequate. Moreover, Congress withdrew MARAD's authority to grant new ODS contracts.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this final rule is not likely to result in an annual effect on the economy of $100 million or more. This rulemaking removes Part 207—Statistical Data for Use in Operating-Differential Subsidy Application Hearings. Statutory changes of the Maritime Security Act of 1996 provided that a hearing process would no longer apply to the ODS program.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities. This final rule removes Part 207—Statistical Data for Use in Operating-Differential Subsidy Application Hearings from the Code of Federal Regulations in compliance with statutory changes of the Maritime Security Act of 1996 which provided that a hearing process would no longer apply to the ODS program. Statistical data was used in hearings to determine if existing U.S.-flag service was adequate. Adequacy is no longer a criterion for granting ODS contracts. Moreover, Congress has withdrawn MARAD's authority to grant new ODS contracts. Therefore, MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Plain Language

Executive Order 12866 and the President's memorandum on plain language in government writing of June 1, 1998, require each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, we have written this final rule in plain language to provide easier understanding. Our goal is clarity, and we invite your comments on how to make this final rule easier to understand.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts", 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this final rule is not required. This final rule removes 46 CFR part 207.

Executive Order 13084

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This final rule does not contain information collection requirements covered by 5 CFR part 1320 requiring OMB approval.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in CFR Part 207

Administrative practice and procedure, Economic statistics, Grant programs-transportation.

Accordingly, under the authority of 46 App. U.S.C. 1114, 46 App. U.S.C. 1171 *et seq.*, and as discussed in the preamble, MARAD amends 46 CFR Chapter II by removing part 207.

Dated: December 6, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–31528 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000511133-0330-03; I.D. 120999B]

RIN 0648-AN52

Atlantic Highly Migratory Species Fisheries; Implementation of ICCAT Recommendations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations governing the Atlantic swordfish fishery to reduce the annual landings quota for the north Atlantic swordfish stock to 2,219 metric tons (mt) dressed weight (dw) for each of the next 3 fishing years (2000, 2001, 2002), with 300 mt dw allocated for incidental catch and the remainder allocated equally to each of the two semi-annual seasons for the directed fishery (June 1 through November 30 and December 1 through May 31). This final rule also establishes an allowance for dead discards of 320 mt whole weight (ww) in 2000, 240 mt ww in 2001, and 160 mt ww in 2002. Dead discards in excess of the allowance will be deducted from the subsequent year's landings quota. Additionally, NMFS is taking several actions regarding import restrictions: Removing a prohibition on the importation of Atlantic bluefin tuna from Panama; prohibiting the importation of BFT and its products from Equatorial Guinea; and prohibiting the importation of Atlantic swordfish and its products from Belize and Honduras.

The intent of these actions is to improve conservation and management of the Atlantic swordfish and BFT, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: All provisions of this final rule are effective January 11, 2001.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA) supporting this action may be obtained from Rachel Husted, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, 301-713-2347; fax: 301-713-1917 or by email at rachel.husted@noaa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery and the BFT fishery are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT. This final rule is based on two proposed rules, both published on May 24, 2000. One of the proposed rules described the proposed changes in trade restrictions (65 FR 33517) while the other described the proposed quotas associated with the rebuilding program for north Atlantic swordfish (65 FR 33519). The contents of the two proposed rules were combined in the development of this final rule.

Swordfish Rebuilding Program

According to the 1999 ICCAT stock assessment, the biomass of the north Atlantic swordfish stock at the beginning of 1999 was estimated to be at 65 percent of that needed to produce maximum sustainable yield (MSY). The biomass associated with MSY is the target stock size of the rebuilding program for north Atlantic swordfish. The 1998 fishing mortality rate was estimated to be 1.34 times the rate needed to produce MSY. Because NMFS is committed to rebuilding north Atlantic swordfish, consistent with the recent ICCAT 10-year rebuilding program and the requirements of the Magnuson-Stevens Act, immediate reductions in landings are necessary to rebuild the stock to levels that would support MSY.

North Atlantic swordfish landings for all nations combined for 1998 were estimated to be 12,175 mt ww. At the November 1999 ICCAT meeting, a recommendation was adopted to establish a 10-year rebuilding program for north Atlantic swordfish and to reduce the total allowable catch for all countries fishing on that stock to 10,600 mt ww (7,970 mt dw) for 2000; 10,500 mt ww (7,895 mt dw) for 2001; and 10,400 mt ww (7,820 mt dw) for 2002. Although the ICCAT recommendation specifies the quota in whole weight, this document refers to the landings quotas in dressed weight (dw = 0.7519 ww) for the purposes of monitoring U.S. harvests, as swordfish are processed at sea and landed in dressed form (head, fins, viscera and tails removed). This final rule implements the ICCAT recommendations for rebuilding north Atlantic swordfish.

Under the ICCAT recommendation, the United States is allocated 29 percent of the North Atlantic swordfish landings quota (total allowable catch minus the total dead discard allowance) for major harvesting nations in 2000, 2001, and 2002. This amounts to 2,951 mt ww for each year and represents a 5 percent decrease from the U.S. landings quota recommended by ICCAT for 1998. Consistent with the HMS FMP, the annual quota is divided between a directed fishery quota and an incidental quota (1,919 mt dw directed, 300 mt dw incidental). The directed fishery quota of 1,919 mt dw is divided equally into two semi-annual quotas: June 1 - November 30 and December 1 - May 31

(959.5 mt dw for each semi-annual season). The incidental quota allows for landings of swordfish taken incidental to other fisheries such as the highly migratory species (HMS) recreational fishery or the pelagic longline fishery for tunas.

In addition to the landings quota, ICCAT allocated to the United States 80 percent of the dead discard allowance (i.e., the U.S. share is 320 mt ww in 2000, 240 mt ww in 2001, and 160 mt ww in 2002). The dead discard allowance is to be phased out by 2004. The United States will deduct any amount over its dead discard allowance from the U.S. landings quota in the following year. If the United States discards less than its share of the dead discard allowance, the remainder will be added to the total quota available for all fishing nations in subsequent years, and will be reallocated by ICCAT.

In 1998, the United States reported discarding 433 mt ww of dead swordfish in the North Atlantic Ocean. Assuming dead discards occur in proportion to landings, dead discards in 2000 might decrease to 411 mt ww commensurate with the 5 percent decrease in landings quota (i.e., 5 percent less than 433 mt reported for 1998). This would result in an expected overharvest of the 2000 dead discard allowance by 91 mt ww. If discard rates remain proportional to the adjusted quota in 2001 and 2002, the dead discard allowance would be exceeded by 158 and 230 mt ww, respectively. These overages would require further reductions in the landings quotas and, combined with the initial landings quota reduction recommended by ICCAT (5 percent), might result in an actual decrease in landings of up to 10 percent by 2002 if the rate of discarding is not reduced (refer to the EA/RIR/FRFA for more details). However, on August 1, 2000, NMFS published a final rule intended to reduce dead discards of swordfish through time/area closures (65 FR 47214). If the time/area closures are effective, they will mitigate to some extent the effects of phasing out the dead discard allowance.

These regulatory changes will further ICCAT's international management objectives for the Atlantic swordfish fishery. NMFS has evaluated the annual quota and the dead discard allowance in accordance with the procedures and factors specified in 50 CFR 635.27(c)(3), and has determined that these measures are consistent with the latest stock assessment and recommendations of ICCAT.

Import Restrictions

On August 21, 1997 (62 FR 44422), NMFS implemented a 1996 ICCAT recommendation to prohibit the importation of BFT and its products from Panama, Honduras, and Belize. At that time, vessels of those countries had been determined by ICCAT to be fishing in a manner inconsistent with ICCAT conservation and management measures for BFT. In recognition of Panama's new status as a Contracting Party to ICCAT and the steps that country has taken and is taking to control its fleet and address ICCAT's concerns, ICCAT recommended in 1999 that its members lift the trade ban on BFT products from Panama. Therefore, consistent with the 1999 ICCAT recommendation, this final rule lifts the BFT import restriction with respect to Panama.

In contrast to the efforts of the Government of Panama, information available to ICCAT indicates that Honduras and Belize continue to have vessels fishing in a manner that diminishes the effectiveness of ICCAT's conservation and management measures for both BFT and Atlantic swordfish. (Background on the original determination can be found at 62 FR 44422, August 21, 1997.) In recent years, significant increases in exports of swordfish by Belize and Honduras have been recorded, although no swordfish catch data have been reported to ICCAT. This increased activity is occurring while other countries have reduced their catches of swordfish to comply with ICCAT conservation measures for the overfished North Atlantic swordfish population. ICCAT has repeatedly contacted the governments of Belize and Honduras but has not received a satisfactory response from either government regarding actions to rectify the situation. Therefore, consistent with the 1999 ICCAT recommendation, NMFS prohibits the importation of Atlantic swordfish and its products from Honduras and Belize. The prohibition on imports of BFT and its products from these countries also remains in effect.

In 1999, ICCAT also recommended that its members prohibit imports of BFT from Equatorial Guinea (a Contracting Party to ICCAT). ICCAT took this step as a last resort to address non-compliance with BFT catch quota limits. Import data from Japan for the years 1997-1999 reveal significant exports of BFT by Equatorial Guinea despite the fact that, for those years, this country received no BFT catch allocation from ICCAT. The Government of Equatorial Guinea has not responded to repeated correspondence from ICCAT regarding the BFT fishing activities of its vessels and Equatorial Guinea has reported no BFT catch data. Therefore, consistent with the 1999 ICCAT recommendation, NMFS prohibits the importation of BFT and its products from Equatorial Guinea.

Other ICCAT Issues

ICCAT adopted a number of other recommendations and resolutions at the 1999 meeting that will not require rulemaking, but will require management action on the part of NMFS. These include a recommendation reiterating the limitation on fishing capacity of commercial vessels fishing for Northern albacore, and a recommendation calling for the United States to endeavor to limit its total catch of southern albacore to no more than 4 percent by weight of its total catch of south Atlantic swordfish. Several other recommendations include provisions that request Contracting Parties to provide catch data or information related to fishing vessel registration. ICCAT also adopted a non-binding resolution encouraging all parties to participate actively in efforts to combat illegal, unregulated and unreported fishing. NMFS intends to implement these measures through non-regulatory actions and will provide ICCAT with all available information that has been requested by ICCAT.

Summary

NMFS will implement ICCAT's 1999 recommendation of a North Atlantic swordfish U.S. quota of 2,219 mt dw for each year 2000, 2001, and 2002. The U.S. landings quota will remain constant for 2000, 2001, and 2002, but it is subject to adjustment between years (consistent with ICCAT recommendations) if the directed or incidental quotas are exceeded or underharvested, or if the dead discard allowance is exceeded.

Consistent with the HMS FMP, the directed fishery quota of 1,919 mt dw is divided equally into two semi-annual quotas: June 1 - November 30 and December 1 - May 31 (959.5 mt dw for each season). Any cumulative overharvest/underharvest that occurs during any year would then be subtracted from/added to the following year's quota, consistent with the ICCAT recommendations.

In addition, this final rule establishes a dead discard allowance. Any discards in excess of the dead discard allowance will be subtracted from the directed quota for the following year.

NMFS prohibits the importation of BFT from Equatorial Guinea, extends the import prohibition on BFT from Honduras and Belize to include an import prohibition on Atlantic swordfish, and lifts the prohibition on BFT imports from Panama.

Comments and Responses

NMFS held public hearings in June-July 2000 to receive comments from fishery participants and other members of the public regarding the proposed regulations. One written comment was submitted to NMFS during the 60-day comment period. Responses to specific comments are provided according to subject.

North Atlantic Swordfish Rebuilding Program

Comment 1: U.S. pelagic longline fishermen support the recommended quota reduction to achieve rebuilding for North Atlantic swordfish. However, this support is based on the presumption that all other countries harvesting in the Atlantic will comply with the rebuilding program. The conservation contributions of U.S. fishermen must not be undermined by the non-compliance of other parties fishing in the Atlantic.

Response: The United States has taken a leading role in ensuring compliance by ICCAT members and cooperation by non-members with the conservation and management measures of ICCAT. NMFS will continue to advocate for the full implementation of these measures by all parties. According to the compliance recommendations that have been adopted by ICCAT, continued violation of quotas can result in deductions from a party's quota and/or trade measures.

Comment 2: The dead discard allowance penalizes U.S. and Canadian fishermen for their honest reporting of dead discards that result from a zero tolerance for undersized fish. Other nations continue to land undersized swordfish in excess of their 15 percent tolerance level. If other countries continue to violate the minimum-size restrictions, ICCAT should eliminate the minimum size and instead recommend hot-spot closures in all appropriate Atlantic areas to accomplish the goal of protecting juvenile swordfish.

Response: NMFS is aware that some other nations harvest small swordfish in excess of the allowed tolerance level. To discourage this practice, the United States has taken steps to eliminate the sale of undersized swordfish in the U.S. market. In addition, the United States supported an ICCAT resolution adopted in 1999 that requests the Standing Committee on Research and Statistics (SCRS) to analyze possible times and areas for international closures to protect small swordfish. The SCRS will also conduct the necessary studies to determine whether modifications in longline gear configurations can reduce catches of undersized swordfish. A report on these findings will be presented in November 2002. At that time, alternatives to the minimum size may be considered.

Comment 3: Handgear permits issued under the limited access program have created a new directed fishery on the east coast of Florida and the Gulf of Mexico, areas that have been identified as juvenile swordfish hot-spots. This additional source of mortality in areas that are closed to pelagic longline vessels could threaten the effectiveness of the swordfish rebuilding program.

Response: It is likely that small swordfish taken by handgear can be released alive. NMFS intends to monitor catches and dead discards in this sector of the fishery, and will take additional steps to reduce mortality on juvenile swordfish as necessary.

Comment 4: There is no need for 300 mt dw to be set aside for the incidental quota. This allocation could result in unnecessary closures toward the end of the first semi-annual season, which is a critical time for fishermen on the Grand Banks.

Response: Recent action to establish limited access permits for the directed and incidental swordfish fisheries together with the implementation of time/area closures may affect the distribution of catch and effort in the directed and incidental categories. Depending on the accumulated catch in each category, NMFS may reconsider the distribution of quota. In the interim, NMFS will attempt to avoid directed fishery closures whenever possible through in-season transfers as allowed under the regulations.

Import Restrictions

Comment 6: The proposed import restrictions are not an effective means of enforcing compliance with ICCAT's conservation and management program. In some cases, we do not import swordfish or BFT from identified countries.

Response: NMFS recognizes that the United States does not currently have significant imports from the identified countries. However, NMFS believes that it is important to adopt these measures in order to provide multilateral support for countries like Japan that do import fish from these countries. Such multilateral action helps to ensure that trade restrictions prevent these countries from exporting their fish to new markets or from transshipping through intermediary nations in order to evade trade restrictions.

Comment 7: Due to the lag time associated with data collection and implementation of the regulations, the United States has difficulty considering new catch and trade information that comes to light between ICCAT meetings.

Response: NMFS recognizes these difficulties but is committed to using the best available data to evaluate member and non-member fishing activities in an effort to identify possible trade-related problem vessels and countries for consideration and possible action at ICCAT. NMFS believes that, although time consuming, a multilateral approach is an appropriate and effective way to address fishing activities that diminish the effectiveness of ICCAT.

Northern Albacore Rebuilding

Comment 8: A rebuilding program for northern albacore must take into consideration the U.S. recreational fishery. Establishing an incidental catch quota and applying recreational landings against that quota, as was done in the swordfish rebuilding program, will not reflect the magnitude of the current recreational fishery for albacore.

Response: In establishing the foundation for an international rebuilding program, NMFS would work through ICCAT to adopt a target stock size and time frame for rebuilding. Should ICCAT adopt a country specific quota system as an element of the rebuilding program, the United States would seek to obtain an equitable allocation based on its historic share, including both the recreational and commercial components of the fishery. Domestic implementation of the country quota would again reflect patterns of historical use.

Changes From the Proposed Rule

No changes, other than minor editorial changes, were made from the proposed rule.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries. The objective of this final rule is to improve conservation and management of the Atlantic swordfish and BFT. No new reporting, record-keeping, or other compliance requirements are required by this final rule.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA). A Final Regulatory Flexibility Analysis (FRFA) has been prepared and a summary is provided here. In preparing the FRFA, it was assumed that the population of small entities affected consists of fishermen issued limited access permits for swordfish. As of December 31, 1999, there were 450 directed and incidental swordfish permit holders and 118 swordfish handgear permit holders. The quota reductions and implementation of the dead discard allowance will, in the short term, reduce ex-vessel swordfish revenues for a substantial portion of the swordfish fleet.

Assuming that the lower quotas will result in equal reductions in swordfish catch for all vessels, the majority of the fleet may experience declines in revenue of between 1 and 4 percent by 2001. By 2002, about 42 percent of active permit holders will experience declines in gross revenues of between 1 and 5 percent, although none of the active permit holders will experience revenue decreases of 5 percent or more. Estmated impacts are lower than those provided in the draft EA, due to a final rule to reduce bycatch and incidental catch in the pelagic longline fishery that was published on August 1, 2000. Additional vessels may be affected if there are more dead discards than expected, thereby making further reductions to the landings quota necessary. However, even without compensatory actions by vessel operators (e.g., increased yellowfin or bigeye tuna fishing) or marketing efforts to enhance prices in the domestic fresh swordfish market, no vessels are expected to experience revenue declines of 5 percent or more. Additionally, lower quotas expected to contribute to stock rebuilding within a 10-year time frame. Thus, negative short-term impacts are expected to yield revenue gains in the long run as the stock is rebuilt and landings quotas increase.

The other alternative considered by NMFS was the status quo. No other alternatives were considered, because NMFS is required under ATCA to implement ICCAT recommendations upon acceptance by the United States and because multilateral action through ICCAT is the only way swordfish can be rebuilt. Although the status quo for the swordfish quotas might have lesser short-term economic impacts on participants in the pelagic longline fishery, that alternative is not consistent with the rebuilding plan established by the HMS FMP. Not implementing the quota reductions and the dead discard allowance at this time would maintain current catch levels only in the short term. Eventually, further decline in swordfish abundance would increase fishing costs (lower catch per unit effort/increased discards of small fish) and decrease revenues (lower total swordfish catch); thus, greater economic impacts would likely result from maintaining the status quo. The FRFA provides further discussion of the economic effects of the alternatives considered. The factual, policy and legal reasons for selecting the alternatives adopted in the final rule are outlined in the EA.

Implementing the trade restrictions for Belize, Honduras and Equatorial Guinea will not have a significant economic impact on a substantial number of small entities, because these countries currently do not export to the United States and there are already alternative sources of supply for U.S. importers and processors.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The final action does not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion (BO) was issued on June 30, 2000. However, NMFS has reinitiated consultation on the pelagic fisheries for swordfish, sharks, tunas and billfish because the agency determined further analysis of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on turtles. In the meantime, NMFS has issued an emergency rule that is effective for 180 days from October 10, 2000 through April 9, 2001. The emergency regulations establish a time and area closure and gear requirements to reduce bycatch and bycatch mortality of threatened loggerhead and endangered leatherback sea turtles pending completion of the new BO.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, paragraphs (c)(1)(i)(A) and (c)(3)(i) are revised, and paragraphs (c)(1)(i)(C) and (c)(3)(iii) are added to read as follows:

§ 635.27 Quotas.

(c) Swordfish. (1) * * *

(i) *North Atlantic swordfish stock.* (A) The directed fishery quota for the North Atlantic swordfish stock is 1,919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(C) The dead discard allowance for the North Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning May 1, 2001. All swordfish discarded dead from U.S. fishing vessels, regardless of whether discarded from vessels permitted under this part, shall be counted against the allowance.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph (c)(3)(iii).

3. Section 635.45 is revised to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of BFT or BFT products, or swordfish or swordfish products, in any form, harvested by a vessel under the jurisdiction of Belize or Honduras will be denied entry into the United States.

(b) All shipments of BFT or BFT products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea will be denied entry into the United States.

4. The heading of § 635.46 is revised to read as follows:

§ 635.46 Import requirements for swordfish.

[FR Doc. 00–31651 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[Docket No. 2000–91]

RIN 1550–AB29

Savings and Loan Holding Companies; Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Office of Thrift Supervision (OTS) is extending the comment period until February 9, 2001 for its proposed rule published October 27, 2000. The proposed rule would require certain savings and loan holding companies to notify OTS before engaging in, or committing to engage in, a limited set of debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions. The proposal also sought comment on a proposal to codify OTS's current practices for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital on a case-by-case basis.

DATES: Comments must be received by February 9, 2001.

ADDRESSES:

Mail: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–91.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Docket No. 2000–91.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–91; or (202) 906–6956 (if comments are over 25 pages).

E-Mail: Send e-mails to "public.info@ots.treas.gov", Attention Docket No. 2000–91, and include your name and telephone number.

Public Inspection: Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9:00 a.m. until 5:00 p.m. on business days. Comments and the related index will also be posted on the OTS Internet Site at *www.ots.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin O'Connell, Senior Project Manager, (202) 906–5693, Supervision Policy; and Valerie J. Lithotomos, Counsel (Business and Finance) (202) 906–6439, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The proposed rule, published in the **Federal Register** on October 27, 2000 (65 FR 64392), indicated that public comments were to be submitted to the OTS no later than December 26, 2000.

OTS received two requests for an extension of the comment period. One request states that the rule proposes a significant change to OTS policy and that compliance with the current comment deadline would require a significant dedication of resources in the midst of year-end activities. The second request indicates an extension is warranted because the issues addressed in the proposal are of sufficient importance and complexity.

To afford the public adequate time to comment, OTS has determined to extend the comment period for 45 days to accommodate these requests. Therefore, the comment period is hereby extended until February 9, 2001.

Dated: December 6, 2000.
By the Office of Thrift Supervision.
Ellen Seidman,
Director.
[FR Doc. 00–31516 Filed 12–11–00; 8:45 am]
BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) AE 2100 and AE 3007 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD), applicable to Rolls-Royce Corporation, (formerly Allison Engine Company), AE 2100 and AE 3007 series engines. This proposed AD would require a one-time acid etch inspection of the 2nd stage high pressure turbine (HPT) wheel for cracks. If the wheel is cracked, this proposed AD would require replacement of the turbine wheel with a serviceable part. This proposed AD is prompted by a report of a 2nd stage turbine wheel that was returned from the field with cracks in the aft bore face. The actions specified by this proposed AD are intended to detect and prevent early development of cracks due to low cycle fatigue of the HPT 2nd stage wheel in the aft bore face that can lead to wheel failure, power loss, and possible damage to the airplane.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7870, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–27–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of cracks in the aft bore face of a 2nd stage high pressure turbine wheel from an AE 2100A engine that was returned from the field. Review of the manufacturing process revealed the cracks were caused by contact between the bore vertical face and a carbide tool bit during machining of the under side of the seal arm lip. This condition, if not corrected, could result in an early development of cracks due to low cycle fatigue of the HPT 2nd stage wheel in the aft bore face that can lead to wheel failure power loss, and possible damage to the airplane.

The inspection intervals for the early manufactured turbine wheels (P/N 23050912) were set to maintain a risk of a wheel burst event to levels at or below 1x10 EE–8 events per cycle. This determination is made based on the crack growth rates observed in the one field returned turbine wheel, the specific missions flown for each engine model, and the probability of a turbine wheel having been damaged. The inspection interval for the remaining engine models was set at "next shop visit" based on the lower risk of having been damaged, the shot peen benefits, and the projected shop visit rate for these models.

The "one-time" inspection is adequate because it identifies (via acid etch) those turbine wheels which were damaged during manufacturing and removes them from service thereby eliminating the risk of a premature wheel failure.

Service Bulletins (SB's)

The FAA has reviewed and approved the technical contents of Rolls-Royce Alert Service Bulletins (ASB's): AE2100A–A–72–234, Revision 2; AE2100C–A–72–183, Revision 2; AE2100D3–A–72–179, Revision, 2, dated October 17, 2000 and AE3007A–A–72, Revision 2, and AE3007C–A–72–153, Revision 2, dated October 17, 2000, that describe the procedures for examining the turbine wheels for damage using the one-time acid etch procedure.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time acid etch inspection of the 2nd-stage high pressure turbine wheel for damage. If the wheel is damaged, this proposal would require replacement of the turbine wheel with a serviceable part. The actions would be required to be done in accordance with the alert service bulletins described previously.

Economic Analysis

There are approximately 1,376 engines of the affected design in the worldwide fleet. The FAA estimates that approximately 470 engines installed on airplanes of US registry would be affected by this proposed AD. The FAA estimates that disassembly to perform the acid etch inspection and reassembly will take approximately 130 work hours, which includes teardown to HPT, inspection and reassembly, and that the average labor rate is $60 per work hour. Labor costs to perform the disassembly/reassembly are $7,800, and a test stand run will cost about $5,000, for a total cost of $12,800 per engine to conduct the acid etch inspection. Based on these figures, the FAA estimates that the total cost impact of performing the acid etch inspection on US operators will be $6,016,000. If a wheel must be replaced, the cost of a replacement wheel is $18,000, and it will take an additional 30 work hours to replace the wheel, at $60 per work hour. Therefore the total cost of parts and labor for replacing the wheel will total $19,800.00 per wheel. If all wheels needed to be replaced, the total cost impact of the proposed AD on U.S. operators would be $15,322,000. The FAA estimates, however, that not all wheels will need replacement and that some labor costs required to accomplish the requirements of this proposed AD maybe reimbursed by the manufacturer, thus reducing the total cost impact of the proposed AD on US operators.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Code of Federal Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce Corporation: Docket No. 2000–NE–27–AD.

Applicability: This airworthiness directive is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) models AE 2100A and AE 2100C engines with high pressure turbine (HPT) wheel 23050912 installed; AE 2100A engine with turbine wheel 23063462-serial number (S/N) MM14062 installed; AE 2106D3 and AE 3007A, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1, AE 3007A1P, AE 3007A3 and AE 3007C with HPT second stage wheels with S/Ns before MM183060. These engines are installed on but not limited to Embraer (EMB) 145 and 135, Cessna Citation 750, and Industi Pesawat Terbang Nusantara (IPTN) N–250 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with the requirements of this AD is required as indicated, unless already.

To detect and prevent early development of cracks due to low cycle fatigue of the high pressure turbine (HPT) 2nd stage wheel in the aft bore face that can lead to wheel failure power loss, and possible damage to the airplane, do the following:

One-time Inspection

(a) Perform a one-time acid etch inspection to the 2nd stage high pressure turbine wheel in accordance with the Accomplishment Instructions contained in the following Rolls-Royce Alert Service Bulletins:

TABLE 1.—APPLICABLE ALERT SERVICE BULLETINS

AE models	Rolls-Royce service bulletin
AE 2100A	AE 2100A–A–72–234, Revision 2, dated October 13, 2000.
AE2100C	AE 2100C–A–72–183, Revision 2, dated October 13, 2000.
AE2100D3	AE 2100D3–A–72–179, Revision 2, dated October 13, 2000.
AE3007A	AE 3007A–A–72–179, Revision 2, dated October 17, 2000.
AE3007C	AE 3007C–A–72–153, Revision 2, dated October 17, 2000.

(b) Perform these inspections according to the following compliance times:

TABLE 2.—INSPECTION COMPLIANCE TIMES

Models	With turbine wheel	Mandatory
(1) AE2100A, AE2100C	23050912	Before 4800 cycles since new (CSN).
(2) AE2100A	23063462–S/N MM 14062	Before 4800 CSN.
(3) AE2100D3	23050912	Before 3200 CSN.
(4) All other AE2100A, AE2100C, and AE2100D3.	23069592, 23063462, 23064822, 23070673, 23065892, 23069116, 233064473, 23064474, 23068072 with S/N's MM183060 and before..	Next shop visit.
(5) All AE3007A, AE3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1, AE3007A1P, AE3007A3, and AE3007C series engines.	23063462, 23065892, 23069116, 23069592, 23069438, with S/N MM183060 and before..	Next shop visit.

(c) If cracks are discovered, replace the turbine wheel with a serviceable part.

(d) The next shop visit is defined as whenever the engine is removed and sent to a maintenance center for inspection or repair.

(e) A serviceable part is defined as any turbine wheel with a serial number greater than MM183060, or less than MM183060, that has undergone an acid etch inspection and has been determined to have no cracks.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Ferry Flights

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 1, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certificotion Service.

[FR Doc. 00–31613 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–71–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D series turbofan engines. This proposal would require removing certain 2nd stage compressor disks, specified by serial number, from service. This proposal is prompted by a report from PW of a number of JT8D engine 2nd stage compressor disks that were delivered to the field with potential machining damage to the tie rod, counterweight, and pin holes. The actions specified by the proposed AD are intended to prevent rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–71–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–71–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–71–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Pratt & Whitney (PW) notified the Federal Aviation Administration (FAA) of the possibility of machining damage in the holes of five hundred twenty-three 2nd stage compressor disks, part number (P/N) 745902, P/N 790832, and P/N 807502. Machining damage may have resulted in distorted microstructure in the tie rod, counterweight, and pin holes. Increased stress due to the distorted microstructure could cause cracks that propagate through the disk. This condition, if not corrected, could result in rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved the technical content of JT8D Alert Service Bulletin (ASB) JT8D A6336, Revision 1, dated June 29, 1999, that lists the serial numbers (SN's) of certain 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, and describes procedures replacing the disk if it is listed by SN in the ASB.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD is being proposed to prevent rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane. This proposed AD would require removal of 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, before accumulating 2,000 cycles-since-new if the SN is listed in the ASB. The compliance time was established based on the safety concerns and the life management analysis. The actions would be required to be accomplished in accordance with the ASB described previously.

Cost Impact

There are approximately 110 engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines, installed on airplanes of U.S. registry, would be affected by this proposed AD, that it would take approximately 48 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The prorated cost of the unusable life of a 2nd stage disk is $30,000. The manufacturer has informed the FAA that it may pay the cost of the disk, which may lower the cost to operators. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $1,972,800.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 98–ANE–71–AD.

Applicability: JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A,–11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines with 2nd stage compressor disks, part number (P/N) 745902, P/N 790832, and P/N 807502, installed. These engines are installed on, but not limited to Boeing 727 series airplanes, Boeing 737–100 and –200 series airplanes and McDonnell Douglas DC–9 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a rupture of the 2nd stage compressor disk, caused by machining damage, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Removal of Disk

(a) Remove from service 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, identified by serial number in the Accomplishment Instructions of JT8D Alert Service Bulletin (ASB) JT8D A6336, Revision 1, dated June 29, 1999, prior to accumulating 2,000 cycles since new.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 5, 2000.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–31614 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 00N–1586]

Revision to Requirements for Licensed Anti-Human Globulin and Blood Grouping Reagents; Companion to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations applicable to microbiological controls for licensed Anti-Human Globulin (AHG) and Blood Grouping Reagents (BGR). FDA is proposing to remove the requirements that the products be sterile. FDA is taking this action because the requirement that these products be sterile is not necessary for the products to be safe, pure, and potent. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. FDA is taking this action final because the proposed changes are noncontroversial and FDA anticipates that it will receive no significant adverse comment.

DATES: Submit written comments on or before February 26, 2001.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comment.

An adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document, before the effective date of the direct final rule, confirming that the direct final rule will go into effect on

June 11, 2001. Additional information about FDA's direct rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21,1997 (62 FR 62466).

AHG and BGR are used primarily for testing human blood for the detection of red cell antigens and antibodies. As defined in 21 CFR 660.20, BGR is a product that comes from blood, plasma, serum, or protein-rich fluids and consists of an antibody-containing fluid containing one or more of the blood grouping antibodies listed in 21 CFR 660.28(d). Under 21 CFR 660.50, AHG is a serum or protein-rich fluid that consists of one or more antiglobulin antibodies identified in 21 CFR 660.55(d). AHG and BGR are biological products as defined in section 351 of the Public Health Service Act (42 U.S.C 262) (the PHS Act). These products are also devices, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321), and fall within the definition of in vitro diagnostic products in § 809.3(a) (21 CFR 809.3(a)).

AHG and BGR must meet the licensing requirements of section 351 of the PHS Act and the regulations in parts 600 through 660 (21 CFR parts 600 through 660). Section 351 of the PHS Act requires that a license applicant demonstrate that the biological product that is the subject of the application is safe, pure, and potent, and that the manufacturing facilities are designed to ensure that the biological product continues to be safe, pure, and potent.

AHG and BGR are also medical devices and in vitro diagnostic products as defined in § 809.3(a), and therefore are subject under the act and 21 CFR 809.20(b) to the requirements in the Quality System Regulation (QSR) in part 820 (21 CFR part 820). The QSR requires that a manufacturer establish appropriate manufacturing controls. A manufacturer must validate the manufacturing process in accordance with § 820.75 and establish production and process controls (§ 820.70). See also the "Guideline for the Manufacture of In Vitro Diagnostic Products" published in the **Federal Register** of January 10, 1994 (59 FR 1402).

The standards for AHG and BGR were established by final rules published in the **Federal Register** of February 11, 1985, and April 19, 1988, respectively (50 FR 5574 and 53 FR 12760). The standards in §§ 660.20(a) and 660.50(a) require BGR and AHG to be manufactured by a "method demonstrated to consistently yield a sterile product." In addition, the requirements for processing methods of BGR and AHG under §§ 660.21(a)(2) and 660.51(a)(3) state "[o]nly that material that has been fully processed, thoroughly mixed in a single vessel, and sterile filtered shall constitute a lot," and under §§ 660.21(a)(3) and 660.51(a)(4) that "[a] lot may be subdivided into clean sterile vessels".

When the regulations were codified, the agency expected that AHG and BGR would be manufactured as sterile under the conditions understood at that time. The agency also considered that the process of sterile filtration and a sterile container and closure system, e.g., vessels, would be sufficient to yield consistently a sterile product (50 FR 5574 at 5575; 53 FR 12760 at 12761). However, current good manufacturing practices require aseptic processing controls to be in place in order to ensure a sterile product. The agency considers AHG and BGR to be microbiologically controlled in vitro diagnostics (IVD's), which are IVD's that are capable of supporting microorganism life and growth and may contain certain levels of microorganisms. Microbiologically controlled IVD's do not need to be manufactured under aseptic conditions; however, they should be manufactured under conditions such that the microbial level will not adversely impact product performance. Manufacturers must establish specifications for these products through testing and validation. FDA's proposed revision of the regulations would in no way undermine the safety, potency, or purity of the products. The proposed revisions would also not prevent a manufacturer from implementing aseptic processing controls for manufacturing AHG and BGR, if the manufacturer determines such controls are appropriate for its product. Therefore, the agency is proposing to revise the standards for AHG and BGR to remove the requirement that these products be sterile.

II. Highlights of the Proposed Rule

FDA is proposing to amend the biologics regulations by revising §§ 660.20, 660.21, 660.50, and 660.51 to clarify the agency's requirements with regard to microbiological control in manufacturing AHG and BGR. FDA is proposing to amend the regulations by deleting all references to sterile processing techniques such as sterile filtration and sterile container and closure systems. FDA is proposing to amend §§ 660.20(a) and 660.50(a) by deleting the phrase regarding preparation "by a method demonstrated to yield consistently a sterile product" because FDA recognizes that controls to ensure a sterile product, i.e., aseptic processing controls, are not necessary to ensure that AHG and BGR meet their performance specifications. In addition, §§ 660.21(a)(1) and 660.51(a)(1) include requirements regarding the adequacy of the processing method. FDA is proposing to amend §§ 660.21(a)(2) and 660.51(a)(3) by deleting the term "sterile" because the manufacturer must establish those controls appropriate for its product, and it may not be necessary for microbiologically controlled IVD's to undergo sterile filtration. FDA is proposing to amend §§ 660.21(a)(3) and 660.51(a)(4) by deleting the reference to "clean, sterile vessels" because FDA believes that manufacturers are in the best position to determine the appropriate level of microbial control for container and closure systems. Appropriate process specifications must be established by the manufacturer to ensure that microbiologically controlled IVD's are manufactured under appropriate conditions and controls resulting in a product that consistently meets all of its specifications. The manufacturer must demonstrate in the license application that the appropriate level of control of microbial contamination ensures that the biological product continues to meet the licensing requirements. The proposed change to the regulation in no way affects the testing and validation a manufacturer must perform in order to establish that the manufacturing specifications are appropriate to ensure the product will perform as intended. In addition, under the current good manufacturing practice regulations for blood and blood components, end users of AHG and BGR, such as blood banks, are required under § 606.65(c) to perform daily checks for potency and specificity of supplies and reagents used in the collection and testing of blood and blood components.

The agency also believes the proposed change is consistent with other requirements in the biologics regulations, such as the sterility testing requirements set forth in § 610.12. This section requires sterility testing for most biological products; however, BGR and AHG are specifically exempted from the sterility testing requirements for bulk and final container material § 610.12(g)(4)).

The proposed rule would also remove the requirement in § 660.51(a)(4) that a manufacturer who subdivides a lot shall include this information on the protocol. FDA is making this change to reflect current agency practice. Manufacturers would still be required to submit this information in the license application. See § 601.2 regarding

requirements for the submission of samples and protocols to FDA.

III. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995

FDA has examined the impact of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distribute impact; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This proposed rule is not a significant regulatory action as defined by the Executive Order and therefore is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because the proposed rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the proposed rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act of 1995 because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. The Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by February 26, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 660 be amended as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

1. The authority citation for 21 CFR part 660 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263 263a, 264.

§ 660.20 [Amended]

2. Section 660.20 *Blood Grouping Reagent* is amended in paragraph (a) by removing the words "prepared by a method demonstrated to yield consistently a sterile product and".

§ 660.21 [Amended]

3. Section 660.21 *Processing* is amended in paragraph (a)(2) by removing the word "sterile"; and in paragraph (a)(3) by removing the words "clean, sterile vessels. Each subdivision shall constitute a sublot." and adding in its place the word "sublots."

§ 660.50 [Amended]

4. Section 660.50 *Anti-Human Globulin* is amended in paragraph (a) by removing the words "and be prepared by a method demonstrated to yield consistently a sterile product".

§ 660.51 [Amended]

5. Section 660.51 *Processing* is amended in the first sentence of paragraph (a)(3) by removing the word "sterile" and in paragraph (a)(4) by removing the words "clean, sterile vessels. Each subdivision shall constitute a sublot" and adding in its place the word "sublots", and in the third sentence by removing the words "and on the protocol".

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31587 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 945

[FHWA Docket No. FHWA–99–5844]

RIN 2125–AE63

Dedicated Short Range Communications In Intelligent Transportation Systems (ITS) Commercial Vehicle Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of docket comment period.

SUMMARY: This document reopens the comment period on this docket and delays the issuance of a final rule to require the use of the FHWA specification for Dedicated Short Range Communication (DSRC) for Commercial Vehicle Operations (CVO); a provisional standard for Intelligent Transportation Systems (ITS) commercial vehicle projects using highway trust funds. Based on the comments received, the date of the final rule will be determined by the completion of the testing program to evaluate products designed to meet the provisional standard. Also, this document responds to all the substantive comments received to date on this docket.

DATES: This docket will remain open until the FHWA publishes another rulemaking document when testing is complete.

ADDRESSES: Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, ITS Joint Program Office (JPO), (202) 366–2128, e-mail address <*william.s.jones@fhwa.dot.gov*>; or Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–32) (202) 366–0780, e-mail address <*wilbert.baccus@fhwa.dot.gov*>, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

The notice of proposed rulemaking (NPRM) published at 64 FR 73674 on December 30, 1999, under Docket No. FHWA 99–5844, contains a detailed discussion of the events and background that has led to this rulemaking process. Only a brief summary of this background is presented in this Supplemental NPRM.

In section 5206 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, at 457 (23 U.S.C. 502 Note), the Congress requires the Department to "ensure the national interoperability" of ITS services through standards. To carry out this mandate, the Congress stated that the Secretary could use the services of existing standards-setting organizations, as appropriate. The statutory provisions also provide that use of approved standards shall be established as a prerequisite for use of highway trust funds on relevant ITS projects. Further, the Congress authorized the Secretary to issue "provisional standards" when the normal consensus standard development process was unsuccessful in reaching agreement on a standard.

There is a clear need for interoperability in at least two applications of DSRC technology within the ITS program as follows:

1. Interstate trucks that participate in the Commercial Vehicle electronic screening programs require national interoperability. This allows participating vehicles to be electronically cleared, if they are safe and legal, without stopping at State ports of entry or weigh/inspection stations.

2. All vehicles, including passenger cars and trucks, in a common multitoll environment within a single State or multistate metropolitan area, require regional interoperability.

This rulemaking only addresses the national interoperability requirement for commercial vehicle applications of DSRC technology. For the CVO program to be successful, it is essential that these vehicles be able to travel from State to State, and within a State, using DSRC technology for processing at automated inspection stations and to be able to bypass State ports of entry if they meet the criteria for safety, and possess the appropriate credentials. The only way to achieve this fundamental objective is to have DSRC standards that all States utilize for their ITS CVO implementations. Thus, this application clearly falls within the TEA–21 definition of standards "critical to national interoperability." The critical standards list defined by the ITS Joint Program Office (JPO), in response to the TEA–21, can be accessed on the JPO web site: *http://www.its.dot.gov*.

The FHWA entered into a rulemaking process for CVO because the established standards process was unable to produce a standard that would ensure national interoperability. The current set of DSRC standards that have been adopted by the American Society of Testing and Materials (ASTM), ASTM PS 111–98 and ASTM PS 111–xxx, allow multiple DSRC technologies to exist, thus promulgating the current interoperability dilemma. The DOT, therefore, defined a provisional standard that incorporated portions of the ASTM standards and the IEEE standard, IEEE P 1455, that was backward compatible with all existing CVO installations. The NPRM required that this new provisional standard be used for all new purchases of DSRC devices for commercial vehicle electronic screening when highway trust funds were used for these purchases after January 1, 2001.

Because of the concerns voiced by the CVO community about proceeding with a rule before equipment designed to the provisional standard has been tested to ensure its technical viability, the FHWA has decided to postpone issuing the final rule until that test program is complete. The subject NPRM stated that the FHWA intended to test the provisional specification. At the time the NPRM was drafted, those tests were to have been completed prior to the effective date of the final rule. Further, the NPRM stated that the intent of the provisional specification was to enable backward compatibility. Backward compatibility means that no existing roadside or vehicle equipment for electronic screening would be required to be modified or replaced. To ensure this compatibility, the manufacturers were involved in developing the provisional specification, and the FHWA is going to test produce built with the provisional specification for both functional capability and backward compatibility.

Although there were other comments to the NPRM, these were clearly the most crucial in their potential impact on the CVO community. Having addressed these concerns, the FHWA believes it is necessary to continue the rulemaking process to achieve the objective of national interoperability in the CVO program at a time when the tested technologies can support the use of the provisional standard.

In the subsequent discussion, the substantive comments will be addressed.

Comments to the NPRM

There were 24 comments received by the FHWA concerning the proposed rule. Comments were received from a joint submission of HELP Inc. and NORPASS Inc.; the HELP/NORPASS comments were supported by State Trucking Associations from California, Arkansas, Arizona, Montana, and Nevada; and by Combined Transport Inc., Montana Department of Transportation, NATSCO Inc., Delphi Automotive systems, Market Transport, Ltd., Watkins Shepard Trucking Inc., Wyoming Highway Patrol, Lockheed Martin IMS, and the Tennessee Department of Safety. This group of 15 respondents will be referred to as HELP in subsequent discussions. Additional comments were received from Amtech Systems, Mark IV IVHS, Inc., Peace

Bridge Authority, TransCore, the American Trucking Association (ATA), E–Z Pass IntgerAgency Group, Illinois Department of Transportation, Washington State Department of Transportation, and the Wisconsin Department of Transportation.

Response to Comments on the NPRM

Comment: The ATA, TransCore, and HELP questioned the need for DOT to do a rulemaking because of the widespread use of the existing device throughout the CVO community.

FHWA Response: It is the opinion of the FHWA that the current, essentially de facto, "standard" is a result of the ITS funding that has spurred the deployment of CVO technology and the insistence of the FHWA on the use of that device. However, CVO may be deployed using other non-Federal funding sources where the FHWA will not have the opportunity to enforce the de facto standard. The Department is aware of States that would prefer to use another device that is more compatible with other DSRC applications in their region, such as electronic tolls. Therefore, the only way to ensure the DOT is doing everything possible to achieve national interoperability is to insist that if Federal funds are employed in the deployment, that a standard will be used. It is recognized that States may still circumvent the regulation by not using highway trust funds for CVO projects. However, it is incumbent upon the Department to do everything practical to ensure national interoperability.

Comment: HELP asserted that the proposed rule would have the Federal government pick winners and losers in the industry.

FHWA Response: The Department does not agree that the proposed rule would pick "winners and losers" in the DSRC industry. There are currently two suppliers of equipment for the CVO application. These two suppliers were chosen by both HELP and Norpass, not the Federal government. Both of these suppliers have indicated a willingness to build products to the proposed FHWA specification. The operators of CVO facilities would have the same competitive environment that currently exists.

Comment: HELP and Washington State DOT were concerned that the proposed specification would require significant modifications to their existing equipment and potentially cause interruptions in existing service.

FHWA Response: The existing manufacturers have indicated that the new transponders designed to the FHWA specification would be backward compatible with all existing roadside equipment. Therefore, this regulation would neither require modifications nor cause disruptions in service. The FHWA specification provides, but does not require, additional functionality in the roadside equipment for CVO application. It also does not require truckers to change their existing transponders. Therefore, there should be no interruption in the daily operations of existing CVO installations. The FHWA testing program will validate this capability.

Comment: HELP commented that the proposed rule would be in violation of California law.

FHWA Response: The proposed regulation does not apply to the electronic toll collection application of DSRC, and therefore is not in conflict with California law.

Comment: HELP, and ATA, and Washington DOT believed this rule would be in conflict with electronic toll activities and would not provide interoperability for toll systems.

FHWA Response: The proposed rule does not apply to the electronic toll application of DSRC. It is recognized that this rule will not solve the interoperability problem within the toll industry as was clearly stated in the NPRM.

Comment: HELP and Washington DOT felt that there was not adequate time provided for public discussion of the proposed rule.

FHWA Response: This SNPRM reopens the docket and will allow for comments to be submitted over an extended time frame. However, the Department engaged in public discussions for almost two years on the subject of DSRC interoperability and the potential avenues to achieving that goal. The idea of the "sandwich" specification, the popular name for the FHWA specification, for DSRC was discussed at a number of forums involving both the toll and CVO communities beginning in mid-1998, almost a year before entering the formal rulemaking process. The Department does not agree that there has been inadequate time for the community to respond. However, the decision to postpone the final rule until testing is complete should satisfy this concern.

Comment: HELP, the E–Z Pass Interagency Group, TransCore, Mark IV, Washington DOT, and Wisconsin DOT were concerned that equipment built to the FHWA specification had not been tested.

FHWA Response: The Department recognizes that the FHWA specification has not yet been built and tested. The NPRM specifically stated the intent of the FHWA to conduct a test program to validate the efficacy of the specification and the backward compatibility feature prior to its mandatory use, and deferred application to procurement of new equipment after January 2001. It is now clear to the FHWA that the proposed test schedule is unlikely to be met, and that testing must be done before the device is deployed. Thus, FHWA is publishing this SNPRM to delay issuance of the final rule until after the test program is complete.

Comment: The ATA and HELP did not believe that there were other applications for DSRC and, therefore, the incorporation of the IEEE application layer standard into the FHWA provisional standard was unnecessary.

FHWA Response: The recent announcement of one of the manufacturers to build a new transponder that incorporates the FHWA specification, would signify to the Department that the supplier industry believes that there are multiple applications for the device beyond CVO. Further, the manufacturers that collaborated on the development of the specification agreed to the inclusion of the IEEE application layer standard in the belief that other applications were probable.

Comment: The ATA, HELP, the E–Z Pass Interagency Group, and Washington DOT were concerned that the proposed rule would adversely impact the development and deployment of DSRC devices at 5.9GHz.

FHWA Response: The FHWA does not believe that this regulation will have any impact on the development of equipment at the new 5.9GHz frequency. Manufacturers have publicly indicated that the two are unrelated and are moving forward to develop the standard for 5.9GHz and plan to build a product at that frequency to serve markets other than CVO. Further, the Department does not anticipate requiring the use of 5.9GHz for the CVO application in the foreseeable future, unless the CVO community would advocate such a transition.

Comment: The Amtech argues for a regional approach to interoperability since most of the nation's trucks are regional carriers. This would mean that each region could pick its own locally utilized transponder configuration, presumably a toll application, for use in its CVO application. This means that the majority of trucks in the nation, the regional carriers, would require only one transponder, and the interstate trucking fleets would require at least two transponders. The supposition is that the converse is true if FHWA promulgates this rule, i.e., that all regional carriers would require two transponders.

FHWA Response: If promulgated, this rule would not require that all intrastate trucks have two transponders. The proposed rule does not prohibit States from installing roadside equipment at CVO sites that accommodates the regional toll standard for use by the intrastate carriers. However, this would be in addition to their existing equipment used for electronic screening which will be compatible with the new proposed FHWA specification. This option would be cheaper than equipping all intrastate vehicles with two transponders. However, the cost of that additional roadside equipment for toll collection would be borne by the public sector rather than the trucking industry. Presumably, the States would derive a public benefit from this approach, which would allow a large percentage of the commercial vehicles to be served within a local region. This approach would mean that the interstate trucks would be relegated to one transponder to serve all the CVO functions, and additional transponders as needed for operations with the toll agencies. The point is that there are alternatives to having multiple transponders while still retaining the objective of national interoperability for interstate trucking.

Comment: The ATA and TransCore were concerned that the FHWA regulation will stifle innovation in the industry and "dooms state governments to perennial obsolescence."

FHWA Response: The Department recognizes that the pace of technological innovation in the electronics industry is much faster than the traditional aspects of highway design that the FHWA normally regulates. Therefore, it is incumbent upon the Department to monitor the advances in technology that might affect the CVO industry, and be prepared to alter its position on the provisional standard as demanded by the changes in technology and community use.

Comment: The ATA and Amtech were concerned that the FHWA proposed rule would require multiple transponders in every truck.

FHWA Response: The current state of the toll industry, and for the foreseeable future, will require multiple transponders in vehicles to enable interstate travel using electronic toll collection. Further, the existing CVO transponders are not compatible with any of the toll applications. Therefore, the proposed rule is not intended, nor does it alter the current situation. This rule only addresses national interoperability for CVO functions.

The recent announcement by a manufacturer to build a transponder that is compatible with all three current DSRC protocols in use in the United States, could be argued to be the result of the Department's insistence on interoperability and its readiness to issue regulations to promote that goal. It is clear that this was not the only motivating factor, but it was an influencing factor. The practical result is that the ATA's goal of "one truck one tag" is closer to reality.

Comment: The ATA was concerned that the Department was ignoring congressional direction in Senate Report No. 106–55[1] directing the testing of passive technology.

FHWA Response: The FHWA has responded to the Senate Report No. 106–55. The FHWA has a program to test passive technology for its compatibility with current CVO DSRC equipment, and will do likewise when the proposed FHWA specification is tested.

Conclusion

Based on an evaluation of the comments, the Department has decided to proceed with a proposal that would require use of the FHWA specification for CVO applications, but delay issuance of a final rule until there are results from the planned testing of the new FHWA specification. Assuming that the tests prove the efficacy of the provisional specification, then the FHWA intends to proceed with the issuance of a final rule that would require the use of the FHWA specification for all CVO electronic screening projects.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal, therefore, a full regulatory evaluation is not required. The implementation of this standard will not alter the functionality of the DSRC roadside or in-vehicle equipment. The recurring cost of these devices should be virtually the same as paid for existing equipment. We do not anticipate any significant economic impact of the regulation proposed in this rulemaking document. Nevertheless, the FHWA solicits comments, information, and data on this issue.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. Based on that evaluation, the FHWA hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Any impact to small entities would likely be a positive one, due to the resulting ability of these entities to compete in the open market for ITS system integration work and other engineering services and to develop and market DSRC standards conforming devices useful in CVO deployment. Large corporations, through sales of their proprietary products and proprietary interfaces have previously dominated this market. Previously, large corporations that owned the proprietary interface designs were the only organizations able to manufacture, install, integrate, and service equipment with the proprietary interfaces. Although the large corporations may experience a small loss of engineering services business, this will be more than compensated for by the increased marketability of their DSRC standards profile-conforming products in the growing national ITS industry.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et. seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation,

[1] Senate Report No. 106–55, at 91 (1999) for the Department of Transportation and Related Agencies Appropriations Bill, FY 2000, Public Law 106–69.

eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not effect a taking of private property or othewise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 and amendments thereto regarding intergovernmental consultation on Federal programs and activities apply to this program. Those regulations stipulate that Federal agencies shall provide opportunities for consultation by element officials of State and local governments that would provide non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development. The regulations further state that the Federal agencies must communicate with the appropriate State and local officials as early in the program planning cycle as is reasonable feasible to explain specific plans and actions.

Since members of the ASTM, the IEEE. and the DSRC industry participated in establishing the need for the DSRC standards, in defining the requirements for the DSRC standards, and in development and approval of the DSRC standards, it is clear that requirements of the intergovernmental review regulations have been satisified. In addition, the FHWA and ITS America have made information about the standards program and the standards widely and publicly available. Furthermore, publication of this SNPRM further emphasizes the agency's efforts to coordinate with State and local governments by providing another opportunity to review and comment on our proposal.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in proposed rulemaking are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed regulation does not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no paperwork burden on the States or private entities. The proposal merely sets forth the DSRC interoperability standards for devices that collect the vehicle data that is already being transmitted either electronically, visually, or otherwise. As for the States assuring that vendors of the devices comply with these standards, the FHWA is not imposing any formal certification process on them. The States may accomplish assurances of vendor compliance as part of their usual and customary processes that they would adopt to implement the requirements of any Federal regulation.

United States International Trade Policy

The agency has analyzed the impact of this rulemaking on United States trade in accordance with Executive Order 12661 and finds no significant detrimental impacts on United States international trade policy.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 945

Communications, Highways and roads, Radio, Transportation-intelligent systems.

Authority: 23 U.S.C. #315, and 502 note; sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105–178, 112 Stat. 107, at 457; and 49 CFR 1.48.

Issued on: December 4, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 00–31642 Filed 12–11–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 18

RIN 1024–AC78

Leasing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend current National Park Service (NPS) regulations concerning the leasing of historic properties within areas of the national park system to encompass additional types of properties as authorized by law and to change in certain respects the procedural requirements for leasing of properties.

DATES: We will accept written comments, suggestions or objections on or before February 12, 2001.

ADDRESSES: Written comments should be sent to Richard Ring, Associate Director, Operations and Education, National Park Service, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, National Park Service Washington, DC 20240 (202/565–1212).

SUPPLEMENTARY INFORMATION: Section 802 of the National Parks Omnibus Management Act, Public Law 105–391, authorized NPS to grant leases for the use of buildings and associated property located within areas of the national park system to persons and governmental entities under certain conditions. This new leasing authority supplements existing NPS leasing authority concerning historic properties set forth in 16 U.S.C. 470h–3 and implemented in 36 CFR Part 18. NPS proposes by amendment of 36 CFR Part 18 to combine into one regulation the leasing authority provided by section 802 of Public Law 105–391 with the leasing authority provided by 16 U.S.C. 470h–3. This will achieve simplification of the NPS historic leasing process as also called for by section 802 of Public Law 105–391 and expand the scope of NPS leasing authority to all eligible properties. NPS also has authority to lease certain property located within units of the national park system under 16 U.S.C. 460*l*–22(a). This authority is implemented by NPS in 36 CFR Part 17. NPS does not intend to amend 36 CFR Part 17. When 36 CFR Part 18 is amended as proposed, NPS will have authority to lease certain types of property under 36 CFR Part 17 or 36 CFR Part 18.

Section Content

Section 18.1. Authority and Purposes. Section 18.1 describes the authority for the proposed rule.

Section 18.2. Section 18.2 defines the terms used in the proposed rule.

Section 18.3. Section 18.3 describes the types of property that NPS may lease under this part. In general, this part applies to leases of both historic and non-historic property located within the boundaries of park areas.

Section 18.4. Section 18.4 describes the types of determinations NPS must make before it may lease property under this part. Before leasing property under this part, NPS must determine that the lease: (1) Will not result in degradation of the purposes and values of the park area; (2) will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area; (3) contains such terms and conditions as will assure the leased property will be used for an activity and in a manner that is consistent with the purposes established by law for the park area in which the property is located; (4) is compatible with the programs of the National Park Service; (5) is for rent at least equal to the fair market value rent of the leased property as described in section 18.5; (6) does not authorize activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument; and (7), if the lease is to include historic property, that the lease will adequately insure the preservation of the historic property.

Section 18.5. Section 18.5 describes the rent NPS must receive for property leased under this part. The rent must be at fair market value, determined after taking into account any restrictions NPS may place on the use of the leased property and any requirements for rehabilitation and maintenance of the leased property.

Section 18.6. Section 18.6 describes the types of uses that are permissible for property leased under this part. In general, leased property may be used for any lawful purpose subject to the determinations called for in section 18.4. These uses may include, among others, office or other commercial uses. Innovative uses that are consistent with the requirements of this part are encouraged.

Section 18.7. Section 18.7 describes the procedures for leasing property through a public bid process. The bid process may only be used if the amount of rent is the sole criterion for award of a lease. The bid process calls for public notice of the lease opportunity, submission of offers on a date certain, and a public bid opening and selection by NPS.

Section 18.8. Section 18.8 describes the procedures for leasing property through a proposal solicitation process. In general, the proposal solicitation process calls for public issuance of a Request for Proposals ("RFP") that describes the leasing opportunity and the criteria for selection. After submission of proposals, NPS will select the best proposal upon application of established selection criteria. These include the compatibility of the proposal to the park area and its visitors, the experience and financial capability of the offeror, and the ability and commitment of the offeror to conduct its activities in an environmentally enhancing manner.

Section 18.9. Section 18.9 permits NPS to lease property to non-profit organizations and governmental units without competitive procedures if NPS determines it is in the public interest to do so.

Section 18.10. Section 18.10 describes the term of leases to be granted under the authority of this part. The term is to be no more than 60 years.

Section 18.11. Section 18.11 describes the general terms and conditions that a lease granted under authority of this part must contain. These include provisions that assure use of the property in a manner consistent with the purposes of the applicable park area, and, if applicable, the preservation of historic property that may be leased.

Section 18.12. Section 18.12 describes a number of specific terms and conditions that a lease granted under the authority of this part must contain. These include a termination for cause provision, a clause requiring the lessee to maintain the leased property, provisions regarding the use of the leased property, and, provisions that state that any improvements a lessee may make may only be undertaken with the approval of NPS.

Section 18.13. Section 18.13 describes the information collection requirements of the proposed rule.

Drafting Information

The primary authors of this rule are the members of a task force comprised of NPS officials involved in the leasing of national park system properties.

Compliance With Laws, Executive Orders and Departmental Policy

Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule within the meaning of Executive Order 12866 because of novel policy issues.

a. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment or other units of government. The rule imposes no obligations on any entity except for persons that may seek to be awarded an NPS lease. It does not apply to existing NPS leases.

b. This rule will not create inconsistencies with other agencies' actions as it only applies to the National Park Service.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule prescribes procedures for leasing lands of the national park system.

d. This rule raises novel policy issues as it prescribes new procedures for leasing lands of the national park system in accordance with the requirements of section 802 of Public Law 105–319 and 16 U.S.C. 470h–3.

Small Business Regulatory Enforcement Act

This rule is not a major rule under 5 U.S.C. 804(2) , the Small Business Regulatory Fairness Enforcement Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish procedures for the granting of leases of certain property located within areas of the national park system. Potential lessees will only submit lease proposals if the effects are positive.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act as it is not required to be published for comment before adoption by 5 U.S.C. 553 or other law. NPS is soliciting public comment on this proposed rule as a matter of policy. In any event, the Department of the Interior considers that the final rule will not have a significant effect on a substantial number of small entities as

defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). NPS anticipates that less than one hundred leases a year will be awarded under this authority. In addition, the rule is only applicable to prospective lessees. It has no effect on existing NPS leases.

Takings

In accordance with Executive Order 12360, this rule does not have significant takings implications as this rule does not apply to private property. A takings assessment is not required.

Federalism

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

Civil Justice Reform (E.O. 12998)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Information Collection

This rule (NPS Leasing Regulations—36 CFR Part 18) requires an information collection from ten or more parties so a submission under the Paperwork Reduction Act is required. An OMB form 83–I has been submitted to the Office of Management and Budget for approval. The information collection requirements of this rule are for the purpose of awarding and administering NPS leases. A federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Six categories of information collection are contained in the rule: Section 18.7 (Request for Bids); Section 18.8 (Requests for Qualifications/Proposals); Section 18.12(c) (Subletting and Assignment of Leases); Section 18.12 (i)–(j) (Approval of Lessee Construction/Demolition); Section 18.12(l) (Approval of Lessee Encumbrances); and Section 18.12(k) (Amendment of Leases). NPS will use the information collected to make administrative decisions with respect to these six categories. The respondents to these collections will be NPS lessees and prospective NPS lessees. NPS anticipates that there will be a total of approximately six hundred respondents per year with respect to Sections 18.7 and 18.8 and a total of approximately twenty-seven respondents per year with respect to the other information collection categories. NPS estimates that the total annual reporting and recordkeeping burden that will result from these collections of information will be 4392 hours, as set forth in the following chart.

Section	Number of responses	Hours per response	Total hours
Section 18.7	200	1	200
Section 18.8—Complex	20	40	800
Section 18.8—Simple	380	8	3040
Section 18.12(c)—Complex	1	40	40
Section 18.12(c)—Simple	4	8	32
Section 18.12 (i)–(j)—Complex	2	32	64
Section 18.12 (i)–(j)—Simple	8	8	64
Section 18.12(k)	2	4	8
Section 18.12(l)—Complex	2	40	80
Section 18.12(l)—Simple	8	8	64
Total	627	*7.0	4392

*Average.

Please send comments regarding this burden or estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (with a copy to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240). The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. NPS is soliciting public comments as to: (1) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility; (2) the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate electronic, mechanical, or other forms of information technology.

National Environmental Policy Act

This rule does not constitute a major federal action affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity?; (3) Does the format of the rule (groupings and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity?; (4) would the rule be easier to understand if it were divided into more but shorter sections?; (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule?; (6) What else could be done to make the rule easier to understand? Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 36 CFR Part 18

Leasing, National Parks.

In consideration of the forgoing, 36 CFR Part 18 is proposed to be revised to read as follows:

PART 18—LEASING OF PROPERTIES IN PARK AREAS

Sec.

18.1 What is the authority and purpose for this part?
18.2 What definitions do you need to know to understand this part?
18.3 What property may be leased?
18.4 What determinations must the Director make before leasing property?
18.5 May property be leased without receiving fair market value rent?
18.6 Are there limitations on the use of property leased under authority of this part?
18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?
18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?
18.9 When may the Director lease property without issuing a request for bids or a request for proposals?
18.10 How long can the term of a lease be?
18.11 What general provisions must a lease contain?
18.12 What specific provisions may, must, or must not a lease contain?
18.13 Have information collection procedures been followed?

Authority: 16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k) , and, 16 U.S.C. 470h–3.

§ 18.1 What is the authority and purpose for this part?

16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k) , and, 16 U.S.C. 470h–3 are the authorities for this part. These authorities allow the Director (or delegated officials) to lease certain federally owned or administered property located within the boundaries of park areas. All leases to be entered into by the Director under these authorities are subject to the requirements of this part.

§ 18.2 What definitions do you need to know to understand this part?

In addition to the definitions contained in 36 CFR part 1, the following definitions apply to this part:

(a) *Associated property* means land and/or structures (e.g., parking lots, retaining walls, walkways, infrastructure facilities, farm fields) related to a building and its functional use and occupancy.

(b) *Building* means an enclosed structure located within the boundaries of a park area and constructed with walls and a roof to serve a residential, industrial, commercial, agricultural or other human use.

(c) *Commercial use authorization* means a written authorization to provide services to park area visitors issued by the Director pursuant to Section 418 of Public Law 105–391 and implementing regulations.

(d) *Concession contract* has the meaning stated in 36 CFR part 51.

(e) *Fair market value rent* means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased should rent for its highest and best use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Determinations of fair market value rent under this part are subject to the considerations stated in 18.5.

(f) *Historic land* means land located within the boundaries of an historic property.

(g) *Historic property* means buildings and land located within the boundaries of a park area if the buildings and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(h) *Land* means unimproved real property.

(i) *Lease* means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.

(j) *Non-historic building* is a building and its associated property that is located within the boundaries of a park area but is not located within the boundaries of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(k) *Non-historic land* means land located within the boundaries of a park area that is not associated property and is not historic property.

(l) *Park area* means a unit of the national park system.

(m) *Property* means a non-historic building and/or historic property that is located within the boundaries of a park area and is federally owned or administered.

(n) *Request for bids* refers to the lease bid process described in § 18.7.

(o) *Request for proposals* refers to the lease proposal process described in § 18.8.

(p) *Responsive bid or proposal* means a bid or proposal that meet the material requirements of a request for bids or a request for proposals.

§ 18.3 What property may be leased?

(a) *In general.* The Director may lease any property under this part if the Director makes the determinations required by § 18.4.

(b) *Non-historic land.* Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR part 17.

§ 18.4 What determinations must the Director make before leasing property?

Before leasing property in a park area under this part, the Director must determine that: The lease will not result in degradation of the purposes and values of the park area; the lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area; the lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located; the lease is compatible with the programs of the National Park Service; the lease is for rent at least equal to the fair market value rent of the leased property as described in § 18.5; the proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and, if the lease is to include historic property, the lease will adequately insure the preservation of the historic property.

§ 18.5 May property be leased without receiving fair market value rent?

Property may be leased under this part only if the Director ensures that the lease requires payment of rent to the government equal to or higher than the property's fair market value rent. The Director's determination of fair market value rent shall take into account: Any restrictions on the use of the property imposed by the Director that limit the value and/or the highest and best use of the property; and, any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property. The Director may take into account in determining the fair market value of property offered for

lease under § 18.7 the amounts of the bids received in response to the solicitation.

§ 18.6 Are there limitations on the use of property leased under this part?

(a) A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by § 18.4 and the limitations on activities set forth in paragraph (b) of this section.

(b) Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization if the Director determines in accordance with park area planning documents and related guidelines that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

§ 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?

(a) If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If historic property is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b) A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: "Bid on lease of property of the National Park Service" and shall note the date the bids are to be opened.

(c) Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease. A responsive bid is a bid that meets the material terms and conditions of the request for bids. The Director shall accept no bid in an amount less than the fair market rental value as determined by the Director. If two or more bids are equal, a drawing shall make the lease award by lot limited to the equal responsive bids received.

(d) When a property is to be leased through a request for bids, the bidder that is declared by the Director to be the high bidder shall be bound by his bid and this part to execute the offered lease, unless the bid is rejected. If the declared high bidder fails to enter into the lease for any reason, the Director may choose to enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value). The Director may reject any and all bids in his discretion and resolicit or cancel a lease solicitation under this part at any time without liability to any person.

§ 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?

(a) When the award of a lease is to be based on selection criteria in addition to the amount of the rent, the Director must solicit proposals for the lease through issuance of a public Request for Proposals (RFP).

(b) An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a "short list" of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP. If the Director issues an RFQ, only persons determined as qualified by the Director under the terms of the RFQ shall be eligible to submit a proposal under the related RFP.

(c) The Director must provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in the Commerce Business Daily. The public notice shall contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP (or RFQ where applicable). The RFP (and RFQ where applicable) shall contain appropriate information about the property proposed for lease, including any limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of proposals, terms and conditions of the lease, and the criteria under which the Director will evaluate proposals. The RFP may state the fair market value rent as the minimum acceptable rent if determined by the Director at that time. The RFP (and RFQ where applicable) must allow at least sixty (60) days for submission of proposals (or qualifications under an RFQ) unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

(d) The Director may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that fails to meet the material terms and conditions of the RFP. After the submission of offers and prior to the selection of the best overall proposal, the Director may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted proposals are given an opportunity to amend their proposals. The Director may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

(e)(1) The criteria to be used in selection of the best proposal are:

(i) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;

(ii) The financial capability of the offeror to carry out the terms of the lease;

(iii) The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease;

(iv) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling; and

(v) Any other criteria the RFP may specify.

(2) If the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property shall be an additional selection criterion. If the RFP requires proposals to include the amount of rent offered, the amount of rent offered also shall be an additional selection criterion.

(f) The Director will evaluate all responsive proposals received. The proposal determined by the Director to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease. If two or more responsive proposals are determined by the Director to be substantially equal under the evaluation criteria, the Director shall provide an opportunity for those proposals to be amended by their offerors as necessary for the Director to select the best amended proposal. In such circumstances, the Director will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposals may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain as equal after amendment, the Director will select for negotiation of the lease the otherwise equal proposal that is rated highest with respect to paragraph (e)(1)(iv) of this section, the conduct of activities under the lease in an environmentally enhancing manner.

(g) The Director will provide the offeror that submitted the best overall proposal as determined by the Director a specified period of time to negotiate the final terms of the lease. The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, the Director, in his discretion, may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best proposal, or, cancel the solicitation.

(h) RFPs may state that the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended. The Director may execute a lease only if the Director determines that it requires the lessee to pay at least the fair market value rent of the leased property.

(i) The Director may execute a lease that includes historic property only after complying with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

§ 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?

The Director, except as provided in this section, may not lease property without issuing a request for bids or a request for proposals in compliance with § 18.7 or § 18.8. The Director under this part may enter into leases with non-profit organizations (recognized as such by the Internal Revenue Service) or units of government without complying with § 18.7 or § 18.8 if the Director determines that to do so it is in the best interests of the administration of the park area. All other requirements of this part are applicable to leases entered into or to be entered into under authority of this section. The Director may enter into leases under this part with a term of sixty (60) days or less without complying with § 18.7 or § 18.8 of this part if the Director determines that to do so is in the best interests of the administration of the park area. If historic land is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) before entering into the lease.

§ 18.10 How long can the term of a lease be?

All leases entered into under this part shall have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. No lease shall have a term of more than 60 years. Leases entered under the authority of this section may not be extended.

§ 18.11 What general provisions must a lease contain?

All leases entered into under this part must contain terms and conditions that are determined necessary by the Director to assure use of the leased property in a manner consistent with the purposes of the applicable park area as established by law, and where applicable, to assure the preservation of historic property. In addition, all leases entered into under this part must contain clauses applicable as a matter of law to leases and certain other mandatory provisions set forth in § 18.12.

§ 18.12 What specific provisions may, must, or must not a lease contain?

(a) All leases entered into under this part shall include a termination for cause or default provision.

(b) All leases entered into under this part shall contain appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease.

(c) All leases entered into under this part shall contain appropriate provisions regarding subletting or assignment of the leased property. Subletting and assignment of a lease, if permissible under the terms of the lease, must be subject to the Director's written approval that shall be granted only of the Director determines that the proposed sub-lessee or assignee is financially and managerially capable of carrying out the terms of the lease. Assignment of a lease for the purpose of effectuating an encumbrance to the lease or the leased property is subject to approval pursuant to the requirements of paragraph (l) of this section.

(d) All leases entered into under this part must contain appropriate provisions requiring the lessee to secure and maintain from responsible companies insurance sufficient to indemnify losses connected with or occasioned by the use and activities authorized by the lease. Types and amounts of insurance coverage will be specified in writing and periodically reviewed by the Director.

(e) All leases entered into pursuant to this part, unless the Director determines otherwise in the circumstances of a particular lease, must contain provisions requiring the lessee to obtain from responsible companies casualty insurance (including flood insurance if applicable) in the amount of at least the replacement value of any leased property. In the event of casualty, the lessee shall be required to repair or replace damaged or destroyed property unless otherwise determined by the Director. If the Director does not require the lessee to repair or replace damaged or destroyed property, any insurance proceeds due the lessee shall be remitted to the Director without offset as additional rent payment for the leased property.

(f) All leases entered into pursuant to this part must contain appropriate provisions requiring the lessee to save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, or judgments and expenses resulting from personal injury, death or property damage of any nature arising out of the lessee's activities under the lease, and/or the activities of the lessee's employees, subcontractors, sub-lessees, or agents. No lease entered into this part may contain provisions intended to provide indemnification or other

assurances to the lessee regarding the conduct or activities of the Director concerning the lease or the administration of the applicable park area. Leases may contain appropriate provisions that commit the Director to accept responsibility for tortious actions of government officials to the extent authorized by the Federal Torts Claim Act or as otherwise expressly authorized by law.

(g) All leases entered into under this part shall contain appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee, and, all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities.

(h) All leases entered into under this part shall contain appropriate provisions stating that a lease may not be extended by the Director and that the lessee has no rights of renewal of the lease or rights of any nature to award of a new lease of the leased property upon the expiration of the lease or upon termination of the lease for any reason. Leases entered into under this part are subject to cancellation by the Director in the exercise of the sovereign authority of the United States to the extent provided by applicable law. Unless otherwise authorized by law, the Director may not enter into a lease a lease that contains provisions that provide compensation to the lessee in the event of expiration or termination of the lease for any reason.

(i) Except as provided in this subsection, leases entered into under authority of this part may not contain provisions authorizing the lessee to construct new buildings or structures on leased property. Leases may contain appropriate provisions that authorize the lessee to construct, subject to the prior written approval of the Director, minor additions, buildings or structures determined by the Director to be necessary for support of the authorized activities of the lessee and otherwise to be consistent with the protection and purposes of the park area. Approval by the Director of new construction may only be granted if the Director makes the determinations required by § 18.4.

(j) All leases entered into under this part shall contain appropriate provisions to the requiring that: Any improvements to or demolition of leased property to be made by the lessee may be undertaken only after receipt of written approval from the Director; that any improvements to or demolition of historic property may only be approved if the Director determines that the improvements or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68); any improvements made by a lessee shall be the property of the United States; and the lessee has no right of compensation for any real property improvements the lessee may make under the terms of the lease upon lease termination or expiration or otherwise.

(k) All leases entered into under this part shall contain appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property. The types of activities described in a lease may be modified from time to time with the approval of the Director through an amendment to the lease. The Director may approve modified activities only if the determinations required by § 18.4 remain valid under the proposed modified activities and the proposed activities are otherwise determined appropriate by the Director.

(l) Leases entered into under this part may contain provisions authorizing the lessee to pledge or encumber the lease as security, provided that any pledge or encumbrance of the lease and the proposed holder of the pledge or encumbrance must be approved in advance by the Director and that a pledge or encumbrance may only grant the holder the right, in the event of a foreclosure, to assume the responsibilities of the lessee under the lease or to select a new lessee subject to the approval of the Director. Pledges or encumbrances may not grant the holder the right to alter or amend in any manner the terms of the lease.

(m) All leases entered into under this part will contain provisions stating to the effect that fulfillment of any obligations of the government under the lease is subject to the availability of appropriated funds. No lease issued under authority of this part shall entitle the lessee to claim benefits under the Uniform Relocation Assistance Act of 1970 (Pub. L. 91–646). All leases entered into under the authority of this part shall require the lessee to waive any such benefits. All leases entered into under this part shall contain provisions granting the Director and the Comptroller General access to the records of the lessee as necessary for lease administration purposes and/or as provided by applicable law.

§ 18.13 Have information collection procedures been followed?

(a) As required by 5 CFR 1320.8(d)(1), NPS is soliciting public comments as to: Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility; the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate electronic, mechanical, or other forms of information technology. A federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) The public reporting burden for the collection of information for the purpose of preparing a bid or proposal in response to a lease solicitation is estimated to average 40 hours per large proposal and 20 hours for small proposals or bids. Please send comments regarding this burden or estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: May 30, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–30866 Filed 12–11–00; 8:45 am]

BILLING CODE 4321–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA–00–01; FRL–6915–5]

Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM_{10}) Nonattainment Area

AGENCY: Environmental Protection Agency (EPA or we).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the public comment period on EPA's notice of proposed rulemaking "Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM_{10}) Nonattainment Area," published on November 16, 2000 at 65 FR 69275. The original comment period closed on December 1, 2000. The new comment period will begin today and end on December 27, 2000. EPA is also announcing that there will be an informational meeting to present an overview of the issues involved in the proposal and to provide an opportunity for the public to ask questions regarding the proposal.

DATES: All comments regarding EPA's proposed rulemaking published on November 16, 2000 must be received in writing on or before close of business on December 27, 2000.

ADDRESSES: Submit written comments to Donna Deneen, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. You may view documents supporting this action during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air Quality, at (206) 553–6706.

SUPPLEMENTARY INFORMATION: On November 16, 2000, we solicited public comment on a proposal to find that the Wallula nonattainment area has not attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM_{10}) by the attainment date of December 31, 1997, as required by the Clean Air Act. If EPA takes final action on this proposal, the Wallula PM_{10} nonattainment area will be reclassified by operation of law as a serious PM_{10} nonattainment area. *See* 65 FR 69275. In the proposal, we stated that EPA would accept public comments on the proposal until December 1, 2000.

During the public comment period that ended December 1, 2000, numerous commenters asked for an extension of the public comment period. In light of the significant public interest in the proposal, as evidenced by the letters EPA has received to date, we are extending the public comment period to December 27, 2000, to provide additional time for interested parties to submit written comments. All written comments received by EPA by December 27, 2000, will be considered in our final action.

In addition, based on the strong public interest in the proposal, there will be an informational meeting regarding the proposal. The meeting, which has not yet been scheduled, will provide an opportunity for EPA to explain to the community the basis for its proposal and an opportunity for the community to ask questions of EPA. Comments on the proposal must be submitted in writing to the EPA address listed above on or before December 27th, 2000. There will also be an opportunity to submit written comments at the informational meeting. The time, date, and location of the informational meeting will be announced in local newspapers.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: December 4, 2000.

Randall F. Smith,

Acting Regional Administrator, Region 10.

[FR Doc. 00–31615 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 61 and 69

[CC Docket No. 96–262; DA 00–2751]

CLEC Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks additional comment in connection with an ongoing FCC proceeding considering whether and how to reform the manner in which competitive local exchange carriers (CLECs) may tariff the charges for the switched local exchange access service that they provide to inter-exchange carriers (IXCs). Specifically, it seeks comment on the possibility of a rural exemption to a benchmarking mechanism under consideration and information about the level of CLEC access charges.

DATES: Submit comment on or before December 27, 2000.

Submit reply comments on or before January 11, 2001.

ADDRESSES: Send comments to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., SW., Room TW–A325, Washington, DC 20554. Or comments may be filed electronically via the Internet at *http://www.fcc.gov/e-file/ecfs.html.*

FOR FURTHER INFORMATION CONTACT: Scott K. Bergmann, 202–418–0940, or Jeffrey H. Dygert, 202–418–1500.

SUPPLEMENTARY INFORMATION: The FCC's Common Carrier Bureau (the Bureau) seeks comment on the following issues.

Scope of a Rural Exemption to Benchmarked Rates: Many of the comments previously submitted in the access charge reform docket have advocated establishing a benchmark for CLEC access charges so that charges at or below the benchmark would be presumed to be just and reasonable. These proposals have suggested a benchmark that could apply to a broad range of CLECs with widely varying cost characteristics and operating in many different markets.

It may be problematic to limit all CLECs to a single benchmarked rate, regardless of the characteristics of the market that they serve. Thus, the Commission has previously raised the prospect that a benchmark might vary depending on whether the CLEC serves high cost areas or low cost areas. The Bureau seeks additional comment on whether and how to create a "rural exemption" that would prevent a CLEC operating in a rural or high-cost areas from being subject to a benchmark that may be more appropriate for CLECs doing business in more concentrated, urbanized areas. Is such an exemption necessary? How should the Commission define the types of areas in which such a rural exemption would be available to CLECs? Can the definition be premised on the Communications Act's definition of "rural telephone company"? 47 U.S.C. 154(37). Should the exemption apply to all areas that fall outside of the defined metropolitan statistical areas? Should the availability of a rural exemption turn instead on the overall population density within a particular CLEC's service area, or should it turn on the density of the CLEC's customers within its service area? If population density is the appropriate factor, commenters are requested to propose what density figure should serve as the cut-off for the availability of a rural exemption and to explain why that number is the appropriate one. Should the Commission tie such and exemption to the presence, within the CLEC's service area, of a town or incorporated place with a certain population? Should a CLEC be required to qualify for and receive rural or high-cost universal service support before it could avail itself of such a rural exemption?

How should a rural exemption apply where, within a single service area, a CLEC serves customers that reside in areas of markedly different density? Is it feasible for a CLEC to charge different access rates within a single service area depending on the population density surrounding particular end users? Should the availability of such an exemption be determined by the actual location of a CLEC's customers or by the location of a CLEC's switch or some other portion of its network?

Should a rural exemption be tied to the volume of access traffic generated by a CLEC's customers? Thus, should a

CLEC serving primarily or exclusively a large institution, or some other high-volume user, qualify for the rural exemption? Alternatively, should the availability of the rural exemption be tied to the number or type of a CLEC's customers? The Bureau also solicits any additional comments that may bear on the appropriate definition or limitation of a rural exemption to benchmark rates for CLEC access service. Specifically, comment is invited on the proposed definitions for a rural exemption submitted, as ex partes in this docket, by the Rural Independent Competitive Alliance and by Sprint Corporation.

CLEC Access Rates: The Bureau seeks additional information on how CLEC access rates compare to ILEC rates. For example, should the multi-line business presubscribed interexchange carrier charge (PICC) or other charges be included in ILEC access revenue when comparing incumbents' and competitors' rates for switched access service? Additional specific information is also sought on the level of CLEC access rates. Thus, for example, interested parties are requested to file with the Commission surveys or other data regarding the range of access charges imposed by either CLECs or ILECs.

The Commission has previously conducted an initial regulatory flexibility analysis relating to the issue of CLEC access charges. Pricing Flexibility Order and Notice, 64 FR 51280 (Sept. 22, 1999). The Bureau invites further comment on it at this time. Additionally, the Bureau invites comment on significant alternatives for the reform of CLEC access charges that would: establish different compliance requirements for small entities; clarify, consolidate or simplify compliance requirements for small entities; or exempt small entities from coverage.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedures, Communications common carrier, telecommunications.

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Part 69

Communications common carriers, Access charges.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

[FR Doc. 00–31713 Filed 12–11–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 0002180448-0295-02; I.D. 013100A]

RIN 0648-AN59

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy for a Letter of Authorization (LOA) to take a small number of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL (DDG-81) in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. In order to authorize the take, NMFS must determine that the taking will have no more than a negligible impact on the affected species and stocks of marine mammals and issue regulations governing the take. NMFS proposes regulations to govern the take and invites comment on the application and the proposed regulations.

DATES: Comments and information must be postmarked no later than January 26, 2001.Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Address comments to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application and/or a list of references used in this document may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A limited number of copies of the Navy's Draft Environmental Impact Statement (DEIS) for conducting the shock trial are also available through this contact. To be placed on the mailing list for receiving a copy of the Final Environmental Impact Statement (FEIS), please contact Will Sloger, U.S. Navy, at (843) 820-5797.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713-2055, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On January 12, 2000, NMFS received an application for an LOA under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take a small number of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. A final decision on the location for the shock trial will be made by the Navy, based, in part, on findings and determinations made under the National Environmental Policy Act (NEPA).

Section 2366, Title 10, United States Code (10 U.S.C. 2366) requires realistic survivability testing of a covered weapon system to ensure the vulnerability of that system under combat conditions is known. (In this case, the covered weapon system is the USS WINSTON S. CHURCHILL.) Realistic survivability testing means testing for the vulnerability of the ship in combat by firing munitions likely to be encountered in combat with the ship configured for combat. This testing is commonly referred to as ≥Live Fire Test & Evaluation≥(LFT&E). Realistic testing by firing live ammunition at the ship or detonating a real mine against the ship's hull, however, could result in the loss of a multi-million dollar Navy asset. Therefore, the Navy has established an approved LFT&E program to complete the vulnerability assessment of ships as required by 10 U.S.C. 2366. The LFT&E program includes three major areas that together provide for a complete and comprehensive evaluation of the survivability of ships in a near miss, underwater explosion environment. These areas are computer modeling and analysis, component testing, and an at-sea ship shock trial. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions as only the at-sea shock trial can provide the real-time data necessary to fully assess ship survivability.

A shock test is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The USS WINSTON S. CHURCHILL is the third ship in a new Flight of 23 ARLEIGH BURKE (DDG 51)-class guided missile destroyers being acquired by the Navy. (A Flight is a subset of a class of ships to which significant modifications/upgrades have been made.) These ships are referred to as the Flight IIA ships and they represent the largest single upgrade to the original DDG 51-class destroyer.

The USS JOHN PAUL JONES (DDG 53) was shock tested off the coast of California in June 1994 to assess the survivability of the original DDG 51-class destroyer. Flight IIA ships are significantly different from the original DDG 51-class destroyers in their design. Major structural changes include the addition of a helicopter hangar, Vertical Launch System foundation changes, and raising the aft radar arrays. Major equipment changes include the addition of a ship-wide Fiber Optic Data Multiplexing System, a Zonal Electrical Power Distribution System involving the addition of switchboards and load centers throughout the ship, and the widespread use of commercial equipment in various mission critical systems to reduce the cost of the ships. Typically the lead ship of a new class or major upgrade is shock tested. The USS WINSTON S. CHURCHILL was selected as the shock trial ship because it has additional design changes that will not be included in the first two Flight IIA ships, and therefore, it is more representative of the Flight.

The Navy's proposed action is to conduct a shock trial of the USS WINSTON S. CHURCHILL at an offshore, deep-water location. The ship would be subjected to a series of three-four 4,536 kg (10,000 lb) explosive charge detonations sometime between 1 May and 30 September, 2001. Three detonations are needed to collect adequate data on survivability. A fourth detonation would be conducted by the Navy only if one of the planned three detonations fails to provide technically acceptable data (e.g., due to equipment failure or some other technical problem).

The ship and the explosive charge would be brought closer together with each successive detonation to increase the severity of the shock. This gradation in severity would ensure that the survivability of the ship and its systems is fully assessed and the point at which failure modes begin is accurately determined. It would also reduce the chance of significant damage at the highest severity detonation. The shock trial would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the ship's systems prior to the ship experiencing the next level of shock intensity.

Comments and Responses

On March 3, 2000 (65 FR 11542), NMFS published a notice of receipt of the Navy's application for a small take exemption and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC), the Humane Society of the United States (HSUS), and the Commonwealth of Virginia (Commonwealth). Because the MMC and the Commonwealth concerns were limited to statements made in the Navy's DEIS for shock testing, and not on the content of the Navy's LOA application, their concerns will be addressed in the Navy's FEIS for shock testing and not in this document.

Comment 1: The HSUS strongly objects to the Navy's de facto establishment of a physiological sound pressure level (SPL) definition of Level B (acoustic) harassment under the MMPA. The HSUS considers that temporary threshold shift (TTS) in the hearing of marine mammals subjected to noise from the detonation should be considered Level A harassment (i.e., injury), not Level B. The HSUS believes that cetaceans suffering from TTS could for some time fail to hear approaching boats or predators or fail to detect prey or mates. This, HSUS contends is clearly more than Level B harassment, which is any act that merely has the potential to disturb. The HSUS claims that this determination is precedent-setting.

Response: While NMFS agrees the Navy's establishment of an SPL definition for Level B harassment is precedent-setting, NMFS believes that TTS should be considered as Level B harassment. This is fully supported by the science as described in detail in the Navy DEIS and this document, and proceeds logically from the criteria used by the Navy in the FEIS for the USS SEAWOLF shock trial based upon scientific documentation provided in that latter document. In that regard, NMFS recommends reviewers compare the Navy's FEIS for the USS SEAWOLF shock trial and the DEIS for the USS WINSTON CHURCHILL shock trial.

NMFS scientists and other scientists are in general agreement that TTS is not an injury (i.e., does not result in tissue damage), but is a temporary impairment to hearing that may last from a few minutes to a few days, depending upon the level and duration of exposure. The Navy, in its DEIS and small take application, states that TTS could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. That these short-term effects would lead to increased mortality is speculative and, to our knowledge, unsupported scientifically. Lost feeding and mating opportunities is considered by NMFS to be Level B harassment takings if the response is significant for these biologically important activities.

Although science supports that TTS is not an injury (i.e., Level A harassment), because scientists have noted that a range of only 15-20 dB may exist between onset TTS and the onset of a permanent elevation in hearing sensitivity (termed permanent threshold shift (PTS)), which NMFS considers to be an injury (Level A harassment), TTS must be considered to be in the upper portion of the Level B harassment zone (near the lower level of the Level A harassment zone). However, even though TTS is not an injury placing it

in the upper level of the Level B harassment zone is precautionary.

NMFS recommends that commenters review Appendix E of the Navy's DEIS for the scientific basis supporting its determination that TTS is a Level B harassment taking and PTS is Level A harassment and provide NMFS with comments on this determination for consideration during this rulemaking.

Comment 2: The HSUS contends that neither the Navy's use of a received level of 182 dB (re 1 uPa²-sec) as the SPL that will induce TTS, nor that it represents a de facto definition of Level B harassment, has been subject to public notice or public comment prior to this Letter of Authorization (LOA) request.

Response: The use of an energy-based TTS-criterion of 182 dB (re 1 μPa²-sec) has been subject to public review previously. The rulemaking for the USS SEAWOLF shock trial (63 FR 66069, December 1, 1998), resulted in an improvement on the determinations made in regard to the shock trial for the USS JOHN PAUL JONES (59 FR 5111, February 3, 1994). In the USS SEAWOLF shock trial rulemaking NMFS concurred with the Navy's findings that, in terms of mammal hearing, a better measure for determining impacts may be total energy received in 1/3-octave frequency bands (i.e., the approximate filter bandwidth of the hearing system) within the integration time of the ear. NMFS determined that, as pulsed sound sources with differing peak pressures could deliver the same energy over a certain time period, the acoustic harassment criterion could be improved over the standard 160 dB (re 1 μPa @ 1 m) impulse measurement used during shock testing the USS JOHN PAUL JONES and other explosive detonation events. In the USS SEAWOLF rulemaking, NMFS determined that TTS meets the definitions of both Level A and Level B harassment found in the MMPA since, on a cellular level, TTS could be considered a very slight "injury" (i.e., Level A harassment) in the sense of damage to hair cells in the ear and since TTS is a temporary hearing loss, it could also lead to a temporary disruption of behavioral patterns (Level B harassment). Under the 182 dB (re 1 uPa²-sec (energy)) criterion, separate harassment ranges were calculated for odontocetes and mysticetes based on their differing sensitivity to low frequencies.

Following the USS SEAWOLF small take rulemaking, NMFS published a notice of issuance of an Incidental Harassment Authorization (IHA) to the U.S. Air Force for taking small numbers of dolphins incidental to explosives testing at Eglin Air Force Base (63 FR 67669, December 8, 1998). That document noted that NMFS considers harassment of marine mammals to occur (from an explosive-generated shockwave and its acoustic signature) between 5 psi-msec out to a transmission distance where a noise level of 180 dB re 1 uPa²-sec. (It should be noted that the Air Force used a level of 180 dB (re 1 uPa²-sec), because that was the level it used in its modeling for determining distances for safety zones.) Therefore, the area between those two levels (i.e., 5 psi-msec and 182 dB re 1 uPa²-sec) was considered as the zone of incidental harassment which would result in a non-injurious physiological response on the part of the mammals.

What is new in the current rulemaking is the Navy's interpretation that TTS should be considered only as Level B harassment and not as both a Level A and Level B harassment. That approach is fully explained in the Navy's DEIS, and especially in Appendix E of that document. NMFS believes that the information contained in the Navy's DEIS is the best scientific information to date on this subject and therefore concurs with the Navy's determination. During this rulemaking, NMFS welcomes comments relating to scientific determinations made on this issue.

Comment 3: HSUS is disturbed that NMFS has accepted the Navy's 182 dB criterion for TTS and that this indicates a change in its implementation of the MMPA, since the only previous mention of it was in a response to a comment on a proposed rule for shock testing the USS SEAWOLF.

Response: See the previous comment. Using 182 dB as the criterion for determining TTS was an integral part of the rulemaking for the USS SEAWOLF shock trial small take authorization. The Navy provided significant detail in its USS SEAWOLF DEIS and small take application to explain why using the 182 dB criterion was considered an improvement over use of a pressure-induced criterion of 160 dB, used previously for the shock trial of the USS JOHN PAUL JONES (59 FR 5111, February 3, 1994). NMFS subsequently adopted this information as the best scientific information available for assessing harassment impacts on marine mammal stocks from explosions during the shock trial of the USS SEAWOLF.

Comment 4: Based on the statement made in the previous two comments, the HSUS believes that this represents a significant change in implementation of the MMPA, and that prior notice and opportunity for public comment should have been given for this change pursuant to the requirements of section 553(b) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)). The HSUS states that NMFS' "acceptance" or "concurrence" with the Navy definition falls squarely within the definition of a "rule" in section 552 of the APA. To permit the continued acceptance and subsequent use of this standard is to acquiesce to a continuing violation of the letter and spirit of the APA.

Response: Because part of this proposed rulemaking is the criterion NMFS proposes to use to determine levels of harassment and injury incidental to takings of marine mammals by the USS WINSTON CHURCHILL shock trial there is no violation of section 553(b) of the APA. NMFS invites comment on the criterion for assessing impacts from explosives on marine mammals.

Comment 5: The HSUS also notes that the Navy is using a received level of 182 dB (re 1 uPa²-sec) as the SPL that will induce TTS in cetaceans and therefore is the outer SPL for Level B harassment. This SPL is unsubstantiated empirically (i.e., the threshold of hearing in many cetaceans is unknown and certainly the SPL that will induce TTS has never been measured).

Response: NMFS clarifies that it and the Navy are using a dual criterion of (1) an energy-based TTS criterion of 182 dB (re 1 uPa²-sec) in any 1/3 octave band, and (2) 12 psi peak pressure, cited by Ketten (1995) as associated with "a safe outer limit for the 10,000 lb (4,536 kg) charge for minimal, recoverable auditory trauma" (i.e., TTS). The harassment range is the minimum distance at which neither criterion is exceeded. However, the 182 dB energy criterion is usually the determining factor in the calculated ranges (Navy, 1999, Appendix E).

While NMFS agrees that the SPL that would cause TTS in cetaceans by explosives has not been tested empirically on live cetaceans, for reasons explained in the application and in detail in the Navy's DEIS on this action, the Navy has calculated TTS from explosives based upon empirical research on bottlenose dolphins and white whales conducted by Ridgway *et al.* (1997) and Schlundt *et al.* (2000). NMFS believes that this is the best scientific information available to date on this issue. Because Ridgway *et al.* (1997) and Schlundt et al. (2000) determined the SPL where TTS first begins (i.e., full recovery of hearing occurred within a few minutes), NMFS believes that establishing a level for TTS at onset of that impairment, is precautionary.

Comment 6: The HSUS requests NMFS deny the Navy's LOA request until such time as the Navy completes a revised DEIS and in fact completes a FEIS.

Response: NMFS does not believe that delaying the small take authorization process until completion of NEPA documentation, as suggested by the HSUS, would be appropriate. Both the Council on Environmental Quality regulations (40 CFR 1502.5(d)) and NOAA's NEPA guidelines provide for proposed regulations to accompany a draft NEPA document. As a cooperating agency in the preparation of the DEIS, which NMFS may adopt as its own NEPA document, the Navy's DEIS is the key NEPA document for the NMFS action. Not beginning the small take authorization/regulatory process until completion of NEPA requirements would lead to unnecessary and potentially extensive delays in processing applications, a key problem previously recognized by Congress in 1994, when it amended the MMPA to expedite small take authorizations. However, under NEPA, NMFS may not make final regulations governing the taking of marine mammals, incidental to the shock testing the USS WINSTON CHURCHILL, effective for at least 30 days after the U.S. Navy releases a FEIS for the shock trial.

Description of Habitat and Marine Mammals Affected by Shock Testing

A description of the U.S. Atlantic and Gulf of Mexico coast environment, its marine life and marine mammal abundance, distribution and habitat can be found in the DEIS on this subject and is not repeated here. Additional information on Atlantic and Gulf coast marine mammals can be found in Waring *et al.* (1999).

Affected Marine Mammals

A summary of the marine mammal species found in each of the three areas which may be selected by the Navy for shock testing is presented here. A complete list of potentially affected marine mammal species can be found later in this document. For more detail on marine mammal abundance, density and the methods used to obtain this information, reviewers are requested to refer to either the Navy application or the Navy's DEIS.

Mayport, FL

Up to 29 marine mammal species may be present in the waters off Mayport, FL, including seven mysticetes and 22 odontocetes. Mysticetes are unlikely to occur at Mayport during the May through September time period. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, four species of beaked whales, and 15 species of dolphins and porpoises.

Norfolk, VA

Up to 35 marine mammal species may be present in the waters off Norfolk, VA, including 7 mysticetes, 27 odontocetes, and 1 pinniped. The fin whale is the mysticete most likely to occur in the test area. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, six species of beaked whales, and 18 species of dolphins and porpoises.

Pascagoula, MS

Up to 29 marine mammal species may occur in the waters off Pascagoula, MS, including seven mysticetes, 21 odontocetes, and one exotic pinniped. With the exception of Bryde's whale, mysticetes are considered unlikely to occur at Pascagoula. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, four species of beaked whales, and 14 species of dolphins and porpoises.

Potential Impacts to Marine Mammals

Mortality and Injury

Potential impacts on several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Marine mammals may be killed or injured as a result of the explosive blast due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are more likely to be most severe in near surface waters above the detonation point where the reflected shock wave creates a region of negative pressure called "cavitation." This is a region of near total physical trauma within which no animals would be expected to survive. Based on calculations in Appendix D of the Navy's DEIS, the maximum horizontal extent of the cavitation region is estimated to be 683 meters (m) (2,240 ft). This region would extend from the surface to a maximum depth of about 23 m (77 ft). A second criterion for mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range. The range predicted for a small marine mammal (e.g., a dolphin calf) is 1.35 kilometers (km) (0.73 nautical miles (nm)) from the detonation point. For estimating the impact from the detonation(s), NMFS and the Navy presume that 100 percent of the marine mammals within this radius would be killed, even though larger mammals may survive their injury from the shock wave.

NMFS and the Navy have established a dual criteria for determining non-lethal injury: (1) The onset of slight lung hemorrhage, and (2) a 50-percent probability level for eardrum rupture. These are injuries from which animals would be expected to recover on their own. The range predicted for the onset of slight lung hemorrhage is 2.25 km (1.22 nm). The range predicted for 50-percent probability of eardrum rupture varies with the mammal's depth in the water column; the highest value being 2.16 km (1.17 nm) for a mammal at a depth of 335 m (1,100 ft). The criterion with the greater range (onset of slight lung hemorrhage) was used to estimate the number of potential non-lethal injuries. It is presumed that 100 percent of the marine mammals within this radius would be injured.

Some percentage of the animals with eardrum rupture or slight lung hemorrhage could eventually die from their injuries. However, as noted previously, the mortality calculation based on extensive lung hemorrhage presumes that 100 percent of the animals within a radius of 1.35 km (0.73 nm) would be killed. At that range, the probability of eardrum rupture would be less than 50 percent and the threshold for onset of slight lung hemorrhage would be exceeded only in the upper 61 m (200 ft) of the water column (Navy, 2000). While all animals within this radius are assumed to be killed, in reality some are unlikely to be even injured.

Finally, the Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur.

Incidental Harassment

TTS has been defined by NMFS as one form of harassment (60 FR 28379, May 31, 1995). TTS is a change in the threshold of hearing (the quietest sound an animal can hear), which could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. As such, it could result in a temporary disruption of behavioral patterns, as specified in the statutory definition of Level B harassment.

Since the small take authorization and Navy's FEIS for the USS SEAWOLF shock trial (63 FR 66069, December 1, 1998), the Navy has conducted an extensive analysis of the scientific literature, producing a good perspective on the physiological effects of TTS as well as its use in human damage risk criteria (DRC) by the Occupational Health and Safety Administration and in the National Institute for Occupational Safety and Health's (NIOSH) Criteria for Recommended Noise Standard (NIOSH, 1998). The best research to date indicates that the distortion and dysfunction of sensory tissue observed during TTS are only temporary and fully reversed upon recovery (i.e., occasional TTS produces no permanent tissue damage to the ear, only the temporary nondestructive impairment of tissue that fully recovers). This type of temporary nondestructive impairment as well as the use of TTS in human DRC are the scientific basis for no longer considering TTS as Level A harassment. Therefore, NMFS and the Navy concur that an impairment of hearing-related behavior during periods of TTS is the most reliable and meaningful estimate of Level B harassment for explosive detonation events.

Based upon information provided in the Navy's application for a small take authorization and in greater detail in Appendix E of the Navy's DEIS, a dual criterion for Level B acoustic harassment has been developed: (1) an energy-based TTS criterion of 182 dB re 1 uPa^2-sec derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 lbs/in^2 (psi) peak pressure cited by Ketten (1995) as associated with a "safe outer limit for the 10,000 lb (4,536 kg) charge for minimal, recoverable auditory trauma" (i.e., TTS). The harassment range, therefore, is the minimum distance at which neither criterion is exceeded.

Using the 182 dB (re 1 uPa^2-sec) criterion, the Navy calculated separate ranges for odontocetes and mysticetes based on their differing sensitivity to low frequency sounds. For those odontocetes which are "high-frequency specialists," all frequencies greater than or equal to 100 Hz were included. For mysticetes, which are "low-frequency specialists," the frequency range was extended down to 10 Hz. Water depth is also an important factor in calculating harassment ranges. However, regardless of water depth, the Navy chose the highest values for TTS harassment ranges. Expected numbers of marine mammals within these radii (and thereby potentially receiving a TTS harassment impact) were calculated using the mean densities for the species expected in each area, and adjusting those estimates to account for submerged (undetectable) individuals. These ranges are as follows:

	Odontocetes	*Mysticetes*
Mayport	13.3 - 25.2 km (7.2 - 13.6 nm)	24.7 - 27.8 km (13.0 - 15.0 nm)
Norfolk	16.7 - 32.8 km (9.0 - 17.7 nm)	25.9 - 42.6 km (14.0 - 23.0 nm)
Pascagoula	15.9 - 24.6 km (8.6 - 13.3 nm)	22.8 - 29.6 km (12.3 - 16.0 nm)

Estimated Level of Marine Mammal Takings

While the Navy does not expect that any lethal takes will result from these detonations (because of mitigation measures taken), calculations indicate that the Mayport site has the potential to result in up to 4 mortalities, 6 non-serious injuries, and 2,885 takings by harassment. The Norfolk site has the potential to result in 7 mortalities, 12 non-serious injuries, and 14,640 takings by harassment. The Pascagoula site has the potential to result in up to 3 mortalities, 4 injuries, and 3,132 takings by harassment.

Summary of Proposed Mitigation and Monitoring Measures

The Navy's proposed action includes mitigation and monitoring that would minimize risk to marine mammals and sea turtles. These mitigation and monitoring measures are as follows:

(1) Through pre-detonation aerial surveys, the Navy would select a primary and two secondary test sites within the test area where potentially, marine mammals and sea turtle populations are the lowest, based on the results of aerial surveys conducted one to two days prior to the first detonation;

(2) Pre-detonation aerial monitoring would be conducted on the day of each detonation to evaluate the primary test site and verify that the safety range and buffer zone are free of visually detectable marine mammals and other critical marine life (If marine mammals are detected in the primary test area, the Navy proposes to survey the secondary areas for marine mammals, and may move the shock test to one of the other two sites);

(3) Independent marine mammal biologists and acousticians would monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if (a) any marine mammal, sea turtle, large sargassum raft or large concentration of jellyfish is visually detected within a safety zone of 3.7 km (2.0 nm), (b) any marine mammal is acoustically detected within a safety zone of 4.16 km (2.25 nm), or (c) any large fish school, or flock of seabirds is detected within a safety zone of 1.85 km (1 nm);

(4) The area would be monitored visually (aerial and shipboard monitoring) and acoustically before each test and detonation would not occur if any marine mammal or sea turtle is within a buffer zone of an additional 1.85-km (1.0-nm) buffer zone, unless the marine mammals are on a course within the buffer zone that is taking them away from the 3.7-km (2.0-nm) safety zone, except that detonation would not occur if a listed marine mammal is detected within the buffer zone, and subsequently cannot be detected, until sighting and acoustic teams have searched the area for 2.5 hours (approximately 3 times the typical large whale dive duration). If a northern right whale is seen, detonation would not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present;

(5) Detonation would not occur if the sea state exceeds 3 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), or the visibility is not 5.6 km (3 nm) or greater, and the ceiling is not 305 m (1,000 ft) or greater;

(6) Detonation would not occur earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for pre- and post-detonation monitoring; and

(7) The area would be monitored for 48 hours after each detonation, and for 7 days following the last detonation, to find, document and track any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as a result of the test, or if any marine mammals or sea turtles were observed in the safety range immediately after a detonation, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

Detailed descriptions of the measures for mitigation and monitoring the shock test can be found in Section 5 of the Navy's DEIS.

Reporting

Within 120 days of the completion of shock testing, the Navy would submit a final report to NMFS. This report would include the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Costs and Benefits

In addition to allowing the Navy to take a small number of marine mammals incidental to conducting the shock trial, this rule would require the Navy to provide NMFS and the public with information on the shock trial's effect on the marine environment, especially on marine mammals. Besides the improved survivability of U.S. armed forces at sea and the Navy's multi-billion dollar ship assets, this rule would result in NMFS and the public being provided this information. NMFS believes that obtaining this information is extremely important because shock trials are not the only explosive noise source in the world's oceans, and the scientific findings resulting from monitoring is likely to be directly applicable to future activities. Also, the mitigation measures for protecting marine mammals, sea turtles and other marine life that would be required by the rule will result in a substantial reduction in impacts on these animals. Without these regulations, these mitigation measures could not be required to be undertaken by the U.S. Navy. Also, the cost to the Navy to comply with the mitigation and monitoring measures that would be required by this rule cannot be fully determined at this time. NMFS believes that the cost would be approximately $1 million.

NEPA

On December 10, 1999 (64 FR 69267), a notice of availability of the Navy DEIS was published. The public comment for that document was extended until March 31, 2000, by notification in the **Federal Register** (65 FR 4236). NMFS is a cooperating agency, as defined by the CEQ (40 CFR 1501.6), in the preparation of this DEIS.

Endangered Species Act (ESA)

The U.S. Navy requested consultation with NMFS under section 7 of the ESA on this action. In that regard, NMFS concluded consultation with the Navy on this activity on October 10, 2000. If an authorization to incidentally take listed marine mammals is issued under the MMPA for this action, NMFS will complete consultation under the ESA on the regulations and the LOA and issue an Incidental Take Statement under section 7 of the ESA.

Preliminary Conclusions

Based on the scientific analyses detailed in the ONR DEIS and the Scripp' application, NMFS has preliminarily concluded that the incidental taking of marine mammals resulting from the shock trial of the USS WINSTON CHURCHILL in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS would result in only small numbers (as the term is defined in § 216.103) of marine mammals being taken, have no more than a negligible impact on the affected marine mammal stocks or habitats and not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals.

Information Solicited

NMFS requests interested persons to submit comments on the proposed regulations and on the Navy's application for taking marine mammals incidental to conducting the shock trial. NMFS requests that commenters review the Navy's application and not just submit comments based solely on this document.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It will also affect a small number of contractors providing services related to reporting the impact of the shock trial on marine mammals. Some of the affected contractors may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Accordingly, the analytical requirements of the Regulatory Flexibility Act (RFA) do not apply and a a regulatory flexibility analysis has not been prepared.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, Natioal Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart N is revised to read as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Sec.

Subpart N—Taking of Marine Mammals Incidental to Shock Testing the USS WINSTON S. CHURCHILL by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

216.151 Specified activity, geographical region, and incidental take levels.
216.152 Effective dates.
216.153 Permissible methods of taking; mitigation.
216.154 Prohibitions.
216.155 Requirements for monitoring and reporting.
216.156 Modifications to the Letter of Authorization.

Subpart N—Taking of Marine Mammals Incidental to Shock Testing the USS WINSTON S. CHURCHILL by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the U.S. Atlantic Coast or Gulf of Mexico offshore Mayport, FL, Norfolk, VA, or Pascagoula, MS, for the purpose of shock testing the USS SEAWOLF.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Blue whale (*Balaenoptera musculus*); fin whale (*B. physalus*); sei whale (*B. borealis*); Bryde's whale (*B. edeni*); minke whale (*B. acutorostrata*); humpback whale (*Megaptera novaeangliae*); northern right whale (*Eubalaena glacialis*); sperm whale (*Physeter macrocephalus*); dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whales (*Globicephala melas, G. macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); Pantropical spotted dolphin (*S. attenuata*); striped dolphin (*Stenella coeruleoalba*); spinner dolphin (*S. longirostris*); Clymene dolphin (*S. clymene*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); killer whale (*Orcinus orca*); false killer whale (*Pseudorca crassidens*); pygmy killer whale (*Feresa attenuata*); Fraser's dolphin (*Lagenodelphis hosei*); harbor porpoise (*Phocoena phocoena*); melon-headed whale (*Peponocephala electra*); northern bottlenose whale (*Hyperoodon ampullatus*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); Sowerby's beaked whale (*M. bidens*); True's beaked whale (*M. mirus*); common dolphin (*Delphinus delphis*); Atlantic white-sided dolphin (*Lagenorhynchus acutus*); and harbor seals (*Phoca vitulina*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total of no more than 7 mortalities, 12 injuries, and 14,640 takings by harassment for detonations in the Norfolk, VA area; 4 mortalities, 6 injuries, and 2,885 takings by harassment in the Mayport area; or 3 mortalities, 4 injuries, and 3,132 takings by harassment at the Pascagoula site, except that the taking by serious injury or mortality for species listed in paragraph (b) of this section that are also listed as threatened or endangered under § 17.11 of this title, is prohibited.

§ 216.152 Effective dates.

Regulations in this subpart are effective from April 1, 2001, through September 30, 2001.

§ 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, injury or mortality in the course detonating up to 4 4,536 kg (10,000 lb) conventional explosive charges within the area described in § 216.151(a) provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or within the buffer zone prescribed in the Letter of Authorization and on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone or on a course within the buffer zone that is taking them away from the safety zone.

(2) If a marine mammal listed under the Endangered Species Act is detected within the buffer zone, and subsequently cannot be detected, detonation must not occur until sighting and acoustic teams have searched the area for 2.5 hours.

(3) If a northern right whale is seen, detonation must not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present;

(4) If weather and/or sea conditions as described in the Letter of Authorization preclude adequate aerial surveillance, detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(5) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the appropriate Regional Director at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, 48-72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(f) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS WINSTON S. CHURCHILL. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.156 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.151(a), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

[FR Doc. 00–31624 Filed 12–11–00; 8:45 am]

BILLING CODE: 3510–22–S

Notices

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on January 8 and 9, 2001.

DATES: Monday, January 8, 2001, from 9 a.m. to 5 p.m., and Tuesday, January 9, 2001 from 8:30 a.m. to 5 p.m..

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Monday, January 8, 2001, from 9 a.m. to 5 p.m., and Tuesday, January 9, 2001, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2000 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2001 pension actuarial examination and the May 2001 basic actuarial examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2000 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 8 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m.. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 30, 2000, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SC:DOP, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: November 27, 2000.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 00–31502 Filed 12–11–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Provincial Advisory Committees

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of advisory committee renewal.

SUMMARY: In response to the continued need of the Department of Agriculture and the Department of the Interior for advice on coordination and implementation of the Record of Decision of April 13, 1994, for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, the Departments have renewed the Provincial Advisory Committees for 12 provinces. The purpose of the Provincial Advisory Committees is to provide advice on coordinating the implementation of the Record of Decision and to make recommendations promoting the integration and coordination of forest management activities between Federal and non-Federal entities.

FOR FURTHER INFORMATION CONTACT: Jonathan Stephens, Planning Specialist, Forest Service, USDA, (202) 205–0948.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Department of Agriculture, in consultation with the Department of the Interior, has renewed the Provincial Advisory Committees (PACs), which will advise the Provincial Interagency Executive Committee (PIEC). The purpose of the PIEC is to facilitate the coordinated implementation of the Record of Decision of April 13, 1994. The PIEC consists of representatives of the following Federal agencies: the Forest Service, the Bureau of Land Management, the Fish and Wildlife Service, the National Marine Fisheries Service, the National Park Service, the Bureau of Indian Affairs; the Environmental Protection Agency, the Army Corps of Engineers, the Natural Resource Conservation Service, and the Geological Survey's Biological Resources Division.

Ecosystem management at the province level requires improved coordination among governmental entities responsible for land management decisions and the public those agencies serve. The PACs provide advice and recommendations to promote integration and coordination of forest management activities between Federal and non-Federal entities. Each PAC will provide advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province (provinces are defined in the Record of Decision at E–19).

The chairing responsibility of the PACs will alternate annually between the Forest Service's and the Bureau of Land Management's representative. When the Bureau of Land Management is not represented on the PIEC, the Forest Service representative will serve as chair. The chair, or a designated agency employee, will serve as the Designated Federal Official under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.).

The renewal of the PACs does not require an amendment of Bureau of Land Management or Forest Service planning documents because the renewal does not affect the standards and guidelines or land allocations. The Bureau of Land Management and Forest Service will provide further notices, as needed, for additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the Record of Decision.

Equal opportunity practices are followed in all appointments to the advisory committees. To ensure that the recommendations of the PACs have taken into account the needs of diverse groups served by the Departments, membership will include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: October 23, 2000.

Paul W. Fiddick,

Assistant Secretary for Administration.

[FR Doc. 00–31538 Filed 12–11–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request the reinstatement and revision of a previously approved information collection. This information is used by CCC and FSA to issue payments or other disbursements. The program under which payments are made are authorized by the Agricultural Act of 1970, the Commodity Credit Corporation Charter Act, the Food Security Act of 1985, and the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before February 12, 2001 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David Tidwell, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–4542.

SUPPLEMENTARY INFORMATION:

Title: Payer's Request for Identifying Number.

OMB Control Number: 0560–0121.

Expiration Date: October 31, 2000.

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: In order to provide the Internal Revenue Service with proper identification for the processing of tax returns, all producers who receive CCC and FSA program payments must provide FSA with a social security, employer, or IRS identifying number. Form CCC–343, Payer's Request for Identifying Number, will collect this information without regard to whether the payee is required to file a tax return or is covered by social security.

The county FSA office prepares a CCC–343 for each producer who has not furnished a producer ID number. Once the ID number is obtained and provided to the county FSA office, the producer is not requested to provide this information again.

FSA does not make any program payment until a producer furnishes a social security, employer, or IRS identifying number.

Identification of producers allows FSA to provide IRS with identifying numbers for tax collection purposes. Section 6676 of the Internal Revenue Code provides a penalty for failure to furnish an identifying number to a payer required to report such number to the Service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .08 (5 minutes) per response.

Respondents: Producers.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 250 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to David Tidwell, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–2415, (202) 720–4542.

Copies of the information collection may be obtained from David Tidwell at the above address.

Signed at Washington, DC, on December 5, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–31623 Filed 12–11–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Proposed Change in Price Support Differentials for Flue-Cured Tobacco, and Invitation to Comment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to set price support differentials for the 2001 crop of flue-cured tobacco, that, because of market conditions, would provide a zero price support rate for tobacco that has not been cured in barns with an

indirect heat source. In order that tobacco can be duly valued for price support purposes, farmers will, if the proposal is adopted, be required to certify whether their barns have an indirect heat source.

DATES: Comments on this proposal should be received by December 27, 2000 to be assured of consideration and should be directed to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Charles Hatcher, Director, Tobacco and Peanuts Division, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0574, Washington, DC 20250–0514, telephone (202) 720–0156 or FAX (202) 418–4270.

SUPPLEMENTARY INFORMATION: Quotas for tobacco production are administered under the Agricultural Adjustment Act of 1938, 7 U.S.C. 1281 *et seq.* Where quotas for a kind of tobacco have been approved by producers of that kind of tobacco, price support is made available for that tobacco under the terms and conditions of Section 106 the Agricultural Act of 1949, 7 U.S.C. 1421, *et seq.* Flue-cured tobacco is one of the kinds of tobacco for which quotas have been approved. Regulations for governing price support and quotas for tobacco are found at 7 CFR parts 723 and 1464.

Price support is made available through non-recourse loans to farmers through a designated producer-member association, which in the case of flue-cured tobacco is the Flue-Cured Tobacco Stabilization Corporation (Stabilization). As such, the loans do not have to be repaid, but rather the tobacco is placed in Stabilization's inventory and Stabilization then attempts to sell the tobacco for the highest price possible. Losses on inventory tobacco are covered by assessments levied against all producers (and buyers) of flue-cured tobacco, irrespective of, in the case of producers, whether that individual producer placed any tobacco under a price support loan.

The average loan rate for the tobacco is set for each crop year under a formula which is set out in Section 106 of the 1949 Act, but, in making those loans, variations for location and other factors are made in the loan amount which is available for an individual lot of tobacco. Such variations in the price support level are known as "differentials". They are provided for explicitly in Section 403 of the 1949 Act, which is found at 7 U.S.C. 1423. That section was suspended for commodities other than tobacco for the 1996–2000 crops by Section 171 of the Agricultural Market Transition Act (AMTA), Public Law 104–127, but remains in force for tobacco. Under the provisions of section 403 of the 1949 Act, the Secretary may (and the Secretary has done so consistently for many years) make appropriate adjustment in the support price for differences in grade, type, quality, location and other factors. The adjustments must, insofar as practicable, be made in such manner that the average support price for the commodity will, on the basis of the anticipated incidence of such factors, be equal to the national average level of support determined in accordance with section 106 of the 1949 Act. Using this authority, differentials are established each crop year for quota tobaccos, by kind.

This notice proposes to change the flue-cured tobacco price support differentials effective for the 2001 crop year to provide for differing valuations of tobacco based on the heat source of the barn in which the tobacco is cured. Specifically, it is proposed in this notice that the differentials for the upcoming crop year be adjusted so that flue-cured tobacco cured in barns which use a direct heat source would have a price support value of zero. For ease of reference, and for reasons which are explained below, those barns with a direct heat source will be referred to as "un-improved" barns and those with an indirect heat source will be identified as "improved" barns. However, those barns which have been built with an indirect heat source would, of course, be treated the same as those which have been converted, or "improved" by changing the heat source from a direct source to an indirect source.

The change in differentials set out in this notice is being proposed at the request of Stabilization, the producer-owned association. According to Stabilization, buyers in recent years have increasingly been concerned about flue-cured tobacco cured in barns with direct heat sources because of the desire of buyers to reduce nitrosamines which can form through direct heating. Due to those concerns and as part of a long-term effort to reduce nitrosamines, Stabilization has informed USDA that buyers will no longer, effective with the 2001 crop, buy tobacco cured using direct heat; that is, Stabilization has indicated that the market value of direct-heated tobacco is zero. Recently, however, by a joint enterprise between tobacco buyers and Stabilization, farmers have been provided funding to convert their barns from direct heat to indirect heat.

In the meantime, however, because of these buyer preference and demands, producers, through their association (Stabilization), have requested that the price support value of the tobacco produced in un-improved barns be zero because otherwise, it is feared, the tobacco will go into the price support inventory, will not be marketable, and will produce losses that must be borne by all producers together in the form of the higher "no net cost assessments," referred to above, which, under the terms of the 1949 Act, are designed to help assure that the tobacco program is operated at no net cost to the public other than the costs associated with price support programs in general. Since there is no indication that the market price of the tobacco will be greater than zero, this notice proposes adopting the suggestion of the producer association. However, in proposing to set the differentials at zero for tobacco produced in un-improved barns, the Department is not making a determination about the benefits of, or need for, barn improvement, or even whether the general trends in barn improvement are a good idea or a bad idea. Rather, the differential determination is made on the expected actual market price for tobacco produced in the un-improved barns, taking into account the assessment of that price being made by the producer association itself. It is realized, however, that this determination may involve difficulty for some farmers who do not, or can not, make the improvements to their barns despite the incentives being offered in the industry to make that change. For that reason, comment on this proposal is requested. While all comments are welcome and solicited, respondents should, in particular, address the question of whether tobacco in un-improved barns will, in fact, have a market value for the upcoming crop year. It bears emphasizing that irrespective of the outcome of the proposal set out in this notice, tobacco produced in direct-heated barns will still be, at least technically, elfgible for price support in that the tobacco will meet the minimum requirement that tobacco must meet to generate a price support loan as set out in part 1464. However, of course, this will not be of much value to the farmer, in terms of loan access since the loan value assigned the tobacco would be zero, or, perhaps, close to zero Because this is strictly a price determination, it does not appear that any change to program regulations, such as the regulation at 7 CFR 1464.8 dealing with tobacco eligibility standards, needs to be made on an emergency basis to make the change set forth in this notice. Likewise, whether or not the differential proposal is adopted, this action will not prohibit tobacco from un-improved barns from being marketed to buyers which of itself would mitigate an error in determining the market value of the tobacco given that if the market value of the tobacco is greater then zero, producers will be free to market the tobacco at whatever price the market will be bear. Such marketings, if they do produce a return greater than zero, will at least indirectly benefit from the price support system because that system aids the market price of all tobacco by lifting the price for competing producers of the same kind of domestic tobacco.

In order to assure that there are no loan losses, the proposal will require certifications by producers of whether their tobacco has or has not been produced in improved barns. For these purposes, an improved barn would be any barn which has been retrofitted under the association's program or which otherwise have been built with, or improved to include, the technology that produces the market-preferred tobacco. In making this proposal, the Department wished to emphasize that it would be preferable if accommodations could be made within the industry to allow disadvantaged farmers extra time to complete barn improvements or to provide greater funding so that this change in market arrangements will produce less harm. To that end, the comments, which would include comment from the associations, and others interested in this issue, on whether there will be efforts made to provide for such assistance and on whether such considerations should be taken in consideration in setting the differentials. However, it should be understood that if the market value of the tobacco is indeed zero and despite that market value, no change was made in the differentials, this would mean not only that there would likely be loan losses but that because of those losses it would be necessary to increase tobacco assessments immediately (that is, for the 2001 crop) to cover such losses, as required by the 1949 Act. Such assessments could be considerable.

Following the receipt of the comments, the Secretary will take such action as may be warranted, taking into account the comments and any other information as may be relevant.

Proposed Change in Differentials for Flue-Cured Tobacco: Accordingly, it is proposed with respect to the 2001 and subsequent crops of flue-cured tobacco that the differentials for such tobacco provide (1) that the price support low value of tobacco produced in a barn without an acceptable indirect heat source for curing should be zero and (2) that producers should be required to certify in a manner acceptable to CCC whether their tobacco which is presented for a price support loan has been cured in a barn with an acceptable heat source. Such certifications may be tied to a program of barn improvement implemented by Stabilization as needed to assure a proper valuation of the tobacco for price support purposes.

Signed at Washington, DC, on December 7, 2000.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–31673 Filed 12–7–00; 4:54 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Horsethief

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for the Horsethief project, Sierra National Forest Fresno County, California.

DATES: The public is asked to submit any issues regarding potential effects of the proposed action or alternatives by January 15, 2001.

ADDRESSES: Send written comments to Ray Porter, District Ranger, Pineridge/ King River Ranger District, P.O. Box 559, Prather, California 93651.

FOR FURTHER INFORMATION CONTACT: Kim Sorini-Wilson, Team Leader at (559) 855–5355, or e-mail ksorini@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background and Early Public Involvement

In 1995, the NEPA process for Horsethief began; knowing the main focus would be to re-introduce fire into the ecosystem with fuels reduction through timber harvest. A letter was sent to the public, requesting preliminary input in defining the characteristics of a healthy and viable ecosystem and to assist in planning projects that would achieve those characteristics. Two public field trips to Horsethief occurred in June 1995 and specialists began gathering information about existing condition. A conscious decision was made by the Forest Supervisor to defer planning efforts in order to better understand ecosystem management. An ecosystem management plan was prepared and signed in June of 1997. The Plan is titled Horsethief Ecosystem Analysis Plan. From this Ecosystem Analysis an Environmental Assessment titled Horsethief Environmental Assessment was completed and sent out for comments in December 1999; with the comments received and new scientific information it was decided to prepare an Environmental Impact Statement. No additional public meetings are anticipated.

Proposed Action

The proposed action is to reintroduce fire, improve forest health, manage stand structure and density for the survival and growth of conifer/oak seedlings and reestablish conifers while providing desired spotted owl habitat within Spotted Owl Habitat Area (SOHA #14, FR031).

The need is due to the high risk of stand replacing fire, the potential loss to the current investment (plantations) from fire and disease, and the potential for fires to exceed the boundaries of one watershed. A current fire risk analysis has shown this watershed to be at high risk for a stand replacing fire.

The need for forest health improvement is due to high tree densities are increasing tree stress, susceptibility to stand replacing fire, susceptibility of insect attack and disease; and plantations are at risk to increased infestations of mistletoe from infected mistletoe trees.

The need to improve the habitat conditions of SOHA #14 is due to lack of nesting habitat, excessive foraging habitat, vegetation conditions are not appropriate for increasing non-overlapping canopy cover, and previously harvested areas are not providing nesting or foraging habitat.

The proposed activities are consistent with the LRMP and the Horsethief Ecosystem Analysis Plan. The project prescriptions will be following California Spotted Owl (CASPO) guidelines (USDA 1993) and the recommended direction suggested in the Regional Forester's letter of May 1, 1998.

Preliminary Alternatives to the Proposed Action

To comply with NEPA, the Forest Service will evaluate alternatives to the proposed action within the EIS, including No Action and other alternatives responding to public comments. Each alternative will be rigorously explored and evaluated, or

rationale would be given for eliminating an alternative from detailed study. The range of alternatives to be considered would include, but not be limited to:

1. Fuels reduction and forest health—Fire is reintroduced through (1) thinning to prepare for burning; (2) the creation of DFPZs to assist in burning and to maintain fires to one watershed; (3) underburning conifer stands; (4) patch burning chaparral stands. Forest health is achieved through thinning and by removing mistletoe infested trees to reduce the risk of plantation loss from disease. The SOHA will not be entered under this alternative.

2. Fuels reduction, forest health and SOHA enhancement—Under this alternative all the activities listed above would occur and in SOHA #14 desired spotted owl habitat is created by (1) increasing canopy cover through conifer regeneration; and (2) maintaining potential nest trees. Stand structures within SOHA #14 are managed to provide desired spotted owl habitat while providing for the reintroduction of fire.

3. Fuels reduction, forest health and SOHA enhancement activities are conducted while maintaining or enhancing landscape level connectivity and stand level structure (denning, resting and foraging habitat) for the fisher.

The public will be invited to participate in the scoping process, and review of the draft environmental impact statement (DEIS). Comments from the public and other agencies will be used in preparation of the DEIS. The draft environmental impact statement is expected to be available for public review and comment in March 2001 and a final environmental impact statement in June 2001. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental state may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 409 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 5, 2000.

James L. Boynton,

Forest Supervisor.

[FR Doc. 00–31535 Filed 12–11–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1132]

Grant of Authority for Subzone Status; Coastal Fuels Marketing, Inc. (Petroleum Products Storage Facility), Port Everglades, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port Everglades Department of Broward County, Florida, grantee of FTZ 25, for authority to establish special-purpose subzone status at the petroleum products storage facility of Coastal Fuels Marketing, Inc. (Coastal) in Port Everglades, Florida, was filed by the Board on March 15, 2000, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 9–2000, 65 FR 15304, 3/22/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 25C) at the petroleum products storage facility of Coastal Fuels Marketing Inc., in Port Everglades, Florida, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–31495 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 65–2000]

Foreign-Trade Zone 27—Boston, Massachusetts; Application for Subzone, AstraZeneca LP (Pharmaceutical Products), Westborough, MA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority, grantee of FTZ 27, requesting special-purpose subzone status for the pharmaceutical manufacturing plant of AstraZeneca LP in Westborough, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 28, 2000.

AstraZeneca LP is a subsidiary of AstraZeneca PLC, a global prescription pharmaceutical manufacturer, formed in 1999 by a merger between Zeneca Group PLC (U.K.) and Astra AB (Sweden).

The Westborough plant (532,543 sq. ft./13 bldgs. on 83.3 acres) is located at 50 and 53 Otis Street, Westborough, Massachusetts. The facility (650 employees) produces finished pharmaceutical products and their intermediates, including XYLOCAINE®, POLOCAINE®, NAROPIN®, SENSORCAINE® anesthetics, and PULMICORT RESPULES®, for the treatment of asthma. Foreign-sourced materials will account for, on average, 70 percent of material value, and include items from the following general categories: Gums, starches, waxes, vegetable extracts, mineral oils, chemically pure sugars, empty capsules, protein concentrates, prepared animal feed, mineral products, inorganic acids, chlorides, clorates, sulfites, sulfates, phosphates, cyanides, silicates, radioactive chemicals, rare-earth metal compounds, hydroxides, hydrazine and hydroxylamine, chlorides, natural magnesium phosphates and carbonates, cyclic and acyclic hydrocarbons, alcohols, phenols and peroxides, esters, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, insecticides, rodenticides, fungicides and herbicides, fertilizers, vitamins, hormones, antibiotics, enzymes, essential oils, albumins, gelatins, activated carbon, residual lyes, acrylic polymers, color lakes, soaps and detergents, protein concentrates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

Zone procedures would exempt AstraZeneca from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 20.0 percent). Although at the outset, 100 percent of the production of ZD–0473, a developmental drug for the treatment of cancer, will be exported, it is expected that future zone savings would primarily involve choosing the finished product duty rate on ZD–0473, (HTSUS 3004.90.9015—duty-free), rather than the rate for a foreign-sourced active ingredient (HTSUS 2843.90.0000—3.7%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 10, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 25, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 164 Northern Avenue, World Trade Center, Suite 307, Boston, Massachusetts 02210.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 30, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31492 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 66–2000]

Foreign-Trade Zone 199—Texas City, Texas; Application for Subzone, ISP Technologies Inc. (Chemical Plant), Texas City, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Texas City Foreign-Trade Zone Corporation, grantee of FTZ 199, requesting special-purpose subzone status for the chemical plant facilities of ISP Technologies Inc., located in Texas City, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 28, 2000.

The facility is located at 4501 Attwater Avenue, Texas City, Texas. The application is requesting the use of zone procedures only for the portion of the facility that processes butanediol (B1D) into butyrolactone (BLO). This portion of the facility (2.2 acres, 170 employees) has the capacity to produce 140,000 pounds per day of BLO (HTS 2932.29.50 and 3824.90.47; duty rate 3.7%). All of the B1D is sourced from abroad (HTS 2905.39.10; duty rate 7.9%).

FTZ procedures would exempt ISP from Customs duty payments on the foreign components used in export production. Some 35 percent of the BLO produced from the imported B1D in 1999 was exported. On its domestic sales, ISP would be able to choose the duty rates during Customs entry procedures that apply to BLO (3.7%) for the foreign input noted above. The request indicates that the savings from FTZ procedures would help improve

the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 12, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 25, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 500 Dallas, Suite 1160, Houston, TX 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 30, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31493 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 67–2000]

Foreign-Trade Zone 115—Beaumont, Texas, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 115, requesting authority to expand its zone to include a petroleum terminal in Nederland (Jefferson County), Texas, within the U.S. Customs Service consolidated port of Port Arthur and Sabine. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 29, 2000.

FTZ 115 was approved on March 20, 1985 (Board Order 296, 50 FR 13261, 4/3/85). The zone project currently consists of seven sites (244 acres) in Orange and Jefferson Counties.

The applicant is now requesting authority to expand the general-purpose zone to include Proposed Site 8 (952 acres)—at the Sun Pipe Line Company (Sun PLC) crude oil petroleum terminal located in Nederland, Texas. The site includes all of the facilities of Sun PLC's Nederland Terminal, including the buildings, marine berths, storage tanks, pipelines, manifolds, pumps, valves, filters, meters, etc. The terminal includes an 802-acre marine facility that provides storage for crude oil and certain refined petroleum products. The terminal also includes a 150-acre tank farm that provides for storage of crude oil. Several of the storage tanks at the proposed zone site already are covered by two existing FTZ subzone grants (Mobil Oil Corporation (FTZ–115B) and Fina Oil & Chemical Company (FTZ–116–B)), and those tanks are excluded from this application. Sun PLC, the owner and anticipated operator of the proposed site, is a wholly-owned subsidiary of Sunoco, Inc. The facilities will be primarily used to store and distribute crude oil for Sunoco affiliates, but the facilities will also be available for use by other petroleum companies that lease tanks from Sun PLC. Sun PLC (or Sunoco) will be the operator of the site.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 12, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 26, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port of Beaumont, 1225 Main Street, Beaumont, Texas 77701, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 30, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31494 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from two respondents, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on circular welded non-alloy steel pipe (P&T) from Mexico. We are rescinding the review with respect to one of the respondents, Hylsa S.A. de C.V. (Hylsa). The review covers one manufacturer and exporter of the subject merchandise, Tuberia Nacional S.A. de C.V. (TUNA). The period of review (POR) is November 1, 1998, through October 31, 1999. We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: John Drury or Nancy Decker, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–0195 or (202) 482–0196, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1999).

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 1998/99 review period on November 16, 1999 (64 FR 62167). Respondents TUNA and Hylsa, as well as petitioners, requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. We initiated this review on December 21, 1999. See 64 FR 72644 (December 21, 1998).

The Department received timely requests for withdrawal from the administrative review from the respondent Hylsa on March 15, 2000. On March 22, 2000, petitioners also withdrew their request for a review of Hylsa. In accordance with 19 CFR 351.213(d)(1), the Department is now terminating this review for respondent Hylsa because both petitioners and respondent have withdrawn their requests for review and no other interested parties have requested a review.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 11, 2000, the Department published a notice of extension of the time limit for the preliminary results in this case to November 29, 2000. See Extension of Time Limit: Circular Welded Non-Alloy Pipe From Mexico; Antidumping Administrative Review, 65 FR 49223 (August 11, 2000).

Period of Review

The review covers the period November 1, 1998 through October 31, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered each circular welded non-alloy steel pipe and tube product produced by the respondent, covered by the descriptions in the "Scope of the Review" section of this notice, supra, and sold in the home market during the POR, to be a foreign like product for purposes of determining appropriate product comparisons to U.S. sales of circular welded non-alloy steel pipe and tube. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's August 25, 2000, supplemental questionnaire, or to constructed value (CV).

Verification

As provided in section 782(i) of the Act, we verified information provided by TUNA (sales and cost) using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of the relevant sales and financial records.

Our verification results are outlined in the public versions of the verification reports. See Sales Verification Report dated November 29, 2000 and Cost Verification Report dated November 29, 2000.

Based on our findings at verification, we made changes to TUNA's reported general and administrative expenses, direct materials costs, and fixed overhead costs.

Normal Value Comparisons

To determine whether sales of circular welded non-alloy steel pipe from Mexico to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

We have used the date of invoice as the date of sale for all home market and U.S. sales made by TUNA during the POR.

Export Price and Constructed Export Price

We analyzed sales made to the United States, and determined that there were both EP and CEP sales in the United States during the POR. For certain sales to the United States, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by TUNA's U. S. affiliate (Acerotex) after having been imported into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

We determined that the remaining sales were EP sales based on the fact that TUNA sold the subject merchandise directly to the unaffiliated U.S. customer prior to importation, and CEP treatment was not otherwise indicated. We calculated EP in accordance with

section 772(a) of the Act. We based EP on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling and U.S. customs duties.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403 and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's-length. See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 62 FR 60472 (November 10, 1997); 62 FR 27295, 27355–56 (May 19, 1997). We included those sales that passed the arm's-length test in our analysis (see 19 CFR 351.403; 62 FR at 27355–56).

Where such sales did not pass the arm's length test, we used sales from affiliated resellers to the first unaffiliated customer. Additionally, we used sales from TUNA, Lamina y Placa Monterrey and Lamina y Placa Commercial which were made directly to unaffiliated customers. We preliminarily determine that TUNA, Lamina y Placa Monterrey and Lamina y Placa Commercial are all producers of the subject merchandise, as defined by section 771(28) of the Act, and that all three should be collapsed into a single entity for purposes of calculating normal value. See 19 CFR 351.401(f).

The Department collapses the operations of producers into a single entity when: (1) The producers are affiliated, (2) the producers have production facilities which would not require substantial retooling for producing similar or identical products, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the Department may consider: (1) The level of common ownership, (2) overlapping managerial employees or board members of the affiliated firms, and (3) whether the operations of the affiliated firms are intertwined. Based on the totality of the circumstances, the Department collapses affiliated producers and treats them as a single entity when these criteria are met. See Stainless Steel Wire Rod from Sweden, Final Determination of Sales at Less Than Fair Value, 63 FR 40452–53 (July 29, 1998).

In this instance, all three producers are in the same corporate group, the Villacero group, which is family owned. The facility of the TUNA entity for producing merchandise is used by all three producers. The merchandise produced by all three producers also is identical. The managerial employees and board members which control the Lamina y Placa companies also control TUNA. Finally, the operations of all three producers are not merely intertwined, but are conducted at the same facility in terms of production of subject merchandise. Based on the facts of the case, we are collapsing all three producers into a single entity for the purpose of this review in accordance with the Department's regulations. See TUNA Analysis Memorandum, dated November 29, 2000.

Where appropriate, in accordance with section 773(a)(6)(A) of the Act, we deducted credit expenses, warranties, advertising, insurance, packing, and certain discounts.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

As the Department explained in Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review (Cement from Mexico), 62 FR 17156 (April 9, 1997), for both EP and CEP the relevant transaction for the LOT analysis is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged by the exporter to the importer if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an unaffiliated U.S. customer the expenses referenced in section 772(d) of the Act and the profit allocated to these expenses. These expenses represent activities undertaken by the affiliated importer in making the sale to the unaffiliated customers. Because the expenses deducted under section 772(d) of the Act are incurred for selling activities in the United States, the deduction of these expenses may yield a different LOT for the CEP than for the later resale (which we use for the starting price). Movement charges, duties, and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer, and we do not remove them to obtain the price on which the CEP LOT is based.

To determine whether some or all home market sales are at a different LOT than U.S. sales, we examined the stages of marketing and the selling functions in both markets. An analysis of the selling functions substantiates or invalidates the claimed LOTs.

Our analysis of the data submitted by TUNA indicates that sales to the United States were made through two channels of distribution, and sales in the home market were through multiple channels of distribution. Furthermore, there were differences in selling functions between certain types of customers in both markets, depending upon the channel of distribution. Sales in the home market to unaffiliated parties were to end users and distributors. Conversely, all sales in the United States were to distributors.

An examination of the selling functions in both markets indicates that TUNA performs a "core" of selling functions in the home market for all customers. These functions include inventory maintenance, salesman visits to customers, and technical services. Depending upon the channel of distribution, TUNA also performs additional selling functions for certain customers in the home market. TUNA provides certain selling functions in the form of specialized services to one channel of distribution, such as engineering advice and custom designed products, which are not provided to any other home market customers. In a separate channel of distribution, TUNA performs additional selling functions, related principally to affiliated resellers, which allow the resellers to perform selling functions for their unaffiliated customers. The selling functions provided by TUNA in this channel of trade, such as excess inventory return and personnel training, are unique.

Based on our analysis, we preliminarily determine that there are three levels of trade in the home market. Those sales receiving certain selling functions in the form of specialized services constitute one level of trade. Downstream sales through affiliates receive a unique set of selling functions and thus constitute a separate level of trade. All other sales in the home market constitute a third level of trade, in which only the "core" selling functions, described above, are performed.

In the United States, we preliminarily determine that there are two separate levels of trade. These correspond to EP and CEP sales, respectively. For CEP sales, we found minimal selling functions (such as inventory maintenance) performed by TUNA for its U.S. affiliate. Therefore, we preliminarily determine that the CEP is at a different LOT from any of the HM LOTs. For EP sales, we found that TUNA performs certain selling functions consistent with the "core" functions performed for sales in the home market. Therefore, the selling functions are the same, and we preliminarily determine that EP sales in the United States are at the same level of trade as those sales in the home market which do not receive specialized services, or services provided on downstream sales (*i.e.*, the third level of trade in the home market).

Section 773(a)(7)(A) of the Act directs us to make an adjustment for differences in LOT where such differences affect price comparability. For CEP, because there are insufficient data to perform an analysis of the effect on price comparability, and each home market LOT is more advanced than the CEP LOT, the Department must make a CEP offset. Therefore, regarding those sales to the United States which are classified as CEP sales, in accordance with section 773(a)(7)(B) of the Act, a CEP offset is warranted.

As we have determined that TUNA's home market sales at the third LOT are at the same level of trade as the EP sales in the United States, we have made no LOT adjustment when TUNA's EP sales matched sales at this LOT. See TUNA Analysis Memorandum, dated November 29, 2000.

Cost-of-Production Analysis

Because the Department disregarded sales below cost for TUNA in the comparison market during the last completed segment of the proceeding, we initiated a cost of production analysis in accordance with section 773(b) of the Act. We conducted the COP analysis as described below.

A. Calculation of COP

We calculated the COP based on the sum of TUNA's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling, general, and administrative expenses ("SG&A"), and packing costs in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs for TUNA, with changes. See TUNA Analysis Memorandum, dated November 29, 2000.

B. Test of Home-Market Prices

We used the respondents' weighted-average COPs for the period November 1, 1999, through October 31, 2000. We compared the weighted-average COP figures to home-market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices, less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

In accordance with section 773(b)(2)(C), where less than 20 percent of TUNA's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of TUNA's sales during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Furthermore, because we compared prices to POR average COPs, we determined that below-cost prices do not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded such below-cost sales of TUNA. Where all contemporaneous sales of comparison products were disregarded, we calculated NV based on CV.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of TUNA's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses as reported in the U.S. sales database, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we

determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Producer/manufacturer/exporter	Weighted-average margin (percent)
TUNA	2.57

The Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed (19 CFR 351.224). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of circular welded-non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent, and therefore, de minimis within the meaning of 19 CFR 351.106(c), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 36.62%, the "all other" rate from the original investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31491 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part

SUMMARY: In accordance with 19 CFR 351.216(b), Taiho Corporation of America ("Taiho America") requested a changed circumstances review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan with respect to the carbon steel flat product as described below. Domestic producers of the like product have expressed no interest in continuation of the order with respect to this particular carbon steel flat product. In response to Taiho America's request, the Department of Commerce ("the Department") is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182, (202) 482–3818, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On October 23, 2000, Taiho America requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Taiho America requested that the Department revoke the order with respect to imports meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. Taiho America is an importer of the product in question.

Scope of Review

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. Also excluded from this review are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. Also excluded from this review are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. Also excluded from this review are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials. Also excluded from this review are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. Also excluded from this review are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the {relief provided by the} order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; Ispat Inland Steel; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a unit of USX Corporation ("domestic producers"), of no further interest in continuing the order with respect to certain corrosion-resistant carbon steel flat products meeting the

following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys (*see* domestic producers' November 16, 2000 letter to the Department), we are initiating this changed circumstances administrative review. Furthermore, because petitioners have expressed a lack of interest, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty orders with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service ("Customs") to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) A statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments. This notice is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31633 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is amending the final results of the administrative review of the antidumping duty order on certain cut-to-length (CTL) carbon steel plate from Mexico to correct certain ministerial errors. *See Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 8338 (February 18, 2000), *as amended*, 65 FR 65830 (November 2, 2000). These corrections are in accordance with section 751(h) of the Tariff Act of 1930, as amended (the Tariff Act) and 19 CFR 351.224 of the Department's regulations. The period covered by these amended final results of review is August 1, 1997 through July 31, 1998.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5222 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 CFR part 351 (1998).

Amended Final Results

On February 18, 2000, the Department published in the **Federal Register** the final results of the 1997–1998 administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Mexico (65 FR 8338). This review covered one producer of the subject merchandise, Altos Hornos de Mexico S.A. de C.V. (AHMSA) and the period August 1, 1997 through July 31, 1998. Following timely allegations by both AHMSA and petitioners,[1] the Department subsequently amended the final results of this administrative review. *See Notice of Amended Final Results of Antidumping Duty Administrative Review*, 65 FR 65830 (November 2, 2000). The amended final results yielded a weighted average margin for AHMSA of 21.75 percent.

On October 31, 2000, AHMSA submitted allegations of an additional ministerial error. AHMSA alleged that the Department incorrectly calculated the costs of certain raw materials supplied by affiliated parties by applying an incorrect adjustment factor to these material costs. This error had the effect of double counting the profit realized by the affiliates on these transactions. According to AHMSA, the correction of this error would cause certain home market sales to pass the cost test; therefore, AHMSA urged the Department to amend its model match computer programming language in order to permit these now above-cost home market sales to be matched to U.S. sales of identical merchandise.

We agree with AHMSA's allegation concerning our recalculation of AHMSA's direct material costs, and have made the suggested programming changes to permit matches of U.S. sales to above-cost sales of identical merchandise in the home market. Furthermore, in preparing these amended final results, we found and rectified an additional error in the treatment of indirect selling expenses in our cost-of-production test. *See* Memorandum to the File, "Analysis of Data Submitted by Altos Hornos de Mexico, S.A. (AHMSA) for the Second Amended Final Results of Review of Cut-to-Length Carbon Steel Plate from Mexico (A–201–809)," dated November 21, 2000. After the two mathematical corrections, however, all home market sales of model number "1," the model identical to the U.S. model, continued to fail the cost test. As a result, for these amended final results, we continued to compare the U.S. model to the most similar home market model.

As a result of our analysis of AHMSA's allegations, we are again amending our final results of review to correct the error in calculating affiliated party profit identified by AHMSA, as well as to rectify the error involving indirect selling expenses we uncovered during our analysis, in accordance with 19 CFR 351.224(e). The amended weighted average dumping margin for AHMSA for the period August 1, 1997 through July 31, 1998 is 25.02 percent.

Accordingly, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. Because there is only one importer of the subject merchandise, we have calculated an importer specific duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales. Furthermore, the following deposit requirements shall be effective upon publication of this notice of amended final results of review for all shipments of certain cut-to-length carbon steel plate from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 49.25 percent, the "All Others" rate in the less-than-fair-value investigation. *See Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From Mexico*, 58 FR 44165 (August 19, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.224.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31496 Filed 12–11–00; 8:45 am]

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[1] Petitioners are Bethlehem Steel Corporation, Geneva Steel, Gulf States Steel, Inc. of Alabama, Inland Steel Industries, Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group (a unit of USX Corporation).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of elemental sulphur from Canada.

SUMMARY: On September 8, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review on the antidumping duty order on elemental sulphur from Canada. This review covers imports of subject merchandise from Husky Oil Limited ("Husky"), a producer, and Petrosul International ("Petrosul"), a reseller. The period of review ("POR") for Husky and Petrosul is from December 1, 1998 through December 31, 1999. The POR for all other entries is December 1, 1998 through November 30, 1999. We gave interested parties an opportunity to comment on our preliminary results. No interested parties have filed case briefs or rebuttal briefs on the preliminary results and no request for a hearing has been received by the Department. Therefore, we have not changed the results from those presented in the preliminary results of review and we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries for Petrosul and Husky.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1999).

Background

The antidumping dumping duty order for elemental sulphur from Canada was revoked, pursuant to the sunset procedures established by statute, effective January 1, 2000. *See Revocation of Antidumping Finding: Elemental Sulphur From Canada*, 64 FR 40553 (July 27, 1999). However, we are conducting this review to cover sales of the subject merchandise made in the United States by Husky and Petrosul during the 13-month period from December 1, 1998, until the effective date of the revocation.

On September 8, 2000, the Department published in the **Federal Register** its preliminary results of the antidumping duty order on elemental sulphur from Canada (65 FR 54488) ("Preliminary Results"). As noted above, the Department did not receive comments from interested parties.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule ("HTS") subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the Department's written description of the scope of this order remains dispositive.

Period of Review

The POR for Husky and Petrosul is from December 1, 1998 through December 31, 1999. *See* April 11, 2000 letters to Husky and Petrosul, in which the Department extended the POR to include December 1999. The POR for all other entries is December 1, 1998 through November 30, 1999.

Adverse Facts Available

As discussed in the Preliminary Results, we preliminarily determined that the application of total adverse facts available with respect to Petrosul was appropriate. No parties have commented on this determination, and no new facts have been submitted which would cause the Department to revisit this decision. Therefore, for the reasons set out in the Preliminary Results, 65 FR 54489–90, we have continued to apply total adverse facts available to Petrosul for the purposes of this final results notice.

Final Results of Review

As a result of our review, we determine that the following weighted-average dumping margins exist for the period December 1, 1998 through December 31, 1999:

Manufacturer/exporter/reseller	Margin (percent)
Husky Oil Limited	0.55
Petrosul International, Ltd	40.38

Assessment

The Department will assess antidumping duties on all Petrosul entries at the same rate as the dumping margin (*i.e.*, 40.38 percent) since the margin is not a current calculated rate for the respondent, but a rate based upon total adverse facts available pursuant to section 776(b) of the Act. We will assess importer-specific antidumping duties on all appropriate Husky entries. Also, the Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit

Because the antidumping duty order on elemental sulphur from Canada has been revoked, effective January 1, 2000, no cash deposits are required for entries of elemental sulphur from Canada for entries on or after January 1, 2000. *See Revocation of Antidumping Finding: Elemental Sulphur From Canada*, 64 FR 40553 (July 27, 1999).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31632 Filed 12–11–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–814, A–570–865, A–533–820, A–560–812, A–834–806, A–421–807, A–485–806, A–791–809, A–583–835, A–549–817, A–823–811]

Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Charles Riggle at (202) 482–3818 and (202) 482–0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petitions

On November 13, 2000, the Department of Commerce (the Department) received petitions filed in proper form by the following parties: Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and the Independent Steelworkers Union (collectively the petitioners). [1] The United Steelworkers of America notified the Department that it also is a petitioning party in these investigations on November 16, 2000. The Department received from the petitioners information supplementing the petitions throughout the 20-day initiation period.

[1] Weirton Steel Corporation is not a petitioner in the investigation involving the Netherlands.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain hot-rolled carbon steel flat products (hereafter referred to as hot-rolled steel) from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China (the PRC), Romania, South Africa, Taiwan, Thailand, and Ukraine are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see* the *Determination of Industry Support for the Petitions* section below).

Scope of Investigations

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by December 26, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to

determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, "the article subject to investigation" is substantially similar to the scope of the Department's investigations involving hot-rolled carbon steel products initiated in 1998. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation*, 63 FR 56607 (October 22, 1998). The only differences are as follows: (1) A 2.25 percent silicon maximum content level (as opposed to 1.50 percent in the 1998 case); (2) the omission of maximum content levels for boron and titanium; and (3) the itemization of two additional examples of products specifically excluded from the scope, *i.e.*, all products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507), and non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS. The Department has reviewed reasonably available information to determine whether the products within the scope of the investigations constitute one or more than one domestic like product.

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel*, a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA, IF, and motor lamination steels as falling within categories of plain carbon sheet steels (*see* chapters 44, 45 and 52). Also, *Carbon and Alloy Steels*, published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). Carbon and Alloy Steels also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.*, pages 159 and 161).

We noted that, in 1998 hot-rolled steel investigations, we discussed these issues with representatives of the ITC and the International Trade Administration's (ITA's) Office of Trade Development. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the agency representatives cited reasons why the products in question might be treated as distinct from hot-rolled carbon steels. In addition to the research discussed above, the Department determined in the 1998 hot-rolled steel investigations that, with respect to certain steel products, such as high-strength low-alloy steel, industry sources indicated that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications. *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation: Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998* (which is on file and publically available in the Central Records Unit (CRU) of the Main Commerce Department building). We are unaware of any factual differences between the present case and the initiation of the 1998 hot-rolled steel investigations. Thus, based on our analysis of the information presented to the Department above and the information obtained and reviewed independently by the Department, we have determined that there is a single domestic like product which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, Section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied upon not only the petition and amendments thereto, but also upon "other information" it obtained through research and which is attached to the Initiation Checklist (*See Import Administration AD Investigation Initiation Checklist (Initiation Checklist)*, Attachment Re: Industry Support, December 4, 2000). Based on information from these sources, the Department determined, pursuant to Section 732(c)(4)(D), that there is support for the petition as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of Section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of Section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the *Initiation Checklist*.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist*. Where the petitioners obtained data from foreign market research, we spoke to the researcher to establish that person's credentials and to confirm the validity of the information being provided. *See* Memorandum to the File, *Telephone Conversation with Source of Market Research used in Antidumping Petition to Support Certain Factual Information*, dated December 4, 2000. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate. The period of investigation (POI) for market economy countries is October 1, 1999, through September 30, 2000, while the POI for non-market economies (NME) is April 1, 2000, through September 30, 2000.

Regarding the investigations involving NME, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994). In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters.

Lastly, in the petitioners' calculation of the estimated margins in the cases involving NME countries (except the PRC) and certain market economy countries, the petitioners, in submissions dated November 22, 2000, based export prices on import statistics covering certain months and ports of entry. For initiation purposes, we have recalculated the estimated margins for these countries using POI-wide and nation-wide averages of the appropriate import values. For the remaining market economy countries, we based export price (EP) on price quotes obtained by the petitioners from foreign producers to unaffiliated U.S. purchasers.

We note that, on December 4, 2000, the petitioners calculated EP based on import statistics covering the entire POI (*i.e.*, 12 months for market economies, 6 months for NME countries) through the port of New Orleans, which the petitioners note ranks first among all U.S. ports for imports of hot-rolled steel from the countries against which the petitions were filed. The petitioners maintain that such a methodology is appropriate because the "precipitous decline in import prices of hot-rolled steel which has continued since May of this year is not yet fully reflected in the IM–145 Census data, due to the time lag in reporting of this data." The petitioners note that this is because, for sales which are made pursuant to a contract, a significant number of months often transpire between agreement on price and entry into the United States. To resolve these timing differences, the petitioners suggest that the use of New Orleans import statistics is more appropriate, to the extent that imports through this port include substantial volumes of hot-rolled steel sold on a "spot" basis. Specifically, the petitioners note that AUVs based primarily on "spot" sales would likely be more sensitive to and, therefore, likely more reflective of, recent price declines in the market than would be the case with national averages. The margins calculated using this methodology are as follows: Indonesia 80.57 percent, Kazakhstan 166.93 to 168.89 percent, the Netherlands 28.10 percent, Romania 77.23 to 100.46 percent, South Africa 6.35 percent, Taiwan 16.06 to 50.48 percent, Thailand 18.53 to 19.85 percent, and Ukraine 85.20 to 86.68 percent.

Because the Department received these recalculations from the petitioners at a very late date, we did not have adequate time to analyze these arguments. However, since the use of POI-wide, country-wide import statistics to calculate estimated margins is sufficient for purposes of initiation, it is not necessary to address those arguments at this time. To the extent necessary, we will consider the appropriateness of the petitioners' alternative methodology during the course of this proceeding. However, we have initiated these investigations based on the POI-wide, country-wide import statistics.

Argentina

Export Price

The petitioners based EP on price quotes from an Argentine steel producer to an unaffiliated U.S. purchaser for different grades and sizes of subject merchandise, and calculated a net U.S. price by deducting international freight and duties.

Normal Value

With respect to normal value (NV), the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Argentina using publicly available data. To calculate depreciation and SG&A expenses the petitioners relied upon amounts reported in an Argentine steel producer's unconsolidated 2000 financial statements. For interest expense, the petitioners used the Argentine steel producer's consolidated 2000 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at

[2] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Argentina on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute Argentine home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in an Argentine steel producer's unconsolidated 2000 financial statements.

Based upon the comparison of EP to CV, the petitioners calculated estimated dumping margins ranging from 36.61 to 44.59 percent.

India

Export Price

The petitioners based EP on a price quote from the Steel Authority of India, Ltd., (SAIL) to an unaffiliated U.S. purchaser for different grades and sizes of hot-rolled steel, and calculated a net U.S. price by deducting a foreign trading company's mark-up, foreign inland freight, international freight, U.S. port charges, and custom duties. Although, the submitted price does not specify whether it was based upon FOB or CIF prices, the Department notes that the adjustments to price are those incurred on shipments irrespective of the terms of sale.

Normal Value

With respect to NV, the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was FOB mill and did not make any deductions for movement expenses from this price. Because the home market sales are made on a 30-day credit basis, the petitioners made a deduction for imputed credit expense.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP refers to the total cost of producing the foreign-like product which includes COM, SG&A expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and India using publicly available data. The petitioners noted that the Indian manufacturers produce a variety of steel products besides hot-rolled steel. Under these circumstances, the petitioners submitted the best estimate of depreciation cost by utilizing the product-specific depreciation based on the U.S. producer's experience. To calculate SG&A and financing expenses, we relied upon amounts reported in an Indian steel producers unconsolidated 2000 financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in India on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute Indian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. The petitioners calculated a profit amount from the unconsolidated 2000 financial statements for an Indian steel producer.

Based upon the comparison of EP to CV, the petitioners calculated estimated dumping margins ranging from 11.12 to 51.99 percent.

Indonesia

Export Price

The petitioners identified PT Krakatau Steel as the only producer of subject merchandise in Indonesia. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the average per-unit customs import values (AUV) for the two ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Indonesia during the period November 1999 through August 2000. For each of the two HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Indonesia using POI-wide and nation-wide averages of the appropriate import values. The petitioners presumed that the customs values used to calculate the AUV for each HTSUS category are identical to the free alongside ship (FAS) export value of the subject merchandise being shipped by PT Krakatau Steel. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis*.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotations were ex-mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Indonesia. To calculate SG&A expenses and interest expense, the petitioners relied upon amounts reported in an Indonesian steel producer's 1999 financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Indonesia on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses and interest expense figures used to compute Indonesian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. Profit was calculated based on an Indonesian steel producer's 1999 financial statements.

Based upon the comparison of EP to CV, we recalculated an estimated weighted-average dumping margin of 59.25 percent.

Kazakhstan

Export Price

The petitioners identified Ispat Karmet JSC (Ispat) as the only producer of subject merchandise in Kazakhstan. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for the three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Kazakhstan which entered through a specific customs port during a specific month of the POI. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of estimated dumping margins, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Kazakhstan using POI-wide and nation-wide averages of the appropriate import values. We note that customs import value as defined by *Technical Documentation for US Exports and Imports of Merchandise on CD-ROM* excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight. In order to calculate foreign inland freight, the petitioners first determined the distance by rail between Temirtau and Novorossiysk, the port which the petitioners determined to be the most appropriate port of embarkation for inter-continental shipment of goods originating in Kazakhstan, and then applied an Indonesian rail rate as a surrogate.

Normal Value

The petitioners allege that Kazakhstan is an NME country, and in all previous investigations, the Department has determined that Kazakhstan is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys from the Republic of Kazakhstan*, 62 FR 2648, 2649 (January 17, 1997). Kazakhstan will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Kazakhstan's status as an NME remains in effect, the petitioners determined the dumping margin using an FOP analysis.

For NV, the petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. hot-rolled steel producer, adjusted for known differences in production efficiencies on the basis of available information. The petitioners assert that information regarding Ispat's consumption rates is not available, and have therefore assumed, for purposes of the petition, that producers in Kazakhstan use the same inputs in the same quantities as the petitioners use, except where a variance from the petitioners' cost model can be justified on the basis of available information. The petitioners argue that the use of the petitioners' factors is conservative because the U.S. steel industry is more efficient than the Kazakh steel industry. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

The petitioners assert that Indonesia is the most appropriate surrogate country for Kazakhstan, claiming that Indonesia is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to Kazakhstan in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of Indonesia as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from Indonesia. The materials were primarily valued based on Indonesian import values, as published in the UN *Trade Commodity Statistics*. However, for coal used in coke-making, the petitioners used an Indian import value based on their assertion that no Indonesian value was available. Labor was valued using the regression-based wage rate for Kazakhstan provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate for Indonesia published in a quarterly report of the OECD's International Energy Agency. For overhead, SG&A expenses and profit, the petitioners applied rates derived from the public annual report of an Indonesian producer of subject merchandise, PT Krakatau Steel. All surrogate values which fell outside the POI were adjusted for inflation based on the currency in which the source data were reported. The Indonesian consumer price index or the PPI, as published by the International Monetary Fund's *International Financial Statistics*, was used for these adjustments. Based on the information provided by the petitioners, we believe that their surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based upon a comparison of EP to CV, we recalculated estimated dumping margins ranging from 143.71 to 167.24 percent.

The Netherlands

Export Price

The petitioners identified the Corus Group as the only Dutch producer of subject merchandise. The petitioners were unable to obtain prices for specific sales or offers for sale for the subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for the ten-digit category of the HTSUS accounting for a significant percentage of in-scope imports from the Netherlands during the period November 1999 through August 2000. For the HTSUS category under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margins for the Netherlands using POI-wide and nation-wide averages of the appropriate import values. The petitioners presumed that the customs values used to calculate the AUV for the HTSUS category are equivalent to the FAS

export value of the merchandise being shipped by Dutch mills. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis*.

Normal Value

With respect to NV, the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel products that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, financial expense, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and the Netherlands using publicly available data. The petitioners' calculated SG&A expenses based on the financial statements of a Dutch equipment manufacturer, because the financial statements of the Dutch steel producer did not allow for the calculation of SG&A expenses. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in the Netherlands on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute the home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit which was based on the profit of a surrogate Dutch equipment manufacturer.

Based upon the comparison of EP to CV, we recalculated an estimated dumping margin of 19.36 percent.

The PRC

Export Price

The petitioners identified the following companies as possible producers and/or exporters of hot-rolled steel from the PRC: Anshan Iron & Steel (Group) Co. (Anshan), Shanghai Baosteel Group Corp., Anyang Iron and Steel Group, Wuhan Iron and Steel Group Co., Benxi Iron and Steel Group Co., and Laiwu Iron and Steel Group. The petitioners based EP on a price offering for the first sale of a range of hot-rolled products from Anshan to an unaffiliated U.S. purchaser. The petitioners calculated a net U.S. price by deducting foreign inland freight, international shipping charges, U.S. port charges, U.S. customs duties, and a trading company mark-up.

In order to calculate foreign inland freight expense, the petitioners first determined the distance by rail between Anshan and Dalian, the port from which Anshan-manufactured hot-rolled steel is exported. Since the PRC is an NME country (see the discussion of NV below), the petitioners then applied Indian rail rates as a surrogate. We relied on the petitioners' calculation of EP except with respect to their deduction for marine insurance charges (included in the international shipping charges figure). However, because the terms of sale (which are proprietary information) of the offer are exclusive of insurance charges, we do not find that it is appropriate to make a deduction for these charges. Therefore, we have added to U.S. price an amount for marine insurance charges, based on a marine insurance rate recently used in the preliminary determination of the antidumping investigation of steel wire rope from the PRC. *See Antidumping Investigation of Steel Wire Rope from the People's Republic of China: Factors of Production Valuation for the Preliminary Determination*, dated September 25, 2000, which is contained in the *Initiation Checklist*. For our recalculation of EP, *see* the *Initiation Checklist*.

Normal Value

The petitioners assert that the PRC is an NME country, and note that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). The PRC will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners estimated the dumping margin using an NME analysis.

For NV, the petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. hot-rolled steel producer. The petitioners assert that information regarding Chinese producers' consumption rates is not available, and that the U.S. producer employs a production process which is similar to the production processes employed by the two largest producers of hot-rolled steel in the PRC. Thus, the petitioners have assumed, for purposes of the petition, that producers in the PRC use the same inputs in the same quantities as the petitioners use. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Materials, with the exception of tar, sulphate, petroleum coke, and granular slag, were valued based on Indian import values, as published in the *1998 and 1999 Monthly Statistics of Foreign Trade of India*, and inflated based on the Indian Wholesale Price Index. Because the Indian import values for tar and sulphate were claimed to be many times higher than the price paid by the U.S. producer, these inputs were valued based on Indian export data, as published by UN Import Statistics (1998), and inflated based on the U.S. Producer Price Index (PPI). Also, because India did not import petroleum coke during the period for which data are available, the petitioners valued petroleum coke using UN Import Statistics (1998), and inflated the value based on the U.S. PPI. Finally, the petitioners valued granular slag using a U.S. price for iron slag, as reported by the U.S. Geological Survey. The Department previously used this value in the antidumping investigation of certain cold-rolled flat-rolled carbon-quality steel products from the PRC. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the People's Republic of China*, 65 FR 1117, 1126 (January 7, 2000). Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using *Energy Prices and Taxes, Second Quarter 2000*, published by the OECD International Energy Agency, and natural gas was valued using a current price for natural gas in India from the second quarter earnings statements of EOG Resources Inc., a large publicly-traded oil and gas company.

For overhead, depreciation, SG&A expenses, and profit, the petitioners applied rates derived from the financial statements of SAIL and TATA, India's two largest integrated producers of hot-rolled steel products. The petitioners calculated simple averages of the factory overhead expense ratio, depreciation expense ratio and SG&A expense ratio based on each company's 1999–2000 unconsolidated statements. Because SAIL did not earn a pre-tax profit, the petitioners based profit on net profit before taxes found in TATA's 1999–2000 income statement. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation.

Based upon comparisons of EP to CV, we recalculated estimated dumping margins ranging from 34.34 to 38.97 percent.

Romania

Export Price

The petitioners identified Sidex SA Galati and Gavazzi Steel SA as the principal Romanian producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Romania which entered through a specific customs port during a specific month of the period of POI. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Romania using POI-wide and nation-wide averages of the appropriate import values. We note that customs import value as defined by *Technical Documentation for US Exports and Imports of Merchandise on CD–ROM* excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight. In order to calculate foreign inland freight, the petitioners first determined the distance by rail between Galati and Constanta, the port which the petitioners determined to be the most appropriate port of embarkation for inter-continental shipment of goods originating in Romania, as a conservative estimate of the distance for both producers, and then applied to this distance an Indonesian rail rate as a surrogate.

Normal Value

The petitioners allege that Romania is an NME country, and in all previous investigations, the Department has determined that Romania is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 39125 (June 23, 2000). Romania will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Romania's status as an NME remains in effect, the petitioner determined the dumping margin using an FOP analysis.

Given that information regarding the respondents' consumption rates is not available, the petitioners calculated NV using the same methodology described above for Kazakhstan. Further, the petitioners used Indonesia as the surrogate country. We believe that Indonesia is an appropriate surrogate for purposes of initiating this case with respect to Romania for the same reasons as discussed above with respect to Kazakhstan. Lastly, the petitioners valued Romania's FOP with the same surrogate values as used with respect to Kazakhstan, with the only exception being that coal was valued with the cost of one of the petitioners because no appropriate Indonesian value was available.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 75.38 to 88.62 percent.

South Africa

Export Price

The petitioners identified Highveld Steel and Vanadium Corporation Limited, Saldanha Steel Limited, and Iscor Limited as the principal South African producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for a ten-digit category of the HTSUS accounting for a significant percentage of in-scope imports from South Africa during the period November 1999 through August 2000. For the HTSUS category under examination, the petitioners calculated the import AUV using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for South Africa using POI-wide and nation-wide averages of the appropriate import values. The petitioners presumed that the customs values used to calculate the AUV for the HTSUS category are identical to the FAS export value of the merchandise being shipped by South African mills. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above de minimis.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to those of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotations were ex-mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the

Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and South Africa. To calculate SG&A expenses, the petitioners relied upon amounts reported in a South African steel producer's unconsolidated financial statements for the fiscal year ending June 30, 2000. To determine financial expenses, the petitioners relied on the South African steel producer's consolidated financial statements for the fiscal year ending June 30, 2000. Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in South Africa on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute South African home market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. The petitioners calculated a profit amount based on the financial data of a South African processor and seller of steel products. However, we revised the profit amount to be included in CV by using a profit ratio based on the June 30, 2000, unconsolidated financial statements of the same South African steel producer used to compute the SG&A expenses.

Based upon the comparison of EP to CV, we recalculated an estimated dumping margin of 9.28 percent.

Taiwan

Export Price

The petitioners identified An Feng Steel Co., Ltd., China Steel Corporation, and Yieh Loong Enterprise Co., Ltd., as the principal Taiwanese producers of subject merchandise. The petitioners were unable to obtain prices for specific sales or offers for sale for subject merchandise in the United States. Therefore, in their initial submission, the petitioners based EP on the AUVs for three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Taiwan during the period September 1999 through August 2000. In their supplemental submission, the petitioners revised their methodology and based EP on import statistics covering a limited number of months and U.S. ports of entry. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In both their calculations of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margins for Taiwan using POI-wide and nation-wide averages of the appropriate import values. Petitioners presume that the customs values used to calculate the AUV for each HTSUS category reflect the actual transaction value of the merchandise being shipped by Taiwan's mills. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight and foreign brokerage and handling. These values were based upon China Steel Corporation's August 30, 1999, Section C questionnaire response in the investigation of certain cold-rolled flat-rolled carbon-quality steel products. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan*, 65 FR 1095 (January 7, 2000).

Normal Value

With respect to NV, the petitioners provided a home market price that was obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to the products exported to the United States. The petitioners state that the home market price quotation was on an FOB-mill basis and, therefore, made no deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Taiwan using publicly available data. To calculate depreciation, SG&A expenses, and interest expense, the petitioners relied upon amounts reported in a Taiwanese steel producer's 1999 financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Taiwan on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute COP. Consistent with section 773(3)(2) of the Act, the petitioners also included in CV an amount for profit. For profit, the petitioners relied upon the amounts reported in a Taiwanese steel producer's 1999 audited financial statements.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 15.18 percent to 29.14 percent.

Thailand

Export Price

The petitioners identified Siam Strip Mill Public Co. Ltd., Saharviriya Steel Industries Public Co. Ltd., and Nakornthai Strip Mill Public Co. Ltd., as the principal Thai producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, in their initial submission, the petitioners based EP on the AUVs for two ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Taiwan during the period September 1999 through August 2000. In their supplemental submission, the petitioners revised their methodology and based EP on import statistics covering a limited number of months and U.S. ports of entry. For the HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In both their calculations of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margins for Thailand using POI-wide and nation-wide averages of the appropriate import values. Petitioners presume that the customs values used to calculate the AUV for each HTSUS category reflect the actual transaction value of the merchandise being shipped by Thailand's mills. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis*.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for a grade and size of hot-rolled steel that is comparable to the products exported to the United States which serve as the basis for EP. The home market price employed in the petitioners' dumping analysis was the average of the range of Thailand's transaction prices. The petitioners state that the home market price quotation was FOB mill and did not make any deductions from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of hot-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce hot-rolled steel in the United States and Thailand using publicly available data. We revised the petitioners' calculation of depreciation and SG&A expenses using ratios, provided by the petitioners, which were derived from amounts reported in a Thai steel producer's 1999 audited, unconsolidated financial statements. For interest expense, the petitioners used a Thai steel producer's 1999 audited consolidated financial statements. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide sales-below-cost investigation. *See* the *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Thailand on CV. The petitioners calculated CV using the same COM, depreciation, SG&A expenses, and interest expense figures used to compute Thai home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. We revised the petitioners calculation of this profit amount using a profit ratio, provided by the petitioners, based on a Thai steel producer's 1999 audited unconsolidated financial statements.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 10.35 to 20.30 percent.

Ukraine

Export Price

The petitioners identified Dnepropetrovsk Comintern Steel Works, Ilyich Iron & Steel Works, Mariupol, Krivoi Rog State Mining (Krivorozhstal), and Zaporozhstal Iron & Steel Works as the principal Ukrainian producers of subject merchandise. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, the petitioners based EP on the AUV for three ten-digit categories of the HTSUS accounting for a significant percentage of in-scope imports from Ukraine which entered through a specific customs port during a specific month of the period of POI. For each of the three HTSUS categories under examination, the petitioners calculated the import AUVs using the reported quantity and customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. In their calculation of an estimated margin, the petitioners based EP on import statistics covering only a portion of the POI. As noted above, for initiation purposes, we have recalculated the estimated margin for Ukraine using POI-wide and nation-wide averages of the appropriate import values. We note that customs import value as defined by *Technical Documentation for US Exports and Imports of Merchandise on CD–ROM* excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners made no adjustments to EP. We note that this is a conservative methodology that still results in a dumping margin above *de minimis*.

Normal Value

The petitioners allege that Ukraine is an NME country, and in all previous investigations, the Department has determined that Ukraine is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997). Ukraine will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Ukraine's status as an NME remains in effect, the petitioners determined the dumping margin using an FOP analysis.

Given that information regarding the Ukrainian mills' consumption rates is not available, the petitioners calculated NV using the same methodology described above for Kazakhstan. Further, the petitioners used Indonesia as the surrogate country. We believe that Indonesia is an appropriate surrogate for purposes of initiating this case with respect to Ukraine for the same reasons as discussed above with respect to Kazakhstan. Lastly, the petitioners valued the Ukrainian mills' FOP with the same surrogate values as those used with respect to Kazakhstan, with the only exception being that coke was valued with Indonesian import statistics, because public information indicated that Ilyich Iron and Steel Works does not possess coke batteries.

Based upon the comparison of EP to CV, we recalculated estimated dumping margins ranging from 89.13 to 89.49 percent.

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Argentina, India, Indonesia, the Netherlands, South Africa, Taiwan, and Thailand were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Session, at 833(1994). The SAA, at 833, states that "Commerce will consider

allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in the markets of Argentina, India, Indonesia, the Netherlands, South Africa, Taiwan, and Thailand were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of hot-rolled steel from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist* at Attachment II Re: Material Injury).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on hot-rolled steel, and the petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our conversation with the foreign market researcher who provided information concerning various aspects of the petitions, we have found that they meet the requirements of section 732 of the Act. *See Memorandum to the File, Telephone Conversation with Source of Market Research used in Antidumping Petition to Support Certain Factual Information*, dated December 4, 2000. Therefore, we are initiating antidumping duty investigations to determine whether imports of hot-rolled steel from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than December 28, 2000, whether there is a reasonable indication that imports of certain hot-rolled steel products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the PRC, Romania, South Africa, Taiwan, Thailand, and Ukraine are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 4, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31635 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of changed circumstance antidumping duty review, and determination to revoke order in part.

EFFECTIVE DATE: December 12, 2000.

SUMMARY: On October 27, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of a changed circumstances antidumping duty review and preliminary results of review with intent to revoke, in part, the antidumping duty order on stainless steel sheet and strip in coils from Japan (65 FR 64424). We are now revoking this order, in part, with regard to the following product: nickel-clad stainless steel sheet and strip in coils from Japan, as described in the "Scope" section of this notice. This partial revocation is based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the importation or sale of this nickel clad stainless steel sheet and strip in coils from Japan, as so described.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April, 1999).

Background

On August 17, 2000, the Department received a request from NIPPON Metalworking U.S.A., Inc., (NIPPON) for a changed circumstance review seeking revocation, in part, of the antidumping duty (AD) order on nickel clad stainless steel sheet and strip in coils from Japan. The Department received a letter on September 6, 2000, from petitioners Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, the United Steelworkers of America, AFL–CIO/CLC, the Butler-Armco Independent Union, and the Zanesville Armco Independent Union, expressing no opposition to the request of NIPPON for revocation, in part, of the order pursuant to a changed circumstances review with respect to the subject merchandise defined in the Scope of the Review section below. Petitioners' request confirms that they have no objection to the retroactive application of the exclusion to the entries made from the date of the preliminary determination in the antidumping investigation, January 4, 1999, forward.

Pursuant to 19 CFR 351.222(g)(1)(i) we preliminarily determined that petitioners' affirmative statement of no interest constituted changed circumstances sufficient to warrant a review and partial revocation of the order. Consequently, on October 27, 2000, the Department published an initiation of a changed circumstances review and preliminary results of review with an intent to revoke the order in part (65 FR 64424).

The merchandise under review is currently classifiable under subheading 7219.90.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of Changed Circumstance Review

The products covered by this exclusion request and changed circumstances review are nickel clad stainless steel sheet and strip in coils from Japan. This nickel clad stainless steel sheet must satisfy each of the following specifications. The sheet must: (1) Have a maximum coil weight of 1000 pounds; (2) with a coil interior diameter of 458 mm to 540 mm; (3) with a thickness of .33 mm and a width of 699.4 mm; (4) fabricated in three layers with a middle layer of grade 316L or UNS 531603 sheet and strip sandwiched between the two layers of nickel cladding, using a roll bonding process to apply the nickel coating to each side of the stainless steel, each nickel coating being not less than 99 percent nickel and a minimum .038 mm in thickness. The resultant nickel clad stainless steel sheet and strip also must meet the following additional chemical composition requirement (by weight): The first layer weight is 14%, specification Ni201 or N02201, Carbon 0.009, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.992. The second layer weight is 72%, specification 316L or UNS 513603, Carbon 0.02, Silicon 0.87, Manganese 1.07, Phosphorus 0.033, Sulfur 0.001, Nickel 12.08, Chromium 17.81, Molybdenum 2.26, Iron 65.856 for a combined total of 100. The third layer is 14%, specification Ni201 or N02201, Carbon 0.01, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.993. The weight average weight is 100%. The following is the weighted average: Carbon 0.01706, silicon 0.6264, Manganese 0.7704, Phosphorus 0.02376, Sulfur 0.001, Nickel 36.6892, Chromium 12.8232, Molybdenum 1.62748, Iron 47.41912, and Copper is 0.00028. The above-described material sold as grade 316L and manufactured in accordance with UNS specification 531603. This material is classified at subheading 7219.90.00.20 of the Harmonized Tariff Schedule of the United States.

Comments

In the preliminary results, we provided parties the opportunity to comment (65 FR 64424). On October 31, 2000, and again on November 1, 2000 we received comments from counsel for Fuel Cell, Inc. and NIPPON requesting that the scope description in specification number two read as "with a coil diameter of 458 millimeters to 540." The Department received additional comments from the Petitioners regarding NIPPON's request agreeing to the proposed amendments of the scope exclusion on November 14, 2000.

Final Results of Review and Partial Revocation of the Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning the nickel clad stainless steel sheet and strip in coils from Japan and the fact that no interested parties objected to our preliminary results of review, constitute changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on stainless steel sheet and strip in coils with respect to the product described above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.222(g)(1)(i).

The Department will instruct the Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of any unliquidated entries of the merchandise subject to this request, as specifically described in the "Scope of Changed Circumstance Review" section above, and entered, or withdrawn from the warehouse, for consumption on or after January 4, 1999. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of stainless steel sheet and strip in coils from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(g)(4).

This notice also serves as a final reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216, 351.221(c)(3), and 351.222(g) of the Department's regulations.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31636 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–815, C–533–821, C–560–813, C–791–810, C–549–818]

Notice of Initiation of Countervailing Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, South Africa, and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Countervailing Duty Investigations.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak (Argentina), at (202) 482–2209; Eric Greynolds (India), at (202) 482–6071; Stephanie Moore (Indonesia), at (202) 482–3692; Sally Gannon (South Africa), at 482–0162; and Dana Mermelstein (Thailand), at (202) 482–1391, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

INITIATION OF INVESTIGATIONS:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

The Petitions

On November 13, 2000, the Department of Commerce (the Department) received petitions filed in proper form on behalf of Bethlehem Steel Corporation; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a Unit of USX Corporation; Gallatin Steel Company; IPSCO Steel Inc.; Nucor Corporation; Steel Dynamics, Inc.; Weirton Steel Corporation, and the Independent Steelworkers Union (the petitioners). The United Steelworkers of America notified the Department that it also is a petitioning party in these investigations on November 16, 2000. The Department received from the petitioners information supplementing the petitions throughout the 20-day initiation period.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of certain hot-rolled carbon steel flat products (hot-rolled steel or subject merchandise) in Argentina, India, Indonesia, South Africa, and Thailand receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioners filed the petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act. The petitioners have demonstrated sufficient industry support with respect to each of the countervailing duty investigations which they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions*, below).

Scope of Investigations

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by December 26, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the relevant foreign governments for consultations with respect to the petitions filed. The Department held consultations with representatives of the governments of Thailand on November 28, Argentina on November 29, and South Africa on November 30, 2000. *See* the memoranda to the file regarding these consultations (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099). The Government of Indonesia did not accept our invitation to hold consultations before the initiation. However, it has requested a meeting after initiation. The Government of India also did not accept our invitation to hold consultations before the initiation. It did, however, submit written comments on December 4, 2000. In addition, it has requested a meeting after initiation.

Determination of Industry Support for the Petitions

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law. [1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, "the article subject to investigation" is substantially similar to the scope of the Department's investigations involving hot-rolled carbon steel products initiated in 1998. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation*, 63 FR 56607 (October 22, 1998). The only differences are as follows: (1) A 2.25 percent silicon maximum content level (as opposed to 1.50 percent in the 1998 case); (2) the omission of maximum content levels for boron and titanium; and (3) the itemization of two additional examples of products specifically excluded from the scope, *i.e.*, all products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507), and non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS. The Department has reviewed reasonably available information to determine whether the products within the scope of the investigations constitute one or more than one domestic like product.

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel*, a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA, IF, and motor lamination steels as falling within categories of plain carbon sheet steels (*see* chapters 44, 45 and 52). Also, *Carbon and Alloy Steels*, published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). *Carbon and Alloy Steels* also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.*, pages 159 and 161).

We noted that, in the1998 hot-rolled steel investigations, we discussed these issues with representatives of the ITC and the International Trade Administration's (ITA's) Office of Trade Development. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the agency representatives cited reasons why the products in question might be treated as distinct from hot-rolled carbon steels. In addition to the research discussed above, the Department determined in

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

the 1998 hot-rolled steel investigations that, with respect to certain steel products, such as high-strength low-alloy steel, industry sources indicated that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications. *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and the Russian Federation: Attachment to the Initiation Checklist, Re: Industry Support, October 15, 1998* (which is on file and publicly available in the Central Records Unit (CRU) of the Main Commerce Department building). We are unaware of any factual differences between the present case and the initiation of the 1998 hot-rolled steel investigations. Thus, based on our analysis of the information presented to the Department above and the information obtained and reviewed independently by the Department, we have determined that there is a single domestic like product which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, Section 702(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied upon not only the petition and amendments thereto, but also upon "other information" it obtained through research and which is attached to the Initiation Checklist for each country (*See Import Administration CVD Investigation Initiation Checklist (Initiation Checklist)*, Attachment Re: Industry Support, December 4, 2000). Based on information from these sources, the Department determined, pursuant to Section 702(c)(4)(D), that there is support for the petition as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, India, Indonesia, South Africa, and Thailand, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of Section 702(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of Section 702(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* the December 4, 2000, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Injury Test

Because Argentina, India, Indonesia, South Africa, and Thailand are "Subsidies Agreement Countries" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated subsidized imports of the subject merchandise. Petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* the December 4, 2000, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the countervailing duty petitions on hot-rolled steel from Argentina, India, Indonesia, South Africa, and Thailand, and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of hot-rolled steel from these countries receive subsidies. *See* the December 4, 2000, memoranda to the file (for each country) regarding the initiation of each investigation (public versions on file in the Central Records Unit of the Department of Commerce, Room B–099).

A. Argentina

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Argentina:

1. *Equity Infusions Bestowed from 1984 through 1990*
2. *Government of Argentina Assumption of Debt*
3. *Relief from Liquidation Costs*
4. *Additional Subsidies from Reorganization/Privatization under Decree 1144/92*
5. *Investment Commitment*
6. *Tax Abatement Program*
7. *Rebate of Indirect Taxes (Reembolso)*
8. *Pre-and Post-shipment Export Financing*
9. *Zero-Tariff Turnkey Bill*

Creditworthiness

Petitioners have also alleged that Sociedad Mixta Siderurgica Argentina (SOMISA) was uncreditworthy in 1991 and 1992. To support this allegation, petitioners stated that the company had negative operating margins and negative return on sales in each of these two years. However, petitioners further stated that to fund these losses the company took on more long-term debt. Under the Department's policy, the presence of long-term borrowing generally constitutes dispositive evidence that a firm is creditworthy if such loans are provided without a government guarantee. *See* Section 351.505(a)(4)(ii) of the Department's CVD Regulations. Absent information that this debt was guaranteed by the Government of Argentina or other similar information, we do not plan to investigate SOMISA's alleged creditworthiness in 1991 and 1992.

B. India

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in India:

1. *The Passbook Scheme (PBS)*
2. *The Duty Entitlement Passbook Scheme—Pre- and Post-Export Credits (DEPBS)*
3. *Advanced, Advanced Intermediate and Special Imprest Import Licenses Under the Duty Exemption Scheme*
4. *Special Import Licenses (SIL)*
5. *Export Promotion Capital Goods Scheme (EPCGS)*
6. *Concessional Export Financing (Pre- and Post-shipment Export Financing)*
7. *Exemption of Export Credit from Interest Taxes*
8. *Income Tax Deductions Under Section 80 HHC*
9. *Loan Guarantees from the Government of India (GOI)*
10. *The GOI's Forgiveness of Steel Development Fund Loans Issued to Steel Authority of India Limited (SAIL)*
11. *GOI Forgiveness of Other Loans Issued to SAIL*
12. *Steel Development Fund (SDF) Loans*

In the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India (CTL Plate)*, 64 FR 73131, 73138 (December 29, 1999), we determined that because the SDF was funded by producer levies and other non-GOI monies, there was no evidence of direct or indirect funding by the GOI. In addition, in *CTL Plate*, 64 FR at 73143, we determined that there was no evidence indicating that the GOI controlled the SDF. Therefore, we determined that the program was not countervailable.

However, new information provided in the petition has led us to reconsider our finding in *CTL Plate* regarding the GOI's level of control of the SDF. Section 771(5)(B)(iii) of the Act states that a subsidy is bestowed when an authority "entrusts or directs a private entity to make a financial contribution." Given that the GOI apparently has the authority to waive SAIL's SDF loans, we determine that, for the purposes of this initiation, there is sufficient evidence to initiate an investigation of the GOI's ability to control the terms at which participating companies can borrow from the fund.

Creditworthiness

In their November 13, 2000 filing and their November 22, 2000 amended filing, petitioners allege that SAIL was uncreditworthy in each year during the period 1989 through March 31, 2000.[2]

Based on an analysis of the information provided by petitioners, including detailed data regarding SAIL's financial health between the years 1989 through 2000, we recommend initiating an investigation on whether SAIL was uncreditworthy only during the fiscal years 1999 and 2000. An examination of key financial ratios reveals general consistency during the fiscal years 1989 through 1998. Only in the fiscal years covering April 1, 1998, through March 31, 1999, and April 1, 1999, through March 31, 2000, do the ratios take a substantial negative turn, especially with regard to profit ratios. Additionally, petitioners have provided information indicating that SAIL neared being declared a "sick" company based on its 1998–99 financial information, but they have not provided evidence indicating that SAIL was on the verge of such a declaration before that time.

We note that it appears from SAIL's annual reports that the company received long-term loans from commercial sources that were outstanding as of the time of its 1999 annual report. The presence of such loans generally constitutes dispositive evidence that a firm is creditworthy if such loans are provided without a government guarantee (*see* Section 351.505(a)(4)(ii) of the Department's CVD Regulations). However, given certain specific allegations made by petitioners regarding loan guarantees by the GOI, it is possible that the loans highlighted in SAIL's annual reports do indeed contain guarantees by the GOI. On this basis, we are investigating whether SAIL was uncreditworthy during the fiscal years 1999 and 2000.

[2] SAIL's most recently completed fiscal year was March 31, 2000.

C. Indonesia

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Indonesia:

1. *1995 Equity Infusion into P.T. Krakatau Steel*
2. *Pre-1993 Equity Infusion*
3. *1989 Equity Infusion to Cold Rolling Mill of Indonesia (CRMI)*
4. *Three-Step Equity Infusion to CRMI*
5. *Two-Step Loan Program*
6. *Bank of Indonesia Rediscount Loan Program*

Creditworthiness

Petitioners have submitted information sufficient to warrant an examination of the creditworthiness of Krakatau and CRMI in the years in which these companies were approved for equity and other non-recurring benefits.

D. South Africa

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in South Africa:

1. *1996 and 1999 Equity Infusions into Saldanha Steel (Proprietary) Limited (Saldanha)*
2. *Industrial Development Corporation (IDC) Loans*
3. *Impofin Loan Guarantees*
4. *Section 37E Tax Allowances*

Creditworthiness

Petitioners have submitted information sufficient to warrant an examination of the creditworthiness of Saldanha in the years in which the company was approved for equity and other non-recurring benefits.

E. Thailand

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Thailand:

1. *Duty Exemptions on Imports of Raw and Essential Materials Under Section 30 of the Investment Promotion Act (IPA)*

2. *Duty Exemptions on Imports of Machinery Under IPA Section 28*
3. *Exemptions from VAT Under Section 21(4) of the VAT Act*
4. *Corporate Income Tax Exemptions Under IPA Section 31*
5. *Additional Tax Deductions Under IPA Section 35*
6. *IPA Subsidies for Construction of SSI's On-Site Power Plant*
7. *IPA Subsidies for Building and Operating the Prachuob Port*
8. *SSI Debt Restructuring*
9. *LPN Debt Restructuring*
10. *Loans from the Industrial Finance Corporation of Thailand (IFCT) and the Thai Export-Import Bank*
11. *Other Loans and Loan Guarantees from Banks Owned, Controlled, or Influenced by the RTG*
12. *Export Packing Credits*
13. *Pre-shipment Finance Facilities*
14. *Export Insurance Program*
15. *Trust Receipt Financing for Raw Materials*
16. *Tax Certificates for Export*
17. *Import Duty Exemptions for Industrial Estates*
18. *Export Processing Zone Incentives*
19. *Provision of Water Infrastructure for Less Than Adequate Remuneration*
20. *Provision of Electricity for Less Than Adequate Remuneration*

Creditworthiness

Petitioners allege that both Sahaviriya Steel Industries Pcl (SSI) and LPN Plate Mill Pcl. (LPN) have been uncreditworthy since 1996. Our review of the information provided by the petitioners indicates that SSI was able to issue debentures to the public in 1995, and it was not until 1996 that these debentures lost their value. While SSI's financial ratios were very weak in 1995, it was not until the end of 1996 that the company's ratios indicated that they were in serious financial difficulty and would have trouble meeting their debt obligations; in fact, SSI defaulted on its convertible bond issue in July 1998. The company continued to experience serious financial difficulties through at least the third quarter of 1999. As such, we will examine whether SSI was uncrediworthy from 1997 through 1999. With respect to LPN, we have examined the ratios based on information submitted by petitioners and we consider that the company's financial position, while deteriorating, was not critical until 1996. While petitioners were unable to obtain financial statements for the years after 1997, other evidence provided by the petitioners indicates that LPN continued to experience financial difficulties through the third quarter of 1999. Thus, we will examine whether LPN was uncreditworthy from 1997 through 1999.

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in Thailand:

1. *Fuel subsidies for SSI.* Petitioners allege that the preliminary plans for the Steel Based Industrial Estate, where SSI is located, called for it to build a power plant on site to supply its steel mills. This plan called for SSI to start a "special purpose joint venture" to build the plant and receive Board of Investment (BoI) incentives similar to its other companies. Petitioners further allege that SSI was going to obtain fuel from PTT, Thailand's national oil company. Petitioners contend that PTT was going to provide SSI with fuel at international prices well below those available to other Thai producers. The Sahaviriya Power Plant Report that petitioners reference states "that it will be critical to insure that they (PTT) provide competitive pricing in the same fashion that they do to EGAT." Although petitioners have alleged that "competitive" pricing constitutes a benefit, they have provided no information to support their allegation that the fuel is provided for less than adequate remuneration in accordance with section 771(5)(E)(iv) of the Act.

Steel Scrap Export restrictions. Petitioners allege that Thailand imposes an export duty on scrap iron and steel. Petitioners claim that a financial contribution and benefit would be conferred under such export restrictions because, by the RTG's prevention of scrap exports, Thai steelmakers would gain a supply of low-priced steel scrap, an input in the steelmaking process. Petitioners contend that such a program would satisfy specificity requirements because steel producers are the primary users of steel scrap. We note that although economic theory would indicate that steel scrap export restrictions in Thailand might artificially lower domestic steel scrap prices, the Department requires information demonstrating that the restrictions had a downward pressure on steel scrap prices in order to meet the threshold of initiation. The petitioners did not provide sufficient information to support their allegation that the export restraints have "led directly to a discernible lowering of input costs." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103–316, at 257.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of Argentina, India, Indonesia, South Africa, and Thailand. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by December 28, 2000, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of certain hot-rolled carbon steel flat products from Argentina, India, Indonesia, South Africa, and Thailand. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: December 4, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31634 Filed 12–11–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120400C]

Availability of a Draft Environmental Assessment/Finding of No Significant Impact and Receipt of an Application for an Incidental Take Permit (1272)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS received an application for an incidental take permit (Permit) from the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, ODFW and WDFW have also prepared a conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful sport and commercial fisheries on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest. The duration of the proposed Permit and Plan is 1 year. The Permit application includes the proposed Plan submitted by ODFW and WDFW. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit application. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application, Plan, and draft EA must be received at the appropriate address or fax number no later than 5 p.m. Pacific standard time on January 11, 2001.

ADDRESSES: Written comments on the application, Plan, or draft EA should be sent to Enrique Patiño, Sustainable Fisheries Division, F/NWR2, 7600 Sand point Way NE, Seattle, WA, 98115-0070. Comments may also be sent via fax to 206-526-6736. Comments will not be accepted if submitted via e-mail or the internet. Requests for copies of the Permit application, Plan, and draft EA should be directed to the Sustainable Fisheries Division (SFD), F/NWR2, 7600 Sand point Way NE, Seattle, WA, 98115-0070. Comments received will also be available for public inspection, by appointment, during normal business hours by calling 206-526-4655.

FOR FURTHER INFORMATION CONTACT: Enrique Patiño, Seattle, WA (ph: 206-526-4655, fax: 206-526-6736, e-mail: Enrique.Patino@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are included in the Plan and Permit application:

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) spring, threatened(SnR) summer, endangered Upper Columbia river spring (UCR), threatened Upper Willamette River spring (UWR) (LCR), threatened lower Columbia River spring (LCR).

Steelhead (*O. mykiss*): threatened SnR, endangered naturally produced and artificially propagated UCR, threatened middle Columbia River (MCR), threatened LCR, threatened Upper Willamette River (UWR).

Sockeye Salmon (*Oncorhynchus nerka*): endangered SnR.

To date, protective regulations for threatened LCR chinook salmon under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened LCR chinook salmon. The initiation of a 30-day public comment period on the application, including its proposed takes of threatened LCR chinook salmon does not presuppose the contents of the eventual protective regulations.

Background

Winter/spring/summer (w/s/s) season fisheries in the Columbia River have been managed since 1996 under provisions of the 1996-1998 Management Agreement for Upper Columbia River Spring Chinook, Summer Chinook and Sockeye. The Management Agreement modified provisions of the Columbia River Fish Management Plan (CRFMP) to include additional provisions for newly listed species. The CRFMP, and thus the associated Management Agreement, expired by their own terms on December 31, 1998, but were extended by agreement of the parties and court order through July 31, 1999. Since NMFS was a signatory party to the CRFMP, and approval of the CRFMP was a Federal action subject to ESA section 7 consultation, incidental take associated with the ODFW and WDFW fisheries was authorized in biological opinions issued on the CRFMP. NMFS has advised the states that, with the expiration of the CRFMP, and absent any subsequent agreement among the parties to *U.S.v.Oregon*, there is no longer a Federal action that provides a nexus for ESA section 7 consultation. Because the immediate prospects for reaching an agreement remain uncertain, ODFW and WDFW have applied for a 1-year ESA section 10(a)(1)(B) permit for incidental takes of ESA-listed adult and juvenile salmonids associated with sport and commercial fisheries during the w/s/s season 2001 on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest.

Conservation Plan

The Conservation Plan prepared by ODFW and WDFW describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed anadromous salmonids associated with some or all of the following fisheries which are expected to occur from January 1 through July 31, 2001, with approximate dates as specified:

Winter commercial sturgeon fishery: January and February 2001.

Winter commercial salmon fishery: February through April 2001.

Spring chinook commercial fishery - Select Areas: April through June 2001.

Smelt commercial fishery/test fishery: December 1 through March 31, 2001.

Anchovy and herring commercial bait fishery: Year round.

Shad commercial fishery - Area 2S: Mid-May through early August 2001.

Shad commercial fishery - Washougal Reef: May and June 2001.

Sockeye commercial fishery: June and July 2001.

Spring chinook sport fishery - mainstem Columbia River: January 1 through March 31, 2001.

Spring chinook sport fishery - Select Areas: Year round.

Steelhead/trout sport fishery - mainstem Columbia River: May 16 to October 31 below the I-5 Bridge and from June 16 to December 31 above the I-5 Bridge up to the Highway 395 Bridge at Pasco, Washington

Spring chinook/steelhead sport fishery - Ringold: January 1 through March 31, 2001.

Smelt recreational fishery

Shad recreational fishery: Late May and early July 2001.

Sockeye recreational fishery: June and July 2001.

Sturgeon recreational fishery: March through July 2001.

Warmwater recreational fishery: Year round

Spring chinook test fishery - Corbett: April 2001.

Sturgeon tagging stock assessment project: May through July 2001.

Spring chinook Indian subsistence fishery - Wanapum Tribe: May through July 2001.

ESA-listed fish incidental mortalities associated with the ODFW and WDFW fishery programs are requested at levels

specified in the Permit application. ODFW/WDFW are proposing to limit state in-river fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Seven alternatives for the ODFW and WDFW fisheries were provided in the Plan, including: (1) historic baseline; (2) Columbia River Fish Management Plan; (3) Willamette subbasin Plan; (4) Willamette spring Chinook fishery Management and evaluation Plan; (5) 1996-99 Management agreement Limits;(6) 1996-99 Actual Harvest Rates; and (7) No action.

Environmental Assessment/Finding of No Significant Impact

The EA package includes a draft EA and a draft Finding of No Significant Impact (FONSI) which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Two Federal action alternatives have been analyzed in the EA, including: (1) the no action alternative; and (2) issue a permit with conditions.

This notice is provided pursuant to section 10 of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: December 7, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–31650 Filed 12–11–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000803225-0326-02; I.D. 062900B]

RIN 0648-AO34

American Shad; Interstate Fishery Management Plans; Cancellation of Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of determination of compliance; cancellation of moratorium.

SUMMARY: The Secretary of Commerce (Secretary) announces the cancellation of the Federal moratorium on fishing for American shad in the coastal waters of the State of South Carolina that would have been implemented on January 5, 2001. The Secretary has canceled the moratorium as required by the Atlantic Coastal Fisheries Cooperative Management Act (Act), based on his determination that the State of South Carolina is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for Shad and River Herring, after the Commission had notified the Secretary that it was withdrawing its determination of noncompliance.

DATES: Effective December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301-427-2014.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2000, NMFS published a document in the **Federal Register** (65 FR 49969) announcing the Secretary's determination that the State of South Carolina was not in compliance with the Commission's ISFMP for Shad and River Herring for not implementing and enforcing the 10-fish creel limit contained in the ISFMP for American shad. In the document a moratorium was declared on fishing for American shad in South Carolina state waters that would be made effective on January 5, 2001, if South Carolina was not found to be in compliance by December 15, 2000. Details were provided in the August 16, 2000, **Federal Register** document and are not repeated here.

The Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If the State is determined to be in compliance, the moratorium shall be terminated.

Activities Pursuant to the Act

On November 7, 2000, the Secretary received a letter from the Commission prepared pursuant to the Act. The Commission's letter, dated November 6, 2000, stated that the State of South Carolina had taken corrective action to comply with the Commission's ISFMP for Shad and River Herring, and, therefore, the Commission was withdrawing its determination of noncompliance.

Cancellation of the Moratorium

Based on the Commission's November 6, 2000, letter, information received from the State of South Carolina, and the Secretary's review of South Carolina's revised regulations, the Secretary concurs with the Commission's determination that South Carolina is now in compliance with the Commission's ISFMP for Shad and River Herring. The State has adopted a creel limit of 10 American shad in all watersheds except one. In that one watershed the 10-fish creel compliance requirement has been met through the imposition of management measures that provide conservation equivalency. Therefore, the moratorium on fishing for American shad in South Carolina waters is canceled.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31626 Filed 12–11–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001027300–0300–01]

RIN 0648–ZA96

The Argo Project: Global Ocean Observations for Understanding and Prediction of Climate Variability

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the Office of Oceanic and Atmospheric Research (OAR), on behalf of the National Ocean Partnership Program (NOPP), is entertaining preliminary proposals (Letters of Intent) and subsequently full proposals for implementing the next phase of the U.S. contribution to the global Argo array of profiling floats. The NOPP was established by 10 U.S.C. 7902 *et seq.* to (1) promote the national goals of assuring national security, advancing economic development, protecting qualify of life, and strengthening science education and communication through improved knowledge of the ocean; and (2) coordinate and strengthen oceanographic efforts in support of those goals by identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication. In 1999, Argo was identified as a key NOPP program and selected for implementation. In FY 2001, NOAA intends to begin the long-term deployment and operation of Argo. Contingent on the availability of appropriated funds, this phase of Argo is expected to continue for five years. The level of funding available each year will be dependent on appropriations. It is expected that approximately $3,000,000 will available on a continuing basis for the project.

Timetable: January 12, 2001, 5 pm (EST)—One Letter of Intent (LOI) (not required) due at NOAA/Office of Oceanic and Atmospheric Research. The LOI may be transmitted by facsimile or electronic mail.

March 16, 2001, 5 pm (EST)—One original plus two copies of the full proposal due at NOAA/Office of Oceanic and Atmospheric Research. If color and/or grayscale graphics are included in the proposal, and offerer feels that color or grayscale graphics would be necessary for the review process, the offerer may submit twelve additional copies of these graphics. The proposal must clearly delineate each partner's efforts and the associated request(s) for NOPP funds as well as any cost-sharing. Separate budgets within the single proposal will be required if more than one funding action is needed. Facsimile or electronic transmissions of the full proposal will not be accepted.

July 1, 2001 (approximate)—Funds awarded to selected recipients. Program begins.

ADDRESSES: Letters of Intent (LOI) and Proposal submissions must be directed to the Office of Oceanic and Atmospheric Research at: Office of Oceanic and Atmospheric Research; National Oceanic and Atmospheric Administration, R/OSS2; ATTN: Dr. Stephen R. Piotrowicz; SSMC3, Room 11554; 1315 East-West Highway; Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen R. Piotrowicz at the above address, or at phone: (301) 713–2465 Ext. 124, Facsimile: (301) 713–0158, internet: Steve.Piotrowicz@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 49 U.S.C. 44720(b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.*, (CFDA No. 11.431)—Climate and Atmospheric Research.

II. Program Description

Background

Argo, a broad-scale global array of temperature/salinity profiling floats, is planned as a major component of the ocean observing system, with deployment scheduled to begin in 2000. Conceptually, Argo builds on the existing upper-ocean thermal networks, extending their spatial and temporal coverage, depth range and accuracy, and enhancing them through addition of salinity and velocity measurements. Argo is designed to have a strong complementary relationship with the Jason altimeter mission. For the first time, the physical state of the upper ocean will be systematically measured and assimilated in near real-time.

The objectives of Argo fall into several categories. Argo will provide a quantitative description of the evolving state of the upper ocean and the patterns of ocean climate variability, including heat and freshwater storage and transport. The data will enhance the value of the Jason altimeter through measurement of subsurface vertical structure (T(z), S(z)) and reference velocity, with sufficient coverage and resolution for interpretation of altimetric sea surface height variability. Argo data will be used for initialization of ocean and coupled forecast models, data assimilation and dynamical model testing. A primary focus of Argo is seasonal to decadal climate variability and predictability, but a wide range of applications for high-quality global ocean analyses is anticipated.

The initial design of the Argo network is based on experience from the present observing system, on newly gained knowledge of variability from the TOPEX/Poseidon altimeter, and on estimated requirements for climate and high-resolution ocean models. All Argo data will be publicly available in near real-time via the GTS, and in scientifically quality-controlled form with a few months delay. Global coverage should be achieved during the Global Ocean Data Assimilation Experiment (GODAE), which together with CLIVAR (CLImate VARiability and Predictability Program) and GCOS/GOOS, provide the major scientific and operational impetus for Argo. The design emphasizes the need to integrate Argo within the overall framework of the global ocean observing system.

International planning for Argo, including sampling and technical issues, is coordinated by the Argo Science Team. Nations presently having Argo plans that include float procurement or procurement, include Australia, Canada, France, Japan, U.K., and U.S.A., plus a European Union proposal. Combined deployments from these nations are expected to exceed 700 floats per year by 2002.

Funding Availability

This RFP is to implement the NOAA component of the U.S. contribution to Argo. Actual funding levels will depend upon the final FY 2001 budget appropriations. This Program Announcement is for a program to be conducted by investigators both inside and outside of NOAA, over a five year period. It is expected, though not certain, that a single program involving multiple investigators will be funded. In accordance with the NOPP, team efforts among academia, industry, and government participants with cost sharing proposals are very strongly encouraged. For Federal Government investigators, funding will be provided through intra- or interagency transfers, as appropriate. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaborative between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposal projects. NOAA will make decisions regarding the use of the a cooperative agreement on a case-by-case basis.

III. Eligibility

Eligible applicants are institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments and Federal agencies. Applicants from non-Federal and Federal applicants will be

competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intraagency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer. **Please Note:** Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 USC 1535) is not an appropriate legal basis.

IV. Evaluation Criteria

Evaluations of the proposals will use the following selection criteria:

1. Overall technical merits of the proposal, including (20%):

a. Deployment strategy, including how the proposed strategy complements and/or supplements other components of the observing system as they relate to operational predictions, as well as to the objectives of CLIVAR and GODAE;

b. Deployment logistics, including communications as well ad deployment; and

c. Data management.

2. Relevance of the proposed program to NOPP objectives of developing a better understanding of oceans and establishing U.S. leadership in oceanography through a formal partnership mechanism including (20%)

a. Data accessibility,

b. Broad participation within the oceanographic community,

c. Partners with a long-term commitment to the proposed objectives;

d. Resource sharing among partners, and

e. The degree of cost-sharing by partners with the requested Partnership funding.

3. The offeror's capabilities, related experience, and facilities or unique combinations of these that are critical to the program's objectives (20%).

4. The qualifications and experience of the proposed principal investigator(s) and key personnel (20%).

5. The degree of significant partnering among at least two of the following parties: Academia, industry or government (10%).

6. Realism of the proposed costs (10%).

V. Selection Procedures

All proposals, including those submitted by NOAA employees, will be evaluated and ranked using the criteria above by: (1) Independent peer mail review, and/or (2) independent peer panel review; both NOAA and non-NOAA experts in the field may be used in this process. The program officer will no be a voting member of an independent peer panel. The results of the peer reviews are provided to the NOPP Interagency Working Group. The NOPP Interagency Working Group determines the proposals to be funded, subject to the concurrence of the National Ocean Research Council (NORLC) for funding. The NORLC reviews and approves a NOPP program at a regular NORLC meeting. An award may be selected outside of the ranking order provided by the peer mail or peer panel reviewers. Reasons for an award outside of the ranking order are logistical (*e.g,* access to deployment platforms) and timeliness (*e.g.,* it takes an unusually long time, for example, a couple of years from receipt of funding to full deployment of floats supported each year). The Program Manager will also determine the total duration of funding. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

V. Instruction for Application

What To Submit

Letter of Intent

To prevent the expenditure of effort that may not be successful, it is in the best interest of applicants to submit letters of intent, however, it is not a requirement. Letters for Intent must be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 x 297 mm) or 8½" x 11" paper. The following information should be included:

(1) Title page: The title page should clearly identify the program area being addressed by starting the project title with "The Argo Project: Global ocean observations for understanding and prediction of climate variability." Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being requested should be listed for each budget period.

(2) A concise (2-page limit) description of the program including a brief summary of work to be completed, methodology to be used, approximate costs of the major elements (salaries and benefits; direct costs such as float acquisition and preparation, communications and data management; travel, including deployment costs; indirect costs) of the project. Evaluation will be by program management. It is in the best interest of applicants and their institutions to submit letters of intent; however, it is not a requirement. Facsimile and electronic mail are acceptable for letters of intent only. Projects deemed suitable during Letters of Intent (LOI) review will be encouraged to submit full proposals.

(3) Resumes (1-page limit) of the Principal Investigators.

Full Proposed Guidelines

Each full proposal must include the first seven items listed below; the standard forms included as Item 8 will only be required for proposal(s) selected for funding. All pages should be single- or double-spaced, typewritten in at least a 10-point front, and printed on metric A4 (210 x 297 mm) or 8½" x 11" paper. Brevity will assist reviewers and program staff in dealing effectively with proposals, therefore, the Program Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify program by starting the title "The Argo Project: Global ocean observations for understanding and prediction of climate variability." The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each year of the program; the total should include all subrecipient's budgets on projects involving multiple institutions.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) Program Description/Work Statement (15-page limit): The Program Description should include

identification of the problem, objectives (both operational and scientific) of the work, relevance to the operational prediction mission, proposed implementation strategy, proposed methodology (e.g., float acquisition, communications, deployment), and a transition plan for long-term data management. The following elements should be described in detail:

(a) Deployment strategy: The program should include a plan for interactions with the operational and research communities with regard to the deployment strategy for the U.S. contribution to the global 3-degree array. The program should describe with whom interactions will occur, and how their recommendations will be considered to determine the configuration of the array that you intend to deploy. The program should also address how the proposed deployment strategy complements and/or supplements other components of the observing system as they relate to operational predictions, as well as to the objectives of CLIVAR (CLImate VARiability program) and GODAE (Global Ocean Data Assimilation Experiment).

(b) Deployment logistics: All costs associated with the implementation of Argo should be included, including communications and deployment costs. The proposal should demonstrate that access to appropriate deployment platforms (ships, aircraft) is available to implement the strategy being proposed.

(c) Data Management: The proposal should also include a plan for continued inter-comparison of floats from different manufacturers within the consortium and within the international science group. It should illustrate how real-time (within 24 hour) delivery of data will be achieved. Since the implementation of the global Argo array will be the responsibility of several international groups that may change over time, the proposal must include a plan for maintaining the integrity of the data system (data flow and quality control) over the lifetime of the program.

(4) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Subcontracts should have a separate budget page. Matching funds must be indicated. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For all applications, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support: Applicants must provide the following information on the relationship between this project and other work planned, anticipated, or underway under Federal assistance: current and pending support for ongoing projects and proposals, subsequent funding in the case of continuing grants, and the number of person-months per year to be devoted by the principal investigator to each project.

(6) Vitae (2 pages maximum per investigator): Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) Results from prior research: The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, Principal Investigators, of award and total award. The section should be a brief summary and should not exceed two pages total.

(8) Standard Application Forms: For proposal(s) selected for funding, the following forms must also be submitted: (a) Standard Form 424, Application for Federal Assistance, and 424B, Assurances-Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter "11.431" for the CFDA Number and "Climate and Atmospheric Research" for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, § 26.105 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, § 26.605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VI. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any

verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(D) No Obligation of Future Funding—If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(F) Name and Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(G) Intergovernmental Review—This program is subject to the requirements of OMB Circular No. A–110, and 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations", to State and Local Governments", as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(H) False Statements—A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(I) Purchase of American-Made Equipment and Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(J) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(K) For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (*http://www.fgdc.gov/standards/standards/html*)

(L) Notwithstanding any other provision of the law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current, valid OMB control number.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0328–0043, 348–0040, and 0348–0046. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Dated: December 6, 2000.

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 00–31607 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Meeting on the Telephone Number Mapping (ENUM) Protocol

AGENCY: National Telecommunications and Information Administration.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, will hold a roundtable to discuss and explore issues related to the Internet Engineering Task Force's (IETF) Telephone Number Mapping (ENUM) protocol and the work being undertaken between the IETF and the International Telecommunication Union (ITU) Study Group 2 (SG2) to consider how number resolution using ENUM may be affected by public switched telephone network infrastructure and telephone numbering administration.

DATES: The meeting will be held from 12:30 p.m. to 5:00 p.m., Monday, December 18, 2000.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Room B841A, 1401 Constitution Avenue, NW., Washington, DC. The meeting will be open to the public.

FOR FURTHER INFORMATION: For further information, please contact Karen Rose, Office of International Affairs, NTIA, telephone: (202) 482–1866. Individuals wishing to attend the meeting should send an e-mail with the participants name, organizational affiliation, and telephone number to <krose@ntia.doc.gov> with a subject line entitled ENUM ROUNDTABLE or call Ms. Rose with this information at the above-listed number.

SUPPLEMENTARY INFORMATION: Currently, communications users require a number of different identifiers to be reachable through various communications networks and services. For example, a user might have an e-mail address, a telephone number, and a fax number, among others. The ENUM protocol, the result of work of the Internet Engineering Task Force's (IETF's) Telephone Number Mapping working group (<http://www.ietf.org/html.charters/enum-charter.html>), is designed to allow communications users to be reachable using standard telephone numbers (E.164 numbers) as a universal communications identifier. The ENUM protocol uses the Internet domain name system (DNS) to resolve E.164 numbers into the specific routing information needed to connect users through a chosen communication path. E.164 is an International Telecommunications Union (ITU) Recommendation that provides the number structure used for international public telecommunication numbering plan. The ENUM protocol itself is defined in IETF document "E.164 number and DNS" (RFC 2916) (see website above).

As part of the its work, the IETF engaged the ITU to consider how number resolution using ENUM might be affected by public switched telephone network infrastructure and telephone numbering plans, such as the ITU E.164 standard. Work in the ITU has been undertaken in ITU Telecommunication Standardization Sector (ITU-T) Study Group 2 (SG 2) Working Party 1 (WP1), which recently held a meeting in Berlin, Germany on October 16–26, 2000. Among other issues, SG2/WP1 meeting discussed issues raised by ENUM, and particularly, the method for administering and maintaining ENUM E.164-based resources in the DNS. The SG2/WP1 meeting resulted in the issuance of a liaison statement to the IETF that set forth a view on how E.164 resources should be administered, as well identifying other issues for further consideration (See <http://www.itu.int/infocom/enum/wp1–39_rev1.htm>).

The December 18 meeting intends to explore and stimulate discussion on issues raised by ENUM, including those raised by recent ITU work. To facilitate an exchange of views, the meeting will be structured as a roundtable discussion. The tentative agenda for the meeting (subject to change) is as follows:

1. Welcome.
2. Technical overview of ENUM and examples of possible services enabled by the ENUM protocol.
3. Exploration and discussion of issues raised by ENUM and ENUM numbering administration.
4. Discussion of ITU SG2/WP1 meeting results and possible US approaches to SG2/WP1 to the issue going forward.
5. Discussion on additional steps for progressing consideration of the issue.
6. Summary.

Public Participation

The meeting will be open to the public an is physically accessible to people with disabilities. Individuals wishing to attend should send an e-mail with the participants name, organizational affiliation, and telephone number to <krose@ntia.doc.gov> with a subject line entitled ENUM ROUNDTABLE or call Ms. Rose at (202) 482–1866 with this information. To facilitate entry into the Department of Commerce building, please have a photo identification and/or a U.S. Government building pass, if applicable. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Ms. Rose at least three (3) days prior to the roundtable at the above-listed e-mail address or telephone number.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 00–31630 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Secrecy, License to Export.

Form Number(s): N/A.

Agency Approval Number: 0651–0034.

Type of Request: Extension of a currently approved collection.

Burden: 1,298 hours annually.

Number of Respondents: 1,862 responses per year. Of this total, the USPTO expects that approximately 6 per year for petition for rescission of secrecy order, 3 per year for permit to disclose or modification of secrecy order, 1 per year for general and group permits, 1,625 per year for petition for foreign filing license without a corresponding application on file, 128 per year for petition for foreign filing with a corresponding U.S. application on file, and 99 per year for a petition for retroactive license will be filed.

Avg. Hours Per Response: It is estimated to take an average of 3.0 hours for permit for rescission of secrecy order; 2.0 hours for permit to disclose or modification of secrecy order; 1.0 hours for general and group permits; 0.5 hours each for foreign filing license: petition for foreign filing license without a corresponding United States application, and petition for license with a corresponding United States patent; and 4.0 hours for a petition for retroactive license for the public to gather, prepare and submit the various petitions.

Needs and Uses: In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. When an invention is determined to be detrimental to national security, the Commissioner of Patents must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. This collection of information is required by 35 U.S.C. 181–188 and administered through 37 CFR Ch. 1, Part 5, 5.1–5.3. There are no forms associated with this collection of information.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at susan.brown@uspto.gov.

Written comments and recommendations for the proposed information collection should be sent on or before January 11, 2001 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 2000.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 00–31505 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 6, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 2000 limits.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a notice published in the **Federal Register** on September 11, 1996 (61 FR 47892), CITA announced that Customs would be conducting investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in certain categories, produced or manufactured in China and entered into the United States with the incorrect country of origin, were entered in circumvention of the Bilateral Textile Memorandum of Understanding (MOU) dated February 1, 1997 between the Governments of the United States and the People's Republic of China. Consultations were held between the Governments of the United States and the People's Republic of China on this matter on June 28–29, 2000 and October 30–31, 2000. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge certain amounts to the 2000 quota levels.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. Any charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to the February 1, 1997 MOU between the Governments of the United States and the People's Republic of China.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 69228, published on December 10, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Textile Memorandum of Understanding dated February 1, 1997, between the Governments of the United States and the People's Republic of China, you are directed, effective on December 15, 2000, to charge the following amounts to the following categories for the 2000 restraint period (see directive dated December 6, 1999):

Category	Amounts to be charged
237	76 dozen.
239	25,582 kilograms.
331	23,206 dozen pairs.
336	79 dozen.
338/339	29,743 dozen.
338–S/339–S	37,766 dozen.
340	468 dozen.
340–Z	781 dozen.
341	1,505 dozen.
341–Y	85 dozen.
345	281 dozen.
347/348	8,536 dozen.
350	150 dozen.
352	6,784 dozen.
359–O	11,763 kilograms.
433	435 dozen.
435	42 dozen.
438	360 dozen.
442	45 dozen.
445/446	1,021 dozen.
448	37 dozen.
459	2,010 kilograms.
634	559 dozen.
635	1,211 dozen.
636	41 dozen.
638/639	942 dozen.
640	238 dozen.
641	11,425 dozen.
642	24 dozen.
645/646	1,355 dozen.
647	211 dozen.
648	712 dozen.
649	2,457 dozen.
652	12,026 dozen.
659–H	2,955 kilograms.
659–O	118 kilograms.
670–L	18,274 kilograms.
835	25 dozen.
836	14 dozen.
838	1,863 dozen.
840	221 dozen.
842	1 dozen.
845	1,603 dozen.
847	552 dozen.
859	7 kilograms.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31456 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 339/639 is being increased for special shift, reducing the limit for Categories 338/638 to account for the special shift being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 12, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	1,273,518 dozen.
339/639	1,253,898 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31608 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATIONS OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Oman and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	165,198 dozen.
335/635	305,322 dozen.
338/339	633,544 dozen.
340/640	305,322 dozen.
341/641	228,991 dozen.
347/348	1,091,526 dozen.
647/648/847	468,064 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31609 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

December 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 2001 through December 31, 2001 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of.a valid visa. Also see 49 FR 493, as amended, published on January 4, 1984.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
313	2,586,806 square meters.
314	1,940,104 square meters.
315	4,668,865 square meters.
333/833	184,913 dozen.
334	446,955 dozen.
335/835	234,225 dozen.
338/339	1,010,862 dozen.
340	441,235 dozen.
341/840	184,912 dozen.
347/348	788,967 dozen.
350	41,766 dozen.
352	281,254 dozen.
359pt. [1]	1,008,847 kilograms.
360	2,607,141 numbers.
361	1,738,095 numbers.
369pt. [2]	457,545 kilograms.
410	180,325 square meters.
433/434	9,988 dozen.
435	10,447 dozen.
442	12,099 dozen.
443	93,338 numbers.
444	44,001 numbers.
447/448	24,266 dozen.
604	1,721,378 kilograms.
638/639	966,899 dozen.
640	132,982 dozen.
647/648	229,551 dozen.
666	192,789 kilograms.

[1] Category 359pt.: all HTS numbers except 6406.99.1550.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. These limits do not apply to products exported under the Outward Processing Program.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 14, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated December 29, 1983, as amended, (49 FR 493). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31610 Filed 12–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0049, Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to procedures for submitting requests for exemptive, no-action, and interpretative letters.

DATES: Comments must be submitted on or before February 12, 2001.

ADDRESSES: Comments may be mailed to Christopher W. Cummings, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20851.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings (202) 418–5445; FAX: (202) 418–5536; email: ccummings@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters, OMB control number 3038–0049—Extension.

Commission Rule 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 140.99	280	On occasion	280	7.0	1,957

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests for such letters in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request may involve analytical work and analysis, as well as the work of drafting the request itself.

Dated: December 6, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–31532 Filed 12–11–00; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for National Service-Learning Clearinghouse

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") announces the availability of approximately $300,000 to support the initial phase of a cooperative agreement of up to three years to provide National Service-Learning Clearinghouse services. We expect that the initial funding will represent roughly one-half of the first year's budget. The Corporation will enter into a cooperative agreement with the organization selected under this Notice to provide service-learning Clearinghouse services to grantees and subgrantees supported by the Corporation and to the service-learning field. This will include: (A) Overall Administration of the Clearinghouse activities; (B) Technology Management, which includes operation and staffing of toll-free telephone lines and assistance, databases, listservs, and a web site; and (C) Information Management, which includes library service functions such as: collecting, organizing, analyzing, abstracting and disseminating information and materials about service-learning principles, programs, effective practices, resources, and research.

The Clearinghouse will collect and disseminate information and materials related to service-learning. Pertinent subtopics include service-learning in

and partnerships among: K–12 schools; higher education institutions; community-based organizations; Indian Tribes and U.S. territories, especially Learn and Serve America grantees and subgrantees; and AmeriCorps, National Senior Service Corps and other programs and projects involved in service-learning.

Note: This notice concerns the selection of an organization to provide service-learning Clearinghouse services. This is not a notice for program grant proposals.

DATES: Conference call: A conference call is scheduled for those who have questions related to this competition. The date and time is: Tuesday, December 19, 2000, 3 p.m. Eastern Time. To sign up for this conference call, please call Pat Carpenter at 1–202–606–5000, ext. 209 by Friday, December 15, 2000, at 12 noon.

Due date: Proposals must be received by the Corporation by 5 p.m. Eastern time on Friday, January 26, 2001.

ADDRESSES: Submit proposals to the Corporation for National and Community Service, Attention: Juanita Peoples, Room 8404–B, Box NSLC, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Brad Lewis at the Corporation for National and Community Service, telephone (202) 606–5000, ext. 113, (*BLewis@cns.gov*), facsimile (202) 565–2781. This Notice is available on the Corporation's web site, at: *http://www.nationalservice.org/whatshot/notices/*.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation was established in 1993 to engage Americans of all ages and backgrounds in service to their communities. (See 42 U.S.C. 12501, *et seq.*) The Corporation's national and community service programs provide opportunities for participants to serve full-time and part-time, with or without stipend, as individuals or as part of a team. Learn and Serve America integrates community service into the academic life or experiences of more than one and a half million youth from kindergarten through higher education in all 50 states, Indian Tribes and U.S. territories, through grants to state education agencies, community-based organizations, and higher education institutions and organizations. AmeriCorps*State, National, VISTA, and National Civilian Community Corps programs engage thousands of Americans on a full-time or part-time basis, at over 1,000 locations, to help communities meet their toughest challenges. The National Senior Service Corps utilizes the skills, talents and experience of over 500,000 older Americans to help make communities stronger, safer, healthier and smarter. For additional information on the national service programs supported by the Corporation, see the "Glossary of Terms" in Section VI of this Notice or go to http://www.nationalservice.org.

II. Eligibility

Public-sector agencies, non-profit organizations, institutions of higher education, and Indian Tribes that: (1) Have extensive experience with administering library and/or Clearinghouse services, and (2) have knowledge of service-learning, are eligible to apply. Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying, is not eligible to apply.

The successful applicant must be a strong administrative entity that offers Clearinghouse services to grantees and the public as "one-stop-shopping" through a single comprehensive website and a toll-free telephone line. It may be necessary, therefore, for applicants to consider planning to work in conjunction with a small number of other organizations to obtain needed expertise. The Corporation wants to minimize the administrative time, effort, and cost associated with managing multiple agreements in the operation of the Clearinghouse and, therefore, values concentration of duties in a minimum number of organizations. Whatever the number of organizations involved, the Corporation requires that the successful applicant and the other organizations present the Clearinghouse to the public as a single entity funded by and working with the Corporation.

A successful applicant must demonstrate an exemplary track record in all relevant areas outlined below, as well as the capacity to handle all tasks with or without contracting for needed services. An applicant that proposes to work in conjunction with others should outline a plan to select, monitor and administer those organizations, including assessing their expertise, and determining the role they will play in meeting the requirements of this Notice. For example (and this is only an example, not a recommendation or requirement), an applicant might have in-house exemplary expertise and capacity in library science and information technology, and may plan to select organizations with exemplary expertise and capacity in school-based service-learning (including tribal service-learning), higher education service-learning, and community-based service-learning. Alternatively, an applicant might have exemplary expertise and capacity in two or more of these areas, thereby reducing the number of organizations involved. In any case, an applicant must indicate in the application its intention to work with other organizations. We anticipate that the successful applicant will select any other organizations within three months of the award. All proposed arrangements with other organizations are subject to Corporation review and approval. Organizations may provide Clearinghouse services even if they are also receiving or applying for other Corporation funds.

Based on previous Clearinghouse competitions and our estimate of potential applicants, we expect fewer than ten applications to be submitted.

III. Conditions

A. Legal Authority

Section 118 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12551, authorizes the Corporation to establish a Clearinghouse with respect to information about service-learning. Section 198 of the same Act, as amended, 42 U.S.C. 12653, authorizes the Corporation to provide training and technical assistance in support of activities under the national service laws.

B. Cooperative Agreements

The award made under this Notice will be in the form of a cooperative agreement. Administration of cooperative agreements is pursuant to Uniform Administrative Requirements in Corporation regulations, 45 CFR Part 2541 (for agreements with state and local government agencies) and 45 CFR Part 2543 (for agreements with institutions of higher education, hospitals and other non-profit organizations). The awardee must comply with semi-annual program and fiscal reporting requirements, linking progress on deliverables to expenditures.

C. Time Frame and Funding

The Corporation expects that activities funded under the agreement awarded through this Notice will commence on or about April 1, 2001, following the conclusion of the selection and award process. The Corporation will make an award covering a period not to exceed three years. Applications must include a proposed budget and proposed activities for three years, with a line-item budget and detailed workplan for the first one-year budget period only. Of the funds available for this award $300,000 is presently available. We expect that the initial funding will represent roughly one-half of the first year's budget. If the Corporation approves an application and enters into a multi-year award agreement, at the outset it will provide funding based only on funds presently available for the first year's budget, with the balance of the funding for the first year's budget and the subsequent years pending the availability of funding from Congressional appropriations for Fiscal Year 2002 and subsequent years. Additional funding is contingent upon satisfactory performance, availability of funds, and any other criteria established in the award agreement.

D. Collection and Use of Materials—Reservation of Rights

To ensure that Clearinghouse library materials collected and generated with Corporation funding for training and technical assistance purposes remain available to the public and readily accessible to grantees and sub-grantees: (1) The awardee will be the custodian of the materials purchased or otherwise obtained for the Clearinghouse library of service-learning information and only for the duration of the cooperative agreement; and (2) the Corporation retains royalty-free, non-exclusive, and irrevocable licenses to use, reproduce, publish, or disseminate publications and materials, including data, produced under the agreement, and to authorize others to do so. The awardee must agree to make publications and materials available to the national service field as identified by the Corporation at no cost or at the cost of reproduction. All materials collected and developed for the Corporation must comply with Corporation editorial and publication guidelines. The Clearinghouse is required to make reasonable accommodation for individuals with disabilities who seek to access the Clearinghouse.

IV. Scope of National Service-Learning Clearinghouse Activities To Be Supported

A. Essential Functions and Deliverables

The organization selected under this Notice will provide service-learning Clearinghouse services to Corporation grantees and their sub-grantees, comprising Learn and Serve America programs, AmeriCorps and National Senior Service Corps programs, as well as the general public. This will include: (A) Overall Administration of the Clearinghouse activities; (B) Technology Management, which includes operation and staffing of toll-free telephone lines and assistance, databases, listservs, and a web site; and (C) Information Management, which includes library functions such as: collecting, organizing, analyzing, abstracting and disseminating information and materials about service-learning principles, programs, effective practices, resources, and research. Specific essential functions and deliverables include:

1. Library—Maintain, continuously expand and update the existing Clearinghouse library of high-quality service-learning program and training designs, supporting materials, videos, CD-Roms, curricula, models, effective practices, research and evaluation reports, books, monographs, and periodical literature (not necessarily all physically housed in one place) with web-accessible annotated bibliographies and abstracts.

2. Web Site—Operate, maintain and improve a state-of-the-art, easily navigable World Wide Web site (the point of access for the majority of Clearinghouse users) providing service-learning resources including, but not limited to: a searchable database of abstracted archive holdings; on-line versions of available current printed materials (including papers, articles, essays and other media); a calendar of service-learning events; chat rooms or other web-based communication methods; a directory of Learn and Serve America grantee and subgrantee program information; and a user-friendly annotated list of links to other websites, thereby presenting the Clearinghouse as a primary resource for service-learning on the Web (current site: http://umn.edu/serve).

3. Toll-free telephone lines—Operate and maintain toll-free telephone lines and assistance, accessible nationwide.

4. Program Database—Maintain and update, in collaboration with the Corporation, the existing database of approximately 2,000 Learn and Serve America grantees and subgrantees, searchable through the Clearinghouse website, including program descriptions and aggregate program and participant characteristics.

5. Listservs—Manage listservs of grantees and others with regular postings to stimulate service-learning conversation, share information, and draw attention to upcoming events and new publications (including approximately six lists currently being hosted) and maintain a searchable archive.

6. Marketing—Develop and implement a proactive and cost-effective marketing plan and information dissemination plan for the Clearinghouse and build relationships with the client base. The Corporation expects the Clearinghouse provider to develop and execute effective strategies for working with key service-learning stakeholders, other federal initiatives, and the field.

7. Frequently Asked Questions—Produce at least bi-weekly "Frequently Asked Questions" (FAQs) and answers focusing on pertinent issues and available related resources; publish FAQs on appropriate listservs and make them available in archives on the website and hardcopy.

8. Journal—Publish an annual service-learning journal or monograph with a circulation of at least 7,000, utilizing Learn and Serve America grantees as authors and editorial board members, focusing on themes around current issues in policy and practice in school-based, higher education, and/or community-based service-learning.

9. Collaboration—Collaborate with the National Service-Learning Exchange (the Exchange) and other Corporation-funded national training and technical assistance providers to develop and maintain a system for referring Clearinghouse clients whose needs require training or technical assistance beyond the scope of Clearinghouse responsibilities. In addition, collaborate with the Exchange and other experts to identify and address the field's information needs and resources.

10. Evaluation—Evaluate the impact of Clearinghouse services. Evaluation should focus on client satisfaction with both ease of access and usefulness of information. The evaluation should assess quality and quantity of Clearinghouse services provided, including, but not limited to: website effectiveness and use; on-line and telephone consultation; and materials dissemination in accordance with the essential functions and deliverables of this Notice.

11. Accessible Materials and Services—Provide materials that are accessible to persons with disabilities, and incorporate into all activities planning for needs of clients without Internet access, by using accessible technology, providing materials in alternate formats upon request, captioning videos, and not relying solely on a non-voice-over format, and, when indicating a telephone number, by including a non-voice telephone alternative such as TTY/TDD or e-mail.

12. Wide Range of Materials and Services—Design services that cover a

range of basic to advanced topics that can reach and benefit clients who are at different levels of expertise and who may come from a variety of organizations, including remote programs and/or programs in rural areas.

13. Other Activities—Carry out such other activities as the Corporation and the provider reasonably determine to be appropriate.

B. Other Requirements

1. Staff and Consultant Training—Train Clearinghouse staff and consultants as necessary in the background, approach, vocabulary, assets, needs, and objectives of the Corporation and each of its program streams and substreams. (See Section VI, "Glossary of Terms.")

2. Independent Assessment—In addition to reviewing records submitted by the provider, the Corporation may conduct independent assessments of the provider's performance and expect the provider's cooperation with reasonable requests in this regard.

3. Corporation Meetings—Participate as requested by the Corporation in the planning and implementation of meetings and training events.

4. Collaboration with Others—Collaborate with and support the National Service-Learning Leader Schools program, and the President's Student Service Challenge program, wherever feasible and appropriate, and share effective practices with other providers through the training and technical assistance listserv and other mechanisms (*e.g.*, the National Service Resource Center see: *http://www.etr.org/NSRC/index.html*), and coordinate with other providers in order to avoid duplication.

5. Communications with Corporation Staff—With the Corporation's Clearinghouse Program Officer, develop a plan for on-going communication with the Corporation regarding Clearinghouse activities and the needs of the field.

6. Attribution—Identify the Corporation for National Service as primary sponsor of all Clearinghouse materials and activities in all print, electronic and other communications.

7. Adherence to Circulars—Adhere to all applicable Office of Management and Budget (OMB) circulars.

V. Application Guidelines

A. Proposal Content and Submission.

You must submit one (1) unbound, original proposal and two (2) copies. You must complete the Standard Form 424 (SF 424)—Application for Federal Assistance, Standard Form 424A (SF 424A)—Budget Forms, and Standard Form 424B (SF 424B)—Assurances. These forms are available on the web at: *http://www.nationalservice.org/whatshot/notices.* An outline, which must be included, is limited to two pages, while the remainder of this section may be up to 20 additional double-spaced, single-sided, typed pages with at least one inch margins and no smaller than 12-point font. Proposals may not be submitted by facsimile. Proposals must include the following:

1. Outline.

A one-to-two page outline of all proposed Clearinghouse activities and materials including a schematic diagram outlining the task and information flow for the proposed design.

2. Information Collection/Organization/Marketing/Dissemination Plan.

Applications must include:

a. Proposed Strategy: The applicant's proposed strategy and supporting rationale for providing service-learning Clearinghouse services to a diverse national audience. The applicant should address the specific deliverables and requirements outlined in Section IV—Scope of National Service-Learning Clearinghouse Activities of this Notice. An application that proposes to work in conjunction with other organizations must outline a plan to select, monitor and administer these organizations, including assessing the organization's expertise, and determining the role they will play in meeting the requirements of this Notice.

b. Work Plan: A detailed one-year work plan and timeline for completing all Clearinghouse activities. The work plan should include all deliverables and the tasks leading to them. The work plan should account for necessary start-up activities, including the transfer of the Clearinghouse collection of print, video, and other library materials, as well as electronic files, from the current provider.

c. Evaluation Plan: A plan for regularly evaluating performance and reporting findings and proposed improvements to the Corporation.

3. Description of Organizational Capacity

a. Organizational Chart: An organizational chart that clearly shows the place of the Clearinghouse provider in its parent organization's structure, as well as that of other relevant units of the parent organization, and the proposed relationship of any organizations to the provider.

b. Organizational Capacity Narrative: Describe your:

i. capacity to provide nationwide Clearinghouse services, as outlined in this notice, under the direction of a single administrative entity;

ii. capacity to collect and disseminate information and materials related to service-learning or plan to contract with organizations having specific recognized capacity to complement the provider's experience to address all essential functions effectively;

iii. capacity in modern information systems, including website design and management, listserv management, database management, fax on demand and print-scanning capacity, or a plan to contract with organizations having specific recognized capacity to provide these services;

iv. knowledge of and/or experience with service-learning in: K–12 schools; higher education institutions; community-based organizations; Tribes and U.S. territories, especially Learn and Serve America grantees and subgrantees; and AmeriCorps, National Senior Service Corps and other programs and projects involved in service-learning;

v. financial management capacity to operate the Clearinghouse; and

vi. staff strengths and backgrounds. (Resumes shall be included in an appendix; this information is not subject to the page limits that are otherwise applicable.)

4. Budget

Include a detailed, line-item budget for the first year with hours and costs organized by activities and deliverables outlined in the main strategy and work plan narrative, and a projected overall budget for the second and third years. Use Standard Form 424B for the first year budget information. This form does not count towards the 20-page limit. Financial reporting throughout the term of the cooperative agreement must be organized so that all costs are attributed to specific activities and deliverables. Costs in proposed budgets must consist solely of costs allowable under applicable cost principles found in OMB Circulars A–21, A–122, and/or A–87, as appropriate. [OMB website:—*http://www.whitehouse.gov/OMB/Circulars/index.html*] Provider match is not required. The Corporation welcomes, however, any evidence that its funding leverages other resources.

5. Budget Narrative

Provide a budget narrative that is organized to parallel all items in the line-item budget and that includes the explanation and cost basis for all cost estimates that appear in the line-item budget. The narrative should clearly show how each cost was derived, using equations to reflect all factors considered, including unit costs of deliverables, where applicable.

6. Appendices (No more than 5 items.)

Items may include:

i. A list of references that can be contacted related to this work;

ii. Referral to the address of an applicant-designed web site;

iii. A brochure or other publicity item, and/or

iv. Staff resumes.

(Do not submit video or cassette tapes.)

B. Selection Criteria

To ensure fairness to all applicants, the Corporation reserves the right to disqualify any proposal that fails to comply with the requirements relating to submission deadline, page limits, line spacing, margins and font size. The Corporation will assess qualified applications based on the criteria listed below. Staff may conduct interviews in person or through conference calls before recommending an organization for approval. Following the review process, we will notify applicants of their status in writing.

1. Quality of Plan (30%)

The Corporation will consider the quality of the proposed activities based on:

a. Soundness of Proposed Strategy: Evidence of the cost-effectiveness, comprehensiveness, and creativity of applicant's approach to providing services as described in this Notice.

b. Understanding of the Corporation's Programs: Evidence of the applicant's understanding and ability to meet the Corporation's service-learning Clearinghouse essential functions as outlined in this Notice, the goals of the Department of Service-Learning, and the goals of the Corporation for National Service (see Section VI. "Glossary" and the Corporation for National Service website: *www.nationalservice.org*).

2. Organizational and Personnel Capacity (40%)

The Corporation will consider the organizational capacity of the applicant to deliver the proposed services based on:

a. Organizational and Staff Experience: Evidence of organizational and staff capability and experience in administration, delivery of high-quality information services in a flexible, responsive, collaborative and creative manner, and experience or knowledge of service-learning.

b. Grant Experience: Demonstrated ability either to manage federal funding or to otherwise apply sound fiscal management principles to grants and cost accounting.

3. Evaluation (10%)

The Corporation will consider how the applicant plans to evaluate its work based on:

a. Scope of Plan—Assessment of the effectiveness of—and need for—its services and products delivered under the award, which may include a review of stakeholder satisfaction, a survey of users, and/or a feedback section on the website.

b. Continuous Improvement—Plans to use assessments of its services and products to modify and improve subsequent services and products.

4. Budget (20%)

The Corporation will consider the budget based on:

a. Cost-effectiveness: Cost of each proposed activity in relation to the scope and depth of the services proposed. A demonstrated commitment to providing services in the most cost-effective manner possible will be a major consideration in the evaluation of proposals.

b. Scope: Comprehensiveness of the budget related to the proposed Clearinghouse activity (*e.g.*, publications, website improvements, listserv interventions, etc.).

c. Clarity: The thoroughness of the budget and budget narrative, including the basis for all cost estimates (see specifications under "Budget Narrative").

VI. Glossary of Terms

Department of Service-Learning Long-Term Goals

The Corporation's Department of Service-Learning (DSL) long-term goals are to:

DSL 1. Identify, enhance, and promote the direct and demonstrable "getting things done" outcomes of student service and service-learning.

DSL 2. Identify, enhance, and promote the community-strengthening outcomes of student service and service-learning.

DSL 3. Identify, enhance, and promote the participant development outcomes of student service and service-learning.

DSL 4. Facilitate the progression from community service to quality service-learning within and across the sectors of Learn and Serve America, throughout the field of service-learning and within the streams of national service.

DSL 5. Increase the number of individuals who participate in service-learning including but not limited to all relevant stakeholders, and especially the participation of students in service-learning from kindergarten through higher education.

DSL 6. Foster, strengthen, and identify civic participation as an outcome of service-learning.

DSL 7. Improve the quality and practice of service-learning through professional and leadership development.

DSL 8. Engage, support, and recognize youth and students as leaders in the design and implementation of effective student service and service-learning initiatives.

While we refer to our participants as students, we encompass all youth, parents, educators and adult volunteers in our goals and priorities.

Grantees

Entities funded directly by the Corporation. These include and are not limited to: state commissions; state education agencies; Indian Tribes and U.S. Territories; AmeriCorps National Direct parent organizations; institutions, consortia and organizations of higher education; local governments; and non-profit organizations. Many grantees also subgrant a significant portion of their funds to others (*e.g.*, a State Commission conducts a competition and review process and funds AmeriCorps programs throughout a State; a State Education Agency (SEA) conducts a competition and review process and funds school systems throughout a state). None of the 1,300 Senior Corps grantees is permitted to subgrant.

National Service-Learning Exchange

The National Service-Learning Exchange, led by the National Youth Leadership Council, supports service-learning programs in schools, institutions of higher education, and community organizations through peer-based training and technical assistance. The Exchange links programs with local peer mentors, refers programs to regional trainers, and informs programs of regional service-learning events and initiatives. *http://www.lsaexchange.org/*

National Service Resource Center (NSRC)

The National Service Resource Center (NSRC) serves as a repository of information on all aspects of national service. The NSRC manages most of the Corporation's listservs and its web site includes a calendar of training events and links to all current providers. The NSRC also has a lending library. Training and technical assistance publications are posted or distributed by

the NSRC. Providers must be required to submit copies of their training materials and training scripts to the National Service Resource Center. *http://www.etr.org/NSRC/index.html.*

Service-Learning

The Corporation uses the definition provided in the National and Community Service Trust Act of 1993 (section 101 (23); 42 U.S.C. 12511 (23)), which defines service-learning as an educational method:

- Under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community;
- That is coordinated within an elementary school, secondary school, institution of higher education, or community service program, and with the community;
- That helps foster civic responsibility;
- That is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participant is enrolled; and
- That provides structured time for the students or participants to reflect on the service experience.

Streams of Service

Refers to the Corporation's three main programs: AmeriCorps, Learn and Serve America and National Senior Service Corps.

Subgrantees

Many Corporation grantees competitively award a significant portion of their funds to other entities known as subgrantees. State Commissions, for example, subgrant to local non-profit organizations. Senior Corps programs do not subgrant (see "Grantees").

Substream of Service

Refers to the categories within each of the above streams and includes the following:

AmeriCorps: AmeriCorps*State; AmeriCorps*National Direct; AmeriCorps*VISTA; AmeriCorps*National Civilian Community Corps.

Learn and Serve America: Learn and Serve America K–12 School-Based, Community-Based Programs and Tribal Programs; Learn and Serve America Higher Education Programs.

National Senior Service Corps: Foster Grandparent Program; Retired and Senior Volunteer Program (RSVP); Senior Companion Program.

Training and Technical Assistance Listserv: Currently managed by the National Service Resource Center, the training and technical assistance listserv is one of the ways providers share best practices with one another. Providers also share effective practices through the National Service Resource Center and the National Service-Learning Clearinghouse.

(Catalog of Federal Domestic Assistance: #94.004 Learn and Serve America—School- and Community-Based Programs. #94.005 Learn and Serve America—Higher Education)

Dated: December 6, 2000.

Amy Cohen,

Acting Director, Department of Service-Learning, Corporation for Nationol ond Community Service.

[FR Doc. 00–31534 Filed 12–11–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The leader, regulatory information management group, office of the chief information officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 6, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Performance Reporting Forms for National Institute on Disability and Rehabilitation Research (NIDRR) Grantees (Rehabilitation Engineering Research Centers (RERCs), Rehabilitation Research Training Centers (RRTCs), Disability and Business Technical Assistance Centers (DBTACs), Disability and Rehabilitation Research Projects (DRRPs), Model Systems, Dissemination & Utilization Projects).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 193.

Burden Hours: 3,088.

Abstract: This data collection will be conducted annually to obtain program and performance information from NIDRR grantees on their project activities. The information collected will assist federal NIDRR staff in responding to Government Performance and Results Act. Data will primarily be collected through an internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila_Carey at (202) 708–6287 or via her internet address Sheila_Carey @ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31529 Filed 12–11–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 6, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: America's Career Resource Network State Grant Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 4,720.

Abstract: Section 118(e) of the Carl D. Perkins Act (PL 105–332) requires the Department of Education to report annually to Congress on specific activities carried out by States via grants under Section 118. This information can be obtained via the annual progress reports required of grantees by Section 74.51 Education Department General Administrative Regulations (EDGAR).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31530 Filed 12–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The leader, regulatory information management group, office of the chief information officer invites comments on the submission for OMB review as required by the paperwork reduction act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 6, 200.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Federal Class Size Reduction Program.

Frequency: On occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,298.

Burden Hours: 1,044.

Abstract: For the past two years, the federal government has supported an effort to promote the hiring of high quality teachers to reduce the size of classrooms in the early elementary grades. This evaluation looks at the early implementation of the program and assesses how the federal class size

reduction (CSR) funds were spent, what issues arose in implementing the program, the impact of the program on class size, and the impact of the program on teaching.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31531 Filed 12–11–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.116A; 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of those institutions and other public and private nonprofit institutions and agencies.

Deadline for Transmittal of Preapplications: January 26, 2001.

Deadline for Transmittal of Final Applications: April 27, 2001.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: June 26, 2001.

Applications Available: December 12, 2000.

Available Funds: It is anticipated that approximately $17,000,000 will be available for an estimated 130 new awards under the Comprehensive Program. The actual level of funding, if any, is contingent on final congressional action and the number and quality of applications.

Estimated Range of Awards: $50,000 to $200,000 per year.

Estimated Average Size of Awards: $131,000.

Estimated Number of Awards: 130.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Priorities

Invitational Priorities

While applicants may propose any project within the scope of 20 U.S.C. 1138(a), under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Projects to make more productive use of resources to improve teaching and learning; and to increase learning productivity—that is, to transform programs and teaching to promote more student learning relative to institutional resources expended.

Invitational Priority 2—Projects to disseminate innovative postsecondary educational programs which have already been locally developed, implemented, and evaluated.

Invitational Priority 3—Projects to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for low-income and underrepresented minority students, whose retention and completion rates continue to lag disturbingly behind those of other groups.

Invitational Priority 4—Projects to improve campus climates for learning by creating an environment that is safe, welcoming, and conducive to academic growth for all students.

Invitational Priority 5—Projects to support innovative reforms of undergraduate, graduate, and professional curricula that improve not only what students learn, but how they learn.

Invitational Priority 6—Projects to support the professional development of full- and part-time faculty by assessing and rewarding effective teaching; promoting new and more effective teaching methods; and improving the preparation of graduate students who will be future faculty members.

Invitational Priority 7—Projects to promote innovative school-college partnerships and to improve the preparation of K–12 teachers, in order to enhance students' preparation for, access to, and success in college.

Methods for Applying Selection Criteria

For preapplications (preliminary applications) and final applications (applications), the Secretary gives equal weight to each of the selection criteria. Within each of these criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating preapplications and final applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

Preapplications. In evaluating preapplications, the Secretary uses the following selection criteria:

(a) *Need for the project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Final Applications. In evaluating final applications, the Secretary uses the following selection criteria:

(a) *Need for the project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(e) *The quality of the management plan.* The Secretary reviews each proposed project for the quality of its management plan, as determined by the plan's adequacy to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of project personnel.* The Secretary reviews each proposed project for the quality of project personnel who will carry out the proposed project, as determined by the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(g) *Adequacy of resources.* The Secretary reviews each proposed project for the adequacy of its resources, as determined by the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116A.

FOR FURTHER INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544. Telephone: (202) 502–7500. The application text may be obtained from the Internet address *http://www.ed.gov/FIPSE/.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities also may obtain a copy of the application package in an alternative format. However, the Department is not able to reproduce in alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1138–1138d.

Dated: December 5, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–31517 Filed 12–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Establish the Worker Advocacy Advisory Committee

Pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (Pub. No. 92–463), and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015(a), this is notice of intent to establish the Worker Advocacy Advisory Committee. This intent to establish follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy and the Assistant Secretary for Environment, Safety and Health with advice, information, and recommendations on programs to assist workers who have been diagnosed with work-related illnesses under the Department of Energy's former worker medical surveillance program and ongoing beryllium medical surveillance programs in filing state workers' compensation claims. The Committee will: (1) Provide advice to the Department of Energy on workers' compensation policy issues of concern to the Department; (2) periodically review worker advocacy program initiatives and recommendations; and, (3) provide advice on plans, priorities, and strategies to improve advocacy practices and procedures of the worker advocacy program.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints, including state and federal workers' compensation specialists, workers, union representatives, occupational physicians, representatives of medical and public health organizations, academic researchers and the public at large who may significantly contribute to the deliberations of the Committee. All meetings of this Committee will be published ahead of time in the **Federal Register**.

Additionally, the establishment of the Worker Advocacy Advisory Committee is essential to the conduct of Department of Energy business, and is in the public interest.

Further information regarding this committee may be obtained from Dr. David Michaels, Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, Washington, DC 20585, phone (202) 586–6151.

Issued in Washington, DC on December 7, 2000.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 00–31598 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Morgantown, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–01NT40951 entitled, "Support of Advanced Coal Research at U.S. Colleges and Universities." Proposals will be subjected to a comparative merit review by a technical panel of DOE subject-matter experts and external peer reviewers. Awards will be made to a limited number of proposers based on: the scientific merit of the proposals, application of relevant program policy factors, and the availability of funds.

DATES: The solicitation will be available on the DOE/ NETL's Homepage at http://www.netl.doe.gov/business on or about December 15, 2000. Applications must be received at NETL by February 8, 2001.

FOR FURTHER INFORMATION CONTACT: Michael P. Nolan, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880, E-Mail: mnolan@netl.doe.gov, Telephone: (304) 285–4149, Facsimile: (304) 285–4683.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE–PS26–01NT40951, the DOE is interested in applications from U.S. colleges and universities, as well as university-affiliated research centers submitting applications through their respective universities. Applications will be selected to complement and enhance research being conducted in related Fossil Energy Programs. Applications may be submitted individually (*i.e.*, by only one college/university or one college subcontracting with one other college/university) or jointly (*i.e.*, by "teams" made up of (1) three or more colleges/universities, or (2) two or more colleges/universities and at least one industrial partner. Collaboration, in the form of joint proposals, is encouraged but not required.

Eligibility. Applications submitted in response to this solicitation must address coal research in one of the key focus areas of the Core Program or as outlined in the Innovative Concepts Phase-I & Phase-II Programs.

Background. The current landscape of the U.S. energy industry, not unlike that in other parts of the world, is undergoing a transformation driven by changes such as deregulation of power generation, more stringent environmental standards and regulations, climate change concerns, and other market forces. Energy from coal-fired powerplants will continue to play a dominant role as an energy source, and therefore, it is prudent to use this resource wisely and ensure that it remains part of the sustainable energy solution.

Clean, efficient, competitively priced coal-derived products, and low-cost environmental compliance and energy systems remain key to our continuing prosperity and our commitment to tackle environmental challenges, including climate change. Technological advances finding their way into future markets could result in advanced co-production and co-processing facilities around the world, based upon Vision 21 technologies developed through universities, government, and industry partnerships.

This Vision 21 concept, in many ways is the culmination of decades of power and fuels research and development. Within the Vision 21 plants, the full energy potential of fossil fuel feedstocks and "opportunity" feedstocks such as biomass, petroleum coke, and other materials that might otherwise be considered as wastes, can be tapped by integrating advanced technology "modules." To accomplish the program objective, to advance the science of coal R&D directed at resolving our energy and environmental issues, applications will be accepted in three program areas: (1) The Core Program and (2) the Innovative Concepts Phase-I Program, and (3) the Innovative Concepts Phase-II Program.

UCR Core Program

DOE has allotted $2 million to fund 8 to 10 projects in this program area. The goal of this area is to complement and enhance applied research conducted in related Fossil Energy Programs. Funding is contingent on the length of the project and varies from

$80,000, $140,000, or $200,000 for a project performance period of 12, 13–24, or 25–60 months, respectively for institutions submitting a single application. Additionally, an institution teaming with two other colleges or universities or two colleges/universities teaming with at least one industrial partner is eligible to receive $400,000 in funding for a 36-month project. Joint University/Industry applications must specify a minimum of twenty-five percent (25%) cost sharing of the total proposed project cost. At least one student must receive financial assistance throughout the duration of the grant.

Under the Core Program, research in this area is limited to the following six (6) Core Focus Areas and is listed numerically in descending order of programmatic priority.

1. *Advanced Sensors for Vision 21 Systems*—US DOE is interested in unique approaches in developing advanced sensors and control systems for advanced efficient energy production with zero emission, and related by-product production as envisioned in Vision 21 plans. Future energy production facilities may operate at high temperature environment, real-time temperature measurement (to 3000 °F) of flame, and surfaces (including slags) is needed. Miniaturized temperature sensors that can perform these tasks are a plus. Eliminating fine particulate is critical for gasification and for emission control. Grant applications are sought for proposals to develop particulate sensors capable of measuring concentration, size, and distribution of fine particulate. Particle sizes of interest are from a fraction of a millimeter down to microns. In addition, sensors for measuring trace contaminants in fuels and/or carbon dioxide from advanced gas separation processes would be needed to eliminate any interference with their utilization. Sensors using new mechanisms and with digital output that can be connected into control systems would be preferable. The intended applications are energy production related including advanced combustion facilities, gasifiers, turbines, flue gas cleanup and monitoring, fuel cells, and carbon sequestration, etc.

2. *Materials Development for Advanced Systems Through Nanostructure Science and Technology*—Nanostructured materials are believed to have the potential to revolutionize the way materials are created and used. Any material (metal, ceramic, polymer, glass, composite) created from nanoscale building blocks (clusters or nanoparticles, nanotubes, nanolayers, etc.) that are themselves synthesized from atoms and molecules, can be assembled to form novel structures with unique properties unlike those exhibited by materials composed of microstructures. Thus with the ability to synthesize and control materials in nanometer dimensions, new materials with unprecedented performance properties can be designed [1].

This focus area seeks proposals that will emphasize synthesis, characterization, or engineering development of nanoscale materials that have direct application to advanced power and ultra-clean fuels systems, such as those described in the Vision 21 Program. The DOE–NETL is particularly interested in those projects that seek a new and improved understanding of the relationships between nanostructures and properties and how these can be manipulated to improve efficiencies and performance. For example, nanostructured alloys may hold the potential to be competitors to some oxide dispersion-strengthened ferritic alloys currently being considered for high-temperature heat exchanger tubing, or ultrahigh temperature materials such as the Laves phases intermetallic alloys (*e.g.*, Cr-Cr_2Nb or Cr-Cr_2Ta).

Grant applications are sought for proposals to develop novel, ultrahigh temperature nanostructured alloys and that explores structure/property relationships would be of great interest. Other areas of programmatic interest include using nanostructured materials as advanced environmental barrier coatings, elucidating a better understanding of the fundamental mechanisms in plastic/elastic deformation and fracture of nanostructured materials, synthesizing, characterizing or using nanostructured carbons, or other similar derivatives, as hydrogen storage materials or in gas (H_2, CO_2, CO, CH_4, etc.) separation processes.

References

[1] Siegel, R., Hu, E., Roco, M. "Nanostructure Science and Technology: A Worldwide Study, WTEC Panel Report on Nanostructure Science and Technology: R&D Status and Trends in Nanoparticles, Nanostructured Materials, and Nanodevices." NSF Cooperative Agreement ENG–9707092, International Technology Research Institute at Loyola College, Maryland, August 1999 (also see www.itri.loyola.edu/nano/final/).

3. *Solid-Oxide Fuel Cells*—Solid Oxide Fuel Cells (SOFCs) are a very promising energy conversion technology for utilization of fossil fuels. A new Department of Energy initiative the Solid State Energy Conversion Alliance (SECA) is currently focused on providing the technology to commercialize 400/kW SOFC systems by 2010. It is envisioned that this technology will provide a key component in an integrated coal based Vision 21 power plant. The high temperatures of operation (necessary for adequate ionic conductivity and kinetics) conventionally require layered ceramic materials in a solid state configuration. Research opportunities exist in making high power density SOFCs a commercial reality. Topics being considered for this solicitation are new compatible intermediate temperature material combinations (500–800 °C) for the cell structure, new sulfur and/or oxygen tolerant anode materials, and new cathode materials with good kinetics in the intermediate temperature range. In addition, research addressing the integration of SOFC's into a Vision 21 coal-based power plant is of interest.

Grant applications are sought for proposals to develop intermediate temperature material sets for Solid-Oxide Fuel Cells or addressing SOFC integration issues in Vision 21 coal-based power plants. The intermediate temperature range of interest is 500°C to 800°C although an individual concept does not have to be applicable to the entire range. The concepts and materials proposed must be compatible as part of a fully functional SOFC stack with a lifetime of 40,000 hours. The concepts and materials must be economically compatible with a 2010 SECA cost goal of $100/kW for the fuel cell stack and a $400/kW total system cost. Proposals can address one or all of the research issues, as well as the stated lifetime, compatibility, and economic criteria.

4. *Modeling of Molecule-surface Interactions*—Recent advances in modeling algorithms and computational capabilities have permitted some development of highly detailed computational models of molecule-surface interactions. Such models are of great interest to those developing catalytic materials because the models may suggest more fruitful directions and eliminate unproductive pathways. Further development will permit predictive models that may be able to chemically describe the ideal catalyst for a desired reaction pathway. Grant applications are desired for application and validation of such models to catalytic systems that would produce synthetic fuels or chemicals from coal based synthesis gas.

5. *Liquid Transportation Fuels/ hydrocarbon Reformulation*—Fuel cell power may provide a viable pathway for the transportation industry to deploy high efficiency, ultra-low emissions vehicles. Two sources for the hydrogen fuel include centralized production or

on-board production of hydrogen through reforming of *liquid* hydrocarbon mixtures. The latter route could enable nearer-term utilization of fuel cell power until a hydrogen distribution infrastructure is established. Coal-derived Fischer-Tropsch (F–T) liquids are candidate hydrogen carriers for the vehicle's refoming units because of their favorable hydrogen to carbon ratio and near-zero sulfur content. Other chemicals such as methanol or chemical mixtures other than F–T liquids may also have advantages as hydrogen sources. However, the chemistry involved in reforming these hydrocarbons needs to be better understood, particularly the nature of the by-products.

Grant applications are sought for proposals to investigate the kinetics and thermodynamics of the reforming chemistry associated with converting a selected hydrocarbon (other than methane) or hydrocarbon mixture to hydrogen and byproduct species. A combination of modeling and laboratory research is also needed to provide the basis for more comprehensive evaluations of the merits of utilizing selected hydrogen carriers for fuel cell applications.

6. *Modeling of Refractory Materials in Coal Gasification Systems*—Refractories represent a critical material for the commercial operation of future Vision 21 Systems. Refractories for public utility systems constitute less than 1 percent of all refractories produced, with coal gasification systems comprising only a small part of this total. Much of the research for coal gasification systems was conducted in the 1980s and funded by the U.S. Department of Energy (DOE). Refractory manufacturers have little incentive to develop materials for a coal gasifier market that may exist 10–15 years in the future.

Specific examples of refractory needs in fossil fuel power generation include higher temperature applications in slagging gasifiers, materials able to withstand both oxidizing and reducing environments, high thermal conductivity materials for use in areas where rapid heat transfer is necessary (to increase operating efficiency), and materials with sufficient thermal shock resistance to withstand both scheduled and non-scheduled shut downs. Grant applications are sought for proposals to develop refractory material models which consider the combined effect of chemical or phase changes in the material and thermal cycling on the stress state of the refractory.

UCR Innovative Concepts Phase-I Program

DOE has also allotted $0.25 million to fund up to five, $50,000 12-months Innovative Concepts Phase-I projects. The goal of this area is to solicit unique approaches to address fossil energy-related issues that represent "out-of-the-box" thinking and not simply incremental improvements to accelerate solutions to energy and environmental problems. Like the Core Program Area, single and joint applications are invited, however, no additional funding is provided for team applications. Unlike the Core Program, student participation in the IC Phase-I proposed research is strongly encouraged, however, not required.

Innovative research in the coal conversion and utilization areas will be required if coal is to continue to play a dominant role in the generation of electric power. Technical topics like the ones identified below are potential examples of research areas of interest, however, the areas identified were not intended to be all-encompassing. Therefore, it is specifically emphasized that other subjects for coal research would receive the same evaluation and consideration for support as the examples cited in the following Innovative Concepts Phase-I Technical Topics:

Mercury and Other Trace Emissions in Advanced Power Systems—Attractive features of Advanced Power Systems include the ability to accommodate a wide variety of fuel and waste feedstocks and converting the hydrocarbon-based input to simple nonhazardous byproducts. Gasification Systems, in addition, can produce consistent high-quality synthesis gas products that can be used as a building block for chemical manufacturing processes. Laboratory measurements and development of sampling techniques for mercury in reduced gasification conditions, provide first steps to understanding partitioning and removal of mercury and other trace matter in such environments. A recent study indicated that gasification could convert hazardous materials to nonhazardous gases and ashes, and as such justifies a separate treatment relative to incineration in the context of environmental protection and economics.

Grant applications are sought to further understand partioning and removal of mercury and other trace metal and organic substances in Advanced Systems and possible effects due to hot-gas cleanup devices on such trace matter. Objectives of understanding processes involving mercury and other trace matter must intend to ultimately help in minimizing and controlling trace emissions.

Thermodynamic Measurements for Mixtures of Asymmetric Hydrocarbons—Knowledge of the thermodynamics and phase behavior of mixtures of short-chain and long-chain (*i.e.*, those C_{20} and higher) alkanes is central to the understanding and comprehensive modeling of three-phase, Fischer-Tropsch (F–T) reactors. Subsequent process operations and reactor performance is strongly dependent on the composition of the wax phase, whose composition is constrained by the vapor-liquid equilibrium (VLE) that exists in the reactor. Knowledge of such vapor-liquid equilibrium values is also necessary for an understanding of retrograde condensation for examining wax precipitation in natural gas reservoir pipelines and many applications in petroleum processing, such as propane deasphalting.

Thermodynamic models (*i.e.*, equations of state) developed for hydrocarbon mixtures, and used for years, are poor predictors of VLE data when the mixtures contain alkanes longer than C_{20}. Attempts to circumvent this problem by use of equations of state developed for polymer-solvent systems have also been inadequate for modeling these asymmetric mixtures of hydrocarbons. Clearly, there is a need for a generalized thermodynamic model that can be applied to these systems.

Grant applications are desired for measurement of vapor-liquid equilibria for mixtures of light and heavy hydrocarbons, under appropriate conditions of temperature and pressure, so as to provide the basis for a comprehensive equation-of-state that would address such mixtures and their applications to hydrocarbon processing.

Carbon Sequestration—The potential effects of increasing atmospheric CO_2 levels are of major worldwide concern. If left unabated, increasing anthropogenic CO_2 emissions are expected to double atmospheric CO_2 levels by the middle of the century. One alternative for managing CO_2 emissions, which maintains the many benefits of coal-fired power, is carbon sequestration: the capture and secure storage of CO_2 before it is emitted to the atmosphere. However, major challenges must be overcome before suitable carbon sequestration technologies can be developed. These technologies must be environmentally benign, economically viable, safe and effective. They must also provide permanent containment to avoid creating negative environmental legacies for future generations.

Carbon dioxide sequestration as a carbonate mineral (CO_2 mineral sequestration) is an attractive candidate technology, as it can provide permanent, environmentally benign CO_2 disposal. The carbonates produced (*e.g.*, $MgCO_3$ and $CaCO_3$) already exist in vast quantities in nature and have proven stable over geological time. The major challenge is economically viable process development. Novel methods that address the cost concerns of CO_2 mineral sequestration need to be studied.

Grant applications are sought to investigate key aspects of CO_2 mineral sequestration process development. Methods that have the potential to substantially reduce worldwide CO_2 emissions are of particular interest. Considerations of interest to reduce overall process cost include, but are not limited to, (i) improving process efficiency, *e.g.*, reaction rates and conditions, (ii) use of inexpensive feedstock materials, and (iii) the generation of marketable process products. Emphasis should be placed on approaches that are technically, economically, and environmentally feasible.

UCR Innovative Concepts Phase-II Program

The Innovative Concepts Phase-II Program is the principal R&D effort under the IC Program. DOE has budgeted $600,000 to fund three, three-year $200,000 projects. The goal of the IC Phase-II Program is to solicit additional research in areas previously included in the Phase-I Program. Phase-II awards are expected to be made during fiscal year 2001 to institutions with approaches that offer sufficient promising from Phase-I efforts. Consequently, only winners of a one-year Phase I grant awarded in FY99 will be considered eligible for a phase II grant. It is anticipated that at least 2–3 institutions submitting an application with approaches that appear sufficiently promising from the Phase-I efforts could receive a Phase-II award in 2001. Similar to the Core Program, student participation is required throughout the duration of the grant.

Issued in Morgantown, WV on November 30, 2000.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–31597 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice Inviting Financial Assistance Applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation, DE-PS26–01NT41092, and award financial assistance (Cooperative Agreements) for the program entitled "Energy Efficient Building Equipment and Envelop Technologies, Round III." Through this solicitation, the DOE/NETL seeks applications on behalf of the Office of Building Technology, State and Community Programs in DOE's Office of Energy Efficiency and Renewable Energy (EERE) for innovative technologies that have the potential for significant energy savings in residential and commercial buildings. DOE is seeking to support projects that are advancing energy efficient equipment, envelope and whole building technologies. Specifically, the objective of the solicitation is to accelerate high-payoff technologies that, because of their risk, are unlikely to be developed in a timely manner without a partnership between industry and the Federal government.

DATES: The Program Solicitation will be available on the NETL Web site on or about December 15, 2000. Prospective offerors who would like to be notified as soon as the solicitation is available should register at *http://www.netl.doe.gov/business/index.html*. Provide your e-mail address and click on the heading "Energy Efficiency and Renewable Energy." Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public.

ADDRESSES: The Program Solicitation, along with all amendments, will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business/solicit*. Applicants are therefore encouraged to periodically check this NETL address to ascertain the status of these documents. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

FOR FURTHER INFORMATION CONTACT: John R. Columbia, MS: 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: columbia@netl.doe.gov, Telephone Number: (412) 386–6144.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select a group of projects programmatically balanced with respect to : (1) Technology category (equipment end uses, envelopes and whole buildings); (2) building type (residential and/or commercial); and (3) time of commercialization (short-term or long-term market potential of the technology). The solicitation will cover research and development on materials, components and systems applicable to both residential and commercial buildings. The solicitation will not support demonstration projects to deploy the technology on a large scale but will support proof of concept projects. The research and development areas of interest are as follows: Building Equipment—energy conversion and control equipment supplying lighting, space conditioning (heating, cooling, dehumidification and ventilation), water heating, refrigeration, and appliance services to building occupants and commercial operations; Building Envelope—materials, components and systems for windows, walls, roofs, foundations and other elements which comprise building exteriors and provide thermal integrity and daylighting; and Whole Building Technologies—the integration of components and systems which govern overall energy use and indoor environmental quality in a building.

The solicitation covers research in four technology maturation stages. Technology Maturation Stage 2 involves applied research; Technology Maturation Stage 3 involves exploratory development (non-specific applications and bench-scale testing); Technology Maturation Stage 4 involves advanced development (specific applications and bench-scale testing); and Maturation Stage 5 involves engineering development (pilot-scale and/or field testing). For projects spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Multiple awards are expected regardless of the technology maturation stage(s) proposed.

It is DOE's desire to encourage the widest participation, including the involvement of small business concerns and small disadvantaged business concerns. In order to gain the necessary expertise to review applications, non-Federal personnel may be used as evaluators or advisors in the evaluation

of applications, but will not serve as members of the technical evaluation team. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost share commitment of at least 20 percent from non-Federal sources for research and development projects. Not all of the necessary funds are currently available for this solicitation; the Government's obligation under any cooperative agreement awarded is contingent upon the availability of appropriated FY2002 and FY2003 funds.

Issued in Pittsburgh, PA on November 30, 2000.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 00–31596 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting Correction

AGENCY: Department of Energy.

ACTION: Notice of open meeting correction.

On November 28, 2000, the Department of Energy published a notice of open meeting announcing a meeting of the Secretary of Energy Advisory Board in Washington, DC (65 FR 70890). In that notice, the meeting was scheduled for Thursday, December 14, 2000, 10:00 a.m.–2:00 p.m., at the U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Today's notice announces that, due to scheduling conflicts, the noticed meeting will be conducted as an open teleconference meeting. The open teleconference meeting will be conducted during the previously announced time period, 10:00 a.m.–2:00 p.m. Eastern Standard Time. Public participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

Issued at Washington, DC, on December 7, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–31711 Filed 12–11–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–162–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2001.

Algonquin states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, Algonquin states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) A GRI volumetric surcharge of 0.70¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to small customers qualifying for service under Algonquin's Rate Schedules AFT–1S and AFT–ES; (3) a reservation surcharge of 9.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.*, greater than 50% load factor; and (4) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.*, less than or equal to 50% load factor.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31558 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–152–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective January 1, 2001:

Twenty-Ninth Revised Sheet No. 17

ANR states that the purpose of this filing is to establish the revised Gas Research Institute surcharges approved in the Commission's September 19, 2000 unpublished letter order at Docket No. RP00–313–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31549 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–166–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheets, to be effective January 1, 2001:

Fifteenth Revised Sheet No. 570
Second Revised Sheet No. 573

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's May 15, 1996 Order granting ANR's request for suspension of the tariff pricing provision of Rate Schedule X–64 in the captioned proceeding. The revised tariff sheets reflect a continuance of the suspension of ANR's tariff provisions regarding the requirement to annually redetermine the monthly charge for services provided to High Island Offshore System under ANR's Rate Schedule X–64.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretory.

[FR Doc. 00–31562 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–140–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 2000:

Forty-fifth Revised Sheet No. 8
Forty-fifth Revised Sheet No. 9
Forty-fourth Revised Sheet No. 13
Fifty-fourth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.2 million of above-market costs that are associated with its obligations to Dakota Gasification Company ("Dakota"). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR also advises that the proposed changes would increase current quarterly Above-Market Dakota Cost recoveries from $2,023,299 to $2,211,370.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretory.

[FR Doc. 00–31575 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX01–1–000]

California Independent System Operator Corporation; Notice of Filing

December 6, 2000.

Take notice that on December 1, 2000, the California Independent System Operator Corporation (the ISO) applied in the above-numbered docket for an order, under Section 211 of the Federal Power Act (FPA), 16 U.S.C. 824j, compelling San Diego Gas & Electric Company (SDG&E) to perform those transmission services that are necessary to fulfill the terms of the Transmission Control Agreement between SDG&E and the ISO, the Transmission Owners tariff, and the ISO Tariff. The ISO submits the application as agent for all users of SDG&E's transmission system eligible to apply under Section 211. SDG&E's concurrence is submitted with the application.

The application states that SDG&E transmission and distribution system have been financed, in part with certain "Local Furnishing Bonds," the interest on which is tax-exempt under Section 142 of the Internal Revenue Code. According to the application, Section 142 requires that SDG&E system be operated for the benefit of customers within its service territory, and operation of the system deemed by the Internal Revenue Service (the IRS) to be inconsistent with that requirement would, as a general rule, disqualify all of the currently outstanding Local Furnishing Bonds. The application further states, however, that, under Section 142(f), if disqualifying transmission services are provided pursuant to a Commission order issued under Section 211, only the bonds that financed the portion of the system used to provide such services, rather than all of the bonds that financed the local

furnishing system, cease to be eligible for tax-exempt treatment. SDG&E has advised the ISO that SDG&E local furnishing debt currently includes approximately $168 million relating to its transmission facilities and $518 million relating to its distribution facilities.

SDG&E has requested a ruling from the IRS that neither the execution and implementation of the Transmission Control Agreement nor the implementation, on January 1, 2001, of a state-wide transmission Access Charge under tariffs accepted for filing in Docket No. ER00–2019 conflicts with the local furnishing requirements. To assure, however, that, if a favorable ruling on either request is not forthcoming, at least the $518 million in bonds relating to SDG&E distribution system will remain tax-exempt, the application seeks an order, effective with the effective date of the Transmission Control Agreement, directing SDG&E to perform the stated transmission services. Anticipating that a statewide transmission Access Charge will take effect on January 1, 2001, the application requests that such an order issue prior to that date. SDG&E waives its right to a prior request and to a proposed order.

The ISO states that this filing has been served upon SDG&E, the Public Utilities Commission of the State of California, and the California Electricity Oversight Board.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31569 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–142–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 6, 2000.

Take notice that, on November 30, 2000, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Nineteenth Revised Sheet No. 11A, with an effective date of January 1, 2001.

CIG states that the tariff sheet reflects an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.71% to 0.78% effective January 1, 2001.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell/htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31577 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–160–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2001:

Forty-sixth Revised Sheet No. 25
Forty-sixth Revised Sheet No. 26
Forty-sixth Revised Sheet No. 27
Forty-second Revised Sheet No. 28

Columbia states that this filing is being submitted in accordance with the Federal Energy Regulatory Commission's (Commission) order issued on September 19, 2000 in Gas Research Institute's (GRI) Docket No. RP00–313–000 (Order Approving Settlement) and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff. Columbia is submitting revised tariff sheets to reflect the GRI 2001 funding mechanism.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31556 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–163–000]

Dominion Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of the January 1, 2001:

Fourth Revised Sheet No. 31
Fourth Revised Sheet No. 32

DTI states that the purpose of this filing is to adopt the GRI surcharges established by Article II, Sections 1.2 through 1.5 of the January 21, 1998 "Stipulation and Agreement Concerning GRI Funding, " as approved by the Commission in Docket Nos. RP97–149–003, *et al.* ("GRI Settlement"). DTI further states that the rates established by its filing correspond to those set forth in Appendix A to the GRI Settlement; the unit rate impact on DTI's GRI Adjustment Charge for each affected rate schedule is summarized in DTI's transmittal letter.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31559 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–167–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2001:

First Revised Sheet No. 1076
First Revised Sheet No. 1097
First Revised Sheet No. 2303
First Revised Sheet No. 2304
First Revised Sheet No. 2504

DTI states that the purpose of the filing is to implement revised Appalachian Aggregation Points under the General Terms and Conditions of DTI's Tariff contained in Section 11. E. and related tariff sheets. The current five Appalachian Aggregation Points will be reduced to the following two: Appalachian Pooling North Point (receipts north of Valley Gate in Pennsylvania) and Appalachian Pooling South Point (receipts south of Valley Gate in Pennsylvania including all receipts in West Virginia).

DTI states that the proposed changes will be beneficial to both the Appalachian Pooling customers as well as to DTI's administration of the Appalachian Pools. Other tariff sheets changes are necessary to change the names of the Appalachian Aggregation Points to conform to the new names of the two points.

DTI states that copies of its filing have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31563 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–39–000]

Duke Energy McClain, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

December 6, 2000.

Take notice that on December 1, 2000, Duke Energy McClain, (Duke McClain) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke McClain is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in McClain County, Oklahoma. The eligible facilities will consist of an approximately 550 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before December 27, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31573 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–145–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000 East Tennessee Natural Gas Company (East Tennessee) submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Nineteenth Revised Sheet No. 4, to become effective January 1, 2001.

East Tennessee states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, East Tennessee states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.70¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to small customers qualifying for service under East Tennessee's Rate Schedule FT–GS; (3) a reservation surcharge of 9.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.*, greater than 50% load factor; and (4) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.*, less than or equal to 50% load factor.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31580 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–147–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to become effective January 1, 2001:

Fourth Revised Sheet No. 5
Sixth Revised Sheet No. 6
Third Revised Sheet No. 10

Equitrans states that the purpose of this filing is to comply with the "Order Approving the Gas Research Institute's 2001 Research, Development and Demonstration Program and 2001–2005 Five Year Plan" issued on September 19, 2000 in Docket No. RP00–313–000. The Commission authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 2001 GRI unit surcharge approved by the Commission is (1) $0.0900 per dekatherm (Dth) per month demand surcharge fro high load factor customers, (2) $0.0550 per Dth per month demand surcharge for low load factor customers and (3) $0.0070 per Dth commodity/usage surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31544 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–43–000]

Equitrans, L.P.; Notice of Application

December 6, 2000.

The notice that on December 1, 2000, Equitrans, L.P. (Equitrans). 100 Allegheny Center Mall, Pittsburgh, Pennsylvania, filed in Docket No. CP01–43–000 an abbreviated application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations for a limited term certificate of public convenience and necessity authorizing Equitrans to install and operate one 1,340 horsepower leased compressor unit and related facilities for a limited period beginning January 1, 2001, and ending April 1, 2001, in order to provide an additional 12,000 Mcf per day to be transported between Sleepy Hollow Compressing Station (Sleepy Hollow) and the Pennview Compressing Station (Pennview), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Equitrans states that Sleepy Hollow falls within Texas Eastern Zone M–2. Pennview is in Texas Eastern's Zone M–3. Although the distance is only approximately 24 miles, this is an area of constrained capacity. The ability to take gas from Texas Eastern just west of Sleepy Hollow and redeliver that gas east of Pennview will help alleviate a capacity bottleneck this winter. Equitrans further states that the capacity to be created by this application is fully subscribed, and that the revenue to be received by Equitrans is significantly more than the cost of installing the temporary compression, and therefore Equitrans' existing customers will not subsidize the proposed service, consistent with the Commission's policy statement. Equitrans also avers that if approval is granted for the proposed increase in capacity, the operating pressure of Equitrans' H–156 line will, under no circumstances, exceed the established maximum allowable operating pressure (MAOP) of 1150 psig. for the existing pipeline. Sufficient overpressure protection has been installed in accordance with 49 CFR Part 192 in order to maintain the integrity of the pipeline system.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 18, 2000, file with the Federal Energy Regulatory Commission, 888 first Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157 10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceedings can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provide by the project. Therefore, if a person has comments on community and landowner impacts from this proposal it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–31571 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–155–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, the following tariff sheets, to become effective January 1, 2001:

Third Revised Sheet No. 4
First Revised Sheet No. 85
First Revised Sheet No. 85A

The proposed changes provide for generic types of discounts that may be agreed to by KMIGT and a shipper.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington; DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31552 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–159–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on November 30, 2000, Midwestern Gas Pipeline Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twelfth Revised Sheet No. 5. Midwestern requests an effective date of January 1, 2001.

Midwestern states that Twelfth Revised Sheet No. 5 is being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.*, and approved by the Commission on April 29, 1998 (the GRI Settlement), Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998), an the Commission's Letter Order approving the Gas Research Institute's Year 2001 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2000 in Docket No. RP00–313. Midwestern further states that the revised tariff sheets revise the Gas Research Institute surcharges for 2001.

Any person desiring to be head or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31555 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–172–000]

Mojave Pipeline Company; Notice of Rate Filing

December 6, 2000.

Take notice that on December 1, 2000, Mojave Pipeline Company (Mojave), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2001:

Fifth Revised Sheet No. 11
First Revised Sheet No. 103
First Revised Sheet No. 104

Mojave states that the tariff sheets re-establish its transportation rates as part of a general system-wide rate case.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31568 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–150–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifteenth Revised Sheet No. 8, with a proposed effective date of January 1, 2001.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,
Secretary.
[FR Doc. 00–31547 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–154–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Thirtieth Revised Sheet No. 9 and Fourth Revised Sheet No. 43, with a proposed effective date of January 1, 2001.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, *et al.*, National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) The changes in the FG reservation determinants based on the FG throughput for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Sections 2 and 3 Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of-Service based on the maximum IG rate in effect each month during the prior 12 ended October 31 times the IG throughput for the same period. The recalculation produced an FG rate of $7.7127 per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31551 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–146–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective January 1, 2001:

14th Revised Sheet No. 8
29th Revised Sheet No. 9
5th Revised Sheet No. 10
4th Revised Sheet No. 11

National asserts that the purpose of this filing is to reflect the year 2001 Gas Research Institute (GRI) unit surcharges approved by the Commission on April 29, 1998, at Docket No. RP97–149–003, *et al.*

National states that the proposed tariff sheets reflect demand/reservation surcharges of 09.0 cents and 05.5 cents per Dth for "high load factor and low load factor" customers respectively, and a commodity/usage surcharge of .70 cents on firm services.

National further states that copies of this filing are being were served upon National's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31581 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–168–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2001:

Eighteenth Revised Sheet Number 156
Seventeenth Revised Sheet Number 157

Northern Border proposes to increase the Maximum Rate from 4.038 cents per 100 Dekatherm-Miles to 4.083 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 1.625 cents per 100 Dekatherm-Miles to 2.450 cents per 100 Dekatherm-Miles. The Maximum Rate reflects Northern Border's rate case at Docket No. RP99–322–000, which was suspended by the Commission in its order dated June 30, 1999 that became effective December 1, 1999. Thus, a portion of this Maximum Rate will be billed subject to refund. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(1)(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31564 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–169–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 1, 2001:

50 Revised Sheet No. 50
50 Revised Sheet No. 51
46 Revised Sheet No. 53
4 Revised Sheet No. 56

Northern states that this filing establishes the System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 2001 for the period January 1 through December 31, 2001.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(1)(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31565 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–143–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective January 1, 2001:

Fifth Revised Volume No. 1

53 Revised Sheet No. 50
54 Revised Sheet No. 51
22 Revised Sheet No. 52
51 Revised Sheet No. 53
3 Revised Sheet No. 56

Original Volume No. 2

163 Revised Sheet No. 1C
39 Revised Sheet No. 1C.a

Northern states that the purpose of this filing is to set forth the approved 2001 Gas Research Institute (GRI) surcharges for the 2001 calendar year to be effective January 1, 2001 in accordance with the Commission's Order Approving The Gas Research Institute's Year 2001 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2000 in Docket No. RP00–313–000.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31578 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–165–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective January 1, 2001:

Third Revised Volume No. 1

Twentieth Revised Sheet No. 5
Sixteenth Revised Sheet No. 5–A
Second Revised Sheet No. 5–B
Original Sheet No. 5–C
Eleventh Revised Sheet No. 7
Fourteenth Revised Sheet No. 8
Eleventh Revised Sheet No. 8.1
Fifth Revised Sheet No. 232–D

Original Volume No. 2

Twenty-Ninth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to revise its tariff (1) to change Northwest's daily reservation/demand rates to reflect 365 days a year beginning in January, 2001; (2) to reformat the Statement of Rates shown on current Sheet Nos. 5 through 8.1; and (3) to change the daily price survey references associated with penalties for failure to comply with an operational flow order (OFO).

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31561 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–148–000]

Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

Fifty-Ninth Revised Sheet No. 4
Fifty-Ninth Revised Sheet No. 5
Fifty-Ninth Revised Sheet No. 6
Sixty-Second Revised Sheet No. 7
Sixty-Second Revised Sheet No. 8
Thirty-Eighth Revised Sheet No. 15
Third Revised Sheet No. 17

Panhandle states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order reh'g, 83 FERC ¶ 61,331 (1998) and the Commission's Letter Order dated September 19, 2000 in surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a reservation surcharge of 9.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.*, greater than 50% load factor; (2) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.70¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services: and (4) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Panhandle's Rate Schedule SCT.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31545 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–153–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Filing

December 6, 2000.

Take notice that on December 1, 2000, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twenty-fifth Revised Sheet No. 5. GTN requests that the above-referenced tariff sheet become effective January 1, 2001.

GTN asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect that GTN's fuel and line loss surcharge percentage will increase to 0.0012% per Dth per pipeline-mile for the six-month period beginning January 1, 2001. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31550 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–144–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Thirtieth Revised Sheet No. 4, Sixteenth Revised Sheet No. 4A, and Twenty-sixth Revised Sheet No. 5. GTN requests that the above-referenced tariff sheets become effective January 1, 2001.

GTN asserts that the purpose of this filing is to request an increase in the current maximum fuel and line loss percentage from 0.0041% per Dth per pipeline mile to 0.0050% per Dth per pipeline mile. GTN states that this change is intended to facilitate GTN's timely recovery of fuel and line losses, and limit reliance on GTN's fuel and line loss surcharge percentage, which is used to true up out of period fuel use and line loss amounts.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31579 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–149–000]

Questar Pipeline Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2001:

First Revised Volume No. 1

Nineteenth Revised Sheet No. 5

Original Volume No. 3

Twenty-Eighth Revised Sheet No. 8

Quester states that the tendered tariff sheets show a revised Fuel Gas Reimbursement Percentage (FGRP) of 0.8%, replace the currently effective 1.4% for tracking fuel-use and lost and unaccounted-for gas. The difference of −0.6% is to reflect the decrease in fuel, lost and unaccounted-for gas from the current FGRP rate of 1.4% to 1.3% for the prospective 12 months ending December 31, 2001, as well as a −0.5% amortization for over recovered fuel collected in the 12 month period ended September 30, 2000.

Further, Questar states that the revised FGRP is filed pursuant to Section 12.14 of the General Terms and Conditions of Part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary

[FR Doc. 00–31546 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–38–000]

SEI Michigan, L.L.C.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

December 6, 2000.

Take notice that on December 1, 2000, SEI Michigan, L.L.C. (SEI Michigan), 1155 Perimeter Center West, Atlanta, Georgia 30338, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

SEI Michigan is a Delaware limited liability company that intends to construct own, and operate a 298 MW generation facility at a site in Zeeland, Michigan. SEI Michigan is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before December 27, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31572 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–151–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 6, 2000.

Take notice that on December 1, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing (1) a revised accounting of Tennessee's take-or-pay transition costs and (2) a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the revised accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on June 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31548 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–161–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on November 30, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed on Appendix A to the filing, with an effective date of January 1, 2001.

Tennessee states that the revised tariff sheets are being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.*, and approved by the Commission on April 29, 1998 (the GRI Settlement), Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998), and the Commission's Letter Order approving the Gas Research Institute's Year 2001 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2000 in Docket No. RP00–313. Tennessee further states that the revised tariff sheets revise the Gas Research Institute surcharges for 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31557 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–157–000]

Texas Eastern Transmission Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2001.

Texas Eastern states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, Texas Eastern states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) A GRI volumetric surcharge of 0.70 cents per dekatherm will be charged on a all non-discounted firm commodity and interruptible transportation services; (2) a 1.1 cents per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Texas Eastern's Rate Schedule SCT; (3) a reservation surcharge of 9.0 cents per dekatherm per month will be charged

on non-discounted firm high load factor customers, *i.e.*, greater than 50% load factor; and (4) a reservation surcharge of 5.5 cents per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.*, less than or equal to 50% load factor.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http:///www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31554 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–38–000]

Trans-Union Interstate Pipeline, L.P.; Notice of Application

December 6, 2000.

On November 22, 2000, Trans-Union Interstate Pipeline, L.P. (Trans-Union), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, filed in Docket No. CP01–38–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations for a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations so that Trans-Union may construct, operate, and abandon certain facilities and to perform other routine activities permitted by that subpart, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Questions regarding the details of this proposed project should be directed to Ned Hengerer of John & Hengerer, at (202)–429–8811.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 27, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. Also, non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.20001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–31570 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–171–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Transcontential Gas Pipe Line Corporation tendered for filing certain new and revised pro forma tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1.

Transco states that the purpose of the instant filing is to revise its tariff to reflect new customer services and business practices that will be available on 1Linesm, a new, state of the art, internet-based, service delivery computer system that will replace Transco's current computer system. As is described more fully herein, Transco's proposed tariff modifications relate specifically to the following areas:

Offering Operational Balancing Agreements at wellhead receipt points and processing plants on the Transco system;

Revising imbalance resolution provisions to establish Operational Impact Areas, implementing imbalance netting and trading, modifying the existing cash out mechanism and offering Best Available Operational Data;

Establishing Operational Controls to address adverse operational conditions which impact flexibility prior to issuing an OFO and tariff provisions to address unauthorized takes and trespass gas;

Modifying the Nomination, Confirmation, and Predetermined Allocation methodologies used to determine the daily allocations and, if necessary, capacity reductions, at receipt and delivery points;

Formalizing the pooling services by adopting a new Rate Schedule POOLING and a Form of Service Agreement for pooling service; and

Modifying and formalizing certain pipeline business practices including those relating to capacity release, scheduling equality, liquefiable hydrocarbons processing, billing and payment, as well as other operational and business practices on the Transco system.

Transco states that its proposed pro forma tariff revisions are consistent with Commission policy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/oneline/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http:/ /www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31567 Filed 12–11–00 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–141–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on November 30, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to be effective January 1, 2001.

First Revised Third Revised Sheet No. 18

Transwestern states that the purpose of this filing is to modify the Right of First Refusal (ROFR) provisions of Transwestern's tariff to permit Transwestern to grant contractual ROFR rights on a not-unduly discriminatory basis to shippers that do not automatically qualify for such a right.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31576 Filed 12–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–156–000]

Trunkline Gas Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

Thirty-Fifth Revised Sheet No. 6
Thirty-Fourth Revised Sheet No. 7
Thirty-Fifth Revised Sheet No. 8
Thirty-Fifth Revised Sheet No. 9
Seventeenth Revised Sheet No. 9A
Seventh Revised Sheet No. 9B
Thirty-Fourth Revised Sheet No. 10
Twentieth Revised Sheet No. 10A

Trunkline states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2001 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998) and the Commission's Letter Order dated September 19, 2000 in Docket No. RP00–313–000. Specifically, Trunkline's filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) A reservation surcharge of 9.0¢ per dekatherm per month will be charged on a non-discounted firm high load factor customers, *i.e.*, greater than 50% load factor; (2) a reservation surcharge of 5.5¢ per dekatherm per month will be charged on a non-discounted firm low load factor customers, *i.e.*, less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.70¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 1.1¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Trunkline's Rate Schedule SST.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31553 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–164–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2000.

Take notice that on December 1, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective January 1, 2001:

Third Revised Sheet No. 6B

Williams states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 2000.

Williams states that copies of this filling have been seen on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31560 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–170–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

December 6, 2000.

Take notice that on December 1, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2001.

Williston Basin states the proposed tariff sheets are being filed to incorporate the Gas Technology Institute (GTI) General Research, Development and Demonstration Funding Unit Adjustment provision for 2001, and to change all references to the Gas Research Institute or GRI in the Rate Sheets, Rate Schedules, General Terms and Conditions and Forms of Service Agreements of Williston Basin's Tariff to the Gas Technology Institute or GTI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31566 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 6, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–3052–003.

c. *Date Filed:* August 27, 1999.

d. *Applicant:* City of Black River Falls, Wisconsin.

e. *Name of Project:* Black River Falls Hydroelectric Project.

f. *Location:* On the Black River in the City of Black River Falls, Jackson County, Wisconsin. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Loren Radcliffe, Administrator, Black River Falls Municipal Utilities, 119 North Water Street, Black River Falls, Wisconsin 54615.

i. *FERC Contact:* Susan B. O'Brien, *susan.obrien@ferc.fed.us,* (202) 219–2840.

j. *Deadline for filing motions comments, recommendations, terms and conditions, and prescriptions:* February 10, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted, and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing run-of-river project consists of: (1) 103-foot-long concrete gravity nonoverflow dam with the crest elevation of 773.0 feet; (2) 221-foot-long Taintor gate spillway; (3) 83-foot-long flashboard spillway with 12-inch-high flashboards; (4) nonoverflow concrete wall forming the left side of the powerhouse forebay; (5) headworks consisting of six head gates, a forebay, and the powerhouse intake; (6) powerhouse with a total installed capacity of 920 kilowatts, producing about 4.4 gigawatthours annually; (7) nonoverflow concrete gravity section extending from the headworks to the west retaining wall; (8) concrete retaining wall; (9) 198-acre reservoir with a total storage capacity of 1,980 acre-feet; (10) transmission lines; and (11) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims,* htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David Boergers,
Secretary.
[FR Doc. 00–31574 Filed 12–11–00; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–4]

Prevention of Significant Deterioration of Air Quality (PSD) Applicability Determination.

AGENCY: Environmental Protection Agency.

ACTION: Notice of applicability determination.

SUMMARY: This notice announces that on May 23, 2000, the Environmental Protection Agency (EPA) Region 5, issued an applicability determination for Detroit Edison Company's Monroe Power Plant pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) requirements under the Clean Air Act (Act) and regulations codified at 40 CFR 52.21.

DATES: Region 5 initially issued the above determination on May 23, 2000. The Administrator affirmed the determination on August 30, 2000.

FOR FURTHER INFORMATION CONTACT: Laura Hartman, Environmental Engineer, Permits and Grants Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5703, *hartman.laura@epa.gov.*

Anyone who wishes to review this determination and related materials can obtain this determination at *http://www.epa.gov/region5/air/permits/permits.htm or http://www.epa.gov/region07/programs/artd/air/nsr/nsrpg.htm.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Action is EPA Taking?
B. What did EPA Determine?

A. What Action Is EPA Taking?

We are notifying the public that EPA has made a provisional determination regarding the applicability of the PSD regulations to the proposed replacement and reconfiguration of the high pressure section of two steam turbines at Detroit Edison's Monroe Power Plant, referred to as the Dense Pack project. Specifically, Detroit Edison Company requested EPA to determine: (1) Whether the Dense Pack project is a routine or non-routine change under the PSD regulations, and (2) if the project is not routine, whether it will require a PSD permit.

B. What Did EPA Determine?

Considering the nature, extent, purpose, frequency, and cost of the work, as well as other relevant factors, EPA found that the proposed Dense Pack project would not be routine maintenance, repair, and replacement. Consequently, EPA determined that the project would not be exempt from the PSD program on that basis.

However, the Dense Pack project must undergo PSD review only if the project would result in a significant net emissions increase of regulated pollutants. Under the applicable PSD regulatory provisions commonly known as the "WEPCO rule", *see* 57 FR 32314 (July 21, 1992), in determining if a physical change will result in a significant emissions increase at an electric utility plant, a company may use an "actual" to "representative actual annual emissions" test for emissions from the electric utility steam generating unit. Under this test, the company must calculate baseline emissions and project future emissions after the change. Because EPA has no information to dispute Detroit Edison's contention that actual emissions will not significantly increase at the modified units as a result of the Dense Pack project, and as long as the State permitting agency concurs with Detroit Edison's projection that emissions will not increase as a result of the project, Detroit Edison may proceed at any time with the project without first obtaining a PSD permit. EPA's determination is provisional because Detroit Edison has not provided a calculation of baseline emissions or projected future emissions to the State permitting agency for evaluation as is called for under the WEPCO rule. The company should do so before starting construction.

If, after the project is completed and the affected units resume regular operation, data reflecting actual emissions show a significant emissions increase resulting from the project, PSD would apply at that time.

C. How May Interested Parties Seek Judicial Review of this Action?

Interested parties with standing may seek judicial review of this decision under Section 307(b)(1) of the Act *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate regional circuit within 60 days from the date on which this notice is published in the **Federal Register**. Under Section 307(b)(2) of the Act, this determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: November 21, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–31617 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–3]

National Advisory Council for Environmental Policy and Technology, (NACEPT) Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT standing committee on compliance assistance meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Standing Committee on compliance assistance will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below. NACEPT Standing Committee on Compliance Assistance; January 10th & 11th, 2001. Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the NACEPT Standing Committee on Compliance Assistance on Wednesday, January 10, 2001 from 8:30 a.m. to 5 p.m., and January 11, 2001 from 8:30 a.m. to 4:45 p.m.. The meeting will be held at the Washington Monarch Hotel, 2401 M. St. NW, Washington, DC 20037. The agenda for both days of the meeting will be focused primarily on the workgroup discussion of strategic compliance assistance (CA) policy issues, including integrating CA into the Agency's mission, CA measurement and CA priority setting. A formal agenda will be available at the meeting.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies.

Over the last two years, EPA has undertaken a number of actions to improve out Compliance Assistance activities. To ensure that the Agency efforts to improve compliance assistance are implemented in a way that continues to reflect stakeholder needs, the National Advisory Council on Environmental Policy and Technology (NACEPT) created a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the Agency can continue to receive valuable stakeholder advice and recommendations on compliance assistance activities.

For further information concerning the NACEPT Standing Committee on Compliance Assistance, including the upcoming meeting, contact Joanne Berman, Designated Federal Officer (DFO), on (202) 564–7064, or E-mail: berman.joanne@epa.gov.

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting.

Dated: December 4, 2000.

Joanne Berman,

Designated Federal Officer.

[FR Doc. 00–31616 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34223B; FRL–6756–7]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for the organophosphate pesticide malathion. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34223B, must be received by EPA on or before February 12, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34223B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8068; e-mail address: overstreet.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on malathion, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules", and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control number OPP–34223B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to This Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34223B in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34223B. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. What Action Is EPA Taking in This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, malathion. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA–USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the malathion preliminary risk assessments, which where released to the public through a notice in the **Federal Register** on May 11, 1999, 65 FR 30407, (FRL–6558–3).

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for malathion. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific malathion use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre–harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non—target organisms. EPA will provide other opportunities for public participation

and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before February 12, 2001, at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 7, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–31696 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6915–7]

Strategy for Research on Environmental Risks to Children

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Office of Research and Development (ORD), is today announcing the availability of a final document, Strategy for Research on Environmental Risks to Children, EPA 600/R–00/068, dated October 2000. ORD has prepared the Strategy for Research on Environmental Risks to Children to strengthen the scientific foundation of the EPA risk assessments and risk management decisions that affect children. ORD strategies provide a framework of research needs and priorities to guide its programs over the next five to ten years. They form the basis for more detailed research plans, which in turn link to individual ORD laboratory implementation plans. The strategy includes a program of research in hazard identification, dose-response and exposure assessment, and risk reduction, as well as problem-oriented research that addresses current critical needs identified by EPA Program Offices and Regions.

ADDRESSES: A limited number of copies of the Strategy for Research on Environmental Risks to Children are available from the National Service Center for Environmental Publications.

Request a copy by telephoning 1–800–490–9198 or 513–489–8190 and providing the title and the EPA number for the document, EPA 600/R–00/068. Internet users may obtain a copy from the EPA's Office of Research and Development home page. The URL is http://www.epa.gov/ORD.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Hammerstrom, National Center for Environmental Assessment (8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–3258; facsimile: 202–565–0065; E-mail: hammerstrom.karen@epa.gov.

SUPPLEMENTARY INFORMATION: The Strategy for Research on Environmental Risks to Children focuses on six objectives: (1) To establish direction for a long-term, stable core research program in children's environmental health that leads to sustained risk reduction through more accurate, scientifically based risk assessments for children, (2) to identify research to answer the key questions about children's environmental health risks and increase our understanding of when and why children respond differently from adults to environmental agents, (3) to identify research that will help to reduce children's risks, (4) to provide a research agenda that identifies priorities for the ORD intramural and extramural programs, (5) to inform EPA scientists, risk assessors, and risk managers of the research related to children at EPA and other Federal agencies, and (6) to provide guiding principles for implementation.

To meet these objectives, the strategy describes a research program with short-term and long-term goals in the following areas:

- Data to reduce uncertainties in risk assessment through mode of action research, epidemiology and clinical studies, exposure field studies, and activity pattern and exposure factor studies
- Risk assessment methods and models for children, including dose-response and exposure models
- Experimental methods for studying mechanisms of action in children
- Risk reduction in children's indoor environments
- Methods of communicating risks to children and reduction of risk through parental and community actions

The strategy provides the framework for a program that continues well into the future. The success of the program will depend on a number of factors, not the least of which is engagement and partnership with key stakeholders. In addition to EPA's Program Offices and Regions, these key stakeholders include industry; States, Tribes, and local communities; Federal organizations including the National Institute of Environmental Health Sciences, the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry; and the international community.

Dated: December 6, 2000.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–31619 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–6]

Carrier Air Conditioning Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the Carrier Corporation pursuant to 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the Carrier Air Conditioning Company Superfund Site located in Collierville, Shelby County, Tennessee. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: November 20, 2000.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–31618 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51959; FRL–6759–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 30, 2000 to November 10, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51959 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51959. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the manufacturer/importer and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51959 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51959 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**"

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 30, 2000 to November 10, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 10/30/00 TO 11/10/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0078	10/30/00	01/28/01	CBI	(G) Glass fiber coating	(G) Urethane acrylate oligomer
P–01–0079	10/30/00	01/28/01	CIBA Specialty Chem.Corp., Colors Division	(G) Textile dye	(G) Benzoic acid, 3,5-diamino-2-[(1,5-disulfo-2-naphthalenyl)azo]-4,6-bis[[4-(substituted)phenyl]azo]-, sodium salt
P–01–0080	10/31/00	01/29/01	Lambent Technologies Corp.	(S) Wetting agent - coatings	(S) Poly(oxy-1,2-ethanediyl), α-(2-carboxybenzoyl)-omega-[3-[1,3,3,3-tetramethyl-1-[(trimethylsily-l)oxy]disiloxanyl]propoxy]-, potassium salt
P–01–0081	10/31/00	01/29/01	Lambent Technologies Corp.	(S) Wetting agent - coatings	(S) Poly(oxy-1,2-ethanediyl), α-(2-carboxybenzoyl)-omega-(2-propenyloxy)-, potassium salt
P–01–0082	10/31/00	01/29/01	Lambent Technologies Corp.	(S) Wetting agent - coatings	(S) Poly(oxy-1,2-ethanediyl), α-(2-carboxybenzoyl)-omega-[(2-carboxybenzoyl)oxy]-, dipotassium salt
P–01–0083	10/31/00	01/29/01	CBI	(G) Coating component	(G) Tris carbamoyl triazine
P–01–0084	11/01/00	01/30/01	CBI	(S) Plasticizer for plastics	(G) 1,2,4,5-benzenetetracarboxylic acid, tetrakis esters with monohydric alcohols
P–01–0085	11/02/00	01/31/01	CBI	(G) Component of adhesives, inks, and clear coatings	(G) Mono esters from 2-propenoic acid
P–01–0086	11/02/00	01/31/01	Huntsman Petrochemical Corporation	(G) Chemical intermediate - destructive use	(G) Alkanolamine
P–01–0087	11/02/00	01/31/01	Atofina Chemicals, Inc.	(G) Free radical initiator for polymers	(G) Polyether poly-t-butyl peroxycarbonate
P–01–0088	11/02/00	01/31/01	Rhodia, Inc.	(S) Component in surfactant/foaming agent for leather processing	(S) Sulfuric acid, mono-c_{9-11}-alkyl esters, sodium salts
P–01–0089	11/03/00	02/01/01	CBI	(G) Acrylic pressure sensitive adhesive	(G) Vinyl pyrrolidone-acrylate copolymer
P–01–0090	11/03/00	02/01/01	Dainippon ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–01–0091	11/03/00	02/01/01	Dainippon ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–01–0092	11/06/00	02/04/01	Degussa-huls Corporation	(S) Sizing component for fiber glass	(S) 2-propanol, reaction products with (3-chloropropyl)trimethoxysilane and diethylenetriamine-ethylenimine polymer

TABLE I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 10/30/00 TO 11/10/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0093	11/06/00	02/04/01	Rhodia, Inc./formerly albright & wilson	(S) Viscosity index improver for hydraulic and gear oils;viscosity index improvers for shock absorber fluids and other special hydraulics;pour point depressants for hydraulic and gear oils	(S) 2-propenoic acid, 2-methyl-, c_{6-18}-alkyl esters, polymers with me methacrylate
P–01–0094	11/07/00	02/05/01	CBI	(G) Resin coating	(G) Polyester resin
P–01–0095	11/09/00	02/07/01	3M Company	(G) Stain resistant coating	(G) Aliphatic urethane
P–01–0096	11/09/00	02/07/01	CBI	(G) Open.non dispersive use	(G) Modified acrylate polymer
P–01–0097	11/09/00	02/07/01	Sybron Chemical Inc.	(S) A crosslinker for waterborne paper coastings; a crosslinker for waterborne inks; a crosslinker for leather finishes; a crosslinker for waterborne wood coatings	(G) Polyaziridinyl ester
P–01–0103	11/06/00	02/04/01	Solutia Inc.	(S) Binder for industrial printing inks	(G) Phenolic resin modified rosin resin

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

TABLE II. 4 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 10/30/00 TO 11/10/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–01–0002	11/03/00	12/18/00	Ilford Imaging USA	(S) Dye for inkjet printer ink	(G) Copper complex with sulfonated azo dye, sodium salt
T–01–0003	11/09/00	12/24/00	Bystronic Inc.	(S) Photo-curing overprint varnish for paper, cardboard and plastic films roller coating	(G) Acrylic acid ester amino addition product
T–01–0004	11/09/00	12/24/00	Bystronic Inc.	(S) Photo-curing overprint varnish for paper, cardboard and plastic films roller coating	(G) Acrylic acid ester amino addition product
T–01–0005	11/09/00	12/24/00	Bystronic Inc.	(S) Photo-curing overprint varnish for paper, cardboard and plastic films roller coating	(G) Acrylic acid ester amino addition product

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE III. 38 NOTICES OF COMMENCEMENT FROM: 10/30/00 TO 11/10/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0080	11/09/00	10/13/00	(G) Polyphosphoric acids, compounds with melamine
P–00–0084	11/07/00	10/23/00	(G) Dimethyl ester of 2-2 oxo-1-(1,4-dihydro-2,3-dioxo-6-methoxy-quinoxaline-7-yl carbamoyl-propylazo)terephthalic acid
P–00–0534	11/09/00	10/12/00	(G) Copolymer of alkyl acrylates
P–00–0543	11/08/00	10/12/00	(S) Petanoic acid, 5,5'-dioxybis[5-oxo-]
P–00–0631	11/07/00	10/16/00	(G) Alkyl arylaminophenylcarboxylate
P–00–0657	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0658	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0659	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0660	11/03/00	10/06/00	(G) Styrene acrylic emulsion polymer
P–00–0732	11/08/00	10/09/00	(G) Silane
P–00–0765	11/01/00	10/04/00	(G) Alkylaryl polyether
P–00–0787	11/07/00	10/24/00	(S) Alkanes, c_{10-24}-branched
P–00–0788	11/07/00	10/11/10	(S) Alkanes, c_{10-24}
P–00–0838	11/03/00	10/17/00	(G) Substituted alkylsulfonamide
P–00–0871	10/30/00	10/07/00	(G) Reaction product of halogenated arylammonium salt, alkylaluminum and substituted carbomonocyclic metal compound
P–00–0880	11/06/00	10/25/00	(S) 1,2,3 propanetricarboxylic acid, 2-hydroxy-, bismuth(3+) salt (1:1)

TABLE III. 38 NOTICES OF COMMENCEMENT FROM: 10/30/00 TO 11/10/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0884	10/30/00	10/19/00	(G) Polyester polyether isocyanate polymer
P–00–0886	10/30/00	10/16/00	(G) Polyester polyether isocyanate polymer
P–00–0921	10/30/00	10/19/00	(G) Silane treated silica
P–00–0937	11/03/00	10/25/00	(G) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, polymer with 1,1'-methylenebis[4-isocyanatocyclohexane], and an aliphatic alcohol
P–00–0940	11/03/00	10/18/00	(G) Polyamide resin
P–00–0944	10/30/00	10/02/00	(G) Aqueous polyurethane
P–00–0994	11/01/00	10/13/00	(G) Amino substituted aromatic acid derivative
P–00–1004	11/08/00	10/16/00	(G) Polyester resin
P–00–1007	11/03/00	10/17/00	(G) Colored aliphatic urethane
P–00–1008	11/09/00	10/13/00	(G) Multifunctional polycarbodiimide
P–00–1049	11/08/00	10/19/00	(G) Polyester resin
P–00–1066	11/09/00	11/02/00	(G) Methacrylic acid copolymer
P–92–0539	11/07/00	10/27/00	(S) Polymer of fatty acids, C_{18}-unsatd., dimers; ethylenediamine; stearic acid; 1,5-pentanediamine, 2-methyl-;piperazine; polyoxypropylenediamines; sebacic acid
P–93–0939	10/30/00	10/03/00	(G) Cyclic - aliphatic polyester
P–99–0377	10/30/00	10/25/00	(G) Halogenated alkyldiene
P–99–0791	11/06/00	10/17/00	(G) Polyester polyol
P–99–0792	11/06/00	10/17/00	(G) Polyester polyol
P–99–0793	11/06/00	10/17/00	(G) Polyester polyol
P–99–0848	11/07/00	10/30/00	(G) Alkenyl carboxylate, metal salt
P–99–1064	11/08/00	10/25/00	(S) Cellulose, acetate hydrogen (2*z*)-2-butenedioate propanoate
P–99–1311	10/30/00	10/12/00	(G) Polyol
P–99–1379	11/06/00	08/30/00	(G) Polydimethyldiphenylsiloxane resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 29, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–31620 Filed 12–11–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, December 14, 2000, at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

The following items have been added to the agenda: Dole/Kemp '96, Inc.—Statement of Reasons (LRA #506); Response to October 19, 2000 open meeting regarding Dole-Kemp '96, Inc.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–31745 Filed 12–8–00; 2:51 pm]

BILLING CODE 6775–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Partially Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of partially open meeting.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: January 25–27, 2001.

Place: Building J, Room 236, National Emergency Training Center, Emmitsburg, Maryland.

TIME: January 25, 2001, 8:30 a.m.–10:30 a.m. (Closed Meeting), January 25, 2001, 10:30 a.m.–5 p.m. (Open Meeting), January 26, 2001, 8:30 a.m.–9 p.m. (Open Meeting), January 27, 2001, 8:30 a.m.–12 noon (Open Meeting).

Proposed Agenda: January 25, (Closed Meeting from 8:30 a.m.–10:30 a.m., to review Fiscal Year 2001 budgetary and procurement information.) January 25–27, Review U.S. Fire Administration Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public (except as noted above) with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 19, 2001.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Chief Operating Officer, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: November 29, 2000.

Kenneth O. Burris, Jr.,

Chief Operating Officer.

[FR Doc. 00–31514 Filed 12–11–00; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Deposit Bancshares, Inc., Douglasville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Douglas Federal Bank, Douglasville, Georgia, upon its conversion from a federal savings bank to a chartered commercial bank.

Board of Governors of the Federal Reserve System, December 6, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31498 Filed 12–11–00; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

Proposed Collection; Comment Request Entitled GSA Board of Contract Appeals Rules Procedure

AGENCY: GSA Board of Contract Appeals (GSBCA), GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB Clearance (3090–0221).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning GSA Board of Contract Appeals Rules Procedure. This information collection was published in the **Federal Register** at 65 FR 58088, on September 27, 2000 allowing for the standard 60-day public comment period. No comments were received.

DATES: Comment Due Date: January 11, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to: Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals (202) 501–0272.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, and cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 55; *annual responses:* 55; *average hours per response:* .20; *burden hours:* 6.4.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: December 4, 2000.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 00–31515 Filed 12–11–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Request for public comment on a proposed template of genetic test information for use by health professionals.

SUMMARY: The Secretary's Advisory Committee on Genetic Testing (SACGT) was chartered to advise the Department of Health and Human Services on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. SACGT recently completed its first report, Enhancing the Oversight of Genetic Tests (available at *http://www4.od.nih.gov/oba/sacgt.htm*). SACGT stated in the report's overarching principles that genetics education of health professionals and the public about the appropriate use, interpretation, and understanding of genetic test results is critical to the successful implementation of genetic testing into health care.

To inform and educate health professionals on genetic testing and their appropriate uses, SACGT is developing a template of essential information elements about genetic tests. A SACGT working group, composed of SACGT members and ad hoc experts, identified seven key data elements about a genetic test that may be valuable to health professionals considering using a genetic test for patient care. At its November 2–3, 2000 meeting, SACGT reviewed the proposed genetic test information template and recommended public comment be solicited. After consideration of public comments, SACGT's final draft of the template will be submitted to the Assistant Secretary of Health for transmittal to the Secretary of Health and Human Services.

DATES: The public is encouraged to provide written comments on the proposed genetic test information template by January 31, 2001. The following mailing address should be used: SACGT, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 103, Bethesda, Maryland, 20892. SACGT's facsimile number is 301–496–9839. Comments can also be sent via e-mail to *hagas@od.nih.gov*. All public comments received will be available for public inspection at the SACGT office between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION: Questions about this request for public comment can be directed to Dr. Susanne Haga, by e-mail (*hagas@od.nih.gov.*) or telephone (301–496–9838). The proposed template will also be posted on SACGT's website for review and comment.

SUPPLEMENTARY INFORMATION: Decades of genetics research have brought about many important medical and public health advances. The pace of discovery

in this area has enabled scientists to make rapid progress in understanding the role of genetics in many common yet complex diseases and conditions, such as heart disease, cancer, and diabetes. It also has increased knowledge that may lead to the development of new tests to identify these disease conditions in individuals, sometimes before symptoms occur. According to GeneTests, a genetic testing laboratory directory, genetic testing is clinically available for more than 400 diseases or conditions in more than 200 laboratories in the United States, and investigators are exploring the development of tests for an additional 338 diseases or conditions. However, most of the current genetic testing is for single gene disorders such as Huntington disease and cystic fibrosis.

Genetic tests can be performed for a number of purposes. Moreover, a test can be used in more than one way, such as when a test used for diagnostic purposes is also used to predict risk of disease. SACGT included the following types of testing within its definition: (1) An analysis performed on human DNA, RNA, genes, and/or chromosomes to detect heritable or acquired genotypes, mutations, phenotypes, or karyotypes that cause or are likely to cause a specific disease or condition; and (2) the analysis of human proteins and certain metabolites, which are predominantly used to detect heritable or acquired genotypes, mutations, or phenotypes. The purposes of both these types of genetic tests include directing clinical management, screening of newborns, predicting risks of disease, identifying carriers, and establishing prenatal or clinical diagnoses or prognoses in individuals, families, or populations. Not included in this definition are tests that are used primarily for other purposes, but that may contribute to diagnosing a genetic disease (*e.g.*, blood smear, certain serum chemistries), and tests conducted exclusively for forensic identification purposes.

In the past, many tests were developed to detect or confirm rare genetic diseases. More recently, tests have been developed to detect mutations that may be involved in or contribute to more common, complex conditions (such as breast, ovarian, and colon cancer and cardiovascular disease), the effects of which generally do not appear until later in life. Optimally, these tests are used to predict a person's predisposition to disease where there is a family history of the disease, and, in general, such tests are not recommended for individuals without such a history. However, in the future, the use of predictive tests may expand and be offered to individuals without a family history of certain diseases and conditions, e.g., common adult-onset disorders.

Proposed Template of Genetic Test Information

Due to the wide range of genetic tests, their multiple uses and complexities, and the rapidity with which they are being developed and introduced into clinical practice, health professionals should be knowledgeable about the basic elements of a genetic test to ensure their appropriate use. A SACGT working group developed a template of seven key essential data elements about genetic tests that could serve as a framework for an informational fact sheet. This fact sheet would be analogous to reference books or fact sheets describing intended uses, risks, and benefits of drugs for health professionals. Fact sheets for genetic tests could help encourage important information exchanges between health professionals who order genetic tests and laboratorians who provide the testing services. Information that is known about a genetic test in these seven areas should be included or referenced on the fact sheet. Equally important, when data are not available for a given element, the absence of such data should be specifically noted. It will also be important for the fact sheets to be updated periodically to reflect new scientific or clinical data. If the Food and Drug Administration (FDA) or other oversight bodies become involved in the review of genetic tests prior to clinical introduction, the approved claims of the test should be stated as well.

The seven elements relate to the following areas: purpose of the test; clinical condition for which the test is performed; definition of the test; analytical validity, clinical validity, and clinical utility of the test; cost of the test and billing/reimbursement information. The seven elements are described in detail below along with the proposed sources for each element.

A. *Purpose of the Test.* SACGT proposes that the purpose of the test and the appropriate settings for offering the test should be clearly described. Examples of categories of test purposes could include predictive, carrier, prenatal, preimplantation, newborn, and diagnostic testing. Each category of test use represents a different test, even when the laboratory measurement(s) are the same. Therefore, all appropriate categories should be clearly described.

SACGT suggests that the laboratory providing the testing services should define the proper use of the test. Peer-reviewed literature as well as the laboratory's own data should be used to substantiate the appropriateness of the intended use(s) of a test. In addition, relevant clinical, professional, and health policy communities and government agencies should contribute to defining the appropriate uses of genetic tests through the development of practice standards and guidance documents.

B. *Clinical Condition for Which Test is Performed.* SACGT recommends that the clinical condition for which the test is to be performed be described. The prevalence or incidence of the disease or condition, its clinical manifestations, and prognosis to the extent known should be included in the description of the clinical condition. The testing laboratory should cite the clinical condition as part of its description of the intended use(s) of the test. Peer-reviewed literature should be referenced as appropriate. In addition, relevant clinical, professional, and health policy communities and government agencies should contribute to describing clinical manifestations, prevalence, and prognosis as appropriate.

C. *Definition of Test.* SACGT proposes that the specific laboratory measurement(s) of the test, *e.g.*, specific mutation, metabolite, enzyme activity, be described in the information template for health professionals. The description should be written in a language that would be understandable to non-laboratorians. A description of what the test measures may also assist health professionals in interpreting the results.

D. *Analytical Validity.* SACGT recommends that information regarding the analytical validity of a test be provided in the information template to health professionals. SACGT believes that a genetic test should demonstrate analytical validity before the test is used for clinical purposes. Analytical validity is defined as the ability of a test to measure or detect the analyte it is intended to measure or detect. An analyte is defined as the substance measured by a laboratory test, *e.g.*, DNA—mutation, allele, or chromosome, metabolites, or enzyme activity. Analytical validity includes analytical sensitivity (the probability that a test will detect an analyte when it is present in the sample) and analytical specificity (the probability that a test will be negative when an analyte is absent from a sample). Health professionals as well as patients should know whether a test can accurately detect the presence or absence of its intended target.

SACGT proposes that the laboratory providing the testing services supply specific information related to its assay. As with other elements, peer-reviewed literature may be referenced to substantiate claims of test performance.

E. *Clinical Validity.* SACGT proposes that information on the clinical validity of a test be provided to health professionals. SACGT defines clinical validity as the accuracy with which a laboratory measurement predicts the presence or absence of a clinical condition. For diagnostic, prenatal, and carrier tests, accuracy could be expressed as clinical sensitivity (the probability a person with the disease, or who will get the disease, will have a positive result), clinical specificity (the probability that a test will be negative in a person who does not have or will not get the disease), positive predictive value (the probability that a person with a positive result has, or will get, the disease), and negative predictive value (the probability that a person with a negative test result does not have, or will not get, the disease). For predictive tests, SACGT proposes to define accuracy as the prediction of expressivity (the range of phenotypes associated with positive and negative test results) and age-related penetrance (likelihood of disease at a given age in test-positive individuals). In addition, health professionals should be made aware of other factors, such as environment or lifestyle, that may influence the development or prognosis of a disease or condition in an individual with a positive test result, as they may assist in their clinical management approaches.

SACGT suggests that the testing laboratory should define clinical validity as relevant to the proposed uses of the test. Peer-reviewed literature as well as the laboratory's own data should be used to substantiate the claims of clinical validity of the test. Information about the clinical validity should include, as necessary, a statement about the limitations of the available data. For example, if a test has been evaluated in only high-risk families, the absence of population-based data should be noted. More detailed consideration of clinical validity through research studies and clinical experience may contribute to the development of practice standards over time by the professional, medical, and health policy communities.

F. *Clinical Utility.* SACGT proposes that information relating to the clinical utility of a test be provided to health professionals. SACGT defines clinical utility as the contribution of the test result to improved outcome in the person tested. Clinical utility usually reflects the efficacy of clinical interventions for persons with positive test results. However, even when no interventions are available to treat or prevent the disease or condition, there may be other benefits associated with the knowledge of positive or negative test results.

If a clinical intervention is available for individuals who test positive for the disease or condition, this information should be provided to health professionals, along with the level of evidence regarding its efficacy. Other potential benefits associated with the knowledge of test results should also be described.

SACGT has not identified a specific source that would be responsible for providing information related to clinical utility. References to peer-reviewed literature or contact information for professional or patient advocacy organizations in the relevant field could be listed. Health professionals should also be active in investigating possible clinical interventions or preventive strategies. In-depth consideration of clinical utility through research studies and clinical experience will contribute to the development of practice standards and guidelines over time by professional medical and health policy communities and patient and disease advocacy organizations.

G. *Cost of Test and Billing/Reimbursement Information.* SACGT suggests that the testing laboratory provide information to health professionals on the cost of the test. At present, some genetic tests are very expensive, though, as technology advances and the use of these tests increases, it is expected that costs will decrease. If possible, the laboratory could also provide any information on billing and reimbursement policies for the test. For example, the laboratory may indicate which CPT codes should be used for billing purposes. In addition, since patients may wish to pay for the test directly due to concerns related to the confidentiality and privacy of test results, information on direct payments should be included. SACGT recognizes that laboratories may have limited information regarding reimbursement policies since these are variable and often decided over time by third-party payors. Many health insurers provide information on their reimbursement policies via their web-site or customer information services.

Questions on Which Comment Is Being Solicited

1. Do the proposed elements sufficiently address the relevant information that should be made available to health professionals about a genetic test? Are there other elements that should be added to the template? If so, please define the element and propose a specific source for the element.

2. Are the proposed sources of information appropriate for each element?

3. Who should provide information regarding the clinical utility of a genetic test?

4. Would this information template be useful to you? If so, how?

5. How would this information best be disseminated to health professionals?

6.If FDA becomes involved in the oversight of genetic tests, much of the content of the proposed fact sheets will be considered during FDA's review process. In the interim, what other review mechanisms should be considered to ensure the accuracy of the material provided in the information sheets?

Dated: December 6, 2000.

Sarah Carr,

Executive Secretary, Secretary's Advisory Committee on Genetic Testing.

[FR Doc. 00–31523 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1642]

Agency Information Collection Activities; Proposed Collection; Comment Request; Establishment Registration and Listing Requirements for Human Cells, Tissues, and Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for human tissue intended for transplantation.

DATES: Submit written or electronic comments on the collection of information by February 12, 2001.

ADDRESSES: Submit electronic comments on the collection of

information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Establishment Registration and Listing of Requirements for Human Cellular and Tissue-Based Products—21 CFR Part 1270 (OMB Control Number 0910–0372)—Extension

Under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264), FDA issued regulations to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, hepatitis C, and other organisms causing infectious disease through the use of human tissue for transplantation. The regulations in part 1271 (21 CFR part 1271) require establishments that recover, process, store, label, package, or distribute any human cell, tissue, and cellular and tissue-based product (HCT/P), or that perform donor screening or testing, to submit an initial establishment registration and HCT/P list to FDA. Subsequently, establishments must submit an annual update to their establishment registration. In addition, establishments are required to submit HCT/P list updates, if any, and amendments whenever an establishment changes ownership or locations. FDA provides a registration and listing form (Form FDA 3356) to facilitate the ease and speed of submissions.

Sections 1271.10(b) and 1271.21(a) and (b) require the initial establishment registration and HCT/P listing information. Sections 1271.10(b) and 1271.21(b) require the annual establishment registration by domestic and foreign HCT/P establishments that are solely regulated under section 361 of the PHS Act and this part. Sections 1271.10(b), 1271.21(c)(ii), and 1271.25(c) require domestic and foreign HCT/P establishments to submit HCT/P listing updates only when an HCT/P is changed, added, or discontinued, and when there has been a material change to information submitted previously to the agency. If no change has occurred since the previous submission, an update is not required. Sections 1271.10(b) and 1271.26 require domestic and foreign HCT/P establishments to submit an amendment, but only when the establishment makes a change in location or ownership.

Sections 207.20, 207.26, 207.30, 807.20, 807.26, and 807.30 (21 CFR 207.20, 207.26, 207.30, 807.20, 807.26, and 807.30) already require establishments that manufacture drug or device products to submit initial establishment registration and product listing, as well as annual establishment registration, product listing updates, and location and ownership amendments. Sections 207.20(f) and 807.20(d) require that manufacturers of HCT/P drugs and devices submit this registration and listing information using Form FDA 3356 instead of the multiple forms identified under parts 207 and 807 (21 CFR parts 207 and 807). Therefore, these establishments will incur only a one-time burden to transition from the use of several forms to the use of one form.

Respondents to this information collection are establishments that recover, process, store, label, package, or distribute any human cells, tissue, and cellular and tissue-based product. Based on information provided to FDA by industry representatives, trade organizations, and professional societies, the estimated number of establishments 1,225 (i.e., approximately 110 conventional tissue, 114 eye tissue banks, 400 peripheral blood stem cells, 25 stem cell products from cord blood, 400 reproductive tissue, 110 sperm banks, and 66 licensed biological products and approved devices). Our burden estimates for the annual frequency per response and average hours per response are based on institutional experience with comparable reporting provisions for drugs, including biological products, and devices, information from industry representatives and trade organizations, and data provided by the Eastern Research Group, a consulting firm hired by FDA to prepare an economic analysis of the potential economic impact on sperm banks and other reproductive tissue facilities.

Table 1 of this document provides the initial, one-time estimated burden for HCT/P establishment registration and HCT/P listing. This information may be submitted simultaneously on the same form, Form FDA 3356. We estimate that 0.75 hour of staff time will be needed for each initial submission.

In table 1 of this document we also include the one-time burden for HCT/P drug and device manufacturers regulated under parts 207 and 807. Parts 207 and 807 require that drug and device manufacturers submit initial establishment registration and product listing, annual establishment registration, product listing updates, and location/ownership amendments. Sections 207.20(f) and 807.20(d) change only the reporting format and require use of only one form, new Form FDA 3356, in place of the multiple forms currently required, i.e., Forms FDA–2656 and FDA–2657 for drug manufacturers, and Forms FDA–2891, FDA–2891(a), and FDA–2892 for device manufacturers. Therefore, the one-time reporting burden estimate for §§ 207.20(f) and 807.20(d) in table 1 of this document reflects only the time necessary to transition from the use of current multiple forms to the use of Form FDA 3356.

Table 2 of this document provides the estimate of the ongoing annual reporting burden for establishment registration. In addition, table 2 of this document sets out estimated reporting burdens for HCT/P listing updates and establishment location or ownership amendments that would occur during any given year. If there is no change to an HCT/P listing, establishment location or ownership, a submission is not required. It is estimated that ongoing annual registration, updates and amendments require 0.50 hour, while the initial submission requires on average 0.75 hour. In addition, table 2 of this document shows that the average hours per response is 0.25 hour for the HCT/P listing updates and location/ownership amendments, which are required only when a change is made.

In table 2 of this document, we also estimate that approximately 5 percent of the 1,159 establishments, or 58 establishments, will make changes to HCT/P's, location, or ownership in any one year after the initial registration and listing.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED INITIAL (ONE-TIME) REPORTING BURDEN[1]

21 CFR Section	Form FDA 3356	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
207.20(f)		1	1	1	0.5	0.5
807.20(f)		65	1	65	0.5	32.5
1271.10(b) and 1271.25(a) and (b)	Inital registration and listing	1,159	1	1,159	0.75	869.25
Total						902.25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA 3356	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1271.10(b) and 1271.21(b)	Annual registration	1,159	1	1,159	0.5	579.5
1271.10(b), 1271.21(c), and 1271.25(c)	Listing update	58	1	58	0.5	29
1271.10(b) and 1271.26	Location/ownership amendment	58	1	58	0.25	14.5
Total						623

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31592 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1353]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 2000 (65 FR 41674), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0116. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31588 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1303]

Agency Information Collection Activities; Announcement of OMB Approval; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Agreement for Shipment of Devices for Sterilization" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 2000 (65 FR 55634), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0131. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31590 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1328]

Agency Information Collection Activities; Announcement of OMB Approval; Latex Condoms; User Labeling; Expiration Dating

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Latex Condoms; User Labeling; Expiration Dating" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 2000 (65 FR 57617), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0352. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31593 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1359]

Agency Information Collection Activities; Announcement of OMB Approval; Affirmation of Generally Recognized as Safe (GRAS) Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Affirmation of Generally Recognized as Safe (GRAS) Status" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the**Federal Register** of September 25, 2000 (65 FR 57616), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0132. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31594 Filed 12–11–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2001. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5496.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register** and FDA implemented the recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Since the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA Advisory Committees' home page located at www.fda.gov/oc/advisory/default.htm. The FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2001. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

Committee Name	Dates of Meetings	Advisory Committee 5–Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	April 13 November 16	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	March 5 October 29	12388
Biological Response Modifiers Advisory Committee	January 18–19 April 5–6 July 12–13 October 25–26	12389
Blood Products Advisory Committee	March 15–16 July 26–27 September 20–21 December 13–14	19516
Transmissible Spongiform Encephalopathies Advisory Committee	January 18–19 June 28–29 October 25–26	12392
Vaccines and Related Biological Products Advisory Committee	January 30–31 March 8–9 May 16–17 September 13–14 November 28–29	12391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	April 23–24 August 13–14 October 29–30	12539
Advisory Committee for Reproductive Health Drugs	June 1	12537
Anesthetic and Life Support Drugs Advisory Committee	January 25–26 May 10–11 September 13–14	12529
Anti-Infective Drugs Advisory Committee	January 29–30	12530
Antiviral Drugs Advisory Committee	January 11 April 26–27 July 23–24 October 22–23 December 6–7	12531
Arthritis Advisory Committee	February 7–9 April 19–20 August 16–17 October 11–12 December 6–7	12532
Cardiovascular and Renal Drugs Advisory Committee	February 8–9 May 17–18 October 18–19	12533
Dermatologic and Ophthalmic Drugs Advisory Committee	February 5 June 5 August 14 September 18 December 9–10	12534
Drug Abuse Advisory Committee	No meetings are planned	12535
Endocrinologic and Metabolic Drugs Advisory Committee	February 22–23 April 26–27 July 26–27 September 20–21 November 8–9	12536
Gastrointestinal Drugs Advisory Committee	March 29–30	12538
Medical Imaging Drugs Advisory Committee	March 1 July 2	12540

Committee Name	Dates of Meetings	Advisory Committee 5–Digit Information Line Code
Nonprescription Drugs Advisory Committee	May 10–11	12541
Oncologic Drugs Advisory Committee	March 13–14 June 7–8	12542
Peripheral and Central Nervous System Drugs Advisory Committee	March 13–15	12543
Pharmacy Compounding Advisory Committee	March 29–30 June 28–29 September 13–14	12440
Psychopharmacologic Drugs Advisory Committee	February 14–15	12544
Pulmonary-Allergy Drugs Advisory Committee	January 18–19 April 26–27 September 6–7	12545
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	April 23–24 September 24–25	10564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No meetings are planned	12398
Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices Panel	June 14–15	12624
Circulatory System Devices Panel	February 5 April 2–3 June 25–26 September 10–11 December 3–4	12625
Clinical Chemistry and Clinical Toxicology Devices Panel	January 17 May 9 July 11 October 24–25 December 5–6	12514
Dental Products Panel	April 3–4 August 14–15 November 13–14	12518
Dispute Resolution Panel	Will meet as needed	10232
Ear, Nose, and Throat Devices Panel	February 22–23 June 11–12 October 11–12	12522
Gastroenterology-Urology Devices Panel	March 9 June 29 September 24–25 December 10–11	12523
General and Plastic Surgery Devices Panel	February 7 May 15–16 September 24–25 December 10–11	12519
General Hospital and Personal Use Devices Panel	February 12–13 May 17–18 August 2–3 November 1–2	12520
Hematology and Pathology Devices Panel	February 26 April 23 July 30 October 8	12515
Immunology Devices Panel	March 16 June 15 September 14 December 3	12516
Microbiology Devices Panel	March 8–9 July 19–20 October 25–26 December 6–7	12517
Molecular and Clinical Genetics Panel	March 9 June 8 September 7 December 7	10231
Neurological Devices Panel	February 8–9 May 17–18 November 15–16	12513
Obstetrics-Gynecology Devices Panel	January 29–30 April 30–May 1 July 16–17 October 15–16	12524

Committee Name	Dates of Meetings	Advisory Committee 5–Digit Information Line Code
Ophthalmic Devices Panel	March 15–16 May 17–18 July 19–20 September 20–21 November 29–30	12396
Orthopaedic and Rehabilitation Devices Panel	January 18–19 May 10–11 August 9–10 November 1–2	12521
Radiological Devices Panel	February 5 May 14 August 13 November 5	12526
National Mammography Quality Assurance Advisory Committee	April 23 September 10	12397
Technical Electronic Product Radiation Safety Standards Committee	May 16–17	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	February 20–21 September 12–13	12548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	December 6–7 May 10–11	12560
Science Board to the National Center for Toxicological Research	June 7–8	12559

Dated: December 5, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–31589 Filed 12–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–00–800]

Memorandum of Understanding Between the Food and Drug Administration and the Centers for Disease Control and Prevention

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Centers for Disease Control and Prevention. The purpose of the MOU is to provide a framework for coordination and collaborative efforts, and provide the principles and procedures by which information exchanges shall take place.

DATES: The agreement became effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ellen F. Morrison, Office of Regulatory Affairs (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5660.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

BILLING CODE 4160–01–F

FDA 225–00–8000

Memorandum of Understanding Between the Food and Drug Administration and theCenters for Disease Control and Prevention

I. Purpose

This Memorandum of Understanding (MOU) between the Food and Drug Administration(FDA) and the Centers for Disease Control and Prevention (CDC) provides a framework forcoordination and collaborative efforts between these two agencies which are both components ofthe Department of Health and Human Services. This MOU also provides the principles andprocedures by which information exchanges between FDA and CDC shall take place.

This memorandum supersedes the Memorandum of Understanding Between the Centers forDisease Control and the Food and Drug Administration, dated 4/1/82, regarding the exchange ofinformation and coordination of actions.

II. Background

FDA and CDC are sister agencies within the Department of Health and Human Services. Both FDA and CDC exist and work to protect the public health but have different statutory mandates and responsibilities.

FDA is a regulatory agency responsible for protecting the public health through the regulation of food, cosmetics, and medical products, including human drugs, biological products, animal drugs, and medical devices. FDA administers the Federal Food, Drug, and Cosmetic Act and relevant sections of the Public Health Service Act, among other statutes. Among its duties, FDA approves pre-market applications, conducts inspections of manufacturing facilities, and monitors post-marketing adverse events. FDA also initiates civil and criminal litigation to enforce applicable laws and regulations.

CDC is charged with protecting the public health by providing leadership and direction in the prevention and control of diseases and other preventable conditions and by responding to public health emergencies. CDC administers relevant sections of the Public Health Service Act, the Occupational Safety

and Health Act, the Clinical Laboratory Improvement Act, and the Federal Mine Safety and Health Act. CDC, among other activities, administers national programs for the prevention and control of communicable and vector-borne diseases, enforces quarantine regulations, and works to monitor and control disease outbreaks.

CDC's and FDA's respective missions to protect the public health may overlap in a variety of ways depending upon the subject matter. Each agency has a responsibility to work collaboratively to protect and improve public health. It may sometimes be the case that FDA or CDC will be in possession of information that could be useful to the other agency in that agency's performance of its responsibilities. Timely sharing of information between CDC and FDA is therefore critical to protecting the public health.

III. Substance of Agreement and Responsibilities of Each Agency

A. Coordination and Collaboration Relative to Public Health Activities

It is mutually agreed that:

1. Each agency will coordinate and collaborate with the other agency to protect and improve the public health. To achieve this, each agency will utilize the expertise, resources, and relationships of the other agency in order to increase its own capability and readiness to respond to emergency situations. In addition, each agency will designate central contact points where communications from the other agency, dealing with matters covered by this agreement, should be referred.
2. Each agency will participate in periodic joint meetings to promote better communication and understanding of regulations, policies, and statutory responsibilities, and to serve as a forum for questions and problems that may arise.
3. Each agency will notify the other agency as soon as possible when issues of mutual concern become evident.
4. Each agency will collaborate with the other agency in all investigations of mutual concern. Such collaboration may include providing alerts to the other agency regarding disease outbreaks encountered as part of its activities; providing technical advice in areas of recognized expertise;

providing results of analysis; making available expert witnesses; and exchanging information as described in section III B.

5. Each agency will consult with the other before issuing press or scientific releases or publications that may have a significant impact on the other agency.

6. Each agency will refer its proposed regulations, guidances, or recommendations that may have a significant impact on the other agency for review and comment by that agency before publication.

7. This agreement does not preclude CDC or FDA from entering into other agreements which may set forth procedures for special programs which can be handled more efficiently and expertly by other agreements.

B. Principles and Procedures for the Exchange of Information That is Not Publicly Available

FDA and CDC agree that the following principles and procedures will govern the exchange of nonpublic information between the two agencies.

Although there is no legal requirement that FDA and CDC exchange information in all cases, FDA and CDC agree that there should be a presumption in favor of full and free sharing of information between FDA and CDC. As sister public health agencies within the Department of Health and Human Services, there are no legal prohibitions that preclude FDA or CDC from sharing with each other most agency records in the possession of either agency. Both agencies recognize and acknowledge, however, that it is essential that any confidential information that is shared between FDA and CDC must be protected from unauthorized public disclosure. *See e.g.*, 21 U.S.C. 331(j); 18 U.S.C. 1905; 21 CFR parts 20 and 21;42 CFR parts 5 and 5b, and 42 U.S.C. 301(d). Safeguards are important to protect the interests of, among others, owners and submitters of trade secrets and confidential commercial information; patient identities and other personal privacy information; privileged and/or pre-decisional agency records; and information protected for national security reasons. Such safeguards also help guarantee FDA's and CDC's compliance with applicable laws and regulations.

To facilitate the sharing of information with each other, it is necessary that FDA and CDC implement procedures to ensure, at a minimum, that such sharing of information is indeed appropriate and that the recipient agency guards the confidentiality of all information received.[1] There are separate procedures, as described below, for routine requests for information and for emergency requests. It is incumbent upon both agencies to respond to requests for information in a timely manner. Any unauthorized disclosure of shared confidential information by the agency receiving the information shall be the responsibility of that agency.

1. Routine Requests for Information

a. The requesting agency must demonstrate, in writing, why it is necessary for it to obtain the requested information. This demonstration should consist of a summary that describes in detail the information requested (to facilitate identification of relevant records) and a brief statement of the purpose for which the information is needed. This request shall state which internal agency offices and/or individuals requested the information. A model request letter is attached.

b. The agency receiving the request for information shall, based upon the sufficiency of the need-to-know demonstration described in section III B 1a above, determine whether it is appropriate to share the requested information with the requesting agency. The need-to-know threshold is a low one. As stated above, there is a presumption in favor of information exchange between FDA and CDC. An agency should only decide not to share information in response to a request if it has credible information and a reasonable belief that the requesting agency may not be able to comply with applicable laws or regulations governing the protection of non-public information or with the principles or procedures set forth in this MOU. If an agency decides that it is not appropriate to share information with the requesting agency, it shall describe to the requesting agency the reasons for such decision.

[1] It is assumed that each agency has implemented or will implement all data and information security requirements and has implemented or will implement, to the extent necessary and practicable, all data and information security recommendations.

c. The requesting agency agrees that it shall comply with the following conditions:

—The requesting agency shall limit the dissemination of shared information it receives to internal agency offices and/or individuals that have been identified in its written request and/or have a need-to-know. The agency official who signs the request letter will be responsible for ensuring that there are no other recipients of the information.

—The requesting agency shall agree in writing not to publicly disclose any shared information in any manner including publications and public meetings. If the requesting agency wishes to disclose shared information, including information that it believes is publicly releasable, it shall first request and obtain the written permission of the agency that has shared the information. If the requesting agency receives a Freedom of Information Act (FOIA) request for the shared information, it will refer the request to the information-sharing agency for it to respond directly to the requester regarding the releasability of the information. In such cases, the agency making the referral will notify the requester that a referral has been made and that a response will issue directly from the other agency.

—The agency that shares information with the requesting agency shall include a transmittal letter, along with any agency records exchanged. The transmittal letter shall indicate the type of information (e.g., confidential commercial information, personal privacy, or pre-decisional). A model transmittal letter is attached.

—The requesting agency shall promptly notify the appropriate office of the information-sharing agency when there is any attempt to obtain shared information by compulsory process, including but not limited to, a FOIA request, subpoena, discovery request, or litigation complaint or motion.

—The requesting agency shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that the agencies may determine the appropriate measures to take, including where appropriate the filing of a motion or an appeal with the court.

2. Emergency Requests for Confidential Information

In cases in which the requesting agency has a need to obtain certain information as soon as possible due to emergency circumstances, such as a foodborne illness outbreak, FDA and CDC may utilize the following procedures. These procedures are intended for use only in the case of an actual emergency situation and are not appropriate for routine requests for information.

a. The requesting agency shall indicate orally or in writing to the agency in possession of the relevant information that it has the need to obtain certain identifiable information as soon as possible due to the existence of emergency circumstances. The requesting agency shall also describe what the emergency circumstances are.

b. The requesting agency shall verbally agree to protect from unauthorized public disclosure any and all information that is shared, according to all applicable laws and regulations.

c. The existence of an actual emergency situation shall warrant, as determined by the agency in possession of the requested records, the waiver of the need-to-know demonstration and determination described above in section III B 1a and B 1b. However, once the requesting agency has obtained the information it seeks, it shall comply with those procedures set forth in section III B 1c above.

IV. Name and Address of Participating Parties

A. Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857

B. Centers for Disease Control and Prevention, Public Health Service, Department of Health and Human Services, Atlanta, GA 30333

V. Liaison Officers

A. For FDA: Associate Commissioner for Regulatory Affairs, Contact: Ellen F. Morrison, Deputy Director, Division of Emergency and Investigational Operations, Food and Drug Administration, 5600 Fishers Lane (HFC09130), Rockville, MD 20857, 301–827–5660

B. For CDC: Associate Director for Science, Atlanta, GA 30333

VI. Period of Agreement

This agreement becomes effective upon signature of both parties and will continue for three years It may be modified by mutual consent or terminated by either party upon 120 days written notice.

Attachments

Model Request Letter

Model Transmittal Letter

Approved and Accepted for the Centers for Disease Control and Prevention

By: Jeffrey P. Koplan, M.D., M.P.H.,

Director, Centers for Disease Control and Prevention

Date: June 26, 2000.

Approved and Accepted for the Food and Drug Administration

By: Jane E. Henney, M.D.

Commissioner of Food and Drugs.

Date: June 1, 2000.

Model Language for Request

The Centers for Disease Control and Prevention (CDC) has requested the following information from FDA for the following purposes: [Identify information and purpose]

or

CDC hereby requests the following information from FDA that it will use for the following purposes: [Identify information and purpose]

CDC agrees that it will not publicly disclose any such information that FDA shares with it without prior written permission from FDA and that it will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between CDC and FDA. Applicable laws and regulations prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C. 331(j); 18 U.S.C. 1905, 21 CFR parts 20 and21, 42 CFR parts 5 and 5b, and 42 U.S.C. 301(d).

CDC will limit dissemination of any shared information to the following CDC offices and/or employees: [Identify office(s) and/or employee(s)]

Name:_____

Date:_____

[Signature and Date by CDC official with requisite responsibility and authority.]

Model Language for Request

The Food and Drug Administration (FDA) has requested the following information from the Centers for Disease Control and Prevention (CDC) for the following purposes: [Identify information and purpose]

or

FDA hereby requests the following information from CDC for the following purposes: [Identify information and purpose]

FDA agrees that it will not publicly disclose any such information that CDC shares with it without prior written permission from CDC and that it will comply with the principles and procedures set forth

in the Memorandum of Understanding on information sharing between FDA and CDC. Applicable laws and regulations prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C. 331(j); 18 U.S.C. 1905, 21 CFR parts 20 and 21,42 CFR parts 5 and 5b, and 42 U.S.C. 301(d).

FDA will limit dissemination of any shared information to the following FDA offices and/or employees: [Identify office(s) and/or employee(s)]

Name:_____

Date:_____

[Signature and Date by FDA official with requisite responsibility and authority.]

[Model Transmittal letter from CDC to FDA]

This letter accompanies agency records that the Center for Disease Control and Prevention (CDC) is sharing with the Food and Drug Administration (FDA) in response to FDA's request, dated _____. These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[CDC checks applicable numbers below]

— trade secrets;

— confidential commercial or financial information;

— information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

— information subject to the Privacy Act;

— intra-agency records;

— records or information compiled for law enforcement purposes; or

— information protected for national security reasons.

FDA shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

FDA shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that FDA and/or CDC may take appropriate measures, including filing a motion with the court or an appeal.

FDA has agreed, by this letter or e-mail and by a signed request letter dated _____, not to publicly disclose the above-described information without prior written permission of CDC. FDA acknowledges that applicable laws and regulations may prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C.331(j); 18 U.S.C. 1905, 21 CFR parts 20 and 21, 42 CFR parts 5 and 5b, and 42 U.S.C. 301(d). FDA also agrees to comply with the principles and procedures set forth in the Memorandum ofUnderstanding between FDA and CDC, *cite*

[Model Transmittal letter from FDA to CDC]

This letter accompanies agency records that the Food and Drug Administration (FDA) is sharing with the Center for Disease Control and Prevention (CDC) in response to CDC's request, dated _____. These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[FDA checks applicable numbers below]

— trade secrets;

— confidential commercial or financial information;

— information the disclosure of which would constitute a clearly unwarranted invasion ofpersonal privacy;

— information subject to the Privacy Act;

— intra-agency records;

— records or information compiled for law enforcement purposes; or

— information protected for national security reasons.

CDC shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

CDC shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that the FDA and/or CDC may take appropriate measures including filing a motion with the court or an appeal.

CDC has agreed, by this letter or e-mail and by a signed request letter dated _____, not to publicly disclose the above-described information without prior written permission of FDA. CDC acknowledges that applicable laws and regulations may prohibit the disclosure of such information. *See, e.g.*, 21 U.S.C.331(j); 18 U.S.C. 1905, and 21 CFR parts 20 and 21, 42 CFR parts 5 and 5b, and 42 U.S.C.301(d). CDC also agrees to comply with the principles and procedures set forth in the Memorandum of Understanding between FDA and CDC, *cite*.

[FR Doc. 00–31591 Filed 12–11–00; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; A Nested Case-Control Study of Lung Cancer and Diesel Exhaust Among Non-Metal Miners

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 26, 2000, page 24490, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title. A Nested Case-Control Study of Lung Cancer and Diesel Exhaust Among Non-Metal Miners. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This nested case-control study will examine lung cancer in non-metal miners and its association, if any, with diesel exhaust exposure. The study will involve approximately 160 deaths from lung cancer (the actual number will depend on the number of deaths occurring, but based on national rates we expect 160), and four controls matched to each death, identified from the cohort. Controls will be matched on miners, gender, race/ethnicity and year of birth (within 5 years). Detailed information regarding exposure to diesel exhaust will be obtained from employment records and measurements of diesel exhaust surrogates. Information on potential confounders will be obtained by interview and from environmental measurements. This information will be used in a study by the National Cancer Institute and the National Institute for Occupational Safety and Health to examine risk of mortality from lung cancer for various measures of diesel exhaust exposure, adjusted for smoking and other potential confounders. *Frequency of Response:* Single-time study. *Affected Public:* Individuals. *Type of Respondents:* Workers or next of kin of workers. The annual reporting burden is as follows: Estimated number of Respondents: 227; Estimated Number of Responses per Respondent: One; Average Burden Hours per Response: 1.0; and Estimated Total Annual Burden Hours Requested: 227. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management And Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Debra Silverman, NCI Project Director, National Cancer Institute, Executive Plaza South, Room 8108, Rockville, Maryland 20892–7240, or call non-toll-free number (301) 435–4716, or FAX your request to (301) 402–1819, or E-mail your request, including your address, to Silvermd@exhange.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before January 11, 2001.

Dated: December 1, 2000.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 00–31522 Filed 12–11–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Antibodies and Other Ligands Directed Against KIR2DL4 Receptor for Production of Interferon-Gamma

Eric Long, Sumati Rajagopalan (NIAID)
DHHS Reference No. E–255–00/0 filed 23 Oct 2000

Interferon-gamma is a potent antiviral and antimicrobial substance produced by natural killer (NK) white blood cells. NK cells are activated during infections by viruses and by other intracellular pathogens, such as parasites and bacteria. Soluble substances, such as interleukins, produced by infected cells activate NK cells to secrete interferon-gamma. Injection of interleukins into patients to stimulate NK cells to secrete interferon-gamma has not been a successful therapeutic approach because of the toxicity involved. The invention is based on the discovery by the inventors that activation of the KIR2DL4 receptor expressed by all NK cells stimulates them to produce interferon-gamma. The invention claims monoclonal antibodies and derivatives thereof, as well as natural and synthetic ligands of KIR2DL4 that can be utilized to stimulate interferon-gamma production by NK cells without any other stimulus. The possibility of inducing interferon-gamma production by NK cells without the toxic side effects of interleukins could be an effective therapy for various types of infections and of cancers. Also claimed in the invention are methods of treating various cancers and viral infections, methods of treating autoimmune disease, and methods of administration of the antibody or derivatives thereof.

Ixodes scapularis Tissue Factor Pathway Inhibitor

Ivo Francischetti, Jesus Valenzuela, Jose Ribeiro (NIAID)
DHHS Reference No. E–208–00/0 filed 05 Oct 2000

Ixodes scapularis is a blood-sucking tick and the principal vector of Lyme disease, a spirochetal illness caused by Borrelia burgdorferi and now the most common vector-borne infection in the United States; more than 50,000 cases have been reported during the last ten years. The salivary gland of I. scapularis has a number of pharmacologically active molecules that help the tick to successfully feed on blood, such as inhibitors of complement system, in addition to coagulation and platelet aggregation inhibitors. This invention describes Ixolaris, a protein that inhibits the initiation of blood coagulation by inhibition of components of the extrinsic pathway. Accordingly, Ixolaris blocks Factor X activation by Factor VIIa/TissueFactor, it attenuates Factor Xa production by the prothrombinase, and inhibits fibrin formation in a diluted prothrombin time. Ixolaris is highly specific since it does not inhibit other serine proteases. Because Ixolaris has anticoagulant properties, it could be used to ameliorate a number of clinical conditions such as disseminated intravascular coagulation, and hypercoagulation states. In addition, Ixolaris may be useful as a vaccine candidate for Lyme disease because inactivation of Ixolaris by antibodies may make transmission of Borrelia burgdorferi more difficult. In addition to the composition of Ixolaris, the invention claims vaccines utilizing Ixolaris, methods of stimulating an immune response, and methods of treatment of restenosis, arterial thrombosis, and stroke.

Ixodes Salivary Anticomplement Protein

Jose Ribeiro (NIAID), Jesus Valenzuela (NIAID), Rosane Charlab (NIAID), Thomas Mather (EM)
DHHS Reference No. E–207–00/0 filed 28 Sep 2000

This invention describes Isac, a novel anticomplement protein that can be isolated and purified from I. scapularis (tick) saliva that may be useful as a peptide vaccine against Lyme disease. Because inactivation of Isac by antibodies will make transmission of Borrelia burgdorferi to humans more difficult, Isac is an ideal candidate for a Lyme disease vaccine. Isac disrupts the alternative complement pathway by inhibiting factors Bb and/or C3b, preventing cell lysis and anaphylatoxin production. The inventors have found no similarity to any protein in GenBank for Isac. Isac may also be used in situations where alternative complement activation is implicated such as in rheumatoid conditions such as lupus erythematosus or juvenile arthritis. The invention is further described in Ribeiro et al., "Purification, cloning, and expression of a novel salivary anticomplement protein from the tick, Ixodes scapularis," J Biol. Chem. 2000 Jun 23; 275(25):18717–23.

LL–37 Is an Immunostimulant

Oleg Chertov (NCI), Joost Oppenheim (NCI), De Yang (NCI), Qian Chen (NCI), Ji Wang (NCI), Mark Anderson (EM), Joseph Wooters (EM)
DHHS Reference No. E–285–00/0 filed 21 Sep 2000

This invention relates to use of an antimicrobial peptide as a vaccine adjuvant. LL–37 is the cleaved antimicrobial 37-residue C-terminal peptide of hCAP18, the only identified

member in humans of a family of proteins called cathelicidins. LL–37/hCAP18 is produced by neutrophils and various epithelial cells. LL–37 is well known as an antimicrobial peptide. However, although antimicrobial peptides have generally been considered to contribute to host innate antimicrobial defense, some of them may also contribute to adaptive immunity against microbial infection. The inventors have shown that LL–37 utilizes formyl peptide receptor-like 1 (FPLR1) as a receptor to activate human neutrophils, monocytes, and T cells. Since leukocytes participate in both innate and adaptive immunity, the fact that LL–37 can chemoattract human leukocytes may provide one additional mechanism by which LL–37 can contribute to host defense against microbial invasion, by participating in the recruitment of leukocytes to sites of infection. The invention claims methods of enhancing immune responses through the administration of LL–37 alone, in conjunction with a vaccine, and methods of treating autoimmune diseases. The invention is further described in Chertov *et al.*, "LL–37, the neutrophil granule-and epithelial cell-derived cathelicidin, utilizes formyl peptide receptor-like 1 (FPRL1) as a receptor to chemoattract human peripheral blood neutrophils, monocytes, and T cells," J Exp. Med. 2000 Oct 2;192(7):1069–74.

A Method for Bioconjugation Using Diels-Alder Cycloaddition

Vince Pozsgay (NICHD)

DHHS Reference No. E–126–00/0 filed 09 Aug 2000

This invention relates to a new method for the synthesis of conjugate vaccines using the Diels-Alder cycloaddition reaction to covalently attach a carbohydrate antigen from a pathogen to a protein carrier. The Diels-Alder reaction has not been extended to conjugation involving biopolymers or other types of polymeric materials. Advantages of this method are that cross-linking during conjugation is entirely avoided in addition to the mild chemical conditions under which this synthesis method proceeds. Diels-Alder reactions commonly take place in high-temperature environments; the method contemplated by this invention takes place at much lower temperatures. In addition to claiming methods of synthesis for conjugate vaccines using the Diels-Alder cycloaddition, the patent application claims vaccines produced utilizing the method, and methods of inducing antibodies which react with the polysaccharides contemplated by the invention.

5-Substituted Derivatives of Conformationally Locked Nucleoside Analogues

Victor Marquez, Pamela Russ (NCI)

DHHS Reference No. E–249–00/0 filed 26 Jul 2000

This invention relates to 5-substituted derivatives of conformationally locked nucleoside analogues and methods of using these derivatives as antiviral and anticancer agents. The compounds contemplated by the invention are nucleoside analogues where the 5-substituent is a halogen, alkyl, alkene, halovinyl or alkyne group, and the nucleotide base is cytosine or uracil. The analogues are particularly effective in treating viral infections, specifically infections of DNA viruses such as Herpes simplex virus (HSV), Varicella zoster virus (VSV), Epstein Barr virus (EBV), and Cytomegalovirus (CMV) as well as members of the Poxviridae family. The inventors have demonstrated in plaque reduction assays that 5-substituted uracils (bromo, iodo, and bromovinyl) attached to a bicyclo[3.1.0]hexane template are thirty times more potent than acyclovir against HSV–1 and HSV–2.

Bacteriophage Having Multiple Host Range

Carl Merril (NIMH), Sankar Adhya (NCI), Dean Scholl (NIMH)

DHHS Reference No. E–257–00/0 filed 25 Jul 2000

Recently, there has been a renewed interest in the use of phages to treat bacterial infections. The inventors have discovered FK1–5, a highly lytic, non-lysogenic, stable bacteriophage with the ability to kill bacteria rapidly, making it a good candidate for phage therapy. The designation FK1–5 denotes the phage's ability to infect E. coli strains that contain the K1 polysaccharide in their outer capsule as well as E. coli strains that contain the K5 polysaccharide in their outer capsule. Sequence analysis of the tail proteins of phage FK1–5 by the inventors has shown that they are arranged in a cassette structure, suggesting that the host range of phages can be broadened to other K antigens, and even possibly other species of bacteria by recombinant techniques. FK1–5 has a particular advantage because it recognizes and attaches to the structures that confer virulence to bacteria. The inventors' demonstration that a phage can contain multiple tail proteins that expand its host range is useful for generating phage with broad-spectrum antibacterial properties for the treatment of infectious diseases. The inventors have completed in vitro studies on this phage. Furthermore, because of the possibility of engineering the expression of recombinant tail proteins, gene transfer to organisms that are not normally infected by phages is also contemplated by the invention.

Dated: December 4, 2000.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–31525 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Mouse Model of UV-Inducible Cutaneous Malignant Melanoma

Glenn Merlino *et al.* (NCI)

DHHS Reference No. E–281–00/0

Licensing Contact: Elaine White; 301/496–7056 ext. 282; e-mail: gesee@od.nih.gov

The current invention embodies a genetically engineered mouse harboring a hepatocyte growth factor/scatter factor transgene ("HGF/SF"). The Met signaling pathway, which has been implicated in the development of human melanoma, is chronically activated in the HGF/SF mice. Upon exposure to a single neonatal dose of erythrogenic UV radiation, the mice develop cutaneous malignant melanoma which is consistent with the epidemiology and pathogenesis of melanomas observed in humans. The mice, therefore, represent a valuable model for studying the development of malignant melanoma in humans, for determining the consequences of ultraviolet radiation, and for assessing the efficacy of therapeutic agents and vaccines against melanoma. While no patent rights are available for this invention, breeding pairs of mice are available for licensing via Biological Materials License Agreements.

Gamma-Glutamyl Transpeptidase Inhibitors: Novel Chemotherapeutic Agents

Robert E. London, Scott A. Gabel (NIEHS)

DHHS Reference No. E–243–00/0 filed 05 Oct 2000

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

Gamma-glutamyl transpeptidase (GGTP) plays a central role in the metabolism of glutathione. It has been shown to be a marker for neoplasia and cell transformation, and it is induced by the presence of many anti-cancer drugs. Common human epithelial tumors, including, but not necessarily limited to, breast, ovarian and prostate tumors are GGTP-positive. The invention relates to novel inhibitors of GGTP, and their use to treat cancer. In particular, the technology could be used to (1) interfere with glutathione metabolism in GGTP-positive cancers by perhaps altering the cellular orientation of GGTP; (2) potentiate the effects of radiation and chemotherapeutic drugs, in particular, cisplatin, on cancer cells by interfering with cysteine recycling and glutathione regeneration; and (3) reduce renal toxicity for some chemotherapeutic drugs by blocking the metabolism of glutathione-conjugates into toxic agents, *e.g.*, mercapturic acids. The patent application contains composition of matter claims as well as method claims.

Protein Kinase A and the Carney Complex

Constantine A. Stratakis, Lawrence S. Kirschner (NICHD)

DHHS Reference No. 259–00/0 filed 25 Aug 2000

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

The present invention provides compositions and methods useful in the diagnosis and prognosis of Carney complex (CNC), as well as methods and compositions for the identification of compounds useful in the treatment and/or prevention of CNC. CNC is a multiple endocrine neoplasia syndrome that affects the adrenal cortex, pituitary gland, thyroid gland and gonads. Additionally, compositions and methods are provided for the diagnosis and treatment of conditions associated with skin pigmentation defects, including but not limited to, freckling, as well as endocrine tumors including, but not limited to, adrenal and pituitary tumors. Finally, compositions and methods are provided for the diagnosis and treatment of various types of cancers associated with abnormal protein kinase A activity, and cancers and tumors in which protein kinase A regulatory subunit 1A acts as a tumor-suppressor gene. These actions are possible due to the identification of specific genetic sequences, and the use of this information in assay systems to detect, diagnose and treat the aforementioned conditions.

SH2 Domain Binding Inhibitors

Terrence R. Burke, Yang Gao, Johannes Voight (NCI)

DHHS Reference No. E–262–00/0 filed 22 Aug 2000

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

Signal transduction, the process of relaying extracellular messages to the intracellular cytoplasm and the nucleus, is critical to normal cellular homeostasis, and protein-tyrosine kinases play a central role in this biological function. Examples of this latter class of enzymes include the PDGF receptor, the FGF receptor, the HGF receptor, members of the EGF receptor family, including the EGF receptor itself and erb–B2, erb–B3 and erb–B4 kinases; the src kinase family, Fak kinase and the Jak kinase family. Protein-tyrosine phosphorylation is known to be involved in modulating the activity of a variety of target enzymes and in the formation of specific complex networks involved in signal transduction via proteins containing specific amino acid sequences, called the Src homology 2, or SH2 domain. A malfunction in this protein-tyrosine phosphorylation through tyrosine kinase overexpression and/or deregulation, can be manifested by various oncogenic and hyperproliferative disorders, such as cancer, inflammation, autoimmune disease, hyperproliferative skin disorders, *e.g.*, psoriasis and allergy/asthma. The disclosed compounds, *e.g.* peptides, preferably, macrocyclic peptides, are SH2 domain inhibitors with enhanced binding affinity. The claims of the current application are directed to compositions of matter and methods of use which provide for the diagnosis, testing and treatment of the aforementioned disease states.

Use and Targeting of CD98 Light-Chain Proteins in Therapies for Thyroid Hormone Disorders

Yun-Bo Shi (NICHD)

DHHS Reference No. E–054–00/0 filed 30 Jun 2000

Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Thyroid hormone disorders are among the most common problems in the Western world. These include hypo-and hyper-thyroidism (including goiter), as well as obesity and developmental abnormalities caused by excess or deficient levels of thyroid hormones during pregnancy.

The NIH announces the discovery of a protein, which is a member of the CD98 light-chain permease family, which acts as a thyroid hormone transporter across vertebrate cell membranes. This protein provides a missing link in the chain by which thyroid hormones in the blood reach the cell nucleus. By utilizing the CDNA of this protein, genomic libraries can be screened for sequences capable of being used as primers for use in diagnostics. Also, by targeting this protein through drug discovery, new treatments for thyroid disorders may be found and developed.

Method of Regulating Interleukin-12 (IL–12) Production by Administering CCR5 Agonists and Antagonists

Sher *et al.* (NIAID)

PCT/US00/01019 filed 14 Jan 2000

Licensing Contact: J.P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

Interleukin-12 (IL–12) is a cytokine produced by the body which is necessary for the development of effective cellular immunity against many microbial agents. Increasing IL–12 production has been shown to both enhance the immune clearance of microbial agents as well as augment the protection induced by vaccines. At the same time a number of inflammatory diseases are associated with the excess production of this cytokine. Therefore, methods are needed to both boost IL–12 production for the induction of host resistance as well as suppress it to treat these immunopathologic disorders.

The present invention relates to methods for increasing IL–12

production in a cell by administering CCR5 agonists and methods for decreasing IL–12 production in a cell administering CCR5 antagonists. The invention also relates to methods for increasing IL–12 production by administering CCR5 agonists and to methods for decreasing IL–12 production in a subject by administering CCR5 antagonists.

Dated: November 11, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–31526 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 2000.

Time: 9:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 2000.

Time: 10:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31518 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 23–24, 2001.

Open: January 23, 2001, 1:00 p.m. to 5:00 p.m.

Agenda: For discussion of program policies and issues.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: January 24, 2001, 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31519 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council.

Date: January 18–19, 2001.

Closed: January 18, 2001, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892., .

Open: January 19, 2001, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: National Institute of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PHD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31520 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b((c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 18, 2000.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31521 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: The NIH is proposing changes to the NIH Guidelines to enhance its oversight of human gene transfer research by making modifications to the reporting and analysis of serious adverse events in human gene transfer research studies. The purpose of this Notice is to inform the public about the proposed changes and to seek public comment on them. The proposed changes involve four main issues: (1) The scope and timing of serious adverse event reporting; (2) public access to information about serious adverse events; (3) protection of individually identifiable patient information as it relates to serious adverse event reporting; and (4) a new mechanism for the review and assessment of data on serious adverse events and other relevant safety information.

The NIH currently requires all serious adverse events to be reported immediately whether or not they are expected or considered to be associated with the gene transfer product. The first proposed change would require expedited reporting for those serious adverse events that are unexpected and considered possibly associated with the use of the gene transfer product. The proposed change also provides timeframes for expedited reporting and definitions of serious, associated, and unexpected adverse events. Under this proposal, other reportable serious adverse events would be included in annual reports.

The second proposed change would clarify that serious adverse event reports submitted to the NIH may not be classified as confidential information and that trade secret or other commercial confidential information should not be included in serious adverse event reports.

The third proposed change adds specific language to the NIH Guidelines to prohibit the submission of individually-identifiable patient information in serious adverse event reports.

The fourth and final change is the establishment of a working group of the NIH Recombinant DNA Advisory Committee (RAC), to be known as the NIH Gene Transfer Safety Assessment Board, that will be responsible for the review and analysis of serious adverse event reports and other relevant safety information in gene transfer research studies. The working group will report safety information to the RAC and information will, thereby, be disseminated to the scientific and patient communities and the public.

DATES: The public is encouraged to submit written comments on these proposed changes. Comments may be submitted to NIH Office of Biotechnology Activities (OBA) in paper or electronic form. Comments received on or before February 10, 2002 will be reproduced and distributed to the RAC for consideration at a future meeting to be announced.

All comments received in response to this notice will be considered by the NIH and will be available for public inspection in the NIH OBA office weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION: If you have questions, or require additional information about these proposed changes, please contact OBA by e-mail at oba@od.nih.gov, or telephone at 301–496–9838. Comments can be submitted to the same email address or by fax to 301–496–9839 or mail to the Office of Biotechnology Activities, National Institutes of Health, Building 1, Room 103, Bethesda, Maryland 20892.

For additional information about the RAC meeting at which these proposed changes will be deliberated, please visit the NIH/OBA Web site at: *http://www.nih.gov/od/oba/.*

SUPPLEMENTARY INFORMATION:

Introduction

NIH's oversight of human gene transfer research, especially its requirements for serious adverse event reporting in human gene transfer research, has been the subject of an in-depth, year-long, public debate and discussion. In September 1999, the RAC initiated a discussion relating to public access to serious adverse event reports. The RAC's interest in this issue was prompted by claims from several human gene transfer investigators and sponsors that serious adverse event reports were confidential, commercial information and, therefore, should not be made publicly available. In November, following the death of a participant in a human gene transfer research protocol—a death directly attributable to the study—a number of new concerns arose about the collection, analysis, and dissemination of gene transfer safety information. The RAC subsequently expanded its discussions to include the scope and timing of NIH reporting requirements for serious adverse events and investigator compliance with those requirements.

In December 1999, the NIH Director established the Advisory Committee to the Director (ACD) Working Group on NIH Oversight of Clinical Gene Transfer Research. The charge to this Working Group was to review the role of NIH in oversight of this area of research, including an assessment of protocol review, analysis of serious adverse event reports, and the interaction between the various Federal agencies and local oversight bodies involved in regulation and oversight of this research. The ACD Working Group met four times and issued a final report to the ACD, which concurred with the Working Group's recommendations. The ACD Working Group report is posted at the following URL:

The changes proposed in this Notice respond to recommendations made by the ACD and by the RAC. They also reflect the views expressed by patients, patient advocates, investigators, industry representatives, and professional associations regarding the purpose, public good, and appropriate scope of toxicity and safety data collection and dissemination in human gene transfer research subject to the NIH Guidelines.

Background

The NIH Guidelines (Appendix M–I–C–4) currently require immediate reporting of all serious adverse events to NIH OBA, the IBC, the IRB, and, if applicable, the Office for Human Research Protections. This NIH requirement for immediate reporting of all serious adverse events, whether or not they are associated with the gene transfer product, was added to the NIH Guidelines in 1990, shortly after human gene transfer studies began. Because gene transfer was a novel and untested area of clinical investigation and because of the potential risks, NIH determined, with advice from the RAC, that it would be prudent to collect information on all serious adverse events in these studies.

These and other provisions of the NIH Guidelines apply to NIH-funded as well as non-NIH-funded gene transfer projects that are conducted at or sponsored by an institution that receives NIH support for recombinant DNA research. All human gene transfer research studies are also subject to FDA regulations found in volume 21 of the Code of Federal Regulations (CFR), including specific requirements at 21 CFR 312.32 related to adverse events.

Roles and Responsibilities of NIH and FDA. The scope and timeframe of the serious adverse event reporting to the NIH and the FDA currently differ. As noted above, NIH requires immediate reporting of all serious adverse events. FDA requires expedited reporting of only those serious adverse events that are unexpected and considered possibly associated with the gene transfer product.

The two agencies also have different roles and responsibilities with respect to adverse event reports and initiate different, but complementary, processes in response to these reports. The FDA conducts an analysis of an adverse event(s) and related data and, if necessary, places the study, and others like it, on clinical hold until the safety issues have been adequately addressed. The FDA is required by law to maintain the confidentiality of all information connected with an investigational new drug (IND). In contrast, the reporting of serious adverse events to NIH enables the identification of trends in serious adverse events, the assessment of their significance for the safety of patients enrolled in similar human gene transfer studies, and public discussion by the RAC of important developments in the safety of human gene transfer research.

Confidentiality of Adverse Event Reports. In September 1999, the RAC initiated discussions regarding public access to serious adverse event information. This discussion was in response to several serious adverse event reports submitted to OBA which were labeled as confidential. The NIH has always acknowledged and affirmed the need to protect trade secret and other proprietary information, such as the details of a sponsor's manufacturing process, and this principle is accommodated in the NIH Guidelines. The concept that reports of serious adverse events should be considered from a commercial standpoint as confidential, however, is contrary to NIH's commitment to public access to information about the safety of human gene transfer research. Since the NIH Guidelines were not explicit about the confidentiality of serious adverse event reports, NIH OBA asked the RAC to consider whether the NIH Guidelines should be modified to clarify the requirement for public access to these reports. In response, the RAC issued the following consensus statement:

> Adverse event reports shall not be designated as confidential, either in whole or in part. Adverse event reports are essential to decision-making by IBCs, IRBs, and potential subjects of gene transfer research in humans. The public disclosure of adverse events is also essential to public understanding and evaluation of gene transfer in humans. Adverse event reports must be made available for public discussion without the inclusion of proprietary or trade secret information.

Compliance with NIH Adverse Event Reporting Requirements. Subsequent to the death of a participant in a human gene transfer research protocol, which was directly attributable to the study, NIH OBA called on investigators conducting related studies to submit comprehensive pre-clinical and clinical data from their trials. In the course of gathering and assessing this data, it became evident that serious adverse events were not being reported to OBA, as required by the NIH Guidelines. Concerted efforts were immediately initiated to ensure enhanced awareness of, and compliance with, the reporting requirements. NIH also proposed that the NIH Guidelines be amended to make the requirements for reporting serious adverse events more explicit. The proposed amendments were published for public comment in the November 22, 1999, **Federal Register** (64 FR 63827). The proposed amendments added explicit definitions and spelled out timeframes for immediate reporting of serious adverse events.

In response to the notice, NIH OBA received a wide range of public comments from investigators, sponsors, industry, and patient advocacy organizations. Some commenters expressed vigorous support for the requirement that all serious adverse events be reported to OBA immediately, arguing that the requirement was warranted for the same reasons it was established in the first place'the field was still young and the manipulation of genetic material posed risks that were still not fully known or understood. Other commenters suggested that NIH harmonize its requirements with those of the FDA so that it would receive, on an expedited basis, only those serious adverse events that are unexpected and considered to be possibly associated with the gene transfer product, and, on an annual basis, a summary of adverse events that are expected or considered to have other causes such as disease progression or concurrent medications. According to these commenters, requiring the immediate submission of all serious adverse events was counter-productive given the priority that should be placed on events that are unexpected and considered to be possibly associated with the gene transfer product. Other commenters stated that reporting any serious adverse event to OBA was unnecessary because FDA receives such reports by law and has authority to stop trials when necessary for safety concerns. Given that most serious adverse events are associated with disease progression, not the experimental gene transfer product, some commenters expressed concern that reporting of all serious adverse events had the potential to mislead or confuse the public about the cause of adverse events. They argued that the reporting of all such events would give the public the wrong impression about the risks involved in human gene transfer research.

Members of the RAC also expressed differing views about the appropriate scope of reporting. At its December 10, 1999, meeting, the Committee did not reach a consensus on whether the proposed amendments making more explicit the requirement for immediate reporting of all serious adverse events should be adopted. Consideration of the proposed amendments was deferred pending further RAC deliberations. Moreover, as noted previously, the ACD Working Group, formed in early December 1999, was also charged with considering the issue of serious adverse event reporting in the context of its broader review of NIH's role in the oversight of human gene transfer studies.

After extensive deliberations, the ACD Working Group submitted a report to the NIH ACD which concluded that: (1) public discussion of serious adverse events is an important component of the NIH oversight process; (2) serious adverse events should not be considered trade secrets or proprietary; (3) serious adverse event data should be disseminated to the public in an analyzed and interpreted form; and (4) because FDA is unable to disclose information, NIH OBA should continue to receive reports of serious adverse events directly from investigators or sponsors. With regard to the scope of what should be reported, the ACD Working Group recommended that NIH and FDA work together to simplify, streamline, and harmonize reporting of serious adverse events. The ACD Working Group also agreed that all reasonable measures be taken to protect the privacy of the individual who experienced the adverse event, without compromising the health of others in similar trials.

In addition, the ACD Working Group affirmed the need to gather cumulative data on gene transfer trials to improve the conduct and overall safety of such research, noting that systematic analyses of adverse event data could reveal trends related to, for example, specific diseases, routes of administration, or vectors. In this regard, the ACD Working Group recommended that a new mechanism was needed for ongoing analyses of the nature and frequency of adverse events reported over time, analyses that would be made available to the RAC, FDA, scientific community, and public. They recommended that a standing expert body be established to conduct ongoing analyses of adverse event data. The standing expert body should include basic scientists, clinicians, patient advocates, and ethicists. Ad hoc members could be appointed to provide additional expertise on an as-needed basis. The standing body should review all reports of adverse events, analyze the data for trends, develop a cumulative report that should be presented annually at a public RAC meeting and made available to the public, and identify trends or even single events that may warrant further public discussion or Federal action.

In June 2000, the RAC reviewed the conclusions and recommendations of the ACD Working Group and, after engaging in further discussion about the appropriate timing and scope of serious adverse event reporting, endorsed the ACD Working Group recommendations by a unanimous vote. In September 2000, the full ACD reviewed and endorsed the recommendations of the Working Group at a publicly accessible teleconference.

The public deliberations of the ACD and the RAC affirmed the importance of NIH's role in ensuring the safety of human gene transfer research studies. This role differs from, and in important ways complements, the role of the FDA, which is to respond on a timely basis to serious, life-threatening, unexpected events that are associated with the investigational product. NIH's role is to gather information about the safety of the field in general and to disseminate that information to investigators and the public with the purpose and goal of developing a body of knowledge about the risks and benefits of this form of clinical investigation.

The NIH concurs with the need to harmonize Federal requirements for reporting serious adverse events and other safety information. With this action, NIH is proposing to amend the NIH Guidelines to require expedited reporting of serious adverse events that are unexpected and considered to be possibly associated with the use of the gene transfer product. The scope and timeframe for reporting these events and other safety information, as well as definitions used, would parallel those of the FDA as set forth in volume 21 of the CFR. Submission of a comprehensive summary of serious adverse event data will be required on an annual basis, again in harmony with the FDA requirements.

The comprehensive public review of serious adverse event data by the RAC is a critical component of Federal oversight of human gene transfer research. A systematic and publicly accountable review and assessment of toxicity and safety data from these trials over time is essential for identifying trends and recognizing patterns that may have important implications for the future development of human gene transfer research. In order to enhance NIH's ability to perform this critical function, and in accordance with the recommendations of the ACD, the NIH is proposing to establish a new mechanism for the review and assessment of serious adverse events. The specific proposed mechanism is a working group of the RAC, to be known as the NIH Gene Transfer Safety Assessment Board. The working group's specific functions would involve: (1) Reviewing serious adverse event reports, annual reports, and other relevant safety information and assessing toxicity and safety data across all gene transfer trials and analyzing the data for trends; (2) identifying significant trends or single events; (3) developing information that will enhance the development, design, and conduct of human gene transfer clinical trials; and (4) reporting aggregated data to the RAC to enhance review of new protocols and to enhance public understanding and awareness of the safety of human gene transfer research studies as well as the informed decision-making of potential trial participants. The working group would

be composed of government and non-governmental experts in relevant clinical specialties; pediatric, adult, and geriatric medicine; relevant basic science disciplines such as genetics, virology, and immunology; biostatistics; bioethics; and patient advocacy. The working group would include liaison representation from the FDA. The working group would consist of approximately 15 members, at least two of whom would be RAC members, appointed by the NIH Director. The working group would meet quarterly or more frequently if needed.

Patient safety is the utmost concern. NIH believes that the proposed changes will expand knowledge, advance the science and ethics of the field of human gene transfer research, and optimize NIH oversight of the field.

Proposed Amendments to the NIH Guidelines

Although the NIH has received a considerable amount of valuable advice and a range of perspectives from the public and advisory groups, NIH wishes to provide another opportunity for public comment before finalizing these proposed amendments regarding serious adverse event reporting. The specific proposed amendments to the NIH Guidelines are as follows: (1) Change the requirements for expedited reporting of serious adverse events; (2) clarify that trade secret or other commercial confidential information should not be included in serious adverse event reports and that serious adverse event reports may not be classified as confidential information; (3) add a new section prohibiting individually identifiable patient information from being included in serious adverse event reports; and (4) establish a working group of the RAC, to be known as the NIH Gene Transfer Safety Assessment Board, to be responsible for the review and analysis of serious adverse events and other relevant safety information in gene transfer research studies and dissemination of safety information to the RAC, and, thereby, to the scientific and patient communities, and the public.

A new Section I–E–8 is proposed to be added to read:

"Section I–E–8. A 'serious adverse event' is any event occurring at any dose that results in any of the following outcomes: Death, a life-threatening event, in-patient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization also may be considered a serious adverse event when, upon the basis of appropriate medical judgment, they may jeopardize the human gene transfer research subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition."

A new Section I–E–9 is proposed to be added to read:

"Section I–E–9. An adverse event is 'associated with the use of a gene transfer product,' when there is a reasonable possibility that the event may have been caused by the use of that product."

A new Section I–E–10 is proposed to be added to read:

"Section I–E–10. An unexpected serious adverse event is any serious adverse event for which the specificity or severity is not consistent with the risk information currently available in the protocol."

Section IV–B–7. Principal Investigator (PI) is modified to read:

Section IV–B–7. Principal Investigator (PI)

On behalf of the institution, the Principal Investigator is responsible for full compliance with the NIH Guidelines in the conduct of recombinant DNA research. A Principal Investigator engaged in human gene transfer research may delegate to another party, such as a corporate sponsor, the reporting functions set forth in Appendix M, with written notification to NIH OBA of the delegation and of how the delegate may be contacted. The Principal Investigator is responsible for ensuring that the reporting requirements are fulfilled and will be held accountable for any reporting lapses."

Current M–I–C–3, Annual Reporting, is proposed to be modified proposed to read in its entirety:

Appendix M–I–C–3, Annual Reports

Within 60 days of the one-year anniversary of the date on which the clinical trial was initiated and of each subsequent anniversary until the trial is completed, the Principal Investigator (or delegate) shall submit a summary report of the progress of the investigation that includes:

(a) Clinical Trial Information. A brief summary of the status of each trial in progress and each trial completed during the previous year. The summary is required to include the following information for each trial: (1) The title and purpose of the trial; (2) clinical protocol identifiers, including the NIH OBA protocol number, NIH grant number(s) (if applicable), and the FDA IND application number; (3) participant population; (4) the status of the trial; (5) the total number of participants planned for inclusion in the trial; the number entered into the trial to date; the number whose participation in the trial was completed; and the number who dropped out of the trial for any reason; and (6) if the trial has been completed, a brief description of any study results.

(b) Progress Report and Data Analysis. Information obtained during the previous year's clinical and non-clinical investigations, including: (1) A narrative or tabular summary showing the most frequent and most serious adverse experiences by body system; (2) a summary of all serious adverse events submitted during the past year; (3) a summary of serious adverse events that are expected or considered to have causes not associated with the use of the gene transfer product such as disease progression or concurrent medications; (4) the number of participants who died during participation in the investigation and causes of death; (5) a brief description of any information obtained pertinent to an understanding of the gene transfer product's actions, including, for example, information about dose-response, information from controlled trials, and information about bioavailability.

(c) A copy of the updated clinical protocol including a technical and non-technical abstract.

Current Appendix M–I–C–4, Serious Adverse Event Reporting is proposed to be modified in its entirety to read:

Appendix M–I–C–4, Safety Reporting

Principal Investigators must submit, in accordance with this section, Appendix M–I–C–4–a and Appendix M–I–C–4–b, a written report on: (1) Any serious adverse event that is both unexpected and possibly associated with the use of the gene transfer product; and (2) any finding from tests in laboratory animals that suggests a significant risk for human research participants including reports of mutagenicity, teratogenicity, or carcinogenicity. The report must be clearly labeled as a "Safety Report" and must be submitted to the Office of Biotechnology Activities (OBA) and to the local Institutional Biosafety Committee within the timeframes set forth in Appendix M–I–C–4–b.

Principal Investigators should adhere to any other serious adverse event reporting requirements in accordance with Federal regulations, state laws, and local institutional policies and procedures, as applicable.

Principal Investigators may delegate to another party, such as a corporate sponsor, the reporting functions set forth in Appendix M, with written notification to NIH OBA of the delegation and of how the delegate may be contacted. The Principal Investigator is responsible for ensuring that the reporting requirements are fulfilled and will be held accountable for any reporting lapses.

The three alternative mechanisms for reporting serious adverse events to OBA are: by e-mail to oba@od.nih.gov; by fax to 301–496–9839; or by mail to the Office of Biotechnology Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010.

Appendix M–I–C–4–a, Safety Reporting: Content and Format

Reports of serious adverse events should follow the format provided in the Adverse Event Reporting Format available on NIH OBA's web site at: http://www.nih.gov/od/oba/. The serious adverse event report must include, but need not be limited to: (1) The date of the event; (2) designation of the report as an initial report or a follow-up report; (3) a complete description of the event; (4) relevant clinical observations; (5) relevant clinical history; (6) relevant tests that were or are planned to be conducted; (7) the suspected cause of the event; (8) gene delivery method; (9) vector type, *e.g.*, adenovirus; (10) vector subtype, *e.g.*, type 5, relevant deletions; (11) dosing schedule; (12) route of administration; (13) identification of all safety reports previously filed with the clinical protocol concerning a similar adverse event and an analysis of the significance of the adverse event in light of previous similar reports; (14) clinical site; (15) the principal investigator; (16) NIH Protocol number; and (17) FDA's Investigational New Drug (IND) Application number.

Serious adverse event reports must not contain individually identifiable patient information.

Reports from laboratory animal studies must be submitted in a narrative format.

Unless NIH OBA determines that there are exceptional circumstances, all information submitted in accordance with Appendix M–I–C will be considered public. Safety reports submitted in accordance with Appendix M–I–C will not be considered to contain any trade secret or commercial or financial information that is privileged or confidential as defined under the Freedom of Information Act, 5 U.S.C. 552.

Appendix M–I–C–4–b, Safety Reporting: Time-Frames for Expedited Reports

Any serious adverse event that is fatal or life-threatening, that is unexpected, and possibly associated with the use of the gene transfer product must be reported to NIH OBA as soon as possible, but not later than 7 calendar days after the sponsor's initial receipt of the information (*i.e.*, at the same time the event must be reported to the FDA).

Serious adverse events that are unexpected and possibly associated with the use of the gene transfer product, but are not fatal or life-threatening, must be reported to NIH OBA as soon as possible, but not later than 15 calendar days after the sponsor's initial receipt of the information (*i.e.*, at the same time the event must be reported to the FDA).

If, after further evaluation, an adverse event initially considered not to be possibly associated with the use of the gene transfer product is subsequently determined to be possibly associated, then the event must be reported to NIH OBA within 15 days of the determination.

Relevant additional clinical and laboratory data may become available following the initial serious adverse event report. Any follow-up information relevant to a serious adverse event must be reported within 15 calendar days of the sponsor's receipt of the information. If a serious adverse event occurs after the end of a clinical trial and is determined to be possibly associated with the use of the gene transfer product, that event shall be reported to NIH OBA within 15 calendar days of the determination.

Any finding from tests in laboratory animals that suggests a significant risk for human research participants including reports of mutagenicity, teratogenicity, or carcinogenicity must be reported as soon as possible, but not later than 15 calendar days after the sponsor's initial receipt of the information (*i.e.*, at the same time the event must be reported to the FDA)."

A new Appendix M–I–D is proposed to be added:

Appendix M-I-D, Safety Assessment in Human Gene Transfer Research

A standing working group of the RAC, the NIH Gene Transfer Safety Assessment Board, will: (1) Review serious adverse event reports, annual reports, and other relevant safety information made to OBA for the purpose of assessing toxicity and safety data across all gene transfer trials and analyzing the data for trends; (2) identify significant trends or single events; (3) develop information that will enhance the development, design, and conduct of human gene transfer clinical trials; and (4) report aggregated trend data to the RAC to enhance review of new protocols and to enhance public understanding and awareness of the safety of human gene transfer research studies as well as the informed decision-making of potential trial participants. The working group members are appointed by the NIH Director."

Current Appendix M–IV. Privacy and Confidentiality is proposed to be amended by the addition of the following sentence at the end of the section:

Current Appendix M–IV. Privacy and Confidentiality

"* * * These measures should protect the confidentiality of information that could indirectly enable identification of study participants, as well as information that would directly identify study participants."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which recombinant DNA techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: December 4, 2000.

Ruth L. Kirschstein,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 00–31524 Filed 12–11–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4541–N–04]

Notice of Proposed Information Collection Revision: Comment Request, FHIP SuperNOFA Application Kit

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the *Fair Housing Initiatives Program* will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: February 12, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW., Room 5228, Washington, DC 20410. Telephone number (202) 708–0800.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. (This is not a toll-free number). Hearing or speech-impaired individuals may access this TTY number by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), as amended.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to certify: (1) That recipients of FHIP funds will not use FHIP funds to settle a claim, satisfy a judgment, or fulfill a court order in any defensive litigation or (2) whether key project personnel have a prior felony conviction or been convicted of a crime or crimes involving fraud or perjury.

Notice of Submission of Proposed Information Collection Revision to OMB

Title: Fair Housing Initiatives Program SuperNOFA Application Kit and Reporting/Recordkeeping Requirements Revision.

OMB Approval Number: 2529–0033.

Description of the Need for the Information and its Proposed Use: The information required by this certification will enable the Department to determine that selected agencies are using FHIP funds as intended (to prevent and eliminate discriminatory housing practices). These grants are authorized under Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) and the implementing regulations are found at 24 CFR Part 125.

Agency form numbers: SF–269A, SF–424/A/B/M: SF–LLL, HUD 2880, HUD 2992, HUD50070, HUD–50071:

Members of Affected Public: 400.

Reporting Burden: The Department estimates that the application kit, Certificate, quarterly report, final report, and enforcement log, will have the following reporting burdens:

Application	Number of respondents	Frequency	Hours per response	Burden hours
Development	400	1	53	21,200

The number of respondents is based on the total number of applications received under all initiatives. The number of hours per response is an average based on grantee estimates of time to review instructions, search existing data sources, prepare required responses to the application kit, and assemble exhibits.

Certification	70	2	.4	560
Quarterly Report	70	4	12	3,360
Enforcement Log	35	4	7	980
Final Report	70	1	20	1,400

Estimates are based on 70 of 400 applications funded, thus, 70 respondents will file a Certification for Recipients of FHIP Funds, at least twice. In addition, respondents will report 4 times annually on program performance and financial status. Approximately one-half of the funded recipients will be requested to complete the enforcement log. Hours per response are averages based on grantee estimates of time to review instructions, search existing data sources, gather and maintain the needed data, and complete or respond to the requested information. Actual time may vary because of differences in grant activities, size, or complexity, and depending on whether the grantee automates the format.

Status of the proposed information collection: Revision.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 5, 2000.

Pamela Walsh,

Director, Program Standards Division.

[FR Doc. 00–31503 Filed 12–11–00; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–15]

Order of Succession for the Secretary of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Secretary of Housing and Urban Development designates the Order of Succession for the position of Secretary of Housing and Urban Development. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice on December 11, 1989 at 54 FR 50823.

EFFECTIVE DATE: November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Virginia Kelly Ackerman, Senior Attorney, Procurement and Administrative Law Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone: 202–708–0622. (This is not a toll-free number.) This telephone number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Secretary is not available to exercise the powers or perform the duties of the Secretary, the following are hereby designated to exercise all powers, functions and duties assigned to or vested in the Secretary. However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office:

(1) Deputy Secretary
(2) General Counsel
(3) Assistant Secretary for Housing-Federal Housing Commissioner
(4) Assistant Secretary for Community, Planning and Development
(5) Assistant Secretary for Public and Indian Housing
(6) Assistant Secretary for Policy Development and Research
(7) Assistant Secretary for Fair Housing and Equal Opportunity
(8) Assistant Secretary for Congressional and Intergovernmental Relations
(9) Assistant Secretary for Administration
(10) Assistant Secretary for Public Affairs.

In the event of a national security or other emergency and none of the officials named above is able to act, appointees to the positions listed below are authorized to exercise all powers, functions, and duties assigned to or vested in the Secretary. Executive Order No. 12656, 53 FR 47491 (published November 23, 1988), as amended at 63 FR 7277 (February 12, 1998). However, no official shall act as Secretary until, all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office:

1. President, Government National Mortgage Association
2. Chief Financial Officer
3. Director, Office of Federal Enterprise Oversight
4. Secretary's Representative, New England (Boston)
5. Secretary's Representative, New York/New Jersey (New York)
6. Secretary's Representative, Mid-Atlantic (Philadelphia)
7. Secretary's Representative, Southeast/Caribbean (Atlantic)
8. Secretary's Representative, Midwest (Chicago)
9. Secretary's Representative, Southwest (Fort Worth)
10. Secretary's Representative, Great Plains (Kansas City)
11. Secretary's Representative, Rocky Mountains (Denver)
12. Secretary's Representative, Pacific/Hawaii (San Francisco)
13. Secretary's Representative, Northwest/Alaska (Seattle)

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession of the Secretary of Housing and Urban Development, published at 54 FR 50823 (December 11, 1989).

Authority: Executive Order 11274, 5 U.S.C. 3347; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Executive Order 12656, 53 FR 47491 (November 23, 1988), as amended at 63 FR 7277 (February 12, 1998); Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d.

Dated: November 30, 2000.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 00–31504 Filed 12–11–00; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval under the Paperwork Reduction Act (PRA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: New information collection—NEPA compliance checklist.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has submitted the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement and related forms and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Consideration will be given to all comments received on or before January 11, 2001. OMB has up to 60 days to approve or disapprove an information collection, but may respond after 30 days. Therefore to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer (1018–XXXX), New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 and they should send a copy of the comments to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack_Hicks@fws.gov* E-mail.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public have the opportunity to comment on information and record keeping activities.

On September 1, 2000 the Director of the U.S. Fish and Wildlife Service signed Director's Order No. 127 establishing policy and procedures for the preparation of an administrative record for complying with the requirements of the National Environmental Policy Act (NEPA) by Service personnel who administer Federal financial assistance programs. This record was developed in the form 3–2185 adopted by the Service as the NEPA Compliance Checklist.

On September 12, 2000 the Service published in the **Federal Register** (FR Vol. 65, No. 177, p55032) a 60 day notice and request for public comment on this information collection. That comment period ended on November 13, 2000. We received the following comments from this earlier notice.

1. One private individual E-mailed asking where she could get copies of the form and supporting information.

Response: She was referred by return E-mail to the Service's Home Page with directions for navigation to the Director's Order. A sample of the new form was attached to the E-mail response.

2. A State employee E-mailed the following comments.

A. The wording on Item 6 is so broad that almost anything could be categorically excluded (2 examples were included with the comment), please remove this Item.

B. Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. The wording for Item 6 carries this to a new level that

will cause confusion and unnecessary writing of EA's.

Response to both: The language in item 6 in the NEPA Compliance Checklist is not new to the Service. It has been a requirement in the Council on Environmental Quality regulations since 1978, and in the Departmental Manual (516 DM 2, App 2.6) since (at least) September 26, 1984. This requirement has been referenced in the Service's NEPA Manual since 1984. The intent is clear, Federal Agencies must address cumulative impacts of their actions. Your concern is how broadly (or how stringently) this is interpreted, particularly when it exists as an exception to a categorical exclusion. The Service has no absolute requirement as to when a categorical exclusion or an exception apply, it is not possible due to the complexity of our programs. In the past our application of this requirement and the interpretation by the courts of our decisions have been based on a rule of reason. Item 6 stays in the document, but as always, will be applied reasonably to more complex issues. The Service will continue to take a reasonable approach, consistent with NEPA, when determining when to prepare an EA or EIS.

3. A State wrote that they thought the new language was more restrictive than they have been using in the past and explained a process they use currently.

Response: The items on the checklist are the minimum thresholds for initiating either an Environmental Assessment or and Environmental Impact Statement. The process you currently use, the memorandum of understanding between your agency and the State Historic Preservation Office, is not endorsed by the FWS, DOI, or CEQ.

4. Another State wrote that the Service should delay implementation of this checklist until after the Department has issued new manual chapters regarding DOI policy on NEPA.

Response: The checklist spells out the current minimum requirements for NEPA and will be changed to include the new items that may be added to the list by the Department of Interiors policy development process currently underway. What we are doing with the checklist now will gain approval from OMB for use of the checklist and ensure that everyone knows what the current minimum requirements are for NEPA consideration.

No other comments were received.

Description and Use: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act, the Clean Vessel Act, the Sportfishing and Boating Safety Act, North American Wetlands Conservation Act, the Coastal Wetlands Planning, Protection and Restoration Act, and through other Acts and authorities. The Service uses the information collected to make a determination as to National Environmental Policy Act compliance. The State or other grantee uses the checklist as a guide to general NEPA requirements and it becomes an administrative record to meet their assurances requirements for receiving a grant. Grant applicants provide the information requested in the NEPA Compliance Checklist in order to qualify to receive benefits in the form of grants for purposes outlined in the applicable law. This form is designed to cause the minimum impact in the form of hourly burden on grant applicants and still get all the required information. Only about 3 percent of the Service's applicants for either a new grant or for an amendment to an existing grant will meet the criteria, and need to complete the NEPA Compliance Checklist.

Title of Form: NEPA Compliance Checklist

FWS Form Number: 3–2185

OMB Control Number: 1018–XXXX
The Service will receive a control number from OMB prior to collecting any information. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Supplemental Information: The Service has submitted the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Frequency: Generally annually.

Description of Respondents: State Government, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and others receiving grant funds.

COMPLETION TIME AND ANNUAL RESPONSE AND BURDEN ESTIMATE

Form name	Completion time per checklist	Annual response	Annual burden
NEPA Compliance Checklist	½ Hour	160	80

BILLING CODE 4310–55–M

NEPA COMPLIANCE CHECKLIST **OMB Control Number 1018-XXXX**
Expires: xx/xx/xxxx

State: **Federal Financial Assistance Grant/Agreement/Amendment Number:**

Grant/Project Name:

This proposal ☐ **is;** ☐ **is not completely covered by categorical exclusion No(s). _____, 516 DM 6 Appendix 1.**
(check (✓) one) *(Review proposed activities. An appropriate categorical exclusion must be identified before completing the remainder of the Checklist. If a categorical exclusion cannot be identified, or the proposal cannot meet the qualifying criteria in the categorical exclusion, an EA must be prepared.)*

Exceptions:

Will This Proposal *(check (✓) yes or no for each item below)*:

Yes	No		
☐	☐	1.	Have significant adverse effects on public health or safety.
☐	☐	2.	Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.
☐	☐	3.	Have highly controversial environmental effects.
☐	☐	4.	Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
☐	☐	5.	Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
☐	☐	6.	Be directly related to other actions with individually insignificant, but cumulatively significant environmental effects.
☐	☐	7.	Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
☐	☐	8.	Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.
☐	☐	9.	Have material adverse effects on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
☐	☐	10.	Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(If any of the above exceptions receive a "Yes" check (✓), an EA must be prepared.)

Concurrences/Approvals:

Project Leader: _____ Date: _____

State Authority Concurrence: _____ Date: _____
(with financial assistance signature authority, if applicable)

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the grant/agreement/amendment:

☐ **is a categorical exclusion as provided by 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.**
☐ **is not completely covered by the categorical exclusion as provided by 516 DM 6, Appendix 1. An EA must be prepared.**
☐ **includes other attached information supporting the Checklist.**

Service signature approval:
RO/WO Environmental Coordinator (if required): _____ Date: _____

Staff Specialist, Division of Federal Aid: _____ Date: _____

FWS Form 3-2185 Version 8/2000

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one-half hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, 1018-XXXX, U.S. Fish and Wildlife Service, MS 222-ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Dated: November 17, 2000.

Rebecca A. Mullin,

Fish and Wildlife Service Information Collection Clearance Officer.

[FR Doc. 00–31508 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–PF–01–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0168

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of an existing approval to collect certain information from private landowners which will allow BLM to determine road use and maintenance fees for logging road right-of-way permits issued under the O&C Logging Road Right-of-Way regulations (43 CFR 2812).

DATES: You must submit your comments to BLM at the appropriate address below on or before February 12, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0168" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Styduhar, BLM Oregon State Office, on (503) 952–6454 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Styduhar.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 2812 to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Private landowners in western Oregon obtain authorization to transport their timber over BLM-controlled roads under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). The logging road right-of-way permits that BLM issues are subject to the requirements of the O&C Logging Road Right-of-Way regulations (43 CFR Part 2812). As a condition of each right-of-way permit, a permittee must provide BLM with a certified statement containing the amount of timber removed, the lands from which the timber was removed, and the BLM roads used to transport the timber. BLM collects this information on a quarterly basis using the Form OR–2812–6, Report of Road Use.

The monies BLM receives for road use contribute to the recovery of costs incurred in the construction of forest access roads. Fees collected for road maintenance are reimbursements for services BLM provided to maintain roads the permittees use. If BLM did not require the collection of information included in the Report of Road Use Form, it would not be possible to determine payment amounts, ledger account status, or monitor a permittee's compliance with the terms of the permit. The costs for services BLM provides would not be collected in a timely manner if we reduce the frequency of reporting. This would have a direct effect on the ability of BLM to properly maintain its road system, protect the road investment, and provide safe and efficient access to the public lands.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected estimates to average 1 hour per response. The respondents include individuals, partnerships, and corporations engaged in the removal and transportation of timber and other forest products. The frequency of response is quarterly. The estimated number of responses per year totals 400. The estimated total annual burden is 1600 hours. BLM specifically requests your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 6, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–31497 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–01–1220–PA: GP1–0051]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Tuesday, January 9, 2001 from 8 a.m. to 12 p.m. in the Conference Room at the Baker County Library, 2400 Resort Street, Baker City, Oregon. Public comments will be received from 11 a.m. to 11:15 a.m., January 9, 2001. Topics to be discussed are the review and approval of the updated Strategic Plan, reports from Coordinators of Subcommittees, and the development of Action Plan and Recommendations for FY2001–2002.

DATES: The meeting will begin at 8 a.m. and run to 12 p.m. January 9, 2000.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541–523–1845).

Sandra L. Guches,

Acting Vale District Manager.

[FR Doc. 00–31506 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK—910–1410–PG]

Notice of Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The BLM Alaska Resource Advisory Council will conduct an open meeting Thursday, January 11, 2001, from 9:30 a.m. until 4:30 p.m. and Friday, January 12, 2001, from 8:30 a.m. until 3 p.m. The meeting will be held at the BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska.

The primary agenda item for this meeting is to review draft resource management standards for BLM public lands in Alaska and to take public comment on this draft from 1 to 3 p.m. Thursday, January 11, 2001. The draft standards are standards are available for public review and comment at www.ak.blm.gov or call (907) 271–5555 to request a copy. Both oral and written comments will be taken at the meeting, or written comments may be mailed to BLM at the address below.

ADDRESSES: Inquiries or comments should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 00–31536 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Preparation of a New 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002–2007; and Notice of Intent To Prepare an Environmental Impact Statement for the Proposed 5-Year Program

SUMMARY: Section 18 of the OCS Lands Act (43 USC 1344) requires the Department of the Interior to solicit information from interested and affected parties during the preparation of a 5-year OCS oil and gas leasing program. The current 5-year program covers the period July 1997 to July 2002. The Minerals Management Service (MMS) intends to prepare a new 5-year program for 2002–2007 to succeed the current one.

The MMS is starting the program preparation process at this time because section 18 requires completion of a lengthy, multi-step process of consultation and analysis before the Secretary of the Interior may approve a new 5-year program. The section 18 process includes the following required steps: this solicitation of comments; development of a draft proposed program, a proposed program, and a proposed final program; and Secretarial approval. The MMS also will prepare an Environmental Impact Statement (EIS) that analyzes the alternatives considered for the new 5-year program. This notice announces the start of the EIS preparation process. The MMS will consider comments received in response to this notice in developing the draft proposed program and in determining the scope of the EIS.

DATES: The MMS must receive all comments and information by February 1, 2001.

ADDRESSES: Mail comments and information to: 5-Year Program Manager, Minerals Management Service (MS–4400), Room 2324, 381 Elden Street, Herndon, Virginia 20170. The MMS will accept hand deliveries at 1849 C Street, N.W., Room 4230, Washington, D.C. Please label your comments and the packaging in which they are submitted as to subject matter: mark those pertaining to program preparation, "Comments on Preparation of the 5-Year Program for 2002–2007; and mark those pertaining to EIS preparation, "Scoping Comments on the EIS for the 5-Year Program for 2002–2007." If you submit any privileged or proprietary information to be treated as confidential, please mark the envelope, "Contains Confidential Information."

The MMS will accept comments submitted by electronic mail. Send your comments on the preparation of the program to *MMS5-year.document@mms.gov* and your comments concerning the scope of the EIS to *MMS5-year.eis@mms.gov*. We also will provide access to information concerning the 5-year program and EIS, including copies of comments we receive in response to this notice, at the MMS internet website (www.mms.gov).

Public Comment Procedure

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold his or her name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission.

We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

FOR FURTHER INFORMATION CONTACT: Ralph Ainger, 5-Year Program Manager, at (703) 787–1215.

SUPPLEMENTARY INFORMATION: The MMS requests comments from states, local governments, American Indian and Native Alaskan organizations, the oil and gas industry, federal agencies, environmental and other interest organizations, and other parties to assist in the preparation of a 5-year OCS oil and gas leasing program for 2002–2007 and applicable EIS. The 5-year program enables the federal government, states, industry, and other interested parties to plan for steps proposed to lead to OCS oil and gas lease sales. The Department will make a decision on whether to proceed with a specific sale on the schedule only after meeting all of the applicable requirements of the OCS Lands Act, the National Environmental Policy Act (NEPA), and other statutes.

The program preparation process will follow all the procedural steps required by section 18 of the OCS Lands Act. This notice solicits comments early in the preparation process pursuant to section 18(c)(1). The MMS will prepare a draft proposed program based on consideration of the comments we receive and analysis of the principles and factors specified in section 18. The draft proposed program will present for review and comment a preliminary schedule of lease sales indicating the size, timing, and location of OCS leasing proposed for 2002–2007, as well as provisions for assuring receipt of fair market value for leases.

OCS Planning Areas To Be Considered and Analyzed

The OCS consists of 26 planning areas for purposes of administering the 5-year program and related OCS oil and gas activities. Figures 1 and 2 depict the 26 OCS planning areas. Note that precise marine boundaries between the United States and nearby or adjacent nations have not been determined in all cases. The depicted maritime boundaries and limits, as well as divisions between planning areas, where shown, are for planning purposes only. These limits shall not affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters or of sovereign rights or jurisdiction for any purpose whatsoever.

In 1998, acting under the authority of section 12 of the OCS Lands Act (43 USC 1341), the President withdrew the following planning areas from disposition by leasing through June 30, 2012: North Aleutian Basin; Washington-Oregon; Northern, Central, and Southern California; Eastern Gulf of Mexico, except the Sale 181 area located off Alabama and more than 100 miles off Florida; and South, Mid, and North Atlantic. The President also withdrew indefinitely all National Marine Sanctuaries, which are located in the following planning areas: Washington-Oregon (Olympic Coast); Central California (Cordell Bank, Gulf of the Farallones, and Monterey Bay), Southern California (Channel Islands), Western Gulf of Mexico (Flower Garden Banks); Straits of Florida (Florida Keys); South Atlantic (Gray's Reef); Mid-Atlantic (Monitor); and North Atlantic (Stellwagon Bank). None of the areas withdrawn under section 12 will be available for leasing during the timeframe of the next 5-year program.

Section 18 requires the Secretary of the Interior to begin the 5-year program preparation process by soliciting information pertaining to all of the areas of the OCS that have not been withdrawn (*i.e.*, the portions of the OCS not listed above). We will consider information we receive concerning the available areas in light of the criteria specified in section 18, which are discussed below. If the Secretary decides not to propose leasing in an area in the draft proposed program, further analysis of that area under section 18 will not be necessary.

Types of Information Requested

The MMS invites comments from anyone who would like to submit information for us to consider in determining the appropriate size, timing, and location of OCS leasing for the 5-year period July 2002 to July 2007. The types of information we seek are described below using general and specific headings. Regardless of these headings, all respondents are welcome to comment on any aspect of program preparation and to submit any type of pertinent information.

General

The MMS would like to receive comments and suggestions of nationwide application that would be useful in formulating the new 5-year program. The types of information that would be most useful to us in conducting the section 18 analysis relate to the following factors:

(1) National energy needs for the period relevant to the new program (in particular for this program, the role of OCS leasing in achieving national energy policy goals, including its potential for contributing to increased domestic natural gas supplies, as addressed further below); the economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS; and the potential impact of oil and gas exploration on other resource values of the OCS and the marine, coastal, and human environments;

(2) Geographical, geological, and ecological characteristics of the planning areas of the OCS and nearshore environments;

(3) Equitable sharing of developmental benefits and environmental risks among the various planning areas;

(4) Location of planning areas with respect to, and the relative needs of, regional and national energy markets;

(5) Other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of OCS resources and locations;

(6) Relative environmental sensitivity and marine productivity of the different planning areas of the OCS;

(7) Environmental and predictive information pertaining to offshore and coastal areas potentially affected by OCS development (including socio-cultural and archaeological information); and

(8) Methods and procedures for assuring the receipt of fair market value for lands leased.

The MMS also invites you to respond to the following questions:

(i) Since the national energy picture concerning "needs" as mentioned above has been volatile, how should the 5-year program for 2002–2007 be structured to meet those needs? What do you think is the proper role of the OCS in national energy policy?

(ii) Since recent studies have projected shortfalls in meeting energy needs such as for home heating oil, and especially natural gas, how should such needs be balanced with the laws, goals, and policies influencing the management of the OCS? Specifically, since concerns from affected states, such as those identified in studies conducted by the National Research Council, have led to past congressional and presidential actions to restrict many areas, how should long-term planning address the current situation?

(iii) Although OCS oil and gas leasing is typically conducted through an extensive, long-established process, are there alternative ways to ensure appropriate consultation and to streamline our procedures? How might we best meet the purpose of the OCS Lands Act "to insure that the extent of oil and gas resources of the Outer Continental Shelf is assessed at the earliest practicable time?"

Specific

Affected Coastal States

As specified in section 18(a)(2)(F), the MMS requests the governors of affected states to identify state laws, goals, and policies relevant to OCS oil and gas. We have sent to each of those governors a letter soliciting such information. Pursuant to section 18(f)(5) and implementing regulations at 30 CFR 256.20, we request information concerning the relationship between OCS oil and gas activity and the states' coastal management programs that are being developed or administered under the Coastal Zone Management Act. We also request the affected states to submit information concerning environmental risk and potential for damage to coastal and marine resources associated with development of the OCS, information related to other uses of the sea, and any information in your possession that is relevant to equitable sharing of developmental benefits and environmental risks associated with OCS oil and gas activity.

Oil and Gas Industry

As specified in section 18(a)(2)(E), the MMS requests oil and gas industry respondents to provide information indicating your interest in the opportunity to lease and develop additional OCS oil and gas resources. You should base this information on your expectations as of 2002. For each area in which your company is interested, please submit information concerning unleased hydrocarbon potential, future oil and gas price expectations, and other relevant information that your company uses in making OCS oil and gas leasing decisions. The MMS also requests industry commenters to provide additional information as specified below (on request such information will be treated confidentially as explained further below).

(1) Indicate the OCS planning area(s) where your company would be interested in acquiring oil and gas leases during the period 2002–2007. If you indicate more than one planning area, rank the areas in order of preference.

(2) Indicate the number and timing of lease sales in the period 2002–2007 that you believe would be appropriate for each planning area. If you suggest only one sale in a planning area, indicate whether that area should be considered for leasing early or late in the 5-year program schedule. If you suggest more than one lease sale in a planning area, indicate the preferred interval between sales.

Regarding the scope and timing of lease sales, the MMS would be especially interested in hearing innovative ideas for the Central and Western Gulf of Mexico Planning Areas, which have been subject to a long-running policy of annual areawide leasing. For example, we would like to know if commenters think it would be advantageous to offer blocks located in shallower waters on the shelf and those in deep water separately and at different intervals.

We also seek input from all respondents on ways that the leasing program can be designed to promote increased production of natural gas from the OCS. Natural gas is widely recognized to be the environmentally preferred fossil fuel and now accounts for about 25 percent of the nation's fuel needs. It is expected to remain a critical component of our Nation's energy needs well into the 21st century. The Energy Information Administration, National Petroleum Council, Gas Research Institute, and others forecast significant increases in future domestic gas demand—from about 22 trillion cubic feet (TCF) to as much as 29 TCF by 2010 and 31 TCF or more by 2015. Much of the increased production that will be needed is expected to come from the Rocky Mountain onshore region and from the Gulf of Mexico OCS, from deeper wells, deeper water, and nonconventional sources.

Currently, natural gas production from federal waters of the Gulf of Mexico contributes about 5.1 TCF annually (or about 23 percent) to domestic gas supplies. Given projected growth in domestic natural gas consumption, annual production from the OCS would need to increase significantly—from 5 TCF now to about 7 to 8 TCF or more within the next 15 years—to sustain its same contribution to domestic gas supplies. Although oil and natural gas production from the deep waters of the Gulf of Mexico is increasing, annual gas production from the shallower waters has been declining.

As recommended in a December 1999 National Petroleum Council report on natural gas, an Interagency Work Group on Natural Gas has been established to take a lead role in developing a natural gas strategy and resolving issues associated with future natural gas needs. Consistent with the MMS' participation in that work group, and with an OCS Policy Committee resolution calling for consideration of rising natural gas demand, we are examining new ways to increase OCS natural gas production in the Gulf of Mexico in an environmentally responsible manner. For example, we are currently looking at possible incentives that could be employed on a sale specific basis to foster and accelerate exploration for and production of natural gas both in the deep water and gas-prone areas of the continental shelf in the Gulf of Mexico. Some incentives, such as deepwater royalty relief, are expected to encourage increased development over the long term, but other incentives to help bring on new production sooner and meet near-term national increases in demand for natural gas are also needed.

Section 18(g) authorizes confidential treatment of privileged or proprietary information. In order to protect the confidentiality of privileged or proprietary information, include such information as an attachment to other comments submitted. On request the MMS will treat as confidential from the time of its receipt until 5 years after approval of the next leasing program the privileged or proprietary information that is attached to a response, subject to the standards of the Freedom of Information Act. However, the MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, or comments not containing such information. As noted above, you should place the label "Contains Confidential Information" on any envelope containing privileged or proprietary information that you wish to be treated as confidential.

Department of Commerce

Pursuant to section 18(f)(5) and implementing regulations at 30 CFR 256.20, the MMS requests information concerning relationships between affected states' coastal zone management programs and OCS oil and gas activities. We have sent a letter to the Secretary of Commerce soliciting such information.

Department of Energy

Pursuant to implementing regulations at 30 CFR 256.16, the MMS requests information concerning regional and national energy markets, OCS production goals, and oil and gas transportation networks. We have sent a letter to the Secretary of Energy soliciting such information.

EIS Preparation

Pursuant to section 102(2)(C) of NEPA, the MMS intends to prepare an EIS for the new 5-year OCS oil and gas leasing program for 2002–2007. This notice starts the scoping process for the EIS under 40 CFR 1501.7 and solicits information regarding issues and alternatives that should be evaluated in the EIS. The EIS will address the potential impacts of the adoption of the proposed 5-year program. The MMS requests respondents to focus your comments on the significant environmental issues attendant to OCS oil and gas leasing and development

and on alternative options for the size, timing and location of sales that should be evaluated in the EIS. Please label and submit your comments as indicated above. We will consider all comments we receive, regardless of how they are labeled, for the purpose of determining the scope of the EIS we plan to prepare. The individual knowledgeable about preparation of the EIS is Richard Wildermann, telephone (703) 787–1670.

Dated: December 6, 2000.

Walt Rosenbusch,

Director, Minerals Management Service.

BILLING CODE 4310–MR–U

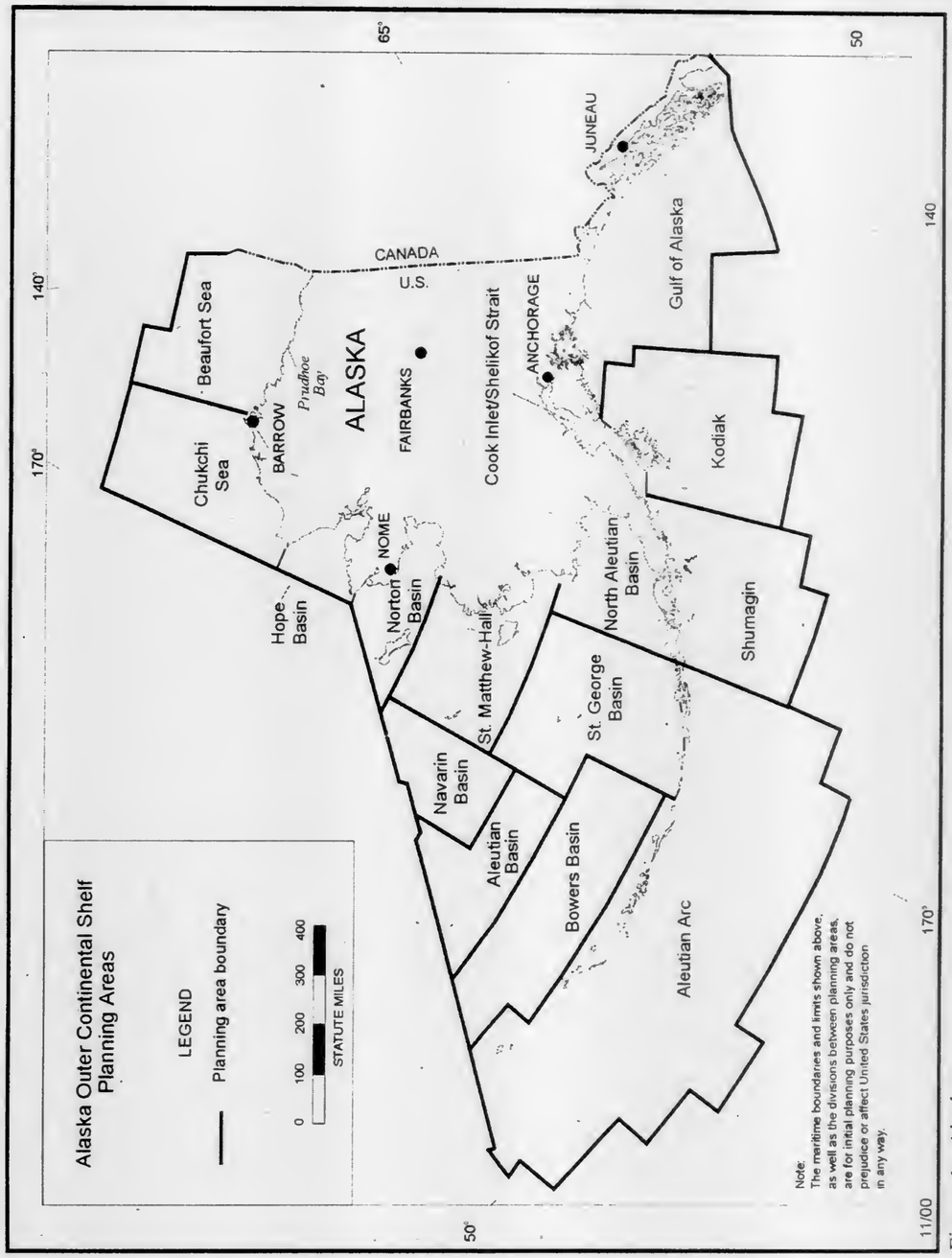


Figure 1. Alaska

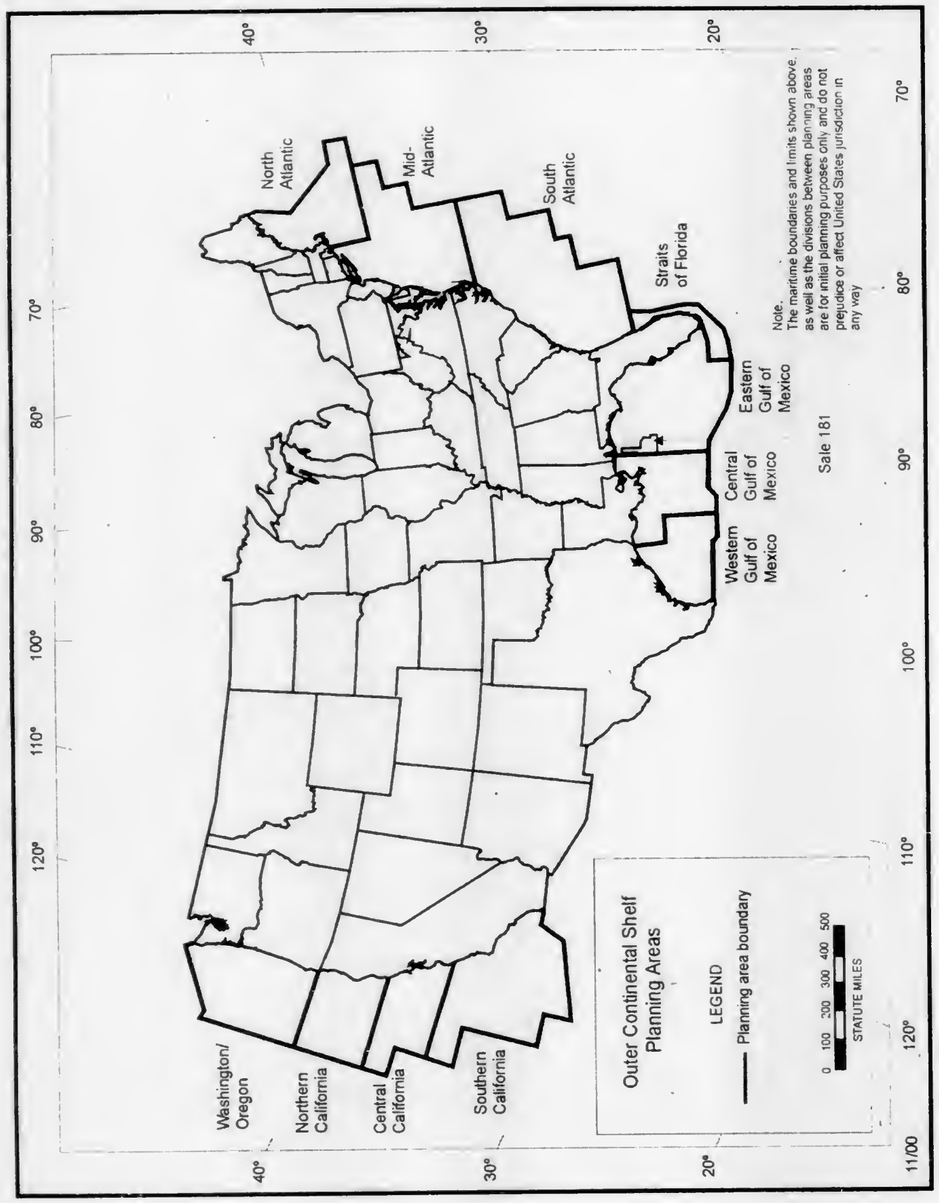


Figure 2. Lower 48 States

[FR Doc. 00–31629 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES00–54]

East Bay Municipal Utility District Supplemental Water Supply Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the East Bay Municipal Utility District (EBMUD) have prepared a joint FEIR/FEIS for the EBMUD Supplemental Water Supply Project. Reclamation and EBMUD prepared a draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the proposed project in November 1997, and a draft recirculated environmental impact report/supplemental environmental impact statement (REIR/SEIS) in October 2000. The FEIR/FEIS incorporates the DEIR/DEIS and REIR/SEIS, by reference, and includes all comments received on the DEIR/DEIS and the REIR/SEIS, and responses to those comments.

DATES: No decision will be made on the proposed action until at least 30 days after release of the FEIR/FEIS. After the 30-day waiting period, Reclamation will be preparing a Record of Decision (ROD) and EBMUD will be preparing a Notice of Determination, both of which will state the action that will be implemented and will discuss all factors leading to the respective decision of each agency. When an alternative is selected and the ROD is signed, Reclamation and EBMUD will resume negotiations on the amendatory contract to conform the contract terms to accurately reflect the selected alternative.

ADDRESSES: Copies of the FEIR/FEIS may be requested from Ms. Ann Reis, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS ı305, Oakland CA 94623, (510) 287–1197.

See "Supplementary Information" section for locations where copies of the FEIR/FEIS are available for inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Ladensack, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS ı305, Oakland CA 94623, (510) 287–1197; or Mr. Robert Schroeder, Environmental Specialist, Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom CA 95630, (916) 988–1707.

SUPPLEMENTARY INFORMATION: The federal action supported by this FEIS/FEIR is execution of an amendment to the 1970 contract. The amendatory contract will provide for a selection of one of the following alternative diversion sites under the identified and other appropriate conditions:

- A diversion of EBMUD's contractual supply at "site 5" on the American River (alternative 4) that must include the completion, prior to construction, of a satisfactory water storage strategy which will allow EBMUD to meet project purposes within the necessary flow pattern limitations. The storage strategy must include all necessary additional environmental documentation and be completed in a satisfactory manner. Additionally, the amendatory contract will include for "site 5" specific diversion rates and schedules (*e.g.*, Hodge flows for "site 5"), which will be in effect for the duration of the contract, and will assure compliance with the State Wild and Scenic Rivers Act.
- A diversion of EBMUD's contractual supply at Freeport on the Sacramento River (alternative 6), instead of an American River diversion. The Freeport diversion would be structured to allow and encourage regional water management partnerships that will consider interim water supplies to be made available by regional partners.

The amendatory contract will prohibit deliveries of water diverted at Nimbus Dam as currently provided in Article 9(a) of the existing 1970 contract. However, if permitting and necessary agreements for another point of diversion are not completed by a certain date, EBMUD will have the right to deliveries as provided in Article 9(a) of the existing 1970 contract.

The amendatory contract will provide that in order for diversions to occur at any of the diversion sites identified above, all relevant state and federal laws and regulations must be complied with, and approval of the Contracting Officer is required. The Contracting Officer will initiate and complete consultation under Section 7 of the Endangered Species Act, and will comply with NEPA, as applicable, prior to approving any such diversions.

Included in the FEIR/FEIS, for clarity of reference only, is Appendix A. It is a draft amendatory contract that Reclamation circulated for public comment in December 1998. The REIR/SEIS and FEIR/FEIS refers to the provisions of the December 1998, draft amendatory contract. Although the entire 1998 draft amendatory contract is included in this FEIR/FEIS, Reclamation and EBMUD expect to replace this amendatory contract with a new draft amendatory contract that conforms to the provisions contained within the ROD.

Copies of the FEIR/FEIS are available for inspection at the following locations:

- East Bay Municipal Utility District at 375 Eleventh Street in Oakland CA 94607–4240
- Sacramento County Water Agency at 827 Seventh Street, Room 301 in Sacramento CA 95814
- City of Sacramento Utilities Department at 5770 Freeport Boulevard, Suite 100 in Sacramento CA 95822
- Sacramento County Clerk-Recorder's Office at 600 Eighth Street in Sacramento CA 95814
- Bureau of Reclamation, Office of Public Affairs at 2800 Cottage Way in Sacramento CA 95825
- Bureau of Reclamation, Folsom Area Office at 7794 Folsom Dam Road in Folsom CA 95630
- Library, Bureau of Reclamation at 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center in Denver CO 80225–0007
- Natural Resources Library, U.S. Department of the Interior at 1849 C Street NW, Main Interior Building in Washington DC 20240–0001
- Sacramento Central Library at 828 I Street in Sacramento CA 95814
- Lodi Public Library at 201 W. Locust Street in Lodi CA 95240
- Caesar Chavez Central Library at 605 N. El Dorado Street in Stockton CA 95202
- Science, Social Science & Government Documents Department, Oakland Public Library at 125 14th Street in Oakland CA 94612
- Contra Costa County Clerk's Office at 730 Las Juntas in Martinez CA 94553
- Alameda County Clerk's Office at 1225 Fallen Street in Oakland CA 94612
- San Joaquin County Clerk's Office at 24 S. Hunter, Room 304 in Stockton CA 95202
- Elk Grove Branch Library at 8962 Elk Grove Boulevard in Elk Grove CA 95624
- Rancho Cordova Community Library at 9845 Folsom Boulevard in Rancho Cordova CA 95827
- Herald Fire Station at 12746 Ivie Road in Herald CA 95638
- Galt Branch Library at 1000 Caroline Avenue in Galt CA 95632
- Tracy Public Library at 20 E. Eaton Avenue in Tracy CA 95376
- Amador Public Library at 25 East Main in Ione CA 95640

- Calaveras County Central Library at 891 Mountain Ranch Road in San Andreas CA 95249
- Community Development Department at 104 Oak Street in Brentwood CA 94513
- City Hall at 708 3rd Street in Brentwood CA 94513
- Brentwood Library at 751 3rd Street in Brentwood CA 94513
- Antioch Library in 501 West 18th Street in Antioch CA 95409
- Antioch Planning Department at Third and H Street in Antioch CA 94531
- City Clerk/Records Department at 65 Civic Avenue in Pittsburg CA 94565
- Pittsburg Library at 80 Power Avenue in Pittsburg CA 94565
- Contra Costa County Public Library at 1664. N. Broadway in Walnut Creek CA 94596

Dated: December 5, 2000.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 00–31606 Filed 12–11–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

U. S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects (Inv. No. 332–422)

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to submit comments

EFFECTIVE DATE: December 6, 2000.

SUMMARY: Following receipt of a request on November 27, 2000, from the United States Trade Representative (USTR), pursuant to authority under section 332(g) of the Tariff Act of 1930, the Commission instituted investigation No. 332–422, U.S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects.

FOR FURTHER INFORMATION CONTACT: Arona Butcher (202–205–3255), Office of Economics; or William Gearhart of the Office of the General Counsel (202–205–3091) for information on the legal aspects of this investigation. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background:

The USTR requested that the Commission conduct an investigation and provide advice as to the economic impact of a U.S.-Singapore FTA. As requested by USTR, the Commission's report on the investigation will include the following:

- A concise description of the Singapore economy, patterns of trade with the United States and other major trade partners, and the tariff and investment relationship between the United States and Singapore.
- A quantitative analysis of the likely trade and economic impact of a United States-Singapore FTA by sector.
- A supplementary qualitative analysis of the impact of the U.S.-Singapore FTA on product sectors to be identified by USTR.
- A discussion of potential trade and economic effects of the elimination of barriers to trade in services under the United States-Singapore FTA.
- A discussion of potential trade and economic effects of changes in intellectual property rights regimes under the United States-Singapore FTA.
- A discussion of potential trade and economic effects of changes in rules concerning foreign direct investment under the United States-Singapore FTA.

The Commission plans to submit its report, U.S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects on January 12, 2001. USTR indicated that portions of the report will be classified as confidential.

Written Submissions

The Commission does not plan to hold a public hearing in connection with this investigation. However, interested persons are invited to submit written statements concerning matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules (19 CFR 201.6). All written statements, except for confidential business information will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than December 20, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: December 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31712 Filed 12–11–00; 8:45 am]

BILLING CODE 7000–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 6, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtaining by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 693–4129 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission or responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Trade Act Participant Report (TAPR), a GPRA compliant data collection and reporting system.

OMB Number: 1205–0392.

Affected Public: State, Local, or Tribal government.; Federal Government.

Frequency: Quarterly.

Number of Respondents: 50.

Estimated Time Per Respondent: 47.5 Hours.

Total Burden Hours: 9,500.

Total Annualized capital/startup costs: $100,000.

Total annual costs (operating/maintaining systems or purchasing services): $225,000.

Description: A GPRA-compliant data collection and reporting system that supplies critical information on the operation of the Trade Adjustment Assistance program and the outcomes for participants.

Type of Review: New collection.

Agency: Employment and Training Administration.

Title: WIA Management Information and Reporting System.

OMB Number: 1205–0New.

Affected Public: State, Local, or Tribal government.

Form No.	Affected public	Number of respondents	Frequency	Average hours per response	Total burden hours
Individual records	State, local, or tribal govt	53	Annually	13,272	703,416
ETA 9090 annual report	State, local, or tribal govt	53	Annually	.75	2,385
Customer survey	Participants and employers	53,000	Quarterly, annually	.83	4,417
Customer survey	Agency administration	53	Quarterly, annually	500	26,500
Customer survey	Overhead	53	Quarterly, annually	154	8,162
ETA 9091 quarterly report	State, local, or tribal govt	53	Quarterly	16	3,392

Total Burden Hours: 748,272.

Total Annualized capital/startup costs: $919,213.

Total annual costs (operating/maintaining systems or purchasing services): $81,541,548.

Description: Selected standardized information pertaining to participants in WIA Title IB programs will be collected and reported for the purposes of general program oversight, evaluation, and performance assessment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–31599 Filed 12–11–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–141]

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of programs and activities receiving financial assistance from the National Aeronautics and Space Administration that are covered by Title IX of the Education Amendments of 1972, as amended.

SUMMARY: In accordance with subpart F of the final common rule for the enforcement of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, *et seq.* ("Title IX") this notice lists those programs and activities that receive financial assistance from NASA and are covered by Title IX. Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F requires each Federal agency that awards Federal financial assistance to publish in the **Federal Register** a notice of the programs covered by the Title IX regulations within sixty (60) days after the effective date (September 29, 2000) of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by twenty (20) Federal agencies, including NASA, on August 30, 2000, (65 FR 52857–52895).

DATES: Effective December 12, 2000.

ADDRESSES: Address comments concerning this notice to the Office of Equal Opportunity Programs, Code EI, NASA Headquarters, 300 E Street, SW, Room 4W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Dalton, 202–358–0958, or TDD: 202–358–3748.

SUPPLEMENTARY INFORMATION: Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). This statute was modeled after Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, which prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance. The goal of Title IX is to ensure that Federal funds are not utilized for and do not support sex-based discrimination, and that individuals have equal opportunities, without regard to sex, to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs or activities.

List of Federal Financial Assistance Administered by the National Aeronautics and Space Administration to Which Title IX Applies

Note: All recipients of Federal financial assistance from GSA are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any. Failure to list a type of Federal assistance below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

1. Grants that provides funding to recipients for the purpose of supporting or stimulating research, education, and training, without substantial involvement by NASA in the activity

supported by the financial assistance. The four types of grants NASA provides are as follows:

a. *Research Grant*—A Research Grant is an agreement used to stimulate or support research in areas such as space science, earth science, the solar system, the universe, human activity in space, advanced aeronautics, and related technologies. Usually, research grants are in excess of one year in duration.

b. *Education Grant*—An Education Grant is an agreement that provides funds to an educational institution or other non-profit organizations for the purposes of:

(1) Capturing student interest and/or improving student performance in science, mathematics, technology, or related fields;

(2) Enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics, or technology;

(3) Supporting national educational support movements;

(4) Conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and

(5) Developing instructional materials (*e.g.*, teacher guides, printed publications, computer software, and videotapes) or networked information services for education.

c. *Training Grant*—A Training Grant is an agreement that provides funds to an educational institution or other non-profit organization solely by providing scholarships, fellowships, or stipends to students, teachers, and/or faculty. NASA training grants are awarded to colleges, universities, or other non-profit organizations; not to individual students, teachers, or faculty members. Students and faculty receiving direct support under a NASA Training Grant must be U.S. citizens.

d. *Facilities Grant*—A Facilities Grant is used to provide for the acquisition, construction, use, maintenance, and disposition of facilities. For the purposes of this type of grant, facilities means property used for production, maintenance, research, development, or testing.

2. Cooperative Agreements that is used to transfer something of value to recipients in order to support and stimulate research, with substantial involvement between NASA and the recipient during the performance of the activity.

Grants and Cooperative Agreements are made under the authority of NASA's organic statute, The National Aeronautics and Space Act of 1958 (Space Act), as amended, 42 U.S.C. 2451 *et seq.*, and the National Space Grant College and Fellowship Act, 42 U.S.C. 2486–2486l. In addition to the grants and cooperative agreements discussed above, the Space Act allows NASA to enter into other agreements in order to meet its wide-ranging mission and program requirements and objectives. Arrangements to receive a copy of NASA's federal financial assistance programs in an alternative format may be made by contacting the named individual.

George E. Reese,

Associate Administrator for Equal Opportunity Programs.

[FR Doc. 00–31490 Filed 12–11–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Status of Museum School Partnerships

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of Status of Museum School Partnership.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 12, 2001.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Rebecca Danvers, Director of the Office or Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Dr. Danvers can be reached on Telephone: 202–606–2478 Fax: 202–606–1077 or at rdanvers@imls.gov.

SUPPLEMENTARY INFORMATION:

Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Status of Museum School Partnership.

OMB Number: n/a.

Agency Number: 3137.

Frequency: every five years.

Affected Public: Museums.

Number of Respondents: 600.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 300 hours.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: December 6, 2000.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 00–31511 Filed 12–11–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Evaluation Museum Leadership Initiatives

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed evaluation of its Museum Leadership Initiatives.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 12, 2001.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Dr. Danvers can be reached on Telephone: 202–606–2478, Fax: 202–606–1077 or at rdanvers@imls.gov.

SUPPLEMENTARY INFORMATION:

Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Evaluation Museum Leadership Initiative.

OMB Number: N/A.

Agency Number: 3137.

Frequency: Once.

Affected Public: Museums.

Number of Respondents: 120.

Estimated Time Per Respondent: 1.

Total Burden Hours: 120.

Total Annualized capital/startup costs: 0.

Total Annual Costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: December 6, 2000.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 00–31512 Filed 12–11–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Cancellation of panel meeting.

SUMMARY: The National Endowment for the Humanities published a document in the **Federal Register** of November 28, 2000, concerning a Humanities Panel meeting. The date of the meeting is December 15, 2000. This meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson at (202) 606–8322.

Cancellation

In the **Federal Register** of November 28, 2000, on page 70951, in the second column, numbered paragraph 15, has been cancelled.

Dated: December 7, 2000.

Lauren Walsh,

Acting Advisory Committee Management Officer.

[FR Doc. 00–31646 Filed 12–11–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Correction.

SUMMARY: The National Endowment for the Humanities published a document in the **Federal Register** of November 28, 2000, concerning a Humanities Panel meeting. The date of the meeting is December 12, 2000 and the title of the program of this meeting was incorrect.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson at (202) 606–8322.

Correction

In the **Federal Register** of November 28, 2000, on page 70950, in the third column, numbered paragraph 11, correct the title of the Humanities Panel Program for December 12, 2000 to read:

Program: This meeting will review applications for *American History IV*, submitted to the Division of Preservation and Access at the July 1, 2000 deadline.

Dated: December 6, 2000.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–31582 Filed 12–11–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: January 21 and 22, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contract Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning Individual Investigator Award proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31487 Filed 12–11–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems

Date and Time: January 24, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning Individual Investigator Award proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Sensor Technologies for Civil and Mechanical Systems Individual Investigator Award Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31488 Filed 12–11–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: January 29 and 30, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning Sensing Initiative proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Sensor Technologies for Civil and Mechanical Systems Sensing Initiative Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31489 Filed 12–11–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Public Meeting on Standard Review Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion on the revised Standard Review Plan (SRP) Chapter 11 of NUREG 1520 for 10 CFR part 70. The revised SRP can be reviewed on the Internet at the following website: http://techconf.llnl.gov/cgi-bin/library?source=*& library=Part_70_lib&file.

The web site can also be reached by the following method:

1. Go to the main NRC web site at: http://www.nrc.gov.
2. Scroll down towards the bottom of that page and click on the word "Rulemaking."
3. Scroll down on the Rulemaking page till you see the words "Technical Conference." Click on those words.
4. On the page titled "Welcome to the NRC Technical Conference Forum," click where it says to participate in Technical Conferences.
5. Scroll down to the topic "Draft Standard Review Plan and Guidance on Amendment to 10 CFR Part 70."
6. Select "Document Library."

PURPOSE: This meeting will provide an opportunity to discuss any comments on the staff's recently revised Chapter 11.

DATES: The meeting is scheduled for Wednesday, December 20, 2000, from 1:00 p.m. to 4:30 p.m and Thursday, December 21, 2000, from 8:30 a.m. to 12:30 p.m. The meeting is open to the public.

ADDRESSES: Technical Training Center T–3B–43 at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Thomas Cox, Project Manager, Fuel Cycle Licensing Branch, Division of Fuel Cycle and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–8107, e-mail *thc@nrc.gov.*

Dated at Rockville, Maryland this 5th day of December, 2000.

For the Nuclear Regulatory Commission.

Myron Fliegel,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–31539 Filed 12–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of December 11, 18, 25, 2000, January 1, 8, and 15, 2001.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 11

There are no meetings scheduled for the Week of December 11.

Week of December 18—Tentative

Tuesday, December 19, 2000

9:30 a.m. Discussion of Management Issues (Closed—Ex. 2 and 6)

Wednesday, December 20, 2000

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on the Status of the Fuel Cycle Facility Oversight Program Revision (Public Meeting) (Contact: Walt Schwink, 301–415–7253)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1, 2001—Tentative

There are no meetings scheduled for the Week of January 1, 2001.

Week of January 8, 2001—Tentative

Tuesday, January 9, 2001

9:30 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Wednesday, January 10, 2001

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address— www.nrc.gov/live.html

Week of January 15, 2001—Tentative

Wednesday, January 17, 2001

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

Additional Information: By a vote of 5–0 on December 4, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule Amending the Fitness-for-Duty Rule" be held on December 4, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *wmh@nrc.gov* or *dkw@nrc.gov.*

Dated: December 7, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–31714 Filed 12–08–00; 2:12 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1671]

Standard Review Plan for the Recertification of the Gaseous Diffusion Plants Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Because of significant changes to current U.S. Nuclear Regulatory Commission (NRC) decommissioning financial assurance guidance, NRC is offering the opportunity for additional public review and comment on the revised Section 14.0, "Decommission Funding Plan and Financial Assurance Mechanisms," of the draft report NUREG–1671 entitled, "Standard Review Plan for the Recertification of the Gaseous Diffusion Plants" (GDPs).

DATES: Submit comments to the address listed below by January 11, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm during Federal workdays.

Draft NUREG–1671, without the revised Section 14.0, is available for inspection and copying for a fee at the NRC public document room (PDR), that is currently located at NRC's headquarters building, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. A copy of the draft revised Section 14.0 may also be obtained from the NRC's Internet website at: http://www.nrc.gov/NRC/NUREG/index.html or from the Agency's document management system, called ADAMS, at: http://www.nrc.gov/NRC/ADAMS/index.html

FOR FURTHER INFORMATION CONTACT: Timothy C. Johnson, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7299.

Dated at Rockville, Maryland, this 6th day of December 2000.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–31540 Filed 12–11–00; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Revision of OMB Circular No. A–130, Transmittal No. 4.

SUMMARY: The Office of Management and Budget issues a revision to Circular No. A–130, "Management of Federal Information Resources," to implement provisions of the Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996") and for other purposes. The revision modifies sections of the Circular concerning information systems and information technology management to follow more closely provisions of the Clinger-Cohen Act and OMB Circular A–11. These sections involve the acquisition, use, and disposal of information technology as a capital asset by the Federal government to improve the productivity, efficiency, and effectiveness of Federal programs.

OMB has issued previous guidance regarding the Clinger-Cohen Act

implementation, including OMB Memoranda M–96–20, "Implementation of the Information Technology Management Reform Act of 1996;" M–97–02, "Funding Information Systems Investments;" M–97–09, "Interagency Support for Information Technology;" M–97–15, "Local Telecommunications Services Policy;" and M–97–16, "Information Technology Architectures." As a convenience to readers, these Memoranda are rescinded and their content incorporated into this Circular.

This revision also incorporates the content of three other OMB Memoranda. The guidance in Memorandum M–98–09, on the handbook requirement of the 1996 Electronic FOIA Amendments, has been incorporated into Appendix IV. The guidance on "Implementing the Government Paperwork Elimination Act" (OMB Memorandum M–00–10) has been inserted in Appendix II, and the principles on "Incorporating and Funding Security in Information Systems Investments" (OMB Memorandum M–00–07) have been incorporated into Section 8b(4). Appendix IV has been expanded to reflect these changes. With its incorporation into the Circular, Memoranda M–98–09 is rescinded.

OMB intends to review this Circular in 2001 for other revisions including Information Policy, Security and Privacy. At that time, we will review the Circular generally and update it to reflect plain language principles.

EFFECTIVE DATE: November 28, 2000.

ADDRESSES: You can find a full recompiled version of Circular A–130, including the changes made here along with the existing sections that have not changed on the Internet at the OMB web site, http://www.whitehouse.gov/OMB/circulars/index.html and at the CIO Council home page at http://cio.gov. You can also obtain a copy of OMB Circular No. A–11, including the supplement to Part 3, "The Programming Guide," at the OMB web site and the CIO Council web site, or by calling the Budget Review and Concepts Division at OMB at 202–395–3172.

FOR FURTHER INFORMATION CONTACT: Tony Frater, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395–3785.

SUPPLEMENTARY INFORMATION:

Background

The Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996") (Pub. L. 104–106, Division E, codified at 40 U.S.C. Chapter 25) grants to the Director of the Office of Management and Budget (OMB) authority to oversee the acquisition, use, and disposal of information technology by the Federal government, so as to improve the productivity, efficiency, and effectiveness of Federal programs. It supplements the information resources management (IRM) policies contained in the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) by establishing a comprehensive approach to improving the acquisition and management of agency information systems through work process redesign, and by linking planning and investment strategies to the budget process.

The Clinger-Cohen Act establishes clear accountability for IRM activities by creating agency Chief Information Officers (CIOs) with the authority and management responsibility necessary to advise agency heads on budget, program, and implementation issues concerning information technology. Among other responsibilities, CIOs oversee the design, development, and implementation of information systems. CIOs also monitor and evaluate system performance and advise agency heads whether to modify or terminate those systems. The Clinger-Cohen Act directs agencies to work together towards the common goal of using information technology to improve the productivity, effectiveness, and efficiency of Federal programs and to promote an interoperable, secure, and shared government-wide information resources infrastructure.

OMB Circular No. A–130, "Management of Federal Information Resources," contains the policy framework for the management of Federal information resources. OMB last revised Circular A–130 on February 20, 1996 (61 FR 6428). To provide agencies with additional guidance on implementing the Clinger-Cohen Act, and for other purposes, OMB on April 13, 2000 (65 FR 19933) requested public comment on a proposed revision to this Circular. In addition to publishing the proposed revision in the **Federal Register**, OMB posted it on its public web site and sent copies of the proposal directly to Federal agencies.

Comments on the Proposed Revision to Circular A–130

In response to the request for public comment, OMB received specific comments from thirty four organizations and individuals. Federal agencies submitted the majority of comments, but non-profit organizations and concerned citizens also responded. Most comments proposed changes in clarity and detail. Where these comments added clarity and did not conflict with the substance of the provision in question, OMB incorporated them. Several organizations suggested changes to parts of the Circular that are not within the scope of this update of the Circular. OMB intends to review Circular No. A–130 for other revisions in 2001.

We describe below the principal substantive issues raised in the comments and our responses to them.

1. Comments Regarding the IT Capital Plan

A number of agencies wanted greater clarification regarding the distinction between the Information Technology (IT) Capital Plan and the Information Resources Management (IRM) Strategic Plan. We have updated the section outlining the IT Capital Plan and the IRM Strategic Plans. The new section describes in much greater detail, and in so doing clarifies, the different objectives of the two plans: The IT Capital Plan is operational in nature while the IRM Strategic Plan is a long range planning document.

The IRM Strategic Plan is the agency's IT vision or roadmap that will align its information resources with its business strategies and investment decisions. As an example, the IRM Strategic Plan might include the mission of the agency, key business processes, IT challenges, and guiding principles.

Conversely, the IT Capital Plan provides the justification for individual assets. A sample IT Capital Plan would include: the business case, expected benefits and costs, schedule, return on investment analysis, performance measures to evaluate the effectiveness of the investment, an examination of the alternative solutions, an acquisition strategy, and a discussion of how that system comports with IT security and privacy guidance.

The Government Performance and Results Act requires agencies to develop and submit to OMB agency Strategic Plans. Each agency submits this information annually along with its Performance Plans, as part of its budget submission to OMB. IRM Strategic Plans should support the Agency Strategic Plans, describing how information resources will help accomplish agency missions and ensuring that IRM decisions are integrated with organizational planning, budget, financial management, procurement, human resources management, and program decisions. The IT Capital Plan, on the other hand, supports the goals and missions identified in the IRM Strategic Plan, is an operational document, and is updated twice yearly. The IT Capital Plan is largely comprised of existing documents that accompany the agency budget submission, as updated to reflect the Presidential budget request to Congress. The updated IT Capital Plan becomes the implementation plan for the budget year.

2. Comments on the Relationship Between the Agency Enterprise Architecture and the Agency Capital Planning and Investment Control Process

Several agencies wanted further elaboration on how the Enterprise Architecture (EA) and the capital planning and investment control (CPIC) process should work together. To address these comments, we include information on the EA within the body of Section 8b and elaborate on its relationship with the capital planning and investment control process. In doing so, information contained in the proposed Appendix II regarding the EA (April 13, 2000 (65 FR 19933)) has been incorporated into Section 8b(2). Appendix II is now dedicated to information on implementing the Government Paperwork Elimination Act.

We also add a discussion that describes how the EA documents linkages between mission needs, information sources and content, and information technology capabilities. The EA should inform the CPIC process by defining the technologies and information critical to operating an agency's business, and by creating a roadmap which enables the agency to transition from its current to its targeted state. The EA helps the agency respond to changing business needs, and ensures that potential solutions support the agency's targeted state. A proposed IT solution that does not comply with the EA should not be considered as a possible investment, and should not enter the CPIC process. The CPIC process helps select, control and evaluate investments that conform with the EA.

For example, during the select stage of capital planning an agency identifies and investigates different potential solutions for an investment. An agency then selects the option with the best business case. If any of these alternatives does not conform with the EA, the agency should drop it from consideration.

Another example might include an agency considering a new financial management system. The new system will require users to have a certain computing environment in order to operate the proposed system. During the select stage of capital planning, the agency should review the EA to determine if that proposed system design is appropriate for all of the necessary users in the organization. Users in field offices, for example, may not have the computing resources to use the system. The agency must consider the costs of upgrading these users' computing resources in the evaluation of this alternative. If the system is selected, the agency must incorporate, into the EA, its impact on business processes, data, security, etc.

There were also comments regarding how the Federal Enterprise Architecture (FEA) framework relates to the agency Enterprise Architecture. The Chief Information Officers Council created and currently maintains the FEA. We discuss the FEA in Appendix IV; agencies should address the Federal framework when developing the agency-specific EA. Collaboration among agencies who share a common business function promotes information sharing and is critical for the creation of a responsive, customer-focused electronic government.

3. Comments on the Threshold for a Major Information System

A few agencies wanted OMB to create a dollar threshold for major information systems. We did not adopt this recommendation.

Since 1985, OMB has included in Circular A–130 a definition for what is a "major information system" (50 FR 52730, 52735; December 24, 1985.) Since its revision in 1994, the Circular has defined "major information system" as follows: "an information system that requires special management attention because of its importance to an agency mission; its high development, operating, or maintenance costs; or its significant role in the administration of agency programs, finances, property, or other resources" (59 FR 37906, 37909; July 25, 1994). As this definition indicates, whether an information system qualifies as "major" depends on the particular circumstances of that system and its context within the agency's operations. Therefore, an information system that is "major" for one agency may not necessarily be "major" for another agency. This determination is to be made by the respective agency, and this determination necessarily involves an exercise of judgment.

Because there is significant variance among agency information technology budgets, we think it is inadvisable to establish a uniform, one-size-fits-all dollar threshold across all agencies, and therefore we have not done so.

4. Comments on Data Quality Concerns

A few organizations inquired about the quality of Federal data. Ensuring the quality of the information that the Federal Government disseminates to the public is very important. Federal agencies must take seriously their responsibility to ensure the quality of their data. OMB works with the agencies to ensure the quality of Federally disseminated information in several ways, including the review of collections of information under the Paperwork Reduction Act (to ensure that collections "maximize usefulness"), statistical coordination and review, and the establishment in this Circular of general policies for information dissemination. The current Analysis of Key Sections in Appendix IV stresses the importance of data quality protections. OMB intends to review data quality policies in 2001 and to issue new guidance as appropriate.

5. Comments on Computer Security

Several agencies inquired about changes regarding computer security and privacy. OMB Memorandum M–00–07 "Incorporating and Funding Security in Information Systems Investments" (February 28, 2000) is incorporated into Section 8b(3).

Of special note, Title X, Subtitle G, "Government Information Security Reform" of the FY 2001 Defense Authorization Act (Pub. L. 106–398), was enacted during the final stages of revision to this Circular. In order to include these reforms, and other important computer security modifications, we plan more substantive changes when we revise Circular A–130 in 2001. During the upcoming revision process, we will take into consideration the comments that we have received on computer security.

6. Comments on Information Dissemination and Information Resources Management

One organization suggested we add to Section 9 "Assignment of Responsibilities" a provision to reflect Section 5403 of the Clinger Cohen Act (40 U.S.C. 1503). Section 5403 requires agencies, in the designing of IT systems for disseminating information to the public, to reasonably ensure that an index of information disseminated by the system is included in the directory, created by the Superintendent of Documents pursuant to 44 U.S.C. 4101. OMB has included a new Section 9a(14) to reiterate Section 5403.

One organization expressed concern that language in Appendix IV (Sections 8a(5) and 8a(6)) describing agency requirements for the Government Information Locator Services (GILS) could lead to agency non-compliance with those requirements. OMB expects all agencies to comply with the information dissemination provisions of the PRA and of the E–FOIA Amendments to the Freedom of Information Act. In this regard, in accordance with the PRA (44 U.S.C. 3511) and the FOIA (5 U.S.C. 552(g)), each agency must develop and make available to the public (including through the Government Information Locator Service) an inventory that includes the agency's major information systems.

In addition, with respect to the "information resources management" responsibilities of each agency under the PRA (44 U.S.C. 3506(b)), OMB continues to believe that an agency needs to focus its management attention on its "major" information systems. For this reason, an agency's management of its information resources is best improved by having the agency maintain an inventory of its "information resources" that includes those major information systems (rather than all of the agency's information systems).

In sum, in addition to reflecting the passage of the E–FOIA Amendments, the revisions to Section 9 also clarify the agency obligations under the PRA and FOIA. These revisions reiterate that each agency must maintain and disseminate an inventory of its major information systems (these systems may be electronic or paper—the Circular's definition of "major information systems" is format neutral). The revisions also clarify that, under the "information resources management" responsibilities in Section 3506(b)(4) of the PRA, each agency needs to maintain an inventory of its other "information resources" (such as personnel and funding) at the level of detail that the agency's managers believe is most appropriate for use in the agency's management of its information resources.

Because this revised Circular A–130 is not being reprinted here in its entirety, changes from the previous version are provided below. A copy of the recompiled Circular (consisting of the February 1996 Circular and the amendments in this notice) is available on OMB's web site (see **ADDRESSES** above).

Section 3. Authorities. This section is amended to cite and to incorporate changes necessitated by the Clinger-Cohen Act, the Government Performance and Results Act (GPRA), and Executive Order 13011.

Section 5. Background. A discussion of the basic principles and goals of the Clinger-Cohen Act is added.

Section 6. Definitions. The terms "Chief Information Officers Council" and "Information Technology Resources Board" are introduced to reflect the interagency support structures established by Executive Order 13011. The terms "executive agency" and "national security system" are introduced to reflect the definitions found in the Clinger-Cohen Act. The term "information technology" is amended to reflect definitional changes made by the Clinger-Cohen Act, and is supplemented by the limiting term "national security system" to clearly identify those systems to which the Circular applies. The term "capital planning and investment control process" is introduced to assist agencies in the reporting requirements of the Clinger-Cohen Act.

Section 7. Basic Considerations and Assumptions. The existing basic considerations and assumptions are supplemented with a modified subsection (i) and new subsection (r) to reflect the relevant goals and purposes of the Clinger-Cohen Act and Executive Order 13011.

Section 8b. Policy. Information Systems and Information Technology Management. This section is substantially revised to implement the policies of the Clinger-Cohen Act and the principles of Executive Order 13011. Previous subsections (8b(1)–8b(5)) have been merged and revised to integrate requirements under Clinger-Cohen Act, the Government Performance and Results Act (Public Law 103–62), and revisions to OMB Circular A–11.

Section 9a, All Federal Agencies, is changed to reflect the new Chief Information Officer (CIO) position created by the Clinger-Cohen Act, and reflects developments since the Circular was last revised in February 1996.

Section 9b, Section 9c, Section 9e, Section 9h, are revised to reflect responsibilities described in the Clinger-Cohen Act and Executive Order 13011.

Accordingly, OMB revises Circular A–130 as set forth below, and rescinds OMB Memoranda M–96–20, M–97–02, M–97–09, M–97–15, M–97–16, and M–98–09.

Jacob J. Lew,

Director.

1. Section 3, "Authorities," is revised to read as follows:

3. **Authorities:** OMB issues this Circular pursuant to the Paperwork Reduction Act (PRA) of 1980, as amended by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35); the Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996") (Pub. L. 104–106, Division E); the Privacy Act, as amended (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 *et seq.*); the Federal Property and Administrative Services Act, as amended (40 U.S.C. 487); the Computer Security Act of 1987 (Pub. L. 100–235); the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11); the Government Performance and Results Act of 1993(GPRA); the Office of Federal Procurement Policy Act (41 U.S.C. Chapter 7); the Government Paperwork Elimination Act of 1998 (Pub. L. 105–277, Title XVII), Executive Order No. 12046 of March 27, 1978; Executive Order No. 12472 of April 3, 1984; and Executive Order No. 13011 of July 17, 1996.

2. Section 5, "Background," is revised to read as follows:

5. Background: The Clinger-Cohen Act supplements the information resources management policies contained in the PRA by establishing a comprehensive approach for executive agencies to improve the acquisition and management of their information resources, by:

1. Focusing information resource planning to support their strategic missions;

2. Implementing a capital planning and investment control process that links to budget formulation and execution; and

3. Rethinking and restructuring the way they do their work before investing in information systems.

The PRA establishes a broad mandate for agencies to perform their information resources management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the PRA requires that the Director of OMB develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information resources management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

3. Section 6, "Definitions," is amended by adding five new definitions (c,d,f,t, and v, below); revising the definition of "information technology"; and redesignating the remaining definitions accordingly:

c. The term "capital planning and investment control process" means a management process for ongoing identification, selection, control, and evaluation of investments in information resources. The process links budget formulation and execution, and is focused on agency missions and achieving specific program outcomes.

d. The term "Chief Information Officers Council" (CIO Council) means the Council established in Section 3 of Executive Order 13011.

f. The term "executive agency" has the meaning defined in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

s. The term "information technology" means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product. The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. The term "information technology" does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract. The term "information technology" does not include national security systems as defined in the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

t. The term "Information Technology Resources Board" (Resources Board) means the board established by Section 5 of Executive Order 13011.

v. The term "national security system" means any telecommunications or information system operated by the United States Government, the function, operation, or use of which (1) involves intelligence activities; (2) involves cryptologic activities related to national security; (3) involves command and control of military forces; (4) involves equipment that is an integral part of a weapon or weapons system; or (5) is critical to the direct fulfillment of military or intelligence missions, but excluding any system that is to be administrative and business applications (including payroll, finance, logistics, and personnel management applications). The policies and procedures established in this Circular will apply to national security systems in a manner consistent with the applicability and related limitations regarding such systems set out in Section 5141 of the Clinger-Cohen Act (Pub. L. 104–106, 40 U.S.C. 1451). Applicability of Clinger-Cohen Act to national security systems shall include budget document preparation requirements set forth in OMB Circular A–11. The resultant budget document may be classified in accordance with the provisions of Executive Order 12958.

4. Section 7, "Basic Considerations and Assumptions," is amended by revising Section 7i, and by adding Section 7r, as follows:

i. Strategic planning improves the operation of government programs. The agency strategic plan will shape the redesign of work processes and guide the development and maintenance of an Enterprise Architecture and a capital planning and investment control process. This management approach promotes the appropriate application of Federal information resources.

r. The Chief Information Officers Council and the Information Technology Resources Board will help in the development and operation of interagency and interoperable shared information resources to support the performance of government missions.

5. Section 8b is revised to read as follows:

b. How Will Agencies Manage Information Systems and Information Technology?

(1) How will agencies use capital planning and investment control process?

Agencies must establish and maintain a capital planning and investment control process that links mission needs, information, and information technology in an effective and efficient manner. The process will guide both strategic and operational IRM, IT planning, and the Enterprise Architecture by integrating the agency's IRM plans, strategic and performance plans prepared pursuant to the Government Performance and Results Act of 1993, financial management plans prepared pursuant to the Chief Financial Officer Act of 1990 (31 U.S.C. 902a5), acquisition under the Federal Acquisition Streamlining Act of 1994, and the agency's budget formulation and execution processes. The capital planning and investment control process includes all stages of capital programming, including planning, budgeting, procurement, management, and assessment.

As outlined below, the capital planning and investment control process has three components: selection, control, and evaluation. The process must be iterative, with inputs coming from all of the agency plans and the outputs feeding into the budget and investment control processes. The goal is to link resources to results (for further guidance on Capital Planning refer to OMB Circular A–11). The agency's capital planning and investment control process must build from the agency's current Enterprise Architecture (EA) and its transition from current architecture to target architecture. The Capital Planning and Investment Control processes must be documented, and provided to OMB consistent with the budget process. The Enterprise Architecture must be documented and provided to OMB as significant changes are incorporated.

(a) What plans are associated with the capital planning and investment control process?

In the capital planning and investment control process, there are two separate and distinct plans that address IRM and IT planning requirements for the agency. The IRM Strategic Plan is strategic in nature and addresses all information resources management of the agency. Agencies must develop and maintain the agency Information Resource Management Strategic Plan (IRM) as required by 44 U.S.C. 3506(b)(2). IRM Strategic Plans should support the agency Strategic Plan required in OMB Circular A–11, provide a description of how information resources management activities help accomplish agency missions, and ensure that IRM decisions are integrated with organizational planning, budget, procurement, financial management, human resources management, and program decisions.

The IT Capital Plan is operational in nature, supports the goals and missions identified in the IRM Strategic Plan, is a living document, and must be updated twice yearly. This IT Capital Plan is the implementation plan for the budget year. The IT Capital Plan should also reflect the goals of the agency's Annual Performance Plan, the agency's Government Paperwork Elimination Act (GPEA) Plan, the agency's EA, and agency's business planning processes. The IT Capital Plan must be submitted annually to OMB with the agency budget submission annually. The IT Capital Plan must include the following components:

(i) A component, derived from the agency's capital planning and investment control process under OMB Circular A–11, Section 300 and the OMB Capital Programming Guide, that specifically includes all IT Capital Asset Plans for major information systems or projects. This component must also demonstrate how the agency manages its other IT investments, as required by the Clinger-Cohen Act.

(ii) A component that addresses two other sections of OMB Circular A–11:a section for Information on Financial Management, including the Report on Financial Management Activities and the Agency's Financial Management Plan, and a section entitled Information Technology, including the Agency IT Investment Portfolio.

(iii) A component, derived from the agency's capital planning and investment control process, that demonstrates the criteria it will use to select the investments into the portfolio, how it will control and manage the investments, and how it will evaluate the investments based on planned performance versus actual accomplishments.

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(iv) A component that includes a summary of the security plan from the agency's five-year plan as required by the PRA and Appendix III of this Circular. The plan must demonstrate that IT projects and the EA include security controls for components, applications, and systems that are consistent with the agency's Enterprise Architecture; include a plan to manage risk; protect privacy and confidentiality; and explain any planned or actual variance from National Institute of Standards and Technology (NIST) security guidance.

(b) What must an agency do as part of the selection component of the capital planning process?

It must:

(i) Evaluate each investment in information resources to determine whether the investment will support core mission functions that must be performed by the Federal government;

(ii) Ensure that decisions to improve existing information systems or develop new information systems are initiated only when no alternative private sector or governmental source can efficiently meet the need;

(iii) Support work processes that it has simplified or otherwise redesigned to reduce costs, improve effectiveness, and make maximum use of commercial, off-the-shelf technology;

(iv) Reduce risk by avoiding or isolating custom designed components, using components that can be fully tested or prototyped prior to production, and ensuring involvement and support of users;

(v) Demonstrate a projected return on the investment that is clearly equal to or better than alternative uses of available public resources. The return may include improved mission performance in accordance with GPRA measures, reduced cost, increased quality, speed, or flexibility; as well as increased customer and employee satisfaction. The return should reflect such risk factors as the project's technical complexity, the agency's management capacity, the likelihood of cost overruns, and the consequences of under- or non-performance. Return on investment should, where appropriate, reflect actual returns observed through pilot projects and prototypes;

(vi) Prepare and update a benefit-cost analysis (BCA) for each information system throughout its life cycle. A BCA will provide a level of detail proportionate to the size of the investment, rely on systematic measures of mission performance, and be consistent with the methodology described in OMB Circular No. A–94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs";

(vii) Prepare and maintain a portfolio of major information systems that monitors investments and prevents redundancy of existing or shared IT capabilities. The portfolio will provide information demonstrating the impact of alternative IT investment strategies and funding levels, identify opportunities for sharing resources, and consider the agency's inventory of information resources;

(viii) Ensure consistency with Federal, agency, and bureau Enterprise architectures, demonstrating such consistency through compliance with agency business requirements and standards, as well as identification of milestones, as defined in the EA;

(ix) Ensure that improvements to existing information systems and the development of planned information systems do not unnecessarily duplicate IT capabilities within the same agency, from other agencies, or from the private sector;

(x) Ensure that the selected system or process maximizes the usefulness of information, minimizes the burden on the public, and preserves the appropriate integrity, usability, availability, and confidentiality of information throughout the life cycle of the information, as determined in accordance with the PRA and the Federal Records Act. This portion must specifically address the planning and budgeting for the information collection burden imposed on the public as defined by 5 CFR 1320;

(xi) Establish oversight mechanisms, consistent with Appendix III of this Circular, to evaluate systematically and ensure the continuing security, interoperability, and availability of systems and their data;

(xii) Ensure that Federal information system requirements do not unnecessarily restrict the prerogatives of state, local and tribal governments;

(xiii) Ensure that the selected system or process facilitates accessibility under the Rehabilitation Act of 1973, as amended.

(c) What must an agency do as part of the control component of the capital planning process?

It must:

(i) Institute performance measures and management processes that monitor actual performance compared to expected results. Agencies must use a performance based management system that provides timely information regarding the progress of an information technology investment. The system must also measure progress towards milestones in an independently verifiable basis, in terms of cost, capability of the investment to meet specified requirements, timeliness, and quality;

(ii) Establish oversight mechanisms that require periodic review of information systems to determine how mission requirements might have changed, and whether the information system continues to fulfill ongoing and anticipated mission requirements. These mechanisms must also require information regarding the future levels of performance, interoperability, and maintenance necessary to ensure the information system meets mission requirements cost effectively;

(iii) Ensure that major information systems proceed in a timely fashion towards agreed-upon milestones in an information system life cycle. Information systems must also continue to deliver intended benefits to the agency and customers, meet user requirements, and identify and offer security protections;

(iv) Prepare and update a strategy that identifies and mitigates risks associated with each information system;

(iv) Ensure that financial management systems conform to the requirements of OMB Circular No. A–127, "Financial Management Systems;"

(v) Provide for the appropriate management and disposition of records in accordance with the Federal Records Act.

(vi) Ensure that agency EA procedures are being followed. This includes ensuring that EA milestones are reached and documentation is updated as needed.

(d) What must an agency do as part of the evaluation component of the capital planning process?

It must:

(i) Conduct post-implementation reviews of information systems and information resource management processes to validate estimated benefits and costs, and document effective management practices for broader use;

(ii) Evaluate systems to ensure positive return on investment and decide whether continuation, modification, or termination of the systems is necessary to meet agency mission requirements.

(iii) Document lessons learned from the post-implementation reviews. Redesign oversight mechanisms and performance levels to incorporate acquired knowledge.

(iv) Re-assess an investment's business case, technical compliance, and compliance against the EA.

(v) Update the EA and IT capital planning processes as needed.

(2) The Enterprise Architecture

Agencies must document and submit their initial EA to OMB. Agencies must submit updates when significant changes to the Enterprise Architecture occur.

(a) What is the Enterprise Architecture?

An EA is the explicit description and documentation of the current and desired relationships among business and management processes and information technology. It describes the "current architecture" and "target architecture" to include the rules and standards and systems life cycle information to optimize and maintain the environment which the agency wishes to create and maintain by managing its IT portfolio. The EA must also provide a strategy that will enable the agency to support its current state and also act as the roadmap for transition to its target environment. These transition processes will include an agency's capital planning and investment control processes, agency EA planning processes, and agency systems life cycle methodologies. The EA will define principles and goals and set direction on such issues as the promotion of interoperability, open systems, public access, compliance with GPEA, end user satisfaction, and IT security. The agency must support the EA with a complete inventory of agency information resources, including personnel, equipment, and funds devoted to information resources management and information technology, at an appropriate level of detail. Agencies must implement the EA consistent with following principles:

(i) Develop information systems that facilitate interoperability, application portability, and scalability of electronic applications across networks of heterogeneous hardware, software, and telecommunications platforms;

(ii) Meet information technology needs through cost effective intra-agency and interagency sharing, before acquiring new information technology resources; and

(iii) Establish a level of security for all information systems that is commensurate to the risk and magnitude of the harm resulting from the loss, misuse, unauthorized access to, or modification of the information stored or flowing through these systems.

(b) How do agencies create and maintain the EA?

As part of the EA effort, agencies must use or create an Enterprise Architecture Framework. The Framework must document linkages between mission needs, information content, and information technology capabilities. The Framework must also guide both strategic and operational IRM planning.

Once a framework is established, an agency must create the EA. In the creation of an EA, agencies must identify and document:

(i) Business Processes—Agencies must identify the work performed to support its mission, vision and performance goals. Agencies must also document change agents, such as legislation or new technologies that will drive changes in the EA.

(ii) Information Flow and Relationships—Agencies must analyze the information utilized by the agency in its business processes, identifying the information used and the movement of the information. These information flows indicate where the information is needed and how the information is shared to support mission functions.

(iii) Applications—Agencies must identify, define, and organize the activities that capture, manipulate, and manage the business information to support business processes. The EA also describes the logical dependencies and relationships among business activities.

(iv) Data Descriptions and Relationships—Agencies must identify how data is created, maintained, accessed, and used. At a high level, agencies must define the data and describe the relationships among data elements used in the agency's information systems.

(v) Technology Infrastructure—Agencies must describe and identify the functional characteristics, capabilities, and interconnections of the hardware, software, and telecommunications.

(c) What are the Technical Reference Model and Standards Profile?

The EA must also include a Technical Reference Model (TRM) and Standards Profile.

(i) The TRM identifies and describes the information services (such as database, communications, intranet, etc.) used throughout the agency.

(ii) The Standards Profile defines the set of IT standards that support the services articulated in the TRM. Agencies are expected to adopt standards necessary to support the entire EA, which must be enforced consistently throughout the agency.

(iii) As part of the Standards Profile, agencies must create a Security Standards Profile that is specific to the security services specified in the EA and covers such services as identification, authentication, and non-repudiation; audit trail creation and analysis; access controls; cryptography management; virus protection; fraud prevention; detection and mitigation; and intrusion prevention and detection.

(3) How Will Agencies Ensure Security in Information Systems?

Agencies must incorporate security into the architecture of their information and systems to ensure that security supports agency business operations and that plans to fund and manage security are built into life-cycle budgets for information systems.

(a) To support more effective agency implementation of both agency computer security and critical infrastructure protection programs, agencies must implement the following:

(i) Prioritize key systems (including those that are most critical to agency operations);

(ii) Apply OMB policies and, for non-national security applications, NIST guidance to achieve adequate security commensurate with the level of risk and magnitude of harm;

(b) Agencies must make security's role explicit in information technology investments and capital programming. Investments in the development of new or the continued operation of existing information systems, both general support systems and major applications must:

(i) Demonstrate that the security controls for components, applications, and systems are consistent with, and an integral part of, the EA of the agency;

(ii) Demonstrate that the costs of security controls are understood and are explicitly incorporated into the life-cycle planning of the overall system in a manner consistent with OMB guidance for capital programming;

(iii) Incorporate a security plan that complies with Appendix III of this Circular and in a manner that is consistent with NIST guidance on security planning;

(iv) Demonstrate specific methods used to ensure that risks and the potential for loss are understood and continually assessed, that steps are taken to maintain risk at an acceptable level, and that procedures are in place to ensure that controls are implemented effectively and remain effective over time;

(v) Demonstrate specific methods used to ensure that the security controls are commensurate with the risk and magnitude of harm that may result from the loss, misuse, or unauthorized access to or modification of the system itself or the information it manages;

(vi) Identify additional security controls that are necessary to minimize risk to and potential loss from those systems that promote or permit public access, other externally accessible systems, and those systems that are interconnected with systems over which

program officials have little or no control;

(vii) Deploy effective security controls and authentication tools consistent with the protection of privacy, such as public-key based digital signatures, for those systems that promote or permit public access;

(viii) Ensure that the handling of personal information is consistent with relevant government-wide and agency policies;

(ix) Describe each occasion the agency decides to employ standards and guidance that are more stringent than those promulgated by NIST to ensure the use of risk-based cost-effective security controls for non-national security applications;

(c) OMB will consider for new or continued funding only those system investments that satisfy these criteria. New information technology investments must demonstrate that existing agency systems also meet these criteria in order to qualify for funding.

(4) How Will Agencies Acquire Information Technology?

Agencies must:

(a) Make use of adequate competition, allocate risk between government and contractor, and maximize return on investment when acquiring information technology;

(b) Structure major information systems into useful segments with a narrow scope and brief duration. This should reduce risk, promote flexibility and interoperability, increase accountability, and better match mission need with current technology and market conditions;

(c) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented through pilot projects or prototypes; and

(d) Ensure accessibility of acquired information technology pursuant to the Rehabilitation Act of 1973, as amended (Pub. L. 105–220, 29 U.S.C. 794d).

6. Section 9a is revised to read as follows:

a. All Federal Agencies. The head of each agency must:

1. Have primary responsibility for managing agency information resources;

2. Ensure that the agency implements appropriately all of the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB;

3. Appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who must report directly to the agency head to carry out the responsibilities of the agencies listed in the Paperwork Reduction Act (44 U.S.C. 3506), the Clinger Cohen Act (40 U.S.C. 1425(b) & (c)), as well as Executive Order 13011. The head of the agency must consult with the Director of OMB prior to appointing a Chief Information Officer, and will advise the Director on matters regarding the authority, responsibilities, and organizational resources of the Chief Information Officer. For purposes of this paragraph, military departments and the Office of the Secretary of Defense may each appoint one official. The Chief Information Officer must, among other things:

(a) Be an active participant during all agency strategic management activities, including the development, implementation, and maintenance of agency strategic and operational plans;

(b) Advise the agency head on information resource implications of strategic planning decisions;

(c) Advise the agency head on the design, development, and implementation of information resources.

(i) Monitor and evaluate the performance of information resource investments through a capital planning and investment control process, and advise the agency head on whether to continue, modify, or terminate a program or project;

(ii) Advise the agency head on budgetary implications of information resource decisions; and

(d) Be an active participant throughout the annual agency budget process in establishing investment priorities for agency information resources;

4. Direct the Chief Information Officer to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the Chief Information Officer must consider alleged instances of agency failure to comply with this Circular, and recommend or take appropriate corrective action. The Chief Information Officer will report instances of alleged failure and their resolution annually to the Director of OMB, by February 1st of each year.

5. Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

6. Develop agency policies and procedures that provide for timely acquisition of required information technology;

7. Maintain the following, as required by the Paperwork Reduction Act (44 U.S.C. 3506(b)(4) and 3511) and the Freedom of Information Act (5 U.S.C. 552(g)): an inventory of the agency's major information systems, holdings, and dissemination products; an agency information locator service; a description of the agency's major information and record locator systems; an inventory of the agency's other information resources, such as personnel and funding (at the level of detail that the agency determines is most appropriate for its use in managing the agency's information resources); and a handbook for persons to obtain public information from the agency pursuant to these Acts.

8. Implement and enforce applicable records management policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

9. Identify to the Director of OMB any statutory, regulatory, and other impediments to efficient management of Federal information resources, and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

10. Assist OMB in the performance of its functions under the PRA, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

11. Ensure that the agency:

(a) cooperates with other agencies in the use of information technology to improve the productivity, effectiveness, and efficiency of Federal programs;

(b) promotes a coordinated, interoperable, secure, and shared government wide infrastructure that is provided and supported by a diversity of private sector suppliers; and

(c) develops a well-trained corps of information resource professionals.

12. Use the guidance provided in OMB Circular A–11, "Planning, Budgeting, and Acquisition of Fixed Assets," to promote effective and efficient capital planning within the organization;

13. Ensure that the agency provides budget data pertaining to information resources to OMB, consistent with the requirements of OMB Circular A–11,

14. Ensure, to the extent reasonable, that in the design of information systems with the purpose of disseminating information to the public, an index of information disseminated by the system will be included in the directory created by the Superintendent of Documents pursuant to 41 U.S.C. 4101. (Nothing in this paragraph authorizes the dissemination of information to the public unless otherwise authorized.)

15. Permit, to the extent practicable, the use of one agency's contract by another agency or the award of multi-agency contracts, provided the action is within the scope of the contract and consistent with OMB guidance; and

16. As designated by the Director of OMB, act as executive agent for the government-wide acquisition of information technology.

7. Section 9b is revised to read as follows:

b. Department of State. The Secretary of State must:

1. Advise the Director of OMB on the development of United States positions and policies on international information policy and technology issues affecting Federal government activities and the development of international information technology standards; and

2. Be responsible for liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on all matters related to information resources management, including federal information technology. The Secretary must also ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international standards and recommendations affecting information technology. These responsibilities may also require the Secretary to consult, as appropriate, with affected domestic agencies, organizations, and other members of the public.

8. Section 9c is amended by revising subparagraph 1, to read as follows:

c. Department of Commerce. The Secretary of Commerce must:

1. Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology, while taking into consideration the recommendations of the agencies and the CIO Council;

9. Section 9e is revised to read as follows:

e. General Services Administration. The Administrator of General Services must:

1. Continue to manage the FTS2001 program and coordinate the follow-up to that program, on behalf of and with the advice of agencies;

2. Develop, maintain, and disseminate for the use of the Federal community (as requested by OMB or the agencies) recommended methods and strategies for the development and acquisition of information technology;

3. Conduct and manage outreach programs in cooperation with agency managers;

4. Be a liaison on information resources management (including Federal information technology) with State and local governments. GSA must also be a liaison with non-governmental international organizations, subject to prior consultation with the Secretary of State to ensure consistency with the overall United States foreign policy objectives;

5. Support the activities of the Secretary of State for liaison, consultation, and negotiation with intergovernmental organizations on information resource management matters;

6. Provide support and assistance to the CIO Council and the Information Technology Resources Board.

7. Manage the Information Technology Fund in accordance with the Federal Property and Administrative Services Act, as amended;

10. Section 9h is amended by removing subparagraph (10), redesignating subparagraphs (11) and (12) as (10) and (11), and adding the following new subparagraphs:

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

12. Evaluate agency information resources management practices and programs and, as part of the budget process, oversee agency capital planning and investment control processes to analyze, track, and evaluate the risks and results of major capital investments in information systems;

13. Notify an agency if OMB believes that a major information system project requires outside assistance;

14. Provide guidance on the implementation of the Clinger-Cohen Act and on the management of information resources to the executive agencies, to the CIO Council and to the Information Technology Resources Board; and

15. Designate one or more heads of executive agencies as executive agent for government-wide acquisitions of information technology.

11. Appendix II to Circular A–130, which was formerly reserved, now incorporates OMB's guidance on the Government Paperwork Elimination Act (OMB Memorandum M–00–10; April 25, 2000); published at 65 FR 25508–25521 (May 2, 2000).

In addition to referencing 65 FR 25508–25521, readers may also find a full text of the GPEA guidance on the Internet at the OMB web site, http://www.whitehouse.gov/OMB/memoranda/index.html and at the CIO Council home page at http://cio.gov.

12. Appendix IV of Circular A–130, is amended by revising section 1 and 2, and by adding supplemental discussions regarding Section 8(a)(5), 8(b), 9(a)(3), and 9(a)(4) of the Circular to section 3 of the appendix, to read as follows:

1. Purpose

The purpose of this Appendix is to provide a general context and explanation for the contents of the key Sections of the Circular.

2. Background

The Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996" (Pub. L. 104–106, Division E, codified at 40 U.S.C. Chapter 25) grants to the Director of the Office of Management and Budget (OMB) various authorities for overseeing the acquisition, use, and disposal of information technology by the Federal government, so as to improve the productivity, efficiency, and effectiveness of Federal programs. It supplements the information resources management (IRM) policies contained in the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35).

The Paperwork Reduction Act (PRA) of 1980, Public Law 96–511, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 authorizes the Director of OMB to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

The Circular implements OMB authority under the PRA with respect to Section 3504(b), general information resources management policy, Section 3504(d), information dissemination, Section 3504(f), records management, Section 3504(g), privacy and security, and Section 3504(h), information technology. The Circular also implements certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a); the Government Paperwork Elimination Act. (Pub. L. 105–277, Title XVII); the Chief Financial Officers Act (31 U.S.C. 3512 *et seq.*); Sections 111 and 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759 and 487, respectively); the Computer Security Act (40 U.S.C. 759 note); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); and Executive Order No. 12046 of March 27, 1978, and Executive Order No. 12472 of April 3, 1984, Assignment of National Security and Emergency Telecommunications Functions. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other Sections of the PRA dealing with controlling the reporting and recordkeeping burden placed on the public.

3. Analysis

Sections 8a(5) and 8a(6). Information Dissemination Policy.

Section 8a(5). As described in Section 11 of the "Electronic Freedom of Information Act Amendments of 1996" (Pub. L. 104–231), 5 U.S.C. 552(g), an agency must place its index and description of major information and record locator systems in its reference material or guide. We expect that this index and description would include an agency's Government Information Locator Service (GILS) presence as well as any other major information and record locator systems the agency has identified.

In addition, each agency should prepare a handbook that describes in one place the various ways by which a person can obtain public information from the agency, as well as the types and categories of information available. In preparing the handbook, each agency should review the dissemination policies contained in this Circular. The handbook should be in plain English and user-friendly. Where applicable, it should indicate that the public is encouraged to access information electronically via the agency's home page or to search in its reading room, and that the public may also submit a request to the agency under the Freedom of Information Act. "Types and categories" of available information will vary from agency to agency, and agencies should describe their information resources in whatever manner seems most appropriate.

Although the law does not require that the handbook be available on-line, OMB encourages agencies to do so as a matter of policy. The handbook should include the following elements:

1. The location of reading rooms within the agency and within its major field offices, as well as a brief description of the types and categories of information available.
2. The location of the agency's World Wide Web home page.
3. A reference to the agency's FOIA regulations and how to get a copy.
4. A reference to the agency's FOIA annual report and how to get a copy.
5. The location of the agency's GILS page.
6. A brief description of the types and categories of information generally available from the agency.

In addition, if there is an on-line version, it should have electronic links to these elements wherever they exist.

Every agency has a responsibility to inform the public within the context of its mission. This responsibility requires that agencies distribute information at the agency's initiative, rather than merely responding when the public requests information.

Section 8b. Information Systems and Information Technology Management

Section 8b(1). Capital Planning and Investment Control

What Is the Capital Planning and Investment Control Process?

The capital planning and investment control process is a systematic approach to managing the risks and returns of IT investments. The process has three phases: select, control and evaluate. The process covers all stages of capital programming, including planning, budgeting and procurement. For additional information describing capital planning, please consult Circular A–11.

What Will Happen if I Don't Maintain an IT Capital Plan?

The IT Capital Plan is the document that demonstrates to the agency Investment Review Board and to OMB officials, that a project deserves Federal funds. If the agency does not provide this information, merits of the project can not be determined.

As Part of the Agency IT Capital Plan, Do I Need To Report on Both Development, Modernization and Enhancement (DME) as Well as Steady State Investments?

Yes. Additional information is provided in Part 3 of OMB Circular No. A–11, "Planning, Budgeting, and Acquisition of Capital Assets."

As Part of the Portfolio View of the Agency IT Capital Plan, Do I Only Need To Report on Major Investments?

In accordance with the Clinger-Cohen Act and Circular A–11, agencies are required to manage all investments. They must also provide OMB with individual IT Capital Plans for major projects, as well as significant projects at the request of OMB.

Where Can I Get More Information About Return on Investment (ROI)?

Agencies that would like to learn more about compiling and demonstrating projected return on investments (ROI) are encouraged to consult the Federal CIO Council document "ROI and the Value Puzzle". This document may be obtained at the CIO Council's web page (*http://cio.gov*).

Why Do Agencies Need To Conduct a Benefit-Cost Analysis?

Benefit-cost analyses provide vital management information on the most efficient allocation of human, financial, and information resources to support agency missions. Agencies should conduct a benefit-cost analysis for each information system to support management decision making to ensure: (a) Alignment of the planned information system with the agency's mission needs; (b) acceptability of information system implementation to users inside the Government; (c) accessibility to clientele outside the Government; and (d) realization of projected benefits. When preparing benefit-cost analyses to support investments in information technology, agencies should seek to quantify the improvements in agency performance results through the measurement of program outputs.

The requirement to conduct a benefit-cost analysis need not become a burdensome activity for agencies. The level of detail necessary for such analyses varies greatly and depends on the nature of the proposed investment. Proposed investments in "major information systems" as defined in this Circular require detailed and rigorous analysis. This analysis should not merely serve as budget justification material, but should be part of the ongoing management oversight process to ensure prudent allocation of scarce resources. Proposed investments for information systems that are not considered "major information systems" can be analyzed more informally.

While it is not necessary to create a new benefit-cost analysis at each stage of the information system life cycle, it is useful to refresh these analyses with up-to-date information to ensure the continued viability of an information system prior to and during implementation. Reasons for updating a benefit-cost analysis may include such factors as significant changes in projected costs and benefits, significant changes in information technology capabilities, major changes in requirements (including legislative or regulatory changes), or empirical data based on performance measurement gained through prototype results or pilot experience.

How Will Portfolio Management Aid in the Selection of Investments?

Agencies must also weigh the relative benefits of proposed investments in information technology across the agency. Given the fiscal constraints facing the Federal government, agencies should fund a portfolio of investments across the agency that maximizes return on investment for the agency as a whole. Agencies should also emphasize those proposed investments that show the greatest probability (*i.e.*, display the lowest financial and operational risk) of achieving anticipated benefits for the organization.

Is There a Preferred Model for Information Life Cycles?

The policy statements in this Circular describe an information system life cycle. It does not, however, make a definitive statement that there must be, for example, four versus five phases of a life cycle because the life cycle varies by the nature of the information system. Only two phases are common to all information systems—a beginning and an end.

While each phase of an information system life cycle may have unique characteristics, the dividing line between the phases may not always be distinct. For instance, both planning and evaluation must continue throughout the information system life cycle. In fact, during any phase, it may be necessary to revisit the previous stages based on new information or changes in the environment in which the system is being developed.

Why Are Post-Implementation Reviews Necessary?

Agencies will complete a retrospective evaluation of information systems once operational to validate projected savings, changes in practices, and effectiveness in serving stakeholders. These post-implementation reviews may also serve as the basis for agency-wide learning about effective management practices.

Section 8b(2). Enterprise Architectures

How Will the EA Guide the Agency?

An EA should guide the agency's management of information resources for agency-wide information and information technology needs consistent with Section 8b(2) of this Circular. The EA will help the agency cope with technology and business change by serving as a reference for updates to existing and new information systems. The EA will also assure interoperability of business processes, data, applications and technology as agencies integrate proposed information systems projects with one another and with existing legacy systems.

Where Can I Get More Information Describing the EA?

Agencies that require additional information on developing or maintaining an EA are encouraged to consult the Federal CIO Council document entitled, "The Federal Enterprise Architecture (FEA) Framework," which is available on the CIO Council's web site (http://cio.gov). The Architecture Plus web site (http://www.itpolicy.gsa.gov/mke/archplus/archhome.htm) also has a number of useful documents.

What Is an Open Systems Environment?

An open system should be based on an architecture with published or documented interface specifications that have been adopted by a standards settings body.

What Enterprise Architecture Issues Must an Agency Consider That Have Government-Wide or Multiple Agency Implications?

The CIO Council has begun to address this issue in its "Federal Enterprise Architecture Framework (FEAF), Version 1.0," and subsequent versions. The FEAF was created to promote shared development for common Federal processes, interoperability, and sharing of information among the agencies of the Federal government and other governmental entities, as required by the Clinger-Cohen Act. The FEAF is recommended for use in (1) Federal government-wide efforts, (2) multi-Federal agency (2 or more agencies) efforts and, (3) whenever Federal business-areas and substantial Federal investment are involved with international, state, or local governments. The Federal Enterprise Architecture Framework, Version 1.0, which is a conceptual model, begins the process of defining a better documented and coordinated structure for cross-cutting businesses and technology developments in the government. Collaboration among agencies who share a common business function promotes information sharing and is a prerequisite for the creation of a responsive electronic government.

Where Can I Get More Information on Federal EA Efforts?

Some other examples of ongoing Federal government efforts in this arena are Treasury Enterprise Architecture Framework (TEAF) and Command, Control, Communications, Intelligence, Surveillance, and Reconnaissance (C4ISR).

Section 8b(3) Securing Agency Information Systems

How Should Agencies Incorporate Security Into Management of Information Resources?

Effective security is an essential element of all information systems. A process assuring adequate security must be integrated into the agency's management of information resources. This process should be a component of the both capital planning process and the EA. A system's security requirements must be supported by the agency EA in order for it to be considered during the select phase of the capital planning process. Agencies will use the control and evaluate phases of capital planning to ensure these security requirements are met throughout the system's life cycle. For more information on computer security please read Appendix III of this Circular.

Ultimately, Who Determines the Acceptable Level of Security for a System?

Each agency program official must understand the risk to systems under their control. They are also responsible for determining the acceptable level of risk, ensuring adequate security is maintained to support and assist the programs under their control, ensuring that security controls comport with program needs and appropriately accommodate operational necessities. In addition, program officials should work in conjunction with Chief Information Officers and other appropriate agency officials so that security measures support agency information architectures.

Section 8b(4) Acquiring Information Technology

What Should Agencies Consider Before Acquiring a COTS Solution?

Commercial-off-the-shelf (COTS) products can provide agencies a cost effective and efficient solution. However, often COTS products require customization for seamless use. Therefore agencies must still thoroughly examine the impact of a COTS product selection. A lessons-learned guide describing the risks of COTS products has been published by the Information Technology Resources Board (ITRB). The guide, entitled "Assessing the Risks of Commercial-Off-The-Shelf (COTS) Applications," is available on the ITRB web site (http://itrb.gov).

Section 9a(3). Chief Information Officer (CIO).

To Whom Does the CIO Report?

Each agency must appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who will report directly to the agency's head to carry out the responsibilities of the agency under the PRA.

What Is the CIO's Role in the Capital Planning Process?

The CIO will ensure that a capital planning process is established and rigorously used to define and validate all information resource investments. Through this process, the CIO will monitor and evaluate the performance of the information technology portfolio of the agency and advise the agency head on key budget, program, and implementation issues concerning information technology.

Additionally, the CIO will help establish a board composed of senior level managers, including the Chief Financial Officer and Chief Procurement Executive, who will have the responsibility of making key business recommendations on information resource investments, and who will be continuously involved. Many agencies will institute a second board, composed of program or project level managers, with more detailed business and information resource knowledge. They will be able to provide technical support to the senior level board in proposing, evaluating, and recommending information resource investments.

What Is the CIO's Role in the Annual Budget Process?

The CIO will be an active participant during all agency annual budget processes and strategic planning activities, including the development, implementation, and maintenance of agency strategic plans. The CIO's role is to provide leadership and a strategic vision for using information technology to transform the agency. CIO's must also ensure that all information resource investments deliver a substantial mission benefit to the agency and/or a substantial return on investment (ROI) to the taxpayer.

Additionally, the CIO will ensure integration of information resource planning processes and documentation with the agency's strategic, performance and budget process, in coordination with the CFO and Procurement Executive.

Section 9a(4)

Why Is the CIO Considered an Ombudsman?

The CIO designated by the head of each agency under 44 U.S.C. 3506(a) is charged with carrying out the responsibilities of the agency under the PRA. Agency CIOs are responsible for ensuring that their agency practices are in compliance with OMB policies. It is envisioned that the CIO will work as an ombudsman to investigate alleged instances of agency failures to adhere to the policies set forth in the Circular and to recommend or take corrective action as appropriate. Agency heads should continue to use existing mechanisms to ensure compliance with laws and policies.

[FR Doc. 00–31507 Filed 12–11–00; 8:45 am]
BILLING CODE 3110–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 12, 2001.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the

agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, System Accountant, Office of Investment Division, Small Business Administration, 409 3rd Street, SW., Suite 6300.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, System Accountant, 202–205–7759 or Curtis B. Rich, Management Analyst, (202) 295–7030.

SUPPLEMENTARY INFORMATION:

Title: Size Status Declaration.
Form No.: 480.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 4,200.
Annual Burden: 700.

Title: SBIC License Application Statement of Personal History and Qualification of Management.
Form No's.: 415, 415A.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 90.
Annual Burden: 14,400.

Title: Stockholder's Confirmation (Corporation) Ownership Confirmation (Partnership).
Form No.: 1405.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 600.
Annual Burden: 600.

Title: SBIC Financial Reports.
Form No.: 468.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 625.
Annual Burden: 1,025.

Title: Portfolio Financing Report.
Form No.: 1031.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 2,100.
Annual Burden: 420.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 00–31510 Filed 12–11–00; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 3501]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Ancient (circa. CE 224–641) Coins and History of the Zoroastrian (Pre-Islamic) Sassanian Dynasty of Iran"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Ancient (circa. CE 224–641) Coins and History of the Zoroastrian (Pre-Islamic) Sassanian Dynasty of Iran," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Seventh World Zoroastrian Congress in Houston, Texas from on or about December 28, 2000 to on or about January 1, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 3, 2000.

William B. Bader,
Assistant Secretary for Educational and Cultural Affairs, Department of State.
[FR Doc. 00–31622 Filed 12–11–00; 8:45 am]
BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Israel Free Trade Area Implementation Act; Designation of Qualifying Industrial Zones

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Under the United States-Israel Free Trade Area Implementation Act (IFTA Act), products of Qualifying Industrial Zones encompassing portions of Israel and Jordan or Israel and Egypt are eligible to receive duty-free treatment. Effective upon publication of this notice, the United States Trade Representative, pursuant to authority delegated by the President, is designating the Mushatta International Complex, the El Zay Ready Wear Manufacturing Company Duty Free Area and the Al Qastal Industrial Zone as Qualifying Industrial Zones under the IFTA Act.

FOR FURTHER INFORMATION CONTACT: Edmund Saums, Director for Middle East Affairs, (202) 395–4987, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

SUPPLEMENTARY INFORMATION: Pursuant to authority granted under section 9 of the United States-Israel Free Trade Area Implementation Act of 1985 (IFTA Act), as amended (19 U.S.C. 2112 note), the President proclaimed certain tariff treatment for the West Bank, the Gaza Strip, and Qualifying Industrial Zones (Proclamation 6955 of November 13, 1996 (61 FR 58761)). In particular, the President proclaimed modifications to general notes 3 and 8 of the Harmonized Tariff Schedule of the United States: (a) To provide duty-free treatment to qualifying articles that are the product of the West Bank or Gaza Strip or a Qualifying Industrial Zone and are entered in accordance with the provisions of section 9 of the IFTA Act; (b) to provide that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the United States-Israel Free Trade Area Agreement ("the Agreement") even if shipped to the United States from the West Bank, the Gaza Strip, or a Qualifying Industrial Zone, if the articles otherwise meet the requirements of the Agreement; and (c) to provide that the cost or value of materials produced in the West Bank, the Gaza Strip, or a Qualifying Industrial Zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and that the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a Qualifying Industrial Zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

Section 9(e) of the IFTA Act defines a "Qualifying Industrial Zone" as an area that "(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or exercise taxes; and (3) has been specified by the President as a qualifying industrial zone." In Proclamation 6955, the President delegated to the United States Trade Representative the authority to designate qualifying industrial zones.

The United States Trade Representative has previously designated Qualifying Industrial Zones under Section 9 of the IFTA Act on March 13, 1998 (63 FR 12572), March 19, 1999 (64 FR 13623), October 15, 1999 (64 FR 56015), and October 24, 2000 (65 FR 64472).

The Government of Israel and the Government of the Hashemite Kingdom of Jordan have agreed to the designation of the Mushatta International Complex (protocol dated November 22, 2000), the El Zay Ready Wear Manufacturing Company Duty Free Area (protocol dated January 12, 2000) and the Al Qastal Industrial Zone (protocol dated November 22, 2000) as Qualifying Industrial Zones. The Government of Israel and the Government of Jordan further agreed that merchandise may enter, without payment of duty or excise taxes, areas under their respective customs control in association with the Mushatta, El Zay and Al Qastal Qualifying Industrial Zones.

Accordingly, the Mushatta International Complex, the El Zay Ready Wear Manufacturing Company Duty Free Area and the Al Qastal Industrial Zone meet the criteria under paragraphs 9(e)(1) and (2) of the IFTA Act.

Therefore, pursuant to the authority delegated to me by the President in Proclamation 6955, I hereby designate the Mushatta International Complex, the El Zay Ready Wear Manufacturing Company Duty Free Area and the Al Qastal Industrial Zone, as established by the January 12, 2000 and November 22, 2000 Amending Protocols to the Agreement Between the Government of the Hashemite Kingdom of Jordan and the Government of the State of Israel on Irbid Qualifying Industrial Zone, as Qualifying Industrial Zones under section 9 of the IFTA Act, effective upon the date of publication of this notice, applicable to goods shipped from these Qualifying Industrial Zones after such date.

Dated: December 4, 2000.

Charlene Barshefsky,
United States Trade Representative.
[FR Doc. 00–31627 Filed 12–11–00; 8:45 am]
BILLING CODE 3901–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dallas County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for a Trinity Parkway reliever route, a transportation project, in the **Federal Register** on June 16, 1999 (Volume 64, Number 115). The FHWA is now issuing this supplementary Notice of Intent to include in the EIS a City of Dallas evaluation of a proposed City of Dallas Lake Plan located within the Trinity River Dallas Floodway in Dallas County, Texas. This proposed Lake Plan potentially affects the project corridor for the transportation project, and several of the route alternatives under consideration. Supplementary analysis is needed to fully address the impacts of joint development of these actions.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick A. Bauer, P.E., District Engineer, Federal Highway Administration, 300 East Eighth Street, Federal Office Building, Room 826, Austin, Texas 78701, Telephone (512) 536–5950. Mr. Jerry Hiebert, Executive Director, North Texas Tollway Authority (NTTA), 5900 West Plano Parkway, Suite 100, Plano, Texas 75093, Telephone (214) 522–6200.

SUPPLEMENTARY INFORMATION: The FHWA, jointly with the Texas Department of Transportation and the NTTA, and in cooperation with the City of Dallas, will prepare an EIS for the Trinity Parkway reliever route and associated improvements in the project corridor. Associated improvements include one or more proposed lakes, recreation amenities, and possible wetlands as identified in the City of Dallas Trinity River Corridor Master Implementation Plan Lake Design and Recreational Amenities Report, which are located within the Dallas Floodway.

Impacts caused by construction and operation of the Trinity Parkway and the Dallas Lake Plan will vary according to the alternatives selected. Generally, these projects may impact floodplains, water quality, air quality, socio-economic conditions, historic and other man-made structures.

The Draft EIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or NTTA at the address provided above.

Issued on: December 1, 2000.

Salvador Deocampo,
Urban Programs Engineer, Federal Highway Administration.
[FR Doc. 00–31462 Filed 12–11–00; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, January 11, 2001. The meeting begins at 2:00 p.m. and ends at 6 p.m. The letter designations that follow each item mean the following: (I) is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements (I); (2) Review & and Approval of August 6, 2000 Board Meeting #35 Minutes and November 5, 2000 #36 Minutes (A); (3) Federal ITS Initiatives Report (I/D); (4) Coordinating Council Report (I/D/A); (5) State Chapters Council Report (I/D); (6) International Affairs Council & World Congresses Reports (I/D); (7) ITS America Trade Association Report (I); (8) Interim President's Report (External Issues) (I/D); (9) Other Business;

Business Session

(US DOT participants excused; Board Members, ITS America Members and Staff Only.) (10) Report to the Executive Committee (I/D); (11) Report of the Nominating Committee (I); (12) Report of the Finance Committee and Approval of 2001 Budget (I/D/A); (13) Interim President's Report (Internal Issues)(I/D); (14) Other Business and Schedule for Meetings This Year.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, January 11, 2001, from 2 p.m.–6 p.m. Room TBA.

ADDRESSES: Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008, Phone: 202–328–2000 Fax: 202–234–0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 7, 2000.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office.

[FR Doc. 00–31637 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on September 22, 2000 [65 FR 57422]. Comments were due on or before November 21, 2000. No comments were received.

DATES: Comments must be submitted on or before January 11, 2001.

FOR FURTHER INFORMATION CONTACT: Walter Lockland, Chief, Division of Operations Support, Office of Ship Operations, Maritime Administration, 400 Seventh Street, SW, Room 2123, Washington, DC 20590, telephone number 202–366–5735. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title of Collection: "Automated Mutual-Assistance Vessel Rescue System (AMVER)".

OMB Control Number: 2133–0025.

Type of Request: Approval of an existing information collection.

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Form(s): CG–4796 (MA) (Rev. 8–88).

Abstract: This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of Search and Rescue in the saving of lives at sea and for the marshalling of ships for National Defense and safety purposes. This collection consists of vessels that transmit the positions through various electronic means with the most commonly used AMVER/SEAS "compressed message" sent via INMARSAT–C. The information collected will be used to facilitate the immediate marshalling of ships for National Defense purposes and for the purpose of maintaining a current plot for Search and Rescue purposes for safety of life at sea.

Annual Estimated Burden Hours: 2,598 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention: MARAD Desk Officer.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator.

Dated: December 6, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–31527 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8242]

Notice of Receipt of Petition for Decision that Nonconforming 1994–2000 Honda VFR 400 and RVF 400 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–2000 Honda VFR 400 and RVF 400 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–2000 Honda VFR 400 and RVF 400 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 2001.

ADDRESSESES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Northern California Diagnostic Laboratories, Inc. of Napa, California ("NCDL") (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1994–2000 Honda VFR 400 and RVF 400 motorcycles are eligible for importation into the United States. The vehicles which NCDL believes are substantially similar are 1994–2000 Honda CBR 600 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1994–2000 Honda VFR 400 and RVF 400 motorcycles to 1994–2000 Honda CBR 600 motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

NCDL submitted information with its petition intended to demonstrate that 1994–2000 Honda VFR 400 and RVF 400 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1994–2000 Honda CBR 600 motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1994–2000 Honda VFR 400 and RVF 400 motorcycles are identical to 1994–2000 Honda CBR 600 motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars, and 122 Motorcycle Brake Systems*.

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR Part 565 are already affixed to 1994–2000 Honda VFR 400 and RVF 400 motorcycles.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) replacement of the headlamp system with a U.S.-model component; (b) installation of a red reflector on each side of vehicle at its rear end; (c) installation of an amber reflector on each side of the vehicle at its front end. The petitioner states that the vehicle is equipped with a tail lamp system, a stop lamp system, a license plate lamp, a red rear reflector, and turn signals that are in conformity with the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: installation of a U.S.-model speedometer. The petitioner states that all other controls and displays on the vehicle, including the supplemental engine stop control, conform to the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance

[FR Doc. 00–31638 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8294]

Notice of Receipt of Petition for Decision That Nonconforming 1998–2001 BMW R1200C Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998–2001 BMW R1200C motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998–2001 BMW R1200C motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 10 am to 5 pm)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Bayway Auto, Inc. of Elizabeth, New Jersey ("Bayway")(Registered Importer 99–166) has petitioned NHTSA to decide whether non-U.S. certified 1998–2001 BMW R1200C motorcycles are eligible for importation into the United States. The vehicles which Bayway believes are substantially similar are 1998–2001 BMW R1200C motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998–2001 BMW R1200C motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Bayway submitted information with its petition intended to demonstrate that non-U.S. certified 1998–2001 BMW R1200C motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998–2001 BMW R1200C motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S. model headlamps, stop lamps, tail light lenses, amber front reflectors, rear red reflectors, and white license plate lamps and lenses on vehicles that are not already so equipped.

Standard No. 111 Rearview Mirrors: installation of U.S. model rearview mirrors.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* (a) Installation of an illuminated speedometer calibrated in miles per hour; (b) inscription of conforming symbols for the supplemental engine stop control, turn signals, headlamp, and horn on vehicles that are not already so equipped.

The petitioner also states that a vehicle identification number (VIN) plate and VIN reference label must be affixed to non-U.S. certified 1998–2001 BMW R1200C motorcycles to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 00–31639 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8281]

Notice of Receipt of Petition for Decision that Nonconforming 2000 Yamaha R1 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 Yamaha R1 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 Yamaha R1 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California ("NCDL") (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 2000 Yamaha R1 motorcycles are eligible for importation into the United States. The vehicles which NCDL believes are substantially similar are 2000 Yamaha R1 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 Yamaha R1 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

NCDL submitted information with its petition intended to demonstrate that non-U.S. certified 2000 Yamaha R1 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 Yamaha R1 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR Part 565 are already affixed to non-U.S. certified 2000 Yamaha R1 motorcycles.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of a red reflector on each side of vehicle at its rear end; (b) installation of an amber reflector on each side of the vehicle at its front end. The petitioner states that the vehicle is equipped with a headlamp system, a tail lamp system, a stop lamp system, a white license plate lamp, a red rear reflector, and turn signals that are in conformity with the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* Modification of the speedometer to conform to the standard. The petitioner states that all other controls and displays on the vehicle, including the supplemental engine stop control, conform to the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 00–31640 Filed 12–11–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33952]

Norfolk Southern Railway Co.—Corporate Family Transaction Exemption—High Point, Randleman, Asheboro and Southern Railroad Co.

Norfolk Southern Railway Company (NSR), a Class I rail carrier, has filed a notice of exemption to renew its lease [1] and to operate approximately 28 miles of rail line owned by High Point, Randleman, Asheboro and Southern Railroad Company (High Point), a Class III carrier and a subsidiary of NSR, located in the State of North Carolina.

The transaction is scheduled to be consummated prior to December 31, 2000. The earliest the transaction can be consummated is December 7, 2000, the effective date of the exemption (7 days after the exemption was filed).

NSR has filed its notice of exemption under 49 CFR 1180.2(d)(3) as the proposed renewal of its lease with High Point is exempt because it is within the NSR corporate family and will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the NSR corporate family.

As a condition to this exemption, any employee affected by the transaction will be protected by the conditions imposed in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA* v. *ICC*, 675 F.2d 1248 (D.C. Cir. 1982).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33952, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Maquiling B. Parkerson, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: December 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31470 Filed 12–11–00; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR notes that the lease of the rail line by the Carolina and Northwestern Railway Company, a predecessor of NSR, was previously approved in *Carolina & Northwestern Railway Company, Control, Etc.*, 282 I.C.C. 802 (1951). NSR further notes that the extension of the lease contemplated by the transaction in STB Finance Docket No. 33952 extends the term of the lease arrangement until 2025 with an optional 25-year extension thereafter.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33951]

Norfolk Southern Railway Co.—Corporate Family Transaction Exemption—Yadkin Railroad Co.

Norfolk Southern Railway Company (NSR), a Class I rail carrier, has filed a notice of exemption to renew its lease [1] and to operate approximately 30 miles of rail line owned by Yadkin Railroad Company (Yadkin), a Class III carrier and a subsidiary of NSR, located in the State of North Carolina.

The transaction is scheduled to be consummated prior to December 31,

[1] NSR notes that the lease of the rail line by the Carolina and Northwestern Railway Company, a predecessor of NSR, was previously approved in *Carolina & Northwestern Railway Company, Control, Etc.*, 282 I.C.C. 802 (1951). NSR further notes that the extension of the lease contemplated by the transaction in STB Finance Docket No. 33951 extends the term of the lease arrangement until 2025 with an optional 25-year extension thereafter.

2000. The earliest the transaction can be consummated is December 7, 2000, the effective date of the exemption (7 days after the exemption was filed).

NSR has filed its notice of exemption under 49 CFR 1180.2(d)(3) as the proposed renewal of its lease with Yadkin is exempt because it is within the NSR corporate family and will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the NSR corporate family.

As a condition to this exemption, any employee affected by the transaction will be protected by the conditions imposed in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA* v. *ICC,* 675 F.2d 1248 (D.C. Cir. 1982).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33951, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Maquiling B. Parkerson, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: December 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31471 Filed 12–11–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–80–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–80–93 (TD 8645), Rules for Certain Rental Real Estate Activities (Section 1.469–9).

DATES: Written comments should be received on or before February 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–1455.

Regulation Project Number: PS–80–93.

Abstract: This regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20,100.

Estimated Time Per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,015.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–31501 Filed 12–11–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 65, No. 239
Tuesday, December 12, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ42–1–214, FRL–6910–1]

Approval and Promulgation of Implementation Plans; New Jersey; Nitrogen Oxides Budget and Allowance Trading Program

Correction

In proposed rule document 00–30543 beginning on page 71278 in the issue of Thursday, November 30, 2000, make the following correction:

On page 71281, the table is corrected read as set forth below:

Source category	EPA's 2007 baseline emissions for NJ (tons/season)	EPA's 2007 NO_X budget emissions for NJ (tons/season)	NJ's 2007 projected emissions (tons/season)	NJ's 2007 projected reductions (tons/season)
EGUs	18,352	10,250	.....	.....
Non-EGU Point	15,975	15,464	.....	.....
Total	34,327	25,714	25,113*	9,214
Area sources	12,431	12,431	12,431	0
Non-road mobile	23,565	23,565	23,565	0
Highway mobile	35,166	35,166	36,166	0
NJ Total	105,489	96,876	96,275	9,214

*8,200 cap from trading rule.

[FR Doc. C0–30543 Filed 12–11–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
December 12, 2000

Part II

Advisory Council on Historic Preservation

36 CFR Part 800
Protection of Historic Properties; Final Rule

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

RIN 3010–AA05

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final rule; revision of current regulations.

SUMMARY: The Advisory Council on Historic Preservation is publishing its final rule, replacing the previous rule which implemented the 1992 amendments to the National Historic Preservation Act (NHPA), and improved and streamlined the rule in accordance with the Administration's reinventing government initiatives and public comment. Litigation earlier this year challenged that previous rule. This rulemaking has addressed questions and concerns raised by that litigation, and has given the public a chance to provide input to determine how the rule has operated and revise the rule as appropriate. The final rule modifies the process by which Federal agencies consider the effects of their undertakings on historic properties and provide the Council with a reasonable opportunity to comment with regard to such undertakings, as required by section 106 of the NHPA. The Council has sought to better balance the interests and concerns of various users of the section 106 process, including Federal agencies, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Native Americans and Native Hawaiians, industry, and the public.

DATES: This final rule is effective January 11, 2001.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rule, please call Frances Gilmore or Paulette Washington at the regulations hotline (202) 606–8508, or e-mail us at regs@achp.gov. When calling or sending e-mail, please state your name, affiliation, and nature of your question, so your call or e-mail can then be routed to the correct staff person. Informational materials about the new rule will be posted on our web site (http://www.achp.gov) as they are developed.

SUPPLEMENTARY INFORMATION: The information that follows has been divided into five sections. The first one provides background information introducing the agency and summarizing the history of the rulemaking process. The second section highlights the changes incorporated into the final rule. The third section describes, by section and topic, the Council's response to public comments on this rulemaking. The fourth section provides a description of the meaning and intent behind specific sections of the final rule. Finally, the fifth section provides the impact analysis section, which addresses various legal requirements, including the Regulatory Flexibility Act, the Paperwork Reduction Act, the National Environmental Policy Act, the Unfunded Mandates Act, the Congressional Review Act and various relevant Executive Orders.

I. Background

The Advisory Council on Historic Preservation ("Council") is the major policy advisor to the Government in the field of historic preservation. Twenty members make up the Council. The President appoints four members of the general public, one Native American or Native Hawaiian, four historic preservation experts, and one governor and one mayor. The Secretary of the Interior and the Secretary of Agriculture, four other Federal agency heads designated by the President, the Architect of the Capitol; the chairman of the National Trust for Historic Preservation and the president of the National Conference of State Historic Preservation Officers complete the membership.

This final rule sets forth the revised section 106 process. Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f (NHPA), requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment on such undertakings.

Through Section 211 of the National Historic Preservation Act, the Council is authorized to "promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 * * * in its entirety."

After publishing two Notices of Proposed Rulemaking (59 FR 50396, October 3, 1994; and 61 FR 48580, September 13, 1996), the Council published a final rule setting forth a revised process implementing section 106 in its entirety (64 FR 27044–27084, May 18, 1999). Such rule went into effect on June 17, 1999, and superseded the rule previously issued in 1986.

Two major forces behind that revision process were the 1992 amendments to the National Historic Preservation Act (NHPA), and the Administration's reinventing government efforts. In October, 1992, Public Law 102–575 amended the NHPA and affected the way section 106 review is carried out. Among other things, the 1992 amendments:

1. Clarified that "[p]roperties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register." 16 U.S.C. 470a(d)(6)(A);

2. Required that "[i]n carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described" above. 16 U.S.C. 470a(d)(6)(B). Also see 36 CFR 800.2(c)(3) (granting such tribes and Native Hawaiian organizations, "consulting party" status in the section 106 process). Implementation of this statutory consultation requirement is found throughout the proposed rule. See, for example, 36 CFR 800.3(f)(2), 800.4(a)(4), 800.4(b), 800.4(c)(1), 800.5(a), 800.6(a)–(b).

3. Added a provision in the NHPA prohibiting Federal agencies from granting a license or assistance to applicants who, with the intent to avoid the requirements of section 106, significantly adversely affected historic properties related to the license or assistance. In such cases, the Federal agency can only grant the license or assistance if it determines, after consulting with the Council, that circumstances justify granting the license or assistance despite the effects to the historic property. 16 U.S.C. 470h–2(k). See 36 CFR 800.9(c).

4. Explicitly recognized the long-standing practice of having Federal agencies develop agreements to address adverse effects of their undertakings to historic properties. This practice had also been recognized in the earlier, 1980 amendments, where Section 205(b) of the NHPA was changed to state that the Council could be represented in court by its General Counsel regarding "enforcement of agreements with Federal agencies." It also clarified that where such an agreement is not reached, the head of the relevant Federal agency must document his/her decision pursuant to section 106. Such agency head cannot delegate that responsibility. It also provided that agreements executed pursuant to the section 106 process would govern the relevant Federal undertaking and all its parts. 16 U.S.C. 470h–2(l). See 36 CFR 800.6, 800.7.

5. Added a member to the Council. This Council member would be a Native American or Native Hawaiian appointed by the President. 16 U.S.C. 470i(a)(11).

6. Explicitly clarified the fact that the Council has authority to "promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act *in its entirety*." 16 U.S.C. 470s (emphasis added) (highlighted text was added by the 1992 amendments); and

7. Amended the definition of the term "undertaking," by adding "[projects, activities, and programs] subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency" to the list of actions constituting an "undertaking." 16 U.S.C. 470w(7)(D). The amended, statutory definition of "undertaking" was adopted verbatim in the rule. 36 CFR 800.16(y).

Additionally, as part of the Administration's National Performance Review and overall regulatory streamlining efforts, the Council undertook a review of its regulatory process to identify potential changes that could improve the operation of the section 106 process and conform it to the principles of the Administration. A description of the Council's revision efforts from 1992, which led to the final rule that went into effect in 1999 ("1999 rule"), is found in its preamble (64 FR 27044–27084, May 18, 1999). That preamble extensively details its history, purpose, intent, and response to public comment.

On February 15, 2000, the National Mining Association ("NMA") filed a lawsuit challenging the 1999 rule. Among other things, the lawsuit alleged violations of the Appointments Clause of the Constitution and certain provisions of the Administrative Procedure Act pertaining to rulemaking. After assessing the allegations contained in the lawsuit, the Council decided to move forward with the present rulemaking process that culminates today with this final rule. The Council believed that this rulemaking would provide an opportunity to address assertions about the procedural adequacy of the promulgation of the 1999 rule, including those about the participation of the National Trust for Historic Preservation ("Trust") and the National Conference of State Historic Preservation Officers ("NCSHPO"), as Council members, in the adoption of the final, revised rule. It would also give the public a chance to provide input to determine how the rule has operated and revise the rule as appropriate. This rulemaking does not evidence Council agreement with the merits of the allegations but, rather, the Council's desire to remove these issues from litigation.

Accordingly, at the June 23, 2000 Council meeting in Maine, the Chairman of the Council asked the Council members to take two actions. The first action was a new vote on the adoption of the 1999 rule, without the participation of the Trust and NCSHPO. The Council members voted 16–0 in favor of the 1999 rule, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it.

The second action was a vote on undertaking the present rulemaking process, using the text of the 1999 rule as the proposed rule. Again, the Council members voted in favor of moving forward with the rulemaking by a vote of 16–0, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it. Accordingly, on July 11, 2000 the Council published a proposed rule for public comment (65 FR 42833–42849).

The public was given a 30-day period, until August 10, in which to comment on the proposed rule. All those who filed a timely request for an extension of the comment period were given until August 31 to submit their comments. We believe the extension granted was reasonable in light of the circumstances.

As stated above, the text of the proposed rule submitted for public comment was the same as the one for the final rule that had been in effect for more than a year. That final rule, in turn, was the product of a rulemaking process that afforded the public ample opportunity, throughout six years, to participate and comment. The preamble of that 1999 final rule (found at 64 FR 27044–27084, May 18, 1999) extensively details its history, purpose, intent, and response to public comment. It is a lengthy document and will not be re-printed here.

After the close of the public comment period, the Council, minus the Trust and NCSHPO, considered the comments and incorporated changes into a draft rule as was deemed appropriate. On November 17, 2000, the Council voted on whether to adopt the draft rule as a final rule. As stated before, the Council members representing the Trust and NCSHPO had already recused themselves from the rulemaking process and proposed suspension. They accordingly removed themselves from the table and took no part in the deliberations and vote on this matter.

The Council voted to adopt the draft rule as the final rule now being published, by a vote of 17 for, 1 abstention, and none against.

The Council reiterates that the Trust and NCSHPO did not participate in any way whatsoever in the deliberations, decisions, votes, or any other Council activities regarding this rulemaking. Their only participation in this rulemaking took the form of a written comment filed by NCSHPO on the proposed rule. Such comment was submitted by NCSHPO, as a member of the general public, during the commenting period provided by the notice of proposed rulemaking.

II. Highlights of Changes

The Council retained the core elements of the section 106 process that have been its hallmark since 1974. The Council also retained the major streamlining improvements that were adopted in June, 1999. Changes adopted were primarily modifications to remove operational impediments in the process and clarifications of certain provisions and terms. In addition, a number of technical and informational edits were made throughout the rule. Major changes are as follows:

1. Clarification of the Role of State Historic Preservation Officers.

Section 800.2(c)(1) was amended to acknowledge the statutory responsibility of SHPOs to cooperate with agencies, local governments, and organizations and individuals to ensure that historic properties are considered in planning.

2. Clarification of the Role of Indian Tribes and Tribal Historic Preservation Officers

Section 800.2(c)(2) was completely rewritten to better distinguish the roles of Indian tribes that had assumed the responsibilities of SHPOs on their tribal lands under section 101(d)(2) of the Act from that of Indian tribes which had not. The Council notes that these amendments do not change the substantive role of non-101(d)(2) Tribes or any other party in the section 106 process under the proposed rule, but simply provide for a clearer rule. Section 800.2(c)(2)(ii) was also amended to clarify that the Act requires agency consultation with Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to historic properties regardless of whether the historic properties are located on or off tribal land. Section 800.2(c)(2)(ii)(B) was amended to better reflect the sovereignty of Indian tribes over their tribal lands.

3. More Flexibility To Involve Applicants

Section 800.2(c)(5) was amended to resolve a major problem regarding the participation of applicants for Federal assistance or permission in the Section 106 process. Under the change, an agency may authorize a group of applicants to initiate the section 106 process, rather than being required to grant individual authorizations. Language was also added to clarify that such authorizations do not relieve the Federal agency of its obligations to conduct government-to-government consultation with Indian tribes.

4. Clarification of Undertakings Covered by the Section 106 Process

Section 800.3(a)(1) was amended to better state the premise of the rule that only an undertaking that presents a type of activity that has the potential to affect historic properties requires review. The previous language implied that making such a determination related to the circumstances of the particular undertaking, rather than the more generic analysis of whether the type of undertaking had the potential to affect historic properties.

5. Reinforcement of the Federal Agency's Responsibilities in Identifying Historic Properties

Section 800.4(a) was amended to assert that determinations in this subsection are made unilaterally by the Agency Official, after consultation with SHPO/THPO. Some had misunderstood the previous version as providing for consensus determinations.

6. Revision of the Role of Invited Signatories

Section 800.6(c)(2) was rewritten to remove confusion about the ability of the Federal agency to invite other parties to become formal signatories to Memoranda of Agreement and to clarify their rights and responsibilities as invited signatories. Also regarding memoranda of agreement, § 800.6(c)(8) was amended to provide that the option for their termination exists not only when one party simply cannot comply with its terms, but also when the terms are not being followed for whatever reason.

7. Revision of the Use of Environmental Impact Statements (EIS) To Comply With Section 106

Section 800.8(c)(4) was rewritten to more clearly state the actions a Federal agency must take in making a binding commitment in an NEPA documents to carry out measures to avoid, minimize or mitigate adverse effects and thereby use the NEPA process to comply with section 106 requirements.

8. Redefinition of the Role of the Council When Improving the Operation of Section 106

Section 800.9(d)(2) was amended to require the Council to participate in section 106 reviews in a manner parallel to SHPOs/THPOs when the Council decides to join individual case reviews it would not otherwise engage in. This occurs when the Council has determined that section 106 responsibilities are not being properly carried out by an agency or SHPO/THPO and the Council's participation can remedy the problem.

9. Modification of Documentation Standards

Section 800.11(a) was amended to state that a Federal agency's responsibility to provide documentation was limited by legal authority and the availability of funds. Section 800.11(c)(2) was also amended to require Federal agencies to include the views of the SHPO/THPO when consulting with the Council on withholding confidential information.

10. Inclusion of National Register Eligibility Assessment in Consideration of Post-Review Discoveries

Section 800.13(b)(3) was amended to add a requirement that a Federal agency seeking expedited section 106 review for properties discovered after approval of an undertaking provide information on the eligibility of affected properties for the National Register.

11. Increased Flexibility for Programmatic Agreements

Section 800.14(b) was amended by the addition of a new section authorizing the Council to create "prototype programmatic agreements" which could be executed by a Federal agency and an SHPO/THPO without Council participation. This would permit routine programmatic agreements that follow an accepted model to be completed more expeditiously.

12. Improved Consideration of Stakeholder and Public Views on Proposed Exemptions

Section 800.14(c)(5) was amended to add Council consideration of the views of SHPOs/THPOs and others consulted when determining whether to approve an exemption from the section 106 process. The Council was also required to notify the agency and SHPOs/THPOs of it decision on the requested exemption.

13. More Flexibility for Federal Agencies When Consulting With Indian Tribes on Nationwide Program Alternatives

Section 800.14(f) was amended to reemphasize a Federal agency's obligation under various authorities to consult with Indian tribes and Native Hawaiian organizations when developing nationwide program alternatives, but to acknowledge that it is the agency's responsibility to determine the appropriate means of meeting those obligations.

III. Response to Public Comments

Following is a summary of the public comments received in response to the notice of proposed rulemaking, along with the Council's response. The public comments are printed in bold typeface, while the Council response follows immediately in normal typeface. They are organized according to the relevant section of the proposed rule or their general topic.

Section 800.1

The Council should expand the definition of SHPO responsibilities beyond cooperation with the Secretary, Advisory Council and Federal agencies to include explicit reference to organizations and individuals, such as regulatees and their consultants. The Council noted that such language was warranted by the NHPA, and therefore inserted language regarding such SHPO duties per section 101(b)(3)(F) of the NHPA.

The very last sentence of this section should be changed to: "The Agency Official is encouraged to initiate the section 106 process as early as practicable in the undertaking's planning so that it may consider impacts on historic resources." The language on the proposed rule stated that the Agency Official "shall ensure that the section 106 process is initiated early in the undertaking's planning * * *" The Council disagreed with the commenter's proposed change since it is crucial that agencies initiate the section 106 process at a point where alternatives have not yet been foreclosed. Otherwise, the review would be rendered meaningless.

Council is urged to preserve flexibility provision under the 1986 regulations, which stated: "The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting different program requirements, as long as the purposes of section 106 of the Act and these regulations are met." Specific areas of flexibility are incorporated in the proposed rule to embody the general flexibility term found in the 1986 rule. Among these are: phased identification, compression of steps, NEPA coordination, and the various program alternatives under § 800.14 of the rule.

Section 800.2(a)

The regulations should state that Federal agencies that authorize applicants to initiate consultation are still responsible for their government to government relationships with tribes. The Council agreed and incorporated such change at § 800.2(c)(5) since the statement comports with Executive Orders and Memoranda regarding the government-to-government responsibilities of Federal agencies towards federally recognized tribes.

Requirements of § 800.14 preclude implementation of § 800.2(a) insofar as it calls for utilization of the agency's existing procedures to fulfill consultation requirements. The Council disagreed. The comment failed to consider the difference between procedures that implement 36 CFR part 800 (those under § 800.2(a)) and procedures that actually substitute/modify the process under 36 CFR part 800 (those under § 800.14).

Nothing in NHPA requires Federal agencies to consult with a particular party, thus, while such consultation may be beneficial, it should be left to the discretion of the Federal agency under NHPA. The Council not only believes that such consultation is beneficial, but it also believes it has the required authority to justify this and all other sections of the proposed rule. Consultation occurs in the section 106 process propounded by the rule in a way that is fully consistent with the statute. See, for example, the statutory language under section 101 of the NHPA regarding SHPO and THPO assistance to Federal agencies in the section 106 process, the consultation requirements with Indian tribes and Native Hawaiian organizations under the 1992 amendments to the NHPA, and language under Section 110 of the NHPA ensuring that public involvement occurs in the section 106 process. Such consulting entities have the specialized knowledge and interest that Federal agencies may lack. Consultation with these parties provides the Federal agency with the information it needs to make reasoned assessment of how its undertakings affect historic properties. Furthermore, it is clear to the Council through its years of experience, that such consultation is necessary and that Federal agencies heavily rely on such assistance (in particular that of the SHPOs). Please also refer to responses given under the legal topics.

Federal officials (and not State, local or tribal government officials) are responsible for taking into account the effects of their undertakings on historic properties. Furthermore, it is inappropriate to mention Section 112 of the NHPA in this section since the Council has no authority to enforce it. The Council agrees that the responsibility for section 106 compliance lies with Federal agencies, including the "take into account" responsibility. The Council clarifies that section 112 is merely restated in the rule for reference purposes (as opposed to enforcement).

ACHP refusal to take a position regarding delegation of authority have resulted in SHPOs disregarding FCC's jurisdiction and emphasizes on enforcement over historic preservation. During the time frame of this rulemaking, the Council issued a memorandum to the FCC, all SHPOs and the telecommunications industry clarifying its position on delegations of authority. This and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. These discussions commenced before the present rulemaking process. Such ongoing discussions are referred hereinafter as "Telecommunications Working Group."

Although section 101 of the NHPA establishes an advisory role for SHPOs to assist Federal agencies, the rules fail to establish consistent objective standards for SHPOs to apply in carrying out their duties. It undermines the ability of SHPOs and Federal agencies to adequately serve the Council's goal of protecting historic properties. The Council believes that the rule contains adequate standards that guide SHPOs in carrying out their functions. These standards can be found in various parts of the rule (e.g., criteria of adverse effect under § 800.5(a), and various definitions of terms under § 800.16). Further standards, such as the National Register Criteria of Eligibility (36 CFR part 63), are referenced in the present rule, and guide SHPO duties. Furthermore, pursuant to the NHPA, the Department of the Interior regularly reviews SHPO programs and ensures such programs and their personnel have the necessary expertise to guide their performance of their statutory duties, which include "to consult with * * * Federal agencies * * * on Federal undertakings that may affect historical properties." 16 U.S.C. 470a(b)(3)(I).

"Delegation authority" should be expanded to include "approved" state agencies and other pre-approved designees to conduct section 106 coordination on behalf of the Agency Official. The Council disagrees since the comment fails to realize that such authority can only come through statute. Congress specifically placed section 106 compliance responsibilities on Federal agencies. Only Congress can shift that responsibility. The Council is only aware of certain Department of Housing and Urban Development programs containing such a statutory delegation.

Section 800.2(b)

Licensees should be recognized as consulting parties under the regulations. Applicants for licenses, permits, approvals or assistance are specifically listed in the rule as consulting parties (see §§ 800.2(c)(5) and 800.3(f)(1)).

Add the following to § 800.2(b)(2): "Within 30 days of receipt of a request for such advise, the Council shall reply in writing with advise, or it shall reply in writing that it will not offer advice stating its reason(s) for so doing." This is needed to ensure Council responds in a timely fashion. The Council disagreed with this proposal. Time limits, and the consequences of not replying in time, are already specified in the proposed rule as needed.

Section 800.2(c)

Remove the first sentence of § 800.2(c)(1)(I). It is unrealistic to charge the SHPO with "reflecting the interests of the State and its citizens in the preservation of their cultural heritage." This only encourages agencies to treat SHPO coordination as the be-all and end-all of consultation, even where large numbers of a State's citizens violently disagree with a SHPO position. The rule reasonably supports the idea that the SHPO reflects the interests of the State by virtue of being a State official appointed by the elected State Governor.

Several comments requested that the rule distinguish the roles of Tribes that have an approved "Tribal Historic Preservation Officer' (THPO) pursuant to section 101(d)(2) of the NHPA, and those that do not. The use of the term "THPO" for both was deemed to be highly confusing. As stated in the highlight of changes above, § 800.2(c)(2) was completely rewritten to better distinguish the roles of Indian tribes that had assumed the responsibilities of SHPOs on their tribal lands under section 101(d)(2) of the Act from that of Indian tribes which had not. The Council notes that these amendments do

not change the substantive role of non-101(d)(2) Tribes or any other party in the section 106 process of the proposed rule, but simply provide for a clearer rule.

Many THPO's have construed this provision to mean that they must be invited to participate as "consulting parties" on all undertakings affecting properties of traditional religious and cultural importance, a position at odds with the NHPA. It is requested that the role of tribal representatives and THPO's in consultation off tribal land to be clarified consistent with the statute. The Council believes that section 101(d)(6)(B) of the NHPA clearly gives federally recognized tribes and Native Hawaiian organizations a right to be consulted regarding historic properties of religious and cultural significance to them. The cited section of the statute does not qualify that right depending on whether the historic property is located on or off tribal lands. It also does not qualify that right depending on whether the tribe has a THPO certified pursuant to section 101(d)(2) of the NHPA.

Too difficult to implement requirements of § 800.2(c)(2) when the project is not on reservation land. It is unreasonable for each Federal agency to develop on their own information as to which tribe(s) may be associated with specific geographic areas. While the Council acknowledges certain initial difficulties in identifying tribes to consult outside tribal lands, it believes the statute is clear in mandating such consultation regardless of the location of the historic property. The Council and the National Park Service are currently conducting a guidance project to assist agencies in identifying Indian tribes to be consulted.

Regulations do not create a "consultative" role for SHPO staff who would prefer to spend their time and efforts preserving historic properties rather than enforcing procedures on telecommunications projects. The SHPOs have a specific statutory duty to consult with Federal agencies and assist them with their section 106 duties. 16 U.S.C. 470a(b)(3)(I). Moreover, the SHPOs do spend their time directly preserving historic properties through their involvement in the section 106 process. The Council has not received contrary views from any SHPOs. Finally, similar issues of SHPO/telecommunications industry work in the section 106 process is being addressed by the ongoing Telecommunications Working Group.

Definition of "additional consulting parties" is too open ended, since it makes it possible for anyone who can claim a "concern" to become a consulting party, adding delays and expenses to the process (§ 800.2(c)(6)). Even if Council had authority over this issue, at a minimum the rule should require a demonstration of some form of protectable interest similar to the concept of legal standing. Standards for additional consulting parties adequately balance the project's need for expediency and the right of those with defined interests in getting involved in the process. To ensure this provision is not abused, the rule gives the Agency Official the ultimate discretion to invite additional consulting parties or not. The Council believes the Agency Official is in a better position to balance the benefits of including these parties against the costs of so doing. The Agency Official will be able to do this on a case by case basis, according to the particulars of the specific undertaking at issue.

Use of the phrase "SHPO/THPO" has led to misunderstandings concerning the different regulatory roles of the SHPOs and THPOs in consultation on projects located off tribal lands. Guidance is needed to clarify these roles. The Council believes the rule is clear in that Federally recognized tribes have to be consulted regarding historic properties of cultural and religious significance to them, regardless of the location of such properties. With the changes regarding the use of the term THPO, there should be no confusion as to consultative rights of tribes.

Expanded definition of consulting parties has made it difficult and time consuming for agency officials to establish an appropriate consultation process. Guidelines for determining formal consulting parties should be developed. The Council believes that §§ 800.2 and 800.3(f) set forth clear standards for who should be a consulting party, and a clear process for who makes the determination and when. A further expansion on this topic to aid Federal agencies is better suited for guidance.

Regulations give tribes a secondary role to SHPOs with respect to tribal cultural and sacred properties which are not on tribal lands. The 1992 Amendments were intended to provide tribes with rights at least equivalent to SHPOs regardless of where the properties are located. Tribes want same consultation rights as SHPO for tribal cultural properties located off tribal lands. SHPO role is a creation of the regulations and is not required in the Act. The Council does not believe that Tribes have a secondary role to SHPOs. They do have a different role however. The rule recognizes that Tribes are entitled to consult regarding historic properties of religious and cultural significance to them that may be affected by an undertaking. The SHPO is also entitled to consult, consistent with the definition of SHPO responsibilities in the Act, regarding historic properties. 16 U.S.C. 470a(b)(3).

The regulations assume that the THPO is a regulatory/executive body of a tribal government. Federal agencies believe that consulting with the THPO or tribal cultural resource manager fulfills the government-to-government responsibility. Agencies need to become familiar with this responsibility. The regulations fail to address or identify the process for government-to-government consultation. It is the duty of the relevant Federal agency (and not the Council) to specify how they meet their government-to-government responsibilities. See Executive Memorandum on Government-to-Government Relations with Native American Governments, dated April 29, 1994.

Granting SHPOs a role on tribal lands where there is no 101(d)(2) THPO is an intrusion on tribal sovereignty and is hypocritical since tribes are not given an equivalent role for their traditional cultural and sacred properties off tribal lands. The Council disagrees. Tribes that attach religious and cultural significance to historic properties must be invited to consult, regardless of where the property is located. The proposed rule follows statutory roles given to Tribes and SHPOs. See 16 U.S.C. 470a in general, and 470a(d)(2)(D)(iii).

The regulations provide a significant role for the THPO, above the tribal government leader. Federal agencies now have an "out" to avoid the government-to-government responsibility. Agencies need to learn, and ACHP trainers need to emphasize, the difference. The regulations should include a section that requires agencies to develop a process that recognizes the THPO role. The Council reasonably assumes 101(d)(2) THPOs are the appropriate contact for government to government relations. Nevertheless, the Council will confirm this statement with the Department of the Interior.

800.2(c)(3)(vi) is confusing. This allows for the SHPO and Council to ignore and avoid tribal involvement. It also provides an outlet for Federal agencies to disregard Federal law, E.O.s, etc. Finally, the SHPO then becomes a decision maker on tribal lands. This provision was requested by Tribal comments that wanted to avoid Tribes being required to sign an agreement if they chose not to sign it. A waiver under § 800.2(c)(3)(vi) requires positive action from the Tribe, and therefore does not present a loophole to be used by Federal agencies or any other entities.

A tribe that does not have a 101(d)(2) THPO does not have the same authority as a tribe that does. This gives the SHPO the ability to come onto reservation lands and dictate how the tribe handles its preservation program and individual projects. Would like the regulations to provide tribes the option of inviting the SHPO into consultation on tribal lands. Section 101(d)(2) of the NHPA provides for THPO substitution of the SHPO on tribal lands if approved by DOI. If there is no approved 101(d)(2) THPO, NHPA provides that the SHPO shall consult with Federal agencies on any undertaking within the State. Also, NHPA specifically states the right of private owners of land within tribal boundaries to request SHPO involvement in undertakings on tribal lands. See section 470a(d)(2)(D)(iii) of NHPA.

Change last sentence to: Nothing in this part alters, repels, interprets, or modifies tribal sovereignty or preempts, modifies, or limits the exercise of any such rights. This change would delete "is intended to . . ." The Council agreed with such a change since it was needed to more properly accord with tribal sovereign rights and the original intent of the section.

Section 800.2(c)(5)

Several comments requested that the rule be changed so that Federal agencies will not be required to give specific authorization for each applicant to initiate consultation with SHPO/THPOs. The Council supported amending the proposed rule to allow agencies to authorize applicants to initiate consultation on a broader basis than individual authorizations.

Because of the time and resources required to consult with Tribes, more Federal agencies are delegating their consultation responsibilities, without guidance, to consultants, applicants and others. Many tribes, however, refuse to interact with parties other than the Federal agency or agency director. The Council responds to this concern by clarifying that such insistence is due to the Federal agencies' government-to-government responsibilities under Executive Orders and Memoranda.

Delegating authority to applicants is delegating Federal agency responsibility. This process lacks the integrity of upholding the intent of laws and EOs. Generally, tribes are insisting on formal consultation with Federal agencies, not applicants. Federal agencies are required to consult with Indian Tribes on a government-to-government basis pursuant to Executive Orders, Presidential memoranda, and other authorities. The proposed rule therefore was amended to acknowledge this responsibility. The authorization to applicants to initiate consultation does not include consultation with Tribes.

Section 800.2(d)

Proposed part 800 elaborate procedures for public participation go well beyond the provisions of NHPA. NHPA does not require separate public notice and comment requirements at every stage of the review process. Recommend that part 800 recognize Federal agencies' existing public participation procedures and permit agencies to rely on those procedures in addressing adverse effects only. The rule does not require separate public notice and comment requirements at each step. Also, the proposed rule already allows for use of agency procedures. Nevertheless, it is simply impractical and illogical to solely rely on agency procedures for public involvement regarding section 106 if such procedures fail to address historic preservation issues.

Public participation provisions are an improvement over the 1996 proposed rule, but still invite problems. Council is not vested with authority to regulate public participation. Section 106 does not address this topic. Council has no authority to vest anyone, but itself, with a reasonable opportunity to comment on the Federal undertaking. The Council believes it has the required authority to justify this and all other sections of the proposed rule. Please refer to our response regarding legal authority, below.

This provision lies outside of the NHPA section 106 authority, and is a back door mechanism to impose upon Federal agencies the Council's interpretation of the interested public instead of leaving the interpretation of that role to the agencies, in consultation with the Secretary of Interior as provided for in section 110(a)(2)(E) of the NHPA. Deleting this provision is recommended. The Council disagrees. As stated below, the Council has the required authority to justify this and all other sections of the proposed rule. Furthermore, § 800.2(d)(3) allows the use of agency procedures to the extent they provide pertinent information on historic preservation.

Section 800.3(a)

Several comments requested clarification that under § 800.3(a) the agency should not be considering case-specific issues, and that in this section the reference is to "type and nature" of the undertaking. In light of these comments and practical experience, the Council agreed that such a change was necessary. The language in § 800.3(a) was amended to state that the determination is as to whether the undertaking is a "type" of activity that has the potential to cause effects on historic properties, assuming such properties would be present.

Regulations should address what happens with program alternatives or PAs that were executed before the effective date of the new regulations. Such agreements are still valid and will continue to be in effect according to their terms.

Section 800.3(b)

The section should read that the Agency Official "may coordinate * * *." Council cannot require such coordination. The comment misreads the proposed rule. It only states that the Agency Official "should coordinate," implying encouragement, but not requirement.

Section 800.3(c)

30 day response period is too long and only ensures the destruction or damage to an archeological site where the project went forward because of the necessities of the mission. A 15 day response period would be much more appropriate in recognition of the rapid forms of communication available. The Council disagrees. The 30 day time period reflects an adequate balance between project need for expediency and workload requirements on reviewers.

Either delete section 3(c)(3) altogether, or add further guidance or regulatory definition of the phrase "* * * and to the nature of the undertaking and its effects on historic properties." Also, delete any discussion of timing in section 3(c)(4). It erroneously implies that nearly everything submitted to the SHPO falls under a 30 day review period. Review time periods should simply be referenced in the various sections of §§ 800.4–800.6. The rule indeed imposes a 30 day limit on SHPO/THPO at each step of the process where a formal response is required to findings and determinations, unless otherwise noted. See § 800.3(c)(4). SHPO/THPO cannot require the process to stop by failing to respond by the end of this period. On the other hand, there is no such clock for consultation alone (e.g., regarding APE or for seeking ways to avoid, minimize or mitigate adverse

effects). All that the Federal agency needs to do regarding such consultation is to make a reasonable effort to consult (which may or may not take 30 days) and move forward with the process.

Section 800.3(d)

Once SHPO declines to participate, Federal agencies should have no further burdens. To the extent that the Council is relying on SHPOs to comment or consult on its behalf under section 106, the agency complies with section 106 by providing SHPO (Council) an opportunity to comment. Rule should also contain presumption that SHPO concurs with a written finding if it does not respond within 30 days. Accordingly, § 800(d) should read: (1) If the SHPO declines in writing to participate, or otherwise cooperate, in the section 106 process, the Agency Official shall proceed as it believes appropriate; (2) If the SHPO does not respond within 30 days to a written finding under this part, or sooner if reasonably requested by the Agency Official, a presumption of concurrence with such finding shall be created. Federal agency obligations under section 106 of the NHPA do not terminate when the SHPO or any other entity declines to continue participating. SHPOs do not comment or participate in consultation on behalf of the Council. A process of allowing the agency to proceed without any Council review when SHPO declines to participate or respond within the 30 days is inconsistent with the letter, intent and spirit of the law. Nothing in the NHPA indicates in any way whatsoever that Federal agency responsibilities under section 106 disappear once a SHPO refuses to participate. The statute mandates Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment regardless of what any other entity does or does not do. 16 U.S.C. 470f. It is noted that the rule does have certain, reasonable presumptions of concurrence when a response does not come in time. See particularly, § 800.3(c)(4).

Section 800.3(f)

The regulations do not give adequate guidance regarding federally designated THPO's, Federally recognized tribes without a designated THPO, and federally recognized tribes not occupying tribal lands. Guidance is also needed to identify associated tribes, crosscutting boundaries or ancestral lands, differentiate among differing views of ancestral lands to ensure that tribes' rights are addressed without impinging upon the property rights of private landowners. Such information can be provided in guidance but is not appropriate in a rule. Furthermore, see information above regarding Council/NPS project regarding assistance to Federal agencies regarding ancestral lands.

Section fails to establish who is responsible for establishing the list of consulting parties, setting a time limit in which the SHPO should respond, and defining what constitutes a good faith effort in doing so. This comment is incorrect. The proposed rule does establish that the Agency Official is ultimately responsible for establishing the list of consulting parties. It also sets forth the 30 day comment period. The meaning of a "good faith effort" will be better handled through guidance.

Section 800.4(a)

This is a useful and important provision. Minor wording changes are proposed to remove any suggestion that the SHPO is responsible for the decision: "(a) Determine scope of identification efforts. In consultation with the SHPO/THPO and other consulting parties, the Agency Official shall (1) Determine and document the area of potential effects, as defined in § 800.16(d); etc." The Council agreed with this recommended amendment since it clarifies that the ultimate decision here is made by the Agency Official. However, the phrase "and other consulting parties" was removed from the recommended language since the obligation to consult at this stage would not extend to other consulting parties.

Section on determining Area of Potential Effect fails to include time limit for a response by SHPO or other consulting parties to an agency's determination of APE. As stated above, the agency obligation is to consult. Failure by SHPO/THPO to respond to consultation within a reasonable time would allow agency to finalize its unilateral determination of the area of potential effect and move forward in the process.

Indian Tribes are given broad discretion to designate any property to which they attach religious and cultural significance, whether or not within tribal lands, as historic in the context of the consultation process. There are no standards directly relevant to the eligibility of such properties for the National Register. The broad discretion creates great uncertainty, delay, and costs. The rule should contain criteria on designating religiously or culturally significant properties. This comment is incorrect. These properties must be "historic properties" and therefore meet the National Register criteria. They must follow the same process as other potentially historic properties.

Requirement to consult with SHPO regarding the APE should be deleted. It needlessly extends the already protracted consultation process without any concomitant benefits. The Council believes that consultation with SHPO is valuable at this critical point to avoid later problems. Furthermore, consultation with the SHPO/THPO at this critical decision making point has always been viewed as an important part of the process. The Council decided to retain the duty to consult with the SHPO/THPO since the Council believes that SHPO/THPOs have special expertise as to the historic areas in their jurisdiction and the idiosyncracies of such areas, and can greatly assist the Agency Official, using such expertise, in determining an accurate area of potential effects. Nevertheless, it is noted that the Federal agency is ultimately responsible for making the final determination about the area of potential effect (*i.e.*, the concurrence of the SHPO/THPO in such determination is not required).

In the case of scattered site housing rehabilitation program, the Agency Official should have the authority to determine that (1) the area of potential effect is limited to the property to be rehabilitated, and (2) any structure to be rehabilitated that is less than 50 years old is not considered eligible. The result would allow scattered site housing rehabilitation to proceed in a responsible manner without adding a time-consuming consultation process with no apparent benefit to the public or environment. The Council disagrees. Not all scattered site projects are the same. Where a block of properties are to be rehabilitated, the historic district may be affected. The less than 50 years old exemption should be handled during negotiation of a Programmatic Agreement.

Given that some of the tribes with ancestral interest in a project area are no longer physically located within the state, it is difficult or unfeasible to comply with this provision. The reg needs to set some practical limits on consulting with Tribes in identifying historic properties. The NHPA does not set such limits on consultation. The location of tribes and the boundaries of tribal lands are consequences of history to which tribes were subjected. Accordingly, the fact that a tribe may not live on or near a significant property should not be an impediment to its participation in consultation. As stated above, this is the subject of a guidance

project currently under way between the Council and the National Park Service.

The regulations should set forth a process to follow when the SHPO disagrees with an agency determination of the area of potential effects (APE)—similar to the process for determinations of eligibility. Also, we need further guidance on what is considered "documenting" the APE. The Council believes the process in the rule regarding APE should remain unchanged. The determination of APE should be ultimately done by the Federal agency in consultation with the SHPO. SHPO can seek informal advice from the Council. Guidance could be developed regarding what is considered "documenting" the APE.

Section 800.4(b)

Comments recommended that the provisions of section 106 be extended only to properties formally determined eligible, and that this section should therefore be deleted. The Council disagrees. Both the Council and the Department of the Interior have interpreted the NHPA to require section 106 consideration of all properties that are listed on the Register, as well as all those that meet the criteria of eligibility on the National Register, regardless of whether a formal determination by the Keeper has been made. Well established Department of the Interior regulations regarding formal determinations of eligibility specifically acknowledge the appropriateness of section 106 consideration of properties that Federal agencies and SHPOs determine meet the National Register criteria. See 36 CFR 63.3. The NHPA specifically defines "historic properties" as those that are "included in, or eligible for inclusion on the National Register." 16 U.S.C. 470W(5). Not only does the statute allow this interpretation, but it is the only interpretation that reflects (1) the reality that not every single acre of land in this country has been surveyed for historic properties, and (2) the NHPA's intent to consider all properties of historic significance. It has been estimated that of the approximately 700 million acres under the jurisdiction or control of Federal agencies, more than 85 percent of these lands have not yet been investigated for historic properties. Even in investigated areas, more than half of identified properties have not been evaluated against the criteria of the National Register of Historic Places. These estimates represent only a part of the historic properties in the United States since the section 106 process affects properties both on Federal and non-Federal land. Finally, the fact that a property has never been considered by the Keeper neither diminishes its importance nor signifies that it lacks the characteristics that would qualify it for the National Register.

Rule should clarify that the section 106 process does not impose identification burdens upon the private applicant. Although identification obligations are placed on Federal agencies, in reality the burden is often passed on to the applicant through delays or conditioning the agency's decision until the applicant has funded the identification efforts. Federal agency ability to shift burden to applicant is dependent on that agency's independent authority. The section 106 rule does not confer such authority nor relieve Federal agencies of its duties. This may be an appropriate guidance topic to be developed.

Regulations fail to respect the National Register nomination and listing process and grant unbridled authority to impose section 106 requirements on properties already deemed ineligible. Properties that are determined ineligible are not subject to section 106 consideration. Revisiting eligibility determinations is encouraged on certain occasions, but not mandatory.

Any imputation of a new substantive duty under section 106 to discover unidentified properties is negated by the detailed provisions for the discovery of unknown properties contained elsewhere in NHPA. The Council disagrees. The obligation to identify during planning is different than coming across something during construction. Further obligation is limited in scope, duration and intensity. The "discovery" provisions of the NHPA do impose a continuing duty to survey and identify historic properties. See 16 U.S.C. 470h–2(2)(A). However, the reality is that such an effort has not reached every acre of land of this country that could be affected by a Federal undertaking, and the NHPA seeks to protect historic properties even if they had not been identified prior to the proposition of an undertaking. This is clearly reflected in the statute where it provides, for example, that agency procedures implementing the Council's section 106 rule would provide a process for identifying historic properties. 16 U.S.C. 470h–2(a)(2)(E)(ii). The NHPA would not contain this language if it believed the other, general surveying provisions were sufficient.

Since SHPOs are statutorily required to conduct comprehensive statewide surveys of historic properties (section 101(b)(3) of NHPA), Federal agencies and permit applicants should not have to be required to engage in field investigations or surveys. SHPOs should already know what historic properties exist. No. Agency obligation to "take into account" effects on historic properties necessarily places an affirmative duty to identify historic properties. The Council notes that the rule does not compel shifting of such agency burden to applicants. Also, please refer to the immediately preceding response.

Although proposed rule on its face may place identification efforts on Federal agencies, the reality is that these burdens are borne by applicants. This is usually done by delaying or conditioning the Federal decision until the applicant has funded the identification effort requested by the SHPO or Council. This tactic is improper and the rule should clarify that the process does not impose the burden upon applicants through either direct or indirect means, including delays. The rule does not compel shifting of this or other Federal agency burdens to applicants. Section 106 obligations lie with the Federal agency. Although Federal agencies may be requiring submissions, as a basis of accepting applications, this is not compelled by the rule.

Council only has authority to promulgate rules regarding section 106. Since section 106 does not address the identification of historic properties or evaluation of historic significance, the Council has no authority to regulate these activities. The duty to identify historic properties are placed upon Federal agencies, the Secretary of the Interior, and SHPOs under other sections of the NHPA (namely sections 101 and 110). The Council disagrees. The NHPA grants the Council the authority to promulgate regulations regarding section 106 "in its entirety." 16 U.S.C. 470s. It would be impossible for an agency to take into account the effects of its undertakings on historic properties (which include those listed on the Register, as well as those eligible for listing), as section 106 requires, if it does not know what those historic properties are in the first place. Accordingly, the identification and evaluation provisions of this rule are reasonable under the authority. Also, see response to comment above regarding ongoing identification duties.

This provision for phased identification and evaluation using an MOA is inconsistent with our prior understanding that an MOA should be used exclusively to stipulate mitigation measures for properties that have been identified and fully evaluated. With this change, why would an agency do a project specific PA? Phased identification acknowledges the reality

of large projects. A programmatic agreement may be an alternative, but this provision expands the flexibility of the rule.

Section 800.4(c)

This section should be revised to overcome the current perception that agencies are required to identify every single specific property that may be affected and study each sufficiently to apply the National Register criteria. This drives up the cost of S. 106 consultation, unnecessarily delays the process, discourages consideration of indirect and cumulative effects, and complicates coordination with NEPA. The provision for phased ID and evaluation helps, but § 800.4(a) should be revised to make it clear that it is permissible to address eligibility prospectively, and to focus on "types of properties" rather than to identify every single property. The phased identification provisions of the rule are intended to deal with this issue. The Council intends to provide guidance regarding phasing.

Section 800.4(c)(1) is misleading in stating that tribes have "special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them." Their expertise is not in applying the criteria of eligibility, it is in identifying some kinds of historic properties and in identifying effects that might not be apparent to others. The current wording sets up the tribes to overrule decisions made by agencies and SHPOs. The Council clarifies that tribal expertise is not in applying the eligibility criteria per se, but in bringing a special perspective to how a property possesses religious and cultural significance. This reflects the fact that such Tribes are particularly well placed to provide insights and information on those properties of religious and cultural significance to them. It is common sense to reach out to the Tribes regarding these issues.

Requiring eligibility determination from the Keeper when SHPO disagrees with Agency Official determination gives SHPO a veto over the project. The Keeper eligibility process is so lengthy that applicants have no alternative but to go along with the SHPO's position regarding time-sensitive projects. SHPO can delay projects simply by claiming not to have sufficient information. Department of the Interior regulations require a response from the Keeper within 45 days. Those regulations also recognize the concurrent Agency/SHPO determination scheme. See 36 CFR part 63. The section 106 rule does not encourage wrongful delays by any party. Cases where an abuse of the process is suspected can always be brought to the attention of the Federal agency conducting the review and/or the Council.

Proposed rule gives Tribes the de facto ability to designate any property to which they attach religious and cultural significance as a historic property. Tribes can then pressure the Agency Official to take their concerns into account above all others. Proposed rule effectively requires Federal agencies to defer to Indian tribes on what properties are reached by section 106, and give added (if not dispositive) weight to religious considerations in that determination. The Council disagrees. Properties of religious and cultural significance to Tribes must meet the National Register criteria in order to be considered "historic" and subject to section 106 consideration. The fact that a Tribe attaches religious and cultural significance to them does not make them "historic," but neither does it preclude them from meeting the National Register criteria. The Federal agency makes the determination of eligibility, and disputes are ultimately resolved by the Keeper based on the secular National Register criteria. The Tribe is consulted but, again, the ultimate decision in the case of a dispute with the Federal agency finding by a SHPO/THPO, is the Keeper.

The NHPA does not empower the Council to require Agency Officials to obtain a determination of eligibility from the Keeper. In fact the NHPA prohibits "any person or local government" from providing a nomination for inclusion of a property on the Register unless such property is located within a State where there is no SHPO. Moreover, this is redundant with 36 CFR part 63. There is no basis for requiring SHPO concurrence or agreement. Finally, the NHPA expressly prohibits the nomination of any historic property for the Register where the owner objects. 16 U.S.C. 470(a)(6). Such prohibition should be integrated into the proposed rule to reflect that when such objection is lodged with a Federal agency, they may terminate their section 106 review. The comment fails to realize that a determination of eligibility is not the same as a nomination/listing on the National Register. The Council also points out that under the NHPA, an owner's objection to a nomination/listing still can lead to the Secretary of the Interior determining the eligibility of the property. It should also be noted that this rule provides that an owner of an affected property can, and should be, invited as an additional consulting party in the section 106 process. See § 800.2(c)(6) of the rule. Finally, see responses above to the issue of Agency/SHPO concurrence determinations of eligibility.

Various comments comment suggested that in the last sentence, the word "special" should be changed to "unique" The Council disagreed. The word "unique" excludes everyone else and gives the incorrect impression that Tribes have the final word that cannot really be challenged by the Agency. Also, see response above regarding the need of properties of "religious and cultural significance" to Tribes to meet National Register criteria in order to be considered "historic."

Section 800.4(d)

The addition of a 30 day waiting period, even when no historic properties are identified, is unreasonable. Suggest that the waiting period after submission to SHPO/THPO be eliminated consistent with previous regulations. The Council disagreed. This period is necessary so the consulting parties and the Council can review the finding responsibly and object if appropriate. Such review also allows mistakes to be caught in time before they potentially lead to costly litigation.

Move this subsection under § 800.5 and re-title § 800.5 to "Assessment of Effects." The proposed change was rejected since these are outcomes of identification and effect assessments. However, the Council may draft guidance on the topic of assessment of effects.

Section 800.5(a)

A tribal comment stated that the exemption of properties of religious and cultural significance from the demolition by neglect provision (§ 800.5(a)(2)(vi)) is so broadly written that it could lead to the loss of National Register districts in pueblos and other Native communities. This provision had been added at the request of Indian tribes. It specifies that the exception only applies where neglect and deterioration are recognized qualities of the property. A further safety valve is that a "no adverse effect" determination is subjected to review by consulting parties (which would include Tribes that attach religious and cultural significance to the historic property at issue). See § 800.5(c). Lastly, the Council is not aware of this provision having been applied inappropriately or over the objections of Tribes.

Criteria of adverse effect too broad, and encompasses activities of benefit to the public. Accordingly, such activities are delayed. Examples of such activities are: reclamation of abandoned mines, creation of wetlands, "hazardous material remediation" (§ 800.5(a)(2)(ii)), rehabilitation of historic properties, and provision of handicapped access. Adverse effect criteria are linked specifically to objective National Register criteria published by the National Park Service, which are used to determine characteristics that contribute to a property's historic significance. If those characteristics are adversely affected, then the historic significance is impaired. It is noted that program alternatives under § 800.14 are intended to deal with repetitive or minimal impact situations. Finally, while the listed activities may be of benefit to the public, it does not necessarily follow that such positive activities could not also cause an adverse effect on historic properties. Again, all that the section 106 process requires is that such effects be taken into account. The section 106 process does not prohibit any projects, beneficial or otherwise.

Proposed rule uses impermissibly vague and overbroad terms, in violation of the Due Process Clause. Its definition of "adverse effects" includes those when an undertaking "may" alter "indirectly" "any" of the characteristics making the property eligible in a way that would diminish the integrity of the property's "feeling" or "association." Such definition does not give fair notice as to what it requires, and is not grounded on intelligible principles. This further complicates, expands, and lengthens the process, adding difficulties, costs and uncertainty. As stated above, adverse effect criteria are linked specifically to objective National Register criteria published by the National Park Service. The National Register criteria itself expands on the meaning of its terms and provides various examples. These criteria have been fleshed out through consideration and application countless times, over the years, since the program began, and explained through various guidance documents. For example, see National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation," which includes definitions of the terms "feeling" and "association."

Criteria of adverse effect should exclude "insignificant" transfers of property. De minimis transfers of property are being subjected to lengthy section 106 process. The rule provides for an avenue, under § 800.14(c), whereby the appropriate agency can pursue an exemption.

The criteria of Adverse Effect is devoid of any limitations on the proximity of an undertaking to a historic site, allowing the SHPO to be inconsistent and subjective when evaluating effects. The standard set forth under section 106 is effect, not proximity. While it is possible that distance separating an undertaking from a particular historic property may remove any effects, such a determination should be made on a case by case basis, and is not suitable for a generalization. Different undertakings simply have different areas of potential effects according to several factors such as the nature of the undertaking itself, the nature of the historic property at issue and topography.

The current and proposed rule do not take into account the fact the cumulative impact of adding a monopole to areas with modern intrusions would not be an adverse effect. The proposed rules, therefore, will lead to consultative gridlock as the expansion of wireless services continues. This and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. These discussions commenced before the present rulemaking process. Such ongoing discussions are referred hereinafter as "Telecommunications Working Group."

Section 800.5(b)

Final decision regarding adverse effects is charged on the Agency Official. Council has no authority to impose its determination on this matter. Council may comment on the issue, but the final decision is to be made by the Agency Official. The Council has used its expertise in setting up the criteria of adverse effects on this rule. It therefore has a justifiable role and the expertise in ensuring the correct interpretation of its rule. Section 800.7 of the rule is clear in stating that the Agency Official can terminate consultation on ways to avoid, minimize or mitigate adverse effects, and request Council comments. The Agency Official can then proceed with its undertaking in any way it wants, after taking the Council's expert comments into account.

There is no basis for mandating consultation regarding adverse effects. To the extent that other sections of the NHPA require Agency Official consultation with the SHPO, these provisions are not to be implemented by section 106 regulations of the Council. The Council believes this consultation is reasonable and necessary in that it provides the Federal agency with the information and considerations needed for it to take into account the effects of its undertakings on historic properties. Consulting parties are defined in such a way as to ensure they have the necessary interest and competence in informing Federal agency decisions on historic properties. As elsewhere in the process, consultation ensures that correct and informed decisions are made and that mistakes are not overlooked. See response regarding legal authority, below.

To address agreements like Community Development Block Grant (CDBG) Programmatic Agreements, the Council should add language which recognizes situations where the specific details of future activities are unknown and the consulting parties agree that adverse effects will be avoided through review and standard mitigation measures. Such language can, and many times is, used and provided for in the Programmatic Agreements themselves. There is no need to add this language to the process under the rule to reach such agreements. As stated before, the Council has revised the rule to provide for prototype agreements, which could be particularly helpful in the CDBG context.

Section 800.5(c)

Proposed rule gives Tribes power to require further analysis (and therefore delay) under the process whenever they attach religious or cultural significance to a property. Tribes are provided the same consultative opportunities to review an agency's findings that other consulting parties are provided. The rule only encourages, but clearly does not require, the agency to reach such concurrence. See response above to comments regarding properties of "cultural and religious significance." Also see section 101(d)(6)(B) of the NHPA.

Subsection (c)(1) is directly contrary to NHPA since NHPA only requires documentation when an adverse effect is found. 16 U.S.C. 470(l). This comment misreads the statute. Section 110(l) of the NHPA simply indicates that when no solution to adverse effects is reached and embodied in an agreement in accordance with this rule, the Federal agency must document its decision after considering Council comment. This is completely different than providing the documentation necessary for reviewers to understand agency decisions in the normal section 106 process, which is reasonable and not precluded by anything in the statute.

Subsection (c)(2) must clarify that a finding of adverse effect does not require consultation under section 106. The Council is provided a reasonable opportunity to comment under section 106. The Council disagrees. Section 110(l) of the NHPA explicitly indicates its blessing of the Memorandum of Agreement consultation concept when it states that when no such solution is reached in accordance with this rule, then the agency head must document its decision after considering Council comment. Furthermore, the rule clearly states that once a Federal agency has entered into such consultation, it can terminate and proceed to Council comment.

Regarding § 800.5(c)(2)(i), anytime a consulting party objects to a finding, the Federal agency should notify all consulting parties and consult again with all parties prior to seeking consultation with the Council. Regarding 5(c)(3), the Council should also notify all consulting parties of its determination. Regarding the § 800.5(c)(2)(i) point, the Council clarifies that if consultation with the objecting party leads to changes affecting other parties, the Agency should go back to them. The Council also notes that it would notify all consulting parties regarding its § 800.5(c)(3) determination.

Section 800.6(a)

The regulations grant an unconstrained authority to require mitigation to avoid adverse effects with no constraints on cost and without requiring any nexus between the mitigation and actual adverse effect. Comment is incorrect. The agency can, based on the applicant's position, refuse any mitigation measures and terminate consultation. Furthermore, the rule is quite clear in that the consultation that may lead to an agreement is to avoid, minimize or mitigate the adverse effects on the historic properties.

Rules should provide that any Adverse Effect comment should include recommendations and core criteria for mitigation to reduce the effects to No Adverse Effect. While this is permissible, the Council believed the rule should not require it as a duty of SHPO/THPO at the determination of adverse effect step. Review at that point is intended to focus on identifying whether adverse effects exist, and not to provide a full range of mitigation options.

Section 800.6(b)

Proposed rule inappropriately attempts to require parties to sign an MOA to avoid additional delays from Council comment on the undertaking. Federal Register Council has no authority to require execution of a binding contractual agreement of any kind. Section 110(l) does not mean that the Council may compel the use of MOAs. This is beyond Council authority and must be deleted from the rule. The rule does not require or compel execution of an MOA. Furthermore, section 110(l) of the NHPA explicitly indicates its endorsement of the Memorandum of Agreement (MOA) consultation concept when it states that (1) when no such solution is reached in accordance with this rule, then the agency head must document its decision after considering Council comment, and (2) when such an agreement is reached, it shall govern the undertaking and all its parts.

There is no specific time period for Council review of a MOA when Council is participating in consultation which can significantly lengthen the section 106 compliance process. Regulatory time limits or guidelines (30–45 days) should be promulgated. Similarly, there is no review time specified for Council response to the submission of an executed MOA. Recommend time limit or guidelines of 30 days. The Council consults regarding MOAs but does not "review" them. The Council does not review executed MOAs, so there are no delays of agency action.

Section 800.6(c)

Several comments requested changes to the rule to clarify the issue of invited signatories. The Council agreed that this section needed to be changed. The changes to the rule indicate that the Agency Official is the one that ultimately decides who is an invited signatory, and that the rights to seek amendment or termination of an MOA attach to those that actually sign the MOA.

A comment regarding 36 CFR 800.6(c)(2)(I) supported retention of the permissive "may" in allowing agency to invite an Indian Tribe or Native Hawaiian organization to become a signatory to a MOA, but would find a language such as "should" or "shall" to be unacceptable. Several tribal comments, on the other hand, requested that the tribes be given a signatory right. This was a major issue during the development of the 1999 rule. After careful consideration, the Administration made a policy decision that is reflected in the proposed rule. Indian tribes are not mandatory signatories to an MOA dealing with effects on historic properties off tribal lands. The Council has no new evidence to support changing that position.

SHPOs are given broad discretion to determine appropriate mitigation for an MOA, resulting in the process being unregulated. This comment is incorrect. The Federal agency has the discretion to agree or disagree with SHPO/THPO views regarding an MOA. When an agreement is not reached, the agency goes for Council comment to wrap up the process.

Section 800.7(c)

There is no authority for the Council to dictate to Federal agencies how they consider Council comments, how they document or prepare records of decisions, nor how or whether they notify the public, nor require the agency to provide the Council with the decision prior to approving the undertaking. The NHPA specifically grants the Council the authority to promulgate rules to implement section 106 in its entirety. Section 106 requires Federal agencies to give the Council a reasonable opportunity to comment. Section 110(l) of the NHPA explicitly requires the Federal agency to document its decision made pursuant to section 106. The Council is well within its authority to implement these requirements and determine how such opportunity is provided the Council, and how the required documentation is provided.

Time for Council comment should be limited to 30 days, and the Agency Official could decide to grant an extension if it so desired. The Council believes the 45 day comment period is reasonable, takes into account the reality of staff and Council workload and need for adequate consideration, and reflects a shorter time period than previous rules (the section 106 rule adopted in 1986 set a 60 day period).

Section 800.8(a)

Rule contravenes NEPA by seeking to require processing under NEPA of undertakings that have no significant or no adverse impact on historic properties. The Council emphasizes that the rule clearly does not require NEPA processing for anything. That is something the Federal agency must decide independently.

Rule contravenes NEPA in that it undermines the categorical exclusion provisions of NEPA by requiring section 106 processing for all categorically excluded Federal actions and failing to provide a compatible process for excluding from section 106 those actions that have small or insignificant impacts, thus causing waste of enormous public and private compliance resources struggling with the least measurable and least important Federal actions. The statement is incorrect. Section 106 of the NHPA covers "undertakings" regardless of NEPA categorical exclusions. The NHPA and NEPA are independent statutes with separate obligations for Federal agencies. Furthermore, § 800.14(c) provides for a way that agencies can request and obtain exemptions.

Section 800.8(c)

Comments suggested need for guidance to facilitate use of provisions allowing substitution of NEPA for section 106 process. The Council is committed to develop such guidance and assist Federal agencies that desire to follow these provisions of the rule.

Any integration of the NEPA process with section 106 should allow EAs as well as EISs to constitute full compliance with section 106. Section 800.8(c) of the rule allows just that when certain reasonable standards are met. Those standards ensure that historic properties are taken into account in a manner consistent with the NHPA.

Council has no authority to prescribe rules regulating Federal agencies' use of NEPA to comply with section 106. Such an approach was rejected during the 1992 amendments. The Council notes that the NEPA coordination provisions of this rule only apply when the Federal agency independently chooses NEPA documents/process to substitute for the regular section 106 process that they would have had to follow otherwise. The Council has the authority to set conditions for an agency to substitute another process for the Council's government-wide rule.

Requirement that the NEPA documents include mitigation measures should be deleted. The Supreme Court has stated repeatedly that NEPA mandates that mitigation measures be discussed, but that there is no requirement that a detailed mitigation plan be adopted. The Council has no authority to attach such a requirement to the NEPA process. Again, the NEPA/106 substitution provisions of this rule apply only when the NEPA process is used to substitute regular section 106 process that the Federal agency would have had to follow otherwise. Nothing in the rule requires adoption of mitigation measures since the option of getting formal Council comments instead is still available.

Section 800.9(a)

It is not the responsibility of the Council to decide whether or not their procedures have been followed regarding Agency determinations. The only Council right is to expect a reasonable opportunity to comment and that its comments will be considered before the agency proceeds with the undertaking. The rule makes it clear that this is not a binding "decision" by the Council, but an advisory opinion (see section 202 of the NHPA). The Council, as the agency promulgating the section 106 rule, has the specific expertise and interest in opining as to whether its rule has been correctly followed.

Section 800.9(b)

The process in § 800.9(b) regarding the Council's determination of a foreclosure lies outside of the Council's authority. A finding of foreclosure is an advisory opinion within the Council's authority (see Section 202 of the NHPA). The Council, as the agency promulgating the section 106 rule, has the specific expertise and interest in opining as to whether its rule has been correctly followed.

Section 800.9(c)

Comments questioned the statutory authority for Council to promulgate regulations implementing section 110(k) of the NHPA. Section 211 of the NHPA authorizes the Council to promulgate regulations to implement section 106 in its entirety. Section 110(k) directly relates to the section 106 and what an agency must do when an applicant's actions may have precluded section 106 review. Moreover, section 110(k) specifies a requirement that the Council be consulted. The rule simply re-states Section 110(k), sets forth how the Council will be consulted, and reminds agencies of their further section 106 responsibilities.

Section 800.9(d)

Council's assertion, under § 800.9(d)(2), that it can participate in individual case reviews, however it deems appropriate, finds no support in any section of the NHPA and should be deleted. The Council changed the rule in response to this comment. The change expressly limits the role of the Council in such reviews to accord with the role already given to the Council under subpart B and parallel to that of SHPO/THPOs.

Section 800.10

A comment questioned the statutory authority for Council to promulgate regulations implementing Section 110 of the NHPA. Section 211 of the NHPA authorizes the Council to promulgate regulations to implement section 106 in its entirety. The Council notes that undertakings affecting National Historical Landmarks (NHLs) are subject to section 106 review. NHLs are "historic properties" listed on the National Register. The provisions of § 800.10 lay out how the Council may participate in the section 106 review of these particularly important historic properties, how the Council may request a report from the Secretary of the Interior pursuant to section 213 of the NHPA, and how the Council will provide a report to the Secretary on the outcome of the consultation.

Section 800.11(a)

NHPA section 470k limits the substance and extent of any documentation requirement dependent upon each Federal agency's authority and funding; therefore the proposed § 800.11 should be revised to clarify that the rules' documentation requirements are not mandatory but are recommended guidelines consistent with NHPA 470k and the Council's advisory role. To better comport with statutory language, § 800.11 was changed by adding language that clarifies that documentation requirements are mandatory but limited "to the extent permitted by law and within available funds." 16 U.S.C. 470k. The documentation provisions remain mandatory since the Council and other reviewers simply cannot comment without a basis, which can only be provided by adequate documents. The Council believes that the document requirements are not only minimal, but should be readily available to any agency as its record supporting its decisions in the process.

When a documentation dispute is presented to the Council, it must be resolved in a timely manner. When documentation disputes are referred to the Council, the Council is committed to expeditiously providing a resolution to them. The resolution provided by the Council will include guidance as to when the relevant party should complete their review of the finding or determination at issue—taking into account how long the party disputing the documentation has had the documentation, particularly in cases where such documentation is deemed by the Council to have been adequate.

Documentation standards are extremely broad, and likely to create confusion. Specific standards should be included that reference and adopt, at a minimum, documentation sufficient to satisfy the definition of "sacred site" in EO 13007 ("any specific, discrete, narrowly delineated location on Federal land that is identified by" an authoritative Indian tribal source). Documentation standards are

adequately specific and far more specific than those of past regulations. The matter about defining "sacred sites" is better handled through guidance. Nevertheless, the Council clarifies once more that sites, sacred or otherwise, must meet the National Register criteria in order to be considered in the section 106 process.

Questions statutory authority for Council to impose extensive documentation requirements. Section 110(l) of the NHPA requires agencies to document their section 106 decisions, but does not authorize Council to elaborate. Section 203 of the NHPA authorizes the Council to obtain information from Federal agencies, but does not require those agencies to provide the information. Section 203 of the NHPA would be meaningless if it authorized the Council to obtain documents from Federal agencies, but did not require such agencies to comply according to the law. Furthermore, the Council is within its statutory authority to promulgate regulations implementing section 106 in its entirety, in setting the rule's reasonable documentation requirements. Documenting decisions not only assures meaningful compliance with the requirement to take into account effects to historic properties, but it produces the necessary information for consulting parties to assist the Federal agency in meeting its duties. Furthermore, the Council would not have a reasonable opportunity to comment on an undertaking without having adequate documentation on the undertaking and relevant historic properties, as provided in this section of the rule.

Section 800.11(c)

It is too cumbersome for the agency to be required to consult the Secretary of the Interior and the Council every time it wishes to withhold information under this provision. This consultative process is set forth and mandated by section 304 of the NHPA. The rule simply outlines a reasonable process for the Council participation required by section 304.

Regarding § 800.11(c)(2), the Agency official should also submit to Council the views of SHPO regarding the confidentiality of information. The Council agreed and changed the rule to reflect this. SHPOs views as to confidentiality and harm to resources are relevant, and confidentiality is not limited to tribal issues.

Section 800.11(d)

Documentation level for a finding of no Historic Properties Affected is unreasonable. The Council believes the level of documentation is more than reasonable, if not minimal, since the agency should already have the listed documentation readily on hand in order to have been able to reach such a decision.

Section 800.11(e)

Section 800.11(e)(5) should require that each criteria of adverse effect be explained, whether found applicable or inapplicable, to ensure consistency in agency documentation. The Council disagreed with this proposal. Many criteria may have no relevance whatsoever to a particular project. Nevertheless, the Council believes some guidance may be warranted in the future to promote consistency in agency documentation.

Section 800.12(a)

It is not clear how the regulations apply during rehabilitation work, monitoring the emergency from a cultural resources perspective, or when to implement the regulations during emergency situations. The Council believes the rules are clear that the emergency provisions are triggered when an agency proposes an emergency undertaking in response to a declared disaster. The provisions require notification and a seven day review period.

Section 800.12(d)

Implementation time for emergency procedures should be extended from 30 days for a formally declared event to 90 days in order to allow for limited agency resources to adequately address all the issues that arise from a disaster related event. The longer an implementation time is extended, the lesser the justification for emergency, abbreviated procedures. Furthermore, the rule already allows requests for extensions of time when needed. The Council has not declined any such extension requests.

Section 800.13(b)

Agencies often do not often want to assume a new find to be National Register eligible. To address this, the comment offered a proposed change. The Council believed the suggested concept was useful and incorporated changes to the rule. The changes state that the subject of eligibility can be raised (and be considered by agency) in comments. As explained above, section 106 applies to those properties listed or eligible for listing on the National Register. This change acknowledges the importance of National Register eligibility at this point.

Section 800.13(b)(2) should be removed for the same reason that the data recovery exemption was removed from the 86 regulations. The Council disagreed. A short cut for these post-review discoveries of archaeological resources of value only for their data is necessary. The Council believes that tribal involvement will provide an adequate safeguard.

Section 800.14

The program alternative provisions are too rigid, intimidating and difficult to apply and create a one-size-fits all approach. The revised regulations should make this provision more useful so that it can be applied more productively to Federal agencies and industry. What the alternatives under § 800.14 do is to provide vehicles to tailor the section 106 process to the particular needs of each agency, agency program or group of undertakings. While the intent is to provide such flexibility in the final product, it is still essential to maintain the role of the public, preservation officers and other stakeholders in providing necessary input in shaping those products.

Section 800.14(a)

Include a provision for Council monitoring and evaluation of whether Federal agency program alternatives are working or not. Council monitoring of program alternatives should be on a regular basis, including, but not limited to, how agencies implement the "exempted categories" projects. Also, add a provision for the Council to publish a list of acceptable Federal Agency alternative programs and make them available to the public. Monitoring measures would be included, as appropriate, in the alternatives' agreements themselves. Regarding a list of Council approved alternatives, the Council does not need a change to its rule to publish such a list.

Since agency must submit any proposed alternate procedures for review by Council and NCSHPO, requirement for publication in the Federal Register should be eliminated. The Council disagrees. Federal Register notice of final adoption of these alternatives is needed to notify the public as to these changes in how Federal agencies comply with section 106.

Regarding all of § 800.14, the Council is granted no rights under the NHPA to be consulted with about Federal agency development of their procedures. Section 110(a)(2) requires consultation with the Secretary of the Interior, but not with the Council. Federal agencies may find consultation with the Council desirable, but it is not required by the statute. The comment simply misreads section 110(a)(2) of the NHPA. That section deals with non-binding procedures that agencies may use to implement the Council's binding, section 106 regulations under 36 CFR part 800. The alternatives under section 800.14 directly modify or substitute for the Council's binding regulations regarding certain programs or undertakings, and therefore require our direct involvement. The Council believes it has the internal experience and expertise to make such evaluations. Also, the diversity of its membership ensures that a balanced perspective is brought to final determinations regarding consistency. Section 211 of the NHPA states that the Council "is authorized to promulgate such rules and regulations as it deems necessary to govern implementation of section 106 * * * in its entirety." Section 110(a)(2) of the NHPA states that the "(Federal agency historic preservation) *program[s]* shall ensure * * * that the agency's procedures for compliance with section 106 * * * are consistent with regulations issued by the Council * * *" (emphasis added). It must be understood, among other things and upon closer examination, that section 110 of the NHPA does not specifically provide for Federal agencies to substitute their programs for the section 106 regulations promulgated by the Council. Through § 800.14 of the rule, the Council is allowing for such substitution, believing this may help agencies in their section 106 compliance. However, the Council will not allow such substitution if the agency procedures are inconsistent with the Council's 106 regulations. The Council, in its expertise, holds that its regulations correctly implement section 106, and that it would therefore be inimical to its mandate and contrary to the spirit and letter of section 100(a)(2)(E) of the NHPA, for the Council to allow inconsistent procedures to substitute the Council's section 106 regulations.

The Council should seek the views of affected SHPOs and notify them of final adoption when an Indian tribe enters into an agreement with the Council to substitute tribal regulations for Council regs. The Council notes that section 101(d)(5) of NHPA already requires such consultation with the affected SHPO, and that the Council would obviously notify such affected SHPO as to a final substitution.

Section 800.14(b)

These regulations require more steps, more paperwork, and therefore more time to process routine CDBG Programmatic Agreements. Under the new regulations, the Council must participate more actively in these highly routine and repetitive agreements; and the Council treats the activities covered by CDBG agreements as "adverse effects." We request Council reconsider its procedures for routine PAs. In response to this comment, the Council agreed to provide a new procedure for routine Programmatic Agreements. See § 800.14(b)(4).

It is not clear that Programmatic Agreements under § 800.14(b)(3) are developed by an agency official in consultation with the SHPO. Additional guidance is needed beyond simply referencing § 800.6. The Council notes that the SHPO and other consulting parties must be consulted, just as they would be consulted for a Memorandum of Agreement under § 800.6.

Section 800.14(c)

The Council should modify the proposed rule to accommodate and promote voluntary habitat conservation efforts under the ESA. It should establish as an "exempted category", exempting from section 106 review, all voluntary incidental take and enhancement of survival permits issued by either FWS or NMFS under section 10 of the ESA. Also, approval of and voluntary participation in a "take limitation" or exemption created under a special conservation rule adopted by either the FWS or NMFS under section 4(d) of the ESA should also be exempted from NHPA review. These and other specific alternatives and exemptions recommended by the commenting public should be decided after the appropriate § 800.14 process is followed, and not through the rulemaking itself. The Council encourages Federal agencies to submit proposed exemptions and other alternatives.

Under § 800.14(c)(5), the Agency Official should submit the views of SHPO/THPO to the Council along with the other required documentation. The Council should also notify SHPO/THPO of the Council decision. In § 800.14(c)(7), SHPO's and others should be able to request that the Council review an Agency's activities to determine if the exemption no longer meets the criteria. The Council decided to change this section to explicitly add SHPO/THPO comments to those that need to be submitted. The Council assures the commenting public that it will notify SHPO/THPOs of final decisions regarding exemption decisions. Finally, the Council notes that anyone can request the Council to conduct a review of a program alternative without need of amendment to the rule.

Section 800.14(f)

Requiring comment from all Indian tribes is unnecessarily broad. Section 800.14(f)(1) should be amended so as to provide an appropriate government-to-government consultation with affected Indian tribes and consultation with Native Hawaiian organizations when a nationwide Programmatic Agreement is being developed, adding language to the effect that "when a proposed program alternative has nationwide applicability, the Agency Official shall identify an appropriate government-to-government consultation with Indian tribes and consultation with Native Hawaiian organizations." The Council agreed with the concept and rationale of the proposed change. It therefore added language to § 800.14(f) regarding tribal consultation for nationwide agreements, while honoring the underlying intent of meaningful consultation with Indian tribes and Native Hawaiian organizations.

Section 800.16(d)

Rule is unclear, and allows area of potential effect for a one acre wetland permit, to encompass entire development site (which could be over one hundred acres). The area of potential effects should be the one acre of wetland. Vagueness of rule leaves applicants vulnerable to high costs and long permit delays. The issue of area of potential effects and wetlands permits is one that needs to be worked out between the Council and the Corps of Engineers. The Council notes that section 106 requires Federal agencies to take into account the effects of undertakings on historic properties. An undertaking is defined by the statute to include a "*project* (or) activity * * * requiring a Federal permit, license or approval." The effects to be considered are those of the "project" that required the permit. Moreover, in most instances the effects of projects are felt by historic properties beyond the immediate footprint of a project. To illustrate, a historic property whose integrity would be affected by increased noise is affected even though it is not itself located on the site of the source of that noise. The Federal agency must take into account such effects. Having said this, the Council understands the need for guidance on the subject of establishing areas of potential effects regarding the

particular concerns reflected in this comment and others. The Council will be developing such guidance.

Definition of APE is too broad, adding expense for surveys (usually borne by applicants), and unlawfully encompassing private or State lands. See answer above. Also, section 106 requires Federal agencies to take into account effects on historic properties regardless of whether they are located in private or public lands.

Section 800.16(e)

To the extent the Council seeks to prescribe a role for SHPOs, this definition should include in the alternative the comments of the SHPO. The comment is incorrect. The term "comment," as use on the rule, means the formal comments by the Council. The SHPO is never entrusted with that responsibility. The SHPO role through the process comes from its assistance responsibilities in the section 106 process (see section 101(b) of the NHPA).

Section 800.16(I)

The definition of effect should be consistent with language used to define area of potential effect (§ 800.16(d)) and the criteria of adverse effect (§ 800,5(a)(1)). The Council agreed and, for consistency, changed the rule so that the "alterations" is used for both definitions.

Section 800.16(w)

Several comments requested the Council to revise the rule to distinguish between section 101(d)(2), NPS approved THPOs and non-101(d)(2) tribes. They strongly recommend that different terms be used for these two types of tribes in order to more clearly reflect their different authorities on tribal lands. The Council agreed and changed the rule accordingly. In summary, the Council (1) deleted the reference to non-101(d)(2) tribes from the definition of "THPOs" on this section of the rule, and (2) revised the language regarding these consulting parties under section of § 800.2(c).

Section 800.16(x)

A definition of "dependent Indian communities" for the purposes of this regulation is needed. Folks need a legal definition from the Council. The Council used the definition of Indian tribes provided by the statute. The Council will bring this issue to the attention of the Department of the Interior and work on clarification.

Section 800.16(y)

The term "undertaking" needs to be better defined within the regulation so as to clearly eliminate actions with no potential to affect historic properties. Section 800.3(a)(1) provides at the beginning of the process that Federal agencies have no further section 106 responsibilities if the undertaking is not a type of activity that has the potential to affect historic properties.

Various comments requested in different forms that the Council should clarify that Federal funding is a condition precedent to the application of the section 106 process. The Council notes that there is case law supporting that position as well as case law stating that funding is not a prerequisite. The Council has maintained the statutory definition of "undertaking," verbatim, in the regulations. The Agency Official is responsible, in accordance with § 800.3(a), for making the determination as to whether a proposed Federal action is an undertaking. As appropriate, an agency should examine the nature of its Federal involvement taking into consideration factors such as the degree of Federal agency control or discretion; the type of Federal involvement or link to the action; and whether or not the action could move forward without Federal involvement. An agency should seek the advice of the Council when uncertain about whether or not its action falls within the definition of an undertaking.

Do not want incidental take permits (ITPs) under the Endangered Species Act to be subject to section 106 review. As stated before, the Council notes that this and other specific alternatives and exemptions should be decided after the appropriate § 800.14 process is followed and not through rulemaking itself. The Council encourages Federal agencies to submit proposed exemptions and other alternatives.

Various comments argued in various forms that Surface Mining Control and Reclamation Act (SMCRA) permits issued by States, after Office of Surface Mining (OSM) delegation of the program, are not subject to the section 106 process. The Council believes that it is the responsibility of the Federal agency, rather than the State, to comply with section 106. The Council intends to continue working with OSM to develop and finalize a solution to this issue.

The proposed rule does not apply to the siting of wireless facilities, since the construction of communications towers does not constitute a Federal undertaking. As stated before, this and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. These discussions commenced before the present rulemaking process. Such ongoing discussions are referred hereinafter as "Telecommunications Working Group."

Appendix A

Various comments stated that Council participation in consultation should be mandatory when requested by a tribe, particularly because tribes are not mandatory signatories off tribal lands. The Council disagreed. The Council needs to retain discretion, just as it has in any other Section 106 reviews. Such discretion is necessary not only to allow the Council to manage its limited resources, but also to further encourage the goal of Agency and SHPO/THPO independence in the process. We have no evidence that this discretion is not being exercised appropriately.

The Council should change its rule to allow it to comment on the most important cases, involving the SHPOs/THPOs in an advisory capacity, not a managerial role. The Council believes the rule accomplishes this. Under the rule, the Council only gets involved in some of the cases meeting Appendix A criteria. The rule requires the Council to explain how such criteria is met before entering consultation, and provides SHPOs/THPOs with an advisory role.

General Consultation

THE COUNCIL'S "HANDBOOK ON TREATMENT OF ARCHAEOLOGICAL PROPERTIES" IS WOEFULLY OUT OF DATE AND SHOULD BE UPDATED AS SOON AS POSSIBLE. ALSO "PREPARING AGREEMENT DOCUMENTS" SHOULD BE REVISED TO REFLECT THE CHANGES IN THE NEW REGULATIONS. THE COUNCIL SHOULD ALSO EXPLORE ESTABLISHING PEER REVIEW SYSTEMS IN RESOLVING DISPUTES THAT INVOLVE THE IDENTIFICATION, EVALUATION AND/OR TREATMENT OF ARCHAEOLOGICAL SITES. The Council agrees that the mentioned documents should be updated. Regarding the establishment of peer review systems, such an option could be explored.

Overly burdensome consultation requirements. Commenter cites seven different points of notification or consultation even when there are no historic properties present, and a dozen or more if there should be historic properties, resulting in unnecessary delays for thousands of routine projects. The commenter estimates that implementation and documentation of the numerous consultation points requires ¼ to ½ FTE on every National Forest in the Southwest. The rule provides for ways to tailor the process. The Council notes that a Programmatic Agreement under Section 800.14 should be suggested to the Forest Service. Such Programmatic Agreements have proved effective in the past in further streamlining and fitting the section 106 process to the particular needs of agency programs. The comment also raised an issue on the number of consultation points for situations where there are no historic properties affected. Consultation is necessary for an agency to learn whether historic properties are present or not, and then whether and how those present would be affected. Section 106, again, requires the effects of undertakings on historic properties be taken into account. For that to happen, there has to be a process for identifying the properties and assessing the effects on such properties. As stated before, Section 800.14 presents several options an agency can pursue to advance an alternative way of complying with Section 106 which better fits the realities of their particular programs.

Some SHPO's have attempted to implement the Council's proposed Part 800 rules by treating the regulations as a springboard for additional, mandatory compliance steps and unreasonable documentation requirements that only serve to delay the review process. Clarify that SHPO's must follow proposed part 800's regulatory deadlines. Please refer to earlier responses regarding the 30 day time limits, above.

Proposed rules discourage SHPOs/THPOs from consulting with private sector companies and individuals seeking consultation regarding their projects. Government to government consultation if invoked by Tribes may prevent historic preservation matters from receiving their full consideration. As stated before, the rule has been changed to facilitate Federal agency authorizations for applicants to initiate the section 106 process. Government-to-government relationships between the Federal Government and Tribes is based on Presidential Memoranda, Executive Order 13084, treaties, and statutes. Furthermore, the Council believes that consultation with Tribes assures full consideration regarding historic properties on tribal lands or of significance to tribes.

Numerous provisions of proposed rule attempt to confer upon SHPO consultation, agreement (i.e., concurrence) or virtual veto powers. Section 106 does not mention any role for the SHPOs, let alone a requirement that the SHPO concur in agency determinations. SHPO's responsibilities, like the Council, are to assist and to advise. Proposed rule confers unauthorized powers on SHPOs and the Council, and result in additional administrative requirements and delays. The SHPO's role is limited in the rule to consulting and advising, based in their responsibilities pursuant to section 101(b)(3) of the NHPA. When a step calls for concurrence, SHPO concurrence can end the process from further evaluation. When the SHPO does not concur, a project is not vetoed; rather, the Federal agency is moved to the next, logical step in the process. Nothing in the rule gives anyone veto power over an undertaking. The Federal agency ultimately decides by itself what to do with the undertaking, once it has complied with its Section 106 responsibilities.

Council should confirm that SHPOs have no legal authority over private parties. Neither the Council nor this rule gives SHPOs the legal authority to require any action from private parties.

Nothing in the NHPA requires that every party that finds preservation to be interesting to be given a formal role in the section 106 process, with the ability to delay or derail Federal undertakings. The Council agrees, and believes that the rule reflects that regarding who are consulting parties and how the Federal agency can control who becomes an additional consulting party.

Proposed rules provide a mechanism for a Federal agency to proceed over the objections of SHPO/THPO or without an MOA, however, the Federal agency and its regulatees would have already paid a steep price for their efforts through project delays, duplicative legal reviews and other expenses associated with earlier consultation with SHPOs, THPOs, and ACHP. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment. Just as with NEPA and other laws, Federal agency compliance with such obligations necessarily requires effort and time. Through various methods, such as time limits and program alternatives (which give Federal agencies the tools to further streamline and adapt the process to their needs), the Council has provided for cutting down such compliance costs.

Federal agencies often have no cultural resources expertise and therefore rely on SHPO to make findings for them. Although Council staff has urged SHPO offices not to be forced into this position, it is just too much work to get agencies to obtain the necessary expertise. This is an important program issue, but not a regulatory one. The Council and the National Park Service should work with agencies in this area.

Additional guidance may be needed to further clarify the roles of participating parties in the consultation process. The Council agrees that such guidance should be developed.

The length of the comment periods are well founded and prudent because they insures that the parties respond in a timely manner. The rule also clarifies and emphasizes opportunities for Tribes, Native American organizations, and the interested public to participate in consultation. The Council agrees.

General Negative

The regulations have strayed from the consultation and advisory process envisioned by Congress for "nationally significant historic sites." It is evidenced by Congress' enactment of section 101(a) of the NHPA that a site does not have to be of "national" significance in order to meet National Register criteria and be considered under section 106 review (sites of State or local significance can meet the criteria as well).

Section 106 process is unnecessary because it duplicates an existing local zoning review/approval process for radio towers (a process that considers the impact that proposed towers might have on nearby historic properties). Therefore, it imposes unnecessary costs on carriers, and those costs are invariably passed on to the consumers. Congress has determined that local governments—not the Federal Government—should resolve such issues as the location, height and design of communications facilities. While certain local zoning measures may address historic preservation concerns, Federal agency undertakings are still subject to section 106. The NHPA does not relieve them of this duty. As stated before, this and several other issues mentioned by the telecommunications industry in this rulemaking process have been or are in the process of being addressed through ongoing discussions with the industry, the FCC and SHPOs. One objective of this exercise is to better coordinate Federal and local review processes. These discussions commenced before the present rulemaking process.

Instead of imposing overly-detailed proscriptive regulations that are difficult to understand and enforce, the Council should work with agencies and others to develop incentive programs that encourage innovative and effective

protection and preservation procedures. These could encourage compliance much more efficiently than the present enforcement model. This can be done pursuant to the program alternatives under § 800.14 of the rule.

Council should suspend this rulemaking, and develop a new rule that contains: (1) Procedures that the Federal and State agencies can process and apply; (2) provisions that assign burdens and responsibilities that non-Federal entities can understand and reasonably support; and (3) an approach to preservation that equitably apportions responsibility and cost, and provides positive incentives for compliance. The Council believes the rule presents reasonable procedures that Federal agencies can process and apply. The vast majority of the thousands of section 106 reviews under the current and past rules have been conducted and concluded by Federal agencies without serious problems. The fact that disagreements sometimes arise regarding certain findings and determinations does not mean the process cannot be applied but, rather, reflects that it is being applied correctly. Disagreements and working out solutions is simply a part of a consultative process. The Council notes that, like section 106 itself, the rule only place requirements on Federal agencies. The incentive for Federal agency compliance, beyond meeting legal obligations set by the NHPA, is the furtherance of the historic preservation policies of the Federal Government, as expressed in the NHPA.

I do not think that the 1999 regulations have resulted in, or will in the foreseeable future result in, much streamlining of the process. The reduction in Council involvement has created a void. SHPOs do not carry sufficient respect to fill that authority void. I recommend that the regulations require the Council be notified as soon as either the Agency official or the SHPO expresses an opinion that an effect will be adverse; and that the Council be a signatory to all MOAs and PAs. The notification requirement is already in the rule (see § 800.6(a)(1)). The Council will not become a signatory to all MOAs, since a decision has been made to streamline the process by relying more on the Federal agency and SHPO/THPO for routine cases.

General Positive

General positive comments are summarized below, without a Council response beyond stating its agreement.

A comment asked that the Council refrain from further restricting public participation or "other consulting party" involvement in any way. It also ask, that the Council not vest any further authority in the SHPO or reduce the involvement of SHPOs, THPOs, and other consulting parties in agency decision making.

Other comments stated that: (1) the elimination of the distinction between "no historic properties" and "no effect" was a move in the right direction; (2) the rule is working well and that positive responses by certain Federal agencies had been noted; (3) the rule is very specific and provides sound guidance for federal agencies and other parties; (4) the rule clearly establishes the roles and responsibilities of the parties; (4) the rule works well and provides an efficient framework for the administration of the Act; (5) project review has been streamlined by reducing the need for Council review; (6) the rule is operating well, has appropriately defined the role of Federal agencies as the responsible party for section 106 compliance, achieves the objective of streamlining the process, and incorporates changes enacted in the 1992 amendments; (7) Federal agencies are beginning to assume their appropriate role as the lead in the process, and the Council can focus on difficult cases and problem agencies; (8) the rules are an improvement over the 1986 regs; (9) the rule offers a constructive framework for consultation among SHPO, tribes and all interested parties.

Miscellaneous

Since implementing NHPA necessarily affects the agencies' regulatees, FCC recommends that the proposed rule include a "reasonable" time period for Federal agencies to develop their own implementing procedures. Federal agencies have always had the authority to develop implementing procedures pursuant to section 110(a)(2)(E). The Council has no role in setting deadlines for Federal agencies to develop these implementing procedures.

The deadlines for response from Council and SHPOs (15 days and 30 days) are reasonable—assuming adequate personnel to handle the workload. Because SHPO's are inadequately funded, they are understaffed to meet these time frames. Therefore, a 30 day review period for the Council and a 45-day review period for SHPOs is recommended. The Council disagrees. The current deadlines adequately balance the project need for expediency and the workloads of the Council and SHPO/THPOs.

General Tribal

In requesting that the role of THPO's and tribal representatives be clarified for those situations affecting properties of religious and cultural significance off tribal land, it is suggested that section 101(d)(2) limits THPO responsibilities and authority to tribal lands and does not require a Federal agency to consult with those tribes regarding properties of religious and cultural significance. The Council disagrees. Section 101(d)(6)(B) of the NHPA requires tribal consultation regarding historic properties of religious and cultural significance. Nothing in the statute makes a distinction that would limit such consultation to tribal lands.

It is inappropriate and illegal for Council to implement 1992 amendments regarding Indian Tribes through its proposed rule. Section 106 itself was not amended, and the Secretary of the Interior is the agency charged with promulgating regulations to implement the tribe-related amendments. The comment misreads the NHPA. The rule appropriately deals with tribal requirements as they directly relate to the section 106 process. The Council is authorized to promulgate rules to govern the implementation of section 106 "in its entirety." This authority necessarily covers all aspects that directly relate to the section 106 process. The 1992 amendments require Federal agencies to consult with tribes and Native Hawaiian Organizations in carrying out their Section 106 responsibilities. While the Department of the Interior provides assistance to tribes and fosters communication among tribes, SHPOs and agencies, it does not oversee the section 106 process nor have the requisite authority. It is noted that the Department of the Interior sits on the Council and voted in favor of adopting this rule.

Several THPOs have begun to request payment of fees for Section 106 consultation and have asserted THPO powers outside of tribal lands. Council could remove uncertainty and avoid delays by clarifying that THPOs are bound by the same rules as SHPOs and THPO authority extends only over tribal lands. This is a topic being addressed by the ongoing Telecommunications Working Group. Once the Council reaches a decision on this matter, it will be disseminated.

Concerned about several THPOs and tribal representatives requesting payment for the section 106 consultation required in the regulations and believes such actions are contrary to the regulations. This issue was raised by the wireless industry, and will be addressed by the Telecommunications Working Group.

We would not support changes to grant expanded authority to tribes off tribal lands. We strongly support current provisions which enable tribes to participate, as appropriate. The Council agrees with this comment and did not expand the tribal role in this rule.

The proposed rule will impact us resulting in the consultation with Native Hawaiian organizations. The requirement for consultation with Native Hawaiian organizations will require expenditure of time and funds spent on EIS studies. The rule fails to specify which Hawaiian Native organizations (NHO) we would have to consult with, which may be many. The statute requires Federal agencies to conduct such consultation. The rule is not the appropriate venue for identifying specific NHOs. That is the responsibility of the Federal agency based on the potential to affect properties of significance to specific organizations.

E.O. 13084 has language that should be utilized in the section 106 process. EO 13084 addresses the development of Federal agency policies and regulations. The Council rule addresses individual projects and programs, and not these overall policies and rules developed by other agencies.

The regulations took a positive step regarding tribal input and participation. It works when the agency is truly in compliance with the regulations. Need to work on how tribes can be more involved; are legally involved in decision making without a specific agreement; and can be funded to conduct the work demanded by agencies and the regulations. The Council is developing guidance on tribal consultation.

The regulations conflict with the language and purpose of the Act by creating an artificial distinction between tribal properties depending on their location (on or off tribal lands). Tribes are provided lesser consultation rights where traditional cultural properties are located off tribal lands. The rule acknowledges tribal sovereignty on tribal lands, which necessarily distinguishes a tribe's role on and off tribal lands. The rule does not distinguish where properties are located, but only the scope of tribal involvement.

The regulations suggest that tribal governments and the interested public are at the same level of importance. This concept ignores the sovereign status of tribes and, as a result, Federal agencies are disrespecting some tribal treaties. An important statement of the tribal government role is missing. With the public on the same level as tribes, the public can gain access to documents that may compromise the confidentiality provisions of section 106. The Council disagrees. Section 800.2(c)(3) of the rule provides information for Federal agencies regarding sovereignty and the government-to-government responsibility. The public is simply notified and involved as appropriate but, unlike tribes in their land or regarding historic properties of significance to them, is not an entitled consulting party.

Legal Authority

Several comments questioned the Council's legal authority to issue the rule. The main arguments were that: (1) The Council was given advisory functions by the statute, and that the proposed rule transformed the role of the Council from purely advisory to one with substantive regulatory authority over other Federal agencies and parties; (2) the Council could only issue regulations regarding how it issued its comments (from the "reasonable opportunity to comment" provided by section 106); and (3) there was no statutory basis for a rule that dictates how an agency takes into account the effects of its undertakings or the Council's comments.

The Council believes that the rule is properly characterized as one providing a process to be followed. Nowhere does the rule impose an outcome on a Federal agency as to how it will decide whether or not to approve an undertaking, or how. The rule merely provides a process that assures that the Federal agency takes into account the effects of the undertaking on historic properties. It does not impose in any way whatsoever how such consideration will affect the final decision of the Federal agency on the undertaking. The rule does not provide anyone with a veto power over an undertaking.

Furthermore, the Council believes it has the authority to promulgate the present rule. Section 211 of the NHPA states that: "The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of [the NHPA] in its entirety." The phrase "in its entirety" was added by the 1992 amendments to the NHPA. Directly talking to the meaning of the "in its entirety" amendment, the summary of the amendments stated that: "This makes clear that the ACHP has the authority to define not only how agencies will afford the Council a reasonable opportunity to comment, but also how agencies should take effects on historic properties into account in their planning." Congressional Record, Senate, S 3575, March 19, 1991. This amendment was specifically introduced to address the authority issues raised earlier. Thus, it is clear that Congress has given the Council the authority to promulgate rules, such as the present one, setting forth how Federal agencies are to meet all their section 106 responsibilities to take into account the effects of their undertakings on historic properties, as well as to provide the Council with a reasonable opportunity to comment.

Moreover, the rule is solidly based on the requirements of the statute and, as Congress intended, provides a predictable framework which fleshes out those requirements. As stated before, section 106 specifically requires Federal agencies to take into account the effects of their undertakings on historic properties. 16 U.S.C. 470f. The first general step in the process under the rule requires Federal agencies to identify the historic properties that may be affected by the undertaking. 36 CFR 800.4. It is simply impossible for an agency to take into account the effects of its undertaking on historic properties if it does not even know what those historic properties are in the first place.

The second general step in the process is for the Federal agency to assess the effects of the undertaking on the historic property. 36 CFR 800.5. Again, an agency cannot take into account effects on historic properties if it does not first assess the nature of those effects. The Council has utilized its considered expertise on historic preservation to create the criteria of adverse effect that guides the end of this step.

The third general step in the process under the challenged rule is to consult to attempt resolving adverse effects to historic properties (through what is called a Memorandum of Agreement), if it has been determined the effects are actually adverse. 36 CFR 800.6. Such an approach is explicitly sanctioned by the statute under Section 110(l) of the National Historic Preservation Act. 16 U.S.C. 470h–2(l). Specifically, Section 110(l) of the statute states that:

> With respect to any undertaking subject to section 106 which adversely affects any [historic property], *and for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of such agency shall document any decision made pursuant to section 106. . . . Where a section 106 memorandum of agreement has been executed with respect to an undertaking,*

such memorandum shall govern the undertaking and all its parts.

Id. (emphasis added). It bears mentioning that this section was amended by Congress after the section 106 rule that went into effect in 1999. The amendment further conformed the statute to that 1999 rule, which was used as the proposal in the present rulemaking. Specifically, section 5(a)(8) of HR 834, amended the language of section 110(l) by striking "with the Council" and inserting "pursuant to regulations issued by the Council."

In the last general step in the process, the Council issues comments to the Federal agencies that fail to resolve adverse effects. Such a step is obviously contemplated in the requirements of section 106 that the Council be given "a reasonable opportunity to comment." 16 U.S.C. 470f.

The rule does provide for consultation with various parties throughout the process. Such consultation requirements with State Historic Preservation Officers, Tribal Historic Preservation Officers and certain federally recognized Indian Tribes and Native Hawaiian Organizations are solidly anchored on statutory requirements that Federal agencies consult with such parties. *See e.g.* 16 U.S.C. 470a(b)(3)(I), 470a(d)(2), and 470a(d)(6)(B). The general public is also given a general role under the rule, although such role does not rise to the level of that of consulting parties. The Council believes this role for the public is reasonable and authorized. The Federal agency's consideration of how its undertaking affects historic properties is enhanced and better informed by the participation of the consulting parties and the general public, for whose enjoyment and enrichment the NHPA seeks to protect historic properties. It must be kept in mind that such public is the one that lives in the communities and areas where the historic properties are located, and therefore may have uniquely informed viewpoints as to such properties. As stated above, the rule specifically states that Federal agencies can use their own procedures for public involvement in lieu of those under subpart B of this rule, so long as they provide adequate opportunities consistent with the rule. Such procedural consistency is no more than what the NHPA requires under 16 U.S.C. 470h–2(a)(2)(E).

Appointments Clause

Some comments argued that the present rulemaking process violates the Appointments Clause of the Constitution. This argument is summarized as follows: (a) The section 106 rule that went into effect in 1999 (1999 rule) was developed and adopted in violation of the Appointments Clause due to the participation of the Chairman of the National Trust on Historic Preservation (the Trust) and the President of the National Conference of State Historic Preservation Officers (NCSHPO) (both of whom are members of the Council not appointed by the President) in the development and adoption of that 1999 rule; and (b) since the content of that 1999 rule was used as the proposed rule in the present rulemaking, the present rulemaking process is incurably tainted and unconstitutional.

The Council strongly disagrees with such arguments. As has been stated before, the Trust and NCSHPO have not participated in any way whatsoever in the deliberations, decisions, votes, or any other Council activities related to this rulemaking. On June 23, 2000, the Council membership, minus the representatives of the Trust and NCSHPO, took a new vote on the adoption of the 1999 rule. It voted 16–0 in favor of the 1999 rule. As has been stated above, that 1999 rule was the culmination of six years of work by the Council members, Council staff, public comments and public meetings.

Again without the participation of the representatives of the Trust and NCSHPO, the Council proceeded to vote unanimously in favor of proceeding with the present rulemaking process, using the text of the 1999 rule as the proposed rule. Many of these Council members (all Presidential appointees) had participated in the drafting and original, unanimous adoption of the 1999 rule on February of 1999. On June 23, 2000, they decided to use that 1999 rule as the proposed rule. On November 17, 2000, after taking into account public comment and changing the proposed rule as they deemed appropriate, these Presidentially appointed Council members (without the participation of the representatives of the Trust and NCSHPO) voted to adopt the final rule now being published.

Any prior involvement in the rule does not represent the exercise of significant authority pursuant to the laws of the United States contemplated by the Appointments Clause. The Presidential appointees considering the draft, proposed rule during the 2000 rulemaking process were at full liberty to vote against it, amend it, or adopt it. In the end, the final decision to move forward with such draft was in their power.

In the present rulemaking, any act that could arguably be deemed an exercise of significant authority has been carried out solely by the Council's Presidential appointees.

Other Legal Issues

Certain comments indicated a belief that the proposed rule violates the Establishment Clause of the Constitution. The arguments stated that to the extent the proposed rule requires Federal agencies to conform their decisionmaking under section 106 based on the "religious and cultural significance" of properties (as determined by Tribes) it results in an excessive entanglement between the government and religion, impermissibly restricts the use of public lands on the basis of religion, and impermissibly establishes or favors religion, in violation of the Establishment Clause.

The Council strongly disagrees. The rule does not require Federal agencies to conform their decisionmaking based on the religious and cultural significance of properties. As stated before, the NHPA and the rule only clarify that properties of religious and cultural significance to Tribes "*may* be determined to be eligible for inclusion on the National Register." section 101(d)(6)(A) of the NHPA. Like any other property of any kind, in order for properties with such significance to be considered in the section 106 process, they must first meet the established, objective, secular criteria of the National Register of Historic Places. The determination as to whether a property meets that criteria is made by the Federal agency in concurrence with the SHPO/THPO or, in the case of disagreement, by the Keeper of the National Register. Furthermore, once a historic property has been so identified, all that Federal agencies are required to do is to take into account the effects of their undertaking on such property. Nothing whatsoever in the rule imposes an obligation on the Federal agency to change, reject or approve an undertaking based on the religious and cultural significance of a property.

The rule and section 101(d)(6) of the NHPA only require consultation with Indian Tribes regarding those historic properties of significance to them. The Federal agency must consult with such Tribes, but is nowhere required to abide by the opinions expressed by the Tribes in such consultations. Furthermore, such consultation provisions are fully justified and reasonable. They do not provide Tribes with a "special treatment," but rather a rational treatment. Just as it would be common sense for a person to consult, for example, with the Navy in order to seek a better understanding of the history of Pearl Harbor, it is more than rational to go to Tribes to seek a better understanding of historic properties to which they attach a religious and cultural significance. Due to their history and experience with such properties, such Tribes are in a specially advantageous position to provide valuable information about them. At the very least, the Council believes that these Tribal consultation provisions of the rule and of section 101(d)(6) of the NHPA are tied rationally to the fulfillment of the Federal Government's unique obligations towards Tribes. See *Morton* v. *Mancari*, 417 U.S. 535 (1974).

IV. Description of Meaning and Intent of Specific Sections

The following information clarifies the meaning and intent behind particular sections of the final rule.

Subpart A—Purposes and Participants

Section 800.1(b). This section makes clear that references in the section 106 regulations are not intended to give any additional authority to implementing guidelines, policies or procedures issued by any other Federal agency. Where such provisions are cited, they are simply to assist users in finding related guidance, which is non-binding, or requirements of related laws, which may be mandatory depending on the particular law itself.

Section 800.1(c). The purpose of this section is to emphasize the flexibility an Agency Official has in carrying out the steps of the section 106 process, while acknowledging that early initiation of the process is essential and that actions taken to meet the procedural requirements must not restrict the effective consideration of alternatives related to historic preservation issues in later stages of the process.

Section 800.2(a). The term "Agency Official" is intended to include those Federal officials who have the effective decision making authority for an undertaking. This means the ability to agree to such actions as may be necessary to comply with section 106 and to ensure that any commitments made as a result of the section 106 process are indeed carried out. This authority and the legal responsibilities under section 106 may be assumed by non-Federal officials only when there is clear authority for such an arrangement under Federal law, such as under certain programs administered by the Department of Housing and Urban Development. This subsection indicates that the Federal Agency must ensure that the Agency Official "takes . . . financial responsibility for section 106 compliance . . ." This phrase is not to be construed as prohibiting Federal agencies from passing certain section 106 compliance costs to applicants. Such a construction of the regulation would contravene section 110(g) of the NHPA and 16 U.S.C. 469c–2. The intent behind the reference to "financial responsibility" in the regulation is, as stated above, to ensure that the Agency Official has the effective decision making authority for an undertaking.

Section 800.2(a)(1). This reference to the Secretary's professional standards is intended to remind Federal agencies that this independent but related provision of the Act may affect their compliance with section 106.

Section 800.2(a)(2). This provision allows, but does not require, Federal agencies to designate a lead agency for section 106 compliance purposes. The lead agency carries out the duties of the Agency Official for all aspects of the undertaking. The other Federal agencies may assist the lead agency as they mutually agree. When compliance is completed, the other Federal agencies may use the outcome to document their own compliance with section 106 and must implement any provisions that apply to them. This provision does not prohibit an agency to independently pursue compliance with section 106 for its obligations under section 106, although this should be carefully coordinated with the lead agency. A lead agency can sign the Memorandum of Agreement for other agencies, so long as that is part of the agreement among the agencies for creating the lead agency arrangement. It should also be clear in the Memorandum of Agreement.

Section 800.2(a)(4). This section sets forth the general concepts of consultation. It identifies the duty of Federal agencies to consult with other partes at various steps in the section 106 process and acknowledges that consultation varies depending on a variety of factors. It also encourages agencies to coordinate section 106 consultation with that required under other Federal laws and to use existing agency processes to promote efficiency.

Section 800.2(b). The Council will generally not review the determinations and decisions reached in accordance with these regulations by the Agency Official and appropriate consulting parties and not participate in the review of most section 106 cases. However, because the statutory obligation of the Federal agency is to afford the Council a reasonable opportunity to comment on its undertaking's effects upon historic properties, the Council will oversee the section 106 process and formally become a party in individual consultations when it determines there are sufficient grounds to do so. These are set forth in Appendix A. The Council also will provide participants in the section 106 process with its advice and guidance in order to facilitate completion of the section 106 review.

Section 800.2(c). This section sets a standard for involving various consulting parties. The objective is to provide parties with an effective opportunity to participate in the section 106 process, relative to the interest they have to the historic preservation issues at hand.

Section 800.2(c)(1). This section recognizes the central role of the SHPO in working with the Agency Official on section 106 compliance in most cases. It also delineates the manner in which the SHPO may get involved in the section 106 process when a THPO has assumed SHPO functions on tribal lands.

Section 800.2(c)(2). The role of THPO was created in the 1992 amendments to the Act. This section tracks the statutory provision relating to THPO assumption of the SHPO's section 106 role on tribal lands. In such circumstances, the THPO substitutes for the SHPO and the SHPO participates in the section 106 process only as specified in 800.2(c)(1) or as a member of the public. This section also specifies that in those instances where an undertaking occurs on or affects properties on tribal lands and a tribe has not officially assumed the SHPO's section 106 responsibilities on those lands, the Agency Official still consults with the SHPO, but also consults with a representative designated by the Indian tribe. Such designation is made in accordance with tribal law and procedures. However, if the tribe has not designated such a representative, the Agency Official would consult with the tribe's chief elected official, such as the tribal chairman.

Section 800.2(c)(3). This section embodies the statutory requirement for Federal agencies to consult with Indian tribes and Native Hawaiian organizations throughout the section 106 process when they attach religious and cultural significance to historic properties that may be affected by an undertaking. It is intended to promote continuing and effective consultation with those parties throughout the section 106 process. Such consultation is intended to be conducted in a manner that is fully cognizant of the legal rights of Indian tribes and that is sensitive to their cultural traditions and practices.

Section 800.2(c)(3)(i). This subsection has two main purposes. First, it emphasizes the importance of involving Indian tribes and Native Hawaiian organizations early and fully at all stages of the section 106 process.

Second, Federal agencies should solicit tribal views in a manner that is sensitive to the governmental structures of the tribes, recognizing that confidentiality and communication issues may require Federal agencies to allow more time for the exchange of information. Also, this section states that the Agency Official must make a "reasonable and good faith effort" to identify interested tribes and Native Hawaiian organizations. This means that the Agency Official may have to look beyond reservations and tribal lands in the project's vicinity to seek information on tribes that had been historically located in the area, but are no longer there.

Section 800.2(c)(3)(iii). This subsection emphasizes the need to consult with Indian tribes on a government-to-government basis. The Agency Official must consult with the appropriate tribal representative, who must be selected or designated by the tribe to speak on behalf of the tribe. Matters of protocol are important to Indian tribes. Indian tribes and Native Hawaiian organization may be reluctant to share information about properties to which they attach religious and cultural significance. Federal agencies should recognize this and be willing to identify historic properties without compromising concerns about confidentiality. The Agency Official should also be sensitive to the internal workings of a tribe and allow the time necessary for the tribal decision making process to operate.

Section 800.2(c)(3)(iv). This subsection reminds Federal agencies of the statutory duty to consult with Indian tribes and Native Hawaiian organizations whether or not the undertaking or its effects occur on tribal land. Agencies should be particularly sensitive in identifying areas of traditional association with tribes or a Native Hawaiian organizations, where historic properties to which they attach religious and cultural significance may be found.

Section 800.2(c)(3)(v). Some Federal agencies have or may want to develop special working relationships with Indian tribes or Native Hawaiian organization to provide specific arrangements for how they will adhere to the steps in the section 106 process and enhance the participation of tribes and Native Hawaiian organizations. Such agreements are not mandatory; they may be negotiated at the discretion of Federal agencies. The agreements cannot diminish the rights set forth in the regulations for other parties, such as the SHPO, without that party's express consent.

Section 800.2(c)(3)(vi). The signature of tribes is required where a Memorandum of Agreement concerns tribal lands. However, if a tribe has not formally assumed the SHPO's responsibilities under section 101(d)(2) the tribe may waive its signature rights at its discretion. This will allow tribes the flexibility of allowing agreements to go forward regarding tribal land, but without condoning the agreement with their signature.

Section 800.2(c)(4). Affected local governments must be given consulting party status if they so request. Under § 800.3(f)(1), Agency Officials are required to invite such local governments to be consulting parties. This subsection provides for that status and also reminds Federal agencies that some local governments may act as the Agency Official when they have assumed section 106 legal responsibilities, such as under certain programs administered by the Department of Housing and Urban Development.

Section 800.2(c)(5). Applicants for Federal assistance or for a Federal permit, license or other approval are entitled to be consulting parties. Under § 800.3(f)(1), Agency Officials are required to invite them to be consulting parties. Also, Federal agencies have the legal responsibility to comply with section 106 of the NHPA. In fulfilling their responsibilities, Federal agencies sometimes choose to rely on applicants for permits, approvals or assistance to begin the 106 process. The intent was to allow applicants to contact SHPOs and other consulting parties, but agencies must be mindful of their government-to-government consultation responsibilities when dealing with Indian tribes. If a Federal agency implements its 106 responsibilities in this way, the Federal agency remains legally responsible for the determinations. Applicants that may assume responsibilities under a Memorandum of Agreement must be consulting parties in the process leading to the agreement.

Section 800.2(c)(6). This section allows for the possibility that other individuals or entities may have a demonstrated special interest in an undertaking and that Federal agencies and SHPO/THPOs should consider the involvement of such individuals or entities as consulting parties. This might include property owners directly affected by the undertaking, non-profit organizations with a direct interest in the issues or affected businesses. Under § 800.3(f)(3), upon written request and in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, an Agency Official may allow certain individuals under § 800.2(c)(6) to become consulting parties.

Section 800.2(d)(1). Public involvement is a critical aspect of the 106 process. This section is intended to set forth a standard that Federal agencies must adhere to as they go through the section 106 process. The type of public involvement will depend upon various factors, including but not limited to, the nature of the undertaking, the potential impact, the historic property, and the likely interest of the public. Confidentiality concerns include those specified in section 304 of the Act and legitimate concerns about proprietary information, business plans and privacy of property owners.

Section 800.2(d)(2). This subsection is intended to set the notice standard. Notice, with sufficient information to allow meaningful comments, must be provided to the public so that the public can express its views during the various stages and decision making points of the process.

Section 800.2(d)(3). It is intended that Federal agencies have flexibility in how they involve the public, including the use of NEPA and other agency planning processes, as long as opportunities for such public involvement are adequate and consistent with subpart A of the regulations.

Subpart B—The section 106 Process

Section 800.3. This new section is intended to encourage Federal agencies to integrate the section 106 process into agency planning at its earliest stages.

Section 800.3(a). The determination of whether or not an undertaking exists is the Agency Official's determination. The Council may render advice on the existence of an undertaking, but ultimately this remains a Federal agency decision.

Section 800.3(a)(1). This section explains that if there is an undertaking, but it is not a type of activity that has the potential to affect a historic property, then the agency is finished with its section 106 obligations. There is no consultation requirement for this decision.

Section 800.3(a)(2). This is a reminder to Federal agencies that adherence to the standard 106 process in Subpart B is inappropriate where the undertaking is governed by a program alternative established pursuant to § 800.14.

Section 800.3(b). This section does not impose a mandatory requirement on Federal agencies. It emphasizes the benefit of coordinating compliance with related statutes so as to enhance

efficiency and avoid duplication of efforts, but the decision is up to the Agency Official. Agencies are encouraged to use the information gathered for these other processes to meet section 106 needs, but the information must meet the standards in these regulations.

Section 800.3(c). This sets forth the responsibility to properly identify the appropriate SHPO or THPO that must be consulted. If the undertaking is on or affects historic properties on tribal lands, then the agency must determine what tribe is involved and whether the tribe has assumed the SHPO's responsibilities for section 106 under section 101(d)(2) of the Act. A list of such tribes is available from the National Park Service.

Section 800.3(c)(1). This section reiterates that the tribe may assume the role of the SHPO on tribal land and tracks the language of the Act in specifying how certain owners of property on tribal lands can request SHPO involvement in a section 106 case in addition to the THPO.

Section 800.3(c)(2). This section is the State counterpart to Federal lead agencies and has the same effect. It allows a group of SHPOs to agree to delegate their authority under these regulations for a specific undertaking to one SHPO.

Section 800.3(c)(3). This section reinforces the notion that the conduct of consultation may vary depending on the agency's planning process, the nature of the undertaking and the nature of its effects.

Section 800.3(c)(4). This section makes it clear that failure of an SHPO/THPO to respond within the time frames set by the regulation permit the agency to assume concurrence with the finding or to consult about the finding or determination with the Council in the SHPO/THPO's absence. It also makes clear that subsequent involvement by the SHPO/THPO is not precluded, but the SHPO/THPO cannot reopen a finding or determination that it failed to respond to earlier.

Section 800.3(d). This section specifies that, on tribal lands, the Agency Official consults with both the Indian tribe and the SHPO when the tribe has not formally assumed the responsibilities of the SHPO under section 101(d)(2) of the Act. It also allows the section 106 process to be completed even when the SHPO has decided not to participate in the process, and for the SHPO and an Indian tribe to develop tailored agreements for SHPO participation in reviewing undertakings on the tribe's lands.

Section 800.3(e). This section requires the Agency Official to decide early how and when to involve the public in the section 106 process. It does not require a formal "plan," although that might be appropriate depending upon the scale of the undertaking and the magnitude of its effects on historic properties.

Section 800.3(f). This is a particularly important section, as it requires the Agency Official at an early stage of the section 106 process to consult with the SHPO/THPO to identify those organizations and individuals that will have the right to be consulting parties under the terms of the regulations. These include local governments, Indian tribes and Native Hawaiian organizations and applicants for Federal assistance or permits, especially those who may assume a responsibility under a Memorandum of Agreement (see § 800.6(c)(2)(ii)). Others may request to be consulting parties, but that decision is up to the Agency Official.

Section 800.3(g). This section makes it clear that an Agency Official can combine individual steps in the section 106 process with the consent of the SHPO/THPO. Doing so must protect the opportunity of the public and consulting partes to participate fully in the section 106 process as envisioned in § 800.2.

Section 800.4(a). This section sets forth the consultative requirements involved in the scoping efforts at the beginning stages of the identification process. The Agency Official must consult with the SHPO/THPO in fulfilling the steps in subsections (1) through (4). This section emphasizes the need to consult with the SHPO/THPO at all steps in the scoping process. It also highlights the need to seek information from Indian tribes and Native Hawaiian organizations with regard to properties to which they attach religious and cultural significance, while being sensitive to confidentiality concerns. Where Federal agencies are engaged in an action that is on or may affect ancestral, aboriginal or ceded lands, Federal agencies must consult with Indian tribes and Native Hawaiian organizations with regard to historic properties of traditional religious and cultural significance on such lands.

Section 800.4(b). This section sets out the steps an Agency Official must follow to identify historic properties. It is close to the section 106 process under the 1986 regulations, with increased flexibility of timing and greater involvement of Indian tribes and Native Hawaiian organizations in accordance with the 1992 amendments to the Act.

Section 800.4(b)(1). This section on level of effort required during the identification processes has been added to allow for flexibility. It sets the standard of a reasonable and good faith effort on behalf of the agency to identify properties and provides that the level of effort in the identification process depends on numerous factors including, among others listed, the nature of the undertaking and its corresponding potential effects on historic properties.

Section 800.4(b)(2). This new section is also intended to provide Federal agencies with flexibility when several alternatives are under consideration and the nature of the undertaking and its potential scope and effect has therefore not yet been completely defined. The section also allows for deferral of final identification and evaluation if provided for in an agreement with the SHPO/THPO or other circumstances. Under this phased alternative, Agency Officials are required to follow up with full identification and evaluation once project alternatives have been refined or access has been gained to previously restricted areas. Any further deferral of final identification would complicate the process and jeopardize an adequate assessment of effects and resolution of adverse effects.

Section 800.4(c). This section sets out the process for determining the National Register eligibility of properties not previously evaluated for historic significance.

Section 800.4(c)(2). This section provides that if an Indian tribe or Native Hawaiian organization disagrees with a determination of eligibility involving a property to which it attaches religious and cultural significance, then the tribe can ask the Council to request that the Agency Official obtain a determination of eligibility. The Council retains the discretion as to whether or not it should make the request of the Agency Official. This section was intended to provide a way to ensure appropriate determinations regarding properties, located off tribal lands, to which tribes attach religious and cultural significance.

Section 800.4(d)(1). This section describes the closure point in the section 106 process where no historic properties are found or no effects on historic properties are found. Consulting parties must be specifically notified of the determination, but members of the public need not receive direct notification; the Federal agency must place its documentation in a public file prior to approving the undertaking, and provide access to the information when requested by the public. Once the consulting parties are notified, the SHPO/THPO has 30 days to object to the determination. The Council may also

object on its own initiative within the time period. Lack of such objection within the 30 day period means that the agency need not take further steps in the Section 106 process.

Section 800.4(d)(2). This section requires that the Federal agency proceed to the adverse effect determination step where it finds that historic properties may be affected or the SHPO/THPO or Council objects to a no historic properties affected finding. The agency must notify all consulting parties.

Section 800.5(a). This section provides for Indian tribe and Native Hawaiian organization consultation where historic properties to which they attach religious and cultural significance are involved. This section also requires the Agency Official to consider the views of consulting parties and the public that have already been provided to the Federal agency.

Section 800.5(a)(1). This section codifies the practice of the Council in considering both direct and indirect effects in making an adverse effect determination. This section allows for consideration of effects on the qualifying characteristics of a historic property that may not have been part of the property's original eligibility evaluation. The last sentence in this section is intended to amplify the indirect effects concept, similar to the NEPA regulations, which calls for consideration of such effects when they are reasonably foreseeable effects.

Section 800.5(a)(2)(ii). The list of examples of adverse effects has been modified by eliminating the exceptions to the adverse effect criteria. However, if a property is restored, rehabilitated, repaired, maintained, stabilized, remediated or otherwise changed in accordance with the Secretary's standards, then it will not be considered an adverse effect.

Section 800.5(a)(2)(iii). This subsection, along with § 800.5(a)(2)(I), would encompass recovery of archeological data as an adverse effect, even if conducted in accordance with the Secretary's standards. This acknowledges the reality that destruction of a site and recovery of its information and artifacts is adverse. It is intended that in eliminating data recovery as an exception to the adverse effect criteria, Federal agencies will be more inclined to pursue other forms of mitigation, including avoidance and preservation in place, to protect archeological sites.

Section 800.5(a)(2)(iv). This section tracks the National Register criteria regarding the relation of alterations to a property's use or setting to the significance of the property.

Section 800.5(a)(2)(v). This section tracks the language of the National Register criteria as it pertains to the property's integrity.

Section 800.5(a)(2)(vi). This section acknowledges that where properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations are involved, neglect and deterioration may be recognized as qualities of those properties and thus may not necessarily constitute an adverse effect.

Section 800.5(a)(2)(vii). If a property is transferred leased or sold out of Federal ownership with proper preservation restrictions, then it will not be considered an adverse effect. Transfer between Federal agencies is not an adverse effect per se; the purpose of the transfer should be evaluated for potential adverse effects, so that they can be considered before the transfer takes place.

Section 800.5(a)(3). This section is intended to allow flexibility in Federal agency decision making processes and to recognize that phasing of adverse effect determinations, like identification and evaluation, is appropriate in certain planning and approval circumstances, such as the development of linear projects where major corridors are first assessed and then specific route alignment decisions are made subsequently.

Section 800.5(b). This section allows SHPO/THPO's the ability to suggest changes in a project or suggest conditions so that adverse effects can be avoided and thus result in a no adverse effect determination. It is also written to emphasize that a finding of no adverse effect is only a proposal when the Agency Official submits it to the SHPO/THPO for review. This provision also acknowledges that the practice of "conditional No Adverse Effect determinations" is acceptable.

Section 800.5(c). The Council will not review "no adverse effect" determinations on a routine basis. The Council will intervene and review no adverse effect determinations if it deems it appropriate based on the criteria listed in Appendix A or if the SHPO/THPO or another consulting party and the Federal agency disagree on the finding and the agency cannot resolve the disagreement. The SHPO/THPO and any consulting party wishing to disagree to the finding must do so within the 30-day review period. If Indian tribes or Native Hawaiian organizations disagree with the finding, they can request the Council's review directly, but this must be done within the 30 day review period. If a SHPO/THPO fails to respond to an Agency Official finding within the 30 day review period, then the Agency Official can consider that to be SHPO/THPO agreement with the finding. When a finding is submitted to the Council, it will have 15 days for review; if it fails to respond within the 15 days, then the Agency Official may assume Council concurrence with the finding. When it reviews no adverse effect determinations, the Council will limit its review to whether or not the criteria have been correctly applied.

Section 800.5(d). Agencies must retain records of their findings of no adverse effect and make them available to the public. This means that the public should be given access to the information, subject to FOIA and other statutory limits on disclosure such as section 304 of the NHPA, when they so request. Failure of the agency to carry out the undertaking in accordance with the finding requires the Agency Official to reopen the section 106 process and determine whether the altered course of action constitutes an adverse effect. A finding of adverse effect requires further consultation on ways to resolve it.

Section 800.6(a)(1). When adverse effects are found, the consultation must continue among the Federal agency, SHPO/THPO and consulting parties to attempt to resolve them. The Agency Official must notify the Council when adverse effects are found and should invite the Council to participate in the consultation when the circumstances in § 800.6(a)(1)(i)(A)–(C) exist. A consulting party may also request the Council to join the consultation. The Council will decide on its participation within 15 days of receipt of a request, basing its decision on the criteria set forth in Appendix A. Whenever the Council decides to join the consultation, it must notify the Agency Official and the consulting parties. It must also advise the head of the Federal agency of its decision to participate. This is intended to keep the policy level of the Federal agency apprized of those cases that the Council has determined present issues significant enough to warrant its involvement.

Section 800.6(a)(2). This section allows for the entry of new consulting parties if the agency and the SHPO/THPO (and the Council, if participating) agree. If they do not agree, it is desirable for them to seek the Council's opinion on the involvement of the consulting party. Any party, including applicants, licensees or permittees, that may have responsibilities under a Memorandum of Agreement must be invited to participate as consulting parties in reaching the agreement.

Section 800.6(a)(3). This section specifies the Agency Official's obligation to provide project documentation to all consulting partes at the beginning of the consultation to resolve adverse effects. Particular note should be made of the reference to the confidentiality provisions.

Section 800.6(a)(4). The Federal agency must provide an opportunity for members of the public to express their views on an undertaking. The provision embodies the principles of flexibility, relating the agency effort to various aspects of the undertaking and its effects upon historic properties. The Federal agency must provide them with notice such that the public has enough time and information to meaningfully comment. If all relevant information was provided at earlier stages in the process in such a way that a wide audience was reached, and no new information is available at this stage in the process that would assist in the resolution of adverse effects, then a new public notice may not be warranted. However, this presumes that the public had the opportunity to make its views known on ways to resolve the adverse effects.

Section 800.6(a)(5). Although it is in the interest of the public to have as much information as possible in order to provide meaningful comments, this section acknowledges that information may be withheld in accordance with section 304 of the NHPA.

Section 800.6(b). If the Council is not a part of the consultation, then a copy of the Memorandum of Agreement must be sent to the Council so that the Council can include it in its files to have an understanding of a Federal agency's implementation of section 106. This does not provide the Council an opportunity to reopen the specific case, but may form the basis for other actions or advice related to an agency's overall performance in the section 106 process.

Section 800.6(b)(1). When resolving adverse effects without the Council, the Agency Official consults with the SHPO/THPO and other consulting parties to develop a Memorandum of Agreement. If this is achieved, the agreement is executed between the Agency Official and the SHPO/THPO and filed with required documentation with the Council. This filing is the formal conclusion of the section 106 process and must occur before the undertaking is approved. Standard treatments adopted by the Council may set expedited ways for competing memoranda of agreement in certain circumstances.

Section 800.6(b)(2). When the Council is involved, the consultation proceeds in the same manner, but the agreement of the Agency Official, the SHPO/THPO and the Council is required for a Memorandum of Agreement.

Section 800.6(c). This section details the provisions relating to Memoranda of Agreement. This document evidences an agency's compliance with section 106 and the agency is obligated to follow its terms. Failure to do so requires the Agency Official to reopen the section 106 process and bring it to suitable closure as prescribed in the regulations.

Section 800.6(c)(1). This section sets forth the rights of signatories to an agreement and identifies who is required to sign the agreement under specific circumstances. The term "signatory" has a special meaning as described in this section, which is the ability to terminate or agree to amend the Memorandum of Agreement. The term does not include others who sign the agreement as concurring parties.

Section 800.6(c)(2). Certain parties may be invited to be signatories in addition to those specified in § 800.6(c)(1). They include individuals and organizations that should, but do not have to, sign agreements. It is particularly desirable to have parties who assume obligations under the agreement become formal signatories. However, once invited signatories sign MOAs, they have the same rights to terminate or amend the MOA as the other signatories.

Section 800.6(c)(3). Other parties may be invited to concur in agreements. They do not have the rights to amend or terminate an MOA. Their signature simply shows that they are familiar with the terms of the agreement and do not object to it.

Sections 800.6(c)(4)–(9). These sections set forth specific features of a Memorandum of Agreement and the way it can be terminated or amended.

Section 800.7. This section specifies what happens when the consulting parties cannot reach agreement. Usually when consultation is terminated, the Council renders advisory comments to the head of the agency, which must be considered when the final agency decision on the undertaking is made.

Section 800.7(a)(1). This section requires that the head of the agency or an Assistant Secretary or officer with major department-wide or agency-wide responsibilities must request Council comments when the Agency Official terminates consultation. Section 110(l) of the NHPA requires heads of agencies to document their decision when an agreement has not been reached under section 106. If the agency head is responsible for documenting the decision, it is appropriate that the same individual request the Council's comments.

Section 800.7(a)(2). This section allows the Council and the Agency Official to conclude the section 106 process with a Memorandum of Agreement between them if the SHPO terminates consultation.

Section 800.7(a)(3). If a THPO terminates consultation, there can be no agreement with regard to undertakings that are on or affect properties on tribal lands and the Council will issue formal comments. This provision respects the tribe's unique sovereign status with regard to its lands.

Section 800.7(a)(4). This section governs cases where the Council terminates consultation. In that case, the Council has the duty to notify all consulting parties prior to commenting. The role given to the Federal Preservation Officer is intended to fulfill the NHPA's goal of having a central official in each agency to coordinate and facilitate the agency's involvement in the national historic preservation program.

Section 800.7(b). This section allows the Council to provide advisory comments even though it has signed a Memorandum of Agreement. It is intended to give the Council the flexibility to provide comments even where it has agreed to sign an MOA. Such comments might elaborate upon particular matters or provide suggestions to Federal agencies for future undertakings.

Section 800.7(c). This section gives the Council 45 days to provide its comments to the head of the agency for a response by the agency head. When submitting its comments, the Council will also provide the comments to the Federal Preservation Officer, among others, for information purposes.

Section 800.7(c)(4). This section specifies what it means to "document the agency head's decision" as required by section 110(l) when the Council issues its comment to the agency head.

Section 800.8. This major section guides how Federal agencies can coordinate the section 106 process with NEPA compliance. It is intended to allow compliance with section 106 to be incorporated into the NEPA documentation process while preserving the legal requirements of each statute.

Section 800.8(a)(1). This section encourages agencies to coordinate NEPA and section 106 compliance early in the planning process. It emphasizes that impacts on historic properties should be considered when an agency makes evaluations of its NEPA obligations, but makes clear that an adverse effect

finding does not automatically trigger preparation of an EIS.

Section 800.8(a)(2). This section encourages consulting parties in the section 106 process to be prepared to consult with the Agency Official early in the NEPA process.

Section 800.8(a)(3). This section encourages agencies to include historic preservation issues in the development of various NEPA assessments and documents. This is essential for effective coordination between the two processes. It is intended to discourage agencies from postponing consideration of historic properties under NEPA until later initiation of the section 106 process.

Section 800.8(b). This section notes that a project, activity or program that falls within a NEPA categorical exclusion may still require section 106 review. An exclusion from NEPA does not necessarily mean that section 106 does not apply.

Section 800.8(c). This section offers Federal agencies an opportunity for major procedural streamlining when NEPA and section 106 both apply to a project. It allows the agency, when specific standards are met, to substitute preparation of an EA or an EIS for the specific steps of the section 106 process set out in these regulations.

Section 800.8(c)(1). This section lists the standards that must be adhered to when developing NEPA documents that are intended to incorporate 106 compliance. They are intended to ensure that the objectives of the section 106 process are being met even though the specific steps of the process are not being followed.

Section 800.8(c)(2). This section provides for Council and consulting party review of the agency's environmental document within NEPA's public comment review time frame. Consulting parties and the Council may object prior to or within this time frame to adequacy of the document.

Section 800.8(c)(3). If there is an objection to the NEPA document, the Council has 30 days to state whether or not it agrees with the objection. If the Council agrees with the objection, the Agency Official must complete the section 106 process through development of a Memorandum of Agreement or obtaining formal Council comment (§ 800.6–7). If it does not, then the Agency Official can complete its review under § 800.8.

Section 800.8(c)(4). This subsection explains how Agency Officials using NEPA coordination must finalize their section 106 compliance for those cases where an adverse effect is found. The Agency must document the proposed mitigation measures. A binding commitment with the proposed measures must be adopted. In the case of a FONSI, the binding commitment must be in the form of an MOA, drafted in accordance with § 800.6(c). Although the regulations do not send Agency Officials back to § 800.6(b) (regarding consultation towards an MOA), Agency Officials are reminded of the standards they must still follow under § 800.8(c)(1), and specifically the mitigation measures' consultation under § 800.8(c)(1)(v). In the case of an EIS, although a Memorandum of Agreement under § 800.6(c) is not required, an appropriate binding commitment must still be adopted. Finally, the subsection also clarifies the Agency Official's obligation to ensure that its approval of the undertaking is conditioned accordingly.

Section 800.8(c)(5). This section requires Federal agencies to supplement their NEPA documents or abide by §§ 800.3 through 800.6 in the event of a change in the proposed undertaking that alters the undertaking's impact on historic properties.

Section 800.9. This section delineates the methods the Council will use to oversee the operation of the section 106 process. The Council draws upon its general advisory powers and specific provisions of the NHPA to conduct these actions.

Section 800.9(a). This section emphasizes the right of the Council to provide advice at any time in the process on matters related to the section 106 process.

Section 800.9(b). A foreclosure means that an agency has gone forward with an undertaking to such an extent that the Council can not provide meaningful comments. A finding of foreclosure by the Council means that the Council has determined that the Federal agency has not fulfilled its section 106 responsibilities with regard to the undertaking. Such a finding does not trigger any specific action, but represents the opinion of the Council as the agency charged by statute with issuing the regulations that implement section 106.

Section 800.9(c). This section reiterates the requirements of section 110(k) of the Act added in 1992. It also provides a process by which the Council will comment if the Federal agency decides that circumstances may justify granting the assistance. If after considering the comments, the Federal agency does decide to grant the assistance, then the Federal agency must comply with section 106 for any historic properties that still may be affected. This does not require duplication of consultation that may have already taken place with the Council in the course of addressing 110(k), but is intended to ensure that the agency has meaningful consultation with the Council as to mitigating adverse effects if the agency decides to proceed with approving the undertaking.

Section 800.9(d). As the Council reduces its involvement in routine cases, it will be focusing its efforts more and more on agency programs and overall compliance with the section 106 process. The NHPA authorizes the Council to obtain information from Federal agencies and make recommendations on improving operation of the section 106 process. If the Council finds that an agency or a SHPO/THPO has not carried out its section 106 responsibilities properly, it may enter the section 106 process on an individual case basis to make improvement. The Council may also review agency operations and performance and make specific recommendations for improvement under section 202(a)(6) of the Act.

Section 800.10. This section provides a process for how Federal agencies must afford the Council a reasonable opportunity to comment on historic landmarks. It is largely unchanged from the process under previous regulations.

Section 800.11. This section sets forth the requirements for documentation at various steps in the section 106 process. It makes documentation requirements clearer and promotes agency use of documentation prepared for other planning requirements.

Section 800.11(a). The section allows for the phasing of documentation requirements when an agency is conducting phased identification and evaluation. The Council can advise on the resolution of disputes over adherence to documentation standards. However, the ultimate responsibility for compiling adequate documentation rests with the agency. During the consideration of any disputes over documentation, the process is not formally suspended. However, agencies should resolve significant disputes before going forward too far in the section 106 process in order to avoid subsequent delays.

Section 800.11(b). This section allows for the use of documents prepared for NEPA or other agency planning processes to fulfill this provision as long as those documents meet the standards in this section.

Section 800.11(c). This section is intended to protect the rights of private property owners with regard to proprietary information, and Indian

tribes and Native Hawaiian organizations with regard to properties to which they attach religious and cultural significance. This section emphasizes that the regulations are subject to any other Federal statutes which protect certain kinds of information from full public disclosure. The role of the Secretary and the process of consultation with the Council are based on the statutory requirements of section 304 of the Act.

Section 800.11(d)–(f). These sections specify the documentation standards for various findings or actions in the section 106 process. They are incrementally more detailed as the historic preservation issues become more substantial or complex. Each is intended to provide basic information so that a third-party reviewer can understand the basis for an agency's finding or proposed decision.

Section 800.12. This section deals with emergency situations and generally follows the approach of previous regulations.

Section 800.12(a). This section encourages Federal agencies to develop procedures describing how the Federal agency will take into account historic properties during certain emergency operations, including imminent threats to life or property. The nature of the consultation required in developing such procedures will vary, depending upon the extent of actions covered by the procedures. The procedures must be approved by the Council if they are to substitute for Subpart B.

Section 800.12(b). If there are no agency procedures for taking historic properties into account during emergencies, then the Federal agency may either follow a previously-developed Programmatic Agreement or notify the Council, SHPO/THPO and, where appropriate, an Indian tribe or Native Hawaiian organization concerned with potentially affected resources. If possible, the Federal agency should provide these parties 7 days to comment.

Section 800.12(c). This section permits a local government that has assumed section 106 responsibilities to use the provisions of § 800.12(a) and (b). However, if the Council or an SHPO/THPO objects, the local government must follow the normal section 106 process.

Section 800.12(d). A Federal agency may use the provisions in § 800.12 only for 30 days after an emergency or disaster has been declared, unless an extension is sought.

Section 800.13. This section deals with resources discovered after section 106 review has been completed.

Section 800.13(a). This section emphasizes the utility of developing Programmatic Agreements to deal with discoveries of historic properties which may occur during implementation of an undertaking. If there is no Programmatic Agreement to deal with discoveries, and the Agency Official determines that other historic properties are likely to be discovered, then a plan for how discoveries will be addressed must be included in a no adverse effect finding or a Memorandum of Agreement.

Section 800.13(b)(1). This section states the procedures that must be followed when construction has not yet occurred or an undertaking has not yet been approved. Because a Federal agency has more flexibility at this stage, adherence to the consultative process as set forth in § 800.6 is appropriate.

Section 800.13(b)(2). This section provides that where an archeological site has been discovered and where the Agency Official, SHPO/THPO and any appropriate Indian tribe or Native Hawaiian organization agree that it is of value solely for the data that it contains, the Agency Official can comply with the Archeological and Historic Preservation Act instead of the procedures in this subpart.

Section 800.13(b)(3). This section sets forth the procedures that must be followed when the undertaking has been approved and construction has commenced. Development of actions to resolve adverse effects and notification to the SHPO/THPO and the Council within 48 hours of the discovery are required. Comments from those parties are encouraged and the agency must report the actions it ended up taking to deal with the discovery.

Section 800.13(c). This section allows an agency to make an expedited field judgment regarding eligibility of properties discovered during construction.

Subpart C—Program Alternatives

Section 800.14. This section lays out a variety of alternative methods for Federal agencies to meet their section 106 obligations. They allow agencies to tailor the section 106 process to their needs.

Section 800.14(a). Alternate procedures are a major streamlining measure that allows tailoring of the section 106 process to Agency programs and decisionmaking processes. The procedures would substitute in whole or in part for the Council's section 106 regulations. As procedures, they would include formal Agency regulations, but would also include departmental or Agency procedures that do not go through the formal rulemaking process. Procedures must be developed in consultation with various parties as set forth in the regulations. The public must have an opportunity to comment on Alternate procedures. If the Council determines that they are consistent with its regulations, the alternate procedures may substitute for the Council's regulations. In reviewing alternate procedures for consistency, the Council will not require detailed adherence to every specific step of the process found under the Council's regulations. The Council, however, will look for procedures that afford historic properties consideration equivalent to that afforded by the Council's regulations and that meet the requirements of section 110(a)(2)(E) of the Act. If an Indian tribe has substituted its procedures for the Council's regulations pursuant to section 101(d)(5) of the NHPA, then the Federal agency must follow the agreement with the Council and the tribe's substitute regulations for undertakings on tribal lands.

Section 800.14(b). This section retains the concept of Programmatic Agreements. The circumstances under which a Programmatic Agreement is appropriate are specified. The section places Programmatic Agreements into two general categories: those covering agency programs and those covering complex or multiple undertakings. The section on Agency programs makes clear that the President of NCSHPO must sign a nationwide agreement when NCSHPO has participated in the consultation. If a Programmatic Agreement concerns a particular region, then the signature of the affected SHPOs/THPOs is required. An individual SHPO/THPO can terminate its participation in a regional Programmatic Agreement, but the agreement will remain in effect for the other states in the region. Only NCSHPO can terminate a nationwide Programmatic Agreement on behalf of the individual SHPOs. Language is included to recognize tribal sovereignty while providing flexibility to Federal agencies and tribes when developing Programmatic Agreements. While it does not prohibit the other parties from executing a Programmatic Agreement, the language does limit the effect of the agreement to non-tribal lands unless the tribe executes it. However, the language also authorizes multiple Indian tribes to designate a representative tribe or tribal organization to participate in consultation and sign a Programmatic Agreement on their behalf. Requirements for public involvement and notice are included. The section on complex or multiple undertakings ties

back to § 800.6 for the process of creating such programmatic agreements.

Section 800.14(c). Exemptions are intended to remove from section 106 compliance those undertakings that have foreseeable effects on historic properties which are likely to be minimal. Section 214 of the NHPA gives the Council the authority to allow for such exemptions. This section sets forth the criteria, drawn from the statute, for exemptions and a process for obtaining (and terminating) an exemption.

Section 800.14(d). Standard treatments provide a streamlined process by which the Council can establish certain acceptable practices for dealing with a category of undertakings, effects, historic properties, or treatment options. A standard treatment may modify the application of the normal section 106 process under certain circumstances or simplify the steps or requirements of the regulations. This section sets forth the process for establishing a standard treatment and terminating it.

Section 800.14(e). Program comments are intended to give the Council the flexibility to issue comments on a Federal program or class of undertakings rather than comment on such undertakings on a case-by-case basis. This section sets forth the process for issuing such comments and withdrawing them. The Federal agency is obligated to consider, but not necessarily follow, the Council's comments. If it does not, the Council may withdraw the comment, in which case the agency continues to comply with section 106 on a case-by-case basis.

Section 800.14(f). The requirement for consultation program alternatives with Indian tribes and Native Hawaiian organizations is provided for in this section. It is an overlay on each of the Federal program alternatives set forth in § 800.14(a)–(e). It provides for government-to-government consultation with Indian tribes.

Section 800.15. Tribal, State and Local Program Alternatives. This section is presently reserved for future use. The Council will proceed with the review of tribal applications for substitution of tribal regulations for the Council's section 106 regulations on tribal lands, pursuant to section 101(d)(5) of the Act, on the basis of informal procedures. With regard to State agreements, the Council will keep in effect any currently valid State agreements until revised procedures for State agreements take effect or until the agreement is otherwise terminated.

Section 800.16. Definitions. This section includes new definitions to respond to identified needs for clarification and to reflect statutory amendments.

The term "Agency" is defined for ease of reference. It tracks the statutory definition in the NHPA.

The definition of "approval of the expenditure of funds" clarifies the intent of this statutory language as it appears in section 106 of the NHPA. This definition addresses the timing of section 106 compliance. A Federal agency must take into account the effects of its actions and provide the Council a reasonable opportunity to comment before the Agency decides to authorize funds, not just before the release of those funds. The intent of this provision is to emphasize the necessitate for compliance with section 106 early in the decision making process.

The definition of "area of potential effects" acknowledges that the determination of the area potential effects often depends on the nature and scale of the undertaking and the associated effects.

The definition of "comment" makes it clear that the term refers to the formal comments of the Council members.

The definition of "consultation" describes the nature and goals of this critical aspect of the section 106 review process.

The term "day" was defined to clarify the running of time periods.

The term "effect" is defined because, even though the "no effect" step is not in the rule, the concept of an undertaking's effect is still a part of the "historic properties affected" determination.

"Foreclosure" is a term that has always been a part of the section 106 process. The term describes the finding that is made by the Council when an Agency action precludes the Council from its reasonable opportunity to comment on an undertaking.

The term "head of the Agency" is defined in light of the 1992 amendments in section 110(l) that require that the head of an Agency document a decision where a Memorandum of Agreement has not been reached for an undertaking.

"Indian tribe" is defined exactly as in section 301(4) of the NHPA.

"Native Hawaiian organization" is defined exactly as in section 301(17) of the NHPA.

"Tribal Historic Preservation Officer" is the tribal official who has formally assumed the SHPO's responsibilities under section 101(d)(2) of the NHPA.

"Tribal lands" is defined exactly as in section 301(14) of the NHPA.

"Undertaking" is defined exactly as in section 301(7) of the statute. The Agency Official is responsible, in accordance with § 800.3(a), for making the determination as to whether a proposed Federal action is an undertaking. As appropriate, an agency should examine the nature of its Federal involvement taking into consideration factors such as the degree of Federal agency control or discretion; the type of Federal involvement or link to the action; and whether or not the action could move forward without Federal involvement. An agency should seek the advice of the Council when uncertain about whether or not its action falls within the definition of an undertaking. The 1986 regulatory definition of undertaking included new and continuing projects, activities, or programs and any of their elements not previously considered under section 106. It is intended that the new definition includes such aspects of a project, activity, or program as undertakings.

Appendix A. Criteria for Council Involvement in Reviewing Individual section 106 Cases

This appendix sets forth the criteria that will guide Council decisions to enter certain section 106 cases. As § 800.2(b)(1) states, the Council will document that the criteria have been met and notify the parties to the section 106 process as required. Council involvement in section 106 cases is not automatic once a criterion has been met. The Council retains discretion as to whether or not to enter such a case. Likewise, it is not essential that all criteria be met. The point of the criteria is to ensure that the Council has made a thoughtful decision to enter the section 106 process and to give agencies, SHPOs/THPOs and other section 106 participants a clear understanding of the kind of cases that warrant Council involvement.

V. Impact Analysis

The Regulatory Flexibility Act

The Council certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Although comments on the proposed rule questioned the validity of such certification, the rule in its proposed and final versions imposes mandatory responsibilities on only Federal agencies. As set forth in section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the Council a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the course of a Federal agency's compliance with section 106 of the NHPA, must be considered and evaluated by that Federal agency.

The Paperwork Reduction Act

The final regulations do not impose reporting or recordkeeping requirements or the collection of information as defined in the Paperwork Reduction Act.

The National Environmental Policy Act

In accordance with 36 CFR part 805, the Council initiated the NEPA compliance process for the Council's regulations implementing section 106 of the NHPA prior to publication of the proposed rule in the **Federal Register** on September 13, 1996. On July 11, 2000, through a notice of availability on the **Federal Register** (65 FR 42850), the Council sought public comment on its Environmental Assessment and preliminary Finding of No Significant Impact. The Council has considered such comments, and has confirmed its finding of no significant impact on the human environment. A notice of availability of the Environmental Assessment and Finding of No Significant Impact has been published in the **Federal Register**.

Executive Orders 12866 and 12875

The Council is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The Council also is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994. The rule does not mandate State, local, or tribal governments to participate in the section 106 process. Instead, State, local, and tribal governments may decline to participate. State Historic Preservation Officers do advise and assist Federal agencies, as appropriate, as part of their duties under section 101(b)(3)(E) of the NHPA, as a condition of their Federal grant assistance. In addition, in accordance with Executive Order 12875, the rule includes several flexible approaches to consideration of historic properties in Federal agency decision making, such as those under § 800.14 of the rule. The rule promotes flexibility and cost effective compliance by providing for alternate procedures, categorical exemptions, standard treatments, program comments, and programmatic agreements.

The Unfunded Mandates Reform Act of 1995

The final rule implementing section 106 of the NHPA does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The Council thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

Executive Order 12898

The final rule implementing section 106 of the NHPA does not cause adverse human health or environmental effects, but, instead, seeks to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by this rule seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The Council considers environmental justice issues in reviewing analysis of alternatives and mitigation options particularly when section 106 compliance is coordinated with NEPA compliance. Guidance and training is being developed to assist public understanding and use of this rule.

Memorandum Concerning Government-to-Government Relations With Native American Tribal Governments

The Council has fully complied with this Memorandum. A Native American/Native Hawaiian representative has served on the Council. As better detailed in the preamble to the rule adopted in 1999, the Council has consulted at length with Tribes in developing the substance of what became the proposed rule in this rulemaking. The rule enhances the opportunity for Native American involvement in the section 106 process and clarifies the obligation of Federal agencies to consult with Native Americans. The rule also enhances the Government-to-Government intentions of the memorandum.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Council will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 11, 2001.

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Intergovernmental relations.

For the reasons discussed in the preamble, the Advisory Council on Historic Preservation amends 36 CFR chapter VIII by revising part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants

Sec.
800.1 Purposes.
800.2 Participants in the Section 106 process.

Subpart B—The Section 106 Process

800.3 Initiation of the section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
800.6 Resolution of adverse effects.
800.7 Failure to resolve adverse effects.
800.8 Coordination with the National Environmental Policy Act.
800.9 Council review of Section 106 compliance.
800.10 Special requirements for protecting National Historic Landmarks.
800.11 Documentation standards.
800.12 Emergency situations.
800.13 Post-review discoveries.

Subpart C—Program Alternatives

800.14 Federal agency program alternatives.
800.15 Tribal, State, and local program alternatives. [Reserved]
800.16 Definitions.
Appendix A to Part 800—Criteria for Council involvement in reviewing individual section 106 cases

Authority: 16 U.S.C. 470s.

Subpart A—Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a

reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer.*

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations.*

(i) *Consultation on tribal lands.*

(A) *Tribal historic preservation officer.* For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions.* When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses, and other approvals.* An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may

also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures.* The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews.* The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*

(1) *Apply National Register criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the agency official's finding under paragraph (d)(1) of this section, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all

qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to § 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out the undertaking in accordance with § 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.*

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the agency official shall submit the finding, along with the documentation specified in § 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in § 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its determination. The agency official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) *Results of assessment.*

(1) *No adverse effect.* The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation.* The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*

(1) *Resolution without the Council.*

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement.* A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.*

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others.* The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) *Comments by the Council.*

(1) *Preparation.* The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination With the National Environmental Policy Act.

(a) *General principles.*

(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes.* An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106.* During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and (v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.*

(i) The agency official shall submit the EA, DEIS, or EIS to the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS, or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS, or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall notify the agency official either that it agrees with the objection, in which case the agency official shall enter into consultation in accordance with § 800.6(b)(2) or seek Council comments in accordance with § 800.7(a), or that it disagrees with the objection, in which case the agency official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) *Approval of the undertaking.* If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in:

(A) The ROD, if such measures were proposed in a DEIS or EIS; or

(B) An MOA drafted in compliance with § 800.6(c); or

(ii) The Council has commented under § 800.7 and received the agency's response to such comments.

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of section 106 compliance.

(a) *Assessment of agency official compliance for individual undertakings.* The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*

(1) *Agency responsibility.* Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) *Consultation with the Council.* When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants.* Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation.* The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format.* The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality.*

(1) *Authority to withhold information.* Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of agreement.* When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement. Documentation shall include:*

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures.* The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) *Using a programmatic agreement.* An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National

Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

§ 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the **Federal Register** and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the **Federal Register**.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.*

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings.* Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements.* The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories.*

(1) *Criteria for establishing.* An agency official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The agency official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The agency official shall publish notice of any approved exemption in the **Federal Register**.

(d) *Standard treatments.*

(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the **Federal Register**.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

(e) *Program comments.* An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the **Federal**

Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and local program alternatives. [Reserved]

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual section 106 Cases

(a) *Introduction.* This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy.* The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria.* The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: December 4th, 2000.

John M. Fowler,

Executive Director.

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Department of Health and Human Services

Administration for Children and Families

45 CFR Part 308

State Self-Assessment Review and Report; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 308

RIN 0970–AB96

State Self-Assessment Review and Report

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement a provision of the Social Security Act added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which requires each State to annually assess the performance of its child support enforcement program and to provide a report of the findings to the Secretary of the Department of Health and Human Services (DHHS).

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Jan Rothstein, OCSE Division of Policy and Planning, (202) 401–5073. Hearing impaired individuals may call the Federal Dual Party Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These regulations are published under the authority of the Social Security Act (the Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). Section 454(15)(A) of the Act (42 U.S.C. 654(15)(A)) contains a requirement for each State to annually assess the performance of the State's child support enforcement program under title IV–D of the Act in accordance with standards specified by the Secretary, and to provide a report of the findings to the Secretary.

These regulations are also published under the general authority of section 1102 of the Act (42 U.S.C. 1302) authorizing the Secretary to publish regulations necessary for the efficient administration of the title IV–D program.

Background

Prior to PRWORA, Federal law specified that States that had been audited and found not to be in substantial compliance with Federal requirements were subject to a financial penalty of between 1 and 5 percent of the State's funding under the title IV–A program. These audits were performed every 3 years. The penalty could be held in abeyance for up to one year to allow States the opportunity to implement corrective actions to remedy the program deficiency. At the end of the corrective action period, a follow-up audit was conducted. If the follow-up audit showed that the deficiency had been corrected, the penalty was rescinded. Section 342(b) of PRWORA revised section 452(a)(4) of the Act, changing Federal audit requirements to focus on data reliability and to assess performance outcomes instead of determining compliance with process steps.

At the same time, section 342(a) of PRWORA amended the Act by adding a new section 454(15)(A) of the Act to require each State to conduct an annual review of its Child Support Enforcement (IV–D) program to determine if Federal requirements are being met and to provide an annual report to the Secretary of DHHS on the findings. The changes to sections 452 and 454(a)(15) of the Act mean that the Federal government's audit responsibilities now focus primarily on results and fiscal accountability while States are to focus on the responsibilities for child support service delivery in accordance with Federal mandates. The annual self-assessment's purpose is to give a State the opportunity to assess whether it is meeting Federal requirements for providing child support services and providing the best services possible. There are no financial sanctions associated with a State's self-assessment. It is to be used as a management tool, to help a State evaluate its program and assess its performance.

Following the enactment of PRWORA and to ensure broad input, OCSE consulted with a wide variety of program stakeholders to get recommendations on how to proceed. These recommendations addressed: the criteria to be covered in annual reports to the Secretary; the methodology for reviewing the criteria; and an approach for reporting the results of these reviews. OCSE considered these recommendations in developing the proposed rule.

Prior to writing the proposed rule, OCSE received suggestions on self-assessment reviews at national and regional meetings, including meetings with the American Public Human Services Association, formerly known as the American Public Welfare Association (APWA) and the National Child Support Enforcement Association (NCSEA). In addition, several child support advocacy groups informally provided comments. Comments were also solicited from State IV–D directors.

Federal Role

The Federal role in the self-assessment review process includes receiving reports submitted pursuant to section 452(a)(4)(B) of the Act and, as appropriate, provide to the States comments, recommendations for additional or alternative corrective action, and any technical assistance that a State may need. The Federal involvement includes, but is not limited to: approving IV–D State plan amendments certifying that the State has a self-assessment review process; providing review requirements, guidelines, instructions and methodologies for the review to the State; responding to requests for help from the State; providing interpretation of compliance standards; developing continuing partnerships; reviewing and providing appropriate comments on self-assessment reports; developing a self-assessment review module; overseeing the implementation of the self-assessment process in the States; periodically analyzing self-assessment reports to identify "best practices" to be shared with other States and providing comments and recommendations regarding the appropriateness of proposed corrective action or alternative correction action.

Description of Regulatory Provisions

These regulations implement the statutory requirement that a State annually assess the performance of its IV–D program and submit a report of the findings to the Secretary by adding a new part 308, "Annual State Self-Assessment Review and Report" to existing rules in Chapter III governing the child support enforcement program under title IV–D of the Act.

Section 308.0 sets the scope of the regulation and specifies this is applicable only to the annual State self-assessment review and report process.

Section 308.1 provides the components of the self-assessment implementation methodology that States must use including: sampling, scope of review, the review period, and reporting.

Section 308.1(a) addresses the obligation of the IV–D agency to maintain the responsibility and control for all reviews, review findings and the content of the annual report. We have revised the regulatory language in this section since publication of the proposed rule to delete requirements on organizational placement and to clarify responsibilities in response to comments received that the requirement could be read as IV–D responsibility for control of reviews only when the self-assessment is privatized.

Section 308.1(b) specifies that a State must either review all of its cases or conduct sampling which meets the criteria specified. Due to the differences in administrative structures in States, we did not prescribe a single sampling formula for universal use by all States. Instead, under paragraph (b), a State has discretion in designing its own sampling methodologies that could be tailored to meet individual State needs. However, under paragraphs (b)(2) and (3), each State must maintain a minimum confidence level of 90 percent for each criterion, select statistically valid samples, and assure that there are no portions of the IV–D case universe omitted from the sample selection process.

The following checklist has been developed to provide guidance in the form of a series of steps that should be taken during the development and application of a sampling methodology. This checklist is not intended as a definitive pronouncement or mandate from OCSE, but only as a guide outlining a generic sampling approach. We provide it for reference and guidance only.

1. Define the reason(s) for collecting and evaluating the data: i.e. each State must evaluate its performance with regard to each required program compliance criterion set forth in section 308.2.

2. Plan the data collection method(s):

a. Identify the criteria to be evaluated (refer to section 308.2).

b. Select a method of data collection/evaluation.

c. Establish a minimally acceptable level of performance.

d. Set a desired confidence level pursuant to Federal requirements.

e. Choose a method of random selection (e.g., simple random selection or systematic random selection).

3. Collect the required data: After selecting the sample cases, obtain the case files and/or the pertinent computer records containing the necessary data elements.

4. Process the collected data: Evaluate each case for each criterion to determine if an action was required, and if the required action was taken. Tabulate the results of the sample or samples.

5. Analyze the data. Quantify results and statistically evaluate the results obtained.

6. Present the results for each criterion in a tabular format and provide a narrative explanation of the results obtained.

Section 308.1(c) relates to the scope of the self-assessment review. This paragraph requires a State to review all required criteria articulated in section 308.2 on a yearly basis.

Section 308.1(d) provides for a 12-month review period, beginning no later than 12 months after the effective date of this final rule and occurring again each 12 month period thereafter. We revised this section in response to comments to clarify when the review period begins and ends. The 12-month review period is consistent with prior audit review periods and allows enough time to evaluate the case processing timeframes in part 303. States should continue to use the same review periods they used prior to publication of this final rule and should make no break in their reviewing processes. States need not match each other's review periods, provided that case samples selected are from the period that will be reviewed and reflected in their report. Self-assessment reviews can be conducted in one of two ways: historically or incrementally. Using the historical approach, a State begins its self-assessment review after the end of the period to be reviewed. We have made changes to the language in this section to explain and clarify what the duration of the review period is.

Using the incremental approach, a State selects cases from several periods during the review period and adds the results to provide a picture of performance for the entire period. The State would draw a separate sample for each incremental review period. The incremental approach enables the State to spread its review effort over time and make more efficient use of available resources because the sample size could be smaller, while allowing the State to identify problem areas and take corrective action prior to the end of the review period. For those States who review their case samples incrementally, the cases selected must be reviewed and evaluated for the actions required at the beginning of the incremental review period.

Section 308.1(e) addresses the contents of the annual reports and requires copies to be sent to the Commissioner, OCSE and the applicable Regional Office. The State must submit its written report no later than 6 months after the end of the review period. For example, if the review period ends September 30, 2000, the report would be due by March 31, 2001. We revised this section to clarify that States should submit a description of any corrective actions proposed and/or taken.

Section 308.2 lists and provides descriptions of the required program compliance criteria. In all cases, States must have the required procedures specified in the regulations. In this section we are requiring States to use benchmarks for performance that are identical to those that were required when previous Federal audit standards were in place. The benchmarks for determining the adequacy of performance continue to be appropriate under the new system of self-assessment reviews because States are being asked to measure themselves on the same performance criteria as under previous audit standards. States should use the benchmarks to determine when corrective action is necessary, i.e. if they fail to meet one or more benchmarks. Reviews of closed cases would need to demonstrate that appropriate action was taken in 90 percent of the cases reviewed. Further, reviews of the other required program criteria would need to show that appropriate action was taken in 75 percent of the cases reviewed.

Section 308.2(a) requires reviews of closed IV–D cases to determine whether the case met one or more Federal case closure criteria under section 303.11.

Section 308.2(b)(1) requires the review of State actions to establish paternity and support orders. A case would meet the review requirement if an order for support was required and established during the review period, notwithstanding the relevant timeframes. Section 308.2(b)(2) addresses the necessary procedures to follow when an order was required but not established during the review period.

Section 308.2(c) requires the review of State actions to enforce child support orders. If income withholding was appropriate, a case would meet the review requirement if it was received during the review period, notwithstanding the mandatory timeframes. A review of the enforcement of orders would include all cases in which an ongoing income withholding is in place, as well as those cases in which new or repeated enforcement actions were required during the review period. We made changes to this section to correct a typing mistake that appeared in the proposed rule, to clarify the locate sources that are appropriate to use, and to specify the timeframes for sending a notice to the employer to withhold income if information is obtained from the State Directory of New Hires or other recognized sources.

Section 308.2(d) describes reviews of the disbursement of collections. This review would include a determination of whether States are complying with the 2-day requirement for disbursing

certain collections. States that fail to meet the 2-day time frame but are under an alternative penalty for failure to meet the State disbursement unit (SDU) deadline should mention that fact in their self-assessment reports. Section 308.2(d) requires States to determine whether disbursements of collections were made in compliance with the Act. We made changes to this section based on a comment we received regarding review of payments received. The regulatory language now indicates that States must review the last payment received for each case. We also deleted language in this section to clarify the requirement.

Section 308.2(e) requires reviews of securing and enforcing medical support orders. This includes measuring whether the requirements were met for: including a medical support provision in all new orders; taking steps to determine whether reasonable health insurance is available when health insurance is included in the order; informing the Medicaid agency when coverage was obtained; determining whether the custodial parent was informed of policy information when coverage has been obtained; determining whether employers are informing the State of lapses in coverage; and determining whether the State transferred notice of the health care provision to a new employer when a noncustodial parent changed employment.

Section 308.2(f) addresses the review and adjustment of orders. A case meets the review requirement if it was reviewed and met the conditions for adjustment notwithstanding the applicable timeframes. An examination of the review and adjustment criterion includes reviews of assistance cases, review of cases where adjustments were not necessary, repeated location efforts, notices to the custodial and non-custodial parents informing them of their rights to request reviews within 180 days of determining that a review should be conducted, and reviews of whether both parties were given 30 days to contest adjustments if the cost-of-living or automated methods had been utilized. We have made minor revisions to the regulatory language in this section to clarify the actions required.

Section 308.2(g) addresses interstate services. The review criterion includes the initiating State's responsibility to refer cases to the responding State within 20 days of determining that the noncustodial parent is in another State pursuant to section 303.7(b)(2); providing responses to the responding State with requested additional information within 30 calendar days of the request pursuant to section 303.7(b)(4); notifying the responding State of new information within 10 working days pursuant to section 303.7(b)(5); and sending a request for review of a child support order within 20 calendar days after receiving a request for review and adjustment under the Uniform Interstate Family Support Act (UIFSA) pursuant to section 303.7(b)(6). In recognition of the fact that passage of UIFSA and other PRWORA administrative enforcement actions have changed the way interstate cases are processed, we encourage States to use one-state action to take any enforcement action they can on a case, rather than referring all cases for two-state action. We have revised the final rule to provide for the referral of interstate cases where appropriate.

Reviews must also include determining compliance with responsibilities of the responding State in interstate cases, including central registry requirements for review of submitted documentation for completeness, forwarding the case to the State Parent Locator Service for locate services, acknowledgment of the receipt of the case and requests for missing documentation from the initiating State, and whether the IV–D agency in the initiating State was informed of where the case was sent for action. The review would also determine whether the central registry responded to inquiries from other States within five working days of receipt of a request for a case status review pursuant to section 303.7(a)(4).

Section 308.2(b), (c), and (f) contain language that previously appeared in the former Federal audit regulations at section 305.20 relative to certain missed timeframes. As we stated in the preamble to the final Federal audit regulations in 1994 (59 FR 66204), the State should not be penalized when timeframes are missed in a case if a successful result is achieved (paternity or a support order is established, an order is adjusted, income is withheld, or a collection is made or distributed), since these results are the main goals of the child support enforcement program. We emphasize that all timeframes, including those for paternity establishment, support order establishment, review and adjustment, and income withholding, are still Federal requirements that States must meet.

Other timeframes that must be reviewed for compliance include: 10 days to forward the case upon locating the non-custodial parent in a different jurisdiction pursuant to section 303.7(c)(5) and (6); two business days to forward any support payments collected to the initiating State pursuant to section 303.7(c)(7)(iv); and 10 working days to notify the initiating State upon receipt of new information pursuant to section 303.7(c)(9).

Section 308.2(h) addresses the timeframes applicable to the expedited processes criterion pursuant to section 303.101(b)(2)(i) and in keeping with previous definitions of substantial compliance in former section 305.20, we are proposing a benchmark of 75 percent for the number of cases to be completed within 6 months and a benchmark of 90 percent for the number of cases to be completed within one year. The 75 and 90 percent benchmark standards apply to the establishment of orders from the date of service of process to the time of disposition.

Section 308.3 lists and describes the optional program areas of review, which include program direction and program service enhancements. Section 308.3(a) pertains to the review of State program direction.

The first optional category, Program Direction, should be an analysis of the relationships between case results relating to program compliance areas, and performance and program outcome indicators. While this review category is optional, by including the information, States have the opportunity to demonstrate how they are trying to manage their resources to achieve the best performance possible. This evaluation should explain the data and how the State adjusted its resources and processes to meet goals and improve performance. In this section, States are encouraged to discuss new laws and enforcement techniques, etc., that are contributing to increased performance. Barriers to success, such as State statutes, may also be discussed in this section.

Section 308.3(b) pertaining to the optional review of State program service enhancements is envisioned as a report of practices initiated by the State that are contributing to improving program performance and customer service.

Examples include improvement of client services through the use of expanded office hours, kiosks, internet, and voice response systems. This is an opportunity for a State to promote its programs and innovative practices. Some examples of innovative activities that a State may elect to discuss in the report include: steps taken to make the program more efficient and effective; efforts to improve client services; demonstration projects testing creative new ways of doing business; collaborative efforts being taken with partners and customers; innovative practices which have resulted in improved program performance; actions taken to improve public image; and access/visitation projects initiated to improve non-custodial parents' involvement with the children. A State also could discuss in this review area whether the State has a process for timely dissemination of applications for IV–D services in cases that are not receiving public assistance, when requested, and child support program information to recipients referred to the IV–D program, as required by section 303.2(a).

Response to Comments

On October 8, 1999 we published a Notice of Proposed Rulemaking in the **Federal Register** with a 60 day comment period (64 FR 55102). We received 73 comments from 19 State and local IV–D agencies, national child support enforcement organizations, advocacy groups representing custodial parents and children, and the general public. Two commenters wrote solely to express their support for the notice of proposed rulemaking. A summary of the comments received and our responses follow.

General Comments

Comment: One commenter was concerned that States that modify the review standards by imposing a higher standard on themselves than required by the final rule would make themselves more susceptible to a Federal audit over substantial compliance issues.

Response: We welcome the idea that States will want to hold themselves to higher standards then those set by this final rule. Certainly, performance on the program compliance criteria that exceeds the standards would represent greater benefits for children and families. States should be assured that setting higher standards for themselves will not mean greater attention from OCSE or increase the likelihood of Federal audits. The Incentive Payments and Audit Penalties NPRM (64 FR 55074, October 8, 1999) proposed that OCSE would conduct audits for such purposes as OCSE may find necessary. This could include circumstances under which the results of two or more State self-assessments show evidence of sustained poor performance or indicate that the State has not corrected deficiencies identified in previous self-assessments. However, we would certainly not be more likely to audit a State because it failed to meet a self-imposed higher performance standard.

Comment: One commenter was concerned because the NPRM does not address penalties for a State's failure to produce an adequate self-assessment. They thought a Federal compliance audit should be triggered by a State's failure to audit its own compliance adequately.

Response: The statute requires States, as a condition of State plan approval, to provide for a process for annual reviews of and reports to the Secretary on the State IV–D program. Therefore, a State's failure to provide for the process in its State plan or to conduct such a review and submit the findings to the Secretary in accordance with Federal requirements would result in steps to initiate State plan disapproval and loss of all Federal IV–D funding.

Comment: Another commenter was concerned that the integrity of the self-assessment process would be threatened by the possibility of a Federal audit for accurately assessing a weak area.

Response: We expect States to use the self-assessment as a management tool and to be entirely accurate and objective when reporting their performance. To do otherwise would only harm the State and its future performance. PRWORA revised Federal audit requirements from a process-based system to a performance-based system. This means balancing the Federal government's oversight responsibilities with States' responsibilities for child support service delivery and fiscal accountability. However, we want to point out that the Secretary retains the right to conduct substantive compliance audits, but would likely assert that right only in the most egregious circumstances such as where the State fails to take steps to correct sustained poor performance.

Comment: Four commenters addressed what they think is an inconsistency between the incentive and penalty NPRM and this NPRM. They think this NPRM states that the self-assessment review is not tied to fiscal sanctions while section 305.60(c)(2)(i) of the incentive and penalty NPRM says self-reviews can lead to audits which may lead to penalties. These commenters think the final rule on self-assessments should state clearly that States would not be subject to a fiscal penalty as a result of self-assessment reviews.

Response: We want to be very clear on this point: States will not incur a fiscal penalty as a direct result of poor performance reported in a self-assessment review. We want to encourage States to report accurately and fully their actual performance in the self-assessment reviews. Self-assessment reviews are management tools for States to assess and improve their performance. However, section 452(a)(4)(C) of the Act established that the Secretary may conduct audits for such purposes as she may find necessary, including audits to determine substantial compliance. Financial penalties are potential consequences of these separate, Federal audits. Audits to determine substantial compliance could be triggered by: evidence of systemic problems with a State's child support program, on-going performance issues that are not addressed or corrected in more than one State self-assessment, and similar problems.

Self-Assessment Implementation Methodology—Section 308.1

Comment: One commenter thought the effective date of the NPRM was unclear. The commenter also thought the review date was unclear and wondered, if a State chooses to conduct a review with an incremental approach, how would the end of the review period be determined?

Response: This regulation is effective upon publication. Each self-assessment review period covers a 12-month period. For clarification, we revised the language in section 308.1(d). The regulatory standards would be applied beginning with the start of the first new review period occurring after publication. It is expected that States will continue to use the same review periods that they have been using for the past two years and that there will be no gaps. All subsequent self-assessment review periods would then immediately follow the time period of the previous review period. The report documenting and presenting the results of the review are due to OCSE no later than 6 months after the end of the review period. As stated previously, States may choose to use historical or incremental approaches to their self-assessment reviews. States have discretion in choosing the duration of their increments. If, for example, a State chooses a quarterly increment, it could start on October 1 and would then end December 31. Each subsequent quarterly incremental review period would then end 3-months later.

Comment: Several commenters suggest allowing States to apply for extensions of the self-assessment reporting deadline in recognition that States with more complicated review processes will need more time.

Response: We do not think extensions will be necessary. States are currently conducting reviews that are very similar in scope and content to the reviews required by this regulation and by and large, States are conducting the reviews with little or no problems. OCSE is available to assist States should they encounter any problems.

Comment: We received 10 comments on the requirement that the sampling

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methodology for self-assessments must maintain a minimum confidence level of 90 percent for each criterion. Most commenters suggested using an overall confidence level of 90 percent for all criteria. Another commenter was concerned that their statewide system would be unable to pull cases by criterion and so would be unable to achieve a minimum confidence level of 90 percent for each criterion.

Response: For a self-assessment review to be a useful tool for management, it must provide accurate, and reliable information. Information provided should identify program strengths and weaknesses as well as provide meaningful estimates of current performance.

As we understand it, States that have raised the 90 percent confidence level issue are advocating the use of one sample selected from the IV–D caseload to review all eight required performance criteria. This approach would likely result in adequate representation for some of the reviewed criteria and inadequate representation for other reviewed criteria. This would occur because the action that needs to be reviewed for one or more of the criteria may occur infrequently in the population, while the action needed to be reviewed for other criteria may occur more frequently. Consequently, the likelihood that the sample will contain cases having the attribute being sought could potentially be quite low. As a result, small samples are selected, and the effect of detected errors on the sample estimate are magnified because the computed standard error associated with the estimate derived from the sample (point estimate or efficiency rate) will more than likely be large. This could result in relatively poor performance being accepted as possibly being in compliance with Federal requirements. It also appears that these States are suggesting that they then be allowed to combine the results for all eight criteria and compute an overall compliance rate and determine the confidence level attributable to that rate. This action would emphasize the performance of the criteria with the most representation, and mitigate or de-emphasize the performance of those criteria with minimal representation. This would not facilitate results that would be useful to States as a management tool to accurately assess their performance.

We used 90 percent confidence as the value for the confidence level variable in the sample size computation to reduce the sample sizes States would need to conduct their self-assessment reviews. Under previous audits, the OCSE Auditors used a 95 percent confidence level. In order to determine sample size for self-assessment purposes, one must consider: confidence level (the degree of confidence to place in the derived estimate), sampling error (the degree of error that can be accepted), and expected rate of occurrence of the attribute to be sampled. Varying these three factors influences the size of sample required. Varying the precision and desired confidence level can dramatically affect the sample size determination and overall benefit/impact of the effort. Sampling error has the largest effect on sample size. In other words, as the acceptable error percentage increases the sample size decreases. The converse is true in the case of a confidence level. An increase in the sampling error percentage from 5 percent to 10 percent, coupled with a decrease in the confidence level (i.e., from 95 percent to 90 percent) required, would significantly reduce the sample size required. The problem often encountered when the sample size has been reduced by changing both the confidence level and sampling error in opposite directions is a sample that produces a large standard error associated with the estimate derived. This can result in fairly poor performance being seen as compliance. For all of these reasons, we think it would be imprudent to take the commenters suggestion and we have retained the original confidence levels in the final rule.

In response to the commenter concerned about his statewide system's inability to meet the requirements, OCSE will provide any State the technical assistance it needs to meet these requirements. Statewide systems should be able to meet these requirements and need to be able to for Federal reporting requirements.

Comment: One commenter recommended the reference to a formal self-assessment "unit" be amended to permit the States flexibility to assign staff rather than create a formal unit. The commenter thinks PRWORA requires a process for self-assessment but not a unit. The commenter thinks this recommendation is consistent with the workgroup's recommendation.

Response: The commenter's point is well taken. PRWORA simply requires that a process be put in place. Although it would be preferable that a formal self-assessment unit be established, it is not required. However, we encourage States to establish a formal unit because of the following benefits: (1) Continuity—the possibility that the same staff would be conducting the annual reviews over the course of several years, and (2) Familiarity—the possibility that the staff will have experience with the Child Support Program and the review instrument used. We have deleted the provisions on organizational placement from the final rule. We have specified only that the IV–D agency must ensure that requirements are met and maintain responsibility for the review and report. States have the flexibility to establish a self-assessment unit within the IV–D agency, another State agency, or within the umbrella agency containing the IV–D agency or privatize the self-assessment.

Comment: Two commenters requested that we add language that appears to be missing from 308.1(a)(1) that appears in (a)(2) regarding a State's ability to privatize self-assessment functions as long as the IV–D agency maintains responsibility for and control of the results produced and the contents of the annual report.

Response: As discussed in the preceding comment, we have revised this section to increase clarity and removed the specific organizational requirements.

Comment: One commenter thought there was an inconsistency between the language in the preamble relating to organizational placement for the self-assessment unit and the requirements specified in section 308.1(a). The commenter was concerned that section 308.1(a) could be read to mean that the IV–D agency only had sole responsibility for the self-assessment when the self-assessment is privatized.

Response: We do not believe there was an inconsistency. The preamble state that it would be ideal if the organizational placement was within the IV–D agency because this would enable the IV–D agency to draw on the experience of IV–D staff who have the skills and qualifications needed to analyze the program. However, we recognized in the preamble that this is not always possible. We revised section 308.1(a) to read as follows: "The agency must ensure the review meets Federal requirements and must maintain responsibility for and control of the results produced and contents of the annual report."

Comment: One commenter suggested that the final rule should not stipulate a report format. It should only state that the report must contain the review methodology, the compliance findings and corrective action plan, if needed.

Response: We are stipulating a general report format. Section 308.1(e)(2) states that the report must include but is not limited to an executive summary; a description of optional program criteria

covered by the review; a description of sampling methodology used, if applicable; the results of the review; and description of any corrective action proposed and/or taken. We have specified this format because we need to be sure that we receive comparable information from all States. States are free to use any report format they choose that includes the required information. We want to be clear that we are not requiring a specific corrective action plan format. States must describe how they will change their programs to better achieve the goals of the child support program and meet the self-assessment benchmarks. We revised section 308.1(e)(iv) to indicate that the State must include a description of any corrective action proposed and/or taken.

Comment: One commenter suggested allowing States to submit a subsequent report 3 to 6 months following the initial report instead of including any corrective actions proposed and/or taken in the initial report.

Response: We believe 3 to 6 months is too short a period of time to expect to have significant results from corrective actions. The purpose of requiring States to report on corrective actions in their self-assessment reports is to ensure that States have explicit plans in place to address performance problems to ensure they do not continue to occur in subsequent years.

Comment: One commenter was concerned that the schedule of reporting would be an undue burden on States, causing them to evaluate and report on a different schedule than all other Federal reporting. The commenter was also concerned that requiring the review to begin immediately when the rule becomes effective does not allow States the ability to review any new rule changes and develop procedures, train staff, and implement reviews based on the new standards.

Response: We believe the regulation gives States flexibility in determining when to start their review periods. We revised section 308.1(d) to make it clear that each review period must cover a 12-month period, the first of which must begin no more than 12 months after the effective date of this final rule. The review requirements in this rule are consistent with the review components spelled out in program instructions issued two years ago in OCSE–AT–98–12.

Comment: Two commenters urged that the regulations require States to use comparable review periods and methodologies over time. The commenter thought that the assessments would lose their value as a way to analyze changes in performance over time if the framework shifts from year to year.

Response: We do not think it is necessary to place this restriction on States. We expect that States will make every effort to standardize the process using their statewide systems and that the annual self-assessments will be comparable to as great an extent as possible. Again, we wish to stress our overarching concern that these reviews be useful to States as management tools to assess their own performance.

Comment: Two commenters suggested additional steps be taken to ensure self-assessments are meaningful and useful. They thought the Secretary should ensure the reports are available to the public and other interested parties. In addition, they thought that the required elements should be described in detail including specific findings for each criteria. The commenters also thought the relationship between self-assessment and corrective action is not clear and that the final regulations should require corrective action plans if a self-assessment reveals substantial noncompliance.

Response: We believe that by following the directives in the final rule, States will design self-assessment reviews that serve them meaningfully as management tools to review their progress in serving families and children. States are free to make these reviews available to the public and they would be available through the Freedom of Information Act process if necessary. We do not agree that further detail is needed to describe the required elements of the self-assessment. States are required to include in their self-assessment reports a description of any corrective actions proposed and/or taken. This description is to be part of the management tool, designed to help the State achieve the benchmarks and improve its performance in the future. We believe States will propose corrective actions when needed.

Comment: One commenter noted that the NPRM requires that the self-assessment report contain "any corrective actions proposed and/or taken." Based on the description of the Federal role in the self-assessment process, it appeared to the commenter that the corrective action plans are subject to Federal acceptance. Yet, the commenter noted, the proposed rule contains no detail about what a corrective action plan should contain. The commenter requested more clarification about corrective action plans.

Response: States are not required to request or receive Federal approval of any corrective action proposed or taken. Again, we want to be clear that we are not requiring a specific corrective action plan. As stated earlier, a State must describe how it will change its programs to better achieve the goals of the program and the benchmarks of the self-assessment. The action described should be clearly aimed at solving all the problems identified in the review. Since the main purpose of these reviews is to assist States in evaluating their own performance against a list of eight program criteria, we think the States are in the best position to determine what corrective action is needed to address program deficiencies. We are available to provide any needed technical assistance in this area.

Comment: One commenter thought it was not clear that the State must provide a corrective action plan to describe any corrective action proposed or taken as part of its self-assessment review if a self-assessment indicates serious program deficiencies. The commenter recommended changing the word "any" to "the" in section 308.1(e)(2)(v).

Response: We have made the suggested change.

Comment: One commenter thought the proposed regulation was unclear on what action OCSE will take if a State fails to file a corrective action plan as mentioned in section 308.1(e)(2)(v) or files one which does not meet the criteria established in the final rules. The commenter recommended adding a subsection (f) to section 308.1 indicating what OCSE will do if no report or an inadequate report is filed. The recommendation was that this subsection should make it clear that failure to submit a report or submission of an inadequate report would trigger the process for State plan disapproval.

Response: Section 454(15) of the Act requires States to have a process for annual reviews of and reports to the Secretary on the State IV–D program. Therefore, failure to have such a process would trigger the State plan disapproval process. However, that was not the intent of the reference to corrective action in section 308.1(e). The principal purpose of the self-assessment process is to serve as a management tool for the IV–D program. We wish States to use the process to determine, what, if any, deficiencies exist in their IV–D program so that these deficiencies can be addressed and corrected. If a State fails to submit a self-assessment report, OCSE would work with that State to try to resolve any issues that might be preventing the State from submitting a self-assessment report. However, if a State fails to make a good faith effort to

resolve any barriers and submit a self-assessment report, we would begin taking the steps necessary to disapprove the State plan pursuant to sections 452(a)(3) and 455(a) of the Act and sections 301.10 and 301.13 of this chapter.

Comment: One commenter noted that OCSE–AT–98–12 contained the suggestion that States submit a copy of their report to the OCSE Area Audit Office. They wondered if a copy of the self-assessment annual report should be sent to the OCSE Area Audit Office.

Response: Section 308.1(e) requires States to provide a report of the results of the self-assessment review to the appropriate OCSE Regional Office and to the Commissioner of OCSE. OCSE will share the self-assessment results with all interested parties within the Administration for Children and Families. If a State is concerned about a particular Area Audit Office receiving a copy of the review, it is free to send one to that office.

Required Program Compliance Criteria—Section 308.2

Comment: One commenter believes section 308.2(g) on interstate services should be revised to recognize the encouragement of direct enforcement across State lines that exists under the Uniform Interstate Family Support Act (UIFSA). Another commenter was concerned that section 308.2(g)(1)(i) fails to recognize long arm jurisdiction for instances other than paternity establishment as provided for under UIFSA. A third commenter thought that for purposes of self-assessment, cases should not be defined as interstate until the local IV–D agency has determined the assistance of another State must be engaged in the enforcement of the case.

Response: We recognize that the regulations on the processing of interstate cases do not take into account the direct enforcement activities that are authorized under UIFSA and PRWORA. OCSE has a workgroup made up of Federal and State staff and child support experts, called the Interstate Reform Initiative, which is working to make suggestions to revise the way interstate cases are processed and working to develop a consensus from which new interstate regulations can be written. We expect to be revising the interstate regulations in the next few years. At that time we will ensure full consistency between State self-assessments and interstate regulations. In the meantime, we have amended the final rule to take into account the fact that it may not be necessary to refer a case to another State in order to take appropriate enforcement actions by adding the words "if referral is appropriate" to section 308.2(g)(1)(i). Accordingly, the 20-day time period for referring a case to another State's central registry when it is determined that the non-custodial parent is in another State applies only where referral is necessary in order to take the appropriate action on the case.

Commenter: One commenter noted that the regulation at section 308.2(g) refers to current regulations on interstate case processing. The commenter thought it is important to note, however, that these regulations no longer reflect the reality of interstate case processing. Direct income withholding, direct lien filing and expanded jurisdiction for establishment of a support order have lessened the need for States to automatically refer a case to another jurisdiction simply upon finding the parent in another jurisdiction. The commenter thinks more accurate policy interpretations may be found in OCSE–AT–98–30. At a minimum, the commenter thinks comments and guidance in this regulation should acknowledge this deficiency and reference the work being done to update the regulations such as the work of the Interstate Reform Initiative.

Response: As noted in the previous response, we have amended the final rule to take into account these changes until revised interstate case processing regulations are issued.

Comment: One commenter believes that since implementation of a SDU is an administrative requirement, it is not a case level program criterion and should not be included in a self-assessment review. The commenter also questioned how the standard could be measured at the 75 percent standard and recommended that the requirement be deleted.

Response: We have revised the language in section 308.2(d) to make it clearer that the 75 percent requirement applies only to the timing of disbursements of collections. We also deleted 308.2(d)(1) which would have required the implementation of an SDU.

Comment: One commenter believed section 308.2(d)(2) required review of all payments received on a case during the previous quarter. Since some cases might have 12 payments this could increase the possibility of noncompliance and is not what the workgroup said in the OCSE–AT–98–12. The commenter suggests using either the workgroup recommendation or limiting the payments reviewed to the 3 most recent collections received within the last quarter of the review period.

Response: In accordance with the workgroup recommendation, we have revised section 308.2(d)(2) to indicate that States must review against the last payment received for each case.

Comment: One commenter believed it is inappropriate to allow States to treat a case as meeting the requirements if a result was achieved within the annual review period notwithstanding the timeframes. The commenter recommends requiring States to determine and report its actual level of performance and the associated 90 percent confidence intervals. The commenter wants the regulation to make clear that the compliance levels of 75 percent or 90 percent represent minimum performance levels that trigger a requirement of a corrective action plan.

Response: We agree that the compliance levels represent minimum performance levels and encourage States to perform beyond these levels. However, we are not requiring States to report their actual levels of performance to us because this is a State management tool. Additionally, while timeframes are important in ensuring the provision of effective and timely services, States' primary focus should be on whether bottom line results of providing child support services are being achieved. We would however expect States to address any problems they are having in meeting the required timeframes in the corrective action section of their reports.

Comment: One commenter recommended that the self-assessment also include review of State performance in other key areas such as effectiveness in providing services to families leaving TANF.

Response: We encourage States to go as far beyond the minimum standards stated in the regulation as they choose. Section 308.3 provides States the option to report on such performance.

Comment: One commenter thought the section of the preamble describing section 308.2(f) should be rewritten. The segment stating "notices to the custodial and non-custodial parents informing them of their rights to request reviews within 180 days of determining that a review should be conducted" appears to be a combination of two truncated phrases (one dealing with the notice of right to request review and the other dealing with the 180 day time frame for completing a review). Even after editing this sentence, the grammar in this entire paragraph needs to be reworked.

Response: We do not agree that substantial rewriting is needed of either the preamble or the regulatory language. We have made some minor changes to the regulatory language in section 308.2(f) which makes the section clearer.

Comment: One commenter wrote that section 308.2(c)(3)(i) regarding orders that were needed for enforcement during the review period should not include the phrase "at a minimum, all of the," referring to locate sources since the regulations regarding locate in section 303.3 do not require all of the locate sources listed to be used.

Response: We agree and have made the requested change to section 308.2(c)(3)(i).

Comment: One commenter was concerned that the wording in section 308.2(b)(2) is not consistent with its subsection (iv), since the former refers to situations where an "order was required, but not established" and the latter lists "establishing an order" as a possible outcome.

Response: We do not agree that this language is inconsistent. Section 308.2(b)(2) states that "if an order was required, but not established during the review period," subsections (i) through (iv) are a list of possible last required actions. If establishment of an order was the last required action on the case and the State failed to establish the order, section 308.2(b)(2)(iv) would apply. We do not think rewriting is necessary.

Comment: One commenter requested we define "enforcement collection" as used in section 308.2(c)(2).

Response: In section 308.2(c)(2) a typing mistake appeared in the NPRM. The first sentence should read "If income withholding was not appropriate, and a collection was received. * * * The final rule corrects this error.

Comment: We received two comments about section 308.2(c)(3)(iv). The comments concerned the deadlines for actions to be taken. The commenters' understanding is that the requirement to send an income withholding order to the employer within two business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires applies only at the point in time when a statewide automated system is in place.

Response: The requirement to send an income withholding notice within two business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires is not tied to the implementation of a statewide automated System. Pursuant to sections 453A(f) and (g) of the Act, States were required to match the social security numbers of newly hired employees with those of individuals in the State case registry beginning not later than May 1, 1998. Notice of a match is required to be sent to the IV–D agency which in turn was required to send an income withholding order to the employer within two business days of the entry of the employee's name in the SDNH. In addition, section 454A(g)(1) of the Act requires transmission of withholding orders and notices to employers within two business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service or another source recognized by the State. This requirement was effective not later than October 1, 1999. We revised section 308.2(c)(3)(iv) to specify and correct the timeframes for sending a notice to the employer to withhold income if information is obtained from the State Directory of New Hires or other recognized sources.

Comment: One commenter notes that section 308.2 fails to include a number of the general case evaluation rules set forth in Exhibit 1 of the OCSE–AT–98–12. For example, the Exhibit directs that certain cases should be excluded from further analysis because there was insufficient time to take the required case action or that the case documentation cannot be located or is inadequate. The commenter recommends amending the section to include the general case evaluation directions set forth in the exhibit.

Response: OCSE–AT–98–12 does not apply to this rule and therefore it would not be appropriate to attach the exhibit to the final rule. However, if insufficient time has elapsed during the review period to take the required action in the case, we would suggest they exclude the case from the sample as OCSE did when performing compliance audits. The State's failure to locate a case or the lack of documentation on the case is not a basis for case exclusion. If a case is lost or lacks documentation, we would question what, if any, service was provided to the IV–D client. It should be noted that the self-assessment process allows for a certain number of cases to be discounted as not meeting the requirements. We do not support broad exclusions of lost or non-documented cases, as that would not support the goals of the self-assessment process.

Comment: One commenter thought the final rule should require States to analyze and report on complaints filed as part of the self-assessment.

Response: While we recognize the importance of customer service in providing service to families and children, in writing this regulation we were trying to stay as close as possible to focusing on the responsibilities for child support service delivery in accordance with Federal mandates. We encourage States to report on customer service or other issues in the optional program direction or program service enhancement areas.

Comment: One commenter suggested we allow States to review cost of living adjustments (COLA) for purposes of adjusting orders instead of the review and adjustment processes.

Response: We think the regulation already allows States this flexibility. The regulation at section 308.2(f)(2)(iv) allows States to use COLA or automated methods to review and adjust support orders.

Comment: One commenter suggested renumbering subsections 308.2(f)(2)(iii) and (iv) because these subsections deal with "notice of right to request review" requirements which should stand apart from the review and adjustment process covered earlier in the subsection.

Response: We agree and have made revisions to this section in the regulation.

Optional Program Areas of Review—308.3

Comment: One commenter thought this section should be deleted from the regulations as it addresses optional areas of review and has no statutory basis.

Response: Under section 1102 of the Act, the Secretary has the authority to regulate beyond the statute if we think it is necessary for the efficient administration of the program. We believe the optional aspects are beneficial and add an extra dimension to the self-assessments. They are, as noted, optional.

Comment: Two commenters recommended that analysis of program direction and service enhancements be mandatory.

Response: While we appreciate that the commenters were concerned about adding to the breadth of the self-assessment review in this manner, we do not believe it is necessary to mandate these aspects of the self-assessments at this time. Should circumstances change over time we may revisit these regulations as warranted.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. The changes in this rule contain the Secretary's standards for State self-assessment reviews that largely replace previously required mandatory Federal audits. The

rule was determined to be significant and was reviewed by the Office of Management and Budget.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a final rule. This final rule contains reporting requirements in Part 308, which the Department submitted to OMB for its review. OMB filed comment on the collection, reporting it had concerns about the utility of the collection. OCSE understands OMB is concerned about balancing the value to OCSE of the information collection against the burden placed on State CSEs to collect the information. We would like to clarify that the requirement to have a process for annual reviews of and reports to the Secretary on the State's IV–D program, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures is a requirement of section 454(15) of the Act. The Act requires that States perform self-assessments using such standards and procedures as are required by the Secretary, under which the State IV–D agency will determine the extent to which the program is operated in compliance with the Act. In addition, as stated in several places in the NPRM and in this final rule, OCSE envisions the self-assessment as a management tool to enable States to improve their CSE programs.

Section 308.1(e) contains a requirement that a State report the results of annual self-assessment reviews to the appropriate OCSE Regional Office and to the Commissioner of OCSE. The information submitted must be sufficient to measure State compliance with title IV–D requirements and case processing timeframes. The results of the report will be disseminated via "best practices" to other States and also be used to determine if technical assistance is needed and the use of resources to meet goals. The State plan preprint page for this requirement (page 2.15, Federal and State Reviews and Audits) was approved by OMB July 7, 1997 under OMB Number 0970–0017.

The likely respondents to this information collection include State child support enforcement agencies of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

We have resubmitted the information collection request to OMB. The information collection requirements in this final rule are not effective until approved by OMB.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the final rule.

We have determined that the final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Executive Order 13132 Federalism Assessment

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government." While this rule does not have federalism implications for State or local governments as defined in the executive order, we consulted with representatives of State IV–D programs in developing the rule and their input is reflected.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 308

Auditing, Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement Program)

Dated: June 26, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Dated: August 22, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Chapter III is amended by adding a new part 308 as set forth below:

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

Sec.

308.0 Scope.
308.1 Self-assessment implementation methodology.
308.2 Required program compliance criteria.
308.3 Optional program areas of review.

Authority: 42 U.S.C. 654(15)(A) and 1302.

§ 308.0 Scope.

This part establishes standards and criteria for the State self-assessment review and report process required under section 454(15)(A) of the Act.

§ 308.1 Self-assessment implementation methodology.

(a) The IV–D agency must ensure the review meets Federal requirements and must maintain responsibility for and control of the results produced and contents of the annual report.

(b) *Sampling.* A State must either review all of its cases or conduct sampling which meets the following conditions:

(1) The sampling methodology maintains a minimum confidence level of 90 percent for each criterion;

(2) The State selects statistically valid samples of cases from the IV–D program universe of cases; and

(3) The State establishes a procedure for the design of samples and assures that no portions of the IV–D case universe are omitted from the sample selection process.

(c) *Scope of review.* A State must conduct an annual review covering all of the required criteria in Sec. 308.2.

(d) *Review period.* Each review period must cover a 12-month period. The first review period shall begin no later than 12 months after the effective date of the final rule and subsequent reviews shall each cover the same 12-month period thereafter.

(e) *Reporting.* (1) The State must provide a report of the results of the self-assessment review to the appropriate OCSE Regional Office, with a copy to the Commissioner of OCSE, no later than 6 months after the end of the review period.

(2) The report must include, but is not limited to:

(i) An executive summary, including a summary of the mandatory program criteria findings;

(ii) A description of optional program areas covered by the review;

(iii) A description of sampling methodology used, if applicable;

(iv) The results of the self-assessment reviews; and

(v) A description of the corrective actions proposed and/or taken.

§ 308.2 Required program compliance criteria.

(a) *Case closure.* (1) The State must have and use procedures for case closure pursuant to Sec. 303.11 of this chapter in at least 90 percent of the closed cases reviewed.

(2) If a IV–D case was closed during the review period, the State must determine whether the case met requirements pursuant to § 303.11 of this chapter.

(b) *Establishment of paternity and support order.* The State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed.

(1) If an order for support is required and established during the review period, the case meets the requirements, notwithstanding the timeframes for: establishment of cases as specified in Sec. 303.2(b) of this chapter; provision of services in interstate IV–D cases per § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and support order establishment under §§ 303.3(b)(3) and (5), and 303.4(d) of this chapter.

(2) If an order was required, but not established during the review period, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last actions:

(i) Opening a case within 20 days pursuant to § 303.2(b) of this chapter;

(ii) If location activities are necessary, using all appropriate sources within 75 days pursuant to § 303.3(b)(3) of this chapter. This includes all the following locate sources as appropriate: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, employment data, Department of Motor Vehicles, and credit bureaus;

(iii) Repeating location attempts quarterly and when new information is received in accordance with § 303.3(b)(5) of this chapter;

(iv) Establishing an order or completing service of process necessary to commence proceedings to establish a support order, or if applicable, paternity, within 90 days of locating the non-custodial parent, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts pursuant to §§ 303.3(c) and 303.4(d) of this chapter.

(c) *Enforcement of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. Enforcement cases include cases in which ongoing income withholding is in place as well as cases in which new or repeated enforcement actions were required during the review period.

(1) If income withholding was appropriate and a withholding collection was received during the last quarter of the review period and the case was submitted for Federal and State income tax refund offset, if appropriate, the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and income withholding in §§ 303.3(b)(3) and (5), and 303.100 of this chapter.

(2) If income withholding was not appropriate, and a collection was received during the review period, and the case was submitted for Federal and State income tax refund offset, if appropriate, then the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6) and (c) (8) and (9) of this chapter; and location and enforcement of support obligations in §§ 303.3(b)(3) and (5), and 303.6 of this chapter.

(3) If an order needed enforcement during the review period, but income was not withheld or other collections were not received (when income withholding could not be implemented), the State must determine the last required action and determine whether the action was taken within the appropriate timeframes. The following is a list of possible last required actions:

(i) If location activities are necessary, using all appropriate location sources within 75 days pursuant to Sec. 303.3(b)(3) of this chapter. Location sources include: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, Department of motor vehicles, and credit bureaus;

(ii) Repeating attempts to locate quarterly and when new information is received pursuant to § 303.3(b)(5) of this chapter;

(iii) If there is no immediate income withholding order, initiating income withholding upon identifying a delinquency equal to one month's arrears, in accordance with Sec. 303.100(c) of this chapter;

(iv) If immediate income withholding is ordered, sending a notice to the employer directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) support obligation (including any past due support obligation) of the employee, within:

(A) Two business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires and in which an information comparison conducted under section 453A(f) of the Act reveals a match;

(B) Two business days after receipt of notice of, and the income source subject to withholding from a court, another State, an employer, the FPLS or another source recognized by the State.

(v) If income withholding is not appropriate or cannot be implemented, taking an appropriate enforcement action (other than Federal and State income tax refund offset), unless service of process is necessary, within no more

than 30 days of identifying a delinquency or identifying the location of the non-custodial parent, whichever occurs later in accordance with § 303.6(c)(2) of this chapter;

(vi) If income withholding is not appropriate or cannot be implemented and service of process is needed, taking an appropriate enforcement action (other than Federal and State income tax refund offset), within no more than 60 days of identifying a delinquency or locating the non-custodial parent, whichever occurs later, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines for defining diligent efforts and § 303.6(c)(2) of this chapter;

(vii) If the case has arrearages, submitting the case for Federal and State income tax refund offset during the review period, if appropriate, in accordance with §§ 303.72, 303.102 and 303.6(c)(3) of this chapter.

(d) *Disbursement of collections.* A State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed. With respect to the last payment received for each case:

(1) States must determine whether disbursement of collection was made within two business days after receipt by the State Disbursement Unit from the employer or other source of periodic income in accordance with section 457(a) of the Act, if sufficient information identifying the payee is provided pursuant to section 454B(c) of the Act.

(2) States may delay the distribution of collections toward arrearages until resolution of any timely appeals with respect to such arrearages pursuant to section 454B(c)(2) of the Act.

(e) Securing and enforcing medical support orders. A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. A State must:

(1) Determine whether all support orders established during the review period included medical support. If not, determine whether medical support was included in the petition for support to the court or administrative authority pursuant to sec. 466(a)(19) of the Act and § 303.31(b)(1) of this chapter.

(2) If a requirement for medical support is included in the order, determine whether steps were taken to determine if reasonable health insurance was available pursuant to Sec. 303.31(a)(1) and (b)(7) of this chapter.

(3) If reasonable health insurance was available, but not obtained, determine whether steps were taken to enforce the order pursuant to § 303.31(b)(7) of this chapter.

(4) Determine whether the IV-D agency informed the Medicaid agency that coverage had been obtained when health insurance was obtained during the review period pursuant to § 303.31(b)(6) of this chapter.

(5) Determine whether the custodial parent was provided with information regarding the policy when health insurance was obtained pursuant to § 303.31(b)(5) of this chapter.

(6) Determine whether the State requested employers providing health coverage to inform the State of lapses in coverage pursuant to § 303.31(b)(9) of this chapter.

(7) Determine whether the State transferred notice of the health care provision to a new employer when a noncustodial parent was ordered to provide health insurance coverage and changed employment and the new employer provides health care coverage.

(f) *Review and adjustment of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed.

(1) If a case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8 of this chapter and the order is adjusted or a determination is made as a result of a review during the self-assessment period that an adjustment is not needed in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9) of this chapter; and location and review and adjustment of support orders contained in §§ 303.3(b)(3) and (5), and 303.8 of this chapter.

(2) If a case has not been reviewed, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last required actions:

(i) If location is necessary to conduct a review, using all appropriate location sources within 75 days of opening the case pursuant to § 303.3(b)(3) of this chapter. Location sources include: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, unemployment data, Department of Motor Vehicles, and credit bureaus;

(ii) Repeating location attempts quarterly and when new information is received pursuant to § 303.3(b)(5) of this chapter;

(iii) Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, conducting a review of the order and adjusting the order or determining that the order should not be adjusted pursuant to sec. 303.8(e) of this chapter;

(iv) If an adjustment was made during the review period using cost of living or automated methods, giving both parties 30 days to contest any adjustment to that support order pursuant to sec. 466(a)(10)(A)(ii) of the Act.

(3) The State must provide the custodial and non-custodial parents notices, not less often than once every three years, informing them of their right to request the State to review and, if appropriate, adjust the order. The first notice may be included in the order pursuant to sec. 466(a)(10)(C) of the Act.

(g) *Interstate services.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. For all interstate cases requiring services during the review period, determine the last required action and determine whether the action was taken during the appropriate timeframe:

(1) Initiating interstate cases:

(i) Except when using the State's long-arm statute for establishing paternity, if referral is appropriate, within 20 calendar days of determining that the non-custodial parent is in another State and, if appropriate, receipt of any necessary information needed to process the case, referring that case to the responding State's interstate central registry for action pursuant to § 303.7(b)(2) of this chapter.

(ii) If additional information is requested, providing the responding State's central registry with requested additional information within 30 calendar days of the request pursuant to § 303.7(b)(4) of this chapter.

(iii) Upon receipt of new information on a case, notifying the responding State of that information within 10 working days pursuant to § 303.7(b)(5) of this chapter.

(iv) Within 20 calendar days after receiving a request for review and adjustment pursuant to § 303.7(b)(6) of this chapter.

(2) Responding interstate cases:

(i) Within 10 working days of receipt of an interstate IV-D case, the central registry reviewing submitted documentation for completeness, forwarding the case to the State Parent Locator Service (PLS) for locate or to the appropriate agency for processing, acknowledging receipt of the case and requesting any missing documentation from the initiating State, and informing the IV–D agency in the initiating State where the case was sent for action, pursuant to § 303.7(a)(2) of this chapter.

(ii) The Central registry responding to inquiries from other States within five working days of a receipt of request for case status review pursuant to § 303.7(a)(4) of this chapter.

(iii) Within 10 days of locating the non-custodial parent in a different jurisdiction or State, forwarding the case in accordance with Federal requirements pursuant to §§ 303.7(c)(5) and (6) of this chapter.

(iv) Within two business days of receipt of collections, forwarding any support payments to the initiating State pursuant to sec. 454B(c)(1) of the Act.

(v) Within 10 working days of receipt of new information notifying the initiating State of that new information pursuant to § 303.7(c)(9) of this chapter.

(h) *Expedited processes.* The State must have and use procedures required under this paragraph in the amounts specified in this paragraph in the cases reviewed for the expedited processes criterion.

(1) In IV–D cases needing support orders established, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes pursuant to Sec. 303.101(b)(2)(i) of this chapter:

(i) 75 percent in 6 months; and

(ii) 90 percent in 12 months.

(2) States may count as a success for the 6-month standard cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or non-custodial parent.

§ 308.3 Optional program areas of review.

(a) *Program direction.* A State may include a program direction review in its self-assessment for the purpose of analyzing the relationships between case results relating to program compliance areas, and performance and program outcome indicators. This review is an opportunity for States to demonstrate how they are trying to manage their resources to achieve the best performance possible. A program direction analysis could describe the following:

(1) Initiatives that resulted in improved and achievable performance accompanied with supporting data;

(2) Barriers impeding progress; and

(3) Efforts to improve performance.

(b) *Program service enhancement.* A State may include a program service enhancement report in its self-assessment that describes initiatives put into practice that improved program performance and customer service. This is an opportunity for States to promote their programs and innovative practices. Some examples of innovative activities that States may elect to discuss in the report include:

(1) Steps taken to make the program more efficient and effective;

(2) Efforts to improve client services;

(3) Demonstration projects testing creative new ways of doing business;

(4) Collaborative efforts being taken with partners and customers;

(5) Innovative practices which have resulted in improved program performance;

(6) Actions taken to improve public image;

(7) Access/visitation projects initiated to improve non-custodial parents' involvement with the children and;

(8) Efforts to engage non-custodial parents who owe overdue child support to pay that support or engage in work activities, such as subsidized employment, work experience, or job search.

(c) A State may provide any of the optional information in paragraphs (a) and (b) of this section in narrative form.

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H.J. Res. 127/P.L. 106–539

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 7, 2000; 114 Stat. 2570)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to make delegations of authority to the Chief Information Officer (CIO) designated pursuant to the provisions of the Clinger-Cohen Act. This document also revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to reflect a reorganization in the offices reporting to the Assistant Secretary for Administration. This document also transfers some offices and functions which previously reported to the Assistant Secretary for Administration to the CIO.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Edwardene Pitcock, Office of Human Resources Management, Department of Agriculture, Room 309 W Jamie L. Whitten Federal Building, Washington, DC 20250, telephone 202–720–3635.

SUPPLEMENTARY INFORMATION: In order to centralize and standardize the Department's Information Technology (IT) systems, procurement and training, the Secretary has named a Department CIO pursuant to the provisions of the Clinger-Cohen Act, Pub. L. No. 104–106. The CIO is responsible for Departmentwide IT system architecture, standardization, guidance, and training. The Office of Information Systems Management, which previously reported to the Assistant Secretary for Administration (hereinafter referred to as the Assistant Secretary), now reports to the CIO.

The Assistant Secretary has reorganized the offices which report to him to better utilize the resources of those offices. This reorganization restructured the functions of these offices so they can carry out their missions in a more effective and efficient manner as they meet the needs of their customers both within the Department of Agriculture and in the private sector.

The Assistant Secretary has consolidated all Departmentwide civil rights functions in an Office of Civil Rights. This office is headed by a Director who reports to the Assistant Secretary and who has responsibility for leadership, coordination, and direction related to both civil rights programs and equal employment opportunity complaints.

The Assistant Secretary has consolidated all Departmentwide personnel functions in an Office of Human Resources Management. This Office, headed by a Director who reports to the Assistant Secretary and who is responsible for establishing personnel policy for the entire Department of Agriculture (USDA), also provides operational support to specified organizations within USDA.

Also, as part of this reorganization, the Assistant Secretary has been named the Director of Small and Disadvantaged Business Utilization. The Office of Small and Disadvantaged Business Utilization now reports to the Assistant Secretary. This Office previously reported to the Deputy Secretary of Agriculture.

Additionally, an Office of Procurement, Property, and Emergency Preparedness has been established. The Office is headed by a Director who reports to the Assistant Secretary. The Director is responsible for establishing policy related to procurement and property management, and for providing services relating to procurement operations for projects having a nationwide scope and for assigned Departmental offices. The Director is responsible for coordinating the Department's programs related to emergency preparedness, national security, and disaster emergency response. The Director also is responsible for designating a competition advocate to promote competition in Departmental acquisitions.

This document revises the delegations of authority to authorize the Assistant Secretary for Administration to obtain and furnish excess personal property to the 1890 Land Grant Institutions, 1994 Land Grant Institutions and the Hispanic-Serving Institutions, in support of research, educational, technical, and scientific activities or for related programs.

This document removes from the Assistant Secretary for Administration authority related to advisory committees. Responsibility for advisory committee management will remain within the Office of the Secretary.

Further, an Office of Planning and Coordination has been established. The Office is headed by a Director who reports to the Assistant Secretary. The Director is responsible for providing budget and financial management coordination, strategic planning support, and quality management to the Assistant Secretary for Administration, and the Director is also responsible for issuing policy and guidance related to conflict resolution programs.

Additionally, an Office of Ethics has been established. The Office is headed by a Director who reports for administrative purposes to the Assistant Secretary. The Director is responsible for the Department's worldwide ethics program which includes providing advice to all levels of management on ethics issues, and developing and disseminating policy and guidance on ethics and conflicts of interest.

Lastly, an Office of Outreach has been established. The Office is headed by a Director who reports to the Assistant Secretary. The Director is responsible for ensuring that opportunities are available for the provision of information, technical assistance, and training to USDA customers with emphasis on under-served populations. The Director is responsible for coordinating efforts to ensure that USDA customers have access to all the Department's programs and services.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to

internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 10–121, this rule may be made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3201, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart A—General

§ 2.24 [Amended]

2. Section 2.24 is amended by adding "Chief Information Officer;" after "Chief Financial Officer;".

3. Section 2.24 is amended by revising paragraphs (a)(2) through (a)(13), adding paragraphs (a)(14) through (a)(17), and revising paragraph (b) to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(2) *Related to small and disadvantaged business utilization.* (i) In compliance with Public Law 95–507, the Assistant Secretary for Administration is designated as the Department's Director for Small and Disadvantaged Business Utilization. The Director of Small and Disadvantaged Business Utilization has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(A) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority businesses including women-owned business, and the small business, small minority business and small women-owned business subcontracting programs;

(B) Providing Departmentwide liaison and coordination of activities related to small, small disadvantaged, and women-owned businesses with the Small Business Administration and others in public and private sector;

(C) Developing policies and procedures required by the applicable provision of the Small Business Act, as amended to include the establishment of goals; and

(D) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(3) *Related to equal opportunity in programs and employment.* (i) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

(A) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs;

(B) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(C) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(D) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(E) Actions to enforce Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department;

(F) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs.

(G) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.*, prohibiting discrimination against individuals with disabilities in State and local government services.

(H) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(I) Actions to develop and implement the Department's Federal Women's Program; and

(J) Actions to develop and implement the Department's Hispanic Employment Program.

(ii) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(iii) Provide leadership and coordinate Departmental agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(iv) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(v) Coordinate with the Department of Justice on matters relating to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vi) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vii) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(viii) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(ix) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(x) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(xi) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(xii) Make determinations, after legal sufficiency reviews by the Office of the General Counsel, that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate;

(xiii) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(xiv) Conduct investigations and compliance reviews Departmentwide.

(xv) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(xvi) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(xvii) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(xviii) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(xix) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity (EEO), to provide equal employment opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(xx) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(xxi) Administer the Department's EEO Program.

(xxii) Oversee and manage the EEO counseling function for the Department.

(xxiii) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(xxiv) Process formal EEO discrimination complaints by employees or applicants for employment.

(xxv) Investigate Department EEO and program discrimination complaints.

(xxvi) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, on both EEO and program discrimination complaints, except in those cases where the Assistant Secretary has participated in the events that gave rise to the matter.

(xxvii) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(xviii) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(xxix) Make final determinations, or enter into settlement agreements, after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC and FCIC funds to satisfy such an award.

(xxx) Require corrective action on findings of discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(xxxi) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other offices or agencies of the Department as may be agreed.

(4) *Related to outreach.* (i) Develop policy guidelines and implement a Departmental outreach program which delivers services to the traditionally under-served customers.

(ii) Administer and provide leadership, direction, coordination, and monitoring for the Small Farmer Outreach Training and Technical Assistance program, *i.e.* Outreach and Technical Assistance Grants to Socially Disadvantaged Farmers and Ranchers Program, including the authority to make grants and enter into contracts and other agreements pursuant to 7 U.S.C. 2279(a).

(iii) Develop a strategic outreach plan for the Department which coordinates the goals, objectives, and expectations of mission area outreach programs.

(iv) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(v) Serve as the Department's official outreach spokesperson.

(vi) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(vii) Develop a system to monitor the delivery of outreach grants and funding.

(viii) Report agency outreach status and accomplishments, and make recommendations to the Secretary.

(5) *Related to operations.* (i) Provide services for the Department in the following areas:

(A) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments, in the Washington, D.C. metropolitan area;

(B) Acquiring, storing, distributing, and disposing of forms; and

(C) Mail management and all related functions.

(ii) Operating centralized Departmental services to provide printing, copy reproducing, offset composing, supplies, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuing of general employee identification cards, supplemental distributing of Department directives, space allocating and management, and related management support.

(iii) Providing property management, space management, messenger, and other related services with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices reporting to the Assistant Secretary for Administration;

(D) Any other offices or agencies of the Department as may be agreed; and

(E) Other federal, state, or local government organizations on a cost recovery basis.

(iv) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(v) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services, in the Washington, D.C. metropolitan area.

(vi) Provide internal administrative management and support services for the defense program of the Department.

(6) *Related to human resources management.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to human resources management.

(ii) Provide human resources management procedural guidance and operational instructions.

(iii) Set standards for human resources data systems.

(iv) Inspect and evaluate human resources management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive Orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(v) Exercise final authority in all human resources matters, including individual cases, that involve the jurisdiction of more than one General Officer or agency head.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in human resources matters.

(vii) Make final decisions on adverse actions, except in those cases where the Assistant Secretary for Administration has participated.

(viii) Represent the Department in human resources matters in all contacts outside the Department.

(ix) Exercise specific authorities in the following operational matters:

(A) Waive repayment of training expenses where an employee fails to fulfill service agreement;

(B) Establish or change standards and plans for awards to private citizens; and

(C) Execute, change, extend, or renew:

(1) Labor-Management Agreements; and

(2) Associations of Management Officials' or Supervisors' Agreements.

(D) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(E) Change a position (with no material change in duties) from one pay system to another;

(F) Grant restoration rights, and release employees with administrative reemployment rights;

(G) Authorize any mass dismissals of employees in the Washington, D.C., metropolitan area;

(H) Approve "normal line of promotion" cases in the excepted service where not in accordance with time-in-grade criteria;

(I) Make the final decision on all classification appeals filed with the Department of Agriculture;

(J) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(K) Authorize all employment actions (except LWOP) for the following positions:

(1) Schedule C;

(2) Non-career Senior Executive Service or equivalent; and

(3) Administrative Law Judge.

(L) Authorize adverse actions for positions in GS–14–15 and equivalent and, as appropriate, redelegate this authority to Heads of Department agencies;

(M) Authorize adverse action for positions in the career senior executive service or equivalent, and as appropriate, redelegate this authority on a case by case basis to the Heads of Departmental agencies;

(N) Approve the details of Department employees to the White House;

(O) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(P) Authorize long-term training in programs which require Departmentwide competition;

(Q) Initiate and take adverse action in cases involving a violation of the merit system.

(x) As used in this section, the term human resources includes:

(A) Position management;

(B) Position classification;

(C) Employment;

(D) Pay administration;

(E) Automation of human resources data and systems;

(F) Hours of duty;

(G) Performance management;

(H) Promotions;

(I) Employee development;

(J) Incentive Programs;

(K) Leave;

(L) Retirement;

(M) Human resource program management evaluations;

(N) Social security;

(O) Life insurance;

(P) Health benefits;

(Q) Unemployment compensation;

(R) Labor management relations;

(S) Intramanagement consultation;

(T) Security;

(U) Discipline; and

(V) Appeals.

(xi) Provide human resources services, as listed in paragraph (a)(6)(x) of this section, and organizational support services, with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other offices or agencies of the Department as may be agreed.

(xii) Maintain, review, and update Departmental delegations of authority.

(xiii) Authorize organizational changes which occur in:

(A) Departmental organizations:

(1) Agency or office;

(2) Division (or comparable component); and

(3) Branch (or comparable component in Departmental centers, only).

(B) Field organizations:

(1) First organizational level; and

(2) Next lower organizational level-required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental internal direction.

(xiv) Formulate and promulgate departmental organizational objectives and policies.

(xv) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xvi) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive Orders and other policy and procedural issuances related to occupational safety and health within the Department.

(xvii) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Governmentwide activities that affect the Department's Occupational Safety and Health Management Program.

(xviii) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.

(xix) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(xx) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the Department's Drug-Free Workplace Program and designate the final appeal officer for that Program.

(xxi) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(xxii) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.

(xxiii) Oversee and manage the Department's administrative grievance program.

(xxiv) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.

(7) *Related to procurement and property management.* (i) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Acquisition, including, but not limited to, the procurement of supplies, services, equipment, and construction;

(B) Socioeconomic programs relating to contracting;

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(E) Motor vehicle and aircraft fleet and other vehicular transportation;

(F) Transportation of things (traffic management);

(G) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(H) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601, *et seq.*); and

(I) Development and implementation of energy management and environmental actions related to acquisition and procurement, real and personal property management, waste prevention and resource recycling, and logistics. Maintain liaison with the Office of the Federal Environmental Executive, the Department of Energy, and other Government agencies in these matters.

(ii) Exercise the following special authorities:

(A) Designate the Departmental Debarring Officer to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407); with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c);

(B) Conduct liaison with the Office of Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(C) Maintain custody and permit appropriate use of the official seal of the Department;

(D) Establish policy for the use of the official flags of the Secretary and the Department;

(E) Coordinate collection and disposition of personal property of historical significance;

(F) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes making such verifications or certifications as may be required by 26 CFR 1.6050M–1 and making the election allowed by 26 CFR 1.6050M–1(d)(5)(1);

(G) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies; and

(H) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(iii) Serve as the Acquisition Executive in the Department to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in Circular A–109, Major Systems Acquisitions, with the exception that major system acquisitions for information technology shall be under the cognizance of the Chief Information Officer. This includes the authority to:

(A) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(B) Review the program management of each major system acquisition, excluding information technology;

(C) Designate the program manager for each major systems acquisition, excluding information technology; and

(D) Designate any Departmental acquisition as a major system acquisition, excluding information technology, under OMB Circular A–109.

(iv) Pursuant to Executive Order 12931, 3 CFR, 1994 Comp., p. 925, and sections 16, 22, and 37 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b), and 433, designate the Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental acquisition policies, regulations, and procedures;

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

(E) Evaluating and monitoring the performance of the Department's procurement system;

(F) Managing and enhancing career development of the Department's acquisition work force;

(G) Participating in the development of Governmentwide procurement policies, regulations, and standards, and determining specific areas where

Governmentwide performance standards should be established and applied;

(H) Developing unique Departmental standards as required;

(I) Overseeing the development of procurement goals, guidelines, and innovation;

(J) Measuring and evaluating procurement office performance against stated goals;

(K) Advising the Secretary whether goals are being achieved;

(L) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards not are met;

(M) Redelegating as appropriate, the authority in paragraph (a)(6)(iv)(A) of this section to agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(N) Redelegating the authorities in paragraphs (a)(6)(iv)(B), (C), (D), (F), and (G) of this section to agency Procurement executives or other qualified agency officials with the power of further redelegation.

(v) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.

(vi) Pursuant to the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901–5909), establish and maintain a Preference List for selected products developed with commercialization assistance under 7 U.S.C. 5905.

(vii) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.

(viii) Serve as Departmental Remedy Coordination Official pursuant to 41 U.S.C. 255 to determine whether payment to any contractor should be reduced or suspended based on substantial evidence that the request of the contractor for advance, partial, or progress payment is based on fraud.

(ix) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department in maintaining the security of physical facilities nationwide.

(x) Review and approve exemptions for USDA contracts and subcontracts from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.2155(b)).

(xi) Promulgate policy concerning excess Federal personal property in accordance with section 923 of Public Law 104–127, to support research, educational, technical and scientific activities or for related programs, to:

(A) Any 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (Public Law 103–382; 7 U.S.C. 301 note));

(B) Any Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*) including Tuskegee University; and

(C) Any Hispanic-serving Institutions (as defined in sections 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(xii) Issue regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR Chapters 1 and 4).

(xiii) Issue regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapters 101 and 102).

(xiv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention, recycling, and the procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101.

(xv) Provide administrative support to the USDA Hazardous Materials Management Group.

(xvi) In accordance with Public Law 95–91, section 656 and pursuant to Executive Order 13123, serve as the Department's principal Energy Conservation Officer.

(xvii) Exercise full Departmentwide contracting and procurement authority.

(xviii) Conduct acquisitions with authority to take actions required by law or regulation to procure supplies, services, and equipment for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration;

(D) Any other offices or agencies of the Department as may be agreed; and

(E) For other federal, state, or local government organizations on a cost recovery basis.

(8) *Related to competition advocacy.* (i) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), designate the Department's Advocate for Competition with the responsibility for section 20 of the Act (41 U.S.C. 418), including:

(A) Reviewing the procurement activities of the Department;

(B) Developing new initiatives to increase full and open competition;

(C) Developing goals and plans and recommending actions to increase competition;

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(E) Promoting the acquisition of commercial items; and

(F) Designating an Advocate for Competition for each procuring activity within the Department.

(9) *Related to emergency preparedness:* (i) Administer the Department Emergency Preparedness Program. This includes the:

(A) Coordination of the assignments made to the Department by Executive Order 12656, November 18, 1988, "Assignment of Emergency Preparedness Responsibilities," 3 CFR, 1988 Comp. p. 255, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(B) Management of the Department Emergency Coordination Center and alternate facilities;

(C) Development and promulgation of policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both national and international;

(D) Providing guidance and direction regarding issues of emergency preparedness, disaster assistance, and national security to the agencies, mission areas, and the State and County Emergency Boards;

(E) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations, including the Federal Emergency Management Agency and the National Security Council, concerning matters of assigned responsibilities; and

(F) Oversight of the Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(ii) Provide guidance and direction to the Department Emergency Coordinator, who, along with the Chief Economist, is responsible for coordinating the preparation of Department estimates of agricultural losses from natural disaster.

(iii) Coordinate Department responsibilities under disaster assistance authorities, including the Chemical Stockpile Emergency Preparedness Program, the Federal Radiological Emergency Response Plan, the Federal Response Plan, the National Oil and Hazardous Substance Pollution Contingency Plan, and other Federal emergency response plans.

(10) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(11) *Related to management.* (i) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(ii) Develop strategies to improve processes with respect to administrative and associated financial activities of the Department and make recommendations to the Secretary.

(iii) Improve Departmental management by: performing management studies and reviews in response to agency requests for assistance; enhancing management decision making by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(iv) Coordinate Departmental Administration strategic planning and budget coordination activities on behalf of the Assistant Secretary.

(12) *Related to conflict management.* (i) Designate the senior official to serve as the Department Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provide leadership, direction and coordination for the Department's conflict prevention and resolution activities;

(ii) Issue Departmental regulations, policies, and procedures relating to the use of Alternative Dispute Resolution (ADR) to resolve employment complaints and grievances, workplace disputes, Departmental program disputes, and contract and procurement disputes;

(iii) Provide ADR services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other officer or agency of the Department as may be agreed.

(iv) Develop and issue standards for mediators and other ADR neutrals utilized by the Department;

(v) Coordinate ADR activities throughout the Department; and

(vi) Monitor Agency ADR programs and report at least annually to the Secretary on the Department's ADR activities; and

(13) *Related to ethics.* The Ethics function in the U.S. Department of Agriculture is under the authority of the Assistant Secretary for Administration for purposes of general supervision only. The Assistant Secretary does not have any authority over the functions exercised by the Director, Office of Ethics, pursuant to the Director's responsibilities as Designated Agency Ethics Official under the Office of Government Ethics regulations at 5 CFR part 2638.

(14) *Related to budget and finance.* Exercise general financial and budget authority over all organizations assigned to the Assistant Secretary for Administration.

(15) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(16) *Related to the Board of Contract Appeals.* Provide administrative supervision of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(17) *Related to hazardous materials management:* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA offices of assigned responsibility to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to matters of assigned responsibility.

(iv) Present, in coordination with the Chairman of the USDA Hazardous Materials Policy Council, the USDA Hazardous Waste Management Appropriation budget request to the Office of Management and Budget and to Congress.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to human resources management.* Make final determinations in the following areas:

(i) Separation of employees for security reasons;

(ii) Restoration to duty of employees following suspension from duty for security reasons;

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons; and

(iv) Issuance of temporary certificates to occupy sensitive positions.

(2) [Reserved]

§ 2.28 [Amended]

4. Section 2.28 is amended by revising the reference in paragraph (b)(5)(ii) "the Office of Information Resources Management" to read "the Office of the Chief Information Officer."

5. In subpart E, § 2.37 is removed, and subpart E is reserved; and in subpart D, a new § 2.37 is added to read as follows:

§ 2.37 Chief Information Officer.

(a) *Delegation.* The Chief Information Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated in Public Law

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104–106 for agency Chief Information Officers, as follows:

(1) Reporting directly to the Secretary of Agriculture regarding information technology matters.

(2) Overseeing all information technology and information resource management activities relating to the programs and operations of the Department and component agencies. This oversight includes approving information technology investments, monitoring and evaluating the performance of those investments and information resource management activities, approval of all architectures and components thereto and determining whether to continue, modify, or terminate an information technology program or project.

(3) Providing advice and other assistance to the Secretary and other senior management personnel to ensure that information technology is acquired and managed for the Department consistent with chapter 35 of title 44, United States Code (Coordination of Federal Information Policy).

(4) Developing, implementing, and maintaining a sound and integrated Departmentwide information technology architecture.

(5) Promoting the effective and efficient design and operation of all major information resources management processes for the Department, including improvements to work processes of the Department.

(6) Approving the acquisition or procurement of information technology resources by, or on behalf of, any Department agency or office.

(7) Providing guidance and assistance to Department procurement personnel with respect to information technology acquisition strategy and policy.

(8) The Chief Information Officer is designated the Major Information Technology Systems Executive in USDA to integrate and unify the management process for the Department's major information technology system acquisitions and to monitor implementation of the policies and practices set forth in Circular A–109, Major Systems Acquisitions, for information technology. This includes the authority to:

(i) Ensure that OMB Circular A–109 is effectively implemented for information technology systems in the Department and that the management objectives of the Circular are realized;

(ii) Review the program management of each major information technology system acquisition;

(iii) Approve the appointment of the program manager for each major information technology systems acquisition; and

(iv) Designate any Departmental information technology acquisition as a major system acquisition under OMB Circular A–109.

(9) On an annual basis:

(i) Assessing Departmentwide personnel requirements regarding knowledge and skill in information resources management, and the adequacy of such requirements, to achieve the performance goals established for information resources management.

(ii) Developing strategies and specific plans for hiring, training, and professional development at the executive and management level to meet personnel information technology personnel requirements.

(iii) Reporting to the Secretary on progress made in improving information resources management capability.

(10) The Chief Information Officer is designated as the senior official to carry out the responsibilities of the Department under chapter 35 of title 44, United States Code (Coordination of Federal Information Policy), including:

(i) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department;

(ii) Reviewing proposed Department reporting and record keeping requirements, including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department;

(iii) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs; and

(iv) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), including review of Department information activities.

(11) The Chief Information Officer is responsible for:

(i) Providing Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines;

(ii) Providing Departmentwide guidance and direction in all aspects of information technology, including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitoring these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required;

(iii) Managing the Department Computer Centers, with the exception of the National Finance Center, including setting rates to recover the cost of goods and services within approved policy and funding levels;

(iv) Reviewing and evaluating information technology activities related to delegated functions to assure that they conform to all applicable Federal and Department information technology management policies, plans, standards, procedures, and guidelines;

(v) Designing, developing, implementing, and revising systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources;

(vi) Administering the Departmental records, forms, reports and Directives Management Programs;

(vii) Managing all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies;

(viii) Managing Departmental telecommunications contracts;

(ix) Providing technical advice throughout the Department;

(x) Implementing a program for applying information resources management technology to improve productivity in the Department;

(xi) Planning, developing, installing, and operating computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices;

(xii) Representing the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Institute for Science and Technology, and other organizations or agencies on matters related to delegated responsibilities; and

(xiii) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

(12) Implementing policies established pursuant to paragraphs (a)(1) through (11) of this section by:

(i) Disposing of information technology that is acquired by a Department agency in violation of procedures or standards for the Department Information Systems Technology Architecture;

(ii) Establishing information technology and information resources management performance standards for agency Chief Information Officers, information resources managers, and project managers to be used in the performance appraisal process;

(iii) Approving the selection of agency Chief Information Officers and agency major information technology system project managers in accordance with criteria to be promulgated by the Chief Information Officer;

(iv) Provide recommendations to Agency Heads for the removal or replacement of information technology project managers, when, in the opinion of the Chief Information Officer, applicable laws and policies are being violated, or, when the cost, schedule, or performance of an information technology project would indicate management deficiencies;

(v) Withdrawing agencies' authority to obligate funds on Information Technology programs or projects if the agency violates the Chief Information Officer policies, standards, or Department Information Systems Technology Architecture;

(vi) Requiring agencies to validate and verify major information technology systems through the use of an existing contract for such purpose designated by the Chief Information Officer; and

(vii) Requiring approval by the Chief Information Officer of any proposed acquisition of information technology (whether through the award or modification of a procurement contract, a cooperative or other agreement with a non-Federal party, or an interagency agreement) to ensure technical conformance to the Department technical architecture.

(13) Provide management and operational support to the Secretary of Agriculture; the general staff offices; the offices and agencies reporting to the Assistant Secretary for Administration and for any other offices or agencies of the Department as may be agreed. As used in this section, such support services shall include:

(i) Information technology services, as listed in paragraph (a)(11)(v) of this section with authority to take actions required by law or regulation to perform such services; and

(ii) Forms management, files management, and directives management with authority to take actions required by law or regulation to perform such services.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

6.–7. A new § 2.88 is added to read as follows:

§ 2.88 Director, Office of Small and Disadvantaged Business Utilization.

(a) *Delegations.* Pursuant to § 2.24 (a)(3), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Small and Disadvantaged Business Utilization:

(1) The Director, Office of Small and Disadvantaged Business Utilization, under the supervision of the Assistant Secretary for Administration, has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(i) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority businesses including women-owned business, and the small business, small minority business, and small women-owned business subcontracting programs;

(ii) Providing Departmentwide liaison and coordination of activities related to small, small disadvantaged, and women-owned businesses with the Small Business Administration and others in public and private sector;

(iii) Developing policies and procedures required by the applicable provision of the Small Business Act, as amended, to include the establishment of goals; and

(iv) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(b) [Reserved]

8. Section 2.89 is revised to read as follows:

§ 2.89 Director, Office of Civil Rights.

(a) *Delegations.* Pursuant to § 2.24 (a)(4), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs;

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(v) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department;

(vi) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs;

(vii) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.*, prohibiting discrimination against individuals with disabilities in State and local government services.

(viii) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(ix) Actions to develop and monitor compliance in the Department's Federal Women's Program; and

(x) Actions to develop and monitor the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate Department agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to Title VI of

the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations, after legal sufficiency reviews by the Office of the General Counsel, that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate.

(13) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(14) Conduct investigations and compliance reviews Departmentwide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(18) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(19) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity, to provide equal employment opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(20) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Administer the Department's EEO Program.

(22) Oversee and manage the EEO counseling function for the Department.

(23) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(25) Investigate Department EEO and program discrimination complaints.

(26) Issue Departmental regulations, policies and procedures relating to the use of Alternative Dispute Resolution to resolve employment and program discrimination complaints.

(27) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, on both EEO and program discrimination complaints, except in those cases where the Director, Office of Civil Rights, has participated in the events that gave rise to the matter.

(28) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(29) Provide liaison on EEO matters concerning complaints and appeals with Department agencies and Department employees.

(30) Make final determinations, or enter into settlement agreements, after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act.

(31) Require corrective action on findings of discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(32) Provide civil rights and equal employment opportunity support services, except for the equal employment opportunity support services provided by the Office of Human Resources Management, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Any other offices or agencies of the Department as may be agreed.

(b) [Reserved]

9. Section 2.90 is revised to read as follows:

§ 2.90 Director, Office of Outreach.

(a) *Delegations.* Pursuant to § 2.24 (a)(5), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Outreach.

(1) Develop policy guidelines and implement a Departmental outreach program which delivers services to the traditionally under-served customers.

(2) Administer and provide leadership, direction, coordination, and monitoring for the Small Farmer Outreach Training and Technical Assistance program, *i.e.* Outreach and Technical Assistance Grants to Socially Disadvantaged Farmers and Ranchers Program, including the authority to make grants and enter into contracts and other agreements pursuant to 7. U.S.C. 2279 (a).

(3) Develop a strategic outreach plan for the Department which coordinates the goals, objectives and expectations of mission area outreach programs.

(4) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(5) Serve as the Department's official outreach spokesperson.

(6) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(7) Develop a system to monitor the delivery of outreach grants and funding.

(8) Report agency outreach status, accomplishments and make recommendations to the Assistant Secretary for Administration.

(b) [Reserved]

10. Section 2.91 is revised to read as follows:

§ 2.91 Director, Office of Operations.

(a) *Delegations.* Pursuant to § 2.24 (a)(6), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Provide services for the Department in the following areas:

(i) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments, in the Washington, D.C. metropolitan area.

(ii) Acquiring, storing, distributing, and disposing of forms; and

(iii) Mail management and all related functions.

(2) Operating centralized Departmental services to provide printing, copy reproducing, offset composing, supplies, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuing of general employee identification cards, supplemental distributing of Department directives, space allocating and management, and related management support.

(3) Providing property management, space management, messenger, communications, and other related services with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration;

(iv) Any other offices or agencies of the Department as may be agreed; and

(v) Other federal, state, or local government organizations on a cost recovery basis.

(4) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(5) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services, in the Washington, D.C. metropolitan area.

(6) Provide internal administrative management and support services for the defense program of the Department.

(b) [Reserved]

11. Section 2.92 is revised to read as follows:

§ 2.92 Director, Office of Human Resources Management.

(a) *Delegations.* Pursuant to § 2.24 (a)(7), subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Human Resources Management:

(1) Formulate and issue Department policy, standards, rules and regulations relating to human resources management.

(2) Provide human resources management procedural guidance and operational instructions.

(3) Set standards for human resources data systems.

(4) Inspect and evaluate human resources management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive Orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(5) Exercise final authority in all human resources matters, including individual cases, that involve the jurisdiction of more than one General Officer, or agency head.

(6) Receive, review, and recommend action on all requests for the Secretary's or Assistant Secretary for Administration's approval in human resources matters.

(7) Make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration or the Director, Office of Human Resources Management, has participated.

(8) Represent the Department in human resources matters in all contacts outside the Department.

(9) Exercise specific authorities in the following operational matters:

(i) Waive repayment of training expenses where an employee fails to fulfill service agreement;

(ii) Establish or change standards and plans for awards to private citizens; and

(iii) Execute, change, extend, or renew:

(A) Labor-Management Agreements; and

(B) Associations of Management Officials' or Supervisors' Agreements.

(iv) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations.

(v) Change a position (with no material change in duties) from one pay system to another;

(vi) Grant restoration rights, and release employees with administrative reemployment rights;

(vii) Authorize any mass dismissals of employees in the Washington, DC metropolitan area;

(viii) Approve "normal line of promotion" cases in the excepted service where not in accordance with time-in grade criteria;

(ix) Make the final decision on all classification appeals filed with the Department of Agriculture;

(x) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(xi) Authorize all employment actions (except LWOP) for the following positions:

(A) Schedule C;
(B) Non-career Senior Executive Service or equivalent; and
(C) Administrative Law Judge.
(xii) Make final decisions on adverse actions for positions in GS–14 and 15 or equivalent and, as appropriate, redelegate this authority to the Heads of Departmental agencies;
(xiii) Authorize adverse action for positions in the career Senior Executive Service or equivalent and, as appropriate, redelegate this authority on a case by case basis to Heads of Departmental agencies;
(xiv) Approve the details of Department employees to the White House;
(xv) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;
(xvi) Authorize long-term training in programs which require Departmentwide competition; and
(xvii) Initiate and take adverse action in cases involving a violation of the merit system.
(10) As used in this section, the term human resources includes:
(i) Position management;
(ii) Position classification;
(iii) Employment;
(iv) Pay administration;
(v) Automated human resources data and systems;
(vi) Hours of duty;
(vii) Performance management;
(viii) Promotions;
(ix) Employee development;
(x) Incentive programs;
(xi) Leave;
(xii) Retirement;
(xiii) Human resource program management evaluation;
(xiv) Social security;
(xv) Life insurance;
(xvi) Health benefits;
(xvii) Unemployment compensation;
(xviii) Labor management relations;
(xix) Intramanagement consultation;
(xx) Security;
(xxi) Discipline; and
(xxii) Appeals.
(11) Provide human resource services, as listed in paragraph (a)(10) of this section; and organizational support services; with authority to take actions required by law or regulation to perform such services for:
(i) The Secretary of Agriculture;
(ii) The general officers of the Department;
(iii) The offices reporting to the Assistant Secretary for Administration; and
(iv) Any other officer or agency of the Department as may be agreed.
(12) Maintain, review, and update Departmental delegations of authority.
(13) Recommend authorization of organizational changes which occur in:
(i) Departmental organizations:
(A) Agency or office;
(B) Division (or comparable component); and
(C) Branch (or comparable component in Departmental centers, only).
(ii) Field organizations;
(A) First organizational level; and
(B) Next lower organizational level-required only for those types of field installations where the establishment, change in location, or abolition of same requires approval in accordance with Departmental internal direction.
(14) Formulate and promulgate Departmental policies regarding reorganizations.
(15) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive Orders and other policy and procedural issuances and related to occupational safety and health within the Department.
(16) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Government wide activities that affect the USDA Occupational Safety and Health Management Program.
(17) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.
(18) Administer the computerized management information systems for the collection, processing, and dissemination of data related to the Department's occupational safety and health programs.
(19) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the Department's Drug-Free Workplace Program and designate the final appeal officer for that Program.
(20) Administer the Department's Occupational Health and Prevention Medical Program, as well as design and operate employee assistance and workers' compensation activities.
(21) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.
(22) Oversee and manage the Department's administrative grievance program.
(23) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.
(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Administration:
(1) Authorize organizational changes occurring in a Department agency or staff office which affect the overall structure of that service or office; *i.e.,* require a change to that service or office's overall organization chart.
(2) [Reserved]

12. A new § 2.93 is added to read as follows:

§ 2.93 Director, Office of Procurement, Property, and Emergency Preparedness.

(a) *Delegations.* Pursuant to §§ 2.24 (a)(8), (a)(9), (a)(10), and (a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Procurement, Property, and Emergency Preparedness:
(1) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:
(i) Acquisition, including, but not limited to, the procurement of supplies, services, equipment, and construction;
(ii) Socioeconomic programs relating to contracting;
(iii) Selection, standardization, and simplification of program delivery processes utilizing contracts;
(iv) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;
(v) Motor vehicle and aircraft fleet and other vehicular transportation;
(vi) Transportation of things (traffic management);
(vii) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);
(viii) Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*); and
(ix) Development and implementation of energy management and environmental actions related to acquisition and procurement, real and personal property management, waste prevention and resource recycling, and logistics. Maintain liaison with the Office of the Federal Environmental Executive, the Department of Energy, and other Government agencies in these matters.
(2) Exercise the following special authorities:
(i) The Director, Office of Procurement, Property, and Emergency Preparedness is designated as the Departmental Debarring Officer and authorized to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407), with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c);
(ii) Conduct liaison with the Office of Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;
(iii) Maintain custody and permit appropriate use of the official seal of the Department;
(iv) Establish policy for the use of the official flags of the Secretary and the Department;
(v) Coordinate collection and disposition of personal property of historical significance;
(vi) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes making such verifications or certifications as may be required by 26 CFR 1.6050M–1 and making the election allowed by 26 CFR 1.6050M–1(d)(5)(1).
(vii) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies; and
(viii) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities; and
(ix) Redelegate, as appropriate, the authority in paragraph (a)(10) of this section to agency Property Officials or other qualified agency officials with no power of further redelegation.
(3) Exercise authority under the Department's Acquisition Executive (the Assistant Secretary for Administration) to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions, with the exception that major system acquisitions for information technology shall be under the cognizance of the Chief Information Officer. This delegation includes the authority to:

(i) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;
(ii) Review the program management of each major system acquisition, excluding information technology;
(iii) Designate the program manager for each major system acquisition, excluding information technology; and
(iv) Designate any Departmental acquisition, excluding information technology, as a major system acquisition under OMB Circular A–109.
(4) Pursuant to Executive Order 12931, 3 CFR, 1994 Comp., p. 925, and sections 16, 22, and 37 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b), and 433, serve as the Senior Procurement Executive for the Department with responsibility for the following:
(i) Prescribing and publishing Departmental acquisition policies, regulations, and procedures;
(ii) Taking any necessary actions consistent with policies, regulations, and procedures, with respect to purchases, contracts, leases, and other transactions;
(iii) Designating contracting officers;
(iv) Establishing clear lines of contracting authority;
(v) Evaluating and monitoring the performance of the Department's procurement system;
(vi) Managing and enhancing career development of the Department's acquisition work force;
(vii) Participating in the development of Governmentwide procurement policies, regulations and standards, and determining specific areas where Governmentwide performance standards should be established and applied;
(viii) Developing unique Departmental standards as required,
(ix) Overseeing the development of procurement goals, guidelines, and innovation;
(x) Measuring and evaluating procurement office performance against stated goals;
(xi) Advising the Assistant Secretary whether procurement goals are being achieved;
(xii) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are not met;
(xiii) Redelegating, as appropriate, the authority in paragraph (a)(5)(i) of this section to agency Procurement Executives or other qualified agency officials with no power of further redelegation; and
(xiv) Redelegating the authorities in paragraphs (a)(5)(ii), (iv), (vi), and (vii) of this section to agency Procurement executives or other qualified agency officials with the power of further redelegation.
(5) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.
(6) Pursuant to the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901–5909), establish and maintain a Preference List for selected products developed with commercialization assistance under 7 U.S.C. 5905.
(7) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.
(8) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities nationwide.
(9) Review and approve exemptions for USDA contracts and subcontracts from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.215 (b)).
(10) Promulgate policy and obtain and furnish excess Federal personal property in accordance with section 923 of Public Law 104–127, in support research, educational, technical and scientific activities or for related programs, to:
(i) Any 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, (Public Law 103–382; 7 U.S.C. 301 note));
(ii) Any Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*) including Tuskegee University; and
(iii) Any Hispanic-serving Institutions (as defined in sections 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).
(11) Issuance of regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR chapters 1 and 4).
(12) Issuance of regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapters 101 and 102).
(13) Exercise full Departmentwide contracting and procurement authority.

(14) Conduct acquisitions with authority to take actions required by law or regulation to procure supplies, services, and equipment for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration;

(iv) Any other offices or agencies of the Department as may be agreed; and

(v) For other federal, state, or local government organizations on a cost recovery basis.

(15) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), designate the Department's Advocate for Competition with the responsibility for section 20 of the Act (41 U.S.C. 418), including:

(i) Reviewing the procurement activities of the Department;

(ii) Developing new initiatives to increase full and open competition;

(iii) Developing goals and plans and recommending actions to increase competition;

(iv) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(v) Promoting the acquisition of commercial items; and

(vi) Designating an Advocate for Competition for each procuring activity within the Department.

(16) *Related to emergency preparedness:*

(i) Administer the Department Emergency Preparedness Program. This includes the:

(A) Coordination of the assignments made to the Department by Executive Order 12656, November 18, 1988, "Assignment of Emergency Preparedness Responsibilities," 3 CFR, 1988 Comp., p. 255, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(B) Management of the Department Emergency Coordination Center and alternate facilities;

(C) Development and promulgation of policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both national and international;

(D) Providing guidance and direction regarding issues of emergency preparedness, disaster assistance, and national security to the agencies, mission areas, and the State and County Emergency Boards;

(E) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations, including the Federal Emergency Management Agency and the National Security Council, concerning matters of assigned responsibilities; and

(F) Overseeing Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(ii) Provide guidance and direction to the Department Emergency Coordinator, who, along with the Chief Economist, is responsible for coordinating the preparation of Department estimates of agricultural losses from natural disaster.

(iii) Coordinate the Department responsibilities under disaster assistance authorities, including the Chemical Stockpile Emergency Preparedness Program, the Federal Radiological Emergency Response Plan, the Federal Response Plan, the National Oil and Hazardous Substance Pollution Contingency Plan, and other Federal emergency response plans.

(17) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300F, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) [Reserved]

13. A new § 2.94 is added to read as follows:

§ 2.94 Director, Office of Planning and Coordination

(a) *Delegations.* Pursuant to § 2.24 (a)(12) and (a)(13), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Planning and Coordination:

(1) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(2) Develop strategies to improve processes with respect to administrative and financial activities of the Department and make recommendations to the Secretary.

(3) Improve Departmental management by: performing management studies and reviews in response to agency requests for assistance; enhancing management decision making by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(4) Coordinate Departmental Administration strategic planning and budget activities on behalf of the Assistant Secretary.

(5) Oversee the Conflict Prevention and Resolution Center, the Director of which:

(i) Serves as the Department's Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provides leadership, direction and coordination for the Department's conflict prevention and resolution activities;

(ii) Provides ADR services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other officer or agency of the Department as may be agreed.

(iii) Develops and issues standards for mediators and other ADR neutrals utilized by the Department.

(iv) Coordinates ADR activities throughout the Department; and

(vi) Monitors Agency ADR programs and reports at least annually to the Secretary on the Department's ADR activities.

(b) [Reserved]

14. A new § 2.95 is added to read as follows:

§ 2.95 Director, Office of Ethics.

(a) *Delegations.* Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, and the Delegations of Authority from the Secretary dated April 28, 1998, the Director, Office of Ethics, shall be the USDA Designated Agency Ethics Official and shall exercise all authority pursuant to that designation.

(b) [Reserved]

15. A new Subpart Q is added to read as follows:

Subpart Q-Delegations of Authority by the Chief Information Officer

§ 2.200 Deputy Chief Information Officer.

Pursuant to § 2.37, the following delegation of authority is made by the Chief Information Officer to the Deputy Chief Information Officer, to be exercised only during the absence or unavailability of the Chief Information Officer: perform all duties and exercise all powers which are now or which may hereafter be delegated to the Chief Information Officer.

For Subpart C:
Dated: November 28, 2000.

Dan Glickman,

Secretary of Agriculture.

For Subpart E:
Dated: November 28, 2000.

Richard E. Rominger,

Deputy Secretary of Agriculture.

For Subpart P:
Dated: November 28, 2000.

Paul W. Fiddick,

Assistant Secretary for Administration.

For Subpart Q:
Dated: November 28, 2000.

Ira L. Hobbs,

Acting Chief Information Officer.

[FR Doc. 00–31513 Filed 12–12–00; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC93

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Final Rule—WIC Nondiscretionary Funding Modifications of P.L. 106–224

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the WIC Program regulations to incorporate two nondiscretionary funding provisions mandated by the Agricultural Risk Protection Act of 2000. The first change modifies the methodology used to calculate the national administrative grant per person, which is used to determine the amount of WIC funds to be used for food benefits and nutrition services and administration (NSA). The second change provides greater flexibility for State agencies in noncontiguous States containing a significant number of remote Indian or Native villages by permitting them to convert food funds to cover allowable NSA costs incurred in providing services and breastfeeding support to those areas.

EFFECTIVE DATE: This rule is effective October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Background

Why Is This Rule Being Promulgated?

The Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), was enacted on June 20, 2000, and, among other things, mandates two modifications to WIC funding procedures. The first change modifies the methodology used to calculate the national administrative grant per participant, which is used to determine the amount of WIC funds to be used for food benefits and NSA. This change calls for a revision of the inflation rate calculation methodology. The second change provides greater flexibility for State agencies in noncontiguous States containing a significant number of remote Indian or Native villages by permitting them to convert food funds to cover allowable NSA costs incurred in providing services and breastfeeding support to those areas. This provision recognizes the higher costs associated with service delivery to these remote sites.

Why Are no Comments Being Taken on This Rule and Why Is It Effective October 1, 2000?

The changes to the WIC regulations made by this rule are mandated by Congress and require no Agency discretion. Further, section 263 of Pub. L. 106–224 requires that FNS promulgate regulations to implement these provisions as soon as practicable after the date of enactment without regard to the Administrative Procedure Act's notice and comment provisions at 5 U.S.C. 553; the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804, July 24, 1971), relating to notices of proposed rulemaking and public participation in rulemaking; and the Paperwork Reduction Act at 44 U.S.C. chapter 35. In addition, section 172 of Pub. L. 106–224 requires us to promulgate rules to carry out the Act and its amendments not later than 120 days after the date of enactment. For these reasons, we are not taking public comment prior to promulgating this rule. Finally, section 244(f)(2) of Pub. L. 106–224 provides that the WIC funding changes take effect on October 1, 2000. Accordingly, this rule is effective October 1, 2000.

Why Is This Rule and Preamble in Question and Answer Format?

We have used this opportunity to rewrite the affected provisions in a question and answer format to improve readability. This approach also complies with the President's Executive Memorandum requiring all Federal regulations published after January 1, 1999 to be in Plain Language, as recommended by the National Partnership for Reinventing Government.

What Is the Change to the Calculation of the National Administrative Grant Per Participant?

The national administrative grant per person (AGP) is used in the WIC funding formula to determine the amount of funds allocated for: (1) Food benefits; and (2) NSA costs. The Child Nutrition and WIC Reauthorization Act of 1989 (Pub.L. 101–147), amended section 17(h)(1) of the Child Nutrition Act of 1966 (CNA) to require a specific methodology be used to calculate the AGP. (Section 17 of the CNA is codified at 42 U.S.C. 1786.) This legislation required the AGP for any fiscal year to be calculated by adjusting the actual national average per participant grant for fiscal year 1987 to reflect the percentage change between: (1) the value of the index for State and local government purchases (S&LP), using the

implicit price deflator, for the 12-month period ending June 30, 1986; and (2) the estimate of the value of the index for the 12-month period ending June 30 of the previous fiscal year. This index is published by the Department of Commerce; Bureau of Economic Analysis (BEA) in the National Income and Product Accounts as a component of the Gross Domestic Product (GDP).

A potential concern is that the implicit price deflator, although appropriate at the time, is no longer the best index to calculate the AGP for the WIC Program. The BEA recommends the use of the chain-type price index rather than the implicit price deflator for measuring inflation. The Office of Management and Budget (OMB) also requires the use of the State and Local chain-type price index rather than the implicit price deflator in projection of State and local costs in budget estimates. The continued use of the implicit price deflator in the WIC AGP calculations, rather than conversion to the now standard chain-type price index, is undesirable.

In addition, the primary problem of using current rules is that they require the AGP to be based upon the 1987 S&LP data, including annual and benchmark revisions. Occasionally, as in 1992, 1995 and 1999, the National Income and Product Accounts undergo benchmark or comprehensive revisions. These revisions typically involve revision of the entire S&LP series. The revisions over the last few years have led to a downward shift in the AGP from the level it would have been if the index had not been revised. Index revisions cause instability in the AGP because, although the S&LP continues to rise from year to year, the AGP has the potential to go down or up disproportionately when the historical series is adjusted. In turn, WIC NSA grants to State agencies are unstable.

In recognition of these concerns, section 244(d) of Pub. L. 106–224 amended section 17(h)(1)(B)(ii)(I) of the CNA by removing the requirement to use the implicit price deflator. In addition, section 244(d) amended section 17(h)(1)(B)(ii) to remove the reference to fiscal year 1987 as the base year and requires instead that the adjustment be made to the AGP for the "preceding fiscal year" with conforming changes to the adjustment methodology. This rule amends § 246.16(c)(2) of the WIC regulations to reflect these changes.

What Is the Additional Flexibility for State Agencies in Noncontiguous States Containing a Significant Number of Indian or Native Villages?

In recognition of higher costs associated with delivery of WIC services to remote Indian and Native villages, section 244(e) of Pub. L. 106–224 added a new section 17(h)(5)(D) to the CNA to allow for State agencies to convert food funds to NSA funds to cover allowable NSA expenditures necessary to provide WIC services and breastfeeding support in those areas. This new conversion authority is limited to State agencies in noncontiguous States containing a significant number of Indian or Native villages.

Current conversion authority, described in section 17(h)(5)(A) of the CNA and § 246.16(f) in Program regulations, allows for the conversion of food funds to NSA funds under two conditions: (1) An approved plan outlining food cost reduction strategies and increases in participation levels above the FNS-projected participation levels; and (2) actual participation increases achieved in excess of participation projected by FNS. Conversion of food funds to NSA funds are allowed to the extent that the funds are used to cover current year allowable NSA expenditures and the current fiscal year's per participant NSA grant for each State agency is maintained.

Under this new authority, food funds may be converted to NSA funds to the extent the conversion is necessary to cover expenditures incurred in providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages and to provide breastfeeding support in those areas. This rule amends § 246.16(g) of the WIC regulations to add this new conversion authority. New paragraph (g)(2) makes clear that funds may only be converted as necessary to cover costs in providing service and breastfeeding support in remote Indian or Native villages to the extent that they exceed the State agency's NSA funds, including any spent forward funds, for the fiscal year. This rule also revises § 246.16(i) to clarify how the converted funds will be treated in calculating a State agency's prior year food grant and base NSA grant. Finally, this rule also makes a conforming change to § 246.16(f)(2)(i) to incorporate the limitation in current § 246.16(g).

Section 244 (a) of Pub. L. 106–224 amended section 17(b) of the CNA to add a new definition of "remote Indian or Native village." This definition is used both in connection with the new conversion authority and with a new provision concerning proof of residency by residents of remote Indian or Native villages. The new proof of residency provision and the definition of "remote Indian or Native village" were added to the WIC regulations by the WIC Certification Integrity final rule (published on December 11, 2000).

Procedural Matters

Executive Order 12866—Regulatory Planning and Review

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will only affect State and local WIC agencies. Although some of these agencies may fall within the definition of "small entities," the number of affected entities will not be substantial. Further, the impact of the changes on small entities is not significant. Finally, because this rule contains only nondiscretionary provisions required by statute, we could not consider any alternatives.

Paperwork Reduction Act

This final rule does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20).

Executive Order 12372—Intergovernmental Review of Federal Programs

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, and final rule-related Notice published June 24, 1983 (48 FR 29114)).

Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4—Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of that rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

Executive Order 13132 does not require consultation with State and local officials and a federalism impact statement for rules that are required by statute. This rule is required by Pub. L. 106–244. Therefore, we determined that this rule does not meet the threshold criteria for further review under Executive Order 13132.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.16:

a. Revise paragraph (c)(2) introductory text;

b. Revise the heading of paragraph (f);

c. Revise the introductory text of paragraph (f)(1);

d. Revise paragraph (f)(2)(i);

e. Revise paragraph (g);

f. Amend paragraph (h) by revising the paragraph heading, removing the reference to "paragraph (f)", and adding in its place a reference to "paragraphs (f) and (g)"; and

g. Revise paragraph (i).

The revisions read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(2) *How is the amount of NSA funds determined?* The funds available for allocation to State agencies for NSA for each fiscal year must be sufficient to guarantee a national average per participant NSA grant, adjusted for inflation. The amount of the national average per participant grant for NSA for any fiscal year will be an amount equal to the national average per participant grant for NSA issued for the preceding fiscal year, adjusted for inflation. The inflation adjustment will be equal to the percentage change between two values. The first is the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year. The second is the best estimate that is available at the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. Funds for NSA costs will be allocated according to the following procedure:

* * * * *

(f) *How do I qualify to convert food funds to NSA funds based on increased participation?* (1) *Requirements.* The State agency qualifies to convert food funds to NSA funds based on increased participation in any fiscal year in two ways:

* * * * *

(2) * * *

(i) To cover NSA expenditures in the current fiscal year that exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year; and

* * * * *

(g) *How do I qualify to convert food funds to NSA funds for service to remote Indian or Native villages?* (1) *Eligible State agencies.* Only State agencies located in noncontiguous States containing a significant number of remote Indian or Native villages qualify to convert food funds to NSA funds under this paragraph (g) in any fiscal year.

(2) *Limitation.* In the current fiscal year, food funds may be converted only to the extent necessary to cover expenditures incurred:

(i) In providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages; and

(ii) To provide breastfeeding support in those areas that exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year.

(h) *What happens at the end of the fiscal year in which food funds are converted?* * * *

(i) *How do converted funds affect the calculation of my prior year food grant and base NSA grant?* For purposes of establishing a State agency's prior year food grant and base NSA grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to NSA funds under paragraphs (f) and (g) of this section and § 246.14(e) during the preceding fiscal year will be treated as though no conversion had taken place.

Dated: December 7, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–31731 Filed 12–12–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–111–1]

Change in Disease Status of Artigas, Uruguay, Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Artigas, a department in Uruguay, from the list of regions considered to be free of rinderpest and foot-and-mouth disease. We are taking this action because the existence of foot-and-mouth disease has been confirmed there. The effect of this action is to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Artigas.

DATES: This interim rule was effective October 1, 2000. We invite you to comment on this docket. We will consider all comments that we receive by February 12, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–111–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–111–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

Furthermore, an evaluation in support of this action is available for review in our reading room and on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html*, or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Glen Garris, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD exists in all other regions of the world not listed. Section 94.11 of the regulations lists regions of the world that have been declared to be free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

Prior to the effective date of this interim rule, Uruguay was among the listed regions in §§ 94.1 and 94.11 considered to be free of rinderpest and FMD. However, on October 23, 2000, a suspected outbreak of FMD was detected in the Uruguayan department of Artigas, a region in northern Uruguay. On October 26, 2000, Uruguay's Ministry of Agriculture, Livestock and Fisheries notified us with clinical confirmation of the FMD diagnosis. On November 20, 2000, Uruguay sent a team of veterinary officials to the United States to provide us with detailed information on the outbreak history, measures taken to eradicate the disease, movement controls, monitoring and surveillance, and other relevant activities. Based on our discussions with Uruguay's team of veterinary officials and our own evaluation)[1] we have determined that: (1) FMD is not known to exist outside the department of Artigas; (2) Uruguay maintains strict control over the importation and movement of animals and animal products from regions of higher risk and has established barriers to the spread of FMD from the department of Artigas; (3) Uruguay maintains a surveillance system capable of detecting FMD should the disease be introduced into other regions of the country; and (4) Uruguay has the laws, policies, and infrastructure to detect, respond to, and eliminate any occurrence of FMD. Consequently, we have decided to remove the portion of Uruguay encompassing the department of Artigas from the list of regions recognized as free of FMD.

Therefore, to protect the livestock of the United States from FMD, we are amending the regulations in § 94.1 by removing the department of Artigas from the list of regions considered to be free of rinderpest and FMD. We are also removing Artigas from the list of regions in § 94.11 that are considered to be free of these diseases, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. Other regions of Uruguay will remain on the list of regions considered to be free of rinderpest and FMD. As a result of this action, the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine that left Artigas on or after October 1, 2000, is prohibited or restricted. Because the disease may have been present in Artigas for some time prior to its detection on October 23, 2000, we are making these amendments effective on October 1, 2000. The date of October 1, 2000, takes into account the approximate incubation period for FMD of 14 days, and includes an additional margin of safety based on uncertainty as to how long the affected animals experienced clinical signs of the disease prior to discovery.

Although we are removing the department of Artigas from the list of regions considered to be free of rinderpest and FMD, we recognize that Uruguay's Ministry of Agriculture, Livestock and Fisheries responded immediately to the detection of the disease by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products into and from the affected area and initiating measures to eradicate the disease. At the time of publication of this interim rule, it appears that the outbreak is well controlled. Because of the efforts of the Ministry of Agriculture, Livestock and Fisheries to ensure that FMD does not spread beyond the department of Artigas, we intend to reassess the situation in accordance with the standards of the Office International des Epizooties. Additionally, as part of our reassessment process, over the next 12 months we will conduct periodic inspections of Uruguayan slaughtering establishments and their operations and records, as well as review relevant documentation maintained by the Ministry of Agriculture, Livestock and Fisheries. We will also consider all comments received on this interim rule. This reassessment will determine whether it is necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Artigas, or whether we can restore the department of Artigas to the list of regions considered free of rinderpest and FMD.

[1] An evaluation has been prepared for this action and is available from the sources listed under **ADDRESSES**.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of FMD into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the regulations by removing the Uruguayan department of Artigas from the list of regions considered free of rinderpest and FMD. We are taking this action because Uruguay's Ministry of Agriculture has reported cases of FMD in that region. This action prohibits or restricts the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine that left the department of Artigas on or after October 1, 2000. This action is necessary to protect the livestock of the United States from FMD.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to October 1, 2000; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding the words "except the department of Artigas" immediately after the word "Uruguay".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by adding the words "except the department of Artigas" immediately after the word "Uruguay".

Done in Washington, DC, this 11th day of December 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–31868 Filed 12–12–00; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF94

Changes, Tests, and Experiments: Confirmation of Effective Date and Availability of Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule: Confirmation of effective date and availability of guidance.

SUMMARY: The Nuclear Regulatory Commission amended its regulation concerning changes, tests, and experiments for nuclear reactors on October 4, 1999 (64 FR 53582). The effective date of this amendment was deferred until guidance on implementation of the revised provisions of the rule was issued to reactor licensees. This document announces the availability of that guidance (Regulatory Guide 1.187, "Guidance for Implementation of 10 CFR 50.59, Changes, Tests, and Experiments") and specifies the effective date for the October 4, 1999, amendment to § 50.59.

DATES: The effective date of the October 9, 1999 amendment to 10 CFR 50.59 (64 FR 53613) is March 13, 2001.

ADDRESSES: Regulations, certain regulatory guides, and certain endorsed NEI documents are available for inspection or downloading at the NRC's web site, *http://WWW.NRC.GOV*. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to *DISTRIBUTION@NRC.GOV*. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of regulations, regulatory guides, and endorsed NEI documents are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD, 20852; the PDR's mailing address is Public Document Room, Washington DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; email *PDR@NRC.GOV*.

Comments and suggestions in connection with items for inclusion in regulations or regulatory guides are encouraged at any time. Written

comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

FOR FURTHER INFORMATION CONTACT: E. M. McKenna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555; telephone (301) 415–2189; email *EMM@NRC.GOV*.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission amended its rule, 10 CFR 50.59, "Changes, Tests, and Experiments" on October 4, 1999 (64 FR 53582). This amendment clarified the rule requirements, and also provided licensees greater flexibility to make certain changes without NRC approval that involve only minimal increases in likelihood or consequences of events. The implementation date of this amendment was made dependent upon guidance being issued to nuclear reactor licensees on implementing the revised requirements.

Regulatory Guide 1.187 endorses a document prepared by the Nuclear Energy Institute (NEI), NEI 96–07, Revision 1, dated November 2000. Regulatory Guide 1.187 was published for public comment (65 FR 24231) as DG–1095, "Guidance for Implementation of 10 CFR 50.59, Changes, Tests, and Experiments". The comments submitted by licensees and other commenters were addressed by revisions made by NEI to NEI 96–07, Revision 1, as submitted in November 2000; the NRC staff concurs in these revisions.

Therefore, the effective date of the October 4, 1999, amendment to 10 CFR 50.59 is March 13, 2001.

Dated at Rockville, Maryland, this 6th day of December 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31735 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P 1

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–48–AD; Amendment 39–12029; AD 2000–24–22]

RIN 2120–AA64

Airworthiness Directives; S.N. CENTRAIR Model 201B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all S.N. CENTRAIR Model 201B gliders. This AD requires you to modify the rear canopy emergency release system. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to prevent the rear canopy retaining strap from not releasing properly during the emergency egress procedure because of the current design of the rear canopy emergency release system. This condition, if not corrected, will not allow the rear canopy to completely separate from the glider and could result in potential injury to the pilot during an emergency egress.

DATES: This AD becomes effective on January 27, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 27, 2001.

ADDRESSES: You may get the service information referenced in this AD from S.N. CENTRAIR, Aerodome—36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all S.N. CENTRAIR Model 201B gliders. The DGAC reports an incident where a Model 201B rear canopy strap did not properly release during an actual emergency egress.

The DGAC advises that the problem is related to the unreliability of the rear canopy in completely separating from the glider during an emergency egress procedure.

What are the consequences if the condition is not corrected? If the rear canopy retaining strap does not release properly during the emergency egress procedure, the rear canopy will not completely separate from the glider. This could result in potential injury to the pilot during an emergency egress.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all S.N. CENTRAIR Model 201B gliders. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 29, 2000 (65 FR 58495). The NPRM proposed to require you to install a mechanism that automatically releases the rear canopy strap when the emergency canopy lever is actuated.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—will not change the meaning of the AD; and

—will not add any additional burden upon the public than was already proposed.

Compliance Time of this AD

What is the compliance time of this AD? The compliance time of this AD is "within the next 3 months after the effective date of this AD."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Although the rear canopy retaining strap not releasing properly during the emergency egress procedure occurs during flight, the condition is not a direct result of glider operation. The chance of this situation occurring is the same for a glider with 10 hours TIS as it would be for a glider with 500 hours TIS. A calendar time for compliance will assure that the unsafe condition is addressed on all gliders in a reasonable time period.

What are the differences between the French AD and this AD?

The French AD requires installation of a mechanism that automatically releases the rear canopy strap when the emergency canopy lever is actuated. The French AD also requires a visual inspection to ensure that the modification is incorporated correctly.

The FAA does not require this inspection because we believe that the procedures are adequate to allow the maintenance personnel to accomplish the action correctly.

Cost Impact

How many gliders does this AD impact? We estimate that this AD affects 41 gliders in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected gliders? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per glider	Total cost on U.S. Operators
4 workhours × $60 per hour = $240	$150 per glider	$390 per glider	$15,990

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket, A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2000–24–22 S.N. Centrair: Amendment 39–12029; Docket No. 2000–CE–48–AD.

(a) *What gliders are affected by this AD?* This AD affects Model 201B gliders, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above gliders must comply with this AD.

(c) *What problem does this AD address?* The actions specified in this AD are intended to prevent the rear canopy retaining strap from not releasing properly during the emergency egress procedure because of the current design of the rear canopy emergency release system. This condition, if not corrected, will not allow the rear canopy to completely separate from the glider and could result in potential injury to the pilot during an emergency egress.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance times	Procedures
(1) Install a mechanism that automatically releases the rear canopy strap when the emergency canopy lever is actuated.	Within the next 3 months after January 27, 2001 (the effective date of AD).	Follow the procedures in S.N Centrair Process Sheet for Fitment of the Release Unit for the Rear Canopy Strap on Glider Centrair 201 "Marianne", dated March 17, 1999 (or the instructions provided with the modification kit). The document specified above is referenced in S.N. CENTRAIR Service Bulletin No. 201–16, Revision 1, dated December 12, 1999. The inspection referenced in the service bulletin is not required by this AD.
(2) Do not install a rear canopy emergency release system without incorporating the modification referenced in paragraph (d)(1) of this AD.	As of January 27, 2001 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each glider identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)

of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the glider to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your glider to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with S.N. CENTRAIR Service Bulletin No. 201–16, Revision 1, dated December 12, 1999, and S.N Centrair Process Sheet for Fitment of the Release Unit for the Rear Canopy Strap on Glider Centrair 201 "Marianne", dated March 17, 1999 (including photo 1A added to page 3 or November 8, 1999). The instructions provided with the modification kit also include these procedures. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from S.N. CENTRAIR, Aerodome 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 27, 2001.

Note 2: The subject of this AD is addressed in French AD 1999–055(A)R1, dated February 5, 2000.

Issued in Kansas City, Missouri, on November 28, 2000.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30903 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–37–AD; Amendment 39–12031; AD 2000–24–24]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines having common nozzle assembly part number (P/N) FK16544 or FK16558. This action requires initial and repetitive visual inspections of the inner and outer skins of the common nozzle assembly and specifies allowable limits for cracks, loose rivets, and missing rivets. This action also requires repair if the common nozzle assembly damage exceeds allowable limits. This amendment is prompted by two reports of in-flight inner skin detachment. The actions specified in this AD are intended to detect cracks, loose rivets, and missing rivets, which could result in inner skin detachment, release of common nozzle assembly debris from the engine, and possible damage to the airplane control surfaces.

DATES: Effective January 12, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 12, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781–238–7744; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines having common nozzle assembly P/N FK16544 or FK16558. The CAA received reports of cracking and rivet loss on the outer and inner skin of the common nozzle assembly, with two reports of inner skin detachment. Rolls-Royce has determined that cracks and detachment of inner skin, and cracks of outer skin occurred due to a combination of missing rivets, loose rivets, and high stress levels on common nozzle assemblies with a high number of flight cycles. This condition, if not corrected, could result in inner skin detachment, release of common nozzle assembly debris from the engine, and possible damage to the airplane control surfaces. The compliance times specified in this AD are based on Rolls-Royce service bulletin criteria and CAA recommendations.

Manufacturer's Service Information

RR has issued Mandatory Service Bulletin (MSB) No. RB.211–78–C931, Revision 1, dated June 13, 2000, that specifies procedures for initial visual inspections of inner and outer skin, including allowable limits, for cracks, missing rivets, and loose rivets. The MSB also specifies repair for common nozzle assemblies that are out of limits. The MSB also specifies on common nozzle assemblies with more than 1,500 cycles-since-new, initial visual inspections for cracks in inner and outer skins, missing rivets, loose rivets not later than 500 flight hours after release of AD, and repetitive inspections within 500 flight hours since the last inspection. The CAA classified this MSB as mandatory and issued airworthiness directive (AD) 005–06–2000 in order to ensure the airworthiness of these engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As required by this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for engines of this type design that could be used on airplanes certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design that could be used on airplanes registered in the United States, this AD requires initial and repetitive in-service visual inspections of the common nozzle assembly to detect cracks, missing rivets, and loose rivets, including allowable acceptance limits. This AD also requires repair for common nozzle assemblies that are out of limits. The actions must be done in accordance with the MSB described previously.

Immediate Adoption

A situation exists that allows the immediate adoption of this regulation. Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–37–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order (EO) 13132, because it would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under EO 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–24–24 Rolls-Royce plc: Amendment 39–12031. Docket 2000–NE–37–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines having common nozzle assembly part number (P/N) FK16544 or FK16558 installed. These engines are installed on but not limited to Airbus A330–341 and A330–342 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To detect cracking, loose rivets, and missing rivets on common nozzle assembly P/N FK16544 or FK16558, which could result in inner skin detachment, release of exit nozzle debris from the engine, and possible damage to the airplane control surfaces, do the following:

Initial Inspection

(a) Visually inspect all common nozzle assemblies for cracks, missing rivets, and loose rivets, within 500 flight hours after the effective date of this AD, and disposition in accordance with Accomplishment Instructions, Paragraph 3A of RR Mandatory Service Bulletin (MSB) No. RB.211–78–C931, Revision 1, dated June 13, 2000.

Repetitive Inspections

(b) Thereafter, on common nozzle assemblies that have greater than 1,500 cycles-since-new, do repetitive visual inspection for cracks, loose rivets, and missing rivets, within 500 flight hours since the last inspection, and disposition in accordance with Accomplishment Instructions, Paragraph 3A of RR MSB No. RB.211–78–C931, Revision 1, dated June 13, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions required by this AD must be performed in accordance with the Accomplishment Instructions of RR MSB No. RB.211–78–C931, Revision 1, dated June 13, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date of This AD

(f) This amendment becomes effective on January 12, 2001.

Issued in Burlington, Massachusetts, on November 28, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–31113 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–33–AD; Amendment 39–12033; AD 2000–24–26]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Rolls-Royce plc RB211 Trent 800 series turbofan engines, that currently requires initial and repetitive ultrasonic inspections of fan blade roots for cracks, and replacement, if necessary, with serviceable parts. This amendment requires the reduction of the initial cyclic compliance threshold and repetitive inspection intervals. This amendment also allows inspections to be accomplished within 100 cycles-in-service if the initial or repetitive thresholds are exceeded on the effective date of this AD. This amendment is prompted by an improved understanding of the crack propagation mechanism and the latest service operational data. The actions specified by this AD are intended to detect and prevent fan blade failure, which could result in multiple fan blade releases, uncontained engine failure, and possible damage to the airplane.

DATES: Effective February 12, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone: (317) 230–3995, fax: (317) 230–4743. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7136, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–19–21, Amendment 39–10762 (63 FR 50484, September 22, 1998, corrected by 63 FR 52961, October 2, 1998), applicable to Rolls-Royce plc (RR) RB211 Trent 800 series turbofan engines, was published in the **Federal Register** on December 3, 1999 (64 FR 67806). That action proposed to require the reduction of initial compliance thresholds and repetitive cyclic inspection intervals. The action also proposed the allowance for inspections to be accomplished within 100 cycles-in-service if the initial or repetitive thresholds are exceeded on the effective date of the AD.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

Request To Revise Economic Analysis

The comment states that all RR Trent 800 series engines on the US registry that will be affected by the AD have already been modified to RR Service Bulletin RB.211–72–C629. Therefore, the estimate of the total cost impact of the proposed action on US operators is zero.

The FAA disagrees. Although some Trent 800 series engines on US registered airplanes may have already been modified to RR Service Bulletin RB.211–72–C629 and the actual cost may be reduced, the original economic analysis is retained.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order (EO) 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under EO 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10762 (63 FR 50484, September 22, 1998) and by adding a new airworthiness directive, Amendment 39–12033, to read as follows:

AD 2000–24–26 Rolls-Royce plc.: Amendment 39–12033. Docket 98–ANE–33–AD. Supersedes AD 98–19–21, Amendment 39–10762.

Applicability: Rolls-Royce plc (RR) RB211 Trent 875, RB211 Trent 877, RB211 Trent 884, RB211 Trent 892, and RB211 Trent 892B series turbofan engines, except if the fan blades described in RR Service Bulletin (SB) RB.211–72–C629 were installed as complete sets. These engines are installed on but not limited to Boeing 777 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent fan blade failure, which could result in multiple fan blade releases, uncontained engine failure, and possible damage to the airplane, accomplish the following:

Ultrasonic Inspections (Reduced Thresholds and Repetitive Intervals)

(a) Perform initial and repetitive inspections of fan blade roots for cracks, in accordance with RR SB No. RB211–72–C445, Revision 6, dated September 3, 1999, as follows:

(1) For Trent 875 series engines, inspect as follows:

(i) Initially, prior to accumulating 3,000 cycles-since-new (CSN).

(ii) Thereafter, at intervals not to exceed 400 cycles-in-service (CIS) since last inspection.

(2) For Trent 877 series engines, inspect as follows:

(i) Initially, prior to accumulating 2,000 CSN.

(ii) Thereafter, at intervals not to exceed 350 CIS since last inspection.

(3) For Trent 884 series engines, inspect as follows:

(i) Initially, prior to accumulating 1,500 CSN.

(ii) Thereafter, at intervals not to exceed 350 CIS since last inspection.

(4) For Trent 892 and 892B series engines, inspect as follows:

(i) Initially, prior to accumulating 900 CSN.

(ii) Thereafter, at intervals not to exceed 200 CIS since last inspection.

Engines Exceeding Thresholds and Repetitive Intervals

(5) For engines that exceed the initial inspection thresholds listed in paragraphs (a)(1)(i), (a)(2)(i), (a)(3)(i), and (a)(4)(i) on the effective date of this AD, conduct initial inspection within 100 CIS after the effective date of this AD.

(6) For engines that exceed the repetitive inspection intervals listed in paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), and (a)(4)(ii) on the effective date of this AD, inspect within 100 CIS after the effective date of this AD.

Cracked Parts

(7) Prior to further flight, remove from service cracked fan blades and replace with serviceable parts.

Alternate Method of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

Ferry Flights

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

Incorporation by Reference Material

(d) The actions required by this AD must be done in accordance with the following Rolls-Royce SB:

Document No.	Pages	Revision	Date
RB.211–72–C445	1–9	6	September 3, 1999.
Appendix 1	1	Original	February 13, 1998.
	2	6	September 3, 1999.
	3–4	Original	February 13, 1998.
Appendix 2	1	Revision 4	November 6, 1998.
	2–3	Original	February 13, 1998.

Total pages: 16.

The incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone: (317) 230–3995; fax: (317) 230–4743. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 12, 2001.

Issued in Burlington, Massachusetts, on November 30, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–31066 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–49–AD; Amendment 39–12037; AD 2000–25–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc. Model 205A–1, 205B, 212, 412, and 412CF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Inc. (BHTI) Model 205A–1, 205B, 212, 412, and 412CF helicopters. This action requires inspecting the locking washer on each main rotor actuator (actuator) for twisting or damage to the tab and replacing any locking washer that has a twisted or damaged tab. Replacing certain locking washers, regardless of condition, is also required within a specified time period. Installing a certain airworthy locking device on each actuator constitutes terminating action for the requirements of this AD. This amendment is prompted by an incident in which a damaged locking washer allowed the rod end to detach from the collective actuator, causing loss of collective control of the main rotor. The current locking washer is subject to mechanical damage and failure, which allows the actuator piston to unthread itself from its rod end. This condition, if not corrected, could cause loss of control of the main rotor and subsequent loss of control of the helicopter.

DATES: Effective December 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–49–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

The service information referenced in this AD may be obtained from HR Textron, 25200 W. Rye Canyon Road, Santa Clarita, California 91355–1265, telephone (611) 702–5509, fax (661) 702–5970. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alfred Boutin, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for BHTI Model 205A–1, 205B, 212, 412, and 412CF helicopters. This AD requires, within 25 hours time-in-service (TIS), inspecting the tab on the NAS513–6 locking washer on all actuators, part number (P/N) 41105950, serial number with an "HR" prefix up to and including 490 and P/N 41000470, serial numbers with a prefix of "HR" up to and including 10010, for a twisted or damaged tab. P/N's 41105950 and 41000470 were assigned by the manufacturer; the BHTI P/N's are 205–076-036 and 212–076–005. Replacing any twisted or damaged locking washer with an airworthy NAS1193K6C locking device is required before further flight. Replacing any NAS513–6 locking washer with an airworthy NAS1193K6C locking device, regardless of the condition of the tab, is required within 100 hours TIS or at the next actuator overhaul, whichever occurs first. Installing an airworthy NAS 1193K6C locking device on all actuators constitutes terminating action for the requirements of this AD. This AD is prompted by the discovery of a damaged locking washer. The damage to the locking washer was discovered when an operator experienced a problem with a collective control while attempting to take off. The collective control could not be moved upward from the full down position. Further inspection revealed that the lower piston of the actuator had unthreaded and separated from the lower rod end, causing the piston to make contact with the rod end support assembly and lodge itself against the rod end shank at an angle limiting any movement of the collective control. The collective servo cylinder assembly is used to provide irreversible collective control of the main rotor. Because the actuator end locking washer failed, the servo lower piston could rotate inside the lower servo head assembly and unthread itself from the rod end. This condition, if not corrected, could cause loss of control of the main rotor and subsequent loss of control of the helicopter.

The FAA has reviewed HR Textron Alert Service Bulletin (ASB) No. 41000470–67A–05, Revision 1 and HR Textron ASB No. 41105950–67A–01, Basic Issue, both dated October 19, 2000, which describe procedures for inspecting and replacing certain locking washers. BHTI has issued ASB No.'s 205–00–79, 205B–00–33, 212–00–109, 412–00–105, and 412CF–00–12, all dated October 19, 2000, which include the applicable HR Textron Alert Service Bulletins.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 205A–1, 205B, 212, 412, and 412CF helicopters of the same type designs, this AD is being issued to prevent an actuator piston from unthreading itself from its rod end causing loss of collective control and subsequent loss of control of the helicopter. This AD requires inspecting the locking washers on all actuators for twisting or damage to the tab and replacing any locking washer that has a twisted or damaged tab. Replacing certain locking washers, regardless of condition, is also required within 100 hours TIS or at the next actuator overhaul, whichever occurs first. Installing an airworthy NAS1193K6C locking device on all actuators constitutes terminating action for the requirements of this AD. The actions must be accomplished in accordance with the HR Textron service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions described previously are required at the specified time intervals, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 500 helicopters will be affected by this AD. It will take approximately 1 work hour to inspect the locking washer, 6 work hours per helicopter to replace the three locking devices on each helicopter, and the average labor rate is $60 per work hour. Required parts will cost approximately $20 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $190,000, assuming all the locking devices on all the helicopters are replaced.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–49–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–25–03 Bell Helicopter Textron Inc.: Amendment 39–12037. Docket No. 2000–SW–49–AD.

Applicability: (a) Model 205A–1 helicopters with a hydraulic servo actuator (actuator), part number (P/N) 41105950, serial numbers with an "HR" prefix up to and including 490, installed, certificated in any category; and

(b) Model 205A–1, 205B, 212, 412, and 412CF helicopters with an actuator, P/N 41000470, serial numbers with an "HR" prefix up to and including 10010, installed, certificated in any category.

Note 1: P/N 41105950 is the P/N assigned by HR Textron, which is the actuator manufacturer. Bell Helicopter Textron, Inc. (BHTI) has assigned P/N 205–076–036 to this part when fitted with a support mount. P/N 41000470 is the P/N assigned by HR Textron; BHTI has assigned P/N 212–076–005 to this part when fitted with a support mount.

Note 2: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent an actuator piston from unthreading from its rod end, loss of control of the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS), inspect the tab on the NAS513–6 locking washer on each actuator for any twisting or damage in accordance with the Accomplishment Instructions, paragraph A., of HR Textron Alert Service Bulletin (ASB) No. 41000470–67A–05, Revision 1, dated October 19, 2000 or HR Textron ASB No. 41105950–67A–01, Basic Issue, dated October 19, 2000, as applicable to the affected actuator P/N. Replace any twisted or damaged locking washer with an airworthy NAS1193K6C locking device before further flight.

(b) Within 100 hours TIS or at the next actuator overhaul, whichever occurs first, replace the NAS513–6 locking washer on each actuator with an airworthy NAS1193K6C locking device.

(c) Installation of an airworthy NAS1193K6C locking device on each of the three actuators constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections and modifications shall be done in accordance with the Accomplishment Instructions, paragraph A., of HR Textron Alert Service Bulletin No. 41000470–67A–05, Revision 1 or HR Textron ASB No. 41105950–67A–01, Basic Issue, both dated October 19, 2000, as applicable to the affected actuator P/N. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from HR Textron, 25200 W. Rye Canyon Road, Santa Clarita, California 91355–1265, telephone (611) 294–6000, fax (661) 259–9622. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: BHTI ASB No.'s 205–00–79, 205B–00–33, 212–00–109, 412–00–105, and 412CF–00–12, all dated October 19, 2000, pertain to the subject of this AD and include the applicable HR Textron Alert Service Bulletins.

(g) This amendment becomes effective on December 28, 2000.

Issued in Fort Worth, Texas, on November 30, 2000.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–31317 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–60–AD; Amendment 39–12038; AD 2000–25–04]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes, that requires a one-time inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, and corrective actions, if necessary; and installation of an additional support for the hydraulic tube. This amendment is intended to prevent an asymmetric braking condition and a longer stopping distance due to sudden loss of normal braking to the left wheel. Such loss of normal braking could result in the airplane overrunning the runway surface. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes was published in the **Federal Register** on August 10, 2000 (65 FR 48945). That action proposed to require a one-time inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, and corrective actions, if necessary; and installation of an additional support for the hydraulic tube.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 567 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 522 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $31 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $78,822, or $151 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Additionally, the manufacturer has indicated the warranty remedies may be available to defer the cost of the replacement parts also associated with accomplishing this actions required by this AD.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–25–04 Raytheon Aircraft Company (Formerly Beech): Amendment 39–12038. Docket 2000–NM–60–AD.

Applicability: Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes; as listed in Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent an asymmetric braking condition and a longer stopping distance due to sudden loss of normal braking to the left wheel, which could result in the airplane overrunning the runway surface, accomplish the following:

General Visual Inspection

(a) Within 200 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, in accordance with Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no leakage is found, prior to further flight, install an additional support (*i.e.*, new nutplate, clamp, and screw) for the hydraulic tube; in accordance with the service bulletin.

(2) If any leakage is found, prior to further flight, replace the hydraulic tube with a new or serviceable hydraulic tube, and install an additional support (*i.e.*, new nutplate, clamp, and screw) for the hydraulic tube; in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 17, 2001.

Issued in Renton, Washington, on December 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31316 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–384–AD; Amendment 39–12039; AD 2000–25–05]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, that currently requires a one-time inspection of the coupling hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies, and follow-on corrective actions. This amendment retains those requirements and adds a requirement to revise the applicability of the existing AD to add certain airplanes. The actions specified in this AD are intended to prevent failure of the rivets of the Gamah couplings and consequent separation of a Gamah coupling, which could result in fuel leakage and consequent fire in or around the wing. This action is intended to address the unsafe condition.

DATES: Effective December 28, 2000.

The incorporation by reference of a certain publication listed in the regulations, was approved previously by the Director of the Federal Register as of October 3, 2000, (65 FR 56231, September 18, 2000).

Comments for inclusion in the Rules Docket must be received on or before January 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–384–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–384–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On September 8, 2000, the FAA issued AD 2000–19–03, amendment 39–11904 (65 FR 56231, September 18, 2000), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, to require a one-time inspection of the coupling hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies, and follow-on corrective actions. The actions required by that AD are intended to prevent failure of the rivets of the Gamah couplings and consequent fire in or around the wing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has advised the FAA that, certain airplanes were inadvertently not included in the effectivity of Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000 (the appropriate service information for AD 2000–19–03). Consequently, those additional airplanes are subject to the identified unsafe condition specified in this rule.

U.S. Type Certification of the Airplane

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2000–19–03 to continue to require a one-time inspection of the coupling hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies, and follow-on corrective actions. This AD also requires the addition of certain airplanes to the applicability of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–384–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11904 (65 FR 56231, September 18, 2000), and by adding a new airworthiness directive (AD), amendment 39–12039, to read as follows:

2000–25–05 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–12039. Docket 2000–NM–384–AD. Supersedes AD 2000–19–03, Amendment 39–11904.

Applicability: Model EMB–135 and EMB–145 series airplanes, as listed in Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000, and serial numbers 145301 through 145312, inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the rivets attaching the Gamah coupling hinge to the fuel system tubing and consequent separation of the coupling, which could result in fuel leakage and consequent fire in or around the wing, accomplish the following:

Continuing Requirements of AD 2000–19–03—General Visual Inspection

(a) Perform a one-time general visual inspection of the hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies (including coupling separation, and loose rivets on the coupling hinge or locking fastener attaching points), in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000; at the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable. If no discrepancies are detected, secure the Gamah couplings with locking wire in accordance with the alert service bulletin.

(1) For airplanes having serial numbers 145004 through 145103 inclusive; 145105 through 145121 inclusive; 145123 through 145139 inclusive; 145141 through 145153 inclusive; 145155 through 145176 inclusive: Within 400 flight hours after October 3, 2000 (the effective date of AD 2000–19–03, amendment 39–11904).

(2) For airplanes having serial numbers 145177 through 145189 inclusive; 145191 through 145230 inclusive; 145232 through 145251 inclusive; 145253 through 145255 inclusive; 145258 through 145262 inclusive; 145264 through 145293 inclusive; 145295, 145296, and 145298 through 145300 inclusive: Within 50 flight hours after October 3, 2000.

Follow-On Corrective Actions

(b) If any discrepancies (including coupling separation, and loose rivets on the coupling hinge or locking fastener attaching points) are detected after accomplishment of the inspection required by paragraph (a) of this AD: Before further flight, replace any affected Gamah couplings and secure the Gamah couplings with locking wire in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000. Accomplishment of this paragraph terminates the requirements of this AD.

New Requirements of This AD—General Visual Inspection

(c) For airplanes having serial numbers 145301 through 145312, inclusive: Perform a one-time general visual inspection of the hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies (including coupling separation, and loose rivets on the coupling hinge or locking fastener attaching points), in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000, within 50 flight hours after the effective date of this AD.

(1) If no discrepancies are detected, secure the Gamah couplings with locking wire in accordance with the alert service bulletin.

(2) If any discrepancy is detected, before further flight, accomplish the requirements of paragraph (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000. The incorporation by reference of that document was approved previously by the Director of the Federal Register as of October 3, 2000 (65 FR 56231, September 18, 2000). Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 28, 2000.

Issued in Renton, Washington, on December 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31449 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–28–AD; Amendment 39–12042; AD 2000–15–52]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B, and 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting superseding Airworthiness Directive (AD) 2000–15–52, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. Model (BHTI) Model 204B, 205A, 205A–1, 205B, and 212 helicopters by individual letters. This AD reduces the retirement index number (RIN) life limit for the main rotor mast (mast); increases the RIN factor for masts and main rotor trunnions (trunnions); applies standard RIN factors for all external load lifts; and requires a one-time inspection of the snap ring groove area of the mast. This AD also establishes RIN factors for masts and trunnions that have been previously installed on military or restricted category helicopters and removes from service those masts that have been previously installed with a hub spring. This amendment is prompted by an occurrence of a cracked mast at a lower value than the established RIN life limit. The actions specified by this AD are intended to preclude the occurrence of fatigue

cracks in the damper clamp splined area of a mast. A crack in the damper clamp splined area could result in failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective December 28, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–15–52, issued on July 25, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On November 13, 1998, the FAA issued AD 98–24–15 (Amendment 39–10900 (63 FR 64612, November 23, 1998), Docket No. 97–SW–20–AD. That AD required establishing a RIN tracking system for mast and trunnion torque events; creating component history cards or equivalent records; converting accumulated factored flight hours to a baseline accumulated RIN count; establishing a system for tracking increases to the accumulated RIN; and establishing a maximum accumulated RIN for certain masts and trunnions. That action was prompted by an accident involving a BHTI Model 205A–1 helicopter in which a mast failure caused a separation of the main rotor from the helicopter. A subsequent metallurgical examination revealed that the mast had fractured as a result of fatigue. Analyses and fatigue testing conducted by the manufacturer and assessed by the FAA confirmed that the remaining lives of the mast and trunnion are more accurately assessed by monitoring the number of torque events and flight hours on the helicopter rather than by monitoring only flight hours.

The FAA superseded AD 98–24–15 by issuing Emergency AD 2000–08–52 (Docket No. 2000–SW–20) on April 21, 2000. AD 2000–08–52 required a one-time special inspection for certain serial-numbered masts to detect burrs or inadequate radii in the snap ring groove areas that can cause fatigue failure. That AD was issued as a result of an accident involving a BHTI Model 212 helicopter following in-flight separation of its main rotor system. The post-accident investigation revealed a fatigue failure in the damper clamp splined area of the mast, part number (P/N) 204–011–450–007. Also, operators reported at least five other failures in the damper clamp splined area of masts, P/N 204–011–450–001, –007, and –105, in either the upper or lower snap ring grooves. That AD also reduced the maximum allowable RIN life for each affected mast and changed the RIN counting procedure to require application of a standard RIN factor for all external load lifts regardless of altitude change and the type of load lifted. The RIN factor assessed for each torque event was increased for masts installed on BHTI Model 204B and 205B helicopters. The requirements of AD 98–24–15 pertaining to trunnions, P/N 204–011–105–001 and –103, were not changed by AD 2000–08–52.

After issuing AD 2000–08–52, the FAA received a report of another cracked mast. Metallurgical inspection revealed that the mast cracked as a result of fatigue in snap ring groove radii that were smaller than the 0.020 inch minimum allowable dimension. Detailed takeoff (1,249) and lift (16,339) event data for the entire life of the mast confirmed that the accumulated RIN count at the time the fatigue crack was detected was approximately 68,000 when calculated in accordance with the most recent RIN counting procedure as defined in AD 2000–08–52. The FAA concluded that several corrections to the RIN counting procedure are required based on a review of the fatigue data and previously issued AD's.

On July 25, 2000, the FAA issued Emergency AD 2000–15–52 for BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters. That Emergency AD reduces the RIN life limit for the mast and trunnion; increases the RIN factor for the masts and trunnions; applies standard RIN factors for all external load lifts; and requires a one-time inspection of the snap ring groove area of the mast. That Emergency AD also establishes RIN factors for masts and trunnions that have been previously installed on military or restricted category helicopters and removes from service those masts that have been previously installed with a hub spring. That action was prompted by an occurrence of a cracked mast at a lower value than the established RIN life limit. This condition, if not corrected, could result in failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters of the same type designs, the FAA issued Emergency AD 2000–15–52 to prevent failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter. The AD retains the following requirements from previously issued AD 2000–08–52:

- Reduces the allowable RIN life limit established in AD 98–24–15 for masts, P/N 204–011–450–001, –007, –105, –113, and –119;
- Increases the RIN factor assessed for each torque event for BHTI Model 204B and 205B helicopters;
- Applies a standard RIN factor for all external load lifts regardless of altitude change and type of load lifted; and
- Requires a one-time special inspection of certain S/N masts for inadequate radii and presence of burrs in the snap ring groove areas.

The Emergency AD differs from AD 2000–08–52 in that it:

- Requires, before further flight, that the accumulated RIN for all mast and trunnion history prior to the implementation of RIN counting (required by AD 98–24–15) be corrected for inadequate factors used to calculate factored hours TIS and to convert factored flight hours to accumulated RIN;
- Increases the RIN factor for each takeoff and external load lift for masts and trunnions installed on BHTI Model 204B, 205A, and 205A–1 helicopters to properly reflect the actual level of torque (horsepower rating) applied to the mast when it is installed in these helicopter models;
- Expands the requirement for a one-time special inspection to detect inadequate radii and burrs in the snap ring grooves to include masts with S/N's 00000 through 52720, 61433 through 61444, and 61457 through 61465, regardless of prefix;
- Establishes RIN factors for masts and trunnions that have been previously installed on military helicopters (BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1C, UH–1D, UH–1E, UH–1F, UH–1G, UH–1H, UH–1L, UH–1M, UH–1N, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1) and restricted category helicopters (Firefly Aviation Helicopter Services (previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; and U.S. Helicopter, Inc.).
- Requires the immediate removal from service of any mast that has been previously installed with a hub spring.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions previously stated are required at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 25, 2000 to all known U.S. owners and operators of BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 147 helicopters of U.S. registry will be affected by this AD. It will take approximately 10 work hours per helicopter to remove and replace the mast, if necessary; 10 work hours to remove and replace the trunnion, if necessary; and 6 work hours to inspect the mast for proper radius or a burr. The approximate time necessary for calculating the accumulated RIN, revising the Airworthiness Limitations section of the maintenance manuals, and providing the information requested to the FAA is 15 work hours per helicopter. The average labor rate is $60 per work hour. Required parts will cost approximately $9,538 to replace a mast, if necessary, and $5,300 to replace a trunnion, if necessary. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,675,506 ($11,398 per helicopter, assuming one inspection, one mast replacement, not trunnion replacement, and that the helicopter's accumulated RIN is calculated, the maintenance manuals are revised, and the requested information is submitted to the FAA).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–28–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10900 (63 FR 64612, November 23, 1998) and by adding a new airworthiness directive to read as follows:

2000–15–52 Bell Helicopter Textron Inc.: Amendment 39–12042. Docket No. 2000–SW–28–AD. Supersedes Emergency AD 2000–08–52, Docket No. 2000–SW–20–AD, and AD 98–24–15, Amendment 39–10900, Docket No. 97–SW–20–AD.

Applicability: Model 204B, 205A, 205A–1, 205B, and 212 helicopters, with main rotor mast (mast), part number (P/N) 204–011–450–001, –007, –105, –113, or –119, or main rotor trunnion (trunnion), P/N 204–011–105–001 or –103, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

Note 2: This AD has new requirements which must be complied with even if AD's

98–24–15 and 2000–08–52 have already been accomplished. This AD requires the recalculation of accumulated mast and trunnion RIN and increases the RIN factors for masts and trunnions installed on certain helicopter models. This AD also expands the S/N applicability for the one-time special inspection of the mast.

To prevent failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine the accumulated Retirement Index Number (RIN) in accordance with the Instructions in Appendix 1 of this AD for the mast and Appendix 2 of this AD for the trunnion. If the helicopter model installation history or hours time-in-service (TIS) of the mast or trunnion is unknown, remove the mast or trunnion from service and replace it with an airworthy mast or trunnion. If the mast has been installed on certain military helicopters (BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1C, UH–1D, UH–1E, UH–1F, UH–1G, UH–1H, UH–1L, UH–1M, UH–1N, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, or SW205A–1) or restricted category helicopters (Firefly Aviation Helicopter Services (previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; and U.S. Helicopter, Inc.) and you cannot verify that hub springs have not been installed, remove the mast from service and replace it with an airworthy mast.

(b) Before further flight, replace any mast, P/N 204–011–450–113 or 119, that has accumulated 240,000 or more RIN with an airworthy mast. Before further flight, replace any mast, P/N 204–011–450–001, –007, or –105, that has accumulated 265,000 or more RIN with an airworthy mast.

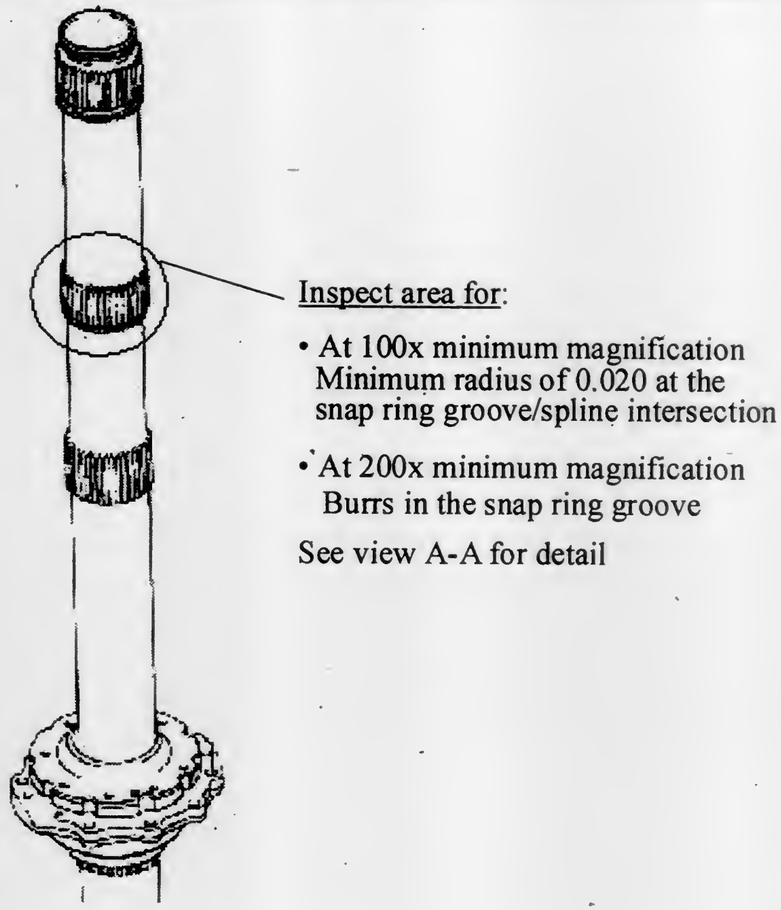
(c) Before further flight, replace any trunnion, P/N 204–011–105–103, that has accumulated 240,000 or more RIN with an airworthy trunnion. Before further flight, replace any trunnion, P/N 204–011–105–001, that has accumulated 265,000 or more RIN with an airworthy trunnion.

(d) Before reaching 100,000 RIN, inspect the upper and lower snap ring grooves in the damper clamp splined area of any mast with serial number (S/N) 00000 through 52720, S/N 61433 through 61444, and S/N 61457 through S/N 61465 (regardless of prefix) for:

(1) A minimum radius of 0.020 inches around the entire circumference (see Figures 1 through 3), using a 100x or higher magnification. If any snap ring groove radius is less than 0.020 inches, replace the mast with an airworthy mast prior to exceeding 100,000 RIN.

(2) A burr, using a 200x or higher magnification. If a burr is found in any snap ring groove/spline intersection, replace the mast with an airworthy mast prior to exceeding 170,000 RIN.

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View A

Figure 1

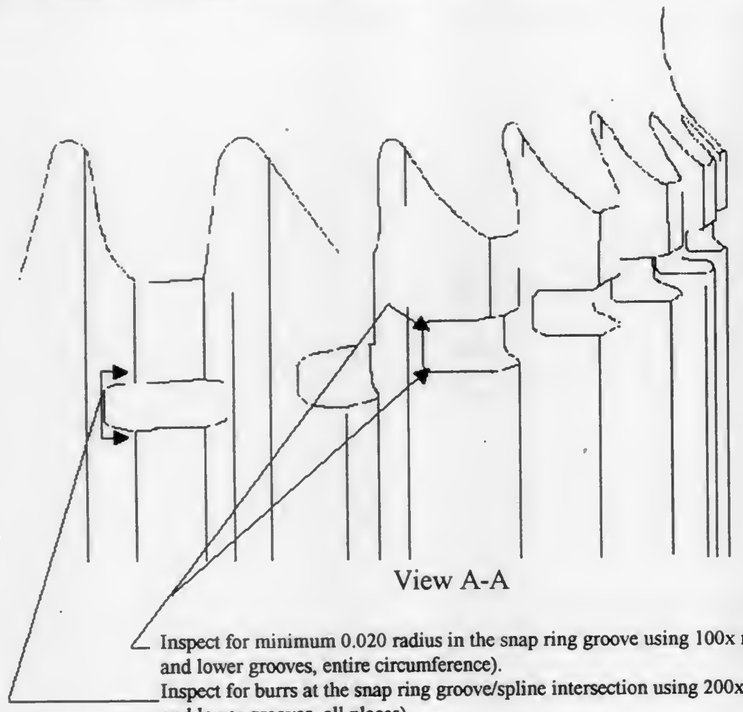


Figure 2
Snap Ring Groove/Spline Intersection



Cutaway View Looking Down from Inside Snap Ring Groove

Typical Burrs at Snap Ring Groove/Spline Intersection
Burrs are to be Inspected at 200x Minimum Magnification

Figure 3
Typical Burr at Snap Ring Groove

(e) Continue to calculate the accumulated RIN for the mast by multiplying all takeoff and external load lifts by the RIN factors defined in columns (D) and (G) of Table 1 of Appendix 1 of this AD.

(f) Continue to calculate the accumulated RIN for the trunnion by multiplying all takeoff and external load lifts by the RIN factors defined in columns (D) and (G) of Table 1 of Appendix 2 of this AD.

(g) Before further flight, revise the Airworthiness Limitations section of the maintenance manuals for the masts and trunnions in accordance with Figure 4.

MAST AND TRUNNION LIFE LIMITS

Mast part No.	Hours TIS life limit	RIN life limit	Trunnion part No.	Hours TIS life limit	RIN life limit
204–011–450–001	6,000	265,000	204–011–105–001	15,000	265,000
204–011–450–007	15,000	265,000	204–011–105–103	13,000	240,000
204–011–450–105	15,000	265,000			
204–011–450–113	13,000	240,000			
204–011–450–119	13,000	240,000			

(h) Within 10 days after completing the inspections required by this AD, provide the information contained on the AD inspection report, sample format, contained in Appendix 3 of this AD and send it to the Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193–0170, USA. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(k) This amendment becomes effective on December 28, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–15–52, issued July 25, 2000, which contained the requirements of this amendment.

APPENDIX 1

Instructions for Calculating Mast RIN

Definition of Retirement Index Number:

The overall **fatigue life** of a main rotor mast is a function of the number of cycles of torque, lift, and bending loads applied to it during the various modes of operation. The mast experiences both high cycle fatigue and low cycle fatigue during operation.

The **high cycle fatigue life** of the mast is a function of high frequency but relatively low level cyclic loads, which are primarily induced by rotor r.p.m. The high cycle fatigue life limit for the mast is defined in terms of hours TIS because rotor r.p.m. is basically a constant value.

The **low cycle fatigue life** of the mast is a function of the number of less frequent but relatively high level cyclic loads experienced primarily during takeoffs and external load lifts. The low cycle fatigue life limit for the mast is expressed in terms of the accumulated Retirement Index Number (RIN).

The **accumulated RIN** is defined as the total number of load cycles experienced (since new) by the mast multiplied by a **RIN factor** to account for the difference in torque levels applied to the same mast when installed in different helicopter models. The level of torque applied to the mast is directly proportional to the transmission output horsepower. The manufacturer's established mast **RIN life limit** is based on the measured number of cycles to failure of masts (in laboratory tests) at various levels of constant torque, lift, and bending loads which are representative of the expected operating environment.

Calculation of Retirement Index Number:

There are two methods for calculating the accumulated RIN, depending on the available service history information for the mast. In some cases, one method will be used for a portion of the mast service history, and the other method will be used for another portion of the mast service history. Both methods require knowledge of all the helicopter models in which the mast was installed.

Calculation of RIN when Number of Takeoffs and External Load Lifts is **Known** (Reference Table 1):

If the total number of takeoffs and the total number of external load lifts for the mast are known, the accumulated RIN must be calculated by multiplying each takeoff and each external load lift by a RIN factor determined to be appropriate for the torque (horsepower) of the helicopter model in which the mast is installed.

Table 1 of Appendix 1 is a worksheet for calculating the accumulated mast RIN when the number of takeoffs and external load lifts is known.

The RIN factor for each external load lift is twice that specified for each takeoff. This is because two torque events are experienced during a typical external load lift.

Using Table 1, calculate accumulated RIN as follows:

1. Enter the total number of takeoffs for the particular mast model/helicopter model combination in column (C).
2. Multiply the value entered in column (C) by the RIN factor listed in column (D), and enter the result in column (E). This is the total accumulated RIN due to takeoffs.
3. Enter the total number of external load lifts for the particular mast model/helicopter model combination in column (F).
4. Multiply the value entered in column (F) by the RIN factor listed in column (G), and enter the result in column (H). This is the accumulated RIN due to external load lifts.
5. Add the values from column (E) and column (H) and enter the result in column (I). This is the total accumulated RIN to date for the mast for the particular mast model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various mast model/helicopter combinations in column (I) and enter the result in the space provided. This is the total accumulated RIN for the mast.

Calculation of RIN when Exact Number of Takeoffs and External Load Lifts is **Unknown** (Reference Tables 2 and 3):

If either the exact total number of takeoffs or the exact total number of external load lifts for the mast model/helicopter model combination is unknown, then the accumulated RIN must be calculated by multiplying the (unfactored) hours TIS by a RIN conversion factor based on the torque (horsepower) of the helicopter model in which it was installed. The resultant factored hours TIS is then multiplied by a RIN conversion factor retained from AD 98-24-15 to establish a baseline accumulated RIN count. The FAA has determined that the factors used to establish the factored hours in earlier ASB's as well as the RIN conversion factors specified in AD 98-24-15 are inadequate. Consequently, this AD (2000-15-52) requires that the baseline accumulated RIN count be further multiplied by an additional RIN adjustment factor.

Tables 2 and 3 of Appendix 1 are worksheets for calculating the accumulated mast RIN when the exact number of takeoffs and external load lifts is unknown. Using Tables 2 and 3, calculate accumulated mast RIN as follows:

1. Enter the (unfactored) hours TIS for the particular mast model/helicopter model combination in column (C) of Table 2.
2. Using service history for the mast, select the appropriate Frequency of Event Hour Factor from column (E) of Table 2 based on the total number of takeoffs + external load lifts per hour shown in column (D) of Table 2.

3. Multiply the value for (unfactored) hours TIS entered in column (C) by the appropriate value in column (E) for Frequency of Event Hour Factor as determined in step 2 above. Enter the result in column (F) of Table 2. This is the total FACTORED hours TIS for the particular mast model/helicopter model combination.
4. Enter the value for FACTORED hours TIS from column (F) of Table 2 into column (C) of Table 3.
5. Using Table 3, multiply the value for FACTORED hours TIS in column (C) by the appropriate RIN conversion factor listed in column (D), by the appropriate RIN adjustment factor in column (E) of Table 3, and enter the result in column (F) of Table 3. This is the accumulated RIN to date for the particular mast model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various mast model/helicopter model combinations in column (F) of Table 3 and enter the result in the space provided. This is the total accumulated RIN for the mast.

Sample Mast RIN Calculation

Given the following known service history for the mast:

Mast Model –007 was first installed on a BHTI Model 204B helicopter for 1000 hours TIS and experienced an unknown number of takeoffs and external load lifts. The mast was then removed and subsequently installed on a BHTI Model 205A helicopter for 1500 hours TIS. It is known that the helicopter was used primarily for passenger carrying for the first 1000 hours of operation on this model. The exact number of takeoffs and external load lifts is unknown, but it is known that the helicopter averaged less than 20 takeoffs per hour, with no external load lifts. It was subsequently used for heavy lift operation for the remaining 500 hours of operation on this model, averaging between 20 and 44 external load lifts during this period of time. The mast was then removed and installed on a BHTI Model 212 helicopter for a total of 1500 hours TIS with accurate records indicating that it experienced 1000 takeoffs and 2000 external load lifts.

Calculate the total accumulated RIN to date since new for the mast as follows:

Accumulated RIN while installed in BHTI Model 204B:

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
= (column C) x (column E)
= (1000) x (3)
= 3000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (3000) x (20) x (1)

= 60,000 RIN

Accumulated RIN while installed in BHTI Model 205A:

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
(for first 1000 hrs.) = (column C) x (column E)
= (1000) x (1)
= 1000

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
(for next 500 hrs) = (column C) x (column E)
= (500) x (2)
= 1000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (1000) x (20) x (10) + (1000) x (20) x (10)
= 200,000 + 200,000
= 200,000 + 200,000
= 400,000 RIN

Accumulated RIN while installed in BHTI Model 212:

Calculate the accumulated RIN from Table 1 and the given number of takeoff and lifts as follows:

Accumulated RIN = (number of takeoffs x RIN factor per takeoff) + (number of lifts x RIN Factor per lift)

= (column C) x (Column D) + (Column F) x (Column G)
= (1,000) x (5) + (2,000) x (10)
= 25,000 RIN

Therefore, the total accumulated RIN to date for the mast is the sum of the subtotals from Tables 1 and 3 for the period of time the mast was installed on the BHTI Model 204B, 205A, and 212 helicopters:

Total accumulated mast RIN = 60,000 + 400,000 + 25,000
= **485,000**

Please note that the recalculated total accumulated RIN for this sample mast would have exceeded the 265,000 allowable RIN life. This mast would therefore be removed from service.

The values for the sample problem are shown in bold italics in Tables 1 – 3 for illustration purposes.

Mast RIN Calculation Based on Takeoffs and External Load Lifts

Mast A/C Model Installation	Mast P/N 204-011-450	Number Of Takeoffs	RIN Factor Per Takeoff	Total Takeoff RIN	Number of External Load Lifts	RIN Factor Per External Load Lift	Total Lift RIN	Accumulated RIN
(A)	(B)	(C)	(D)	(E) =(C) x (D)	(F)	(G)	(H) =(F) x (G)	(I) =(E) + (H)
204B (≤1100 T.O. hp SLS)	204-011-450-001		10			20		
204B (≤1100 T.O. hp SLS)	204-011-450-007		2			4		
204B (≤1100 T.O. hp SLS)	204-011-450-105		2			4		
204B (>1100 T.O. hp SLS)	All		Contact FAA*			Contact FAA*		Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-007		5			10		
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-105		5			10		
205A/A-1 (>1250 T.O. hp SLS)	All		Contact FAA*			Contact FAA*		Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-450-007		6			12		
205B (≤1290 T.O. hp SLS)	204-011-450-105		6			12		
205B (>1290 T.O. hp SLS)	All		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-450-007	*1000*	5	*5000*	*2000*	10	*20,000*	*25,000*
212 (≤1290 T.O. hp SLS)	204-011-450-105		5			10		
212 (>1290 T.O. hp SLS)	-007 or -105		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1350 T.O. hp SLS)	204-011-450-113		6			12		
212 (≤1350 T.O. hp SLS)	204-011-450-119		6			12		
Restricted Category or Military TIS with (≤700 T.O. hp SLS)	204-011-450-001		1.25			2.5		
Restricted Category or Military TIS with (≤700 T.O. hp SLS)	204-011-450-007		0.25			0.5		
Restricted Category or Military TIS with (≤700 T.O. hp SLS)	204-011-450-105		0.25			0.5		
Restricted Category or Military TIS with (≤1000 T.O. hp SLS)	204-011-450-001		7.5			15		
Restricted Category or Military TIS with (≤1000 T.O. hp SLS)	204-011-450-007		1.5			3		
Restricted Category or Military TIS with (≤1000 T.O. hp SLS)	204-011-450-105		1.5			3		
Restricted Category or Military TIS with (≤1100 T.O. hp SLS)	204-011-450-001		15			30		
Restricted Category or Military TIS with (≤1100 T.O. hp SLS)	204-011-450-007		3			6		
Restricted Category or Military TIS with (≤1100 T.O. hp SLS)	204-011-450-105		3			6		
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-450-001		Not Approved			Not Approved		Not Approved
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-450-007		6			12		
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-450-105		6			12		
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-450-001		Contact FAA*			Contact FAA*		Contact FAA*
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-450-007		Contact FAA*			Contact FAA*		
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-450-105		Contact FAA*			Contact FAA*		
Total RIN=								*25,000*

*Contact FAA at (817) 222 – 5159

Appendix 1 - Table 1

Calculation of Mast Factored Hours Time-in-Service

Mast A/C Model Installation	Mast P/N 204-011-450	Unfactored Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
204B	204-011-450-001, -007, or -105		1.0-20.00	1.00	
			20.01-44.00	2.00	
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA*	
		1,000	Unknown	3.00	*3,000*
205A/A-1	204-011-450-007,-105, -113, or -119	*1,000*	1.0-20.00	1.00	*1,000*
		500	20.01-44.00	2.00	*1,000*
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA*	
			Unknown	3.00	
205B	204-011-450-007,-105		1.0-5.00	1.00	
			5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00	9.00	
			Greater than 62.00	Contact FAA*	
			Unknown	9.00	
212	204-011-450-007,-105, -113, or -119		1.0-5.00	1.00	
			5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00	9.00	
			Greater than 62.00	Contact FAA*	
			Unknown	9.00	

*Contact FAA at (817) 222 – 5159

Appendix 1 - Table 2 (1st page of 2)

Calculation of Mast Factored Hours Time-in-Service

Mast A/C Model Installation	Mast P/N 204-011-450 (without a hub spring)	Unfactored Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
Restricted Category TIS (≤700 hp)	204-011-450-007 or –105		1.0-37.00	1.00	
			37.01-46.00	1.25	
			46.01-55.00	1.50	
			55.01-63.00	1.75	
			Greater than 63.00	Contact FAA*	
			Unknown	1.75	
Restricted Category TIS (≤1000 hp)	204-011-450-007 or -105		1.0-7.00	1.00	
			7.01-13.00	2.00	
			13.01-18.00	3.00	
			18.01-30.00	5.00	
			30.01-41.0	7.00	
			41.01-52.00	9.00	
			52.01-63.00	11.00	
			Greater than 63.00	Contact FAA*	
			Unknown	11.00	
Restricted Category TIS (≤1100 hp)	204-011-450-007 or -105		1.0-5.00	1.00	
			5.01-7.00	2.00	
			7.01-10.00	3.00	
			10.01-16.00	5.00	
			16.01-24.0	7.50	
			24.01-31.00	10.00	
			31.01-46.00	15.00	
			46.01-61.00	20.00	
			Greater than 61.00	Contact FAA*	
			Unknown	20.00	
Restricted Category TIS (≤1290 hp)	204-011-450-007 or -105		1.0-5.00	2.10	
			5.01-7.00	4.00	
			7.01-10.00	6.00	
			10.01-15.00	9.00	
			15.01-19.00	12.00	
			19.01-25.00	16.00	
			25.01-31.00	20.00	
			31.01-46.00	30.00	
			46.01-60.00	40.00	
			Greater than 60.00	Contact FAA*	
			Unknown	40.00	
Military TIS (≤700 hp SLS)	204-011-450-001, -007, or -105		All	1.00	
(≤1000 hp SLS)			All	3.00	
(≤1100 hp SLS)			All	6.00	
(≤1290 hp SLS)			All	12.00	

*Contact FAA at (817) 222 – 5159

Appendix 1 - Table 2 (continued - 2nd page of 2)

Mast RIN Calculation Based on Hours Time-in-Service

Mast A/C Model Installation	Mast P/N 204-011-450	FACTORED Hours TIS On Model	RIN FACTOR Per AD 98-24-15	RIN Adjustment Per AD 2000-15-52	Accumulated RIN
(A)	(B)	(C) (From Table 2 of Appendix I)	(D)	(E)	(F) =(C) x (D) x (E)
204B (≤1100 T.O. hp SLS)	204-011-450-001		50	1	
204B (≤1100 T.O. hp SLS)	204-011-450-007	*3000*	20	1	*60,000*
204B (≤1100 T.O. hp SLS)	204-011-450-105		20	1	
204B (>1100 T.O. hp SLS)	All	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-007	*2000*	20	10	*400,000*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-105		20	10	
205A/A-1 (>1250 T.O. hp SLS)	All	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-450-007		20	1	
205B (≤1290 T.O. hp SLS)	204-011-450-105		20	1	
205B (>1290 T.O. hp SLS)	All	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-450-007		20	1	
212 (≤1290 T.O. hp SLS)	204-011-450-105		20	1	
212 (>1290 T.O. hp SLS)	-007 or –105		Contact FAA*	Contact FAA*	
212 (≤1350 T.O. hp SLS)	204-011-450-113		21.2	1.2	
212 (≤1350 T.O. hp SLS)	204-011-450-119		21.2	1.2	
212 (>1350 T.O. hp SLS)	-113 or –119	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-450-001		50	1	
	204-011-450-007		20	1	
	204-011-450-105		20	1	
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-450-001	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
	204-011-450-007				*460,000*
	204-011-450-105				
Total RIN=					

*Contact FAA at (817) 222 – 5159

Appendix 1 - Table 3

APPENDIX 2

Instructions for Calculation of Trunnion RIN

Definition of Retirement Index Number:

The overall **fatigue life** of a main rotor trunnion is a function of the number of cycles of torque, lift, and bending loads applied to it during the various modes of operation. The trunnion experiences both high cycle fatigue and low cycle fatigue during operation.

The **high cycle fatigue life** of the trunnion is a function of high frequency but relatively low level cyclic loads, which are primarily induced by rotor r.p.m. The high cycle fatigue life limit for the trunnion is defined in terms of hours TIS because rotor r.p.m. is basically a constant value.

The **low cycle fatigue life** of the trunnion is a function of the number of less frequent but relatively high level cyclic loads experienced primarily during takeoffs and external load lift operations. The low cycle fatigue life limit for the trunnion is expressed in terms of the accumulated Retirement Index Number (RIN).

The **accumulated RIN** is defined as the total number of load cycles experienced (since new) by the trunnion multiplied by a **RIN factor** to account for the difference in torque levels applied to the same trunnion when installed in different helicopter models. The level of torque applied to the trunnion is directly proportional to the transmission output horsepower. The manufacturer's established trunnion **RIN life limit** is based on the measured number of cycles to failure of trunnions (in laboratory tests) at various levels of constant torque, lift, and bending loads, which are representative of the expected operating environment.

Calculation of Retirement Index Number:

There are two methods for calculating the accumulated RIN, depending on the available service history information for the trunnion. In some cases, one method will be used for a portion of the trunnion service history, and the other method will be used for another portion of the trunnion service history. Both methods require knowledge of all the helicopter models in which the trunnion was installed.

Calculation of RIN when Number of Takeoffs and External Load Lifts is **Known** Reference Table 1):

If the total number of takeoffs and the total number of external load lifts for the trunnion are known, the accumulated RIN must be calculated by multiplying each takeoff and each external load lift by a RIN factor determined to be appropriate for the torque (horsepower) of the helicopter model in which the trunnion is installed.

Table 1 of Appendix 2 is a worksheet for calculating the accumulated trunnion RIN when the number of takeoffs and external load lifts is known.

The RIN factor for each external load lift is twice that specified for each takeoff. This is because two torque events are experienced during a typical external load lift.

Using Table 1, calculate accumulated RIN as follows:

1. Enter the total number of takeoffs for the particular trunnion model/helicopter model combination in column (C).
2. Multiply the value entered in column (C) by the RIN factor listed in column (D), and enter the result in column (E). This is the total accumulated RIN due to takeoffs.
3. Enter the total number of external load lifts for the particular trunnion model/helicopter model combination in column (F).
4. Multiply the value entered in column (F) by the RIN factor listed in column (G), and enter the result in column (H). This is the accumulated RIN due to external load lifts.
5. Add the values from column (E) and column (H) and enter the result in column (I). This is the total accumulated RIN to date for the trunnion for the particular trunnion model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various trunnion model/helicopter combinations in column (I) and enter the result in the space provided. This is the total accumulated RIN for the trunnion.

Calculation of RIN when Exact Number of Takeoffs and External Load Lifts is **Unknown** (Reference Tables 2 and 3):

If either the exact total number of takeoffs or the exact total number of external load lifts for the trunnion model/helicopter model combination is unknown, then the accumulated RIN must be calculated by multiplying the (unfactored) hours TIS by a RIN conversion factor based on the torque (horsepower) of the helicopter model in which it was installed. The resultant factored hours TIS is then multiplied by a RIN conversion factor retained from AD 98-24-15 to establish a baseline accumulated RIN count. The FAA has determined that the factors used to establish the factored hours in earlier ASB's as well as the RIN conversion factors specified in AD 98-24-15 are inadequate. Consequently, this AD (2000-15-52) requires that the baseline accumulated RIN count be further multiplied by an additional RIN adjustment factor.

Tables 2 and 3 of Appendix 2 are worksheets for calculating the accumulated trunnion RIN when the exact number of takeoffs and external load lifts is unknown. Using Tables 2 and 3, calculate accumulated trunnion RIN as follows:

1. Enter the (unfactored) hours TIS for the particular trunnion model/helicopter model combination in column (C) of Table 2.
2. Using service history for the trunnion, select the appropriate Frequency of Event Hour Factor from column (E) of Table 2 based on the total number of takeoffs + external load lifts per hour shown in column (D) of Table 2.

3. Multiply the value for (unfactored) hours TIS entered in column (C) by the appropriate value in column (E) for Frequency of Event Hour Factor as determined in step 2 above. Enter the result in column (F) of Table 2. This is the total FACTORED hours TIS for the particular trunnion model/helicopter model combination.
4. Enter the value for FACTORED hours TIS from column (F) of Table 2 into column (C) of Table 3.
5. Using Table 3, multiply the value for FACTORED hours TIS in column (C) by the appropriate RIN conversion factor listed in column (D), by the appropriate RIN adjustment factor in column (E) of Table 3, and enter the result in column (F) of Table 3. This is the accumulated RIN to date for the particular trunnion model / helicopter model combination.
6. Add the accumulated RIN subtotals for the various trunnion model / helicopter model combinations in column (F) of Table 3 and enter the result in the space provided. This is the total accumulated RIN for the trunnion.

Sample Trunnion RIN Calculation

Given the following known service history for the trunnion:

Trunnion Model –001 was first installed on a BHTI Model 204B helicopter for 1000 hours TIS, and experienced an unknown number of takeoffs and external load lifts. The trunnion was then removed and subsequently installed on a BHTI Model 205A helicopter for 1500 hours TIS. It is known that the helicopter was used primarily for passenger carrying for the first 1000 hours of operation on this model. The exact number of takeoffs and external load lifts is unknown, but it is known that the helicopter averaged less than 20 takeoffs per hour, with no external load lifts. It was subsequently used for heavy lift operation for the remaining 500 hours of operation on this model, averaging between 20 and 44 external load lifts during this period of time. The trunnion was then removed and installed on a model 212 helicopter for a total of 1500 hours TIS with accurate records indicating that it experienced 1000 takeoffs and 2000 external load lifts.

Calculate the total accumulated RIN to date since new for the trunnion as follows:

Accumulated RIN while installed in BHTI Model 204B:

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
= (column C) x (column E)
= (1000) x (3)
= 3000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (3000) x (20) x (1)

= 60,000 RIN

Accumulated RIN while installed in BHTI Model 205A:

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
(for first 1000 hrs.) = (column C) x (column E)
= (1000) x (1)
= 1000

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Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
(for next 500 hrs) = (column C) x (column E)
= (500) x (2)
= 1000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (1000) x (20) x (10) + (1000) x (20) x (10)
= 200,000 + 200,000
= 200,000 + 200,000
= 400,000 RIN

Accumulated RIN while installed in BHTI Model 212:

Calculate the accumulated RIN from Table 1 and the given number of takeoff and lifts as follows:

Accumulated RIN = (number of takeoffs x RIN factor per takeoff) + (number of lifts x RIN Factor per lift)

= (column C) x (Column D) + (Column F) x (Column G)

= (1,000) x (5)+ (2,000) x (10)

= 25,000 RIN

Therefore, the total accumulated RIN to date for the trunnion is the sum of the subtotals for the period of time the trunnion was installed on the BHTI Model 204B, 205A, and 212 helicopters:

Total accumulated trunnion RIN = 60,000 + 400,000 + 25,000
= **485,000**

Please note that the recalculated total accumulated RIN for this sample trunnion would have exceeded the 265,000 allowable RIN life. This trunnion would therefore be removed from service.

The values for the sample problem are shown in bold italics in Tables 1 – 3 for illustration purposes.

Trunnion RIN Calculation Based on Takeoffs and External Load Lifts

Trunnion A/C Model Installation	Trunnion P/N	Number Of Takeoffs	RIN Factor Per Takeoff	Total Takeoff RIN	Number Of External Load Lifts	RIN Factor Per External Load Lift	Total Lift RIN	Accumulated RIN
(A)	(B)	(C)	(D)	(E) = (C) x (D)	(F)	(G)	(H) = (F) x (G)	(I) = (E) + (H)
204B (≤1100 T.O. hp SLS)	204-011-105-001		2			4		
204B (>1100 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-105-001		5			10		
205A/A-1 (>1250 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-105-001		6			12		
205B (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-105-001	***1000***	5	5000	***2000***	10	***20,000***	***25,000***
212 (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1350 T.O. hp SLS)	204-011-105-103		6			12		
212 (>1350 T.O. hp SLS)	204-011-105-103		Contact FAA*			Contact FAA*		Contact FAA*
Restricted Category Or Military TIS with:	204-011-105-001		0.25			0.5		
(≤700 T.O. hp SLS)			1.5			3		
(≤1000 T.O. hp SLS)			3			6		
(≤1100 T.O. hp SLS)			6			12		
(≤1290 T.O. hp SLS)			Contact FAA*			Contact FAA*		Contact FAA*
(>1290 T.O. hp SLS)								
Total RIN=								***25,000***

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 1

Calculation of Trunnion Factored Hours Time-in-Service

Trunnion A/C Model Installation	Trunnion P/N	Unfactored Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
204B	204-011-105-001		1.0-20.00	1.00	
			20.01-44.00	2.00	
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA	
		1000	Unknown	3.00	*3000*
205A/A-1	204-011-105-001	*1000*	1.0-20.00	1.00	*1000*
		500	20.01-44.00	2.00	*1000*
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA	
			Unknown	3.00	
205B	204-011-105-001		1.0-5.00	1.00	
			5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00	9.00	
			Greater than 62.00	Contact FAA	
			Unknown	9.00	
212	204-011-105-001		1.0-5.00	1.00	
	or, -103		5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00	9.00	
			Greater than 62.00	Contact FAA	
			Unknown	9.00	

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 2 (1st page of 2)

Calculation of Trunnion Factored Hours Time-in-Service

Trunnion A/C Model Installation	Trunnion P/N 204-011-105-001 (without a hub spring)	Unfactored Hours TIS on Model	Frequency of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
Restricted Category TIS (≤700 hp)	204-011-105-001		1.0-37.00	1.00	
			37.01-46.00	1.25	
			46.01-55.00	1.50	
			55.01-63.00	1.75	
			Greater than 63.00	Contact FAA*	
			Unknown	1.75	
Restricted Category TIS (≤1000 hp)	204-011-105-001		1.0-7.00	1.00	
			7.01-13.00	2.00	
			13.01-18.00	3.00	
			18.01-30.00	5.00	
			30.01-41.0	7.00	
			41.01-52.00	9.00	
			52.01-64.00	11.00	
			Greater than 64.00	Contact FAA*	
			Unknown	11.00	
Restricted Category TIS (≤1100 hp)	204-011-105-001		1.0-5.00	1.00	
			5.01-8.00	2.00	
			8.01-10.00	3.00	
			10.01-16.00	5.00	
			16.01-24.0	7.50	
			24.01-31.00	10.00	
			31.01-46.00	15.00	
			46.01-61.00	20.00	
			Greater than 61.00	Contact FAA*	
			Unknown	20.00	
Restricted Category TIS (≤1290 hp)	204-011-105-001		1.0-5.00	2.10	
			5.01-7.00	4.00	
			7.01-10.00	6.00	
			10.01-15.00	9.00	
			15.01-19.00	12.00	
			19.01-25.00	16.00	
			25.01-31.00	20.00	
			31.01-46.00	30.00	
			46.01-60.00	40.00	
			Greater than 60.00	Contact FAA*	
			Unknown	40.00	
Military TIS with:	204-011-105-001				
(≤700 hp SLS)			All	1.00	
(≤1000 hp SLS)			All	3.00	
(≤1100 hp SLS)			All	6.00	
(≤1290 hp SLS)			All	12.00	

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 2 (continued – 2nd page of 2)

Trunnion RIN Calculation Based on Hours Time-in-Service

Trunnion A/C Model Installation	Trunnion P/N	FACTORED Hours TIS On Model	RIN Factor Per AD 98-24-15	RIN Adjustment Per AD 2000-15-52	Accumulated RIN
(A)	(B)	(C) (From Table 2 of Appendix 2)	(D)	(E)	(F) = (C) x (D) x (E)
204B (≤1100 T.O. hp SLS)	204-011-105-001	*3000*	20	1	*60,000*
204B (>1100 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-105-001	*2000*	20	10	*400,000*
205A/A-1 (>1250 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-105-001		20	1	
205B (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-105-001		20	1	
212 (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
212 (≤1350 T.O. hp SLS)	204-011-105-103		21.2	1.2	
212 (>1350 T.O. hp SLS)	204-011-105-103		Contact FAA*	Contact FAA*	Contact FAA*
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-105-001		20	1	
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
Total RIN=					*460,000*

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 3

BILLING CODE 4910–13–U

Appendix 3—Ad Compliance Inspection Report

P/N 204–011–450–001/–007/–105/–113/–119 Main Rotor Mast

Provide the following information and mail or fax it to: Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193–0170, USA Fax: 817–222–5783

Operator Name:
Aircraft Registration No:
Helicopter Model:
Helicopter S/N:
Mast P/N:
Mast S/N:
Mast RIN:
Mast Total TIS:

Inspection Results

Were any radii during inspection of this mast determined to be less than 0.020 inches? If yes, what was the dimension measured?

Was a burr found in the inspected snap ring grooves?

Were cracks noted during the inspection?

Who performed this inspection?

Provide any other comments?

Issued in Fort Worth, Texas, on December 5, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–31628 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–42]

Amendment of Class E5 Airspace; Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a technical amendment to the Class E5 airspace at Columbus, GA. The Lawson VOR has been upgraded to a VOR/DME. Therefore, the airspace legal description must be amended to reflect this change.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

The Lawson VOR was upgraded to a VOR/DME. As a result the airspace legal description must be amended. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action has no impact on users of the airspace in the vicinity of the Columbus Metropolitan Airport, Columbus, GA, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E5 airspace at Columbus, GA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E Airspoce Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Columbus, GA [Revised]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N, long. 84°56′20″ W)
Lawson AAF
(Lat. 32°20′17″ N, long. 84°59′32″ W)
Lawson VOR/DME
(Lat. 32°19′57″ N, long. 84°59′36″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbus Metropolitan Airport and within a 7.6-mile radius of Lawson AAF and within 2.5 miles each side of Lawson VOR/DME 340° radial, extending from the 7.6-radius to 15 miles north of the VOR/DME, excluding that airspace within Restricted Area 3002 when it is active.

* * * * *

Issued in College Park, Georgia, on November 29, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–31707 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–43]

Amendment of Class D and Class E5 Airspace; Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a technical amendment to the Class D and Class E5 airspace at Vero Beach, FL. The geographic position coordinates for the Vero Beach Municipal Airport have been updated. Therefore, the airspace legal descriptions must be amended to reflect this change.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

The geographic position coordinates for the Vero Beach Municipal Airport have been updated. As a result the airspace legal descriptions must be amended. This rule will become effective on the date specified in the EFFECTIVE DATE section. Since this action has no impact on users of the airspace in the vicinity of the Vero Beach Municipal Airport, Vero Beach, FL, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 5000 and 6005 respectively of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class D and Class E5 airspace at Vero Beach, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Vero Beach, FL [Revised]

Vero Beach Municipal Airport, FL
(Lat. 27°39'20" N, long. 80°25'05" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Vero Beach Municipal Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Vero Beach, FL [Revised]

Vero Beach Municipal Airport, FL
(Lat. 27°39'20" N, long. 80°25'05" W)
Vero Beach VORTAC
(Lat. 27°40'42" N, long. 80°29'23" W)
St. Lucie County International Airport, FL
(Lat. 27°29'42" N, long. 80°22'06" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Vero Beach Municipal Airport and within 2.5 miles each side of Vero Beach VORTAC 296° radial, extending from the 6.7-mile radius to 7 miles west of the VORTAC and within a 7-mile radius of St. Lucie County International Airport.

* * * * *

Issued in College Park, Georgia, on November 29, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–31706 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 000720214–0337–02]

RIN 0691–AA39

International Services Surveys: BE–93 Annual Survey of Royalties, License Fees and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend the reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons.

The BE–93 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The data are needed to support U.S. trade policy initiatives, compile the U.S. international transactions accounts and the national income and product accounts, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The revised rules raise the exemption level for the BE–93 survey to $2 million in covered receipts or payments, from $500,000 on the previous (1999) survey. Raising the exemption level will reduce respondent burden, particularly for small companies.

DATES: These rules will be effective January 12, 2001.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the September 21, 2000, **Federal Register**, volume 65, No. 184, 65 FR 57117–57119, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–93 Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 801 by revising paragraph 801.9(b)(5)(ii) to set forth revised reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (P.L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services. In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–93 is an annual survey of U.S. royalty and license fee transactions for intangible rights with unaffiliated foreign persons. The data are needed to support U.S. trade policy initiatives, compile the U.S. international transactions accounts and national income and product accounts, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The change to the BE–93 annual survey contained in these final rules is to require a BE–93 from all U.S. persons whose total receipts from, or total payments to, unaffiliated foreign persons for intangible rights exceeded $2 million during the reporting year. The new exemption level is an increase from the current level of $500,000. The increase is intended to reduce respondent burden, particularly for small companies. The data collected on the BE–93 are disaggregated by country and by type of intangible right.

Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0017) has been displayed.

Public reporting burden for this collection of information is estimated to vary from less than one hour to 25 hours, with an overall average burden of 4 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A. Paperwork Reduction Project 0608–0017, Washington, DC 20530. (Attention PRA Desk Officer for BEA.)

Regulatory Flexibility Act

The Assistant General Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. While the survey does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the proposed increase in the exemption level for the survey from $500,000 to $2 million in covered receipts or payments, even fewer small businesses can be expected to be subject to reporting than in the past. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only one type of royalty or license transaction, often limited to transactions with a single partner country; therefore, the burden on them can be expected to be small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Penalties, Report and recordkeeping requirements.

Dated: November 27, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p.86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147; E.O. 12318, 3 CFR, 1981 Comp., p. 173; and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by revising paragraph (b)(5)(ii) to read as follows:

§801.9 Reports required.

* * * * *

(b) * * *

(5) * * *

(ii) *Exemption.* A U.S. person otherwise required to report is exempt if total receipts and total payments of the types covered by the form are each $2 million or less in the reporting year. If the total of either covered receipts or payments is more than $2 million in the reporting year, a report must be filed.

* * * * *

[FR Doc. 00–31689 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 113, 163 and 178

[T.D. 00–87]

RIN 1515–AC43

Amended Bond Procedures for Articles Subject to an Exclusion Order Issued by the U.S. International Trade Commission

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs Regulations regarding bond procedures for the entry of articles subject to an exclusion order issued by the U.S. International Trade Commission ("Commission"). Merchandise that is subject to a Commission exclusion order may be entitled to entry under a special bond

prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant. This document adds the text of this special importation and entry bond to the Customs Regulations, and makes conforming changes to other regulatory provisions that are impacted by the addition of the new bond text.

EFFECTIVE DATE: January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Entry Procedures and Carriers Branch, (202) 927–1327.

SUPPLEMENTARY INFORMATION:

Background

Under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), the U.S. International Trade Commission ("Commission") has the authority to conduct investigations into certain alleged unfair practices in import trade. Most complaints filed under this provision involve allegations of patent infringement, trademark infringement, or misappropriation of trade secrets. The Commission may determine that section 337 has been violated or, during the course of an investigation, that there is reason to believe that section 337 has been violated.

If the Commission finds a violation, or reason to believe there is a violation, of section 337, it may direct the Secretary of the Treasury to exclude the subject articles from entry into the U.S. During the period the Commission's exclusion order remains in effect, and prior to the date that the Commission's determination of a violation of section 337 becomes final, articles otherwise excluded may be entered under a single entry bond prescribed by the Secretary of the Treasury.

Certain statutory changes to section 337 of the Tariff Act of 1930 were enacted pursuant to the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (December 8, 1994). Paragraphs (e)(1) and (j)(3) of section 337, as respectively amended by sections 321(a)(3) and (6) of the URAA, provide that articles subject to a Commission exclusion order may be entered under bond prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury and that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant.

On February 8, 2000, Customs published a document in the **Federal Register** (65 FR 6062) that proposed to amend the Customs Regulations to implement the statutory changes to section 337 effected by section 321 of the URAA.

In that document, it was proposed to create a new single entry bond that must be filed for articles subject to a Commission exclusion order. It was proposed that the amount of the single entry bond would be determined by the Commission to be sufficient to protect the complainant from any injury. It was proposed that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the 3 complainant. The procedures for importing merchandise subject to the bonding requirements of section 337 were proposed to be set forth in § 12.39, Customs Regulations. The new bond conditions were proposed to be set forth in part 113, Customs Regulations.

Further, it was proposed to remove any reference to Commission exclusion orders from § 113.62, as this section pertains to basic importation and entry bonds. The newly proposed bond to indemnify the complainant under section 337 is applicable where merchandise is subject to a Commission exclusion order and is set forth in appendix B to part 113. Customs wishes to emphasize that the proposed special importation and entry bond is in addition to, not in lieu of, the basic importation and entry bond (§ 113.62) and any other Customs requirements for the importation of merchandise subject to a Commission exclusion order.

It was also noted in the proposal that the "(a)(1)(A)" list of documents required for entry, set forth in the appendix to part 163 of the Customs Regulations, would be amended if the proposal were adopted. The (a)(1)(A) list would be amended to reflect the fact that the new bond would be required as an entry document for entry of merchandise covered by a Commission exclusion order.

In addition, it was noted in the proposal that part 178, which lists the information collections contained in the regulations and the control numbers assigned by OMB, would be amended accordingly if the proposal were adopted.

Comments were solicited on the proposal.

Discussion of Comment

One comment was received by Customs in response to the solicitation of comments.

Comment: The commenter recommended four changes to the text of the proposed bond, as follows:

(1) *Bond Obligee:* That additional text be included in the bond to better identify the actual complainant. This is suggested to be achieved by including a blank space for the complainant's name to be typed on the bond and by including a blank space in which to type the specific Commission case or investigation number;

(2) *Description of the Merchandise:* That the bond text require the entry date and entry number for the merchandise so that there is certainty as to which merchandise is secured by which bond;

(3) *Prompt Notice to the Principal from the Port Director Regarding the Commission Exclusion Determination:* That a condition of the bond be that the port director's notice to redeliver to the importer be promptly issued after the Commission investigation; and

(4) *Agreement to Pay Face Value of the Bond Upon Default of the Principal's Obligation to Export/Destroy the Merchandise:* That the seventh paragraph of the proposed bond text be clarified to indicate that the principal and the surety, "jointly and severally," agree to pay an amount equal to the face value of the bond in the event of default.

Customs Response: With respect to these four recommendations, Customs agrees with the adoption of all but the third (*i.e.*, "Prompt Notice to the Principal from the Port Director regarding the Commission Exclusion Determination"). Unlike the previous Commission bond that indemnified the Government, the new Commission bond indemnifies the complainant. Consequently, the new bond should impose as few preconditions as possible on the Government. Since a Commission order is either served on the principal, or made by general announcement in the **Federal Register**, there is no need to add, as a condition of the bond, the requirement that a port director issue a notice to redeliver, let alone impose a requirement that such a notice be issued "promptly" within a specified time period.

Conclusion

After review of the comment and further consideration, Customs has decided that the proposed amendments, with the changes to the text of the proposed special importation and entry bond discussed above, should be adopted as a final rule.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments conform the Customs Regulations to reflect the terms of an existing statute regarding bond procedures for articles subject to an exclusion order issued by the Commission, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0222. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in appendix B to part 113. Although other parts of the Customs Regulations are being amended, all information required by these amendments is contained or identified in appendix B to part 113. The information requested is necessary to enable Customs to permit the entry of merchandise the subject of a Commission exclusion order under a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The likely respondents are individuals or commercial organizations that seek to import merchandise that is the subject of a section 337 exclusion order into the U.S.

The estimated average annual burden associated with the collection of information in this final rule is 30 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch at the address set forth above.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Restricted merchandise, Unfair competition.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 12, 113, 163 and 178 of the Customs Regulations (19 CFR parts 12; 113, 163 and 178) are amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.39 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.39 is also issued under 19 U.S.C. 1337, 1623.

* * * * *

2. Section 12.39(b)(2) is revised to read as follows:

§ 12.39 Imported articles involving unfair methods of competition or practices.

* * * * *

(b) * * *

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must: 9

(i) File with the port director prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

* * * * *

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows, and a new authority citation is added for § 113.74:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.74 also issued under 19 U.S.C. 1337.

§ 113.62 [Amended]

2. In § 113.62:

a. The introductory paragraph is amended by removing that portion of the text which reads ", except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond"; and

b. Paragraph (l)(1) is amended by removing the words "except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise";

3. A new § 113.74 is added to read as follows:

§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.

A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in appendix B to this part. The bond must be a single entry bond and must be filed in accordance with the provisions set forth in 19 CFR 12.39(b)(2). For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

4. A new appendix B is added to part 113 to read as follows:

Appendix B to Part 113—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended

This appendix contains the bond to indemnify a complainant under section

337 of the Tariff Act of 1930, as amended. The provisions contained in 11 §§ 12.39(b)(2) and 113.74 of the Customs Regulations (19 CFR Chapter I) and § 210.50(d) of the U.S. International Trade Commission Regulations (19 CFR Chapter II) apply.

Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, As Amended

_____ as principal and _____ as surety, are held and bound to _____, as the complainant in U.S. International Trade Commission case/investigation number _____, of unfair practices or methods of competition in import trade in violation of section 337, Tariff Act of 1930, as amended, in the sum of _____ dollars ($_____), for payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

Pursuant to the provisions of section 337, Tariff Act of 1930, as amended, the principal and surety recognize that the Commission has, according to the conditions described in its order, excluded from, or authorized, entry into the United States of the following merchandise _____ _____ under entry number ___-_____, dated _____.

The principal and surety recognize that the Commission has excluded that merchandise from entry until its investigation is completed, or until its decision that there is a violation of section 337 becomes final.

The principal and surety recognize that certain merchandise excluded from entry by the Commission was, or may be, offered for entry into the United States while the Commission's prohibition is in effect.

The principal and surety recognize that the principal desires to obtain a release of that merchandise pending a final determination of the merchandise's admissibility into the United States, as provided under section 337, and, for that purpose, the principal and surety execute this stipulation:

If it is determined, as provided in section 337 of the Tariff Act of 1930, as amended, to exclude that merchandise from the United States, then, on notification from the port director of Customs, the principal is obligated to export or destroy under Customs supervision the merchandise released under this stipulation within 30 days from the date of the port director's notification.

The principal and surety, jointly and severally, agree that if the principal defaults on that obligation, the principal and surety shall pay to the complainant an amount equal to the face value of the bond as may be demanded by him/her under the applicable law and regulations.

Witness our hands and seals this _____ day of _____ (month), _____ (year).

_____ (seal)
Principal

_____ (seal)
Surety

PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. In the appendix to part 163—Interim (a)(1)(A) List, under section "IV.," the list of documents/records or information required for entry of special categories of merchandise is amended by adding the following new listing in the appropriate numerical order:

* * * * *

Part 113, Appendix B—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control no.
. . .	. . .	. . .
Part 113—Appendix B	Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended.	1515–0222
. . .	. . .	. . .

Raymond W. Kelly,
Commissioner of Customs.
Approved: December 7, 2000.
Timothy E. Skud,
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–31699 Filed 12–12–00; 8:45 am]
BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 00—86]

RIN 1515–AC54

Export Certificates for Lamb Meat Subject to Tariff-Rate Quota

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the interim rule amending the Customs Regulations that was published in the **Federal Register** on December 2, 1999, as T.D. 99–87. The interim rule set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain fresh, chilled or frozen lamb meat that is the subject of a tariff-rate quota, and the product of a participating country, as defined in interim regulations of the United States Trade Representative (USTR). The export certificate enables the importer to claim the in-quota rate of duty on the lamb meat.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Porter, Office of Field Operations, (202–927–5399).

SUPPLEMENTARY INFORMATION:

Background

By Presidential Proclamation No. 7208 dated July 7, 1999, as modified by Presidential Proclamation No. 7214 of July 30, 1999, the President, acting under the authority of section 203 of the Trade Act of 1974 (19 U.S.C. 2253), established a tariff-rate quota with respect to certain fresh, chilled or frozen lamb meat exported to the United States on or after July 22, 1999.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.

It is noted that the tariff-rate quota on lamb meat was established in response to a determination by the U.S. International Trade Commission under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) that lamb meat was being imported into the United States in such increased quantities as to substantially threaten serious injury to the domestic lamb meat industry. The tariff-rate quota is temporary in duration, being established for a period of three years and one day. It is intended to help facilitate efforts during this period by the domestic lamb meat industry to adjust to the increased import competition.

Specifically, the lamb meat covered by the tariff-rate quota consists of fresh, chilled or frozen lamb meat that is classified in subheading 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, or 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTSUS). In order to implement the tariff-rate quota for the described lamb meat, Presidential Proclamation No. 7208, as amended by Presidential Proclamation No. 7214, modified subchapter III of Chapter 99, HTSUS, so as to list the in-quota quantities of lamb meat allocated to those countries covered by the tariff-rate quota, together with the in-quota and over-quota rates of duty applicable to the lamb meat.

Under Presidential Proclamation No. 7214, the United States Trade Representative (USTR) was given authority to administer the tariff-rate quota on the imported lamb meat.

As part of the implementation of this tariff-rate quota, the USTR offered exporting countries that have an allocation of the in-quota quantity the opportunity to use export certificates for their lamb meat exports to the United States. While a country does not need to participate in the export-certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates assures an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, and it helps ensure that such imports do not disrupt the orderly marketing of lamb meat in the United States.

The USTR issued an interim rule establishing regulations for this export-certificate program (15 CFR part 2014) (64 FR 56429; October 20, 1999). To this end, an exporting country wishing to participate in the export-certificate program must notify the USTR and provide the necessary supporting information. As defined in the USTR interim regulations (15 CFR 2014.2(c)), a participating country is a country that has received an allocation of the in-quota quantity of the tariff-rate quota, and that the USTR has determined, and has so informed Customs, is eligible to use export certificates for their lamb meat products exported to the United States. The USTR has stated that it intends to publish a notice in the **Federal Register** whenever a country becomes, or ceases to be, a participating country. In this connection, Australia and New Zealand have already requested, and have been approved by USTR, to use export certificates for their lamb meat that is exported to the United States, as noted in the USTR interim rule.

Accordingly, by a document published in the **Federal Register** (64 FR 67481) on December 2, 1999, as T.D. 99–87, Customs issued an interim rule setting forth a new § 132.16, Customs Regulations (19 CFR 132.16), in order to implement the USTR interim rule. Section 132.16 prescribes the form and manner by which an importer establishes that a valid export certificate exists, including a unique number for the certificate that must be referenced on the entry or withdrawal from warehouse for consumption. This was intended to ensure that no imports of the specified lamb meat products of a participating country would be counted against the country's in-quota allocation unless the products were covered by a proper export certificate. The export certificate enables the importer to claim the in-quota rate of duty on the lamb meat.

In addition, the interim rule revised the Interim (a)(1)(A) list of records required for the entry of merchandise, that is set forth in an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix). As amended, the list made reference to the requirement in § 132.15, Customs Regulations (19 CFR 132.15) and in new § 132.16, Customs Regulations (19 CFR 132.16), that an importer possess a valid export certificate, respectively, for beef or lamb meat subject to a tariff-rate quota that is the product of a participating country, in order that the importer may claim the applicable in-quota rate of duty. The interim rule also made a technical correction to § 132.15, Customs Regulations.

Discussion of Comments

Two comments were received in response to the interim rule. Both were submitted by or on behalf of trade associations. One commenter unconditionally supported the interim rule. The other commenter supported the establishment of an export-certificate program for lamb meat subject to the tariff-rate quota, but raised a question about how the applicable quota year under the export-certificate program was to be determined. The specific issue raised by this commenter, together with Customs response, is set forth below.

Comment

The commenter sought clarification as to whether the quota year under the export-certificate program was to be based on the date of entry or withdrawal for consumption, or on the date of exportation. The commenter asserted that the quota period for purposes of administering the tariff-rate quota for lamb meat should be based on the yearly period in which the lamb meat is entered or withdrawn for consumption, rather than on the yearly period in which the lamb meat is exported to the United States. The commenter requested that § 132.16 add a specific provision to this effect. The commenter believed that basing the quota period and the validity of the export certificate on the date of exportation, rather than on the date of entry or withdrawal for consumption, represented a departure from law as well as customary practice..

Customs Response

The administration of the tariff-rate quota for lamb meat was delegated to the USTR by Presidential Proclamation No. 7214 of July 30, 1999 (64 FR 42265; August 4, 1999). Thus, the determination of the quota year for purposes of the export-certificate program implementing this tariff-rate quota properly falls within the scope of USTR's authority. In adopting its interim rule as a final rule (65 FR 40049; June 29, 2000), the USTR has directly addressed the definition of the quota year in this matter.

Specifically, in accordance with 15 CFR 2014.2(g) of the USTR final rule, for purposes of applying the tariff-rate quota for lamb meat under the export-certificate program, the quota year is the yearly period in which the subject lamb meat is exported to the United States (from July 22, 1999 through July 21, 2000, inclusive; from July 22, 2000 through July 21, 2001, inclusive; and from July 22, 2001 through July 21, 2002, inclusive). This means that lamb meat covered by a valid export certificate would be entitled, upon entry or withdrawal for consumption, to the in-quota rate of duty that is in effect for the period within which the lamb meat is exported to the United States (15 CFR 2014.2(g), 2014.3(b)(2) and 2014.3(b)(4) of the USTR final rule).

For example, lamb meat subject to the export-certificate program that is exported on July 20, 2000, and entered for consumption on July 25, 2000, would be entitled to the in-quota rate of 9% ad valorem, if it is covered by a valid export certificate, because this is the in-quota rate in effect for the yearly (quota) period running from July 22, 1999, through July 21, 2000, inclusive, during which the product is exported to the United States.

It is noted that the USTR final rule in this case is governed by the Annex to Presidential Proclamation No. 7214 (64 FR 42265, at 42267) which plainly applies the tariff-rate quota for lamb meat based upon its date of exportation, as described above. To this effect, the Annex so modified subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS).

It is further noted that textile quotas, which are usually absolute in nature, are also similarly determined based upon the date of export, as opposed to the date of entry or withdrawal for consumption.

Conclusion

For these reasons, and after careful consideration of the comment and further review of the matter, Customs concludes that the amendments regarding parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163) that appeared in the interim rule published in the **Federal Register** (64 FR 67481) on December 2, 1999, as T.D. 99–87, should be adopted as a final rule without change.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this final rule because it is within the foreign affairs function of the United States. Also, for the above reason, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply; and because this document involves a foreign affairs function of the United States, it is not subject to the provisions of E.O. 12866.

Paperwork Reduction Act

The collections of information involved in this final rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Entry summary and continuation sheet) and 1515–0214 (General recordkeeping and record production requirements). This rule does not substantively change the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the amendments relating to parts 132 and 163 that appeared in the interim rule that was published at 64 FR 67481 on December 2, 1999, are adopted as a final rule without change.

Raymond W. Kelly,
Commissioner of Customs.
Approved: October 6, 2000.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 00–31700 Filed 12–12–00; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 602

[TD 8910]

RIN 1545–AV28

Electronic Tip Reports

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the regulations dealing with the requirement that tipped employees report their tips to their employer. These final regulations permit employers to establish electronic systems for use by their tipped employees in reporting tips to the employer. These final regulations also address substantiation requirements for employees using the electronic system.

DATES: *Effective Date:* These regulations are effective December 13, 2000.

Applicability Dates: For dates of applicability, see § 31.6053–1(d)(6) of these regulations.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202–622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1603. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 26, 1998, the IRS published in the **Federal Register** (63 FR 3681) a notice of proposed rulemaking (REG–104691–97) under section 6053 of the Internal Revenue Code relating to electronic tip reports. The notice proposed to amend § 31.6053–1 and § 31.6053–4 of the employment tax regulations.

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. Accordingly, the proposed regulations are adopted as final regulations.

The final regulations are consistent with the provisions of the Electronic Signatures in Global and National Commerce Act.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act (5 U.S.C. chapter 6), that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in § 31.6053–1 is imposed solely on individuals, not on any small entities, and the regulations provide flexibility to employees who must provide the information required by statute, thereby reducing burden. With respect to the collection of information in § 31.6053–4, the certification is based on the expectation of the IRS that most businesses that choose to implement the electronic tip reporting provisions will be larger businesses with many employees and sophisticated computer systems. Moreover, because the provision is wholly elective, any small business that would be adversely impacted may choose not to use electronic tip reporting. Finally, the Service expects that for those small entities that choose to implement the provision, the use of electronic tip reporting will reduce overall burden by reducing paper collections. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 31.6053–1 is amended as follows:

1. Paragraph (a) is revised.
2. The introductory text of paragraph (b)(1) is revised.
3. The last sentence of paragraph (b)(1)(iii) is revised.
4. Paragraph (b)(2) is revised.
5. Paragraph (c) is revised.
6. Paragraph (d) is added.

The revisions and additions read as follows:

§ 31.6053–1 Report of tips by employee to employer.

(a) *Requirement that tips be reported*—(1) *In general.* An employee who receives, in the course of employment by an employer, tips that constitute wages as defined in section 3121(a) or section 3401, or compensation as defined in section 3231(e), must furnish to the employer a statement, or statements, disclosing the total amount of the tips received by the employee in the course of employment by the employer. Tips received by an employee in a calendar month in the course of employment by an employer that are required to be reported to the employer must be reported on or before the 10th day of the following month. For example, tips received by an employee in January 2000 are required to be reported by the employee to the employer on or before February 10, 2000.

(2) *Cross references.* For provisions relating to the treatment of tips as wages for purposes of the Federal Insurance Contributions Act (FICA) tax under sections 3101 and 3111, see sections 3102(c), 3121(a)(12), and 3121(q) and §§ 31.3102–3 and 31.3121(a)(12)–1. For provisions relating to the treatment of tips as wages for purposes of the tax under section 3402 (income tax withholding), see sections 3401(a)(16), 3401(f), and 3402(k) and §§ 31.3401(a)(16)–1, 31.3401(f)–1, and 31.3402(k)–1. For provisions relating to the treatment of tips as compensation for purposes of the Railroad Retirement Tax Act (RRTA) tax under sections 3201 and 3201, see section 3231(e) and § 31.3231(e)–1(a).

(b) * * * (1) *In general.* The statement described in paragraph (a) of this section can be provided on paper or transmitted electronically. The statement must be signed by the employee and must disclose:

* * * * * *

(iii) * * * If the statement is for a period of less than 1 calendar month, the beginning and ending dates of the period must be included (for example, January 1 through January 8, 1998).

* * * * *

(2) *Form of statement*—(i) *In general.* No particular form is prescribed for use in furnishing the statement required by this section. The statement may be furnished on paper or transmitted electronically. An electronic system and all tip statements generated by that system must meet the requirements of paragraph (d) of this section. If the employer does not provide any other means for the employee to report tips, the employee may use Form 4070, "Employee's Report of Tips to Employer."

(ii) *Single-purpose forms.* A statement may be furnished on an employer-provided form. The form may be on paper or in electronic form. An employer that provides a paper form must make blank copies of the form readily available to all tipped employees. Any form, whether paper or electronic, provided by an employer for use by its tipped employees solely to report tips must meet all the requirements of paragraph (b)(1) of this section.

(iii) *Regularly used forms.* Instead of requiring that tips be reported as described in paragraph (b)(2)(ii) of this section on a special form used solely for tip reporting, an employer may prescribe regularly used forms for use by employees in reporting tips. A regularly used form may be on paper or in electronic form (such as a time card or report), must meet the requirements of paragraph (b)(1) (iii) and (iv) of this section, must contain identifying information that will ensure accurate identification of the employee by the employer, and is permitted to be used only if the employer furnishes the employee a statement suitable for retention showing the amount of tips

reported by the employee for the period. The employer statement may be furnished when the employee reports the tips, when wages are first paid following the reporting of tips by the employee, or within a short time after the wages are paid. The employer may meet this requirement, for example, through the use of a payroll check stub or other payroll document regularly furnished (if not less frequent than monthly) by the employer to the employee showing gross pay and deductions.

(c) *Period covered by, and due date of, tip statement*—(1) *In general.* A tip statement furnished by an employee to an employer may not cover a period greater than 1 calendar month. An employer may, however, require the submission of a statement in respect of a specified period of time, for example, on a weekly or biweekly basis, regular payroll period, etc. An employer may specify, subject to the limitation in paragraph (a) of this section, the time within which, or the date on which, the statement for a specified period of time should be submitted by the employee. For example, a statement covering a payroll period may be required to be submitted on the first (or second) day following the close of the payroll period. A statement submitted by an employee after the date specified by the employer for its submission nevertheless is a statement furnished pursuant to section 6053(a) and this section if it is submitted to the employer on or before the 10th day following the month in which the tips were received.

(2) *Termination of employment.* If an employee's employment terminates, the employee must furnish a tip statement to the employer when the employee ceases to perform services for the employer. A statement submitted by an employee after the date on which the employee ceases to perform services for the employer is a statement furnished pursuant to section 6053(a) and this section if the statement is submitted to the employer on or before the earlier of the day on which the final wage payment is made by the employer to the employee or the 10th day following the month in which the tips were received.

(d) *Requirements for electronic systems*—(1) *In general.* The electronic system must ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted.

(2) *Same information as on paper statement.* The electronic tip statement must provide the employer with all the information required by paragraph (b)(1) of this section.

(3) *Signature.* The electronic tip statement must be signed by the employee. The electronic signature must identify the employee transmitting the electronic tip statement and must authenticate and verify the transmission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper tip statement. Any form of electronic signature that satisfies the foregoing requirements is permissible.

(4) *Copies of electronic tip statements.* Upon request by the Internal Revenue Service (IRS), the employer must supply the IRS with a hard copy of the electronic tip statement and a statement that, to the best of the employer's knowledge, the electronic tip statement was filed by the named employee. The hard copy of the electronic tip statement must provide the information required by paragraph (b)(1) of this section, but need not be a facsimile of Form 4070 or any employer-designed form.

(5) *Record retention.* The record retention requirements applicable to automatic data processing systems also apply to electronic tip reporting systems.

(6) *Effective date.* The provisions pertaining to electronic systems and electronic tip reports are applicable as of December 13, 2000. However, employers may apply these provisions to earlier periods.

Par. 3. Section 31.6053–4 is amended as follows:

1. A sentence is added to paragraph (a)(1) after the third sentence.

2. A sentence is added to paragraph (a)(2) after the fourth sentence.

The additions read as follows:

§ 31.6053–4 Substantiation requirements for tipped employees.

(a) * * * (1) * * * The Commissioner may by revenue ruling, procedure or other guidance of general applicability provide for other methods of demonstrating evidence of tip income. * * *

(2) * * * In addition, an electronic system maintained by the employer that collects substantially similar information as Form 4070A may be used to maintain such daily record, provided the employee receives and maintains a paper copy of the daily record. * * *

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by revising the entries for 31.6053–1 and 31.6053–4 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
31.6053–1	1545–0029 1545–0062 1545–0064 1545–0065 1545–1603
* * * *	*
31.6053–4	1545–0065 1545–1603
* * * *	*

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 25, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–31499 Filed 12–12–00; 8:45 am]

BILLING CODE 4830–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2525

RIN 3045–AA09

AmeriCorps Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: We are amending a provision of our National Service Trust regulations relating to the permitted uses of the AmeriCorps education award. This change will expand the definition of "current" educational expenses to include expenses incurred after an individual enrolls in a term of service as an AmeriCorps member.

DATES: This final rule is effective February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799.

SUPPLEMENTARY INFORMATION:

Background

Through this document, the Corporation for National and Community Service adopts a final rule regarding AmeriCorps education awards. Under the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), an individual who successfully completes a term of service in a national service position (referred to as an "AmeriCorps member") is eligible for an education award. An AmeriCorps member may use an education award to repay qualified student loans or to pay for approved educational expenses.

We published a proposed rule on December 1, 1999 (64 FR 67235) to clarify one provision regarding eligibility for an education award and another provision concerning the use of the education award to pay current educational expenses at an institution of higher education. We have determined not to proceed on the proposed change regarding eligibility. Accordingly, this final rule involves only a change to the rules governing the payment of current educational expenses.

Definition of Current Educational Expenses

Section 148(c) allows an AmeriCorps member to use the education award to pay for "current" costs of attendance at a qualified institution of higher education. The previous rule published on July 12, 1999, defined "current" expenses as covering only those expenses incurred after the completion of service. This rule expands the definition of "current" educational expenses to include expenses incurred after an individual enrolls in a term of service as an AmeriCorps member. We believe that this change in definition will help to avoid unnecessary financial hardship for AmeriCorps members who serve while also attending an institution of higher education.

Discussion of the Public Comments

The proposed rule of December 1, 1999, gave the public sixty days to submit comments. We received one comment regarding current educational expenses. One commenter expressed concern that the change in definition of "current" educational expenses would place an undue administrative burden on the Corporation and local program operators to monitor the pace of such expenditures against the value of the education award as it is earned. We do not believe that this concern is well-founded. The change in definition will not require such monitoring, as there is no necessary connection between the two amounts. The rule simply authorizes an AmeriCorps member to use an education award to pay for costs of attendance at an approved institution of higher education for a period of attendance that begins after the member's term of service.

Executive Order 12866

We have determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

We have determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, we have not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because these changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects in 45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

Accordingly, the Corporation for National and Community Service amends 45 CFR chapter XXV as follows:

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2525.20 is amended by revising the definition of "Current educational expenses" to read as follows:

§ 2525.20 Definitions.

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance for a period of enrollment in an institution of higher education that begins after an individual enrolls in an approved national service position.

* * * * *

Dated: December 6, 2000.

Wendy Zenker,

Chief Operating Officer, Corporation for National and Community Service.

[FR Doc. 00–31669 Filed 12–12–00; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80 and 95

[PR Docket No. 92–257; RM–9664; FCC 00–370]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: In this document, the Commission amends its rules to promote operational, technical, and regulatory flexibility for Automated Maritime Telecommunications System (AMTS) and high seas public coast stations. These final rules will eliminate the application and engineering study requirements and modify the broadcaster notification requirement for new AMTS stations that qualify as fill-in stations, extend the construction requirement for new AMTS systems from eight months to two years, provide

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AMTS licensees with much-needed technical flexibility, extend the high seas public coast construction requirement to twelve months, and eliminate the HF channel loading requirement for high seas public coast stations. The Commission believes that this action will increase competition in the provision of telecommunications services, promote more efficient use of maritime spectrum, increase the types of telecommunications services available to vessel operators, allow maritime commercial mobile radio service (CMRS) providers to respond more quickly to market demand, and reduce regulatory burdens on AMTS and high seas public coast station licensees.

DATES: Effective January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–7308.

SUPPLEMENTARY INFORMATION:

1. The Commission's Fourth Report and Order (4th R&O) PR Docket No. 92–257, FCC 00–370, was adopted October 13, 2000, and released on November 16, 2000. The full text of this Commission's 4th R&O is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2000/fcc00370.txt*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the 4th R&O

2. The Commission amends its rules to eliminate the application and engineering study requirements and to modify the broadcaster notification requirement for new AMTS stations whose predicted interference contours do not encompass any land area beyond the composite interference contour of the applicant's existing system. This is consistent with the Commission's treatment of certain other CMRS licensees (*i.e.*, paging and radiotelephone service licensees, and SMR system licensees in the 800 MHz band).

3. The Commission concludes that the construction requirement for new AMTS systems and system extensions should be extended from eight months to two years because the Wireless Telecommunications Bureau's licensing experience has shown that licensees generally have found eight months to be insufficient time in which to construct a system of coast stations. It believes that the one-year period that it has adopted for other site-based CMRS services would be insufficient in most AMTS cases.

4. The Commission amends its rules to eliminate the modulation and channelization requirements for AMTS coast stations, so long as transmissions do not exceed the adjacent channel emission limitations of each station's authorization. It concludes that modulation and channelization requirements are unnecessary with respect to AMTS because AMTS frequencies are assigned in channel blocks. AMTS transmitters will now be allowed to use any modulation or channelization scheme so long as emissions are attenuated at the band edges of each station's assigned frequency group(s) in accordance with § 80.211 of the Commission's Rules.

5. The Commission concludes that AMTS licensees should have the authority to provide fixed or hybrid CMRS services on a co-primary basis with mobile services. It believes that this operational flexibility will enhance AMTS licensees ability to meet customer requirements and demand, and promote regulatory parity among maritime CMRS providers and between maritime CMRS providers and other CMRS providers.

6. The Commission amends its rules to eliminate channel loading requirements for high seas public coast stations, including the limits that were placed on the number of frequencies that could be obtained in an initial or subsequent application, because it concludes that the imposition of such requirements could unfairly impair AMTS providers ability to compete with other maritime CMRS providers.

7. Finally, the Commission extends the existing construction requirement from eight months to twelve months for high seas public coast stations because a twelve-month construction period is consistent with the construction periods that have been adopted for other site-based CMRS licensees. The Commission believes that employing long-term construction requirements based on population or geographic service areas, in this case, is inappropriate.

Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Second Further Notice of Proposed Rule Making (2nd FNPRM) in this proceeding. The Commission sought written public comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the 4th R&O

9. Our objective is to promote operational, technical, and regulatory flexibility for Automated Maritime Telecommunications System (AMTS) and high seas public coast stations. Specifically, this action will: (1) Provide additional flexibility for AMTS coast stations by permitting the construction and operation of fill-in stations without prior Commission authorization, eliminating the current emission restrictions and channel plan, and increasing the permitted power levels for point-to-point communications, and (2) eliminate the required showing of channel loading and extend the construction period for high seas public coast stations. We find that these actions will allow maritime CMRS providers to better respond to market demand, increase competition in the provision of telecommunications services, promote more efficient use of marine spectrum, increase the types of telecommunications services available to vessel operators, and reduce regulatory burdens on coast station licensees. Thus, we conclude that the public interest is served by amending our rules as described above.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

10. No comments were submitted in response to the IRFA. In general comments on the 2nd FNPRM, however, some small business commenters (*i.e.*, Paging Systems, Inc., RegioNet Wireless LLC, Waterway Communications System LLC) raised issues that might affect small business entities. In particular, some small business commenters argued that the construction period for AMTS and high seas public coast stations should be extended from eight months to two years, and that AMTS licensees should be permitted to construct fill-in stations without prior Commission approval. The Commission carefully considered each of these comments in reaching the decision set forth herein.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

12. The rules adopted herein will affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* in this proceeding, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing fewer than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, and no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirteen high seas public coast station licensees. Based on the rules adopted herein, it is unlikely that more than seven licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately twenty-five AMTS and high seas public coast station licensees that are small businesses, as that term is defined by the Small Business Administration.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. In order to permit AMTS licensees to construct fill-in stations without notifying the Commission, while still enabling amateur radio licensees to abide by the exclusion and notification distances in our rules, we are requiring AMTS licensees to notify two organizations that represent amateur licensees of the location of their fill-in stations. The estimated time for preparing these letters is twenty minutes per fill-in station. This is the same time requirement for both large and small entities, however, it is such a nominal requirement that it should not be a burden to any entity.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

15. The Commission in this proceeding has considered comments on implementing broad changes to the maritime service rules. It has adopted alternatives which minimize burdens placed on small entities. First, it has decided to permit AMTS licensees to construct fill-in stations without notifying the Commission, avoiding the need to file an application. Also, it has extended the eight-month construction requirement to two years for all AMTS stations and one year for all high seas public coast stations. In addition, the Commission has eliminated the requirement that applicants for HF high seas frequencies show that their current channels are fully loaded before they may obtain additional channels.

16. The Commission considered and rejected several significant alternatives. It rejected the National Association of Broadcasters and Association for Maximum Service Television's alternative of moving the rules governing the Low Power Radio Service from Part 95 to Part 80 of its rules. This was rejected because it could have caused confusion among licensees. Instead, the Commission will leave the LPRS rules in place. The Commission also rejected the alternative of basing the construction requirement for high seas public coast stations on the population of the station's service area as it has for other services, such as AMTS. This would have required licensees to acquire and act upon additional data. Instead, the Commission used a time-based construction requirement because it will ensure rapid delivery of service to the public.

Report to Congress

The Commission will send a copy of the 4th R&O, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the 4th R&O, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the 4th R&O and FRFA (or summaries thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects 47 CFR Parts 80 and 95

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 80 and 95 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.25 is amended by revising paragraph (b) to read as follows:

§ 80.25 License term.

* * * * *

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal.

* * * * *

3. Section 80.49 is amended by revising paragraph (a)(2) and adding a new paragraph (a)(3) to read as follows:

§ 80.49 Construction and regional service requirements.

(a) * * *

(2) For LF, MF, and HF band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies

authorized have not been placed in operation within twelve months from the date of grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(3) For AMTS band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within two years from the date of grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

* * * * *

4. Section 80.105 is revised to read as follows:

§ 80.105 General obligations of coast stations.

Each coast station or marine-utility station must acknowledge and receive all calls directed to it by ship or aircraft stations. Such stations are permitted to transmit safety communication to any ship or aircraft station. VHF (156–162 MHz) and AMTS (216–220 MHz) public coast stations may provide fixed or hybrid services on a co-primary basis with mobile operations.

5. Section 80.213 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 80.213 Modulation requirements.

(a) * * *

(2) When phase or frequency modulation is used in the 156–162 MHz band the peak modulation must be maintained between 75 and 100 percent. A frequency deviation of ± 5 kHz is defined as 100 percent peak modulation; and

* * * * *

(d) Ship and coast station transmitters operating in the 156–162 MHz band must be capable of proper operation with a frequency deviation of ± 5 kHz when using any emission authorized by § 80.207 of this part.

* * * * *

6. Section 80.215 is amended by removing and reserving footnote 7, and revising the introductory test of paragraphs (h)(2), and (i) and revising paragraph (h)(5) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(h) * * *

(2) Coast stations located less than 169 kilometers (105 miles) from a channel 13 TV station, or less than 129 kilometers (80 miles) from a channel 10 TV station, or when using a transmitting antenna height above ground greater than 61 meters (200 feet), must submit a plan to limit interference to TV reception, unless the station's predicted interference contour is fully encompassed by the composite interference contour of the system's existing stations, or the station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands). The plan must include:

* * * * *

(5) The transmitter power, as measured at the input terminals to the station antenna, must be 50 watts or less.

(i) A ship station must have a transmitter output not exceeding 25 watts and an ERP not exceeding 18 watts. The maximum transmitter output power is permitted to be increased to 50 watts under the following conditions:

* * * * *

7. Section 80.357 is amended by removing paragraphs (b)(2)(ii)(A) through (b)(2) (ii)(C) and revising paragraph (b)(2)(ii) to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(b) * * *

(2) * * *

(ii) Frequencies above 5 MHz may be assigned primarily to stations serving the high seas and secondarily to stations serving inland waters of the United States, including the Great Lakes, under the condition that interference will not be caused to any coast station serving the high seas.

* * * * *

8. Section 80.371 is amended by removing paragraph (b)(3) and (b)(4), and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(b) *Working frequencies in the 4000–27500 kHz band.* (1) The following table specifies the carrier frequencies available for assignment to public coast stations. The paired ship frequencies are available for use by authorized ship stations. The specific frequency assignment available to public coast stations for a particular geographic area is indicated by an "x" under the appropriate column. The allotment areas are in accordance with the "Standard Defined Areas" as identified in the International Radio Regulations, Appendix 25 Planning System, and indicated in the preface to the International Frequency List (IFL).

WORKING CARRIER FREQUENCY PAIRS IN THE 4000–27500 KHZ BAND

Channel	Ship transmit	Coast transmit	USA–E	USA–W	USA–S	USA–C	VIR	HWA	ALS	PTR	GUM
401	4065	4357	x	x	x	x					
403	4071	4363	x	x	x	x		x		x	
404	4074	4366	x	x		x			x		
405	4077	4369	x	x	x	x		x	x		
409	4089	4381	x	x	x	x					
410	4092	4384	x								x
411	4095	4387	x	x		x					
412	4098	4390	x	x	x						
414	4104	4396	x		x				x	x	
416	4110	4402	x	x		x			x		
417	4113	4405	x	x	x	x					
418	4116	4408				x		x			
419	4119	4411		x	x			x		x	x
422	4128	4420	x	x					x		
423	4131	4423	x	x	x	x			x		
424	4134	4426				x					
427	4143	4435	x	x	x	x	x	x	x		
428	4060	4351			x						
604	6209	6510	x	x	x	x		x	x	x	x

WORKING CARRIER FREQUENCY PAIRS IN THE 4000–27500 KHZ BAND—Continued

Channel	Ship transmit	Coast transmit	USA–E	USA–W	USA–S	USA–C	VIR	HWA	ALS	PTR	GUM
605	6212	6513				x					
607	6218	6519			x						
802	8198	8722	x		x			x	x		
803	8201	8725				x					
804	8204	8728	x	x	x						
805	8207	8731	x	x	x						
807	8213	8737				x					
808	8216	8740	x	x				x	x		x
809	8219	8743	x	x							
810	8222	8746	x	x	x						
811	8225	8749	x	x	x						
814	8234	8758	x	x	x	x		x	x		
815	8237	8761	x	x	x						
817	8243	8767				x					
819	8249	8773				x					
822	8258	8782	x	x	x						
824	8264	8788	x	x	x						
825	8267	8791	x	x	x						
826	8270	8794	x			x					x
829	8279	8803	x	x	x					x	
830	8282	8806			x					x	
831	8285	8809		x	x					x	
836	8113	8713			x						
837	8128	8716			x						
1201	12230	13077	x	x	x						
1202	12233	13080	x	x	x	x					
1203	12236	13083	x	x	x	x		x	x		
1206	12245	13092	x	x	x						
1208	12251	13098	x		x						
1209	12254	13101	x	x	x				x		
1210	12257	13104	x	x	x						x
1211	12260	13107	x	x	x	x			x		
1212	12263	13110	x		x			x	x	x	
1215	12272	13119		x	x					x	
1217	12278	13125				x					
1222	12293	13140						x			
1223	12296	13143	x	x	x						x
1225	12302	13149	x		x						
1226	12305	13152	x	x	x						
1228	12311	13158	x	x		x					
1229	12314	13161		x							
1230	12317	13164	x	x	x			x			
1233	12326	13173			x						
1234	12329	13176		x	x			x	x		
1235	12232	13179			x						
1236	12335	13182			x						
1237	12338	13185	x		x	x	x				
1601	16360	17242	x		x			x	x		
1602	16363	17245	x	x	x						
1603	16366	17248	x	x	x				x		
1605	16372	17254	x	x							
1607	16378	17260	x	x	x				x		
1609	16384	17266	x	x	x						
1610	16387	17269	x	x	x						
1611	16390	17272	x	x	x						
1616	16405	17287	x	x	x			x	x		
1620	16417	17299	x			x					
1624	16429	17311	x	x	x						
1626	16435	17317	x								
1631	16450	17332	x								
1632	16453	17335	x	x	x				x		
1641	16480	17362	x	x	x						
1642	16483	17365	x	x	x	x	x	x	x	x	
1643	16486	17368			x						
1644	16489	17371	x	x	x	x		x	x		
1645	16492	17374			x						
1646	16495	17377		x							
1647	16498	17380	x	x	x	x			x		
1648	16501	17383		x		x	x	x	x	x	
1801	18780	19755	x	x	x	x	x	x	x	x	
1802	18783	19758	x		x	x	x			x	

WORKING CARRIER FREQUENCY PAIRS IN THE 4000–27500 kHz BAND—Continued

Channel	Ship transmit	Coast transmit	USA–E	USA–W	USA–S	USA–C	VIR	HWA	ALS	PTR	GUM
1803 ..	18786	19761	x	x	.....	x	x	x	x	x	.....
1804 ..	18789	19764	.....	x	x	.....	.....	x	x	.....	.....
1805 ..	18792	19767	.....	x	.....	.....	.....	.....	x	.....	.....
1807 ..	18798	19773	.....	.....	x	.....	.....	.....	.....	.....	.....
1808 ..	18801	19776	x	x	x	x	x	x	x	x	.....
2201 ..	22000	22696	x	x	x	.....	.....	.....	.....	.....	x
2205 ..	22012	22708	x	x	x	.....	.....	.....	.....	.....	.....
2210 ..	22027	22723	x	.....	.....	.....	.....	.....	.....	.....	.....
2214 ..	22039	22735	x	x	x	.....	.....	.....	.....	.....	.....
2215 ..	22042	22738	x	x	x	.....	.....	.....	.....	.....	.....
2216 ..	22045	22741	x	.....	x	.....	.....	.....	.....	.....	x
2222 ..	22063	22759	x	.....	.....	.....	.....	.....	.....	.....	.....
2223 ..	22066	22762	x	x	x	.....	.....	x	x	x	.....
2227 ..	22078	22774	x	x	x	.....	.....	.....	.....	.....	.....
2228 ..	22081	22777	x	x	.....	.....	.....	.....	.....	.....	.....
2231 ..	22090	22786	x	x	x	.....	.....	.....	x	.....	.....
2236 ..	22105	22801	x	x	.....	.....	.....	.....	.....	.....	.....
2237 ..	22108	22804	x	x	x	.....	.....	.....	.....	.....	.....
2241 ..	22120	22816	x	x	x	x	x	x	x	x	.....
2242 ..	22123	22819	.....	.....	x	.....	.....	.....	.....	.....	.....
2243 ..	22126	22822	x	x	x	x	x	x	x	x	.....
2244 ..	22129	22825	.....	x	.....	.....	.....	x	x	.....	.....
2245 ..	22132	22828	.....	x	x	.....	.....	x	x	.....	.....
2246 ..	22135	22831	.....	.....	x	.....	.....	.....	.....	.....	.....
2247 ..	22138	22834	x	x	x	x	x	x	x	.....	.....
2501 ..	25070	26145	x	x	x	x	.....	x	x	.....	.....
2502 ..	25073	26148	x	x	x	x	x	x	x	x	.....
2503 ..	25076	26151	.....	.....	x	.....	.....	.....	.....	.....	.....
2504 ..	25079	26154	x	x	x	x	x	x	x	x	.....

(2) The following table specifies the non-paired carrier frequencies that are available for assignment to public coast stations for simplex operations. These frequencies are available for use by authorized ship stations for transmissions to coast stations (simplex operations). Assignments on these frequencies must accept interference. They are shared with government users and are considered "common use" frequencies under the international Radio Regulations. They cannot be notified for inclusion in the Master International Frequency Register, which provides stations with interference protection, but may be listed in the international List of Coast Stations. (*See* Radio Regulation No. 1220 and Recommendation 304.)

PUBLIC CORRESPONDENCE SIMPLEX

[Non-paired radiotelephony frequencies in the 4000–27500 kHz Band [1] Carrier Frequencies (kHz)]

16537	18825	22174	25100
16540	18828	22177	25103
	18831	.....	25106
	18834	.....	25109
	18837	.....	25112

[1] Coast stations limited to a maximum transmitter power of 1 kW (PEP).

* * * * *

§ 80.374 [Amended]

9. Section 80.374 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b).

10. Section 80.475 is amended by redesignating paragraph (b) as paragraph (c), and revising paragraph (a)(1) and adding a new paragraph (b) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) * * *

(1) Applicants proposing to locate a coast station transmitter within 169 kilometers (105 miles) of a channel 13 TV station or within 129 kilometers (80 miles) of a channel 10 TV station or with an antenna height greater than 61 meters (200 feet), must submit an engineering study clearly showing the means of avoiding interference with television reception within the grade B contour, *see* § 80.215(h) of this chapter, unless the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system, or the proposed station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands).

* * * * *

(b) Coast stations for which the above specified need not be submitted because the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system or the proposed station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands) must, at least 15 days before the station is put into operation, give written notice to the television stations which may be affected of the proposed station's technical characteristics, the date it will be put into operation, and the licensee's representative (name and phone number) to contact in the event a television station experiences interference. No prior FCC authorization is required to construct and operate such a station, but, at the time the station is added, the AMTS licensee must make a record of the technical and administrative information concerning the station and, upon request, supply such information to the FCC. In addition, when the station is added, the AMTS licensee must send notification of the station's location to the American Radio Relay League, Inc., 225 Main Street, Newington, CT 06111–1494, and Interactive Systems, Inc., Suite 1103, 1601 North Kent Street, Arlington, VA 22209.

* * * * *

11. Section 80.477 is amended by adding a new paragraph (d) to read as follows:

§ 80.477 AMTS points of communication.

* * * * *

(d) AMTS licensees may use AMTS coast and ship frequencies on a secondary basis for fixed service communications to support AMTS deployment in remote fixed locations at which other communications facilities are not available.

12. A new § 80.481 is added to read as follows:

§ 80.481 Alternative technical parameters for AMTS transmitters.

In lieu of the technical parameters set forth in this part, AMTS transmitters may utilize any modulation or channelization scheme so long as emissions are attenuated in accordance with § 80.211 at the band edges of each station's assigned channel group or groups.

PART 95—PERSONAL RADIO SERVICES

13. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

14. Section 95.1013 is amended by revising paragraph (a) to read as follows:

§ 95.1013 Antennas.

(a) The maximum allowable ERP for a station in the LPRS other than an AMTS station is 100 mW. The maximum allowable ERP for an AMTS station in the LPRS is 1 W, so long as emissions are attenuated, in accordance with § 80.211 of this chapter, at the band edges.

* * * * *

[FR Doc. 00–31310 Filed 12–12–00; 8:45 am]
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DEPARTMENT OF DEFENSE

48 CFR Parts 212, 225, and 252

[DFARS Case 2000–D301]

Defense Federal Acquisition Regulation Supplement; Domestic Source Restrictions-Ball and Roller Bearings and Vessel Propellers

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8064 of the DoD Appropriations Act for Fiscal year 2001 and Section 805 of the DoD Authorization Act for Fiscal Year 2001. These laws place restrictions on the acquisition of vessel propellers and ball and roller bearings from foreign sources.

DATES: *Effective date:* December 13, 2000.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before February 12, 2001, to be considered in the formation of the final rule.

ADDRESSES: E-mailed comments are preferred. Submit comments to: dfars@acq.osd.mil. Please cite DFARS Case 2001–D301 in the subject line.

Respondents that cannot submit comments by e-mail may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2000–D301.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DFARS to implement Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259) and Section 805 of the DoD Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 8064 of Public Law 106–259 restricts the acquisition of ball and roller bearings and vessel propellers to those produced by a domestic source and of domestic origin. The restriction does not apply to the purchase of commercial items, except ball or roller bearings purchased as end items. Section 805 of Public Law 106–398 extends the restriction on acquisition of ball and roller bearings at 10 U.S.C. 2534 through fiscal year 2005.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized as follows: The objective of this interim rule is to protect the domestic industrial base for ball and roller bearings and vessel propellers as required by Section 8064 of Public Law 106–259 and 10 U.S.C. 2534. By restricting foreign competition, the rule will benefit domestic small business concerns that manufacture ball or roller bearings, bearing components, vessel propellers, or vessel propeller casings. This rule does not duplicate, overlap, or conflict with other relevant Federal rules.

DoD has submitted a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the analysis from the point of contact specified herein. Comments are invited. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D301.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to

comment. This interim rule implements Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259) and Section 805 of the DoD Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 8064 of Public Law 106–259 restricts the acquisition of ball and roller bearings and vessel propellers to those produced by a domestic source and of domestic origin. Section 805 of Public Law 106–398 extends the restriction on acquisition of ball and roller bearings at 10 U.S.C. 2534 through fiscal year 2005. Section 8064 of Public Law 106–259 became effective on August 9, 2000, and Section 805 of Public Law 106–398 became effective on October 30, 2000. DoD will consider comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 225, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.503 is amended by revising paragraph (a)(xi) to read as follows:

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) * * *

(xi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019–2(b) (Section 8064 of Public Law 106–259).

* * * * *

3. Section 212.504 is amended by revising paragraph (a)(xxv) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xxv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019–2(b) (Section 8064 of Public Law 106–259).

* * * * *

PART 225—FOREIGN ACQUISITION

225.7019–1 [Amended]

4. Section 225.7019–1 is amended in paragraph (a) by removing the phrase "fiscal year 2000" and adding in its place "fiscal year 2005".

5. Section 225.7019–2 is amended by revising paragraph (b) to read as follows:

225.7019–2 Exceptions.

* * * * *

(b) The restriction in 225.7019–1(b) does not apply to contracts or subcontracts for acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

6. Section 225.7019–4 is revised to read as follows:

225.7019–4 Contract clause.

(a) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(1) The restrictions in 225.7019–1 do not apply or a waiver has been granted; or

(2) The contracting officer knows that the items being acquired do not contain ball or roller bearings.

(b) In solicitations and contracts that use simplified acquisition procedures, use the clause with its Alternate I.

7. Sections 225.7020 through 225.7020–4 are added to read as follows:

225.7020 Restriction on vessel propellers.

225.7020–1 Restriction.

In accordance with Section 8064 of the National Defense Appropriations Act for Fiscal Year 2001 (Public Law 106–259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source of domestic origin, *i.e.*, vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

225.7020–2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

225.7020–3 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7020–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts for the acquisition of vessels or vessel propellers, unless—

(a) An exception under 225.7020–2 is known to apply or a waiver has been granted in accordance with 225.7020–3; or

(b) The vessels being acquired do not contain vessel propellers.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 252.212–7001 is amended by revising the clause date; and in paragraph (a) by adding, in numerical order, a new entry "252.225–7016" to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Dec 2000)

(a) * * *

___252.225–7016 Restriction on Acquisition of Ball and Roller Bearings (___Alternate I) (Section 8064 of Pub. L. 106–259).

* * * * *

9. Section 252.225–7016 is amended by revising the clause date and paragraph (c)(1); and by adding Alternate I to read as follows:

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

* * * * *

Restriction on Acquisition of Ball and Roller Bearings (Dec 2000)

* * * * *

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

* * * * *

Alternate I (Dec 2000) As prescribed in 225.7019–4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

10. Section 252.225–7023 is added to read as follows:

252.225–7023 Restriction on Acquisition of Vessel Propellers.

As prescribed in 225.7020–4, use the following clause:

Restriction on Acquisition of Vessel Propellers (Dec 2000)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers—

(1) Manufactured in the United States or Canada; and

(2) For which all component castings were poured and finished in the United States or Canada.

(b) The restriction in paragraph (a) of this clause—

(1) Does not apply to vessel propellers that are commercial items; and

(2) For other than commercial items, may be waived upon request from the Contractor in accordance with subsection 225.7020–3 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 2000–D300]

Defense Federal Acquisition Regulation Supplement; Profit Incentives To Produce Innovative New Technologies

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000. Section 813 requires DoD to review its profit guidelines to consider whether appropriate modifications, such as placing increased emphasis on technical risk as a factor for determining appropriate profit margins, would provide an increased profit incentive for contractors to develop and produce complex and innovative new technologies.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; facsimile (703) 602–0350. Please cite DFARS Case 2000–D300.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DoD profit policy to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). The rule amends the weighted guidelines method of profit computation at DFARS 215.404–71 to combine the management and cost control elements of the performance risk factor; to establish a new "technology incentive" range for technical risk; and to slightly modify some of the cost control standards. In addition, the rule amends DFARS 215.404–4(b) to clarify that DoD departments and agencies must use a structured approach for developing a prenegotiation profit for fee objective on any negotiated contract action when cost or pricing data is obtained.

DoD published a proposed rule at 65 FR 32066 on May 22, 2000. Five sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule. The final rule is similar to the proposed rule, except for changes at 215.404–71–2(c)(3) that: (1) Permit use of the technology incentive range for acquisitions that include application of innovative new technologies; and (2) specify that the technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are below $500,000, are based on adequate price competition, or are for commercial items, and do not require submission of cost or pricing data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 215 is amended as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–4 is amended by revising paragraph (b)(1) introductory text to read as follows:

215.404–4 Profit.

(b) * * * (1) Departments and agencies must use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404–74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

* * * * *

3. Section 215.404–71–2 is revised to read as follows:

215.404–71–2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical—the technical uncertainties of performance.

(2) Management/cost control—the degree of management effort necessary—

(i) To ensure that contract requirements are met; and

(ii) To reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 18)	Profit objective
21.	Technical	(1)	(2)	N/A	N/A
22.	Management/Cost Control	(1)	(2)	N/A	N/A
23.	Reserved.				
24.	Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluatio criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

[In percentage]

	Assigned weighting	Assigned value	Weighted value
Technical ...	60	5.0	3.0
Management/Cost Control ...	40	4.0	1.6
Composite Value	100	.....	4.6

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development and bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

[In percentage]

	Normal value	Designated range
Standard	4	2 to 6.
Alternate	6	4 to 8.
Technology Incentive.	8	6 to 10.

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Alternate.* Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404–71–4(c)(3)).

(3) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) Items are being manufactured using specifications with stringent tolerance limits;

(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(D) The contractor's independent development and investment has reduced the Government's risk or cost;

(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of—

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.*

(1) The contracting officer should evaluate—

(i) The contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The contractor's cost reduction initiatives (*e.g.*, competition advocacy programs, technical insertion programs, obsolete parts control programs, dual sourcing, spare parts pricing reform, value engineering);

(vii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(viii) Any other factors that affect the contractor's ability to meet the cost targets (*e.g.*, foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(D) The contractor provides fully documented and reliable cost estimates;

(E) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(F) The contractor uses a high degree of subcontract competition (*e.g.*, aggressive dual sourcing);

(G) The contractor has a proven record of cost tracking and control; or

(H) The contractor aggressively seeks process improvements to reduce costs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (*e.g.*, offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) the contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate; or

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (*e.g.*, quality assurance, property, control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

4. Section 215.404–72 is amended by adding paragraph (b)(1)(iii) to read as follows:

215.404–72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

* * * * *

(b) * * *

(1) * * *

(iii) Do not assign a value from the technology incentive designated range.

* * * * *

[FR Doc. 00–31601 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 217, 219, and 236

[DFARS Case 2000–D015]

Defense Federal Acquisition Regulation Supplement; North American Industry Classification System

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule converts programs based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS), in accordance with the final rule issued by the Small Business Administration (SBA) on May 15, 2000.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2000–D015.

SUPPLEMENTARY INFORMATION:

A. Background

SBA issued a final rule at 65 FR 30836 on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published at 65 FR 46055 on July 26, 2000, to establish policy for use of the new size standards in Government acquisitions. DoD published an interim rule at 65 FR 50148 on August 17, 2000, to make corresponding changes to the DFARS. One source submitted comments on the interim DFARS rule. DoD considered those comments in the decision to convert the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule implements the final rule issued by SBA on May 15, 2000, and SBA has certified that the impact of the change from SIC to NAICS on each business will not be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 217, 219, and 236

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 217, 219, 236, and Appendix I to Chapter 2, which was published at 65 FR 50148 on August 17, 2000, is adopted as a final rule without change.

[FR Doc. 00–31602 Filed 12–12–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2000–D017]

Defense Federal Acquisition Regulation Supplement; Polyacrylonitrile Carbon Fiber

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to phase out restrictions on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources. The restrictions will be phased out over a 5-year period to minimize short-term risks to DoD and current domestic suppliers.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises DFARS 225.7103–1 and 225.7103–3 to phase out restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD conducted a review of the administratively imposed restrictions that included an evaluation of DoD applications for PAN carbon fiber, key domestic and foreign suppliers, supply and demand market information, potential impacts on DoD and key suppliers, and potential national security issues. As a result, DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. The phased elimination will minimize short-term risks to both DoD and current domestic suppliers and will allow for a gradual introduction of competition that will encourage innovation and affordability. This action is consistent with DoD's interest in promoting vigorous competition in defense markets while ensuring that industrial capabilities essential to national defense are preserved. The market for PAN carbon fiber is projected to grow in the future as defense and commercial application demand increases. The 5-year phase-in period gives domestic suppliers time to adjust to market conditions and also gives DoD the flexibility to adjust its policy (*i.e.*, extend the restrictions) if projected circumstances do not materialize.

DoD published a proposed rule at 65 FR 41037 on July 3, 2000. Three sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the known domestic manufacturers of PAN carbon fiber are not small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7103–1 is revised to read as follows:

225.7103–1 Policy.

DoD has imposed restrictions on the acquisitions of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

3. Section 225.7103–3 is revised to read as follows:

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone III as defined in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPS) and Major Automated Information System (MAIS) Acquisition Programs); or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in engineering and manufacturing development (milestone II as defined in DoD 5000.2–R).

[FR Doc. 00–31603 Filed 12–12–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 242 and 252

[DFARS Case 2000–D003]

Defense Federal Acquisition Regulation Supplement; Material Management and Accounting Systems

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the criteria for determining when review of a contractor's material management and accounting system (MMAS) is needed. The rule also replaces the current requirement for an MMAS "demonstration" with a requirement for the contractor to provide the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2000–D003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule makes the following changes to the DFARS:

1. Revises the prescription for use of the clause at 252.242–7004, Material Management and Accounting System, to—

a. Require inclusion of the clause only in cost-reimbursement contracts and in fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

b. Eliminate the requirement for inclusion of the clause in contracts with small businesses, educational institutions, and nonprofit organizations.

2. Revises the clause at 252.242–7004 to replace the requirement for an MMAS "demonstration" with a requirement for the contractor to—

a. Have policies, procedures, and operating instructions that adequately describe its MMAS; and

b. Provide to the Government, upon request, the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions.

3. Makes the dollar threshold for conducting an MMAS review consistent with the threshold for conducting a Contractor Insurance/Pension Review ($40 million of qualifying sales to the Government during the contractor's preceding fiscal year).

4. Clarifies the responsibilities of the ACO and the MMAS team members.

DoD published a proposed rule at 65 FR 41038 on July 3, 2000. Six sources submitted comments on the proposed rule. DoD considered all comment sin the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS already exempts small business concerns from the major MMAS requirements.

C. Paperwork Reduction Act

The rule eliminates the requirement for contractors to demonstrate their material management and accounting systems, and will reduce the number of contractors that must disclose their systems to the Government. Therefore, this rule reduces the paperwork burden hours approved under Office of Management and Budget Control Number 0704–0250.

List of Subjects in 48 CFR Parts 242 and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 242 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 242 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Subpart 242.72 is revised to read as follows:

Subpart 242.72—Contractor Material Management and Accounting System

Sec.
242.7200 Scope of subpart.
242.7201 Definitions.
242.7202 Policy.
242.7203 Review procedures.
242.7204 Contract clause.

242.7200 Scope of subpart.

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—

(i) Cost-reimbursement contracts; or

(ii) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242–7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242–7004, so that the system—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

242.7203 Review procedures.

(a) *Criteria for conducting reviews.* Conduct an MMAS review when—

(1) A contractor has $40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Qualifying sales.* Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) *System evaluation.* Cognizant contract administration and audit activities must jointly establish and manage programs for evaluating the MMAS systems of contractors and must annually establish a schedule of contractors to be reviewed. In addition, they must—

(1) Conduct reviews as a team effort.

(i) the ACO—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (*e.g.*, industrial specialist, engineer, property administrator, auditor).

(ii) The team leader—

(A) Advises the ACO and the contractor of findings during the review and at the exit conference; and

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(iii) The contract auditor—

(A) Participates as a member of the MMAS team or serves as the team leader (see paragraph (c)(1)(i) of this section); and

(B) Issues an audit report for incorporation into the MMAS report based on an analysis of the contractor's books, accounting records, and other related data.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare the MMAS report.

(d) *Disposition of evaluation team findings.* The team leader must document the evaluation team findings and recommendations in the MMAS report to the ACO. If there are any significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO must provide a copy of the report to the contractor immediately upon receipt from the team leader.

(i) The ACO must notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are any deficiencies, the ACO must request the contractor to provide a written response within 30 days (or such other date as may be mutually agreed to by the ACO and the contractor) from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days (or such other date as may be mutually agreed to by the ACO and the contractor) to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees with the report, the contractor must provide rationale in the written response.

(2) *Evaluation of the contractor's response.* The ACO, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains any deficiencies and, if so, any corrective action is needed;

(ii) The deficiencies are significant enough to result in the reduction of progress payments or disallowance of costs on vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Notification of ACO determination.*

(i) The ACO must notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Any deficiencies and the necessary corrective action;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce progress payments or disallow costs on vouchers.

(ii) The Government does not approve or disapprove the contractor's MMAS. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there are any significant MMAS deficiencies until the time the deficiencies are corrected, all field pricing reports for that contractor must contain a recommendation relating to proposed adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of any significant MMAS deficiencies in reviews of the contractor's estimating system (see 215.407–5).

(4) *Reductions or disallowances.*

(i) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803). The reductions or disallowances must remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the MMAS report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or when the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor's corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO must not fully reinstate withheld amounts until the contractor corrects the deficiencies, or until the impact of the deficiencies become immaterial.

(5) *Monitoring contractor's corrective action.* The ACO and the auditor must monitor the contractor's progress in correcting deficiencies. When the ACO determines the deficiencies have been corrected, the ACO must notify the contractor in writing. If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

(i) Elevate the issue to higher level management;

(ii) Further reduce progress payments and/or disallow costs on vouchers;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and

(iv) Issue cautions to contracting activities regarding the award of future contracts.

242.7204 Contract clause.

Use the clause at 252.242–7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

(a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.242.7004, is revised to read as follows:

252.242–7004 Material Management and Accounting System.

As prescribed in 242.7204, use the following caluse:

Material Management and Accounting System (Dec 2000)

(a) *Definitions.* As used in this clause—

(1) *Material management and accounting system (MMAS)* means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) *Valid time-phased requirements* means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) "Contractor" means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) *General.* The Contractor shall—

(1) Maintain an MMAS that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) *Disclosure and maintenance requirements.* The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately described its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of the internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) *Deficiencies.*

(1) If the Contractor receives a report from the ACO that identifies any deficiencies in its MMAS, the Contractor shall respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its agreement in writing; and

(B) Within 60 days (or such other date as may be mutually agreed to by the ACO and the Contractor), correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its rationale for each area of disagreement.

(2) The ACO will evaluate the Contractor's response and will notify the Contractor in writing of the—

(i) Determination concerning any remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(3) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803) until the ACO determines that—

(i) The deficiencies are corrected; or

(ii) The amount of the impact is immaterial.

(e) *MMAS standards.* The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The "loan/pay-back technique" means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (e)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Regardless of the provisions of FAR 45.505–3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (e)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(End of clause)

[FR Doc. 00–31605 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 250

[DFARS Case 2000–D025]

Defense Federal Acquisition Regulation Supplement; Authority to Indemnify Against Unusually Hazardous or Nuclear Risks

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics) to indemnify a contractor against unusually hazardous or nuclear risks.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2000–D025.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Part 250, Extraordinary Contractual Actions, to clarify that the Under Secretary of Defense (Acquisition, Technology, and Logistics) may indemnify a contractor against unusually hazardous or nuclear risks, in accordance with the acquisition

authority provided the Under Secretary at 10 U.S.C. 133.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D025.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 250

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 250 is amended as follows:

1. The authority citation for 48 CFR Part 250 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

2. Section 250.201 is revised to read as follows:

250.201 Delegation of authority.

(b) Authority under FAR subpart 50.4 to approve actions obligating $50,000 or less may not be delegated below the level of the head of the contracting activity.

(d) In accordance with the acquisition authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics (USD (AT&L)) under 10 U.S.C. 133, in addition to the Secretary of Defense and the Secretaries of the military departments, the USD (AT&L) may exercise authority to indemnify against unusually hazardous or nuclear risks.

3. Section 250.201–70 is amended by revising paragraphs (b)(1) and (c) to read as follows:

250.201–70 Delegations.

* * * * *

(b) * * *

(1) Requests to obligate the Government in excess of $50,000 must be submitted to the USD (AT&L) for approval.

* * * * *

(c) *Approvals.* The Secretary of the military department or the agency director must approve any delegations in writing.

[FR Doc. 00–31604 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040-0040-01; I.D. 120800B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Hook-and-line in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific cod allocated for catcher processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The share of the 2000 TAC of Pacific cod allocated to catcher processor vessels using hook-and-line gear in the BSAI was established by the Revision of the 2000 BSAI Pacific cod Harvest Specifications of Groundfish for the BSAI (65 FR 51553, August 24, 2000) and subsequent reallocation (65 FR 65272, November 1, 2000) as a directed fishing allowance of 81,958 mt. See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(A)&(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC of Pacific cod allocated to catcher processor vessels using hook-and-line gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod for vessels using hook-and-line and pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the 2000 TAC of Pacific cod allocated to catcher processor vessels using hook-and-line gear in the BSAI. NMFS finds that the prevention of overharvesting of Pacific cod constitutes good cause to waive the requirement for prior notice and comment pursuant to 5 U.S.C 553(b)(B) as such procedures are contrary to the public interest. The Pacific cod directed fishing allowance established for catcher processor vessels using hook-and-line gear will soon be reached. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31733 Filed 12–8–00; 4:44 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register
Vol. 65, No. 240
Wednesday, December 13, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.; DA–00–03]

Milk in the Northeast and Other Marketing Areas; Referendum Order; Determination of Representative Period and Designation of Referendum Agent

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum Order.

SUMMARY: This document announces a referendum to be conducted to determine whether producers favor issuance of the order regulating the handling of milk in the Upper Midwest marketing area, as proposed to be amended in the tentative final decision issued by the Deputy Under Secretary on November 29, 2000 (65 FR 76831), regarding the pricing formulas for milk used in Class III and Class IV.

DATES: The referendum is to be completed on or before December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968 South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Tentative Final Decision: Issued November 29, 2000; published December 7, 2000 (65 FR 76831).

On November 29, 2000, the Deputy Under Secretary, Marketing and Regulatory Programs, issued a tentative final decision on proposed amendments to the Class III and Class IV pricing formulas for Federal milk orders, as required by the Consolidated Appropriations Act, 2000 (P.L. 106–113, 115 Stat. 1501).

Each of the eleven Federal milk orders must be approved by the producers whose milk would be pooled under the order. The tentative final decision included a referendum order for two Federal milk orders, the Northeast and Mideast, for which approval by the necessary two-thirds of producers, or by producers who produced at least two-thirds of the total milk produced under the order, could not be determined by means other than referenda of all producers and cooperative associations that bloc vote. After issuance of the tentative final decision, it was determined that approval of the Upper Midwest order also would require a referendum of all producers and bloc-voting cooperative associations. Accordingly, the following referendum order is issued to determine approval of the Upper Midwest order as amended by the provisions contained in the tentative final decision.

7 CFR Part	Marketing Area	AO Nos.
1001	Northeast	AO–14–A69.
1005	Appalachian	AO–388–A11.
1006	Florida	AO–356–A34.
1007	Southeast	AO–366–A40.
1030	Upper Midwest	AO–361–A34.
1032	Central	AO–313–A43.
1033	Mideast	AO–166–A67.
1124	Pacific Northwest	AO–368–A27.
1126	Southwest	AO–231–A65.
1131	Arizona-Las Vegas	AO–271–A35.
1135	Western	AO–380–A17.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Upper Midwest marketing area, as amended by the tentative final decision issued on November 29, 2000 (65 FR 76831), is approved by at least two-thirds of the producers, or by producers who produced at least two-thirds of the total milk produced during the representative period.

The month of September 2000 is hereby determined to be the representative period for the conduct of such referendum.

H. Paul Kyburz is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*)

Such referendum shall be completed on or before 30 days from the issuance of the tentative final decision.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Authority: 7 U.S.C. 601–674.

Dated: December 8, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–31762 Filed 12–11–00; 10:11 am]

BILLING CODE 3410–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 32

RIN 3038–AB61

Trade Options on Enumerated Agricultural Commodities

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend the exemption from its agricultural trade option rule, to clarify its operation in light of amendments to the exemption for bilateral transactions, published elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received by December 28, 2000.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or by e-mail to *secretary@cftc.gov*. Reference should be made to "Amendment to Rule 32.13(g)."

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5260. E-mail: *PArchitzel@cftc.gov* or *NYanofsky@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is proposing a technical revision to its agricultural trade option rule to clarify the requirements for an exemption therefrom. As revised, the exemption from the agricultural trade option rule will be based only on the net worth requirement in the current rule. *See* Rule 32.13(g)(1)(iii).[1] A revised part 35, published elsewhere in this issue of the **Federal Register**, establishes an exemption from the regulatory requirements of the Commodity Exchange Act (Act) and the Commission's regulations for certain bilateral transactions between eligible participants. In adopting part 35, however, the Commission reserved the applicability of rule 32.13. Today's proposal is designed to make the operation of the exemption from rule 32.13 consistent with the broader exemption of part 35. Transactions between counterparties meeting the net worth requirement although not subject to the requirements of rule 32.13 remain subject to the provisions of part 35.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires that agencies consider the impact of their rules on small businesses. The proposed rule amendment simply clarifies the scope of an existing regulatory exemption available to high net worth entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that this proposed amendment will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3504(h) (PRA), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to the proposed amendment to this rule. The Commission believes the proposed amendment does not contain information collection requirements which require the approval of the Office of Management and Budget. The purpose of the proposed amendment is to clarify the scope of an existing regulatory exemption.

[1] The Commission's agricultural trade option rule currently provides a three-prong test for an exemption therefrom. In addition to the net worth requirement, the rule requires that: (a) the option be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the option transaction, or the products or byproducts thereof; and (b) such producer, processor, commercial user of or merchant is offered or enters into the option solely for purposes related to its business as such. *See* Rule 32.13(g)(1)(i) and (ii). The Commission is proposing to remove these latter two requirements and make the exemption from the agricultural trade option rule available to parties based solely on their ability to meet the net worth requirement.

List of Subjects in 17 CFR Part 32

Commodity futures, Commodity options, Prohibited transactions, Trade options.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1)(A), 4c and 8a of the Act, 7 U.S.C. 2, 6c and 12a, as amended, the Commission hereby proposes to amend Chapter I, Part 32 of Title 17 of the Code of Federal Regulations as follows:

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

1. The authority section for part 32 continues to read as follows:

Authority: 7 U.S.C. 2, 6c and 12a.

2. Section 32.13 is proposed to be amended by revising paragraph (g) to read as follows:

§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

* * * * *

(g) *Exemption.* The provisions of this section shall not apply to a commodity option entered into between counterparties that have a reasonable basis to believe that each has a net worth of not less than $10 million or the party's obligations on the option are guaranteed by a person which has a net worth of $10 million and has a majority ownership interest in, is owned by, or is under common ownership with, the party to the option; *provided, however,* that part 35 of this chapter and § 32.9 apply to such option transactions.

Issued in Washington, D.C., this 7th day of December, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–31732 Filed 12–12–00; 8:45 am]

BILLING CODE 6351–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 00N–1380]

Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair; Public Meeting; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period for a public meeting entitled "Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair" that was held on August 2, 2000. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments to FDA on the issues discussed at the public meeting.

DATES: Submit written comments by February 12, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 18, 2000 (65 FR 44485), FDA published a notice of public meeting that would give the public an opportunity to provide additional information to the agency about the characteristics of various bone products as they relate to the agency's proposed definitions for "minimal manipulation" and "homologous use." Such information would be considered for future guidance to industry in conjunction with regulations that have been proposed. Interested persons were given until September 1, 2000, to submit written comments. The agency received several requests for an extension of the comment period to allow interested parties additional time to address the complex issues concerning FDA's proposed regulatory framework for bone allografts used for reconstruction and repair, to provide adequate time to review the transcript of the meeting, and to conduct research into the issues discussed at the meeting in formulating comments to submit to FDA. FDA finds these requests are reasonable, and, therefore, is reopening the comment period for an additional 60 days. Stakeholders are encouraged to provide information about the following issues:

1. Which processing procedures applied to human bone allograft fall within, or outside of, FDA's proposed definition for "minimal manipulation?"

2. Which uses of human bone allograft fall within, or outside of, FDA's proposed definition for "homologous use?"

3. What risks to health have been identified and characterized for human bone allograft products?

4. What controls have been identified to adequately address the risk to health of human bone allograft products?

5. What industry standards for bone allograft products are available, and what standards will be needed in the future?

Interested persons may submit to the Dockets Management Branch (address above) written comments on the issues discussed at the public meeting by February 12, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31653 Filed 12–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–221]

RIN 2115–AA97

Safety Zone: New York Harbor, Western Long Island Sound, East River, and Hudson River Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish ten permanent safety zones for fireworks displays located in the Port of New York/New Jersey, to expand the size of one current safety zone, and to modify effective times and notice requirements of existing permanent safety zones. This action is necessary to provide for the safety of life on navigable waters during the events. This action establishes permanent exclusion areas that are only active prior to the start of the fireworks display until shortly after the fireworks display is completed, and is intended to restrict vessel traffic in the affected waterways, expand the effective times of the zones to allow for earlier displays during daylight savings time, and to require one sign that may be used for displays from a barge or onshore.

DATES: Comments and related material must reach the Coast Guard on or before February 12, 2001.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–00–221), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–221), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish ten permanent safety zones that will be activated for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these ten locations. The ten locations are south of

Ellis Island, Rockaway Beach, and Rockaway Inlet in New York Harbor, Larchmont Harbor in western Long Island Sound, Pier 16 and Newtown Creek on the East River, Pier 54 and Pier 84, Manhattan, Peekskill Bay, and Jersey City on the Hudson River. The Coast Guard also proposes to expand the diameter of the current safety zone west of Pier 90, on the Hudson River, to 360 yards from the current 300 yards. The Coast Guard received 17 applications for fireworks displays in these new areas from 1999 to 2000. In 1997, the Coast Guard received four applications for fireworks displays in these locations. In the past, temporary safety zones were established with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing permanent safety zones by notice and comment rulemaking at least gives the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has promulgated safety zones for fireworks displays at all 11 areas in the past and we have not received notice of any impact to waterway traffic resulting from the zones' enaction. Marine traffic would still be able to transit around the proposed safety zones because all of the zones prohibit vessels from entering only the zones themselves. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zones. This proposal would also move the zone effective time back two hours so that zones are enacted beginning at 6 p.m. versus 8 p.m. The safety zone termination time remains the same. Finally, the proposed rule would only require one sign reading "FIREWORKS—STAY AWAY". The current regulations require a sign that reads "FIREWORKS BARGE" for displays from barges, and a separate sign that reads "FIREWORKS SITE" for displays from shore. The sign dimensions and letter requirements remain the same.

This proposed rule revises 33 CFR 165.168 by adding ten permanent safety zones to the 24 existing ones, expanding the diameter of the safety zone west of Pier 90, on the Hudson River, to 360 yards from the current 300 yards, expanding the effective time of the zones to allow for earlier displays during Daylight Savings Time, and simplifying the requirements for signs used as on-scene notification.

Discussion of Proposed Rule

The proposed sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 6 to 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in these areas. Proposed barge locations and mortar sizes were adjusted to try and ensure the proposed safety zone locations would not interfere with any known marinas or piers. The proposed earlier effective time for the zones would allow for earlier fireworks displays during Daylight Savings Time. The proposed new sign requirements are to make it easier for the fireworks companies to make on-scene notifications. The 11 proposed safety zones are:

New York Harbor

The first proposed safety zone includes all waters of Upper New York Bay within a 240-yard radius of the fireworks barge in approximate position 40°41′39.9″N 074°02′33.7″W (NAD 1983), about 260 yards south of Ellis Island. The proposed safety zone prevents vessels from transiting a portion of Upper New York Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Anchorage Channel as it is unaffected by this zone. Additionally, vessels would still be able to anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The second proposed safety zone includes all waters of the Atlantic Ocean within a 360-yard radius of the fireworks barge in approximate position 40°34′28.2″N 073°50′00.0″W (NAD 1983), off Beach 116th Street. The proposed safety zone prevents vessels from transiting a portion of the Atlantic Ocean and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the Atlantic Ocean near Rockaway Beach. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone and there are no commercial facilities in the vicinity of the zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The third proposed safety zone includes all waters of Rockaway Inlet within a 360-yard radius of the fireworks barge in approximate position 40°34′19.1″N 073°54′43.5″W (NAD 1983), about 1,200 yards south of Point Breeze. The proposed safety zone prevents vessels from transiting a portion of Rockaway Inlet and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Rockaway Inlet. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone and there are no commercial facilities in the vicinity of the zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

Western Long Island Sound

The proposed safety zone includes all waters of Larchmont Harbor within a 240-yard radius of the fireworks barge in approximate position 40°55′21.8″N 073°44′21.7″W (NAD 1983), about 540 yards north of Umbrella Rock. The proposed safety zone prevents vessels from transiting a portion of Larchmont Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational traffic will still be able to transit through the western 100 yards and eastern 40 yards of the 620-yard wide Larchmont Harbor. There are currently no commercial facilities in Larchmont Harbor. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

East River

The first proposed safety zone includes all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′12.5″N 074°00′02.0″W (NAD 1983), about 200 yards east of Pier 16. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Vessel traffic will be able to transit through the eastern 140 yards of the 490-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone.

The second proposed safety zone includes all waters of the East River within a 360-yard radius of the fireworks barge in approximate position 40°44′24.0″N 073°58′00.0″W (NAD 1983), about 785 yards south of Belmont Island. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and non-deep draft commercial vessel traffic will be able to transit through the western 160 yards of the 910-yard wide East River during the event. This safety zone would close this portion of the East River for vessels that must use the Poorhouse Flats Range. This range marks the area where the 35-foot deep main channel crosses from the west side of the river to the east side of the river. The Poorhouse Flats Range marks the best water in this crossover. But the Coast Guard will minimize any negative impact from this safety zone by ensuring that this zone is not effective during slack tide, which is typically when vessels that must use the Poorhouse Flats Range transit this portion of the East River. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone.

Hudson River

The first proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′31″N 074°01′00″W (NAD 1983), about 380 yards west of Pier 54. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 170 yards of the 885-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The second proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°45′56.9″N 074°00′25.4″W (NAD 1983), about 380 yards west of Pier 84. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 165 yards of the 875-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The third proposed safety zone includes all waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″N 073°56′18″W (NAD 1983), about 670 yards north of Travis Point. The proposed safety zone prevents vessels from transiting a portion of Peekskill Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Peekskill Bay Channel during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The fourth proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′37.3″N 074°01′41.6″W (NAD 1983), about 420 yards east of Morris Canal Little Basin. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 535 yards of the 1,215-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The fifth proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°46′11.8″N 074°00′14.8″W (NAD 1983), about 375 yards west of Pier 90, Manhattan. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 160 yards of the 895-yard wide Hudson River during the event. This would expand the diameter of the current safety zone (§ 165.168(d)(4)) from 300 yards to 360 yards. This expanded safety zone would only be authorized when it would not interfere with vessel traffic at the New York Passenger Ship Terminal. Normally, this safety zone is established in conjunction with a passenger ship arrival or departure from Pier 88, 90, or 92. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The Coast Guard does not know the actual dates that these safety zones will be activated at this time. Coast Guard Activities New York will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The Coast Guard expects that the notice of the activation of each permanent safety zone in this rulemaking will normally be made between thirty and fourteen days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled "FIREWORKS—STAY AWAY". This will provide on-scene notice that the safety zone the fireworks barge is located in is or will be activated on that day. This sign will consist of 10" high by 1.5" wide red lettering on a white background. Displays launched from shore sites will have a sign labeled "FIREWORKS—STAY AWAY" with the same size requirements. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each proposed safety zone is from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.). This is two hours earlier than the current regulations and is to allow for earlier fireworks displays during Daylight Savings Time. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

This rule is being proposed to provide for the safety of life on navigable waters

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during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. Vessels may also still transit through New York Harbor, western Long Island Sound, the East River, and Hudson River, during these events. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that there will only be 18 total activations of these safety zones per year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of New York Harbor, western Long Island Sound, the East River, and Hudson River, during the times these zones are activated.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could transit around all 11 safety zones. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by local notice to mariners. Marine information and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes 11 safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Section 165.168 is amended as follows:

a. Revise the section heading;

b. Revise paragraph (a) introductory text and add paragraphs (a)(7) through (a)(9);

c. Revise paragraph (b) introductory text and add paragraph (b)(10);

d. Revise paragraph (c) introductory text and add paragraphs (c)(3) through (c)(4);

e. Revise paragraphs (d) introductory text and (d)(4) and add paragraphs (d)(8) through (d)(11);

f. Revise paragraphs (e) and (f); and

g. Revise Figures 1 through 4.

The additions and revisions read as follows:

§ 165.168 Safety Zones: New York Harbor, Western Long Island Sound, East River, and Hudson River Fireworks.

(a) *New York Harbor.* Figure 1 of this section displays the safety zone areas in paragraphs (a)(1) through (a)(9).

* * * * *

(7) *South Ellis Island Safety Zone:* All waters of Upper New York Bay within a 240-yard radius of the fireworks barge in approximate position 40°41′39.9″N 074°02′33.7″W (NAD 1983), about 260 yards south of Ellis Island.

(8) *Rockaway Beach Safety Zone:* All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position 40°34′28.2″N 073°50′00.0″W (NAD 1983), off Beach 116th Street.

(9) *Rockaway Inlet Safety Zone:* All waters of Rockaway Inlet within a 360 yard radius of the fireworks barge in approximate position 40°34′19.1″N 073°54′43.5″W (NAD 1983), about 1,200 yards south of Point Breeze.

(b) *Western Long Island Sound.* Figure 2 of this section displays the safety zone areas in paragraphs (b)(1) through (b)(10).

* * * * *

(10) *Larchmont Harbor, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°55′21.8″N 073°44′21.7″W (NAD 1983), about 540 yards north of Umbrella Rock.

(c) *East River.* Figure 3 of this section displays the safety zone areas in paragraphs (c)(1) through (c)(4).

* * * * *

(3) *Pier 16, East River Safety Zone:* All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′12.5″N 074°00′02.0″W (NAD 1983), about 200 yards east of Pier 16.

(4) *Newtown Creek, East River Safety Zone:* All waters of the East River within a 360-yard radius of the fireworks barge in approximate position 40°44′24.0″N 073°58′00.0″W (NAD 1983), about 785 yards south of Belmont Island.

(d) *Hudson River.* Figure 4 of this section displays the safety zone areas in paragraphs (d)(1) through (d)(11).

* * * * *

(4) *Pier 90, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°46′11.8″N 074°00′14.8″W (NAD 1983), about 375 yards west of Pier 90, Manhattan.

* * * * *

(8) *Pier 54, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′31″N 074°01′00″W (NAD 1983), about 380 yards west of Pier 54, Manhattan.

(9) *Pier 84, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°45′56.9″N 074°00′25.4″W (NAD 1983), about 380 yards west of Pier 84, Manhattan.

(10) *Peekskill Bay, Hudson River Safety Zone:* All waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″N 073°56′18″W (NAD 1983), about 670 yards north of Travis Point.

(11) *Jersey City, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′37.3″N 074°01″41.6″W (NAD 1983), about 420 yards east of Morris Canal Little Basin.

(e) *Notification.* Coast Guard Activities New York will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS—STAY AWAY". This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. Shore sites used in these locations will display a sign labeled "FIREWORKS—STAY AWAY" with the same dimensions.

(f) *Effective Period.* This section is effective from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.) each day a barge with a "FIREWORKS—STAY AWAY" sign on the port and starboard side is on-scene or a "FIREWORKS—STAY AWAY" sign is posted in a location listed in paragraphs (a) through (d) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York or designated Coast Guard patrol personnel on scene.

* * * * *

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Figure 1
§ 165.168(a) New York Harbor Fireworks Safety Zones drawn to scale.

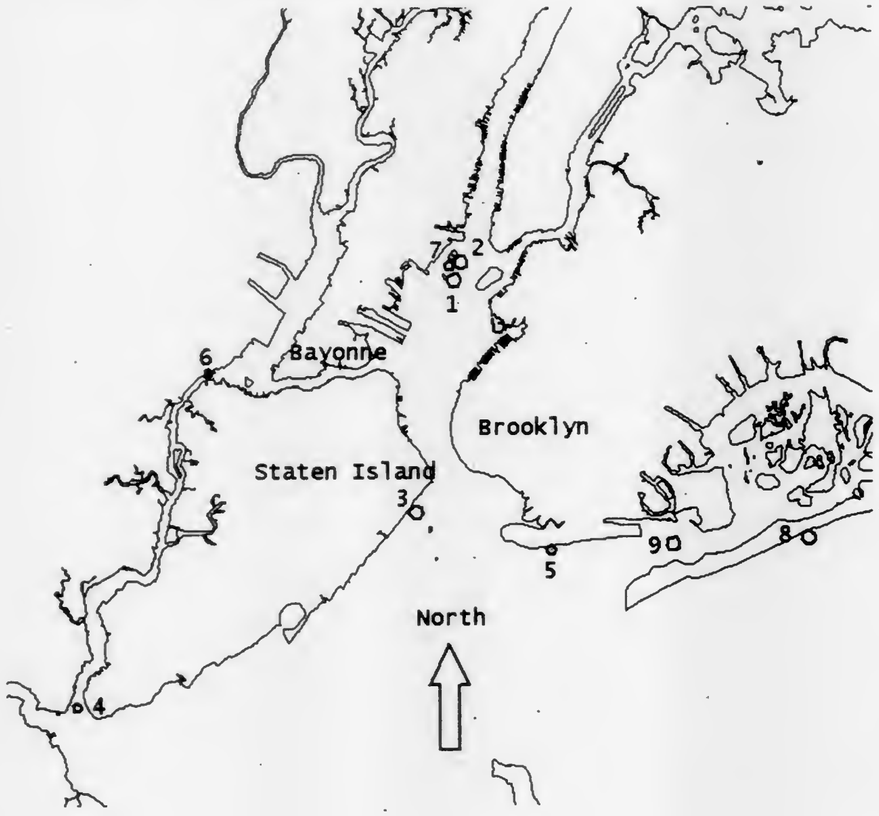
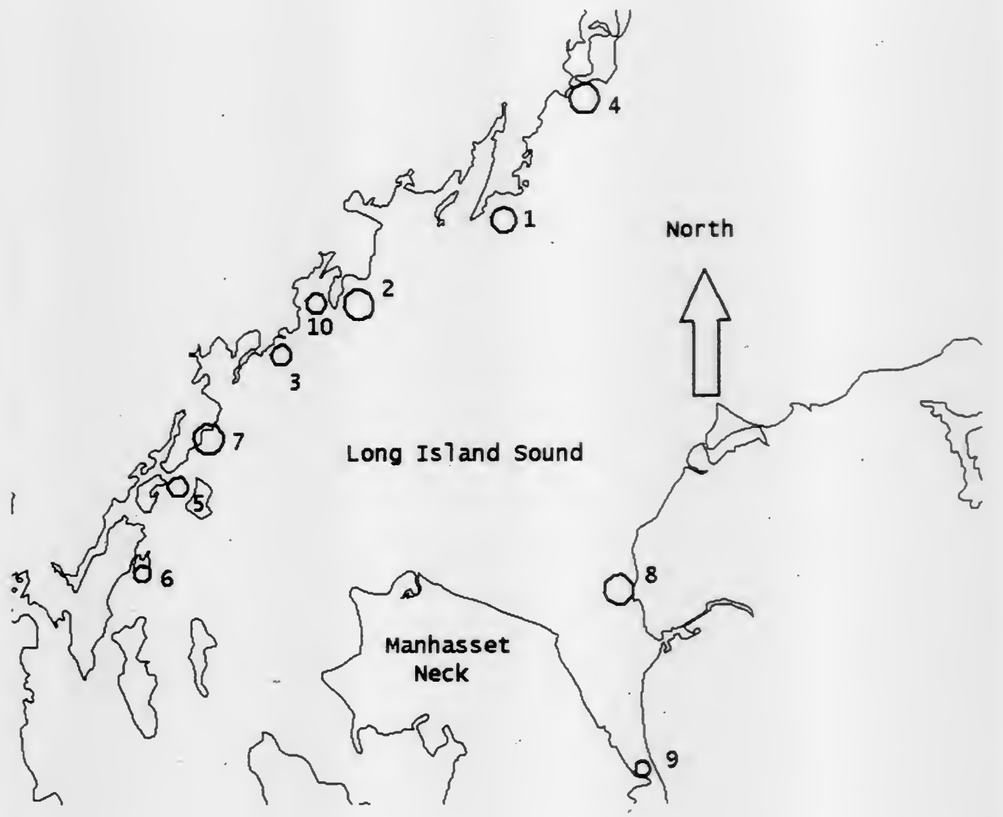


Figure 2
§ 165.168(b) Western Long Island Sound Fireworks Safety Zones drawn to scale.



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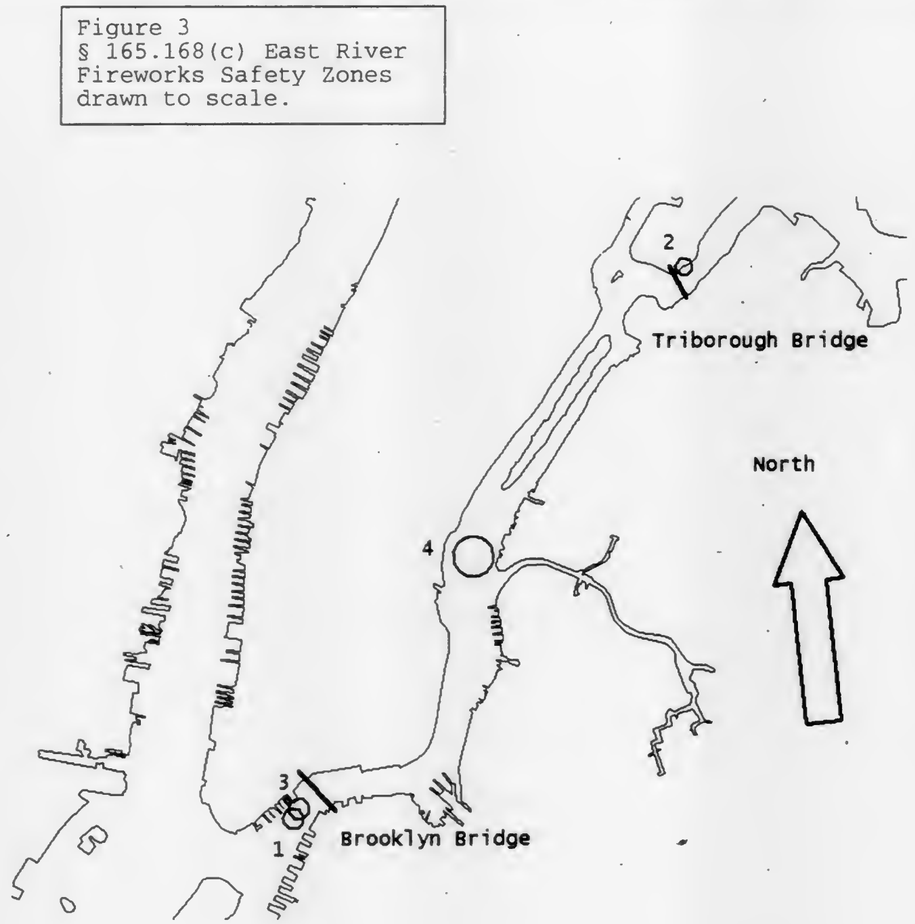


Figure 3
§ 165.168(c) East River Fireworks Safety Zones drawn to scale.

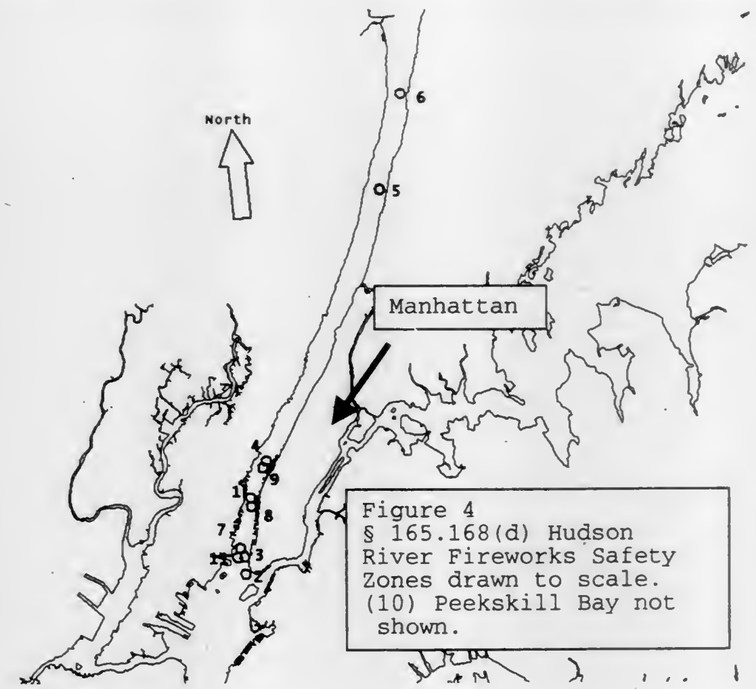


Figure 4
§ 165.168(d) Hudson River Fireworks Safety Zones drawn to scale. (10) Peekskill Bay not shown.

Dated: November 3, 2000.

P.A. Harris,

Captain, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 00–31705 Filed 12–12–00; 8:45 am]

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Notices

Federal Register
Vol. 65, No. 240
Wednesday, December 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest; California; Lakes Forest Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service intends to prepare an environmental impact statement to analyze and disclose the environmental effects of implementing resource management activities that include fuelbreak construction consisting of a strategic system of defensible fuel profile zones, group selection and individual tree selection harvests, and riparian restoration projects on the Almanor Ranger District in the Lassen National Forest. These activities are part of a 5-year pilot project to test and demonstrate the effectiveness of certain resource management activities designed to meet ecologic, economic, and fuel reduction objectives on the Lassen National Forest as well as the Plumas National Forest and on the Sierraville Ranger District of the Tahoe National Forest. This notice applies only to the Lassen National Forest; however, all three National Forests were named in the Record of Decision (August 1999) for the Herger-Feinstein Quincy Library Group Forest Recovery Act Final Environmental Impact Statement. The Record of Decision amended the management direction in the Land and Resource Management Plans for these three National Forests. The need for the Record of Decision and Final Environmental Impact Statement was generated from the Herger-Feinstein Quincy Library Group Forest Recovery Act of October 21, 1998.

DATES: Comments concerning the scope of the analysis should be received in writing on or before January 12, 2001.

ADDRESSES: Send written comments to Susan Jeheber-Matthews, Almanor District Ranger, P.O. Box 767, Chester, CA, 96020.

FOR FURTHER INFORMATION CONTACT: Dominic Cesmat, Interdisciplinary Team Leader, telephone: (530) 258–2141.

SUPPLEMENTARY INFORMATION:

Proposed Action

To accomplish the purpose of the Herger-Feinstein Quincy Library Group Forest Recovery Act (Act), resource management activities included in the proposed Lakes Forest Recovery Project are defensible fuel profile zone (DFPZ) construction, group selection and individual tree selection harvests, and riparian restoration projects. The proposed project is located in Butte County, California, within the Almanor Ranger District of the Lassen National Forest in all or portions of Sections 1–3, 10–15, 22–27, 34–36, T.25N, R.4E., Sections 3–10, 15–20, 29–30, T.25N., R.5E., Sections 1–4, 9–15, 22–26, 34–36, T.26N., R.4E., Section 4–10, 14–23, 26–35, T.26N., R.5E., Sections 33–36, T.27N., R.4E., and Sections 31–33, T.27N., R.5E., MDM.

The Lakes Forest Recovery Project area is one of five sub networks established to implement a DFPZ network on the District. The purpose of DFPZs in this area is to reduce the number of acres that would be burned by high-intensity and stand-replacing fires. DFPZs are needed in this area in order to improve suppression efficiency by creating an environment where wildfires would burn at lower intensities and where fire fighting production rates would be increased. DFPZ are strategically located strips of land on which forest fuels, both living and dead, have been modified in order to reduce the potential for a sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Fuels treatment strategies would focus on the alteration or reduction of surface fuels, ladder fuels, and canopy closure in order to effectively alter fire behavior and severity. Treatment methods would include thinning timbered stands, hand or machine piling of excessive forest fuels, and prescribed fire. The Lakes Forest Recovery Project proposes to construct 7,780 acres of DFPZs in the Lake's project area including an estimated 5,520 acres that would be thinned.

Groups selection harvests would be implemented to promote diversity in stand age and structure. Root disease centers or dwarf mistletoe infected areas would be targeted for group selection, as well as those stands that are even-aged in structure. Some understocked areas would also be regenerated using the group selection prescription. Group selection harvests would be implemented in some aspen stands where competition for light and soil moisture from conifers is causing a decline in health and structure of the aspen stand. Treatment would consist of removing most of the conifers within identified aspen stands. Group selection harvests would also be utilized to treat stands with meadow attributes that are declining due to conifer encroachment within the meadow. Group selection harvests would be performed to reduce the encroachment of conifers. Group selection would be implemented on an estimated 1,100 acres within the Lakes Forest Recover Project area. Fuels treatment would occur on 650 acres within group selections.

Individual tree selection is allowed in the Act to promote forest health and provide an uneven-aged structure to forested lands. Individual tree selection would be implemented on an estimated 460 acres within the Lakes Forest Recovery Project area.

Included in the proposed action for the Lakes Forest Recovery Project is the realignment of a boundary for a protected activity center for the California spotted owl, and the establishment of a new goshawk management area for a nesting pair of goshawks.

New construction of permanent and temporary roads would be needed to economically access stands requiring treatment for DFPZ and group selection harvest. Within the project area, 19.9 miles of permanent new road construction and 8.2 miles of temporary road construction would be implemented for this purpose. New construction of permanent roads would be added to the Forest transportation system. Temporary roads would be obliterated upon completion of use.

Riparian restoration projects would include erosion control treatment on existing landings and skidtrails, and on eroding streambanks that are contributing sediment to the streams. Treatment of existing roads would be implemented as part of an overall riparian restoration strategy to reduce impacts caused by roads. Impacts include erosion and increased runoff from inadequately or poorly drained roads, especially those located close to streams and with poorly designed drainage structures and stream crossings. Road treatments would include road relocation (11.2 miles of new construction, all of which is included in the new construction mentioned above), reconstruction (44 miles of existing roads for DFPZ and group selection access), and decommissioning (14.9 miles). Reconstruction activities would also include improvement or relocation of several in-channel water sources.

Decision To Be Made

The decision to be made is whether to implement the proposed action as described above, to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

In order to fully test the Herger-Feinstein Quincy Library Group Forest Recovery Act on the Almanor Ranger District (*e.g.*, implement contiguous DFPZs on the landscape), it is necessary to analyze and implement the resource management activities outlined in the Act within suitable habitat for the California spotted owl. The Lakes Forest Recovery Project proposed action includes projects within suitable habitat.

The Record of Decision for the Herger-Feinstein Quincy Library Group Forest Recovery Act Final Environmental Impact Statement (FEIS) stated that California spotted owl habitat would be avoided at the site-specific project level until a new California spotted owl habitat management strategy is released. The decision to implement resource management activities within suitable owl habitat in the Lakes Forest Recovery Project area will be based upon one or more of the following three actions:

(1) A decision is made on the Sierra Nevada Conservation Framework (that would amend the Lassen National Forest (NF) Land and Resource Management Plan) that defines a new owl strategy and allows the implementation of resource management activities as outlined in the Act; or;

(2) A new California spotted owl viability assessment is completed providing direction encompassing the species' range and the Lassen NF Land and Resource Management Plan is amended to include the new owl strategy, or;

(3) A site-specific California spotted owl strategy would be developed and implemented for this project resulting in a non-significant amendment to the Lassen NF Forest Plan.

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. District Ranger Susan Jeheber-Matthews is the responsible official.

Tentative or Preliminary Issues and Possible Alternatives

Comments from the public and other agencies will be used in preparation of the draft environmental impact statement (EIS). The scoping process will be used to identify questions and issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

An anticipated public issue with the Lakes Forest Recovery Project is the proposal to implement resource management activities within suitable California spotted owl habitat. Alternatives currently being considered for the Lakes Forest Recovery Project include: (a) No action; (b) the proposed action as outlined above, and; (c) an alternative, based on the proposed action, that does not enter into suitable California spotted owl habitat.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

Identification of Permits or Licenses Required

No permits or licenses have been identified to implement the proposal action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review on March 2001. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register.**

The Reviewers Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 6, 2000.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 00–31694 Filed 12–12–00; 8:45 am]
BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Performance Review Board Members

AGENCY: Broadcasting Board of Governors.

ACTION: Notice of Membership.

SUMMARY: This Notice is issued to announce the membership of the Broadcasting Board of Governors (BBG) Performance Review Board.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Ms. Linda C. Beard (Executive Secretary), Office of Personnel, Broadcasting Board of Governors, 330 Independence Avenue SW, Washington, DC 20237, Telephone: (202) 619–1523.

SUPPLEMENTARY INFORMATION: In accordance with sections 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following is a list of members of the 2000 Performance Review Board for the Broadcasting Board of Governors.

Chairperson: Director for International Broadcasting Bureau, Brian Conniff (Acting). Panel 1—International Broadcasting Bureau SES Members.

Chairperson: Chief of Staff for the Broadcasting Board of Governors, Josiah H. Beeman. Panel 2: Broadcasting Board of Governors SES Members Career SES Members.

Patricia Popovich, Deputy Chief, Information Officer For Management, Information Resources Management Bureau, Department of State.

Mike Blank, Executive Officer for the Immediate Office of the Secretary for Health and Human Services.

Alternate Career SES Members, Stephen Smith, Associate Director for Management, International Broadcasting Bureau, Broadcasting Board of Governors.

Dated: December 7, 2000.

John S. Welch,

Director, Office of Personnel.

[FR Doc. 00–31746 Filed 12–12–00; 8:45 am]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Hearing on Allegations of Voting Irregularities in the Presidential Election on November 7, 2000

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearings.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, Section 3, Public Law 103–419, 108 Stat. 4338, as amended, and 45 CFR 702.3., that public hearings before the U.S. Commission on Civil Rights will commence on Thursday, January 11, 2001, beginning at 9:00 a.m., in the morning in Tallahassee, FL, and on subsequent days in Miami, FL, Jacksonville, FL, and Tampa, FL. The purpose of these hearings is to collect information within the jurisdiction of the Commission, under Public Law 98–183, Section 5(a)(1) and Section 5(a)(5), related particularly to allegations that eligible persons in Florida were denied the right to vote or to have their votes properly counted in the election of the Presidential electors on November 7, 2000.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR 701.2. The Commission is an independent bipartisan, fact finding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The Commission has broad authority to investigate allegations of voting irregularities even when alleged abuses do not involve discrimination.

Hearing impaired persons who will attend the hearings and require the services of a sign language interpreter, should contact Pamela Dunston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearings.

FOR FURTHER INFORMATION CONTACT: Les Jin, Office of the Staff Director (202) 376–7700.

Dated: December 11, 2000.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–31904 Filed 12–11–00; 2:52 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 68–2000]

Foreign-Trade Zone 64—Jacksonville, FL; Application for Subzone Status; Atlantic Marine, Inc. (Shipbuilding and Repair)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Jacksonville Port Authority, grantee of FTZ 64, requesting special-purpose subzone status for the shipbuilding facility of Atlantic Marine, Inc. (AMI), in Jacksonville, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 5, 2000.

The AMI shipyard (81 acres, 276,000 sq. ft.) is located along the St. Johns River at 8500 Heckscher Drive in Jacksonville. The facility is used for the construction, repair, and conversion of commercial vessels for domestic and international customers. The application indicates that all steel mill products are sourced domestically. Foreign components that may be used at the AMI shipyard (up to 12% of vessel value) include propulsion units, engines and control systems, pumps, air-conditioning systems, hydraulic parts, fire doors, pipes, solenoids, valves, multimeters, gaskets, washers, signaling equipment, davits and lifeboats, electric motors, articles of rubber and chrome, navigation and electronic equipment, propellers, anchors, deck cranes, plumbing fixtures, lighting equipment, carpet, furniture, wall and ceiling panels, and table and kitchen ware (2000 duty rate range: free—29%, *ad valorem*).

FTZ procedures would exempt AMI from Customs duty payments on the foreign components (except steel mill products) used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. The manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 12, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 26, 2001).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 2831 Talleyrand Avenue, Jacksonville, FL 32206.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: December 5, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31755 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1130]

Expansion of Foreign-Trade Zone 94; Laredo, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Laredo, Texas, grantee of Foreign-Trade Zone 94, submitted an application to the Board for authority to expand FTZ 94 to include a site at the Unitec Industrial Center located in Laredo (Site 6), within the Laredo Customs port of entry (FTZ Docket 7–2000; filed 3/3/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 12970, 3/10/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders: The application to expand FTZ 94 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 28th day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternote Choirman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31750 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers nine producers/exporters of the subject merchandise. The period of review (POR) is July 1, 1998, through June 30, 1999. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the "Final Results of Review" section. Furthermore, we are not revoking the antidumping duty order with respect to Malee Sampran Public Co., Ltd. (Malee) given that shipments of this company's subject merchandise to the United States have not been made in commercial quantities for each of the three consecutive review periods that formed the basis of the revocation request.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department regulations are to the regulations codified at 19 CFR Part 351 (1999).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Vita Food Factory (1989) Co., Ltd. (Vita); Siam Fruit Canning (1988) Co., Ltd. (SIFCO); Siam Food Products Public Co. Ltd. (SFP); The Thai Pineapple Public Co., Ltd. (TIPCO); Malee; The Prachuab Fruit Canning Company Ltd. (PRAFT); Thai Pineapple Canning Industry (TPC); Tropical Food Industries Co., Ltd. (TROFCO); and Kuiburi Fruit Canning Co. Ltd. (KFC).

On August 8, 2000, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke Order in Part: Canned Pineapple Fruit From Thailand,* 65 FR 48450 (*Preliminary Results*). On September 7 and 14, 2000, we received case briefs and/or rebuttal briefs, respectively, from the petitioners,[1] SFP, TIPCO, Malee, TPC, and SIFCO.

Scope of Review

The product covered by this review is canned pineapple fruit (CPF). CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated December 6, 2000, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding

[1] The petitioners in this case are Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Determination Not To Revoke Order

For the reasons outlined in the Decision Memorandum, we have determined not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Malee, because its sales were not made in commercial quantities in accordance with 19 CFR 351.222(e)(1)(ii).

Fair Value Comparisons

We calculated export price (EP) and normal value (NV) based on the same methodology used in the preliminary results. We corrected clerical errors with respect to Malee and TPC.

Cost of Production

We calculated the COP based on the same methodology used in the preliminary results, with the exception of PRAFT. For PRAFT we used the five-year historical net realizable value ratio for calculating the fruit cost used in the COP. For a further discussion of this issue, *see* the Decision Memorandum, Comment 4. We corrected clerical errors with respect to SFP.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Siam Food Products Company Ltd	0.37
The Thai Pineapple Public Company, Ltd	1.95
Kuiburi Fruit Canning Co. Ltd	1.63
Thai Pineapple Canning Industry	3.42
Siam Fruit Canning (1988) Co. Ltd	1.31
Vita Food Factory (1989) Co. Ltd	5.19
The Prachuab Fruit Canning Company Ltd	2.16
Tropical Food Industries Co., Ltd	4.02
Malee Sampran Public Co., Ltd	1.04

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the import-specific assessment rate is above *de minimis* we will instruct the Customs Service to assess antidumping dutjes on that importer's entries of subject merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above, except where the margins are zero or *de minimis* no cash deposit will be required, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix—Issues Covered in Decision Memorandum

I. ISSUES SPECIFIC TO MALEE
Comment 1: Revocation
Comment 2: Imputed Credit Expenses
Comment 3: Export Price (EP) vs. Constructed Export Price (CEP)
II. ISSUES SPECIFIC TO PRAFT
Comment 4: Fruit Cost Allocation
Comment 5: Direct vs. Indirect Selling Expenses
III. ISSUES SPECIFIC TO SIFCO
Comment 6: Correction of Errors in Database
Comment 7: Calculation of General and Administrative (G&A) Expense Ratio
Comment 8: Calculation of Interest Expense Ratio
IV. ISSUES SPECIFIC TO TIPCO
Comment 9: Expenses Related to Compliance with the Antidumping Duty Order
Comment 10: Foreign Exchange Gains and Losses
Comment 11: Calculation of Interest Expense Ratio
Comment 12: Offset to G&A
Comment 13: Purchase of Input from Affiliated Party
Comment 14: Offset to Cost of Manufacturing (COM)
Comment 15: Clerical Error Allegation
V. ISSUES SPECIFIC TO TPC
Comment 16: Date of Sale
Comment 17: EP vs. CEP
Comment 18: Allocation of G&A to Arbitrage Activity
Comment 19: Allocation of Interest Expense to Arbitrage Activity
Comment 20: Clerical Error Allegation
VI. ISSUES SPECIFIC TO SFP
Comment 21: Clerical Error Allegation

[FR Doc. 00–31751 Filed 12–12–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination to revoke the antidumping duty order in part: Certain pasta from Italy.

SUMMARY: On August 8, 2000, the Department of Commerce (the "Department") published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Italy. This review covers the following exporters/producers of subject merchandise: (1) Commercio-Rappresentanze-Export S.r.l. ("Corex"); (2) F.lli De Cecco di Filippo Fara S. Martino S.p.A. ("De Cecco"); (3) La Molisana Industrie Alimentari S.p.A. ("La Molisana"); (4) Pastificio Fratelli Pagani S.p.A. ("Pagani"); (5) Pastificio Antonio Pallante ("Pallante"); (6) P.A.M. S.r.l. ("PAM"); and (7) N. Puglisi & F. Industria Paste Alimentare S.p.A. ("Puglisi"). The period of review ("POR") is July 1, 1998, through June 30, 1999.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section *"Final Results of Review."* For our final results, we have found that during the POR, La Molisana and PAM sold subject merchandise at less than normal value ("NV"). We have also found that during the POR, Corex, De Cecco, Pallante, Pagani, and Puglisi did not make sales of the subject merchandise at less than NV (i.e., "zero" or *de minimis* dumping margins). In addition, we are revoking the antidumping order with respect to De Cecco, based on three years of sales in commercial quantities at not less than NV. See *"Intent to Revoke"* section of this notice.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Geoffrey Craig, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3965, or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On August 8, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta from Italy*, 65 FR 48467 (August 8, 2000) (*"Preliminary Results"*). The review covers seven manufacturers/exporters. The POR is July 1, 1998, through June 30, 1999. We invited parties to comment on our preliminary results of review. We received case briefs on September 7, 2000, from PAM, De Cecco, and La Molisana.[1] A public hearing was not held with respect to this review.[2] The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*"HTSUS"*). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the case file in the Central Records Unit, main Commerce building, room B–099 ("the CRU").

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John

[1] On September 28, 2000, we rejected one page of the case brief submitted by PAM, pursuant to 19 CFR 351.301(b)(2) and 19 CFR 351.302(d), because we found that the page contained untimely new factual information. PAM resubmitted the page of the case brief without the new information on October 2, 2000.

[2] Although on September 7, 2000 PAM requested a hearing, that request was subsequently withdrawn on September 18, 2000. No other party requested a hearing.

Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

Determination to Revoke

On July 28, 1999, De Cecco submitted a request, pursuant to 19 CFR 351.222, that the Department revoke the antidumping duty order with respect to its sales of the subject merchandise. In accordance with 19 CFR 351.222(e), this request was accompanied by a certification that De Cecco had not sold the subject merchandise at less than NV for a period of three consecutive reviews, which included this review period, and that it sold the subject merchandise in commercial quantities to the United States during each of these three years. De Cecco also has stated that it would not sell the subject merchandise at less than NV to the United States in the future, and agreed to the reinstatement of the antidumping order with respect to its merchandise, as long as any exporter or producer is subject to the order, if the Department concludes that De Cecco sold the subject merchandise at less than NV.

In our preliminary results, in accordance with 19 CFR 351.222(f), we stated our intent to revoke in part the order for certain pasta from Italy as it pertains to De Cecco's sales of the subject merchandise. *See Preliminary Results*. No parties submitted comments on De Cecco's request for revocation.

Therefore, because De Cecco has made sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Jarrod Goldfeder to File, "Shipments of Pasta to the United States by De Cecco," dated July 31, 2000) and because there is no evidence on the record to indicate the likelihood of resumption of sales at dumped prices, we are revoking the antidumping duty order in part with respect to De Cecco's sales of the subject merchandise. *See Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part*, 65 FR 39367 (June 26, 2000).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *"Issues and Decision Memorandum for the Third Antidumping Duty Administrative Review" ("Decision Memorandum")* from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU, room B–099 ("B–099") of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Corex	zero
De Cecco	0.22 (*de minimis*)
La Molisana	5.26
Pagani	0.49 (*de minimis*)
Pallante	0.08 (*de minimis*)
PAM	5.04
Puglisi	0.07 (*de minimis*)

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where the importer-specific assessment rate is above *de miminis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Decision Memorandum

PAM

Comment 1: Excluding certain sales from the database
Comment 2: Model matching for unenriched pasta
Comment 3: Selection of normal values
Comment 4: Exchange rate conversion
Comment 5: Level of trade methodology
Comment 5A: General level of trade methodology
Comment 5B: Inventory carrying cost
Comment 5C: Freight and delivery
Comment 6: Shape-based methodology
Comment 7: Short-term borrowing rate
Comment 8: Verification
Comment 9: Sampling methodology
Comment 10: Department of Commerce's release of data
Comment 11: Constructed export price language in the margin program
Comment 12: Administrative process
Comment 13: Accuracy of final results
Comment 14: Cost of production and constructed value data
Comment 15: Weight-averaging methodology
Comment 16: Disregarding sales below cost
Comment 17: Misstated cost data
Comment 18: Raw material cost
Comment 19: Home market sales used in below-cost test
Comment 20: Below-cost sales
Comment 21: General and administrative expenses
Comment 22: Financial expense rate

De Cecco

Comment 23: Constructed export price offset and commission offset
Comment 24: U.S. selling expenses
Comment 25: Countervailing duty variable

La Molisana

Comment 26: Treatment of negative net-U.S. prices
Comment 27: Total overall cost of production data for calculation of cost of production and constructed value
Comment 28: Ministerial Error

[FR Doc. 00–31752 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Preliminary Results of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper antidumping duty review: Certain pasta from Turkey.

SUMMARY: In response to a request by a pasta producer and its affiliated exporter in Turkey, Beslen Makarna Gida Sanayi ve Ticaret A.S., and Beslen Pazarlarma Gida Sanayi ve Ticaret A.S., respectively (collectively "Beslen"), the Department of Commerce ("the Department") is conducting a new shipper review of the antidumping duty order on certain pasta from Turkey. The review covers sales during the period July 1, 1999 through December 31, 1999. We preliminarily determine that Beslen did not sell subject merchandise at less than normal value during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or James Terpstra, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3797, or 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

Case History

The Department published the antidumping duty order on certain pasta from Turkey on July 24, 1996 (61 FR 38545). On January 27, 2000, Beslen requested a new shipper review pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214.

On February 17, 2000, the Department initiated the new shipper review of Beslen, and the notice of initiation was published on February 23, 2000 (65 FR 8949).

On February 17, 2000, we issued an antidumping questionnaire [1] to Beslen. Beslen submitted its sections A, B and C questionnaire response on March 27, 2000. The Department issued two supplemental section A through C questionnaires to Beslen on August 25 and September 22, 2000. Beslen submitted its responses to our supplemental questionnaires on September 18 and October 10, 2000, respectively.

On August 8, 2000, the Department published a notice postponing the preliminary results of this review until December 7, 2000 (65 FR 48477).

We verified the sales information submitted by Beslen from November 13 to 17, 2000.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Turkey that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, or by QC&I International Services.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively.

Scope Rulings

The Department has issued the following scope ruling to date:

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* "Memorandum from John Brinkmann to Richard Moreland," dated May 24, 1999, in the case file in the Central Records Unit ("the CRU"), main Commerce building, room B–099.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by Beslen. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report placed in the case file in the CRU.

Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Because Beslen sold identical merchandise in the U.S. and comparison markets, when comparing U.S. sales with comparison market sales, it was not necessary to make any adjustments for physical differences in the merchandise as permitted under section 773(a)(6)(C)(ii) of the Act.

Comparisons to Normal Value

To determine whether sales of certain pasta from Turkey were made in the United States at less than normal value ("NV"), we compared the export price ("EP") to the NV, as described in the "*Export Price*" and "*Normal Value*" sections of this notice. Because Turkey's economy experienced high inflation during the POR (over 60 percent), as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60 contemporaneity rule" (*see, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 64 FR 69493 (December 13, 1999) and *Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (August 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise warranted based on the facts on the record. We based EP on the packed delivered prices to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant to port of exportation, foreign handling fees, international freight, U.S. brokerage, U.S. duty, and U.S. inland freight. In addition, we increased the EP by the amount of the countervailing duties imposed that were attributable to an export subsidy, in accordance with section 772(c)(1)(C) of the Act.

Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Beslen's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Beslen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Beslen.

Normal Value

We calculated NV based on ex-works or delivered prices to comparison market customers. We made deductions from the starting price for inland freight, discounts, and rebates according to 773(a)(6)(B)(ii) of the Act. We added U.S. packing costs and deducted comparison market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. In addition, we made circumstance of sale adjustments for direct expenses, including imputed credit and advertising, in accordance with section 773(a)(6)(C)(iii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade ("LOT") as the U.S. EP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customers. If the comparison market sales were at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we made a LOT adjustment under section 773(a)(7)(A) of the Act.

Beslen reported 95 percent of comparison market sales to an unaffiliated distributor ("group 1"). The remaining 5 percent of comparison market sales were made to distributors, end-users, or affiliated customers (collectively, "group 2"). We found that the two home market groups differed significantly with respect to selling activities for sales process and marketing support. Based on our overall analysis, we found that the two home market groups constituted two different LOTs.

Beslen reported one EP sale to an unaffiliated retailer and, therefore, only had one level of trade for U.S. sales. This EP LOT differed considerably from the home market group 1 with respect to selling activities associated with sales process and marketing support, advertising, and freight and delivery, and from group 2 with respect to freight and delivery, and advertising. Consequently, we could not match EP sales to sales at the same LOT in the home market. In addition, we could not make a LOT adjustment because there was no way to measure whether the differences in the LOTs between the comparison market sales and the U.S. sale affected price comparability since there were no home market sales at the LOT of the export transaction. Therefore, we have matched EP sales to all sales in the home market and made no level of trade adjustment.

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and used daily exchange rates. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429 (December 11, 1998).

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for Beslen is 0.00 percent.

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent) the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this new shipper review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this new shipper review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Beslen will be zero; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 51.49 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31753 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review: certain pasta from Turkey.

SUMMARY: We determine that sales of the subject merchandise have not been made below normal value (NV).

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Cindy Lai Robinson, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

Case History

On August 8, 2000, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Turkey. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 48474 ("*Preliminary Results*"). As discussed in the preliminary results, this review covers shipments by one respondent, Filiz Gida Sanayi ve Ticaret A.S ("Filiz"), during the period of review ("POR") July 1, 1998 through June 30, 1999. Interested parties did not submit case briefs nor did they request a hearing. There have been no changes since the preliminary results.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* "Memorandum from John Brinkmann to Richard Moreland," dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 ("the CRU").

Price Comparisons

We calculated export price and normal value ("NV") based on the same methodology described in the *Preliminary Results*.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondent participating in the review made home market sales of the foreign like product during the POR at prices below its cost of production ("COP") within the meaning of section 773(b)(1) of the Act. We calculated the COP for these final results following the same methodology as in the *Preliminary Results*.

We found 20 percent or more of Filiz's sales of a given product during the six-month reporting period were at prices less than the weighted-average COP for the reporting period and thus determined that these below cost sales were made in "substantial quantities" within an extended period of time in accordance with sections 773(b)(2)(B) and (C) of the Act. As discussed in the preliminary results, in our September 1, 1999 letter, we granted Filiz a six-month limited reporting period, and we advised Filiz that if it elected to limit its reporting of home market data to the six-month period, in the sales-below-cost investigation, it would forgo the application of the "recovery of cost" test pursuant to section 773(b)(2)(D) of the Act. Filiz agreed to accept this limitation on September 7, 1999. Consequently, without the application of "recovery of cost" test, we determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of these final results, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, pursuant to section 773(b)(1) of the Act. While we disregarded some below-cost sales, sufficient sales remained that passed the cost test in the current review. Therefore, it was unnecessary to calculate constructed value in this case.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the *Preliminary Results*. As noted above, we received no comments from the petitioners or Filiz.

Final Results of Review

As a result of our review, we determine that Filiz had a zero weighted-average margin for the period July 1, 1998 through June 30, 1999.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value. Where the importer-specific assessment rate is above *de minimis* we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

Cash Deposit Requirements

To calculate the cash-deposit rate for Filiz in this administrative review, we divided the total dumping margins for Filiz by the total net value for Filiz's sales during the review period.

Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise from Turkey entered, or withdrawn from warehouse, for consumption upon publication of these final results of administrative review, as provided by sections 751(a)(2)(A) and (C) of the Act: (1) The cash deposit rate for Filiz will be zero; (2) for other previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 51.49 percent, the "all others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 USC 1675(a)(1) and 19 USC 1677f(i)(1)).

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31754 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

December 7, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54872, published on October 8, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 13, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	160,947 dozen.
338/339	3,153,690 dozen.
340/640	1,271,931 dozen.
341/641	1,048,888 dozen.
347/348	3,168,321 dozen.
635	507,422 dozen.
638/639	2,382,782 dozen.
647/648	1,515,974 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–31720 Filed 12-13-00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

December 7, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 360 is being increased for swing, reducing the limit for Category 369-D to account for the swing being applied. In addition, the donor category for a previous swing to Categories 342/642/842 is being changed from Category 360 to Category 369–D. There is no net effect on the limit for Categories 342/642/842.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70223, published on December 16, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 13, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
360	2,225,441 numbers.
369–D [2]	459,013 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31721 Filed 12–12–00; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 00–80–NG, et al.]

Koch Energy Trading, Inc., et al.; Orders Granting, Amending, Transferring and Vacating Authority to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2000, it issued Orders granting, amending, transferring and vacating authority to import and export natural gas. These Orders are summarized in the appendix and may be found on the FE website at *http://www.fe.doe.gov,* or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 4, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1639	11/02/00	Kock Energy Trading, Inc. 00–80–NG.	73 Bef		Import from Canada beginning on November 3, 2000, and extending through November 2, 2002.
1464–A	11/02/00	Powerex Corp. 99–12–NG			Errata to correct order no.
1640	11/03/00	Enron LNG Marketing LLC 00–74–LNG.	300 Bcf		Import LNG from international sources not subject to trading sanctions over a two-year term beginning on the date of first delivery.
1641	11/06/00	Energy West Resources, Inc. 00–83–NG.	30 Bcf		Import and export a combined total from and to Canada over a two-year term beginning on first delivery after November 12, 2000.
1642	11/08/00	Tristar Gas Marketing Company 00–85–NG.	10 Bcf	20 Bcf	Import from Canada and import and export combined total from and to Mexico beginning on April 2, 2000, and extending through March 31, 2002.
1643	11/08/00	Sceptre Energy Inc. 00–70–NG.	50 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.
1644	11/09/00	Cordeca Corporation 00–86–NG.	60 Bcf		Import from Canada beginning on November 13, 2000, and extending through November 12, 2002.
1645	11/09/00	Alliance Canada Marketing L.P. 00–87–NG.	30 Bcf		Import from Canada beginning on November 13, 2000, and extending through November 12, 2002.
1646	11/15/00	Distrigas LLC 00–79–LNG	100 Bcf		Import from various international sources over a two-year term beginning on first delivery after November 30, 2000.
1647	11/15/00	Vector Pipeline L.P. 00–89–NG.		10 Bcf	Export to Canada beginning on November 15, 2000, and extending through November 14, 2002.
1648	11/16/00	Hess Energy Services Company, LLC 00–76–NG.		60 Bcf	Export to Canada beginning on December 22, 2000, and extending through December 21, 2002.
1649	11/16/00	Hess Energy Services Company, LLC 00–77–NG.	60 Bcf		Import from Canada beginning on December 22, 2000, and extending through December 21, 2002.
1650	11/16/00	BC Gas Utility Ltd. 00–82–NG	35 Bcf	35 Bcf	Import and export from and to Canada beginning on December 19, 2000, and extending through December 18, 2002.
991–A	11/17/00	Engage Energy Canada, L.P., (The Successor to Westcoast Gas Services Inc.) 94–73–NG.			Transfer of long-term import authority.

APPENDIX—ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1651	11/17/00	Midland Cogeneration Venture Limited Partnership 00–84–NG.	400 Bcf		Import and export a combined total over a two-year term beginning on the date of first delivery.
1202–B	11/20/00	Engage Energy America Corp. (Succesor to Westcoast Gas Services Delaware (America) Inc.) 96–52–NG.			Transfer of long-term import authority.
1128–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 95–104–NG.			Transfer of long-term import authority.
1332–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 97–48–NG.			Transfer of long-term import authority.
1253–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc. 97–03–NG.			Transfer of long-term import authority.
1282–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 97–37–NG.			Transfer of long-term import authority.
1275–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 97–36–NG.			Transfer of long-term import authority.
1652	11/20/00	Coastal Merchant Energy, L.P. 00–88–NG.	600 Bcf	150 Bcf	Import a combined total from Canada and Mexico, and export a combined total to Canada and Mexico, beginning on October 3, 2000, and extending through October 2, 2002.
1617–A	11/20/00	Engage Energy US, L.P. 00–56–NG.			Vacating blanket import and export authority.
1653	11/21/00	El Paso Merchant Energy—Gas, L.P. 00–90–LNG.	200 Bcf		Import from various international sources over a two-year term beginning on the date of first delivery.
1654	11/29/00	Nexen Marketing U.S.A. Inc. 00–91–NG.		200 Bcf	Import and export a combined total from and to Canada and Mexico, beginning on January 1, 2001, and extending through December 31, 2002.
1655	11/29/00	Berkley Petroleum Corp. 00–92–NG.	20 Bcf		Import from Canada beginning on December 1, 2000, and extending through November 30, 2002.
1622–A	11/30/00	Engage Energy America Corp. (Formerly Westcoast Gas Services Delaware (America) Inc.) 00–58–NG.			Amendment to blanket import authority changing name of company.

[FR Doc. 00–31715 Filed 12–12–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–33–000, et al.]

FPL Group, Inc., et al. Electric Rate and Corporate Regulation Filings

December 5, 2000.

Take notice that the following filings have been made with the Commission:

1. FPL Group, Inc., on behalf of itself and its public utility affiliates, and Entergy Corporation, on behalf of itself and its public utility affiliates

[Docket No. EC01–33–000]

Take notice that on November 30, 2000, FPL Group, Inc. (FPL Group), on behalf of itself and its public utility affiliates, and Entergy Corporation (Entergy), on behalf of itself and its public utility affiliates, filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby FPL Group and Entergy will become wholly-owned subsidiaries of a newly formed holding company (the Merged Company). FPL Group, through its subsidiaries and affiliates, owns and operates facilities for the generation and transmission of electricity throughout most of the east and lower west coasts of Florida. Entergy, through its subsidiaries and affiliates, owns and operates facilities for the generation and transmission of electricity in Arkansas, Louisiana, Mississippi, and Texas. Both FPL Group and Entergy also indirectly own and operate independent power projects throughout the United States.

The proposed merger of FPL Group and Entergy involves the indirect transfer of control over all jurisdictional facilities owned and operated by the FPL Group and Entergy subsidiaries and affiliates. The proposed merger will be accomplished through a merger of FPL Group and Entergy with and into subsidiaries of the Merged Company, with FPL Group and Entergy being the surviving companies. As a result, each share of FPL Group common stock (other than shares held by FPL Group, Entergy, or the Merged Company) will

be converted into the right to receive one share of the Merged Company common stock and each outstanding share of Entergy common stock (other than shares held by FPL Group, Entergy, or the Merged Company) will be converted into the right to receive 0.585 of a share of the Merged Company common stock.

Pursuant to 18 CFR 388.112, Applicants request confidential treatment of the Competitive Analysis Screening model (CASm) submitted by William H. Hieronymus and J. Stephen Henderson, witnesses in support of Applicants. The CASm is a proprietary computer model used by Dr. Hieronymus and Dr. Henderson to conduct their competitive analyses.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. PPL Montour, LLC

[Docket No. EG01–36–000]

Take notice that on November 29, 2000, PPL Montour, LLC tendered for filing an Application for New Determination of Exempt Wholesale Generator Status.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Duke Energy Lee, LLC

[Docket No. EG01–37–000]

Take notice that on November 30, 2000, Duke Energy Lee, LLC (Duke Lee) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations. Duke Lee is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in Lee County, Illinois. The eligible facilities will consist of an approximately 640 MW natural gas-fired, simple cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. ISO New England Inc.

[Docket No. EL00–62–014]

Take notice that on December 1, 2000, ISO New England Inc. filed a revised implementation plan for the Congestion Management and Multi-Settlement Systems.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER01–522–000]

Take notice that on November 29, 2000, MidAmerican Energy Company (MidAmerican) tendered for filing a Wholesale Market-Based Rate Tariff and a pro forma Service Agreement. In addition, MidAmerican tendered for filing certain modifications to its currently-effective Power Sales Tariff.

MidAmerican seeks an effective date of December 1, 2000 for all of the tariff sheets submitted with this filing.

MidAmerican states that its Wholesale Market Based Rate Tariff and pro forma Service Agreement, are being filed in order to conform to a pro forma tariff prepared by a group of representatives from various segments of the electric industry. MidAmerican states that it does not proposed to eliminate its currently effective Power Sales Tariff which permits sales of power at market based rates. However, MidAmerican proposed to revise the Power Sales Tariff to provide that MidAmerican will offer service under that tariff only to customers that (1) have an existing service agreement under the Power Sales Tariff (until the agreement expires) or (2) wish to purchase power from MidAmerican, but do not wish to sell power to MidAmerican.

Copies of this filing have been sent to the Iowa Utilities Board, Illinois Commerce Commission and South Dakota Public Utility Commission.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Otter Tail Power Company

[Docket No. RT01–63–001]

Take notice that on November 27, 2000, Otter Tail Power Company tendered for filing an Amendment to its Order No. 2000 compliance filing.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Nevada Power Company

[Docket No. ER00–2015–004]

Sierra Pacific Power Company

[Docket No. ER00–2018–004]

Take notice that on December 1, 2000, Nevada Power Company and Sierra Pacific Power Company tendered for filing their compliance filing in the above-captioned dockets.

This filing has been served on all parties on the official service list in this proceeding.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Hudson Gas & Electric Corporation

Consolidated Edison Company of New York, Inc.,

Long Island Light Company

New York State Electric & Gas Corporation

Niagara Mohawk Power Corporation

Power Authority of the State of New York

Orange and Rockland Utilities, Inc.

Rochester Gas and Electric Corporation

Docket Nos. ER97–1523–057, OA97–470–053, ER97–4234–051, (not consolidated)

Take notice that on November 28, 2000, the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly know as the Member Systems of the New York Power Pool (Member Systems), tendered for filing a compliance report disclosing TSC refunds made pursuant to the Joint Offer of Settlement of November 17, 1999. The Member Systems state that these refunds have been made in compliance with the Commission's July 31, 2000 letter order in this proceeding.

A copy of this filing was served upon all persons in the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Williams Generating Company-Hazelton

[Docket No. ER97–4587–002]

Take notice that on November 29, 2000, Williams Generating Company-Hazelton (WGCH) a power marketer selling electric power at wholesale pursuant to market-based rate authority granted to it by the Federal Energy Regulatory Commission tendered for filing an updated market power analysis in compliance with the Commission's October 23, 1997 letter order in Docket No. ER97–4587.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket Nos. ER98–3594–006]

Take notice that on December 1, 2000, the California Independent System Operator Corporation (ISO), tendered for filing with the Federal Energy Regulatory Commission a report prepared by the ISO's Department of Market Analysis entitled "The Firm Transmission Rights Market: Review of the First Nine Months of Operation, February 1, 2000—October 31, 2000" and a document prepared by the ISO's Market Surveillance Committee entitled "An Assessment of the February through October 2000 California ISO Firm Transmission Rights Market." This filing was submitted in compliance with the Commission's May 3, 1999 and August 2, 1999 Orders in the above-captioned proceedings.

The ISO has served these documents upon each person on the official service list in the above-captioned proceeding. These documents are also being posted on the ISO's internet Home Page, *www.caiso.com.*

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–000, ER00–3591–001, ER00–3591–004, ER00–1969–005]

Take notice that on November 30, 2000, the New York Independent System Operator, Inc. (NYISO) tendered for filing a request for leave to submit Alternative Compliance Filing in the above-captioned proceedings. The NYISO was required to submit this compliance filing pursuant to New York Independent System Operator Inc., 93 FERC ¶ 61,142 (2000).

A copy of this filing was served upon all parties in the above-referenced dockets.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER00–3188–002]

Take notice that on November 29, 2000, Sierra Pacific Power Company and Nevada Power Company tendered for filing their compliance filing in the above-captioned docket.

This filing has been served on all parties on the official service list in this proceeding.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Westmoreland-LG&E Partners (Roanoke Valley I)

[Docket No. ER01–538–000]

Take notice that on November 30, 2000, Westmoreland-LG&E Partners tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, the Third Amendment and Restatement of the Power Purchase and Operating Agreement By and Between Westmoreland-LG&E Partners as Successor in Interest to Beckley Cogeneration Company and Virginia Electric and Power Company for sales from its Roanoke Valley I (ROVA I) facility entitled First Revised Rate Schedule FERC No 1. Westmoreland-LG&E Partners have requested certain waivers of the Commission's regulations.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER01–539–000]

Take notice that on November 30, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement for short-term firm point to point transmission service under the terms of PNM's Open Access Transmission Tariff (OATT) with El Paso Merchant Energy, L.P. (El Paso), dated November 7, 2000. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to El Paso and to the New Mexico Public Regulation Commission.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER01–540–000]

Take notice that on November 30, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin Public Service Corporation (WPSC), tendered for filing a service agreement between WPSC and Stratford Water and Electric Utility (STRATFORD). Service Agreement No. 11 provides service to STRATFORD, under WPSC's W–1A full requirements tariff.

The company states that copies of this filing have been served upon STRATFORD and to the State Commissions where WPSC serves at retail.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company

Metropolitan Edison Company

Pennsylvania Electric Company

[Docket No. ER01–541–000]

Take notice that on November 30, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and El Paso Power Services Company (now El Paso Merchant Energy, L.P.), FERC Electric Rate Schedule, Second Revised Volume No. 5, Service Agreement No. 19.

GPU Energy requests that cancellation be effective the 29th day of January 2001.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. STI Capital Company

[Docket No. ER01–542–000]

Take notice that on November 29, 2000, STI Capital Company. (STI), tendered for filing with the Commission an application for acceptance of STI's Tariff FERC Electric No. 1; the granting of certain blanket approvals including authority to sell electricity at market-based rates and the waiver of certain Commission Regulations. STI intends to engage in wholesale electric power sales from the York facility that currently is owned by, and being transferred from, Solar Turbines Incorporated.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company and Entergy Services, Inc.

[Docket No. ER01–543–000]

Take notice that on November 30, 2000, Florida Power & Light Company (FPL) and Entergy Services, Inc., on behalf of the Entergy Operating Companies (the Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.) (collectively, Applicants) tendered for

filing a System Integration Agreement to take effect upon the consummation of the proposed merger of FPL Group, Inc., parent company of FPL, and Entergy Corporation, parent company of the Entergy Operating Companies.

Applicants state that they have served a copy of the filing on the regulators of FPL and the Entergy Operating Companies.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Cook Inlet Power, LP

[Docket No. ER01–544–000]

Take notice that on November 30, 2000, Cook Inlet Power, LP (Cook Inlet LP) tendered for filing a petition for Commission acceptance of Cook Inlet LP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Cook Inlet LP intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cook Inlet LP is not in the business of generating or transmitting electric power.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Lee, LLC

[Docket No. ER01–545–000]

Take notice that on November 30, 2000, Duke Energy Lee, LLC (Duke Lee), tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Lee seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Lee also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke Lee seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. MidAmerican Energy Company

[Docket No. ER01–548–000]

Take notice that on November 30, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission two (2) Firm Transmission Service Agreement entered into by MidAmerican, as transmission provider, and Ameren Energy Marketing Company, as wholesale merchant. Each Agreement is dated November 9, 2000 and has been entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of November 9, 2000 for each Agreement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER01–549–000]

Take notice that on December 1, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, tendered for filing with the Commission a Service Agreement for Non-Firm Point-To-Point Transmission Service with Upper Peninsula Power Company (UPPC) entered into pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of November 3, 2000, for the Agreement and accordingly seeks a waiver of the Commission's notice requirement.

Illinois Power has served a copy of the filing on UPPC.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER01–550–000]

Take notice that on December 1, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with Cottonwood Energy Company L.P. (Cottonwood), and a Generator Imbalance Agreement with Cottonwood.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Western Systems Power Pool, Inc.

[Docket No. ER01–551–000]

Take notice that on December 1, 2000, the Western Systems Power Pool (WSPP) tendered for filing further updates and correct aspects of the WSPP Agreement.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Virginia Electric and Power Company

[Docket No. ER01–553–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing an amendment, "Rider SB1286 For Resale Service to Virginia Municipal Electric Association No. 1 under Schedule VMEA–RS" (the Rider), to the Agreement for the Purchase of Electricity for Resale Between Dominion Virginia Power and Virginia Municipal Electric Association Number 1 (VMEA) dated as of January 12, 1989, First Revised Rate Schedule FERC No. 109. The Rider reflects Senate Bill 1286 passed by the 1999 Virginia General Assembly which provides for the elimination of the gross receipts tax and the imposition of the Virginia state income tax effective January 1, 2001.

Dominion Virginia Power requests that the Rider become effective January 1, 2001.

Dominion Virginia Power states that copies of the filing have been served upon VMEA and the Virginia State Corporation Commission.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31702 Filed 12–12–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–174–000]

Lighthouse Energy Trading Company, Inc.; Notice of Issuance of Order

December 7, 2000.

Lighthouse Energy Trading Company, Inc. (LETC) submitted for filing a rate schedule under which LETC will engage in wholesale electric power and energy transactions at market-based rates. LETC also requested waiver of various Commission regulations. In particular, LETC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by LETC.

On December 1, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by LETC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, LETC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of LETC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 2, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31691 Filed 12–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–388–000]

WFEC Genco, L.L.P.; Notice of Issuance of Order

December 7, 2000.

WFEC Genco, L.L.P. (WFEC) submitted for filing a rate schedule under which WFEC will engage in wholesale electric power and energy transactions at market-based rates. WFEC also requested waiver of various Commission regulations. In particular, WFEC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by WFEC.

On November 30, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WFEC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WFEC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WFEC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 2, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31690 Filed 12–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

December 8, 2000.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 15, 2000, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- Docket Nos. EL00–95–000, 002 and 003, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
- Docket Nos. EL00–98–000, 002 and 003, Investigation of Practices of the California Independent System Operator and the California Power Exchange
- Docket No. EL00–107–000, Public Meeting in San Diego, California
- Docket No. EL00–97–000, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc. and Southern Energy California, L.L.C. v. California Independent System Operator Corporation
- Docket No. EL00–104–000, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Power Exchange
- Docket No. EL01–1–000, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
- Docket No. EL01–2–000, Californians for Renewable Energy, Inc.

v. Independent Energy Producers, Inc. and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation and California Power Exchange

• Docket No. EL01–10–000, Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western System Power Pool Agreement

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400.

David P. Boergers,

Secretary.

[FR Doc. 00–31883 Filed 12–11–00; 11:44 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00302; FRL–6752–5]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides AEGL values and Executive Summaries for 7 chemicals for public review and comment. Comments are welcome on both the AEGL values in this notice and the Technical Support Documents placed in the public version of the official record for these 7 chemicals.

DATES: Comments, identified by the docket control number OPPTS–00302, must be received by EPA on or before January 12, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00302 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404 and TDD: (202) 554–055; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on "Proposed" AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00302. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

3. *Fax-on-Demand.* You may request to receive a faxed copy of the document(s) by using a faxphone to call (202) 401–0527 and select the item number 4800 for an index of the items available by fax-on-demand in this category, or select the item number for the document related to the chemical(s) identified in this document as listed in the chemical table in Unit III. You may also follow the automated menu.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00302 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. (Note: for express delivery, please see "In person or by courier" in this unit).

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control numbers OPPTS–00302. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without official notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data that you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve this notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. Introduction

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice on October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as "the efficient and effective development of Acute Exposure Guideline Levels (AEGLs) and the preparation of supplementary qualitative information on the hazardous substances for federal, state, and local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response." The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for chemicals through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available. An initial priority list of 85 chemicals for AEGL development was published in the **Federal Register** of May 21, 1997 (62 FR 27734) (FRL–5718–9). This list is intended for expansion and modification as priorities of the stakeholder member organizations are further developed. While the development of AEGLs for chemicals are currently not statutorily based, at lease one rulemaking references their planned adoption. The Clean Air Act and Amendments Section 112(r) Risk Management Program states, "EPA recognizes potential limitations associated with the Emergency Response Planning Guidelines and Level of Concern and is working with other agencies to develop AEGLs. When these values have been developed and peer-reviewed, EPA intends to adopt them, through rulemaking, as the toxic endpoint for substances under this rule (see 61 FR 31685)." It is believed that other Federal and State agencies and private organizations will also adopt AEGLs for chemical emergency programs in the future.

B. Characterization of the AEGLs

The AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposure periods ranging from 10 minutes to 8 hours. AEGL-2 and AEGL-3 levels, and AEGL-1 levels as appropriate, will be developed for each of five exposure periods (10 and 30 minutes, 1 hour, 4 hours, and 8 hours) and will be distinguished by varying degrees of severity of toxic effects. It is believed that the recommended exposure levels are applicable to the general population including infants and children, and other individuals who may be sensitive and susceptible. The AEGLs have been defined as follows:

• AEGL-1 is the airborne concentration (expressed as parts per million (ppm) or milligram/meter cube (mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic, non-sensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.

• AEGL-2 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects, or an impaired ability to escape.

• AEGL-3 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience life-threatening health effects or death.

Airborne concentrations below the AEGL-1 represent exposure levels that could produce mild and progressively increasing odor, taste, and sensory irritation, or certain non-symptomatic, non-sensory effects. With increasing airborne concentrations above each AEGL level, there is a progressive increase in the likelihood of occurrence and the severity of effects described for each corresponding AEGL level. Although the AEGL values represent threshold levels for the general public, including sensitive subpopulations, it is recognized that certain individuals, subject to unique or idiosyncratic responses, could experience the effects described at concentrations below the corresponding AEGL level.

C. Development of the AEGLs

The NAC/AEGL Committee develops the AEGL values on a chemical-by-chemical basis. Relevant data and information are gathered from all known sources including published scientific literature, State and Federal agency publications, private industry, public databases, and individual experts in both the public and private sectors. All key data and information are summarized for the NAC/AEGL

Committee in draft form by Oak Ridge National Laboratories together with "draft" AEGL values prepared in conjunction with NAC/AEGL Committee members. Both the "draft" AEGLs and "draft" technical support documents are reviewed and revised as necessary by the NAC/AEGL Committee members prior to formal committee meetings. Following deliberations on the AEGL values and the relevant data and information for each chemical, the NAC/AEGL Committee attempts to reach a consensus. Once the NAC/AEGL Committee reaches a consensus, the values are considered "Proposed" AEGLs. The Proposed AEGL values and the accompanying scientific rationale for their development are the subject of this notice.

In this document, the NAC/AEGL Committee is publishing proposed AEGL values and the accompanying scientific rationale for their development for 7 hazardous substances. These values represent the fourth set of exposure levels proposed and published by the NAC/AEGL Committee. EPA published the first "Proposed" AEGLs for 12 chemicals from the initial priority list in the **Federal Register** of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3); for 10 chemicals in the **Federal Register** of March 15, 2000 (65 FR 14186–14196) (FRL–6492–4); and for 14 chemicals in the **Federal Register** of June 23, 2000 (65 FR 39263–39277) (FRL–6591–2) in order to provide an opportunity for public review and comment. In developing the proposed AEGL values, the NAC/AEGL Committee has followed the methodology guidance Guidelines for Developing Community Emergency Exposure Levels for Hazardous Substances, published by the National Research Council of the National Academy of Sciences (NRC/NAS) in 1993. The term Community Emergency Exposure Levels (CELLS) is synonymous with AEGLs in every way. The NAC/AEGL Committee has adopted the term Acute Exposure Guideline Levels to better connote the broad application of the values to the population defined by the NAS and addressed by the NAC/AEGL Committee. The NAC/AEGL Committee invites public comment on the proposed AEGL values and the scientific rationale used as the basis for their development.

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data, and information that may have an impact on the NAC/AEGL Committee's position and will again seek consensus for the establishment of Interim AEGL values. Although the Interim AEGL values will be available to Federal, State, and local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the NAS. The NAS subcommittee will serve as a peer review of the Interim AEGLs and as the final arbiter in the resolution of issues regarding the AEGL values, and the data and basic methodology used for setting AEGLs. Following concurrence, "Final" AEGL values will be published under the auspices of the NAS.

III. List of Chemicals

On behalf of the NAC/AEGL Committee, EPA is providing an opportunity for public comment on the AEGLs for the 7 chemicals identified in Table 1. Table 1 also provides the fax-on-demand item number for the chemical specific documents, which may be obtained as described in Unit 1.B.

A. Fax-On-Demand Table

TABLE 1.—FAX-ON-DEMAND

CAS No.	Chemical name	Fax-On-Demand item no.
75–44–5	Phosgene	4862
78–82–0	Isobutyronitrile	4869
107–12–0	Propionitrile	4877
126–98–7	Methacrylonitrile	4888
7790– 91–2	Chlorine trifluoride	4922
151–56–4	Ethylenimine	4890
75–55–8	Propylenimine	4863

B. Executive Summaries

The following are executive summaries from the chemical specific Technical Support Documents (which may be obtained as described in Unit 1.B. and III.) that support the NAC/AEGL Committee's development of AEGL values for each chemical substance. This information provides the following information: A general description of each chemical, including its properties and principle uses; a summary of the rationale supporting the AEGL-1, -2, and -3 concentration levels; a summary table of the AEGL values; and a listing of key references that were used to develop the AEGL values. More extensive toxicological information and additional references for each chemical may be found in the complete Technical Support Documents. Risk managers may be interested in reviewing the complete Technical Support Document for a chemical when deciding issues related to use of the AEGL values within various programs.

1. *Phosgene*—i. *Description.* Phosgene is a colorless gas at ambient temperature and pressure. Its odor has been described as similar to new-mown hay. Phosgene is manufactured from a reaction of carbon monoxide and chlorine gas in the presence of activated charcoal. The production of dyestuffs, isocyanates, carbonic acid esters (polycarbonates), acid chlorides, insecticides, and pharmaceutical chemicals requires phosgene.

Appropriate data were not available for deriving AEGL-1 values for phosgene.

AEGL-2 values were based on chemical pneumonia in rats (2 ppm for 90 minutes) (Gross et al., 1965). An uncertainty factor (UF) of 3 was applied for interspecies extrapolation since little species variability is observed both with lethal and non lethal endpoints after exposure to phosgene. An UF of 3 was applied to account for sensitive human subpopulations since the mechanism of phosgene toxicity (binding to macromolecules and irritation) is not expected to vary greatly between individuals (total UF = 10). The 1.5 hour value was then scaled to the 30-minute, 1-hour, 4-hour, and 8-hour AEGL exposure periods, using $C^n \times t = k$, where n = 1 (Haber's Law) since Haber's Law has been shown to be valid for phosgene within certain limits. Haber's Law was originally derived from phosgene data (USEPA, August 1986). The 30-minute value was also adopted as the 10-minute value since extrapolation would yield a 10-minute AEGL-2 value close to concentrations producing alveolar edema in rats exposed for 10-minutes (Diller et al., 1985) and may not be protective.

The 30-minute, 1-hour, 4-hour, and 8-hour AEGL-3 values were based on a 30-minute no-effect-level for death in rats (15 ppm) (Zwart et al., 1990). An UF of 3 was applied for interspecies extrapolation since little species variability is observed both with lethal and non-lethal endpoints after exposure to phosgene. An UF of 3 was applied to account for sensitive-human subpopulations since the mechanism of phosgene toxicity (binding to macromolecules and irritation) is not expected to vary greatly between individuals (total UF = 10). The value was then scaled to the 1-, 4-, and 8-hour AEGL periods, using $C^n \times t = k$, where n = 1 (Haber's Law) since Haber's Law has been shown to be valid for phosgene within certain limits. Haber's Law was originally derived from phosgene data (USEPA, August 1986). The 10-minute AEGL-3 value was based on a 10-minute no-effect-level for death in rats and mice (Zwart et al., 1990). An UF of 3 was applied for interspecies extrapolation since little species variability is observed both with lethal and non lethal endpoints after exposure to phosgene. An UF of 3 was applied to account for sensitive human subpopulations since the mechanism of phosgene toxicity (binding to macromolecules and irritation) is not expected to vary greatly between individuals (total UF = 10).

The calculated values are listed in Table 2 below:

TABLE 2.—PHOSGENE

Summary of Proposed Aegl Values for Phosgene [ppm (mg/m³)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	NA	NA	NA	NA	NA	NA
AEGL-2 (Disabling)	0.60 (2.5)	0.60 (2.5)	0.30 (1.2)	0.080 (0.33)	0.040 (0.16)	Chemical pneumonia rats (Gross et al., 1965)
AEGL-3 (Lethal)	3.6 (15)	1.5 (6.2)	0.75 (3.1)	0.20 (0.82)	0.090 (0.34)	30-minute r 10-minute no-effect-level for death in rats (Zwart et al., 1990)

NA means not applicable

ii. *References.* a. Diller, W. F., Bruch, J., and Dehnen, W. 1985. Pulmonary changes in rats following low phosgene exposure. *Archives of Toxicology.* 57:184–190.

b. Gross, P., Rinehart, W.E., and Hatch, T. 1965. Chronic pneumonitis caused by phosgene. *Archieves of Environmental Health.* 10:768–775.

c. USEPA, August 1986. Health Assessment Document for Phosgene. EPA/600/8-86/022A. p. 1-4 to 1-5.

d. Zwart, A., Arts, J.H.E., Klokman-Houweling, J.M., and Schoen, E.D. 1990. Determination of concentration-time-mortality relationships to replace LC_{50} values. *Inhalation Toxicology.* 2:105–117. November 1977.

2. *Isobutyronitrile*—i. *Description.* Isobutyronitrile is a colorless liquid at ambient temperature and pressure. It has an almond-like odor and may cause irritation or burning of the eyes and skin. It is metabolized to cyanide in the body and signs of exposure may include weakness, headache, confusion, nausea, vomiting, convulsion, dilated pupils, weak pulse, shallow and gasping breathing, and cyanosis (EPA, 1985).

Data were insufficient for derivation of AEGL-1 values for isobutyronitrile.

The AEGL-2 was based on a no-effect-level from a developmental toxicity study in rats (100 ppm, 6 hour/day, days 6–20 of gestation) (Saillenfait et al., 1993). Although no interspecies information concerning isobutyronitrile toxicity was available, data from another nitrile (methacrylonitrile) suggest that the rat is not the most sensitive species. Therefore, an interspecies UF of 10 will be applied. In the absence of chemical-specific data and since much of the acute toxicity of nitriles is due to cyanide, the intraspecies UF will be the same as that used in the derivation of hydrogen cyanide AEGL-2 values (NAC/AEGL Committee, 1997). Thus, an UF of 3 will be applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Therefore, the total UF is 30. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of isobutyronitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 derived from cyanide rat lethality data) (NAC/AEGL Committee, 1997) will be used for scaling the AEGL values for isobutyronitrile across time.

The AEGL-3 was based on a estimated no-effect-level for death in rats (1/3 of the 1-hour LC_{50}: 1,800 ppm ÷ 3 = 600 ppm) (Eastman Kodak Co., 1986a). Although no interspecies information concerning isobutyronitrile toxicity was available, data from another nitrile (methacrylonitrile) suggest that the rat is not the most sensitive species. Therefore, an interspecies UF of 10 will be applied. In the absence of chemical-specific data and since much of the acute toxicity of nitriles is due to cyanide, the intraspecies UF will be the same as that used in the derivation of hydrogen cyanide AEGL-3 values (NAC/AEGL Committee, 1997). Thus, an UF of 3 will be applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Therefore, the total UF is 30. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of isobutyronitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) will be used for scaling the AEGL values for isobutyronitrile across time.

The calculated values are listed in Table 3 below:

TABLE 3.—ISOBUTYRONITRILE

Summary of Proposed AEGL Values for Isobutyronitrile [ppm (mg/m³)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	ID	ID	ID	ID	ID	Insufficient data to derive AEGL-1 values
AEGL-2 (Disabling)	13 (36)	8.7 (24)	6.6 (18)	3.9 (11)	3.0 (8.4)	No-effect-level in rats (Saillenfait et al., 1993)

TABLE 3.—ISOBUTYRONITRILE—Continued

Summary of Proposed AEGL Values for Isobutyronitrile [ppm (mg/m³)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-3 (Lethal)	40 (112)	26 (73)	20 (56)	12 (34)	9.0 (23)	Estimated no-observed-effect level (NOEL) for death in rats (Eastman Kodak, 1986a)

ID Insufficient data.

ii. *References.* a. Eastman Kodak Company. 1986a. Acute inhalation toxicity and one-hour LC_{10} value of isobutyronitrile in the rat. (Study No. TX–86–193) Eastman Kodak Company, Rochester, NY 14650.

b. NAC/AEGL Committee. 1997. Acute Exposure Guideline Levels for Hydrogen Cyanide. NAC Pro Draft 3:11/97.

c. Saillenfait, A. M., Bonnet, P., Gurnier, J. P., and de Ceaurriz, J. 1993. Relative developmental toxicities of inhaled aliphatic mononitriles in rats. *Fundamental Applied Toxicology.* 20:365–375.

d. ten Berge, W.F., Zwart, A. and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal Hazardous Materials.* 13:301–309.

e. USEPA. 1985. Chemical Profile. Isobutyronitrile. Washington, DC. December, 1985.

3. *Propionitrile*—i. *Description.* Propionitrile is a colorless liquid at ambient temperature and pressure. It has a pleasant, ethereal, sweetish odor and may cause irritation or burning of the eyes and skin. It is metabolized to cyanide in the body and signs of exposure may include weakness, headache, confusion, nausea, vomiting, convulsion, dilated pupils, weak pulse, shallow and gasping breathing, and cyanosis (Hazardous Substances Data Bank (HSDB), 1998).

Data were insufficient for derivation of AEGL-1 values for propionitrile.

The AEGL-2 was based on headache, nausea, dizziness, vomiting, confusion, and disorientation in a 34-year-old male worker exposed to approximately 33.8 ppm propionitrile for 2 hours (Scolnick et al., 1993). In the absence of chemical-specific data and since much of the acute toxicity of propionitrile appears to be due to cyanide, an UF of 3 was applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). A modifying factor of 2 was also applied to account for the poor database. Thus, the total uncertainty/modifying factor is 6. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of proprionitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) was used for scaling the AEGL-2 values for 30-minutes, 1-, 4-, and 8-hours. The 30-minute AEGL-2 value was also adopted as the 10-minute value due to the fact that reliable data are limited to durations ≥2 hours, and it is considered inappropriate to extrapolate back to 10-minutes.

The AEGL-3 was based on a 4-hour no-effect-level for death in rats of 690 ppm (Younger Labs, 1978). An interspecies UF of 10 was applied since toxicity information suggests that the rat is not the most sensitive species. In the absence of chemical-specific data and since much of the acute toxicity of proprionitrile appears to be due to cyanide, an UF of 3 was applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Thus, the total UF is 30. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of propionitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) was used for scaling the AEGL values for values for 30-minutes, 1-hour, and 8-hours. The 30-minute AEGL-3 value was also adopted as the 10-minute value due to the fact that the values are derived from a 4 hour exposure, and it is considered inappropriate to extrapolate back to 10-minutes.

The calculated values are listed in the Table 4 below:

TABLE 4.—PROPIONITRILE

Summary of Proposed AEGL Values for Propionitrile [ppm (mg/m³)]						Endpoint/Reference
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	
AEGL-1 (Nondisabling)	ID	ID	ID	ID	ID	Insufficient data to derive AEGL-1 values
AEGL-2 (Disabling)	9.6 (22)	9.6 (22)	7.4 (17)	4.3 (9.8)	3.3 (7.6)	Headache, nausea, vomiting, dizziness, confusion in a human subject (Scolnick et al., 1993)
AEGL-3 (Lethal)	51 (120)	51 (120)	39 (89)	23 (53)	18 (41)	No-effect-level for death in rats (Younger Labs, 1978)

ID Insufficient data.

ii. *References.* a. HSDB. 1998. Propionitrile. Reviewed 9/24/92. Updated 6/2/98. Retrieved 6/16/98.

b. NAC/AEGL Committee. 1997. Acute Exposure Guideline Levels for Hydrogen Cyanide. NAC Pro Draft 3:11/97.

c. Scolnick, B., Hamel, D., and Woolf, A.D. 1993. Successful treatment of life threatening propionitrile exposure with sodium thiosulfate followed by hyperbaric oxygen. *Journal of Occupational Medicine.* 35:577–580.

d. ten Berge, W.F., Zwart, A. and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials.* 13:301–309.

e. Younger Labs. 1978. Initial Submission: Toxicological Investigation of Propionitrile with Cover Letter Dated 081992. OTS0546148.

4. *Methacrylonitrile*—i. *Description.* Methacrylonitrile is a colorless liquid at ambient temperature and pressure. It has an odor similar to bitter almonds and may cause irritation or burning of the eyes and skin. It is metabolized to cyanide in the body and signs of exposure may include weakness, headache, confusion, nausea, vomiting, convulsion, dilated pupils, weak pulse, shallow and gasping breathing, and cyanosis (HSDB, 1998).

Data were insufficient for derivation of AEGL-1 values for methacrylonitrile.

The AEGL-2 values were set as 1/3 of the AEGL-3 values. The values obtained from this approach are supported by a repeated-exposure study in which dogs were exposed to 13.5 ppm methacrylonitrile, 7 hours/day, 5 days/week for 90 days (Pozzani et al., 1968). Convulsions and loss of motor control of the hindlimbs were observed starting at day 39 of exposure.

The AEGL-3 was based on a no-effect-level for death in mice (19 ppm for 4 hours) (Pozzani et al., 1968). An interspecies UF of 3 will be applied since the mouse is the most sensitive species. In the absence of chemical-specific information on intraspecies variability and since much of the acute toxicity of nitriles is due to cyanide, the intraspecies UF will be the same as that used in the derivation of hydrogen cyanide AEGL-3 values (NAC/AEGL Committee, 1997). Thus, an UF of 3 will be applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Thus, the total UF is 10. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). In the absence of chemical-specific information and since much of the acute toxicity of methacryonitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) will be used for scaling the 30-minute, 1-, and 8-hour AEGL values for propionitrile across time. The 30-minute AEGL-3 value was also adopted as the 10-minute value due to the fact that reliable data are limited to durations ≥4 hours, and it is considered inappropriate to extrapolate back to 10-minutes.

The calculated values are listed in Table 5 below:

TABLE 5.—METHACRYLONITRILE

Summary of Proposed AEGL Values for Methacrylonitrile [ppm (mg/m³)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	ID	ID	ID	ID	ID	Insufficient data to derive AEGL-1 values
AEGL-2 (Disabling)	1.5 (4.1)	1.5 (4.1)	1.1 (3.0)	0.70 (1.9)	0.50 (1.4)	1/3 of the AEGL-3 values
AEGL-3 (Lethal)	4.5 (12)	4.5 (12)	3.4 (9.3)	2.0 (5.5)	1.5 (4.1)	4-hr. no-effect-level for death in mice (Pozzani et al., 1968)

ID Insufficient data.

ii. *References.* a. HSDB. 1998. Methacrylonitrile. Reviewed 9/24/92. Updated 6/3/98. Retrieved 6/16/98.

b. NAC/AEGL Committee. 1997. Acute Exposure Guideline Levels for Hydrogen Cyanide. NAC Pro Draft 3: 11/97.

c. Pozzani, U.C., Kinkead, E.R., and King, J.M. 1968. The mammalian toxicity of methacrylonitrile. *American Industrial Hygiene Association Journal.* 29:202–210.

d. ten Berge, W.F., Zwart, A. and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials.* 13:301–309.

5. *Chlorine trifluoride*—i. *Description.* Chlorine trifluoride is an extremely reactive and corrosive oxidizing agent used in nuclear reactor fuel processing, as a fluorinating agent, as an incendiary, igniter and propellant for rockets, and as a pyrolysis inhibitor for fluorocarbon polymers. It is unstable in air and rapidly hydrolyses to hydrogen fluoride (HF) and a number of chlorine-containing compounds including chlorine dioxide (ClO_2). The toxic effects of ClF_3 are likely due to HF and ClO_2.

Chlorine trifluoride is a mucous membrane irritant. Contact with the skin and eyes produces burns and inhalation causes pulmonary irritation and edema. Inhalation studies with the monkey, dog, rat, and mouse for several endpoints and exposure durations were located. Data on irritant effects were available for the dog and rat; data on sublethal and lethal concentrations were available for the monkey, rat, and mouse. Although human exposures have occurred, no data on exposure concentrations were located.

The AEGL-1 was based on the threshold for notable discomfort (lacrimation) that was observed in dogs after 3 hours during a 6-hour exposure to an average concentration of 1.17 ppm (Horn and Weir, 1956). The only other sign of exposure was mild sensory irritation (nasal discharge) that usually occurred within 45 minutes. Nasal discharge in the sensitive nose of the dog was considered below the definition of the AEGL-1. No effects were observed in rats exposed to this concentration for 6 hours. The 1.17 ppm concentration for an exposure duration of 3 hours was divided by a combined interspecies and intraspecies UF of 10 (3 for interspecies differences [the dog was more sensitive than the rat] and 3 for intraspecies differences in sensitivity [the mechanism of toxicity is irritation; response to such a basic chemical effect on tissue is not expected to vary

significantly among individuals)). Scaling across time was based on $C^n \times t = k$ where n = 1 (Haber's Law); this concentration-exposure duration relationship was determined from several lethality studies. Because of the long exposure duration of the key study, the 10-minute AEGL-1 was set equal to the 30-minute AEGL-1.

The AEGL-2 was based on signs of strong irritation (salivation, lacrimation, rhinorrhea, and blinking of the eyes) in dogs exposed to a concentration of 5.15 ppm for 6 hours (Horn and Weir, 1955). Although these effects appeared reversible by the end of the day, they may impair the ability to escape. Rats exposed to this concentration for 6 hours appeared unaffected. The 6-hour concentration of 5.15 ppm was divided by a combined interspecies and intraspecies UF of 10 and scaled across time using the same reasons and relationships as for the AEGL-1 in this unit. Because of the long exposure duration of the key study, the 10-minute AEGL-2 was set equal to the 30-minute AEGL-2.

Lethality data (1-hour LC_{50} values) were available for the monkey, rat, and mouse. The AEGL-3 was based on the calculated 1-hour LC_{01} for the mouse, the most sensitive species based on LC_{50} values (MacEwen and Vernot, 1970). This concentration, 135 ppm, was divided by a combined interspecies and intraspecies UF of 10 and scaled across time using the same reasons and relationships as for the AEGL-1 in this unit. Death was due to extreme irritation resulting in massive lung hemorrhaging. Data from another study in which dogs exposed to a concentration of 21 ppm for 6 hours showed extreme signs of irritation but no deaths resulted in essentially the same AEGL-3 values when adjusted by an UF of 10 and scaled across time using Haber's Law.

The calculated values are listed in Table 6 below:

TABLE 6.—CHLORINE TRIFLUORIDE

Summary of Proposed AEGL Values for Chlorine Trifluoride [ppm (mg/m³)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	0.70 (2.7)	0.70 (2.7)	0.35 (1.3)	0.090 (0.34)	0.040 (0.15)	Threshold, notable discomfort—dog (Horn and Weir, 1956)
AEGL-2 (Disabling)	6.2 (24)	6.2 (24)	3.1 (12)	0.77 (2.9)	0.39 (1.5)	Strong irritation—dog (Horn and Weir, 1955)
AEGL-3 (Lethal)	81 (308)	27 (103)	14 (53)	3.4 (13)	1.7 (6.5)	Lethality (LC_{01})—mouse (MacEwen and Vernot, 1970)

ii. *References.* a. Horn, H.J. and R.J. Weir. 1955. Inhalation toxicology of chlorine trifluoride. I. Acute and subacute toxicity. *A.M.A. Archives of Industrial Health.* 12:515–521.

b. Horn, H.J. and R.J. Weir. 1956. Inhalation toxicology of chlorine trifluoride. II. Chronic toxicity. *A.M.A. Archives of Industrial Health.* 13:340–345.

c. MacEwen, J.D. and E.H. Vernot. 1970. Toxic Hazards Research Unit Annual Technical Report: 1970. AMRL-TR-70-77, Aerospace Medical Research Laboratory, Wright-Patterson Air Force Base, OH; National Technical Information Service, Springfield,VA

6. *Ethyleneimine*—i. *Description.* Ethylenimine is a volatile, clear, colorless, flammable explosive liquid that has an odor similar to that of ammonia and an odor detection level of 2 ppm. It is a very reactive direct-acting alkylating agent, the activity of which is similar to that of nitrogen mustards. It is also very caustic, attacking numerous substances including plastics, metals, and glass that does not contain carbonate or borax. Estimates of domestic production of ethylenimine range between 3.3 and 4.85 million pounds. Ethylenimine is used in the manufacture of products, such as triethylenemelamine, paper, textile chemicals, adhesive binders, and petroleum refining chemicals. Ethylenimine is stored in 320-pound cylinders, but shipping quantities are unknown.

Relevant data on ethylenimine consisted of only a few case studies in humans and acute inhalation lethality studies in laboratory animals. One individual died after a brief exposure to an unknown concentration of ethylenimine. Death was preceded by eye irritation, salivation, vomiting, respiratory tract irritation, breathlessness, and pulmonary edema; death may have been due to medical treatment. Individuals exposed to ethylenimine at estimated concentrations of 235–353 ppm and *N*-ethylethylenimine at 722 to 1,084 ppm for 1½ to 2 hours suffered severe eye and respiratory tract irritation and vomiting that were delayed for 1 to 5 hours after exposure, followed by hemoglobinemia, eosinophilia, and albuminuria. Effects reported for occupational exposure to ethylenimine included skin sensitization, slow-healing dermatitis, rapidly reversible irritation to the eyes and respiratory tract, and blistering, reddening, and edema of the scrotum. Direct contact of liquid ethylenimine to the tongue caused delayed inflammation and edematous swelling of the oral cavity and inflammation of eyes, and direct contact of liquid with the skin causes necrotizing painless burns. Ethylenimine was genotoxic in all test systems investigated including bacteria, fungi, plants, insects, and mammalian cells *in vitro*. It is clastogenic in cultured human cells. Subcutaneous injection of rats with ethylenimine produced sarcomas at the injection site.

Acute inhalation LC_{50} values were 2,558, 1,407, 545, 268, 259, 58, and 35 ppm for rats exposed to ethylenimine for 5, 10, 15, 60, 120, 240, or 480 minutes, respectively; 2,906, 2,824, 1,283, 364, 235, 158, 45, and 27 ppm for guinea pigs exposed for 5, 10, 15, 30, 60, 120, 240, or 480 minutes, respectively; and 2,236 ppm for mice exposed for 10 minutes. In all studies, death and other signs of toxicity were delayed depending on exposure concentration. Signs of toxicity included eye irritation, respiratory tract irritation, respiratory difficulty, prostration, complete loss of muscular coordination (mouse only), and convulsions (mouse only). Systemic effects included lung damage, congestion in lungs and all internal organs, damage to the kidney tubules, and albuminuria in rats and guinea pigs.

AEGL-1 values were not derived, because ethylenimine is an insidious agent (effects are delayed) that has an odor similar to that of ammonia, and an odor detection limit at 2 ppm; consequently, ethylenimine has no specific warning properties (sensory irritation or odor). The odor detection level is similar to or higher than the

AEGL-2 values for 4-hour and 8-hour exposures; therefore, it is not valid nor would it be a benefit to the public to propose AEGL-1 values.

No animal studies designed specifically to examine nonlethal effects of ethylenimine were located in the literature, and the human study involved exposure to another substance that could have contributed to the observed toxic effects. Therefore, the AEGL-2 values were based on a NOEL for extreme respiratory difficulty in guinea pigs (10 ppm for 240 minutes) in the study by Carpenter et al. (1948). An UF of 3 was applied for intraspecies variability because of the insidious nature of ethylenimine, and effects of exposure may not become apparent before exposure is terminated. Under these conditions; individuals with respiratory or heart diseases are not expected to respond differently from the general population. The very reactive alkylating activity of ethylenimine also suggests that it would be similarly effective in all individuals. A UF of 3 was also applied for interspecies sensitivity because of the reactive alkylating activity of ethylenimine and the similarity of the mode of action in different species. Further, the available evidence suggests that humans may be less sensitive than rodents. The total UF is 10. Scaling across the pertinent time frames was based on the equation $C^{0.91} \times t = k$, where n was derived from the LC_{50} data for guinea pigs. The AEGL-2 values do not take into account the potential carcinogenicity of ethylenimine.

AEGL-3 values were based on the acute inhalation study in rats (Carpenter et al. , 1948). The LC_{01} (lethality threshold) of 15 ppm for the 8-hour exposure duration was estimated by probit analysis. The 8-hour LC_{01} was selected because it had the smallest standard error. A total UF of 10 (3 for intraspecies variability and 3 for interspecies sensitivity) was applied to the LC_{01} value. Scaling across the pertinent time frames was based on the equation $C^{1.1} \times t = k$, where n was derived from LC_{50} data for rats.

The calculated values are listed in Table 7 below:

TABLE 7.—ETHYLENIMINE

Summary of Proposed AEGL Values for Ethylenimine[a,b] [ppm (mg/m³)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	No values derived for AEGL-1					
AEGL-2 (Disabling)	33 (59)	9.8 (185)	4.6 (8.2)	1.0 (1.8)	0.47 (0.84)	NOEL for extreme respiratory difficulty (Carpenter et al., 1948)
AEGL-3 (Lethal)	51 (91)	19 (34)	9.9 (18)	2.8 (5.0)	1.5 (2.7)	Threshold for lethality (Carpenter et al., 1948)

a AEGL-2 and -3 values do not take into consideration the potential cancer risk due to exposure to ethylenimine.
b Effects at these concentrations may be delayed until sometime after exposure; toxic levels may be absorbed through the skin.

ii. *Reference.* Carpenter, C. P.; Smyth, H. F., Jr.; Shaffer, C. B. 1948. The acute toxicity ethyleneimine to small animals. *Journal of Industrial Hygiene and Toxicology.* 30:2–6.

7. *Propyleneimine*—i. *Description.* Propylenimine is an aziridine compound used to modify latex surface coating resins to improve adhesion and to modify bonding properties of textiles, paper, and dyes; it is also used in photography, in the pharmaceutical industry, in gelatins, and in organic syntheses. Propylenimine is a colorless oily liquid that has an odor similar to that of ammonia. It is flammable and is an explosion hazard. Propylenimine is similar in structure and toxicity to ethylenimine.

No data were found in the literature concerning toxicity or the odor detection threshold for exposure to propylenimine in humans. A time-response study conducted in rats and guinea pigs showed that 1/6 guinea pigs died after exposure to 500 ppm for 60 minutes and 0/6 died after exposure to the same concentration for 30 minutes (Carpenter et al., 1948). In rats, 5/6 died after exposure to 500 ppm for 240 minutes and 0/6 died after exposure to the same concentration for 120 minutes. No concentration-response data were available for deriving AEGL values from animal studies. Therefore, a relative potency approach was used to derive AEGL-2 values, because the toxicity of propylenimine is considered to be qualitatively similar to that of ethylenimine. The study of Carpenter et al. (1948) showed that propylenimine is 4 to 8 times less toxic than ethylenimine depending on the species: 4 or 5 times less toxic to the guinea pig and 8 times less toxic to the rat. Tumors developed at multiple sites in rats treated orally with propylenimine for 28 or 60 weeks; therefore, International Agency for Research on Cancer (IARC) has classified propylenimine as Group 2B (possibly carcinogenic to human). Propylenimine is mutagenic in *salmonella and drosophila.*

No AEGL-1 values were proposed for ethylenimine, and no values are proposed for propylenimine. Propylenimine has an odor similar to that of ammonia, the odor detection and irritation thresholds are not known, and propylenimine is probably an insidious agent similar to ethylenimine. It would not be valid nor beneficial to propose AEGL-1 values for propylenimine.

The derivation of AEGL-2 values is based on the relative toxicity approach. The AEGL values proposed for ethylenimine based on a no-effect-level for extreme respiratory difficulty were as follows: 33, 9.8, 4.6, 1.0, and 0.47 ppm for 10 minutes, 30 minutes, 1 hour, 4 hours, and 8 hours, respectively. The NAC/AEGL Committee selected 5 as the appropriate relative toxicity value for deriving AEGL-2 values for propylenimine. The NAC/AEGL Committee also proposed that a modifying factor of 2 should be applied to account for a deficient database. Therefore, the resulting values for propylenimine based on a relative toxicity value of 5 and a modifying factor of 2 are 83, 25, 12, 2.5, and 1.2 ppm for exposure durations of 10 minutes, 30 minutes, 1 hour, 4 hours, and 8 hours, respectively.

It was the consensus of the NAC/AEGL Committee to consider a 500 ppm exposure for 30 minutes as the no-effect-level for lethality and to use this concentration to derive AEGL-3 values. An UF of 10 (3 for intraspecies sensitivity and 3 for interspecies sensitivity) was applied to the no-effect-levels for lethality. Propylenimine is an insidious agent and signs of toxicity may not become apparent until after exposure. Propylenimine a very reactive direct-acting alkylating agent, and its mode of action is not expected to vary

considerably across species or within the population. Time extrapolation was based on the equation, $C^n \times t = k$, where n = 0.91 derived by probit analysis of LC_{50} data for guinea pigs exposed to ethylenimine.

The calculated values are listed in Table 8 below:

TABLE 8.—PROPYLENIMINE

Summary of Proposed AEGL Values for Propylenimine[a,b] [ppm (mg/m³)]						
Classification	ppm (mg/m³)					Endpoint/Reference
	10-minutes	30-minutes	1-hour	4-hours	8-hours	
AEGL-1	No values derived for AEGL-1					
AEGL-2[c]	83 (200)	25 (58)	12 (28)	2.5 (5.8)	1.2 (2.8)	NOEL for extreme respiratory difficulty (Carpenter et al., 1948)
AEGL-3	167 (390)	50 (120)	23 (54)	5.1 (12)	2.4 (5.6)	Lethality threshold (Carpenter et al., 1948)

a AEGL-2 and -3 values do not take into consideration the potential cancer risk due to inhalation exposure to propylenimine.
b Effects including lethality, irritation to eyes, and irritation to the respiratory tract may be delayed until after exposure; toxic levels of propylenimine may be absorbed through the skin.
c AEGL values for propylenimine = AEGL for ethylenimine x 5 (relative potency factor) ÷ 2 (modifying factor).

ii. *Reference.* Carpenter, C.P., Smyth, H.F., Jr., Shaffer, C.B. 1948. The acute toxicity of ethylenimine to small animals. *Journal of Industrial Hygiene and Toxicology.* 30:2–6.

IV. Next Steps

The NAC/AEGL Committee plans to publish "Proposed" AEGL values for five-exposure periods for other chemicals on the priority list in groups of approximately 10 to 20 chemicals in future **Federal Register** notices during the calendar year 2001.

The NAC/AEGL Committee will review and consider all public comments received on this notice, with revisions to the "Proposed" AEGL values as appropriate. The resulting AEGL values will be established as "Interim" AEGLs and will be forwarded to the NRC/NAS, for review and comment. The "Final" AEGLs will be published under the auspices of the NRC/NAS following concurrence on the values and the scientific rationale used in their development.

List of Subjects

Environmental protection, Hazardous substances.

Dated: December 6, 2000.

Stephen L. Johnson,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–31730 Filed 12–12–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30503; FRL–6749–2]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30503, must be received on or before January 12, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30503 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

Regulatory action leader	Office address/telephone no.	E-mail address
Andrew C. Bryceland	USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Mail Code: 7511C, (703) 305–6928	bryceland.andrew@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30503. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30503 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp–docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30503. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does notcontain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

File Symbol: 52991–RL. Applicant: Bedoukian Research, Inc., 21 Finance Drive, Danbury, CT 06810–4192. Product Name: Bedoukian z-11-Hexadecenyl Acetate Technical Pheromone. The proposed product is a new active ingredient that has not been previously registered. Proposed classification: None. For manufacturing use only. For use in the incorporation into end–use products intended for agricultural application. Not for direct treatment of pests.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 30, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–31621 Filed 12–12–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100164; FRL–6760–1]

Versar, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Versar, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Versar, Inc. has been awarded a contract to perform work for OPP, and access to this information will enable Versar, Inc. to fulfill the obligations of the contract.

DATES: Versar, Inc. will be given access to this information on or before December 18, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–W0–0130, the contractor will perform the following:

The Contractor shall perform technical reviews of studies containing pesticide exposure and related data in support of registration, reregistration, and special review activities of the Health Effects Division (HED). These studies may include: (1) Re-entry or post application exposure studies; (2) exposure monitoring data on the subject chemical submitted by registrants on pesticide handling operations; (3) exposure studies from the open scientific literature; and (4) exposure studies using data from aggregate pesticide chemicals (e.g., Pesticide Handlers Exposure Database).

For each assigned study, a draft written report shall be submitted by the Contractor to the EPA Work Assignment Manager. Draft reports shall: (1) Document the contents of the studies; (2) note any discrepancies, inadequacies, and unresolved issues; (3) provide appropriate exposure calculations, correlations, and plots; and (4) provide a summary discussion and conclusions resulting from the review.

This contract involves no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Versar, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Versar, Inc. until the requirements in this document have been fully satisfied. Records of information provided to Versar, Inc. will be maintained by EPA Project Officers for the contract. All information supplied to Versar, Inc. by EPA for use in connection with the contract will be returned to EPA when Versar, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: December 7, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–31729 Filed 12–12–00; 8:45 am]
[BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6916–1]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Public Comment.

SUMMARY: Notice is hereby given of a proposed Prospective Purchaser Agreement and Covenant Not To Sue, executed between the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), and Medure Development LLC ("Purchaser") in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601–9675, as amended ("CERCLA"). The proposed agreement will allow reuse of an abandoned industrial facility associated with the Metcoa Radiation Superfund Site ("Site") in Pulaski, Lawrence County, Pennsylvania, and will resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against the Purchaser. The proposed agreement is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or circumstances indicating that the proposed agreement is inappropriate, improper or inadequate.

The proposed agreement would allow the Purchasers to take title to a 21.74 acre property ("the Property") located within the approximately 22.5 acre Site. The Property is located on Route 551 and Metallurgical Way, approximately one-half mile north of the center of the village of Pulaski, and Route 208 in Pulaski, Lawrence County, Pennsylvania. The Property formerly was occupied by the Metallurgical Corporation of America, which conducted a metal reclamation business there between 1976 and 1983. Response actions and long term remedial actions have been conducted or overseen by EPA, the Nuclear Regulatory Commission ("NRC") and the Commonwealth of Pennsylvania at the Site since 1985. In 1997, EPA entered a Consent Decree with 187 parties, requiring them to conduct certain response actions to clean up the Site. In March 2000, EPA issued a notice of completion to the parties stating that the required response actions had been performed satisfactorily. Under the terms of the proposed agreement, the Purchaser is required to cooperate with and provide access to EPA for any response activities on the Property, and is subject to certain property use restrictions.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed agreement. Comments should be submitted to Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, or by e-mail to *canning.suzanne@epa.gov*, and should refer to the "Metcoa Radiation Superfund Site Prospective Purchaser Agreement" and "EPA Docket No. CERC–PPA–2000–0008." The proposed agreement and additional background information relating to it may be examined and/or copied at the above EPA office. A copy of the proposed agreement may be obtained by mail from Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Humane L. Zia (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; phone: (215) 814–3454.

Dated: November 30, 2000.

Bradley M. Campbell,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 00–31725 Filed 12–12–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–9]

Proposed Administrative Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource, Conservation and Recovery Act; The Doe Run Resources Corporation, Herculaneum, Missouri, Docket Nos. CERCLA–7–2000–0029 and RCRA–7–2000–0018

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), and Section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d) notification is hereby given of a proposed administrative agreement concerning The Doe Run Resources Corporation ("Respondent"), at 881 Main Street in Herculaneum, Missouri. Under the Agreement, the Respondent agrees to perform response actions to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by (i) the actual or threatened release of hazardous substances at or from the facility, and/or (ii) the past or present handling, storage, treatment, transportation or deposition by Respondent of any solid waste or hazardous waste. This agreement also concerns the (1) performance and oversight of a Human Health and Ecological Risk Assessment; (2) reimbursement by Respondent of costs incurred by the United States and the Missouri Department of Natural Resources ("MDNR") in connection with this Order; and (3) collection of sufficient data, samples and other information, in conjunction with the MDNR and U.S. Fish and Wildlife Service ("USFWS"), in their capacity as Natural Resource Trustees to enable the completion of an injury determination and other appropriate natural resource damage assessment activities in accordance with 43 CFR Part 11. Respondent will clean up soil contamination caused by its smelter operations, including contaminated soil in residential areas in the vicinity of the smelter. Respondent will conduct a blood lead study and public education program on health effects of lead exposure through the air and soil, mine wastes, smelting activity and lead paint to citizens of Herculaneum and the surrounding area. Respondent will install air emission controls. Respondent will study and implement short-term and long-term measures to control runoff of pollutants from its 24-acre slag pile and will ensure that the slag pile is operated in a way that prevents loss of slag into the environment. Respondent will develop and conduct a groundwater monitoring program. Respondent will investigate other potential areas affected by its smelter operations. The Respondent agrees to pay oversight costs incurred by the United States and MDNR pursuant to an Administrative Order on Consent ("Order") dated October 11, 2000. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for recovery of past response costs or future response costs incurred by the United States or MDNR in connection with this response action or this Order. This covenant not to sue shall take effect upon receipt by EPA and MDNR of the payments required by the Order and is conditioned upon the complete and satisfactory performance by Respondent of its obligations under the Order. Under the agreement, Respondent pays $25,013.04 for reimbursement of past costs incurred by the United States. Respondent also pays $3,569.20 for reimbursement of past natural resource damage assessment costs incurred by MDNR.

For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received from the public during this comment period or at the public meeting disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The public meeting is on Thursday, December 14, 2000, 7:00 P.M., at the Herculaneum United Methodist Church, 672 Main, Herculaneum, Missouri. The EPA's response to any comments received will be available for public inspection at the

Herculaneum Public Library, 1 Parkwood Court, Herculaneum, Missouri, and from Kathy Robinson, Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before January 12, 2001.

ADDRESSES: A copy of the proposed settlement and the Administrative Record are available for public inspection at the Office of the Regional Hearing Clerk and at the Herculaneum Public Library, at the addresses referenced above. A copy of the proposed settlement may be obtained from Kathy Robinson, the Regional Hearing Clerk, telephone: (913) 551–7567. Comments should reference The Doe Run Resources Corporation, at 881 Main Street in Herculaneum, Missouri, Docket No. CERCLA 7–2000–0029 and Docket No. RCRA–7–2000–0018 and should be addressed to Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Julie Murray, Assistant Regional Counsel, EPA, 901 N. 5th Street, Kansas City, Kansas 66101, telephone: (913) 551–7448, or Shelley Woods, Assistant Attorney General, 221 W. High, P.O. Box 899, Jefferson City, Missouri 65102, telephone: (573) 751–0660.

Dated: December 5, 2000.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 00–31726 Filed 12–12–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 14, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

1. Approval of Minutes

—November 9, 2000 (Open and Closed)

2. Reports

—FCS Building Association's Quarterly Report

—Report on Corporate Approvals

—Report on National Charters

*** Closed Session**

Report

—Bank Request for Approval

Dated: December 8, 2000.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. 00–31884 Filed 12–11–00; 11:43 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

December 6, 2000.

Deletion of Agenda Items From the December 7th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the December 7, 2000, Open Meeting and previously listed in the Commission Notice of November 30, 2000.

Item No.	Bureau	Subject
1	Mass Media	Title: Applications of Anderson Broadcasting Company (Assignor) and Cumulus Licensing Corp. (Assignee); For Consent to the Assignment of the Licenses of KBMR(AM), Bismark, ND, KXMR(AM), Bismarck, ND, KSSS(FM), Bismarck, ND, KAVG(FM), Beulah, ND, and KBKU(FM), Hettinger, ND. (File Nos. BAL/BALH/BAP–19991004AAY–ABC Summary: The Commission will consider a Hearing Designation Order concerning applications for the assignment of licenses from Anderson Broadcasting Company to Cumulus Licensing Corp.
2	Mass Media	Title: Definition of Radio Markets Summary: The Commission will consider a Notice of Proposed Rule Making concerning its methodology for defining radio markets, and other related policies for applying the radio multiple ownership rules.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31761 Filed 12–8–00; 4:08 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2454]

Petitions for Reconsideration of Action in Rulemaking Proceedings

December 5, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by (Insert date of 15 days after Publication in **Federal Register**). See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Urbana, Il) (MM Docket No. 00–76, RM–9809).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Sparta and Buckhead, GA) (MM Docket No. 00–101, RM–9885).

Number of Petitions Filed: 1.

Subject: The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band (IB Docket No. 99–81).

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31663 Filed 12–12–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 00–12]

Revocation of Licenses, Provisional Licenses and Order To Discontinue Operations in U.S.-Foreign Trades for Failure To Comply With the New Licensing Requirements of the Ocean Shipping Reform Act of 1998; Notice of Issuance of Order To Show Cause

Notice is given that on December 7, 2000, the Federal Maritime Commission ("Commission") served an Order directing 81 ocean transportation intermediaries ("OTIs") ("Respondents") to show cause both why their ocean transportation intermediary licenses (permanent and/or provisional) should not be revoked and why they should not be directed to discontinue their operations in the foreign trades of the United States for failure to comply with the requirements of the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902 ("OSRA"). The Commission took this action because the Respondents still have not met new requirements effective May 1, 1999 prescribed by OSRA and the Commission's implementing rules thereunder, notwithstanding extensive efforts by the Commission to bring them into compliance.

Specifically, Respondents have been directed pursuant to sections 11 and 14 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app 1710 and 1713, to submit affidavits of fact and memoranda of law to show cause why: the Commission should not revoke their licenses for failure to comply with section 19 of the 1984 Act and 46 CFR Part 515; and why the Commission should not order each of them to cease and desist from operating as an OTI, including publication of any tariff, in the foreign trade of the United States.

The Order requires that affidavits of fact and memoranda of law filed by Respondents and any intervenors in support of Respondents be filed no later than January 12, 2001.

The full text of the Order may be viewed on the Commission's home page at *http://www.fmc.gov,* or at the Office of the Secretary, room 1046, 800 N. Capitol Street, NW., Washington, DC.

Petitions for leave to intervene may be filed in accordance with 46 CFR 502.72.

The Order to Show Cause was served on the following ocean transportation intermediaries, which have been designated Respondents in this proceeding:

A.I.F. Services, Inc. dba Agency International Forwarding, Inc.
Advante Customs Broker and Freight Forwarders Inc.
Agency International Forwarding, Inc.
Air & Sea Inc.
Airlift Container Lines, Inc.
Albatross Shipping Inc.
Allied International N.A., Inc.
Almcorp Project Transport, Inc.
Alrod International, Inc. dba Alrod Ocean Company
Andreani Corporation
Auto Export Services North America, Inc.
Auto Overseas Ltd.
Blackbird Line, Inc.
Bulkmatic Transport Company
C & F Worldwide Agency Corp.
Calico Equipment Corp. dba Global Equipment Transport
Cargo Maritime Services, Inc.
Cargo Transport, Inc.
Centra Worldwide Inc dba Cwi Container Line
Century Express, Inc.
Chin, Johnnie C. F. dba J C Express
Con-Way Intermodal, Inc.
Continental Shipping & Trading Import—Export, Inc.
Continental Van Lines, Inc. dba Continental International
Denali International, Inc.
Deugro Ocean Transport, Inc.
Dukes Systems Corp.
Excel Shipping Corp.
Exploit Express Freight Inc.
Federal Warehouse Company
Feith, Cornelis J. dba Tiger Express
Formerica Consolidation Service, Inc.
Frontier International Forwarders, Inc.
Gulf South Forest Products, Inc.
Hemisphere International Shipping, Inc.
Hopkins, James E. dba Hopkins Services
Intermare Agency Services, Inc.
Inter-American Freight Consolidators, Inc.
International Distribution, Inc.
International Trade and Logistics, Inc.
International Transport Agency dba I.T.A.
Iris Enterprises Corp. dba Iris Cargo
J.C. Express of Miami, Corp.
Johnson Storage & Moving Co.
Landstar Ranger, Inc.
Loa Int'l (USA) Transport Co. Inc.
Manna Freight Systems, Inc.
Maurice Pincoffs Company, Inc.
Millenium Logistics Services, Inc.
Nador Shipping Corporation
Naviera Mundial Inc.
Oceanic Freights, Inc.
Ocean Pacific Lines, Inc.
Og International (USA) Co., Inc.
P. H. Petry, Company
Pagoda Container Line Corp.
Poseidon Freight Forwarders, Inc. dba Poseidon Line
Professional Cargo Services Int'l Inc.
Roberto Bucci (USA) Inc.
Rolines Shipping Corp.
S.h.r. Enterprises, Inc.
S.t.s. International, Inc.
Sanchez, Carlos B. dba R & S Trading
Sea Expo Freight Services, Inc.
Sea-Land Logistics, Inc.
Seajet Express Container Line Ltd. dba Gateway Container Line
Seamax, Inc.
Sunmar Shipping, Inc. dba Sunmar Alaska Service
Taiun Company (U.S.A.) Inc.
Time Definite Services, Inc.
Trans-Alliance Int'l Fwdg. Co. dba Nova Ocean Line
Transbridge International, Inc.
Transneftegazstroy America, Inc.
Transpo Service, Ltd.
Treset Corporation
Unitrans Shipping & Air Cargo Limited
Universe Freight Brokers, Inc. dba Seacarriers
Victory Van Corporation dba Victory Van International
World Marine Services Dominicana, LLC
World Wide Cargo Logistics, Inc.
Yellow Freight System, Inc.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–31666 Filed 12–12–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 19817 (j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Tubbs-Ohnward Limited Partnership, Maquoketa, Iowa, General Partners, Edward L. Tubbs, Maquoketa, Iowa, Alan R. Tubbs, Maquoketa, Iowa; Steven E. Tubbs, Delmar, Iowa, AMBA Limited Partnership, Maquoketa, Iowa, General Partners, Alan R. Tubbs, Maquoketa, Iowa, Myrna J. Tubbs, DeWitt, Iowa, Brigham L. Tubbs, Clinton, Iowa, Abram A. Tubbs, Anamosa, Iowa, J.F. Limited Partnership, Maquoketa, Iowa, General Partners, John W. Fagerland, Maquoketa, Iowa; Evelyn L. Fagerland, Maquoketa, Iowa; Karen L. Slattery, Maquoketa, Iowa; Kendra L. Beck, Maquoketa, Iowa, and Krista L. Grant, Preston, Iowa, E.F. Limited Partnership, Maquoketa, Iowa, General Partners, John W. Fagerland, Maquoketa, Iowa, Evelyn L. Fagerland, Maquoketa, Iowa, Karen L. Slattery, Maquoketa, Iowa, Kendra L. Beck, Maquoketa, Iowa, and Krista L. Grant, Preston, Iowa; all to acquire voting shares of Ohnward Bancshares, Inc., Maquoketa, Iowa, and thereby indirectly acquire voting shares of Maquoketa State Bank, Maquoketa, Iowa, 1st Central State Bank, De Witt, Iowa, Tri-County Bank & Trust, Cascade, Iowa, and Gateway State Bank, Clinton, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. David Gunter Hodo, Amory, Mississippi, to retain voting shares of Security Bancshares, Inc., Amory, Mississippi, and thereby indirectly retain voting shares of Security Bank of Amory, Amory, Mississippi.

Board of Governors of the Federal Reserve System, December 7, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31668 Filed 12–12–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Bedwell Investments, Inc., Jackson, Alabama; to become a bank holding company by acquiring 35 percent of the voting shares of Merchants Trust, Inc., Jackson, Alabama; and thereby indirectly acquire Merchants Bank, Jackson, Alabama.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Capital Bankshares, Inc., Peoria, Illinois; to acquire 20 percent of the voting shares of Community Bank of Lemont (in organization), Lemont, Illinois.

Board of Governors of the Federal Reserve System, December 7, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31667 Filed 12–12–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 12:00 noon, Monday, December 18, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits. (This item was originally announced for a closed meeting on December 4, 2000.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31760 Filed 12–8–00; 4:08 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of Labor is cancelling the following Standard Form because of low usage: SF 99, Notice of Award of Contract.

DATES: Effective December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: November 13, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–31670 Filed 12–12–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow a proposed information collection project: "Medical Expenditure Panel Survey Household Component (MEPS–HC)–2001 through 2004". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 3, 2000 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 12, 2001.

ADDRESSES: Written comments should be submitted to: OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project: "Medical Expenditure Panel Survey Household Component (MEPS–HC)–2001 through 2004".

The AHRQ intends to conduct an annual panel survey of U.S. households to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. Each panel consists of a nationally representative sample of U.S. households who remain in MEPS for two consecutive years of data collection. The first panel of MEPS began in 1996 and has continued annually thereafter. The MEPS–HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

It will be conducted using a sample of households selected from households which responded to the National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health related data from approximately 50,000 households and 110,000 people. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (HHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

In accordance with AHRQ and NCHS confidentiality statutes, statistical and nonidentifying data will be made available through publications, articles in major journals as well as public use data files. The data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and,
- Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations on the civilian non-institutionalized population of the United States, as well as to conduct research in which the family is the unit of analysis.

Method of Collection: The data will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person) interviews with each household to obtain health care use and expense data. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary. Burden estimates follow:

Estimated Annual Respondent Burden Per Year: Each MEPS participant is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart:

Survey period	Number of completes	Burden per complete (hours)	Total burden (hours)
Feb–July 2001	19,380	1.8	34,884
Aug–Dec 2001	13,280	1.8	23,904
Feb–July 2002	21,248	1.8	38,246
Aug–Dec 2002	16,239	1.8	29,230
Feb–July 2003	24,187	1.8	43,537
Total			148,291

Dated: December 6, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–31671 Filed 12–12–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Guidance for the Tribal Temporary Assistance for Needy Families Program.

OMB No. 0970–0157.

Description: The subject document provides program information, plan guidance, and a suggested plan outline for an application for direct funding and administration by federally recognized Indian Tribes of a Temporary Assistance for Needy Families program (Tribal TANF).

Respondents: Federally recognized Indian Tribes or consortia thereof.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Plan and revisions	18	3	100	5,400
Estimated Total Annual Burden Hours:				5,400

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 7, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–31665 Filed 12–12–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS FY 2000–04]

Early Head Start Longitudinal Research Partnerships: Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

Statutory Authority: The Head Start Act, as amended 42 U.S.C. 9801 *et seq.*) CFDA: 93.600.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of funds for universities, in partnership with the original 17 Early Head Start Research sites, to conduct the local and cross-site longitudinal research until entry into kindergarten on children and families who were participants in the original National Early Head Start Research Study.

DATES: The closing date for receipt of applications is 5:00 P.M. EDT January 29, 2001.

Note: Applications should be submitted to the ACYF Operations Center at 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: The full announcement and applications, including all necessary forms can be downloaded from the Head Start web site at *www.acf.dhhs.gov/programs/hsb.* The web site also contains a listing of the 17 Early Head Start programs that were part of the original study. Hard copies of the application may be obtained by writing or calling the Operations Center or sending an email to *hsr@cgnet.com*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or (1–800) 351–2293.

SUPPLEMENTARY INFORMATION:

Eligible Applicants: Universities and four-year colleges on behalf of a faculty member who holds a doctorate degree or equivalent in their respective field and have formed partnerships with an original Early Head Start Research site.

Project Duration: The announcement for Early Head Start Longitudinal Research is soliciting applications for project periods of four years. Awards, on a competitive basis, will be for the first one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. An additional competitive grant for one year may be considered for recipients of grants under this announcement if it is deemed necessary for the completion of the data analysis and report writing.

Federal Share of Project Costs: The maximum Federal share is $190,000 per Early Head Start research site for the first 12-month budget period based on the number of children to be tracked and tested and their distance from the original site. The Federal share for subsequent years shall be up to $200,000 per year per Early Head Start research site for each year of the project period depending on the number of children still to be tracked and tested and the analysis and report writing to be completed. The Federal share is *inclusive* of indirect costs.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects To Be Funded: It is anticipated that a maximum of 17 projects will be funded.

Criteria

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected—25 points

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the study, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
- The extent to which the results build on the results of the first study.

2. Approach—40 points

- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which child outcomes are the major focus of the study.
- The extent to which the planned research specifies the measures to be used and the analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study.
- The extent to which the planned measures and analysis incorporate the measures and analyses completed under the original study.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the-art.
- The extent to which the analytic techniques are appropriate for the question under consideration.
- The extent to which the proposed sample size is sufficient for the study.
- The scope of the project is reasonable for the funds available for these grants.
- The extent to which the planned approach reflects sufficient input from and partnership with the Early Head Start program.

3. Staff and Position Data—35 points

- The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- The principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Early Head Start program staff and parents.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.

Required Notification of the Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street SW., Washington, DC 20447, Attn: Head-Start University Partnerships or Graduate Student Head Start Research. A list of the Single Points of Contact for each State and Territory can be found on the web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: December 6, 2000.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–31664 Filed 12–12–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 2001.

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Date and Time: January 11, 2001; 8:30 a.m.–5:00 p.m., January 12, 2001; 8:30 a.m.–3:00 p.m.

Place: Washington Monarch Hotel, 2401 M Street, N.W., Washington, DC 20037.

The meeting is open to the public.

Agenda: Updates and discussion of Department, Agency, Bureau and Division activities, and the legislative and budget status of programs; status of COGME/NACNEP joint report on "Collaborative Education to Ensure Patient Safety"; discussion of the National Sample Survey 2000 report; presentation and panel discussion of national and regional nursing

workforce issues; status of funding allocation methodology contract; and Council strategic planning workgroups on Workforce and Practice.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5786.

Dated: December 7, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–31701 Filed 12–12–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, City, State	Effective date
Civil Monetary Penalty	
Valiente, Jose G., Miami, FL	11/06/2000
Program-Related Convictions	
Aquino, Nilvio R., Eglin AFB, FL	12/20/2000
Bassett, Douglas Allen, Fort Wayne, IN	12/20/2000
Camacho, Raul, Hialeah, FL	12/20/2000
Chromey, Paul Anthony, W. Pittson, PA	12/20/2000
Costanzo, Patricia A., Palm Bay, FL	12/20/2000
Curtis, Lorraine Edith, Bloomington, CA	12/20/2000
Faddock, William, Peachtree City, GA	12/20/2000
Favela, Ricardo, Whittier, CA ...	12/20/2000
Giller, Leonid, Edison, NJ	12/20/2000
Gray, Robert Bruce, Ft. Lauderdale, FL	12/20/2000
Gray, Leslie Kenney, Richmond, VA	12/20/2000
Harrington, William, Coleman, FL	12/20/2000
Harris, Gloria A., East Point, GA	12/20/2000
Hollander, Alexander, Flushing, NY	12/20/2000
Isaacson, Yoram, Tehachapi, CA	12/20/2000
Isaacson, Joseph, Los Angeles, CA	12/20/2000
Johnson, Jeffrey, Rochester, NY	12/20/2000
Johnson, Linda, Vero Beach, FL	12/20/2000
Karu, Ron, Avenal, CA	12/20/2000
Lamar, Magaline Eddings, Fresno, CA	12/20/2000
Lewis, Terry Lamond, Rialto, CA	12/20/2000
Lopez, Gloria E., Coleman, FL	12/20/2000
Mack, Cedric Lamar, College Park, GA	12/20/2000
Mason, Paula J., Richmond, VA	12/20/2000
Mikhaylova, Alla, Flushing, NY	12/20/2000
Molina, David Jr., Brooklyn, NY	12/20/2000
Olmos, Leonardo, Miami, FL	12/20/2000
Pichardo, Juan A., New York, NY	12/20/2000
Pinkney, Brandi Raquel, Rowland Hgts, CA	12/20/2000
Poli, Catherine E., Delray Beach, FL	12/20/2000
Rampersad, Lakshminarine, Landing, NJ	12/20/2000
Rizzo, Anthony T., Batavia, NY	12/20/2000
Rome, Stanford B., Valdosta, GA	12/20/2000
Rubenich, Ervand Doganian, Long Beach, CA	12/20/2000
Schwartz, Edward, Redlands, CA	12/20/2000
Stallings, Allen J., Wallace, NC	12/20/2000
Stan, Joseph N., Beverly Hills, CA	12/20/2000
Weiselberg, Alan, Miami, FL	12/20/2000
Williams, Sandra Lynette, Ontario, CA	12/20/2000
Zak, Felix, Brooklyn, NY	12/20/2000
Zarza, Jose, Blounstown, FL	12/20/2000
Felony Control Substance Conviction	
Walters, Darlene Danielle, Tupelo, MS	12/20/2000
Patient Abuse/Neglect Convictions	
Adams, Yolanda M., Magee, MS	12/20/2000
Anderson, Margaret B., Columbia, SC	12/20/2000
Ducksworth, Coquetties, Taylorsville, MS	12/20/2000
Feliciano, Aja K., Hartsville, SC	12/20/2000
Fisher, Frederick Antonio, Corcoran, CA	12/20/2000
Gray, Dewayne, Jackson, MS ..	12/20/2000
Hopkins, Judith, Jackson, MS ..	12/20/2000
Johnson, Bertha, Kansas City, MO	12/20/2000
Larow, Mark L., Rome, NY	12/20/2000
Mitchell, Charlene, Camden, SC	12/20/2000
Moore, Larry Earl, Chattanooga, TN	12/20/2000
Motley, Mary Frances, Wesson, MS	12/20/2000
Naker, George Walter, Spokane, WA	12/20/2000
Nearing, Darrell W., Columbia, SC	12/20/2000
Scott, Altovise L., Jackson, TN	12/20/2000
Willis, Chester Lovell, Jackson, MS	12/20/2000
Wilson, Shirley, Jackson, MS ...	12/20/2000
Conviction for Health Care Fraud	
Ingram, Coltina E., Santee, SC	12/20/2000
License Revocation/Suspension/ Surrendered	
Alexander, Kristine R., Bethel, CT	12/20/2000
Altman, Karen R. Taylor, Blackshear, GA	12/20/2000
Anderson, Tim Glenn, Spokane, WA	12/20/2000
Anderson, Cassandra Michelle, Houston, TX	12/20/2000
Armando, Brenda Denise Wells, Stone Mountain, GA ..	12/20/2000
Armistead, Cedric, San Pablo, CA	12/20/2000
Bailey, Lawrence Ray Jr., Aurora, IN	12/20/2000
Balmer, Ruth Ann, Bethalto, IL	12/20/2000
Batish, Rajesh, Frazer, PA	12/20/2000
Baxter, Kimberly, Newtown, CT	12/20/2000
Beringer, Vicki L., Mentor, OH	12/20/2000
Bondoc, Dominga Rivera, Bronx, NY	12/20/2000
Borland, Richard K., Kennerdell, PA	12/20/2000
Borum, Curtis Tyrone, Fremont, CA	12/20/2000
Bryan, Karen Gean Byrd, Macon, GA	12/20/2000
Brydon, Cathy A., Pocatello, ID	12/20/2000
Buckner-Hunter, Francis, Los Angeles, CA	12/20/2000
Burke, Marianne Cunningham, Glendale, CA	12/20/2000
Cash, Lisa, Midlothian, VA	12/20/2000
Chenard, Paul Michael, Erie, PA	12/20/2000

Subject, City, State	Effective date
Choi, Jimmy W., Glen Cove, NY	12/20/2000
Church, Susan E., Walford, IA	12/20/2000
Courtney, Lara Skye, Hinton, OK	12/20/2000
Dailey, Douglas O., Grass Valley, CA	12/20/2000
Darling, Elizabeth Ann, Minneapolis, MN	12/20/2000
Davis, Larry Duane, Ontario, OR	12/20/2000
Dowling, Joanna Kathleen, Little Rock, AR	12/20/2000
Duffield, Cami R., Lawrenceville, NJ	12/20/2000
Erickson, Bernadette, Des Moines, IA	12/20/2000
Fleisher, Paul R., New London, CT	12/20/2000
Frasier, Shirley A., Waterville, ME	12/20/2000
Frazer, Cheryl, Lebanon, TN	12/20/2000
Gelpi, Angelo, Bronx, NY	12/20/2000
German, Mark L., Chino Valley, AZ	12/20/2000
Givens, Angela M., Richmond, VA	12/20/2000
Glynn, Tara, Yehm, WA	12/20/2000
Guerrero-Ramirez, Luis E., Houston, TX	12/20/2000
Haase, Steven, Scottsdale, AZ	12/20/2000
Harrington, William H., Colchester, CT	12/20/2000
Harrison, Jeffrey D., Phoenix, AZ	12/20/2000
Hendriksen, Rebecca Anne, Las Vegas, NV	12/20/2000
Henry, Jo Anne S., Cleveland, GA	12/20/2000
Hickman, Cynthia Marie Rathgeb, Chesapeake, VA ...	12/20/2000
Hoeppner, Michelle D., Urbandale, IA	12/20/2000
Holbrook, Robert Walter, El Paso, TX	12/20/2000
Hollobaugh, Samuel Lee, Ozark, Al	12/20/2000
Howe, Tammy L., Burlington, IA	12/20/2000
Hughes, Stephanie Nola, Fayetteville, GA	12/20/2000
Inorio, Nancy S., Hamden, CT	12/20/2000
Isaacs, Joy Rosemary S., St. Paul, MN	12/20/2000
Jacob, Lisa Rothrauff, Braddock, PA	12/20/2000
Jones, Patrick Stephen, Roanoke, VA	12/20/2000
Jordan, Paul Lawrence, Chowchilla, CA	12/20/2000
Kelly, Warren Roger, Wasco, CA	12/20/2000
Kocer, Abdul Khaliq, Ft. Oglethorpe, GA	12/20/2000
Kotajarvi, Cherie Lyn, Krueger Alpharetta, GA	12/20/2000
Kottler, Barry M., Butner, NC ...	12/20/2000
Lake, Cicely C., Richmond, VA	12/20/2000
Land, Timothy David, Chicago Ridge, IL	12/20/2000
Landrum, Kurt McKinley, Chicago, IL	12/20/2000
Langford, Sheshalla M., Mundelein, IL	12/20/2000
Lara, Susan G., Chicago, IL	12/20/2000
Lawrence, Gregory Scott, Edwardsville, IL	12/20/2000
Lee, Jerry Clayton, Chico, CA ..	12/20/2000
Liebman, William M., San Rafael, CA	12/20/2000
Lin, Paul Pao-Shan, Los Angeles, CA	12/20/2000
Lockridge, Pamela, Robeline, LA	12/20/2000
Lucas, Stephanie Andre, San Bernardino, CA	12/20/2000
Lukken, Nickie S., Sioux City, IA	12/20/2000
Lynch, Gloria J., E. Hartland, CT	12/20/2000
Madison, Shirley A., Aiken, SC	12/20/2000
Madison, Antoine Catrele, Joliet, IL	12/20/2000
Maugle, Barbara Lynn, Springfield, NJ	12/20/2000
McCall, Randy Allen, Sylva, NC	12/20/2000
McFarland, Dawn M., S. Portland, ME	12/20/2000
McGlynn, Megan T., Roslyn, PA	12/20/2000
McMath, Pamela Lynn, Southgate, MI	12/20/2000
Millard, Ann Clark, Mocanaqua, PA	12/20/2000
Minor, Jenny B., Staunton, VA	12/20/2000
Miranda-Solari, Artemio, Baltimore, MD	12/20/2000
Mitsui, Masao, Jersey City, NJ	12/20/2000
Moore, Lebrondia F., East Ridge, TN	12/20/2000
Naseeruddin, Khaja, Middletown, NY	12/20/2000
Newman, Robert Edwin II, Fortuna, CA	12/20/2000
Nunez, Denis A., Lawrenceville, GA	12/20/2000
Oddo, Stephen Anthony, San Diego, CA	12/20/2000
Papp, Mary Yvonne, Clyde, TX	12/20/2000
Paul, Jeremy Jay, Mesa, AZ	12/20/2000
Perron, L. Andre, Manchester, NH	12/20/2000
Perry, Michael Paul, San Antonio, TX	12/20/2000
Perry, Christopher J., E. Providence, RI	12/20/2000
Peterson, Robert F., Reno, NV	12/20/2000
Reniff, Betsy Christine, Baldwinsville, NY	12/20/2000
Rizzo-Collins, Theresa Marie, La Puente, CA	12/20/2000
Roberts, Amber S., Charlotte, VT	12/20/2000
Rodriguez, Ricardo, Los Angeles, CA	12/20/2000
Rogowski, Jerzy Miroslaw, Gouverneur, NY	12/20/2000
Sandhu, Susan Jane, Hercules, CA	12/20/2000
Schnur, Lois M., Colo, IA	12/20/2000
Skipping, Amy K., Dallas, TX ...	12/20/2000
Smith Wells, Deborah, Fort Worth, TX	12/20/2000
Starr, Amy Cathleene, Waco, TX	12/20/2000
Stiffler, Keith Monroe, Chapel Hill, NC	12/20/2000
Storks, Janet L., Danville, IA	12/20/2000
Streetman, Scott J., Destin, FL	12/20/2000
Struwe, Franklin J. JR., Brooklyn, WI	12/20/2000
Sunga, Isaias D., Palos Hills, IL	12/20/2000
Swenson, Shelley Allayne, Buffalo, MN	12/20/2000
Tartaglia, Tracy Christine, San Francisco, CA	12/20/2000
Tavey, Bertha, Riverside, CA ...	12/20/2000
Terrell, Bemita, Richmond, VA	12/20/2000
Thomas, Patricia Mary, Rochester, MN	12/20/2000
Tisdale, Kristen Elizabeth, Lakeville, MN	12/20/2000
Towery, David B., Newnan, GA	12/20/2000
Turner-Johnson, Jane, San Francisco, CA	12/20/2000
Tyler, Etta Mae, Redwood City, CA	12/20/2000
Valenzuela-Hawkins, Linda Jean, Santa Barbara, CA	12/20/2000
Vaughan, Thomas Karlton, Midland, GA	12/20/2000
Velasco, Barbara A., Memphis, TN	12/20/2000
Wagler, Mistie M., Sigourney, IA	12/20/2000
Walley, Bruce E., Lac Du Flambeau, WI	12/20/2000
Warren, John Marcus, Minneapolis, MN	12/20/2000
Weathers, Joan C., E Hartford, CT	12/20/2000
Willingham, Debra Kay, Lubbock, TX	12/20/2000
Wilson, Jane Ellen, Beggs, OK	12/20/2000
Wilson, Vickie Gay, Mulkeytown, IL	12/20/2000
Wise, Ronald Eugene, Charlottesville, VA	12/20/2000
Federal/State Exclusion/Suspension	
Economy Medical Supply, Burbank, CA	12/20/2000
Fraud/Kickbacks	
Dashiell-Ernst, Celeste, Point Pleasant, PA	09/20/2000
Owned/Controlled by Convicted Excluded	
Central Nutrition Svcs, Inc., Miami, FL	12/20/2000
Chicchetti Chiropractic Ctr., Palm Bch Gardens, FL	12/20/2000
Family Dentistry, Sun Valley, CA	12/20/2000
H & D Home Health Services, Sun Valley, CA	12/20/2000
Joseph N. Stan, D.D.S., Inc., Beverly Hills, CA	12/20/2000
Kaiser Chiropractic Life Ctr., McConnellsburg, PA	12/20/2000
Lee Family Dentistry, PC, New York, NY	12/20/2000
Towery Chiropractic Clinic, Newnan, GA	12/20/2000

Subject, City, State	Effective date
Default on Heal Loan	
Bailey, David W., Chicago, IL	11/06/2000
Bath-Barry, Susan M., Gardneerville, NV	11/01/2000
Benjamin, Roxanne L., Rose City, MI	12/20/2000
Berk, Richard I., Ann Arbor, MI	11/07/2000
Bucklar, Charles Jr., Saint Clair, PA	12/20/2000
Caporaso, Nicholas G., W. Liberty, OH	12/20/2000
Crews, Marvin, Washington, DC	12/20/2000
Green, Stephen K., Sr., Kennesaw, GA	12/20/2000
Green, Edwin Alfred Jr., Brownwood, TX	12/20/2000
Haderxhanaj, Kujtim I., Anahuac, TX	12/20/2000
Horner, Cynthia E., Greenville, SC	12/20/2000
Jeffrey, Pamela Marie, Plano, TX	12/20/2000
Keck, Julie N., Costa Mesa, CA	10/17/2000
Kennedy, Michael D., Conroe, TX	09/18/2000
Kober, Philip M., Madison, WI	12/20/2000
Krystosik, James D., Mantua, OH	12/20/2000
Lemons, Warren C., Los Angeles, CA	12/20/2000
Litten-Ferree, Laura L., Pleasant Grove, UT	12/20/2000
Louis, Robert P., Brooklyn, NY	12/20/2000
Mikaelian, Michelle, Bronx, NY	12/20/2000
Mizell, William L., Franlington, LA	12/20/2000
Moulds, Dan R. Jr., Chattanooga, TN	12/20/2000
Moulds, Lora Crystle, Chattanooga, TN	12/20/2000
Nyquist, Julia R., San Anselmo, CA	12/20/2000
O'Brien, Robert J., Clementon, NJ	11/16/2000
Pelmore, Janet C., Louisville, KY	10/04/2000
Preston, Richard G., Mitchells, VA	12/20/2000
Richards, Terence J., San Francisco, CA	12/20/2000
Selman, Alon Duane, Arlington, TX	12/20/2000

Dated: December 7, 2000.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–31672 Filed 12–12–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172; Extension, no change)—These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements.

The Act authorized funds to support activities on behalf of individuals with mental illness. Recipients of this formula grant program are required by law to annually report their activities and accomplishments to include the number of individuals served, types of facilities involved, types of activities undertaken and accomplishments resulting from such activities. This summary must also include a separate report prepared by the PAIMI Advisory Council descriptive of its activities and assessment of the operations of the protection and advocacy system. The annual burden estimate for the reporting requirements for these regulations is shown in the following table.

42 CFR Citation	Number of respondents	Responses per respondent	Burden per response (Hrs.)	Total annual burden
51.(8)(a)(2) Program Performance Report [1]	56	1	26.0	1,456
51.8(8)(a)(8) Advisory Council Report [1]	56	1	10.0	560
51.10 Remedial Actions:				
Corrective Action Plan	6	1	8.0	48
Implementation Status Report	6	3	2.0	36
51.23(c) Reports, materials and fiscal data provided to Advisory Council	56	1	1.0	56
51.25(b)(2) Grievance Procedure	56	1	.5	28
51.43 Written denial of access by P&A system [2]				
Total	56			2,184

[1] Responses and burden hours associated with these reports are approved under OMB Control No. 0930–0169.

[2] There is no burden estimate associated with this program provision because State P&A systems report that they attempt to resolve such situations through other means.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 6, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–31695 Filed 12–12–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4548–FA–02]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2000 Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of the award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Community Development Block Grant Program awards, contact the Area Office of Native American Programs serving your area or Jackie Kruszek, Office of Native Programs, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The ICDBG Program assistance made available in this notice is authorized by Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301, *et seq.*); 24 CFR part 1003; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106–74 113 Stat. 1047, approved October 20, 1999); and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276, 112 Stat. 2461, approved October 21, 1998).

The FY 2000 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on March 10, 2000 (65 FR 13192). Applications were scored and selected for funding based on the selection criteria in that NOFA and Area Office of Native American Programs (ONAPs) geographic jurisdictional competitions.

The amount appropriated in FY 2000 to fund the ICDBG was $67 million. Two million dollars of this amount was retained to fund imminent threat grants in FY 2000. Including $338,300 in unused funds from the amount reserved by the Assistant Secretary in FY 1999 for imminent threat grants, a total to $65,338,300 were available to fund single purpose ICDBG grants. The allocations for the Area ONAP geographic jurisdictions are as follows:

Eastern/Woodlands—$5,169,533
Southern Plains—12,233,734
Northern Plains—10,318,714
Southwest—28,148,676
Northwest—3,942,513
Alaska—5,525,130
Total—65,338,300

(The Catalog of Federal Domestic Assistance number for the ICDBG Program is 14.862.)

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 105 awards made under the various regional competitions in Appendix A to this document.

Dated: December 6, 2000.

Milan Ordinec,

Acting General Deputy Assistant, Secretary for Public and Indian Housing.

Appendix A—Fiscal Year 2000 Indian Community Development Block Grant Recipients of Funding Decisions

Funding recipient	Amount approved
EASTERN/WOODLANDS ONAP	
Aroostook Band of Micmac Indians, P.O. Box 772, Presque Isle, ME 04769	$120,000
Bad River Band of Lake Superior Tribe of Chippewa Indians, P.O. Box 39, Odanah, WI 54861	500,000
Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772	500,000
Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, NC 28719	500,000
Ho-Chunk Nation, Wisconsin Winnebago, W9814 Airport Road, P.O. Box 667, Black River Falls, WI 54615	500,000
Keweenaw Bay Indian Community, 107 Beartown Road, Baraga, MI 49908	438,478
Little River Band of Ottawa, 1762 S. US 31, Minstee, MI 49660	500,000
Mille Lacs Band of Ojibwe, Minnesota Chippewa Tribe, HCR 67, Box 194, Onamia, MN 56359	500,000
Penobscot Indian Nation, 6 River Road, Indian Island, Old Town, ME 04468	500,000
St Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655	500,000
Upper Sioux Indian Community, P.O. Box 147, Granite Falls, MN 56241	475,000
SOUTHERN PLAINS ONAP	
Absentee-Shawnee Tribe of Oklahoma, 2025 South Gordon Cooper Drive, Shawnee, OK 74801	750,000
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, OK 74465	750,000
Chickasaw Nation, P.O. Box 1548, Ada, OK 74821	750,000
Choctaw Nation of Oklahoma, Drawer 1210, Durant, OK 74702	750,000
Citizen Potawatomi Nation, 1601 S. Gordon Cooper Drive, Shawnee, OK 74801	688,910
Comanche Indian Tribe, P.O. Box 908, Lawton, OK 73502	652,277
Coushatta Tribe of Louisiana, P.O. Box 818, Elton, LA 70532	750,000
Delaware Tribe of Western Oklahoma, P.O. Box 825, Anadarko, OK 73005	722,826
Iowa Tribe of Kansas and Nebraska, RR1, Box 58A, White Cloud, KS 66094	375,000
Iowa Tribe of Oklahoma, RR 1 Box 721, Perkins, OK 74059	750,000
Kaw Nation, Drawer 50, Kaw City, OK 74641	525,625
Miami Tribe of Oklahoma, P.O. Box 1326, Miami, OK 74355	750,000
Osage Nation of Oklahoma, 627 Grandview, Pawhuska, OK 74056	137,500
Pawnee Nation of Oklahoma, P.O. Box 470, Pawnee, OK 74058	750,000
Sac and Fox Nation of Oklahoma, Route 2, Box 246, Stround, OK 74079	750,000
Seminole Nation, P.O. Box 1498, Wewoka, OK 74884	750,000

Funding recipient	Amount approved
United Keetoowah Band of Cherokee Indians, P.O. Box 746, Tahlequah, OK 74465–0746	749,998
Wichita and Affiliated Tribes, P.O. Box 729, Anadarko, OK 73005	732,420
Northern Plains ONAP	
Chippewa Cree Tribe, P.O. Box 544, Box Elder, MT 59521	800,000
Crow Creek Sioux Tribe, P.O. Box 50, Fort Thompson, SD 57339	800,000
Eastern Shoshone Tribe, P.O. Box 538, Fort Washakia, WY 82514	800,000
Northwest Band of Shoshoni Nation, 108 East Forest, Brigham City, UT 84302	650,000
Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514	800,000
Oglala Lakota Sioux Tribe, P.O. Box H, Pine Ridge, SD 57770	800,000
Ponca Tribe of Nebraska, 2602 J Street, Omaha, NE 68107	350,000
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570	800,000
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, MT 59855	800,000
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, SD 57262	800,000
Three Affiliated Tribes of the Fort Berthoid Reservation, HC 3, Box 2, New Town, ND 58763	800,000
Turtle Mountain Band of Chippewa Tribe, P.O. Box 900, Belcourt, ND 58316	500,000
Ute Mountain Ute Tribe, P.O. Box 248, Towaoc, CO 81334	800,000
Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361	800,000
Southwest ONAP	
k-Chin Indian Reservation, 42507 E. Peters & Nall Rd, Maricopa, AZ 852391	550,000
Big Valley Rancheria, 2726 Mission Rancheria Dr., Lakeport, CA 95455	550,000
Chemehuevi Indian Tribe, P.O. Box 1976, Chemehuevi Valley, CA 92363	550,000
Cloverdale Rancheria, 555 S. Cloverdale Blvd. Ste 1, Cloverdale, CA 95425	550,000
Cold Springs Rancheria, PO Box 209, Tollhouse, CA 93667	550,000
Colusa Rancheria, 50 Wintun Roads, Ste. D, Colusa, CA 95932	550,000
Coyote Valley Rancheria, PO Box 39, Redwood Valley, CA 95470	135,000
Dry Creek Ranhcheria, PO Box 607, Geyserville, CA 95441	550,000
Duckwater Shoshone Paiute, PO Box 140068, Duckwater, NV 89314–0068	493,489
Fort Bidwell Indian Reservation, PO Box 129, Fort Bidwell, CA 96112	258,560
Fort Independence Indian Reservation, PO Box 67, Independence, CA 93526	550,000
Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363	550,000
Guidiville Rancheria, PO Box 339, Talmage, CA 95481	550,000
Havasupai Indian Tribe, PO Box 10, Supai, AZ 86435	550,000
Haulapai Indian Tribe, PO Box 179, Peach Springs, AZ 86434	750,000
Kaibab-Paiute Tribe, H.C. 65, Box #2, Fredonia, AZ 86022	550,000
Karuk Indian Tribe, PO Box 1016, Happy Camp, CA 96039	550,000
Laytonville Rancheria, P.O. Box 1239, Laytonville, CA 95454	325,761
Los Coyotes Indian Reservation, P.O. Box 189, Warner Springs, CA 92086	550,000
Lytton Rancheria, 1250 Coddington Center, #1, Santa Rosa, CA 95401	550,000
Nambe Pueblo Reservation, Rt. 1 Box 117–BB, Santa Fe, NM 87501	550,000
Navajo Nation, PO Box 9000, Window Rock, AZ 86515	550,000
Pauma Band of Mission Indian, PO Box 369, Pauma Valley, CA 92061	524,960
Pit River Indian Tribe, 37014 Main Street, Burney, CA 96013	473,947
Pojoaque Pueblo, Route 22, Box 71 Santa Fe, NM 87501	550,000
Potter Valley Rancheria, 915 S. Dora Street, Ukiah, CA 95482	511,195
Pueblo of Zuni, P.O. Box 339, Zuni, NM 87327	2,000,000
Quartz Valley Rancheria, P.O. Box 24, Fort Jones, CA 96032	550,000
Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001	550,000
Redwood Valley Rancheria, 3250 Road I, Redwood Valley, CA 95470	498,328
Robinson Rancheria, 1545 E. Highway 20, Nice, CA 95464	549,905
Rohnerville Rancheria, 32 Bear River Drive, Loleta, CA 95551	549,968
Round Valley Indian Reservation, P.O. Box 448, Covelo, CA 95428	550,000
Salt River Indian Community, 10005 E. Osborn, Scottsdale, AZ 85256	1,997,135
Shingle Springs Rancheria, P.O. Box 1340, Shingle Springs, CA 95682	502,960
Stewarts Point Rancheria, 1410–C Guerneville Rd, Ste 4, Santa Rosa, CA 95403–4107	550,000
Torres-Martinez Indian Reservation, P.O. Box 1160, Thermal, CA 92274	550,000
Tule River Indian Reservation, P.O. Box 589, Porterville, CA 93258	550,000
Yavapai Apache Nation, P.O. Box 1188, Camp Verde, AZ 86322	550,000
Yomba Shoshone Tribe, HC 61, Box 6275, Austin, NV 89310–9301	549,904
Yurok Tribal Council, 1034 Sixth Street, Eureka, CA 95501	550,000
Northwest ONAP	
Coeur D'Alene, P.O. Box 408, Plummer, ID 83851	350,000
Coquille Tribe, P.O. Box 783, Coos Bay, OR 97420	348,818
Fort Hall, P.O. Box 306, Fort Hall, ID 83203	350,000
Jamestown S'Klallam Tribe, 1033 Old Blyn Highway, Sequim, WA 98382	348,055
Lummi Tribe, 2828 Kwina Road, Bellingham, WA 98226	350,000
Nez Perce Tribe of Idaho, P.O. Box 365, Lapwai, ID 83540	230,372
Nisqually, 4820 She-Nah-Num Drive, SE, Olympia, WA 98503	267,000
Shoalwater Bay Tribe, P.O. Box 130, Tokeland, WA 98590	299,000
Siletz, P.O. Box 549, Siletz, OR 97380	350,000
Skokomish, N. 80 Tribal Center Road, Shelton, WA 98584	350,000
Spokane, P.O. Box 100, Wellpinit, WA 99040	350,000
Umatilla, P.O. Box 638, Pendleton, OR 97801	350,000
Alaska ONAP	
Akiachak Native Community, P.O. Box 70, Akiachak, AK 99551	500,000
Native Village of Kongiganak, P.O. Box 5069, Kongiganak, AK 99559	500,000
Native Village of Kotlik, P.O. Box 20210, Kotlik, AK 99620	500,000
Nenana native Association, P.O. Box 356, Nenana, AK 99760	494,928
Native Village of Nightmute, P.O. Box 90021, Nightmute, AK 99690	499,487
Nikolai Village Council, P.O. Box 9145, Nikolai, AK 99691	500,000
Orutsaramuit Native Council, P.O. Box 927, Bethel, AK 99559	495,619
Native Village of Port Graham, P.O. Box 5510, Port Graham, AK 99603	479,236
Native Village of St. Michael, P.O. Box 50, St. Michael, AK 99659	500,000
Native Village of Stevens Village, P.O. Box 74016, Stevens Village, AK 99774	500,000
Tuluksak Native Community (IRA), P.O. Box 195, Tuluksak, AK 99679	500,000

[FR Doc. 00–31686 Filed 12–12–00; 8:45 am]
BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Renewal of Charter

AGENCY: Office of the Secretary, Interior.
ACTION: Notice.

SUMMARY: This notice is published in accordance with 41 CFR Part 101–6, section 101–6.1015(a), Committee establishment, reestablishment, or renewal. Following the recommendation and approval of the Exxon Valdez Oil Spill Trustee Council, the Secretary of the Interior hereby renews the Exxon Valdez Oil Spill Public Advisory Group Charter to continue for approximately 2 years, to September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the T/V *Exxon Valdez* ran aground on Bligh Reef in Prince William Sound in Alaska spilling approximately 11 million gallons of North Slope crude oil. Oil moved into the Gulf of Alaska, along the Kenai coast to Kodiak Island and the Alaska Peninsula—some 600 miles from Bligh Reef. Massive clean-up and containment efforts were initiated and continued to 1992. On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations. Under the civil settlement, Exxon agreed to pay to the governments $900 million over a period of 10 years.

The Exxon Valdez Oil Spill Trustee Council was established to manage the funds obtained from the civil settlement of the Exxon Valdez Oil Spill. The Trustee Council is composed of three State of Alaska trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Group was chartered by the Secretary of the Interior on October 23, 1992, and functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. (1988)).

The Public Advisory Group was established to advise the Trustee Council, and began functioning in October 1992. The Public Advisory Group consists of 17 members representing the following principal interests: sport hunting and fishing, environmental, public-at-large (5), recreation users, local government, science/academic, conservation, subsistence, commercial fishing, aquaculture, commercial tourism, forest products, and Native landowners. Members are appointed to serve a 2-year term.

To carry out its advisory role, the Public Advisory Group makes recommendations to, and advises, the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment; and

c. Planning, evaluation and conduct of restoration activities.

Trustee Council intentions regarding the importance of obtaining a diversity of viewpoints is stated in the *Public Advisory Group Background and Guidelines* (March 1993, updated June 1994 and August 1996): "The Trustee Council intends that the Public Advisory Group be established as an important component of the Council's public involvement process." The Council continues, stating their desire that "* * * a wide spectrum of views and interest are available for the Council to consider as it evaluates, develops, and implements restoration activities. It is the Council's intent that the diversity of interests and views held by the Public Advisory Group members contribute to wide ranging discussions that will be of benefit to the Trustee Council."

In order to ensure that a broad range of public viewpoints continues to be available to the Trustee Council, and in keeping with the settlement agreement, the continuation of the Public Advisory Group for another 2-year period is necessary.

Dated: November 29, 2000.

Bruce Babbitt,
Secretary of the Interior.

[FR Doc. 00–31677 Filed 12–12–00; 8:45 am]
BILLING CODE 4310–RC–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number 001206343–0343–01 and I.D. 120400E]

Solicitation of Public Comments on a Proposed Policy for Review of Mandatory Conditions Developed by the Departments of the Interior and Commerce in the Context of Hydropower Licensing

AGENCIES: Office of the Secretary, Interior; National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), Commerce.

ACTION: Notice of solicitation of public comments on proposed agency policy.

SUMMARY: The Department of the Interior and the Department of Commerce (Departments) are proposing a new process for public review of and comment on mandatory conditions and prescriptions the Departments develop as part of the Federal Energy Regulatory Commission's (Commission's) hydropower licensing proceedings under part I of the Federal Power Act (Act). This policy would offer an opportunity for public comment on the Departments' mandatory conditions and prescriptions for both the traditional licensing process and the alternative licensing process.

DATES: Submit written comments on the proposed policy to be received by the Departments on or before January 3, 2001.

ADDRESSES: Submit written comments to Kathryn Conant, National Marine Fisheries Service, Office of Habitat Conservation, 1315 East West Highway, Building 3, Room 15206, Silver Spring, Maryland 20910 or fax: 301–713–1043.

FOR FURTHER INFORMATION CONTACT: Tom Iseman, U.S. Department of the Interior, 202–208–6291, or Kathryn Conant, U.S. Department of Commerce, 301–713–2325, extension 205.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Part I of the Federal Power Act, 16 U.S.C. 791a *et seq.* (Act), the Department of the Interior and the Department of Commerce (Departments) possess certain authorities in the process for licensing non-federal hydroelectric generating facilities. Although the final licensing decision lies with the Federal Energy Regulatory Commission (Commission), the Departments, and Bureaus within the Department of the Interior, provide input to the Commission on a number of issues related to the license application. Among others, the Departments' authorities include the U.S. Fish and Wildlife Service's and National Marine Fisheries Service's authority to prescribe fishways under section 18 of the Act, 16 U.S.C. 811, and the Secretary of the Interior's authority under section 4(e) of the Act, 16 U.S.C. 797(e), to establish conditions "necessary for the adequate protection and utilization" of land "reservations" that may contain non-federal hydropower project works. The affected reservations may include lands managed principally by the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Land Management, the Bureau of Reclamation, or the Bureau of Indian Affairs.

The Act requires that both section 18 prescriptions and section 4(e) conditions be included in any license issued by the Commission. The mandatory nature of these prescriptions and conditions has been upheld by Federal courts, including the Supreme Court. *Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765 (1984); *Bangor Hydroelectric Company* v. *FERC*, 78 F.3d 659 (DC Cir.1996); *American Rivers* v. *FERC*, 129 F.3d 99 (2d Cir. 1997); *American Rivers* v. *FERC*, 201 F.3d 1186 (9th Cir. 1999). After incorporation into a license, the prescriptions and conditions are subject to judicial review under the Act's appeal procedures, which place exclusive jurisdiction in the Federal courts of appeals, 16 U.S.C. 8251(b).

The Departments' practice has been to try to work closely with license applicants in developing mandatory conditions and prescriptions. However, licensees and others have expressed interest in having the Departments consider outside input and comments on these conditions and prescriptions through a standardized process. Such a standardized mechanism would provide an opportunity for interested parties to provide comment on the conditions and prescriptions. On May 26, 2000, the Departments published a **Federal Register** notice soliciting public comments on the possibility of the Departments' establishing a review process for their mandatory conditions and prescriptions, and asking six specific questions regarding such a possible review process. (65 FR 34151, May 26, 2000).

The Departments received 25 sets of comments representing a broad range of parties interested in hydropower licensing. All the commenters supported the idea of establishing a review process, and they expressed a broad range of views regarding the potential timing and substance of the process. After careful review and consideration of the comments received and the constraints of the existing hydropower licensing process the Departments are proposing to provide a two part process for review of mandatory conditions and prescriptions under the traditional licensing process of the Act and the Commission's regulations. In addition, the Departments are proposing a more limited process for review of conditions and prescriptions developed through the Commission's alternative licensing process.

The review process proposed today will be limited to section 4(e) and 18 conditions and prescriptions. The recommendations filed by the Departments under sections 10(a) and 10(j) of the Act are subject to further review by the Commission and may be addressed under existing Commission procedures. In all cases, the review of conditions and prescriptions would occur at an appropriate level within the relevant agency.

This process would be adopted as an agency policy to be become effective six months after adoption, in order to provide time for field implementation.

The proposed review procedures are briefly summarized below. (Please refer to the detailed description of the policy for more specific information.)

A. Review Process—Traditional Licensing

The Departments are proposing a two-part process for review of license conditions and prescriptions in the traditional licensing process. This process would provide participating parties an opportunity both before and after license issuance to comment on conditions and prescriptions.

First, the Departments propose to consider comments through the Commission's traditional hydropower licensing process, prior to issuance of the license. In most situations, the Departments file preliminary conditions and prescriptions in response to the Commission's Ready for Environmental Analysis (REA) notice. Under this process, parties will have the opportunity to comment on the preliminary conditions and prescriptions to the appropriate Departments within a 45-day time period. In most cases, this will be concurrent with the Commission's allowed time to reply to REA submissions. Although the Departments intend for this 45-day response period to be the primary mechanism for receiving comments from participants in the licensing process, they will also seek comments in response to the Commission's draft National Environmental Policy Act (NEPA) document, to ensure that the public at-large has the opportunity to participate in the review process. The Departments will consider information developed through the draft NEPA document and all comments on the conditions and prescriptions, and then issue modified conditions and prescriptions to the Commission for inclusion in its final NEPA document.

In addition, the Departments propose to consider any issues raised regarding the Departments' conditions and prescriptions, submitted through the Commission's request for rehearing process after license issuance. If an intervener [1] submits a request for rehearing, pursuant to 18 CFR 385.713, that clearly addresses the Departments' conditions and prescriptions, the Departments will review those comments. The Departments will submit a written response to issues raised regarding its mandatory conditions and prescriptions, including any necessary changes to the conditions and prescriptions, within 30 days if possible. In those infrequent situations when more than 30 days is required for response because of substantive and new information or other unexpected circumstances, the Departments will, within 30 days, submit a description of the reason for additional review and a reasonable time line for the written response.

B. Review Process—Alternative Licensing Procedure.

The Commission's alternative licensing procedure raises unique concerns regarding the adoption of a review process for the Departments' mandatory conditions and prescriptions, particularly when parties negotiate delicately balanced license terms in a settlement agreement. If the Departments submit conditions and prescriptions that are not included in a settlement agreement, the Departments propose to apply to that proceeding the review process described above for the traditional licensing process.

If the Departments submit conditions and prescriptions that are included in the settlement agreement, then the Departments propose to apply a modified version of the review process described above. The Departments will review specific comments on conditions and prescriptions in response to the Commission-issued notice calling for comment on the settlement agreement and/or license application pursuant to 18 CFR 4.34(b). If comments raise substantive issues that may require amendment of the negotiated agreement, the Departments will discuss appropriate resolution with the settling parties. After conferring with the settling parties, the Departments will respond to the comments. The Departments will include any changes or adjustments made to the agreed-upon conditions and prescriptions as a result of the comments received and collaboration with the settling parties when the conditions and prescriptions are formally submitted to the Commission.

[1] The request for rehearing is available only to interveners, as described by FERC regulations.

II. Response to Comments

In response to the **Federal Register** notice (May 26, 2000), the Departments received comments from a variety of stakeholders who participate in hydropower licensing, including: the Commission; the United States Department of Agriculture, Forest Service; National Hydropower Association; Western Urban Water Coalition; the Hydroelectric Licensing Reform Task Force; Alcoa Power Generating, Inc.; Duke Power; the American Public Power Association; Pacific Gas and Electric Company; Alabama Power Company; Public Utility District No. 1 Chelan County; Public Utility District No. 1 of Douglas District and Public Utility District of Grant County; Idaho Power; Petersburg Municipal Power & Light; Orion Power of New York; Southern California Edison; New York Power Authority; Senator Coppola of the State of New York; Edison Electric Institute; Allegheny Energy Supply; Northwestern University; Kleinschmidt Associates Consulting Engineers; Trout Unlimited; American Rivers; New York Rivers United; and Defenders of Wildlife.

By their **Federal Register** notice, the Departments sought public comment on six questions. After consideration of all of the comments received, and giving consideration to the issues raised as discussed in the preamble, these specific questions are answered in Section I—Response to Specific Questions. Some commenters raised issues not directly related to the specific questions. These general issues, and expansion of some issues raised in the specific questions, are addressed in Section II—Response to General Issues.

A. Section I—Response to Specific Questions

Question 1. Should a review process be adopted and, if so, what kind of process should be established?

Answer. The Departments agree with the unanimous comments received that a review process should be adopted. Through this notice, the Departments are proposing to establish a Mandatory Conditions Review Process (MCRP). Commenters provided a wide range of options regarding the kind of process—from a process that includes an appeal component to a process that includes full evidentiary hearings with administrative law judges [2] to a process that involves some form for notice and comment upon preliminary conditions and prescriptions.[3] All options suggested by commenters were considered by the Departments in the development of this procedure.

Question 2. If so, how could such a process be integrated into the Commission's current licensing procedures in a timely and efficient manner? To meet the constraints of timeliness and resource limitations, are changes needed in the timing or implementation of various steps in the agencies'—including the Commission's—existing regulations or procedures? If not, then when should the review process take place?

Answer. Most commenters suggested that any review process designed by the Departments should not impede or delay the Commission's licensing process.[4] The Departments agree. In designing the proposed MCRP, the Departments gave predominant consideration to establishing a seamless process which would provide the desired opportunities for meaningful review, without undermining, impeding or delaying the Commission's licensing process in any fundamental way. The Departments' proposed MCRP, in fact, employs the Commission's existing licensing process and requires only minor adjustments. If the Departments foresee that review of comments may require more time than is allotted in the Commission's licensing process, the Departments propose submitting target letters to the Commission, with schedules for completion of review of public comments and modification of conditions and prescriptions. The Departments anticipate only minor delays and expect that target letters will be required rarely, in instances when new and substantive information is provided in comments, if coordination between the Departments or bureaus with the Department of Interior requires additional time, or other unexpected situations.

Question 3. If, under any review process mechanism, it were not possible to avoid delaying the overall licensing process, would it still be worth establishing such a process?

[2] Alabama Power Company; American Public Power Association; the Hydropower Licensing Reform Task Force; Southern California Electric; Public Utility Districts of Chelan, Douglas and Grant Counties; National Hydropower Association; Idaho Power Company; Duke Energy; Orion Power of NY; and Edison Electric Institute.

[3] Senator Coppola; Federal Energy Regulatory Commission; Defenders of Wildlife; New York Rivers United; Alcoa Power Generating Inc.; Trout Unlimited; American Rivers.

[4] Coppola; New York Rivers United; Western Urban Water Coalition; Alcoa Power Generating Inc.; Edison Electric Institute; Public Utility Districts of Chelan, Douglas and Grant Counties.

Answer. While most commenters did not want the Departments' review process to cause significant delay to the licensing process,[5] most commenters also responded that in order to achieve meaningful review of the Departments' mandatory conditions and prescriptions, some delay was justifiable.[6] However, while the Departments agree, the Departments have developed a process that provides meaningful review without significant delay to the licensing process.

Question 4. Should the review process for section 4(e) and section 18 be the same?

Answer. All commenters who addressed this issue commented that the review process for mandatory conditions under section 4(e) and mandatory prescriptions under section 18 should be the same.[7] The Departments agree.[8] The proposed MCRP is generally the same whether the mandatory condition is submitted under section 4(e) or under section 18. However, it should be noted that the Departments also designed the proposed MCRP to be used by both Departments, including the different bureaus within the Department of the Interior. Thus, flexibility was necessary to accommodate the different chain of command, signature authority and other administrative functions within and between Departments and the bureaus within the Department of the Interior.

Question 5. Who should be allowed to initiate and/or participate in the review process? Should it be limited to the license applicant? Should it be limited to formal parties (i.e. interveners) to the Commission's licensing process (note that, depending upon when the review process takes place, there may not yet be interveners before the Commission)? Should the opportunity be available to anyone with an interest in the project?

Answer. There was some divergence in comments on this issue. Some commenters asserted the process should apply only to the license applicant.[9] Other commenters asserted that any review process should be open to any participant.[10] The Departments agree that participants in the process in addition to the license applicant have a significant interest in these proceedings, and that all participants in the licensing process may be included in the review process without creating either a cumbersome or time-consuming process. Consequently, the Departments have proposed that the MCRP should include review opportunity for the license applicant, any participants in the licensing process, and the general public. The Departments have designed the MCRP to be available to the participants in the licensing process on the Commission's Service List when the Departments submit preliminary conditions and prescriptions in response to the Commission's Ready for Environmental Analysis (REA) Notice and to any members of the general public when the Commission includes the preliminary conditions and prescriptions in the publication of the Commission's Draft National Environmental Policy Act (NEPA) document. All of these comments will be considered in the Departments' review and in their submission of modified conditions and prescriptions after the Draft NEPA document is published. In order to merge time frames with the Commission regulations, participants in the licensing process should submit comments in response to the submission of preliminary conditions and prescriptions after the REA Notice. The comment period after public notice in the Draft NEPA document publication is provided to allow members of the public who may have an interest, but were not previously involved in the licensing process, the opportunity to comment as well. In this way, both participants in the licensing process and members of the general public who have an interest, but were not previously involved, will have an opportunity to provide comments. Those who have intervened in accordance with Commission regulations will be provided further review through the Commission's request for rehearing.

Question 6. Should the new process be available for prescriptions and conditions agreed upon pursuant to the Commission's streamlined alternative licensing procedure—a process that already provides considerable opportunity for communication and negotiation among the Departments and other interested parties?

Answer. Many commented that the review process should be applicable to the alternative licensing process (ALP).[11] Some commenters asserted that the review process was not necessary in the alternative licensing process, given the extensive amount of consultation and coordination which is embodied in the process itself.[12] The Departments find merit in both of these comments. In considering this issue, the Departments had several concerns: most of the alternative licensing process takes place before a license application is filed or an administrative record of the proceeding is established, precluding the preparation of conditions and prescriptions; the process is new and unique to each project, so clear hallmarks and procedures do not exist; and, most importantly, review and alteration of carefully crafted license conditions could undermine settlement agreements negotiated through the ALP. For these reasons, designing a practical process was difficult. However, the Departments propose to provide an opportunity for comment on mandatory conditions and prescriptions negotiated through alternative licensing proceedings and included in the settlement agreement.

B. Section II—Response to General Comments

1. Public Input to Process Development

Some commenters suggested the possibility of the Departments' holding a technical conference to discuss options for the proposed review process.[13] The Departments considered this possibility, but decided that an opportunity to seek written comments would give the public more time to comment on a proposed process and provide better documentation of concerns raised with the proposed process. Further, the Departments intend to revisit the process after two years, allowing refinement based on experience to date. Therefore, this proposed policy has been developed based on the public response to **Federal**

[5] See Footnote 4 herein.

[6] Northwestern University; Idaho Power Company, Federal Energy Regulatory Commission; Defenders of Wildlife; Petersburg Municipal Power and Light; Kleindschmidt Associates; National Hydropower Association; and Trout Unlimited.

[7] Senator Coppola; Idaho Power Company; Federal Energy Regulatory Commission; Defenders of Wildlife; Orion Power of NY; New York Rivers United; Kleindschmidt Associates; Western Water Coalition; American Public Power Association; Trout Unlimited; Public Utility Districts of Chelan, Douglas and Grant Counties.

[8] The U.S. Forest Service already has a public review process, through its Forest Planning/NEPA guidelines, for its 4(e) conditions.

[9] Senator Coppola; Western Urban Water Coalition; Edison Electric Institute.

[10] Northwestern University; Idaho Power Company; Federal Energy Regulatory Commission; Defenders of Wildlife; Orion Power; Petersburg Municipal Power & Light; New York Rivers United; Kleinschmidt Associates; Duke Power; Trout Unlimited; National Hydropower Association; American Rivers; Public Utility Districts of Chelan, Douglas and Grant Counties.

[11] Idaho Power Company; Federal Energy Regulatory Commission; Defenders of Wildlife; Petersburg Municipal Power & Light; Kleinschmidt; Duke Power; National Hydropower Association; Public Utility Districts of Chelan, Douglas & Grant Counties; American Rivers; Trout Unlimited; New York Rivers United.

[12] Western Urban Water Coalition; Edison Electric Institute.

[13] Orion Power of New York; Kleindschmidt Associates; Duke Power; National Hydropower Association; Public Utility Districts of Chelan, Douglas and Grant Counties.

Register notice (May 26, 2000), staff experience with the licensing process, and consultation with Commission staff.

2. Form of Review Process

Some commenters suggested that the review process should be established through binding regulations.[14] Others recommended that the review process should start immediately with policy and move toward regulation, or that new regulations were not necessary.[15] In considering all comments, the Departments propose that the best way to implement the proposed MCRP is through the publication of a policy. In addition, the Departments recognize that meaningful evaluation of this process may best take place after a trial period of implementation. The Departments intend to revisit the process after two years, allowing refinement based on experience to date.

3. Timing

The Departments found that timing was a principal consideration in determining whether and how to establish a review procedure for the Departments' conditions and prescriptions. Several comments suggested that the Departments should write conditions and prescriptions and provide a review period before a hydropower license application is submitted,[16] but the Departments found that unworkable. While the Departments will continue to work with licensees to coordinate development of conditions and prescriptions together with project design, license applications still may change significantly between drafts circulated to interested parties and final applications submitted to the Commission. Many of the studies identified by the parties as necessary would not have been completed, again undermining the ability to formulate preliminary conditions and prescriptions. Moreover, the publication of preliminary conditions and prescriptions before there is a proceeding, or a license application on the record that identifies a specific project, project operations, and probable project impacts for which mitigation may be needed, is not consistent with the legal requirements for substantial evidence in the record before the Commission, set forth in *Bangor Hydroelectric Co., Inc.* v. *FERC*, 78 F.3d 659 (DC Cir. 1996).

Once an application is submitted to the Commission, the timing of the issuance of mandatory conditions and prescriptions and any review process is necessarily intertwined with the Commission's procedures for processing the application. The length of time required for hydropower licensing has been a continuing concern for the Commission, the Departments, licensees and other members of the interested public. While the Departments and the Commission may disagree over the extent to which the Commission may affect the Departments' authorities through its procedural regulations, the Departments wish to work with the Commission and within the Commission's existing process to the extent possible, in order to avoid creating any new delays in the licensing process. Thus, the timing of the Departments' proposed review process takes into account the timing contemplated by the Commission's regulations.

The Departments have found, however, that it is not always possible to act within the time period contemplated by the Commission's regulations. Since the Commission's REA notice is based upon the Commission's own requirements for information to perform its NEPA analysis, it does not necessarily take into account the question of whether the Departments have sufficient information to form the basis of the conditions that meet the Departments' statutory responsibilities and to provide substantial evidence for the Departments' administrative record. See *Bangor Hydroelectric* v. *FERC*, 78 F.3d 659 (DC Cir. 1996). In addition, the Departments propose to file modified conditions and prescriptions 90 days after the close of the comment period on the Commission's draft NEPA document, in order to respond to public comments addressing the preliminary conditions and prescriptions. Currently, Commission practice anticipates that the modified conditions and prescriptions would be filed within the public comment period. Another conflict could arise with the Departments' proposal to file a response following requests for rehearing that raise issues with the Departments' conditions and prescriptions. Current Commission regulations provide discretion for the Commission to allow filings in response to a request for rehearing, and the Commission generally does not reject or exclude from the record such filings. However, the Departments' proposal would standardize that practice. By proposing to notify the Commission regarding the anticipated timing for the Departments' filings, the Departments seek to improve agency coordination and reduce delays in the process.

4. Appeal Mechanism

Many of the commenters wanted an appeal component, some including full evidentiary hearings before administrative law judges.[17] Other commenters recommended notice and comment.[18] The Departments have given this issue careful consideration. The Departments propose not to provide full evidentiary hearings for two primary reasons: (1) no appropriate forum is available that has jurisdiction over the Departments' decision under the FPA; and (2) full evidentiary hearings would prevent the Departments from meeting the most common request of all commenters, that the review process fit within the Commission's existing licensing process and not cause extended delay. However, the Departments propose to meet the request for an appeal component by answering specific issues raised on its modified conditions and prescriptions that are included in a party's request for rehearing.

5. Level of Review

Some commenters[19] specifically requested that the review process be conducted at a different and/or higher level than the staff responsible for preparing the conditions and prescriptions. These comments may, in part, be based on a misconception regarding the level at which the Departments submit conditions; in most cases, conditions and prescriptions are submitted at the regional level or higher. Nonetheless, the Departments considered this issue in developing this process. The initial signature level of the conditions and prescription is different between the Departments of Commerce and Interior, and also within the bureaus of the Department of the Interior. The level of review of modified conditions and prescriptions will vary depending upon the Department and the bureau. In all cases, the Departments propose that the review will occur at least at the State or regional level.

[14] Southern California Edison; Idaho Power Company; Alabama Power Company; Duke Power; Public Utility Districts of Chelan, Douglas and Grant Counties; New York Rivers United; Western Urban Water Coalition.

[15] National Hydropower Association; American Rivers; Orion Power; Federal Energy Regulatory Commission.

[16] Senator Coppola, Southern California Edison, Idaho Power Company, Federal Energy Regulatory Commission, Western Urban Water Coalition, Alcoa Power Generating Inc.

[17] See Footnote 2 herein.

[18] See Footnote 3 herein.

[19] Pacific Gas & Electric Co.; American Public Power Association; Duke Power; Hydropower Licensing Reform Task Force.

6. Review of Non-Exercise or Reservation of Authority

Some commenters suggested that any review process should be applicable to situations in which a stakeholder challenges the Departments' failure to exercise mandatory authority.[20] In certain cases when the Commission issues the REA notice, the Departments already participating in the licensing process may respond by exercising their section 4(e) or 18 statutory authority by reserving that authority. In these cases, that submission would be subject to the review process proposed here. When the Department(s) are not participating in a licensing process, the review process is not applicable.

7. Review of Economic Impacts

Some commenters suggested that the review process provide a review of the economic impacts of the conditions and prescriptions on the project.[21] It is not necessary, or appropriate, to address here what substantive issues may be raised by participants in requesting review. Commenters may raise whatever concerns they consider relevant at the appropriate time in each licensing proceeding.

III. Procedural Requirements

A. Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that the action proposed (implementation of a policy) is not a "significant regulatory action". This proposed policy describes an opportunity for public review of and comment on conditions and prescriptions that the Departments develop as part of the Commission's existing hydropower licensing process. Thus, the policy would not impose a compliance burden on the economy generally.

B. Administrative Procedures Act

This policy is not subject to prior notice and an opportunity to comment because it is a general statement of policy (5 U.S.C. 553(b)(A)).

C. Regulatory Flexibility Act

This policy is not subject to notice and comment under the Administrative Procedures Act, and therefore not subject to the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Furthermore, the Departments have determined that this policy will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed policy is guidance and does not compel any party to conduct any action. This policy would provide a standardized opportunity for public comment on the Departments' mandatory conditions and prescriptions. Therefore, the Departments believe that no economic effects on small entities will result from compliance to the criteria in this policy.

D. Small Business Regulatory Enforcement Fairness Act

This policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

1. Will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of the policy is to provide a standardized opportunity for public comment on the Departments' mandatory conditions and prescriptions. It will impose no additional regulatory restraints to those already in operation. The Departments have, therefore, determined that the policy will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

E. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

1. This policy will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The policy does not require any additional management responsibilities. The Departments expect that this proposed policy will not result in any significant additional expenditures by entities that participate in the Commission's hydropower licensing process.

2. This proposed policy will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This rule is not expected to have significant economic impacts nor will it impose any unfunded mandates on other Federal, State, or local governments agencies to carry out specific activities.

F. Federalism

In accordance with Executive Order 13132, this proposed policy does not have significant Federalism effects; therefore, a Federalism assessment is not required. This policy will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. Therefore, the policy does not have significant effects or implications on Federalism.

G. Paperwork Reduction Act

This policy does not require an information collection under the Paperwork Reduction Act. Therefore, this proposed policy does not constitute a new information collection requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. National Environmental Policy Act

The Departments have analyzed this policy in accordance with the criteria of the National Environmental Policy Act (NEPA). This proposed policy does not constitute a major Federal action significantly affecting the quality of the human environment because it only provides notice and comment on conditions and prescriptions. Issuance of the proposed policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10. The National Oceanic and Atmospheric Administration (NOAA) has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216–6 Administrative Order, Environmental Review Procedure.

I. Essential Fish Habitat

We have analyzed this policy in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that issuance of this policy may not adversely affect the essential fish habitat of federally managed species, and, therefore, an essential fish habitat consultation on this policy is not required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, the Departments have assessed the impact of this proposed policy on tribal trust resources and have determined that it does not directly affect Tribal resources. Because the policy will standardize a review process of section 4(e) conditions, which do directly affect tribal resources, the Departments will consult with tribal governments when reviewing and responding to comments or requests for rehearing that directly relate to conditions that affect tribal resources.

IV. Commission Coordination

The Departments have begun discussions with the Commission regarding the integration of the proposed MCRP with the Commission's existing licensing process. Timing issues require coordination with the Commission, and the Departments will continue to work with the Commission to determine how best to minimize timing conflicts while providing meaningful review of the Departments' conditions and prescriptions.

V. Mandatory Conditions Review Process—Narrative

A. Traditional Licensing Process

The following process describes a proposal for the Departments to receive and respond to comments regarding the mandatory conditions and prescriptions submitted to the Commission through the traditional licensing process. The Departments already have informal policies and practices for maintaining communications with licensees and others throughout the development of conditions and prescriptions. The Departments view this as an iterative, cooperative process. However, the Departments have not until now had a standardized process for reviewing public comments on the conditions and prescriptions developed during the licensing process. This proposed policy is designed to work within the Commission's licensing process to efficiently allow meaningful public input without unduly delaying licensing.

1. Part A: Notice and Comment on Preliminary Conditions and Prescriptions

a. Ready for Environmental Analysis. The Departments' proposed Mandatory Conditions Review Process (MCRP) is triggered when the Commission determines that a hydropower license application is complete and it has issued a notice indicating the license application is Ready for Environmental Analysis (REA). Comments, recommendations, terms and conditions, and prescriptions concerning the license application are typically to be filed with the Commission within 60 days from the date of the REA notice. The MCRP relates only to the mandatory conditions and prescriptions (not comments or recommendations). The information that is filed in response to the REA notice is generally incorporated into the Commission's National Environmental Policy Act (NEPA) analysis that establishes the framework for license conditions the Commission may include in any issued license.

b. Filing of Preliminary Conditions and Prescriptions. The Departments will file preliminary conditions and prescriptions within the Commission's 60-day REA comment period. In those infrequent cases when the Departments' administrative record is insufficient, the Departments need more time to coordinate, or other circumstances arise and the Departments are unable to issue preliminary conditions and prescriptions during this period, the Departments will follow the procedures described below.

When the Departments are unable to provide some or all preliminary prescriptions and conditions to the Commission within the 60-day REA notice period, the Departments will, in a letter to the Commission and its service list, exercise their statutory authorities by reserving authority. The Departments will include in this letter: (1) the reasons why preliminary prescriptions and conditions are not being filed at this time; and (2) a schedule, including a target date, for submitting the preliminary prescriptions and conditions. When the preliminary prescriptions and conditions are completed, they will be provided to the Commission and its service list. The Departments intend that preliminary conditions and prescriptions will be filed for inclusion in the draft NEPA document and that both comment periods will be completed as discussed below.

If the Departments make the determination that their administrative record does not support the filing of conditions and prescriptions at the time of licensing, but may support such a filing during the license term, the Departments will exercise statutory authority by reserving that authority until a later date when the Departments' administrative record supports such an exercise. The participating Departments will provide the reservation of authority during the 60-day REA comment period.

The level of signature for preliminary conditions and prescriptions will vary depending on the signature authority within each Department and within the bureaus of the Department of the Interior. The Departments will file an original and eight copies of the preliminary conditions and prescriptions with the Commission and an index to the Departments' administrative record that supports the preliminary conditions and prescriptions. These materials will also be provided to the Commission's service list. The Departments will file an original and three copies of the Departments' administrative record with the Commission either concurrently or within a time period specified in the preliminary submission. The administrative record will also be provided to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, to the Indian Tribe of that Reservation. The Departments' administrative record will be available at the Departmental office from which it originates, but will not be automatically served upon the service list. Any party may request copies of the record, in whole or in part, from the conditioning Department, according to procedures described in the issuing document.

c. Comment Opportunity. The proposed MCRP would provide two very specific opportunities for notice and comment targeted to two separate audiences. The Departments will respond to comments and modify conditions and prescriptions as necessary after the end of the second comment opportunity.

The first opportunity is provided to participants in the licensing process who receive the Departments' preliminary conditions and prescriptions in response to the Commission's REA notice. The preliminary submission, which is served on the Commission's Service List, will invite comments and new supporting evidence on the preliminary conditions and prescriptions within a 45 day time period. Commission regulations call for submissions within 60 days of the REA notice, and provide for reply to those submissions to be filed

[20] New York Rivers United; American Rivers.

[21] Western Urban Water Coalition' American Public Power Association; Hydropower Licensing Reform Task Force.

within 105 days of the REA notice See 18 CFR 4.34(b). Thus, the comment period on the preliminary conditions and prescriptions will usually be concurrent with the Commission's allowed time to reply to REA submissions. All comments on the Departments' preliminary conditions and prescriptions should be specifically identified and include supporting evidence. The Departments will begin reviewing comments when received; however, no response will be made until after review of the draft NEPA document.

To be responsive to the fact that there may be persons with an interest in the Departments' preliminary conditions and prescriptions who have not been previously involved in the licensing process, the Departments are providing a second opportunity to the public to provide comments. With publication of the draft NEPA document for comment, which will include the Departments' preliminary conditions and prescriptions, the Commission will inform the public that, if they want to comment, they must provide a copy of specific comments and supporting evidence to the Departments within the comment period for the draft NEPA document. In order to have adequate time to thoroughly review comments and to efficiently provide the Commission with the modified conditions and prescriptions, the Departments strongly encourage participants in the licensing process to submit comments during the first notice and comment period, rather than wait until the NEPA comment period. While it is neither necessary nor recommended for participants in the licensing process to re-submit comments already submitted, to the extent that participants in the process resubmit comments in the NEPA comment period, any changes or new comments should be specifically and expressly identified in the submission. The Departments will consider all comments received.

d. Filing Modified Conditions and Prescriptions. The Departments will review the draft NEPA document and all comments received on the preliminary conditions and prescriptions. Based on this review, the Departments will modify the conditions and prescriptions, as needed, and respond to comments. Within 90 days of the close of the draft NEPA comment period, the Departments will submit modified conditions and prescriptions, unless substantial and new information was provided during the NEPA comment period requiring additional review time, or coordination between the Departments or Department of Interior's bureaus or other unexpected circumstances arise that reasonably require additional time. In those infrequent situations where additional time is needed, the Departments will submit to the Commission and its service list, and all commenters, a letter providing an explanation of the need for additional time and a schedule for preparing the modified conditions and prescriptions.

The process of comment and review itself modifies the conditions and prescriptions by modifying the record underlying them, even if the actual language of the conditions and prescriptions does not change. The Departments will coordinate the review and response to comments. The format of the response to comments will be commensurate with the nature, substance and extent of the comments received, the inter-agency and intra-bureau involvement, time frame, staff availability and the Departments' practice. Signature authority will vary between the Departments and among the bureaus of the Department of the Interior; however, this submission will be signed at the state or regional level.

The result of this process will be the Departments' submission to the Commission of an original and eight copies of the modified conditions and prescriptions, a response to comments, and an index to the Departments' supplemental administrative record generated as a result of the review process, as needed. These materials will also be provided to the Commission's service list and to commenters. The Departments will file an original and three copies of the Departments' supplemental administrative record with the Commission. The supplemental administrative record will also be provided to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, to the Indian Tribe of that Reservation. Any party may again request copies of the supplemental record, in whole or in part. The Departments intend that modified conditions and prescriptions will be provided to the Commission in advance of issuance of the final NEPA document.

2. Part B: Comments on Modified Conditions and Prescriptions

a. Request for Rehearing. After the Commission issues the license, if any intervener submits a request for rehearing, pursuant to Commission regulations at 18 CFR 385.713, that clearly identifies issues with the Departments' modified conditions and prescriptions, and includes supporting evidence, the Departments will review those concerns. Assuming the Commission grants rehearing for further consideration, as is its custom, the Departments will review all information and coordinate their response to all issues raised within 30 days of the formal filing with the Commission of a timely request for rehearing. The Departments may choose to file consolidated responses to more than one request for rehearing. The Departments will either file the response pursuant to 18 CFR 385.713(d)(2) or, in the unexpected situation that substantive or new issues are raised, the Departments will notify the Commission of the issues raised, that additional time is necessary to review issues, and provide a time line for response. The content of the response will vary depending on whether the issue is one that has been raised previously, or presents new issues that require a new response or supplementation of the record. The Departments will file the response with the Commission and its Service List.

B. Alternative Licensing Process

The following process describes a proposed opportunity for the Departments to receive and respond to comments regarding the mandatory conditions and prescriptions submitted to the Commission through the alternative licensing process. The form of the review process will depend on whether the Departments submit conditions and prescriptions as part of a settlement agreement. If the Departments submit conditions and prescriptions that are not part of a settlement agreement, then the process described for the traditional licensing process applies, as detailed herein.

If negotiations in the alternative licensing process result in an agreement as to the Departments' mandatory conditions and prescriptions, then a modified review process applies. Under the alternative licensing process, the license applicant files a license application, including any settlement offer, which may include the Departments' agreement as to their preliminary mandatory conditions and prescriptions, and a Draft Applicant Prepared NEPA document with the Commission. The Commission then publishes a notice calling for comments on the license application, including the settlement offer and any agreed-upon preliminary conditions and prescriptions included in the settlement offer. In response to the Commission's notice, interested parties, including parties that are not signatories to the settlement, are provided an opportunity to provide comments regarding the license application, the settlement offer, and the Departments' agreed-upon preliminary conditions and prescriptions.

If a non-settling party submits comments directly addressing the Departments' agreed-upon conditions and prescriptions, including the evidence in support thereof, then the Departments will review the comments pertaining to the mandatory conditions and prescriptions. If comments do not necessitate changes to the mandatory conditions and prescriptions that would render them inconsistent with the settlement agreement, the Departments will address the comments without returning to the settling parties. If comments are substantive and raise issues not previously identified, the Departments will discuss the comments and their appropriate resolution with the settling parties. If the Departments determine, after discussion with the settling parties, that the comments warrant a change in the conditions and prescriptions, the Departments will submit modified conditions and prescriptions. This process will be the only review of the Departments' agreed-upon conditions and prescriptions submitted through the alternative licensing process.

As part of the alternative licensing process, the Commission also publishes a notice indicating that it is proceeding with the environmental review. In response to this Notice, the Departments, pursuant to their statutory authority under sections 4(e) and 18, will submit to the Commission, as a separate filing, their agreed-upon conditions and prescriptions, so that, regardless of Commission action on the settlement agreement, the Departments' agreed-upon conditions and prescriptions will become mandatory license conditions. Any changes that may have been made to the settlement conditions and prescriptions as a result of comments received will be included in this submission.

VI. Mandatory Conditions Review Process—Step-by-Step

A. Traditional Licensing Process

1. Notice and Comment on Preliminary Conditions and Prescriptions:

a. The Commission issues a notice stating that the license application is Ready for Environmental Analysis (REA).

b. In most cases, the Departments will submit to the Commission some or all preliminary conditions and prescriptions within 60 days of the REA notice. Signature authority will vary between the Departments and within the bureaus of the Department of the Interior.

To the extent that the Departments' conditions and prescriptions are based on materials not already included in the Commission's administrative record, a copy of the materials submitted by the Departments in support of conditions and prescriptions will be maintained at the originating office

Additions to the administrative record will be filed with the preliminary conditions and prescriptions or within a specified time period thereafter.

Submission to the Commission will include:

- An original and eight copies of the preliminary conditions and prescriptions; and
- The index to the Departments' administrative record that includes documents not already included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record; and
- An original and three copies of the Departments' administrative record.

Submission to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, to the Indian Tribe of that Reservation, will include:

- A copy of the preliminary conditions and prescriptions; and
- The index to the Departments' administrative record that includes documents not already included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record; and
- A copy of the Departments' administrative record

Submission to the Commission's service list will include:

- A copy of the preliminary conditions and prescriptions; and
- The index to the Departments' administrative record that includes documents not already included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record.

A party may request copies of the record, in whole or in part, according to procedures described in the issuing document.

c. If the Departments determine that the evidence in the Commission's administrative record and information generally available is not sufficient or if other circumstances arise and the Departments cannot file preliminary conditions and prescriptions within 60 days of the REA notice, the Departments will include a reservation of authority. The submission will also include:

- An explanation for the delay; and
- A schedule and date for submitting preliminary conditions and prescriptions.

d. The preliminary conditions and prescriptions submission will include an invitation for interested persons to submit comments.

The comment period will be 45 days. This is concurrent with the time allowed by Commission regulation to reply to REA submissions.

The Departments will consider comments if they:

- Are identified as raising issues pertaining to the mandatory conditions and prescriptions;
- Include supporting evidence.

The Departments will begin reviewing comments; however, no response will be made until after review of the NEPA document.

e. The Commission will issue the draft NEPA document for public comment, which will include the Departments' preliminary conditions and prescriptions.

The Commission's notice will inform the public that they may submit comments on the preliminary conditions and prescriptions.

The Departments will consider comments if they:

- Are identified as raising issues pertaining to the mandatory conditions and prescriptions;
- Are copied to the conditioning Department(s); and
- Include supporting evidence.

f. The Departments will review all comments received and the draft NEPA document within 90 days of the close of the Draft NEPA comment period, the Departments will either

- Submit the modified conditions and prescriptions; or
- Send the Commission a letter (an original and eight copies) with an explanation of why additional time is required and an anticipated target date for submitting the modified conditions and prescriptions. The letter will also be served on the Commission's Service List.

The Departments will coordinate the review and submission of modified conditions and prescriptions, when appropriate.

The response to comment will be commensurate with the nature, substance and extent of the comments received, the inter-agency and intra-bureau involvement, the time frame, staff availability and the Departments' practice.

Signature authority will vary between the Departments and within the bureaus

of the Department of the Interior; however this submission will be signed at the state or regional level or higher.

The Departments intend to submit the modified conditions and prescriptions in advance of issuance of the Commission's final NEPA document.

A copy of the Departments' supplemental administrative record, as needed, will be maintained at the originating office.

The Departments' administrative record will be filed with the modified conditions or within a time period specified in the submission.

Submission to Commission will include:

- An original and eight copies of the modified conditions and prescriptions;
- An index of the Departments' supplemental administrative record formed as part of the review process and not yet included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record;
- An original and three copies of the Departments' supplemental administrative record; and
- Response to comments.

Submission to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, the Indian Tribe of that Reservation, will include:

- A copy of the modified conditions and prescriptions;
- An index of the Departments' supplemental administrative record formed as part of the review process and not yet included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record;
- A copy of the Departments' supplemental administrative record; and,
- Response to comments.

Submission to the Commission's service list and all other commenters will include:

- A copy of the modified conditions and prescriptions;
- An index to the Departments' supplemental administrative record, as needed. A party may request copies of the record, in whole or in part, according to procedures described in the issuing document; and
- Response to comments

2. Comments on Modified Conditions and Prescriptions:

a. After the license is issued, an intervener may submit a request for rehearing pursuant to 18 CFR 385.713.

The request for rehearing is available only to interveners, as described by the Commission's regulations.

b. The Departments will consider those issues raised in requests for rehearing: that pertain to the mandatory conditions and prescriptions; are clearly identified as issues relating to the Departments' mandatory conditions and prescriptions; and include supporting evidence or citation to the supporting evidence in the administrative record.

c. Within 30 days of the filing of the request for rehearing, the Departments will either submit a response relating only to those issues directed to the Department's conditions and prescriptions, with any changes to the conditions and prescriptions, if needed; or send the Commission a letter (an original and eight copies), in those infrequent cases where significant and/or new issues relating to the Departments' mandatory conditions and prescriptions are raised in the request, with an explanation of why additional time is required and an anticipated date for submitting the response and any changes to the modified conditions and prescriptions, if needed. The letter will also be served on the Commission's Service List.

d. The Departments may coordinate this submission, but may submit their responses separately.

e. The response will be commensurate with the nature, substance and extent of the comments received, the inter-agency and intra-bureau involvement, the time frame, staff availability and the Departments' practice.

For issues addressed earlier in the licensing process, the response will include the appropriate citations to the administrative record.

f. The response will be sent to the Commission (an original and eight copies) and be served on the Commission's Service List.

g. The Departments intend to submit the response prior to issuance of the Commission's decision on the requests for rehearing.

B. Alternative Licensing Process

1. If the Departments submit conditions and prescriptions that are not part of a settlement agreement resulting from an alternative licensing process, then the review process described for the traditional licensing process applies.

2. If the Departments submit mandatory conditions and prescriptions that are included in the license application and settlement offer, then the following process applies.

a. The license applicant will file a license application, including the settlement offer, which may include any agreed-upon preliminary mandatory conditions and prescriptions, and Draft Applicant Prepared Environmental Assessment to the Commission.

b. The Commission will publish a Notice calling for comments on the license application (including the settlement offer and any agreed-upon conditions and prescriptions).

c. If a non-settling party submits comments that raise issues on the Departments' agreed-upon preliminary conditions and prescriptions, then the Departments will review the comments pertaining to the mandatory conditions and prescriptions.

Comments should include specific comments on the mandatory conditions and prescriptions and supporting evidence.

d. If comments do not necessitate changes to the mandatory conditions and prescriptions that would render them inconsistent with the settlement agreement, the Departments will address the comments without returning to the settling parties.

e. To the extent that the comments are substantive and raise issues not previously identified, the Departments will discuss the comments and their appropriate resolution with the settling parties.

f. The Commission issues Notice stating the application is ready for final analysis.

g. The resource agencies will formally file those agreed-upon preliminary conditions and prescriptions as modified by the Departments in response to comments and after consultation with the settling parties.

Dated: December 5, 2000.

David J. Hayes,

Deputy Secretary, U.S. Department of the Interior.

Dated: December 7, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31758 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–22–P; 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval under the Paperwork Reduction Act (PRA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: New information collection approval—the federal aid grant application booklet.

SUMMARY: The U.S. Fish and Wildlife Service (Service) submitted the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement and related forms and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Consideration will be given to all comments received on or before January 12, 2001. OMB has up to 60 days to approve or disapprove information collections but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer (1018–XXXX), New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 and they should send a copy of the comments to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack@Hicks fws.gov* E-mail.

SUPPLEMENTARY INFORMATION:

Title of Forms: Federal Aid Grant Application Booklet.

OMB Approval Number: OMB has not issued an approval number, the Service has applied for and will obtain approval prior to any information collection request described in this notice.

The Service has submitted to OMB a request to approve the information collection described in this notice for the Federal Aid Program. The Service is requesting a three year term of approval for this information collection. A previous 60 day notice was published on September 5, 2000 (FR Vol. 65, No. 172, 53737) requesting comment. That period expired on November 6, 2000.

Comments received included the following:

Comment 1. Limiting outreach and communications to activities for RBFF seems overly restrictive.

Response—We have redrafted that portion limiting outreach and communications to only RBFF, Federal Aid grant programs authorize outreach and communication activities by grantees.

Comment 2. The hourly burden for completing an Amendment to Grant Agreement is overstated, it should be two hours.

Response—We spoke with several Federal Aid managers who agreed with this comment so we changed the burden and lowered the total burden to reflect that change.

Comment 3. House Bill 3671 eliminated any outreach and communication activities.

Response—Changes required by The Fish and Wildlife Programs Improvement and National Wildlife Refuges System Centennial Act of 2000 have been incorporated in this notice and in the Federal Aid Grant Application Booklet.

Comment 4. Add "and related components such as habitat, harvest, or use." to end of sentence on Surveys and Inventories to clarify.

Response—We added it.

Comment 5. Correct or clarify definition of RBFF outreach at the end of section 3.

Response—Changed to "Supports improved communication with anglers, boaters, and the general public."

Comment 6. Wrong use of Grant Amendment form on page 13.

Response—Changed to "An Amendment to Grant Agreement (3–1591) is only required when changes in grant costs, period, or scope of work must be made."

Comment 7. In-Kind match and volunteer services area is confusing.

Response—Changed to "In-kind match is an agency noncash contribution such as volunteer services, land, equipment, supplies * * * etc."

Comment 7. Add "X" to land acquisition and operations and maintenance on the matrix for Section 7 work.

Response—Added the X's to the matrix.

Comment 8. Key personnel section under research grants is hard to understand.

Response—Re-drafted in plain language.

Comment 9. Suggested some wording changes to our program descriptions and eligible activities.

Response—Redrafted these portions of the booklet to accommodate plain language.

This notice provides another 30 day period in which to comment on the information collection described.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection has not been issued yet.

Description and Use: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act, the Clean Vessel Act, the Sportfishing and Boating Safety Act, the Coastal Wetlands Planning, Protection and Restoration Act, and others. The Service uses the information collected to make grant awards to States and others within these grant programs. This includes determining if the proposed work and cost is reasonable, the cost sharing is consistent with the applicable program statutes, and other vital information collected through proposals submitted by grant applicants. The State or other grantee uses the booklet as a guide for writing complete proposals including; work proposed, providing specific budget information, identifying proposed cost sharing, addressing any compliance issues, and identifying partners if any. The information collected through this document also satisfy special requirements for various approvals for National Environment Policy Act, National Historic Preservation Act, and other Acts pertaining to grants management in the Federal government. Grant applicants provide the information requested in the Federal Aid Grant Application booklet in order to receive benefits in the form of grants for purposes outlined in the applicable law. The Service uses the Federal Aid Grant Application Booklet to request complete information needed to determine the eligibility, cost, scope, and appropriateness of the grant applied for. This information collection is intended to apply to both single grants and grants issued under the planning options outlined in the applicable Acts. This booklet is designed to cause the minimum impact in the form of hourly burden on grant applicants and still get all the required information.

Supplemental Information: The service has submitted the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of

collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Frequency: Generally annually.

Description of Respondents: State Government, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and others receiving grant funds.

Completion Time and Annual Response and Burden Estimate:

Form name	Completion time per application [hours]	Annual response in narrative format	Annual burden [hours]
Grant application booklet	80	3,500	280,000
Amendment to grant agreement	2	1,750	3,500
Totals		5,250	283,500

Federal Aid Grant Application Booklet

OMB Control Number 1018–XXXX
Expires xx/xx/xxxx

Part 1—(Cover)

Department of the Interior
U.S. Fish and Wildlife Service
Division of Federal Aid
Grant Programs

Authorized under the following Acts:

Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–7771)
Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i)
Partnerships for Wildlife Act (16 U.S.C. 3741)
Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954)
Endangered Species Act, Sec 6 (h) (16 U.S.C. 1361)
Clean Vessel Act of 1992 (16 U.S.C. 777)

Covering the following types of projects and grants:

Sport Fish Restoration Projects
Wildlife Restoration Projects
Coastal Wetland Restoration
Clean Vessel Pumpout Projects
Boating Infrastructure
Partnerships for Wildlife
Endangered Species, Sec 6 (h)
Land Acquisition
Coordination
Strategic Planning
Comprehensive Management
Surveys and Inventories
Training and Education
Facilities Development
Construction
Operations and Maintenance
Development
Research
Single and Multi-Project
Habitat and Population Management
Hunter and Aquatic Education
Outreach and Communications

Part 2—(inside front cover)

Draft Information Collection Statement

Information Collection Statement: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501) please note the following information. This information collection is authorized by the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–7771), Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), Partnerships for Wildlife Act (16 U.S.C. 3741), and the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954). This information collection covers the following types of grant programs: Sport Fish Restoration, Wildlife Restoration, Coastal Wetland Restoration, Clean Vessel, Boating Infrastructure, Partnerships for Wildlife and Endangered Species [See 6(h)]. We are collecting this information relevant to the eligibility, substantially, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track cost and accomplishments of these grant programs. Completion of these application and reporting requirements will involve a paperwork burden of approximately 80 hours per grant proposal and two hours per grant amendment, this does not include any burden hours previously approved by OMB for standard or Fish and Wildlife Service forms. Your response to this information collection is voluntary, but necessary to receive benefits in the form of a Grant, and does not carry any premise of confidentiality. An agency may not conduct or sponsor; and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned control number 1018–XXXX. The public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation, and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240.

Part 3

Who is eligible to participate in these grant programs and for what purpose? We work with several programs, they are listed below, along with their individual purpose and eligible recipients.

Federal Aid in Wildlife Restoration Programs: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Island, and the American Samoa. The purpose of the Wildlife Restoration grants must be for restoration, conservation, management, and enhancement of wild birds and wild mammals, and providing for public use and benefit from these resources. Eligible activities include: educating responsible hunters, shooters and archers in skills, knowledge, and attitudes regarding the safety in firearms, public target ranges development, operations and maintenance either archery of firearm.

The Sport Fish Restoration Program: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. Grants must be for the restoration, conservation, management, and enhancement of sport fish, and provision for public use of and benefits from these resources, such as boating access. Sport fish, by definition, are limited to aquatic, gill breathing, vertebrate animals bearing paired fins, and having material value for sport or recreation. Also eligible are grants which address the enhancement of the public's understanding of water resources and aquatic life forms, and the development of responsible attitudes and ethics towards the aquatic environment.

Coastal Wetland Restoration projects: Any State agency designated by the Governor of a coastal State to participate on behalf of the State is eligible. A coastal State is any State bordering on the Atlantic, the Pacific, or the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and American Samoa are also eligible. Coastal wetlands conservation grants must be for the long-term conservation of lands and waters, hydrology, water quality and fish and wildlife that depend upon these lands and waters. For the Coastal Wetlands Conservation Program, grant work must be in the first tier of counties along the coast of any State except Louisiana.

Clean Vessel projects: Any State fish and wildlife agency of the fifty States and the Districts of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. Grants must be for the surveying and planning for installing pumpout/dump stations, and to fund the construction and renovation or maintenance of pumpout/dump stations to be used by recreational vessels, for the purpose of preventing recreational boat sewage from entering U.S. waters. Educational activities are also eligible for funding.

Boating Infrastructure: Any State fish and wildlife agency of the 50 States as designated by the State government and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. The purpose of the Boating Infrastructure Grant Program is to provide funds to States for the development and maintenance of facilities for transient nontrailerable recreational vessels.

Partnerships for Wildlife: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa in partnership with third parties. The purpose of these projects must be to: Inventory fish and wildlife species; determine and monitor the size, range, and distribution of populations of fish and wildlife species, identify the extent, condition, and location of the significant habitats of fish and wildlife species; identify the significant problems that may adversely affect fish and wildlife species and their significant habitats; take actions to conserve fish and wildlife species and their habitats; or take action which the principal purpose is to provide opportunities for the public to use and enjoy fish and wildlife through nonconsumptive activities. This program applies to any wild members of the animal kingdom that are in an unconfined state, except animals that are: (1) taken for recreation, fur, or food; (2) Federally listed as endangered or threatened species under the Endangered Species Act; or (3) marine mammals defined by the Marine Mammal Protection Act.

Endangered Species Section 6 Grants: Any State agency that has a cooperative agreement with the Secretary of the Interior, as well as the Commonwealth of Puerto Rico; the Commonwealth of the Northern Mariana Islands; Guam; the United States Virgin Islands; and American Samoa. The purpose of the Endangered Species Section 6 Grants program is to provide Federal financial assistance to any State, through its appropriate agency, which has entered into a cooperative agreement to assist in the development of programs for the conservation of endangered and threatened species. Currently, all 50 States, DC and some insular territories have such an agreement. Eligible activities include all types of projects (including land acquisition) with the potential of restoring a threatened or endangered species, monitoring or a candidate species or monitoring of a recovered species.

Grant Programs

Wildlife Restoration Act

- Restore and manage wild birds and wild mammals
- Provide for public use of and access to wild birds and wild mammals
- Provide hunter education
- Funded by hunters and recreational shooters

Sport Fish Restoration Act

- Restore and manage sport fish
- Provide for public use of and access to sport fish
- Provide aquatic education
- Funded by anglers and recreational boaters

Coastal Wetlands Planning, Protection and Restoration Act

- Acquire coastal wetlands
- Restore or enhance coastal wetlands' ecosystems
- Provide long-term conservation of coastal lands and waters
- Funded by Sport Fish Restoration account

Endangered Species Act

- Acquisition, enhancement and protection of habitat
- Recovery and conservation of species
- Surveys and research
- Funded under Section 6 of the Act through Congressional appropriation

Partnerships for Wildlife Act

- Inventory and conserve nongame species
- Provide watchable wildlife recreational and educational opportunities
- Identify and manage species and their habitats
- Funded by Congressional appropriations and State and private partners

Clean Vessel Act

- Survey needs and make plans
- Construct and maintain pumpouts and dump stations
- Educate boaters on use of facilities and impacts of overboard discharge
- Funded by Sport Fish Restoration account

Grant Types Eligible for Funding

- *Coordination*—supports administrative activities of Federal Aid Program
- *Strategic Plans and Comprehensive Management Systems (CMS)*

—permits implementation of grant funding under either of two funding options:

(1) strategic plan for sport fish and/or wildlife resource management or

(2) CMS for all or part of a State agency's resource management

—allows for funding a grant to develop either of the two funding options above

- *Land Acquisition*—The acquisition of real property for

—protecting or maintaining habitat conditions for fish or wildlife species;
—developing or improving habitat conditions to enhance carrying capacity;
—providing public access for the use of fish and wildlife resources; and
—constructing buildings or other structures needed by the State to meet program needs.

- *Motorboat Access Facilities*—Activities necessary for the purpose of accommodating sport anglers using motor boats propelled by internal combustion engines including:

—acquisition, development, renovation and improvement projects;
—multipurpose projects designed to provide benefits for sport anglers using motor boats and other compatible recreation to the extent of the prorated share of the facility cost attributable to each purpose;
—undertakings to compensate for or mitigate recreational or resource losses caused by the boating access improvement, and that are necessary to secure permits or approval of the boating facility;
—research, surveys, planning, appraisals, permits, public involvement or other preliminary requirements to evaluate, design, program, or schedule future boating access improvements are allowable as an on-going development or access planning project;
—operation and maintenance of facilities acquired or constructed with Federal Aid funds or by other funds is eligible when such facilities are necessary for carrying out an approved Federal Aid project; or
—channel improvements, vegetation clearance, navigation aids and other modifications to expedite boating to open water from launching facilities.

- *Clean Vessel Act Facilities*—Activities necessary for activities addressing the need for facilities enabling recreational boaters to dispose of boater sewage in an environmentally sound manner, including:

—identification of recreational boater sewage disposal needs and plans for addressing identified needs;
—construction, renovation and maintenance of pumpout facilities, and;
—education plans to increase boater awareness of related opportunities and environmental impacts.

- *Operations and Maintenonce*—Activities necessary for the functioning of a facility to produce desired results, and for the upkeep of a facility to allow the facility to function including routine recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work.
- *Development Grants for:*

—Population Management—supports restoration and management of sport fish and wildlife populations through stocking or transplant efforts
—Habitat Management—supports creation and improvement of habitat for sport fish and wildlife populations
—Facilities Construction—supports activities providing public access to or enhancing public use of wildlife or sport fish resources; and supports development of facilities for educational or administrative purposes that further federal aid objectives

- *Research*—Activities necessary for:

—providing solutions to problems involving fish or wildlife resources; or
—determining factors affecting the demands or needs for fish and wildlife resources.

- *Surveys and Inventories*—Activities necessary for:

—determining the abundance, characteristics, or condition of fish or wildlife populations;
—determining the status or condition of habitats;

—determining current use or demands for fish or wildlife resources and information about the resource users; or
—monitoring environmental conditions relating to wildlife and sport fish.

• *Hunter and Aquatic Education*
—educates hunters to be responsible
—provides education or training on fishing skills and aquatic resources
—supports construction of education facilities
—supports construction of shooting ranges

• *Technical Guidance*—Activities necessary for
—improving environmental conditions affecting fish or wildlife resources;
—protecting and/or creating fish or wildlife habitat; or
—managing fish and wildlife populations, areas, and habitats for increased production or for public benefits from fish or wildlife resources.

• *Outreach and Communications (Recreational Boating and Fishing Foundation RBFF)*—improve communications with anglers, boaters, and the general public regarding angling and boating opportunities, to reduce barriers to participation in these activities, to advance adoption of sound fishing and boating practices, to promote conservation and the responsible use of the Nation's aquatic resources, and to further safety in fishing and boating.

• *Outreoch*—State efforts to increase public awareness and understanding of Federal Aid Programs, accomplishments, and the user-pay/user-benefit approach. The Service encourages outreach activities that provide opportunities for public use, understanding, and awareness of fish and wildlife restoration.

Part 4

A. Instructions

(1) Agencies shall use the following standard application forms when applying for Federal Aid Grants. These forms, in PDF fillable/printable format, can be found at the Federal Aid Training Program webpage at *http://www.nctc.fws.gov/fedaid/toolkit/toolkit.pdf.* At your request, the Regional Office will mail a diskette or CD with fillable forms in PDF format for your use on any personal computer and printer.

Application

SF–424 Face Sheet, and as appropriate:
SF–424A Budget Information (Non-Construction)
SF–424B Standard Assurances (Non-Construction)
SF–424C Budget Information (Construction)
SF–424D Standard Assurances (Construction)

Financial

SF–269 Financial Status Report
SF–270 Request for Reimbursement

Lobbying

SF–LLL Disclosure for Lobbying Activities

Other Assurances

DI–2010 Department of Interior Assurances form
National Environmental Policy Act Compliance (NEPA)
Endangered Species Act Section 7 Compliance (ESA)
National Historic Preservation Act Compliance (NHPA)
Suspension and Debarment Certification
Drug Free Environment Certification
E.O. 11988, Floodplain Management
E.O. 11990, Protection of Wetlands
E.O. 12898, Federal Actions to Protect Environmental Justice in Minority Populations and Low Income Population (Environmental Justice)
American with Disabilities Act (ADA) and the following U.S. Fish and Wildlife Service forms as applicable:
3–1552 Grant Agreement (OMB Approval 1018–0049)
3–1591 Amendment to Grant Agreement (OMB Approval 1018–0049)

Complete the SF–424 face sheet and the appropriate parts A or C and SF–424B assurances for nonconstruction projects or SF–424D assurances for construction projects.

A Grant Agreement (3–1552) form is required for all grants. Complete and have it signed by an Agency Official authorized to do so and include it with all grant proposal submissions. An Amendment to Grant Agreement (3–1591) is only required when changes in grant cost, period, or scope of work must be made.

In-kind match is an agency noncash contribution such as volunteer services, land, equipment, supplies * * * etc. There are specific requirements to document the value of this on the SF–424, in budget/cost info, and in performance reports. See 43 CFR 12.64 for specific guidance on in-kind match, especially how to calculate the value of volunteer services used as in-kind. There are also specific requirements in 43 CFR 12.64 for time accounting and documentation of volunteer time.

Part 5

A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

(a) Establish communication between the agency and the applicant,

(b) Determine the applicant's eligibility,

(c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no change for Federal funding before applicants incur significant costs in preparing detailed applications.

Budgets

Applicants shall use the appropriate Budget Information and Standard Assurances on the SF–424 for either construction or non-construction projects. They shall use the construction version when the major purpose of the project or program is construction, land acquisition or land development.

Budgets shall provide an estimated total by project objective and should match the objectives described in the proposal (see instructions for proposals below). Budget estimates are entered on the Grant Agreement 3–1552 or the Amendment to Grant Agreement 3–1591, the obligating documents.

Attach a schedule listing projects and dollar amounts within a grant. The total from the schedule should match the total on the Grant Agreement or Amendment to Grant Agreement.

Example:

(Name of Grant) Grant XX FY–XX
Grant Number XX
Start Date_____
End Date_____

Project	Estimated cost
A O&M (WR)	600,000
B Habitat Improvement (SFR)	250,000
C Construction (BA)	20,000
Total	[1] 870,000

[1] This total goes to Grant Agreement or Amendment.

WR = Regular Wildlife Restoration.
SFR = Regular Sport Fish Restoration.
BA = SFR, Boating Access.

Grant Proposals

Applicants should include a program narrative statement for each separate project under a grant proposal which is based on the following instructions:

(a) *Objectives and need for assistance.* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and any subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included, footnoted, or referenced.

(b) *Results or benefits expected.* Identify costs and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public. For all projects list benefits and to whom or what resource, and quantify them in a standard measure such as dollars, acres, miles * * * etc.

(c) *Approach.* Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved and target dates for completion, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target expected completion dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) *Geographic location.* Give a precise location of project and area to be served by the proposed project. Maps or other graphic aids may be attached. Add latitude and longitude where possible, this is required for all site specific development, such as boating access, construction, or land acquisition projects.

(e) *If applicable, provide the following information.*

(1) For research and demonstration assistance requests list the name, training and background for key personnel engaged in the project.

(2) Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

(3) Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify.

(4) For other requests for changes, or amendments, explain the reason for the change(s). If the scope of objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(f) *For the following types of programs, the Regional Office may request the following additional information:*

Additionally for:

1. Federal Aid in Wildlife Restoration: For Hunter Education grants, If the work includes the construction of training facilities such as ranges, provide a description of each facility by type, capacity, and cost.

2. Boating Infrastructure Projects: How does this project benefit the public and how is that benefit measured, the BIG programs requires that applicants submit a Schedule of Fees, providing the fees for public use of facilities constructed with BIG funds; proposals will need to respond to the ranking criteria in § 50 CFR 86.60.

3. Partnerships for Wildlife Projects: Describe the partnership involved in this project and what their relative contribution to the partnership is;

4. All lands acquisition projects, regardless of program must include:

In "Approach," describe the present ownership and habitat type of the real property to be acquired, and how the area will be managed. Include a listing of the lands, estimated costs, and the legal rights to be acquired (i.e. fee title, easements, or other long-term acquisition.) Also provide:

—a legal description of the real property to be acquired;
—an Appraisal prepared by a State-certified appraiser;
—a Review Appraisal prepared by a State-certified appraiser;
—a Purchase Option or Agreement; and
—a Statement of Just Compensation.

5. Section 6 of the Endangered Species Act: Prerequisites for participation in grants under Sec. 6 are that the State establishes and maintains an adequate and active program for conservation of endangered and threatened species [50 CFR 81.2], and has entered into a Cooperative Agreement with the Secretary of the Interior [50 CFR 81.3] which must be renewed annually. Federal payments shall not exceed 75 percent of the program costs, except when two or more states having a common interest in one or more endangered or threatened species and may enter jointly into an agreement with the Secretary, and thereby increase the Federal share to 90% [50 CFR 81.8].

6. Surveys and Inventory: Address each of the following factors.

a. Adequacy: Are the data answering the decision-makers' questions? The review should evaluate whether the data acquired from the survey are actually meeting the stated purpose. Analysis of trend data will identify whether data being collected are sufficient in answering the agency's management questions or whether data gaps exist. Timeliness of data collection, analysis and availability is important.

b. Necessity: Are the data used by decision makers? In determining the necessity of a particular survey, consideration should be given to what data are actually being collected and their use in management decisions. Survey utility should be considered in the context of the agency's data needs, given necessary prioritization and allocation of staff and monetary resources.

c. Reliability: Are the decision makers confident in the data? Survey design should be based on sound science and key results should be statistically reliable. A review of the literature will show whether the methodology is still current or if there are other state-of-the-art techniques that might prove more suitable. Validity of the survey approach and whether assumptions are met should be considered as well as whether sample sizes are sufficient to achieve desired levels of precision.

d. Efficiency: Are the data being collected in a cost efficient manner? Data collection is costly, both in staff time and dollars expended. The cost of data collection and analysis should be assessed relative to applicability and use of the data by decision makers.

7. Habitat Management—In "Approach," include the number of acres/hectares to be created or improved and the methods or techniques to be employed. If the work proposed involves the construction, enlargement, or rehabilitation of dams subject to Federal design requirements, provide evidence that an engineer qualified in the design and construction of dams has reviewed the design and specifications. For construction costing more than $100,000, include written assurance that a qualified engineer will approve plans and specifications, approve the feasibility determination, and supervise the construction.

8. Facilities Construction—In "Approach" provide a description of the capacity, type of construction, etc. If specifically requested, include plans and specifications. If applicable, describe third party arrangements for operation and/or maintenance of the facility, including how revenue from any user fees will be handled. For construction costing more than $100,000, include written assurance that a qualified engineer will approve engineering plans and specifications, approve the feasibility determination, and supervise the construction.

9. Research—In "Need," include a brief discussion of the literature review relative to the problem. In "Approach," describe how the research will be carried out, including the method(s) to be employed and the schedule to be followed. If the work (or major portion of the work) will be performed under an agreement with a third party, such as a university, identify the performer. Also include the name of the principal investigator.

10. All projects must meet all applicable NEPA, Endangered Species Act (Section 7), and National Historic Preservation Act requirements. Information will be collected as mandated under those Acts to satisfy compliance requirements. (This burden is included in the 80 hour estimate per application.)

Sportfish and Wildlife Grant—Compliance Issue Matrix

The X's indicate compliance issues that may need to be considered when planning a specific type of grant.

Compliance issue—	NEPA	NHPA	ESA	E.O. 11990	E.O. 11988	FPPA	ADA	COE	Exotic animals	AWA	Invassive species	Environmental justice	Coastal zone	Costal barriers
Coordination	X						X							
Strategic plans and comprehensive management systems	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Land acquisition	X	X	X	X	X	X	X	X			X	X	X	X

Compliance issue—	NEPA	NHPA	ESA	E.O. 11990	E.O. 11988	FPPA	ADA	COE	Exotic animals	AWA	Invassive species	Environmental justice	Coastal zone	Costal barriers
Operation and maintenance	X	X	X	X	X	X	X	X			X	X	X	
Fish and wildlife population management	X		X						X	X	X	X		
Habitat management	X	X	X	X	X	X	X	X	X		X	X		X
Facilities construction	X	X	X	X	X	X	X	X				X	X	X
Research	X		X						X	X		X		
Surveys and inventories	X		X							X		X		
Hunter and aquatic education	X	X	X				X					X		
Technical guidance	X											X		
Motorboat access facilities	X	X	X	X	X	X	X	X				X	X	X
Clean Vessel Act facilities	X	X	X	X	X	X	X	X				X	X	X
Boating infrastructure	X	X	X	X	X	X	X	X				X	X	X
Outreach and communication	X						X					X		

Part 6—Financial and Accomplishment and Financial Reporting

Accomplishment and Performance

Accomplishment and Performance reports shall compare the proposed work, approved as part of the Grant Agreement, with the actual work accomplished, any deviation, including, but not limited to, cost, time, quality, or quantity shall be reported.

Financial Reports

Grantees shall use the SF–269 series documents provided by our Regional Offices, on our website, diskette or CD.

Payment

How do grantees get paid? Payments are made only to grantee officials authorized to enter into grant agreements and request funds. Payments to grantees are made for the Federal share of allowable costs incurred by the grantee in accomplishing approved grants. All payments are subject to final determination of allowability based on audit.

a. Requests for payments by check are submitted on Standard Form SF–270, Request for Reimbursement. Grantees must submit a SF–270 and supporting documentation to the FWS Project Leader, who will review, approve, and forward to USFWS Finance for processing the payment.

Note: Grantees will be told at the time the grant is issued if they are a regular or special grantee. b. For regular grants, payments within 24 hours by Electronic Fund Transfer (EFT) from the grantor are accomplished by completing a SF–1199A Direct Deposit Sign Up Form and forwarding it6 to Health and Human Services (address at FWS Regional Offices) for authorization in the payment management system SMARTLINK. Request for payment are submitted by grantee to SMARTLINK, payment is monitored/ authorized by the FWS Regional Office.

c. For special grants, payments within 24 hours by Electronic Fund Transfer (EFT) from the grantor are accomplished by completing a SF–1199A Director Deposit Sign Up Form and forwarding it to Health and Human Services (address at FWS Regional Offices) for authorization in the payment management system SMARTLINK Funds are then requested by submitting through FAX or E-mail an invoice/request for review and approval by the FWS project leader. After approval is received, the grantee may request funds electronically through SMARTLINK.

PART 7

The U.S. Fish and Wildlife Service (Service), Division of Federal Aid awards grants to successful applicants from States and certain other entities to benefit fish and wildlife resources. Applications may be mailed to the following addresses for review by the Regional Office serving your need.

Region 1—AS–CA–GU–HI–ID–NV–OR–MP–WA.	U.S. Fish and Wildlife Service, 911 .NE 11th Avenue, Portland, OR 97232–4181.	Comm: (503) 231–6996; FAX: (503–231–6128.
Region 2—AZ–NM–OK–TX.	U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306 or 625 Silver SW., Suite 325, Albuquerque, NM 87102.	Comm: (505) 248–7450; FAX: (505) 248–7471.
Region 3—IA–IL–MI–MN–MO–OH–WI	U.S. Fish and Wildlife Service, 1 Federal Drive, Ft. Snelling, MN 55111–4056.	Comm: (612) 713–5130; FAX: (612) 713–5290.
Region 4—AL–AR–FL–GA–KY–LA–MS–NC–PR–SC–TN–VI.	U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 324, Atlanta, GA 30345.	Comm: (404) 679–4159; FAX: (404) 679–4160.
Region 5—CT–DC–DE–MA–MD–ME–NH–NJ–NY–RI–VA–VT–WV–PA.	U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	Comm: (413) 253–8508; FAX: (413) 253–8487.
Region 6—CO–KS–MT–ND–NE–SD–UT–WY.	U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225 or Lake Plaza North Blvd., 134 Union Blvd., 4th Floor, Lakewood, CO 80228.	Comm: (303) 236–7392; FAX: (303) 236–8192.
Region 7—AK	U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.	Comm: (907) 786–3435; FAX: (907) 786–3575.
Washington, DC, National issues and program coordination.	U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 140, Arlington, VA 22203.	Comm: (703) 358–2156; FAX: (703) 358–1837.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this information collection is required to obtain benefits. Once submitted this data becomes public information and is not protected under the Privacy Act. The public reporting burden for this information is estimated at 80 hours per grant and two hours per amendment to a grant, including time for gathering information, completing narratives, reviewing and obtaining signature. Direct comments to the Service Infiroamtion collection Clearance Officer, 1018–XXXX, U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street NW., Washington, DC 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Version 8/2000.

Dated: November 17, 2000.

Rebecca A. Mullin,

U.S. Fish and Wildlife Service Information Collection Clearance Officer.

[FR Doc. 00–31509 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Acceptance of Retrocession of Jurisdiction for the Tulalip Tribes, Washington; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Indian Affairs published a document in the **Federal Register** of December 5, 2000 (65 FR 75948), concerning the Tulalip Tribes' request that the state of Washington retrocede partial criminal jurisdiction to the tribes by Resolution No. 96–0167 dated November 2, 1996. The document contained an incorrect date. This notice corrects the following date.

FOR FURTHER INFORMATION CONTACT: Peter Maybee, 202–208–5787.

Correction

In the **Federal Register** of December 5, 2000, in FR Doc. 00–30956, on page 75948, in the first column, line seven, change the date November 21, 2000 to November 21, 2001.

Dated: December 7, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31698 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

Between 1936–1954, human remains representing 46 individuals were removed during excavations at the Belcher Mounds Site (LSUMNS Site Number 16CD013), Caddo Parish, LA, by Clarence H. Webb. Dr. Webb donated these remains and objects to the Louisiana State University Museum of Natural Science in 1974. No known individuals were identified. The 32 associated funerary objects are earthenware pottery, a ceramic spindle whorl and hair ornament, shell artifacts including a shell necklace, and a stone celt. Unassociated funerary objects from the Belcher Mounds Site at the Louisiana State University Museum of Natural Science will be reported separately in a Notice of Intent to Repatriate.

The Belcher Site is a dual mound and habitation site that functioned as a ceremonial center and cemetery between circa A.D. 900–1700. Twenty-four of the individuals excavated by Dr. Webb were buried between circa A.D. 900 and 1400. Twenty-two of these individuals were buried between circa A.D. 1500 and 1700. The mortuary practices and ceramic styles indicate site affiliations with Caddoan culture.

In 1935, human remains representing one individual were removed from the Ida Site (LSUMNS Site Number 16CD025), Caddo Parish, LA, during salvage excavations associated with highway construction by Clarence H. Webb. At an unknown date, Dr. Webb donated these remains to the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, along with remains from the Gahagan Mounds Site. At an unknown date, remains from the Ida Site were transferred from the Peabody Museum to the Louisiana State University Museum of Natural Science. No known individual was identified. No associated funerary objects are present.

Louisiana State University Museum of Natural Science records indicate that earthenware pottery collected from the surface of the Ida Site is dated to between circa A.D. 1200 and 1400, and perhaps earlier as well, on the basis of surface decoration. Stylistic attributes of the pottery affiliate the site with Caddo Indians.

In 1935, Clarence H. Webb removed human remains representing two individuals during excavations at the Smithport Landing Site (LSUMNS Site Number 16DS004), De Soto Parish, LA. The same year, Dr. Webb donated these remains and objects to the Louisiana State University Museum of Natural History. No known individuals were identified. The two associated funerary objects consist of two ceramic vessels. Unassociated funerary objects from the Smithport Landing Site in the Louisiana State University Museum will be reported separately in a Notice of Intent to Repatriate.

Smithport Landing is a non-mound burial site. The stylistic attributes of the associated funerary objects date the burials to circa A.D. 1000–1300. These attributes culturally affiliate the interred with Caddo Indians.

In 1937–1938, human remains representing two individuals were removed during salvage excavations by James Ford at the Hogg Place Site (LSUMNS Site Number 16LI003), Lincoln Parish, LA. Dr. Ford donated the remains and the object to the Louisiana State University Museum of Natural Science in 1938. No known individuals were identified. The one associated funerary object is an incised ceramic vessel.

The Hogg Place Site was a village and associated cemetery. The observed mortuary treatment of the remains is typical of the Caddo culture. The Plaquemine influence seen in the

incised Caddo vessel suggests an interment between A.D. 1200–1700.

At an unknown time prior to 1985, human remains representing two individuals were donated to the Louisiana State University Museum of Natural Science by an unknown donor. The remains were removed from the Hampton Place Site (LSUMNS Site Number 16NA000), Natchitoches Parish, LA, by an unknown person, possibly Clarence H. Webb. No known individual was identified. No associated funerary objects are present.

The determination of cultural affiliation with the Caddo tribe is based on geographic location and knowledge of Dr. Webb's research focus.

Between 1933–1935, human remains representing one individual was removed during excavations at the Wilkinson Place Site (LSUMNS Site Number 16NA003), Natchitoches Parish, LA, by James Ford. Dr. Ford donated the remains to the Louisiana State University Museum of Natural Science in the late 1930's. No known individual was identified. No associated funerary objects are present.

Euroamerican objects placed with other burials at the site indicate that the mortuary use of the Wilkinson Place site dates to the historical period. Previous research suggests that the site is affiliated with the Yatasi, a Caddoan group once centered along the Red River near Shreveport, LA. This group moved southward during the historic period and consolidated with the Kaddohadacho circa 1830. The Kaddohadacho are an historically documented group ancestral to the Caddo.

In 1936 or 1937, human remains representing one individual were removed during excavations at the Allen Place Site (LSUMNS Site Number 16NA004), Natchitoches Parish, LA, by James Ford. Dr. Ford donated the remains to the Louisiana State University Museum of Natural Science in the late 1930's. No known individuals were identified. The 95 associated funerary objects are a necklace made of glass beads and a tubular jasper bead. Unassociated funerary objects in the Louisiana State University Museum from the Allen Place Site will be reported separately in a Notice of Intent to Repatriate.

The Euroamerican glass beads found with this burial and Euroamerican objects found with other burials excavated by Dr. Ford but not donated to this museum suggest that the Allen Place Site was utilized during the historic period.

In 1970, human remains representing one individual were removed from the Fish Hatchery Site (LSUMNS Site Number 16NA009), Natchitoches Parish, LA, and donated to the Louisiana State Museum of Natural Science by Robert Neuman. Mr. Neuman collected the remains from the surface of the site. No known individuals were identified. No associated funerary objects are present.

Material culture and human remains discovered during salvage excavations associated with construction of a U.S. Bureau of Fisheries fish hatchery in 1931 indicate that there was an extensive mortuary component dating to A.D. post-1700 at the Fish Hatchery Site.

In 1946, human remains representing three individuals were removed during salvage excavations associated with facility construction at the Southern Compress and Oil Mill Site (LSUMNS Site Number 16NA014), Natchitoches Parish, LA, by Clarence H. Webb. Dr. Webb donated these remains to the Louisiana State University Museum of Natural Science as part of a larger collection. No known individuals were identified. No associated funerary objects are present.

Other burials excavated at the Southern Compress and Oil Mill Site, but not donated to the museum, contained Euroamerican and Native American objects dating to the A.D. mid-1700's.

In 1972, human remains representing one individual were removed during excavations at the Lake Rodemacher Site (LSUMNS Site Number 16RA021), Rapides Parish, LA, by John House. Mr. House donated these remains to the Louisiana State University Museum of Natural History the same year. No known individuals were identified. No funerary objects are present.

The Lake Rodemacher Site occupation dates to A.D. 1100–1500, as determined by the excavator.

At an unknown date, human remains representing eight individuals removed from the Gahagan Mounds Site (LSUMNS Site Number 16RR001), Red River Parish, LA, were donated to the Louisiana State University Museum of Natural Science by the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The remains were part of multiple burials removed during excavations of "Burial Pit 1" and "Burial Pit 2" by Clarence H. Webb in 1939. No known individuals were identified.

In 1972, three associated funerary objects removed from "Burial Pit 1" and/or "Burial Pit 2" at the Gahagan Mound Site (LSUMNS Site Number 16RR001) were donated to the Louisiana State University Museum of Natural Science by Clarence Webb. These objects were removed during the same 1939 excavations as the human remains. The three associated funerary objects are a Hayes-style projectile point, a Catahoulan-style projectile point, and a Reed-style projectile point.

Mortuary practices and stylistic attributes of the associated funerary objects indicate that the Gahagan Mound Site was utilized circa A.D. 900–1200.

At an unknown date, human remains representing two individuals were removed from LSUMNS Site Number 16RR002, an unnamed site in Red River Parish, LA, by an unknown person, but who was possibly Clarence H. Webb. Dr. Webb donated these remains as part of a larger collection to the Louisiana State University Museum of Natural Science in 1974. No known individuals were identified. No associated funerary objects are present.

The determination of cultural affiliation with the Caddo tribe is based on geographic location and knowledge of Dr. Webb's research focus.

In 1960, human remains representing three individuals were removed during salvage excavations associated with road construction at the Cedar Bluff Site (LSUMNS Site Number 16WN001), Winn Parish, LA, by William Haag. Mr. Haag donated these remains to the Louisiana State University Museum of Natural Science the same year. No known individuals were identified. No associated funerary objects are present.

Mr. Haag noted diagnostic Caddo sherds on the surface of the site. While not definitive, the sherds suggest an occupation sometime between A.D. 900-1700, which is the occupation span of Caddo culture in the area. No more precise dates are available.

Historical evidence and oral history indicate that northwest Louisiana is part of the traditional territory of the Caddo people. Archeological evidence indicates that settlements within this region exhibit a cultural continuity dating from circa A.D. 900 and continuing into the historic period. In the historic period these stylistic attributes are associated with the Caddo people. Based on archeological, historical and oral history evidence, the 13 sites reported above are identified with the Caddoan culture.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 73 individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 133 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of the human remains and associated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31657 Filed 12–12–00 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of Choctaw Indians, Mississippi.

In 1941, human remains representing six individuals were removed during excavations at Nick's Place (16AV004), Avoyelles Parish, LA, by Robert S. Nietzel. Mr. Neitzel donated the remains and objects to the Louisiana State University Museum of Natural Science in 1941. No known individuals were identified. The 363 associated funerary objects are Euroamerican bracelets, rings, glass beads, textiles, shell fragments, gun flints, lead shot, iron nails, and iron nail fragments. Unassociated funerary objects also were removed during these excavations.

Nick's Place consists of a conical mound near the eastern escarpment of the Marksville prairie, about a mile south of Marksville, LA. The human remains and funerary objects described here were removed from intrusive historic-age burials into the mound. The associated funerary objects date the burials to the late 18th or early 19th centuries. Archeological evidence and characteristics of the mortuary program culturally affiliate the remains with the Choctaw. Oral history evidence indicates that the Choctaw population occupying Nick's Place during the 18th and 19th centuries were absorbed into the Tunica-Biloxi Tribe.

In 1934–1935, human remains representing one individual were removed from the Angola Farm Site (16WF002), West Feliciana Parish, LA, by James Ford. The Angola Farm Site is currently on the grounds of the Louisiana State Penitentiary. The remains and objects were removed from "Burial 7." Dr. Ford donated these remains and objects to the Louisiana State University Museum of Natural Science in 1935 and 1939. No known individual was identified. The 11 associated funerary objects are an aboriginal pot, an iron spike, gun parts, gun flints, and iron nails. Funerary objects interred with individuals whose remains are not present in Louisiana State University Museum of Natural Science collections also were removed during these excavations.

The Angola Farm Site is an historic cemetery located below the bluffs on the eastern side of the Mississippi River. The burial was removed from a filled stream channel at the site. Archeological and historic evidence indicate that the site was a small Tunica village and cemetery occupied 1706–1731.

Based on archeological evidence, the human remains and objects from the two sites described above date to the post-European contact period in the late 17th-early 19th centuries. Historical documentation and oral history indicate that the sites were occupied either by Tunica groups or by groups that were absorbed into the Tunica-Biloxi Indian Tribe of Louisiana. The geographical location of these sites during this time period is consistent with the known traditional territory of the Tunica-Biloxi people.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 374 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of Choctaw Indians, Mississippi.

This notice has been sent to officials of the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of Choctaw Indians, Mississippi. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of the human remains and associated funerary objects to the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of

Choctaw Indians, Mississippi may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31658 Filed 12–12–00 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Chitimacha Tribe of Louisiana.

In 1929–1930, human remains representing seven individuals were removed during excavations conducted at the Fatherland Site (22AD001), Adams County, MS, by Moreau B. Chambers. Mr. Chambers donated these remains to the Lousiana State University Museum of Natural Science in 1930. Museum records indicate that these remains were found in Burial 7, and Burial 13C. No known individuals were identified. The 85 associated funerary objects are textile fragments, shell fragments, wood fragments, trunk parts, and iron nails. One hundred and seven unassociated funerary objects also were removed during these excavations.

The Fatherland Site is located on the west side of St. Catherine Creek, about three miles south of Natchez, MS. The material culture excavated from the Fatherland Site dates to A.D. 1682-1729. Historical and archeological evidence demonstrate that the Fatherland Site is the Grand Village of the Natchez. This settlement was occupied until 1729, when the Natchez lost a war with the French and were forced to flee. The majority resided for some time with the Chickasaw, though some moved to live with the Upper Creek and the Cherokee. Each of these groups were removed with their hosts to Indian Territory in the 19th century.

Based on the archeological, ethnohistorical, and historical evidence, the human remains and objects from the Fatherland Site are determined to be affiliated with the Chitimacha Tribe of Louisiana. The Chitimacha Tribe of Louisiana is the sole remaining Federally recognized tribe that share cultural attributes with the late prehistoric Delta-Natchezan complex from which both the Natchez and the Chitimacha derived. On the basis of linguistic and sociocultural evidence, the Chitimacha Tribe of Louisiana is considered to be the most closely related of the Federally recognized Native American groups.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 85 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Chitimacha Tribe of Louisiana.

This notice has been sent to officials of the Chitimacha Tribe of Louisiana; the Cherokee Nation of Oklahoma; the United Keetoowah Band of Cherokee Indians of Oklahoma; the Muskogee Creek; and the Chickasaw Nation, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578-6562, before January 12, 2001. Repatriation of the human remains and associated funerary objects to the Chitimacha Tribe of Louisiana may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31659 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service.

Notice of Intent to Repatriate Cultural Items in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the Louisiana State University Museum of Natural Science that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

Between 1936–1954, 18 unassociated funerary objects were removed during excavations at the Belcher Mounds Site (LSUMNS Site Number 16CD013), Caddo Parish, LA, by Clarence H. Webb. Dr. Webb donated these objects as part of a larger collection to the Louisiana State University Museum of Natural Science in 1974. The unassociated objects include earthenware pottery, a decorated conch shell cup and other shell artifacts, a zoomorphic shell pendant, and a decorated platform pipe.

The Belcher Site is a dual mound and habitation site that functioned as a ceremonial center and cemetery between circa A.D. 900–1700. Twenty-four individuals were buried between circa A.D. 900 and 1400, and 22 individuals were buried between circa A.D. 1500 and 1700. The mortuary practices and ceramic styles indicate affiliations with Caddoan culture.

Between 1950–1952, two unassociated funerary objects were removed during excavations at the Mounds Plantation (LSUMNS Site Number 16DC071/16DC02/16DC012), Caddo Parish, LA, by Clarence H. Webb. Dr. Webb donated these objects as part of a larger collection to the Louisiana State University Museum of Natural Science in 1974. The objects consist of wood lath and decorated cane matting removed from the log tomb covering of "Burial Pit 5."

Diagnostic pottery, mortuary customs, and other distinctive features indicate that "Burial Pit 5" in Mound 5 represents an intrusive Caddoan interment in an earlier Coles Creek Period mound. The logs of the tomb covering of "Burial Pit 5" were dated to circa A.D. 1050–1475.

In 1935, Clarence H. Webb removed three unassociated funerary objects during excavations at the Smithport Landing Site (LSUMNS Site Number 16DS004), De Soto Parish, LA. The same year, Dr. Webb donated these remains and objects to the Louisiana State University Museum of Natural History. The unassociated funerary objects consist of ceramic vessels.

Smithport Landing is a non-mound burial site. The stylistic attributes of the associated funerary objects date the burials to circa A.D. 1000–1300. They also indicate that the cultural affiliations with the interred are with Caddo Indians.

In 1936, four unassociated funerary objects were removed from an unknown location in Lincoln Parish, LA. These were donated to the Louisiana State University Museum of Natural Science by Hubert Smith in 1937. The unassociated funerary objects consist of three vessels and a pipe fragment. Though precise provenience locations are lacking and the vessels do not differ significantly from utilitarian wares, Mr. Smith's habits as a pothunter strongly suggest that they were taken from burial contexts.

Stylistic attributes of the pottery date them to circa A.D. 1400–1600, and are diagnostic of Caddoan culture.

In 1936 or 1937, four unassociated funerary objects were removed during excavations at the Allen Place Site (LSUMNS Site Number 16NA004), Natchitoches Parish, LA, by James Ford. Dr. Ford donated the objects to the Louisiana State University Museum of Natural Science in the late 1930's. The unassociated funerary objects consist of four ceramic vessels.

Stylistic attributes of these vessels and the presence of Euroamerican objects found with burials excavated by Dr. Ford but not donated to this museum suggest that the Allen Place Site was utilized during the historic period.

In 1939, two unassociated funerary objects were removed during excavations at the Gahagan Mounds Site (LSUMNS Site Number 16RR001), in Red River Parish, Louisiana by Clarence H. Webb. Dr. Webb donated these objects to the Louisiana State Museum of Natural Science in 1974 as part of a larger collection. The two objects were recovered from "Burial Pit #3," and consist of a Holly Engraved bottle and one fragmented blade, possibly a Gahagan.

Mortuary practices and stylistic attributes of the unassociated funerary objects indicate that the Gahagan Mound Site was utilized circa A.D. 900–1200.

Historical evidence and oral history indicate that northwest Louisiana is part of the traditional territory of the Caddo people. Archeological evidence indicates that settlements within this region exhibit a cultural continuity dating to circa A.D. 900 and continued into the historic period. In the historic period these stylistic attributes are associated with the Caddo people. Based on archeological, historical and oral history evidence, the six sites reported above are identified with the Caddo people.

Officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of the cultural items to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31662 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Palmer Foundation for Chiropractic History, Palmer College of Chiropractic, Davenport, IA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Palmer Foundation for Chiropractic History, Davenport, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Palmer Foundation for Chiropractic History professional staff in consultation with representatives of the Santa Ynez Band of Mission Indians.

In approximately 1903–1904, human remains representing two individuals were removed from an unidentified island in the Santa Barbara Channel Islands, CA, by D.D. Palmer. These remains were part of a collection of human remains held at a chiropractic college founded by Mr. Palmer in Santa Barbara, CA. After this institution closed, the remains were transferred to the Palmer School, Davenport, IA, in approximately 1906. The Palmer School was a forerunner of the Palmer College of Chiropractic. No known individuals were identified. No associated funerary objects are present.

Osteological examination of the human remains by Palmer Foundation for Chiropractic History curatorial staff indicates that these individuals are Native American. The degree of preservation of the remains suggests that they can be dated to the last several thousand years. The geographical location of the finding of the remains is consistent with the territory of the Island Chumash, represented by the Santa Ynez Band of Mission Indians. There is no evidence to contradict this.

Based on the above-mentioned information, officials of the Palmer Foundation for Chiropractic History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Palmer Foundation for Chiropractic History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Santa Ynez Band of Mission Indians.

This notice has been sent to officials of the Santa Ynez Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Alana Callender, Palmer Foundation for Chiropractic History, Palmer College of Chiropractic, 1000 Brady Street, Davenport, IA 52803, telephone (319) 884-5404, before January 12, 2001. Repatriation of the human remains to the Santa Ynez Band of Mission Indians may begin after that date if no additional claimants come forward.

Dated: December 1, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31661 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana.

In 1937, human remains representing one individual were removed from the Glenn McCullogh Place ("the Burial Ground") (22LE011), Lee County, MS, by Moreau B. Chambers. Mr. Chambers donated these human remains to the Louisiana State University Museum of Natural Science the same month. No known individual was identified. No associated funerary objects are present.

Recent archeological research, including a review of the site records and the artifact assemblage, suggests that Site 22LE011 was the site of the short-lived Chickasaw village of "Etoukouma," inhabited during the early 1700's. The burial, presumably, dates to this occupation.

In 1937, human remains representing one individual were removed from the Alston Place Site (22LE014), Lee County, MS, by Moreau B. Chambers. Mr. Chambers donated these human remains to the Louisiana State University Museum of Natural Science the same year. No known individual was identified. No associated funerary objects are present. Unassociated funerary objects from the Alston Place Site in the Louisiana State University Museum of Natural Science also were removed during these excavations.

The Alston Place Site is a fortified habitation site. Archeological evidence dates the latest occupation to the 18th century. The site has been identified both as an unnamed Chickasaw village and as the Natchez village of "Falatchao." Falatchao was established after the Natchez fled their lands following defeat by the French in 1729. The Chitimacha Tribe of Louisiana is the sole remaining Federally recognized tribe that share cultural attributes with the late prehistoric Delta-Natchezan complex from which both the Natchez and the Chitimacha derived. On the basis of linguistic and sociocultural evidence, the Chitimacha Tribe of Louisiana is considered to be the most closely related of the Federally recognized Native American groups.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonabley traced between these Native American human remains and the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana.

This notice has been sent to officials of the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of these human remains to the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31660 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–403 and 731–TA–895–897 (Preliminary)]

Pure Magnesium From China, Israel, and Russia; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930,[3] that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel and Russia, and pure granular magnesium from China,[4] that are alleged to be sold in the United States at less than fair value (LTFV).

The Commission also determines,[5] pursuant to section 703(a) of the Tariff Act of 1930,[6] that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel that are alleged to be subsidized by the Government of Israel.

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Miller, Hillman, and Askey dissenting with respect to imports of pure magnesium ingot from Israel and pure granular magnesium from China. Commissioners Miller and Hillman dissenting with respect to imports of pure magnesium ingot from Russia. Commissioners Miller, Hillman, and Askey found imports of pure granular magnesium from Israel and Russia to be negligible.

[3] 19 U.S.C. § 1673b(a).

[4] The imported goods covered in the investigations concerning Israel and Russia include pure magnesium, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. The imported goods covered in the investigation concerning China include all of the foregoing pure magnesium products, except pure magnesium ingots (which are covered by an existing order and are classifiable under subheadings 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTS)).

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to an American Society for Testing and Materials (ASTM) specification for magnesium alloy (generally referred to as "off-specification pure" magnesium).

The merchandise subject to the investigation concerning Israel and Russia is classifiable under subheadings 8104.11.00, 8104.19.00, and 8104.30.00 of the HTS. The merchandise subject to the investigation concerning China is classifiable under subheading 8104.30.00 of the HTS.

[5] Commissioners Miller, Hillman, and Askey dissenting with respect to imports of pure magnesium ingot from Israel. Commissioners Miller, Hillman, and Askey found imports of pure granular magnesium from Israel to be negligible.

[6] 19 U.S.C. § 1671b(a).

Background

On October 17, 2000, a petition was filed with the Commission and the Department of Commerce by Magnesium Corporation of America (MagCorp), Salt Lake City, UT, the United Steel Workers of America, Local 8319, Salt Lake City, UT, and the United Steelworkers of America, AFL–CIO–CLC (USWA International),[7] alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of pure magnesium from Israel and Russia, and pure granular magnesium from China, that are alleged to be sold in the United States at LTFV, and by reason of imports of pure magnesium from Israel that are alleged to be subsidized by the Government of Israel. Accordingly, effective October 17, 2000, the Commission instituted countervailing duty investigation No. 701–TA–403 (Preliminary) and antidumping investigations Nos. 731–TA–895–897 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 25, 2000.[8] The conference was held in Washington, DC, on November 7, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 1, 2000. The views of the Commission are contained in USITC Publication 3376 (December 2000), entitled Pure Magnesium from China, Israel, and Russia: Investigations Nos. 701–TA–403 (Preliminary) and 731–TA–895–897 (Preliminary).

[7] See letter from petitioners dated October 26, 2000 amending the petitions to include the USWA International as co-petitioners.

[8] 65 FR 63888, Oct. 25, 2000.

By order of the Commission.

Issued: December 5, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31719 Filed 12–12–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP (BJS)–1307A]

Hate Crime Statistics Data Collection in Selected Police and Sheriffs' Departments; Extension

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Justice.

ACTION: Extension of grant application due date.

SUMMARY: The purpose of this notice is to announce a change to the deadline date of the submission of proposals to the Solicitation "Hate Crime Statistics Data Collection in Selected Police and Sheriffs' Departments" from December 31, 2000 to January 8, 2001.

DATES: Proposals must arrive at the Bureau of Justice Statistics (BJS) on or before 5:00 p.m. ET, Monday, January 8, 2001, or be postmarked on or before January 8, 2001.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531; (202) 616–3497.

FOR FURTHER INFORMATION CONTACT: Charles R. Kindermann, Ph.D., Senior Statistician, Bureau of Justice Statistics, (202) 616–3489 or Carol Kaplan, Chief, National Criminal History Improvement Program (202) 307–0759.

Dated: December 5, 2000.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–31693 Filed 12–12–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information included in its Interim Final Rule for Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers (Interim Final Reporting Rule) has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This notice announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Copies of the current Form M–1 and instructions are available on the Internet at: *http://www.dol.gov/dol/pwba.* In addition, after printing, copies will be available by calling the PWBA toll-free publication hotline at 1–800–998–7542. Questions on completing the form are being directed to the PWBA help desk at (202) 219–8770 (not a toll-free number).

Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW. Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 11, 2000, PWBA published the Interim Final Reporting Rule and the Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception (Form M–1) (65 FR 7152), along with an Interim Final Rule for the Assessment of Civil Penalties under Section 502(c)(5) of ERISA and an Interim Rule Governing Procedures of Administrative Hearing Regarding the Assessment of Civil Penalties under Section 502(c)(5) of ERISA (Interim Final Penalty Rules, 65 FR 7181). At the time of publication, the Department submitted the ICR included in the Interim Final Reporting Rule to OMB using emergency procedures, and received approval through August 31, 2000. On August 31, 2000, the Department submitted the ICR to OMB for an extension of the initial approval.

On November 22, 2000, OMB approved the ICR under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and 5 CFR 1320. The approval will expire on November 30, 2003. The control number assigned in this ICR by OMB is 1210–0116.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid control number.

Dated: November 29, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–31704 Filed 12–12–00; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TXU Electric; Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by TXU Electric, (the licensee) for an amendment to Facility Operating License Nos. NPF–87 and NPF–89 issued to the licensee for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on October 4, 2000 (65 FR 59226).

The purpose of the licensee's amendment request was to revise the CPSES Security Plan as follows: (1) To allow response team members to perform compensatory measures for protective area intrusion detection or closed circuit television failure, (2) to post compensatory measures for vital doors only if both the alarm and lock are inoperable, (3) to modify vital area door alarm response if no unresolved protective area alarms are received, (4) to eliminate the need to perform vehicle ignition key checks within the protected area, (5) to modify the patrol frequency for the protected area, (6) to eliminate the need to search generic packages sealed at the point of manufacturing and sent to a site from a general distribution center (e.g., pallet of paper), and (7) to allow material/equipment to be sealed prior to exiting the protective area or searched and sealed in a location exterior to the protective area (this would permit material/equipment to be transferred from one site to another without additional search). The U.S Nuclear Regulatory Commission (the Commission) staff has completed its evaluation of the proposed changes to the CPSES Security Plan as detailed in the Safety Evaluation dated December 5, 2000. Of the changes proposed by the licensee, changes (1) and (5) are acceptable, change (2) is not applicable to CPSES and is thus denied, change (3) is unacceptable and is thus denied, change (4) is not a Security Plan commitment associated with CPSES and thus is denied, and changes (6) and (7) are currently approved in the CPSES Security Plan and thus are denied.

The licensee was notified of the Commission's denial of proposed Security Plan changes (2), (3), (4), (6) and (7) by a letter dated December 5, 2000.

By January 12, 2001, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the U.S. Nuclear Regulatory Commission, Public Document Room, Washington, DC 20555–000, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington DC 20036–5869, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 2, 2000, and the supplement dated August 30, 2000, and (2) the Commission's letter to the licensee dated December 5, 2000.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 5th day of December 2000.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Project Director, Project Directorate IV–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31737 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 17, 2000, through December 1, 2000. The last biweekly notice was published on November 29, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Divisjon of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 12, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first Floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: July 5, 2000.

Description of amendment request: The proposed amendment would revise the maximum power level specified in each unit's license; revise the value of rated thermal power of each unit from 3411 megawatts thermal (MWt) to 3586.6 MWt and the reference source for conversion factors in the calculation of Dose Equivalent Iodine 131 in the technical specification (TS) definitions; add a Departure from Nucleate Boiling Ratio (DNBR) limit specifically for a thimble cell; increase the minimum limit for reactor coolant system (RCS) total flow; revise the steam generator laser welded sleeve plugging limit; and reduce the peak calculated containment internal pressure P_a for the design basis loss-of-coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Evaluation of the Probability of Previously Evaluated Accidents.

Plant systems and components have been verified to be capable of performing their intended design functions at uprated power conditions. Where necessary, some components will be modified prior to implementation of uprated power operations to accommodate the revised operating conditions. The analysis has concluded that operation at uprated power conditions will not adversely affect the capability or reliability of plant equipment. Current TS surveillance requirements ensure frequent and adequate monitoring of system and component operability. All systems will continue to be operated in accordance with current design requirements under uprated conditions, therefore no new components or system interactions have been identified that could lead to an increase in the probability of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). No changes were required to the Reactor Trip or Engineered Safety Features (ESF) setpoints.

B. Evaluation of the Consequences of Previously Evaluated Accidents.

The radiological consequences were reviewed for all design basis accidents (DBAs) (*i.e.*, both Loss of Coolant Accident (LOCA) and non-LOCA accidents) previously analyzed in the UFSAR. The analysis showed that the resultant radiological consequences for both LOCA and non-LOCA accidents remain either unchanged or have not significantly increased due to operation at uprated power conditions. The radiological consequences of all DBAs continue to meet established regulatory limits.

The proposed addition of Table E–7 of NRC Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I," Revision 1, 1977, or International Commission on Radiological Protection (ICRP) 30, "Limits for Intakes of Radionuclides by Workers," Supplement to Part 1, page 192–212, Table titled, "Committed Dose Equivalent in Target Organs or Tissues per Intake of Unit Activity," for thyroid dose conversion factors, will not significantly increase the consequences of an accident previously evaluated. If Regulatory Guide 1.109, or ICRP 30, Supplement to Part 1, are used to calculate maximum dose equivalent iodine specific activity, the total RCS iodine activity may increase, depending on the iodine nuclide mix, and this activity is used to calculate the doses resulting from a Main Steam Line Break (MSLB) or other analyzed accident. The calculated thyroid doses resulting from an MSLB or other analyzed accident would not increase as the corresponding dose conversion factors would be used to calculate the offsite thyroid doses. For a given Dose Equivalent I–131 concentration in the RCS, the offsite dose predicted using the dose conversion factors in either Table E–7 of Regulatory Guide 1.109, or ICRP 30, Supplement to Part 1, is less than that predicted by Table III of Atomic Energy Commission (AEC) Technical Information Document TID–14844, "Calculation of Distance Factors for Power and Test Reactor Sites," which is currently referenced in the TS definition of Dose Equivalent I–131.

ICRP–30 is the updated reference for thyroid dose conversion factors used in the power uprate accident analysis radiological evaluation. The current version of 10 CFR 20, "Standards for Protection Against Radiation," also utilizes ICRP–30 data.

Based on the analysis, it is concluded that the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The configuration, operation and accident response of the Byron Station and the Braidwood Station systems, structures or components are unchanged by operation at uprated power conditions or by the associated proposed TS changes. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario.

The effect of operation at uprated power conditions on plant equipment has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified as a result of operating at uprated conditions. In addition, operation at uprated power conditions does not create any new failure modes that could lead to a different kind of accident. Minor plant modifications, to support implementation of uprated power conditions, will be made as required to existing systems and components. The basic design of all systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to any Reactor Trip or ESF actuation setpoints.

Based on this analysis, it is concluded that no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed TS changes do not have an adverse effect on any safety-related system. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

A comprehensive analysis was performed to support the power uprate program at the Byron Station and the Braidwood Station. This analysis identified and defined the major input parameters to the NSSS [Nuclear Steam Supply System], reviewed NSSS design transients, and reviewed the capabilities of the NSSS fluid systems, NSSS/BOP [balance-of-plant] interfaces, NSSS control systems, and NSSS and BOP components. All appropriate NSSS accident analysis was reperformed to confirm acceptable results were maintained and that the radiological consequences remained within regulatory limits. The nuclear and thermal hydraulic performance of nuclear fuel was also reviewed to confirm acceptable results. The analysis confirmed that all NSSS and BOP systems and components are capable, some with minor modifications, to safely support operations at uprated power conditions.

To support the operation of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2 at uprated power conditions, nuclear fuel Departure from Nucleate Boiling Ratio (DNBR) reanalysis was required to define new core limits, axial offset limits, and Condition II, "Faults of Moderate Frequency," acceptability. This analysis included review of the following events: loss of RCS flow, reactor coolant pump locked rotor, feedwater malfunction, dropped control rod, steamline break, and control rod withdrawal from a subcritical condition. DNB design criteria was met for all events.

NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995, allows Dose Equivalent I–131 to be calculated using any one of three dose conversion factors; Table III of TID–14844, 1962, Table E–7 of NRC Regulatory Guide 1.109, Revision 1, 1977, or ICRP 30, Supplement to Part 1. Using thyroid dose conversion factors other than those given in TID–14844 results in lower doses and higher allowable activity but is justified by the discussion given in the **Federal Register** (*i.e.*, **Federal Register** (FR) page 23360 Vol. 56, May 21, 1991). This discussion accompanied the final rulemaking on 10 CFR 20, "Standards for Protection Against Radiation," by the NRC. In that discussion, the NRC stated that it was incorporating modifications to existing concepts and recommendations of the ICRP into NRC regulations. Incorporation of the methodology of ICRP–30 into the 10 CFR 20 revision was specifically mentioned with the changes being made resulting from changes and updates in the scientific techniques and parameters used in calculating dose. This FR reference clearly shows that the NRC was updating 10 CFR 20 to incorporate ICRP–30 recommendations and data. Regulatory Guide 1.109 thyroid dose conversion factors are higher than the ICRP–30 thyroid dose conversion factors for all five iodine isotopes of concern. Therefore, using Regulatory Guide 1.109 thyroid dose conversion factors to calculate Dose Equivalent I–131 is more conservative than ICRP–30 and is therefore acceptable. For a given Dose Equivalent I–131 concentration in the Reactor Coolant, the offsite dose predicted using the dose conversion factors in either Table E–7 of Regulatory Guide 1.109, Revision 1, NRC, 1977, or ICRP 30, Supplement to Part 1, is less than that predicted by Table III of TID–14844 which is currently referenced in the TS definition of Dose Equivalent I–131.

ICRP–30 is the updated reference source used in the power uprate accident analysis radiological evaluation. All regulatory acceptance criteria continue to be met and adequate safety margin is maintained.

Revising the minimum limit for RCS total flow from greater than or equal to 371,400 gpm to greater than or equal to 380,900 gpm does not represent a significant reduction in the margin of safety. The reactor coolant pumps run at full flow and have a total flow capacity greater than 380,900 gpm. The analysis has shown that DNBR criteria has been met for all normal operational transients and loss of flow accident scenarios.

The margin of safety of the reactor coolant pressure boundary is maintained under uprated power conditions. The design pressure of the reactor pressure vessel and reactor coolant system will not be challenged as the pressure mitigating systems were confirmed to be sufficiently sized to adequately control pressure under uprated power conditions.

The proposed change revises the plugging limit for laser welded sleeves from 40% to 38.7% of nominal wall thickness. The analysis performed in support of the power uprate effort, indicated that it is necessary to remove steam generator (SG) tubes with laser welded sleeves from service upon discovering an imperfection depth of 38.7% wall thickness to ensure the structural integrity of SG tubes which have been sleeved thereby precluding the occurrence of an SG tube rupture of sleeved tubes under all operating conditions. The previous laser welded sleeve plugging limit was based on an analysis that used lower tolerance limit material strength values. The new analysis methodology, required for laser welded sleeves, uses minimum strength properties from the American Society of Mechanical Engineers Code. As determined by the new analysis, reducing the plugging limit from 40% to 38.7% maintains a comparable margin of safety to the previous analysis.

Reanalysis of containment structural integrity under Design Basis Accident (DBA) conditions indicated that the safety margin improved, even though the mass and energy release due to a LOCA under uprated power conditions increases. Based on new and improved analytical methodologies, P_a, the peak calculated containment internal pressure for the design basis LOCA, is 42.8 psig as compared to the current value of 47.8 psig for Unit 1; and is 38.4 psig as compared to the current value of 44.4 psig for Unit 2, for both Byron Station and Braidwood Station.

Radiological consequences of the following accidents were reviewed: Main Steamline Break, Locked Reactor Coolant Pump (RCP) Rotor, Locked RCP Rotor with Power-Operated Relief Valve Failure, Rod Ejection, Small Line Break Outside Containment, Steam Generator Tube Rupture, Large Break Loss of Coolant Accident, Small Break Loss of Coolant Accident, Waste Gas Decay Tank Rupture, Liquid Waste Tank Failure, and Fuel Handling Accident. The resultant radiological consequences for each of these accidents did not show a significant change due to uprated power conditions and 10 CFR 100 limits continue to be met.

The analyses supporting the power uprate program have demonstrated that all systems and components are capable of safely operating at uprated power conditions. All design basis accident acceptance criteria will continue to be met. Therefore, it is concluded that the proposed TS changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant

Date of amendment request: July 7, 2000.

Description of amendment request: The proposed amendment would add a new license condition which would approve the License Termination Plan dated July 7, 2000, and allow the licensee to make changes to the approved License Termination Plan without prior Nuclear Regulatory Commission (NRC) approval if certain

criteria specified in the license condition are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Connecticut Yankee Atomic Power Company (CYAPCO) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

CYAPCO has reviewed the proposed change to the Operating License in accordance with the requirements of 10 CFR 50.92, "Issuance of Amendment," and concluded that the change does not involve a significant hazards consideration (SHC). The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Currently, the bounding airborne radioactivity event given in the Haddam Neck Plant UFSAR [Updated Final Safety Analysis Report] is the resin container accident. Whereas previously doses associated with gaseous waste system accidents would have bounded those associated with solid waste system failures, the small amount of radioactivity contained within the gaseous radioactive waste system with the plant in the permanently defueled condition results in this system's failure no longer being bounding. The curie content of the resin container was based on the actual radioactivity inventory collected on the resin from the reactor coolant system decontamination. This corresponded to approximately 90% of the NRC Class C burial limits. Consistent with NUREG–0782 for a resin fire, one percent of the activity of the container was assumed to be released to the environment. The 1% bounds the potential airborne release fraction from various resin incidents, such as an exothermic reaction during dewatering, dropping of a high integrity container, or a resin spill. Other airborne particulate radwaste or radioactive material accidents considered in the UFSAR but bounded by the resin container fire are as follows:

- a fire in the radwaste storage facility,
- a drop of a component (*e.g.*, steam generator, reactor vessel, or heat exchanger) being removed from the site,
- a van of radioactive waste materials consumed by a fire while stored in the yard area on-site,
- a radiological HEPA [High-Efficiency Particulate Air] filter rupture,
- segmentation of components or structures during loss of local engineering controls,
- an oxyacetylene tank explosion, or
- an explosion of liquid propane gas leaked from a front-end loader.

The UFSAR also discusses a fuel handling accident in the fuel building, involving the drop of a spent fuel assembly onto the fuel racks. The postulated drop assumes the rupture of all fuel rods in the associated assembly. The probability or consequences of this accident would not be increased during any future fuel transfer operations in the spent fuel pool related to decommissioning. Transfer of the spent fuel to canisters for dry cask storage will involve additional restrictions contained in the cask certificate of compliance in order to maintain decommissioning activities within the assumption and consequences of the fuel handling accident.

The requested license amendment is consistent with plant activities described in the Post Shutdown Decommissioning Activities Report (PSDAR) and the HNP [Haddam Neck Plant] Decommissioning UFSAR. Accordingly, no systems, structures, or components that could initiate the previously evaluated accidents or are required to mitigate these accident are adversely affected by this proposed change. Therefore, the proposed change does not involve an increase in the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Accident analyses related to decommissioning activities are addressed in the UFSAR. The requested license amendment is consistent with the plant activities described in the HNP Decommissioning UFSAR and the PSDAR. Thus, the proposed change does not affect plant systems, structures, or components in a way not previously evaluated. No new failure mechanisms will be created by this activity, and the proposed activity does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The License Termination Plan (LTP) is a plan for demonstrating compliance with the radiological criteria for license termination as provided in 10 CFR 20.1402. The margin of safety defined in the statements of consideration for the final rule on the Radiological Criteria for License Termination is described as the margin between the 100 mrem/yr public dose limit established in 10 CFR 20.1301 for licensed operation and the 25 mrem/yr dose limit to the average member of the critical group at a site considered acceptable for unrestricted use (one of the criteria of 10 CFR 20.1402). This margin of safety accounts for the potential effect of multiple sources of radiation exposure to the critical group. Since the License Termination Plan was designed to comply with the radiological criteria for license termination for unrestricted use, the LTP supports this margin of safety.

In addition, the LTP provides the methodologies and criteria that will be used to perform remediation activities of residual radioactivity to demonstrate compliance with the ALARA [as low as reasonably achievable] criterion of 10 CFR 20.1402.

Additionally, the LTP was designed with recognition that (a) the methods in MARSSIM (Multi-Agency Radiation Survey and Site Investigation Manual) and (b) the building surface contamination levels are not directly applicable to use with complex nonstructural components. Therefore, the LTP states that nonstructural components remaining in buildings (*e.g.*, pumps, heat exchangers, etc.) will be evaluated against the criteria of RG [Regulatory Guide] 1.86 to determine if the components can be released for unrestricted use. The LTP also states that materials, surveyed and evaluated as a part of normal decommissioning activities and prior to implementation of the final status survey, will be surveyed for release using current site procedures to demonstrate compliance with the "no detectable" criteria. Such materials that do not pass these criteria will be controlled as contaminated.

Also, as previously discussed, the bounding accident for decommissioning is the resin container accident. Since the bounding decommissioning accident results in more airborne radioactivity than can be released from other decommissioning events, the margin of safety associated with the consequences of decommissioning accidents is not reduced by this activity.

Thus, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Robert K. Gad, III, Ropes & Gray, One International Plaza, Boston, Massachusetts 02110–2624.

NRC Section Chief: Michael T. Masnik.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: November 2, 2000.

Description of amendment request: The proposed amendment would revise the WNP–2 Technical Specifications (TS) to incorporate long-term power stability solution requirements. The proposed changes reflect: (1) The addition of a new TS Section 3.3.1.3, "Oscillation Power Range Monitoring (OPRM) Instrumentation," (2) a revision to TS Section 3.4.1, "Recirculation Loops Operating," to remove monitoring specifications that would no longer be necessary upon activation of the automatic OPRM instrumentation, and (3) a revision to TS 5.6.5 to include in the Core Operating Limits Report (COLR) the applicable operating limits for the OPRMs, and also reference the topical report which describes the analytical methods used to determine the setpoint values for the OPRM.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements for the OPRM system and allows operation in regions of the power-to-flow map currently restricted by the requirements of interim corrective actions (ICAs) and certain limiting conditions of operation of Technical Specification 3.4.1. The restrictions of the ICAs and Technical Specification 3.4.1 were imposed to ensure adequate capability to detect and suppress conditions consistent with the onset of thermal-hydraulic oscillations that may develop into a thermal-hydraulic instability event. A thermal-hydraulic instability event has the potential to challenge the minimum critical power ratio (MCPR) safety limit. The OPRM system can automatically detect and suppress conditions necessary for thermal-hydraulic instability. With the installation of the OPRM system, the restrictions of the ICAs and Technical Specification 3.4.1 are no longer required to prevent a potential challenge to the MCPR safety limit during an anticipated instability event.

The probability of a thermal-hydraulic event is dependent on power-to-flow conditions such that only during operation inside specific regions of the power-to-flow map, in combination with power shape and inlet enthalpy conditions, can the occurrence of an instability event be postulated to occur. Operation in these regions may increase the probability that operation with conditions necessary for a thermal-hydraulic instability can occur. When the OPRM system is operable, conditions consistent with the imminent onset of oscillations are automatically detected and the conditions necessary for oscillations are suppressed, which decreases the probability of an instability event. In the event the trip capability of the OPRM is not maintained, the proposed change limits the period of time before an alternate method to detect and suppress thermal-hydraulic oscillations is required. The probability of a thermal-hydraulic instability event may be increased during the limited period of time that operation is allowed at conditions otherwise requiring the trip capability of the OPRM to be maintained. However, since the duration of this period of time is limited, the increase in the probability of a thermal-hydraulic instability event is not significant.

The proposed change requires the OPRM system to be operable and, thereby, ensures mitigation of thermal-hydraulic instability events with a potential to challenge the MCPR safety limit when initiated from anticipated conditions, by detection of the onset of oscillations and actuation of an RPS [reactor protection system] trip signal. The OPRM also provides the capability of an RPS trip being generated for thermal-hydraulic instability events initiated from unanticipated, but postulated conditions. These mitigating capabilities of the OPRM system will become available as a result of the proposed change and have the potential to reduce the consequences of anticipated and postulated thermal-hydraulic instability events. The OPRM installation has been evaluated and does not alter the function or capability of any other installed equipment such as the average power range monitoring (APRM) system or the RPS to mitigate the consequences of postulated events.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power-to-flow map currently restricted by the requirements of ICAs and Technical Specification 3.4.1. The OPRM system uses input signals shared with APRM and rod block functions to monitor core conditions and generate an RPS trip when required. Quality requirements for software design, testing, implementation and module self-testing of the OPRM system provide assurance that no new equipment malfunctions due to software errors are created. The design of the OPRM system also ensures that neither operation nor malfunction of the OPRM system will adversely impact the operation of other systems and no accident or equipment malfunction of these other systems could cause the OPRM system to malfunction or cause a different kind of accident.

Operation in regions currently restricted by the requirements of ICAs and Technical Specification 3.4.1 is within the nominal operating domain and ranges of plant systems and components, and within the range for which postulated equipment and accidents have been previously evaluated.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power-to-flow map currently restricted by the requirements of ICAs and Technical Specification 3.4.1.

The OPRM system monitors small groups of LPRM [local power range monitor] signals for indication of local variations of core power consistent with thermal-hydraulic oscillations and generates an RPS trip when conditions consistent with the onset of oscillations are detected. An unmitigated thermal-hydraulic instability event has the potential to result in a challenge to the MCPR [minimum critical power ratio] safety limit. The OPRM system provides the capability to automatically detect and suppress conditions which might result in a thermal-hydraulic instability event and, thereby, maintains the margin of safety by providing automatic protection for the MCPR safety limit while significantly reducing the burden on the control room operators. In the event the trip capability of the OPRM is not maintained, the proposed change limits the period of time before an alternate method to detect and suppress thermal-hydraulic oscillation is required. The alternate method to detect and suppress oscillations would be comparable to current actions required by the interim corrective actions and no significant reduction in the margin of safety would result in the event that an unmitigated instability event occurred.

Operation in regions currently restricted by the requirements of ICAs and Technical Specification 3.4.1 is within the nominal operating domain and ranges of plant systems and components, and within the range assumed for initial conditions considered in the analysis of anticipated operational occurrences and postulated accidents.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 29, 2000.

Description of amendment request: The proposed changes to the Arkansas Nuclear One, Unit 1 (ANO–1) Technical Specifications (TS) provide for the use of an Alternate Repair Criteria (ARC) for steam generator tubes with indications of outer diameter intergranular attack (ODIGA) within the upper tube sheet region of the once-through steam generators (OTSGs). Amendment 202 to the ANO–1 TS dated October 4, 1999, allowed the ARC for ODIGA indications only during Operating Cycle 16 at ANO–1. The proposed change would allow continued operation beyond Cycle 16 for ANO–1 with OTSG tubes that have ODIGA indications that are located in a defined area of the upper tube sheet.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the criteria in 10 CFR 50.92(c). A discussion of these criteria as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The purpose of the periodic surveillance performed on the OTSGs in accordance with ANO–1 Technical Specification (TS) 4.18 is to ensure that the structural integrity of this portion of the reactor coolant system will be maintained. The TS plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the TS as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line or feedwater line break. The proposed TS change allows OTSG tubes with ODIGA indications contained within a defined area of the UTS [upper tube sheet] to remain in service with existing degradation exceeding the existing 40% through-wall (TW) plugging limit.

Extensive testing and plant experience has illustrated that ODIGA flaws confined to this area within the OTSG will not result in tube burst and tube leakage is unlikely. Therefore, allowing ODIGA flaws in this specific region to remain in service will not alter the conditions assumed in the current ANO–1 accident analysis for OTSG tube failures under postulated accident conditions. In addition, the condition of the OTSG tubes in this region are monitored during regular inspection intervals to assess for evidence of growth. Any growth noted will be addressed through testing and the operational assessment. Therefore, ANO–1 has determined that the identification, testing, monitoring, assessment, and corrective action programs provided in ANO [Arkansas Nuclear One] Engineering Report No. 00–R–1005–01, sufficiently supports this change request.

Application of the ODIGA alternate repair criteria will allow leaving tubes with ODIGA indications found in the defined area of the UTS in service while ensuring safe operation by monitoring and assessing the present and future conditions of the tubes. ANO–1 has operated since 1984 with ODIGA affected tubes in service with no appreciable effect on structural integrity or indications of tube leakage from ODIGA sources within the UTS. Through the inspection, testing, monitoring, and assessment program previously mentioned, and the on-line leak detection capabilities available during plant operation, continued safe operation of ANO–1 is reasonably assured.

Therefore, the application of the ODIGA alternate repair criteria does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The implementation of the ODIGA alternate repair criteria will not result in any failure mode not previously analyzed. The OTSGs are passive components. The intent of the TS surveillance requirements are being met by these proposed changes in that adequate structural and leak integrity will be maintained. Additionally, the proposed change does not introduce any new modes of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The application of an alternate repair criteria for ODIGA provides adequate assurance with margin that ANO–1 steam generator tubes will retain their integrity under normal and accident conditions. The structural requirements of ODIGA affected tubes have been evaluated satisfactorily and meet or exceed regulatory requirements. Leakage rates for these tubes within the defined region of the upper tubesheet are essentially zero and are reasonably assured to remain within the assumptions of the accident analysis by proper application of the ODIGA alternate repair criteria program. Assuming high differential pressures following an ATWS [Anticipated Transient Without Scram] or MSLB [Main Steam Line Break], if the ODIGA patches leak, the leakage would be less than the normal makeup capacity of the reactor coolant system. Since no appreciable impact is evidenced on the tubes structural integrity or its resulting leak rate, the margin to safety remains effectively unaltered.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 28, 2000.

Description of amendment request: The proposed changes to the Arkansas Nuclear One, Unit 1 (ANO–1) technical specifications revise the safety-related 4160 Volt (V) bus loss-of-voltage and 480 V bus degraded voltage relay allowable values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The two 4160 V vital bus loss-of-voltage protection relays that are provided on each of the 4160 V safety buses act to mitigate the consequences of an accident by detecting a loss of voltage, isolating the safety buses, initiating load shedding schemes, and starting the associated emergency diesel generator (EDG). The safety function of the relays is unchanged by the proposed setpoint revisions. The revised settings for the loss-of-voltage protection relays will continue to provide the safety function with no appreciable additional time delay. The proposed time delays are within those assumed in the ANO–1 safety analyses. Additionally, the lower voltage settings will aid in preventing unnecessary isolation from the off-site power sources, which in turn will reduce the probability of a loss of off-site power to the unit due to off-site power system transients. Since the proposed change does not adversely impact the mitigating function of the relays, the consequences of an accident previously evaluated remains unchanged.

The two degraded voltage protection relays that are provided on each of the 480 V safety buses act to mitigate the consequences of an accident by detecting a sustained undervoltage condition, isolating the safety buses from offsite power, and starting the associated EDG. This safety function is unchanged by the proposed setpoint revisions. The revised settings for the degraded voltage protection relays will continue to provide the safety function of protecting the associated Class IE equipment from the effects of a low voltage condition. There is no proposed change to the existing timer setting and the time delays remain within those assumed in the ANO–1 safety analyses. Additionally, the revised allowable voltage settings will not result in any unnecessary isolation from the off-site power sources. Since the proposed change does not adversely impact the mitigating function of the relays, the consequences of an accident previously evaluated remains unchanged.

The ANO–1 technical specifications will continue to require the 4160 V bus loss-of-voltage functions and 480 V bus degraded voltage functions to be surveillance tested at their present frequency without changing the modes in which the surveillance is required or the modes of applicability for these components. The technical specifications will continue to require the same actions as currently exist for the inoperability of one or more of the 4160 V bus loss-of-voltage channels or the 480 V bus degraded voltage channels.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change introduces no new modes of plant operation or new plant configuration that could lead to a new or different kind of accident from any previously evaluated being introduced. The 4160 V vital bus loss-of-voltage protection relays are required to operate following a complete loss of off-site power to initiate the bus power source transfer to on-site power, *i.e.*, the EDGs, to prevent a loss of all AC power. Likewise, the 480 V bus degraded voltage relays are required to operate upon detection of a sustained undervoltage condition to protect the Class IE components from damage from low voltage by initiating transfer of the 4160 V safety bus power source to the EDG. These safety functions are unchanged by the proposed setpoint revisions, and the proposed setpoints continue to provide the required actions consistent with the ANO–1 safety analysis.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The two undervoltage relays located on each 4160 V safety bus are provided to detect loss-of-voltage, isolate the safety buses, initiate load shedding, and start the EDGs. The two undervoltage relays located on each 480 V safety bus are provided to detect sustained undervoltage, isolate the safety buses, and start the EDGs. These safety functions are unchanged by the proposed setpoint revisions. The proposed changes to the allowable values for both loss-of-voltage and degraded voltage relays incorporate channel uncertainties and calibration tolerances, while fully meeting their required safety functions of loss-of-voltage and degraded voltage protection without resulting in undesired tripping of the offsite power source.

The lower loss-of-voltage values do not affect the margin of safety since there is no appreciable time difference in reaching the lower setpoints during a loss-of-voltage event. The maximum proposed time delay allowable value with the minimum loss-of-voltage relay allowable value is within that used in the ANO–1 safety analysis. The revised allowable values for the loss-of-voltage relays will continue to provide the safety function with no appreciable additional time delay. Additionally, the lower voltage settings will help to prevent unnecessary isolation from the off-site power sources due to off-site perturbations in the electrical grid, and thus contribute to increasing the margin of safety. Also, the slightly higher range of allowable values for the degraded voltage settings allows enhanced protection of the Class IE components, but does not result in undesired tripping of the offsite power source for the analyzed grid minimum normal condition. The degraded voltage relays, therefore, also act to contribute to an increased margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations, Inc. has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 28, 2000.

Description of amendment request: The proposed changes to Arkansas Nuclear One, Unit 1 (ANO–1), Technical Specifications (TS) provide for the implementation of a revised reroll repair process for ANO–1 Once-Through Steam Generators (OTSG). The current TSs limit application of the reroll repair process to repair tubes with defects in the upper tubesheet area only, using a 1 inch roll length, and allow the reroll repair process to be performed only once per steam generator tube. The requested amendment would allow the reroll repair process to be used multiple times for a single tube and would allow the repairs in both the upper and lower tubesheets.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the criteria in 10 CFR 50.92(c).

OTSG tubesheet areas where reroll installation is excluded are specified in Appendix A of topical report BAW–2303P, Revision 4 [A non-proprietary version of the report, BAW–2303NP, Revision 4, "OTSG Repair Roll Qualification Report," was submitted on October 26, 2000.]. The following discussion applies to areas of the OTSG tubesheets where installation of reroll repairs is permitted:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Two types of repair rolls have been developed for installation in the OTSGs, a single 1-inch roll expansion and an overlapping roll consisting of two 1-inch roll expansions. The overlapping roll provides a minimum of 1⅝ inch effective roll expansion. There is an additional ¼-inch roll transition region on each end of the roll expansion and a new leak-limiting pressure boundary is created by the repair roll. Applicable OTSG transient conditions were evaluated to develop a set of bounding test conditions for application to both types of repair rolls. Testing included examination of the effects of crevice deposits, cyclic loading, tube yield strength, differential dilations, axial loads and internal pressure.

Test results conclude that the single 1-inch minimum repair roll is structurally adequate to prevent tube slip during all non-faulted operating transients. A small amount of slippage is acceptable provided the tube does not slip out of the tubesheet and tube bow due to post-faulted transient heatup does not result in tube failure. Exclusion areas are established in the tubesheets to provide assurance that tube will not slip out of the tubesheet . The 1⅝ inch minimum overlapping roll is structurally acceptable based on the bounding evaluation of the single 1-inch repair roll.

Bounding leak rates are applied based on tubesheet depth and radial position. A post-slip leak rate is applied to any location where there is potential for repair roll slip during a postulated accident. The bounding leak rates are very conservative because the leakage is based on test samples with a full circumferential sever outboard of the repair roll. The majority of the degradation in the tubesheets is comprised of short, axial cracks for which the leakage would be much less under axial tensile loads than for the tested severed tube. In addition, repair rolls will actually slip only if the tube is severed outboard of the repair roll. Since the majority of the degradation in the region of the roll joints has been identified as small axial cracks, the probability of the repair roll maintaining structural integrity is very high and the potential for a joint to slip is very low. The leakage from each repair roll that serves as a pressure boundary is added to the leakage from all other sources and the total leakage must be within current accident analysis limits.

The application of the reroll repair process as described in topical report BAW–2303P, Revision 4 will not alter the conditions assumed in the current ANO–1 accident analysis for OTSG tube failures under postulated accident conditions. In addition, the condition of the OTSG tubes in this region are monitored during regular inspection intervals to assess for evidence of degradation. Any degradation noted will be addressed in the operational assessment and appropriate actions taken.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility

of a New or Different Kind of Accident from any Previously Evaluated.

The reroll process establishes a new pressure boundary for the associated tube in the tubesheet region inboard of the flaw. The new roll transition may eventually develop primary water stress corrosion cracking (PWSCC) and require additional repair. Industry experience with roll transition cracking has shown that PWSCC in roll transitions are normally short axial cracks, with extremely low leak rates. The standard MRPC eddy current inspection during the refueling outages have proven to be successful in detecting these defects.

In the unlikely event the rerolled tube failed and severed completely at the heel transition of the reroll region, the tube would retain engagement in the tubesheet bore, preventing any interaction with neighboring tubes. In this case, leakage is minimized and is well within the assumed leakage of the design basis tube rupture accident. In addition, the possibility of rupturing multiple steam generator tubes is unaffected. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The repair roll is applicable to repairing axial, volumetric, or circumferential indications. Testing was conservatively performed with the assumption that the tube is severed at the heel transition (360 degree and 100% through-wall circumferential defect). The joint strength margin (actual load/limiting load) was calculated for each tubesheet depth and radial position for the cooldown transient to ensure margin against slip for non-faulted conditions. All locations showed a joint strength margin less than 0.65 with an acceptable margin less than 1.0.

A tube with degradation can be kept in service through the use of the reroll process. The new roll expanded interface created with the tubesheet satisfies all of the necessary structural and leakage requirements. Since the joint is constrained within the tubesheet bore, there is no additional risk associated with tube rupture. Therefore, the analyzed accident scenarios remain bounding, and the proposed modifications to the reroll process do not reduce the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502..

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: November 9, 2000.

Description of amendment request: The proposed amendment requests fourteen of the simpler, generic administrative/editorial/consistency improvements agreed upon between the Nuclear Energy Institute Technical Specification Task Force (TSTF) and the NRC, subsequent to the conversion of the Perry Technical Specifications to the improved Standard Technical Specifications. The proposed amendment requests Perry-specific versions of TSTF 5, "Delete Notification, Reporting, and Restart Requirements if a Safety Limit is Violated;" TSTF 32, "Slow/Stuck Control Rod Separation Criteria;" TSTF 38, "Revise Visual Surveillance of Batteries to Specify Inspection is for Performance Degradation;" TSTF 52, "Implement 10 CFR Part 50, Appendix J, Option B;" TSTF 65, "Use of Generic Titles for Utility Positions;" TSTF 104, "Relocate to the Bases the Discussion of Exceptions to Limiting Condition for Operation (LCO) 3.0.4;" TSTF 106, "Change to Diesel Fuel Oil Testing Program;" TSTF 118, "Administrative Controls Program Exceptions;" TSTF 152, "Revise Reporting Requirements to be Consistent with 10 CFR Part 20;" TSTF 153, "Clarify Exception Notes to be Consistent with the Requirement being Excepted;" TSTF 166, "Correct Inconsistency between LCO 3.0.6 and the Safety Functional Determination Program (SFDP) Regarding Performance of an Evaluation;" TSTF 258, "Changes to Section 5.0, Administrative Controls;" TSTF 278, "Battery Cell Parameters (LCO 3.8.6) includes more than Table 3.8.6–1 Limits;" and TSTF 279, "Remove the Words 'Including Applicable Supports' from the Description of the Inservice Testing Program."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve reformatting and rewording of the existing Technical Specifications to be consistent with regulations or other existing Technical Specifications, or the changes do not involve a change in intent. The proposed changes also involve Technical Specification requirements that are administrative rather than technical in nature. As such, this change does not affect initiators of previously evaluated events, or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will not impose new or eliminate old requirements on design or operation of the plant. The administrative changes also do not introduce new initiators of events. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change has no impact on any safety analysis assumptions or design basis margins. This change is administrative in nature. The proposed changes will not impose new or eliminate old requirements on design or operation of the plant. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

GPU Nuclear, Inc., Three Mile Island Nuclear Station, Unit 2, Docket No. 50–320, Dauphine County, Pennsylvania

Date of amendment request: July 25, 2000.

Description of amendment request: The proposed technical specifications change request (TSCR) is to revise Three Mile Island Nuclear Generating Station, Unit 2 (TMI–2), Technical Specification (TS) Section 6.7.2 to eliminate a change associated with periodic reviews of procedures. Currently, TS 6.7.2 states that required procedures shall be reviewed periodically as required by American National Standards Institute (ANSI) N18.7–1976 (a biennial review). This TSCR proposes to revise the wording for TS 6.7.2 to be essentially identical with the Three Mile Island, Unit 1 (TMI–1), TS requirements for procedure reviews, which states that required procedures shall be revised periodically, as set forth in administrative procedures (currently a biennial review). This TSCR would also be consistent with the TMI–2 Post-Defueling Monitored Storage (PDMS) Quality Assuance (QA) Plan, which states that "Procedural documentation shall be periodically reviewed for adequacy as set forth in administrative procedures."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Applying the three standards set forth in 10 CFR 50.92, the proposed changes to the Technical Specifications involve no significant hazards consideration. The proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators or assumptions are affected. The proposed changes have no effect on any plant systems. All Limited Conditions for PDMS and Safety Limits specified in the Technical Specifications will remain unchanged.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected. The proposed changes do not alter the source term, containment isolation, or allowable radiological consequences. The change in specified periodic procedure review requirements will have no adverse effect on any plant system.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed changes have no direct effect on any plant systems. The changes do not affect any system functional requirements, plant maintenance, or operability requirements.

3. Not involve a significant reduction in the margin of safety because the proposed changes do not involve significant changes to the initial conditions contributing to accident severity or consequences. The proposed changes have no direct effect on any plant systems.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 0037.

NRC Section Chief: Michael T. Masnik.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 16, 2000.

Description of amendment request: The proposed amendment would incorporate new pressure and temperature (P/T) curves into the Technical Specifications. The reactor pressure vessel P/T limit curves would be updated for inservice leakage and hydrostatic testing, non-nuclear heatup and cooldown, and criticality.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The P/T [pressure and temperature] limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed by the ASME [American Society of Mechanical Engineers] Code and 10 CFR 50 Appendix G and H as restrictions on operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause non-ductile failure of the reactor coolant pressure boundary.

The changes to the calculational methodology for the P/T limits based upon Code Case N–640 continue to provide adequate margin in the prevention of a non-ductile type fracture of the reactor pressure vessel (RPV). The Code Case was developed based upon the knowledge gained through years of industry experience. P/T curves developed using the allowances of Code Case N–640 indeed yield more operating margin. However, the experience gained in the areas of fracture toughness of materials and pre-existing undetected defects shows that some of the existing assumptions used for the calculation of P/T limits are unnecessarily conservative and unrealistic. Therefore, providing the allowances of the Code Case in developing the P/T limit curves will continue to provide adequate protection against non-ductile type fractures of the RPV.

The proposed change will not affect any other system or piece of equipment designed for the prevention or mitigation of previously analyzed events. The change does not adversely affect the integrity of the reactor coolant system such that its function in control of radiological consequences is affected.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The amendment will revise the P/T curves which are established to the requirements of 10 CFR 50, Appendix G to assure that non-ductile fracture of the reactor vessel is prevented.

The proposed change provides more operating margin in the P/T limit curves for inservice leakage and hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality, with benefits being primarily realized during the pressure tests. The proposed change does not result in any new or unanalyzed operation of any system or piece of equipment important to safety, and as a result, the possibility of a new type event is not created.

(3) The proposed amendment will not involve a significant reduction in a margin of safety. 10 CFR 50, Appendix G specifies fracture toughness requirements to provide adequate margins of safety during operation over the service lifetime. The values of adjusted reference temperature and upper shelf energy are expected to remain within the limits of Regulatory Guide 1.99, Revision 2 and Appendix G of 10 CFR 50 (less than 200 degrees F and greater than 50 ft-lbs respectively) for at least 32 effective full power years (EFPY) of operation.

The proposed change reflects an update of P/T curves based on the latest ASME guidance. The revised P/T curves provide more operating margin and thus, more operational flexibility than the current P/T curves. With the increased operational margin, a reduction in the safety margin results with respect to the existing curves. However, industry experience since the inception of the P/T limits in 1974 confirms that some of the existing methodologies used to develop P/T curves are unrealistic and unnecessarily conservative. Accordingly, ASME Code Case N–640 takes into account the acquired knowledge and establishes more realistic methodologies for the development of P/T curves. Therefore, operational flexibility is gained and an acceptable margin of safety to RPV non-ductile type fracture is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 29, 1999, as supplemented on November 10, 2000.

Description of amendment request: The licensee submitted a proposed amendment to Kewaunee Nuclear Plant's Technical Specifications (TSs) modifying the TSs to incorporate requested changes per Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Shield Building Ventilation, the Auxiliary Building Ventilation, the Spent Fuel Pool Sweep Systems and the Control Room Post Accident Recirculation System are not accident initiators. Therefore, the proposed change will not increase the probability of an accident. The purpose of each of these systems is to mitigate the consequences of an accident once it has occurred. Based upon a comparison, the later version of ASTM D3803, ASTM D3803–89 was found to test the efficiency of the charcoal material under more conservative conditions. By testing the charcoal absorber material under more conservative conditions, the charcoal will require replenishment sooner. Therefore, the consequences will not be increased.

The changes to the basis sections are to promote clarity and uniformity. These statements were previously contained in the basis section or clarify which revision of Regulatory Guide 1.52 that should be used. This change provides acceptable guidelines for the qualification of replacement charcoal absorbent. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not change any component at the plant. It is changing the testing requirements for material already installed. The material being tested has not changed. By testing the charcoal material under this revised protocol the material will be replaced with fresh charcoal sooner. This will ensure the equipment performs as described in the USAR.

The changes to the basis sections are to promote clarity and uniformity. These statements were previously contained in the basis section or clarify which revision of Regulatory Guide 1.52 that should be used. This change provides acceptable guidelines for the qualification of replacement charcoal adsorbent. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

There is no reduction in the margin of safety. The efficiency of the charcoal material assumed by the USAR will not change as a result of this amendment and the functioning of the system will not change. Therefore, the original margin of safety is maintained.

The changes to the basis sections are to promote clarity and uniformity. These statements were previously contained in the basis section or clarify which revision of Regulatory Guide 1.52 that should be used. This change provides acceptable guidelines for the qualification of replacement charcoal adsorbent. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 12, 2000.

Description of amendment request: In accordance with 10 CFR 50.59, the topical report WPSRSEM–NP, "Reload Safety Evaluation Methods for Application to Kewaunee," Revision 3, is being submitted for the staff's review and approval since the licensee determined the revision of the report involved an unreviewed safety question. The topical report is intended to be applicable to Kewaunee reload cycles after and including Cycle 25, presently scheduled to commence in the fall of 2001. The topical report reflects:

- Editorial changes, including corrections to the limiting directions of core physics parameters and clarification of the definition of core physics parameters.
- Changes made to incorporate the CONTEMPT code for containment analysis. CONTEMPT is currently described for this purpose in the Kewaunee updated safety analysis report (USAR).
- The adoption of the GOTHIC code for containment analysis.
- Changes in Reload Safety Evaluation Methods due to Large Break Loss-of-Coolant Accident Upper Plenum Injection Analysis.
- The adoption of RETRAN–3D for use in the 2D mode for system analysis.
- The extension of the VIPRE–01 code to reflect changes in fuel design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Analysis methods are not accident initiators, therefore, changes in analysis methods will not increase significantly the probability of occurrence or the consequences of an accident previously evaluated.

The changed analysis methods are conservative and conform to industry standards for analysis methods that are applied to design basis safety analyses. Benchmark analyses have demonstrated good agreement between the changed analysis methods and the current analysis of record (AOR) methods. The safety analysis results using the changed analysis methods are shown to satisfy all applicable design and safety analysis acceptance criteria. The demonstrated adherence to safety analysis acceptance criteria precludes new challenges to components and systems that could adversely affect the ability of existing components and systems to mitigate the consequences of any accident or adversely affect the integrity of any fission product barrier.

Analysis methods changes will not impact plant equipment important to safety. Equipment important to safety will continue to operate within its design capabilities. The analysis methods changes also do not affect the plant configuration or the overall plant performance capabilities.

Therefore, the changes will not increase probability or the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change is a change to the analysis methods, which are applied to Kewaunee. Analysis methods are not accident initiators. The changed analysis methods are applied to the accidents that are the established design basis accidents for Kewaunee. Analysis methods changes will not impact plant equipment important to safety. Equipment important to safety will continue to operate within its design capabilities. The analysis methods changes also do not affect the plant configuration or the overall plant performance capabilities.

As demonstrated by the benchmark reports the methodologies provide a more accurate but still conservative representation of expected plant response following a design basis accident. Since the new methodologies are conservative with respect to actual expected plant response the changes will not create the possibility of an accident of a different type than any previously evaluated.

(3) Involve a significant reduction in the margin of safety.

The proposed changes are changes to the analysis methods, which are applied to Kewaunee design basis safety analyses. The revised analysis methods have been verified through benchmark analyses against the current Analysis of Record methods. The analysis methods are conservative and appropriate for application to Kewaunee design basis analyses. Safety analysis acceptance criteria are satisfied when the changed analysis methods are applied to the Kewaunee design basis safety analyses. Demonstrated adherence to safety analysis acceptance criteria using the new analysis methods assures that Technical Specification limits will be satisfied during operation with the changed analysis methods.

Therefore, the margin of safety as defined in the basis of any Technical Specification will not be reduced significantly because of these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 10, 2000.

Description of amendment request: The proposed amendment is to revise several sections of the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TSs). These sections include administrative changes, Table 4.1–1, and Sections 1.0, 6.4, and 6.10.

Administrative changes are submitted with this proposed amendment to correct minor typographical errors in the Table of Contents and among these changes are renumbering the index section pages and the addition of previously omitted sections.

The proposed changes will modify TS Table 4.1–1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." This proposed change will decrease the calibration frequency for Turbine First Stage Pressure to support KNPP's 18-month operating cycle, and modify the table to eliminate a note that could lead to non-conservative calibration frequency.

The proposed TS Section 1.0, "Definitions," will incorporate a line item improvement to provide additional clarification on channel calibration.

The proposed TS Section 6.4, "Training," will remove the title of director for the KNPP training program and relocate the title reference to the Operational Quality Assurance Program Description (OQAPD).

The proposed TS Section 6.10, "Record Retention," will revise the off-site review committee title.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

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The proposed changes are administrative in nature and, therefore, have no impact on accident initiators or plant equipment, and thus do not affect the probability or consequences of an accident.

TS Section 1.0, "Definitions"

A calibration will continue to ensure that a channel is within specification. Furthermore, calibration methodology is not an accident initiator. Therefore, the proposed change will not significantly raise the probability or consequences of an accident previously evaluated.

TS Table 4.1–1

The proposed change amends the calibration interval of the turbine first stage pressure from 12 months to each refueling cycle to coincide with KNPP's operating cycle. Calibration frequency would not change the consequence of a failure of the first stage pressure channel. Calibration frequency is not an accident initiator. Therefore, the proposed changes will not significantly raise the probability or consequences of an accident previously evaluated. Additionally, this change is consistent with the turbine first stage pressure calibration frequency stated in STS.

The proposed changes to the identified line items in Table 4.1–1 will require calibration of the instruments on a refueling cycle interval without exception. These calibration frequencies are not accident initiators and thus do not affect the probability of an accident. These changes are more conservative than existing TS and, therefore, will not increase the consequences of an accident.

TS Section 6.4, "Training"

The proposed change will not change the intent of the TS. Removing the title from the TS is administrative in nature and, therefore, has no impact on accident initiators or plant equipment, and thus does not affect the probability or consequences of an accident.

TS Section 6.10, "Record Retention"

The proposed change will not change the intent of the TS. Changing the title of the off-site review committee is administrative in nature and, therefore, has no impact on accident initiators or plant equipment, and thus does not affect the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

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The proposed changes do not involve changes to the physical plant or operations. Since these administrative changes do not contribute to accident initiation, they do not produce a new accident scenario or produce a new type of equipment malfunction. Also, these changes do not alter any existing accident scenarios; they do not affect equipment or its operation, and thus, do not create the possibility of a new or different kind of accident.

TS Section 1.0, "Definitions"

The proposed TS change to channel calibration will not introduce any new equipment or result in existing equipment functioning differently from that previously evaluated in the USAR or TS. Calibration will continue to ensure that the channel is within specification and capable of performing its design basis function. No new accident is introduced and no safety-related equipment or safety functions are altered. Therefore, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accident.

TS Table 4.1–1

The proposed TS change will not introduce any new equipment or result in existing equipment functioning differently from that previously evaluated in the USAR or TS. The proposed change amends the calibration interval of the turbine first stage pressure from 12 months to each refueling cycle to coincide with KNPP's operating cycle. Performing the surveillance during refueling will decrease the likelihood for an induced transient. Expanding the calibration frequency will not affect the performance of the first stage pressure channel. A review of turbine first stage pressure calibration results for the last three years concluded no adjustment of the instrument was necessary due to little or no drift. Furthermore, similar transmitters already calibrated on a refueling basis have remained within acceptable limits. These results indicate stable instrument performance to support extending calibration frequency from 12 months to each refueling cycle.

The proposed changes will ensure that the affected channels are calibrated on a refueling basis. These changes will not introduce any new equipment or result in existing equipment functioning differently from that previously evaluated in the USAR or TS. No new accident is introduced and no safety-related equipment or safety functions are altered. The proposed changes do not affect any of the parameters or conditions that contribute to initiation of any accident.

TS Section 6.4, "Training"

The proposed change does not involve a change to the physical plant or operations. Since an administrative change does not contribute to accident initiation, it does not produce a new accident scenario or produce a new type of equipment malfunction.

TS Section 6.10, "Record Retention"

The proposed change does not involve a change to the physical plant or operations. Since an administrative change does not contribute to accident initiation, it does not produce a new accident scenario or produce a new type of equipment malfunction.

3. Involve a significant reduction in the margin of safety.

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Administrative changes do not involve a significant reduction in the margin of safety. The proposed changes do not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by these changes.

TS Section 1.0, "Definitions"

Operation of the facility in accordance with this proposed TS change would not involve a significant reduction in a margin of safety. The specification will still ensure the operability of channels requiring calibration.

TS Table 4.1–1

Operation of the facility in accordance with the proposed TS changes would not involve a significant reduction in the margin of safety. The calibration will continue to verify the operability of the turbine first stage pressure channels. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Operation of the facility in accordance with the proposed TS changes would not involve a significant reduction in a margin of safety. The proposed changes will ensure the continued reliability of the instruments. This change is more conservative than existing TS and is consistent with STS.

TS Section 6.4, "Training"

Administrative changes do not involve a significant reduction in the margin of safety. The proposed change does not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

TS Section 6.10, "Record Retention"

Administrative changes do not involve a significant reduction in the margin of safety. The proposed change does not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: March 20, 2000.

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station (SSES), Unit 2, Technical Specification 2.1.1.2, minimum critical power ratio (MCPR) safety limits. These safety limits are being revised to reflect planned changes to the core composition for the next operating cycle and to support a separate license amendment proposing an increase in the SSES, Unit 1 and 2, rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes in MCPR Safety Limits do not affect any plant system or component (except the reactor core) and therefore does not increase the probability of an accident previously evaluated.

A Unit 2 Cycle 11 MCPR Safety Limit analysis was performed for PPL by SPC [Siemens Power Corporation]. This analysis used NRC approved methods as required by SSES Technical Specifications. For Unit 2 Cycle 11 [U2C11], the critical power performance of the ATRIUM™–10 fuel was determined using the NRC approved ANFB–10 correlation. Also, the analysis for U2C11 supports a Core Thermal Power of 3493 MWt which is a 1.5% increase over U2C10 (3441 MWt). The Safety Limit MCPR calculations statistically combine uncertainties on feedwater flow, feedwater temperature, core flow, core pressure, core power distribution, and uncertainties in the Critical Power Correlation. The SPC analysis used cycle specific power distributions and calculated MCPR values such that at least 99.9% of the fuel rods are expected to avoid boiling transition during normal operation or anticipated operational occurrences. The resulting two-loop and single-loop MCPR Safety Limits are included in the proposed Technical Specification change. Thus, the cladding integrity and its ability to contain fission products are not adversely affected. It is therefore concluded that the proposed change does not increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed changes to the Unit 2 Technical Specifications (MCPR Safety Limits) do not affect any plant system or component and do not affect plant operation. The consequences of transients and accidents will remain within the criteria approved by the NRC. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Since the proposed changes do not affect any plant system or component, and do not have any impact on plant operation, the proposed changes will not affect the function or operation of any plant system or component. The consequences of transients and accidents will remain within the criteria approved by the NRC. The proposed MCPR Safety Limits do not involve a significant reduction in the margin of safety as currently defined in the bases of the applicable Technical Specification sections. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Marsha Gamberoni.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of amendment requests: October 30, 2000–PCN 268.

Description of amendment requests: This amendment application requests to delete license condition 2.C(3) related to fuel transshipments between San Onofre Nuclear Generating Station, Unit 1 (SONGS 1), which is in the process of decommissioning, and SONGS Units 2 or 3 since such transshipments will no longer be made. In addition, the amendment application requests revisions to the Unit 1 defueled Technical Specifications to (1) remove the spent fuel pool (SFP) temperature limits and related cooling system operability requirements, (2) remove the SFP auxiliary feedwater storage tank makeup water requirements and related surveillance requirements, (3) change the SFP water level limit for conditions other than spent fuel movement, and (4) change the operator staffing requirements for the decommissioning control room. As a result of these proposed changes, the licensee also proposes to delete the definitions of FUNCTIONAL and SPENT FUEL POOL COOLING TRAIN and revise the table of contents and list of tables according to the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change is a request to revise the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1) license and permanently defueled technical specifications. The license condition for transshipment is being deleted since there is no safety-related equipment to protect and no plans for transshipment of SONGS 1 fuel to SONGS 2 or 3. Since the purpose of removing this license condition is that this activity will no longer be performed, there is no impact on accident probability or consequences. Deleting the technical specifications for spent fuel pool temperature and makeup are based on the current benign status of the spent fuel and spent fuel pool. The requirements and surveillances provided by these technical specifications no longer provide appropriate limits for the safe storage of the spent fuel. The spent fuel temperature limit cannot be reached. Makeup water is available from various sources onsite and offsite in a timely manner. Deleting these technical specifications has no impact on the probability or consequences of an accident. Modifying the spent fuel pool water level requirements provides two levels for maintaining water: One water level (elevation 28' [feet]) for just storage and a higher water level (elevation 40' 3" [inches]) for fuel movement. Lowering the water level for storage of spent fuel does not affect the accident probability. The fuel handling accident will not occur when the pool water level is at elevation 28 feet since spent fuel will only be handled when the pool water level is at elevation 40' feet 3". Removing the restrictions for having one individual of the minimum shift crew located in the control room will not have any impact on the fuel handling accident since a certified fuel handler is still required to be present.

Therefore, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated?

No. This proposed change is a request to revise the SONGS 1 license and permanently defueled technical specifications. The transshipment license condition is being deleted since there is no safety-related equipment to protect and no plans for transshipment of Unit 1 spent fuel to Units 2 or 3. The technical specifications for spent fuel pool temperature and makeup are being deleted since these requirements no longer provide limits appropriate for maintaining the spent fuel pool. Removing these requirements does not create the possibility for a new or different accident since the associated limits are no longer attainable by the spent fuel pool. The only potential accident remaining is the spent fuel handling accident. Lowering the level of the spent fuel pool to elevation 28 feet has no impact on accident initiations since fuel handling will not be allowed at this water level. Removing the restrictions in the location of the minimum shift crew has no impact on accident initiation, and the certified fuel handler will be present during fuel handling operations.

Therefore, this change does not involve the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. This proposed change is a request to delete requirements from the license and the technical specifications and modify the spent fuel pool level requirements. Deleting the transshipment license condition has no impact on margin since there no longer is any safety-related equipment to protect and there are no plans for transshipment of Unit 1 spent fuel to Units 2 or 3. Deleting the spent fuel pool temperature and makeup requirements has no effect on margin since the status of the spent fuel pool is such that the margins associated with these requirements have increased and with time will continue to increase. Modifying the level requirement to allow the water level to be at elevation 28 feet for spent fuel storage has no impact on margin since the spent fuel has cooled significantly and fuel movement will not occur at this level. Since the status of the spent fuel pool is such that the margins are improving with time, removing the restrictions in the location of the minimum shift crew has no effect on the margins.

Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The staff also reviewed the proposed administrative changes to delete definitions and conform the table of contents and list of tables to the proposed changes for no significant hazards consideration. These administrative changes do not affect the design or operation of the facility and satisfy the three standards of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Michael Masnik (Unit 1).

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 5, 2000.

Brief description of amendments: The amendments revise the VEGP Updated Final Safety Analysis Report (UFSAR) Chapters 11 and 15 to incorporate changes due to an updated Dose Equivalent Iodine analysis. The new analysis was performed in response to Westinghouse Nuclear Safety Advisory Letter, "NSAL–00–04: Nonconservatisms in Iodine Spiking Calculations."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the [Updated Final Safety Analysis Report] UFSAR. The comprehensive engineering review included evaluations or reanalysis of all accident analyses. The letdown flow rate does not initiate any accident; therefore, the probability of an accident has not been increased. All dose consequences have been analyzed or evaluated with respect to the proposed changes, and all acceptance criteria continue to be met. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the UFSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. Therefore, all accident analyses criteria continue to be met, and these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety. All analyses and evaluations using these inputs have been revised to reflect the proposed values. The evaluations and analyses results demonstrate that applicable acceptance criteria are met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 3, 2000.

Description of amendment request: The proposed amendments would revise Technical Specification 5.5.11, "Technical Specification Bases Control Program," to provide consistency with the changes to 10 CFR 50.59 which were published in the **Federal Register** (64 FR 53582) on October 4, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes the reference to unreviewed safety question as defined in 10 CFR 50.59. Deletion of the definition of unreviewed safety question was approved by the NRC with the revision of 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the critieria in paragraph 10 CFR 50.59(c)(2) will still require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 6, 2000.

Brief description of amendments: The request revises the VEGP Technical Specification (TS) Limiting Conditions for Operation 3.7.10, 3.7.11, and 3.7.13 to address degraded pressure boundaries. The changes revise the TS to allow the pressure boundaries of ventilation systems such as the Control Room Emergency Filtration System (CREFS) and the Piping Penetration Area Filtration and Exhaust System (PPAFES) to be opened intermittently under administrative controls. A new condition is also added that allows 24 hours to restore inoperable CREFS and PPAFES pressure boundaries before requiring the units to perform an orderly shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The control room emergency filtration system (CREFS) and the piping penetration area filtration and exhaust system (PPAFES) are not assumed to be initiators of any analyzed accident. Therefore, the proposed changes do not affect the probability of any accident previously evaluated. The proposed changes for the CREFS and PPAFES Technical Specifications (TS) would permit the subject pressure boundaries to be opened intermittently under administrative control. Based on the proposed compensatory measures in the form of a dedicated individual who is in communication with the control room, and his ability to rapidly restore the pressure boundary, the capability to mitigate a design basis event will be maintained. In addition, the proposed changes would add a new condition that would permit a 24-hour period to take action to restore an inoperable pressure boundary to operable status, modify existing conditions to accommodate the new condition (so as to maintain the requirements of the existing conditions), and correct a typographical error. With respect to CREFS, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated based on the availability of a self-contained breathing apparatus to minimize radiological dose due to iodine and the ability to operate more than one train as the need arises to maintain positive pressure or at least maintain an outflow of air from the control room environment. With respect to the PPAFES, it has been demonstrated by analysis that a breach of the pressure boundary will not result in control room or offsite doses that exceed their respective limits. The correction of the typographical error is an administrative change that has no technical impact.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes for the CREFS and PPAFES TS would permit the subject pressure boundaries to be opened intermittently under administrative control. In addition, the proposed changes would add a new condition that would permit a 24-hour period to take action to restore an inoperable pressure boundary to operable status, modify existing conditions to accommodate the new condition (so as to maintain the requirements of the existing conditions), and correct a typographical error. The proposed changes do not alter the operation of the plant or any of its equipment, introduce any new equipment, or result in any new failure mechanisms or single failures. Therefore, there is no potential for a new accident and no changes to the way that an analyzed accident will progress. The correction of the typographical error is an administrative change that has no technical impact.

3. Do the proposed changes result in a significant reduction in a margin of safety?

No. The proposed changes for the CREFS and PPAFES TS would permit the subject pressure boundaries to be opened intermittently under administrative control. In addition, the proposed changes would add a new condition that would permit a 24-hour period to take action to restore an inoperable pressure boundary to operable status, modify existing conditions to accommodate the new condition (so as to maintain the requirements of the existing conditions), and correct a typographical error. The proposed changes do not adversely affect the ability of the fission product barriers to perform their functions. The only safety-related equipment affected by the proposed changes is the CREFS and the PPAFES. It has been demonstrated by analysis that a breach in the pressure boundary of the PPAFES will not cause the control room or offsite doses to exceed their respective limits. Adequate compensatory measures are available to mitigate a breach in the CREFS pressure boundary. The probabilities of design bases accidents that would place demands on these systems during a period that the ventilation system pressure boundaries would be allowed to be inoperable have been shown to be negligible. In addition, the proposed changes avoid the potential of placing one or both units in TS Limiting Condition for Operation (LCO) 3.0.3 solely due to a breach of the ventilation system pressure boundary. The correction of the typographical error is an administrative change that has no technical impact.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 16, 2000.

Brief description of amendments: The request proposes to amend Technical Specification 5.5.1, " Technical Specification Bases Control Program" to provide consistency with the changes to 10 CFR 50.59 as published in the **Federal Register** (64 FR 53582) dated October 4, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes the reference to unreviewed safety question as defined in 10 CFR 50.59. Deletion of the definition of unreviewed safety question was approved by the NRC with the revision of 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph 10 CFR 50.59 (c)(2) will still require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: November 21, 2000 (TSC–396).

Description of amendment request: The proposed amendment would revise the reactor core Safety Limit Minimum Critical Power Ratio (SLMCPR) specified in Technical Specification (TS) Section 2.1.1.2 from 1.10 to 1.07 for two reactor recirculation loop operation and from 1.12 to 1.10 for single loop operation. The change is based on use of newly approved analytical methodology for the Cycle 12 reload analysis. This methodology is described in Global Nuclear Fuels (GNF) licensing document, "General Electric Standard Application for Reactor Fuel, GESTAR-II, Amendment 25," dated June 2000, which has been approved by NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed new SLMCPR values for two recirculation loop operation and for single recirculation loop operation. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Since the change does not require any physical plant modifications or physically affect any plant components, no individual precursors of an accident are affected and the probability of an evaluated accident is not increased by revising the SLMCPR values.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The revised SLMCPRs have been performed using NRC-approved methods and procedures. The basis of the MCPR [minimum critical power ratio] Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. These calculations do not change the method of operating the plant and have no effect on the consequences of an evaluated accident. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment involves a revision of the SLMCPR for two recirculation loop operation and for single loop operation based on the results of an analysis of the Cycle 12 core. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. The new SLMCPRs are calculated using NRC-approved methods and procedures which are in accordance with the current fuel design and licensing criteria. The SLMCPRs remain high enough to ensure that greater than 99.9% of all fuel rods in the core are

expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 25, 2000.

Description of amendment request: The proposed change would revise the 125 volt DC (Vdc) station battery system Technical Specifications (TSs) to reflect the availability of a second, fully qualified charger, for each main station battery system. The licensee also proposed corresponding changes to the listing of components in the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no change in the method of operation of the 125 Vdc main station battery systems by this change. The battery chargers will function the same, except that an additional battery charger will be available to each system. No change to accident assumptions or precursors are involved with this change. Likewise, no change in system operation or response to analyzed events is affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new chargers to be installed will provide additional charging capability. No reduction in DC system equipment operation or capability is involved. The methods by which the DC systems perform their safety functions are unchanged and remain consistent with current safety analysis assumptions. There is no change in system or plant operation that involves failure modes other than those previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

No adverse affect on equipment operation or capability will result from this change. The installation of additional chargers in fact enhances the reliability of the battery charging function. The equipment fed by the DC systems involved in this change will continue to provide adequate power to safety related loads in accordance with analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 1, 2000.

Description of amendment request: The proposed change would revise the operability requirement for high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) low steam line pressure isolation instrumentation to coincide with system operability requirements. The proposed change eliminates the need to open manual containment isolation valves under administrative control during reactor heatup, reduces the potential for operator error when closing these valves (potential for leaving valve mispositioned) and clarifies the steam line low pressure isolation function description. An administrative change to correct the HPCI High Steam Line d/p instrument component numbers was also proposed to ensure the accuracy of isolation instrumentation information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change clarifies the equipment protection purpose of the HPCI and RCIC low steam line isolation function. [The proposed change would require] operability of the steam supply pressure instrumentation [ ] whenever the systems are required to be operable. This change does not significantly alter the function of containment isolation actuation instruments nor does it significantly alter containment integrity requirements. The proposed change does not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is being introduced.

The proposed change does not affect the ability of the primary containment isolation system or high pressure core cooling systems to perform their safety functions. The essential safety function of providing primary containment integrity is maintained since operability of the primary instrumentation associated with detection of a HPCI or RCIC steam line break outside containment will continue to be required when primary containment integrity is required. The essential safety function of providing water to cool the core in the event of a small break in the nuclear system is maintained. The operational change being made would not alter the sequence of events, plant response, or conclusions of existing safety analyses. This proposed change results in no impact on analyzed accident event precursors, initiators or effects.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. No new or different types of equipment will be installed. Operation with the HPCI and RCIC steam line isolation valves open between 212 °F and 150 psig does not alter the input or result of existing accident analyses. The change in plant operation does not involve failure modes other than those previously evaluated. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The change involves operation with the HPCI and RCIC systems with steam line isolation valves open between 212 °F and 150 psig. This change will not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is introduced.

The proposed change maintains design margins of the primary containment isolation system or high pressure core cooling systems to perform their required safety functions. The essential safety functions of providing primary containment integrity and providing water to cool the core in the event of a small break in the nuclear system are maintained. There is no physical or operational change being made which would alter the sequence of events, plant response, or margins in existing safety analyses. This proposed change results in no impact on analyzed accident event precursors or effects.

This proposed change does not alter the physical design of the plant. The change in method of operation results in no significant impact on safety functions or assumed responses. The proposed change does not alter the means by which primary containment isolation is maintained and high pressure core cooling systems are operated.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 27, 2000, as supplemented November 21, 2000.

Description of amendment request: The proposed changes will increase the fuel enrichment limit from 4.3 weight percent to 4.6 weight percent Uranium^{235} (U^{235}), establish Technical Specifications to control the boron concentration in the spent fuel pool (SFP) and impose restrictions on the storage locations for some spent fuel assemblies, and change the method of criticality calculation used to evaluate the effect of a fuel enrichment change on the SFP.

Basis for proposed no significant hazards consideration determination; As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1.] Criterion 1. The proposed increase in maximum fuel enrichment and the changes to the SFP design basis will not significantly increase the probability of or consequences of an accident previously evaluated in the North Anna Units 1 and 2 UFSAR [Updated Final Safety Analysis Report].

The only accidents for which the probability of occurrence is potentially affected by the fuel enrichment and SFP changes involve criticality events during fuel handling and storage (e.g., fuel mispositioning). The proposed Technical Specifications establish additional restrictions on the placement of each fuel assembly in the SFP to ensure subcriticality. However, criticality safety analyses have been performed that demonstrate that the K_{eff} during the handling and storage of both new and spent fuel remains low enough to ensure subcriticality during postulated accident conditions. In addition, analyses of the dilution of the spent fuel pool have been performed to ensure that there is adequate time for a dilution event to be detected and mitigated, such that the required subcritical margin is maintained in the spent fuel pool. Therefore the probability of occurrence of criticality during fuel handling or storage is not significantly increased. In addition the consequences of the operating reactor accident scenarios are also unchanged, because the source terms used to determine the releases from fuel during accidents are a function of burnup, rather than initial enrichment.

[2.] Criterion 2. The proposed increase in maximum fuel enrichment or the change in the SFP design basis does not create a new or different kind of accident from any already discussed in the North Anna Units 1 and 2 UFSAR.

Although there are new restrictions on placement of fuel in the SFP, the administrative controls on fuel movement to specified locations in the pool are unchanged. The higher enrichment fuel and the new Technical Specifications for the spent fuel pool do not require any new or different plant equipment, and do not change the manner in which currently installed equipment is operated. There are no changes to normal core operation, and the units will meet all applicable design criteria and will operate within existing Technical Specifications limits. No new failure modes have been created for any system, component, or piece of equipment, and no new single failure mechanisms have been introduced. No new or different plant equipment is introduced, and the operation of currently equipment is not changed. The use of a higher maximum fuel enrichment will not cause the design criteria for fuel operation or storage to be exceeded. No new modes or limiting single failures are created by the use of a higher fuel enrichment. Safety analyses for the fuel storage area have demonstrated that subcriticality will be maintained during fuel handling and storage, including fuel mispositioning and pool dilution scenarios.

[3.] Criterion 3. The proposed increase in maximum fuel enrichment and the changes to the SFP design basis will not significantly reduce the margin of safety.

The use of higher enriched fuel and the changes to the SFP design basis have the potential to affect only criticality events during fuel handling and storage. Criticality analyses demonstrate that the limits on K_{eff} for the new and spent fuel storage areas will be satisfied. Therefore, there is adequate margin to ensure subcriticality during the storage and handling of fuel. The requirements of 10 CFR 50 Appendix A General Design Criterion 62 are satisfied. Safety analyses demonstrated that K_{eff} will remain sufficiently low to ensure subcriticality, so no new releases will result and there is no impact on radiological consequences of accidents. The safety analyses of record will remain applicable for the operation of fuel with a higher initial U^{235} enrichment and changes to the spent fuel pool. Therefore, the margin of safety is not affected by the proposed increase in initial fuel enrichment or changes to the spent fuel pool design basis.

Based on the evaluations and analyses results presented in the foregoing safety significance evaluation, it has been demonstrated that increasing the North Anna Units 1 and 2 maximum initial fuel enrichment to 4.6 weight percent U^{235} and changing the design basis of the spent fuel pool to eliminate any credit for Boraflex but take credit for soluble boron in the pool will not result in a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination,

and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 27, 2000.

Brief Description of amendments: The amendments change the Technical Specifications to allow one of each unit's Direct Current power subsystems to be inoperable when in Modes 4 and 5, and during movement of irradiated fuel assemblies in the secondary containment.

Date of issuance: November 29, 2000.

Effective date: November 29, 2000.

Amendment Nos.: 211 and 238.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: September 20, 2000 (65 FR 56948). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 1, 2000.

Brief description of amendments: The amendments revise TS Section 3.7.15 and associated Bases, and Section 4.0 for the McGuire Nuclear Stations, Units 1 and 2, to allow the use of credit for soluble boron in spent fuel pool criticality analyses. The request is based on the NRC-approved Westinghouse Owners Group Topical Report WCAP–14416–NP–A, which provides generic methodology for crediting soluble boron.

Date of issuance: November 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 197 and 178.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 18, 2000 (65 FR 62385). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: October 18, 2000.

Brief description of amendments: The amendments revise the implementation date of Amendment Nos. 312, 312, and 312 from November 30, 2000, so that implementation will be on or before implementation of amendments resulting from the application that must be submitted by April 5, 2001. This submittal will be based on an engineering study that is being conducted to evaluate both the appropriate Keowee Hydro Unit out-of-tolerance surveillance criteria and resolve overshoot concerns.

Date of Issuance: November 27, 2000.

Effective date: As of the date of issuance.

Amendment Nos.: 317/317/317.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Implementation Date.

Date of initial notice in **Federal Register**: October 25, 2000 (65 FR 63896). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 25, 2000.

Brief description of amendment: The amendment changed the action statements for Technical Specification (TS) 3.8.2.2, A.C. Distribution—Shutdown, and TS 3.8.2.4, DC Distribution—Shutdown, by replacing the requirement to establish containment integrity within eight hours with a requirement to immediately suspend core alterations, the movement of irradiated fuel assemblies, and any operations involving positive reactivity additions. Related changes to the associated Bases were also made.

Date of issuance: November 28, 2000.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 227.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 12, 2000 (65 FR 43045). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2000.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 31, 2000.

Brief description of amendment: The Technical Specifications (TS) were revised by adding an additional Condition to ITS 3.3.11, Emergency Feedwater Initiation and Control System Instrumentation, regarding the required action to be taken for one or more Emergency Feedwater Initiation and Control System channels when up to two Reactor Coolant Pump status signals are inoperable.

Date of issuance: November 21, 2000

Effective date: November 21, 2000

Amendment No.: 194.

Facility Operating License No. DPR–72: Amendment revised the TS.

Date of initial notice in **Federal Register**: July 12, 2000 (65 FR 43047). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: June 8, 2000.

Brief description of amendments: The amendments allow the use of probabilistic risk assessment (PRA) techniques in evaluating the need for tornado-generated missile barriers; this provides an alternative to installing physical missile protection for those structures, systems, and components that are not physically protected from tornado-generated missiles.

Date of issuance: November 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 247 and 228.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments approved revision of the UFSAR.

Date of initial notice in **Federal Register**: July 12, 2000 (65 FR 43049). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 1, 2000, as supplemented October 27, 2000.

Brief description of amendments: The licensee proposed the following three changes:

(1) A one-time change to Unit 1 Technical Specification (TS) Surveillance Requirement (SR) 4.6.1.2 to add the following: "A one-time exception to the requirement to perform post-modification Type A testing is allowed for the steam generators and associated piping, as components of the containment barrier. For this case, American Society of Mechnical Engineers (ASME) Section XI leak testing will be used to verify leak tightness of the repaired or modified portions of the containment barrier. Entry into MODES 3 and 4 following the extended outage that commenced in 1997, may be made to perform this testing."

(2) A change to Unit 1 and Unit 2 TS SR 4.6.1.2 to add the phrase "except as modified by NRC-approved exemptions" to the requirement to perform testing in accordance with 10 CFR Part 50, Appendix J, Option B, and the September 1995 version of Regulatory Guide 1.163.

(3) A change to the Unit 1 and Unit 2 Bases TS SR 4.6.1.2 to add the phrase "Regulatory Guide 1.163, dated September 1995, and Nuclear Energy Institute (NEI) document NEI 94–01, except as modified" after the surveillance testing for measuring leakage rates are consistent with the Appendix "J" of 10 CFR Part 50.

Date of issuance: November 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 248 and 229.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 20, 2000 (65 FR 56953). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: April 6, 2000, as supplemented November 13, 2000.

Brief description of amendments: The amendments would approve changes involving unreviewed safety questions to the Updated Final Safety Analysis Report to incorporate new methodology to be used in the analysis of high-energy line breaks at D. C. Cook.

Date of issuance: November 21, 2000.

Effective date: As of the date of issuance.

Amendment Nos.: 249 and 230.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 23, 2000 (65 FR 51355). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 18, 2000, as supplemented November 10, 2000.

Brief description of amendments: The amendments revise Technical Specifications (TSs) 3/4.7.1.2, "Auxiliary Feedwater [AFW] System," to change the description in the TSs surveillance requirement (SR) 4.7.1.2.d of the position for each automatic valve in the AFW system from the "fully open" position to the "correct" position.

Date of issuance: November 30, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 250 and 231.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 25, 2000 (65 FR 63899) The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 20, 2000, as supplemented on September 25, 2000.

Description of amendment request: The amendment revises the Technical Specifications (TS) by removing the prescriptive requirement for determining the reactor coolant system flow rate by precision heat balance in Surveillance Requirement 4.2.5.3. The amendment also revises TS Table 2.2–1 to reflect the allowed calibration tolerance of the protection racks and noting that the Trip Setpoint for Functional Unit 12, Reactor Coolant Flow-Low reactor trip is based on an indicated value rather than a measured value.

Date of issuance: October 26, 2000.

Effective date: As of its date of issuance, and shall be implemented at commencement of Cycle 8 operation (scheduled for November 2000).

Amendment No.: 77.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 2000 (65 FR 48753) The supplemental letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendments: June 6, 2000.

Brief description of amendment: The amendment deletes or modifies license conditions and confirmatory orders to reflect the permanently defueled condition of the unit.

Date of Issuance: November 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 108.

Facility Operating License No. DPR–21: The amendment revised the Facility Operating License.

Date of initial notice in **Federal Register:** July 26, 2000 (65 FR 46010). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 2000.

No significant hazards consideration comments received: No.

Nuclear Management Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 12, 2000.

Brief description of amendment: The amendment revises the Technical Specification 4.6.E.1.d safety/relief valve bellows monitoring system test frequency from quarterly to once per operating cycle.

Date of issuance: November 30, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 114.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 2000 (65 FR 39959). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 2000.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: December 21, 1999, as supplemented May 2, 2000

Brief description of amendments: These amendments incorporate changes to the Technical Specifications (TSs) to more clearly define the requirements for service water (SW) system operability in accordance with the system configuration assumed in the SW system analysis. The application dated December 21, 1999, as supplemented May 2, 2000, superceded an application dated July 30, 1998, in its entirety. The December 21, 1999, application was submitted because the licensee performed additional analyses of the SW system subsequent to the submittal of the July 30, 1998, application, which necessitated additional changes to the TSs.

Date of issuance: November 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 199 and 204.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 23, 2000 (65 FR 9014). The May 2, 2000, supplemental letter provided additional clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 14, 2000, as supplemented on October 12, 2000.

Brief description of amendments: The amendments modify the Salem Unit Nos. 1 and 2 Technical Specifications (TS), and allow PSEG Nuclear to use the Best Estimate Analyzer For Core Operations—Nuclear (BEACON) system at Salem to fulfill certain TS surveillance requirements that involve core power distribution measurements. BEACON is a core power distribution monitoring and support system based on a three dimensional nodal code. The system is used to provide data reduction for incore neutron flux maps, core parameter analysis and follow, and core prediction.

Date of issuance: November 6, 2000.

Effective date: As of the date of issuance, and shall be implemented within 30 days of issuance.

Amendment Nos.: 237 and 218.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 2000 (65 FR 46014). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 6, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 24, 1999, as supplemented September 14, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to implement Filtration, Recirculation, and Ventilation System and Control Room Emergency Filtration System charcoal filter testing requirements that are consistent with the U.S. Nuclear Regulatory Commission guidance delineated in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Date of issuance: November 17, 2000

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 130.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 29, 1999 (64 FR 73096). The September 14, 2000, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: July 20, 2000 (PCN–488, supplement 1; supersedes application dated August 11, 1999).

Brief description of amendments: The amendments revised Technical Specifications surveillance requirements (SRs) related to the acceptance criteria for TS 3.3.7, "Diesel Generator (DG)—Undervoltage Start," SR 3.3.7.3, which verifies operability of the loss of voltage and degraded voltage actuation circuits. The amendments replaced the analytical limits currently specified as acceptance criteria with allowable values, and deleted SR 3.3.7.4 on the basis that it is redundant with SR 3.3.7.3.

Date of issuance: November 29, 2000.

Effective date: November 29, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2–174; Unit 3–165.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 2000 (65 FR 51362). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: August 28, 2000.

Description of amendment request: The amendments revise the Units 1, 2 and 3 Technical Specifications (TS) to incorporate TS Task Force (TSTF) Items Nos. TSTF–71, TSTF–208, TSTF–222, TSTF–284, TSTF–258 and TSTF–364. TSTFs are changes to the Improved Standard TS that were initiated by the nuclear power industry and submitted to the NRC staff. A description of each of the six TSTFs proposed for implementation at Browns Ferry follows: (1) TSTF–71, Revision 2, adds an example of the application of the Safety Function Determination Program to the Bases for Limiting Conditions for Operation (LCO) 3.0.6. (2) TSTF–208, Revision 0, extends the allowed time to reach MODE 2 in LCO 3.0.3 from 7 hours to 10 hours. The change is based on plant experience regarding the time needed to perform a controlled shutdown in an orderly manner. (3) TSTF–222, Revision 1, clarifies Improved Technical Specification (ITS) Section 3.1.4, Control Rod Scram Times, Surveillance Requirements (SRs) to better delineate the requirements for testing control rods following refueling outages and for control rods requiring testing due to work activities. (4) TSTF–258, Revision 4, revises TS Section 5.0, Administrative Controls, to delete specific TS staffing requirement provisions for Reactor Operators (ROs), eliminates TS details for working hour limits, clarifies requirements for the Shift Technical Advisor position, adds regulatory definitions for Senior ROs and ROs, revises the Radioactive Effluent Controls Program to be consistent with the intent of 10 CFR Part 20, deletes periodic reporting requirements for mainsteam relief valve openings, and revises radiological area control requirements for radiation areas to be consistant with those specified in 10 CFR 20.1601(c). (5) TSTF–284, Revision 3, modifies Improved TS Section 1.4, Frequency, to clarify the usage of the terms "met" and "performed" to facilitate the application of SR Notes. Two new SR Examples, 1.4–5 and 1.4–6, are added to illustrate the application of the terms. (6) TSTF–364, Revision 0, revises Section 5.5.10, TS Bases Control Program, to reference 10 CFR 50.59 rather than "unreviewed safety question." Also, editorial change WOG–ED–24, which substitutes "require" for "involve" in 5.5.10.b is made for consistency in usage.

Date of issuance: November 21, 2000.

Effective date: November 21, 2000.

Amendment Nos.: 239, 266, and 226.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the licenses.

Date of initial notice in **Federal Register:** October 4, 2000 (65 FR 59224)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2000.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: September 15, 2000.

Brief description of amendments: The proposed change replaces the general references currently provided in Technical Specification 5.6.6 for determining the reactor coolant system pressure and temperature limits with the requirement that the Pressure/Temperature Limits and Low Temperature Overpressure Protection System Setpoints shall not be revised without prior U.S. Nuclear Regulatory Commission approval.

Date of issuance: November 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 81 & 81.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 1, 2000 (65 FR 65351). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 19, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to establish operability requirements to ensure that adequate reactor coolant inventory and sufficient heat removal capability exist during cold shutdown and refueling conditions.

Date of Issuance: November 17, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 195.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 18, 2000 (65 FR 62393). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 29, 1999, as supplemented August 31, 2000.

Brief description of amendments: The amendments revise the testing requirements in Technical Specification (TS) 4.7.7.1 and TS 4.7.8.1 to incorporate the American Society for Testing and Materials D3803–1989 standard and the application of a safety factor of 2.0 for the charcoal filter

efficiency assumed in Virginia Electric and Power Company's design-basis dose analysis.

Date of issuance: November 20, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 224 and 205.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 9, 2000 (65 FR 6413). The August 31, 2000, supplement provided clarifying information only, and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 6th day of December 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31541 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series, with its related Standard Review Plan section. The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1096 (which should be mentioned in all correspondence concerning this draft guide), is titled "Transient and Accident Analysis Methods." This guide is being developed to describe a process that is acceptable to the NRC staff for the development and assessment of evaluation models that may be used to analyze transient and accident behavior.

Draft Standard Review Plan Section 15.0.2, "Review of Analytical Computer Codes," is being developed to describe the review process for NRC staff and acceptance criteria for analytical models and computer codes used by licensees to analyze accident and transient behavior. This draft Standard Review Plan (SRP) section is intended to become Section 15.0.2 of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants."

This draft guide and draft standard review plan section have not received complete staff approval and do not represent an official NRC staff position.

Comments on both documents may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; email <*PDR@NRC.GOV*>. Comments will be most helpful if received by February 15, 2001.

You may also provide comments or access these documents via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. Electronic copies of this draft guide, under Accession Number ML003770849, are available in NRC's Public Electronic Reading Room, which can also be accessed through NRC's web site, *WWW.NRC.GOV*. For information about the draft guide and the related documents, contact Mr. N. Lauben at (301) 415–6762; e-mail *GNL1@NRC.GOV*. For information about the draft standard review plan section, contact Mr. J.L. Staudenmeier at (301) 415–2869, email *JLS4@NRC.GOV*; or Mr. M.A. Shuaibi at (301) 415–2859, email *MAS4@NRC.GOV*.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides and standard review plan sections are available for inspection at the Commission's Public Document Room, 11555 Rockville Pike, Rockville, MD. Requests for single copies of draft or final guides or SRP sections (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of November 2000.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Acting Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 00–31736 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Retirement Plan for Manually Set Postage Meters

AGENCY: Postal Service.

ACTION: Notice of final plan.

SUMMARY: This notice of the final plan for the retirement of manually set postage meters clarifies the second phase of the plan to take postage metering to a higher level of security. The Postal Service recently completed the first phase of an overall Postal Service plan with the decertification of mechanical postage meters. Upon completion of the four phases of this plan, all meters in service will offer enhanced levels of security, thereby greatly reducing the Postal Service's exposure to meter fraud, misuse, and loss of revenue.

DATES: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, 703–292–3703.

SUPPLEMENTARY INFORMATION: In 1995 the Postal Service, in cooperation with all authorized postage meter manufacturers, began a phase-out, or decertification, of all mechanical postage meters because of identified cases of indiscernible tampering and misuse. Postal revenues were proven to be at serious risk. The completion of this effort, which resulted in the withdrawal of 776,000 mechanical meters from service, completed Phase I of the proposed plan for secure postage meter technology. Recent advances in postage meter technology offer high levels of security, operational reliability, and flexibility for meter users. As a result, the Postal Service is addressing the next category of less secure meters: electronic meters that are manually set by postal employees. Of the current total, installed population of 1,469,841 meters, almost 92 percent are remotely set through telephone access to a manufacturer's setting center. Customers have recognized the advantages of remote setting, and as a result the marketplace has moved in a positive direction. The remaining 131,426 manually set electronic meters are to be retired and no longer authorized for use as postage evidencing devices. It is the Postal Service's intent to make this an orderly process with minimal problems for users.

The proposed plan for Phase II, the retirement of manually reset electronic meters, was published for comment in the **Federal Register**, May 1, 2000. The Postal Service requested that comments on the proposed plan be submitted by June 15, 2000. The Postal Service received seven written comments from postage meter manufacturers, interested companies, large commercial mailers, and industry associations representing commercial mailers. Eight additional comments came from companies and industry associations after an article on the retirement plan was published in the Postal Service's Memo to Mailers, June 2000. Although those comments came after June 15, 2000, they were considered in the response.

The Postal Service gave thorough consideration to those comments, modified the proposed plan as appropriate, and now announces the adoption of the final plan. This plan gives users of manually reset postage meters ample time to make timely and intelligent decisions on replacement meters.

The Postal Service's evaluation of the comments follows. The final plan, as revised, follows the discussion of comments. The comments are organized to reflect common topics addressed by the commenters.

A. Discussion of Comments

1. *Support for plan.* Two postage meter manufacturers commented in support of the plan.

2. *Meter models not available to the public.* One postage meter manufacturer commented that the list of meter models included some models that fit the category but that are not available to the public.

The Postal Service revised the list to include only those models available to the public.

3. *Affected meter models.* One postage meter manufacturer commented that some of the models included on the list are capable of remote setting and need not be retired or withdrawn.

The Postal Service determined that those models should remain on the list. Any meter capable of remote setting that is currently being reset manually must be reinstalled by the postage meter manufacturer as a remote set meter with a new model number before the user can continue to use it. The Postal Service added a requirement to this effect.

4. *Timing of retirement plan.* Three commenters questioned the timing of the retirement plan, coming as it does soon after the completion of the decertification of mechanical meters. They noted that some users who replaced their mechanical meters with manually reset electronic meters are faced now with the expense of another meter replacement.

Although the Postal Service did not require that users of mechanical meters replace those meters with remote set electronic meters, pamphlets that were widely distributed to users by the Postal Service during the decertification process suggested that users rent "remote set meters as this will be our direction in the future."

5. *Replacement meters.* Two industry associations were concerned about the possibility that the Postal Service would require the near-term retirement of a meter selected to replace a manually reset meter and asked about the long-range plans for postage meter technology.

Phases III and IV of the proposed plan for secure postage meter technology were published for comment in the **Federal Register** on August 21, 2000. Upon completion of these phases of the plan all meters in service will offer enhanced levels of security, thereby greatly reducing the Postal Service's exposure to meter fraud, misuse, and loss of revenue. Given the rapid pace of new technological developments for secure postage meter technology, leases for postage meter equipment of more than five (5) years' duration would appear to be inadvisable.

6. *Communications with meter users.* One postage meter manufacturer was concerned about inadequate, misleading, or confusing communications to meter users, and another questioned the Postal Service requirement for the manufacturer to provide generalized correspondence with meter users to the Postal Service for review.

The Postal Service is working to ensure the integrity of the meter retirement process with expeditious, accurate, and informative communications with postage meter users, postal employees, and postage meter manufacturers, and it expects manufacturers to provide accurate, timely information to their customers. If the Postal Service finds that meter manufacturers or their agents are disseminating misleading information, it reserves the right to review all generalized manufacturer communications to all customers or a subclass of its customers prior to distribution to customers.

7. *Request for list of lease expiration dates.* One postage meter manufacturer questioned the requirement to provide the Postal Service with a complete listing of lease expiration dates, since such information is considered confidential business information.

Manufacturers will no longer be asked to submit this information. However, in order to accomplish the goal of ensuring that manually reset meters are withdrawn in accordance with the plan, the Postal Service will review meter manufacturer lease records and records of meter withdrawals shortly after each quarterly retirement date.

8. *Security of remote set meters.* One industry association asked for information to support the Postal Service claim of increased security benefits with remote set postage meters and the actual risk to Postal Service revenue from manually reset meters.

Postal Service records show that all major meter fraud cases have involved physical tampering. USPS ability to detect meter fraud involving conventional postage meters is limited; the best protection for postal revenue comes from requiring the change to more secure meters. The increased security of remote reset meters is based, first of all, on the analysis by the resetting computer of the meter control total when the meter user contacts the resetting center to obtain additional postage. The computer used for resetting can identify any imbalance that would warrant investigation. This amounts to an "inspection" of the control totals each time the meter is reset. Second, remote meter resetting eliminates the use of the meter keys that must be used when meters are reset manually. These keys allow access to any meter of the same model and sometimes other meters of the same manufacturer. Loss and theft of these keys, which would allow improper access to meters, is a major security issue that is eliminated with remote set meters. In addition, any manually set meter allows the possibility of human error by the resetting clerk.

New, remotely reset meters are also more reliable and have more features than manually reset meters; meter manufacturers can provide the specifics. The remote set meters are clearly more flexible because, unlike manual set meters, they do not have to be removed from the plant or office and taken to a remote location for resetting. They can be reset and returned to service in minutes.

There are 131,426 manually reset meters in use, which represents 8.2 percent of the total number of postage meters. Postal revenue from manually reset meters for our 2000 fiscal year is $6,121,084,200, which is 29.8 percent of total meter revenue. Given the significant contribution of the relatively small number of manually reset meters to postal revenue, it is essential that these meters be secure.

9. *Advantage to meter manufacturers from retirement of manually reset meters.* Several large commercial mailers and the industry associations representing such mailers commented that the change to remote reset meters gives an advantage to the meter manufacturers over meter users. They felt that manufacturers would benefit from replacement of mailing equipment, from additional fees—which could be increased at any time—and from the interest on the money deposited by a user before it is reset on the meter.

Retiring manually reset postage meters is a USPS plan to increase meter security and is not driven by the manufacturers. Checks for postage must be made payable to the U.S. Postal Service (or to the manufacturer) and are sent by the meter user to the designated Postal Service lockbox account at Citibank. The manufacturer does not benefit from any "float" on the money, unless the manufacturer has established its own bank to handle the funds before they are deposited with the Postal Service and its customers elect to deposit funds in that bank. Moreover, through its Postage Now™ program, the USPS promotes the use of electronic payments: automated clearing house (ACH) debits and credits, and wire transfer of funds. Using such electronic payments to the Postal Service lockbox account minimizes float by allowing customers to pay for postage at a time that is very close to the time that postage is needed. In most cases, postage payment and meter resetting can take place on the same business day.

Any additional fees and costs for users are determined on a manufacturer-by-manufacturer basis and not by the Postal Service. Customers have choices in a competitive meter marketplace if they are not satisfied with the fees and policies of a given manufacturer. Users of remote set meters benefit from the additional features not available on manually set meters and from the increased convenience of using meters that do not require a trip to the post office during the business day for resetting. Individual meter manufacturers can provide detailed information about their products and services.

10. *Inconvenience and increased cost of remote set meters.* All comments from interested companies, large commercial mailers, and industry associations representing such mailers addressed the perceived difficulties, inconvenience, and cost of changing from manually reset meters to remote set meters. The following comments and responses discuss the major areas of concern.

11. *Increased fees.* Commenters were concerned about increased fees and the financial costs associated with the change to a remote set meter including (1) Higher resetting fees compared with the free resets at the post office; (2) higher service fees, especially for last-minute mailings, or if the mailer wants immediate access to postage, or if funds are not on deposit for a specified time period; and (3) the loss to the mailer of interest earned on funds during the time period between when money is sent to the manufacturer and when postage is used. Mailers noted that they would need to keep significant funds on deposit with a meter manufacturer to cover the costs of last-minute mailings—especially since the amount of postage needed each day is so unpredictable.

The Postal Service is encouraging meter manufacturers to work with the industry and the Postal Service to ensure that the fees and procedures for resetting remote set meters meet the needs of all customers, including large commercial mailers and third party mailers. In the competitive postage meter marketplace, every customer has the option to change meter manufacturers and/or to negotiate the fees paid. Although the commenters assumed that manually reset meters are reset for free, that assessment does not account for the user time, labor, and travel costs incurred when a meter is taken to the post office. Remote set meters can thus be more cost effective and convenient than manually reset meters, and offer the possible availability of postage 24 hours a day, seven days a week, depending on the manufacturer plan selected.

12. *Increased equipment costs.* Nine commenters were concerned about increased equipment costs, especially the need for new mailing equipment if the new remote set meter is incompatible with the mailer's existing equipment. They also mentioned the cost of installing a new (possibly dedicated) telephone line to handle meter resets.

Any changes to mailing equipment required because of incompatibilities with remote set postage meters, as well as the need for an additional telephone line, is manufacturer dependent and not under the control of the Postal Service. However, according to manufacturer feedback, mailing equipment changes should be minimal.

13. *Problems in handling last-minute mailings.* Seven commenters, including presort bureaus, third party mailers, and industry associations, were concerned about losing the ability to obtain postage on their meters to process last-minute mailing requests. Currently, many mailing agents bring a check and a postage meter to the post office to have the meter reset while they wait. They claim that losing this option will inconvenience their customers since mailers would be unable to bring in mail for processing at the last minute and have it metered. They noted that additional time is required for remote setting since there is a delay of several days between the time when additional funds are transmitted or requested and when the funds are available for use. Commenters noted that they would need to keep significant funds on deposit to cover such last-minute postage needs since costs are so unpredictable and variable, another added expense. Commenters noted that they might have to change procedures to accommodate last-minute mailings.

Through the Postal Service's Postage Now™ program, which was designed to facilitate quick electronic payment for postage, mailers can pay close to the last minute for mailings. If the customer authorizes an ACH debit, the meter can be reset immediately. Payment by wire transfer allows meter resetting within two to three hours. Should a customer prefer to pay for postage by check, there is no waiting period required by the Postal Service for a check to clear before an account is credited. In fact, the Postal Service processes all checks within 24 hours of receipt, and the information is then transferred to the manufacturer for an update of the user's account. The user's designated Citibank lockbox is located geographically so as to minimize time in transit for the checks mailed in for postage. The Citibank lockbox is specific to each manufacturer and has files for automated updates of users' accounts. The Postal Service agrees that some mailers may have to adapt new procedures for last-minute mailings.

However, both the Postal Service and meter manufacturers are aware of the challenges for some mailers in handling last-minute mail and are working on solutions that will be implemented by June 30, 2001, the first mandated retirement date for manually reset meters. In addition, the Postal Service strongly encourages use of Postage Now™.

14. *Cut-off time for end-of-day resets.* One industry representative noted that depending on time zone, meter manufacturer cut-off time for daily deposits (such as 6:00 p.m. EST) limits the ability of West Coast and Hawaiian commercial mailers to respond to emergency postage needs after 12:00 noon.

The Postal Service does not have a cut-off time for daily deposits. Any cut-off time is established on a manufacturer-by-manufacturer basis, rather than by the Postal Service. Meter manufacturers are aware of the potential timing problems with meter resetting for some mailers and are working on solutions that will be implemented by June 30, 2001, the first mandated retirement date for manually reset meters.

15. *Alternative payment plans.* Two industry associations suggested alternative payment options for customers who need immediate access to postage, including using credit cards and having the Postal Service act as an intermediary between the customer and meter manufacturer for immediate resetting of the meter. Commenters said that any solution must involve nearly instantaneous deposit and crediting of postage.

As noted before, certain electronic payments through Postage Now™ can satisfy any last-minute request for postage. The Postal Service does not allow use of credit cards as a payment option for remote meter resettings. Since local post offices do not have any direct interface with the Citibank lockbox, they cannot be used as an intermediary for resetting postage meters.

16. *Procedures for getting customer postage on meters for mailing agents.* Four commenters, including commercial mailers and industry associations, were concerned with the procedures for paying for customer postage on remote set meters. Commercial mailers' customers prepay for mailings, which can include the use of meters from more than one manufacturer, as well as other forms of postage, such as permits. The commenters were unclear about how they will be able to get this postage onto their remote set meters under the new system without either a waiting period for the customer, or else providing the postage up front and taking the risk that the customer's check will clear. Even if checks are made out to the U.S. Postal Service, they said different checks will now be needed for each meter manufacturer and form of postage.

Mailing agents, such as presort bureaus, will need a way to guarantee their customer funds. Checks should be made payable to the U.S. Postal Service and sent to the designated Citibank lockbox, as appropriate for each meter company. However, if a check is made out to a third party, it will be processed by the Postal Service if the third party endorses it over to the Postal Service on the back of the check. As the commenters noted, there may be a need for different checks for each meter manufacturer and form of postage.

17. *Multiple meters.* Two industry associations were concerned about how commercial mailers would handle multiple customer meters, since they often have meters from more than one manufacturer, resulting in multiple setting fees and contractual arrangements.

The customers of the third party mailers are responsible for meter fees. Commercial mailers should handle these costs in accordance with industry practices.

18. *Permission to continue to reset meters at post office.* Two commenters asked for permission to continue to reset their meters at the local post office, given the many problems associated with changing to remote reset meters.

The Postal Service must maintain a level playing field for all mailers and cannot accept the continued risk of less secure meters. The Postal Service will not allow the continued use of manually reset meters beyond the dates given in the plan.

19. *Mailings for state and local governments.* Two industry associations asked how meter resetting will be handled for state and local governments that use only checks for payment. They also noted that it is often illegal for state and local governments to place funds on deposit with private parties.

Although the funds for resetting postage meters are sent to the Postal Service's lockbox account at Citibank, a private sector bank, checks are made payable to the U.S. Postal Service. In addition, the Postal Service does not keep funds on deposit at Citibank. Each day, all available Postal Service funds are concentrated in the Postal Service Fund at the U.S. Treasury. Checks made payable to the U.S. Postal Service are sent to a designated Citibank Postal Service lockbox account, but the funds for resetting postage meters are not deposited with a private business; rather, they are deposited with the U.S. Postal Service.

20. *Speed of remote set meters.* One industry association was concerned that remote set meters are not as fast as manually reset meters. The availability of high-speed meters is dependent on the individual meter manufacturer's approved meter models and is not within the control of the Postal Service.

21. *Timetable for meter retirement.* One manufacturer questioned the timetable for withdrawals of manually set meters, especially the immediate withdrawal of meters upon lease expiration for leases expiring between January 1, 2001, and June 30, 2001, and suggested an alternative.

The Postal Service reviewed the suggestion and revised the timetable to simplify the withdrawal schedule and to ensure that all users will be able to make timely and intelligent decisions on replacement meters. Under the revised timetable, any meter covered under a lease that expires after December 31, 2000, may be used until the end of the calendar quarter following the quarter in which the lease expires, at which time the meter must be retired and withdrawn from service. This date is called the retirement date. For example, any meter with a lease expiring during the first quarter of 2001 (January, February, or March 2001) must be retired before the end of the second quarter of 2001 and will have a retirement date of June 30, 2001. This timetable will give all manually set postage meter users at least three months to replace the meter with a remote set meter and will consolidate retirement dates. The first date for mandatory manual meter retirement will be June 30, 2001.

22. *Protection of funds for postage if meter or meter manufacturer fails.* One commenter was concerned about how postage funds would be protected in the event of the failure of the postage meter, and another was concerned about the possible bankruptcy of the meter manufacturer.

Postage meters undergo extensive testing to ensure against meter failure and memory loss. There are established procedures for postage refunds in the case of meter failure. The Postal Service is working with manufacturers to make the process easier and more immediate. The new technology used in remote set meters enhances the process and gives the customer additional protections. All funds for postage are sent directly from customers to a Postal Service account and are not held by the manufacturer. Each day, the Postal Service concentrates all of its available funds in

the Postal Service Fund at the U.S. Treasury. Therefore, the user's money is protected in the unlikely event of a manufacturer bankruptcy.

B. The Final Postal Service Plan for the Retirement of Manually Reset Postage Meters

1. Effective February 1, 2000, new placements of manually reset electronic postage meters ceased. The decision applied to new customers as well as existing meter users. All meter manufacturers were notified of this policy and have complied.

2. The Postal Service will allow a lease extension for a manually set electronic meter up to December 31, 2001, for any lease that expires during calendar year 2000. No other lease extensions are permitted by the Postal Service. Manufacturers or users cannot avoid meter retirement by the manipulation of leases.

3. Some users currently have a lease for a manually reset electronic meter that expires after December 31, 2000. Any meter covered under such a lease may be used until the end of the calendar quarter following the quarter in which the lease expires, at which time the meter must be retired and withdrawn from service. This date is called the "retirement date." For example, any meter with a lease expiring during the first quarter of 2001 (January, February, or March 2001) must be retired before the end of the second quarter of 2001 and will have a retirement date of June 30, 2001. This timetable will give all manually set postage meter users at least three months to replace the meter with a remote set meter and will consolidate retirement dates.

4. All retired meters must be withdrawn from active service records immediately upon the retirement date following lease expiration. Manufacturers must process PS Form 3601–C, Postage Meter Activity Report, to withdraw the meter effective the retirement date.

5. Retired meters must be physically returned to the manufacturer within 30 business days after the retirement date. The use of a retired meter in the time period between the retirement date and when the meter is returned to the manufacturer may result in the cancellation of the user registration.

6. Official notification to users explaining this plan will be sent directly by the Manager, Postage Technology Management, Postal Service Headquarters. No other correspondence will be considered to be official.

7. The manager of Postage Technology Management reserves the right to review manufacturer correspondence to these meter users prior to distribution.

8. After each retirement date, the Postal Service may review meter manufacturers' lease records in comparison with meter withdrawals, to ensure that all meters that should have been retired were retired.

9. Any manually reset electronic postage meter that is capable of remote meter setting must be either converted to remote meter setting or withdrawn from service. The function that allows manual resetting must be disabled.

10. Given the rapid pace of new technological developments for secure postage meter technology, meter manufacturers should not offer, and customers should not accept, leases for postage meter equipment of more than five (5) years' duration.

11. The following meter models may be affected by this plan. Any postage meter that is taken to a post office for resetting is affected by this plan and must be retired, even if it is not included on the following list.

Ascom Hasler

1441
1441X
1446
1446X
16410
16413
16413X
16463
16463X
17563
17563X
4280
64280
741
741X
7410
7410X
7413
7413X
7560
7560X
7563
7563X

Francotyp-Postalia

7000
7100
7200

Neopost

9212
9212G
9248
9248G
9252
9252G
9257
9257G
9258
9258G
9252U
9257U
9258U
9258UG
9267
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Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–31359 Filed 12–12–00; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 2001, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 2001, 39.7 percent of the taxes collected under sections 3221(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 60.3 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 1, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–31675 Filed 12–12–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[SEC File No. 270–265; OMB Control No. 3235–0273]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–10 Prompt Posting of Certificate Detail to Master Securityholder Files; Maintenance of Accurate Securityholder Files and Control Book; and Retention of Certificate Detail

Rule 17Ad–10, 17 CFR 240.17Ad–10, under the Securities Exchange Act of 1934, requires a registered transfer agent to create and maintain minimum information on securityholder's ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a "control book"). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, an ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

Given that there are 1,093 transfer agents currently registered, the staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totaling 21,860 hours industry-wide. The average cost is approximately $20 per hour, with the industry-wide cost estimated at approximately $437,200. However, the information required by Rule 17Ad–10 generally is already maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

The retention period for the recordkeeping requirements under Rule 17Ad–10 is six years for certificate detail that has been cancelled and to maintain and keep current an accurate record of the number of shares or principle amount of debt securities that the issuer has authorized to be outstanding. The recordkeeing requirement under Rule 17Ad–10 is mandatory to ensure accurate securityholder records and to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Persons should note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, DC 20503; and (ii) Michael E. Bartell, Associate Executive Directive, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 5, 2000.

Margaret H. McFarland,

Secretary.

[FR Doc. 00–31678 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24786; International Series Release No. 1239/812–12334]

Telco Finance N.V.

December 7, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY: Applicant requests an order under section 6(c) of the Act exempting applicant from all provisions of the Act. The order would permit applicant to sell certain debt securities and use the proceeds to finance the business activities of Telsim Mobile Telekomünikayson Hizmetleri A.S. ("Telsim").

Filing Date: The application was filed on November 29, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Intertrust Management (Antilles) N.V., Attn: Robert R. Stroeve, Curaçao, Netherlands Antilles.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–5064 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Netherlands Antilles limited liability corporation. Applicant was organized specifically to raise funds for the operations of Telsim by issuing debt securities ("Notes") and lending the proceeds to Telsim. Telsim is a joint stock company organized under the laws of the Republic of Turkey and is a cellular telecommunications company in Turkey.

2. Telsim has determined to raise capital through applicant because the

direct issuance of the Notes by Telsim would not be feasible under Turkish tax and corporate law. In addition, under Turkish law, significant tax disadvantages may be borne by Telsim were it to own or control applicant and/or directly guarantee the Notes. For these reasons, all of applicant's common shares will be held by a Netherlands Antilles stichting (the "Foundation") for the benefit of an existing charity named in the Foundation's articles of organization ("Charity"). The Foundation will be prohibited by its articles of organization from transferring the shares of applicant to any other party. The Foundation will have no answers or shareholders, but will be managed by a Netherlands Antilles trust company. The Charity will have no ownership or other rights with regard to the Foundation. Neither the Foundation nor the Charity will pay any consideration in connection with its involvement in the activities described in the application.

3. Applicant intends to issue the Notes in reliance on rule 144A under the Securities Act of 1933 ("1933 Act") and shortly thereafter file a registration statement under the 1933 Act. Applicant will loan the proceeds of the Notes to Telsim and assign applicant's right to receive interest and principal payments on the loan to an indenture trustee for the noteholders (the "Trustee"). The Trustee, which will be a major U.S. commercial bank, will have the right to proceed directly against Telsim in the event of default on the loan payments. the loan agreement will provide that a default under the Notes and the trust indenture agreement constitutes a default under the loan agreement. In the event of a default under the Notes, the Trustee may declare the outstanding amount of the loan and any accrued but unpaid interest with respect to the loan to be immediately due and payable. Under the trust indenture agreement, if the Trustee does not exercise its rights following a default, holders of at least 25% in aggregate principal amount of the Notes outstanding may direct the Trustee to exercise the rights, or may themselves accelerate the Notes.

4. Telsim and applicant, in connection with the offering of the Notes, will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint an agent to accept any process which may be served, in any suit, action, or proceedings brought against Telsim or applicant based upon their obligation to the Trustee as described in the application. The consent to jurisdiction and appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to all outstanding obligations of Telsim to the Trustee as described in the application have been paid.

5. Applicant will loan at least 85% of any cash or cash equivalents raised by applicant to Telsim as soon as practicable, but in no event later than six months after applicant's receipt of the cash or cash equivalents. In the event that applicant borrows amounts in excess of the amounts to be loaned to Telsim at any given time, applicant will invest the excess in temporary investments pending lending the money to Telsim. All investments by Telsim, including all temporary investments, will be made in government securities, securities of Telsim or a company controlled by Telsim, or debt securities which are exempted from the provisions of the 1933 Act by section 3(a)(3) of that Act. Applicant's articles of incorporation and the trust indenture relating to the Notes will limit applicant's activities to issuing the Notes or other debt securities, loaning the proceeds to Telsim and assigning all of applicant's rights to repayment from Telsim to the Trustee.

Applicant's Legal Analysis

1. Applicant states that it may be viewed as falling technically within the definition of an investment company under section 3(a)(1) of the Act. Applicant requests an exemption under section 6(c) of the Act from all provisions of the Act. Section 6(c) of the Act permits the SEC to grant an exemption from the provisions of the Act if, and to the extent that, such exemption is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Applicant states that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Applicant states that it meets all of the requirements of rule 3a–5 except for two, which it cannot meet for Turkish tax reasons.

3. Rule 3a–5(b)(1)(i) under the Act requires that all of applicant's common stock be owned by Telsim or a company controlled by Telsim. Applicant argues that, even though for Turkish tax reasons applicant's common stock will be held by the Foundation, applicant was organized to serve solely as a conduit for Telsim's capital raising activities. Applicant further states that its functions will be limited by its articles of incorporation and the trust indenture agreement to those of a traditional finance subsidiary.

4. Rule 3a–5(a)(1) under the Act requires that applicant's debt securities be directly guaranteed by Telsim. Applicant states that under the arrangement described in the application, the Trustee will have the right to proceed directly against Telsim. Applicant argues that this arrangement is necessitated by Turkish tax law and that the arrangement will provide the noteholders with the functional equivalent of a guarantee by Telsim. For the above stated reasons applicant argues that it is not the type of entity intended to be regulated under the Act.

Applicant's Condition

Applicant agrees that any order granting the requested relief will be subject to the following condition:

Applicant will comply with all provisions of rule 3a–5 under the Act except (i) with respect to rule 3a–5(b)(1)(i), applicant's common shares will be owned by the Foundation for the benefit of the Charity, and (ii) with regard to rule 3a–5(a)(1), the noteholders will have recourse to Telsim for payment of principal and interest on the Notes as described in the application. Applicant's articles of incorporation and the trust indenture agreement will: (i) limit applicant's activities to issuing Notes or other debt securities; loaning the proceeds to Telsim, and assigning all of its rights to repayment from Telsim to the Trustee; (ii) prohibit the sale of applicant's common shares held by the Foundation; and (iii) enable the Trustee in the event of a payment default to proceed directly against Telsim, as assignee of the loan agreement between applicant and Telsim.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31716 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24751A; 812–12294]

Stratevest Funds, et al.; Notice of Application

December 11, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY: Applicants request an order to permit the proposed reorganizations of two series (the "Acquired funds") of the Forum Funds with and into two series of the Stratevest Funds (the "Acquiring Funds," and together with the Acquired Funds, the "Funds"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Stratevest Funds, Forum Funds, The Stratevest Group, N.A. ("Stratevest Group"), and Forum Investment Advisors, LLC ("Forum Advisors").

Filing Dates: The application was filed on October 10, 2000. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service.[1] Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Stratevest Funds and Stratevest Group, 111 Main Street, Burlington, Vermont 05402–0409; Forum Funds and Forum Advisors, Two Portland Square, Portland, Maine 04101.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Stratevest Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and currently offers four series. Stratevest Funds is organizing two new series, the Stratevest Large Cap Core Fund ("Stratevest Core Fund") and the Stratevest Intermediate Bond Fund ("Stratevest Bond Fund"), which will be Acquiring Funds. The Stratevest Group, a national banking association, serves as investment adviser to the Acquiring Funds and is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). On or before the Reorganizations (as defined below), the Stratevest Group is expected to own, in a fiduciary capacity, more than 25% of the outstanding voting shares of the Stratevest Bond Fund as a result of the Stratevest Bond Fund's proposed acquisition of assets of certain common and collective trust funds.

2. Forum Funds, a Delaware business Trust, is registered under the Act as an open-end management investment company and currently offers twenty-one series, two of which are Acquired Funds: the Investors Equity Fund ("Forum Equity Fund") and the Investors High Grade Bond Fund ("Forum Bond Fund"). Stratevest Group is the investment adviser for Forum Equity Fund, and owns, in a fiduciary capacity, more than 25% of the outstanding voting shares of the Forum Bond Fund. Forum Advisors is an investment adviser registered under the Advisers Act and serves as investment adviser to the Forum Bond Fund. The Acquired Funds and Acquiring Funds are collectively referred to as the Funds.

3. On August 15, 2000 and October 2, 2000, the boards of trustees of the Acquiring Funds and the Acquired Funds (together, the "Boards"), respectively, including all the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), unanimously approved the agreements and plans of reorganization between the Funds (the "Reorganization Agreements"). Under the Reorganization Agreements, each Acquiring Fund will acquire all the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund (the "Reorganizations").[2] The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of business on the business day immediately preceding the day of the closing of each Reorganization ("Closing Date"), currently anticipated to occur on or after December 20, 2000. The value of the assets of the Funds will be determined according to the Funds' then-current prospectuses and statements of additional information. As soon as reasonably practical after the Closing Date, each Acquired Fund will be liquidated by the distribution of the Acquiring Fund shares *pro rata* to the shareholders of the Acquired Fund.

4. Applicants state that the investment objectives and strategies of each Acquired Fund are similar to those of the corresponding Acquiring Fund. The Funds offer one class of shares. The Acquired Funds' shares are subject to either a front-end sales charge or a contingent deferred sales charge, but are not subject to a distribution fee adopted under rule 12b–1 of the Act or shareholder services fees. The Acquiring Funds' shares are subject to a front-end sales charge, a rule 12b–1 distribution fee, and shareholder services fee. Shareholders of the Acquired Funds will not be subject to a contingent deferred sales charge upon redemption of the Acquiring Fund shares that they receive in connection with the Reorganizations. No sales charges or exchange fee will be imposed in connection with the Reorganizations. Stratevest Group, Federated Services Company, and, possibly, Forum Financial Group will bear the costs associated with the Reorganizations.

5. The Boards, including all of the Independent Trustee, determined that the participation of each Acquiring and Acquired Fund in a Reorganization was in the best interests of each Fund and its shareholders, and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In approving the Reorganizations, the Boards considered various factors, including: (a) The

[1] A notice was originally issued on November 28, 2000 (Investment Company Act Release No. 24751) giving interested persons until December 20, 2000, to request a hearing. However, the original notice was not published in the Federal Register, therefore, interested persons have until December 28, 2000, to request a hearing on the application.

[2] The Acquired Funds and their corresponding Acquiring Funds are: (1) Forum Equity Fund and Stratevest Core Fund and (2) Forum Bond Fund and Stratevest Bond Fund.

investment objectives, strategies, techniques, investment risks and limitations of each Acquired Fund and their compatibility with those of the corresponding Acquiring Fund; (b) the investment advisory and other fees paid by each Acquiring Fund and the projected expense ratio of each Acquiring Fund as compared to those of the corresponding Acquired Fund; (c) the terms and conditions of each Reorganization Agreement; and (d) the anticipated tax consequences of the Reorganizations for the Funds and their shareholders. In addition, the Forum Board considered: (a) The small asset size of each Acquired Fund; (b) the likelihood that each Acquired Fund's service providers may not be able to maintain their current fee waivers; and (c) the fact that the Reorganizations would permit shareholders to own shares in a new fund without realizing tax consequences that would be present if the Acquired Funds were to liquidate.

6. The Reorganizations are subject to certain conditions, including that: (a) the shareholders of each Acquired Fund will have approved the Reorganizations; (b) the Funds will have received opinions of counsel concerning the tax-free nature of the Reorganizations; and (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations. The Reorganization Agreements may be terminated and the Reorganizations abandoned at any time prior to the Closing Date by the Boards. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

7. Registration Statements on Form N–14 with respect to the Reorganizations were filed with the Commission on September 8, 2000. Proxy solicitation materials were mailed to shareholders of the Acquired Funds on November 1, 2000. A shareholders meeting of the Acquired Funds is scheduled for December 1, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that Stratevest Group is investment adviser to the Stratevest Core Fund and Stratevest Group holds of record more than 25% of the outstanding voting securities of the Forum Equity Fund. In addition, applicants state that, on or before the Reorganization, Stratevest Group will hold of record more than 25% of the outstanding voting securities of the both the Forum Bond Fund and the Stratevest Bond Fund. Because of these relationships and ownership positions, the Acquired Funds and their corresponding Acquiring Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including all of the Independent Trustees, found that participation in the Reorganizations is in the best interests of each Fund and its shareholders and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganizations. Applicants also note that the Reorganizations will be based on the Funds' relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31889 Filed 12–11–00; 2:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43660; File No. SR–Amex–00–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Increase to One Hundred the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO–EX

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to increase to one hundred the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO–EX. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1985, the Exchange implemented the AUTO–EX system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entitled into the Amex Order File ("AOF"). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders of up to 250 option contracts.[3] Generally, however, AUTO–EX is only permitted to execute equity option orders and index option orders of up to seventy-five contracts.[4] Thus, market and marketable limit orders of more than seventy-five contracts are generally routed by AOF to the specialist's book.

The Exchange now proposes to increase to one hundred the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO–EX system. It is proposed that this increase to one hundred in permissible order size for AUTO–EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page. Generally, these parameters provide that displayed quotes are for twenty contracts for equity options and for thirty contracts for index options and are set on a class-by-class basis. However, pursuant to Exchange Rule 958A, the order size for AUTO–EX will remain at ten contracts for equity and index options, or such larger size currently in effect and as indicated on the Exchange's web page.[5] The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to one hundred contracts will allow for the quick, efficient execution of public customer orders.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[6] of the Act in general and furthers the objectives of section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–57 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31682 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43666; File No. SR–CBOE–00–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., Permitting the Implementation of the Exchange's Rapid Opening System in Conducting Rotations in Options on the S&P 100 Index

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange")

[3] *See* Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

[4] *See* Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079 (November 15, 2000). While the maximum permissible number of contracts in an index option order executable through AUTO–EX is generally seventy-five contracts, there are a few exceptions: The Institutional, Japan and S&P MidCap 400 Indexes allow ninety-nine contract orders. The Exchange proposes to increase the applicable parameter from ninety-nine to one hundred for the Institutional, Japan and S&P MidCap 400 indices to eliminate any potential for confusion over the permissible parameters applicable to AUTO–EX eligible orders for both equity and index options.

[5] Amex Rule 958A, referred to as the "Firm Quote Rule," requires Exchange specialists to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading post where the option class is located for trading.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Interpretation .01 to its Rapid Opening System ("ROS") rule (CBOE Rule 6.2A), amend its Lead Market-Maker ("LMM") and Supplemental Market-Maker ("SMM") (CBOE Rule 8.15), and amend Interpretation 0.02 to its index option trading rotation rule (CBOE Rule 24.13) to clarify that LMMs and SMMs may employ the Exchange's ROS in conducting rotations in options on the S&P 100 Index ("OES"). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1999, the Exchange implemented a Rapid Opening System ("ROS") that has facilitated the expedited openings of options classes on the Exchange.[4] since that time, ROS has been used in a number of equity option trading crowds to open options classes within seconds of the opening of the underlying security. The Exchange believes that by entering into open trading more quickly using ROS, customer orders have been addressed in open trading in a timelier manner.

Openings in OEX, however, have been conducted for many years by the use of LMMs, who are appointed pursuant to the terms of CBOE Rule 8.15, and who open the various series of OEX pursuant to the terms of Interpretation .02 to CBOE Rule 24.13.[5] The LMM system was put in place to allow for speedier openings in the OEX crowd and to make particular market-makers responsible for opening quotes. While the LMM system has been successful in speeding up the opening process in the OEX trading crowd, the openings still may not be completed for a number of minutes, particularly on days of extreme market conditions. Consequently, the CBOE Index Floor Procedure Committee, pursuant to its authority under CBOE Rule 24.13 to direct the manner of the opening rotations, has determined to require the LMMs to employ ROS to open OEX.[6] The CBOE Index Floor Procedure Committee expects to see the same benefits that have been experienced in the equity option trading crowds that have been using ROS for the past on and a half years, namely, entry into open trading within seconds of the opening bell.

When the Exchange adopted ROS, it intended for the system to be used at any trading location on the floor, whether in an equity option trading crown or an index option trading crowd. The rules governing ROS did not specifically address to what extent ROS was to be used in connection with the LMM system that was operating in the OEX trading crowd. The CBOE, however, represents that the ROS system was not meant to supplant the LMM system, which has added accountability to the openings in OEX. The CBOE believes that, at the option of the appropriate CBOE Floor Procedure Committee, ROS would be used as a tool by the LMM to facilitate openings. With the proposed rule change, the CBOE will thus clarify that the LMMs may use ROS to conduct the opening rotation in OEX. To the extent that market-makers want to participate in the opening of a series in which they do not hold LMM or SMM appointments, they will continue to be able to transmit written non-cancelable proprietary and market-makers orders to the LMM in the appropriate zone ten minutes prior to the opening of trading, pursuant to the terms of Interpretation .02 to CBOE Rule 24.13.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and further the objectives of section 6(b)(5);[8] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(1)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–34 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31681 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

[3] The CBOE filed its proposed rule change on August 3, 2000. On October 5, 2000, however, the CBOE filed Amendment No. 1, which clarified that the proposed rule change will be effective only as long as ROS is approved for use by the Commission. *See* Letter from Timothy Thompson, Assistant General Counsel and Vice President, CBOE, to Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission (October 5, 2000).

[4] The ROS pilot program was first approved by the Commission in February 1999. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The ROS pilot has been extended through September 2001. *See* Securities Exchange Act Release No. 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000).

[5] The rules governing opening rotations in OEX were approved by the Commission on March 31, 1988. *See* Securities and Exchange Act Release No. 25545 (March 31, 1988), 53 FR 11720 (April 8, 1988).

[6] Previously, only those open classes that employed the Exchange's AutoQuote system were able to use ROS. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The OEX does not employ the Exchange's AutoQuote; however, the CBOE represents that ROS can now accommodate inputs from systems other than the Exchange's AutoQuote. Telephone conversation between Timothy Thompson, Assistant General Counsel and Vice President, CBOE, and Susie Cho, Attorney, Division, SEC, September 11, 2000. For purposes of CBOE Rule 6.2A, the term "AutoQuote" means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crown. *See* Securities Exchange Act Release No. 43667 (December 4, 2000).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43667; File No. SR–CBOE–00–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Permitting the Use of the Exchange's AutoQuote System or a Proprietary Autoquote System in the Operation of the Exchange's Rapid Opening System

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Interpretation .02 of its Rapid Opening System ("ROS") rule (CBOE Rule 6.2A)[3] to clarify that for purposes of the rule, "AuoQuote" means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crowd where the particular ROS class is traded. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1999, the Exchange implemented a Rapid Opening System ("ROS") that has facilitated the expedited openings of options classes on the Exchange.[4] Since that time, ROS has been used in a number of equity option trading crowds to open options classes within seconds of the opening of the underlying security. The Exchange believes that by entering into open trading more quickly using ROS, customer orders have been addressed in open trading in a timelier manner.

ROS determines a single opening price for each series by applying an algorithm that takes into account the AutoQuote values fed into ROS as well as those orders contained in the customer limit order book (and that are otherwise represented in the crowd pursuant to the ROS rule). The algorithm is generally designed to maximize the number of customer orders able to be traded at or between the bid-ask values submitted from AutoQuote. When the Exchange first implemented ROS, the system was designed to operate only with the Exchange's AutoQuote system. The Exchange noted, however, that "[l]ater versions of ROS may accommodate inputs from systems other than AutoQuote."[5] The CBOE now represents that ROS is able to accept inputs from various proprietary quote systems that are operated on the floor of the Exchange.[6] The Exchange is thus proposing to add Interpretation .02 to CBOE Rule 6.2A to make it clear that, for purposes of the Rule, the term "AutoQuote" means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crowd.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rule text for the CBOE's proposed rule change was identified as "Interpretation .01" to Rule 6.2A instead of "Interpretation .02" and has been corrected in this notice. Interpretation 0.01 to Rule 6.2A was added in Securities Exchange Act Release No. 43666 (December 4, 2000). Telephone conversation between Timothy Thompson, Assistant General Counsel and Vice President, CBOE, and Susie Cho, Attorney, Division, SEC, December 4, 2000.

[4] The ROS pilot program was first approved by the Commission in February 1999. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The ROS pilot has been extended through September 2001. *See* Securities Exchange Act Release No. 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000).

[5] *Id.*

[6] In lieu of using the Exchange's own AutoQuote system, some DPMs and trading crowds employ proprietary autoquote systems which serve the same function that operate in much the same manner as the Exchange's own system. These systems generally employ the same general mathematical formulas for determining the quotes although with certain proprietary refinements.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The CBOE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(1) [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–SBOE–00–63 and should be submitted by January 3, 2001.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31683 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43686; File No. SR–DTC–00–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for the DALI Service

December 6, 2000.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 5, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish fees for DTC's DALI service.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] DALI is a tax service that will be available on or about January 1, 2001, for the transmission of information used in calculating and reporting U.S. withholding tax on payments made to non-U.S. persons. For further explanation of the DALI service, refer to Securities Exchange Act Release No. 43640 (Nov. 29, 2000).

[3] The Commission has modified the text of the summaries prepared by DTC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish the following fees for DTC's DALI service:

DALI Fees

Initial Registration Fee—$2,500
Annual Membership Fee—$2,500 (browser only) or $10,000 (File Transfer Protocol and browser)
Transaction Fee—$0.33 per billable message

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [4] and the rules thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions by equitably allocating fees among users of the DALI service.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments from DTC's participants concerning the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The propose rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder because the proposed rule change establishes a fee. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary. Securities and Exchange Commission, 450 Fifth Street, NW.,

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450th Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No SR–DTC–00–20 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31717 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43680; File No. SR–EMCC–00–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Membership Criteria for Inter-dealer Brokers Regulated by the Securities and Futures Authority Limited

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 3, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.[2]

[7] CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] EMCC's filing will be available for inspection and copying in the Commission's Public Reference Section or through EMCC.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EMCC is proposing to amend its rules to establish membership criteria for brokers or dealers that act as inter-dealer brokers ("IDBs") and that are regulated by the Securities and Futures Authority Limited ("SFA").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, EMCC's Rules only provide for U.S. registered broker-dealers to act as an inter-dealer broker. The purpose of this proposed rule change is to establish admission criteria for brokers or dealers who are regulated by the SFA and act as IDBs. EMCC's membership criteria for broker-dealers acting as IDBs that are registered by the SFA will mirror the requirements of U.S. registered broker-dealers acting as IDBs except SFA regulated IDBs will be required to maintain "excess financial resources" of $10,000,000 as opposed to excess net capital of $10,000,000.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [4] and the rules and regulations thereunder because the proposal should encourage IDBs' regulated by the SFA to become participants in EMCC and therefore facilitate the prompt and accurate clearance and settlement of emerging market securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

[3] The Commission has modified the text of the summaries prepared by EMCC.

[4] 15 U.S.C. 78q–1

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–00–04 and should be submitted by January 3, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31680 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43675; File No. SR–EMCC–00–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Financial Statements Prepared in Accordance With International Accounting Standards or United Kingdom Generally Accepted Accounting Principles

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 29, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") and on October 26, 2000, and on November 15, 2000, amended it proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit EMCC to accept financial statements from an applicant prepared in accordance with International Accounting Standards ("IAS") or United Kingdom Generally Accepted Accounting Principles ("UK GAAP") without requiring the applicant to provide a discussion of the material variations of such accounting principles from United States Generally Accepted Accounting Principles ("US GAAP").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for; the Proposed Rule Change

Currently, Rule 2, Section 3(b) of EMCC's Rules and procedures requires applicants to provide audited financial statements for the two fiscal years immediately preceding the year the application is made. To the extent such financial statements are not prepared in accordance with US GAAP, applicants must provide EMCC with a discussion of the material variations of such accounting principles from US GAAP.

When membership requirements were initially established in 1996, EMCC had minimal experience in analyzing non-U.S. financial statements. Therefore, it was deemed prudent to require applicants submitting audited financial statements prepared on a basis other than US GAAP to provide a discussion of the material differences. Since that time, EMCC's staff's familiarity with, understanding, and expertise in evaluating financial statements not prepared in accordance with US GAAP has significantly increased.

Pursuant to the proposed rule change, EMCC would have the authority to determine that a discussion of the material variations between US GAAP and another financial accounting standard used in a preparing an applicant's audited financial statement is unnecessary. Also under EMCC's proposal, EMCC is seeking Commission approval of its determination that with respect to audited financial statements prepared in accordance with IAS or UK GAAP, it will not require an applicant to provide a discussion of such material variations from US GAAP. EMCC retains the right to require any applicant not submitting audited financial statements prepared according to US GAAP to provide a discussion of such material variations if EMCC in its sole discretion determines that circumstances warrant the applicant providing such a discussion.

Moreover, when assessing an applicant's qualifications for EMCC membership, the audited financial statements comprise only a portion of the materials provided to and reviewed by the company. Such materials include, but are not limited to, reports filed with the applicant's primary regulator, interim financial, and a detailed questionnaire. To demonstrate to EMCC the applicant's financial responsibility and operational capability is sufficient for membership, EMCC may also require an applicant to make its books and records available to EMCC. Thus, EMCC has the ability to seek information it deems necessary or relevant to sufficiently assess and review an applicant's qualifications and capability for membership.

EMCC believes that the proposed rule change will not adversely affect the safeguarding of securities or funds in the custody or control EMC or for which it is responsible and is therefore consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the propose rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR–EMCC–00–01 and should be submitted by January 3, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31685 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43679; File No. SR–NYSE–00–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Regarding the Listing and Trading of Exchange Traded Funds

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on December 5, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending certain rules and adopting other rules relative to listing and trading of investment company units ("ICUs"), also known as exchange traded funds. The text of the proposed rule change is available at the Office of the Secretary, the Exchange or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has rules in Section 703.16, Investment Company Units, of the Listed Company Manual ("LCM") related to the listing of ICUs.[4] Subsequent to the adoption of those rules, the Commission determined to allow the adoption of "generic" listing standards that permit listing and trading of new derivative products pursuant to Rule 19b–4(e) under the Act.[5] The Exchange is proposing to amend its listing standards in Section 703.16 of the LCM to adopt generic standards to permit the trading of ICUs pursuant to Rule 19b–4(e).

The Exchange's proposed generic listing criteria are intended to ensure that a substantial portion of the weight of an index or portfolio underlying an ICU is composed of securities with substantial market capitalization and trading volume. Under the proposal, the Exchange may approve a series of ICUs for listing or trading pursuant to Rule 19b–4(e) under the following criteria. Upon the initial listing of a series of ICUs, component stocks accounting for at least 90% of the weight of the underlying index or portfolio have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

Under the Exchange's proposed generic listing standard, the most heavily weighted component stock in an underlying index or portfolio cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks, and all securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market).

To comply with generic listing standards, the Exchange proposed that the underlying index or portfolio must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index or portfolio, and the index must be calculated by a third party who is not a broker-dealer.

The proposed generic listing standards specify that the current index value must be disseminated every 15 seconds over the consolidated tape, as well as an estimate of the net asset value per share of the ICU. A minimum of 100,000 shares of an ICU must be outstanding at the time trading begins. The minimum trading variation for an ICU will be 1/16, 1/32 or 1/64 of $1.00, as determined by the Exchange for a specific series. The Exchange will shortly move to decimals, after which the minimum trading variation for an ICU is expected to be the same as for other stocks generally on the Exchange, which is one penny.

The Exchange will implement written surveillance procedures for the ICUs that it trades pursuant to the generic listing standards. In addition, the Exchange will comply with the record-keeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each ICU within five business days of commencement of trading.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made several technical corrections to the rule text and clarified that the Exchange will issue a circular to members highlighting the characteristics of purchases in ICUs, prior to the commencement of trading in ICUs. *See* Letter to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission from James E. Buck, Corporate Secretary, NYSE dated December 5, 2000 (received by facsimile) ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996).

[5] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Outside of the proposed generic listing standards, the rules will specify that a fund will be required to have such number of units outstanding on listing as determined by the Exchange in connection with the specific fund. ICUs will also be permitted to be in book-entry-only format, without certificates, to bring them in line not only with ICUs listed on other marketplaces, but with ordinary open-end mutual funds as well.

In addition to the proposed generic rules, the Exemption is proposing other ICU rules under proposed NYSE Rule 1100. A discreet section in the rulebook will centralize certain ICU-related rules and provide cross references to other related rules. Under proposed NYSE Rule 1100, specific limitations of liability are provided to protect the Exchange, index proprietors, calculators and vendors. The proposed rules also state that there are no express or implied warranties with respect to ICUs. These provisions are based on similar provisions already contained in the rules of the Exchange regarding other similar activities, such as those that were enacted a number of years ago in connection with Exchange trading in standardized options and Exchange Stock Baskets.[6]

Furthermore, prior to the commencement of trading in ICUs, the Exchange will issue a circular to members highlighting the characteristics of purchases in ICUs.[7] The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other issues, will discuss what ICUs are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing ICUs prior to or concurrently with the confirmation of a transaction, applicable Exchange Rules, dissemination information, trading information, and the applicability of suitability rules.[8]

The Exchange also will require its members to provide all purchasers of newly issued ICUs with a prospectus. For those ICUs that will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1993[9] applies to all investors in ICUs, including secondary market purchases on the Exchange in ICUs.

With respect to series of ICUs that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under section 24(d) of the Investment Company Act of 1940,[10] the proposal provides that the Exchange will inform members and member organizations regarding disclosure obligations with respect to a particular series of ICUs by means of an Information Circular prior to commencement of trading in such series.

The proposal provides that the Exchange will require that members and members organizations provide to all purchasers of a series of ICUs a written description of the terms and characteristics of such securities, in a form prepared or approved by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of ICUs that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of ICUs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Investment Company Units] has been prepared or approved by the New York Stock Exchange and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Investment Company Units]. In addition, upon request you may obtain from your broker a prospectus for [the series of Investment Company Units]."

A member or member organizations carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of ICUs for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of ICUs.

The Exchange also proposes to retain the authority to prescribe trading hours that extend until 4:15 p.m. for particular ICUs. This will be done in all probability only for those ICUs that are based on indexes that are also the subject of a futures contract. In those cases the Exchange believes it is appropriate to match the trading hours of the related futures contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the act[11] in general and furthers the objectives of section 6(b)(5) of the Act[12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–00–46 and should be submitted by January 3, 2001.

[6] *See* NYSE Rule 702(b) and Rule 814.

[7] *See supra* note 3.

[8] *Id.*

[9] 15 U.S.C. 77a, *et seq.*

[10] 15 U.S.C. 80a–24(d).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78F(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[13] The Commission believes that the Exchange's proposal to amend its rules relative to the listing and trading of ICUs will provide investors with a convenient and efficient way of participating in the securities markets. The Exchange's proposal should also provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security, at negotiated prices throughout the business day that replicates the performance of an index or a portfolio of stocks. In addition, the Commission finds that the Exchange's proposal to establish generic standards to permit the trading of ICUs pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly.[14] Accordingly, as discussed below, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[15]

In general, ICUs represent an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or similar entity. ICUs represent interests in a registered investment company that typically holds security which comprise or are otherwise based on or represent an investment in an index or portfolio. Each ICU is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid, on the underlying portfolio of securities, less certain expenses, as described in the applicable prospectus. As noted above, the Commission has previously approved NYSE Section 703.16, Investment Company Units, of the LCM that permit the listing and trading of ICUs.[16] In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the NYSE rules that govern their trading.

The Commission previously concluded that ICUs trading under the existing Exchange rules would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.[17] The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed additional listing standards and the proposed generic listing standards for ICUs, in proposed NYSE Rule 1100 and Section 703.16 of the LCM, should produce the same benefits to investors.

The Commission notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which an ICU is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading ICUs. ICUs listed under the generic standards will be subject to a prospectus delivery requirement or, for series that have been granted relief from the prospectus delivery requirements of the Investment Company Act of 1940,[18] a product description delivery requirement. The requirement extends to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, a member or member organization must deliver a prospectus to a customer upon request.

The Commission also notes that upon the initial listing, or trading of ICUs, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases of ICUs. The circular also will inform members of their responsibilities under the Exchange's rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investor about the terms and characteristics of a particular series and is consistent with section 6(b)(5) of the Act.[19]

The proposal also provides that the Exchange can prescribe that the trading hours for a particular ICU extend until 4:15 p.m.; ICUs be entered in book-entry-only format; and the Exchange can determine the number of units required to be outstanding on listing a specific ICU. The Commission believes each of these requirements afford investors flexibility in satisfying their investment needs in purchasing and selling ICUs, while providing for a fair and orderly market. Further, the proposal would establish certain limitations related to liability and warranties. The Commission believes that such provisions are reasonable and foster cooperation and coordination in facilitating transactions in securities.

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class

[13] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* note 4.

[17] *See supra* note 4.

[18] 15 U.S.C. 80a–1, *et seq.*

[19] 15 U.S.C. 78f(b)(5).

that include the new derivative securities product and the SRO has a surveillance program for the product class.[20] The Commission believes that the NYSE' proposal contains adequate rules and procedures to govern the trading of ICUs under Rule 19b–4(e).

All series of ICUs listed under the generic standards will be subject to the full panoply of NYSE rules and procedures that now govern the trading of existing ICUs on the Exchange. In addition, the Exchange has established that upon initial listing, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have a minimum market value of at least $75 million. Further the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio. The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks, and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market.

Moreover, any series seeking to list under the generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund. The Commission believes that these criteria should serve to ensure that the underlying securities of these indexes and portfolios are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new series of ICUs under Rule 19b–4(e). These listing criteria also will make certain that new ICUs do not contain features that are likely to impact adversely the U.S. securities markets.

In addition, the Exchange has developed specific listing criteria for ICUs qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of ICUs are outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

In addition, as previously noted, all series of ICUs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria under Section 703.16 of the LCM. This requirement allows the Exchange to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealings in such securities inadvisable. The Commission believes that this will give the Exchange flexibility to delist ICUs if circumstances warrant such action.

Furthermore, the Commission finds that the Exchange's proposal to trade ICUs in minimum fractional increments of 1/16, 1/32, or 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, all of which benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in ICUs, thereby protecting customers and the public interest consistent with section 6(b)(5) of the Act.[21]

The Exchange represents that the current underlying index value as well as an estimate of the value per share of the ICU will be disseminated over the consolidated tape every 15 seconds. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Exchange has developed surveillance procedures for the ICUs listed under the generic standards that incorporate and rely upon existing surveillance procedures governing ICUs and equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading ICUs under the generic standards. The Exchange further represents that it will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) record keeping requirements. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act.[22]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the listing standards of several other exchanges, which the Commission previously approved after soliciting public comment on the proposals pursuant to section 19(b) of the Act.[23] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the other filings. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[24] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSE–00–46), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland
Deputy Secretary
[FR Doc. 00–31679 Filed 12–11–00; 8:45 am]
BILLING CODE 8010–01–M

[20] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(5).

[23] *See e.g.*, Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approval of American Stock Exchange generic listing standards).

[24] 15 U.S.C. 78s(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43664; File No. SR–NYSE–00–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., To Revise Its Fee Schedule for Equity Transaction Fees

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice hereby is given that on November 29, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to revise its fee schedule for Equity Transaction Fees to be effective January 1, 2001. This fee revision would raise the monthly transaction fee cap to $500,000 per member firm and increases the rate for the first 5,000 shares of a trade to $.0023 from $.0019 per share. The proposed rule change is available at the principal office of the NYSE and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A, Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1996, the NYSE established a cap on transaction charges of $400,000 per month per firm.[3] According to the Exchange, it initially planned to increase the cap each year in proportion to the increase in trading volume. Had it invoked the indexing provision each year, the cap for 2001 would be approximately $1,100,000. The increase in volume during 2000 compared with 1999 is about 24 percent.

Commencing January 1, 2001, the Exchange proposes to establish the cap at $500,000 per firm per month, representing an increase in proportion to the above described increase in trading volume. The Exchange also proposes, effective January 1, 2001, to increase the rate charged for transactions in the 5,000 share and under category from $.0019 per share to $.0023 per share. The $.0019 rate was also established in 1996 and has not been changed since then. This increase is roughly in the same proportion as the increase in the cap and ensures that the firms that do and do not reach the cap will be treated equitably.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(4)[4] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has neither solicited nor received written comments on the proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective on filing pursuant to section 19(B)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–50 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 00–31684 Filed 12–12–00; 8:45 am]
BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36465 (November 8, 1995), 60 FR 57473 (November 15, 1995) (File No. SR–NYSE–95–38).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Report of New System of Records and Routine Uses

AGENCY: Social Security Administration.
ACTION: New system of records and routine uses.

SUMMARY: In accordance with the Privacy Act, 5 U.S.C. 552a(e)(4) and (e)(11), we are issuing public notice of our intent to establish a new system of records. The proposed system of records is entitled Records of Individuals Authorized Entry into Secured Areas by Digital Lock Systems, Electronic Key Card Systems or Other Electronic Access Devices, SSA/RO 60–0270. The proposed system will maintain records on individuals authorized to enter secured areas in SSA regional offices, field offices, teleservice centers, program service centers, hearing offices and satellite facilities. We invite public

comments on the proposed system and the routine uses.

DATES: We filed a report of the proposed system with the Chairman, Committee on Government Reform and Oversight, House of Representatives, the Chairman, Committee on Governmental Affairs, United States Senate, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on December 4, 2000. We have requested OMB to waive the 40-day advance notice period. If OMB does not waive the 40-day advance period, we will not implement the proposed system until January 15, 2001, unless we receive comments on or before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available at the above address for public inspection and photocopying between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Cetta Ruzicka, Social Insurance Policy Specialist, Office of Disclosure Policy, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (410) 965–1743.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Proposed System

SSA is responsible for ensuring the safety of personnel and for safeguarding government records and property in its facilities. Through the use of digital lock systems, electronic key card systems or other electronic access devices, SSA is able to monitor and control the access to its facilities. The digital lock systems, electronic key card systems and other electronic access devices have the capacity to maintain entry and exit data, such as the name and/or personal identification number (PIN) of the individual entering the secured area, the location of the secured area, the date of the entry and the time of the entry and exit. Data in the system is used for security purposes and may be used in a disciplinary action.

II. Collection and Maintenance of Data in the Proposed System

SSA security personnel will assign a PIN to each individual who is authorized to enter secured areas. For electronic key card systems, the name of the individual and assigned PIN will be encoded on the key card. Security personnel will maintain a computer file of the name of the individual and the assigned PIN.

To enter secured areas, an individual manually enters his or her PIN into the digital or electronic access device, or in the case of an electronic key card system, the individual uses his or her key card to facilitate entry. These systems maintain a record of the name and/or PIN of the individual, the entry point, the date of the entry and the time of the entry. Some digital lock systems and electronic lock system are connected to computer systems that maintain the information in computer files. Information will be retrieved by individuals' names and/or PINs.

Only authorized SSA personnel will download and print information from computer files, digital lock systems, electronic key card systems or other electronic access devices. The information will be maintained in file folders and disclosed to Agency personnel on a need-to-know basis or to other individuals or entities consistent with the routine uses below.

III. Proposed Routine Uses of Information in the System

We are proposing to establish routine uses of information that will be maintained in the system as discussed below.

1. To disclose pertinent information to the appropriate Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule or regulation, or order when the Agency becomes aware of an indication of a violation of civil or criminal law or regulations pertaining to this system of records.

We contemplate disclosing information under this routine use to law enforcement entities that are responsible for investigating alleged violations of civil or criminal statutes or alleged violations of Standards of Conduct governing Federal employees.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of the record.

We contemplate disclosing information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in an SSA matter on his or her behalf. Information will be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court or other tribunal (including an adjudicative or administrative body, or other third-party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation; and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation.

We contemplate disclosing information under this routine use, as necessary, to enable the Department of Justice to effectively defend SSA, its components or employees. We contemplate disclosing information under this routine use when SSA has an interest in litigation involving the proposed systems of records and/or the records contained therein.

4. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

IV. Compatibility of Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1–3 above will ensure efficient administration of Social Security programs; the disclosures that would be made under routine use number 4 is required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

V. Records Storage Medium and Safeguards

We will maintain information in digital lock systems, electronic key card systems, or other electronic access devices, computer memory (including floppy diskettes) and paper form. Only SSA security personnel who have a need for the information in the performance of their official duties will be permitted to retrieve information.

VI. Effect of the System on Individuals

The proposed system will maintain information that could lead to administrative, civil or criminal action. This action would occur only after an investigation. Individuals will be afforded all appropriate due process and appeal rights. Thus, we do not anticipate that the proposed system will have any unwarranted adverse effect on the privacy of individuals.

Dated: December 4, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Social Security Administration Notice of System of Records Required by the Privacy Act of 1974

System number: SSA, RO–60–0270.

System name: Records of Individuals Authorized Entry into Secured Areas by Digital Lock Systems, Electronic Key Card Systems or Other Electronic Access Devices, SSA.

Security classification: None.

System Location: Social Security Administration, Offices of the Regional Commissioners.

Categories of individuals covered by the system: Those individuals who are authorized entry into secured areas in regional offices, field offices, teleservice centers, program service centers, hearings offices and satellite facilities.

Categories of records in the system: This system of records contains the name and/or personal identifying number(s) for each individual who is authorized to enter secured areas in regional offices, field offices, teleservice centers, program service centers, hearing offices and satellite facilities. The system also contains the entry point, the date of entry and the time of entry.

Authority for maintenance of the system: 42 U.S.C. 902 and 1302; 5 U.S.C. 552a(e)(10); 41 CFR 101–20.302.

Purpose(s): The principal purpose is to maintain a record of individuals who entered secured areas in the Social Security Administration's facilities and to ensure the security of personnel and property. The system of record may also be used in a disciplinary action.

Routine uses of records maintained by the system, including categories of users and the purposes of such uses: Disclosure may be made for routine uses as indicated below:

1. To disclose pertinent information to the appropriate Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule or regulation, or order when the Agency becomes aware of an indication of a violation of civil or criminal law or regulations pertaining to this system of records.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of the record.

3. To the Department of Justice (DOJ), a court or other tribunal, (including an adjudicative or administrative body) or other third-party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation: and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation.

4. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage: Records in this system are stored in the digital lock systems, electronic key card systems, other electronic access devices, computer memory (including floppy diskettes) and paper form.

Retrievability: Records in this system may be retrieved by name of the individual, by assigned personal identifying number(s), by date, by time period, and by entry point.

Safeguards: Only authorized SSA personnel have access to this system of records. Employees who are authorized to retrieve records will be assigned a personal identification number (PIN) and passwords. The information will be processed in a manner that will protect confidentiality and in such a way that unauthorized individuals cannot retrieve it by means of computer, remote terminal or other means. The paper records that result from the digital lock or other electronic access systems are kept in locked cabinets or in otherwise secure areas. All SSA employees, including contractor personnel, having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

Retention and disposal: SSA retains records in this system up to 3 years following the expiration of an individual's authority to enter into secured areas. SSA destroys a paper record by shredding and a non-paper record by deleting-wiping it from the digital, magnetic and/or computer memory.

System manager(s) and address: The systems manager will be the Regional Security Officer (or his/her designee) in those Regions where SSA purchases digital lock systems, electronic key card systems or other electronic access devices.

Region I—Boston: Social Security Administration, Regional Security Officer, Room 1975, JFK Federal Building, Boston, Massachusetts 02203–1101, Telephone: (617) 565–2852.

Region II—New York: Social Security Administration, Regional Security Officer, 26 Federal Plaza, Room 4011, New York, New York 10278, Telephone: (212) 264–1716.

Region III—Philadelphia: Social Security Administration, P.O. Box 8788, Philadelphia, Pennsylvania 19101, Telephone: (215) 597–8531.

Region IV—Atlanta: Social Security Administration, Atlanta Regional Security Office, Security and Integrity Team, P.O. Box 10085, Birmingham, Alabama 35202, Telephone: (205) 801–1300.

Region V—Chicago: Social Security Administration, Center for Material Resources, Security and Integrity Section, Box 87479, Chicago, Illinois 60680, Telephone: (312) 353–1224.

Region VI—Dallas: Social Security Administration, MB–1 Room 1400, Management and Budget, ATTN: RSO, 1200 Main Tower Building, Suite M110 Dallas, Texas 75202–4324, Telephone: (214) 767–4331.

Region VII—Kansas City: Social Security Administration, MAMPSC, SIS, 601 East Twelfth Street, P.O. Box 15625, Kansas City, Missouri 64106, Telephone: (816) 426–3095.

Region VIII—Denver: Social Security Administration /M&B/BFS, Attn: Regional Security Office, 1961 Stout Street, Room 325, Denver, Colorado 80294–3538, Telephone: (303) 844–3347.

Region IX—San Francisco: Social Security Administration, FHFB, Field Facilities Team, P.O. Box 4205, Richmond, California 98402, Telephone: (510) 970–8340.

Region X—Seattle: Social Security Administration, Security and Integrity Team, Suite 2900, M/S–291B, 701 Fifth Avenue, Seattle, Washington 98104–7006, Telephone: (206) 615–2150.

Notification procedure: An individual may determine if this system contains a record about him or her by writing to the systems manager. When requesting notification, the individual should provide his or her name and/or personal identifying number(s) and refer to this system.

Record access procedures: Same as notification procedures. Requestors should also reasonably specify the contents of the record being sought.

Contesting record procedures: Same as notification procedures. Requestors should also reasonably: identify the particular record; specify whether he/she is seeking an addition to or a deletion or substitution of the record; and state his/her reason(s) for requesting corrective action or amendment to the record (*e.g.*, why it is not accurate, timely, complete, relevant or necessary).

Record source categories: SSA obtains information in this system from the individuals who are covered by the system or the security personnel.

Systems exempted from certain provisions of the Privacy Act: None.

[FR Doc. 00–31655 Filed 12–12–00; 8:45 am]

BILLING CODE 4190–11–P

DEPARTMENT OF STATE

[Public Notice 3502]

Bureau of Diplomatic Security, Office of Foreign Missions, Tax and Customs Unit; Information Collection Under Emergency Review: Form DS–1504, Request for Customs Clearance of Merchandise

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency.

Originating Office: DS/OFM/VTC/TC.

Title of Information Collection: Request for Customs, Clearance of Merchandise.

Frequency: As needed.

Form Number: DS–1504.

Respondents: The foreign diplomatic and consular community in the United States; certain international organizations; and the Office of the President.

Estimated Number of Respondents: approx. 6,100.

Average Hours Per Response: one half hour.

Total Estimated Burden: 3,463.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by 12/15/00. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until the date of the 60th day from the date of publication of this notice in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have any practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to U.S. Department of State, DS/OFM/VTC/TC, State Annex 33, Room 212, Washington, DC 20520. Tele. no. 202 895–3618.

Dated: December 1, 2000.

Theodore Strickler,

Deputy Assistant Secretary of State, U.S. Department of State, Bureau of Diplomatic Security, Office of Foreign Missions.

[FR Doc. 00–31739 Filed 12–12–00; 8:45 am]

BILLING CODE 4710–43–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–144, Recommended Method for FAA Approval of Aircraft Fire Extinguishing System Components

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–144, Recommended Method for FAA Approval of Aircraft Fire Extinguishing System Components. This AC provides guidance on the various aspects that should be considered in the FAA approval process of fire extinguishing system components manufactured under a Production Certificate, components to be FAA approved under the Part Manufacturer Approval process, or design changes to components originally approved by either method. This AC does not constitute a regulation, however, it provides a method, but not the only method, for obtaining approval of aircraft fire extinguishing system components. This is intended to enhance the standardization of all FAA Aircraft Certification Offices and Manufacturing Inspection District Offices in the approval process of the critical components of an aircraft fire extinguishing system.

DATES: Advisory Circular 20–144 was issued by the Acting Manager, Aircraft Engineering Division, AIR–100, on September 22, 2000.

How To Obtain Copies: A paper copy of AC 25.335–1A may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or faxing your request to the warehouse at 301–386–5394. The AC also will be available on the Internet at *http://www.faa.gov/avr/air/airhome.htm*, at the link titled "Advisory Circulars" under the "Available Information" down-drop menu.

Issued in Renton, Washington, on November 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–31688 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Waterville Robert LaFleur Airport, Waterville, Maine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments. Notice of intent of waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of airport property (approximately 16 acres located West and North of the airport along Airport Road Extension) is no longer needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the disposal of the property. The land was acquired under FAA Project Nos. 6–23–0047–06, 6–23–0047–07 and 6–23–0047–08 (portion of parcels 7, 8, and 9).

In accordance with section 47107(h) of title 49, united States Code, this notice is required to be published in the **Federal Register** thirty (30) days before modifying the land-use assurance which requires that the property be used for an aeronautical purpose. The purpose of the release of land will allow development of an industrial park associated with an Economic Development Administration grant and access to a designated Federal free trade zone.

DATES: Comments must be received on or before January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone No. 781–238–7624/Fax 781–238–7608. Documents reflecting the proposed FAA action may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts or Mr. Gregory Brown, Public Works Director, City of Waterville, Maine, 1 Common Street, Waterville, Maine.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA in considering the release of the subject airport property at Waterville Robert LaFleur Airport, Waterville, Maine. The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Burlington, Massachusetts on December 1, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–31708 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2000–8493]

Notice of Request for the Reinstatement of an Expired Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

(1) 49 U.S.C. Section 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311—Nonurbanized Area Formula Program

(2) Americans with Disabilities Act

(3) Pre-Award and Post Delivery Review Requirements

DATES: Comments must be submitted before February 12, 2001.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: *49 U.S.C. Section 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311—Nonurbanized Area Formula Program:* Ms. Sue Masselink, Office of Program Management, (202) 366–2053.

Americans with Disabilities Act: Mr. Arthur Andrew Lopez, Director, Office of Civil Rights, (202) 366–4018.

Pre-Award, Post-Delivery Review Requirements: Spiro Colivas, Office of Program Management (202) 366–6009.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311 Nonurbanized Area Formula Program (OMB Number: 2132–0500)

Background: The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas (urbanized, small urban, and rural). The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas. This program is also administered by the States. 49 U.S.C. sections 5310 and 5311 authorize FTA to review applications for federal financial assistance to

determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the program requirements. Information collected during the project management stage includes an annual financial report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

Respondents: State and local government and non-profit institutions.

Estimated Annual Burden on Respondents: 102.44 hours for each of the respondents.

Estimated Total Annual Burden: 11,370 hours.

Frequency: Annual.

Title: Americans with Disabilities Act (OMB Number: 2132–0555)

Background: On July 26, 1990, the President signed into law civil rights legislation entitled, "The Americans with Disabilities Act of 1990" (ADA) (Pub.L. 101–336). It contains sweeping changes for individuals with disabilities in every major area of American life. One key area of the legislation addresses transportation services provided by public and private entities. Some of the requirements under the ADA are: (1) No transportation entity shall discriminate against an individual with a disability in connection with the provision of transportation service; (2) All new vehicles purchased by public and private entities after August 25, 1990, must be readily accessible to and usable by persons with disabilities, including individuals who use wheelchairs; (3) Public entities that provide fixed route transit must provide complementary paratransit service for persons with disabilities, who are unable to use the fixed route system, that is comparable to the level of service provided to individuals without disabilities; and (4) Public entities operating light, rapid or commuter rail systems must designate key stations which were to be made accessible by July 26, 1993, unless the operator received a statutory time extension.

If FTA reasonably believes that an entity may not be in compliance, FTA may require periodic reports on a quarterly or annual basis. The information collected provides FTA with a basis for monitoring compliance. In addition, public entities, including recipients of FTA funds, are required to provide information during triennial reviews, complaint investigations, resolutions of complaints, and compliance reviews.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 100 hours for 50 respondents and 50 hours for 700 recipients.

Estimated Total Annual Burden: 40,000 hours.

Frequency: Annual.

Title: Pre-Award and Post-Delivery Review Requirements (OMB Number: 2132–0544)

Background: Under the Federal Transit Laws, at 49 U.S.C. 5323(l), grantees must certify that pre-award and post-delivery reviews will be conducted when using FTA funds to purchase revenue service vehicles. FTA regulation 49 CFR Part 663 implements this law by specifying the actual certificates that must be submitted by each bidder to assure compliance with the Buy America, contract specification, and vehicle safety requirements for rolling stock. The information collected on the certification forms is necessary for FTA grantees to meet the requirements of 49 U.S.C. 5323(l).

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 3 hours for each of the 700 respondents.

Estimated Total Annual Burden: 1,729 hours.

Frequency: Annual.

Issued: December 7, 2000.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 00–31709 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No NHTSA–2000–8171]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal Agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal Agencies must solicit public comment on proposed information collections, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 12, 2001.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., Plaza 401, Washington, DC 20590. Docket No. NHTSA–2000–8171.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, telephone (202) 366–5597.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day comment period and to allow for consultation with affected agencies and members of the public concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following proposed collection of information:

National Survey of Drinking and Driving Attitudes and Behavior

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: February 28, 2002.

Summary of the Collection of Information

An agency goal is to reduce the number of alcohol related fatalities from 15,786, in 1999, to 11,000 by the year 2005. In support of this goal, NHTSA has conducted over the past decade a series of bi-annual surveys of the driving-aged public (aged 16 or older) to identify patterns and trends in public attitudes and behaviors towards drinking and driving and public reaction to alcohol countermeasures aimed at reducing the occurrence of drinking and driving and alcohol related crashes. The proposed study, to be administered in the 3rd quarter of 2001, and the sixth in this series of biennial surveys, will collect data on topics included in the first five studies (and several additional topics), including: frequency of drinking and driving and of riding with an impaired driver, ways to prevent drinking and driving, enforcement of drinking and driving laws including the use of sobriety checkpoints, understanding of BAC levels and legal limits, and crash and injury experience.

The survey will be administered by telephone to a national probability sample of the driving age public (aged 16 years or older as of their last birthday). Participation by respondents is voluntary. The interview is anticipated to average approximately 20–25 minutes; for non-drinkers and non-drivers the interview will average below 20 minutes, while for drinker-drivers it will average slightly over 20 minutes. Interviewers will use computer assisted telephone interviewing to reduce survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. All respondents' results will remain anonymous and completely confidential. Participant names are not collected during the interview and the telephone number used to reach the respondent is separated from the data record prior to its entry into the analytical database.

Description of the Need for and Proposed Use of the Information

More than 308,000 persons were reported injured and nearly 16,000 persons died in alcohol-related motor vehicle crashes in 1999 (NHTSA-National Center for Statistics and Analysis). NHTSA is committed to the development of effective programs to reduce the incidence of these crashes. In order to properly plan and evaluate programs directed at reducing alcohol-impaired driving, the agency needs to periodically update its knowledge and understanding of the public's attitudes and behaviors with respect to drinking and driving.

The findings from this proposed collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed collection, a telephone interview averaging approximately 20 minutes in length would be administered to each of 6,000 randomly selected members of the general public age 16 and older. The respondent sample would be selected from all 50 states plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household would be selected, and each sample member would complete just one interview. Businesses are ineligible for the sample and would be not be interviewed.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 20 minutes to complete the telephone interview. Thus, estimated reporting burden on the general public would be a total of 2000 hours for the proposed survey. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.

[FR Doc. 00–31676 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33945]

Boot Hill & Western Railway Co., L.C.—Acquisition Exemption—Dodge City Ford & Bucklin Railroad Co.

Boot Hill & Western Railway Co., L.C. (BHWR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 25.73 miles of rail line from the Dodge City Ford & Bucklin Railroad Company. The line is located between milepost 347.9, at Bucklin, KS, and milepost 373.63, at Dodge City, KS. In conjunction with the acquisition of the rail line, BHWR will also acquire approximately 1.5 miles of incidental overhead trackage rights over a rail line owned by Union Pacific Railroad Company between Engineer Station 11+88 and Engineer Station 52+84.9, at Dodge City. The purpose of the trackage rights is to enable BHWR to interchange traffic with The Burlington Northern and Santa Fe Railway Company at Dodge City. BHWR certifies that its projected revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier, and further certifies that its annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or shortly after December 6, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance

Docket No. 33945, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, BALL, JANIK LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our website at "*www.stb.dot.gov.*"

Decided: December 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31472 Filed 12–12–00; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Wednesday,
December 13, 2000

Part II

Commodity Futures Trading Commission

17 CFR Part 1 et al.

A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations; Rules Relating to Intermediaries of Commodity Interest Transactions; A New Regulatory Framework for Clearing Organizations; Exemption for Bilateral Transactions; Final Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 15, 36, 37, 38, 100, 170 and 180

RIN 3038–AB55

A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is promulgating a new regulatory framework to apply to multilateral transaction execution facilities, to market intermediaries and to clearing organizations. This new framework constitutes a broad exemption under the authority of section 4(c) of the Commodity Exchange Act (Act or CEA) from many of the current rules applicable to designated contract markets. In addition, the new framework relies more heavily on disclosure rather than merit regulation. It establishes three new market categories, including the category of exempt multilateral transaction execution facility and two categories of Commission-recognized and regulated multilateral transaction execution facilities. In companion releases published in this edition of the **Federal Register**, the Commission also is adopting new rules for intermediaries and entities that clear derivative transactions. These final rules make fundamental and far-reaching changes to Federal regulation of commodity futures and option markets. However, nothing in these rules alters or diminishes the Commission's responsibility for overseeing and enforcing compliance by self-regulatory organizations, Commission registrants and market participants with the provisions of the Act.

The Commission in a companion release published in this edition of the **Federal Register** also is expanding and clarifying the operation of the current swaps exemption. Nothing in these releases, however, would affect the continued vitality of the Commission's exemption for swaps transactions under part 35 of its rules, or any of its other existing exemptions, policy statements or interpretations. Moreover, nothing in the final rules would affect the application of any statutory exclusion, including in particular, the applicability of the exclusion under section 2(a)(1)(A)(ii), known as "the Treasury Amendment."

EFFECTIVE DATE: February 12, 2001.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The Commission, on June 22, 2000, proposed a new regulatory framework to apply to multilateral transaction execution facilities that trade contracts of sale of a commodity for future delivery or commodity options. 65 FR 38986. The Commission proposed this new framework to "promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers." *Id.* The framework provides U.S. futures exchanges greater flexibility with which to respond to the competitive challenges brought about by new technologies.

Specifically, the framework proposed to replace the current "one-size-fits-all" regulation for futures markets with broad, flexible "core principles," and to establish three regulatory tiers for markets: recognized futures exchanges (RFEs), derivatives transaction facilities (DTFs) and exempt multilateral transaction execution facilities (exempt MTEFs). The proposed core principles were tailored to match the degree and manner of regulation to the varying nature of the products and the participants permitted to trade on a facility.

In general, the framework proposed a lower level of regulatory oversight where access to an exchange or facility is restricted to eligible participants or commercial participants or where the nature of the underlying commodity poses a relatively low susceptibility to manipulation. This reflects the reduced need to monitor closely such markets. The Commission also proposed, however, that markets serving a price discovery function, irrespective of the product traded or market participants, provide a degree of price transparency. The proposed framework therefore balanced the public interests of market and price integrity, protection against manipulation and customer protection with the need to permit exchanges and other trading facilities to operate more flexibly in today's competitive environment. As noted in the Notice of Proposed Rulemaking, the President's Working Group on Financial Markets and the chairmen of the Commission's Congressional oversight committees encouraged the Commission to consider proposing such major revisions to the regulatory framework.[1] 65 FR at 38987.

B. The Proposed Rules

Under the proposed framework, current U.S. futures exchanges would be included automatically in the RFE category.[2] These exchanges would be permitted greater business flexibility through compliance with core principles rather than the prescriptive regulations now in place. In addition to achieving greater flexibility in their current operations, the exchanges, as a business choice, also could operate as a DTF or as an exempt MTEF, as appropriate.

The proposed DTF market would be subject to an intermediate level of regulation. DTFs, like RFEs, would be Commission-recognized markets. As proposed, DTFs would be geared either to mainly institutional traders or to only commercial traders. Specific requirements proposed for DTFs differ somewhat depending upon whether a DTF is an institutional or a commercial market.

The Commission proposed that institutional-participant DTFs may provide a trading platform for transactions involving those commodities listed in the rules that are eligible for such an intermediate level of regulation.[3] Additional commodities, including agricultural commodities, would be eligible to trade on an institutional-participant DTF on a case-by-case determination. The Commission would make that determination based upon the depth and liquidity of the cash market and on the surveillance history of the commodity based on its actual trading history.

Although institutional-participant DTFs would be intended primarily for institutional traders, the proposed rules provide individual DTFs with the flexibility to decide whether or not to permit access by non-institutional traders. The Commission proposed, therefore, to permit access to a DTF by non-institutional traders only through a registered futures commission merchant (FCM) that is a member of a recognized clearing organization and that has $20 million of adjusted net capital. Those FCMs would be required to provide their non-institutional customers trading on a DTF with additional disclosures and other protections.

In addition, the rules proposed an intermediate level of oversight for commercial-participant DTFs. Only commercial participants trading for their own accounts would have access to these facilities. Commercial-participant DTFs may trade any commodity other than the agricultural commodities enumerated in section 1a(3) of the Act, government securities and commodities subject to the provisions of section 2(a)(1)(B)(ii) of the Act. Such commercial traders generally would have both the financial ability and the physical means to deliver tangible commodities or otherwise be involved in trading that commodity in connection with their line of commerce. Accordingly, certain requirements that were proposed to apply to institutional-participant DTFs would not be applicable to commercial-participant DTFs.

The Commission also proposed a market tier exempt from all Commission regulation, subject only to the Act's anti-fraud and anti-manipulation provisions and a requirement that, if performing a price discovery function, the market provide pricing information to the public. This exemption was proposed for facilities on which transactions would be entered into among institutional traders in contracts based upon a specified list of commodities.[4] The Commission proposed to exempt counterparties to such transactions from a claim in a private right of action that a violation of the terms of the exemption renders the transactions void. These exempt markets could not hold themselves out as being regulated by the Commission. As noted above, existing futures markets, where appropriate, would have the opportunity to operate under the terms of this exemption, if they so choose.

C. Overview of Comments

The Commission received a total of 71 comments from a wide range of commenters on the proposed new regulatory framework for multilateral transaction execution facilities.[5] The commenters included 24 trade associations, six commodity exchanges, two government agencies, four financial institutions, three attorneys, two institutional study organizations, one agri-business firm, a self-regulatory organization, and several energy and communication firms or markets.

In addition to comment letters, the Commission received oral and written statements during a public meeting held at the Commission's headquarters on June 27 and 28, 2000. At that meeting, members of the public had an opportunity to address the Commission and to respond to questions.[6] During the meeting, several panels of industry experts, representing the U.S. futures exchanges, the over-the-counter derivatives markets, emerging information and technology providers, market intermediaries and clearing organizations discussed the proposals in the context of current market structures and future trends. The proposed rules were also discussed and public comments received at a July 19, 2000, meeting of the Commission's Agricultural Advisory Committee (AAC).[7]

The overwhelming majority of the comments expressed general support for the Commission's proposed framework, and provided specific suggestions for its improvement. Many commenters described the Commission's initiative as a bold or important departure from the status quo which recognizes the beginnings of a new financial market landscape. In general, the commenters supported the framework's innovative concepts of providing greater regulatory flexibility by substituting core principles for prescriptive, one-size-fits-all regulations, and of tiered regulations tailored to the particular nature of the market. They also generally supported the Commission's initiative as providing greater legal certainty to various types of instruments.

Four commenters, however, strongly disagreed with the Commission's approach, albeit for opposing reasons. One institutional study organization argued that the proposal would take regulatory reform too far. In contrast, a second institutional study organization, an investment banking firm and an attorney expressed serious reservations, contending that the framework provided neither significant regulatory relief nor greater legal certainty. The substance of individual comments is discussed in greater detail below.

II. Final Rules

A. Exempt Multilateral Transaction Execution Facilities (Exempt MTEFs)

As discussed above, the Commission, in revised part 36, proposed a new, self-effectuating exemption for those multilateral transaction facilities (MTEFs) to which only eligible participants have access, either trading for their own account or through another eligible participant, and only for contracts based upon: (1) A debt obligation; (2) a foreign currency; (3) an interest rate; (4) an exempt security or index thereof, as provided in section 2(a)(1)(B)(v) of the Act; (5) a measure of credit risk or quality, including instruments known as "total return swaps," "credit swaps" or "spread swaps"; (6) an occurrence or contingency beyond the control of the counterparties to the transaction; or (7) cash-settled, based upon an economic or commercial index or measure beyond the control of the counterparties to the transaction and not based upon prices derived from trading in a directly

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[1] Recognizing the importance of the OTC derivatives markets, the Chairmen of the Senate and House Agriculture Committees asked the President's Working Group on Financial Markets (PWG) to conduct a study of OTC derivatives markets. After studying the existing regulatory framework for OTC derivatives, recent innovations, and the potential for future developments, the PWG on November 9, 1999, reported to Congress its recommendations. *See*, Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group. The PWG report focused on promoting innovation, competition, efficiency, and transparency in OTC derivatives markets and in reducing systemic risk. Although specific recommendations about the regulatory structure applicable to exchange-traded futures were beyond the scope of its report, the PWG suggested that the Commission review existing regulatory structures (particularly those applicable to markets for financial futures) to determine whether they were appropriately tailored to serve valid regulatory goals.

[2] Products subject to the special procedural provisions of section 2(a)(1)(B)(ii) of the Act, however, must continue to be designated and regulated by the Commission as contract markets.

[3] The eligible commodities are those that are listed as eligible for trading on an exempt MTEF. The rules relating to exempt MTEFs are discussed below. A market that otherwise might be eligible to be exempt from regulation as an exempt MTEF may voluntarily become a DTF in order to be become a "recognized" market.

[4] The proposed list of commodities included: a debt obligation, a foreign currency, an interest rate, an exempt security, a measure of credit risk or quality, or cash-settled based upon an economic or commercial index or based upon an occurrence or contingency.

[5] A significant number of letters commenting on aspects of the regulatory framework raised in companion notices were also submitted to the Commission. In this and three companion Notices of Final Rulemaking which are being published in this edition of the **Federal Register**, comment letters (CL) are referenced by file number, letter number and page. Comments filed in response to the notice of proposed rulemaking on MTEFs, parts 36–38, are contained in file No. 21, on the notice of proposed rulemaking on intermediaries in file No. 22, on the notice of proposed rulemaking on clearing in file No. 23 and on the notice of proposed rulemaking on the part 35 exemption in file No. 24. These letters are available through the Commission internet web site, www.cftc.gov.

[6] A transcript of the proceedings was included in the Commission's comment file and is available through the Commission's internet web site.

[7] A transcript of the AAC meeting is also included in the Commission's comment file and is available on the Commission's website.

corresponding underlying cash market.[8] The Commission proposal was based upon the "view that these commodities, when traded between or among eligible participants need not be subject to the regulatory scheme of the Act. Accord PWG Report at 17." 65 FR at 38988.

Many commenters strongly supported this new exemption. For example, the International Swaps and Derivatives Association, Inc. (ISDA) observed that the "clarifications contained in the Exempt MTEF proposal are of critical importance to ISDA and its members." CL 21–37 at 4. Reuters Group PLC (Reuters), a provider and developer of "electronic business-to-business transaction communities," stated that in its view, "[t]his new category of Exempt MTEF provides significant legal certainty to new electronic marketplaces in the enumerated derivatives." CL 21–62 at 3. A group of commercial and investment banks (Coalition)[9] commented that it "strongly supports the Commission's proposal, and believes that the proposal represents a very important initiative both to promote legal certainty and to facilitate the development by U.S. market participants of electronic trading systems and technologies and the expanded use of clearing facilities. In addition, proposed part 36 would * * * limit[] the ability of an eligible participant to repudiate unprofitable contracts based on the CEA. The Coalition strongly supports these provisions. * * *" CL 21–65 at 9. An attorney with the firm of Covington & Burling commented that:

> Derivative transactions satisfying these three conditions would be exempt from virtually all CEA regulation * * * and *either* (1) *were* traded on a multilateral transaction execution facility (MTEF), under newly-proposed part 36 of the Commission's regulations; or (2) *were not* traded on an MTEF, under newly-revised part 35 of the Commission's regulations. Thus, participants * * * would obtain legal certainty about the limited scope of CEA regulation regardless of whether the means for executing transactions did or did not satisfy the technical definition of an MTEF.
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> It is our understanding that several comments have been filed with the Commission that seek changes to the proposed regulations in ways that conceivably could affect the legal certainty described above, including the Commission's statement supporting such legal certainty. We urge the Commission not to make any changes that would affect the interrelationship between the MTEF exemption and the bilateral transactions exemption in a manner that would diminish the legal certainty provided to eligible participants trading exempt commodities.

CL 21–63 at 2–3.

A number of the comments that generally supported proposed part 36 also suggested specific modifications, relating mainly to the commodities which were proposed to be eligible for the part 36 exemption and the proposed definition of MTEF. These issues, along with three comments opposing the proposed part 36 exemption on mainly jurisdictional grounds, are discussed below.

1. Jurisdictional Issues

Three commenters objected to the part 36 exemption on jurisdictional grounds. *See,* CLs 21–28, 55 and 57. One of the three, JP Morgan Securities, Inc. (JP Morgan), objected generally to proposed part 36, and particularly to the inclusion of instruments eligible for the exemption that are "a measure of credit risk or quality, including instruments known as 'total return swaps,' 'credit swaps,' or 'credit spread swaps,'" reasoning that:

> An Exempt MTEF is to be subject to the anti-fraud and anti-manipulation provisions of the Act, as well as to whatever future rule the Commission may enact governing information dissemination. Therefore, a proposed "exemption" from the CEA has the effect of extending the Commission's authority to facilities that may trade products, such as swaps, which are not the Commission's to regulate under the terms of the Act itself. A self-effectuating "exemption" in this instance unintentionally becomes the reverse, an assertion of CFTC jurisdiction over non-futures products.

CL 21–55 at 4.

However, JP Morgan's conclusion is erroneous. As explained in its Notice of Proposed Rulemaking (65 FR at 38989), and reiterated herein, the Commission, by providing an exemption under part 36, is not thereby making an initial determination that any particular instrument which may be trading in reliance on the exemption is or is not within the Commission's jurisdiction. The use of the Commission's section 4(c) exemptive authority in this context to provide legal certainty to novel instruments without a preliminary determination by the Commission of complex jurisdictional issues is precisely as intended by the Congress. When Congress adopted section 4(c) in 1992, the Conferees stated:

> The conferees do not intend that the exercise of exemptive authority by the Commission [under Section 4(c)] would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.[10]

Moreover, the assertion that the Commission through this exemption would extend provisions of the Act to instruments or persons not subject to the Act misconstrues the nature and the scope of the exemption. As proposed, rule 36.3(a) provides that the anti-fraud and anti-manipulation sections of the Act "continue to apply to transactions and persons otherwise subject to those provisions."[11] 65 FR at 38999. Thus, it is clear that the proposed rules do not attempt to extend application of the Act to any transactions not already subject to the Act.[12]

Proposed rule 36.2(g) requires that an exempt MTEF disseminate trading volume, price ranges and other trading data, but only pursuant to a Commission determination, after notice and an opportunity for a hearing, that the facility serves as a significant source for the discovery of prices. That procedure provides the facility with an opportunity to challenge the validity of the Commission's authority to issue and enforce such an order on the grounds that the instruments being traded are not subject to the Act.[13] Nevertheless, the Regulatory Studies Program of the Mercatus Center (Mercatus) opined that, even though "a party could contest the CFTC's assertion of jurisdiction * * * it is the mere assertion of regulatory jurisdiction by the CFTC that in the past has created the legal uncertainties that these Proposals attempt to address." CL 21–57 at 4.

However, proposed rule 36.3(b), the contract non-repudiation provision, further removes any such potential negative, collateral effects on other markets. To the extent that part 36 applies to transactions traded on a facility, the contract non-repudiation provision also applies, reinforcing the legal certainty and validity of the transactions. On the other hand, to the extent that transactions and a market are outside of the Commission's jurisdiction, the Act and Commission rules (including the part 36 exemption) are inapplicable, and hence there can be no legal uncertainty about the validity of the contracts arising from the Act or Commission rules thereunder. As the Commission explained in the Notice of Proposed Rulemaking,

> the Commission is not making a determination that any market that is eligible to be an exempt MTEF under the proposed exemption is or is not subject to the Commission's jurisdiction under the CEA. Moreover, the fact that one market may operate as an exempt MTEF in reliance upon the proposed exemption * * * does not imply that the Commission has made a determination that any firm or entity that operates in a similar manner is subject to the Commission's jurisdiction under the CEA.

65 FR at 38989 (footnote omitted). Thus, the existence and application to any particular market of the part 36 exemption carries no negative legal inference or uncertainty for any other market.

Nevertheless, Mercatus further argues that the proposed exemption "raises a whole new area for legal uncertainty in that the broad definition of MTEF in Proposed Rule 36.1(b) would appear to cover auction markets such as eBay and all other forms of B2B trading facilities, whether electronic or not." CL 21–57 at 5. Similarly, an attorney with the firm of Vinson & Elkins argues that, "multilateral transaction execution facilities—regardless of the nature of their participants or the nature of the economic activity being undertaken on those facilities—must agree to become regulated by the CFTC." CL 21–28 at 1. This misconstrues the operation and structure of the part 36 exemption. As noted above, the exemption in part 36 is from application of the Act. To the extent that the Act does not apply to a facility's transactions, the regulatory framework is simply inapplicable. Thus, so long as a facility auctions instruments outside of the Commission's regulatory jurisdiction under the Act, these exemptions therefrom and this framework would have no application to its business.

2. Eligible Commodities

Some commenters have suggested that the commodities eligible for this exemption should differ somewhat from those proposed by the Commission. Specifically, the United States Department of the Treasury (Treasury) recommended that government securities should be ineligible for trading on exempt MTEFs. Treasury noted that contracts eligible to trade on an exempt MTEF would have included both single government securities and baskets of government securities. It further noted that "[s]ince the introduction of futures contracts on government securities in the late 1970s, the trading of these instruments on futures exchanges has always been subject to Commission regulation, and all dealers and brokers in the cash market for government securities have been subject to regulation since the enactment of the Government Securities Act." CL 21–50 at 2.

As the Commission explained in its Notice of Proposed Rulemaking, 65 FR at 38988, its determination of which commodities to include as eligible for exempt MTEF status was informed by the recommendations of the PWG, including its recommendation to exclude from the Act transactions by eligible participants on electronic trading systems in commodities other than non-financial commodities with finite supplies. Treasury, however, has concluded that, for futures and options on government securities, a higher level of regulation than trading as an exempt MTEF is necessary and appropriate in order not to "undermine the integrity of the government securities markets." *Id.* As Treasury noted in its comment letter,

> [p]rior to 1986, * * * problems with these entities [government securities brokers and dealers] led to the passage of the Government Securities Act of 1986, which was amended in 1993 to address issues related to auction irregularities, short squeezes, and unfair sales practices * * *. Allowing government securities futures to trade on exempt MTEFs, where they would not be subject to the Government Securities Act or any other regulatory framework designed to address potential problems, could undermine the integrity of the government securities markets.
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> [T]here have been a number of attempts to manipulate individual securities within the broader market. Additionally, fraud and mistreatment of customers has in the past also been a concern in the government securities market.

Id.

In deference to Treasury's expressed concern that a higher level of regulation is necessary than provided at the exempt MTEF level, the final rules adopted by the Commission do not include government securities as eligible for trading on exempt MTEFs. Specifically, the Commission has removed the reference to exempt securities and indexes thereof previously included in proposed rule 36.2(b)(4) and has amended final rule 36.2(b)(1) to make clear that eligible debt instruments do not include such exempt securities.

In contrast to Treasury's recommendation to delete government securities from the list of eligible commodities, several commenters with energy-related businesses suggested that energy-related products be added to the list of commodities eligible to trade on exempt MTEFs. *See* CLs 21–34, 37, 38, 43. Merrill Lynch Co., Inc. (Merrill Lynch), for example, opined that "over-the-counter bilateral trading in energy products between commercial entities has been exempted * * * since 1993 * * * and that no pattern of abuses or irregularities has been identified." CL 21–38 at 9. It further reasoned that, "electricity trading remains subject to oversight by the FERC and the states, including licensing standards for market participants, reporting requirements, and enforcement authority to remedy any problems that may arise." *Id.* at 12. Merrill Lynch also noted that action has been taken by the FERC,

> to promote open access to transmission grids for natural gas. * * * Similarly, many state legislatures and public utility commissions * * * have adopt[ed] rules to facilitate or require the unbundling of gas distribution from production and supply. [A] standardized form of contract is in widespread use in the natural gas market. Given this statutory background, it would be inconsistent with the intent of Congress and actions taken by the FERC for the Commission to impose additional regulation on natural gas trading.

Id. at 13.

However, the Commission does not require that cash markets, such as those described above, come within the regulatory framework.[14] Centralized markets to trade spot and forward agricultural commodities have long existed outside of the regulatory scheme that applies to futures and option markets. The Act, and the regulatory framework thereunder, apply to markets that trade futures or option contracts on such underlying commodities. Accordingly, there is no inconsistency between the Commission's regulation of futures markets and regulation of the underlying cash markets by other regulators, such as the FERC or the states. To the contrary, the Commission in its oversight of the futures and option

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[8] It should be noted that the instruments eligible for exemption are limited by operation of section 2(a)(1)(B) of the Act, which is reserved in proposed § 36.3(a). As the Commission observed, "[t]he reservation, and application, of this provision is consistent with the language of section 4(c) of the act which limits the Commission's authority to exempt transactions from the application of section 2(a)(1)(B) of the Act." 65 FR at 38988.

[9] They are: Chase Manhattan Bank; Citigroup, Inc.; Credit Suisse First Boston, Inc.; Goldman Sachs & Co.; Merrill Lynch & Co., Inc.; and Morgan Stanley Dean Witter & Co.

[10] H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

[11] *See also,* CL 21–57 at 4, which makes the same fundamental error.

[12] In this regard, it must be noted that sections 6(c) and 9(a)(2) of the Act prohibit manipulation of "the market price of any commodity, in interstate commerce," and is not limited in application to "contracts of sale of a commodity for future delivery."

[13] For example, were the Chicago Mercantile Exchange (CME) to offer trading of its Eurodollar contract through an exempt MTEF, the rule provides for public notice and an opportunity for public comment in determining that the market "serves as a significant source for the discovery of prices for an underlying commodity" and to require that, as a consequence, it disseminate certain information to the public. *See,* PWG Report at 19.

[14] *See,* CFTC Staff Letter No. 99–67, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,970 (Dec. 16, 1999), relating to a market established by the legislature of California for the trading of electricity.

markets coordinates and cooperates with the regulators of related underlying cash markets.

Moreover, although some commenters expressed the view that energy products under the regulatory framework should be eligible to trade on exempt MTEFs based on the sophistication of traders in the market,[15] eligibility for exempt MTEF treatment must also be premised upon a finding that the likelihood of manipulation is sufficiently low that regulation is not required. That case has not yet been made. Existing derivative contracts involving energy commodities typically are based on physical delivery within a relatively narrow geographic area. Delivery under these contracts can be subject to physical constraints, *e.g.*, pipeline congestion, transmission congestion in the case of electricity, weather or natural disaster related events, concentration of ownership of transmission, pipeline or storage and production capacity. Although the total supplies of a broadly defined energy commodity may be large if viewed on a global basis, only a small subset of that total supply typically would be available for delivery on a derivatives contract. As the New York Mercantile Exchange (NYMEX) pointed out in its comment,

> [t]he President's Working Group drew a distinction in its report that limited exclusion from CFTC regulatory authority to financial derivatives. The Working Group's reasoning, in part, was that financial derivatives had "virtually inexhaustible supplies" and that dealers in the swaps markets, * * * were subject to other forms of regulatory oversight. That is not the case with many participants in the OTC energy derivative marketplace. Because the President's Working Group focused primarily upon financial derivatives in its report, one may reasonably conclude at this time that the case has yet to be made that such wholesale exemption from CFTC regulation for energy derivatives would serve the public interest.

CL 21–47 at 3. In agreement, Williams Energy Marketing and Trading Company, a company engaged in energy marketing and trading and risk management activities, noted that it "supports the Commission's proposal to exempt from regulation those * * * MTEFs meeting the conditions specified in the proposed rule," and it urged the "Commission to stay the course of establishing the basic parameters for its new regulatory framework." CL 21–25 at 3, 4.

As proposed, the final rules do not make energy-related commodities eligible for trading on exempt MTEF markets at this time.[16] The Commission is making this determination based upon its surveillance experience of designated contract markets on energy-related products and upon careful consideration of the comments. In making this determination, the Commission is not foreclosing generally any subsequent reconsideration of the issue. Moreover, the Commission proposed to permit individual markets, including those offering energy-related products, to petition the Commission for exemption under the provisions of part 36. As proposed, rule 36.2(h) specifically provides that "any person or entity may apply to the Commission for exemption for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited to, the applicability of other regulatory regimes." 65 FR at 38999. The New York Independent System Operator (NYISO) in its comment supported inclusion of this provision, stating that,

> [i]rrespective of whether the automatic exemption criteria are modified, NYISO supports the inclusion of a provision permitting the Commission authority to grant individual petitions for Exempt MTEF status * * *. This type of flexibility is, we believe, necessary to accommodate markets with which the Commission may not as yet be familiar as well as changing markets.

CL 21–61 at 7.

The Commission agrees that flexibility to address new and changing markets is both necessary and appropriate and is adopting proposed rule 36.2(h) as final.[17] As with other such general exemptive provisions, the rule does not limit the grounds on which such an exemption may be granted. *Compare*, 17 CFR 32.4(b) and 35.2(d). However, those petitioning for exemption should be guided by the overall principles underlying the framework, that

> the level of oversight applied to exchanges or trading facilities * * * be based on the nature of participants allowed to trade on the facility and certain characteristics of the commodities being traded. In general, where access to an exchange or facility is restricted to more sophisticated traders or commercial participants, or where the nature of the commodity being traded poses a relatively low susceptibility to manipulation, regulatory oversight would be set at a lower level, reflecting the reduced need to monitor closely such markets.

65 FR at 38988. The commodities that are eligible for exempt MTEF status enjoy nearly inexhaustible deliverable supplies or are otherwise not subject to limitation. Petitions for inclusion of additional commodities should be for commodities of a similar nature. In addition, petitioners should consider addressing the sufficiency and applicability of other regulatory schemes.

Proposed rule 36.2(b)(5) would make eligible for exemption contracts, agreements or transactions which are "a measure of credit risk or quality, including instruments known as 'total return swaps,' 'credit swaps,' or 'spread swaps.'" JP Morgan objected to their proposed eligibility on the grounds that:

> [t]he named swaps are commonly based upon the price of corporate equities or, in the case of credit swaps, corporate debt, which is represented by a non-exempt security. The Commission is given authority under 4(c) to exempt futures contracts. But if these particular swaps are futures, they cannot be exempted because they would run afoul of the Shad-Johnson Accord, which bans futures on non-exempt securities prices (except for indexes which have cleared a lengthy regulatory approval process). The part 36 exemption will be of no use because it specifically does not exempt such transactions from the Shad-Johnson Accord. So if the Commission has authority to exempt these transactions (which would only be the case if they are futures), it cannot do so (because the Shad-Johnson Accord prohibits such futures).

CL 21–55 at 4.

However, "total return swaps," include a greater variety of instruments than just swaps on corporate equities or debt, which as JP Morgan correctly recognizes, are not exempt under part 36. Proposed rule 36.2(b) also includes instruments that are not the subject of the prohibitions of the Shad-Johnson Accord.[18] Specifically, for example,

[15] *See*, comment letter from the California Power Exchange, an exchange offering physical delivery cash forward markets for the purchase and sale of electricity between commercial parties. CL 21–34 at 3.

[16] Of course, the framework does not preclude the trading of such contracts altogether. Under the framework, contracts for these commodities may trade on an institutional-participant DTF based on a case-by-case determination by the Commission, on a commercial-participant DTF or on an RFE.

[17] ISDA suggests including a "category of eligible commodities * * * that over time become traded in sufficient volume so as to be highly unlikely to be susceptible to manipulation." CL 21–37 at 4. The Commission is of the view that the petition procedure provided in part 36 would in fact provide it with the type of flexibility to respond to market developments that ISDA advocates. The Coalition recommended that this authority be delegated by the Commission to the Director of the Division of Economic Analysis. CL 21–65 at 10. The Commission is of the view that these determinations should not be delegated at this time.

[18] Moreover, the specific named types of instruments such as "total return swaps" in the clause beginning with the word "including" modify the more general description "a measure of credit risk or quality." Thus "total return swaps," a term which may include many different types of instruments, are included under this prong of the exemption only insofar as they are also "a measure of credit risk or quality." Of course, as noted in the Notice of proposed Rulemaking and reiterated above, nothing in these rules would affect the continued applicability of any existing Commission exemptions, policy statements or interpretations to such "total return swaps," or to any other instrument. Moreover, the non-repudiation provision of rule 35.3(c) that the Commission is adopting in a companion release would also apply to such instruments.

"total return swap" also describes an agreement whereby one party agrees to pay the total return on a loan portfolio to its counterparty in exchange for semi-annual payments based on a floating interest rate. It is this type of contract, transaction or agreement, traded among eligible participants, that is exempt under rule 36.2(b)(5), which the Commission is adopting as proposed.[19]

Proposed rule 36.2(b)(7) provides that cash-settled contracts on any economic or commercial index or measure beyond the control of the counterparties and not based upon prices derived from trading in a directly corresponding underlying cash market are eligible to trade on an exempt MTEF. The Board of Trade of the City of Chicago (CBT) suggested that proposed rule 36.2(b)(7) be modified so that it is not limited to economic or commercial indexes not based upon prices derived from trading in a directly corresponding cash market. It argued that the requirement that the index or measure be beyond the control of the counterparties is alone sufficient to protect against manipulation. CL 21–36 at 3. However, the Commission believes that both requirements must be met to qualify for the exemption. Basing the cash settlement price of a futures contract on prices derived from trading on an underlying cash market necessarily raises issues regarding the potential ability and incentives of traders in one market to affect pricing in the other market.[20] The Commission, by adopting the rule as proposed, intends to make eligible for this broad exemption only those MTEFs on which the contract's settlement price is objectively determined based upon prices that are "an objective measurement of an economic or commercial index." 65 FR at 38989. As the Commission made clear, the exemption,

> is not intended to include contracts based upon a cash-settlement price determined through cash-market trading of any physical commodity or financial instrument. * * * Finally, included in this category are contracts based on an objectively determined index value or measure of an economic or commercial index reflecting broad characteristics of the economy as a whole, or portions thereof, or material segments of commercial activity.

Id. The Notice of Proposed Rulemaking noted that the consumer price index or the gross domestic product, insurance data, bankruptcy rates, real estate rental indexes, measures of physical production or sales amounts such as housing starts or auto sales or crop yields are examples of contracts falling within this category.[21]

3. Definition of MTEF

Several comments raised issues relating to the proposed definition of MTEF. The Commission proposed in rule 36.1(b) to define "MTEF" as "an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others, enter into, agree to enter into or execute binding transactions by accepting bids or offers made by one person that are open to multiple persons conducting business through such market or similar facility." 65 FR at 38999. As explained in the Notice of Proposed Rulemaking,

> [t]he definition as proposed does not, and is not intended to, "preclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as "broker screens," to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions." Accordingly, the definition makes clear that it does not include facilities merely used as a means of communicating bids or offers nor does it include markets in which a single market maker offers to enter into bilateral transactions with multiple counterparties who may not transact with each other.

Id. at 38989 (citation omitted).

Several commenters recommended that the definition of MTEF exclude trading systems that include a credit screen. CL 21–21 at 6; CL 21–37 at 4. One commenter, DNI Holdings, reasoned that "this credit emphasis has always been a characteristic of swaps transactions, but has never been a characteristic of the futures exchanges." CL 21–21 at 5–6. However, in a companion notice of final rulemaking published in this edition of the **Federal Register**, the Commission, consistent with the amendment of part 35 to permit bilateral contracts, transactions or agreements to be cleared, is deleting individualized creditworthiness determinations as a condition for meeting its part 35 exemption for bilateral transactions.

Moreover, as technology increases the availability of electronic credit screens or filters, their use has become common in both multilateral and bilateral environments. As NYMEX notes in commenting on a different provision, which applies to multilateral trading facilities,

> this provision would appear to be premised upon the notion that the credit checking and position limit functionality would reside only within the FCM's internal systems * * *. However, * * * certain trading systems, such as NYMEX's NYMEX ACCESS" electronic trading system maintains the credit checking functionality as a component of the host computer. Clearing Members may enter inputs into the system to set specific limits per customer.

CL 21–47 at 8.

Finally, the exemptions in part 35 and part 36, when taken together, exempt derivative instruments from regulation under the Act whether or not they are traded on an MTEF if: (1) They are traded among or between eligible counterparties; (2) they are based on the underlying commodities, instruments or measures listed in part 36; and (3) they are, if cleared, cleared by an authorized clearing organization. As correctly observed in a comment referenced above, "participants in transactions that satisfy these three conditions would obtain legal certainty about the limited scope of CEA regulation regardless of whether the means for executing transactions did or did not satisfy the technical definition of an MTEF." CL 21–63 at 2. In light of the availability of the same degree of exemptive relief under either part 35 or part 36 for the specified commodities, the deletion of creditworthiness as a condition for exemption under part 35, and the use of credit screens and filters in both bilateral and multilateral environments, the final rule does not include such an exclusion.

The CBT suggested that the exclusion from the proposed MTEF definition in rule 36.1(b)(3) for "any facility on which only a single firm may participate as market maker and participants other than the market maker may not accept

[19] The rule, as proposed, referenced "spread swaps" rather than "credit spread swaps," which were referenced correctly in the preamble at page 38988. The final rule corrects this typographic error.

[20] This is in contrast to proposed 36.2(b)(6) which applies to "an occurrence, extent of an occurrence or contingency beyond the control of the counterparties to the transaction." As the Commission explained, this category is intended to include contracts:

> based upon the outcome of a contingency, such as a recurring or nonrecurring event, a specific incident, a natural phenomenon or the unambiguous results of some other condition that gives rise to a hedgeable risk.

65 FR at 38989. The Commission does not anticipate that the settlement price of such contracts could be derived from trading in a directly related cash market and has therefore not included that as a criterion.

[21] The Commission provided specific examples for each category of commodities eligible to trade on an exempt MTEF under proposed rule 36.2(b). 65 FR at 38988–89. Except for exempt securities, which are being deleted from eligibility in the final rules, each of those examples is incorporated herein by reference.

bids or offers of other non-market maker participants" should be deleted. It reasons that "the Commission's approach could be read to allow a futures exchange * * * to decide to use a single market-maker or specialist system, like many securities exchanges, and avoid being considered to be an MTEF." CL 21–36 at 4. However, under the proposed exclusion there can be but one counterparty to all market participants. That is quite different from using one or more specialists in a multilateral trading setting. In that structure, the bids and offers of non-specialists are permitted to interact with each other. The Commission believes that this is a valid and logical distinction between bilateral and multilateral trading structures and is adopting the proposed language as final.

The CBT also questioned whether the definition of MTEF in proposed rule 36.1(b) would affect the Commission's view of the scope of the Treasury Amendment exclusion in section 2(a)(1)(A)(ii) of the Act. CL 21–36–4. As the Commission stated in the Notice of Proposed Rulemaking,

> the definition of MTEF in proposed § 36.1(b) applies only to those rules in which it is cited. It is not intended to modify, alter, amend or interpret any other provision of the Act or the Commission's rules. For example, the proposed § 36.1(b) definition of MTEF does not affect the meaning or application of the statutory term, "board of trade." 7 U.S.C. 1a(1). Thus, the scope and application of the statutory exclusion in section 2(a)(1)(A)(ii) of the Act, popularly known as the "Treasury Amendment," which depends in part on the meaning of "board of trade," is in no way affected by the Commission's proposed adoption of a definition of MTEF under § 36.1(b) for purposes of the exemptions in part 35 and part 36 of its rules.

65 FR at 38989.[22]

Finally, commenters suggested a number of technical modifications to the rules. The CBT suggested that the Commission modify the final rules to clarify that it is the participant to whom notice is provided under proposed rule 36.2(f)(1) and that the separate trading location (or pit) required for trading on exempt MTEFs under proposed rule 36.2(f)(2) may nevertheless adjoin the location wherein Commission-recognized markets are traded. CL 21–36 at 5. The Commission agrees with these suggestions and is modifying the final rules accordingly. In addition, the Minneapolis Grain Exchange (MGE), CL 21–24 at 4, suggested that the Commission modify proposed rule 36.2(e)'s requirement that an exempt MTEF be legally separate from Commission-recognized markets. Upon further consideration of the issue, and based upon the fact that many of the exchanges historically overseen by the Commission have housed both designated contract markets and markets for trading spot or forward contracts without adverse consequence, the Commission is deleting that requirement from the final rules.

B. Derivatives Transaction Facilities.

The Commission also proposed a new exemptive category, "Derivatives Transaction Facilities," which provides for an intermediate level of regulation. This intermediate level of regulation was proposed to be available for two separate types of markets. Although many of the proposed rules are common to both types of markets, some of the proposed rules were tailored to apply to one or the other market.

The first type of DTF proposed by the Commission was for (primarily) "eligible-participants."[23] Under the provisions of proposed part 37, these markets or similar facilities, including the current boards of trades, would be eligible to become a DTF regardless of the method of transmitting bids and offers or matching system used, either on a case-by-case determination or if the contracts traded were on the list of commodities eligible to trade as an exempt MTEF.[24] The Commission proposed that such "eligible participant DTFs" would have the choice of whether or not to permit access to the market by non-eligible traders. If they did permit access to non-eligible traders, a number of additional requirements were proposed to apply, including enhanced disclosure and higher net capital requirements for the carrying FCM.[25]

The Commission proposed a second type of DTF under proposed part 37 for facilities that restricted participation to "eligible commercial participants." This type of "commercial-participant DTF" would be eligible to trade contracts on all commodities other than those domestic agricultural commodities enumerated in section 1a(3) of the Act,[26] any securities or indices thereof subject to section 2(a)(1)(B)(ii) of the Act or any exempt securities or indices thereof included in section 2(a)(1)(B)(v) of the Act. This type of eligible commercials-only market structure lessens many of the regulatory concerns regarding manipulation ordinarily present with contracts for tangible commodities and the regulations that are applicable to them have been tailored to this specific type of market.[27]

Although a few commenters objected to the DTF rules on jurisdictional grounds, many more commenters supported the concept of providing for an intermediate level of regulation. These commenters included both those interested in the eligible-participant DTF as well as those interested in the commercial-participant DTF. For example, Cargill stated that the "three-tier system seems to provide adequate regulation for a wide range of financial products and market participants depending on the relative sophistication of the participants." CL 21–49 at 2. The Coalition stated that it supports the Commission's efforts to create an intermediate category of regulated trading facility subject to less regulation than an RFE and more regulation than an exempt MTEF. The Coalition went on to say that the tiered approach recognizes that there is a wide range of types of markets, trading systems and market participants, and that it will facilitate market innovation. CL 21–65 at 16. The Association for Investment Management and Research (AIMR) opined that the tiered approach to regulation recognizes different operational profiles and risks inherent to individual participants. CL 21–64 at 3.

Commenters also suggested that the Commission reconsider various specific aspects of the rules as proposed. These suggestions clustered around how various commodities, including in particular, domestic agricultural commodities, should fit within the framework, how eligible participants should be defined, under what conditions non-eligible participants should have access, how the core principles should be enforced and what further tailoring might be appropriate for regulating commercial-participant DTFs. Each of these issues is discussed in greater detail below.

1. Jurisdictional Issues.

Although contracts, agreements or transactions traded on a DTF would be exempt from many of the Act's provisions and Commission regulations,[28] the exemption is contingent upon compliance with the conditions set forth in part 37. A market that applies to the Commission for recognition, and is so recognized by the Commission, is bound to comply with applicable provisions of the Act and Commission rules as a condition of this exemption.

Notwithstanding the requirement that a market or facility must apply to the Commission for recognition in order for the part 37 exemption to pertain, Mercatus questioned how commercial markets for physical commodities would be treated in this regime, and suggested that the Commission provide further guidance on the reach of the proposed part 37 in this area. CL 21–57 at 6. As the Commission noted in proposing part 37 (65 FR at 38989), and reiterates here, in exercising its section 4(c) exemptive authority to date, the Commission has not made a determination that the transactions being exempted were, or were not, subject to the Commission's jurisdiction under the CEA.[29] Rather, the Commission has exercised its section 4(c) authority to provide legal certainty for instruments that *may* be within its jurisdiction. However, the Commission will not entertain applications for recognition from markets or facilities offering transactions that clearly are outside of its jurisdiction.

The Coalition directly addressed this issue and supports the Commission's view. It reasoned that

> the Commission would not be authorized to exercise jurisdiction over activities that are clearly outside its jurisdiction under the CEA. Examples of this would include trading in equity options and spot transactions.
>
> At the same time, the conferees to the Futures Trading Practices Act of 1992 (the "FTPA") expressly authorized the Commission to exercise its exemptive authority under Section 4(c)(1) of the CEA without determining whether the exempted transactions are subject to the CEA. And they authorized the Commission to do so on such terms and conditions as the Commission deems appropriate. The conferees specifically so provided to enable the Commission to act without making consequential jurisdictional determinations that might create legal uncertainty for, or imply the illegality of, other transactions.
>
> For precisely the reasons motivating the FTPA conferees, the Coalition believes that the Commission is authorized to and should accept requests by trading facilities who wish to be registered as DTFs and who request that the Commission not make any determination that the underlying transactions are futures contracts or commodity options. The Coalition agrees with the Commission's implicit judgment that this approach will minimize the adverse jurisdictional implications, and therefore the legal uncertainty, that might otherwise arise if one trading facility elects to pursue DTF registration in circumstances where other, possibly analogous trading facilities do not. However, as suggested by the immediately preceding discussion, the Commission should only so proceed in cases where a bona fide issue as to its jurisdiction exists and should not so proceed in any case where it is clear that the Commission lacks jurisdiction.

CL 21–65 at 17–18.

As the Commission noted above with regard to the application of the part 36 exemption, this framework has no applicability to markets or facilities that clearly are outside of the scope of the Act and the Commission's jurisdiction. Thus, the availability of part 37 recognition to those markets that apply in no way carries a negative legal inference or uncertainty for any other market. Accordingly, the Commission is of the view that providing legal certainty through this part 37 exemptive relief to markets or facilities that may be subject to the Act is consistent with Congress' mandate to the Commission and is in the public interest.

2. Commodities

A number of commenters recommended that the framework be modified with regard to its application to the agricultural commodities enumerated in section 1a(3) of the Act. The Commission proposed that contracts on those commodities not be permitted to trade on a commercial-participant DTF, and that they be permitted to trade on an eligible-participant DTF only on a case-by-case determination by the Commission.

The response of commenters representing various agricultural interests was divided. National Grain and Feed Association (NGFA) argued that agricultural markets should be regulated in precisely the same manner as markets for financial commodities. The American Cotton Shippers (Cotton Shippers) argued that any differences in regulation of agricultural commodities penalizes these markets by denying them the benefit of potential marketing innovations. CL 21–12 at 3–5. MGE and the National Grain Trade Council (NGTC) also argued that there should be no distinction in the regulatory framework for the enumerated agricultural commodities. CL 21–24 at 1–2; CL 21–46. An FCM, F.C. Stone, contended that agribusiness firms have substantial risk management experience and can themselves weigh the risks of using a particular trading facility. CL 21–59 at 3.

A significant number of commenters favored permitting enumerated agricultural commodities to trade on an eligible-participant DTF on a case-by-case determination, as provided in the proposed rules. In a joint comment letter, eight agricultural producer groups[30] supported a case-by-case

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[22] The CBT raises the concern whether the Act's Treasury Amendment exclusion would continue to apply to an exempt MTEF without an explicit reservation in the rules of that provision of the statute. CL 21–36 at 4. As the Commission explained in the Notice of Proposed Rulemaking and reiterated herein, "the scope and application of the statutory exclusion in section 2(a)(1)(A)(ii) of the Act * * * is in no way affected" by this regulatory exemption. Thus, the determination of whether or not a person or facility is a "board of trade" for purposes of the Act, generally, and the Treasury Amendment, specifically, should be made without reference to the definition of "multilateral transaction execution facility" under rule 36.1(b), which operates in the context of exemptions for markets to which access is limited to eligible participants.

[23] In a companion notice of final rulemaking published in this edition of the **Federal Register** entitled "Rules Relating to Intermediaries of Commodity Interest Transactions," the term "institutional customer" is used rather than "eligible participant." These terms can be used interchangeably.

[24] The Commission also expects, however, on a case-by-case basis, that the surveillance history and the self-regulatory undertakings of a particular exchange or facility could make it possible to include a specific contract traded on that facility within the DTF category even if the underlying commodity does not meet the general eligibility criteria. An exchange or facility seeking a case-by-case determination would be recognized as a DTF for that contract or contracts only upon CFTC approval.

[25] Amendments to the Commission's rules governing intermediaries are published today in a separate release in this edition of the **Federal Register**. Although those amendments apply to all categories of intermediaries irrespective of where they choose to transact business, certain proposals differentiate between intermediation on various types of markets and for different types of customers.

[26] They are wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, potatoes, wool, wool tops, fats and oils, cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

[27] Many of these trading facilities are expected to replicate electronically various aspects of today's commercial markets, including trading exclusively between principals, and direct negotiation and documentation of trades. In addition, these facilities often do not provide clearing arrangements for contracts.

[28] Certain sections of the Act, including the fraud and manipulation provisions of the Act and the Commission's regulations are reserved in rule 37.8 and would continue to apply.

[29] As noted above, the legislative history states that the Commission in exercising its section 4(c) exemptive authority is not required to make an initial determination that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Accordingly, in carrying out this mandate, when the Commission exempted certain swap agreements in 1993, pursuant to section 4(c) of the Act, it stated:

> The issuance of this rule (Rule 35.2) should not be construed as reflecting any determination that the swap agreements covered by the terms hereof are subject to the Act, as the Commission has not made and is not obligated to make any such determination.

58 FR 5587, 5588 (Jan. 22, 1993). See also Order Granting the London Clearing House's Petition for an Exemption Pursuant to Section 4(c) of the Commodity Exchange Act, 64 FR 53346 (Oct. 1, 1999); Exemption for Certain Contracts Involving Energy Products, 58 FR 21286, 21288 (Apr. 20, 1993); Regulation of Hybrid Instruments, 58 FR 5580, 55821 n. 2 (Jan. 22, 1993). The Commission is following this same mandate with respect to this exemption for DTFs.

[30] The eight groups are: the American Farm Bureau Federation, American Soybean Association, National Association of Wheat Growers, National Cattlemen's Beef Association, National Corn Growers Association, National Farmers Union,

Continued

Commission determination of eligibility for DTF trading of individual agricultural commodities. They emphasized, however, that the Commission should provide notice and accept public comment as part of its deliberative process. They further cautioned that such a determination should include appropriate conditions in addition to the seven DTF core principles. CL 21–60 at 1. The NGTC concurred, suggesting that DTFs be permitted to trade agricultural commodities conditioned upon enhanced surveillance (RFE Core Principle 3), position limits (RFE Core Principle 4), and such other requirements that the Commission concludes are essential to market integrity. Cargill, while recognizing that certain agricultural commodities may be subject to manipulation, nevertheless recommended that the CFTC should retain flexibility to address this issue by spelling out criteria that would have to be met for such a commodity to achieve DTF status. CL 21–49 at 2–3.

The final rules, as proposed, provide that the Commission may determine on a case-by-case basis to permit any commodity, including the enumerated agricultural commodities, to trade on an eligible-participant DTF. The Commission remains convinced, as do many commenters, that this strikes the appropriate balance between caution and flexibility to respond to future developments. Moreover, the commenters' suggestions that any case-by-case determination include particular, tailored conditions to the general core principles are well-taken. In this regard, the Commission is of the view that, at a minimum, any DTF trading a commodity on a case-by-case basis will be required to retain the large trader reporting system that pertains to RFEs. The Commission will determine additional requirements, if any, during each individualized determination. In this regard, the procedures to be used by the Commission in such case-by-case determinations will indeed include public notice and an opportunity for public comment.[31]

Commission rule 37.2(a)(2)(i) provides that commodities eligible through a case-by-case determination to trade on a DTF "have a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience to provide assurance that the contract is highly unlikely to be manipulated." The Global TeleExchange (GTX) commented that the Commission should articulate the standards that it will use to judge whether there is a "sufficiently liquid and deep cash market" to warrant approving a contract for DTF trading. CL 21–40 at 4. The Commission is not establishing quantitative thresholds or criteria for DTF inclusion *a priori*, because the appropriate standards necessarily would differ across markets and time, and the adoption of specific, detailed standards would deny the Commission and applicants needed flexibility.[32]

In making a determination whether a contract is highly unlikely to be manipulated and thus eligible for DTF trading through an individualized determination, the Commission will consider both the liquidity and depth of the underlying cash market *and* the actual trading experience of the contract, including, where relevant, the facility's surveillance history in monitoring the market and in addressing market problems. Sufficient liquidity and depth of the underlying commodity can be demonstrated by looking at a number of specific factors. These include: (1) A high level of liquidity; (2) bid-ask spreads that are narrow relative to traded values; (3) relatively frequent transactions involving participants that represent major segments of the industry; (4) the absence of material impediments to participation by commercial entities; (5) transfer of ownership that is easily and readily accomplished at minimal cost; and (6) a pattern of pricing that exhibits continuity and the absence of frequent, sharp price changes such that a person cannot readily move materially the price of the product in normal cash market channels. Facilities seeking recognition as a DTF should provide to the Commission information on these factors. Actual trading experience acceptable for DTF eligibility can be based upon a history that the contract terms and conditions provide for a deliverable supply that is adequate to minimize the threat of market abuses such as price manipulation and distortions, congestion, and defaults,[33] and by having in place appropriate procedures effectively to oversee the market, including a large trader system, as well as a history of active surveillance to prevent or mitigate market problems.[34]

3. Access by Non-Eligible Participants

Only eligible participants (*i.e.*, institutional traders) would have unrestricted access to an eligible-participant DTF. Non-eligible participants may access the market, but only through a registered FCM with $20 million in net capital that is a clearing member of a contract market or RFE. *See*, rule 37.2(a)(2)(ii). A number of commenters opposed this requirement. The CBT contended that this requirement is overly burdensome and does not further the Commission's stated goal that DTF transactions "be transacted through FCMs that are more capable of properly maintaining such accounts and handling the associated risk." CL 21–36 at 7. It further reasoned that net capital is a poor proxy for an FCM's trading capabilities or level of regulatory compliance and that the rule favored large FCMs at the expense of smaller FCMs. *Accord*, CL 21–24. The CME disagreed with the premise of the rule that transactions on a DTF entail a higher degree of financial risk than do transactions on an RFE, especially in the context of futures based on liquid financial instruments carrying little risk of manipulation. CL 21–51 at 8. NGTC also questioned the relationship between an FCM's capitalization and its fitness to handle retail accounts on a DTF and argued that the $20 million threshold requirement was inconsistent with other CFTC capital requirements. CL 21–46 at 4–6.

Although adjusted net capital may be an imprecise measure of an FCM's capability to service accounts, the Commission nevertheless believes that the capital requirement proposed to be required of FCMs who trade on DTFs for non-institutional customers is appropriate at this time. Because of the absence of restrictions on the type of

National Grain Sorghum Producers and National Pork Producers Council, and will be referred to hereafter as "agricultural producer groups."

[31] Treasury similarly commented with respect to whether government securities should be permitted to trade on a DTF. It recommended that continued application of the segregation of customer funds requirements, certain adjustments to capital requirements for FCMs executing trades for retail customers and large trader reporting be conditions of permitting government securities to trade on a DTF. The Commission will certainly consider these views if any such request to trade government securities on a DTF is received. Moreover, consistent with current practice under the Act, the Commission will continue to keep Treasury apprised of new contracts involving government securities to be listed on both DTFs and RFEs.

[32] GTX also added that, in its view, telecommunication minutes and other telecommunication products should qualify as such a market. The Commission is not making such a determination in this rulemaking. That decision is better made as an individualized determination where a factual record can be developed and public comment specifically sought on the issue.

[33] In this regard, deliverable supply represents the amount of the commodity meeting the contract's specifications at the delivery locations that is available for delivery at its economic value in normal cash marketing channels.

[34] This requirement is not intended to preclude a market experienced in the trading of only cash or other instruments from making the necessary demonstrations. Such facilities may rely on that market experience in making the necessary demonstration.

trading mechanisms that could be used by a DTF, and the possibility of a greater number of such competing markets trading similar products, filling non-institutional customer orders at the best price would likely require the FCM to have a more extensive and sophisticated infrastructure and greater trading resources than an FCM operating in a traditional setting. Accordingly, the Commission, at this time, is adopting the capital-related access restriction as proposed. The Commission will consider further appropriate measures to permit additional FCMs to handle non-institutional customers' access to DTFs as experience is gained under the rules.

The Managed Funds Association (MFA) argued that customers trading through registered CTAs should have trading access to DTFs without regard to their individual financial qualifications. In particular, MFA suggested that a CTA with at least $25 million under management should be permitted to engage in transactions on behalf of their clients on all eligible-participant DTFs. CL 21–31 at 5. Although the Commission is not prepared at this time to treat a CTA's customers as eligible participants without limitation on the basis of the CTA's management of the account, the Commission does recognize that CTAs provide expertise and professional management to their customers. In recognition of this role, the Commission is revising proposed rule 37.2(a)(2)(ii) to permit CTAs, with at least $25 million under management and having non-institutional clients, to access DTFs that permit non-institutional participants on behalf of both their institutional and non-institutional customers through accounts carried by *any* registered FCM. The Commission will reconsider this issue when it looks more broadly at revising current rules applicable to CTAs and commodity pool operators.

NYMEX expressed concern that the proposed requirement that non-eligible traders access a DTF through an FCM may not address adequately electronic systems with direct customer order entry on which FCM credit filters are resident. The Commission agrees, and is modifying 37.2(a)(2)(ii) to make it clear that while the accounts of non-eligible traders must be carried by registered FCMs, they may have direct trading access to the DTF if a credit filter is required to be used by the FCM, regardless of where the filter is resident.

4. Commercial-Participant DTF

The Commission proposed that an intermediate level of regulation also apply to commercial-participant DTFs. The proposed rules applicable to commercial-participant DTFs, although having common elements with eligible-participant DTFs, also have a number of special features. For example, the proposed core principles for DTFs may include two alternatives, with the proviso that they apply to the market "as applicable." *See, e.g.*, Core Principle 2, rule 37.4(b). Only one of the alternatives may be appropriate for a particular facility, and should be understood to apply in that manner.

One commenter, a company beginning an electronic platform for trading "physical commodities and derivative products * * * among commercial participants," opined that "the overall approach * * * will result in the imposition of excessive and unwarranted burdens on Commercial DTFs." Intercontinental Exchange, LLC (Intercontinental) CL 21–22 at 2. A second letter from a group of oil and gas producers, refiners, processors, and marketers and electric utilities and marketers (Energy Group) raised many of the same issues as did Intercontinental. CL 21–23. Specifically, these letters suggested that the Commission provide for a streamlined review procedure for recognition of a DTF within a fixed time period. The letters further stated that the DTF may not have "exchange-style memberships or rules. Any substantive review of commercial DTFs, their owners or operators, therefore, or any review of rules or principles applicable to trading on or through such facilities would be inappropriate and unwarranted and will render the DTF framework completely unworkable." CL 21–22 at 3. They also noted that electronic platforms may have "trading protocols, product descriptions, fee schedules, user guides and similar trading or transaction related documents or information" rather than trading rules. *Id.*

The proposed rules, however, recognized this distinction and provided that the facility have rules *or terms and conditions* governing trading procedures. *See, e.g.*, proposed rule 37.3(a)(2). The reference to "terms and conditions" was intended to apply to trading platforms that did not have exchange-style rules and instead incorporated their trading procedures as terms of their operating agreements. However, "terms and conditions" is already a defined term under Commission rule 1.41(a)(2). To provide greater clarity of the Commission's intent, the final rules refer to "rules, which may be trading protocols." Trading protocols include the methods and conditions for trading that may be included in a user's guide or operator's manual, customer agreements, screen trading prompts or other similar documents or writings.[35]

Intercontinental also opined that the reservation of various sections of the Act in proposed rule 37.5(a) potentially would subject a DTF to a number of additional obligations beyond those included in the rules themselves. CL 21–22 at 4. The Commission's intent, however, in reserving various sections of the Act in part 37 was not to import additional regulatory obligations into the part 37 rules. Rather, its reservation of various sections of the Act is to establish legal authority for promulgating these regulatory requirements. By reserving these sections of the Act, the Commission does not intend to incorporate regulatory requirements for DTFs beyond those specified in part 37. Moreover, the Commission intends that the reserved sections of the Act be interpreted as applying to DTFs as the difference in the contexts require. Some of the Act's provisions, such as section 4c(a) of the Act are reserved "as applicable," depending upon the particular characteristics of a trading facility. The Commission will confirm whether that section of the Act applies to a particular facility in its Order granting recognition to the facility.

In contrast to the reservation of provisions of the Act effectuating the regulatory conditions of the exemption, the Commission has deleted from the final rules in parts 37, 38, and 39 specific reservation of various enforcement provisions that it had proposed specifically to retain. The Commission has determined that such specific reservations are unnecessary. Rather, such specific reservations do not affect the Commission's existing authority to investigate violations and to bring enforcement actions. *See*, section 4(d) of the Act.

In order to conform the regulatory requirements of the commercial-participant DTF more closely to cash market practices, the Commission is deleting the proposed requirement that participants respond to special calls for information about their trading activities. The Commission will rely instead on its investigative authority, which also applies to a person's cash market activities. Moreover, the Commission is not requiring that a non-U.S. participant appoint an agent for receipt of service of process within the United States or that the DTF act in that

[35] In addition, the Commission is amending the definition of "rules" under Commission rule 1.41(a)(1) specifically to include the term "trading protocols."

capacity. Instead, the Commission is requiring that the commercial-participant DTF provide notice to its non-U.S. participants of communications from the Commission. In the event that a non-U.S. participant fails to comply with such a Commission communication, the Commission may direct recognized DTFs to deny the participant further trading access. *Compare,* 17 CFR 21.03. By modifying the final rules in this way, the Commission is bringing the rules for commercial-participant DTFs into closer alignment with the operation of related cash markets, and the requirements on participants on commercial-participant DTFs, by and large, will be no greater or no different than is applicable to cash market trading.

Finally, both comment letters suggested that the rules applicable to DTFs be located entirely within part 37 without cross-referencing other rules. The Commission has modified the final rules to reduce the number of cross-references within part 37. Accordingly, the final rules have been reorganized to include a new rule 37.5 relating to information requirements (formerly in proposed part 20) and has divided the requirements for recognition into two sections. These modifications to the final rules change the substance of the rules only as discussed above. A number of voluntary provisions remain as cross-references to other rules.

Several commenters raised issues regarding the proposed definition of "eligible commercial participant." Both NYMEX and the Commodity Floor Brokers and Traders Association expressed concern that exchange locals were not included within the category of eligible commercial participants. They reasoned that locals provide the same market making function as do dealers, a category included within the definition of eligible commercial participant. NYMEX noted that professional floor traders provide approximately 43–49% of the trading volume in NYMEX energy contracts. CL 21–47 at 4. NYMEX further noted that unless floor traders were included, the commercial-participant DTF model would "be used to exclude * * * another business model [exchanges] that is generally comparable but for the sharing of market making responsibilities among a group of professional market makers rather than concentration of this function in a single dealer." *Id.* at 10. The CBT concurred, stating that "[c]ertainly floor brokers and floor traders that trade regularly on exchange markets should be considered to be as sophisticated as any market participants. For that reason, in the Commission's current part 36 rules, floor brokers and traders are defined to be eligible participants without regard to any total or net asset test." CL 21–36 at 6. The Commission agrees that Commission registrants, particularly floor brokers and floor traders should be included as eligible to trade in a DTF with a guarantee of their obligations by a futures commission merchant, as suggested by NYMEX.[36]

These rules establish an intermediate level of regulation for DTFs appropriate to the commodities traded and the participants trading thereon. DTFs have great flexibility in determining the trading systems and mechanisms that they will use. Accordingly, and in light of their institutional nature, participants trading on DTFs are expected to exercise the appropriate degree of understanding in making use of these facilities. Notwithstanding part 37's greater degree of regulatory flexibility, the Commission retains its enforcement responsibility to ensure compliance with the fundamental regulatory goals of the Act, as included within these rules. The Commission believes that it has retained the tools necessary to accomplish this mandate and by adopting a more flexible regulatory approach is not thereby indicating any diminishment in its resolve effectively to enforce compliance.

5. Procedures for Recognition

A board of trade, facility, or entity seeking recognition as a derivatives transaction facility would be deemed to be recognized thirty days after the Commission received the application if the application met the conditions for recognition pursuant to §§ 37.3 and 37.4 and the applicant and/or its rules or procedures do not violate the Act or the Commission's regulations.[37] An entity seeking recognition as a DTF may request that the Commission approve its initial set of rules, which may be trading protocols, and any subsequent rules or rule amendments under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. However, the DTF is only required to notify the Commission of rules and rule amendments, which include trading protocols, in the same manner that it notifies market participants, but no later than close of business on the day preceding implementation.

Several commenters raised issues regarding the procedures for recognition. Kiodex, a risk management services firm, suggested that the applicant have an opportunity to correct a deficiency before the "Commission convert the review into a full-scale designation proceeding." CL 21–29 at 4. However, proposed rule 37.4(c) merely provided that upon termination of review under the thirty-day period, the application would be subject to the "procedures specified in section 6 of the Act." That provision merely incorporates the time periods and other procedures from section 6; it is not intended to convert the application or its review into one for contract market designation.

On a related point, the CBT suggested a technical modification to clarify that a board of trade or other entity that files for recognition as a DTF by certification is not required to demonstrate that it satisfies conditions for recognition under part 37. CL 21–36 at 10. As both the proposed and final rules provide, however, the filing by a facility which is already a designated contract market need only include the DTF's rules and its certification that it meets the conditions for recognition as a DTF under the part 37 rules.

Intercontinental suggested that the Commission specifically retain the flexibility to grant recognition to new facilities at various stages of readiness. CL 21–22 at 1–3. The Commission agrees, and has modified rule 37.4 as proposed to provide that the Commission may determine to recognize a DTF upon conditions. These might relate either to additional regulatory undertakings by a particular facility, or to recognition of a facility pending its subsequent fulfillment of a regulatory requirement. This flexibility will enable new entrants to apply for recognition before development of their trading system is complete and to be recognized contingent upon their meeting all of the recognition requirements.[38]

[36] This determination is based on the important role that floor brokers and floor traders, which are Commission registrants, may fulfill in trading on a Commission-recognized market under the part 37 exemption. For this reason, the Commission does not agree, as NYMEX suggests, that floor trades or floor brokers should be eligible participants for purposes of parts 35 and 36 under conditions other than currently provided.

[37] The Commission has made clear in the rule 37.1(a) scope provision that the part 37 rules apply to a "a board of trade operating as a derivatives transaction facility." Moreover, DTFs, as a condition of the part 37 rules, generally would be considered under proposed rule 37.1(a) to be subject to the Act's provisions as though the DTF were a "designated contract market" under the Act. As a board of trade within the meaning of that term under the Act (and as a contract market by operation of part 37), a DTF on which futures transactions are traded would be covered by the provisions of Subchapter IV of Chapter 7, Title 11 of the Bankruptcy Code. Similarly, DTFs should be considered "contract markets" for the purpose of, for example, Sections 556 and 761 of the Bankruptcy Code, and 12 U.S.C. 4402. The Commission has modified final rule 38.1(b) to make a similar clarification relating to RFEs.

6. Enforcement of Core Principles

Several letters raised concerns regarding the interpretation, enforcement and oversight of core principles. NYMEX suggested that the guidance with respect to Core Principle 6 which provides that rule 1.31 is the acceptable practice should be amended to read "an acceptable but non-exclusive means regarding the form and manner for keeping records." CL 21–47 at 11. The Commission appreciates that the current wording does not appear to offer a high degree of flexibility in meeting this core principle. However, rule 1.31 was recently amended (64 FR 28910) and in its amended form provides a degree of flexibility in compliance. Moreover, rule 1.31's provisions are consistent with the record-keeping requirements of the Securities and Exchange Commission (SEC). In light of the importance of recordkeeping to the Commission's ability to fulfill its oversight function and the high number of Commission registrants that must also comply with similar SEC requirements, the Commission is adopting the guidance as proposed and will provide further guidance on acceptable record-keeping practices after additional study of the issue.

The CBT opined that "safeguards should be provided to ensure that flexible standards do not become a license for the CFTC to dictate to exchanges." CL 21–1 at 2–3. In contrast, Mercatus objected to the use of core principles as too vague. *See* CL 21–57 at 7, 10. *See also* CL 21–45 at 3. The Commission finds both of these arguments unpersuasive. First, the core principles are specifically designed to afford flexibility to trading facilities to design innovative trading mechanisms in an expeditious manner. Second, this flexibility should not be confused with vagueness. While not like typical prescriptive regulations, the core principles nevertheless do set forth specific standards to be satisfied by those seeking to gain and maintain recognition. Finally, any interpretative advice, assistance or direction provided by the Commission would constitute guidance only. It does not preclude any facility from complying with the core principle in some other manner.

Accordingly, the framework does not place the burden of proof upon those covered by the framework to demonstrate why a particular practice that differs from the specific guidance offered in a statement of acceptable practices complies with a particular core principle. See, CL 21–57 at 7. If, as a practical matter, a disagreement on the interpretation of any core principle could not be addressed through informal mechanisms, the burden of proof to establish a violation of a core principle would not differ from the Commission's current burden, and would rest with the Commission in any formal regulatory or enforcement proceeding.

Nevertheless, the CBT and CME called for a "mechanism" for resolving disagreements over interpretation of core principles short of the CFTC taking punitive action. CL 21–51 at 5. CBT suggested, for example, that all adjectives, such as "appropriate," "periodically," "proper," and "timely" be removed from the core principles and that the Commission "structure an alternative dispute resolution mechanism to resolve disagreements about the application of core principles." CL 21–36 at 10. The Commission appreciates the concerns of these commenters. By moving from prescriptive rules to more general core principles, self-regulatory organizations will have not only greater flexibility in how they meet the regulatory requirements, but more responsibility, as well. Purging the core principles of adjectives will not address the issue of whether the self-regulatory organizations act in a manner consistent with these internationally accepted norms for the conduct of trading facilities. The Commission fully expects that as self-regulators, the entities covered by the framework will strive to act at the highest ethical and professional standards for the protection of customers and the integrity of the market.

Finally, trading facilities must recognize that the requirements contained in the core principles may involve many interested parties, not just a facility's members or owners. Accordingly, as FIA suggested, when issuing interpretative guidance having industry-wide application, the Commission will follow the notice and public comments procedures of the Administrative Procedure Act, as appropriate. CL 21–45 at 5.[39]

C. Recognized Futures Exchanges

The Commission further proposed to recognize all currently designated contract markets, except for those designated as contract markets in section 2(a)(1)(B) commodities, as "Recognized Futures Exchanges" under proposed part 38. To provide recognized futures exchanges with greater operational flexibility, part 38, as proposed, would replace many prescriptive rules with performance-based rules, or core principles. Moreover, Commission review would not be required for new contracts or for rules and rule amendments prior to listing or implementation, except for the terms and conditions of agricultural commodities enumerated in section 1a(3) of the Act. Furthermore, the exchanges would not be required to be responsible for auditing intermediaries' sales practices. Instead, enforcement could be the responsibility of a registered futures association.[40]

The preamble to proposed part 38 noted that RFE markets can list for trading contracts on any commodity, including those having potentially a greater risk of price manipulation. In addition, because they could permit unconditioned access to both institutional and non-institutional traders, they raise greater concerns regarding customer protection than do DTFs. 65 FR at 38991. Therefore, as the preamble noted, the proposed rules in part 38 preserve a higher level of market surveillance, position reporting obligations, customer protections and financial safeguards than do the proposed rules for DTFs. *Id.* A number of commenters questioned these requirements as incorporated in the core principles that are applicable to RFEs.

1. RFEs as a Means of Regulatory Reform

As was the case with commenters on the proposed DTF category, many commenters supported the general concept of changing from prescriptive regulations to broad, flexible core principles for RFEs.[41] Some

[38] The Commission has modified the final application guidances to make clear that DTFs and RFEs must disclosure limitations of liability, if any. Such limitations of liability, consistent with longstanding Commission policy, may not limit liability for violations of the Act or Commission rules, fraud, or wanton or willful misconduct.

[39] The National Futures Association (NFA) advocated that its member rules be the primary means of developing best practice or other interpretative guidance for core principles applying the framework. The Commission appreciates the NFA's willingness to assist in interpreting Commission rules and in certain instances, where the parts of the framework involve NFA's member rules, the Commission may ask for NFA's interpretative assistance. However, it would be inappropriate for NFA to assume that role for areas of the framework that do not involve its membership, particularly for example, where a trading facility does not permit intermediation.

[40] As pointed out in the Federal Register release proposing part 38, the NFA currently is the only such registered organization. *See* 65 FR at 38991.

[41] Specifically, for example, Cargill supported the basic structure of the regulatory relief for organized

Continued

commenters expressed concern, however, that the RFE proposal would permit greater deregulation than appropriate for these commodities and market participants. For example, the Silver Users Association (SUA) maintained that any change in the regulatory structure for silver trading must provide clear assignment of responsibility for trading facility operators, and procedures for market participants to obtain redress for improper actions.[42] The agricultural producer groups urged that new agricultural contracts and amendments to such contracts continue to be subject to Commission review prior to their trading. CL 21–60 at 1. Two commenters, Mercatus and CBT, questioned whether the proposed framework for RFEs was sufficiently deregulatory in nature. CL 21–36 at 12.

The Commission remains convinced, and most commenters agreed, that the use of core principles supplemented by statements of acceptable practices strikes the right balance between the need for appropriate regulation and for flexibility. The proposed rules for RFEs are not intended to remove internationally accepted standards for market or financial integrity or for the protection of customers trading on futures exchanges. Rather, they are intended to offer U.S. exchanges greater flexibility in meeting those requirements. As the Commission noted:

> [t]hese proposed rules * * * [are] intended to provide greater flexibility in meeting technological and competitive challenges. At the same time, the Commission will retain its oversight authority to ensure the integrity of markets and prices, to deter manipulation, to protect the markets' financial integrity, and to protect customers.

65 FR at 38987. This approach, although providing exchanges a high degree of flexibility to meet these challenges, is not intended to relieve U.S. exchanges from their obligations to comply with the policies and requirements of the Act, nor to operate in a manner that fails to meet "internationally-accepted guidance regarding appropriate regulatory measures for exchange-traded derivatives markets."[43] 65 FR at 38987.

2. Comments Concerning the Core Principles

A number of commenters offered suggested changes to the core principles. The Commission has considered these comments within the overall goal that the core principles establish broad, flexible requirements, that at the same time are specific enough to provide notice of the required performance by the recognized entity. In this regard, the final version of Appendix A to part 38 herein, clarifies that the guidance offered on the means of complying with the core principles is for illustrative purposes only and is not intended to be a mandatory checklist for compliance.

Specifically, AIMR suggested that Core Principle 3 (Position Monitoring and Reporting) should simply require exchanges to have the process and rules necessary to deter market manipulation. CL 21–64 at 4. That formulation, however, fails to capture the breadth of an RFE's responsibility under the Act. Both prevention of price manipulation and assurance of market and price integrity are fundamental public policy interests of the Act. Accordingly, the Commission believes that it is vital that RFEs have more than just rules and a process to deter manipulation, as suggested by AIMR. The Commission therefore is retaining the language of Core Principle 3, which requires an RFE to monitor "on a routine and non-routine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process."[44]

NYBOT and CBT expressed concerns about Core Principle 7, which relates to transparency. NYBOT raised the concern that the required level of transparency under Core Principle 7 should be appropriate to the method of order execution, explaining that some aspects of transparency are affected by whether trading is electronic or open-outcry (*e.g.*, bids and offers are not automatically captured in open-outcry trading). CL 21–7 at 3, CL 21–27 at 2. However, technology is rapidly transforming futures markets and the core principles are intended to be understood broadly and applied flexibly in each particular market context. Accordingly, the Commission believes that the transparency requirement, as proposed, provides the necessary guidance for both open-outcry and electronic markets. The CBT suggested that the Commission revise the DTF Transparency Core Principle to mirror the proposed RFE Transparency Core Principle, commenting that DTFs appear to have the more onerous transparency burden. CL 21–36 at 10. The material difference between the two core principles is that the DTF Transparency Core Principle requires disclosure of information to both market participants and the public. That requirement is particularly necessary at the DTF level in light of the framework's greater reliance on disclosure rather than merit-type regulation.

Upon further consideration, however, the Commission believes that the Transparency Core Principle proposed to apply to DTFs should be applied at the RFE level, as well. The RFE Transparency Core Principle as proposed could result in permitting an inappropriate reduction in the information currently available to market participants. Therefore, under the final Transparency Core Principle, both RFEs and DTFs must provide information to market participants, on a fair, equitable and timely basis, regarding prices, bids and offers, as well as other pertinent information as appropriate to the market. This additional language is not intended to interfere with the current practice of futures exchanges of selling price and other market information through various information vendors.

FIA suggested in its comment that the guidance regarding price and reporting time as it relates to block trading should be eliminated from Appendix A, Core Principle 8.[45] CL 21–45 at 6–7. The Commission understands the difficulties in implementing both the "fair and reasonable price" and "transparency" guidance. Nevertheless, current block trading provisions meet both such criteria, and the Commission believes it appropriate to retain them at this time. In this regard, the Commission notes that the reporting time provision is not the "specific timing requirement" referred to by FIA, but a provision for transparency of the block trade, directing that the trade be reported "within a reasonable period of time."(emphasis added). 65 FR at 39006. Without such transparency, the market's price discovery role would be harmed. The Commission may reconsider this guidance in the future if, in practice, these criteria prove to be unworkable.[46]

NYBOT suggested that requiring all RFEs on which intermediaries trade to have relevant rules under Core Principle 10 (Financial Standards) would impose a new, onerous burden, and might result in conflicting rules being implemented at different RFEs. NYBOT states that segregation of customer and proprietary funds and custody and investment of customer funds are currently governed by Commission rules implemented under the auspices of a designated self-regulatory organization. CL 21–7 at 2. The adoption of Core Principle 10 is not intended to impose a "new, onerous burden" on exchanges, to change current systems in place for the oversight of intermediaries nor to discourage the voluntary harmonization of rules by the exchanges through the operation of organizations such as the Joint Audit Committee.

The Commission has modified Core Principle 15 in response to concerns that it inadvertently could impose a duty different in form or degree from the antitrust statutes and court decisions construing them. *See, e.g.*, comment of the Board of Trade Clearing Corporation, CL 21–20 at 13. Final Core Principle 15 requires that RFEs operate in a manner consistent with the public interest to be protected by the antitrust laws. The Commission itself remains subject to the requirements of section 15 of the Act, and will continue to take into consideration the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act in requiring or approving any bylaw, rule or regulation of any facility recognized under this framework.[47]

3. New Products and Rules and Amendments Thereof

The Commission proposed that alteration by RFEs of the terms and conditions of futures contracts on the enumerated agricultural contracts be subject to prior review and approval by the Commission. The NYBOT, MGE, CBT, and CME opposed this provision, arguing that RFEs should be permitted to alter the terms or conditions of agricultural contract terms and conditions by self-certification, the same process permitted for contracts on all other commodities.[48] In contrast to the exchange commenters, a number of commenters representing agricultural interests specifically supported retention of the proposed 45-day prior approval requirement for changes to the terms and conditions of existing agricultural contracts.[49] Concern was also raised by the National Cotton Council and the agricultural producers groups regarding the certification process for new contracts. CL 21–54 at 1. They suggested that Commission prior approval under a 45-day review period be required for new agricultural contracts, as well as for alterations of existing contracts.[50] CL 21–60 at 2.

The Commission concurs with the agricultural producers groups that, as "agricultural futures markets serve as the price discovery mechanism for agricultural commodities, any changes to these markets can have a significant impact on farmers and ranchers." CL 21–60 at 2. In light of their reliance on the existing futures markets for price discovery, the Commission concurs that agricultural producers, processors and merchants have an interest in commenting on significant alterations to the terms of contracts prior to their implementation. Accordingly, the Commission is adopting the prior approval provision for amendments to contract terms and conditions, as proposed. However, the Commission does not agree that the same opportunity for comment is necessary for new contracts, upon which producers have not previously relied. The success of a new contract will rest on its attractiveness to market participants and the marketplace will determine whether the terms and conditions of a new contract offer a reliable price discovery mechanism. Accordingly, the Commission has decided to permit an RFE to list new agricultural contracts by self-certification, as proposed.

Several commenters opposed Commission authority to stay the effectiveness of rules implemented by exchange certification during a Commission action to disapprove those rules. *See,* rule 1.41(c)(4) as amended.[51] They argued that such stays could disrupt the marketplace.[52] However, under the rule, the Commission would only be able to stay a proposed rule incident to disapproval proceedings and the stay determination would not be delegable to Commission staff. The Commission anticipates that it will stay implementation of an RFE rule only in limited and egregious situations, where, for example, one or more core principles

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futures exchanges. CL 21–49 at 2. NYMEX strongly supported the overall design of the proposal. CL 21–47 at 1. CME strongly supported the Commission's approach in moving from prescriptive regulations to core principles. CL 21–51 at 5. NYBOT stated that the proposed framework struck a measured balance between self-regulation and federal oversight in many respects. CL 21–27 at 1.

[42] The SUA expressed the additional concern that if liquidity in silver trading at RFEs using open-outcry diminishes due to interest in electronic platforms, procedures should be in place for making pricing data from electronic trading platforms available to the public on a timely basis. CL 21–39 at 3.

[43] Under Rule 38.3(f), as modified in the final rules, RFEs are required to carry out international financial and surveillance information sharing arrangements. The Commission points out that, at this time, the International Information Sharing Agreement and Memorandum of Understanding developed by the FIA Global Task Force on Financial Integrity is one such arrangement.

[44] AIMR also suggested that Core Principle 4 (Position Limits) be modified only to require RFEs to hold members accountable for their positions. However, position limits are a necessary tool for preventing market manipulation or distortion in many markets and the Commission therefore declines to modify the core principle as proposed. However, the Commission in its proposed statement of acceptable practices specifically determined that exchange position accountability rules are an acceptable means of meeting the core principle for various types of markets. 65 FR at 39005.

[45] Core Principle 8 requires an RFE to "provide a competitive, open and efficient market." A primary goal of the Commission's framework is to ensure that prices discovered in futures and derivatives markets are accurate and reflective of current supply and demand conditions in the markets. Core Principle 8 specifically includes the concept of "efficient" markets in order to make clear that trading systems that discover prices reflective of the forces of supply and demand and accurately reflect publicly held information may include certain practices, such as block trades, that permit large traders to enter the market with a single trade as opposed to having to execute numerous small trades. By including "efficiency" in addition to open and competitive markets, the Commission is promoting a flexible standard that protects the price discovery process of the markets while permitting a variety of trading practices.

[46] AIMR recommended that the Commission reword Core Principle 8 as an RFE should not only provide for, but should also facilitate the appearance of, a competitive, open and efficient market (trading system). CL 21–64 at 4. The final version of Core Principle 8 does not include the additional language proposed by AIMR. The Commission believes that provision of an open and competitive market would also promote the appearance of such a market, without the need explicitly to so require.

[47] Section 15 of the Act is also reserved under rule 38.6(a). Section 15 of the Act requires the Commission to take into consideration the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act in issuing any order, adopting any regulation, or approving any rule.

[48] *See* CL 21–7 at 2, 4; CL 21–24 at 3–4; CL 21–36 at 11; CL 21–51 at 5.

[49] *See* CL 21–52 at 1–2 (National Cattlemen's Beef Association); CL 21–54 at 1 (The National Cotton Council of America, "National Cotton Council"); CL 21–60 at 1–2 (agricultural producers groups).

[50] The comment letter stated that the agricultural organizations were concerned that exchanges could use the ability to offer a new contract with one day's notice to avoid prior review and approval for amendments and changes to agricultural contracts. It could also cause market fragmentation, since new trading facilities might test new contracts on the market without a thorough prior business analysis.

[51] Amendments to Commission rule 1.41 were proposed as part of the new regulatory framework. These amendments, appearing in the final version in this **Federal Register** release, allow an RFE to make modifications to its rules (other than terms or conditions of contracts on the commodities enumerated in section 1a(3) of the Act) by certification to the Commission that the new or amended rule does not violate the Act or the Commission's regulations. Upon the adoption of the attached amendments to Commission rule 1.41, the Commission's earlier certification proposal, published as a proposed rule on November 26, 1999 (64 FR 55428), will be unnecessary. Therefore, the Commission is withdrawing proposed rule 1.41(z) at this time.

[52] *See, e.g.*, CL 21–24 at 4 (assertions by MGE that rules should not be stayed absent sufficient evidence that market participants will suffer material harm). *See also* CL 21–27 at 3 (conclusions by NYBOT that staying a rule pending a proceeding to disapprove or amend it could take months, and the uncertainty thus created would deter traders); CL 21–36 at 11–12 (statement by CBT that it could be detrimental for the Commission to retain authority to impose a stay during a proceeding to disapprove, alter, or amend an RFE rule as stays could disrupt the marketplace); CL 21–51 at 5 (observation by CME that the Commission should not retain authority to stay operation of an exchange rule as, in an emergency situation, the Commission could act under section 8a(9) of the Act, without advance notice or a hearing).

were being violated, but that the Commission's emergency authority would not apply.[53] In such serious situations, the Commission believes that the unavailability of a stay could cause significantly more disruptive effects than imposition of a stay in appropriate situations. In those rare instances, the absence of a stay could cause significantly greater harm to the market than its use. The Commission has determined that this authority is central to its ability to oversee the operation of RFEs consistent with its responsibilities under the Act.

4. Bankruptcy Status

Several commenters requested that the Commission clarify that transactions on both DTFs and RFEs continue to enjoy the same Bankruptcy Code status as transactions on a designated contract market.[54] As noted above, recognized RFEs and DTFs are both "boards of trade" within the meaning of the Act, and pursuant to these regulations, are deemed to be subject to all provisions of the Act and Commission rules applicable to a "designated contract market." *See, e.g.*, rule 38.1(b). Moreover, final part 38 explicitly reserves the applicability of part 190 to part 38 transactions. Accordingly, as explained in footnote 37 above, as a board of trade within the meaning of that term under the Act (and as a contract market by operation of part 38), transactions on RFEs (and DTFs) would be covered by the provisions of Subchapter IV of Chapter 7, Title 11 of the Bankruptcy Code, which apply to futures contracts (or options) traded on or subject to the rules of a board of trade or contract market.[55]

III. Section 4(c) Findings

These rule amendments are being promulgated under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions from any of the requirements of any provision of the Act. For any exemption granted pursuant to 4(c), the Commission must find that the exemption would be consistent with the public interest. For any exemption granted pursuant to 4(c) from the requirements of section 4(a), the Commission must further find that the section 4(a) requirement(s) should not be applied to the agreement, contract or transaction to be exempted, that the exemption would be consistent with the public interest and the purposes of the Act, that the agreement, contract, or transaction to be exempted would be entered into solely between appropriate persons and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[56]

The Commission specifically requested the public to comment on these issues. The Commission finds and the commenters overwhelmingly concurred that the proposed regulatory framework would be in the public interest. As explained above, these proposed rules establish a new regulatory framework. The proposed framework is intended to promote innovation and competition in futures trading and to permit the markets the flexibility to respond to technological and structural changes. Consequently, the Commission finds that section 4(a) requirements should not be applied to agreements, contracts or transactions executed pursuant to parts 36, 37 or 38 except as provided for in each part, respectively. Moreover, the proposed framework establishes three regulatory tiers with regulations tailored to the nature of the commodities traded and the nature of the market participant. As the Commission explained above, access to each of the tiers is dependent upon the appropriateness of the participant.

Accordingly, and for the reasons detailed above, the Commission finds that each class of participant eligible to participate in a specific tier is appropriate for that exemptive relief. Finally, the exemptions for parts 37 and 38 are upon stated terms. As detailed above, these terms include application of regulatory and self-regulatory requirements tailored to the nature of the market. In light of these conditions, this exemptive relief would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act and the exemptions are consistent with the purposes of the Act.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* (1994 & Supp. II 1996), requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets, FCMs, CTAs, Floor Brokers and Floor Traders. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[57] In its previous determinations, the Commission has concluded that contract markets and registered FCMs are not small entities for the purpose of the RFA.[58] With respect to CTAs, Floor Brokers and Floor Traders, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would allow qualifying CTAs, floor brokers and floor traders to access trading in less regulated futures markets than is currently the case; consequently, these rules should not have any, or result in only a de minimus, increase in the regulatory requirements that apply to CTAs, Floor Brokers and Floor Traders. Accordingly, the Commission does not expect the rules, as adopted herein, to have a significant economic impact on a substantial number of small entities. Furthermore, no comments were received from the public on the RFA and its relation to the proposed rules. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

These parts 15, 37, 38 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)), the Commission has submitted a copy of these proposed parts to the Office of Management and Budget (OMB) for its review (44 U.S.C. 3504(h)). No comments were received in response to the Commission's invitation in the NPRM to comment on any potential paperwork burden associated with these regulations.

List of Subjects

17 CFR Part 1

Commodity futures, Consumer protection, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 5

Authority delegations (Government agencies), Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 15

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Authority delegations (Government agencies), Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 100

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 170

Authority delegations (Government agencies), Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 180

Claims, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4, 4c, 4i, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6, 6c, 6i, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.37 is amended by adding paragraphs (c) and (d) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

* * * * *

(c) Each recognized futures exchange shall keep a record in permanent form which shall show the true name; address; and principal occupation or business of any foreign trader executing transactions on the facility or exchange, as well as the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.

(d) Paragraph (c) of this section shall not apply to a recognized futures exchange on which transactions in futures or option contracts of foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of paragraph (a) of this section.

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3. Section 1.41 is amended as follows:

a. By revising paragraph (a)(1),

b. By removing and reserving paragraph (b), and removing paragarphs (i) through (t),

c. By redesignating paragraph (e) as paragraph (i) and revising it,

d. By revising paragraphs (c) and (d) and adding (e), and

e. By amending paragraphs (f) and (g) by adding the words "or recognized futures exchange" after the words "contract market" each time they appear, to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

(a) * * *

(1) The term rule of a contract market means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof.

* * * * *

(b) [Reserved]

(c) *Exemption from the rule review procedure requirements of section 5a(a)(12)(A) of the Act and related regulations.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act, designated contract markets, recognized futures exchanges and recognized clearing organizations may place a rule into effect without prior Commission review or approval if:

(1) The rule is not a term or condition of a contract for future delivery of an agricultural commodity listed in section 1a(3) of the Act;

(2) The entity has filed a submission for the rule, and the Commission has received the submission at its Washington, D.C. headquarters and at the regional office having jurisdiction over the entity by close of business on the business day preceding implementation of the rule; and

(3) The rule submission includes:

(i) The label, "Submission of rule by self-certification;'

(ii) The text of the rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(iii) A brief explanation of the rule including any substantive opposing views not incorporated into the rule; and

(iv) A certification by the eligible entity that the rule does not violate any provision of the Act and regulations thereunder.

(4) The Commission retains the authority to stay the effectiveness of a rule implemented pursuant to paragraph (c)(1) of this section during the pendency of Commission proceedings to disapprove, alter or amend the rule. The decision to stay the effectiveness of a rule in such circumstances may not be delegable to any employee of the Commission.

(d)(1) *Voluntary submission of rules for fast-track approval.* A designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization may submit any rule or proposed rule (which may be terms or conditions of trading or trading protocols), except those submitted to the Commission under paragraph (f) of this section, for approval by the Commission pursuant to section 5a(a)(12)(A) of the Act, whether or not so required by section 5a(a)(12) of the Act under the following procedures:

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[53] For example, a rule that altered a trade matching algorithm to give one class of participants a significant and improper ongoing advantage over another or that had a continuing significant adverse affect on customers could be the subject of a stay. In contrast, such a rule might not be a proper basis for a market emergency, as it might not result in a situation where action was necessary to ensure that the market accurately reflected the forces of supply and demand. The term "emergency" as defined in the Act means, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. *See* section 8a(9) of the Act.

[54] *See, e.g.*, CL 21–65 at 22.

[55] Similarly, the Commission believes that transactions on recognized DTFs and RFEs should be subject to the same tax treatment as transactions on formally designated contract markets.

[56] *See* 7 U.S.C. 6(c).

[57] 47 FR 18618–21 (Apr. 30, 1982).

[58] 47 FR 18618, 18619 (discussing contract markets); 47 FR 18619–20 (discussing FCMs and CPOs).

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(i) One copy of each rule submitted under this section shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commission at its Washington, DC headquarters. If a hard copy is furnished for submissions under appendix A to part 5 of this chapter, two additional hard copies shall be furnished to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Each submission under this paragraph (d)(1) shall be in the following order:

(A) Label the submission as "Submission for Commission rule approval";

(B) Set forth the text of the rule or proposed rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(C) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization's framework of self-regulation, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(E) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission; and

(F) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the change.

(ii) All rules submitted for Commission approval under paragraph (d)(1)(i) of this section shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(A) The submission complies with the requirements of paragraphs (d)(1)(i) (A) through (F) of this section or, for dormant contracts, the requirements of § 5.3 of this chapter;

(B) The submitting entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(C) The submitting entity has not instructed the Commission in writing during the review period to review the proposed rule under the 180 day review period under section 5a(a)(12)(A) of the Act.

(iii) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (d)(1)(i) of this section, may notify the entity making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required. Upon such notification, the period for review shall be extended for a period of thirty days, and, unless the entity is notified otherwise during that period, the rule shall be deemed approved at the end of the enlarged review time.

(iv) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (d)(1)(iii) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed rule under the 180 day review period of section 5a(a)(12)(A) of the Act, if it appears that the proposed rule may violate a specific provision of the Act, regulations, or form or content requirements of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulations, or form or content requirements of this section that the proposed rule appears to violate. Within fifteen days of receipt of this termination notification, the designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization may:

(A) Withdraw the rule;

(B) Request the Commission to review the rule pursuant to the one hundred and eighty day review procedures set forth in section 5a(a)(12)(A) of the Act; or

(C) Request the Commission to render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the submitting entity views its submission as complete and final as submitted.

(2) *Voluntary submission of rules for expedited approval.* Notwithstanding the provisions of paragraph (d)(1) of this section, changes to terms and conditions of a contract that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the market or clearing organization of the applicability of this paragraph (d)(2) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify, provided, however, that the Commission may at any time alter or revoke the applicability of such a notice to any particular contract.

(e)(1) *Notification of rule amendments.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges and recognized clearing organizations may place the following rules into effect without prior notice to the Commission if the following conditions are met:

(i) The designated contract market, recognized futures exchange, or recognized clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly Notification of Rule Changes" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; and

(ii) The rule change governs:

(A) *Nonmaterial revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of contract terms and conditions that have no effect on the economic characteristics of the contract;

(B) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on futures contracts that are established by an independent third party and that are incorporated by reference as terms of the contract, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading;

(C) *Index contracts.* Routine changes in the composition, computation, or method of selection of component entities of an index other than a stock index referenced and defined in the contract's terms, made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option contract;

(D) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments; or

(E) *Administrative procedures.* The organization and administrative procedures of a contract market's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements and procedures or requirements or procedures relating to conflicts of interest.

(2) *Notification of rule amendments not required.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges and recognized clearing organizations may place into effect without notice to the Commission, rules governing:

(i) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area; or

(ii) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, visitors, but not the establishment of penalties for violations of such rules.

* * * * *

(i) *Membership lists.* Upon request of the Commission each designated contract market, recognized futures exchange or recognized clearing organization shall promptly furnish to the Commission a current list of the facility's or entity's members or owners subject to fitness requirements.

§§ 1.43, 1.45 and 1.50 [Removed]

4. In part 1, §§ 1.43, 1.45, and 1.50 are proposed to be removed and reserved.

5. Part 5 is amended as follows:

PART 5—PROCEDURES FOR LISTING NEW PRODUCTS

a. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

b. The heading of part 5 is revised as set forth above and §§ 5.1 through 5.3 are revised to read as follows:

§ 5.1 Listing contracts for trading by exchange certification.

(a) Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, a board of trade that has been recognized by the Commission as a recognized futures exchange under part 38 of this chapter may list for trading contracts of sale of a commodity for future delivery or commodity option contracts, if the recognized futures exchange:

(1) Lists for trading at least one contract which is not dormant within the meaning of § 5.3;

(2) In connection with the trading of the contract complies with all requirements of the Act and Commission regulations thereunder applicable to the recognized futures exchange under part 38 of this chapter;

(3) Files with the Commission at its Washington, D.C., headquarters either in electronic or hard-copy form a copy of the contract's initial terms and conditions and a certification by the recognized futures exchange that the contract's initial terms and conditions do not violate any requirement of part 38 of this chapter, any applicable provision of the Act or of the rules thereunder, and the filing is received no later than the close of business of the business day preceding the contract's initial listing; and

(4) Identifies the contract in its rules as listed for trading pursuant to exchange certification.

(b) The provisions of this section shall not apply to:

(1) A contract subject to the provisions of section 2(a)(1)(B) of the Act;

(2) A contract to be listed initially for trading that is the same or substantially the same as one for which an application for Commission review and approval pursuant to § 5.2 was filed by another board of trade while the application is pending before the Commission; or

(3) A contract to be listed initially for trading that is the same or substantially the same as one which is the subject of a pending Commission disapproval proceeding under section 6 of the Act, to disapprove a term or condition under section 5a(a)(12) of the Act, to alter or supplement a term or condition under section 8a(7) of the Act, to amend terms or conditions under section 5a(a)(10) of the Act, to declare an emergency under section 8a(9) of the Act, or to any other proceeding the effect of which is to disapprove, alter, supplement, or require a contract market or a recognized futures exchange to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 5.2 Voluntary submission of new products for Commission review and approval.

(a) *Cash-settled contracts.* A new contract to be listed for trading by a recognized futures exchange under part 38 of this chapter or a recognized derivatives transaction facility under part 37 of this chapter shall be deemed approved by the Commission ten business days after receipt by the Commission of the application for contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Ten-Day Review;

(2)(i) The application for approval is for a futures contract providing for cash settlement or for delivery of a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; or

(ii) For an option contract that is itself cash-settled, is for delivery of a foreign currency that meets the requirements of paragraph (a)(2)(i) of this section or is to be exercised into a futures contract which has already been designated as a contract market or approved under this section;

(3) The application for approval is for a commodity other than those enumerated in section 1a(3) of the Act or one that is subject to the procedures of section 2(a)(1)(B) of the Act;

(4) The submitting entity trades at least one contract which is not dormant within the meaning of this part;

(5) The submission complies with the requirements of Appendix A of this part—Guideline No. 1;

(6) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(7) The submitting entity has not instructed the Commission in writing during the review period to review the application for designation under the usual procedures under section 6 of the Act.

(b) *Contracts for physical delivery.* A new contract to be listed for trading by a recognized futures exchange under part 38 of this chapter or by a derivatives transaction facility under part 37 of this chapter shall be deemed approved by the Commission forty-five days after receipt by the Commission of the application for contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Forty-Five Day Review;

(2) The application for contract approval is for a commodity other than those subject to the procedures of section 2(a)(1)(B) of the Act;

(3) The submitting entity lists for trading at least one contract which is not dormant within the meaning of this part;

(4) The submission complies with the requirements of Appendix A to this part—Guideline No. 1;

(5) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(6) The submitting entity has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) *Notification of extension of time.* The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the submitting entity that the review period has been extended for a period of thirty days where the application for approval raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) *Notification of termination of fast-track procedures.* During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed contract under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulations, or form or content requirements of Appendix A to this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A to this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the submitting entity may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its application as complete and final as submitted.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs (a)(6) and (b)(5) of this section that the recognized futures exchange or derivatives transaction facility amend the proposed contract or supplement the application, to notify a submitting entity under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has been extended, and to notify the submitting entity under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

§ 5.3 Dormant contracts.

(a) *Definitions.* For purposes of this section:

(1) The term *dormant contract* means any commodity futures or option contract:

(i) In which no trading has occurred in any future or option expiration for a period of six complete calendar months; or

(ii) Which has been certified by a recognized futures exchange or a recognized derivatives transaction facility to the Commission to be a dormant contract market.

(2) [Reserved]

(b) *Listing of additional futures trading months or option expiration by certification.* A contract that has been listed for trading initially under the procedures of either §§ 5.1 or 5.2 that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(c) of this chapter by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section. Upon relisting, the contract must be identified by the recognized futures exchange as listed for trading by exchange certification.

(c) *Approval for listing of additional futures trading months or option expirations.* A contract that has been initially approved by the Commission under § 5.2 and that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(d) of this chapter by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section.

(1) Each such submission shall clearly designate the submission as filed pursuant to Commission Rule 5.3; and

(2) Include the information required to be submitted pursuant to § 5.3 or an economic justification for the listing of additional months or expirations in the dormant contract market, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions which are now being proposed, or which have been proposed for an option market's underlying futures contract market, would make it reasonable to expect that the futures or option contract will be used on more than an occasional basis for hedging or price basing.

(d) *Exemptions.* No contract shall be considered dormant until the end of sixty (60) complete calendar months:

(1) Following initial listing; or

(2) Following Commission approval of the contract market bylaw, rule, regulation, or resolution to relist trading months submitted pursuant to paragraph (c) of this section.

Appendices C and D [Removed and Reserved]

c. Appendices C and D are removed and reserved.

PART 15—REPORTS—GENERAL PROVISIONS

6. The authority citation for Part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6(c), 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21.

7. Section 15.05 is amended by revising the heading and by adding paragraphs (e) through (h) to read as follows:

§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.

* * * * *

(e) Any derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange that permits a foreign broker to intermediate transactions in futures or option contracts on the facility or exchange, or permits a foreign trader to effect transactions in futures or option contracts on the facility or exchange shall be deemed to be the agent of the foreign broker and any of its customers for whom the transactions were executed, or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader with respect to any futures or option contracts executed by the foreign broker or the foreign trader on the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange. Service or delivery of any communication issued by or on behalf of the Commission to a derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange pursuant to such agency shall constitute valid and effective service upon the foreign broker, any of its customers, or the foreign trader. A derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, any of its customers, or a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, any of its customers or the foreign trader.

(f) It shall be unlawful for any derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange to permit a foreign broker, any of its customers or a foreign trader to effect transactions in futures or option contracts unless the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange prior thereto informs the foreign broker, any of its customers or the foreign trader in any reasonable manner the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange deems to be appropriate, of the requirements of this section.

(g) The requirements of paragraphs (e) and (f) of this section shall not apply to any transactions in futures or option contracts if the foreign broker, any of its customers or the foreign trader has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange prior to effecting any transactions in futures or option contracts on the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker, any of its customers or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange prior to permitting the foreign broker, any of its customers or the foreign trader to effect any transactions in futures or option contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. A foreign broker, any of its customers or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange knows or should know that the agreement has expired, been terminated, or is no longer in effect, the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange and the foreign broker, any of its customers or the foreign trader are subject to the provisions of paragraphs (e) and (f) of this section.

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a derivatives transaction facility or recognized futures exchange on which all transactions in futures or option contracts of foreign brokers, their customers or foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of Rules 15.05(a), (b), (c) and (d).

* * * * *

8. Part 36 is revised to read as follows:

PART 36—EXEMPTION OF TRANSACTIONS ON MULTILATERAL TRANSACTION EXECUTION FACILITIES

Sec.
36.1 Definitions. As used in this part:
36.2 Exemption.
36.3 Enforceability.

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 36.1 Definitions.

As used in this part:

(a) *Eligible participant* means and shall be limited to the parties or entities listed in § 35.1(b)(1) through (11) of this chapter; and

(b) *Multilateral transaction execution facility* means an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others,

enter into, agree to enter into or execute binding contracts, agreements or transactions by accepting bids or offers made by one person that are open to multiple persons who conduct business through such market or similar facility, but does not include:

(1) A facility whose participants individually negotiate (or have individually negotiated) with counterparties the material terms applicable to contracts, agreements, or transactions between them, including contracts, agreements, or transactions conducted on the facility, and which are subject to subsequent acceptance by the counterparties;

(2) Any electronic communications system on which the execution of a contract, agreement or transaction results from the content of bilateral communications exchanged between the parties and not by the interaction of multiple orders within a predetermined, non-discretionary automated trade matching algorithm; or

(3) Any facility on which only a single firm may participate as market maker and participants other than the market maker may not accept bids or offers of other non-market maker participants.

§ 36.2 Exemption.

A contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such contract, agreement or transaction is exempt for such activity from all provisions of the Act (except in each case the provisions enumerated in § 36.3(a)) provided the following terms and conditions are met:

(a) Only eligible participants, either trading for their own account or through another eligible participant, have trading access to the multilateral transaction execution facility;

(b) The contract, agreement or transaction listed on or traded through the multilateral transaction execution facility is based upon:

(1) A debt obligation other than an exempt security under section 3 of the Securities Act of 1933 or section 3a(12) of the Securities Exchange Act of 1934;

(2) A foreign currency;

(3) An interest rate;

(4) A measure of credit risk or quality, including instruments known as "total return swaps," "credit swaps" or "credit spread swaps";

(5) An occurrence, extent of an occurrence or contingency beyond the control of the counterparties to the transaction; or

(6) An economic or commercial index or measure which is beyond the control of the counterparties to the transaction, and is not based upon prices derived from trading in a directly corresponding underlying cash market and for which the related contract, agreement or transaction is cash settled;

(c) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearing organization that is authorized under § 39.2 of this chapter: *Provided, however,* that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such contracts, agreements, or transactions; or

(2) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments or deliveries resulting from such contracts, agreements or transactions;

(d) The multilateral transaction execution facility on or through which such contracts, agreements or transactions are traded and the parties to, participants in, or intermediaries in such a facility that is exempt under this section are prohibited from claiming that the facility is regulated, recognized or approved by the Commission; and

(e) The facility:

(1) If an electronic system that also lists for trading products pursuant to parts 37 or 38 of this chapter, must provide notice to participants of the agreements, contracts or transactions traded on the facility pursuant to this part 36 and that such transactions are not subject to regulation under the Act; or

(2) If providing a physical trading environment, must provide that products trading pursuant to parts 37 or 38 of this chapter be traded in a location separate from, but which may adjoin, the location for products traded pursuant to this part 36.

(f) If the Commission determines by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, that the facility serves as a significant source for the discovery of prices for an underlying commodity, the facility must on a daily basis disseminate publicly trading volume and price ranges and other trading data appropriate to that market as specified in the order.

(g) Any person or entity may apply to the Commission for exemption from any of the provisions of the Act (except section 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including, but not limited to, the applicability of other regulatory regimes.

§ 36.3 Enforceability.

(a) Notwithstanding the exemption in § 36.2, sections 2(a)(1)(B), 4b, and 4o of the Act and § 32.9 of this chapter as adopted under section 4c(b) of the Act, and sections 6(c) and 9(a)(2) of the Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, continue to apply to transactions and persons otherwise subject to those provisions.

(b) A party to a contract, agreement or transaction that is with a counterparty that is an eligible participant (or counterparty reasonably believed by such party at the time the contract, agreement or transaction was entered into to be an eligible participant) shall be exempt from any claim, counterclaim or affirmative defense by such counterparty under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement or transaction is void, voidable or unenforceable, or

(2) To rescind, or recover any payment made in respect of, such contract, agreement or transaction, based solely on the failure of such party or such contract, agreement or transaction to comply with the terms or conditions of the exemption under this part.

9. Chapter I of 17 CFR is amended by adding new Part 37 as follows:

PART 37—EXEMPTION OF TRANSACTIONS ON A DERIVATIVES TRANSACTION FACILITY

Sec.

37.1 Scope and definitions.
37.2 Exemption.
37.3 General conditions for recognition as a derivatives transaction facilities.
37.4 Conditions for recognition as a derivatives transaction facility, compliance with core principles.
37.5 Additional conditions for recognition as a derivative transaction facility.
37.6 Information relating to transactions on derivative transaction facilities.
37.7 Procedures for recognition.
37.8 Enforceability.
37.9 Fraud in connection with part 37 transactions.
Appendix A to Part 37—Application Guidance.

Authority: 7 U.S.C. 2, 6, 6c, 6(c), 6(i) and 12a.

§ 37.1 Scope and definitions.

(a) *Scope.* (1) A board of trade operating as a recognized derivatives transaction facility and the products listed for trading thereon under this exemption shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a "board of trade," "board of trade licensed by the Commission," "exchange," "contract market," "designated contract market," or "contract market designated by the Commission" as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized derivatives transaction facilities pursuant to this section.

(2) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

(b) *Definitions.* As used in this part:

(1) *Eligible participant* means, and shall be limited to, the parties or entities listed in § 35.1(b)(1) through (11) of this chapter, *Provided, however,* that notwithstanding the proviso of § 35.1(b)(10), a floor broker or floor trader that is a natural person or proprietorship shall be considered to be an eligible participant for transactions on a derivatives transaction facility recognized under § 37.7 if the floor broker or floor trader is registered in such a capacity under the Act and its trading obligations on the derivatives trading facility are guaranteed by a futures commission merchant.

(2) "Eligible commercial participant" means, and shall be limited to, a party or entity listed in §§ 35.1(b)(1), (b)(2), (b)(3), (b)(6) and (b)(8) of this chapter that in connection with its business, makes and takes delivery of the underlying commodity and regularly incurs risks in addition to price risk related to such commodity, is a dealer that regularly provides hedging, risk management or market-making services to the foregoing entities, or is a registered floor trader or floor broker trading for its own account, whose trading obligations are guaranteed by a futures commission merchant.

§ 37.2 Exemption.

Notwithstanding § 37.1(a)(1), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility's operator are exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 37.8(a), provided the following terms and conditions are met:

(a)(1) *Commercial-participant derivatives transaction facility.* Only eligible commercial participants trading for their own account have trading access to the derivatives transaction facility for contracts, agreements or transactions in any commodity except for those listed in section 1a(3) of the Act or an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934; or

(2)(i) *Eligible-participant derivatives transaction facility.* The contract, agreement or transaction listed on or traded through the multilateral transaction execution facility meets the requirements set forth in § 36.2(b) of this chapter or has been found by the Commission on a case-by-case determination to have a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience to provide assurance that the contract is highly unlikely to be manipulated; and

(ii) *Non-eligible participants.* Participants that are not eligible participants as defined in § 37.1(b)(1) may have trading access only through:

(A) A registered futures commission merchant that operates in accordance with the provisions of § 1.17(a)(1)(ii) of this chapter and that carries such participant's account, including access directly through any credit filter on which the futures commission merchant affirmatively imposes credit standards; or

(B) A commodity trading advisor that operates in accordance with § 4.32 of this chapter, where the participant's account is carried by any registered futures commission merchant;

(b) The multilateral transaction execution facility through which the contract, agreement or transaction is entered into has been recognized by the Commission as a derivatives transaction facility pursuant to § 37.7;

(c) A multilateral transaction execution facility that applies to be, and is, a recognized derivatives transaction facility must comply with all of the conditions of this part 37 exemption and must disclose to participants transacting on or through its facility that transactions conducted on or through the facility are subject to the provisions of this part 37;

(d)(1) If intermediated, the transactions of eligible participants must be carried in accounts at a registered futures commission merchant;

(2) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse that is recognized by the Commission under § 39.4 of this chapter. *Provided, however,* that nothing in this paragraph (d)(2) precludes:

(i) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such contracts, agreements, or transactions; or

(ii) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments or deliveries resulting from such contracts, agreements or transactions; and

(e) The products if traded on an electronic system must be clearly identified as traded on a recognized derivatives transaction facility or if traded in a physical trading environment must be traded in a location separate from, but which may adjoin the location for, the trading of products pursuant to contract market designation, or to parts 36 and 38 of this chapter.

§ 37.3 General conditions for recognition as a derivatives transaction facility.

To be recognized as a derivatives transaction facility, the facility initially must have:

(a) Rules, which may be trading protocols, relating to trading on its facility, including, depending on the nature of the trading mechanism:

(1) Rules, which may be trading protocols, to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violation of its trade rules or trading protocols including arrangements to obtain necessary information to perform the functions in this paragraph (a)(1), or

(2) Use of technology that provides participants with impartial access to transactions and captures information that is available for use in determining whether violations of its rules or trading protocols have occurred;

(b) Rules, which may be trading protocols, defining, or specifications detailing, the operation of the trading mechanism or electronic matching platform; and

(c) Rules, which may be trading protocols, detailing the financial framework applying to the transactions or ensuring the financial integrity of transactions entered into by, or through, its facilities.

§ 37.4 Conditions for recognition as a derivatives transaction facility, compliance with core principles.

To be recognized as a derivatives transaction facility, the facility, initially and on a continuing basis, must meet and adhere to the following core principles:

(a) *Enforcement.* Effectively monitor and enforce its rules, which may be trading protocols, including, if applicable, limitations on access.

(b) *Market oversight.* As appropriate to the market and the contracts traded:

(1) Monitor markets on a routine and nonroutine basis as necessary to ensure fair and orderly trading, and have, and where appropriate exercise, authority to maintain a fair and orderly market; or

(2) Provide information to the Commission as requested by the Commission to satisfy its obligations under the Act.

(c) *Operational information.* Disclose to regulators and to market participants, as appropriate, information concerning trading terms, trading protocols, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information.

(d) *Transparency.* Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market and, as appropriate to the market, make available to the public with respect to actively traded products, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information.

(e) *Fitness.* Have appropriate fitness standards for members, operators or owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations.

(f) *Recordkeeping.* Keep full books and records of all activities related to its business as a recognized derivatives transaction facility, including full information relating to data entry and trade details sufficient to reconstruct trading, in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U,S. Department of Justice.

(g) *Competition.* Operate in a manner consistent with the public interest to be protected by the antitrust laws.

§ 37.5 Additional conditions for recognition as a derivative transaction facility.

To be recognized as a derivatives transaction facility, initially and on a continuing basis, the facility must:

(a) *Products.* Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, notify the Commission of the listing of new contracts for trading, posting of new product descriptions, terms and conditions or trading protocols or providing for a new system product functionality, by filing with the Commission at its Washington, D.C. headquarters, a submission labeled "DTF Notice of Product Listing" that includes the text of the contract's terms or conditions, product description, trading protocol or description of the system functionality or by electronic notification of the foregoing at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding initial listing, posting or implementation of the trading protocol or system functionality;

(b) *Material modifications.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12)(A) of the Act, notify the Commission prior to placing a material rule, term or condition or trading protocol into effect or amending a material rule, term or condition or trading protocol, by filing with the Commission at its Washington, D.C. headquarters a submission labeled, "DTF Rule Notice" which includes the text of the rule or rule amendment, term and condition or trading protocol (brackets must indicate words deleted and underscoring must indicate words added) or by electronic notification of the rule, term and condition or trading protocol to be placed into effect or to be changed, at the time and in the manner traders or participants in the market are notified, but in no event later than the close of business on the business day preceding implementation of the rule, term and condition or trading protocol. The derivatives transaction facility must maintain documentation regarding all changes to rules, terms and conditions or trading protocols;

(c) *Identify participants.* Keep a record in permanent form which shall show the true name; address; and principal occupation or business of any foreign trader executing transactions on the facility or exchange, as well as the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader. *Provided, however,* this paragraph shall not apply to a derivatives transactions facility insofar as transactions in futures or option contracts of foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to § 1.37 of this chapter; and

(d) *Identify persons subject to fitness.* Upon request by the Commission, furnish to the Commission a current list of persons subject to the fitness requirements in accordance with § 37.4(e).

§ 37.6 Information relating to transactions on derivative transaction facilities.

(a) *Special calls for information from derivatives transaction facilities.* Upon special call by the Commission, a derivatives transaction facility shall provide to the Commission such information related to its business as a derivatives transaction facility, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the special call.

(b) *Notification of communications.* (1) Upon receipt of any communications issued by or on behalf of the Commission to any person who resides or is domiciled outside of the United States, its territories, or possessions, relating to contracts, agreements, or transactions effected on or through a derivatives transaction facility, the derivatives transaction facility shall promptly notify such foreign person of, and transmit the communication to such foreign person, in a manner reasonable under the circumstances, or as specified by the Commission.

(2) If the Commission has reason to believe that a person has not complied with a communication issued by or on behalf of the Commission pursuant to paragraph (b)(1) of this section, the Commission in writing may direct the derivatives transaction facility on or through which the person is or has traded to deny that person further trading access either directly or, if applicable, through an intermediary or, as applicable, to permit that person access to trade for liquidation only.

(3) Any person that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (b)(2) of this section, shall have the opportunity for a prompt hearing after the Commission acts pursuant to paragraph (b)(2) of this section under the procedures provided in § 21.03(g) of this chapter.

(c) *Special calls for information from futures commission merchants.* Upon special call by the Commission, each person registered as a futures commission merchant that carries or has carried an account for a customer on a derivatives transaction facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on that or other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(d) *Special calls for information from participants.* Upon special call by the Commission, any person who enters into or has entered into a contract, agreement or transaction on a derivatives transaction facility eligible under § 37.2(a)(2) shall provide information to the Commission concerning such contracts, agreements, or transactions or related positions on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(e) *Delegation of authority.* The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) through (d) of this section to the Directors of the Division of Economic Analysis and the Division of Trading and Markets to be exercised separately by each Director or by such other employee or employees as the Director may designate from time to time. The Director of the Divisions of Economic Analysis and Trading and Markets may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

§ 37.7 Procedures for recognition.

(a) *Recognition by certification.* A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market in at least one commodity which is not dormant within the meaning of § 5.2 of this chapter will be recognized by the Commission as a derivatives transaction facility upon receipt by the Commission at its Washington, D.C. headquarters of a copy of the derivatives transaction facility's rules, which may be trading protocols, and a certification by the board of trade, facility or entity that it meets the conditions for recognition under this part.

(b) *Recognition by application.* A board of trade, facility or entity shall be recognized or, as determined by the Commission, recognized upon conditions as a derivatives transaction facility thirty days after receipt by the Commission of an application for recognition as a derivatives transaction facility unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 37;

(3) The submission includes a copy of:

(i) The derivatives transaction facility's rules, which may be trading protocols;

(ii) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(iii) To the extent that compliance with the conditions of recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for recognition under §§ 37.3 and 37.4;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in §§ 37.3 and 37.4 could be satisfied.

(c) *Termination of part 37 review.* During the thirty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the derivatives transaction facility or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegatees, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated or to recognize the entity as a derivatives transaction facility upon conditions.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for Commission approval of rules and products.* (1) An entity seeking recognition as a derivatives transaction facility may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and §§ 1.41(d) and 5.2 of this chapter, as applicable. A derivatives transaction facility may label a product in its rules as, "Listed for trading pursuant to Commission approval," if the product's terms or conditions have been approved by the Commission.

(2) An entity seeking recognition as a derivatives transaction facility may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) *Request for withdrawal of application for recognition or withdrawal of recognition.* A recognized derivatives transaction facility may withdraw an application to be a recognized derivatives transaction facility or, once recognized, may withdraw from Commission recognition by filing with the Commission at its Washington, D.C., headquarters such a request. Withdrawal from recognition

shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was recognized by the Commission.

§ 37.8 Enforceability.

(a) Notwithstanding the exemption in § 37.2, the following provisions of the Act and Commission regulations thereunder are reserved, and shall continue to apply: sections 1a, 2(a)(1), 4, 4b, 4c(a) as applicable to the market, 4c(b), 4g, 4i, 4o, 5(6), 5(7), 5a(a)(1), 5a(a)(2), 5a(a)(8), 5a(a)(16), 5a(a)(17), 5a(b), 6(a), 6(c) to the extent it prohibits manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, 8a(9), 8c(a) as applicable to the market, 9(a)(2), 9(a)(3), 9(f), 14, 15, 20 and 22 of the Act and §§ 1.3, 1.31, 1.41, 5.2, 15.05 as applicable to the market, § 33.10, this part 37 and part 190 of this chapter; and for derivatives transaction facilities eligible under § 37.2(a)(2), in addition to the foregoing, the rule disapproval procedures of section 5a(a)(12) of the Act, section 9(a)(1) of the Act, and sections 8c(b), 8c(c) and 8c(d) of the Act and parts 15 through 21 of this chapter as applicable to the market.

(b) For purposes of section 22(a) of the Act, a party to a contract, agreement or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable solely for failure of the parties to a contract, agreement or transaction, or the contract, agreement or transaction itself, to comply with the terms and conditions for the exemption under this part or as a result of:

(1) A violation by the recognized derivatives transaction facility of the provisions of this part 37; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized derivatives transaction facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 37.9 Fraud in connection with part 37 transactions.

It shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered into pursuant to this part—

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 37—Application Guidance

This appendix provides guidance to applicants for recognition as derivatives transaction facilities under §§ 37.3 and 37.4. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the derivatives transaction facilities rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition.

Core Principle 1: Enforcement: Effectively monitor and enforce its rules, which may be trading protocols, including, if applicable, limitations on access.

(a) A derivatives transaction facility should have arrangements and resources and authority for effectively and affirmatively enforcing its rules, including the authority and ability to collect or capture information and documents on both a routine and non-routine basis and to investigate effectively possible rule violations.

(b) This should include the authority and ability to discipline, and limit or suspend a member's or participant's activities and/or the authority and ability to terminate a member's or participant's activities or access pursuant to clear and fair standards.

Core Principle 2: Market Oversight. As appropriate to the market and the contracts traded: (1) Monitor markets on a routine and nonroutine basis as necessary to ensure fair and orderly trading, and have, and where appropriate exercise, authority to maintain a fair and orderly market; or (2) Provide information to the Commission as requested by the Commission to satisfy its obligations under the Act.

(a) Arrangements and resources for effective market surveillance programs should facilitate, on both a routine and nonroutine basis, direct supervision of the market. Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. The analysis of data collected should be suitable for the type of information collected and should occur in a timely fashion. A derivatives transaction facility should have the authority to collect the information and documents necessary to reconstruct trading for appropriate market analysis as it carries out its market surveillance programs. The derivatives transaction facility also should have the authority to intervene as necessary to maintain an open and competitive market. In carrying out this responsibility, the facility should address access to, and use of, material non-public information by members, owners or operators, participants or facility employees.

(b) Alternatively, and as appropriate to the market, a derivatives transaction facility may choose to satisfy Core Principle 2 by providing information to the Commission as requested by the Commission to satisfy its obligations under the Act. The derivatives transaction facility should have the authority to collect or capture and retrieve all necessary information.

(c) The Commission will collect reporting data from eligible participants trading in a derivatives transaction facility eligible under § 37.2(a)(2) only upon Special Call as provided in § 37.6(d).

Core Principle 3: Operational Information: Disclose to regulators and to market participants, as appropriate, information concerning trading terms, trading protocols, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information.

A derivatives transaction facility should have arrangements and resources for the disclosure and explanation of trading terms, trading protocols, contract terms and conditions, trading mechanisms, system functioning, system capacity, system security, system testing and review, financial integrity arrangements or mechanisms. The facility must also disclose any limitations of liability (which may not include limitations of liability for violations of the Act or Commission rules, fraud, or wanton or willful misconduct. Such information may be made publicly available through the operation of a website by the derivatives transaction facility.

Core Principle 4: Transparency: Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market and, as appropriate to the market, make available to the public with respect to actively traded products, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information.

All market participants should have information regarding prices, bids and offers, or other information appropriate to the market readily available on a fair and equitable basis. The derivatives transaction facility should provide to the public information regarding daily opening and closing prices, price range, trading volume, open interest and other related market information for actively traded products. Provision of information could be through such means as provision of the information to a financial information service or by placement of the information on a facility's web site.

Core Principle 5: Fitness: Have appropriate fitness standards for members, operators or owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations.

A derivatives transaction facility should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle which would include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness are those bases for refusal to register a person under section 8a(2) of the Act. or a history of serious disciplinary offenses, such as those which would be disqualifying under § 1.63 of this chapter. A demonstration of the fitness of the applicant's members, operators or owners may include providing the Commission with registration information for such persons, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's Counsel or other information substantiating the fitness of such persons.

Core Principle 6: Recordkeeping: Keep full books and records of all activities related to its business as a recognized derivatives transaction facility, including full information relating to data entry and trade details sufficient to reconstruct trading, in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle 7: Competition: Operate in a manner consistent with the public interest to be protected by the antitrust laws.

An entity seeking recognition as a derivatives transaction facility may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules, which may be trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter. The Commission intends to apply Section 15 of the Act to its consideration of issues under the Competition Core Principle in a manner consistent with that previously applied to contract markets.

10. Chapter I of 17 CFR is amended by adding new Part 38 as follows:

PART 38—EXEMPTION OF TRANSACTIONS ON A RECOGNIZED FUTURES EXCHANGE

Sec.

38.1 Scope.
38.2 Exemption.
38.3 General conditions for recognition as a recognized futures exchange.
38.4 Conditions for recognition as a recognized futures exchange, compliance with core principles.
38.5 Procedures for recognition.
38.6 Enforceability
38.7 Fraud in connection with part 38 transactions.
Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 38.1 Scope.

(a) Except for commodities subject to paragraph (c) of this section, the provisions of the exemption in § 38.2 shall apply to every board of trade that has been designated as a contract market in a commodity under section 6 of the Act. *Provided, however,* nothing in this provision affects the eligibility of designated contract markets for exemption under parts 36 or 37 of this chapter.

(b) A board of trade operating as a recognized futures exchange and the products listed for trading thereon under this exemption shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a "board of trade," "board of trade licensed by the Commission," "exchange," "contract market," "designated contract market," or "contract market designated by the Commission" as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized futures exchanges pursuant to this section.

(c) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

§ 38.2 Exemption.

Notwithstanding § 38.1(b), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility's operator is exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 38.6(a), provided the following terms and conditions are met:

(a) The multilateral transaction execution facility on which the contract, agreement or transaction is entered into has been recognized by the Commission as a recognized futures exchange pursuant to § 38.5;

(b) A multilateral transaction execution facility that applies to be, and is, a recognized futures exchange must comply with all of the conditions of this part 38 exemption and must disclose to participants transacting on or through its facilities that transactions conducted on or through the facility are subject to the provisions of part 38;

(c)(1) If intermediated, the transactions of participants must be carried in accounts at a registered futures commission merchant;

(2) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse which is recognized by the Commission under part 39 of this chapter. *Provided, however,* that nothing in this paragraph precludes:

(i) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such agreements; or

(ii) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments or deliveries resulting from such agreements; and

(d) The products if traded on an electronic system must be clearly identified as traded on a recognized futures exchange or if traded in a physical trading environment must be traded in a location separate from, but which may adjoin the location for, the trading of products pursuant to parts 36 and 37 of this chapter;

§ 38.3 General conditions for recognition as a recognized futures exchange.

To be recognized as a recognized futures exchange, the exchange must demonstrate initially that it has:

(a) A clear framework for conducting programs of market surveillance, compliance, and enforcement, including having procedures in place to make use of collected data for real-time monitoring and for post-event audit and compliance purposes to prevent market manipulation;

(b) Rules relating to trading on the exchange, including rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violations of its trading rules, and a dedicated regulatory department or delegation of that function to an appropriate entity;

(c) Rules defining, or specifications detailing, the manner of operation of the trading mechanism or electronic matching platform and a trading mechanism or electronic matching platform that performs as articulated in the operational rules or specifications;

(d) A clear framework for ensuring the financial integrity of transactions entered into by or through the exchange;

(e) Established procedures for impartial disciplinary committee(s) or other similar mechanisms empowered to discipline, suspend, and expel members, or to deny access to participants or, if provided for, discipline participants; and

(f) Arrangements to obtain necessary information to perform the functions in this section, including the capacity and arrangements to share financial and surveillance information with other derivative exchanges, both domestic and international, and a mechanism to provide to the public ready access to its rules and regulations.

§ 38.4 Conditions for recognition as a recognized futures exchange, compliance with core principles.

To be recognized as a futures exchange, the exchange initially, and on a continuing basis, must meet and adhere to the following core principles:

(a) *Rule enforcement.* Effectively monitor and enforce its rules.

(b) *Products.* List contracts for trading that are not readily susceptible to manipulation.

(c) *Position monitoring and reporting.* Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.

(d) *Position limits.* Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months.

(e) *Emergency authority.* Exercise authority to intervene to maintain fair and orderly trading, including, where applicable, authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin.

(f) *Public information.* Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public.

(g) *Transparency.* Provide market participants on a fair, equitable and timely basis information regarding, as appropriate to the market, prices, bids and offers, and other appropriate information, and make available to the public information regarding daily opening and closing prices, price ranges, trading volume, open interest and other related market information.

(h) *Trading system.* Provide a competitive, open and efficient market.

(i) *Audit trail.* Have procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the quality of the data captured, and the safe storage of such information, and have systems to enable information to be used in assisting in detecting and deterring customer and market abuse.

(j) *Financial standards.* Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, rules addressing the financial integrity of the intermediary and the protection of customer funds, as appropriate, and a program to enforce those requirements.

(k) *Customer protection.* Have, monitor and enforce rules for customer protection.

(l) *Dispute resolution.* Provide for alternative dispute resolution mechanisms appropriate to the nature of the market.

(m) *Governance.* Have fitness standards for members, owners or operators with greater than ten percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants.

(n) *Recordkeeping.* Keep full books and records of all activities related to its business as a recognized futures exchange in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(o) *Competition.* Operate in a manner consistent with the public interest to be protected by the antitrust laws.

§ 38. 5 Procedures for recognition.

(a) *Recognition by prior designation.* A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market on February 12, 2001 in at least one commodity which is not dormant within the meaning of § 5.3 of this chapter is recognized by the Commission as a recognized futures exchange and each of the contracts traded thereon that has been designated by the Commission as a designated contract market in a commodity may be labeled in the recognized futures exchange's rules as listed for trading pursuant to Commission approval.

(b) *Recognition by application.* A board of trade, facility or entity shall be recognized or, as determined by the Commission, recognized upon conditions as a recognized futures exchange sixty days after receipt by the Commission of an application for recognition unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 38;

(3) The submission includes a copy of the applicant's rules and, to the extent that compliance with the conditions for recognition is not self-evident, a brief explanation of how the rules satisfy each of the conditions for registration under §§ 38.3 and 38.4;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in §§ 38.3 and 38.4 could be satisfied.

(c) *Termination of part 38 review.* During the sixty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the futures exchange or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegatees, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated or to recognize the entity as a recognized futures exchange upon conditions.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for Commission approval of rules and products.* (1) An entity seeking recognition as a recognized futures exchange may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the exchange, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and §§ 1.41 and 5.2 of this chapter, as applicable. A product the terms or conditions of which have been approved by the Commission may be labeled in its rules as listed for trading pursuant to Commission approval. In addition, rules of the recognized futures exchange not submitted pursuant to § 38.5(b)(3) shall be submitted to the Commission pursuant to § 1.41.

(2) An entity seeking recognition as a recognized futures exchange may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) *Request for withdrawal of application for recognition or withdrawal of recognition.* An entity may withdraw an application to be a recognized futures exchange or once recognized, may withdraw from Commission recognition by filing with the Commission at its Washington, D.C. headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the exchange was recognized by the Commission.

§ 38.6 Enforceability.

(a) Notwithstanding the exemption in § 38.2, the following provisions of the Act and the Commission's regulations thereunder are reserved and shall continue to apply, as applicable: sections 1a, 2(a)(1), 4, 4a, 4b, 4c, 4g, 4i, 4o, 5(6), 5(7), 5a(a)(1), 5a(a)(2), 5a(a)(8), the rule disapproval procedures of 5a(a)(12), 5a(a)(16), 5a(a)(17), 5a(b), 6(a), 6(c) to the extent it prohibits manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, 8a(7), 8a(9), 8c(a), 8c(b), 8c(c), 8c(d), 9(a), 9(f), 14, 15, 20 and 22 of the Act and §§ 1.3, 1.31, 1.38, 1.41, 33.10, part 5, part 9, parts 15 through 21, part 38 and part 190 of this chapter.

(b) For purposes of section 22(a) of the Act, a party to a contract, agreement or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(1) A violation by the recognized futures exchange of the provisions of this part 38; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized futures exchange to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 38.7 Fraud in connection with part 38 transactions.

It shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered pursuant to this part:

(a) To cheat or defraud or attempt to cheat or defraud any person;

(b) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

1. This appendix provides guidance and acceptable practices for the core principles found in Part 38. Guidance to applicants for recognition as recognized futures exchanges under §§ 38.3 and 38.4 is offered under subsection (a) following a core principle. This appendix is only illustrative of the types of matters an applicant may address, as applicable, and is not intended to be a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the recognized futures exchange's rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition.

2. Acceptable practices meeting the requirements of the core principles are set forth in subsection (b). Recognized futures exchanges that follow specific practices outlined under subsection (b) for any core principle in this appendix will meet the applicable core principle. Except where otherwise provided, subsection (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

Core Principle 1: Rule Enforcement: Effectively monitor and enforce its rules.

(a) *Application Guidance.*

(1) A recognized futures exchange should have arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis including the examination of books and records kept by members/participants of the exchange. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected.

(2) A recognized futures exchange should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit or suspend a member's or participant's activities as well as the authority and ability to terminate a member's or participant's activities pursuant to clear and fair standards.

(b) *Acceptable Practices.* An effective trade practice surveillance program should include:

(1) Maintenance of data reflecting the details of each transaction executed on an RFE;

(2) Electronic analysis of this data routinely to detect potential trading violations;

(3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to its attention; and

(4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend a member's or participant's activities pursuant to clear and fair standards. *See, e.g.*, 17 CFR part 8.

Core Principle 2: Products: List contracts for trading that are not readily susceptible to manipulation.

(a) *Application Guidance.* Applicants should submit their initial product for listing for Commission approval under § 5.2 and Part 5, Appendix A, of this chapter. Subsequent products may be listed for trading by self-certification under § 5.1 of this chapter.

(b) *Acceptable Practices.*

Guideline No. 1, 17 CFR Part 5, Appendix A may be used as guidance in meeting this core principle.

Core Principle 3: Position monitoring and reporting: Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.*

(1) An acceptable program for monitoring markets will generally involve the collection of various market data, including information on traders' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices.

(2) The recognized futures exchange should collect data in order to assess whether the market price is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through marketing channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply and the future or potential supply, and to the pricing of the deliverable commodity relative to the futures price and relative to similar, but nondeliverable, kinds of the commodity. For cash-settled markets, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the market will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) To assess traders' activity and potential power in a market, at a minimum, every exchange should have routine access to the positions and trading done by the members of its clearing facility. Although clearing member data may be sufficient for some exchanges, an effective surveillance program for exchanges with substantial numbers of customers trading through intermediaries should employ a much more comprehensive large-trader reporting system (LTRS). The Commission operates an industry-wide LTRS. As an alternative to having its own LTRS or contracting out for such a system, exchanges may find it more efficient to use information available from the Commission's LTRS data for position monitoring.

Core Principle 4: Position Limits. Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months.

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.*

(1) In order to diminish potential problems arising from excessively large speculative positions, the Commission sets limits on traders' positions for certain commodities. These position limits specifically exempt bona fide hedging, permit other exemptions, and set limits differently by markets, by futures or delivery months, or by time periods. For purposes of evaluating an exchange speculative-limit program, the Commission considers the specified limit levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified levels, and procedures for enforcement to deal with violations.

(2) In general, position limits are not necessary for markets where the threat of excessive speculation or manipulation is very low. Thus, exchanges do not need to set position-limit levels for futures markets in major foreign currencies and in certain financial futures having very liquid and deep underlying cash markets. Where speculative limits are appropriate, acceptable speculative-limit levels typically are set in terms of a trader's combined position in the futures contract plus its position in the option contract (on a delta-adjusted basis).

(3) Spot-month levels for physical-delivery markets should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. Spot-month limits for physical-delivery markets are appropriately set at no more than 25 percent of the estimated deliverable supply. For cash-settled markets, spot-month position limits may be necessary if the underlying cash market is small or illiquid such that traders can disrupt the cash market or otherwise influence the cash-settlement price to profit on a futures position. In these cases, the limit should be set at a level that minimizes the potential for manipulation or distortion of the futures contract's or the underlying commodity's price. Markets may elect not to provide all-months-combined and non-spot month limits.

(4) An exchange may provide for position accountability provisions in lieu of position limits for contracts on financial instruments, intangible commodities, or certain tangible commodities. Markets appropriate for position accountability rules include those with large open-interest, high daily trading volumes and liquid cash markets.

(5) Exchanges must have aggregation rules that apply to those accounts under common control, those with common ownership, *i.e.*, where there is a 10 percent or greater financial interest, and those traded according to an expressed or implied agreement. Exchanges will be permitted to set more stringent aggregation policies. For example, one major exchange adopted a policy of automatically aggregating members of the same household, unless they were granted a specific waiver. Exchanges may grant exemptions to their position limits for bona fide hedging (as defined in Commission Rule 1.3(z)) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) Exchanges must establish a program for effective monitoring and enforcement of these limits. One acceptable enforcement mechanism is a program whereby traders apply for these exemptions by the exchange and are granted a position level higher than the applicable speculative limit. The position levels granted under hedge exemptions are based upon the trader's commercial activity in related markets. Exchanges may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. An exchange should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the exchange approve a specific maximum higher level.

(7) Exchanges with many markets with large numbers of traders should have an automated means of detecting traders' violations of speculative limits or exemptions. Exchanges should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication.

(8) Finally, an acceptable speculative limit program must have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The exchange policy will need to consider appropriate actions where the violation is by a non-member and should address traders carrying accounts through more than one intermediary.

(9) A violation of exchange position limits that have been approved by the Commission is also a violation of section 4a(e) of the Act.

Core Principle 5: Emergency Authority: Exercise authority to intervene to maintain fair and orderly trading, including, where applicable, authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin.

(a) *Application Guidance.*

A recognized futures exchange should have clear procedures and guidelines for exchange decision-making regarding emergency intervention in the market, including procedures and guidelines to carry out such decision-making without a conflict of interests. An exchange should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. The Commission believes that a recognized futures exchange should also have procedures and guidelines for the notification of the Commission of the exercise of regulatory emergency authority, as well as procedures and guidelines to prevent conflicts of interest, for the documentation of the exchange's decision-making process and for the reasons for use of its emergency action authority.

(b) *Acceptable Practices.*

As is necessary to address perceived market threats, the exchange, among other things, should be able to impose position limits in particular in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order the reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member of the exchange to another or alter the delivery terms or conditions.

Core Principle 6: Public Information: Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public.

(a) *Application Guidance.*

A recognized futures exchange should have arrangements and resources for the disclosure of contract terms and conditions and trading mechanisms to the Commission, users and the public. Procedures should also include the provision of information on listing new products, rule amendments or other changes to previously disclosed information to the Commission, users and the public.

(b) *Acceptable Practices.* [Reserved]

Core Principle 7: Transparency: Provide market participants on a fair, equitable and timely basis information regarding, as appropriate to the market, prices, bids and offers, and other appropriate information, and make available to the public information regarding daily opening and closing prices, price ranges, trading volume, open interest and other related market information.

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* [Reserved]

Core Principle 8: Trading System: Provide a competitive, open and efficient market.

(a) *Application Guidance.*

(1) Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. A recognized futures exchange's analysis of its automated system should address appropriate principles for the oversight of automated systems, ensuring proper system function, adequate capacity and security. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 (which have been referred to as the "Principles for Screen-Based Trading Systems"), subsequently adopted by the Commission on November 21, 1990 (55 FR 48670), are appropriate guidelines for a recognized futures exchange to apply to electronic trading systems. Any program of objective testing and review of the system should be performed by a qualified independent professional. The Commission believes that information gathered by analysis, oversight or any program of objective testing and review of any automated systems regarding system functioning, capacity and security should be made available to the Commission and the public.

(2) A recognized futures exchange that determines to allow block trading should have rules which:

(i) Define the block based upon the customary size of large positions in the cash and derivatives market,

(ii) Restrict access to block trading to eligible participants,

(iii) Provide a mechanism for ensuring that the block's price will be fair and reasonable, and

(iv) provide for transparency of the trade by requiring that it be reported for clearing within a reasonable period of time and that it be identified separately in the price reporting system.

(b) *Acceptable Practices.*

A professional that is a certified member of the Informational Systems Audit and Control Association experienced in the industry would be an example of an acceptable party to carry out such testing and review.

Core Principle 9: Audit Trail: Have procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the quality of the data captured, and the safe storage of such information, and have systems to enable information to be used in assisting in detecting and deterring customer and market abuse.

(a) *Application Guidance.*

A recognized futures exchange should have arrangements and resources for recording of full data entry and trade details sufficient to reconstruct trading and the safe storage of audit trail data systems enabling information to be used in combating customer and market abuse.

(b) *Acceptable Practices.*

(1) The goal of an audit trail is to detect and deter customer and market abuse. An effective exchange audit trail should capture and retain sufficient trade-related information to permit exchange staff to detect trading abuses and to reconstruct all transactions. An audit trail should include specialized electronic surveillance programs that would identify potentially abusive trades and trade patterns, including for instance, withholding or disclosing customer orders, trading ahead, and preferential allocation. An acceptable audit trail must be able to track a customer order from time of receipt through fill allocation. The exchange must create and maintain an electronic transaction history database that contains information with respect to transactions affected on the recognized futures exchange.

(2) An acceptable audit trail, therefore, should include the following: original source documents, transaction history, electronic analysis capability, and safe storage capability. A registered futures exchange whose audit trail satisfies the following acceptable practices would satisfy Core Principle 9.

(i) *Original Source Documents.* Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded, whether recorded manually or electronically. For each customer order, such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry. For floor-based exchanges, the time of report of execution of the order should also be captured.

(ii) *Transaction History.* A transaction history which consists of an electronic history of each transaction, including:

(A) All data that are input into the trade entry or matching system for the transaction to match and clear;

(B) Whether the trade was for a customer or proprietary account;

(C) Timing and sequencing data adequate to reconstruct trading; and

(D) The identification of each account to which fills are allocated.

(iii) *Electronic Analysis Capability.* An electronic analysis capability that permits sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to both customer and market abuse.

(iv) Safe Storage Capability. Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in accordance with the recordkeeping standards of Core Principle 14.

Core Principle 10: Financial Standards: Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, rules addressing the financial integrity of the intermediary and the protection of customer funds, as appropriate, and a program to enforce those requirements.

(a) *Application Guidance.*

Clearing of transactions executed on a recognized futures exchange should be provided through a Commission-recognized clearing facility. In addition, a recognized futures exchange should maintain the financial integrity of its transactions by maintaining minimum financial standards for its members and having default rules and procedures. The minimum financial standards should be monitored for compliance purposes. The Commission believes that in order to monitor for minimum financial requirements, a recognized futures exchange should routinely receive and promptly review financial and related information. Rules concerning the protection of customer funds should address the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, and related recordkeeping.

(b) *Acceptable Practices.* [Reserved]

Core Principle 11: Customer Protection: Have, monitor and enforce rules for customer protection.

(a) *Application Guidance.*

A recognized futures exchange should have rules prohibiting conduct by intermediaries that is fraudulent, noncompetitive, unfair, or an abusive practice in connection with the execution of trades and a program to detect and discipline such behavior. Intermediated markets are not required to have, monitor or enforce rules requiring intermediaries to provide risk disclosure or to comply with other sales practices.

(b) *Acceptable Practices.* [Reserved]

Core Principle 12: Dispute Resolution: Provide for alternative dispute resolution mechanisms appropriate to the nature of the market.

(a) *Application Guidance.*

A recognized futures exchange should provide customer dispute resolution procedures that are fair and equitable and that are made available to the customer on a voluntary basis, either directly or through another self-regulatory organization.

(b) *Acceptable Practices.*

(1) Core Principle 12 requires a recognized futures exchange to provide for dispute resolution mechanisms that are appropriate to the nature of the market.

(2) In order to satisfy acceptable standards, a recognized futures exchange should provide a customer dispute resolution mechanism that is fundamentally fair and is equitable. The procedure should provide:

(i) The customer with an opportunity to have his or her claim decided by a decision-maker that is objective and impartial,

(ii) Each party with the right to be represented by counsel, at the party's own expense,

(iii) Each party with adequate notice of claims presented against him or her, an opportunity to be heard on all claims, defenses and permitted counterclaims, and an opportunity for a prompt hearing,

(iv) For prompt written final settlement awards that are not subject to appeal within the exchange, and

(v) Notice to the parties of the fees and costs which may be assessed.

(3) The procedure employed also must be voluntary and may permit counter claims, as provided in § 166.5 of this chapter.

(4) If the recognized futures exchange also provides a procedure for the resolution of disputes which do not involve customers (*i.e.*, member-to-member disputes), the procedure for the resolution of such disputes must be independent of and shall not interfere with or delay the resolution of customers' claims or grievances.

(5) A recognized futures exchange may delegate to another self-regulatory organization or to a registered futures association its responsibility to provide for customer dispute resolution mechanisms, *Provided, however,* that, if the recognized futures exchange does so delegate that responsibility, the exchange shall in all respects treat any decision issued by such other organization or association as if the decision were its own including providing for the appropriate enforcement of any award issued against a delinquent member.

Core Principle 13: Governance: Have fitness standards for members, owners or operators with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants.

(a) *Application Guidance.*

(1) A recognized futures exchange should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle which should include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness are those bases for refusal to register a person under section 8a(2) of the Act or a history of serious disciplinary offenses, such as those which would be disqualifying under § 1.63 of this chapter. The Commission believes that such standards should include the provision to the Commission of registration information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's counsel or other information substantiating the fitness of such persons. If an exchange provided certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in their position. The means to address conflicts of interest in decision-making should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addressing the access to, and use of, material non-public information, the Commission believes that the recognized futures exchange should provide for limitations on exchange employee trading.

(2) A recognized futures exchange may not limit its liability or the liability of any of its officers, directors, employees, licensors, contractors and/or affiliates where such liability arises from such person's violation of the Act or Commission rules, fraud, or wanton or willful misconduct.

(b) *Acceptable Practices.* [Reserved]

Core Principle 14: Recordkeeping: Keep full books and records of all activities related to its business as a recognized futures exchange in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.*

Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle 15: Competition: Operate in a manner consistent with the public interest to be protected by the antitrust laws.

(a) *Application Guidance.*

An entity seeking recognition as a recognized futures exchange may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter. The Commission intends to apply section 15 of the Act to its consideration of issues under the Competition Core Principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable Practices.* [Reserved]

PART 170—REGISTERED FUTURES ASSOCIATIONS

11. The authority citation for Part 170 continues to read as follows:

Authority: 7 U.S.C. 6p, 12a, and 21.

12. Section 170.8 is revised to read as follows:

§ 170.8 Settlement of customer disputes (section 17(b)(10) of the Act).

A futures association must be able to demonstrate its capacity to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a customer's claim or grievance brought against any member of the association or any employee of a member of the association. Such rules shall conform to and be consistent with section 17(b)(10) of the Act and be consistent with the guidelines and acceptable practices for dispute resolution found within Appendix A and Appendix B to part 38 of this chapter.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

13. Part 180 is removed.

Issued in Washington, DC, this 21st day of November, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[This statement will not appear in the Code of Federal Regulations]

Dissent of Commissioner Thomas J. Erickson Regarding Final Rules for a New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

I dissent from the Commission's final rules regarding multilateral transaction execution facilities, or "MTEFs." While I believe this is the most dynamic element of the proposed framework, I also fear that it will only expand the legal uncertainty that the industry has decried for so long in reference to the existing swaps exemption in Part 35. I am thus simultaneously interested in the potential this proposal represents and disappointed in the lost opportunity for clarification.

At its core, my concern is this: The framework will, for the first time, inject legal uncertainty into regulated exchange markets by conferring "recognition" upon derivatives transaction facilities, or DTFs, without any determination that the transactions are within the CFTC's jurisdiction. I believe that if an agency of the United States Government tells market participants, other branches of the government, and counterpart foreign regulators that a market is regulated, then it should be, in fact, regulated.

At the DTF level, it seems clear that some markets will not be subject to Commission oversight because the Commission's jurisdiction—over transactions for future delivery and commodity options—will not attach to markets for certain products traded on DTFs. The nature of the Commission's mixed jurisdiction was not lost on commenters to the proposed framework; while some saw this as a flaw in the proposal,[1] others took comfort in it.[2] Despite this "don't ask, don't tell" approach, DTFs all will be "recognized" by the Commission as regulated markets.[3] In turn, these DTF markets will hold themselves out to the public as markets regulated by the CFTC.

The Commission and certain commenters within the industry find the possible mix of futures and non-futures products on DTFs acceptable. They rely on Congressional report language from the 1992 legislation that, in effect, allows the Commission to exempt transactions without first determining that they are in the agency's jurisdiction.[4]

In the context of bilateral, privately negotiated transactions—such as those swaps the Commission was directed by Congress to "promptly exempt—such an exemption makes a certain amount of sense. The consequence of any performance failure or fraud is borne solely by the parties to the transaction.

However, today the Commission extends this rationale to entities that are, in fact, exchange markets. Global participants and international regulators rely on our representations that these markets are regulated. I will not be comfortable making such representations with regard to DTFs where the Commission's jurisdiction is so questionable.

As a secondary matter, I am concerned with the level of oversight that will be applied to all DTF markets. Under the new framework, DTFs generally will not be required to maintain or provide the Commission with reports of futures positions held by their customers that exceed certain thresholds. In what appears to be a nod to the need for these reports, known as "large trader reports," the Commission contemplates collecting this information only in a select, few markets. But the vast majority of markets trading at the DTF level—generally those without retail participants—will have no obligation or duty to the Commission or the public with regard to this important information.

Large trader reports are an essential tool in the Commission's effort to detect and deter market manipulations. Deterrence is important because the effects of market manipulations reach far beyond the market's participants. Consumers ultimately pay for manipulations in commodity markets: Home buyers pay higher interest rates; commuters pay higher prices for gasoline; and we all pay higher prices for heating oil and food. For these reasons, I would require large trader reports in all DTF markets, regardless of the type of commodity product or participant involved.

The Department of the Treasury identified this issue in its comment letter, stating that "large trader reporting requirements have worked well in the market for treasury futures, both for the information they reveal to regulators and their deterrent effect."[5] I could not agree more strongly with the Treasury Department on this point. While it appears that large trader reporting will attach to government securities markets, I do not understand why the Treasury's views have not provided just as compelling a rationale for other markets which are not nearly as deep or liquid.

I believe that DTF markets may prove to be very successful, commercially. They may well grow to be the commercial markets where pricing and price-basing of commodities occurs. The Commission would be wise to retain its ability to detect and deter manipulations at their incipience.

Dated: November 20, 2000.

Thomas J. Erickson,

Commissioner.

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[1] *See* Mercatus letter, Aug. 21, 2000, p. 4 ("While it may be appropriate for the CFTC to avoid such a determination in granting an exemption from regulation, it is not clear that the CFTC can exercise its antifraud authority in relation to a particular transaction without determining that the CFTC is authorized to exercise jurisdiction in the first instance.") The drafters of the Mercatus letter further note that the "broad definition of MTEF" in the proposed rules could even be read "to cover auction markets such as eBay and all other forms of B2B trading facilities, whether electronic or not." *Id.* at 5. The Commission attempts to deflect this criticism in the final rules, stating that "so long as a facility auctions instruments outside of the Commission's regulatory jurisdiction under the Act, [the] exemptions therefrom and this framework would have no application to its business." *See* Final Rules for a New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, pp. 13–14. The Commission's response misses the rudimentary point that it will be anyone's guess whether some instruments possibly traded on DTFs are within or outside the Commission's jurisdiction.

[2] *See* Lehman Brothers letter, Sept. 5, 2000, p. 2 ("[T]he Commission's jurisdiction extends solely to futures and commodity options, such that reserving anti-fraud and anti-manipulation authority over futures and commodity options merely restates the current state of law. Such a reservation of authority cannot, legally, extend to transactions other than futures and commodity options and repeating the nature of the agency's statutory jurisdiction carries no legal baggage.")

[3] The only apparent penalty for refusing to comply with Commission rules is the market's loss of recognition as a DTF. I am not comfortable with this after-the-fallout remedy, and I cannot imagine potential market participants or domestic or international regulators being any more pleased.

[4] *See* A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, p. 11, citing H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

[5] *See* Department of Treasury letter, Aug. 16, 2000, p. 4.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 140, 155 and 166

RIN 3038–AB56

Rules Relating to Intermediaries of Commodity Interest Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: As part of a comprehensive regulatory reform process, the Commodity Futures Trading Commission (CFTC or Commission) has revised its rules relating to intermediation of commodity futures and commodity options (commodity interest) transactions. These new rules and rule amendments will provide greater flexibility in several areas. For example, to ease barriers to entry for persons seeking registration as futures commission merchants (FCMs) or introducing brokers (IBs), the Commission has established a simplified registration procedure for those persons who are regulated by other federal financial regulatory agencies and who limit their customer base to institutional customers only, regardless of the type of market involved.

With respect to trading on recognized derivatives transaction facilities (DTFs), the Commission has determined to permit non-institutional customers to enter into transactions thereon, provided that such non-institutional customer business is transacted either through a registered FCM that is a clearing member of at least one designated contract market or recognized futures exchange (RFE), and that has adjusted net capital of at least $20 million or by a registered commodity trading advisor (CTA) who has discretionary authority over the non-institutional customer's account, and who has assets under management of not less than $25 million. The latter circumstance is an expansion of the proposal.

As proposed, the Commission is expanding the range of instruments in which FCMs may invest customer funds. In response to various comments concerning the expansion of permissible investments, the Commission is making certain adjustments to the proposals relating to, among other things, concentration limits as applied to securities held in connection with repurchase transactions, permissible investments in FCMs and their affiliates by money market mutual funds meeting the requirements of Rule 2a–7 under the Investment Company Act of 1940 (Investment Company Act), and investment in foreign sovereign debt. Separately, the Commission also is considering proposing risk-based capital rules for FCMs. Further, the Commission recently adopted a revised interpretation concerning the treatment of customer funds on deposit with

FCMs for the purpose of trading on foreign markets under Rule 30.7.[1]

In addition, the Commission is announcing herein the adoption of other new rules and rule amendments, concerning the definition of the term "principal," certified financial reports, ethics training, disclosure, account opening procedures, trading standards, reporting requirements, and offsetting positions, as proposed. The Commission has made additional changes to allow a registrant to notify the Commission when a new natural person is added as a principal "promptly" after the change occurs. With respect to pre-dispute arbitration agreements between an institutional customer and a Commission registrant, the Commission has determined to allow such parties to negotiate any or all terms of the agreement, provided that the signing of such agreement by the institutional customer cannot be made a condition of doing business with the registrant. The Commission has also determined to allow any counterclaim to be heard as part of an arbitration proceeding between a non-institutional customer and a registrant where the parties have agreed in advance that all such claims must be included in the proceeding, provided that the aggregate value of the counterclaim is capable of calculation and that the counterclaim arises out of a transaction subject to Commission jurisdiction.

EFFECTIVE DATE: February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Paul H. Bjarnason, Jr., Special Advisor for Accounting Policy (with respect to Rule 1.25 concerning investment of customer funds), or Ky Tran-Trong, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5450.

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I. Introduction

A. Background

In accordance with the recommendations made in a staff task force report submitted to the Commission's Congressional oversight committees on February 22, 2000, the Commission on June 22, 2000 published a proposed new regulatory structure intended to adapt to the changing needs of the modern marketplace (New Regulatory Framework).[2] In reviewing its regulatory structure for intermediaries, the Commission in its proposal (Proposing Release) identified eight Core Principles that it believes are fundamental to assuring proper conduct by intermediaries of commodity interest transactions.[3] Although the Commission did not propose these Core Principles as rules, they guided the Commission in its regulatory reform efforts, as the Commission reviewed all of its rules related to intermediaries in light of the Core Principles. The Commission proposed reforms contemplating greater flexibility for intermediaries and their customers via a regulatory structure that acknowledges the different levels of safeguards appropriate to the types of instruments, customers, and markets involved.

To the extent that an existing rule was not addressed in the Proposing Release, and no amendment thereto has been adopted, the rule will apply to intermediaries transacting business on behalf of customers on contract markets, RFEs and DTFs. When an intermediary transacts business on an exempt multilateral transaction execution facility (exempt MTEF), these transactions are subject only to the Commission's antifraud and antimanipulation authority to the extent applicable.[4] Similarly, where a DTF permits trading only on a principal-to-principal basis, CFTC rules related only to intermediaries will not be applicable to such a market structure.[5]

The Core Principles that guided the Commission in its review of rules applicable to intermediaries, which relate to registration, fitness of registrants, financial requirements, risk disclosure, trading standards, supervision of personnel, large position reporting requirements, and recordkeeping, are as follows:

1. Registration Required

Any person or entity intermediating a transaction on an RFE, or on a DTF that permits intermediation of trading, must be registered in the appropriate capacity with the Commission as an FCM, IB, CTA, commodity pool operator (CPO), associated person (AP) of any of the foregoing, or floor broker (FB). In addition, a person trading solely for his or her own account on an RFE or DTF with a trading floor must register as a floor trader (FT).

2. Fitness of Registrants

Intermediaries and FTs in all markets recognized by the CFTC must be and remain fit.

3. Financial

FCMs must keep and safeguard customer money and FCMs and IBs must have sufficient capital to ensure their capacity to meet their obligations to customers.

4. Risk Disclosure

Intermediaries must provide to customers risk disclosure appropriate to the particular instrument or transaction and the customer.

5. Trading Standards

Intermediaries and their affiliated persons are prohibited from misusing knowledge of their customers' orders.

6. Supervision

All intermediaries, including APs having supervisory responsibilities, must diligently supervise all commodity interest accounts that they carry, operate, advise, introduce, handle, or trade, as well as all of the other activities that arise in their business as intermediaries. All intermediaries must establish, maintain, and enforce supervisory procedures.

7. Reporting of Positions

All intermediaries must report to the Commission, RFE or DTF information that permits the Commission, RFE, or DTF to identify concentrations of positions and market composition. Reports of transactions on RFEs are required on a routine and non-routine basis, as is the case for transactions on contract markets. Reports of transactions on an institutional-participant DTF are required only on a non-routine basis.[6]

8. Recordkeeping

All intermediaries (and FTs) must keep full books and records of all activities related to their business as an FCM, IB, CPO, CTA, FB, or FT, in a form and manner acceptable to the Commission for a period of five years. Such information must be readily available during the first two years and be produced to the Commission at the expense of the person required to keep the books or records. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

Certain of the Commission's rule amendments, such as those concerning ethics training and the definition of the term "principal," will affect all registered firms. The other new rules and rule amendments will affect mainly FCMs and IBs, and are not applicable to CPOs and CTAs. The Commission intends to consider further rulemaking proposals at a subsequent date that will focus more directly upon Part 4 of the Commission's rules, which governs the operations and activities of CPOs and CTAs.[7]

B. The Comments Received

The Commission received 81 comment letters on the New Regulatory Framework, 51 of which were posted to the comment file on intermediaries on the Commission's web site. Of those 51 comment letters, 31 letters addressed specific provisions of the Proposing Release: five from U.S. commodity exchanges; two from the National Futures Association (NFA); one from the Futures Industry Association (FIA); six from other futures industry professional associations; one from the Federal Reserve Bank of Chicago (FRBC); one from the Department of the Treasury (Treasury); one from a provider of ethics training programs for the futures industry; five from firms registered as FCMs; one from a margin settlement bank for various U.S. exchanges and clearing corporations; three from trade associations representing the grain industry; one from a group of trade associations representing various producer groups; two from public policy centers; one from a single firm registered as an FCM, CPO and CTA; and one from a certified public accounting firm. These commenters, as well as those that addressed the concept of regulatory reform in a more general fashion, expressed strong support for the Proposing Release, but some suggested that the relief did not go far enough towards replacing the Commission's regulatory framework concerning intermediaries with core principles.[8]

The Commission has carefully reviewed all of the comments received. Based upon this review, the Commission generally has determined to adopt the new rules and amendments as proposed in the Proposing Release. In response to the comments, the Commission has also decided, however, to modify the proposal in several respects. First, the Commission has determined to expand the "passport" provisions with respect to those FCMs and IBs that are already registered with the Securities and Exchange Commission (SEC) in a similar registration capacity, or that are authorized to perform these functions by a federal banking authority. As adopted, these rules will allow those FCMs and IBs to follow a simplified registration procedure in order to conduct business solely for institutional customers on designated contract markets and RFEs, in addition to DTFs. Second, the Commission has determined to permit certain CTAs to place trades on a DTF on behalf of non-institutional customers, provided that the non-institutional customer's investment decisions are directed by the CTA and that total assets over which the CTA has discretionary authority are not less than $25 million. The proposal would have required non-institutional customers wishing to trade on DTFs to transact their business only through an FCM with at least $20 million in adjusted net capital that is also a clearing member of at least one designated contract market or RFE.[9] Third, the Commission has made adjustments to its rules governing permissible investments for customer funds in response to the comments received. Fourth, the Commission has adopted additional changes to allow a registrant to notify the Commission "promptly" after a new principal is added, rather than prior to the change as was the case previously. Fifth, with respect to pre-dispute arbitration agreements between an institutional customer and a Commission registrant, the Commission has determined to allow such parties to negotiate any or all terms of such agreements, provided that the signing of the agreement may not be made a condition of doing business with the registrant. Sixth, the Commission has decided to permit any counterclaim arising out of a transaction subject to the Commodity Exchange Act (Act) or regulations thereunder to be heard as part of an arbitration proceeding between a non-institutional customer and a registrant where the parties have agreed in advance that all such claims must be included in the proceeding.

In the Proposing Release, the Commission gave a detailed explanation for each revision that it proposed to

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[1] 65 FR 60558 (Oct. 11, 2000). Unless otherwise noted, Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] *See* A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, 65 FR 38986; Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 39008; A New Regulatory Framework for Clearing Organizations, 65 FR 39027; Exemption for Bilateral Transactions, 65 FR 39033.

[3] 65 FR 39008.

[4] *See id.* at 39009 nn.1–3.

[5] *See id.* A more complete description of the various new market structures can be found in "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations," published elsewhere in today's edition of the **Federal Register.**

[6] As discussed in a companion release in today's edition of the **Federal Register**, large trader reports will not be required from participants trading on a DTF restricted to commercial participants, except where the Commission specifically orders otherwise.

[7] The Commission wishes to make clear that its regulatory reform efforts are an ongoing process. Thus, for example, as a part of the regulatory reform process, the Division of Trading and Markets recently permitted designated self-regulatory organizations (DSROs) to conduct "risk-based" auditing and thereby take into account a firm's business practices in establishing the scope and timing of audits. *See* Financial and Segregation Interpretation No. 4–2, CFTC Staff Letter 99–32, [1998–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,745 (Aug. 20, 1999). Similarly, the Commission is considering amendments to the minimum capital requirements for FCMs. Those proposed amendments would contain an approach, generally referred to as "risk-based" capital requirements, that is based more upon position risk than is the case under the current rules.

[8] Commenters are generally identified by name below when their comments are discussed. Citations to comment letters are denoted as "CL 22–x." The number 22 represents the comment file for the Proposing Release and "x" is the number assigned to a particular comment letter as set forth on the Commission's website, www.cftc.gov.

[9] As explained in the separate release on "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations" in today's edition of the **Federal Register**, however, the Commission is amending its proposal to permit a non-institutional customer to enter an order directly to a DTF's electronic trading platform where the customer's account is carried by a registered FCM with at least $20 million in adjusted net capital that is also a clearing member of at least one designated contract market or RFE, provided that such FCM's credit filter is maintained as part of the DTF's electronic trading platform. *See* § 37.2(a)(2)(ii)(A).

In addition, FTs and FBs will be permitted to trade for their own account on a DTF, even if they would not otherwise come within the definition of an institutional customer, provided that their obligations in connection with their trading on the DTF are guaranteed by an FCM. *See* § 37.1(b)(1), (2). Generally, an FT or an FB must have total assets exceeding $10,000,000 to be considered an institutional customer. *See* §§ 1.3(g), 35.2(b)(10), (11).

make to the rules relating to intermediation of commodity interest transactions. The scope of this **Federal Register** release generally is restricted to the comments received on the Proposing Release and changes to the proposed new rules and rule amendments that the Commission has made in response thereto. Accordingly, the Commission encourages interested persons to read the Proposing Release for a discussion of the background and purpose of each of the rule amendments that is not described in detail in this **Federal Register** release.

The Proposing Release also presented several sets of questions intended to elicit public comments on various issues. For instance, the Commission requested comment concerning the need to update and to make more flexible its minimum net capital requirements for FCMs by permitting the application of risk-based net capital requirements.[10] In response to the comments received, the Commission plans to separately propose various rules and amendments addressing risk-based capital requirements. The Commission also posed certain questions related to the treatment of customer funds.[11] Reactions were mixed regarding these additional issues. Consequently, the Commission will continue to study these issues.

II. Responses to the Comments Received

A. General

As noted above, several commenters urged the Commission to revoke many of the rules that govern the relationship between futures and options customers and intermediaries, and to adopt in their place a set of core principles and statements of acceptable practices that reflect the "largely institutional nature of derivatives market participants." (CL 22–31 at 2–3; see also CL 22–22 at 9; CL 22–24 at 1; CL 22–39 at 8; CL 22–35 at 11) In particular, FIA commented that:

> [We have] identified the following core principles that we believe should govern intermediaries in the conduct of their business, without regard to the market on which a transaction is executed: (1) Registration of intermediaries and their associated persons; (2) minimum financial requirements; (3) protection of customer funds appropriate to the type of customer; (4) prohibition against fraud and manipulation; (5) large trader reporting requirements; and (6) recordkeeping. These core principles, combined with an effective self-regulatory organization audit program to assure that intermediaries have developed and are enforcing adequate internal controls[,] should achieve the Commission's regulatory purpose. (CL 22–31 at 3 (footnotes omitted))

In general, the Commission believes that it is more expeditious at this time to adopt the specific regulatory reforms contemplated in the original release. Replacing the current rules with core principles might have delayed these changes, and in some instances, resulted in no practical benefit to the regulated community. To use Rule 1.55 as an example, the development of a core principle approach in this area would have required the Commission to propose the repeal of Rule 1.55 and the adoption of a core principle for disclosure together with a Statement of Acceptable Practices. The Statement of Acceptable Practices would likely provide, as the rule does now, no standard disclosure requirement for institutional customers and the basic single-page statement now applicable to non-institutional customers. At the end of this process, there would be no discernible change in FCM or IB operations. Firms might theoretically be freer to develop their own statements, but to clear them through counsel and self-regulatory organization (SRO) staff would likely be costly and time-consuming. Accordingly, the Commission did not believe that it would be an effective use of the Commission's or the industry's resources at this time to replace Rule 1.55 solely for the purpose of establishing a core principle concerning disclosure. The Commission reaches similar conclusions with respect to the repeal of other rules.

Second, the Commission believes that certain issues, such as the computation of capital for a financial intermediary, do not lend themselves easily to a core principle approach. As one commenter observed: "Capital and segregation requirements * * *" must be spelled out in detail to ensure the integrity of customer funds." (CL 22–24 at 1)

Third, as the New York Mercantile Exchange (NYMEX) noted, a re-examination of the Commission's rules applicable to intermediaries with a goal towards replacing them with a set of Core Principles and statements of acceptable practices "would require an intensive review of the applicable rules in this area," and accordingly, "undertaking such an examination as part of the current Reform Proposal could so greatly lengthen the process as to undermine the entire reform effort." (CL 22–32 at 16–17)

Nevertheless, the Commission's decision at this time not to use a core principles approach with respect to intermediaries will not affect its commitment to the continued review of the rules affecting intermediaries to determine where core principles are appropriate.[12] In this regard, the Commission notes the request it made in the Proposing Release for specific comments concerning existing rules and suggested modifications thereto.[13] The Commission further notes that under Rule 140.99, there remains a procedure in place whereby the Commission's staff may consider specific individual circumstances and, where warranted, the Commission's staff may grant interpretative, exemptive, or no-action relief from requirements under the Act or Commission rules to individuals or entities requesting such relief.

Certain commenters specifically addressed the need for further regulatory relief with respect to CPOs and CTAs. (CL 22–22 at 9; CL 22–43 at 5–6; CL 22–47 at 2) The Commission recognizes that CPOs and CTAs represent "important sectors of the futures industry." (CL 22–22 at 2) As stated above, the regulatory reform process is an ongoing one. The Commission continues to explore additional areas in which relief for CPOs and CTAs may be warranted, *e.g.*, Part 4 of the Commission's rules, and will be making further rulemaking proposals.

With specific regard to recordkeeping, the Commission in 1999 adopted amendments to the recordkeeping requirements of Rule 1.31 in order to allow recordkeepers to store most records on either micrographic or electronic storage media for the full five-year period, thereby harmonizing procedures for those firms regulated by both the Commission and the SEC.[14] In order to avoid undue hardship, the Commission later extended the effective date of the requirement that recordkeepers using only electronic storage media enter into arrangements with third-party technical consultants.[15] The Commission's staff is continuing to work with industry representatives to implement this procedure.

[10] 65 FR at 39012.

[11] *Id.* at 39014–15.

[12] Should the Commission in the future adopt core principles in the place of some of its existing regulations as they pertain to intermediaries, NFA urged the Commission to look to NFA and the industry to develop the acceptable practices for satisfying many of these core principles, subject to Commission approval. (CL 22–24 at 2) The Commission notes that it has already taken such an approach in certain areas, *e.g.*, disclosure to non-institutional customers trading on DTFs, and looks forward to continuing to work with NFA and the industry in developing acceptable practices in additional areas.

[13] 65 FR at 39009.

[14] 64 FR 28735 (May 27, 1999).

[15] 64 FR 36568 (July 7, 1999).

B. Core Principle One: Registration

1. Definition of the Term "Principal"

Under Commission staff's prior interpretation of the definition of the term "principal" in Rules 3.1(a)(1) and 4.10(e)(1),[16] all officers of a registrant were treated as principals and required to register as such. In response to changes in management structures over the last 20 years and requests from registrants that certain employees, such as some vice presidents, not be considered principals because they do not exercise a controlling influence over the registrant or any of its activities subject to Commission regulation, the Commission proposed to amend Rules 3.1(a)(1) and 4.10(e)(1) by defining as principals persons within a given organizational structure who hold specific offices.[17] A registrant would, therefore, no longer be required to treat every officer as a principal, but only those who met the criteria of the rule as revised.

Commenters were strongly in support of the proposal to amend the definition of "principal" to reduce the number of persons required to be registered, and the Commission is adopting the amendments as proposed.[18] (CL 22–22 at 11; CL 22–24 at 3; CL 22–25 at 2; CL 22–31 at 13; CL 22–32 at 16) The Managed Funds Association (MFA) asked the Commission to confirm that the reference in the proposed amendment to the "principal" definition to "any person in charge of a business unit subject to regulation by the Commission" applied solely to "the aggregate business unit acting in a registered capacity and not subsidiary divisions or units such as marketing, human resources, audit, and other departments within an operating entity." (CL 22–22 at 11) The Commission agrees with this interpretation, and reiterates that the intent of the amended "principal" definition is to reduce the number of officers that will be considered principals, while ensuring that appropriate personnel, *e.g.*, those that exercise, or are in a position to exercise, "a controlling influence over the registrant or any of its activities subject to Commission regulation," [19] remain listed as such.

The Commission also has determined to adopt, as proposed, conforming changes to Rules 4.24(f)(1)(v), 4.25(a)(8)(ii)(A) and 4.25(c)(2)(i)(B), applicable to CPOs, and 4.34(f)(1)(ii) and 4.35(a)(7)(ii)(A), applicable to CTAs, as incorporated by reference in amended Rule 4.10(e)(1). Accordingly, CPOs and CTAs will only be required to provide business backgrounds and proprietary trading results for those principals who participate in making trading or operational decisions, or supervise persons so engaged, and not all officers.[20]

In response to suggestions by FIA, the Commission has determined to delete Rule 3.32, which specifies certain events or changes within a firm's management structure that require the firm to file a new registration form. (CL 22–31 at 13–14) The Commission is adding a new paragraph (a)(2) to Rule 3.31 to require the registrant to file a Form 8–R on behalf of each new natural person principal who was not listed on the registrant's Form 7–R "promptly" after the change occurs. Rule 3.31(a)(2) was drafted to closely parallel Rule 3.10(a)(2)(i), and provides that, if the change that renders the application for registration deficient or inaccurate results from the addition of a new principal without a current Form 8–R on file with NFA, a Form 8–R for that principal must accompany the Form 3–R amending the registrant's application for registration.[21]

2. Special Procedures Available to Firms Subject to Securities or Banking Regulation

The Commission proposed to amend Rule 3.10 to simplify the registration process for FCMs or IBs who conduct business solely for institutional customers on a DTF, and who are already registered with the SEC in a similar registration category or who are authorized to perform these functions by a federal banking authority.[22] The Commission stated in the Proposing Release that such applicants would be registered as an FCM or IB upon filing notice with NFA of their intent to undertake such limited activities, together with a certification that they are registered or authorized to engage in a similar function by, and are in good standing with, the SEC or a federal banking authority. In addition, individuals acting in the capacity of APs for such FCMs or IBs need not be registered or listed, and would not be subject to proficiency testing or ethics training requirements. These firms and their salespersons would remain subject to antifraud provisions, however.[23]

The Chicago Mercantile Exchange (CME), along with other commenters, stated that the "passporting" provisions did not go far enough and urged the Commission to extend the provisions to allow those persons who are regulated by the SEC or a federal banking agency, and who opt to register as an FCM or IB under the simplified registration procedure, to conduct business for institutional customers on all trading platforms, rather than limit their access to DTFs.[24] (CL 22–35 at 12; *see also* CL 22–24 at 3–4; CL 22–25 at 2–3) In support of this recommendation, the Chicago Board of Trade (CBT) stated, "[i]f the nature of the entity or individual intermediating the transaction and the nature of the customer determines the need for any particular requirement, whether the transaction facility is a DTF or an RFE is irrelevant." (CL 22–25 at 3; *see also* CL 22–35 at 15)

In contrast, however, the National Introducing Brokers Association (NIBA) urged that any person or organization conducting any commodity interest business should be subject to full registration requirements (CL 22–17 at 4), while MFA stated that firms making use of the "passport" procedure should be subject to a limitation upon their commodity interest business, such as a requirement that their commodity interest activities be incidental to their primary business as a broker-dealer or bank. (CL 22–22 at 11–12)

Upon consideration of the comments received, the Commission agrees that given the nature of the customers (*i.e.*, solely institutional customers) for whom a securities broker-dealer or bank would

[16] Rule 3.1(a) defines "principal" for purposes of the Commission's Part 3 rules, which govern registration. Rule 4.10(e) defines "principal" for purposes of the Commission's Part 4 rules, which apply to the activities of CPOs and CTAs.

[17] 65 FR at 39010.

[18] As amended, the "principal" definition will continue to include all directors of a corporate registrant. In addition, the definition will include the general provision that defines as a principal any person occupying a similar status as or performing similar functions to those persons specifically listed, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over a firm's activities that are subject to regulation by the Commission. As noted in the Proposing Release, what constitutes "a controlling influence" will be left for determination on "a case-by-case basis." *Id.* at 39011 n.11.

[19] *Id.* at 39010.

[20] *Id.* at 39011.

[21] An additional conforming change was made to § 3.21(c) to reflect the deletion of § 3.32, and the addition of new paragraph (a)(2) to § 3.31.

[22] 65 FR at 39011–12.

[23] *Id.* at 39012.

[24] In this regard, the CME stated that given the restrictions of the DTF market structure:

> The proposed rulemaking provides no relief whatsoever to a securities broker-dealer (not also registered as a FCM) that wishes to execute transactions in both stock index futures and the underlying stocks in order to implement an asset allocation strategy for its institutional customers. So long as the customers are sophisticated institutions, we can see no regulatory reason not to allow them to use the federally-regulated intermediary of their choice in effecting transactions in a futures market, regardless of whether the market is regulated as a designated contract market, an RFE, a DTF or an exempt MTEF. (CL 22–35 at 12)

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be acting as an FCM or IB, the securities broker-dealer or bank should be eligible for the simplified FCM or IB registration procedures, irrespective of the type of exchange on which the customer seeks to conduct its transactions. Accordingly, the Commission has adopted Rule 3.10(a)(1)(i)(B) to permit an individual or entity who is registered with the SEC as a broker-dealer, or has been authorized by the appropriate banking authority, to register as an FCM or IB simply by filing notice with NFA, together with a certification of registration with the appropriate financial regulator.[25] Such FCMs and IBs who are otherwise regulated by another federal financial regulator will be permitted to conduct business solely for institutional customers on any designated contract market, RFE or DTF.[26] The Commission notes, however, in accordance with FIA's comments, that the simplified registration procedure is limited to banks themselves, and not to their affiliates, and further, that once registered, securities broker-dealers and banks would be subject to the same rules that govern all FCMs and IBs. (CL 22–34 at 13)

Although "passported" firms will be eligible for the simplified FCM or IB registration procedures without regard to the type of exchange on which their institutional customers seek to conduct business, the Commission has determined to adopt Rules 1.17(a)(2)(iii) and 1.52(m), as proposed, without making further changes. Under Rule 1.17(a)(2)(iii), the Commission would not require an FCM or IB registered under the "passporting" procedures in Rule 3.10(a)(1)(i)(B) to meet the Commission's minimum financial requirements if (i) it meets the appropriate net capital requirements of its primary regulator, (ii) its activities are limited to serving institutional customers trading on DTFs that do not require compliance with CFTC minimum financial requirements for such "passported" firms, and (iii) it conforms to minimum financial standards and related reporting requirements set by such DTF in its bylaws, rules, regulations or resolutions.[27]

If, however, the "passported" FCM or IB chooses to conduct transactions on behalf of its institutional customers on a contract market or RFE in addition to its DTF activities, the firm would then be required to satisfy the Commission's minimum financial requirements. The Commission believes that this requirement is important to protect the financial integrity of these markets because a customer default may have ancillary impacts not just on other customers of the affected firm, but also on other firms and their customers transacting business on such markets. Moreover, because the Commission anticipates that "passported" firms will conduct most of their business in the securities or banking fields, with only a minor portion of their activities involving commodity interests, the requirement that such firms meet the Commission's minimum financial requirements if they conduct business for their institutional customers on a contract market or RFE should not impose a significant burden. Rules 1.17(a)(1)(i) and (ii) already require the dually registered FCM or IB to meet the greater of either the Commission's or SEC's minimum financial requirements, and in most cases, those entities that conduct most of their business in the securities or banking fields will have satisfied the Commission's minimum financial requirements by meeting the SEC capital requirements. Similarly, the Commission allows a dually registered FCM or IB to satisfy the basic financial reporting requirements of Rule 1.10 by filing a copy of its FOCUS report in lieu of a Form 1–FR. In addition, Rule 1.52(m) is adopted as proposed to relieve a DTF from the requirement that it adopt for "passported" firms, the Commission's minimum adjusted net capital standards.[28]

The Commission continues to encourage the SEC to consider reciprocal amendments to its rules to accommodate FCMs and IBs that are not now dually registered as securities brokers or dealers, but that may wish to act as intermediaries in the securities markets.

The Commission also noted in the Proposing Release that it was considering updating and making more flexible its minimum net capital requirements with respect to FCMs, specifically with respect to adopting risk-based net capital requirements.[29] Commenters were overwhelmingly in favor of this proposal, and the CBT further noted that it had, along with the Board of Trade Clearing Corporation (BOTCC) and the CME, already adopted risk-based capital requirements at the clearing organization level. (CL 22–25 at 3) The Commission is separately considering proposing rules related to risk-based net capital requirements.[30]

3. Standard Application Procedures for FCMs and IBs

The Commission proposed that applicants for registration as FCMs or IBs who raise their own capital to satisfy minimum financial requirements would be permitted to file an unaudited financial report indicating satisfaction of the minimum requirements, rather than be required to provide certified financial statements with their registration application.[31] A firm taking advantage of the new procedure would be subject to an on-site review within six months of registration by the firm's DSRO or, at the DSRO's discretion, a conference between appropriate staff of the firm and the DSRO at the DSRO's offices. An applicant that did not wish to be subject to the six-month review could continue to follow the existing rules and file a certified financial statement with its application.[32]

In general, commenters supported the proposed elimination of the certified financial statement requirement for IB applicants. (CL 22–17 at 3; CL 22–24 at 4; CL 22–25 at 4) Both NFA and the CBT, however, expressed reservations about eliminating the requirement for FCM applicants. (CL 22–24 at 4; CL 22–25 at 4) In addition, NFA recommended that the Commission consider allowing the DSRO to conduct the six-month review of independent IBs telephonically where the DSRO has no reason to be concerned about the IB's capital. (CL 22–24 at 4) The CBT expressed the view that the six-month time period for the on-site review of the FCM by the DSRO should be calculated from the date the FCM begins customer business, rather than six months from the date of registration. (CL 22–25 at 4).

The Commission has determined to eliminate the requirement to file certified financial statements with FCM or IB registration applications by adopting Rules 1.10 (a)(2)(i)(C) and (a)(2)(ii)(C), generally as proposed.[33] This alternative procedure is modeled on similar procedures in the securities industry. Although the Commission is not requiring FCMs to file a certified financial statement with their application for registration, this does not preclude any SRO from imposing this requirement before accepting an FCM for membership. With respect to the six-month review that must be conducted should an FCM or IB choose not to file a certified financial statement with its registration application, the Commission does not object, in the case of an IB, to allowing the DSRO to conduct the review telephonically where the DSRO does not have reason to question the IB's capital. However, the Commission believes that the six-month time period for the review of both FCMs and IBs should begin from the date the applicant is registered. The Commission has held consistently that once a registrant becomes registered in a certain capacity, the registrant is immediately assumed to be engaging in the activities permitted by such registration.[34]

C. Core Principles Two and Six: Fitness and Supervision

The Commission proposed to delete Rule 3.34 and instead to implement Congressional intent regarding ethics training through a Statement of Acceptable Practices.[35] Rule 3.34 specified frequency and duration of ethics training, the suggested curriculum, qualifications of instructors, and the necessary proof of attendance at such classes. In proposing to replace the rule with a Statement of Acceptable Practices that would leave the format, frequency, and providers of ethics training up to the registrants themselves, the Commission expressed its belief that greater flexibility regarding ethics training and proficiency testing could be afforded to registrants than was permitted under Rule 3.34. For registrants seeking guidance as to the maintenance of proper ethics training procedures consistent with the purposes of the Core Principle that intermediaries must be and remain fit, the Commission stated that the Statement of Acceptable Practices could function as a "safe harbor."[36]

In general, commenters expressed strong support for the Commission's proposal, stating, for example, that Rule 3.34 had become "far too detailed and administratively cumbersome," (CL 22–24 at 5) and that "each registrant should be responsible for implementing an ethics training program that addresses the registrant's business activities." (CL 22–31 at 14) Other commenters, however, expressed their beliefs that Rule 3.34 already provided sufficient flexibility to registrants, and that by eliminating the rule, the Commission risks sending the wrong message to the industry regarding the importance the Commission assigns to the ethics requirement. (CL 22–7 at 3; CL 22–43 at 6).

Upon consideration of the comments received, the Commission is deleting Rule 3.34 and issuing the Statement of Acceptable Practices as a new Appendix B to Part 3 of its Rules as proposed. Although the Commission notes the concern that eliminating Rule 3.34 may lead firms to place an inadequate priority on ethics training, the Commission does not believe that the replacement of the rule with a Statement of Acceptable Practices will diminish a registrant's obligations to remain fit and to adequately supervise the handling of customer accounts. Instead, the Commission hopes that the Statement of Acceptable Practices, which allows registrants to adopt ethics training programs that are better tailored to their needs, will help to imbue firms with a "culture of ethics" that is ongoing rather than episodic. The Commission believes that the essence of the ethics training or continuing education requirement is to remain current as to the legal requirements applicable to a person's role in the futures industry, which a registrant ignores at his or her peril.

The Commission also proposed to publish its recent "guidance letters" issued to NFA concerning the treatment of SRO disciplinary actions in assessing the fitness of FBs and FTs. The guidance letters were issued to provide greater clarity in interpreting the "other good cause" ground for statutory disqualification from registration under Section 8a(3)(M) of the Act. Support was expressed for this proposal and, accordingly, the Commission is hereby publishing both letters as an addition to Appendix A to Part 3 of its Rules.[37] (CL 22–25 at 4–5)

The Commission also requested comment regarding additional changes that should be considered in this area. In response, NFA urged the Commission to consider prohibiting exchange "subscribers" from accessing electronic exchanges where they have been barred by another exchange. (CL 22–22 at 5) As explained by NFA, the term "subscriber" describes the type of person that is equivalent to an FT. The Commission previously stated, when it adopted rules to govern FT registration, that it would defer consideration of the application of such requirements to persons using electronic trading systems to a later date.[38] To date, the Commission has not revisited the issue, and accordingly does not believe that it is appropriate to adopt NFA's request at this time. Nevertheless, the exchanges remain free to ban such "subscribers"

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[25] As noted in the Proposing Release, a firm acting in the capacity of an FCM would be required to become a member of a registered futures association. *See* § 170.15. NFA is currently the only registered futures association. NFA Bylaw 1101 essentially provides that no NFA member may deal with another person with respect to an account, order or transaction where the other person is acting in a capacity that requires registration, unless that other person is also a member of a registered futures association. The combination of Commission Rule 170.15 and NFA Bylaw 1101 therefore requires most registrants to become members of NFA.

The Commission may consider not requiring NFA membership in the future if reciprocal arrangements were made by the primary regulators of other financial industry segments to recognize CFTC registration without requiring corresponding SRO membership.

[26] Because an intermediary that conducts business on an exempt MTEF will not be subject to Commission regulation for activity on the exempt MTEF, except for the antifraud and antimanipulation provisions of the Act to the extent applicable, it is unnecessary to extend the "passporting" procedure to firms trading on these markets.

[27] 65 FR at 39012.

[28] *Id.*

[29] *Id.*

[30] Although the Proposing Release did not generally address registration procedures for firms that are dually registered with the National Association of Securities Dealers (NASD) and NFA, the Association of Registration Management (ARM) made several suggestions in that area. Among its comments, ARM recommended that: (1) Firms that are dually registered with NASD and NFA should be permitted to maintain internal records about branch office location and supervision of those locations; (2) NFA should be permitted to rely on the fingerprint information available through the NASD's Internet-based Central Registration Depository (Web CRD) database for dual registrants; and (3) NFA also should be permitted to rely on disciplinary and disclosure information filed through amendments to Web CRD. (CL 22–23 at 2–3) ARM also recommended that the Commission eliminate its Form 7–R annual update requirement by allowing NFA to rely upon, and to record changes in a registrant's application through use of, the amendments filed via Form 3–R throughout the year. (CL 22–23 at 1–2)

The Commission's Registration Working Group (RWG) will consider ARM's suggestions in the near future. In this regard, Commission staff indicated in a letter dated July 13, 2000 to NFA that: (1) NFA could rely upon reporting by the futures industry SROs and the Commission with respect to SRO disciplinary actions and Commission enforcement actions; (2) certain requirements related to the collection of employment, residential and educational data could be reduced; and (3) as part of the annual update process, firms would only be required to report any new criminal or civil matters that had arisen since the previous update.

[31] *Id.* However, as stated in the Proposing Release, those IB applicants who do not raise their own capital continue to be required to file a guarantee agreement entered into with an FCM with their registration application. IBs and FCMs should refer to Commission Rules 1.10(j) and 1.57(a)(1) concerning the procedures applicable to guarantee agreements. *See also First American Discount Corp. v. CFTC*, 222 F.3d 1008 (D.C. Cir. Aug. 18, 2000).

[32] 65 FR at 39013.

[33] Rules 1.10(a)(2)(i)(C) and (a)(2)(ii)(C) have been further revised to make clear that the Form 1–FR–FCM or Form 1–FR–IB that must be submitted by new applicants for registration as FCMs and IBs with their application must be dated not more than 17 business days prior to the date on which such report is filed. This is consistent with Rules 1.10(a)(2)(i)(B) and (a)(2)(ii)(B).

[34] *See, e.g., In re Premex*, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,992 (Feb. 1, 1984), *aff'd in relevant part, rev'd in part*, 785 F.2d 1403 (9th Cir. 1986).

[35] 65 FR at 39013.

[36] *Id.*

[37] In the Proposing Release, the Commission indicated that these letters would be published as an accompanying statement to this **Federal Register** release. The Commission has determined to add these letters to Appendix A to Part 3 because they relate to the issue of "other good cause," which is discussed at the end of Appendix A, and to provide an easier way to access the texts of these letters.

[38] 58 FR 19575, 19576 (Apr. 15, 1993).

from access pursuant to their own rules and policies. As with the case of certified financial statements for FCM applicants discussed above, SROs may determine to impose requirements that are stricter than the minimum standards set forth in Commission rules.

D. Core Principal Three: Financial Requirements

1. Trading by Non-Institutional Customers on DTFs

Under the New Regulatory Framework, trading on DTFs would be limited to futures and options on specified commodities or those commodities deemed eligible under a case-by-case Commission determination.[39] In addition, DTFs could permit trading in any commodities if trading is limited to qualifying commercial participants.[40] The Commission proposed, however, that under certain conditions a DTF might permit non-institutional customers to enter into transactions thereon.[41] To address the higher degree of risk associated with the lower regulatory protections offered to DTF participants, such non-institutional customer business could be transacted only through a registered FCM that (1) Is a clearing member of at least one designated contract market or RFE, and (2) has a minimum adjusted net capital of at least $20 million.[42] Such an FCM is considered to be more capable of properly handling these transactions and the associated risk. The Commission further noted that, in order to provide guidance to such customers and their FCMs, NFA would issue a Statement of Acceptable Practices regarding additional disclosures to be made to non-institutional customers trading on DTFs and related issues involving price dissemination.[43]

Several commenters objected to the $20 million adjusted net capital requirement for FCMs set forth in Rule 1.17(a)(1)(ii) as proposed, stating that the amount was arbitrary, and urging that it be eliminated or reduced. (CL 22–35 at 8; CL 22–46 at 3–4; CL 22–48 at 3) The CBT observed that the $20 million minimum adjusted net capital requirement would prevent more than half of all registered FCMs from intermediating on DTFs for retail customers. (CL 22–25 at 5) Instead, the CBT suggested that the Commission focus on the FCM's record of customer protection, and permit any registered FCM to transact retail customer business on a DTF if the firm: (1) Has been registered as an FCM for at least three years; and (2) has not been found by a governmental or SRO authority to have committed any sales practice violations against retail customers during the past three years. (CL 22–25 at 5) Goldenberg, Hehmeyer & Co. (GHC) recommended that the Commission apply risk-based capital requirements in lieu of the $20 million minimum net capital requirement to assess the FCM's financial soundness. (CL 22–19 at 1–2) In a somewhat related vein, Treasury commented that a more appropriate measure of an intermediary's soundness is the amount of adjusted net capital in excess of the minimum required by regulation. (CL 22–34 at 3–4) Treasury further observed, however, that because the Commission's adjusted net capital requirements are based on the amount of segregated funds, whether excess adjusted net capital is an appropriate measure of an FCM's soundness in addition to total adjusted net capital depended on what the Commission ultimately decided on the segregation of funds issue. Accordingly, Treasury recommended that the Commission consider the segregation of funds issue in conjunction with its review of net capital rules. (CL 22–34 at 3–4)

Although MFA supported the Commission's proposal to allow non-institutional customers access to DTFs through qualifying FCMs (*i.e.*, those that are clearing members of at least one designated contract market or RFE and that have at least $20 million in adjusted net capital), it urged that customers who opted to trade through certain registered CTAs should also have such access. (CL 22–22 at 5) Specifically, MFA recommended that CTAs with at least $25 million in assets under management be permitted to access both exempt MTEFs and DTFs and engage in transactions on behalf of their customers in those markets. In support, MFA pointed out that in adopting Rule 30.12, which included in the definition of "authorized customer" any person whose investment decisions with respect to foreign futures and foreign option transactions are made by a CTA with total assets under management exceeding $50 million,[44] the Commission recognized that where a professional asset manager such as a CTA acts for a customer, it is appropriate to rely on the financial sophistication of the person managing the assets rather than on the sophistication of the individual CTA client. (CL 22–22 at 5) MFA further stated that because customers select their CTAs precisely on the basis of their determination that those CTAs are best qualified to make trading decisions on their behalf, precluding a CTA from being able to access DTF markets "would * * * deprive customers of their ability to elect and receive the full benefits of the professional management for which the customer has retained the CTA." (CL 22–22 at 6) MFA estimated that less than 10 percent of all registered CTAs would qualify under a $25 million assets under management threshold, and expressed the view that this "small but sophisticated" class of CTAs would be an appropriate group for the Commission to permit access to all types of futures markets. (CL 22–22 at 8)

The Commission has reviewed these comments carefully. The Commission has determined to adopt, as proposed, the $20 million minimum adjusted net capital requirement for FCMs wishing to transact business on behalf of non-institutional customers on a DTF. The Core Principle addressing financial standards encourages intermediaries to maintain adequate capital to ensure they are able to meet their obligations to customers, and the Commission believes that the $20 million adjusted net capital requirement is a sufficient proxy for ensuring that FCMs will be financially capable of properly maintaining and servicing customer accounts. The Commission will monitor the effects of this requirement and make adjustments if appropriate.

The Commission has determined to add a new Rule 4.32 to permit registered CTAs to enter trades on or subject to the rules of a DTF on behalf of a non-institutional client, provided that the CTA: (1) Directs the client's commodity interest account;[45] (2) directs accounts containing total assets of not less than $25 million at the time the trade is entered; and (3) discloses to the client that it may enter trades on a DTF on the client's behalf. Paragraph (b) of Rule 4.32 further requires that the client's commodity interest account be carried by a registered FCM. An FCM who receives orders on behalf of a non-institutional customer from a CTA acting in accordance with Rule 4.32 need not maintain $20 million in minimum adjusted net capital, however. *See* Rule 1.17(a)(1)(ii)(B). In addition, a CTA placing trades on a DTF on behalf of a non-institutional client will be required to make any necessary disclosures pursuant to Rule 4.34(h), which requires a CTA to disclose to the client if, pursuant to Rule 1.46, the CTA has instructed the FCM carrying the client account either not to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis. This issue is discussed in greater detail below.

[39] 65 FR at 38990.

[40] *Id.*

[41] 65 FR at 39013.

[42] *Id.*

[43] *Id.*

[44] 65 FR at 47277.

[45] The term "direct," as defined in Rule 4.10(f), refers to, in the context of trading commodity interest accounts, "agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization."

2. Segregation of Funds

The Proposing Release raised two sets of questions seeking comments about whether, and under what circumstances, the Commission should permit (1) customers to opt out of segregation and (2) FCMs to maintain, in the same customer segregated account, various instruments, such as over-the-counter (OTC) derivatives, equity securities, and other cash market positions, as well as the funds used for the purpose of securing or margining such products and positions.[46] Differing views were presented on both issues, and the Commission has determined to defer action in these areas. With respect to customer opt-out of segregation, most parties commenting on the issue urged the Commission to consider thoroughly the potential implications with respect to the bankruptcy rules, *e.g.*, priority of distribution, before proceeding on the issue. (CL 22–18 at 1; CL 22–22 at 6; CL 22–25 at 7; CL 22–31 at 7–8; CL 22–32 at 14–15; CL 22–34 at 3) NFA further expressed the view that there was no current need for, or interest in, allowing institutional customers to opt out of segregation, as the FCM community is more interested in being able to provide customers with a unified account statement reflecting their holdings across all products, not just futures contracts. (CL 22–24 at 5)

In response to the Commission's query on whether the types of permissible instruments held in the same customer account should be expanded, FIA expressed the view that Section 4d(2) of the Act permits the Commission to authorize any FCM that wishes to carry a customer's cash, OTC derivatives, securities and futures positions in a single account to maintain that account as a customer segregated account. The CBT cautioned the Commission to give further consideration to bankruptcy implications before proceeding in this area. The Commission agrees that action on this issue should be deferred to allow for additional study and consultation with other regulators, including members of the President's Working Group (PWG), and in addition, that any ultimate determination must be made in conjunction with deciding the customer opt-out of segregation issue.[47]

3. Investment of Customer Funds

The Commission proposed to amend Rule 1.25, which sets forth the types of instruments in which FCMs and clearing organizations are permitted to invest customer funds pursuant to Section 4d(2) of the Act (permitted investments), by expanding the list of permitted investments.[48] Previously, an FCM or clearing organization was permitted to invest segregated funds only in obligations of the U.S., in general obligations of any State or of any political subdivision thereof, or in obligations fully guaranteed as to principal and interest by the U.S.

The Commission proposed, subject to specific risk-limiting features, to permit FCMs to invest customer segregated funds in the following additional instruments: (1) Obligations issued by any agency sponsored by the U.S.; (2) certificates of deposit issued by a bank, as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation; (3) commercial paper; (4) corporate notes; and (5) interests in money market mutual funds (MMMFs). In addition, an FCM or a clearing organization would also be permitted to both buy and sell the permitted investments pursuant to agreements for resale or repurchase of the instruments (repurchase transactions).[49]

The Proposing Release contained several provisions intended to minimize credit risk; market risk, and liquidity risk, including: (i) A requirement that the investments be highly-rated by a nationally-recognized statistical rating agency (NRSRO), except for U.S. government securities and those MMMFs that are not required to be rated; (ii) a requirement that the dollar-weighted average of the time remaining to maturity of the debt securities held in the segregated portfolio not exceed 24 months, excluding investment in MMMFs because MMMFs have no maturity date; (iii) concentration limits on the percentage of the portfolio that may be comprised of the securities of individual issuers; (iv) specific prohibitions against leverage, embedded derivatives, and options; and (v) a requirement that the daily value and gains and losses on each investment be included in the records of the FCM or clearing organization.[50]

In connection with the proposed revisions to Rule 1.25, the Commission also proposed to amend Rules 1.20(a) and 1.26(a) to eliminate the requirement that an FCM obtain a written acknowledgment, from each clearing organization where the FCM has deposited customer funds or instruments purchased with customer funds, that the clearing organization was informed that the customer funds or instruments purchased with customer funds and deposited therein belong to customers and are being held in accordance with the provisions of the Act and the rules and orders promulgated thereunder.[51] The elimination of the written acknowledgment requirement would be conditioned upon the clearing organization's adoption and submission to the Commission of rules that provide for the segregation as customer funds, in accordance with the Act and the Commission's rules and orders, of all funds held on behalf of customers and all instruments purchased with customer funds.[52]

In general, commenters responded favorably to the Commission's proposals to expand the permissible investments, and the Commission has determined to adopt the amendments generally as proposed.[53] Notwithstanding their overall support, however, commenters addressed several areas in which they sought additional adjustments or clarifications concerning the rule amendments. Commenters also responded to specific questions raised by the Commission in the Proposing Release.

The CBT suggested that the Commission set guidelines with regard to the marketability of the permitted investments. The CBT recommended that the guidelines limit permitted investments to those instruments for which there are available quotes or valuations and, further, that the guidelines provide that there be a likelihood that any permitted investments can be liquidated within a

[46] 65 FR at 39014.

[47] The Commission notes, however, that cross-margining arrangements are already in place with respect to trading of stock index options and stock index futures.

[48] 65 FR at 39014.

[49] *Id.*

[50] *Id.* at 39014–15.

[51] *Id.* at 39015.

[52] *Id.* This codifies a staff no-action letter issued three years ago. *See* CFTC Staff Letter No. 97–45, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,085 (May 5, 1997).

[53] Because the Commission has determined to include MMMFs in the list of permissible investments for customer funds, subject to the limitations adopted in Rule 1.25, it is hereby rescinding Division of Trading and Markets Financial and Segregation Interpretation No. 9, which previously prohibited such investment. *See* Financial and Segregation Interpretation No. 9, 1 Comm. Fut. L. Rep. (CCH) ¶7,119 (Nov. 23, 1983).

reasonable time period. (CL 22–25 at 7) The final rule has been modified so that paragraph (b)(1) of Rule 1.25 requires that the permitted securities held in segregation be "readily marketable" consistent with SEC Rule 15c3–1 under the Securities Exchange Act of 1934.[54]

The CBT also recommended that the Commission use a simpler approach for the valuation of downgraded investments than the proposed 20 percent per day reduction. The CBT suggested instead that a set number of days be permitted for disposal of the investment and that, during that permitted time period, the firm be allowed to use the full market value of the instrument towards meeting its segregated liability. The CBT also indicated that it thought the 20 percent per day reduction in value for a downgraded instrument could lead to errors in calculation. (CL 22–25 at 7–8) The Commission has determined not to change this provision because it believes that the 20 percent per day write-down will provide an appropriate valuation under the circumstances and that it will serve as an incentive for the firm to take action to dispose of a downgraded investment sooner. *See* Rule 1.25(b)(2)(ii).

Rosenthal Collins Group, LLC (RCG) stated that the proposed credit rating requirements were too restrictive. (CL 22–18 at 2) The Commission notes that these requirements are intended to result in the holding of "investment grade" securities only. After the new rule takes effect, the Commission plans to monitor the effectiveness of the rule on an ongoing basis. If experience shows that the required ratings are too stringent, adjustments to the rule will be considered.

RCG also stated that the Commission should not impose rating requirements on investments in municipal securities because some of these securities are not rated due to the costs associated with obtaining a rating. RCG stated further that if the rule were adopted as proposed, investments that comply with the present rules but that do not comply with the new requirements should be "grandfathered" as part of an existing portfolio. (CL 22–18 at 2) In response to this comment, the Commission will not require the disposal of investments held as of December 13, 2000, *i.e.*, such investments may be held until they mature or are liquidated in the ordinary course of business, although no new acquisitions of non-compliant investments will be permitted.

Brown Brothers Harriman (BBH) stated that the prohibition against an FCM investing in an MMMF that has investments in securities issued by a parent or affiliate of the FCM should be dropped. (CL 22–20 at 5) This recommendation was made because MMMFs are often operated independently of the sponsoring affiliated entity and, in any event, are subject to a five percent concentration limit in the securities of any single issuer. BBH also noted that many FCMs are affiliated with world-class financial enterprises and that a prohibition against MMMFs investing in securities of the FCMs' affiliates would eliminate a large and important group of instruments. The Commission finds merit in this suggestion and has modified Rule 1.25(b)(6)(ii) accordingly. The Commission also notes that Section 17 of the Investment Company Act[55] restricts investments made by MMMFs in securities issued by any entity affiliated with the MMMF or its sponsors, and that the concentration limit set forth in SEC Rule 2a–7 under the Investment Company Act[56] is similar to the concentration provision of CFTC Rule 1.25.

BBH also requested that the requirement that a fund be "SEC registered" be defined to mean registration under the Investment Company Act only and not require registration under the Securities Act of 1933. (CL 22–20 at 6) This clarification has been made to paragraph (c)(1) of Rule 1.25.

Sentinel Management Group, Inc. (Sentinel) requested clarification as to whether the concentration limits provided for in the proposed rule would apply to securities held in connection with repurchase agreements. (CL 22–41 at 1) Sentinel stated that the concentration limits should not apply because of: (1) The burden that would be imposed upon the FCMs; (2) the fact that complete information on such securities is sometimes not known until the day following entry into the repurchase transaction; (3) the fact that the duration of repurchase transactions is only one day; and (4) the fact that the obligation created pursuant to a repurchase transaction is that of the counterparty and not the issuer of the securities. Therefore, it argued, the creditworthiness of the counterparty augments the value of the securities held pursuant to the repurchase agreement. (CL 22–41 at 1–2) This same point was raised by BBH in follow-up conversations.

Taking into consideration these comments, as well as the requirement contained in the Proposing Release that counterparties for repurchase transactions must be regulated financial institutions (generally large banks or brokerage firms), the Commission has concluded that the focus of concentration should be primarily upon the counterparties and secondarily upon the securities held in connection with the repurchase agreement. Therefore, the final rule contains several clarifying or enhancing changes.

First, paragraph (b)(4)(ii) provides that securities that are held by a counterparty, *i.e.*, securities that have been "repoed out," are subject to the concentration limitations along with currently-owned direct investment securities. This clarification was made because a security that has been sold subject to repurchase at a later date presents the FCM or clearing organization with the same price risk as a security that is currently held in the portfolio. Second, paragraph (b)(4)(iii) provides concentration limit percentages for securities that are held by the FCM or clearing organization pursuant to a reverse repurchase agreement that are double those required for direct investments, provided that the counterparty has a credit rating of single A or higher from two or more NRSROs. In addition, the rule was changed to provide that the concentration percentages for such securities shall be computed using only the securities contained in the portfolio of securities supplied by each counterparty of the FCM or clearing organization. This change was made because the counterparty has the direct control over what specific securities will be supplied in a repurchase transaction. Thus, the Commission expects that an FCM or clearing organization will inform its counterparties as to the per-issuer concentration limits that must be observed, as set forth in the rule. Finally, paragraph (b)(4)(v) makes explicit that the concentration limits do not apply to securities owned by customers that have been posted by customers as collateral with the FCM. This clarification was made primarily because changes in the value of customer-owned securities accrue to the customers who posted the securities and, therefore, in a properly margined account such securities pose no direct price risk to the FCM. The Commission believes that these changes and clarifications will provide additional flexibility to FCMs and clearing

[54] 17 CFR 240.15c3–1. As a result of the addition of new Rule 1.25(b)(1), proposed paragraph (b)(6) of Rule 1.25 concerning recordkeeping is being adopted unchanged as paragraph (b)(7).

[55] 15 U.S.C. 80a–17.

[56] 17 CFR 270.2a–7.

organizations without unduly increasing associated risk.

The Investment Company Institute (ICI) suggested that MMMFs sponsored by investment advisers registered under the Investment Advisers Act of 1940 be included in the list of permitted investments. (CL 22–27 at 6) The Commission has made this suggested change. *See* Rule 1.25(c)(2).

ICI noted that the proposed rule appeared to require valuation of the investment portfolio by 9 a.m. each day and suggested, instead, that valuation not be required until after the close of the markets each day, *i.e.*, not until after 4 p.m. (CL 22–27 at 7) The Commission's intention was to require valuation by 9 a.m. the business day following the investment, so that the valuation would be available in time for the segregation calculation, which is required to be completed on a daily basis by noon the following business day. The final rule (paragraph (c)(4) of Rule 1.25) has been changed to correctly state the Commission's intention more precisely.

ICI also suggested that the proposed rule should be changed to permit MMMFs that are not rated by an NRSRO to invest in unrated securities. The proposed rule provided that only MMMFs that are rated may invest in unrated securities. ICI cited the comprehensive approach to risk control and preservation of capital contained in SEC Rule 2a–7 and noted that that rule permits an MMMF to invest in unrated securities if the MMMF determines that the securities are of comparable quality to otherwise eligible securities. (CL 22–27 at 4) The Commission has changed the final rule (Rule 1.25(b)(2)(i)(D)) to permit unrated MMMFs to invest in unrated securities because of the risk-limiting features of SEC Rule 2a–7.

ICI also recommended two revisions to paragraph (c)(3) of Rule 1.25 concerning MMMFs. First, because fund shares are usually uncertificated, ICI recommended that the first sentence be revised to provide that the ownership of fund shares must be noted (by book-entry or otherwise) in a custody account of the FCM or clearing organization. Second, to ensure that confirmations for transactions in fund shares are retained, ICI recommended that the confirmation relating to the purchase be retained in the FCM's or clearing organization's records. (CL 22–27 at 6) The Commission has made these suggested changes.

ICI further recommended that the one-day liquidity requirement applicable to MMMFs be extended to seven days, to be consistent with SEC requirements and the longer settlement time-frames associated with direct investments. (CL 22–27 at 7)

The Commission believes the one-day liquidity requirement for investments in MMMFs is necessary to ensure that the funding requirements of FCMs will not be impeded by a long liquidity time frame. Since a material portion of an FCM's customer funds could well be invested in a single MMMF, this is an important provision of the rule. The Commission notes that, although sales of directly-owned securities settle in longer than one-day time-frames, an FCM or clearing organization could obtain liquidity by entering into a repurchase transaction. Therefore, the Commission has retained the one-day liquidity requirement imposed on investments in MMMFs and, in view of the importance of this provision, has clarified that demonstration that this requirement has been met may include either an appropriate provision in the offering memorandum of the fund or a separate side agreement between the fund and an FCM or clearing organization. *See* Rule 1.25(c)(5).

The FRBC commented that permitted investments should have either a CUSIP or ISIN number, and that permitted investments should be required to have a reasonably transparent secondary market enabling accurate and efficient valuation of the investments. (CL 22–30 at 6) The Commission has changed the final rule to include securities with ISIN numbers as permitted investments.

The FRBC also recommended that permitted investments have a reasonably transparent secondary market. As noted above, the Commission strengthened the rule in this respect by adding a requirement that all permitted securities, except for MMMFs, meet the SEC's "readily marketable" standard. The Commission intends to monitor closely for any problems concerning valuation of permitted investments, and will consider proposing further rule amendments if appropriate.

The FRBC also recommended that permitted investments should settle on a same-day or next-day basis, to ensure adequate liquidity. It pointed out that, currently in the U.S., virtually all corporate and municipal debt securities settle on a T+3 basis, which is not sufficient for futures clearing organization demands, and that this delay could deprive the FCM or clearing organization of the liquidity that is so important in times of market stress or emergency. (CL 22–30 at 5) The Commission has elected to permit investment of customer funds in investment grade corporate notes and municipal securities because FCMs have methods of obtaining liquidity other than by selling the securities, such as by entering into repurchase transactions and by establishing backup bank lines of credit using the securities as collateral.

The FRBC further recommended that CFTC rules should permit the investment of customer funds held in a foreign currency in identically-denominated sovereign debt securities. (CL 22–30 at 4–5; *see also* CL 22–31 at 9; CL 22–42 at 2) The Commission notes that, under the rule as proposed, an FCM that decided to invest deposits of foreign currencies was required to convert the foreign currencies received to a U.S. dollar-denominated asset. This would increase its exposure to foreign currency fluctuation risk, unless it incurred the additional expense of hedging. Therefore, the Commission has determined that the FRBC's suggestion should be adopted. The Commission has changed the proposed rule to permit investment in the general obligations of any country whose sovereign debt is rated in the highest category by at least one NRSRO, but limited as follows; an FCM may invest in the sovereign debt of a country to the extent it has balances owed to its customers denominated in that currency; a clearing organization may invest in the sovereign debt of a country to the extent it has balances owed to its clearing member FCMs denominated in that currency.[57] The Commission notes that foreign sovereign debt that is denominated in the Euro will qualify as a permitted investment under this rule, provided the country that issued the debt qualifies as a permitted country under the rule, the obligation is a general obligation of the country, and the balances owed to the customers or the FCMs are Euro-denominated. As with other aspects of Rule 1.25, the Commission will monitor the effect of this provision and stands ready to make additional adjustments as experience dictates.

In addition, the FRBC suggested that the CFTC expressly approve the use of certain "sweep" accounts in connection with the investment of customer funds in MMMFs or other permissible forms of investment. (CL 22–30 at 6) The Commission notes that Rule 1.25 will not preclude the use of sweep accounts and encourages this practice to enhance the efficiency of liquidity management.

The FRBC also suggested that, with respect to the concentration provision, the rule should be clarified that it applies only to the portfolio of securities

[57] As is the case for U.S. government securities and those MMMFs that are not required to be rated, permitted foreign sovereign debt will not be subject to a credit rating requirement. *See* § 1.25(b)(2)(i)(A).

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purchased with customer funds, *i.e.*, the provision does not apply to customer-owned securities posted as margin. (CL 22–30 at 6) As noted previously, the Commission has made this clarification in paragraph (b)(4)(v) of Rule 1.25.

FIA suggested that the Commission clarify what is meant by the required ratings in the rule, where the "two highest ratings of an NRSRO" are specified, *i.e.*, AAA and AA. In particular, it recommended that the Commission clarify whether "AA" includes all variations included within the AA rating. (CL 22–31 at 8) The Commission confirms that this interpretation is correct.

FIA also suggested that the Commission clarify whether a security would be a permitted investment if one NRSRO gave it an acceptable rating, even though another NRSRO gave it an unacceptable rating. (CL 22–31 at 9) The Commission hereby confirms that if one NRSRO gave an acceptable rating and another did not, investment in the security would be permitted. The Commission believes that it would be rare for such differences to occur at the investment grade ratings level and, further, that any differences would probably be temporary.

FIA also suggested providing a grace period for FCMs or clearing organizations that find themselves in violation of the concentration limits. (CL 22–31 at 9) The Commission has decided against adopting this suggestion because the Commission would not expect FCMs to violate the concentration limits, except perhaps under unusual circumstances. Further, the Commission is concerned that were a formal grace period provided in the rule, it might be subject to abuse.

In addition, FIA suggested that the Commission plan to review the list of permitted investments every six months to determine whether revisions should be made. (CL 22–31 at 9) The Commission plans to review all aspects of the new rule on an ongoing basis and further changes will be proposed, if appropriate.

Two exchanges, the NYMEX and the CME, pointed out that each clearing organization would need to make its own determination as to the types of assets that would be accepted by that clearing organization. (CL 22–32 at 16; CL 22–35 at 13) The Commission recognizes that an SRO may adopt more restrictive requirements than those set forth in Rule 1.25 for its member FCMs.

E. Core Principle Four: Risk Disclosure and Account Statements

Although the Commission stated in the Proposing Release that non-institutional customers should continue to receive the risk disclosures regarding futures and options trading that are currently required,[58] it proposed to streamline the account opening process by amending Rules 1.55(d)(1) and (2) to expand the list of disclosures and consents that could be provided in a single document and acknowledged with a single signature.[59] This list includes: (1) The disclosures required by new Rule 1.33(g) (relating to electronic transmission of statements);[60] (2) the consent referenced in Rule 155.3(b)(2) (relating to customer permission for FCMs to take the opposite side of an order); and (3) a provision for preauthorization of transfers of funds from a customer's segregated account to another account of that customer. The single signature could be made electronically as provided for in recently-adopted Commission Rules 1.3(tt) and 1.4.[61] Disclosure concerning arbitration of disputes, however, would continue to require a separate signed acknowledgement by non-institutional customers, pursuant to proposed Rule 166.5 (which was modeled on, and would replace, prior Rule 180.3).[62]

All of the commenters who addressed the proposed amendments to Rule 1.55(d) responded favorably to the expansion of disclosures and consents that could be acknowledged and made by a single signature, and the Commission is adopting the amendments as proposed. (CL 22–17 at 3; CL 22–24 at 6; CL 22–25 at 8; CL 22–31 at 14; CL 22–32 at 16; CL 22–35 at 11; CL 22–44 at 2) FIA requested that the Commission confirm that an FCM may obtain an acknowledgement of receipt and understanding of the risk disclosure statement contemporaneously with opening an account. The Commission agrees that the FCM may open the customer account simultaneously with receiving the acknowledgment of receipt and understanding of the risk disclosure statement, along with margin funds and any other required account opening documents, from the customer. The FCM will remain responsible for ensuring that the risk disclosure document is furnished to the customer in such a way that the customer can review and understand the document before committing funds to the FCM.

NFA commented generally that the Commission should not dictate the specifics of how disclosures and consents are delivered and acknowledged, and that it would be willing to develop best practice guidance in this area. (CL 22–24 at 6) The Commission believes that its rules requiring risk disclosure and customer acknowledgments do not impose a significant burden in light of their important customer protections. The Commission is providing additional flexibility to the industry in this area. As the Commission noted in the Proposing Release, there would continue to be no specific disclosure requirements for institutional customers and, in addition, as provided in Rule 35.1(b), governmental entities would be included in the definition of "institutional customer," and consequently would not be required to receive and to acknowledge a disclosure statement.[63] Further, the single signature acknowledgment could be made electronically as provided for in Rules 1.3(tt) and 1.4. The Commission looks forward to working with NFA and the industry both in developing a Statement of Acceptable Practices for disclosure to non-institutional customers trading on DTFs, and in developing more streamlined disclosure requirements for domestic exchange-traded options under Rule 33.7.

As noted above, the Commission proposed to continue to require a separate signed acknowledgement by non-institutional customers with respect to disclosure concerning arbitration of disputes. Nevertheless, the Commission also solicited comment on whether to maintain this requirement.[64] FIA opposed continuing to require a separate signature from non-institutional customers if their account agreement contains a pre-dispute arbitration provision. (CL 22–31 at 14) In general, FIA expressed the opinion that the Commission should eliminate all of its rules pertaining to the use of pre-dispute arbitration agreements, as well as the Commission's reparations program. For example, FIA commented that the Commission's rule that an FCM may not require a customer to sign a pre-dispute arbitration agreement as a condition to opening an account with the FCM inhibits the ability of FCMs that are also securities broker-dealers to enter into a single agreement with their customers, because the SEC does not prohibit the use of such mandatory agreements. (CL 22–31 at 10) At the very least, FIA stated that the Commission should permit institutional customers contractually to waive their right to file a complaint under the Commission's reparations program. (CL 22–31 at 10) In this regard, NFA maintained that intermediaries and institutional customers should be allowed to negotiate *all* terms in pre-dispute arbitration agreements. (CL 22–24 at 8).

The Commission is adopting Rule 166.5 as it pertains to non-institutional customers as proposed. Further, the Commission believes that no customer, regardless of their level of sophistication, should be required to sign a pre-dispute arbitration agreement as a condition for doing business in the futures industry. The Commission has determined, however, to allow institutional customers and intermediaries to negotiate any terms of a pre-dispute arbitration agreement as they deem appropriate, including a waiver of the customer's right to file a complaint under the Commission's reparations program. Accordingly, the definition of the term "customer" in Rule 166.5(a)(2) has been changed to exclude institutional customers from general application of the rule. In addition, new paragraph (g) has been added to make clear that an institutional customer and a registrant may negotiate any terms of a pre-dispute arbitration agreement, except that the institutional customer may not be required to sign a pre-dispute arbitration agreement as a condition of opening an account with the registrant.[65]

NFA specifically requested that the Commission clarify the reach of pre-dispute arbitration agreements and confirm that such agreements are binding on both the intermediary as well as the customer, unless the agreement states specifically that the registrant is not required to arbitrate its claims.[66] (CL 22–24 at 9) Former Part 180, which is to be replaced by Rule 166.5, was mainly intended to provide for fair and equitable SRO arbitration forums and to prevent firms from requiring customers to agree to arbitration in order to do business. Part 180 did not require registrants to submit their claims against customers to arbitration, and the Commission did not propose to require that registrants do so in the Proposing Release. Thus, provided that a registrant pursues a dispute in accordance with the terms of the customer agreement, and the procedures followed do not violate Rule 166.5, Commission rules would not prohibit the registrant's actions.

NFA also objected to proposed Rule 166.5(f), which would permit counterclaims that do not arise out of the same transaction or occurrence that is the subject of the original claim only if (1) The customer agreed to the counterclaim being heard after it has arisen, and (2) the aggregate monetary value of the counterclaim is capable of calculation. NFA believes that, for both retail and institutional customers, the parties should be allowed to agree in advance that any counterclaim would be required to be included in the arbitration proceeding. (CL 22–24 at 9) The Commission has determined to adopt NFA's suggestion, and has revised Rule 166.5(f) to permit any counterclaim arising out of a transaction subject to the Act and Commission regulations promulgated thereunder for which a non-institutional customer has utilized the services of a registrant, to be made part of an arbitration proceeding between the non-institutional customer and the registrant where the parties have agreed in advance to require that any such claim be included in the arbitration proceeding, provided that the aggregate monetary value of the counterclaim is capable of calculation. As noted above, under Rule 166.5(g), institutional customers remain free to negotiate any terms of their pre-dispute arbitration agreement, including the type of counterclaims that may be included in an arbitration proceeding.

F. Core Principle Five: Trading Standards

The Commission proposed that Rules 155.1, 155.3 and 155.4, which collectively require FCMs and IBs to establish and to maintain supervisory procedures to assure that neither they nor any affiliated persons use their knowledge of customer orders to the customer's disadvantage, would continue to apply to intermediation of trades on contract markets. These requirements would be extended to trading on RFEs, and to trading by non-institutional customers on DTFs under new Rule 155.6(a).[67] These rules over the years have helped the Commission deter such practices as "front-running," "trading ahead," "bucketing," taking the opposite side of customer orders, and improper disclosure of customer orders. However, for intermediation of trades by institutional customers at DTFs, the Commission proposed a new Rule 155.6(b), which set forth a general standard of practice in this area that parallels the language of the core principle concerning trading standards. The Commission stated that "it is nevertheless intended to proscribe the same trade practice abuses as Rules 155.1–155.5."[68]

The commenters who addressed this section were critical of the Commission's approach. The CBT expressed its belief that all prescriptive rules regarding trading practices should be replaced with core principles, not just the rules governing trades for institutional customers on DTFs. (CL 22–25 at 8) MFA stated that it was inconsistent to add a general prohibition against "misuse" of knowledge as contained in Proposed Rule 155.6(b) if the rule was intended to proscribe the same trade practice abuses referred to in Rules 155.1–155.5. (CL 22–22 at 13–14) NFA commented that RFEs and DTFs should not be treated differently with respect to trading standards rules, because otherwise operators of DTFs would have a competitive advantage over operators of RFEs. (CL 22–24 at 6)

The Commission has determined to leave unchanged Rules 155.1–155.5 at this time, and to adopt Rule 155.6 as proposed. The Commission believes that the existing rules should continue to apply in connection with non-institutional customer trades no matter where they occur because of such customers' greater susceptibility to trading abuses by intermediaries, as compared to institutional customers. The Commission recognizes that, with respect to institutional customers trading on a DTF, a general standard of practice is more appropriate. However, the Commission remains open to specific suggestions regarding how individual provisions in Rules 155.3 and 155.4 might be streamlined.

The Commission notes that because the core principle concerning trading standards states that intermediaries must not misuse their knowledge of their customers' orders without making any distinctions regarding the nature of the customer, the same trade practice abuses that are proscribed by Rules 155.1–155.5 should also be considered

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[58] 65 FR at 39015. There would continue to be no specific disclosure requirements for institutional customers. Id. at 39016.

[59] *Id.* at 39015–16.

[60] *See infra.*

[61] 65 FR 12466 (Mar. 9, 2000).

[62] 65 FR at 39016. This is discussed further below.

[63] *Id.*

[64] *Id.*

[65] As a result of these changes, proposed paragraphs (c)(2) (ii) and (iii) of Rule 166.5 are adopted as paragraphs (c)(2) (i) and (ii), respectively. In addition, to reflect the recent amendments to Rule 4.7, paragraph (c)(2)(ii) of Rule 166.5 (formerly paragraph (c)(2)(iii)) has been modified to apply to a person who is a "qualified eligible person" as defined by Rule 4.7. *See* 65 FR 47848 (Aug. 4, 2000).

[66] NFA referred to several recent lower court cases where registrants who brought debit balance claims against their customers in state court successfully argued, in response to the customers' attempts to force the claims to arbitration, that a pre-dispute arbitration agreement did not apply to their claims against customers. NFA questioned the logic of these decisions, stating that there is no consideration for a customer to sign a pre-dispute arbitration agreement if it does not apply to the intermediary's claims as well. (CL 22–24 at 9)

[67] 65 FR at 39016.

[68] *Id.*

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as being in violation of Rule 155.6(b). The Commission believes that its overall approach with respect to trading standards strikes a reasonable balance in preserving rules that have worked successfully over the years in curbing abusive trading practices, while relaxing certain of the specific provisions of the existing rules in connection with the trading on DTFs by more sophisticated customers.

G. Core Principle Seven: Reporting Requirements

The Commission proposed to apply its existing large trader reporting requirements to intermediaries on RFEs, but would reduce reporting requirements with respect to intermediaries transacting business on DTFs, because of the nature of the instruments traded or the limited access granted to non-institutional traders. Intermediaries trading on DTFs would be subject to large trader reporting requirements only by special call.

The Commission received varying comments in response to its large trader reporting proposal. NFA agreed with both aspects of the Commission's proposal, asserting that large trader reporting requirements should remain in place for intermediaries on RFEs, while a more flexible approach would be appropriate for gathering information from intermediaries trading on DTFs. (CL 22–24 at 7) FC Stone suggested that reduced large trader reporting should be available to all FCMs with institutional customers only, not just to those trading on DTFs. (CL 22–44 at 4) The CBT stated that the Commission should permit individual markets to require large trader reporting, as they deem necessary, and that any large trader reporting to the Commission should be done pursuant to special call, without drawing a distinction between DTFs and RFEs. (CL 22–25 at 8–9) NIBA also commented that the Commission should not make a distinction between DTFs and RFEs; NIBA stated, however, that regular large trader reports should be required on both types of exchanges, and that otherwise customers who trade on RFEs would lose the benefit of price transparency. (CL 22–17 at 4) Treasury expressed concern about the mechanics of large trader reporting on a DTF, stating that because eligible participants would not be required to use FCMs to execute trades on a DTF, it was unclear how large trader positions could be reported. In addition, Treasury noted that large trader reporting requirements have worked well in the market for Treasury bond futures, both for the information they reveal to regulators and their deterrent effect, and consequently, urged the Commission to establish a mechanism for large trader reporting for government securities futures trading on DTFs. (CL 22–34 at 4) The Economic Strategy Institute agreed with Treasury that the elimination of large trader reports would reduce the Commission's ability to effectively detect and deter manipulation. (CL 22–45 at 2) Finally, the American Farm Bureau Federation, the American Soybean Association, the National Association of Wheat Growers, the National Cattlemen's Beef Association, the National Corn Growers Association, the National Farmers Union, the National Grain Sorghum Producers and the National Pork Producers Council collectively commented that if the Commission determined to permit agricultural products to be traded on a DTF, large trader reports relating thereto should be filed with the Commission. (CL 22–51 at 1)

The Commission has determined to adopt the large trader reporting requirements for RFEs and DTFs as proposed, except that large trader reports will not be required from participants trading on a commercial-participant DTF. The reporting system is critical to the Commission's ability to oversee markets and provides a valuable bulwark against illegitimate trade practices. RFEs in particular permit unconditioned access to any type of trader, including both institutional and non-institutional customers or participants, and may list contracts on any type of commodity, including those based on commodities that have finite deliverable supplies or cash markets with limited liquidity. Such markets potentially have a greater susceptibility to price manipulation and raise greater customer protection concerns than do DTFs. Consequently, regular large trader reports are necessary to enable the Commission to carry out its oversight responsibilities for RFE markets.

With respect to intermediaries transacting business on DTFs, however, because of the nature of the instruments traded and the limited access granted to non-institutional traders, large trader reporting on a less routine basis, *i.e.*, upon special call by the Commission, is more appropriate. Where trading access on a DTF is restricted to eligible commercial participants only, however, large trader reports generally will not be required from such participants.[69] The Commission will rely instead on its investigative authority, which also applies to a person's cash market activities.[70]

H. Core Principle Eight: Recordkeeping

1. General

The Core Principles state that all registrants must keep full books and records of their activities related to their business. Thus, the Commission did not propose to amend any of its recordkeeping requirements in the Proposing Release.[71] NFA asked the Commission to consider replacing Rule 1.31 with a core principle and acceptable practice guidance that follows NFA's December 1997 proposal. NFA's proposal recommended that Rule 1.31 be rewritten to require only that registrant recordkeeping systems meet general reliability and accessibility standards. (CL 22–24 at 7) The Commission revised Rule 1.31 in 1999 to provide additional flexibility to recordkeepers, allowing them to store most required records on either micrographic or electronic storage media for the full five-year required retention period.[72] The Commission intends to revisit NFA's proposal in the future and, where appropriate, will undertake to work with the SEC to make additional changes in this area.

2. Customer Account Statements; Close-Out of Offsetting Positions

The Commission proposed to codify its June 1997 advisory relating to the electronic transmission of account statements in a new Rule 1.33(g).[73] Thus, an FCM would be permitted, with customer consent, to deliver required confirmation, purchase-and-sale, and monthly account statements electronically in lieu of mailing a paper copy. FCMs would need only to retain the daily confirmation statement as of the end of the trading session, provided that it reflects all trades made during that session. Before transmitting any statement electronically to a customer, however, the FCM would be required to make certain disclosures regarding the practice, and in the case of non-institutional customers, the FCM would be required to obtain the customer's signed consent acknowledging the disclosures. The acknowledgement could be made through a single signature in accordance with Rule 1.55 as discussed above. NIBA and FC Stone responded favorably to the

[69] As explained in a companion release in today's edition of the **Federal Register**, large trader reports may be required upon special call depending upon the nature of the commodity interest traded on a commercial-participant DTF.

[70] Large trader reports may be required upon special call on the DTF itself, however. *See* § 37.6(a).

[71] 65 FR at 39017.

[72] 64 FR 28735.

[73] 65 FR at 39017; *see also* 62 FR 31507 (June 10, 1997).

Commission's proposal (CL 22–17 at 3; CL 22–44 at 2), while NFA commented that the 1997 Advisory should be treated as acceptable practices guidance rather than codified in a new rule. (CL 22–24 at 7) The Commission has determined to adopt the rule as proposed, believing that, as noted previously, a certain level of uniformity and standardization is essential in an area such as reporting to customers to facilitate the processing of massive quantities of data, which is often accomplished by third-party, "back office" firms.

The Commission also proposed to revise Rule 1.46 to allow customers or account controllers to instruct the FCM if they wished to deviate from the default rule that the FCM close out offsetting positions on a first-in, first-out basis, looking across all accounts it carries for the same customer.[74] CPOs and CTAs would be required to disclose, under proposed amendments to Rules 4.24(h)(2) and 4.34(h), respectively, if they instruct an FCM to deviate from the default rule for closing out offsetting positions.[75]

After considering the comments received, the Commission is adopting the revisions as proposed. Nevertheless, the Commission agrees with NFA that FCMs should closely monitor the activity in those customer accounts that depart from the default close-out method set forth in Rule 1.46 to ensure that their customers are not offsetting their positions other than by a first-in, first-out method solely to avoid taxes, to launder money, or to improve their delivery position. (CL 22–24 at 7)

In addition, the Commission believes that customers may transmit their offset instructions to their FCMs orally, as requested by FIA. (CL 22–31 at 8) In the case of CPOs and CTAs, the Commission agrees with MFA that responsibility for transmitting instructions regarding offset should normally lie with the registrant directing trading. Generally, where a pool's trading is directed by a CTA, this should be the CTA, not the CPO. (CL 22–22 at 14) The Commission does not agree, however, that it is unnecessary to require CPOs and CTAs to disclose whether they instructed their FCM to offset positions in a manner other than by a first-in, first-out method. The Commission does not believe that this requirement would impose a significant burden on CPOs and CTAs, particularly in light of the fact that these entities would no longer be prevented from offsetting their positions in a manner other than on a first-in, first-out basis, as was previously the case. The Commission believes that it is appropriate in this area to provide greater choice balanced with disclosure as to the method of operation.

[74] 65 FR at 39017.

[75] *Id.*

III. Section 4(c) Findings

Certain of these final rules and rule amendments are being promulgated under Section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act other than Section 2(a)(1)(B), if the Commission determines that the exemption would be consistent with the public interest. Furthermore, Section 4(c)(2) of the Act provides that the Commission may not grant an exemption from the contract market designation requirement of Section 4(a) of the Act unless the Commission also finds that: (i) The contract market designation requirement should not be applied to the agreement, contract, or transaction for which the exemption is requested and the exemption would be consistent with the public interest and the purposes of the Act; (ii) the exempted transaction will be entered into solely between "appropriate persons"; and (iii) the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. For the reasons stated below, the Commission believes that issuing the exemptive relief as set forth in these final rules and rule amendments is consistent with those determinations.

As explained above, certain of the final rules and rule amendments would provide greater flexibility for intermediaries and their customers in several areas. Specifically, the Commission is adopting final rule amendments concerning the definition of the term "principal" that recognize the evolution of management structures by reducing the number of officers that will be considered principals, while ensuring that appropriate personnel that perform significant roles within the firm remain listed as such. In addition, the Commission is expanding the range of instruments in which FCMs may invest customer funds beyond those listed in Section 4d(2) of the Act to enhance the yield available to FCMs, clearing organizations and their customers, without compromising the safety of customer funds. These final rule amendments acknowledge the development of new financial instruments over the last 60 years, and should both enable FCMs to remain competitive globally and domestically and maintain safeguards against systemic risk. In light of the foregoing, the Commission has determined that the adoption of the final rules and rule amendments relating to the definition of the term "principal" and the expansion of permitted instruments for the investment of customer funds will be consistent with the public interest.

Further, the final rules and rule amendments adopted herein, as well as the existing rules as they also relate to the transaction of business by intermediaries, will be applied, or extended, to agreements, contracts and transactions carried out on new markets, *i.e.*, RFEs and DTFs. As more fully discussed in a companion release published in this edition of the **Federal Register**, the rules pertaining to the new markets establish a new regulatory framework that is intended to promote innovation and competition in the trading of derivatives and to permit the markets the flexibility to respond to technological and structural changes in the markets. The new framework establishes three regulatory tiers with regulations tailored to the nature of the commodities traded and the nature of the market participant, and access to each of the tiers is dependent upon the appropriateness of the participant. In this respect, the Commission believes that the actions taken herein are consistent with the "public interest" as that term is used in Section 4(c) of the Act. When that provision was enacted, the Conference Report accompanying the Futures Trading Practices Act of 1992[76] stated that the "public interest" in this context would "include the national public interests noted in the Act, the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition."[77]

[76] Pub. L. No. 102–546 (1992), 106 Stat. 3590.

[77] H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). The Conference Report also states that the reference in Section 4(c) to the "purposes of the Act" is intended to "underscore [the Conferees'] expectation that the Commission will assess the

Continued

The Commission has retained or adopted safeguards to ensure that transactions will be carried out between appropriate persons. Appropriate persons can include, beyond those specified in Section 4(c)(3)(A)–(J) of the Act, "[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections." [78] The Commission has determined that it is appropriate to permit any person to trade on an RFE because the rules pertaining to RFEs will be closest to those currently pertaining to contract markets and the bulk of the existing regulatory framework pertaining to intermediaries will apply in connection with their intermediation of transactions on RFEs. On the other hand, customers on DTFs, which will be subject to looser regulation than RFEs, are generally restricted to the types of persons specified in Section 4(c)(3)(A)–(J) of the Act. The Commission has determined, however, that it is appropriate to allow access to retail, or non-institutional, customers on DTFs, subject to stated limits and conditions. For example, if a non-institutional customer seeks to enter into transactions on a DTF permitting such access, such customer may only do so through either: a) a registered FCM that is a clearing member of at least one designated contract market or RFE, and that has adjusted net capital of at least $20 million; or b) a registered CTA who has discretionary authority over the non-institutional customer's account, and who has assets under management of not less than $25 million. The Commission further believes that, in light of these conditions and safeguards, the exemptive relief would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (1994 & Supp. II 1996), requires federal agencies, in proposing rules, to consider the impact of those rules on small businesses. The rules adopted herein would affect FCMs, IBs, CPOs, CTAs, FBs, FTs, leverage transaction merchants (LTMs) and agricultural trade option merchants (ATOMs), as well as principals thereof. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[79] The Commission has previously determined that registered FCMs, CPOs, LTMs and ATOMs are not small entities for the purpose of the RFA.[80] With respect to IBs, CTAs, FBs and FTs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would not require any registrant to change its current method of doing business. For many registrants, the revisions should decrease the number of persons within the registrant's organization who would be considered principals under the CFTC rules. Further, the revisions should reduce, rather than increase, the regulatory requirements that apply to registrants and applicants for registration, regardless of size. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the action taken herein will not have a significant economic impact on a substantial number of small entities. In this regard, the Commission notes that it did not receive any comments concerning the RFA implications of the rules and rule amendments discussed herein.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], the Commission submitted a copy of the proposed amendments to its rules to the Office of Management and Budget for its review. The Commission did not receive any comments on any potential paperwork burden associated with the Proposing Release.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Principals, Registration, Reporting and recordkeeping requirements.

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Disclosure, Principals, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

17 CFR Part 155

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 166

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 2, 4(c), 4b, 4d, 4f, 4m, 4n; 8a, and 19 thereof, 7 U.S.C. 2, 6(c), 6b, 6d, 6f, 6m, 6n, 12a and 23, the Commission hereby amends Parts 1, 3, 4, 140, 155 and 166 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.3 is amended by adding new paragraphs (g), (m) and (v) to read as follows:

§ 1.3 Definitions.

* * * * *

(g) *Institutional customer.* This term has the same meaning as "eligible participant" as defined in § 35.1(b) of this chapter.

* * * * *

(m) *Derivatives transaction facility.* This term has the same meaning as a "derivatives transaction facility" under part 37 of this chapter.

* * * * *

(v) *Recognized futures exchange.* This term has the same meaning as a "recognized futures exchange" under part 38 of this chapter.

* * * * *

3. Section 1.10 is amended as follows:

a. Revising paragraph (a)(2)(i)(B);

b. Adding paragraph (a)(2)(i)(C);

c. Designating the undesignated paragraph following paragraph (a)(2)(i)(B) as paragraph (a)(2)(i)(D) and revising it;

d. Designating the undesignated paragraph following paragraph (a)(2)(ii)(C) as paragraph (a)(2)(ii)(E) and revising it;

e. Redesignating paragraph (a)(2)(ii)(C) as (a)(2)(ii)(D) and revising it; and

f. Adding a new paragraph (a)(2)(ii)(C).

The revisions and additions read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) * * *

(i) * * *

(B) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed; or

(C) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed, *Provided, however,* that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of being granted registration.

(D) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) * * *

(C) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed, *Provided, however,* that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of registration; or

(D) A guarantee agreement.

(E) Each person filing in accordance with paragraphs (a)(2)(ii) (A), (B) or (C) of this section must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

4. Section 1.17 is amended by redesignating paragraph (a)(1)(ii) as (a)(1)(iii) and by adding new paragraphs (a)(1)(ii) and (a)(2)(iii) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(1) * * *

(ii) Each person registered as a futures commission merchant engaged in soliciting or accepting orders and customer funds related thereto for the purchase or sale of any commodity for future delivery on or subject to the rules of a derivatives transaction facility from any customer who does not qualify as an "institutional customer" as defined in § 1.3(g):

(A) Must be a clearing member of a designated contract market or recognized futures exchange, and must maintain adjusted net capital in the amount of the greater of $20,000,000 or the amounts otherwise specified in paragraph (a)(1)(i) of this section; or

(B) Receive orders on behalf of the customer from a commodity trading advisor acting in accordance with § 4.32 of this chapter.

* * * * *

(2) * * *

(iii) The requirements of paragraph (a)(1) of this section shall not be applicable if the registrant is a futures commission merchant or introducing broker registered in accordance with § 3.10(a)(1)(i)(B) of this chapter, whose business is limited to transacting business on behalf of institutional customers on a derivatives transaction facility, and who conforms to minimum financial standards and related reporting requirements set by such derivatives transaction facility in its rules.

* * * * *

5. Section 1.20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each registrant shall obtain and retain in its files for the period provided in § 1.31 a written acknowledgment from such bank, trust company, clearing organization, or futures commission merchant, that it was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and this part: *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

* * * * *

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes,

impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." *Id.*

[78] See Section 4(c)(3)(K) of the Act, 7 U.S.C. 6(c)(3)(K).

[79] 47 FR 18618–21 (Apr. 30, 1982).

[80] *Id.* at 18619–20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs); and 63 FR 18821, 18830 (Apr. 16, 1998) (discussing ATOMs).

storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further,* That customer funds may be invested in instruments described in § 1.25.

6. Section 1.25 is revised to read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a clearing organization may invest customer funds in the following instruments (permitted investments):

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision thereof (municipal securities);

(iii) General obligations issued by any agency sponsored by the United States (government sponsored agency securities);

(iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation;

(v) Commercial paper;

(vi) Corporate notes;

(vii) General obligations of any country whose sovereign debt is rated in the highest category by at least one nationally recognized statistical rating organization (NRSRO), as that term is defined in § 270.2a–7 of this title (permitted foreign sovereign debt), subject to the following limits: a futures commission merchant may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; a clearing organization may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing member futures commission merchants denominated in that country's currency; and

(viii) Interests in money market mutual funds.

(2) In addition, a futures commission merchant or a clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the instruments, in accordance with the provisions of paragraph (d) of this section.

(b) *General terms and conditions.* A futures commission merchant or a clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements.

(1) *Marketability.* Except for interests in money market mutual funds, investments must be "readily marketable" as defined in § 240.15c3–1 of this title.

(2) *Ratings.* (i) *Initial requirement.* Instruments that are required to be rated by this section must be rated by an NRSRO. For an investment to qualify as a permitted investment, ratings are required as follows:

(A) U.S. government securities and the permitted sovereign debt of the countries listed in paragraph (a)(1)(vii) of this section, need not be rated;

(B) Municipal securities, government sponsored agency securities, certificates of deposit, commercial paper, and corporate notes, except notes that are asset-backed, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO;

(C) Corporate notes that are asset-backed must have the highest rating of an NRSRO; and

(D) Money market mutual funds that are rated by an NRSRO must be rated at the highest rating of the NRSRO.

(ii) *Effect of downgrade.* If an NRSRO lowers the rating of an instrument that was previously a permitted investment on the basis of that rating to below the minimum rating required under this section, the value of the instrument recognized for segregation purposes will be the lesser of:

(A) The current market value of the instrument; or

(B) The market value of the instrument on the business day preceding the downgrade, reduced by 20 percent of that value for each business day that has elapsed since the downgrade.

(3) *Restrictions on instrument features.* (i) With the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, including but not limited to a call option, put option, or collar, cap, or floor on interest paid.

(ii) No instrument may contain interest-only payment features.

(iii) No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark except as provided in paragraph (b)(3)(iv) of this section.

(iv) Variable-rate securities are permitted, provided the interest rates paid correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, or the one-month or three-month LIBOR rate.

(v) Certificates of deposit, if negotiable, must be able to be liquidated within one business day or, if not negotiable, must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.

(4) *Concentration.* (i) *Direct investments.* (A) U.S. government securities, money market mutual funds, and permitted foreign sovereign debt securities shall not be subject to a concentration limit.

(B) Securities of any single issuer of government sponsored agency securities held by a futures commission merchant or clearing organization may not exceed 25 percent of total assets held in segregation by the futures commission merchant or clearing organization.

(C) Securities of any single issuer of municipal securities, certificates of deposit, commercial paper, or corporate notes held by a futures commission merchant or clearing organization may not exceed 5 percent of total assets held in segregation by the futures commission merchant or clearing organization.

(ii) *Repurchase agreements.* For purposes of determining compliance with the concentration limits set forth in this section, securities sold by a futures commission merchant or clearing organization subject to agreements to repurchase shall be combined with securities held by the futures commission merchant or clearing organization as direct investments.

(iii) *Reverse repurchase agreements.* The concentration limit applicable to securities of each issuer that are held by a futures commission merchant or clearing organization subject to agreements to resell to a particular counterparty shall be as follows:

(A) For a portfolio of securities held that are subject to resale to a counterparty that has been rated single A or higher by two or more NRSROs, or whose obligation under an agreement is guaranteed by a parent or affiliate company that has been rated single A or higher by two or more NRSROs:

(*1*) Government sponsored agency debt, issued by the same issuer and supplied by the counterparty, may not exceed 50 percent of the total amount of securities supplied by such counterparty; and

(*2*) Municipal securities, certificates of deposit, commercial paper, and corporate notes, issued by the same issuer and supplied by the counterparty, may not exceed 10 percent of the total amount of securities supplied by such counterparty; and

(B) For a portfolio of securities held that are subject to resale to a counterparty that does not have a rating or guarantee as specified in paragraph (b)(4)(iii)(A) of this section:

(*1*) Government sponsored agency debt, issued by the same issuer and supplied by the counterparty, may not exceed 25 percent of the total amount of securities supplied by such counterparty; and

(*2*) Municipal securities, certificates of deposit, commercial paper, and corporate notes, issued by the same issuer and supplied by the counterparty, may not exceed 5 percent of the total amount of securities supplied by such counterparty.

(iv) *Treatment of securities issued by affiliates.* For purposes of determining compliance with the concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(6) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted money market mutual fund is not deemed to be a security issued by its sponsoring entity.

(v) *Treatment of customer-owned securities.* For purposes of determining compliance with the concentration limits set forth in this section, securities owned by the customers of a futures commission merchant and posted as margin collateral are not included in total assets held in segregation by the futures commission merchant, and securities posted by a futures commission merchant with a clearing organization are not included in total assets held in segregation by the clearing organization.

(5) *Time-to-maturity.* Except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a–7 of this title, may not exceed 24 months.

(6) *Investments in instruments issued by affiliates.* (i) A futures commission merchant shall not invest customer funds in obligations of an entity affiliated with the futures commission merchant, and a clearing organization shall not invest customer funds in obligations of an entity affiliated with the clearing organization. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(ii) A futures commission merchant or clearing organization may invest customer funds in a fund affiliated with that futures commission merchant or clearing organization.

(7) *Recordkeeping.* A futures commission merchant and a clearing organization shall prepare and maintain a record that will show for each business day with respect to each type of investment made pursuant to this section, the following information:

(i) The type of instruments in which customer funds have been invested;

(ii) The original cost of the instruments; and

(iii) The current market value of the instruments.

(c) *Money market mutual funds.* The following provisions will apply to the investment of customer funds in money market mutual funds (the fund).

(1) Generally, the fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a money market fund, in accordance with § 270.2a–7 of this title. A fund sponsor, however, may petition the Commission for an exemption from this requirement. The Commission may grant such an exemption provided that the fund can demonstrate that it will operate in a manner designed to preserve principal and to maintain liquidity. The application for exemption must describe how the fund's structure, operations and financial reporting are expected to differ from the requirements contained in § 270.2a–7 of this title and the risk-limiting provisions for direct investments contained in this section. The fund must also specify the information that the fund would make available to the Commission on an ongoing basis.

(2) The fund must be sponsored by a federally-regulated financial institution, a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, except for a fund exempted in accordance with paragraph (c)(1) of this section.

(3) A futures commission merchant or clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with § 1.31 and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the FCM or clearing organization in accordance with § 1.26(a). If the futures commission merchant or the clearing organization holds its shares of the fund with the fund's shareholder servicing agent, the sponsor of the fund and the fund itself are required to provide the acknowledgment letter required by § 1.26.

(4) The net asset value of the fund must be computed by 9 a.m. of the business day following each business day and made available to the futures commission merchant or clearing organization by that time.

(5) A fund must be able to redeem an interest by the business day following a redemption request by the futures commission merchant or clearing organization. Demonstration that this requirement has been met may include either an appropriate provision in the offering memorandum of the fund or a separate side agreement between the fund and a futures commission merchant or clearing organization.

(6) The agreement pursuant to which the futures commission merchant or clearing organization has acquired and is holding its interest in a fund must contain no provision that would prevent the pledging or transferring of shares.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the securities (agreements to repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

(1) The securities are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(2) Counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986.

(3) The transaction is executed in compliance with the concentration limit requirements applicable to the securities held in connection with the agreements to repurchase referred to in paragraphs (b)(4)(ii) and (iii) of this section.

(4) The transaction is made pursuant to a written agreement signed by the parties to the agreement, which is consistent with the conditions set forth in paragraphs (d)(1) through (d)(12) of this section and which states that the

parties thereto intend the transaction to be treated as a purchase and sale of securities.

(5) The term of the agreement is no more than one business day, or reversal of the transaction is possible on demand.

(6) The securities transferred under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

(7) The futures commission merchant or the clearing organization may not use securities received under the agreement in another similar transaction and may not otherwise hypothecate or pledge such securities, except securities may be pledged on behalf of customers at another futures commission merchant or clearing organization. Substitution of securities is allowed, *provided, however,* that:

(i) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(ii) Substitution is made on a "delivery versus delivery" basis; and

(iii) The market value of the substituted securities is at least equal to that of the original securities.

(8) The transfer of securities is made on a delivery versus payment basis in immediately available funds. The transfer is not recognized as accomplished until the funds and/or securities are actually received by the custodian of the futures commission merchant's or clearing organization's customer funds or securities purchased on behalf of customers. The transfer or credit of securities covered by the agreement to the futures commission merchant's or clearing organization's customer segregated custodial account is made simultaneously with the disbursement of funds from the futures commission merchant's or clearing organization's customer segregated cash account at the custodian bank. On the sale or resale of securities, the futures commission merchant's or clearing organization's customer segregated cash account at the custodian bank must receive same-day funds credited to such segregated account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(9) A written confirmation to the futures commission merchant or clearing organization specifying the terms of the agreement and a safekeeping receipt are issued immediately upon entering into the transaction and a confirmation to the futures commission merchant or clearing organization is issued once the transaction is reversed.

(10) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

(11) An actual transfer of securities by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as "customer property."

(12) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) *Deposit of firm-owned securities into segregation.* A futures commission merchant shall not be prohibited from directly depositing unencumbered securities of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; provided, however, that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

7. Section 1.26 is revised to read as follows:

§ 1.26 Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and retain in its files an acknowledgment from such bank, trust company, clearing organization or other futures commission merchant that it was informed that the instruments belong to commodity or option customers and are being held in accordance with the provisions of the Act and this part. *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such acknowledgment shall be retained in accordance with § 1.31. Such bank, trust company, clearing organization or other futures commission merchant shall allow inspection of such obligations at any reasonable time by representatives of the Commission.

(b) Each clearing organization which invests money belonging or accruing to commodity or option customers of its clearing members in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to commodity or option customers and are segregated as required by the Act and this part. Each clearing organization upon opening such an account shall obtain and retain in its files a written acknowledgment from such bank or trust company that it was informed that the instruments belong to commodity or option customers of clearing members and are being held in accordance with the provisions of the Act and this part. Such acknowledgment shall be retained in accordance with § 1.31. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

§ 1.27 [Amended]

8. Section 1.27 is amended by:

a. Revising the word "obligations" to read "instruments" each time it appears; and

b. Adding the phrase "or ISIN" following the word "CUSIP" each time it appears.

§§ 1.28 and 1.29 [Amended]

9. Sections 1.28 and 1.29 are amended by revising the word "obligations" to read "instruments" each time it appears.

10. Section 1.33 is amended by adding a new paragraph (g) to read as follows:

§ 1.33 Monthly and confirmation statements.

* * * * *

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by § 1.46, may be furnished to any customer by means of electronic media if the customer so requests, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a customer who does not qualify as an "institutional customer" as defined in § 1.3(g), a futures commission merchant must obtain the customer's signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31.

* * * * *

11. Section 1.46 is amended as follows:

a. By revising paragraph (a), introductory text,

b. By removing and reserving paragraphs (d)(4) through (d)(7),

c. By removing paragraph (d)(9) and

d. By revising paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* Except with respect to purchases or sales which are for omnibus accounts, or where the customer has instructed otherwise, any futures commission merchant who, on or subject to the rules of a contract market, recognized futures exchange or derivatives transaction facility:

* * * * *

(e) The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).

* * * * *

12. Section 1.52 is amended by adding a new paragraph (m) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

* * * * *

(m) Nothing in this section shall apply to the activities of a derivatives transaction facility or the minimum adjusted net capital requirements it may require of persons operating thereon pursuant to § 1.17(a)(2)(iii).

* * * * *

13. Section 1.55 is amended by revising paragraphs (d) and (f) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

* * * * *

(d) Any futures commission merchant, or in the case of an introduced account any introducing broker, may open a commodity futures account for a customer without obtaining the separate acknowledgments of disclosure and elections required by this section and by § 1.33(g), and by §§ 33.7, 155.3(b)(2), and 190.06 of this chapter, provided that:

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in this section and § 1.33(g), and in §§ 33.7, 155.3(b)(2), and 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement or election that the customer has received and understood such disclosure statement or made such election;

(2) The acknowledgment referred to in paragraph (d)(1) of this section must be accompanied by and executed contemporaneously with delivery of the disclosures and elective provisions required by this section and § 1.33(g), and by §§ 33.7, 155.3(b)(2), and 190.06 of this chapter.

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for an institutional customer without furnishing such institutional customer the disclosure statements or obtaining the acknowledgements required under paragraph (a) of this section, §§ 1.33(g) and 1.65(a)(3), and §§ 30.6(a), 33.7(a), 155.3(b)(2), and 190.10(c) of this chapter.

* * * * *

PART 3—REGISTRATION

14. The authority citation for Part 3 is revised to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

15. Section 3.1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 3.1 Definitions.

(a) * * *

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business

unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of ten percent or more of any class of voting securities, or is entitled to receive ten percent or more of the profits; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of any class of securities; or

* * * * *

16. Section 3.10 is amended by revising paragraph (a)(1)(i), by redesignating paragraph (a)(2)(i) as paragraph (a)(2), by removing paragraph (a)(2)(ii), and by revising paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.*

(1)(i)(A) Except as provided in paragraph (a)(1)(i)(B) of this section, application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(B) An applicant for registration as a futures commission merchant or introducing broker that will conduct transactions on or subject to the rules of a contract market, recognized futures exchange or derivatives transaction facility for institutional customers, and which is registered with the Securities and Exchange Commission as a securities broker or dealer, or is a bank or any other financial depository institution subject to regulation by the United States, may apply for registration by filing with the National Futures Association notice of its intention to undertake transactions on or subject to the rules of a contract market, recognized futures exchange, or derivatives transaction facility for institutional customers, together with a certification of registration and good standing with the appropriate authority or of authorization to engage in such transactions by said authority.

* * * * *

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a)(1)(i)(A) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

* * * * *

17. Section 3.21 is amended by revising paragraph (c) introductory text to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2)(i) and 3.31(a)(2), file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

* * * * *

18. Section 3.31 is amended by redesignating paragraph (a) as paragraph (a)(1), and by adding new paragraph (a)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) * * *

(1) * * *

(2) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), each Form 3–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c). The provisions of this paragraph do not apply to any principal who has a current Form 8–R on file with the Commission or the National Futures Association.

* * * * *

§ 3.32 [Removed]

19. Section 3.32 is removed.

§ 3.34 [Removed]

20. Section 3.34 is removed.

21. Appendix A to Part 3 is amended by adding to the end thereto the following:

Appendix A to Part 3—Interpretive Statement with Respect to Section 8A(2)(C) and (E) and Section 8A(3)(J) and (M) of the Commodity Exchange Act

* * * * *

The Commission has further addressed "other good cause" under Section 8a(3)(M) of the Act in issuing guidance letters on assessing the fitness of floor brokers, floor traders or applicants in either category:

[First guidance letter]

December 4, 1997.

Robert K. Wilmouth,

President, National Futures Association, 200 West Madison Street, Chicago, IL.

Re: Adverse Registration Actions with Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category

Dear Mr. Wilmouth:

As you know, the Commission on June 26, 1997, approved for publication in the **Federal Register** a Notice and Order concerning adverse registration actions by the National Futures Association ("NFA") with respect to registered floor brokers ("FBs"), registered floor traders ("FTs") and applicants for registration in either category. 62 Fed. Reg. 36050 (July 3, 1997). The Notice and Order authorized NFA to grant or to maintain, either with or without conditions or restrictions, FB or FT registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history. The Commission has worked with its staff to determine which of the pending matters could efficiently be returned to NFA for handling, and such matters have been forwarded to NFA. The Commission will continue to accept or to act upon requests for exemption, and the Commission staff will consider requests for "no-action" opinions with respect to applicable registration requirements.

By this correspondence, the Commission is issuing guidance that provides NFA further direction on how it expects NFA to exercise its delegated power, based upon the experience of the Commission and the staff with the registration review process during the past three years. This guidance will help ensure that NFA exercises its delegated power in a manner consistent with Commission precedent.

In exercising its delegated authority, NFA, of course, needs to apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act ("Act").[1] In that regard, NFA should consider the matters in which the Commission has taken action in the past and endeavor to seek similar registration restrictions, conditions, suspensions, denials, or revocations under similar circumstances.

One of the areas in which NFA appears to have had the most uncertainty is with regard to previous self-regulatory organization ("SRO") disciplinary actions. Commission Rule 1.63[2] provides clear guidelines for determining whether a person's history of "disciplinary offenses" should preclude service on SRO governing boards or committees.[3] In determining whether to grant or to maintain, either with or without conditions or restrictions, FB or FT registration, NFA should, as an initial matter, apply the Rule 1.63(a)(6) criteria to those registered FBs, registered FTs and applicants for registration in either category. However, NFA should be acting based upon any such offenses that occurred within the previous five years, rather than the three years provided for in Rule 1.63(c). NFA should consider disciplinary actions taken by an SRO as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934 no differently from disciplinary actions taken by an SRO in the futures industry as defined in Rule 1.3(ee).[4] Application of the Rule 1.63 criteria, as modified, to these matters will aid NFA in making registration determinations that are reasonably consonant with Commission views.[5] NFA should focus on the nature of the underlying conduct rather than the sanction imposed by an SRO. Thus, if a disciplinary action would not come within the coverage of Rule 1.63 but for the imposition of a short suspension of trading privileges (such as for a matter involving fighting, use of profane language or minor recordkeeping violations), NFA could exercise discretion, as has the Commission, not to institute a statutory disqualification case. On the other hand, conduct that falls clearly within the terms of Rule 1.63, such as violations of rules involving potential harm to customers of the exchange, should not be exempt from review simply because the exchange imposed a relatively minor sanction.

The Commission has treated the registration process and the SRO disciplinary process as separate matters involving separate considerations. The fact that the Commission has not pursued its own enforcement case in a particular situation does not necessarily mean that the Commission considers the situation to be a minor matter for which no registration sanctions are appropriate. Further, the Commission believes that it and NFA, entities with industry-wide perspective and responsibilities, are the appropriate bodies, rather than any individual exchange, to decide issues relating to registration status, which can affect a person's ability to function in the industry well beyond the jurisdiction of a particular exchange. Thus, NFA's role is in no way related to review of exchange sanctions for particular conduct, but rather it is the entirely separate task of determining whether an FB's or FT's conduct should impact his or her registration.

NFA also should look to Commission precedent in selecting conditions or restrictions to be imposed, such as a dual trading ban where a person has been involved in disciplinary offenses involving customer abuse. Where conditions or restrictions are imposed, or agreed upon, NFA also should follow Commission precedent, under which such conditions or restrictions generally have been imposed for a two-year period.

The Commission has required sponsorship for conditioned FBs and FTs when their disciplinary offenses have involved noncompetitive trading and fraud irrespective of the level of sanctions imposed by an SRO. Indeed, but for a sponsorship requirement there would be no one routinely watching and responsible for the activities of these registrants. Absent sponsorship, such FBs and FTs would only be subject to routine Commission and exchange surveillance. The Commission's rules are premised upon the judgment that requiring FTs and FBs to have sponsors to ensure their compliance with conditions is both appropriate and useful. See Rule 3.60(b)(2)(i).

A question has arisen whether, if NFA is required to prove up the underlying facts of an SRO disciplinary action, the exchanges can provide information on exchange disciplinary proceedings directly to NFA. Although Section 8c(a)(2) of the Act states that an exchange shall not disclose the evidence for a disciplinary action except to the person disciplined and to the Commission, Section 8a(10) of the Act allows the Commission to authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law. The effective discharge of the delegated registration function requires NFA to have access to the exchange evidence. Thus, the Commission believes that Section 8a(10) may reasonably be interpreted to allow the disclosure of information from exchange disciplinary proceedings directly to NFA despite the provisions of Section 8c(a)(2).

Nothing in the Notice and Order affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it

[1] 7 U.S.C. 12a(2) and (3) (1994). The letter is intended to supplement, not to supersede, other guidance provided in the past to NFA. In this regard, the NFA should continue to follow other guidance provided by the Commission or its staff.

[2] Commission rules referred to herein are found at 17 CFR Ch. I.

[3] Rule 1.63(c) provides that a person is ineligible from serving on an SRO's disciplinary committees, arbitration panels, oversight panels or governing board if, as provided in Rule 1.63(b), the person, inter alia: (1) within the past three years has been found by a final decision of an SRO, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense; or (2) within the past three years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) provides that a "disciplinary offense" includes: (i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[4] Thus, for example, a disciplinary action taken by the Chicago Board Options Exchange or the National Association of Securities Dealers, Inc. should be considered in a manner similar to a disciplinary action of the Chicago Board of Trade or NFA.

[5] In reviewing these matters, the NFA should bear in mind recent Commission precedent which allows for reliance on settled disciplinary proceedings in some circumstances. *See In the Motter of Michael J. Clark,* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997) ("other good cause" under Section 8a(3)(M) of the Act exists based upon a pattern of exchange disciplinary actions resulting in significant sanctions for serious rule violations—whether settlements or adjudications), *off'd sub nom., Clark v. Commodity Futures Trading Commission,* No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

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monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,
Jean A. Webb,
Secretary of the Commission.

[Second guidance letter]

April 13, 2000.

Robert K. Wilmouth,
President, National Futures Association, 200 West Madison Street, Chicago, IL.

Re: Use of Exchange Disciplinary Actions as *"Other Good Cause" to Affect Floor Broker/Floor Trader Registration*

Dear Mr. Wilmouth:

I. Introduction and Background

In July 1997, the Commission issued a Notice and Order authorizing the National Futures Association ("NFA") to grant or to maintain, either with or without conditions or restrictions, floor broker ("FB") or floor trader ("FT") registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history.[1] By letter dated December 4, 1997 ("Guidance Letter"), the Commission provided further direction on how the Commission expected NFA to exercise its delegated power and to ensure that NFA exercised its delegated power in a manner consistent with Commission precedent.

The Commission has determined to revise the Guidance Letter. Specifically, the Commission is revising the portion of the Guidance Letter that addresses the use of exchange disciplinary actions as "other good cause" to affect FB and FT registrations. The Commission has made this determination following its own reconsideration of the issue and at the urging of industry members.[2]

The Guidance Letter pointed out that, in exercising its delegated authority, NFA must apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act ("Act").[3] In particular, Section 8a(3)(M) of the Act authorizes the Commission to refuse to register or to register conditionally any person if it is found, after opportunity for hearing, that there is other good cause for statutory disqualification from registration beyond the specifically listed grounds in Sections 8a(2) and 8a(3) of the Act. The Commission held in *In the Matter of Clark* that statutory disqualification under the "other good cause" provision of Section 8a(3)(M) may arise on the basis of, among other things, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions, and that it is immaterial whether the sanctions imposed resulted from a fully-adjudicated disciplinary action or an action that was taken following a settlement.[4]

The Guidance Letter recommended the application of the provisions of Commission Rule 1.63[5] as criteria to aid in assessing the impact of an FB or FT applicant's or registrant's previous disciplinary history on the person's fitness to be registered, with the exception that NFA should be acting based on disciplinary history from the previous five years, rather than the three years provided for in Rule 1.63.[6] The Guidance Letter also noted that NFA should consider disciplinary actions taken not only by futures industry SROs but also those taken by SROs as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 ("1934 Act"), including settled disciplinary actions.

II. Revised Guidance

As stated above, the Commission has determined to revise the Guidance Letter. From this point forward, NFA should cease using Rule 1.63 as the basis to evaluate the impact of an FB or FT applicant's or registrant's disciplinary history on his or her fitness to be registered. Instead, as *Clark* stated, when reviewing disciplinary history to assess the fitness to be registered of an FB, FT, or applicant in either category, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions will trigger the "other good cause" provision of Section 8a(3)(M). The "pattern" should consist of at least two final exchange disciplinary actions, whether settled or adjudicated.

NFA also should consider initiating proceedings to affect the registration of the FB or FT, if the exchange action was based on allegations of particularly egregious misconduct or involved numerous instances of misconduct occurring over a long period of time. If, however, a proceeding is initiated based on a single exchange action that was disposed of by settlement, NFA may have to prove up the underlying misconduct. Furthermore, traditional principles of collateral estoppel apply to adjudicated actions, whether they are being considered individually or as part of a pattern.[7]

As provided by the Guidance Letter, "exchange disciplinary actions" would continue to include disciplinary actions taken by both futures industry SROs and SROs as defined in Section 3(a)(26) of the 1934 Exchange Act. Furthermore, NFA should review an applicant's or registrant's disciplinary history for the past five years.[8] At least one of the actions forming the pattern, however, must have become final after *Clark* was decided by the Commission on April 22, 1997. Finally, "serious rule violations" consist of, or are substantially related to, charges of fraud, customer abuse, other illicit trading practices, or the obstruction of an exchange investigation.

Congress, the courts and the Commission have indicated the importance of considering an applicant's history of exchange disciplinary actions in assessing that person's fitness to register.[9] Furthermore, NFA's review of exchange disciplinary actions within the context of the registration process should not simply mirror the disciplinary actions undertaken by the exchanges. The two processes are separate matters that involve separate considerations. As part of their ongoing self-regulatory obligations, exchanges must take disciplinary action[10] and such disciplinary matters necessarily focus on the specific misconduct that forms the allegation. In a statutory disqualification action, however, NFA must determine whether the disciplinary history of an FB, FT or applicant over the preceding five years should impact his or her registration. Additionally, NFA possesses industry-wide perspective and responsibilities. As such, NFA, rather than an individual exchange, should decide registration status issues, since those issues affect an individual's status within the industry as a whole, well beyond the jurisdiction of a particular exchange.

The Commission also wants to clarify to the fullest extent possible that its power to delegate the authority to deny or condition the registration of an FB, FT, or an applicant for registration in either category permits exchanges to disclose to NFA all evidence underlying exchange disciplinary actions, notwithstanding the language of Section 8c(a)(2) of the Act.[11] The Commission's power to delegate stems from Section 8a(10) of the Act, which permits delegation of registration functions, including statutory disqualification actions, to any person in accordance with rules adopted by such person and submitted to the Commission for approval or for review under Section 17(j) of the Act, "notwithstanding any other provision of law." Certainly, Section 8c(a)(2) qualifies as "any other provision of law." Furthermore, the effective discharge of the delegated function requires NFA to have access to the exchange evidence. Thus, the exercise of the delegated authority pursuant to Section 8a(10) permits the exchanges to disclose all evidence underlying disciplinary actions to NFA.[12]

This letter supersedes the Guidance Letter to the extent discussed above. In all other aspects, the Guidance Letter and other guidance provided by the Commission or its staff remain in effect. Therefore, NFA should continue to follow Commission precedent when selecting conditions or restrictions to be imposed. For example, NFA should impose a dual trading ban where customer abuse is involved and any conditions or restrictions imposed should be for a two-year period. Furthermore, NFA should require sponsorship for conditioned FBs or FTs when their disciplinary offenses involve noncompetitive trading and fraud.

Nothing in the Notice and Order or this letter affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,
Jean A. Webb,
Secretary of the Commission.

22. Part 3 is amended by adding Appendix B to read as follows:

Appendix B to Part 3—Statement of Acceptable Practices with Respect to Ethics Training

(a) The provisions of section 4p(b) of the Act (7 U.S.C. 6p(b) (1994)) set forth requirements regarding training of registrants as to their responsibilities to the public. This section requires the Commission to issue regulations requiring new registrants to attend ethics training sessions within six months of registration, and all registrants to attend such training on a periodic basis. Consistent with the will of Congress, the Commission believes that a Core Principle for all persons intermediating transactions in recognized multilateral trade execution facilities is fitness. The awareness and maintenance of professional ethical standards are essential elements of a registrant's fitness. Further, the use of ethics training programs is relevant to a registrant's maintenance of adequate supervision, itself a Core Principle, and a requirement under Rule 166.3.

(b)(1) The Commission recognizes that technology has provided new, faster means of sharing and distributing information. In view of the foregoing, the Commission has chosen to allow registrants to develop their own ethics training programs. Nevertheless, futures industry professionals may want guidance as to the role of ethics training. Registrants may wish to consider what ethics training should be retained, its format, and how it might best be implemented. Therefore, the Commission finds it appropriate to issue this Statement of Acceptable Practices regarding appropriate training for registrants, as interpretative guidance for intermediaries on fitness and supervision. Commission registrants may look to this Statement of Acceptable Practices as a "safe harbor" concerning acceptable procedures in this area.

(2) The Commission believes that section 4p(b) of the Act reflects an intent by Congress that industry professionals be aware, and remain abreast, of their continuing obligations to the public under the Act and the regulations thereunder. The text of the Act provides guidance as to the nature of these responsibilities. As expressed in section 4p(b) of the Act, personnel in the industry have an obligation to the public to observe the Act, the rules of the Commission, the rules of any appropriate self-regulatory organizations or contract markets (which would also include recognized futures exchanges and recognized derivatives transactions facilities), or other applicable federal or state laws or regulations. Further, section 4p(b) acknowledges that registrants have an obligation to the public to observe "just and equitable principles of trade."

(3) Additionally, section 4p(b) reflects Congress' intent that registrants and their personnel retain an up-to-date knowledge of these requirements. The Act requires that registrants receive training on a periodic basis. Thus, it is the intent of Congress that Commission registrants remain current with regard to the ethical ramifications of new technology, commercial practices, regulations, or other changes.

(c) The Commission believes that training should be focused to some extent on a person's registration category, although there will obviously be certain principles and issues common to all registrants and certain general subjects that should be taught. Topics to be addressed include:

(1) An explanation of the applicable laws and regulations, and the rules of self-regulatory organizations or contract markets, recognized futures exchanges and derivatives transaction facilities;

(2) The registrant's obligation to the public to observe just and equitable principles of trade;

(3) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(4) How to establish effective supervisory systems and internal controls;

(5) Obtaining and assessing the financial situation and investment experience of customers;

(6) Disclosure of material information to customers; and

(7) Avoidance, proper disclosure and handling of conflicts of interest.

(d) An acceptable ethics training program would apply to all of a firm's associated persons and its principals to the extent they are required to register as associated persons. Additionally, personnel of firms that rely on their registration with other regulators, such as the Securities and Exchange Commission, should be provided with ethics training to the extent the Act and the Commission's regulations apply to their business.

(e) As to the providers of such training, the Commission believes that classes sponsored by independent persons, firms, or industry associations would be acceptable. It would also be permissible to conduct in-house training programs. Further, registrants should ascertain the credentials of any ethics training providers they retain. Thus, persons who provide ethics training should be required to provide proof of satisfactory completion of the proficiency testing requirements applicable to the registrant and evidence of three years of relevant industry or pedagogical experience in the field. This industry experience might include the practice of law in the fields of futures or securities, or employment as a trader or risk manager at a brokerage or end-user firm. Likewise, the Commission believes that registrants should employ as ethics training providers only those persons they reasonably believe in good faith are not subject to any investigations or to bars to registration or to

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[1] Registration Actions by National Futures Association With Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category, 62 FR 36050 (July 3, 1997).

[2] *See* letters submitted by James Bowe, former president of the New York Board of Trade ("NYBOT"), dated October 13, 1999, Christopher Bowen, general counsel of the New York Mercantile Exchange ("NYMEX"), dated October 18, 1999, and the Joint Compliance Committee ("JCC"), dated February 2, 2000. The JCC consists of senior compliance officials from all domestic futures exchanges and the NFA (*i.e.*, the domestic self-regulatory organizations ("SROs")). In addition, staff from the Contract Markets Section of the Commission's Division of Trading and Markets attend the JCC meetings as observers. The JCC was established to aid in the development of improved compliance systems through joint efforts and information-sharing among the SROs. Commission staff have also discussed this issue with SRO staff.

[3] 7 U.S.C. 12a(2) and (3) (1994).

[4] *In the Matter of Clark*, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997), *aff'd sub nom., Clark* v. *Commodity Futures Trading Commission*, No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

[5] Commission rules referred to in this letter are found at 17 CFR Ch. 1.

[6] Rule 1.63 provides, among other things, that a person is ineligible from serving on SRO disciplinary committees, arbitration panels, oversight panels or governing boards if that person, *inter alia*, entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) defines a "disciplinary offense" to include:

(i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[7] *Clark* at 44,929.

[8] The Commission generally looked at a five-year period of disciplinary history. On occasion, however, the Commission examined a longer period of an applicant's or registrant's disciplinary history. For example, the Commission revoked the registration of one FB on the basis of exchange disciplinary cases that extended back six years, *see Clark*, 2 Comm. Fut. L. Rep. (CCH) ¶ 27,032, and denied an application for registration as an FT on the basis of exchange disciplinary cases that extended back seven years, *see In the Matter of Castellano*, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,360 (Nov. 23, 1988), *summarily aff'd* (May 29, 1990), *reh. denied* [1990–1992 Transfer Binder] Comm. Fut. L. Rep. ¶ 24,870 (June 26, 1990), *aff'd sub nom. Castellano* v. *CFTC*, Docket No. 90–2298 (7th Cir. Nov. 20, 1991).

[9] Letter dated July 14, 1995, from Mary L. Schapiro to R. Patrick Thompson, President, New York Mercantile Exchange (unpublished). *See also Castellano, supra* note 8.

[10] *See* Rule 1.51(a)(7).

[11] Section 8c(a)(2) states, in relevant part, that "[A]n exchange * * * shall not disclose the evidence therefor, except to the person who is suspended, expelled, disciplined, or denied access, and to the Commission."

[12] Of course, the Commission could request records from the exchange and forward them to NFA. The Commission believes that this is an unnecessary administrative process and that NFA should obtain the records it needs to carry out the delegated function of conducting disciplinary history reviews directly from the exchanges. In this context and pursuant to Commission orders authorizing NFA to institute adverse registration actions, NFA should be viewed as standing in the shoes of the Commission.

service on a self-regulatory organization governing board or disciplinary panel.

(f)(1) With regard to the frequency and duration of ethics training, it is permissible for a firm to require training on whatever periodic basis and duration the registrant (and relevant self-regulatory organizations) deems appropriate. It may even be appropriate not to require any such specific requirements as, for example, where ethics training could be termed ongoing. For instance, a small entity, sole proprietorship, or even a small section in an otherwise large firm, might satisfy its obligation to remain current with regard to ethics obligations by distribution of periodicals, legal cases, or advisories. Use of the latest information technology, such as Internet websites, can be useful in this regard. In such a context, there would be no structured classes, but the goal should be a continuous awareness of changing industry standards. A corporate culture to maintain high ethical standards should be established on a continuing basis.

(2) On the other hand, larger firms which transact business with a larger segment of the public may wish to implement a training program that requires periodic classwork. In such a situation, the Commission believes it appropriate for registrants to maintain such records as evidence of attendance and of the materials used for training. In the case of a floor broker or floor trader, the applicable contract market, recognized futures exchange or derivatives transaction facility should maintain such evidence on behalf of its member. This evidence of ethics training could be offered to demonstrate fitness and overall compliance during audits by self-regulatory organizations, and during reviews of contract market, recognized futures exchange or derivatives transaction facility operations.

(g) The methodology of such training may also be flexible. Recent innovations in information technology have made possible new, fast, and cost-efficient ways for registrants to maintain their awareness of events and changes in the commodity interest markets. In this regard, the Commission recognizes that the needs of a firm will vary according to its size, personnel, and activities. No format of classes will be required. Rather, such training could be in the form of formal class lectures, video presentation, Internet transmission, or by simple distribution of written materials. These options should provide sufficiently flexible means for adherence to Congressional intent in this area.

(h) Finally, it should be noted that self-regulatory organizations and industry associations will have a significant role in this area. Such organizations may have separate ethics and proficiency standards, including ethics training and testing programs, for their own members.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

23. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

24. Section 4.10 is amended by revising paragraph (e)(1) to read as follows:

§ 4.10 Definitions.

* * * * *

(e)(1) *Principal,* when referring to a person that is a principal of a particular entity, shall have the same meaning as the term "principal" under § 3.1(a) of this chapter.

* * * * *

25. Section 4.24 is amended by revising paragraphs (f)(1)(v) and (h)(2) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(v) Each principal of the persons referred to in this paragraph (b)(1) who participates in making trading or operational decisions for the pool or who supervises persons so engaged.

* * * * *

(h) * * *

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants carrying the pool's accounts shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

* * * * *

26. Section 4.32 is added to read as follows:

§ 4.32 Trading on a derivatives transaction facility for non-institutional customers.

(a) A registered commodity trading advisor may enter trades on or subject to the rules of a derivatives transaction facility on behalf of a client who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter, provided that the trading advisor:

(1) Directs the client's commodity interest account;

(2) Directs accounts containing total assets of not less than $25,000,000 at the time the trade is entered; and

(3) Discloses to the client that the trading advisor may enter trades on or subject to the rules of a derivatives transaction facility on the client's behalf.

(b) The commodity interest account of a client described in paragraph (a) of this section must be carried by a registered futures commission merchant.

27. Section 4.34 is amended by revising paragraphs (f)(1)(ii) and (h) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

* * * * *

(h) *Trading program.* A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

28. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a, 12a.

29. Section 140.91 is amended by adding a new paragraph (a)(7) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(7) All functions reserved to the Commission in § 1.25 of this chapter.

* * * * *

PART 155—TRADING STANDARDS

30. The authority citation for Part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a unless otherwise noted.

§§ 155.2, 155.3, 155.4 and 155.5 [Amended]

31. Sections 155.2, 155.3, 155.4 and 155.5 are amended by adding the words "or recognized futures exchange" after the words "contract market" each time they appear.

32. Section 155.6 is added to read as follows:

§ 155.6 Trading standards for the transaction of business on derivatives transaction facilities.

(a) A futures commission merchant, or affiliated person thereof, transacting business on behalf of a customer who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter on a derivatives transaction facility shall comply with the provisions of § 155.3.

(b) No futures commission merchant, introducing broker or affiliated person thereof shall misuse knowledge of any institutional customer's order for execution on a derivatives transaction facility.

PART 166—CUSTOMER PROTECTION RULES

33. The authority citation for Part 166 is amended to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7a, 12a, 21 and 23, unless otherwise noted.

34. Section 166.5 is added to read as follows:

§ 166.5 Dispute settlement procedures.

(a) *Definitions.* (1) The term *claim or grievance* as used in this section shall mean any dispute that:

(i) Arises out of any transaction executed on or subject to the rules of a contract market, a recognized futures exchange or a derivatives transaction facility,

(ii) Is executed or effected through a member of such facility, a participant transacting on or through such facility or an employee of such facility, and

(iii) Does not require for adjudication the presence of essential witnesses or third parties over whom the facility does not have jurisdiction and who are not otherwise available.

(iv) The term claim or grievance does not include disputes arising from cash market transactions that are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

(2) The term *customer* as used in this section includes an option customer (as defined in § 1.3(jj) of this chapter) and any person for or on behalf of whom a member of a contract market, a recognized futures exchange or a derivatives transaction facility or a participant transacting on or through such market, exchange or facility effects a transaction on or through such market, exchange or facility, except another member of or participant in such market, exchange or facility. *Provided, however,* a person who is an "institutional customer" as defined in § 1.3(g) of this chapter shall not be deemed to be a customer within the meaning of this section.

(3) The term *Commission registrant* as used in this section means a person registered under the Act as a futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person.

(b) *Voluntariness.* The use by customers of dispute settlement procedures shall be voluntary as provided in paragraph (c) of this section.

(c) *Pre-dispute arbitration agreements.* No Commission registrant shall enter into any agreement or understanding with a customer in which the customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the Commission registrant.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. A futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter for the following classes of customers only:

(i) A plan defined as a government plan or church plan in section 3(32) or section 3(33) of title I of the Employee Retirement Income Security Act of 1974, or a foreign person performing a similar role or function subject as such to comparable foreign regulation; and

(ii) A person who is a "qualified eligible person" as defined in § 4.7 of this chapter.

(3) The agreement may not require the customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter. Accordingly, the customer must be advised in writing that he or she may seek reparations under section 14 of the Act by an election made within 45 days after the Commission registrant notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when the Commission registrant notifies the customer of an intention to arbitrate. The customer must also be advised that if he or she seeks reparations under section 14 of the Act and the Commission declines to institute reparation proceedings, the claim or grievance will be subject to the pre-existing arbitration agreement and must also be advised that aspects of the claim or grievance that are not subject to the reparations procedure (*i.e.*, do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the pre-existing arbitration agreement.

(4) The agreement must advise the customer that, at such time as he or she may notify the Commission registrant that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

(5) *Election of forum.* (i) Within ten business days after receipt of notice from the customer that he or she intends to submit a claim to arbitration, or at the time a Commission registrant notifies the customer of its intent to submit a claim to arbitration, the Commission registrant must provide the customer with a list of organizations whose procedures meet Acceptable Practices established by the Commission for customer dispute resolution, together with a copy of the rules of each forum listed. The list must include:

(A) The contract market, recognized futures exchange or derivatives transaction facility, if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

(B) A registered futures association; and

(C) At least one other organization that will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and that will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of the contract market, recognized futures exchange or derivatives transaction facility or employee thereof, and that are not otherwise associated with the contract market, recognized futures exchange or derivatives transaction facility (mixed panel): *Provided,*

however, that the list of qualified organizations provided by a Commission registrant that is a floor broker need not include a registered futures association unless a registered futures association has been authorized to act as a decision-maker in such matters.

(ii) The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

(6) *Fees.* The agreement must acknowledge that the Commission registrant will pay any incremental fees that may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

(7) *Cautionary Language.* The agreement must include the following language printed in large boldface type:

Three Forums Exist for the Resolution of Commodity Disputes: Civil Court litigation, reparations at the Commodity Futures Trading Commission (CFTC) and arbitration conducted by a self-regulatory or other private organization.

The CFTC recognizes that the opportunity to settle disputes by arbitration may in some cases provide many benefits to customers, including the ability to obtain an expeditious and final resolution of disputes without incurring substantial costs. The CFTC requires, however, that each customer individually examine the relative merits of arbitration and that your consent to this arbitration agreement be voluntary.

By signing this agreement, you: (1) May be waiving your right to sue in a court of law; and (2) are agreeing to be bound by arbitration of any claims or counterclaims which you or [name] may submit to arbitration under this agreement. You are not, however, waiving your right to elect instead to petition the CFTC to institute reparations proceedings under Section 14 of the Commodity Exchange Act with respect to any dispute that may be arbitrated pursuant to this agreement. In the event a dispute arises, you will be notified if [name] intends to submit the dispute to arbitration. If you believe a violation of the Commodity Exchange Act is involved and if you prefer to request a section 14 "Reparations" proceeding before the CFTC, you will have 45 days from the date of such notice in which to make that election.

You need not sign this agreement to open or maintain an account with [name]. *See* 17 CFR 166.5.

(d) *Enforceability.* A dispute settlement procedure may require parties utilizing such procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure, provided that the agreement to submit the claim or grievance to the procedure was made in accordance with paragraph (c) of this section or that the agreement to submit the claim or grievance was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(e) *Time limits for submission of claims.* The dispute settlement procedure established by a contract market, recognized futures exchange or derivatives transaction facility shall not include any unreasonably short limitation period foreclosing submission of customers' claims or grievances or counterclaims.

(f) *Counterclaims.* A procedure established by a contract market, recognized futures exchange, or derivatives transaction facility under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The contract market, recognized futures exchange, or derivatives transaction facility may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties, or third persons over whom the contract market, recognized futures exchange, or derivatives transaction facility does not have jurisdiction. Other counterclaims arising out of a transaction subject to the Act and rules promulgated thereunder for which the customer utilizes the services of the registrant may be permissible where the customer and the registrant have agreed in advance to require that all such submissions be included in the proceeding, and if the aggregate monetary value of the counterclaim is capable of calculation.

(g) *Institutional customers.* (1) A person who is an "institutional customer" as defined in § 1.3(g) of this chapter may negotiate any term of an agreement or understanding with a Commission registrant in which the institutional customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure, except that signing the agreement must not be made a condition for the institutional customer to use the services offered by the registrant.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the institutional customer must separately endorse the clause or clauses containing the agreement; *Provided, however,* a futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter.

Issued in Washington, D.C. on November 21, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–30268 Filed 12–12–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AB57

A New Regulatory Framework for Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is promulgating a new regulatory framework to apply to clearing organizations. These regulations for clearing organizations are part of an initiative that would also establish a new regulatory framework for multilateral transaction execution facilities (MTEF) and market intermediaries. The final new framework in its entirety is simultaneously announced today in companion releases. The new framework, including these regulations are centered on broad, flexible, core principles and are designed to "promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers." The Commission has fashioned these regulations so that it can fairly and efficiently carry out the important duty of overseeing clearing organizations in a changing, dynamic industry pursuant to a transparent codified framework.

EFFECTIVE DATE: February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Alan L. Seifert, Deputy Director, Division of Trading and Markets, or Lois J. Gregory, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5260 or e-mail *PArchitzel@cftc.gov, ASeifert@cftc.gov,* or *LGregory@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2000, the Commission published for comment proposed new Part 39, a regulatory framework for the oversight of clearing organizations. 65 FR 39027. Part 39 is part of an initiative that would also establish a new regulatory framework for MTEFs and market intermediaries. The final new framework in its entirety is simultaneously announced today in companion releases. The new framework, including Part 39, is centered on broad, flexible, core principles and is designed to "promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers." 65 FR 38986.

The futures and option markets are undergoing changes in market structure and technology. Clearing organizations for these markets perform valuable functions by mitigating counterparty risk, facilitating the netting and offsetting of contractual obligations, and decreasing systemic risk. Clearing organizations should be subject to continuing regulatory oversight to ensure that they have sufficient financial resources and that they establish and implement prudential risk management programs designed to control concentration risks associated with centralized clearing.[1] The Commission has fashioned new Part 39 so that it can fairly and efficiently carry out the important duty of overseeing clearing organizations in a changing, dynamic industry pursuant to a transparent codified framework.

Part 39 requires that transactions effected on recognized futures exchanges (RFEs) under Part 38 and derivatives transaction facilities (DTFs) under Part 37 be cleared only by clearing organizations that have been recognized by the Commission under Part 39—recognized clearing organizations (RCOs). RCOs are also permitted to clear transactions that are exempt under Part 35—Exemption of Bilateral Agreements and Part 36—Exemption of Transactions on Multilateral Transaction Execution Facilities.[2] In addition, nothing in Part 39 prohibits an RCO from clearing any other type of instrument such as cash or forward delivery contracts.[3]

Current futures clearing organizations may self-certify and automatically qualify as RCOs under Part 39. New entities could apply for RCO status by demonstrating that their rules, procedures, and operations would be consistent with the 13 broad and flexible core principles set forth in Part 39. Appendix A to Part 39 would provide guidance to applicant RCOs as to how to make such a demonstration. Certain provisions of Part 39 and Appendix A have been modified from their proposed versions in light of comments received from participants in the industry. These modifications, as discussed herein, provide additional clarity and are consistent with the new regulatory framework's goal of promoting innovation and maintaining U.S. competitiveness, while also reducing systemic risk and protecting customers.

II. Overview

The Commission received comment letters on Part 39 from a number of SROs and other interested entities.[4] Commenters overwhelmingly supported the Part 39 requirement that all transactions executed on a designated contract market, an RFE, or a DTF, if cleared, be cleared by an RCO. Commenters also supported the proposition that nothing in Part 39 prohibits RCOs from clearing transactions other than those effected pursuant to Parts 35–38. Other comments concerned the definition of clearing organization, the jurisdiction of the Commission, the applicable provisions of the Commodity Exchange Act (Act) and regulations, and the guidance in Appendix A to Part 39. In response to the comments, the Commission has made changes to the definition of clearing organization and changes that clarify the jurisdiction of the Commission under Part 39. Other changes to Part 39 limit the applicability of sections of the Act and the regulations, and address the illustrative purpose of the guidance in Appendix A.

III. Discussion

A. Purpose

The Part 39 core principles reflect standards that the Commission takes into account in overseeing the clearing of futures and option contracts without imposing new regulatory requirements. Certain commenters contended that Part 39 as proposed would impose a new regulatory framework on entities already successfully regulated, and that the Commission had not fully articulated why Part 39 was being imposed at this time. *See, e.g.,* CL 21–51 at 11 and CL 23–40 at 2.

The Commission currently oversees the clearing organizations that are associated or affiliated with U.S. futures and option exchanges. As a practical matter, the Commission generally has regulated clearing organizations in connection with its oversight of contract markets which heretofore have had close affiliations with their clearing organizations. Among other things, the Commission has reviewed clearing organization rules, audited clearing organizations for compliance with the Commission's segregation, recordkeeping, and customer funds investment rules, monitored the clearing process in times of major market moves to identify potential systemic risks, and conducted oversight of the liquidation of positions and transfer of customer accounts in cases where clearing members encounter financial difficulty.

The Commission's oversight of clearing organizations also has been guided by standards not expressly set forth in the Act or the Commission's regulations for contract markets. For example, the Commission has taken into account, among other standards and procedures, the standards set forth in the Bank for International Settlements' (BIS) 1993 Lamfalussy Report on multilateral netting systems and other BIS reports, the recommendations with respect to clearing and settlement of

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[1] *See* Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group, November 1999.

[2] In addition to RCOs, certain other enumerated entities also are authorized to clear transactions exempt under Parts 35 and 36. These include a clearing agency or system regulated by the Securities and Exchange Commission (SEC), the Federal Reserve, or the Comptroller of the Currency, and certain foreign clearing organizations.

[3] Further, nothing in Part 39 prohibits an entity that clears only exempt transactions from applying to the Commission for RCO status. An entity may want to apply for recognition as an RCO for its own business purposes.

[4] In this and three companion Notices of Final Rulemaking which are being published in this edition of the **Federal Register**, comment letters (CL) are referenced by file number, letter number and page. These letters are available through the Commission's internet web site. Comments filed in response to the notice of proposed rulemaking on clearing organizations are contained in file No. 23. Comments filed predominantly in response to the notice of proposed rulemaking on Parts 36–38, but which also had comments on clearing organizations, are contained in file No. 21. Those commenting upon Part 39 include: Board of Trade Clearing Corporation (BOTCC); California Power Exchange; Chicago Board of Trade; Chicago Mercantile Exchange (CME); Federal Reserve Bank of Chicago (FRB of Chicago); Financial Markets Lawyers Group; Futures Industry Association (FIA); Global TeleExchange; Government Securities Clearing Corporation (GSCC); New York Independent System Operator; JP Morgan; Kiodex, Inc.; Mercatus Center at George Mason University; New York Clearing Corporation (NYCC); New York Mercantile Exchange; Options Clearing Corporation (OCC); Oxy Energy Services, Inc.; PetroCosm Corporation; Securities Industry Association; and Cleary, Gottlieb, Steen & Hamilton, on behalf of a coalition of investment banks consisting of Chase Manhattan Bank, Citigroup Inc., Credit Suisse First Boston Inc., Goldman Sachs & Co., Merrill Lynch & Co. Inc., and Morgan Stanley Dean Witter & Co. (Coalition).

securities transactions of the Group of Thirty, and the recommendations of the President's Working Group in response to the market break of October 1987. Part 39's core principles reflect these various standards and existing futures clearing organizations currently meet these standards. Thus, Part 39 represents the Commission's intention to put into a logical and coherent regulatory form the same principles that the Commission now applies to clearing organizations. This approach is a natural accompaniment to the new regulatory framework.

Recently, there has been an increase in the number of new electronic markets that do not have their own clearing capacity. This trend has resulted in an increase in the opportunity for clearing organizations independent of transaction facilities to clear for multiple markets, which in turn magnifies the importance of clearing in the management of systemic risk. Clearing organizations unaffiliated with the transaction facilities for which they clear necessarily will have rules, procedures, and practices separate and independent from the transaction facilities. Thus, the Commission will oversee the clearing function pursuant to a framework separate from, but related to, the framework for the oversight of the transaction facilities.

B. Definition of Clearing Organization

In its final Part 39 rules, the Commission has clarified the definition of "clearing organization" to mean, with respect to transactions executed on a designated contract market or pursuant to Parts 35–38, a person that provides credit enhancement to its members or participants in connection with netting and/or settling the payments and payment obligations of such members or participants, by becoming a universal counterparty to such members or participants, or otherwise.[5] Providing credit enhancement in connection with, or as a byproduct of, providing settlement services is the critical attribute of a clearing organization.

Some of the comments raised concerns about the proposed definition in that they stated certain activities should not constitute the activity of clearing. *See, e.g.*, BOTCC CL 21–20 at 10. These activities include the netting of payment obligations and entitlements and the performance of trade processing services such as trade comparison, margin calculation, and reporting services.[6] In response to these comments, the revised definition captures only organizations whose services enhance the credit of the members or participants that are parties to the contracts cleared by the organization.

One method of credit enhancement is to be the counterparty to every cleared transaction. The clearing organization substitutes itself for each original counterparty and becomes legally bound to every party to a transaction. This is known as legal novation. However, a clearing organization can provide credit enhancement in ways other than strict legal novation. It can agree with its members and participants that it will be legally bound to guarantee payment flows associated with transactions in connection with or as a byproduct of the provision of netting services, that is, the netting of all payment obligations and entitlements. A clearing organization also could provide credit enhancement in any legal agreement to guarantee payment flows in connection with other settlement services.

The provision of one or more clearing services absent credit enhancement, however, will not, as a general matter, constitute the activity of clearing for purposes of Part 39. Therefore, for purposes of Part 39, the term "clearing organization" does not encompass the sole provision of netting services in the absence of any type of credit enhancement.

C. Scope of Part 39

The language of the scope provision, § 39.1, the enforceability provision, § 39.5, and the antifraud provision, § 39.6, in their final form, all apply to an RCO's *clearing* of transactions effected pursuant to the enumerated parts. The final language of § 39.2 clarifies:

(1) what must be cleared by an RCO (any transaction effected on a contract market or pursuant to Parts 37 and 38 that is cleared);

(2) that the *clearing of* transactions by an RCO is regulated under Part 39;

(3) that transactions effected pursuant to Parts 35 or 36 may be cleared by an RCO or by other authorized clearing organizations;[7]

(4) that the *clearing of* transactions effected pursuant to Parts 35 or 36 by an RCO is regulated under Part 39;

(5) that the clearing of transactions effected pursuant to Parts 35 or 36 by authorized clearing organizations other than an RCO is not regulated under Part 39; and

(6) that transactions not specified in 39.1(a) may also be cleared by an RCO.

The changes to the scope, enforceability and antifraud provisions address commenters' concerns that: (1) proposed Part 39 could be interpreted to apply the Act and the Commission's regulations to transactions outside the appropriate scope of Part 39, such as cash products or other products beyond the authority of the Act, *see, e.g.*, CME CL 21–51 at 9–10; (2) it may appear as if the Commission is attempting to expand its jurisdiction to include any over-the-counter transaction that is submitted to an RCO for clearing, *id.*; (3) the new part should clarify that transactions effected pursuant to Parts 35 or 36 do not become subject to the jurisdiction of the Commission simply because they are submitted to a Part 39 clearing organization and that clearing does not, by itself, make an exempt transaction subject to the Act, *see* BOTCC CLs 21–6 at 4 and 21–20 at 8; and (4) the effect of § 39.6 would not be the assertion of the Commission's enforcement authority over otherwise-exempt transactions simply because those transactions are submitted to clearing. As proposed, § 39.6 prohibited fraud in connection with any transaction cleared by an RCO. The final section prohibits fraud in connection with the *activity* of clearing. *See* BOTCC CL 21–6 at 4, FRB of Chicago CL 23–25 at 7 and GSCC CL 23–19 at 4.

As discussed, the final Part 39 rules address these comments. The Commission is not hereby asserting jurisdiction over transactions in cash and other products not subject to the Act. Commission oversight of an RCO under Part 39 addresses the clearing process only and does not include regulation or oversight of the transactions or the traders. The Commission, however, notes that it must monitor for the potential that clearing of cash and other products not subject to the Act could adversely affect the viability, risk exposure, and management of the entity as an RCO.[8]

[5] The definition continues to exclude those netting arrangements specified in § 35.2 (d)(1) and (d)(2) and an entity that is a single counterparty offering to enter into, or entering into, bilateral transactions with multiple counterparties.

[6] It also includes, where applicable, the scheduling or netting of physical delivery obligations and related bookkeeping functions such as those performed by operators of physical delivery points for certain energy-related products. *See* CL 21–56 at 2.

[7] Transactions pursuant to Part 34 are not included in 39.2 or otherwise referred to in Part 39 as these instruments have consistently been subject to other regulatory schemes, whether under the jurisdiction of the SEC as securities, or regulated pursuant to federal banking laws as depository instruments.

[8] An analogy can be drawn to the interest the Commission has in assessing risk presented to futures commission merchants (FCMs) by their non-futures activities. Thus, for example, the Commission's net capital rule has provisions relating to the capital treatment of securities and other non-futures inventory held by an FCM in the normal course of its business. *See* Commission Regulation 1.17. *See also* Commission Regulations 1.14 and 1.15 that assess risk to a registered FCM from affiliates in its holding company system.

D. Treatment as Contract Market

As proposed, § 39.1(b)(2) provided that an RCO would be deemed to be a contract market for purposes of the Act and the regulations, but would be exempt from all such provisions except as reserved in § 39.5. In its final rules, the Commission has combined the language of proposed § 39.1(b)(2) with proposed § 39.5. Section 39.5 now provides that an RCO is deemed to be a contract market *to the extent it clears transactions specified in § 39.1(a)* (the scope provision), but is exempt from all provisions of the Act and regulations except, *as applicable*, certain enumerated sections of the Act and the Commission's regulations which would continue to apply.

Combining the separate provisions and amending the resulting § 39.5 as indicated, limits the purpose for which RCOs are deemed to be contract markets and addresses commenters' concern that the provision would subject clearing organizations to provisions of the Act and the Commission's regulations that do not now apply. *See, e.g.*, BOTCC CL 21–6 at 4. Pursuant to the final rule, an RCO is deemed to be a contract market only to the extent it clears those transactions specified in § 39.1(a). Further, even though an RCO is deemed to be a contract market to this limited extent, § 39.5 exempts it from all provisions of the Act and regulations, except the sections enumerated, and only to the extent those enumerated sections are applicable to the activity of clearing § 39.1(a) transactions.

In reserving the sections of the Act and the regulations enumerated in § 39.5, the Commission is not asserting that any of those sections or regulations would be applicable to an RCO under any particular circumstances. The Commission only seeks, conservatively, to reserve those sections of the Act and regulations that may need to be applied to an RCO in order to achieve compliance with the core principles set forth in Part 39. The reservations in § 39.5 of Sections 4b and 4o of the Act and Rule 33.10 will subject RCOs to the same standard with respect to fraud and manipulation in connection with the clearing of transactions to which clearing organizations are currently subject. *See* FIA CL 23–26 at 5. Reservation of the enumerated sections of the Act or regulations, including specifically Section 4i of the Act and Rule 1.38(a), will not render RCOs responsible for the enforcement of any new or additional regulatory requirements, nor increase the liability of clearing organizations under Section 22 of the Act. *See* BOTCC CLs 21–20 at 7 and 21–6 at 4.

E. Competitive Issues

Commenters strongly agreed with the requirement in § 39.2 that all transactions effected on a contract market, RFE, or DTF, if cleared, must be cleared by an RCO. For example, the CME expressed its agreement with the result that a clearing organization that either is governed by another regulator, or has no regulator, is prohibited from clearing such products. CL 21–51 at 10. However, many commenters raised concerns regarding the effect of Part 39 on the ability of RCOs to compete with other types of clearing organizations. The commenters stated that allowing clearing organizations other than RCOs, including clearing organizations regulated by the SEC, to clear transactions effected pursuant to Parts 35 or 36, will give clearing organizations other than RCOs the ability to clear the full spectrum of financial transactions—cash, securities, options, futures (if traded on an exempt MTEF) and other derivatives. They further stated that the SEC, however, will not allow an RCO that is not also registered as a clearing agency with the SEC to clear transactions in securities. *Id.* Commenters thought the proposal grants an unfair exemption to securities clearinghouses, banks, bank affiliates, and foreign clearinghouses from the substantive requirements that otherwise would apply to RCOs. CLs 21–6 at 5, 21–20 at 5, 23–26 at 7, and 21–36 at 6.

In authorizing particular clearing organizations in addition to RCOs to clear transactions pursuant to Parts 35 and 36, the Commission is adopting the unanimous recommendations made in the report of the President's Working Group.[9] The Commission notes that it has made revisions elsewhere in its new regulatory framework (*i.e.*, the final rules under Parts 35–38) that lessen the impact of these concerns in some instances. Under final rules adopted by the Commission in response to comments made by the U.S. Department of the Treasury, transactions based on U.S. government securities are not eligible for trading on exempt MTEFs.[10] Under part 39, only RCOs can clear transactions effected on DTFs or RFEs.

F. Application of Core Principles and Appendix A

1. General

RCO applicants must demonstrate compliance with each of the core principles of Part 39 as a condition of recognition. These principles will not subject RCOs to any regulatory requirement not now applicable to futures clearing organizations under the Commission's current oversight. Each of the core principles must be addressed, but the guidance in Appendix A to Part 39 is intended only to be illustrative of the types of matters an applicant may address in order to satisfactorily demonstrate that it meets the core principles.

The final appendix clarifies the purpose of the guidance in response to commenters' concerns regarding the level of specificity in Appendix A. Commenters were concerned that the guidance would take on the force of law, applicants would have to affirmatively demonstrate compliance with each provision, and clearing organizations would be subject to far greater regulatory compliance burdens than before. *See, e.g.*, FIA CL 23–26 at 4 and BOTCC CL 21–20 at 10. Appendix A expressly makes clear that it is neither a checklist of issues that an applicant is required to address nor an exclusive list of matters from which an applicant can choose applicable components to address. Rather, the appendix provides detailed non-binding guidance that applicants can use as a tool in demonstrating satisfaction of the core principles.

In order to become recognized under Part 39, current futures clearing organizations need only submit a certification that their rules, procedures and operations fulfill the conditions for recognition under Part 39.[11] All of the current futures clearing organizations could become recognized in this

[9] Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group, November 1999. The group, whose members were signatories to the report, includes the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission.

[10] Specifically, the Commission has removed the reference to exempt securities and indexes thereof previously included in proposed Rule 36.2(b)(4) and has amended final Rule 36.2(b)(1) to make clear that eligible debt instruments do not include such exempt securities.

[11] Although § 39.4(a) allows only nondormant entities, as defined, to self-certify, the Commission is prepared to accept the certification of the Intermarket Clearing Corporation (ICC) under this provision. ICC is a wholly-owned subsidiary of the Options Clearing Corporation. Commission staff is familiar with ICC's rules and operations. ICC has maintained its clearing systems, rules, and banking and other arrangements in place and remains fully prepared operationally to clear transactions in futures contracts in accordance with its rules.

manner. They are not required to address affirmatively any of the separate core principles (and none of the suggested guidance in Appendix A).

2. The Core Principles

The final rules contain changes that address commenters' views concerning the wording and applicability of particular core principles. Commenters requested that Core Principle 2, which deals with participant and product eligibility, be revised to eliminate product eligibility criteria for instruments that an RCO will accept for clearing. Commenters contended that this requirement was impractical, would require an extraordinary degree of prognostication and would best be dealt with on a case-by-case basis by an RCO, considering all relevant circumstances. BOTCC CL 21–20 at 13. The Commission has revised the final core principle and the accompanying appendix guidance accordingly.

Several commenters thought that Core Principle 7 on enforcement inappropriately required arrangements and resources for resolution of disputes and encouraged the Commission to eliminate it from the principle. *See, e.g.*, NYCC CL 23–40 at 4 and GSCC 23–19 at 4. The Commission has considered the commenters' concerns that this requirement would impose a new and inappropriate burden on RCOs, but has determined to retain it in the core principle with the added qualification of "as applicable." The Commission does not wish to rule out the possible appropriateness of some form of dispute resolution at RCOs as the industry continues to evolve. By qualifying the item with its applicability, RCO applicants can choose to address whether and why they do or do not have a dispute resolution program in demonstrating that they will be able to effectively enforce their rules.

The final version of the other core principles contains modifications that serve to increase their intended breadth and flexibility. For example, Core Principle 1, which deals with financial resources, as proposed, required adequate capital resources to fulfill its guarantee function without interruption in various market conditions. At the suggestion of one of the commenters, the final version of Core Principle 1 requires adequate financial resources to fulfill its guarantee function without interruption in *reasonably foreseeable* market conditions. *See* Coalition CL 23–41 at 24. In addition, Core Principle 14 concerning competition has been revised. The Commission does not want to inadvertently impose duties on an applicant that differ in form or degree from the antitrust statutes and court decisions construing federal antitrust laws. *See* BOTCC CL 21–20 at 13. Thus, final Core Principle 14 simply requires RCOs to operate in a manner consistent with the public interest to be protected by the antitrust laws. This language comes directly from Section 15 of the Act which the Commission has reserved in § 39.5. The requirements of Section 15 remain the responsibility of the Commission and the Commission intends to apply Section 15 to antitrust issues in the same manner as previously applied.

Core Principle 12 regarding public disclosure of certain operating procedures of an RCO was not revised in response to concerns regarding confidentiality. An RCO, however, will not be required under this core principle to disclose trade secrets.

3. The Guidance in Appendix A

Commenters also expressed opinions about the applicability and wording of particular proposed guidance in Appendix A. Many of these concerns are addressed by language in the final appendix that states the guidance is only illustrative of the types of matters an applicant may address in order to demonstrate that it meets the core principles and is not intended to be a mandatory checklist of issues to address. If particular guidance does not apply to an RCO applicant, it may either not address it or explain why it does not apply. Applicants also are strongly encouraged to address relevant matters other than those contained in the guidance suggested in the appendix if doing so would assist the applicant in demonstrating compliance with a particular core principle.

The Commission has modified certain of the guidance in response to commenters' concerns regarding the appropriateness or applicability of particular guidance language. In response to comments that the Commission does not have the authority to review the setting of levels of margin, the Commission revised guidance regarding the determination of appropriate margin levels for a cleared contract and the clearing member clearing the contract. *See, e.g.*, FIA CL 23–26 at 4. The final version of this guidance suggests that an applicant may describe the process by which it would determine appropriate margin levels for an instrument that it clears and its clearing members. This information is highly relevant and could be used by an applicant for RCO status to assist in demonstrating that it meets the third core principle concerning the ability to manage risks associated with carrying out the guarantee function.

Several comments addressed the appropriateness of the proposed guidance under Core Principle 6 concerning default rules and procedures. The guidance suggested that applicants describe rules and procedures regarding priority of customer accounts over proprietary accounts and, where applicable, in the context of other programs such as specialized margin reduction programs like cross-margining. Commenters argued that given the successful operation of cross-margining programs, it is inappropriate for the accounts of cross-margining participants to be subordinated to the accounts of market participants not participating in cross-margining programs. OCC CL 23–23 at 2, 3. The Commission has considered this argument and although it recognizes that cross-margining programs have been successful and can operate to reduce risks, including risk of participant default, it has determined to retain this guidance in the final Appendix A. The guidance is appropriate in that it only suggests that an applicant RCO that is proposing or contemplating being a party to a margin reduction program such as cross-margining address in its application whether and why a priority rule would or would not be present in any particular margin reduction program. It does not require such a priority rule. This information will provide relevant and useful information to the Commission in assessing the applicant's overall compliance with all aspects of Core Principle 6.

The Commission modified other guidance under various core principles in response to comments received. For example, the final guidance under Core Principle 8 dealing with system safeguards suggests that an applicant may confirm that system testing and review has been performed by a qualified independent professional, and not specifically by a member of the Information Systems Audit and Control Association. A professional that is a certified member of the Information Systems Audit and Control Association experienced in the industry, however, is referred to as an example of an acceptable party to carry out such testing and review. *See* CL 21–20 at 10. In addition, the Commission has modified the guidance for Core Principle 9 relating to governance to note that an RCO, consistent with longstanding Commission policy, may not limit liability for violation of the Act or Commission rules, fraud, or wanton or willful misconduct. This requirement currently applies to designated contract markets.

G. Other Comments

Certain commenters suggested that the Commission restrict the length of time that a proposed RCO rule could be stayed under Commission Regulation 1.41. *See e.g.*, CL 21–20 at 12. The Commission anticipates that it only will impose a stay of an RCO rule in limited and potentially egregious situations. In fact, the Commission would only be able to stay a proposed rule incident to disapproval proceedings and the stay determination would not be delegable to Commission staff. Since a rule only would be stayed incident to a disapproval proceeding, the length of any stay would not be indeterminate in any event.

Certain commenters raised questions as to whether bankruptcy provisions that are currently applicable to transactions conducted on a contract market could also be applicable to all transactions cleared by an RCO. *See, e.g.*, CL 21–65 at 23. Part 39 reserves the applicability of Part 190 to the activity of clearing § 39.1(a) transactions, *if applicable*. Part 190 in conjunction with the commodity broker liquidation provisions of Subchapter IV of Chapter 7, Title 11 of the Federal Bankruptcy Code, apply to an insolvency when the insolvent party is a "commodity broker" (typically an FCM or clearing organization that has any futures accounts), as defined under Title 11. If an RCO does not have open futures accounts it would not be covered by SubChapter IV.

IV. Section 4(c) Findings

These final rules are being promulgated under Section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act other than Section 2(a)(1)(B), if the Commission determines that the exemption would be consistent with the public interest. Furthermore, Section 4(c)(2) of the Act provides that the Commission may not grant an exemption from the contract market designation requirement of Section 4(a) of the Act unless the Commission also finds that: (i) the contract market designation requirement should not be applied to the agreement, contract, or transaction for which the exemption is requested and the exemption would be consistent with the public interest and the purposes of the Act; (ii) the exempted transaction will be entered into solely between "appropriate persons"; and (iii) the agreement, contract, or transaction in questions will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

As explained above, Part 39 is part of a new regulatory framework. The new framework is intended to promote innovation and competition in the trading of derivatives and to permit the markets the flexibility to respond to technological and structural changes. Specifically, Part 39 replaces Commission regulation of clearing organizations through the current more formal designation and regulation of contract markets. It provides for a streamlined procedure for clearing organizations to obtain recognition by meeting broad, non-prescriptive core principles. It permits recognized clearing organizations the flexibility to clear regulated, exempt, and unregulated transactions. It also authorizes clearing organizations regulated by other regulatory bodies to clear certain transactions. The core principle approach set forth in Part 39 strikes an appropriate balance between applying necessary regulatory protections to the critical market functions of clearing and facilitating the development of varied clearing mechanisms and structures. Accordingly, the Commission believes that Part 39 is consistent with the public interest, is consistent with the purposes of the Act, will be applicable only to appropriate persons, and would have no adverse effect on the regulatory or self-regulatory responsibilities imposed by the Act.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those regulations on small entities. The rules adopted herein would affect certain clearing organizations. The Commission has stated that it is appropriate to evaluate within the context of a particular rule whether some or all of affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would not require any current futures clearing organization to change any aspect of its operation or take any action other than to submit a certification. The rules being adopted replace regulation of clearing organizations through the formal designation and regulation of contract markets with a streamlined procedure for clearing organizations, regardless of size, to obtain recognition by meeting broad, non-prescriptive core principles. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. In this regard, the Commission notes that it did not receive any comments regarding the RFA implications of Part 39.

B. Paperwork Reduction Act

Part 39 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Commission submitted a copy of this part to the Office of Management and Budget (OMB) for its review. *See* 44 U.S.C. § 3507(d). No comments were received in response to the Commission's invitation in the proposing release to comment on any potential paperwork burden associated with this regulation.

List of Subjects in 17 CFR Part 39

Clearing, Clearing Organizations, Commodity Futures, Consumer Protection.

In consideration of the foregoing, and pursuant to the authority contained in Sections 2, 6(c), 7a, and 12a(5) of the U.S.C., the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by adding part 39 to read as follows:

PART 39—RECOGNIZED CLEARING ORGANIZATIONS

Sec.

39.1 Scope and definitions.
39.2 Permitted clearing.
39.3 Conditions for recognition as a recognized clearing organization.
39.4 Procedures for recognition.
39.5 Enforceability.
39.6 Fraud in connection with the clearing of transactions by a recognized clearing organization.
Appendix A to Part 39—Application Guidance

Authority: 7 U.S.C. 2, 6(c), 6d(2), 6g, 7a, 12a(5).

§ 39.1 Scope and definitions.

(a) *Scope.* The provisions of this part 39 apply to a recognized clearing organization that clears transactions effected on or through a designated contract market, a recognized futures exchange under part 38 of this chapter, a derivatives transaction facility under part 37 of this chapter, an exempt multilateral transaction execution facility under part 36 of this chapter, and to exempt bilateral transactions under part 35 of this chapter.

(b) *Definitions.* For purposes of this part:

(1) *Clearing organization* means a person that provides a credit enhancement function with respect to transactions executed on a designated contract market or pursuant to Parts 35 through 38 of this chapter in connection with netting and/or settling the payments and payment obligations of such members or participants, by becoming a universal counterparty to such members or participants, or otherwise; but does not include those netting arrangements specified in § 35.2(d)(1) and (d)(2), nor does it include an entity that is a single counterparty offering to enter into, or entering into bilateral transactions with multiple counterparties.

(2) *Recognized clearing organization* means a clearing organization that has been recognized by the Commission under § 39.3.

§ 39.2 Permitted clearing.

(a) Any transaction effected on a designated contract market, recognized futures exchange, or derivatives transaction facility, if cleared, shall be cleared by a recognized clearing organization. The clearing of transactions by a recognized clearing organization shall be governed by the provisions of this part.

(b) A transaction effected pursuant to part 35 or part 36 of this chapter, if cleared, shall meet the requirements of § 35.2(c) or § 36.2(c) of this chapter, as applicable, if the transaction is cleared by one of the following authorized clearing organizations:

(1) A recognized clearing organization;

(2) A securities clearing agency subject to the supervisory jurisdiction of the Securities and Exchange Commission;

(3) A clearing system organized as a bank, bank subsidiary, affiliate of a bank, or Edge Act corporation established under the Federal Reserve Act authorized to engage in international banking or financial activities, and subject to the jurisdiction of the Federal Reserve or Comptroller of the Currency; or

(4) A foreign clearing organization that demonstrates to the Commission that it:

(i) Is subject to home country regulation and oversight comparable to the standards set forth by the Commission for recognition of clearing organizations under this part; and

(ii) Is a party to and abides by appropriate and adequate information-sharing arrangements.

(c) The clearing of transactions effected pursuant to part 35 or part 36 of this chapter by a recognized clearing organization shall be governed by the provisions of this part. The provisions of this part shall not apply to the clearing of transactions effected pursuant to part 35 or part 36 by an authorized clearing organization other than a recognized clearing organization.

(d) Nothing in this part prohibits clearing by a recognized clearing organization of transactions not specified in § 39.1(a).

§ 39.3 Conditions for recognition as a recognized clearing organization.

To be recognized by the Commission under this part 39 as a recognized clearing organization, an entity:

(a) Need not be affiliated with a designated contract market or recognized futures exchange under part 38 of this chapter, derivatives transaction facility under part 37 of this chapter, or exempt multilateral transaction execution facility under part 36 of this chapter;

(b) Must have rules and procedures relating to its governance and to the operation of its clearing function; and

(c) Must initially, and on a continuing basis, meet and adhere to the following core principles:

(1) *Financial resources:* Have adequate financial resources to fulfill its guarantee function without interruption in reasonably foreseeable market conditions.

(2) *Participant eligibility:* Have appropriate admission and continuing eligibility standards for members or participants of the organization.

(3) *Risk management:* Have the ability to manage the risks associated with carrying out its guarantee function through the use of tools and procedures appropriate under the circumstances.

(4) *Settlement procedures:* Have the ability to complete settlements on a timely basis under varying circumstances, to maintain an adequate record of the flow of funds associated with the transactions it clears, and, to the extent applicable, to comply with the terms and conditions of any netting or offset arrangements with other clearing organizations.

(5) *Treatment of member and participant funds:* Have adequate procedures designed to protect the safety of member and participant, and as applicable, customer funds held by the clearing organization.

(6) *Default rules and procedures:* Have rules and procedures designed to allow for the effective and fair management of events when members or participants become insolvent or otherwise default on their obligations to the clearing organization.

(7) *Rule enforcement:* Have arrangements and resources for the effective monitoring and enforcement of compliance with its rules and, as applicable, for resolution of disputes.

(8) *System safeguards:* Have a program of testing, oversight, and risk analysis to ensure that its automated systems function properly and have adequate capacity, security, emergency, and disaster recovery procedures.

(9) *Governance:* Have appropriate fitness standards for owners or operators with greater than ten percent interest or an affiliate of such an owner, and for members of the governing board, and a means to address conflicts of interest in making decisions.

(10) *Reporting:* Provide all information requested by the Commission for it to conduct its oversight function of the clearing organization's activities.

(11) *Recordkeeping:* Keep full books and records of all activities relating to its business as a recognized clearing organization in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(12) *Public information:* Publicly disclose information concerning the rules and operating procedures governing its clearing and settlement systems, including default procedures.

(13) *Information sharing:* Participate in domestic and international information-sharing agreements as appropriate and use information obtained from such agreements in carrying out the clearing organization's risk management program.

(14) *Competition:* Operate in a manner consistent with the public interest to be protected by the antitrust laws.

§ 39.4 Procedures for recognition.

(a) *Recognition by certification.* A clearing organization that cleared for at least one nondormant contract market within the meaning of § 5.3 of this chapter on February 12, 2001, will be recognized by the Commission as a recognized clearing organization upon receipt by the Commission at its Washington, DC, headquarters of a copy of the clearing organization's current rules and a certification by the clearing organization that it meets the conditions for recognition under this part.

(b) *Recognition by application.* A clearing organization shall be recognized by the Commission as a recognized clearing organization sixty days after receipt by the Commission of an application for recognition unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part;

(3) The submission includes a copy of the applicant's rules and, to the extent that compliance with the conditions of recognition is not self-evident, a brief explanation of how the rules satisfy each of the conditions for recognition under § 39.3;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part is guidance to applicants concerning how the core principles set forth in this paragraph (b) could be satisfied.

(c) *Termination of part 39 review.* During the sixty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to, or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the clearing organization or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) *Delegation of authority.* (1) The Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify an entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated.

(2) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for Commission approval of rules.* (1) An applicant for recognition as a recognized clearing organization may request that the Commission approve any or all of its rules and subsequent amendments thereto, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and § 1.41 of this chapter. The recognized clearing organization may label such rules as having been approved by the Commission.

(2) Rules of a recognized clearing organization that have not been submitted pursuant to paragraph (a) or (b)(3) of this section shall be submitted to the Commission pursuant to § 1.41 of this chapter.

(3) An applicant seeking recognition as a recognized clearing organization may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies at the time of recognition or thereafter.

(f) *Request for withdrawal of recognition.* A recognized clearing organization may withdraw from Commission recognition by filing with the Commission at its Washington, DC headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the clearing organization was recognized by the Commission.

§ 39.5 Enforceability.

To the extent it clears transactions specified in § 39.1(a), a recognized clearing organization shall be deemed to be a contract market for purposes of the Act and the Commission rules thereunder; *provided, however,* a recognized clearing organization shall be exempt from all provisions of the Act and Commission regulations except, as applicable, sections 1a, 2(a)(1), 4, 4b, 4c, 4d, 4g, 4i, 4o, 5(6), 5(7), 5a(a)(1), 5a(a)(2), 5a(a)(8), 5a(a)(9), the rule disapproval procedures of section 5a(a)(12), 5a(a)(16), 5a(a)(17), 6(a), 6(c) to the extent it prohibits manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, 8a(7), 8a(9), 8c(a), 8c(b), 8c(c), 8c(d), 9(a), 9(f), 14, 15, 20 and 22 of the Act and §§ 1.3, 1.20, 1.24, 1.25, 1.26, 1.27, 1.29, 1.31, 1.36, 1.38, 1.41, parts 15 through 21, § 33.10, this part 39, and part 190 of this chapter, which continue to apply.

§ 39.6 Fraud in connection with the clearing of transactions by a recognized clearing organization.

It shall be unlawful for any person, directly or indirectly, in or in connection with the clearing of any transaction specified in § 39.1(a) by a recognized clearing organization:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) Willfully to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any other person by any means whatsoever.

Appendix A to Part 39—Application Guidance

This appendix provides guidance to applicants for recognition as recognized clearing organizations in connection with satisfying each of the core principles of § 39.4. This appendix is only illustrative of the types of matters an applicant may address, as applicable, in order to demonstrate satisfactorily that it meets the core principles and is not intended to be a mandatory checklist of issues to address.

Core Principle 1—Financial Resources. Have adequate financial resources to fulfill its guarantee function without interruption in reasonably foreseeable market conditions.

In addressing core principle 1, applicants may describe or otherwise document:

1. The amount of resources dedicated to supporting the clearing function:

a. The amount of resources available to the clearing organization and the sufficiency of those resources to assure that no break in clearing operations would occur in a variety of market conditions; and

b. The level of member/participant default such resources could support as demonstrated through use of hypothetical default scenarios that explain assumptions and variables factored into the illustrations.

2. The nature of resources dedicated to supporting the clearing function:

a. The type of the resources, including their liquidity, and how they could be

accessed and applied by the clearing organization promptly; and

b. Any legal or operational impediments or conditions to access.

Core Principle 2—Participant Eligibility. Have appropriate admission and continuing eligibility standards for members or participants of the organization.

In addressing core principle 2, applicants may describe or otherwise document:

1. Member/participant admission criteria:

a. How admission standards for its clearing members would contribute to the soundness and integrity of operations; and

b. Matters such as whether these criteria would be in the form of organization rules that apply to all clearing members, whether different levels of membership would relate to different levels of net worth, income, and creditworthiness of members, and whether margin levels, position limits and other controls would vary in accordance with these levels.

2. Member/participant continuing eligibility criteria:

a. A program for monitoring the financial status of its members; and

b. Whether and how the clearing organization would be able to change continuing eligibility criteria in accordance with changes in a member's financial status.

3. The clearing function for each instrument the organization undertakes to clear.

Core Principle 3—Risk Management. Have the ability to manage the risks associated with carrying out its guarantee function through the use of tools and procedures appropriate under the circumstances.

In addressing core principle 3, applicants may describe or otherwise document:

1. Use of risk analysis tools and procedures:

a. How the adequacy of the overall level of financial resources would be tested on an ongoing periodic basis in a variety of market conditions; and

b. How the organization would use specific risk management tools such as stress testing and value at risk calculations.

2. Use of collateral:

a. How appropriate forms and levels of collateral would be established and collected;

b. How amounts would be adequate to secure prudentially obligations arising from clearing transactions and performing as a central counterparty;

c. The process for determining appropriate margin levels for an instrument cleared and for clearing members;

d. The appropriateness of required or allowed forms of margin given the liquidity and related requirements of the clearing organization;

e. How the clearing organization would value open positions and collateral assets; and

f. The proposed margin collection schedule and how it would relate to changes in the value of market positions and collateral values.

3. Use of credit limits: If and how systems would be implemented that would prevent members and other market participants from exceeding credit limits.

4. Use of cross-margin programs: How collateral assets subject to cross-margining programs would provide, where applicable, for clear, fair, and efficient loss-sharing arrangements in the event of a program participant default.

Core Principle 4—Settlement Procedures. Have the ability to complete settlements on a timely basis under varying circumstances, to maintain an adequate record of the flow of funds associated with the transactions it clears, and, to the extent applicable, to comply with the terms and conditions of any netting or offset arrangements with other clearing organizations.

In addressing core principle 4, applicants may describe or otherwise document:

1. Settlement timeframe:

a. Procedures for completing settlements on a timely basis during times of normal operating conditions; and

b. Procedures for completing settlements on a timely basis in varying market circumstances including during a period when a significant participant or member has defaulted.

2. Recordkeeping:

a. The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

b. How such information would be recorded, maintained and accessed.

3. Interfaces with other clearing organizations: How compliance with the terms and conditions of netting or offset arrangements with other clearing organizations would be met, including, among others, common banking or common clearing programs.

Core Principle 5—Treatment of Member and Participant Funds. Have adequate procedures designed to protect the safety of member and participant, and as applicable, customer funds held by the clearing organization.

In addressing core principle 5, applicants may describe or otherwise document:

1. Safe custody:

a. The safekeeping of funds, whether in accounts, in depositories, or with custodians, and how it would meet industry standards of safety;

b. Any written terms regarding the legal status of the funds and the specific conditions or prerequisites for movement of the funds; and

c. The extent to which the deposit of funds in accounts in depositories or with custodians would limit concentration of risk.

2. Segregation between customer and proprietary funds: Requirements or restrictions regarding commingling customer with proprietary funds, obligating customer funds for any purpose other than to purchase, clear, and settle the products the clearing organization is clearing, or which are subject to cross-margin or similar agreements, and any other aspects of customer fund segregation.

3. Investment standards: How customer funds would be invested consistent with high standards of safety and associated recordkeeping regarding the details of such investments.

Core Principle 6—Default Rules and Procedures. Have rules and procedures designed to allow for the effective and fair management of events when members or participants become insolvent or otherwise default on their obligations to the clearing organization.

In addressing core principle 6, applicants may describe or otherwise document:

1. Definition of default:

a. The definition of default and how it would be established and enforced; and

b. How the applicant would address failure to meet margin requirements, the insolvent financial condition of a member or participant, failure to comply with certain rules, failure to maintain eligibility standards, actions taken by other regulatory bodies, or other events.

2. Remedial action: The authority pursuant to which, and how, the clearing organization may take appropriate action in the event of the default of a member which may include, among other things, closing out positions, replacing positions, set-off, and applying margin.

3. Process to address shortfalls: Procedures for the prompt application of clearing organization and/or member financial resources to address monetary shortfalls resulting from a default.

4. Customer priority rule: Rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting members or participants and, where applicable, in the context of specialized margin reduction programs such as cross-margining or trading links with other exchanges.

Core Principle 7—Rule Enforcement. Have arrangements and resources for the effective monitoring and enforcement of compliance with its rules and, as applicable, for resolution of disputes.

In addressing core principle 7, applicants may describe or otherwise document:

1. Surveillance: Arrangements and resources for the effective monitoring of compliance with rules relating to clearing practices and financial surveillance.

2. Enforcement: Arrangements and resources for effective enforcement of rules and authority and ability to discipline and limit or suspend a member's or participant's activities pursuant to clear and fair standards.

3. Dispute resolution: Where applicable, arrangements and resources for resolution of disputes between customers and members, and between members.

Core Principle 8—System Safeguards. Have a program of testing, oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity, security, emergency, and disaster recovery procedures.

In addressing core principle 8, applicants may describe or otherwise document:

1. Oversight/risk analysis program:

a. Whether a program addresses appropriate principles for the oversight of automated systems to ensure that its clearing systems function properly and have adequate capacity and security;

b. Emergency procedures and a plan for disaster recovery; and

c. Periodic testing of back-up facilities and ability to provide timely processing, clearing, and settlement of transactions.

2. Appropriate periodic objective system reviews/testing:

a. Any program for the periodic objective testing and review of the system, including tests conducted and results; and

b. Confirmation that such testing and review would be performed or assessed by a qualified independent professional. A professional that is a certified member of the Information Systems Audit and Control Association experienced in the industry is an example of an acceptable party to carry out such testing and review.

Core Principle 9—Governance. Have appropriate fitness standards for owners or operators with greater than ten percent interest or an affiliate of such an owner, and for members of the governing board, and a means to address conflicts of interest in making decisions.

In addressing core principle 9, applicants may describe or otherwise document:

1. Standards for fitness for clearing organization owners, operators, affiliates of owners or operators, and members of the governing board based on disqualification standards under section 8a(2) of the Act and a history of serious disciplinary offenses, such as those which would be disqualifying under § 1.63 of this chapter.

2. Collection and verification of information supporting compliance with standards: Verification information could be registration information or certification of fitness or affidavit of fitness by outside counsel based on other verified information.

3. Methods to ascertain presence of conflicts of interest and methods of making decisions in that event.

4. A recognized clearing organization may not limit its liability or the liability of any of its officers, directors, employees, licensors, contractors and/or affiliates where such liability arises from such person's violation of the Act or Commission rules, fraud, or wanton or willful misconduct.

Core Principle 10—Reporting. Provide all information requested by the Commission for it to conduct its oversight function of the clearing organization's activities.

In addressing core principle 10, applicants may describe or otherwise document:

1. Information necessary for the Commission to perform its oversight activities of the recognized clearing organization's activities:

a. Information available to or generated by the clearing organization that will be made available to the Commission, upon request and/or as appropriate, to enable the Commission to perform properly its oversight function, including counterparties and their positions, stress test results, internal governance, legal proceedings, and other clearing activities;

b. The types of information which are not believed to be necessary to provide to the Commission and why; and

c. The information the organization intends to make routinely available to members/participants or the general public.

2. Provision of information:

a. The manner in which all relevant information will be provided to the Commission whether by electronic or other means; and

b. The manner in which any information will be made available to members/participants and/or the general public.

Core Principle 11—Recordkeeping. Keep full books and records of all activities relating to its business as a recognized clearing organization in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

In addressing core principle 11, applicants may describe or otherwise document:

1. Maintenance of records related to the function of a clearing organization in a form and manner acceptable to the Commission:

a. The different activities related to the function of the clearing organization for which the organization intends to keep books or records; and

b. Any activity related to the function of a clearing organization for which the organization does not intend to keep books or records and why this is not viewed as necessary.

2. How the entity would satisfy the requirements of § 1.31 of this chapter including:

a. What "full" or "complete" would encompass with respect to each type of book or record that would be maintained;

b. How books or records would be compiled and maintained with respect to each type of activity for which such books or records would be kept;

c. Confirmation that books and records would be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

d. How long books and records would be readily available and how they would be made readily available during the first two years; and

e. How long books and records would be maintained (and confirmation that, in any event, they would be maintained for at least five years).

Core Principle 12—Public Information. Publicly disclose information concerning the rules and operating procedures governing its clearing and settlement systems, including default procedures.

In addressing core principle 12, applicants may describe or otherwise document:

Disclosure of information regarding rules and operating procedures governing clearing and settlement systems:

a. Which rules and operating procedures governing clearing and settlement systems should be disclosed to the public, to whom they would be disclosed, and how they would be disclosed;

b. What other information would be available regarding the operation, purpose and effect of rules;

c. How member/participants may become familiar with such procedures before participating in operations; and

d. How member/participants will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options and obligations of the clearing organization preceding and upon the participant's default.

Core Principle 13—Information Sharing. Participate in domestic and international information-sharing agreements as appropriate, and use information obtained from such agreements in carrying out the clearing organization's risk management program.

In addressing core principle 13, applicants may describe or otherwise document:

1. Applicable appropriate domestic and international information-sharing agreements and arrangements including the different types of domestic and international information-sharing arrangements, both formal and informal, which the clearing organization views as appropriate and applicable to its operations.

2. Using information obtained from information-sharing arrangements in carrying out risk management and surveillance programs:

a. How information obtained from any information-sharing arrangements would be used to further the objectives of the clearing organization's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its members/participants;

b. How accurate information is expected to be obtained and the mechanisms or procedures which would make timely use and application of all information; and

c. The types of information expected to be shared and how that information would be shared.

Core Principle 14—Competition. Operate in a manner consistent with the public interest to be protected by the antitrust laws.

Pursuant to Core Principle 14, an entity seeking recognition as a recognized clearing organization may request the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies at the time of application for recognition or thereafter. The Commission intends to apply section 15 of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

Issued in Washington, D.C., this 21st day of November, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[This statement will not appear in the Code of Federal Regulations.]

Concurrence of Commissioner Thomas J. Erickson Regarding Final Rules for a New Regulatory Framework for Clearing Organizations

I concur with the adoption of the final rules relating to clearing organizations. Increasingly, clearing is being de-coupled from the exchange. More electronic

exchanges are choosing to contract with new or existing clearing organizations for this aspect of traditional exchange activity. From what the Commission heard at the public hearing on the proposed framework, this trend is expected to continue and accelerate. Accordingly, this proposal represents a first step toward providing clearing organizations with the flexibility they will need to adapt to this new environment.

Nevertheless, I am sympathetic to the concerns of domestic clearing organizations regarding competition, jurisdiction and scope. Specifically, the final rule's treatment of securities clearinghouses, banks, bank affiliates, and foreign clearinghouses with regard to the requirements of Part 39 would appear to subject futures clearinghouses to a significant competitive disadvantage. The Commission's final rules justify this approach with little more than the observation that it is consistent with the "unanimous recommendations of the President's Working Group." [1] Much more needs to be done so that one segment of the industry is not disproportionately affected and unfairly hamstrung by these regulations. Therefore, while I support the final rules to the extent they represent the Commission's willingness to meet the evolving marketplace with innovative approaches, I do so with the caveat that Part 39 will clearly need the Commission's full attention in order to ensure that the Commission is not picking winners and losers. At a minimum, since these reforms follow so closely the recommendations of the President's Working Group, I hope that the members of the PWG will respond swiftly to today's action by making parallel changes to their own regulatory schemes implementing the PWG's recommendations.

Date: November 20, 2000.

Thomas J. Erickson,

Commissioner.

[FR Doc. 00–30269 Filed 12–12–00; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 35

RIN 3038–AB58

Exemption for Bilateral Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting final rules to clarify the operation of the current swaps exemption. In addition, in a companion notice of final rulemaking published in this edition of the **Federal Register**, the Commission is adopting rules that provide for the clearing of transactions under the revised exemption. The Commission, in other companion releases, also is adopting a new regulatory framework to apply to multilateral transaction execution facilities and to market intermediaries. This new framework establishes a number of new market categories, including a category of exempt multilateral transaction execution facility. Nothing in these releases, however, affects the continued vitality of the Commission's exemption for swaps transactions in effect before December 13, 2000, or any of its other existing exemptions, policy statements or interpretations.

EFFECTIVE DATE: February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: *PArchitzel@cftc.gov* or *NYanofsky@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rules

On June 22, 2000, the Commission published proposed amendments to its part 35 swaps exemption to expand and to clarify its operation, including the availability of clearing for these transactions.[1] These amendments were proposed in order to provide greater legal certainty to the over-the-counter (OTC) markets and to reduce systemic risk. The President's Working Group on Financial Markets (PWG) [2] and the chairmen of the Commission's Congressional oversight committees encouraged the Commission in this undertaking.

The Commission proposed the amendments to part 35 in light of the changes that have occurred in the OTC markets since the Commission adopted its Swaps Policy Statement in 1989, and its subsequent part 35 swaps exemption in 1993. In the intervening years, the OTC derivatives markets have experienced dramatic and sustained growth. During this period, OTC financial derivatives have developed into global markets having outstanding contracts with a total notional value of over $90 trillion.[3] OTC derivatives have transformed finance, increasing the range of financial products available for managing risk.

The Commission proposed making several changes to part 35. First, the Commission proposed deleting specific reference to "swaps" within the exemption itself. Instead, the rule would refer to a "contract, agreement or transaction" that meets the requisite exemptive conditions. Moreover, as suggested by the PWG Report, the Commission proposed to delete the requirement that exempt transactions not be fungible or standardized and to make clear that insofar as such exempt transactions may be cleared, creditworthiness of the counterparty is not a condition of the exemption. PWG Report at 17. In addition, the Commission proposed, through an exemption from the private right of action provision of section 22 of the Act, that transactions entered into in reliance on the part 35 swaps exemption would not be subject to a claim for rescission solely due to a violation of the exemption's requirements. See *id.* at 18.

In proposing the rules, the Commission affirmed the continuing vitality of the exemptive relief that it had previously granted to transactions in the OTC market, including the part 35 exemption, the Policy Statement Concerning Swap Transactions (54 FR 30694 (July 21, 1989)) (Swaps Policy Statement), the Statutory Interpretation Concerning Forward Transactions (55 FR 39188 (Sept. 25, 1990)) (Energy Interpretation), and the Exemption for Certain Contracts Involving Energy Products (58 FR 21286 (April 20, 1993)) (Energy Exemption). Moreover, in recognition of its continuing vitality and to assist the public in locating it, the Commission proposed publishing the Swaps Policy Statement as Appendix A to part 35.

II. Comments Received

The Commission received 31 comment letters on the proposed rulemaking.[4] The commenters included nine trade associations,[5] three future exchanges,[6] two brokerage firms,[7] a coalition of commercial and investment banks,[8] four law firms,[9] four representatives of the energy services community,[10] an agricultural firm [11] and others.[12]

The majority of commenters strongly supported the Commission's proposed amendments and expressed the view that the amendments, among other things, would increase legal certainty for the OTC market. Two commenters took the opposite view, expressing jurisdictional concerns. The commenters also raised a number of technical issues concerning the operation of the exemption, the definition of "eligible participant" and other matters. The comments are addressed in the final rules section below.

[1] 65 FR 39033 (June 22, 2000).

[2] Recognizing the importance of the OTC derivatives markets, the chairmen of the Senate and House Agriculture Committees requested that the PWG conduct a study of OTC derivatives markets. After studying the existing regulatory framework of OTC derivatives, recent innovations, and the potential for future developments, the PWG on November 9, 1999, reported to Congress its recommendations. See Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group on Financial Markets (PWG Report). The PWG Report focused on promoting innovation, competition, efficiency, and transparency in OTC derivatives markets and in reducing systemic risk.

[3] See Our Estimates of Global Size Market (visited Oct. 10, 2000), *http://www.swapsmonitor.com*.

[4] In addition to these 31, a significant number of letters commenting on aspects of the regulatory framework in companion notices were also submitted to the Commission. In this and three companion Notices of Final Rulemaking which are being published in this edition of the **Federal Register**, comment letters (CLs) are referenced by file number, letter number and page. Comments filed in response to the notice of proposed rulemaking on multilateral transaction execution facilities, parts 36–38, are contained in file No. 21, on the notice of proposed rulemaking on intermediaries in file No. 22, on the notice of proposed rulemaking on clearing organizations in file No. 23 and on the notice of proposed rulemaking on the part 35 exemption in file No. 24. These letters are available through the Commission's internet web site, http://www.cftc.gov.

[5] The associations that filed comment letters are the Managed Funds Association, the International Swaps and Derivatives Association, Inc., the National Grain and Feed Association, the Futures Industry Association, the Commodity Floor Brokers & Traders Association, the Silver Users Association, the Weather Risk Management Association, the Association for Investment Management and Research, Advocacy Advisory Committee, Derivatives Subcommittee, and the Securities Industry Association, OTC Derivatives Products Committee.

[6] The futures exchanges that filed comment letters are the Chicago Board of Trade, the New York Mercantile Exchange and the Chicago Mercantile Exchange.

[7] The brokerage firms that filed comment letters are Merrill Lynch & Co. Inc. and J.P. Morgan Securities Inc.

[8] The coalition of commercial and investment banks (the Coalition) consists of the following financial institutions: The Chase Manhattan Bank, Citigroup Inc., Credit Suisse First Boston Inc., Goldman Sachs & Co., Merrill Lynch & Co., Inc. and Morgan Stanley Dean Witter & Co.

[9] The law firms that filed comment letters are Covington & Burling, McDermott, Will & Emery, on behalf of Virginia Electric & Power Company, Vinson and Elkins, and Gardner, Carter and Douglas.

[10] The representatives of the energy services community that filed comment letters are Williams Energy Marketing and Trading Company, the California Power Exchange, Oxy Energy Services, Inc. and Petrocosm Corporation.

[11] The agricultural firm that filed a comment letter is Cargill.

[12] The others filing comment letters are the National Futures Association, the Financial Markets Lawyers Group, the Federal Reserve Bank of Chicago, the U.S. Department of the Treasury, the Regulatory Studies Program of the Mercatus Center, Reuters Group PLC, and The EBS Partnership.

[1] *See* Final Rules for a New Regulatory Framework for Clearing Organizations, p.12.

III. The Final Rules

A. The Exemption

Except for certain technical changes, the Commission is adopting the proposed rules expanding and clarifying the operation of the swaps exemption as final rules. As noted above, the majority of commenters strongly supported the amendments, expressing the view that they will increase legal certainty for the OTC market and reduce systemic risk. See, *e.g.*, CL 24–6; CL 24–8; CL 24–25; CL 24–29; CL 24–30; CL 24–31; CL 24–34; CL 24–36. The International Swaps and Derivatives Association (ISDA) views the proposed amendments as necessary to ensuring that new and evolving risk management tools will enjoy legal certainty comparable to that which has been available to transactions covered by the Commission's swaps exemption since 1993. CL 24–8 at 2. See also CL 24–6 at 3; CL 24–29 at 3–4. ISDA specifically commented that: The proposed expansion of the exemption to cover all bilateral agreements would "enable market participants to focus on legal and economic substance rather than labels" (CL 24–8 at 3); that the elimination of the requirement that exempt transactions not be standardized or fungible would "eliminate a potential source of uncertainty with respect to the scope of the exemption" (*id.*); that the authorization of clearing would "eliminate the 'Hobson's Choice' that now exists between legal certainty and the use of clearing to reduce systemic risk" (*id.*); and that the nonrepudiation provisions would deal directly with the "main source of legal risk under the CEA" (*id.* at 5). As ISDA noted, the substantial growth of the OTC swaps market since the Commission first promulgated part 35 in 1993:

> did not occur in a vacuum. It was fostered by this Commission in an earlier regulatory initiative commencing with the release of the Swaps Policy Statement in 1989 and continuing with the promulgation of the Swaps Exemption * * * and the Hybrids Exemption * * * These latter actions were of course entirely consistent with the intent of Congress, as reflected in the enactment of the Futures Trading Practices Act of 1992. * * * The pivotal role that OTC derivatives transaction [sic] now play in our economy is an outgrowth of these earlier policies of the Commission and the continuing expressions of support for those policies by Congress. ISDA believes that the proposed regulatory initiative now under consideration can and should be viewed as a vital and positive step in carrying out the Commission's long-standing policy with respect to OTC derivatives.
>
> ISDA believes that * * * the proposed regulatory initiative is an important change for the better. We applaud the sensitivity of both the Commission and its professional staff to the need to avoid structuring the proposals in ways that could result in legal uncertainty, and we believe that the proposals *will not* have this effect. We likewise applaud the decision of the Commission to propose specific actions intended to increase, within the parameters of the CEA, legal certainty and we believe the proposals *will* have this effect. * * *

(CL 24–8 at 2; emphasis in original).

One commenter, however, the Regulatory Studies Program of the Mercatus Center (Mercatus), expressed the view that, by expanding the category of products to which the exemption applies, the Commission may exacerbate rather than reduce legal uncertainty. CL 24–21 at 4–5. Mercatus is concerned about the "implications" of the broad definitions used, commenting that, if adopted as proposed, the Commission could attempt to exercise its antifraud authority over contracts, agreements and transactions as to which it has no jurisdiction. *Id.* Mercatus suggests that the Commission instead limit the scope of part 35 to instruments over which the Act vests the Commission with jurisdiction, such as "contracts of sale of a commodity for future delivery." *Id.* at 9.[13]

These amendments, however, do not expand the Commission's jurisdiction. To the contrary, the substance of part 35's scope provision remains unchanged from the current part 35 exemption.[14] Furthermore, the Commission's antifraud authority in rule 35.3, as proposed and as being adopted herein, is limited to "*transactions and persons otherwise subject to those [antifraud] provisions*" (emphasis added). Thus, the antifraud provisions will continue to apply only to those transactions already covered by them. The Commission's approach is consistent with how Congress intended the Commission to exercise its exemptive authority.[15]

[13] J.P. Morgan Securities Inc. (J.P. Morgan) raises jurisdictional issues similar to those raised by Mercatus, while specifically focusing on the Commission's proposed rules concerning exempt multilateral transaction execution facilities and recognized clearing organizations. CL 24–19 at 2–5. The Commission is responding to those comments more thoroughly in its companion releases on those matters.

[14] Commission rule 35.1(a) provides that the provisions of the exemption apply to any transaction "*which may be subject to the Act*" (emphasis added). The final rules amend this scope provision to incorporate a technical amendment which substitutes the phrase "any contract, agreement or transaction" for "any swap agreement." This change merely conforms the formal statement of scope in rule 35.1(a) to the substantive provisions of the rule.

[15] When it adopted section 4(c) in 1992, the Conferees of the Congress stated:

> The Conferees do not intend that the exercise of exemptive authority by the Commission [under section 4(c)] would require any determination

Continued

Moreover, the contract nonrepudiation provision that the Commission is adopting today further removes any potential legal uncertainty. As one commenter, McDermott, Will & Emery, on behalf of Virginia Electric & Power Company, noted, this provision "would prevent economically disappointed counterparties from bringing a private cause of action seeking to void the contract on the theory that it is illegal." CL 24–25 at 2. This provision, as ISDA commented, will reduce legal uncertainty because "[it] deal[s] directly with the main source of legal risk under the CEA." CL 24–8 at 5.

The expansion of the exemption to cover all bilateral "contracts, agreements and transactions" was endorsed by most other commenters. As one commenter, Reuters Group PLC, noted, this amendment should permit a "substantially broader range of transactions to enjoy a new level of legal certainty." CL 24–30 at 2. In this regard, the Commission believes that certain pending matters may now be considered within the context of the new regulatory framework.

Two commenters, a coalition of commercial and investment banks (the Coalition)[16] and the OTC Derivatives Products Committee of the Securities Industry Association (SIA), recommended two changes regarding the operation of the exemption. CL 24–31; CL 24–36. First, they suggested that the Commission delete the requirement of the exemption that, in cases where a transaction is not submitted for clearing,[17] the creditworthiness of the counterparty be a material consideration in entering into the transaction. These commenters believe that retention of the creditworthiness requirement for non-cleared transactions will create uncertainty and confusion as to what types of non-cleared transactions are permissible. The Commission agrees and has deleted the creditworthiness requirement from part 35.

The Coalition and SIA also recommended that rule 35.2(d) be amended to authorize explicitly the netting of deliveries or delivery obligations in connection with transactions pursuant to part 35. Currently, part 35 permits bilateral arrangements for the netting of *payment obligations*. It also permits multilateral arrangements for the netting of *payments* "provided that the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed." 58 FR at 5591. SIA commented that many categories of OTC derivatives require or permit settlement by delivery, that it can see no policy reason for excluding netting of such deliveries while permitting netting of payments, and that permitting such netting would be consistent with the goal of reducing systemic risk for OTC derivatives. CL 24–36 at 10. In light of these comments, the Commission is clarifying that the types of netting agreements that are permissible under part 35 include arrangements for the netting of delivery obligations or deliveries, respectively. As is currently the case for multilateral netting of payments, multilateral netting of deliveries would be permitted provided that the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed.

ISDA, the Coalition and SIA suggested that the Commission clarify that the determination whether a party is an eligible participant is to be determined by whether there was a reasonable belief at the time the transaction was entered into that a party was an eligible participant. CL 24–8 at 3; CL 24–31 at 8; CL 24–36 at 8. The language of the exemption currently tracks the language of the statute, which provides that the Commission shall not grant an exemption under section 4(c) of the Act unless the Commission determines that the exempted transaction "will be entered into solely between appropriate persons." 7 U.S.C. 6(c)(2)(B)(i). However, as the Commission noted when it adopted the swaps exemption in 1993 (58 FR at 5589; footnotes omitted):

> As the Act specifies that the swap agreement may only be "entered into" by appropriate persons, this determination is to be made at the inception of the transaction. Further, it is sufficient that the parties have a reasonable basis to believe that the other party is an eligible swap participant at such time.

Furthermore, the Commission notes that the nonrepudiation provision specifically exempts a party from a rescission action based solely on the failure of the agreement to comply with the terms of the exemption when that party entered into the agreement with an eligible participant or with a counterparty "reasonably believed by such party at the time the transaction was entered into" to be an eligible counterparty.[18]

As part of its proposed amendments to part 35, the Commission proposed to publish its Swaps Policy Statement as Appendix A to part 35 and to include its Swaps Policy Statement and its Statutory Interpretation Concerning Certain Hybrid Instruments (55 FR 13582 (April 11, 1990)) (Hybrid Interpretation) within the nonrepudiation provision. The commenters generally supported these proposals, but recommended that the Commission update the Swaps Policy Statement, provide additional relief regarding the Treasury Amendment (7 U.S.C. 2(ii)) and revise and update the Hybrid Interpretation. CL 24–31 at 14–16; CL 24–36 at 3–7. As the Commission has noted, nothing in these rules affects the continuing vitality of the Commission's existing exemptions, policy statements or interpretations. The Commission is persuaded, however, that these commenters have raised important issues which, although outside the scope of this rulemaking, should be addressed expeditiously. The Commission plans to address these issues through a separate rulemaking or other appropriate action.

B. Eligible Participants

A number of commenters suggested changes to the definition of "eligible participant" in rule 35.1. The Commission proposed applying the definition of eligible participant set forth in the 1993 swaps exemption[19] to the revised and amended bilateral transaction exemption in part 35. Two commenters, the Managed Funds Association (MFA) and the Futures Industry Association (FIA), suggested that the Commission create a new category of eligible participant that would include certain large commodity trading advisors. CL 24–4 at 4; CL 24–12 at 11. Specifically, MFA and FIA suggested that commodity trading advisors (CTAs) with at least $25 million in assets under management be permitted to trade in all exempt markets on behalf of their customers, without regard to the individual customers' financial qualifications. FIA also suggested that registered investment advisers (IAs) with at least $25 million in assets under management be included in this category of eligible participant.

Several other commenters suggested additional modifications to the definition of eligible participant. ISDA, the Coalition, The EBS Partnership and SIA recommended that the definition of eligible participant be expanded to include several additional categories of financial institutions and to include agency transactions by eligible participants on behalf of other eligible participants. CL 24–8; CL 24–31; CL 24–34; CL 24–36. Certain commenters, including the California Power Exchange, the National Grain and Feed Association (NGFA) and the Weather Risk Management Association, suggested that the financial thresholds for corporations and other entities were too restrictive. CL 24–5; CL 24–10; CL 24–28. Other commenters, including the FIA, the Coalition and SIA, commented that the financial threshold for natural persons who enter into exempt transactions for risk management purposes should be reduced from a total asset test of $10 million to a total asset test of $5 million. CL 24–12; CL 24–31; CL 24–36. Finally, the National Futures Association suggested that the Commission impose a $5 million asset test on investment companies to conform the standard for those collective investment vehicles to that which applies to commodity pools. CL 24–4.[20]

After careful consideration of these comments, the Commission is modifying the definition of eligible participant to permit agency transactions by eligible participants on behalf of other eligible participants,[21] to include foreign banks and their U.S. branches and agencies and the regulated subsidiaries and affiliates of insurance companies within that definition and to include a $5 million asset test for investment companies (as is required for investment companies under the current part 36). The Commission will consider MFA's and NFA's suggestion that a new category of eligible participant be added for registered CTAs and IAs with at least $25 million in assets under management in conjunction with its subsequent review of relief for CPOs and CTAs.[22]

In response to the comments regarding expanding the categories of eligible financial institutions and reducing the financial thresholds for corporations and other entities, the Commission notes that the current definition of eligible participant contains a general corporate category, which itself contains alternative means of qualifying, and that this general corporate category enables many different types and sizes of entities (including financial institutions) to qualify as eligible participants under part 35. As the Coalition acknowledges (CL 24–31 at 6), many financial institutions that are not specifically encompassed by the definition of eligible participant fall within this general corporate category. The Commission believes that this general corporate category is an appropriate standard to determine corporate eligibility.[23]

C. Agricultural Trade Options

Finally, the NGFA and Cargill opined that the bilateral transaction exemption should be available for all transactions in the agricultural commodities enumerated in section 1a(3) of the Act, including agricultural trade options. CL 24–10 at 3; CL 24–15 at 1–2. The Commission is retaining in part 35 its reservation of rule 32.13 which governs trading in certain agricultural trade options at this time.[24] The Commission has not yet had sufficient experience with rule 32.13, which the Commission recently reconsidered and adopted (64 FR 68011 (December 6, 1999)), to determine whether the $10 million net worth level should be modified. Furthermore, at the time the Commission adopted that exemptive level it noted the lack of industry consensus on the issue. *Id.* at 68015. The Commission has no reason to believe that a greater level of consensus has been reached since that time.

The Commission reiterates that these amendments to the part 35 exemption are designed to enhance legal certainty. In adopting these amendments to part 35, the Commission is not making any determination that the exempted transactions are or are not subject to its jurisdiction. When it adopted section 4(c) in 1992, the Conferees of the Congress stated:

> The Conferees do not intend that the exercise of exemptive authority by the Commission [under section 4(c)] would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.[25]

Moreover, these changes in no way call into question any transaction undertaken under part 35 before the adoption of these amendments. In recognition of its continuing vitality and to assist the public in locating it, the Commission as proposed is incorporating its 1989 Swaps Policy

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beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.

H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992). The Commission did not make a determination in 1993 that the transactions that it was exempting under part 35 were or were not subject to its jurisdiction. The Commission similarly declined to make any such determination in proposing the current amendments to part 35 and will not make any such determination now.

[16] See note 8, *supra*.

[17] For rules pertaining to clearing, see part 39 which the Commission is adopting in a companion release in this edition of the **Federal Register**.

[18] The Commission has made a technical change to the nonrepudiation provision in rule 35.3(b) to make clear that the reasonable belief is to exist at the time the transaction is entered into. In addition, the Commission has reorganized the nonrepudiation provisions of section 35.3.

[19] That definition generally uses the list of "appropriate persons" set forth in section 4(c)(3)(A) through (J) of the Act, and utilizes the authority granted by section 4(c)(3)(K) to determine other persons to be appropriate persons (specifically, natural persons with total assets exceeding at least $10 million). The Commission placed certain financial and other limitations on various categories of appropriate persons, consistent with Congress' intent that the Commission may limit the terms of an exemption to some, but not all, of the listed categories of appropriate persons. See H.R. Rep. No. 978, 102nd Cong., 2d Sess. 79 (1992).

[20] Many commenters also suggested modifications to the Commission's proposed definition of "multilateral transaction execution facility" in part 36. These comments are addressed in a companion release being issued by the Commission today adopting final rules governing multilateral transaction execution facilities. In this regard, the Commission notes that the use of the term "bilateral" in the title of part 35 does not import any independent requirements regarding the exemption. Taken together, however, part 35 governing bilateral transactions and parts 36 through 38 governing multilateral transactions execution facilities are intended to be seamless in the sense that transactions that do not fall within the definition of multilateral transaction execution facility in part 36 will be considered to be bilateral.

[21] In light of this general agency authorization by eligible participants on behalf of other eligible participants, the Commission is deleting the language in paragraphs 35.1(b)(2)(i), (ix) and (x) which specifically authorizes certain entities such as banks and futures commission merchants that are eligible participants to act in an agency capacity on behalf of other eligible participants. See 7 U.S.C. 6(c)(3)(A), (I) and (J). This specific authorization is now unnecessary.

[22] In a companion release being issued in this edition of the **Federal Register**, however, the Commission has modified the access standards for CTAs to provide that CTAs with at least $25 million under management may trade on a recognized derivatives transaction facility through any registered futures commission merchant. Moreover, in response to the comments of the futures exchanges, in the same companion release being issued today, the Commission has modified the eligibility standards for recognized derivatives transaction facilities to include certain registered floor brokers and floor traders. The Commission, however, is retaining the existing eligibility standards for floor brokers and floor traders when entering into bilateral transactions under part 35 (and when trading on exempt multilateral transaction execution facilities).

[23] Furthermore, with regard to the comments suggesting that some of the financial thresholds in the definition are too restrictive, the Commission notes that the part 35 definition of eligible participant has worked well over the years and that the amounts in real terms are less restrictive than when the exemption was first adopted.

[24] Rule 32.13 includes its own exemption which imposes a different financial threshold than part 35. Under rule 32.13(g), an option is exempt from various regulatory requirements if, among other things, each party to the option has a net worth of not less than $10 million. The Commission has reserved the application of rule 32.13 in part 35, see rule 35.3(a), and it is that reservation to which NGFA and Cargill object.

[25] H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

Statement as Appendix A to part 35.[26] Finally, the Commission again affirms the continuing applicability of its Energy Interpretation and its Energy Exemption which are not being changed or altered in any way by these part 35 amendments.

III. Section 4(c) Findings

These rule amendments are being promulgated under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions from any of the requirements of any provision of the Act. For any exemption granted pursuant to section 4(c), the Commission must find that the exemption would be consistent with the public interest. For any exemption granted pursuant to section 4(c) from the requirements of section 4(a), the Commission must further find that the section 4(a) requirements should not be applied to the agreement, contract or transaction to be exempted, that the exemption would be consistent with the public interest and the purposes of the Act, that the agreement, contract or transaction to be exempted would be entered into solely between appropriate persons and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[27]

No one commented directly on the Commission's section 4(c) findings. Two U.S. futures exchanges, the Chicago Board of Trade and the Chicago Mercantile Exchange, however, cautioned the Commission to ensure that traditional exchange markets would not be put at an unfair competitive disadvantage within this new regulatory regime contemplated by this and the Commission's companion **Federal Register** releases. CL 24–7 at 12–13; CL 24–17 at 13–14. In this regard, the Commission believes that the regulatory lines that it has drawn are necessary and appropriate to protect the public interests embodied in the Act. Under the framework as a whole, the degree of regulation will turn on whether the market is multilateral, whether the market participants are eligible and whether or not the commodity is susceptible to manipulation. The Commission believes that these are appropriate factors on which to base regulatory differences and that, within the framework, the exchanges will be able to fairly compete with the OTC market.

The proposed exemption for bilateral transactions is available only to appropriate persons. Moreover, these amendments to part 35 will promote financial innovation and fair competition and reduce systemic risk. The Commission further finds that these proposed amendments would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act. Finally, the Commission finds that these amendments are consistent with the public interest.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. A small entity is defined to include, *inter alia*, a "small business" and a "small organization." 5 U.S.C. 601(6).[28] The Commission previously has formulated its own standards of what constitutes a small business with respect to the types of entities regulated by it. The Commission has determined that contract markets, futures commission merchants, registered commodity pool operators, and large traders should not be considered small entities for purposes of the RFA.[29]

The Commission believes that it is unlikely that firms defined as small businesses under Section 3 of the Small Business Act could offer or be offered transactions subject to the part 35 exemption and thus be affected by the rules exempting such transactions. See 58 FR 5587, 5593 (January 22, 1993). Further, the amendments to part 35 that the Commission is adopting today remove the requirement that the exempt transactions not be fungible or standardized as to their material economic terms and makes the expanded relief available to a broader category of transactions.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the amendments to part 35 will not have a significant economic impact on a substantial number of small entities. In this regard, the Commission notes that it did not receive any comments regarding the RFA implications of the amendments to part 35.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. As the Commission noted in proposing these amendments, it has determined that the PRA does not apply to these amendments because they do not contain information collection requirements which require the approval of the Office of Management and Budget. No comments were received concerning the Commission's determination in this regard.

List of Subjects in 17 CFR Part 35

Commodity futures, Commodity Futures Trading Commission.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4, 4c, and 8a thereof, 7 U.S.C. 2, 6, 6c, and 12a, the Commission hereby revises part 35 of title 17 of the Code of Federal Regulations to read as follows:

PART 35—EXEMPTION OF BILATERAL AGREEMENTS

Sec.
35.1 Scope and definitions.
35.2 Exemption.
35.3 Enforceability.
Appendix A to Part 35—Policy Statement Concerning Swap Transactions

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 35.1 Scope and definitions.

(a) *Scope.* The provisions of this part shall apply to any contract, agreement or transaction which may be subject to the Act, and which has been entered into on or after October 23, 1974.

(b) *Definition.* As used in this part, "eligible participant" means, and shall be limited to, the following persons or classes of persons, either trading for their own account or through another eligible participant:

(1) A bank or trust company or a foreign bank or a branch or agency of a foreign bank (as defined in section 1(b) of the International Bank Act of 1978 (12 U.S.C. 3101(b));

(2) A savings association or credit union;

(3) An insurance company that is regulated by a State or that is regulated by a foreign government and is subject to comparable regulation (including a regulated subsidiary or affiliate of such an insurance company);

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible participant and has total assets exceeding $5,000,000;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign pefson performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible participant:

(i) Which has total assets exceeding $10,000,000, or

(ii) The obligations of which under the contract, agreement or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in paragraph (b)(6) of this section or by an entity referred to in paragraph (b)(1), (2), (3), (4), (5), (6) or (8) of this section; or

(iii) Which has a net worth of $1,000,000 and enters into the agreement in connection with the conduct of its business; or which has a net worth of $1,000,000 and enters into the agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of either paragraph (b)(6) or (11) of this section;

(10) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation: *Provided, however,* that if such futures commission merchant, floor broker, or floor trader is a natural person or proprietorship, the futures commission merchant, floor broker, or floor trader must also meet the requirements of paragraph (b)(6) or (b)(11) of this section; or

(11) Any natural person with total assets exceeding at least $10,000,000.

§ 35.2 Exemption.

A contract, agreement or transaction is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such contract, agreement or transaction, is exempt for such activity from all provisions of the Act (except in each case the provisions enumerated in § 35.3(a)) provided the following terms and conditions are met:

(a) The contract, agreement or transaction is entered into solely between eligible participants either trading for their own account or through another eligible participant;

(b) The contract, agreement or transaction is not entered into and traded on or through a multilateral transaction execution facility as defined in § 36.1 of this chapter; and

(c) The contract, agreement or transaction, if cleared, is submitted for clearance or settlement to a clearinghouse that is authorized under § 39.2 of this chapter.

(d) The provisions of paragraphs (b) and (c) of this section shall not be deemed to preclude:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such contracts, agreements or transactions;

(2) Arrangements or facilities among parties to such contracts, agreements or transactions that provide for netting of payments or deliveries resulting from such contracts, agreements or transactions; or

(3) The use of an electronic or non-electronic market or similar facility used solely as a means of communicating bids or offers by market participants or the use of such a market or facility by a single counterparty to offer to enter into or to enter into bilateral transactions with multiple counterparties.

(e) Any person may apply to the Commission for exemption from any of the provisions of the Act (except section 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited thereto, the applicability of other regulatory regimes.

§ 35.3 Enforceability.

(a) Notwithstanding the exemption in § 35.2, sections 2(a)(1)(B), 4b, and 4o of the Act, § 32.9 of this chapter as adopted under section 4c(b) of the Act, § 32.13 of this chapter, and sections 6(c) and 9(a)(2) of the Act to the extent that they prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, continue to apply to transactions and persons otherwise subject to those provisions.

(b) A party to a contract, agreement or transaction that is with a counterparty that is an eligible participant (or counterparty reasonably believed by such party at the time the contract, agreement or transaction was entered into to be an eligible participant) shall be exempt from any claim, counterclaim or affirmative defense by such counterparty under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement or transaction is void, voidable or unenforceable, or

(2) To rescind, or recover any payment made in respect of, such contract, agreement or transaction, based solely on the failure of such party or such contract, agreement or transaction to comply with the terms or conditions of the exemption under this part.

(c) A party to a contract, agreement or transaction that is entered into pursuant to the Statement of Policy Concerning Swap Transactions in appendix A to

[26] The Swaps Policy Statement originally was published at 54 FR 30694 (July 21, 1989). In this republication, the Commission has corrected certain typographical errors that appeared in the original publication.

[27] See 7 U.S.C. 6(c).

[28] "Small organization," as used in the RFA, means "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *." 5 U.S.C. 601(4). The RFA does not incorporate the size standards of the Small Business Administration for small organizations. Agencies are expressly authorized to establish their own definition of small organization. *Id.*

[29] 47 FR 18618–20 (Apr. 20, 1982).

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this part 35 or the Statutory Interpretation Concerning Certain Hybrid Instruments, as the same may be revised by the Commission from time to time, shall be exempt from any claim under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement or transaction is void, voidable or unenforceable, or

(2) To rescind, or recover any payment made in respect of, such contract, agreement or transaction, based solely on the failure of such party, or such contract, agreement or transaction, to comply with the Statement of Policy Concerning Swap Transactions in appendix A to this part 35 or the Statutory Interpretation Concerning Certain Hybrid Instruments, as the same may be revised by the Commission from time to time, respectively, or with any provision of the Act or other Commission rule or exemption, excluding, in the case of this paragraph, any claim for manipulation or fraud arising under a provision of the Act or Commission rules applicable by its terms to a contract, agreement or transaction that is not otherwise subject to regulation under the Act.

Appendix A to Part 35—Policy Statement Concerning Swap Transactions

(a) Background.

(1) Section 2(a)(1)(A) of the Commodity Exchange Act (CEA or Act) grants the Commission exclusive jurisdiction over "accounts, agreements (including any transaction which is of the character of * * * an 'option' * * *), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market * * * or any other board of trade, exchange, or market. * * *" 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the CFTC.[1] In several recent releases[2] and in response to requests for case-by-case review of various proposed offerings,[3] the Commission has addressed the applicability of the Act and Commission regulations to various forms of commodity-related instruments offered and sold other than on designated contract markets. An overview of off-exchange transactions and issues was commenced by issuance in December 1987 of an Advance Notice of Proposed Rulemaking (Advance Notice). The Advance Notice requested comment concerning, among other things, a proposed no-action position concerning certain commercial transactions, which, as described, would have extended to certain categories of swap transactions.*

(2) Based upon careful review of the comments received in response to the Advance Notice, indicating generally a need for greater clarity in this area, representations from market users, and consultations with other federal regulators concerning the issues raised by swap transactions, the Commission is issuing this policy statement to clarify its view of the regulatory status of certain swap transactions. This statement reflects the Commission's view that at this time most swap transactions, although possessing elements of futures or options contracts, are not appropriately regulated as such under the Act and regulations. This policy statement is intended to recognize a non-exclusive safe harbor for transactions satisfying the requirements set forth in this Appendix.

(b) Safe harbor standards. (1) In determining whether a transaction constitutes a futures contract, the Commission and the courts have assessed the transaction "as a whole with a critical eye toward its underlying purpose."[4] Such an assessment entails a review of the "overall effect" of the transaction as well as a determination as to "what the parties intended."[5] Although there is no definitive list of the elements of futures contracts, the CFTC and the courts recognize certain elements as common to such contracts.[6] Futures contracts are contracts for the purchase or sale of a commodity for delivery in the future at a price that is established when the contract is initiated, with both parties to the transaction obligated to fulfill the contract at the specified price. In addition, futures contracts are undertaken principally to assume or shift price risk without transferring the underlying commodity. As a result, futures contracts providing for delivery may be satisfied either by delivery or offset.

(2) In addition to these necessary elements, the CFTC and the courts also recognize certain additional elements common to exchange-traded futures contracts, including standardized commodity units, margin requirements related to price movements, clearing organizations which guarantee counterparty performance, open and competitive trading in centralized markets, and public price dissemination.[7] These additional elements facilitate the trading of futures contracts on exchanges and historically have developed in conjunction with the growth of organized contract markets. The presence or absence of these additional elements, however, is not dispositive of whether a transaction is a futures contract.[8]

(3) In general, a swap may be characterized as an agreement between two parties to exchange a series of cash flows measured by different interest rates, exchange rates, or prices with payments calculated by reference to a principal base (notional amount).[9] Commenters have described the swap market as one in which the customary large transaction size effectively limits the market to institutional participants rather than the retail public.[10] Market participants also have noted that swaps typically involve long-term contracts, with maturities ranging up to twelve years.[11] In addition to these characteristics, many comparisons between swaps and futures contracts have stressed the tailored, non-standardized nature of swap terms; the necessity for particularized credit determinations in connection with each swap transaction (or series of transactions between the same counterparties); the lack of public participation in the swap markets; and the predominantly institutional and commercial nature of swap participants. Other commenters have stressed that, despite these distinctions in the manner of trading of swaps and exchange products, the economic reality of swaps nevertheless resembles that of futures contracts.

(4) The Commission recognizes that swaps generally have characteristics, such as individually-tailored terms, predominantly commercial and institutional participants, and expectation of being held to maturity, rather than offset during the term of the agreement, that may warrant distinguishing them from futures contracts. The criteria set forth in this Appendix identify certain swaps for which regulation under the CEA and Commission regulations is unnecessary. These safe harbor standards are consistent with policies reflected in the CEA's jurisdictional exclusion for forward contracts,[12] the Treasury Amendment,[13] and the trade option exemption,[14] and are otherwise consistent with section 2(a)(1)(A) of the CEA. Although these jurisdictional and exemptive or exclusionary provisions are not sufficiently broad to provide clear exemptive boundaries for many swaps, they reflect policies relevant to the safe harbor policy set forth in this Appendix and may encompass certain swap transactions.[15]

(5) Consequently, the Commission has determined that a greater degree of clarity may be achieved through safe harbor guidelines establishing specific criteria for swap transactions to which the Commission's regulatory framework will not be applied. Swaps satisfying the requirements set forth in this Appendix will not be subject to regulation as futures or commodity option transactions under the Act and regulations. This policy statement addresses only swaps settled in cash, with foreign currencies considered to be cash.[16]

(i) Individually-tailored terms. (A) Individual tailoring of the terms of swap agreements is frequently cited as indispensable to the operation of the swap market. Commenters have indicated that swap agreements are based upon individualized credit determinations and are tailored to reflect the particular business objectives of the counterparties. Tailoring occurs through private negotiations between the parties and may involve not only financial terms but issues such as representations, covenants, events of default, term to maturity, and any requirement for the posting of collateral or other credit enhancement. Such tailoring and counterparty credit assessment distinguish swap transactions from exchange transactions, where the contract terms are standardized and the counterparty is unknown. In addition, the tailoring of swap terms means that, unlike exchange contracts, which are fungible, swap agreements are not fully standardized.

(B) To qualify for safe harbor treatment, swaps must be negotiated by the parties as to their material terms, based upon individualized credit determinations, and documented by the parties in an agreement or series of agreements that is not fully standardized.[17] This requirement is intended to exclude from safe harbor treatment instruments which are fungible and therefore may be readily transferred and traded.

(ii) Absence of exchange-style offset. (A) Exchange-traded futures contracts generally

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[1] 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA provides, inter alia, that it is unlawful to enter into a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a). The exchange trading requirement reflects Congress's view that such an environment would control speculation and promote hedging. H.R. Rep. No. 44, 67th Cong., 1st Sess. 2 (1921). See also 7 U.S.C. 5 (Congressional findings concerning necessity for regulation of futures and commodity option transactions). Pursuant to sections 4c(b) and 4c(d), 7 U.S.C. 6c(b) and 6c(d), of the CEA, the Commission has authority to permit transactions in commodity options which do not take place on contract markets. Currently, only two narrow categories of such option transactions exist: trade options (in which the offeree is a "commercial user" of the underlying commodity) and dealer options (in which the grantor fulfills the criteria of section 4c(d)(1) of the CEA). See also 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments). Final Rules Concerning Regulation of Hybrid Instruments.

[2] 52 FR 47022 (December 11, 1987) (Advance Notice of Proposed Rulemaking); 54 FR 1139 (January 11, 1989) (Statutory Interpretation Concerning Certain Hybrid Instruments); 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments). See also 50 FR 42963 (October 23, 1985) (Statutory Interpretation and Request for Comments Concerning Trading in Foreign Currencies for Future Delivery).

[3] The Commission staff's Task Force on Off-Exchange Instruments has addressed a number of proposed offerings of hybrid instruments in a series of published "no-action" letters. See, e.g., CFTC Advisory No. 39–88, June 23, 1988 [Interpretative Letter No. 88–10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,262] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 45–88, July 19, 1988 [Interpretative Letter No. 88–11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,284] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 48–88, July 26, 1988 [Interpretative Letter No. 88–12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,285] (notes indexed to dollar/foreign currency exchange rate); CFTC Advisory No. 58–88, August 30, 1988 [Interpretative Letter No. 88–16, August 26, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,312] (federally-chartered corporation issuing notes indexed to nationally disseminated measure of inflation published by a U.S. government agency); CFTC Advisory No. 63–88, September 21, 1988 [Interpretative Letter No. 88–17, September 6, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,320] (fixed-rate debentures with additional payments indexed to the price of natural gas over an established base price); CFTC Advisory No. 66–88, September 23, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,321 (certificates of deposit with interest payable at maturity indexed in part to the spot price of gold). See also CFTC Advisory No. 18–19, March 17, 1989 (letter dated November 23, 1988, concerning proposed sale of hay for delayed delivery).

[4] CFTC v. Co Petro Marketing Group, Inc., 680 F.2d 573, 581 (9th Cir. 1982).

[5] CFTC v. Trinity Metals Exchange, No. 85–1482–CV–W–3 (W.D. Mo. January 21, 1986) [citing CFTC v. National Coal Exchange, Inc. [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,424 at 26,046 (W.D. Tenn. 1982)].

[6] See generally, 52 FR 47022, 47023 (December 11, 1987) (citing In the Matter of First National Monetary Corp., [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985)); Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 7–8). The Commission has explained that this does not mean that "all commodity futures contracts must have all of these elements * * *" In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979). To hold otherwise would permit ready evasion of the CEA.

[7] E.g., Advance Notice, 52 FR 47023; Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 8); OGC Statutory and Regulatory Interpretation (Regulation of Leverage Transactions and Other Off-Exchange Future Delivery-Type Instruments), 50 FR 11656, 11657, n.2 (March 25, 1985); CFTC v. Co Petro Marketing Group, Inc., 680 F.2d 573 (9th Cir. 1982).

[8] In addition, the Commission and the courts have consistently recognized that "the requirement that a futures contract be executed on a designated contract market is what makes the contract legal, not what makes it a futures contract." In the Matter of First National Monetary Corp., [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 at 30,975 (CFTC 1985); In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,776 (CFTC 1979). See, also, Interpretative Statement, "The Regulation of Leverage Transactions and Other Off-Exchange Future Delivery Type Investments-Statutory Interpretation," 50 FR 11656 (March 25, 1985).

[9] See generally, Bank for International Settlements, Recent Innovations in International Banking at 37–60 (April 1986); S.K. Henderson, "Swap Credit Risk: A Multi-Perspective Analysis," 44 Business Lawyer 365 (1989). Interest rate swaps have been described as having three primary forms: coupon swaps (fixed rate to floating rate swaps); basis swaps (swap of one floating rate for another floating rate); and cross-currency interest rate swaps (swaps of fixed rate payments in one currency to floating rate payments in another currency). Currency swap transactions involve agreements between two parties providing for exchanges of amounts in different currencies which are calculated on the basis of a pre-established interest rate, a specified exchange rate, and a specified notional amount. Commodity swaps generally include swap transactions similar in structure to interest rate swaps, except that payments are calculated by reference to the price of a specified commodity, such as oil.

[10] The average notional amount for swaps has been estimated at $24 million. Letter from the New York Clearing House to CFTC, dated April 6, 1989, commenting on Proposed Rule and Statutory Interpretation Concerning Certain Hybrid and Related Instruments.

[11] E.g., Letter to CFTC from the International Swap Dealers Association, Inc., dated April 8, 1988, concerning Advance Notice; letter to CFTC from Morgan Guaranty Trust Company of New York, dated April 11, 1988, concerning Advance Notice.

[12] Section 2(a)(1)(A) of the CEA provides that the term "future delivery" does not include sales of any cash commodity for deferred shipment or delivery. 7 U.S.C. 2. Sales of cash commodities for deferred delivery, or forward contracts, generally have been recognized to be commercial, merchandising transactions in physical commodities entered into by commercial counterparties who have the capacity to make or take delivery of the underlying commodity but in which delivery "may be deferred for purposes of convenience or necessity." 52 FR 47027; In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,777–78 (CFTC 1979). The forward contract exclusion may apply to certain types of swap transactions.

[13] The Treasury Amendment provides that "[n]othing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade." 7 U.S.C. 2. See generally, 50 FR 42963 (October 23, 1985) (CFTC Statutory Interpretation). See also, Commodity Futures Trading Commission v. American Board of Trade, 473 F. Supp. 117 (S.D.N.Y. 1979), aff'd, 803 F.2d 1242 (2d Cir. 1986). The Treasury Amendment may apply to some types of transactions also characterized as swaps.

[14] The trade option exemption, which is set forth in Rule 32.4(a), 17 CFR 32.4(a) (1988), authorizes commodity option transactions, other than those on commodities specified in rule 32.2(a), that are not executed on a designated contract market and that are:

Offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such. It should be noted that under Rule 32.4(a), only the offeree of the trade option need qualify as a "commercial user" or "merchant." Rule 32.4(a) is silent concerning which party to a trade option may be the option buyer of a put or call or "long," and which party may be the option seller of a put or call or "short." As a result, provided that the qualifying commercial offeree is entering the trade option transaction solely for non-speculative purposes demonstrably related to its commercial business in the commodity which is the subject of the option transaction, the requirements of Rule 32.4(a) are met.

[15] The forward contract exclusion facilitates commodity transactions within the commercial merchandising chain. The trade option exemption similarly may be viewed as facilitating principal-to-principal transactions in which the offeree is a commercial party with respect to the underlying commodity. The Treasury Amendment reflects Congressional intent to avoid duplicative regulation of foreign currency transactions and other transactions in the interbank market supervised by bank regulatory agencies.

[16] As noted previously, certain categories of swap transactions may be subject to the forward contract exclusion, the Treasury Amendment and the trade option exemption. The safe harbor criteria set forth in this Appendix apply equally to options on swaps.

[17] Formation of swaps pursuant to a master agreement between two counterparties that establishes some or all contract terms for one or more individual swap transactions between those counterparties is not precluded by this requirement, provided that material terms of the master agreement and transaction specifications are individually tailored by the parties.

may be terminated by offset,[18] that is, liquidated through establishment of an equal and opposite position. For exchange-traded futures contracts, the universal counterparty to each cleared position is the clearing organization. Prior consent of the clearing organization, as counterparty, is unnecessary to offset.[19]

(B) In contrast, swap transactions have been described as transactions which create performance obligations terminable only with counterparty consent and which generally are expected to be maintained to maturity. A swap counterparty who seeks to eliminate the economic effect of a swap agreement may enter into a reverse swap agreement, that is, a second swap with the same maturity and payment requirements, with the same or a new counterparty, but in which the party seeking to eliminate its economic exposure assumes the reverse position (in this case the obligations of each party to both transactions continue to maturity). A swap counterparty who seeks to terminate, absent default, its obligations under a swap agreement may: Undertake a swap sale in which, based upon consent of the counterparty, it assigns its rights and obligations under the swap to a third party or negotiate an early termination of the transaction, or swap "closeout," in which it negotiates a lump-sum payment with its counterparty to terminate the swap.[20] In the latter two cases, termination of the obligations created by a swap is dependent upon consent of the counterparty.

(C) To qualify for safe harbor treatment, the swap must create obligations that are terminable, absent default, only with the consent of the counterparty. If consent to termination is given at the outset of the agreement and a termination formula or price fixed, the consent provision must be privately negotiated. This requirement is intended to confine safe harbor treatment to instruments that are not readily used as trading vehicles, that are entered into with the expectation of performance, and that are terminated as well as entered into based upon private negotiation.

(iii) Absence of clearing organization or margin system. (A) As noted in paragraph (b)(5)(ii) of this Appendix, the necessity for individualized credit determinations has been described as a hallmark of swap transactions. A number of commenters have stressed both the dependence of the current swap market on such determinations and the absence of a multilateral "credit support" mechanism, such as a clearing organization, for swaps. In accordance with the concept of swaps as dependent upon private negotiation and individualized credit determinations as to the capacity of certain parties to perform, this safe harbor is applicable only to swap transactions that are not supported by the credit of a clearing organization and that are not primarily or routinely supported by a marked-to-market margin and variation settlement system designed to eliminate individualized credit risk.[21] The ability to impose individualized credit enhancement requirements to secure either changes in the credit risk of a counterparty or increases in the credit exposure between two counterparties consistent with the criteria in paragraph (b)(5)(ii) would not be affected.

(B) [Reserved]

(iv) The Transaction is Undertaken in Conjunction With a Line of Business.

(A) The absence of public participation in the swaps market has frequently been cited as a factor supporting different regulatory treatment of swaps and futures contracts. Swap market participants are predominantly institutional and commercial entities such as corporations, commercial and investment banks, thrift institutions, insurance companies, governments, and government-sponsored or chartered entities.[22]

(B) The safe harbor set forth in this Appendix is limited to swap transactions undertaken in conjunction with the parties' line of business.[23] This restriction is intended to preclude public participation in qualifying swap transactions and to limit qualifying transactions to those based upon individualized credit determinations. This restriction does not preclude dealer transactions in swaps undertaken in conjunction with a line of business, including financial intermediation services.

(v) Prohibition Against Marketing to the Public. Swap transactions eligible for safe harbor treatment may not be marketed to the public. This restriction reflects the institutional and commercial nature of the existing swap market and the Commission's intention to restrict qualifying swap transactions to those undertaken as an adjunct of the participant's line of business.

(c) Conclusion. This policy statement is intended to clarify the regulatory treatment of certain transactions in order to facilitate legitimate market transactions in a field distinguished by innovation and rapid growth. Consequently, the Commission proposes to continue to review on a case-by-case basis transactions that do not meet the criteria set out in this Appendix and that are not otherwise excluded from Commission regulation.

Issued in Washington, DC, this 21st day of November, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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[18] In the context of exchange-traded futures, offset refers to the liquidation of a futures position through the acquisition of an opposite position. Availability of such offset, resulting in the liquidation of the position, typically is established by exchange rules governing exchange members' relationships with the clearing house. See, e.g., Chicago Mercantile Exchange Rule 808 ("a clearing member long or short any commodity to the Clearing House as a result of substitution may liquidate the position by acquiring an opposite position for its principal"); Board of Trade Clearing Corporation Regulation 705.00 ("Where a member buys and sells the same commodity for the same delivery, and such contracts are cleared through the Clearing House, the purchases and sales shall be offset to the extent of their equality, and the member shall be deemed a buyer from the Clearing House to the extent that his purchases exceed his sales, or a seller to the Clearing House to the extent that his sales exceed his purchases"); New York Futures Exchange Rule 3–4 ("As between the Clearing Corporation and the original parties to futures contracts and option contracts, such contracts shall be binding upon the original parties until liquidated by offset, delivery, exercise or expiration, as the case may be"). Of course, the ability to offset in any given case depends upon the availability of a counterparty to enter into an offsetting transaction at an acceptable price.

[19] However, the ability to liquidate contractual positions through offset is established by clearing organization rules to which all clearing members consent.

[20] Swap parties may agree in advance upon a termination formula or price for the swap.

[21] Several commenters urged the Commission to adopt a safe harbor for swaps that would be conditioned upon, among other things, the absence of a credit support mechanism. See Letter to CFTC from Sullivan & Cromwell, dated April 8, 1988, concerning Advance Notice, at 41–42; Letter to CFTC from Manufacturers Hanover, dated April 11, 1988, concerning Advance Notice, at 4. The safe harbor standard is based upon individualized credit determinatioos at the outset and during the pendency of the contract.

[22] Letter dated April 8, 1988, to CFTC from International Swap Dealers Associations, Inc. concerning Advance Notice.

[23] Swap transactions entered into with respect to exchange rate, interest rate, or other price exposure arising from a participant's line of business or the financing of its business would be consistent with this standard.

Federal Register

Wednesday,
December 13, 2000

Part III

Department of Housing and Urban Development

Notice of Funding Availability; Fair Share Allocation of Incremental Voucher Funding, Fiscal Year 2001; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4632–N–01]

Notice of Funding Availability; Fair Share Allocation of Incremental Voucher Funding, Fiscal Year 2001

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability (NOFA).

SUMMARY: *Purpose of the Program.* The purpose of this NOFA is to invite public housing agencies (PHAs) to apply for vouchers on a fair share allocation basis under the Housing Choice Voucher Program. The vouchers are for issuance to families on a PHA's housing choice voucher waiting list to enable these families to rent decent, safe, and affordable housing of their choice on the private rental market.

Available Funds. Approximately $452,907,000 in one-year budget authority for approximately 79,000 housing choice vouchers. Prior to the funding of any new applications under this NOFA for FY 2001, $4,191,788 of this budget authority will be used to correct the underfunding of four PHAs under the FY 2000 Fair Share NOFA due to an error on the part of HUD. See Section II(C)(3) of this NOFA regarding the specific PHAs, dollar amounts and corresponding number of vouchers that each of the four PHAs will receive to correct the underfunding error. This will leave $448,715,212 in one-year budget authority available for the funding of approximately 78,475 vouchers for applications submitted in FY 2001 under this NOFA.

Eligible Applicants. Public housing agencies (PHAs). Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible applicants. The Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new housing choice voucher (Section 8) annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Due Date. January 29, 2001.

Match. None.

SUPPLEMENTARY INFORMATION: If you are interested in applying for funding under this NOFA, please read the balance of this NOFA which will provide you with detailed information regarding the submission of an application, Housing Choice Voucher Program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application (an original and one copy) is due on or before January 29, 2001 at the address shown below. This application deadline is firm. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. Submit your original application and one copy to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, D.C. 20024.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA. A copy of the application is not required to be submitted to the local HUD Field Office. For ease of reference, the term "local HUD Field Office" will be used in this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Hand Carried Applications. If you are hand delivering your application, your application is due by not later than 8:45 am to 5:00 pm, Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received on or within ten (10) days of that date at the Grants Management Center.

Applications Sent By Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received by the Grants Management Center before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. This NOFA contains all of the information necessary for the submission of an application for voucher funding in connection with this NOFA.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064. Subsequent to application submission, you may contact the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

II. Authority, Purpose, Fair Share Allocation Amount, Voucher Funding, and Eligibility

(A) Authority

Authority for the approximately $452,907,000 in one-year budget authority for housing choice vouchers for low-income families is found in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2001 (Pub.L. 106–377, approved October 27, 2000, referred to as the FY 2001 HUD Appropriations Act. The allocation of housing assistance budget authority for housing choice vouchers, by allocation area based on fair share factors, is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended. Funding in the amount of $4,191,788 will be subtracted from the one-year budget authority of $452,907,000 in order to correct an underfunding error affecting four PHAs funded by HUD in FY 2000 under the FY 2000 Fair Share NOFA (see Section II(C)(3), Underfunding Corrections, in this NOFA).

(B) Purpose

The purpose of the housing choice voucher funding being made available under this NOFA is to provide housing assistance to very low-income families to enable them to rent decent, safe, and affordable housing of their choice on the private market.

(C) Fair Share Allocation Amount

This NOFA announces the availability of approximately $452,907,000 in one-year budget authority for a fair share formula allocation which will provide rental assistance to approximately 79,000 very low-income families. Funding in the amount of $4,191,788 for 525 vouchers for four PHAs will first be subtracted from the $452,907,000 (leaving a balance of $448,715,212 for approximately 78,475 vouchers for FY 2001 applications submitted in response to this NOFA) to correct an underfunding error attributable to HUD under the FY 2000 Fair Share NOFA that affected four PHAs. (See Section II(C)(3), Underfunding Corrections.)

(1) Fair Share Allocation for Each Allocation Area

Appendix A of this NOFA lists the allocation of housing assistance budget authority for vouchers for each allocation area, based on fair share factors. Appendix A also provides an estimate of the total number of vouchers that could be funded from the housing assistance available for each allocation area based on the weighted local average costs of voucher assistance for a two-bedroom unit. The actual number of units assisted within each allocation area will vary from the estimates prepared by Headquarters since the actual costs of voucher assistance for each PHA vary from the average.

(2) Potential Additional Funding

If additional voucher funding becomes available for fair share use during FY 2001, HUD plans to distribute any additional funding to allocation areas using the same percentage distribution as reflected in Appendix A to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund PHA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount for which the PHA was eligible under this NOFA.

(3) Underfunding Corrections

If prior to the award of Fair Share funding under this NOFA, HUD determines that any awardees under the FY 2000 Fair Share NOFA have been underfunded due to an error attributable to HUD, funding will be increased to the amount that the awardee should have received. The Grants Management Center will, in coordination with the local HUD Field Office and the affected PHA, determine the number of units that should have been awarded the PHA under the FY 2000 NOFA and the funding amount that would currently be appropriate to fund that number of units under the voucher funding procedures in Section II.(D) of this FY 2001 Fair Share NOFA.

Prior to the issuance of this NOFA the determination was made that four PHA awardees under the FY 2000 Fair Share NOFA were underfunded due to HUD's failure to include these PHAs' Moving to Work (MTW) units when calculating the number of certificates and vouchers being administered for purposes of the number of vouchers a PHA was eligible to apply for and be funded. Funding in the amount of $4,191,788 will be subtracted from the Fair Share funding available under this NOFA to fund these four PHAs as follows: Seattle, Washington Housing Authority—$1,621,534 for 231 vouchers; Portland Oregon Housing Authority—$841,788 for 117 vouchers; Cambridge, Massachusetts Housing Authority—$1,514,386 for 133 vouchers; and Portage, Ohio Housing Authority—$214,080 for 44 vouchers.

(D) Voucher Funding

(1) Determination of Funding Amount for the PHA's Requested Number of Vouchers

HUD will determine the amount of funding that a PHA will be awarded under this NOFA based upon an actual annual per unit cost {except that for Moving to Work (MTW) agencies the per unit cost will be calculated in accordance with the agency's MTW Agreement} using the following three step process (as may be modified based upon a percentage of annual per unit cost if necessary to produce the 79,000 vouchers provided for under this NOFA):

(a) HUD will extract the total expenditures for all the PHA's housing choice voucher and certificate programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's housing choice voucher and certificate programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

(c) HUD will multiply the annual per unit cost derived under paragraph (b) above by the Housing Choice Voucher Program (Section 8) Housing Assistance Payments Program Contract Rent Annual Adjustment Factor (with the highest cost utility included) to generate an adjusted annual per unit cost. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(E) Eligible Applicants

A PHA established pursuant to State law may apply for funding under this NOFA. A regional (multi-county) or State PHA is also eligible to apply for funding.

A PHA may submit only one application under this NOFA. This one application per PHA limit applies regardless of whether or not the PHA is a State or regional PHA, except in those instances where such a PHA has more than one PHA code number due to its operating under the jurisdiction of more than one HUD Field Office. In such an instance, a separate application under each code shall be considered for funding, with the cumulative total of vouchers applied for under the applications not to exceed the maximum number of vouchers the PHA is eligible to apply for under Section V.(B) of this NOFA; *i.e.*, no more than the number of vouchers the same PHA would be eligible to apply for if it only had one PHA code number.

Two or more divisions within State government comprising separate PHAs shall require the State to determine which division shall submit an application to HUD under this NOFA. As with other PHAs, only one application per PHA shall be considered (see sole exception referenced immediately above).

A contract administrator which does not have an annual contributions contract (ACC) with HUD for housing choice vouchers or certificates, but which constitutes a PHA under 24 CFR 791.102 by reason of its administering housing choice vouchers or certificates on behalf of another PHA, shall not be eligible to submit an application under this NOFA.

Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997.

Applicants are limited to those PHAs currently administering housing choice vouchers or certificates.

Some PHAs currently administering the housing choice voucher and certificate programs have, at the time of

publication of this NOFA, major program management findings from Inspector General audits, HUD management reviews, or independent public accountant (IPA) audits that are open and unresolved or other significant program compliance problems. HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application due date, the findings are either not closed, or sufficient progress toward closing its findings has not been made to HUD's satisfaction. The PHA must also, to HUD's satisfaction, be making satisfactory progress in addressing any program compliance problems. If the PHA wants to apply for funding under this NOFA, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor, that is acceptable to HUD. The PHA's application must include an agreement by the other housing agency, nonprofit agency, or contractor to administer the new funding increment on behalf of the PHA, and a statement that outlines the steps the PHA is taking to resolve the program findings and the program compliance problems. *Immediately after the publication of this NOFA, the local HUD Field Office will notify, in writing, those PHAs that are not eligible to apply without such an agreement. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the GMC.* The PHA may appeal the decision, in writing, if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error (*i.e.*, documentation showing that the finding has been cleared or satisfactory progress toward closing the findings or addressing the compliance problems has been made) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the GMC with a copy of its written response to the appeal, along with a copy of the PHA's written appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(F) Eligible Participants

Eligible participants must be income eligible under 24 CFR 982.201(b)(1) in order to receive a voucher. Eligible participants include very low-income families, and on an exception basis some low-income families, who are on the PHA's housing choice voucher waiting list and who are determined to be eligible for housing assistance under the housing choice voucher regulations at 24 CFR part 982 and part 5.

III. General Program Requirements

(A) General Program Requirements

(1) Compliance With Fair Housing and Civil Rights Laws

All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) Additional Nondiscrimination Requirements

In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) Affirmatively Furthering Fair Housing

Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(a) Examine the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice—in its Consolidated Plan); develop a plan to (i) address those impediments in a reasonable fashion in view of the resources available; and (ii) work with local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and maintain records reflecting this analysis and actions.

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice.

Further, applicants have a duty to carry out the specific activities cited in their responses under this NOFA to address affirmatively furthering fair housing.

(4) Certifications and Assurances

Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(B) PHA Responsibilities and Rental Assistance Requirements

(1) Housing Choice Voucher Regulations

PHAs must administer the housing choice vouchers received under this NOFA in accordance with HUD regulations and requirements governing the Housing Choice Voucher Program.

(2) Housing Choice Voucher Program Admission Requirements

Housing choice voucher assistance must be provided to eligible applicants in conformity with regulations and requirements governing the Housing Choice Voucher Program and the PHA's administrative plan.

(3) Turnover

When a voucher under this NOFA becomes available for reissue (*e.g.*, the family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the voucher may be used only for the next eligible family on the PHA's housing choice voucher waiting list.

IV. Fair Share Application Rating Process

(A) Selection Criteria

The GMC will use the Selection Criteria shown below for the rating of applications submitted in response to this NOFA. The maximum score under the selection criteria for fair share funding is 100 points.

(1) Selection Criterion 1: Housing Needs (65 points)

(a) *Description:* This criterion assesses the housing need in the primary market area specified in the PHA's application compared with the housing need for the State. Housing need is defined as the number of very low-income renter households with severe rent burden, based on 1990 Census data. Very low-income is defined as income at or below the housing choice voucher (Section 8) very low-income limits. Severe rent burden is defined as a household paying 50 percent or more of its gross income for rent.

(b) *Needs Data:* For the purpose of this criterion, housing needs are based on a tabulation of 1990 Census data prepared for the Department by the Bureau of the Census. Data on housing needs are available for all States, all counties (county equivalents), and places with populations of 10,000 or more as of 1990. Information will be posted on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov), under "funds available" for the Fair Share NOFA, indicating the proportion of each State's housing needs for primary markets.

(c) *Rating and Assessment:* The number of points assigned is based on the percentage of the State's housing need that is within the PHA's primary market area. The primary market area is defined as the jurisdiction (or its closest equivalent in terms of areas for which housing needs data are available) in which the PHA is legally authorized to operate and where the vouchers will be used, as described in its application. (See Section VI. (C) of this NOFA regarding the description of the primary market area required to be included in each PHA's application.)

(1) The GMC will assign one of the following point totals:

• 65 points (maximum). For each percentage point of the State's housing need (rounded to the nearest percentage point), the PHA will receive three points.

(2) A State or regional (multi-county) PHA will receive points based on the areas it serves where the vouchers will be used, *e.g.*, the entire State or the sum of the housing needs for the counties and/or localities comprising its primary market area.

(3) A PHA with a primary market area that is a community with a population of 10,000 or less, or a PHA for which housing needs data are not available, will receive three points.

(2) Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (15 points)

(a) *Description:* Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the housing choice voucher program. The GMC will assign points to PHAs that are not using/will not use a residency preference, or will use a residency preference in a limited manner for selection of families to participate in the voucher program. In addition, the GMC will assign points to PHAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty. The GMC will also assign points to PHAs that demonstrate they have implemented other initiatives that have resulted in expanding housing opportunities.

A PHA having more than one housing authority code number and submitting an application under one or more of these code numbers (see Section II. (E) of this NOFA) will be eligible to receive points under the categories in Selection Criterion 2 if it meets the qualifications for points under any one or more of the separate applications it submits.

(b) *Rating and Assessment:* The GMC will assign point values for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 15 points) to determine the total points for this Selection Criterion:

• 5 Points—Assign 5 points if the PHA certifies that (i) its administrative plan does not include a "residency preference" for selection of families to participate in its voucher program, or (ii) it will eliminate immediately any "residency preference" currently in its administrative plan, or (iii) it will limit applicability of residency preferences to up to 50% of all new admissions.

• 5 Points—Assign 5 points if the PHA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration, PHAs participating in the Regional Opportunity Counseling (ROC) Program, and any other PHAs that receive counseling funds from HUD in connection with the demolition of public housing, public housing vacancy consolidation, or settlement of litigation involving desegregation may qualify for points under this assessment. However, these PHAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration, ROC Program, or the court-ordered plans or plans for relocating public housing families, to expand housing opportunities.

• 5 Points—Assign 5 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities.

(3) Selection Criterion 3: Disabled Families (15 points)

(a) *Description:* The GMC will assign 15 points to PHAs that indicate at least 15 percent or more of the vouchers they are requesting (or funded by HUD) under this NOFA will be used to house disabled families. The PHA's application must be specific as to the exact percentage of vouchers that will be issued solely to disabled families. Disabled families are defined as follows:

(i) *Disabled Family.* A family whose head, spouse, or sole member is a person with disabilities. The term "disabled family" may include two or more such persons with disabilities living together, and one or more such persons with disabilities living with one or more persons who are determined essential to the care and well-being of the person or persons with disabilities (live-in aides).

(ii) *Person with disabilities.* A person who—

a. Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

b. Is determined to have a physical, mental or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;

2. Substantially impedes his or her ability to live independently; and

3. Is of such a nature that such ability could be improved by more suitable housing conditions, or

c. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

Note: While the above definition of a "person with disabilities" is to be used for purposes of determining a family's eligibility for a housing choice voucher designated as being for a disabled family under this NOFA, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of meeting the requirements of Fair Housing laws, including providing reasonable accommodations.

No individual shall be considered a person with disabilities for the purpose of determining eligibility solely on the basis of any drug or alcohol dependence.

(b) *Rating and Assessment:* The GMC will assign one of two point values, as follows:

- 15 points: The PHA will use not less than 15 percent of the vouchers being requested (or funded by HUD) to house disabled families.
- 0 points: The PHA will use less than 15 percent of the vouchers it is requesting (or funded by HUD) to house disabled families.

(4) Selection Criterion 4: Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (5 points)

(a) *Description:* This selection criterion is for PHAs interested in the provision of housing choice voucher assistance to families within their jurisdiction who are disabled and also covered under a waiver of Section 1915(c) of the Social Security Act. Section 1915(c) waivers are approved by the Health Care Financing Administration within the Department of Health and Human Services (HHS) for the agency within each State responsible for the administration of the medicaid program. Contacting the responsible State agency (for example, the Agency for Health Care Administration in the State of Florida) will assist the PHA in determining how many, if any, individuals are covered by a Section 1915(c) waiver in the PHA's legal area of operation. These waivers allow medicaid-eligible individuals at risk of being placed in hospitals, nursing facilities or intermediate care facilities the alternative of being cared for in their homes and communities. These individuals are thereby assisted in preserving their independence and ties to family and friends at a cost no higher than that of institutional care.

While a Section 1915(c) waiver may cover individuals other than those who are disabled, the focus of Selection Criterion 4 is on disabled families only. The definition of disabled families listed under Selection Criterion 3 will be used by PHAs for purposes of the issuance of vouchers to disabled families in connection with Selection Criterion 4; i.e., only those individuals that meet the definition of a disabled family in this NOFA are to be considered in connection with a PHA determining how many such disabled families are covered by a Section 1915(c) waiver in their legal area of operation and whether to try to qualify for the 5 points available under Selection Criterion 4. The PHA's application must be specific as to the percentage of vouchers that will be issued to such disabled families.

Any PHA attempting to qualify for the 5 points available under Selection Criterion 4 should also include information within its application indicating the collaborative efforts already undertaken with the responsible State agency to identify eligible families, as well as agreements reached with that agency for future referrals of such families. HUD reserves the right at some future point in time to conduct an evaluation of the success of the PHA's efforts to collaborate with the State agency and to successfully house individuals that meet the requirements of being covered by a Section 1915(c) waiver, qualify as a disabled family under this NOFA, and are otherwise eligible for a housing choice voucher.

(b) *Rating and Assessment:* The GMC will assign one of two point values as follows:

- 5 points: The PHA will use not less than 3 percent of the vouchers being requested (or funded by HUD) to house voucher eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.
- 0 points: The PHA will use less than 3 percent of the vouchers it is requesting (or funded by HUD) to house voucher eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

(c) *Prohibition Against Double Counting.* The number (percentage) of disabled families that a PHA indicates it will issue vouchers to when qualifying for the 5 points available under Selection Criterion 4 cannot be used to also qualify for the 15 points available under Selection Criterion 3 or conversely.

V. Fair Share Application Selection Process

(A) Maximum Funding Allowed

The GMC may recommend for approval the maximum funding for a PHA under this NOFA that does not exceed the lesser of 25 percent of the PHA vouchers and certificates [including Moving to Work (MTW) units] reserved; i.e., the number of units in its adjusted baseline (see 24 CFR 982.102(d)(ii)), or 25 percent of the number of vouchers available in the allocation area. The determination of reserved units shall be made in accordance with the methodology indicated in Appendix B.

(B) Funding Procedure

HUD seeks to maximize, insofar as practical, the number of PHAs awarded funding under this NOFA. The GMC will recommend applications for approval in rank order (highest to lowest score) within each allocation area. No PHA shall be eligible to request or be funded at more than the maximum funding indicated under Section V.(A) above of this NOFA. The number of vouchers for which a PHA will first receive consideration by the GMC for funding will be based upon initially using the lesser of a 5 percent calculation for a PHA's reserved units, or 25 percent of the vouchers available for the allocation area. If funding remains available within the allocation area, the percentage used for the PHA's reserved units will increase to the percent required to use all funding within the allocation area, not to exceed 25 percent.

Where the GMC finds it has some number of vouchers left but not enough to fully fund the next ranked application or applications receiving the same score, funding will be recommended by the GMC for the application indicating it will accept the lesser number of vouchers (see Section VI. (B) of this NOFA). In the event there are two or more PHAs ranked at the same position (same number of rating points) indicating they will accept the lesser number of vouchers, the PHA whose application is eligible for the largest number of vouchers among these PHAs will be recommended by the GMC for funding.

(C) Reallocations Between Allocation Areas

The GMC will make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one allocation area to another when the funds cannot be used in the allocation area to which they

were initially allocated. (See 24 CFR 791.405(d).) In such cases, the GMC will re-allocate funds to the allocation area having the largest number of approvable vouchers remaining unfunded due to lack of sufficient fair share funding.

(D) Applications Recommended by the GMC for Funding

After the GMC has screened PHA applications and disapproved any applications found unacceptable for further processing, the GMC will review all acceptable applications to ensure they are technically adequate and responsive to the requirements of the NOFA. As PHAs are selected, the cost of funding the applications will be subtracted from the funds available. Applications will be funded for the total number of units recommended for approval by the GMC in accordance with this NOFA.

VI. Fair Share Application Submission Requirements

(A) Form HUD–52515

All PHAs must complete and submit form HUD–52515, Funding Application, for housing choice vouchers (Section 8), (dated January 1996). Section C of the form should be left blank. PHAs are requested to enter their housing authority code number, as well as their electronic mail address, telephone number, and facsimile telephone number in the same space at the top of the form where they are also to enter the PHA's name and mailing address.

This form includes all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities.

Appendix A to this NOFA lists the estimate of the number of vouchers and budget authority available for each allocation area. PHAs should limit their applications for the "fair share" program to a reasonable number of vouchers based on the capacity of the PHA to lease-up within 12 months of ACC execution. The number of vouchers on the PHA application may not exceed that allowed under Section V.(A) of this NOFA. Copies of form HUD–52515 may be obtained from the local HUD Field Office or may be downloaded from the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). (On the HUD website click on "handbooks and forms," then click on "forms", then click on "HUD–5" and click on "HUD–52515".) The form must be completed in its entirety, with the exception of section C, signed and dated.

(1) A PHA may submit only one application (Form HUD–52515). (See Section II(E), Eligible Applicants, of this NOFA which fully addresses this one application per eligible applicant requirement and the one very limited exception allowed under that requirement.)

(2) The GMC will reduce the number of vouchers requested in any application that exceeds the established application limit in Section V(A) of this NOFA above.

(B) Letter of Intent and Narrative

The PHA must state in its cover letter to the application whether it will accept a reduction in the number of vouchers, and the minimum number of vouchers it will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The application should include a narrative description of how the application meets, or will meet, the application selection criteria in Section IV(A) of this NOFA. Failure to submit a narrative description is not cause for application rejection; however, the GMC can only rate and rank the application based on information it has on-hand.

(C) Description of Primary Market Area

Each PHA must specify in the application its primary market area; *i.e.*, the area in which it is authorized to operate and in which the housing choice vouchers will be used. This information may be different than that entered by such a PHA on the form HUD–52515, as the form calls for the PHA to identify its "legal area of operation" which may be far more geographically expansive than the specific city, county, or area within a State where a PHA, particularly a regional or State PHA, intends to use the fair share vouchers. This information is critical because, as indicated in Section IV(A)(1)(c) of this NOFA, the geographic area in which the vouchers are intended to be used and in which the PHA is legally authorized to operate a Housing Choice Voucher Program will be used to determine the percentage of the state's housing needs that are within the PHA's primary market area under Selection Criterion 1. For example, although a PHA may be legally authorized to operate throughout the entire county in which it is located, if the vouchers will be used only in two cities within that county then the primary market area is those two cities and not the entire county. Likewise, for a State PHA which may be legally authorized to operate throughout the entire State, but which intends to use the fair share vouchers in only one county, the primary market area is solely that county. In addition, the primary market area shall not include a geographic area in which the PHA is issuing vouchers, outside its normally legally authorized area of operation, based upon an agreement with another PHA(s) to issue vouchers in the other PHA's jurisdiction.

(D) Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing

The areas to be addressed in the PHA's statement should include, but not necessarily be limited to:

(1) An examination of the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice—in its Consolidated Plan); and a description of a plan developed to (a) address those impediments in a reasonable fashion in view of the resources available and (b) work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and the maintenance of records reflecting this analysis and actions;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

(E) Moving to Work (MTW) PHA Information and Certification

See Section VII(B)(2)(c)regarding the information to be submitted by an MTW PHA required to report under the Section 8 Management Assessment Program (SEMAP) but not meeting the 95 percent lease-up or budget authority utilization requirements, or the lease-up or budget authority utilization certification to be submitted by an MTW PHA not required to report under SEMAP.

(F) Multifamily Tenant Characteristics System (MTCS) Reporting Certification

In order to be eligible to submit an application under this NOFA, the PHA must have had a minimum reporting rate of not less than 85 percent for housing choice voucher and certificate resident records to HUD's MTCS (see 24 CFR Part 908 and Notice PIH 98–30) for the period ending December 1999, and must submit a certification with its application certifying to having met this requirement.

VII. Corrections to Deficient Applications

(A) Acceptable Applications

An acceptable application is one which meets all of the application submission requirements in Section VI

of this NOFA and does not fall into any of the categories listed in Section VII (B) of this NOFA. The GMC will initially screen all applications and notify PHAs of technical deficiencies by letter.

With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the GMC will notify the applicant in writing by describing the clarification or technical deficiency. The applicant must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the GMC within 7 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

(B) Unacceptable Applications

(1) After the 7-calendar day technical deficiency correction period, the GMC will disapprove all PHA applications that it determines are not acceptable for processing. The GMC's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications from PHAs that do not meet the requirements of Section III(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has major program management findings in an Inspector General audit, HUD management review, or independent public accountant (IPA) audit for its voucher or certificate programs that are not closed or on which satisfactory progress in resolving the findings is not being made; or program compliance problems for its voucher or certificate programs on which satisfactory progress is not being made. The only exception to this category is if the PHA has been identified under the policy established in Section II.(E) of this NOFA and the PHA makes application with a designated contract administrator. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achieve a lease-up rate of 95 percent for its combined certificate and voucher units under contract for its fiscal year ending in 1999. Category (c) may be passed, however, if the PHA achieved a combined certificate and voucher budget authority utilization rate of 95 percent or greater for its fiscal year ending in 1999. In the event the PHA is unable to meet either of these percentage requirements, it may still pass category (c) if it submits information to the GMC, as part of its application, demonstrating that it was able to either increase its combined certificate and voucher lease-up rate to 95 percent or greater for its fiscal year ending in 2000, or was able to increase combined certificate and voucher budget authority utilization to 95 percent or more for its fiscal year ending in 2000. PHAs that have been determined by HUD to have passed either the 95 percent lease-up, or 95 percent budget authority utilization requirement for their fiscal year ending in 1999 will be listed with the Fair Share NOFA under "funds available" on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). A PHA not listed must either submit information (following the format of Appendix B of this NOFA) in its application supportive of its 95 percent lease-up or 95 percent budget authority utilization performance for its fiscal year ending in 2000, or submit information (following the format of Appendix B of this NOFA) as part of its application supportive of its contention that it should have been included among those PHAs HUD listed on the HUD Home Page as having achieved either a 95 percent lease-up rate or 95 percent budget authority utilization rate for fiscal years ending in 1999. Appendix B of this NOFA indicates the methodology and data sources used by HUD to calculate the lease-up and budget authority utilization percentage rates for PHAs with fiscal years ending in 1999. Any PHA wishing to submit information to the GMC in connection with its 1999 fiscal year or 2000 fiscal year for the purposes described immediately above (so as to be eligible under category (c) to submit an application) will be required to use the same methodology and data sources indicated in Appendix B.

Moving To Work (MTW) agencies that are required to report under the Section 8 Management Assessment Program (SEMAP) shall be held to the 95 percent lease-up and budget authority utilization requirements referenced above, except where such an MTW agency provides information in its application demonstrating to HUD that a lower percentage is the result of the implementation of specific aspects of its program under its MTW Agreement with HUD. MTW agencies which are not required to report under SEMAP must submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 95 percent lease-up or budget authority utilization requirements.

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the vouchers.

(e) A PHA's application that does not comply with the requirements of 24 CFR 982.102 and this NOFA after the expiration of the 7-calendar day technical deficiency correction period will be rejected from processing.

(f) The PHA's application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Address for Submitting Applications" at the beginning of this NOFA.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

(i) The applicant has failed to achieve a minimum 85 percent submission rate for housing choice voucher and certificate resident records to HUD's Multifamily Tenant Characteristics System (MTCS), as set forth by 24 CFR Part 908 and Notice PIH 98–30, for the period ending December 1999.

VIII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Housing Choice Voucher Program (Section 8) information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

In accordance with 24 CFR 50.19(b)(11) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. This NOFA provides funding for these activities under 24 CFR part 982, which does not contain environmental review provisions because of the categorical exclusion of these activities from environmental review. Accordingly, under 24 CFR 50.19(c)(5), issuance of this NOFA is also categorically excluded from environmental review under NEPA.

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.857.

(D) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) Disclosures

HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: December 4, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Appendix A

HOUSING CHOICE VOUCHERS—FY 2001 FAIR SHARE ALLOCATIONS

Allocation area	Dollars	Units
Alabama	3,832,512	986
Alaska & Washington	8,490,178	1,466
Arizona	5,674,314	1,058
Arkansas	2,259,847	593
California	80,985,425	11,176
Colorado	6,109,188	1,008

HOUSING CHOICE VOUCHERS—FY 2001 FAIR SHARE ALLOCATIONS—Continued

Allocation area	Dollars	Units
Connecticut	5,822,038	891
Delaware	872,723	149
District of Columbia & Maryland	9,073,520	1,556
Florida	18,168,761	3,295
Georgia	9,376,338	1,762
Hawaii & Pacific Islands	2,952,114	407
Idaho	1,069,276	262
Illinois	21,352,392	3,626
Indiana	6,143,219	1,353
Iowa	3,311,913	803
Kansas	2,486,578	626
Kentucky	3,831,993	1,015
Louisiana	5,095,557	1,283
Maine	1,671,828	336
Massachusetts	14,279,752	2,112
Michigan	13,632,265	2,651
Minnesota	5,488,976	1,043
Mississippi	2,485,561	672
Missouri	5,662,051	1,337
Montana	1,187,042	245
Nebraska	1,905,039	445
Nevada	2,671,352	442
New Hampshire	1,495,658	243
New Jersey	16,581,017	2,210
New Mexico	1,678,279	383
New York	71,902,793	9,830
North Carolina	8,022,284	1,664
North Dakota	721,896	176
Ohio	15,518,163	3,266
Oklahoma	3,079,623	792
Oregon	4,588,121	948
Pennsylvania	18,177,238	3,558
Puerto Rico & Virgin Islands	3,726,802	1,005
Rhode Island	2,033,286	357
South Carolina	3,520,083	815
South Dakota	936,014	215
Tennessee	5,247,465	1,229
Texas	25,394,562	4,955
Utah	2,095,813	398
Vermont	1,019,047	179
Virginia	6,958,322	1,475
West Virginia	1,778,802	492
Wisconsin	7,908,238	1,655
Wyoming	439,954	105
US Total*	448,715,212	78,475

*Budget authority was reduced from $452,907,000 to $448,715,212 in order to correct the underfunding of four PHAs under the FY 2000 Fair Share NOFA due to a HUD error (see Section II(C)(3), Underfunding Corrections, of this NOFA). Vouchers have likewise been reduced from 79,000 to 78,475 in order to first fund the 525 vouchers that should have been funded for the four PHAs under the FY 2000 Fair Share NOFA. The four PHAs were located in the Alaska/Washington, Massachusetts, Ohio, and Oregon fair share allocation areas, so the dollar/voucher reductions were effectuated for these allocation areas consistent with the dollars and vouchers per PHA cited in Section II(C)(3) of this NOFA.

Appendix B

Methodology for Determining Lease-Up and Budget Authority Utilization Percentage Rates

Using data from the HUDCAPS system, HUD determined which PHAs met the 95% budget authority utilization or 95% lease-up criteria. The data used in the determination was based on PHA fiscal years ending in 1999. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA 1999 year combining the certificate and voucher programs.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD–52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA 1999 year for each funding increment which had an active contract term during all or a portion of the PHA year.

Example. PHA ABC Fiscal year 10/1/98 through 9/30/99.

HUD 52681 Approved Data:	
HAP	$2,500,000
Administrative Fee	250,000
Hard to House Fee	1,000
Audit	2,000
Total	2,753,000
Interest earned on administrative fee	(2,500)
Total contributions required	2,750,500

CALCULATION OF ANNUAL BUDGET AUTHORITY

Increments	Contract term	Total BA	ABA
001	11/01/98–10/31/99	$1,300,000	$1,191,667
002	01/01/99–12/31/99	1,200,000	900,000
003	04/01/99–03/31/00	950,000	475,000
004	07/01/99–06/30/00	1,500,000	375,000
Totals		4,950,000	2,941,667

Budget Authority Utilization

Total contributions required divided by $2,750,000
Annual budget authority equals $2,941,667
Budget Authority Utilization—93.5%

Lease-up Rate

The lease-up rate was determined by comparing the reserved units (funding increments active as of the end of the PHA 1999 year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for 1999.

Active funding increments awarded by HUD for special purposes such as litigation, relocation/replacement, housing conversions. Welfare to Work, and new units awarded to the PHA during the last twelve months were excluded from the reserved units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

Example.

Increments	Contract term	Units
001	11/01/98–10/31/99	242
002	01/01/99–12/31/99	224
003	04/01/99–03/31/00	178
004	07/01/99–06/30/00	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units		746

Unit months leased reported by PHA—8,726
Divided by 12—727
Units Leased—727

Lease-up Rate

Units leased—727
Divided by adjusted contract units equals—746
Lease-up Rate—97.5%

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Part IV

Department of Labor

Pension and Welfare Benefits Administration

Publication of Year 2000 Form M–1; Notice

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Publication of Year 2000 Form M–1

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice on the availability of the Year 2000 Form M–1.

SUMMARY: This document announces the availability of the Year 2000 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. A copy of this new form is attached.

FOR FURTHER INFORMATION CONTACT: Amy Turner, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219–7006.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g)(h) [1] and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2000 Form M–1

This document announces the availability of the Year 2000 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). A copy of this new form is attached.

This year's Form M–1 has been revised to incorporate clarifications already published by the Department of Labor's Pension and Welfare Benefits Administration (PWBA) in question-and-answer guidance with respect to the 1999 Form M–1. In addition, the filing deadlines for the Year 2000 Form M–1 are different from those for the Year 1999 Form M–1. Specifically, the Year 2000 Form M–1 is generally due March 1, 2001, with an extension until May 1, 2001 available. These Year 2000 deadlines were also previously published; they are included in the Department of Labor's regulations implementing the Form M–1 filing requirement and they were set forth in last year's Form M–1.

PWBA is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M–1 are available on the Internet at: *http://www.dol.gov/dol/pwba*. In addition, after printing, copies will be available by calling the PWBA toll-free publication hotline at 1–800–998–7542. Questions on completing the form are being directed to the PWBA help desk at (202) 219–8770.

Statutory Authority

Sec. 29 U.S.C. 1024, 1027, 1059, 1132(c)(5), 1135, 1171–1173, 1181–1183, 1191–1194; Sec. 101, Pub. L. 104–191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

Signed at Washington, DC, this 29th day of November, 2000.

Alan D. Lebowitz,

Deputy Assistant Secretary for Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

BILLING CODE 4510–29–P

[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g)(h) of ERISA.

2000 Form M-1

MEWA/ECE Form

This Form is Open to Public Inspection

Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

This report is required to be filed under section 101(g)(h) of the Employee Retirement Income Security Act of 1974 (as amended) and 29 CFR 2520.101-2.

➤ See separate instructions before completing this form.

OMB No. 1210-0116

Department of Labor
Pension and Welfare Benefits Administration

PART I REPORT IDENTIFICATION INFORMATION

Complete either Item **A** or Item **B**, as applicable.

A If this is an annual report, specify whether it is for:
(*1*) ☐ The 2000 calendar year; or
(2) ☐ The fiscal year beginning _____, _____ and ending _____, _____.

B If this is a special filing, specify whether it is:
(*1*) ☐ A 90-day origination report;
(2) ☐ An amended report; or
(*3*) ☐ A request for an extension.

PART II MEWA OR ECE IDENTIFICATION INFORMATION

1a Name and address of the MEWA or ECE	**1b** Telephone number of the MEWA or ECE
	1c Employer Identification Number (EIN)
	1d Plan Number (PN)
2a Name and address of the administrator of the MEWA or ECE	**2b** Telephone number of the administrator
	2c Employer Identification Number (EIN)
3a Name and address of the entity sponsoring the MEWA or ECE	**3b** Telephone number of the sponsor
	3c Employer Identification Number (EIN)

PART III REGISTRATION INFORMATION

4 Specify the most recent date the MEWA or ECE was originated ..... ➤ _____

5 Complete the following chart. (See Instructions for **Item 5**)

5a	5b	5c	5d	5e	5f	5g
Enter all States where the entity provides coverage.	Is the entity a licensed health insurance issuer in this State?	If you answer "yes" to **5b**, list any NAIC number.	If you answer "no," to **5b**, is the entity fully-insured?	If you answer "yes" to **5d**, enter the name of the insurer and its NAIC number.	Does the entity purchase stop-loss coverage?	If you answer "yes" to **5f**, enter the name of the stop-loss insurer and its NAIC number.
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	

For Paperwork Reduction Act Notice, see page 1 of the instructions. Form M-1

6 Of the States identified in **Item 5a**, list those States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

7 Total number of participants covered under the MEWA or ECE ..... ➤ _____

PART IV INFORMATION FOR COMPLIANCE WITH PART 7 OF ERISA

8a Has the MEWA or ECE been involved in any litigation or enforcement proceeding in which noncompliance with any provision of Part 7 of Subtitle B of Title I (Part 7) of ERISA was alleged? Answer for the year to which this filing applies and any time since then up to the date of completing this form. Answer "Yes" for any State or federal litigation or enforcement proceeding (including any administrative proceeding), whether the allegation concerns a provision under Part 7 of ERISA, a corresponding provision under the Internal Revenue Code or Public Health Service Act, a breach of any duty under Title I of ERISA if the underlying violation relates to a requirement under Part 7 of ERISA, or a breach of a contractual obligation if the contract provision relates to a requirement under Part 7 of ERISA. (The instructions to this form contain additional information that may be helpful in answering this question.) ..... ➤ ☐ Yes ☐ No

8b If you answered "Yes" to **Item 8a**, identify each litigation or enforcement proceeding. With respect to each, include (if applicable): (1) the case number, (2) the date, (3) the nature of the proceedings, (4) the court, (5) all parties (for example, plaintiffs and defendants or petitioners and respondents), and (6) the disposition. You may answer this question by attaching a copy of the complaint with the name of the MEWA or ECE, the disposition of the case, and the phrase "Item 8b Attachment," noted in the upper right corner.

9 Complete the following. (Note: The instructions to this form contain four detailed worksheets which may be helpful in completing this item. Please read the instructions carefully before answering the following questions.)

9a	Is the coverage provided by the MEWA or ECE in compliance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 and the Department's regulations issued thereunder? (See Worksheet A) .... ➤ ☐ Yes ☐ No ☐ N/A
9b	Is the coverage provided by the MEWA or ECE in compliance with the Mental Health Parity Act of 1996 and the Department's regulations issued thereunder? (See Worksheet B) ..... ➤ ☐ Yes ☐ No ☐ N/A
9c	Is the coverage provided by the MEWA or ECE in compliance with the Newborns' and Mothers' Health Protection Act of 1996 and the Department's regulations issued thereunder? (See Worksheet C) ..... ➤ ☐ Yes ☐ No ☐ N/A
9d	Is the coverage provided by the MEWA or ECE in compliance with the Women's Health and Cancer Rights Act of 1998? (See Worksheet D) ..... ➤ ☐ Yes ☐ No ☐ N/A

IF MORE SPACE IS REQUIRED FOR ANY ITEM, YOU MAY ATTACH ADDITIONAL PAGES. (SEE INSTRUCTIONS SECTION 2.4)

Caution: *Penalties may apply in the case of a late or incomplete filing of this report.*

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including any accompanying attachments, and to the best of my knowledge and belief, it is true and correct. Under penalty of perjury and other penalties set forth in the instructions, I also declare that, unless this is an extension request, this report is complete.

Signature of administrator ➤ _____ Date ➤ _____

Type or print name of administrator ➤ _____

Department of Labor
Pension and Welfare Benefits Administration

Year 2000
Instructions for Form M-1
Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

ERISA refers to the Employee Retirement Income Security Act of 1974, as amended

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA. You are required to give us the information. We need it to determine whether the MEWA or ECE is operating according to law. You are not required to respond to this collection of information unless it displays a current, valid OMB control number.

The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

Learning about the law or the form	Preparing the form
2 hrs.	50 min. - 1 hr and 35 min.

Contents

The instructions are divided into three main sections.

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Changes to Note for 2000

- This year's Form M-1 has been revised to incorporate clarifications already published by the Department of Labor's Pension and Welfare Benefits Administration in question-and-answer guidance with respect to the 1999 Form M-1. This revised Form M-1 is intended to incorporate all comprehensive guidance about the scope of the reporting requirement for the Year 2000.
- In addition, the filing deadlines for the Year 2000 Form M-1 are different from those for the Year 1999 Form M-1. Specifically, the Year 2000 Form M-1 is generally due March 1, 2001, with an extension until May 1, 2001 available. These Year 2000 deadlines were also previously published; they are included in the Department of Labor's regulations implementing the Form M-1 filing requirement and they were set forth in last year's Form M-1.

Introduction

This form is required to be filed under section 101(g){h}* and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101-2.

The Department of Labor, Pension and Welfare Benefits Administration (PWBA) is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M-1 are available by calling the PWBA toll-free publication hotline at 1-800-998-7542 and on the Internet at: http://www.dol.gov/dol/pwba. If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the **PWBA help desk** at **(202) 219-8770**.

All Form M-1 reports are subject to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report.

SECTION 1

1.1 Definitions

"Administrator"

For purposes of this report, the "administrator" is the person specifically designated by the terms of the MEWA or ECE. However, if the MEWA or ECE is a group health plan and the administrator is not so designated, the "plan sponsor" is the administrator. ("Plan sponsor" is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.) Moreover, in the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the MEWA or ECE) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.

"Employer Identification Number" or "EIN"

An EIN is a nine-digit employer identification number. For example, 00-1234567. Entities who do not have an EIN can apply for one on Form SS-4, Application for Employer Identification Number. This form can be obtained at most IRS or Social Security Administration offices. PWBA does NOT issue EINs.

"Entity Claiming Exception" or "ECE"

For purposes of this report, the term "entity claiming exception" or "ECE" means any plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, and that claims it is not a MEWA because the plan or other arrangement claims the exception relating to plans established or maintained pursuant to one or more collective bargaining

* Both the Small Business Job Protection Act of 1996 (Pub. L. 104-188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

agreements (contained in section 3(40)(A)(i) of ERISA).

The administrator of an ECE must file this report each year for the first three years after the ECE is "originated". (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

"Employee Welfare Benefit Plan"
In general, an employee welfare benefit plan means any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent such plan, fund, or program provides its participants or beneficiaries the benefits listed in section 3(1) of ERISA (including benefits for medical care).

"Excepted benefits"
Part 7 of Subtitle B of Title I (Part 7) of ERISA does not apply to any group health plan or group health insurance issuer in relation to its provision of excepted benefits.

Certain benefits that are generally not health coverage are excepted in all circumstances. These benefits are: coverage only for accident (including accidental death and dismemberment), disability income insurance, liability insurance (including general liability insurance and automobile liability insurance), coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, credit-only insurance (for example, mortgage insurance), and coverage for on-site medical clinics.

Other benefits that generally are health coverage are excepted if certain conditions are met. Specifically, limited scope dental benefits, limited scope vision benefits, and long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the group health plan. For more information on these limited excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(3).

In addition, noncoordinated benefits may be excepted benefits. The term "noncoordinated benefits" refers to coverage for a specified disease or illness (such as cancer-only coverage) or hospital indemnity or other fixed dollar indemnity insurance (such as insurance that pays $100/day for a hospital stay as its only insurance benefit), if three conditions are met. First, the benefits must be provided under a separate policy, certificate, or contract of insurance. Second, there can be no coordination between the provision of these benefits and another exclusion of benefits under a group health plan maintained by the same plan sponsor. Third, benefits must be paid without regard to whether benefits are provided with respect to the same event under a group health plan maintained by the same plan sponsor. For more information on these noncoordinated excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.701.732(b)(4).

Finally, supplemental benefits may be excepted benefits if certain conditions are met. Specifically, the benefits are excepted only if they are provided under a separate policy, certificate or contract of insurance, and the benefits are medicare supplemental (commonly known as "Medigap" or "MedSupp") policies, CHAMPUS supplements, or supplements to certain employer group health plans. Such supplemental coverage cannot duplicate primary coverage and must be specifically designed to fill gaps in primary coverage, coinsurance, or deductibles. Note that retiree coverage under a group health plan that coordinates with Medicare may serve a supplemental function similar to that of a Medigap policy. However, such employer-provided retiree "wrap around" benefits are not excepted benefits (because they are expressly excluded from the definition of a Medicare supplement policy in section 1882(g)(1) of the Social Security Act). For more information on supplemental excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(5).

"Group Health Plan"
In general, a group health plan means an employee welfare benefit plan to the extent that the plan provides benefits for medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. See ERISA section 733(a).

"Health Insurance Issuer" or "Issuer"
The term "health insurance issuer" or "issuer" is defined, in pertinent part, in § 2590.701-2 of the Department's regulations as "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law which regulates insurance . . . . Such term does not include a group health plan."

"Multiple Employer Welfare Arrangement" or "MEWA"
In general, a multiple employer welfare arrangement (MEWA) is an employee welfare benefit plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that the term does not include any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. See ERISA section 3(40).

(Note: Many States regulate entities as a MEWA using their own, State definition of the term. Whether or not an entity meets a State's definition of a MEWA for purposes of regulation under State law is a matter of State law.)

For more information on MEWAs, visit the Pension and Welfare Benefits Administration's (PWBA's) website at www.dol.gov/dol/pwba or call the PWBA toll free publications hotline at 1-800-998-7542 and ask for the booklet entitled, "MEWAs: Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and State Regulation."

For information on State MEWA regulation, contact your State Insurance Commissioner's Office.

"Originated"
For purposes of this report, a MEWA or ECE is "originated" each time any of the following events occur:

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the merger were last originated at least three years prior to the merger); or

(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

Therefore, a MEWA or ECE may be originated more than once.

"Plan Number" or "PN"
A PN is a three-digit number assigned to a plan or other entity by an employer or plan administrator. For plans or other entities providing welfare benefits, the first plan number should be number 501 and additional plans should be numbered consecutively.

"Sponsor"
For purposes of this report, the "sponsor" means:

(1) If the MEWA or ECE is a group health plan, the sponsor is the "plan sponsor," which is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan; or

(2) If the MEWA or ECE is not a group health plan, the sponsor is the entity that establishes or maintains the MEWA or ECE.

1.2 Who Must File

General rules
The administrator of a multiple employer welfare arrangement (MEWA) generally must file this report for every calendar year, or portion thereof, that the MEWA offers or provides benefits for medical care to the employees of two or more employers (including one or more self-employed individuals). The administrator of an entity claiming exception (ECE) must file the report if the ECE was last originated at any time within three years before the annual filing due date. (See the definition of "originated" in Section 1.1 and the discussion of when to file in Section 1.3.) (**Caution:** An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

Exception
Irrespective of the general rules (described above), in no event is reporting required by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees (or to their beneficiaries).

Additional guidance
(1) In response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of a MEWA or ECE if the MEWA or ECE meets any of the following conditions –

(i) It provides coverage that consists solely of excepted benefits (defined above),which are not subject to Part 7 of ERISA. (However, if the MEWA or ECE provides coverage that consists both of excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to file the Form M-1.)

(ii) It is an employee welfare benefit plan that is not subject to ERISA, including a governmental plan, church plan, or plan maintained only for the purpose of complying with worker's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively.

(iii) It provides coverage only through employee welfare benefit plans that are not covered by ERISA, including governmental plans, church plans, and plans maintained only for the purpose of complying with worker's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), and 4(b)(3) of ERISA, respectively.

(2) In addition, in response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of an entity that would not constitute a MEWA or ECE but for the following circumstances:

(i) It provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles applied under section 414 of the Internal Revenue Code.

(ii) It is created by a change in control of businesses (such as a merger or acquisition) that is for a bona fide business purpose (that is, for a purpose other than avoiding Form M-1 filing) and is temporary in nature (that is, it does not extend beyond the end of the plan year following the year in which the change in control occurs).

(iii) It is a group health plan that covers a very small number of participants who are not employees (or former employees) of the plan sponsor, such as non-employee members of the board of directors or independent contractors. The number of non-employee participants covered by the plan is very small if it does not exceed one percent of the total number of participants, determined as of the last day of the year to be reported (or, in the case of a 90-day origination report, determined as of the 60th day following the origination date).

Good Faith Determinations Regarding Whether an Entity is an ECE
Accordingly, subject to the exceptions described above, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is required to file for three years following an origination.

Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time of the filing that the entity is maintained pursuant to one or more collective bargaining agreements, then the entity is an ECE. Moreover, if the administrator makes a further good faith determination at the time of the filing that the ECE is not required to file because its most recent origination was more than three years ago, then a filing is not required. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for years after the determination that the entity is a MEWA.

In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's otigination date, the administrator's determination does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

1.3 When to File

General Rule
The administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than March 1 following any calendar year for which a filing is required (unless March 1 is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the following business day).

90-Day Origination Report
In general, an expedited filing is also required after a MEWA or ECE is originated. To satisfy this requirement, the administrator must complete and file the Form M-1 within 90 days of the date the MEWA or ECE is originated (unless the last day of the 90-day period is a Saturday, Sunday, or federal boliday, in which case the form must be filed no later than the following business day).

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Exception to the 90-Day Origination Report Requirement
No 90-Day Origination Report is required if the entity was originated in October, November, or December.

Extensions
A one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension. To request an extension, the administrator must: (1) complete Parts I and II of the Form M-1 (and check Box B(3) in Part I); (2) sign, date, and type the administrator's name at the end of the form; and (3) file this request for extension no later than the normal due date for the report. In such a case, the administrator will have an additional 60 days to file a completed Form M-1. A copy of this request for extension must be attached to the completed Form M-1 when filed.

1.4 Where to File
Completed copies of the Form M-1 should be sent to:

Public Documents Room, Pension and Welfare Benefits Administration
Room N-5638, U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

1.5 Penalties
ERISA provides for the assessment or imposition of a penalty for failure to file a report, failure to file a completed report, and late filings. In the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,000 a day for each day that the administrator of the MEWA or ECE fails or refuses to file a complete report. In addition, certain other penalties may apply.

SECTION 2

2.1 Year to be Reported
General rule
The administrator of a MEWA or ECE that is required to file should complete the form using the previous calendar year's information. (Thus, for example, for a filing that is due by March 1, 2001, calendar year 2000 information should be used.)

Fiscal year exception
The administrator of a MEWA or ECE that is required to file may report using fiscal year information if the administrator of the MEWA or ECE has at least six continuous months of fiscal year information to report. (Thus, for example, for a filing that is due by March 1, 2001, fiscal year 2000 information may be used if the administrator has at least six continuous months of fiscal year 2000 information to report.) In this case, the administrator should check Box A(2) in Part I and specify the fiscal year.

2.2 The 90-Day Origination Report
When a MEWA or ECE is originated, a 90-Day Origination Report is generally required. (See Section 1.3 on When to File). When filing a 90-Day Origination Report, the administrator is required to complete the Form M-1 using information based on at least 60 continuous days of operation by the MEWA or ECE.

Remember, there is an exception to the 90-Day Origination Report requirement. No 90-Day Origination Report is required if the entity was originated in October, November, or December.

2.3 Signature and Date
The administrator must sign and date the report. The signature must be original. The name of the individual who signed as the administrator must be typed or printed clearly on the line under the signature line.

2.4 Attaching Additional Pages
If more space is needed to complete any item on the Form M-1, additional pages may be attached. Additional pages must be the same size as this form (8 ½" x 11") and should include the name of the MEWA or ECE, the Item number, and the word "Attachment" in the upper right corner. In addition, the attachment for any item should be in a format similar to that item on the form.

2.5 Amended Report
To correct errors and/or omissions on a previously filed Form M-1, submit a completed Form M-1 with Part I, Box B(2) checked and an original signature. When filing an amended report, answer all questions and circle the amended line numbers.

SECTION 3
Important: "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

3.1 Line-By-Line Instructions
Part I - Report Identification Information
Complete either Item A or Item B, as applicable.

Annual Reports: If this is an annual report, check either box A(1) or box A(2).

Box A(1): Check this box if calendar year information is being used to complete this report. (See Section 2.1 on Year to be Reported.)

Box A(2): Check this box if fiscal year information is being used to complete this report. Also specify the fiscal year. (For example, if fiscal year 2000 information is being used instead of calendar year 2000 information, specify the date the fiscal year begins and ends.) (See Section 2.1 on Year to be Reported.)

Special Filings: If this is a special filing, check either box B(1), box B(2), or box B(3).

Box B(1): Check this box if this filing is a 90-Day Origination Report. (See Section 1.2 on Who Must File, Section 1.3 on When to File, and Section 2.2 on 90-Day Origination Reports.)

Box B(2): Check this box if this filing is an Amended Report. (See Section 2.5 on Amended Reports.)

Box B(3): Check this box if the administrator of the MEWA or ECE is requesting an extension. (See Section 1.3 on When to File.)

Part II - MEWA or ECE Identification Information

Items 1a through 1d: Enter the name and address of the MEWA or ECE, the telephone number of the MEWA or ECE, and any employer identification number (EIN) and plan number (PN) used by the MEWA or ECE in reporting to the Department of Labor or the Internal Revenue Service. If the MEWA or ECE does not have any EINs associated with it, leave Item 1c blank. If the MEWA or ECE does not have any PNs associated with it, leave Item 1d blank. In answering these questions, list only EINs and PNs used by the MEWA or ECE itself and not those used by group health plans or employers that purchase coverage through the MEWA or ECE. For more information on EINs or PNs, see Section 1.1 on Definitions.

Items 2a through 2c: Enter the name and address of the administrator of the MEWA or ECE, the telephone number of the administrator, and the EIN used by the administrator in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the administrator as a separate entity. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "administrator," and on EINs or PNs, see Section 1.1 on Definitions.

Items 3a through 3c: Enter the name and address of the entity sponsoring the MEWA or ECE, the telephone number of the sponsor, and any EIN used by the sponsor in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the sponsor. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "sponsor," and on EINs or PNs, see Section 1.1 on Definitions. If there is no such entity, leave Item 3 blank and skip to Item 4.

Part III - Registration Information

Item 4: Enter the date the MEWA or ECE was most recently "originated." For this purpose, see the definition of "originated" in Section 1.1.

Item 5: Complete the chart. If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.) When completing the chart, complete Item 5a first. Then for each row, complete Item 5b through Item 5g as it applies to the State listed in Item 5a.

Item 5a. Enter all States in which the MEWA or ECE provides benefits for medical coverage. For this purpose, list the State(s) where the employers (of the employees receiving coverage) are domiciled. In answering this question, a "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Northern Mariana Islands. Enter one State per row.

Item 5b. For each State listed in Item 5a, specify whether the MEWA or ECE is licensed or otherwise authorized to operate as a health insurance issuer in the State listed in that row. (For a definition of the term "health insurance issuer," see Section 1.1.) For more information on whether an entity that is a licensed or registered MEWA in a State meets the definition of a health insurance issuer in that State, contact the State Insurance Commissioner's Office.

Item 5c. For each "yes" answer in Item 5b, enter the National Association of Insurance Commissioners (NAIC) number.

Item 5d. For each "no" answer in Item 5b, specify whether the MEWA or ECE is fully-insured through one or more health insurance issuers in each State.

Item 5e. For each "yes" answer in Item 5d, enter the name of the insurer, and its NAIC number (if available). If there is more than one insurer, enter all insurers, and their NAIC numbers (if applicable).

Item 5f. In each State listed in Item 5a, specify whether the MEWA or ECE has purchased any stop-loss coverage. For this purpose, stop-loss coverage includes any coverage defined by the State as stop-loss coverage. For this purpose, stop-loss coverage also includes any financial reimbursement instrument that is related to liability for the payment of health claims by the MEWA or ECE, including reinsurance and excess loss insurance.

Item 5g. For each "yes" answer in Item 5f, enter the name of the stop-loss insurer, and its NAIC number (if available). If there is more than one stop-loss insurer, enter all stop-loss insurers, and their NAIC numbers (if applicable).

Item 6: Of the States identified in Item 5a, identify all States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

For example, consider a MEWA that offers or provides coverage to the employees of six employers. Two employers are located in State X and 70 participants in the MEWA receive coverage through these two employers. Three employers are located in State Y and 30 participants in the MEWA receive coverage through these three employers. Finally, one employer is located in State Z and 200 participants in the MEWA receive coverage through this employer. In this example, the administrator of the MEWA should specify State X and State Z under Item 6 because the MEWA conducts 23⅓% of its business in State X (70÷300 = 23⅓%) and 66⅔% of its business in State Z (200÷300 = 66⅔%). However, the administrator should not specify State Y because the MEWA conducts only 10% of its business in State Y (30÷300 = 10%).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 7: Identify the total number of participants covered under the MEWA or ECE. For more information on determining the number of participants, see the Department of Labor's regulations at 29 CFR 2510.3-3(d).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Part IV - Information for Compliance with Part 7 of ERISA

Background Information on Part 7 of ERISA: On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted. On September 26, 1996, both the Mental Health Parity Act of 1996 (MHPA) and the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) were enacted. On October 21, 1998, the Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted. All of the foregoing laws amended Part 7 of Subtitle B of Title I (Part 7) of ERISA with new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). These provisions generally are substantively identical.

The Departments of Labor, the Treasury, and Health and Human Services first issued interim final regulations implementing HIPAA's portability, access, and renewability provisions on April 1, 1997 (published in the Federal Register on April 8, 1997, 62 FR 16893). Two clarifications of the HIPAA regulations were published in the Federal Register on December 29, 1997 at 62 FR 67687. Regulations implementing the MHPA provisions were published in the Federal Register on December 22, 1997 at 62 FR 66931. Also, regulations implementing the substantive provisions of the Newborns' Act were published in the Federal Register on September 9, 1998 at 63 FR 48372 and on October 27, 1998 at 63 FR 57545. Moreover, the notice requirements with respect to group health plans that provide coverage for maternity or newborn infant coverage are described in the Department's summary plan description content regulations at § 2520.102-3(u), 63 FR 48372 (September 9, 1998). Finally, the Department of Labor has published two sets of informal, question-and-answer guidance on WHCRA. These sets of question-and-answer guidance are available on the

Department's website at www.dol.gov/dol/pwba and via the Pension and Welfare Benefits Administration's toll-free publications hotline at 1-800-998-7542.

General Information Regarding the Applicability of Part 7: In general, the foregoing provisions apply to group health plans and health insurance issuers in connection with a group health plan.

Many MEWAs and ECEs are group health plans or health insurance issuers. However, even if a MEWA or ECE is neither a group health plan nor a health insurance issuer, if

the MEWA or ECE offers or provides benefits for medical care through one or more group health plans, the coverage is required to comply with Part 7 of ERISA and the MEWA or ECE is required to complete Item 8a through Item 9d.

Relation to Other Laws: States may, under certain circumstances, impose stricter laws with respect to health insurance issuers. Generally, questions concerning State laws should be directed to the State Insurance Commissioner's Office.

For More Information: To obtain copies of the Department of Labor's booklet, "Questions and Answers: Recent Changes in Health Care Law," which includes information on HIPAA, MHPA, the Newborns' Act, and WHCRA, you may call the Pension and Welfare Benefits Administration's (PWBA's) toll-free publication hotline at 1-800-998-7542. This booklet is also available on the Internet at: www.dol.gov/dol/pwba. If you have any additional questions concerning Part 7 of ERISA, you may call the PWBA office nearest you or the PWBA technical assistance hotline at 202-219-8776.

Items 8a and 8b: With respect to Item 8a, check "yes" or "no" as applicable. For this purpose, do not include any audit that does not result in required corrective action. If you answer "yes" under Item 8a, identify, in Item 8b, any such litigation or enforcement proceeding.

Item 9a: The portability requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added sections 701, 702, and 703 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations). Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet A may be helpful. **Item 9b:** The Mental Health Parity Act of 1996 (MHPA) added section 712 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small group health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide both medical/surgical benefits and mental health benefits.

(4) The MEWA or ECE offers or provides coverage only to small employers (as described in the small employer exemption contained in section 712(c)(1) of ERISA and § 2590.712(e) of the Department's regulations).

(5) The coverage has satisfied the requirements for the increased cost exemption (described in section 712(c)(2) of ERISA and § 2590.712(f) of the Department's regulations).

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet B may be helpful.

Item 9c: The Newborns' and Mothers' Health Protection Act of 1996 (Newborn's Act) added section 711 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE does not provide benefits for hospital lengths of stay in connection with childbirth.

(2) The MEWA or ECE is subject to State law regulating such coverage, instead of the federal Newborns' Act requirements, in all States identified in Item 5a, in accordance with section 711(f) of ERISA and § 2590.711(e) of the Department's regulations.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet C may be helpful.

Item 9d: The Women's Health and Cancer Rights Act of 1998 (WHCRA) added section 713 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide medical/surgical benefits with respect to a mastectomy.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet D may be helpful.

3.2 Voluntary Worksheets

Voluntary worksheets, which may be used to help assess an entity's compliance with Part 7 of ERISA, are included on the following pages of these instructions. These worksheets may also be helpful in answering Items 9a through 9d of the Form M-1.

Worksheet A (Form M-1)	Determining Compliance with the HIPAA Provisions in Part 7 of Subtitle B of Title I of ERISA Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the HIPAA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to any of the questions below, you should review your entity's operations because the entity may not be in full compliance with the HIPAA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) Does the coverage provided by the MEWA or ECE issue complete certificates of creditable coverage automatically to individuals who lose coverage under the MEWA or ECE and to individuals upon request? ..... ➤ ☐ Yes ☐ No

- Section 701(e) of ERISA and § 2590.701-5 of the Department's regulations require group health plans and group health insurance issuers to issue, free of charge, certificates of creditable coverage automatically to individuals who lose coverage and to any individual upon request.
- To be complete, the certificate must include: the date, the name of the plan, the participant and/or beneficiary's name and identification information, the plan administrator's contact information (name, address, and telephone number, a telephone number to call for further information (if different than the plan administrator's number)), and the individual's creditable coverage information, as described below. (**TIP: Don't forget dependent information.)
- With respect to an individual's creditable coverage information, the certificate must reflect either – (1) that an individual has at least 18 months of creditable coverage; or (2) the date any waiting period (or affiliation period) began and the date creditable coverage began. In addition, the certificate must reflect either – (1) the date creditable coverage ended; or (2) that coverage is continuing. (**TIP: Don't forget waiting period information.)
- For a certificate issued automatically upon loss of coverage, the certificate should reflect the last continuous period of coverage. For a certificate issued upon request, the certificate should reflect each period of continuous coverage that the individual had in the 24 months prior to the date of request (up to 18 months of creditable coverage).
- Most health coverage is creditable coverage. However, coverage consisting solely of excepted benefits is not creditable coverage. Examples of benefits that may be excepted benefits include limited-scope dental benefits, limited-scope vision benefits, hospital indemnity benefits, and Medicare supplemental benefits.
- If you have a question about whether health coverage offered by a MEWA or ECE is creditable coverage or is coverage consisting solely of excepted benefits, contact the PWBA office nearest you or call the PWBA Division of Technical Assistance and Inquiries at 202-219-8776. This is not a toll-free number.

(2) Does the coverage provided by the MEWA or ECE make available a procedure for individuals to request and receive certificates? ..... ➤ ☐ Yes ☐ No

- Section 2590.701-5(a)(4)(ii) of the Department's regulations requires group health plans and group health insurance issuers to establish a procedure for individuals to request and receive certificates.

(3) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are notices provided informing individuals of the exclusion, the terms of the exclusion, and the right of individuals to demonstrate creditable coverage to reduce the period of the exclusion? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-3(c) of the Department's regulations requires that a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion with respect to a participant or a dependent of the participant before notifying the participant, in writing, of the existence and terms of any preexisting condition exclusion under the plan and of the rights of individuals to demonstrate creditable coverage.

Question # 3 is continued on the next page.

- **TIP: Check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated, or must comply with HIPAA's limitations on preexisting condition exclusion periods, including this general notice provision, the individual notice provision described in Question #4, and HIPAA's other limits on preexisting condition exclusion periods, described in Question #5.

- The description of the rights of individuals to demonstrate creditable coverage includes a description of the right of the individual to request a certificate from a prior plan or issuer, if necessary, and a statement that the current plan or issuer will assist in obtaining a certificate from any prior plan or issuer, if necessary.

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(4) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are letters of determination and notification of creditable coverage provided within a reasonable time after the receipt of individuals' creditable coverage information? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-5(d) of the Department's regulations states that, within a reasonable time following receipt of evidence of creditable coverage, a plan or issuer seeking to impose a preexisting condition exclusion with respect to an individual is required to disclose to the individual, in writing, its determination of any preexisting condition exclusion period that applies to the individual, and the basis for such determination, including the source and substance of any information on which the plan or issuer relied.

- In addition, the plan or issuer is required to provide the individual with a written explanation of any appeal procedures established by the plan or issuer, and with a reasonable opportunity to submit additional evidence of creditable coverage.

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(5) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion, does it comport with HIPAA's other limitations on preexisting condition exclusions? ..... ➤ ☐ Yes ☐ No ☐ N/A

- **TIP: Again, check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated, or must comply with HIPAA's limitations on preexisting condition exclusion periods.

- Section 701(a)(1) of ERISA and § 2590.701-3(a)(1)(i) of the Department's regulations provide that a plan or issuer may impose a preexisting condition exclusion period only if it relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the individual's enrollment date in the plan or coverage. (Therefore, genetic information is not treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.) (In addition, for health insurance issuers, State law may prescribe a shorter period than the 6-month period that generally applies.)

- The enrollment date, for purposes of the HIPAA limitations on preexisting condition exclusion periods, is the first day of coverage or, if there is a waiting period, the first day of the waiting period. (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 6-month look-back period ends on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(2) of ERISA and section § 2590.701-3(a)(1)(ii) of the Department's regulations provide that any preexisting condition exclusion period is limited to 12 months (18 months for late enrollees) after an individual's enrollment date in the plan or coverage. (For health insurance issuers, State law may prescribe a shorter period.) (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 12-month (or 18-month for late enrollees) maximum preexisting condition exclusion period begins on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(3) of ERISA and § 2590.701-3(a)(1)(iii) of the Department's regulations provide that any preexisting condition exclusion period is reduced by the number of days of an individual's creditable coverage prior to his or her enrollment date.

- When determining the number of days of creditable coverage, the plan or issuer is not required to take into account any days that occur prior to a significant break in coverage. The federal law defines a significant break in coverage as a break of 63 days or more. However, State law applicable to health insurance coverage offered or provided by health insurance issuers may provide for a longer period.

- In any case, section 701(d) of ERISA and § 2590.701-3(b) provide that a group health plan, and a group health insurance issuer, may not impose any preexisting condition exclusion period with regard to a child who enrolls in a group heath plan within 30 days of birth, adoption, or placement for adoption and who does not incur a subsequent significant break in coverage. In addition, a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion relating to pregnancy. (For health insurance issuers, State law may further restrict the extent to which a preexisting condition exclusion may be imposed.)

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(6) Does the coverage provided by the MEWA or ECE provide notices of special enrollment rights to employees who are eligible to enroll in the plan or coverage? ..... ➤ ☐ Yes ☐ No

- Section 2590.701-6(c) of the Department's regulations requires that, on or before the time an employee is offered the opportunity to enroll in a group health plan or coverage, the plan or issuer provide the employee with a description of the plan's special enrollment rules.

- For this purpose, the plan may use the following model description of special enrollment rules:

  If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

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(7) Does the coverage provided by the MEWA or ECE provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption? ..... ➤ ☐ Yes ☐ No

- Section 701(f) of ERISA and § 2590.701-6 of the Department's regulations require group health plans, and group health insurance issuers, if certain conditions are met, to permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if the individual either – (1) has a new dependent through marriage, birth, adoption, or placement for adoption; or (2) loses eligibility for other group health plan or health insurance coverage or employer contributions towards the other coverage terminate.

- **TIP: Ensure that the MEWA or ECE provides special enrollment to all individuals who qualify. Among other things, this includes individuals who lose eligibility for individual market coverage, individuals who voluntarily terminate employment and lose group health plan coverage (even if they are eligible for COBRA continuation coverage), individuals who exhaust COBRA, children who "age out" of eligibility under another parent's group health plan, individuals who move out of a group health plan's HMO service area, and individuals whose employers cease contributing towards their group health plan coverage (even if coverage does not cease).

- For individuals who special enroll after marriage or loss of other coverage, coverage must be made effective no later than on the first day of the first calendar month following the date the completed request for enrollment is received. For individuals who special enroll after birth, adoption, or placement for adoption, coverage most be made effective no later than the date of such birth, adoption, or placement for adoption. (**TIP: Ensure that effective dates of coverage for special enrollees are correct.)

- For State laws applicable to health insurance issuers that may provide individuals with additional special enrollment rights, check with an attorney or the Insurance Commissioner's Office in your State.

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(8) Does the coverage provided by the MEWA or ECE provide rules for eligibility (including continued eligibility) that comply with the nondiscrimination requirements that prohibit discrimination against any individual or a dependent based on any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(a) of ERISA and § 2590.702(a) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not establish rules for eligibility (including continued eligibility, rules defining any applicable waiting periods, and rules relating to late and special enrollment) of any individual to enroll under the terms of the plan based on a health factor.

- The health factors are: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability.

- However, nothing requires a plan or issuer to provide particular benefits other than those provided under the terms of the plan or coverage. In addition, nothing prevents a plan or issuer from establishing limitations or restrictions on the amount, level, extent, or nature of benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

- **TIP: Ensure that the plan does not require individuals to present evidence of insurability in order to enroll in the plan, even at late enrollment.

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(9) Does the coverage provided by the MEWA or ECE comply with the nondiscrimination requirements that prohibit requiring any individual (as a condition of enrollment or continued enrollment) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(b) of ERISA and § 2590.702(b) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor (defined above).

- However, nothing restricts the amount that an employer may be charged for coverage under a group health plan and nothing prevents a plan or issuer from establishing premium discounts or rebates or modifying applicable copayments or deductibles in return for adherence to bona fide wellness programs.

(10) If the entity is a group health plan which is a multiemployer plan or a MEWA, does it comply with the guaranteed renewability requirements, which generally prohibit it from denying an employer whose employees are covered under a group health plan continued access to the same or different coverage under the terms of the plan? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 703 of ERISA provides that a group health plan that is a multi-employer plan or a MEWA may not deny an employer whose employees are covered under the plan continued access to the same or different coverage under the terms of the plan, other than: for nonpayment of contributions; for fraud or other intentional misrepresentation of material fact by the employer; for noncompliance with material plan provisions; because the plan is ceasing to offer any coverage in a geographic area; in the case of a plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan acts without regard to the claims experience of the employer or any health factor in relation to those individuals or their dependents; and for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.

- For other laws applicable to health insurance issuers that may provide additional guaranteed renewability requirements, check with an attorney or the Insurance Commissioner's Office in your State.

Worksheet B (Form M-1)	Determining Compliance with the Mental Health Parity Act (MHPA) Provisions in Part 7 of Subtitle B of Title I of ERISA Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the MHPA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the question below, you should review your entity's operations because the entity may not be in full compliance with the MHPA provisions in Part 7 of ERISA. If you need help answering this question or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

Q. If the MEWA or ECE offers or provides coverage for both mental health benefits and medical/surgical benefits, does the coverage comply with the requirements of the MHPA provisions, which are contained in section 712 of ERISA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 712 of ERISA and § 2590.712 of the Department's regulations generally provide for parity in the application of aggregate lifetime dollar limits and in the application of annual dollar limits between benefits for medical and surgical care and benefits for mental health coverage.

- These provisions do not require a group health plan or group health insurance coverage to provide any mental health coverage. Further, MHPA does not apply to benefits for treatment of substance abuse or chemical dependency.

- There are also exemptions for small employers and certain plans or coverage with increased costs.

- Finally, MHPA does not apply to benefits for services furnished on or after September 30, 2001.

- To find out more about these provisions, you can call the PWBA toll-free publication hotline at 1-800-998-7542 and request a copy of "Recent Changes in Health Care Law." This information can also be downloaded from the PWBA website at: www.dol.gov/dol/pwba. If you have questions, you can call the PWBA office nearest you or call the PWBA Division of Technical Assistance and Inquiries at 202-219-8776.

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Worksheet C (Form M-1)	**Determining Compliance with the Newborns' and Mothers' Health Protection Act (Newborns' Act) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the Newborns' Act provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to either of the questions below, you should review your entity's operations because the entity may not be in full compliance with the Newborns' Act provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides benefits for hospital stays in connection with childbirth and is subject to the Newborns' Act, does the coverage comply with the Newborns' Act's substantive requirements, which are contained in section 711 of ERISA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 711 of ERISA and § 2590.711 of the Department's regulations generally provide that a group health plan, and a group health insurance issuer, that offers benefits for hospital lengths of stay in connection with childbirth may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or her newborn child, following a vaginal delivery to less than 48 hours, and following a cesarean section to less than 96 hours, unless the attending provider, in consultation with the mother, decides to discharge earlier.

- In addition, such a plan or issuer may not require that the provider obtain authorization from the plan or issuer for prescribing any length of hospital stay up to 48 hours following a vaginal delivery and up to 96 hours following a cesarean section. Nor may such a plan or issuer penalize an attending provider for providing care in a manner consistent with this law or provide incentives to an attending provider to provide care in a manner that is inconsistent with this law. Nor may such a plan or issuer deny the mother or newborn eligibility or continued eligibility, or provide incentives to mothers to encourage them to accept less than the minimum length of stay required. Nor may such a plan or issuer restrict benefits for any portion of a period within a hospital length of stay required by this law in a manner that is less favorable than the benefits provided for any preceding portion of the stay.

- **TIP: Check whether the federal Newborns' Act's requirements in section 711 of ERISA apply, or whether the coverage is instead subject to State law regulating such coverage. For this purpose, the following information is helpful:

  (A) Self-insured coverage: The federal Newborns' Act's requirements in section 711 of ERISA apply to self-insured benefits offered in connection with childbirth.

  (B) Insured coverage: On the other hand, State law (rather than federal law) applies to health insurance coverage offered in connection with childbirth if the State law meets certain criteria specified in ERISA section 711(f). Based on a preliminary review of State laws as of July 1, 1999, State law rather than federal law applies to health insurance coverage offered in connection with childbirth in the following States:

  Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia.

  Moreover, the following States appear to have a State law applicable to health insurance coverage that references the federal Newborns' Act provisions:

  Delaware, Hawaii, Idaho, and Oregon.

  Finally, the following States and other jurisdictions do not appear to have a law regulating coverage for newborns and mothers that meets the criteria specified in section 711(f) of ERISA. Therefore, the federal Newborns' Act provisions appear to apply to health insurance coverage in the following States:

  Michigan, Mississippi, Nebraska, Utah, Vermont, Wisconsin, Wyoming, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Northern Mariana Islands.

(2) If the MEWA or ECE offers or provides benefits in connection with childbirth, are the disclosure requirements under the Newborns' Act satisfied? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2520.102-3(u) of the Departments regulations requires all group health plans providing maternity benefits to include a statement in their summary plan descriptions advising individuals of the Newborns' Act's requirements. (Note: Parallel disclosure requirements are contained in section 711(d) of ERISA, if applicable (see discussion of federal Newborns' Act applicability above under Question 1).)

- For this purpose, a MEWA or ECE that is subject to the Newborns' Act disclosure requirements through ERISA may use the following sample language:

  Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

- A similar disclosure requirement applies to nonfederal governmental plans. For mandated language required to be used with respect to such plans, see 45 CFR § 146.130(d)(2) (published in the **Federal Register** at 63 FR 57561 on October 27, 1998).

Worksheet D (Form M-1)	**Determining Compliance with the Women's Health and Cancer Rights Act (WHCRA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the WHCRA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the questions below, you should review your entity's operations because the entity may not be in full compliance with the WHCRA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides mastectomy coverage, does the coverage comply with WHCRA's substantive requirements, which are contained in section 713 of ERISA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713 of ERISA generally provides that a group health plan, and a group health insurance issuer, that offers mastectomy coverage must also provide coverage for reconstructive surgery in a manner determined in consultation with the attending physician and the patient. Coverage includes all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications of the mastectomy, including lymphedemas.
- In addition, a plan or issuer may not deny a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of WHCRA. Nor may a plan or issuer penalize or otherwise reduce or limit the reimbursement of an attending provide,; or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to furnish care to an individual participant or beneficiary in a manner inconsistent with WHCRA.
- Plans and issuers may impose deductibles or coinsurance requirements for reconstructive surgery, prostheses, and treatment of physical complications in connection with a mastectomy, but only if the deductibles and coinsurance are consistent with those established for other benefits under the plan or coverage.
- State law protections may apply to certain health insurance coverage if the State law was in effect on October 21, 1998 (the date of enactment of WHCRA) and the State law requires at least the coverage for reconstructive breast surgery that is required by WHCRA.

(2) If the MEWA or ECE offers or provides mastectomy coverage, are the disclosure requirements under WHCRA satisfied? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713(b) of ERISA establishes a one-time notice requirement under which group health plans, and their health insurance issuers, must furnish a written description of the benefits that WHCRA requires. This notice is required to be furnished as part of the first general mailing made after October 21, 1998 by group health plans, and their health insurance issuers, or in any yearly information packet sent out regarding the plan, but, in any event, the one-time notice is required to be furnished not later than January 1, 1999.
- Section 713(a) of ERISA establishes a disclosure requirement under which group health plans, and their health insurance issuers, must again describe the benefits required under WHCRA, but the notice is to be provided to participants upon enrollment in the plan and annually thereafter.
- The enrollment notice must describe the benefits that WHCRA requires the group health plan, and its insurance companies or HMOs, to cover. If the following information is provided, then the group health plan is in compliance with this requirement. The enrollment notice indicates that, in the case of a participant or beneficiary who is receiving benefits in connection with a mastectomy, coverage will be provided in a manner determined in consultation with the attending physician and the patient, for all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications of the mastectomy, including lymphedema. Additionally, the enrollment notice describes any deductibles and coinsurance limitations applicable to such coverage. Under WHCRA, coverage of breast reconstruction benefits may be subject only to deductibles and coinsurance limitations consistent with those established for other benefits under the plan or coverage.

Question #2 is continued on the next page.

- WHCRA's annual notice must include: (1) information on the availability of benefits for the treatment of mastectomy-related services, including reconstructive surgery, prosthesis, and lymphedema under the plan; and (2) information (telephone number, web address, etc.) on how to obtain a detailed description of the mastectomy-related benefits available under the plan. The following examples illustrate how the annual notice requirement may be satisfied:

(A) An entity distributes the enrollment notice to participants on an annual basis.

(B) An entity annually distributes the following model notice informing participants: "Did you know that your plan, as required by the Women's Health and Cancer Rights Act of 1998, provides benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema)? Call your Plan Administrator [insert phone number] for more information."

(C) In October of every year, an entity delivers to each participant (including those on COBRA) an issue of a periodical benefits newsletter with the following statement in a prominent place on the front page: "IMPORTANT NOTICE ABOUT YOUR RIGHTS UNDER YOUR GROUP HEALTH PLAN: October is National Breast Cancer Awareness Month. Your plan, *[or identify plan by name]*, provides benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Keep this notice for your records and call your Plan Administrator for more information."

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Federal Register

Wednesday,
December 13, 2000

Part V

Department of Transportation

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park Special Flight Rules Area; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park Special Flight Rules Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on commercial routes for the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). The commercial routes are not being published in today's **Federal Register** because they are on very large and very detailed charts that would not publish well in the **Federal Register.** The modifications are related to safety concerns identified by air tour operators and evaluated by the Federal Aviation Administration (FAA). With this notice, the FAA invites comments on the modifications of these routes. This notice solely proposes administrative changes in air tour routes to improve safety; it has no effect on the Airspace Modification rule published in April 2000 nor any effect on the Commercial Operations Limitation rule also approved in April 2000.

DATES: Comments must be received on or before January 12, 2001.

ADDRESSES: Comments on the proposed commercial air tour routes may be delivered or mailed, in duplicate to: Federal Aviation Administration, Attention: Gary Davis, Air Transportation Division, Flight Standards Service, AFS–201, Rm 831, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Special Assistant for National Parks, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 493–4981.

SUPPLEMENTARY INFORMATION: The FAA is not publishing the commercial routes in today's **Federal Register** because they are on very large and very detailed charts that would not publish well in the **Federal Register.** You may obtain a copy of the commercial routes by contacting Denise Cashmere at (202) 267–3717, by faxing a request to (202) 267–5229, or by sending a request in writing to the Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591. You may comment on the routes as you desire, but you must identify that you are commenting on the commercial routes for Grand Canyon National Park. The FAA will consider all comments received on or before the closing date for comments before finalizing the air tour routes. The FAA will consider late-filed comments to the extent practicable.

History

On April 4, 2000, the Federal Aviation Administration published two final rules the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule became effective on May 4, 2000. the Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000. The effective date of the Air Space Modification final rule and the new routes was extended to provide the air tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, The United States Air Tour Association (USATA) and seven air tour operators (hereinafter collectively referred to as the Air tour Providers) filed a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. The FAA, The Department of Transportation, the Department of Interior, the National Park Service (NPS) and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of Appeals. The federal respondents in this case filed a motion for summary denial on grounds that petitioners had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (hereinafter will collectively referred to The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the federal respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion. On October 11, 2000, (65 FR 60352) the FAA published a disposition of the stay request, denying the stay. On October 25, 2000, the Air Tour Providers filed a Motion for Stay and Emergency Relief Pending Review of an Agency Order with the Court of Appeals. The federal respondents filed their Opposition of Petitioner's Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules on November 2, 2000. The FAA then issued an administrative stay of the routes and airspace until December 28, 2000 so that it could further investigate some new safety allegations raised by the Air Tour Providers during the course of litigation (65 FR 69846 and 65 FR 69848; November 20, 2000).

Discussion

The Air Tour Providers petitioned the United States Court of Appeals for the District of Columbia Circuit for a review of the FAA's Commercial Air Tour Limitations final rule and the Airspace Modification final rule. During the ensuing litigation, the Air Tour Providers brought forth several new safety issues regarding the east end routes in the Dragon Corridor, the area north of the Zuni Point Corridor and around the Desert View Flight Free Zone that were not clearly articulated in prior comments to the agency during the rulemaking process. The FAA has investigated the safety issues and has, in consultation with the NPS, developed suggested map changes to the routes to improve safety in the Dragon Corridor and the area north of the Zuni Point Corridor, and around the Desert View Flight Free Zone. These changes are reflected in the map that is the subject of this Notice. The routes in the Marble Canyon area, Sanup region (the west end of GCNP), and the routes running east to west across the SFRA are not reopened under this Routes Notice. However, for purposes of completeness, these routes are shown on the map together with the routes that are open for comment (Dragon, Zuni Point, Kaibab Plateau and around Desert View Flight Free Zone).

The Dragon Corridor (Green Route 2/2R) would be modified by extending the turnaround approximately up to the future incentive corridor for noise efficient aircraft (also sometimes referred to as the Bright Angel Corridor). This creates a turnaround in the same place as shown on the SFAR 50–2 map. This change is necessary for safety purposes because it was brought to the FAA's attention that the turnaround on the Green 2/2R, shown on the map published on April 4, 2000, occurs in an area where pilots on the Green 2/2R would be blind to the traffic descending from the southern portion of the southbound Green 1. The FAA originally believed that this turnaround was safe because entering traffic would be able to see the length of the corridor prior to the turnaround and would be able to proceed via radio reporting. However, after further investigation, the FAA has concluded that a turnaround just before the Dragon Head would create an unacceptable safety risk, especially in certain visibility conditions or when heavy radio traffic could block some radio transmissions. Thus for safety reasons, it was determined that the turnaround should be returned to its present location as depicted on the current SFAR 50–2 route map.

The proposed Green 2/2R route is shown at 7,500 feet MSL, which is consistent with the route under SFAR 5–2. The FAA Las Vegas Flight Standards District Office (FSDO) will maintain a procedure in the "Las Vegas Grand Canyon National Park Special Flight Rules Area Procedures Manual" requiring helicopters to climb to maintain adequate terrain clearance as the Green 2 passes over the Dragon's Head and to level off at 8,300 feet MSL in preparation for the 180 degree turn back down the Corridor. Helicopters flying South on the Green 1 coming off of the Kaibab Plateau would begin descending prior to the turnaround to ensure a smooth merging of the traffic.

The other alternative considered for addressing the safety concerns at the Dragon's Head was to locate the standard route turnaround approximately a mile and a half below its current location to where the weather turnaround currently is located on the Green 2/2R, as shown on the April 4, 2000 map. However, this alternative was not significantly different than the current route structure and still placed the turnaround south of the Dragon's Head. Thus, the FAA determined that this alternative would not provide adequate line of sight visibility for oncoming traffic just prior to the turnaround and therefore would fail to address the safety issues. The FAA invites comments on this decision.

The Green 1 and Black 1 routes north of the Zuni Point Corridor would be modified to address concerns that the climb between Gunther's Castle and Pete's Corner does not ensure adequate vertical separation between fixed wing aircraft and helicopters. The FAA has separated these two routes horizontally and there would now be a slight divergence between these two routes and then they would join up as they cross the plateau. This would allow helicopters to climb to the designated altitude without concern that the helicopters might pass through the airspace occupied by the fixed wing before the fixed wing have cleared the altitude. The FAA does not anticipate that this will be a significant change in the route structure.

Additionally, the Zuni Point Corridor routes would be modified by depicting a weather route turnaround on the Green 1 and Black 1 for fixed wing and helicopter operators after the operators cross the Saddle Mountain Ridge. Based on FAA's investigation, placement of the weather route at this point would to give the operators a better opportunity to assess the weather conditions over the Kaibab Plateau and make a decision whether to proceed or turn around. The route could be used during any weather condition that affected safety of flight (turbulence, winds, thunderstorms, precipitation, etc). The operator would file a deviation with the FSDO when using the weather route. The deviation is for record keeping purposes only and would not be used to penalize the operator in any way for making a safety of flight decision.

The route structure around the Desert View Flight Free Zone would be modified by depicting weather routes that provide larger, clearer landmark navigation aids to use in visibility minimums. This address the concern that there are not adequate navigation landmarks on the Black 2 and Green 3 over the Painted Desert. The FAA investigated this allegation and determined that the navigation landmarks were adequate during good visibility. However, during marginal visibility, the route landmarks could possibly be missed, although the FAA was not able to evaluate these routes in limited visibility conditions. To ensure that operators are able to navigate this area safely in visibility minimums, the FAA has added weather routes for both fixed wing and helicopters. These routes would be closer to the Little Colorado River and its canyons and thus should be easy to navigate in marginal conditions.

The placement of weather routes on the map simply depicts an established procedure for the operators should weather conditions require. Operators are always permitted to take whatever route is necessary for safety of flight in the event of adverse weather conditions. The FAA has projected that weather routes will be used less than 5 percent of the time. Thus, the depiction of the weather routes is not a significant change from the route structure adopted April 4, 2000.

Finally, north of the Desert View Flight Free Zone the FAA would add an entrance (2E–4) at 8,500 feet MSL for fixed wing aircraft, which responds to a request from the Navajo Nation. Pursuant to this request, the FAA reevaluated its decision in the April 4, 2000 notice to deny an entrance at this location. The FAA was initially concerned that this entrance would cause altitude congestion. However, based on further evaluation of traffic density the FAA believes that it can achieve proper vertical separation by modifying the altitude structure. Thus, the altitude on the 2X–4 as shown on the April 4, 2000 map is raised to 9,000 feet MSL to allow for adequate vertical separation and the altitude for helicopters on the Green 3X remains at 7,500 feet MSL. While this entrance is not necessary for safety of flight and thus is different than the other changes noted above, the FAA has decided to include this change at this time, provided that doing so does not hinder the adoption of any changes necessary for safety of flight. If this matter becomes controversial, the FAA may decide to remove this change from this map and handle it as a separate matter at a later date.

The FAA has determined that the revisions to the route map outlined in this Notice are not significant changes to the current route structure at GCNP. The location of the turnaround in the Dragon Corridor is depicted in the identical location as under SFAR 50–2. In addition, the slight route deviation north of Zuni Point Corridor between Gunther's Castle and Pete's Corner are minor changes that will make important improvements to the safety of flight. The weather routes north of the Zuni Point Corridor and around Desert View Flight Free Zone simply depict established deviations from the standard route

structure that operators currently could take if necessary for safety of flight. Finally, the addition of an entrance for fixed wing aircraft North of the Desert View Flight Free Zone will be located in the same area as the exit routes shown on the April 4, 2000 map.

The FAA is completing a written reevaluation to determine whether the contents of the previous Supplemental Environmental Assessment remain valid and what, if any, impact these slight route changes will have on substantial restoration of natural quiet at GCNP. While the FAA is not required to publish the written reevaluation, the FAA intends to make it publicly available in January 2001. The revisions to the route map outlined in this Notice will address the safety concerns and allow the FAA to implement these routes by spring 2001 so they will be in place by the summer 2001 season.

Issued in Washington, DC on December 11, 2000.

L. Nicholas Lacey,

Director of Flight Standards Service.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.J. Res. 128/P.L. 106–540

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 8, 2000; 114 Stat. 2571)

S. 2796/P.L. 106–541

Water Resources Development Act of 2000 (Dec. 11, 2000; 114 Stat. 2572)

Last List December 11, 2000

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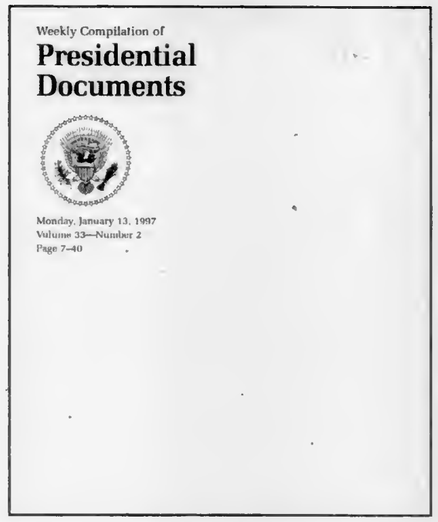
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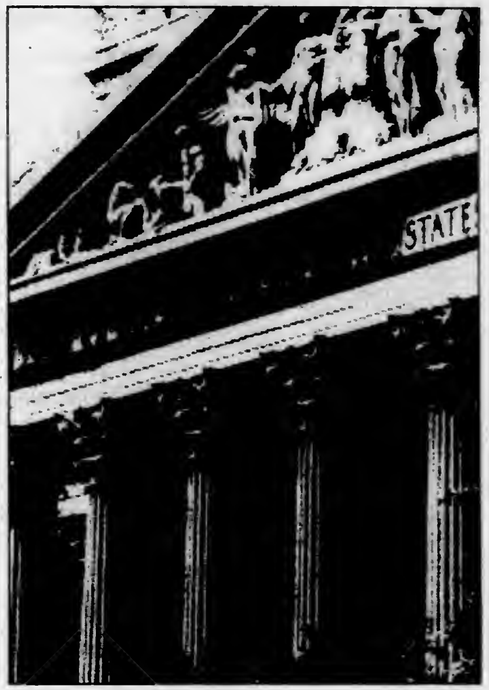
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Presidential Documents

Title 3—

The President

Proclamation 7386 of December 9, 2000

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2000

By the President of the United States of America

A Proclamation

On December 15, 1791, the Bill of Rights was ratified. A century and a half later, on December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Though separated by more than 150 years, these two documents are not dusty relics of a distant past—the ideas they so powerfully express continue to shape the destiny of individuals and nations across the globe.

Because the rights guaranteed by these documents, such as freedom of conscience, freedom of speech, freedom of assembly, and freedom from arbitrary arrest, are such an inherent part of America's history and national character, we at times may take them for granted. We sometimes forget that people elsewhere in the world are suffering, struggling, and even dying because these rights are denied them by oppressive governments. In countries such as Afghanistan, Burma, and the Sudan, men and women are harassed, arrested, and executed for worshipping according to their conscience. In many corners of the world, modern-day slavery still exists, with criminals trafficking in women and children and profiting from their servitude.

But there is hope for the future. Globalization and the revolution in information technology are helping to break down the former barriers of geography and official censorship. People fighting for human rights in disparate places around the world can talk to one another, learn from one another, and shine the light of public scrutiny on the dark corners of the world. Free nations can work in concert to combat human rights abuses, as the United States did last spring when we joined with the Philippines and more than 20 other Asian and Pacific nations to develop a regional action plan to combat trafficking in persons and protect trafficking victims.

The Reverend Martin Luther King, Jr., once said that the arc of the moral universe is long, but it bends toward justice. We have seen the truth of that statement in the history of America, where each generation has strived to live up to our founders' vision of human dignity: that we are all created equal and that we all have the right to life, liberty, and the pursuit of happiness. But that statement holds true for the world's history as well; in our own lifetime, we have seen the fall of the Berlin Wall and the triumph of democracy in the Cold War. More people live in freedom today than at any other time in history.

But that march toward freedom is not inevitable; it is advanced by individual acts of courage and will; by the strong voices of people refusing to be silenced by their oppressors; by the willingness of free people and free nations to defend the rights of men, women, and children. Heroes like Lech Walesa in Poland, Vaclav Havel in the Czech Republic, Nelson Mandela in South Africa, and Aung San Suu Kyi in Burma are powerful reminders of how precious our human rights are and how high the cost is to sustain them. The Bill of Rights and the Universal Declaration of Human Rights that we celebrate this week are not merely proud words preserved on paper; they are a pledge written on our consciences and to oppressed people

everywhere, so that they too will some day know the meaning of dignity and the blessing of human rights.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2000, as Human Rights Day; December 15, 2000, as Bill of Rights Day; and the week beginning December 10, 2000, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate activities, ceremonies, and programs that demonstrate our national commitment to the Bill of Rights, the Universal Declaration of Human Rights, and promotion and protection of human rights for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this Ninth day of December, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–32035
Filed 12–13–00; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 AND 315

RIN 3206–AJ28

Excepted Service; Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the staffing provisions of the Federal Career Intern Program. This program will serve to assist agencies in recruiting and attracting exceptional men and women who have a variety of experience, academic disciplines, or competencies necessary for the effective analysis and execution of public programs.

DATES: This interim rule is effective December 14, 2000. Comments must be received on or before January 16, 2001.

ADDRESSES: Send or deliver written comments to: Carol J. Okin, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: Ms. Suzy Barker, *smbarker@opm.gov;* Ms. Karen Jacobs, *kkjacobs@opm.gov;* or Mr. Mike Mahoney, *mjmahone@opm.gov;* on 202–606–0830 or FAX (202) 606–0390.

SUPPLEMENTARY INFORMATION: On July 6, 2000, President Clinton signed Executive Order 13162 authorizing the establishment of the Federal Career Intern Program to assist agencies in recruiting and attracting exceptional individuals with a variety of experience, academic disciplines, or competencies necessary for the effective analysis and execution of public programs. Agencies have the authority to recruit from a variety of sources to locate candidates that would most likely meet their mission and needs. The executive order tasked OPM to develop appropriate procedures for the recruitment, screening, placement and continuing career development for the Career Interns. These procedures must conform to the merit systems principles and assure equal employment opportunity and the application of appropriate veterans' preference criteria.

The program is intended to be used for grades GS–5, 7, and 9 (and equivalent) positions or other trainee positions appropriate for the program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. For those positions subject to the *Luevano* Consent Decree, agencies will be required to use those assessment tools permitted under the decree. Interns will be appointed in the excepted service (Schedule B) for a period not to exceed 2 years, unless extended up to 1 additional year with the approval of OPM. Upon successful completion of the internships, the interns will be eligible for noncompetitive conversion to career or career-conditional appointments. Throughout the internship, the employee must participate in a formal training program and job assignments to develop competencies appropriate to the agency's mission and needs.

If an agency selects one of its internal career or career-conditional employee for the program, and he/she fails to complete the program for reasons unrelated to misconduct or suitability, the agency shall place the employee back in a position of equivalent status, tenure and pay as the position the employee left. Here are some examples:

(1) If an employee of the Environmental Protection Agency (EPA) is selected for an internship with EPA and the employee fails to complete the internship, EPA will be responsible for placing the employee.

(2) If an employee of the Department of Treasury (Treasury) is selected for an internship with EPA and the employee fails to complete the internship, EPA is not obligated to place the employee. Also, Treasury is not obligated to place the employee.

(3) Within Departments that have components or bureaus, such as the Department of Justice (Justice), the Department would have the discretion to decide whether or not to treat all of its components as separate and independent agencies or as part of the Department. For example: If an employee of Immigration and Naturalization Service (INS), a bureau within Justice, is selected for an internship within Justice headquarters and the employee fails to complete the internship, neither the headquarters office nor the INS is obligated to place the employee. The INS and the headquarters office are treated as separate agencies.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in the effective date is being waived because the executive order was signed on July 6, 2000, and agencies began developing their intern programs. Agencies will be able to make appointments immediately upon publication of the regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities (including small businesses, small organizational units and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38

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U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 STAT. 3182–83; and E.O. 13162.

2. In § 213.3202, paragraph (o) is added to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(o) *The Federal Career Intern Program*—(1) *Appointments.* Appointments made under the Federal Career Intern Program may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments shall be made to a position at the grades GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. Agencies will use part 302 of this chapter when making appointments under this Program.

(2) *Extensions.* (i) Agencies must request, in writing, OPM approval to extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

(ii) Agencies are delegated the authority to extend, without prior OPM approval, 2-year internships for up to an additional 120 days to cover rare or unusual circumstances, and where agencies have established criteria for approving extensions.

(3) *Qualifications.* Candidates will be evaluated using OPM qualification requirements or OPM-approved, agency-specific qualification requirements.

(4) *Tenure Group.* Career interns are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter. Expiration of the internship is not subject to part 351 of this chapter.

(5) *Promotions.* During the internship period, individuals participating in the program may receive promotions as determined by an agency's plan. This provision does not confer entitlement to promotion.

(6) *Conversion to Competitive Service.* Except as provided in paragraph (o)(6)(ii) of this section, service as an intern shall confer no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(i) Competitive civil service status may be granted to career interns who successfully complete their internships and meet all qualification, suitability, and performance requirements. These noncompetitive conversions will be effective on the date the 2-year service requirement is met, or at the end of the extended period.

(ii) An employee who held a career or career-conditional appointment in an agency immediately before entering the Career Intern Program in the same agency, and who fails to complete the Career Intern Program for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the Career Intern Program. For purposes of this paragraph, agency means an Executive Department, Government corporation, or independent establishment as defined in 5 U.S.C. 105. An Executive Department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but must do so by agency directive in establishing the program.

(iii) Service under the Career Intern Program counts toward career tenure in the competitive service, if the Career Intern is converted to a career-conditional appointment under § 315.712 of this chapter.

(7) *Terminations.* The appointment of a career intern expires at the end of the 2-year internship period, plus any extensions. The employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with § 315.712 of this chapter. If an employee is not converted to a career or career-conditional appointment, the career intern appointment terminates, unless specifically eligible for placement under paragraph (o)(6)(ii) of this section.

(8) *Career Development.* Agencies will provide the career interns with formal training and developmental opportunities to acquire the appropriate agency-identified competencies needed for conversion. These activities may include, but are not limited to, formal training classes, rotational or other job assignments, attendance at conferences and seminars, interagency assignments, or other activities approved by the agency.

(9) *Agency Responsibilities.* Each agency will determine the appropriate use of the Career Intern Program relating to recruitment needs in specific occupational series, grades, and geographical areas, ensuring that programs are developed and implemented in accordance with the merit system principles. Agencies may adapt the program to meet their individual requirements, including, but not limited to such aspects as:

(i) Deciding how to delegate the authority to develop Career Intern Programs (*e.g.*, department-wide versus bureaus and agency components);

(ii) Defining the roles and responsibilities of supervisors and other key officials in career intern program administration, such as human resources staff, budget and finance staff, career counselors, or mentors;

(iii) Designing, implementing, and documenting formal program(s) for the training and development of employees selected under the provisions of this Part, including the type and duration of assignments;

(iv) Deciding how to inform the career interns of what will be expected during the internship, including developmental assignments and performance requirements; and

(v) Planning, coordinating, implementing and monitoring program activities.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

3. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577. 3 CFR, 1954–1958 Comp. P. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 120034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 STAT. 1575–76. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987, Comp., p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

4. In § 315.201, a new paragraph (b)(1)(xix) is added to read as follows:

Subpart B—The Career-Conditional Employment System

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xix) The date of appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.712.

5. A new section § 315.712 is added to subpart G to read as follows:

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

* * * * *

§ 315.712 Conversion based on service as a Career Intern

(a) *Agency authority.* An agency may convert noncompetitively to career or career-conditional employment, a career intern who:

(1) Has successfully completed a Career Intern Program, under § 213.3202(o) of this chapter, at the time of conversion; and

(2) Meets all citizenship, suitability and qualification requirements.

(b) *Tenure on conversion.* An employee whose appointment is converted to career or career-conditional employment under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[FR Doc. 00–31887 Filed 12–13–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00–929–5 FR]

Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate for the Cranberry Marketing Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $.06 to $.08 per barrel of cranberries acquired by handlers. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in the production area. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 1 and ends August 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods for cranberries from $0.06 to $0.08 per barrel of cranberries.

The cranberry marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 fiscal period, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The assessment rate for the 1999–2000 fiscal period was increased from $0.04 to $0.06 cents per barrel to generate enough funds to cover increased costs due to the industry's oversupply situation. Committee expenses in 1999–2000 were initially estimated at $548,231, but were increased to $675,339 to cover additional meeting and other expenses related to the development of volume regulation for the 2000–2001 season.

At its June 6, 2000, meeting the Committee developed its 2000–2001 budget and assessment rate. In July, the Committee conducted a mail vote, and unanimously recommended 2000–2001

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expenditures of $778,840 and an assessment rate of $.08 per barrel of cranberries. The expenditures and assessment rate were discussed and unanimously reaffirmed at the Committee's August 28, 2000, meeting. A further increase in the assessment rate for 2000–2001 was recommended because the Committee needs additional funds to implement volume regulation and further address the industry's oversupply situation.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $223,647 for administration costs, $119,464 for personnel, and $67,500 for Committee meetings. Budgeted expenses for these items in the 1999–2000 budget were $130,358 for administration, $119,807 for personnel, and $81,700 for Committee meetings.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected barrels of cranberries acquired by handlers. Acquisitions for the year are estimated at 6,400,000 barrels which should provide $512,000 in assessment income. Income derived from handler assessments, along with interest income, operating reserves, and funds from the Foreign Agricultural Service for export marketing programs will be adequate to cover budgeted expenses. Any excess funds will be used by the Committee to build up its operating reserve. Funds in the reserve, currently $45,000, will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although the assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of cranberry handlers and producers may be classified as small entities.

The assessment rate for the 1999–2000 fiscal period was increased from $0.04 to $0.06 cents per barrel to generate enough funds to cover increased costs due to the industry's oversupply situation. Committee expenses in 1999–2000 were initially estimated at $548,231, but had to increase to $675,339 to cover additional meeting and other expenses related to the development of volume regulation for the 2000–2001 season.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.06 to $0.08 per barrel of cranberries acquired by handlers. The Committee unanimously recommended 2000–2001 expenses of $778,840. The major expenditures recommended by the Committee include $223,647 for administration costs, $119,464 for personnel, and $67,500 for Committee meetings. Budgeted expenses for these items in 1999–2000 were $130,358, $119,807, and $81,700, respectively.

The increased assessment rate was recommended by the Committee because the Department approved a volume regulation for the 2000–2001 season to help stabilize marketing conditions. The Committee needs additional funds to administer the volume regulation and further address the industry's oversupply situation.

The Committee discussed the alternative of continuing the existing $0.06 per barrel assessment rate, but concluded that the Committee could run out of funds with the implementation of a volume regulation program. The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected barrels of cranberries acquired by handlers. Acquisitions for the year are estimated at 6,400,000 barrels which should provide $512,000 in assessment income. Income derived from handler assessments, along with interest income, operating reserves, and funds from the Foreign Agricultural Service for export marketing programs will be adequate to cover budgeted expenses. Any excess funds will be used by the Committee to build up its operating reserve. Funds in the reserve, currently $45,000, will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Board meetings, all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on November 2, 2000 (65 FR 65788). Copies of the proposed rule were also mailed or sent via facsimile to all cranberry handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending on November 17, 2000, was provided. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2000–2001 crop cranberries from growers and the assessment rate applies to all cranberries received during the 2000–2001 crop year and subsequent seasons; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this rule which was recommended at a public meeting; and (4) a 15-day comment period was provided for in the proposed rule published in the **Federal Register** and no comments were received.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 929.236 is revised to read as follows:

§ 929.236 Assessment rate.

On and after September 1, 2000, an assessment rate of $0.08 per barrel is established for cranberries.

Dated: December 8, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–31798 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV00–984–2 FR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Walnut Marketing Board (Board) for the 2000–01 and subsequent marketing years from $0.0118 to $0.0134 per kernelweight pound of assessable walnuts. The $0.0016 increase is necessary because this year's estimate of assessable walnuts is about 13 percent less than last year's estimate. The Board locally administers the Federal marketing order which regulates the handling of walnuts grown in California (order). Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), both as amended, regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2000–01 and subsequent marketing years from $0.0118 to $0.0134 per kernelweight pound of assessable walnuts. The $0.0016 increase is necessary because this year's estimate of assessable walnuts is about 13 percent less than last year's estimate. Thus, sufficient income will not be generated at the current assessment rate for the Board to meet its anticipated expenses.

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The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate of $0.0118 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 8, 2000, and unanimously recommended 2000–01 expenditures of $2,937,885 and an assessment rate of $0.0134 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,967,356. The recommended assessment rate is $0.0016 higher than the $0.0118 rate currently in effect. The higher assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 245,000 tons (220,500,000 kernelweight pounds merchantable), which is about 13 percent less than last year's estimate. Thus, sufficient income would not be generated at the current rate for the Board to meet its anticipated expenses.

Major expenditures recommended by the Board for the 2000–01 year include $2,382,455 for marketing and production research projects, $305,250 for general expenses such as administrative salaries and insurance, $165,380 for office expenses, $59,800 for a production research director, and $25,000 as a contingency. Budgeted expenses for these items last year were $2,413,038 for marketing and production research projects, $289,709 for general expenses, $179,809 for office expenses, $59,800 for a production research director, and $25,000 as a contingency, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 220,500,000 kernelweight pounds which should provide $2,954,700 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year §thnsp;984.69). The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2000–01 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and about 48 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Using an average f.o.b. price of $2.10 per kernelweight pound of walnuts for the 1999–2000 marketing year, handlers would have had to ship more than 2,380,953 pounds of walnuts to exceed sales of $5,000,000. Approximately 33 percent of the handlers shipped over 2,380,953 kernelweight pounds of walnuts and 67 percent shipped less than that amount during the 1999–2000 marketing year. Based on the foregoing, it can be concluded that the majority of California walnut handlers may be classified as small entities, excluding receipts from other sources. A majority of the California walnut growers also may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2000–01 and subsequent marketing years from $0.0118 to $0.0134 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2000–01 expenses of $2,937,885. The recommended $0.0016 increase in the assessment rate is necessary because this year's estimate of assessable walnuts is about 13 percent less than last year's estimate. Thus, sufficient income would not be generated at the current rate for the Board to meet its anticipated expenses.

Major expenditures recommended by the Board for the 2000–01 year include $2,382,455 for marketing and production research projects, $305,250 for general expenses such as administrative salaries and insurance, $165,380 for office expenses, $59,800 for a production research director, and $25,000 as a contingency. Budgeted expenses for these items last year were $2,413,038 for marketing and production research projects, $289,709 for general expenses, $179,809 for office expenses, $59,800 for a production research director, and $25,000 as a contingency, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended $0.0134 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 220,500,000 kernelweight pound estimate of assessable walnuts for the year. This is approximately $16,815 above the anticipated expenses, which the Board determined to be acceptable.

Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year (§ 984.69).

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2000–01 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2000–01 year as a percentage of total grower revenue could range between 2.0 and 2.7 percent.

Regarding the impact of this action on affected entities, this action will increase the assessment rate currently imposed on walnut handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the order.

In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on October 23, 2000 (65 FR 63219). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. The proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending November 22, 2000 was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–01 marketing year began on August 1, 2000, and the order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a proposed rule on this action was published in the **Federal Register** and no comments were received.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2000, an assessment rate of $0.0134 per kernelweight pound is established for California merchantable walnuts.

Dated: December 8, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–31797 Filed 12–13–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–43–AD; Amendment 39–12040; AD 2000–25–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) PW4000 turbofan engines with the current design low pressure turbine (LPT) 4th stage air seal installed. This action requires, based on engine model, replacement of the current design seal with a new design seal, or with a modified seal. This amendment is prompted by reports of cracks in LPT 4th stage air seals. The actions specified by this AD are intended to reduce stresses that could lead to LPT 4th stage air seal cracking, resulting in seal fracture, uncontained engine failure, and damage to the airplane.

DATES: Effective date December 29, 2000. Comments for inclusion in the Rules Docket must be received on or before December 29, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line. The service information referenced under the caption **SUPPLEMENTARY INFORMATION** may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone: (860) 565–6600, fax: (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7130; fax: (781) 238–7199.

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SUPPLEMENTARY INFORMATION: The FAA recently received reports of five LPT 4th stage air seals found cracked. An investigation revealed that the cracking is being caused by excessive axial loads on the air seal. The thermal environment and mechanical loads are causing the current design LPT 4th stage air seals to grow radially and axially.

This is causing insufficient distance between the LPT stage 3 disk and LPT stage 4 disk, that results in an excessive axial load leading to air seal cracks. This action requires, based on engine model, replacement of the current design seal with a new design seal, or with a modified seal. This amendment is prompted by reports of cracks in LPT 4th stage air seals. The actions specified by this AD are intended to reduce stresses that could lead to LPT 4th stage air seal cracking, resulting in seal fracture, uncontained engine failure, and damage to the airplane. Pratt & Whitney has issued two relevant Alert Service Bulletins, (ASB) No. PW4G–100–A72–155, Revision 1, dated October 27, 2000, and ASB No. PW4ENG A72–707, Revision 1, dated October 27, 2000. The ASB's introduce a new design LPT 4th stage air seal P/N 51N038, and provide instructions for modifying the current design air seal P/N 50N478 to increase service life.

Required Actions

Since the unsafe condition described is likely to exist or develop on other engines of the same type design that are certificated for operation in the United States, this AD is being issued to replace, based on engine model, the current design seal P/N 50N478 with a new design seal P/N 51N038, or modification of the current design seal. This AD is also being issued to reduce stresses that could lead to LPT 4th stage air seal cracking, resulting in seal fracture, uncontained engine failure, and damage to the airplane.

Immediate Adoption

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–43–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) No. 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under EO No. 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–25–06 Pratt & Whitney: Amendment 39–12040. Docket 2000–NE–43–AD.

Applicability: This airworthiness directive is applicable to Pratt & Whitney (PW) PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4164, PW4168, PW4168A, PW4460, and PW4462 turbofan engines, with low pressure turbine (LPT) 4th stage air seal, part number (P/N) 50N478 or P/N 50N478–001 installed. These engines are installed on but not limited to Boeing 747, 767, McDonnell Douglas MD–11, Airbus Industrie A300, A310, and A330 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To reduce stresses that could lead to fatigue cracking of the LPT 4th stage air seal, resulting in seal fracture, uncontained engine failure, and damage to the airplane, do the following:

(a) If the limits in Table 1 of this AD for 4th stage air seal P/N 50N478 or P/N 50N478–001 have been exceeded, replace with a serviceable part prior to further flight.

(b) Replace 4th stage air seal, P/N 50N478 or 50N478–001, with a serviceable part, based on engine model, prior to exceeding the cycles-since-new (CSN) or cycles-in-service (CIS) time limits in Table 1 of this AD.

TABLE 1.—4TH STAGE AIR SEAL TIME LIMITS

Engine model	4th stage air seal P/N	Cycles-since-new (CSN) on effective date of this AD	Limit
(1) PW4052, PW4060, PW4060A, PW4156, and PW4158.	50N478	Fewer than or equal to 8,000 CSN	8,000 CSN.
(2) PW4056, PW4152, PW4156A, and PW4460, that have incorporated service bulletin (SB) PW4ENG 72–657, Revision 1, dated July 19, 2000.	50N478	Fewer than or equal to 8,000 CSN	8,000 CSN.
(3) PW4056, PW4152, PW4156A, and PW4460, that have not incorporated SB PW4ENG 72–657, Revision 1, dated July 19, 2000.	50N478	Fewer than or equal to 4,500 CSN	4,500 CSN.
(4) PW4062 and PW4462	50N478	Fewer than or equal to 7,000 CSN	7,000 CSN.
(5) PW4164, PW4168, and PW4168A	(i)50N478 or 50N478–001.	Fewer than or equal to 3,000 CSN	4,500 CSN.
	(ii)50N478 or 50N478–001.	More than 3,000 CSN but fewer than or equal to 4,500 CSN.	1,500 CIS after the effective date of this AD.
	(iii) 50N478 or 50N478–001.	More than 4,500 CSN but fewer than 6,000 SCN.	6,000 CSN.

For the purposes of this AD, a serviceable part is defined in Table 2 as follows:

TABLE 2.—SERVICEABLE PARTS

For engine models	Serviceable P/N
(1) PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4460, and PW4462.	51N038 or 50N478-001
(2) PW4164, PW4168, and PW4168A.	51N038

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection and rework requirements of this AD can be accomplished.

Effective Date of This AD

(f) This amendment becomes effective December 29, 2000.

Issued in Burlington, Massachusetts, on December 5, 2000.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–31537 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30220; Amdt. No. 2027]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City,

OK 73169 (Mail address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAP's are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 8, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's effective at 0901 UTC on the dates specified:

** * * Effective January 25, 2001*

Ann Arbor, MI, Ann Arbor Muni, VOR or GPS RWY 6, Amdt 13A, CANCELLED
Ann Arbor, MI, Ann Arbor Muni, VOR RWY 6, Amdt 13A
Ann Arbor, MI, Ann Arbor Muni, VOR or GPS RWY 24, Amdt 13A, CANCELLED
Ann Arbor, MI, Ann Arbor Muni, VOR RWY 24, Amdt 13A
Erwin, NC, Erwin/Harnett County, NDB or GPS RWY 23, Orig-C, CANCELLED
Erwin, NC, Erwin/Harnett County, NDB RWY 23, Orig-C
Pulaski, TN, Pulaski/Abernathy Field, VOR/DME or GPS RWY 33,Orig-A, CANCELLED
Pulaski, TN, Pulaski/Abernathy Field, VOR/DME RWY 33, Orig-A

[FR Doc. 00–31930 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30219; Amdt. No. 2026]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. these regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by references are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timel8iness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Execution Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 8, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/19/00	CT	Windsor Locks	Bradley Intl	0/1538	VOR OR TACAN RWY 33 ORIG . . .
09/19/00	CT	Windsor Locks	Bradley intl	0/1539	ILS RWY 33 AMDT 7 . . .
09/27/00	CA	Lake Tahoe	South Lake Tahoe	0/1949	LDA/DME-2 RWY 18 AMDT 1 . . .
09/27/00	CA	Lake Tahoe	South Lake Tahoe	0/1951	GPS RWY 18 ORIG . . .

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FDC date	State	City	Airport	FDC No.	SIAP
09/27/00	CA	Lake Tahoe	South Lake Tahoe	0/1952	VOR/DME OR GPS-A AMDT 3A . . .
09/27/00	CA	Lake Tahoe	South Lake Tahoe	0/1953	LDA/DME-1 RWY 18 AMDT 7 . . .
10/27/00	MS	Olive Branch	Olive Branch	0/3365	NDB OR GPS RWY 18, AMDT 4A . . .
10/27/00	TN	Memphis	Memphis Intl	0/3349	ILS RWY 18R AMDT 12A . . .
11/08/00	OK	Sand Springs	William R Pogue Muni	0/4457	NDB RWY 35, AMDT 2A . . . REPLACES FDC 0/3887 PUBLISHED IN TL00–26.
11/17/00	MA	Mansfield	Mansfield Muni	0/4304	GPS RWY 32 ORIG-A . . .
11/17/00	MA	Mansfield	Mansfield Muni	0/4305	NDB RWY 32 AMDT 6C . . .
11/17/00	NY	White Plains	Westchester County	0/4293	ILS RWY 16 AMDT 22B . . .
11/17/00	NY	White Plains	Westchester County	0/4294	ILS RWY 34 AMDT 3 . . .
11/21/00	FL	Fort Myers	Page Field	0/4377	RADAR-1, AMDT 2 . . .
11/21/00	FL	Fort Myers	Page Field	0/4379	ILS RWY 5, AMDT 6D . . .
11/21/00	FL	Fort Myers	Page Field	0/4380	NDB RWY 5, AMDT 5B . . .
11/21/00	FL	Fort Myers	Page Field	0/4381	VOR RWY 13, ORIG-A . . .
11/21/00	LA	Eunice	Eunice	0/4374	NDB OR GPS RWY 16 ORIG-A . . .
11/21/00	TX	El Paso	El Paso Intl	0/4373	NDB RWY 22 AMDT 28B . . .
11/23/00	AR	Siloam Springs	Smith Field	0/4407	VOR OR GPS-A AMDT 8 . . .
11/23/00	LA	Eunice	Eunice	0/4405	VOR/DME OR GPS-A AMDT 2 . . .
11/23/00	OK	Ardmore	Ardmore Muni	0/4403	ILS RWY 31 AMDT 4 . . .
11/24/00	ID	Boise	Boise Air Terminal (Gowen Field)	0/4424	GPS RWY 28L AMDT 1B . . .
11/29/00	CA	Sacramento	Sacramento Executive	0/4588	ILS RWY 2 AMDT 22A . . .
11/29/00	MO	Mosby	Clay County Regional	0/4590	GPS RWY 18 ORIG-B . . .
11/30/00	NY	Islip	Long Island MacArthur	0/4694	ILS RWY 24 AMDT 2 . . .
11/30/00	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	0/4602	GPS RWY 31 ORIG-A . . .
11/30/00	LA	Homer	Homer Muni	0/4601	NDB OR GPS RWY 12 AMDT 1 . . .
11/30/00	LA	Minden	Minden-Webster	0/4600	GPS RWY 19 ORIG . . .
11/30/00	MT	Poplar	Poplar	0/4665	RNAV RWY 9, ORIG . . .
11/30/00	MT	Poplar	Poplar	0/4666	RNAV RWY 27, ORIG . . .
11/30/00	NH	Manchester	Manchester	0/4651	ILS RWY 35 AMDT 20 . . .
11/30/00	NH	Manchester	Manchester	0/4652	VOR/DME OR GPS RWY 17 ORIG-A . . .
11/30/00	NH	Manchester	Manchester	0/4653	NDB OR GPS RWY 35 AMDT 13A . . .
11/30/00	NH	Manchester	Manchester	0/4654	VOR/DME RNAV RWY 6 AMDT 4 . . .
11/30/00	NH	Manchester	Manchester	0/4655	VOR RWY 35 AMDT 15A . . .
11/30/00	NH	Manchester	Manchester	0/4656	GPS RWY 6 ORIG . . .
11/30/00	NH	Manchester	Manchester	0/4658	ILS RWY 17 AMDT 2 . . .
11/30/00	TX	CLEBURNE	Cleburne Muni	0/4733	LOC/DME RWY 15 ORIG . . .
11/30/00	TX	Cleburne	Cleburne Muni	0/4734	VOR/DME RNAV RWY 15 ORIG . . .
11/30/00	TX	Houston	George Bush Intercontinental Airport/ Houston.	0/4619	GPS RWY 27 AMDT 1 . . .
11/30/00	TX	Marshall	Harrison County	0/4628	GPS RWY 33 ORIG-D . . .
11/30/00	TX	Marshall	Harrison County	0/4629	VOR/DME RNAV RWY 33 AMDT 1C . . .
11/30/00	WA	Bellingham	Bellingham Intl	0/4716	MLS RWY 34 ORIG . . .
11/30/00	WA	Bellingham	Bellingham Intl	0/4717	GPS RWY 34, ORIG-A . . .
11/30/00	WA	Bellingham	Bellingham Intl	0/4722	NDB RWY 16, ORIG . . .
11/30/00	WA	Bellingham	Bellingham Intl	0/4725	GPS RWY 16, ORIG-A . . .
11/30/00	WA	Bellingham	Bellingham Intl	0/4728	ILS RWY 16, AMDT 3 . . .
11/30/00	WI	Mosinee	Central Wisconsin	0/4721	ILS RWY 8, AMDT 11B . . .
12/01/00	AL	Tuscaloosa	Tuscaloosa Muni	0/4757	ILS RWY 4, AMDT 14B . . .
12/01/00	FL	Boca Raton	Boca Raton	0/4773	GPS RWY 5, AMDT 1 . . .
12/01/00	FL	Boca Raton	Boca Raton	0/4774	VOR/DME OR GPS-A, ORIG-A . . .
12/01/00	UT	Wendover	Wendover	0/4804	VOR/DME OR TACAN RWY 26, ORIG . . .
12/04/00	LA	Bunkie	Bunkie Muni	0/4814	VOR/DME OR GPS-A, AMDT 5 . . . THIS REPLACES FDC 0/4814
12/04/00	MO	Harrisonville	Lawrence Smith Memorial	0/4826	VOR/DME RWY 35 ORIG . . .
12/04/00	MO	Harrisonville	Lawrence Smith Memorial	0/4828	GPS RWY 35 ORIG . . .
12/04/00	MO	St Joseph	Rosecrans Memorial	0/4831	LOC BC RWY 17 AMDT 8B . . .
12/05/00	OK	Lawton	Lawton-Fort Sill Regional	0/4873	RADAR-2 AMDT 1 . . .

[FR Doc. 00–31929 Filed 12–13–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30218; Amdt. No. 2025]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice of Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 8, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME,VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 28, 2000*

Greeley, CO, Greeley-Weld County, ILS RWY 34, Orig
Holyoke, CO, Holyoke, NDB RWY 14, Orig
Holyoke, CO, Holyoke, NDB RWY 32, Orig
Wadena, MN, Wadena Muni, RNAV RWY 34, Orig

** * * Effective January 25, 2001*

Barrow, AK, Wiley Post—Will Rogers memorial, ILS/DME RWY 6, Amdt 2B, CANCELLED
Barrow, AK, Wiley Post—Will Rogers memorial, ILS RWY 6, Orig
Arkadelphia, AR, Dexter B. Florence Memorial Field, GPS RWY 4, Orig-A
Blytheville, AR, Blytheville Muni, GPS RWY 36, Orig-A
De Queen, AR, J. Lynn Helms Sevier County, GPS RWY 8, Orig-A
Harrison, AR, Boone County, NDB RWY 18, Amdt 5D
Harrison, AR, Boone County, GPS RWY 18, Orig-A
Helena/West Helena, AR, Thompson-Robbins, GPS RWY 17, Orig-A
Hot Springs, AR, Memorial Field, Zaple VOR RWY 5, Amdt 4A
Hot Springs, AR, Memorial Field, NDB RWY 5, Amdt 7B
Newport, AR, Newport Muni, GPS RWY 18, Orig-B
Newport, AR, Newport Muni, GPS RWY 36, Orig-B
Fairfield, IA, Fairfield Muni, RNAV (GPS) RWY 18, Orig
Fairfield, IA, Fairfield Muni, VOR/DME RNAV RWY 18, Amdt 1C, CANCELLED
Oelwein, IA, Oelwein Muni, RNAV (GPS) RWY 13, Orig
Oelwein, IA, Oelwein Muni, VOR/DME RNAV OR GPS RWY 13, Amdt 2A, CANCELLED
Alexandria, LA, Esler Regional, VOR OR GPS RWY 32, Amdt 13, CANCELLED
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 15, Orig-A
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 33, Orig-A
Hammond, LA, Hammond Muni, GPS RWY 31, Orig-B
Houma, LA, Houma-Terreboone, VOR/DME OR GPS RWY 30, Amdt 11C
Houma, LA, Houma-Terreboone, GPS RWY 18, Orig-A
New Iberia, LA, Acadiana Regional, NDB OR GPS RWY 34, Amdt 8B
Grants, NM, Grants-Milan Muni, GPS RWY 31, Orig-C
Las Vegas, NM, Las Vegas, Muni, GPS RWY 32, Orig-A
Santa Fe, NM, Santa Fe Muni, NDB RWY 2, Amdt 4A
Garrison, ND, Garrison Muni, RNAV (GPS) RWY 13, Orig
Garrison, ND, Garrison Muni, RNAV (GPS) RWY 31, Orig
Guymon, OK, Guymon Muni, GPS RWY 18, Orig, CANCELLED
Guymon, OK, Guymon Muni, RNAV (GPS) RWY 18, Orig
Williamsport, PA, Williamsport Regional, VOR/DME RNAV–A, Orig, CANCELLED
Pulaski, TN, Abernathy Field, NDB OR GPS RWY 15, Amdt 4, CANCELLED
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 15, Orig
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 33, Orig
Big Spring, TX, Big Spring McMahon-Wrinkle, VOR/DME OR GPS RWY 17, Amdt 7B
Bonham, TX, Jones Field, NDB RWY 17, Amdt 4
Borger, TX, Hutchinson County, VOR OR GPS RWY 17, Amdt 8A
Dallas, TX, Redbird, VOR/DME OR GPS RWY 17, Orig-A
Dumas, TX, Moore County, VOR/DME RNAV RWY 19, Amdt 3D
Dumas, TX, Moore County, GPS RWY 19, Orig-A
Fort Worth, TX, Fort Worth Meacham Intl, NDB OR GPS RWY 16L, Amdt 5A
Fort Worth, TX, Fort Worth Spinks, VOR/DME RNAV RWY 35L, Orig-A
Hamilton, TX, Hamilton Muni, NDB RWY 36, Orig-A
Hamilton, TX, Hamilton Muni, GPS RWY 36, Orig-A
Marfa, TX, Marfa Muni, VOR RWY 30, Amdt 5A
Marfa, TX, Marfa Muni, GPS RWY 30, Orig-A
Mesquite, TX, Mesquite Metro, NDB OR GPS RWY 17, Amdt 5A
Midland, TX, Midland Airpark, VOR/DME OR GPS RWY 25, Amdt 3A
New Braunfels, TX, New Braunfels Muni, GPS RWY 13, Orig-B
Palacios, TX, Palacios Muni, GPS RWY 13, Orig-A
Seminole, TX, Gaines County, NDB RWY 35, Amdt 1
Sinton, TX, San Patricio County, VOR/DME RWY 14, Amdt 1A
Sinton, TX, San Patricio County, VOR/DME RWY 32, Amdt 8A
Morgantown, WV, Morgantown Muni—Walter L. Bill Hart Field, RNAV (GPS) RWY 18, Amdt 1
Madison, WI, Dane County Regional—Truax Field, RADAR–1, Amdt 16

[FR Doc. 00–31928 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162, 171 AND 178

[T.D. 00–88)

RIN 1515–AC69

Civil Asset Forfeiture

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations, on an interim basis, in order to implement the provisions of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), insofar as these provisions are applicable to laws enforced by Customs. The CAFRA creates general rules governing civil forfeiture proceedings. However, CAFRA specifically exempts from certain of its requirements forfeitures that are made under a number of statutes, among these being: The Tariff Act of 1930 or any other provision of law codified in title 19, United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act; and the Trading with the Enemy Act. In addition, the interim rule makes minor conforming changes to the Customs Regulations in order to reflect a recodification of existing statutory law.

DATES: Interim rule is effective August 23, 2000, and applies to any forfeiture proceeding commenced on or after August 23, 2000. Comments must be received on or before February 12, 2001.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch (202–927–2344).

SUPPLEMENTARY INFORMATION:

Background

Section 2 of the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), Pub. L. 106–185, 114 Stat. 202, enacted on April 25, 2000, and codified at title 18, United States Code, section 983 (18 U.S.C. 983), creates general rules for civil forfeiture proceedings. This section of the CAFRA, however, specifically exempts from certain of its requirements forfeitures undertaken pursuant to the following statutes: The Tariff Act of 1930 or any other provision of law codified in title 19, United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

Under section 2 of the CAFRA, specified duties and obligations are placed upon Government officials to be designated by seizing agencies. To clarify and implement the law in this regard, the interim rule identifies the particular Customs official who will grant extensions of time for sending notices of seizure, as authorized by 18 U.S.C. 983(a)(1)(B), and it identifies those Customs officials who will rule on requests for immediate release of seized property, as authorized by 18 U.S.C. 983(f)(2). The interim regulations also provide clear guidance to Customs officials in the processing of property seized for forfeiture under the CAFRA.

To address these matters, the interim rule adds a new subpart H to part 162 of the Customs Regulations (19 CFR part 162, subpart H).

Furthermore, the interim regulations make clear that acceptance of an administrative forfeiture remission does not make the government liable for fees, costs or interest pursuant to 28 U.S.C. 2465. In this respect, a new § 171.24 is added to the Customs Regulations (19 CFR 171.24) to provide that, in the case of any seizure for forfeiture that is remitted or mitigated under 19 U.S.C. 1618 or 31 U.S.C. 5321, the person who accepts such a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of being able to collect any fees, costs or interest from the Government.

With the exception of the amendment providing for a new § 171.24, seizures exempt from the requirements of section 2 of the CAFRA will be processed in accordance with existing regulations.

Lastly, Pub. L. 103–272, 108 Stat. 745, dated July 5, 1994, reenacted and recodified the provisions of title 49, United States Code. To this end, the interim rule removes the reference to "49 U.S.C. App." appearing in part 171, subpart F, of the Customs Regulations (19 CFR part 171, subpart F), and adds in its place a reference to "49 U.S.C. 80303", in accordance with the recodification of the statutory provision specifically made by section 1(e) of Public Law 103–272.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments that are timely submitted to Customs.

Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12866

The interim regulations do not impose any additional requirements upon the public. Rather, these regulations are intended both to confer certain additional rights on property owners or interested parties, and to provide clear guidance to Customs officials in the processing of property seized for forfeiture under the CAFRA. Accordingly, it has been determined that notice and public comment procedures are inapplicable and unnecessary in this case pursuant to 5 U.S.C. 553(b)(B), and pursuant to 5 U.S.C. 553(d)(1) and (d)(3), a delayed effective date is not required. Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do the interim amendments result in a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this interim rule has already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Number 1515–0052 (Petition for remission or mitigation of forfeitures and penalties incurred). This collection encompasses a claim for seized property in a non-judicial civil forfeiture proceeding. This rule does not present any material change to the existing approved information collection. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is appropriately revised to make reference to OMB Control Number 1515–0052.

List of Subjects

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Imports, Inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 162, 171 and 178, Customs Regulations (19 CFR parts 162, 171 and 178), are amended as set forth below.

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 continues to read as follows, and a specific authority citation for §§ 162.91–162.96 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

Sections 162.91 through 162.96 also issued under 18 U.S.C. 983.

2. Part 162 is amended by adding a new subpart H to read as follows:

Subpart H—Civil Asset Forfeiture Reform Act

Sec.

162.91 Exemptions.
162.92 Notice of seizure.
162.93 Failure to issue notice of seizure.
162.94 Filing of a claim for seized property.
162.95 Release of seized property.
162.96 Remission of forfeitures and payment of fees, costs or interest.

Subpart H—Civil Asset Forfeiture Reform Act

§ 162.91 Exemptions.

The provisions of this subpart will apply to all seizures of property for civil forfeiture made by Customs officers except for those seizures of property to be forfeited under the following statutes: The Tariff Act of 1930 or any other provision of law codified in title19,

United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

§ 162.92 Notice of seizure.

(a) *Generally.* Customs will send written notice of seizure as provided in this section to all known interested parties as soon as practicable. Except as provided in paragraphs (b), (c) and (d) of this section, in no case may notice be sent more than 60 calendar days after the date of seizure. Any notice issued under this section will include all information that is required by § 162.31(a) and (b) of this part.

(b) *Seizure by state or local authorities.* In a case in which property is seized by a state or local law enforcement agency and turned over to Customs for the purpose of forfeiture under Federal law; notice will be sent not more than 90 calendar days after the date of seizure by the State or local law enforcement agency.

(c) *Identity or interest of party not determined.* If the identity or interest of a party is not determined until after the seizure or turnover, but it is determined before a declaration of forfeiture, notice will be sent to such interested party not later than 60 calendar days after the determination by Customs of the identity of the party or the party's interest.

(d) *Extensions by Customs.* (1) The Assistant Commissioner, Investigations, or his designee, may extend the period for sending notice under this section for a period not to exceed 30 calendar days, if it is determined that issuance of the notice within 60 calendar days of seizure may have an adverse result, including:

(i) Endangering the life or physical safety of an individual;

(ii) Flight from prosecution;

(iii) Destruction of or tampering with evidence;

(iv) Intimidation of potential witnesses; or

(v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2) The period for sending notice of seizure as provided in paragraph (d)(1) of this section may not be further extended except by order of a court of competent jurisdiction as prescribed in paragraph (e) of this section.

(e) *Extensions by a court.* Upon motion by the Government, a court of competent jurisdiction may extend the period for sending notice for a period not to exceed 60 calendar days. This period may be further extended by the court for additional 60 calendar-day periods, as necessary, if the court determines, based on a written certification of the Assistant Commissioner, Investigations, or designee, that the conditions set forth in paragraph (d) of this section are present.

§ 162.93 Failure to issue notice of seizure.

If Customs does not send notice of a seizure of property in accordance with § 162.92 to the person from whom the property was seized, and no extension of time is granted, Customs will return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. Customs is not, however, required to return contraband or other property that the person may not legally possess.

§ 162.94 Filing of a claim for seized property.

(a) *Generally.* In lieu of filing a petition for relief in accordance with part 171 of this chapter, any person claiming property seized by Customs in a non-judicial civil forfeiture proceeding may file a claim with the appropriate Fines, Penalties, and Forfeitures Officer.

(b) *When filed.* Unless the Fines, Penalties, and Forfeitures Officer provides additional time to the person filing a claim for seized property pursuant to paragraph (a) of this section, the claim must be filed within 35 calendar days after the date the notice of seizure is mailed. If the notice of seizure is not received, a claim may be filed not later than 30 calendar days after the date of final publication of notice of seizure and intent to forfeit the property.

(c) *Form of claim.* The claim must be in writing but need not be made in any particular form.

(d) *Content of claim.* The claim must:

(1) Identify the specific property being claimed;

(2) State the claimant's interest in the property (and provide customary documentary evidence of such interest, if available) and state that the claim is not frivolous; and

(3) Be made under oath, subject to penalty of perjury.

(e) *Effect of claim.* Not later than 90 calendar days after a claim has been filed, the Government will file an appropriate complaint for forfeiture, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

§ 162.95 Release of seized property.

(a) *Generally.* Except as provided in paragraph (b) of this section, a claimant to seized property under 18 U.S.C. 983(a) is entitled to immediate release of the property if:

(1) The claimant has a possessory interest in the property;

(2) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(3) The continued possession of the property by Customs pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing an individual from working, or leaving an individual homeless; and

(4) The claimant's likely hardship from the continued possession by Customs of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceedings.

(b) *Exceptions.* Immediate release of seized property under paragraph (a) of this section will not apply if the seized property:

(1) Is contraband, currency or other monetary instrument, or electronic funds, unless, in the case of currency, other monetary instrument or electronic funds, such property comprises the assets of a legitimate business;

(2) Is to be used as evidence of a violation of the law;

(3) By reason of design or other characteristic, is particularly suited for use in illegal activities; or

(4) Is likely to be used to commit additional criminal acts if returned to the claimant.

(c) *Request for release.* A claimant seeking release of property under this section must request possession of the property from the Fines, Penalties, and Forfeitures Officer who issued the notice of seizure. The request need not be made in any particular form, but must be in writing and set forth the basis on which the requirements of paragraph (a) of this section have been met. The request may be filed at any time during which the property remains under seizure.

(d) *Granting request for release.* The Fines, Penalties, and Forfeitures Officer may release the property if it is determined to be appropriate under paragraphs (a) through (c) of this section.

(e) *Denial of or failure to act on request for release.* If the Fines, Penalties, and Forfeitures Officer denies the request for release or fails to make a decision on the request by the 15th calendar day after the date the request is received by Customs, the claimant may file a petition in the district court in which the complaint has been filed, or, if no complaint has been filed, in the U.S. district court in which the seizure warrant was issued or in the U.S. district court for the district in which the property was seized.

§ 162.96 Remission of forfeitures and payment of fees, costs or interest.

When a person elects to petition for relief before, or in lieu of, filing a claim under § 162.94, any seizure subject to forfeiture under this subpart may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321(c), as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

PART 171—FINES, PENALTIES AND FORFEITURES

1. The authority citation for part 171 is revised to read as follows:

Authority: 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614; 21 U.S.C. 881 note.

2. Part 171 is amended by adding a new § 171.24 to read as follows:

§ 171.24 Remission of forfeitures and payment of fees, costs or interest.

Any seizure subject to forfeiture may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321, as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

§ 171.52 [Amended]

3. In § 171.51(b)(7) and 171.52(a), the reference to "49 U.S.C. App. 782" is removed and, in its place, a reference to "49 U.S.C. 80303" is added.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding the following in appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
. .	. .	.
§§ 162.94, 162.95(c)	Petition for remission or mitigation of forefeitures and penalties incurred	1515–0052
. .	. .	.
§ 171.11	Petition for remission or mitigation of forfeitures and penalties incurred	1515–0052
. .	. .	.

Approved: August 24, 2000.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–31882 Filed 12–13–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 3503]

Schedule of Fees for Consular Services

AGENCY: Department of State.

ACTION: Interim rule; stay of regulation.

SUMMARY: The Department of State is staying the amendment of the schedule of fees for the affidavit of support processing fee published in the **Federal Register** of September 7, 2000 (65 FR 54148–54150).

DATES: Effective December 14, 2000, Item 61 of 22 CFR 22.1 is stayed until January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, Department of State, SA–1, 10th Floor, 2401 E Street, NW., Washington DC 20522–0111; telex (202) 663–2499; e-mail address *abeytask@state.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2000, (65 FR 54148–54150) the Department published a rule adding a new item, Item 61, to the Schedule of Fees for consular services. Item 61 calls for a fee of $50.00 for review of a newly-required Affidavit of Support, Form I–864, when submitted in support of an application for immigration to the United States. The rule established October 1, 2000, as the effective date for collection of this new fee. For technical reasons, the Department was unable to begin this program on that date. This rule applies to posts designated for this purpose by the Deputy Assistant Secretary for Visa Services.

List of Subjects in 22 CFR Part 22

Schedule of Fees for Consular Services.

22 CFR Part 22 is amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

1. The authority citation for Part 22 continues to read:

Authority: 8 U.S.C. 1153 note, 1151, 1151 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 Y./s./c, 9701; E.O. 10718; 22 FR 4632, 3 CFR 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR 1966–1970 Comp., p. 570.

§ 22.1 [Amended]

2. Stay § 22.1, Item 61 until January 1, 2001.

Dated: November 27, 2000.

Bonnie R. Cohen,

Under Secretary for Management.

[FR Doc. 00–31740 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

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DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 3505]

Immigrant Visas; Change in the Schedule of Fees for Consular Service

AGENCY: Department of State.

ACTION: Final Rule, with a request for comments.

SUMMARY: The Department of State is amending the immigrant visa regulations to reference a change in the Schedule of Fees for Consular Services which added a fee under Item 61 for assistance in the preparation of a required Affidavit of Support.

DATES: Effective January 1, 2001. Comments must be submitted by February 12, 2001.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Chief, Legislation and Regulations Division, Visa Services, Department of State, 20520–0106 or e-mail odomhe@state.gov.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106, (202) 663–1204, e-mail odom*he@state.gov*, or fax at (202) 663–3898.

SUPPLEMENTARY INFORMATION: On March 13, 2000, the Department of State published a Proposed Rule (65 FR 13253), establishing a fee of $50.00 for the review of, and assistance rendered in connection with, the proper preparation of a required Affidavit of Support. Those services will be rendered in the United States at the National Visa Center and through a call center available to all affiants. That rule was made final on September 7, 2000, (65 FR 54148–54150).

This rule amends the immigrant visa regulation pertaining to the Affidavit of Support (22 CFR 40.41(b)), with respect to applicants from certain designated posts, to require the payment of that fee prior to the consular officer's assessment of the sufficiency of the affidavit. The Deputy Assistant Secretary for Visa Services shall designate such posts by public notice from time to time, until it becomes applicable worldwide.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an final rule, with a 60-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The fee under reference has been the subject of both a proposed and a final rule, which will be effective on the same date as this rule. The imposition of such a fee is authorized by law.

Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

Executive Order 131332

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 40

Aliens, Immigrants, Nonimmigrants, Visas, Ineligibilities

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 40 is as follows:

Authority: 8 U.S.C. 1104

2. Revise § 40.41(b) to read as follows:

§ 40.41 Public Charge

* * * * *

(b) *Affidavit of support.* Any alien seeking an immigrant visa under INA 201(b)(2), 203(a), or 203(b), based upon a petition filed by a relative of the alien (or in the case of a petition filed under INA 203(b) by an entity in which a relative has a significant ownership interest), shall be required to present to the consular officer an affidavit of support (AOS) on a form that complies with terms and conditions established by the Attorney General. Petitioners for applicants at a post designated by the Deputy Assistant Secretary for Visa Services for initial review of and assistance with such an AOS will be charged a fee for such review and assistance pursuant to Item 61 of the Schedule of Fees for Consular Services (22 CFR 22.1).

* * * * *

Dated: November 29, 2000.

Maura Harty,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 00–31742 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 3504]

Change in Procedures for Payment of Certain Immigrant Visa Fees

AGENCY: Department of State.

ACTION: Interim rule; stay of regulation.

SUMMARY: The Department of State is staying the recent regulation pertaining to a change in procedures for the payment of certain immigrant visa fees, published in the **Federal Register** of September 8, 2000 (65 FR 54412).

DATES: Effective December 14, 2000, 22 CFR 42.71(b) is stayed until January 1, 2001, and § 42.71(c) is added until January 1, 2001.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204, e-mail *odomhe@state.gov*, or fax at (202) 663–3898.

SUPPLEMENTARY INFORMATION: On September 8, 2000, (65 FR 54412–12) the Department published a rule which, among other things, changed the procedure for and the timing of the payment of the application processing fee by immigrant visa applicants at certain consular posts. At the time the rule was sent to the **Federal Register** it was intended to be effective upon publication. For technical reasons, it could not be implemented as intended on the date published in the **Federal Register**.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

22 CFR Part 42 is amended as follows:

PART 42—VISAS; DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104.

2. In § 42.71 stay paragraph (b) until January 1, 2001, and add paragraph (c) until that date to read as follows:

§ 42.71 Authority to issue visas; visa fees.

* * * * *

(c) Immigrant visa fees. Fees are prescribed by the Secretary of State for the execution of an application for, and the issuance of, an immigrant visa. The application fee shall be collected prior to the visa interview and execution of the application. The issuance fee shall be collected after completion of the visa interview and prior to issuance of the visa. A fee receipt shall be issued for each fee. A fee collected for the application for or issuance of an immigrant visa is refundable only if the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible.

Dated: November 28, 2000.

Maura Harty,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 00–31741 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–433; Ref. Notice No. 883]

RIN 1512–AC03

Addition of a New Grape Variety Name for American Wines (99R–142P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is adding a new name, "Dornfelder", to the list of prime grape variety names for use in designating American wines. Dornfelder is a red variety, developed in Germany in 1955, currently grown commercially in the United States.

EFFECTIVE DATE: Effective February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202–2301, (716) 551–4048.

SUPPLEMENTARY INFORMATION:

1. Background on Grape Variety Names

Under 27 CFR 4.23(b), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in some circumstances) is derived from that grape variety. The wine must also be labeled with an appellation of origin. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all varieties are listed on the brand label and the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92.

How May New Varieties Be Added to the List of Prime Grape Names?

Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- Information that the variety is used or will be used in winemaking; and
- Information that the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety such as the acreage planted or market studies.

Section 4.93 also places certain restrictions on grape names that will be approved. A name will not be approved:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term "Riesling."

The Director reserves the authority to disapprove the name of a grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words that are misleading under § 4.39.

2. Dornfelder Rulemaking

Petition

ATF received a petition proposing to add the name "Dornfelder" to the list of prime grape variety names approved for the designation of American wines. Mr. John Weygandt and Ms. Alice Weygandt of Stargazers Vineyard in Coatesville, Pennsylvania, submitted the petition.

According to information submitted by the petitioners, Dornfelder is a red variety, developed in Germany in 1955. It is a crossing of Helfenstein (a crossing of Frühburgunder and Trollinger) and Heroldrebe (a crossing of Portugieser and Limberger). According to Jancis Robinson's Vines, Grapes and Wines (First American Edition 1986), Dornfelder is * * * perhaps Germany's most promising 'new' red crossing." The name "Dornfelder" is derived from Imanuel Dornfeld, founding father of the Württemberg viticultural school during

the mid-19th century. "Dornfelder" was approved as a varietal name under German wine regulations in 1980.

In the United States, the breeders have obtained plant variety protection through the Plant Variety Protection Act, 7 U.S.C. Chapter 57, until 2009. The petitioners planted 600 vines of this variety in 1997, which will bear a commercial crop in 2000. In addition, three other growers in the states of Virginia, Pennsylvania, and Michigan have planted this variety. Dornfelder plants have been offered for sale by American Nursery, located in California and Virginia, since 1996.

Notice No. 883

In Notice 883, published March 9, 2000, ATF proposed to add the name "Dornfelder" to the list of approved prime names in § 4.91. No comments were received. Because sufficient evidence was provided to satisfy the requirements under § 4.93, ATF is amending § 4.91 to include "Dornfelder" in the list of approved prime names for grape varieties.

3. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of the grape varietal name Dornfelder. No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

4. Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer Protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.91 is amended by adding the name "Dornfelder," in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Dornfelder

* * * * *

Bradley A. Buckles,

Director.

Approved: August 11, 2000.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 00–31486 Filed 12–13–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–434; Re: Notice No. 874]

RIN 1512–AA07

Applegate Valley Viticultural Area [99R–112P]

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing a viticultural area located within the State of Oregon, to be known as "Applegate Valley." The petition for this viticultural area was filed by Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations Division, (202–927–8210), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas (AVAs). The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added a new part 9 to 27 CFR, providing for the listing of approved AVAs. Section 4.25a(e)(1), title 27, CFR, defines an AVA as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an AVA. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc., proposing to establish a viticultural area within the State of Oregon, to be known as "Applegate Valley." The viticultural area is located entirely within the Rogue Valley AVA. The viticultural area is in Josephine and Jackson Counties. Mr. Smith believes that Applegate Valley is a widely known name for the petitioned area, that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

The Applegate Valley has been a grape-growing region since 1870 when A. H. Carson began planting 30 acres of grapes along North Applegate Road. There are now 23 vineyards in the valley. In the original petition, Mr. Smith noted there were six bonded wineries and 235 acres of grapes in the proposed area. Since the publication of the notice, the petitioner amended his statement regarding the number of bonded wineries: there are four bonded wineries in the Applegate Valley. One commentor provided an acreage update by stating that there are now over 340 acres that have been planted to grapes within the Applegate Valley.

Notice of Proposed Rulemaking

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 874, in the **Federal Register** on May 6, 1999 [64 FR 24308], proposing the establishment of the Applegate Valley viticultural area. The notice requested comments from interested persons by July 6, 1999.

Name Evidence

ATF found that usage of the name Applegate Valley is well established. There are many businesses, organizations and at least one community event (the Applegate Valley Harvest Festival), that employ the use of this name. The Applegate River was named for one or more of the Applegate brothers who explored the area in 1846. The U.S.G.S. map used to show the boundaries of the area (Medford, Oregon; California 1955, Revised 1976, (NK 10–5), scale 1:250,000) uses the name Applegate River and shows the town of Applegate within the Applegate Valley viticultural area. The following are evidence of Applegate Valley's name recognition.

- "The Wine Appellations of Oregon" map published by the Oregon Wine Marketing Coalition shows the Applegate Valley and mentions it in its notes.
- The Oxford Companion to Wine (first edition) mentions the Applegate Valley on page 693.
- The Oregon Winegrape Growers' Guide devotes several paragraphs to a discussion of the Applegate Valley as one of Oregon's grape-growing areas.
- Treasury Decision ATF–310 (The Rogue Valley Viticultural Area) refers to the Applegate Valley within the Rogue Valley viticultural area.

Geographical Features

Evidence of Boundaries and Topography

The boundaries of the viticultural area are within Jackson and Josephine Counties in the State of Oregon. The area is entirely within the Rogue Valley viticultural area. The Rogue Valley viticultural area has three distinct subregions: Applegate Valley and two other valleys that have not been designated as AVAs, Illinois Valley and Bear Creek Valley. The Illinois Valley lies to the west of the Applegate Valley and Bear Creek Valley lies directly to the east of the AVA.

The Applegate Valley is approximately 50 miles long, running from its southeast origins near the California border, in a generally northwest direction, to where it joins the Rogue River, just west of Grants Pass.

Applegate Valley is surrounded by the Siskiyou Mountains. The Siskiyou Mountains are believed to have been created in the Jurassic period by up-thrusts of the ocean floor as a plate forced its way under the continental shelf. To Applegate Valley's east and south is the Rogue River National Forest. To its west is the Siskiyou National Forest. Both of the National Forests' boundaries have been identified by the U.S. Forest Service and were used to identify the boundaries of the Applegate Valley AVA where appropriate. A portion of the western boundaries, and most of the northern boundaries, are established by straight-line segments drawn between prominent physical features of the terrain, mostly mountaintops. The boundaries of the Applegate Valley AVA are more particularly discussed in § 9.165(c) of the regulations, as identified at the end of this Treasury Decision.

Soil

The petitioner submitted a soil analysis listing the principal soil series from Applegate Valley, Bear Creek Valley and Illinois Valley vineyards. As indicated earlier, these three subregions are located in the Rogue Valley viticultural area. The principal soil series from vineyards located in each of these subregions are: (1) Applegate Valley: Central Point, Cove, Kerby, Manita, Ruch and Shefflein; (2) Bear Creek Valley: Agate-Winlow Complex, Brockman, Carney, Central Point, Coleman, Darrow, Evans, Holland, Medford, Provig-Agate Complex, Ruch, Selmac, Shefflein, Vannoy and Wapato; (3) Illinois Valley: Brockman, Cornutt-Dubakella Complex, Foehlin, Kerby, Pollard and Takilma. Based on this soil analysis, the Applegate Valley and Bear Creek Valley vineyards have three principal soil series in common: Central Point, Ruch and Shefflein. It is also apparent that Illinois Valley and Applegate Valley vineyards have one principal soil series in common, Kerby.

Soil types in the Applegate Valley are generally granite in origin as opposed to the volcanic origin of the Cascade Mountains to the east. Most of the Applegate Valley vineyards are planted on stream terraces or alluvial fans providing deep well-drained soils. The leaching of the more basic soil components found in the Illinois Valley have left the soil slightly more acidic than the soils in the Applegate Valley. The soils to the east of Applegate Valley near Bear Creek Valley tend to be less acidic than the soils in the Applegate Valley. Applegate Valley soils have a pH of between 6.1 and 6.5. In The Oregon Winegrape Growers' Guide, Ken Browning writes that a pH of 6.0 to 6.5 is ideal for desirable microbiological activity, nutrient availability, and nutrient balance.

Climate

The natural geographic boundaries of the Applegate Valley provide for its distinct climate in terms of rainfall, degree-days and temperature. Specifically, the Siskiyou Mountains separate the Applegate Valley's western side from the Illinois Valley and its eastern side from Bear Creek Valley. This further accentuates climatic differences between the three valleys, coupled with a lessening of the marine influence, when moving from a west to east direction.

According to The Oregon Winegrape Growers' Guide, "As one moves from west to east, or from the Illinois River Valley including Selma to the Applegate Valley and into the Rogue Valley, good grape-growing sites generally become warmer due to the lessening of the marine air influence." The Oregon Winegrape Growers' Guide goes on to point out that earlier ripening varieties such as Pinot noir, Early Muscat, and Gewürztraminer, do well in the Illinois Valley. In contrast, the Applegate Valley with its Region II temperature range can ripen Cabernet Sauvignon, Merlot, and Chardonnay two to three weeks earlier than is possible in the Illinois Valley.

As mentioned earlier, Applegate Valley AVA is located in Jackson and Josephine Counties. The USDA Natural Resources Conservation Service, National Water and Climate Center, has climate data for Jackson and Josephine Counties, which is available from the USDA web site at *http://wcc.nrcs.*

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usda.gov/water/climate/. Temperature and precipitation differences in Applegate Valley and surrounding areas are illustrated by the data collected during 1961 through 1990 at five weather stations. The Ruch weather station is located inside the Applegate Valley AVA boundaries and data from that site is used to approximate the climate conditions of this viticultural area. The four other weather stations located outside the AVA, are: (1) Cave Junction, located in the Illinois Valley, in Josephine County, which is in close proximity to the AVA's southwest boundaries; (2) Grants Pass, in Josephine County, which is in close proximity the AVA's northwest boundaries; (3) Medford, located in the Bear Creek Valley in Jackson County, which is in close proximity to the AVA's northeast boundaries; and (4) Ashland, also in Jackson County, which is in close proximity to the AVA's southeast boundaries.

Climatological statistics are as follows: Cave Junction (Illinois Valley) has an average annual precipitation of 59.57 inches. Average annual precipitation declines steadily, when proceeding in a generally eastern direction: starting with Grants Pass at 30.89 inches, into Applegate Valley at Ruch with 26.01 inches, then Medford, in Bear Creek Valley, with 20.56 inches and finally, Ashland reporting 19.26 inches. This illustrates the following precipitation differences when comparing each of the four weather sites with the Ruch (Applegate Valley) site: Cave Junction had the highest precipitation with 33.56 inches more than Ruch; Grants Pass had 4.9 inches more; Medford had 5.5 inches less; and Ashland with 6.8 inches less than Ruch. This shows that Applegate Valley has a distinct and measurable climatic difference from its surrounding areas in terms of average annual precipitation.

The growing degree-days records (from the same source as the precipitation records presented above) provide another climatic difference between the Applegate Valley and the surrounding areas. A growing degree-day is defined as a unit of heat available for plant growth. It is calculated by taking the average daily temperature (adding the maximum and minimum daily temperatures, then dividing by two) and subtracting the temperature below which growth is minimal for the principal crops in the area. The temperature threshold used for determining minimal growth was 40 degrees Fahrenheit. The temperature data places the average yearly degree-days at the Ruch site (Applegate Valley) at 5108. The average yearly degree-days, beginning with the stations outside of the Applegate Valley boundaries are as follows: Southwest at Cave Junction (Illinois Valley) registers 5008 degree-days; northwest at Grants Pass reported 5689; northeast at Medford (Bear Creek Valley) measured 5086, and southeast at Ashland had 4836. In comparing the degree-days of Ruch (Applegate Valley) with the four others, it is clear that a measurable difference in degree-days exists between Applegate Valley and the surrounding areas: The largest temperature variation was at Grants Pass, which had 583 more degree-days than Applegate Valley, and the smallest difference was at Medford (Bear Creek Valley), which had 20 degree-days less than Applegate Valley.

Comments on Notice of Proposed Rulemaking

ATF received 28 letters of comment in response to Notice No. 874. Of the 28 comments ATF received, 22 (with a total of 27 signatures) favored creating the Applegate Valley viticultural area; six (with a total of seven signatures) were opposed. The petitioner submitted additional supporting documentation about soil and climate for areas within and outside of the viticultural area, which was included in the rulemaking record. This information included soil maps, precipitation and temperature records. All of these comments were given careful consideration in the preparation of the final rule.

Commentors who supported the establishment of an Applegate Valley AVA confirmed that Applegate Valley has distinct weather and growing conditions. One respondent, Mr. Robert Kerivan, President of Bridgeview Vineyards, stated that the Applegate Valley is known for Bordeaux style grapes—merlot, syrah and cabernet sauvignon—specifically due to its warmer climate. Four of the commentors specifically noted the distinct soils of Applegate Valley along with six who cited the unique geographic features of the AVA. Climate was the most common basis for support with 16 commentors in favor of Applegate Valley's AVA approval.

The respondents opposed to establishing Applegate Valley viticultural area challenge the existence of significant differences between Applegate Valley and the surrounding Rogue Valley viticultural area. The majority of the opposition based their objection on the overall similarity of the climate and soils of the Rogue Valley viticultural area and the Applegate Valley. One commentor noted that the different soils of the Rogue Valley viticultural area are "a jigsaw puzzle of soils which occur repeatedly in all parts of the region." Opponents want the Rogue Valley left as one area. Three of the six opposing commentors expressed concerns about the fragmenting of the Rogue Valley viticultural area. Two of these commentors stated that there should not be an Applegate Valley AVA since the quality of the wine is not distinct from those produced in the surrounding areas. Yet, both commentors describe the wine from Applegate Valley as "bland" and "brash." One of the commentors voiced concerns about having "a noticeable negative financial impact on the other established wineries and growers" outside the Applegate Valley AVA.

ATF's Decision

ATF believes that the evidence supports the establishment of an Applegate Valley AVA. While ATF agrees there are similarities associated with Applegate Valley and the surrounding Rogue Valley, we believe that the confluence of distinctions, in soil, climate and name recognition, are sufficient to demarcate the Applegate Valley as an AVA. As evidenced above, the petition clearly satisfies the criteria in 27 CFR 4.25(a)(e)(2) with respect to name recognition, boundaries and geographical features. As set forth above, Applegate Valley is also recognized as having a distinct climate from the areas that surround it.

The Applegate Valley is encompassed by the Rogue Valley and, therefore, is considered a sub-appellation of the Rogue Valley. (A sub-appellation is the smaller delimited grape-growing region that is bounded by the larger delimited grape-growing region.) As with many sub-appellations, the similarities are implicitly recognized by the approval of the primary appellation. Rogue Valley, the primary appellation, and Applegate Valley, the sub-appellation, are not exceptions to this situation.

Marketing materials for Rogue Valley wineries, along with viticultural reference books, cite the Applegate Valley as a distinct sub-appellation. Ted Jordan Meredith, in his book Northwest Wine Companion, specifically describes the Applegate Valley as being "one of the warmest grape-growing areas in western Oregon * * *". A web page titled TOUR WINE COUNTRY by The Oregon Pinot Noir Club (http://www.oregonpinotnoir.com/Merchant/tourrgsm.htm) states that Rogue Valley has three distinct sub-appellations. Of these three areas, "the Applegate Valley with a warmer climate is known for Cabernet Sauvignon, Cabernet franc, and Merlot." Another web site, WINES NORTHWEST—A GUIDE TO THE WINE COUNTRY OF THE PACIFIC NORTHWEST (*http://www.winesnw.com/rogue.html*), mentions Applegate Valley as the smallest of Rogue Valley's sub regions. They state that Applegate Valley is "drier and warmer than the Illinois Valley subregion to its west, yet not as warm and dry as Bear Creek Valley to the east."

With respect to concerns about breaking up the Rogue Valley, as previously stated, Rogue Valley AVA encompasses Applegate Valley. In accordance with ATF regulations, an overlapping area is entitled to more than one viticultural designation. Wine that meets the criteria described in 27 CFR 4.25a(e)(4), may be labeled with Rogue Valley or Applegate Valley or with both viticultural areas as the appellation(s) of origin. Therefore, ATF does not view this as a fragmentation of the existing Rogue Valley, but as an option for wineries to provide consumers with more specific information about the origin of the wine.

Moreover, to the extent certain commentors opposed the establishment of the Applegate Valley AVA on the basis that the wine made from grapes produced in that area is not distinct or that the establishment of the Applegate Valley AVA will present an adverse financial impact on the area, these concerns are not criteria for denying a petition to establish an AVA under 27 CFR 4.27a(e)(2). Moreover, approval of an AVA does not, in any manner, constitute the endorsement of a particular wine. Rather, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area.

Boundary

The boundaries of the Applegate Valley viticultural area may be found on one U.S.G.S. map titled "Medford, Oregon; California" (NK 10–5) scale 1:250,000 (1955, revised 1976). The boundaries are described in § 9.165.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. In subpart C is amended by adding § 9.165 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.165 Applegate Valley.

(a) *Name.* The name of the viticultural area described in this section is "Applegate Valley."

(b) *Approved maps.* The appropriate map for determining the boundaries of the Applegate Valley viticultural area is one U.S.G.S. map titled "Medford, Oregon; California" (NK 10–5) scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Applegate Valley viticultural area is located in the State of Oregon within Jackson and Josephine Counties, and entirely within the existing Rogue Valley viticultural area. The boundaries are as follows:

(1) Beginning at the confluence of the Applegate River with the Rogue River approximately 5 miles west of Grants Pass, the boundary proceeds due west to the boundary of the Siskiyou National Forest north of Dutcher Creek;

(2) Then in a straight line in a southerly and westerly direction along the boundary of the Siskiyou National Forest to Highway 199;

(3) Then in a straight line easterly to the peak of Roundtop Mountain (4693 feet);

(4) Then in a straight line easterly and southerly to the peak of Mungers Butte;

(5) Then in a straight line southerly and westerly to Holcomb Peak;

(6) Then in a generally southeasterly direction along the eastern boundary of the Siskiyou National Forest until it joins the northern boundary of the Rogue River National Forest;

(7) Then easterly along the northern boundary of the Rogue River National forest to a point due south of the peak of Bald Mountain;

(8) Then due north to the peak of Bald Mountain (5635 feet);

(9) Then in a straight-line northerly and westerly to the lookout tower on Anderson Butte;

(10) Then in a straight line northerly and westerly to the peak of an unnamed mountain with an elevation of 3181 feet;

(11) Then in a straight line northerly and westerly to the peak of Timber Mountain;

(12) Then in a straight line westerly and southerly to the middle peak of Billy Mountain;

(13) Then, northerly and westerly by straight lines connecting a series of five unnamed peaks with elevations of approximately 3600, 4000, 3800, 3400, and 3800 feet, respectively;

(14) Then in a straight line northerly and easterly to Grants Pass Peak;

(15) Then in a straight line westerly to Jerome Prairie;

(16) Then in a straight line northwesterly to the confluence of the Applegate River and the Rogue River and the point of the beginning.

Dated: October 16, 2000.

Bradley A. Buckles,

Director.

Approved: November 1, 2000.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 00–31595 Filed 12–13–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA122 & 124–5055; FLR–6919]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Source-Specific Permits to Reduce NO_X Emissions in the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. the intended effect of this action is to approve permits issued by the Commonwealth of Virginia for the Potomac Electric Power Company (PEPCO), Potomac River Generating Station and the Virginia Power (VP), Possum Point Generating Station. These permits were submitted as State Implementation Plan (SIP) revisions on September 19, 2000, September 26, 2000, and October 24, 2000, by the Virginia Department of Environmental Quality (VADEQ). These permits impose conditions which reduce nitrogen oxides (NO_X) emissions from these two facilities during the ozone season (May 1–September 30) of each year. The resulting NO_X emission reductions are strengthening measures for the Metropolitan Washington, DC ozone nonattainment area's attainment plan and are necessary for full approval of the attainment demonstration SIP for this ozone nonattainment area.

EFFECTIVE DATE: This final rule is effective on January 16, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Michael Ioff at (215) 814–2166 or by e-mail at *ioff.mike@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 19, 2000 (65 FR 62666), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed to approve, as revisions to the Virginia SIP, two permits issued by the Commonwealth. One permit was issued for PEPCO's Potomac River Generating Station and the other for VP's Possum Point Generating Station. That NPR provided for a public comment period ending on November 9, 2000. On November 9, 2000 (65 FR 67319), EPA published a notice extending the comment period to November 20, 2000. The requirements of the permits and EPA's rationale for approving them as SIP revisions were provided in the NPR and will not be restated here. EPA received no comments on its proposed action to approve these permits.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regualt5eed entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 101.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enorce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. in addition, citizen enforcement under section 304 of the clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

II. Final Action

EPA is approving permits issued by the commonwealth of Virginia to PEPCO's Potomac river Generating Station and to VP's Possum point Generating Station as revisions to the Virginia SIP. EPA is amending the chart found at 40 CFR section 52.2420(d) to reflect its approval action.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve two permits issued by the Commonwealth of Virginia to PEPCO's Potomac River Generating Station and to VP's Possum Point Generating Station may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

1. In § 52.2420, the table in paragraph (d) is amended by adding the entires for "Potomac Electric Power Company (PEPCO)—Potomac River Generating Station (Permit to Operate)" and "Virginia Power (VP)—Possum Point Generating Station (Permit to Operate)" at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
. . .	. . .	.	.	.
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station (Permit to Operate).	Registration No. 70228.	9/18/00	12/14/00	52.2420(d).
Virginia Power (VP)—Possum Point Generating Station (Permit to Operate).	Registration No. 70225.	9/26/00	12/14/00	52.2420(d).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[VI002; FRL–6916–9]

Clean Air Act Final Full Approval of Operating Permits Program: The U.S. Virgin Islands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the operating permits program submitted by the U.S. Virgin Islands for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: This program will be effective January 16, 2001.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway, 25th Floor, New York, New York 10007–1866, Attention: Steven C. Riva.

EPA Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attention: John Aponte.

The U. S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), Division of Environmental Protection, Building 111, Apartment 14A, Water Gut Homes, Christainsted, St. Croix, U.S. Virgin Islands 00820. Attention: Hollis Griffin.

FOR FURTHER INFORMATION CONTACT: Umesh Dholakia, Permitting Section, at the above EPA office in New York or at telephone number (212) 637–4023. John Aponte of the Caribbean Environmental Protection Division can be reached at (787) 729–6951, extension 279.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the Clean Air Act ("the Act"), 42 U.S.C. 7661–7661(f), and its implementing regulations at 40 Code of Federal Regulations (CFR) part 70 required that States develop and submit operating permit programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act, 42 U.S.C. 7502 and 40 CFR part 70, which together outline criteria for approval or disapproval. If a state did not have an approved program by two years after the November 15, 1993 date, EPA was required to establish and implement a Federal program.

On January 25, 1996, the EPA proposed full approval of the Operating Permits Program submitted for the Virgin Islands (see 61 FR 2216) requiring that the VIDPNR correct the wording errors in its legislation before full approval could be finalized. No comment was received on the proposed full approval document. Because the wording errors were not corrected, EPA subsequently issued a Final Interim Approval on July 31, 1996, rather than a full approval. EPA also reiterated the requirements for a full final approval (see 61 FR 39882). Since all the defects in the Virgin Island's program have been corrected, the EPA is taking the direct final action in this notice to promulgate full approval of the Operating Permits Program for the Virgin Islands.

II. Final Action and Implications

A. Analysis of State Submission

On January 25, 1996, the EPA proposed full approval of VIDPNR's Title V Operating Permits Program (see 61 FR 2216). The proposed full approval required that the VIDPNR correct the wording errors in its legislation prior to receiving final approval. On July 31, 1996 the Virgin Islands was given interim approval because it had not corrected the wording errors in its legislation (see 61 FR 39882). The Virgin Islands has corrected those errors in legislative changes promulgated on December 22, 1999. These changes were signed by the Governor at Act No. 6338 on January 3, 2000. The program elements discussed in the proposal document are unchanged from the analysis in the Final Full Approval document and continue to fully meet the requirements of 40 CFR part 70.

B. Options for Approval/Disapproval

The EPA is promulgating full approval of the Operating Permits Program submitted to the EPA by the VIDPNR on November 18, 1993 with supplemental packages through August 25, 2000. Among other things, the VIDPNR has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5), 42 U.S.C. 7412(l)(5), requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under part 70. In a letter dated May 30, 1995, VIDPNR requested delegation through 112(l) of all existing 112 standards and all future 112 standards for both part 70 and non-part 70 sources and infrastructure programs. In the letter, VIDPNR demonstrated that they have sufficient legal authorities, adequate resources, the capability for automatic delegation of future standards, and adequate enforcement ability for implementation of section 112 of the Act for both part 70 sources and non-part 70 sources. Therefore, the EPA is also promulgating full approval under section 112(l)(5), 42 U.S.C. 7412(1)950, and 40 CFR 63.91 to the Virgin Islands for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs that are unchanged from Federal rules as promulgated.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full approval are contained in the docket maintained at the EPA Regional Offices in New York and Puerto Rico and at VIDPNR. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this final rule may have federal implications. For example, under the authority of section 505 of the Act, 42 U.S.C. 7661(d), EPA may object to a permit issued under the VI's Title V Operating Permits Program. Should the VI fail to revise the permit based upon EPA's objection, EPA has the authority under this section of the Act to issue a federal permit for the facility under 40 CFR part 71. However, it will not impose direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds. Therefore, section 6(c) of the Executive Order does not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted closely with the Governor of the VI and his staff early and throughout the process of developing the VI's regulations to permit them to have meaningful and timely input in the development of its Title V Operating Permits Program. EPA worked closely with the Governor's legal staff in drafting the legislation and regulations for this program and in enacting legislation to correct the typographical errors in the original legislation.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

E. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute a Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

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agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be in the United States Court of Appeals for the appropriate circuit by February 12, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 4, 2000.

Jeanne M. Fox,

Regional Administrator, Region 2.

Title 40, chapter I, part 70 of the Code of Federal Regulations is to be amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising entry (a) for the Virgin Islands to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Virgin Islands

(a) The Virgin Islands Department of Natural Resources submitted an operating permits program on November 18, 1993 with supplements through August 25, 2000; full approval effective on January 16, 2001.

[FR Doc. 00–31899 Filed 12–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301081; FRL–6755–7]

RIN 2070–AB78

Modified Styrene-Acrylic Acid and/or Methacrylic Acid Polymers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of a group of polymers, modified styrene-acrylic acid and/or methacrylic acid polymers, when used as inert ingredients in or on growing crops, when applied to raw agricultural commodities (RAC) after harvest, or to animals. Uniqema submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of modified styrene-acrylic acid and/or methacrylic acid polymers.

DATES: This regulation is effective December 14, 2000. Objections and requests for hearings, identified by docket control number OPP–301081,must be received by EPA on or before February 12, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301081 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379 and e-mail address: gairola.indira@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentiallyaffected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules." and then look up the entry for this document under the "**Federal Register** —Environmental Documents." You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301081. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of September 6, 2000 (65 FR 54022) (FRL–6739–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 0E6197) by Uniqema, 900 Uniqema Boulevard, New Castle, DE 19720. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of a group of polymers modified styrene-acrylic acid and/or methacrylic acid polymers.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert " is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The modified styrene-acrylic acid and/or methacrylic acid polymers are not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymers do contain as an integral part of their compostion the atomic elements carbon, hydrogen, and oxygen.

3. The polymers do not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymers are neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6.The polymers are not water absorbing polymers with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the modified styrene-acrylic acid and/or methacrylic acid polymers, also meet as required the following exemption criteria specified in 40 CFR 723.250 (e).

7. The polymers' number average molecular weight (MW) of 1,200 is greater than 1,000 and less than 10,000 daltons. The polymers contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymers do not contain any reactive functional groups.

Thus, modified styrene-acrylic acid and/or methacrylic acid polymers meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to modified styrene-acrylic acid and/or methacrylic acid polymers.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that modified styrene-acrylic acid and/or methacrylic acid polymers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of modified styrene-acrylic acid and/or methacrylic acid polymers is 1,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Additionally, since the polymers are not water-absorbing, it is expected that respirable fractions would be cleared from the lungs. Since [modified styrene-acrylic acid and/or methacrylic acid polymers] conform to

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the criteria that identify low risk polymers, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not modified styrene-acrylic acid and/or methacrylic acid polymers share a common mechanism of toxicity with any other chemicals. However, modified styrene-acrylic acid and/or methacrylic acid polymers conform to the criteria that identify low risk polymers. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of modified styrene-acrylic acid and/or methacrylic acid polymers.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of modified styrene-acrylic acid and/or methacrylic acid polymers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that modified styrene-acrylic acid and/or methacrylic acid are endocrine disruptors.

B. Existing Exemptions from a Tolerance

There are no existing tolerance exemptions for modified styrene acrylic acid and/or methacrylic acid polymers.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring tolerance for modified styrene-acrylic acid and/or methacrylic acid polymers] nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of modified styrene-acrylic acid and/or methacrylic acid polymers from the requirement of a tolerance will be safe. Since EPA is exempting a group of polymers, it is not possible to identify in this final rule by CAS Reg. No., all polymers that could be included in this group. Those considering the use of a specific polymer that is exempted under this group must document in writing to the Agency the fact that a particular polymer (including CAS Reg. No.) falls under the exemption for modified styrene-acrylic acid and/or methacrylic acid polymers.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301081 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 12, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail thefee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301081, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket @epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have " substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inertingredients	Limits	Uses
Styrene, copolymers with acrylic acid and/or methacrylic acid, with none and/or one or more of the following monomers: acrylamidopropyl methyl sulfonic acid, methallyl sulfonic acid, 3-sulfopropyl acrylate, 3-sulfopropyl methacrylate, hydroxypropyl methacrylate, hydroxypropyl acrylate, hydroxyethyl methacrylate, and/or hydroxy-ethyl acrylate; and its sodium, potassium, ammonium, monoethanolamine, and triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) of 1,200.	Notto exceed 25% informulated product	Carriers, adhesives, binders, suspending and dispersing agents, related adjuvants in pesticide formulations

* * * * *

(e) * * *

Inertingredients	Limits	Uses
Styrene, copolymers with acrylic acid and/or methacrylic acid, with none and/or one or more of the following monomers: acrylamidopropyl methyl sulfonic acid, methallyl sulfonic acid, 3-sulfopropyl acrylate, 3-sulfopropyl methacrylate, hydroxypropyl methacrylate, hydroxypropyl acrylate, hydroxyethyl methacrylate, and/or hydroxy-ethyl acrylate; and its sodium, potassium, ammonium, monoethanolamine, and triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) of 1,200.	Notto exceed 25% informulated product	Carriers, adhesives, binders, suspending and dispersing agents, related adjuvants in pesticide formulations.

[FR Doc. 00–31900 Filed 12–13–00; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7749]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

64.6 LIST OF ELIGIBLE COMMUNITIES

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazardous areas
Region II				
New York: Brunswick, town of, Rensselaer County.	361130	January 14, 1993, Emerg., August 26, 1977, Reg., December 6, 2000.	12–06–00	12–06–00
Region III				
Pennsylvania: New Kensington, city of, Westmoreland County.	420891	September 29, 1978, Emerg., June 14, 1973, Reg., December 6, 2000.	12–06–00	12–06–00
Region IV				
Florida: Apopka, city of, Orange County.	120180	June 17, 1975, Emerg., September 29, 1978, Reg., December 6, 2000.	12–06–00	12–06–00
Eatonville, town of, Orange County.	120182	March 31, 1975, Emerg., Demember 01, 1978, Reg., December 6, 2000.	12–06–00	12–06–00
Maitland, city of, Orange County.	120184	October 10, 1974, Emerg., September 5, 1979, Reg., December 6, 2000.	12–06–00	12–06–00
Windermere, town of, Orange County.	120381	November 2, 1979, Emerg., December 18, 1984, Reg., December 6, 2000.	12–06–00	12–06–00
Winter Park, city of, Orange County.	120188	May 28, 1974, Emerg., November 15, 1979, Reg., December 6, 2000.	12–06–00	12–06–00
Region X				
Washington: North Bonneville, city of, Skamania County.	530256	April 8, 1983, Emerg., May 28, 1984, Reg., December 6, 2000 ...	12–06–00	12–06–00
Region I				
Massachusetts: Braintree, town of, Norfolk County.	250233	November 10, 1972, Emerg., June 1, 1978, Reg., December 6, 2000.	12–06–00	12–06–00

64.6 LIST OF ELIGIBLE COMMUNITIES—Continued

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazardous areas
Region II				
New Jersey: Mantoloking, borough of, Ocean County.	340383	January 14, 1972, Emerg., September 30, 1977, Reg., December 6, 2000.	12–06–00	12–06–00

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: December 6, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–31903 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000331092-0315-02; I.D. 030100F]

RIN 0648-AM42

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and application period.

SUMMARY: NMFS issues regulations to implement Amendment 4 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which creates a license limitation program (LLP) for the scallop fishery). NMFS also announces the application period for this program. The scallop LLP will limit the number of participants and reduce fishing capacity in the scallop fishery off Alaska. The scallop LLP is necessary to achieve the conservation and management goals for the scallop fishery and is intended to further the objectives of the FMP.

DATES: (1) Final rule: Effective on January 16, 2001; and (2) application period: Beginning January 16, 2001, and ending on February 12, 2001.

ADDRESSES: Applications are available from the Program Administrator, Restricted Access Management, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Philip Smith. Applications may be picked up in person from NMFS in the Federal Building, Room 713, Juneau, AK. Requests for applications may also be sent by facsimile to (907) 586–7354. Copies of Amendment 4 to the Scallop FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809. Copies of the Final Regulatory Impact Review (FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Sue Salveson. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228, or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the FMP, management of all aspects of the scallop fishery, except limited access, is delegated to the State of Alaska (State). Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska Administrative Code (AAC) at 5 AAC Chapter 38--Miscellaneous Shellfish.

State regulations establish guideline harvest levels for different scallop registration areas, fishing seasons, open and closed fishing areas, observer coverage requirements, bycatch limits, gear restrictions, and measures to limit processing efficiency (including a ban on the use of mechanical shucking machines and a limitation on crew size). The gear regulations limit vessels to using no more than two 15-ft (4.5-m) dredges, except in Cook Inlet (State Registration Area H) where vessels are limited to using a single 6-ft (1.8-m) scallop dredge.

The Council submitted Amendment 4 for Secretarial review, and a Notice of Availability of the amendment was published March 9, 2000 (65 FR 12500), for a 60-day comment period that ended May 8, 2000. A proposed rule to implement Amendment 4 was published April 21, 2000 (65 FR 21385), for a 45-day comment period that ended June 5, 2000. Eleven letters of comments were received concerning Amendment 4 and its implementing rule. NMFS approved Amendment 4 on June 8, 2000. A summary of comments received on Amendment 4 and its implementing rule and agency response to each comment are presented in the Responses to Comments later in this document.

Management Background and Need for Action

The history of State and Federal management of the scallop fishery is described in the preamble to the rule proposed to implement Amendment 4 (April 21, 2000; 65 FR 21385). In summary, the scallop resource off Alaska has been commercially exploited for more than 30 years. Between 1969 and 1991, about 40 percent of the annual scallop harvest came from State waters. Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. The fishery has occurred almost exclusively in Federal waters in recent years, but some fishing in State waters occurs off Yakutat, Dutch Harbor, and Adak.

By 1992, fishery participants and management agencies developed growing concerns about excessive fishing capacity and exploitation in the scallop fishery. The Council was presented with information indicating that the stocks of weathervane scallops were fully exploited and any increase in fishing effort could be detrimental to the stocks. This information raised conservation concerns because scallops are highly susceptible to local depletion and boom/bust cycles worldwide.

The Council began its consideration of Federal management of the scallop fishery in 1992. The Council determined that Federal action was necessary because existing State statutes precluded a State vessel moratorium and, at that time, the State did not have authority under the Magnuson-Stevens Act to restrict access in Federal waters.

On February 23, 1995, NMFS closed Federal waters off Alaska to fishing for scallops by emergency interim rule to address concerns about uncontrolled fishing for scallops by vessels fishing outside the jurisdiction of State regulations (60 FR 11054; March 1, 1995).

In July 1995, NMFS approved an FMP for the scallop fishery (60 FR 42070; August 15, 1995). The only management measure authorized and implemented under the FMP was an interim 1 year closure of Federal waters off Alaska to fishing for scallops that was intended to provide management agencies time to develop measures necessary to support a controlled fishery.

During 1995, the Council prepared Amendment 1 to the FMP to replace the interim closure with a joint State-Federal management regime. NMFS approved Amendment 1 on July 10, 1996 (61 FR 38099). Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicated most State scallop regulations. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act enabled the Council to delegate management of the fishery to the State.

NMFS approved Amendment 2 to the FMP in March 1997. This amendment established a temporary moratorium on the entry of new vessels into the scallop fishery in Federal waters off Alaska. NMFS published a final rule implementing the moratorium on April 11, 1997 (62 FR 17749). A vessel owner had to have made a legal landing of scallops during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990 to qualify for a moratorium permit. This moratorium expired June 30, 2000. Eighteen vessel owners qualified for moratorium permits under the Federal vessel moratorium.

Changes made to the Magnuson-Stevens Act in 1996 provided the authority to delegate management responsibility for the scallop fishery in Federal waters to the State. The Council formalized this delegation with Amendment 3, which granted the State the authority to manage all aspects of the scallop fishery in Federal waters, except limited access, including the authority to regulate vessels not registered under the laws of the State. The final rule implementing Amendment 3 was published on July 17, 1998 (63 FR 38501).

Development of the Scallop LLP

The Council recommended Amendment 4 to the scallop FMP in February 1999. This amendment, approved by NMFS on June 8, 2000, establishes an LLP to replace the existing Federal moratorium program.

The Council's recommendation responded to extensive public testimony that the scallop fishery suffered from excessive harvesting capacity. In 1996, members of the scallop industry submitted a proposal to the Council for an LLP. Industry members proposed an LLP to limit access to the fishery because they believed that they would suffer economic hardship if latent capacity were activated. "Latent" capacity refers to fishing capacity that is not currently active in the fishery but is capable of entering the fishery. Public testimony indicated that the re-entry of latent capacity would adversely affect the economic viability of current participants (i.e., their average gross income from scallops landed would not at least equal their average costs of fishing for scallops).

Based on this information, the Council developed a problem statement and alternatives for analysis of an LLP to replace the vessel moratorium. The Council developed six alternatives and two options for the LLP. These alternatives ranged from no action, which result in open access to the scallop fishery, to programs that would issue between nine and 18 licenses. According to the official scallop LLP record, the Council's preferred alternative will yield a total of nine licenses. The options deal with area endorsements and vessel reconstruction and replacement. The Council's preferred options will: (1) allow all licenses to be statewide, but vessels that fished only in Cook Inlet in the qualifying period are limited to the existing gear restrictions for Cook Inlet; and (2) not allow increases in vessel length. The details of the alternatives and options can be found in the EA/RIR/FRFA (see **ADDRESSES**).

The Council's intent in adopting the most restrictive alternative was to create an LLP that will reduce the number of participants in the fishery and eliminate growth in harvesting capacity. The Council's goal was to reduce effort to approach a sustainable fishery with maximum net benefits to the Nation, as required by the Magnuson-Stevens Act.

Operational Aspects of the Scallop LLP and Small Business Compliance Guide

1. General

The LLP limits access to the commercial scallop fisheries in the exclusive economic zone (EEZ) off Alaska. A qualified person who applies as prescribed will receive a license(s) that authorizes that person to catch and retain scallops. Initial allocation of licenses will be based on the eligibility qualifications discussed below.

2. Nature of Scallop LLP Licenses and Qualification Periods

A scallop LLP license is a permit that grants the person named on the license (i.e., the license holder) the privilege of catching and retaining scallops in Federal waters off Alaska. Permanent scallop LLP licenses issued using criteria discussed below will be transferable to an eligible transferee(s), subject to NMFS approval. Each license will specify certain endorsements and limitations, including the name and address of the license holder and the maximum length overall (MLOA) of the vessel on which the license could be used. Some licenses will also specify limitations on scallop dredging gear that could be deployed from the vessel. A scallop LLP license represents a privilege (not a property right) that could be amended or revoked at any time without compensation.

NMFS will initially issue a scallop LLP license to an eligible applicant who held a State or Federal moratorium permit on February 8, 1999, and who used that permit to make the necessary legal landings of scallops during the qualifying period. The qualifying period runs from January 1, 1996, through October 9, 1998 (1996 was the first year of scallop fishing under the Federal scallop FMP and October 9, 1998, was the date of Council initial action on the scallop LLP). The necessary legal landings of scallops is at least one landing in each of any 2 calendar years during the qualifying period. A legal landing is defined at 50 CFR 679.2 as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing.

A license authorizes the license holder to catch and retain scallops in

Federal waters off Alaska. The license holder could be an individual or a corporate person consistent with the definition of "Person" at 50 CFR 679.2. The license holder is not required to be on-board a vessel when it is used to catch and retain scallops. However, the original scallop LLP license is required to be onboard the vessel when it is used to catch and retain scallops. Although a scallop LLP license will not be vessel-specific, the length overall of any vessel that is used to catch and retain scallops under the terms of the license will be constrained by the MLOA specified on the license. In addition, a license will specify any gear limitations. A permanent license also will be transferable, subject to NMFS review and approval of an application to transfer the license and the eligibility of the proposed transferee to receive a license by transfer.

The scallop LLP eligibility criteria that require an applicant to have held a moratorium permit and to have made legal landings of scallops during the scallop LLP qualifying period are designed to account for past and recent participation in the scallop fishery. Hence, persons who were eligible for a vessel moratorium permit but did not apply or receive one will not now be eligible for a scallop LLP license. Also, the LLP requirement to have the original scallop LLP license onboard while the vessel is used to catch and retain scallops would prevent a license holder from deploying more than one vessel at the same time for that purpose through copies of an original scallop LLP license.

3. Gear Endorsements

Most scallop LLP licenses will not have gear endorsements. However, persons who qualify for a scallop LLP license based on the legal landings of scallops harvested only from Cook Inlet (State Registration Area H) during the qualifying period will have a gear endorsement that limits the gear authorized by the license to a single 6-ft (1.8-m) dredge. A single 6-ft dredge is the maximum amount of gear authorized to catch and retain scallops in Cook Inlet. The purpose of this gear endorsement is to prevent expansion in overall fishing capacity of the scallop fleet. This purpose will be accomplished by not allowing operations in Cook Inlet to increase their fishing capacity outside of Cook Inlet beyond the level they used inside of Cook Inlet during the qualification period.

4. Vessel Length

The length overall or "length overall" of a vessel is defined at 50 CFR 679.2. Each scallop LLP license will specify the MLOA of a vessel that could be used under the authority of the license. A scallop LLP license could be used on any vessel equal to or less than the MLOA. The specified MLOA is equal to the length overall of the longest vessel used by the applicant to make legal scallop landings during the qualifying years with a valid moratorium permit. The purpose of the MLOA provision is to prevent expansion of harvesting capacity in the fishery, thus furthering the goals of the LLP.

5. Harvest Requirements

A legal landing is defined at 50 CFR 679.2 as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing. Only legal landings of scallops qualify the applicant for a scallop LLP license. To qualify for a scallop license, the applicant had to make one legal landing of scallops in each of any 2 calendar years during the period beginning January 1, 1996, through October 9, 1998, with a valid moratorium permit.

6. Scallop LLP License Recipients

A license will be issued only to an applicant meeting the eligibility criteria described above. In addition, an applicant must have been eligible on February 8, 1999, to document a fishing vessel under Chapter 121 of Title 46, U.S.C., to qualify for a scallop LLP license. Chapter 121 of Title 46, U.S.C., establishes citizenship requirements for documenting U.S. fishing vessels.

7. Application Process for Scallop LLP Licenses

A one-time application period for scallop LLP licenses will begin on January 16, 2001, and end on February 12, 2001. All applications for licenses must be submitted during this time period. Applications postmarked after the ending date for the application period will be denied.

Applications are available from NMFS Restricted Access Management, Alaska Region (see **ADDRESSES**). Also, NMFS will use the official records to identify qualified applicants and will notify these persons of the application period.

To evaluate and verify an applicant's eligibility claim, NMFS has compiled an official LLP record for the scallop LLP containing information on qualified persons who held moratorium permits and used the permits to participate in the scallop fishery during the qualifying period. The official scallop LLP record contains only complete and verifiable information that will be used for the purpose of determining eligibility for a license, including information on vessels that participated in the scallop fishery during the relevant time periods, vessel ownership, and the dates, location, and numbers of qualifying landings of scallops made by those vessels.

NMFS will compare the claims on the application with the official LLP record for all scallop LLP applications submitted during the application period. If the claims on the application are supported by the information in the official scallop LLP record, and those claims are sufficient to qualify the applicant for a license, the application will be approved and a license will be issued to the applicant. However, if the claims cannot be verified using information in the official scallop LLP record, the applicant will be notified and provided 60 days to submit information or evidence to support the unverified claims. For example, an applicant could provide State fish tickets to verify legal landings not found in the official scallop LLP record. Unsubstantiated or incompletely verified claims will not be accepted. If an applicant demonstrates that the claims submitted in the application are correct and sufficient to qualify the applicant for a license, NMFS will issue a license to the applicant at the conclusion of the evidentiary period.

If information in the application is not substantiated or verified at the conclusion of the 60-day evidentiary period, NMFS will issue an initial administrative determination (IAD) denying the permit, including the reasons why the application is not accepted. Applicants then will be provided with an opportunity to appeal that IAD to the NMFS Office of Administrative Appeals, under 50 CFR 679.43.

Pursuant to the license renewal provisions of 5 U.S.C. 558, NMFS will issue an interim (temporary, non-transferable) license to an applicant who was authorized to participate in the fishery in the year before the IAD is issued and who makes a credible claim to eligibility under the scallop LLP regulations. This interim permit will be issued at the same time an applicant is notified about the 60-day evidentiary period. This interim permit will authorize the applicant to catch and retain scallops and will be effective during administrative adjudication leading to a final agency action. Depending on the final agency action, the person will receive either a permanent, transferable license, or no license at all.

8. Transfer Process for Scallop LLP Licenses

The transfer process for scallop LLP licenses will enable a license holder to request a transfer of an LLP license to any person (designated transferee) who meets the eligibility requirements. Eligibility requirements include (1) the designated transferee being eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C., (2) the parties to the transfer having no fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and (3) the transfer not causing the designated transferee to exceed a two-license limit for the scallop LLP (see "Ownership Limit" below).

A complete transfer application must be submitted to the Regional Administrator for approval before a transfer can occur. Application forms will be available from NMFS (RAM) on request (see **ADDRESSES**). NMFS will return incomplete applications to the applicant and will identify specific information that is necessary to make the application complete. Information that will be required in the transfer application includes (1) identification information for all parties to the transfer, (2) identification number of the license to be transferred, (3) declaration that the designated transferee is a U.S. citizen, (4) a copy of the contract or sales agreement for the transfer, (5) other information the Administrator, Alaska Region, NMFS (Regional Administrator) may require, and (6) the notarized signatures of the parties to the transfer.

This final rule also provides for a transfer pursuant to court order, operation of law, or the terms of a security agreement. This provision contemplates that some transfers might not be voluntarily requested by the license holder. Under those circumstances, the Regional Administrator will review the information in the transfer application or other document and determine whether the requested transfer conflicts with other provisions of the scallop LLP regulations.

9. Ownership Limit

An individual, corporation, partnership, or other legal entity is prohibited from holding more than two scallop licenses at one time. A person who holds two scallop licenses cannot receive an additional scallop license by transfer.

The two-license ownership limit is intended to prevent any person from obtaining an excessive share of harvest privileges in the scallop fishery as required by national standard 4 of the Magnuson-Stevens Act. The Council determined that holding more than two scallop LLP licenses would constitute an excessive share in the context of this relatively small fishery.

Consistency With Section 303(b)(6) of the Magnuson-Stevens Act and a Fisheries Impact Statement

The preamble of the proposed rule for the action (65 FR 21385; April 21, 2000) provides a complete discussion of the scallop LLP's consistency with section 303(b)(6) of the Magnuson-Stevens Act and a Fisheries Impact Statement for the scallop fishery.

Response to Comments

NMFS received 11 letters of comments concerning the proposed rule. Seven letters indicated unqualified approval of Amendment 4 and its implementing rule. Four letters indicated general approval for the scallop LLP but expressed concerns about specific provisions in the program. These concerns are summarized into the following three comments and responses.

Comment 1: License holders should have the ability to increase the length of their vessels.

Response: The primary objective of the scallop LLP is to rationalize the scallop fishery. As indicated in the analysis, the scallop fleet prior to implementation of limited access had grown beyond the size necessary to harvest the resource, both in number of vessels and in fishing capacity of those vessels. Such an overcapitalized fleet represents an unnecessarily large and unproductive share of the economy's capital investment base. This condition of overcapitalization prevents the achievement of optimum yield (OY) from the fishery to the extent that operating costs are significantly higher than necessary to harvest the resource. National standard 1 of the Magnuson-Stevens Act requires that conservation and management measures shall prevent overfishing of each stock of fish while achieving, on a continuing basis, the OY from each fishery for the United States. The Magnuson-Stevens Act also authorizes the Council to design a limited access program for a fishery to achieve OY. OY is defined as that amount of the resource that will provide the greatest overall benefit to the Nation. An overcapitalized fishery is antithetical to OY and providing the greatest overall benefit to the Nation because, as explained earlier, the economic rents in such a fishery are lower than those achievable, and overall capital costs in that fishery are higher than required.

To allow persons to increase the length of their vessels beyond the size previously used in scallop fishery would only exacerbate the current overcapitalization problem. An increase in the length of a vessel can increase the overall fishing capacity of that vessel. Such an increase would not be different than allowing more participants into the fishery. This is contrary to the primary objective of the scallop LLP, which is to rationalize the fishery by reducing capacity and participants, and thereby reducing overcapitalization to the greatest extent possible.

Establishing an MLOA based on the largest vessel used by the qualified applicant during the qualification period does not violate national standard 10 (safety concerns) of the Magnuson-Stevens Act. First, a person is not required to reduce the size of the vessel they chose to use in the fishery prior to implementation of the scallop LLP. Second, the incentive to fish during inclement weather to catch a portion of the resource before other participants do will be reduced because fewer participants will compete under the scallop LLP. Third, vessel replacements are possible. The MLOA requirement does not prohibit a person from replacing a derelict vessel with one that is within the size limits established by the MLOA

Comment 2 : The requirement that limits a vessel to using a single 6-ft (1.8-m) dredge in all areas if that vessel did not participate outside of Cook Inlet during the recent qualifying period is inconsistent with national standards and other Magnuson-Stevens Act provisions.

Response: The Council has the authority to recommend, and NMFS has the authority to approve, limited access systems, such as the scallop LLP, if the Council and NMFS consider criteria listed in 16 U.S.C. 1853(b)(6) and ensure that the assignment of fishing privileges among various U.S. fishermen is fair and equitable.

The Council, when it recommended the provision limiting the amount of gear used by certain vessels, used recent participation, a criterion in 16 U.S.C. 1853(b)(6), as a determining factor. The Council indicated that part of its rationale for this provision is the control of overcapitalization. Overcapitalization can have adverse impacts on the economics of a fishery, another criterion in 16 U.S.C. 1853(b)(6). An analysis of the various alternatives for a license

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limitation program indicated that the break-even number of vessels for economic viability in this fishery is a maximum of nine vessels. Based on that information, the Council decided to choose the most restrictive alternative, allowing nine vessels into the fishery, and restricting those vessels to the gear used during the most recent participation period.

As in all limited access programs, the Council also considered the need to limit fishing capacity when it developed this provision. The method used to limit fishing capacity, by limiting a person's gear to the amount used in the recent participation period, is consistent with criteria specified in the Magnuson-Stevens Act. As all persons that are similarly situated are treated in the same manner, NMFS has determined that the gear limitation provision in the scallop LLP is consistent with the national standards specified in the Magnuson-Stevens Act and with other applicable law.

Comment 3: The scallop LLP should have included area endorsements.

Response: The Council considered including area endorsements as part of the scallop LLP. This option was considered to provide protection to the small boat fleet inside Cook Inlet from competition by larger outside vessels. The Council chose not to include area endorsements for three reasons. First, the season opening dates for Yakutat and Prince William Sound have been changed from January 1 to July 1. This provides additional fishing opportunities for vessels during the summer months, and reduces the incentives to large vessel operators to fish in Cook Inlet. Second, only a single 6-ft (1.8-m) dredge can be used in Cook Inlet. Fishing with a large vessel and crew under that gear restriction would not be economical. Third, the Cook Inlet (Kamishak) quota has remained very small relative to outside areas. This reduces the incentive to forego fishing in outside areas in favor of fishing in Cook Inlet. The Council decided that area endorsements were unnecessary because these three factors will keep the fleet from significantly deviating from traditional fishing patterns.

In this final rule, the definition of MLOA is revised slightly to clarify that the longest vessel authorized by a Federal or State Scallop Moratorium Permit and from which the eligible applicant made legal landings of scallops during the scallop LLP qualification period, will be used to determine the MLOA on the scallop LLP license. Also, the final rule lengthens the application period from 15 days to 30 days. Otherwise, this final rule makes no other changes to the proposed rule other than minor editorial changes.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 4 to the FMP for the Scallop Fishery off Alaska is necessary for the conservation and management of the scallop fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an EA/RIR/IRFA for the scallop LLP, which describes the management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. It estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act.

NMFS prepared an FRFA based on the IRFA. The IRFA prepared for this action was made available for public review and comment. NMFS received no letters of public comment in response to the IRFA. The FRFA describes the economic impacts this rule will have on small entities. A summary of the FRFA follows.

NMFS considers the fishing operations that will be affected by this final rule to be small entities. The universe of small entities is composed of 18 operators who fished for scallops during the 1980-1998 period and that qualified for a moratorium permit.

NMFS considered six alternative for the scallop LLP. These alternatives ranged from no action, which would result in open access to the scallop fishery, to programs that would issue between nine and 18 licenses. According to the official scallop LLP record, the preferred alternative will yield a total of nine licenses. The options dealt with area endorsements and vessel construction and replacement. The preferred options will: (1) allow all licenses to be statewide, but vessels that fished only in Cook Inlet in the qualifying period are limited to the existing gear restrictions for Cook Inlet; and (2) not allow increases in vessel length. The FRFA details these alternatives and options.

In order to meet the primary objectives, the Council developed eligibility criteria that reduced the fleet, but granted harvesting privileges to those operations what were most dependent on the scallop fishery as evidenced through past and recent participation. The preferred alternative struck the appropriate balance by reducing the fleet enough so that excess capacity and capitalization will be less of a problem, but not reducing the fleet to the point of eliminating operations most dependent on the scallop resource.

The preferred alternative was chosen even though it would have a significant impact on a substantial number of small entities because it was the only alternative that fully met the requirements of the Magnuson-Stevens Act to achieve OY, reduce overcapitalization, and maximize economic benefits to the Nation. Reduction of capital and capacity were primary objectives of this action. Because NMFS is addressing the allocation of a limited resource, alternatives to minimize economic impacts on some small entities would necessarily result in increased impacts on others.

The Council's break-even analysis, contained in the EA/RIR/IRFA, indicated that a total of about six or seven vessels could participate full time in the Alaska statewide scallop fishery at the break-even level (not including Cook Inlet vessels). The Cook Inlet fishery appears to be fully capitalized, and perhaps overcapitalized at the current level of effort (three to four vessels). The break-even analysis showed that the current scallop fleet contained more vessels that necessary to harvest the resource efficiently and that open access has negative impacts on all members of the fleet.

Each alternative that reduces capacity in the fishery benefits the remaining fleet. However, by reducing capacity, some vessels are excluded from the fishery. The preferred alternative excludes nine vessels from the fishery, creating a fleet of nine vessels, which is the most restrictive alternative and closest to the break-even point.

NMFS concludes that the principal effect of this rule on small entities is that the LLP will significantly impact the vessels excluded from the fishery. The flexibility of open access will be reduced, limited economic opportunities for some non-qualifying fishermen. Non-qualifying fishermen will not be eligible for a license during the initial issuance because they do not meet the eligibility criteria. These fishermen may be eligible to obtain a license through transfer to participate in the scallop fishery.

The scallop LLP also inhibits the ability of new, small entities to enter the fishery because new entrants must purchase a license, thereby increasing the entry cost into the scallop fishery. Alternatively, small fishing firms owning non-qualifying vessels may experience a decrease in the value of their investments to the extent that the vessel's opportunities have been limited.

The scallop LLP also affects small entities that only fished inside of Cook Inlet during the qualifying period by limiting the size and number of dredges those vessels could operate in areas outside of Cook Inlet to a single 6-ft (1.8-m) dredge. However, those small entities can use their licenses to harvest scallops statewide and will not be limited to harvesting scallops in Cook Inlet. The scallop LLP also affects the small entities that receive licenses by restricting their ability to increase vessel length.

The impact of license limitation is to restrict the opportunities of some vessel owners, yet offer a stabilized economic environment for affected small businesses that qualify for continued participation in the Alaska scallop fishery. The benefits accrue from preventing a further erosion of per-vessel net returns and operating efficiency.

NMFS considered measures to minimize the significant economic impact on small entities. NMFS concluded that alternative policies that would minimize adverse impacts on excluded small entities also would dilute or eliminate the benefits to the fleet as a whole of reduced fishing capacity under the LLP. Allowing one or two additional vessels to participate (relative to the preferred alternative) would reduce impacts on those one or two small entities. However, it also would reduce the beneficial effect of the LLP by reducing the average harvest of all vessels (all other small entities) in the fishery and their potential profitability by preventing attainment of the break-even fleet size. Hence, alternative measures that would reduce the impacts on small entities that are negatively affected would not achieve the objectives of this action.

The scallop LLP will reduce the adverse impacts on a substantial number of small entities resulting from open access. Generally, small entities included in the fishery under the LLP benefit, while those excluded will be adversely affected. Alternatives and options that perpetuate overcapitalization in the scallop fishery would have negative impacts on vessel owners, crew, and fishing communities. The LLP will help reduce overcapitalization of the fishery and the loss of income to current participants that would result from further overcapitalization. Issued licenses will have monetary value, and latent licenses (issued to vessels not currently fishing) if allowed, would likely be transferred to other vessels wishing to participate in the scallop fishery.

This final rule contains new recordkeeping and reporting requirements. All persons wishing to participate in the scallop fishery under the LLP would be required to submit to NMFS a completed application for a license. Also, all persons taking part in the transfer of a license would be required to submit an application for transfer of the license to NMFS. An applicant wishing to appeal an initial administrative determination on an application would submit in writing a concise statement of reasons why the determination should be reversed or modified. These collections of information are necessary to provide information to NMFS for the implementation and management of the LLP.

In summary, the scallop LLP will have economic impacts on vessels excluded from the scallop fishery. The flexibility of open access will be reduced, thereby limiting the economic opportunities for some non-qualifying fishermen. However, this reduced flexibility will be offset by increased stability and financial security for the remaining participants in the scallop fisheries. The increased economic stability and viability of the qualified applicants is the purpose of establishing this program and is consistent with the Magnuson-Stevens Act, which authorizes the establishment of limited access systems in order to achieve OY.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been approved by OMB and issued OMB control number 0648-0420, expiration date 07-31-2003. Public reporting burden for these collections of information are estimated to be an average of 2 hours per response for an application for initial issuance of a license, 1 hour per response for an application for transfer of a license, and 4 hours per response for an appeal of an initial administrative determination. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comment should be sent to the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 2000.

William T. Hogarth,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.1, paragraphs (j)(3) and (j)(4) are added to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(j) * * *

(3) Regulations in this part implement the license limitation program for the commercial scallop fishery in the EEZ off Alaska.

(4) Regulations in this part govern the commercial fishing for scallops by vessels of the United States using authorized gear within the EEZ off Alaska.

* * * * *

3. In § 679.2, the definition for "Scallop license" is added in alphabetical order and the definitions "Eligible applicant", "License holder", "Maximum LOA", "Official LLP record", and "Qualified Person" are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Eligible applicant means a qualified person who submitted an application

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during the application period announced by NMFS and:

(1) For a groundfish license or crab species license, who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) For a groundfish license or crab species license, to whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or

(3) For a crab species license, who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

(4) For a scallop license, who qualifies for a scallop license as specified at § 679.4(g)(2) of this part; or

(5) Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794 (a).

* * * * *

License holder means the person who is named on a currently valid groundfish license, crab species license, or scallop license.

* * * * *

Maximum LOA (MLOA) means:

(1)*With respect to the scallop license limitation program*, the MLOA is equal to the length overall on February 8, 1999, of the longest vessel that was:

(i) Authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops;

(ii) Used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(2) *With respect to the groundfish and crab species license limitation program*, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(i) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(ii) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(iii) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

* * * * *

Official License Limitation Program (LLP) record means the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish or crab fisheries during qualified periods for the groundfish and crab LLP specified at § 679.4(k) and in the scallop fisheries during the qualifying periods for the scallop LLP specified at § 679.4(g). Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving the validity of information submitted in an application that is inconsistent with the official LLP record.

* * * * *

Qualified Person means:

(1) *With respect to the IFQ program*, see IFQ Management Measures at § 679.40(a)(2).

(2) *With respect to the groundfish and crab species license limitation program*, a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

(3) *With respect to the scallop LLP*, a person who was eligible on February 8, 1999, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

* * * * *

Scallop license means a license issued by NMFS that authorizes the license holder to catch and retain scallops pursuant to the conditions specified on the license.

* * * * *

4. In § 679.4, paragraph (g) is added to read as follows:

§ 679.4 Permits.

* * * * *

(g) *Scallop LLP*—(1) *General requirements.* In addition to the permit and licensing requirements prescribed in this part, each vessel within the EEZ off Alaska that is catching and retaining scallops, must have an original scallop LLP license on board at all times it is catching and retaining scallops. This scallop LLP license, issued by NMFS, authorizes the person named on the license to catch and retain scallops in compliance with regulations of the State of Alaska and only with a vessel that does not exceed the MLOA specified on the license and the gear designation specified on the license.

(2) *Qualifications for a scallop LLP license.* A scallop LLP license will be issued to an eligible applicant who:

(i) Is a qualified person;

(ii) Was named on a State of Alaska scallop moratorium permit or Federal scallop moratorium permit on February 8, 1999;

(iii) Used the moratorium permit held on February 8, 1999, to make legal landings of scallops in each of any 2 calendar years during the qualification period beginning January 1, 1996, through October 9, 1998; and

(iv) Submitted a complete application for a scallop license during the application period specified pursuant to paragraph (g)(4) of this section.

(3) *Scallop license conditions and endorsements.* A scallop license authorizes the license holder to catch and retain scallops only if the vessel length and gear used do not exceed the vessel length and gear endorsements specified on the license. These endorsements will be determined as follows.

(i) The MLOA specified on the scallop license is equal to the length overall on February 8, 1999, of the longest vessel that was authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops and used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(ii) The gear specified on a scallop license will be restricted to a single 6-ft (1.8-m) dredge in all areas if the eligible applicant was a moratorium permit holder with a Scallop Registration Area H (Cook Inlet) endorsement and did not make a legal landing of scallops caught outside of Area H during the qualification period specified in paragraph (g)(2)(iii) of this section.

(4) *Application for a scallop license*—(i) *General.* The Regional Administrator will issue a scallop license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in this part. An application that is postmarked or hand delivered after the ending date for the application period for the scallop LLP specified in paragraph § 679.4(g)(4)(ii) will be denied. An application form will be sent to the last known address of the person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application Period.* January 16, 2001, through February 12, 2001.

(iii) *Contents of application.* To be complete, an application for a scallop license must be signed and dated by the applicant, or the individual representing the applicant, and contain the following information, as applicable:

(A) Scallop Moratorium Permit number under which legal landings of scallops were made during the qualification period specified in paragraph (g)(2)(iii) of this section;

(B) Name, business address, telephone number, FAX number, and social security number or tax ID number of the applicant, and whether the applicant is a U.S. citizen or a U.S. business;

(C) Name of the managing company, if any;

(D) Evidence of legal landings in the qualifying years and registration areas;

(E) For the vessel(s) being used as the basis for eligibility for a license, the name, state registration number (e.g., ADF&G number), the USCG documentation number, and valid evidence of the LOA on February 8, 1999, of the longest vessel used by the applicant during the qualification period specified in paragraph (g)(2)(iii) of this section.

(iv) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(A) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was an individual; or

(B) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (g)(4)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal in the applicant's favor.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant at the same time notification is provided to the applicant of his or her 60-day evidentiary period if issuance is required by the license renewal

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provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to catch and retain scallops as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(5) *Transfer of a Scallop License*—(i) *General.* The Regional Administrator will approve the transfer of a scallop license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets all the eligibility criteria as specified in paragraph (g)(5)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A scallop license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license limit in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of transfer application.* To be complete, an application for a scallop license transfer must be signed by the licence holder and the designated transferee, or the individuals representing them, and contain the following information, as applicable:

(A) Name, business address, telephone number, FAX number, and social security number or tax ID number, of the license holder and of the designated transferee;

(B) License number and total price being paid for the license;

(C) Certification that the designated transferee is a U.S. citizen, or a U.S. corporation, partnership, or other association;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer; and

(E) Other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (g)(5) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a scallop license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

5. In § 679.7, paragraphs (i)(3) and (i)(7) are revised, and new paragraphs (i)(1(iv) and (i)(8) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i)*License Limitation Programs*—(1) *Number of licenses.** * *

(iv) Hold more than two scallop licenses in the name of that person at any time.

* * * * *

(3) Conduct directed fishing for crab species without an original valid crab license, except as provided in § 679.4(k)(2);

* * * * *

(7) Lease a groundfish, crab species, or scallop license; or

(8) Catch and retain scallops:

(i) Without an original valid scallop license on board;

(ii) Using a vessel with a MLOA greater than that specified on the scallop license; or

(iii) Using dredge gear contrary to a gear limitation specified on the scallop license.

* * * * *

6. In § 679.43, paragraphs (a) and (p) are revised to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under part 679 of this chapter.

* * * * *

(p) *Issuance of a non-transferable license.* A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish, crab species under § 679.4(k) or scallops under § 679.4(g). This non-transferable license authorizes a person to conduct directed fishing for groundfish, crab species, or catch and retain scallops and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable license expires upon the resolution of the appeal.

[FR Doc. 00–31649 Filed 12–13–00; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000905252-0339-02; I.D. 080700D]

RIN 0648-AN98

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, permanent extension of the Pacific halibut donation program.

SUMMARY: NMFS issues a final rule that permanently extends the existing regulations that establish and govern the voluntary Pacific halibut donation program. Under this program, Pacific halibut that is taken incidentally in groundfish trawl fisheries off Alaska may be donated for consumption by economically disadvantaged individuals rather than discarded, as normally required. This action is necessary to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) (FMPs). The intended effect of this action is to reduce the amount of regulatory discards in the groundfish fisheries.

DATES: Effective January 1, 2001.

ADDRESSES: Copies of the regulatory impact review and environmental assessment prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Comments regarding burden estimates for collection-of-information requirements should be sent to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to Sue Salveson, Assistant Regional Administrator, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907-586-7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone off Alaska are managed by NMFS under the Alaska groundfish FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679. Fishing for Pacific halibut in waters in and off Alaska is governed by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea and by regulations adopted by the International Pacific Halibut Commission (IPHC) and approved by the Secretary of State of the United States pursuant to section 4 of the North Pacific Halibut Act (16 U.S.C. 773-773k). Regulations of the IPHC are published as annual management measures in the **Federal Register** each year pursuant to regulations at 50 CFR 300.62.

The Prohibited Species Donation (PSD) program regulations at 50 CFR 679.26 include provisions for the donation of those trawl-caught halibut that are delivered by catcher vessels to shoreside processors. A final rule published in the **Federal Register** (63 FR 32144, June 12, 1998) authorized voluntary distribution of halibut taken as bycatch in the groundfish trawl fishery to needy individuals by tax-exempt organizations through a NMFS-authorized distributor.

The program is limited to dead halibut landed by trawl catcher vessels to shoreside processors. Many of the halibut taken in the groundfish fisheries are discarded alive. However, dead halibut are sometimes landed shoreside by trawl catcher vessels because at-sea sorting of catch is not practicable. This action has no impact on the halibut resource because the groundfish fisheries are restricted by halibut bycatch mortality limits that require closure of specified fisheries when a limit has been reached. This final rule has no impact on target and non-target species of the groundfish fisheries harvested because it has no effect on harvest amounts or patterns. In 1998 and 1999, 21,196 lb (9,635 kg) and 6,190 lb (2,814 kg) of eviscerated halibut were donated through the PSD program, respectively. NMFS estimates that the halibut donation program provided 65,000 meals to economically disadvantaged individuals in the western Washington Puget Sound area in 1998. No violations of the halibut donation regulations have been reported or observed.

Without this final rule the halibut part of the PSD program would have expired on December 31, 2000. This sunset provision was advocated by the Council and the IPHC so that management agencies could assess the effectiveness of the halibut donation program, relative to the program's objectives, before the Council took action to extend the program beyond the year 2000.

At its June 2000 meeting, the Council requested NMFS to initiate rulemaking to permanently extend the halibut donation program. The Council also endorsed a recommendation by IPHC staff to review the program every 3 years and assess whether regulatory changes should be pursued to respond to any management or enforcement concerns that may arise in the future. With this rulemaking, NMFS permanently extends the existing halibut provisions of the PSD program. This action makes no other changes to the existing PSD program. NMFS, the Council, and the IPHC will conduct a periodic review of the program and the regulations could be revised in the future, if necessary, to respond to new concerns.

A proposed rule to permanently implement the Pacific halibut donation program was published in the **Federal Register** for a 15-day public review and comment period (65 FR 56860, September 20, 2000). No written comments were received during the comment period.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final regulatory amendment is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effectiveness of this final rule for 30 days would be contrary to the public interest. Such a delay would cause the Pacific halibut donation program to expire. The intent of this action is to have that program continue without interruption so that its benefits to economically disadvantaged individuals can continue. Further, the program is voluntary and no individual has to take any action because the program remains in effect. Accordingly, the AA is making the extension effective January 1, 2001.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Regional Administrator determined that activities conducted pursuant to this rule will not affect endangered and threatened species or critical habitat under the Endangered Species Act (ESA).

Pursuant to section 7 of the ESA, NMFS has completed a consultation on the effects of the groundfish fishery on listed species. Reasonable and prudent alternatives have been implemented to mitigate the adverse impacts of the pollock fisheries on the western population of Steller sea lion and its critical habitat (65 FR 3892, January 25, 2000, and extended at 65 FR 36795, June 12, 2000). NMFS also completed consultations on the effects of the 2000 BSAI groundfish fisheries on listed species and on critical habitat. These consultations were completed December 23, 1999, and concluded that the proposed fisheries were not likely to cause jeopardy or adverse modification to designated critical habitat. However, in an order dated January 25, 2000, the District Court for the Western District of Washington (Court) concluded that NMFS must consult pursuant to section 7 of the ESA on the fishery management plans for the groundfish fisheries of the BSAI and GOA. *Greenpeace* v. *NMFS*, Civ. No. 98-49ZZ (W.D. Wash.). On August 7, 2000, the Court issued an injunction, effective August 8, 2000, prohibiting fishing for groundfish with trawl gear in the exclusive economic zone within Steller sea lion critical habitat west of 144° W. long. until NMFS issues a comprehensive biological opinion adequately analyzing the full scope of the FMPs. (*Greenpeace* v. *NMFS*, 106 F. Supp. 2d 1066 (W.D. Wash. 2000)). The critical habitat areas closed by the Court's injunction are defined in regulations codified at 50 CFR 226.202, and in Tables 1 and 2 to 50 CFR part 226. Pursuant to the ESA, NMFS published an interim final rule prohibiting fishing for groundfish with trawl gear in Steller sea lion critical habitat specified in the Court's injunction (65 FR 49766, August 15, 2000). This interim final rule was effective August 9, 2000, and will remain in effect until the Court orders otherwise. NMFS has developed a comprehensive biological opinion that evaluates the effects of the FMPs on endangered and threatened species and their critical habitat as required by the Court.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reducation Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection-of-information requirements subject to the PRA. These collections of this information have been approved under OMB control number 0648-0316. Public reporting burden (per individual) for these collections of information, including both salmon and halibut donations, is estimated to average as follows: 40 hours every 3 years per application and 40 hours per year for completing a list of vessels and processors for a NMFS authorized distributor; 9 hours per year (0.1 hrs for 90 processing days) for vessel and processor labeling and product tracking documentation; and 15 minutes per year for vessels/processor documentation. The estimated response times listed include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Send comments regarding this burden estimate, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to NMFS, Alaska Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 8, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U. S. C. 1540(f).

2. In § 679.26, paragraphs (a)(2) and (b)(3)(iv) are revised to read as follows:

§ 679.26 Prohibited Species Donation Program (PSD).

(a) * * *

(2) Halibut delivered by catcher vessels using trawl gear to shoreside processors.

(b) * * *

(3) * * *

(iv) *Effective period.* A PSD permit issued for salmon or halibut remains in effect for a 3-year period after the selection notice is published in the **Federal Register** unless suspended or revoked. A PSD permit issued to an authorized distributor may be renewed following the application procedures in this section.

* * * * *

[FR Doc. 00–31917 Filed 12–13–00; 8:45 am]

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Proposed Rules

Federal Register
Vol. 65, No. 241
Thursday, December 14, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–69–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe Aerospatiale (SOCATA) Model TBM 700 airplanes. The proposed AD would require you to install a thermal protection sleeve on the propeller governor flexible cable. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent loss of propeller control because of hardening or blocking of the control cable, which could result in the inability to control propeller pitch and inability to feather the propeller. Such failure could lead to loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by January 19, 2001.

ADDRESSES: Send three copies of your comments to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–69–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4191. You may read this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed AD?

We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this action in light of the comments received.

Are there Any Specific Portions of the Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–69–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on certain SOCATA Model TBM 700 airplanes. The DGAC reports five occurrences on civilian and military Socata model TBM 700 airplanes where there was damage to the internal sleeve of the flexible propeller control cable. This damage was because of thermal conduction generated by the turboprop left hand exhaust nozzle.

What Are the Consequences if the Condition Is Not Corrected?

The actions specified by the proposed AD are intended to prevent loss of propeller control because of hardening or blocking of the control cable. This could result in the inability to control propeller pitch and inability to feather the propeller. Such failure could lead to loss of airplane control.

Is There Service Information That Applies to this Subject?

SOCATA has issued Service Bulletin SB 70–084, dated September 2000.

What Are the Provisions of This Service Bulletin?

The service bulletin includes procedures for the installation of a thermal protection sleeve on the propeller governor flexible cable.

What Action Did the DGAC Take?

The DGAC classified this service bulletin as mandatory and issued French AD Number 2000–430(A), dated November 15, 2000, to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Following this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other SOCATA Model TBM 700 airplanes of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would the Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously referenced service bulletin.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD affects 80 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners or Operators of the Affected Airplanes?

We estimate the following costs to do the proposed modification:

Labor Cost	Parts Cost	Total Cost Per Airplane	Total Cost on U.S. Operators
2 workhours × $60 per hour = $120.	$40	$120 + $40 = $160	$160 × 80 = $12,800

Compliance Time of the Proposed AD

What Would Be the Compliance Time of the Proposed AD?

The compliance time of this proposed AD would be within the next 100 hours time-in-service (TIS) after the effective date of the proposed AD or within the next 3 calendar months after the effective date of this proposed AD, whichever occurs first.

Why Is the Compliance Time of the Proposed AD Presented in Both Hours TIS and Calendar Time?

The affected airplanes are used in general aviation operations. Those operators may accumulate 100 hours TIS on the airplane in less than 3 months and many owners have numerous affected airplanes. We have determined that the dual compliance time:

—gives all owners/operators of the affected airplanes adequate time to schedule and do the actions in this proposed AD; and

—ensures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

What Are the Differences Between the French AD and the Proposed AD?

The French AD requires the modification at the next scheduled inspection and at the latest before December 21, 2000. We propose a requirement that you install the thermal protection sleeve within the next 100 hours time-in-service (TIS), or within the next three calendar months, whichever occurs first.

We cannot legally enforce a compliance time of at the next scheduled inspection. We believe that a compliance time of 100 hours TIS or within the next three months, whichever occurs first, will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe Aerospatiale: Docket No. 2000–CE–69–AD

(a) *What airplanes are affected by this AD?* This AD affects Model TBM 700 airplanes, serial numbers 1 thru 156, and 158 thru 163; that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended

to prevent loss of propeller control because of hardening or blocking of the control cable, which could result in the inability to control propeller pitch and inability to feather the propeller. Such failure could lead to loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must do the following, unless already accomplished:

Actions	Compliance	Procedures
Install a thermal protection sleee on the propeller control cable.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 3 calendar months after the effective date of this AD, whichever occurs first, unless already done.	Do this installation following the ACCOMPLISHMENT INSTRUCTIONS of Socata Service Bulletin SB 70–084, dated September 2000, and the applicable maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another locotion to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You may look at these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in French AD 2000–430(A), dated November 15, 2000.

Issued in Kansas City, Missouri, on December 7, 2000.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31892 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 12, 2001.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–51–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–51–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Federal or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. The OIG may also impose administrative sanctions or exclude violators from the Federal or State health care programs.

The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the arranging for or the purchasing, leasing or ordering of any good, facility, service, or item paid for by Federal or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution. As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the anti-kickback statute (section 1128B(b) of the Act; 42 U.S.C. 1320a–7b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act; 42 U.S.C. 1320a–7(b)(7). The OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements" (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority.

To date, the OIG has developed and codified in 42 CFR 1001.952 a total of 21 final safe harbors that describe practices that are sheltered from liability. The OIG is also currently developing a final safe harbor rule addressing ambulance restocking arrangements.

B. OIG Special Fraud Alerts

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. These Special Fraud Alerts serve to notify the health care industry that the OIG has become aware of certain abusive practices that the OIG plans to pursue and prosecute, or to bring civil and administrative action, as appropriate. The Special Fraud Alerts also serve as a tool to encourage industry compliance by giving providers an opportunity to examine their own practices. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs.

In developing these Special Fraud Alerts, the OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry. To date, ten individual Special Fraud Alerts have been issued by the OIG and subsequently reprinted in the **Federal Register**.[1]

[1] See 59 FR 65372 (December 19, 1994); 60 FR 40847 (August 10, 1995); 61 FR 30623 (June 17, 1996); 63 FR 20415 (April 24, 1998); and 64 FR 1813 (January 12, 1999). The OIG has also issued three Special Advisory Bulletins—64 FR 37985 (July 14, 1999); 64 FR 52791 (September 30, 1999); and 64 FR 61353 (November 10, 1999).

C. Section 205 of Public Law 104–191

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, the OIG is compelled to engage in a complete and thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover all potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, the OIG is continuing to study safe harbor and Special Fraud Alert proposals submitted in response to the annual solicitations. Some of those suggestions have been addressed in the safe harbor rulemakings published on November 19, 1999 (64 FR 63504 and 64 FR 63518) or are already under development. The OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 10, 1999 (64 FR 69217). The OIG received 17 timely-filed responses from a cross-section of organizations, associations and other interested parties. In response to that and previously-issued **Federal Register** solicitation notices, a status report of the public comments received for new and modified safe harbors is set forth in Appendix G to the OIG's Semiannual Report covering the period April 1, 2000 through September, 30, 2000.[2] OIG is currently taking the recommendations listed in the appendix under advisement and is not seeking additional public comment on those proposals at this time. Rather, this notice seeks additional recommendations from affected provider, practitioner, supplier and beneficiary representatives regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in the appendix to the OIG Semiannual Report referenced above.

[2] The OIG Semiannual Report can be accessed through the OIG web site at http://www.dhhs.gov/oig/semann/index.htm.

Criteria for modifying and establishing safe harbor provisions

In accordance with the statute, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, those practices that would be identified in new Special Fraud Alerts may result in any of the consequences set forth above, and the volume and frequency of the conduct that would be identified in these Special Fraud Alerts.

A detailed explanation of justifications or empirical data supporting the suggestion, and sent to the address indicated above, would prove helpful in our considering and drafting new or modified safe harbor regulations and Special Fraud Alerts.

Dated: December 7, 2000.

June Gibbs Brown,

Inspector General.

[FR Doc. 00–31808 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 001108316-0316-01; I.D. 060600B]

RIN 0648-AK50

Fisheries of the Exclusive Economic Zone Off Alaska; Improved Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to amend regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. NMFS has identified parts of the program that need further refinement or correction for effective management of the affected fixed gear fisheries. This action is intended to effect those refinements and is necessary to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to the IFQ fisheries.

DATES: Comments must be received by January 16, 2001.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator for the Sustainable Fisheries Division, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the Regulatory Impact Review may be obtained from the same address. Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to the Administrator, Alaska Region, P.O. Box 21668, Juneau, AK, 99802-1668.

FOR FURTHER INFORMATION CONTACT: James Hale, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations codified at 50 Part CFR 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off Alaska, under the authority of the Northern Pacific Halibut Act (Halibut Act) with respect to halibut and the Magnuson-Stevens Act with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375).

NMFS' continuing assessment of the IFQ Program's responsiveness to conservation and management goals for Pacific halibut and sablefish fisheries has produced two "omnibus" packages of IFQ regulatory reforms since the inception of the program (60 FR 22307, May 5, 1995; 61 FR 41523, August 9, 1996). This proposed action, the third such "omnibus" package of regulatory changes to the IFQ Program, would amend various portions of the program's implementing regulations that require further refinement. These changes are necessary: To promote the ability of fishermen to conduct efficient IFQ fishing operations, while complying with IFQ Program requirements; to improve NMFS' ability to efficiently administer the program; and to improve the clarity and consistency of IFQ Program regulations.

This proposed action would make the following changes to the IFQ Program: (1) In § 679.1 *Purpose and scope*, add explicit reference to the Northern Pacific Halibut Act (Halibut Act), under which regulations in this part regarding the Pacific halibut fishery were developed, and in § 679.1(d) revise "IFQ management plan" to read "IFQ management measures" to prevent any inference that the IFQ Program is itself a "fishery management plan" as that term is used in the Magnuson-Stevens Act; (2) clarify the requirements for IFQ fishermen participating in open access sablefish fisheries in Alaska State waters; (3) revise nomenclature to reflect organizational changes in NMFS' Restricted Access Management (RAM) division; (4) revise the definition of an IFQ landing to include vessels that are removed from the water and put on trailers; (5) delete the reference to an "accompanying statement" establishing IFQ balances; (6) exempt lingcod fishermen using dinglebar gear from the IFQ 6-hour prior notice of landing and 12-hour landing window requirements; (7) add gear type to information required on a completed IFQ landing report; (8) clarify which registered buyer, in landings involving multiple registered buyers, is responsible for compliance with shipment report requirements; (9) make minor corrections to errors arising from the consolidation of regulations; (10) modify the existing survivorship transfer provisions to allow for the temporary transfer of a deceased QS holder's QS and IFQ to a designated beneficiary, and revise a paragraph on an IFQ leasing provision that expired in 1998; (11) require annual updates on the status of corporations and partnerships; (12) allow the electronic submission of appeals to initial administrative decisions; and (13) clarify reporting requirements for purposes of the Paperwork Reduction Act. A discussion of and justification for each of the proposed measures follows.

Referencing the Halibut Act in § 679.1, Purpose and scope

The IFQ Program is a limited access system for two separate fisheries: (1) The fixed gear sablefish fishery, which NMFS manages under the authority of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs), and (2) the Pacific halibut fishery, which NMFS manages under the authority of the Halibut Act. In § 679.1, *Purpose and scope*, an explicit reference to the Halibut Act as the authorizing statute for regulations in part 679 pertaining to halibut would be added. Further, the reference to "IFQ management plan" at § 679.1(d) would be revised to read "IFQ management measures" to prevent the inference that the IFQ Program is itself a "fishery management plan" as that term is used in the Magnuson-Stevens Act.

IFQ Fishermen and Open Access Sablefish Fisheries in Alaska State Waters

Section 679.1(d)(1)(i)(B) identifies vessels required to observe IFQ regulations when participating in such fisheries as vessels on which "such fishing is conducted by persons who have been issued permits under § 679.4." For clarity, the citation to § 679.4 would be replaced by descriptions of such permits: sablefish QS and IFQ permits, and sablefish IFQ cards. Section 679.1(d)(l)(i)(B) also would be revised to read "persons who hold" rather than "persons who have been issued" such permits. The current language could be read to require IFQ sablefish fishermen who have been issued such permits at any time in the past to comply with all IFQ regulations when participating in an open access sablefish fishery in Alaska State waters. The regulation was not intended to affect the activities of fishermen who have participated in the IFQ Program in the past but have since divested themselves of all QS or IFQ holdings. As revised, the paragraph would pertain only to those fishermen who currently hold sablefish QS or IFQ or who are current participants in the program as sablefish IFQ cardholders or hired skippers.

Nomenclature Change

To comport with organizational changes within NMFS, the definition of "Chief, RAM Division" in § 679.2 *Definitions* would be changed to read "*Program Administrator RAM*, means the Program Administrator of Restricted Access Management, Alaska Region, NMFS." All subsequent references to "Chief, RAM Division" in 50 CFR 679 also would be revised to read "Program Administrator, RAM."

Trailering of Vessels

As defined in § 679.2, the term "IFQ landing" does not include the "trailering" of vessels (i.e., removing a vessel from the water, loading the vessel onto a trailer, and conveying it elsewhere other than dockside for the offloading of IFQ harvests and production of an IFQ landing report). Such practices inhibit NMFS' ability to monitor IFQ landings to ensure proper accounting of harvests against IFQ balances. Therefore, the definition of an IFQ landing—"the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish"—would be revised to include "the removal from the water of a vessel carrying any IFQ halibut, IFQ sablefish, or products thereof."

Accompanying Statement

The reference to "the most recent accompanying statement specifying the amount of each species that may be harvested during the current IFQ fishing season" would be deleted from § 679.4(d)(1)(i). While such an accompanying statement was originally projected as part of the IFQ permit, NMFS currently issues no such accompanying statement, because the IFQ card itself is sufficient to establish a fisherman's IFQ balance.

Delivery of IFQ Halibut Bycatch by Lingcod Fishermen Using Dinglebar Gear

Lingcod dinglebar fishermen who hold halibut IFQ are required to keep and offload any halibut bycatch incidental to lingcod harvests. Consequently, such lingcod fishermen who take small amounts of halibut bycatch must comply with the IFQ Program's 6-hour prior notice of landing and 12-hour landing window requirements before they can offload their lingcod harvests.

Because these requirements may contribute to the illegal discard of IFQ halibut bycatch in the lingcod dinglebar fishery, NMFS believes lingcod fishermen should be exempted from the 6-hour prior notice requirement and the 12-hour landing window when landing 500 lb (0.227 metric tons (mt)) or less of IFQ halibut bycatch concurrently with legal lingcod landings harvested with dinglebar gear. IFQ landing reports for such landings would still be required as currently prescribed. NMFS believes that 500 lbs (0.227 mt) is large enough to cover halibut bycatch in the lingcod dinglebar fishery but not so large as to jeopardize the effective monitoring of IFQ landings.

To effect this exemption, paragraph 679.5(l)(1)(iv) and (2)(iv)(A)(2) would be revised to exempt lingcod fishermen, and a definition of the term "dinglebar gear" would be added to the definitions of authorized fishing gear in § 679.2. "*Dinglebar gear*" would be defined to mean "one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way." The definition of the term "troll gear" would also be amended to include dinglebar gear.

Information on Gear Type in Landing Report

Paragraph 679.5(l)(2)(vi) would be revised to add gear type to information required on a completed IFQ landing report. NMFS needs to be apprised of gear type used in making landings of IFQ species to effectively manage the IFQ Program, which is limited to fixed gear. Also, certain exemptions from IFQ recordkeeping and reporting requirements are based on gear-type and require that NMFS be able to determine at the time of landing the gear type used to harvest IFQ species. For instance, salmon fishermen, who typically use troll gear, are exempt from the prior notice of landing and 12-hour landing window when landing 500 lb (0.227 mt) or less of halibut bycatch with legal salmon landings. Also, as discussed earlier, rulemaking would extend a similar exemption to lingcod fishermen using dinglebar gear. NMFS needs to be provided with information on gear type in IFQ landing reports for purposes of distinguishing such exempted landings from potential violations of IFQ recordkeeping and reporting requirements.

Registered Buyer Responsible for Shipment Report

Paragraph 679.5(l)(3)(i)(A) would be revised to specify, for IFQ landings that involve more than one registered buyer, which registered buyer is responsible for ensuring compliance with shipment report requirements. Paragraph 679.5(l)(3)(ii) would be revised to specify that by signing an IFQ Landing Report and thereby taking responsibility for an IFQ Landing, a registered buyer also assumes responsibility for completing and submitting to NMFS all shipment reports for IFQ harvests landed under that landing report. Current regulations do not sufficiently assign responsibility for proper compliance with shipment report regulations, and other persons who hold registered buyer permits may be involved in a landing but not in the shipping of IFQ harvests from the point of landing to other destinations. This proposed change would assign the responsibility for compliance with shipment report requirements to the registered buyer who signs the IFQ landing report for those harvests being shipped.

Prohibitions

The general prohibition at § 679.7(f)(14) would be revised to prohibit the violation of any provision of the IFQ and Community Development Quota (CDQ) regulations incorporated into §§ 679.4 *Permits*, 679.5 *Recordkeeping and reporting*, and subparts C and D of 50 CFR part 679. Prior to the consolidation of the regulations governing fisheries in the exclusive economic zone off Alaska into 50 CFR part 679, which was required by the President's Regulatory Reform Initiative (61 FR 31228, June 19, 1996), all IFQ and CDQ regulations were in a single subpart. The general prohibition formerly referred to this subpart. With the consolidation of regulations, IFQ and CDQ regulations pertaining to permits and to recordkeeping and reporting were catalogued under subparts dealing separately with those respective subjects. Section 679.7(f)(14) would be revised to refer again to all regulations pertaining to the IFQ and CDQ programs.

Expanding Survivorship Transfer Provisions

Paragraph 679.41(k)(2) would be revised to expand the existing survivorship transfer provisions to include a family member designated as a beneficiary to whom the survivorship transfer privileges would extend in the absence of a surviving spouse. The IFQ Program restricts the transfer of category B, C, or D quota share (QS) and resulting IFQ to prevent excessive consolidation of QS and ensure that QS continues to be held by professional fishermen, rather than being acquired by

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investment speculators. In 1996, NMFS amended the regulations to allow for a temporary transfer of QS to surviving spouses of deceased QS holders (61 FR 41523; August 9, 1996). Under this provision, upon the death of an individual who holds QS or IFQ, a surviving spouse may request to receive for 3 years all QS and IFQ held by the decedent, unless a contrary intent was expressed in a will that is probated. This provision was consistent with the Council's intent for the IFQ Program, as evidenced by sections 14.4.7.1.4(5) and 4.4.1.1.4(5), respectively, of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), which state:

> The Secretary may, by regulation, designate exceptions to [the transfer provisions] to be employed in cases of personal injury or extreme personal emergency which allows the transfer of [IFQ resulting from QS assigned to vessel categories B, C, or D] for limited periods of time.

In June 1997, the Council recommended that the transfer privileges be extended to any heirs of the deceased, so that other members of a deceased QS holder's immediate family may benefit for a certain period of time from the deceased's commercial fishing interests with regard to the IFQ Program. NMFS subsequently published a proposed rule to implement the Council's recommendation in the **Federal Register** on November 6, 1997 (62 FR 60060). Following the publication of this proposed rule and upon further analysis, NMFS recognized that the proposed action would not provide transfer privileges for an emergency situation and would require an FMP amendment not authorized by the Council. Therefore, NMFS withdrew the proposed rule by publishing a notice to that effect in the **Federal Register** (63 FR 13161, March 18, 1998), which provides further explanation of the rationale for the withdrawal of the rule. Upon the withdrawal of the proposed rule, the Council requested that the analysis be amended with a new alternative that would effect the intent of the proposed action—to extend the benefit of the surviving spouse privilege to families of deceased QS holders who have no surviving spouse—in a manner consistent with the FMPs' emergency transfer provisions.

This proposed action would allow QS holders to provide NMFS with the name of an immediate family member to be the beneficiary of the survivorship transfer privileges in the absence of a surviving spouse. The designated beneficiary would be granted the ability to fish or to transfer the deceased QS holder's IFQ for the remainder of any current IFQ season and to fish or transfer the total annual allocations of IFQ deriving from the deceased QS holder's QS by right of survivorship for a period of 3 years from the date of the deceased QS holder's death or until the QS is awarded to a legal heir, whichever comes first.

This action also would correct an erroneous citation in the regulations implementing the survivorship transfer privilege at § 679.41(k)(2). The survivorship transfer provisions exempt those who receive emergency transfers of a deceased QS holder's QS from the prohibition on leasing of IFQ derived from B, C, or D category QS. The citation is intended to refer to the leasing prohibition, which stands at § 679.41(h)(2). The existing citation would be revised to cite the correct paragraph. Also, the paragraph cited, 679.41(h)(2), prohibits leasing of more than 10-percent of a QS holder's total annual IFQ. That 10 percent leasing provision expired on January 2, 1998, after which date a QS holder may not transfer any IFQ resulting from B, C, or D category QS separately from the originating QS. Therefore, § 679.41(h)(2) would be revised to read: "IFQ resulting from category B, C, or D QS may not be transferred separately from its originating QS, except as provided in paragraph (k) of this section."

Annual Updates on the Status of Corporations and Partnerships

A paragraph (5) would be added to § 679.42(j) requiring corporations and partnerships holding QS to provide annual updates to NMFS/Restricted Access Management on the status of the corporation or partnership identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership. Current IFQ regulations require collectively held QS to be transferred to a qualified individual upon any change in a corporation or partnership. Corporations or partnerships that have been issued QS but have either been dissolved or have acquired additional shareholders or partners are not eligible to fish the IFQ resulting from that QS. To ensure that such corporations and partnerships are not erroneously issued annual IFQ resulting from the collectively held QS, they would be required to provide the updates.

Electronic Submission of Appeals

Paragraph 679.43(c) would be revised to allow facsimile submission of appeals of initial administrative determinations made to the Office of Administrative Appeals. Current regulations that prohibit the filing of appeals by facsimile unnecessarily inhibit the transmission of timely appeals and would therefore be removed. Also, the address to which appeals must be sent would be changed from the Regional Administrator's office to the Office of Administrative Appeals.

Information Requirements

The regulations pertaining to certain IFQ forms and reports would be revised to clearly identify all of the data elements required of the public in these collections of information. Such clarification is necessary to assure that all collections of information for the IFQ Program are authorized by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995. The pertinent collections of information are: (1) the Request for QS Application at 50 CFR 679.40(a)(6)(i); (2) the IFQ Landing Report at 50 CFR 679.5(l)(2); (3) the IFQ Vessel Clearance Report at 679.5(l)(5)(i); (4) the IFQ Transshipment Authorization Request at 679.5(l)(4); and (5) the Corporation Eligibility Notice at 679.43(c).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. These requirements are either new or revisions to collection-of-information requirement approved by OMB under OMB control number 0648-0272. These requirements have been submitted to OMB for approval. Public reporting burden per response for these collections of information is estimated to average as follows: 0.5 hours for individuals and 1 hour for corporations or partnership filling out a Request for QS Application; 0.2 hours for an IFQ landing report; 0.2 hours for an IFQ vessel clearance report; 2 hours for the identification of ownership interest form; 0.3 hours for an IFQ shipment report; 0.2 hours for an IFQ transshipment authorization request; 0.5 hours for the Designated Beneficiary form; 2 hours for the Application for Transfer of QS/IFQ; and 4 hours for the Letter of Appeal, including in all cases the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are invited on (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through use of automated collection techniques or other forms of information technology. Send comments on these or other aspects of the information collections to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

NMFS prepared an initial regulatory flexibility analysis to describe this proposed rule's economic effects on small entities. This proposed action would impact all QS holders in the IFQ Program, as well as seafood processors and transporters. The majority of catcher vessels harvesting IFQ halibut and IFQ sablefish meet the definition of a small entity under the RFA. As of the end of the 1998 IFQ season, 3,795 persons held halibut QS and 919 held sablefish QS. Persons who buy IFQ harvests from IFQ fishermen must possess Registered Buyers permits, and as of the end of the 1998 season, Registered Buyer permits were held by 859 businesses, including restaurants, processors, retailers, brokers, tenders, and catcher/processors. In addition, families of deceased QS holders would be impacted beneficially by the proposed extension of temporary transfer privileges to other surviving members of a deceased QS's family in addition to surviving spouses.

This proposed action comprises only minor regulatory changes, adjustments, clarifications, and corrections necessary to refine NMFS' ability to manage the program effectively and to improve the clarity and consistency of the program's implementing regulations. Seven of the proposed changes are intended to clarify aspects of the regulations and would impose little change in the way small businesses conduct their businesses under the IFQ Program, except to avoid any potential confusion due to inexact regulatory language.

The other six changes contained in this proposed action may have greater impact on small businesses operating under the IFQ Program, but these impacts too would either be beneficial or impose relatively minor changes in recordkeeping and reporting requirements. Changes in the program's collection-of-information requirements have been discussed above.

These changes are expected to have minimal economic impacts on small entities. NMFS has not identified alternatives that would further minimize these impacts.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising form the language used in this proposed rule. Such comments should be addressed to the Alaska Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 2000

William T. Hogarth

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773, *et seq.*

2. In part 679, all references to "Chief, RAM Division" are removed and "Program Administrator, RAM" is added in its place.

3. In § 679.1, the first sentence of the introductory paragraph, the introductory text to paragraph (d), and paragraph (d)(1)(i)(B) are revised to read as follows:

§ 679.1 Purpose and scope.

Regulations in this part were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. * * *

* * * * *

(d) *IFQ Program for sablefish and halibut.* The IFQ management measures for the commercial fisheries that use fixed gear to harvest sablefish and halibut (see subparts A, B, D, and E of this part).

(1) * * *

(i) * * *

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold quota shares, Individual Fishing Quota permits, or Individual Fishing Quota cards.

* * * * *

4. In § 679.2, the definition of "Chief, RAM Division" is removed, the definition of "IFQ landing" is revised, the definition of "Program Administrator, RAM" is added, and, under the definition of "Authorized fishing gear", paragraphs (1) through (15) are redesignated as paragraphs (2) through (16), newly designated paragraph (16) is revised, and a new paragraph (1) is added to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

(1) *Dinglebar gear* means one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

* * * * *

(16) *Troll gear* means one or more lines with hooks or lures attached drawn through the water behind a moving vessel. This gear type includes hand troll and power troll gear and dinglebar gear.

* * * * *

IFQ landing means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, IFQ sablefish, or products thereof.

* * * * *

Program Administrator, RAM means the Program Administrator of Restricted Access Management Program, Alaska Region, NMFS.

* * * * *

5. In § 679.4, paragraph (d)(1)(i) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(d) *IFQ*—(1) * * *

(i) *IFQ permit.* A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ

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halibut or IFQ sablefish may be harvested by the IFQ permit holder; and

* * * * *

6. In § 679.5(l), paragraphs (l)(1)(iv), (l)(2)(iv)(A)(2), (l)(2)(vi), (l)(3)(i)(A), (l)(3)(ii), (l)(4), and (l)(5)(i) are revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(1) * * *

(iv) *Exemption.* The operator of a category B, C, or D vessel, as defined at § 679.40(a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(2) is exempt from the prior notice of landing required by this section when such landings of IFQ halibut are made concurrent with legal landings of lingcod harvested with dinglebar gear or with legal landings of salmon.

* * * * *

(2) * * *

(iv) * * *

(A) * * *

(2) IFQ halibut of 500 lb (0.227 mt) or less of IFQ weight determined pursuant to § 679.42(c)(2) is landed concurrently with a legal landing of lingcod harvested with dinglebar gear or a legal landing of salmon by a category B, C, or D vessel, as defined at § 679.40(a)(5).

* * * * *

(vi) *Information required.* The registered buyer must enter accurate information contained in a complete IFQ landing report as follows: Date, time, and location of the IFQ landing; name and permit number of the IFQ card holder and registered buyer; the harvesting vessel's ADF&G number; gear type reported by cardholder; the Alaska State fish ticket number(s) for the landing; the ADF&G statistical area of harvest reported by the IFQ cardholder; if ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder; for each ADF&G statistical area of harvest reported by the IFQ cardholder, the product code landed and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained.

(3) * * *

(i) * * *

(A) Complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish for which the Registered Buyer submitted a landing report before the fish leave the landing site.

* * * * *

(ii) *Information required.* A shipment report must specify the following: Whether the report is a revised report; species and product type being shipped; number of shipping units and unit weight; fish product weight; names of the shipper and receiver; names and addresses of the consignee and consignor; mode of transportation; intended route; and signature of the responsible registered buyer's representative.

* * * * *

(4) *Transshipment authorization.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization must specify the date and location of the transshipment; names and ADF&G numbers of vessels delivering and receiving the transshipment; product destination; registered buyers' names and permit numbers; IFQ permit numbers; species, regulatory areas, product types and codes, number of units, and unit weight of IFQ harvests being transshipped; time and date of the request; and name and contact numbers for the person making the request.

(5) * * *

(i) *Applicability.* The vessel operator who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel from a clearing officer and provide the following information: date, time, and location of clearance; vessel name and ADF&G and IPHC numbers; homeport; Federal Fisheries Permit number; IFQ permit numbers; registered buyer permit number; IFQ cardholder name; date, time, and location of landing; areas fished and estimated weight of harvests by species; and registered buyer's signature.

* * * * *

7. In § 679.7, paragraph (f)(14) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) *IFQ fisheries.* * * *

(14) Violate any other provision under this part.

* * * * *

8. In § 679.40, paragraph (a)(6)(i) is revised to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(a) * * *

(6) * * *

(i) *Application form.* The Application period for QS ended on July 15, 1994. As of that date, the Request for QS Application form replaces the QS Application form as the means by which the Administrator, RAM, reviews and makes initial administrative determinations on requests for initial allocations of QS. A Request for QS Application must contain the following: Information identifying the individual, representative of a deceased fisherman's estate, corporation or partnership, or dissolved corporation or partnership making the request; contact numbers; vessel identification, length overall, and purchase date; and information on any vessel leasing arrangement pertinent to the claim of eligibility.

* * * * *

9. In § 679.41, paragraphs (h)(2) and (k) are revised to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(h) *Transfer of IFQ.* * * *

(2) IFQ resulting from category B, C, or D QS may not be transferred separately from its originating QS, except as provided in paragraph (k) of this section.

* * * * *

(k) *Survivorship transfer privileges.*—(1) On the death of an individual who holds QS or IFQ, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (k)(2) of this section, receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an Application for Transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) QS holders may provide the Regional Administrator with the name of a designated beneficiary from the QS holder's immediate family to receive survivorship transfer privileges in the event of the QS holder's death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse or, in the absence of a surviving spouse, from a beneficiary from the QS holder's immediate family designated pursuant to paragraph (k)(2) of this section to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (h)(2) of this section.

10. In § 679.42, paragraph (j)(6) is added to read as follows:

§ 679.42 Limitations on the use of QS and IFQ.

* * * * *

(j) * * *

(6) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of QS assigned to categories B, C, or D must provide annual updates to the Regional Administrator identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership.

* * * * *

11. In § 679.43, paragraph (c) is revised to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(c) *Submission of appeals.* Appeals must be in writing and must be submitted to the Office of Administrative Appeals, P. O. Box 21668, Juneau, AK 99802 or delivered to Federal Building, 709 West 9th St., Room 801, Juneau, Alaska. Appeals may be transmitted by facsimile to (907) 586-9361. Additional information about appeals may be obtained by calling (907) 586-7258, and by accessing Office of Administrative Appeals section of the NMFS Alaska Region website http://www.fakr.noaa.gov.

* * * * *

[FR Doc. 00–31625 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 001114320-0320-01; I.D. 080400B]

RIN 0648-AN01

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements; Alaska Commercial Operator's Annual Report

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to require groundfish motherships and catcher/processors to submit to the State of Alaska, Department of Fish & Game (ADF&G), an annual Commercial Operator's Annual Report (COAR). The COAR provides information on exvessel and first wholesale values for statewide finfish and shellfish products. The State of Alaska currently requires shoreside processors to submit this information to ADF&G. This proposed rule is necessary to extend these requirements to all groundfish processing sectors off Alaska in order to provide for equivalent annual product value information and for a consistent time series of information. This proposed rule is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 16, 2001.

ADDRESSES: Comments on the proposed rule may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, Alaska, and marked Attn: Lori Gravel. Hand- or courier-delivered comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Send comments on the collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to the Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone (EEZ) off Alaska in accordance with the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under authority of the Magnuson-Stevens Act. Regulations implementing the FMPs at 50 CFR part 679 and subpart H of 50 CFR part 600 govern fishing by U.S. vessels. Recordkeeping and reporting requirements appear at 50 CFR 679.5.

Catcher/processors and motherships operating in the EEZ off Alaska represent a significant part of the total capacity of groundfish processors in the BSAI and GOA and account for a substantial part of the total landings each year, but currently are not required to supply groundfish product value information. In February 1999, the Council requested that NMFS collect exvessel and first wholesale value data for fish and shellfish products from motherships and catcher/processors through the COAR. Currently, shoreside processors and stationary floating processors are required to submit the COAR annually under title 5 of the Alaska Administrative Code (AAC), chapter 39.130. The information submitted in the COAR is protected by Alaska State confidentiality statute AS 16.05.815.

NMFS proposes to require federally permitted motherships and catcher/processors to complete and submit the Alaska COAR on an annual basis. Combining these data from motherships and catcher/processors with the information from shoreside processors and stationary floating processors would yield equivalent annual product value information for all processing sectors and would provide a consistent time series of information. NMFS could use this information to more efficiently manage groundfish resources. NMFS and the State of Alaska would coordinate the use of the information generated by the COAR.

The expected result of expanding the COAR's collection of information would be an enhanced socioeconomic database that NMFS could use to more accurately measure economic and socioeconomic impacts and to prepare economic analyses of proposed or existing management measures. It would provide detailed (and consistent) data on production, prices, and product forms that NMFS would use to respond to requests for economic information from Federal and state management agencies, the fishing industry, and the general public. NMFS would also use the COAR data in analyses it prepares in compliance with the mandates of Executive Order 12866, the Magnuson-Stevens Act, including national standards 2, 4, 7 and 8, the American Fisheries Act (to monitor and report to Congress on the effects and efficacy of the new groundfish management programs), and the Regulatory Flexibility Act.

Additionally, the database would be used in the annual NMFS Stock Assessment and Fishery Evaluation documents for the groundfish fisheries of the BSAI and GOA, in annual Federal publications on the value of U.S. commercial fisheries, and in periodic reports that describe the fisheries.

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The information would be collected annually on COAR paper application forms from all catcher/processors and motherships issued a Federal Fisheries permit to conduct fishing activities in the EEZ of the BSAI or GOA. ADF&G would provide the COAR forms to each mothership and catcher/processor on an annual basis to record information from the previous year. The motherships and catcher/processors would submit the COAR the following April to ADF&G, Juneau, AK. Each mothership or catcher/processor would be required to complete and submit one or more pages of the COAR to ADF&G for computer data entry. Only one COAR would be required from a vessel that functions both as a mothership and as a catcher/processor during a given year. A certification page would be submitted to indicate that no receipt or production of groundfish took place for that year, and that no other COAR pages would be required. Information from motherships and catcher/processors would be verified using the NMFS weekly production report data base. Information from processors that operate in state waters and shore-based processors would be verified using the ADF&G fish ticket data base.

About 58 percent of the motherships and catcher/processors that would be affected by this proposed rule are already voluntarily complying with the COAR requirement. In 1998, approximately 96 motherships and 237 catcher/processors were issued Federal Fisheries Permits, for a total of 333 at-sea processors. In 1998, based on weekly production report data, 35 motherships and 99 catcher/processors were active. Because 32 of the motherships also functioned as catcher/processors, a more accurate estimate of at-sea processors is 102. A total of 59 at-sea processors complied voluntarily with the 1998 State's data collection requirement and submitted a COAR to ADF&G, leaving approximately 43 processors that did not voluntarily submit the report.

This proposed rule would revise regulations at § 679.2 by adding a definition of COAR and at § 679.5 by adding a new paragraph (p) that sets forth requirements on completing and submitting the C OAR. Finally, several tables would be amended or added to part 679, specifically:

Table 1—Product Codes would be amended by removing code 96 and replacing it with two new codes, codes 88 and 89. Code 96 was established as a category for fish that were in any way adulterated. However, regulations require different handling of fish dependent on the type of adulteration. Therefore code 96, the "discard, decomposed" category, would be split into code 88 for flea-infested or parasite-infested fish, and code 89 for previously discarded or decomposed fish.

Table 14—Ports of landing, including CDQ and IFQ primary ports. Table 14, which currently lists CDQ and IFQ primary port codes, would be amended by creating three separate subtables (a, b, c) that show geographic subdivisions with the appropriate NMFS and ADF&G codes for each port of landing. The ADF&G developed alpha codes to designate ports in its computer database, while NMFS developed numerical codes to designate ports in its database. The ADF&G fish ticket program uses the alpha codes. The CDQ and IFQ programs use the NMFS numerical codes for ports of landing, and the IFQ program uses the NMFS numerical codes in the card-swipe terminal. With the advent of the NMFS shoreside processor electronic logbook and electronic weekly production reports, that use the numerical codes and this proposed expansion of the COAR that uses the alpha codes, NMFS proposes combining in one table both sets of codes in addition to the coordinates for those ports identified by NMFS as primary ports for the IFQ program. Table 14a would present the NMFS codes and the ADF&G codes for ports of landing in Alaska. Table 14b would present the NMFS codes and the ADF&G codes for ports of landing in California, Oregon, and Canada. Table 14c would present the NMFS codes and the ADF&G codes for ports of landing in Washington.

Table 15—Gear Codes, descriptions, and use. Table 15 (which currently describes gear codes and descriptions used with the IFQ Program on the card-swipe terminal plus ADF&G gear codes used on fish tickets) would be expanded to include all ADF&G gear codes. In addition, NMFS and ADF&G have agreed upon uniform definitions of gear types where differences existed. While ADF&G developed numeric codes to designate gear type in its computer database, NMFS developed alpha codes to designate gear type in its database. The CDQ and IFQ programs use the ADF&G numeric codes for gear type, and the IFQ program uses the ADF&G numeric codes for gear type in the card-swipe terminal. In addition, the NMFS logbook system uses whole words to describe a fewer number of gear types (e.g., trawl, jig). With the advent of the NMFS groundfish electronic weekly production reports (which use the alpha codes), the NMFS shoreside processor electronic logbook (which uses the whole words and both the numeric and alpha codes), and this proposed expansion of the COAR (which uses the numeric codes), NMFS proposes to combine in one table, all references to gear types used by either NMFS or ADF&G and to indicate where they are used.

Table 16—Area Codes and descriptions for use with ADF&G COAR. Table 16 would be added to present ADF&G area codes that are used in the COAR. The State of Alaska developed two major systems over a period of about 25 years: the fish ticket system and the COAR. ADF&G defines registration areas for fish tickets as geographic areas for a species where fisheries are managed by the State, meaning that a person must be registered with the State (permitted) to fish in that area for that species. ADF&G registration areas are described in State of Alaska regulations with specific latitude and longitude coordinates, but geographic areas are not necessarily consistent between species. The COAR defines areas generally, often in terms of prominent features or the location of a processing plant. State of Alaska regulations do not describe the COAR areas. NMFS describes areas first by management area (Bering Sea, Aleutian Islands, Gulf of Alaska) and then by reporting area. NMFS's data collection for all species uses the NMFS area designations (a Federal reporting area often contains State waters). The COAR describes federal waters as: FB for Federal waters, Bering Sea and Aleutian Islands; FG for Federal waters, Gulf of Alaska, and means waters outside of 3 miles in its 200-mile limit. Because the COAR requests information from both ADF&G registration areas and Federal management areas, NMFS proposes to combine in one table, all references to areas used by either ADF&G registration areas or ADF&G COAR. ADF&G is currently working on revising the COAR area descriptions to correspond to ADF&G registration areas. Table 16 would be referenced when completing the COAR to describe areas where products were processed and where products were purchased.

Table 17—COAR Process Codes. Table 17 would be added to present ADF&G codes that describe processes that are used in the COAR.

Table 18—COAR Buying and Production Forms. Table 18 would be added to present the ADF&G buying and production reporting forms that make up the COAR. A separate form is used for each species/gear combination, and for reporting buying of fish or production of fish products.

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to the PRA. The proposed collection with this rulemaking has been submitted to OMB for review and approval. The estimated response times for the COAR requirements are estimated to range from 0.5 hr to 16 hr, at an average of 8 hr per year.

Public comment is sought regarding this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection to NMFS and OMB (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

It is difficult to project how many of the firms that will be affected will fall into different size classes. NMFS has attempted to determine the numbers of BSAI and GOA groundfish catcher-processing operations that may be called small on the basis of U.S. Small Business Administration (SBA) guidelines for fishing firms. These guidelines use a $3,000,000 gross revenue threshold to separate small from large operations. These also require that the $3,000,000 threshold consider income to all affiliated operations in its application to any one firm.

NMFS reporting suggests that 70 of the 91 catcher-processors operating in 1999 were small vessels and that 21 were large. These totals changed significantly from 1997 when 58 of the catcher-processors were small and 58 were large. Three of the six motherships grossed more than $3,000,000 in 1999.

These NMFS reports are believed to overstate the numbers of small catcher-processors and motherships and to understate the numbers of large catcher-processors and motherships (with respect to the SBA definitions) for the following reasons: (1) a vessel's earnings from other fisheries and activities were not included, (2) a vessel owner's earnings from other sources (i.e., another vessel) were not included, (3) the ex-vessel value of a delivery by a catcher-vessel to an at-sea processor was included only when a fish ticket with value data was submitted for the delivery, (4) vessel specific fish ticket landings weight and value data are used to estimate ex-vessel value for catcher vessels but such data are not available for all deliveries to inshore processors, (5) these estimates do not take account of affiliation relationships that may exist between an individual vessel and other fishing or processing operations.

In 1999 there were 91 catcher-processors and six motherships (that did not also function as catcher processors) in the at-sea processing sector. In 1998, 59 out of 102 at-sea processors, or 58%, filed COAR reports in the absence of this regulation and 43, or 42%, did not. If the percentages were similar in 1999, 41 firms would not file COAR reports in the absence of this regulatory change.

It is estimated that completion of the COAR report takes 15 minutes of overhead time, and an additional 15 minutes for each species and product combination produced by the firm. Weekly Processor Reports for 1999 indicate that vessels were producing an average of 15 species and product combinations. The COAR report will increase the number of species and product combinations to be considered. For the purposes of this analysis, it is assumed that this will increase the number of species and product combinations by 50%, to 23. This means that it may take 360 minutes, or 6 hours, to fill out each COAR report.

It is estimated to cost $50/hour to complete these forms. This implies that the cost for completing a COAR report would be $300 if it took 6 hours. If regulatory change requires 41 vessels to begin to fill out these reports, the total annual additional compliance cost for all at-sea processors would be $12,300.

While it is hard to project the numbers of firms of different sizes that will be affected by this rule, it seems likely, on the basis of the considerations described in the cost discussion of this section, that this requirement will not have a substantial impact on the cash flow, or the profitability, of either large or small groundfish at-sea processors.

As noted above, the total annual industry cost of this rule is estimated to be about $12,300. In addition there will be some start-up expenses. The average cost for an individual vessel is estimated to be about $300. It has been estimated that in 1999 groundfish catcher-processors produced a processed value of about $469.6 million (this catcher-processor gross combined with an estimated 1999 mothership gross of $22.8 million, gave a total at-sea processor gross of $492.4 million). This is an average of $5.16 million for each catcher-processor operation. As noted above, only 21 operations grossed more than $3 million so the distribution of harvest values is highly skewed. Nevertheless, it seems unlikely that even smaller catcher processors will find their cash flow or profitability significantly negatively impacted.

Based on the above description, NMFS has determined that this action would not have a "significant impact" as NMFS has interpreted that term to mean that it would have disproportionate or profitability impacts. The proposed requirement would not place affected entities at a significant competitive disadvantage relative to large entities, and would not significantly reduce profit for the regulated entity. Therefore, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 1, 2000

William T. Hogarth,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. Section 679.2 is amended by adding the definition for "Commercial Operator's Annual Report (COAR)."

§ 679.2 Definitions.

* * * * *

Commercial Operator's Annual Report (COAR) means the annual report of information on exvessel and first wholesale values for fish and shellfish required under Title 5 of the Alaska Administrative Code, chapter 39.130 (see § 679.5(o)).

* * * * *

3. Section 679.5 is amended by adding paragraph (p) to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(p) *Commercial Operator's Annual Report (COAR)*—(1) *Requirement.* The owner of a mothership or catcher/processor must annually complete and submit to ADF&G the appropriate Forms

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A through M and COAR certification page for each year in which the mothership or catcher/processor was issued a Federal Fisheries permit. The owner of a mothership must include all fish received and processed during the year, including fish received from an associated buying station. The ADF&G COAR is further described under Alaska Administrative Code (5 AAC 39.130) (see § 679.3(b)(2)).

(2) *Time limit and submittal of COAR.* The owner of a mothership or catcher/processor must submit to ADF&G the appropriate Forms A through M and COAR certification page by April 1 of the year following the year of issuance of a Federal Fisheries permit to the following address: Alaska Department of Fish & Game, Division of Commercial Fisheries, Attn: COAR, P.O. Box 25526, Juneau, Alaska 99802-5526

(3) *Information required, certification page.* The owner of a mothership or catcher/processor must:

(i) Enter the company name and address, including street, city, state, and zip code; also seasonal mailing address, if applicable.

(ii) Enter the vessel name and ADF&G processor code.

(iii) Check YES or NO to indicate whether fishing activity occurred conducted during the appropriate year.

(iv) If response to paragraph (o)(3)(iii) of this section is YES, complete the applicable forms of the COAR (see table 18 to this part) and complete and sign the certification page.

(v) If response to paragraph (o)(3)(iii) of this section is NO, complete and sign only the certification page.

(vi) Sign and enter printed or typed name, e-mail address, title, telephone number, and FAX number of owner.

(vii) Enter printed or typed name, e-mail address, and telephone number of alternate contact.

(4) *Buying forms (exvessel), Forms A(1-3), C(1-2), E, G, I(1-2), K, and M.*—(i) *Requirement.* If the mothership was the first purchaser of raw fish, the owner must record and submit the appropriate COAR buying forms (A(1-3), C(1-2), E, G, I(1-2), K, and M) for all information for each species purchased during the applicable year.

(ii) *Buying information required.* The owner of the mothership must record the following information on the appropriate COAR buying forms:

(A) Species name and code (see table 2 to this part).

(B) Area purchased (see table 16 to this part).

(C) Gear code (see table 15 to this part).

(D) Delivery code (form G only) (see table 1 to this part).

(E) Total pounds (to the nearest lb) purchased from fishermen.

(F) Total amount paid to fishermen, including all post- season adjustments and/or bonuses and any credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.

(G) Price per pound. If additional adjustments would be made after this report has been filed, the owner must check the "$ not final" box, and submit Form M when these adjustments are paid. Do not include fish purchased from another processor.

(5) *Wholesale production forms, Forms B(1-6), D, F, H, J(1-2), and K).* For purposes of this paragraph, the total wholesale value is the amount that the processor receives for the finished product (free on board pricing mothership or catcher/processor). For products finished but not yet sold (still held in inventory), calculate the estimated value using the average price received to date for that product.

(i) *Requirement*—(A) *Mothership.* The owner of a mothership must record and submit the appropriate COAR production forms (B(1-6), D, F, H, J(1-2), and K) for all production for each species during the applicable year:

(*1*) That were purchased from fishermen on the grounds and/or dockside, including both processed and unprocessed seafood.

(*2*) That were then either processed on the mothership or exported out of the State of Alaska.

(B) *Catcher/processor.* The owner of a catcher/processor must record and submit the appropriate COAR production forms (B(1-6), D, F, H, J(1-2), and K) for each species harvested during the applicable year that were then either processed on the vessel or exported out of the State of Alaska.

(ii) *Information required, non-canned production.*

(A) Enter area of processing (see table 16 to this part). List production of Canadian-harvested fish separately.

(B) Processed product. Processed product must be described by entering three codes:

(*1*) Process prefix code (see table 17 to this part).

(*2*) Process suffix code (see table 17 to this part).

(*3*) Product code (see table 1 to this part).

(C) Total net weight. Enter total weight in pounds of the finished product.

(D) Total value($). Enter the total wholesale value of the finished product.

(E) Enter price per pound of the finished product.

(iii) *Information required, canned production.* Complete an entry for each can size produced:

(A) Enter area of processing (see table 16 to this part).

(B) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).

(C) Total value($). Enter the total wholesale value of the finished product.

(D) Enter price per pound of the finished product.

(E) Enter can size in ounces, to the hundredth of an ounce.

(F) Enter number of cans per case.

(G) Enter number of cases.

(6) *Custom production forms, Form L(1-2)*—(i) *Requirement.* The owner of a mothership or catcher/processor must record and submit COAR production form L(1-2) for each species in which custom production was done by the mothership or catcher/processor for another processor and for each species in which custom production was done for the mothership or catcher/processor by another processor.

(ii) *Custom-production by mothership or catcher/processor for another processor.* If the mothership or catcher/processor custom-processed fish or shellfish for another processor during the applicable year, the owner of the mothership or catcher/processor must list the processor name and ADF&G processor code (if known) to describe that processor, but must not include any of that production in production form L(1-2).

(iii) *Custom-production by another processor for mothership or catcher/processor.* If a processor custom-processed fish or shellfish for the mothership or catcher/processor during the applicable year, the owner of the mothership or catcher/processor must use a separate page to list each processor and must include the following information.

(A) *Custom fresh/frozen miscellaneous production.* The owner of a mothership or catcher/processor must list the following information to describe production intended for wholesale/retail market and that are not frozen for canning later:

(*1*) Species name and code (see table 2 to this part).

(*2*) Area of processing (see table 16 to this part).

(*3*) Processed product. Processed product must be entered using three codes:

(*i*) Process prefix code (see table 17 to this part).

(*ii*) Process suffix code (see table 17 to this part).

(*iii*) Product code (see table 1 to this part).

(*4*) Total net weight. Enter total weight in pounds of the finished product.

(*5*) Total wholesale value($). Enter the total wholesale value of the finished product.

(B) *Custom canned production.* The owner of a mothership or catcher/processor must list the following information to describe each can size produced in custom canned production:

(*1*) Species name and code (see table 2 to this part).

(*2*) Area of processing (see table 16 to this part).

(*3*) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).

(*4*) Total wholesale value($). Enter the total wholesale value of the finished product.

(*5*) Can size in ounces, to the hundredth of an ounce.

(*6*) Number of cans per case.

(*7*) Number of cases.

(*7*) *Fish buying retro payments/post-season adjustments, Form M*—(i) *Requirement.* The owner of a mothership must record and submit COAR production Form M to describe additional adjustments and/or bonuses awarded to a fisherman, including credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.

(ii) *Information required.*

(A) Enter species name and code (see table 2 to this part).

(B) Enter area purchased (see table 16 to this part).

(C) Enter gear code (see table 16 to this part).

(D) Enter total pounds purchased from fisherman.

(E) Enter total amount paid to fishermen (base + adjustment).

4. In part 679, tables 1, 14 and 15 to part 679 are revised; tables 16, 17, and 18 to part 679 are added.

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)

Product Description	Code
GENERAL USE CODES	
Belly flaps. Flesh in region of pelvic and pectoral fins and behind head. (ancillary only)	19
Bled only. Throat, or isthmus, slit to allow blood to drain.	03
Bled fish destined for fish meal (includes offsite production) DO NOT RECORD ON PTR.	42
Bones (if meal, report as 32) (ancillary only).	39
Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.	37
Cheeks. Muscles on sides of head (ancillary only)	17
Chins. Lower jaw (mandible), muscles, and flesh (ancillary only)	18
Fillets, deep-skin. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.	24
Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.	23
Fillets with ribs, no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.	22
Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.	20
Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.	21
Fish meal. Meal from whole fish or fish parts; includes bone meal.	32
Fish oil. Rendered oil from whole fish or fish parts. Record only oil destined for sale and not oil stored or burned for fuel onboard.	33
Gutted, head on. Belly slit and viscera removed.	04
Head and gutted, with roe.	06
Headed and gutted, Western cut.	07
Head removed just in front of the collar bone, and viscera removed.	07
Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.	08
Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.	10
Heads. Heads only; regardless where severed from body (ancillary only).	16
Kirimi (Steak) Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.	11
Mantles, octopus or squid. Flesh after removal of viscera and arms.	36
Milt. (in sacs, or testes) (ancillary only).	34
Minced. Ground flesh.	31
Other retained product. If product is not listed on this table, enter code 97 and write a description with product recovery rate next to it in parentheses.	97
Pectoral girdle. Collar bone and associated bones, cartilage and flesh.	15
Roe. Eggs, either loose or in sacs, or skeins (ancillary only).	14
Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.	12
Stomachs. Includes all internal organs (ancillary only)	35
Surimi. Paste from fish flesh and additives	30
Whole fish/meal. Whole fish destined for meal (includes offsite production.) DO NOT RECORD ON PTR.	41
Whole fish/food fish.	01
Whole fish/bait. Processed for bait. Sold	02
Wings. On skates, side fins are cut off next to body.	13
DISCARD/DISPOSITION CODES	
Whole fish/donated prohibited species. Number of Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program.	86
Whole fish/onboard bait. Whole fish used as bait on board vessel. Not sold.	92
Whole fish/damaged. Whole fish damaged by observer's sampling procedures.	93
Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait	95
Whole fish, discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Vessel Buying Stations delivering to Motherships. DO NOT RECORD ON PTR.	98
Whole fish, discard, infested. Flea-infested fish, parasite-infested fish	88
Whole fish, discard, decomposed. Decomposed or previously discarded fish	89
Whole fish, discard, onshore. Discard after delivery and before processing by Shoreside Processors and Buying Stations delivering to Shoreside Processors and in-plant discard of whole ground-fish and prohibited species during processing. DO NOT RECORD ON PTR.	99
PRODUCT DESIGNATION CODES	
Ancillary product means a product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.	A
Primary product means a product, such as fillets, made from each fish, with the highest recovery rate.	P

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

Product Description	Code
Reprocessed or rehandled product means a product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product.	R
IFQ CODES Reserved for use with IFQ fish products	
Gutted, head off. Belly slit and viscera removed. Pacific halibut only.	05

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

Product Description	Code
Gutted, head on. Belly slit and viscera removed. Pacific halibut and sablefish.	04
Whole fish/food fish with ice & slime. Sablefish only.	51
Bled only with ice & slime. Throat or isthmus slit to allow blood to drain. Sablefish only.	53

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

Product Description	Code
Gutted, head on, with ice & slime. Belly slit and viscera removed. Pacific halibut and sablefish.	54
Gutted, head off, with ice & slime. Belly slit and viscera removed. Pacific halibut only.	55
Headed and gutted, Western cut, with ice & slime. Sablefish only.	57
Headed and gutted, Eastern cut, with ice & slime. Sablefish only.	58

TABLE 14A TO PART 679.—PORT OF LANDING CODES, ALASKA, INCLUDING CDQ AND IFQ PRIMARY PORTS

Port Name	NMFS Code	ADF & G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/ IFQ	North Latitude	West Longitude
Adak	186	ADA			
Akutan	101	AKU	X	54°08'05"	165°46'20"
Akutan Bay	102				
Alitak	103	ALI			
Anchor Point	104				
Anchorage	105	ANC			
Angoon	106	ANC			
Aniak		ANI			
Anvik		ANV			
Atka	107	ATK			
Auka Bay	108				
Baranof Warm Springs	109				
Beaver Inlet	110				
Bethel					
Captains Bay	112				
Chignik	113	CHG			
Chinitna Bay	114				
Cordova	115	COR	X	60°33'00"	145°45'00"
Craig	116	CRG	X	55°28'30"	133°09'00"
Dillingham	117	DIL			
Douglas	118				
Dutch Harbor	119				
Dutch Harbor/Unalaska			X	53°53'27"	166°32'05"
Edna Bay	121				
Egegik	122	EGE			
Ekuk		EKU			
Elfin Cove	123	ELF			
Emmonak		EMM			
False Pass	125				
Fairbanks		FBK			
Galena		GAL			
Glacier Bay		GLB			
Glennalen		GLN			
Gustavus	127	GUS			
Haines	128	HNS			
Halibut Cove	130				
Hollis	131				
Homer	132	HOM	X	59°38'40"	151°33'00"
Hoonah	133	HNH			
Hydaburg	128	HNS			
Hyder	134	HDR			
Ikatan Bay	135				
Juneau	136	JNU			
Kake	137	KAK			
Kaltag		KAL			
Kasilof	138	KAS			

TABLE 14A TO PART 679.—PORT OF LANDING CODES, ALASKA, INCLUDING CDQ AND IFQ PRIMARY PORTS—Continued

Port Name	NMFS Code	ADF & G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/ IFQ	North Latitude	West Longitude
Kenai	139	KEN			
Kenai River	140				
Ketchikan	141	KTN	X	55°20'30"	131°38'45"
King Cove	142	KCO	X	55°03'20"	162°19'00"
King Salmon	143	KNG			
Kipnuk	144				
Klawock	145	KLA			
Kotzebue		KOT			
La Conner		LAC			
Mekoryuk	147				
Metlakatla	148	MET			
Moser Bay		MOS			
Naknek	149	NAK			
Nenana		NEN			
Nikiski (or Nikishka)	150	NIK			
Ninilchik	151	NIN			
Nome	152	NOM			
Nunivak Island		NUN			
Old Harbor	153	OLD			
Other/Unknown	499	UNK			
Pelican	155	PEL	X	57°57'30"	136°13'30"
Petersburg	156	PBG	X	56°48'10"	132°58'00"
Point Baker	157				
Port Alexander	158	PAL			
Port Bailey	159	PTB			
Port Graham	160	GRM			
Port Lions		LIO			
Port Moller		MOL			
Port Protection	161				
Resurrection Bay	163				
Sand Point	164	SPT	X	55°20'15"	160°30'00"
Savoonga	165				
Seldonia	166	SEL			
Seward	167	SEW	X	60°06'30"	149°26'30"
Sitka	168	SIT	X	57°03'	135°20'
Skagway	169	SKG			
Soldotna		SOL			
St. George	170	STG			
St. Lawrence	171	*			
St. Mary		STM			
St. Paul	172	STP	X	57°07'20"	170°16'30"
Tee Hrbor	173				
Tenakee Spring	174	TEN			
Thorne Bay	175				
Togiak	176	TOG			
Toksook Bay	177				
Tununak	178				
Ugadaga Bay	179				
Ugashik		UGA			
Unalakleet		UNA			
Unalaska	180				
Valdez	181	VAL			
Wasilla		WAS			
Whittier	183	WHT			
Wrangell	184	WRN			
Yakutat	185	YAK		59°33'	139°44'

TABLE 14B TO PART 679.—PORT OF LANDING CODES: CALIFORNIA, OREGON, CANADA INCLUDING CDQ AND IFQ PRIMARY PORTS

Port Name	NMFS Code	ADF&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/ IFQ	North Latitude	West Longitude
CALIFORNIA					
Eureka	500	EUR			
Fort Bragg	501				
Other	599				
OREGON					
Astoria	600	AST			
Lincoln City	602				
Newport	603	NPT			
Olympia		OLY			
Portland		POR			
Warrenton	604				
Other	699				
CANADA					
Port Edward	800				
Port Hardy	801				
Prince Rupert	802	PRU			
Other	899				

TABLE 14C TO PART 679.—WASHINGTON PORT OF LANDING CODES INCLUDING CDQ AND IFQ PRIMARY PORTS

Port Name	NMFS Code	AD&G Code	CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi))		
			CDQ/IFQ	North Latitude	West Longitude
Anacortes	700	ANA			
Belluvue	701				
Bellingham	702		X	48°45'04"	122°30'02"
Blaine		BLA			
Edmond	703				
Everett	704				
Fox Island	706				
Ilwaco	707				
La Conner	708	LAC			
Mercer Island	709				
Nagai Island	710				
Port Orchard	712				
Port Townsend	713				
Rainier	714				
Seattle	715	SEA			
Tacoma		TAC			
Other	799				

TABLE 15 TO PART 679.—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)

Name of Gear	NMFS Logbooks and Forms	Electronic WPR & Check-in/out Code	Gear Code, Numeric	Use Numeric Code to Complete the Following:		
				Shoreside Electronic Logbook	IFQ Terminal and Forms	COAR Re port
Diving		OTH	11	X		X
Dredge		OTH	01	X		X
Dredge, hydro/mechanical		OTH	23	X		X
Fish wheel		OTH	08	X		
Gillnet, drift		OTH	03	X		X
Gillnet, herring		OTH	34	X		X
Gillnet, set		OTH	04	X		X
Gillnet, sunken		OTH	41	X		X
Hand line/jig/troll		(1)	05	X	IFQ name: hand troll	X
Handpicked		OTH	12	X		X
Hatchery		n/a	77	X		X

TABLE 15 TO PART 679.—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)—Continued

Name of Gear	NMFS Logbooks and Forms	Electronic WPR & Check-in/out Code	Gear Code, Numeric	Use Numeric Code to Complete the Following:		
				Shoreside Electronic Logbook	IFQ Terminal and Forms	COAR Re port
Hook-and-line	X	HAL	61	X	X	X
Jig, mechanical		(1)	26	X		X
Jig/Troll	X	JIG	(1)	(1)		
Net, dip		OTH	13	X		X
Net, ring		OTH	10	X		X
Other/specify	X	OTH	99	X		X
Pot	X	POT	91	X	X	X
Pound	X	OTH	21	X		X
Seine, purse		OTH	01	X		X
Seine, beach		OTH	02	X		X
Shovel		OTH	18	X		X
Trap		OTH	90	X		X
Troll, dinglebar		OTH	25	X	IFQ name: dinglebar troll	X
Troll, power gurdy		(1)	15	X		X
Trawl, beam		(2)	17	X		X
Trawl, double otter		(2)	27	X		X
Trawl, nonpelagic/bottom	X	NPT	07	X		X
Trawl, pelagic/midwater	X	PTR	47	X		X
Weir		OTH	14	X		X

(1)Federal Authorized Gear JIG/TROLL. No numeric code is available because both jig and troll have a separate code number
(2)For logbooks, forms, electronic WPR, electroniccheck-in/out reports: all trawl gear must be reported as either nonpelagic or pelagic trawl

TABLE 16 TO PART 679.—AREA CODES AND DESCRIPTIONS FOR USE WITH STATE OF ALASKA ADF&G COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

COAR: Name (Code)	Species	ADF&G fisheries management areas	Area description in ADF&G regulations
Alaska Peninsula:	King Crab:	M	5 AAC 34.500
South Peninsula (MS)	AK Peninsula/Aleutian Islands Salmon	M	5 AAC 12.100
North Peninsula (MN)	Herring	M	(Aleutians) 5 AAC 09.100 (AK Peninsula) 5 AAC 27.600
Atka-Amlia Islands (FB) (FG).	Salmon	n/a	5 AAC 11.1010
Bering Sea:	Bering Sea King Crab	Q	5 AAC 34.900
Pribilof Island (Q1)	Bering Sea/Kotzebue Herring	Q	5 AAC 27.900
St. Matthew Island Q2)			
St. Lawrence Island (Q4)			
Bristol Bay (T)	King Crab	T	5 AAC 34.800
	Salmon	T	5 AAC 06.100
	Herring	T	5 AAC 27.800
Chignik (L)	Groundfish	L	5 AAC 28.500
	Herring	L	5 AAC 27.550
	Salmon	L	5 AAC 15.100
Cook Inlet:	Groundfish	H	5 AAC 28.300
Lower Cook Inlet (HL)	Herring	H	5 AAC 27.400
Upper Cook Inlet (HU)	Cook Inlet Shrimp	H	5 AAC 31.300
	Outer Cook Inlet Shrimp	H	5 AAC 31.400
	Dungeness Crab	H	5 AAC 32.300
	King Crab	H	5 AAC 34.300
	Tanner Crab	H	5 AAC 35.400
	Miscellaneous Shellfish	H	5 AAC 38.300
	Salmon	H	5 AAC 21.100
Dutch Harbor (O)	Aleutian Islands King Crab	O	5 AAC 34.600
EEZ (Federal waters of BSAI and GOA) (FB) (FG).	Groundfish	n/a	n/a

TABLE 16 TO PART 679.—AREA CODES AND DESCRIPTIONS FOR USE WITH STATE OF ALASKA ADF&G COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)—Continued

COAR: Name (Code)	Species	ADF&G fisheries management areas	Area description in ADF&G regulations
Kodiak (western GOA) (K)	Groundfish	K	5 AAC 28.400
	Herring	K	5 AAC 27.500
	King Crab	K	5 AAC 34.400
	Salmon	K	5 AAC 18.100
	Shrimp	J	5 AAC 31.500
	Dungeness Crab	J	5 AAC 32.400
	Tanner Crab	J	5 AAC 35.500
	Miscellaneous Shellfish	J	5 AAC 38.400
Kotzebue (X)	Salmon	W	5 AAC 03.100
Kuskokwim:	Salmon	W	5 AAC 07.100
Kuskokwim River/Bay (W1)	Herring	W	5 AAC 27.870
Security Cove (W2)			
Goodnews Bay (W3)			
Nelson Island (W4)			
Ninivak Island (W5)			
Cape Avinof (W6)			
Norton Sound (Z)	Norton Sound-Port Clarence Salmon	Z	5 AAC 04.100
	Norton Sound-Port Clarence King Crab		
Prince William Sound (E)	Groundfish	E	5 AAC 28.200
	Herring	E	5 AAC 27.300
	Shrimp	E	5 AAC 31.200
	Dungeness Crab	E	5 AAC 32.200
	King Crab	E	5 AAC 34.200
	Tanner Crab	E	5 AAC 35.300
	Miscellaneous Shellfish	E	5 AAC 38.200
	Salmon		5 AAC 24.100
Southeast:	Groundfish	A	5 AAC 28.100
Juneau/Haines (A1)	Southeast (w/o Yakutat) Herring	A	5 AAC 27.100
Yakutat (A2)	Yakutat Herring	D	5 AAC 27.200
Ketchikan/Craig (B)	Southeast (w/o Yakutat) Dungeness Shrimp	A	5 AAC 31.100
Petersburg/Wrangell (C)	Yakutat Shrimp	D	5 AAC 31.150
Sitka/Pelican (D)	Southeast (w/o Yakutat) Crab	A	5 AAC 32.100
	Yakutat Dungeness Crab	D	5 AAC 32.155
	Southeast (w/o Yakutat) King Crab	A	5 AAC 34.100
	Yakutat King Crab	D	5 AAC 34.160
	Southeast (w/o Yakutat) Tanner Crab	A	5 AAC 35.100
	Southeast (w/o Yakutat) Miscellaneous Shellfish	D	5 AAC 35.160
	Yakutat Miscellaneous Shellfish	A	5 AAC 38.100
	Southeast (w/o Yakutat) Salmon	D	5 AAC 38.160
	Yakutat Salmon	A	5 AAC 33.100
		D	5 AAC 29.010
			5 AAC 30.100
Yukon River:	Yukon-Northern Salmon	Y	5 AAC 05.100
Lower Yukon (YL)			
Upper Yukon (YU)			

TABLE 17 TO PART 679.—PROCESS CODES FOR USE WITH STATE OF ALASKA COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

Codes	Process Codes and Description
Prefix Codes	1–Fresh
	2–Frozen
	3–Salted/brined
	4–Smoked
	5–Canned
	6–Cooked
	7–Live
	8–Dry
	9–Pickled
	11–Minced
Suffix Codes	0–General
	1–Canned Conv.
	2–Canned smoked
	8–Vacuum packed
	1–Individual quick frozen (IFQ) pack

TABLE 17 TO PART 679.—PROCESS CODES FOR USE WITH STATE OF ALASKA COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)—Continued

Codes	Process Codes and Description
	S–Shatter pack
	B–Block

TABLE 18 TO PART 679.—REQUIRED BUYING AND PRODUCTION FORMS FOR USE WITH STATE OF ALASKA COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

Fishery	Required Form Number and Name
Salmon	*Salmon Buying:*
	(A)(1) Seine gear
	(A)(1) Gillnet gear
	(A)(2) Troll gear Hatchery
	(A)(3) Miscellaneous gear
	King Salmon Production:
	(B)(1) Production
	(B)(1) Canned Production
	Sockeye Salmon Production:
	(B)(2) Production
	(B)(2) Canned Production
	Coho Salmon Production:
	(B)(3) Production
	(B)(3) Canned Production
	Pink Salmon Production:
	(B)(4) Production
	(B)(4) Canned Production
	Chum Salmon Production:
	(B)(5) Production
	(B)(5) Canned Production
	Salmon Roe & Byproduct Production:
	(B)(6) Roe
	(B)(6) Byproduct Production
Herring	*Herring Buying:*
	(C)(1) Seine gear
	(C)(1) Gillnet gear
	(C)(2) Gillnet gear (contd)
	(C)(2) Pound gear
	(C)(2) Hand-pick gear
	Herring Production:
	(D) Production
	(D) Byproduct Production
Crab	(E) *Crab Buying:*
	(F) Crab Production
Shrimp/Miscellaneous shellfish	(G) *Shrimp/Misc.Shellfish Buying:*
	Trawl gear
	Pot gear
	Diving/picked gear
	Other gear (specify)
	(H) Shrimp/Misc. Shellfish Production
Groundfish	(I)(1) (I)(2) Groundfish Buying
	(J)(1) (J)(2) Groundfish Production
Halibut	(K) Halibut Buying & Production
Custom Production	*Custom Production:*
	(L)(1) Associated Processors
	Custom Fresh/Frozen
	Misc. production
	Custom Canned Production
	(L)(2) (additional sheet)
PRICES NOT FINAL	(M)(1) Fish Buying Retro Payments
	(M)(2) Post-season Adjustments

[FR Doc. 00–31916 Filed 12–13–00; 8:45 am]
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Notices

Federal Register
Vol. 65, No. 241
Thursday, December 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: January 10, 2001 (8:45 a.m. to 12:00 p.m.).

Locotion: Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC.

This meeting will feature discussion of the Committee's recommendations for U.S. policymakers on major new priorities for development and humanitarian assistance. The findings of an ACVFA–USAID study on best practices in USAID/PVO relations will also be discussed.

The meeting is free and open to the public. Persons wishing to attend the meeting can fax or e-mail their name to Kari Wickenheiser, (703) 741–0567, *Kari.AMATech@juno.com.*

Dated: December 5, 2000.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 00–31893 Filed 12–13–00; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Announcement of Draft Guidelines for Title II Cooperating Sponsor Results Reports and Resources Requests

Pursuant to the Agricultural Market and Transition Act of 1996 (Public Law 480, as amended), notice is hereby given that the Draft Guidelines for Title II Cooperating Sponsor Results Reports and Resource Requests are being made available to interested parties of the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, Agency for International Development, RRB 7.06–120, 1300 Pennsylvania Avenue, Washington, DC 20523–0809. Individuals who have questions or comments on the draft guidelines should contact Richard Newberg at the above address or at (202) 712–1828.

The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register.**

Dated: October 13, 2000.

William T. Oliver,

Director, Office of Food for Peace Bureau for Humanitarian Response.

[FR Doc. 00–31674 Filed 12–13–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Changes to Section IV of the Field Office Technical Guides for NRCS in California

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to section 343 of Subtitle E of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) that requires the Secretary of Agriculture to provide public notice and comment under section 553 of Title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service (NRCS) State technical guides that are used to carry out Subtitles A, B, and C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), the Natural Resources Conservation Service, United States Department of Agriculture, gives notice of revisions to all conservation practices in section IV of State technical guides in California. The distribution of these revisions and an updated index of conservation practice standards and specifications was made to all California NRCS offices via California Technical Guide Notice 43 dated September 29, 2000.

These revisions to conservation practices in Section IV of State technical guides are subject to these provisions since one or more are used, or could be used, as a part of a conservation management system to comply with the Highly Erodible Land Conservation or Wetland Conservation requirements of the Food Security Act of 1985.

FOR FURTHER INFORMATION CONTACT: Diane B. Holcomb, State Resource Conservationist, USDA–NRCS, 430 G Street, Davis, CA 95616–4164. Telephone Number (530)–792–5667, FAX #(530)–792–5793, or email *diane.holcomb@ca.usda.gov.*

A copy of the new index and any of the revised items can be obtained on the Web at *http://www.ca.nrcs.usda.gov/rts/fotgintro.htm,* or from Ms. Holcomb, either in paper copy format, or electronic copy on compact disk (CD). These items are also available at each of the NRCS field offices in California.

Comments can be sent at anytime to Diane B. Holcomb or to the District Conservationist at any NRCS field office in California. Comments will be reviewed and considered by NRCS technical discipline specialists and the California State Technical Guide Committee, which meets approximately four times a year at the NRCS State Office in Davis, California.

SUPPLEMENTARY INFORMATION: In California, "State technical guides" refers to the State Office Technical Guide maintained by the NRCS State Resource Conservationist in Davis, California, to the Area Office Technical Guide maintained at each NRCS Area Office in Red Bluff, Salinas, Fresno, and Riverside, California, and to the Field Office Technical Guide maintained at each NRCS Field Office in California.

Practice standards establish the minimum level of acceptable quality for planning, designing, installing, operating, and maintaining conservation practices. National standards from the National Handbook of Conservation Practices form the basis for developing State supplements to the standards. Practice specification guidance are developed by each State and establish and list the terms and conditions, and how the practice standard will be made site-specific.

The last revisions to conservation practices in State technical guides in California were completed in July, 2000, and issued via California Technical Guide Notice Number 43 on September 29, 2000. The current California "Index of Conservation Practice Standards and Specifications" and practice standards and specifications are dated July 2000. All practice standards and specifications are reviewed by the State Technical Guide Committee at least once every five years from their date of issuance to determine if the standard is needed and reflects the latest acceptable technology.

The July, 2000, revisions cover all of the 221 conservation practice standards, 132 conservation practice specifications and their practice requirements sheets, 128 conservation practice material specifications, and 9 conservation practice construction specifications in California. Revisions include word changes, reformatting sections of practice standards, name changes, renumbering, additions, deletions, updates of technical requirements, changing dates, and adding some new practices.

Diane B. Holcomb,

State Resource Conservationist.

[FR Doc. 00–31734 Filed 12–13–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Report of Privately Owned Residential Building or Zoning Permits Issued (Building Permits Survey).

Form Number(s): C–404.

Agency Approval Number: 0607–0094.

Type of Request: Revision of a currently approved collection.

Burden: 30,716 hours.

Number of Respondents: 19,000.

Avg Hours Per Response: 9 minutes.

Needs and Uses: The Census Bureau conducts the Building Permits Survey to collect data that will provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family. The Census Bureau also uses these data to select samples for its demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services, and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas.

Due to budget reductions, the collection of nonresidential data was discontinued as of January 1996. With this submission we have decreased the estimated number of annual responses, accordingly. We have also eliminated the Forms C–404(I) and C–404(B). The primary instructions, C–404(I), are now included on the reverse side of Form C–404. The C–404(B) booklet listing classification of many types of nonresidential construction is no longer needed.

Affected Public: State, local, or Tribal Government.

Frequency: Monthly and annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 9(b), 161, and 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31780 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Reporting and Record Keeping Requirements Under the Wassenaar Arrangement

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management Analyst, Bureau of Export Administration (BXA), Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information required by this collection is required semiannually from all exporters of certain items specified in § 743.1 of the Export Administration Regulations controlled for national security reasons on the Commerce Control List and exported under certain License Exceptions.

II. Method of Collection

The information will be collected in electronic and written form.

III. Data

OMB Number: 0694–0106.

Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Businesses and other for-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Burden Hours: 734 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31781 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Application for Transfer of Licenses to Another Party; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management Analyst, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certain circumstances such as company mergers, company takeovers, etc., necessitate the transfer of an active export license from one party to another. When a licensee transfers an unexpired license to another party, there must be assurances that the other party, the transferee, will also be accountable for the proper use of the license. The required information collected from both parties provides assurances that the balance of the shipments will not be diverted or used for purposes contrary to the authorized use of the approved license.

II. Data

OMB Number: 0694–0051.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 1.1 hours per response.

Estimated Total Annual Burden Hours: 11.

Estimated Total Annual Cost: No start-up or capital expenditures.

III. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31782 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Short Supply Regulations, Petroleum (Crude Oil); Notice and Request for Comments

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is collected as supporting documentation for license applications to export petroleum (crude oil) and used by licensing officers to determine the exporter's compliance with the 5 statutes governing this collection.

II. Method of Collection

III. Data

OMB Number: 0694–0027.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 24.

Estimated Time Per Response: 4–12 hours per response.

Estimated Total Annual Burden Hours: 196.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31783 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

License Exception, Humanitarian License; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management Analyst, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW, Room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 7(g) of the EAA, as amended by the Export Administration Amendments Act of 1985 (Public Law 99–64), exempts from foreign policy controls exports of donations to meet basic human needs. Since the enactment of Public Law 99–74, an exporter had to apply for a bulk Humanitarian license, permitting the export of goods identified in a supplement to the regulation without restriction as to quantity or number of shipments to any of the embargoed destinations. New License Exception procedures contained in this regulation reduce the regulatory burden on these exporters by enabling them to make humanitarian donations with only minimal recordkeeping.

III. Data

OMB Number: 0694–0033.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost: No start-up or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31784 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Collection; Comment Request

TITLE: Non-Tariff Barriers Survey.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms, Clearance Officer, (202) 482–3129, Email *MClayton@doc.gov.*, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Mary Rhody, Trade Development, Office of Environmental Technologies Industries (ETI), Room 1003; U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, DC 20230; Phone number: (202) 482–5225.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's Office of Environmental Technologies Industries (ETI) office is the principal resource and key contact point within the U.S. Department of Commerce for American environmental technology companies. ETI's goal is to facilitate and increase exports of environmental technologies, goods and services by providing support and guidance to U.S. exporters. One aspect of increasing exports is to reduce trade barriers and non-tariff measures. ETI works closely with the Office of the U.S. Trade Representative on trade negotiations and trade liberalization initiatives. The information collected by this survey will be used to support these projects and enable ETI to maintain a current, up-to-date list of non-tariff measures that create trade barriers for U.S. exports of environmental goods and services.

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II. Method of Collection

Electronic submission to the International Trade Administration's Office of Environmental Technologies Industries.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Business or other for profit.
Estimated Number of Respondents: 200.
Estimated Time Per Response: 10 minutes.
Estimated Total Annual Burden Hours: 33 hours.
Estimated Total Annual Costs: $12,000 (Government $5,000, Respondents $7,000).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31806 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.120700B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permits (1201).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received applications for permit modifications from: Dr. Thane Wibbels, University of Alabama at Birmingham (1201).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on January 16, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment: For permits 1201: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

FOR FURTHER INFORMATION CONTACT: For permits 1201: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).?????

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice: Sea Turtles

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Green turtle (*Chelonia mydas*), Kemp's ridley turtle (*Lepidochelys kempii*), Loggerhead turtle (*Caretta caretta*).

Modification Requests Received

Permit #1201

The applicant requests a modification to Permit 1201. Permit 1201 authorizes the sampling for and collection of green, loggerhead and Kemp's ridley turtles in the estuaries of Alabama in the Northern Gulf of Mexico. The purpose of the research is to evaluate the abundance, movements, and location of juvenile sea turtles in the estuaries of Alabama, to potentially identify specific foraging areas. The presence of juvenile sea turtles in estuaries represents a potential conflict for fisheries and coastal development. However, there is little information about this issue for the estuaries of Alabama. The information from this study is critical to developing a prudent management strategy which protects sea turtles while sustaining the productivity of the fisheries. The proposed research is a prerequisite to determining if the estuaries of Alabama represent a developmental habitat for juvenile sea turtles.

The applicant proposes to: (1) Identify potential foraging areas by conducting sampling surveys, and measuring and tagging all captured turtles, (2) Perform radio tracking on some of the turtles to determine short term movements, home range, and identify foraging areas, (3) Collect samples of fecal and stomach materials in order to identify and document the diets of juvenile turtles, (4) Collect blood samples to estimate of sex ratio. Modification #1 would extend the permit expiration date from February 28, 2001 to February 28, 2003.

Dated: December 11, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–31918 Filed 12–13–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235N]

Special Demonstration Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: To provide financial assistance to support projects or programs that expand and improve the provision of rehabilitation and other services for individuals with disabilities, including technical assistance that meets the needs of underserved populations.

For FY 2001 this competition focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice. This competition provides funds for a Technical Assistance Center focusing on Latinos and Hispanics with Disabilities and a Technical Assistance Center focusing on Asian Americans and Pacific Islanders with Disabilities.

Eligible Applicants: State vocational rehabilitation agencies; community rehabilitation programs; Indian tribes or tribal organizations; and public or nonprofit agencies or organizations, including institutions of higher education.

Applications Available: December 21, 2000.

Deadline For Transmittal of Applications: February 20, 2001.

Deadline For Intergovernmental Review: April 21, 2001.

Estimated Available Funds: $1,000,000.

Estimated Range of Awards: $400,000 to $500,000 per year per Center.

Estimated Number of Awards: 2.

Reasonable Accommodations: We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. The Assistant Secretary believes that a period of at least 36 months is necessary to accomplish the project objectives. The Assistant Secretary will assess, during the third year of the project period, whether there is a continuing need for the project and whether to provide funding beyond 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, and 99; and (b) The regulations for this program in 34 CFR part 373.

Priority

Background

Many individuals with disabilities, including Latinos, Hispanics, Asian Americans, and Pacific Islanders, have difficulty accessing rehabilitation services and employment opportunities due to existing language, cultural, socio-economic, and other barriers. In particular, the unique characteristics of immigrant subpopulations living in urban and rural areas support the need for culturally appropriate technical assistance regarding civil rights, education and employment opportunities, and disability-related services. That technical assistance will assist Latinos and Hispanics with disabilities, Asian Americans and Pacific Islanders with disabilities, and other individuals with disabilities and their families, rehabilitation agencies, local educational agencies, higher education institutions, independent living centers, parent training information centers, and employers to gain access to appropriate services and information in order to improve community integration, independent living, and employment outcomes.

Priorities

Under 34 CFR 75.105(c)(3) and section 303(b)(4)(C) and (5)(B)(vi) of the Rehabilitation Act of 1973, as amended, the Assistant Secretary gives an absolute preference to applications that meet one of the following priorities. The Assistant Secretary funds only applications that meet one of the absolute priorities.

The projects must create a National Technical Assistance Center that would provide culturally appropriate technical assistance to organizations, State vocational rehabilitation agencies, other service agencies, individuals, and families focusing on increasing employment opportunities, vocational, educational, and independent living outcomes for Latinos and Hispanics with disabilities or Asian Americans and Pacific Islanders with disabilities.

Priority 1: Creating a National Technical Assistance Center for Individuals with Disabilities focusing on Latinos and Hispanics with Disabilities.

Priority 2: Creating a National Technical Assistance Center for Individuals with Disabilities Focusing on Asian Americans and Pacific Islanders with Disabilities.

Allowable Activities

Activities that may be supported under this competition include, but are not limited to—

- Providing information to employers and industry, small business administrations, and chambers of commerce;
- Providing culturally and linguistically relevant training on the provisions of the Americans with Disabilities Act, sections 504 and 508 of the Rehabilitation Act of 1973, as amended, the Individuals with Disabilities Education Act (IDEA), and other civil rights legislation focused on Latinos and Hispanics with disabilities, Asian Americans and Pacific Islanders with disabilities, and other individuals with disabilities who wish to use the training.
- Identifying solutions related to the barriers to obtaining employment, educational and independent living opportunities for individuals with disabilities focusing on Latinos and Hispanics with disabilities and Asian Americans and Pacific Islanders with disabilities;
- Providing educational and vocational outreach to Latinos and Hispanics with disabilities, Asian Americans and Pacific Islanders with disabilities, other individuals with disabilities, including migrant and seasonal farmworkers, and their families through key organizations and agencies;
- Assisting organizations, families, higher education, and individuals with disabilities to better understand other issues relevant to these populations, including, but not limited to, housing, transportation, assistive technology, independent living, long-term care, and Federal statutes such as the Workforce Investment Act, the Ticket to Work and Work Incentives Act, and the Individuals with Disabilities Education Act.

Selection Criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734

You may also contact ED Pubs at its Web site: http://www.ed.gov/pubs/edpubs.html

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED pubs, be sure to identify this

competition as follows: CFDA number 84.235N.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC. 20202–2650. Telephone: (202) 205–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: *http://ocfo.ed.gov/fedreg.htm, http://www.ed.gov/news.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 773(b).

Dated: December 8, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–31809 Filed 12–13–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 01–13; Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: U.S. Department of Energy.

ACTION: Notice Inviting Grant Applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). Applications should focus on issues of (1) Genetics and the workplace, (2) storage of genetic information and tissue samples, (3) education, or (4) complex or multigenic traits. The HGP is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research grants that address ethical, legal, and social implications from the use of information and knowledge resulting from the HGP.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 01–13, should be received by 4:30 p.m., EST, January 19, 2001. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., EST, March 29, 2001, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

ADDRESSES: Preapplications, referencing Program Notice 01–13, should be sent to: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 01–13, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–13. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–6488 or E-mail: *daniel.drell@science.doe.gov.* The full text of Program Notice 01–13 is available via the World Wide Web using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research in four broad areas:

I. Genetics and the Workplace

Research is encouraged on the uses, impacts, implications of, and privacy of genetic information in the workplace. A particular emphasis of this solicitation is screening and monitoring programs that involve the collection and evaluation of genetic information. Research is also encouraged on the use of the workplace as a research venue. Research could explore historical experiences, current practices, international practices, the economics of, and lessons learned as they pertain to the collection and use of worker genetic information. Research can include issues arising from the creation, use, maintenance, privacy and disclosure of genetic information obtained in workplace settings that can include, but is not limited to, workplaces at which DOE activities are taking place or have in the past.

II. Storage of Information and Samples

Research is encouraged on access to, and protection of genetic information stored in databases (especially computerized databases), or obtained from stored human tissue or sample archives. Research can explore threats to, issues surrounding, and protection of the confidentiality of genetic data in databanks and databases, ways to anonymize existing or new genetic records and samples, to assess the economics of genetic data collection, and to explore the intellectual property protection of genetic information and genome research tools, technologies, and resources. Research can also explore the privacy and ownership issues associated with genetic data in records collected as part of occupational medical surveillance, as well as in academic genetics research.

III. Education

Research is encouraged to create and disseminate relevant educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups. A particular interest of this solicitation is the creation of innovative and novel materials to Institutional Review Boards (IRB) and Ethics Boards that review protocols involving the gathering of genetic information or from genome investigators who work with human subjects or materials from which human genetic information can be obtained. Educational efforts should not target specific groups that have already been the subject of past ELSI awards (for further information about past awards under previous ELSI solicitations, see *http://www.ornl.gov/hgmis/research/elsi.html.*)

IV. Complex or Multigenic Traits

Research is encouraged that addresses the ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions. Such conditions may include, but are not limited to, behavioral conditions, diseases of aging, vulnerability to substance abuse, susceptibility to workplace exposure hazards, or other common conditions with a partial genetic basis. This can include:

(1) Gene—environment interactions that result in diseases or disease susceptibilities, and human polymorphisms.

(2) Studies that explore the novel issues raised by research on complex conditions.

(3) The responses of institutions (*e.g.*, courts, employers, companies or company health officers, schools, etc., including Federal Agencies) that must deal with "genetic uncertainty," *e.g.*, uncertainty about the significance of results of screening for susceptibility genes, uncertainty about the role of yet-undefined environmental influences, and uncertainty about the implications of different alleles at highly polymorphic genes when those alleles are not fully characterized.

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to personal genetic data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should provide a plan to disseminate results to the widest appropriate audience as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to evaluate progress or outcomes. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

If an educational effort for a specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice, *e.g.*, privacy and access to research materials, workplace uses of genetic information, education of targeted groups such as IRBs and investigators, and susceptibility/sensitivity genes, and polymorphisms. Educational and conference applications should demonstrate awareness of the relevant literature, include detailed plans for the accomplishment of project goals, and clearly describe the outcome or "deliverables" from the activity. For conference applications, a detailed and largely complete roster of speakers is necessary. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group. For all conferences supported under this notice, a summary report is required following the conference. In applications that propose the production of educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requires inclusion of a plan for assessment of the effectiveness of the proposed activities.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. DOE generally discourages applications for geographically limited efforts (*e.g.*, college or school curricula that will not be disseminated) and requests detailed justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project, as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress toward the goals of the DOE Human Genome Program. The OBER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OBER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

Additional Request for Small Grants

The DOE also encourages small grant applications, to a maximum of $33,000 total costs, for innovative and exploratory activities within the previously described areas. Such exploratory grants could be used to carry out pilot or investigative research on an issue consistent with any of the above areas of ELSI research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. This program could be appropriate for a research scientist interested in exploring a related area of ELSI research, or a scholar conducting ELSI research of one type to explore an ELSI research topic of a different type. Such applications must use the standard DOE application forms, which can be found on the Internet at: *http://www.sc.doe.gov/production/grants/grants.html,* but the description of research activities should

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not be more than five pages and curriculum vitae should not exceed two pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date. It is expected that up to nine of these awards might be made in FY 2001. As with larger applications to this notice, applications should be sent to the address given above.

Program Funding

It is anticipated that approximately $800,000 will be available for multiple grant awards (including any small grants) to be made during Fiscal Year 2001, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years (not applicable for any small grants as stated above.) Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed $25,000 and indirect costs are not allowed as part of conference grant awards.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and federally funded research and development centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

DOE policy requires that potential applicants adhere to 10 CFR 745 "Protection of Human Subjects," or such later revision of those guidelines as may be published in the **Federal Register**. The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

(The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.)

Issued in Washington, DC on December 4, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–31890 Filed 12–13–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–80–001, FERC Form No. 80]

Information Collection Submitted for Review and Request for Comments

December 7, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission ("Commission") has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of section 3507 of the Paperwork Reduction Act of 1995 (Public Law 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 5, 2000 (65 FR 53707) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before January 16, 2001.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form No. 80 "Licensed Hydro Power Development Recreation Report".
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* OMB No. 1902–0106. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an increase in the reporting burden due to a change of status for this information collection. Form 80 is currently in "standby" status as the respondents file once every six years and one hour has been assigned to it. Form 80 will be collected again in 2002 or during the next potential OMB review period. The Commission has noted this adjustment in burden in its submission to OMB. These are mandatory collection requirements. The Commission does not consider this information to be confidential.
4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC Form 80 is filed in accordance with sections 4(a), 10(a), 301(a), 304, and 309(FPA). The Commission issues licenses for nonfederal hydro power projects and monitors these projects to ensure the conditions of the license are being met. The Commission's licensing and post-licensing processes have the multiple intent of maintaining power generation, enhancing and protecting the environment, and enhancing recreational assets of water resources. Hydro power facilities provide tangible benefits to the regions where they are located. These benefits include additional recreational opportunities, economic benefits through commercial development and the generation of electricity without the use of fossil fuels. At the same time, operation of hydro power projects can adversely affect resources such as water quality, fishery resources, water-based recreational uses, terrestrial and cultural enhancing environmental resources. Submission of the data as required may be found in 18 CFR 811. and 141.14.
5. *Respondent Description:* The respondent universe currently comprises on average, 400 respondents filing the recreation report.
6. *Estimated Burden:* 1,200 total burden hours, 400 respondents, 1 response sexennial, 30 hours per response (average).
7. *Estimated Cost Burden to Respondents:* 1,200 hours ÷ 2,080 hours per year × $115,357 per year = $66,552. The cost per respondent is $166.

Statutory Authority: Sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA), 16 U.S.C. 797–825h.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31858 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–74–001 and RP97–406–026]

Dominion Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on December 1, 2000, Dominion Transmission Inc. (DTI) filed as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2001:

Substitute Third Revised Sheet No. 31
Substitute Third Revised Sheet No. 32
Third Revised Sheet No. 33
Substitute Third Revised Sheet No. 34
Substitute Third Revised Sheet No. 35

DTI states that the purpose of the filing is to apply the rate component changes that DTI originally proposed in this proceeding on November 1, 2000, to the currently effective rates and tariff sheets that the Commission approved in its order issued October 17, 2000, in Docket No. RP00–602–000. The original November 1, 2000, filing in this docket was made under the assumption that the TCRA rates that DTI had proposed on September 29, 2000, in Docket No. RP000–632, would be allowed to become effective on November 1, 2000. That latter filing, however, was suspended by the Commission.

DTI also states that it is filing to withdraw Second Revised Sheet No. 33 that was paginated incorrectly in the November 1, 2000, filing and to replace it with Third Revised Sheet No. 33.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties of the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31839 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–014]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

December 7, 2000.

Take notice that on December 1, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following Agreement to a recently filed negotiated rate transaction:

Agreement to ITS–2 Service Agreement No. 70052 between Columbia Gulf Transmission Company and Amoco Energy Trading Corporation dated November 30, 2000

Transportation service which was scheduled to commence December 1, 2000.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a protest

with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31866 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–43–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

December 7, 2000.

Take notice that on November 28, 2000, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 169, proposed to be effective on November 1, 2000.

Eastern Shore states that the purpose of this filing is to make further necessary modifications to its tariff to (1) permit imbalance netting and (2) expand its imbalance trading period, as directed by the Commission's letter order dated November 9, 2000 in the above-referenced proceeding in order to fully comply with the requirements of FERC Order No. 587–L.

Eastern Shore states that a copy of this filing has been mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31836 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2069–003 Arizona]

Arizona Public Service Company; Notice of Site Visit and Technical Conference

December 8, 2000.

Take notice that on Tuesday, January 9, 2001, FERC staff will conduct a site visit to the Childs Irving Project No. 2069. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at 9:00 a.m. at the parking lot of the Best Western Cliff Castle Lodge at 333 West Middle Verde Road in Camp Verde, Arizona. Arizona Public Service Company (APS), the applicant for the project, will provide transportation to the project site to minimize the number of vehicles. APS will also provide lunch for all participants. Anyone who wishes to attend the site visit should contact Mr. Larry Johnson of APS at 480–350–3131 by 4:00 p.m. on Monday, January 8, 2001.

On September 15, 2000, APS filed with the Commission an Offer of Settlement and Settlement Agreement. Commission staff will hold a technical conference of APS, parties to the proposed Settlement Agreement, and other interested parties in the relicensing proceeding for the project. The conference will be held on January 10, 2001, from 10:00 a.m. to 5:00 p.m. at the Community Room of the Phoenix Museum of History, 105 North 5th Street, Phoenix, Arizona.

The purposes of the conference are to learn more about the Settlement Agreement, and discuss related procedural steps. All interested individuals, organizations, and agencies are invited to attend the conference.

For further information, please contact Dianne Rodman at (202) 219–2830.

David P. Boergers,

Secretary.

[FR Doc. 00–31854 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–625–001]

Canyon Creek Compressions Company; Notice of Compliance Filing

December 7, 2000.

Take notice that on December 4, 2000, Canyon Creek Compression Company (Canyon) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 127, to be effective on January 1, 2001.

Canyon states that this tariff sheet is being filed in compliance with the Commission's "Order on Filing to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L," issued October 27, 2000, in Docket No. RP00–625–000.

Canyon requested any waivers which may be required for the tendered tariff sheet to become effective January 1, 2001.

Canyon states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00–625.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31833 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–344–000 and RP00–601–000]

Dominion Transmission, Inc.; Notice of Technical Conference

December 7, 2000.

Take notice that a technical conference to further discuss the various issues raised by Dominion Transmission, Inc.'s (Dominion) Order No. 637 compliance filing will be held on Thursday, December 14, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31858 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–22–002]

East Tennessee Natural Gas Company; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered its compliance filing with the Commission's "Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)] issued on October 27, 2000 (October 27 Order.

East Tennessee states that the purpose of this filing is to comply with the requirements of the October 27 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31836 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–41–000]

El Paso Natural Gas Company; Notice of Application

December 8, 2000.

On November 30, 2000, El Paso Natural Gas (El Paso), pursuant to Section 3 of the Natural Gas Act (NGA), and Subparts B and C of Part 153 of the Federal Energy Regulatory Commission's (Commission) regulations under the NGA, filed in Docket No. CP01–41–000 its application for: (1) an order authorizing the siting, construction, and operation of 60 feet of 16-inch diameter pipeline and the place of exit for export of up to 8,500 Mcf per day of natural gas at the International Boundary between the United States and Mexico in Santa Cruz County, Arizona; and, (2) a Presidential Permit, pursuant to Section 7 of the NGA and the Commission's Rules and Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

The application states that El Paso understands that Nogales, Sonora, Mexico is host to a growing commercial manufacturing industry. Due to the increasing number of industrial parks and U.S. manufacturing plants being located in northern Sonora, there is an increasing need for supplies of clean burning natural gas as fuel. In response thereto, Ener-Son, U.S.A. Inc. (Ener-Son), a buyer and seller of natural gas, has agreed to provide for the increasing needs of these commercial manufacturing plants. In addition, Ener-Son also desires to provide natural gas to fuel future electric power generation in Northern Mexico.

El Paso states that its existing California Mainline System is capable of providing interruptible transportation service for such quantities of natural gas. However, certain additional metering and lateral facilities must be constructed between El Paso's existing mainline system and the point of interconnection at the International Boundary. El Paso will construct and operate: a delivery point, Ductos de Nogales; 4,216 feet of 6.625-inch diameter lateral pipeline (the last 60 feet of lateral on the United States side will be 16-inch diameter pipe); and, metering facilities pursuant to the automatic blanket provisions under sections 157.211(a) and 157.208(a), respectively, of the Commission's regulations.

El Paso's application further states that measurement will take place at the new delivery point; however, custody transfer will take place at the border crossing. A financial arrangement has been executed with El Paso for the construction and operation of the new gas transportation facilities. El Paso understands that construction has been completed of the necessary pipeline system in Mexico to the Mexican side of the border crossing.

Questions regarding the details of this proposed project should be directed to Robert T. Tomlinson, Director, Tariff and Certificates Department, El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas 79978, call (915) 496–5959.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 22, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be

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placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–31852 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–007]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreements

December 7, 2000.

Take notice that on November 29, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, two (2) transportation service agreements pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Tenaska Marketing Ventures (Tenaska) and by Great Lakes and CXY Energy Marketing (U.S.A.) Inc. (CXY) (FT Service Agreements). The FT Service Agreements being filed reflect negotiated rate arrangements between Great Lakes and Tenaska and between Great Lakes and CXY commencing December 1, 2000.

Great Lakes states that the FT Service Agreements are being filed to implement negotiated rate contracts as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulations of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31846 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–466–004]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing, to be effective January 1, 2001.

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Order No. 587–I issued on September 29, 1998, in Docket No. RM96–1–009. 84 FERC ¶ 61,328 (1998). The proposed sheets reflect the necessary revisions to Great Lakes' tariff to reflect the completion of Great Lakes' transition to Internet communications.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31847 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–556–000]

Handsome Lake Energy, LLC; Notice of Filing

December 7, 2000.

Take notice that on December 1, 2000, Handsome Lake Energy, LLC tendered for filing pursuant to section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 22, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31856 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2055]

Idaho Power Company; Notice of Authorization for Continued Project Operation

December 7, 2000.

On November 24, 1998, Idaho Power Company, licensee for the C.J. Strike Project No. 2055, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2055 is located on the Snake and Bruneau Rivers in Elmore and Owyhee Counties, Idaho.

The license for Project No. 2055 was issued for a period ending November 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2055 is issued to Idaho Power Company for a period effective December 1, 2000, through November 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 1, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Idaho Power Company is authorized to continue operation of the C.J. Strike Project No. 2055 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31861 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–17–002]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered its compliance filing with the Commission's "Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)]" issued on October 27, 2000 ("October 27 Order") and as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective on November 1, 2000:

Sub Original Sheet No. 262A
Sub First Revised Sheet No. 263

Maritimes states that the purpose of this filing is to comply with the requirements of the October 27 Order.

Maritimes also states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

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appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31835 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG01–9–000, EG01–40–000 and EG01–41–000]

Mexican Business Trust No. 111076–2, Et Al.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 8, 2000.

Take notice that on November 27, 2000, Mexican Business Trust No. 111076–2 (the Trust); Banco Nacional de México, S.A., Institución de Banca Múltiple, División Fiduciaria, Grupo Financiero Banamex-Accival (the Trustee under Mexican Business Trust No. 111076–2); and Termoeléctrica Peñoles, S. de R.L. de C.V. (TEP and together with the Trust and Trustee, Applicants), filed with the Commission a request for additional docket number designations in connection with the Applicants' application for a determination of exempt wholesale generator status, filed with the Commission in EG01–9–000, on October 20, 2000.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before December 14, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31853 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–98–000]

Miami Valley Resources, Inc.; Notice of Filing

December 7, 2000.

Take notice that on November 16, 2000, Miami Valley Resources, Inc. (MVR), tendered for filing a request for withdrawal of its FERC Electric Rate Schedule Volume No. 1, filed with the Commission on October 11, 2000 in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31855 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–158–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

December 7, 2000.

Take notice that on December 1, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing FERC Gas Tariff, Second Revised, Volume 1, Fourth Revised Sheet No. 70 and Third Revised Sheet No. 79, with an effective date of January 1, 2001.

Midwestern states that these revised tariff sheets are being filed in order to revise the invoicing and notice provisions of its FERC Gas Tariff to state the method by which Midwestern will render invoices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31842 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–024]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

December 7, 2000.

Take notice that on November 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet Nos. 26P, 26P.01 and 26P.02, to be effective December 1, 2000.

Natural states that the purpose of this filing is to implement two negotiated rate transactions with Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions (GT&C) of Natural's Tariff.

Natural asks the Commission to accept the proposed tariff sheet and the related Agreement to become effective December 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31844 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatoary Commission

[Docket No. RP99–176–025]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

December 7, 2000.

Take notice that on November 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26B, to be effective December 1, 2000.

Natural states that the purpose of this filing is to implement a negotiated rate transaction with MidAmerican Energy Company (MEC) under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions (GT&C) of Natural's Tariff.

Natural concurrently tenders for filing with the Commission, by a separate filing in this docket, the amended Firm Transportation Negotiated Rate Agreement (Agreement) entered into by Natural and MEC. Natural states that the Agreement does not deviate in any material respects from the applicable form of service agreement in Natural's Tariff.

Natural asks the Commission to accept the proposed tariff sheet and the related Agreement to become effective December 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31845 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–76–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective December 1, 2000:

2 Revised Sheet No. 56

Northern states that the reason for this filing is to file Tariff Sheet No. 56, which sets forth Rate Schedule VFT base rates, to reflect the impact of the SLA rate adjustment on Northern's VFT rates. Tariff Sheet No. 56 was not included in the November 1 tariff filing in this proceeding because the Commission did not approve the VFT Rate Schedule until November 8, 2000.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210. of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

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Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31840 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–000]

Pacific Gas and Electric Company; Notice Establishing a Deadline for Submission of Comments on Settlement Agreement

December 7, 2000.

Take notice that on December 4, 2000, Pacific gas and Electric Company, licensee for the Rock Creek-Cresta Project No. 1962, located on the North Fork Feather River in Butte and Plumas counties, California, filed supporting documentation for the Settlement Agreement filed in the proceeding on September 29, 2000. This supporting documentation is available for public inspection.

Our October 10, 2000, notice soliciting comments on the Settlement Agreement, 65 FR 61160 (2000), stated that comments on the settlement were to be due November 30, 2000, or 30 days after the filing of the supporting documentation, whichever comes later. Reply comments were to be due December 13, 2000, or 45 days after the filing of supporting documentation. Accordingly, comments on the Settlement Agreement are due on January 3, 2001, and reply comments are due on January 18, 2001.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31859 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–162–008]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

December 7, 2000.

Take notice that on December 1, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing a report detailing the activity under Rate Schedule HFT through October 1, 2000.

Panhandle states that the purpose of this filing is to comply with the Commission's Order, 91 FERC ¶ 61,174 (May 22, 2000) (Order) in the above-referenced proceeding. Panhandle's report reflects that, since the effective date on May 22, 2000 until October 1, 2000, no service has been provided under Rate Schedule HFT.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31865 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–061]

Reliant Energy Gas Transportation Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

Substitute Third Revised Sheet No. 8B
Substitute Original Sheet No. 8B.01
Substitute Original Sheet No. 8B.02

REGT states that the purpose of this filing is to reflect the delay in implementation of a new negotiated rate arrangement involving three contracts which was filed in this docket on November 3, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31849 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–180–000]

San Diego Gas & Electric Company; Notice of Filing

December 8, 2000.

Take notice that on December 7, 2000, San Diego Gas & Electric Company (SDG&E) filed a Request For Emergency Relief pursuant to Rule 207(a)(2) and (5). The filing requests that the Commission issue an order: (1) that price caps for short-term releases of capacity for service to the California border and to points of interconnection between interstate pipelines and California local distribution companies, be re-imposed effective immediately and kept in effect until March 31, 2001; and (2) that sellers be required to state separately the transportation and commodity components of the bundled rate for bundled sales at these points so that the cap can be enforced on these transactions. Alternatively, the cap could be enforced on such bundled sales through a mechanism which caps bundled sales at these points at 150% of the sum of a reported average commodity sales price plus the as-billed rate for interstate transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,
Secretary.
[FR Doc. 00–31886 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–25–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered its compliance filing with the Commission's "Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)] issued on October 27, 2000 (October 27 Order) and as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to become effective on November 1, 2000:

Sub Second Revised Sheet No. 525
Sub Original Sheet No. 525A

Texas Eastern states that the purpose of this filing is to comply with the requirements of the October 27 Order. Texas Eastern also states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31837 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–83–006]

Texas Gas Transmission Corporation; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 13, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of June 14, 2000:

Substitute First Revised Sheet No. 126
Second Substitute First Revised Sheet No. 278

Texas Gas states that the revised tariff sheets are being filed to comply with the Commission's Order issued on October 30, 2000, in Docket No. RP00–83–004 and RP00–83–005, implementing a new summer no-notice (SNS) service on the Texas Gas system.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers, interested state commissions, and those parties appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–31848 Filed 12–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Trans-Union Interstate Pipeline, L.P.; Notice of Application

December 7, 2000.

Take notice that on November 22, 2000, Trans-Union Interstate Pipeline, L.P., (Applicant) 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing an application, pursuant to section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717(f), and the Federal Energy Regulatory Commission's Regulations under Part 284, Subpart G, 18 CFR part 284, Subpart G, for a blanket certificate of public convenience and necessity, authorizing it to undertake self-implementing interstate transportation of natural gas under a Part 284 Subpart G blanket transportation certificate. Applicant also requests approval of the "open access" rates and tariff submitted herewith. Applicant also seeks authorization of its negotiated rate proposal, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm.* (Call 202–208–2222 for assistance).

Applicant indicates that any questions regarding the application

herein should be directed to project counsel, Ned Hengerer, at John & Hengerer, 1200 17th Street, NW., Washington, DC 20036 (202) 249–8811.

Applicant states that it will be a natural gas company subject to the Commission's NGA jurisdiction once its previously certificated facilities have been constructed and it has been authorized to commence service. It is indicated that the Commission's order issued July 26, 2000 in Docket No. CP00–47–000. *Trans-Union Interstate Pipeline, L.P.* 92 FERC ¶ 61,066, authorized Applicant to construct and operate facilities subject to the Commission's jurisdiction.

Applicant states that the Application is filed in compliance with Ordering Paragraph (E) of the July 26th order, which conditions the certificate on Applicant filing an application under Part 284, Subpart G, along with tariff and rates consistent with the Commission's Regulations within one hundred and twenty days (120) of the date of the order.

Applicant states that it will provide firm and interruptible transportation services on a non-discriminatory, open access basis, consistent with the Commission's Part 284 policy. It is stated that firm transportation will be offered when firm capacity is available, under Rate Schedule FT, and interruptible transportation service will be offered under Rate Schedule IT. Applicant asserts that its tariff complies with the Commission's policies and regulations established in Order Nos. 636 and 637, as well as the Gas Industry Standards Board (GISB), and that, to diverge in some limited respects from a strict construction of that policy, it requests the requisite waivers. Finally, Applicant requests negotiated rate approval in the context of this open access certificate filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31857 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–6–29–003]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 29, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 Substitute Eleventh Revised Sheet No. 29 and Substitute Twelfth Revised Sheet No. 44, with a proposed effective date of April 1, 1999.

Transco states that the instant filing is submitted in compliance with the Commission's Order On Rehearing issued October 30, 2000 in Docket No. TM99–6–29–001 (October 30 Order). In that order, the Commission authorized Transco to adjust its fuel retention percentages (FRP) to include previously disallowed prior period adjustments amortized over a seven year period. In compliance with the Ordering Paragraph of the October 30 Order, Transco submits herein the tariff sheets reflecting the FRPs to be effective April 1, 1999, a detailed narrative describing Transco's amortization plan and the workpapers supporting the revised FRPs.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31846 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–006]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 1, 2000:

Third Revised Sheet No. 5B.05
Second Revised Sheet No. 5B.07

Transwestern states that the above sheets are being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31867 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–609–001]

Trunkline Gas Company, Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Pro Forma Sheet No. 181.

Trunkline states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L" (Order) dated October 27, 2000 in the above-referenced proceeding.

Trunkline states that copies of this filing are being served on all parties to this proceeding, affected customers and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31832 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–104–000]

Venice Gathering System, L.L.C.; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 7, 2000, Venice Gathering System, L.L.C., (Venice) filed a letter with the Commission explaining that its tariff complies with the imbalance netting and trading provisions of Order Nos. 587–G and 587–L. According to Venice, its tariff already contains imbalance netting and trading provisions, as required by those orders.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31841 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–13–001]

Williams Gas Pipelines Central, Inc., Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective December 1, 2000:

Third Revised Sheet No. 147

In compliance with the Commission's October 27, 2000 Order (Docket No. RM96–1, et al., 93 FERC ¶ 61,903), Williams is removing from Section 3(f) of the PS Rate Schedule the language which would have permitted an appropriate adjustment for fuel. This removal is without prejudice to Williams' filing to revise its tariff in the future should actual experience warrant an additional transportation charge attributable to any specific netting or trading activity.

Williams states that copies of the revised tariff sheet is being mailed to Williams's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31834 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–36–000, et al.]

PPL Montour, LLC, et al.; Electric Rate and Corporate Regulation Filings

December 7, 2000.

Take notice that the following filings have been made with the Commission:

1. PPL Montour, LLC

[Docket No. EG01–36–00]

Take notice that on December 6, 2000, PPL Montour, LLC (PPL Montour) tendered for filing an Amendment to its Application for New Determination of Exempt Wholesale Generator Status.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. American Transmission Systems, Inc.

[Docket No. ER00–3667–001]

Take notice that on December 4, 2000, American Transmission Systems, Inc. (ATSI), tendered for filing its Rate Schedule FERC No. 2 to conform to the header and footer designations of Order No. 614, as directed by the Commission in its November 2, 2000 order. The rate schedule now bears the designation First Revised Rate Schedule FERC No. 2, and each sheet is given a sheet number. ATSI states that it has made no change to the text of the rate schedule.

FirstEnergy and ATSI state further that they have served the filing on all parties to the proceeding.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–003, ER97–1523–004, OA97–470–004, OA97–470–005, ER97–4234–002 and ER97–4234–003]

Take notice that on December 1, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing a Report on Certain Generation Issues One Year After Start-Up. The NYISO was required to submit this report pursuant to Central Hudson Gas & Electric Corp., et al., 88 FERC ¶ 61,138 (1999).

A copy of this filing was served upon all parties in Docket Nos. ER97–1523–003, and –004, OA97–470–004 and –005, and ER97–4234–002 and –003.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Xcel Energy Services Inc.

[Docket No. ER01–205–001]

Take notice that on December 4, 2000, Xcel Energy Services Inc. (Xcel Energy Services), in order to fully comply with the Commission's Order No. 614, tendered for filing codes of conduct for the market-based rate tariffs of Xcel Energy Services, Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS) that were previously filed in the above-captioned docket.

Since the filing made today is purely administrative in nature, Xcel Energy Services seeks the same effective date requested in its original filing, October 24, 2000.

Copies of this filing have been served on those parties listed on the official service list in this proceeding and the state commissions having jurisdiction over the Xcel Operating Companies.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER01–460–001]

Take notice that on December 4, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing amendments and corrections to its filing of November 15, 2000, in Docket No. ER01–460–000 concerning revised Must-Run Service Agreements (RMR Agreements) between it and the California Independent System Operator Corporation (ISO). The amendments are required to implement a request of the ISO to change planned outages of the Hunters Point Power Plant. The corrections result from typographic errors in the November 15 filing.

Copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER01–546–000]

Take notice that on November 30, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively "ComEd"), tendered for filing two unexecuted amended Network Service Agreements (NSA) between ComEd and the City of Batavia (Batavia), and between ComEd and the City of St. Charles (St. Charles). ComEd asks that the NSAs supersede and be substituted for the NSAs with Batavia and St. Charles previously filed on September 29, 2000 in Docket No. ER00–3788–000. These agreements will govern ComEd's provision of network service load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 1, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies were filed on the Cities of Batavia and St. Charles.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER01–552–000]

Take notice that on December 1, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Interconnection and Operation Agreement between Ohio Power Company and National Power Cooperative, Inc. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of February 1, 2001.

A copy of the filing was served upon the Public Utilities Commission of Ohio.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER01–554–000]

Take notice that on December 1, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for acceptance materials (1) to permit NEPOOL to expand its membership to include BP Energy Company, MIECO, Inc., The New Power Company and TCPL Power Ltd. (together, the Applicants); and (2) to terminate the memberships of StratErgy, Inc. (StratErgy) and PPL Utilities (PPLU).

The Participants Committee requests an effective date of December 1, 2000 for commencement of participation in NEPOOL by the Applicants, November 1, 2000 for the termination of StratErgy and December 31, 2000 for the termination of PPLU.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER01–555–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing an amendment, "Rider SB1286 For Resale Service to Central Virginia Electric Cooperative under Schedule VA-RC" (the Rider), to the Contract for the Purchase of Electricity for Resale by Rural Electric Cooperatives dated March 20, 1967, by and between Dominion Virginia Power and Central Virginia Electric Cooperative (CVEC), Rate Schedule FERC No. 94. The Rider reflects Senate Bill 1286 passed by the 1999 Virginia General Assembly which provides for both the elimination of the gross receipts tax and the imposition of a Virginia state income tax effective January 1, 2001.

Dominion Virginia Power requests that the amendment become effective January 1, 2001. Dominion Virginia Power states that copies of the filing have been served upon CVEC and the Virginia State Corporation Commission.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Holland Energy, LLC

[Docket No. ER01–558–000]

Take notice that on December 1, 2000, Holland Energy, LLC tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Wolf Hills Energy, LLC

[Docket No. ER01–559–000]

Take notice that on December 1, 2000, Wolf Hills Energy, LLC submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Big Sandy Peaker Plant, LLC

[Docket No. ER01–560–000]

Take notice that on December 1, 2000, Big Sandy Peaker Plant, LLC, tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, and to reassign transmission capacity.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Xcel Energy Services, Inc.

[Docket No. ER01–561–000]

Take notice that on December 1, 2000, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), tendered for filing a Long Term Firm Point-to-Point Transmission Service Agreement between Public Service and Tri-State Generation and Transmission Association Inc. under Xcel's Joint Open Access Transmission Service Tariff (Xcel FERC Electric Tariff, Original Volume No. 1).

XES requests that this agreement, designated as Original Service Agreement No. 101–PSCo, become effective on November 3, 2000.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. SEI Michigan, L.L.C.

[Docket No. ER01–562–000]

Take notice that on December 1, 2000, SEI Michigan, L.L.C. (SEI Michigan) tendered for filing an application requesting acceptance of its proposed Market Rate Tariff, waiver of certain regulations, and blanket approvals. The proposed tariff would authorize SEI Michigan to engage in wholesale sales of capacity and energy to eligible customers at market rates.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Conectiv Energy Supply, Inc.

[Docket No. ER01–563–000]

Take notice that on December 1, 2000, Conectiv, on behalf of its subsidiaries Conectiv Energy Supply, Inc. (CESI) and Delmarva Power and Light Company (Delmarva), tendered for filing a power sale agreement (PSA) between CESI and Delmarva for CESI to sell all or a portion of the power needed by Delmarva to meet its retail sales obligation in the States of Delaware, Maryland and Virginia.

Conectiv asks that the PSA be allowed to become effective on February 1, 2001.

Copies of the filing were served upon the public utility's jurisdictional customers, and upon the regulatory commissions of the States of Delaware, Maryland and Virginia.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Xcel Energy Services, Inc.

[Docket No. ER01–564–000]

Take notice that on December 1, 2000, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), tendered for filing a Short Term Firm Point-to-Point Transmission Service Agreement between Public Service and PacifiCorp Power Marketing under Xcel's Joint Open Access Transmission Service Tariff (Xcel FERC Electric Tariff, Original Volume No. 1).

XES requests that this agreement become effective on October 17, 2000 designated as Original Service Agreement No. 100–PSCo.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. The Dayton Power and Light Company

[Docket No. ER01–565–000]

Take notice that on December 1, 2000, The Dayton Power and Light Company (DP&L), tendered for filing a Service Agreement and Transaction Agreement establishing DPL Energy Resources as a customer under the terms of DP&L's market-based sales tariff.

DP&L requests an effective date of January 1, 2001 for the Service Agreement and Transaction Agreement.

Copies of this filing were served upon DPL Energy Resources and the Public Utilities Commission of Ohio.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy McClain, LLC

[Docket No. ER01–566–000]

Take notice that on December 1, 2000, Duke Energy McClain, LLC (Duke McClain), tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke McClain seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke McClain also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke McClain seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

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Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER01–567–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing an amendment, "Rider SB1286 For Resale Service to Rural Electric Cooperatives under Schedule VA–RC" (the Rider), to the Contract for the Purchase of Electricity for Resale By Rural Electric Cooperatives dated March 20, 1967 by and between Dominion Virginia Power and Craig-Botetourt Electric Cooperative (CBEC), Rate Schedule FERC No. 78. The Rider reflects Senate Bill 1286 passed by the 1999 Virginia General Assembly which provides for both the elimination of the gross receipts taxes and the imposition of a Virginia State income tax effective January 1, 2001.

Dominion Virginia Power requests that the amendment become effective January 1, 2001.

Dominion Virginia Power states that copies of the filing have been served upon CBEC and the Virginia State Corporation Commission.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Company

[Docket No. ER01–568–000]

Take notice that on December 1, 2000 Commonwealth Edison Company (ComEd) tendered for filing agreements between ComEd and Exelon Generation Company, L.L.C. (Exelon).

ComEd requests an effective date of the later of January 1, 2001 or the date the facilities underlying the agreements are transferred to Exelon.

ComEd states that a copy of the filing was served on Exelon, parties to Docket No. EC00–98, and the Illinois Commerce Commission.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Virginia Electric and Power Company

[Docket No. ER01–569–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (the Company), tendered for filing Notices of Assignment entered into by and among Public Service Electric and Gas Company (Assignor), PSEG Energy Resources & Trade LLC (Assignee), and Virginia Electric and Power Company dated August 24, 2000. Under this assignment, the Assignor assigns to the Assignee and the Assignee assumes all of the Assignor's rights and obligations pertaining to the following Service Agreements with Virginia Electric and Power Company:

1. Service Agreement for Non-Firm Point-To-Point Transmission Service dated May 20, 1997 and accepted by Letter Order dated August 20, 1997 in Docket No. ER97–3652–000.

2. Service Agreement for Firm Point-To-Point Transmission Service dated October 7, 1997 and accepted by Letter Order dated December 15, 1997 in Docket No. ER98–512–000.

The Company requests an effective date of the assignments of August 21, 2000.

Copies of this filing were served upon PSEG Energy Resources & Trade LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Dearborn Industrial Generation, L.L.C.

[Docket No. ER01–570–000]

Take notice that on December 1, 2000, Dearborn Industrial Generation, L.L.C. (DIG), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 2 to be effective at the earliest possible time, but not later than 60 days for the date of its filing.

DIG intends to engage in electric power and energy purchases and sales. In transactions where DIG sells electric energy, it proposes to make such sales on rates, terms and conditions to be manually agreed to with the purchasing party. As outlined in DIG's petition, DIG is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy Company.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Central Vermont Public Service Corporation

[Docket No. ER01–571–000]

Take notice that on November 30, 2000, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 2001 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 ("RS–2 rate schedule") under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Commonwealth Edison Company

[Docket No. ER01–572–000]

Take notice that on December 1, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreement with TransAlta Energy Marketing (TEM) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 9, 2000 for the Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–573–000]

Take notice that on December 4, 2000, Alliant Energy Corporate Services, Inc. tendered for filing executed Service Agreements for long-term firm point-to-point transmission service, establishing Madison Gas and Electric Company as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of January 1, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Hunlock Creek Energy Ventures

[Docket No. ER01–574–000]

Take notice that on December 4, 2000 Hunlock Creek Energy Ventures (Energy Ventures), tendered for filing a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised utility affiliates with captive rate payers at rates capped by a publicly available regional index price.

Energy Ventures requests an effective date no later than December 5, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Central Maine Power Company

[Docket No. ER01–576–000]

Take notice that on December 4, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) Regulations, 18 CFR 35.12, an executed interconnection agreement (the Agreement) between CMP and Sparhawk Mill Company (Sparhawk).

The Agreement is intended to replace and supersede the unexecuted interconnection agreement filed by CMP on March 31, 2000. As such, CMP is requesting that the Agreement become effective March 1, 2000.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and Sparhawk.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Puget Sound Energy, Inc.

[Docket No. ER01–578–000]

Take notice that on December 4, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Aquila, as Transmission Customer.

A copy of the filing was served upon Aquila.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Puget Sound Energy, Inc.

[Docket No. ER01–579–000]

Take notice that on December 4, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Cinergy Energy Services, Inc. (Cinergy), as Transmission Customer.

A copy of the filing was served upon Cinergy.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31885 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981–010–Wisconsin]

Oconto Electric Cooperative; Notice of Availability of Draft Environmental Assessment

December 7, 2000.

[1] In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the existing Stiles Hydroelectric Project, located on the Oconto River, in the township of Stiles, Oconto County, Wisconsin, and has prepared a draft Environmental Assessment (EA) for the project. In the draft EA, the Commission staff has analyzed the potential environmental effects of the project and has concluded that the approval of the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The draft EA may also be viewed on the internet at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix "Stiles Hydroelectric Project, FERC Project No. 1981–010" to all comments. For further information, please contact Patti Leppert at (202) 219–2767. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31860 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 7, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* P–2631–007.

c. *Date Filed:* August 31, 1999.

d. *Applicant:* International Paper Company.

e. *Name of Project:* Woronoco Hydroelectric Project.

f. *Location:* On the Westfield River in the Town of Russell, Hampden County, Massachusetts. No federal lands are affected by the proposed project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ted Lewellyn, P.E., International Paper Company, Paper Mill Road, Millers Falls, MA 01349, (413) 659–2337

Michael K. Chapman, Esq., International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, (901) 763–5888

Jon Christensen, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967, (207) 487–3328

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i. *FERC Contact:* Allan Creamer, (202) 219–0365, allan.creamer@ferc.fed.us.

j. *Deadline for Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Protests, comments on filings, comments on environmental assessments and environmental impact statements, and reply comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Status of Environmental Analysis:* This application has been accepted for filing, and, pursuant to § 4.30(b)(25), is ready for environmental analysis at this time.

l. *Description of Project:* The proposed run-of-river project would consist of the following features: (1) Two non-contiguous dam sections, with lengths of about 307 feet (North dam) and 351 feet (South dam), and a crest elevation of 229 feet NGVD; (2) a 655-foot-long earthen dike with a sheet steel core; (3) a 40-foot-wide by 15-foot-high intake structure, having trashracks with 1.25-inch clear bar spacing; (4) a 550-foot-long penstock; (5) a powerhouse containing three Francis turbines and generating units, having an installed capacity of 2,700 kW; (6) a 43-acre impoundment that extends approximately 1.2 miles upstream; (7) an interim downstream fish passage facility; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be approximately 7,700 MWh.

m. *Availability of Application:* A copy of the application, as supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. The application may be viewed at http://www.ferc.fed.us/online/rims.htm, or call (202) 208–2222 for assistance. A copy of the application, as supplemented, is also available for inspection and reproduction at International Power Company, Paper Mill Road, Millers Falls, Massachusetts 01349 and through the Town of Russell, Robert P. Drake, Chairman, Board of Selectman, Town of Russell, Russell, Massachusetts 01071

n. *Filing and Service of Responsive Documents*—The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31862 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 7, 2000.

a. *Application Type:* Application to Amend License for the Lytle Creek Project.

b. *Project No:* 1932–005.

c. *Dated Filed:* November 9, 2000.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Lytle Creek Project.

f. *Location:* The project is located on Lytle Creek, a tributary of the Santa Ana River, in San Bernardino County, California. The project utilizes lands of the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bryant Danner, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–4459.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* January 12, 2001.

Please include the project number (1932–005) on any comments or motions filed.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Description of Filing:* SCE proposes to revise the project boundary by removing a telephone line, caretaker building, and storage building because they are no longer used for project purposes. The proposed modifications reduce the amount of federal lands used by the project by 9.82 acres.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31863 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 7, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 11175–008.

c. *Date Filed:* October 30, 2000.

d. *Applicant:* Crown Hydro Company.

e. *Name of Project:* Crown Mill.

f. *Location:* The project is located on the Mississippi River in the City of Minneapolis, Hennepin County, Minnesota. The project occupies 0.5 acres of lands of the United States under the jurisdiction of the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas R. Griffin, 5436 Columbus Avenue South, Minneapolis, Minnesota 55417 (612) 825–1043.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. *Deadline for filing comments and or motions:* January 12, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (11175–008) on any comments or motions filed.

k. *Description of Filing:* Crown Hydro requests deletion of article 402 of the license for the Crown Mill Project No. 11175. Article 402 requires Crown Hydro to file for approval a plan to construct a pedestrian walkway and bridge in the project tailrace area and excavate a historic turbine and move it to a public area for viewing. Crown Hydro reports that the state grant (to be equally matched by the license) is no longer available.

l. *Locations of the Application:* A copy of the application for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commissioin's web site at *http://www.ferc.fed.us/efi/doorbell.htm*

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31864 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL01–1–000]

Hydroelectric Licensing Policies, Procedures, and Regulations—Comprehensive Review; Notice of Public Meetings and Requesting Comments and Recommendations

December 8, 2000.

Pursuant to section 603 of the Energy Act of 2000 (Public Law No. 106–469), the Commission is preparing a comprehensive review of policies,

procedures, and regulations for the licensing of hydroelectric projects to determine how to reduce the cost and time of obtaining a license. Section 603 directs the Commission to report its findings to Congress, including any recommendations for legislative changes, by May 8, 2001.

To ensure a comprehensive review, the Commission seeks the comments and recommendations of all stakeholders in the Commission's hydroelectric licensing program, including federal and state agencies, Indian tribes, non-governmental organizations, licensees and other members of the public. In particular, the Commission wishes to receive comments identifying steps in the existing licensing process that may require inordinate time and expense to complete, and the reasons therefor. We also are seeking proposed administrative or legislative solutions to any problem areas identified.

The Commission will conduct public meetings at the following locations to receive comments and recommendations:

Date	Address
Monday, January 8, 2000	Commission Meeting Room, 2–C, 888 First Street, N.E., Washington D.C., (202) 219–2722.
Tuesday, January 9, 2000	Richard B. Russell Building, Storm Auditorium, 75 Spring Street, Atlanta GA, (404) 562–9404.
Wednesday, January 10, 2000	Ramada Inn, 300 Broadway, Albany, NY, (518) 434–4111.
Thursday, January 11, 2000	Lansing Center, 333 E. Michigan Avenue, Lansing, MI, (517) 483–7400.
Wednesday, January 17, 2000	Holiday Inn Airport, 8439 N.E. Columbia, Portland, OR, (503) 256–5000.
Thursday, January 18, 2000	Vagabond Executive Inn, 2030 Arden Way, Sacramento, CA, (916) 929–5600.

All meetings will commence at 9:00 A.M. Each public meeting will include a review of the existing licensing process and an opportunity for participants to offer their comments on how it can be improved. The public meetings will be recorded by a stenographer and, thereby, will become a part of the record of the proceeding. Persons making statements will be asked to identify themselves for the record. The speaking time permitted to individuals will be determined at the beginning of each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least ten minutes to present their views.

Persons choosing not to speak but wishing to comment, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written comments may also be mailed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Correspondence should clearly show the following caption on the first page:

Docket No. PL01–1–000

Hydroelectric Licensing Policies, Procedures, and Regulations—Comprehensive Review

In light of the limited amount of time available for submission of the Commission's Report to Congress, commenters are encouraged to provide written comments as early as possible, but not later than February 1, 2001, and to use their time at the public meetings to summarize previously filed written comments or to focus on only the most significant sources of cost and delay in the licensing process from their perspective. Comments may also be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*. Commenters may also send copies of their comments to agencies or other entities of interest.

FOR FURTHER INFORMATION: Please contact Edward Abrams at the Commission, 202–219–2773.

David P. Boergers,

Secretary.

[FR Doc. 00–31851 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Services Performance Review Board

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: Notice of appointments.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Dr. Albert E. Brandenstein; Henry H. Marsden III, and Daniel Schecter.

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Edward H. Jurith, General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 00–31790 Filed 12–13–00; 8:45 am]

BILLING CODE 3180–02–P

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank).

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, December 13, 2000, at 9:30 AM to 12:30 PM. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: This meeting will include a discussion of the end of the year report from the Advisory Committee to Ex-Im Bank.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 3, 2000, Nichole Westin, Room 1257, 811 Vermont Avenue, NW, Washington, D.C. 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

Further Information: For further information, contact Nichole Westin, Room 1257, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3542.

John M. Niehuss,

General Counsel.

[FR Doc. 00–31791 Filed 12–13–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 6, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0943.
Expiration Date: 12/31/2003.
Title: Section 54.809, Carrier Certification.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 27 respondents; 1.5 hours per response (avg.).; 41 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annually; Third Party Disclosure.
Description: 47 CFR 54.809 requires each price cap or competitive local exchange carrier (LEC) that wishes to receive universal service support to file an annual certification with the Universal Service Administrative Company (USAC) and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission and USAC will use the certifications to ensure that carriers comply with section 254(e) of the Telecommunications Act by using the interstate access universal service support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0816.
Expiration Date: 11/30/2003.
Title: Local Competition and Broadband Reporting, CC Docket No. 99–301.
Form No.: FCC Form 477.
Respondents: Business or other for-profit.
Estimated Annual Burden: 255 respondents; 58.6 hours per response (avg.).; 29,924 total annual burden hours (based on two responses per respondents).
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Semi-annually.
Description: FCC Form 477 seeks to gather information on the development of local competition and deployment of broadband service also known as advanced telecommunications services. The data is necessary to evaluate the status of developing competition in local exchange telecommunications markets and to evaluate the status of broadband deployment. The information will be used by Commission staff to advise the Commission about the efficacy of Commission rules and policies adopted to implement the Telecommunications Act of 1996. Copies of the FCC Form 477, Local Competition and Broadband Reporting Form, can be obtained from the Commission's website at *www.fcc.gov*. Obligation to respond: Mandatory.

OMB Control No.: 3060–0790.
Expiration Date: 11/30/2003.
Title: Section 68.110(c)—Availability of Inside Wiring Information.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 200 respondents; 1 hour per response (avg.); 1200 total annual burden hours (based on six requests per year).
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: 47 CFR 68.110(c) requires telephone companies to provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. The information must be provided to the telephone company upon request of the building owner or agent thereof. The information is needed so that building owners may be able to contract with an installer of their choice for maintenance and installation service, or elect to contract with the telephone company to modify existing wiring or assist with the installation of additional inside wiring. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0933.
Expiration Date: 11/30/2003.
Title: Community Broadband Deployment Database Reporting Form.
Form No.: FCC Form 460.
Respondents: Business or other for-profit.
Estimated Annual Burden: 150 respondents; .25 hours per response (avg.); 37 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: Pursuant to section 410(b) of the Communications Act of 1934, as amended, on October 8, 1999, the FCC convened a Federal-State Joint Conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment effort has been established. The information will enable the Commission to better assess the availability of broadband services so that it can better satisfy its duty to encourage the deployment of advanced telecommunications capability as Congress directed the Commission to do in Section 706 of the Telecommunications Act of 1996. Obligation to respond: Voluntary.

OMB Control No.: 3060–0964.
Expiration Date: 05/31/2001.
Title: Certification for Waiver of September 30, 2000 Deadline.
Form No.: N/A.
Respondents: Not-for-profit institution; Business or other for-profit.
Estimated Annual Burden: 250 respondents; .50 hours per response (avg.); 125 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: The Commission extended the September 30, 2000 deadline for certain applicants under the schools and libraries universal service support mechanism for implementation of non-recurring services whose year two funding commitment letters were issued by the Universal Service Administrative Company on or after April 4, 2000, who received service provider change authorizations or service substitution authorizations from USAC on or after April 4, 2000, whose service provider's control, or who have had their funding disbursements delayed while USAC investigates their application for program compliance until September 30, 2001. To the extent an applicant has not met the September 30, 2000 deadline because its service provider has been unable, due to circumstances beyond the service provider's control, to complete delivery of non-recurring

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services prior to the deadline, the applicant shall also receive an extension of the deadline until September 30, 2001. The applicant must have submitted documentation to USAC prior to the expiration of the September 30, 2000 deadline requesting relief on the grounds that its service provider was unable to deliver the services due to events beyond the service provider's control, such as labor walk-outs or natural disasters. In addition, an applicant may also qualify for an extension of the September 30, 2000 deadline to September 30, 2001, if the applicant has certified to USAC that its service provider was unwilling to deliver or install non-recurring services before the expiration of the September 30, 2000 deadline, because USAC had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice. If an applicant believes it qualifies for relief under this second scenario, but has not yet certified to USAC that its service provider has been unwilling to implement non-recurring services due to the withholding of payments on its invoices, the applicant shall have sixty (60) days from the release date of CC Docket No. 96–45 (DA No. 00–2444, released 11/1/2000) to make such certification to USAC.

The Commission will use the information collected to determine whether schools and libraries applicants qualify for extensions of the September 30, 2000 deadline for implementation of non-recurring services. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0791.

Expiration Date: 11/30/2003.

Title: Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1 respondents; 36 hours per response (avg.); 36 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In CC Docket No. 93–240, the Commission considered the issue of the accounting rules and ratemaking policies that should apply to litigation costs incurred by carriers subject to 47 CFR part 32. The Commission concluded that there should be special rules to govern the accounting treatment of federal antitrust judgements and settlements, in excess of the avoided costs of litigation, but not for litigation expenses. The Commission further concluded that these special rules should not apply to costs arising in other kinds of litigation. A carrier must make a showing to receive recognition of its avoided costs of litigation. The information will be used to determine the justness and reasonableness of the rates. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretory.

[FR Doc. 00–31888 Filed 12–13–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Monday, December 11, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), the Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 11, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–31968 Filed 12–12–00; 4:06 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the Emergency Management Institute.

DATES OF MEETING: January 9–10, 2001.

PLACE: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Room 408, Emmitsburg, Maryland 21727.

TIME: Tuesday, January 9, 2001, 8:30 a.m.–5 p.m., Wednesday, January 10, 2001, 8:30 a.m.–12 p.m.

PROPOSED AGENDA: Status reports on training in response and recovery, planning, mitigation, and simulation and exercises; informal working sessions regarding EMI activities; expansion of the Independent Study program and EMI's Higher Education Program.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: November 30, 2000.

Kay C. Goss,

Associate Director for Preparedness, Training and Exercises.

[FR Doc. 00–31901 Filed 12–13–00; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice lists federal financial assistance administered by FEMA that is covered by Title IX of the Education Amendments of 1972. Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Director, Office of Equal Rights, Federal Emergency Management Agency, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–4122, (email) pauline.campbell@fema.gov.

SUPPLEMENTARY INFORMATION: Title IX of the Education Amendments of 1972, 28 U.S.C. 1681–1688, prohibits recipients of federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance," with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a).

Twenty-one (21) federal agencies, including FEMA, published the final common rule for the enforcement of Title IX in the **Federal Register** on August 30, 2000, 65 FR 52857 to 52895. FEMA's portion of the final common rule will be codified at 44 CFR Part 19. Both Title IX of the Education Amendments and the Title IX common rule prohibit discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but also by other entities, including, law enforcement agencies, and for-profit and nonprofit organizations.

Subpart F of the Title IX common rule requires each federal agency that awards federal financial assistance to publish in the **Federal Register** a notice of the federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. In accordance with Subpart F, FEMA publishes the following:

List of Federal Financial Assistance Administered by the Federal Emergency Management Agency to Which Title IX Applies

Note: All recipients of federal financial assistance from FEMA are subject to Title IX, but Title IX limits its anti-discrimination prohibitions to the educational components of the recipient's program or activity, if any.

If Title IX is otherwise applicable, failure to list a type of federal assistance below does not mean that Title IX does not cover a program or activity.

The following types of federal financial assistance were derived from the Catalog of Federal Domestic Assistance (CFDA).

1. U.S. Fire Administration Assistance Provided By

National Fire Academy Educational Program including training to increase the professional level of the fire service and others responsible for fire prevention and control. (Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. 2201 *et seq*).

National Fire Academy Training Assistance in the form of travel stipends to students attending Academy courses. (Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. 2201 *et seq*).

First Responder Counter-Terrorism Training Assistance including training and grants to enhance the capabilities of first responders in managing the consequences of terrorist acts. (Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104–208).

2. Office of Financial Management Assistance Provided By

Emergency Management Performance Grants including training to encourage the development of comprehensive emergency management, including for terrorism consequence management, at the State and local level and to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. (Department of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 2000, Pub.L. 106–74; Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Title II, section 201(d) 42 U.S.C. 5131(d); Title VI, sections 611 and 613, 42 U.S.C. 5196 and 5196b; and the Omnibus Consolidated Appropriations Act of 1997, Pub.L. 104–208).

3. Preparedness, Training and Exercises Directorate Assistance Provided By

Emergency Management Institute (EMI): Resident Educational Program including training to improve emergency management practices among State and local government managers, and Federal officials, in response to emergencies and disasters. (Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; National Security Act of 1947, 50 U.S.C. 401 *et seq.*; Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Earthquake Hazards Reduction Act of 1977, 42 U.S.C. 7701 *et seq.*).

EMI: Training Assistance/Student Stipend Reimbursement Program (SEP) to defray travel and per diem expenses of State and local emergency management personnel who attend training courses conducted by EMI. (Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; National Security Act of 1947, 50 U.S.C. 401 *et seq.*; Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Earthquake Hazards Reduction Act of 1977, 42 U.S.C. 7701 *et seq.*).

Hazardous Materials Training Program for Implementation of the Superfund Amendment and Reauthorization Act (SARA) of 1986/ SARA Title III Training Program, which makes funding available to provide training in support of tribal governments emergency planning, preparedness, mitigation, response, and recovery capabilities, with special emphasis on emergencies associated with hazardous chemicals. (Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as further amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 9615 et seq.

EMI: Independent Study Program training to enhance public and selected audience knowledge of emergency management practices among State and local government managers in response to emergencies and disasters. The program currently consists of 21 courses. (Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; National Security Act of 1947, 50 U.S.C. 401 *et seq.*; Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Earthquake Hazards Reduction Act of 1977, 42 U.S.C. 7701 *et seq.*).

Further information on FEMA federal financial assistance can be found by consulting the Catalog of Domestic Financial Assistance (CFDA) at *http://www.cfda.gov*. If using the Internet site, please select "Search the Catalog," select; "Browse the Catalog—By Agency," and then click on "The Federal Emergency Management Agency." Catalog information is also available by calling, toll free, 1–800–699–8331 or by writing to: Federal Domestic Assistance Catalog Staff (MVS), General Services Administration, Reporters Building, room 101, 300–7th Street, SW., Washington, DC 20407.

Dated: December 6, 2000.

Pauline C. Campbell,

Director, Office of Equal Rights.

[FR Doc. 00–31902 Filed 12–13–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011737.

Title: The MCA Agreement.

Parties: Crowley Liner Services, Inc., Inchcape Shipping Services, Inc., Linea Maritima Mexicana S.A. De C.V., Lykes Lines Limited, LLC, Tecmarine Lines, Inc., and Transportacion Maritima Grancolombiana, S.A.

Synopsis: The proposed agreement authorizes the parties to discuss and share credit and collection information. The agreement does not permit the parties to act concertedly, or establish common credit rules, credit policy or terms, rates or agreements on conditions under which credit is granted or not granted.

By Order of the Federal Maritime Commission.

Dated: December 8, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–31763 Filed 12–13–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

YEZ Shipping Co., Ltd., 199–34 34th Avenue, Bayside, NY 11358, Officers: Angela M. Lazzara, President, (Qualifying Individual), Kathie Chu, Operations Manager

Celestial International Freight, Inc., 2300 E. Higgins Road, Suite #224, Elk Grove Village, IL 60007, Officers: Marilou Pedres, Managing Director/CEO, (Qualifying Individual), Herme G. Pedres, President

Next Day Cargo, Inc., 8805 N.W. 35th Lane, Miami, FL 33172, Officer: Andy Abreu, President, (Qualifying Individual)

Tignes Inc., 7088 N.W. 50th Street, Miami, FL 33166, Officer: Sergio Lemme, President, (Qualifying Individual)

Sky Way Shipping Inc., 357 E. Mooney Drive, Monterey Park, CA 91755, Officer: Zai He (David), Li, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

IS America, LLC, 30 Vessey Street, 10th Floor, New York, NY 10007, Officers: Edward S. Simioni, Operating Manager, (Qualifying Individual), Pietro Vavasson, Secretary

Transtar Express, Inc., 405 Victory Avenue, Suite D, South San Francisco, CA 94080, Officers: Catherine K. Tse, CEO, Alix K. Co, Secretary, (Qualifying Individuals)

Daily Freight Cargo, Corp., 8426 N.W. 70th Street, Miami, FL 33166, Officers: Pedro David Esteller Rangel, President, (Qualifying Individual), Teresa De Vincenzo, Vice President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Freight Logistics Services, LLC, 300 Elliott Avenue West, Suite 315, Seattle, WA 98119, Officer: Kathy L. Reeves, General Manager, (Qualifying Individual)

Dated: December 8, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–31764 Filed 12–13–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky; to acquire 100 percent of the voting shares of Dupont State Bank, Dupont, Indiana.

Board of Governors of the Federal Reserve System, December 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31789 Filed 12–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. BB&T Bancshares, Bloomingdale, Illinois; to engage in the nonbanking activity of extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31788 Filed 12–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 002 3025]

WFS Enterprises, Inc. d/b/a The Cash Nursery, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 29, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Karen Leonard, FTC/H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3597.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to case and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained form the FTC Home Page (for October 31, 2000), on the World Wide Web, at "http://www.ftc.gov/opa/2000/10/topten.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from W.F.S. Enterprises, Inc., a corporation, doing business as The Cash Nursery, and Rabb Sabin and Arthur Smith, individually and as officers of the corporation (together, "respondents").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the commission will again review the agreement and and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell a training program on the Internet for the daily buying and selling of stock and commodity options (also known as "day trading"). They advertise on their Internet Web site, *www.thecashnursery.com*. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent or risk involved in using respondents' trading methods.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' options trading program could reasonably expect to earn large profits, as much as seven figures annually (*i.e.*, more than $1,000,000); that users could reasonably expect consistent investment returns of 100% to 500% on their trades; and that testimonials appearing in the advertisements for respondents' options trading program reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented that users of their options trading program could reasonably expect to trade with little financial risk.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' currency trading program can reasonably expect to earn

large profits: (1) That users of Respondents' commodity and stock option trading program can reasonably expect to earn large profits, or as much as six figures annually; (2) that users of Respondents' commodity and stock option trading program can reasonably expect consistent investment returns of 100% to 500% on their trades; and (3) that users of Respondents' commodity and stock option trading program can reasonably expect 90% or more of their trades to yield returns of 100% or better. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program could reasonably expect to attain, or about any financial benefit or other benefit from any trading program offered by respondents.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, "Stock, commodity futures, and stock or commodity options trading involve HIGH RISKS and YOU can LOSE a lot of money," in close proximity to any representation that make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclosure either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires W.F.S. Enterprises, Inc. to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Parts VIII and IX require that individual respondents Rabb Sabin and Arthur Smith, respectively, to notify the commission of changes in their employment status for a period of ten years. Part X requires W.F.S. Enterprises, Inc. to file compliance reports with the Commission. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–31777 Filed 12–13–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 002 3024]

R.S. of Houston Workshop, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 29, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Peter Lamberton, FTC/H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3274.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 31, 2000), on the World Wide Web, at "http://www.ftc.gov/opa/2000/10/topten.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from R.S. of Houston Workshop, a company, and Ronald J. Schoemmell and Valdimar Thorkelsson, fifty percent owners and principals of the company, individually and as officers of the company (together, "respondents").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell a training program for a trading method on the Internet for the daily buying and selling of stocks (also known as "day trading"). They advertise on their Internet Web site, *www.rsofhouston.com*. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents' trading programs and trading methods.

The Commissions' proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' trading programs and trading methods could reasonably expect to earn large profits, as much as six figures annually (*i.e.*, more than $182,000); that users of respondents' trading programs and trading methods could reasonably expect consistent investment returns of $2,500 to $3,500 per week; that users of respondents' trading programs and trading methods could reasonably expect to succeed at day trading for a lifetime of profitable and enjoyable trading; and that testimonials appearing in the advertisements for respondents' trading programs and trading methods reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented that users of respondents' trading programs and trading methods could trade in volatile markets with LOW RISK.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' day trading program can reasonably expect to earn large profits: (1) That users of respondents' trading program or trading method can reasonably expect to earn large profits, or as much as $2,000 to $5,000 per day on some days; (2) that users of respondents' trading program or trading method can reasonably expect to earn profits of $500 to $750 or more per day; (3) that users of respondents' trading program or trading method can reasonably expect to approach trading as a business and earn a consistent living from the markets; and (4) that users of respondents' trading program or trading method can reasonably expect to trade in volatile markets with low risk. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program or trading method could reasonably expect to attain, or about any financial benefit or other benefit from the purchase or use of any such trading program or trading method.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, "DAYTRADING involves HIGH RISKS and YOU can LOSE a lot of money." in close proximity to any representation they make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires R.S. of Houston Workshop to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Parts VIII and IX require that individual respondents Ronald J. Schoemmell and Valdimar Thorkelsson, respectively, to notify the Commission of changes in their employment status for a period of seven years. Part X requires respondents to file compliance reports with the Commission. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–31778 Filed 12–13–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request Drug Accountability Form and Drug Transfer Form

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Drug Accountability Form and Drug Transfer Form.

Type of Information Collection Request: Revision. (OMB No. 0925–0240, expires 4/30/2002).

Need and use of Information Collection: The regulations of the Food and Drug Administration (FDA) require investigators to establish a record of the receipt, use, and disposition of all investigational agents. The National Cancer Institute (NCI), as a sponsor of investigational drug trials, has the responsibility for assuring to the FDA that systems for drug accountability are being maintained by investigators in its clinical trials program. In order to fulfill these requirements, we have developed a standardized investigational Drug Accountability Report Form (NIH 2564) designed to account for drug inventories and usage by protocol. The Transfer Investigational Drug Form (NIH–2564–1) permits intra-institutional transfer of agents to NCI approved protocols for use by the investigator or other NCI registered investigators on approved protocols. The data obtained from the drug accountability record is used to track the dispensing of investigational anticancer drugs from receipt from NCI to dispensing or administration to patients. NCI uses the accountability data to ensure that investigational drug supplies are not diverted for inappropriate protocol or patient use. The drug accountability information is used to validate patient protocol reporting forms during site audits conducted at each of the Cooperative Groups. The intent is to ensure the investigational agents are used according to protocol guidelines and to ensure the patient's safety and protection.

Frequency of response: Daily.

Affected public: State or local governments, businesses or other for profit, Federal agencies or employees, non-profit institutions, and small business or organizations. *Types of Respondents:* Investigators and their designees, pharmacists, nurses, pharmacy technicians, data managers. The annual reporting burden is divided into two major areas. These are the audits of Drug Accountability Forms by Government and its contractors and the use of the forms by clinical research sites. The burden is as follows: The annualized respondents' burden for record keeping is estimated to require 3,648 hours for drug accountability and

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120 hours for drug transfer. The reporting burden is the average time (4 minutes or 0.1 hours) required to complete the transfer investigational drug form multiplied by the number of forms completed annually. The record keeping burden represents an average time required for multiple entries (4 minutes or 0.1 hour per entry) on the drug accountability form, the average number of forms maintained by each record keeper and the number of record keepers. These estimates are based on the items shipped by the PMB and the number of transfer approvals in the calendar year 1999.

Type of respondents	Est. number of respondents	Est. number of responses-respondents	Ave. burden hrs per response	Ave. burden hours	Est. total annual burden hours requested
Drug Transfer Form	1,200	1	0.1	120	120
Drug Accountability Form	4,560	8	0.1	3,648	3,648
Total	5,760				3,768

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Carl Huntley, Head Drug Management and Authorization Section, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of Cancer Therapy and Diagnosis, National Cancer Institute, Executive Plaza North, Room 7112, 9000 Rockville Pike, Bethesda, Maryland 20892. Or call non-toll-free number 301–496–5725 or e-mail your request, include your address to *HuntleyC@ctep.nci.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before February 12, 2001.

Dated: December 5, 2000.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 00–31829 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Tobacco Use Supplement to the 2001–2002 Current Population Survey

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Tobacco Use Supplement to the 2001–2002 Current Population Survey.

Type of information request: REVISION, OMB No. 0925–0368, Expiration 01/31/2003.

Need and Use of Information Collection: The 2001–2002 Tobacco Use Supplement to the Current Population Survey conducted by the Bureau of the Census will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, workplace smoking policies, medical and dental advice to stop smoking, and changes in smoking norms and attitudes. This survey will provide invaluable information to government agencies, other scientists and the general public necessary for tobacco control surveillance and research, as well as measure progress toward tobacco control as part of the National Cancer Institute's Extraordinary Opportunities in Tobacco Research. This survey is part of a continuing series of surveys that were sponsored by NCI and fielded periodically over the 1990's by the Census Bureau as part of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) project and made available for general public use. The Tobacco Use Supplements will be continuing over the next decade alternating between a standard or core tobacco use survey (such as the 2001–2002 survey) and a special topic survey focusing on emerging adult tobacco control issues. The survey will allow state specific estimates to be made. Data will be collected in June 2001, November 2001 and February 2002 from approximately 293,000 respondents. The National Cancer Institute is co-sponsoring this survey with the Centers for Disease Control and Prevention.

Frequency of Response: One-time study.

Affected Public: Individuals or households.

Type of respondents: Persons 15 years of age or older.

The total annual reporting burden is as follows:

Estimated Number of Respondents: 97,666;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours per Response: 0.1169; and

Estimated Total Annual Burden Hours Requested: 11,417.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Suite 4005, Bethesda, Maryland 28092–7344, or call non-toll free (301) 496–4970, or FAX your request, to (301) 435–3710, or E-mail your request, including your address, to *ah42t@nih.gov* or Anne_Hartman@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their effect if received on or before February 12, 2001.

Dated: December 5, 2000.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 00–31830 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute, Submission for OMB Review; Comment Request; The Atherosclerosis Risk in Communities Study (ARIC)

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 22, 2000, pages 50999–51000, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The Atherosclerosis Risk in Communities Study (ARIC).

Type of Information Collection Request: Revision of a currently approved collection (OMB No. 0925–0281).

Need and Use of Information Collection: This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women.

Frequency of Response: The participants will be contacted annually.

Affected Public: Individuals or households; Businesses or other for profit; Small Businesses or Organizations.

Type of Respondents: Middle aged and elderly adults; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows:

Estimated Number of Respondents: 15,113;

Estimated Number of Responses per Respondent: 1.0;

Average Burden Hours Per Response: 0.2479; and

Estimated Total Annual Burden Hours Requested; 3,746.

The annualized cost to respondents is estimated at $41,453, assuming respondents' time at the rate of $10 per hour for family and patient respondents, and $75 per hour for physicians. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Participant follow-up	14,448	1.0	0.2500	3,622
Physician, hospital, nursing home staff [1]	245	1.0	0.2500	61
Participant's next-of-kin [1]	380	1.0	0.1667	63
Total	15,113	1.0	0.2479	3,746

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number of new fatal and nonfatal events.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more

information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. A. Richey Sharrett, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0448 or E-mail your request, including your address to: SharretR@nhlbi.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before January 16, 2001.

Dated: December 4, 2000.

Peter Savage,

Acting Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.

[FR Doc. 00–31831 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 J4.

Date: January 5, 2001.

Time: 3 pm. to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK/DEA/Review Branch, 2 Democracy Boulevard, 6707 Democracy Boulevard, MSC 5452, Room 659, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31822 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Chromosome Rearrangements and Mental Retardation.

Date: December 18, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: December 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31823 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 14, 2000.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31826 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: December 11–13, 2000.

Time: 7 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Loews Giorgio Hotel, 4150 East Mississippi Avenue, Denver, CO 80246.

Contact Person: Carole H. Latker, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31828 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Analysis of the Function Impact of Coding Regions SNP's.

Date: December 21, 2000.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Milton Corn, Associate Director, Office of Extramural Programs, National Library of Medicine, National Institutes of Health, One Rockledge Centre, Suite 301, 6705 Rockledge Drive, MSC 6075, Bethesda, MD 20892–6075, 301–496–4621.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31827 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.

Contact Person: J. Terrell Hoffeld, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Persón: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 12, 2000.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210 MSC 7890, Bethesda, MD 20892, 301–435–1038, remondid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 12, 2000.

Time: 11 a.m. to 12 p.m.

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Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci-Aragon, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 12, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–435–1258; micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 2000.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Georgetown, DC 20007.

Contact Person: Jeanne N. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel Rawlings, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, 301–435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 19, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, 301–435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31824 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 11, 2000.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, davidsoh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 11, 2000.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, 301/435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, 301/435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 22, 2000.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301/435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892–93.893, National Institutes of Health, HHS)

Dated: December 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31825 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–01]

Notice of HUD-Held Multifamily and Healthcare Loan Sale; 2000–1 Sale

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces the Department's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed-bid sale. This notice also describes generally the bidding process to be used in the Multifamily Healthcare Loan Sale 2000–1 (Sale).

DATES: Bid Packages are currently available. It is anticipated that HUD will be accepting bids for the loans in the Sale on December 19, 2000.

ADDRESSES: To become a Qualified Bidder and receive a Bid Package, prospective bidders must submit a completed Confidentiality Agreement and Qualification Statement. Both documents are available on the FHA Multifamily and Healthcare Loan Sale Page at: www.hud.gov/fha/comp/asset/mfam/mhls.html. The executed Confidentiality Agreement and Qualification Statement must be mailed and faxed to: Secured Capital Corp, 11150 Santa Monica Blvd., Suite 1400, Los Angeles, CA 90025, ATTN: R. Mark Williams, FHA MHLS 2000–1, Facsimile: 310–477–3436. Prospective bidders may make special arrangements to receive the Bid Package and other bid materials through expedited delivery by calling Secured Capital Corp at 310–477–9600.

The Due Diligence Facility is scheduled to be open from November 6, 2000, through December 17, 2000. Qualified Bidders will be able to review the imaged copies of the loan files and other information, to the extent available (Due Diligence Investor Package and Asset Review Files) via computer workstations at the Due Diligence Facility. Qualified Bidders are required to schedule an appointment and post a refundable $500 deposit before they may visit the facility. Appointments may be scheduled by contacting Daniel H. Lisser at (212) 319–8600 of Secured Capital Corp. Imaged copies of the Due Diligence Investor Package and Asset Review Files on CDs will also be available for purchase by Qualified Bidders in the manner described in the Bid Package.

FOR FURTHER INFORMATION CONTACT: Office of the Housing-FHA Comptroller, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625.

SUPPLEMENTARY INFORMATION: The Department announces its intention to sell in the Sale certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. A final listing of the specific Mortgage Loans included in the Sale will be contained in a supplement to the Bid Package. The Mortgage Loans will be sold without FHA insurance. The Department will offer Qualified Bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans have been pooled for bidding purposes into 27 Mortgage Loan Pools. Each Mortgage Loan Pool contains Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified Bidders will be permitted to submit bids for any one or more of the individual Mortgage Loans and any one or more pools of Mortgage Loans. Bidders will be permitted to submit all-or-none pool bids and will also be permitted to establish floors (minimums) and a ceiling (a maximum) with respect to pool bids. The Department will evaluate the bids submitted and use its sole discretion to determine successful bids.

The Bidding Process

The Department will describe in detail the procedure for participating in the Sale in a Bid Package, which will include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement), as well as certain information concerning each of the Mortgage Loans, such as the unpaid principal balance and interest rate. Bid Packages are currently available. Qualified Bidders may receive a Bid Package by contacting Secured Capital as specified in the **ADDRESSES** section, above, of this notice. Qualified Bidders will be required to submit a deposit at the time of bidding as detailed in the Bid Package. HUD anticipates that closings will be held during the first two weeks of January 2001. If a successful bidder fails to close in accordance with the terms of the Loan Sale Agreement, the Department shall be entitled to retain as liquidated damages the deposit received from such bidder.

TO ENSURE A COMPETITIVE BIDDING PROCESS, THE TERMS OF SALE ARE NOT SUBJECT TO NEGOTIATION.

Due Diligence Facility

During the approximately four-week period prior to the Bid Date, a Due Diligence Facility will be open to Qualified Bidders. At the Due Diligence Facility, the Department will provide access to computer workstations at which Qualified Bidders may view available information about the Mortgage Loans, including environmental and title reports and market data. The Department reserves the right to charge a reasonable fee to recover its costs in duplicating and forwarding any information requested by a Qualified Bidder. Qualified Bidders are required to post a refundable deposit of $500 towards such costs prior to visiting the Due Diligence Facility. Appointments to visit the Due Diligence Facility may be scheduled by contacting Daniel H. Lisser at (212) 319–8600 of Secured Capital Corp.

Mortgage Sale Policy

The Department reserves the right to remove Mortgage Loans from the Sale at any time prior to the Award Date. The Department also reserves the right, in its sole discretion, and for any reason

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whatsoever, to terminate the Sale, in whole or in part, prior to the Award Date and to reject any and all bids, without prejudice to the Department's right to include any Mortgage Loans in a later sale.

The regulations applicable to the sale of the HUD-held multifamily mortgages (Multifamily Mortgage Sale Regulations) (24 CFR 290.30 *et seq.*) were promulgated in consideration of the settlement that the Department entered into in *Walker* v. *Kemp*, No. C 87 2628 (RFP) (N.D. Cal.). In settling the matter, the Department agreed, with regard to specific mortgage loans, to consider, prior to the sale of such mortgage loans, certain factors pertaining to the protection of tenant interests in projects securing subsidized and unsubsidized HUD-held mortgage loans.

This is a sale of unsubsidized mortgage loans. Therefore, the Department has determined that, pursuant to the Multifamily Mortgage Sale Regulations, the Mortgage Loans may be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35(b), the Department knows of no Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which reside very low-income tenants who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan (24 CFR 290.35(b)). If the Department determines that any Mortgage Loans meet these criteria, they will be removed from the Sale.

Mortgage Loan Sale Procedure

The Department selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Multifamily Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes the Department's return on the sale of these Mortgage Loans, affords the greatest opportunity for all Qualified Bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for the Department to dispose of the Mortgage Loans.

Replacement of Reserve Funds

Depending upon the Mortgage Loan, amounts in reserve for replacement accounts will, in HUD's discretion, be refunded to the Mortgagor, applied against the Mortgagor's outstanding arrearage, or credited against the amounts due by the Successful Bidder.

Timely Bids and Deposits

Each Qualified Bidder assumes all risks of loss relating to its failure to deliver, or cause to be delivered, on a timely basis and in the manner specified by the Department, its bid form, deposit and Loan Sale Agreement required to be submitted by the bidder.

Ties for High Bidder

In the event there is a tie for a high bid, the Department, through its transaction specialist, will contact the Qualified Bidders who submitted the tie bids and afford each of them an opportunity to submit a best and final bid. The successful bidder will be the one with the highest bid.

Status of Mortgage Loans

The Mortgage Loans contained within the Sale are comprised of performing, subperforming and nonperforming loans.

Ineligible Bidders

The following individuals and entities (either alone or in combination with others) are ineligible to bid on any one or combination of the Mortgage Loans included in the Sale:

(1) Any employee of HUD, a member of such employee's household or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred from doing business with HUD pursuant to 24 CFR part 24;

(3) Any contractor, subcontractor and/or consultant or adviser (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with the Sale;

(4) Any individual that was a principal, partner, director, agent or employee of any entity or individual described in paragraph (3) above at any time during which the entity or individual performed services for or on behalf of HUD in connection with the Sale;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under paragraphs (1) through (4) above, to assist in preparing its bid on any Mortgage Loan(s); and

(6) Any individual or entity that employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in the Sale.

(7) Mortgagors who have not submitted their project's audited financial statements for fiscal years 1998 and 1999.

Furthermore, any entity or individual that served as a loan servicer or performed other services for or on behalf of HUD at any time during the two-year period prior to October 23, 2000 with respect to any Mortgage Loan(s) is ineligible to bid on such Mortgage Loan(s) or provide services to Bidder with respect to such Mortgage Loans during the Warranty Period established for the Sale. The following also are ineligible to bid on such Mortgage Loan(s): (a) Any employee, affiliate or principal of such entity or individual described in the preceding sentence, (b) any contractor, subcontractor or other person or entity which, during that two-year period prior to October 23, 2000, either had access to information concerning or provided any services with respect to any such Mortgage Loan(s) or provided services to such person or entity with respect to such Mortgage Loans, or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan(s).

Freedom of Information Requests

The Department reserves the right, in its sole and absolute discretion, to disclose information regarding the Sale, including, but not limited to, the identity of bidders and the bid price or bid percentage, upon the consummation of the Sale. Even if the Department elects not to publicly disclose any information relating to the Sale, the Department will have the right to disclose any information the Department is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to the Sale, and does not establish the Department's policy for the sale of any other mortgage loans.

Dated: December 8, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–31807 Filed 12–13–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Applicant: University of Wisconsin, Madison, WI, PRT–831689.

The applicant request re-issuance of a permit to import blood and feather samples taken from captive-held and wild-caught Andean condors (*Vultur gryphus*) in South America for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

Applicant: Steven E. Kobrine, Potomac, MD, PRT–036841.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: December 11, 2000.

Anna Barry,

Branch of Permits, Division of Manogement Authority.

[FR Doc. 00–31905 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Comprehensive Test Ban Treaty.

Current OMB approval number: 1028–0059.

Abstract: This information, required by the Comprehensive Test Ban Treaty (CTBT), will provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred. Respondents to the information collection request are U.S. nonfuel minerals producers.

Bureau form numbers: 9–4040–A.

Frequency: Annual.

Description of respondents: Companies that have conducted in the last calendar year, or that potentially will conduct in the next calendar year, explosions with a total charge size of 300 tons of TNT-equivalent, or greater.

Annual Responses: 3,000.

Annual burden hours: 750.

Bureau clearance officer: John Cordyack, 703–648–7313.

K.W. Mlynarski,

Acting Chief Scientist, Minerals Information Team.

[FR Doc. 00–31772 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Biological Resources Division Request for Public Comments on Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

The proposal for the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. the quality, utility, and clarity of the information to be collected; and

4. how to minimize the burden of the collection of information on those who

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are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Breeding Bird Survey.

Current OMB Approval Number: None.

SUMMARY: The North American Breeding Bird Survey (BBS) is a large-scale avian monitoring program used to track the status and trends of North American bird populations. The survey consists of over 4100 road-side routes of which approximately 2500 U.S. routes are sampled annually. Along each route participants record every bird seen or heard during 50, 3-min point counts. This information will be used by scientists and federal, state and local agencies to identify bird populations demonstrating significant declines in order to direct conservation and research efforts towards those populations before their numbers have reached critically low levels. For more information see the web site (*www.mp2-pwrc.usgs.gov/bbs/*).

Participants are provided with detailed survey instructions, a map of the route, a blank survey form, and a postage-paid reply envelope. Once the data are submitted, each participant is provided with a report summarizing the results from their route.

Estimated Annual Number of Respondents: 2500.

Estimated Annual Burden Hours: 12,500 hours.

Affected Public: Primarily U.S. residents.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: December 5, 2000.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 00–31894 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1220–PA]

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Coeur d'Alene Field Office, Idaho.

ACTION: Notice of restriction order number ID–086–27 for the Wallace Forest Conservation Area.

SUMMARY: By order, the following restrictions apply to the Wallace Forest Conservation Area, described as all public land located in T50N, R2W, Sec 31, T50N, R3W, Sec 35, T49N, R2W, Sec 6 and those portions of T49N, R3W, Sec 1 north of Lake Coeur d'Alene:

(1) Camping by any person or group of persons is prohibited except at the log landing at the terminus of the Landing Road.

(2) Camping as allowed by restriction number one above is limited to a maximum of two nights or 48 hours within any 28-day period. The two night limit my be reached through separate visits or continuous occupation. After the second night of occupation, campers must move outside of a 25-mile radius of the previous location.

(3) No person may leave personal property or supplies unattended for a period of more than 12 hours.

(4) Cutting of personal use firewood is prohibited.

(5) Use of motor vehicles on other than existing country roads is prohibited.

(6) Possession of a loaded firearm is prohibited, except that:

A. Firearms may be legally possessed within a motor vehicle in accordance with the Idaho State Code.

B. Waterfowl hunters may transport unloaded shotguns by the most direct route from either the Yellowstone Trail or the Landing Road for the purpose of hunting waterfowl below the high water mark of Lake Coeur d'Alene within Blue Creek Bay.

The authority for establishing these restrictions is Title 43 Code of Federal Regulations 8364.1 and 8341.2.

These restrictions become effective immediately and shall remain in effect until revoked and/or replaced with supplemental rules.

This Order includes lands previously described under Order ID–060–14, ID–060–19 and ID–080–21; these orders are hereby rescinded.

Definitions

Camping is defined as the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy during any part of the night period from 10 p.m. to 6 a.m.

Firearms are defined as pistols, rifles, shotguns or any implement capable of firing a projectile with the use of compressed gas or gunpowder.

The *Log Landing* is defined as the southern end of the Landing Road south of the last unnamed road blocked with a concrete jersey barrier.

These restrictions do not apply to:

(1) Any Federal, State or local law enforcement officer or member of an organized rescue or fire fighting force while engaged in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor or cooperator while engaged in the performance of an official duty.

(3) Any person or group expressly authorized by an Authorized Officer to use or occupy the subject public land through the issuance of a special use permit or other use authorization.

These restrictions are necessary to:

(1) Preclude any individual or group from camping at one location for an extended period, thereby depriving others an opportunity to use the location for recreational purposes.

(2) Protect public land from habitat degradation due to illegal firewood cutting and soil erosion due to off-road vehicle use.

(3) To protect property and families of adjacent homeowners.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Eric Thomson, Coeur d'Alene Field Manager, Bureau of Land Management, 1808 N. Third St., Coeur d'Alene, ID 83814.

Dated: December 7, 2000.

Ted Graf,

Acting District Manager.

[FR Doc. 00–31906 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale

ACTION: Amendment to proposed notice of sale 178.

The Minerals Management Service made available the proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 178 in the Central Gulf of Mexico through the Notice of Availability published in the **Federal Register** at 65 FR 71119 on Wednesday, November 29, 2000. This Notice amends the area identified in the proposed Notice of Sale as available for leasing.

On October 18, 2000, the United States Senate gave advice and consent to ratification of the treaty establishing the continental shelf boundary between the United States and Mexico in the area beyond the U.S. Exclusive Economic Zone (EEZ) known as the Western Gap.

On November 28, 2000, the Senate of Mexico also approved the treaty. Given that the two countries will likely exchange instruments of ratification prior to the proposed sale date, the MMS proposes to offer in this sale blocks beyond the U.S. EEZ in the Western Gap, with the exception of blocks and portions of blocks in the 1.4 mile buffer area along the boundary established by the treaty.

Blocks beyond the U.S. EEZ in the northern portion of the Western Gap are now proposed to be available for leasing in the proposed sale *except for:*

• Blocks or portions of blocks beyond the U.S. EEZ in the northern portion of the Western Gap which are in the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico. Both the zone and the boundary were established by the "Treaty Between The Government Of The United States Of America And The Government Of The United Mexican States On The Delimitation Of The Continental Shelf In The Western Gulf Of Mexico Beyond 200 Nautical Miles" signed by the United States and Mexico on June 9, 2000, and to which the U.S. Senate gave advice and consent to ratification on October 18, 2000, and for which the Mexican Senate gave its approval on November 28, 2000.

The following blocks lie wholly within the 1.4 nautical mile buffer and are deferred from this sale: Amery Terrace (Area NG15–09), 280, 281, 318 through 320, 355 through 359.

The portions of the following blocks lying within the 1.4 nautical mile buffer ore deferred from this sale: Amery Terrace (Area NG15–09), 235 through 238, 273 through 279, 309 through 317.

The available acreage in these blocks will be provided in the "Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease" document to be included in the Final Sale Notice Package. Also, Supplemental Official OCS Block Diagrams for these blocks are available from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519. These diagrams can also be found on the MMS Homepage Address on the Internet: http://www.mms.gov. For additional information, please call Mr. Charles Hill (504) 736–2795.

Blocks or portions of blocks beyond the U.S. EEZ are offered in Sale 178 consistent with U.S. law and the provisions of the 1982 Law of the Sea Convention. The Convention balances the extension of coastal Nation control over the natural resources of the continental margin seaward of 200 miles with a modest obligation on such Nations to share revenues from successful mineral development seaward of 200 miles. The Convention provides that payments by the coastal Nations subject to it would not be required during exploration or the first 5 years of production, and once instituted, would be at the rate of 1 percent of the value or volume of production beginning in the sixth year of such production, increasing at a rate of 1 percentage point per year to a maximum of 7 percent in the 12th year and thereafter. It has been expected that payments would come from normal royalties already paid by the industry to the United States Government. The question of what, if any, effect the Law of the Sea Convention revenue sharing requirements and the methods and procedures of paying any international obligations of the U. S. Government from royalty payments to the United States would have on royalty suspension volumes is under review. Once determinations are made on this issue, specific terms and conditions for leasing blocks in this area will be specified as soon as possible, but no later than in the final Notice of Sale.

All other terms and conditions of the proposed sale remain the same as described in the proposed Notice of Sale.

Dated: December 8, 2000.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

Dated: December 8, 2000.

Sylvia V. Baca,

Assistant Secretary, Land ond Minerals Management.

[FR Doc. 00–31779 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention to Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Rocky Mountain National Park, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is seeking to gather information from residents of Colorado with respect to their acceptance of and preferences for different elk and vegetation management alternatives possible in Rocky Mountain National Park (RMNP). The information sought will also determine acceptability of specific techniques to achieve the objectives of these different alternatives. The information gathered is to be used in developing an elk and vegetation management plan for RMNP, as well as an Environmental Impact Statement on the plan. To gather this information, the NPS is proposing to survey Colorado residents regarding their attitudes towards elk and vegetation management issues facing the Park.

	Estimated numbers of Responses	Burden hours
Rocky Mountain National Park Regional Resident Survey	400	200

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed survey. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to determine Colorado residents' acceptance and preferences for different management alternatives that are possible in RMNP.

DATES: Public comments will be accepted on or before February 12, 2001.

Send comments to: Michael J. Manfredo, Human Dimensions in Natural Resources Unit, College of Natural Resources, Colorado State University, Fort Collins, CO 80523.

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FOR FURTHER INFORMATION CONTACT: Michael J. Manfredo. Voice: 970–491–6591, e-mail: manfredo@cnr.colostate.edu.

SUPPLEMENTARY INFORMATION:

Titles: Public preferences for elk vegetation management in Rocky Mountain National Park: Regional Resident Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information assessing the acceptability of different overall management alternatives for elk and vegetation management in RMNP as well as the acceptability of specific management techniques to achieve the objectives of the different alternatives.

Automated Data Collection: At the present time there is no automated way to gather this information because it includes asking Colorado residents their acceptance and preferences regarding different elk and vegetation management alternatives that are possible in RMNP.

Description of Respondents: Persons residing in Colorado.

Estimated Average Number of Respondents: 400.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Response: 30 minutes.

Frequency of Response: 1 time per respondent.

Estimated Annual Reporting Burden: 200 hours.

Dated: December 11, 2000.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 00–31912 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan; Santa Monica Mountains National Recreation Area, Los Angeles and Ventura Counties, CA; Notice of Availability

SUMMARY: Pursuant to section102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement assessing the potential impacts of the proposed General Management Plan (GMP) for Santa Monica Mountains National Recreation Area. This conservation planning and environmental impact analysis effort to date has identified and analyzed five alternatives (and appropriate mitigation strategies) for the management and use of the Santa Monica Mountains National Recreation Area over the next fifteen to twenty years.

Proposal and Alternatives: The draft environmental impact statement (DEIS) includes five alternatives, including the "no action" (existing conditions) alternative. The No Action Alternative assumes that physical facilities would remain largely unchanged and staffing and operational funding would remain relatively constant over the next fifteen to twenty years. The Preferred Alternative incorporates the exceptional elements of all of the alternatives to provide protection of significant natural and cultural resources while promoting compatible recreation and educational opportunities. The Preservation Alternative emphasizes the preservation of all natural and cultural systems and removing some park-related development. Virtual media and exhibits would provide visitors with alternative experiences and information. Visitor disturbance would be reduced while visitor appreciation for the resource would increase. The Education Alternative would promote strong environmental and cultural education programs that reach the public and especially the school systems. The Recreation Alternative maximizes recreation with any new park development in non-sensitive areas.

Comments: Printed or CD–ROM copies of the DEIS are available for public review at Park Headquarters, as well as at many public libraries and federal offices in southern California. In addition the document is posted on the internet at www.nps.gov/samo. Inquiries and requests for copies may also be directed to: Superintendent, Santa Monica Mountains National Recreation Area, 401 W. Hillcrest Drive, Thousand Oaks, California, 91360. The telephone number for the park is (805) 370–2300. Interested individuals, organizations, and agencies wishing to provide information or suggest issues and concerns to be addressed in future land management are encouraged to address these to the Superintendent, Santa Monica Mountains National Recreation Area. All written comments must be postmarked not later than February 28, 2001.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There may also be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations and businesses; and, anonymous comments may not be considered.

Public Meetings: Five public meetings will be held in the vicinity surrounding the park. The particular locations selected for these meetings were determined based upon responses received from the public during the scoping process. The meetings scheduled are: February 5, 2001 (Calabasas/Agoura Hills); February 6, 2001 (Santa Monica); February 7, 2001 (Los Angeles); February 8, 2001 (Malibu); February 9, 2001 (Thousand Oaks). Confirmed details as to specific locations and times will be announced in local newspapers, available at the internet site identified above, or can be obtained by calling the park at (805) 370–2341.

Decision: After the formal DEIS review period has concluded, all comments and suggestions received will be considered in preparing the final EIS. Currently the final EIS is anticipated in the fall of 2001; its availability will be similarly announced in the **Federal Register**. Subsequently a Record of Decision would be executed no sooner than 30 (thirty) days after the release of the final EIS. The official responsible for approval of the DEIS/GMP is the Regional Director, Pacific West Region; the official responsible for implementation of the approved GMP is the Superintendent, Santa Monica Mountains National Recreation Area.

Dated: December 4, 2000.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–31915 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Fee Schedules and Guidance for Commercial Filming in Compliance with Public Law 106–206 To Apply in All Units of the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service (NPS) has available for public review, the draft fee schedules and associated guidance for Filming and Photography Location Fees to be charged in all units of the National Park Service in accordance with Public Law 106–206. We hope to be shortly issuing our proposed regulations requesting public comments. In the meantime, we want to obtain public involvement as early as possible regarding our draft location fee schedule and guidance by issuing this notice now. Other Federal land management agencies may adopt any or all of the schedule(s) as they are finalized, however this notice only applies to the location fee schedules and associated guidance applicable to NPS.

Copies of the draft location fee schedules and guidance will be made available upon request by writing: National Park Service, Ranger Activity Division, 1849 C St., NW, Suite 7408, Washington, DC 20240, or by calling (202) 208–4874. The draft document is also available on the NPS website at the following URL: *www.nps.gov/refdesk/DOrders*

DATES: Public comments will be accepted on or before February 12, 2001.

ADDRESSES: Comments should be addressed to: Dick Young, Special Park Uses Program Manager, C/O Colonial NHP, P.O. Box 210, Yorktown, VA 23690, or via email at: Dicks__S.__Young@nps.gov.

FOR FURTHER INFORMATION CONTACT: Dick Young at (757) 898–7846, or (757) 898–3400, ext. 2426.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 00–31913 Filed 12–13–00 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–409–412 and 731–TA–909–912 (Preliminary)]

Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing and antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing and antidumping duty investigations Nos. 701–TA–409–412 and 731–TA–909–912 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France, Germany, the Netherlands, and the United Kingdom of low enriched uranium that are alleged to be sold in the United States at less than fair value and that are alleged to be subsidized by the governments of France, Germany, the Netherlands, and the United Kingdom. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing and antidumping duty investigations in 45 days, or in this case by January 22, 2001. The Commission's views are due at the Department of Commerce within five business days thereafter, or by January 29, 2001.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on December 7, 2000, by USEC Inc. and its wholly owned subsidiary United States Enrichment Corp., Bethesda, MD.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 28, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than December 22, 2000, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission

on or before January 3, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: December 8, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31795 Filed 12–13–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in *United States* v. *Abex Aerospace Division, et al.,* Civil No. 00–12471 CAS, was lodged on Nov. 24, 2000, with the United States District Court for the Central District of California ("Abex Decree"). The proposed Consent Decree would resolve certain claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, as amended, as well as certain claims under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, brought against 120 defendants (collectively "Settling Defendants"), to recover response costs incurred by the Environmental Protection Agency and to undertake certain response actions in connection with the release of hazardous substances at a portion of the Omega chemical Corporation Superfund Site ("Site"). The Settling Defendants are liable as persons who arranged for the disposal or treatment of hazardous substances (or waste) or who arranged for transport for disposal or treatment of such substances at the Site, or as a person who accepted hazardous substances (or waste) for transport to the Site, or succeeded to the liabilities of persons who made such arrangements or accepted hazardous substances (or waste) for transport. Under the proposed Consent Decree, the Settling Defendants will pay $282,636 to the Hazardous Substances Superfund to reimburse the United States for Past Response Costs through May 1999, plus interest, and all Oversight Costs. In addition, under the proposed Consent Decree, the Settling Defendants have agreed to perform certain response actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20530, and should refer to *United States* v. *Abex Aerospace, et al.,* C.D. CA, Civil No. *00–12471 CAS,* DOJ Ref. #90–11–3–06529. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The Consent Decree may be examined at the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105 and the United States Attorney's Office for the Central District of California, Federal Building 300 North Los Angeles Street, Room 7516, Los Angeles, CA 90012 *c/o* Assistant U.S. Attorney Lawrence Kole. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, D.C. 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $43.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31769 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice policy, 28 CFR 50.7., notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *Chemical Leaman Tank Lines, Inc.* (Civil No. 00CV5715 (SSB), was lodged on November 21, 2000, with the United States District Court for the District of New Jersey. The proposed consent decree resolves claims of the United States and the State of New Jersey under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607, against Chemical Leaman Tank Lines, Inc. (hereinafter, defendant) for natural resources damages with respect to the Chemical Leaman Tank Lines Superfund Site ("Site") in Logan Township, Gloucester County, New Jersey.

Under the terms of the proposed consent decree, defendant will pay the Natural Resources Trustees for the United States and for the State of New Jersey Department of Environmental Protection ("State") the total sum of $4,200,000, for reimbursement of assessment costs and damages to natural resources at the Site. Of the total sum, assessment costs to be paid to the United States and to the States are $27,739.00 and $20,000.00 respectively. Of the total sum, the United States will receive $500,000.00 and the State will receive $3,652,261.00 for natural resources damages. Pursuant to a Cooperative Agreement to be entered into between the United States and the State, all monies paid pursuant to the Consent Decree, except for the monies paid for assessment costs, shall only be spent for the purchase of and restoration of wetlands and associated uplands; lands to be acquired will require unanimous consent of the United States and State Trustees.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be address to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States of America* v. *Chemical Leaman Tank Lines, Inc.* (Civil No. 00CV5715 (SSB)), DOJ Ref. No. 90–11–2–296/1.

The proposed consent decree may be examined at the offices of the United States Department of the Interior, Office of the Solicitor, One Gateway Center, Suite 612, Newton Corner, MA 02485–2802, and at the Office of the United States Attorney, District of New Jersey, Camden Federal Building and Courthouse, 4th Floor, 401 Market Street, Camden, New Jersey 08101. A copy may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611. In requesting a copy by mail, please refer to the referenced case and enclose a check in the amount of $5.25 for the Consent Decree (25 cents per page reproduction costs) made payable to Consent Decree Library. A copy of the Appendices to the Consent Decree can be ordered by enclosing a check for $78.25 made payable to the Consent Decree Library (25 cents per page reproduction costs).

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31771 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Pursuant to the Clean Water Act and the categorical pretreatment standards contained at 40 CFR 414.55 and 414.111, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *Georgia-Pacific Resins, Inc.,* CIV–S–00–2531 GEB–PAN (E.D. Cal.), was lodged on November 16, 2000, with the United States District Court for the Eastern District of California.

Specifically, Georgia-Pacific discharged zinc and toluene in excess of the categorical pretreatment standards from its thermosetting resin manufacturing facility located at Elk Grove, California, to the Sacramento Regional County Sanitation District's Treatment Plant.

Under the proposed consent decree, the settling party will pay a $165,000 penalty and perform a supplemental environmental project which will result in Georgia-Pacific reducing the amount of hazardous solids generated in the resin manufacturing process.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Georgia-Pacific Resins, Inc.* DOJ Ref. #90–5–1–1–3954A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of California, 501 "I" Street, Suite 10–100, Sacramento, California 95814. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Principal Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31770 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a cross-claim and two consent decrees, which together would resolve all claims in *Jones* v. *Thorne, et al.,* Civil Action No. CV97–1674–ST (D. Ore.), were lodged with the United States District Court for the District of Oregon on November 30, 2000.

The first proposed consent decree, entitled "Consent Decree Settling United States' Cross-Claim Against Port of Portland," settles claims asserted by the United States against the Port of Portland ("Port") in a cross-claim in the lawsuit. The cross-claim was also lodged with the Court. The cross-claim and consent decree concern alleged violations of the Clean Water Act, 33 U.S.C. 1311, resulting from the Port's alleged unauthorized discharge of dredged or fill materials into waters of the United States in the Rivergate area of Portland, Oregon, near the confluence of the Columbia and Willamette Rivers, between 1991 and 1996. The consent decree requires the Port to: (a) Mitigate and restore approximately 37 acres of wetlands and associated upland riparian habitat and buffer areas adjacent to the Columbia Slough and Smith and Bybee Lakes in the Rivergate area, in accordance with parameters specified in the consent decree and detailed plans to be approved by the United States Army Corps of Engineers ("Corps"); (b) preserve the mitigation and restoration in perpetuity by recording the consent decree and identifying the restrictions against development on the property in any instrument by which the Port conveys an interest in the property; (c) pay $285,000 for additional mitigation projects in the Smith and Bybee Lakes Management Area, subject to the approval of the corps; (d) pay $64,000 to the City of Portland for revegetation of the lower Columbia Slough banks and buffer areas; and (e) pay $50,000.00 to the United States Treasury.

The second consent decree, entitled "Consent Decree, Order of Dismissal with Prejudice and Release," settles claims asserted by William Michael Jones against the Port and the United States related to the Port's development of Rivergate. This consent decree requires the Port to perform some of the same activities required in the consent decree described in the previous paragraph. Also in this consent decree, the United States, on behalf of the Corps, the Environmental Protection Agency and the Fish and Wildlife Service, releases the Port from any claims it may have under the 1989 Cooperative Agreement regarding the Port's development of Rivergate.

The Department of Justice will receive written comments relating to the cross-claim and proposed consent decrees for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: G. Scott Williams, Senior Attorney, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *Jones* v. *Thorne, et al.,* DJ No. 90–5–1–4–585.

The cross-claim and proposed consent decrees may be examined at the Clerk's Office, United States District Court, 740 United States Courthouse, 1000 S.W. Third Avenue, Portland, OR 97204–2902.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 00–31767 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on Thursday, November 30, 2000, a consent decree was lodged in *United States* v. *Ribi Immunochem Research, Inc.*, Civil Action No. 98–55–M–DWM, with the United States District Court for the District of Montana.

This consent decree, between the United States, the State of Montana, and Corixa Corporation (successor to Ribi Immunochem Research, Inc.), provides that Corixa Corporation will pay $2.65 million in settlement of its alleged liability to the United States and Montana for past and future response costs related to contamination of the Bitterroot Valley Sanitary Landfill ("BVSL") in Hamilton, Montana. The United States will receive $1.1 million of this payment, Montana will receive $450,000, and $1.1 million will be placed in an escrow account, with at least $900,000 of this amount to be used by Montana to fund future response actions related to contamination of the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ribi Immunochem Research, Inc.*, DOJ Ref. No. 90–11–3–1713. The proposed Consent Decree may be examined at the office of the United States Attorney, United States Attorney's Office Russell Smith Courthouse, 201 E. Broadway, Room 210, Missoula, Montana 59802. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy by mail, please enclose a check in the amount of $5.75 (twenty-five cents per page reproduction costs), payable to the "Consent Decree Library."

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31768 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on November 30, 2000, a consent decree was lodged in *United States* v. *Sonoco Products Company and Kardon Industries, Inc.*, Civil Action No. 00–6068 with the United States District Court for the Eastern District of Pennsylvania.

Pursuant to the consent decree, defendants Sonoco Products Company ("Sonoco") and Kardon Industries, Inc. ("Kardon") will pay $40,000 in reimbursement of response costs incurred by EPA at the Kardon Park Site in Chester County, Pennsylvania.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sonoco Products Company and Kardon Industries, Inc.*, DOJ Ref. No. 90–11–3–06935. The proposed Consent Decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106. Copies of the consent decree may also be examined at the offices of the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy by mail, please enclose a check in the amount of $4.75 (Twenty-five cents per page reproduction costs), payable to the "Consent Decree Library."

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31766 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 211–2000]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), is modifying the following system of records which was last published in the **Federal Register** on November 25, 1998 (63 FR 65223):

The National Instant Criminal Background Check System (NICS) JUSTICE/FBI–018.

Opportunity For Comment

The Privacy Act (5 U.S.C. 552a(e)(4) and (11)) requires that the public be given 30 days in which to comment on any new or amended uses of information in a system of records. In addition, in accordance with Privacy Act requirements (5 U.S.C. 552a(r)), the Department of Justice has provided a report on these modifications to OMB and the Congress. OMB, which has oversight responsibilities under the Act, requires that OMB and the Congress be given 40 days in which to review major changes to Privacy Act systems. Therefore, the public, OMB, and the Congress are invited to submit written comments on this modification.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

EFFECTIVE DATE: These proposed changes will be effective January 23, 2001, unless comments are received that result in a contrary determination.

SUPPLEMENTARY INFORMATION: The Department is modifying the system of records to clarify that the NICS contains records of appealed transactions in an appeals file which is separate from and in addition to the NICS Audit Log. (Although the NICS Audit Log is also used to record basic comments relating to appealed transactions.) Accordingly, we have added "Appeals Records" to the list of categories of records in the system.

Clarification was made to the category of "aliens" who are covered by the system. The revision notes that the category also includes aliens who have been admitted to the United States under a non-immigrant visa.

An introductory paragraph has been inserted into the "Routine Uses" section which sets the context for the enumerated uses that follow. We are also providing clarification through the promulgation of one new routine use ("I") which expressly provides that information relating to individuals who have been *denied* a firearm by the NICS may be provided to federal, states, local, joint, tribal, foreign, international, or other public agencies/organizations for the furtherance of law enforcement interests. Proposed firearm transfers are denied by the NICS when available information demonstrates that the prospective transferee is disqualified from possessing a firearm under federal or state law. Law enforcement agencies may use this information to investigate possible violations of federal and/or state law with regard to the attempted purchase of the firearm, as well as for other law enforcement uses that could have significant public safety benefits.

Accordingly, the system of records is modified as provided below.

Dated: December 6, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Justice/FBI–018

SYSTEM NAME:

National Instant Criminal Background Check System (NICS).

* * * * *

ACTION:

The system notice published in the **Federal Register** on November 25, 1998 (63 FR 65223), is amended as follows:

1. In the section titled "Category of Individuals Covered by the System," subsection E is revised, and subsection L is amended by replacing the first two sentences with three new sentences, to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

E. Is an alien who is illegally or unlawfully in the United States or who has been admitted to the United States under a non-immigrant visa.

* * * * *

L. Has applied for the transfer of a firearm or for a firearms-related permit or license and has had his or her name forwarded to the NICS as part of a request for a NICS background check. (Identifying information about this category of individuals is maintained for system administration and security purposes in the "NICS Audit Log," a system transaction log described below under the headings **"CATEGORIES OF RECORDS IN THE SYSTEM" AND "RETENTION AND DISPOSAL."** Identifying information may also be maintained in appeals files for those individuals who have requested the reason for a denial or delay from the FBI, or from a law enforcement agency serving as a POC, and/or challenged the accuracy or validity of a disqualifying record or otherwise inquired about a NICS transaction. * * *

2. The section titled "Categories of Records in the System" is amended by adding a new paragraph at the end to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

The NICS also contains "appeals records" which reflect inquiries by individuals regarding the reason for a delay or denial by the FBI or a POC, and/or challenges to the accuracy or validity of a disqualifying record, or other types of inquiries made by individuals about a NICS transaction.

3. The section titled "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses" is amended by adding an introductory paragraph and a new subparagraph ("I") at the end to read as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI may disclose relevant system records to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

* * * * *

I. Information pertaining to individuals who have been *denied* a firearm by the NICS may be disclosed, either electronically or otherwise, to a federal, state, local, joint, tribal, foreign, international, or other public agency/organization where such disclosure may promote, assist, or otherwise serve law enforcement interests. By way of example and not limitation, such disclosures may, for instance, include posting all NICS denials on a centralized database that would be electronically accessible to law enforcement agencies.

[FR Doc. 00–31749 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection national evaluation of the safe schools/healthy students initiative.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by December 22, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–7860, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Kellie J. Dressler, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington DC 20531, or facsimile at (202) 353–9096.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Application for new collection effort.

(2) *The Title of the Form/Collection:* The National Evaluation of the Safe Schools/Healthy Students Initiative has several information collection forms, which are: District Personnel Survey, School Personnel Surveys, Classroom Teacher Survey, Teacher Rating Scale, Coalition/Partnership Survey, Key Partners Survey, Student Survey, Project Director Survey, Archival Data Collection, Economic Data Collection, Focus Group Discussion Questions for Parents and Community, Focus Group Discussion Questions for Students.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* None; Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract:* School personnel, which includes superintendents, principals, counselors, violence prevention and drug coordinators; 1st, 3rd, 5th, 7th, 9th, and 11th grade teachers; Coalition members; Students in grades 7, 9, and 11 (15 sites only); Project Directors; Parents (15 sites only); Community members; and Chief Financial Officers (15 sites only). 42 U.S.C. 5653 authorizes the Office of Juvenile Justice and Delinquency Prevention to collect information on all aspects of the Safe Schools/Healthy Students Initiative programs. The purposes of the surveys, coalition discussion guides, focus groups, etc. are to obtain information from the respondents that will assist in evaluating the Safe Schools/Healthy Students Initiative and contribute to the development of policies and programs that reduce violence, crime, substance use, and other risk-related behaviors and that support healthy childhood development. The survey instruments focus on the nature and scope of alcohol, tobacco, and other drug use among youth; perceptions about school safety, crime and violence; educational climate; school policies and programs; and mental health development.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond/Reply:*

ANNUAL BURDEN ESTIMATES*

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
District Personnel Survey	308	1	1.0	308
School Personnel Surveys:				
Principal	1,335	1	1.0	1,335
Mental Health Coord.	1,335	1	.50	667.5
Substance Use Prevention Coord.	1,335	1	.50	667.5
Violence Prevention Coord.	1,335	1	.50	667.5
School-level Total	5,340		2.5	3,337.5
Classroom Teacher Survey	4,252	1	.50	2,126
Teacher Rating Scale	1,397	5	.42	2,933.7
Student Survey	10,184	1	.75	7,638
Archival Data Collection	378	1	**None	
Coalition Survey	1,540	1	.50	770
Key Partners Survey	231	1	.50	115.5
Project Director Survey	77	1	.75	57.75
Economic Data Collection	15	1	4.0	60
Focus Groups Questions: Parents and Community Members	150	1	2.0	300
Focus Groups Questions: Students	150	1	1.0	150

* All estimates are based on 77 sites except for student surveys, teacher rating scales, economic and focus groups which are drawn from the 15 Sentinel sites only.

** Data to be collected for personnel responsible for providing publicly available agency-level data; thus SS/HS data collection burden is not expected to exceed general practice.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* The total burden hours for this information collection is 17,796.45 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: December 8, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–31773 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,657A]

Ambar Chemical, Incorporated Division of Ambar, Incorporated Corporate Office Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 2000 applicable to workers of Ambar Chemical, Incorporated, Corporate Office located in Houston, Texas. The notice was published in the **Federal Register** on July 24, 2000 (65 FR 45621).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide support services such as accounting, customer service and sales for the subject firms' production facility in Manistee, Michigan. Company information shows that Ambar, Incorporated is the parent firm of Ambar Chemical, Incorporated, Houston, Texas. New information provided by the State shows that workers separated from employment at the Corporate Office, Houston, Texas location of Ambar Chemical, Incorporated had their wages reported under a separate unemployment insurance (UI) tax account at Ambar, Incorporated, also located in Houston, Texas.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Ambar Chemical, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,657A is hereby issued as follows:

All workers of Ambar Chemical, Incorporated, Ambar, Incorporated, Corporate Office, Houston, Texas who became totally or partially separated from employment on or after April 25, 1999 through June 30, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 21st day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31817 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,929]

B.F. Goodrich Aerospace (Coltec Industries, Inc.) Landing Gear Division Euless, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 2, 2000, applicable to workers of B.F. Goodrich Aerospace, (COLTEC), Landing Gear Division, Euless, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read "B.F. Goodrich Aerospace, (COLTEC Industries, Inc.), Landing Gear Division".

The amended notice applicable to TA–W–37,929 is hereby issued as follows:

All workers of B.F. Goodrich Aerospace, (COLTEC Industries, Inc.), Landing Gear Division, Euless, Texas who became totally or partially separated from employment on or after July 14, 1999 through November 2, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31820 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 26, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 26, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of November, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 11/27/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,346	Flowserve Corp. (Wrks)	Temecola, CA	11/15/2000	Seals.
38,347	Cold Metal Products Co (IAMAW)	New Britain, CT	11/09/2000	Steel Rolling and Slitting.
38,348	National Spinning Co (Comp)	Washington, NC	11/13/2000	Textile Yarns.
38,349	Dearborn Brass (GMPBA)	Tyler, TX	11/16/2000	Plumbing Fixtures.
38,350	Hill Knitting Mills (Comp)	Richmond Hill, NY	11/01/2000	Knits and Welts.

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PETITIONS INSTITUTED ON 11/27/2000—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,351	Tyco Electronics (Wrks)	Sanford, ME	11/07/2000	Electronic Connectors.
38,352	Mulox, Inc. (Comp)	Macon, GA	11/13/2000	Intermediate Bulk Containers.
38,353	Langston Corp (Wrks)	Cherry Hill, NJ	11/06/2000	Machines to Make Corrugated Boxes.
38,354	Parker Hannifin Corp (USWA)	Lebanon, IN	11/08/2000	Resin Bonded Filter Cartridge.
38,355	LSC Kentucky, LLC (Wrks)	Morganfield, KY	11/10/2000	Administrative Functions.
38,356	Johnson Controls, Inc. (IBEW)	Poteau, OK	11/09/2000	Electrical Controls and Panels.
38,357	Jockey International (Wrks)	Belzoni, MS	11/09/2000	Men's Tee Shirts.
38,358	Tower Automotive (Wrks)	Kalamazoo, MI	10/30/2000	Structural Stampings, Welded Assemblies.
38,359	Johns Manville Int'l (Comp)	Corona, CA	11/08/2000	Flexglass.
38,360	Georgia Pacific (PACE)	Baileyville, ME	11/07/2000	Oriented Strand Boards.
38,361	Don Shapiro/Action West (Wrks)	El Paso, TX	11/13/2000	Jeans.
38,362	LTV Steel (USWA)	Cleveland, OH	11/14/2000	Steel.
38,363	Pratt and Whitney (IAMAW)	Middleton, CT	11/03/2000	Aircraft Engine Turbines.
38,364	Johnson and Johnson Med (Comp)	El Paso, TX	11/08/2000	Disposables Medical Products.
38,365	Agrilink Foods (Wrks)	Alamo, TX	11/13/2000	Frozen Foods.
38,366	Bend Millwork Co. (Comp)	Bend, OR	11/07/2000	Wood Mouldings and Millwork.
38,367	Key Industries, Inc. (Comp)	Erin, TN	11/14/2000	Shirts.
38,368	Crown Pacific (IAMAW)	Coeurd'Alene, ID	11/13/2000	Framing Lumber.
38,369	Dun and Bradstreet (Wrks)	Parsippany, NJ	11/03/2000	Software.
38,370	A.O. Smith Electrical (Comp)	Altavista, VA	11/16/2000	Electric Meters.

[FR Doc. 00–31811 Filed 12–13–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,828]

Johnstown Corporation, Johnstown, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 26, 2000, the United Steelworkers of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–37,828. The denial notice was signed on August 15, 2000 and was published in the **Federal Register** on September 12, 2000 (65 FR 55049).

The petitioner presented new information concerning declining customers of the subject firm. The Department will therefore conduct further survey of the Johnstown Corporation customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 19th day of October 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31812 Filed 12–13–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,828]

Johnstown, Corporation, Johnstown, PA; Notice of Revised Determination of Reconsideration

On October 19, 2000, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice soon will be published in the **Federal Register**.

The Department initially denied TAA to workers of Johnstown Corporation, Johnstown, Pennsylvania, because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department obtained additional information from the company regarding the company's lost customer bids of iron rolls during the relevant period. The survey revealed that major respondents reported awarding the contracts to foreign sources for which the subject firm was the lowest domestic bidder.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with iron rolls contributed importantly to the declines in sales or production and to the total or partial separation of workers of Johnstown Corporation, Johnstown, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Johnstown Corporation, Johnstown, Pennsylvania who became totally or partially separated from employment on or after June 9, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;

Signed in Washington, DC this 16th day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31813 Filed 12–13–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[T–W–37,910]

Mallinckrodt, Incorporated, Nellcor Puritan Bennett, Incorporated, Puritan-Bennett Corporation, Respiratory Division Carlsbad, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 5, 2000, applicable to workers of Mallinckrodt, Incorporated, Respiratory Division, Carlsbad, California. The notice was published in the **Federal Register** on November 1, 2000 (FR 65 65330).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of critical care medical equipment. New information provided by the State shows that Nellcor Puritan Bennett, Incorporated and Puritan-Bennett Corporation are business units of Mallinckrodt, Incorporated. New information also shows that workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts: Nellcor Puritan Bennett, Incorporated and Puritan-Bennett Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Mallinckrodt, Incorporated, Respiratory Division who were adversely affected by increased imports of critical care medical equipment.

The amended notice applicable to TA–W–37,910 is hereby issued as follows:

All workers of the Mallinckrodt, Incorporated, Nellcor Puritan Bennett, Incorporated, Puritan-Bennett Corporation, Respiratory Division, Carlsbad, California who became totally or partially separated from employment on or after July 5, 1999 through October 5, 2002 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31816 Filed 12–13–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,884]

Rycraft, Incorporated, Corvallis, OR; Notice of Revised Determination on Reconsideration

On November 2, 2000, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on November 15, 2000 (65 FR 69050).

The Department initially denied TAA to workers of Rycraft, Incorporated, Corvallis, Oregon producing terra cotta cookie stamps because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted further survey of the major independent brokers of Rycraft. The survey revealed that the former customers of Rycraft imported substantial amounts of terra cotta cookie stamps while reducing purchases from Rycraft.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with terra cotta cookie stamps, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Rycraft, Incorporated, Corvallis, Oregon. In accordance with the provisions of the Act, I make the following certification:

All workers of Rycraft, Incorporated, Corvallis, Oregon who became totally or partially separated from employment on or after June 27, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 22nd day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31814 Filed 12–13–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,061]

TRW, Valve Division, Danville, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 11, 2000, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–38,061. The denial notice was signed on October 10, 2000 and published in the **Federal Register** on November 1, 2000 (65 FR 65329).

The Department has reviewed the request for reconsideration and has determined that further survey of a major declining customer of the subject firm would be appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 30th day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31815 Filed 12–13–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04281]

Greenwood Mills Inc., Greige and Denim Greenwood, SC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 23331), an investigation was initiated on November 8, 2000, in response to a petition filed by a company official on behalf of workers at Greenwood Mills Inc., Greige and Denim, Greenwood, South Carolina. The workers producer lightweight textiles.

The petitioner has requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31818 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4020]

Thomson Consumer Electronics, Incorporated, A.T.O. Division, Dunmore, PA; Notice of Negative Determination on Reconsideration

On October 17, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register.**

The Department initially denied NAFTA to workers of Thomson Consumer Electronics, Incorporated, A.T.O. Division, Dunmore, PA because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of color television picture tubes.

The petitioner presented evidence that the Department's survey of the company's customer was incomplete.

On reconsideration, the Department requested that the subject firm provide additional information concerning declining customers. Upon examination of those customers, it was discovered that the customers were located in Mexico. Those customers were the reason for the declines in sales, production and employment at the subject plant. Company sales of color television picture tubes to the domestic market did not decline during the relevant period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Thomson Consumer Electronics, Incorporated, A.T.O. Division, Dunmore, Pennsylvania.

Signed at Washington, DC, this 4th day of December, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–31819 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Applications for a Permit To Fire More Than 20 Boreholes, for the Use of Nonpermissible Blasting Units, Explosives, and Shot-Firing Units

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the application for a permit to fire more than 20 boreholes, for the use of nonpermissible blasting units, and for the use of nonpermissible explosives and nonpermissible shot-firing units, and posting of warning notices with regard to mis-fired explosives.

DATES: Submit comments on or before February 12, 2001.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice) or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: A copy of the proposed information collection request and further information may be obtained by contracting Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, a mine operator is required to use permissible explosives in underground coal mines. The Mine Act also provides that under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Title 30, CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

III. Current Actions

Title 30, CFR 75.1321, 75.1327 and 77.1901–1 provide MSHA District Managers with the authority to address unusual but reoccurring blasting practices needed for breaking rock types more resilient than coal and for misfires in blasting coal. MSHA uses the information requested to issue permits to mine operators or shaft and slope contractors for the use of nonpermissible explosives and/or shot-firing units under 30 CFR Part 77, Subpart T—Slope and Shaft Sinking. Similar permits are issued by MSHA to underground coal mine operators for shooting more than 20 bore holes and/or for the use of nonpermissible shot firing units when requesed under 30 CFR Part 75, Subpart N—Explosives and Blasting. The approval permits allow the use of specific equipment and explosives in limited appliations and under exceptional circumstances where standard coal blasting techniques or equipment is inadequate to the task. These permits inform mine management and the miners of the steps to be employed to protect the safety of any person exposed to such blasting while using nonpermissible items. Also, the posting of danger/warning signs at entrances to locations where an misfired blast hole or round remains indisposed is a safety precaution predating the Coal Mine Safety and Health Act.

Type of Review: Extension (without change).

Agency: Mine Safety and Health Administration.

Title: 30 CFR 75.1321, 75.1327, and 77.1909–1—use of nonpermissible blasting units, and for the use of nonpermissible explosives and nonpermissible shot-firing units, and posting of warning notices with regard to misfired explosives (pertains to coal mining industry).

OMB Number: 1219–0025.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
75.1321 Permit Appl.	51	On Occasion	51	1 hour	51
75.1327 Misfire Notices Posted	106	On Occasion	106	20 minutes	35
77.1909–1 Permit APL.	4	On Occasion	4	1 hour	4
Totals			161		90

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $650.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 8, 2000.

Charlene N. Barnard,

Acting Chief, Records Management Division.

[FR Doc. 00–31821 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–43–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

Corrections Notice for Notice of Availability

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Corrections Notice for Notice of Availability.

SUMMARY: This document corrects three text errors appearing in the Notice of Availability of the Final Environmental Impact Statement for the El Paso-Las Cruces Regional Sustainable Water Project in Sierra and Doña Ana counties, New Mexico and El Paso County, Texas published in the **Federal Register** (65 FR 71128) on November 29, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902 or call 915/832–4741. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: Three corrections are indicated in the referenced Notice of Availability as follows:

Summary—The last sentence of the paragraph is corrected to read, "No final action can be taken on this proposal during the 30 days following the filing of this FEIS, in accordance with the Council on Environmental Quality regulations, 40 CFR 1506.10(b)(2)."

Supplementary Information—The third sentence of the last paragraph is corrected to read, "A Record of Decision will be executed on this proposal after a minimum of 30 days following the filing of the FEIS."

Supplementary Information, last paragraph, last sentence—Correct to read, "No final action will be taken on the proposed action before 30 days following publication of the notice of availability of the EIS by EPA."

Dated: November 30, 2000.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 00–31869 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–142)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that the University of Houston, Houston, TX, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,780,186, entitled "High Performance Zinc Anode for Battery Applications." Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by February 12, 2001.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: December 7, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–31872 Filed 12–13–00; 8:45 am]

BILLING CODE 7510–01–P

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NORTHEAST DAIRY COMPACT COMMISSION

Notice of Out-of-Business New England Dairy Producer Escrow Reimbursement Program

AGENCY: Northeast Dairy Compact Commission.

ACTION: Solicitation of application claims from eligible out-of-business New England dairy producers for reimbursement of escrowed funds.

SUMMARY: The Northeast Dairy Compact Commission announces an Escrow Reimbursement Program for those New England dairy producers who were in business but ceased operations during the pendency of the New York Dairy Foods, Inc. litigation from July 1, 1997 through March 31, 2000. Part of the Compact Over-order Producer payment was placed in escrow monthly during the litigation and those funds have since been released by the Federal District Court for distribution to New England dairy producers.

Producers whose milk was marketed in New England either through pool plants or partially regulated plants may be eligible for payment. Those producers who had been in business during any part of the period of the litigation but had ceased operation before March 31, 2000 qualify for reimbursement if their verified claims exceed $50.00. Producers who were still in business on March 31, 2000 were reimbursed those funds in the September Compact payment and do not qualify.

The Compact Commission has determined that eligible producers who went out of business will be reimbursed on the basis of pounds of milk shipped during the period July 1, 1997 through March 31, 2000. Qualified producers must file notarized Application Claim Forms with the Commission documenting the handler and the pounds of milk shipped by month. The Forms must be filed for verification between December 1, 2000 and February 28, 2001. Payments to qualified producers for claims above $50.00 will be made in January, February or March, 2000.

DATES: Application Claim Forms will be available after December 1, 2000 and must be filed by February 28, 2001.

ADDRESSES: Application Claim Forms are available from and must be filed with the Out-of-Business Escrow Reimbursement Program, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941, Fax (802) 229–2028, E-mail smae@dairycompact.

Authority: 7 U.S.C. 7256.

Dated: November 17, 2000.

Daniel Smith,

Executive Director.

[FR Doc. 00–31792 Filed 12–13–00; 8:45 am]

BILLING CODE 4650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–333–LT and 50–286–LT (consolidated)]

Power Authority of the State of New York and Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 3 LLC, Entergy Nuclear Operations, Inc. (James A. FitzPatrick Nuclear Power Plant) and Indian Point Nuclear Generating Unit No. 3); CLI–00–22, Memorandum and Order

Commissioners: Richard A. Meserve, Chairman, Greta Joy Dicus, Nils J. Diaz, Edward McGaffigan, Jr. and Jeffrey S. Merrifield

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a. *Age-Related Defects at Both Plants*
b. *Leak-Detection Problems at Both Plants*
c. *Issues of Management "Character"*
d. *Cost-Cutting Pressures*
5. *The Association's Labor-Related Technical Qualifications Issues*
6. *Issues Involving Emergency Evacuation Plans*
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I. Introduction

This proceeding involves applications which together seek the Commission's authorization to transfer the operating licenses of both the Indian Point Nuclear Generating Unit No. 3 ("Indian Point 3") and the James A. FitzPatrick Nuclear Power Plant ("FitzPatrick"). The Indian Point plant is located in Westchester County, New York, beside the Hudson River. Its property lies partially within the Town of Cortlandt and entirely within the Hendrick Hudson School District. The FitzPatrick plant is located in the town of Scriba in Oswego County, New York.

The Power Authority of the State of New York ("PASNY") seeks to transfer its ownership interest in, and operating/maintenance responsibility for, the Indian Point 3 plant to Entergy Nuclear Indian Point 3, LLC ("Entergy Indian Point") and Entergy Nuclear Operations, Inc. ("Entergy Nuclear Operations"), respectively. Similarly, PASNY would transfer its ownership interest in, and operating/maintenance responsibility for, the FitzPatrick plant to Entergy Nuclear FitzPatrick, LLC ("Entergy FitzPatrick") and Entergy Nuclear Operations, respectively.

The applications were submitted to the Commission on May 11 and 12, 2000, pursuant to Section 184 of the Atomic Energy Act of 1954 ("AEA")[1] and section 50.80 of the Commission's regulations.[2] On June 28, 2000, the Commission published notices of the FitzPatrick and Indian Point 3 applications in the **Federal Register**. *See* 65 FR 39953 and 39954, respectively.

The Commission received five petitions to intervene (or participate) and requests for hearing from individuals or entities wishing to address or oppose one or both of the license transfer applications. The petitioners are Citizens Awareness Network ("CAN"); the Town of Cortlandt together with the Hendrick Hudson School District (collectively "Cortlandt"); Westchester County ("Westchester") (petitioning to participate as a governmental entity); Local 1–2 of the Utility Workers of America ("the Union"); and the Nuclear Generation Employees Association, together with William Carano, Thomas Pulcher and Richard Wiese, Jr. (collectively "the Association").[3] The applicants filed an Answer to each of these hearing requests. All petitioners except Westchester submitted replies to the applicants' answers. The Union subsequently withdrew its petition. The NRC staff is not participating as a party in the adjudicatory portion of this proceeding. *See generally* 10 CFR § 2.1316(b), (c). We consider the pleadings under Subpart M of our procedural rules. 10 CFR 2.1301–2.1331.

For the reasons set forth below, we grant the requests for hearing of CAN, Cortlandt and the Association. We also grant Westchester's request to participate in a hearing as an interested governmental entity. Finally, we admit certain issues involving whether the Entergy companies have demonstrated their financial ability to operate and maintain the plants safely and whether they have provided a reasonable assurance of adequate decommissioning funding.

[1] 42 U.S.C. 2234 (precluding the transfer of any NRC license unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing). On November 9, 2000, the NRC staff issued orders approving the two applications for license transfer. Pursuant to 10 CFR 2.1327, the petitioners in this proceeding could have asked the Commission by November 17, 2000, to stay the effect of the staff's two orders, but petitioners filed no stay motion. Consequently, PASNY and the Entergy companies were free to close the sale of the two nuclear plants, which they did on November 21, 2000. Neither the staff's approvals, nor the closing of the sale affects the instant adjudicatory proceeding. The purpose of this proceeding is to resolve whether, for the reasons raised by the petitioners, the Commission should disapprove the transfers and require the applicants to return the plant ownership to the *status quo ante* or modify the license notwithstanding the staff's orders and the applicants' actual consummation of the sale. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI–00–17, 52 NRC 79, 82–83 (2000).

[2] 10 CFR 50.80. This regulation reiterates the requirements of AEA section 184, sets forth the filing requirements for a license transfer application and establishes the following test for approval of such an application: (1) the proposed transferee is qualified to hold the license and (2) the transfer is otherwise consistent with law, regulations and Commission orders.

[3] In addition, the County of Putnam sought and was granted an extension of time until July 31, 2000, by which to file its petition to intervene and request for hearing. However, Putnam filed no petition or request.

II. The License Transfer Applications

As noted above, PASNY, Entergy FitzPatrick and Entergy Nuclear Operations have filed applications seeking to transfer the ownership of the FitzPatrick plant to Entergy FitzPatrick and the operating and maintenance responsibilities for the plant to Entergy Nuclear Operations. The regulatory responsibility for decommissioning the plant would also transfer to Entergy FitzPatrick. Pursuant to the Decommissioning Agreements and subject to the monetary limits of those Agreements, PASNY would retain the decommissioning funds and would have a contractual obligation to provide funds to Entergy FitzPatrick (up to a specified limit) to decommission the FitzPatrick plant.[4]

Similarly, PASNY, Entergy Indian Point and Entergy Nuclear Operations have filed applications seeking to transfer the ownership of the Indian Point plant to Entergy Indian Point and the operating and maintenance responsibilities for the plant to Entergy Nuclear Operations. The regulatory responsibility for decommissioning the plant would also transfer to Entergy Indian Point. Pursuant to the Decommissioning Agreements and subject to the monetary limits of those Agreements, PASNY would retain the Decommissioning Funds and would have a contractual obligation to provide funds to Entergy Indian Point (up to a specified limit) to decommission the Indian Point 3 plant.

Under both applications, however, PASNY would have the option of terminating this contractual obligation upon the occurrence of certain events specified in the Decommissioning Agreements. Upon such termination, PASNY would have no further contractual responsibility to its successor owner (Entergy FitzPatrick or Entergy Indian Point, as applicable) and no further involvement with the decommissioning process for that plant. At that point, PASNY would be required to transfer the decommissioning funds to its successor owner, subject to certain conditions.

If PASNY does not terminate its contractual responsibility before the decommissioning of the applicable plant begins, then PASNY's contractual responsibility would be carried out pursuant to the Decommissioning Agreements. Under those Agreements, PASNY and Entergy Nuclear, Inc. ("ENI") must enter into an agreement whereby ENI would decommission the plants in accordance with the Decommissioning Agreements. Entergy FitzPatrick and Entergy Indian Point, through their authorized agent, Entergy Nuclear Operations, would at all times retain ultimate control over the timing and control of the decommissioning activities of ENI and its contractors.

The new owners and the new operator of the Indian Point 3 and FitzPatrick nuclear plants are not "electric utilities" under our rules, and thus must demonstrate financial qualifications to own and/or operate the plant. *See* 10 CFR 50.33(f). These Entergy companies have submitted five-year cost and revenue projections in accordance with our rules, *see id.*, but much of their material was submitted as confidential financial information and has been withheld from public disclosure.

Upon the closing of the purchase and sales agreements, all employees within PASNY's Nuclear Generation Department, and certain other employees supporting the Nuclear Generation Department, would become employees of Entergy Nuclear Operations. The application proposes no physical or operational changes to the FitzPatrick or Indian Point facilities, but does request certain administrative changes to the licenses that are necessary to reflect the proposed transfers. *See* 65 FR at 39953–54.

Before reaching petitioners' standing and the admissibility of their issues, we must first address certain pending procedural motions.

III. Preliminary Procedural Issues

A. CAN'S Motion to Consolidate the Commission's Consideration of the Applications

CAN moves for a joint hearing on all applications. CAN argues that there are overarching concerns that affect the transfer of both facilities—concerns stemming from the Entergy companies' joint negotiation of both sales and their intertwining of the two plants' finances, day-to-day operations and reactor decommissioning. *See* CAN's Petition, dated July 31, 2000, at 7. Conversely, Cortlandt objects to such a consolidation. Cortlandt states that the issuance of separate orders for each facility would be in the public interest because it "would facilitate review

[4] Commitments limiting PASNY's role to holding and disbursing the decommissioning funds are contained in a letter dated Sept. 21, 2000.

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thereof and action thereupon."[5] However, Cortlandt has offered us no rationale to justify this conclusion. Given that CAN and the Association present a number of arguments applicable to both plants, we believe that the parties' and the Commission's resources are better spent by addressing these arguments only once. We therefore grant CAN's motion to consolidate the FitzPatrick and Indian Point 3 license transfer proceedings.

B. The Association's and CAN's Motions for Stay

The Association seeks a stay of this NRC proceeding pending a decision by the New York courts regarding the rights, obligations and liabilities of its members, the Entergy companies, and PASNY. *See* Association's Petition to Intervene, dated July 17, 2000, at 19, 21. The Association brought that state court action on July 27, 2000.[6] In support, the Association asserts that the state court action could render void or voidable the sales transaction involving the two plants, that the outcome of the state court action could assist in clarifying the Commission record, and that consummation of the sales transaction could render irreversible many aspects of the Association members' relationship with the applicants. See Association's Reply Brief, dated Aug. 3, 2000, at 26.

Similarly, CAN seeks a stay of the adjudication until the Internal Revenue Service ("IRS"), the Federal Energy Regulatory Commission ("FERC") and the New York State Department of Environmental Conservation ("DEC") have completed their own proceedings involving the transfer of the two plants.[7] CAN asserts that these agencies' rulings could affect the Entergy companies' ability to own, operate and decommission the two plants,[8] and that DEC or IRS rulings adverse to Entergy could render the sales agreement void or voidable.[9]

As we indicated in a prior case, the pendency of parallel proceedings before other forums is not adequate grounds to stay a license transfer adjudication. *See Niagara Mohawk Power Corp.* (Nine Mile Point, Units 1 and 2), CLI–99–30, 50 NRC 333, 343–44 (1999). We therefore deny the motions for a stay. However, we instruct the parties to inform the Commission promptly of any court or administrative decision that might in any way relate to, or render moot, all or part of the instant proceeding. Similarly, if at any point the parties to this proceeding reach a settlement of this dispute, or if the transfer applicants decide to withdraw or postpone their application, we expect immediate notification to the Commission.

C. Applicants' Request To Deny Cortlandt's Hearing Motion on Procedural Grounds

Applicants assert that Cortlandt's Motion for Hearing should be denied because Cortlandt failed to serve the applicants in a manner that ensured delivery on the due date of filing. *See* Answer to Cortlandt's Petition, dated Aug. 14, 2000, at 3–4. We consider such a sanction too severe for the offense. Cortlandt has acknowledged its error, apologized, and explained that it was based on a "communications error" with the Commission's Office of the Secretary. *See* Cortlandt's Reply Brief, dated Aug. 21, 2000, at 8. Also, applicants do not appear to have suffered any prejudice as a result of Cortlandt's error. We therefore deny their motion.

D. CAN's Motion For a Formal Subpart G Hearing

In both a separate motion and throughout its presentation on standing and issues, CAN requests a formal hearing under Subpart G of our procedural regulations. *See* CAN's Petition at 9–11, 22, 23, 29, 36, 42, 47, 51, 55, 56, 64, 66; CAN's Reply Brief at 4–5, 9–10, 12. CAN's motion for a Subpart G proceeding is expressly prohibited under 10 CFR 2.1322(d). *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station, CLI–00–20, 52 NRC at ____, slip op. at 3 (Oct. 6, 2000).

In an effort to avoid this prohibition, CAN asserts that this proceeding falls within the bounds of 10 CFR 2.1329, providing for waiver of rules under "special circumstances" which demonstrate that the "application of a rule or regulation would not serve the purposes for which it was adopted." As "special circumstances," CAN points to the fact that "the matters in this license transfer are not strictly 'financial in nature' as contemplated in the promulgation of Subpart M." *See* CAN's Petition at 9.

CAN's interpretation of the appropriate scope of Subpart M procedures is, in our view, overly restrictive. Our Subpart M rules are intended to apply to more than just those cases presenting only financial issues. We expected when promulgating Subpart M that most issues would be financial,[10] and indeed this expectation has been fulfilled. However, we also predicted that petitioners would raise other categories of issues as well (such as foreign ownership, technical qualifications, and appropriate critical staffing levels)—a prediction that has also been fulfilled.[11] For that reason, when promulgating Subpart M, we expressly declined to adopt the nuclear industry trade organization's suggestion that we limit the scope of Subpart M proceedings to financial matters.[12] We deny CAN's motion for essentially the same reason. The nature of petitioners' financial and technical allegations do not call for an alteration in the usual Subpart M process.

As an alternative request, CAN moves for a consolidated hearing by the Commission, FERC and DEC. *See* CAN's Petition at 11; CAN's Reply Brief at 7–8. We believe holding a consolidated hearing would be impractical in the particular circumstances of this proceeding, given that each agency would be operating under a different set of procedural rules and governing statutes. Moreover, as indicated in footnote 7, *supra*, FERC has already concluded its parallel proceeding involving the FitzPatrick and Indian Point 3 plants.

Finally, as a second alternative request, CAN asks that the Commission initiate a Subpart M hearing, but consider the possibility of converting it to a Subpart G hearing at a later date. *See* CAN's Reply Brief at 9. In our view, CAN is asking nothing more than the Commission's regulations already provide. *See* 10 CFR 2.1322(d) ("The Commission, on its own motion, or in response to a request from a Presiding Officer * * *, may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under subpart G of this part on specific and substantial disputes of fact * * * that cannot be resolved with sufficient accuracy except in a formal hearing"). We deny CAN's second alternative request as unnecessary.

E. Petitioner' Request For Access to Unredacted Versions of Financial Information

Cortlandt asserts that its lack of access to certain confidential financial information (*e.g.*, the five-year estimates of Indian Point 3's annual operating costs, the credit agreement, and the financial statements for Entergy International Ltd., Entergy Global Investments, LLC and Entergy Indian Point) precludes it from fully presenting its arguments. *See* Cortlandt's Petition at 8; Cortlandt's Supplemental Filing, dated July 31, 2000, at 3; Cortlandt's Reply Brief at 4–7. *See generally* Affirmation of Peter Henner at ¶ 10 ("materials made available in the public record are insufficient for an assessment of [Entergy Indian Point]'s ability [to] operate under the issued license and to restore the [Indian Point 3] site to greenfield status"); Letter from George E. Sansoucy to Paul V. Nolan, Esq., dated July 28, 2000, at 1 ("Sansoucy Letter"), appended to Cortlandt's Supplemental Filing. More specifically, Cortlandt's expert notes that

> [I]t is not possible to render an opinion as to whether the income stream to Entergy will be sufficient to make the required payments. A particular problem is that the fuel payment stream cited in the application is for the combined fuel assets of [Indian Point] 3 and James A. FitzPatrick Nuclear Generating Station and does not allocate the portion of payments assigned to each site [citing Purchase and Sale Agreement, p. 14].
>
> [I]t is not possible to estimate the ability of Entergy to fund required payments to the Decommissioning Fund.

See Sansoucy Letter at 2, 3. CAN similarly complains about lack of access to decommissioning documents. *See, e.g.*, CAN's Petition at 3, 11, 15; CAN's Reply Brief at 18.

We find below that Cortlandt and CAN have made sufficient showings of standing and have raised admissible issues. We also recognize that the lack of access to the applicants' full financial information could affect their ability to present their substantive case at the hearing. *E.g.*, pages 19, 22, 23, *infra*. Cortlandt and CAN (along with the Association and Westchester, if they wish) should discuss access to proprietary information with the applicants and thereafter file with the Presiding Officer a mutually-agreeable protective order. If the parties cannot agree on a protective order, CAN and Cortlandt may move for issuance of such an order.[13] Moreover, we note that portions of the hearing (which we herein grant) may have to be closed to the public when issues involving proprietary information are being addressed.

IV. Discussion

To intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its "interest may be affected by the proceeding," *i.e.*, it must demonstrate "standing." *See* AEA, Section 189a, 42 U.S.C. section 2239(a). The Commission's rules for license transfer proceedings also require that a petition to intervene raise at least one admissible issue. *See* 10 CFR 2.1306. For the reasons set forth below, we conclude that CAN, the Association and Cortlandt have demonstrated standing, and that Westchester is entitled to governmental participant status in this proceeding. We also conclude that CAN, the Association and Cortlandt have each raised at least one admissible issue. We therefore set the case for hearing.

A. Standing

To demonstrate standing in a Subpart M license transfer proceeding, the petitioner must (1) identify an interest in the proceeding by

(a) Alleging a concrete and particularized injury (actual or threatened) that

(b) is fairly traceable to, and may be affected by, the challenged action (e.g., the grant of an application to approve a license transfer), and

(c) is likely to be redressed by a favorable decision, and

(d) lies arguably within the "zone of interests" protected by the governing statute(s).

(2) specify the facts pertaining to that interest.

See 10 CFR 2.1306, 2.1306; *Nine Mile Point*, CLI–99–30, 50 NRC at 340–41 and n.5 (and cited authority). Moreover, an organization which seeks representational standing must demonstrate how at least one of its members may be affected by the licensing action, must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. *See Vermont Yankee*, CLI–00–20, 52 NRC at____, slip op. at 4; Oyster Creek, CLI–00–6, 51 NRC at 202 (and cited authority).

1. CAN

CAN seeks permission to represent the interests of two of its members—Linda Downing, who lives 5½ miles from the FitzPatrick plant, and Marilyn Elie, who lives the same distance from the Indian Point 3 plant. *See* Declaration of Linda Downing, dated July 31, 2000; Declaration of Marilyn Elie, dated July 31, 2000. On Ms. Downing's and Ms. Elie's behalf, CAN alleges potential health-and-safety impacts on them if the Commission approves the two license transfers, seeks specific relief to prevent such injuries (disapproval of the transfers or imposition of conditions), and asserts that the safety-related issues fall within the zone of interests protected by the AEA and the National Environmental Policy Act ("NEPA"). *See* CAN's Petition at 14, 22, 28–29, 25–26, 34, 36, 40–41, 46–47, 50–51, 55–56, 63–64, 65–66; CAN's Reply Brief at 10–

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[1] *See* Cortlandt's Petition for Extension of Time, dated July 7, 2000, at 4 n.1. This petition, despite its name, includes both a petition to intervene and request for hearing.

[6] *See* Verified Petition, *Nuclear Generation Employees Ass'n v. New York Power Auth.* (Sup. Ct., Westchester Co., NY), Index No. 11129/00 (filed July 27, 2000) (appended to Association's Reply Brief as Exh. 1). *See also* Association's Reply Brief, dated Aug. 3, 2000, at 3. We note in passing that, on July 26, 2000, the Town of Cortlandt filed a separate action in New York State court, also challenging the transfer. *See* Verified Petition, *Town of Cortlandt v. Power Auth. of the State of N.Y.* (Sup. Ct., Westchester Co., NY), Index No. 11084–00 (filed July 26, 2000) (appended to Cortlandt's Supplemental Statement, dated July 31, 2000) (hereafter "Cortlandt Verified Petition"), *petition denied* (Sept. 15, 2000), *appeal noticed* (Sept. 22, 2000) (court denial and appeal notice both appended to Cortlandt's Submission of Supplemental Information, dated Sept. 28, 2000). *See also* Affirmation of Peter Henner, dated July 31, 2000, at ¶ 29 (appended to Cortlandt's Supplemental Statement, dated July 31, 2000). (We cite to the paragraph rather than the page number of Mr. Henner's Affirmation because neither version of this document is paginated and because the contents of the first version appear on different pages from the same content of the second version.)

[7] On Sept. 29, 2000, FERC authorized Entergy Indian Point's and Entergy FitzPatrick's purchase of the Indian Point 3 and FitzPatrick nuclear plants, respectively, from PASNY. *See Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear FitzPatrick, LLC*, Docket No. EC00–100–000, "Order Authorizing Disposition of Jurisdictional Facilities," 92 FERC ¶ 61,281 (Sept. 29, 2000).

Separately, it is not at all clear whether there is any request or proceeding pending before the IRS. Such a request appears to be the assumption on which one of the Association's issues rests (*see* Association's Petition at 18, referring to the potential effects of "[a] contrary ruling by the IRS"), and also is expressly one of the assumptions on which CAN bases its instant stay request. However, the record contains no indication that the applicants have ever sought such an IRS ruling. Conversely, the applicants' responses to the Association's (and CAN's) arguments never deny seeking an IRS ruling.

[8] *See* CAN's Petition at 1–7. *See also id.* at 14 (rapid consolidation of nuclear industry justifies a stay pending changes in NRC regulations and enforcement practices); CAN's Reply Brief, dated Aug. 17, 2000, at 5–6.

[9] CAN's Reply Brief at 6.

[10] See Nine Mile Point, CLI–99–30, 50 NRC at 345.

[11] *See Vermont Yankee*, CLI–00–20, 52 NRC at ——, slip op. at 11–14 (petitioners raised issues involving technical qualifications); *Northern States Power Co.* (Monticello Nuclear Generating Plant), CLI–00–14, 52 NRC 37 (2000) (petitioners raised issues regarding the proposed licensees' technical qualifications), *reconsid'n denied*, CLI–00–19, 52 NRC 135 (2000); *Duquesne Light Co.* (Beaver Valley Power Station, Units 1 and 2), CLI–99–23, 50 NRC 21 (1999) (petitioner raised labor issues between union and management relating to plant safety); *Duquesne Light Co.* (Beaver Valley Power Station, Units 1 and 2), CLI–99–25, 50 NRC 224 (1999) (same).

[12] See Final Rule, "Streamlined Hearing Process for NRC Approval of License Transfers," 63 Fed. Reg. 66,721, 66,724 (Dec. 3, 1998).

[13] *See GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI–00–6, 51 NRC 193, 211 (2000); *North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1) & Northeast Nuclear Energy Co. (Millstone Station, Unit 3), CLI–99–27, 50 NRC 257, 268 (1999); *North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI–99–6, 49 NRC 201, 225 (1999); North Atlantic Energy Serv. Corp. (Seabrook Station, Unit 1), unpublished Protective Order of Presiding Officer, 1999 WL 202690 (March 24, 1999). *Cf.* 10 CFR 2.740(c)(6).

11. We recently granted standing in the *Vermont Yankee, Oyster Creek* and *Monticello* license transfer proceedings to petitioners who (like CAN) raised similar assertions and who (again like CAN) were authorized to represent members living or active quite close to the site.[14] Based on these similarities, we conclude that CAN has satisfied our standing requirements and is granted standing with respect to both the FitzPatrick and Indian Point 3 license transfers.

2. The Association

The Association is a group of about 400 technical and management employees (*e.g.*, reactor operators, reactor engineers) in the nuclear generation component of PASNY.[15] The Association is concerned that the proposed transfer will directly and materially affect (and, in fact, is already affecting) its members' morale and economic interests (salaries, benefits, pensions), as well as their working conditions, professional roles and safety culture—factors the Association believes will affect performance, attrition and operational safety at the two plants. The Association also argues that its members' health and safety may suffer as a direct result of the license transfer if an insufficient amount of revenue were to preclude the Entergy companies from adequately funding both occupational radiation protection and safe decommissioning activities. *See* Association's Petition at 17; Association's Reply Brief at 7–8, 25–26. The Association supports its assertions with notarized affirmations of the three individual petitioners, and it requests both intervenor status and a hearing. As relief, it seeks an order declining to approve the license transfer.

The Association's submission satisfies our standing requirements. Given that we have found that people (like CAN's members here) living or active within a few miles of a nuclear plant have shown standing in license transfer cases, it follows that employees who work inside a plant should ordinarily be accorded standing as well, as long as the alleged injury is fairly traceable to the license transfer. Here the Association has made a sufficient linkage to establish standing. The Association's concerns, if substantiated at a hearing, would be redressed by a favorable decision, *i.e.*, a decision declining to approve the transfer.

3. Local Governmental Entities

Cortlandt and the Hendrick Hudson School District collectively seek standing in the Indian Point 3 license transfer proceeding on the grounds that the Indian Point 3 plant is located within the boundaries of both governmental entities and that the plant's safe operation and decommissioning is of great concern to the safety and long-term economic well-being of the Town and School District communities. We find that, for these reasons, Cortlandt has demonstrated standing with respect to the Indian Point 3 license transfer application. *See Vermont Yankee*, CLI–00–20, 52 NRC at ____, slip op. at 5. Moreover, Cortlandt is the locus of the Indian Point 3 plant and therefore is in a position analogous to that of an individual living or working within a few miles of a plant whose license may be transferred. *See* discussion of CAN's standing, at page 14, *supra*.

Westchester, the County where the Indian Point 3 plant is located, seeks participant (but not intervenor) status in this proceeding, citing 10 CFR 2.715(c). *See* Westchester's Petition, dated July 31, 2000, at 2–3. As we indicated in *Nine Mile Point*, CLI–99–30, 50 NRC at 344, "the Commission has long recognized the benefits of participation in our proceedings by representatives of interested states, counties, municipalities, etc." We therefore grant Westchester's request for participant status regarding the Indian Point 3 license transfer.

B. Admissibility of Issues

To demonstrate that issues are admissible under Subpart M, a petitioner must

(1) Set forth the issues (factual and/or legal) that petitioner seeks to raise,
(2) demonstrate that those issues fall within the scope of the proceeding,
(3) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application,
(4) show that a genuine dispute exists with the applicant regarding the issues, and
(5) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.

See 10 CFR 2.1308; *Nine Mile Point*, CLI–99–30, 50 NRC at 342 (and cited authority). These standards do not allow mere "notice pleading;" the Commission will not accept "the filing of a vague, unparticularized" issue, unsupported by alleged fact or expert opinion and documentary support. *See Seabrook*, CLI–99–6, 49 NRC at 219 (citation and internal quotation marks omitted). General assertions or conclusions will not suffice. This is not to say, however, that our threshold admissibility requirements should be turned into a "fortress to deny intervention." *Cf. Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI–99–11, 49 NRC 328, 335 (1999), quoting *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB–216, 8 AEC 13, 20–21 (1974).

1. General Concerns

We initially touch on two general concerns raised by the Association and CAN. The first is a claimed decline in the educational opportunities and talent necessary for an effective nuclear workforce in the United States.*See* Association's Petition at 19–20. The second is an alleged over-concentration in the ownership of nuclear power plants. *See* CAN's Petition at 12–18. These may well be significant questions warranting Commission inquiry. Indeed, as we recently pointed out in *Vermont Yankee*, the NRC staff, at Commission direction, already is examining the industry consolidation question. *See* CLI–00–20, 52 NRC at__, slip op. at 17. But an individual license transfer adjudication is not an appropriate forum for a legislative-like inquiry into issues affecting the entire nuclear industry. *See id.* We therefore decline to admit for hearing petitioners' general issues on a declining nuclear workforce and on overly concentrated ownership.[16]

2. Financial Qualifications Issues

Cortlandt and CAN question whether Entergy FitzPatrick and Entergy Indian Point will have the necessary level of financial qualifications to run the FitzPatrick and Indian Point 3 plants safely. *See* Cortlandt's Petition at 5–6; CAN's Petition at 54–55. We admit Cortlandt's issue as discussed below insofar as it argues that Entergy Indian Point's potential joint and several liability for Entergy FitzPatrick's fuel and plant purchase expenses could draw into question the "reasonable assurance" that Entergy Indian Point has "the funds necessary" to operate the Indian Point plant safely. *See* 10 CFR 50.33(f)(2). In addition, we give Cortlandt and CAN an opportunity to formulate a challenge to Entergy's cost-and-revenue projections for both plants, after a protective order is entered making Entergy's confidential financial data available. *See generally Seabrook*, CLI–99–6, 49 NRC at 219–21. We turn now, briefly, to petitioners' specific claims.

a. Joint and Several Liability. Cortlandt asserts that several of the agreements underlying the transfer impose liability on Entergy Indian Point for certain financial obligations of Entergy FitzPatrick. *See* Cortlandt's Petition at 6–8 and Affirmation of Peter Henner at ¶ 14, both of which refer to a $586 million Facilities Payment Note (Exh. A to Indian Point Application) and a $171 million Fuel Payment Note (Exh. B to Indian Point 3 Application). Cortlandt is worried that these joint and several liability obligations would place the Indian Point 3 plant in financial jeopardy in the event of an accident at either Indian Point 3 or FitzPatrick.

Such financial jeopardy could, according to Cortlandt, leave the Indian Point plant in an unsafe condition which would place at risk both the environment and the public health. *See* Cortlandt's Petition at 7; Cortlandt's Supplemental Filing at 3; Affirmation of Peter Henner at ¶¶ 13, 60. In support, Cortlandt points to the fact that Entergy Indian Point has agreed to sell its entire output of electricity to PASNY for 3.6 cents per kilowatt-hour through 2004—a revenue level Cortlandt considers sufficient to cover Unit 3's operating costs, but insufficient to simultaneously satisfy any obligations arising from activities at the FitzPatrick plant. *See* Affirmation of Peter Henner at ¶ 15. According to Cortlandt, the problem is exacerbated by the Entergy companies' ostensible failure to allocate between the Indian Point 3 and FitzPatrick plants the payment for those plants' combined fuel assets.[17]

The applicants respond only briefly to this general line of argument, stating merely that Cortlandt's assertions of joint and several liability are vague and baseless. *See* Answer to Cortlandt's Petition at 13–14. We disagree with the applicants.[18] Cortlandt points specifically to two financial obligations (the Facilities Payment Note and the Fuel Payment Note) as sources of joint and several liability and asserts that PASNY's 3.6 cent per kilowatt hour payments would be insufficient to satisfy the transferees' obligations at both FitzPatrick and Indian Point 3. Moreover, Cortlandt's expert (Mr. Sansoucy) concludes that the estimated net operating income from Indian Point 3 for the next seven years would, under certain assumptions, be insufficient to cover the facility and fuel payments during that time. *See* Sansoucy Letter at 2. These allegations, backed by an expert's affidavit, create a genuine dispute warranting a hearing.[19]

b. *Limited Liability Corporation.* As a second line of argument regarding financial qualifications, Cortlandt asserts that Entergy Indian Point, as a limited liability company, may not have the necessary resources to protect the environment and meet its legal, contractual and regulatory obligations to its employees, PASNY (pursuant to the Indian Point 3 and FitzPatrick sales contracts), and those who may be injured or suffer property damage in a nuclear accident. *See* Affirmation of Peter Henner at ¶ 25(e). Cortlandt anticipates that Entergy Indian Point could lack the necessary resources to respond to these obligations if it were to face an accident, a shortfall in operating revenue due to fluctuations in the market, or changes in the energy market or in the cost of producing nuclear power. *See* Affirmation of Peter Henner at ¶ 54. Cortlandt asserts that the newly-formed Entergy Indian Point should be subject to the stricter financial requirements of 10 CFR 50.33(f)(3) and (4). *See* Affirmation of Peter Henner at ¶ 53.

Cortlandt acknowledges that we have issued reactor operating licenses to limited liability corporations in the past and that we have recently approved a transfer of such a license to an LLC whose only asset was the generating facility. *See* Affidavit of Peter Henner at ¶ 55, citing *Oyster Creek*, CLI–00–6, 51 NRC at 208. However, Cortlandt considers *Oyster Creek* factually distinguishable inasmuch as the transferor in that proceeding was an investor-owned utility while the transferor in the instant proceeding is a public entity. *See* Affirmation of Peter Henner at ¶ 59. Cortlandt also considers *Oyster Creek* to have been wrongly decided and argues that it creates a "fortress to deny intervention." *See* Affirmation of Peter Henner at ¶ 62.

We decline to admit this issue. The applicants have already provided the financial data called for by the requirements of 10 CFR 50.33(f)(3) and (4). Moreover, Cortlandt has offered us no convincing reason to reconsider our legal ruling in *Oyster Creek*,[20] and we find equally unconvincing its effort to distinguish that case factually. The issue at bar is the financial qualifications of the *transferee*. Cortlandt has not explained why the public status of the *transferor* is relevant to this issue.

c. *Baseline Funding.* CAN contends that we should decline to approve the license transfers until Entergy FitzPatrick and Entergy Indian Point, together with their parent corporations, establish "baseline funding" that is clearly defined and substantially increased over the current level. *See* CAN's Petition at 54. This general line of argument is quite similar (and, in some cases, identical) to an issue raised by CAN in *Vermont Yankee*. As we noted in that decision, CAN "nowhere defines the term ['baseline funding']; nor is it a term with which we are familiar." *See* CLI–00–20, 52 NRC at ____, slip op. at 16. However, from the context of CAN's references to baseline funding, it appears in the instant proceeding that CAN is referring to the $90 million line of credit that the Entergy companies are offering as supplemental funding, if necessary. For the reasons set forth below, we find that CAN has failed to provide an adequate basis for most of this issue, but may

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[14] *See Vermont Yankee*, CLI–00–20, 52 NRC at ____, slip op. at 4–5; *Oyster Creek*, CLI–00–6, 51 NRC at 202–03; *Monticello*, CLI–00–14, 52 NRC at 47.

[15] Messrs. Carano and Pulcher (both cosignatories on the Association's Petition to Intervene and Request for Hearing) are managers at the Indian Point 3 plant; Mr. Wiese (also a cosignatory) is a manager at the FitzPatrick plant. *See* Association's Petition at 2–6.

[16] Entergy's acquisition of the Indian Point and FitzPatrick plants, if the proposed deals are consummated, would give the "Entergy-family" control over approximately 7.9 nuclear plants. If Entergy then merges with the FPL Group and purchases the Indian Point 2 facility, as has been proposed, the Entergy conglomerate will then control 12.75 nuclear power plants. To place this in perspective, Commonwealth Edison historically (and currently) has held an ownership interest in 12.5 plants. *See Vermont Yankee*, CLI–00–20, 52 NRC at____, slip op. at 20 n.20. There are over 100 nuclear power reactor units in the United States. Petitioners have not explained why adding two reactors to Entergy's current fleet, in and of itself, poses a unique health and safety risk warranting an adjudicatory hearing.

[17] *See* Affirmation of Peter Henner at ¶ 17. *See also* Sansoucy Letter at 2 ("[I]t is not possible to render an opinion as to whether the income stream to Entergy will be sufficient to make the required payments. A particular problem is that the fuel payment stream cited in the application is for the combined fuel assets of [Indian Point] 3 and James A. FitzPatrick Nuclear Generating Station and does not allocate the portion of payments assigned to each site [citing Purchase and Sale Agreement, p. 14]."

[18] We do, however, agree with the applicants on one point. We see no factual basis (*e.g.*, affidavits or other documents) in the record for Cortlandt's assertion regarding the inadequacy of Entergy's proposed $50 million letter of credit. *See* Cortlandt's Petition at 7. This aspect of the financial qualifications issue is therefore not admitted for hearing.

[19] *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI–96–7, 43 NRC 235, 249 (1996) (citations and internal quotation marks omitted):

> Although section 2.714 imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from the applicant to the petitioner. Nor does section 2.714 require a petitioner to prove its case at the contention stage. For factual disputes, a petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion. On the other hand, a petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate.

[20] We recently reaffirmed our *Oyster Creek* holding. *See Monticello*, CLI–00–14, 52 NRC at 57.

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submit a revised issue regarding one facet of the "baseline funding" question within twenty days of issuance of a protective order that provides CAN access to the applicants' proprietary information.

CAN initially argues that the applicants have failed to explain whether the $50 million letter of credit from Entergy Global Investments, Inc., is to support all of Entergy's current nuclear holdings and future acquisitions, and whether those funds are immediately available to Entergy FitzPatrick and Entergy Indian Point or whether instead they are available only upon repayment of a $50 million letter of credit from Entergy Corp. *See* CAN's Petition at 54–55. In response, the applicants explain that the Entergy Corp.'s $50 million line of credit is part of the $90 million supplemental funding that various Entergy companies are making available to meet contingencies for both Entergy FitzPatrick and Entergy Indian Point. The funds, according to the applicants, are not available to the entire fleet of Entergy reactors. *See* Answer to CAN's Petition at 26 n.20. In our view, the applicants' explanation fills the informational gap about which CAN complains, leaving no "genuine dispute" on this point. *See* 10 CFR 2.1306(b)(2)(iv). We therefore do not admit this portion of CAN's "baseline funding" issue.[21]

CAN next argues that (a) neither FitzPatrick nor Indian Point 3 has ever met, on a sustained basis, the revenue generation standards required under the Purchase and Sale Agreement; (b) maintenance outage costs could easily exceed the $90 million in supplemental funding available to the two plants; and therefore (c) the applicants must provide additional assurance as to the health and safety of both the workers and the public. *See* CAN's Petition at 55. Applicants respond that CAN has provided no affidavits, supporting documents or other evidence to support this claim. *See* Answer to CAN's Petition at 26. However, CAN explains that the applicants' exclusion of certain financial information from the two applications precludes CAN from comparing the anticipated operating costs with the anticipated revenues and thereby assessing the transferees' ability to plan for maintenance outages or to build up sufficient funds for unexpected outages. *See* CAN's Reply Brief at 18.

Regarding part (b) of this argument, the "sufficiency" *vel non* of the $90 million supplemental funding does not constitute grounds for a hearing. In *Vermont Yankee*, we recently declined to admit essentially the same issue (also raised by CAN) on the ground that NRC rules do not mandate supplemental funding. "The parent company guarantee is supplemental information and not material to the financial qualifications requirements of 10 CFR 50.33(f)(2)." [22] CAN has given us no reason to reach a different conclusion in the instant proceeding.

Regarding the remainder of CAN's argument, however, we reach a somewhat different conclusion. CAN's claim of revenue shortfalls essentially challenges the Entergy companies' cost and revenue projections—precisely the kind of challenge we have indicated would be acceptable if based on sufficient facts, expert opinion or documentary support. *See Oyster Creek*, CLI–00–6, 51 NRC at 207, 208, citing *Seabrook*, CLI–99–6, 49 NRC at 219–21. In fact, we have already ruled that Cortlandt's somewhat different financial qualifications issue meets our threshold requirements for a hearing. It is true that CAN's version of the issue appears only in its Petition, without back-up support. However, we believe that CAN's explanation regarding the unavailability of relevant data entitles it to gain access to the data through a protective order (*see* page 12, *supra*) before being held to our usual specificity requirements.[23] The same is true of Cortlandt insofar as it also chooses to challenge Entergy's cost-and-revenue projections. We therefore authorize CAN and Cortlandt to submit a properly formulated and supported financial qualifications issue within 20 days of the entry of a protective order.

We caution CAN, and Cortlandt as well, that "absolute certainty" in financial forecasts is impossible, and that we do not require it. *See Seabrook*, CLI–99–6, 49 NRC at 221–22. Challenges to Entergy's financial qualifications "ultimately will prevail only if [they] can demonstrate relevant uncertainties significantly greater than those that usually cloud business outlooks." *Id.* at 222.

Finally, CAN asserts that Entergy's supplemental $90 million will prove inadequate to cover Entergy's various potential liabilities, including its Price-Anderson Act responsibility. We have already explained why the $90 million in supplemental funds is not part of this license transfer case. And, in our recent *Vermont Yankee* decision, we rejected an identical Price-Anderson claim by CAN:

> [N]othing about Price-Anderson coverage changes as a result of this license transfer. The same coverage will exist after license transfer as exists today. Moreover, contrary to what CAN suggests, Price-Anderson indemnification agreements continue in effect even after plants have ceased permanent operation and are engaged in decommissioning. *See* 10 CFR 140.92 (NRC Indemnification Agreement, Article VII); 10 CFR 50.54(w). Thus, CAN's Price-Anderson argument is ill-conceived. . . .[24]

In sum, we will consider a revised issue submitted by CAN regarding the applicants' cost and revenue projections, but we reject CAN's claims regarding the $90 million supplemental fund and the Price-Anderson Act.

3. Decommissioning Issues

a. *Consistency of Decommissioning Funding Arrangement with 10 CFR 50.75.* As explained at pages 5–6, *supra*, the applicants have structured an unusual arrangement whereby the transferor (PASNY) keeps the decommissioning fund after transferring the FitzPatrick and Indian Point 3 plants to the Entergy companies. Ordinarily, a transferee would receive the decommissioning fund along with the nuclear plant with which it was associated.

The Association raises the question whether the applicant's arrangement is consistent with the Commission's own decommissioning requirements of 10 CFR 50.75(e) which, according to the Association, requires the transferee (here, the Entergy companies) to hold the decommissioning funds. *See* Association's Petition at 18; Affidavit of Stephen Prussman. The Association disputes applicants' claim that the license transfer request meets the requirements of 10 CFR 50.75(e)(1)(vi), *i.e.*, that the applicant provide financial assurance "equivalent" to that offered by the decommissioning devices (*e.g.*, a surety or insurance arrangement) specified in the earlier portions of section 50.75(e)(1). In support, the Association asserts that outstanding questions of tax liability limit the availability of the decommissioning funds and also that the applicants impose various contractual limitations upon the availability of the funds (*i.e.*, limits based upon plants owned, limits on the Authority's liability, and provisions to pay less than the full decommissioning funding). *See* Prussman Affidavit at 2. The Association also asserts that the arrangement contravenes 10 CFR 50.75(e)(1)(v), which specifies that the terms of the contract must be with the licensee's customers and include provisions that the electricity buyers will pay for decommissioning. *See* Prussman Affidavit at 2.

At bottom, the issue here is whether the applicants' financial assurance arrangement is lawful under 10 CFR 50.75 and the "equivalent" of those otherwise prescribed in the regulations (10 CFR 50.75(e)(1)(i)–(v)). The issue raises genuine disputes of law and fact and we admit it for hearing.[25] We now move to the remaining decommissioning issues. None of these is admissible.

b. *Commitment and Ability to Decommission Indian Point 3 to Greenfield Condition.* Cortlandt's first substantive issue regarding decommissioning funding is whether the Entergy companies are both committed and financially able to decommission the Indian Point 3 facility to "greenfield" condition [26] and thereby give Cortlandt the benefits of the greenfield decommissioning of not only Unit 3 but also Units 1 and 2 (whose decommissioning awaits the decommissioning of Unit 3).[27]

Concerning the Entergy companies' commitment, Cortlandt maintains that the transfer documents do not commit Entergy Indian Point to greenfield decommissioning, even though the planning for greenfield decommissioning must begin soon if it is to be achieved.[28] Cortlandt does not trust Entergy Indian Point, as a for-profit entity, to spend more than the minimum amount possible to decommission the facility, even if this means decommissioning it to less than greenfield conditions.[29]

Concerning the Entergy companies' ability to fund decommissioning, Cortlandt questions the adequacy of the decommissioning fund in light of Entergy Indian Point's joint and several liability for Entergy FitzPatrick's obligations.[30] It also challenges the applicants' reliance on the decommissioning cost estimate established in the NRC's regulations, arguing that the actual costs may be higher than the regulations envision.[31] Cortlandt objects that the applicants have not made enough information available for Cortlandt to determine the sufficiency of the decommissioning fund.[32] Cortlandt explains that "greenfielding" is particularly important to it because the plant property is a prime area for either residential/commercial development or recreational use.[33]

The principal difficulty Cortlandt faces with this issue is that our regulations do not require Entergy Indian Point to decommission the plant to greenfield condition. Although Cortlandt may have grounds for an action in a State Court against PASNY for breach of a contractual commitment to return the facility land to greenfield condition,[34] Cortlandt has provided no basis for us to question Entergy Indian Point's ability or willingness to comply with the NRC's decommissioning requirements.

Cortlandt's argument has other flaws as well. Its challenge to the applicants' use of the very decommissioning cost estimate methodology sanctioned by our rules amounts to an impermissible collateral attack on 10 CFR 50.75.[35] Cortlandt has not attempted to justify a waiver here of our rule prohibiting such attacks. *See* 10 CFR 2.1329. Notably, the fund's current assets *exceed* regulatory requirements.[36] Finally, the decommissioning funds are held in a special fund, separate and apart from Entergy Indian Point's other assets, and are therefore unaffected by any joint and several liability that Entergy Indian Point may have for the obligations of Entergy FitzPatrick.

For the reasons set forth above, this issue is not admissible.

c. *Extension or Renewal of Indian Point 3 License.* Cortlandt's next substantive issue is whether the Entergy

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[21] Entergy Global Investments, Inc., has offered two $20 million lines of credit to Entergy FitzPatrick and Entergy Indian Point, respectively. However, contrary to CAN's representations, it has not issued a $50 million dollar letter of credit.

[22] *See* CLI–00–20, 52 NRC at ____, slip op. at 21–22, citing *Oyster Creek*, CLI–00–6, 51 NRC at 205. *See also Vermont Yankee*, CLI–00–20, 52 NRC at ____, slip op. at 25:

> [A]lthough AmerGen's $200 million reserve fund provides significant assurance of sufficient operating and decommissioning funds in the event of a problem, the fund is not, strictly speaking, required by our rules. It therefore lies outside the bounds of our license transfer hearing process—which focuses on whether AmerGen Vermont meets the required financial and technical qualifications.

[23] Subpart M calls for "specificity" in pleadings. *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI–00–18, 52 NRC 129, 131–32 (2000). However, in the unusual setting here, where critical information has been submitted to the NRC under a claim of confidentiality and was not available to petitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an issue until the petitioner has had an opportunity to review this information and submit a properly documented issue.

[24] CLI–00–20, 52 NRC at ____, slip op. at 22. In that same decision, we further commented on the analogous Price-Anderson argument of another petitioner (Vermont) that:

> . . . our regulations only require it to show that it has sufficient cash equivalents (such as the parent company guarantee) to cover the retroactive $10 million premium required by our regulations at 10 CFR 140.21(e)–(f). *See Oyster Creek*, CLI–00–6, 51 NRC at 206. . . . Vermont's argument that the applicant must meet financial requirements in addition to those imposed by our regulations constitutes, in effect, a demand for additional rules, but it does not provide an adequate basis for a hearing. *Id.* Moreover, * * *, prior to issuance of the amended license to AmerGen Vermont, it must obtain all regulatorily-required property damage insurance.

[25] CAN raises related issues: whether NRC approval of the transfers will deprive the Commission of authority to require PASNY to conduct remediation under decommissioning, and whether, under those circumstances, PASNY would no longer have access to the decommissioning trust fund for the remediation it would need to complete. *See* CAN's Reply Brief at 14. These issues relate to the admitted issue involving 10 CFR 50.75, *supra*, and CAN may address them at the hearing in that context.

CAN and the Association should be aware, however, that the decommissioning trust agreement has been modified somewhat by the NRC staff's November 9, 2000 orders. *See* both Staff Orders at 6 ¶ 9.

[26] *See* Cortlandt's Petition at 8; Cortlandt's Supplemental Filing at 2; Affirmation of Peter Henner at ¶9, 26(a), 31–32, 35–36, 52, 61; Sansoucy Letter at 4. Cortlandt is particularly concerned about whether the transferees have the financial ability to remove permanently the spent fuel rods from the site upon decommissioning, without using dry cask storage. *See* Affirmation of Peter Henner at ¶ 12; Sansoucy Letter at 3; Cortlandt Verified Petition at 16. PASNY estimates that the fund for decommissioning both the FitzPatrick and Indian Point 3 plants will contain $1.9 billion at the time of license expiration. See Cortlandt Verified Petition at 11.

[27] *See* Affirmation of Peter Henner at ¶ 7. Although it is less than clear, Cortlandt appears to argue that the full decommissioning of Indian Point Unit 1 was postponed to coincide with the decommissioning of Units 2 and 3. *See* Affirmation of Peter Henner at ¶¶ 43–46; Cortlandt's Reply Brief at 14. Units 1 and 2 are not owned by PASNY and are not the subject of this proceeding.

[28] *See* Affirmation of Peter Henner at ¶ 35.

[29] *See* Affirmation of Peter Henner at ¶¶ 36–41; Cortlandt Verified Petition at 11.

[30] *See* Cortlandt's Reply Brief at 11.

[31] *See* Cortlandt's Reply Brief at 11–12.

[32] *See* Cortlandt's Petition at 8; Cortlandt's Supplemental Filing at 3.

[33] *See* Affirmation of Peter Henner at ¶ 33; Cortlandt Verified Petition at 10.

[34] *See* note 6, *supra*. Cortlandt refers to a "social compact" between Cortlandt and PASNY. According to Cortlandt, PASNY agreed in this compact to decommission Indian Point Units 1, 2 and 3 to greenfield condition in return for Cortlandt agreeing to permit the siting of Indian Point 3 at its current location. *See* Cortlandt's Reply Brief at 10–11. Similarly, Cortlandt asserts that "[t]he monies in the decommissioning fund were contributed based on [PASNY's] commitment to the surrounding community, including [Cortlandt], to restore the site to greenfield conditions." Cortlandt asserts that the applicants cannot legitimately argue that greenfielding is beyond the scope of the transfer proceeding yet, at the same time, transfer the money that was placed in the decommissioning fund on the understanding that it would be used to "greenfield" the site. *See* Cortlandt's Reply Brief at 15.

[35] *See Vermont Yankee*, CLI–00–20, 52 NRC at __, slip op. at 8. CAN also challenges Entergy's use of our generic decommissioning cost formula. *See* CAN's Petition at 18–23; CAN's Reply Brief at 12–13. For the reasons we gave in *Vermont Yankee*, 52 NRC at __, slip op. at 8, we find CAN's claim inadmissible.

[36] As we indicated in *Seabrook*, CLI–99–6, 49 NRC at 218 n.9, power reactor licensees will occasionally set aside more funds than the NRC requires—generally to cover activities such as the removal and subsequent disposal of spent fuel or non-radioactive structures and materials beyond the level necessary to reduce residual radioactivity to the levels required under our regulations. Moreover, other governmental agencies, such as the FERC and state public utilities commissions, may also impose funding requirements which licensees may have to satisfy, over and above those of the NRC.

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companies would seek to extend or renew the Indian Point 3 operating license (which expires in 2015)[37] and thereby delay Cortlandt's enjoyment of the full panoply of health-and-safety benefits associated with the expected decommissioning of all three units.[38] Specifically, Cortlandt refers to its expectations that PASNY would dismantle and move the facility (*i.e.*, Unit 3) offsite and that any onsite storage of spent fuel by PASNY would be of limited duration.[39] Cortlandt claims that any delay in decommissioning Unit 3 (and any consequent postponement of the decommissioning of Units 1 and 2) will adversely affect Cortlandt's health and safety interests[40] by subjecting Cortlandt and its citizens to the possibility of increased radiological exposure as a result of both the continued operation of the plant and the continued (and possibly expanded) onsite storage of spent fuel.[41] By contrast, Cortlandt expects Entergy Indian Point, as a for-profit entity, to run the plant as long as possible, in order to continue generating revenue.[42] For this reason, Cortlandt asserts that, with the time for decommissioning planning so near, the NRC staff's assessment of financial ability must not be truncated, but should instead include an evaluation of the transferees' ability to decommission Indian Point 3—both as currently licensed and as that license may be renewed or extended.[43]

These concerns do not fall within the scope of this license transfer proceeding. Entergy Indian Point does not here seek in its application to renew or extend the Indian Point 3 operating license, nor does its pending application assume such a request. Moreover, a request to renew or extend the license would seem just as likely from PASNY as from Entergy Indian Point, assuming the plant remains profitable. Finally, in posing this issue, Cortlandt overlooks its right to seek intervenor status in any application for license renewal or license extension that Entergy Indian Point may file. These grounds for rejection apply equally to Cortlandt's concerns regarding delayed decommissioning of the three units, the resulting need both to store additional spent fuel onsite during the plant's extended life and the resulting need to continue the storage of current spent fuel for a longer time than Cortlandt had anticipated.[44]

In a related vein, Cortlandt expresses concern that the Indian Point 3 facility will be used as a temporary repository for spent fuel from other nuclear facilities owned by the Entergy family of companies.[45] This is pure speculation. The transfer application does not seek such authority, and the Indian Point 3 facility could not accept spent fuel from other facilities without transshipment license authority. Should Entergy ever seek such authority, Cortlandt would have the right to seek intervenor status.

d. *Management of Indian Point 3 Decommissioning Fund.* Cortlandt next questions whether sufficient controls exist regarding the management of the decommissioning fund.[46] It suggests that the decommissioning agreements contain ill-defined and uncertain liabilities for the public, and expresses concern that any such additional liabilities or costs incurred by PASNY will have to be absorbed either by PASNY customers or the New York taxpayers.[47] Also, Cortlandt (through its expert, Mr. Sansoucy) claims that PASNY may be retaining decommissioning funds in excess of the amount required and that the application is silent as to the distribution of any excess money remaining after decommissioning.[48]

With the exception of Mr. Sansoucy's assertion concerning excess funds, the issue is overly vague. Cortlandt nowhere identifies the liabilities about which it is concerned. Nor does it explain why it believes they would fall on the public's shoulders. Mr. Sansoucy's claim, while sufficiently specific, lies beyond the scope of this proceeding. The Commission does not have statutory authority to determine the recipient of excess decommissioning funds. For these reasons, we decline to admit this issue.[49]

e. *Scope of Commission's Consideration of Indian Point 3 Decommissioning Issues to Include Indian Point 2 Matters.* In addition to raising these substantive issues regarding decommissioning funding, Cortlandt requests that the Commission consider the transfer in light of both the fact that Units 2 and 3 share common facilities and the possibility that Entergy Indian Point (or one of its affiliates) may acquire Indian Point Unit 2—a possibility which Cortlandt states is specifically contemplated in the Indian Point 3 transfer agreements.[50] We decline to expand the scope of this proceeding in the two ways that Cortlandt requests. Cortlandt has not explained how either the commonality of facilities or Entergy's possible purchase of Unit 2 bears on the acceptability of the Indian Point 3 transfer.

f. *Entergy's Intention to Make a Profit on the Decommissioning Fund.* CAN objects to Entergy's espoused intent to make a profit on the decommissioning trust funds and to return that profit to its shareholders. To accomplish this, Entergy would, according to CAN, have to cut corners and thereby risk public health and safety. *See* CAN's Petition at 21. CAN believes that Entergy will try to turn a profit by minimizing the onsite remediation by constructing new power plants on the decommissioning sites and rotating the decommissioning work schedules at simultaneously decommissioning facilities. *See* CAN's Petition at 21, 22.

[37] *See* Affirmation of Peter Henner at ¶ 3. Cortlandt explains that certain other Entergy companies are already in the process of renewing the licenses of other nuclear plants (*e.g.*, Arkansas One), thereby purportedly increasing the likelihood that Entergy Indian Point would likewise seek to renew the Indian Point 3 license. *See* Affirmation of Peter Henner at 25(b).

Along similar lines, Cortlandt also asks the Commission to consider the impact of the proposed transfers on possible requests for extensions and/or renewals of the licenses for Unit 2 at Indian Point. *See* Cortlandt's Petition at 8–9; Cortlandt's Supplemental Filing at 2, 4. Cortlandt explains that the operating license for this unit expires in 2013. *See* Affirmation of Peter Henner at ¶ 3. According to Cortlandt, the instant license transfer application will affect whether and by whom a future application for license renewal is ultimately made. *See* Affirmation of Peter Henner at ¶ 39.

[38] *See* Affirmation of Peter Henner at ¶ 6, 7, 11, 44; Cortlandt's Supplemental Filing at 3; Cortlandt's Reply Brief at 12–14. Cortlandt explains that Indian Point Unit 1 has not been an operating facility since 1974 but has yet to be fully decommissioned (*see* Affirmation of Peter Henner at ¶ 3) and claims that Consolidated Edison Inc. of New York ("ConEd," the owner of Indian Point Units 1 and 2) has committed to decommission its units for unrestricted use at the same time as PASNY decommissions Unit 3 for unrestricted use. *See* Cortlandt's Petition at 8–9; Cortlandt's Supplemental Filing at 2, 4.

[39] *See* Cortlandt's Petition at 5; Cortlandt's Supplemental Filing, at 4; Cortlandt Verified Petition at 16.

[40] *See* Affirmation of Peter Henner at ¶ 11.

[41] *See* Affirmation of Peter Henner at ¶¶ 25(b), 34; Cortlandt Verified Petition at 16.

[42] *See* Affirmation of Peter Henner at ¶¶ 36, 40; Cortlandt Verified Petition at 11.

[43] *See* Affirmation of Peter Henner at ¶ 6; Cortlandt's Reply Brief at 12–14.

[44] *See* Cortlandt's Petition at 5; Cortlandt's Supplemental Filing at 4; Affirmation of Peter Henner at ¶¶ 11–13, 61; Sansoucy Letter at 3; Cortlandt Verified Petition at 16; Cortlandt's Reply Brief at 12, 14.

[45] *See* Affirmation of Peter Henner at ¶ 25(c); Cortlandt Verified Petition at 16.

[46] *See* Cortlandt's Petition at 8.

[47] *See* Cortlandt's Petition at 9.

[48] *See* Sansoucy Letter at 3.

[49] To the extent that Mr. Sansoucy intended here to argue that such retention of decommissioning funds was a way of making a profit off of the fund, we address that issue at page 33, below.

[50] *See* Affirmation of Peter Henner at ¶¶ 8, 42, 46; Cortlandt's Reply Brief at 14. In fact, Entergy recently announced that it had contracted to purchase from ConEd both Indian Point Units 1 and 2. *See* "Entergy to Purchase 2 Nuclear Power Plants in New York State," *Wall Street Journal* at A–6 (Nov. 10, 2000).

In support, CAN refers us to page 23 of Entergy's 1999 Annual Report.[51] We have checked the cited page on Entergy's web page and find no such statement. Although page 24 of the Annual Report does contain a reference to "manag[ing] decommissioning of nuclear plants . . . as a source of earnings," the reference is made in the context of Entergy's contracts to decommission plants owned by other entities. We conclude that CAN has provided no basis for this issue, and we decline to admit it.

g. *Lack of Provision for Off-Site Remediation.* CAN asserts that, despite both plants having an incontestible record of off-site releases of hazardous radioactive and non-radioactive material, neither the Decommissioning Cost Estimates, the Purchase and Sale Agreement nor the License Transfer Applications contain a provision addressing off-site remediation. *See* CAN's Petition at 20, 23–26. In support, CAN points specifically to section 2.4(b) of the Purchase and Sale Agreement, which provides that Entergy will not assume decommissioning responsibility for the remediation of off-site contamination occurring during PASNY's ownership of the plants. Although CAN acknowledges that it may be unfair to hold Entergy accountable for contamination occurring under PASNY's ownership, it points out that the Purchase and Sales Agreement contains no provision holding PASNY liable for that contamination. CAN is concerned that an NRC approval of the transfer could absolve both Entergy and PASNY of such responsibility. *See* CAN's Petition at 23–24.

To resolve this problem, CAN proposes that the Commission impose one of the following two conditions on the transfer:

> "Through the Environmental Impact Statement requested [elsewhere in CAN's Petition, the NRC staff should] establish an accurate and detailed study of [the off-site] contamination . . . which PASNY must remediate before the license can be transferred."
>
> or
>
> PASNY "should not simply be released from all licensee responsibility, but rather issued a "decommissioning" license until [PASNY] has completed" whatever remediation for which Entergy is not assuming responsibility.

See CAN's Petition at 24. If the Commission imposes either of these conditions, CAN requests that it also address how to fund this partial remediation. CAN is concerned that PASNY's accountability for partial site remediation and cleanup not compromise the quantity of funds available to complete the decommissioning after the license expires. *See* CAN's Petition at 24. CAN also provides a third alternative condition:

> The Commission disregard "clause 2.4(b) . . . insofar as [it affects] decommissioning responsibilities . . .;, and Entergy should be required to conduct a complete . . . decommissioning without regard to whether the off-site contamination was caused by [PASNY] or Entergy, but [with] Entergy . . . allowed to recover those [actual] costs from [PASNY that] . . . exceed the amount in the Decommissioning Trust."

See CAN's Petition at 24–25.

Applicants respond that nothing in the purchase and sales agreement relieves PASNY of any liabilities not assumed by the Entergy applicants, and that PASNY "retains liability for off-site disposal, storage, etc. that occurred prior to closing." *See* Answer to CAN's Petition at 14. Our review of the agreement gives us no reason to question the applicants' interpretation. We therefore see no reason to impose the conditions CAN has requested. Moreover, we see no basis for CAN's concern that this retained liability will somehow deplete the FitzPatrick and Indian Point 3 decommissioning trust funds. Those funds are set aside in a trust specifically and exclusively dedicated to the purpose of decommissioning the plant sites; the trust cannot be used for offsite remediation.[52] In short, we see nothing in CAN's offsite remediation argument that raises a material issue of fact or law meriting a hearing.

h. *Environmental Impact Statements.* CAN requests the Commission to prepare environmental impact statements ("EIS") regarding the adequacy of the decommissioning funding. *See* CAN's Petition at 26–27. CAN later refines this request to cover only the levels of on- and off-site contamination. *See* CAN's Reply Brief at 18. CAN points out that, prior to 1980, plants throughout the United States buried radioactive waste both on- and off-site, with poor documentation and few safeguards. CAN would like the Commission to prepare EIS's for the two plants to determine the extent of contamination and to set realistic funding requirements. CAN points to the experimental nature of decommissioning and to the decommissioning cost overruns at every decommissioned plant to date. *See* CAN's Petition at 26–27. CAN doubts Entergy's claim that, with experience, it can decrease its decommissioning costs by developing special techniques. CAN also doubts that Entergy will have garnered that experience by the time it needs to decommission both Indian Point 3 and FitzPatrick starting in 2013 and 2015, respectively.[53] CAN further asserts that the Entergy companies' inability to recoup their decommissioning expenses from ratepayers constitutes yet another obstacle to successful decommissioning. *See* CAN's Petition at 28. We decline to admit this issue for the same reasons set forth in our recent decision in *Vermont Yankee*:

> CAN's "NEPA" issue amounts to another effort to litigate site-specific decommissioning cost estimates. CAN's position rests on the assumption that our regulations require AmerGen Vermont, in its license transfer application, to provide an estimate of the actual decommissioning and site clean-up costs. As explained in the previous section of this order, our regulations impose no such requirement. Our decommissioning funding regulation (10 CFR 50.75(c)) generically establishes the amount of decommissioning funds that must be set aside.[47] CAN cannot challenge the regulation in this proceeding. As noted above, the NRC's decommissioning funding rule reflects a deliberate decision not to require site-specific estimates in setting decommissioning funding levels. CAN has not sought a waiver of that rule in this proceeding. *See* 10 CFR 2.1329 * * *; *Seabrook*, CLI–99–6, 49 NRC at 217 n.8. Nor has CAN reconciled its demand for a NEPA review with our rules' "categorical exclusion" of license transfers from NEPA requirements. *See* 10 CFR 51.22(c)(21).
>
> [47] CAN's supporting argument that decommissioning technology is still in an experimental stage fails for the same reason, *i.e.*, it is a collateral attack on 10 CFR 50.75(c) establishing the amount of decommissioning funds that must be set aside. It is worth noting that the NRC rule which CAN attacks, 10 CFR 50.75(c), is in fact supported by a

[51] CAN's Petition at 21 and n.22. However, CAN provides us a copy of neither the report nor the cited page. Even after Entergy denied ever expressing such an intent (Answer to CAN's Petition at 13 n.9), CAN in its Reply Brief still failed to support its claim with the necessary documentation.

[52] Decommissioning trusts are reserved for decommissioning as defined in 10 CFR § 50.2. Thus, offsite remediation would not be an accepted expense. However, some licensees use the decommissioning trust to accumulate funds for both "decommissioning" as NRC defines it and decommissioning in the broader sense that includes interim spent fuel management, non-radioactive structure demolition, and site remediation to greenfield status. The Commission accepts this approach as long as the NRC-defined "decommissioning" funds are clearly earmarked. Also, once the funds are in the decommissioning trust, withdrawals are limited by 10 CFR § 50.82, so that non-"decommissioning" funds (again, as defined by the NRC) could only be spent after the NRC-defined "decommissioning" work had been finished or committed.

[53] *See* CAN's Petition at 27–28. The FitzPatrick license actually expires in 2014.

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generic environmental impact statement. *See* Generic Environmental Impact Statement, NUREG–0586 (August 1988) (issued in conjunction with the promulgation of 10 CFR 50.75 and 50.82). *See generally* Final Rule, "General Requirements for Decommissioning Nuclear Facilities," 53 FR 24018, 24051 (June 27, 1988).[54]

CAN also seeks an EIS on two grounds unrelated to decommissioning: that the problems at Indian Point 3 which persuaded Entergy to pass up an opportunity to become the plant's operator in 1996 still exist (*see* CAN's Petition at 48–51), and that the Commission's failure to conduct an antitrust review constitutes a major federal action affecting the quality of the environment (*see* CAN's Petition at 61). CAN later broadens the first of these so as to seek an EIS on the new owners' operation of both plants. *See* CAN's Reply Brief at 17–18. We reject these two EIS issues on the same grounds as set forth immediately above. In addition, we exclude the first EIS issue (as broadened) on the ground that the scope of this proceeding does not include the new owners' operation of the plants—but includes only the transfer of their operating licenses. Further, we exclude the antitrust EIS issue on same ground we used to reject CAN's same argument in *Vermont Yankee*.[55]

4. CAN's Non-Labor Related Technical Qualifications Issues

CAN raises an array of challenges to the technical qualifications of the workforce that will be employed at FitzPatrick and Indian Point 3 once the Entergy companies take over those plants. CAN's claims, however, are not directly linked to the license transfers at issue here, but rest largely on current operational issues at the two plants and on Entergy's operation of other plants, including non-nuclear plants. As in our recent *Vermont Yankee* and *Oyster Creek* decisions, where we rejected claims all but identical to CAN's, we find here that CAN has provided no documents, facts or expert opinion establishing a genuine issue concerning technical qualifications. *See also Millstone*, CLI–00–18, 52 NRC at 131–32, citing 10 CFR 2.1306(b)(2)(iii).

a. *Age-Related Defects at Both Plants.* CAN asserts that the Entergy companies lack the ability to manage FitzPatrick (a boiling-water reactor or "BWR") and Indian Point 3 (a pressurized-water reactor or "PWR"). CAN claims that FitzPatrick is older and subject to more age-related degradation than Entergy's other BWRs. *See* CAN's Petition at 29–36. CAN concludes that Entergy is significantly overstating its claim of experience in maintaining and operating BWRs and that Entergy's spotty record in managing PWRs (such as Indian Point 3) suggests the company's ability to manage an increasing number of aging reactors may be stretched past the breaking point. *See id.* at 29–30. Based on these arguments, CAN asks the Commission to "take into consideration the effect of consolidating a large number of aging, mismanaged and otherwise troubled facilities under a single corporate umbrella, especially given the rigors of operating those facilities in a deregulated electricity market without the flexibility of returning to ratepayers to reimburse unexpected operating and maintenance costs." *See id.* at 30.

CAN ignores Entergy Nuclear Operations' stated intent to employ the same personnel as are currently working at the two plants. Nor does CAN's Petition challenge these individuals' technical qualifications. Its discussion of Entergy's experience in operating other BWRs and PWRs and the age of other Entergy plants does not bear on the technical qualifications of the transferees and their intended employees at FitzPatrick and Indian Point 3. *See Vermont Yankee*, CLI–00–20, 52 NRC at ____, slip op. at 11–13 (declining to admit a similar issue where CAN failed to challenge the technical qualifications of the plant's intended employees). We therefore decline to admit this issue.

b. *Leak-Detection Problems at Both Plants.* CAN points to alleged leak detection problems at the two plants and asks the Commission to require Entergy to modify inspections and leak detection equipment and to institute programs to study the rate of crack propagation. CAN further asks the Commission to oversee the development of systems and procedures necessary to provide an objective review of these actions. *See* CAN's Petition at 32–33. Moreover, CAN asks the Commission to deny the license transfer application on the ground that Entergy, with a tightly-packed maintenance schedule and a depleted workforce (due to "profitability" cuts), lacks the flexibility necessary to react quickly to surprises at two or more generating plants. *See* CAN's Petition at 33. In a similar technical challenge to the two applications, CAN points to certain evidence that the Updated Final Safety Analysis Reports ("UFSAR") for both plants have not been kept up-to-date, and argues that it would be premature to approve a transfer of licenses for reactors which were in an unanalyzed condition. *See* CAN's Petition at 34–36.

We recently addressed a quite similar argument from CAN in *Vermont Yankee* concerning another company's ability to discern cracks and leaks. We consider our response there equally dispositive of CAN's contention in this proceeding:

> These arguments address the adequacy of the plant's ongoing safety-related programs. Operational issues of this kind will remain the same whether or not the license is transferred. The Commission has indicated that a license transfer hearing is not the proper forum in which to conduct a full-scale health-and-safety review of a plant.[14]

[14] "A license transfer proceeding is not a forum for a full review of all aspects of current plant operation." *See Oyster Creek*, CLI–00–6, 51 NRC at 213, 214 * * * CAN may, of course, file a petition for staff enforcement action pursuant to 10 CFR 2.206 if it is concerned about current safety issues at Vermont Yankee.

See Vermont Yankee, CLI–00–20, 52 NRC at ____, slip op. at 13. Moreover, in *Vermont Yankee*, we rejected a similar request from CAN (that the Commission require special training as a condition for its approval of the transfer) on the ground that CAN "failed to demonstrate that a genuine dispute exists, with requisite specificity, on this basis." *See* CLI–00–20, 52 NRC at ____, slip op. at 13. *See also* 10 CFR 2.1306(b)(2)(iv). This ruling applies equally to CAN's similar argument here.[56]

c. *Issues of Management "Character".* CAN asserts that Entergy's license transfer applications rely on the resources and experience of the parent company (Entergy Corp.), its public utility subsidiaries (Entergy Arkansas Inc., Entergy Gulf States Inc., Entergy Louisiana Inc., and System Energy Resources Inc.), and its operations subsidiary (Entergy Operations Inc.) to establish a track record as a nuclear operator. CAN describes the operating records of these affiliates as "mixed at best, irrelevant in some regards, and alarming in many others:" *See* CAN's Petition at 37. CAN further argues that, because the majority of Entergy Nuclear Operations", Entergy FitzPatrick's and Entergy Indian Point's corporate officers hold positions in other Entergy companies, these two new companies will inevitably inherit the existing companies' record and operational style. See CAN's Petition at 37; CAN's Reply Brief at 16. According to CAN, this record and style are reflected in the facts that Entergy has among the highest number of NRC violations in the United States and that the company's improved capacity factors are "shadowed by questionable maintenance practices and inadequate procedures, work performance, and operator training." *See* CAN's Petition at 38. CAN relies not only on Entergy's record as a nuclear generator; it also points to findings that, in the electrical transmission and delivery business, Entergy has a record of marginalizing safe operations by chronically postponing maintenance and reducing the skilled workforce to levels that compromise worker and public safety. *See* CAN's Petition at 38–40, citing findings of the Texas Public Utility Commission ("Texas PUC") and the Council of the City of New Orleans, both in 1998.[57]

Absent strong support for a claim that difficulties at other plants run by a corporate parent will affect the plant(s) at issue before the Commission, we are unwilling to use our hearing process as a forum for a wide-ranging inquiry into the corporate parent's general activities across the country. Here, CAN's various references to problems of other Entergy subsidiaries, including the non-nuclear subsidiaries, tell us little if anything about Entergy Nuclear Operations' technical qualifications to operate FitzPatrick and Indian Point 3 using the same workforce that is already there. *See Vermont Yankee*, CLI–00–20, 52 NRC at ____, slip op. at 14–15, (concluding that "claims of staffing deficiencies at other nuclear facilities owned by AmerGen" were insufficient to trigger our hearing process). *See also Oyster Creek*, 51 NRC at 209–10.

Nor do we believe a hearing is merited by CAN's conclusory assertions that the corporate culture of Entergy Nuclear Operations will be tainted by the influence of high-level officials from the parent company and other subsidiaries. CAN does not identify which officials will undercut safety at Indian Point and FitzPatrick or explain how they will do so. CAN's claims are too broad and too vague to be suitable for adjudication. We therefore decline to admit this issue.

d. *Cost-Cutting Pressures.* CAN questions whether Entergy FitzPatrick and Entergy Indian Point can safely accomplish the goals necessary for the companies to reduce costs to a level sufficiently low for the plants' electric rates to be competitive, *i.e.*, reducing maintenance and outage times and workforce size.[58] According to CAN, Entergy's applications indicate a goal of 85-percent capacity (or 15-percent downtime). CAN acknowledges that PASNY was able to meet the same refueling schedule at Indian Point 3 that Entergy will need to maintain, but says that PASNY did so only by unnecessarily exposing its workforce to radiation. *See* CAN's Petition at 41–42. Finally, CAN draws the Commission's attention to ConEd's decision not to replace the steam generators at Indian Point Unit 2, warning that Entergy will experience cost-cutting pressures similar to those which led to ConEd's problems.[59]

CAN has failed to provide adequate support or basis for its general "cost-cutting" issue. It has not provided the necessary nexus between the problems at other plants (some not even in this country) operated by different companies and the difficulties it anticipates from Entergy FitzPatrick, Entergy Indian Point and Entergy Nuclear Operations. *See Oyster Creek*, CLI–00–6, 51 NRC at 209–10. Nor does it offer any factual support for its claim that the Entergy companies will subordinate safety to production goals or profits. *See Oyster Creek*, CLI–00–6, 51 NRC at 207 ("Absent [documentary] support, this agency has declined to assume that licensees will contravene our regulations") and cited authority. Finally, CAN's speculation about the likelihood and ramifications of staff reductions is insufficient to trigger a hearing on this issue. CAN points to no information suggesting that Entergy plans to reduce its staff below NRC requirements. As we stated in *Oyster Creek:*

> For key positions necessary to operate a plant safely, the Commission has regulations requiring specific staffing levels and qualifications. *See* 10 CFR § 50.54(m). Other than those specific positions, the licensee has a responsibility to ensure that it has adequate staff to meet the Commission's regulatory requirements. If a licensee's staff reductions or other cost-cutting decisions result in its being out of compliance with NRC regulations, then (as noted above) the agency can and will take the necessary enforcement action to ensure the public health and safety. The Oyster Creek application does not on its face suggest any likelihood of a cost-driven lapse in compliance with NRC safety rules.

CLI–00–6, 51 NRC at 209. *See also id.* at 214 ("so long as personnel decisions do not impose [a] risk [to the public health and safety], our regulations and policy do not preclude a licensee from reducing or replacing portions of its staff").

5. *The Association's Labor-Related Technical Qualifications Issues*

The Association raises labor-related issues which, it claims, bear directly on the question whether the transfer will ensure the presence of "sufficient management personnel, and appropriate working conditions, so as to assure continued safe operation of the facilities." See Association's Petition at 9. As noted in the discussion of standing, supra, the Association alleges a precipitous decline in morale among the members of the Association; a high level of confusion regarding future rights and benefits; a significantly increased attrition rate among Association members; a general belief that the transfer will markedly reduce their rights and benefits; and a developing uneasiness with, and unwillingness to trust, or communicate safety-related problems to, senior executive nuclear management or corporate management. *See* Association's Petition at 17.

The Association's claims arise out of what it says is the "increasingly adversarial nature of the dialogue (or lack thereof) between its members and the proposed transferor and transferees concerning the putative rights and benefits that will be available to petitioners following the proposed transfer." *See id.* A contest over "putative rights and benefits" amounts, of course, to a labor dispute rooted in economic concerns. Indeed, the Association has brought state-court litigation to adjudicate the labor controversy and, as if to stress the labor relations nature of its claims, the Association has included its lengthy

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[54] CLI–00–20, 52 NRC at____, slip op. at 8–10 (final footnote omitted). *See also Monticello*, CLI–00–14, 52 NRC at 59.

[55] CLI–00–20, 52 NRC at____, slip op. at 11 (footnote omitted): The fact that a particular license transfer may have antitrust implications does not remove it from the categorical exclusion. In any event, because the AEA does not require, and arguably does not even allow, the Commission to conduct antitrust evaluations of license transfer applications, our purported "failure" to conduct such an evaluation cannot constitute a Federal actioo warranting a NEPA review.

[56] CAN indicated, for the first time in its Reply Brief, that it was raising the cracks-and-leaks and UFSAR arguments not only as technical and administrative problems meriting the Commission's attention and correction, but also as an indication of the lack of technical qualifications of the existing plants' staff, on whose technical qualifications Entergy Nuclear Operations is relying in the applications. *See* CAN's Reply Brief at 16. CAN's effort to recast its claim is unavailing. As indicated in *Vermont Yankee* (quoted in the text immediately above), any ongoing operational deficiencies at nuclear plants subject to a license transfer must be addressed regardless of the transfer.

[57] *See* CAN's Petition at 39–40 (citing and quoting Public Utility Commission of Texas, Docket No. 18249, *Entergy Gulf States, Inc., Service Quality Issues* (Feb. 1998); Groesch, *Report to New Orleans City Council for the Alliance for Affordable Energy* (Aug. 13, 1999); and Groesch, *Statement before the New Orleans City Council Utility Committee* (Aug. 12, 1999)). The second and third of these three documents are included in Exh. 9 to CAN's Petition.

[58] *See* CAN's Petition at 41–47. CAN points to the problems of a foreign nuclear plant owner, British Energy, as an example of how public safety can be adversely affected by over-reduction of the workforce. *See* CAN's Petition at 44–46. *See also* Declaration of David A. Lochbaum, dated July 31, 2000, at 2 (¶ 9(a)), appended as Attachment 3 to CAN's Petition.

[59] *See* CAN's Petition at 42. ConEd has informed the NRC that it has replaced these steam generators. *See* Letter from John A. Zwolinski (NRC) to A. Alan Blind (ConEd) (Oct. 11, 2000).

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state-court complaint in the record before us.[60]

As a nuclear safety agency, however, we are loath to step into the middle of a labor dispute. The Association seemingly expects us to consider whether Entergy's commitments regarding salary, benefits and job security are so unjust as to ruin employee morale and cause excessive attrition at FitzPatrick and Indian Point 3. But we have neither the expertise nor the legislative charter of a National Labor Relations Board or labor mediator. We see no natural limits to the labor issues the Association wants us to consider. We thus find the Association's labor grievances unsuitable for a license transfer hearing.

The Association, apparently sensitive to the Commission's reluctance to enmesh itself in management-worker conflicts at nuclear facilities, attempts to argue that its labor dispute with PASNY and Entergy translates into a health and safety problem that the Commission should consider at a hearing. But, while the Association's pleadings frequently allude to alleged health and safety effects of the labor controversy, what the Association has given us, at bottom, consists of specific accusations of bad faith in labor relations and that are tied to vague or conclusory assertions about health and safety. On the latter issue, the only one falling within the NRC's jurisdiction, the Association provides no expert support, no concrete facts, and no claims of specific rule violations.

Further, the specific concerns about pay, benefits and conditions that the Association points to as the source for morale issues are potential (not certain) changes in pay, benefits and conditions that would not occur for between one and three years after completion of the transfer. The Commission is particularly reluctant to engage in prognostication of the impact of changes in current working conditions that the Association has in its own pleadings and affidavits acknowledged may occur years in the future. Unsupported hypothetical theories or projections, even in the form of an affidavit, will not support invocation of the hearing process. In short, the Association has not provided tangible regulatory issues around which to organize a hearing.

The Association's most specific health and safety claims are charges that the labor controversy will provoke high attrition and poor morale. But neither claim raises a genuine controversy for hearing. As for the purported increase in attrition, the Association merely says that it is so. The Association does not provide factual data, expert witnesses, or even affidavits of employees who have or will quit as a result of the license transfer.[61] As for morale, we do not see how we could adjudicate such an abstract concept at a hearing absent some allegation of specific rule violations or specific safety challenges arising out of lower morale. Notably, the Association has submitted no evidence, such as inspection reports or other indicators, suggesting an increase in safety problems at the two plants.

We add a cautionary note. Today's decision does not hold that economic concerns, whether of a labor, commercial or other nature, are categorically excluded from the NRC hearing process. Such concerns, if closely tied to specific health and safety concerns or to potential violations of NRC rules, can be admitted for hearing. *See, e.g., North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI–99–27, 50 NRC 257, 262–63 (1999). Indeed, in our Subpart M rulemaking, which established our current license transfer hearing process, we expressed a willingness to review labor-type issues to a limited extent:

> [I]f a significant loss and replacement of critical plant personnel can be anticipated as the result of a particular license transfer[,] this might well be a reason not to approve the transfer or to condition the transfer on the maintenance of adequate technical qualifications.
>
> * * * * *
>
> If, in a particular license transfer case, a need is identified for submission of a critical staff retention plan in order to address the applicant's technical qualifications, this matter can readily be addressed in the hearing process and can ultimately result in a condition on license transfer approval.

Final Rule, "Streamlined Hearing Process for NRC Approval of License Transfers," 63 FR 66721, 66723 (Dec. 3, 1998).

Claims resting on the loss and replacement of "critical" staff derive directly from our rules, which specify both minimum staffing requirements for trained operators at reactors and the technical qualifications of such employees. *See* 10 CFR § 50.54(m). *See also Oyster Creek*, CLI–00–06, 51 NRC at 209 (NRC staffing regulations cover "key positions necessary to operate the plant safely"). Here, the Association asserts no current or future section 50.54(m) violations arising out of the PASNY-Entergy license transfer. (Nor, frankly, would we expect such a challenge from the Association, some of whose members hold the very staff positions covered by section 50.54(m).)

Notwithstanding the narrow exception in the rulemaking language quoted above, the Commission generally does not involve itself in the personnel decisions of licensees. As we indicated in *Oyster Creek:*

> The Commission is interested in whether the plant poses a risk to the public health and safety, and so long as personnel decisions do not impose that risk, our regulations and policy do not preclude a licensee from reducing or replacing portions of its staff. . . .

CLI–00–6, 51 NRC at 214. *See also Vermont Yankee*, CLI–00–20, 52 NRC at ____, slip op. at 14 n.16 and accompanying text. We would require personnel claims considerably more concrete than the Association's—*i.e.*, specific indications of a potential rule violation or of deteriorating safety conditions linked to the license transfer—before we would consider admitting plant staffing questions into an NRC license transfer hearing.

We by no means intend to denigrate the concerns of the Association's members, who work at FitzPatrick and Indian Point 3 and have an understandable interest in working conditions at the two plants. The question whether those conditions are fair and lawful is an important one. But our license transfer hearings under Subpart M are designed solely to adjudicate genuine health and safety disputes arising out of license transfers. The grant of hearings merely on the broad assertion that contentious labor controversies will lead to deleterious health and safety consequences would have no stopping point and would risk converting our agency into a labor relations forum, contrary to our statutory mission and at a significant cost in resources and effort.

For these reasons, we decline to admit for hearing the Association's labor-related issues.[62]

[60] *See* Verified Petition, *Nuclear Generation Employees Ass'n* v. *New York Power Auth.* (Sup. Ct., Westchester Co., NY), Index No. 11129/00 (filed July 27, 2000) (appended to Association's Reply Brief as Exh. 1). *See also* Association's Reply Brief, dated Aug. 3, 2000, at 3.

[61] The Association's failure to provide actual data on departing employees renders virtually meaningless its reference to a "more than doubl[ing]" of the normal attrition rate for its members. *See* Joint Declaration at 6. By way of extreme example, if the normal attrition rate were one person per year per plant, a doubling of this rate would provide no conceivable basis for health-and-safety concerns.

[62] Like the Association, CAN raises the issue that much of the plants' existing staff will quit their jobs as a result of the transfer. *See* CAN's Petition at 44; CAN's Reply Brief at 16. But CAN has provided little detail, and no back-up support, for this claim. For the reasons stated in the text, CAN's claims on this score are inadmissible. *See also Oyster Creek*, CLI–00–6, 51 NRC at 209–10, 214.

6. Issues Involving Emergency Evacuation Plans

Cortlandt asks the Commission to consider the impact of the proposed transfers on the need for changes to the Emergency Evacuation Plans. *See* Cortlandt's Supplemental Filing at 2. It expresses similar concerns about whether the transferees for Indian Point 3 will discontinue the emergency warning program, emergency preparedness training program, and health impact training program currently run by PASNY.[63]

The new licensees will have to meet all of the requirements of 10 CFR 50.47 and Appendix E to 10 CFR part 50 concerning emergency planning and preparedness. The emergency notification system is required by the regulations and will remain in place. Cortlandt has not alleged, with supporting facts, that Entergy is likely to violate the NRC's emergency planning rules. Under these circumstances, we see no basis for further pursuit of this issue.

7. Appropriateness of Indian Point 3 Transfer, Given Its Location

Cortlandt asks the Commission to consider the appropriateness of the proposed Indian Point 3 transfer in light of the plant's proximity to metropolitan areas (New York City, White Plains and Peekskill) and to locations for sporting and cultural events. *See* Cortlandt's Supplemental Filing at 4. Cortlandt explains that the plant is located 24 miles north of New York City in the heavily-populated Westchester County, and that it is two miles from the City of Peekskill (population 20,000), 2 miles from a military reservation (Camp Smith), and eight miles from West Point. *See* Affirmation of Peter Henner at ¶¶2–3. We do not see how Indian Point 3's proximity to these locations is relevant to the question whether to approve the license transfer for that plant. We therefore decline to admit this issue.

8. Antitrust Issue

Cortlandt expresses an antitrust concern that, if Entergy merges with Florida Power and Light Company (FPL Group), the combined entity's market share will give it an inordinate amount of control over the nation's nuclear industry. Cortlandt's Reply Brief at 17. As we have explained in prior cases, the Commission no longer conducts antitrust reviews in license transfer proceedings.[64]

CAN also raises the antitrust issue, acknowledging our precedents but disagreeing with them. CAN criticizes the Commission for having declined to conduct further antitrust review in these cases, calls that decision an abdication of the agency's antitrust responsibilities under the AEA, and predicts that such abdication will lead to a rapid consolidation of nuclear power ownership through premature acceptance of this and other Entergy applications and overly-accelerated hearing schedules. CAN's Petition at 13. *See also id.* at 14–15, 56–64; CAN's Reply Brief at 18–20. For the reasons set forth in both the *Wolf Creek* decision and the rulemaking, *supra*, we do not agree with CAN's characterization that we are abdicating our statutory authority. Nor do we believe we are acting precipitously in giving expedited treatment to license transfer applications. We therefore find this issue inadmissible.[65]

9. Independent Evaluation of the Plants

CAN asserts that, given the historical problems in NRC's Region I, the Commission should arrange for an independent analysis of the two plants' conditions. *See* CAN's Petition at 51–54. We decline to do so for the same reasons we gave in *Vermont Yankee* when rejecting CAN's similar issue:

> An inquiry such as the one CAN advocates would go considerably beyond the scope of our inquiry in this proceeding, *i.e.*, AmerGen Vermont's qualifications to own and operate the Vermont Yankee plant. We also note that Region I's overall performance in overseeing Vermont Yankee is far outside the scope of a license transfer proceeding. CAN does not explain how any action taken with respect to this license transfer, whether it be denial of the license or the imposition of conditions on the transferee, could remedy CAN's broad complaints that NRC's Region I has abdicated its oversight responsibilities.[66]

V. Other Procedural Matters

A. Designation of Issues

Our opinion in this case has considered in some detail numerous concerns raised by the various petitioners. Some issues we have found admissible, and some inadmissible. To avoid confusion, and to delineate the boundaries of the admitted issues, we direct the parties to organize their presentations at the hearing around the following two issues:

> Whether Entergy Indian Point's liability for certain financial obligations of Entergy FitzPatrick would place the Indian Point 3 plant in financial jeopardy in the event of an accident at either Indian Point 3 or FitzPatrick and would thereby call into question whether Entergy Indian Point has the funds necessary to operate the Indian Point plant safely, within the meaning of 10 CFR 50.33(f)(2), 50.33(f)(3) and 50.80(b)?
>
> Whether the transfer applicants' plan for handling decommissioning funds for the FitzPatrick and Indian Point nuclear plants—whereby control of the decommissioning funds will remain with PASNY but responsibility for decommissioning the plants will reside with the Entergy companies—provides reasonable assurance of adequate decommissioning funding, within the meaning of 10 CFR 50.75(b) and 50.75(e)(1)(vi).

The precise contours of these two admitted issues are set forth above at pages 18–20 (issue 2a, raised by Cortlandt regarding the effect of joint and several liability on the Entergy companies' financial qualifications) and 25–26 (issue 3a, raised by the Association and CAN regarding whether the decommissioning funding arrangement is consistent with the requirements of 10 CFR 50.75), respectively. The parties' filings and arguments must be confined to the contours of these two issues. In addition, as indicated on page 23, we permit CAN and Cortlandt to submit a revised issue challenging the Entergy companies' cost-and-revenue projections, such issue to be filed within 20 days of the issuance of a protective order giving CAN and Cortlandt access to applicants' proprietary information.

The parties should be prepared to offer pre-filed testimony and exhibits containing specific facts and/or expert opinion in support of their positions on these issues. All parties should keep their pleadings as short, and as focused on the admitted issues, as possible. The Commission will not consider new issues or new arguments or assertions related to the admitted issues at the hearing, unless they satisfy our rules for

[63] *See* Affirmation of Peter Henner at ¶25(d); Cortlandt Verified Petition at 5, 8, 19 (referring to "emergency planning and health impact training programs;" "emergency preparedness plans, local preparedness resources, and the Four County Notification System;" and "the payment of the State Emergency Management Office, bus driver training and reception centers, public education programs, including emergency planning and radiological training and medical drills"].

[64] *See Vermont Yankee*, CLI–00–20, 52 NRC at ____, slip op. at 11, 19–20; *Oyster Creek*, CLI–00–06, 51 NRC at 210; *Kansas Gas and Elec. Co.*, (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441 (1999). *See also* Final Rule, "Antitrust Review Authority: Clarification," 65 Fed. Reg. 44,649 (July 19, 2000).

[65] Regarding CAN's prediction of industry consolidation, *see* note 16, *supra*.

[66] CLI–00–20, 52 NRC at ____, slip op. at 15. *See also Curators of the University of Missouri*, CLI–95–1, 41 NRC 71, 121 (1995); Final Rule, "Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process," 54 FR 33168, 33171 (Aug. 11, 1989) ("With the exception of NEPA issues, the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC Staff performance").

late-filed issues (10 CFR 2.1308(b)), and will not consider claims rejected in the course of this opinion. Redundant, duplicative, unreliable or irrelevant submissions are not acceptable and will be stricken from the record. *See* 10 CFR 2.1320(a)(9). We also direct the intervenors to state explicitly exactly what remedial measures (if any) they believe the Commission should take in addition to those specified in their intervention petitions.

B. Designation of Presiding Officer

The Commission directs the Chief Administrative Judge promptly to appoint a Presiding Officer for this proceeding. Until the appointment of a presiding officer, the parties should file any written submissions with the Office of the Secretary.

C. Notices of Appearance

To the extent that they have not already done so, each counsel or representative for each party shall, not later than 11:59 p.m. on December 7, 2000 (*i.e.*, ten days after the issuance date of this order), file a notice of appearance complying with the requirements of 10 CFR 2.713(b). In each such notice of appearance, the counsel or representative should specify his or her business address, telephone number, facsimile number, and e-mail address. Any counsel or representative who has already entered an appearance but who has not provided one or more of these pieces of information should do so not later than the date and time specified above.

D. Filing Schedule

If the parties agree to a non-oral hearing, they must file their joint motion for a "hearing consisting of written comments" no later than 11:59 p.m. (Eastern Time) on December 12, 2000 (*i.e.*, fifteen days of the date of this order). 10 CFR 2.1308(d)(2). No later than that same date, the parties should complete any necessary negotiations on a protective order regarding any proprietary data and should submit a joint protective order to the presiding officer. If they are unsuccessful in negotiating such an order, they should inform the Presiding Officer by that date and indicate any areas in which they were able to agree.[67] We also direct the parties to confer promptly on whether this proceeding might be settled amicably without conducting a hearing.

All initial written statements of position and written direct testimony (with any supporting affidavits) must be filed no later than 11:59 p.m. on December 27, 2000 (thirty days after the issuance date of this order). 10 CFR 2.1309(a)(4), 2.1310(c), 2.1321(a), 2.1322(a)(1). All written responses to direct testimony, all rebuttal testimony (with any supporting affidavits) and all proposed questions directed to written direct testimony must be filed no later than 11:59 p.m. on January 16, 2001 (the first working day following the twentieth day after the submission of written statements of position and written testimony). 10 CFR 2.1309(a)(4), 2.1310(c), 2.1321(b), 2.1322(a)(2)–(3). All proposed questions directed to written rebuttal testimony must be submitted to the Presiding Officer no later than 11:59 p.m. on January 26, 2001 (ten days after the submission of rebuttal testimony).[68]

If the parties do not unanimously seek a hearing consisting of written comments, the Presiding Officer will hold an oral hearing beginning at 9:30 a.m on February 2, 2001, at the Commission's headquarters in Rockville, MD. The subject of the hearing will be the issues designated above, along with any admissible financial qualifications issue regarding the Entergy companies' cost-and-revenue projections that CAN and/or Cortlandt may choose to submit within 20 days of the entry of a protective order. Portions of the hearing may have to be closed to the public when issues involving proprietary information are being addressed.

Any party or participant submitting pre-filed direct testimony should make the sponsor of that testimony available for questioning at the hearing. The Presiding Officer will issue an order establishing the amount of time available for the initial and reply presentations of the parties and participant. Given the expedited nature of license transfer proceedings; the Commission anticipates that the hearing will take no longer than one day. The hearing will not include opportunities for cross-examination, although the Presiding Officer may question any witness proffered by any party. *See* 10 CFR 2.1309, 2.1310(a), 2.1322(b).

Finally, all written post-hearing statements of position must be filed no later than 11:59 p.m. on February 22, 2001 (twenty days after the oral hearing). *See* 10 CFR 2.1322(c). The Commission expects to issue a final memorandum and order on the merits of this proceeding by March 26, 2001 (50 days after the oral hearing).

The Commission is confident that the proceeding can be resolved fairly and efficiently within the prescribed time schedule.

E. Participants in the Hearing and the Proceeding; Service List

The parties to this proceeding will be CAN, Cortlandt, the Association, the Power Authority of the State of New York, Entergy Nuclear Operations, Entergy FitzPatrick, and Entergy Indian Point. Westchester will be a governmental participant in the proceeding. The recipients on the service list will be:

Timothy L. Judson, Citizens Awareness Network, Inc., 162 Cambridge Street, Syracuse, NY 13210, phone: (315) 475–1203, e-mail: *can@shaysnet.com*

Thomas F. Wood, Esq., Town of Cortlandt, 153 Albany Post Road, Buchanan, NY 10511, phone: (914) 736–0930, fax: (914) 736–9082, e-mail: *tfwesq@aol.com*

Paul V. Nolan, Esq. (Attorney for Town of Cortlandt and Hendrick Hudson School District), 5515 N. 17th Street, Arlington, VA 22205–2207, phone: (703) 534–5509, fax: (703) 538–5257, e-mail: *pvnpvn@aol.com*

Nancy T. Bocassi, Hendrick Hudson School District, 61 Trolley Road, Montrose, NY 10548, phone: (914) 737–7500, fax: (914) 736–5242, e-mail: *nbocassi@henhud.lhric.org*

Alan D. Scheinkman, Esq., County Attorney, Westchester County, Department of Law, Room 600, 148 Martine Avenue, White Plains, NY 10601, phone: (914) 285–2690, fax: (914) 285–5858, e-mail: *ads2@westchestergov.com*

Stewart M. Glass, Esq., Senior Assistant County Attorney, County of Westchester, Department of Law, Room 600, 148 Martine Avenue, White Plains, NY 10601, phone: (914) 285–3134, fax: (914) 285–2495, e-mail: *smg4@westchestergov.com*

Joseph R. Egan, Esq., Egan & Associates, P.C. (Attorney for Nuclear Generation Employees Association), 1500 K Street, N.W., Suite 200, Washington, DC 20005, phone: (703) 871–5012, fax: (703) 871–5013[69], e-mail: *eganpc@aol.com*

John Valentino, Esq., Green & Seifter (Attorney for Nuclear Generation Employees Association), One Lincoln Center, 9th Floor, Syracuse, NY 13202, phone: (315) 422–1391, fax: (315) 423–2839, e-mail: *jvalentino@greenseifter.com*

Douglas E. Levanway, Esq. (Attorney for Entergy Nuclear FitzPatrick LLC, Entergy Nuclear Indian Point 3 LLC, and Entergy Nuclear Operations, Inc.), Wise, Carter, Child and Caraway, P.O. Box 651, Jackson, MS 39205–0651, phone: (601) 968–5524, fax: (601) 968–5519, e-mail: *del@wisecarter.com*

Gerald C. Goldstein, Esq., Arthur T. Cambouris, Esq., David E. Blabey, Esq., The Power Authority of the State of New York, 1633 Broadway, New York, NY 10019, phone: (212) 468–6131, fax: (212) 468–6206, e-mail: *goldstein.g@nypa.gov*

Jay E. Silberg, Esq., William R. Hollaway, Esq. (Attorneys for the Power Authority of the State of New York), Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128, phone: (202) 663–8000, fax: (202) 663–8007, e-mail: *jay.silberg@shawpittman.com*

Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, phone: (301) 415–1537, fax: (301) 415–3725, e-mail: *OGCLT@NRC.gov*

Office of the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings & Adjudications Branch, Washington, DC 20555, phone: (301) 415–1966/1679, fax: (301) 415–1101, e-mail: *SECY@NRC.gov*

George E. Sansoucy, P.E. (representing Hendrick Hudson school District), 260 Ten Rod Road, Rochester, NH 03867, phone: (603) 335–3167, fax: (603) 335–0731, e-mail: *sansoucy@nh.ultranet.com*

We direct the parties immediately to supplement or correct the above information to the extent that it is incomplete or inaccurate, and immediately to notify all recipients of any such changes.

Pursuant to 10 CFR 2.1316(b)–(c), the NRC staff has indicated that it will not be a party to this proceeding. Notwithstanding this fact, the staff is still expected both to offer into evidence its SER and to proffer one or more sponsoring witnesses for that document. *See* 10 CFR 2.1316(b).

F. Service Requirements

Although the parties and Westchester have a number of options under 10 CFR 2.1313(c) by which to serve their filings, the preferred method of filing in this proceeding is electronic (*i.e.*, by e-mail). Electronic copies should be in WordPerfect format (in a version at least as recent as 6.0). Service will be considered timely if sent not later than 11:59 p.m. of the due date under our Subpart M rules. However, we also require the parties to submit a single signed hard copy of any such filings[70] to the Rulemakings and Adjudications Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Room O–16–H–15, Rockville, MD 20852. As noted above, the fax number for this office is (301) 415–1101 and the e-mail address is secy@nrc.gov.

VI. Conclusion

For the reasons set forth above:

(1) The license transfer adjudications involving FitzPatrick and Indian Point 3 license transfers are consolidated.

(2) CAN's, Cortlandt's and the Association's petitions to intervene and requests for hearing are granted;

(3) Westchester's petition for governmental participant status is granted;

(4) The Association's and CAN's motions for stay are denied;

(5) Cortlandt's motion to expand this adjudication's scope of review is denied;

(6) CAN's motion for a Subpart G hearing is denied;

(7) CAN and Cortlandt may formulate and submit a properly-supported financial qualifications issue within 20 days of the entry of a protective order.

(8) The parties are required to inform the Commission of any court or administrative orders, settlements or business decisions that may in any way relate to, or render moot, part or all of the instant proceeding.

(9) Within fifteen days of the issuance date of this order, the parties shall complete any necessary negotiations on a protective order regarding any proprietary data and shall submit a joint protective order to the Presiding Officer. If they are unsuccessful in negotiating such an order, they shall so inform the Presiding Officer by that date and shall indicate any areas in which they were able to agree.

It is so ordered.

Dated at Rockville, Maryland, this 27th day of November, 2000.

For the Commission.[71]

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31875 Filed 12–13–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[IA–00–028]

In the Matter of Garner W. Reed; Order Prohibiting Involvement in NRC-Licensed Activities

I

Garner W. Reed was employed by Public Service Electric & Gas Company (Licensee) at the Salem Nuclear Power Plant (Salem) from on or about August 13, 1996, to November 12, 1997. The licensee is the holder of Licenses No. DPR–70 and DPR–75 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on June 30, 1977, and October 13, 1981, respectively. The Salem facility is located near Wilmington, DE.

Mr. Reed was employed by the Wisconsin Electric Power Company (Licensee) at the Point Beach Nuclear Power Plant, Units 1 and 2 (Point Beach), from on or about November 17, 1997 to April 30, 1999. The Licensee is the holder of Licenses No. DPR–24 and DPR–27 issued by the Commission pursuant to 10 CFR part 50 on October 5, 1970 and March 8, 1973, respectively. The Point Beach facility is located near Manitowoc, WI.

On May 13, 1999, Mr. Reed, applied for unescorted access to the Donald C. Cook Nuclear Power Plant, Units 1 and 2 (D.C. Cook), which is operated by the American Electric Power Company (Licensee or AEP). The Licensee is the holder of Licenses No. DPR–58 and DPR–74, issued by the Commission pursuant to 10 CFR part 50 on October 28, 1975 and July 1, 1978, respectively. The D.C. Cook plant is located near Bridgeman, MI.

II

In applying for unescorted access to the D.C. Cook Plant, on May 13, 1999, Mr. Reed was required to explain any arrests, pending charges, or convictions within the five years prior to the date of application. While Mr. Reed indicated that he had been convicted of operating a motor vehicle while intoxicated (OWI) prior to his employment at the Point Beach, Mr. Reed failed to disclose that

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[67] Separately, we have directed CAN and Cortlandt to formulate and submit a properly-supported financial qualifications issue within 20 days of the entry of a protective order. *See* page 23, *supra*. CAN's failure to do so will preclude its participation with regard to the financial qualifications issue. If such an issue is submitted, the Presiding Officer should establish a supplemental briefing schedule to permit answers and replies thereto. *Cf.* 10 CFR 2.1307.

[68] *See* 10 CFR 2.1309(a)(4), 2.1310(c), 2.1321(b), 2.1322(a)(4). The seven-day filing period specified in the last two of these regulations is, pursuant to 10 CFR 2.1314(b), extended by three days, because the period includes a Saturday and Sunday.

[69] Mr. Egan's office is located in Washington, DC, but his phone number has a Northern Virginia area code. There appears to be an error here. If so, the Commission requests Mr. Egan to correct it.

[70] We draw the attention to the difference between this requirement and that of Subpart G, which provides that any service whether by fax or e-mail on the Secretary should be followed with an original and two conforming copies of the service by regular mail in accordance with 10 CFR 2.708(d).

[71] Commissioner Dicus was not present for the affirmation of this Order. Had she been present, she would have affirmed her prior vote to approve this Order.

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he had been arrested while he was employed at the Point Beach Plant. Representatives of the D. C. Cook Plant learned of the potentially false information provided by Mr. Reed and contacted personnel at the Point Beach Plant about Mr. Reed's arrest record. It was determined by the D. C. Cook licensee that Mr. Reed had not notified officials at the Point Beach Plant about his arrest in Two Rivers, WI, while he was employed at that facility. The NRC learned of Mr. Reed's failure to report arrests during a routine security inspection at the Point Beach Plant on July 30, 1999. As a result of this information, the NRC Office of Investigations (OI) conducted an investigation into the apparent deliberate failures by Mr. Reed to fully disclose his arrest information to NRC Licensees.

Information obtained during the OI investigation indicated that Mr. Reed was arrested and subsequently convicted of:

Possession of marijuana, receiving and concealing stolen property in Mobile, AL, on or about June 22, 1976,

Driving under the influence of alcohol in Louisiana on May 13, 1993,[1]

Operating while intoxicated (OWI) in Huntsville, AL, during November 1993,

OWI in Hamilton County, TN, on November 16, 1994,

OWI in Hamilton County, Chattanooga, TN, on October 17, 1995, alternately reported as Ringgold, GA,[2]

OWI in Woodstown, NJ, on October 5, 1997,

OWI in New Jersey on January 11, 1998,[3] and

OWI in Two Rivers, WI, on April 10, 1999.

Other information gathered during the OI investigation indicated that:

Mr. Reed failed to notify, as required by the Licensee's NRC approved physical security plan, the Salem Plant of at least one arrest, (the arrest that occurred in Woodstown, N.J. on October 5, 1997), while he was employed at that facility,

Mr. Reed failed to notify, as required by the Licensee's NRC approved physical security plan, the Point Beach Plant of his arrest on April 10, 1999 in Two Rivers, WI, while he was employed at that facility, and

Mr. Reed failed to list, as required by the Licensee's NRC approved physical security plan, his arrests on November 16, 1994 (in Hamilton County, TN), October 17, 1995 (in Chattanooga, TN), and April 10, 1999 (in Two Rivers, WI), on his application for unescorted access to the Cook Plant.

During his sworn, transcribed interview with the OI investigator on November 4, 1999, Mr. Reed admitted that he knew he was required to report his arrests to the Licensees, but stated that he was afraid he would lose his job in the nuclear industry if the Licensees learned of all of his OWI arrests.

10 CFR 73.56(b) requires NRC licensees[4] to establish and maintain access authorization programs to grant individuals unescorted access to the protected and vital areas of nuclear power plants. These programs and the implementing procedures at each plant require individuals seeking unescorted access to divulge their criminal history for evaluation and to identify to the licensee any subsequent arrests after having been granted unescorted access to the facility. Furthermore, 10 CFR 50.5(a)(2) provides that an employee of a licensee or an employee of a contractor of any licensee may not deliberately submit to the NRC or a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. An individual's criminal history is material to the NRC because it is part of the information a licensee evaluates to provide high assurance that individuals granted unescorted to NRC licensed facilities are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage (10 CFR 73.56(b)).

Based on the information developed during the OI investigation, it was concluded that Mr. Reed deliberately submitted information concerning his criminal history to the licensees operating Salem, Point Beach and D.C. Cook facilities that he knew was incomplete and inaccurate.

Furthermore, Mr. Reed provided inaccurate information to the OI investigator during a sworn, transcribed interview on November 4, 1999. Mr. Reed stated that his arrest on June 22, 1976, was for possession of stolen property, the charges against him were dropped and he was subsequently cleared of the charges. Mr. Reed failed to disclose that he was arrested for possession of marijuana, along with receiving and concealing stolen property. Mr. Reed also failed to divulge that he was convicted on both of those charges with a suspended jail sentence of 36 months and placed on probation for a period of 36 months.

III

Based on the above, it appears that Garner W. Reed, a former employee of the Licensees, has engaged in deliberate misconduct in violation of 10 CFR 50.5. The NRC must be able to rely on its licensees and the employees of its licensees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all respects material to the NRC. Garner W. Reed's deliberate actions in making deliberate misrepresentations and omissions to the Licensees and to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC and NRC licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Garner W. Reed were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Garner W. Reed be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Garner W. Reed for a period of one year is required to notify the NRC of his employment in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, 10 CFR 73.56, and 10 CFR 150.20, it is hereby ordered that:

1. Garner W. Reed is prohibited for one year from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Garner W. Reed is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of one year after the one year period of prohibition has expired, Garner W. Reed shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Garner W. Reed shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Garner W. Reed of good cause.

V

In accordance with 10 CFR 2.202, Garner W. Reed must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Garner W. Reed or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351 and to Garner W. Reed if the answer or hearing request is by a person other than Garner W. Reed. If a person other than Garner W. Reed requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Garner W. Reed or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated: Dated this 4th day of December 2000.

For the Nuclear Regulatory Commission,

Frank J. Miraglia, Jr.,

Deputy Executive Director for Reactor Programs.

[FR Doc. 00–31878 Filed 12–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TXU Utilities Electric Company, et al.; Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration; correction.

SUMMARY: This document corrects a notice relating to the consideration of issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89 issued to TXU Electric Company, et. al., appearing in the **Federal Register** on December 4, 2000 (65 FR 75737). This action is necessary to correct the websites listed in the notice for viewing the electronic copies of documents related to this notice.

FOR FURTHER INFORMATION CONTACT: David H. Jaffe, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1439 (e-mail: *DHJ@nrc.gov*).

In the **Federal Register** dated December 4, 2000, page 75739, first column, fifth paragraph, third sentence, the last line is corrected to read (*http://www.nrc.gov*), first column, seventh paragraph, third sentence, the last line is corrected to read (*http://www.nrc.gov*), and page 75740, second column, first paragraph, last line is corrected to read (http://www.nrc.gov).

Dated at Rockville, Maryland, this 8th day of December, 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–31877 Filed 12–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for Public Comment on the First Year of Initial Implementation of the Reactor Oversight Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is approaching completion of the first year of initial implementation of the Reactor Oversight Process (ROP). In response to the Commission's Staff Requirements Memorandum (SRM–00–0049), dated May 17, 2000, the NRC is preparing a report summarizing the lessons learned during the first year of initial implementation of the ROP. The NRC is requesting comments/information from members of the public, licensees, and interest groups related to the initial implementation of the ROP which began at the 103 commercial nuclear power plant sites (except D.C. Cook which is being phased into the ROP) on April 2, 2000.

The NRC is specifically requesting comments on the questions listed at the end of this notice. The NRC is also conducting a public workshop, tentatively scheduled for late March

[1] Mr. Reed admits to having held a driver's license issued by the State of Louisiana, but denies having been arrested for OWI in that statement. However, official records indicate the existence of this arrest in the State of Louisiana.

[2] Chattanooga, TN, Hamilton County, TN, and Ringgold, GA, are nearby communities.

[3] Mr. Reed alternately indicates that this arrest occurred in early 1997 and on January 11, 1998, in the State of New Jersey, but does not recall the specific jurisdiction. This arrest was not listed on official records.

[4] These programs were required to be implemented at Salem, Point Beach and D.C. Cook by April 27, 1992. See 10 CFR 73.56(a).

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2001, to discuss lessons learned. In support of this workshop, the NRC is seeking public feedback on key issues that should be considered during the workshop.

DATES: (1) Submit potential topic areas for consideration during the public ROP workshop by February 23, 2001. (2) Submit comments on the ROP's first year of initial implementation by April 13, 2001. Comments received after these dates will be considered if it is practical to do so, but the Commission is able to only ensure consideration for comments received on or before these dates.

ADDRESSES: Comments may be sent to David Meyer, Chief, Rules and Directives Branch, Office of Administration, Mail Stop T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001or electronically to e-mail: *REACTOROVERSIGHT@nrc.gov*

Deliver comments to: 11554 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Certain documents related to this notice, including comments received, may be examined and/or copied for a fee at the NRC Public Document Room, One White Flint North, Room O1–F15, 11555 Rockville Pike, Rockville, Maryland.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: August K. Spector, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–2140, e-mail: *REACTOROVERSIGHT@nrc.gov*

SUPPLEMENTARY INFORMATION:

Program Overview

The mission of the NRC is to regulate the civilian uses of nuclear materials in the United States to protect the public health and safety, protect the environment, and promote the common defense and security by preventing the proliferation of nuclear material. This mission is accomplished through:

- Licensing nuclear facilities and the possession, use and disposal of nuclear materials;
- Developing and implementing requirements governing licensed activities; and
- Inspection and enforcement of licensee activities to assure compliance with these requirements and the law.

While the responsibility of the NRC is to monitor and regulate the performance of the licensee, primary responsibility for safe operation and handling of nuclear materials rests with the licensee.

During the past 25 years, the nuclear industry in the United States has matured to one where licensees and the NRC have learned much about how to safely operate nuclear facilities and handle nuclear materials. Recently, the NRC has begun to implement more effective and efficient inspection, assessment, and enforcement approaches which apply insights from years of regulatory oversight and nuclear facility operation. The NRC has also incorporated risk-informed principles and techniques into its oversight activities. A risk-informed approach to oversight enables the NRC to more appropriately apply its resources to oversight of operational areas which contribute most to safe operation at nuclear facilities.

After conducting a six-month pilot program in 1999, assessing the results, and incorporating the lessons learned, the NRC began implementation of the revised reactor oversight process (ROP) at all 103 nuclear facilities (except D. C. Cook) on April 2, 2000. Inherent in the ROP are the following key NRC performance goals:

1. Maintain safety by establishing and implementing a regulatory oversight process that assures that plants are operated safely;
2. Enhance public confidence by increasing the predictability, consistency, and objectivity of the oversight process, providing timely and understandable information, and providing opportunities for meaningful involvement by the public;
3. Improve effectiveness, efficiency, and realism of the oversight process by implementing a process of continuous improvement; and
4. Reduce unnecessary regulatory burden through the consistent application of the process and incorporation of lessons learned.

Key elements of the ROP include revised NRC inspection procedures, plant performance indicators, a significance determination process and an assessment program which incorporates various risk-informed thresholds to help determine the level of NRC oversight and enforcement. Since process development began in 1998, the NRC has frequently communicated with the public by various means. These have included conducting public meetings in the vicinity of each licensed commercial nuclear power plant, issuing **Federal Register** Notices soliciting feedback on the process, publishing press releases about the new process, conducting multiple public workshops, placing pertinent background information in the NRC's Public Document Room, and establishing an NRC website containing easily accessible information about the new program and licensee performance. Information about specific aspects of the reactor oversight process may be obtained electronically from the following source:

www.nrc.gov/NRR/OVERSIGHT/index.html.

NRC Reactor Oversight Public Workshop

In late March 2001, the NRC is planning a public workshop intended to bring together all interested stakeholders to discuss key issues that have emerged during the first year of initial implementation of the ROP. The NRC is soliciting feedback from its public stakeholders on what topic areas should be considered during this workshop. The NRC will consider this feedback along with its own insights gained during initial implementation to develop the agenda for the workshop. Some of the areas currently under consideration include selected performance indicators, approaches to inspecting and assessing problem identification and resolution activities, inspection report thresholds, and the efficacy of certain elements of the significance determination process.

NRC Public Stakeholder Comments

The NRC continues to be interested in receiving feedback from members of the public, various public stakeholders and industry groups on their insights on the first year of initial implementation of the reactor oversight process. The NRC is specifically seeking responses to the questions listed below, which will provide the NRC with vital information regarding the initial implementation of the reactor oversight process, which can be used in continuing program improvement. A summary of responses and how the responses were considered will be included in the report submitted to the Commission on the implementation of the ROP, currently planned for June 2001.

Questions

I. *Questions related to the efficacy of the overall process* (As appropriate, please provide specific examples and suggestions for improvement.):

1. Does the ROP provide adequate assurance that plants are being operated safely?
2. Does the ROP provide sufficient regulatory attention to utilities with performance problems?
3. Does the ROP reduce unnecessary regulatory burden on licensees?
4. Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process, focusing NRC resources on those issues with the most safety significance?
5. Has the public information associated with the ROP been appropriate to keep the public informed, in a timely and understandable fashion, of NRC activities related to plant safety? (Examples: NRC plant performance web page, Plant Performance Indicators, NRC Inspection Reports, Assessment Letters, ROP guidance documents and implementation procedures, the NRC ROP website, press releases)
6. Does the ROP increase the predictability, consistency, clarity and objectivity of the NRC's oversight activities?
7. Has the public been afforded adequate opportunity to provide input/comments and involvement in the ROP development process?
8. Has NRC been responsive to input/comments provided by the public regarding the ROP development process?
9. Please provide any additional (brief) information or issues related to the reactor oversight process.

II. *Questions related to specific ROP program areas* (As appropriate, please provide specific examples and suggestions for improvement.):

1. Do the performance indicators or other aspects of the ROP create unintended consequences? (Please comment on the potential of unintended consequences associated with the counting of manual scrams in the Initiating Event Cornerstone Performance Indicators.)
2. Do any aspects of the ROP inappropriately increase regulatory burden? (Please comment on any unnecessary overlap between ROP reporting requirements with those associated with INPO, WANO, or the Maintenance Rule.)
3. Is the Significance Determination Process (SDP) usable and does it produce consistent and accurate results?
4. Are there areas of unnecessary overlap between the inspection program and the performance indicators?
5. Does the ROP assessment program provide timely, consistent, and relevant assessment information?
6. Has the NRC implemented the ROP as defined by program documents?
7. Please provide any additional (brief) information or comments on other program areas related to the reactor oversight process. Other areas of interest may be: the treatment of cross-cutting issues in the ROP, the risk-based evaluation process associated with determining event response, and the reduced subjectivity and elevated threshold for documenting issues in inspection reports.

Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

William M. Dean,

Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31876 Filed 12–13–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revision to OMB Guidance on Implementation of FAIR Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed Revision to OMB Guidance on the Implementation of the FAIR Act.

SUMMARY: The Office of Management and Budget (OMB) publishes a request for agency and public comments on a proposed technical change to the OMB Circular A–76 Revised Supplemental Handbook to clarify the scope of the challenge-and-appeals process that is available under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (the "FAIR Act"). The FAIR Act requires each Federal agency to submit to OMB, annually, a "list" (inventory) of all its activities that "are not inherently governmental functions" (i.e., activities that are "commercial" in nature) and that are performed by Federal employees. Under the FAIR Act, OMB reviews each agency's list and consults with the agency regarding its content. Upon the completion of this review and consultation, the agency transmits a copy of the inventory to Congress and makes the inventory available to the public. An "interested party," as defined by the FAIR Act, may then submit to the agency a challenge (and, if that is denied, an appeal) "of an omission of a particular activity from, or an inclusion of a particular activity on," the agency's inventory. The agency must respond to the challenge (and appeal), and the agency must notify Congress of any changes to the inventory and must make them publicly available.

In June 1999, OMB issued guidance on the FAIR Act, through revisions to OMB's Circular A–76 and its Revised Supplemental Handbook. 64 FR 33927 (June 24, 1999). This guidance addressed, among other things, the scope of the FAIR Act's challenge-and-appeal process. Recently, OMB issued a revision to its FAIR Act guidance, regarding the timetable for the FAIR Act's challenge-and-appeal process. 65 FR 54568 (September 8, 2000).

OMB is requesting public and agency comment on a further revision to OMB's guidance on the FAIR Act. The purpose of the proposed revision is to provide additional clarification regarding the scope of the statutory challenge-and-appeal process. Although Congress in the FAIR Act clearly defined the scope of that process, and OMB provided guidance on this point in June 1999, the General Accounting Office in a recent report found that a significant number of "interested parties" submitted challenges and appeals (regarding the 1999 FAIR Act inventories) on matters for which Congress had not authorized challenges and appeals. OMB hopes, by providing additional clarification, to eliminate any confusion that may still exist about the scope of the challenge-and-appeal process that Congress established in the FAIR Act.

DATES: Agency and public comments on the proposed change are due to OMB not later than January 16, 2001.

ADDRESSES: Address all comments to the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, FAX Number (202) 395–5105.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Childs, Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–6104.

Availability: Copies of the OMB Circular A–76, its Revised Supplemental Handbook, currently applicable Transmittal Memoranda and additional information regarding the FAIR Act and its implementation may be obtained at the OMB home page. The online address (URL) http://www.whitehouse.gov/OMB/procurement/fair-index.html. Paper copies of this information can also be obtained by contacting the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–7579.

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SUPPLEMENTARY INFORMATION:

1. Background—The FAIR Act and OMB's Implementation Guidance

The Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (the "FAIR Act") was enacted into law in October 1998. Section 2 of the FAIR Act requires each Federal agency to submit to OMB, annually, a "list" (inventory) of all its activities that "are not inherently governmental functions" (i.e., activities that are "commercial" in nature) and that are performed by Federal employees. Under the FAIR Act, OMB reviews each agency's inventory of commercial activities and consults with the agency regarding its content. Upon the completion of this review and consultation, each agency transmits a copy of its FAIR Act inventory to Congress and also makes the inventory available to the public. Section 3 of the FAIR Act establishes a challenge-and-appeal process under which an "interested party" may submit to the respective agency a challenge to "an omission of a particular activity from, or an inclusion of a particular activity on," the agency's FAIR Act inventory of commercial activities. Under the FAIR Act, challenges to an agency's FAIR Act list may be submitted by "interested parties," which the Act defines to be, basically, federal employees (and their representatives) and existing and prospective federal contractors (and their representatives). The agency must respond to the challenge. If the agency provides an "adverse" response, the interested party may file an appeal, to which the agency must also respond. At the end of the process, the agency must notify Congress of any changes that it has made to its FAIR Act inventory and must make the changes available to the public.

In March 1999, OMB requested public and agency comment on proposed guidance for implementing the FAIR Act. 64 FR 10031 (March 1, 1999). The proposed guidance consisted of revisions to OMB Circular A–76 ("Performance of Commercial Activities") and the Circular's Revised Supplemental Handbook, and it addressed a number of issues involving the FAIR Act, including the statute's challenge-and-appeal process. In June 1999, OMB issued final guidance for implementing the FAIR Act. 64 FR 33927 (June 24, 1999). Among other things, the final guidance addressed the scope of the FAIR Act's challenge-and-appeals process. The OMB guidance was based on the FAIR Act itself, which as noted above provides that a challenge may be submitted regarding "an omission of a particular activity from, or an inclusion of a particular activity on," the agency's FAIR Act inventory. In its June 1999 guidance (64 FR 33930), OMB stated in Paragraph G.2 ("Challenges and Appeals") of Appendix 2 that:

"Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activities Inventory is subject to administrative challenge and, then, possible appeal by an "interested party.'"

In the June 1999 guidance, OMB also went on to provide additional explanation, in Paragraph G.3, regarding the scope of the challenge-and-appeal process (64 FR 33930):

"An interested party may submit to an executive agency an initial challenge to the inclusion or exclusion of an activity within 30 calendar days after publication of OMB's **Federal Register** notice stating that the inventory is available. The challenge must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory) in accordance with OFPP Policy Letter 92–1 on inherently Governmental functions (see Appendix 5) or as established by precedent (such as when other agencies have contracted for the activity or undergone competitions for this or similar activities)."

Earlier this year, OMB requested public and agency comment on revisions to the June 1999 OMB guidance, focusing on the timetable for the FAIR Act challenge-and-appeal process. 65 FR 25966 (May 4, 2000). In response to concerns that the timetable for the 1999 challenge-and-appeal process had not provided sufficient time for interested parties to submit challenges and for agencies to respond to them, OMB proposed to revise the 30-day and 28-day time periods (for submitting and responding to challenges) by converting them from calendar days to working days. OMB recently finalized this revision to the guidance. 65 FR 54568 (September 8, 2000).

2. GAO's Report on the FAIR Act Challenge-and-Appeal Process

Most recently, on September 29, 2000, the General Accounting Office (GAO) issued a report that evaluated the history of the challenges and appeals that "interested parties" submitted for the Federal Government's FAIR Act inventories for 1999. GAO Report No. GGD/NSIAD–00–244, B–283779, "Competitive Contracting: Agencies Upheld Few Challenges and Appeals Under the FAIR Act" (September 2000), available at www.gao.gov. As explained above, the FAIR Act allows challenges and appeals to be filed by federal employees (and their representatives) and by existing and prospective federal contractors (and their representatives), who challenge "an omission of a particular activity from, or an inclusion of a particular activity on," the agency's FAIR Act inventory of commercial activities. In its report, GAO analyzed the challenges and appeals that were filed in connection with the 1999 FAIR Act inventories of the 24 agencies that are subject to the Chief Financial Officers Act (the 14 Cabinet Departments and 11 other major agencies).

In its analysis, GAO distinguished between "employee challenges" and "industry challenges." According to GAO (p. 3), "almost all of the employees" challenges and appeals were within the provisions of the act, because they concerned the inclusion of activities that the employees contended should have been omitted because they were inherently governmental." The industry challenges presented a different picture. According to GAO (pp. 2–3), "Many of the issues that industry raised in their challenges and appeals went beyond the provisions of the FAIR Act, because they concerned issues other than the inclusion or omission of an activity from an agency's inventory." As GAO later explained (p. 9), "About one-third of industry's challenges cited the omission of activities from agencies' inventories, with many of the remainder citing issues that went beyond the provisions of the FAIR Act because they did not involve either the inclusion of an activity on or its omission from an inventory." GAO outlined the issues that industry raised, which "did not meet the challenge provisions of the FAIR Act" (p. 11):

"The remaining issues raised by industry did not meet the challenge provisions of the FAIR Act. As shown in table 4, these issues included (1) the agency's use of OMB's reason codes for categorizing commercial activities; (2) the format of the agency's inventory; (3) the agency's use of OMB's function codes; and (4) a general dissatisfaction with OMB guidance or the act, or agency compliance with either."

Since such challenges were outside the scope of the challenge-and-appeal process that Congress had established, these challenges were unsuccessful. As GAO noted (p. 14), "Because most of industry's challenges and appeals did not involve either the inclusion, or omission of, an activity from an agency's inventory, agencies dismissed them."

3. The Proposed Revision to OMB's FAIR Act Guidance

As GAO noted in its report, most of the "employee challenges" to the 1999 FAIR Act inventories were within the scope of the statutory challenge-and-appeal process, but only one-third of the "industry challenges" fell within the scope of the statute. In light of the experience gained during the 1999 challenge-and-appeal process, including the agencies' denials of those challenges that "did not meet the challenge provisions of the FAIR Act" (GAO Report, p. 11), it would be reasonable to expect that "interested parties" have now developed a better understanding of what matters may, and may not, be raised during the challenge-and-appeal process that Congress established in the FAIR Act.

As was noted above, and in GAO's report, the FAIR Act itself provides the operative test: Section 3 of the FAIR Act states an interested party may submit challenges and appeals to "an omission of a particular activity from, or an inclusion of a particular activity on," the agency's FAIR Act inventory of commercial activities. In accordance with this test, OMB in its June 1999 guidance stated that "an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then possible appeal by an 'interested party,'" and OMB further stated that the challenge "must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory)." (Paragraphs G.2 and G.3 of Appendix 2 of the Revised Supplemental Handbook for Circular A–76.)

OMB believes that it is in the interest of all affected parties—namely, the interested parties that may file challenges and appeals, and the agencies that must respond to them—to eliminate any remaining confusion that may still exist about the scope of the challenge-and-appeal process that Congress established in the FAIR Act. Accordingly, OMB proposes to revise its implementation guidance for the FAIR Act to provide additional clarification regarding what matters are, and are not, subject to challenge and appeal. Specifically, OMB proposes to revise the introductory paragraph of Paragraph G.2 of Appendix 2 to the Revised Supplemental Handbook for Circular A–76 so that it reads as follows (the proposed new language is in italics):

2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then, possible appeal by an "interested party." *In other words, if an agency has not included an activity on its Inventory, then an "interested party" may submit a challenge and appeal contending that the activity is commercial and, therefore, should be added to the Inventory. Conversely, if an agency has included an activity on its Inventory, then an "interested party" may submit a challenge and appeal contending that the particular activity is inherently governmental and, therefore, should be deleted from the Inventory. The FAIR Act does not authorize any other types of challenges and appeals. Thus, for example, in the case of an activity that an agency has included in its Inventory, an "interested party" may not submit a challenge and appeal that agrees with the agency's decision that the activity is commercial but disagrees with how the agency has described the activity (with respect to, for example, the Function Codes and Reason Codes that the agency used in describing the activity).* Section 3(b) of the FAIR Act defines "interested party as . . ."

OMB requests comment on the proposed revisions.

Jacob J. Lew,

Director.

Circular No. A–76 (Revised); Proposed Transmittal Memorandum No. 23

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Performance of Commercial Activities

This Transmittal Memorandum implements changes to the OMB Circular A–76 Revised Supplemental Handbook, in furtherance of the requirements of the Federal Activities Inventory Reform Act ("The FAIR Act"), Public Law 105–270. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum No. 15 (61 FR 14338). The March 1996 Revised Supplemental Handbook was further revised to implement the requirements of the FAIR Act through Transmittal Memorandum No. 20 (64 FR 33927) and Transmittal Memorandum No. 22 (65 FR 54568).

To clarify that the FAIR Act's administrative challenge and appeal process is limited to the inclusion or the omission of an activity on or off the list, the following change at Appendix 2, paragraph G. 2, of the OMB Circular A–76 Supplemental Handbook is proposed (see italics):

"2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then possible appeal by an "interested party." *An agency's decision with regard to the application of appropriate Function Codes, Reason Codes and agency decisions regarding the aggregation or dis-aggregation of FTE for purposes of reporting commercial activities on the inventory are not subject to administrative challenge or appeal by an "interested party."* Section 3(b) of the FAIR Act defines "interested party as..."

This change is effective immediately. Current A–76 and FAIR Act implementation guidance can be accessed at OMB's homepage at http://www.whitehouse.gov/OMB/procurement/fair-index.html.

Jacob J. Lew,

Director.

[FR Doc. 00–31881 Filed 12–13–00; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2000 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Commercial Activities Inventories.

SUMMARY: Year 2000 FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below. The Office of Federal Procurement Policy has prepared and is making available a summary FAIR Act User's Guide through its Internet site:

http://www.whitehouse.gov/OMB/procurement/index.html.

This User's Guide will help interested parties review Year 2000 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The "Federal Activities Inventory Reform Act of 1998" (Public Law 105–270) ("FAIR Act") requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has completed this process for the agencies listed below. Further

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announcements will be published as OMB and the agencies complete their review and consultation process.

The attached Commercial Activities Inventories are now available.

Jacob J. Lew,
Director.

Agency	Contact
African Development Foundation	Tom Wilson, 202–673–3948. Website: *www.adf.gov.*
Agency for International Development	Deborah Lewis, 202–712–0936. Website: *www.usaid.gov/procurement—bus—opp.*
Agency for International Development (OIG)	Deborah Lewis, 202–712–0936. Website: *www.usaid.gov/procurement—bus—opp*
Agriculture	Richard Guyer, 202–690–0291. Website: *www.usda.gov/ocfo.*
	Richard Kodl, 202–884–7666. Website: *www.arc.gov/infopubs/infomain.htm.*
Appalachian Regional Commission	Hubert Sparks, 202–884–7675. Website: *www.arc.gov/infopubs/infomain.htm.*
Appalachian Regional Commission (OIG)	Richard Guyer, 202–690–0291. Website: *www.usda.gov/ocfo.*
Architectural and Transportation Barriers Compliance Board	Lawrence W. Roffee, 202–272–5434, ext. 113 Website: *www.access-board.gov.*
Barry Goldwater Scholarship and Excellence in Education Foundation	Gerald J. Smith, 703–756–6012. Website: *www.act.org/goldwater*
Christopher Columbus Fellowship Foundation	Judith M. Shellenberger, (315) 258–0090 Website: *www.columbusfdn.org*
Commerce	Edna Campbell, 202–482–0585. Website: *www.doc.gov/oebam/fair.*
Commission on Fine Arts	Jeff Carson, 202–504–2200. No Website currently available.
Committee for Purchase from People who are Blind or Severely Disabled.	Lee Wilson, 703–603–7740. Website: *www.jwod.gov.*
Council on Environmental Quality	Ellen Athas, 202–456–6541.Website: *www.whitehouse.gov/CEQ.*
Consumer Product Safety Commission	Edward E. Quist, 301–504–0029. ext. 2240.Website: *www.cpsc.gov/businfo/businfo.html.*
Education Department	Gary Weaver, 202–401–3848. Website: *www.ed.gov/offices/OCFO/2000fair.html.*
Federal Election Commission	John O'Brien, 202–694–1215. Website: *www.fec.gov.*
Federal Emergency Management Agency	Colleen Kennedy-Roberts, 202–646–2988. Website: *www.fema.gov.*
Federal Retirement Thrift Investment Board	Richard White, 202–942–1633. Website: *www.frtib.gov/eread.html.*
General Services Administration	Tom Fitzpatrick, 202–501–0324. Website: *www.cfo.gsa.gov.*
Harry S. Truman Scholarship Foundation	Louis H. Blair, 202–395–4831. Website: *www.truman.gov.*
Health and Human Services	Michael Colvin, 202–690–7887. Website: *www.hhs.gov/progorg/oam/fair*
Housing and Urban Development	Janice W. Blake-Green, 202–708–0638. Website: *www.hud.gov/cfo/cforept.html.*
Institute of Museum and Library Services	Linda Bell, 202–606–8637. Website: *www.imls.gov.*
Inter-American Foundation	Linda Borst, (703) 306–4308. Website: *www.iaf.gov.*
James Madison Memorial Fellowship Foundation	Steve Weiss, 202–653–6109. Website: *www.jamesmadison.com.*
Japan-United States Friendship Commission	Eric Ganloff, 202–418–9800. Website: *www.jusfc.gov.*
Kennedy Center for the Performing Arts	Jared Barlage, 202–416–8721. Website: *www.kennedy-center.org/about/administration.html.*
Marine Mammal Commission	Suzanne Montgomery, 301–504–0087. No Website currently available.
National Commission on Libraries and Information Science	Judith C. Russell, 202–606–9200. Website: *www.nclis.gov.*
National Council on Disability	Ethel D. Briggs, 202–272–2004. Website: *www.ncd.gov/newsroom/correspondence (pull up lew 7–14–00.html).*
National Education Goals Panel	John Masaitis, 202–724–0015. Website: *www.negp.gov* (hit search and type in A–76).
National Endowment for the Arts	Mike Burke, 202–682–5497. Website: *www.arts.gov/learn/commercial2000.html.*
National Labor Relations Board (OIG)	Emil T. George, 202-273–1960. Website: *www.nlrb.gov/active.html.*
Office of U.S. Trade Representative	Barbara Ferguson, 202–456–6001 *www.ustr.gov.*
Peace Corps	Susan Hancks, 202–692–1612 Website: *www.peacecorps.gov.*
Railroad Retirement Board	Henry M. Valiulis, 312–751–4520 Website: *www.rrb.gov/emaillink.html.*
Railroad Retirement Board	Martin J. Dickman, 312–751–4690. Website: *www.rrb.gov/emaillink.html.*
Smithsonian Institution	L. Carole Wharton, 202–357–2917. Website: *www.si.edu/si_fairact.htm.*
U. S. Trade and Development Agency	Julie Norton, 703–875–6066 Website: *www.tda.gov.*

[FR Doc. 00–31880 Filed 12–13–00; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24788; File No. 812–12256]

Integrity Life Insurance Company, et al.

December 8, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder.

Applicants: Integrity Life Insurance Company ("Integrity"), National Integrity Life Insurance Company ("National Integrity," together with Integrity, the "Companies"), Separate Account I of Integrity Life Insurance Company, Separate Account I of National Integrity Life Insurance Company (together with Separate Account I of Integrity Life Insurance Company, the "Accounts"), and Touchstone Securities, Inc. ("Touchstone").

Summary of Application: Applicants seek an order of exemption pursuant to Section 6(c) of the 1940 Act to the extent necessary to permit the recapture, under specified circumstances, of credits applied to contributions made under certain flexible premium variable annuity contracts that the Companies will issue through the Accounts (the "Contracts"), as well as other contracts that the Companies may issue in the future through their existing or future separate accounts ("Other Accounts") that are substantially similar to the Contracts in all material respects ("Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control or affiliated with, Touchstone, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts ("Affiliated Broker-Dealers").

Filing Date: The application was filed on September 15, 2000, and amended and restated on December 4, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 2, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o G. Stephen Wastek, Esq., Assistant General Counsel, Integrity Life Insurance Company, 515 West Market Street, Louisville, Kentucky 40202.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch at (202) 942–8090.

Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of the State of Ohio. It is authorized to sell life insurance and annuities in 47 states and the District of Columbia. Integrity is a subsidiary of Western and Southern Life Insurance Company ("Western and Southern"), a mutual life insurance company organized under the laws of the State of Ohio.

2. National Integrity is a stock life insurance company organized under the laws of New York. It is authorized to sell life insurance and annuities in four states and the District of Columbia. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern.

3. Separate Account I of Integrity Life Insurance Company was established in 1986 as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Integrity. It is a segregated asset account of Integrity and is registered with the Commission as a unit investment trust under the Act (File No. 811–04844).

4. Separate Account I of National Integrity Life Insurance Company was established in 1986 as a separate account under New York law for the purpose of funding variable annuity contracts issued by National Integrity. It is a segregated asset account of National Integrity and is registered with the Commission as a unit investment trust under the Act (File No. 811–04846).

5. The Accounts will fund the variable benefits available under the Contracts. Each Company's offering of the Contracts is registered under the Securities Act of 1933. That portion of the assets of the Accounts that is equal to the reserves and other Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of the Companies. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of the Companies.

6. Touchstone is the principal underwriter of the Contracts. Touchstone is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. The Contracts are sold by registered representatives of broker-dealers that have entered into distribution agreements with Touchstone. Touchstone is a wholly owned subsidiary of Western and Southern.

7. The minimum initial contribution is $1,000. An owner may make additional contributions of at least $100 at any time. The Companies may limit total contributions to $1,000,000 if the owner is under age 76 and to $250,000 if the owner is over age 76.

8. The Added Value Option is an optional credit to the Contracts of between 1% and 5% of the total first year contributions (the "Credit"). If an owner selects the Added Value Option at the time of application, the Companies will credit an extra amount to a Contract each time the owner makes a contribution within the first twelve months after the contract is issued. The owner may select a Credit form 1% to 5%. The Companies will allocate Credits pro rata among the investment options in the same ratio as the contribution. The Companies will fund Credits from their general account assets.

9. The annual charge for the Added Value Option is .15% for each percentage of Credit an owner selects. The charge is assessed against the Accounts and the fixed accounts. For example, if the owner selects the 3% Credit, the annual charge is .45%. The charge is subject to a minimum and maximum dollar amount. The minimum, amount is .145% multiplied

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by the first year total contributions. The maximum amount is .182% multiplied by first year total contributions. The prospectuses for the Contracts contain a chart of percentages the Companies will use in calculating the range of dollar amounts. The Companies assess the charge quarterly on the assets in the investment options to which an owner's contributions are allocated. The Companies will discontinue deducting the charge seven years from the date a Contract is issued.

10. The Credit is not part of the amount an owner will receive if he or she exercises the free look provision. In addition, all or part of the Credit will be recaptured if the owner makes a withdrawal in excess of the annual 10% free withdrawal amount during the first seven contract years. The 10% free withdrawal provision allows an owner to withdraw up to 10% annually of the account value without any contingent withdrawal charge or a market value adjustment being assessed. Regardless of whether or not the Credit is vested, all gains or losses attributable to such Credit are part of the owner's contract value and are immediately vested.

11. The free look period is the 10-day period (or longer if required by state law) during which an owner may return a Contract after it has been delivered and receive a full refund of the Contract value, less any Credits applied. Unless the law requires that the full amount of the contribution be refunded, less any withdrawals, the owner bears the investment risk from the time of purchase until he or she returns a Contract and the refund amount may be more or less than the contribution the owner made. The Credit is not part of the amount an owner will be paid if the free look provision is exercised.

12. An owner may make withdrawals from a Contract at any time before annuitization. The minimum withdrawal amount is $300. Assuming the owner has selected the Added Value Option, any withdrawal in excess of the annual 10% free withdrawal amount during the first seven contract years will be subject to the recapture of all or part of any Credit applied to the Contract and will also be subject to contingent withdrawal charges. Only amounts withdrawn in excess of the 10% free withdrawal amount are subject to recapture or contingent withdrawal charges. The amount that will be recaptured depends on the contract year in which the withdrawal is made. The chart below shows what portion of the Added Value Option as credited will be recaptured in connection with a partial withdrawal in excess of the free withdrawal amount or a complete withdrawal.

AMOUNT OF CREDIT RECAPTURED

Contract year	Integrity (in percent)	National integrity (in percent)
1	100	100
2	85	100
3	65	85
4	55	70
5	40	55
6	25	40
7	10	25
8+	0	0

The contingent withdrawal charge is a percentage of contributions withdrawn by the owner. The contingent withdrawal charge for each Company is as follows:

Number of years from date of contribution	Integrity charge (in percent)	National integrity charge (in percent)
1	8	7
2	7.5	6
3	7	5
4	6	4
5	5	3
6	4	2
7	3	1
8+	0	0

For purposes of calculating the contingent withdrawal charge, the Companies treat withdrawals as coming from the oldest contribution first (*i.e.*, first-in, first-out). In the case of partial withdrawals, the Companies deduct the contingent withdrawal charge, if any, from the value remaining in a Contract, not from the withdrawal amount requested by the owner.

13. Owners of the Contracts may allocate their contributions among 42 investment options—40 variable investment options and two fixed investment options. Each subaccount of the Accounts is a variable investment option that will invest in shares of a corresponding portfolio of Janus Aspen Series, Fidelity's Variable Insurance Product Funds, The Legends Fund, MFS Variable Insurance Trust, Putnam Variable Trust Funds, or Van Kampen Life Portfolios.

14. The Companies, at a later date, may decide to create additional subaccounts to invest in any additional funding media as may now or in the future be available. The Companies, from time to time, also may combine or eliminate subaccounts or transfer assets to and from subaccounts.

15. The Contracts provide for a death benefit, various death benefit options, annuity benefits and annuity payout options, as well as transfer privileges, dollar cost averaging, and other features. The Contracts have the following charges: (a) a deferred sales charge as a percentage of contributions withdrawn as described above; (b) an annual administrative charge of $30; (c) a mortality and expense risk charge of .85%; (d) an administrative expense charge of .15%; (e) a transfer fee of $20 after twelve transfers made during a Contract year; (f) any applicable charge for the Added Value Option; (g) any applicable death benefit option fee; and (h) any applicable state premium tax. In addition, assets invested in the subaccounts are charged with the annual operating expenses of the underlying portfolios.

16. Applicants seek exemption pursuant to Section 6(c) of the 1940 Act from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent deemed necessary to permit the Companies to recapture part or all of a Credit in the following instances: (a) when an owner exercises the Contract's free look provision; and (b) when an owner makes a withdrawal in excess of the annual 10% free withdrawal amount within the first seven Contract years.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission pursuant to section 6(c) of the 1940 Act grant the exemptions requested below with respect to the Contracts and any Future Contracts issued by the Companies, funded by the Accounts or Other Accounts, and underwritten or distributed by Touchstone or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar to the Contracts in all material respects. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that it is not administratively feasible to track a Credit in the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amount held in the Accounts, including the Credit, during the free look period and the recapture period. As a result, during such periods, the aggregate asset-based charges assessed against an owner's account value will be higher than those that would be charged if the owner's account value did not include the Credit. The account value includes all assets in the Accounts and the fixed accounts, including any Credit.

3. Subsection (i) of section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) of the 1940 Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants assert that the recapture of a Credit in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An owner's interest in a Credit allocated to his or her Contract value upon receipt of a contribution made during the first twelve months after issuance is not fully vested until the eighth contract year. Unless and until the full amount of a Credit is vested, the Companies retain at least partial right and interest in the Credit, although not in the earnings attributable to the amount. Thus, Applicants argue that when the Companies recapture a Credit, in part or in full, they are merely retrieving their own assets and the owner has not been deprived of a proportionate share of the applicable Accounts' assets because his or her interest in the Credit has not vested.

5. In addition, Applicants state that permitting an owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract, with no intention of keeping it, and return it for a quick profit. Furthermore, Applicants state that the recapture of Credits applied to contributions made within the first twelve months after issuance is designed to provide the Companies with a measure of protection against anti-selection. The risk here is that, rather than spreading contributions over a number of years, an owner might make very large contributions during the first Contract year, thereby leaving the Companies little time to recover the cost of the Credits. As noted earlier, the amounts recaptured equal the Credits provided by the Companies from their general account assets and any gain would remain a part of the owner's contract value.

6. Applicants assert that the Credit will be attractive to and in the interest of investors because it will permit owners to put between 100% and 105% of each of their contributions to work for them in the selected investment options. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal amount of the Credit once vested.

7. Applicants further assert that the recapture of any Credit only applies in relation to the risk of anti-selection against the Companies. Anti-selection can generally be described as a risk that owners obtain an undue advantage based on elements of fairness to the Companies and the actuarial and other factors taken into account in designing the Contracts and Future Contracts. The Companies provide the Credit from their general account assets on a guaranteed basis. Thus, they undertake a financial obligation that contemplates the retention of the Contracts and Future Contracts by their owners over an extended period, consistent with the long-term nature of retirement planning. The Companies generally expect to recover their costs, including Credits, over an anticipated duration while a Contract or Future Contract is in force. The right to recapture Credits applied to contributions made within the first twelve months after issuance protects the Companies against the risk that an owner will purchase a Contract or Future Contract or make larger or additional contributions with the knowledge that the contingency that triggers payment of a benefit is likely or about to occur. With respect to refunds paid upon the return of a Contract or Future Contract during the free look period, the amount payable by the Companies must be reduced by the amount of the Credit. Otherwise, investors could purchase a Contract or Future Contract for the sole purpose of exercising the free look provision and making a quick profit.

8. Applicants submit that the provisions for recapture of Credits under the Contracts and Future Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Sections 26(e) and 27(i) were added to the 1940 Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Credit to contributions made under the Contracts should not raise any questions as to the Companies' compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances summarized herein without the loss of relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 under the 1940 Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computer after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. The Companies' recapture of a Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current accumulation unit value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate section 22(c) or Rule 22c–1. To effect a recapture of a Credit, the Companies will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value(s) of the subaccount(s) to which the owner's contract value is allocated. The amount recaptured will equal the amount of the Credit paid out of the Companies' general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current accumulation unit values of the applicable subaccounts. Thus, no

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dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. Because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Credit, Rule 22c–1 and section 22(c) should not apply to any Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

Conclusion

Applicants submit that their request for an order that applies to the Accounts and any Other Accounts established by the Companies, in connection with the issuance of the Contracts and Future Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the application. Applicants submit that having Applicants file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive requests meet the standards set out in section 6(c) of the 1940 Act and that the Commission should, therefore, grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31897 Filed 12–13–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24787: File No. 812–11940]

The Travelers Insurance Company, et al.

December 8, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission")

ACTION: Notice of Application for an Order under section 6(c) of the Investment Company Act of 1940 ("1940 Act" or "Act") granting exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits added to purchase payments of certain variable annuity contracts.

Applicants: The Travelers Insurance Company ("The Travelers"), The Travelers Life and Annuity Company ("Travelers Life," together with The Travelers, "Insurers"), the Travelers Fund BD III for Variable Annuities ("Fund BD III"), The Travelers Fund BD IV for Variable Annuities ("Fund BD IV") (Fund BD III, together with Fund BD IV, the "Separate Accounts" or "Accounts") and Travelers Distribution LLC ("Travelers Distribution").

Summary of Application: Applicants seek an order section 6(c) of the Act to the extent necessary to permit the recapture of credits added to purchase payments of certain variable annuity contracts (the "Contracts"). Applicants also request that the order being sought extend to (i) any other contracts that may be issued in the future by the Insurers that are substantially similar in all material respects to the Contracts ("Future Contracts") but are issued through the Accounts or through separate accounts of the Insurers to be established in the future ("Future Accounts"), and (ii) any other National Association of Securities Dealers, Inc. ("NASD"), member broker-dealers controlling or controlled by, or under common control with the Insurers, whether existing or created in the future, that acts as a distributor of and/or principal underwriter for the Contracts or Future Contracts offered through the Insurer's Accounts or Future Accounts ("Future Underwriters").

Filing Date: The application was filed on January 19, 2000, and was amended and restated on November 1, 2000. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 2, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Kathleen A. McGah, Esq., The Travelers Insurance Company, One Tower Square, Hartford, CT 06183.

FOR FURTHER INFORMATION CONTACT: Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Travelers, a Connecticut stock insurance company, is licensed to conduct life insurance business in all of the states of the United States, the District of Columbia, Puerto Rico, Guam, the British and U.S. Virgin Islands, and the Bahamas. The Travelers is an indirect wholly owned subsidiary of Citigroup Inc. Citigroup Inc. consists of businesses that include a broad range of financial services, including asset management, banking and consumer finance, credit and charge cards, insurance investments, investment banking, and trading.

2. Travelers Life, a Connecticut stock insurance company, is licensed to conduct life insurance because in a majority of states of the United States. Travelers Life is a wholly owned subsidiary of The Travelers.

3. Fund BD III and Fund BD IV were established under the laws of Connecticut as separate investment accounts by The Travelers and Travelers Life, respectively. Assets allocated to each Separate Account support the benefits payable under group and individual annuity contracts offered by the Insurers. Each Separate Account is registered with the Commission as a unit investment trust, and meets the definition of a "separate account" in section 2(a)(37) of the 1940 Act.

4. Travelers Distribution is registered as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the NASD. Travelers Distribution serves as the principal underwriter for the Contracts, and is affiliated with the Insurers.

5. The Contracts are flexible premium variable annuity contracts that may be purchased by individuals or groups in connection with certain retirement plans on a tax-qualified or a non-tax-qualified basis. Each Contract permits an owner to allocate funds to one or more variable funding options and/or to the fixed account. Each Contract provides an owner special features such as purchase payment credits, systematic withdrawals, dollar-cost averaging, and automatic rebalancing as well as a choice of a standard death benefit or an enhanced death benefit.

6. During the first Contract year, for each purchase payment made, the relevant Insurer will add a credit to the owner's Contract value. This credit will be funded from the Insurer's general account assets. The credit will equal a percentage of each purchase payment made and will depend upon the greater age of the owner or annuitant at issue. If the greater age is 69 or under, the credit will be 5%. If the greater age is 70 or over, the credit will be 4%.

7. Each Insurer will apply the credit to the investment options selected by the owner in the same ratio as the applicable purchase payment. However, the Insurer will deduct the credit from the contract value if: (i) The owner returns the Contract during the right to return period; (ii) the owner (or the annuitant, with no contingent annuitant surviving) dies within 12 months after the credit is applied; or (iii) the owner surrenders or annuitizes the Contract within 12 months after the credit is applied. The amount of credit deducted from any surrender, any contract value applied to an annuity option, or death benefit made by the Insurer will not include the amount attributable to the credit's investment pains or losses. An Insurer will not recapture purchase payment credits from any partial withdrawal.

8. Each owner may elect a standard death benefit or an enhanced death benefit. Under the standard death benefit, an Insurer will pay the beneficiary an amount equal to the greater of (1) and (2) below, each reduced by the any applicable premium tax and withdrawals (and charges) not previously deducted where: (1) is the contract value, less any purchase payment credits applied within 12 months of the death; or (2) is the total purchase payments made under the Contract.

9. Under the enhanced death benefit, an Insurer will pay the beneficiary an amount equal to the greatest of (1), (2), and (3) below, each reduced by any applicable premium tax and withdrawals (and charges) not previously deducted where: (1) is the contract value, less any purchase payment credits applied within 12 months of the death; (2) is the total purchase payments made under the Contract; or (3) is the "step-up" value that reflects the highest anniversary calculation of cash value (before the annuitant's 80th birthday or death) after adjustment for purchase payments and withdrawals.

10. An owner may make a withdrawal at any time before the maturity date. However, each Insurer will apply a withdrawal charge if purchase payments and associated credits are withdrawn before they have been in a contract for ten years. The withdrawal charge is assessed as a percentage of each purchase payment and associated credit as follows: 0–4, 5, 6, 7, 8, 9, 10 years since purchase payment made will be assessed a withdrawal charge of 8%, 7%, 6%, 5%, 3%, 1%, and 0%, respectively.

11. For purposes of the withdrawal charge calculation, the Insurers will take the withdrawal first from: (a) any purchase payments and associated credits to which no withdrawal charge applies; then from (b) any remaining free withdrawal allowance (after being reduced by (a)); then from (c) any purchase payment and associated credits to which a withdrawal charge applies (on a first-in, first-out basis); and then from (d) any Contract earnings.

12. Purchase payment credits, however, are not considered in the calculation of the withdrawal charge if the withdrawal is taken within 12 months after the credit is applied—therefore, purchase payment credits are never subject to withdrawal charges during that 12-month period. Unless the owner requests otherwise, each Insurer will deduct the withdrawal charge from the amount withdrawn.

13. The Insurers will not deduct a withdrawal charge if purchase payments are distributed: due to the death of the owner or the annuitant (with no contingent annuity surviving); under the Travelers Minimum distribution Program (under which an owner may instruct an Insurer to make minimum distributions that may be required by the IRS upon reaching age 70½); or under the Nursing Home Confinement provision (this provision is only available if the owner elects the enhanced death benefit).

14. Beginning in the second Contract year, an owner may withdraw up to 10% of contract value annually without a withdrawal charge. The free withdrawal amount is calculated as of the end of the previous Contract year.

15. Certain other charges are made in connection with the Contracts. Among these charges are an annual $40 administrative charge (waived if contract value is $100,000 or more), asset-based mortality and expense risk and administrative expense charges, and fund fees and expenses.

16. The mortality and expense risk and administrative expense charges are deducted daily. On an annual basis, the mortality and expense risk and administrative expense charges combined, total 1.40% of the average daily net assets of the Separate Account (if the owner selects the standard death benefit) or total 1.60% of the average daily net assets of the Separate Account (if the owner selects the enhanced death benefit).

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule, or regulation of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Because the provisions described below may be inconsistent with certain aspects of the recapture of the purchase payment credits, Applicants seek exemptions from Sections 2(a)(32), 22(c), 27(i)(2)(A) and Rule 22c–1 thereunder, to the extent necessary, pursuant to Section 6(c) to recapture the credits from those owners who surrender during the right to return period, or who surrender, annuitize or die before the expiration of the relevant 12-month time period. For the reasons discussed below, Applicants submit that the recapture of the purchase payment credits is in the public interest and consistent with the protection of investors and purposes fairly intended by the 1940 Act.

2. Applicants note that because the credit is added to contract value, the asset-based mortality and expense charge and administrative charge are higher than they would have been had the Insurer not added the credit to the owner's Contract value. Applicants submit that it is not administratively

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feasible to track the credit amount in the Separate Account once the credit is applied. Nevertheless, each Insurer represents that the fees and charges, in the aggregate, are reasonable within the meaning of Section 26(e).

3. Section 27(i)(2)(A) of the 1940 Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security. Section 2(a)(32) of the 1940 Act defines a "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. To the extent the recapture of the purchase payment credits could be seen as a discount from net asset value or could result in the return of less than the proportionate share of the issuer's net assets, the recapture of the credits would trigger the need for relief absent some exemption from the 1940 Act.

4. The purchase payment credits are part of the overall pricing structure for each Contract. When the Contracts were designed, the pricing actuaries established the credits at a set level assuming the Insurer could recover its costs associated with the credits if the owner remained in the Contract for a certain period of time. Applicants submit that should the owner surrender, annuitize, or die before that period, the Insurer must recover the credits to help offset its costs. Therefore, Applicants seek relief from Section 2(a)(32).

5. Applicants assert that the owner's interest in the credit amount does not vest until the expiration of both the right to return period and the 12-month period following the credits' application to the owner's account. Until such time, the Insurer retains the right to and interest in the credit amount, although not the earnings attributable to the credit. Therefore, Applicants argue that when an Insurer recaptures the purchase payment credit, the Insurer is simply taking back what rightfully belongs to the Insurer—its own assets. Accordingly, Applicants argue that the credit recapture is a legitimate "charge" for a benefit under the Contracts, and does not reduce the amount of Fund BD III's or Fund BD IV's current net assets that an owner otherwise would be entitled to receive.

6. Moreover, Applicants represent that the recapture of the purchase payment credits is consistent with the long-term nature of the Contracts. The recapture acts as an "anti-selection" device by discouraging an owner to invest in the Contract simply to make a quick profit. In other words, the recapture prevents an owner from making a very large contribution one day and then surrendering the contract the next day (and thereby depriving the Insurer of opportunity to recover the cost of the credits applied). As stated above, the credits are contributed by the Insurer from its own general account assets, and any gain attributable to the credits would remain as part of the owner's contract value.

7. Consistent with Section 2(a)(32), therefore, Applicants argue that the Contracts will be "redeemable securities." The Contracts provide for withdrawals and surrenders of contract value. The prospectuses for the Contracts disclose the contingent nature of the credit recapture. Accordingly, Applicants argue that there will be no restriction on, or impediment to, withdrawals or surrenders that should cause the Contracts to be considered other than redeemable securities within the meaning of the 1940 Act and rules thereunder, and that an owner upon taking a withdrawal from a Contract or surrendering or annuitizing a Contract will receive his "proportionate share" of the relevant Separate Account: *i.e.*, the amount of the purchase payment reduced by the amount of all charges and increased or decreased by the amount of investment performance credited to the Contract.

8. Rule 22c–1, promulgated under Section 22(c) of the 1940 Act, imposes requirements with respect to both the amount payable on redemption and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing a redeemable security and its principal underwriter from selling, redeeming, or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security. To the extent that the credit recapture can be viewed as causing a Contract to be redeemed at a price that is computed at less than current net asset value, Applicants request relief from Section 22(c) and Rule 22c–1.

9. Applicants argue that the purchase payment credit recapture will comply with the requirements of Rule 22c–1. Regarding the amount payable, Applicants argue that the recapture of the credits upon surrender, annuitization, or death of an owner during the right to return period and the 12-month period following the credits' application to the owner's Contract value, does not alter the owner's current net asset value. Furthermore, regarding the timing requirement of Rule 22c–1, Applicants, consistent with their current procedures, represent that they will determine the net cash surrender value under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an owner's request for surrender or annuitization or a beneficiary's death report date. Accordingly, Applicants assert that they will comply with both the amount payable and timing requirements of Rule 22c–1.

10. In addition, Applicants argue that the credit recapture is consistent with the policy behind Rule 22c–1. Applicants state that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interests of the other security holders, and (ii) speculative trading practices that are unfair to such holders. Applicants represent that the purchase payment credit recapture would in no way have the dilutive effect that Rule 22c–1 is designed to prohibit, because a surrendering or annuitizing owner, or a beneficiary, would "receive" no more than an amount equal to the Contract value determined pursuant to the formula and at a time set out in the Contract. Furthermore, Applicants argue that variable annuities, by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, even if they could be so used, the credit recapture would discourage, rather than encourage, any such trading.

11. In addition to the considerations discussed above, Applicants assert that despite the fact that the purchase credits are subject to recapture upon surrender, annuitization, or payment of the death benefit before the expiration of the relevant 12 month time period, the credits are advantageous to owners. Even though the credits do not vest until 12 months after they are applied, owners receive the benefits from the credits. Upon application, owners will be able to invest the credits (thus having more to invest than they otherwise would have had), and will be able to receive any positive investment experience from those credits.

12. Applicants assert that the Contracts' charge structure provides equitable treatment to all owners. Applicants state that the charge structure was established for the purchase payment credits so that the Insurer may recover its costs over the life of the Contract. If an owner could surrender or annuitize a Contract, or if a beneficiary could receive the death benefit proceeds before the 12 month period after credit application without the recapture of the credits, the Insurer may not be able to fully recover its costs. If the Insurer did not recapture the credits and instead raised other charges under the Contract, the Insurer could be charging persisting owners enrolled in the product more than may otherwise be necessary to recover the costs attributable to such owners.

13. Applicants seek the relief requested herein not only with respect to themselves and the Contracts described above, but also with respect to Future Contracts issued by themselves through Future Accounts and underwritten by Future Underwriters. Applicants represent that the terms of the relief requested with respect to any Future Contract, Future Account, and Future Underwriter are consistent with standards set forth in section 6(c) of the 1940 Act.

14. Applicants state that, without the requested class relief, exemptive relief for any Future Contract, Future Account, and Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants argue, enhance each Applicant's ability to effectively take advantage of business opportunities as such opportunities arise. Applicants assert, for all the reasons stated herein, that their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Contract and provisions of the 1940 Act, and that an order of the Commission including such class relief, should, therefore, be granted.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31896 Filed 12–13–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43685; File No. SR–BSE–00–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, as Amended by the Boston Stock Exchange, Inc., Relating to an Amendment to the Post Primary Session ("PPS")

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 6, 2000, the BSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend existing rules under Chapter IIB, *Post 4:00 P.M. Trading*, which will allow member firms to accommodate various customer average pricing programs based on the primary market's primary trading session and to permit risk based portfolio programs which are based on the primary market's closing price.

The proposed rule language is as follows: The new language is in *italics.*

CHAPTER IIB

Facilitation of GTX Orders

Application of Chapter

Sec. 1. This chapter applies to the facilitation of certain orders after the close of the 9:30 a.m. to 4:00 p.m. trading session. All other provisions of the Constitution and Rules of the Exchange are applicable unless superseded by this chapter.

Facilitation of Customer Average Pricing Programs "CP"s Eligible for Reporting During PPS

Sec. 4. This section applies to the facilitation of certain transactions hereinafter referred to as Customer Average Pricing Programs, "CP"s, which are reported during the PPS to facilitate transactions in single issue, or portfolios of stocks. In order to be eligible under this rule, all CPs must facilitate customer-to-customer (agency), or customer-to-principal (principal) average pricing programs that are based on primary market average prices. For the purposes of this Section and Section 5, only those stocks that are listed on the Exchange, or that are traded pursuant to Unlisted Trading Privileges (UTP), shall be eligible for these programs.

(a) CPs are not exposed to the Exchange's PPS auction, are not price protected during PPS, and thus, may not be broken-up upon entry to the Exchange.[1]

(b) CPs must be electronically communicated to the Exchange via BEACON, identified as "CP" on each cross, entered by symbol and price, into the system, identified as to "principal" or "agency", and when applicable, identified as "short exempt". The time slice must be identified on the cross, identifying the beginning and ending slice for CP entered crosses.

BEACON will record the transaction for Tape reporting with the identifier "W", to the nearest fraction or decimal eligible for reporting by the Exchange.

(c) The following CP crossed orders are eligible for Reporting during the PPS:

(i) Primary Market Average Price—Benchmark +/− (Plus or Minus)

This CP Program provides customers with average pricing based on the primary market's trading session transactions that are reported to the consolidated tape. The Benchmark is the primary market's average price for the duration of the CP Program. If the Benchmark is exceeded, the customer will receive a better price. If the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John Boese, Assistant Vice President, BSE, to Alton Harvey, Office Chief, Office of Market Watch, Division of Market Regulation, Commission, dated December 1, 2000 ("Amendment No. 1"). In Amendment No. 1, the BSE made corrections to its rule text and clarified issues regarding the language used in its filing.

Benchmark is not reached, the customer will receive a price less than the Benchmark price.

(ii) Primary Market Average Price—Guaranteed

This CP Program provides customers with a guarantee of receiving the Benchmark. Customers electing to participate in this Program will not be eligible to obtain a better, or an inferior price.

(iii) Primary Market Average Price—Stop

This CP Program provides customers with the Benchmark, or better.

After-Hours Risk Portfolio Crosses "RP"s Eligible for PPS

Sec. 5. After-Hours Risk Portfolio Crosses, "RP"s, provide customers with the ability to sell (buy) baskets of stocks (at least 15 stocks, $1 million or more in value) where the member firm guarantees to the customer the primary market closing price, less a discount (plus a premium) for the components that comprise the basket.

- (a) RP's are not exposed to the Exchange's PPS auction, and are not price protected.[2]

(b) RPs must be electronically communicated to the Exchange via BEACON, identified as "RF" on each cross, entered by symbol and price into the system, identified as "principal" or "agency", and if appropriate identified as "short exempt". BEACON will record and enter the transaction, and report RPs to the consolidated tape in the aggregate. BEACON will record these transactions as RP Programs and provide regularly available information on aggregate volume levels by individual stock components on T+3, or thereafter[3].

[1] *These orders are not afforded price protection generally available to members under BSE Rules of Board of Governors, Chapter II, Section 33, Execution Guarantee.*

[2] *These orders are not afforded price protection generally available to members under BSE Rules of Board of Governors, Chapter II, Section 33, Execution Guarantee.*

[3] *Transactions which occur "regular way" will settle within the standard T+3 settlement period. Cash settlements may settle beyond the standard T+3 settlement period, according to the agreement of the parties to the transaction. The overwhelming majority of transactions occur "regular way".*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is seeking to amend existing rules under Chapter IIB, *Post 4:00 P.M. Trading*, to incorporate new language which will permit members and member firms to use the PPS: (1) to accommodate various customer average pricing programs, in issues eligible to trade on the Exchange,[4] that are based on the primary market trading session; and (2) to permit risk based portfolio programs, which are based on the primary market's closing price. In a side letter, the Exchange is also seeking an exemption to the short sale rule for purposes of supporting the programs described herein.[5]

a. Background

The Exchange initiated its PPS program on January 13, 2000.[6] The program runs from 4:00 p.m. through 4:15 p.m. (EST). Only orders entered after the Exchange's 4:00 p.m. close and designated as "PPS" are eligible for participation during this session. All PPS designated orders not executed during the PPS expire at the end of the PPS session and are not carried over to the next PPS session. Orders eligible for the Exchange's primary trading session are not eligible to participate during the PPS.

Member firms may wish to use the Exchange's PPS to facilitate execution of certain customer average pricing and risk based portfolio programs on either an agency basis (wherein member firms act as an agent facilitating customers on both sides of the transaction) or as principal (wherein member firms act as principal on one side of the transaction). The main purpose of accessing the PPS to report these programs is to expdite execution and customer reporting of these particular crosses that would otherwise be reported later, such as at 5:15 p.m. (EST), during the New York Stock Exchange's ("NYSE") Crossing Session II.[7]

The Exchange proposes to implement two general programs; the Customer Average Pricing Facilitation Programs ("CP Programs"), and Post Primary Session Risk Portfolio Facilitation Programs ("RP Programs"). Both of these programs are described below.

b. The Customer Average Pricing Facilitation Programs

The CP Programs will allow member firms to act as a principal on one side of the cross (principal cross), or as an agent facilitating customers on both sides (agency cross), and may include single stocks or portfolios of stocks.

Member firms facilitate their customer requests for average pricing based on primary market transactions reported over some specific period of time during the day (a so-called "time slice"). A time slice can incorporate a full trading day or some part thereof. CP Programs will be "time sliced" during the primary market's trading session so that some will begin during the trading day (upon receipt of the program) and end prior to the close. Others will begin at some point during the trading day and last through the primary market's close. Lastly, a full day average pricing program will include all trading day primary market prints from the opening transaction to the last/closing transaction. For example, a customer may seek a guarantee of receiving the primary market average price from noon to 3:00 p.m. (a time slice) on an order to sell 100,000 shares of a particular stock. The member firm accepts the conditions so it can facilitate the customer's order. At the same time, the member firm assumes the pricing risk since it may not be able to obtain the average price. Thus, the customer directly benefits from this transaction because the price performance is guaranteed.

There will be two types of reported facilitation crosses: (1) An agency cross, where the member firm has matched a buyer with a seller; and (2) a principal cross, where the member firm has assumed the contra-side of the customer's order. To facilitate a transaction where customers seek to participate on the buy side, member firms will need to sell to their customers irrespective of the tick. Therefore, an exemption to the short sale rule is required.[8]

Member firms may offer three types of average price orders to their customers: (1) Best efforts to obtain the average price, but with no guarantee; (2) a stop order guaranteeing the average price; and (3) a stop order guaranteeing the average price with the ability to improve the average price. As these transactions will be reported as averaged priced crosses during the Exchange's PPS session, they will not be exposed to the PPS auction. In that way, member firms will be able to immediately report these transactions to their customers.

The three specific order types eligible for the CP program are the following:

Primary Market Average Price—Benchmark+/-(Plus or Minus)

This order type provides customers with average pricing based on the primary market's trading session transactions, which are reported to the consolidated tape. The Benchmark price ("Benchmark") is the primary market's average price for the duration of the time slice. If the Benchmark is exceeded, the customer will receive the better price. If the Benchmark is not achieved, the customer will receive the actual price which will be less than the Benchmark price.

Primary Market Average Price—Guaranteed

This order type provides customers with a guarantee of receiving the Benchmark. Customers electing to participate in this Program will not be eligible to obtain a better, nor an inferior price.

Primary Market Average Price—Stop

This order type provides customers with the Benchmark, or better, for the duration of the time slice. Customers will not receive an inferior price to the Benchmark.

c. The PPS Risk Portfolio Facilitation Programs

Under the RP Program, member firms will offer customers a guaranteed price for the sale or purchase of a basket containing at least 15 stocks, $1 million in value or more. Member firms will provide customers with a guarantee of receiving the primary market's closing price, less a discount (or fee) in return for assuming the market risk of the basket. Thus, where member firms facilitate a transaction by being on the buy side, with the customer on the sell side, the discounted price of each component of the basket will be at a price less than the primary market's last sale. Conversely, where customers seek to be on the buy side, member firms will facilitate on the sell side and mark-up the value of the basket.

Each component of a basket will be electronically reported during the PPS as principal facilitation crosses. These principal facilitation crosses will not be exposed to the PPS auction. The shares will be reported to the consolidated tape in the aggregate, not unlike the NYSE's Crossing Session II,[9] to prevent disclosure of the side that the member firm has facilitated. This process is also similar to the system in place for NYSE Crossing Session program where reporting is in the aggregate for shares and not made available until T+3. In order to provide the ability to facilitate customers seeking to participate on the buy side, member firms will need to sell to their customers irrespective of the tick. Therefore, an exemption to the short sale rule is required.[10]

An example of a risk portfolio is where a customer sells a basket of stocks to the member firm at the primary market closing price. In return for assuming the risk, the member firm discounts the basket from the closing price. Another potential program may involve equities-futures programs (EFP). For example, a mutual fund that needs to purchase securities after the close of trading for the amount of investment funds (cash) it has received during the trading day may purchase futures contracts because the stock market is closed. Because the mutual fund must convert the futures to stock at some point, a member firm may buy the futures from the mutual fund and sell the component or underlying stocks in return.

These strategies require that the transactions not be immediately reported to the tape, because price exposure can disclose to competitors the position the member firm has assumed. Anonymity permits the member firm to unwind its position without risk of disclosure. The Exchange would emulate the process currently used by the NYSE and report to the tape in the aggregate and then provide additional information on T+3, or thereafter.[11] As the closing prices are discounted, these programs may be priced away from the primary market's last sale and potentially outside of the day's trading range.

For regulatory oversight purposes, the Exchange will require each member firm that reports transactions in CP or RP Programs to: (1) Identify the issue, shares, and price on each cross; (2) indicate whether the firm is facilitating as agent or principal; (3) indicate, if principal, that it is short exempt; (4) identify the time slice period for CP entered crosses; (5) indicate the average (Benchmark) price determined by the member firm; and (6) for RP programs, identify all crosses in a particular basket. The Exchange may also require other identifiers deemed necessary to monitor pricing. This information will be used to validate Benchmark prices.

d. Application of Rule 10a-1 of the Exchange Act

The Exchange is separately requesting that the Commission exempt both the CP and RP Programs from Rule 10a-1, the short sale rule.[12] Based on the manner of pricing transactions that will occur within the CP and RP programs, the practices that Rule 10a–1 is designed to prevent are not at issue. Specifically, over the course of the CP and RP Programs the price direction of a particular stock, *i.e.*, the tick, will not be a factor in determining to fill customer CP and RP orders. Member firms will be acting as facilitators.

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[4] Issues eligible to trade are those listed on the Exchange or listed pursuant to unlisted trading privileges.

[5] 17 CFR 240.10a–1. Review of the BSE's request for an exemption from the short sale rule is still pending before the Commission.

[6] *See* Securities Exchange Act Release No. 41814 (August 31, 1999); 64 FR 46885 (September 8, 1999).

[7] NYSE's Crossing Session II facilities the crossing of portfolios and operates between 4:00 p.m. and 5:15 p.m. (EST). This session is designed to facilitate trading of baskets of at least 15 NYSE securities valued at $1 million or more. Members that have either facilitated a basket trade, or have paired two customer baskets, submit aggregate information to the NYSE for execution. At 5:15 p.m., the NYSE prints the aggregate information of all baskets executed in this session to the consolidated tape. On the third day after the trade date (T+3), the individual component stocks executed as part of a basket are printed in aggregate form in the NYSE's Daily Sales Report.

[8] *See supra* note 5.

[9] Under the Rules of the NYSE, members that have either facilitated a basket trade, or have paired two customer baskets, submit aggregate information to the NYSE for execution. At 5:15 p.m., the NYSE prints the aggregate information of all baskets executed in this session to the consolidated tape. On the third day after the trade date (T+3), the individual component stocks executed as part of a basket are printed in aggregate form in the NYSE's Daily Sales Report.

[10] *See supra* note 5.

[11] Transactions which occur "regular way" will settle within the standard T+3 settlement period. Cash settlements may settle beyond the standard T+3 settlement period, according to the agreement of the parties to the transaction. The overwhelming majority of transactions occur "regular way." *See* Amendment No. 1, *supra* note 3.

[12] 17 CFR 240.10a–1. *See supra* note 5.

[13] 15 U.S.C. 78f(b)(5).

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any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The BSE has requested accelerated approval of the proposed rule change, as amended. While the Commission is not prepared to grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room or the principal office of the BSE. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–BSE–00–04 and should be submitted by December 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31805 Filed 12–13–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43677; File No. SR–CBOE–00–49]

Self-Regulatory Organizations; Notice of Filing by Chicago Board Options Exchange, Inc., Relating to RAES Eligibility Requirements for SPX Options

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") proposes to amend Rule 24.16, which governs the eligibility requirements of Market-Makers to participate on the Exchange's Retail Automatic Execution System ("RAES") in options on the Standard & Poor's 500 Index ("SPX").

The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 24.16, "RAES Eligibility in SPX," to: (1) eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.16; and (2) eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group. The proposed rule changes will make the RAES eligibility requirements of SPX Market-Makers the same as for other Market-Makers in non-index option classes and will enhance the depth and liquidity of the RAES markets in SPX.

Currently, Rule 24.16(a)(iv) sets forth four eligibility requirements that a Market-Maker must meet before he or she can participate in RAES in SPX. One of these requirements is that the Market-Maker must execute at least fifty percent of his or her Market-Maker contracts for the preceding calendar month in SPX. Another requirement is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker trades for the preceding calendar month in SPX in person. No comparable RAES eligibility requirements are imposed upon Market-Makers trading in non-index option classes. The Exchange proposes to eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.16, so that the RAES eligibility requirements of SPX Market-Makers are the same as for other Market-Makers.

Recently, Market-Maker participation on RAES in index options has been low compared to historical levels. This problem has been aggravated by the fact that the in-person and volume requirements have forced the Exchange to delay new Market-Makers who wish to participate on RAES from logging onto RAES for at least 30 days. The proposed rule change would allow a new Market-Maker to log onto RAES so long as that Market-Maker: (1) Has signed the RAES Participation Agreement and completed the RAES instructional program (Rule 24.16(a); (2) has been approved under Exchange Rules as a Market-Maker with a letter of guarantee (Rule 24.16(a)(iv)(A)); and (3) maintains his or her principal business on the CBOE as a Market-Maker (Rule 24.16(a)(iv)(B)).

The Exchange also proposes to eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group[3] set forth in Rule 24.16(e). Currently, Rule 24.16(e) provides that a RAES group may not exceed the maximum number of RAES participants set by the appropriate Market Performance Committee from time to time, which in no event may be set higher than thirty-three and one-third percent of the average number of RAES participants for the prior quarter. The recent decline in RAES participation in index options has resulted in imposed reductions in the RAES group size due to the application of this size limit.

The proposed rule change would conform Rule 24.16 to the Exchange Rule governing RAES eligibility for equity options, Rule 8.16, which does not impose in-person and volume requirements on equity options Market-Makers. The Exchange believes that by making the SPX RAES eligibility rule consistent with the rule for equity Market-Makers, the proposed rule change will provide the SPX market with enhanced capital and market-making expertise while maintaining the overall quality of the market. By increasing the number of RAES participants in SPX, the Exchange believes the proposed rule change will further assure the availability of RAES during periods of market volatility.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[4] in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–49 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31799 Filed 12–13–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43676; File No. SR–CBOE–00–48]

Self-Regulatory Organizations; Notice of Filing by Chicago Board Options Exchange, Inc., Relating to RAES Eligibility Requirements for OEX and DJX Options

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") proposes to amend Rule 24.17, which governs the eligibility requirements of Market-Makers to participate on the Exchange's Retail Automatic Execution System ("RAES") in both options on the Standard & Poor's 100 Index ("OEX") and options on the Dow Jones Industrial Average ("DJX").

The text of the proposed rule change is available at CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 240.19b–4.

[3] A RAES group is an account whereby members of a joint account may participate on the system at the same time and assign their RAES trades to a designated joint account or nominee acronym.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 24.17, "RAES Eligibility in OEX and DJX," to: (1) eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.17; (2) eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group; and (3) add an exception to the log-off requirements of OEX and DJX Market-Makers. The proposed rule changes will make the RAES eligibility requirements of OEX and DJX Market-Makers the same as for other Market-Makers in non-index option classes and will enhance the depth and liquidity of the RAES markets in OEX and DJX.

Currently, Rule 24.17(b)(v) sets forth four eligibility requirements that a Market-Maker must meet before he or she can participate in RAES in either OEX or DJX. One of these requirements is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker contracts for the preceding calendar month in the option class in which the Market-Maker is participating on RAES. Another requirement is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker trades for the preceding calendar month in the option class in which the Market-Maker is participating on RAES in person. No comparable RAES eligibility requirements are imposed upon Market-Makers trading in non-index option classes. The Exchange proposes to eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.17, so that the RAES eligibility requirements of OEX and DJX Market-Makers are the same as for other Market-Makers.

Recently, Market-Maker participation on RAES in index options has been low compared to historical levels. This problem has been aggravated by the fact that the in-person and volume requirements have forced the Exchange to delay new Market-Makers who wish to participate on RAES from logging onto RAES for at least 30 days. The proposed rule change would allow a new Market-Maker to log onto RAES so long as that Market-Maker: (1) Has signed the RAES Participation Agreement and completed the RAES instructional program (Rule 24.17(b)(i)); (2) has been approved under Exchange Rules as a Market-Maker with a letter of guarantee (Rule 24.17(b)(v)(A)); and (3) maintains his or her principal business on the CBOE as a Market-Maker (Rule 24.17(b)(v)(B)).

Accordingly, the Exchange proposes to also eliminate subparagraph (b)(vi)(C) to Rule 24.17, which allows a Market-Maker to qualify for RAES in both OEX and DJX during the same calendar month by meeting the individual in person and volume requirements with respect to OEX, with respect to DJX, or the volume requirement with respect to OEX and DJX combined and the in person requirement with respect to OEX or DJX. Under the proposed rule change, a Market-Maker will be able to participate in RAES in both OEX and DJX during the same calendar month as long as he or she meets the remaining criteria under subparagraph (b)(v) to Rule 24.17 and as long as the two products continue to be traded at the same physical trading location. A Market-Maker must be present in the particular trading crowd where the class is traded while he or she is participating in RAES for that class. The Exchange also proposes to eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group[3] set forth in Rule 24.17(e). Currently, Rule 24.17(e) provides that a RAES group may not exceed the maximum number of RAES participants set by the appropriate Committee from time to time, which in no event may be set higher than 50 RAES participants or 25% of the average number of RAES participants for the prior quarter, whichever is smaller. The recent decline in RAES participation in index options has resulted in imposed reductions in the RAES group size due to the application of this size limit.

The Exchange further proposes to add to Rule 24.17 an exception to the log-off requirement that provides that a Market-Maker who has logged onto RAES in OEX or DJX must log off RAES whenever he or she leaves the respective trading crowd. The exception would allow OEX and DJX Market-Makers to remain logged onto RAES if the Market-Maker's departure from the trading crowd is for a "brief interval." This exception is currently found in the SPX RAES eligibility rule, Rule 24.16, and the RAES eligibility rule for equity options, Rule 8.16.[4] The Exchange believes that OEX and DJX RAES Market-Makers should also have the benefit of this exception applicable to SPX and equity options Market-Makers. The appropriate Committee, as defined in Rule 24.17, would have the authority to determine the length of time that constitutes a brief interval in the OEX and DJX trading crowds.

The proposed rule change would conform Rule 24.17 to the Exchange Rule governing RAES eligibility for equity options, Rule 8.16, which does not impose in-person and volume requirements on equity options Market-Makers. The Exchange believes that by making the OEX and DJX RAES eligibility rule consistent with the rule for equity Market-Makers, the proposed rule change will provide the OEX and DJX markets with enhanced capital and market-making expertise while maintaining the overall quality of these markets. By increasing the number of RAES participants in OEX and DJX, the Exchange believes the proposed rule change will further assure the availability of RAES during periods of market volatility.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[5] in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[3] A RAES group is an account whereby members of a joint account may participate on the system at the same time and assign their RAES trades to a designated joint account or nominee acronym.

[4] A "brief interval" in SPX options has been determined by the appropriate Committee to mean no more than 10 to 15 minutes. In equity options, a brief interval has been determined by the appropriate Committee to mean 5 minutes or less.

[5] 15 U.S.C. 78f(b)(5).

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–48 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31801 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43688; File No. SR–ISE–00–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to a Marketing Fee To Fund Payment for Order Flow

December 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2000, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a new marketing fee to fund a payment for order flow program. This will be an interim fee, pending both approval of the Exchange's permanent payment for order flow program ("Permanent Program") and the establishment of fees under that program.[3] The fee will be $.75 a contract on all Primary Market Maker ("PMM") and Competitive Market Maker executions against customer orders. This fee will terminate at the earlier of January 15, 2001, or the effectiveness of a fee to fund the Permanent Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide a source of funding for a payment for order flow program. This will be an interim program expiring on the earlier of January 15, 2001, or Commission approval of the Permanent Program and the establishment of a fee to fund that Program.

[3] On September 12, 2000, the Exchange filed with the Commission a rule change proposing to establish the Permanent Program. *See* Securities Exchange Act Release No. 43462 (October 19, 2000), 65 FR 64466 (October 27, 2000). By the terms of that proposal, the Exchange would be required to submit a separate rule change filing pursuant to Section 19(b)(3)(A) of the Act each time it sets the specific amount of any fees authorized under the program.

The Exchange will segregate the funds the fees generate proportionately to the groups of securities (or "bins") that generated the funds. The PMM in each bin will have full and exclusive discretion on how to use those funds to pay for order flow. The Exchange will make the payments to Electronic Access Members based on the PMM's directives.

The Exchange will be issuing appropriate circulars to its members emphasizing their disclosure and best execution obligations. The Exchange also will be providing to members various reports and other information demonstrating the quality of executions that they receive on the Exchange.

2. Statutory Basis

The Exchange states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchanges believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

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or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

The Commission has frequently raised serious concerns about payment for order flow and internalization.[7] Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available. While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the ISE's proposal involves the imposition of a fee, and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the ISE's proposal raises greater or different concerns than payment for order flow at other option exchanges. After receiving comments, and at any time within 60 days from the date the ISE filed its proposal, the Commission can decide to require the ISE to stop collecting the fee and await Commission approval of the Permanent Program.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–24, and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31800 Filed 12–13–00; 8:45 am]

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[7] *See* Securities Exchange Act Release Nos. 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000); 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000); 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000); 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000); 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000); 34902 (October 27, 1994), 59 FR 55006 (November 2, 1994). *See also* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43678; File No. SR–PCX–00–08]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Dissolution of the Appointments Committee

December 5, 2000.

I. Introduction

On March 20, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the Options Appointment Committee and to transfer all of its powers to the Options Allocation Committee. On September 21, 2000, the Exchange submitted Amendment No. 1 to the proposal.[3] The proposed rule change was published for comment in the **Federal Register** on October 4, 2000.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of Proposal

Currently, the PCX rules provide that it is the duty of the Options Appointment Committee to make recommendations to the Board of Governors regarding the appointment, assignment, retention, reassignment, transfer, and taking leave of the privileges to deal in and trade options to, by, and among members on the Options Trading Floor.[5] The Options Appointment Committee is also responsible for appointing Market Makers and appointing and approving Lead Market Makers ("LMMs").[6] The Options Appointment Committee has the authority to relieve LMMs of their appointments, designate interim LMMs, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee. Currently, the Options Allocation Committee allocates and reallocates issues and evaluates and monitors Market Makers, LMMs, and trading crowds. In the proposed rule change, the Exchange seeks to eliminate the Options Appointment Committee and to transfer all of its authority and duties to the Options Allocation Committee.

In this regard, the Exchange proposes to change all references to the "Options Appointment Committee" in PCX Rule 11.10(a) to the "Options Allocation Committee" and to transfer the language of PCX Rule 11.10(a), relating to the current duties of the Options Appointment Committee, to the Options Allocation Committee under new proposed PCX Rule 11.10(b)(2). The Exchange also proposes to renumber PCX Rule 11.10(b) as 11.10(a) and PCX Rule 11.10(c) as 11.10(b)(1). The Exchange proposes to change the references to the "Options Appointment Committee" in PCX Rules 6.35; 6.37; Commentary .08; 6.82(a)(1) and (3); 6.82(b)(1) and (2); 6.82(f)(3); 6.82(g)(1); and 6.82(h)(1) to the "Options Allocation Committee."

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and in particular with the requirements of section 6(b) of the Act.[8] Specifically, the Commission believes that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act[9] because it is designed to help perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between customer and brokers or dealers.

The proposed rule change centralizes all rules relating to the approval, evaluation, allocation to, and appointment of LLMs in one committee. The Commission finds that by doing so, it is likely that more consistent decisions regarding LLMs, and their role on the Exchange will be made. The Commission believes that this consistency will benefit customers and broker-dealers conducting business on the Exchange.

The Commission recognizes that currently, Market Makers and LLMs are not permitted to serve on the PCX Options Appointment Committee; however, they are permitted to serve on the PCX Options Allocation Committee. The Commission further recognizes that Market Makers and LLMs will continue to be permitted to serve on the Options Allocation Committee after it assumes the responsibilities of the Options Appointment Committee, and that this represents a change in the composition of persons who will make decisions regarding the appointments of Market Makers and LLMs.

The Commission does not believe it is contrary to the public interest, or the interests of PCX members, to allow Market Makers and LLMs to participate on the committee that appoints Market Makers and LLMs, make decisions to relieve LMMS of their appointments, designate interim LMMS, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee.[10] The Commission expects that members of the Options Allocation Committee, including Market Makers and LLMs, will act fairly and in a non-discriminatory manner, and will recuse themselves from particular decisions, as appropriate. The Commission also expects that the Options Allocation Committee will continue to appoint only those members qualified for market maker positions, and will relieve Market Makers and LLMs of their positions only for appropriate reasons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Jennifer L. Colihan, Division of Market Regulation, Commission, dated September 20, 2000.

[4] *See* Securities Exchange Release No. 43342 (September 26, 2000), 65 FR 59242.

[5] *See* PCX Rules 6.35, 6.37, 6.82, and 11.10(c).

[6] *See* PCX Rules 6.35 and 6.82.

[7] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that four of the nine members of the Chicago Board Options Exchange's ("CBOE") Modified Trading System Appointments Committee, which is responsible for the selection and removal of CBOE Designated Primary Market Makers ("DPM"), are Exchange members whose primary business is as a Market Maker, and two of the nine members are Exchange members whose primary business is as a Market Maker or as a DPM Designee. *See* CBOE Rule 8.80. In addition, the Philadelphia Stock Exchange's ("Phlx") Allocation, Evaluation and Securities Committee, which is the committee that appoints and evaluates specialists on the Phlx, and makes allocations, allows specialists and floor brokers to serve on the committee. *See* Phlx By-law Article X, Section 10–7.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31803 Filed 12–13–00; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43683; File No. SR–PHLX–00–67]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Related to PHLX Rule 1009A

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2000, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1009A, "Designation of the Index," provide for the listing and trading of narrow-based stock index options pursuant to Rule 19b–4(e) under the Act.[4]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*

The PHLX proposes to amend PHLX Rule 1009A(b) to provide for the listing and trading of narrow-based stock index options pursuant to Rule 19b–4(e) under the Act. The purpose of the proposal is to allow the PHLX to list and trade narrow-based index options immediately without filing a proposed rule change with the Commission under Section 19(b)(3)(A) of the Act prior to trading the product, as PHLX Rule 1009A(b) currently requires.

Currently, PHLX Rule 1009A(b) allows the PHLX to list and trade options on a narrow-based index 30 days after the Exchange files a proposal under Section 19(b)(3)(A) of the Act describing the index option, provided that the index meets the generic listing criteria set forth in PHLX Rule 1009A(b). The Commission release adopting Rule 19b–4(e) under the Act ("New Products Release"),[5] however, no longer requires a Section 19(b)(3)(A) filing and subsequent waiting period so long as the exchange relying on Rule 19b–4(e) under the Act has generic listing criteria approved by the Commission and meets certain other requirements.

The New Products Release indicated that products meeting the listing criteria

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 18, 2000, the PHLX amended the proposal to reflect the PHLX Rule 1009A(b)(6)(i), which established a concentration requirement for the Gold/Silver Index. *See* letter from Nandita Yagnik, PHLX, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated September 15, 2000 ("Amendment No. 1"). The Commission approved the adoption of PHLX Rule 1009A(b)(6)(i) on July 25, 2000. *See* Securities Exchange Act Release No. 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (order approving File No. SR–PHLX–00–69) ("July 25 Order"). On November 30, 2000, the PHLX amended the proposal to indicate that the PHLX will use Rule 19b–4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b–4(e) under the Act. *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Nancy Sanow, Division, Commission, dated November 30, 2000 ("Amendment No. 2").

[4] 17 CFR 240.19b–4(e).

[5] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

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approved by the Commission in its 1994 Generic Narrow-Based Index Options Approval Order (as set forth in PHLX Rule 1009A(b)) [6] qualified for filing under Rule 19b–4(e) under the Act, so long as the exchange eliminated the Section 19(b)(3)(A) rule filing requirement from its existing rules.[7] Therefore, the PHLX proposes to eliminate the Section 19(b)(3)(A) rule riling requirement in PHLX Rule 1009A(b) the instead incorporate the provisions of new Rule 19b–4(e) under the Act. The PHLX represents that the Exchange will use Rule 19b–4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b–4(e) under the Act.[8] The PHLX believes that the proposal should allow the Exchange to list and trade narrow-based index options that comply with the PHLX Rule 1009A(b) standards immediately, thereby providing a more expeditious method of offering these products in the marketplace.

(2) Basis

For these reasons, the PHLX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing a quicker method of putting important hedging tools in the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[6] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (order approving File Nos. SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–PHLX–94–10) ("Generic Index Narrow-Based Index Options Approval Order"). The Generic Narrow-Based Index Options Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options satisfying the generic listing standards.

[7] *See* New Products Release at note 89.

[8] *See* Amendment No. 2, *supra* note 3.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–00–67 and should be submitted by January 4, 2000.

IV. Commission's Findings and Order Grating Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) [9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10] Specifically, the Commission finds that the proposal furthers the objectives of the New Products Release, which indicated, among other things, that a self-regulatory organization ("SRO") could submit a proposal to eliminate the 19(b)(3)(A) rule filing requirement from an existing SRO rule, such as PHLX Rule 1009A(b), that permits the listing and trading of narrow-based index options that satisfy the criteria approved in the Generic Index Narrow-Based Index Options Approval Order.[11] The Commission notes that the Chicago Board Options Exchange, Inc. ("CBOE") and the American Stock Exchange LLC ("Amex") have eliminated the 19(b)(3)(A) rule filing requirement from their rules permitting the listing and trading of options pursuant to the Generic Narrow-Based Index Options Approval Order,[12] and that the PHLX's proposal is substantially identical to the CBOE and Amex proposals. Accordingly, Commission finds that the PHLX's proposal does not raise new regulatory issues.

The Commission finds good cause for approving the proposal and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. As noted above, the PHLX's proposal is consistent with the New Products Release and is substantially identical to rule changes adopted previously by the CBOE and the Amex. In addition, the Commission believes that approving the proposal on an accelerated basis will help to ensure that PHLX is not disadvantaged in the listing of new index option products vis-à-vis the Amex and the CBOE. Because Amendment No. 1 reflects the adoption of PHLX Rule 1009A(b)(6)(i), which the Commission approved previously,[13] Amendment No. 1 does not raise new regulatory issues. Amendment No. 2 strengthens the PHLX's proposal by indicating that the PHLX will use rule 19b–4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b–4(e) under the Act. Accordingly, the Commission finds that it is consistent with sections 6(b) and 19(b)(2) of the Act to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PHLX–00–67), as amended, is approved on an accelerated basis.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* New Products Release at note 89.

[12] *See* Securities Exchange Act Release Nos. 41374 (May 5, 1999), 64 FR 25936 (May 13, 1999) (File No. SR–CBOE–99–16); and 41091 (February 23, 1999), 64 FR 10515 (March 4, 1999) (File No. SR–Amex–99–07).

[13] *See* July 25 Order, *supra* note 3.

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31802 Filed 12–13–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43684; File No. SR–Phlx–00–93]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Providing Automatic Executions for Public Customer Orders at the NBBO

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 22, 2000 and December 1, 2000, the Exchange submitted Amendments Nos. 1 [3] and 2,[4] respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the portion of the proposal allowing AUTO–X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined step-up parameter.[5]

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Phlx restated its filing in its entirety to clarify, in part, (1) the factors used in determining which options would qualify as step-up options; (2) when quotes would be deemed unreliable in the rule text; and (3) the factors to be considered in determining whether quotes previously deemed unreliable would be included in the national best bid or offer ("NBBO"). Amendment No. 1 also provides for a memoranda listing all automatic step-up options to be circulated to Exchange members and member organizations. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 20, 2000 (with attached restated 19b–4 filing) ("Amendment No. 1").

[4] In Amendment No. 2, the Phlx restated its filing in its entirety to (1) clarify that there may be some circumstances where the specialist's best bid or offer ("BBO") in inconsistent with the Exchange's BBO; (2) make conforming changes to its rule language to reflect that the specialist's quote may not be the Exchange's BBO; and (3) make technical corrections to its rule text. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 30, 2000 (with attached restated 19b–4 filing) ("Amendment No. 2").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. NBBO Feature

The Exchange proposes an enhancement to AUTO–X, the automatic execution feature of the Exchange's Automated Options Market ("AUTOM") System, that would allow AUTO–X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined "step-up parameter." The enhancement is known as the "NBBO Feature."

Under proposed Rule 1080(c)(i), the NBBO Feature would execute AUTO–X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature ("automatic step-up options"), provided that the NBBO does not differ from the specialist's BBO by more than the step-up parameter. The step-up parameter for automatic step-up options would be the minimum trading increment (one "tick") for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee in respect of specified automatic step-up options or series of options.

The proposal provides that orders that would otherwise qualify as automatic step-up options would be executed manually in accordance with Exchange rules in three circumstances: (1) Where the specialist's best bid or offer [6] is inferior to the current best bid or offer in another market by more than the step-up parameter; (2) where the NBBO is crossed (*i.e.*, 2 bid, 2 asked); or locked (*i.e.*, 2 bid, 2 asked); or (3) in respect of equity options other than automatic step-up options where the specialist's BBO is inferior to the current best bid or offer in another market by any amount. The proposed rule would also include a provision that an order may also be executed partially by AUTO–X and partially manually.

In addition, under the proposal, the Chairman of the Options Committee or his designee [7] (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTOM users. In circumstances where the NBBO Feature is disengaged, such orders will continue to be executed manually, in accordance with Exchange rules. Finally, an additional proposed amendment to Exchange Rule 1080(e) would provide that the NBBO Feature is always disengaged when AUTO–X is disengaged.

B. Exclusion of Unreliable Quotes from NBBO

Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in certain automatic step-up options on the Exchange or other markets are deemed not to be reliable, such unreliable quotes would be excluded from the calculation of NBBO, and customers would receive an automatic execution at NBBO based on the remaining markets whose quotes are not deemed to be unreliable.

A quote could be deemed not to be reliable because of Exchange communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the Options Price Reporting Authority ("OPRA") (in which case the Exchange would know that there is a delay in the dissemination of quotes from the other exchanges, which would likely render such quotes stale); or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

The text of the proposed rule change is as follows. New text is italicized.

Rule 1080. (a)–(b) No change.

(c) AUTO–X—AUTO–X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee

[5] The Commission is not approving the portion of the proposed rule change that would allow the Exchange to determine when unreliable quotes would be excluded from the calculation of the NBBO. Further, approval of the automatic step-up feature should not be interpreted as suggesting that the Commission is predisposed to approving the remainder of the proposal.

[6] The proposed rule states that there may be some circumstances in which the specialist's BBO is inferior to the Exchange's BBO. *See* Amendment No. 2, *supra* note 4.

[7] The designee would be a member of the Options Committee. Telephone conversation between Richard Rudolph, Counsel, Phlx, and Terri Evans, Special Counsel, Division, Commission, on November 24, 2000.

determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged. *An order may also be executed partially by AUTO–X and partially manually.*

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series. Currently, orders up to 75 contracts, subject to the approval of the Options Committee, are eligible for AUTO–X. With respect to OTC Prime Index ("OTX") options, orders of up to 100 contracts are eligible for AUTO–X.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i) AUTO–X on the NBBO (NBBO Feature).—AUTO–X on the NBBO (the "NBBO Feature") is a feature of AUTOM that automatically executes at the National Best Bid or Offer ("NBBO"). NBBO Feature will execute AUTO–X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature ("automatic step-up options"), provided that the NBBO does not differ from the specialist's best bid or offer by more than the "step up parameter."

(A) The "step-up parameter" for automatic step-up options shall be the minimum trading increment for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee in respect of specified automatic step-up options or series of options.

(B) The Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTO users in situations in which the Exchange is experiencing communications or systems problems; fast markets; or delays in the dissemination of quotes because of queues on the Options Price Reporting Authority ("OPRA") which would likely render such quotes stale, Where the NBBO Feature is disengaged, such orders shall be executed manually in accordance with Exchange rules.

(C) In respect of automatic step-up options (1) where the specialist's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up parameter; or (2) where the NBBO for one of the series of automatic step-up options is crossed (i.e., 2⅛ bid, 2 asked) or locked (i.e., 2 bid 2 asked); or (3) in respect of equity options other than automatic step-up options where the specialist's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders shall be executed manually in accordance with Exchange rules. There may be circumstances in which the specialist's best bid or offer is inconsistent with the Exchange's best bid or offer. In such a circumstance, such an order shall be executed manually.

(D) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets are deemed not to be reliable due to Exchange communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the Options Price Reporting Authority ("OPRA") which would likely render such quotes stale; or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable, customer market orders will receive an automatic execution at NBBO based on the best bid or offer in markets whose quotes are not deemed to be unreliable, AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO.

(E) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets previously deemed not to be reliable pursuant to Section (D) of this paragraph are again reliable, such quotations will be included in the calculation of NBBO for such options. Factors to be considered in determining whether such quotes previously deemed not to be reliable are to be included in the calculation of NBBO include information via telephonic verification to the Exchange that such quotes are reliable; visual surveillance by Exchange staff or the specialist; and electronic messages from other markets. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are begin included in the calculation of NBBO.

(d) No change.

(e) Extraordinary Circumstances—In the event extraordinary circumstances with respect to a particular class of options exist, two Floor Officials may determine to disengage AUTO-X with respect to that option, in accordance with Exchange procedures. In the event extraordinary conditions exist floor-wide, two Exchange Floor Officials, the Chairperson of the options Committee or his designee may determine to disengage the AUTO-X feature floor-wide. *The NBBO Feature is always disengaged when AUTO-X is disengaged.*

(*i*) The Exchange's Emergency Committee, pursuant to Rule 98, may take other action respecting AUTOM in extraordinary circumstances.

(f)-(i) No change.

Commentary: No change.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide automatic executions for public customer orders at the NBBO. Currently, customer orders can be delivered electronically to the Exchange via AUTOM.[8] An option order that is automatically executed via AUTOM's automatic execution feature, AUTO–X, is priced at the prevailing market quote on the Phlx at the time the order is received by AUTOM. If another marketplace is displaying a better quote away from the Phlx at the time of the delivery of such an order, then that order would be handled manually by the specialist so that it would not be automatically executed at an inferior price. Under the current system, the specialist handling the order determines whether the order should be executed at the away price.[9] The Exchange believes that adding a feature that provides automatic executions at the NBBO should minimize or eliminate any delays that are inherent in orders that are handled manually by the specialist, thus reducing the risk of an adverse movement in the market while such customer orders are being filled.

To increase the number of orders handled automatically, the Exchange is also proposing to partially execute AUTO–X eligible orders that have a size greater than the guaranteed size for automatic execution. Thus, if an order exceeds the size of the AUTO–X guarantee for a given option, the portion of such an order that is within the AUTO–X guaranteed size would be executed automatically, and the remainder would be executed manually.

The NBBO feature would execute AUTO–X eligible orders at the NBBO provided that the NBBO does not differ from the specialist's BBO by more than the step-up parameter. The proposed rule also provides that the step-up parameter for automatic step-up options would be equal to one tick, *i.e.*, the minimum trading increment for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee. In the event that the NBBO is better than the specialist's BBO by more than one tick, the existing procedure will continue to apply whereby the order would be handled manually by the specialist in order to avoid execution at a price inferior to the NBBO.

The proposed rule states that there may be some circumstances in which the specialist's BBO is inconsistent with the Exchange's BBO. This would occur when the Exchange's BBO is composed of a quote of a Registered Option Trader ("ROT") in a trading crowd or a customer limit order that improves the specialist's BBO. Due to the limitations of the Exchange's existing systems, the transactions would be executed manually to ensure that the specialist could execute an order at the Exchange's BBO and match it to the ROT quote or a customer limit order that posted it.

Under this proposal, the Exchange's Options Committee, upon the request of a specialist, would designate which options traded on the Exchange qualify as automatic step-up options. This is to ensure the orderly introduction of this change to the Exchange's AUTO–X feature. In determining which options qualify as step-up options, the Options Committee may consider such factors as the open interest in the requested option, the average daily volume of the option, customer requests, and any such other factors as the Options Committee deems appropriate. The Options Committee would also have the ability to delete options from the list of automatic step-up options upon the request of the specialist using the same criteria. The Exchange would publish a list of all automatic step-up options in memoranda circulated to the Exchange members and member organizations and on its web site, and would inform all AUTOM users of any changes in the list at least one business day prior to the time such changes become effective.[10]

The proposed rule change authorizes the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) to determine that quotes in specified options or series of options or in respect of specified markets are not reliable. This authority would be expected to be exercised only in circumstances such as communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the OPRA (in which case the Exchange would know that there is a delay in the dissemination of quotes from the other exchanges, which would likely render such quotes stale); or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

In creating the NBBO Feature, the Exchange has sought to ensure that customer orders would not be disqualified from receiving an automatic execution due to another market's dissemination of unreliable quotes. When quotes in specified options or series of options or in respect of specified markets are deemed not to be reliable, such quotes would not be included in the calculation of the NBBO, and market orders would receive an automatic execution at the NBBO based on the best bid or offer in markets whose quotes are not deemed to be unreliable.

Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets previously deemed not to be reliable are again reliable, such quotations will be included in the calculation of the NBBO for such options. Factors to be considered in determining whether such quotes previously deemed not to be reliable are to be included in the calculation of the NBBO include information via telephonic verification to the Exchange that such quotes are reliable; visual surveillance by Exchange staff or the specialist; and electronic messages from other markets. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

The rule also provides that the NBBO Feature is always disengaged when AUTO–X is disengaged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[11] in general, and with Section 6(b)(5) of the Act[12] specifically, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by enhancing the Exchange's ability to provide automatic execution of public customers' orders at the best available prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[8] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[9] Under normal market conditions, the specialist will execute the manually handled order at the best available price, *i.e.*, the NBBO, unless the specialist determines that the superior price at the away market is not reliable due to fast market conditions; communications or other Exchange systems problems; delays in the dissemination of quotes because of queues on OPRA (in which case the specialist would know that there is a delay in the dissemination of quotes from the other exchanges, which likely would render such quotes stale); or if the specialist is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

[10] Currently, the Exchange publishes a list of all AUTO–X guarantees. It is anticipated that the publication of a list of options that qualify for the NBBO Feature will be published and disseminated in a similar fashion.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

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(ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–93 and should be submitted by January 4, 2001.

V. Commission's Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change relating to the automatic step-up feature [13] is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the section 6(b)(5) [14] requirements that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.[15]

By providing an automatic step-up feature, the rule should help to insure that investors receipt prompt, automatic execution of AUTO–X eligible orders at the best available prices (subject to the step-up parameter), even if those prices are being quoted on a market other than the Phlx. As a result, this proposal should minimize the delay inherent in manually handling orders in this circumstance, and thereby reduce the risk to investors that, as a result of an adverse move in the market while their orders are being manually handled, they may receive an inferior execution.

The Commission finds good cause for approving this portion of the proposed rule change, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will permit customers to receive the benefits of automatic price improvement under the proposed rule change more quickly. Further, the Exchange's proposed rule change regarding the automatic step-up feature is substantially similar to the Chicago Board Options Exchange Rule 6.8, Interpretations and Policies .02, which was approved in 1998.[16] The Commission is not aware of any problems with respect to CBOE's automatic step-up feature.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the portion of the proposed rule change (SR–Phlx–00–93), as amended, allowing AUTO–X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined step-up parameter, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret McFarland,

Deputy Secretary.

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[13] The Commission is not approving Phlx Rule 1080(c)(i)(D), (E) at this time.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Securities Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–43692; File No. SR–PHLX–00–20)

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading Certain Over-the-Counter Securities, Nasdaq National Market Securities

December 8, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2000, the Philadelphia Stock Exchange, Inc., ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to trade certain over-the-counter ("OTC") securities, Nasdaq National Market ("Nasdaq/NM") securities, on the Exchange, pursuant to unlisted trading privileges ("UTP") under Section 12(f) of the Act.[3] As discussed below, minor changes to Phlx rules are necessary to accommodate such trading, generally to revise the term "Nasdaq/NM securities." The text of the proposed rule change is available at the Office of the Phlx, the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1985, the Commission permitted the extension of UTP [4] by national securities exchanges in certain OTC securities, provided that certain terms and conditions were satisfied. In particular, the Commission's willingness to grant UTP was conditioned, in part, on the approval of a plan submitted by the interested exchanges and the National Association of Securities Dealers, Inc. ("NASD") to consolidate and disseminate exchange and OTC quotation and transaction data in OTC securities upon which UTP was granted. On June 26, 1990, the Commission approved a joint industry plan ("OTC/UTP Plan") submitted by the NASD, the American Stock Exchange ("Amex"), the Boston Stock Exchange ("BSE"), the Midwest Stock Exchange (currently operating as the Chicago Stock Exchange, or "CHX") and the Phlx.[5]

The OTC/UTP Plan provides for the collection from Plan participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities." The Plan defines "eligible" as any Nasdaq/NM security as to which UTP has been granted to a national securities exchange pursuant to section 12(f) of the Act or that is listed on a national securities exchange.[6]

In late 1992, the Phlx obtained approval of a pilot program and accompanying rules to permit the trading of Nasdaq/NM securities on the Exchange pursuant to UTP ("Phlx OTC/UTP" Pilot Program").[7] The Phlx began trading Nasdaq securities pursuant to the Pilot in February 1993. The effectiveness of the Pilot was extended four times before the Phlx determined to cease trading such securities pending reorganization of its OTC/UTP program as a whole. The Phlx OTC/UTP Pilot Program expired on February 12, 1996.[8] The Phlx intends to reinstate OTC/UTP trading in Nasdaq/NM securities in the near future, and, thus, seeks reinstatement of the Phlx OTC/UTP Pilot Program. The Phlx believes that such reinstatement requires only the minor revisions to the Phlx rules for the term "Nasdaq/NM securities" because the various rules implicated by OTC/UTP trading were amended in connection with the original Phlx OTC/UTP Pilot Program.

Proposal

Reinstatement of the Phlx OTC/UTP Pilot Program will enable the trading of eligible Nasdaq/NM securities by Phlx specialists. The Phlx proposes to reinstate the Pilot for a six-month period.[9] Initially, Phlx specialists will be provided with quotation generation capability, as well as the ability to manually enter and execute orders through a system designed by a third party vendor, TradinGear, separate from the Exchange's PACE System.[10]

The Phlx proposes to trade these securities pursuant to its equity rules, where applicable. The following series of provisions that continue to appear in Phlx rules, specifically reference Nasdaq/NM securities, which are outlined more fully below and include Phlx Rules 102; 105, Supplementary Material .01; 225; 226; 233; 455; and 606, previously approved on a pilot basis: [11]

- Rule 102: Specifies that all Nasdaq/NM securities transactions must be conducted during the applicable Exchange trading floor hours.
- Rule 105: Includes language requiring that in the event of unusual market conditions, as determined by the Floor Procedure Committee, quotations in a given issue will not be subject to firmness provided that the Exchange notifies the processor of Nasdaq/NM securities.
- Rule 225: Incorporates Nasdaq/NM securities into the rule governing odd-lot orders.
- Rule 226: Incorporates Nasdaq/NM securities into the rule dealing with round-lot orders.
- Rule 233: Enables the Exchange to trade Nasdaq/NM securities pursuant to UTP.
- Rule 455: Exempts Nasdaq/NM securities from the short sale rule.
- Rule 606: Enables access by telephone or any other such access as may be established between the Exchange and the Nasdaq system to the Phlx assigned specialist for any Nasdaq system market maker.

The Phlx is also proposing to add a reference to Phlx Rule 233(b) to permit receipt of handheld orders for purposes of the proposed rule change. The proposed rule change would also expand the method of communication between specialists on the Exchange's equity floor and each Nasdaq market maker to include "such other access as may be established between the Exchange and the Nasdaq system."

2. Statutory Basis

The Exchange believes that reinstatement of the Phlx OTC/UTP Pilot Program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including sections 6(b)(5), 11A and 12(f) of the Act.[12] Specifically, the Phlx believes that the proposed rule change is consistent with section 6(b)(5), because permitting Phlx specialists to trade eligible Nasdaq/NM securities should promote just and equitable principles of trade and facilitate transactions in securities, thereby removing impediments to and perfecting the mechanism of a free and open market in manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of the proposed rule change to promptly reinstate the Pilot. The Commission has determined to deny this request to provide an opportunity for the Exchange and the Commission to resolve questions and concerns created by the proposal but not answered in the proposal, and to provide for the full public comment period prior to potentially approving the proposed rule change to reinstate the Pilot. Accordingly, within 35 days of the date of publication of this notice in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 781(f).

[4] Section 12(f) of the Act describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending UTP to the security. *See* 15 U.S.C. 781(f).

[5] Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990). Since that time, the CSE and PCX have become participants in the OTC/UTP Plan. *See* respectively Securities Exchange Act Release Nos. 42657 (April 10, 2000), 65 FR 20498 (April 17, 2000); and 43165 (August 16, 2000), 65 FR 51878 (August 25, 2000).

[6] The OTC/UTP Plan superseded an interim transaction reporting plan filed by the NASD and the CHX, approved by the Commission on April 29, 1987. *See* Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349 (May 7, 1987).

[7] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (January 7, 1993) (order approving SR–Phlx–92–04).

[8] *See* Securities Exchange Act Release No. 36087 (August 10, 1995), 60 FR 42637 (August 16, 1995).

[9] The current number of Nasdaq/NM Securities that may be traded on a UTP basis is 1,000 securities. *See* Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

[10] PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. *See generally* Phlx Rule 229 which includes the ability, if available, to use PACE as an order delivery system for Nasdaq/NM securities.

[11] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (order approving File No. SR–Phlx–92–94). The effectiveness of the Phlx OTC/UTP Pilot Program was extended four times, most recently through February 12, 1996.

[12] 15 U.S.C. 78f(b)(5), 78k–1, and 781(f).

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Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–20 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31898 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000418]

Bluestem Capital Partners III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Bluestem Capital Partners III, L.P. (Bluestem III), 122 South Phillips Ave., Suite 300, Sioux Falls, South Dakota, 57104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Bluestem III proposes to provide convertible debt security financing to Paragon Solutions, Inc., 3625 Brookside Parkway, Suite 300, Alpharetta, GA 30022. The financing is contemplated for the purpose of providing working capital to Paragon Solutions, Inc. to fund its current operations and the expansion of its sales force and management team within the U.S.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Bluestem Capital Partners II, L.P., an Associate of Bluestem III, currently owns greater than 10 percent of Paragon Solutions, Inc. and therefore Paragon Solutions, Inc. is considered an Associate of Bluestem III as defined in Sec. 107.50 of the SBA Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 1, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–31785 Filed 12–13–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000414]

Selby Venture Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Selby Venture Partners II, L.P., 2460 Sand Hill Road, Suite 200, Menlo Park, California 94025, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Selby Venture Partners II, L.P. proposes to provide equity financing to Pulsent Corporation, 1455 McCarthy Blvd., Milpitas, California 95035. The financing is contemplated for working capital and research and development.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Selby Venture Partners, L.P., an Associate of Selby Venture Partners II, L.P., currently owns greater than 10 percent of Pulsent Corporation and therefore Pulsent Corporation is considered an Associate of Selby Venture Partners II, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 1, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–31786 Filed 12–13–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3309]

State of Oklahoma (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated December 4, 2000, the above-mentioned Declaration is hereby amended to include Carter, Comanche, and Tillman Counties in the State of Oklahoma as a disaster area due to damages caused by severe storms and flooding beginning on October 21, 2000 and continuing through October 29, 2000.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Cotton, Jackson, Jefferson, Johnston, Love, Marshall, and Murray Counties in Oklahoma; and Wichita and Wilbarger Counties in Texas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 26, 2001, and for economic injury the termination date is August 27, 2001.

The economic injury number for Texas is 9J8900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

[13] 17 CFR 200.30–3(a)(12).

Dated: December 6, 2000.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–31787 Filed 12–13–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3506]

Bureau of Consular Affairs; Designation of Certain Posts for Special Fee Payment Procedures

This public notice identifies the initial ten posts designated by the Deputy Assistant Secretary for Visa Services for two purposes related to the payment of immigrant visa fees. The first purpose relates to the revised procedure for payment of the fee for the processing of an application for an immigrant visa set forth in the **Federal Register** on September 8, 2000, (65 FR 54598). That regulation is being stayed in a public notice today until a new effective date of January 1, 2001.

The second purpose is to identify the posts for which a fee pursuant to Item 61 of the Schedule of Fees for Consular Services (22 CFR 22.1) will be assessed for advance review of and assistance with the Affidavit of Support that is required in certain immigrant visa cases. Notice of this fee requirement is being added to the visa regulation pertaining to the Affidavit of Support requirement in 22 CFR 40.41(b), being published today with an effective date of January 1, 2001.

The Department will publish further public notices as additional designations are made, until such time as both procedures have been made applicable worldwide.

The Deputy Assistant Secretary for Visa Services hereby designates the Foreign Service posts in the following cities: for participation in the initial stage of the new immigrant visa application processing fee payment system and the fee for review of and assistance with the Affidavit of Support required under section 213A of the Immigration and Nationality Act

Bogota, Colombia
Ciudad Juarez, Mexico
Freetown, Sierra Leone
Georgetown, Guyana
Guangzhou, China
Manila, Philippines
Montreal, Canada
Port au Prince, Haiti
Santo Domingo, Dominican Republic
Tirana, Albania.

Dated: November 28, 2000.

George C. Lannon,

Deputy Assistant Secretary for Visa Services.

[FR Doc. 00–31743 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3507]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: NIS Secondary School Partnership Program

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the NIS Secondary School Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Russia or Ukraine. All proposals must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component. The maximum grant award will be $150,000.

Program Information: The Secondary School Partnership Program is funded under the Freedom Support Act to assist young people in building an open society and developing democratic processes and institutions in the New Independent States (NIS). This program provides grants to link schools in the three countries noted above with schools in the United States. The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a U.S. network of a minimum of two secondary schools; strengthening an existing working relationship with an organization or agency of government in the NIS responsible for a network of at least two schools there; and linking the two networks in one-to-one school partnerships through thematic projects and substantive exchange activities.

Overview: The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and NIS schools featuring collaborative substantive projects and reciprocal student and educator exchanges with strong academic content. The long-term goals are to: (1) Develop lasting, sustainable institutional ties between U.S. and NIS schools and communities; (2) support democracy and educational reform in the NIS; (3) advance mutual understanding between the youth and teachers of the U.S. and the NIS; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools.

The program has several defining features to help the participating schools develop their partnership:

—Each partnership has a project theme and the students and teachers in the two paired schools work on a joint project throughout the school year related to this theme;

—The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges from three weeks to ten months in duration. Exchanges take place while the host school is in session.

—The student and teacher exchanges must be reciprocal.

—The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

—During the exchange, participants attend class, are involved in school-based activities, work on their joint project, perform community service, visit educational and cultural sites, and reside with host families.

DATES: Grants may begin on or about July 15, 2001, and cover the 2001–2002 academic year. The exact starting date of the grant will be dependent on availability of funds.

Guidelines: A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for the linkage apart from the availability of grant funds. Organizers and school networks in the U.S. and NIS should collaborate in planning and preparation. Applicants must have an NIS organizational partner that has its base of operation in the partner country and not in another country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project, such as the development of educational materials. The proposal should specify measurable goals and objectives of the program.

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In general, the Bureau seeks school partnerships that target under-served countries or regions. For programs with Russia and Ukraine, priority will be given to partnerships with schools located outside of the Moscow, St. Petersburg, and Kiev regions. The Bureau particularly welcomes proposals that feature schools in the Russian Far East (east of Lake Baikal), western Siberia (*e.g.,* Altay Kray, Gorniy Altay Republic, Kemerovo and Tyumen oblasts), Central Russia (*e.g.,* Orel, Lipetsk, Tambov, Kursk oblasts), and Novgorod, Samara, and Tomsk.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed. For example, what will the participants be doing and how is it relevant to the thematic focus of the program? Applicants should present a program that involves the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include civic education, such as citizen activism, volunteerism or community service, youth leadership training, multicultural education, rule of law, and free press.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, shadowing of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools, teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive.

Competitive proposals will demonstrate a solid and comprehensive follow-on plan to sustain the partnerships after the grant has expired.

Responsibilities: The U.S. organization receiving the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep the Bureau informed of its progress; (4) manage all travel arrangements, logistics, travel documents, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of a grant are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants from the U.S. and the NIS in the exchange components of the program must be open, competitive, and merit-based; the proposal should describe the mechanisms used for participant selection. All participants from the U.S. and the NIS should represent the full diversity of their communities (racial, ethnic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Preference will be given to proposals that include schools that have not already received funding under the NIS Secondary School Initiative for a total of three years or more.

Significant cost-sharing is mandatory in all proposals, and those that show more generous and creative cost-sharing will be more favorably viewed. Proposals that contain non-Bureau funded items such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, capital city civics programs, and other significant items will be more competitive proposals than those that do not. However, NIS participants may not be charged to participate in the program, aside from paying for home country costs (such as transportation to the point of departure), the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Please be sure to refer to the Project Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information. Also consult the Proposal Submission Instructions (PSI) for information on budget presentation and required forms.

Budget Guidelines: Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $150,000. Only partnerships between secondary schools in the United States and these two countries are eligible for this competition.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S. or NIS participants. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–01–26.

FOR FURTHER INFORMATION, CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–6299; fax (202) 619–5311; E-mail: *clantz@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs *by 5:00 p.m.* Washington, D.C. time on *Friday, February 9, 2001.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and seven copies including tabs A–E and appendices should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–01–26, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. Proposals should adequately address each area of review. These criteria are not rank ordered.

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning and ability to achieve program objectives: Program objectives should be stated clearly and precisely and should reflect the applicant's understanding of the project. Objectives need to be reasonable, attainable, and flexible. Proposals should clearly demonstrate how the institution would meet the program's objectives. A detailed agenda and work plan should explain how the objectives will be achieved and the expected outcomes realized. The proposal should describe the academic substance of the project in detail. The agenda and plan should adhere to the program overview and guidelines described above.

3. Multiplier effect/impact: Proposals should show how the program would strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Programs that include convincing plans for sustainability will be given preference.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities) should address diversity in a comprehensive and innovative manner.

5. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The proposal should reflect institutional expertise in the subject area and knowledge of the conditions in the target country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events. Follow-on activities should be clearly outlined.

7. Program Evaluation: Proposals must include a plan and methodology to evaluate the program's successes, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique. The evaluation plan should show a clear link between program objectives and expected outcomes in the short- and medium-term, and provide a well-thought-out description of performance indicators and measurement tools.

8. Cost-effectiveness/cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Administrative costs should account for 20% or less of the funding requested from the Bureau. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, such as auditable contributions from the applicant, the NIS partner, and other sources, should be included in the budget.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

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Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 8, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–31911 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3508]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: College and University Affiliations Program With Serbia

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program to support the reform of higher education in the Republic of Serbia, within the Federal Republic of Yugoslavia. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to pursue institutional or departmental objectives through international partnerships with counterpart institutions in Serbia. These objectives should support the overall goals of the Program: to assist the process of democratization in Serbia by facilitating the development of comprehensive plans for educational reform; and to strengthen mutual understanding and cooperation among U.S. and Serbian educational institutions on themes of common interest to the United States and to the participating colleges and universities, specified below. To achieve these objectives, an applicant and its partner(s) may propose approaches including teaching, scholarship, and outreach to professionals and other members of the communities served by the participating institutions. Eligible fields are economics, political science, social sciences, communications, journalism, and law.

Program Information

Underlying the specific institutional objectives of the project funded by this program should be the goals of encouraging the growth of freedom and democracy in Serbia through a deepened understanding of fundamental issues and practical applications in the development of civil society, economic stability and prosperity, or the free flow of information. Innovative strategies to address these underlying concerns in the pursuit of clearly defined institutional objectives are encouraged. Outreach from academic institutions to larger communities of citizens and practitioners to extend understanding about these issues is also encouraged.

Funds available under this year's program are restricted to the support of linkages with institutions in Serbia. Please consult with the program office regarding future opportunities for linkages elsewhere in Yugoslavia.

In addition, the Bureau supports institutional linkages in higher education with partners from the New Independent States of the former Soviet Union through the NIS College and University Partnerships Program (NISCUPP) and the NIS Community College Partnerships Program (NISCCPP). A Request for Grant Proposals for NISCUPP was announced on July 27, 2000 with a deadline of January 19, 2001. Community Colleges wishing to pursue partnership projects with counterpart institutions in Georgia, Kazakhstan, Moldova, Russia, Ukraine, or Uzbekistan may apply under the Request for Grant Proposals for the NISCCPP program, which was announced on November 9, 2000 with a deadline of February 23, 2001. A Request for Grant Proposals for an assistance award to support instruction and faculty training in Business Management, Entrepreneurship, and Public Administration at the University of Pristina, Kosovo, is currently open, with a deadline of March 14, 2001. The Bureau's support for institutional linkages in higher education is also provided through the College and University Affiliations Program for other world regions, including Europe. The annual Request for Grant Proposals for FY2002 is expected to be published in the spring of 2001. Applicants interested in any of these additional programs should contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202) 619–5289.

Applicant Objectives

In the College and University Affiliations Program with Serbia, partner institutions may pursue specific institutional goals with support from the Bureau of Educational and Cultural Affairs through exchanges of teachers and administrators for any appropriate combination of teaching, consultation, research, and outreach, for periods ranging from one week (for planning visits) to an academic year.

Both the U.S. and foreign participating institutions should benefit from the partnership, although the nature and scope of those benefits may differ. It is especially important that proposals outline well-reasoned strategies leading to specific, demonstrable changes at the department or institution in Serbia. For example, proposals may describe the parameters and possible content of new courses, new research or teaching capacities or methodologies, new or revised curricula or programs, or other changes anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives.

Proposals must focus on curriculum, faculty, and staff development at the Serbian partner institution(s) in one or more of the eligible disciplines. Administrative reform at the Serbian partner institution should also be a project component. Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Whenever feasible, the participating institutions should also make their resources, as well as the results of their collaborative work, available to the government, NGOs, and business community.

To provide adequate time to meet institutional project objectives, the Program awards grants for periods of approximately three years. The strategy for achieving project goals may include visits in either or both directions, but no single formula is anticipated for the duration, sequence, or number of these visits. However, visits of one semester or more for participants from each of the institutional partners are strongly encouraged. Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Although strong budgetary and programmatic emphasis may be given to visits in one direction over another, the benefits of these visits to the sending as well as the receiving sides should be clearly explained in terms of their

contributions to the departmental or institutional objectives that the project is designed to achieve. Exchange visits for the purpose of attending conferences are not encouraged except in combination with other grant activities and in support of specific educational objectives at one or more of the participating institutions.

In addition to demonstrating the capacity of each participating institution to contribute to its partner(s), proposals should also explain how this cooperation would enable each of the institutions to address its own needs. Accordingly, applicants are encouraged to describe the needs as well as the capabilities of each participating department as well as the broader social and educational needs which the partner institutions attempt to serve.

Effective proposals will explain the anticipated cooperation in ways that demonstrate that the institutions proposed for participation in the partnership clearly understand one another and are committed to support one another in project implementation. If the proposed partnership would occur within the context of a previous or on-going project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described in an appendix with details about the amounts and sources of external support.

Proposals should outline a methodology for project evaluation. The evaluation plan should include an updated assessment of the current status of each participating department's and institution's needs at the time of program inception; ongoing formative evaluation to allow for prompt corrective action; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's influence within the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements, both with and without the Bureau's support. Evaluative observations by external consultants with appropriate subject or regional expertise are especially encouraged. Proposal budgets should reflect evaluation plans.

Proposals must be submitted by the U.S. institutional partner and must include a letter of commitment from the foreign partner(s). Faxed letters are acceptable. The letters should be signed by persons authorized to commit institutional resources to the project. U.S. and foreign partner institutions are encouraged to consult about the proposed project with the Bureau's program officer in Washington, DC.

Costs

The commitment of all partner institutions to the proposed project should be reflected in the cost sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by other applicants, all participating institutions are expected to identify costs to contribute. These costs may include the estimated costs of in-kind contributions for which funds are not exchanged (*e.g.*, subsidized housing or homestays). Consistent with the "Review Criteria" for this competition listed elsewhere in this document and with specific reference to "Cost-Sharing" and "Institutional Commitment to Cooperation," proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and of the institution's potential to benefit from it.

The Bureau's support may be used to defray the costs of the exchange visits as well as the costs (up to a maximum of 20 percent of the total grant) of their administration at any partner institution, including administrative salaries and direct administrative costs but excluding indirect costs. Although grants will be issued to the lead U.S. college or university, the administrative costs of the project at all partner institutions, including the foreign partner(s), should be included in the budget.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail communication facilities as well as through interactive technology or non-technology-based distance-learning programs. However, projects focusing primarily on technology or physical infrastructure development are not encouraged. Proposals that include Internet, electronic mail, and other interactive technologies should discuss how the foreign partner institution would support the costs of such technologies after the project ends. Applicants may propose other project activities not specifically anticipated in this solicitation if the activities reinforce exchange activities and their impact.

Bureau policy stipulates that awards to organizations with less than four years experience in conducting international exchanges are limited to $60,000. The Bureau anticipates awarding one grant not to exceed $228,750. Budgets and budget notes should carefully justify the amounts requested.

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFGP, which can be obtained by following the instructions given in the section below entitled "For Further Information". The Project Objectives, Goals, and Implementation (hereafter, POGI) and the Proposal Submission Instructions (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Eligible Fields

The College and University Partnership—Serbia Program is limited to the following academic fields: (1) Economic, political, social sciences; (2) journalism/communications; and (3) law.

U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from community colleges, minority-serving institutions, undergraduate liberal arts colleges, research universities, and combinations of these types of institutions are eligible. Applications from consortia or other combinations of U.S. colleges and universities are eligible. If the lead U.S. institution is responsible for submitting an application on behalf of a consortium, the application must document the lead institution's authority to represent the consortium. With the exception of outside evaluators on contract with the U.S. institution, participants representing the U.S. institution(s) who are traveling under Bureau grant funds should be faculty or staff from the participating institution(s) and must be U.S. citizens.

Foreign Institution and Participant Eligibility

In Serbia, participation is open to recognized institutions of post-secondary education, including pedagogical institutes and universities, technical institutes and universities,

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and vocational training schools. Secondary foreign partners may include non-profit service or professional organizations. Participants representing the foreign institutions must be faculty or staff of the primary or secondary partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Ineligibility

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFGP, herein;

(6) The amount requested of the Bureau exceeds $228,750 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–01–15.

FOR FURTHER INFORMATION CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational And Cultural Affairs, ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–4097, fax: (202) 401–1433, email: johnsonmi@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Michelle Johnson on all inquiries and correspondence.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at: http://exchanges.state.gov/education/rfgps. Please read all information before downloading.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on February 5, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–01–15, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the relevant State Department officers for review, with the goal of reducing the time it takes to get comments for the Bureau's grants review process.

Approximate program dates: Grants should begin on or about March 30, 2001.

Duration: Approximately March 30, 2001–March 30, 2004.

Diversity, Freedom, and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

Proposals are reviewed for adherence to legal and budgetary requirements by Bureau offices responsible for these functions. For program content, cost-effectiveness, and other criteria spelled out in the RFGP, the review is conducted by an advisory, assistance award-review panel composed of Bureau and Department officers. Additional officers, including geographic area personnel, also review proposals for feasibility as well as potential for short- and long-term impact. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with a Bureau Grants Officer.

Review Criteria

State Department officers in Washington, D.C. and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea and Cross-Cultural Sensitivity

Proposals should exhibit originality, substance, precision, and resourcefulness. Proposals should demonstrate an in-depth understanding of the region and the challenges facing Serbian educators and should describe how the proposed project will contribute toward higher education reform in Serbia.

2. Program Planning

Proposals should include creative, realistic, and feasible program plans and a detailed schedule, covering all program and support activities. Agenda and plan should adhere to the program overview and guidelines described above and should consist of goals that are achievable.

3. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. A proposal should demonstrate a detailed understanding of university conditions in Serbia. Proposals should demonstrate a promise of long-term impact, as reflected in a plan for follow on activities.

5. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau grants management and contracts staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Follow-On Activities

Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

7. Project Evaluation

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-Effectiveness

Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of commitment to the pursuit of project objectives. Administrative costs should be kept to a minimum. Cost sharing, including contributions from the applicant or other sources should be included in the budget.

Grant Making Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Support for East European Democracy (SEED) Act of 1989.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 4, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–31744 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 3509]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: 2001 Summer Institute for English Language Educators From South Africa

SUMMARY: The African Programs Branch, Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs, announces an open competition for the 2001 Summer Institute for English Language Educators from South Africa. Accredited, post secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide a six-week academic training program for approximately 28 English language educators from South Africa. Subject to availability of funds, one grant will be awarded to conduct the 2001 Institute.

Program Information

Overview

American institutions of higher education having an acknowledged reputation in the field of English-as-a-second language (ESL) and in curriculum design may apply to develop and deliver a six-week summer program for approximately twenty-eight English language teaching educators from South Africa. The Summer Institute should be programmed to encompass about 45 days and should begin on or about June 16, 2001. A variation in start date, up to one week beyond June 16, 2001, will be considered if it is necessitated by the host institution's academic calendar. The first five weeks of the program will consist of academic coursework specializing in project-based ESL materials development/delivery focusing on three content-based areas (i.e., HIV–AIDS, civic and values education, entrepreneurship, and/or environmental education). Support for these ESL content-based projects through classroom management and curriculum design at the South African secondary and tertiary levels will be developed. A web site will be developed for all projects. The sixth week will consist of an escorted cultural and educational tour of Washington, D.C.

The 2001 Summer Institute for English Language Educators from South Africa will provide participants with intensive training in the fundamentals of content-based ESL materials development/delivery, classroom management and curriculum design. These three areas are critical in South Africa where educators are attempting

to create a new English curriculum in a context of educational transformation and Outcomes Based Education (OBE). Given the need to teach content-based English across the South African curriculum, English language educators are key personnel for quality learning. Presently, there exists a severe shortage of skilled classroom educators. South African teachers will need to produce and deliver culturally appropriate and pedagogically sound content-based materials in a multi-cultural setting.

The Summer Institute will also provide structured exposure to U.S. culture and the diversity of America. The problems of teaching in a multi-cultural society should be a component of the program. The program should maintain a relative balance among discussion sessions, lectures and collaborative workshops. A web site is recommended for participants' projects. Lengthy lectures should be kept at a minimum. Participants should be given ample opportunity to work together and learn from each other as well as from their American instructors. Given the project-based orientation exploring the themes of HIV–AIDS, civic and values education, entrepreneurship and/or environmental education, selected participants will be able to share not only content but relevant ESL materials with their colleagues and home institutions. Participants will receive an educational materials allowance.

Few participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society and education should be considered an integral part of the Institute and should be held on the first two to three days of the program.

Program Guidelines

The applicant is asked to design a two-part program: (1) A five-week academic program supporting South Africa's goal of education transformation through the delivery of intensive training in content-based materials development, classroom management and curriculum design for Outcomes Based Education (OBE) and ESL learning (English across the curriculum) at the secondary and tertiary levels. Division into 3–4 manageable project teams, each with a selected thematic/content focus and each targeting the particular needs of the secondary and tertiary levels is essential. Training should be sensitive to any special needs of the South African participants.

(2) A one-week escorted visit to Washington, D.C., planned, arranged, and conducted by the Institute Program Director and principal Institute staff. The Washington program should be seen as an integral part of the Summer Institute, complementing and reinforcing both the academic and thematic content. This escorted visit should take place at the end of the Institute. Programming in Washington will include a half-day briefing session at the Bureau of Educational and Cultural Affairs, United States Department of State. Additionally, visits to such organizations as TESOL, a regional university, local school systems and teacher resource centers, are encouraged. Proposals may include cultural and educational visits en route to Washington, if such stops contribute to program quality and are cost effective. The participants will return to South Africa at the conclusion of the Washington program.

Specific areas to address in the Institute are:

1. Materials development/delivery with an emphasis on content-based ESL instruction. Thematic issues should include HIV–AIDS, civic and values education, entrepreneurship and/or environmental education (examples can be found at: http://exchanges.state.gov/forum/journal/).

2. Classroom management (for secondary levels).

3. Education Technology:

(a) Introduction and/or enrichment of computer-based word processing and appropriate software for participants who lack these skills. Introduction to computer networks for ESL professionals.

(b) Introduction and/or enrichment of knowledge of e-mail, usenet and the World Wide Web as pedagogic and research tools.

4. Visits to:

(a) Local institutions and organizations related to thematic areas.

(b) On-going ESL classes at the host institution, other universities, and in local educational or community centers, providing participants with opportunities to observe ESL methodology, materials, and multi-cultural classrooms featuring content-based language learning across the curriculum.

5. Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

6. Formative evaluation and adjustment of program components accordingly, as well as summative evaluation of the entire Institute upon its completion.

In accordance with the objectives of the Summer Institute, participants will concentrate on their thematic program projects. However, the academic program should provide time for interaction with American students, faculty, and school administrators, and the local community to promote mutual understanding between the people of the United States and South Africa. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest; home stays with families in the area (with other educators if possible), and events, which will bring the participants into contact with Americans from a variety of backgrounds.

Participants

Participants, to be selected by Public Affairs Section of the U.S. Embassy in Pretoria, will be South African educators involved with English language instruction. Professionally, they can be teacher-trainers, subject advisors, curriculum developers, and learning facilitators/coordinators. The selected participants will be drawn from public and private sectors including the national and provincial departments of education, teacher resource centers, non-governmental organizations, university departments of education and teacher training colleges. Minimum qualification for all participants will be a three-year teacher-training diploma with preference given to candidates with university degrees. Recruitment will concentrate on English language educators who are actively involved at secondary and tertiary levels, some of whom may be relatively inexperienced but are identified as having leadership potential. Depending upon availability of funds, approximately 28 participants from South Africa will participate in the Institute.

Program Elements

The proposal should be designed to support the following specific activities:

1. Pre-Program communication among participants and the U.S. institution to facilitate an exchange of ideas developed for the Institute. Communication should be e-mail based.

2. A web site identifying the program goals/syllabus and on-going participant thematic projects. The site should be a dynamic resource, with weekly updates during the duration of the program, and regular updates in South Africa following program completion. The web site should display each of the three completed theme-based projects. The participants should develop site content, while site construction and Internet hosting should be provided by the selected American institution. All Institute participants should receive a CD–ROM of their Website creation.

3. A five-week academic program comprising coursework on:

—Project-based English for content-based instruction,
—Use of the Internet and web resources for educators,
—Leadership training to enable participants to conduct workshops upon return to their countries. Training should meet the special needs of participants from South Africa.

4. Cultural activities facilitating interaction among the African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of South Africa, planned within the five-week academic program.

5. A one-week, escorted, cultural and educational tour of Washington, D.C., complementing and reinforcing the academic material. The visit will be planned, arranged and conducted by the Institute Program Director and principal Institute staff.

6. Follow-on communication among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.

7. Assistance to participants to select, purchase and ship materials to use in follow-on activities and training projects in South Africa.

Orientation

The host institution should plan to conduct either a pre-program needs assessment if time allows, or a needs assessment upon the arrival of the participants. The Institute Director should be prepared to adjust program emphasis as necessary to respond to participants' professional concerns.

A pre-departure orientation will be held in South Africa by the Public Affairs Section (U.S. Embassy, Pretoria) for all participants. The Institute host institution will be expected to provide general orientation materials for this meeting. This material might include a tentative program outline with suggested goals and objectives, relevant background information about the U.S. institutions and individuals involved in the project, and information about the local housing, climate, and available services.

Program Administration

All Summer Institute programming and administrative logistics, management of the academic program and the educational tour, and on-site arrangements will be the responsibility of the host institution.

The host institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. The host institution should strive to balance cost effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites, which offer privacy, are preferable.

The Bureau will arrange participants' international travel. The Bureau will provide the host institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute. The participants will arrive directly at the Institute site from their home countries. It is expected that the Institute program staff will make arrangements to have participants met upon arrival at the airport nearest the host campus. Departures will be from Washington D.C. Participants will be given international tickets which will include the leg from the host institution to Washington D.C., if necessary. The Institute staff will plan for ground transportation to and from Washington area airports.

Proposals should describe the available health care system and the plan to provide health care access to Institute participants. The Department of State will provide limited health insurance coverage to all participants. The host institution will be responsible for enrolling the participants in the insurance program with materials supplied by the Department.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to provide clarification.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The Bureau anticipates awarding one grant in an amount not-to-exceed $155,000 to support program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Allowable costs for the program include the following:

1. Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

2. Lodging, meals, and incidentals for participants;

3. Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

4. Administrative costs as necessary.

5. U.S. ground transportation costs to U.S. appointments, meetings and to/from airports.

Proposals should maximize cost sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/AF–01–01.*

FOR FURTHER INFORMATION CONTACT: The African Programs Branch, ECA/A/E/AF, Room 232, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, Tel: (202) 619–5376 and fax (202) 619–6137, e-mail: eberelso@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Ellen Berelson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, January 26, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received

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on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/–01–01*, Program Management, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section at U.S. Embassy Pretoria for review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposal should exhibit quality, rigor, and appropriateness of proposed syllabus to the academic objectives of the Institute. Proposal should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants. The proposal should clearly demonstrate how the institution will meet the program's objectives.

2. *Program planning:* Relevant work plan and a detailed calendar should demonstrate substantive undertakings and logistical capacity. Plan and calendar should adhere to the program overview and guidelines described above.

3. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with South African participants. Proposal should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

8. *Project Evaluation:* Proposals should include a plan to evaluate the Summer Institute's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 8, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–32003 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3510]

Bureau of Educational and Cultural Affairs; Extension to the Deadline for the Wye River People-to-People Exchange Program

ACTION: Notice.

SUMMARY: Due to the Department's interest in providing opportunities for a broad range of organizations to apply for grants, the deadline for the Wye River People-to-People Exchange Program has been extended from January 5, 2001, to April 6, 2001.

ADDITIONAL INFORMATION: For additional information, U.S. organizations should contact Thomas Johnston at 202–619–5325 or email tjohnsto@pd.state.gov. Israeli organizations or organizations located in Gaza should contact the Programs and Exchanges Office, U.S. Embassy, Tel Aviv, at 03–516–3210 or email *p-e@usembassy-israel.org.il*.

Palestinian organizations located in the West Bank should contact the Public Affairs Office, U.S. Consulate General, Jerusalem, at 02–622–7207 or email *peoplejeru@pd.state.gov*.

The Wye River People-to-People Exchange Program was announced in the **Federal Register** on September 21, 2000.

Dated: December 8, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–31910 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–05–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on Proposed United States-Chile Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to conduct negotiations, initiation of environmental review, and request for comments.

SUMMARY: The United States intends to conduct negotiations with the Republic of Chile to conclude a free trade agreement. The Trade Policy Staff Committee (TPSC) is requesting written comments from the public to assist the United States Trade Representative (USTR) in formulating negotiating objectives for the agreement and to provide advice on how specific goods and services and other matters should be treated under the agreement.

Pursuant to Executive Order 13141 (64 FR 63169), USTR, through the TPSC, is initiating an environmental review of the agreement. The TPSC is also requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for environmental laws and regulations. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received by noon, January 29, 2001.

ADDRESS: Public comment should be submitted to: Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 Attention: U.S.-Chile Free Trade Agreement

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 (202) 395–3475. All questions regarding the environmental review should be addressed to Mary Latimer, Deputy Assistant USTR for Environment and Natural Resources, Office of the USTR (202) 395–7320. All other questions regarding the negotiations should be addressed to Susan Cronin, Director for Brazil and the Southern Cone, Office of the Western Hemisphere of the USTR (202) 395–5190.

SUPPLEMENTARY INFORMATION: On November 29, 2000, President Clinton agreed with Chile's President Ricardo Lagos to negotiate a bilateral free trade agreement. In the negotiations, the United States and the Republic of Chile will seek to eliminate duties and commercial barriers to bilateral trade in U.S.-and Chilean-origin goods and also expect to address trade in services, agricultural products, investment, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. Two-way trade between the United States and Republic of Chile approached $6 billion in 1999. USTR is requesting that the U.S. International Trade Commission conduct a study of the potential economic impacts of the free trade agreement.

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to Executive Order 13141, 64 FR 63169.

Written comments with as much specificity as possible, including data, views and recommendations, are invited on:

(a) General and commodity-specific negotiating objectives for the agreement.

(b) Economic costs and benefits to U.S. producers and consumers of the removal of tariffs and non-tariff barriers to U.S.-Chile trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the agreement, including comments on (1) product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, recommended staging schedule for such elimination.

(d) Proposals for service sectors to be addressed in the agreement, existing barriers to trade in those sectors, and economic costs and benefits of removing such barriers.

(e) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(f) Relevant investment issues that should be addressed in the negotiations.

(g) Relevant environmental and labor issues that should be addressed in the negotiations

(h) Relevant government procurement issues that should be addressed in the negotiations.

(i) Possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement.

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Comments identifying as present or potential trade barriers any laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such laws and regulations and the degree to which they discriminate against producers of the other country. Comments on the scope of the environmental review should be as detailed as possible.

Written Comments

Persons submitting written comments should provide twenty (20) copies no later than noon, January 29, 2001, to Gloria Blue at address listed above. If possible, comments should be submitted before this date. Where possible, please supplement written comments with a computer disk of the submission containing as much of the technical details as possible either in spreadsheet or word processing table format, with each tariff line or services sector in a separate cell. The disk should have a label identifying the software used and the submitter.

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room 101) at the address noted above. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 00–31774 Filed 12–13–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending November 24, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8369.
Date Filed: November 21, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0697 dated 6 October 2000
Mail Vote 090—Resolution 017c
Construction Rules for Fare Components
Re-adopt Paragraphs (5)(a)(ix) and (5)(b)(vii)
Intended effective date: 1 November 2000

Docket Number: OST–2000–8370.
Date Filed: November 21, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0722 dated 14 November 2000
Composite Resolution 002ww (except within Europe, between USA and Austria, Belgium, Chile, Germany, Iceland, Italy, Malaysia, Netherlands, Scandinavia, Switzerland)
Intended effective date: 15 December 2000

Docket Number: OST–2000–8371.
Date Filed: November 21, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0723 dated 14 November 2000
Composite Resolution 002n between USA and Austria, Belgium, Chile, Germany, Iceland, Italy, Malaysia, Netherlands, Scandinavia, Switzerland
Intended effective date: 15 December 2000

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–31923 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Notice of Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending November 17, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8282.
Date Filed: November 13, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC123 0123 dated 7 November 2000—Mid Atlantic (r–1 to r–7)
PTC123 0124 dated 7 November 2000—South Atlantic (r–8 to r–20)
Fares: PTC123 Fares 0042 dated 7 November 2000 (Mid Atlantic)
PTC123 Fares 0043 dated 7 November 2000 (South Atlantic)
Intended effective date: 1 March 2001

Docket Number: OST–2000–8283.
Date Filed: November 13, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC123 0122 dated 7 November 2000
TC123 North Atlantic Resolutions (r–1 to r–18)
Fares: PTC123 Fares 0041 dated 7 November 2000
Minutes—PTC123 0125 dated 10 November 2000
Intended effective date: 1 March 2001

Docket Number: OST–2000–8295.
Date Filed: November 14, 2000.
Parties: Members of the International Air Transport Association.
Subject:
CTC COMP 0322 dated 14 November 2000
Mail Vote 094—Resolution 033d
Intended effective date: 1 February 2001

Docket Number: OST–2000–8351.
Date Filed: November 17, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0347 dated 7 November 2000
TC2 Within Europe Expedited Resolution 002gg
PTC2 EUR 0348 dated 17 November 2000
TC2 Within Europe Expedited Resolutions 002nn, 078q, 078y

Intended Effective Dates: 15 December 2000, 5 January 2001

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–31924 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Aviation Proceedings

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending October 13, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–422.
Date Filed: October 10, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 31, 2000.
Description: Application of US Airways, Inc. ("US Airways") pursuant 49 U.S.C. 41102 and 41108 and Subpart B, applies forrenewal of its certificate of public convenience and necessity for Route 690, which authorizes US Airways to engage in scheduled foreign air transportation of persons, property, and mail between Philadelphia, Pennsylvania, and Rome, Italy.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–31922 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Aviation Proceedings

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending November 17, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8291.
Date Filed: November 13, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 2000.
Description: Application of Corporate Flight Management, Inc. pursuant to 49 U.S.C. 41738 and Subpart B, requests the transfer of its commuter air carrier authority to Corporate Airlines, Inc.

Docket Number: OST–2000–8355.
Date Filed: November 17, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 8, 2000.
Description: Joint Application of United Air Lines, Inc., US Airways, Inc., and Allegheny Airlines, Inc. pursuant to 49 U.S.C. Section 41105 and Subpart B apply, to the extent necessary, for approval of the *de facto* certificate transfer that will result from the acquisition of the outstanding shares of US Airways Group, Inc., the corporate parent of US Airways and Allegheny, by UAL Corporation ("UAL"), the corporate parent of United.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–31925 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Monterey County.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Team Leader, Program Delivery Team—North, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone: 916–498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) on a proposed project to construct three operational improvements to improve traffic flow on portions of State Route 1 between Carmel Valley Road and the Route 1/68 interchange (a distance of 2.2 miles), near the City of Carmel-by-the-Sea, in Monterey County. The project is to add a northbound climbing land and a median left turn lane from Carmel Valley Road to Ocean Avenue; add a left turn lane for northbound traffic turning onto Handley Drive; and add an additional northbound lane from Handley Drive to the Route 1/68 interchange. The other alternative under consideration would construct one, two or none of the three proposed operational improvements. The proposed project would basically be an upgrade of the existing facility.

There would be a public scoping meeting to discuss the proposed project and another opportunity for public comment on the draft environmental document during the circulation phase of the draft environmental impact statement (DEIS).

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. The views of agencies that may have interest in the effects of the proposal on historic properties are specifically solicited. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 6, 2000.

C. Glenn Clinton,

Team Leader, Program Delivery Team—North, Sacramento, California.

[FR Doc. 00–31895 Filed 12–13–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8398]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice announces the FMCSA's receipt of applications from 35 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). If we grant the request, the individual will qualify as a driver of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: We must receive your comments on or before January 16, 2001.

ADDRESSES: Please mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. You can look at and copy all the comments at the same address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joe Solomey, Office of the Chief Counsel, (202) 366–0834, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

Background

Thirty-five individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemptions will achieve the required level of safety.

Qualifications of Applicants

1. Carl W. Adams

Mr. Adams, 49, lost his right eye in 1984. His visual acuity in the left eye is 20/20 with correction. His ophthalmologist examined him in 2000, and certified, "In my opinion, Mr. Adams has sufficient vision to perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Adams reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.6 million miles. He holds a Minnesota Class A CDL, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

2. David F. Bardsley

Mr. Bardsley, 52, lost his right eye due to an injury in 1976. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 1999, his ophthalmologist stated, "I hereby certify that in my professional opinion and reasonable degree of medical certainty, Mr. Bardsley's visual deficiency is stable and he is medically qualified to operate a commercial motor vehicle safely." Mr. Bardsley submitted that he has driven a straight truck for 33 years and 825,000 miles. He holds a Class B CDL from Massachusetts, and during the last 3 years, he has had no accidents or convictions for moving violations in a CMV.

3. William E. Beckley

Mr. Beckley, 67, had an injury to his left eye in 1975 resulting in corneal scarring. His best-corrected visual acuity is 20/25 in the right eye and hand motions in the left eye. An ophthalmologist examined him in 2000 and stated, "I feel that Mr. Beckley has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Beckley's application, he has 51 years of experience driving tractor-trailers, totaling 4.4 million miles; and 6 years of experience driving straight trucks, totaling 270,000 miles. He holds a Maryland Class A CDL and has had no accidents or moving violations in a CMV for the past 3 years.

4. Joseph M. Blankenship

Since childhood, Mr. Blankenship, 37, has had amblyopia, which reduces his visual acuity to 20/200 in his right eye. The uncorrected vision in his left eye is 20/20. In 2000, an optometrist examined him and certified, "Although Mr. Blankenship does not meet the specific criteria of 20/40 monocular vision in each eye, I feel that with the demonstration of excellent visual fields and the presence of binocular depth perception that Mr. Blankenship has sufficient vision to safely operate a commercial vehicle." Mr. Blankenship submitted he has operated tractor-trailer combination vehicles for 7 years, accumulating 676,000 miles. He holds a Class AM CDL from Alabama. During the last 3 years, according to his driving record, he has had no accidents and 2 convictions for speeding in a CMV. He exceeded the speed limit by 19 mph in one instance, and 14 mph in the other instance.

5. Willie Burnett

Mr. Burnett, 44, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left eye. His optometrist examined him in 2000, and stated, "Mr. Burnett in my medical opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Burnett submitted that he has driven 220,000 miles in straight trucks over 23 years. He holds a Class A CDL from Florida, and his driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

6. Awilda S. Colon

Ms. Colon, 48, has a corneal scar in her left eye due to a childhood injury. Her best-corrected visual acuity is 20/20 in her right eye and 20/60 in her left eye. Following an examination in 2000, her optometrist certified, "After careful examination and talking with Ms. Colon, I feel she has adequate vision to operate a commercial vehicle." Ms. Colon reported that she has driven buses for 6 years, accumulating 15,000 miles. She holds a Class B CDL from Tennessee. Her driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

7. Robert P. Conrad

Mr. Conrad, 54, has amblyopia in his left eye. His visual acuity with correction is 20/20 in the right eye and 20/60 in the left. Mr. Conrad was examined in 1999, and his ophthalmologist stated, "I certify that in my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Conrad submitted that he has driven straight trucks and tractor-trailer combinations for 32 years, accumulating 64,000 miles in straight trucks, and 1.4 million miles in tractor-trailer combinations. He holds a Maryland Class AM CDL, and his driving record for the last 3 years contains no accidents and no convictions for moving violations in a CMV.

8. Jerald O. Edwards

Mr. Edwards, 52, has had optic nerve pallor in the left eye since birth. His visual acuity is 20/20 in the right eye and finger counting at 5 feet in the left eye. As a result of a 2000 examination, his optometrist affirmed, "With the previous information, I have sent to you, the tests indicate Mr. Edwards has sufficient vision to perform commercial vehicle driving tasks." Mr. Edwards reported that he has driven straight trucks for 5 years and 50,000 miles, and tractor-trailer combination vehicles for 30 years and 1.2 million miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no accidents and one speeding conviction in a CMV. He exceeded the speed limit by 9 mph.

9. William W. Ferrell

Mr. Ferrell, 61, developed a macular scar in his right eye following surgery in January 1997. He also has some central vision loss related to macular degeneration. His visual acuity is 20/200 in the right eye and 20/25 corrected in the left. An ophthalmologist examined him in 2000 and stated, "In my medical opinion, Mr. Ferrell does indeed have sufficient vision to perform the driving tasks that would be required to operate a commercial vehicle." Mr. Ferrell reported that he has driven straight trucks for 7 years for 400,000 miles, and tractor-trailer combinations 12 years for 1.2 million miles. He holds a Missouri Class A CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

10. Marion R. Fox, Jr.

Mr. Fox, 56, has a chorioretinal scar in his left eye, due to trauma at age 10. His corrected vision is 20/20+2 in the right eye and 20/60+2 in the left eye. He was examined in 2000, and his optometrist stated, "Mr. Fox has sufficient vision to operate a commercial vehicle." Mr. Fox reported that he has 33 years and 3.3 million miles of experience driving tractor-trailer combinations. He holds an Indiana Class A CDL, and has had no CMV accidents or convictions for moving violations for the past 3 years.

11. Thomas E. Howard

Mr. Howard, 48, has had anterior uveitis scaring in the left eye since age 2. His vision is 20/20, unaided, in the right eye, and hand motion only, with correction, in the left eye. Following a 2000 examination, his optometrist stated, "I feel that Mr. Howard should be able to perform the driving tasks required for commercial driving." Mr. Howard reported that he has driven tractor-trailer combination vehicles for 30 years, totaling 3.0 million miles. He holds an Indiana Class A CDL, and his official driving record shows no CMV accidents or moving violations in the last 3 years.

12. James L. Johnson

Mr. Johnson, 43, has refractive amblyopia in his left eye. His visual acuity uncorrected in the right eye is 20/20, and corrected in the left eye, 20/60. An optometrist examined Mr. Johnson in 2000 and affirmed, "This condition [refractive amblyopia] does not hinder in any way Mr. Johnson's ability to safely drive or operate commercial vehicles." According to Mr. Johnson's application, he has driven 4.8 million miles in tractor-trailer combination vehicles over 20 years. He holds a Class AM CDL from Alabama. In the last 3 years he has had no accidents or convictions for moving violations in a CMV on his driving record.

13. Spencer E. Leonard

Mr. Leonard, 48, has amblyopia in his right eye. The visual acuity of his left eye is 20/20, with correction, and the visual acuity of his right eye is finger counting. The ophthalmologist who examined him in 1999 noted, "Vision and ocular condition stable and patient is able to operate a commercial vehicle as he has in the past." According to his application, he has 24 years' and 1.9 million miles' experience operating tractor-trailer combinations, and 12 years' and 180,000 miles' experience operating straight trucks. He has an Ohio Class A CDL. There are no accidents and one conviction for a moving violation in a CMV on his driving record for the last 3 years. The ticket charged him with exceeding the speed limit by 11 mph.

14. John K. Love

Mr. Love, 67, has had a prosthetic left eye since 1950. His corrected visual acuity is 20/20 – in the right eye. An optometrist examined him in 2000 and affirmed, "In my medical opinion, John Love has sufficient vision required to operate a commercial vehicle." Mr. Love stated he has driven tractor-trailer combinations for 43 years, accumulating 2.1 million miles. He holds a Wyoming Class 1AMTX license. His official driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

15. Robert C. Lueders

Mr. Lueders, 44, suffered trauma to his left eye approximately 38 years ago, resulting in a retinal scar. Best-corrected acuities are 20/20 in the right eye and 20/70 in the left. As a result of an examination in 1999, his optometrist stated, "Based on Mr. Lueders" excellent driving record and his comprehensive eye exam, I feel Mr. Lueders has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Lueders' application, he has driven straight trucks for 8 years, accumulating 300,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.5 million miles. He holds a Class A CDL from Wisconsin. In the last 3 years his driving record shows no accidents or convictions for moving violations in a CMV.

16. Thomas F. Marczewski

Mr. Marczewski, 34, has amblyopia in his left eye. His visual acuities are 20/20 in his right eye and 20/300, not correctable, in his left. Following a 2000 examination, his optometrist noted, "Mr. Marczewski has sufficient vision to perform driving tasks required to operate a commercial vehicle." According to Mr. Marczewski, he has operated straight trucks for 6 years, accumulating 120,000 miles; and tractor-trailer combinations for 3 years, accumulating 114,000 miles. A holder of a Class ABCDM CDL from Wisconsin, he has no accidents or citations for moving violations in a CMV for the last 3 years.

17. Samson B. Margison

Mr. Margison, 48, has congenital amblyopia and esotropia of the left eye. His corrected visual acuity is 20/20+ in the right eye and 20/400 in the left. He was examined in 2000 and his optometrist stated, "In my opinion I see no reason Mr. Margison should not be able to drive commercially based on his visual status alone." In his application, Mr. Margison reported that he has driven straight trucks for 7 years, accumulating 49,000 miles; and tractor-trailer combinations for 16 years, accumulating 1.6 million miles. He holds an Ohio Class A CDL, and has no accidents and one citation for speeding in a CMV on his driving record for the past 3 years. His speed was 12 mph over the limit.

18. Velmer L. McClelland

Mr. McClelland, 50, has light perception only in his left eye due to trauma as a child. His best-corrected vision in the right eye is 20/20. Following a 2000 examination, his optometrist noted, "I feel patient can safely operate a motor vehicle. (commercial)." In his application, Mr. McClelland reported that he has driven tractor-trailer combinations for 15 years, accumulating 1.1 million miles; and straight trucks for 5 years, accumulating 250,000 miles. He holds a Texas Class A CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

19. Duane A. McCord

Mr. McCord, 34, has been blind in his right eye since age 4 due to trauma. His best vision with correction is 20/20 in his left eye. Following an examination in 2000, his optometrist certified, "I feel since Duane has had the visual defect since almost birth he has adapted using other visual cues and can still operate a commercial vehicle." Mr. McCord submitted that he has driven straight trucks for 200,000 miles in 5 years. He holds an Illinois Class B CDL, and his official driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

20. Gene L. Miller

Mr. Miller, 60, has a mature cataract and exotropia due to a childhood injury to his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. Following an examination in 1999, his optometrist stated, "In my opinion Mr. Miller has sufficient vision to operate a commercial vehicle." Mr. Miller submitted that he has driven straight trucks for 2 years and 100,000 miles; tractor-trailer combination vehicles for 8 years and 800,000 miles; and buses for 2 years and 65,000 miles. He holds a Class A CDL from the State of Washington, and his driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

21. John E. Musick

Mr. Musick, 35, had a traumatic injury to the left eye in 1979, resulting in retinal detachment and diffuse retinal scarring, with an acuity of hand motion. His visual acuity is 20/20 in the right eye, without correction. Following a 2000 examination, his ophthalmologist stated, "Since he has been operating a commercial vehicle in the past and has had many years to adjust to his visual deficit, I would think he can continue." Mr. Musick reported that he has driven straight trucks for 5 years, totaling 50,000 miles, and tractor-trailer combination vehicles for 3 years, totaling 105,000 miles. He holds an Arizona Class A CDL, and his official driving record shows no CMV accidents or convictions for moving violations during the last 3 years.

22. Bobby G. Pool, Sr.

Mr. Pool, 45, has amblyopia in the left eye. His vision is 20/20 in the right eye and 20/200 in the left eye with best correction. His ophthalmologist examined him in 2000, and certified, "I have no reason to believe that this patient is any less able to operate a commercial vehicle now than in the last 30 years and I feel his visual requirements should meet your guidelines." Mr. Pool reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.5 million miles. He holds a Texas Class AM CDL. In the last 3 years, he has had one accident and no convictions for moving violations in a CMV. Mr. Pool was not charged in the accident, and another driver was held to be at fault for failing to control speed in this 3-vehicle accident.

23. Robert Radcliff, Jr.

Mr. Radcliff, 39, has a central macular scar and a corneal scar in his left eye due to a childhood injury. His uncorrected visual acuity is 20/20 in the right eye and 20/100 in the left eye, but refraction yielded no improvement. His optometrist examined him in 2000, and stated, "In my opinion Mr. Radcliff has sufficient vision to drive a commercial vehicle." Mr. Radcliff submitted that he has driven straight trucks for 11 years and 205,000 miles. He holds a Class D license from Alabama. His driving record for the last 3 years shows that he had no accidents and one conviction for speeding in a CMV. The ticket stated that he was driving 16 mph over the limit.

24. Randolph M. Riffey

Mr. Riffey, 49, has amblyopia in his right eye. He was examined in 2000, and his optometrist found his visual acuity to be 20/20, corrected, in the left eye, and hand motion at 2 feet in the right eye. His optometrist stated, "In conclusion, Mr. Riffey has a congenital condition that is stable and in my medical opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Riffey reported that he has driven straight trucks for 5 years and 25,000 miles, and tractor-trailer combination vehicles for 15 years and 1.5 million miles. He holds a Virginia Class A CDL, and has had no convictions for moving violations or accidents in a CMV during the last 3 years.

25. Billy G. Saunders

Mr. Saunders, 63, has scarring in his right eye, due to an injury at age 4. His visual acuity is 20/20, corrected, in his left eye, and hand motion in his right eye. Following a 2000 examination, his optometrist stated, "In my opinion Mr. Saunders has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Saunders stated that he has operated tractor-trailer combination vehicles for 40 years, and a total of 4.0 million miles. He holds a New Mexico Class A CDL, and his official driving record shows no accidents or convictions for a moving violation in a CMV over the last 3 years.

26. George D. Schell

Mr. Schell, 48, has amblyopia in his left eye. His visual acuities are 20/20, uncorrected, in the right eye, and 20/200, not correctable, in the left eye. An optometrist examined him in 2000 and stated, "In my opinion, your vision seems to be stable and you have sufficient vision in the right eye to be able to perform the driving tasks required to operate a commercial vehicle." Mr. Schell indicated that he has 12 years of experience driving tractor-trailer combinations, with 900,000 miles driven, and 2 years of experience driving straight trucks, with 24,000 miles driven. He holds an Illinois Class A CDL, and has had no accidents or convictions for moving violations in a CMV during the past 3 years.

27. Gerald L. Smith

Mr. Smith, 44, has amblyopia in his right eye. His visual acuity is 20/20 best-corrected in the left eye and 20/200 in the right eye. Following a 1999 examination, his optometrist stated, "Mr. Smith has sufficient vision to operate a commercial vehicle." Mr. Smith reports that he has operated tractor-trailer combinations for 4 years, accumulating 400,000 miles. He holds a California Class AM1 CDL. He has no accidents and one conviction for "Driver Failure to Obey All Trucks Stop at Scales" in a CMV on his driving record for the last 3 years.

28. Scottie Stewart

Mr. Stewart, 46, has finger counting only in the right eye due to trauma at about the age of 4. His visual acuity is 20/20 in the left eye. His ophthalmologist examined him in 2000 and stated, "Considering the fact that this patient has been driving commercial vehicles for many, many years without a problem, it is my opinion that his vision is sufficient to continue to do the same task." In his application, Mr. Stewart reported that he has driven tractor-trailer combination vehicles for 20 years, totaling 1.1 million miles; and straight trucks for 2 years totaling 570,000 miles. He holds a Mississippi Class A CDL, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

29. Clarence L. Swann, Jr.

Mr. Swann, 51, suffered an injury in his right eye in 1962, resulting in a best-corrected visual acuity of 20/200 in that eye. The uncorrected vision in his left eye is 20/20. The ophthalmologist who examined him in 2000 stated, "I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Swann submitted that he has 21 years' experience driving tractor-trailer combinations for a total of 840,000 miles; and 5 years' experience driving straight trucks for a total of 150,000 miles. He holds a Class AM CDL from Alabama, and for the last 3 years he has no accidents or convictions for violations in a CMV on his driving record.

30. Robert Tatum

Mr. Tatum, 52, lost his right eye in an accident 20 years ago. An optometrist examined him in 1999, and certified, "Mr. Tatum has 20/20 vision in his left eye and has been successfully operating a commercial vehicle for approximately 20 years. Therefore in my medical opinion, Mr. Tatum has sufficient vision to perform these tasks." Mr. Tatum stated that he has operated tractor-trailer combinations for 18 years, accumulating 1.6 million miles. He holds a Class A CDL from Illinois, and his driving record for the last 3 years shows that he had no accidents and one conviction for speeding in a CMV for the last 3 years. He exceeded the speed limit by 10 mph.

31. Thaddeus E. Temoney

Mr. Temoney, 50, has a macular scar in his right eye due to an injury over 25 years ago. His corrected visual acuity is 20/20 in his left eye and 20/70 in his right eye. An ophthalmologist examined him in 2000, and stated, "I certify it is my medical opinion that Mr. Temoney has sufficient vision to perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Temoney reported that he has driven straight trucks for 9 years, accumulating 304,000 miles. He holds a Maryland Class B CDL, and his official driving record for the last 3 years shows no accidents or moving violations in a CMV.

32. Roberto R. Turpaud

Mr. Turpaud, 38, has a cataract in his left eye most likely caused by trauma sustained in 1976. He is able to see 20/20 with his right eye and 20/60 with his left eye with correction. His ophthalmologist examined him in 1999, and stated, "In my opinion, he is qualified based on his vision to drive a commercial vehicle." Mr. Turpaud reported that he has driven straight trucks for 4 years and 60,000 miles. He holds a Washington Operator's License currently, but at the time of his application he held a Class D license from Massachusetts. He has no accidents and two convictions for moving violations in a CMV on his driving record for the last 3 years. The convictions were for "Failure to Stop" and "Failure to Obey Stop Sign."

33. Roy B. Waggoner

Mr. Waggoner, 63, has refractive amblyopia due to anisometropic refractive error in his left eye as a result of a childhood injury. The best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. As the result of an examination in 2000, his ophthalmologist concluded, "It is my understanding that Mr. Waggoner has operated a commercial vehicle for many years as his primary occupation. * * * Given his binocular visual acuity of 20/20 in his glasses and his full visual fields, it is my opinion that his overall visual function is quite good. * * * My opinion, given these facts, is that Mr. Waggoner does have sufficient vision to operate a commercial vehicle." Mr. Waggoner reported that he has 41 years and 4.9 million miles of experience operating tractor-trailers. He holds a Class A CDL from Texas, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

34. Harry C. Weber

Mr. Weber, 65, has amblyopia in his left eye. His visual acuity is 20/20 in the right eye, and 20/100 in the left eye. His optometrist examined him in 2000, and stated, "Mr. Weber has sufficient vision to perform the driving tasks required to operate his commercial vehicle as he performs his duties, with no record of accidents or tickets." Mr. Weber reported that he has driven straight trucks for 45 years, accumulating 810,000 miles. He holds a Class C license from Maryland currently, but held a Class B CDL at the time of application. He has no accidents or convictions for moving violations in a CMV on his driving record for the past three years.

35. Yu Weng

Mr. Weng, 51, has amblyopia of the left eye. His best-corrected visual acuity is 20/25 in the right eye and 20/50 in the left eye. In 2000 his ophthalmologist examined him and affirmed, "It is my opinion that Mr. Weng has sufficient vision to perform the driving tasks required to operate a commercial vehicle without problem." Mr. Weng submitted that he has 16 years' experience driving tractor-trailer combinations over 2.3 million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years has no accidents and one conviction for "Failure to [Use Chains] When Required" in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. We will consider all comments that we receive before the close of business on the closing date indicated in the "Dates" section. We will continue to place comments that we receive after the closing date in the docket, and we will consider them to the extent practicable, but the FMCSA may publish in the **Federal Register** a notice of final determination at any time after the close of the comment period.

Authority: 49 U.S.C. 322, 31136 and 31315; 49 CFR 1.73.

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Issued on: December 8, 2000.

Brian M. McLaughlin,

Acting Assistant Administrator.

[FR Doc. 00–31921 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Office of Hazardous Materials Safety; Notice of Application for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 29, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 8, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8451–M	.....	TRW Automotive, Queen Creek, AZ (See Footnote 1)	8451
8723–M	.....	Senex Explosives, Inc., Cuddy, PA (See Footnote 2)	8723
8760–M	.....	Barton Solvents, Inc., Des Moines, IA (See Footnote 3)	8760
9929–M	.....	Orbital Sciences Corporation, Germantown, MD (See Footnote 4)	9929
10869–M	.....	Norris Cylinder Company, Longview, TX (See Footnote 5)	10869
11526–M	.....	BOC Gases, Murray Hill, NJ (See Footnote 6)	11526
11691–M	.....	Universal Flavors Corporation, Indianapolis, IN (See Footnote 7)	11691
12022–M	RSPA–1998–3308	Taylor-Wharton (Harsco Gas & Fluid Control Group), Harrisburg, PA (See Footnote 8)	12022
12102–M	RSPA–1998–4019	Onyx Environmental Services, L.L.C., Ledgewood, NJ (See Footnote 9)	12102
12581–M	RSPA–2000–8387	Ball Aerospace & Technologies Corp., Boulder, CO (See Footnote 10)	12581
12582–M	RSPA–2000–8385	State of Michigan (Dept. of State Police), East Lansing, MI (See Footnote 11)	12582

[1] To modify the exemption to waive the requirement to have a copy of the exemption accompany the shipment of not more than 25 grams of Division 1.1 materials.

[2] To modify the exemption to authorize an additional non-DOT specification repump unit for bulk shipment of certain blasting agents.

[3] To modify the exemption to allow for the transportation of additional Class 3 materials in cargo tanks having six or more compartments.

[4] To modify the exemption to update the list of cargo air carriers and airports of departure for the transport of rocket motors having weights exceeding those specified in the regulations.

[5] To modify the exemption to clarify the fracture toughness test requirements, for design qualification only, of non-DOT specification steel cylinders transporting certain compressed gases.

[6] To modify the exemption concerning the calibration cylinder specification testing requirements of 3A and 3AA cylinders.

[7] To modify the exemption to allow for the transportation of an additional Class 8 material exempt from segregation requirements; competent authority approval.

[8] To modify the exemption to include 3BN cylinders and alternative test equipment/procedures for use in transporting Division 2.1, 2.2 and 2.3 materials.

[9] To modify the exemption to allow for the transportation of densitized Division 5.1 and additional Class 3 materials; cargo vessel as an additional mode of transportation; expanded transportation services.

[10] To reissue the exemption originally issued on an emergency basis for the transportation of helium in non-DOT specification packaging.

[11] To reissue the exemption originally issued on an emergency basis for the transportation of first aid/trauma kits containing 2.2 gases in a passenger-carrying aircraft.

[FR Doc. 00–31931 Filed 12–13–00; 8:45am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 16, 2001.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped envelope showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 8, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of Exemption Thereof
12586–N	RSPA–00–8480	Wilsonart International Inc., Temple, TX.	49 CFR 174.67 (i) and (j).	To authorize rail cars to remain attached while standing without the physical presence of an unloader. (mode 2)
12587–N	RSPA–00–8481	Georgia-Pacific Corp., Crossett, AR.	49 CFR 173.31(d)(1)(vi).	To exempt rail cars containing hazardous materials from rupture disc inspection and replacement and marking requirement. (mode 2)
12591–N	RSPA–00–8484	SGL Carbon, LLC, Morgantown, NC.	49 CFR 174.67 (i) and (j).	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (mode 2)
12592–N	RSPA–00–8483	Matson Navigation Co., San Francisco, CA.	49 CFR 176.905	To authorize the transportation in commerce of combustion-powered motor vehicles in freight containers in cargo vessel holds that are not ventilated. (mode 3)

[FR Doc. 00–31932 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974, as Amended: System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of alteration of Privacy Act System of Records.

SUMMARY: The Department of the Treasury, Departmental Offices (DO), gives notice of a proposed alteration to the system of records entitled "Personnel Security System—Treasury/DO .004," which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system notice was last published in its entirety on December 17, 1998, at 63 FR 69721.

DATES: Comments must be received no later than January 16, 2001. The proposed alteration will be effective January 24, 2001 unless DO receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue, NW, Room 3180 Annex, Washington, DC 20220. Comments received will be available for inspection at the same address between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ann Tursic, Office of Security, (202) 622–1120.

SUPPLEMENTARY INFORMATION: The original publication of this system of records concerned the collection of information relevant to, or necessary for, making suitability, employability retention, or security clearance determinations. The Department is altering this system to: (1) Include the Disclosure and Written Authorization form that is mandated by the amendments to the Fair Credit and Reporting Act; (2) delete the current routine use and add six new routine uses; (3) add contractor employees as a category of individuals covered by the system; (4) create a Treasury-wide notice; (5) add system locations and managers; and (6) revise the retention and disposal of the records on government and contractor employees.

The following notices of systems of records maintained by Treasury bureaus will be deleted on January 24, 2001.

ATF .006—Internal Security Record System;

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CC .014—Personnel Security/ Investigation Files/Employee/ Applicant Reference File
BEP .044—Personnel Security Files and Indices;
FMS .008—Personnel Security Records;
Mint .002—Current Employee Security Identification Record;
OTS .013—Personnel Security and Suitability Program.

A segment of the records formerly maintained in Treasury/IRS 60.008—Security, Background, and Character Investigation Files, Inspection, and which were transferred to the Treasury Inspector General for Tax Administration (TIGTA), pursuant to the IRS Restructuring and Reform Act of 1998, are included in this Treasury-wide Privacy Act notice. Other records formerly maintained in Treasury/IRS 60.008, were transferred to the Assistant Commissioner (Support Services) and are now included in Treasury/IRS 34.021—Personnel Security Investigations, National Background Investigations Center, as published on June 15, 1999, at 64 FR 32096.

The altered system of records report as required by 5 U.S.C. 552a(r) of the Privacy Act has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996.

The Department proposes to alter system of records "Treasury/DO .004—Personnel Security System" as noted above. The notice is published in its entirety below.

Date: December 7, 2000.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .004

SYSTEM NAME:

Personnel Security System-Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 3180 Annex, Washington, DC 20220. Other locations at which the system is maintained by Treasury bureaus and their associated offices are:

1. a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW, Washington, DC 20220.

b. Financial Crimes Enforcement Network (FinCEN): 2070 Chain Bridge Road, Vienna, VA 22182.

c. The Office of Inspector General (OIG): 740 15th Street, NW, Washington, D.C. 20220.

d. Treasury Inspector General for Tax Administration (TIGTA): 1111 Constitution Ave., NW, Washington, DC 20224.

2. Bureau of Alcohol, Tobacco and Firearms (ATF): 650 Massachusetts Avenue, NW, Washington, D.C. 20226.

3. Office of the Comptroller of the Currency (OCC): 250 E Street, SW, Washington, DC 20219–0001.

4. United States Customs Service (CS): 1300 Pennsylvania Avenue, NW, Washington D.C. 20229

5. Bureau of Engraving and Printing (BEP): 14th & C Streets, SW, Washington, D.C. 20228.

6. Federal Law Enforcement Training Center (FLETC): Glynco, GA. 31524.

7. Financial Management Service (FMS): 401 14th Street, SW, Washington, D.C. 20227.

8. United States Mint (MINT): 801 9th Street, NW, Washington, DC 20220.

9. Bureau of the Public Debt (BPD): 200 Third Street, Parkersburg, WV 26101.

10. Office of Thrift Supervision (OTS): 1700 G Street, NW, Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former government employees, applicants and contractor employees occupying or applying for sensitive positions in the Department, (2) current and former senior officials of the Department and Treasury bureaus, and those within the Department who are involved in personnel security matters, and (3) current employees, applicants and contractor employees who are appealing a denial or a revocation of a security clearance.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Background investigations, (2) FBI and other agency name checks, (3) investigative information relating to personnel investigations conducted by the Department of the Treasury and other Federal agencies and departments on a pre-placement and post-placement basis to make suitability and employability determinations and for granting security clearances, (4) card records comprised of Notice of Personnel Security Investigation (TD F 67–32.2) or similar previously used card indexes, and (5) an automated data system reflecting identification data on applicants, incumbents and former employees, disclosure and authorization forms, and record of investigations, level and date of security clearance, if any, as well as status of investigations, and (6) records pertaining to the appeal of a denial or a revocation of a security clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, Sections 2 and 3, Executive Order 12958, and Executive Order 12968.

PURPOSE(S):

This system is used to maintain records that assure the Department is upholding the highest standards of integrity, loyalty, conduct, and security among its personnel and contract employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury is authorized to appear, when: (a) The Department of the Treasury, or any component thereof; or (b) any employee of the Department of the Treasury in his or her official capacity; or (c) any employee of the Department of the Treasury in his or her individual capacity where the Department of Justice or the Department of the Treasury has agreed to represent the employee; or (d) the United States, when the Department of the Treasury determines that litigation is likely to affect the Department of the Treasury or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department of the Treasury is deemed by the Department of the Treasury to be relevant and necessary to the litigation; provided, however, that the disclosure is compatible with the purpose for which records were collected;

(4) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations; and

(7) unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, index cards, and magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are stored in locked metal containers and in locked rooms. Electronic records are password protected. Access is limited to officials who have a need to know in the performance of their official duties and whose background investigations have been favorably adjudicated.

RETENTION AND DISPOSAL:

The records on government employees and contractor employees are retained for the duration of their employment at the Treasury Department. The records on applicants not selected and separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Director of Security, 1500 Pennsylvania Avenue, NW., Room 3180 Annex, Washington, DC 20220.

The system managers for the Treasury components are:

1. (a) DO: Director of Security, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(b) FinCEN: Security Director, 2070 Chain Bridge Road, Vienna, VA 22182.

(c) OIG: Personnel Officer, 740 15th St., NW, Suite 510, Washington, DC 20220.

(d) TIGTA: Security Officer, 1111 Constitution Ave., NW, Washington, DC 20224.

2. ATF: Deputy Assistant Director (Management), 650 Massachusetts Avenue, NW, Washington, DC 20226.

3. BPD: Director, Division of Administrative Services, 200 Third Street, P.O. Box 1328, Parkersburg, WV 26106–1318.

4. USCS: Chief, Security Management Branch, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

5. FLETC: Associate Director for Planning & Resources, Glynco, GA 31524.

6. OCC: Director, Administrative Services Division, 250 E Street, SW, Washington, DC 20219.

7. BEP: Chief, Office of Security, 14th & C Streets, NW, Room 113M, Washington, DC 20228.

8. FMS: Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, MD 20782.

9. Mint: Director of Security, 801 9th Street, NW, Washington, DC 20220.

10. OTS: Director, Procurement and Administrative Services, 1700 G Street, NW, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or who seek access to any record contained in the system of records, or seek to contest its content, may inquire in accordance with instructions given in the Appendix for each Treasury component appearing at 31 CFR Part 1, Subpart C.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized by those concerned, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). (See 31 CFR 1.36).

[FR Doc. 00–31794 Filed 12–13–00; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, As Amended; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: The Department is consolidating systems of records pertaining to the parking and carpool programs into one Treasury-wide system of records entitled "Treasury/DO .204—Parking and Carpool Program Records."

DATES: Comments must be received no later than January 16, 2001. The proposed system of records will be effective January 23, 2001, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC, 20220.

FOR FURTHER INFORMATION CONTACT: Les Smith, Program Manager, Facilities Management Division, (202) 622–0989, fax (202) 622–5334.

SUPPLEMENTARY INFORMATION: The Department is consolidating systems of records pertaining to the parking and carpool programs into one Treasury-wide system of records. Department of the Treasury system of records notices were last published in their entirety beginning at 63 FR 69716 on December 17, 1998. In the proposed notice each Treasury bureau is listed as a "System Location" and the official responsible for the program at each bureau is identified under "System Manager."

In certain instances, employer-provided parking may constitute a taxable fringe benefit subject to 26 U.S.C. 132(f), and the system will contain information necessary to report the taxable income, withhold the necessary income and employment taxes, and report the amount on an employee's W–2 and Leave and Earnings Statement. In addition, the Department may collect medical information from a person seeking a handicapped parking permit and if needed, disclose the medical information to a physician for determining the individual's eligibility for a handicap permit.

The following system of records notices will be deleted on January 23, 2001:

Treasury/CS .172—Parking Permits File
Treasury/BEP .043—Parking Program Records
Treasury/IRS 34.005—Parking Space Application and Assignment

Treasury/OTS .007—Employee Parking.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

This system of records, "Treasury/DO .204—Parking and Carpool Program Records" is published in its entirety below.

Dated: December 7, 2000.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .204

SYSTEM NAME:

Parking and Carpool Program Records—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The locations at which the system is maintained by Treasury bureaus and their associated field offices are:

1. a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW, Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW, Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1111 Constitution Ave., NW, Washington, DC 20224.

2. Bureau of Alcohol, Tobacco and Firearms (ATF): 650 Massachusetts Avenue, NW, Washington, DC 20226.

3. Office of the Comptroller of the Currency (OCC): 250 E Street, SW, Washington, DC 20219–0001.

4. United States Customs Service (CS): 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

5. Bureau of Engraving and Printing (BEP): 14th & C Streets, SW, Washington, DC 20228.

6. Federal Law Enforcement Training Center (FLETC): Glynco, Ga. 31524.

7. Financial Management Service (FMS): 401 14th Street, SW, Washington, DC 20227.

8. Internal Revenue Service (IRS): 1111 Constitution Avenue, NW, Washington, DC 20224.

9. United States Mint (MINT): Judiciary Square Building, 633–3rd Street, NW, Washington, DC 20220.

10. Bureau of the Public Debt (BPD):. 200 Third Street, Parkersburg, WV 26101.

11. United States Secret Service (USSS): 950 H Street, NW, Washington, DC 20001.

12. Office of Thrift Supervision (OTS): 1700 G Street, NW, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Department and individuals from other Government agencies or private sector organizations who may use, or apply to use, parking facilities or spaces controlled by the Department. Individuals utilizing handicapped or temporary guest parking controlled by the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include the name, position title, manager's name, organization, vehicle identification, arrival and departure time, home addresses, office telephone numbers, social security numbers, badge number, and service computation date or length of service with a component of an individual or principal carpool applicant. Contains name, place of employment, duty telephone, vehicle license number and service computation date of applicants, individuals or carpool members. For parking spaces, permit number, priority group (handicapped, job requirements/ executive officials (SES) or carpool/ vanpool). Medical information may also be included when necessary to determine disability of applicant when applying for handicapped parking spaces.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Treasury Department Order No. 165, revised as amended. Federal Property and Administrative Services Act of 1949, as amended.

PURPOSE(S):

The records are used to administer parking, carpool and vanpool programs within the Department. The system enables the Department to allocate and check parking spaces assigned to government or privately-owned vehicles operated by visitors, handicapped personnel, key personnel, employees eligible to participate in a parking program and carpools or vanpools. The Department is also able to compare these records with other Federal agencies to ensure parking privileges or other employee transportation benefits are not abused.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) A physician for making a determination on a person's eligibility for handicapped parking;

(4) A contractor who needs to have access to this system of records to perform an assigned activity;

(5) Parking coordinators of Government agencies and private sector organizations for verification of employment and participation of pool members;

(6) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(7) Department of Justice when seeking legal advice, or when (a) the Department of the Treasury (agency) or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(8) Third parties when mandated or authorized by statute or when necessary to obtain information that is relevant to an inquiry concerned with the possible abuse of parking privileges or other employee transportation benefits;

(9) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where relevant or potentially relevant to a proceeding, and

(10) Officials of the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission or the Office of Personnel Management when requested in the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and/or electronic media.

RETRIEVABILITY:

Name, address, social security number, badge number, permit number, vehicle tag number, and agency name or organization code on either the applicant or pool members as needed by a bureau. Records are filed alphabetically by location.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access. Protection and control of sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual bureaus. The IRS access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Generally, record maintenance and disposal is in accordance with NARA General Retention Schedule 11, and any supplemental guidance issued by individual components. Disposal of manual records is by shredding or burning; electronic data is erased. Destroyed upon change in, or revocation of, parking assignment.

For the IRS, records are maintained in accordance with Records Control Schedule 301—General Records Schedule 11, Space and Maintenance Records, Item 4(a), IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the Treasury components are:

(1)(a) DO: Assistant Director, Parking, Safety and Farecard Office, Facilities Management Division, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

(b) OIG: Director, Administrative Services Division, Office of Management Services, Room 510, 740 15th Street, NW., Washington, DC 20220.

(c) TIGTA: Security Officer, 1111 Constitution Ave., NW, Washington, DC 20224.

(2) ATF: Chief, Safety Program Branch, Administrative Programs Division, Office of Management, 650 Massachusetts Ave., NW, Washington, DC 20226.

(3) OCC: Building Manager, Building Services, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(4) CS: Chief Financial Officer, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(5) BEP: Chief, Office of Administrative Services, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

(6) FLETC: Associate Director for Planning & Resources, Federal Law Enforcement Training Center, Glynco, GA 31524.

(7) FMS: Director, Administrative Programs Division, 401 14th Street, SW, Washington, D.C. 20227.

(8) IRS: Chief, Security and Safety Branch; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and Computing Center Directors. (See IRS Appendix A for addresses.)

(9) MINT: Office of Management Services, 801 9th St. NW, Washington, DC 20220.

(10) BPD: Director, Washington Support Services, Bureau of the Public Debt, 999 E Street, NW, Washington, DC 20239.

(11) USSS: Assistant Director, Office of Administration, 950 H Street, NW, Washington, DC 20373–5802.

(12) OTS: Director, Procurement and Administrative Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–L.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Parking permit applicants, members of carpools or vanpools, other Federal agencies, medical doctor if disability determination is requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–31793 Filed 12–13–00; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 60, 61, 63, and 65
Consolidated Federal Air Rule; Synthetic Organic Chemical Manufacturing Industry; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, 63, and 65

[AD–FRL–6876–9]

RIN 2060–AG28

Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates a consolidated Federal air rule for the Synthetic Organic Chemical Manufacturing Industry (SOCMI). In this final rule, we (EPA) consolidate major portions of several new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the SOCMI. The final rule pulls together applicable Federal SOCMI rules into one integrated set of rules in order to simplify, clarify, and improve implementation of the existing rules with which source owners or operators must comply. The consolidated rule is an optional compliance alternative for SOCMI sources; sources may simply continue to comply with existing applicable rules or choose to comply with the final consolidated rule. The effects of this consolidation are to improve understandability, reduce burden, clarify requirements, and improve implementation and compliance. This document also announces the effective date of information collection requirements in a subpart in the Code of Federal Regulations relating to standards of performance for volatile organic compound emissions from the synthetic organic chemical manufacturing industry reactor processes which was originally published in the **Federal Register** on August 31, 1993.

DATES: This final rule is effective December 14, 2000. The incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of December 14, 2000. The information collection requirements in 40 CFR part 60, subpart RRR, became effective November 8, 1993 when the Office of Management and Budget approved them.

ADDRESSES: Docket number A–96–01 contains information we considered in developing these standards and is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays at EPA's Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). The fax number for the Center is (202) 260–4000 and the E-mail address is "*A-and-R-docket@epamail.gov.*" A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5262, fax number (919) 541–0942, or E-mail: *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: This preamble provides background information, summarizes major changes to the CAR since proposal, and discusses how we have met the administrative requirements for this final rule. This preamble does not contain extensive background information in the rule's development or how this rule relates to other rules. The preamble to the proposed CAR (63 FR 57798, October 28, 1998) contains extensive background information, which includes these discussions: goals and objectives, participation, amendments to the referencing subparts, significant decisions in rule consolidation, delegation of the CAR to State authorities, incorporating CAR requirements into the title V permit, extension of the consolidation to include the State implementation plan, summary of benefits and other impacts, and additional amendments to equipment leak referencing subparts.

Judicial Review. Under section 307(d)(1) of the Clean Air Act (Act), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 12, 2001. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Background Information Document. The consolidated rulemaking package promulgated today is supported by a background information document (BID) that contains a summary of the public comments received on the proposal and the Administrator's responses to public comments. This document may be obtained from the docket for this rule, A–96–01, or through the World Wide Web at *http://www.epa.gov/ttn/oarpg/* or from the U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to "Consolidated Federal Air Rule for Synthetic Organic Chemical Manufacturing Industry; Background Information for Promulgated Standards," EPA–453/R–99–006.

World Wide Web Information. The EPA provides information and technology exchange in various areas of air pollution control on the World Wide Web (WWW). An electronic copy of today's document that includes the regulatory text is available through the WWW at *http://www.epa.gov/ttn/oarpg/,* under recent actions. For WWW help information, call EPA's Web help line at (919) 541–5384.

Regulated Entities. The regulated category and entities potentially affected by this action include the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes.

Category	NAICS	SIC	Examples of regulated entities
Industry	3251	2865 2869	Synthetic organic chemical manufacturing industry units. For example, producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F, and any other chemical manufacturing process unit identified in an applicable subpart that references the use of this part. Producers of polypropylene, polyethylene, polystyrene, or poly (ethylene terephthalate). Producers of vinyl chloride and polyvinyl chloride. Volatile organic compound storage vessels. Benzene storage vessels. Benzene transfer operations. Equipment (valves, pumps, connectors, etc.) in benzene service.

Category	NAICS	SIC	Examples of regulated entities
Industry	32411	2911	Petroleum Refineries. Volatile organic compound storage vessels. Benzene storage vessels. Benzene transfer operations. Equipment (values, pumps, connectors, etc.) in benzene service.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to elect to comply with this rule. This table lists the types of entities that we are now aware could potentially qualify to elect to comply with this rule. To determine whether your facility qualifies to implement this action, you should carefully examine the applicability criteria in 40 CFR part 60, subparts Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and BB; and 40 CFR part 63, subparts G and H. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The following outline is provided to aid in locating information in this preamble.

I. Background Information
II. Summary of Comments and Changes Since Proposal
  A. How has EPA changed the definition of the SOCMI CAR unit?
  B. Has EPA changed the scope of the CAR since proposal?
  C. How has EPA changed the connector monitoring requirements?
  D. What changes were made to the process of implementing the CAR?
III. Other Changes Since Proposal
IV. Has EPA Changed Its Approach for Delegating the CAR to State Authorities?
V. Has EPA changed its approach for incorporating CAR requirements into the title V permit?
VI. Administrative Requirements
  A. Paperwork Reduction Act
  B. Executive Order 12866: Regulatory Planning and Review
  C. Executive Order 13132: Federalism
  D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  E. Unfunded Mandates Reform Act
  F. Regulatory Flexibility
  G. National Technology Transfer and Advancement Act
  H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  I. Congressional Review Act

I. Background Information

Over the past 25 years, EPA has issued a series of Federal air regulations, many of which affect the same plant site. As a result, many facilities are now subject to multiple Federal rules applying to different emission points. Each rule has its own emission control requirements as well as monitoring, recordkeeping, and reporting requirements. Although these rules were developed for different purposes under different statutory authorities and apply to different pollutants, they may impose many duplicative or near duplicative requirements on a plant site, thus complicating implementation of and compliance with these rules.

On March 16, 1995, President Clinton and Vice President Gore announced several initiatives aimed at reinventing environmental regulation. One of those initiatives was to consolidate Federal air rules so that all Federal air rules for any single industry would be incorporated into a single rule. This rule would consist of "* * * one set of emission limitations, monitoring, and recordkeeping and reporting requirements."

We selected the Federal air rules applying to the SOCMI for a pilot project to study the feasibility and practical implications of consolidating and streamlining existing rules, and to establish a workable process for consolidation that can then be applied to other consolidation efforts in the future. We selected the SOCMI as the pilot because of the large number of similar Federal air regulations that can apply at a single location. The SOCMI is subject to NSPS and NESHAP under the Act, as well as to Resource Conservation and Recovery Act (RCRA) air standards. The rules for a given type of emission point require application of controls with similar control efficiencies and include similar design, equipment, or operating standards. However, the standards differ in their applicability and in some of their control, monitoring, recordkeeping, and reporting requirements. Additionally, both the SOCMI and State air pollution control agencies have expressed great interest in consolidation of applicable Federal air requirements to the extent possible for easier incorporation into title V operating permits.

For these reasons, we believe that consolidation of the requirements of the various rules into one rule greatly benefits both the industry and government enforcement agencies. We believe that such consolidation improves compliance and enforceability and reduces resource needs.

II. Summary of Comments and Changes Since Proposal

We received 16 comment letters on the proposed CAR. The most significant changes made as a result of the comments regarded the SOCMI CAR unit, the scope of the rule, and connector monitoring. We address only the major comments and changes in this preamble. We also made a number of editorial changes and clarifications to make the CAR easier to read and understand. The summary of public comments and our responses are contained in the "Consolidated Federal Air Rule for Synthetic Organic Chemical Manufacturing Industry: Background Information for Promulgated Standards," EPA 453/R–99–006, May 2000, Docket No. A–96–01.

A. How Has EPA Changed the Definition of the SOCMI CAR Unit?

We have eliminated the concept of a SOCMI CAR unit (SCU), as proposed, from the final rule. Commenters noted points of confusion in the assignment procedures and in the definition of the SCU. One commenter was specifically concerned that the complexity of the applicability procedures may prohibit implementation at the State and local levels. Commenters made suggestions to improve the clarity of these provisions including a suggestion that the CAR provide examples showing how SCU boundaries are determined; a rephrasing of the SCU definition; and a request that the CAR include a provision that would allow groups of like equipment, subject to one of the referencing subparts, to implement the CAR even though other portions of the SCU continue to comply with the applicable referencing subpart.

Because this is a pilot program for the SOCMI, at proposal we limited the equipment that could opt into the CAR to plant sites with SOCMI process units. Therefore, the proposed definition of SCU contained specifications for what constituted a SOCMI process unit. The proposed CAR (63 FR 57753) specified that facilities opting into the CAR must do so on a SCU basis because we thought this would reduce potential complexity of implementing the CAR. During development of the proposed CAR, State representatives expressed a desire to allow larger portions of sources to opt in as opposed to a more

piecemeal approach, indicating that it would be easier for them to enforce the rule. Industry representatives generally preferred to allow any regulated source (a source or facility subject to a referencing subpart) to opt into the CAR. We felt that opting into the CAR on an SCU basis would provide a small enough collection of emission points and equipment to provide operational flexibility to the facility, but a large enough collection to avoid possible confusion and additional burden for regulatory authorities.

After reviewing the comments regarding the SCU and assignment procedures, we have concluded that eliminating the confusion and complexity added by the assignment procedures outweighs the reduction in burden and complexity to State inspectors by requiring facilities to opt in on a SCU (large collection of equipment) basis. Keeping track of which equipment is in or out of a SCU and which SCU is complying with the CAR appears to be more burdensome than keeping track of which emission point is complying with what rule.

Therefore, to simplify the applicability provisions of the CAR, we are allowing, in the final CAR, any affected source subject to a referencing subpart to use the CAR as a compliance option with two exceptions described below. This means that a facility may choose to opt in, for example, one subpart Kb tank or all equipment at the facility that is subject to a referencing subpart. For both regulator and industry personnel, this eliminates the assignment procedures that determine what equipment constitutes a SCU. With this change, it is not necessary to keep track of new regulated sources and whether they are part of a SCU or not.

There are two situations where the regulated source in the CAR does not match the affected source of the referencing subpart. In one situation, the affected source for 40 CFR part 61, subpart V is an individual piece of equipment like a pump or a valve. We determined that allowing owners or operators to opt in to the CAR on an individual piece of equipment would not be workable. Therefore, owners or operators must opt in the group of affected equipment at a process unit. This does not alter the applicability of subpart V to a facility; it only affects the set of equipment that can comply with the CAR.

The second situation where the regulated source in the CAR does not match the affected source of the referencing subpart is in the HON. Under the HON, the affected source is the total of all applicable emission points at the plant site that are subject to the HON. Thus, a HON facility that contains more than one CMPU, would consist of only one affected source, which would be the collection of all subject CMPU's. However, under the CAR the regulated source is collection of emission points within each CMPU (as proposed under the original concept in the CAR of the SCU). Thus, a HON facility can choose to opt into the CAR on a CMPU basis, and not the entire collection of CMPU's that comprise the HON affected source.

Although we believe that in most cases facilities will opt in as much equipment and as many emission points as possible, the States and owners or operators have the opportunity to work together to determine the basis on which facilities can opt in their equipment that will provide the "best fit" for both regulators and industry.

B. Has EPA Changed the Scope of the CAR Since Proposal?

We have not changed the scope of the CAR since proposal except for one minor change that affects polystyrene process vents. We received comments on incorporating or allowing other rules in the CAR, including the following requests: Consolidate all rules that may apply to a facility that has a SOCMI process unit on site, use the CAR as a compliance option for new regulations, and allow rules that reference the referencing subparts to use the CAR as a compliance option. These comments and our rationale for not changing the scope of the CAR are discussed in the following sections.

1. Incorporating or Allowing Other Rules in the CAR

Comments: Several commenters supported expanding the scope of the CAR so that it completely incorporates rules that may apply to facilities that have a SOCMI process unit on site. Commenters specifically mentioned the HON wastewater provisions (40 CFR part 63, subpart G); the Benzene Waste NESHAP provisions (40 CFR part 61, subpart FF); and the SOCMI wastewater NSPS (40 CFR part 60, subpart YYY). Some commenters requested that sources subject to the Petroleum Refinery NESHAP, 40 CFR part 63, subpart CC, be allowed to use the CAR to comply with subpart CC. Two commenters also referred to the following 40 CFR part 63 subparts as rules that should allow the CAR as a compliance option: I, U, W, DD, TT, OO, UU, WW, and JJJ. One commenter requested consolidation of several other provisions affecting SOCMI including the Hazardous Organic NESHAP (HON) Group 2 transfer racks and storage vessels; emission points not requiring control under the non-HON referencing subparts; marine loading under 40 CFR part 61, subpart BB; and equipment leak provisions under subpart BB of both 40 CFR parts 264 and 265. One commenter encouraged us to define CAR requirements as acceptable for requirements in non-consolidated rules that are likely to overlap with the CAR at SOCMI sites.

Commenters argued that without including additional regulations in the consolidation, issues of overlapping requirements remain, and the CAR cannot achieve its goals. One commenter alleged that sources, in most cases, have no incentive to use the CAR and concluded that the CAR must consolidate several additional rules in order to provide this incentive.

Response: It is true that the CAR does not consolidate all rules applicable to the SOCMI or to sources with SOCMI processes on site. We considered other rules in this consolidation. As stated in the preamble to the proposed rule (63 FR 57750), because the rule was meant to be a pilot project for the SOCMI, we limited the scope to the Federal Clean Air Act rules that apply to SOCMI. We thought that these rules would provide benefit to affected sources, yet the scope would be defined well enough to ensure a reasonable chance of success. Some SOCMI rules that we considered for consolidation were subject to litigation, which could have led to substantial changes, when the CAR process started, and others are currently in litigation. It was therefore not appropriate to consolidate these rules into the CAR since they would likely be changing. Our intention was to keep the rule development process manageable in order to develop a practical CAR in a reasonable amount of time. The details, approach, and regulatory text for including additional rules in the CAR have not been investigated. To include additional rules in the consolidation effort at this point would require substantial time, resources, and a supplemental proposal. We consider our efforts better spent finalizing this rule.

We do not agree that sources have no incentive to use the CAR. We maintain that there can be significant burden reduction with the rules that are currently consolidated, and that the burden reduction will persuade sources to use the CAR.

2. CAR for New Regulations

Comments: Four commenters requested that we consider using the CAR as a compliance option for new regulations. Two commenters specifically mentioned the Miscellaneous Organic NESHAP, one commenter mentioned the Generic MACT, and one commenter mentioned the Ethylene MACT. One commenter recommended that any new regulations applicable to the SOCMI that may be promulgated should be incorporated into the CAR for use by affected sources that have opted to use the CAR. The commenter stated that in this case, additional incorporated rules would follow part 70 on opting new rules into a title V permit as they are promulgated.

Response: We may consider using the CAR in future rulemakings. Because of the timing of the Generic MACT's promulgation (64 FR 34854; June 29, 1999), it was not possible to consolidate that rule into the CAR. However, the Generic MACT employs similar structure, concept, and provisions to the CAR.

3. Referencing Subparts Using the CAR

Comments: Several commenters requested that rules that refer to referencing subparts should be allowed to use the CAR as a compliance option. Commenters specifically mentioned 40 CFR part 63, subpart I, the polymers and resins MACT standards, and 40 CFR part 60, subpart DDD, equipment leak provisions. Two commenters requested any MACT standard that points to the HON be allowed the option to comply with the CAR.

Response: We have not expanded the scope of the final rule to include other regulations that refer to referencing subparts. Expanding the scope of the CAR to other rules at this point would entail additional proposals. The details, approach, and ramifications of allowing the CAR for these other rules have not been investigated. Many of the rules that point to the CAR's referencing subparts for requirements generally have complex references, with conditions and exceptions to the referencing subparts. To allow these rules to comply with the CAR would require us to study the conditions and exceptions and possibly develop detailed references for compliance with the CAR. We are finalizing this rule so that the burden reductions associated with it can be used as soon as possible, and we may consider additional provisions in later rulemakings.

4. Polystyrene Process Vents

Comment: One commenter noted that the proposed language in § 60.560(j) and (k) would not allow polystyrene process vents subject to 40 CFR part 60, subpart DDD, to use the CAR. These process vents have the same requirements as the polypropylene and polyethylene process vents subject to subpart DDD that could opt into the CAR under the proposed rule.

Response: We agree that the polystyrene process vents subject to subpart DDD that choose the control device or flare compliance option should be allowed to opt into the CAR. We have edited the final rule to allow this option.

C. How Has EPA Changed the Connector Monitoring Requirements?

We have provided a sensory inspection alternative to instrument monitoring for sources subject only to 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V, to eliminate a disincentive to use the CAR.

Comments: Several commenters noted that the proposed CAR imposed a significant increase in equipment leak monitoring burden for connectors in gas/vapor or light liquid service if the owner or operator decided to opt into the CAR for compliance. Specifically, these connectors subject to 40 CFR part 60, subpart VV, and 40 CFR part 61, subpart V, would have been subject to periodic instrument monitoring under the CAR. Under the referencing subparts, however, instrument monitoring was only required if sensory indications of a leak were detected. In other words, if plant personnel see, hear, or smell a potential leak, then they would investigate the potential leak by performing instrument monitoring.

Instrument monitoring, the commenters noted, is a substantial burden increase over sensory inspection. The commenters felt that this created a financial disincentive to use the CAR for some owners or operators. The commenters reasoned that if having to perform routine, periodic instrument monitoring of connectors costs more than is saved by complying with the CAR at the rest of the facility, then the owner or operator would likely decide not to use the CAR.

The commenters also noted that removing the requirement for instrument monitoring still has the potential to achieve an overall increase in environmental benefit. By maintaining the status quo with regard to performing sensory inspection for connectors, many subparts V and VV facilities may opt into the CAR. Once in the CAR, they must comply with the CAR's lower leak definitions for valves (500 parts per million (ppm)) and pumps (1,000 ppm for pumps in general service) instead of the referencing subparts' leak definition (10,000 ppm) for this equipment. The lower leak definitions would push the facilities towards better performance, potentially increasing the benefit to the environment.

Response: We agree that initiating instrument monitoring for connectors at a facility currently performing only sensory monitoring presents a significant and unanticipated financial disincentive to using the CAR. Because we believe that having more facilities using the CAR will result in reduced burden for both industry and regulators, we have provided a sensory monitoring option for sources subject only to subparts V and VV to eliminate this disincentive.

We have modified the CAR so that it contains an exemption from the instrument monitoring protocol for connectors referenced from subparts V and VV. It should be noted that the owner or operator may choose to perform instrument monitoring for these connectors if, for example, the owner or operator wanted to have one set of protocols for all the connectors at a facility and some of them were referenced to the CAR from the HON. Instrument monitoring would be required for the connectors referenced from the HON, and it may be simpler to instrument monitor all of the connectors rather than single out some connectors for instrument monitoring and others for sensory inspection.

No degradation of environmental protection results from the CAR requiring sensory monitoring for connectors referenced from subparts V and VV because that is what those two referencing subparts currently require. In fact, as commenters noted, because the CAR consolidates on lower leak definitions for other equipment, environmental protection will potentially be strengthened because subparts V and VV have a 10,000 ppm leak definition.

D. What Changes Were Made to the Process of Implementing the CAR?

We clarified the provisions for setting the implementation schedule to specify that the schedule must be set by mutual agreement with the Administrator. This language was also revised to be consistent with the CAR most likely being a minor permit modification to a title V permit. In the proposed CAR, the implementation schedule was to be established in a title V permit. It was meant to require that the regulated source propose the implementation schedule in a title V amendment. The final schedule as approved by the permitting authority would be established in the title V permit. In other words, the permitting authority would signal approval by including the schedule in the title V permit. However,

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since the title V amendment is a minor permit modification, there is no real opportunity for the permitting authority's approval. Therefore, the language associated with the implementation schedule was modified to establish the schedule by mutual agreement between the source and the permitting authority outside the title V process.

III. Other Changes Since Proposal

In addition to those changes discussed in section II of this preamble, we made numerous other, less significant, changes, including editorial changes and corrections to make the rule more clear. Most of these changes were made in response to comment and are discussed in detail in the BID (see the ADDRESSES section of this preamble).

IV. Has EPA Changed Its Approach for Delegating the CAR to State Authorities?

No. Our approach is outlined here and clarification is provided regarding States that do not have delegated authority of the underlying rules but have an approved title V program.

At proposal, we specifically requested comment on this streamlined approach to State delegation. Commenters who commented on delegation were unanimous in support of our approach. They agreed with our rationale and echoed our belief that the approach we outlined will facilitate and expedite delegation and implementation of the CAR.

To avoid impeding the adoption of the CAR, we specified a streamlined approach to implement the CAR using State authorities who have been delegated authority for the referencing subparts. Our approach is based on two steps. First, we intend to recognize the CAR as an alternative compliance approach to the referencing subparts. Second, we intend to waive the need for formal delegation of the CAR where the State is already delegated authority to implement the underlying NSPS or NESHAP. The details and implications of both of these steps are discussed in detail in the proposal preamble (63 FR 57784; October 28, 1998).

One commenter supported an approach that would provide for implementation of the CAR in States with an approved title V program, regardless of whether the State has received formal delegation of the underlying rules. We agree with the commenter that delegation of the CAR could also occur when States have an approved title V program. We recognize that fewer States have accepted delegation of the part 63 rules than the parts 60 and 61 rules. By incorporating the part 63 rules into the title V permit as applicable requirements, the terms and conditions of the part 63 rules become enforceable by the permitting authority through the permit, as if the part 63 rules themselves were delegated. We agree that the CAR could be delegated to permitting authorities with approved title V programs in place; however, there are advantages to obtaining formal delegation of the CAR by the permitting authority. Delegation should be conditioned to ensure the CAR is substantively incorporated unchanged into the permit.

As stated above, there are advantages to accepting formal delegation of the CAR. Permitting authorities that accept formal delegation of the CAR through accepting delegation of the referencing subparts, *i.e.*, the HON (or accept formal delegation of any section 112 requirement), are the clear enforcement authorities. In other words, if the permitting authority does not accept formal delegation of the referencing subparts, then the EPA Regional Office remains the enforcement authority, and sources must submit duplicate reports to both the EPA Regional Office and the permitting authority. Additionally, if the permitting authority accepts formal delegation of the referencing subparts, then the permitting authority can make the discretionary decisions regarding the general provisions authorities. For example, if a source wants to change some facet of its monitoring program, then, in some cases, a permitting authority that has accepted delegation of the CAR will be able to approve this change. See the 40 CFR part 63, subpart E preamble (64 FR 1879; January 12, 1999) for more information.

V. Has EPA Changed Its Approach for Incorporating CAR Requirements Into the Title V Permit?

No. At proposal, we specifically requested comment on our interpretation of using the minor permit modification mechanism to implement the CAR at title V sources. Commenters agreed and expressed support for our approach. The use of the CAR is subject to mutual agreement with the Administrator, and the title V permit modification is the appropriate mechanism.

The proposal preamble discussed the incorporation of the CAR requirements into the title V permit in detail (63 FR 57786; October 28, 1998). At proposal, we reasoned that of the three mechanisms through which a permit can be modified (administrative amendments, minor permit modification, or significant modifications), a minor permit modification is the correct mechanism to use to incorporate the CAR in most cases. Because the source does not have significant discretion in establishing the specific requirements, adopting the CAR qualifies as a minor permit modification. In cases where the CAR allows significant discretion on the part of the source in determining monitoring, recordkeeping or reporting requirements, and these are being established for the first time through the permit revision process, we would consider this change to be a significant modification to the permit. An example of this type of provision is under § 65.162(e) of 40 CFR part 65, subpart G, which applies to sources who are directed under § 65.154(c)(2) or § 65.155(c)(1) to set unique monitoring parameters.

VI. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1854.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., SW; Washington, DC 20460; by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*. The information requirements are not enforceable until OMB approves them.

Information is required to ensure compliance with the provisions of the rules. The information collected pursuant to the CAR will be used by Agency enforcement personnel to: (1) identify sources subject to the standards, (2) identify the control methodology being applied, and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis.

In addition, records and reports are necessary to enable EPA to identify plants that may not be in compliance with the standards. Based on reported information, EPA can decide which plants should be inspected and what records or processes should be inspected at the plants. The records that plants maintain would indicate to EPA whether plant personnel are operating and maintaining control equipment properly.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the Clean Air Act (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, "Confidentiality of Business Information."

The rules require that facility owners or operators retain records for a period of at least 5 years for title V sources, which exceeds the 3-year retention period contained in the guidelines in 5 CFR 1320.6. The 5-year retention period is consistent with the general provisions of 40 CFR part 63, and with the 5-year record retention requirement in the operating permit program under title V of the Act.

Reports are required on a semi-annual basis and as required, such as notification of performance testing. Information to be reported consists of emission data and other information that are not of a sensitive nature. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the rules. In addition, the EPA's authority to take administrative action would be reduced significantly. No sensitive personal or proprietary information are being collected.

The burden estimate is an estimate of the recordkeeping and reporting burden that will be incurred by a representative respondent choosing to comply with the CAR. The estimated annual average hour burden for all respondents is about 427,046 hours, or about 5,338 hours per respondent. The estimated annual average cost of this burden is about $23,051,000 for all of the estimated 80 projected respondents. An additional cost for operation and maintenance of monitoring systems and computers is about $32,333,600, for a total cost of about $702,708 per respondent. The estimated annual average hour burden for the Federal government is about 6,600 hours, with an associated cost of about $263,000. These estimates do not include the burden reduction achieved from not having to comply with the referencing subparts. The net burden reduction to the industry is estimated to be about 464,000 hours per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule consolidates requirements for existing rules, and will result in no net increase of recordkeeping and reporting to State agencies. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule.

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D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any 1 year. Thus, today's rules are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that these rules contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that have involvement with these source categories and, as such, are not covered by the regulatory requirements of the proposed regulations.

F. Regulatory Flexibility

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency determines that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of today's final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis was not necessary. This final rule is an optional compliance method and does not introduce any new requirements. Sources, including small entities, may choose to comply with the final rule if they determine that it would be beneficial to do so. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

G. National Technology Transfer and Advancement Act

As stated in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The purpose of the NTTAA is to reduce the costs to the private and public sectors by requiring Federal agencies to use existing technical standards used in commerce or industry. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The technical standards promulgated with this final rule are standards that have been proposed and promulgated under other rulemakings for similar source control applicability and compliance determinations. Since today's final rule does not involve the establishment or modification of technical standards, the requirements of the NTTAA do not apply.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 61

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 65

Environmental protection, Air pollution control, Incorporation by reference. Intergovernmental relations. Reporting and recordkeeping requirements.

Dated: September 20, 2000.

Carol M. Browner,

Administrator.

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

§ 60.17 [Amended]

1a. Amend § 60.17 as follows:

a. In paragraph (a)(12), remove "98,";

b. In paragraph (a)(13), remove "95," and "97,";

c. In paragraph (a)(14), remove, "98,";

d. In paragraph (a)(19), add "(Reapproved 1980)" after "D1475–60" and remove "80,";

e. In paragraph (a)(22), remove "82,86,";

f. In paragraph (a)(28), remove "97a,"; and

g. In paragraph (a)(47), add "Test" after "Standard".

Subpart Ka—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984

2. Section 60.110a is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 60.110a Applicability and designation of affected facility.

(a) *Affected facility.* Except as provided in paragraph (b) of this section, the affected facility to which this subpart applies is each storage vessel with a storage capacity greater than 151,416 liters (40,000 gallons) that is used to store petroleum liquids for which construction is commenced after May 18, 1978.

* * * * *

(c) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart C, to satisfy the requirements of §§ 60.112a through 60.114a for storage vessels that are subject to this subpart that store petroleum liquids that, as stored, have a maximum true vapor pressure equal to or greater than 10,3 kPa (1.5 psia). Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (c)(2) do not apply to owners or operators of storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

3. Section 60.115a is amended by revising paragraph (d)(2) to read as follows:

§ 60.115a Monitoring of operations.

* * * * *

(d) * * *

(2) The owner or operator of each storage vessel equipped with a vapor recovery and return or disposal system in accordance with the requirements of § 60.112a(a)(3) and (b), or a closed vent system and control device meeting the specifications of 40 CFR 65.42(b)(4), (b)(5), or (c).

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

4. Section 60.110b is amended by adding paragraph (e) to read as follows:

§ 60.110b Applicability and designation of affected facility.

* * * * *

(e) *Alternative means of compliance.*—(1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart C, to satisfy the requirements of §§ 60.112b through 60.117b for storage vessels that are subject to this subpart that meet the specifications in paragraphs (e)(1)(i) and (ii) of this section. When choosing to comply with 40 CFR part 65, subpart C, the monitoring requirements of § 60.116b(c), (e), (f)(1), and (g) still apply. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(i) A storage vessel with a design capacity greater than or equal to 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa; or

(ii) A storage vessel with a design capacity greater than 75 m^3 but less than 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, must also

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comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (e)(2) do not apply to owners or operators of storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

(3) *Internal floating roof report.* If an owner or operator installs an internal floating roof and, at initial startup, chooses to comply with 40 CFR part 65, subpart C, a report shall be furnished to the Administrator stating that the control equipment meets the specifications of 40 CFR 65.43. This report shall be an attachment to the notification required by 40 CFR 65.5(b).

(4) *External floating roof report.* If an owner or operator installs an external floating roof and, at initial startup, chooses to comply with 40 CFR part 65, subpart C, a report shall be furnished to the Administrator stating that the control equipment meets the specifications of 40 CFR 65.44. This report shall be an attachment to the notification required by 40 CFR 65.5(b).

5. Section 60.116b is amended by revising paragraph (g) to read as follows:

§ 60.116b Monitoring of operations.

* * * * *

(g) The owner or operator of each vessel equipped with a closed vent system and control device meeting the specification of § 60.112b or with emissions reductions equipment as specified in 40 CFR 65.42(b)(4), (b)(5), (b)(6), or (c) is exempt from the requirements of paragraphs (c) and (d) of this section.

Subpart VV—Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry

6. Section 60.480 is amended by adding paragraph (e) to read as follows:

§ 60.480 Applicability and designation of affected facility.

* * * * *

(e) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with the provisions of 40 CFR part 65, subpart F, to satisfy the requirements of §§ 60.482 through 60.487 for an affected facility. When choosing to comply with 40 CFR part 65, subpart F, the requirements of § 60.485(d), (e), and (f), and § 60.486(i) and (j) still apply. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart F must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for that equipment. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (e)(2) do not apply to owners or operators of equipment subject to this subpart complying with 40 CFR part 65, subpart F, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart F, must comply with 40 CFR part 65, subpart A.

7. Section 60.481 is amended by revising the definition of "Closed vent system" and adding in alphabetical order the definitions of "Duct work," "Fuel gas," "Fuel gas system," "Hard-piping," and "Sampling connection system," to read as follows:

§ 60.481 Definitions.

* * * * *

Closed vent system means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

* * * * *

Duct work means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

* * * * *

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgement and standards such as ASME B31.3, Process Piping (available from the American Society of Mechanical Engineers, PO Box 2900, Fairfield, NJ 07007–2900).

* * * * *

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

* * * * *

8. Section 60.482–1 is amended by revising paragraph (a) to read as follows:

§ 60.482–1 Standards: General.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 60.482–1 through 60.482–10 or § 60.480(e) for all equipment within 180 days of initial startup.

* * * * *

9. Section 60.482–2 is amended by:

a. Revising paragraph (d)(1)(ii);

b. Revising paragraph (f);

c. Adding paragraph (g); and

d. Adding paragraph (h).

The revisions and additions read as follows:

§ 60.482–2 Standards: Pumps in light liquid service.

* * * * *

(d) * * *

(1) * * *

(ii) Equipment with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 60.482–10; or

* * * * *

(f) If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a process or to a fuel gas system or to a control device that complies with the requirements of § 60.482–10, it is exempt from paragraphs (a) through (e) of this section.

(g) Any pump that is designated, as described in § 60.486(f)(1), as an unsafe-to-monitor pump is exempt from the monitoring and inspection requirements of paragraphs (a) and (d)(4) through (6) of this section if:

(1) The owner or operator of the pump demonstrates that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in paragraph (c) of this section if a leak is detected.

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (a)(2) and (d)(4) of this section, and the daily requirements of paragraph (d)(5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

10. Section 60.482–3 is amended by revising paragraphs (b)(2) and (h) to read as follows:

§ 60.482–3 Standards: Compressors.

* * * * *

(b) * * *

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 60.482–10; or

* * * * *

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section, if it is equipped with a closed vent system to capture and transport leakage from the compressor drive shaft back to a process or fuel gas system or to a control device that complies with the requirements of § 60.482–10, except as provided in paragraph (i) of this section.

* * * * *

11. Section 60.482–4 is amended by revising paragraph (c), and adding paragraph (d) to read as follows:

§ 60.482–4 Standards: Pressure relief devices in gas/vapor service.

* * * * *

(c) Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage through the pressure relief device to a control device as described in § 60.482–10 is exempted from the requirements of paragraphs (a) and (b) of this section.

(d)(1) Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (a) and (b) of this section, provided the owner or operator complies with the requirements in paragraph (d)(2) of this section.

(2) After each pressure release, a new rupture disk shall be installed upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 60.482–9.

12. Section 60.482–5 is amended by:

a. Revising paragraph (a);

b. Revising the introductory text to paragraph (b);

c. In paragraph (b)(3), removing the period and adding "; or" in it's place; and

d. Adding paragraph (b)(4).

The revisions and addition read as follows:

§ 60.482–5 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purged, closed-loop, or closed-vent system, except as provided in § 60.482–1(c). Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall comply with the requirements specified in paragraphs (b)(1) through (4) of this section:

* * * * *

(4) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(i) A waste management unit as defined in 40 CFR 63.111, if the waste management unit is subject to, and operated in compliance with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams;

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

* * * * *

13. Section 60.482–6 is amended by adding paragraphs (d) and (e) to read as follows:

§ 60.482–6 Standards: Open-ended valves or lines.

* * * * *

(d) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (a), (b) and (c) of this section.

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraphs (a) through (c) of this section.

14. Section 60.482–8 is amended by revising the section heading and paragraph (a) to read as follows:

§ 60.482–8 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and connectors.

(a) If evidence of a potential leak is found by visual, audible, olfactory, or any other detection method at pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and connectors, the owner or operator shall follow either one of the following procedures:

(1) The owner or operator shall monitor the equipment within 5 days by the method specified in § 60.485(b) and shall comply with the requirements of paragraphs (b) through (d) of this section.

(2) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak.

* * * * *

15. Section 60.482–9 is amended by revising paragraph (a) to read as follows:

§ 60.482–9 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

* * * * *

16. Section 60.482–10 is amended by revising paragraphs (b) and (c) to read as follows:

§ 60.482–10 Standards: Closed vent systems and control devices.

* * * * *

(b) Vapor recovery systems (for example, condensers and absorbers) shall be designed and operated to recover the VOC emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, whichever is less stringent.

(c) Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent or to provide a minimum residence time of 0.75

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seconds at a minimum temperature of 816 °C.

* * * * *

17. Section 60.483–1 is amended by revising paragraph (b)(1) to read as follows:

§ 60.483–1 Alternative standards for valves—allowable percentage of valves leaking.

* * * * *

(b) * * *

(1) An owner or operator must notify the Administrator that the owner or operator has elected to comply with the allowable percentage of valves leaking before implementing this alternative standard, as specified in § 60.487(d).

* * * * *

18. Section 60.483–2 is amended by revising paragraph (a)(2) to read as follows:

§ 60.483–2 Alternative standards for valves—skip period leak detection and repair.

(a) * * *

(2) An owner or operator must notify the Administrator before implementing one of the alternative work practices, as specified in § 60.487(d).

* * * * *

19. Section 60.486 is amended by revising paragraphs (f) introductory text and (f)(1) to read as follows:

§ 60.486 Recordkeeping requirements.

(f) The following information pertaining to all valves subject to the requirements of § 60.482–7(g) and (h) and to all pumps subject to the requirements of § 60.482–2(g) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves and pumps that are designated as unsafe-to-monitor, an explanation for each valve or pump stating why the valve or pump is unsafe-to-monitor, and the plan for monitoring each valve or pump.

* * * * *

Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Polymer Manufacturing Industry

* * * * *

20. Section 60.560 is amended by adding paragraph (j) before the note to read as follows:

§ 60.560 Applicability and designation of affected facilities.

* * * * *

(j) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart G, for continuous process vents that are subject to this subpart, that choose to comply with § 60.562–1(a)(1)(i)(A), (B), or (C) as allowed in § 60.562–1(a)(1) and (b)(1)(iii). The requirements of 40 CFR part 65, subpart G, satisfy the requirements of paragraph (c) of this section and §§ 60.563 through 60.566, except for § 60.565(g)(1). Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart G, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (j)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart G, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart G, must comply with 40 CFR part 65, subpart A.

(3) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart G, at initial startup shall notify the Administrator of the specific provisions of 40 CFR part 65, subpart G, with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial startup required by 40 CFR 65.5(b).

* * * * *

21. Section 60.565 is amended by revising paragraph (g) introductory text to read as follows:

§ 60.565 Reporting and recordkeeping requirements.

* * * * *

(g) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.560(j) or § 60.562–1 shall keep up-to-date, readily accessible records of:

* * * * *

Subpart III—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes

22. Section 60.610 is amended by adding paragraph (d) before the note to read as follows:

§ 60.610 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D, to satisfy the requirements of §§ 60.612 through 60.615 and 60.618. The provisions of 40 CFR part 65 also satisfy the criteria of paragraph (c) of this section. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(3) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, at initial startup shall comply with paragraphs (d)(1) and (2) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial startup, whichever date comes first.

(4) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart D, at initial startup shall notify the Administrator of the specific provisions of 40 CFR 65.63(a)(1), (2), or (3), with which the owner or operator has elected to comply. Notification shall be submitted with the notifications of initial startup required by 40 CFR 65.5(b).

* * * * *

Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

23. Section 60.660 is amended by adding paragraph (d) before the note to read as follows:

§ 60.660 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D, to satisfy the requirements of §§ 60.662 through 60.665 and 60.668. The provisions of 40 CFR part 65 also satisfy the criteria of paragraphs (c)(4) and (6) of this section. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(3) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, at initial startup shall comply with paragraphs (d)(1) and (2) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial startup, whichever date comes first.

(4) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart D, at initial startup shall notify the Administrator of the specific provisions of 40 CFR 65.63(a)(1), (2), or (3), with which the owner or operator has elected to comply. Notification shall be submitted with the notifications of initial startup required by 40 CFR 65.5(b).

* * * * *

24. Section 60.665 is amended by revising paragraph (l)(6) to read as follows:

§ 60.665 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(6) Any change in equipment or process operation, as recorded under paragraph (j) of this section, that increases the design production capacity above the low capacity exemption level in § 60.660(c)(5) and the new capacity resulting from the change for the distillation process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. These reports may be submitted either in conjunction with semiannual reports or as a single separate report. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and E_{TOC}. The performance test is subject to the requirements of § 60.8. The facility must begin compliance with the requirements set forth in § 60.660(d) or § 60.662. If the facility chooses to comply with § 60.662, the facility may qualify for an exemption in § 60.660(c)(4) or (6).

* * * * *

Subpart RRR—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

25. Section 60.700 is amended by adding paragraph (d) before the note to read as follows:

§ 60.700 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D, to satisfy the requirements of §§ 60.702 through 60.705 and 60.708. The provisions of 40 CFR part 65 also satisfy the criteria of paragraphs (c)(2), (4), and (8) of this section. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(3) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D at initial startup shall comply with paragraphs (d)(1) and (2) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate af which the affected facility will be operated, or 180 days after the initial startup, whichever date comes first.

(4) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart D, at initial startup shall notify the Administrator of the specific provisions of 40 CFR 65.63(a)(1), (2), or (3), with which the owner or operator has elected to comply. Notification shall be submitted with the notifications of initial startup required by 40 CFR 65.5(b).

* * * * *

26. Section 60.705 is amended by revising paragraph (1)(5) to read as follows:

§ 60.705 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(5) Any change in equipment or process operation, as recorded under paragraph (i) of this section, that increases the design production capacity above the low capacity exemption level in § 60.700(c)(3) and the new capacity resulting from the change for the reactor process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. These reports may be submitted either in conjunction with semiannual reports or as a single separate report. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and E_{TOC}. The performance test is subject to the requirements of § 60.8. The facility must begin compliance with the requirements set forth in § 60.702 or § 60.700(d). If the

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facility chooses to comply with § 60.702, the facility may qualify for an exemption under § 60.700(c)(2), (4), or (8).

* * * * *

PART 61—[AMENDED]

27. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

28. Amend § 61.18 as follows:

a. In paragraph (a)(5), add "Standard Test Method for" after "88,";

b. In paragraph (a)(8), add "(Reapproved 1993)" after "88" and remove "93,";

c. Redesignate paragraphs (a)(9) through (a)(13) as paragraphs (a)(10) through (a)(14);

d. Add new paragraph (a)(9); and

e. Add paragraph (e).

The additions read as follows:

§ 61.18 Incorporations by reference.

(a) * * *

(9) ASTM D2879–83, Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved December 14, 2000 for § 61.241.

* * * * *

(e) The materials listed in this paragraph (e) are available for purchase from the American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

(1) API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition. February 1989. IBR approved December 14, 2000 for § 61.241.

(2) [Reserved]

Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

29. Section 61.110 is amended by revising paragraph (a) to read as follows:

§ 61.110 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in benzene service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by this subpart.

* * * * *

Subpart V—National Emission Standard for Equipment Leaks (Fugitive Emission Sources)

30. Section 61.240 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 61.240 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in volatile hazardous air pollutant (VHAP) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by this subpart.

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65 to satisfy the requirements of §§ 61.242–1 through 61.247 for equipment that is subject to this subpart and that is part of the same process unit. When choosing to comply with 40 CFR part 65, the requirements of §§ 61.245(d) and 61.246(i) and (j) still apply. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 65, subpart C or F.* For owners or operators choosing to comply with 40 CFR part 65, each surge control vessel and bottoms receiver subject to this subpart that meets the conditions specified in table 1 or table 2 of this subpart shall meet the requirements for storage vessels in 40 CFR part 65, subpart C; all other equipment subject to this subpart shall meet the requirements in 40 CFR part 65, subpart F.

(3) *Part 61, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C or F, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.10(b) through (d), 61.11, and 61.15 for that equipment. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(3) do not apply to owners or operators of equipment subject to this subpart complying with 40 CFR part 65, subpart C or F, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C or F, must comply with 40 CFR part 65, subpart A.

(4) *Rules referencing this subpart.* Owners or operators referenced to this subpart from subpart F or J of this part may choose to comply with 40 CFR part 65 for all equipment listed in paragraph (a) of this section.

31. Section 61.241 is amended by revising the definitions of "*Closed-vent system*" and "*Equipment*," adding in alphabetical order the definitions of "*Bottoms receiver*," "*Duct work*," "*Fuel gas*," "*Fuel gas system*," "*Hard-piping*," "*Maximum true vapor pressure*," "*Sampling connection system*," and "*Surge control vessel*," and removing the definition of "*Product accumulator vessel*" to read as follows:

§ 61.241 Definitions.

* * * * *

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

Closed-vent system means a system that is not open to atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

* * * * *

Duct work means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Equipment means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver in VHAP service, and any control devices or systems required by this subpart.

* * * * *

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgement and standards such as ASME B31.3, Process Piping (available from the American Society of Mechanical Engineers, PO Box 2900, Fairfield, NJ 07007–2900).

* * * * *

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total VHAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss From External Floating-Roof Tanks (incorporated by reference as specified in § 61.18); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope (incorporated by reference as specified in § 61.18); or

(4) Any other method approved by the Administrator.

* * * * *

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit when in-process storage, mixing, or management of flow rates of volumes is needed on a recurring or ongoing basis to assist in production of a product.

* * * * *

32. Section 61.242–2 is amended by:

a. Redesignating paragraph (g) as paragraph (h);

b. Revising paragraph (a)(1);

c. Revising paragraph (d)(1)(ii);

d. Revising paragraph (f);

e. Adding new paragraph (g); and

f. Revising newly designated paragraph (h).

The revisions and addition read as follows:

§ 61.242–2 Standards: Pumps.

(a)(1) Each pump shall be monitored monthly to detect leaks by the methods specified in § 61.245(b), except as provided in § 61.242–1(c) and paragraphs (d), (e), (f) and (g) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 61.242–11; or

* * * * *

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a process or fuel gas system or to a control device that complies with the requirements of § 61.242–11, it is exempt from the requirements of paragraphs (a) through (e) of this section.

(g) Any pump that is designated, as described in § 61.246(f)(1), as an unsafe-to-monitor pump is exempt from the monitoring and inspection requirements of paragraphs (a) and (d)(4) through (6) of this section if:

(1) The owner or operator of the pump demonstrates that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in paragraph (c) of this section if a leak is detected.

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (a)(2) and (d)(4) of this section, and the daily requirements of paragraph (d)(5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

33. Section 61.242–3 is amended by revising paragraphs (b)(2) and (h) to read as follows:

§ 61.242–3 Standards: Compressors.

* * * * *

(b) * * *

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 61.242–11; or

* * * * *

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system to capture and transport leakage from the compressor drive shaft back to a process or fuel gas system or to a control device that complies with the requirements of § 61.242–11, except as provided in paragraph (i) of this section.

* * * * *

34. Section 61.242–4 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 61.242–4 Standards: Pressure relief devices in gas/vapor service.

* * * * *

(c) Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 61.242–11 is exempt from the requirements of paragraphs (a) and (b) of this section.

(d)(1) Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (a) and (b) of this section, provided the owner or operator complies with the requirements in paragraph (d)(2) of this section.

(2) After each pressure release, a new rupture disk shall be installed upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 61.242–10.

35. Section 61.242–5 is revised to read as follows:

§ 61.242–5 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system, except as provided in § 61.242–1(c). Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed vent system as required in paragraph (a) of this section shall comply with the requirements specified in paragraphs (b)(1) through (4) of this section:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of § 61.242–11; or

(4) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(i) A waste management unit as defined in 40 CFR 63.111 if the waste

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management unit is subject to and operated in compliance with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams; or

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

36. Section 61.242–6 is amended by adding paragraphs (d) and (e) to read as follows:

§ 61.242–6 Standards: Open-ended valves or lines.

* * * * *

(d) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (a), (b) and (c) of this section.

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraphs (a) through (c) of this section.

37. Section 61.242–8 is amended by revising the section heading and paragraph (a) to read as follows:

§ 61.242–8 Standards: Pressure relief services in liquid service and connectors.

(a) If evidence of a potential leak is found by visual, audible, olfactory, or any other detection method at pressure relief devices in liquid service and connectors, the owner or operator shall follow either one of the following procedures, except as provided in § 61.242–1(c):

(1) The owner or operator shall monitor the equipment within 5 days by the method specified in § 61.245(b) and shall comply with the requirements of paragraphs (b) through (d) of this section.

(2) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak.

* * * * *

38. Section 61.242–9 is revised to read as follows:

§ 61.242–9 Standards: Surge control vessels and bottoms receivers.

Each surge control vessel or bottoms receiver that is not routed back to the process and that meets the conditions specified in table 1 or table 2 of this subpart shall be equipped with a closed-vent system capable of capturing and transporting any leakage from the vessel back to the process or to a control device as described in § 61.242–11, except as provided in § 61.242–1(c); or comply with the requirements of 40 CFR 63.119(b) or (c).

39. Section 61.242–10 is amended by revising paragraph (a) to read as follows:

§ 61.242–10 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

* * * * *

40. Section 61.242–11 is amended by:

a. Revising paragraph (b);
b. Revising paragraph (c);
c. Revising paragraph (f);
d. Revising paragraph (g);
e. Adding paragraph (h);
f. Adding paragraph (i);
g. Adding paragraph (j);
h. Adding paragraph (k);
i. Adding paragraph (l); and
j. Adding paragraph (m).

The revisions and additions read as follows:

§ 61.242–11 Standards: Closed-vent systems and control devices.

* * * * *

(b) Vapor recovery systems (for example, condensers and absorbers) shall be designed and operated to recover the organic vapors vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, whichever is less stringent.

(c) Enclosed combustion devices shall be designed and operated to reduce the VHAP emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent, or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C.

* * * * *

(f) Except as provided in paragraphs (i) through (k) of this section, each closed vent system shall be inspected according to the procedures and schedule specified in paragraph (f)(1) or (2) of this section, as applicable.

(1) If the vapor collection system or closed vent system is constructed of hard-piping, the owner or operator shall comply with the following requirements:

(i) Conduct an initial inspection according to the procedures in § 61.245(b); and

(ii) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(2) If the vapor collection system or closed vent system is constructed of ductwork, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in § 61.245(b); and

(ii) Conduct annual inspections according to the procedures in § 61.245(b).

(g) Leaks, as indicated by an instrument reading greater than 500 parts per million by volume above background or by visual inspections, shall be repaired as soon as practicable except as provided in paragraph (h) of this section. .

(1) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(2) Repair shall be completed no later than 15 calendar days after the leak is detected.

(h) Delay of repair of a closed vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next process unit shutdown.

(i) If a vapor collection system or closed vent system is operated under a vacuum, it is exempt from the inspection requirements of paragraphs (f)(1)(i) and (2) of this section.

(j) Any parts of the closed vent system that are designated, as described in paragraph (l)(1) of this section, as unsafe-to-inspect are exempt from the inspection requirements of paragraphs (f)(1)(i) and (2) of this section if they comply with the following requirements:

(1) The owner or operator determines that the equipment is unsafe-to-inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (f)(1)(i) or (2) of this section; and

(2) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(k) Any parts of the closed vent system that are designated, as described in paragraph (l)(2) of this section, as difficult-to-inspect are exempt from the inspection requirements of paragraphs (f)(1)(i) and (2) of this section if they comply with the following requirements:

(1) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(2) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years. A closed vent system is exempt from inspection if it is operated under a vacuum.

(l) The owner or operator shall record the following information:

(1) Identification of all parts of the closed vent system that are designated as unsafe-to-inspect, an explanation of why the equipment is unsafe-to-inspect, and the plan for inspecting the equipment.

(2) Identification of all parts of the closed vent system that are designated as difficult-to-inspect, an explanation of why the equipment is difficult-to-inspect, and the plan for inspecting the equipment.

(3) For each inspection during which a leak is detected, a record of the information specified in § 61.246(c).

(4) For each inspection conducted in accordance with § 61.245(b) during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(5) For each visual inspection conducted in accordance with paragraph (f)(1)(ii) of this section during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(m) Closed vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

41. Section 61.246 is amended by revising paragraph (f) introductory text and revising paragraph (f)(1) to read as follows:

§ 61.246 Recordkeeping requirements.

* * * * *

(f) The following information pertaining to all valves subject to the requirements of § 61.242–7(g) and (h) and to all pumps subject to the requirements of § 61.242–2(g) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves and pumps that are designated as unsafe to monitor, an explanation for each valve or pump stating why the valve or pump is unsafe to monitor, and the plan for monitoring each valve or pump.

* * * * *

42. Section 61.247 is amended by:

a. Revising paragraph (a)(3);

b. Redesignating paragraph (a)(4) as paragraph (a)(5);

c. Adding new paragraph (a)(4);

d. Revising paragraph (e)(3); and

e. Adding paragraph (f).

The revisions and additions read as follows.

§ 61.247 Reporting requirements.

(a) * * *

(3) In the case of new sources which did not have an initial startup date preceding December 14, 2000, the statement required under paragraph (a)(1) of this section shall be submitted with the application for approval of construction, as described in § 61.07.

(4) For owners and operators complying with 40 CFR part 65, subpart C or F, the statement required under paragraph (a)(1) of this section shall notify the Administrator that the requirements of 40 CFR part 65, subpart C or F, are being implemented.

* * * * *

(e) * * *

(3) In the next semiannual report required by paragraph (b) of this section, the information in paragraph (a)(5) of this section is reported.

(f) For owners or operators choosing to comply with 40 CFR part 65, subpart C or F, an application for approval of construction or modification, as required under §§ 61.05 and 61.07 will not be required if:

(1) The new source complies with 40 CFR 65.106 through 65.115 and with 40 CFR part 65, subpart C, for surge control vessels and bottoms receivers;

(2) The new source is not part of the construction of a process unit; and

(3) In the next semiannual report required by 40 CFR 65.120(b) and 65.48(b), the information in paragraph (a)(5) of this section is reported.

43. Tables 1 and 2 are added to the end of subpart V to read as follows:

TABLE 1 TO PART 61, SUBPART V.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT EXISTING SOURCES

Vessel capacity (cubic meters)	Vapor pressure [1] (kilopascals)
75 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 5.2

[1] Maximum true vapor pressure as defined in § 61.241.

TABLE 2 TO PART 61, SUBPART V.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT NEW SOURCES

Vessel capacity (cubic meters)	Vapor pressure [1] (kilopascals)
38 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 0.7

[1] Maximum true vapor pressure as defined in § 61.241.

Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

44. Section 61.270 is amended by adding paragraph (g) to read as follows:

§ 61.270 Applicability and designation of sources.

* * * * *

(g) *Alternative means of compliance*—(1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart C, to satisfy the requirements of §§ 61.271 through 61.277, except for §§ 61.271(d)(2) and 61.274(a) for storage vessels that are subject to this subpart. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 61, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.10(b) through (d), 61.11, and 61.15 for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (g)(2) do not apply for storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

45. Section 61.271 is amended by revising paragraph (d) introductory text

and revising paragraph (d)(2) to read as follows:

§ 61.271 Emission standard.

* * * * *

(d) The owner or operator of each affected storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) as follows:

* * * * *

(2) The owner or operator of each benzene storage vessel upon which construction commenced after September 14, 1989 shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) prior to filling (*i.e.*, roof is lifted off leg supports) the storage vessel with benzene.

* * * * *

46. Section 61.274 is amended by revising paragraph (a) to read as follows:

§ 61.274 Initial report.

(a) The owner or operator of each storage vessel to which this subpart applies and which has a design capacity greater than or equal to 38 cubic meters (10,000 gallons) shall submit an initial report describing the controls which will be applied to meet the equipment requirements of § 61.271 or § 61.270(g). For an existing storage vessel or a new storage vessel for which construction and operation commenced prior to September 14, 1989, this report shall be submitted within 90 days of September 14, 1989 and can be combined with the report required by § 61.10. For a new storage vessel for which construction or operation commenced on or after September 14, 1989, the report shall be combined with the report required by § 61.07 or 40 CFR 65.5(b). In the case where the owner or operator seeks to comply with § 61.271(c), with a control device other than a flare, this information may consist of the information required by § 61.272(c)(1).

* * * * *

Subpart BB—National Emission Standard for Benzene Emissions From Benzene Transfer Operations

47. Section 61.300 is amended by revising paragraph (c) and adding paragraph (f) to read as follows:

§ 61.300 Applicability.

* * * * *

(c) *Comply with standards at each loading rack.* Any affected facility under paragraph (a) of this section shall comply with the standards in § 61.302 or as specified in paragraph (f) of this section, if applicable, at each loading rack that is handling a liquid containing 70 weight-percent or more benzene.

* * * * *

(f) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart E, to satisfy the requirements of §§ 61.302 through 61.306 for all tank truck or railcar loading racks that are subject to this subpart. Loading racks are referred to as transfer racks in 40 CFR part 65, subpart E. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1. All marine vessel loading racks shall comply with the provisions in §§ 61.302 through 61.306.

(2) *Part 61, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart E, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.10(b) through (d), 61.11, and 61.15 for those loading racks. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (f)(2) do not apply to owners or operators of loading racks complying with 40 CFR part 65, subpart E, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart E, must comply with 40 CFR part 65, subpart A.

PART 63—[AMENDED]

48. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

49. Section 63.110 is amended by adding paragraph (i) to read as follows:

§ 63.110 Applicability.

* * * * *

(i) *Alternative means of compliance—*(1) *Option to comply with part 65.* Owners or operators of CMPU that are subject to § 63.100 may choose to comply with the provisions of 40 CFR part 65 for all Group 1 and Group 2 process vents, Group 1 storage vessels, Group 1 transfer operations, and equipment that are subject to § 63.100, that are part of the CMPU. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1. Group 1 and Group 2 wastewater streams, Group 2 transfer operations, Group 2 storage vessels, and in-process streams are not eligible to comply with 40 CFR part 65 and must continue to comply with the requirements of this subpart and subpart F of this part.

(i) For Group 1 and Group 2 process vents, 40 CFR part 65, subpart D, satisfies the requirements of §§ 63.102, 63.103, 63.112 through 63.118, 63.148, 63.151, and 63.152.

(ii) For Group 1 storage vessels, 40 CFR part 65, subpart C, satisfies the requirements of §§ 63.102, 63.103, 63.112, 63.119 through 63.123, 63.148, 63.151, and 63.152.

(iii) For Group 1 transfer racks, 40 CFR part 65, subpart E, satisfies the requirements of §§ 63.102, 63.103, 63.112, 63.126 through 63.130, 63.148, 63.151, and 63.152.

(iv) For equipment, comply with § 65.160(g).

(2) *Part 63, subpart A.* Owners or operators who choose to comply with 40 CFR part 65 must also comply with the applicable general provisions of this part 63 listed in table 1A of this subpart. All sections and paragraphs of subpart A of this part that are not mentioned in table 1A of this subpart do not apply to owners or operators who choose to comply with 40 CFR part 65, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with a subpart of 40 CFR part 65 must comply with 40 CFR part 65, subpart A.

50. Table 1A is added in numerical order to the appendix to subpart G to read as follows:

Appendix to Subpart G—Tables and Figures

TABLE 1A TO SUBPART G.—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

40 CFR part 63, subpart A, provisions applicable to subpart G
§ 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4)
§ 63.2
§ 63.5(a)(1), (a)(2), (b), (d)(1)(ii), (d)(3)(i), (d)(3)(iii) through (d)(3)(vi), (d)(4), (e), (f)(1), and (f)(2)
§ 63.6(a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j)

TABLE 1A TO SUBPART G.—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS—Continued

40 CFR part 63, subpart A, provisions applicable to subpart G
§ 63.9(a)(2), (b)(4)(i)[a], (b)(4)(ii), (b)(4)(iii), (b)(5)[a], (c), (d)
§ 63.10(d)(4)
§ 63.12(b)

[a] The notifications specified in § 63.9(b)(4)(i) and (b)(5) shall be submitted at the times specified in 40 CFR part 65.

* * * * *

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

51. Section 63.160 is amended by adding paragraph (g) to read as follows:

§ 63.160 Applicability and designation of sources.

* * * * *

(g) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of CMPU that are subject to § 63.100 may choose to comply with the provisions of 40 CFR part 65 for all Group 1 and Group 2 process vents, Group 1 storage vessels, Group 1 transfer operations, and equipment that are subject to § 63.100, that are part of the CMPU. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(i) For equipment, 40 CFR part 65 satisfies the requirements of §§ 63.102, 63.103, and 63.162 through 63.182. When choosing to comply with 40 CFR part 65, the requirements of § 63.180(d) continue to apply.

(ii) For Group 1 and Group 2 process vents, Group 1 storage vessels, and Group 1 transfer operations, comply with § 63.110(i)(1).

(2) *Part 65, subpart C or F.* For owners or operators choosing to comply with 40 CFR part 65, each surge control vessel and bottoms receiver subject to § 63.100 that meets the conditions specified in table 2 or table 3 of this subpart shall meet the requirements for storage vessels in 40 CFR part 65, subpart C; all other equipment subject to § 63.100 shall meet the requirements in 40 CFR part 65, subpart F.

(3) *Part 63, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C or F, for equipment subject to § 63.100 must also comply with the applicable general provisions of this part 63 listed in table 4 of this subpart. All sections and paragraphs of subpart A of this part that are not mentioned in table 4 of this subpart do not apply to owners or operators of equipment subject to § 63.100 of subpart F complying with 40 CFR part 65, subpart C or F, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C or F, must comply with 40 CFR part 65, subpart A.

52. Section 63.169 is amended by revising paragraph (b) to read as follows:

§ 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

* * * * *

(b) If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for all other pumps (including pumps in food/medical service), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured, a leak is detected.

* * * * *

53. Section 63.171 is amended by revising paragraph (a) to read as follows:

§ 63.171 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.

* * * * *

54. Table 4 is added in numerical order to subpart H to read as follows:

TABLE 4 TO SUBPART H.— APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

40 CFR part 63, subpart A, provisions applicable to subpart H
§ 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4)
§ 63.2
§ 63.5(a)(1), (a)(2), (b), (d)(1)(ii), (d)(4), (e), (f)(1) and (f)(2)
§ 63.6(a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j)
§ 63.9(a)(2), (b)(4)(i)[a], (b)(4)(ii), (b)(4)(iii), (b)(5)a, (c) and (d)
§ 63.10(d)(4)
§ 63.12(b)

[a] The notifications specified in § 63.9(b)(4)(i) and (b)(5) shall be submitted at the times specified in 40 CFR part 65.

55. Add part 65 to read as follows:

PART 65—CONSOLIDATED FEDERAL AIR RULE

Subpart A—General Provisions

Sec.

65.1 Applicability.
65.2 Definitions.
65.3 Compliance with standards and operation and maintenance requirements.
65.4 Recordkeeping.
65.5 Reporting requirements.
65.6 Startup, shutdown, and malfunction plan and procedures.
65.7 Monitoring, recordkeeping, and reporting waivers and alternatives.
65.8 Procedures for approval of alternative means of emission limitation.
65.9 Availability of information and confidentiality.
65.10 State authority.
65.11 Circumvention and prohibited activities.
65.12 Delegation of authority.
65.13 Incorporation by reference.
65.14 Addresses.
65.15–65.19 [Reserved]
Table 1 to Subpart A of Part 65—Applicable 40 CFR Parts 60, 61, and 63 General Provisions

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Table 2 to Subpart A of Part 65—Applicable Referencing Subpart Provisions

Subpart B [Reserved]

Subpart C—Storage Vessels

65.40 Applicability.
65.41 Definitions.
65.42 Control requirements.
65.43 Fixed roof with an internal floating roof (IFR).
65.44 External floating roof (EFR).
65.45 External floating roof converted into an internal floating roof.
65.46 Alternative means of emission limitation.
65.47 Recordkeeping provisions.
65.48 Reporting provisions.
65.49–65.59 [Reserved]

Subpart D—Process Vents

65.60 Applicability.
65.61 Definitions.
65.62 Process vent group determination.
65.63 Performance and group status change requirements.
65.64 Group determination procedures.
65.65 Monitoring.
65.66 Recordkeeping provisions.
65.67 Reporting provisions.
65.68–65.79 [Reserved]
Table 1 to Subpart D of Part 65—Concentration for Group Determination
Table 2 to Subpart D of Part 65—TRE Parameters for NSPS Referencing Subparts
Table 3 to Subpart D of Part 65—TRE Parameters for HON Referencing Subparts

Subpart E—Transfer Racks

65.80 Applicability.
65.81 Definitions.
65.82 Design requirements.
65.83 Performance requirements.
65.84 Operating requirements.
65.85 Procedures.
65.86 Monitoring.
65.87 Recordkeeping provisions.
65.88–65.99 [Reserved]

Subpart F—Equipment Leaks

65.100 Applicability.
65.101 Definitions.
65.102 Alternative means of emission limitation.
65.103 Equipment identification.
65.104 Instrument and sensory monitoring for leaks.
65.105 Leak repair.
65.106 Standards: Valves in gas/vapor service and in light liquid service.
65.107 Standards: Pumps in light liquid service.
65.108 Standards: Connectors in gas/vapor service and in light liquid service.
65.109 Standards: Agitators in gas/vapor service and in light liquid service.
65.110 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems.
65.111 Standards: Pressure relief devices in gas/vapor service.
65.112 Standards: Compressors.
65.113 Standards: Sampling connection systems.
65.114 Standards: Open-ended valves or lines.
65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.
65.116 Quality improvement program for pumps.
65.117 Alternative means of emission limitation: Batch processes.
65.118 Alternative means of emission limitation: Enclosed-vented process units.
65.119 Recordkeeping provisions.
65.120 Reporting provisions.
65.121—65.139 [Reserved]
Table 1 to Subpart F of Part 65— Batch Process Monitoring Frequency for Equipment Other Than Connectors

Subpart G—Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process

65.140 Applicability.
65.141 Definitions.
65.142 Standards.
65.143 Closed vent systems.
65.144 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.
65.145 Nonflare control devices used to control emissions from storage vessels or low-throughput transfer racks.
65.146 Nonflare control devices used for equipment leaks only.
65.147 Flares.
65.148 Incinerators.
65.149 Boilers and process heaters.
65.150 Absorbers used as control devices.
65.151 Condensers used as control devices.
65.152 Carbon adsorbers used as control devices.
65.153 Absorbers, condensers, carbon adsorbers, and other recovery devices used as final recovery devices.
65.154 Halogen scrubbers and other halogen reduction devices.
65.155 Other control devices.
65.156 General monitoring requirements for control and recovery devices.
65.157 Performance test and flare compliance determination requirements.
65.158 Performance test procedures for control devices.
65.159 Flare compliance determination and monitoring records.
65.160 Performance test and TRE index value determination records.
65.161 Continuous records and monitoring system data handling.
65.162 Nonflare control and recovery device monitoring records.
65.163 Other records.
65.164 Performance test and flare compliance determination notifications and reports.
65.165 Initial Compliance Status Reports.
65.166 Periodic reports.
65.167 Other reports.
65.168—65.169 [Reserved]

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

§ 65.1 Applicability.

(a) The provisions of this subpart apply to owners or operators expressly referenced to this part from a subpart of 40 CFR part 60, 61, or 63 for which the owner or operator has chosen to comply with the provisions of this part as an alternative to the provisions in the referencing subpart as specified in paragraph (b) of this section.

(b) Owners or operators may choose to comply with this part for any regulated source subject to a referencing subpart.

(c) Compliance with this part instead of the referencing subparts does not alter the applicability of the referencing subparts. This part applies to only the equipment, process vents, storage vessels, or transfer operations to which the referencing subparts apply. This part does not extend applicability to equipment, process vents, storage vessels, or transfer operations that are not regulated by the referencing subpart.

(d) The provisions of 40 CFR part 60, subpart A; 40 CFR part 61, subpart A; and 40 CFR part 63, subpart A, that are listed in table 1 of this subpart still apply to owners or operators of regulated sources expressly referenced to this part. The owner or operator shall comply with the provisions in table 1 of this subpart in the column corresponding to the referencing subpart. All provisions of 40 CFR part 60, subpart A; 40 CFR part 61, subpart A; and 40 CFR part 63, subpart A, not expressly referenced in table 1 of this subpart do not apply, and the provisions of this part apply instead, except that provisions which were required to be met prior to implementation of this part 65 still apply.

(e) The provisions of the referencing subparts that are listed in table 2 of this subpart still apply to owners or operators of regulated sources expressly referenced to this part. The owner or operator shall comply with the provisions in table 2 of this subpart in the row corresponding to the referencing subpart. All provisions of the referencing subparts not expressly referenced in table 2 to this subpart do not apply and the provisions of this part apply instead, except that provisions which were required to be met prior to implementation of this part 65 still apply.

(f) *Implementation date.* Owners or operators who choose to comply with this part shall comply by the dates specified in paragraph (f)(1) of this section, as applicable, and shall meet the requirement in paragraph (f)(2) of this section.

(1) Owners or operators shall implement this part as specified in an implementation schedule or at initial startup. The implementation date shall be established by mutual agreement with the Administrator or delegated authority. The implementation schedule shall be included in the source's title V permit. For non-title V sources, the implementation schedule shall be proposed by the source in the Initial Notification for Part 65 Applicability as specified in § 65.5(c).

(2) There shall be no gaps in compliance between compliance with the referencing subpart and compliance with this part.

(g) *Transitioning out of this part.* Owners or operators who decide to no longer comply with this part and to comply with the provisions in the referencing subpart instead shall comply with the following, as applicable:

(1) This transition shall be carried out on a date established in a title V permit or if the source is not a title V source, by a date established by agreement with the Administrator or delegated authority. The transition date shall be proposed in a title V permit amendment, or for non-title V sources, in a periodic report or separate notice.

(2) There shall be no gaps in compliance between compliance with this part and compliance with the referencing subpart provisions.

(h) *Overlap with other subparts of this part.* When provisions of another subpart of this part conflict with the provisions of this subpart, the provisions of the other subpart shall apply.

(i) *Equipment assignment procedures.* If specific items of equipment (pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers) that are part of a process unit complying with this part are managed by different administrative organizations (for example, different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any process unit within the plant site.

§ 65.2 Definitions.

All terms used in this part shall have the meaning given them in the Act and in this section. If a term is defined both in this section and in other parts that reference the use of this part, the term shall have the meaning given in this section for purposes of this part. If a term is not defined in the Act or in this section, the term shall have the meaning given in the referencing subpart for purposes of this part. The terms follow:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or his or her authorized representative (for example, a State that has been delegated the authority to implement the provisions of this part).

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Automated continuous parameter monitoring system means a continuous parameter monitoring system that automatically both records the measured data and calculates hourly averages.

Automated monitoring and recording system means any means of measuring values of monitored parameters and creating a hard copy or computer record of the measured values that does not require manual reading of monitoring instruments and manual transcription of data values. Automated monitoring and recording systems include, but are not limited to, computerized systems, strip charts, and circular charts.

Batch process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (for example, connectors, reactors, valves, pumps) configured to produce a specific product or intermediate by a batch process.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

By compound means by individual stream components, not carbon equivalents.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (for example, from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. A closed vent system does not include the vapor collection system that is part of any tank truck or railcar or the loading arm or hose that is used for vapor return. For transfer racks, the closed vent system begins at, and includes, the first block valve on the downstream side of the loading arm or hose used to convey displaced vapors.

Closed vent system shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a closed vent system or part of a closed vent system consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a closed vent system shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the closed vent system or part of the closed vent system of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled closed vent system shutdown, is not a closed vent system shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not closed vent system shutdowns.

Closed-loop system means an enclosed system that returns process fluid to a process.

Closed-purge system means a system or combination of systems and portable containers to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic emissions.

Compliance date means the date by which a regulated source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to the Act.

Connector means flanged, screwed, or other joined fittings used to connect two

pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (for example, porcelain, glass, or glass-lined) as described in § 65.108(e)(2).

Continuous parameter monitoring system or *CPMS* means the total equipment that may be required to meet the data acquisition and availability requirements of this part used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous record means documentation, either in hard copy or computer-readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 65.161(a).

Continuous seal means a seal that is designed to form a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means any combustion device, recovery device, or any combination of these devices used to comply with this part. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents (as defined in this section), recovery devices are not considered control devices except for the recovery devices specified in § 65.63(a)(2)(ii). A fuel gas system is not a control device. For a steam stripper, a primary condenser is not considered a control device.

Control system means the combination of the closed vent system and the control devices used to collect and control vapors or gases from a regulated source.

Day means a calendar day.

Distance piece means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Ductwork means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, or equipment leak.

Empty or emptying means the removal of the stored liquid from a storage vessel. Storage vessels where stored liquid is left on the walls, as bottom clingage, or in pools due to bottom irregularities are considered empty. Lowering of the stored liquid level, so that the floating roof is resting on its legs, as necessitated by normal vessel operation (for example, when changing stored material or when transferring material out of the vessel for shipment) is not considered emptying.

Equipment means each of the following that is subject to control under the referencing subpart: pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system; and any control devices or systems used to comply with subpart F of this part.

Equivalent method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method under specified conditions.

External floating roof or *EFR* means a pontoon-type (noncontact) or double-deck-type (contact) roof that is designed to rest on the stored liquid surface in a storage vessel with no fixed roof.

Failure, EFR (referred to as EFR failure) is defined as any time the external floating roof's primary seal has holes, tears, or other openings in the shoe, seal fabric, or seal envelope; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

Failure, internal floating roof type A (referred to as IFR type A failure) means any time, as determined during visual inspection through roof hatches, in which the internal floating roof is not resting on the surface of the stored liquid inside the storage vessel and is not resting on the leg supports; or there is stored liquid on the floating roof; or there are holes, tears, or other openings in the seal or seal fabric; or there are visible gaps between the seal and the wall of the storage vessel.

Failure, internal floating roof type B (referred to as IFR type B failure) means any time, as determined during internal inspections, the internal floating roof's primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

Fill or *filling* means the introduction of liquids into a storage vessel, but not necessarily to complete capacity.

First attempt at repair, for the purposes of subparts F and G of this part, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 65.104(b) and § 65.143(c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

Fixed roof means a roof that is mounted (for example, permanently affixed) on a storage vessel in a stationary manner and that does not move with fluctuations in stored liquid level.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a roof consisting of an external floating roof or an internal floating roof that is designed to rest upon and is supported by the stored liquid and is equipped with a continuous seal.

Flow indicator means a device that indicates whether gas flow is present in a line, or whether the valve position would allow gas flow to be present in a line.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

Group 1 process vent means a process vent for which the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.39 cubic feet per minute); the total concentration is greater than or equal to the appropriate value in table 1 of subpart D of this part, and the total resource effectiveness index value, calculated according to § 65.64(h) is less than or equal to 1.0.

Group 2A process vent means a process vent that is not Group 1 or Group 2B for which monitoring and recordkeeping are required to demonstrate a total resource effectiveness index value greater than 1.0.

Group 2B process vent means a process vent that is not Group 1 or Group 2A for which monitoring and recordkeeping are not required to demonstrate a total resource effectiveness index value greater than 4.0, or which is exempt from control requirements due to the vent stream's flow rate, regulated material concentration, or total resource effectiveness index value.

Halogenated vent stream or *halogenated stream* means, for purposes of this part, a vent stream determined to be halogenated by the procedures specified in § 65.85(c) for transfer racks and in § 65.64(g) for process vents, as applicable.

Halogens and hydrogen halides means hydrogen chloride (HCl), chlorine (Cl_2), hydrogen bromide (HBr), bromine (Br_2), and hydrogen fluoride (HF).

Hard-piping means pipe or tubing that is manufactured and installed using good engineering judgment and standards, such as ASME B31.3, Process Piping (available from the American Society of Mechanical Engineers, PO Box 2900, Fairfield, NJ 07007–2900).

High-throughput transfer racks means those transfer racks that transfer greater than or equal to a total of 11.8 million liters per year (3.12 million gallons per year) of liquid containing regulated material.

In food/medical service means that a piece of equipment in regulated material service contacts a process stream used to manufacture a Food and Drug Administration-regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications;

(2) An exothermic reaction that is a safety hazard;

(3) The intended reaction to be slowed down or stopped; or

(4) An undesired side reaction to occur.

In gas/vapor service means that a piece of equipment in regulated material service contains a gas or vapor when in operation.

In heavy liquid service means that a piece of equipment in regulated material service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in regulated material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F);

(2) The total concentration of the pure organic compound constituents having a vapor pressure greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F) is equal to or greater than 20 percent by weight of the total process stream; and

(3) The fluid is a liquid at operating conditions. (Note: Vapor pressures may be determined by standard reference texts or American Society for Testing and Materials (ASTM) D–2879, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.)

In liquid service means that a piece of equipment in regulated material service is not in gas/vapor service.

In regulated material service means, for the purposes of the equipment leak provisions of subpart F of this part, equipment which meets the definition of "in volatile organic compound service," "in volatile hazardous air pollutant service," "in benzene service," "in vinyl chloride service," or "in organic hazardous air pollutant service" as defined in the referencing subpart.

In vacuum service means that equipment is operating at an internal pressure that is at least 5 kilopascals (0.7 pounds per square inch) below ambient pressure.

In-situ sampling systems means nonextractive samplers or in-line samplers.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. This energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Initial startup means, for new or reconstructed sources, the first time the source begins production. For additions or changes not defined as a new source by an applicable referencing subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startup (as defined in this section) of process units following malfunctions or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (as defined in this section) of process units following changes in product for flexible operation units or following recharging of equipment in batch operation.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (for example, composition, pressure, flow). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller in diameter and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of subpart F of this part.

Intermediate change to monitoring means a modification to federally required monitoring involving "proven technology" (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally required monitoring. Examples of intermediate changes to monitoring include, but are not limited to:

(1) Use of a continuous monitoring system (CEMS) in lieu of a parameter monitoring approach;

(2) Decreased frequency for non-continuous parameter monitoring or physical inspections;

(3) Changes to quality control requirements for parameter monitoring; and

(4) Use of an electronic data reduction system in lieu of manual data reduction.

Intermediate change to test method means a within-method modification to a federally enforceable test method involving "proven technology" (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change

may set a national precedent for a source category and may ultimately result in a revision to the federally enforceable test method. In order to be approved, an intermediate change must be validated according to EPA Method 301 (40 CFR part 63, appendix A) to demonstrate that it provides equal or improved accuracy or precision. Examples of intermediate changes to a test method include, but are not limited to:

(1) Modifications to a test method's sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix; and use of a different impinger absorbing solution;

(2) Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and

(3) "Combining" a federally required method with another proven method for application to processes emitting multiple pollutants.

Internal floating roof or *IFR* means a pontoon-type (noncontact) or double-deck-type (contact) roof that is designed to rest or float on the stored liquid surface inside a storage vessel that has a fixed roof.

Liquid-mounted seal means a foam-or liquid-filled continuous seal mounted in contact with the stored liquid.

Liquids dripping means any visible leakage from a seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

Loading cycle means the time period from the beginning of filling a tank truck or railcar until flow to the control device ceases as determined by the flow indicator.

Low-throughput transfer racks means those transfer racks that transfer less than a total of 11.8 million liters per year (3.12 million gallons per year) of liquid containing regulated material.

Major change to monitoring means a modification to federally required monitoring that uses "unproven technology or procedures" (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to monitoring may be site-specific or may apply to one or more source categories and will almost always set a national precedent. Examples of major changes to monitoring include, but are not limited to:

(1) Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation in this part;

(2) Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS);

(3) Use of alternative calibration procedures that do not involve calibration gases or test cells;

(4) Use of an analytical technology that differs from that specified by a performance specification;

(5) Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system;

(6) Decreased monitoring frequency for a leak detection and repair program; and

(7) Use of alternative averaging times for reporting purposes.

Major change to test method means a modification to a federally enforceable test method that uses "unproven technology or procedures" (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific or may apply to one or more source categories and will almost always set a national precedent. In order to be approved, a major change must be validated according to EPA Method 301 (40 CFR part 63, appendix A). Examples of major changes to a test method include, but are not limited to:

(1) Use of an unproven analytical finish;

(2) Use of a method developed to fill a test method gap;

(3) Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation in this part; and

(4) Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, monitoring equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions. Malfunctions that do not affect a regulated source or compliance with this part are not malfunctions for purposes of this part.

Metallic shoe seal or *mechanical shoe seal* means metal sheets that are held vertically against the wall of the storage vessel by springs, weighted levers, or other mechanisms and connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Minor change to monitoring means:

(1) A modification to federally required monitoring that:

(i) Does not decrease the stringency of the compliance and enforcement measures of the relevant standard;

(ii) Has no national significance (*e.g.*, does not affect implementation of the applicable regulation in this part for other affected sources, does not set a national precedent, and individually does not result in a revision to the monitoring requirements); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to monitoring include, but are not limited to:

(i) Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;

(ii) Increased monitoring frequency; and

(iii) Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

Minor change to test method means:

(1) A modification to a federally enforceable test method that:

(i) Does not decrease the stringency of the emission limitation or standard;

(ii) Has no national significance (*e.g.*, does not affect implementation of the applicable regulation in this part for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to a test method include, but are not limited to:

(i) Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and

(ii) Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix.

Nonautomated monitoring and recording system means manual reading of values measured by monitoring instruments and manual transcription of those values to create a record. Nonautomated systems do not include strip charts nor circular charts.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit shutdown.

One-hour period means the 60-minute period commencing on the hour.

Onsite or *on-site* means, with respect to records required to be maintained by this part, that the records are stored at a location within a plant site that encompasses the regulated source. Onsite includes, but is not limited to, storage at the regulated source to which the records pertain, or storage in central files elsewhere at the plant site.

Open-ended valve or line means any valve except relief valves having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

Organic monitoring device means a device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photo ionization, or thermal conductivity.

Owner or operator means any person who owns, leases, operates, controls, or supervises a regulated source or a stationary source of which a regulated source is a part.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in part 71 of this chapter.

Permitting authority means one of the following:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661) and part 71 of this chapter.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Polymerizing monomer means, for the purposes of this part, a compound which may form polymer buildup in pump mechanical seals resulting in rapid mechanical seal failure.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period.

Pressure relief device or valve means a device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Primary fuel means the fuel that provides the principal heat input to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed combustion device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water. A process heater may, as a secondary function, heat water in unfired heat recovery sections.

Process unit means the equipment specified in the definitions of process unit or chemical manufacturing process unit in the applicable referencing subpart. If the referencing subpart does not define process unit, then, for the purposes of this part, process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

Process vent means a process vent or vent stream as they are defined in the referencing subpart.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (*i.e.*, net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse or sale, are not recovery devices but are control devices. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

Reference method means any method of sampling and analyzing for an air pollutant as specified in an applicable subpart, the appendices to 40 CFR part 60 or 63, or in appendix B of 40 CFR part 61.

Referencing subpart means 40 CFR part 60, subparts Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and BB; and 40 CFR part 63, subparts G and H.

Regulated material means, for the purposes of this part, the material regulated by the specific referencing subpart, including volatile organic liquids (VOL), volatile organic compounds (VOC), organic hazardous air pollutants (HAP's), benzene, vinyl chloride, or other chemicals or groups of chemicals.

Regulated source means, for the purposes of this part, the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant

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to this part, or 40 CFR part 60, 61, or 63.

Relief device or valve means a device or valve used only to release an unplanned, nonroutine discharge. A relief device or valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired means, for the purposes of subparts F and G of this part, that equipment meets the following conditions:

(1) Is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable section of this part; and

(2) Unless otherwise specified in applicable provisions of this part, is monitored as specified in § 65.104(b) and § 65.143(c) to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the emissions are conveyed to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Secondary fuel means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means, for the purposes of subparts F and G of this part, the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Shutdown means the cessation of operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit) and equipment required or used to comply with this part, or the emptying and degassing of a storage vessel. Shutdown is defined here for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

Simultaneous loading means, for a shared control device, loading of regulated materials from more than one transfer arm at the same time so that the beginning and ending times of loading cycles coincide or overlap and there is no interruption in vapor flow to the shared control device.

Single-seal system means, for the purposes of subpart C of this part, a floating roof having one continuous seal. This seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ±0.02 specific gravity units.

Startup means the setting into operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, a storage vessel after emptying and degassing) and/or equipment required or used to comply with this part. Startup includes initial startup, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

State means all non-Federal authorities, including local agencies, interstate associations, and statewide programs, that have delegated authority to implement the provisions of this part; the referencing subparts; and/or the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Steam jet ejector means a steam nozzle that discharges a high-velocity jet across a suction chamber that is connected to the equipment to be evacuated.

Stuffing box pressure means the fluid (liquid or gas) pressure inside the casing or housing of a piece of equipment, on the process side of the inboard seal.

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit (as defined in the specific subpart that references this part) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±1.2 degrees Celsius (°C), whichever is greater.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established under 40 CFR part 70 or 71 to implement title V of the Act (42 U.S.C. 7661).

Total organic compounds or *TOC* means those compounds measured according to the procedures specified in § 65.64(c) and § 65.158(b)(3)(ii)(A), as applicable. Those compounds that the Administrator has determined do not contribute appreciably to the formation of ozone and that are specifically excluded from the definition of volatile organic compound at 40 CFR 51.100(s), as amended, are to be excluded for the purposes of measuring the hourly emission rate as required in § 65.64(f) for process vents subject to subpart III, NNN, or RRR of part 60 of this chapter.

Total resource effectiveness index value or *TRE index value* means a calculated value used to determine whether control is required for a process vent. It is based on process vent flow rate, emission rate of regulated material, net heating value, and corrosion properties (halogenated compound content), as quantified by the equations given under § 65.64(h).

Vapor balancing system means a piping system that is designed to collect regulated material vapors displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header; or to compress and route to a process or a fuel gas system the collected regulated material vapors.

Vapor-mounted seal means a continuous seal that is mounted so that there is a vapor space between the stored liquid and the bottom of the seal.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

§ 65.3 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* (1) Except as provided in paragraph (a)(2) of this section, the emission standards and established parameter ranges of this part

shall apply at all times except during periods of startup, shutdown (as defined in § 65.2), malfunction, or nonoperation of the regulated source (or specific portion thereof) resulting in cessation of the emissions to which this part applies. However, if a startup, shutdown, malfunction, or period of nonoperation of one portion of a regulated source does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this part during the startup, shutdown, malfunction, or period of nonoperation. For example, if there is an over pressure in the reactor area, a storage vessel in a chemical manufacturing process unit would still be required to be controlled in accordance with subpart C of this part. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the requirements of subpart D or G of this part.

(2) Sections 65.106 through 65.118 shall apply at all times except during periods of startup or shutdown (as defined in § 65.2), malfunction, process unit shutdown (as defined in § 65.2), or nonoperation of the regulated source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which subpart F of this part applies.

(3) During startups, shutdowns, and malfunctions when the emission standards of this part do not apply pursuant to paragraphs (a)(1) and (2) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this part. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the regulated source. Backup control devices are not required but may be used if available. This paragraph (a)(3) does not apply to Group 2A or Group 2B process vents.

(4) Malfunctions shall be corrected as soon as practical after their occurrence in accordance with the startup, shutdown, and malfunction plan required in § 65.6(a). This paragraph (a)(4) does not apply to Group 2A or Group 2B process vents.

(5) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(b) *Compliance determination procedures.*—(1) *Parameter monitoring: Compliance with operating conditions.* The parameter monitoring data for emission points that are required to perform continuous monitoring shall be used to determine compliance with the required operating conditions for the monitored control devices or recovery devices. For each excursion, except for excused excursions and as provided for in paragraph (b)(2) of this section, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions. Excused excursions are provided for in § 65.156(d)(2).

(2) *Parameter monitoring: Excursions.* If the conditions of paragraph (b)(2)(i) or (ii) of this section are met, an excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count toward the number of excused excursions. Nothing in this paragraph (b)(2) shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with the source's startup, shutdown, and malfunction plan as required by § 65.6(a)), a monitoring parameter is outside its established range or monitoring data cannot be collected; or

(ii) During periods of nonoperation of the regulated source or portion thereof (resulting in cessation of the emissions to which the monitoring applies).

(3) *Operation and maintenance procedures.* Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan, if applicable, required in § 65.6(a), as applicable), review of operation and maintenance records, inspection of the regulated source, and alternatives approved as specified in § 65.7.

(4) *Emissions standards.* Paragraphs (b)(4)(i) and (ii) of this section shall govern the use of data, tests, and requirements to determine compliance with emissions standards. Paragraphs (b)(4)(i) and (ii) do not apply to Group 2A or Group 2B process vents. Compliance with design, equipment, work practice, and operational standards, including those for equipment leaks, shall be determined according to paragraph (b)(5) of this section.

(i) *Performance test.* The Administrator will determine compliance with emission standards of this part based on the results of performance tests conducted according to the procedures specified in subpart G of this part, unless otherwise specified in a subpart of this part.

(ii) *Operation and maintenance requirements.* The Administrator will determine compliance with emission standards of this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in subparts of this part.

(5) *Design, equipment, work practice, or operational standards.* Paragraphs (b)(5)(i) and (ii) do not apply to Group 2A or Group 2B process vents.

(i) *Records and inspection.* The Administrator will determine compliance with design, equipment, work practice, or operational standards by review of records, inspection of the regulated source, and other procedures specified in this part.

(ii) *Operation and maintenance.* The Administrator will determine compliance with design, equipment, work practice, or operational standards by evaluation of an owner or operator's conformance with operation and maintenance requirements as specified in paragraph (a) of this section, in other subparts of this part, and in applicable provisions of § 65.6(b).

(c) *Finding of compliance.* The Administrator will make a finding concerning a regulated source's compliance with an emission standard, design standard, work practice, operational standard or operating and maintenance requirement as specified in paragraphs (a) and (b) of this section upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used. Standards in this part and methods of determining compliance are given in metric units followed by the equivalents in English units. The Administrator will make findings of

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compliance with the standards of this part using metric units.

(d) *Compliance times.* All terms that define a period of time for completion of required tasks (for example, weekly, monthly, quarterly, annually) unless specified otherwise in the section or paragraph that imposes the requirement refer to the standard calendar periods.

(1) Notwithstanding time periods specified for completion of required tasks, time periods may be changed by mutual agreement between the owner or operator and the Administrator as specified in § 65.5(h)(3) (for example, a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period applies until it is changed. A new request is not necessary for each recurring period.

(2) When the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in the following paragraphs, as appropriate:

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period provided the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 65.4 Recordkeeping.

(a) *Maintaining notifications, records, and reports.* Except as provided in paragraph (b) of this section, the owner or operator of each regulated source subject to this part shall keep copies of notifications, reports, and records required by this part for the length of time specified in the following, as applicable:

(1) If an owner or operator is required to obtain or operate a regulated source under a title V permit, then all applicable notifications, reports, and records for that regulated source shall be maintained for at least 5 years, except for the records required in § 65.47(b) for storage vessel capacity, § 65.104(e)(2) for valve and connector monitoring, and § 65.163(d)(1) for closed vent system design specifications.

(2) If an owner or operator is not required to obtain or operate a regulated source under a title V permit, then all notifications, reports, and records for that regulated source required by this part shall be maintained for at least 2 years, except for the records required in § 65.47(b) for storage vessel capacity, § 65.104(e)(2) for valve and connector monitoring, and § 65.163(d)(1) for closed vent system design specifications.

(b) *Copies of reports.* If an owner or operator submits reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of those reports. If the EPA Regional Office has waived the requirement of § 65.5(g)(1) for submittal of copies of reports, the owner or operator is not required to maintain copies of the waived reports. Paragraph (b) of this section applies only to reports and not the underlying records which must be maintained as specified throughout this part.

(c) *Availability of records.* All applicable records shall be maintained in such a manner that they can be readily accessed and are suitable for inspection as specified in the following:

(1) Except as specified in paragraph (c)(2) of this section, records of the most recent 2 years shall be retained onsite or shall be accessible to an inspector while onsite. The records of the remaining 3 years, where required, may be retained offsite.

(2) For sources referenced to this part from 40 CFR part 63, subpart G or H, the most recent 6 months of records shall be retained on site or shall be accessible to an inspector while onsite from a central location by computer or other means that provides access within 2 hours after a request. The remaining 4 and one-half years of records, where required, may be retained offsite.

(3) Records specified in paragraph (c)(1) or (2) of this section may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

§ 65.5 Reporting requirements.

(a) *Required reports.* Each owner or operator of a regulated source subject to this subpart shall submit the following reports, as applicable:

(1) A Notification of Initial Startup described in paragraph (b) of this section.

(2) An Initial Notification for Part 65 Applicability described in paragraph (c) of this section.

(3) An Initial Compliance Status Report described in paragraph (d) of this section.

(4) Periodic reports described in paragraph (e) of this section.

(5) Other reports shall be submitted as specified elsewhere in this part.

(6) Startup, Shutdown, and Malfunction Reports described in § 65.6(c).

(b) *Notification of Initial Startup.* (1) *Contents.* Any owner or operator of a regulated source which elects to comply with this part at initial startup shall send the Administrator written notification of the actual date of initial startup of a regulated source.

(2) *Due date.* The notification of the actual date of initial startup shall be postmarked within 15 days after such date.

(c) *Initial Notification for Part 65 Applicability.* Owners or operators of regulated sources that have been subject to a 40 CFR part 60, 61, or 63 standard, and who wish to comply with this part, and who are not operating the regulated source under an approved title V permit shall notify the Administrator of their intent. The notice shall include the information specified in paragraphs (c)(1) through (7) of this section, as applicable, and may accompany the application for a construction permit for the regulated source. This notification may be waived by the Administrator.

(1) Identification of the storage vessels subject to subpart C of this part.

(2) Identification of the process vents subject to subpart D of this part, including process vent group status as specified in § 65.62(a).

(3) Identification of the process vents subject to 40 CFR part 60, subpart DDD, complying with requirements of subpart G of this part.

(4) Identification of the transfer racks subject to subpart E of this part.

(5) For equipment leaks, identification of the process units subject to subpart F of this part.

(6) The proposed implementation schedule specified in § 65.1(f)(1) for sources identified in paragraphs (c)(1) through (5) of this section.

(7) *Process unit identification.* As an alternative to requirements specified in paragraphs (c)(1) through (4) of this section, the process units can be identified instead of the individual pieces of equipment. For this alternative, the kind of emission point in the process unit that will comply must also be identified.

(d) *Initial Compliance Status Report—*(1) *Contents.* The owner or operator shall submit an Initial Compliance Status Report for each regulated source subject to this part containing the information specified in the subparts of this part. Unless the required information has already been submitted under requirements of the applicable referencing subpart, this information can be submitted as part of a title V permit application or amendment.

(2) *Due date.* The owner or operator shall submit the Initial Compliance Status Report for each regulated source within 240 days after the applicable compliance date specified in the referencing subparts, or within 60 days after the completion of the initial performance test or initial compliance determination, whichever is earlier. Initial compliance Status Reports may be combined for multiple regulated sources as long as the due date requirements for all sources covered in the combined report are met.

(e) *Periodic reports.* The owner or operator of a source subject to monitoring requirements of this part or to other requirements of this part where periodic reporting is specified, shall submit a periodic report.

(1) *Contents.* Periodic reports shall include all information specified in subparts of this part.

(2) *Due date.* The periodic report shall be submitted semiannually no later than 60 calendar days after the end of each 6-month period. The first report shall be submitted as specified in the following, as applicable:

(i) The first report shall be submitted no later than the last day of the month that includes the date 8 months after the date the source became subject to this part or since the last part 60, 61, or 63 periodic report was submitted for the applicable requirement, whichever is earlier.

(ii) For sources electing to comply with the CAR at initial startup, the first report shall cover the 6 months after the Initial Compliance Status Report is due. The first report shall be submitted no later than the last day of the month that includes the date 8 months after the Initial Compliance Status Report is due.

(3) *Overlap with title V reports.* Information required by this part, which is submitted with a title V periodic report, need not also be included in a subsequent periodic report required by this part. The title V report shall be referenced in the periodic report required by this part.

(f) *General report content.* All reports and notifications submitted pursuant to this part, including reports that combine information from this part and a referencing subpart, shall include the following information:

(1) The name, address, and telephone number (fax number may also be provided) of the owner or operator.

(2) The name, address and telephone number of the person to whom inquiries should be addressed, if different than the owner/operator.

(3) The address (physical location) of the reporting facility.

(4) Identification of each regulated source covered in the submission and identification of which subparts (referencing subparts and this part 65) options from this part are applicable to that regulated source. Summaries and groupings of this information are permitted.

(g) *Report and notification submission—*(1) *Submission.* All reports and notifications required under this part shall be sent to the Administrator at the appropriate EPA Regional Office and to the delegated State authority, except that requests for permission to use an alternative means of emission limitation as provided for in § 65.8(a) shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–10, Research Triangle Park, North Carolina, 27711. The EPA Regional Office may waive the requirement to receive a copy of any reports or notifications at its discretion.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this part, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this part for that report or notification.

(3) *Method of submission.* Wherever this subpart specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (for example, by fax or courier). Submittals shall be sent on or before the specified date.

(4) *Submission by electronic media.* If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(h) *Adjustment to timing of submittals and review of required communications—*(1) *Alignment with title V submission.* An owner or operator may submit periodic reports required by this part on the same schedule as the title V periodic report for the facility. The owner or operator using this option need not obtain prior approval, but must assure no reporting gaps from the last periodic report for the relevant standards. The owner or operator shall clearly identify the change in reporting schedule in the first report filed under paragraph (h) of this section. The requirements of paragraph (e) of this section are not waived when implementing this change.

(2) *Request for adjustment.* An owner or operator may arrange by mutual agreement (which may be a standing agreement) with the Administrator a common schedule on which periodic reports required by this part shall be submitted throughout the year as long as the reporting period is not extended. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practical before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. A request for a change to the periodic reporting schedule need only be made once for every schedule change and not once for every semiannual report submitted.

(3) *Approval of request for adjustment.* If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) *Notification of delay.* If the Administrator is unable to meet a specified deadline, the owner or operator will be notified of any significant delay and informed of the amended schedule.

(i) Unless already submitted in a previous report, an owner or operator shall report in a title V permit application or as otherwise specified by the permitting authority, the information listed in paragraphs (i)(1) through (5) of this section. This information shall be submitted to the Administrator if the regulated source is not a title V source.

(1) A list designating each emission point complying with subparts C through G of this part and whether each process vent is Group 1, Group 2A, or Group 2B.

(2) The control technology or method of compliance that will be applied to each emission point.

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(3) A statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in subparts C through G of this part that are applicable to each emission point will be implemented beginning on the date of compliance as specified in the referencing subpart.

(4) The monitoring information in § 65.162(e) if, for any emission point, the owner or operator of a source seeks to comply through use of a control technique other than those for which monitoring parameters are specified in §§ 65.148 through 65.154.

(5) Any requests for alternatives to the continuous operating parameter monitoring and recordkeeping provisions, as specified in § 65.162(d).

§ 65.6 Startup, shutdown, and malfunction plan and procedures.

(a) Paragraphs (b) and (c) of this section do not apply to Group 2A or Group 2B process vents.

(b) *Startup, shutdown, and malfunction plan.* (1) *Description and purpose of plan.* The owner or operator of a regulated source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the regulated source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. The plan shall also address routine or otherwise predictable CPMS malfunctions. This plan shall be developed by the owner or operator by the regulated source's implementation date as specified in § 65.1(f), or for sources referenced from 40 CFR part 63, subpart F, by the compliance date specified in that subpart. The requirement to develop and implement this plan shall be incorporated into the source's title V permit. This requirement is optional for equipment that must comply with subpart F of this part. It is not optional for equipment equipped with a closed vent system and control device subject to subpart G of this part. The purposes of the startup, shutdown, and malfunction plan are described in the following:

(i) To ensure that owners or operators are prepared to correct malfunctions as soon as practical after their occurrence in order to minimize excess emissions of regulated material (excess emissions are defined in § 65.3(a)(4)); and

(ii) To reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of a regulated source shall operate and maintain such source (including associated air pollution control equipment and CPMS) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (b)(1) of this section.

(3) *Use of additional procedures.* To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the regulated source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(4) *Revisions to the plan.* Based on the results of a determination made under § 65.3(b)(3), the Administrator may require that an owner or operator of a regulated source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan is inadequate as specified in the following:

(i) Does not address a startup, shutdown, and malfunction event of the CPMS, the air pollution control equipment, or the regulated source that has occurred; or

(ii) Fails to provide for the operation of the regulated source (including associated air pollution control equipment and CPMS) during a startup, shutdown, and malfunction event in a manner consistent with good air pollution control practices for minimizing emissions to the extent practical; or

(iii) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable; or

(iv) Does not provide adequate measures to prevent or minimize excess emissions to the extent practical as specified and defined in § 65.3(a)(4).

(5) *Additional malfunction plan requirements.* If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the regulated source during similar malfunction events, and a program of corrective action for similar malfunctions of process or air pollution control equipment or CPMS.

(6) *Retain plan on site.* The current plan must be kept on site at all times.

(c) *Periodic startup, shutdown, and malfunction reports.* During the reporting period, reports shall only be required for startup, shutdown, and malfunction during which excess emissions as defined in § 65.3(a)(4) occur. A startup, shutdown, and malfunction report can be submitted as part of a periodic report required under § 65.5(e), or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit. The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate), unless the information is submitted with the periodic report. The report shall include the following information, as appropriate:

(1) The name, title, and signature of the owner or operator or other responsible official certifying its accuracy.

(2) The number of startup, shutdown, malfunction events and the total duration of all periods of startup, shutdown, and malfunction for the reporting period.

(3) If actions taken by an owner or operator during a startup, shutdown, and malfunction of a regulated source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan, then the owner or operator shall state such information in a startup, shutdown, and malfunction report.

(4) If at any time an action taken by an owner or operator, during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) during which excess emissions occur, as defined in § 65.3(a)(4), is not consistent with the procedures specified in the regulated source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event as part of the periodic report. The report shall explain the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred.

§ 65.7 Monitoring, recordkeeping, and reporting waivers and alternatives.

(a) *Waiver of recordkeeping or reporting requirements.*—(1) *Waiver application.* The owner or operator may apply for a waiver from recordkeeping or reporting requirements if the regulated source is achieving the relevant standard(s), or the source is operating under an extension of compliance under 40 CFR 63.6(i), or a waiver of compliance under 40 CFR 61.10(b), or the owner or operator has requested an extension or waiver of compliance and the Administrator is still considering that request. The waiver application shall be submitted in writing to the Administrator.

(2) *Extension of compliance request.* If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under 40 CFR 63.6(i) or the request for a waiver of compliance under 40 CFR 61.10(b), any required compliance progress report or compliance status report required in the source's title V permit application or a permit modification application, or a periodic report required under this part, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(3) *Approval or denial of waiver.* The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements when performing one of the following actions:

(i) Approves or denies an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.10(b); or

(ii) Makes a determination of compliance following the submission of a required compliance status report or periodic report; or

(iii) Makes a determination of suitable progress toward compliance following the submission of a compliance progress report, whichever is applicable.

(4) *Waiver conditions.* A waiver of any recordkeeping or reporting requirement granted under this paragraph (a) may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(5) *Waiver cancellation.* Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the regulated source.

(b) *Requests for approval of alternative monitoring or recordkeeping.* An owner or operator may submit a written request for approval to use alternatives to the monitoring or recordkeeping provisions of this part. For process vents and transfer racks, except low-throughput transfer racks, the provisions in paragraph (c) of this section shall govern the review and approval of requests. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring or recordkeeping method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method. For storage vessels and low throughput transfer racks, owners and operators shall comply with the requirements of § 65.145(b) for preparing and submitting a design evaluation. For equipment leaks, owners and operators shall comply with the recordkeeping requirements of § 65.163(d).

(c) *Approval or denial of request to use alternative monitoring or recordkeeping.* The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring or recordkeeping method within 90 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with the following:

(1) Notice of the information and findings on which the intended disapproval is based; and

(2) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of the intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(d) *Use of an alternative monitoring or recordkeeping method.* (1) The owner or operator of a regulated source is subject to the monitoring and recordkeeping requirements of the relevant standard unless permission to use an alternative monitoring or recordkeeping method requested under paragraph (b) of this section or § 65.162(d) has been granted by the Administrator. Once an alternative is approved, the owner or operator shall use the alternative for the emission points or regulated sources cited in the approval and shall meet the monitoring and recordkeeping requirements of the relevant standard for all other emission points or regulated sources.

(2) If the Administrator approves the use of an alternative monitoring or recordkeeping method for a regulated source under paragraph (c) of this section, the owner or operator of such source shall continue to use the alternative monitoring or recordkeeping method unless he or she receives approval from the Administrator to use another method.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring or recordkeeping method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in the relevant standard. If the results of the specified and alternative methods, requirements, or procedures do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

§ 65.8 Procedures for approval of alternative means of emission limitation.

(a) *Alternative means of emission limitation.* An owner or operator may request a determination of equivalence for an alternative means of emission limitation to the requirements of design, equipment, work practice, or operational standards of this part. If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in regulated material emissions at least equivalent to the reduction in emissions from that source achieved under any design, equipment, work practice, or operational standards (but not performance standards) in this part, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any such notice shall be published only after public notice and an opportunity for a hearing.

(b) *Content of submittal.* (1) In order to obtain approval, any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves

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equivalent emission reductions. An owner or operator seeking permission to use an alternative means of compliance who has not previously performed testing shall also submit a proposed test plan. If the owner or operator seeks permission to use an alternative means of compliance based on previously performed testing, they shall submit the results of that testing, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(2) The owner or operator who requests an alternative means of emission limitation shall submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(3) For storage vessels, the owner or operator shall include the results of actual emissions tests using full-size or scale-model storage vessels that accurately collect and measure all regulated material emissions using a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or an engineering analysis that the Administrator determines is an accurate method of determining equivalence.

(4) For proposed alternatives to equipment leak requirements, the owner or operator shall also submit the information and meet the requirements for alternative means of emission limitation specified in § 65.102(b) (alternative means of emission limitation).

(c) Manufacturers of equipment used to control equipment leaks of a regulated material may request a determination of equivalence for an alternative means of emission limitation for equipment leaks, as specified in § 65.102(c).

(d) *Compliance.* If the Administrator makes a determination that a means of emission limitation is a permissible alternative to the requirements of design, equipment, work practice, or operational standards of this part, the owner or operator shall either comply with the alternative or comply with the requirements of this part.

§ 65.9 Availability of information and confidentiality.

(a) *Availability of information.* The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter. With the exception of information protected under part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), initial compliance status report, periodic report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

§ 65.10 State authority.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from adopting and enforcing any emission standard or limitation applicable to a regulated source, provided that such standard, limitation, prohibition, or other regulation is not less stringent than the standard applicable to such a regulated source.

(b) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from requiring the owner or operator of a regulated source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of such a regulated source.

§ 65.11 Circumvention and prohibited activities.

(a) *Circumvention.* (1) No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to, the following:

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere; and

(2) The fragmentation of an operation for the purpose of avoiding regulation by a relevant standard.

(b) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any regulated source in violation of the requirements of this part except under the following provisions:

(i) An extension or waiver of compliance granted by the Administrator under an applicable part; or

(ii) An extension of compliance granted under an applicable part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) After the effective date of an approved permit program in a State, no owner or operator of a regulated source in that State who is required under an applicable part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(3) An owner or operator of a regulated source who is subject to an emission standard promulgated under this part or a referencing part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) (including this subpart) regardless of whether the following criteria are met:

(i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(c) *Severability.* Notwithstanding any requirement incorporated into a title V permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 65.12 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under sections 111(c) and 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: §§ 65.8, 65.46, 65.102, 65.156(b)(l)(ii), and 65.158(a)(2)(ii).

§ 65.13 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted in paragraph (b) of this section, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC; and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed in this paragraph (b) are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved December 14, 2000 for §§ 65.64(e)(2) and 65.147(a)(4)(i) and (b)(3)(ii).

(2) ASTM D2382–76, Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method). IBR approved December 14, 2000 for §§ 65.64(e)(1) and 65.147(b)(3)(ii).

§ 65.14 Addresses.

(a) All requests, reports, applications, notifications, and other communications submitted pursuant to this part, except as specified under § 65.5(g)(1), shall be sent to the Administrator at the appropriate EPA Regional Office indicated in the following list:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air Management Division, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air Management Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas); Director; Compliance Assurance and Enforcement Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80295.

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Region X (Alaska, Oregon, Idaho, Washington), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

(b) All information required to be submitted to the Administrator under this part shall also be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The mailing addresses for State agencies are listed as follows:

(1) *Alabama.* Air Pollution Control Division, Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36104.

(2) *Alaska.* Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

(3) *Arizona.* Arizona Department of Health Services, 1740 West Adams Street, Phoenix, Arizona 85007.

(4) *Arkansas.* Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

(5) *California.* (i) Amador County Air Pollution Control District, P.O. Box 430, 810 Court Street, Jackson, California 95642.

(ii) Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, California 94109.

(iii) Butte County Air Pollution Control District, P.O. Box 1229, 316 Nelson Avenue, Oroville, California 95965.

(iv) Calaveras County Air Pollution Control District, Government Center, El Dorado Road, San Andreas, California 95249.

(v) Camino del Rimedio, Santa Barbara, California 93110.

(vi) Colusa County Air Pollution Control District, 751 Fremont Street, Colusa, California 95952.

(vii) El Dorado Air Pollution Control District, 330 Fair Lane, Placerville, California 95667.

(viii) Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, California 93721.

(ix) Glenn County Air Pollution Control District, P.O. Box 351, 720 North Colusa Street, Willows, California 95988.

(x) Great Basin Unified Air Pollution Control District, 157 Short Street, suite 6, Bishop, California 93514.

(xi) Imperial County Air Pollution Control District, County Services Building, 939 West Main Street, El Centro, California 92243.

(xii) Kern County Air Pollution Control District, 1601 H Street, suite 250, Bakersfield, California 93301.

(xiii) Kings County Air Pollution Control District, 330 Campus Drive, Hanford, California 93230.

(xiv) Lake County Air Pollution Control District, 255 North Forbes Street, Lakeport, California 95453.

(xv) Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, California 96130.

(xvi) Madera County Air Pollution Control District, 135 West Yosemite Avenue, Madera, California 93637.

(xvii) Mariposa County Air Pollution Control District, Box 5, Mariposa, California 95338.

(xviii) Mendocino County Air Pollution Control District, County Courthouse, Ukiah, California 94582.

(xix) Merced County Air Pollution Control District, P.O. Box 471, 240 East 15th Street, Merced, California 95340.

(xx) Modoc County Air Pollution Control District, 202 West 4th Street, Alturas, California 96101.

(xxi) Monterey Bay Unified Air Pollution Control, 1164 Monroe Street, Suite 10, Salinas, California 93906.

(xxii) Nevada County Air Pollution Control District, H.E.W. Complex, Nevada City, California 95959.

(xxiii) North Coast Unified Air Quality Management District, 5630 South Broadway, Eureka California 95501.

(xxiv) Northern Sonoma County Air Pollution Control District, 134 "A" Avenue, Auburn, California 95448.

(xxv) Placer County Air Pollution Control District, 11491 "B" Avenue, Auburn, California 95603.

(xxvi) Shasta County Air Pollution Control District, 2650 Hospital Lane, Redding, California 96001.

(xxvii) Sierra County Air Pollution Control District, P.O. Box 286, Downieville, California 95936.

(xxviii) Siskiyou County Air Pollution

Control District, 525 South Foothill Drive, Yreka, California 96097.
(xxix) South Coast Air Quality Management District, 9150 Flair Drive, El Monte, California 91731.
(xxx) Stanislaus County Air Pollution Control District, 1030 Scenic Drive, Modesto, California 95350.
(xxxi) Sutter County Air Pollution Control District, Sutter County Office Building, 142 Garden Highway, Yuba City, California 95991.
(xxxii) Tehama County Air Pollution Control District, P.O. Box 38, 1760 Walnut Street, Red Bluff, California 96080.
(xxxiii) Tulare County Air Pollution Control District, County Civic Center, Visalia, California 93277.
(xxxiv) Tuolumne County Air Pollution Control District, 9 North Washington Street, Sonora, California 95370.
(xxxv) Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, California 93009.
(xxxvi) Yolo-Solano Air Pollution Control District, P.O. Box 1006, 323 First Street, i5, Woodland, California 95695.

(6) *Colorado.* Department of Health, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado 80220.

(7) *Connecticut.* Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06106.

(8) *Delaware.* Delaware Department of Natural Resources and Environmental Control, Tatnall Building, P.O. Box 1401, Dover, Delaware 19901.

(9) *Florida.* Florida Bureau of Air Quality Management, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

(10) *Georgia.* Environmental Protection Division, Department of Natural Resources, 270 Washington Street, SW., Atlanta, Georgia 30334.

(11) *Hawaii.* (i) Hawaii Department of Health, 1250 Punchbowl Street, Honolulu, Hawaii 96813.

(ii) Hawaii Department of Health (mailing address), Post Office Box 3378, Honolulu, Hawaii 96801.

(12) *Idaho.* Idaho Division of Environmental Quality 601 Pole Line Rd. Ste. # 2 Twin Falls, Idaho 83301.

(13) *Illinois.* Illinois Environmental Protection Agency—Bureau of Air 1340 North Ninth St., Springfield Illinois 62702 1021 North Grand Avenue East (mailing address) P.O. Box 19276 62794–9276.

(14) *Indiana.* Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

(15) *Iowa.* Iowa Department of Natural Resources, Environmental Protection Division, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319.

(16) *Kansas.* Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

(17) *Kentucky.* Kentucky Division of Air Pollution Control, Department for Natural Resources and Environmental Protection, U.S. 127, Frankfort, Kentucky 40601.

(18) *Louisiana.* Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

(19) *Maine.* Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, Maine 04333.

(20) *Maryland.* Bureau of Air Quality and Noise Control, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201.

(21) *Massachusetts.* Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, Massachusetts 02108.

(22) *Michigan.* Air Pollution Control Division, Michigan Department of Natural Resources, Stevens T. Mason Building, 8th Floor, Lansing, Michigan 48926.

(23) *Minnesota.* Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

(24) *Mississippi.* Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209.

(25) *Missouri.* Missouri Department of Natural Resources, Division of Environmental Quality, P.O. Box 176, Jefferson City, Missouri 65102.

(26) *Montana.* Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59601.

(27) *Nebraska.* Nebraska Department of Environmental Control, P.O. Box 94877, State House Station, Lincoln, Nebraska 68509.

(28) *Nevada.* Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, Nevada 89710.

(29) *New Hampshire.* Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, New Hampshire 03302–2033.

(30) *New Jersey.* New Jersey Department of Environmental Protection, John Fitch Plaza, P.O. Box 2807, Trenton, New Jersey 08625.

(31) *New Mexico.* Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

(32) *New York.* New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Division of Air Resources.

(33) *North Carolina.* North Carolina Environmental Management Commission, Department of Environment and Natural Resources, Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626–0580.

(34) *North Dakota.* State Department of Health and Consolidated Laboratories, Division of Environmental Engineering, State Capitol, Bismarck, North Dakota 58505.

(35) *Ohio.* Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, Ohio 43266–0149.

(36) *Oklahoma.* Oklahoma State Department of Health, Air Quality Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

(37) *Oregon.* Department of Environmental Quality, Yeon Building, 522 SW. Fifth, Portland, Oregon 97204.

(38) *Pennsylvania.* Department of Environmental Resources, Post Office Box 2063, Harrisburg, Pennsylvania 17120.

(39) *Rhode Island.* Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, Rhode Island 02908.

(40) *South Carolina.* Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

(41) *South Dakota.* Department of Water and Natural Resources, Office of Air Quality and Solid Waste, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

(42) *Tennessee.* Division of Air Pollution Control, Tennessee Department of Public Health, 256 Capitol Hill Building, Nashville, Tennessee 37219.

(43) *Texas.* Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

(44) *Utah.* Department of Health, Bureau of Air Quality, 288 North 1460 West, P.O. Box 16690, Salt Lake City, Utah 84116–0690.

(45) *Vermont.* Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, Vermont 05676.

(46) *Virginia.* Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, Virginia 23219.

(47) *Washington.* Department of Ecology, Olympia, Washington 98504.

(48) *West Virginia.* Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

(49) *Wisconsin.* Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707.

(50) *Wyoming.* Wyoming Department of Environmental Quality Air Division, 122 West 25th St.—4th Floor, Cheyenne, Wyoming 82002.

§§ 65.15–65.19 [Reserved]

TABLE 1 TO SUBPART A OF PART 65—APPLICABLE 40 CFR PARTS 60, 61, AND 63 GENERAL PROVISIONS

A. 40 CFR part 60, subpart A provisions for referencing subparts Ka, Kb, VV, DDD, III, NNN, and RRR
§ 60.1,
§ 60.2,
§ 60.5,
§ 60.6,
§ 60.7(a)(1), and (a)(4),
§ 60.14,
§ 60.15,
§ 60.16
B. 40 CFR part 61, subpart A provisions for referencing subparts Y, V, and BB
§ 61.01,
§ 61.02,
§ 61.05,
§ 61.06,
§ 61.07,
§ 61.08,
§ 61.10(b), and (c),
§ 61.11, § 61.15
C. 40 CFR part 63, subpart A provisions for referencing subparts G and H
§ 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4)
§ 63.2
§ 63.5 (a)(1), (a)(2), (b), (d)(1)(ii), (d)(3)(i)[a], (d)(3)(iii)[a], (d)(3)(iv)[a], (d)(3)(v)[a], (d)(3)(vi)[a], (d)(4), (e), (f)(1), and (f)(2)
§ 63.6 (a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j)
§ 63.9(a)(2), (b)(4)(i)[b], (b)(4)(ii), (b)(4)(iii), (b)(5)[b], (c) and (d)
§ 63.10(d)(4)
§ 63.12(b)

[a] These provisions do not apply to equipment leaks.
[b] The notifications specified in 40 CFR 63.9(b)(4)(i) and 63.9(b)(5) shall be submitted at the times specified in this part 65.

TABLE 2 TO SUBPART A OF PART 65—APPLICABLE REFERENCING SUBPART PROVISIONS

If you have been referenced from * * *	You must comply with * * *
40 CFR part 60, subpart Ka	60.110a, 60.111a, and 60.115a
40 CFR part 60, subpart Kb	60.110b, 60.111b, 60.116b(c), (e), (f)(1), and (g)
40 CFR part 60, subpart VV	60.480, 60.481, 60.482–1(a), 60.485(d), (e), and (f), and 60.486(i) and (j), 60.488, and 60.489
40 CFR part 60, subpart DDD	60.560(a), (b) and (d) through (j), 60.561, 60.562–1, 60.562–2, and 60.565(g)(1)
40 CFR part 60, subpart III	60.610(a), (b) and (d), 60.611, 60.616, 60.617
40 CFR part 60, subpart NNN	60.660(a), (b), (c)(1) through (c)(3), (c)(5), (d), 60.661, 60.666, and 60.667
40 CFR part 60, subpart RRR	60.700(a), (b), (c)(1), (c)(3), (c)(5), (c)(6), (c)(7), (d), 60.701, 60.706, 60.707
40 CFR part 61, subpart V	61.240, 61.241, 61.245(d), 61.246(i) and (j), and 61.247(a) and (f)
40 CFR part 61, subpart Y	61.270, 61.271(d)(2), and 61.274(a)
40 CFR part 61, subpart BB	61.300 and 61.301
40 CFR part 63, subpart G For process vents, group 1 storage vessels, and group 1 transfer racks.	63.100, 63.101, 63.104 and 63.105 of subpart F and 63.110 and 63.111 of subpart G
40 CFR part 63, subpart H	63.100, 63.101, 63.104 and 63.105 of subpart F, and 63.160, 63.161, 63.180(d) of subpart H

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Subpart B—[Reserved]

Subpart C—Storage Vessels

§ 65.40 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from surge control vessels, bottoms receivers, and other storage vessels where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a storage vessel to fall outside the criteria in the referencing subpart that required the storage vessel to control emissions of regulated material, the owner or operator may elect to no longer comply with the provisions of this subpart. Instead, the owner or operator shall comply with any applicable provisions of the referencing subpart.

§ 65.41 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.42 Control requirements.

(a) For each storage vessel to which this subpart applies, the owner or operator shall comply with the requirements of paragraph (b) or (c) of this section.

(b) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is less than 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall reduce regulated material emissions to the atmosphere as provided in any one of the paragraphs (b)(1) through (7) of this section.

(1) *Internal floating roof (IFR).* Operate and maintain a fixed roof and internal floating roof meeting the requirements of § 65.43.

(2) *External floating roof (EFR).* Operate and maintain an external floating roof meeting the requirements of § 65.44.

(3) *EFR converted to IFR.* Operate and maintain an external floating roof converted to an internal floating roof meeting the requirements of § 65.45.

(4) *Closed vent system and flare.* Operate and maintain a closed vent system and flare as specified in § 65.142(a)(1). Periods of planned routine maintenance of the flare during which the flare does not meet the specifications of § 65.147 shall not exceed 240 hours per year. The specifications and requirements in § 65.147 for flares do not apply during periods of planned routine maintenance or during a control system malfunction. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(d).

(5) *Closed vent system and control device.* Operate and maintain a closed vent system and control device as specified in the following and § 65.142(a)(2):

(i) Except as provided in paragraph (b)(5)(ii) of this section, the control device shall be designed and operated to reduce inlet emissions of regulated material by 95 percent or greater.

(ii) For owners or operators referenced to this part from 40 CFR part 63, subpart G, and if the owner or operator of a storage vessel can demonstrate that a control device installed on the storage vessel on or before December 31, 1992 is designed to reduce inlet emissions of total organic HAP by greater than or equal to 90 percent but less than 95 percent, then the control device is required to be operated to reduce inlet emissions of total organic HAP by 90 percent or greater.

(iii) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph (b)(5)(i) or (ii) of this section, shall not exceed 240 hours per year. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(d).

(iv) The requirements in paragraph (b)(5)(i) of this section for control devices do not apply during periods of planned routine maintenance or during a control system malfunction.

(6) *Route to process or fuel gas system.* Route the emissions to a process or a fuel gas system as specified in § 65.142(a)(3). Whenever the owner or operator bypasses the fuel gas system or process, the owner or operator shall comply with the recordkeeping requirement in § 65.163(b)(3). Bypassing is permitted if the owner or operator complies with one or more of the following conditions:

(i) The liquid level in the storage vessel is not increased;

(ii) The emissions are routed through a closed vent system to a control device complying with paragraph (b)(4) or (5) of this section; or

(iii) The total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except startups/shutdowns/malfunctions or product changeovers of flexible operation units and periods when the storage vessel has been emptied and degassed), does not exceed 240 hours.

(7) *Equivalent requirements.* Comply with an equivalent to the requirements in any one of the paragraphs (b)(1) through (6) of this section, as provided in § 65.46.

(c) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is greater than or equal to 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall meet the requirements in paragraph (b)(4), (5), or (6) of this section, or equivalent as provided in § 65.46.

§ 65.43 Fixed roof with an internal floating roof (IFR).

(a) *IFR design requirements.* The owner or operator who elects to control storage vessel regulated material emissions by using a fixed roof and an internal floating roof shall comply with the design requirements in paragraphs (a)(1) through (4) of this section.

(1) The internal floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) Except as provided in paragraph (a)(3) of this section, the internal floating roof shall be equipped with a closure device between the wall of the storage vessel and the floating roof edge and shall consist of one of the following devices:

(i) A liquid-mounted seal.

(ii) A metallic shoe seal.

(iii) Two continuous seals mounted one above the other. The lower seal may be vapor-mounted.

(3) If the internal floating roof is equipped with a vapor-mounted seal as of December 31, 1992, paragraph (a)(2) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(4) Except as provided in paragraph (a)(4)(viii) of this section, each internal floating roof shall meet the following specifications:

(i) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents is to provide a projection below the stored liquid surface.

(ii) Except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains, each opening shall be equipped with a gasketed cover or gasketed lid.

(iii) Each penetration of the internal floating roof shall be a sample well. Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iv) Each automatic bleeder vent and rim space vent shall be gasketed.

(v) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(vii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(viii) If the internal floating roof does not meet any one of the specifications listed in paragraphs (a)(4)(i) through (vii) of this section as of December 31, 1992, the requirement for meeting those specifications does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(b) *IFR operational requirements.* The owner or operator using a fixed roof and an internal floating roof shall comply with the following operational requirements:

(1) The internal floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical and the owner or operator shall maintain the record specified in § 65.47(e).

(3) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(4) Each cover, access hatch, gauge float well, or lid on any opening in the internal floating roof shall be maintained in a closed position at all times (*i.e.*, no visible gaps) except when the device is in actual use. Prior to filling the storage vessel, rim space vents are to be set to open only when the internal floating roof is not floating, or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(c) *IFR inspection requirements.* To demonstrate compliance, the owner or operator shall visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) according to paragraphs (c)(1) through (4) of this section and maintain records of the IFR inspection results as specified in § 65.47(c)(1).

(1) *Single seal.* For vessels equipped with a single-seal system, the owner or operator shall perform the following inspections:

(i) Visually inspect for IFR type A failures, the internal floating roof, and the seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months.

(ii) Visually inspect for IFR type B failures, the internal floating roof, the seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 10 years.

(2) *Double seal.* For vessels equipped with two continuous seals mounted one above the other, the owner or operator shall perform either the inspection required in paragraph (c)(2)(i) of this section or the inspections required in paragraph (c)(2)(ii) of this section:

(i) Visually inspect for IFR type B failures, the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 5 years; or

(ii) Visually inspect the internal floating roof and the other components as specified in the following:

(A) For IFR type A failures, inspect the secondary seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months; and

(B) For IFR type B failures, inspect the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the vessel is emptied, but no less frequently than once every 10 years.

(3) For inspections to determine if any IFR type B failures are present as required by paragraphs (c)(1)(ii), (c)(2)(i), and (c)(2)(ii)(B) of this section, the owner or operator shall comply with the refilling notification requirements specified in § 65.48(c)(1).

(4) After installing the control equipment required to comply with § 65.42(b)(1) or (3), visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) prior to filling the storage vessel with regulated material. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, the owner or operator shall repair the items before filling the storage vessel.

(d) *IFR repair requirements.* The owner or operator shall repair any observed or determined failures according to paragraphs (d)(1) and (2) of this section:

(1) If an IFR type A failure is observed, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 calendar days. If the failure cannot be repaired within 45 calendar days or if the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and keep the records specified in § 65.47(d).

(2) If an IFR type B failure is determined, the owner or operator shall repair the items and comply with the refilling notification requirements of § 65.48(c)(1) before refilling the storage vessel with regulated material.

§ 65.44 External floating roof (EFR).

(a) *EFR design requirements.* The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof shall comply with the design requirements listed in paragraphs (a)(1) through (3) of this section.

(1) The external floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) The external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge.

(i) Except as provided in paragraph (a)(2)(iii) of this section, the closure device is to consist of two continuous seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(ii) Except as provided in paragraph (a)(2)(iv) of this section, the primary seal shall be either a metallic shoe seal or a liquid-mounted seal.

(iii) If the external floating roof is equipped with a liquid-mounted or metallic shoe primary seal as of December 31, 1992, the requirement for a secondary seal in paragraph (a)(2)(i) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(iv) If the external floating roof is equipped with a vapor-mounted primary seal and a secondary seal as of December 31, 1992, the requirement for a liquid-mounted or metallic shoe primary seal in paragraph (a)(2)(ii) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(3) The external floating roof shall meet the following specifications:

(i) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in the noncontact

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external floating roof shall provide a projection below the stored liquid surface except as provided in paragraph (a)(3)(xiii) of this section.

(ii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(iii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be equipped with a gasketed cover, seal, or lid.

(iv) Automatic bleeder vents and rim space vents shall be equipped with a gasket.

(v) Each roof drain that empties into the stored liquid shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(vi) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(vii) Except for antirotational devices equipped with a welded cap, each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(viii) Each slotted guide pole shall be equipped with a gasketed float or other device that closes off the stored liquid surface from the atmosphere.

(ix) Each gauge hatch/sample well shall be equipped with a gasketed cover.

(x) Where a metallic shoe seal is in use as the primary seal, one end of the metallic shoe shall be designed to extend into the stored liquid and the other end shall extend a minimum vertical distance of 61 centimeters (24 inches) above the stored liquid surface.

(xi) The secondary seal shall be designed to be installed above the primary seal so that it completely covers the space between the roof edge and the vessel wall.

(xii) For the primary and secondary seals, there shall be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(xiii) If each opening in a noncontact external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents does not provide a projection below the liquid surface as of December 31, 1992, the requirement for providing these projections below the liquid surface does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(b) *EFR operational requirements.* The owner or operator using an external floating roof shall comply with the following operational requirements:

(1) The external floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical, and the owner or operator shall maintain the record specified in § 65.47(e).

(3) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be maintained in a closed position (*i.e.*, no visible gap) at all times except when the device is in actual use.

(4) Covers on each access hatch and each gauge float well shall be bolted or fastened when they are closed.

(5) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(6) Rim space vents are to be set to open only when the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(7) The cap on the end of each unslotted guide pole shall be closed at all times except when gauging the stored liquid level or taking samples of the stored liquid.

(8) The cover on each gauge hatch/sample well shall be closed at all times except when the hatch or well must be open for access.

(9) Except during the inspections required by paragraph (c) of this section, both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion.

(c) *EFR inspection requirements.* To demonstrate compliance for an external floating roof vessel, the owner or operator shall use the procedures in paragraphs (c)(4) through (9) of this section for seal gaps according to the frequency specified in paragraphs (c)(1) through (3) of this section and meet the requirements of paragraph (c)(10) of this section.

(1) Measurements of gaps between the vessel wall and the primary seal shall be performed no less frequently than once every 5 years and at the times specified in paragraphs (c)(1)(i) and (ii) of this section. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(i) During the hydrostatic testing of the vessel, by initial startup, or within 90 days of the initial fill with regulated material.

(ii) For an external floating roof vessel equipped with a liquid-mounted or metallic shoe primary seal and without a secondary seal as provided for in paragraph (a)(2)(iii) of this section, measurements of gaps between the vessel wall and the primary seal shall be performed at least once per year until a secondary seal is installed. When a secondary seal is installed above the primary seal, measurements of gaps between the vessel wall and both the primary and secondary seals shall be performed within 90 calendar days of installation of the secondary seal and according to the frequency specified in paragraphs (c)(1) through (3) of this section thereafter.

(2) Measurements of gaps between the vessel wall and the secondary seal shall be performed no less frequently than once per year and within 90 days of the initial fill with regulated material, within 90 days of installation of the secondary seal, or by initial startup. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(3) If any storage vessel ceases to store regulated material for a period of 1 year or more, measurements of gaps between the vessel wall and the primary seal, and gaps between the vessel wall and the secondary seal shall be performed within 90 days of the vessel being refilled with regulated material. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(4) If the tank contains regulated material, all primary seal inspections or gap measurements that require the removal or dislodging of the secondary seal shall be accomplished as soon as possible, and the secondary seal shall be replaced as soon as possible.

(5) The owner or operator shall notify the Administrator 30 days before any EFR seal gap measurement as specified in § 65.48(c)(2).

(6) Except as provided in paragraph (d) of this section, the owner or operator shall determine gap widths and gap areas in the primary and secondary seals (seal gaps) individually by the following procedures:

(i) Seal gaps, if any, shall be measured at one or more floating roof levels when the roof is not resting on the roof leg supports.

(ii) Seal gaps, if any, shall be measured around the entire circumference of the vessel in each place where a 0.32 centimeter (⅛ inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel. The circumferential distance of each such location shall also be measured.

(iii) The total surface area of each gap described in paragraph (c)(6)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(7) The owner or operator shall add the gap surface area of each gap location for the primary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in § 65.47(c)(2). For metallic shoe primary seals or liquid-mounted primary seals, the accumulated area of gaps between the vessel wall and the primary seal shall not exceed 212 square centimeters per meter of vessel diameter (10.0 square inches per foot of vessel diameter) and the width of any portion of any gap shall not exceed 3.81 centimeters (1.50 inches).

(8) The owner or operator shall add the gap surface area of each gap location for the secondary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in § 65.47(c)(2). The accumulated area of gaps between the vessel wall and the secondary seal used in combination with a metallic shoe seal or liquid-mounted primary seal shall not exceed 21.2 square centimeters per meter of vessel diameter (1.00 square inch per foot of vessel diameter) and the width of any portion of any gap shall not exceed 1.27 centimeters (0.50 inch). The secondary seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (c)(1) of this section.

(9) If the owner or operator determines that it is unsafe to perform the seal gap measurements or to inspect the vessel to determine compliance because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with one of the following requirements:

(i) The owner or operator shall measure the seal gaps or inspect the storage vessel no later than 30 calendar days after the determination that the roof is unsafe; or

(ii) The owner or operator shall empty and remove the storage vessel from service no later than 45 calendar days after determining that the roof is unsafe. If the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in § 65.47(d).

(10) The owner or operator shall visually inspect for EFR failures, the external floating roof, the primary seal, secondary seal, and fittings prior to initial filling and each time the vessel is emptied (including initially before the vessel is filled with regulated material), shall maintain records of the EFR inspection results as specified in § 65.47(c)(1), and shall comply with the refilling notification requirements specified in § 65.48(c)(1).

(d) *EFR repair requirements.* (1) The owner or operator shall repair conditions that do not meet seal gap specifications listed in paragraphs (c)(7) and (8) of this section or any EFR failure observed by the inspection required by paragraph (c)(10) of this section no later than 45 calendar days after identification, or shall empty and remove the storage vessel from service no later than 45 calendar days after identification. If the vessel cannot be repaired or emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in § 65.47(d).

(2) If an EFR failure is observed by the inspection required by paragraph (c)(10) of this section, the owner or operator shall repair the items as necessary so that none of the conditions specified in paragraph (c)(10) of this section exist before filling or refilling the storage vessel with regulated material.

§ 65.45 External floating roof converted into an internal floating roof.

The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof converted into an internal floating roof shall comply with the internal floating roof requirements of § 65.43 except § 65.43(a)(3), (b)(2), and (b)(3) and the external floating roof deck fitting requirements of § 65.44 except § 65.44(a)(1), (a)(2), (b)(1), (b)(8), (b)(9), (c), and (d), including the recordkeeping and reporting provisions referenced therein.

§ 65.46 Alternative means of emission limitation.

Any person seeking permission to use an alternative means of compliance under this section shall use the procedures of § 65.8.

§ 65.47 Recordkeeping provisions.

(a) *Retention time.* Each owner or operator of a storage vessel subject to this subpart shall meet the requirements of § 65.4, except the record specified in paragraph (b) of this section shall be kept as long as the storage vessel is in operation.

(b) *Vessel dimensions and capacity.* Each owner or operator of a storage vessel subject to this subpart shall keep readily accessible records showing the dimensions of the storage vessel and an analysis of the capacity of the storage vessel.

(c) *Inspection results.* The owner or operator shall keep the records specified in paragraphs (c)(1) and (2) of this section.

(1) For each IFR or EFR inspection required by § 65.43(c)(1) and (2), or § 65.44(c)(10), respectively, a record containing the following information, as appropriate:

(i) In the event that no IFR type A failure, IFR type B failure, or EFR failure is observed, a record showing that the inspection was performed. The record shall identify the storage vessel on which the inspection was performed, the date the storage vessel was inspected, and references indicating which items were inspected.

(ii) In the event that an IFR type A failure, IFR type B failure, or EFR failure is observed, a record that identifies the storage vessel on which the inspection was performed, the date the storage vessel was inspected, a description of the failure and of the repair made, the date the vessel was emptied (if applicable), and the date that the repair was made. As specified in § 65.48(b)(1), the owner or operator shall include this record in the periodic report.

(2) For each EFR seal gap measurement required by § 65.44(c)(1), (2), or (3), a record describing the results of the measurement. The record shall identify the vessel on which the measurement was performed, shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 65.44(c)(7) and (8), and shall meet the following two additional requirements, as appropriate:

(i) In the event that the seal gap measurements do conform to the specifications in § 65.44(c)(7) and (8), the owner or operator shall submit the information specified in § 65.48(b)(2)(i) in the periodic report.

(ii) In the event that the seal gap measurements do not conform to the specifications in § 65.44(c)(7) and (8), the owner or operator shall also keep a description of the repairs that were made, the date the repairs were made,

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and the date the storage vessel was emptied and shall include a report of the seal gap measurement results in the periodic report as specified in § 65.48(b)(2)(ii).

(d) *Emptying and repairing extension.* The owner or operator who elects to utilize an extension in emptying a storage vessel for purposes of repair shall prepare by the initiation of the extension the following documentation, as appropriate, of the decision to utilize an extension:

(1) For an extension pursuant to § 65.43(d)(1) or § 65.44(d)(1), a description of the failure, documentation that alternative storage capacity is unavailable, and a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical. As specified in § 65.48(b)(1)(i), the owner or operator shall include this information in the periodic report.

(2) For an extension pursuant to § 65.44(c)(9), an explanation of why it was unsafe to perform the inspection or seal gap measurement, documentation that alternate storage capacity is unavailable, and a schedule of actions that will ensure that the vessel will be emptied as soon as practical. As specified in § 65.48(b)(3), the owner or operator shall include this information in the periodic report.

(e) *Floating roof set on its legs.* The owner or operator shall maintain a record for each storage vessel subject to § 65.43(b)(2) and § 65.44(b)(2) identifying the date when the floating roof was set on its legs and the date when the roof was refloated. The record shall also indicate whether this was a continuous operation.

§ 65.48 Reporting provisions.

(a) *Notification of initial startup.* If § 65.5(b) requires that a notification of initial startup be filed, then the content of the notification of initial startup shall at least include the information specified in § 65.5(b) and the identification of each storage vessel, its capacity, and the types of regulated material stored in the storage vessel.

(b) *Periodic reports.* Report the information specified in paragraphs (b)(1) through (3) of this section, as applicable, in the periodic report specified in § 65.5(e).

(1) *Inspection results.* Report the following information for each inspection conducted in accordance with § 65.43(c) and § 65.44(c) in which an IFR or EFR failure is detected in the control equipment:

(i) If an IFR type A failure or an EFR failure is observed for vessels for which inspections are required under § 65.43(c)(1)(i), § 65.43(c)(2)(ii)(A), or § 65.44(c)(10), each report shall include the inspection results record listed in § 65.47(c)(1)(ii). If an extension is utilized in accordance with § 65.43(d)(1) or § 65.44(d)(1), the report shall include the records listed in § 65.47(c)(1)(ii) plus the documentation specified in § 65.47(d)(1).

(ii) If an IFR type B failure is observed for vessels for which inspections are required under § 65.43(c)(1)(ii), (c)(2)(i), or (c)(2)(ii)(B), each report shall include a copy of the records listed in § 65.47(c)(1)(ii).

(2) *Seal gap measurement results.* (i) For each vessel whose seal gaps are measured during the reporting period, identify each seal gap measurement made in accordance with § 65.44(c) in which the requirements of § 65.44(c)(7) or (8) are met.

(ii) For each seal gap measurement made in accordance with § 65.44(c) in which the requirements of § 65.44(c)(7) or (8) are not met, from the records kept pursuant to § 65.47(c)(2), report the date of the measurements, results of the calculations, and note which seal gap measurements did not conform to the specifications in § 65.44(c)(7) and (8).

(3) *Extension documentation.* If an extension is utilized in accordance with § 65.44(c)(9), the owner or operator shall include the documentation specified in § 65.47(d)(2) in the next report required by § 65.5(e).

(c) *Special notifications.* An owner or operator who elects to comply with § 65.43, § 65.44, or § 65.45 shall submit, as applicable, the reports specified in paragraphs (c)(1) and (2) of this section except as specified in paragraph (c)(3) of this section. Each written notification or report shall also include the information specified in § 65.5(f).

(1) *Refilling notification.* In order to afford the Administrator the opportunity to have an observer present, notify the Administrator prior to refilling of a storage vessel that has been emptied. If the storage vessel is equipped with an internal floating roof as specified in § 65.43, an external floating roof as specified in § 65.44, or an external floating roof converted to an internal floating roof as specified in § 65.45, the notification shall meet either of the following requirements, as applicable.

(i) Notify the Administrator in writing at least 30 calendar days prior to the refilling of each storage vessel; or

(ii) If the inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days in advance of refilling the vessel, the owner or operator shall notify the Administrator as soon as practical, but no later than 7 calendar days prior to the refilling of the storage vessel. Notification may be made by telephone and immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to refilling.

(2) *Seal gap measurement notification.* In order to afford the Administrator the opportunity to have an observer present during seal gap measurements, the owner or operator of a storage vessel equipped with an external floating roof as specified in § 65.44 shall meet either of the following notification requirements, as applicable:

(i) Notify the Administrator in writing at least 30 calendar days in advance of any seal gap measurements; or

(ii) If the seal gap measurements are not planned and the owner or operator could not have known about the seal gap measurements 30 calendar days in advance, the owner or operator shall notify the Administrator as soon as practical, but no later than 7 calendar days prior to the seal gap measurements. Notification may be made by telephone and immediately followed by written documentation demonstrating why the seal gap measurements were unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to refilling.

(3) *Notification waiver.* Where a notification required by paragraphs (c)(1) or (2) of this section is sent to a delegated State or local agency, a copy of the notification to the Administrator is not required. A delegated State or local agency may waive the requirements for these notifications.

(d) *Compliance certification.* For sources subject to the compliance certification provisions of title V, a recertification of continuous compliance with § 65.43(b)(1) and § 65.44(b)(1) shall be based on the annual inspections required by § 65.43(c)(1)(i) and (c)(2)(ii)(A) and any observations made at other times when the roof is viewed.

§§ 65.49–65.59 [Reserved]

Subpart D—Process Vents

§ 65.60 Applicability.

The provisions of this subpart and of subpart A of this part apply to regulated material emissions from process vents where a referencing subpart references the use of this subpart.

§ 65.61 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.62 Process vent group determination.

(a) *Group status.* The owner or operator of a process vent shall determine the group status (*i.e.*, Group 1, Group 2A, or Group 2B) for each process vent. Group 1 process vents require control, and Group 2A and 2B process vents do not. Group 2A process vents require parameter monitoring, and Group 2B process vents do not. The owner or operator shall report the group status of each process vent as specified in § 65.5(c)(2).

(b) *Group 1.* A process vent is considered Group 1 if it meets at least one of the following specifications:

(1) The owner or operator designates the process vent as Group 1.

(2) At representative operating conditions expected to yield the lowest TRE index value for the process vent, the TRE index value is less than or equal to 1.0, the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and the concentration is greater than or equal to the applicable criterion in table 1 of this subpart. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(c) *Group 2A.* A process vent is considered Group 2A if, at representative operating conditions expected to yield the lowest TRE index value, it has a TRE index value of greater than 1.0 and less than or equal to 4.0, a flow rate of greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and a concentration greater than or equal to the applicable table 1 criterion. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(d) *Group 2B.* A process vent is considered Group 2B if, at representative operating conditions expected to yield the lowest TRE index value, it has a TRE index value of greater than 4.0; or a flow rate of less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute); or a concentration less than the applicable criterion in table 1 of this subpart. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

§ 65.63 Performance and group status change requirements.

(a) *Group 1 performance requirements.* Except for the additional requirement for halogenated vent streams as provided in paragraph (b) of this section, the owner or operator of a Group 1 process vent shall comply with the requirements of either paragraph (a)(1), (2), or (3) of this section.

(1) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of § 65.142(b).

(2) *98 percent or 20 parts per million standard.* Reduce emissions of regulated material or TOC by at least 98 weight-percent or to a concentration of less than 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, and corrected to 3 percent oxygen. The owner or operator shall meet the requirements in § 65.142(b) and paragraphs (a)(2)(i) and/or (a)(2)(ii) of this section.

(i) Compliance with paragraph (a)(2) of this section may be achieved by using any combination of recovery and/or control device to meet the 20 parts per million by volume concentration standard; or by using any combination of recovery and/or control device to meet the 98 weight percent reduction standard, if the recovery device meets the conditions of paragraph (a)(2)(ii) of this section.

(ii) An owner or operator may use a recovery device alone or in combination with one or more control devices to reduce emissions of total regulated material by 98 weight-percent if all of the following conditions are met:

(A) For process vents referenced to this part by 40 CFR part 63, subpart G, the recovery device (and any control device that operates in combination with the recovery device to reduce emissions of total regulated material by 98 weight-percent) was installed before December 31, 1992.

(B) The recovery device that will be used to reduce emissions of total regulated material by 98 weight-percent is the last recovery device before emission to the atmosphere.

(C) The recovery device alone or in combination with one or more control devices is capable of reducing emissions of total regulated material by 98 weight-percent but is not capable of reliably reducing emissions of total regulated material to a concentration of 20 parts per million by volume.

(D) If the owner or operator disposed of the recovered material, the recovery device would be considered a control device and comply with the requirements of this subpart and § 65.142(b) for control devices.

(3) *TRE index value.* Achieve and maintain a TRE index value greater than 1.0 at the outlet of the final recovery device, or prior to release from the process vent to the atmosphere if no recovery device is present. If the TRE index value is greater than 1.0, the process vent shall meet the provisions for a Group 2A or 2B process vent specified in either paragraph (c), (d), (e), or (f) of this section, whichever is applicable.

(b) *Halogenated Group 1 performance requirement.* Halogenated Group 1 process vents that are combusted shall be controlled according to paragraph (b)(1) or (2) of this section. The owner or operator shall either designate the Group 1 process vent as a halogenated Group 1 process vent or shall determine whether the process vent is halogenated using the procedures specified in § 65.64(g). If determined, the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in § 65.160(d). If the owner or operator designates the process vent as a halogenated Group 1 process vent, then this shall also be recorded and reported in the Initial Compliance Status Report.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(2) of this section for a halogenated process vent, then the process vent exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere, and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (ii) of this section, as applicable. The halogenated process vent shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the requirements in § 65.142(b).

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent.

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The owner or operator shall meet the requirements in § 65.142(b).

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other technique may be used to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device and thus make the process vent nonhalogenated; the process vent must comply with the requirements of paragraph (a)(1) or (2) of this section. The mass emission rate of halogen atoms contained in organic compounds prior to the combustor shall be determined according to the procedures in § 65.64(g). The owner or operator shall maintain the record specified in § 65.160(d) and submit the report specified in § 65.165(d).

(c) *Performance requirements for Group 2A process vents with recovery devices.* For Group 2A process vents, where the owner or operator is using a recovery device to maintain a TRE index value greater than 1.0, the owner or operator shall maintain a TRE index value greater than 1.0 and comply with the requirements for recovery devices in § 65.142(b).

(d) *Performance requirements for Group 2A process vents without recovery devices.* For Group 2A process vents where the owner or operator is not using a recovery device to maintain a TRE index value greater than 1.0, determine the appropriate parameters to be monitored and submit the information as specified in paragraphs (d)(1), (2), and (3) of this section. Such information shall be submitted for approval to the Administrator as part of a title V permit application or by separate notice. The owner or operator shall monitor as specified in § 65.65(a), maintain the record specified in § 65.66(e), and submit reports as specified in § 65.67(c).

(1) *Parameter monitoring.* A description of the parameter(s) to be monitored to ensure the owner or operator of a process vent achieves and maintains the TRE above 1.0. and an explanation of the criteria used to select the parameter(s).

(2) *Demonstration methods and procedures.* A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the process, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d), unless this information has already been included in the operating permit application.

(3) *Monitoring, recordkeeping, and reporting frequency.* The frequency and content of monitoring, recording, and reporting if monitoring and recordkeeping are not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in periodic reports required under § 65.5(e). The rationale for the proposed monitoring, recording, and reporting system shall be included.

(e) *Group 2B performance requirements.* For Group 2B process vents, the owner or operator shall maintain a TRE index greater than 4.0, a flow rate less than 0.011 scmm, or a concentration less than the applicable criteria in table 1 to this subpart.

(f) *Group 2A or 2B process change requirements.* Whenever process changes are made that could reasonably be expected to change a Group 2A or 2B process vent to a Group 1 vent, the owner or operator shall recalculate the TRE index value, flow, or TOC or organic hazardous air pollutant (HAP) concentration according to paragraph (f)(1), (2), or (3) of this section as specified for each process vent as necessary to determine whether the process vent is Group 1, Group 2A, or Group 2B and shall maintain the applicable records specified in § 65.66(d) and submit the applicable reports specified in § 65.67(b). The owner or operator shall perform the group status determination as soon as practical after the process change and within 180 days after the process change. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of paragraph (f) of this section, process changes do not include process upsets; unintentional, temporary process changes; and changes that are within the range on which the original TRE index value calculation was based.

(1) *Flow rate.* The flow rate shall be determined as specified in the sampling site and flow rate determination procedures in § 65.64(b) and (d) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i).

(2) *Concentration.* The TOC or organic HAP concentration shall be determined as specified in § 65.64(b) and (c) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i).

(3) *TRE index value.* The TRE index value shall be recalculated based on measurements of process vent flow rate, TOC, and/or organic HAP concentrations, and heating values as specified in § 65.64(b), (c), (d), (e), (f), (g), and (h) as applicable, or based on best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i).

(4) *Group status change to Group 1.* Where the process change causes the group status to change to Group 1, the owner or operator shall comply with the Group 1 process vent provisions in paragraph (a) of this section and, if they apply, the halogenated Group 1 process vent provisions in paragraph (b) of this section upon initial startup after the change and thereafter unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the process change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall comply as expeditiously as practical, but in no event later than 3 years after the emission point becomes Group 1, and shall comply with the following procedures to establish a compliance date:

(i) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(ii) The compliance schedule shall be submitted with the operating permit application or amendment or by other appropriate means.

(iii) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(5) *Group status change to Group 2A.* Whenever a process change causes the process vent group status to change to Group 2A, the owner or operator shall comply with the provisions of paragraph (c) or (d) of this section upon completion of the group status determination of the process vent.

(6) *Group status change to Group 2B.* Whenever a process change causes the process vent group status to change to Group 2B, the owner or operator shall comply with the provisions of paragraph (e) of this section as soon as practical after the process change.

§ 65.64 Group determination procedures.

(a) *General.* The provisions of this section provide calculation and measurement methods for parameters that are used to determine group status.

(b)(1) *Sampling site.* For purposes of determining TOC or HAP concentration, process vent volumetric flow rate, heating value, or TRE index value as specified under paragraph (c), (d), (e), (f), or (h) of this section, the sampling site shall be located after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present, and prior to release to the atmosphere.

(2) *Sampling site when a halogen reduction device is used prior to a combustion device.* An owner or operator using a scrubber or other halogen reduction device to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to a combustion control device in compliance with § 65.63(b)(2) shall determine the halogen atom mass emission rate prior to the combustor and after the scrubber or other halogen reduction device according to the procedures in paragraph (g) of this section.

(3) *Sampling site selection method.* Method 1 or 1A of appendix A of 40 CFR part 60, as appropriate, shall be used for selection of the sampling site. No traverse site selection method is needed for process vents smaller than 0.10 meter (4 inches) in nominal inside diameter.

(c) *TOC or HAP concentration.* The TOC or HAP concentrations used for TRE index value calculations in paragraph (h) of this section shall be determined based on paragraph (c)(1) or (i) of this section, or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. For concentrations needed for comparison with the appropriate concentration in table 1 of this subpart, TOC or HAP concentration shall be determined based on paragraph (c)(1), (c)(2), or (i) of this section or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. The owner or operator shall record the TOC or HAP concentration as specified in § 65.66(c).

(1) *Method 18.* The procedures specified in paragraph (c)(1)(i) and (ii) of this section shall be used to calculate parts per million by volume concentration using Method 18 of appendix A of 40 CFR part 60.

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The concentration of either TOC (minus methane and ethane) or organic HAP emissions shall be calculated using the following two procedures, as applicable.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 64–1 of this section:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{(Eq. 64-1)}$$

Where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.
x = Number of samples in the sample run.
n = Number of components in the sample.
C_{ji} = Concentration of sample component j of the sample i, dry basis, parts per million by volume.

(B) The total organic HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (c)(1)(ii)(A) of this section except that only the organic HAP species shall be summed.

(2) *Method 25A.* The following procedures shall be used to calculate parts per million by volume concentration using Method 25A of appendix A of 40 CFR part 60:

(i) Method 25A of appendix A of 40 CFR part 60 shall be used only if a single organic compound of regulated material is greater than 50 percent of total organic HAP or TOC, by volume, in the process vent.

(ii) The process vent composition may be determined by either process knowledge, test data collected using an appropriate EPA method, or a method or data validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current process vent conditions.

(iii) The organic compound used as the calibration gas for Method 25A of appendix A of 40 CFR part 60 shall be the single organic compound of regulated material present at greater than 50 percent of the total organic HAP or TOC by volume.

(iv) The span value for Method 25A of appendix A of 40 CFR part 60 shall be equal to the appropriate concentration value in table 1 to this subpart.

(v) Use of Method 25A of appendix A of 40 CFR part 60 is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A of appendix A of 40 CFR part 60 is below one-half the appropriate value in table 1 to this subpart to be considered a Group 2B vent with an organic HAP or TOC concentration below the appropriate value in table 1 to this subpart.

(d) *Volumetric flow rate.* The process vent volumetric flow rate (Q_S) in standard cubic meters per minute at 20 °C (68 °F) shall be determined as specified in paragraphs (d)(1) and (2) of this section and shall be recorded as specified in § 65.66(b):

(1) Use Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate. If the process vent tested passes through a final steam jet ejector and is not condensed, the stream volumetric flow shall be corrected to 2.3 percent moisture; or

(2) The engineering assessment procedures in paragraph (i) of this section can be used for determining volumetric flow rates.

(e) *Heating value.* The net heating value shall be determined as specified in paragraphs (e)(1) and (2) of this section or by using the engineering assessment procedures in paragraph (i) of this section.

(1) The net heating value of the process vent shall be calculated using Equation 64–2 of this section:

$$H_T = K_1\left(\sum_{j=1}^{n} D_j H_j\right) \qquad \text{(Eq. 64-2)}$$

Where:

H_T = Net heating value of the sample, megajoule per standard cubic meter, where the net enthalpy per mole of process vent is based on combustion at 25 °C and 760 millimeters of mercury, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C as in the definition of Q_S (process vent volumetric flow rate).

K_1 = Constant, 1.740×10^{-7} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (megajoule per kilocalorie), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

D_j = Concentration on a wet basis of compound j in parts per million as measured by procedures indicated in paragraph (e)(2) of this section. For process vents that pass through a final steam jet and are not condensed, the moisture is assumed to be 2.3 percent by volume.

H_j = Net heat of combustion of compound j, kilocalorie per gram-mole, based on combustion at 25 °C and 760 millimeters of mercury. The heat of combustion of process vent components shall be determined using American Society for Testing and Materials (ASTM) D2382–76 (incorporated by reference as specified in § 65.13) if published values are not available or cannot be calculated.

(2) The molar composition of the process vent (D_j) shall be determined using the following methods:

(i) Method 18 of appendix A of 40 CFR part 60 to measure the concentration of each organic compound.

(ii) American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 65.13) to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 of appendix A of 40 CFR part 60 to measure the moisture content of the stack gas.

(f) *TOC or HAP emission rate.* The emission rate of TOC (minus methane and ethane) (E_{TOC}) and/or the emission rate of total organic HAP (E_{HAP}) in the process vent as required by the TRE index value equation specified in paragraph (h) of this section, shall be calculated using Equation 64.3 of this section:

$$E = K_2\left(\sum_{j=1}^{n} C_j M_j\right) Q_s \qquad \text{(Eq. 64-3)}$$

Where:

E = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic HAP (E_{HAP}) in the sample, kilograms per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram per gram) (minutes per hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

C_j = Concentration on a dry basis of organic compound j in parts per million as measured by Method 18 of appendix A of 40 CFR part 60 as indicated in paragraph (c) of this section. If the TOC emission rate is being calculated, C_j includes all organic compounds measured minus methane and ethane; if the total organic HAP emission rate is being calculated, only organic HAP compounds are included.

M_j = Molecular weight of organic compound j, gram/gram-mole.

Q_s = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C.

(g) *Halogenated vent determination.* In order to determine whether a process vent is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated according to the procedures specified in paragraphs (g)(1) and (2) of this section. A process vent is considered halogenated if the mass emission rate of halogen atoms contained in the organic compounds is equal to or greater than 0.45 kilogram per hour (0.99 pound per hour).

(1) The process vent concentration of each organic compound containing halogen atoms (parts per million by volume, by compound) shall be determined based on one of the following procedures:

(i) Process knowledge that no halogen or hydrogen halides are present in the process vent; or

(ii) Applicable engineering assessment as discussed in paragraph (i)(3) of this section; or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of appendix A of 40 CFR part 60; or

(iv) Any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63.

(2) Equation 64–4 of this section shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 Q\left(\sum_{j=1}^{n}\sum_{i=1}^{m} C_j * L_{j,i} * M_{j,i}\right) \qquad \text{(Eq. 64-4)}$$

Where:

E = Mass of halogen atoms, dry basis, kilogram per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute per hour), where standard temperature is 20 °C.

Q = Flow rate of gas stream, dry standard cubic meters per minute, determined according to paragraph (d) or (i) of this section.

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

C_j = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji} = Number of atoms of halogen i in compound j of the gas stream.

M_{ji} = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

(h) *TRE index value.* The owner or operator shall calculate the TRE index value of the process vent using the equations and procedures specified in paragraphs (h)(1) through (3) of this section, as applicable, and shall maintain the records specified in § 65.66(a) or § 65.66(d)(4), as applicable.

(1) *TRE index value equation.* Equation 64–5 of this section shall be used to calculate the TRE index:

$$TRE = A * [B + C + D + E + F] \qquad \text{(Eq. 64-5)}$$

Where:

TRE = TRE index value.

A, B, C, D, E, and F = Parameters presented in tables 2 and 3 of this subpart that include the following variables:

Q = Process vent flow rate, standard cubic meters per minute, at a standard temperature of 20 °C, as calculated according to paragraph (d) or (i) of this section.

H = Process vent net heating value, megajoules per standard cubic meter, as calculated according to paragraph (e) or (i) of this section.

E_{TOC} = Emission rate of TOC (minus methane and ethane), kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

E_{HAP} = Emission rate of total organic HAP, kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

(2) *Nonhalogenated process vents.* The owner or operator of a nonhalogenated process vent shall calculate the TRE index value using either one of the following procedures, as applicable:

(i) *TRE calculations: Part 60 regulated sources.* Use the parameters in table 2 to this subpart and calculate the TRE index value twice, once using the appropriate equation (depending on the heating value and flow rate of the process vent) in equations 15 through 30 and once using the appropriate equation (depending on the heating value of the process vent) in equations 31 and 32. Select the lowest TRE index value.

(ii) *TRE calculations: Part 63 regulated sources.* Use the equation and parameters in table 3 to this subpart and calculate the TRE index value using equations 34, 35, and 36 for process vents at existing sources; or equations 38, 39, and 40 for process vents at new sources. Select the lowest TRE index value.

(3) *Halogenated process vents.* The owner or operator of a halogenated process vent stream as determined according to procedures specified in paragraph (g) of this section shall calculate the TRE index value using either one of the following procedures, as applicable:

(i) *TRE Calculations: Part 60 regulated sources.* Use the parameters in table 2 to this subpart and calculate the TRE index value using the appropriate equation chosen from equations 1 through 14 depending on the heating value and flow rate of the process vent.

(ii) *TRE calculations: Part 63 regulated sources.* Use the appropriate parameters in table 3 to this subpart and calculate the TRE index value using equation 33 or 37 depending on whether the process vent is at a new or existing source.

(i) *Engineering assessment.* For purposes of TRE index value determination, engineering assessment may be used to determine process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value. Engineering assessments shall meet the requirements of paragraphs (i)(1) through (4) of this section. If process vent flow rate or process vent organic HAP or TOC concentration is being determined for comparison with the 0.011 scmm (0.40 standard cubic foot) flow rate or the applicable concentration value in table 1 to this subpart, engineering assessment may be used to determine the flow rate or concentration for the representative operating condition expected to yield the highest flow rate or concentration.

(1) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is greater than 4.0, then the owner or operator is not required to perform the measurements specified in paragraphs (c) through (g) of this section.

(2) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is less than or equal to 4.0, then the owner or operator is required either to perform the measurements specified in paragraphs (c) through (g) of this section for group determination or to consider the process vent a Group 1 process vent and comply with the requirement (or standard) specified in § 65.63(a) and, if applicable, § 65.63(b).

(3) Engineering assessment includes, but is not limited to, the examples specified in paragraphs (i)(3)(i) through (iv) of this section.

(i) Previous test results provided the tests are representative of current operating practices at the process unit.

(ii) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(iii) Maximum flow rate, TOC emission rate, organic HAP emission rate, organic HAP or TOC concentration, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(iv) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to, the following examples:

(A) Use of material balances based on process stoichiometry to estimate maximum TOC or organic HAP concentrations;

(B) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities;

(C) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(D) Estimation of maximum expected net heating value based on the stream concentration of each organic compound or, alternatively, as if all TOC in the stream were the compound with the highest heating value.

(4) All data, assumptions, and procedures used in the engineering assessment shall be documented. The owner or operator shall maintain the records specified in § 65.66(a), (b), (c), or (d), as applicable.

§ 65.65 Monitoring.

(a) An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall monitor based on the approved plan as specified in § 65.63(d).

(b) As required in § 65.63(a) and (c), an owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 with a recovery device or a Group 1 process vent shall comply with § 65.142(b).

§ 65.66 Recordkeeping provisions.

(a) *TRE index value records.* The owner or operator shall maintain records of measurements, engineering assessments, and calculations performed to determine the TRE index value of the process vent according to the procedures of § 65.64(h), including those records associated with halogen vent stream determination. Documentation of engineering assessments shall include all data, assumptions, and procedures used for the engineering assessments, as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(b) *Flow rate records.* Each owner or operator who elects to demonstrate that a process vent is Group 2B based on a flow rate less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute) shall record the flow rate as measured using the sampling site and flow rate determination procedures specified in § 65.64(b) and (d) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(c) *Concentration records.* Each owner or operator who elects to demonstrate that a process vent is Group 2B based on a concentration less than the

applicable criteria in table 1 to this subpart shall record the organic HAP or TOC concentration as measurement using the sampling site and HAP or TOC concentration determination procedures specified in § 65.64(b) and (c) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(d) *Process change records.* The owner or operator shall keep up-to-date, readily accessible records as specified in the following and shall report this information as specified in § 65.67(b):

(1) If the process vent is Group 2B on the basis of flow rate being less than 0.011 scmm (0.40 standard cubic foot), then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the process vent flow rate and any recalculation or measurement of the flow rate pursuant to § 65.63(f).

(2) If the process vent is Group 2B on the basis of organic HAP or TOC concentration being less than the applicable value in table 1 to this subpart, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the organic HAP or TOC concentration of the process vent and any recalculation or measurement of the concentration pursuant to § 65.63(f).

(3) If the process vent is Group 2A or Group 2B on the basis of the TRE index value being greater than 1.0, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) and any recalculation of the TRE index value pursuant to § 65.63(f).

(4) As a result of a process change, if a process vent that was Group 2B on any basis becomes a Group 2B process vent only on the basis of having a TRE greater than 4.0, then the owner or operator shall keep records of the TRE index value determination performed according to the sample site and TRE index value determination procedures of § 65.64(b)(1) and (h) or determined through engineering assessment as specified in § 65.64(i).

(e) *Other Group 2A records.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall record the parameters monitored based on the approved plan as specified in § 65.63(d).

§ 65.67 Reporting provisions.

(a) *Initial compliance status report.* The owner or operator shall submit as part of the Initial Compliance Status Report specified in § 65.5(d) the information recorded in § 65.66(a), (b), and (c), as applicable.

(b) *Process change.* (1) Whenever a process change, as described in § 65.63(f), is made that causes a Group 2A or 2B process vent to become a Group 1 process vent or a Group 2B process vent to become a Group 2A process vent, the owner or operator shall either submit a report within 60 days after the performance test or group determination or submit a report included as part of the next periodic report. The report shall include the following information:

(i) A description of the process change;

(ii) The results of the recalculation of the flow rate, organic HAP or TOC concentration, and/or TRE index value required under § 65.63(f) and recorded under § 65.66(d); and

(iii) A statement that the owner or operator will comply with the provisions of § 65.63 by the schedules specified in § 65.63(f)(4) through (6).

(2) For process vents that become Group 1 process vents after a process change requiring a performance test to be conducted for the control device being used as specified in subpart G of this part, the owner or operator shall specify that the performance test has become necessary due to a process change. This specification shall be made in the notification to the Administrator of the intent to conduct a performance test as provided in § 65.164(b)(1).

(3) Whenever a process change as described in § 65.63(f) is made that changes the group status of a process vent from Group 1 to Group 2A, or from Group 1 to Group 2B, or from Group 2A to Group 2B, the owner or operator shall include a statement in the next periodic report after the process change that a process change has been made and the new group status of the process vents.

(4) The owner or operator is not required to submit a report of a process change if one of the following conditions is met:

(i) The change does not meet the definition of a process change in § 65.63(f); or

(ii) For a Group 2B process vent, the vent stream flow rate is recalculated according to § 65.63(f) and the recalculated value is less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute); or

(iii) For a Group 2B process vent, the organic HAP or TOC concentration of the vent stream is recalculated according to § 65.63(f), and the recalculated value is less than the applicable value in table 1 to this subpart; or

(iv) For a Group 2B process vent, the TRE index value is recalculated according to § 65.63(f) and the recalculated value is greater than 4.0.

(c) *Parameters for Group 2A without a recovery device.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without using a recovery device shall report the information specified in the approved plan under § 65.63(d).

§§ 65.68–65.79 [Reserved]

TABLE 1 TO SUBPART D OF PART 65.—CONCENTRATION FOR GROUP DETERMINATION

Referencing subpart	Concentration [1]
Subpart III of Part 60	NA.
Subpart NNN of Part 60 ...	300 ppmv of TOC.
Subpart RRR of Part 60 ...	300 ppmv of TOC.
Subpart G of Part 63	50 ppmv of HAP [2].

[1] The 50 ppm HAP concentration cutoff only applies to 40 CFR part 63, subpart G sources. Process vents subject to only 40 CFR part 60, subparts RRR or NNN are eligible for the 300 ppm TOC cutoff. There is no concentration cutoff for subpart III sources. The process vent provisions of subpart DDD are not consolidated under this subpart.

[2] For process vents subject to subpart G of 40 CFR part 63, the owner or operator may measure HAP or TOC concentration with regard to the low concentration exemption provisions of this part.

TABLE 2 TO SUBPART D OF PART 65.—TRE PARAMETERS FOR NSPS REFERENCING SUBPARTS[a]

Halogenated vent stream?	Net heating value (MJ/scm)[b]	Vent stream flow rate (scm/min)[c]	Values of terms for TRE equation: TRE=A * [B + C + D + E + F]						Equation number
			A	B	C	D	E	F	
Yes	0≤ H ≤3.5	Q <14.2	1/E_{TOC}	30.96334	0	0	−0.13064QH	0	1
		14.2≤ Q ≤18.8	1/E_{TOC}	19.18370	0.27580Q	0.757620$Q^{0.88}$	−0.13064QH	0.01025$Q^{0.5}$	2
		18.8< Q ≤699	1/E_{TOC}	20.00563	0.27580Q	0.303870$Q^{0.88}$	−0.13064QH	0.01025$Q^{0.5}$	3
		699< Q ≤1400	1/E_{TOC}	39.87022	0.29973Q	0.303870$Q^{0.88}$	−0.13064QH	0.01449$Q^{0.5}$	4
		1400< Q ≤2100	1/E_{TOC}	59.73481	0.31467Q	0.303870$Q^{0.88}$	−0.13064QH	0.01775$Q^{0.5}$	5
		2100< Q ≤2800	1/E_{TOC}	79.59941	0.32572Q	0.303870$Q^{0.88}$	−0.13064QH	0.02049$Q^{0.5}$	6
		2800< Q ≤3500	1/E_{TOC}	99.46400	0.33456Q	0.303870$Q^{0.88}$	−0.13064QH	0.02291$Q^{0.5}$	7
	H >3.5	Q <14.2	1/E_{TOC}	20.61052	0	0	0	0	8
		14.2≤ Q ≤18.8	1/E_{TOC}	18.84466	0.26742Q	−0.200440$Q^{0.88}$	0	0.01025$Q^{0.5}$	9
		18.8< Q ≤699	1/E_{TOC}	19.66658	0.26742Q	−0.253320$Q^{0.88}$	0	0.01025$Q^{0.5}$	10
		699< Q ≤1400	1/E_{TOC}	39.19213	0.29062Q	−0.253320$Q^{0.88}$	0	0.01449$Q^{0.5}$	11
		1400< Q ≤2100	1/E_{TOC}	58.71768	0.30511Q	−0.253320$Q^{0.88}$	0	0.01775$Q^{0.5}$	12
		2100< Q ≤2800	1/E_{TOC}	78.24323	0.31582Q	−0.253320$Q^{0.88}$	0	0.02049$Q^{0.5}$	13
		2800< Q ≤3500	1/E_{TOC}	97.76879	0.32439Q	−0.253320$Q^{0.88}$	0	0.02291$Q^{0.5}$	14
No	0≤ H ≤0.48	Q <14.2	1/E_{TOC}	11.01250	0	0	−0.17109QH	0	15
		14.2≤ Q ≤1340	1/E_{TOC}	8.54245	0.10555Q	0.090300$Q^{0.88}$	−0.17109QH	0.01025$Q^{0.5}$	16
		1340< Q ≤2690	1/E_{TOC}	16.94388	0.11470Q	0.090300$Q^{0.88}$	−0.17109QH	0.01449$Q^{0.5}$	17
		2690< Q ≤4040	1/E_{TOC}	25.34528	0.12042Q	0.090300$Q^{0.88}$	−0.17109QH	0.01775$Q^{0.5}$	18
	0.48< H ≤1.9	Q <14.2	1/E_{TOC}	13.45630	0	0	−0.16181QH	0	19
		14.2≤ Q ≤1340	1/E_{TOC}	9.25233	0.06105Q	0.319370$Q^{0.88}$	−0.16181QH	0.01025$Q^{0.5}$	20
		1340< Q ≤2690	1/E_{TOC}	18.36363	0.06635Q	0.319370$Q^{0.88}$	−0.16181QH	0.01449$Q^{0.5}$	21
		2690< Q ≤4040	1/E_{TOC}	27.47492	0.06965Q	0.319370$Q^{0.88}$	−0.16181QH	0.01775$Q^{0.5}$	22
	1.9< H ≤3.6	Q <14.2	1/E_{TOC}	7.96988	0	0	0	0	23
		14.2≤ Q ≤1180	1/E_{TOC}	6.67868	0.06943Q	0.025820$Q^{0.88}$	0	0.01025$Q^{0.5}$	24
		1180< Q ≤2370	1/E_{TOC}	13.21633	0.07546Q	0.025820$Q^{0.88}$	0	0.01449$Q^{0.5}$	25
		2370< Q ≤3550	1/E_{TOC}	19.75398	0.07922Q	0.025820$Q^{0.88}$	0	0.01775$Q^{0.5}$	26
	H >3.6	Q <14.2	1/E_{TOC}	6.67868	0	0.02220$Q^{0.88}H^{0.88}$	−0.00707QH	0.02036$H^{0.5}$	27
		Q ≥14.2 and 14.2≤ Q'(H/3.6) ≤1180	1/E_{TOC}	6.67868	0	0.02220$Q^{0.88}H^{0.88}$	−0.00707QH	0.00540$Q^{0.5}H^{0.5}$	28
		Q ≥14.2 and 1180< Q'(H/3.6) ≤2370	1/E_{TOC}	13.21633	0	0.02412$Q^{0.88}H^{0.88}$	−0.00707QH	0.00764$Q^{0.5}H^{0.5}$	29
		Q ≥14.2 and 2370< Q'(H/3.6) ≤3550	1/E_{TOC}	19.75398	0	0.02533$Q^{0.88}H^{0.88}$	−0.00707QH	0.00936$Q^{0.5}H^{0.5}$	30
No	0≤ H <11.2	All	1/E_{TOC}		2.08	0.288$Q^{0.8}$	−0.193QH	− 0.0051E_{TOC}	31
	H ≥11.2	All	1/E_{TOC}		2.08	0.0619$Q^{0.8}$	−0.0043QH	− 0.0043E_{TOC}	32
					2.25Q				
					0.309Q				

[a] Use according to procedures outlined in § 65.64(h).
[b] MJ/scm = mega Joules per standard cubic meter.
[c] scm/min = standard cubic meters per minute.

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TABLE 3 TO SUBPART D OF PART 65.—TRE PARAMETERS FOR HON REFERENCING SUBPARTS[a]

Existing or new?	Halogenated vent stream?	Values of terms for TRE equation: TRE = A * [B + C + D + E + F]						
		A	B	C	D	E	F	Equation number
Existing	Yes	$1/E_{HAP}$	3.995	0.05200Q	0	−0.001769H	$0.0009700E_{TOC}$	33
	No	$1/E_{HAP}$	1.935	0.3660Q	0	−0.007687H	$-0.000733E_{TOC}$	34
		$1/E_{HAP}$	1.492	0.06267Q	0	0.03177H	$-0.001159E_{TOC}$	35
		$1/E_{HAP}$	2.519	0.01183Q	0	0.01300H	$0.04790E_{TOC}$	36
New	Yes	$1/E_{HAP}$	1.0895	0.01417Q	0	−0.000482H	$0.0002645E_{TOC}$	37
	No	$1/E_{HAP}$	0.5276	0.0998Q	0	−0.002096H	$-0.0002000E_{TOC}$	38
		$1/E_{HAP}$	0.4068	0.0171Q	0	0.008664H	$-0.000316E_{TOC}$	39
		$1/E_{HAP}$	0.6868	0.00321Q	0	0.003546H	$0.01306E_{TOC}$	40

[a] Use according to procedures outlined in § 65.64(h).

Subpart E—Transfer Racks

§ 65.80 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from transfer racks where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a transfer rack to fall outside the criteria in the referencing subpart that required the transfer rack to control emission of regulated material, the owner or operator may elect to comply with the provisions for transfer racks not subject to control contained in the referencing subpart instead of the provisions of this subpart.

§ 65.81 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.82 Design requirements.

(a) The owner or operator shall equip each transfer rack with either one of the following equipment:

(1) A closed vent system which routes the regulated material vapors to a control device as provided in § 65.83(a)(1) and (2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4), or to a vapor balance system as provided in § 65.83(a)(3).

(b) Each closed vent system shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material to a control device as provided in § 65.83(a)(1) and (2).

(c) Process piping shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4), or to a vapor balance system as provided in § 65.83(a)(3).

(d) Each closed vent system shall meet the applicable requirements of § 65.143.

(e) If the collected regulated material vapors are routed to a process or a fuel gas system as provided in § 65.83(a)(4), then each owner or operator shall meet the applicable requirements of § 65.142(c).

§ 65.83 Performance requirements.

(a) The owner or operator of the transfer rack shall comply with paragraph (a)(1), (2), (3), or (4) of this section.

(1) *98 Percent or 20 parts per million by volume standard.* Use a control device to reduce emissions of regulated material by 98 weight-percent or to an exit concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen. The owner or operator shall meet the applicable requirements of § 65.142(c). Compliance may be achieved by using any combination of control devices.

(2) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of § 65.142(c).

(3) *Vapor balancing.* Reduce emissions of regulated material using a vapor balancing system designed and operated to collect regulated material vapors displaced from tank trucks or railcars during loading; and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected regulated material vapors to a process. Transfer racks for which the owner or operator is using a vapor balancing system are exempt from the closed vent system design requirements of § 65.82(b) and (d), the halogenated vent stream control requirements of paragraph (b) of this section, the control device operation requirements of § 65.84(b), the monitoring requirements of § 65.86, and the requirements of subpart G of this part.

(4) *Route to a process or fuel gas system.* Route emissions of regulated material to a process or fuel gas system. The owner or operator shall meet the applicable requirements of § 65.142(c) and is exempt from the closed vent system design requirements of paragraphs § 65.82(b) and (d), the halogenated vent stream control requirements of paragraph (b) of this section, the control device operation requirements of § 65.84(b), and the monitoring requirements of § 65.86. If the emissions are routed to a process, the regulated material in the emissions shall predominantly meet one of, or a combination of, the ends specified in the following:

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(b) *Additional control requirements for halogenated vent streams.* Halogenated vent streams from transfer racks that are combusted shall be controlled according to paragraph (b)(1) or (2) of this section. The owner or operator shall either designate the transfer rack vent stream as a halogenated vent stream or shall determine whether the vent stream is halogenated using the procedures specified in § 65.85(c). If determined, the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in § 65.160(d). If the owner or operator designates the vent stream as a halogenated vent stream, then this shall also be recorded and reported in the Initial Compliance Status Report.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(1) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere, and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (ii) of this section, as applicable. The halogenated vent stream shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass emission rate of total hydrogen halides and halogens to 0.45 kilogram per hour (0.99 pound per hour) or less, whichever is less stringent. The owner or operator shall meet the applicable requirements of § 65.142(c).

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the applicable requirements of § 65.142(c).

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other technique may be used to make the vent stream nonhalogenated by reducing the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device used to comply with the requirements of paragraph (a)(1) or (2) of this section. The mass emission rate of halogen atoms contained in organic compounds prior to the combustor shall be determined according to the procedures in § 65.85(c). The owner or operator shall maintain the record specified in § 65.160(d) and submit the report specified in § 65.165(d).

§ 65.84 Operating requirements.

(a) *Closed vent systems or process piping.* An owner or operator of a transfer rack shall operate it in such a manner that emissions are routed through the equipment specified in either paragraph (a)(1) or (2) of this section.

(1) A closed vent system which routes the regulated material vapors to a control device as provided in § 65.83(a)(1) and (2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4) or to a vapor balance system as provided in § 65.83(a)(3).

(b) *Control device operation.* Whenever regulated material emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(c) *Tank trucks and railcars.* The owner or operator shall load regulated material only into tank trucks and railcars that meet one of the following two requirements and shall maintain the records specified in § 65.87:

(1) Have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months as determined by the procedures in § 65.85(a). Vapor-tight means that the pressure in a truck or railcar tank will not drop more than 750 pascals (0.11 pound per square inch) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.65 pound per square inch).

(d) *Pressure relief device.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the loading equipment of each tank truck or railcar shall begin to open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (d) of this section.

(e) *Compatible system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall load regulated material only to tank trucks or railcars equipped with a vapor collection system that is compatible with the transfer rack's closed vent system or process piping.

(f) *Loading while systems connected.* The owner or operator of a transfer rack subject to this subpart shall load regulated material only to tank trucks or railcars whose collection systems are connected to the transfer rack's closed vent systems or process piping.

§ 65.85 Procedures.

(a) *Vapor tightness.* For the purposes of demonstrating vapor tightness to determine compliance with § 65.84(c)(2), the following procedures and equipment shall be used:

(1) The pressure test procedures specified in Method 27 of appendix A of 40 CFR part 60; and

(2) A pressure measurement device that has a precision of ±2.5 millimeters of mercury (0.10 inch) or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(b) *Engineering assessment.* Engineering assessment to determine if a vent stream is halogenated or flow rate of a gas stream includes, but is not limited to, the following examples:

(1) Previous test results, provided the tests are representative of current operating practices at the process unit.

(2) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(3) Maximum flow rate or halogen emission rate specified or implied within a permit limit applicable to the process vent.

(4) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties.

(5) All data, assumptions, and procedures used in the engineering assessment shall be documented.

(c) *Halogenated vent stream determination.* In order to determine whether a vent stream is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated as specified in paragraphs (c)(1) and (2) of this section.

(1) The vent stream concentration of each organic compound containing halogen atoms (parts per million by volume by compound) shall be determined based on any of the following procedures:

(i) Process knowledge that no halogen or hydrogen halides are present in the vent stream; or

(ii) Applicable engineering assessment as specified in paragraph (b) of this section; or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of appendix A of 40 CFR part 60; or

(iv) Any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63.

(2) Equation 85–1 of this section shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 V_s \left(\sum_{j=1}^{n} \sum_{i=1}^{m} C_j * L_{ji} * M_{ji} \right) \quad \text{(Eq. 85-1)}$$

Where:

E = Mass of halogen atoms, dry basis, kilograms per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute/hour), where standard temperature is 20° C.

V_s = Flow rate of gas stream, dry standard cubic meters per minute, determined according to Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate, or determined using engineering assessment as specified in paragraph (b) of this section.

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

C_j = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji} = Number of atoms of halogen i in compound j of the gas stream.

M_{ji} = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

§ 65.86 Monitoring.

The owner or operator of a transfer rack equipped with a closed vent system and control device pursuant to § 65.83(a)(1) or (2) shall monitor the closed vent system and control device as required under the applicable paragraphs specified in § 65.142(c).

§ 65.87 Recordkeeping provisions.

The owner or operator of a transfer rack shall record that either the verification of U.S. Department of Transportation (DOT) tank certification or Method 27 of appendix A of 40 CFR part 60 testing required in § 65.84(c) has been performed. Various methods for the record of verification can be used, such as a check off on a log sheet, a list of DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on-site that do not have the appropriate documentation.

§§ 65.88–65.99 [Reserved]

Subpart F—Equipment Leaks

§ 65.100 Applicability.

(a) *Equipment subject to this subpart.* The provisions of this subpart and subpart A of this part apply to equipment that contains or contacts regulated material. Compliance with this subpart instead of the referencing subpart does not alter the applicability of the referencing subpart. This subpart applies only to the equipment to which the referencing subpart applies. This part does not extend applicability to equipment that is not regulated by the referencing subpart.

(b) *Equipment in vacuum service.* Equipment in vacuum service is excluded from the requirements of this subpart.

(c) *Equipment in service less than 300 hours per calendar year.* Equipment intended to be in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 65.106 through 65.115 and § 65.117 if it is identified as required in § 65.103(b)(6).

(d) *Lines and equipment not containing process fluids.* Lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities and other nonprocess lines, such as heating and cooling systems that do not combine their materials with those in the processes they serve, are not considered to be part of a process unit.

§ 65.101 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.102 Alternative means of emission limitation.

(a) *Performance standard exemption.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 65.111(b) for pressure relief devices or § 65.112(f) for compressors operating under the alternative compressor standard.

(b) *Requests by owners or operators.* An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 65.106 through 65.115 as provided in paragraph (d) of this section. If the Administrator makes a determination that a means of emission limitation is a permissible alternative, the owner or operator shall either comply with the alternative or comply with the requirements of §§ 65.106 through 65.115.

(c) *Requests by manufacturers of equipment.* (1) Manufacturers of equipment used to control equipment leaks of a regulated material may apply to the Administrator for approval of an alternative means of emission limitation that achieves a reduction in emissions of the regulated material equivalent to the reduction achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraph (d) of this section.

(d) *Permission to use an alternative means of emission limitation.* Permission to use an alternative means of emission limitation shall be governed by the procedures in paragraph (d)(1) through (4) of this section.

(1) Where the standard is an equipment, design, or operational requirement, the following requirements apply:

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(iii) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve at least the same emission reduction as the equipment, design, and operational requirements of this subpart.

(2) Where the standard is a work practice, the following requirements apply:

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying test data for the alternative.

(ii) The owner or operator shall demonstrate the emission reduction achieved by the required work practice and the proposed alternative means of emission limitation.

(iii) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (d)(2)(iv) of this section.

(iv) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(3) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(4) If in the judgment of the Administrator an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the **Federal Register** using the procedures pursuant to § 65.8(a).

§ 65.103 Equipment identification.

(a) *General equipment identification.* Equipment subject to this subpart shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit boundaries, by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 65.106 through 65.115 shall be specifically identified as required in paragraphs (b)(1) through (6) of this section, as applicable. Paragraph (b) of this section does not apply to an owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train pursuant to § 65.117.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provisions of § 65.108(e)(2), and instrumentation systems identified pursuant to paragraph (b)(5) of this section, identify the connectors subject to the requirements of this subpart. Connectors subject to § 65.108(e)(3) shall be distinguished from other connectors. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated. With respect to connectors, the identification shall be complete no later than the completion of the initial survey required by § 65.108(a).

(2) [Reserved]

(3) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device under the provisions of § 65.107(e)(3) (pumps in light liquid service), § 65.109(e)(3) (agitators), § 65.111(d) (pressure relief devices in gas/vapor service), § 65.112(e) (compressors), or § 65.118 (alternative means of emission limitation for enclosed-vented process units).

(4) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks under the provisions of § 65.111(e).

(5) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of this subpart. Individual components in an instrumentation system need not be identified.

(6) *Equipment in service less than 300 hours per calendar year.* Identify either by list, location (area or group), or other method, equipment in regulated material service less than 300 hours per calendar year within a process unit subject to the provisions of this subpart.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor.* (1) *Designation and criteria for unsafe-to-monitor.* Valves meeting the provisions of § 65.106(e)(1), pumps meeting the provisions of § 65.107(e)(6), connectors meeting the provisions of § 65.108(e)(1), and agitators meeting the provisions of § 65.109(e)(7) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 65.106(e)(2) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) of this section apply. Agitators meeting the provisions of § 65.109(e)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) of this section apply.

(i) *Valves.* The owner or operator of the valve: (A) Determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface, or it is not accessible in a safe manner when it is in regulated material service, and the process unit within which the valve is located is a regulated source for which the owner or operator commenced construction, reconstruction, or modification prior to the compliance date of the referencing subpart; or

(B) Designates less than 3 percent of the total number of valves within the process unit as difficult-to-monitor.

(ii) *Agitators.* The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface, or it is not accessible in a safe manner when it is in regulated material service.

(3) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section and the planned schedule for monitoring this equipment. The owner or operator shall record the identity of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section, the planned schedule for monitoring this equipment, and an explanation why the equipment is difficult-to-monitor.

(4) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(d) *Special equipment designations: Equipment that is unsafe to repair.*—(1) *Designation and criteria.* Connectors subject to the provisions of § 65.105(e) may be designated unsafe to repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart, and if the connector will be repaired before the end of the next process unit shutdown as specified in § 63.105(e).

(2) *Identification of equipment.* The identity of connectors designated as unsafe to repair and an explanation why the connector is unsafe to repair shall be recorded.

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(e) *Special equipment designations: Compressors operating with an instrument reading of less than 500 parts per million.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million under the provisions of § 65.112(f).

(f) *Special equipment designations: Equipment in heavy liquid service.* The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (f)(1) or (2) of this section as provided in paragraph (f)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of "in light liquid service." Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

§ 65.104 Instrument and sensory monitoring for leaks.

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.106(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 65.107(b).

(iii) Connectors in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.108(b).

(iv) Agitators in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.109(b).

(v) Pressure relief devices in gas/vapor service shall be monitored pursuant to § 65.111(b) and (c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million as described in § 65.103(e) shall be monitored pursuant to § 65.112(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to § 65.107(b)(4) and (e)(1)(v).

(ii) Agitators in gas/vapor service and in light liquid service shall be observed pursuant to § 65.109(b)(3) or (e)(1)(v).

(b) *Instrument monitoring methods.* Instrument monitoring as required under this subpart shall comply with the requirements specified in paragraphs (b)(1) through (6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of appendix A of 40 CFR part 60, except as otherwise provided in this section.

(2) *Detection instrument performance criteria.* (i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of appendix A of 40 CFR part 60, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual organic compound in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not organic hazardous air pollutants or volatile organic compounds, the response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted. Maintain the record specified by § 65.119(b)(8).

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of appendix A of 40 CFR part 60.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air) and the gases specified in paragraph (b)(4)(i) of this section except as provided in paragraph (b)(4)(ii) of this section.

(i) Mixtures of methane in air at a concentration no more than 2,000 parts per million greater than the leak definition concentration of the equipment monitored. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

(ii) A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (5) of this section may still be used to qualify initially for less frequent monitoring under the provisions in § 65.106(a)(2), (b)(3), or (b)(4) for valves or § 65.108(b)(3) for connectors, provided the departures from the criteria or from the specified monitoring frequency of § 65.106(b)(3) or (4) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6 weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring using a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

(c) *Instrument monitoring readings and background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (5) of this section. In such cases, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard). If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures in paragraphs (b)(1) through (5) of this section.

(1) The requirements of paragraphs (b)(1) through (5) of this section shall apply.

(2) The background level shall be determined using the procedures in Method 21 of appendix A of 40 CFR part 60.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of appendix A of 40 CFR part 60.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard).

(d) *Sensory monitoring methods.* Sensory monitoring consists of visual, audible, olfactory, or any other detection method used to determine a potential leak to the atmosphere.

(e) *Leaking equipment identification and records.* (1) When each leak is detected, a weatherproof and readily visible identification shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in paragraphs (e)(2)(i) and (ii) of this section shall be recorded and kept pursuant to § 65.4(a), except the information for valves complying with the 2-year monitoring period allowed under § 65.106(b)(3)(v), and connectors complying with the 8-year monitoring period allowed under § 65.108(b)(3)(iii) shall be kept 5 years beyond the date of the last use of the information to set a monitoring period.

(i) The instrument, the equipment identification, and the instrument operator's name, initials, or identification number if a leak is detected or confirmed by instrument monitoring.

(ii) The date the leak was detected.

§ 65.105 Leak repair.

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (d) or (e) of this section. A first attempt at repair as defined in subpart A of this part shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) [Reserved]

(c) *Leak identification removal.* (1) *Valves and connectors.* The leak identification on a valve in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 65.106(d)(2) and no leak has been detected during that monitoring. The leak identification on a connector in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 65.108(b)(3)(iv) and no leak has been detected during that monitoring.

(2) *Other equipment.* The identification that has been placed pursuant to § 65.104(e)(1) on equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 65.108(b)(3)(iv), may be removed after it is repaired.

(d) *Delay of repair.* Delay of repair is allowed for any of the conditions specified in paragraphs (d)(1) through (5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why repair within 15 days was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a process unit shutdown. Repair of this equipment shall occur as soon as practical, but no later than the end of the next process unit shutdown, except as provided in paragraph (d)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the following provisions are met:

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair; and

(ii) When repair procedures are effected, the purged material is collected and routed to a process or fuel gas system or is collected and destroyed or recovered in a control device complying with § 65.115.

(4) Delay of repair for pumps is also allowed if the provisions of paragraphs (d)(4)(i) and (ii) of this section are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined under the provisions of § 65.116(d) will provide better performance or one of the following specifications are met:

(A) A dual mechanical seal system that meets the requirements of § 65.107(e)(1) will be installed;

(B) A pump that meets the requirements of § 65.107(e)(2) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 65.107(e)(3) will be installed.

(ii) Repair is completed as soon as practical but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit shutdown will not be allowed unless the third process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

(e) *Unsafe-to-repair: Connectors.* Any connector that is designated as described in § 65.103(d) as an unsafe-to-repair connector is exempt from the requirements of § 65.108(d) and paragraph (a) of this section if the provisions of § 65.103(d) are met.

(f) *Leak repair records.* For each leak detected, the information specified in paragraphs (f)(1) through (5) of this section shall be recorded and kept pursuant to § 65.4(a).

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of appendix A of 40 CFR part 60 at the time the leak is successfully repaired or determined to be nonrepairable.

(4) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in the paragraphs (f)(4)(i) and (ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/

shutdown/malfunction plan required by § 65.6 for the source or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.

(5) Dates of process unit shutdowns that occur while the equipment is unrepaired.

§ 65.106 Standards: Valves in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to qualify initially for less frequent monitoring is governed by the provisions of § 65.104(b)(6).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b) or paragraph (e) of this section, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) and/or (b)(4) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 500 parts per million or greater.

(3) *Monitoring frequency.* The owner or operator shall monitor valves for leaks at the intervals specified in paragraphs (b)(3)(i) through (v) of this section and shall keep the record specified in paragraph (b)(3)(vi) of this section.

(i) If at least the greater of two valves or 2 percent of the valves in a process unit leak, as calculated according to paragraph (c) of this section, the owner or operator shall monitor each valve once per month.

(ii) At process units with less than the greater of two leaking valves or 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter except as provided in paragraphs (b)(3)(iii) through (v) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart and meeting the criteria of either § 65.104(b)(1) through (5) or § 65.104(b)(6) may be used to qualify initially for less frequent monitoring under paragraphs (b)(3)(iii) through (v) of this section.

(iii) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(iv) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(v) At process units with less than 0.25 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 years.

(vi) The owner or operator shall keep a record of the monitoring schedule for each process unit.

(4) *Valve subgrouping.* For a process unit or a group of process units to which this subpart applies, an owner or operator may choose to subdivide the valves in the applicable process unit or group of process units and apply the provisions of paragraph (b)(3) of this section to each subgroup. If the owner or operator elects to subdivide the valves in the applicable process unit or group of process units, then the provisions of paragraphs (b)(4)(i) through (viii) of this section apply.

(i) The overall performance of total valves in the applicable process unit or group of process units to be subdivided shall be less than 2 percent leaking valves, as detected according to paragraphs (b)(1) and (2) of this section and as calculated according to paragraphs (c)(1)(ii) and (c)(2) of this section.

(ii) The initial assignment or subsequent reassignment of valves to subgroups shall be governed by the following provisions:

(A) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than 1 year of monitoring data or valves not monitored within the last 12 months must be placed initially into the most frequently monitored subgroup until at least 1 year of monitoring data have been obtained.

(B) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with that less frequently monitored subgroup's associated percent leaking valves calculation for that monitoring event.

(C) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (for example, for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(iii) The owner or operator shall determine every 6 months if the overall performance of total valves in the applicable process unit or group of process units is less than 2 percent leaking valves and so indicate the performance in the next periodic report. If the overall performance of total valves in the applicable process unit or group of process units is 2 percent leaking valves or greater, the owner or operator shall no longer subgroup and shall revert to the program required in paragraphs (b)(1) through (3) of this section for that applicable process unit or group of process units. An owner or operator can again elect to comply with the valve subgrouping procedures of paragraph (b)(4) of this section if future overall performance of total valves in the process unit or group of process units is again less than 2 percent. The overall performance of total valves in the applicable process unit or group of process units shall be calculated as a weighted average of the percent leaking valves of each subgroup according to Equation 106–1 of this section:

$$\%V_{LO} = \frac{\sum_{i=1}^{n}(\%V_{Li} \times V_i)}{\sum_{i=1}^{n} V_i} \qquad \text{(Eq. 106-1)}$$

Where:

$\%V_{LO}$ = Overall performance of total valves in the applicable process unit or group of process units.

$\%V_{Li}$ = Percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (c)(1)(ii) and (c)(2) of this section.

V_i = Number of valves in subgroup i.

n = Number of subgroups.

(iv) The owner or operator shall maintain the following records:

(A) Which valves are assigned to each subgroup;

(B) Monitoring results and calculations made for each subgroup for each monitoring period;

(C) Which valves are reassigned, the last monitoring result prior to reassignment, and when they were reassigned; and

(D) The results of the semiannual overall performance calculation required in paragraph (b)(4)(iii) of this section.

(v) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to begin or end subgrouping valves. The notification shall identify the participating process units and the number of valves assigned to each subgroup, if applicable. The notification may be included in a periodic report if the periodic report is submitted no later than 30 days prior to the beginning of the next monitoring period.

(vi) The owner or operator shall submit in the periodic reports the following information:

(A) Total number of valves in each subgroup; and

(B) Results of the semiannual overall performance calculation required by paragraph (b)(4)(iii) of this section.

(vii) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (c)(2) of this section shall be used.

(viii) Except for the overall performance calculations required by paragraphs (b)(4)(i) and (iii) of this section, each subgroup shall be treated as if it were a separate process unit for the purposes of applying the provisions of this section.

(c) *Percent leaking valves calculation*—(1) *Calculation basis and procedures.* (i) The owner or operator shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis, and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(4)(i) of this section.

(ii) The percent leaking valves for each monitoring period for each process unit or valve subgroup, as provided in paragraph (b)(4) of this section, shall be calculated using Equation 106–2 of this section:

$$\%V_L = (V_L / V_T) \times 100 \qquad \text{(Eq. 106-2)}$$

Where:

$\%V_L$ = Percent leaking valves.

V_L = Number of valves found leaking, including those valves found leaking pursuant to paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section and excluding nonrepairable valves as provided in paragraph (c)(3) of this section.

V_T = The sum of the total number of valves monitored.

(2) *Calculation for monitoring frequency.* When determining monitoring frequency for each process unit or valve subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods. When determining monitoring frequency for each process unit or valve subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three monitoring periods.

(3) *Nonrepairable valves.* (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (c)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking valves calculation in a previous period) up to a maximum of 1 percent of the total number of valves in regulated material service at a process unit may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in regulated material service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in regulated material service shall be included in the calculation of percent leaking valves.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(2) After a leak determined under paragraph (b) or (e)(2) of this section has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by paragraph (d) of this section is in addition to the monitoring required to satisfy the definition of repair.

(i) The monitoring shall be conducted as specified in § 65.104(b) and (c), as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of paragraph (d) of this section if the timing of the monitoring period coincides with the time specified in paragraph (d) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (d) of this section regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (d) of this section.

(iii) If a leak is detected by monitoring that is conducted under paragraph (d)(2) of this section, the owner or operator shall comply with the following provisions to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c)(1)(ii) of this section:

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves*—(1) *Unsafe-to-monitor valves.* Any valve that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor valve is exempt from the requirements of paragraph (b) and (d)(2) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(2) *Difficult-to-monitor valves.* Any valve that is designated as described in § 65.103(c)(2) as a difficult-to-monitor valve is exempt from the requirements of paragraph (b) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(3) *Less than 250 valves.* Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the requirements for monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter or comply with paragraph (b)(3)(iii), (iv), or (v) of this section except as provided in paragraphs (e)(1) and (2) of this section.

§ 65.107 Standards: Pumps in light liquid service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b) or paragraph (e) of this section, the owner or operator

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shall monitor each pump to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method.* The pumps shall be monitored monthly to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* The following leak definitions determined through instrument readings apply:

(i) 5,000 parts per million or greater for pumps handling polymerizing monomers;

(ii) 2,000 parts per million or greater for pumps in food/medical service; and

(iii) 1,000 parts per million or greater for all other pumps.

(3) *Leak repair exception.* For pumps to which a 1,000 parts per million leak definition applies, repair is not required unless an instrument reading of 2,000 parts per million or greater is detected.

(4) *Visual inspection.* Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall comply with either of the following procedures:

(i) The owner or operator shall monitor the pump as specified in § 65.104(b) and (c) unless the pump has already been monitored since the last routine monthly monitoring required by paragraph (b)(1) of this section. If monitoring is performed and the instrument reading indicates a leak as specified in paragraph (b)(2) of this section, a leak is detected and the leak shall be repaired using the procedures in § 65.105, except as specified in paragraph (b)(3) of this section; or

(ii) The owner or operator shall eliminate the visual indications of liquids dripping.

(c) *Percent leaking pumps calculation.* (1) The owner or operator shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(2) If, when calculated on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or three pumps in a process unit leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § 65.116.

(3) The number of pumps at a process unit shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit within 1 month after startup of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by Equation 107–1 of this section:

$$\%P_L = \left((P_L - P_S)/(P_T - P_S)\right) * 100 \qquad \text{(Eq. 107-1)}$$

Where:

$\%P_L$ = Percent leaking pumps.

P_L = Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b)(1) of this section.

P_S = Number of pumps leaking within 1 month of startup during the current monitoring period.

P_T = Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1), (e)(2), (e)(3), and (e)(6) of this section.

(d) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(e) *Special provisions for pumps.*—(1) *Dual mechanical seal pumps.* Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (viii) of this section are met.

(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(ii) Each dual mechanical seal system shall meet the following three requirements:

(A) Operated with the barrier fluid at a pressure that is at all times (except periods of start-up, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 65.115; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow either one of the following procedures prior to the next required inspection:

(A) The owner or operator shall monitor the pump as specified in § 65.104(b) and (c) to determine if there is a leak of regulated material in the barrier fluid. If an instrument reading of 1,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 65.105.

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the pump to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(4) and (e)(1)(v) of this section and the daily requirements of paragraph (e)(1)(vii) of this section provided that each pump is visually inspected as often as practical and at least monthly.

(5) *Ninety percent exemption.* If more than 90 percent of the pumps at a process unit meet the criteria in either paragraph (e)(1) or (2) of this section, the process unit is exempt from the percent leaking calculation in paragraph (c) of this section.

(6) *Unsafe-to-monitor pumps.* Any pump that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor pump is exempt from the requirements of paragraph (b) of this section, the monitoring and inspection requirements of paragraphs (e)(1)(v) through (viii) of this section, and the owner or operator shall monitor and repair the pump according to the written plan specified in § 65.103(c)(4).

§ 65.108 Standards: Connectors in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* Except as allowed in § 65.102(b) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in each process unit initially for leaks by either 12 months after the implementation date as specified in § 65.1(f) or 12 months after initial startup, whichever is later. If all connectors in each process unit have been monitored for leaks prior to the implementation date specified in § 65.1(f), no initial monitoring is required provided either no process changes have been made since the monitoring or the owner or operator can determine that the results of the monitoring, with or without adjustments, reliably demonstrate compliance despite process changes. If required to monitor because of a process change, the owner or operator is required to monitor only those connectors involved in the process change.

(b) *Leak detection.* Except as allowed in § 65.102(b) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in gas/vapor and light liquid service as specified in paragraphs (a) and (b)(3) of this section.

(1) *Monitoring method.* The connectors shall be monitored to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* If an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.

(3) *Monitoring periods.* The owner or operator shall perform monitoring, subsequent to the initial monitoring required in paragraph (a) of this section, as specified in paragraphs (b)(3)(i) through (iii) of this section, and shall comply with the requirements of paragraphs (b)(3)(iv) and (v) of this section. The required period in which monitoring must be conducted shall be determined from paragraphs (b)(3)(i) through (iii) of this section using the monitoring results from the preceding monitoring period. The percent leaking connectors shall be calculated as specified in paragraph (c) of this subpart.

(i) If the percent leaking connectors in the process unit was greater than or equal to 0.5 percent, then monitor within 12 months (1 year).

(ii) If the percent leaking connectors in the process unit was greater than or equal to 0.25 percent but less than 0.5 percent, then monitor within 4 years. An owner or operator may comply with the requirements of paragraph (b)(3)(ii) of this section by monitoring at least 40 percent of the connectors within 2 years of the start of the monitoring period, provided all connectors have been monitored by the end of the 4-year monitoring period.

(iii) If the percent leaking connectors in the process unit was less than 0.25 percent, then monitor as provided in paragraph (b)(3)(iii)(A) of this section and either paragraph (b)(3)(iii)(B) or (C) of this section, as appropriate.

(A) An owner or operator shall monitor at least 50 percent of the connectors within 4 years of the start of the monitoring period.

(B) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is greater than or equal to 0.35 percent of the monitored connectors, the owner or operator shall monitor as soon as practical, but within the next 6 months, all connectors that have not yet been monitored during the monitoring period. At the conclusion of monitoring, a new monitoring period shall be started pursuant to paragraph (b)(3) of this section, based on the percent leaking connectors of the total monitored connectors.

(C) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is less than 0.35 percent of the monitored connectors, the owner or operator shall monitor all connectors that have not yet been monitored within 8 years of the start of the monitoring period.

(iv) If, during the monitoring conducted pursuant to paragraphs (b)(3)(i) through (iii) of this section, a connector is found to be leaking, it shall be re-monitored once within 90 days after repair to confirm that it is not leaking.

(v) The owner or operator shall keep a record of the start date and end date of each monitoring period under this section for each process unit.

(c) *Percent leaking connectors calculation.* For use in determining the monitoring frequency as specified in paragraphs (a) and (b)(3) of this section, the percent leaking connectors as used in paragraphs (a) and (b)(3) of this section shall be calculated by using Equation 108–1 of this section:

$$\%C_L = C_L/C_t * 100 \qquad \text{(Eq. 108-1)}$$

Where:

$\%C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b)(3)(i) through (b)(3)(iii) of this section.

C_L = Number of connectors measured at 500 parts per million or greater by the method specified in § 65.104(b).

C_t = Total number of monitored connectors in the process unit.

(d) *Leak repair.* If a leak is detected pursuant to paragraphs (a) and (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(e) *Special provisions for connectors.*—(1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 65.103(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraphs (a) and (b) of this section and the owner or operator shall monitor according to the written plan specified in § 65.103(c)(4).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (for example, porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (b) of this section and from the recordkeeping and reporting requirements of §§ 65.119 and 65.120. An inaccessible connector is one that

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meets any of the following provisions, as applicable:

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground;

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines or would risk damage to equipment.

(ii) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the visual, audible, olfactory, or other indications of a leak to the atmosphere shall be eliminated as soon as practical.

(3) *Connectors referenced from 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V.* For sources referenced to this part from 40 CFR part 61, subpart VV, or from 40 CFR part 61, subpart V, connectors are exempt from the requirements of paragraphs (a) through (d) of this section and the owner or operator shall comply with the following paragraphs:

(i) Connectors shall be monitored within 5 days by the method specified in § 65.104(b) and (c) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(ii) If an instrument reading of 500 parts per million or greater is measured, a leak is detected.

(iii) When a leak is detected, it shall be repaired using the procedures in § 65.105, as applicable.

§ 65.109 Standards: Agitators in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection.* (1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 65.104(b) and (c), except as provided in § 65.102(b) or paragraph (e) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* Each agitator seal shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the agitator seal, the owner or operator shall comply with either of the following procedures prior to the next required inspection:

(i) The owner or operator shall monitor the agitator seal as specified in § 65.104(b) and (c) to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired according to paragraph (d) of this section.

(ii) The owner or operator shall eliminate the indications of liquids dripping from the agitator seal.

(c) [Reserved]

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 65.105(a).

(e) *Special provisions for agitators.* (1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section provided the requirements specified in paragraphs (e)(1)(i) through (vi) of this section are met.

(i) Each dual mechanical seal system shall meet any one of the following requirements:

(A) Operated with the barrier fluid at a pressure that is at all times (except during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow either of the following procedures prior to the next required inspection:

(A) The owner or operator shall monitor the agitator seal as specified in § 65.104(b) and (c) to determine the presence of regulated material in the barrier fluid. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the following requirements:

(A) The owner or operator shall determine based on design considerations and operating experience criteria that indicates failure of the seal system, the barrier fluid system, or both and that are applicable to the presence and frequency of drips. If indications of liquids dripping from the agitator seal exceed the criteria, or if based on the criteria the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the agitator to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of this section provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(2) as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 65.103(c)(4).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (b) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 65.103(c)(4).

§ 65.110 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b), the owner or operator shall comply with the following:

(1) *Monitoring method.* Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 65.104(b) and (c) if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method, unless the potential leak is repaired as required in paragraph (c) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for all other pumps (including pumps in food/medical service), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured pursuant to paragraph (b)(1) of this section, a leak is detected and it shall be repaired pursuant to § 65.105, as applicable.

(c) *Leak repair.* For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 65.104(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

§ 65.111 Standards: Pressure relief devices in gas/vapor service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, each pressure relief device in gas/vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

(2) The pressure relief device shall be monitored no later than 5 calendar days after the pressure release and being returned to regulated material service to confirm the condition indicated by an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including maximum instrument reading measured during the monitoring and the background level measured if the instrument reading is adjusted for background.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pressure relief device to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a new rupture disk upstream of the pressure relief device as soon as practical after each pressure release, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

§ 65.112 Standards: Compressors.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere except as provided in § 65.102(b) and paragraphs (e) and (f) of this section. Each compressor seal system shall meet any one of the following requirements:

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of start-up, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.* (1) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent*

system. A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of § 65.115.

(f) *Alternative compressor standard.* (1) Any compressor that is designated as described in § 65.103(e) shall operate at all times with an instrument reading of less than 500 parts per million. A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

§ 65.113 Standards: Sampling connection systems.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system except as provided in paragraph (d) of this section or § 65.102(b). Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system as required in paragraph (b) of this section shall meet the following applicable requirements:

(1) The system shall return the purged process fluid directly to a process line or to a fuel gas system; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of § 65.115; or

(4) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(i) A waste management unit as defined in 40 CFR 63.111, if the waste management unit is complying with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams. For sources referenced to this part from 40 CFR part 63, subpart H, and if the purged process fluid does not contain any organic HAP listed in table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to Group 1 wastewater steams provided the facility has a National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility; or

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261; and

(5) Containers that are part of a closed-purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems.* In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

§ 65.114 Standards: Open-ended valves or lines.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Equipment and operational requirements.* (1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve except as provided in § 65.102(b) and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption.* Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption.* Open-ended valves or lines containing materials that would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

§ 65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Compliance standard.* (1) Owners or operators of closed vent systems and nonflare control devices used to comply with provisions of this subpart shall design and operate the closed vent systems and nonflare control devices to reduce emissions of regulated material with an efficiency of 95 percent or greater, or to reduce emissions of regulated material to a concentration of 20 parts per million by volume or, for an enclosed combustion device, to provide a minimum residence time of 0.50 second at a minimum of 760 °C (1400 °F). Owners and operators of closed vent systems and nonflare control devices used to comply with this part shall comply with the provisions of § 65.142(d), except as provided in § 65.102(b). Note that this includes the startup, shutdown, and malfunction plan specified in § 65.6.

(2) Owners or operators of closed vent systems and flares used to comply with the provisions of this subpart shall design and operate the flare as specified in § 65.142(d), except as provided in § 65.102(b). Note that this includes the startup, shutdown, and malfunction plan specified in § 65.6.

(3) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply with the provisions of § 65.142(d), except as provided in § 65.102(b).

§ 65.116 Quality improvement program for pumps.

(a) *Criteria.* If, on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit (or plant site) or three pumps in a process unit (or plant site) leak, the owner or operator shall comply with the following requirements:

(1) Pumps that are in food/medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food/medical or polymerizing monomer service shall comply with all requirements of this section.

(b) *Exiting the QIP.* The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or three pumps calculated as a 6-month rolling average in the process unit (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § 65.107.

(c) *Resumption of QIP.* If in a subsequent monitoring period, the process unit (or plant site) has the greater of either 10 percent of the pumps leaking or three pumps leaking (calculated as a 6-month rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) *QIP requirements.* The quality improvement program shall meet the requirements specified in paragraphs (d)(1) through (8) of this section.

(1) The owner or operator shall comply with the requirements in § 65.107.

(2) *Data collection.* The owner or operator shall collect the data specified in paragraphs (d)(2)(i) through (v) of this section and maintain records for each pump in each process unit (or plant site) subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit or plant site basis.

(i) Pump type (for example, piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (for example, external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected, the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit (or plant site) remains in the quality improvement program.

(4) *Pump or pump seal inspection.* The owner or operator shall inspect all pumps or pump seals that exhibited frequent seal failures and were removed from the process unit due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5) *Data analysis.* (i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process-specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit (or plant site).

(iii) The analysis shall include consideration of the following information:

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intracompany program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using data collected for a minimum of 6 months. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) *Trial evaluation program.* A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial evaluation program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in paragraph (e)(3)(ii) of this section.

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or two pumps for programs involving single process units, and the lesser of 1 percent or five pumps for programs involving a plant site or groups of process units. The minimum number of pumps or pump seal technologies in a trial program shall be one.

(iii) The trial evaluation program shall specify and include documentation of the following information:

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(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted at least for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience are obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated, or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) *Quality assurance program.* Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance, as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable; the findings of the trial evaluation required in paragraph (d)(6) of this section; and the operating conditions in the process unit. The quality assurance program shall be updated each year as long as the process unit has the greater of either 10 percent or more leaking pumps or has three leaking pumps.

(i) The quality assurance program shall meet the following requirements:

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or by a designated representative; and

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate so that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees, and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) *Pump or pump seal replacement.* Beginning at the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace as described in paragraphs (d)(8)(i) and (ii) of this section the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance that, when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § 65.107 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next planned process unit shutdown provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

(e) *QIP recordkeeping.* In addition to the records required by paragraph (d)(2) of this section, the owner or operator shall maintain records for the period of the quality improvement program for the process unit as specified in paragraphs (e)(1) through (6) of this section.

(1) When using a pump quality improvement program as specified in this section, record the following information:

(i) The rolling average percent leaking pumps.

(ii) Documentation of all inspections conducted under the requirements of paragraph (d)(4) of this section and any recommendations for design or specification changes to reduce leak frequency.

(iii) The beginning and ending dates while meeting the requirements of paragraph (d) of this section.

(2) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(3) Records of all analyses required in paragraph (d) of this section. The records will include the following information:

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions, and the maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies and documentation of the performance trial program items required under paragraph (d)(6)(iii) of this section.

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(4) All records documenting the quality assurance program for pumps as specified in paragraph (d)(7) of this section, including records indicating that all pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance.

(5) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in paragraph (d)(8) of this section.

(6) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

§ 65.117 Alternative means of emission limitation: Batch processes.

(a) *General requirement.* As an alternative to complying with the requirements of §§ 65.106 through 65.114 and § 65.116, an owner or operator of a batch process that operates in regulated material service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § 65.102(b). The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks. The owner or operator may switch among the alternatives provided the change is documented as specified in paragraph (b)(7) of this section.

(b) *Pressure testing of the batch equipment.* The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart:

(1) *Reconfiguration.* Each time equipment is reconfigured for production of a different product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before regulated material is first fed to the equipment and the equipment is placed in regulated material service.

(i) When the batch product-process equipment train is reconfigured to produce a different product, pressure testing is required only for the new or disturbed equipment.

(ii) Each batch product-process that operates in regulated material service during a calendar year shall be pressure-tested at least once during that calendar year.

(iii) Pressure testing is not required for routine seal breaks, such as changing hoses or filters, that are not part of the reconfiguration to produce a different product or intermediate.

(2) *Testing procedures.* The batch product-process equipment shall be tested either using the procedures specified in paragraph (b)(5) of this section for pressure vacuum loss or with a liquid using the procedures specified in paragraph (b)(6) of this section.

(3) *Leak detection.* (i) For pressure or vacuum tests using a gas, a leak is detected if the rate of change in pressure is greater than 6.9 kilopascals (1 pound per square inch gauge) in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4) *Leak repair.* (i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before startup of the process.

(ii) If a batch product-process fails the retest (the second of two consecutive pressure tests), it shall be repaired as soon as practical but not later than 30 calendar days after the second pressure test, except as specified in paragraph (e) of this section.

(5) *Gas pressure test procedure for pressure or vacuum loss.* The following procedures shall be used to pressure test batch product-process equipment for pressure or vacuum loss to demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section:

(i) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(ii) Once the test pressure is obtained, the gas source or vacuum source shall be shut off.

(iii) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop or of pressure rise was exceeded. The pressure in the batch product-process equipment shall be measured after the gas or vacuum source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using Equation 117–1 of this section:

$$\Delta(P/t) = \left(\left|P_f - P_i\right|\right)/\left(t_f - t_i\right) \qquad \text{(Eq. 117-1)}$$

Where:

$\Delta(P/t)$ = Change in pressure, pounds per square inch gauge/hr.

P_f = Final pressure, pounds per square inch gauge.

P_i = Initial pressure, pounds per square inch gauge.

$t_f - t_i$ = Elapsed time, hours.

(iv) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) that has a precision of ±2.5 millimeters mercury (0.10 inch of mercury) in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device. If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least ±10 percent of the test pressure

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of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 pound per square inch gauge per hour (7 kilopascals per hour).

(v) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting a pressure loss or rise.

(6) *Pressure test procedure using test liquid.* The following procedures shall be used to pressure test batch product-process equipment using a liquid to demonstrate compliance with the requirements of paragraph (b)(3)(ii) of this section:

(i) The batch product-process equipment train or section of the equipment train shall be filled with the test liquid (for example, water, alcohol) until normal operating pressure is obtained. Once the equipment is filled, the liquid source shall be shut off.

(ii) The test shall be conducted for a period of at least 60 minutes unless it can be determined in a shorter period of time that the test is a failure.

(iii) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

(iv) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting losses of fluid.

(7) *Pressure testing recordkeeping.* The owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train to demonstrate compliance with this subpart shall maintain records of the information specified in paragraphs (b)(7)(i) through (v) of this section.

(i) The identification of each product or product code produced during the calendar year. It is not necessary to identify individual items of equipment in a batch product-process equipment train.

(ii) Physical tagging of the equipment to identify that it is in regulated material service and subject to the provisions of this subpart is not required. Equipment in a batch product-process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(iii) The dates of each pressure test required in paragraph (b) of this section, the test pressure, and the pressure drop observed during the test.

(iv) Records of any visible, audible, or olfactory evidence of fluid loss.

(v) When a batch product-process equipment train does not pass two consecutive pressure tests, as specified in paragraph (b)(4)(ii) of this section, the following information shall be recorded in a log and kept for 2 years:

(A) The date of each pressure test and the date of each leak repair attempt;

(B) Repair methods applied in each attempt to repair the leak;

(C) The reason for the delay of repair;

(D) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment; and

(E) The date of successful repair.

(c) *Equipment monitoring.* The following requirements shall be met if an owner or operator elects to monitor the equipment in a batch process to detect leaks by the method specified in § 65.104(b) and (c) to demonstrate compliance with this subpart:

(1) The owner or operator shall comply with the requirements of §§ 65.106 through 65.116 as modified by paragraphs (c)(2) through (4) of this section.

(2) The equipment shall be monitored for leaks by the method specified in § 65.104(b) and (c) when the equipment is in regulated material service or is in use with any other detectable material.

(3) The equipment shall be monitored for leaks as specified in the following:

(i) Each time the equipment is reconfigured for the production of a new product, the reconfigured equipment shall be monitored for leaks within 30 days of startup of the process. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment in the process unit.

(ii) Connectors shall be monitored in accordance with the requirements in § 65.108.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in table 1 to this subpart. The operating time shall be determined as the proportion of the year the batch product-process that is subject to the provisions of this subpart is operating.

(iv) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (for example, month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (e) of this section.

(d) *Added equipment recordkeeping.* (1) For batch product-process units that the owner or operator elects to monitor as provided under paragraph (c) of this section, the owner or operator shall prepare a list of equipment added to batch product-process units since the last monitoring period required in paragraphs (c)(3)(ii) and (iii) of this section.

(2) Maintain records demonstrating the proportion of the time during the calendar year the equipment is in use in a batch process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in paragraph (c)(3)(iii) of this section.

(3) Record and keep pursuant to § 65.4 the date and results of the monitoring required in paragraph (c)(3)(i) of this section for equipment added to a batch product-process unit since the last monitoring period required in paragraphs (c)(3)(ii) and (iii) of this section. If no leaking equipment is found during this monitoring, the owner or operator shall record that the inspection was performed. Records of the actual monitoring results are not required.

(e) *Delay of repair.* Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available provided the following conditions are met:

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

(f) *Periodic report contents.* For owners or operators electing to meet the requirements of paragraph (b) of this section, the following periodic report to be filed pursuant to § 65.120(b) shall include the following information for each process unit:

(1) Batch product-process equipment train identification;

(2) The number of pressure tests conducted;

(3) The number of pressure tests where the equipment train failed the pressure test; and

(4) The facts that explain any delay of repairs.

§ 65.118 Alternative means of emission limitation: Enclosed-vented process units.

(a) *Use of closed vent system and control device.* Process units that are enclosed in such a manner that all emissions from equipment leaks are routed to a process or fuel gas system or collected and vented through a closed vent system to a control device meeting the requirements of § 65.115 are exempt from the requirements of §§ 65.106 through 65.114 and § 65.116. The enclosure shall be maintained under a negative pressure at all times while the process unit is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping.* Owners and operators choosing to comply with the requirements of this section shall maintain the following records:

(1) Identification of the process unit(s) and the regulated materials they handle.

(2) A schematic of the process unit, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ 65.119 Recordkeeping provisions.

(a) *Recordkeeping system.* An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (for example, quarterly monitoring, quality improvement) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records.* (1) As specified in § 65.103(a) through (c), the owner or operator shall keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to subpart F of this part through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 65.103(c)(4) for any equipment that is designated as unsafe- or difficult-to-monitor.

(3) The owner or operator shall maintain a record of the identity and an explanation as specified in § 65.103(d)(2) for any equipment that is designated as unsafe to repair.

(4) As specified in § 65.103(e), the owner or operator shall maintain a record of the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records associated with the determination that equipment is in heavy liquid service as specified in § 65.103(f).

(6) The owner or operator shall keep records for leaking equipment as specified in § 65.104(e)(2).

(7) The owner or operator shall keep records for leak repair as specified in § 65.105(f) and records for delay of repair as specified in § 65.105(d).

(8) For instrument response factor criteria determinations performed pursuant to § 65.104(b)(2)(i), the owner or operator shall maintain a record of an engineering assessment that identifies the representative composition of the process fluid. The assessment shall be based on knowledge of the compounds present in the process, similarity of response factors for the materials present, the range of compositions encountered during monitoring, or other information available to the owner or operator.

(9) The owner or operator shall keep records of the detection limit calibration as specified in § 65.104(b)(3).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the following records:

(i) The monitoring schedule for each process unit as specified in § 65.106(b)(3)(v).

(ii) The valve subgrouping records specified in § 65.106(b)(4)(iv), if applicable.

(2) For pumps, the owner or operator shall maintain the following records:

(i) Documentation of pump visual inspections as specified in § 65.107(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 65.107(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.107(e)(1)(i).

(3) For connectors, the owner or operator shall maintain the records specified in § 65.108(b)(3)(v) which identify a monitoring schedule for each process unit.

(4) For agitators, the owner or operator shall maintain the following records:

(i) Documentation of agitator seal visual inspections as specified in § 65.109(b)(3).

(ii) For agitators equipped with a dual mechanical seal system that includes barrier fluid system, the owner or operator shall keep records as specified in § 65.109(e)(1)(vi)(B).

(iii) Documentation of the dual mechanical seal agitator seal visual inspections as specified in § 65.109(e)(1)(iv).

(5) For pressure relief devices in gas/vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 65.111(c)(3), or the date the rupture disk is replaced as specified in § 65.111(e).

(6) For compressors, the owner or operator shall maintain the following records:

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.112(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 65.112(f)(2).

(7) For a pump QIP program, the owner or operator shall maintain the following records:

(i) Individual pump records as specified in § 65.116(d)(2).

(ii) Trial evaluation program documentation as specified in § 65.116(d)(6)(iii).

(iii) Engineering evaluation documenting the basis for judgement that superior emission performance technology is not applicable as specified in § 65.116(d)(6)(vi).

(iv) Quality assurance program documentation as specified in § 65.116(d)(7).

(v) QIP records as specified in § 65.116(e).

(8) For process units complying with the batch process unit alternative, the owner or operator shall maintain the following records:

(i) Pressure test records as specified in § 65.117(b)(7).

(ii) Records for equipment added to the process unit as specified in § 65.117(d).

(9) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 65.118(b).

§ 65.120 Reporting provisions.

(a) *Initial Compliance Status Report.* Unless the information specified in paragraphs (a)(1) through (3) of this section has previously been submitted under the referencing subpart, each owner or operator shall submit an Initial Compliance Status Report according to the procedures in § 65.5(d). The notification shall include the information listed in paragraphs (a)(1) through (3) of this section, as applicable.

(1) The notification shall provide the following information for each process unit subject to the requirements of this subpart:

(i) Process unit identification;

(ii) Number of each equipment type (for example, valves, pumps) excluding equipment in vacuum service; and

(iii) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(2) The notification shall provide the following information for each process unit subject to the requirements of § 65.117(b):

(i) Batch products or product codes subject to the provisions of this subpart; and

(ii) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this subpart.

(3) The notification shall provide the following information for each process unit subject to the requirements in § 65.118:

(i) Process unit identification;

(ii) A description of the system used to create a negative pressure in the enclosure, and the control device used to comply with the requirements of subpart G of this part.

(b) *Periodic reports.* The owner or operator shall report the information specified in paragraphs (b)(1) through (9) of this section, as applicable, in the periodic report specified in § 65.5(e).

(1) For the equipment specified in paragraphs (b)(1)(i) through (v) of this section, report in a summary format by equipment type the number of components for which leaks were detected, and for valves, pumps, and connectors show the percent leakers and the total number of components monitored. Also include the number of leaking components that were not repaired as required by § 65.105(a), and for valves identify the number of components that are determined by § 65.106(c)(3) to be nonrepairable.

(i) Valves in gas/vapor service and in light liquid service pursuant to § 65.106(b) and (c).

(ii) Pumps in light liquid service pursuant to § 65.107(b) and (c).

(iii) Connectors in gas/vapor service and in light liquid service pursuant to § 65.108(b) and (c).

(iv) Agitators in gas/vapor service and in light liquid service pursuant to § 65.109(b).

(v) Compressors pursuant to § 65.112(d).

(2) Where any delay of repair is utilized pursuant to § 65.105(d), report that delay of repair has occurred and report the number of instances of delay of repair.

(3) If applicable, report the valve subgrouping information specified in § 65.106(b)(4)(iv).

(4) For pressure relief devices in gas/vapor service pursuant to § 65.111(b) and for compressors pursuant to § 65.112(f) that are to be operated at a leak detection instrument reading of less than 500 parts per million, report the results of all monitoring to show compliance conducted within the semiannual reporting period.

(5) Report, if applicable, the initiation of a monthly monitoring program for valves pursuant to § 65.106(b)(3)(i).

(6) Report, if applicable, the initiation of a quality improvement program for pumps pursuant to § 65.116.

(7) [Reserved]

(8) Where the alternative means of emissions limitation for batch processes is utilized, report the information listed in § 65.117(f).

(9) Report the information listed in paragraph (a) of this section for the Initial Compliance Status Report for process units with later compliance dates. Report any revisions to items reported in an earlier Initial Compliance Status Report if the method of compliance has changed since the last report.

§§ 65.121—65.139 [Reserved]

TABLE 1 TO SUBPART F OF PART 65.—BATCH PROCESSES MONITORING FREQUENCY FOR EQUIPMENT OTHER THAN CONNECTORS

Operating time (percent of year)	Equivalent continuous process monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
0 to <25	Quarterly	Annually	Annually.
25 to <50	Quarterly	Semiannually	Annually.
50 to <75	Bimonthly	Three times	Semiannually.
75 to 100	Monthly	Quarterly	Semiannually.

Subpart G—Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process

§ 65.140 Applicability.

The provisions of this subpart and of subpart A of this part (including the startup, shutdown, and malfunction provisions in § 65.6) apply to routing emissions to processes, fuel gas systems, closed vent systems, control devices, and recovery devices where another subpart expressly references the use of this subpart.

§ 65.141 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.142 Standards.

(a) *Storage vessel requirements.* The owner or operator expressly referenced to this subpart from subpart C of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.42(b)(4) who route storage vessel emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.42(b)(5) who route storage vessel emissions through a closed vent system to a nonflare control device shall meet the requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Route to a fuel gas system or process.* Owners or operators subject to § 65.42(b)(6) who route storage vessel emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions being routed to a fuel gas system or to a process.

(b) *Process vent requirements.* The owner or operator expressly referenced to this subpart from subpart D of this part or 40 CFR part 60, subpart DDD, shall comply with the following requirements, as applicable:

(1) *Flare.* Owners or operators subject to § 65.63(a)(1) or 40 CFR 60.562–1(a)(1)(i)(C) who route process vent emissions to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a flare.

(2) *Nonflare control device.* Owners or operators subject to § 65.63(a)(2) or 40 CFR 60.562–1(a)(1)(i)(A) or (B) who route process vent emissions to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems; the requirements applicable to the control devices being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring requirements of § 65.156; the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction device requirements of § 65.63(b)(1) must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to process vents. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a nonflare control device.

(3) *Final recovery devices.* Owners or operators subject to § 65.63(a)(3) who use a final recovery device to maintain the TRE index value of a Group 2A process vent above 1.0 shall meet the requirements in § 65.153, and the monitoring, recordkeeping, and reporting requirements referenced therein applicable to the recovery device being used and the applicable monitoring requirements in § 65.156, and the recordkeeping and reporting requirements referenced therein, except for § 65.156(c)(2)(ii). No other provisions of this subpart apply to Group 2A process vents.

(c) *Transfer rack requirements.* The owner or operator expressly referenced to this subpart from subpart E of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.83(a)(2) who route transfer rack emissions through a closed vent system to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device for low-throughput transfer racks.* Owners or operators of low-throughput transfer racks subject to § 65.83(a)(1) who route low-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction requirements of § 65.83(b)(1) must also comply with the recordkeeping requirement of § 65.160(d) and the reporting requirement of § 65.165(d). No other provisions of this subpart apply to low-throughput transfer rack emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Closed vent system and nonflare control devices for high-throughput transfer racks.* Owners or operators of high-throughput transfer racks subject to § 65.83(a)(1) who route high-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems; the requirements applicable to the control device being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring of § 65.156; the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction device requirements of § 65.83(b)(1) must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to high-throughput transfer rack emissions routed through a closed vent system to a nonflare control device. No other provisions of this subpart apply to high-throughput transfer rack emissions routed through a closed vent system to a nonflare control device.

(4) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.83(a)(4) of this part who route transfer rack emissions to a fuel gas system or to a process shall meet the applicable requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions being routed to a fuel gas system or to a process.

(d) *Equipment leak requirements.* The owner or operator expressly referenced to this subpart from subpart F of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.115(b) who route equipment leak emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.115(b) who route equipment leak emissions through a closed vent system to a nonflare control device shall meet the requirements in

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§ 65.143 for closed vent systems, § 65.146 for nonflare control devices used for equipment leak emissions, and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a nonflare control device.

(3) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.115(b) who route equipment leak emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions being routed to a fuel gas system or to a process.

(e) *Combined emissions.* When emissions of different kinds (for example, emissions from process vents, transfer racks, and/or storage vessels) are combined, the owner or operator shall comply with the requirements of either paragraph (e)(1) or (2) of this section:

(1) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (for example, the requirements of § 65.142(b) for process vents, and the requirements of § 65.142(c) for transfer racks); or

(2) Comply with the first set of requirements identified in paragraphs (e)(2)(i) through (iii) of this section which applies to any individual emission stream that is included in the combined stream. Compliance with the first applicable set of requirements identified in paragraphs (e)(2)(i) through (iii) of this section constitutes compliance with all other requirements in paragraphs (e)(2)(i) through (iii) of this section applicable to other types of emissions in the combined stream. The hierarchy is as follows:

(i) The requirements of § 65.142(b) for Group 1 process vents, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 65.142(c) for high-throughput transfer racks, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 65.142(a) for control of emissions from storage vessels or low-throughput transfer racks, including monitoring, recordkeeping, and reporting.

§ 65.143 Closed vent systems.

(a) *Closed vent system equipment and operating requirements.* The provisions of paragraph (a) of this section apply to closed vent systems collecting regulated material from a storage vessel, process vent, transfer rack, or equipment leaks.

(1) *Collection of emissions.* Each closed vent system shall be designed and operated to collect the regulated material vapors from the emission point and to route the collected vapors to a control device.

(2) *Period of operation.* Closed vent systems used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(3) *Bypass monitoring.* Except for pressure relief devices needed for safety purposes, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines, the owner or operator shall comply with either of the following provisions for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere:

(i) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 65.163(a)(1)(i). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line. Records shall be generated as specified in § 65.163(a)(1)(ii).

(4) *Loading arms at transfer racks.* Each closed vent system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(5) *Pressure relief devices in a transfer rack's closed vent system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's closed vent system shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (a)(5) of this section.

(b) *Closed vent system inspection requirements.* The provisions of paragraph (b) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack or equipment leaks. Inspection records shall be generated as specified in § 65.163(a)(3) and (4).

(1) Except for closed vent systems operated and maintained under negative pressure and as provided in paragraphs (b)(2) and (3) of this section, each closed vent system shall be inspected as specified in paragraph (b)(1)(i) or (ii) of this section.

(i) If the closed vent system is constructed of hard-piping, the owner or operator shall comply with the following requirements:

(A) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the closed vent system is constructed of ductwork, the owner or operator shall conduct an initial and annual inspection according to the procedures in paragraph (c) of this section.

(2) Any parts of the closed vent system that are designated as described in § 65.163(a)(2) as unsafe to inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the following conditions are met:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (b)(1) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practical during safe-to-inspect times. Inspection is not required more than once annually.

(3) Any parts of the closed vent system that are designated, as described in § 65.163(a)(2), as difficult-to-inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the following provisions apply:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters (7 feet) above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(c) *Closed vent system inspection procedures.* The provisions of paragraph (c) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks.

(1) Each closed vent system subject to paragraph (c) of this section shall be inspected according to the procedures specified in paragraphs (c)(1)(i) through (vii) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of appendix A of 40 CFR part 60 except as specified in this section.

(ii) Except as provided in paragraph (c)(1)(iii) of this section, the detection instrument shall meet the performance criteria of Method 21 of appendix A of 40 CFR part 60, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual organic compound in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not organic hazardous air pollutants or volatile organic compounds, the response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which the monitoring for leaks will be conducted. Maintain the record specified by § 65.163(a)(5).

(iii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(1)(ii) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (c)(1)(ii) of this section.

(iv) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of appendix A of 40 CFR part 60.

(v) Calibration gases shall be as specified in the following:

(A) Zero air (less than 10 parts per million hydrocarbon in air).

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (c)(1)(ii) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(C) If the detection instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,500 parts per million.

(vi) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects not to adjust readings for background, all such instrument readings shall be compared directly to 500 parts per million to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in this section. The owner or operator shall subtract the background reading from the maximum concentration indicated by the instrument.

(vii) If the owner or operator elects to adjust for background, the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining whether there is a leak.

(2) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of appendix A of 40 CFR part 60.

(3) Except as provided in paragraph (c)(4) of this section, inspections shall be performed when the equipment is in regulated material service or in use with any other detectable gas or vapor.

(4) Inspections of the closed vent system collecting regulated material from a transfer rack shall be performed only while a tank truck or railcar is being loaded or is otherwise pressurized to normal operating conditions with regulated material or any other detectable gas or vapor.

(d) *Closed vent system leak repair provisions.* The provisions of paragraph (d) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak.

(1) If there are visible, audible, or olfactory indications of leaks at the time of the annual visual inspections required by paragraph (b)(1)(i)(B) of this section, the owner or operator shall follow either of the following procedures:

(i) The owner or operator shall eliminate the indications of the leak.

(ii) The owner or operator shall monitor the equipment according to the procedures in paragraph (c) of this section.

(2) Leaks as indicated by an instrument reading greater than 500 parts per million by volume above background shall be repaired as soon as practical except as provided in paragraph (d)(3) of this section. Records shall be generated as specified in § 65.163(a)(3) when a leak is detected.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Except as provided in paragraph (d)(3) of this section, repairs shall be completed no later than 15 calendar days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(3) Delay of repair of a closed vent system for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a closed vent system shutdown, as defined in § 65.2, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed as soon as practical, but not later than the end of the next closed vent system shutdown.

§ 65.144 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.

(a) *Equipment and operating requirements for fuel gas systems and processes.* (1) Except during periods of startup, shutdown, and malfunction as specified in § 65.3(a), the fuel gas system or process shall be operating at all times when regulated material emissions are routed to it.

(2) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's system returning vapors to a fuel gas system or process shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph (a)(2).

(3) Each process piping system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(b) *Fuel gas system and process compliance determination.* (1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation.

(2) For storage vessels and transfer racks, and if emissions are routed to a process, the regulated material in the emissions shall predominantly meet one of, or a combination of, the following conditions, and the compliance demonstration requirements in paragraph (b)(3) of this section, if applicable:

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(3) To demonstrate compliance with paragraph (b)(2) of this section for a storage vessel, the owner or operator shall prepare a design evaluation (or

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engineering assessment) that demonstrates the extent to which one or more of the conditions specified in paragraphs (b)(2)(i) through (iv) of this section are being met. The owner or operator shall submit the design evaluation as specified in § 65.165(a)(1).

(c) *Statement of connection to fuel gas system.* For storage vessels and transfer racks, the owner or operator shall submit the statement of connection reports for fuel gas systems specified in § 65.165(a)(2) and/or (a)(3), as appropriate.

§ 65.145 Nonflare control devices used to control emissions from storage vessels or low-throughput transfer racks.

(a) *Nonflare control device equipment and operating requirements.* The owner or operator shall operate and maintain the nonflare control device, including a halogen reduction device for a low-throughput transfer rack, so that the monitored parameters defined as required in paragraph (c) of this section remain within the ranges specified in the Initial Compliance Status Report whenever emissions of regulated material are routed to the control device and halogen reduction device, except during periods of startup, shutdown, and malfunction as specified in § 65.3(a).

(b) *Nonflare control device design evaluation or performance test requirements.* When using a control device other than a flare, the owner or operator shall comply with the requirements in paragraph (b)(1)(i), (ii), or (iii) of this section except as provided in paragraph (b)(2) of this section. Owners or operators of halogenated low-throughput transfer rack vent streams routed to a combustion device and then to a halogen reduction device to meet the specifications of § 65.83(b)(1), must also meet the requirements of paragraph (b)(3) of this section.

(1) Unless a design evaluation or performance test as required in the referencing subpart was previously conducted and submitted for the storage vessel or low-throughput transfer rack, the owner or operator shall either prepare and submit with the Initial Compliance Status Report, as specified in § 65.165(b), a design evaluation that includes the information specified in paragraph (b)(1)(i) of this section, or the results of the performance test as described in paragraph (b)(1)(ii) or (iii) of this section.

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the reasonably expected maximum storage vessel filling or transfer loading rate. This documentation is to include a description of the gas stream that enters the control device, including flow and regulated material content; and additionally for storage vessels, the effects of varying liquid level conditions; and the information specified in paragraphs (b)(1)(i)(A) through (E) of this section, as applicable. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 65.165(b).

(A) The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the control device.

(B) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C is used to meet the emission reduction requirement specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks, documentation that those conditions exist is sufficient to meet the requirements of paragraph (b)(1)(i) of this section.

(C) Except as provided in paragraph (b)(1)(i)(B) of this section for enclosed combustion devices, the design evaluation shall include the estimated autoignition temperature of the stream being combusted, the flow rate of the stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the estimated affinity of the regulated pollutant vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity, the temperature, the flow rate of the inlet stream and, if applicable, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(E) For condensers, the design evaluation shall include the final temperature of the stream vapors, the type of condenser, and the design flow rate of the emission stream.

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with § 65.42(b)(5) for storage vessels, and § 65.83(a)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section if a performance test will be performed that meets the following criteria:

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks; and

(B) The performance test meets the applicable performance test requirements of §§ 65.157 and 65.158, and the results are submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(iii) If the control device used to comply with § 65.42(b)(5) for storage vessels, or with § 65.83(a)(1) for low-throughput transfer racks, as applicable, is also used to comply with § 65.63(a)(2) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, a performance test required by §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), or 65.155(b) is acceptable to demonstrate compliance with § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for low-throughput transfer racks, as applicable. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section, if a performance test will be performed which meets the following criteria:

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(2) A design evaluation or performance test is not required if the owner or operator uses a combustion device meeting the criteria in paragraph (b)(2)(i), (ii), (iii), or (iv) of this section and reports as specified in § 65.165(f).

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator meets either of the following requirements:

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator meets either of the following requirements:

(A) The incinerator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or

(B) The incinerator has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(3) *Halogen reduction devices used for transfer racks.* Unless a design evaluation or performance test as required in the referencing subpart was previously conducted and submitted for a halogen reduction device following a combustion device for a low-throughput transfer rack, the owner or operator shall either prepare and submit with the Initial Compliance Status Report, as specified in § 65.165(b), a design evaluation that includes the information specified in paragraph (b)(3)(i) of this section, or the results of the performance test as described in paragraph (b)(3)(ii) or (iii) of this section. The provisions of this paragraph (b)(3) apply to owners or operators using a halogen reduction device following a combustion device to comply with § 65.83(b)(1).

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the halogen reduction device being used achieves the required control efficiency during the reasonably expected maximum transfer loading rate. This documentation is to include a description of the gas stream that enters the halogen reduction device, including flow and regulated material content. The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the halogen reduction device. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 65.165(b).

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with § 65.83(b)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the halogen reduction device as described in paragraph (b)(3)(i) of this section if a performance test will be performed that meets the following criteria:

(A) The performance test demonstrates that the halogen reduction device achieves greater than or equal to the required control efficiency specified in § 65.83(b)(1) for transfer racks; and

(B) The performance test meets the applicable performance test requirements of §§ 65.157 and 65.158, and the results are submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(iii) If the halogen reduction device used to comply with § 65.83(b)(1) for low-throughput transfer racks, is also used to comply with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for high-throughput transfer racks, a performance test required by § 65.154(b) is acceptable to demonstrate compliance with § 65.83(b)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the halogen reduction device as described in paragraph (b)(3)(i) of this section, if a performance test will be performed which meets the following criteria:

(A) The performance test demonstrates that the halogen reduction device achieves greater than or equal to the required control efficiency specified in § 65.83(b)(1) for transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(c) *Nonflare control device monitoring requirements.* (1) Unless previously established under an applicable standard prior to the implementation date of this part as specified in § 65.1(f), the owner or operator shall submit with the Initial Compliance Status Report a monitoring plan containing the information specified in § 65.165(b) to identify the parameters that will be monitored to assure proper operation of the control device. The owner or operator of a halogenated low-throughput transfer rack vent stream routed to a combustion device and then to a halogen reduction device to meet the specifications of § 65.83(b)(1) shall submit with the Initial Compliance Status Report a monitoring plan containing the information specified in § 65.165(b) to identify the parameters that will be monitored to assure proper operation of the halogen reduction device.

(2) The owner or operator shall monitor the parameters specified in the Initial Compliance Status Report or in the operating permit. Records shall be generated as specified in § 65.163(b)(1).

§ 65.146 Nonflare control devices used for equipment leaks only.

(a) *Equipment and operating requirements.* (1) Owners or operators using a nonflare control device to meet the applicable requirements in § 65.115(b) shall meet the requirements of this section.

(2) Control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Performance test requirements.* A performance test is not required for any nonflare control device used only to control emissions from equipment leaks.

(c) *Monitoring requirements.* Owners or operators of control devices that are used only to comply with the provisions of § 65.115(b) shall monitor these control devices to ensure that they are operated and maintained in conformance with their design. The owner or operator shall maintain the records as specified in § 65.163(d).

§ 65.147 Flares.

(a) *Flare equipment and operating requirements.* Flares subject to this subpart shall meet the performance requirements of paragraphs (a)(1) through (7) of this section.

(1) Flares shall be operated at all times when emissions are vented to them.

(2) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (b)(3)(i) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(3) Flares shall be operated with a flare flame or at least one pilot flame present at all times, as determined by the methods specified in paragraph (c) of this section.

(4) An owner/operator has the choice of adhering to either the heat content specifications in paragraph (a)(4)(ii) of this section and the maximum tip velocity specifications in paragraph (a)(6) of this section, or adhering to the requirements in paragraph (a)(4)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume), or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity, V_{max}, as determined by Equation 147–1 of this section:

$$V_{max} = (X_{H2} - K_1) * K_2 \qquad \text{(Eq. 147-1)}$$

Where:

V_{max} = Maximum permitted velocity, m/sec.

K_1 = Constant, 6.0 volume-percent hydrogen.

K_2 = Constant, 3.9 (m/sec)/volume-percent hydrogen.

X_{H2} = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77 (incorporated by reference as specified in § 65.13).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (b)(3)(iii) of this section.

(ii) Flares shall be used only when the net heating value of the gas being combusted is 11.2 megajoules per standard cubic meter (300 British

thermal units per standard cubic foot) or greater if the flare is steam-assisted or air-assisted, or when the net heating value of the gas being combusted is 7.45 megajoules per standard cubic meter (200 British thermal units per standard cubic foot) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (b)(3)(ii) of this section.

(5) Flares used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(6) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than 18.3 meters per second (60 feet per sec) except as provided in the following two paragraphs, as applicable:

(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, equal to or less than 122 meters per second (400 feet per second) if the net heating value of the gas being combusted is greater than 37.3 megajoules per standard cubic meter (1,000 British thermal units per standard cubic foot).

(ii) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than the velocity, V max , and less than 122 meters per second (400 feet per sec), where the maximum permitted velocity, V_{max}, is determined by Equation 147–2 of this section:

$$\text{Log10}\,(V_{max}) = (H_T + 28.8)/31.7 \qquad \text{(Eq. 147-2)}$$

Where:

V_{max} = Maximum permitted velocity, meters per second.

28.8 = Constant.

31.7 = Constant.

H_T = The net heating value as determined in paragraph (b)(3)(ii) of this section.

(7) Air-assisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than the velocity, V_{max}, where the maximum permitted velocity, V_{max}, is determined by Equation 147–3 of this section:

$$V_{max} = 8.706 + 0.7084\,(H_T) \qquad \text{(Eq. 147-3)}$$

Where:

V_{max} = Maximum permitted velocity, meters per second.

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value as determined in paragraph (b)(3)(ii) of this section.

(b) *Flare compliance determination.* (1) Unless an initial flare compliance determination of the flare was previously conducted and submitted under the referencing subpart, the owner or operator shall conduct an initial flare compliance determination of any flare used to comply with the provisions of this subpart. Flare compliance determination records shall be kept as specified in § 65.159(a) and (b) and a flare compliance determination report shall be submitted as specified in § 65.164. An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet regulated material or TOC concentration when a flare is used.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a flare to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a). Upon implementing the change, a flare compliance determination shall be performed using the methods specified in paragraph (b)(3) of this section within 180 days. The compliance determination report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a flare to replace an existing final recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(3) Flare compliance determinations shall meet the requirements specified in paragraphs (b)(3)(i) through (iv) of this section.

(i) Method 22 of appendix A of part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours, except for transfer racks as provided in either one of the following:

(A) For transfer racks, if the loading cycle is less than 2 hours, then the observation period for that run shall be for the entire loading cycle.

(B) For transfer racks, if additional loading cycles are initiated within the 2-hour period, then visible emissions observations shall be conducted for the additional cycles.

(ii) The net heating value of the gas being combusted in a flare shall be calculated using Equation 147–4 of this section:

$$H_T = K_1 \sum_{j=1}^{n} D_j H_j \qquad \text{(Eq. 147-4)}$$

Where:

H_T = Net heating value of the sample, megajoules per standard cubic meter; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 millimeters of mercury (30 inches of mercury), but the standard temperature for determining the volume corresponding to 1 mole is 20 °C;

$K_1 = 1.740 \times 10^{-7}$ (parts per million by volume)$^{-1}$ (gram-mole per standard cubic meter) (megajoules per kilocalories), where the standard temperature for gram mole per standard cubic meter is 20 °C;

D_j = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of appendix A of 40 CFR part 60 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 65.13); and

H_j = Net heat of combustion of sample component j, kilocalories per gram-mole at 25 °C and 760 millimeters of mercury (30 inches of mercury). The heats of combustion of stream components may be determined using ASTM D2382–76 (incorporated by reference as specified in § 65.13) if published values are not available or cannot be calculated.

(iii) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(iv) Flare flame or pilot monitors, as applicable, shall be operated during any flare compliance determination.

(c) *Flare monitoring requirements.* Where a flare is used, a device (including but not limited to a thermocouple, ultraviolet beam sensor, or infrared sensor) capable of continuously detecting that at least one pilot flame or the flare flame is present is required. Flame monitoring and compliance records shall be kept as specified in § 65.159(c) and (d).

§ 65.148 Incinerators.

(a) *Incinerator equipment and operating requirements.* (1) Owners or operators using incinerators to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Incinerators used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Incinerator performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any incinerator used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required for equipment leaks.

(2) An owner or operator is not required to conduct a performance test for a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O. The owner or operator shall report as specified in § 65.165(f).

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an incinerator to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, an incinerator performance test shall be performed using the methods specified in § 65.157 and within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use an incinerator to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Incinerator monitoring requirements.* (1) Where an incinerator is used, a temperature monitoring device capable of providing a continuous record that meets the provisions specified in paragraph (c)(1)(i) or (ii) of this section is required. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the fire box or in the ductwork immediately downstream of the fire box in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the incinerator. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.149 Boilers and process heaters.

(a) *Boiler and process heater equipment and operating requirements.* (1) Owners or operators using boilers and process heaters to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(B) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) The vent stream shall be introduced into the flame zone of the boiler or process heater.

(3) Boilers and process heaters used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Boiler and process heater performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any boiler or process heater used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required for equipment leaks.

(2) An owner or operator is not required to conduct a performance test when any of the control devices specified in paragraphs (b)(2)(i) through (iii) of this section are used. The owner or operator shall report as specified in § 65.165(f).

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater into which the vent stream is introduced

with the primary fuel or is used as the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator meets either of the following requirements:

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a boiler or process heater to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, a boiler or process heater performance test shall be performed using the methods specified in §§ 65.157 and 65.158 within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a boiler or process heater to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Boiler and process heater monitoring requirements.* (1) Where a boiler or process heater of less than 44 megawatts (150 million British thermal units per hour) design heat input capacity is used and the regulated vent stream is not introduced as or with the primary fuel, a temperature monitoring device in the fire box capable of providing a continuous record is required. Any boiler or process heater in which all vent streams are introduced with primary fuel or are used as the primary fuel is exempt from monitoring. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where monitoring is required, the owner or operator shall establish a range for monitored parameters that indicates proper operation of the boiler or process heater. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.150 Absorbers used as control devices.

(a) *Absorber equipment and operating requirements.* (1) Owners or operators using absorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Absorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Absorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any absorber used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an absorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with an absorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a high-throughput transfer rack with an absorber used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Absorber monitoring requirements.* (1) Where an absorber is used as a control device, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the absorber. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.151 Condensers used as control devices.

(a) *Condenser equipment and operating requirements.* (1) Owners or operators using condensers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Condensers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Condenser performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any condenser used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a condenser to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a condenser used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a high-throughput transfer rack with a condenser used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Condenser monitoring requirements.* (1) Where a condenser is used as a control device, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the condenser. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.152 Carbon adsorbers used as control devices.

(a) *Carbon adsorber equipment and operating requirements.* (1) Owners or operators using carbon adsorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Carbon adsorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Carbon adsorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any carbon absorber used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a carbon adsorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a carbon adsorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or high-throughput transfer rack with a carbon adsorber used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Carbon adsorber monitoring requirements.* (1) Where a carbon adsorber is used as a control device, an organic monitoring device capable of providing a continuous record, or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon-bed temperature monitoring device capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the carbon adsorber. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.153 Absorbers, condensers, carbon adsorbers, and other recovery devices used as final recovery devices.

(a) *Final recovery device equipment and operating requirements.* (1) Owners or operators using a recovery device to meet the requirement to operate and maintain a TRE above 1.0 as specified in § 65.63(a)(3) for process vents shall meet the requirements of this section.

(2) Recovery devices used to comply with the provisions of this subpart shall

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be operated at all times when emissions are vented to them.

(b) *Recovery device performance test requirements.* (1) There are no performance test requirements for recovery devices. Records of TRE index value determination shall be generated as specified in § 65.160(c).

(2) *Replace a final recovery device or control device.* Unless already permitted by the applicable title V permit, if an owner or operator elects to use a recovery device to replace an existing final recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(c) *Recovery device monitoring requirements.* (1) Where an absorber is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, either an organic monitoring device capable of providing a continuous record, or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where a condenser is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record, or a condenser exit (product side) temperature monitoring device capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(3) Where a carbon adsorber is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record, or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon-bed temperature monitoring device capable of recording the carbon-bed temperature after each regeneration and within 15 minutes of completing any cooling cycle, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(4) Unless previously approved by the Administrator under an applicable standard prior to the implementation date of this part, as specified in § 65.1(f), if an owner or operator uses a recovery device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting and recordkeeping procedures as required under § 65.162(e). The Administrator will approve or deny the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(5) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the recovery device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle, and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle.

§ 65.154 Halogen scrubbers and other halogen reduction devices.

(a) *Halogen scrubber and other halogen reduction device equipment and operating requirements.* (1) An owner or operator of halogen scrubbers and other halogen reduction devices subject to this subpart shall reduce the overall emissions of hydrogen halides and halogens by 99 percent, or reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour (0.99 pound per hour) as specified in § 65.63(b) for process vents, or § 65.83(b) for transfer racks, as applicable, and shall meet the requirements of this section.

(2) Halogen scrubbers and other halogen reduction devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Halogen scrubber and other halogen reduction device performance test requirements.* Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a combustion device followed by a halogen scrubber or other halogen reduction device to control halogenated vent streams in accordance with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for transfer racks shall conduct an initial performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164.

(c) *Halogen scrubber and other halogen reduction device monitoring requirements.* (1) Where a halogen scrubber is used, the monitoring equipment specified in paragraphs (c)(1)(i) and (ii) of this section is required for the scrubber. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) A pH monitoring device capable of providing a continuous record shall be installed to monitor the pH of the scrubber effluent.

(ii) A flow meter capable of providing a continuous record shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the following procedures:

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for the chemical manufacturing process unit of which it is part, as specified in 40 CFR 63.100(k) (if the referencing subpart is 40 CFR part 63, subpart F), or prior to the implementation date as specified in § 65.1(f) (for all other referencing subparts), the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to that compliance date may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method that will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method that will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than startups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 65.5.

(2) Where a halogen reduction device other than a scrubber is used, the procedures in § 65.162(e) shall be followed to establish monitoring parameters.

(3) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the scrubber or other halogen reduction device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1), or upon existing ranges or limits established under a referencing subpart.

§ 65.155 Other control devices.

(a) *Other control device equipment and operating requirements.* (1) Owners or operators using a control device other than one listed in §§ 65.147 through 65.152 to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Other control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Other control device performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a control device other than those specified in §§ 65.147 through 65.152, to comply with § 65.63(a)(2) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, shall perform an initial performance test according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use another control device to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, another control device performance test shall be performed using the methods specified in §§ 65.157 and 65.158 within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a control device to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Other control device monitoring requirements.* (1) Unless previously submitted and approved under the referencing subpart, if an owner or operator uses a control device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting, and recordkeeping procedures as required under § 65.162(e). The Administrator will approve, deny, or modify based on the reasonableness of the proposed monitoring, reporting, and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the control device. To establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.156 General monitoring requirements for control and recovery devices.

(a) *General monitoring requirement applicability.* (1) This section applies to the owner or operator of a regulated source required to monitor under this subpart.

(2) Flares subject to § 65.147(c) are not subject to the requirements of this section.

(3) Flow indicators are not subject to the requirements of this section.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and in the relevant sections of this subpart unless either of the following provisions applies:

(i) The Administrator specifies or approves the use of minor or intermediate changes in the specified monitoring requirements or procedures as provided in § 65.7(b), (c), and (d); or

(ii) The Administrator specifies or approves the use of major changes in the specified monitoring requirements or procedures as provided in § 65.7(b), (c), and (d).

(2) When one CPMS is used as a backup to another CPMS, the owner or operator shall report the results from the CPMS used to meet the monitoring requirements of this subpart. If both such CPMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CPMS for the relevant compliance period.

(c) *Operation and maintenance of continuous parameter monitoring systems.* (1) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(2) The owner or operator of a regulated source shall maintain and operate each CPMS as specified in this section or in a relevant subpart and in a manner consistent with good air pollution control practices.

(i) The owner or operator of a regulated source shall ensure the immediate repair or replacement of CPMS parts to correct "routine" or otherwise predictable CPMS malfunctions. The necessary parts for routine repairs of the affected equipment shall be readily available.

(ii) Except for Group 2A process vents, if the startup, shutdown, and malfunction plan is followed during a CPMS startup, shutdown, or malfunction and the CPMS is repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 65.6(c).

(iii) The Administrator's determination of whether acceptable

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operation and maintenance procedures are being used for the CPMS will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturer's recommendations and specifications, and inspection of the CPMS.

(3) All CPMS shall be installed and operational, and the data verified as specified in this subpart either prior to or in conjunction with conducting performance tests. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(4) All CPMS shall be installed such that representative measurements of parameters from the regulated source are obtained.

(5) In accordance with § 65.3(a)(3), except for system breakdowns, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero and span adjustments, all CPMS shall be in continuous operation when emissions are being routed to the monitored device.

(d) Except for Group 2A process vents, the parameter monitoring data shall be used to determine compliance with the required operating conditions for the monitored control devices. For each excursion, except for excused excursions and the excursions described in paragraph (d)(3) of this section, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(1) An excursion means any of the three cases listed in paragraphs (d)(1)(i) through (iii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraph (d)(1)(i), (ii), or (iii) of this section, this is considered a single excursion for the day for the control device.

(i) When the daily average value of one or more monitored parameters is outside the permitted range.

(ii) When the period of control or recovery device operation is 4 hours or greater in an operating day, and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day, and more than 1 hour during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iv) Monitoring data are insufficient to constitute a valid hour of data as used in paragraphs (d)(1)(ii) and (iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 65.162(d)(4), monitoring data are insufficient to calculate a valid hour of data if there are less than four data values recorded during the hour.

(2) One excused excursion for each control device or recovery device for each semiannual period is allowed.

(3) The following excursions are not violations and do not count as excused excursions:

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with its startup, shutdown, and malfunction plan as required by § 65.6.

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with its startup, shutdown, and malfunction plan as required by § 65.6.

(iii) Excursions which occur during periods of nonoperation of the regulated source or portion thereof, resulting in cessation of the emissions to which monitoring applies.

(4) Nothing in paragraph (d) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(5) Paragraph (d) of this section applies to emission points and control devices for which continuous monitoring is required by this subpart, and to alternatives to continuous monitoring systems such as provided in § 65.162(d)(3) and (d)(4). Paragraph (d)(3) of this section also applies to emission points and control devices which are not subject to continuous monitoring requirements, such as inspections of the closed vent system.

(e) *Alternative monitoring parameter.* An owner or operator may request approval to monitor control, recovery, halogen scrubber, or halogen reduction device operating parameters other than those specified in this subpart by following the procedures specified in § 65.162(e).

§ 65.157 Performance test and flare compliance determination requirements.

(a) *Performance tests and flare compliance determinations.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a nonflare control device or a halogen reduction device, or a compliance determination for a flare, the requirements of paragraphs (b) through (d) of this section apply.

(b) *Prior test results and waivers.* Initial performance tests and initial flare compliance determinations are required only as specified in this subpart.

(1) Unless requested by the Administrator, an owner or operator is not required to conduct a performance test or flare compliance determination under this subpart if a prior performance test or compliance determination was conducted using the same methods specified in § 65.158, and either no process changes have been made since the test or the owner or operator can demonstrate to the Administrator's satisfaction that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Individual performance tests and flare compliance determinations may be waived upon written application to the Administrator per § 65.164(b)(3) if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, or the owner or operator has requested an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, and the Administrator is still considering that request.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notification is given to the owner or operator of the source.

(c) *Performance tests and flare compliance determinations schedule.* (1) Unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in the following:

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date of that standard; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in a referencing subpart for an existing source or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant 40 CFR part 63 emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance or a waiver of compliance for an existing source that obtains an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.11; or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) of the Act (see 40 CFR 63.6(b)(4)); or

(vii) When a promulgated emission standard under 40 CFR part 63 is more stringent than the standard that was proposed (see 40 CFR 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance initially with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(2) The Administrator may require an owner or operator to conduct performance tests and compliance determinations at the regulated source at any time when the action is authorized by section 114 of the Act.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new regulated source and, at the request of the Administrator, the owner or operator of each existing regulated source, shall provide performance testing facilities as specified in the following:

(1) Sampling ports adequate for test methods applicable to such source. This includes, as applicable, the following requirements:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

§ 65.158 Performance test procedures for control devices.

(a) *General procedures.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, an owner or operator shall comply with the requirements of (a)(1) through (3) of this section, as applicable.

(1) Performance tests shall be conducted at maximum representative operating conditions for the process unless the Administrator specifies or approves alternate operating conditions. During the performance test, an owner or operator may operate the control or halogen reduction device at maximum or minimum representative operating conditions for monitored control or halogen reduction device parameters, whichever results in lower emission reduction. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this subpart, in each relevant standard, and, if required, in applicable appendices of 40 CFR parts 51, 60, 61, and 63 unless the Administrator allows revisions to the test methods as specified in one or more of the following five paragraphs:

(i) The Administrator specifies or approves, in specific cases, the use of a test method with minor or intermediate changes in methodology; or

(ii) The Administrator approves the use of a major change to a test method, the results of which the Administrator has determined to be adequate for indicating whether a specific regulated source is in compliance; or

(iii) Intermediate and major changes to a test method shall be validated using the applicable procedures of Method 301 of appendix A of 40 CFR part 63; or

(iv) The Administrator waives the requirement for the performance test as provided in § 65.157(b)(2) because the owner or operator of a regulated source has demonstrated by other means to the Administrator's satisfaction that the regulated source is in compliance with the relevant standard; or

(v) The Administrator approves the use of an equivalent method.

(3) Each performance test shall consist of three separate runs using the applicable test method. Except as provided in paragraphs (a)(3)(i) and (ii) of this section, each run shall be conducted for at least 1 hour and under the conditions specified in this section. For the purpose of determining compliance with an applicable standard, the arithmetic mean of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(i) For control devices that are used to control emissions from high-throughput transfer racks, and that are capable of continuous vapor processing but do not handle continuous emissions or emissions from high-throughput transfer racks that load simultaneously from multiple loading arms, each run shall represent at least one complete tank truck or tank car loading period during which regulated materials are loaded, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(ii) For intermittent vapor processing systems used for controlling high-throughput transfer rack emissions that

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do not handle continuous emissions or multiple loading arms of a high-throughput transfer rack that load simultaneously, each run shall represent at least one complete control device cycle, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(b) *Test methods.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, an owner or operator shall conduct that performance test using the procedures in paragraphs (b)(1) through (4) of this section, as applicable. The regulated material concentration and percent reduction may be measured as either total regulated material or as TOC (minus methane and ethane) according to the procedures specified.

(1) Method 1 or 1A of appendix A of 40 CFR part 60 as appropriate, shall be used for selection of the sampling sites.

(i) For determination of compliance with a percent reduction requirement of total regulated material or TOC, sampling sites shall be located at the inlet of the control device as specified in the following and at the outlet of the control device:

(A) For process vents, the control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units per hour), selection of the location of the inlet sampling sites shall ensure the measurement of total regulated material or TOC (minus methane and ethane) concentrations, as applicable, in all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) For determination of compliance with the 20 parts per million by volume total regulated material or TOC limit in § 65.63(a)(2), § 65.83(a)(1), and 40 CFR 60.562–1(a)(1)(i)(A), the sampling site shall be located at the outlet of the control device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate.

(3) To determine compliance with the 20 parts per million by volume total regulated material or TOC (minus methane and ethane) limit, the owner or operator shall use Method 18 of appendix A of 40 CFR part 60 to measure either TOC minus methane and ethane or total regulated material, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. Method 25A may be used for transfer racks as detailed in paragraph (b)(3)(iv) of this section. The procedures specified in paragraphs (b)(3)(i) through (iv) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen.

(i) Except as provided in paragraphs (a)(3)(i) and (ii) of this section, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The concentration of either TOC (minus methane or ethane) or total regulated material shall be calculated according to the following two paragraphs, as appropriate:

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 158–1 of this section:

$$C_{REG,\ or}\ C_{TOC} = \sum_{i-1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{(Eq. 158-1)}$$

Where:

$C_{REG,\ or}\ C_{TOC}$ = Concentration of total regulated material or concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x = Number of samples in the sample run.

n = Number of components in the sample.

C_{ji} = Concentration of sample components j of sample i, dry basis, parts per million by volume.

(B) The total regulated material (C_{REG}) shall be computed according to equation 158–1 of this section except that only the regulated species shall be summed. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The concentration of TOC or total regulated material, as applicable, shall be corrected to 3 percent oxygen if a combustion device is the control device.

(A) The emission rate correction factor (or excess air) integrated sampling and analysis procedures of Method 3B of appendix A of 40 CFR part 60 shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the regulated material or organic compound samples, and the samples shall be taken during the same time that the regulated material or organic compound samples are taken.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using Equation 158–2 of this section:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O2_d}\right) \qquad \text{(Eq. 158-2)}$$

Where:

C_c = Concentration of TOC or regulated material corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane) or regulated material, dry basis, parts per million by volume.

$\%O2_d$ = Concentration of oxygen, dry basis, percentage by volume.

(iv) Method 25A of appendix A of 40 CFR part 60 may be used for the purpose of determining compliance with the 20 parts per million by volume limit specified in § 65.83(a)(1) for transfer racks. If Method 25A of appendix A of 40 CFR part 60 is used, the following procedures shall be used to calculate the concentration of organic compounds (C_{TOC}):

(A) The principal organic HAP in the vent stream shall be used as the calibration gas.

(B) The span value for Method 25A of appendix A of 40 CFR part 60 shall be between 1.5 and 2.5 times the concentration being measured.

(C) Use of Method 25A of appendix A of 40 CFR part 60 is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero

calibration gas when the instrument is zeroed on the most sensitive scale.

(D) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (b)(3)(iii) of this section.

(4) To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18 of appendix A of 40 CFR part 60; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. Method 25A of appendix A of 40 CFR part 60 may be used for transfer racks as detailed in paragraph (b)(4)(v) of this section. Procedures specified in paragraphs (b)(4)(i) through (v) of this section shall be used to calculate percent reduction efficiency.

(i) Except as provided in paragraphs (a)(3)(i) and (ii) of this section, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total regulated material (E_i, E_o) shall be computed as applicable.

(A) Equations 158–3 and 158–4 of this section shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{(Eq. 158-3)}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{(Eq. 158-4)}$$

Where:

E_i, E_o = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic HAP (E_{HAP}) in the sample at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

K_2 = Constant, 2.494 x 10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

C_{ij}, C_{oj} = Concentration on a dry basis of organic compound j in parts per million by volume of the gas stream at the inlet and outlet of the control device, respectively. If the TOC emission rate is being calculated, C_{ij} and C_{oj} include all organic compounds measured minus methane and ethane; if the total organic HAP emissions rate is being calculated, only organic HAP are included.

M_{ij}, M_{oj} = Molecular weight of organic compound j, gram per gram-mole, of the gas stream at the inlet and outlet of the control device, respectively.

Q_i, Q_o = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C, at the inlet and outlet of the control device, respectively.

(B) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by Method 18 of appendix A of 40 CFR part 60 are summed using equations 158–3 and 158–4 of this section.

(C) Where the mass rate of total regulated material is being calculated, only the species comprising the regulated material shall be summed using equations 158–3 and 158–4 of this section. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The percent reduction in TOC (minus methane and ethane) or total regulated material shall be calculated using Equation 158–5 of this section:

$$R = \frac{E_i - E_o}{E_i}\ (100) \qquad \text{(Eq. 158-5)}$$

Where:

R = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total regulated material at the inlet to the control device as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms regulated material per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total regulated material at the outlet of the control device, as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms total regulated material per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units) is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total regulated material or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total regulated material in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total regulated material exiting the combustion device, respectively.

(v) Method 25A of appendix A of 40 CFR part 60 may also be used for the purpose of determining compliance with the percent reduction requirement for transfer racks.

(A) If Method 25A of appendix A of 40 CFR part 60 is used to measure the concentration of organic compounds (C_{TOC}), the principal regulated material in the vent stream shall be used as the calibration gas.

(B) An emission testing interval shall consist of each 15-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(C) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(D) The mass at the inlet and outlet of the control device during each testing interval shall be calculated using Equation 158–6 of this section:

$$M_j = F\,K\,V_s C_t \qquad \text{(Eq. 158-6)}$$

Where:

M_j = Mass of organic compounds emitted during testing interval j, kilograms.

$F = 10^{-6}$ = Conversion factor, (cubic meters regulated material per cubic meters air) * (parts per million by volume) $^{-1}$.

K = Density, kilograms per standard cubic meter regulated material. You may use 659 kilograms per standard cubic meter regulated material. (Note: The density term cancels out when the percent reduction is calculated. Therefore, the density used has no effect. The density of hexane is given so that it can be used to maintain the units of M_j.)

V_s = Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters of mercury (30 inches of mercury), standard cubic meters.

C_t = Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.

(E) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T} \quad \text{(Eq. 158-7)}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T} \quad \text{(Eq. 158-8)}$$

Where:
E_i, E_o = Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the control device, kilograms per hour.
n = Number of testing intervals.
M_{ij}, M_{oj} = Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.
T = Total time of all testing intervals, hours.

(c) *Halogen test method.* An owner or operator using a halogen scrubber or other halogen reduction device to control halogenated vent streams in compliance with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for transfer racks, who is required to conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens, as specified in § 65.154(b), shall comply with the following procedures:

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with the less than 0.45 kilogram per hour (0.99 pounds per hour) outlet emission limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

(2) Except as provided in paragraph (a)(2) of this section, Method 26 or Method 26A of appendix A of 40 CFR part 60 shall be used to determine the concentration, in milligrams per dry standard cubic meter, of total hydrogen halides and halogens that may be present in the vent stream. The mass emissions of each hydrogen halide and halogen compound shall be calculated from the measured concentrations and the gas stream flow rate.

(3) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the less than 0.45 kilogram per hour (0.99 pound per hour) outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below 0.45 kilogram per hour (0.99 pound per hour).

§ 65.159 Flare compliance determination and monitoring records.

(a) *Conditions of flare compliance determination records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of flare compliance determinations performed pursuant to § 65.147(b).

(b) *Flare compliance determination records.* When using a flare to comply with this subpart, record the following information for each flare compliance determination performed pursuant to § 65.147(b):

(1) Flare design (*i.e.*, steam-assisted, air-assisted, or nonassisted);

(2) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the flare compliance determination; and

(3) All periods during the flare compliance determination when all pilot flames are absent or, if only the flare flame is monitored, all periods when the flare flame is absent.

(c) *Monitoring records.* Each owner or operator shall keep up to date and readily accessible hourly records of whether the flare flame or pilot flame monitors are continuously operating during the hour and whether the flare flame or at least one pilot flame is continuously present during the hour. For transfer racks, hourly records are required only while the transfer vent stream is being vented.

(d) *Compliance records.* (1) Each owner or operator shall keep records of the times and duration of all periods during which the flare flame and all the pilot flames are absent. This record shall be submitted in the periodic reports as specified in § 65.166(c).

(2) Each owner or operator shall keep records of the times and durations of all periods during which the flare flame or pilot flame monitors are not operating.

§ 65.160 Performance test and TRE index value determination records.

(a) *Availability of performance tests records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests performed pursuant to §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), 65.154(b), or 65.155(b).

(b) *Nonflare control device and halogen reduction device performance test records.* Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the data specified in paragraphs (b)(1) through (3) of this section, as applicable, measured during each performance test performed pursuant to §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), 65.154(b), or 65.155(b), and also include that data in the Initial Compliance Status Report as specified in § 65.164(a). The same data specified in paragraphs (b)(1) through (3) of this section, as applicable, shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a nonflare control device or the outlet concentration of TOC or regulated material is determined.

(1) *Nonflare combustion device.* Where an owner or operator subject to the provisions of paragraph (b) of this section seeks to demonstrate compliance with a percent reduction requirement or a parts per million by volume requirement using a nonflare combustion device, the following information shall be recorded:

(i) For thermal incinerators, record the fire box temperature measured at least every 15 minutes and averaged over the full period of the performance test.

(ii) For catalytic incinerators, record the upstream and downstream temperatures and the temperature difference across the catalyst bed measured at least every 15 minutes and averaged over the full period of the performance test.

(iii) For an incinerator, record the percent reduction of regulated material or TOC achieved by the incinerator determined as specified in § 65.158(b)(4), as applicable, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the incinerator.

(iv) For a boiler or process heater, record a description of the location at which the vent stream is introduced into the boiler or process heater.

(v) For boilers or process heaters with a design heat input capacity less than 44 megawatts (150 British thermal units per hour) and where the vent stream is not introduced with or as the primary fuel, record the fire box temperature measured at least every 15 minutes and averaged over the full period of the performance test.

(vi) For a boiler or process heater with a design heat input capacity of less than 44 megawatts (150 British thermal units per hour) and where the vent stream is not introduced with or as the primary fuel, record the percent reduction of regulated material or TOC, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the combustion device.

(2) *Other nonflare control devices.* Where an owner or operator seeks to use an absorber, condenser, or carbon adsorber as a control device, the following information shall be recorded, as applicable:

(i) Where an absorber is used as the control device, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the performance test (both measured while the vent stream is normally routed and constituted); or

(ii) Where a condenser is used as the control device, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is routed and constituted normally; or

(iii) Where a carbon adsorber is used as the control device, the total regeneration stream mass flow during each carbon-bed regeneration cycle during the period of the performance test measured at least every 15 minutes and averaged over the same time period as the performance test (full carbon-bed cycle), and temperature of the carbon-bed after each regeneration during the period of the performance test (and within 15 minutes of completion of any cooling cycle or cycles); or

(iv) As an alternative to paragraph (b)(2)(i), (ii), or (iii) of this section, the concentration level or reading indicated by the organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is normally routed and constituted; and

(v) For an absorber, condenser, or carbon adsorber used as a control device, the percent reduction of regulated material or TOC achieved by the control device determined as specified in § 65.158(b)(4), or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the control device.

(3) *Halogen reduction devices.* When using a scrubber following a combustion device to control a halogenated vent stream, record the following information:

(i) The percent reduction or scrubber outlet mass emission rate of total hydrogen halides and halogens as specified in § 65.158(c);

(ii) The pH of the scrubber effluent averaged over the time period of the performance test; and

(iii) The scrubber liquid-to-gas ratio averaged over the time period of the performance test.

(c) *Recovery device monitoring records during the TRE index value determination.* For Group 2A process vents, the following records, as applicable, shall be maintained and reported as specified in § 65.164(a)(3):

(1) Where an absorber is the final recovery device in the recovery system, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the TRE index value determination (both measured while the vent stream is normally routed and constituted); or

(2) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is routed and constituted normally; or

(3) Where a carbon adsorber is the final recovery device in the recovery system, the total regeneration stream mass flow measured at least every 15 minutes and averaged over the same time during each carbon-bed regeneration cycle during the period of the TRE index value determination, and temperature of the carbon-bed after each regeneration during the period of the TRE index value determination (and within 15 minutes of completion of any cooling cycle or cycles); or

(4) As an alternative to paragraph (c)(1), (2), or (3) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is normally routed and constituted; and

(5) All measurements and calculations performed to determine the TRE index value of the vent stream as specified in § 65.64(h).

(d) *Halogen concentration records.* Record the halogen concentration in the vent stream determined according to the procedures as specified in § 65.63(b) or § 65.83(b). Submit this record in the Initial Compliance Status Report, as specified in § 65.165(d). If the owner or operator designates the vent stream as halogenated, then this shall be recorded and reported in the Initial Compliance Status Report.

§ 65.161 Continuous records and monitoring system data handling.

(a) *Continuous records.* Where this subpart requires a monitoring device capable of providing a continuous record, the owner or operator shall maintain the record specified in paragraph (a)(1), (2), (3), or (4) of this section, as applicable (The provisions of this section apply to owners and operators of storage vessels and low-throughput transfer racks only if specified by the applicable monitoring plan established under § 65.165(c)(1) and (2)):

(1) A record of values measured at least once every 15 minutes or each measured value for systems that measure more frequently than once every 15 minutes; or

(2) A record of block average values for 15-minute or shorter periods calculated from all measured data values during each period or from at least one measured data value per minute if measured more frequently than once per minute; or

(3) For data collected from an automated continuous parameter monitoring system, a record of block hourly average values calculated from each 15-minute block average period or from at least one measured value per minute if measured more frequently than once per minute, and a record of the most recent 3 valid hours of continuous (15-minute or shorter) records meeting the requirements of paragraph (a)(1) or (2) of this section. Records meeting the requirements of paragraph (a)(1) or (2) of this section shall also be kept for all periods that include CPMS breakdown or malfunction. During these periods, it is not necessary to calculate hourly averages; or

(4) A record as required by an alternative approved under § 65.162(d).

(b) *Excluded data.* Monitoring data recorded during the following periods shall not be included in any average computed to determine compliance under this subpart:

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(1) Monitoring system breakdowns, repairs, preventive maintenance, calibration checks, and zero (low-level) and high-level adjustments;

(2) Periods of non-operation of the process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies; and

(3) Startups, shutdowns, and malfunctions.

(c) *Records of daily averages.* In addition to the records specified in paragraph (a) of this section, owners or operators shall also keep records as specified in paragraphs (c)(1) and (2) of this section unless an alternative monitoring or recordkeeping system has been requested and approved under § 65.162(d).

(1) Except as specified in paragraph (c)(2) of this section, daily average values of each continuously monitored parameter shall be calculated for each operating day. Data meeting the specifications of paragraph (b) of this section shall not be included in the average. The data shall be reported in the periodic report as specified in § 65.166(f), if applicable.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day as specified in paragraph (a)(1), (2), or (3) of this section. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous (for example, for high-throughput transfer racks, the average shall cover periods of loading). If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the daily average instead of all measured values.

(ii) The operating day shall be the period defined in the operating permit or the Initial Compliance Status Report. It may be from midnight to midnight or another daily period.

(2) If all monitored parameter values recorded under paragraph (a)(1), (2), or (3) of this section, during an operating day are within the range established in the Initial Compliance Status Report or in the operating permit, the owner or operator does not have to calculate a daily average value for the operating day and may record that all values were within the range. The owner or operator must continue to retain the raw data, 15-minute averages, or the hourly averages required under paragraph (a)(1), (2), or (3) of this section.

(d) *Valid data.* Unless determined to be excluded data according to paragraph (b) of this section, the data collected pursuant to paragraphs (a) through (c) of this section shall be considered valid.

(e) *Alternative recordkeeping.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (e)(1) or (2) of this section as alternatives to the continuous parameter monitoring and recordkeeping provisions listed in paragraphs (a) through (c) of this section. The owner or operator shall retain each record required by paragraph (e)(1) or (2) of this section as provided in § 65.4.

(1) The owner or operator may retain only the daily average value and is not required to retain more frequently monitored operating parameter values for a monitored parameter with respect to an item of equipment if the requirements of paragraphs (e)(1)(i) through (vi) of this section are met. The owner or operator shall notify the Administrator of implementation of paragraph (e)(1) of this section in the Initial Compliance Status Report as required in § 65.165(e) or, if the Initial Compliance Status Report has already been submitted, in the periodic report as required in § 65.166(f)(4) immediately preceding implementation of the requirements of paragraph (e)(1) of this section.

(i) The monitoring system can detect unrealistic or impossible data during periods of operation other than startups, shutdowns, or malfunctions (for example, a temperature reading of −200 °C on a boiler) and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system shall generate a running average of the monitoring values, updated at least hourly throughout each operating day, that have been obtained during that operating day, and the capability to observe this average is readily available to the Administrator on-site during the operating day. All instances in an operating day constitute a single occurrence. The owner or operator shall record the occurrence of any period meeting the following criteria:

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour average values;

(C) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(iii) The monitoring system shall be capable of detecting unchanging data during periods of operation other than startups, shutdowns, or malfunctions except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (for example, pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system shall alert the owner or operator by an alarm if the running average parameter value calculated under paragraph (e)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify and document the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (e)(1) of this section, at the following times:

(A) Upon initial installation;

(B) Annually after initial installation; and

(C) After any change to the programming or equipment constituting the monitoring system, that might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the following records:

(A) Identification of each parameter for each item of equipment for which the owner or operator has elected to comply with the requirements of § 65.162(e).

(B) A description of the applicable monitoring system(s) and of how compliance will be achieved with each requirement of paragraphs (e)(1)(i) through (v) of this section. The description shall identify the location and format (for example, on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent outdated description.

(C) A description and the date of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (e)(1) of this section.

(D) Owners and operators shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall be retained on-site at all times or be accessible from a central location by computer or other means that provide access within 2 hours after a request. The owner or operator shall retain the most recent outdated description at least until 5 years from the date of its creation. The outdated description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after being outdated. Thereafter, the outdated description may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (e)(1) of this section and a period of 6 consecutive months has passed without an excursion as defined in paragraph (e)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for that parameter for that unit of equipment for any operating day when the daily average value is less than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months if the parameter limit and the monitoring were required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next periodic report. The notification shall identify the parameter and unit of equipment.

(ii) If there is an excursion as defined in paragraph (e)(2)(iv) of this section on any operating day after the owner or operator has ceased recording daily averages as provided in paragraph (e)(2) of this section, the owner or operator shall immediately resume retaining the daily average value for each day and shall notify the Administrator in the next periodic report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion.

(iii) The owner or operator shall retain the records specified in paragraphs (e)(1)(i) through (vi) of this section for the duration specified in § 65.4. For any calendar week, if compliance with paragraphs (e)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(iv) For purposes of paragraph (e) of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum or less than the minimum established value except as provided in the following:

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (e) if the owner or operator follows the applicable provisions of the startup, shutdown, and malfunction plan required by § 65.6.

(B) Excused excursions described in § 65.156(d)(2) and excursions described in § 65.156(d)(3) do not count toward the number of excursions for purposes of this paragraph (e).

§ 65.162 Nonflare control and recovery device monitoring records.

(a) *Monitoring system records.* For process vents and high-throughput transfer racks, the owner or operator subject to this subpart shall keep the records specified in paragraph (a) of this section as well as records specified elsewhere in this part.

(1) For CPMS used to comply with this part, a record of the procedure used for calibrating the CPMS.

(2) For CPMS used to comply with this subpart, records of the following information, as applicable:

(i) The date and time of completion of calibration and preventive maintenance of the CPMS;

(ii) The "as found" and "as left" CPMS readings whenever an adjustment is made that affects the CPMS reading and a "no adjustment" statement otherwise;

(iii) The start time and duration or start and stop time of any periods when the CPMS is inoperative or malfunctioning;

(iv) Records of the occurrence and duration of each startup, shutdown, and malfunction of CPMS used to comply with this part during which excess emissions (as defined in § 65.3(a)(4)) occur; and

(v) For each startup, shutdown, and malfunction during which excess emissions as defined in § 65.3(a)(4) of this part occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed and documentation of actions taken that are not consistent with the plan. These records may take the form of a checklist, or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and CPMS calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(b) *Combustion control and halogen reduction device monitoring records.* (1) Each owner or operator using a combustion control or halogen reduction device to comply with this subpart shall keep, as applicable, up-to-date and readily accessible continuous records, as specified in § 65.161(a); and records of the equipment operating parameters specified to be monitored under § 65.148(c) (incinerator monitoring); § 65.149(c) (boiler and process heater monitoring); § 65.154(c) (halogen reduction device monitoring); § 65.155(c) (other control device monitoring); or specified by the Administrator in accordance with paragraph (e) of this section.

(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). For catalytic incinerators, record the daily average of the temperature upstream of the catalyst bed and the daily average of the temperature differential across the bed. For halogen scrubbers, record the daily average pH and the liquid-to-gas ratio.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.148(c)(2) (incinerator monitoring), § 65.149(c)(2) (boiler and process heater monitoring), § 65.154(c)(2) (halogen reduction device monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(c) *Monitoring records for recovery devices on Group 2A process vents and for absorbers, condensers, carbon adsorbers, or other noncombustion systems used as control devices.* (1) Each owner or operator using a recovery device to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 or using an absorber, condenser, carbon adsorber, or other noncombustion system as a control device shall keep readily accessible, continuous records, as specified in § 65.161(a), of the equipment operating parameters specified to be monitored under § 65.150(c) (absorber monitoring), § 65.151(c) (condenser monitoring), § 65.152(c) (carbon adsorber monitoring), § 65.153(c) (recovery device monitoring) or § 65.155(c) (other control device monitoring), or specified by the Administrator in accordance with paragraph (e) of this section. For transfer racks, continuous records are required while the transfer vent stream is being vented.

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(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the following records shall be kept instead of the daily averages, and the records shall be reported as specified in § 65.166(f)(2):

(i) Records of total regeneration stream mass or volumetric flow for each carbon-bed regeneration cycle; and

(ii) Records of the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.150(c)(2) (absorber monitoring), § 65.151(c)(2) (condenser monitoring), § 65.152(c)(2) (carbon adsorber monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(d) *Alternatives to the continuous operating parameter monitoring and recordkeeping provisions.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 65.148(c), 65.149(c), 65.150(c), 65.151(c), 65.152(c), 65.153(c), 65.154(c), 65.160, and paragraphs (b) and (c) of this section.

(1) Requests shall be included in the operating permit application or as otherwise specified by the permitting authority and shall contain the information specified in paragraphs (d)(3) through (5) of this section, as applicable.

(2) The provisions in § 65.7(c) shall govern the review and approval of requests.

(3) An owner or operator of a source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and generating continuous records may request approval to use a nonautomated system with less frequent monitoring.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average values shall be calculated from these hourly values and recorded.

(ii) The request shall contain the following information:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the source does not have an automated monitoring and recording system capable of meeting the specified requirements;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control device operating conditions considering typical variability of the specific process and control device operating parameter being monitored.

(4) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values.

(i) The requested system shall be designed to perform the following functions:

(A) Measure the operating parameter value at least once every 15 minutes;

(B) Record at least four values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident; and

(E) Compute daily average values of the monitored operating parameter based on recorded data. If the daily average is not an excursion as defined in § 65.161(e)(2)(iv), the data for that operating day may be converted to hourly average values, and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain a description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating averages, and a demonstration that the system meets all criteria in paragraph (d)(4)(i) of this section.

(5) An owner or operator may request approval to use other alternative monitoring and recordkeeping systems as specified in § 65.7(b). The application shall contain a description of the proposed alternative system. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method.

(e) *Monitoring a different parameter than those listed.* The owner or operator who has been directed by § 65.154(c)(2) or § 65.155(c)(1) to set monitoring parameters, or who requests as allowed by § 65.156(e) approval to monitor a different parameter than those listed in §§ 65.148(c), 65.149(c), 65.150(c), 65.151(c), 65.152(c), 65.153(c), 65.154(c), 65.160, or paragraph (b) or (c) of this section, shall submit the following information with the operating permit application or as otherwise specified by the permitting authority:

(1) A description of the parameter(s) to be monitored to ensure the process, control technology, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d) unless this information has already been included in the operating permit application or previously established under a referencing subpart.

(3) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in Periodic Reports as specified in § 65.166(e). The rationale for the proposed monitoring, recording, and reporting system shall be included.

§ 65.163 Other records.

(a) *Closed vent system records.* For closed vent systems, the owner or operator shall record the following information, as applicable:

(1) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (a)(1)(i) or (ii) of this section, as applicable. The information shall be reported as specified in § 65.166(b).

(i) Hourly records of whether the flow indicator specified under § 65.143(a)(3)(i) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with § 65.143(a)(3)(ii), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(2) For closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak, the owner or operator shall record the identification of all parts of the closed vent system that are designated as unsafe or difficult-to-inspect pursuant to § 65.143(b)(2) or (3), an explanation of why the equipment is unsafe or difficult-to-inspect, and the plan for inspecting the equipment as required by § 65.143(b)(2)(ii) or (b)(3)(ii).

(3) For a closed vent system collecting regulated material from a storage vessel, transfer rack, or equipment leaks, when a leak is detected as specified in § 65.143(d)(1), the information specified in paragraphs (a)(3)(i) through (vi) of this section shall be recorded. The data shall be reported as specified in § 65.166(b)(1).

(i) The instrument and the equipment identification number and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) The maximum instrument reading measured by the procedures in § 65.143(c) after the leak is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(vi) Copies of the periodic reports if records are not maintained on a computerized database capable of generating summary reports from the records.

(4) For each instrumental or visual inspection conducted in accordance with § 65.143(b)(1) for closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks during which no leaks are detected, the owner or operator shall record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(5) For instrument response factor criteria determinations performed pursuant to § 65.143(c)(1)(ii), the owner or operator shall maintain a record of an engineering assessment that identifies the representative composition of the process fluid. This assessment shall be based on knowledge of the compounds present in the process, similarity of response factors for the materials present, the range of compositions encountered during monitoring, or other information available to the owner or operator.

(b) *Storage vessel and transfer rack records.* For storage vessels, an owner or operator shall keep readily accessible records of the information specified in paragraphs (b)(1) through (3) of this section, as applicable. For low-throughput transfer racks, an owner or operator shall keep readily accessible records of the information specified in paragraph (b)(1) of this section.

(1) A record of the measured values of the parameters monitored in accordance with § 65.145(c)(2) and report in the periodic report as specified in § 65.166(e), if applicable.

(2) A record of the planned routine maintenance performed on the control system during which the control system does not meet the applicable specifications of §§ 65.143(a), 65.145(a), or 65.147(a), as applicable, due to the planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(2)(i) through (iii) of this section. This information shall be submitted in the periodic reports as specified in § 65.166(d)(1).

(i) The first time of day and date the requirements of §§ 65.143(a), 65.145(a), or 65.147(a), as applicable, were not met at the beginning of the planned routine maintenance.

(ii) The first time of day and date the requirements of §§ 65.143(a), 65.145(a), or 65.147(a), as applicable, were met at the conclusion of the planned routine maintenance.

(iii) A description of the type of maintenance performed.

(3) *Bypass records for storage vessel emissions routed to a process or fuel gas system.* An owner or operator who uses the bypass provisions of § 65.144(a)(2) shall keep in a readily accessible location the following records:

(i) The reason it was necessary to bypass the process equipment or fuel gas system;

(ii) The duration of the period when the process equipment or fuel gas system was bypassed;

(iii) Documentation or certification of compliance with the applicable provisions of § 65.42(b)(6).

(c) *Regulated source and control equipment startup, shutdown and malfunction records.* (1) Records of the occurrence and duration of each startup, shutdown, and malfunction of process equipment or of air pollution control equipment used to comply with this part during which excess emissions (as defined in § 65.3(a)(4)) occur.

(2) For each startup, shutdown, and malfunction during which excess emissions occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a startup, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (for example, the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a checklist or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and continuous monitoring system calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(d) *Equipment leak records.* The owner or operator shall maintain records of the information specified in paragraphs (d)(1) and (2) of this section for closed vent systems and control devices subject to the provisions of subpart F of this part. The owner or operator shall meet the record retention requirements of § 65.4, except the records specified in paragraph (d)(1) of this section shall be kept as long as the equipment is in operation.

(1) The following design specifications and performance demonstrations:

(i) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(iii) A description of the parameter or parameters monitored as required in § 65.146(c) to ensure that control devices are operated and maintained in conformance with their design, and an explanation of why that parameter (or parameters) was selected for the monitoring.

(2) The following records of operation of closed vent systems and control devices:

(i) Dates and durations when the closed vent systems and control devices required in § 65.115(b) are not operated as designed as indicated by the monitored parameters, including periods when a flare flame or at least one pilot flame is not present.

(ii) Dates and durations during which the monitoring system or monitoring device is inoperative.

(iii) Dates and durations of startups and shutdowns of control devices required in § 65.115(b).

(e) *Records of monitored parameters outside of range.* The owner or operator shall record the occurrences and the cause of periods when the monitored parameters are outside of the parameter ranges documented in the Initial Compliance Status Report in accordance with § 65.165(b). This information shall be reported in the periodic report as specified in § 65.166(e).

§ 65.164 Performance test and flare compliance determination notifications and reports.

(a) *Performance test and flare compliance determination reports.* Performance test reports and flare compliance determination reports shall be submitted as specified in paragraphs (a)(1) through (3) of this section.

(1) For performance tests or flare compliance determinations, the Initial Compliance Status Report or report required by paragraph (b)(2) of this section shall include one complete test report as specified in paragraph (a)(2) of this section for each test method used for a particular kind of emission point, and other applicable information specified in paragraph (a)(3) of this section. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in applicable sections of this subpart or in other subparts of this part shall be submitted, but a complete test report is not required.

(2) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(3) The performance test or flare compliance determination report shall also include the following information, as applicable:

(i) For flare compliance determinations, the owner or operator shall submit the records specified in § 65.159(b).

(ii) For nonflare combustion device and halogen reduction device performance tests as required under §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), 65.154(b), or 65.155(b), the owner or operator shall submit the applicable records specified in § 65.160(b).

(iii) For Group 2A process vents, the owner or operator shall submit the records specified in § 65.160(c), as applicable.

(b) *Other notifications and reports.* (1) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date. The owner or operator shall provide at least 7 days prior notice of the rescheduled date of the performance test or arrange a rescheduled date with the Administrator by mutual agreement.

(2) Unless specified differently in this subpart or another subpart of this part, performance test and flare compliance determination reports not submitted as part of an Initial Compliance Status Report shall be submitted to the Administrator within 60 days of completing the test or determination.

(3) Any application for a waiver of an initial performance test or flare compliance determination as allowed by § 65.157(b)(2), shall be submitted no later than 90 calendar days before the performance test or flare compliance determination is required. The application for a waiver shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the source performing the test.

§ 65.165 Initial Compliance Status Reports.

(a) An owner or operator who elects to comply with § 65.144 by routing emissions from a storage vessel or transfer rack to a process or to a fuel gas system shall submit as part of the Initial Compliance Status Report the following information, as applicable:

(1) If storage vessel emissions are routed to a process, the owner or operator shall submit the information specified in § 65.144(b)(3).

(2) As specified in § 65.144(c), if storage vessel emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to a fuel gas system.

(3) As specified in § 65.144(c), report that the transfer rack emission stream is being routed to a fuel gas system or process when complying with the requirements of § 65.83(a)(4).

(b) An owner or operator who elects to comply with § 65.145 by routing emissions from a storage vessel or low-throughput transfer rack to a nonflare control device or halogen reduction device shall submit with the Initial Compliance Status Report required by § 65.5(d) the applicable information specified in paragraphs (b)(1) through (6) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(i) or (b)(3)(i) by submitting a design evaluation shall submit the information specified in paragraphs (b)(1) through (4) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(ii) or (b)(3)(ii) by submitting performance test results shall submit the information specified in paragraphs (b)(1), (2), (4), and (5) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(iii) or (b)(3)(iii) by submitting performance test results for a shared control device or halogen reduction device shall submit the information specified in paragraph (b)(6) of this section.

(1) A description of the parameter or parameters to be monitored to ensure that the control device or halogen reduction device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (for example, when the liquid level in the storage vessel is being raised). If continuous records are specified, indicate whether the provisions of § 65.166(f) apply.

(2) The operating range for each monitoring parameter identified in the monitoring plan required by § 65.145(c)(1). The specified operating range shall represent the conditions for which the control device or halogen reduction device is being properly operated and maintained.

(3) The documentation specified in § 65.145(b)(1)(i), if the owner or operator elects to prepare a design evaluation; and the documentation specified in § 65.145(b)(3)(i), if the owner or operator elects to prepare a design evaluation for a halogen reduction device.

(4) The provisions of § 65.166(f) do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145 or to any storage vessel for which the owner or operator is not required to keep continuous records, as specified by the applicable monitoring plan established under § 65.145(c)(1) and (2). If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of § 65.166(f) apply.

(5) A summary of the results of the performance test described in § 65.145(b)(1)(ii), (1)(iii), (3)(ii), and/or (3)(iii), as applicable. If a performance test is conducted as provided in § 65.145(b)(1)(ii) and/or (b)(3)(ii), submit the results of the performance test, including the information specified in § 65.164(a)(1) and (2).

(6) Identification of the storage vessel or low-throughput transfer rack and control device and/or halogen reduction device for which the performance test will be submitted, and identification of the emission point(s), if any, that share the control device and/or halogen reduction device with the storage vessel or low-throughput transfer rack and for which the performance test will be conducted.

(c) The owner or operator shall submit as part of the Initial Compliance Status Report the operating range for each monitoring parameter identified for each control, recovery, or halogen reduction device as determined in §§ 65.148(c)(2), 65.149(c)(2), 65.150(c)(2), 65.151(c)(2), 65.152(c)(2), 65.153(c)(5), 65.154(c)(3), and 65.155(c)(2). The specified operating range shall represent the conditions for which the control, recovery, or halogen reduction device is being properly operated and maintained. This report shall include the information in paragraphs (c)(1) through (3) of this section, as applicable, unless the range and the operating day definition have been established in the operating permit:

(1) The specific range of the monitored parameter(s) for each emission point.

(2) The rationale for the specific range for each parameter for each emission point, including any data and calculations used to develop the range and a description of why the range indicates proper operation of the control, recovery, or halogen reduction device, as specified in the following, as applicable:

(i) If a performance test or TRE index value determination is required by this subpart or another subpart of this part for a control, recovery or halogen removal device, the range shall be based on the parameter values measured during the TRE index value determination or performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. The TRE index value determinations and performance testing is not required to be conducted over the entire range of permitted parameter values.

(ii) If a performance test or TRE index value determination is not required by this subpart or other subparts of this part for a control, recovery, or halogen reduction device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

(iii) The range may be based on ranges or limits previously established under a referencing subpart.

(3) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(d) *Halogen reduction device.* The owner or operator shall submit as part of the Initial Compliance Status Report the information recorded pursuant to § 65.160(d).

(e) *Alternative recordkeeping.* The owner or operator shall notify the Administrator in the Initial Compliance Status Report if the alternative recordkeeping provisions of § 65.161(e)(1) are being implemented. If the Initial Compliance Status Report has been submitted, the notification must be in the periodic report submitted immediately preceding implementation of the alternative, as provided in § 65.166(f)(4).

(f) *Exemptions from performance tests and design evaluation.* The owner or operator shall identify in the Initial Compliance Status Report whether an exemption from performance testing or conducting a design evaluation, as provided in §§ 65.145(b)(2), 65.148(b)(2), or 65.149(b)(2), is being invoked, and which of the provisions of §§ 65.145(b)(2), 65.148(b)(2), or 65.149(b)(2) apply.

§ 65.166 Periodic reports.

(a) Periodic reports shall include the reporting period dates, the total source operating time for the reporting period, and, as applicable, all information specified in this section and in other subparts of this part, including reports of periods when monitored parameters are outside their established ranges.

(b) For closed vent systems subject to the requirements of § 65.143, the owner or operator shall submit as part of the periodic report the following information, as applicable:

(1) The information recorded in § 65.163(a)(3)(ii) through (v);

(2) Reports of the times of all periods recorded under § 65.163(a)(1)(i) when the vent stream is diverted from the control device through a bypass line; and

(3) Reports of all times recorded under § 65.163(a)(1)(ii) when maintenance is performed on car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out.

(c) For flares subject to this subpart, report all periods when all pilot flames were absent or the flare flame was absent as recorded in § 65.159(d)(1).

(d) For storage vessels, the owner or operator shall include in each periodic report required the following information:

(1) For the 6-month period covered by the periodic report, the information recorded in § 65.163(b)(2)(i) through (iii).

(2) For the time period covered by the periodic report and the previous periodic report, the total number of hours that the control system did not meet the requirements of §§ 65.143(a), 65.145(a), or 65.147(a) due to planned routine maintenance.

(3) A description of the planned routine maintenance that is anticipated to be performed for the control system during the next 6-month periodic reporting period when the control system is not expected to meet the required control efficiency. This description shall include the type of maintenance necessary, planned frequency of maintenance, and expected lengths of maintenance periods.

(e) If a nonflare control device, including a halogen reduction device for a low-throughput transfer rack, is used to control emissions from storage vessels or low-throughput transfer racks, the periodic report shall identify and state the cause for each occurrence when the monitored parameters were outside of the parameter ranges documented in the Initial Compliance

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Status Report in accordance with § 65.165(b).

(f) For process vents and high-throughput transfer racks, periodic reports shall include the following information:

(1) Periodic reports shall include the daily average values of monitored parameters, calculated as specified in § 65.161(c)(1) for any days when the daily average value is outside the bounds as specified in § 65.162(b)(3) or (c)(3), or the data availability requirements defined in § 65.156(d)(1) are not met, whether these excursions are excused or unexcused excursions. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified.

(2) Report all carbon-bed regeneration cycles during which the parameters recorded under § 65.162(c)(2) were outside the ranges established in the Initial Compliance Status Report or in the operating permit.

(3) The provisions of paragraphs (f)(1) and (2) of this section do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145, or to any storage vessel for which the owner or operator is not required by the applicable monitoring plan established under § 65.165(c)(1) and (2) to keep continuous records. If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of paragraphs (f)(1) and (2) of this section apply.

(4) If the owner or operator has chosen to use the alternative recordkeeping provisions of § 65.161(e)(1) and has not notified the Administrator in the Initial Compliance Status Report that the alternative recordkeeping provisions are being implemented as provided in § 65.165(e), the owner or operator shall notify the Administrator in the periodic report submitted immediately before implementation of the alternative.

§ 65.167 Other reports.

(a) *Replacing an existing control or recovery device.* As specified in §§ 65.147(b)(2), 65.148(b)(3), 65.149(b)(3), 65.150(b)(2), 65.151(b)(2), 65.152(b)(2), or 65.153(b)(2), if an owner or operator at a facility not required to obtain a title V permit elects at a later date to use a different control or recovery device, then the Administrator shall be notified by the owner or operator before implementing the change. This notification may be included in the facility's periodic reporting and shall include a description of any changes made to the closed vent system.

(b) *Startup, shutdown, and malfunction periodic reports.* Startup, shutdown, and malfunction periodic reports shall be submitted as required in § 65.6(c).

§§ 65.168–65.169 [Reserved]

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Part III

Department of the Interior

Bureau of Land Management

43 CFR Parts 6300 and 8560
Wilderness Management; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 6300 and 8560

[WO–250–1220–PA–24 1A]

RIN: 1004–AB69

Wilderness Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Land Management (BLM) revises and updates the regulations for management of designated wilderness areas. In February of 1985, BLM issued the existing regulations. Since the original issuance of the regulations, BLM has developed new policies, Congress has required new procedures, and technologies have changed. The final rule meets the need for updated regulations by adding new requirements based on changes in legislation or agency objectives, clarifying what uses BLM allows and authorizes in wilderness areas, what acts BLM prohibits, and explaining special uses the Wilderness Act explicitly allows, and how BLM allows access to non-Federal lands located within BLM wilderness areas.

EFFECTIVE DATE: January 16, 2001.

ADDRESSES: You should send any inquiries or suggestions to:

Department of the Interior, Bureau of Land Management, Mail Stop WO–172, 1849 C St., NW., Attention: Jeff Jarvis, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Jarvis, Wilderness, Rivers and National Trails Group, (202) 452–5189. Persons who use a telecommunications device for the deaf (TDD) may contact him by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Responses to Comments
III. Final Rule as Adopted
IV. Procedural Matters

I. Background

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701–1785) and the Wilderness Act (16 U.S.C. 1131–1136) direct BLM to manage wilderness areas for the public's use and enjoyment in a manner that will leave these areas unimpaired for future use and enjoyment as wilderness by providing for:

- Protection of these areas,
- Preservation of their wilderness character, and
- The gathering and disseminating of information about their use and enjoyment as wilderness.

Unless Congress specifies otherwise, BLM must ensure the preservation of wilderness character in managing all activities conducted within wilderness areas.

The proposed rule on Wilderness Management was published in the **Federal Register** on December 19, 1996 (61 FR 66968). The proposed rule covered the management of BLM wilderness areas outside Alaska. The rule explained—

- What wilderness areas are,
- How BLM manages them, and
- How you can use them.

The proposed rule also explained what activities BLM would not allow in wilderness areas, the penalties for doing prohibited acts, and the special provisions for some uses and access. When BLM has management responsibility for wilderness areas in Alaska, we will develop regulations for their management, if necessary.

The proposed rule, while it revised and redesignated the entire part in the CFR, focused on the following five areas: (1) definitions, (2) use of wilderness areas, (3) prohibited acts, (4) special use provisions, and (5) access.

The period for public comment on the proposed rule originally expired on February 18, 1997. In response to public requests, BLM extended the comment period until April 21, 1997. BLM received nearly 1,600 public comment letters or other communications during this four-month comment period.

II. Responses to Comments

A. General Comments

A number of comments addressed the proposed rule in general terms, without addressing any specific provision or section. Some opposed or supported the rule, others asked for general clarification, still others questioned underlying authorities. We will address these general comments in this section of the Supplementary Information.

One respondent asked BLM to clarify its authority over activities on non-BLM lands adjacent to BLM wilderness areas. BLM has authority to protect Federal lands and resources under its jurisdiction by virtue of section 302(b) of FLPMA (43 U.S.C.1732(b)). This includes the authority to regulate activities on adjacent private or State lands to protect public lands, including BLM wilderness areas. The final rule does not expand BLM's authority to manage wilderness areas in a way that will affect activities on adjacent non-BLM lands.

Several respondents criticized the proposed rule for not covering extensively enough the responsibility of BLM wilderness managers to monitor and otherwise manage activities and land uses affecting wilderness. Management of activities within wilderness are thoroughly covered in BLM Manuals or handbooks and other internal guidance, which are available to the public in any field office that manages wilderness. The regulations need not explain these internal procedures to BLM managers. The principal purpose of regulations is to provide guidance and direction to the public and other regulated parties.

One comment asked for clarification of how the rule applies to wilderness study areas. The regulations in this rule apply only to congressionally-designated wilderness areas, not to wilderness study areas.

One comment asked what regulations apply when specific provisions in this rule refer to applicable management plans as allowing, limiting, or prohibiting an activity, but BLM has not completed its management plans for a particular area. The regulations in this final rule apply regardless of the status of plans. The plans referred to in these regulations include not just Resource Management Plans or Plan Amendments covering large areas of public lands, but also local BLM field office plans and other decision documents.

Some comments asserted that the proposed regulations were too permissive or conflict with law, including the Wilderness Act, saying they would diminish wildness, reduce challenge and risk, and increase mechanization. The comments said that the language in the proposed rule is ambiguous, allows for inconsistent interpretation and too much discretion on the part of BLM managers. One respondent concluded that the "special provisions" in the proposed rule provided loopholes for uses incompatible with the preservation of wilderness character.

BLM believes that the proposed rule and the final rule are fully consistent with the requirements of the Wilderness Act and other laws. The Wilderness Act specifically provides for limited commercial use and resource development in wilderness areas in the "special provisions" of the Act (16 U.S.C. 1133). A certain amount of discretion on the part of local BLM managers is necessary because circumstances and conditions vary from area to area, and no national regulation could cover every situation. BLM has made every effort to see that these regulations will ensure preservation of the wilderness character of the subject lands while recognizing the specific statutory protections for valid existing rights and the specified uses.

Other comments stated, by contrast, that the regulations are too restrictive, oppressive, or heavy-handed, that they have an adverse effect on the rights of the general public, or that they are unconstitutional. The comments stated that they would reduce the level of enjoyment of wilderness, eliminate or restrict traditionally acceptable uses, generate too much paperwork, and be overly complex or unresponsive to public needs. One comment asserted that the proposed rule gives BLM too much flexibility and reduces individual rights.

BLM does not agree with these assessments of the proposed rule. The regulations are no more restrictive than necessary to carry out the requirements in the Wilderness Act and FLPMA, including—

- Managing wilderness so as to leave it unimpaired for future use and enjoyment as wilderness;
- Providing for its protection and the preservation of wilderness character; and
- Providing for the gathering and dissemination of information regarding wilderness use and enjoyment.

One comment stated that the proposed rule did not consider the special provisions of the California Desert Protection Act of 1994 (16 U.S.C. 410aaa *et seq.*). The special provisions of that Act apply only to those BLM-managed areas designated as wilderness in the California Desert Protection Act. It would be inappropriate for a regulation with nationwide effect to implement these special provisions. These special provisions in the Act stand alone, and do not need regulations to make them effective. If any aspect of these regulations were inconsistent with the special provisions of the California Desert Protection Act, that Act would prevail over these regulations to the extent of the inconsistency.

Some comments urged that National Environmental Policy Act of 1969 (NEPA) analysis of the proposed regulations be done. BLM prepared an environmental assessment (EA) and found that the regulations cause no significant impact (FONSI). Notwithstanding the statement in the preamble of the proposed rule that the EA was still in draft form, BLM approved the EA and FONSI on September 13, 1996. Also, BLM has updated these documents in new versions approved June 19, 2000. These documents are available for review in the administrative record of this rule.

One comment stated that BLM has no authority to enact these regulations and that Federal laws must conform to State and local laws. BLM has ample authority to issue these regulations (see sections 310 and 302(b) of FLPMA, 43 U.S.C. 1740 and 1732(b), for examples). Federal law prevails over inconsistent State laws. The Constitution of the United States provides at Article VI that the Constitution and the laws enacted under it are the supreme law of the land.

Some comments maintained that the proposed rule unnecessarily restricts wildlife management and public enjoyment of wildlife. Others stated that the rule does not address fish and wildlife management activities or hunting, or recognize State management authority for fish and wildlife resources that is contained in Section 4(d) of the Wilderness Act (16 U.S.C. 1133) and Section 302(b) of FLPMA. In this rule, BLM does not alter the existing roles of Federal and State governments in managing wildlife on any public lands, including wilderness. As section 4(d)(8) of the Wilderness Act provides, "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish * * *." States will continue to have jurisdiction over fish and wildlife management.

Comments stated that BLM's present and proposed regulations deny aboriginal, traditional land rights, and urged that the rule should require BLM to work with Native Americans for management of motorized vehicle use, wood cutting, water, and archaeological sites. As stated earlier, the regulations are no more restrictive of traditional practices than necessary to carry out the requirements of law. There is no authority in the Wilderness Act for public use of motor vehicles, for example, or for cutting trees in wilderness areas. BLM does cooperate with Native Americans and others in the management of archaeological sites under other laws and regulations.

A number of comments expressed general support for the proposed rule, saying that the regulations are necessary to protect the character of wilderness for the long term, and that they are balanced, reasonable, well-crafted, and faithfully implement Congressional wilderness goals.

Several comments addressed the style of the proposed rule, either opposing or supporting the question-and-answer format. We did not change the basic format in the final rule because the style follows current Federal Government policy. The final rule somewhat reorders and reorganizes the regulations. We explain this in detail in the section of this preamble discussing the final rule.

B. Specific Comments

In this discussion, section names and numbers refer to those in the proposed rule. Where appropriate, we have inserted the new section numbers in parentheses at the beginning of each section discussion. In the final rule, many numbers have been changed both to improve the organization of the regulations and to respond to public comments. We will explain this reorganization and renumbering in Section III of this preamble. If this portion of the Supplementary Information does not discuss a particular section or paragraph, it means that no public comments addressed the provision, and there is no other need to amend it in the final rule.

Preamble of the Proposed Rule

Regarding the discussion of livestock grazing, one comment questioned the reference to an appendix of a Report of the Committee of Interior and Insular Affairs (H.Rept. 101–405, Appendix A) regarding grazing in wilderness and urged that the Report be published in the **Federal Register**. The proposed rule used the principles and findings in the Report as the basis for the text of the livestock grazing section of the rule. The Report itself is in the administrative record for the rule and is published in the BLM wilderness management manual.

One comment suggested that either the preamble or the regulatory text should refer to the International Association of Fish and Wildlife Agencies document, "Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wildernesses." Such a reference is unnecessary because—

(1) neither the proposed nor the final rule alters the fish or wildlife management roles of State and Federal Government, and

(2) guidance for BLM field managers for cooperating with State wildlife management officers, including a reference to the document in question, is in the BLM Manual.

Subpart 6301—Introduction

Section 6301.30 What is a BLM wilderness area? (Section 6301.3 in the final rule)

One comment objected to this section as a subjective definition of wilderness. BLM intends this section to be an objective, simple, factual, and

unobjectionable statement that wilderness is what Congress says it is, with a reference added to the Wilderness Act itself for a detailed definition.

Section 6301.50 What are the definitions of terms used in this part? (Section 6301.5)

A few comments addressed the proposed definitions as a group. One suggested that they were vague and overly broad and could lead to inconsistent decisions. BLM's position is that our definitions are similar to those of the other Federal wilderness managing agencies, and that they are broad enough to illuminate terms in a set of regulations with a nationwide effect. Nevertheless, in some instances we have changed the definitions to make them clearer in light of specific comments.

Other comments suggested that we define additional terms, including: Primeval, natural condition, untrammeled, solitude, wilderness character, commercial use, American Indian, religious ceremony, emergency, unimpaired, motorized vehicles, permanent improvement, and all non-pedestrian traffic. We have not added definitions for any of these terms. Some of them do not appear at all in the regulations. Others appear once, but with sufficient explanation in their context to make a definition unnecessary. Others are familiar enough that their dictionary definitions provide adequate description of their meaning.

Access

Several comments criticized the definition of "access," stating that it did not make clear what constitutes adequate access. Others stated that access should include R.S. 2477 rights-of-way, guarantee landowners logical and appropriate methods of travel, or allow legal access under Section 501 of FLPMA.

Section 501(a) of FLPMA expressly excludes designated wilderness from land across which BLM may grant a right-of-way. Therefore, BLM is forbidden by law to grant new rights-of-way across wilderness. BLM recognizes valid R.S. 2477 rights-of-way in wilderness areas, as it does all valid existing rights.

Finally, the regulatory provisions on access in the final rule (subpart 6305) are designed to provide inholders with logical and appropriate access within the limitations of the Wilderness Act. Definitions themselves are not intended to have regulatory content.

Inholding

A few comments addressed the definition of "inholding," stating that the definition is too narrow to include non-Federal lands surrounded by other lands along with BLM wilderness. The additional lands bounding the inholding might, for example, be national forest lands or wilderness study areas. Some comments asked for clarification of what constitutes an interest in land under the "inholding" definition. Others stated that this definition, as well as the definitions of "valid occupancy" and "mining operations," improperly limited access rights of owners.

The definition of "inholding" in the proposed rule is consistent with definitions used by other Federal wilderness land managing agencies. However, the concept of "interest in land" has been removed from the definition in the final rule as unnecessary. We address the effects of different degrees of ownership—fee simple ownership, surface ownership only, mining claims, and so forth—in the access provisions of the final rule, not in the definitions.

Mechanical Transport

A number of comments addressed the definition of "mechanical transport," particularly as it affects the use of game carriers. A majority of these comments said that the definition should not include game carriers, or only include motorized ones. They said that a prohibition of game carriers in wilderness would be an unnecessary hardship for hunters and would increase environmental impacts—due to dragging big game—from hunting, would discriminate against the elderly, and would limit the ability to retrieve downed game. They said that animal carriers are traditional, compatible, and legitimate in wilderness and could be considered the minimum tool, especially in desert situations, and that prohibition may discourage legal hunting of big game, limiting management efforts by State government agencies.

A few comments urged that the definition of "mechanical transport" should not include wheelbarrows because they are necessary for trail construction and maintenance work.

BLM's position is that we must include wheeled game carriers or wheelbarrows in the definition of mechanical transport, or it will conflict with the letter and spirit of the Wilderness Act. This position is also consistent with Forest Service policy. Trail work is an administrative function that is adequately addressed in section 4(c) of the Wilderness Act. This section allows BLM to use the minimum tools necessary for such administrative work.

A large number of comments stated that the definition of "mechanical transport" should not include horses and other pack livestock like mules and llamas. BLM never intended to ban horses from wilderness areas, and we have amended the definition specifically to make it clear that horses and other pack stock are allowed in wilderness. Horses are not mechanical transport, and neither are their saddles and bridles and other tack.

A small number of comments raised other concerns about the definition of "mechanical transport." One asked for clarification of the word "contrivance" as used in the definition. BLM used this term to emphasize the human-origin aspect of the means of transportation by relying on a dictionary definition of "contrivance" as "a mechanical device." We have expanded the definition by adding the words "device or vehicle" to improve its clarity. Another comment stated that the definition could be misinterpreted to include a number of devices such as fishing and hunting equipment, and even persons such as land users and administrative and law enforcement personnel. The intent of the final rule is that mechanical transport refers to man-made devices with moving parts and an internal or external power source (even if the power source is environmentally benign, such as solar cells), that are commonly used to carry people or cargo. It would be impractical, and potentially misleading, to include an exhaustive list of inclusions and exclusions, because questions may be raised as to items omitted from the list.

Some comments urged that the definition of "mechanical transport" should not include horse-drawn wagons and carts. Another urged that the definition should include canoes, rafts, bicycles, and travois, and that unless the enabling legislation specifies otherwise, BLM must prohibit all assisted transportation. Wagons, carts, and bicycles clearly fall within the definition of mechanical transport and are excluded from wilderness. Canoes, rafts, and travois, on the other hand, are not included in the definition—they lack moving parts. There is no authority in the Wilderness Act to disallow all assisted transport.

One comment maintained that the definition of "mechanical transport" violates the Americans with Disabilities Act (ADA). The proposed rule excluded wheelchairs from the definition, but with the qualification that a wheelchair is allowed only as necessary medical equipment. BLM has amended the definition in the final rule to remove this qualification. The final rule specifically allows wheelchairs to be used in wilderness areas. The definition of "wheelchair" in the proposed rule has also been changed in the final rule to repeat the definition in the ADA.

One comment asserted that the definition of "mechanical transport," by including the reference to living power sources, is more restrictive than the Arizona Desert Wilderness Act of 1990 and is inconsistent with the Wilderness Act, and alleged that the definition significantly affects recreation. The reference to a living power source was designed to encompass bicycles and horse-carts and similar mechanical means of transportation, and not backpackers and horse packers, which, though they may employ living power sources, do not use mechanical contrivances for transport. However, since the power source itself is not a critical element in defining "mechanical transport," we removed the reference to "living power source" in the final rule.

One comment urged that the rule should restrict the use of wheeled devices to only those specifically permitted in the Wilderness Act. The Wilderness Act makes no mention of wheeled vehicles or devices as such, and it is unnecessary to amend the definition.

A couple of comments addressed a definition not in the proposed rule, "mechanized equipment," apparently confusing it with "mechanical transport" or "motorized equipment." One asked whether rock climbing hardware is mechanized equipment, and another urged that rifles be considered mechanized equipment. Power drills for installing bolts in support of climbing would be considered motorized equipment and are banned from BLM wilderness areas, as are chainsaws and other large power tools. Rifles and shotguns are not motorized, and are not mechanical means of transportation. Therefore, they are not affected by the restrictions on motorized equipment or mechanical transport in section 6302.20(d) of the final rule.

Mining Operations and Valid Occupancy

A few comments stated that the proposed definitions of these terms infringe on the access rights of owners. BLM has changed the definition of "mining operations" to make it a cross reference to the definition in the use and occupancy regulations in 43 CFR subpart 3715. Also, BLM has added to the definition of "valid occupancy" a cross-reference to the use and occupancy regulations in subpart 3715 of this title. These definitions rely entirely on existing BLM regulatory definitions, and therefore do not affect the rights of land owners or mining claimants.

Motorized Equipment

A small number of comments addressed this definition, most of them listing devices that they thought should or should not be considered motorized equipment and accordingly banned from or allowed in wilderness. One comment urged that chain saws be allowed. Chain saws are always motorized and therefore are banned specifically by the Wilderness Act. One comment stated that the definition could be interpreted to include battery-powered devices such as shavers, watches, and the others specifically excluded in the definition. We do not believe this to be a reasonable interpretation, and have not changed the definition in the final rule.

A few comments asked for a more expansive definition of "motorized equipment," one that would include propane heaters, stoves, Global Positioning Systems, Geiger counters, cellular telephones, metal detectors, or radios. They maintained that such devices should have no place in primitive or unconfined use of wilderness, that wilderness is a place for primitive travel skills. The comment suggested that technological advances represented by some of these devices would lead to further mechanization of wilderness, and concluded that exemptions should be limited to flashlights, wristwatches, cameras, and gas stoves. While this view of wilderness may be shared by some, the impacts of the devices proposed for inclusion in the definition by the respondent do not warrant their prohibition in wilderness. We have made no change in the final rule in response to this comment.

Wheelchair

A small number of comments criticized this definition as being too restrictive, and urged that the term be defined as other agencies do. In the final rule, we have amended the definition slightly to conform it exactly to the definition found in Section 507 of the Americans with Disabilities Act, 42 U.S.C. 12207(c)(2).

Temporary Structure

One comment suggested adding a definition for this term and offered language: " 'Temporary structure' means any structure that can be readily and completely dismantled and removed from the site between periods of actual use, and must be removed at the end of each season of use." We have not adopted this comment in the final rule. BLM generally cannot allow permanent or temporary structures in wilderness, so there is no need for a definition of this term. However, we have added a cross reference to the use and occupancy regulations for mining operations in 43 CFR part 3715, because you may erect structures under certain circumstances on mining claims in wilderness areas. We have also added language making it clear that you may use tents and other such equipment for overnight camping.

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

Section 6302.10 May I use wilderness areas? (Section 6302.11)

A small number of comments addressed this general section on use of wilderness, most suggesting uses that should be specifically listed, such as: education, conservation, scenic and historic appreciation, ecology, philosophy, photography, art, spirituality, hunting, fishing, trapping. Most of these uses are expressly mentioned or at least implied in the Wilderness Act, and need not be recited in the regulations. To avoid any appearance of excluding such recognized wilderness uses by naming some uses and omitting others, we removed the list of examples of allowable uses from this section in the final rule. As for hunting, fishing, and trapping, these are managed by State government, and BLM does not seek to change this management role in these regulations.

One comment suggested that this section should emphasize that wilderness is for non-motorized, non-mechanized use. This need not be stated explicitly here; the regulations make this clear in other sections.

Section 6302.20 Do I need and where do I obtain an authorization to use a wilderness area? (Sections 6302.12 and 6302.13)

Several comments addressed this section. One objected to the requirement for authorization if the BLM management plan for the wilderness area involved requires it, arguing that BLM has no authority to prepare management plans in the existing BLM wilderness regulations or the regulations in 36 CFR 283.1. It continued that BLM therefore cannot promulgate or enforce plans, or include

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them in our budget. BLM's general land use planning authority may be found in Section 202 of FLPMA (43 U.S.C. 1712). We have made no change in the final rule in response to this comment.

One comment stated that the proposed rule contained no provision for timely and efficient response to requests for authorizations. Another comment asserted that the permitting process could be used to restrict use unreasonably. A third comment requested clarification as to the type(s) of authorization needed and who issues them, and clarification that BLM requires a permit for any activity that is not consistent with wilderness management.

This rule makes possession of an authorization a prerequisite for certain activities, but does not itself provide for the issuance of authorizations. If this rule requires you to have a permit or other authorization, you must obtain it under the specific BLM regulation for your use or activity. The authorization may be a general use permit under 43 CFR part 2920, a notification of practices and procedures for geophysical exploration under an existing fluid mineral lease under 43 CFR 3151.1, or a special recreation permit under subpart 8372, for example. We have not changed the final rule.

One comment noted that designations of individual wilderness areas by Congress may contain statutory provisions that supersede the Wilderness Act or FLPMA. This is true, and in such a case the statutory provision would also supersede these regulations. It is not our intent to account for every such exception to the general requirements of the Wilderness Act.

The comment went on to state that lands must be managed as provided in the Multiple Use and Sustained Yield Act of 1960. The Wilderness Act provides that its purposes are within and supplemental to the purposes for which national forests and other units of Federal lands are managed. Therefore, the Wilderness Act and these regulations are consistent with the purposes of the Multiple Use and Sustained Yield Act.

One comment urged that fees BLM charges for permits should be used to pay for law enforcement rather than restoring user-caused damage. It went on to say that users should pay for such restoration. There is no need to change the regulation as a result of this comment, because it neither provides for specific fees nor directs where specific fees are to go. Other regulations provide for fees and their administration.

Section 6302.30 When and how does BLM close or restrict use of wilderness areas? (Section 6302.19)

A few comments addressed this section of the proposed rule. One noted that only Congress can alter the use of wilderness areas, and stated that temporary closures should be for no more than one year. Another urged that the regulation should clearly state that the law permits BLM to restrict areas within wilderness without issuing an order. We have amended this provision in the final rule to make it clear that closures will affect the minimum area for the minimum amount of time necessary, likely in most cases to be less than three months. (A typical reason for such restrictions will be wildlife protection.)

Another comment stated that closure or restrictions on use of public lands for mining, grazing, logging, recreation, and so forth, would cause a significant economic impact on small communities if wilderness guidelines are not carefully administered. BLM's intent is that we will carefully administer the regulations, guidelines, and handbooks relating to wilderness management.

Section 6302.40 May I gather information, do research, or collect things such as rocks, animals, plants, or other types of natural or cultural resources in wilderness areas? (Sections 6302.15 and 6302.16)

A number of comments addressed this section. Some challenged the proposed language because of perceived undue effects on the wilderness environment, asserting: uses that damage the environment should be banned; fuel gathering for campfires should be prohibited; collection should be limited to scientific research; commercial collection should be prohibited; and the regulations should be as restrictive as possible for uses inconsistent with the purposes of the Wilderness Act. Others said that the section imposed restrictions on activities that are too stringent or not authorized, maintaining: the rule should allow "incidental use (surface collection with small hand tools)"; the rule should not require a plan to be in place before collecting can be allowed; the rule conflicts with State authority for wildlife management and control of hunting and fishing; and the rule should allow traditional aboriginal land uses, such as wood gathering and pottery shard collection.

To help address some of these comments, we have divided this section into two sections in the final rule: section 6302.15 on collecting or disturbing specimens, and section 6302.16 on scientific information gathering. Thus, we have separated scientific from casual collecting. In the final rule we have tried to minimize the impacts of these activities, within the limits of the law.

This division of the proposed provision into two sections recognizes that scientific research under section 6302.16 is generally a more intensive use of lands and resources than casual or recreational collecting or disturbance of resources, or even the mineral prospecting authorized by the Wilderness Act. Scientific research may involve surface disturbance, long-term use of the land, and larger numbers of people. Of course, BLM will permit scientific research that does not involve these elements as well, but not impose the reclamation and other requirements stated in section 6302.16. Examples of this kind of research would be wildlife population counts that do not involve surface disturbance or lengthy stays in the wilderness.

Under section 6302.15, you may remove small mineral samples for purposes of prospecting, or souvenir items such as pine cones or attractive stones. This provision recognizes that such activities conducted by persons without mechanized transportation or power tools are likely to create considerably smaller impacts on the wilderness environment than scientific research, which may involve base camps, organized crews of scientists and staff, more extensive equipment, and surface disturbance.

In the final rule we have also removed proposed paragraph 6302.40(b), which consisted of several lists of resources and materials that may be collected in wilderness for non-commercial purposes. The lists are not necessary and may have been misleading because most collecting would require an authorization not provided for in the wilderness management regulations. For such collecting, you would need an authorization from other Federal agencies, State agencies, or from BLM under other regulations.

The final rule provides that for scientific information gathering (section 6302.16) in a wilderness area—

- Similar research opportunities must not be reasonably available elsewhere;
- The activity must be compatible with wilderness preservation and the pertinent BLM management plan;
- You must minimize ground disturbance and use of motorized equipment and mechanical transport, including the landing of aircraft; and
- The activity must be authorized by BLM before you may begin.

For information gathering and resource collection or disturbance not related to scientific research, section 6302.15 requires the activity to be—

- Non-commercial as required by section 4(c) of the Wilderness Act;
- Characterized by methods that preserve the wilderness environment; and
- Either in conformance with the pertinent BLM management plan or specially authorized by BLM.

Also, information gathering related to minerals, including prospecting under the mining laws, is specifically allowed under the terms of section 4(d)(2) of the Wilderness Act (16 U.S.C. 1133(d)(2)).

Some measures suggested in comments were: to require campers to carry campfire fuel with them; to limit collecting to education or scientific research; and to require that information and specimen gathering be for the purpose of benefitting wilderness. These activities are not occurring at levels that are harmful to wilderness, and there is no need at present to impose such limits. Some of the activities that respondents suggested we allow in wilderness are prohibited by law. For instance, section 6 of the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470ee(a), prohibits taking pottery shards and similar artifacts from public lands without a permit: "No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit. * * *"

Several comments addressed the specific issue of hobby mineral collecting in the context of this section. They said that the proposed rule would severely limit the hobby, and that collecting specimens preserves them from erosion. One comment stated that closing public lands to mineral collection is unfair when mining may still occur. Another asserted that the proposed rule would impose an excessive restriction of traditional family recreation activities. In response to these comments, we have amended the final rule to allow hobby collecting in BLM wilderness if it is compatible with wilderness preservation and if either the activity conforms with the applicable BLM plan or the hobbyist has an authorization from BLM. The proposed rule would have required both plan conformance and an authorization.

Section 6302.41 Will BLM authorize me to use a motor vehicle, motorized equipment, or mechanized transport to conduct research or gather resource information? (Section 6302.16)

About 20 comments addressed this section. Respondents criticized the provision, stating that it implied motor vehicles could be allowed in wilderness, that it could be interpreted to preclude airborne research over wilderness, and that it did not necessarily require a bond in every case. One comment stated that the rule should clearly prohibit motorized equipment and mechanical transport with certain exceptions: access to valid mining claims, construction and maintenance of wildlife watering devices, maintenance of range improvements, or other uses that BLM cannot prohibit, and that research is not grounds for allowing motorized equipment or mechanical transport. Another comment asked for clarification of how BLM will determine reclamation needs, and another asked whether BLM will give verbal or written authorization for motorized or mechanical information gathering.

Many of these issues are addressed in either other BLM regulations governing specific activities or uses of the public lands, or the BLM Manual if they relate more to BLM internal procedure than to user activity. The type of authorization required is usually covered in the regulations dealing with the subject matter of the research or information gathering. The Wilderness Act governs access to mining claims. Such access need not be by mechanized transport in every case.

We have removed most of the section in the final rule because it is unnecessary. The final sentence has been moved to section 6302.16(b). It requires reclamation, but still provides for discretion on the part of local BLM managers as to whether we will require a bond.

Most human activity in wilderness disturbs the surface in some way. There is no need for bonding in a case where there is likely to be no appreciable impact. The regulations give local managers the power and discretion to require bonding.

Section 6302.50 May wheelchairs be used in a wilderness area? (Section 6302.17)

A few comments addressed this section. Some supported the notion, with which we agree, that adventure and untrammeled nature should be available to the wheelchair user. Another contended that the rule does not meet the spirit of the Americans with Disabilities Act (ADA) because it does not provide for additional facilities for wheelchair users. We disagree with this comment. Special facilities are not required for wheelchair users in wilderness under Section 507 of the ADA (42 U.S.C. 12207(c)(1)).

Another comment stated that the regulation should permit motorized wheelchairs. In the final rule, "wheelchair" is defined in the same way as in Section 507 of the ADA (42 U.S.C. 12207(c)(2)). If a motorized wheelchair meets this definition, so that it is suitable for use in an indoor pedestrian area, it qualifies as a wheelchair under the final rule and may be used in BLM wilderness. One comment asserted that if wheelchairs are allowed in wilderness, game carriers should also be allowed. However, wheelchair users are protected by statute from exclusion, while wheeled game carriers, being mechanical transport, are barred from wilderness by statute.

Section 6302.60 May wilderness areas be used for traditional religious purposes? (Section 6302.18)

A number of comments addressed this section, some of them focusing on the issue of temporary closure to protect privacy of American Indian ceremonies, and others focusing on whether the regulations should even address the issue of religious use of wilderness. We will discuss the latter issue first.

Several comments objected to the provision for temporary closure to the public of portions of wilderness areas being used by Native Americans for religious practices. They stated that persons who engage in such ceremonies on public land should accept the possibility of public discovery of their ceremony. Others said that any closure in support of religious activities is discriminatory, that it is a race-based regulation, and that it violates the Establishment Clause of the First Amendment. On the other hand, several comments supported temporary closure for this purpose, saying that temporary closure is compatible with wilderness values and is needed to protect privacy. One comment tied closure to need, saying that if an area has a history of ceremonies being consistently invaded, BLM should permit temporary closure. Partly because of these comments, and partly because it is unnecessary, BLM has removed this provision in the final rule. Such a special provision for temporary closures to accommodate Indian religious observances is unnecessary because, under 43 CFR subpart 8364 and the general land

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management authority in Section 302 of FLPMA, the BLM local land manager can temporarily close an area to protect or accommodate this or any other use in appropriate circumstances.

The final rule allows American Indians to use wilderness areas for traditional religious purposes, implementing the American Indian Religious Freedom Act (42 U.S.C. 1996) (AIRFA), and other applicable law. It does not specifically allow closure. However, it recognizes the limits provided for in the Wilderness Act, so that Indians using wilderness areas for traditional wilderness purposes may not use motorized equipment or mechanical transportation, and must behave in such a way as to minimize impacts on the wilderness environment.

Comments suggested that the rule should specifically allow mechanical transport for Indian access; however, there is no authority in the Wilderness Act or AIRFA to allow this use. One comment suggested that BLM restrict the manner and degree of this religious activity to that of such activities carried on before designation of the wilderness. There is also no authority to restrict the manner and degree of such Indian religious activity so long as it otherwise comports with the Wilderness Act and these regulations.

One comment stated that the regulations should include the provisions from Executive Order No. 13007 for access, ceremonial use, protection and confidentiality of sacred sites, and notification of proposed management actions potentially affecting these sites. The Executive Order is binding on Federal agencies, and its provisions need not be repeated in these regulations. One comment urged that the regulations should ensure physical access into wilderness for Native Americans for ceremonial, medicinal, cultural, and traditional collecting. We address collecting of materials in wilderness areas in section 6302.15 of the final rule. Native Americans wishing to collect materials for these purposes must do so in a manner compatible with the preservation of the wilderness environment, and the collection must conform with the applicable management plan or be separately authorized by BLM. One comment stated that the term "American Indian" should be replaced by "enrolled member of a federally recognized tribe." This comment is not adopted in the final rule—the terms used in the rule are those used in AIRFA.

Section 6302.70 What activities does BLM prohibit in wilderness areas? (Sections 6302.20 and 6302.14)

Our discussion of the comments on this section will address each paragraph separately, as did most of the comments. But first, a few comments addressed the section as a whole. One comment asked for clarification as to the applicability of the rule to individuals as opposed to State agencies. The rule does not distinguish between States and individuals. For example, State agencies may not use motor vehicles to track wildlife in BLM wilderness any more than individual hunters may, even though States have primary responsibility for wildlife management. Another comment maintained that the treatment in the proposed rule of Wilderness Act prohibitions was inadequate. We disagree with this assessment: Each prohibition in the Wilderness Act is thoroughly covered in this section, along with others that implement the general authority of BLM to regulate public lands, including wilderness. One comment stated that persons wishing to carry on activities that are exceptions to prohibitions should be encouraged in the regulations to use non-wilderness land, or their activities should be narrowly delineated. This comment appears to be directed more to the special provisions of the Act that were covered in subpart 6303 of the proposed rule. Section 4(c) of the Wilderness Act provides for strictly limited exceptions to wilderness prohibitions. BLM believes that subpart 6304 of this final rule properly implements this statutory authority.

Some comments supported the prohibited acts section as a whole, stating that the restrictions imposed are consistent with the purpose and preservation of wilderness, places that are quiet, pristine, and unspoiled. One comment urged that we remove the language in the introductory text giving BLM discretion to enforce these prohibitions in favor of absolute prohibitions. BLM made this change in the final rule.

A small number of comments addressed the issue of road closures, a matter that is not covered in the proposed or final rule. Subject to valid existing rights and special provisions in individual statutes designating wilderness areas, wilderness designation closes jeep trails and similar routes on public lands, but the wilderness management regulations themselves do not close any roads. Wilderness designation or these regulations do not affect roads that are outside wilderness, even those adjacent to wilderness boundaries. If there are routes to wildlife water developments within wilderness, they are closed to mechanical transport except for administrative use. The Wilderness Act prohibits four-wheel drive, off-highway, or other vehicle use of wilderness.

The final rule contains a provision omitted from the proposed rule—a protection of valid existing rights—that is necessary as a matter of law. Section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)) specifically preserves existing private rights.

Paragraph (a). This paragraph prohibits operating a commercial enterprise in BLM wilderness. A small number of comments addressed this provision. A few urged that BLM not prohibit commercial activities such as outfitting and guiding for hunting, fishing, and recreational pack trip. These activities are not prohibited. The rule excepts from the prohibition those activities specifically provided for in the Wilderness Act; Section 4(d)(6) of the Act allows commercial services related to the recreational or other wilderness purposes of the particular area.

One comment asked whether the use of helicopters for wildlife management activities is a commercial activity. Whether such use of helicopters is commercial or not is irrelevant, because BLM claims no authority in this final rule to regulate activities in airspace. Section 4(c) of the Wilderness Act, however, specifically prohibits the landing of aircraft. This does not apply to emergency landing of aircraft.

Paragraph (c). This paragraph prohibits landing strips and helicopter landing facilities. A few comments supported this section, and none objected to it. BLM has made no change in the final rule.

Paragraph (d). This paragraph prohibits the use of motorized equipment. Several comments addressed this prohibition, different respondents raising different points:

- objecting to any motorized and mechanized use of wilderness,
- stating that State wildlife management activities, predator control, fire suppression, emergencies, trail work, delivery of construction materials where delivery is not feasible without mechanical transportation, all require use of mechanized vehicles, motorized equipment, and low-level flights; and
- stating that modern, efficient Native American range management requires use of mechanized vehicles, motorized equipment, and low-level flights.

In response, BLM does not assert authority to regulate overflights of public land in this rule. The other mechanized uses urged in these

comments are prohibited by Section 4(c) of the Wilderness Act, except in the event of emergencies involving the health and safety of persons within the area.

Section 6303.1 of this final rule covers administrative use and emergency situations. The Preamble discussion of that section addresses the merits of allowing or prohibiting use of mechanical transportation and motorized equipment for administrative purposes.

Paragraph (e). This paragraph prohibits landing aircraft, and the dropping and picking up of persons or things by aircraft. A few comments addressed this provision, some in opposition and some in support. One said that the regulations should never allow the use or landing of aircraft unless specifically authorized by Congress for particular wilderness areas. One comment said that the regulations should not restrict the use of aircraft for the administrative uses listed in the discussion of paragraph (d), above, and another urged an exception for search and rescue activities.

Again, BLM does not assert any regulatory authority over airspace. The regulations do allow the landing of aircraft for administrative purposes, and allow BLM to prescribe conditions in which aircraft, as well as other modes of transportation, may be used in emergency situations.

Paragraph (f). This paragraph prohibits structures and installations in BLM wilderness. A few comments addressed this provision, one saying that it did not go far enough and should also specifically prohibit permanent corrals, tent frames, caches, spring boxes, and piped water systems, new grazing structures other than fences intended for wilderness protection, and maintenance of existing dams and other water catchments, unless they are to benefit wilderness. The comment also suggested the addition of "transmission lines" to the list of examples of prohibited structures. Another comment asked that we make our prohibition of structures consistent with that of the U.S. Forest Service. We have added "transmission lines" and "sheds" to the prohibition, in part to be consistent with the policy of the Forest Service, and also in response to the comments. Finally, one comment asked that the regulations not prohibit milepost and trail marker signs. This was not the intent of the proposed rule in prohibiting structures, and milepost and trail signs are allowed in BLM-managed wilderness.

Paragraph (g). This paragraph prohibits cutting trees in BLM wilderness areas. A few comments addressed this prohibition. One questioned whether the prohibition conflicted with section 6302.40(c) of the proposed rule, which specifically allowed the gathering of firewood in reasonable quantities for campfires. (This provision is found at section 6302.15(b) of the final rule.) BLM intends a distinction between gathering firewood and cutting trees. The prohibition of tree cutting does not extend to dead fall and dead branches in reasonable quantities to be used for firewood. One comment stated that the regulations should include an exception for cutting trees to improve habitat if provided for in applicable BLM management plans or under BLM authorization. As a matter of policy, BLM does not permit this kind of habitat management in the wilderness environment.

Paragraph (i). This paragraph prohibits competitive events in wilderness areas. A few comments addressed this section. Some agreed with the notion that the prohibition of competitive use is in keeping with the spirit of the Wilderness Act. Some maintained that some competitive events, such as Eco-Challenge, do not permanently harm the character of wilderness land or reduce the opportunity for solitude, and argued that the prohibition of such events is not consistent with the special provisions section of the Wilderness Act and these regulations. Some questioned the authority for the prohibition.

As a matter of policy, to carry out our responsibility to preserve the wilderness character of the land under the Wilderness Act and FLPMA, BLM does not allow competitive events such as races and time trials in wilderness areas. This is not a change from the existing wilderness management regulations.

Another comment asserted that hunting is a competitive event that BLM should prohibit. In general, hunting is not a competitive sport, but the regulations do prohibit organized competitive hunting events. The regulations treat orienteering in the same way—prohibiting it only if competitive.

Paragraph (j). This paragraph of the proposed rule prohibited "physical alteration or defacement of a natural rock surface for any purpose, including the use of any type of drill, permanent fixed anchor or expansion bolt; construction of permanent artificial hand and footholds; use of glues, epoxies, or other fixatives to facilitate mountain climbing, rock climbing, or cave exploration," unless allowed under the applicable BLM management plan or a BLM authorization. This provision of the proposed rule attracted the most voluminous public response, over 1,300 comments, most opposing what was perceived as a ban on using existing or new fixed anchors for climbing, or a ban on temporary fixed anchors such as slings on trees.

On June 1, 1998, the Forest Service issued a discretionary review decision in separate letters to the Access Fund and Wilderness Watch, finding that fixed anchors are "installations" prohibited by Section 4(c) of the Wilderness Act. On October 29, 1999, the Forest Service published a notice of intent to establish a negotiated rulemaking advisory committee to help develop regulations on the placement, use, and removal of fixed anchors in national forest wilderness areas. Pending the outcome of this Forest Service effort, BLM is reserving paragraph (j) in this final rule. In light of this reservation, we also withhold further discussion of the comments until such time as we publish a final rule addressing the use of fixed anchors in BLM wilderness.

As a point of clarification, climbers do not need authorization to use existing fixed anchors. BLM will not prosecute anyone for using them. However, the final rule also reaffirms the prohibition of power drills used for climbing or any other purpose.

Section 6302.80 What penalties am I subject to if I commit one or more of the prohibited acts? (Section 6302.30)

A few comments opposed this section, stating that penalties are not expressly provided for in the Wilderness Act, or that we should have used the penalties in FLPMA rather than the Sentencing Reform Act in the U.S. Criminal Code (18 U.S.C. 3551–3586). As one of the comments pointed out, FLPMA provides ample authority for penalizing those who violate BLM regulations. The enforcement authority in Section 303(a) of FLPMA (43 U.S.C. 1733(a)) establishes Federal criminal penalties, including fines and imprisonment. The Sentencing Reform Act of 1984, as amended, raises the upper limits on these and all Federal criminal penalties. These new maximums automatically apply to all existing criminal penalty statutes. Of course, magistrates and judges will not necessarily impose the maximum penalties for minor infractions—the penalties are neither mandates nor guidelines. They are the maximum allowed. We have changed this provision in the final rule to make it clear that the imprisonment penalty is based on FLPMA. We have removed the reference to the Sentencing Reform Act.

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Subpart 6303—Special Provisions (Subpart 6304)

One comment suggested that BLM add a provision to this subpart specifically authorizing hunting, fishing, and trapping in BLM wilderness areas, so long as the person doing so does it in accordance with applicable State and Federal law. We have not added such a provision in the final rule. These activities are managed by States, not BLM or other Federal agencies, and are not specifically authorized or prohibited by the Wilderness Act.

Section 6303.10 Are there special provisions for some uses of wilderness areas?

The few comments addressing this section objected that the activities—mining, grazing, development of mineral leases, and so forth—allowed in these special provisions are not compatible with wilderness. They asked that the regulations state that wilderness is a place where such activities are prohibited to preserve wilderness values.

BLM is obligated to allow these activities in wilderness areas because they are specifically allowed by the "special provisions" of Section 4(d) of the Wilderness Act. In most cases the regulations allow the uses only if they pre-existed wilderness designation.

Section 6303.20 Are there special provisions for aircraft and motorboat use within wilderness areas? (Section 6303.21)

A few comments addressed this section, some questioning the need for regulations on aviation, others suggesting controls on aviation noise, and others suggesting that low level flights by government agencies for wildlife management, search and rescue, and so forth, should not be prohibited. One comment asked for clarification as to how the prohibition of motorized equipment relates to aviation. One comment questioned the right of BLM to infringe on the regulatory authority of the Department of Transportation and the Federal Aviation Administration. Another questioned the need for regulations on aviation, including lighter-than-air craft and skydiving. Still another stated that the provision on military overflights should be expanded to apply to private and commercial aviation.

BLM asserts no authority in this rule to regulate the use of airspace or any form of aviation, including military, regardless of altitude. The rule only prohibits the landing of aircraft in wilderness, subject to various exceptions.

One comment asserted that BLM's proposed rule would be too permissive and inconsistent with the Wilderness Act. It said that BLM should use its regulatory authority to restrict these uses as the Secretary of the Interior "deems reasonable" or desirable, not just for protection of wilderness values. It concluded that the regulations should not expand aircraft and motorboat use. The final rule retains, in paragraph (a), a somewhat revised provision allowing BLM to impose other reasonable restrictions necessary to protect wilderness values. The rule includes an amendment, in new paragraph (b), requiring that maintenance of existing wilderness airstrips be done without motorized equipment.

One comment suggested that the regulations should provide that existing but abandoned airstrips cannot be used or maintained after wilderness designation. We have adopted this idea in the final rule.

Several comments addressed the issue of military overflights, most suggesting that such flights should be regulated, reduced, or eliminated. BLM has no authority in this regard, and paragraph (b) of the proposed rule has been removed in the final rule to avoid any suggestion that BLM is trying to regulate any kind of overflight.

Section 6303.30 What special provisions apply to operations under the mining laws? (Section 6303.11)

A few comments addressed this section. One comment argued that subordination of mining activities to the provisions of the Wilderness Act violates section 102(b) of FLPMA (43 U.S.C. 1701(b)). Section 102(b) limits only the effectiveness of the policies of FLPMA, not any other legislation, including the Wilderness Act. This provision has no effect on the relationship between the Wilderness Act and the mining laws.

One comment stated that either casual use (a term defined in 43 CFR 3809.0–5) in a wilderness area should not be exempt from having a plan of operations under 43 CFR subpart 3809, or this rule should include a requirement that casual use be conducted in a manner that preserves the wilderness character of the land.

Amendment of the requirements of subpart 3809 is beyond the scope of this rule. This rule has no effect on subpart 3809, except that it imposes additional requirements on mining operations in wilderness. However, the proposed rule at section 6303.30(b) and (d) required all mining operations, which would include casual use, to be conducted under the standards in the wilderness designation legislation, and to comply with BLM's requirements imposed to protect wilderness values. These provisions are renumbered and consolidated into one paragraph in the final rule. We do not believe a special provision for casual use is necessary.

One comment pointed out that the wording of paragraph (d) in the proposed rule requiring compliance "with all reasonable requirements established by BLM" implies that some BLM requirements may be unreasonable and that miners need not comply with those. This paragraph also raises the question of who determines reasonableness, to the extent that it would provide a legal basis for appeals. BLM has removed this provision in the final rule because paragraph (b)(1) makes it redundant.

One comment asserted that paragraphs (a), (b), (c), and (f) substantially restate the law and are not needed, that paragraphs (d) and (e) may be considered a taking under Executive Order 12630, and that paragraph (h) is unnecessary. BLM promulgates regulations to implement the law. Consequently, all regulations reflect the laws on which they are based, and these paragraphs are included for completeness. Requiring that mining claimants protect wilderness values consistent with use of a mining claim or site for mineral activities, and requiring reclamation and removal of improvements within a reasonable time after termination of mining activities, do not constitute takings of private property under the cited Executive Order. The information in subparagraph (h) was removed because it was substantially covered in the sections on information gathering.

We have also amended this section in the final rule to consolidate in paragraph (b) portions of paragraphs (b), (d), and (g) of the proposed rule that duplicate each other. These three paragraphs address how you must conduct your mining operations to protect wilderness.

One comment stated that the one-year deadline for removal of equipment and improvements, and the six-month deadline for beginning reclamation, may not be long enough, especially at high altitudes or latitudes. It claimed that the reclamation and environmental protection requirements are too vague, and asked for clarification as to time for completion of activities, reclamation standards, ending operations, and the relationship of the requirement that structures be removed with historic preservation requirements.

To answer these concerns, we have amended paragraph (e) to link the reclamation requirements in the final rule to the regulations in 43 CFR subpart 3809. The final rule requires claimants and operators to remove their equipment and structures and begin reclamation within the time frames established in their plan of operations approved by BLM, but no later than 18 months after they have ceased mining and extraction operations. The regulatory provisions are somewhat flexible to accommodate regional differences, keeping in mind the direction in the Wilderness Act to restore the surface as soon as operations are ended. We believe that the environmental protection requirements in the regulations are appropriate for mining in a wilderness setting. As for historic preservation and other legislative requirements, a mining operator who is ready to reclaim must prepare a reclamation plan that addresses such issues.

One comment said that mining should be prohibited in BLM wilderness. As of midnight, December 31, 1983, the location of new mining claims became statutorily prohibited in wilderness, but the Wilderness Act specifically recognizes valid existing rights, including the right to mine valid claims that existed at the time the wilderness was designated and have been properly and continuously maintained since that time. Another comment suggested that BLM require miners to use the minimum tools necessary, in order to protect the land and wilderness values. The Wilderness Act does not provide authority to impose this requirement.

On May 22, 1998, the Solicitor of the Department of the Interior issued an opinion entitled "Patenting of Mining Claims and Mill Sites in Wilderness Areas," M–36994. Consistent with established case law interpreting comparable statutes restricting patenting, the Solicitor's Opinion concludes that section 4(d)(3) of the Wilderness Act requires a reservation of the surface estate to the United States in all patents where the claimant had not established a right to a patent as of the date the lands on which the claim is situated are designated as wilderness. The Solicitor strongly recommended that BLM amend its wilderness regulations to provide guidelines for patenting that comport with the Opinion. Accordingly, BLM will publish shortly a new proposed rule proposing to amend part 6300 as promulgated in today's final rule. This new proposed rule would set forth the patenting limitation and related requirements and clarify BLM's patenting procedures. This final rule reserves a subparagraph in the mining law administration section for this proposed subparagraph.

The final rule also reserves a subparagraph in the mining law administration section for a proposed subparagraph on timber use for mining activities. The proposed rule would have removed from the regulations paragraph (i) of section 8560.4–6, which specified that owners of patented mining claims located after the lands were included in the National Wilderness Preservation System could use timber growing on the patented claims only for mining and mineral extraction and beneficiation purposes, and only if timber otherwise reasonably available is insufficient for these needs. This provision appears in the wilderness regulations in the 1997 edition of the Code of Federal Regulations, but the proposed rule omitted it. No public comments addressed its removal. Because the existing section 8560.4–6(i) could be read to imply a conflict with the Solicitor's Opinion, BLM chose not to incorporate the language from the existing regulations into this final rule. Instead, we will propose, as part of the new rule mentioned above, a revised timber provision that would address timber use for mining operations on both patented and unpatented claims.

Section 6303.31 How will BLM determine the validity of unpatented mining claims or sites? (Section 6304.12)

This section attracted few comments. One comment stated that validity examinations should not be imposed on mining claimants because they would interfere with valid existing rights. The Wilderness Act allows mining under valid existing rights only, and thus by implication authorizes determination by the appropriate administrative authority whether the rights claimed are, in fact, valid.

Another comment requested that BLM make clear (1) whether existing approved mining operations are allowed to continue during the validity examination; (2) that BLM reserves the right to impose mitigation measures; and (3) that BLM must verify the validity of all lode and placer claims affected by a proposed plan of operations. In response to the first concern, we have amended the final rule to allow BLM to determine on a case-by-case basis whether operations may begin or continue pending a validity examination. As to the second part of the comment, operational standards are covered in 43 CFR subpart 3809. Finally, as to the third part, the final rule requires BLM to make a validity determination before approving a plan of operations.

One comment suggested re-wording paragraph (a) of this section to make it clear that the claim must be valid when the area becomes wilderness, not just on some date "prior to" the wilderness designation. BLM adopts this comment, in part, in the final rule to make it clear that the validity must be "as of" the date of wilderness designation.

Section 6303.40 What special provisions apply to mineral leasing and material sales? (Section 6304.23)

A few comments addressed this section. One asserted that the proposed rule did not clearly recognize rights under valid existing leases, licenses, and permits. It went on to say that such authorizations should continue under existing legal requirements or the government should compensate the owner. We disagree with the initial premise of the comment: the regulatory text clearly recognizes valid existing rights. There is no need to provide for compensation, since the regulations allow development of valid existing rights.

One comment suggested that BLM should amend paragraph (b) to provide that activities for which a lease, license, or permit was issued may continue but must be conducted in a manner that preserves the wilderness character of the land. There is no authority in the Wilderness Act for such a provision.

Finally, we removed paragraph (c) of the proposed rule because paragraph (a) renders it redundant.

Section 6303.50 What special provisions apply to water and power resources? (Section 6304.24)

A few comments addressed this section, which deals with the specific authority in the Wilderness Act for the President of the United States to authorize certain water resource prospecting and development. The comments raised issues relating to wildlife water development and State government prerogatives. One comment said that the provision should be removed from the proposed rule because its implementation would damage public lands wilderness. Since the regulation is based directly on a Wilderness Act provision, it is not changed in the final rule except to substitute a codification of the cite to the Act. The provision has no bearing on State water development authority.

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Section 6303.60 What special provisions apply to livestock grazing? (Section 6304.25)

A number of comments addressed this section, some objecting to grazing in wilderness, an activity specifically allowed by the Wilderness Act, and others suggesting various limitations on grazing and related developments. A few of the comments questioned BLM's authority to restrict existing uses or to limit maintenance and reconstruction of grazing support facilities. Under the Wilderness Act, the Federal land managing agency with jurisdiction over a wilderness area will permit you to continue grazing livestock, subject to reasonable regulations, where your grazing authorization was already established when Congress designated the wilderness and has continued since. We consider it to be reasonable regulation to restrict livestock increases, and to prohibit construction of additional facilities, unless they can be shown necessary for purposes of protection and improved management of wilderness resources.

One comment suggested that the regulations include provisions for prevention and correction of resource damage and for allocation of forage among livestock, wildlife, and pack stock. Another asked that the regulations include authority for reduction of grazing levels if resources are being damaged. These matters are covered in BLM's regulations on range management. See 43 CFR subparts 4130 and 4180.

One comment asked for special accommodations for grazing by livestock of Indian tribes, and recommended that the regulations provide for tribal consultation as to grazing decisions on BLM lands adjacent to tribal lands. It also addressed a specific development concern in a wilderness study area.

The final rule has no bearing on wilderness study areas, and the respondent's concern will have to be addressed in the wilderness study process. As for consultation, it is often provided for in other laws and regulations. There is no authority either in the Wilderness Act or in BLM's range management regulations or other grazing authority for special treatment for Indian tribes as to grazing in wilderness areas or on any other public lands. We have not changed the final rule in response to this comment.

One comment suggested that BLM remove the final sentence of the section, allowing increases in grazing levels if they will not adversely affect wilderness values. Removal of the provision would leave no standard in the regulations for deciding whether to allow a requested increase in grazing in wilderness. We believe that no "adverse impact on wilderness values" is a standard sufficiently strict to apply in such cases.

Section 6303.70 What special provisions apply to other commercial uses?

Fewer than 10 comments addressed this section. The Wilderness Act provides that commercial services may be performed in wilderness to the extent necessary for activities proper for realizing the recreational and other wilderness purposes of the area (16 U.S.C. 1133(d)(5)). One comment said that the regulations should require wilderness management plans to include a needs assessment for such commercial activities. BLM planning regulations, which apply to wilderness as well as other public lands, already require a needs analysis. See 43 CFR 1610.4. Such a provision is unnecessary in these regulations.

One comment suggested that the regulations should prohibit permanent or seasonal structures or caches for recreation, or only allow very primitive and ephemeral base camps. Another comment asked that the regulations require NEPA analysis and public review for all decisions on temporary structures. Again, this is covered in BLM's planning regulations—see the previous paragraph. The final rule does not allow temporary structures in BLM wilderness except under the regulations in 43 CFR subpart 3715 on use and occupancy of mining claims.

One comment asked that "wilderness education" or "educational" be added as one of the permissible purposes for commercial use of wilderness. This addition is unnecessary—education is included in "other wilderness purposes."

One comment suggested that commercial hunting be prohibited. We assume the comment refers to commercial guiding and outfitting for hunters. Commercial outfitters often serve as guides for hunters, and this activity is considered among the recreational purposes contemplated in the Wilderness Act.

Upon reviewing these comments, and because the final rule does not permit either permanent or temporary structures in BLM wilderness, we have concluded that this section is unnecessary. We have removed it from the final rule.

Section 6303.80 What special provisions apply to administrative and emergency functions? (Subpart 6303 and Section 6304.22)

A few comments addressed this section, some saying the provision was too restrictive, and others saying it was too permissive. Some said that these provisions should include a minimum tool requirement, that BLM should carry out administrative functions with the minimum tools necessary to minimize damage to the wilderness. BLM has not adopted the comment in the regulations. The standard is not appropriate for emergencies, and BLM can apply it in other situations as a matter of policy.

One comment stated that the regulations should not place sole authority in the hands of BLM, States, and counties without imposing more stringent and more detailed standards. We believe that the level of detail in the regulations is appropriate for regulations with national effect. The regulations provide local managers with the discretion and flexibility they need to be effective wilderness managers. Also, regulations are for the guidance and instruction of the public, not BLM personnel. Internal guidance is found in the BLM Manual, instruction memoranda, and other documents.

One comment stated that the regulations should require that motor vehicles and aircraft be used for rescues, fire-fighting, fighting pest infestations, and trail maintenance and construction. The regulations allow such use, but it would be unnecessary and inappropriate to require it in every case. Another comment, on the other hand, stated that the regulations should include a preference for use of non-motorized equipment. The regulations include no such preference, and are silent on the matter. We do not believe it is appropriate to place anything in regulations that may hamper emergency personnel and place life and property at undue risk.

One comment asked whether the reference in proposed paragraph (c) to "property" is to public or private property. BLM intends no distinction between the two in the context of fire and pest emergencies. In the final rule, we moved this paragraph to new section 6304.22, while the remainder of the section becomes a separate subpart 6303, which addresses BLM administrative functions.

The same comment asked for clarification on the application of the rule to protection of wilderness users, to entry into wilderness by law enforcement officers, and whether BLM will prescribe emergency measures

before or after the emergency. A separate comment opposed allowing occupancy and use by non-BLM officials. Paragraph (d) in the proposed rule clearly stated that emergency measures are to apply in cases of danger to "health and safety of persons." This clearly includes wilderness users, and the meaning is made clearer by adding, from the Wilderness Act itself, the phrase "in the area" to apply to "persons." The rule also states that BLM may authorize occupancy and use of wilderness by law enforcement officers. We have kept the provision discretionary in order to maintain maximum flexibility in protecting health and safety; there may be occasions where it would be inappropriate to require BLM to give free rein to non-Federal agencies, or to establish emergency measures and procedures in advance of the emergency. On the other hand, the Wilderness Act does not prohibit BLM from cooperating with officials of other agencies, and BLM policy is to cooperate with State and local governments to the maximum extent feasible and appropriate.

One comment urged that the regulations include provisions authorizing BLM to use prescribed burns in appropriate situations. We believe that paragraph (b) of this section (section 6303.1(c) of the final rule) is broad enough to allow prescribed fire as a management tool in BLM wilderness. This paragraph allows BLM to authorize Federal, State, and local officials to occupy and use the wilderness areas in order to carry out the purposes of the Wilderness Act or other law.

One comment suggested that feral species and cowbirds should be included, along with fire, insects, and disease, as pests that BLM is authorized to use aircraft to control. The comment is not adopted in the final rule. The Wilderness Act specifies only fire, insects, and disease.

Another comment stated that the provisions for administration, fire, emergencies, insect and noxious weed control need to be more restrictive. We believe that we allowed a level of discretion in the proposed and final rule appropriate for a national regulation. However, we have amended the provision to remove the requirement that control of fire, insects, and disease be tied to threats to human life or property. The Wilderness Act does not limit control of fire, insects, and disease to situations where life or property is in danger. In order to carry out our responsibility for preserving the wilderness character of BLM wilderness areas, we have also added non-native invasive plants to the list of problems to which BLM may apply control measures under this section.

One comment stated that the rule should not provide for emergency rescue. We did not adopt this comment because Section 4(c) of the Act specifically provides for the use of aircraft, motor vehicles, and so forth, in emergencies involving the health and safety of persons within the area.

One comment stated that BLM's emergency actions that involve acts that are otherwise prohibited, such as cutting trees or using a motorized climbing drill, should not be considered a violation of the regulations. We agree. Section 4(c) of the Wilderness Act states that emergencies involving the health and safety of persons within the area are exceptions to the prohibitions in the Act—and the rule should be interpreted in this way.

Several comments offered specific suggestions for rewording certain provisions. BLM adopted some suggestions: adding references to temporary roads, motor vehicles, structures, and landing aircraft in paragraph (a), and, to conform with the Wilderness Act, adding the phrase "in the area" to paragraph (d). We rejected other suggestions as overly restricting administrative discretion. One such comment suggested that the final rule should prohibit most of the administrative measures that the proposed rule sanctioned. We did not adopt this suggestion, because to do so would be contrary to the Wilderness Act.

Subpart 6304 Access to State and Private Lands Within Wilderness Areas (Subpart 6305)

This subpart is renumbered 6305 in the final rule to accommodate new subpart 6303 on BLM administrative functions.

Section 6304.20 How will BLM give access to State and private land within wilderness areas when the access is affected by wilderness designation? (Sections 6305.10, 6305.20, and 6305.30)

Several comments addressed this section, which provides for access to inholdings. "Inholdings" in these regulations are State and private lands completely surrounded by designated wilderness. Several comments addressed matters that are covered in other regulations, primarily 43 CFR part 2920 on general leases, permits, and easements. The regulations in part 2920 authorize, among other things, "uses that cannot be authorized under Title V of the Federal Land Policy and Management Act . . ." (43 CFR 2920.1–1(a)). Title V of FLPMA (43 U.S.C. Chapter 35, Subchapter V, Sections 1761–1771) expressly excludes wilderness from those lands across which BLM may grant rights-of-way under Title V. For this reason, part 2920, which provides for legal mechanisms other than Title V rights-of-way, is the actual authority used to provide access to wilderness inholdings.

Where valid existing rights to access do not exist, BLM may give access to inholdings by permit under existing part 2920, using its administrative discretion under this final rule to determine what access is adequate and causes the briefest and most limited impacts on wilderness character. BLM is preparing a revised version of part 2920 that would provide specific mechanisms for authorizing access to inholdings.

In accordance with these final wilderness management regulations, BLM will only approve the kind and degree of access that you enjoyed immediately before the wilderness area across which you must travel to reach your inholding was designated as wilderness and BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character. By providing for BLM land managers to approve only access routes that were in existence at the time of wilderness designation, the final rule in many cases effectively ratifies the inholder's original choice of route and mode of travel. If no access (other than travel by foot, horseback, or packstock) existed at the date of wilderness designation, BLM will only approve that combination of routes and non-motorized modes of travel to non-Federal inholdings that BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character. If you have a valid existing access right that is greater than the access BLM provides under this rule, we will ensure your reasonable use and enjoyment of your inholding. However, we may impose reasonable restrictions on your access to protect wilderness values.

One comment maintained that rights of access exist independently and are not granted by BLM authority, and that BLM does not have authority to tell private land owners what mode of travel they must use. Section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)) recognizes that valid rights of access may exist in designated wilderness. BLM may nevertheless regulate such existing rights to access in order to protect wilderness resources. Section

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302(b) of FLPMA directs the Secretary of the Interior, "by regulation or otherwise, [to] take any action necessary to prevent unnecessary or undue degradation of the lands." The final regulations specifically implement this authority by providing at section 6305.10 that such rights are subject to reasonable regulation.

One comment stated that, for areas surrounded on only three sides by wilderness but where access on the non-wilderness side may not be possible, the regulations should allow access via the wilderness. Section 5 of the Wilderness Act does not apply to private or State land that is near or adjacent to wilderness, or only partly surrounded by wilderness. Section 5 provides for access only to State and private land that "is completely surrounded by" public land "within areas designated by this Act as wilderness..." (16 U.S.C. 1134(a)). Private or State land that is near or adjacent to wilderness would not be an inholding as defined in these regulations, and we cannot adopt the comment in the final rule.

One comment asked whether BLM will use written or verbal authorization to grant access to inholdings. The authorization must be in writing, and we have added this clarification in the final rule. The same comment asked for clarification of "means that are customarily being used" for determining the type of access allowed, and for assurance that new roads will not be allowed except for mining claims with valid existing rights. The final rule does not allow construction of new roads. You may maintain existing access routes to the degree you or your predecessors maintained them at the time of wilderness designation. BLM will not allow you to upgrade your access routes beyond the condition that existed on the date Congress designated the area as wilderness, unless the improvement would protect wilderness resources from degradation. Further, the customary usage language in section 5 (b) of the Wilderness Act pertains only to mining claims and other valid occupancies, not to access to State and private inholdings provided for in Section 5(a).

One comment stated that the regulations need to acknowledge State and local government jurisdiction over R.S. 2477 rights-of-way. The regulations are silent on how such rights may be recognized. BLM is forestalled by a 1997 statute from promulgating regulations on R.S. 2477 rights-of-way without Congressional consent (Pub. L. 104–208, 110 Stat. 3009–181, 3009–200).

One comment stated that the regulations should use the term "inholding," as defined in the definitions section, and provide that inholdings do not include unpatented mining claims and grazing leases, but should state that these uses have special rights to access under the Wilderness Act. In response, we divided the access section to show more clearly the rights of mining claimants and persons with other valid occupancies.

Two comments criticized the proposed rule's use of the term "customarily used" as a standard for permitting means of access to mining claims and other valid occupancies within wilderness, asserting this standard would not protect wilderness. In the final rule, we have substituted the term "customarily enjoyed." Section 5(b) of the Wilderness Act contains that standard and we may not use a different one.

One comment stated that, according to the United States Attorney General's Opinion of June 23, 1980, BLM need not provide access under the Wilderness Act to inholdings if the owner of the inholding has refused a reasonable offer of exchange. The Attorney General's Opinion addressed the authorities of the Forest Service. It has not yet been determined if the 1980 opinion applies to BLM acquisition of inholdings by exchange. In the event the opinion is determined applicable to BLM, this final rule allows for that possibility. Even so, however, BLM's policy will be to exercise that authority only in unusual or extreme circumstances. The final rule, therefore, allows BLM to acquire land or interests in land from a landowner by exchange, by accepting donation of the inholding or, if the landowner agrees, by purchase. Further, we encourage inholders to seek a fair exchange of their inholding for other public land in the same State (as provided by Sec. 5(a) of the Wilderness Act), and we expect BLM local land managers to explore this possibility in all wilderness inholding cases. Before issuing any authorization allowing access to State-owned or privately owned land, BLM will discuss with the property owner the possibility of selling or donating the inholding to BLM, or exchanging it for other public land.

III. Final Rule as Adopted

The following table shows how BLM redesignated sections in the proposed rule or created new sections in the final rule.

Proposed rule	Final rule
Part 6300	Part 6300
Subpart 6301	Subpart 6301
Sec.	Sec.
6301.10	6301.1
6301.30	6301.3
6301.50	6301.5
Subpart 6302	Subpart 6302
Sec.	Sec.
6302.10	6302.11
6302.20(a)	6302.12(a)
6302.20(b)	6302.12(b)
6302.20(c)	6302.13
6302.30	6302.19
6302.40(a)	6302.16
6302.40(b)	6302.15(a)
6302.40(c)	6302.15(b)
6302.41	6302.15
6302.50	6302.17
6302.60	6302.18
6302.70	6302.20
6302.70(j)	6302.14, 6302.20(j)
6302.80	6302.30
Subpart 6303	Subpart 6304
Sec.	Sec.

Proposed rule	Final rule
6303.10	removed
6303.20	6304.21
6303.30	6304.11
6303.31	6304.12
6303.40	6304.23
6303.50	6304.24
6303.60	6304.25
6303.70	6302.20(f)
6303.80	Subpart 6303
6303.80(c)	6304.22
Subpart 6304	Subpart 6305
Sec.	Sec.
6304.20(a)	6305.10, 6505.11
6304.20(b)	6305.20
6304.20(c)	6305.30

We have tried in this renumbering to make the organization more logical and the regulations flow better and be more informative. We divided a few of the longer sections in the proposed rule into two or more shorter sections with informative headings.

Also, we have arranged subject matter so that major subject matter headings (with section numbers ending in zero (0) and often with no regulatory content themselves), lead into two or more subordinate sections, with numbers ending in other than 0, providing detailed information and guidance. For example, sections 6304.11 and 6304.12 are subordinate to section 6304.10, and section 6304.20 immediately thereafter leads into a separate series of sections. We have also simplified some of the section headings, and minimized the use of "yes or no" questions.

Subpart 6301 contains general information, a statement of purpose in section 6301.1, a reference to the statutory definition of wilderness in section 6301.3, and definitions in section 6301.5.

Subpart 6302 discusses use of wilderness areas, when you need and how you get a permit, what you can do in wilderness without a permit (including rock climbing), and what acts the regulations totally prohibit. It concludes with a section on criminal and civil penalties for violating the prohibited acts.

Subpart 6303 describes the administrative and emergency functions, except for fire, insect, and disease control, that BLM performs in wilderness.

Subpart 6304 deals with the "special provisions" in Section 4(d) of the Wilderness Act. It contains the regulations for mining, prospecting and information gathering, mineral leasing, control of fire, insects, and disease, water development, livestock grazing, and commercial services related to recreation and other wilderness uses.

Subpart 6305 covers access to wilderness inholdings, both those held as private property in fee simple by individuals, or as State land, and those legally occupied, such as mining claims.

IV. Procedural Matters

The principal author of this final rule is Jeff Jarvis, Senior Wilderness Specialist, Wilderness, Rivers and National Trails Group, Office of the National Landscape Conservation System, assisted by Rob Hellie of the National Monuments and National Conservation Areas Group, and Ted Hudson of the Regulatory Affairs Group, all in the Washington, D.C., office. David Porter of the Colorado State Office, Ken Mahoney of the Arizona State Office, and Paul Brink of the California State Office, BLM, also assisted.

National Environmental Policy Act

BLM has performed and documented an environmental assessment (EA), and has found that the rule is not a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C)(NEPA). Therefore, BLM is not required to write a detailed statement on the environmental impacts of the rule under NEPA. BLM has placed the EA and the Finding of No Significant Impact (FONSI), dated June 19, 2000, on file in the BLM Administrative Record. You may review these documents by contacting us at the address listed above (see **ADDRESSES**).

Executive Order 12866

Following the criteria listed in section 3(f) of Executive Order 12866, BLM has found that the rule is not a significant regulatory action. Therefore, this rule is not subject to review by the Office of Management and Budget under section 6(a)(3) of the Executive Order.

Executive Order 12630

This rule does not represent a governmental action capable of interference with constitutionally protected property rights or result in a taking of private property under Executive Order 12630. It does not provide for the taking of any property rights or interests.

One public comment suggested that the access provisions in subpart 6305 may require a takings assessment under this Executive Order. Section 1(b) of the Executive Order states, in part, "Executive departments * * * should account in decision-making for those takings that are necessitated by statutory mandate." The only non-Federal property directly affected by the rule is non-Federal land surrounded by designated wilderness, and the rule establishes procedures regulating access to such inholdings.

There are fewer than 1,000 State and private inholdings in BLM wilderness areas in California and Arizona. These two States contain the great bulk of BLM designated wilderness. This is the approximate number of inholdings that may be affected by this provision of the rule. The rule establishes acquisition by BLM as the remedy of preference for resolving inholding problems. Inholders for whom an exchange or other acquisition arrangement will not work will likely need to apply for access under 43 CFR part 2920. Under BLM policy, we will grant access to such inholders appropriate for their level of use of the affected property and equivalent to that which they enjoyed before wilderness designation.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory

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flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined under the RFA that this rule will not have a significant economic impact on a substantial number of small entities.

Several public comments maintained that section 6302.70(j) of the proposed rule would have a serious impact on small businesses. This argument was based on two premises: (1) that paragraph (j) would prohibit the use of fixed anchors and thereby virtually prohibit climbing, and (2) that the rule would affect many climbing areas.

In Part II of this preamble, we explained that the Forest Service has begun a negotiated rulemaking. This process must be concluded before BLM can promulgate regulations on this matter. Therefore, we reserve a discussion of the supposed impacts of the rule on small business until such time as we publish a final rule containing a provision affecting climbing.

None of the other provisions of the proposed rule attracted comments alleging negative effects on small business.

The Small Business Administration established the Small Business and Agricultural Regulatory Enforcement Ombudsman and ten Regional Fairness Boards to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates these enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on enforcement aspects of this rule, you may call 1–888–734–4247.

Paperwork Reduction Act

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

Unfunded Mandates Reform Act

This rule will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. The rule will not establish a Federal mandate that may result in expenditures of $100 million or more in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, BLM need not prepare a written statement of the anticipated costs and benefits of the rule in accordance with the Unfunded Mandates Reform Act (25 U.S.C. 1501–1571).

The rule requires that State agencies comply with the Wilderness Act in carrying out their activities in BLM wilderness areas. For example, States will not be allowed to use motorized equipment or mechanical transport, or to land aircraft, in managing wildlife. This degree of limitation does not cross the financial threshold contemplated in the Unfunded Mandates Reform Act, and is required by Federal law.

Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law. Several comments on the proposed rule questioned whether the rule would affect State management of fish and wildlife. This was the only arena where the public perceived potential conflict between BLM and the States. As stated several times earlier in this preamble, and as directed by both FLPMA and the Wilderness Act, this rule has no effect on the respective roles of Federal and State government in this area.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no adverse effects on the tribes. The regulations specifically allow Indian use of BLM wilderness for religious ceremonies. Limitations imposed on Indians for the use of BLM wilderness in this rule are no different from limitations imposed on other groups, and are required by the Wilderness Act and FLPMA. The regulations have no effect on Indian governmental affairs, Indian reservations, or other Indian lands.

List of Subjects in 43 CFR Parts 6300 and 8560

Penalties, Public lands, Reporting and recordkeeping requirements, Wilderness areas.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

Dated: November 28, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

1. Subchapter F, consisting of Part 6300, is added to read as follows:

Subchapter F—Preservation and Conservation (6000)

Part 6300—Management of Designated Wilderness Areas

Subpart 6301—Introduction

Sec.
6301.1 Purpose.
6301.3 What is a BLM wilderness area?
6301.5 Definitions.

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

Use of Wilderness Areas
6302.10 Use of wilderness areas.
6302.11 How may I use wilderness areas?
6302.12 When do I need an authorization and to pay a fee to use a wilderness area?
6302.13 Where do I obtain an authorization to use a wilderness area?
6302.14 What authorization do I need to climb in BLM wilderness?
6302.15 When and how may I collect or disturb natural resources such as rocks and plants in wilderness areas?
6302.16 When and how may I gather scientific information about resources in BLM wilderness?
6302.17 When may I use a wheelchair in BLM wilderness?
6302.18 How may American Indians use wilderness areas for traditional religious purposes?
6302.19 When may BLM close or restrict use of wilderness areas?
Prohibited Acts
6302.20 What is prohibited in wilderness?
Penalties
6302.30 What penalties apply if I commit one or more of the prohibited acts?

Subpart 6303—Administrative and Emergency Functions

6303.1 How does BLM carry out administrative and emergency functions?

Subpart 6304—Uses Addressed in Special Provisions of the Wilderness Act

Mining Under the General Mining Laws
6304.10 Mining law administration.
6304.11 What special provisions apply to operations under the mining laws?
6304.12 How will BLM determine the validity of unpatented mining claims or sites?

Other Uses Specifically Addressed by the Wilderness Act
6304.20 Other uses addressed in special provisions of the Wilderness Act.
6304.21 What special provisions cover aircraft and motorboat use?
6304.22 What special provisions apply to control of fire, insects, and diseases?
6304.23 What special provisions apply to mineral leasing and material sales?
6304.24 What special provisions apply to water and power resources?
6304.25 What special provisions apply to livestock grazing?

Subpart 6305—Access to State and Private Lands Or Valid Occupancies Within Wilderness Areas

Access to Non-Federal Inholdings
6305.10 How will BLM allow access to State and private land within wilderness areas?
6305.11 What alternatives to granting access will BLM consider in cases of State and private inholdings?
Access to Other Valid Occupancies
6305.20 How will BLM allow access to valid mining claims or other valid occupancies within wilderness areas?
Access Procedures for Valid Occupancies
6305.30 What are the steps BLM must take in issuing an access authorization to valid occupancies?

Authority: 16 U.S.C. 1131 *et seq.*; 43 U.S.C. 1733, 1740, 1782.

Subpart 6301—Introduction

§ 6301.1 Purpose.

This part governs the management of BLM wilderness areas outside of Alaska. It tells you what wilderness areas are, how BLM manages them, and how you can use them. These regulations also tell you what activities BLM does not allow in wilderness areas, the penalties for performing prohibited acts, and the special provisions for some uses and access that the Wilderness Act explicitly allows.

§ 6301.3 What is a BLM wilderness area?

A BLM wilderness area is an area of public lands that Congress has designated for BLM to manage as a component of the National Wilderness Preservation System in accordance with the Wilderness Act of 1964. The Wilderness Act provides a detailed definition of wilderness that applies to BLM wilderness areas. See 16 U.S.C. 1131(c) and 43 U.S.C. 1702(i).

§ 6301.5 Definitions.

Terms used in this part have the following meanings:

Access means the physical ability of property owners and their successors in interest to have ingress to and egress from State or private inholdings, valid mining claims, or other valid occupancies. It does not include rights-of-way or permits under section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) (FLPMA) or parts 2800 and 2880 of this chapter.

Inholding means State-owned or privately owned land that is completely surrounded by Congressionally designated wilderness.

Mechanical transport means any vehicle, device, or contrivance for moving people or material in or over land, water, snow, or air that has moving parts. This includes, but is not limited to, sailboats, sailboards, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. The term does not include wheelchairs, nor does it include horses or other pack stock, skis, snowshoes, non-motorized river craft including, but not limited to, drift boats, rafts, and canoes, or sleds, travois, or similar devices without moving parts.

Mining operations is defined in subpart 3715 of this chapter.

Motor vehicle means any vehicle that is self-propelled.

Motorized equipment means any machine that uses or is activated by a motor, engine, or other power source. This includes, but is not limited to, chainsaws, power drills, aircraft, generators, motorboats, motor vehicles, snowmobiles, tracked snow vehicles, snow blowers or other snow removal equipment, and all other snow machines. The term does not include shavers, wrist watches, clocks, flashlights, cameras, camping stoves, cellular telephones, radio transceivers, radio transponders, radio signal transmitters, ground position satellite receivers, or other similar small hand held or portable equipment.

Primitive and unconfined recreation means non-motorized types of outdoor recreation activities that do not require developed facilities or mechanical transport.

Public lands means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership.

Valid occupancy means an occupancy under a current permit, lease, or other written authorization from BLM to occupy public lands. For a definition of occupancy related to development of locatable minerals, see subpart 3715 of this chapter.

Wheelchair means a device that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

Use of Wilderness Areas

§ 6302.10 Use of wilderness areas.

§ 6302.11 How may I use wilderness areas?

Unless otherwise provided by BLM, the Wilderness Act, or the Act of Congress designating the area as wilderness, all wilderness areas will be open to uses consistent with the preservation of their wilderness character and their future use and enjoyment as wilderness. In subpart 6304 you will find provisions implementing the special provisions of the Wilderness Act that allow specific uses of wilderness areas. In § 6302.20 you will find a list of acts that are explicitly prohibited within wilderness areas.

§ 6302.12 When do I need an authorization and to pay a fee to use a wilderness area?

(a) In general, you do not need an authorization to use wilderness areas.

(b) BLM may require an authorization and charge fees for some uses of wilderness areas. You must obtain authorization from BLM and pay fees to use a wilderness area when required by:

(1) The regulations in this part (see § 6302.15 on collecting natural resource materials, § 6302.16 on gathering scientific information, and subpart 6305 on access to inholdings and valid occupancies);

(2) Regulations in this chapter II—Bureau of Land Management, Department of the Interior—governing the specific activities in which you are engaged;

(3) The management plan for the wilderness area; or

(4) A BLM closure or restriction under § 6302.19 of this part.

(c) To determine whether you need an authorization under paragraph (b)(2) of this section, you should refer to the applicable BLM regulations for your particular activity.

§ 6302.13 Where do I obtain an authorization to use a wilderness area?

You may request an authorization to use a wilderness area from the BLM field office with jurisdiction over the wilderness area you want to use.

§ 6302.14 What authorization do I need to climb in BLM wilderness?

(a) You do not need a permit or other authorization to climb in BLM wilderness.

(b) [Reserved]

(c) You must not use power drills for climbing. See § 6302.20(d).

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§ 6302.15 When and how may I collect or disturb natural resources such as rocks and plants in wilderness areas?

(a) You may remove or disturb natural resources for non-commercial purposes in wilderness areas, including prospecting, provided—

(1) You do it in a manner that preserves the wilderness environment, using no more than non-motorized hand tools and causing minimal surface disturbance; and

(2) (i) Your proposed activity conforms to the applicable management plan; or

(ii) You have a BLM authorization if one is required by statute or regulation.

(b) Where BLM allows campfires in a wilderness, you may gather a reasonable amount of wood for use in your campfire.

§ 6302.16 When and how may I gather scientific information about resources in BLM wilderness?

(a) You may conduct research, including gathering information and collecting natural or cultural resources in wilderness areas, using methods that may cause greater impacts on the wilderness environment than allowed under § 6302.15(a), if—

(1) Similar research opportunities are not reasonably available outside wilderness;

(2) You carry out your proposed activity in a manner compatible with the preservation of the wilderness environment and conforming to the applicable management plan;

(3) Any ground disturbance or removal of material is the minimum necessary for the scientific purposes of the research; and .

(4) You have an authorization from BLM.

(b) You must reclaim disturbed areas, and BLM may require you to post a bond.

§ 6302.17 When may I use a wheelchair in BLM wilderness?

If you have a disability that requires the use of a wheelchair, you may use a wheelchair in a wilderness. Consistent with the Wilderness Act and the Americans with Disabilities Act of 1990 (42 U.S.C. 12207), BLM is not required to facilitate such use by building any facilities or modifying any conditions of lands within a wilderness area.

§ 6302.18 How may American Indians use wilderness areas for traditional religious purposes?

In accordance with the American Indian Religious Freedom Act (42 U.S.C. 1996), American Indians may use wilderness areas for traditional religious purposes, subject to the provisions of the Wilderness Act, the prohibitions in § 6302.20, and other applicable law.

§ 6302.19 When may BLM close or restrict use of wilderness areas?

When necessary to carry out the provisions of the Wilderness Act and other Federal laws, BLM may close or restrict the use of lands or waters within the boundaries of a BLM wilderness area, using the procedures in § 8364.1 of this chapter. BLM will limit any such closure to affect the smallest area necessary for the shortest time necessary.

Prohibited Acts

§ 6302.20 What is prohibited in wilderness?

Except as specifically provided in the Wilderness Act, the individual statutes designating the particular BLM wilderness area, or the regulations of this part, and subject to valid existing rights, in BLM wilderness areas you must not:

(a) Operate a commercial enterprise;

(b) Build temporary or permanent roads;

(c) Build aircraft landing strips, heliports, or helispots;

(d) Use motorized equipment; or motor vehicles, motorboats, or other forms of mechanical transport;

(e) Land aircraft, or drop or pick up any material, supplies or person by means of aircraft, including a helicopter, hang-glider, hot air balloon, parasail, or parachute;

(f) Build, install, or erect structures or installations, including transmission lines, motels, vacation homes, sheds, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures, other than tents, tarpaulins, temporary corrals, and similar devices for overnight camping;

(g) Cut trees;

(h) Enter or use wilderness areas without authorization, where BLM requires authorization under § 6302.12;

(i) Engage or participate in competitive use as defined in section 8372.0–5(c) of this chapter, including those activities involving physical endurance of a person or animal, foot races, water craft races, survival exercises, war games, or other similar exercises;

(j) [Reserved]; or

(k) Violate any BLM regulation, authorization, or order.

Penalties

§ 6302.30 What penalties apply if I commit one or more of the prohibited acts?

(a) If you commit a prohibited act listed in § 6302.20 in a BLM wilderness area, you are subject to criminal prosecution on each offense. If convicted, you may be fined not more than $100,000 under 18 U.S.C. 3571. In addition, you may be imprisoned for not more than 12 months, as provided for by 43 U.S.C. 1733(a).

(b) At the request of the Secretary of the Interior, the United States Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent you from using public lands in violation of the regulations of this part.

Subpart 6303—Administrative and Emergency Functions.

§ 6303.1 How does BLM carry out administrative and emergency functions?

As necessary to meet minimum requirements for the administration of the wilderness area, BLM may:

(a) Use, build, or install temporary roads, motor vehicles, motorized equipment, mechanical transport, structures or installations, and land aircraft, in designated wilderness;

(b) Prescribe conditions under which other Federal, State, or local agencies or their agents may use, build, or install such items to meet the minimum requirements for protection and administration of the wilderness area, its resources and users;

(c) Authorize officers, employees, agencies, or agents of the Federal, State, and local governments to occupy and use wilderness areas to carry out the purposes of the Wilderness Act or other Federal statutes; and

(d) Prescribe measures that may be used in emergencies involving the health and safety of persons in the area, including, but not limited to, the conditions for use of motorized equipment, mechanical transport, aircraft, installations, structures, rock drills, and fixed anchors. BLM will require any restoration activities that we find necessary to be undertaken concurrently with the emergency activities or as soon as practicable when the emergency ends.

Subpart 6304—Uses Addressed in Special Provisions of the Wilderness Act

Mining Under the General Mining Laws

§ 6304.10 Mining law administration.

§ 6304.11 What special provisions apply to operations under the mining laws?

The general mining laws apply to valid existing mining claims and mill sites within BLM wilderness, except as provided in this section.

(a) After the date on which the general mining laws cease to apply to a specific wilderness area—

(1) You cannot locate a mining claim or establish any right to or interest in any mineral deposits discovered in that wilderness area; and

(2) You cannot locate a mill site in that wilderness area.

(b) If you hold a valid existing mining claim or mill site within a wilderness area—

(1) You must conduct any mining operations following the applicable standards provided in—

(i) The Wilderness Act;

(ii) The legislation designating the wilderness;

(iii) Your approved plan of operations;

(iv) Subpart 3809 of this chapter; and

(v) Subpart 3715 of this chapter;

(2) You must minimize impairment of wilderness characteristics to the extent BLM determines practicable, consistent with the use of a valid claim or site for mineral activities; and

(3) Your temporary structures used in mining operations are subject to the use and occupancy regulations in subpart 3715 of this chapter.

(4) You must post a financial guarantee under subpart 3809 of this chapter in order to ensure completion of reclamation.

(c) If you hold a valid mining claim, mill site, or tunnel site located in any BLM wilderness area before the general mining laws ceased to apply to that area, you may maintain your mining claim or site, so long as you comply with the general mining laws, the regulations in part 3830 of this chapter, and the Act of Congress designating the wilderness.

(d) As required in your approved plan of operations, when you complete mining operations in a wilderness area—

(1) You must remove all structures, equipment, and other facilities and begin reclamation as soon as feasible after mining operations end. However, you must start reclamation no later than 18 months after mining operations end.

(2) You must restore the surface as near as practicable to the appearance and contour of the surface before mining operations began, following the regulations in subpart 3809 of this chapter.

(e) [Reserved]

(f) [Reserved]

§ 6304.12 How will BLM determine the validity of unpatented mining claims or sites?

(a) BLM will conduct a mineral examination to determine whether your claim or site was valid as of the date that lands within the wilderness area were withdrawn from appropriation under the mining laws. We also will determine whether your claim or site remains valid at the time of the examination.

(1) If you do not have an approved plan of operations, BLM must complete this validity determination before approving your plan of operations.

(2) If you have a plan of operations that was approved before the wilderness designation, BLM will determine whether operations may begin or continue while we conduct the validity determination.

(b) If BLM concludes that your mining claim lacks a discovery of a valuable mineral deposit or your claim or site is invalid for any other reason, we will disapprove your application for a plan of operations. For an existing approved operation, BLM may issue a notice ordering suspension or cessation of operations. We will begin contest proceedings to determine the validity of your mining claim or site under subpart E of part 4 of this title. However, you may take samples and gather other evidence to confirm or corroborate. mineral exposures that were physically disclosed on the claim before the date the wilderness area was withdrawn.

(c) If the Department of the Interior issues a final administrative decision declaring your claim or site null and void, you must cease all operations and complete all reclamation required under subpart 3809 of this chapter and § 6304.11(d) of this part.

Other Uses Specifically Addressed by the Wilderness Act

§ 6304.20 Other uses addressed in special provisions of the Wilderness Act.

§ 6304.21 What special provisions cover aircraft and motorboat use?

(a) Subject to such restrictions as BLM determines necessary to protect wilderness values, we may authorize you to land aircraft and use motorboats at places within any wilderness area if these uses were established and active at the time Congress designated the area as wilderness.

(b) BLM may also authorize you to maintain, utilizing non-motorized means, aircraft landing strips, heliports or helispots that existed and were in active use when Congress designated the area as wilderness.

§ 6304.22 What special provisions apply to control of fire, insects, and diseases?

BLM may prescribe measures to control fire, noxious weeds, non-native invasive plants, insects, and diseases. BLM may require restoration concurrent with or as soon as practicable upon completion of such measures.

§ 6304.23 What special provisions apply to mineral leasing and material sales?

(a) After Congress designates any area of public lands as wilderness, BLM will not issue mineral or geothermal leases, licenses, or permits under the mineral or geothermal leasing laws, or sales contracts or free use permits under the Materials Act (30 U.S.C. 601 *et seq.*)

(b) You may continue to hold and operate mineral or geothermal leases, licenses, contracts, or permits under their original terms and conditions after Congress designates the affected BLM lands as wilderness.

§ 6304.24 What special provisions apply to water and power resources?

If the President specifically authorizes you under 16 U.S.C. 1133(d)(4)(1), BLM will permit you to prospect for water resources and establish new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, and to maintain such facilities.

§ 6304.25 What special provisions apply to livestock grazing?

(a) If you hold a BLM grazing permit or grazing lease for land within a wilderness area, you may continue to graze your livestock provided that you or your predecessors began such use under a permit or lease before Congress established the wilderness area.

(b) Your grazing activities within wilderness areas, including the construction, use, and maintenance of livestock management improvements, must comply with the livestock grazing regulations in part 4100 of this chapter.

(c) If the management plan for the area allows, you may maintain or reconstruct grazing support facilities that existed before designation of the wilderness area. BLM will not authorize new support facilities for the purpose of increasing your number of livestock. The construction of new livestock management facilities must be for the purposes of protection and improved management of wilderness resources.

(d) BLM may authorize an increase in livestock numbers only if you demonstrate that the additional use will not have an adverse impact on wilderness values.

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Subpart 6305—Access to State and Private Lands Or Valid Occupancies Within Wilderness Areas

Access to Non-Federal Inholdings

§ 6305.10 How will BLM allow access to State and private land within wilderness areas?

(a) If you own land completely surrounded by wilderness, BLM will only approve that combination of routes and modes of travel to your land that—

(1) BLM finds existed on the date Congress designated the area surrounding the inholding as wilderness, and

(2) BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character.

(b) If you own land completely surrounded by wilderness, and no routes or modes of travel to your land existed on the date Congress designated the area surrounding the inholding as wilderness, BLM will only approve that combination of routes and non-motorized modes of travel to non-Federal inholdings that BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character.

(c) If BLM approves your access route under paragraph (a) or (b) of this section, we will authorize it under part 2920 of this chapter.

(d) BLM will not allow construction of new access routes to State and private inholdings in wilderness.

(e) BLM will not allow improvement of access routes to a condition more highly developed than that which existed on the date Congress designated the area as wilderness, except such improvements BLM determines are necessary to protect wilderness resources from degradation.

(f) If you own land completely surrounded by wilderness and you have a valid existing right of access which is greater than the access described in paragraph (a) or (b) of this section, BLM may manage such access to protect wilderness resources while ensuring your reasonable use and enjoyment of the inholding.

§ 6305.11 What alternatives to granting access will BLM consider in cases of State and private inholdings?

To reduce or eliminate the need to use wilderness areas for access to State and private land, BLM may—

(a) Accept donation of the inholding, or

(b) Acquire the inholding from the owner by an exchange for federally owned land in the same State of approximately equal value or, if the owner concurs, by purchase.

Access to Other Valid Occupancies

§ 6305.20 How will BLM allow access to valid mining claims or other valid occupancies within wilderness areas?

If you hold a valid mining claim or other valid occupancy wholly within a wilderness area, BLM will allow you access by means that are consistent with the preservation of the area as wilderness and that have been or are being customarily enjoyed with respect to other mining claims or similar occupancies surrounded by wilderness.

(a) BLM approves plans of operation under subpart 3809 of this chapter. The plan of operation will prescribe the routes of travel that you may use for access to claims or sites surrounded by wilderness. These plans will also identify the mode of travel, and other conditions reasonably necessary to preserve the wilderness area.

(b) BLM issues written authorizations under part 2920 of this chapter. Your authorization will prescribe the routes of travel that you may use for access to occupancies surrounded by wilderness. The authorizations will also identify the mode of travel and other conditions reasonably necessary to minimize adverse impacts on the natural resource values of the wilderness area.

Access Procedures for Valid Occupancies

§ 6305.30 What are the steps BLM must take in issuing an access authorization to valid occupancies?

(a) Before issuing an access authorization to mining claims or other valid occupancies wholly surrounded by wilderness, BLM will make certain that:

(1) You have demonstrated a lack of any existing access rights or alternate routes of access available by deed or under applicable State or common law and that access by non-federally owned routes is not reasonably obtainable;

(2) Your combination of routes and modes of travel, including non-motorized modes, will cause the least impact on the wilderness but, at the same time, will permit the reasonable use of the non-Federal land, valid mining claim, or other valid occupancy; and

(3) The location, construction, maintenance, and use of the access route that BLM approves will be as consistent as possible with the management of the wilderness area.

(b) After issuing an access authorization, BLM will make certain that you situate and build the route that BLM approves to minimize adverse impacts on the natural resource values of the wilderness area.

Subchapter H—Recreation Programs

PART 8560 [Removed]

2. Group 8500, part 8560, and subpart 8560 are removed.

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Part IV

Department of Education

Bilingual Education: Program Development and Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.288S]

Bilingual Education: Program Development and Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Note to applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program is to provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for limited English proficient (LEP) students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

Eligible Applicants: (1) One or more local educational agencies (LEAs); (2) one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), or a State educational agency (SEA); or (3) a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

Deadline for Transmittal of Applications: January 26, 2001.

Deadline for Intergovernmental Review: March 26, 2001.

Available Funds: $7.3 million.

Estimated Range of Awards: $100,000–$175,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative yRegulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98,99; and (b) 34 CFR Part 299.

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7112 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7422 and 7426)).

The grants awarded under this section are to be used to improve the education of limited English proficient students and their families. Specifically, grantees are required to serve limited English proficient students by: (a) Developing and implementing comprehensive preschool, elementary, or secondary bilingual education or special alternative instructional programs that are coordinated with other relevant programs and services; and (b) providing in-service training to classroom teachers, administrators, and other school or community-based organizational personnel. Grantees may also implement family education programs, improve the instructional program, compensate personnel, and provide tutorials and academic or career counseling to limited English proficient students.

Priorities

Competitive Priority: The Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zones or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Reading

Projects that focus on assisting limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on assisting limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Invitational Priority 4—Safe and Drug-Free Schools

Projects that contribute to the creation and maintenance of a safe and drug-free learning environment for limited English proficient students by being made an integral part of a comprehensive school safety plan.

Information on developing and implementing a comprehensive school safety plan is found in the 1998 Annual Report on School Safety prepared by the U.S. Departments of Education and Justice.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b)(1) *Need for the project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited English proficiency in the school or school district to be served, and

(ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(2) *Quality of the project design.* (25 points) The Secretary considers the quality of the design of the proposed project.

(i) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(D) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(E) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(F) The extent to which the proposed project encourages parental involvement.

(Authority: 34 CFR 75.210(c)(2) (i), (ii), (xii), (xvi), (xviii), and (xix)).

(3) *Quality of project services.* (15 points) The Secretary considers the quality of the services to be provided by the proposed project.

(i) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(ii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210 (d), (1), (2), (3), (i), (v) and (vii)).

(4) *Proficiency in English and another language.* (3 points) The Secretary reviews each application to determine the extent to which the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1)).

(5) *Quality of project personnel.* (7 points) The Secretary considers the quality of the personnel who will carry out the proposed project.

(i) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(ii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(1)–(3)(i) and (ii)).

(6) *Adequacy of resources.* (7 points) The Secretary considers the adequacy of resources for the proposed project.

(i) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the budget is adequate to support the proposed project.

(B) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(C) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(D) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(Authority: 34 CFR 75.210(f)(1),(2),(iv),(v) and (vi)).

(7) *Quality of the management plan.* (13 points) The Secretary considers the quality of the management plan for the proposed project.

(i) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(Authority: 34 CFR 75.210(g)(1),(2)(i),(iv) and (v)).

(8) *Quality of project evaluation plan.* (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with non-limited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)-(3))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

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One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each state under the Executive order. If you want to know the name and address of any SPOC, see the list published in the **Federal Register** on April 29, 1999 (64 FR 22963); or you may view the latest SPOC list on the OMB Web site at the following address: *http://www.whitehouse.gov/omb/grants.*

In States that have not established a process or chosen a program for review, State, area-wide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entitles must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372—CFDA#84.288S, U.S. Department of Education, room 6213, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Program Development and Implementation Grants Program—CFDA #84.288S is one of the programs included in the pilot project. If you are an applicant under the Program Development and Implementation Grants Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Program Development and Implementation Grants Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) elsewhere in this notice.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.288S, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) If You Deliver Your Application by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.288S, Room 3633, Regional Office Building 3, 7th and D Streets,.SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) If You Submit Your Application Electronically

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (http://e-grants.ed.gov) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday–Friday and 6:00 a.m. until 7:00 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time).

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED Form 424; revised November 12, 1999) CFDA #84.288S as the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.
b. Additional Guidance.
c. Estimated Public Reporting Burden.
d. Notice to All Applicants (OMB No. 1801–0004).
e. Checklist for Applicants.
f. Application for Federal Education Assistance (ED 424) and instructions.
g. Budget Information—Non-Construction Programs (ED 524) and instructions.
h. Group Application Certification.
i. Student Data.
j. Project Documentation.
k. Assurances—Non-Construction Programs (SF 424B) and instructions.
l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.
m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

n. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996. Notice may be accessed through the following Internet address: http://ofco.ed.gov/fedreg.htm.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy." No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: James (Jim) Lockhart, Telephone (202) 205–5426; Ki Lee, Telephone: 202–205–8730; or Ursula Lord, Telephone: 202–205–5709. Written inquiries may be addressed to the above at U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, SW., Washington, DC 20202. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: *http://ocfo.ed.gov/fedreg.htm; http://www.ed.gov/news.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7422.

Dated: December 8, 2000.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0538 (Expiration Date: 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5622, Switzer Building, Washington, DC 20202–6510.

Application Instructions

Parity Guidelines Between Paper and Electronic Applications

The Department of Education is expanding the pilot project, which began in FY 2000, that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-

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APPLICATION visit the following address: *http://e-grants.ed.gov.*

In an effort to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-APPLICATION has an impact on all applicants under this competition.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project is another step in the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department is conducting a limited pilot of electronic peer review (e-READER) and electronic annual performance reporting (e-REPORTS).

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating your application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

Use a font that is either 12-point or larger or no smaller than 10 pitch (character per inch).

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; the text of the selection criteria; or the one-page abstract and table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

We will reject your application if—

You apply these standards and exceed the page limit; or

You apply other standards and exceed the equivalent of the page limit.

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zones or Communities comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Additional Guidance

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. Applicants that do not submit a copy of their application to their state educational agency in accordance with these statutory and regulatory requirements will not be considered for funding.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA requesting SEA to comment on the application;

Section B—Documentation of consultation with nonprofit private school officials;

Section C—Appropriate box checked;

Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Assurances—Non-Construction Programs Form (SF 424B).
8. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
9. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
10. Disclosure of Lobbying Activities Form (SF LLL).
11. Information that addresses section 427 of the General Education Provisions Act. (See the form below entitled *Notice to All Applicants.*)
12. One-page abstract.
13. Table of Contents.
14. Application narrative, not to exceed 35 pages.
15. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

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STUDENT DATA			
Name of Local Educational Agency			
NOTE: This section must be completed by local educational agencies applying under the following program: • Program Development and Implementation Program			
1. Total number of students in the school district			
2. Total number of students in the district enrolled in a foreign language program			
3. Foreign languages taught in the school district			
Elementary		Secondary	
4. Name of project school	Language(s) to be taught	Grade(s) to be served	Number of students to be served

GROUP APPLICATION CERTIFICATION					
NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant. [34 CFR 75.128(b)-(c)].					
To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.					
Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:

Address:

Organizational Unit

City | State | County | ZIP Code + 4

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 84

Title:

5. Project Director:

Address:

City | State | ZIP Code + 4

Tel. #: ( ) - Fax #: ( ) -

E-Mail Address:

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)*

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*:

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___

☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
___/___/___	___/___/___

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

OR

b. Assurance of Compliance #:

c. IRB approval date: ___/___/___

☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) - Fax #: ( ) -

d. E-Mail Address:

e. Signature of Authorized Representative | Date: ___/___/___

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/latiduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

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PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

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U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

11.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES
(as of January 13, 1999)

EMPOWERMENT ZONES

California: Los Angeles, Oakland, Santa Ana, Riverside County*
Connecticut: New Haven+
Florida: Miami+
Georgia: Atlanta, Cordele*+
Illinois: Chicago, East St. Louis+, Ullin*
Indiana: Gary, East Chicago
Kentucky: Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston+
Michigan: Detroit
Minnesota: Minneapolis+
Mississippi: Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
Missouri/Kansas: Kansas City, Kansas City
Missouri: St. Louis+
New Jersey: Cumberland County
New York: Harlem, Bronx
North Dakota: Lake Agassiz*
Ohio: Cleveland, Cincinnati, Columbus+
Ohio/West Virginia: Ironton/Huntington+
Pennsylvania/New Jersey: Philadephia/ Camden
South Carolina: Columbia/Sumter
South Dakota: Oglala Sioux Reservation in Pine Ridge*
Tennessee: Knoxville
Texas: Houston, El Paso+, Rio GrandeValley* (Cameron, Hidalgo, Starr, and Willacy Counties)
Virginia: Norfolk+/Portsmouth

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Alabama: Chambers County* Greene County*, Sumter County*
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Illinois: East St. Louis, Springfield
Indiana: Indianapolis, Austin*
Iowa: Des Moines
Kansas: Leoti*
Kentucky: Louisville, Bowling Green*
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Maine: Lewiston*
Massachusetts: Lowell, Springfield
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Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area* (Panola, Quitman, and Tallahatchie Counties)
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Montana: Poplar*
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New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, La Jicarita* (Mora, Rio Arriba, Taos Counties), Deming*
New York: Albany, Schenectady, Troy
New York: Buffalo, Rochester
New York: Newburgh, Kingston
North Carolina: Charlotte
North Carolina: Edgecombe, Halifax, Robeson, Wilson Counties*
Ohio: Akron, Columbus, Greater Portsmouth* (Scioto County)
Oklahoma: Choctaw, McCurtain Counties*, Oklahoma City, Ada*
Oregon: Josephine County*, Portland
Pennsylvania: Harrisburg, Lock Haven*, Pittsburgh, Uniontown*
Rhode Island: Providence
South Carolina: Charleston, Williamsburg, Florence County*, Hallandale*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas, El Paso, San Antonio, Waco, Uvalde*
Utah: Ogden
Vermont: Burlington
Virginia: Accomack (Northampton County)*, Norfolk
Washington: Lower Yakima County*, Seattle, Tacoma, Collie*
West Virginia: Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
Wisconsin: Milwaukee, Keshena*

For further information consult the following Internet site: http://www.ezec.gov

* Denotes rural designee
+ Also an Enterprise Community, Round One

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H.J. Res. 128/P.L. 106–540

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 8, 2000; 114 Stat. 2571)

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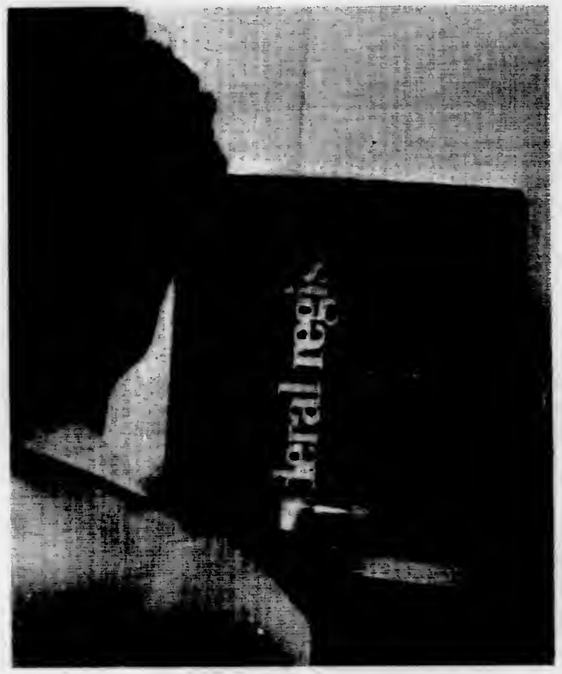
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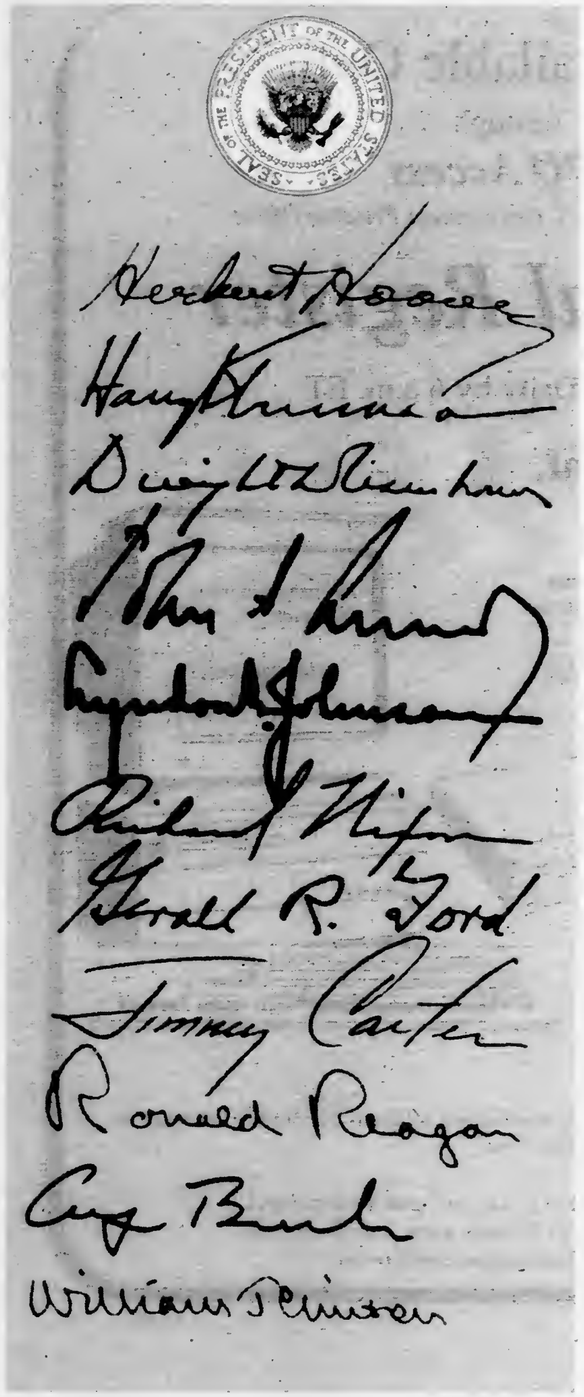
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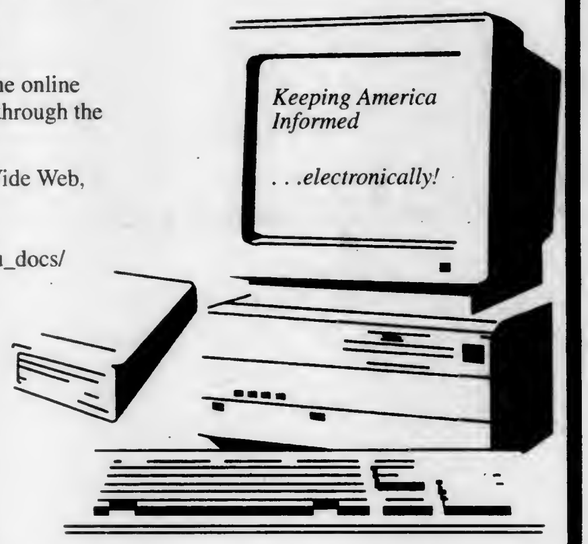
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Rules and Regulations

Federal Register
Vol. 65, No. 242
Friday, December 15, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1315

Prompt Payment

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Management and Budget (OMB) is issuing an interim final revision to its rules on the Prompt Payment Act (PPA) to implement Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Section 1010 requires agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice for payment from the contractor.

DATES: *Effective Date:* This interim final rule is effective December 15, 2000.

Applicability Dates: This interim final rule shall apply to all interim payment requests received under cost-reimbursement service contracts awarded on or after December 15, 2000. At the discretion of the agency, this interim final rule may be applied to interim payment requests received under cost-reimbursement service contracts awarded before December 15, 2000. However, no interest penalty shall accrue under this rule for any delay in payment that occurs prior to December 15, 2000.

Comment Date: Comments must be received by February 13, 2001 and should be directed to the Department of the Treasury at the address identified below.

ADDRESSES: All comments should be addressed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street SW., Washington, DC 20227.

Copies of the current PPA regulation and other information are available from the Prompt Payment web site at *http://www.fms.treas.gov/prompt/index.html*.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Senior Financial Program Specialist, on (202) 874–7106; Matthew Helfrich, Financial Program Specialist, on (202) 874–6749; Martha Thomas-Mitchell, Financial Program Specialist, on (202) 874–6757; or Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, on (202) 874–6590.

SUPPLEMENTARY INFORMATION:

I. Background

Contractors who are awarded cost-reimbursement contracts are generally authorized to seek reimbursement, including reimbursement during the course of the contract ("interim payments"), for the allowable costs they incur in the performance of the contract. In the National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, 114 Stat. 1654, Congress imposed a new statutory requirement on agencies to pay an interest penalty on interim payments that are made late under cost-reimbursement service contracts. This requirement is contained in Section 1010 of the Act—"Interest Penalties for Late Payment of Interim Payments Due Under Government Service Contracts."

Specifically, under Section 1010(a), "an agency acquiring services from a business concern under a cost-reimbursement contract requiring interim payments who does not pay the concern a required interim payment by the date that is 30 days after the date of the receipt of a proper invoice shall pay an interest penalty to the concern on the amount of the payment due." In addition, "[t]he interest shall be computed as provided in section 3902(a) of title 31, United States Code," which is the interest provision of the Prompt Payment Act (PPA, 31 U.S.C. 3901, *et seq.*), and the agencies are to carry out the requirement "[u]nder regulations prescribed" by OMB. In turn, Section 1010(b) directs OMB to "prescribe regulations to carry out this section," which "shall be prescribed as part of" OMB's regulations implementing the PPA. OMB's PPA regulations are now found at 5 CFR Part 1315 (prior to their 1999 codification, they were contained in OMB Circular A–125). See 64 FR 52580 (September 29, 1999). Section 1010(c) states that "[t]he provisions of chapter 39 of title 31, United States Code [i.e., the PPA], shall apply to this section in the same manner as if this section were enacted as part of such chapter."

Finally, Section 1010(d) states that "Subsection (a) shall take effect on December 15, 2000. No interest shall accrue by reason of that subsection for any period before that date."

This rule implements Section 1010 by making conforming revisions, on an interim final basis, to OMB's PPA regulations. In developing this rule, OMB has consulted with the Departments of Defense and Treasury, the General Services Administration, and other agencies. OMB requests comment on the interim final revisions, and will consider them in our development of the final rule.

Agency Practices and Policies Regarding Interim Payments

Until now, interim payments under cost-reimbursement service contracts have not been subject to PPA interest penalties. As a result of Section 1010, interim payments on cost-reimbursement service contracts will be subject to PPA interest penalties when the payment is not made "by the date that is 30 days after the date of the receipt of a proper invoice." However, neither Section 1010 nor this interim final rule is intended to modify current agency practices or policies regarding dates for payment for interim payments on cost-reimbursement service contracts, other than to require—in accordance with Section 1010(a)—that PPA interest penalties be paid on interim payments that are made more than 30 days after the agency receives a proper invoice. In particular, Section 1010 leaves unaffected existing agency policies that call for these interim payments to be made well in advance of 30 days. For example, it is the policy of the Department of Defense to generally pay contractors 14 days or less after being billed for reimbursements on cost-reimbursement contracts. See Subpart 232.906 of the Department of Defense Supplement to the Federal Acquisition Regulation (DFARS), 48 CFR Chapter 2.

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Implementation

Newly added Section 1315.20 of the PPA regulation makes clear that the requirements of Section 1010 are to be implemented on an accelerated basis. Section 1315.20 requires agencies to immediately apply the revisions made by this interim final rule to all interim payment requests received under cost-reimbursement service contracts awarded on or after December 15, 2000. This accelerated implementation schedule is intended to reinforce agency efforts to pay their bills in a timely manner. Prompt payment facilitates the government's ability to attract high quality contractors, and can reduce contractors' costs of doing business with the government, which can translate into lower prices for the products and services agencies acquire to meet their mission needs. For this reason, the rule also authorizes agencies, at their discretion, to apply the revisions to interim payment requests received under cost-reimbursement service contracts awarded prior to December 15, 2000. Agencies are authorized to issue modifications to contracts, as necessary, to conform them to the revisions made by this interim final rule. However, as required by Section 1010(d), no interest penalty shall accrue under this rule for any delay in payment that occurs prior to December 15, 2000.

Mandatory application of the revised rule to contracts awarded on or after the rule's effective date is consistent with implementation approaches previously taken by OMB in implementing PPA requirements. When OMB originally implemented the PPA in 1982, and when OMB in 1989 implemented the Act's 1988 amendments, new requirements generally applied to contracts that would be executed on or after the statutory effective date. See August 25, 1982 implementation of PPA, at 47 FR 37321, 37322 (preamble discussion) and 37324 (Circular A–125, Section 13—"Interest penalties will apply to payments made under contracts issued on or after October 1, 1982."); December 21, 1989 implementation of 1988 amendments, at 54 FR 52700, 52713 (Circular A–125, Section 15—generally applying new requirements to "payments under contracts awarded, contracts renewed, and contract options exercised on or after" the statutory effective date). OMB believes this same implementation approach is suitable for Section 1010 and will best ensure that the requirements of Section 1010—which was recently enacted on October 30, 2000—are applied by agencies in an orderly and effective manner.

II. Regulatory Flexibility Act, Unfunded Mandates Reform Act, Congressional Review Act, and Executive Orders 12866 and 12875

This interim final rule will not have a significant economic effect on a substantial number of small entities; the regulations implement Section 1010 of the National Defense Authorization Act for Fiscal Year 2001, which requires Federal agencies to pay an interest penalty whenever they make interim payments on cost-reimbursement service contracts more than 30 days after they receive a proper invoice. For purposes of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), as well as Executive Orders 12866 and 12875, the interim final rule will not significantly or uniquely affect small governments, and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Finally, the interim final rule is not a "major rule" under 5 U.S.C. Chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2).

III. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this interim final rule because the rule's changes do not impose new recordkeeping requirements or collections of information from offerors, contractors, or members of the public that require approval under 44 U.S.C. 3501, *et seq.* The information a contractor must submit in order to receive an interim payment under a cost-reimbursement service contract is addressed at Section 1315.9(b)(2) of the revised PPA regulations. Section 1315.9(b)(2) states that an interim payment request must correctly include all the information required by the contract or by agency procedures.

IV. Determination To Issue an Interim Final Rule

This rule is being promulgated as an interim final rule in order to carry out Section 1010(a) of Public Law 106–398 on a timely basis. Section 1010(a) requires an agency, under regulations prescribed by the Director of OMB, to pay an interest penalty whenever the agency makes an interim payment under a cost-reimbursement contract for services that is more than 30 days after the agency receives a proper invoice for payment from the contractor. Section 1010(a) was enacted into law on October 30, 2000, when the President signed into law Public Law 106–398, the National Defense Authorization Act for Fiscal Year 2001. Section 1010(d) states that Section 1010(a) "shall take effect on December 15, 2000," and Section 1010(b) directs OMB to "prescribe regulations to carry out" Section 1010. There is "good cause" under 5 U.S.C. 553(b) for OMB to issue this rule without prior public comment, because the issuance of a proposed rule to implement Section 1010(a) would have been "impracticable" due to the very short (45-day) period between the enactment and effective dates for Section 1010(a). Although this rule is being issued without prior opportunity for public comment, OMB is requesting comments on the interim final rule and will consider all comments received in our development of the final rule.

List of Subjects in 5 CFR Part 1315

Administrative practice and procedure, Government contracts, Penalties, Reporting and recordkeeping requirements.

Dated: December 12, 2000.

Sylvia M. Mathews,

Deputy Director.

For reasons set out in the preamble, 5 CFR chapter III, part 1315 is amended as set forth below:

Authority and Issuance

PART 1315—PROMPT PAYMENT

1. The authority citation for part 1315 is revised to read as follows:

Authority: 31 U.S.C. chapter 39; Section 1010 of Public Law 106–398, 114 Stat. 1654.

2. Section 1315.2 is amended by revising paragraph (h) to read as follows:

§ 1315.2 Definitions.

* * * * *

(h) *Contract financing payments* means an authorized disbursement of monies prior to acceptance of goods or services including advance payments, progress payments based on cost, progress payments (other than under construction contracts) based on a percentage or stage of completion, payments on performance-based contracts and interim payments on cost-type contracts (other than under cost-reimbursement contracts for the acquisition of services). Contract financing payments do not include invoice payments, payments for partial deliveries, or lease and rental payments. Contract financing payments also do not include progress payments under construction contracts based on a percentage or stage of completion and interim payments under cost-reimbursement service contracts. For purposes of this part, interim payments under a cost-reimbursement service contract are treated as invoice payments and subject to the requirements of this part, except as otherwise provided (see, *e.g.*, §§ 1315.4(d) and (e), and 1315.9(b)(1) and (c)).

* * * * *

3. Section 1315.4 is amended by revising paragraphs (d) and (e), revising paragraph (g)(1), redesignating paragraphs (g)(2) through (g)(4) as paragraphs (g)(3) through (g)(5), respectively, and adding a new paragraph (g)(2) to read as follows:

§ 1315.4 Prompt payment standards and required notices to vendors.

* * * * *

(d) *Receipt of goods and services.* Agencies will ensure that receipt is properly recorded at the time of delivery of goods or completion of services. This requirement does not apply to interim payments on cost-reimbursement service contracts except as otherwise required by agency regulations.

(e) *Acceptance.* Agencies will ensure that acceptance is executed as promptly as possible. Commercial items and services should not be subject to extended acceptance periods. Acceptance reports will be forwarded to the designated agency office by the fifth working day after acceptance. Unless other arrangements are made, acceptance reports will be stamped or otherwise annotated with the receipt date in the designated agency office. This requirement does not apply to interim payments on cost-reimbursement service contracts except as otherwise required by agency regulations.

* * * * *

(g) *Determining the payment due date.* (1) Except as provided in paragraphs (g)(2) through (5) of this section, the payment is due either:

(i) On the date(s) specified in the contract;

(ii) In accordance with discount terms when discounts are offered and taken (see § 1315.7);

(iii) In accordance with Accelerated Payment Methods (see § 1315.5); or

(iv) 30 days after the start of the payment period as specified in paragraph (f) of this section, if not specified in the contract, if discounts are not taken, and if accelerated payment methods are not used.

(2) *Interim payments under cost-reimbursement contracts for services.* The payment due date for interim payments under cost-reimbursement service contracts shall be 30 days after the date of receipt of a proper invoice.

* * * * *

4. Section 1315.5 is amended by adding a new paragraph (d) to read as follows:

§ 1315.5 Accelerated payment methods.

* * * * *

(d) *Interim payments under cost-reimbursement contracts for services.* For interim payments under cost-reimbursement service contracts, agency heads may make payments earlier than seven days prior to the payment due date in accordance with agency regulations or policies.

5. Section 1315.9 is amended by redesignating paragraphs (b) introductory text and (b)(1) through (b)(10) as paragraphs (b)(1) introductory text and (b)(1)(i) through (b)(1)(x), respectively, revising newly redesignated paragraph (b)(1) introductory text, adding a new paragraph (b)(2), and revising the introductory text of paragraph (c) to read as follows:

§ 1315.9 Required documentation.

* * * * *

(b)(1) Except for interim payment requests under cost-reimbursement service contracts, which are covered by paragraph (b)(2) of this section, the following correct information constitutes a proper invoice and is required as payment documentation:

* * * * *

(2) An interim payment request under a cost-reimbursement service contract constitutes a proper invoice for purposes of this part if it correctly includes all the information required by the contract or by agency procedures.

(c) Except for interim payment requests under cost-reimbursement service contracts, the following information from receiving reports, delivery tickets, and evaluated receipts is required as payment documentation:

* * * * *

6. Section 1315.10 is amended by revising paragraph (b)(1) to read as follows:

§ 1315.10 Late payment interest penalties.

* * * * *

(b) * * *

(1) Interest may be paid only after acceptance has occurred; when title passes to the government in a fast payment contract when title passing to the government constitutes acceptance for purposes of determining when interest may be paid; or when the payment is an interim payment under a cost-reimbursement service contract;

* * * * *

7. Add § 1315.20 to read as follows:

§ 1315.20 Application of Section 1010 of the National Defense Authorization Act for Fiscal Year 2001.

Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1654) requires an agency to pay an interest penalty whenever the agency makes an interim payment under a cost-reimbursement contract for services more than 30 days after the date the agency receives a proper invoice for payment from the contractor. This part implements Section 1010 and is applicable in the following manner:

(a) This part shall apply to all interim payment requests received under cost-reimbursement service contracts awarded on or after December 15, 2000.

(b) This part may be applied, at the discretion of the agency, to interim payment requests received under cost-reimbursement service contracts awarded before December 15, 2000. However, no interest penalty shall accrue under this part for any delay in payment that occurs prior to December 15, 2000.

(c) Agencies are authorized to issue modifications to contracts, as necessary, to conform them to the provisions in this part implementing Section 1010.

[FR Doc. 00–32007 Filed 12–14–00; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF85

2000 Marketing Quota and Price Support for Burley Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 2000 crop of burley tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended (1938 Act), the Secretary determined the 2000 marketing quota for burley tobacco to be 247.4 million pounds. In accordance with the Agricultural Act of 1949, as amended (1949 Act), the Secretary determined the 2000 price support level to be 180.5 cents per pound. A number of related

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determinations were made at the same time, which the rule affirms.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–5346. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and has been reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Farm Service Agency (FSA) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rule making contained in 5 U.S.C. 553 or in any directive of the Secretary. Further, since this rule affirms existing determinations which are time-sensitive, the rule is made effective as of the date of the underlying determinations.

Marketing Quota

Section 319(c)(3) of the 1938 Act provides, in part, that the national marketing quota for a marketing year (MY) for burley tobacco shall be quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) the amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 2000 crop of burley tobacco by January 15, 2000. Five such manufacturers were required to submit such a statement for the 2000 crop and the total of their intended purchases for the 2000 crop is 242.5 million pounds. The 3-year average of exports is 159.1 million pounds.

The national marketing quota for the 1999 crop year was 452.9 million pounds. Thus, in accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level for use in determining the 2000 marketing quota for burley tobacco is 67.9 million pounds.

As of January 30, 2000, the Burley Tobacco Growers Cooperative Association and Burley Stabilization Corporation had in their inventories 185.8 million pounds of burley tobacco net of deferred sales. The 1999-crop receipts are expected to total about 205 million pounds. However, any reduction in adjusting loan inventory to the reserve stock level for burley tobacco is limited by statute; to the greater of 35 million pounds or 50 percent of the amount that the total pool inventory exceeds the reserve stock level. Accordingly, the adjustment allowed to move loan stocks toward the reserve supply level is a decrease of 161.4 million pounds (one-half of 322.9 million pounds).

The total of the three marketing quota components for the 2000 marketing year is 240.2 million pounds. In addition, USDA used its discretionary authority to increase the three-component total by 3 percent (7.2 million pounds) because the Secretary determined that the 48.6 percent decrease called for by the quota formula would be too much of a hardship for small producers to handle at one time. Accordingly, the national marketing quota for the marketing year beginning October 1, 2000, for burley tobacco is 247.4 million pounds.

In accordance with section 319(c)(2) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national quota, in an amount equivalent to not more than 1 percent of the national quota, for the purpose of making corrections in farm quotas to adjust for inequities and establish quotas for new farms. The Secretary has determined that a national reserve for the 2000 crop of burley tobacco of 579,000 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 2000 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 2000 crop of burley tobacco shall be:

(1) The level, in cents per pound, at which the 1999 crop of burley tobacco was supported, plus or minus, respectively,

(a) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(i) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(ii) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (i) (I) and (II)) is 1.5 cents per pound. The difference in the cost index from January 1, 1999 to December 31, 1999, is 1.8 cents per pound. Applying these components to the price support formula (1.5 cents per pound, two-thirds weight; 1.8 cents per pound, one-third weight) results in a weighted total of 1.6 cents per pound. As indicated, section 106(f)(7)(a) of the 1949 Act provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. However, because the increase in price support is less than the cost of production, the increase was not limited. Accordingly, the 2000 crop of burley tobacco will be supported at 180.5 cents per pound, 1.6 cents higher than in 1999.

List of Subjects

7 CFR Part 723

Acreage allotments, Cigarettes, Marketing quotas, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1464

Loan programs—tobacco, Price support programs—tobacco, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.112 is amended by:

(a) Adding and reserving paragraph (g).

(b) Adding paragraph (h) to read as follows:

§ 723.112 Burley (type 31) tobacco.

* * * * *

(g) [Reserved]

(h) The 2000-crop national marketing quota is 247.4 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b and 714c.

4. Section 1464.19 is amended by:

(a) Adding and reserving paragraph (g).

(b) Adding paragraph (h) to read as follows:

§ 1464.19 Burley (type 31) tobacco.

* * * * *

(g) [Reserved]

(h) The 2000 crop national price support level is 180.5 cents per pound.

Signed at Washington, D.C., on December 8, 2000.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–31957 Filed 12–14–00; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL TRADE COMMISSION

16 CFR Part 0

Rules of Practice

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Commission is updating and making other technical corrections and changes to the agency's description of its organization and activities in Part 0 of its Rules of Practice.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447, atang@ftc.gov.

SUPPLEMENTARY INFORMATION: The Commission is amending Part 0 of its Rules of Practice, 16 CFR Part 0, to update and make other technical clarifications, corrections, and changes to the description of the agency's organization and activities.

Rule 0.2, 16 CFR 0.2 (official address): The Commission is amending this rule to include the address of the Commission's Web site, www.ftc.gov.

Rule 0.4, 16 CFR 0.4 (laws administered): The Commission is adding more recent statutes to the list of laws that the FTC enforces or administers and correcting certain other omissions and citations.

Rule 0.7, 16 CFR 0.7 (delegation of functions): The Commission is revising this rule to note the Commission's discretionary authority to review delegated matters upon its own initiative or upon petition, as provided in section 1(b) of Reorganization Plan No. 4 of 1961. Relevant procedures and standards for matters subject to Commission review are already set forth elsewhere in the Commission's Rules of Practice. *See, e.g.*, 16 CFR 4.2, 4.3.

Rule 0.9, 16 CFR 0.9 (organizational structure): The Commission is making a conforming amendment to include the Office of Inspector General. *See also infra* discussion of Rule 0.13.

Rule 0.10, 16 CFR 0.10 (Office of the Executive Director): The Commission is amending this description to reflect changes in the organization and responsibilities of the Executive Director's office.

Rule 0.11, 16 CFR 0.11 (Office of the General Counsel): The Commission is amending this description to revise and update the description of the Office's functions and activities, which include ethics, as well as FOIA and Privacy Act functions now consolidated in this office. *See* 63 FR 45643 (Aug. 26, 1998).

Rule 0.12, 16 CFR 0.12 (Office of the Secretary): The Commission is revising this description to note the Secretary's role in the legal publication of the agency's **Federal Register** notices and the reporting of its official decisions, which was previously included in the description for the Office of Executive Director.

Rule 0.13, 16 CFR 0.13 (Office of the Inspector General): The Commission is adding a description of the Office of Inspector General, which was previously omitted.

Rule 0.14, 16 CFR 0.14 (Office of the Administrative Law Judges): The Commission is amending this description to clarify that the functions performed by Administrative Law Judges are not limited to fact-finding but also include initial rulings on conclusions of law.

Rule 0.16, 16 CFR 0.16 (Bureau of Competition): The Commission is revising this description to note the

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Bureau's educational, advisory, and international assistance activities.

Rule 0.17, 16 CFR 0.17 (Bureau of Consumer Protection): The Commission is revising this description to reflect the previous transfer of the agency's public "reading room" operations to this Bureau, complementing the Bureau's other consumer and business education activities, and to include section 13(b) of the FTC Act among the remedial authorities cited in the description.

Rule 0.19, 16 CFR 0.19 (regional offices): The Commission is amending paragraph (a) to revise and update the description of the Regional Offices' responsibilities.

The Administrative Procedure Act does not require prior public notice and comment on these amendments because they relate solely to rules of agency, organization, procedure or practice. 5 U.S.C. 553(b)(A). For this reason, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. *See* 5 U.S.C. 603, 604.

List of Subjects in 16 CFR Part 0

Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 0—ORGANIZATION

1. Revise the authority for part 0 to read as follows:

Authority: 5 U.S.C. 552(a)(1); 15 U.S.C. 46(g).

2. Amend § 0.2 by adding the following sentence to the end of the section:

§ 0.2 Official address.

* * * The Commission's Web site address is www.ftc.gov.

3. Revise § 0.4 to read as follows:

§ 0.4 Laws administered.

The Commission exercises enforcement and administrative authority under the Federal Trade Commission Act (15 U.S.C. 41–58), Clayton Act (15 U.S.C. 12–27), Robinson-Patman Act (15 U.S.C. 13–13b, 21a), Webb-Pomerene (Export Trade) Act (15 U.S.C. 61–66), Packers and Stockyards Act (7 U.S.C. 181–229), Wool Products Labeling Act of 1939 (15 U.S.C. 68–68j), Lanham Trade-Mark Act (15 U.S.C. 1064), Fur Products Labeling Act (15 U.S.C. 69–69j), Textile Fiber Products Identification Act (15 U.S.C. 70–70k), Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331–1340), Fair Packaging and Labeling Act (15 U.S.C. 1451–1461), Truth in Lending Act (15 U.S.C. 1601–1667f), Fair Credit Reporting Act (15 U.S.C. 1681–1681u), Fair Credit Billing Act (15 U.S.C. 1666–1666j), Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o), Electronic Fund Transfer Act (15 U.S.C. 1693–1693r), Hobby Protection Act (15 U.S.C. 2101–2106), Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301–2312, 45–58), Energy Policy and Conservation Act (42 U.S.C. 6201–6422, 15 U.S.C. 2008), Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), Petroleum Marketing Practices Act (15 U.S.C. 2801–2841), Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401–4408), Telephone Disclosure and Dispute Resolution Act of 1992 (15 U.S.C. 5701–5724), Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101–6108), International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 46, 57b–1, 1311–1312, 6201 & note, 6202–6212), Credit Repair Organizations Act (15 U.S.C. 1679–1679j), Children's Online Privacy Protection Act (15 U.S.C. 6501–6506), Identity Theft Assumption and Deterrence Act of 1998 (18 U.S.C. 1028 note), Gramm-Leach-Bliley Act (15 U.S.C. 6801–6809), and other Federal statutes.

4. Revise § 0.7 to read as follows:

§ 0.7 Delegation of functions.

The Commission, under the authority provided by Reorganization Plan No. 4 of 1961, may delegate, by published order or rule, certain of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, and retains a discretionary right to review such delegated action upon its own initiative or upon petition of a party to or an intervenor in such action.

5. Revise § 0.9 to read as follows:

§ 0.9 Organization structure.

The Federal Trade Commission comprises the following principal units: Office of the Executive Director; Office of the General Counsel; Office of the Secretary; Office of the Inspector General; Office of Administrative Law Judges; Bureau of Competition; Bureau of Consumer Protection; Bureau of Economics; and the Regional Offices.

6. Revise § 0.10 to read as follows:

§ 0.10 Office of the Executive Director.

The Executive Director, under the direction of the Chairman, is the chief operating official who develops and implements management and administrative policies, programs and directives for the Commission. The Executive Director works closely with the Bureaus on strategic planning and assessing the management and resource implications of any proposed action. In addition, the Executive Director manages the Commission's facilities and administrative services, financial management, information technology, and human resources.

7. Revise § 0.11 to read as follows:

§ 0.11 Office of the General Counsel.

The General Counsel is the Commission's chief law officer and adviser, who renders necessary legal services to the Commission, represents the Commission in the Federal and State courts, advises the Commission and other agency officials and staff with respect to questions of law and policy, including advice with respect to legislative matters and ethics, and responds to requests and appeals filed under the Freedom of Information and Privacy Acts and to intra- and intergovernmental access requests.

8. Revise § 0.12 to read as follows:

§ 0.12 Office of the Secretary.

The Secretary is responsible for the minutes of Commission meetings and is the legal custodian of the Commission's seal, property, papers, and records, including legal and public records. The Secretary, or in the Secretary's absence an Acting Secretary designated by the Commission, signs Commission orders and official correspondence. In addition, the Secretary is responsible for the publication of all Commission actions that appear in the **Federal Register** and for the publication of *Federal Trade Commission Decisions.*

9. Add § 0.13 to read as follows:

§ 0.13 Office of the Inspector General.

The Office of Inspector General (OIG) was established within the Federal Trade Commission in 1989 as required by the Inspector General Act Amendments of 1988 (5 U.S.C. app. 3). The OIG promotes the economy, efficiency and effectiveness of FTC programs and operations. To this end, the OIG independently conducts audits and investigations to find and prevent fraud, waste, and abuse within the agency.

10. Amend § 0.14 by revising the first sentence to read as follows:

§ 0.14 Office of the Administrative Law Judges.

Administrative law judges are officials to whom the Commission, in accordance with law, delegates the initial performance of statutory fact-finding functions and initial rulings on conclusions of law, to be exercised in conformity with Commission decisions and policy directives and with its Rules of Practice.

* * * * *

11. Revise § 0.16 to read as follows:

§ 0.16 Bureau of Competition.

The Bureau is responsible for enforcing Federal antitrust and trade regulation laws under section 5 of the Federal Trade Commission Act, the Clayton Act, and a number of other special statutes that the Commission is charged with enforcing. The Bureau's work aims to preserve the free market system and assure the unfettered operation of the forces of supply and demand. Its activities seek to ensure price competition, quality products and services and efficient operation of the national economy. The Bureau carries out its responsibilities by investigating alleged law violations, and recommending to the Commission such further action as may be appropriate. Such action may include injunctive and other equitable relief in Federal district court, complaint and litigation before the agency's administrative law judges, formal nonadjudicative settlement of complaints, trade regulation rules, or reports. The Bureau also conducts compliance investigations and initiates proceedings for civil penalties to assure compliance with final Commission orders dealing with competition and trade restraint matters. The Bureau's activities also include business and consumer education and staff advice on competition laws and compliance, and liaison functions with respect to foreign antitrust and competition law enforcement agencies and organizations, including requests for international enforcement assistance.

12. Revise § 0.17 to read as follows:

§ 0.17 Bureau of Consumer Protection.

The Bureau investigates unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act as well as potential violations of numerous special statutes which the Commission is charged with enforcing. It prosecutes before the agency's administrative law judges alleged violations of law after issuance of a complaint by the Commission or obtains through negotiation consented-to orders, which must be accepted and issued by the Commission. In consultation with the General Counsel, the Bureau may also seek injunctive or other equitable relief under section 13(b) of the Federal Trade Commission Act. The Bureau participates in trade regulation rulemaking proceedings under section 18(a)(1)(B) of the Federal Trade Commission Act and other rulemaking proceedings under statutory authority. It investigates compliance with final orders and trade regulation rules and seeks civil penalties or consumer redress for their violation, as well as injunctive and other equitable relief under section 13(b) of the Act. In addition, the Bureau seeks to educate both consumers and the business community about the laws it enforces, and to assist and cooperate with other state, local, foreign, and international agencies and organizations in consumer protection enforcement and regulatory matters. The Bureau also maintains the agency's public reference facilities, where the public may inspect and copy a current index of opinions, orders, statements of policy and interpretations, staff manuals and instructions that affect any member of the public, and other public records of the Commission.

13. Amend § 0.19 by revising paragraph (a) to read as follows:

§ 0.19 The Regional Offices.

(a) These offices are investigatory arms of the Commission, and have responsibility for investigational, trial, compliance, and consumer educational activities as delegated by the Commission. They are under the general supervision of the Office of the Executive Director, and clear their activities through the appropriate operating Bureaus.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–31775 Filed 12–14–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8911]

RIN 1545–AV92

Relief for Service in Combat Zone and for Presidentially Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the postponement of certain tax-related deadlines due either to service in a combat zone or a Presidentially declared disaster. The regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations affect taxpayers serving in a combat zone and taxpayers affected by a Presidentially declared disaster.

DATES: *Effective Date:* These regulations are effective December 30, 1999.

Applicability Dates: For dates of applicability, see §§ 301.7508–1(b) and 301.7508A–1(h).

FOR FURTHER INFORMATION CONTACT: Bridget E. Finkenaur, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7508 of the Internal Revenue Code (Code), relating to postponement of certain acts by reason of service in a combat zone, and section 7508A, relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster. Section 7508A was added to the Code by section 911 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788), effective for any period for performing an act that has not expired before August 5, 1997.

A notice of proposed rulemaking (REG–101492–98) was published in the **Federal Register** (64 FR 73444) on December 30, 1999. No public hearing was requested or held. One comment letter was received. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

Summary of Comments

1. IRA and Pension Contribution Deadlines

Section 301.7508A–1(c)(1) of the proposed regulations lists various tax-related deadlines that may be postponed. The commentator recommends that deadlines for contributions to an individual retirement account (IRA) or a pension plan be added to the list. The final regulations adopt this recommendation and also add the deadline for rollover contributions.

2. Notification of IRS When Taxpayer Moves Out of Disaster Area

The commentator suggests that the IRS develop a simple procedure for

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taxpayers to notify the IRS when they move out of a Presidentially declared disaster area. The commentator believes that the notification would ensure that relief under section 7508A will automatically apply to a taxpayer who has moved out of a Presidentially declared disaster area. Such taxpayers could also be advised of any further relevant filing guidance regarding the disaster.

The final regulations do not adopt this suggestion because it is not necessary for taxpayers moving out of a disaster area to notify the IRS to obtain relief under section 7508A. When a Presidentially declared disaster occurs, the IRS makes a decision whether to grant relief to taxpayers affected by the disaster. If a decision is made to grant relief, the IRS identifies most affected taxpayers located in the disaster area and places a marker on the affected tax accounts. A subsequent change of address will not remove the marker from the tax account. Thus, an affected taxpayer who relocates outside a disaster area will still automatically receive disaster relief.

Because the IRS may not be able to identify all taxpayers potentially affected by a Presidentially declared disaster, some taxpayers may have to identify themselves to the IRS to receive relief. To ensure that they receive the relief for which they are eligible, the IRS typically issues public guidance, such as a news release, that describes how to claim relief. The guidance instructs taxpayers how to note on their tax return that they are affected taxpayers, and what, if any, additional information should be attached. When the IRS processes these tax returns, it manually places the disaster relief marker on the tax account. Subsequent changes of address will not affect the grant of relief.

3. Definition of Affected Taxpayer

The regulations list seven types of affected taxpayers, including "any business whose principal place of business is located in a covered disaster area." The commentator recommends that this definition be expanded to include all owners of a business.

The final regulations do not adopt this recommendation. The IRS and Treasury Department believe that the definition of *affected taxpayer* in the proposed regulations is sufficiently broad to cover all taxpayers within the intended scope of section 7508A. Although the final regulations do not provide a specific rule for business owners (other than sole proprietors), the IRS may nonetheless make a determination based on the facts and circumstances in a particular case that a business owner is an affected taxpayer under either § 301.7508A–1(d)(1)(iv), which applies to an individual whose principal residence is not located in a disaster area, but whose records necessary to meet the deadline for a specified act are maintained in a covered disaster area, or under § 301.7508A–1(d)(1)(vii), which applies to any other person determined by the IRS to be affected by a Presidentially declared disaster. For example, in the case of a partnership, it is expected that partners whose ability to meet a deadline is significantly affected by a Presidentially declared disaster will be granted relief.

4. Deadline for Tax Deposits

The commentator also recommends that the deadline for tax deposits under section 6302 be added to the list. The commentator states that no distinction should be drawn between tax payments and tax deposits and that allowing a postponement of deposits would be less cumbersome than waiving the section 6656 deposit penalties for reasonable cause. To the contrary, due to the frequency with which tax deposits are due, the IRS believes it would be more administratively cumbersome to defer those deadlines. However, in cases where taxpayers are unable to make timely tax deposits under section 6302 because of a Presidentially declared disaster, the IRS will consider a reasonable cause waiver of the section 6656 failure to deposit penalty on a case by case basis. The IRS believes such a system is more administrable. Thus, this comment has not been adopted by the final regulations.

Explanation of Other Revisions

Section 301.7508A–1(c)(1) of the final regulations expands the acts for which disaster relief is available to include: the filing of generation-skipping transfer tax returns; the payment of generation-skipping transfer tax; and the filing of any petition with the Tax Court.

Sections 301.7508A–1(d)(1)(ii) and (iv) of the final regulations have been revised to clarify that *affected taxpayer* includes any business entity or sole proprietor whose principal place of business is located in a covered disaster area.

Example 5 of the final regulations clarifies the application of section 7508A to the lookback period in section 6511(b)(2)(A). This period limits the amount that may be refunded to the taxpayer when a timely claim is filed under section 6511(a). In *Example 5*, H and W timely file their 2001 income tax return on April 15, 2002. *Example 5* states that an amended return for 2001 will be timely if it is filed on or before July 14, 2005. As clarified by the final regulations, *Example 5* further states that the section 6511(b)(2)(A) lookback period runs from July 14, 2005, back to April 15, 2002. Thus, the taxpayers are allowed a refund of estimated tax and tax withheld from wages for 2001, deemed paid on April 15, 2002, under section 6513(b).

The final regulations also clarify *Examples 6* and *7*. Under § 301.7508A–1(f) of the final regulations, if there is an extension of time to file income tax returns under section 6081 and to pay income tax with respect to such returns under section 6161, and a postponement of tax-related deadlines under section 7508A, interest on an underpayment that arises during such period is abated under section 6404(h) for the period of time disregarded under section 7508A. This is illustrated by *Example 8*. By contrast, in *Examples 6* and *7*, extensions were not granted under sections 6081 and 6161 and interest was not abated under section 6404(h). Therefore, in *Examples 6* and *7*, no interest abatement would be permitted regardless of whether the underpayment arose before or during the extension period. Therefore, *Examples 6* and *7* are amended by removing the statement that interest is not abated "because the underpayment arose prior to the extension period" and clarifying that because no extensions under sections 6081 and 6161 were granted, interest was not abated under section 6404(h).

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Bridget E. Finkenaur, Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.7508–1 also issued under 26 U.S.C. 7508(a)(1)(K);

Section 301.7508A–1 also issued under 26 U.S.C. 7508(a)(1)(K) and 7508A(a); * * *

Par. 2. Section 301.7508–1 is added to read as follows:

§ 301.7508–1 Time for performing certain acts postponed by reason of service in a combat zone.

(a) *General rule.* The period of time that may be disregarded for performing certain acts under section 7508 applies to acts described in section 7508(a)(1) and to other acts specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(b) *Effective date.* This section applies to any period for performing an act that has not expired before December 30, 1999.

Par. 3. Section 301.7508A–1 is added to read as follows:

§ 301.7508A–1 Postponement of certain tax-related deadlines by reason of Presidentially declared disaster.

(a) *Scope.* This section provides rules by which the Internal Revenue Service (IRS) may postpone deadlines for performing certain acts with respect to taxes other than taxes not administered by the IRS such as firearms tax (chapter 32, section 4181); harbor maintenance tax (chapter 36, section 4461); and alcohol and tobacco taxes (subtitle E).

(b) *Postponed deadlines.* For any tax, penalty, additional amount, or addition to the tax of an affected taxpayer (as defined in paragraph (d)(1) of this section), the IRS may disregard a period of up to 90 days in determining, under the internal revenue laws—

(1) Whether any or all of the acts described in paragraph (c) of this section were performed within the time prescribed; and

(2) The amount of any credit or refund.

(c) *Acts for which a period may be disregarded—(1) Acts performed by taxpayers.* Paragraph (b) of this section applies to the following acts performed by affected taxpayers (as defined in paragraph (d)(1) of this section)—

(i) Filing any return of income tax, estate tax, gift tax, generation-skipping transfer tax, excise tax (other than firearms tax (chapter 32, section 4181); harbor maintenance tax (chapter 36, section 4461); and alcohol and tobacco taxes (subtitle E)), or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(ii) Paying any income tax, estate tax, gift tax, generation-skipping transfer tax, excise tax (other than firearms tax (chapter 32, section 4181); harbor maintenance tax (chapter 36, section 4461); and alcohol and tobacco taxes (subtitle E)), employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby), any installment of those taxes (including payment under section 6159 relating to installment agreements), or of any other liability to the United States in respect thereof, but not including deposits of taxes pursuant to section 6302 and the regulations under section 6302;

(iii) Making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2); making distributions under section 408(d)(4); recharacterizing contributions under section 408A(d)(6); or making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3);

(iv) Filing a petition with the Tax Court, or for review of a decision rendered by the Tax Court;

(v) Filing a claim for credit or refund of any tax;

(vi) Bringing suit upon a claim for credit or refund of any tax; and

(vii) Any other act specified in a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(2) *Acts performed by the government.* Paragraph (b) of this section applies to the following acts performed by the government—

(i) Assessing any tax;

(ii) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(iii) Collecting by the Secretary, by levy or otherwise, of the amount of any liability in respect of any tax;

(iv) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax;

(v) Allowing a credit or refund of any tax; and

(vi) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(d) *Definitions—(1) Affected taxpayer* means—

(i) Any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a covered disaster area;

(ii) Any business entity or sole proprietor whose principal place of business is located in a covered disaster area;

(iii) Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area;

(iv) Any individual whose principal residence (for purposes of section 1033(h)(4)), or any business entity or sole proprietor whose principal place of business is not located in a covered disaster area, but whose records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a covered disaster area;

(v) Any estate or trust that has tax records necessary to meet a deadline for an act specified in paragraph (c) of this section and that are maintained in a covered disaster area;

(vi) The spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife; or

(vii) Any other person determined by the IRS to be affected by a Presidentially declared disaster (within the meaning of section 1033(h)(3)).

(2) *Covered disaster area* means an area of a Presidentially declared disaster (within the meaning of section 1033(h)(3)) to which the IRS has determined paragraph (b) of this section applies.

(e) *Notice of postponement of certain acts.* If any tax-related deadline is postponed under section 7508A and this section, the IRS will publish a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) describing the acts postponed, the number of days disregarded with respect to each act, the time period to which the postponement applies, and the location of the covered disaster area. Guidance under this

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paragraph (e) will be published as soon as practicable after the declaration of a Presidentially declared disaster.

(f) *Abatement of interest under section 6404(h).* In the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and to pay income tax with respect to such returns under section 6161, and, in addition, a postponement of tax-related deadlines under section 7508A, interest on an underpayment of income tax that arises during such period will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extension of time to file and the extension of time to pay.

(g) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) Corporation M, a calendar year taxpayer, has its principal place of business in County A in State X. Pursuant to a timely filed request for extension of time to file, Corporation M's 1999 Form 1120, "U.S. Corporation Income Tax Return," is due on September 15, 2000. Also due on September 15, 2000, is Corporation M's third quarter estimated tax payment for 2000. Corporation M's 2000 third quarter Form 720, "Quarterly Federal Excise Tax Return," and third quarter Form 941, "Employer's Quarterly Federal Tax Return," are due on October 31, 2000. In addition, Corporation M has an employment tax deposit due on September 15, 2000.

(ii) On September 1, 2000, a hurricane strikes County A. On September 6, 2000, the President declares a disaster within the meaning of section 1033(b)(3). The Internal Revenue Service determines that County A in State X is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on September 1, 2000, and ending on November 6, 2000, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because Corporation M's principal place of business is in County A, Corporation M is an affected taxpayer. Accordingly, Corporation M's 1999 Form 1120 will be filed timely if filed on or before December 14, 2000. Corporation M's 2000 third quarter estimated tax payment will be made timely if paid on or before December 14, 2000. In addition, because excise and employment tax returns are described in paragraph (c) of this section, Corporation M's 2000 third quarter Form 720 and third quarter Form 941 will be filed timely if filed on or before January 29, 2001. However, because deposits of taxes are excluded from the scope of paragraph (c) of this section, Corporation M's employment tax deposit is due on September 15, 2000. In addition, Corporation M's deposits relating to the third quarter Form 720 are due without extension.

Example 2. The facts are the same as in *Example 1*, except that during 2000, Corporation M's 1996 Form 1120 is being examined by the IRS. Pursuant to a timely filed request for extension of time to file, Corporation M timely filed its 1996 Form 1120 on September 15, 1997. Without application of this section, the statute of limitations on assessment for 1996 income tax will expire on September 15, 2000. However, pursuant to paragraph (c) of this section, assessment of tax is one of the government acts for which up to 90 days may be disregarded. The IRS determines that an extension of the statute of limitations is necessary and appropriate under these circumstances. Because the September 15, 2000, expiration date of the statute of limitations on assessment falls within the period of the disaster as described in the IRS's published guidance, the 90 day period disregarded under paragraph (b) of this section begins on September 16, 2000, and ends on December 14, 2000. Accordingly, the statute of limitations on assessment for Corporation M's 1996 income tax will expire on December 14, 2000.

Example 3. The facts are the same as in *Example 2*, except that the examination of the 1996 taxable year was completed earlier in 2000, and on July 28, 2000, the IRS mailed a statutory notice of deficiency to Corporation M. Without application of this section, Corporation M has 90 days (or until October 26, 2000) to file a petition with the Tax Court. However, pursuant to paragraph (c) of this section, filing a petition with the Tax Court is one of the taxpayer acts for which up to 90 days may be disregarded. Because Corporation M is an affected taxpayer, Corporation M's petition to the Tax Court will be filed timely if filed on or before January 24, 2001.

Example 4. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2001 taxable year and are required to file a Schedule H, "Household Employment Taxes." The joint return is due on April 15, 2002. H and W fully and timely paid all taxes for the 2001 taxable year, including domestic service employment taxes, through withholding and estimated tax payments. H and W's principal residence is in County B in State Y.

(ii) On April 2, 2002, a severe ice storm strikes County B. On April 5, 2002, the President declares a disaster within the meaning of section 1033(h)(3). The IRS determines that County B in State Y is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on April 2, 2002, and ending on April 19, 2002, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because H and W's principal residence is in County B, H and W are affected taxpayers. Because April 15, 2002, the due date of H and W's 2001 Form 1040 and Schedule H, falls within the period of the disaster as described in the IRS published guidance, the 90 day period disregarded under paragraph (b) of this section begins on April 16, 2002, and ends on July 14, 2002, a Sunday. Pursuant to section 7503, if the last day for performing an act falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. Accordingly, H and W's 2001 Form 1040 and Schedule H will be filed timely if filed on or before July 15, 2002.

Example 5. (i) H and W, residents of County C in State Z, want to file an amended return to request a refund of 2001 taxes. H and W timely filed their 2001 income tax return on April 15, 2002. Without application of section 7508A, under section 6511(a), H and W's amended 2001 tax return must be filed on or before April 15, 2005.

(ii) On April 1, 2005, an earthquake strikes County C. On April 5, 2005, the President declares a disaster within the meaning of section 1033(h)(3). The Internal Revenue Service determines that County C in State Z is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on April 1, 2005, and ending on April 19, 2005, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Under paragraph (c) of this section, filing a claim for refund of tax is one of the taxpayer acts for which up to 90 days may be disregarded. Ninety days are disregarded under paragraph (b)(1) of this section beginning on April 16, 2005, and ending on July 14, 2005. Accordingly, H's and W's claim for refund for 2001 taxes will be timely if filed on or before July 14, 2005. Moreover, in applying the lookback period in section 6511(b)(2)(A), which limits the amount of the allowable refund, the period from July 14, 2005, back to April 16, 2005, is disregarded under paragraph (b)(2) of this section. Thus, if the claim is filed on or before July 14, 2005, amounts deemed paid on April 15, 2002, under section 6513(b), such as estimated tax and tax withheld from wages, will have been paid within the lookback period of section 6511(b)(2)(A).

Example 6. (i) L is an unmarried, calendar year taxpayer whose principal residence is located in County R in State T. L does not timely file a 2001 Form 1040, "U.S. Individual Income Tax Return," which is due on April 15, 2002, and does not timely pay tax owed on that return. Absent reasonable cause, L is subject to the failure to file and failure to pay penalties under section 6651 beginning on April 16, 2002.

(ii) On May 10, 2002, a tornado strikes County R. On May 14, 2002, the President declares a disaster within the meaning of section 1033(h)(3). The Internal Revenue Service determines that County R in State T is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on May 10, 2002, and ending on June 27, 2002, 90 days will be disregarded in determining whether the acts are timely.

(iii) On May 31, 2002, L files a 2001 Form 1040, "U.S. Individual Income Tax Return," and pays the tax owed for 2001.

(iv) Because L's principal residence is in County R, L is an affected taxpayer. For purposes of penalties under section 6651, 90 days are disregarded under paragraph (b) of this section beginning on May 10, 2002. Because L files the return on May 31, 2002, the penalties under section 6651 will run from April 16, 2002, until May 10, 2002. Because there is no extension of time to file returns under section 6081 and no extension of time to pay under section 6161, interest is not abated under section 6404(h), and L is liable for the underpayment interest for the entire period of April 16, 2002, through May 31, 2002.

Example 7. The facts are the same as in *Example 6*, except L does not file the 2001 Form 1040 until November 25, 2002. Ninety days are disregarded under paragraph (b) of this section beginning on May 10, 2002, and ending on August 8, 2002. Therefore, the section 6651 penalties will run from April 16, 2002, until May 10, 2002, and from August 9, 2002, until November 25, 2002. Because there is no extension of time to file returns under section 6081 and no extension of time to pay under section 6161, interest is not abated under section 6404(h), and L will remain liable for underpayment interest for the entire period of April 16, 2002, through November 25, 2002.

Example 8. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2001 taxable year. The joint return is due on April 15, 2002. After credits for withholding under section 31 and estimated tax payments, H and W owe tax for the 2001 taxable year. H and W's principal residence is in County D in State Q.

(ii) On March 1, 2002, severe flooding strikes County D. On March 5, 2002, the President declares a disaster within the meaning of section 1033(h)(3). The Internal Revenue Service determines that County D in State Q is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on March 1, 2002, and ending on April 25, 2002, 90 days will be disregarded in determining whether the acts are performed timely. The guidance also grants affected taxpayers an additional 6-month extension of time to file returns under section 6081 and an additional 6-month extension of time to pay under section 6161.

(iii) Because H and W's principal residence is in County D, H and W are affected taxpayers. Pursuant to the published guidance, H and W have until January 13, 2003, to file their return and pay the tax. This date is computed as follows: Under sections 6081 and 6161, H and W will have an additional 6 months, until October 15, 2002, to file and pay the tax. Further, under paragraph (f) of this section, 90 days are disregarded in determining the period of the extension. Therefore, H and W's return and payment of tax will be timely if filed and paid on or before January 13, 2003. In addition, under section 6404(h), underpayment interest under section 6601 is abated for the entire period, from April 16, 2002, until January 13, 2003.

(h) *Effective date.* This section applies to disasters declared after December 30, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 30, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–31500 Filed 12–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 2343–2000]

Authority To Compromise and Close Civil Claims

AGENCY: Department of Justice, Civil Division.

ACTION: Final rule.

SUMMARY: This rule restores to the Code of Federal Regulations language regarding the definition of "gross amount of the original claim" that appears to have been omitted through clerical error when the regulation was previously amended. This amendment added language relating to the settlement of certain customs penalty cases but inadvertently replaced, rather than supplemented, the then existing language.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen Altman, Assistant Director, Commercial Litigation Branch, Civil Division, Department of Justice, Room 6540, 601 D Street, NW., Washington, DC 20004; (202) 307–0188.

SUPPLEMENTARY INFORMATION:

Why Is the Department Publishing This Rule?

This rule corrects the regulations governing authority to compromise civil claims. This amendment restores the exact language of 28 CFR 0.169 that was deleted when a prior amendment published on September 8, 1986, inadvertently substituted rather than added language defining that term as applied to the settlement of certain customs penalty cases. 51 FR 31939.

To What Situations Does the Regulation Being Amended Apply?

The regulation at 28 CFR 0.169, which this rule amends, is included in subpart Y of Title 28 of the Code of Federal Regulations. Subpart Y deals with the authority of the Assistant Attorneys General of the various litigating divisions of the Department of Justice to compromise and close civil claims, and the responsibility for collecting and enforcing judgments, fines, penalties, and forfeitures. Throughout subpart Y, various levels of authority are defined by reference to the term "gross amount of the original claim." This definition is important in setting the scope of authority in fraud cases where a demand may be made for multiples of single damages and forfeitures or civil penalties.

How Does This Rule Affect Persons Outside the Department?

This rule has no effect on the rights or obligations of persons outside the Department. It only pertains to case settlement authorities delegated to certain Department personnel.

Administrative Procedure Act 5 U.S.C. 553

Because this rule relates to agency organization and pertains to a matter of internal Department of Justice management and procedures, the rule does not need to be published for public comment, 5 U.S.C. 553(a)(2). The rule is effective upon issuance.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to administrative and organizational matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule since the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This action has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. This rule is limited to agency organization, management, and personnel as described by section 3(d)(3) of Executive Order 12866 and, therefore, is not a "regulation" or "rule" as defined by this Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and

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responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Summary Impact Statement.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write: Stephen Altman, Assistant Director, Commercial Litigation Branch, Civil Division, Department of Justice, Room 6540, 601 D Street, NW., Washington, DC 20004; (202) 307–0188.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

Accordingly, for the reasons set forth in the preamble, Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Revise § 0.169 to read as follows:

§ 0.169 Definition of "gross amount of the original claim".

(a) The phrase *gross amount of the original claim* as used in this subpart Y and as applied to any civil fraud claim described in § 0.45(d), shall mean the amount of single damages involved.

(b) The phrase *gross amount of the original claim* as used in this subpart Y and as applied to any civil claim brought under section 592 of the Tariff Act of 1930, as amended (see § 0.45(c)), shall mean the actual amount of lost customs duties involved. In nonrevenue loss cases brought under section 592 of the Tariff Act of 1930, as amended, the phrase *gross amount of the original claim* shall mean the amount demanded in the Customs Service's mitigation decision issued pursuant to 19 U.S.C. 1618 or, if no mitigation decision has been issued, the *gross amount of the original claim* shall mean twenty percent of the dutiable value of the merchandise.

Dated: December 6, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–31765 Filed 12–14–00; 8:45 am]

BILLING CODE 4410–12–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in January 2001. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (See the PBGC's two final rules published March 17, 2000, in the **Federal Register** (at 65 FR 14752 and 14753). Effective May 1, 2000, these rules changed how the interest assumptions are used and where they are set forth in the PBGC's regulations.)

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during January 2001, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during January 2001, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during January 2001.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.70 percent for the first 20 years following the valuation date and 6.25 percent thereafter. These interest assumptions (in comparison with those in effect for December 2000) reflect a 5-year decrease in the period during which the initial rate applies (from a period of 25 years following the valuation date to a period of 20 years following the valuation date). The initial rate, in effect during the 20-year period, represents a decrease (from the initial rate in effect for December 2000) of 0.30 percent. The ultimate rate, in effect thereafter, is unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.00 percent for the period during which a benefit is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for December 2000) of 0.25 percent for the period during which a benefit is in pay status and the seven-year period directly preceding the benefit's placement in pay status, and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during January 2001, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 87, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
87	1–1–01	2–1–01	5.00	4.25	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 87, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
87	1–1–01	2–1–01	5.00	4.25	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
January 2001	.0670	1–20	.0625	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of December 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–31990 Filed 12–14–00; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–047–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule [MD–047–FOR], which was published Wednesday, November 8, 2000 (65 FR 66929). The final rule describes Maryland's procedures for financing abandoned mine land reclamation projects that involve the incidental extraction of coal.

DATES: Effective December 15, 2000.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153. E-mail: grieger@osmre.gov

SUPPLEMENTARY INFORMATION: The final rule amended § 920.15 to add a new entry to the table describing the date the original amendment was submitted, the date of final publication, and the citation/description. As originally published in 65 FR 66929, the instructions were correct but the section heading erroneously read "§ 920.25 Approval of Maryland regulatory amendments." It should have read "§ 920.15 Approval of Maryland regulatory amendments."

Correction of Publication

Accordingly, the publication on November 8, 2000 of the final regulations (MD–047–FOR), which were the subject of FR Doc. 00–28618, is corrected to read as follows:

1. On page 66931, in the third column, the section heading is corrected to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Dated: November 20, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–32039 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 096–3061; FRL–6916–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision consists of amendments to Maryland's Nitrogen Oxides (NO_X) Budget Program. The revisions implement the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) in Maryland. In accordance with the MOU, the revisions implement the Maryland portion of a regional NO_X cap and trade program that significantly reduces NO_X emissions generated within the Ozone Transport Region (OTR). EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on January 16, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28,1998, the Maryland Department of the Environment (MDE) submitted a revision to its SIP. The revision to the SIP includes the adoption of new sections .01–.14 under a new chapter, COMAR 26.11.27—Post RACT Requirements for NO_X Sources (Nitrogen Oxides (NO_X) Budget Program) and new sections .01–.13 under a new chapter, COMAR 26.11.28—Polices and Procedures Relating to Maryland's NO_X Budget Program. The revisions implement the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) in Maryland. In accordance with the MOU, the revisions implement the Maryland portion of a regional NO_X cap and trade program that significantly reduces NO_X emissions generated within the Ozone Transport Region (OTR).

On November 16, 1999, MDE submitted amendments to its August 28, 1998 SIP revision request. The purpose of these amendments was to change the compliance date of the Maryland NO_X Budget Program from May 1, 1999 to May 1, 2000. The revisions to the August 28, 1998 submittal include amendments to Regulations (.04) General Requirements, (.07) Allowance Banking, and (.11) End-of-Season Reconciliation under COMAR 26.11.27 and the repeal of Regulation (.08) Early Reduction Allowances under COMAR 26.11.28. On March 20, 2000, MDE submitted amendments to its August 28, 1998 SIP revision request consisting of two enforceable consent agreements between MDE and the Baltimore Gas and Electric Company and the Potomac Electric Power Company. These consent agreements impose special conditions and time lines for both companies regarding the implementation of Maryland's NO_X Budget Trading Program requirements.

On October 19, 2000 (65 FR 62671), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland proposing to approve the August 28, 1998 SIP revision request as amended by the November 16, 1999 and March 20, 2000 submittals. That NPR provided for a public comment period ending on November 9, 2000. On November 9, 2000 (65 FR 67319), EPA published a notice extending the comment period to November 20, 2000. A detailed description of these SIP revisions and EPA's rationale for approving were provided in the October 19, 2000 NPR and will not be restated here. EPA received no comments on its proposed action to approve this SIP revision.

II. Final Action

EPA is approving a revision to the Maryland SIP consisting of COMAR 26.11.27, Post RACT Requirements for NO_X Sources (NO_X Budget Program) and COMAR 26.11.28, Polices and Procedures Relating to Maryland's NO_X Budget Program, as submitted on August 28, 1998 and as amended on November 16, 1999 and March 20, 2000. These revisions implement Maryland's portion of Phase II of the OTC's MOU to reduce nitrogen oxides. Moreover, this SIP revision is necessary for full approval of the attainment demonstration SIP for the Metropolitan Washington, DC ozone nonattainment area.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland NO_X Budget Program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(151) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(151) Revisions to the Maryland State Implementation Plan submitted on August 28, 1998, November 16, 1999 and March 20, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of August 28, 1998 from the Maryland Department of the Environment transmitting additions to the Maryland's State Implementation Plan pertaining to the Nitrogen Oxides Budget Program.

(B) Letter of November 16, 1999 from the Maryland Department of the Environment transmitting additions to the Maryland's State Implementation Plan pertaining to the Nitrogen Oxides Budget Program.

(C) Letter of March 20, 2000 from the Maryland Department of the Environment transmitting additions to the Maryland's State Implementation

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Plan pertaining to the Nitrogen Oxides Budget Program.

(D) Revisions to COMAR 26.11.27, Post RACT Requirements for NO_X Sources (NO_X Budget Program) and COMAR 26.11.28, Polices and Procedures Relating to Maryland's NO_X Budget Program, effective June 1, 1998.

(*1*) Addition of COMAR 26.11.27.01 through COMAR 26.11.27.14, except COMAR 26.11.27.04, .07 and .11.

(*2*) Addition of COMAR 26.11.28.01 through COMAR 26.11.28.13, except COMAR 26.11.28.08.

(E) Revisions to COMAR 26.11.27, Post RACT Requirements for NO_X Sources (NO_X Budget Program) and COMAR 26.11.28, Polices and Procedures Relating to Maryland's NO_X Budget Program, effective October 18, 1999, consisting of the addition of new COMAR 26.11.27.04, .07 and .11.

(F) Revisions to COMAR 26.11.27, Post RACT Requirements for NO_X Sources (NO_X Budget Program) and COMAR 26.11.28, Polices and Procedures Relating to Maryland's NO_X Budget Program, consisting of the consent agreement between the Maryland Department of the Environment and the Potomac Electric Power Company, effective September 13, 1999.

(G) Revisions to COMAR 26.11.27, Post RACT Requirements for NO_X Sources (NO_X Budget Program) and COMAR 26.11.28, Polices and Procedures Relating to Maryland's NO_X Budget Program, consisting of the consent agreement between the Maryland Department of the Environment and the Baltimore Gas & Electric Company, effective November 19, 1999.

(ii) Additional Material—Remainder of August 28, 1998, November 16, 1999 and March 20, 2000 submittals pertaining to the Nitrogen Oxides Budget Program.

[FR Doc. 00–32001 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4096a; FRL–6577–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions establish and require reasonably available control technology (RACT) for 56 major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on February 13, 2001 without further notice, unless EPA receives adverse written comment by January 16, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers at (215) 814–2061 for information on sources #1 through #17, Melik Spain at (215) 814–2299 for information on sources #18 through #50, or Helene Drago at (215) 814–5796 for information on sources #51 through 56.

SUPPLEMENTARY INFORMATION:

I. Background

On September 20, 1995, December 8, 1995, January 10, 1996, March 21, 1996, April 16, 1996, May 2, 1996, June 10, 1996, September 13, 1996, January 21, 1997, July 2, 1997, November 4, 1997, December 31, 1997, March 24, 1998, April 20, 1998, May 29, 1998, July 24, 1998, December 7, 1998, February 2, 1999, March 3, 1999, April 9, 1999, and April 20, 1999, the Commonwealth of Pennsylvania (the Commonwealth) submitted formal revisions to its SIP to establish RACT for major sources of VOCs and NO_X. EPA is approving the Commonwealth's RACT submittals for 56 of these sources in this rulemaking action. EPA will address the Commonwealth's submittals for other sources in later rulemaking actions. The Commonwealth's submittals consist of plan approvals, operating permits, and/or compliance permits which contain the RACT requirements for each source. In accordance with Pennsylvania's SIP revision request, EPA is approving only the RACT related requirements contained in these plan approvals, operating permits, and/or compliance permits.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area) consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. Under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. The entire Commonwealth of Pennsylvania is in the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revision

The details of the RACT requirements for each source are discussed in the technical support documents (TSDs) found in the docket for this rulemaking action and will not be reiterated in this document. Briefly, EPA is approving revisions to the Pennsylvania SIP establishing and requiring VOC and/or NO_X RACT for 56 major sources. The RACT determinations and requirements are included in plan approvals, operating permits and/or compliance permits. Several of the plan approvals, operating permits, and/or compliance permits also contain provisions which are not relevant to the requirements for RACT. These provisions are not part of Pennsylvania's SIP revision requests to EPA.

RACT Determinations

The following table identifies the individual plan approvals, operating permits and/or compliance permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying TSDs, which are available upon further request

from the EPA Region III office listed in the **ADDRESSES** section of this document.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #) Operating permit (OP #) Compliance permit (CP #) (date of issuance)	Source type	Major source pollutant
1. Boeing Company, Defense and Space Group, Helicopters Division.	Delaware	CP–23–0009	Helicopter Manufacturing	VOC/NO_X
2. Delaware County Regional Water Quality Control Authority.	Delaware	OP–23–0032	Wastewater Treatment Plant	VOC/NO_X
3. Delbar Products	Bucks	OP–09–0025	Truck Mirror Manufacturer	VOC
4. Department of Public Welfare—Norristown State Hospital.	Montgomery	OP–46–0060	Hospital	NO_X
5. Dopaco, Inc.	Chester	CP–15–0029	Printer	VOC
6. Garlock, Inc.	Bucks	CP–09–0035 PA–09–0035	Thin Film and Tape Manufacturer	VOC
7. Interstate Brands Corp.	Philadelphia	PLID: 5811	Bakery	VOC/NO_X
8. J.B. Slevin, Inc.	Delaware	OP–23–0013	Printer	VOC
9. Laclede Steel Company	Bucks	OP–09–0023	Steel Products Manufacturer	VOC/NO_X
10. LNP Engineering Plastics	Chester	OP–15–0035	Polymer Pellet Manufacturer	VOC
11. Lukens Steel Company	Montgomery	OP–15–0010	Steel Plate Producer	VOC/NO_X
12. Nabisco, Inc.	Philadelphia	15–3201	Bakery	VOC/NO_X
13. PECO—Croydan Station	Bucks	OP–09–0016a	Turbines	VOC/NO_X
14. PECO—Limerick Station	Montgomery	OP–46–0038	Boilers	VOC/NO_X
15. PECO—Fairless	Bucks	OP–09–0066	Boilers	VOC/NO_X
16. PECO—West Conshohocken	Montgomery	OP–46–0045A	Turbine	NO_X
17. PENELEC—Front Street Station	Erie	25–0041	Boilers	NO_X
18. American Inks & Coating Corp.	Chester	15–0026A	Inorganic Pigment Manufacturer	VOC
19. Avery Denison Corp.	Bucks	09–001A	Surface Coating	VOC/NO_X
20. Cabot Performance Materials	Berks/Montgomery.	46–0037	Chemical Manufacturer	VOC/NO_X
21. Cleveland Steel Container	Bucks	09–0022	Steel Products Manufacturer	VOC
22. CMS Gilbreth Packaging Systems	Bucks	09–0036	Graphic Arts	VOC
23. CMS Gilbreth Packaging Systems	Bucks	09–0037	Graphic Arts	VOC
24. Congoleum Corporation	Delaware	23–0021	Graphic Arts	VOC
25. Epsilon Products Corporation	Delaware	23–0012	Synthetic Materials	VOC
26. Foamex International Inc.	Delaware	23–006A	Synthetic Materials	VOC/NO_X
27. Forms; Spectra Graphics	Montgomery	46–0023	Graphic Arts	VOC
28. Global Packaging, Inc.	Montgomery	46–0026	Graphic Arts	VOC
29. Jefferson Smurfit Corp.	Montgomery	46–0041	Graphic Arts	VOC
30. Jefferson Smurfit Corp.	Montgomery	46–0062	Graphic Arts	VOC
31. Lonza Inc.	Montgomery	46–0025	Chemical Manufacturer	VOC/NO_X
32. Markel Corp.	Montgomery	46–0081	Synthetic Materials	VOC
33. McCorquodale Security Cards, Inc.	Chester	15–0037	Graphic Arts	VOC
34. Mike-Rich, Inc.	Bucks	09–0021	Graphic Arts	VOC
35. Minnesota Mining and Manufacturing	Bucks	CP 09–0005	Boilers and Process Sources	VOC/NO_X
36. MM Biogas Power LLC	Montgomery	46–0067	Low Emission Combustion	NO_X
37. Norwood Industries	Chester	15–0014A	Surface Coating	VOC/NO_X
38. NVF Company	Chester	15–0030	Synthetic Materials	VOC/NO_X
39. Occidental Chemical Corp.	Montgomery	46–0015	Synthetic Materials	VOC/NO_X
40. Philadelphia Newspaper, Inc.	Montgomery	46–0012	Graphic Arts	VOC
41. Procter & Gamble Paper Products Co.	Wyoming	66–0001	Paper & Pulp Mill	VOC/NO_X
42. Quebecor Printing Atglen Inc.	Chester	15–0002	Graphic Arts	VOC
43. Sartomer Company, Inc.	Chester	15–0015	Chemical Manufacturer	VOC
44. Silberline Manufacturing	Carbon	54–0041	Synthetic Materials	VOC
45. Smithkline Beecham Research Co.	Montgomery	46–0031	Pharmaceutical Manufacturer	NO_X
46. Sullivan Graphics, Inc.	York	67–2023	Graphic Arts	VOC
47. Sun Company, Inc. (R&M)	Delaware	23–0010	Petroleum Transfer Station	VOC
48. Sun Company, Inc. (R&M)	Delaware	23–0011	Petroleum Transfer Station	VOC
49. Universal Packaging Corp.	Montgomery	46–0156	Graphic Arts	VOC
50. Zenith Products Corp.	Delaware	23–0008	Surface Coating	VOC
51. Budd Company	Philadelphia	51–1564	Industrial Boiler	NO_X
52. Bellevue Cogeneration Plant	Philadelphia	51–6513	Industrial Boiler	NO_X
53. MSC Prefinish Metals	Bucks	09–0030	Surface Coater	VOC/NO_X
54. Temple University	Philadelphia	51–8906	Industrial Boiler—Medical Incinerator	NO_X
55. Trigen-Schuylkill Station	Philadelphia	51–4942	Utility	NO_X
56. Trigen-Edison Station	Philadelphia	51–4902	Utility	NO_X

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EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on February 13, 2001 without further notice unless we receive adverse comment by January 16, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP submitted by the Department of Environmental protection which establish and require RACT for 56 major sources of NO_X and VOC located in Pennsylvania.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for 56 named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's source-specific RACT requirements for 56 sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Editorial note. This document was received at the Office of the Federal Register on December 6, 2000.

Dated: March 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(143) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(143) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted by the Pennsylvania Department of Environmental Protection on September

20, 1995, December 8, 1995, January 10, 1996, March 21, 1996, April 16, 1996, May 2, 1996, June 10, 1996, September 13, 1996, January 21, 1997, July 2, 1997, November 4, 1997, December 31, 1997, March 24, 1998, April 20, 1998, May 29, 1998, July 24, 1998, December 7, 1998, February 2, 1999, March 3, 1999, April 9, 1999, and April 20, 1999.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals, operating permits, or compliance permits, or supplementary information, on the following dates: September 20, 1995, December 8, 1995, January 10, 1996, March 21, 1996, April 16, 1996, May 2, 1996, June 10, 1996, September 13, 1996, January 21, 1997, July 2, 1997, November 4, 1997, December 31, 1997, March 24, 1998, April 20, 1998, May 29, 1998, July 24, 1998, December 7, 1998, February 2, 1999, March 3, 1999, April 9, 1999, and April 20, 1999.

(B) Plan approvals (PA), Operating permits (OP), and Compliance Permits (CP):

(1) Boeing Company, Defense and Space Group, Helicopters Division, CP–23–0009, issued 09/03/1997, except for the expiration date, the requirements of Conditions 5.B, 6.C, 7.C, 8.C, 9.D, 10.B, and 11.B, and any of their associated recordkeeping and reporting requirements.

(2) Delaware County Regional Water Quality Control Authority's Western Regional Treatment Plant (DELCORA WRTP), OP–23–0032, issued 03/12/1997, as revised on 05/16/1997, except for the expiration date and the requirements of Conditions 9, 12, 14, 15, 16, and any associated recordkeeping and reporting requirements.

(3) Delbar Products, Inc., OP–09–0025, issued 02/01/96, except for the expiration date and the requirements of Conditions 3, 4, 5, 6.A, 6.B, 6.C.1, 6.C.2, 8 and 9.

(4) Department of Public Welfare's Norristown State Hospital, OP–46–0060, issued 01/21/1998, except for the expiration date and Conditions 3, 4, 5, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24.

(5) Dopaco, Inc., CP–15–0029, issued 03/06/1996, except for the expiration date and the requirements of Conditions 4, 5, 6, 7, 8, 9, 10.C, 10.D, 10.H.3, 10.H.4, 11, 12, 13, 14, 15, 16, and 17.

(6) Garlock, Inc., PA–09–0035, issued 03/12/1997, except for the expiration date and Conditions 2, 10, 13, 15.B–F.

(7) Interstate Brands Corporation, PLID 5811, effective 04/10/1995, except for Conditions 1.A(1), (2), (4) and (5), 2.B, 2.C, 7, 8, and 9. (Note: Interstate Brands Corporation acquired this facility through purchase of Continental Baking Company, which was the owner of the facility when the RACT permit was issued. Accordingly, Continental Baking Company is shown as the facility owner on the permit.)

(8) J.B. Slevin Company, Inc., OP–23–0013, issued 09/03/1996, except for the expiration date and the requirements of Conditions 4, 5.A. and 8, 9, and 10.

(9) Laclede Steel Company, OP–09–0023, issued 7/17/1995, except for the expiration date and requirements of Conditions 3 and 7.

(10) LNP Engineering Plastics, Inc., OP–15–0035, issued 10/31/97, except for the expiration date, Conditions 3, 4, 5, 6, 7 (as it relates to non-criteria pollutants), 10 (as it relates to keeping records required to show compliance with Condition 5), 12, 15, 16, and 21.

(11) Lukens Steel Company, OP–15–0010, issued 05/06/1999, except for the expiration date, Conditions 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Permit Condition 3 lists units subject to RACT requirements. All of the listed units are subject to VOC RACT requirements, but only the C and D electric arc furnaces, the Drever Furnace, the NAB Furnaces, the nine batch heat treatment furnaces, the EMS boiler, the Soaking Pits and the ZIP line process are subject to NO_X RACT requirements.

(12) Nabisco Biscuit Co., PLID 3201, effective 04/10/1995, except for Conditions 1.A(1), 1.A(3), 1.A(4), 1.A(5), 1.A(6), 2.B, 2.C, 7, 8, and 9.

(13) PECO Energy Company, Croydon Station, OP–09–0016A, issued 12/20/1996, except for the expiration date, Conditions 4, 5, 7(C), 7(D), 7(E) and 10.

(14) PECO Energy Company, Limerick Station, OP–46–0038, issued 7/25/1995, except for the expiration date, Conditions 4, 5, 8(B), 9(B), 10(A)(3), 10(C), and 11.

(15) PECO Energy Company, Fairless Works, OP–09–0066, issued 12/31/1998, as revised on 04/06/1999, except for the expiration date, Conditions 4, 5, 6, 7, and 8, the portion of Condition 10 pertaining to sulfur content of fuel oil, the provision of Condition 11 (B) pertaining to annual NO_X emissions, the provisions in 11(C) regarding landfill gas and Condition No. 15.

(16) PECO Energy Company, West Conshohocken Plant, OP–46–0045A, issued 12/04/1997, except for the expiration date and the provisions of Conditions 3B, 3C, 3D, 4, 5, 6(B)(2), 7, 8, 9D, 9E, and 9F.

(17) Pennsylvania Electric Company (owner) and GPU Generation, Inc. (operator), Front Street Plant, 25–0041, issued 02/25/1999, except for Conditions 7, 8, 9, and 10.

(18) American Inks and Coatings Corporation, OP 15–0026A, issued 01/10/1997, except for the expiration date, all ton per year limitations, and Conditions 3, 4, 5, 7(A), 8(A), 8(C), 9, 11, 12, 13, and 14.

(19) Avery Dennison Corporation (Fasson Roll Division), OP 09–0001A, issued 10/02/1997, except for the expiration date, Conditions 3, 4, 5, 7, 8, 9(A)1, 9(A)2, 9(A)3, 9(A)4, 9(A)5, 9(A)7, 9(A)8, 9(A)9, 9(B), 9(C), 9(D), 10, 11, 12, 13, and 14.

(20) Cabot Performance Materials, OP 46–0037, issued 04/13/1999, except for the expiration date and Conditions 4, 5, 6, 7, 8, 9, 15(b), 15(c), 16, 17, 18, 19, 20, 21, 22, 23, and 24.

(21) Cleveland Steel Container Corporation, OP 09–0022, issued 09/30/1996, except for the expiration date, and the allowable ton-VOC/year limits in Condition 4, and Conditions 3, 6, and 8.

(22) CMS Gilbreth Packaging Systems, OP 09–0036, issued 01/07/1997, except for the expiration date and Conditions 3, 4, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

(23) CMS Gilbreth Packaging Systems, OP 09–0037, issued 04/10/1997, except for the expiration date, Conditions 3, 4, 22, 23, 24, 25, 26, 27, 28, and 29.

(24) Congoleum Corporation, OP 23–0021, issued 12/31/1998, except for the expiration date and Conditions 3, 4, 5(A), 5(B), 5(D), 5(E), 6, 7(a), 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26.

(25) Epsilon Products Company, OP 23–0012, issued 02/15/1996, except for the expiration date and Conditions 3, 4(B), 4(C), 7, 9, 10, 12, 13, 14, and 15.

(26) Foamex International, Inc., OP 23–0006A, issued 09/30/1996, as revised on 3/30/1999, except for the expiration date and Conditions 3, 4, 5, 8, 9, 10, 11, 12, 13, and 14.

(27) Forms, Inc., Spectra Graphics, OP 46–0023, issued 11/09/1995, as revised on 03/25/1998, except for the expiration date, Conditions 4, the VOC lbs/hr limits in Condition 5 for both the heatset and nonheatset press materials, 6, 7, 9, 11 and 12.

(28) Global Packaging, Inc., OP 46–0026, issued 08/30/1996, as revised on 12/24/1997, except for the expiration date, Conditions 3, 4, 5, 6, the nitrogen oxide limits in Condition 7(B), 10, and 11. (Note: Pennsylvania issued the revised permit to Global Packaging, Inc. Global Packaging, Inc. acquired this facility through purchase of BG Packaging, Inc., which had owned the facility when the original RACT permit

was issued. Accordingly, BG Packaging, Inc. is shown as the facility owner on the original permit.)

(*29*) Jefferson Smurfit Corporation (U.S.), OP 46–0041, issued 04/18/1997, except for the expiration date, Conditions 3, 4, 5, 15(B), 16, 17, 18, 19, 20, 21, and 22 and the record keeping and monitoring requirements of Condition No. 15(A) associated with Condition 4.

(*30*) Jefferson Smurfit Corporation, OP 46–0062, issued 07/15/1996, except for the expiration date and Conditions 3 and 5(F).

(*31*) Lonza, Inc., OP 46–0025, issued 04/22/1997, as revised on 06/16/1998, except for the expiration date, Conditions 3, 6, 7, 8, 9, 10, 11, 12, 13(B), 13(D) and 13(E).

(*32*) Markel Corporation, OP 46–0081, issued 04/09/1999, except for the expiration date and Conditions 3, 4, 5, 11, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

(*33*) McCorquodale Security Cards, Inc., OP 15–0037, issued 09/03/1996, except for the expiration date and Conditions 3, 4, 5, 6, 7, 8, 9, 11, 15, 16, and 17.

(*34*) Mike-Rich, Inc., OP 09–0021, issued 12/20/1996, except for the expiration date, Conditions 3, 4, 5, 7, and the general conditions listed in Condition 8.

(*35*) Minnesota Mining and Manufacturing Co. (3M), CP 09–0005, issued 08/08/1996, except for the expiration date and Conditions 4, 5, 6, 7, 8, 9, 10, 11(C), 12 (C), 12(D), 13(A), 13(C), 13(D), 14, 15, 16, 17, 18, 19, 20, 21, and 22.

(*36*) MM Biogas Power LLC, OP 46–0067, issued 10/31/1997, except for the expiration date and Conditions 3, 4, 7, 9 (as it pertains to the Superior engine), 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21.

(*37*) Norwood Industries, Inc., OP 15–0014A, issued 12/20/1996, as revised on 12/02/1999, except for the expiration date, Conditions 3, 4, 5, 6(A), 6(B), 6(C), 6(D)1, 6(D)2, 6(D)3, 6(D)5, 6(E), 6(F)1, 6(F)2, 6(F)3, 6(F)5, 6(F)6, 6(G), 7, 8(A), 8(C), 8(D), 8(F), 8(G), 8(H), 8(I), and 9.

(*38*) NVF Company, OP 15–0030, issued 04/13/1999, except for the expiration date and Conditions 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

(*39*) Occidental Chemical Corporation, OP 46–0015, issued 11/07/1996, except for the expiration date and Conditions 4, 5, 6(A), the capacity factor in 6(B), 6(E), 7, 8(A), 8(C), 8(D)1, 8(D)2a, 8(D)2b, 8(D)2c, 8(D)2d, 8(D)5, 8(E), 9, 10, 11(B), 12.

(*40*) Philadelphia Newspapers, Incorporated, OP 46–0012, issued 08/30/1996, as revised on 03/15/2000, except for the expiration date, and Conditions 3, 4(A), 5, 9, and 11.

(*41*) Procter & Gamble Paper Products Company, OP 66–0001, issued 04/04/1997, except for the expiration date, and Conditions 3, 4, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 19, 20, 21, and 22.

(*42*) Quebecor Printing Atglen, Inc., OP 15–0002, issued 12/10/1996 except for the expiration date and Conditions 3, 4(A) except as it relates to cleaning solvents, 4(B), 4(C), 5, 6, 7, 8(A), 8(B) and 8(D).

(*43*) Sartomer Company, Inc., OP 15–0015, issued 01/17/1996, as revised on 03/25/1998, except for the expiration date and Conditions 3, 4, 5, 8, 13, 14, 15(A), and 16.

(*44*) Silberline Manufacturing Company, Inc., OP 54–0041, issued 04/19/1999, except for the expiration date and Conditions 3, 4, 5, 6, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.

(*45*) SmithKline Beecham Research Company, OP 46–0031, issued 10/31/1997, as revised on 05/01/1998, except for the expiration date and Conditions 3, 4, 5(a) as it pertains to the Cleaver Brooks boiler rated at 31.4 MMbtu/hr., 6(b), and 6(c).

(*46*) Sullivan Graphics, Inc., OP 67–2023, issued 08/22/1995, except for the expiration date and Conditions 4, 5, 9(c), 9(d), 10, 19, 20, and 24.

(*47*) Sun Company, Inc. (R&M), OP 23–0010, issued 10/31/1996, except for the expiration date and Conditions 3, 4, 6, 7, 8 and 10.

(*48*) Sun Company, Inc. (R&M), OP 23–0011, issued 10/31/1996, except for the expiration date and Conditions 3, 4, 6 and 8.

(*49*) Universal Packaging Corporation, OP 46–0156, issued 04/08/1999, except for the expiration date, and Conditions 3, 4, 5, 9 and 11.

(*50*) Zenith Products Corporation, OP 23–0008, issued 04/07/1997, except for the expiration date, and Conditions 4, 6, 7, 8(A), 8(B), 9(B), 10, 11, and 12.

(*51*) Budd Company, PLID 51–1564, effective 12/28/1995, except for Conditions 7, 8 and 9.

(*52*) Bellevue Cogeneration Plant, PLID 06513, effective 4/10/1995, except for Conditions 1.A(2), 2.B, 4.B, 7, 8 and 9.

(*53*) MSC Pre Finish Metals, Inc., OP–09–0030, issued 11/7/1996, as revised on 03/31/1998, except for the expiration date and Conditions 3, 4, 5, 6.A, 6.B.1, 6.B.5, 6.B.9, 6.C, 6.D.1 (a, b, and e), 8.A, 8.B, 9, 10.E, and 11.

(*54*) Temple University, Health Sciences Center, PLID 8906, effective 5/27/1995, excluding Conditions 1.A(2), 2.B, 6, 7, and 8.

(*55*) Trigen—Schuylkill Station, PLID 04942, effective 5/29/1995, except for Conditions related to low NO_X burners found at 1.B(1) and 2(A), the provision in Condition 3.A(1) limiting NO_X emissions to 1646 tons per year, 4 (B), 7, 8, and 9.

(*56*) Trigen—Edison Station, PLID 4902, effective 5/29/1995, excluding portions of Condition 3.A.(1) limiting NO_X emissions in tons per year and Conditions 7, 8, and 9.

(C) Letters from the Pennsylvania Department of Environmental Protection, dated 09/21/2000, and 10/20/2000, in which Pennsylvania provided supplementary information regarding many of the permits listed in i(B) above, and in which Pennsylvania specified the permit conditions, listed in i(B) above, which it did not wish to have incorporated into the Pennsylvania State Implementation Plan.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 386

[Docket No. FMCSA–00–7332]

RIN 2126–AA54

Sanctions Against Motor Carriers, Brokers, and Freight Forwarders for Failure To Pay Civil Penalties

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA implements section 206 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) by amending the penalty provisions of the rules of practice of the Federal Motor Carrier Safety Regulations (FMCSRs). This action prohibits a motor carrier that does not pay civil penalties assessed by the FMCSA, or that does not arrange and abide by its payment agreements, from operating in interstate commerce. The rule also suspends the registration of a broker, freight forwarder or for-hire motor carrier that has not paid a civil penalty, or arranged and abided by a payment plan. The prohibition or suspension begins on the 91st day after the payment date specified in the final agency order or on the 91st day after the due date of a missed payment arranged in a payment plan. A party that continues to operate in violation of a prohibition or suspension may be subject to additional penalties. However, it will not apply to anyone who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11 of the Bankruptcy Code.

DATES: This final rule is effective on April 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, or Mr. Charles Medalen, Office of Chief Counsel, (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking implements section 206 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, 113 Stat. 1748, at 1763). Section 206 addresses two issues related to delinquent payment of penalties. Section 206(a) amends 49 U.S.C. 13905(c) by authorizing the Secretary of Transportation (Secretary) to suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder if that entity has not paid a civil penalty within 90 days of the time specified by official order for payment, or has not arranged and abided by a payment plan. However, the Secretary may not revoke the registration of a person unable to pay penalties because the person is a debtor in a case under chapter 11 of the Bankruptcy Code (11 U.S.C. 362 *et seq.*).

The term "registration" applies to a for-hire motor carrier, freight forwarder, and broker that registers with the FMCSA to provide transportation under 49 U.S.C chapter 139. This includes an entity that held operating authority from the Interstate Commerce Commission as of the effective date of the ICC Termination Act of 1995 (ICCTA) (Public Law 104–88, 109 Stat. 803), as well as an entity registered by the Federal Highway Administration (FHWA) between January 1, 1996, and December 31, 1999, and by the FMCSA on or after January 1, 2000.

Section 206(b) amends 49 U.S.C. 521(b) to prohibit operations in interstate commerce by an owner or operator of a commercial motor vehicle (CMV) who fails to pay a civil penalty, or to arrange and abide by an acceptable payment plan. A CMV owner or operator must cease its interstate operations if it has not paid its fine within 90 days of the time specified by the Secretary's order for payment, or has not arranged and abided by a payment plan. Similar to the exception contained in section 206(a), the Secretary may not apply this prohibition to anyone unable to pay penalties because the person is a debtor in a case under chapter 11 of the Bankruptcy Code.

The rules of practice for motor carrier proceedings are codified in 49 CFR part 386. The most recent amendments (65 FR 7753, February 16, 2000) added proceedings concerning violations of the commercial regulations that were formerly implemented and administered by the Interstate Commerce Commission.

The FMCSA described in the preamble to the NPRM (65 FR 56521, September 19, 2000) how its current enforcement procedures would be affected by Section 206. Briefly, a compliance review may be conducted in response to a request to change a safety rating, or to investigate potential violations of regulations and complaints. If the compliance review results in the initiation of an enforcement action, the official document used to notify a broker, freight forwarder, or motor carrier is a Notice of Claim (NOC). If the broker, freight forwarder, or motor carrier does not respond, the NOC becomes the final agency order by default 25 days after it was served, and the party is so notified. If the broker, freight forwarder, or motor carrier timely responds and challenges the NOC, the FMCSA's Chief Safety Officer opens an administrative proceeding. If the NOC is upheld, a final agency order (FAO) is issued which usually directs the broker, freight forwarder, or motor carrier, to pay a civil penalty.

The respondent must pay the fine within 30 days of receipt of the FAO. The respondent may petition the FMCSA for reconsideration of the FAO within 20 days after it is served. If the broker, freight forwarder, or motor carrier has not paid its fine in full, or if it has not executed an agreement with the appropriate FMCSA Service Center for a payment schedule for its fine, the agency issues an accounts receivable memorandum to the FHWA Finance Division which will pursue collection through administrative channels. (The FHWA is providing certain administrative support for the FMCSA under an interagency agreement until the FMCSA is authorized to fully staff its administrative offices.) If the agency has not received payment 30 days after the FAO is served on a broker, freight forwarder, or motor carrier, the FHWA will send a letter to the broker, freight forwarder, or motor carrier by certified mail, return receipt requested. The FHWA sends additional letters if it has still not received payment by 60 days and 90 days after service of the order. After 180 days, the FHWA refers the case to the Department of Treasury for collection of the fine in accordance with the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321–358.

Under this final rule implementing section 206, the owner or operator of a commercial motor vehicle that fails to pay its fine (or, if the agency agreed to accept installment payments, part of its fine) within 90 days of the date specified for payment will be barred from operating in interstate commerce on the 91st day and may not resume operating until it has paid the entire fine in full. In addition, the registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay fines (or, in case of installment payments, part of a fine) within 90 days of the date specified for payment will be suspended, after notice and opportunity for a proceeding, on the 91st day. The respondent may not operate in interstate commerce until the entire fine has been paid in full and its registration restored.

Docket Comments to the NPRM

The agency received comments from: the American Trucking Associations (ATA), the National Private Truck Council (NPTC), Advocates for Highway and Auto Safety (AHAS), Larry R. Davidson on behalf of the National Association of Transportation Safety Professionals (NATSP), the Transportation Lawyers Association (TLA), the National Association of Small Trucking Companies (NASTC), and Mr. Robert M. Hunziker, an individual.

Definitions and Delegation

The ATA asks the FMCSA to revise the definition of Assistant Administrator to state that "* * * the decision of the Assistant Administrator * * * shall be administratively final." The NPRM had stated "the Assistant Administrator is * * * the final agency decisionmaker * * *" The ATA reasons that "finality in proceedings should refer to the finality of the decision—not the finality of the decisionmaker." The ATA further points to the citation in the statute that delegates powers to the Administrator, 49 U.S.C. 113(h), uses the term "administratively final."

The ATA also requests the FMCSA to use the term "owner or operator of a commercial motor vehicle" rather than "motor carrier" in § 386.83. The ATA commented that 49 U.S.C. 521(b)(8) does not use the term "motor carrier" and asserted that the meaning of the term in that law is different from the

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meaning under 49 U.S.C. 13102(12) and (13) and 49 U.S.C. 31501.

Agency's Response

The FMCSA believes that both of ATA's comments have merit. The agency has, therefore, changed the definition of "Assistant Administrator" in the manner suggested by ATA, and amended § 386.83 to refer to "a CMV owner or operator."

The agency addressed the use of the terms "motor carrier" and "owner or operator" in the NPRM concerning safety fitness procedures (64 FR 44460, at 44462, August 16, 1999). Although the FMCSRs have long treated owners and operators of CMVs as "motor carriers" (see 49 CFR 390.5), section 206(b) is clear. It applies specifically to "the owner or operator of a commercial motor vehicle against whom a civil penalty is assessed * * *" [49 U.S.C. 521(b)(8)]. The Congress could have used the term "motor carrier" as it did in section 521(b)(2)(B), but obviously decided not to do so in the MCSIA. In the interest of clarity, the FMCSA has therefore replaced the term "motor carrier" with a slight variant of the statutory language.

Notice of Claim

The TLA and the NASTC submitted similar comments. Both organizations contend that the FMCSA's procedures concerning the transformation of a Notice of Claim into a Final Agency Order in case of a failure to comply with the requirements for a response, constitute rulemaking without notice-and-comment. In the words of the NASTC, "The FMCSA fails to describe the manner in which a Notice of Claim defaults into a Final Agency Order, even when a motor carrier timely contests the alleged infractions." The NASTC contends that "FMCSA utilizes this procedure, particularly in situations where a motor carrier has no legal representation, which is the situation in which most NASTC members find themselves." The TLA asserts that the preamble to the September 19, 2000 NPRM "provided an incomplete presentation of how the new penalties fit within the existing procedures."

A motor carrier or other regulated entity that contests a Notice of Claim must provide a response in writing that complies with 49 CFR 386.14(b). Section 386.14(b)(1) requires "[a]n admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense." Section 386.14(b)(3) requires "[a] statement of whether the respondent wishes to negotiate the terms of payment or settlement of the amount claimed, or the terms and conditions of the order." These requirements have been in the FMCSRs since 1985 (50 FR 40306, October 2, 1985). Section 386.14(e) provides that "[i]f the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim letter becomes the final agency order in the proceeding 25 days after it is served."

The TLA and NASTC cited the same administrative cases in support of their views (*In the Matter of Robert D. Bennet*, Docket No. FHWA–98–4779 (December 10, 1998) and *In the Matter of Bergerson-Caswell, Inc.*, Docket No. OMCS–99–6497 (November 29, 1999)). In *Bennett*, the Associate Administrator for Motor Carriers said that "the Regional Director [a position since eliminated] or Resource Center Operations Manager may issue to the respondent a declaration that the Notice of Claim has become the final agency order pursuant to 49 CFR 386.14(e) because a 'reply,' in accordance with 49 CFR 386.14(b), had not been submitted" (p. 3). The TLA asserts that "the existing regulations contain no indication that a Field Administrator is empowered to determine the carrier's timely NOC response is legally insufficient."

Agency's Response

The NPRM summarized the penalty procedures in part 386 as an aid to readers who might not be familiar with them. The summary was not meant to be a complete statement of the agency's procedures. The comments submitted by the TLA and NASTC amount to collateral attacks on the *Bennett* and *Bergerson-Caswell* decisions and are thus beyond the scope of this rulemaking. A brief discussion of those cases may be useful, however. *Bennett* requires the Resource Center Operations Manager, when issuing a declaration of default, to "include a notice that the respondent has an opportunity to petition the Associate Administrator [now Chief Safety Officer] for review of the declaration. If no petition is submitted, the Notice of Claim is both the final order and the final agency order" (p. 3). *Bennett* therefore gives the respondent actual notice of the default and an opportunity to contest the declaration of default. Under the Administrative Procedure Act (APA), notice and comment rulemaking is not required if a person subject to a rule has been personally served or otherwise has actual notice of the rule (49 U.S.C. 553(b)). Furthermore, the opportunity to contest a default created by *Bennett* and reaffirmed by *Bergerson-Caswell* is not specifically provided for in Part 386. These two cases therefore enhanced the rights of respondents, and did so in a manner entirely consistent with the APA.

Notice and Opportunity for Proceeding

The ATA and the NATSP expressed concern that § 386.84 of the NPRM does not provide for prior notice and opportunity for a proceeding before the suspension or revocation of registration, as required by section 206. The NATSP also believes that the agency should give similar procedural rights under § 386.83, although that is not required by statute.

Agency's Response

The proposal in the NPRM to give respondents written notice 45 days after the date a penalty was due (§§ 386.83(b) and 386.84(b)), was intended to meet the statutory requirement for "notice and an opportunity for a proceeding" (49 U.S.C. 13905(c)(1)) and to extend that right to a driver and private motor carrier as well. The FMCSA has amended the sections in question to make those rights more explicit. In order to comply with section 206, however, the show cause proceeding included in the final rule is necessarily limited in nature. A respondent's operations in interstate commerce will be prohibited, or its registration suspended, on the 91st day after payment was due unless it can show that it has paid in full or filed for bankruptcy under chapter 11. There are no other defenses.

Protest Procedure

Mr. Hunziker believes it would not be appropriate to prohibit a motor carrier from operating if the motor carrier was protesting or appealing the assessment of a civil penalty.

Agency's Response

The FMCSA's rules of practice provide a motor carrier several opportunities to contest the agency's findings in enforcement actions. These are described in 49 CFR part 386 and were summarized in the NPRM (65 FR 56521, at 56523–4). Section 206 does not give the agency discretion to hold the statutory penalties in abeyance when the respondent is more than 90 days overdue in making payment, even if a legal challenge has been filed. That principle is stated in §§ 386.83(b)(3) and 386.84(b)(3). Both the NPRM and the final rule, however, recognize that a Federal Circuit Court of Appeals might issue a stay.

Effective Presentation of Warning Text

AHAS and the ATA recommend that the FMCSA's letters to motor carriers whose payments are delinquent contain language presented in a format and typeface that emphasizes the requirement for the motor carrier to cease its operations in interstate commerce if it does not pay its fine by the specified date. The ATA offered specific language for a "Legal Warning."

Agency's Response

The FMCSA will revise the text and format of the letters it sends to motor carriers to emphasize this requirement.

Enforcement of Cease-Operations Sanction

Citing the discussion of current fine-collection procedures in the NPRM, AHAS noted that because section 206 imposes more serious penalties than previous law—prohibition on operation or suspension of registration—the FMCSA should "put forward a plan to enforce this sanction and the law on a much more aggressive time schedule than for mere collection of unpaid fines."

Agency's Response

The FMCSA is developing procedures to vigorously enforce the cessation-of-operations provisions of the statute and implementing regulations. The procedures will include methods to provide rapid and effective notification to FMCSA field staff and State motor carrier safety and vehicle licensing agencies.

Economic Impacts

AHAS agrees with the FMCSA's determination that this rulemaking would have minimal economic impact on the motor carrier industry. No other commenters addressed this aspect of the NPRM.

Penalty Assessment Process

The NATSP charged that the agency's method of determining penalties creates a "due process problem." The NASTP apparently believes the FMCSA should negotiate an "appropriate penalty" with a motor carrier (or other respondent) before issuing a Notice of Claim. In addition to not involving a motor carrier directly "in the determination of the amount of the penalty," the FMCSA refuses to allow independent evaluation of its method of applying the statutory factors for setting penalties. The NATSP believes that the FMCSA imposes fines at arbitrary levels that are impossible for a small or medium-sized motor carrier to pay, and that these firms would thus be forced out of business. The NATSP suggests "referring penalty assessment to an independent Administrative Law Judge, or to the Department of Treasury, or the Department of Justice."

Agency's Response

These comments are outside the scope of this rulemaking. In preparing a Notice of Claim, the FMCSA does not consult with a motor carrier about the proper amount of the penalty, nor should it. The responsibility of choosing penalties that will induce future compliance with the FMCSRs rests with the agency alone. If the respondent believes the penalty assessed is too high, it can try to negotiate a lower amount with the agency's enforcement staff. Alternatively, it could file a motion for reduction with the Chief Safety Officer. That official may or may not agree to lower the penalty originally assessed; both courses of action are reflected in proceedings decided over the past decade. The final outcome will depend on the facts of the particular case.

The Justice or Treasury Departments cannot decide what penalties should be assessed against motor carriers in Notices of Claim; Congress has assigned that authority exclusively to the Department of Transportation. An Administrative Law Judge (ALJ), though certainly unbiased, is not independent of the FMCSA. ALJs hear cases at the request of the Chief Safety Officer, and their initial findings may be overruled by that Officer. The FMCSA's enforcement proceedings comply with all legal and constitutional requirements.

Even on the purely factual level, the NATSP's comments are incorrect. There is no evidence that any substantial number of motor carriers has been forced out of business as a result of paying fines levied by this agency.

General Comments

The NPTC stated that it supported the NPRM provisions. It cautioned the agency to use its enforcement authority wisely and to ensure that fines and other penalties were set at levels appropriate to the nature of the violations found.

The AHAS also support the NPRM and believe that the new regulations should provide a "powerful deterrent" to improve safety.

Agency's Response

The FMCSA and its predecessor agencies did not have the authority to suspend or revoke operating authority solely on the basis of non-payment of fines. Section 206 of the MCSIA provided that authority for the first time.

Discussion of Final Rule

The revisions to 49 CFR part 386 are a straightforward implementation of the amendments to 49 U.S.C. 521(b) and 49 U.S.C. 13905(c) made by section 206 of the MCSIA. The regulatory language published in the NPRM is being adopted today with only a few changes.

Terms of Prohibition

A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified in the FMCSA's FAO must cease operating CMVs in interstate commerce starting the next day (that is, on day 91). The CMV owner or operator will not be allowed to operate in interstate commerce until the FMCSA has received full payment of the penalty.

If the CMV owner or operator fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A CMV owner or operator that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (*i.e.*, the 91st) day. The CMV owner or operator will not be allowed to operate in interstate commerce until the FMCSA has received full payment of the entire penalty.

The rule will apply prospectively. It will only apply to FAOs issued on or after the effective date of the final rule. FAOs issued before that date are not subject to the provisions of the rule.

The rule does not apply to a broker, freight forwarder, CMV owner and operator, or other person who is unable to pay because the person is a debtor in a case under chapter 11, title 11, United States Code.

If the FMCSA has not received payment 45 days after service of the FAO, the agency will send the broker, freight forwarder, or CMV owner or operator a notice by certified mail, return receipt requested. This notice provides the motor carrier, broker, or freight forwarder one additional notice and an opportunity to show cause why its operations in interstate commerce should not be forbidden, or its registration suspended, on the 91st day after service of the FAO. If the broker, freight forwarder, or motor carrier can prove that the FMCSA has received timely payment in full, or that it has filed bankruptcy proceedings under chapter 11 of the Bankruptcy Code, it must notify the FMCSA immediately, and the prohibition or suspension will be reversed.

The FMCSA will be taking necessary actions on the 91st day to notify its State

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partner agencies that a particular broker, freight forwarder, or motor carrier is forbidden to operate in interstate commerce. Immediately notifying FMCSA that full payment or a bankruptcy filing has been made will prevent a motor carrier's CMVs from being needlessly detained at ports of entry and weigh stations.

Effective Date of Final Rule

The effective date of this final rule is April 16, 2001, or 120 days from today. First, the new consequences of non-payment of a penalty are severe. The FMCSA wants to provide sufficient time for motor carriers to become aware of this new rule. Second, the agency requires the additional time to make necessary changes to its information systems and correspondence procedures so the communications between the agency and brokers, freight forwarders, and motor carriers are handled in a timely and efficient manner.

Technical Amendment Modifying Title of Part 386

The FMCSA is modifying the title of Part 386 to show that brokers, freight forwarders, and hazardous material transportation are also subject to these proceedings.

Rulemaking Analyses And Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this regulatory action is not significant within the meaning of Executive Order 12866 nor under the regulatory policies and procedures of the DOT (44 FR 11034, February 26, 1979). This rule will prohibit any broker, freight forwarder, or motor carrier or driver in interstate commerce that has not paid a penalty assessed by the FMCSA within 90 days of the final agency order, or has not abided by a payment plan that it had arranged with the FMCSA, from operating in interstate commerce.

Based upon the data presented in the NPRM, the FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Statistics on enforcement actions taken during each of Federal fiscal years 1996 through 1999 indicate that approximately 300 to 500 motor carriers per year did not pay their assessed penalties within 90 days after receiving a final agency order. Under this regulation, these motor carriers will be required to cease their operations in interstate commerce until they have paid their penalties. That sanction may induce most such motor carriers to pay the civil penalty within 90 days or to abide by their agreed-upon payment plans. It is assumed that the costs of paying the fines, which have historically averaged between $3,500 and $5,500, would be less than the potential significantly higher cost of not paying, and facing the shutdown of interstate operations. Thus, the entities involved would take steps to achieve compliance with the lower cost alternative. For the purpose of this analysis, the FMCSA estimates that between 50 and 75 percent of these motor carriers would pay their fines within 90 days rather than face additional sanctions. Therefore, approximately 75 to 250 motor carriers annually might not pay their assessed fines and would face the penalties attached to this rule. This estimate is conservative because it does not account for those motor carriers in chapter 11 bankruptcy proceedings that are not subject to this rule.

Based upon its analysis of statistical information concerning motor carriers' improvement in their safety ratings, the FMCSA believes that the vast majority of motor carriers interested in continuing their operations would be able to do so. The adverse impact of this rule on those few motor carriers not involved in bankruptcy proceedings which fail to pay their penalties in a timely manner, is exactly the effect intended by Congress.

This rule will only affect the operations of the small number of motor carriers that do not pay civil penalties assessed as part of enforcement actions. The number of motor carriers involved is expected to continue to be extremely small—fewer than one-tenth of one percent of motor carriers per year listed as active in the MCMIS. The FMCSA believes the number of motor carriers potentially subject to this level of impact is much smaller than the number of motor carriers that cease operations every year as a result of normal economic fluctuations. This rulemaking reinforces the importance of complying with the safety regulations by putting into place a mechanism to require motor carriers to pay penalties assessed, unless they are unable to pay because they are debtors in chapter 11 bankruptcy proceedings.

This rule imposes no new costs upon motor carriers, brokers, and freight forwarders. Those entities should see no change to their operations, provided they pay assessed monetary penalties within the time frames that they arrange with the FMCSA. Based upon the extremely small number of motor carriers projected to be affected, the agency believes that the overall adverse economic effects of this rulemaking will be minimal. This rule will allow the FMCSA to require those very few motor carriers that do not pay civil penalties, or abide by payment agreements, to cease their operations in interstate commerce. A broker, freight forwarder, or for-hire motor carrier operating in interstate commerce may also lose its operating authority until it pays its overdue civil penalties. This rule provides the FMCSA with an essential tool to take prompt and effective action against these motor carriers.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this rulemaking on small entities. The only motor carriers economically impacted by this rule will be those who do not pay their civil penalties by the 90th day after the FMCSA's final agency order or that have failed to arrange and abide by a payment plan.

Motor carriers can avoid the consequences of this rule simply by paying their civil penalties. The FMCSA does not assess fines at a level that would cause a motor carrier to shortchange its safety and soundness of operations in order to pay its fine. In determining the level of penalties, the FMCSA takes into account, among other things, a motor carrier's ability to pay. The FMCSA also allows motor carriers to arrange a payment plan with the agency. Both of these considerations are tailored to the financial needs of small motor carriers and are part of the agency's current procedures. Therefore, the FMCSA hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule implements a statutory mandate to prohibit motor carriers that do not pay assessed penalties from operating in interstate commerce. Motor carriers can avoid all of the implications of this mandate by complying with the FMCSRs, thereby avoiding adverse enforcement actions. Failing that, the motor carrier can avoid the new sanctions under this rule by paying penalties assessed within 90 days of the final agency order. If the motor carrier has arranged a payment plan with the FMCSA, it can avoid the new sanctions by abiding by its payment plan. The FMCSA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor will it limit the policymaking discretion of the States.

Nothing in this document directly preempts any State law or regulation. It will not impose additional costs or burdens on the States. Although the FMCSA is revising part 386 of the FMCSRs, States are not required to adopt part 386 as a condition for receiving Motor Carrier Safety Assistance Program grants. Also, this action will not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment.

List of Subjects

49 CFR Part 385

Highway safety, Motor carriers.

49 CFR Part 386

Highway safety, Motor carriers, Rules of practice.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, parts 385 and 386 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b)(5)(A) and (b)(8), 5113, 31136, 31144, 31502; and 49 CFR 1.73.

2. Add § 385.14 to read as follows:

§ 385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties; prohibition on transportation.

(a) A CMV owner or operator that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

3. Revise the authority citation for part 386 to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; sec. 206, Pub. L. 106–159, 113 Stat. 1763; and 49 CFR 1.45 and 1.73.

4. Revise the heading of part 386 to read as set forth above.

5. Revise § 386.1 to read as follows:

§ 386.1 Scope of rules in this part.

The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180). The purpose of the proceedings is to enable the Assistant Administrator to determine whether a motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations and, if such violations are found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

6. In § 386.2, remove "Federal Highway Administration" and add "Federal Motor Carrier Safety Administration" each place it appears; and add the new definitions of *Assistant Administrator, Broker, Final agency order,* and *Freight forwarder,* in alphabetical order, to read as follows:

§ 386.2 Definitions.

* * * * *

Assistant Administrator means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the agency pursuant to 49 U.S.C. 113(d). Decisions of the Assistant Administrator in motor carrier, broker, freight forwarder, and hazardous materials proceedings under this part are administratively final.

* * * * *

Broker means a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. A motor carrier, or person who is an employee or bona fide agent of a carrier, is not a broker within the meaning of this section when it arranges or offers to arrange the transportation of shipments which it is authorized to transport and which it has accepted and legally bound itself to transport.

* * * * *

Final agency order means a notice of final agency action issued pursuant to this part by either the appropriate FMCSA Field Administrator (for default judgements under § 386.14(e)), the FMCSA Chief Safety Officer, or an Administrative Law Judge (ALJ),

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typically requiring payment of a civil penalty by a broker, freight forwarder, driver, or motor carrier.

Freight forwarder means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments;

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

* * * * *

7. Add §§ 386.83 and 386.84 to read as follows:

§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) *General rule.* A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order is prohibited from operating in interstate commerce starting on the next (*i.e.*, the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a CMV owner or operator to pay a civil penalty in installments. If the CMV owner or operator fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A CMV owner or operator that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (*i.e.*, the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) *Appeals to Federal Court.* If the CMV owner or operator appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) *Show Cause Proceeding.* (1) The FMCSA will notify a CMV owner or operator in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If a CMV owner's or operator's principal place of business is in a foreign country, the notice will be delivered to the CMV owner's or operator's designated agent.

(c) A CMV owner or operator that continues to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV (h) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11, title 11, United States Code. CMV owners or operators in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

§ 386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.

(a)(1) *General rule.* The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (*i.e.*, the 91st) day. The suspension continues until the FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a respondent broker, freight forwarder, or for-hire motor carrier to pay a civil penalty in installments. If the respondent fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. The registration of a respondent that fails to pay the remainder of its civil penalty in full within 90 days after the date of the missed installment payment, is suspended on the next (*i.e.*, the 91st) day. The suspension continues until the FMCSA has received full payment of entire penalty.

(3) *Appeals to Federal Court.* If the respondent broker, freight forwarder, or for-hire motor carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) *Show Cause Proceeding.* (1) The FMCSA will notify a respondent broker, freight forwarder, or for-hire motor carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the suspension of the respondent's registration.

(2) The notice will order the respondent to show cause why its registration should not be suspended on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If a respondent's principal place of business is in a foreign country, it will be delivered to the respondent's designated agent.

(c) The registration of a broker, freight forwarder or for-hire motor carrier that continues to operate in interstate commerce in violation of this section after its registration has been suspended may be revoked after an additional notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV (h) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11, title 11, United States Code. Brokers, freight forwarders, or for-hire motor carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

8. Add paragraph h to part IV of Appendix A to part 386 to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

* * * * *

IV. * * *

h. *Violation*—Conducting operations during a period of suspension under §§ 386.83 or 386.84 for failure to pay penalties.

Penalty—Up to $10,000 for each day that operations are conducted during the suspension period.

Issued on: December 7, 2000.

Brian M. McLaughlin,

Acting Assistant Administrator.

[FR Doc. 00–31920 Filed 12–14–00; 8:45 am]

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Proposed Rules

Federal Register
Vol. 65, No. 242
Friday, December 15, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

RIN 1515–AC64

Time Limitation for Requesting Refunds of Harbor Maintenance Fee and for Making Other Claims Against Customs

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to establish a one year time limit within which a refund request must be filed for overpayments of Harbor Maintenance Fees that were paid quarterly and for making other claims against Customs. This time limit would assure an efficient reasonable final resolution of claims against Customs.

DATES: Comments must be received on or before February 13, 2001

ADDRESSES: Comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Accounts Receivable Branch, Accounting Services Division, (317) 298–1200 ext. 4003.

SUPPLEMENTARY INFORMATION:

Background

The Harbor Maintenance Fee was created by provisions of the Water Resources Development Act of 1986 (26 U.S.C. 4461 *et seq.*) ("the Act"), as amended, and implemented through interim regulations, published in the **Federal Register** as T.D. 87–44 on March 30, 1987 (52 FR 10198). The Act authorizes the Customs Service to assess a harbor maintenance fee for port use at certain ports by commercial vessels which load or unload merchandise or passengers, unless specifically exempted. By assessing a charge for port use, the Act causes those who benefit from the maintenance of a Federal port or harbor to share in the cost of that maintenance.

It is necessary for there to be a time limit within which a refund claim can be submitted to Customs to assure an efficient reasonable final resolution of refund claims.

In a case decided by the United States Court of Appeals for the Federal Circuit on February 28, 2000, *Swisher International, Inc.* v. *United States*, No. 99–1277 (February 28, 2000), the court held that there was "no generic limitation period on requesting [harbor maintenance fee] refunds" because Customs did not set a time limit for requesting refunds in the applicable regulations. The court went on to say that "Customs was free to impose time limits on the filing of [harbor maintenance fee] refund requests * * * and it remains free to alter the regulation to impose a time limit in the future."

Customs is acting on the court's advice and proposing to amend the Customs Regulations by establishing a one year time limit for the filing of a refund request for quarterly harbor maintenance fee payments. The one year limit for a refund request will commence at the payment date to Customs. The payment date for quarterly harbor maintenance fee payments mailed to Customs at a post office box is the date the payment to the post office box is processed to Customs account. Section 24.24(e)(4) of the Customs Regulations (19 CFR 24.24(e)(4)) is proposed to be amended to add this time limitation.

This proposed one year time limitation is only applicable to requests for refunds for harbor maintenance fees that are paid quarterly. The proposed limitation is not applicable to requests for refunds of harbor maintenance fees that were paid in accordance with the normal Customs collection procedures for imported merchandise set forth in §§ 24.1 and 141.1 (19 CFR 24.1 and 141.1). Section 24.24(e)(2)(ii), Customs Regulations describes those harbor maintenance fees that are paid in accordance with normal duty collection procedures for imported merchandise. If a harbor maintenance fee is paid in accordance with normal duty collection procedures for imported merchandise, a refund may be sought of that fee in accordance with the procedure that is used for seeking a refund of a duty payment. Additionally, requests for refunds of payments made quarterly that are properly filed with Customs prior to this proposed rule becoming final will be processed by Customs regardless of the dates on which payments were made.

Other Claims

At this time, for similar reasons of administrative efficiency, Customs is also proposing to set a one year time limitation for the filing of a claim of any nature arising under the Customs laws which is not otherwise provided for in the regulations. This limitation is added to § 24.73 of the Customs Regulations (19 CFR 24.73).

Technical Correction

Customs is also amending § 24.24(e)(2)(ii) for a technical error removing the citation to "(e)(3)(iii)" and replacing it with "(e)(2)(iii)".

Comments

Before adopting the proposed amendments, consideration will be given to any written comments, including comments on the clarity of the amendments and how they may be made easier to understand, that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552); § 1.4, Treasury Regulations (31 CFR 1.4); and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Insofar as the proposed amendments merely establish a filing time limit to existing regulations, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

The proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Canada, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Taxes, User fees.

Proposed Amendment

It is proposed to amend part 24, Customs Regulations (19 CFR part 24) as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 will continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. It is proposed to amend § 24.24 by removing in paragraph (e)(2)(ii) the reference to (e)(3)(iii)" and adding "(e)(2)(iii)'; and by revising paragraph (e)(4) to read as follows:

§ 24.24 Harbor Maintenance Fee.

* * * * *

(e) *Collections.*

* * * * *

(4) *Supplemental payments and refunds.* If a supplemental payment is made for a harbor maintenance fee that was paid quarterly, it must be mailed to the U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. The envelope containing a supplemental payment must also have enclosed both a Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350, and a copy of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, that was submitted at the time the fee for which the supplemental payment is being made was originally paid. Requests for refunds of a quarterly harbor maintenance fee payment, specifying the grounds of the claim along with the required documentation, must be received by Customs within one year from the date the fee for which the refund is sought was paid to Customs; or in the case of merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone for any purpose specified in 19 U.S.C. 1309, within one year from the date of withdrawal from the zone. A request for a refund of a quarterly harbor maintenance fee payment must be submitted to Customs with both a Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350, and a copy of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, that was submitted at the time the fee for which a refund is sought was originally paid. The request for a refund of a quarterly harbor maintenance fee payment must be mailed to the U.S. Customs Service, HMF Refunds, 6026 Lakeside Blvd., Indianapolis, IN 46278.

* * * * *

3. It is proposed to revise § 24.73 to read as follows:

§ 24.73 Miscellaneous claims.

Every claim of whatever nature arising under the Customs laws which is not otherwise provided for shall be forwarded directly to Office of Finance, Headquarters, U.S. Customs Service, specifying the grounds of the claim together with all supporting documents and information available. Any claims within this section must be submitted within one year of the act giving rise to the claim.

Raymond W. Kelly,
Commissioner of Customs.

Approved: December 11, 2000.

Helen B. Belt,
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–31969 Filed 12–14–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC71

Royalty or Reduction in Royalty Rates—Deep Water Royalty Relief for OCS Oil and Gas Leases Issued After 2000

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to January 9, 2001, the deadline for submitting comments on the proposed rule revising regulations on royalty relief for oil and gas producers on the Outer Continental Shelf (OCS). The proposed rule provides for suspension or reduction of royalty on a case-by-case basis for certain additional categories of OCS leases under 30 CFR part 203. Also, it identifies circumstances when we may consider special royalty relief outside our established end-of-life and deep water royalty relief programs.

DATES: We will consider all comments received by January 9, 2001, and we may not fully consider comments received after January 9, 2001.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. You may also e-mail your comments to RPT at: *rules.comments@MMS.gov*. Please mark your message for return receipt and identify the rule identification number "RIN 1010–AC71" in the subject line of your message. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economic Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR part 203, Relief or Reduction in Royalty Rates, published on November 16, 2000 (65 FR 69259, with a subsequent correction on November 22, 2000 (65 FR 70386)). The requests indicate a need to wait for the conclusion of two MMS-sponsored workshops the week of December 11, which are designed, in part, to discuss the content and rationale of the proposed rule.

Public Comments Procedures

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

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organizations or businesses, available for public inspection in their entirety.

Dated: December 11, 2000.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 00–32006 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

RIN 1010–AC74

Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Definition of Affected State

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would eliminate the definition of "Affected State" from Subpart B, the Oil and Gas Leasing Program. This would mean that the definition of "Affected State" in Subpart A would apply and would eliminate the need for unaffected coastal States to participate in the preparation of a 5-year program.

DATES: We will consider all comments received by February 13, 2001. We will begin reviewing comments then and may not fully consider comments we receive after February 13, 2001.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Ralph Ainger or Jane Roberts at (703) 787–1215.

SUPPLEMENTARY INFORMATION: This proposed rule would eliminate the definition of "Affected State" at 30 CFR 256.14 as it applies only to the "Subpart B, Oil and Gas Leasing Program." Because of the Presidential proclamation withdrawing areas of the Outer Continental Shelf (OCS) from leasing consideration, it is virtually impossible for many currently listed States to be affected under the Act. The definition in subpart B is therefore erroneous.

The definition of the term already is found at 30 CFR 256.5(g), which applies to the entire part and follows the definition in the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331(f). The definition at § 256.5(g) reads as follows: "'Affected State' means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the act, any State—

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or proposed to be conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the Act;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) In which the Secretary finds that because of such activity there is, or will be a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities."

At this time, listing all the States adjacent to the OCS as "affected" is contrary to the intent as well as the letter of the statute and may cause unnecessary administrative burden for those States that are not affected under the legal definition. In June 1998, President Clinton acted under the authority of section 12 of the OCS Lands Act to withdraw the Atlantic and Pacific coasts from leasing until the year 2012.

As a result of Presidential and congressional actions, there can be no leasing off the Atlantic coast until 2012. The other criteria in the statutory definition of affected State relate to post-lease activity. As there are no active leases off the Atlantic coast, it is virtually impossible for any Atlantic States to be affected by the 5-year program. Automatically treating such States as affected requires the Federal Government to involve them in the preparation of the multi-phased 5-year program that would not affect them. In addition, some States have their own administrative processes that come into play if they are deemed affected. These States should not be automatically involved if they do not meet the statutory definition. Because of the Presidential Proclamation, these States cannot be affected under the Act; therefore, the definition in Subpart B is erroneous. However, there is nothing that precludes any State's participation if they wish and to the extent they wish, as the 5-year process contains multiple periods for public comment. Elimination of the definition also reduces the burden on the Government to involve States that are not affected by the program.

Procedural Matters

Public Comments Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. Elimination of the redundant and unnecessary definition of an Affected State could reduce costs on States that are not affected by the 5-year program and the cost to the Federal Government of involving unaffected States.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required. This rule has no effect on Takings, as it only applies to States that would no longer be automatically involved in the preparation of a program that has no affect on them, thereby eliminating the possible burden of doing so.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Ultimately, this rule is advantageous to the Federal Government in that it would not have to involve certain unaffected States in the complex, multi-step process of preparing a 5-year program and to those States that would not have to participate during program preparation, when the Federal Government makes three requests for comments and recommendations from affected States. Because of Presidential withdrawals and congressional moratoria, an average of 14 of the 23 coastal States could be deemed unaffected by a proposed 5-year program. If those 14 States were deemed unaffected, there could be a maximum savings of $170,100 ($2,100 + $168,000). At a minimum, a State must spend 1 hour deciding whether or not to respond. Therefore, there would be a minimum expenditure of $2,100 (14 States × 3 requests × 1 hour × $ 50 per hour). If a State decides, or in some cases is required to, participate by its own laws, that State could spend up to 80 hours preparing each response, for a maximum expenditure of $168,000 (14 States × 3 requests × 80 hours × $50 per hour).

(2) This will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. There are no other Federal agencies involved in this process as it relates to participation by coastal States.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or rights or obligations of their recipients. This rule has no effect on these programs or such rights.

(4) This rule does not raise novel legal or policy issues. As previously stated, the intent of this rule is to eliminate the redundant and unnecessary definition of Affected State at 30 CFR 256.14. The term already is defined at 30 CFR 256.5(g) and applies to the entire part.

Civil Justice Reform (Executive Order 12899)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) or the Order.

National Environment Policy Act (NEPA)

We have analyzed this rule according to the criteria of the NEPA and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. This rule will have no impact regarding the criteria of the NEPA.

Paperwork Reduction Act (PRA) of 1995

This regulation does not affect an existing OMB-approved information collection and an OMB Form 83–I is not required. The proposed rule simply removes a definition. OMB approved the information collection requirements in part 256 under OMB control number 1010–0006, with an expiration date of March 31, 2001.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This revised rule would eliminate the redundant and unnecessary definition of Affected State at 30 CFR 256.14. The only entities impacted by this rule change are certain coastal States that we would no longer automatically involve in a complex, multi-step process of preparing a 5-year program that would not affect them.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA, 5 U.S.C. 804(2). This rule:

(1) Does not have an annual effect on the economy of $100 million or more. This rule would eliminate the need for the Federal Government to automatically involve some coastal States in a complex, multi-step process to prepare a program that would not affect them.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic areas. This rule would eliminate the need for some coastal States that would not be affected by a 5-year oil and gas program from participating in its preparation unless they chose to do so.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, ability of United States-based enterprises to compete with foreign-based enterprises. There are no United States- or foreign-based enterprises involved in this rule.

Unfunded Mandate Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not create any kind of a mandate for State, local, or tribal governments or the private sector. In fact, it eliminates the need for the Federal Government to involve certain States in the preparation of a program that will not affect them. A statement containing the information required by the UMRA, 2 U.S.C. 1501 *et seq.* is not required.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Minerals Management Service, Oil and gas exploration, Public lands-mineral resources; Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: October 19, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS proposes to amend 30 CFR part 256 as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for Part 256 continues to read as follows:

Authority: 42 U.S.C 6213, 43 U.S.C. 1331 *et seq.*

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§ 256.14 [Removed]

2. Section 256.14 is removed.

[FR Doc. 00–31950 Filed 12–14–00; 8:45 am]
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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–4C]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Petition for rulemaking, denial; correction.

SUMMARY: This document corrects a footnote to a proposed rule document published in the **Federal Register** of December 11, 2000, regarding the public performance of sound recordings: definition of a service.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

Correction

In proposed rule document 00–31458 beginning on page 77330 in the issue of December 11, 2000, make the following correction, in the **SUPPLEMENTARY INFORMATION** section:

On page 77332, in the third column, in footnote 1, the last sentence which reads, "From these descriptions, there is considerable doubt whether either offering would qualify as an 'interactive service.'" is corrected to read as follows: "From these descriptions, there is considerable doubt whether either offering would qualify as a noninteractive service."

Dated: December 12, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–32038 Filed 12–14–00; 8:45 am]
BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0257; FRL–6917–6]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion, Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion, and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California SIP concerning PM–10 emissions from livestock feed lots, agricultural burning, industrial processes, and residential wood burning.

We are also proposing full approval of revisions to the ICAPCD portion of the California SIP concerning definitions, PM–10 emissions from orchard heaters, incinerators, open burning, and range improvement burning, and to the South Coast Air Quality Management District (SCAQMD) portion of the California SIP concerning PM–10 emissions from restaurant operations.

We are also proposing full approval of rescissions from the MBUAPCD portion of the California SIP concerning exceptions to other rules.

We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 16, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules proposed for limited approval and limited disapproval with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	420	Livestock Feed Yards	09/14/99	05/26/00
ICAPCD	701	Agricultural Burning	09/14/99	05/26/00
MBUAPCD	403	Particulate Matter	03/22/00	05/26/00

TABLE 1—SUBMITTED RULES—Continued

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4201	Particulate Matter Concentration	12/17/92	11/18/93
SJVUAPCD	4901	Residential Wood Burning	07/15/93	12/10/93

On October 6, 2000, we determined that the submittals of ICAPCD Rules 420 and 701 and MBUAPCD Rule 403 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On December 27, 1993, we determined that the submittal of SJVUAPCD Rule 4201 met the completeness criteria. On February 7, 1994, we determined that the submittal of SJVUAPCD Rule 4901 met the completeness criteria.

Table 2 lists the rules proposed for full approval with the dates that they were adopted or rescinded by the local air agency and submitted by the CARB.

TABLE 2—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	101	Definitions	09/14/99	05/26/00
ICAPCD	408	Frost Protection	09/14/99	05/26/00
ICAPCD	409	Incinerators	09/14/99	05/26/00
ICAPCD	421	Open Burning	09/14/99	05/26/00
ICAPCD	702	Range Improvement Burning	09/14/99	05/26/00
MBUAPCD	405	Exceptions	*03/22/00	05/26/00
MBUAPCD	406	Additional Exception	*03/22/00	05/26/00
SCAQMD	1138	Control of Emissions from Restaurant Operations	11/14/97	03/10/98

*Rescinded.

On October 6, 2000, we determined that the submittals of ICAPCD Rules 101, 408, 409, 421, and 702 and MBUAPCD Rules 405 and 406 met the completeness criteria. On May 21, 1998, we determined that the submittal of SCAQMD Rule 1138 met the completeness criteria.

B. Are There Other Versions of These Rules?

We approved versions of submitted ICAPCD Rule 101 into the ICAPCD portion of the SIP as Rule 101, Definitions, on May 27, 1982 (47 FR 23159) and as Rule 701, Definitions, on January 27, 1981 (46 FR 8472).

We approved a version of submitted ICAPCD Rule 408 into the ICAPCD portion of the SIP as Rule 408, Frost Protection and Orchard Heaters, on January 27, 1981 (46 FR 8472).

We approved a version of submitted ICAPCD Rule 409 into the ICAPCD portion of the SIP as Rule 409, Incinerators, on November 18, 1983 (48 FR 52452).

We approved a version of submitted ICAPCD Rule 420 into the ICAPCD portion of the SIP as Rule 420, Livestock Feed Yards, on February 3, 1989 (54 FR 5448). The current submittal supersedes a submittal on October 25, 1991 on which we have not acted.

We approved a version of submitted ICAPCD Rule 421 into the ICAPCD portion of the SIP as Rule 421, Open Burning—Non-Agricultural, Rule 422, Open Burning of Wood Wastes, and Rule 423, Exceptions, on February 3, 1989 (54 FR 5448).

We approved versions of submitted ICAPCD Rule 701 into the ICAPCD portion of the SIP as Rule 202, Exceptions, on August 22, 1977 (42 FR 42224) and Rule 702, Prohibitions, and Rule 706, Penalty Clause, on January 27, 1981 (46 FR 8472).

We approved a version of submitted ICAPCD Rule 702 into the ICAPCD portion of the SIP as Rule 705, Range Improvement Burning, on January 27, 1981 (46 FR 8472).

We approved versions of submitted MBUAPCD Rule 403 into the MBUAPCD portion of the SIP as Rule 403, Particulate Matter, on May 18, 1981 (46 FR 27116) and as Rule 405, Exceptions, on July 13, 1987 (52 FR 26148).

We approved MBUAPCD Rule 406, Additional Exception, into the MBUAPCD portion of the SIP on July 13, 1987 (52 FR 26148).

We approved the following versions of submitted SJVUAPCD Rule 4201 into the portions of the California SIP applicable to each of the eight counties that were unified and now comprise the SJVUAPCD:

- Fresno County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).
- Kern County Rule 404, Particulate Matter Concentration—Valley Basin, approved on August 22, 1977 (42 FR 42219).
- Kings County Rule 404, Particulate Matter, approved on August 4, 1978 (43 FR 34468).
- Madera County Rule 403, Particulate Matter Emissions from the Incineration of Combustible Refuse, approved on April 16, 1991 (56 FR 15286).
- Merced County Rule 404, Particulate Matter Concentration, June 14, 1978 (43 FR 25689).
- San Joaquin County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).
- Stanislaus County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).
- Tulare County Rule 404, Particulate Matter, approved on August 22, 1977 (42 FR 42219).

Submitted SJVUAPCD Rule 4901 is a new rule with no previous versions or submittals.

Submitted SCAQMD Rule 1138 is a new rule with no previous versions or submittals.

C. What Are the Changes in the Submitted Rules?

Submitted ICAPCD Rule 101 has the following changes:

- Many definitions were added or revised to correspond to requirements of the amended Clean Air Act of 1990 (CAA).
- The definitions for Major Source and Major Modification were deleted. These definitions are not relevant in Rule 207, New Source Review, because the threshold requiring new source review is more stringent than that defined for a major source or major modification.

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• The definitions from SIP Rule 701 were transferred to Rule 101.

Submitted ICAPCD Rule 408 adds a prohibition to burn oil in open containers and adds requirements that orchard heaters be clean, in good repair, and be free of solids in stacks.

Submitted ICAPCD Rule 409 has the following changes:

• The specific temperature and contact time for burning was added.

• The exemption was clarified to exclude the burning of certain materials that produce smoke or toxic fumes.

Submitted Rule ICAPCD Rule 420 has the following changes:

• The submitted rule applies to all livestock feed yards subject to ICAPCD regulations, while the SIP-approved rule applies strictly to livestock feed yards located within 1.5 miles from any "urban limit," as defined by the County General Plan.

• Submitted Rule 420 specifies under a new "Test Methods" section that moisture content shall be determined with an electrical conductivity moisture meter.

Submitted ICAPCD Rule 421 consists of SIP Rules 421, 422, and 423 combined. In addition, the following changes were made:

• The exception to the general prohibition to use an orchard heater for freeze protection was deleted.

• The exception to the general prohibition to use equipment in agricultural operations were deleted.

• The exception to the general prohibition to burn for agricultural operations for the grazing of animals or raising of cattle was deleted.

• The authority of a public officer to set or permit a fire for the remediation of an oil spill on water (presumed on a No-Burn Day) pursuant to Section 8670.7 of the California Government Code was added.

Submitted ICAPCD Rule 701 consists primarily of SIP Rule 702 renumbered to Rule 701, plus the exceptions contained in SIP Rule 202. An authority citation from SIP Rule 706 is revised and also moved into Rule 701, while the penalty clause was omitted. SIP Rule 701 contained only definitions, which were transferred to Rule 101 and will be superseded by submitted Rule 101 in another TSD. The significant changes in submitted Rule 701 are as follows:

• The APCO was granted the authority to restrict burning on Burn Days, if meteorological conditions would cause an undue amount of emissions to be transported to populated or sensitive receptor areas or cause or contribute to a violation of an ambient air quality standard.

• The requirement was added that a District inspector must be present for agricultural burns near residential areas, rural schools, or heavily travelled roads.

Submitted Rule 702 consists primarily of SIP Rule 705 renumbered. There are no significant changes between Rules 702 and 705.

Submitted MBUAPCD Rule 403 has all of the exceptions in Rule 405 transferred to it as exemptions to Rule 403. An exemption for internal combustion engines was also added.

Submitted MBUAPCD Rules 405 and 406 are rescinded.

Submitted SJVUAPCD Rule 4201 changes are as follows:

• The rules of eight old counties that unified into SJVUAPCD are combined into a single rule, which is equally as stringent.

Submitted SJVUAPCD Rule 4901 is a new rule that consists of the following:

• All new wood heaters must be EPA-certified Phase II or pellet-fueled.

• All used wood heaters must be EPA-certified or Oregon-certified or pellet-fueled.

• Retailers must provide public awareness information with each wood burner sale and cannot advertise wood as "seasoned" unless the moisture content is 20 percent or less by weight.

• The rule establishes a two-stage voluntary curtailment program during November through February for areas located less than 3,000 feet above mean sea level, except where wood burning is the sole source of heat or natural gas is not available. The APCO will request a Level I voluntary curtailment when a Pollutant Standards Index (PSI) of 100 or greater is predicted or request a Level II voluntary curtailment when a PSI of 150 or greater is predicted.

Submitted SCAQMD Rule 1138 is a new rule that consists of the following:

• The operator of a chain-driven charbroiler must install a catalytic oxidizer or equivalent control device that will result in an emissions decrease of about 83% for both PM–10 and VOC.

• An operator of a charbroiler with permitted control equipment operating before November 14, 1997 may continue to operate for the life of the control equipment. At this time but not later than November 14, 2007, the operator must replace the existing control equipment with a catalytic oxidizer or equivalent control device.

• An operator that cooks less than 875 pounds of meat per week or emits less than one pound per day of any criteria pollutant may apply for an exemption, but must keep records to support the exemption.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

We evaluated these rules for enforceability and consistency with the CAA as amended in 1990, with 40 CFR part 51, and with EPA's PM–10 policy. Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). ICAPCD is a moderate PM–10 nonattainment area. MBUAPCD is a PM–10 attainment area and need not meet BACM/BACT or RACM/RACT control levels. SJVUAPCD and SCAQMD are serious PM–10 nonattainment areas. SCAQMD is an extreme ozone nonattainment area and is required by section 182(a)(2)(A) of the CAA to meet RACT requirements for VOC.

EPA's preliminary guidance for moderate PM–10 nonattainment areas provides that RACM/RACT is required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS (*i.e.*, de minimis sources). See *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992) and *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994). The activities subject to ICAPCD Rule 420 contribute a significant amount of the total PM–10 emissions, and the activities subject to submitted Rules 701 and 702 contribute a small but not insignificant amount of the total PM–10 emissions in the Imperial Valley according to the September 23, 1993 *State Implementation Plan for PM–10 in the Imperial Valley* (ICAPCD PM–10 Plan). Moreover, the ICAPCD PM–10 Plan relies on SIP Rules 702, 704, and 705, which are versions of submitted Rules 701 and 702. Submitted Rules 420, 701, and 702 must meet RACM/RACT control levels. However, we are not determining at this time whether Rule 420 does so.

The activities subject to ICAPCD Rules 408, 409 and 421 do not contribute a significant amount of the total PM–10 emissions in ICAPCD according to the ICAPCD PM–10 Plan. Therefore, ICAPCD Rules 408, 409, and 421 are not being evaluated to meet RACM/RACT control levels, but only to ensure that they do not relax the SIP in violation of sections 110(l) and 193 of the CAA and that they meet enforceability and other general SIP requirements of section 110.

The activities subject to submitted SJVUAPCD Rule 4201 contribute a small but not insignificant amount of the total PM–10 emissions in the SJVUAPCD according to the May 15, 1997 *SJVUAPCD PM–10 Attainment Demonstration Plan* (SJVUAPCD PM–10 Plan). Moreover, the SJVUAPCD PM–10 Plan relies on Rule 4201. Therefore, submitted Rule 4201 must meet BACM/BACT control levels.

The activities subject to submitted SJVUAPCD Rule 4901 contribute a significant amount of the total PM–10 emissions in the SJVUAPCD according to the SJVUAPCD PM–10 Plan. Moreover, the SJVUAPCD PM–10 Plan relies on Rule 4901. Therefore, submitted Rule 4901 must meet BACM requirements.

The activities subject to submitted SCAQMD Rule 1138 must meet BACM/BACT requirements for PM–10 and RACT requirements for VOC.

The TSDs have more information on how we evaluated the rules.

Guidance and policy documents that we used to define specific enforceability, RACM/RACT, BACM/BACT, and SIP relaxation requirements include the following:

• *PM–10 Guideline Document*, (EPA–452/R093–008).

• *State Implementation Plan for PM–10 in the Imperial Valley* (September 23, 1993).

• *General Preamble Appendix C3—Prescribed Burning Control Measures*, 57 FR 18072 (April 28, 1992).

• *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).

• *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations: Clarification to Appendix D of November 24, 1987 Federal Register* (Blue Book), notice of availability published in the **Federal Register** (May 25, 1988).

• *Guidance Document for Residential Wood Combustion Emission Control Measures* (EPA–450/2–89–015).

• *Technical Information Document for Residential wood Combustion Best Available control Measures*, EPA–450/2–92–002 (September 1992).

• *Model Volatile Organic Compound Rules for Reasonably Available Control Technology* (June 1992).

B. Do the Rules Meet the Evaluation Criteria?

These rules are largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rule Deficiencies?

ICAPCD Rule 420 contains the following deficiencies:

• The rule lacks a test method procedure by which to determine compliance with the moisture content standard (*e.g.* minimum number of samples to be collected, specifics on collecting representative samples, whether moisture content results of each sample are to be averaged for a final result).

• The rule lacks a definition of "rainy period."

• The rule contains inappropriate Executive Officer discretion with respect to allowing exceptions to compliance with the rule's moisture content standard. Specific criteria for granting an exception must be included in the rule. ICAPCD Rule 701 contains the following deficiency:

• The rule has limited enforceability, because of the open-ended discretion of the Director to approve an exemption to burn on a No-Burn Day in case of imminent and substantial economic loss if the burning were not allowed. The conditions to allow such burning must be limited such that it is unlikely that the NAAQS would be violated or that there would be smoke impacts on sensitive areas. MBUAPCD Rule 403 contains the following deficiencies:

• The rule enforceability is limited, because it does not contain periodic monitoring requirements.

• The rule enforceability is limited, because it does not state the test method for PM.

• The rule enforceability is limited, because it does not require recordkeeping for at least two years. SJVUAPCD Rule 4201 contains the following deficiencies:

• The rule does not appear to meet the requirements of BACM/BACT. Other serious PM–10 nonattainment areas have lower particulate matter emission limits.

• The rule does not have periodic monitoring requirements.

• The rule does not require recordkeeping for at least two years.

SJVUAPCD Rule 4901 contains the following deficiency:

• The rule does not appear to meet the requirements of BACM, which should include restrictions on the sale and installation of woodburning fireplaces, mandatory curtailment during periods of poor air quality, and possibly other control measures.

D. EPA recommendations to Further Improve the Rules

The TSD for ICAPCD Rule 421 describes an additional rule revision that does not affect our current action but is recommended for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing a limited approval of MBUAPCD Rule 403 to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. We are simultaneously proposing a limited disapproval of this rule under section 110(k)(3). If this disapproval is finalized, no sanctions would be imposed under section 179 of the CAA because the area is PM–10 attainment and the rule is not required to maintain attainment. Note that the submitted rule has been adopted by the District, and our final limited disapproval would not prevent the local agency from enforcing it.

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing a limited approval of ICAPCD Rules 420 and 701, SJVUAPCD Rule 4201, and SJVUAPCD Rule 4901 to improve the SIP. If finalized, this action would incorporate these submitted rules into the SIP, including those provisions identified as deficient. We are simultaneously proposing a limited disapproval of these rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994) because the areas are PM–10 nonattainment and the PM–10 emissions are not insignificant. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the Districts, and our final limited disapproval would not prevent the local agencies from enforcing them.

As authorized in section 110(k)(3) of the Act, EPA is also proposing a full approval of ICAPCD Rules 101, 408, 409, 421, and 702, a full approval of the recision of MBUAPCD Rules 405 and

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406, and a full approval of SCAQMD Rule 1138 to improve the SIP.

We will accept comments from the public on the proposed limited approval and limited disapproval and on the proposed full approvals for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 3 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 3.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987 ...	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
November 15, 1990.	PM–10 areas meeting the qualifications of section 107(d)(4)(A) and (B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 186(a) and 189(a). States are required by section 110(a) to submit rules regulating CO and PM–10 emissions in order to achieve the attainment dates specified in sections 186(a)(1) and 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Particulate matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 5, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–32025 Filed 12–14–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 4096b; FRL–6578–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Source

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions establish and require reasonably available control technology (RACT) for 56 major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A more detailed description of the state submittals and EPA's evaluations are included in Technical Support Documents (TSDs) prepared in support of this rulemaking action. Copies of the TSDs are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if adverse comment is received on an amendment, paragraph, or section of this rule and that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received by January 16, 2001.

ADDRESSES: Written comments on this action should be addressed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers at (215) 814–2061 for information on sources #1 through #17, Melik Spain at (215) 814–2299 for information on sources #18 through #50, or Helene Drago at (215) 814–5796 for information on sources #51 through 56.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Editorial note: This document was received at the Office of the Federal Register on December 6, 2000.

Dated: March 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–31464 Filed 12–14–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Groups 3000, 3100, 3200, 3400, 3500, 3600, and 3800

[WO–610–4111–02–24 1A]

RIN: 1004–AC64

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Bureau of Land Management (BLM) mineral resources regulations to increase many fees and to impose new fees to cover BLM's costs of processing certain documents relating to its minerals programs. This would include costs for actions such as environmental studies, monitoring activities, and others. When necessary, the proposed rule would add citations to BLM's authority to charge fees. The proposed fee changes are BLM's response to recommendations made by the Department of the Interior's Office of the Inspector General (OIG) in a 1988 report. This report was part of a 1980s presidential initiative which called for all Federal agencies to charge appropriate user fees for agency services, consistent with the law. The OIG recommended that BLM collect fees for processing minerals-related documents whenever possible. The primary purpose of this rulemaking is to charge those who benefit from these minerals programs, rather than the general public, the costs of BLM minerals document processing.

DATES: Comments on the proposed rule must be received by February 13, 2001 to be assured of consideration.

ADDRESSES: You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. You may also hand-deliver comments to BLM at Room 401, 1620 L Street, NW, Washington, D.C. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address."

FOR FURTHER INFORMATION CONTACT: For questions about fluid minerals (oil, gas, geothermal steam) call Kermit Witherbee at (202) 452–0335. For questions about solid minerals including coal call Brenda Aird at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures and Information
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures and Information

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: *WOComment@blm.gov*. Please also include "Attention: AC–06" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**). Comments, including names, street addresses, and other contact information of respondents, will be available for public review at BLM's offices at 1620 L Street, N.W., Washington, D.C. during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

What Laws Authorize BLM to Charge for its Document Processing Costs?

Federal agencies are generally authorized to do this by the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701.

BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. "Public lands" in FLPMA means all lands or interests in land owned by the United States and administered by BLM, excluding outer continental shelf lands and Native American lands. 43 U.S.C. 1702(e). BLM interprets this definition to mean that a mineral lease or mineral materials disposal administered by BLM, or a mining claim (for which BLM determines validity), even in land where the surface is administered by another agency, is an "interest in land" for the purposes of FLPMA.

[Before BLM disposes of mineral materials or issues a mineral lease on these lands, if the surface managing agency also exercises considerable authority over the mineral estate, that estate may not be sufficiently under the administrative control of BLM to qualify as "public lands" for purposes such as exchanges. However, once BLM issues a mineral lease or proceeds with a mineral materials disposal, we are administering an interest in the lands, and that interest now falls under the FLPMA definition of "public lands." Since the Secretary of the Interior has primary jurisdiction over determining the validity of mining claims, and BLM administers the mineral estate covered by those claims, mining claims also qualify as public lands under FLPMA. Of course, BLM also has authority under the IOAA to collect fees for processing documents related to its administration of the mineral estate in these instances.]

The IOAA and section 304 of FLPMA authorize BLM to charge applicants for the cost of processing documents through rulemaking, which BLM is proposing to do through this rule. The IOAA also states that these charges should pay for the agency services as much as possible.

What Policy Documents Deal with Charging Applicants for Processing Costs?

These policies are explained in the Office of Management and Budget (OMB) Circular A–25, "User Charges," and the Department of the Interior Departmental Manual, Part 346, "Cost Recovery."

What is the Basic Policy of these Documents?

The general federal policy is that a charge "will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." (OMB Circular A–25.) The Department of the Interior Manual mirrors this policy (346 DM 1.2 A.) Certain activities may be exempted from these fees under certain conditions set out at 346 DM 1.2 C.

What Does "Cost Recovery" Mean in this Rulemaking?

It means reimbursement to BLM of its costs of processing a document by charging a fee to the applicant/beneficiary.

What is the Office of the Inspector General (OIG)?

This is an office within the Department of the Interior which studies Departmental economy and efficiency, and makes recommendations for improvement.

What OIG Reports Affected This Rulemaking?

OIG reports No. 89–25 (1988) and 95–I–379 (1995).

What Did the 1988 OIG Report (No. 89–25) Recommend?

The report recommended that BLM:

- List all the minerals-related document types for which it had authority to charge BLM processing costs to the applicant;
- Determine the BLM processing cost for each type of document and count how many were processed;
- Establish exemption standards and apply them to each type of document on the list;
- Prepare and maintain exemption documentation for exempted document types; and
- Establish and collect processing cost fees for all non-exempt types of documents.

How Did BLM Begin Gathering Data in Response to the Report?

BLM first conducted an inventory of about 130 types of documents in all onshore energy and mineral program areas: fluid minerals (including geothermal) resources leasing and operations; solid leasable minerals (coal and non-energy minerals) leasing and operations; mining law administration (locatable minerals); and mineral materials (salable minerals such as sand and gravel).

From this inventory BLM listed the types of documents for which it appeared we had authority to collect processing fees, and those that appeared to be exempt. BLM developed exemption standards in 1989 comprised of the first four exemption categories in the Departmental Manual and two additional categories: documents primarily benefitting the public and documents related to appeals.

How did BLM Analyze its Costs for Types of Documents That Appeared to be Eligible for Processing Fees?

We started with a pilot analysis in the Montana State Office, then surveyed all BLM State Offices in 1990. To ensure that the State Offices used the same data-gathering approach, the BLM Washington Office gave all State Offices a copy of Part 346 of the Departmental Manual, three types of standard forms to record the data, and detailed instructions previously tested for clarity in the Montana pilot analysis.

Were There Differences in the Processing Costs and Number of Document Filings Processed for Each State Office?

Yes. BLM's preliminary review of the data showed large cost differences among offices for processing certain types of documents as well as big differences in the numbers of documents filed and processed. For example, office processing costs for a mineral materials noncompetitive sale application ranged from $234 to $4,773. [The 1995 OIG report, discussed below, cites the low end of the range for this document as $81.64. 1995 OIG Audit Report, p. 3. BLM has been unable to determine the source of this figure.] As discussed below, BLM reconsidered the State Offices' estimated costs for noncompetitive sales applications and determined that the differences in estimates were attributable to unique site- or sale-specific factors.

Similarly, the number of mining law affidavits of assessment filed in State Offices for Fiscal Years 1988–1990 varied from about 2,761 to 251,564. For certain mineral-related document types, some offices had no activity during the three years sampled.

What Did BLM do to Reconcile the Differences in the Data?

BLM decided to use a "weighted" average rather than a simple average to determine a BLM-wide processing cost for each type of document. This method gave greater weight to the processing cost data from State Offices with a heavy workload, and thus more expertise, in processing a particular type of document.

Between 1995 and 1999, we re-analyzed much of the data, conducted spot checks to verify its continued validity, and adjusted it to current prices.

What did the OIG's Follow-up Report Find?

The report (No. 95–I–379, January 1995) found that, of the five recommendations in the 1988 OIG report, BLM had implemented the first, third, and fourth recommendations, had partially implemented the second recommendation to determine the cost and number of each document filing processed, and had not yet implemented the fifth recommendation to establish and collect BLM processing cost fees for non-exempt types of documents. The OIG sent BLM a draft of this report to which we responded in August 1994. We later met with the OIG and discussed issues raised by the report, including the issue of guidance and standards in data gathering. We also provided supplemental information to the OIG in December 1994 to resolve the issue.

What Observations and Recommendations Did the 1995 OIG Report Make?

The OIG noted the wide variations in estimates of the time and cost needed to process types of documents among various BLM State Offices, and made two recommendations to BLM from the draft report. First, BLM should develop document processing standards, request cost information from State Offices based on these standards and analyze and resolve significant differences in the collected data, particularly for types of documents which have major impacts on the total amount of money that BLM can recover. Secondly, BLM should expedite the establishment and collection of fees for processing types of documents which have major impacts on the total amount of money that BLM can recover, and continue efforts to establish and collect fees for other types of documents.

The report went on to say that in the supplemental information provided in December 1994, BLM told the OIG that it had developed guidance/standards "which were used by all state offices to achieve uniformity in data gathering and reporting." It also said that BLM had stated we would establish a multi-program team to continue examining fees to establish a consistent cost recovery program. Based on our responses to the draft report, the final 1995 OIG report concluded that "we consider both recommendations resolved but not implemented."

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How did BLM Respond to the 1995 Report?

After the 1995 report was issued, BLM created a team to update its processing cost data, with priority given to establishing and collecting fees for types of documents with a significant impact on the total amount of money that we can recover. To update the existing data and verify its accuracy, the team gathered new estimates of the number of annual filings, updated processing cost estimates, and assigned BLM minerals experts to review the data in their specialties.

How did BLM Analyze the 1990 Cost Data for Oil, Gas, and Geothermal in Response to the 1995 OIG Report?

BLM's fluid minerals program re-analyzed this data, comparing the data and identifying the appropriate job position, salary level, and time needed for each step indicated in BLM oil, gas, and geothermal Handbooks to process each type of document. The 1990 data was also based on the steps in the Handbooks. Based on this analysis, we calculated a direct cost (see discussion of direct/indirect costs below) for each step of the process, which was then adjusted to 1995 salary rates without a locality factor. Indirect costs were later added. We used these cost figures in this proposed rule as the actual cost estimates for oil and gas and geothermal document types, from which the fees were determined. This method was used for oil and gas and geothermal because the assigned program expert believed it would yield accurate cost estimates.

How did BLM update the 1990 Cost Data for Mineral Materials, Coal, Nonenergy Leasable Minerals, and Mining Law in Response to the 1995 OIG Report?

We spot checked the data by resubmitting it to selected State Offices which often process these particular categories of documents. We also sent these offices a summary of the cost data that office had previously submitted for these types of documents, along with the BLM-wide weighted average cost for each of them. We requested that the State Offices review the cost data and report whether that data, adjusted to current prices, remained reasonable. We also requested that the State Office re-estimate costs for that state if it found the re-examined adjusted cost data to be unreasonable for that time period. This re-examination verified the current validity of BLM's data and ensured that figures which varied significantly among offices had not been submitted in error. We used this method for these programs because our program experts believed it would yield accurate data and be cost-effective.

Also, in mineral materials, the team reconsidered the State Offices' estimated costs for non-competitive sale applications which the 1995 report had highlighted. The team determined that the differences among State Offices were largely caused by unique site- or sale-specific factors, such as the amount and nature of surface disturbance (for example, whether the sales are from existing or new pits, and how much material is to be removed); the impact on other surface resources (which may vary even within the same area); and National Environmental Policy Act (NEPA) analysis.

To bring the figures in line with 1999 prices, BLM adjusted them to the Implicit Price Deflator for Gross Domestic Product for 1998 (the most recent year available) published by the U.S. Department of Commerce, which economists generally consider to be the most reliable general price index.

How Has BLM Implemented the 1995 OIG Recommendations?

As explained above, BLM resolved the first part of the OIG's first recommendation about what standards we used by sending the OIG information in response to the draft report about our use of concrete standards in data collection. BLM updated the proposed fees and updated, analyzed, and verified the data, which responded to the second part of the OIG's first recommendation. This rule proposes to implement the first part of the second 1995 OIG recommendation: BLM would collect fees for types of documents that have a significant impact on the amount of money BLM can recover. This proposed rule covers only some of the documents for which BLM has the authority to recover costs. BLM intends to continue to work on establishing and collecting fees for other documents as well, including those addressed in the Solicitor's Dec. 5, 1996 M Opinion on this subject (M–36987). This satisfies the second part of the OIG's second recommendation.

III. Discussion

What Kinds of Fees Would This Rule Create?

This rule would establish fixed fees and fees based on BLM's case-by-case processing costs. A fixed fee remains the same for each document of a particular type. How BLM set these fixed fees is explained below. A fee based on BLM's case-by-case processing costs would be calculated by tracking the ongoing costs of processing an individual document.

Fixed fee amounts set by rulemaking would not be appealable to the Interior Board of Land Appeals (IBLA) because rulemaking actions are binding on the Department. Case-by-case fees could be appealed in accordance with the Department's general appeals rule at 43 CFR Part 4. BLM would not continue processing a document while an appeal is pending unless the applicant paid the fee under protest. In that case, if the final decision were that the fee was too high, BLM would refund the overpayment. See 43 U.S.C. 1734(c).

The FLPMA Factors

How Did BLM Set These Fees?

Section 304(b) of the Federal Land Policy and Management Act (FLPMA) lists six factors (the FLPMA "reasonableness" factors) that BLM must consider in deciding what is a reasonable processing fee. They are:

(1) BLM's actual costs to process a document. This does not include management overhead, which means costs of BLM State Directors and Washington office staff, except when a member of this group works on a specific authorization like a lease. Actual costs include (but are not limited to) such costs as money spent on special studies, environmental impact statements and other analysis, and monitoring exploration activities, development, construction, production, operation, maintenance, or termination of an authorized facility.

(2) The monetary value, or objective worth, of the right or privilege that the applicant seeks.

(3) The efficiency with which BLM processes a document, meaning with a minimum of waste by carefully managing agency expenses and time.

(4) Whether any of BLM's processing costs, for things such as studies or data collection, benefit the general public or the federal government, rather than just the applicant. This is referred to in the statute as "benefit of the general public interest."

(5) Whether the project provides any significantly valuable tangible improvement, such as a road, or other direct service to the public. This is referred to in the statute as "public service." However, a negative factor, such as an adverse impact on wildlife or surface drainage, may prevent an improvement from being a public service. Data collection that we need to monitor an activity is not a public service.

(6) Any other relevant factors.

How Did BLM Consider the FLPMA Factors?

We considered each of the FLPMA factors for each type of document for which we are proposing a fixed fee in this rule. We first estimated the actual cost for a type of document and then considered each of the other FLPMA factors to see if any of them might cause a fee to be set at less than actual cost. If so, we then considered whether any of the remaining factors acted as an enhancing factor that would mitigate against setting the fee at less than actual cost. We then decided the amount of the fee, which cannot be more than our processing cost. For most minerals actions in this proposal this method resulted in fees set at our actual processing cost.

This weighing of the factors would also be applied to fees that are determined on a case-by-case basis. For those fees, BLM would give the applicant an estimate of the proposed fee after estimating the actual cost of processing the individual document and considering the other FLPMA factors. The applicant could then comment on the proposed fee. We would consider the applicant's comments and any work to be performed by the applicant, and give the applicant a final fee estimate. We could re-estimate reasonable costs whenever necessary. If the fee is set at less than our actual costs because of one of the FLPMA factors, processing could not proceed until funding for the shortfall became available through the BLM budget, contributions by the applicant, or other means.

In considering the FLPMA factors we found several trends. First, the monetary value of the right or privilege was much greater than the processing cost. Also, our document processing procedures, which are based on standard steps in internal BLM Handbooks, are reasonably efficient.

We also found that none of the studies or data collection performed as part of BLM's document processing significantly benefits the general public. [The courts have held that processing which an agency is required to perform in connection with a specific request (for example, before approving a permit) provides a special benefit to an applicant, even if it also provides some benefit to the public. See, e.g., *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Comm'n*, 601 F.2d 223 (5th Cir. 1979), *cert. denied* 444 U.S. 1102 (1980).] We found that any small benefit to the public provided by the processing of fixed fee documents in this rulemaking is speculative and outweighed by the monetary value to the applicant of the right or privilege.

Furthermore, the applicant's project usually provides little or no service to the public. If a project provides a small public service, it will usually be outweighed by the monetary value to the applicant of the right or privilege. Finally, there are usually no other relevant factors.

Actual Costs

Did BLM Consider Figuring and Charging Processing Costs on a Case-by-Case Basis for Every Type of Document?

Yes. We decided not to do this because it would require enormous effort and expense. Also, when we can reliably estimate costs for routine services, we believe applicants benefit from knowing fees in advance. We will therefore determine costs on a case-by-case basis only for types of documents where the average processing cost may not be a reasonably accurate estimate because costs may differ significantly in each case.

How Does BLM Figure Its Costs to Process a Document?

Actual costs are the sum of both direct and indirect costs. Direct costs include such things as labor, material and equipment; BLM's measurement of direct costs is explained below. Indirect costs include items like rent and overhead, excluding State Director and Washington Office management overhead.

For an example of how BLM would determine the sum of direct and indirect costs, suppose the measured direct cost of processing a document is $200. To estimate the indirect cost for processing that document, the BLM office would use a ratio already determined in its accounting system—perhaps, ten to one, meaning for every $10 of direct costs there would be $1 of indirect costs. BLM would then estimate the indirect cost using the ratio and direct cost figures. In this example, since the direct cost was $200 and the ratio is ten to one, the indirect cost is $20. BLM then would add the direct and indirect cost figures to arrive at the actual cost figure of $220 to process the document. This method is generally accepted in the private and public sectors.

When we set fees at actual cost in the proposed rule, we rounded the cost figures down to the nearest zero or five for amounts over $10. For example, a cost figure of $157 was rounded down to $155 and a figure of $153 was rounded down to $150. For amounts under $10, we rounded the cost figures down to the nearest dollar. We did not round any cost figures up, to avoid charging more than actual processing costs.

For What Types of Documents Would BLM Measure Actual Costs on a Case-by-Case Basis?

- Geophysical exploration applications for oil and gas;
- Competitive lease applications for coal;
- Royalty rate reduction applications for coal;
- Logical mining unit applications and applications for LMU modifications for coal;
- Applications for lease modifications for coal;
- Prospecting permit applications for non-energy leasable minerals;
- Preference right lease applications for non-energy leasable minerals;
- Competitive lease applications for non-energy leasable minerals;
- Royalty rate reduction applications for non-energy leasable minerals;
- Non-competitive sale applications for mineral materials;
- Competitive sale applications for mineral materials;
- Lease or sales applications when an Environmental Impact Statement (EIS) is required;
- Mining plans of operations when an EIS is required; and
- Mineral validity examinations/reports (includes field mapping, field sampling, assays, determination of reserves and marketability, *etc.*).

What Would Case-by-Case Fee Calculations Include?

They would include all costs we incur while processing your document, such as the costs of studies BLM conducts to comply with legal requirements like environmental laws, the mineral leasing laws, or the Mining Law of 1872. For a mineral validity examination/report, the mineral examiner would consider the cost to the claimant of the examination and report along with other costs of doing business in evaluating whether the claimant has made a valuable discovery of minerals on the claim. This is because the cost of a mineral exam/report is a business cost similar to the cost of complying with environmental requirements, which is significant in deciding whether there has been a discovery. See *United States* v. *Pittsburgh Pacific Co.*, 30 IBLA 388, 84 I.D. 282, 290 (1977); *United States* v. *Kosanke Sand Corp.*, 12 IBLA 282, 298–99, 80 I.D. 538, 546–47 (1973) (on reconsideration).

Also, although current proposed section 3800.5 refers to applicants for a plan of operations or a mineral patent

"under this part," *i.e.*, 43 CFR Part 3800, BLM may provide in the final rule that BLM will also recover costs of validity examinations and reports performed in connection with plan of operations applications that are submitted under other parts of the CFR as well, such as 36 CFR Part 9 (which implements the Mining in the Parks Act).

How Would the Proposed Fees Be Applied to Documents that BLM is Already Processing?

If BLM accepted your documents before the final rules were in effect, and fees for such documents would have been subject to fixed fees under the new rules, you would not be required to pay such fees. If we accepted your document prior to a final rule, and fees for such a document would be calculated on a case-by-case basis under the new rule, you would be charged fees on that basis for any processing work that must still be done after the final regulations went into effect. This is because filing an application will not exempt you from subsequent regulations. See *Hannifin* v. *Morton*, 444 F.2d 200, 202–203 (10th Cir. 1971). You would not be charged for the processing that took place prior to the regulations going into effect, however, unless a prior regulation or agreement required it.

Did BLM Consider Figuring and Charging Processing Costs on a Case-by-Case Basis for Every Type of Document?

Yes. We decided not to do this because it would require enormous effort and expense. Also, when we can reliably estimate costs for routine services, we believe applicants benefit from knowing fees in advance. We will therefore determine costs on a case-by-case basis only for types of documents where the average processing cost may not be a reasonably accurate estimate because costs may differ significantly in each case. To illustrate the case-by-case variation of BLM's processing cost, costs for processing a "noncompetitive mineral material sales" range from $282 to $5,747 with an average cost of $2,350.

How Did BLM Measure its Direct Actual Costs for Types of Documents it Proposes not to Measure on a Case-by-Case Basis?

We used an agency-wide average cost figure for each type of document. This is a reasonable approximation of our actual processing cost for that document type, as well as an efficient method of measuring the cost.

What are the New Proposed Fixed Fees?

Category-Fixed Fee	Existing fee	Proposed fee
Oil and Gas:		
Noncompetitive lease application	$75	$305
Competitive lease application	75	120
Assignment and transfer	25	70
Name change, corporate merger or transfer to heir/devisee	0	160
Lease consolidation	0	335
Lease renewals or exchanges	75	305
Lease reinstatement, Class 1	25	60
Leasing under right-of-way	75	305
Geothermal:		
Noncompetitive lease application	75	305
Competitive lease application	0	120
Assignment and transfer	50	70
Name change, corporate merger or transfer to heir/devisee	0	160
Lease reinstatement	0	60
Nonenergy Leasable:		
Prospecting Permit application amendment	0	50
Extension of Prospecting Permit	0	80
Lease Renewals	25	390
Mining Law Administration:		
Notice of Location	10	15
Amendment to location	5	10
Transfer of Interest	5	10
Affidavit of Assessment Work	5	10
Notice of Intent to Hold	5	10
Deferment of Assessment	25	80
Mineral Patent Adjudication	0	2,290
Adverse claim	10	80
Protest	10	50

What Data Did BLM Use to Calculate the Average Cost?

We used the data collected from State Offices in 1990, as analyzed and updated in 1995–1996 and in 1999. In the areas of oil and gas and geothermal, we used our re-analyzed direct cost estimate, to which indirect costs were added, as the average cost figure. In other areas, we used the weighted average cost, which included indirect costs, as the average cost figure.

What Processing Steps are Included in the Fixed Fees?

Oil & Gas

For noncompetitive lease applications, fixed fees would include receiving, validating, and entering data; examining land availability; sorting parcels (i.e., developing parcel configuration/acreage); preparing stipulations; preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates.

For competitive lease applications, fixed fees would include preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates. This fee does not at this point include steps leading to sorting parcels, *i.e.* developing parcel configuration/acreage, and preparing stipulations.

For assignments and transfers, fixed fees would include receiving, validating, and entering data; examining assignment and transfer forms; reviewing leases and bonds; and approving, entering, and transmitting updates. For assignments and transfers due to name changes, corporate mergers, or transfer to an heir or devisee, fixed fees would include receiving, validating, and entering data; examining requests; determining successors-in-interest or other special requirements; reviewing leases and bonds; preparing decisions; and entering and transmitting updates.

For transfers of overriding royalties or payments out of production, fixed fees would include receiving, validating, and entering data.

For lease consolidations, fixed fees would include receiving, validating, and entering data; examining requests, lease term conditions, and productions; preparing new leases and decisions; and entering and transmitting updates.

For lease renewals, fixed fees would include receiving, validating, and entering data; examining requests and lease forms for compliance; preparing decisions; and entering and transmitting updates.

For Class 1 lease reinstatements, fixed fees would include receiving, validating, and entering data; examining eligibility; preparing decisions; and entering and transmitting updates.

Geothermal

For noncompetitive lease applications, fixed fees would include receiving, validating, and entering data; examining land availability; sorting parcels (*i.e.*, developing parcel configuration/acreage); preparing stipulations; preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates.

For competitive lease applications, fixed fees would include preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates. This fee does not at this point include steps leading to sorting parcels, *i.e.* developing parcel configuration/acreage, and preparing stipulations.

For assignments and transfers, fixed fees would include receiving, validating, and entering data; examining assignment and transfer forms; reviewing leases and bonds; and approving, entering, and transmitting updates. For assignments and transfers due to name changes, corporate mergers, or transfer to an heir or devisee, fixed fees would include receiving, validating, and entering data; examining requests; determining successors-in-interest or other special requirements; reviewing leases and bonds; preparing decisions; and entering and transmitting updates.

For lease reinstatements, fixed fees would include receiving, validating, and entering data; examining eligibility; preparing decisions; and entering and transmitting updates.

Nonenergy Leasable Minerals

For prospecting permit application amendments, fixed fees would include receiving, validating, and entering data; examining requests and rental payments; and entering and transmitting updates.

For prospecting permit extensions, fixed fees would include receiving, validating, and entering data; examining requests and diligence; and approving, entering, and transmitting updates.

For lease renewals, fixed fees would include receiving, validating, and entering data; examining requests; determining changes in bonds and stipulations; preparing decisions; and entering and transmitting updates.

Mining Law Administration

For notices of location, fixed fees would include receiving data and validating land status; collecting statutory fees; and entering data.

For amendments to a location, fixed fees would include receiving, validating, and entering data.

For a mineral patent adjudication, fixed fees would include receiving and entering data; examining mineral surveys, statements required by statute, initial descriptions of geology and mineral evidence, and status of adverse claims; ensuring sufficiency of title evidence (title opinion or abstract with certified copies of location certificates and all amendments); publishing legal notices; receiving and examining final proofs and statements for sufficiency; accepting purchase monies; forwarding the application to the Secretary for review; and issuing decisions. Fixed fees would not include the cost of a mineral examination and report.

For assignments and transfers, fixed fees would include receiving, validating, and entering data.

For affidavits of assessment work, fixed fees would include receiving, validating, and entering data.

For notices of intent to hold, fixed fees would include receiving, validating, and entering data.

For deferments of assessment work, fixed fees would include receiving and entering data; examining requests; determining eligibility; approving or rejecting requests; entering and transmitting updates; and issuing decisions.

For adverse claims, fixed fees would include receiving and entering data; examining evidence; accepting or denying claims; and issuing decisions.

For protests, fixed fees would include receiving and entering data; examining evidence; and issuing decisions either to dismiss or accept a protest. Fixed fees would not include costs associated with adjudications to correct errors or omissions uncovered by a protest.

How Would BLM Deal With Increased Costs Due to Inflation?

We would adjust the fees periodically to the Implicit Price Deflator, discussed above, to bring them in line with current costs. We chose this method because the alternative is to collect data periodically to adjust fees to inflation, which is inefficient, costly, and impractical. When we do adjust fees, we will publish them in the **Federal Register**.

Might BLM Adjust its Average Cost Figures and Revise Fees in the Future for Reasons Other Than Inflation?

Yes. The fees in this rule do not include certain internal steps for which we believed costs could not be recovered when we initially collected data. For example, the costs for processing an oil and gas or geothermal competitive lease sale parcel do not include the steps required to prepare an individual sale parcel prior to preparing the sale notice, because we assumed those costs were not recoverable. However, the Solicitor's Dec. 5, 1996 Opinion on cost recovery concluded that we can recover costs for those steps, so in future rules we will propose fees that attempt to capture these costs and other costs not captured here so that fees will accurately reflect our reasonable costs. We may also amend fees when we receive new data or have another reason to believe that fees do not accurately reflect reasonable costs.

Monetary Value of the Right or Privilege

Did BLM Calculate Exact Figures for Monetary Values in Setting the Proposed Fixed Fees?

No. We decided not to try to calculate exact figures either by document type or on a case-by-case basis because that would involve extensive time and resources, and because we can reasonably judge the magnitude of these values relative to our costs. We have considered monetary value in terms of fairness rather than precise figures before, in the preamble to the 1986 rights of way regulations (51 FR 26836).

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How Did BLM Decide the Monetary Value of the Right or Privilege Granted by a Fixed Fee Document?

We relied on the monetary value of past similar rights or privileges, which we believe is a good yardstick. We reviewed each type of document, and compared the proposed processing fee for a given type of document with our knowledge of the historical values of rights or privileges granted similar to those sought by the applicant. In each case, we believe the value of the right or privilege is clearly so much greater than the processing cost that a fee set at the average actual cost would not significantly impact the proposed project. Please note, the only fixed fee in this proposed rule that exceeds $390 is for the administrative processing of a mineral patent application (excluding the cost of the mineral examination and report), for which the proposed fee is $2,290. All other proposed fees range from $9 to $390. The costs this rule would recover pertain to documents related to the development of commercial minerals, so it is not surprising that the monetary value of the right or privilege is greater than these proposed fees. Therefore, we did not reduce any fees as a result of this factor. We will consider monetary value for case-by-cases fees in a similar manner.

What About Leases Which Are Found After Exploration To Have Less Value Than Previously Thought?

BLM bases its decision about the value of the right or privilege on monetary value at the time the lease application is submitted. All leases have relatively large monetary value before exploration compared to the proposed fees. The intrinsic value of the opportunity afforded by a lease to explore for minerals is shown by the willingness of industry to pay large sums before exploration for bonus bids (for coal leases), for lease transfers, and for exploration activities such as drilling. We therefore decided that it is reasonable to charge a fee equal to our processing costs for all lease applications.

How Did BLM Consider the Value of Requests for Lease Sales, Requests for Sales, or Expressions of Interest?

In accordance with the Solicitor's Dec. 5, 1996 Opinion on cost recovery, BLM considers that its processing costs to prepare parcels for sale or lease sale benefit three classes of beneficiaries: the party who requests that the parcel be included in the sale or lease sale; all parties who bid on the parcel; and the successful bidder.

While the party who requests that a parcel be included in a sale or lease sale benefits by influencing the selection of parcels offered, we believe this benefit is greatly outweighed by the benefits to the bidder who ultimately obtains the lease or sales contract and can develop the minerals on the parcel. Similarly, while all bidders get the chance to be considered for a lease or sales contract, BLM believes this benefit is greatly outweighed by the benefits to the bidder who obtains the lease or sales contract. We would therefore charge all processing costs to prepare a parcel for lease or sale to the successful bidder.

The Efficiency Factor

What Did BLM Consider When It Looked at Efficiency in Relation to the Proposed Fixed Fees?

We wanted to be sure that the process of collecting fees is not itself overly costly. For example, we would not collect cost data on a case-by-case basis for each document processed because that kind of cost tracking is simply inefficient—employees' tracking time spent on each document just adds to the processing costs.

We looked for other ways to establish fees and decided that for most documents in this rulemaking, it was more efficient and sufficiently reliable to set a fixed fee. As discussed above, when fixed fees would be unreliable or unreasonable, we would track costs on a case-by-case basis.

Did BLM Determine That the Documents for Which Fees Are Charged in This Rulemaking Are Processed Efficiently?

Yes. The processing procedures are based on standardized steps in BLM Handbooks in order to eliminate duplication and extraneous procedures. These detailed and measurable processing steps were developed to be efficient.

Public Benefit Factor

Are There Some BLM Activities That Only Benefit the Public and Do Not Benefit Any Particular Applicant?

Yes. Activities that only benefit the public are those that are not done in connection with processing a particular document. These would include studies which BLM is required to perform whether or not it receives an application or other document processing request, such as land use planning studies and programmatic environmental analyses prepared by an agency at its own instigation. We would not recover the costs of such studies from applicants. Therefore, BLM did not consider studies or data that only benefit the public when it considered the public benefit factor in establishing the fixed fees proposed in this rule.

If Processing a Document Requires That a Study Be Done, Does That Study Always Benefit the Applicant?

Yes. Courts have held that if the processing of an application requires that a study be done, the performance of that study necessarily benefits the applicant. *See, e.g., Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Comm'n*, 601 F.2d 223, 231 (5th Cir. 1979). The most obvious benefit is that the application may be approved and the applicant can then operate. If a study is required, we cannot approve an application unless the study is performed, and if we do not approve an application, the applicant cannot take the action for which it seeks approval.

There are other potential benefits, as were pointed out in the preamble to BLM's 1986 rights-of-way regulations:

> Public comment on environmental issues often helps to [defuse] political opposition to a project. An environmental impact statement may uncover an environmentally acceptable alternative which may allow an otherwise unacceptable project to be built. Special studies of seismic and climatic conditions sometimes reveal that the applicant's original proposal would not meet necessary engineering standards or is otherwise flawed. When an accident is prevented or money saved because higher standards are used, an applicant benefits because the [project] is not interrupted. These types of benefits are difficult to measure and may not be apparent until after a project has been completed and has operated for many years.

51 FR 26836, 26837–38. These benefits of environmental studies are also applicable to minerals actions. Although they are speculative, substantial benefits such as these can exist.

How Did BLM Consider the Public Benefit From Its Document Processing?

Possible public benefits from BLM processing activities such as studies or data collection are also speculative. For example, studies related to document processing often provide natural resource information about an area, and this is sometimes a public benefit, but its value or whether there will be a benefit at all is not predictable. BLM concluded that document processing for types of fixed fee documents in this rulemaking does not usually produce studies or data significantly beneficial to the public.

Also, except for fees determined on a case-by-case basis, BLM determined that for each type of document in this rulemaking the monetary value to the applicant outweighs the possible benefit of such studies to the public. BLM analysts used their knowledge of the historical values of such cases to make these determinations. We have therefore decided that this factor does not warrant setting any fee in this rulemaking at less than its actual processing cost.

Public Service Factor

How Is a Project's Service to the Public (Public Service) Different From Benefits the General Public Derives From BLM's Processing (Public Benefit)?

A project's service to the public concerns whether the applicant's project itself, as opposed to BLM's processing the related documents, provides some significant direct service or benefit to the general public. This is referred to in the statute as "public service." Examples would be improvements such as roads, trails, or recreation facilities. But not every improvement provided by a project is considered a public service. A negative impact on such things as wildlife or surface drainage may prevent BLM from considering an improvement as a public service.

Does Exploration Data Shared With the Government for Purposes Other Than Monitoring Constitute a Public Service?

Yes. Applicants for prospecting permits for nonenergy minerals are required to share with the government the mineral resource data obtained from exploration. If the information is valuable for mineral development, we expect the prospecting permit holder will use it. In that case, the monetary value of the information to the permittee would far outweigh its benefit to the public.

We considered that even information which is not valuable to the prospecting permit holder for mineral development may still provide a small geological or geophysical information benefit to the government, which could sometimes be used in types of resource management such as land classifications. However, because there is very little information obtained in this way and because its use is unpredictable, the potential benefits of the information to the public are too small to warrant an adjustment to the proposed fee.

Do Projects in This Proposed Rule Subject to a Fixed Fee Generally Provide a Public Service?

No. Large projects could include road construction, but such roads are rarely open to the public or built to public safety standards. Also, they must eventually be removed. These roads also often do not serve the public interest because they cause erosion and drainage problems and, if opened to the public, can bring too many people into sensitive areas. Thus, for fixed fee documents, the possibility of such a public service is too remote and speculative to warrant charging a fee less than actual costs. If any projects do provide such a public service, it is more likely to be those that require an environmental impact statement. For those projects, we will consider all of the reasonableness factors, including public service, on a case-by-case basis.

Other Factors

Are There any Other Factors That Made it Reasonable to Set a Fee in This Proposed Rulemaking at Less Than Actual Cost?

Yes. Protests of mineral patent applications provide a benefit to BLM by reducing the potential for error in the patent process. The fee for processing patent protests was therefore set at $50, which is less than BLM's actual processing cost of $255.

BLM did not find other factors that made it reasonable to adjust fees set in this proposed rulemaking. When BLM charges fees on a case-by-case basis, applicants could raise other factors during the fee-setting process.

[Please note, the proposed regulatory language below is based on regulations as they now exist. However, BLM has recently proposed changes to parts 3100 (oil & gas) and 3809 (surface management) of this title. We may need to change any final regulations which result from this proposal to fit with new regulations at those parts, should BLM issue final rules in either program.]

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that this proposed rule is administrative and involves only procedural changes addressing fee requirements. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM) 2.3A and 516 DM 2, Appendix 1, Item 1.10. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have no such effect in procedures adopted by a Federal agency and therefore require neither an environmental assessment nor an environmental impact statement.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve at this time under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This rule potentially affects the following information requirements approved under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*:

- 1004–0025, Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests;
- 1003–0034, Oil and Gas Lease Transfers;
- 1004–0073, Coal Management;
- 1004–0074, Oil and Gas and Geothermal Resources Leasing;
- 1004–0103, Mineral Materials Disposal;
- 1004–0114, Payment and Recordation of Location Notices and Annual Filings for Mining Claims, Mill Sites, Tunnel Sites;
- 1004–0121, Leasing of Solid Minerals Other Than Coal and Oil Shale;
- 1004–0132, Geothermal Resources Operations: General;
- 1004–0134, Onshore Oil and Gas Operations: Non-form items;
- 1004–0135, Sundry Notices and Reports on Wells;
- 1004–0136, Oil and Gas Applications for Permits to Drill;
- 1004–0137, Oil and Gas Well Completion or Recompletion Report and Log;
- 1004–0145, Oil and Gas Exploration and Leasing;
- 1004–0160, Geothermal Leasing Reports;
- 1004–0162, Oil and Gas Geophysical Exploration Operations;
- 1004–0169, Use and Occupancy under the Mining Laws;
- 1004–0176, Surface Management Regulations at 3802 and 3809; and
- 1004–0184, Onshore Oil and Gas Leasing and Operations.

This rule affects the information collections just listed not by decreasing or increasing the information requirements described in these collections but by establishing or changing the costs of filing the applications and reports included in these collections. When this rule becomes final, BLM will file change notices with the Office of Management and Budget (OMB), Form 83c, to reflect the new or changed fees established by the final rule.

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Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section a "small entity," as defined by the Small Business Administration for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) is an individual, limited partnership, or small company considered to be at "arm's length" from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing of federal land for coal mining: a coal lessor is a small entity if it employs not more than 250 people, including people working for its affiliates. SBA would consider many of the operators the BLM works with in the onshore minerals programs small entities. [We note that this proposed rule does not affect service industries, for which the SBA has a different definition of "small entity."]

The proposed rule will affect a large number of small entities since nearly all of them will face fee increases for activities on public lands. However, we have concluded that the effects will not be significant. As discussed in an analysis prepared by BLM and available as an attachment to our Record of Compliance for this proposed rule, when the total fees paid by these entities are expressed as a percentage of their sales value it is clear that the relative size and effect of the fees are very small and that they will have no measurable effect on these entities.

For example, we estimate that under this rule oil and gas operators on public lands would pay an extra $2,052,000 in fees annually, but the small operators in the oil & gas program generate sales of $2.9 billion to $4.8 billion annually, so the increased fees would be 0.04% to 0.07% of sales, even assuming small operators bore the entire fee increase. The small operators developing mineral materials on public lands generate $60 million to $99 million in annual sales, while the total fees for the mineral materials industry would rise by about $866,000, or 0.875% to 1.443% of sales. This is the highest percentage of sales versus increased fees.

Additionally, for mineral materials, based on data for FY96, FY97, FY98, this proposed rule would affect on average only about 13.5% of the disposals on public lands. The rule would not affect the remaining 86.5% of disposals, consisting of small sales from. community pits, and common use areas, and free use permits to government entities and non-profit organizations. And, of course, this rule would not affect small operators on non-public lands.

Finally, we note that most of the proposed fees are charged only once and, therefore, the impact is spread over several years of industry production. This has the effect of lessening the impact even further. Also, leasable and mineral materials sales are for fair market value, so we can expect bonus bids to decline in order to offset and neutralize the new or increased costs.

Due to the size of the proposed fee increase, it is worth discussing mineral patent adjudication and associated mineral examination fees and their possible effect on small entities. These fees apply to hardrock mineral patent applications under the Mining Law of 1872, which, when approved, result in a transfer of title from the United States to the mining claimant. Patenting is a voluntary process and is not required under the law. Mining claimants who have found a valuable mineral discovery on the public lands and properly located a claim may mine and market the minerals on the claim without a patent and without paying any royalties to the United States.

Fixed fees for patent applications are set in this proposed rule at $2,290 for adjudication of title and sufficiency of the application, plus a case-by-case fee for the actual mineral examination of the mining claims or sites in the application. Although this is an appreciable increase, it is not significant compared to the capital expenditures associated with many hard rock mining ventures, which may range from hundreds of thousands of dollars for small operations to hundreds of millions of dollars for large ventures. The smaller the entity, the more likely it is that the application will seek to patent fewer mining claims, reducing the time needed for BLM's mineral examination. Because fees for the mineral examination are based largely on a case-by-case tracking of our actual time and the costs to us, applications with fewer claims will generally be charged fees at the low end of the possible range.

BLM is also operating under a moratorium for processing any new mineral patent applications and a Congressional Five-Year Plan (Public Law 104–134) which required the Secretary to establish a plan for how the Department would complete its review of 90% of grandfathered mineral patent applications by September 30, 2001. Because of the patenting moratorium, future activity in the adjudication and mineral examination of mineral patent applications is expected to decline significantly in the near future and thus these fees will be rarely applied. Moreover, because claimants have a recognized property interest in a valid unpatented mining claim and can enjoy the benefits of mining and marketing from their claims without ever applying for a patent, a claimant could avoid these fees simply by not filing a patent application even if the moratorium were lifted.

For many document types, BLM will establish charges on a case-by-case basis. In these situations, the applicant/operator has the opportunity to present data to BLM on the reasonableness of the fees (the Federal Land Policy and Management Act lists six factors which the BLM must consider in setting a reasonable processing fee, discussed above). If, for example, the entity is small and has a small operation, the monetary value factor may cause BLM to reduce the fee(s). When the entity is small but has large operations that are high in monetary value, it must have access to large amounts of capital and the increased fees will not have a significant detrimental effect. In any case, the entities may appeal case-by-case fees if they believe BLM is being unreasonable in its calculations.

Unfunded Mandates Reform Act

This proposed rulemaking will not result in any unfunded mandate to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have significant effects on federalism, and therefore a federalism assessment is not required. The proposed rule does not change the role or responsibilities between Federal, state, and local government entities. The rule does not relate to the structure and role of states and will not have direct, substantive, or significant effects on states. It may result in a slight decrease in bonus bids which BLM shares on a 50–50 basis with the states. However, the effect would be negligible over the life of a lease.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule has no bearing on property rights, but only concerns recovery of government processing costs for actions which benefit certain entities who acquire rights and extract publicly-owned resources. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, the BLM has determined that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866. BLM has determined that the rule does not meet any of the criteria for a significant regulatory action. The proposed rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. This determination is based on an analysis which BLM prepared in conjunction with this proposed rule.

This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are all encompassed in agreements and memoranda of understanding that will not change with this proposed rule.

In addition, this rule will not materially affect the budgetary impact of entitlements, grants, loan programs or the rights and obligations of their recipients. However, this rule does propose to increase existing fees, and create new fees, for processing documents associated with the onshore minerals programs. This occurs as a result of recommendations by the OIG (Report Nos. 89–25 and 95–I–379) as well as the policy of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701 and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. The IOAA and section 304 of FLPMA authorize BLM to charge applicants the cost of processing documents through rulemaking; in addition, the IOAA states that these charges should cover the agency's costs for these services to the degree practicable. The OIG reports documented the budgetary impact of delaying collection of fees to reimburse agency costs and strongly admonished BLM to collect the fees proposed in this rule. Finally, this rule will not raise novel legal or policy issues. Some of the proposed rule may be controversial (e.g., increased or new fees), but the issues are not novel. Some have been tried in the past and some are currently in use by some State governments.

Executive Order 12988

In accordance with Executive Order 12988, BLM finds that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

Author

The principal authors of this rule are Durga Rimal, Roger Haskins, and John Bebout of Solids Group, and Mary Nagel and John Broderick of Fluids Group, assisted by Christopher Fontecchio of the Regulatory Affairs Group, Bureau of Land Management, Department of the Interior, 1849 C Street, NW., Room 501L, Washington, DC 20240; Telephone: 202–452–0372, and Ken Fitzpatrick of BLM's Eastern States Office.

Dated: March 14, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

Note: This document was received by the Office of the Federal Register on December 8, 2000.

List of Subjects

43 CFR Part 3000

Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Administrative practice and procedure, Alaska, Oil and gas exploration, Public lands mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3220

Geothermal energy, Government contracts, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3240

Geothermal energy, Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Water resources.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3510

Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3520

Government contracts, Public lands-mineral resources.

43 CFR Part 3530

Public lands-mineral resources.

43 CFR Part 3540

Public lands-mineral resources.

43 CFR Part 3550

Public lands-mineral resources.

43 CFR Part 3560

Government contracts, Mineral royalties, Public lands-mineral resources, Surety bonds.

43 CFR Part 3570

Government contracts, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

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43 CFR Part 3580

Administrative practice and procedure, Mines, Public lands-mineral resources, Surety bonds.

43 CFR Part 3590

Administrative practice and procedure, Indian lands-mineral resources, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3600

Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3610

Government contracts, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3800

Public lands-mineral resources, Reporting and recordkeeping requirements, Surface management.

43 CFR Part 3830

Public lands-mineral resources, Location of Mining Claims, Reporting and recordkeeping requirements.

43 CFR Part 3850

Public lands-mineral resources, Assessment Work, Reporting and recordkeeping requirements.

43 CFR Part 3860

Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3870

Public lands-mineral resources, Adverse Claims, Reporting and recordkeeping requirements.

Accordingly, for the reasons we explained in the preamble and the authorities stated below BLM proposes to amend 43 CFR Groups 3000, 3100, 3200, 3400, 3500, 3600, and 3800 as follows:

Group 3000—Minerals Management

PART 3000—MINERALS MANAGEMENT GENERAL

1. The authority citation for part 3000 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 31 U.S.C. 483a; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 301–306; and Pub. L. 97–35, 95 Stat 357.

Subpart 3000—General

2. A new § 3000.10 is added to read as follows:

§ 3000.10 What do I need to know about fees in general?

(a) Fees must be included as required with documents filed under this subchapter. Fees may be statutorily-set fees, relatively nominal filing fees, or processing fees intended to reimburse BLM for its reasonable processing costs. For processing fees, BLM takes into account the factors in section 304(b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1734(b)) before deciding a fee. BLM considers the factors for each type of document when the processing fee is a fixed fee, and for each document when the fee is decided on a case-by-case basis, as explained in 43 CFR 3000.11.

(b) BLM will not accept a document that is submitted without the proper filing or processing fee amounts except for documents where the fee will be set on a case-by-case fee basis. Fees are not refundable except as provided for case-by-case fees in 43 CFR 3000.11. BLM will keep your fixed filing or processing fee as a service charge even if the document is rejected or withdrawn completely or partially.

3. A new § 3000.11 is added to read as follows:

§ 3000.11 When and how does BLM charge me processing fees on a case-by-case basis?

(a) Fees in this subchapter are designated as either case-by-case fees or fixed fees. However, if BLM decides at any time that a document designated for a fixed fee will have a unique processing cost, such as the preparation of an Environmental Impact Statement, we may set the fee under the case-by-case procedures in this section.

(b) BLM may, in our discretion, allow you, the applicant, to do all or part of any special study according to standards we specify.

(c) For case-by-case fees BLM measures the ongoing processing cost for each individual document and considers the factors in section 304(b) of FLPMA on a case-by-case basis according to the following procedures:

(1) Before performing any case processing, we will give you an estimate of the proposed fee for reasonable processing costs after we consider the FLPMA section 304(b) factors.

(2) You may comment on the proposed fee.

(3) We will then give you the final estimate of the processing fee amount after considering your comments and any BLM-approved work you will do.

(i) If we encounter unanticipated expenses or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedure in paragraphs (c)(1), (c)(2), and (c)(3) of this section.

(ii) If the fee is less than BLM's actual costs, as a result of consideration of the FLPMA section 304(b) factors, we will not process the document until funding for the shortfall is available either through appropriated funds or other means. You may pay the shortfall by contributing funds, and once processing is complete we will refund any money to you that we did not spend on processing costs.

(4)(i) We will periodically estimate what our reasonable processing costs will be for a specific period and will bill you for that period. BLM will not process a document further until this bill amount is paid.

(ii) If a periodic payment turns out to be more or less than BLM's reasonable processing costs for the period, we will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without our prior written approval.

(5) You must pay the entire fee before we will issue the final document.

(6) You may appeal BLM's estimated processing costs in accordance with 43 CFR Part 4. We will not process the document further until the appeal is resolved, in accordance with paragraph (c)(4)(i) of this section, unless you pay the fee under protest while the appeal is pending. In that case, if the appeal results in a decision that the fee was too high, we will refund the overpayment in accordance with paragraph (c)(4)(ii) of this section.

(d) Unless otherwise directed by statute, we will periodically adjust fees according to the Implicit Price Deflator for Gross Domestic Product, which is published annually by the U.S. Department of Commerce for the previous year. BLM will publish these fee changes in the **Federal Register**.

Group 3100—Oil and Gas Leasing

PART 3100—OIL AND GAS LEASING

4. The authority citation for part 3100 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.* and 351–359; and 43 U.S.C. 1733 and 1740.

Subpart 3105—Cooperative Conservation Provisions

5. Section 3105.6 is amended by revising the first sentence and adding a new sentence after the first sentence as follows:

§ 3105.6 Consolidation of leases.

BLM may approve consolidation of leases if it determines that there is sufficient justification and it is in the public interest. Each application for a consolidation of leases must include the payment of a processing fee of $335.* * *

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

6. Section 3106.3 is revised to read as follows:

§ 3106.3 Fees.

Each transfer of record title or of operating rights (sublease) for each lease must include the payment of a processing fee of $70. Each request for a transfer to an heir or devisee, request for a change of name, or notification of a corporate merger under § 3106.8, must include the payment of a processing fee of $160. Each transfer of overriding royalty or payment out of production must include the payment of a processing fee of $9 for each lease to which it applies.

7. Section 3106.4–3 is amended by revising paragraph (d) to read as follows:

§ 3106.4–3 Mass transfers.

* * * * *

(d) Include with your mass transfer a processing fee payment of $70 for each such interest transferred for each lease.

§ 3106.8–1 [Amended]

8. Section 3106.8–1(a) is amended by removing the sentence "No filing fee is required." and adding in its place a new sentence to read: "Include a processing fee payment of $160 with your request to transfer lease rights."

9. Section 3106.8–2 is amended by removing the sentence "No filing fee is required." and adding in its place a new sentence to read: "Include a processing fee payment of $160 with your notice of name change."

§ 3106.8–2 [Amended]

10. Section 3106.8–3 is amended by removing the sentence "No filing fee is required." and adding in its place a new sentence to read: "Include a processing fee payment of $160 with your notification of a corporate merger."

§ 3106.8–3 [Amended]

Subpart 3107—Continuation, Extension or Renewal

§ 3107.7 [Amended]

11. Section 3107.7 is amended by removing the next to the last sentence and adding in its place two new sentences to read: "The lessee must file an application to exchange a lease for a new lease, in triplicate, at the proper BLM office. The application must show full compliance by the applicant with the terms of the lease and applicable regulations, and must include the payment of a processing fee of $305."

12. Section 3107.8–2 is revised to read as follows:

§ 3107.8–2 Application.

File your application to renew your lease in triplicate in the proper BLM office at least 90 days, but not more than 6 months, before your lease expires. Include a processing fee payment of $305.

Subpart 3108—Relinquishment, Termination, Cancellation

13. Section 3108.2–2(a) is amended by revising the first sentence of paragraph (a)(3) to read as follows:

§ 3108.2–2 Reinstatement at existing rental and royalty rates: Class I reinstatements.

(a) * * *

(3) A petition for reinstatement, a processing fee of $60, and the required rental, including any back rental that has accrued from the date of the termination of the lease, are filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental. * * *

* * * * *

Subpart 3109—Leasing Under Special Acts

14. Section 3109.1–2 is revised by removing the first three sentences and adding in their place the following:

§ 3109.1–2 Application.

No approved form is required for an application to lease oil and gas deposits underlying a right-of-way. The right-of-way owner or his/her transferee must file the application in the proper BLM office. Include a processing fee payment of $305. If the transferee files an application it must also include an executed transfer of the right to obtain a lease. * * *

PART 3110—NONCOMPETITIVE LEASES

15. The authority citation for part 3110 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 31 U.S.C. 483a; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3110—Noncompetitive Leases

16. Section 3110.4(a) is amended by revising the fourth and sixth sentences to read as follows:

§ 3110.4 Requirements for offer.

(a) * * * The original copy of each offer must be typed or printed plainly in ink, signed in ink and dated by the offeror or an authorized agent, and must include the payment of the first year's rental and a processing fee of $305. * * * A noncompetitive offer to lease a future interest applied for under § 3110.9 must include a processing fee payment of $305. * * *

* * * * *

PART 3120—COMPETITIVE LEASES

17. The authority citation for part 3120 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 40 U.S.C. 471 *et seq.*; 43 U.S.C. 1701 *et seq.*; and the Attorney General's Opinion of April 2, 1941 (40 Op. Attny. Gen. 41).

18. Section 3120.5–2 is amended by revising paragraph (b)(3) to read as follows:

§ 3120.5–2 Payments required.

* * * * *

(b) * * *

(3) A processing fee of $120 per parcel.

* * * * *

PART 3130—OIL AND GAS LEASING; NATIONAL PETROLEUM RESERVE, ALASKA

19. The authority citation for part 3130 is revised to read as follows:

Authority: 42 U.S.C. 6508 and 1701 *et seq.*

20. Section 3132.3(a) is amended by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 3132.3 Payments.

(a) Make payments of bonuses including deferred bonuses, first year's rental, other payments due upon lease issuance, and fees to BLM's Alaska State Office. Before we issue a lease, the highest bidder must pay a processing fee of $120 in addition to other remaining bonus and rental payments. * * *

* * * * *

Subpart 3135—Transfers, Extensions and Consolidations

21. Section 3135.1–2(a)(2) is amended by revising the first two sentences to read as follows:

§ 3135.1–2 Requirements for filing of transfers.

* * * * *

(a)(1) * * *

(2) An application for approval of any instrument which the regulations

require you to file must include a processing fee payment of $70. Any document which the regulations in this part do not require you to file but which you submit for record purposes must also include a processing fee payment of $70 per lease affected. * * *

* * * * *

22. Section 3135.1–6(a) is amended by adding a sentence at the end as follows:

§ 3135.1–6 Consolidation of leases.

(a) * * * Include with each request for a consolidation of leases a processing fee payment of $335.

* * * * *

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

23. The authority citation for part 3150 is revised read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 31 U.S.C. 483a; 42 U.S.C. 6504 and 6508; and 43 U.S.C.1701 *et seq.*

24. Section 3151.1 is amended by adding a new sentence between the second and third sentences to read as follows:

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

* * * BLM will charge a processing fee on a case-by-case basis as described in § 3000.11. * * *

25. Section 3152.1 is amended by removing the last sentence and adding in its place the following:

§ 3152.1 Application for oil and gas geophysical exploration permit.

* * * * *

The application must be submitted to the Field Office Manager of the proper BLM office. BLM will charge a processing fee on a case-by-case basis as described in § 3000.11.

Group 3200—Geothermal Resource Leasing

PART 3200—GEOTHERMAL RESOURCE LEASING

26. The authority citation for part 3200 is revised to read as follows:

Authority: 30 U.S.C. 1001–1027; and 43 U.S.C. 1733 and 1740.

Subpart 3204—Noncompetitive Leasing

§ 3204.12 [Amended]

27. Section 3204.12 is amended by revising the first sentence to read as follows:

Submit a non-refundable processing fee of $305 for each lease offer, and an advance rent in the amount of $1 per acre (or fraction of an acre). * * *

Subpart 3205—Competitive Leasing

§ 3205.16 [Amended]

28. Section 3205.16(a) is amended by removing the word "and" in paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(5), and adding a new paragraph (a) (4) to read as follows:

(a) * * *

(4) The processing fee of $120; and

* * * * *

Subpart 3210—Additional Lease Information

29. Section 3210.12 is amended by adding a new sentence at the end of the section to read as follows:

§ 3210.12 May I consolidate leases?

* * * You must include payment of a $335 processing fee with your request to consolidate leases.

Subpart 3211—Fees, Rent, and Royalties

30. Section 3211.10 is amended by revising the section heading, the table heading, paragraph (b) introductory text, and entries (1) and (3), by redesignating entries (4) through (9) as entries (5) through (10) and by adding a new entry (4) to read as follows:

§ 3211.10 What are the fees, rent, and minimum royalties for leases?

* * * * *

(b) Use the following table to determine the fees, rents and minimum royalties owed for your lease:

FEES, RENT, AND ROYALTIES

Type	Competitive leases	Noncompetitive leases
(1) Lease Application Processing fee	$120	$305 (includes future interest leases)
. . . . .		
(3) Transfer of Record Title or Operating Rights	70	70
(4) Transfer of Interest to Heir or Devisee, Name Change, or Notification of Corporate Merger.	160	160

Subpart 3213—Relinquishment, Termination, Cancellation, and Expiration.

31. Section 3213.19 is revised to read as follows:

§ 3213.19 What must I do to have my lease reinstated?

Send BLM a petition requesting reinstatement. Your petition must include the serial number for each lease and an explanation of why the delay in payment was justifiable, rather than due to a lack of diligence. In addition to your petition, you must also include any past rent owed, any rent which has accrued from the termination date, and a processing fee of $60.

Subpart 3216—Transfers

32. Section 3216.14 is revised to read as follows:

§ 3216.14 What fees and forms does a transfer require?

With each transfer request send us the correct form, if required, and pay the transfer processing fee. When you calculate your fee, make sure it covers the full amount. For example, if you are transferring record title for three leases, submit $210 with the application. Use the following chart to determine forms and fees:

Type of form	Specific form required?	Form No.	Number of copies	Transfer fee (per lease)
(a) Record Title	Yes	3000–3	2 executed copies	$70
(b) Operating Rights	Yes	3000–3(a)	2 executed copies	70
(c) Estate Transfers	No	N/A	1 List of Leases	160

Type of form	Specific form required?	Form No.	Number of copies	Transfer fee (per lease)
(d) Corporate mergers	No	N/A	1 List of Leases	160
(e) Name Changes	No	N/A	1 List of Leases	160

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

33. The authority citation for part 3470 is revised to read as follows:

Authority: 30 U.S.C. 189 and 359; and 43 U.S.C. 1733 and 1740.

Subpart 3473—Fees, Rentals, and Royalties

§§ 3473.2–1 and 3473.2–2 [Removed]

34. Sections 3473.2–1 and 3473.2–2 are removed and section 3473.2 is revised to read as follows:

§ 3473.2 General fee provisions.

(a) An application for a license to mine must include payment of a filing fee of $10. BLM may waive the filing fee for applications filed by relief agencies as provided in § 3440.1–1(b) of this chapter.

(b) An application for an exploration license must include payment of a filing fee of $250.

(c) An instrument of transfer of a lease or an interest in a lease must include payment of a filing fee of $50.

(d) BLM will charge applicants for a royalty rate reduction a processing fee on a case-by-case basis as described in § 3000.11.

(e) BLM will charge applicants for logical mining unit formation or modification a processing fee on a case-by-case basis as described in § 3000.11.

(f) BLM will charge the successful applicant for a competitive coal lease a processing fee on a case-by-case basis as described in § 3000.11.

(g) BLM will charge the successful applicant for modification of a coal lease a processing fee on a case-by-case basis as described in § 3000.11.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

35. The authority citation for part 3500 continues to read as follows:

Authority U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1733 and 1740; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

Subpart 3500—Leasing of Solid Minerals Other Than Coal and Oil Shale: General

36. Section 3501.1(e) is revised by adding a new first sentence to read as follows:

§ 3501.1 What is the authority for this part?

* * * * *

(e) *Fees.* Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1734) authorizes the Secretary to establish reasonable filing and service fees for applications and other documents relating to the public lands. * * *

Subpart 3504—Fees, Rental, Royalty and Bonds

37. A new § 3504.10 is added to read as follows:

§ 3504.10 What fees must I pay?

(a) *Filing fees.* Include a non-refundable filing fee of $25 with each application you submit to BLM that is not charged a processing fee as described in paragraph (b) of this section. Exploration license applications do not require a fee except as provided in part 2920 of this chapter.

(b) *Processing fees.* The following table shows processing fees for various documents.

Document	Processing Fee
(1) Prospecting permit application	case-by-case basis as described in § 3000.11.
(2) Prospecting permit application amendment	$50.
(3) Prospecting permit extension	$80.
(4) Preference right lease application	case-by-case basis as described in § 3000.11.
(5) Successful competitive lease application	case-by-case basis as described in § 3000.11.
(6) Lease renewal application	$390.
(7) Application to waive, suspend, or reduce your rental, minimum royalty, or royalty rate.	case-by-case basis as described in § 3000.11.
(8) Future or fractional interest lease application	case-by-case basis as described in § 3000.11.

38. Section 3504.12(a) is revised to read as follows:

§ 3504.12 What payments do I send to BLM and what payments do I send to MMS?

(a) *Fees and rentals.* (1) Pay all filing and processing fees, all first-year rentals, and all bonus bids for leases to the BLM State office which manages the lands you are interested in. Make your instruments payable to the Department of the Interior—Bureau of Land Management. (2) Pay all second-year and subsequent rentals and all other payments for leases to the Minerals Management Service. See 30 CFR part 218 for MMS's payment procedures.

* * * * *

Subpart 3505—Prospecting Permits

39. Section 3505.12 is revised to read as follows:

§ 3505.12 How do I obtain a prospecting permit?

Deliver three copies of the BLM application form to the BLM office with jurisdiction over the lands you are interested in. Include the first year's rental with your application. You will also be charged a processing fee, which BLM will determine on a case-by-case basis as described in § 3000.11. For more information on fees and rentals, see subpart 3504 of this part.

40. Section 3505.30 is amended by removing the last sentence and by revising the second full sentence to read as follows:

§ 3505.30 May I amend or change my application after I file it?

* * * You must include the rental for any added lands and a processing fee of $50 with your amended application.

* * *

41. Section 3505.31 is amended by revising the last sentence to read as follows:

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§ 3505.31 May I withdraw my application after I file it?

* * * BLM will retain any fees associated with processing already performed on the application.

42. Section 3505.50 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively, redesignating the introductory text as paragraph (a), and adding paragraph (b) to read as follows:

§ 3505.50 How will I know if BLM has approved or rejected my application?

* * * * *

(b) If we reject your application, we will refund your rental payment. We will retain any fees associated with processing already performed on the application.

§ 3505.51 [Removed]

43. Section 3505.51 is removed.

44. Section 3505.64 is amended by revising the last sentence to read as follows:

§ 3505.64 How do I apply for an extension?

* * * Include your processing fee of $80 and the first year's rental, in accordance with §§ 3504.10, 3504.15, and 3504.16 of this part.

Subpart 3507—Preference Right Lease Applications

45. Section 3507.16 is revised to read as follows:

§ 3507.16 Is there a fee or payment required with my application?

Yes. You must submit the first year's rent with your application according to the provisions in § 3504.15. BLM will also charge a processing fee on a case-by-case basis as described in § 3000.11.

Subpart 3508—Competitive Lease Applications

46. Section 3508.21 is amended by adding a new paragraph (c) to read as follows:

§ 3508.21 What happens if I am the successful bidder?

* * * * *

(c) BLM will charge you a processing fee on a case-by-case basis as described in § 3000.11.

Subpart 3509—Fractional and Future Interest Lease Applications

47. Section 3509.16 is amended by removing the second sentence and adding a new last sentence to read as follows:

§ 3509.16 How do I apply for a future interest lease?

* * * BLM will charge you a processing fee on a case-by-case basis as described in § 3000.11.

48. Section 3509.30 is amended by revising the last sentence to read as follows:

§ 3509.30 May I withdraw my application for a future interest lease?

* * * BLM will retain any fees associated with processing already performed on the application.

49. Section 3509.46 is amended by removing the second sentence and adding a new last sentence to read as follows:

§ 3509.46 How do I apply for a fractional interest prospecting permit or lease?

* * * BLM will charge you a processing fee on a case-by-case basis as described in § 3000.11.

50. Section 3509.51 is amended by revising the last sentence to read as follows:

§ 3509.51 May I withdraw my application for a fractional interest prospecting permit or lease?

* * * BLM will retain any fees associated with processing already performed on the application.

Subpart 3511—Lease Terms and Conditions

51. Section 3511.27 is amended by revising the last sentence to read as follows:

§ 3511.27 How do I renew my lease?

* * * Send us three copies of your application together with the $390 processing fee and an advance rental payment of $1 per acre or fraction of an acre.

Subpart 3513—Waiver, Suspension or Reduction of Rental and Minimum Royalties

52. Subpart 3513 is amended by adding § 3513.16 to read as follows:

§ 3513.16 Do I have to pay a fee when I apply for a waiver, suspension, or reduction of rental, minimum royalty, production royalty, or minimum production?

Yes, BLM will charge you a processing fee on a case-by-case basis, as described in § 3000.11.

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL: GENERAL

PART 3610—SALES

53. The authority citation for part 3610 is revised to read as follows:

Authority: U.S.C. 601 and 602; and 43 U.S.C. 1733 and 1740.

Subpart 3610—Mineral Material Sales

54. Section 3610.1–1 is amended by redesignating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 3610.1–1 Request for sale.

(a) * * *

(b) Each requestor for a sale, other than from a community pit or common use area, must pay a processing fee as provided in § 3610.2–1(a) or § 3610.3–4(e) before BLM awards the contract.

55. Section 3610.2–1 is amended by revising the section heading and adding at the end of paragraph (a) a new sentence to read as follows:

§ 3610.2–1 Limitations in volume and fees.

(a) * * * BLM will charge the purchaser a processing fee on a case-by-case basis as described in § 3000.11.

* * * * *

56. Section 3610.3–4 is amended by adding paragraph (e) to read as follows:

§ 3610.3–4 Bid deposits.

* * * * *

(e) BLM will charge the successful bidder a processing fee on a case-by-case basis as described in § 3000.11.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3800—General

57. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 351 and 460y–4; 30 U.S.C. 22 and 28k; 31 U.S.C. 9701; and 43 U.S.C. 1201 and 1740.

54. Part 3800 is amended by adding new subpart 3800, to read as follows:

Subpart 3800—General

§ 3800.5 Fees

(a) An applicant for a plan of operations under this part must pay a processing fee on a case-by-case basis as described in § 3000.11 whenever BLM decides that approval of the plan of operations requires the preparation of an Environmental Impact Statement.

(b) An applicant for a plan of operations or a mineral patent under this part, or a notice operator who may not conduct operations under this part until a validity examination is performed, must pay a processing fee on a case-by-case basis as described in § 3000.11 for any validity examination and report performed in connection with the application or notice.

PART 3830—LOCATION OF MINING CLAIMS

58. The authority citation for part 3830 is revised to read as follows:

Authority: 16 U.S.C. 1901 and 1907; 30 U.S.C. 22, 28 and 242; 31 U.S.C. 9701; 43 U.S.C. 1201, 1740 and 1744; 50 U.S.C. Appendix 565; Pub. L. 103–23, 107 Stat. 60; and Pub. L. 103–66, 107 Stat. 405.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites and Payment of Service Charges; and Payment of Rental Fees

§ 3833.1 Recordation of Mining Claims.

59. Section 3833.1–4 is amended by revising paragraphs (a), (c), (d), and (e) as follows:

§ 3833.1–4 Service charges and location fees.

(a) As the applicant you must include payment of a $15 processing fee for each notice or certificate of location of a mining claim, mill site, or tunnel site filed for recordation.

(b) * * *

(c) Annual filings submitted under § 3833.2 must include payment of a $10 processing fee for each mining claim, mill site, or tunnel site. You do not have to pay a processing fee when paying a maintenance fee under § 3833.1–5 or filing a maintenance fee waiver under § 3833.1–7.

(d) For amendments to a previously recorded notice or certificate of location, you must submit a $10 processing fee for each mining claim, mill site, or tunnel site.

(e) For each transfer of interest document filed under § 3833.3, you must submit a $10 processing fee for each mining claim, mill site, or tunnel site.

* * * * *

PART 3850—ASSESSMENT WORK

60. The authority is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.* and 28–28k; 50 U.S.C. Appendix 565; and Pub. L. 103–66, 107 Stat. 405.

Subpart 3852—Deferment of Assessment Work

61. Section 3852.2 is amended by revising the last sentence of paragraph (a) as follows:

§ 3852.2 Filing of petition for deferment, contents.

(a) * * * Each petition must include payment of a $80 processing fee.

* * * * *

PART 3860—MINERAL PATENT APPLICATIONS

62. The authority citation for part 3860 is revised to read as follows:

Authority: 5 U.S.C. 22 *et seq.* and 552.

63. Part 3860 is amended by adding new subpart 3860 to read as follows:

Subpart 3860—General

§ 3860.1 Fees.

(a) Each mineral patent application must include payment of a $2,290 processing fee to cover BLM's preliminary application processing costs.

(b) BLM will charge a separate processing fee on a case-by-case basis as described in § 3000.11 to cover its processing costs for the mineral examination and report.

Subpart 3862—Lode Mining Claim Patent Applications

64. Section 3862.1–2 is revised to read as follows:

§ 3862.1–2 Fees.

An applicant for a lode mining claim patent must pay fees as described in § 3860.1 of this part.

Subpart 3863—Placer Mining Claim Patent Applications

65. Section 3863.1 is amended by adding new paragraph (c) to read as follows:

§ 3863.1 Placer mining claim patent applications: General.

* * * * *

(c) An applicant for a placer mining claim patent must pay fees as described in § 3860.1 of this part.

Subpart 3864—Millsite Patents

§ 3864.1 Millsite patents: General.

66. Section 3864.1–5 is is added to read as follows:

§ 3864.1–5 Fees.

An applicant for a millsite patent must pay fees as described in § 3860.1 of this part.

PART 3870—ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

67. The authority citation for part 3870 is added to read as follows:

Authority: 30 U.S.C. 30; and 43 U.S.C. 1201 and 1457.

Subpart 3871—Adverse Claims

68. Section 3871.1 is amended by revising paragraph (d) as follows:

§ 3871.1 Filing of claim.

* * * * *

(d) Each adverse claim filed must include an $80 processing fee.

Subpart 3872—Protests, Contests, and Conflicts

69. In § 3872.1 paragraph (b) is revised to read as follows:

§ 3872.1 Protest against mineral applications.

* * * * *

(b) A protest by any party, except a Federal agency, must include payment of a $50 processing fee.

[FR Doc. 00–31748 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 61, 73, 74 and 76

[OMD Docket No. 00–205; FCC 00–421]

Adoption of a Mandatory FCC Registration Number

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes to amend its rules to require persons and entities doing business with the agency to obtain a unique identifying number, called the FCC Registration Number (FRN), through the Commission Registration System (CORES), and to provide the number when doing business with the agency. The FRN requirement is being proposed to better manage the Commission's financial systems and comply with various statutes governing the financial management of agency accounts.

DATES: The agency must receive comments on or before January 16, 2001, and reply comments on or before January 29, 2001.

FOR FURTHER INFORMATION CONTACT: Mark A. Reger, Chief Financial Officer (202) 418–1924 (policy and technical issues); Laurence H. Schecker, Office of

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General Counsel (202) 418–1720 (legal issues).

SUPPLEMENTARY INFORMATION:

1. By this document, the Commission proposes to amend its rules to require persons and entities doing business with the Commission to obtain a unique identifying number called the FCC Registration Number (FRN) to be obtained, or in some cases assigned, through the Commission Registration System (CORES). It will enable the Commission to better manage the financial systems of the agency and improve compliance with various statutes that govern the financial operations of the Federal government. The FRN requirement will also allow the Commission to improve the efficiency of its own processes to the benefit of the public.

2. The Commission is required in a variety of contexts to manage and collect substantial sums of money, including annual regulatory fees and application fees (47 U.S.C. 158 and 159) and civil monetary penalties (47 U.S.C. 503; 47 CFR 1.80). The Commission also auctions radio and television licenses through competitive bidding and administers the collection of payments for these licenses (47 U.S.C. 309(j)). In addition, the Commission directs the collection of mandated contributions to the Universal Service Fund (USF) and other statutory programs (47 U.S.C. 254(d); 47 CFR 54.706).

3. In operating these programs, the Commission is subject to a variety of federal statutes designed to ensure that the Government's financial management systems consistently and accurately report assets; liabilities, revenues and expenditures. *See, e.g.*, 31 U.S.C. 3512(b); 4 CFR 102.1(a) and 102.17. In particular, the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321 (1996), *codified at* 31 U.S.C. 3701, *et seq.*, sought to address congressional concerns that debts owed to the Federal government were not being properly collected. *See United States* v. *Texas*, 507 U.S. 529, 536–37 (1993) (Debt Collection Act was passed "in order to strengthen the Government's hand in collecting its debts"). Recently, review by the Commission's Office of Inspector General (OIG) and by the General Accounting Office (GAO) revealed areas in need of improvement in the Commission's collection systems.

4. In the course of reviewing its collection activities, the Commission has already established a Revenue Accounting and Management Information System (RAMIS), an internal revenue management system that supports application and regulatory fee accounting, spectrum auction loan portfolio management, accounting for auction proceeds, accounting for enforcement actions, and other accounts receivable of the Commission. RAMIS replaces various independent financial management systems currently in use by the Commission. When developing RAMIS, it became clear that entities doing business with the Commission were identified in various ways that made unified accounting and revenue management difficult.

5. To address this problem, the Commission decided to assign a unique 10-digit identifying number called the FCC Registration Number (FRN) that will be used when doing business with the FCC. The Commission Registration System (CORES) was chosen as the mechanism to assign the FRN. CORES went on-line July 19, 2000, to permit the public to obtain FRNs on a voluntary basis. The Commission strongly recommended that the public begin using the FRN with all payments, including on applications, with regulatory fee payments, waiver petitions, auction payments, forfeiture remittances, and other payments and collections. In this proceeding, we propose to require those entities doing business with the Commission obtain an FRN and supply it on certain submissions to the Commission.

6. *The need for the FRN.* We propose to create a new subpart to Part 1 of our rules that will contain the FRN rules proposed herein, and cross-reference to the new subpart where appropriate in our rules. These proposed rules would make the use of the FRN mandatory in certain circumstances so that anyone not yet assigned an FRN or who has not yet obtained one must obtain one. These proposed rules would also address when the FRN will have to be provided with a filing. This will reduce the number of identifiers used by public entities in an effort to simplify their interaction with the Commission.

7. The reports of our own Inspector General and the GAO clearly indicated the need for a reassessment of our recordkeeping of monies collected. The collection of regulatory and application fees, auction payments, auction loan payments, and other monies due to the United States must be processed expeditiously and recorded properly. We tentatively conclude that the FRN will provide us with an improved mechanism for properly recording and tracking payments made to the Commission. The FRN will enable us to maintain the integrity and efficiency of the Commission's collection systems, correct the deficiencies identified in our accounting systems, improve customer service, and increase our efficiency. The FRN will enable us to ensure that fee payers' accounts are properly credited, resulting in fewer letters requesting confirmation of payment and making it easier for us to respond to inquiries. The FRN will enable us to assure that entities that claim to be exempt from paying fees are validly entitled to the exemption. The information entered into the CORES system will also eliminate repetitive collection of data and will enable the Commission by electronic mail to inform the public of refunds and send other informational alerts. The Commission intends to use the information to verify that entities doing business with the Commission have made proper payments, and to mail annual fee schedules and other materials.

8. While the FRN will be used with all FCC licensing and filing systems, it will not replace call signs, license numbers, certification numbers, or other numbers in authorization of service documents. Moreover, the CORES system will not replace the Commission's licensing or filing databases as a source of information about licensees. The FRN relates to the licensee, not the license, so that modification of a license does not affect the FRN or require the licensee to obtain a new FRN. However, if a license is transferred, the new license holder must have its own separate FRN.

9. *Who Must Obtain an FRN?* We propose that anyone doing business with the Commission, as that term is defined by the DCIA, 31 U.S.C. 7701(c)(2), must obtain an FRN. Thus, all businesses and individuals that file applications with the Commission—whether feeable or non-feeable—or make any payments of any type to the Commission will be required to obtain an FRN and provide it to the Commission in its filings. We note that this includes entities making contributions to the USF. The requirement applies not only to fee payers, but also to anyone filing an application who would pay a fee except for an exception in our rules or the statute, such as amateur radio operators, not-for-profit entities, and state and local governments. *See* 47 CFR 1.1114 and 1.1162. CORES registration will help us keep track of entities that claim they are exempt from paying fees. We include non-feeable items to facilitate compliance with the DCIA, which requires that anyone doing business with the federal government provide a taxpayer identifying number (TIN) to the government. *See* 31 U.S.C. 7701(c)(1). An FRN for these types of entities will also enable us to better respond to fee inquiries from these entities. We also propose to permit counsel and representatives of entities doing business with the Commission to obtain an FRN, but seek comment on this proposal. Finally, in certain instances when we cannot reasonably expect the party to obtain an FRN, discussed below, we propose to assign one.

10. To ease the transition to CORES, we assigned FRNs to entities already in the Universal Licensing System (ULS) TIN Registration database and whose service has been converted to ULS. This procedure assigned separate FRNs to hundreds of thousands of entities. In addition, the spectrum auction loan portfolio currently uses a Customer Information File (CIF) number to collect payment data from the debtors. Each bill to the debtor refers to this number and we already request that it be included in the payment information to assure proper credit. We will be converting from this number to the FRN. Auction licenses issued through ULS will probably already have a FRN assigned during the data conversion. Those entities that do not currently have an FRN based on these conversions can obtain one from our website, by mailing FCC Form 160 to the Commission, or by sending Form 160 along with an application or payment.

11. Some foreign entities are already registered in the ULS, and will be assigned an FRN as described above. We propose that those foreign entities that have not obtained TINs will be assigned an FRN by the CORES administrator.

12. An unusual category of fees is fees collected under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Our rules generally require that a FOIA requestor represent its willingness to pay applicable FOIA fees, and when the fee amount is determined a bill is issued. We receive FOIA requests from businesses and individuals, some of which regularly interact with the Commission and others that do not. We seek comment on whether FOIA requestors which have an FRN should have to provide it to the Commission when making a FOIA request, or for other FOIA requestors, whether an FRN should be assigned by the Commission upon issuance of a bill for the applicable FOIA fee. In a similar vein, we seek comment on whether due diligence requesters, who must pay research and copying fees, should have to acquire an FRN and provide it to the Commission.

13. Another unusual category is entities against which a forfeiture has been assessed. *See* 47 U.S.C. 501, *et seq.* Often these entities or individuals will have an FRN by virtue of their prior dealings with the Commission, but there may be many instances when an individual or business has not previously obtained an FRN. When we issue a notice of apparent liability (NAL) or other forfeiture-related order, we will attempt to discern the party's FRN. If the party does not have one, we will assign one and notify the party. Parties making forfeiture payments should submit the FRN of the party to whom the forfeiture was issued, regardless of whether the forfeiture is being paid directly by the subject or by counsel on behalf of a client. Similarly, parties to consent decrees involving voluntary contributions to the United States Treasury should also submit the FRN with their payments.

14. *Multiple FRN issues.* When we announced CORES, and held a forum discussing the implementation of CORES, we indicated that the system was designed to permit each entity with a separate TIN to obtain a separate FRN. We also indicated that FRNs could be obtained for as many separate business operations as an entity may require in its judgment, including a separate registration number for subsidiaries or sub-agencies, customers, or clients, even if these entities have the same TIN. In addition, an entity that has one TIN but many subdivisions that hold licenses or authorizations from the Commission may wish to have different FRNs for each subdivision. We include these proposals in this Notice.

15. We do not wish to create a situation in which one entity has obtained many FRNs, and uses a different FRN for different or even the same transaction. We are concerned that if we permit representatives or counsel to obtain and provide an FRN, we will still not know on whose behalf a payment is being made. Separate FRNs for related entities might complicate any future attempts to determine whether all related entities have paid all debts owed to the Commission. Limitations in CORES, RAMIS, and the Commission's filings systems may also require a different approach. We therefore seek comments on whether we should limit the number of FRNs that an entity may obtain, and whether we should penalize entities that abuse CORES by obtaining multiple FRNs. We also seek comment on whether we should include in our rules requirements that would address these issues, or adopt a new form that would enable us to identify and link all related entities.

16. *What is included in CORES?* The information collected by CORES includes entity name, entity type, TIN, contact address, and e-mail address. CORES is a system of records that contains identifying information about individuals and is subject to the Privacy Act. The information in CORES is for Commission use only and will not be published or distributed, although CORES has a query search that allows the general public to find the FRN, name, date and time of registration. CORES information may be shared with other governmental organizations as authorized under the DCIA and for other routine uses as described in the Privacy Act notice. CORES is designed so that TINs will not be available to the public. Accordingly, members of the general public will not be able to access CORES using TINs. Only a small number of Commission employees will have access to TIN information in conjunction with their work.

17. We will require that information provided to CORES must be kept current by the entities that secure the FRN. Changes and updates may be made to the password, name, address, contact representative name, contact address, contact telephone number and contact e-mail address on-line by visiting the FCC's web page or manually by filing FCC Form 161 (CORES Update/Change Form). The various licensing systems in use at the Commission will continue to be the source for a licensee's official mailing address on a specific license.

18. *When must the FRN be including in a filing with the Commission?* We propose that FRNs must be provided with any filings requiring payment of a fee. FCC Form 159, used in both electronic and paper filings requiring fees, has been modified to accommodate this requirement. In addition, we propose that any filing not requiring a fee but requiring a TIN under the DCIA must include an FRN. FCC Form 162 is the appropriate vehicle for providing the FRN in these instances. We also seek comment on whether we should attempt to develop a comprehensive list of items requiring the FRN, but caution that this may difficult to do.

19. We invite the public to submit in comments any questions concerning specific circumstances in which the FRN must be provided. However, we note that certain filers, such as commenters in rulemakings and members of the public and others petitioning to deny or objecting to the issuance of a Commission authorization, need not obtain or submit an FRN, even if they have one, in order to participate in the Commission proceeding. Letters, reports that do not require payment of a fee, or electronic mail communications to the Commission do not generally require an FRN. Persons

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searching databases such as ULS to verify information will not require the FRN to search the database. Also, pleadings will not require an FRN so long as no fee is required.

20. We propose that counsel or other representatives that makes fee payments on behalf of one or more clients should provide their FRN and the FRN of the client or clients with the payments. Counsel and representatives should take care to ensure that when making payments on behalf of clients, they identify the client and the amount being paid, ensure that the client's FRN is included, and ensure that the FRN provided is the proper one for their client. We seek comment on this proposal. We also propose to amend section 1.221(f) of our Rules, 47 CFR 1.221(f), to require that when a written appearance that must be accompanied by a fee payment is required, counsel must provide an FRN.

21. In feeable complaint proceedings, we tentatively conclude that either the complainant (or in a multiple party complaint, the lead complainant) and the counsel on behalf of the complainants should submit their FRNs. We seek comment on whether all complainants in feeable complaint proceedings should provide their FRN.

22. *How will the FRN be reported?* The FRN will be included primarily on the FCC Form 159 that is required whenever a fee is paid. In addition, all FCC application forms will be amended either as they come up for renewal under the Paperwork Reduction Act (PRA) or if other changes are made to the paper forms to include a field for the FRN. Applications and electronic filings requiring an FRN have been or will be amended to include a field for the FRN. For non-feeable items requiring an FRN, or if there is no application form but the FRN is required, the FRN can be provided on FCC Form 162.

23. *Failure to provide the FRN.* Except as described below, we propose to reject filings that require an FRN but do not include it. We have such a standard currently for application fees (47 CFR 1.1109, 1.1112 and 1.1116), regulatory fees (47 CFR 1.1157 and 1.1164), and applications generally (47 CFR 1.764). We tentatively conclude a similar standard is required for the FRN. As discussed above, the FRN will be required on the FCC Form 159 filed with fee payments, on all application forms as amended to include the FRN, or on FCC Form 162 to accompany forms that have not yet been amended to require the FRN or applications that do not have specific forms. Our rules already address the completeness of applications. *E.g.*, 47 CFR 5.65(a); 25.112(a)(1); 25.527; 73.3564(a)(1); and 78.20(a).

24. Failure to include the FRN would render the application incomplete. We propose that when an application is filed without an FRN, we will not accept the application. The application may be re-submitted with the FRN, but we propose that the date the re-submitted application is received by the Commission or its agent will be considered the date of filing. If an application is resubmitted with the FRN after the specified deadline for filing, it will be considered late-filed and subject to appropriate action. If an application is accepted and it is later discovered that it lacks the FRN, failure to include the FRN will be deemed grounds for dismissal. Application fees may be retained as we do in other circumstances in which applications are dismissed as defective. *Compare* 47 CFR 1.1113 *with* 47 CFR 1.1108. Because application processes vary among our Bureaus, we propose to include in Part 1 Subpart W a generally applicable rule concerning the handling of filings that omit the FRN, and appropriate cross-references to this new subpart. We seek comment on whether this approach is sufficient, or whether we need to amend individual rules governing specific applications. Such comments should specifically identify which rules are believed to require amendment. We also seek comment on how to handle any auction up-front payments, down payments, or auction loan payments made without an FRN, but note that auction registration will require an FRN. We also seek comment on whether the failure of counsel or a representative to provide his or her FRN should affect the status of an application or filing.

25. The next filing of regulatory fees will occur in September 2001; and we will consider in the next rulemaking proceeding to establish regulatory fees how to handle circumstances in which the regulatory fee is paid but the FRN is not provided.

26. We seek comment on what should happen if a complainant in a feeable complaint proceeding fails to submit the FRN. We tentatively conclude that in such cases, failure to submit the FRN may result in dismissal. However, we will permit Commission staff the discretion to allow a party to correct this omission within a reasonable period of time, as determined by the staff. In the case of forfeiture proceedings and consent decrees involving voluntary contributions, we intend to retain the forfeiture payments in cases where the subject fails to provide its obtained or assigned FRN.

27. Tariff publications present unique issues. Some are filed electronically, some on paper, and still others are filed on diskette with an accompanying paper cover letter or other transmittal. *See* 47 CFR 61.13, *et seq.* (tariff publications filed electronically through ETFS); 47 CFR 61.1, *et seq.* (publications filed on paper or diskette). Regardless of how the publication is filed, the payment of the applicable fee is made separately, either electronically or by mail. In addition, there are varying notice periods for tariff publications to become effective, ranging from a maximum of 120 days to the same day. *See* 47 U.S.C. 203(b) (maximum 120 days notice); 204(a)(3) (seven or fifteen days' notice for local exchange carriers); and 226(h)(1)(A) ("changes in [informational tariff] rates, terms, or conditions shall be filed no later than the first day on which the changed rates, terms, or conditions are in effect"); 47 CFR 61.23(c) (one day's notice for non-dominant carriers). There are therefore different processing and fee payment arrangements. *See generally* 47 CFR 61.13 *et seq.*, 61.18, *et seq.*, 61.28, *et seq.*, and 61.31, *et seq.* Finally, there are limits on what actions we may take once a tariff publication has become effective. *See, e.g.*, 47 U.S.C. 204(a) (suspension and investigation of tariff publications) and 205(a) (action on unlawful tariff publications). We propose the following actions regarding the FRN and tariff publications. We propose to modify the ETFS so that a carrier authorized to use that system will be required to provide not only its regular password and login but also its assigned FRN and FRN password to gain access. Also, both the paper and electronic versions of the Form 159, which accompany fee payments, have been amended to include a field for the FRN. In addition, the FRN will be required on the cover letter or other transmittal accompanying each tariff publication. We seek comment on how we should treat tariff publications that omit a valid FRN. For example, should such publications be rejected, declared unlawful, or be subject to other action.

28. *Authority.* Section 4(i) of the Communications Act, 47 U.S.C. 154(i), authorizes the Commission "to perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." *See New England Tel. & Tel. Co.* v. *FCC*, 826 F.2d 1101, 1108 (D.C. Cir. 1987) (section 4(i) serves as the Communications Act's "necessary and proper clause"); *see also* 47 U.S.C. 303(r) (authority to prescribe rules and regulations to implement the

Communications Act). Pursuant to section 8 and 9 of the Communications Act, as amended, we have broad authority to "prescribe appropriate rules and regulations" in the assessment and collection of charges and fees. 47 U.S.C. 158(f) and 159(f)(1). *See also* 47 U.S.C. 309(j) (Commission is authorized to prescribe rules to implement competitive bidding for spectrum); 47 U.S.C. 254(d) (carrier contributions to USF). We believe these provisions of the Communications Act authorize us to require entities interacting with the Commission to obtain and provide the FRN to us.

29. *Paperwork Reduction Act.* We have obtained Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA) for the information collections related to CORES and the FRN. FCC Form 159 has been amended to include the FRN under OMB Control Number 3060–0589. FCC Form 160, the CORES Registration Form, received OMB approval under OMB Control Number 3060–0917. FCC Form 161, the CORES Update Form, received OMB approval under OMB Control Number 3060–0918. FCC Form 162, the CORES Certification Form, received OMB approval under OMB Control Number 3060–0919. Providing the FRN for non-feeable items, and a blanket request to update any other FCC forms to include the FRN, was obtained from OMB in OMB Control Number 3060–0728. As FCC forms are modified, the FRN requirement will be included when we seek OMB approval for the modifications. We may, as a result of comments received in this proceeding and our further consideration of these matters, adopt reporting or recordkeeping requirements subject to the PRA. We will seek OMB approval for such information collections at that time.

30. *Regulatory Flexibility Act.* We hereby certify, and tentatively conclude we will be able to so certify if we adopt these rules in final form, that the rules proposed in this Notice will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The rules require certain entities or individuals to obtain an FRN. A substantial number of entities doing business with the Commission automatically received their FRN by virtue of their prior registration in the ULS. We have proposed to make it extremely simple, and virtually cost-free, for anyone else to obtain an FRN. Nor do we believe the proposed rule amendments establishing penalties for failure to provide the FRN will have a significant economic impact on a substantial number of small entities. Our rules already generally provide for penalties when applications are not substantially complete. The proposed rule amendments simply conform our rules to the new FRN requirement. Therefore, the rules will not have a significant economic impact. We invite comments on this tentative conclusion.

31. *Ex Parte Matters.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

32. *Comment Filing.* Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through ECFS may be sent as an electronic file via the Internet to <www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. When completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Parties should reference MD Docket No. 00–205 in their comments.

33. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the Reference Information Center (Room CY–A257) of the Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Washington, DC 20554. Copies of comments and reply comments will also be available through the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, TTY (202) 293–8810.

34. *Further Information.* Additional information concerning CORES is found in the Frequently Asked Question portion of the CORES homepage on our Internet site, located at <www.fcc.gov> and by clicking on the CORES link.

35. Pursuant to Sections 4(i), 8(f), 9(f)(1), 254(d), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 158(f), 159(f)(1), 254(d), 303(r), and 309(j), and 31 U.S.C. 7701(c)(1), this Notice of Proposed Rulemaking is hereby adopted.

36. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 1

Administrative practice and procedure; reporting and recordkeeping requirements.

47 CFR Parts 21, 61, 73, 74 and 76

Reporting and recordkeeping requirements

Federal Communications Commission

Shirley Suggs,

Chief, Publications Group.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposed to amend 47 CFR Parts 1, 21, 61, 73, 74, and 76 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citations for part 1 continue to read as follows:

Authority: 47 U.S.C. 151, 154(j), 155, 255, 303(r), 309.

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2. Section 1.42 is amended by adding a new paragraph (c) to read as follows:

§ 1.42 Applications, reports complaints; cross-reference.

* * * * *

(c) Rules governing the FCC Registration Number (FRN) are contained in Subpart W of this part.

3. Section 1.77 is amended by adding a new sentence following the first sentence in the introductory text as follows:

§ 1.77 Detailed application procedures; cross-reference.

* * * Applicants should also refer to the Commission rules regarding the payment of statutory charges (subpart G of this part) and the use of the FCC Registration Number (FRN) (see subpart W of this part).

* * * * *

4. Section 1.221 is amended by redesignating paragraph (f) as paragraph (f)(1), designating the note as "Note to paragraph (f)(1):", and adding a new paragraph (f)(2) to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(f) * * *

(2) When a fee is required to accompany a written appearance as described in paragraph (f)(1) of this section, the written appearance must also contain the appropriate FCC Registration Number (FRN) in conformance with subpart W of this part. The presiding judge may dismiss a written appearance that does not contain the FRN. The presiding judge may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the FRN within the original 20-day filing period.

* * * * *

5. Section 1.721 is amended by removing the word "and" at the end of paragraph (a)(13), and adding the word "and" at the end of paragraph (a)(14), and by adding a new paragraph (15) to read as follows:

§ 1.721 Format and content of complaints.

* * * * *

(a) * * *

(15) A FCC Registration Number is required under Part 1, Subpart W. Submission of a complaint without the appropriate FCC Registration Number as required by Part 1, subpart W may result in dismissal of the complaint. The staff may, at its discretion, require the complainant to correct the omission of the FCC Registration Number within a reasonable period of time as specified by the Commission staff.

* * * * *

6. Section 1.934 is amended by removing the word "or" at the end of paragraph (d)(2), and adding the word "or" at the end of paragraph (d)(3), and by adding a new paragraph (d)(4) to read as follows:

§ 1.934 Defective applications and dismissal.

* * * * *

(d) * * *

(4) The FCC Registration Number (FRN) has not been provided.

* * * * *

7. Add a new subpart W to read as follows:

Subpart W—FCC Registration Number

Sec.

1.8001 FCC Registration Number (FRN).
1.8002 Obtaining an FRN.
1.8003 Providing the FRN in Commission filings.
1.8004 Penalty for failure to provide the FRN.

§ 1.8001 FCC Registration Number (FRN).

(a) The FCC Registration Number (FRN) is a 10-digit unique identifying number that is assigned to entities doing business with the Commission.

(b) The FRN is obtained through the Commission Registration System (CORES) over the Internet at the CORES link at <www.fcc.gov> or by filing FCC Form 160.

§ 1.8002 Obtaining an FRN.

(a) The FRN must be obtained by anyone doing business with the government as defined in 31 U.S.C. 7701(c)(2), including but not limited to

(1) Anyone required to pay statutory charges under subpart G of this part;

(2) Anyone applying for a license who is exempt from paying statutory charges under subpart G of this part, see §§ 1.1114 and 1.1162;

(3) Anyone participating in a spectrum auction;

(4) Anyone holding or obtaining a spectrum auction license or loan; and

(5) Anyone paying statutory charges on behalf of another entity or person.

(b)(1) When registering for an FRN through CORES, an entity's name, entity type, contact name and title, address, and taxpayer identifying number (TIN) must be provided. For individuals, the TIN is the social security number (SSN).

(2) Information provided when registering for an FRN must be kept current by registrants either by updating the information on-line at the CORES link at <www.fcc.gov> or by filing FCC Form 161 (CORES Update/Change Form).

(c) An FRN may be obtained separately by each subsidiary of a business, at the discretion of the business entity. Each subsidiary with a different TIN must obtain a separate FRN.

(d) An FRN may be assigned by the Commission, which will promptly notify the entity of the assigned FRN.

§ 1.8003 Providing the FRN in Commission Filings.

The FRN must be provided with any filings requiring the payment of statutory charges under subpart G of this Part, anyone applying for a license who is exempt from paying statutory charges under subpart G of this Part, anyone participating in a spectrum auction, making up-front payments or deposits in a spectrum auction, anyone making a payment on an auction loan, anyone making a contribution to the Universal Service Fund, and anyone paying a forfeiture.

§ 1.8004 Penalty for Failure to Provide the FRN.

(a) Electronic filing systems for filings that require the FRN will not accept a filing without the appropriate FRN. If a party seeks to make an electronic filing and does not have an FRN, the system will direct the party to the CORES website to obtain an FRN.

(b) Except as provided in other Commission rules, filings subject to the FRN requirement and submitted without an FRN may be returned or dismissed. A missing FRN may be corrected and the filing resubmitted. Except in feeable complaint proceedings, for purposes of determining whether the filing is timely, the date the resubmitted application is received by the Commission or its agent with the FRN will be considered the date of filing.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

8. The authority citations for part 21 continue to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 410, 602, 48 Stat. As amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

9. Section 21.20 is amended by removing the word "or" at the end of paragraph (b)(9), and by adding the word "or" at the end of paragraph (b)(10), and by adding a new paragraph (b)(11) to read as follows:

§ 21.20 Defective applications.

* * * * *

(b) * * *

(11) The application does not contain the FCC Registration Number (FRN) as required under Part 1, Subpart W of this chapter.

* * * * *

PART 61—TARIFFS

10. The authority citations for part 61 continue to read as follows:

Authority: Secs. 1, 4(I), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

11. Section 61.1 is amended by revising paragraph (b) to read as follows:

§ 61.1 Purpose and application.

* * * * *

(b) Tariff publications filed with the Commission must conform to the rules in this part and with Commission rules regarding the payment of statutory charges (see part 1, subpart G of this chapter) and the use of FCC Registration Numbers (FRNs) (see part 1, subpart W of this chapter). Failure to comply with any provisions of these rules may be grounds for rejection of the non-complying publication, a determination that it is unlawful or other action.

* * * * *

12. Section 61.15 is amended by adding a new paragraph (a)(4) to read as follows:

§ 61.15 Letters of transmittal and cover letters.

* * * * *

(a) * * *

(4) Include the FCC Registration Number (FRN) of the carrier on whose behalf the cover letter is submitted. See part 1, subpart W of this chapter.

* * * * *

13. Section 61.21 is amended by adding a new paragraph (a)(3) to read as follows:

§ 61.21 Cover letters.

* * * * *

(a) * * *

(3) All cover letters and letters of transmittal shall include the FCC Registration Number (FRN) of the issuing carrier on whose behalf the letter is submitted. See part 1, subpart W of this chapter.

* * * * *

14. Section 61.33 is amended by removing the word "and" at the end of paragraph (a)(3), and adding the word "and" at the end of paragraph (a)(4), and by adding a new paragraph (a)(5) to read as follows:

§ 61.33 Letters of Transmittal.

(a) * * *

(5) Include the FCC Registration Number (FRN) of the carrier on whose behalf the letter is submitted. See part 1, subpart W of this chapter.

* * * * *

PART 73—RADIO BROADCAST SERVICES

15. The authority citations for part 73 continue to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

16. Section 73.1010 is amended by adding a new paragraph (a)(9) to read as follows:

§ 73.1010 Cross reference to rules in other parts.

(a) * * *

(9) Part 1, Subpart W of this chapter, "FCC Registration Number". (§§ 1.8001—1.8005.)

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

17. The authority citations for part 74 continue to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

18. Section 74.5 is amended by adding a new paragraph (a)(7) to read as follows:

§ 74.5 Cross-reference to rules in other parts.

(a) * * *

(7) Part 1, Subpart W of this chapter, "FCC Registration Number". (§§ 1.8001—1.8005.)

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

19. The authority citations in part 76 continue to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

20. Section 76.1610 amended by adding a new paragraph (f) to read as follows:

§ 76.1610 Change of operational information.

* * * * *

(f) The operator's FCC Registration Number (FRN) as required under part 1, subpart W of this chapter.

* * * * *

[FR Doc. 00–31722 Filed 12–14–00; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–00–8248]

RIN No. 2127–AF36

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document grants a request to extend the comment period on an agency proposal to amend the rear and side impact test procedures specified in the federal motor vehicle safety standard on fuel system integrity. The proposed amendment would replace the current test requiring the rear of the test vehicle to be impacted by a flat, rigid barrier at 48 kilometers per hour (30 miles per hour) with a test requiring only a portion of the rear of the test vehicle to be impacted by a lighter, deformable barrier at 80 km/h (50 mph). The proposal also would specify that the test procedure used in the standard on side impact protection be used for the standard on fuel system integrity. The agency is extending the comment period an additional 30 days.

DATES: Comments on the November 13, 2000 proposal, 65 FR 67693, Docket No. NHTSA–00–8248, must be received by the agency on or before the close of business on February 12, 2001.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically via e-mail at *http://dms.dot.gov*.

You may call the Docket at 202–366–9324 and visit it from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William J. J. Liu, Office of Vehicle Safety Standards, (Telephone 202–366–2264) (FAX 202–366–4329).

For legal issues, you may call Mr. Dion Casey, NCC–20, Rulemaking Division, Office of Chief Counsel, (Telephone 202–366–2992) (FAX 202–366–3820).

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On November 13, 2000, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend the rear impact test in Standard No. 301, Fuel System Integrity. The current test procedure requires the entire rear of the vehicle to be impacted by a flat, rigid barrier at speeds up to 48 km/h (30 mph). Under the proposal, NHTSA would replace that full rear impact test procedure with an offset rear impact test procedure requiring only a portion of the rear of the vehicle to be impacted with a lighter, deformable barrier at 80 km/h (50 mph). The agency has tentatively concluded that the new, more stringent test procedure will save lives and prevent injuries.

In the NPRM, the agency also proposed to change Standard No. 301's procedure for side impact tests. Currently, the standard specifies a side impact test procedure that differs from the test procedure in our standard on side impact protection (Standard No. 214, Side Impact Protection). Under the proposal, NHTSA would specify that the test procedure in Standard No. 214 be used for Standard No. 301 as well. The agency has tentatively concluded that this change will provide a more realistic test, increase safety, and reduce testing costs.

The NPRM specified a comment closing date of January 12, 2001 (60 days after the date of publication). However, on December 8, 2000, the agency received a request for an extension of the comment closing date from the Alliance of Automobile Manufacturers (Alliance). The Alliance stated that it wishes to provide comments on the proposal, but will be unable to do so in a timely fashion due to the complexity of the issues involved and the traditional holiday shutdowns in the U.S., Europe, and Japan. Specifically, the Alliance requests additional time to allow its members to conduct testing and gather data so that the Alliance may respond more fully to the proposal.

The agency may grant a person's petition for an extension of a comment period if the petition shows good cause for the extension, and if the extension is consistent with the public interest. 49 CFR 553.19. The agency concludes that the petitioner has made that showing and that an extension is in the public interest. An extension would aid the Alliance and other interested parties in fully responding to the proposed changes to Standard No. 301. Accordingly, this notice extends the comment closing date to February 12, 2001.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority is at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: December 12, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–31976 Filed 12–14–00; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 65, No. 242

Friday, December 15, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Scenturion, Inc., of Clinton, Washington, an exclusive license to U.S. Patent Application Serial No. 09/156,348 filed September 18,1998, entitled, "Chemical Attractants for Moths." Notice of Availability was published in the **Federal Register** on November 3, 1999.

DATES: (**Federal Register**) Comments must be received on or before February 13, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158; Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Scenturion, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 00–31963 Filed 12–14–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Commodity Credit Corporation's (CCC) intention to request a reinstatement of a previously approved information collection under the Sugar Program. The Sugar Program is authorized by Section 156 of the 1996 Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) and implemented by regulations issued by CCC. Paragraph 156(b)(1) of the 1996 Act requires cane sugar refiners, sugar beet processors, and sugarcane processors to "furnish the Secretary, on a monthly basis, such information as the Secretary may require to administer sugar programs, including the quantity of purchases of sugarcane, sugar beets, and sugar, and production, importation, distribution, and stock levels of sugar."

DATES: Comments on this notice must be received by February 13, 2001 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Thomas W. Bickerton, Economic Policy Analysis Staff (EPAS), Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), STOP 0516, 1400 Independence Avenue, SW, Washington, DC 20250–0516; e-mail thomas_bickerton@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Sugar Program.

OMB Control Number: 0560–0138.

Type of Request: Reinstatement of a previously approved collection.

Abstract: The information which will be collected under OMB control number 0560–0138 will allow CCC to effectively administer the Sugar Program authorized and mandated by Section 156 of the 1996 Act. The 1996 Act requires USDA to collect and publish, on a monthly basis, information as the Secretary may require to administer sugar programs, including sales of sugarcane, sugar beets, and sugar, and production, importation, distribution, and stock levels of sugar. This legal requirement to publish monthly data could not be satisfied with less frequent collections.

FSA uses these data to estimate supply and use for the monthly *World Agricultural Supply and Demand Estimates* report; publish the monthly *Sweetener Market Data* report; establish regional sugar loan rates; make appropriate adjustments in loan rates for raw and beet sugar for differences in grade, type, quality, and other factors; and estimate the impact of alternative sugar policy options on the sugar market. Also, these data help USDA determine the adequacy of the amount of sugars, syrups, and molasses permitted to be imported.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.5554 hours per response.

Respondents: Cane sugar refiners, sugar beet processors, and sugarcane processors.

Estimated Number of Respondents: 51.

Estimated Number of Responses per Respondent: 17.

Estimated Total Annual Burden on Respondents: 18,698 hours.

Proposed topics for comments include, but are not limited to: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of informational technology. Comments regarding this information collection requirement should be

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directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, DC 20503, or to Thomas W. Bickerton; EPAS, FSA, USDA, STOP 0516, Room 3734-South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0516; e-mail thomas—bickerton@wdc.fsa.usda.gov. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on December 7, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–31956 Filed 12–14–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of an Environmental Assessment, Decision Notice, and Finding of No Significant Impact for An Amendment to the Hoosier National Forest Land and Resource Management Plan; Brown, Crawford, Jackson, Lawrence, Martin, Orange, and Perry Counties, Indiana

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability of an environmental assessment.

SUMMARY: On November 22, 2000, Hoosier National Forest Supervisor, Kenneth G. Day (Responsible Official) decided to amend the 1991 Hoosier National Forest Land and Resource Management Plan (Forest Plan). Copies of the Environmental Assessment, Plan Amendment pages, Decision Notice, and Finding of No Significant Impact, are available upon request. This amendment modifies the boundaries of the existing Management Area 8.2 special areas, makes a decision on the final allocation of the Management Area 9.2 proposed special areas, and allocates five new areas identified since the signing of the Forest Plan for special area status. The boundaries incorporate all of the special features responsible for designating the area as a special area and provides for protection of these special features. This notice is provided pursuant to National Forest System Land and Resource Management Planning regulations (36 CFR 219.35, 65 FR 67579, November 9, 2000).

DATES: On November 22, 2000, Hoosier National Forest Supervisor, Kenneth G. Day (Responsible Official) decided to amend the 1991 Hoosier National Forest Land and Resource Management Plan (Forest Plan). A legal notice was published in the Sunday Herald-Times, Bloomington, Indiana newspaper in accordance with 36 CFR 217.8(a)(2) on November 26, 2000.

ADDRESSES: Send requests for documents to: Forest Supervisor, Hoosier National Forest, 811 Constitution Avenue, Bedord, IN 47421.

Alternatively, direct electronic mail to: "r9 hoosier website"@fs.fed.us ATTN: Plan Amendment.

FOR FURTHER INFORMATION CONTACT: Regis Terney, Forest Planner, at 812–275–5987. TDD 812–275–7817; or direct electronic mail to: "r9 hoosier website"@fs.fed.us, or access the forest web page at www.fs.fed.us/r9/hoosier.

Responsible Official: Kenneth G. Day, Forest Supervisor, 811 Constitution Avenue, Bedford, Indiana, 47421.

SUPPLEMENTARY INFORMATION: These special areas are located throughout the Hoosier National Forest on about 17,500 acres of National Forest System land. The boundaries incorporate all of the special features responsible for designating the area as a special area and provides for protection of these special features. Boundaries are designed to be easily recognizable by using physical features on the ground such as roads, ridges, and creeks. This is a non-significant amendment.

Public involvement was an important part of the decision making process for this proposal. On November 6, 1997, we started scoping with mailing of letters to interested parties and the mailing of a news release to newspaper, television, and radio news organizations. We requested that people send their comments on the scoping proposal to our office by December 6, 1997. A second round of public involvement occurred with the issuance of the pre-decisional environmental assessment on February 27, 2000. We published a legal notice notifying the public of the availability of the EA for review in the Sunday Herald-Times, Bloomington, Indiana on February 27, 2000, and the Perry County News, Tell City, Indiana on February 28, 2000. A 30-day formal comment period followed release of the predecisional EA on February 27, 2000 for review (until March 28, 2000).

This decision is subject to appeal pursuant to USDA Forest Service regulations 36 CFR 217.3. Any written appeal must be postmarked or submitted to the Regional Forester, USDA Forest Service, Eastern Region, 310 West Wisconsin Ave., Suite 500, Milwaukee, WI 53203, within 45 days of the date of the legal notice was published in the Sunday Herald-Times, Bloomington, Indiana in accordance with 36 CFR 217.8(a)(2). The appeal period begins the day following the legal notice publication in the Sunday Herald-Times. Appeals must meet the content requirements of 36 CFR 217.9. The Forest Service is an equal opportunity organization.

Dated: December 7, 2000.

Kenneth G. Day,

Forest Supervisor.

[FR Doc. 00–31983 Filed 12–14–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma; Proposed Projects in the Invasive Plant Analysis Area, Carson National Forest, Portions of Rio Arriba, Mora, Taos, and Colfax Counties; Santa Fe National Forest, Portions of Rio Arriba, Los Alamos, Sandoval, San Miquel, and Mora Counties, New Mexico

AGENCY: Forest Service, USDA.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement.

SUMMARY: The Carson National Forest, and Santa Fe National Forest will prepare a joint environmental impact statement (EIS) to analyze information relevant to reduce and control existing populations of invasive plants within the boundaries of the two national forests. Proposed projects can be accomplished using one, or a combination of methods including mechanical, herbicidal, biological, and cultural treatments.

DATES: It is estimated that the draft environmental Impact statement (DEIS) will be completed and distributed by the end of March 2001. A 45 day comment period will follow issuance of the DEIS. The final environmental impact statement is estimated to be released in June 2001.

ADDRESSES: The draft environmental impact statement (DEIS) will be available upon request from the Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, Attn: Range and Wildlife; or Santa Fe Forest Supervisor's Office, 1471 Rodeo Road, P.O. Box 1689, Santa Fe, NM 87504–1689, Attn: Range and Wildlife. Comments related to this NOI can be sent to the contractor Mike, Tremble, Ecosystem Management Inc., 4004 Carlisle Blvd., NE, Suite C1, Albuquerque, New Mexico 87107; or via e-mail at *mtremble@nmia.com.*

Responsible Official: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether or not projects will be implemented by the Forest Service in the Carson National Forest; The Forest Supervisor, Santa Fe National Forest, is the responsible official and will decide whether or not projects will be implemented by the Forest Service in the Santa Fe National Forest. The Forest Supervisor of each National Forest will decide what projects and where, how and when they will be implemented.

FOR FURTHER INFORMATION CONTACT: Resource Staff Officer (Project Leader), Charles Jankiewicz, Santa Fe National Forest, 505–438–7820, or Daniel Rael, Carson National Forest, 505–758–6200.

SUPPLEMENTARY INFORMATION:

Location: The analysis area is the two national forests, Carson, and Santa Fe, lying predominantly in the Sange de Cristo, the Jemez, and the Tusas mountains all in central to north central New Mexico.

Purpose: The purpose of treating the invasive plant infestations within the boundaries of the Carson, and Santa Fe National Forests is to reduce the likelihood of ecological change from native plant species to introduced plant species, noxious, or detrimental to native plant communities, wildlife species, and domestic livestock.

Decisions To Be Made

The Decisions To Be Made Are

- Whether areas should be allocated to no treatment of invasive weeds (plants). If so, where and how much?
- Whether areas should be treated to reduce and control invasive weeds (plants). If so, where and how much?
- Whether one, or a combination of methods should be used, including mechanical, herbicidal, biological, or cultural treatments should be used. If so, where and how much should be treated.

Supplemental Information for Public Participation

Comments received in response to this NOI, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.23(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA; confidentiality may be granted in only very limited circumstances such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comment may be resubmitted with or without name and address within 10 days.

Dated: December 8, 2000.

Steve Okamoto,

Acting Forest Supervisor, Carson National Forest.

Dolores Maese,

Acting Forest Supervisor, Santa Fe National Forest.

[FR Doc. 00–31952 Filed 12–14–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Griffin Springs Resource Management Project, Dixie National Forest, Garfield County, Utah

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent (NOI) to prepare an Environmental Impact Statement. (The original Notice of Intent was published on November 16, 1998 and a revised NOI changing the project name from Aquarius Ecosystem Restoration Project (AERP) to Griffin Springs Resource Management Project (GSRMP) was published on July 26, 1999.) Comments originally collected under the NOI for the Aquarius Ecosystem Restoration Project will be used for the Griffin Springs Resource Management Project.

SUMMARY: The Dixie National Forest, Garfield County, Utah, announced November 16, 1998, its intent to prepare an Environmental Impact Statement (EIS) that would analyze management proposals within the Aquarius Ecosystem Restoration Project. Because a portion of the area was affected by 36 CFR part 212, Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas, and there are existing roadless areas within the project area, the project area was divided into smaller decision blocks. A Revised NOI for the Griffin Springs Resource Management Project was published in the Federal Register on July 26, 1999.

Comments received during the AERP scoping period or in response to the original or revised NOI will be addressed in the GSRMP analysis. Since the revised NOI was published the GSRMP proposed actions and analysis area have been changed. The southern portion of the analysis area located on Barney Top has also been made a separate decision block, and the analysis area has been expanded to include an adjacent area located in section 8, T33S; R1E; SLBM that is experiencing tree mortality from bark beetles. The Proposed Action now includes sanitation and salvage harvesting that would remove spruce beetle infested trees and recently killed trees on 714 acres. Implementation of the GSRMP would not require new road construction.

The proposed action no longer includes construction of a trailhead for the Powell Point trail (#6.0) at the junction of the Powell Point non-motorized trail and the end of FS road (#1516), construction of a trailhead for the Gap trail (#1.51) at the end of Forest road (#1370), construction of a trailhead at Clayton Guard Station to serve Grass Lakes (#1.61), Pacer Lake (#4.0), Poison Creek (#3.0) and Antimony Lake (#2.0) motorized trails, or construction of a trailhead for the North Creek lakes non-motorized trail (#1.5). The previously proposed trailhead construction at the above locations included, parking areas, signs and an information kiosk. The proposed parking area at the end of the road #0176 at Row Lakes has also been dropped.

Travel management proposals have also been eliminated. Previously, travel management proposals within the AERP project area included: the closing of 16.3 miles of existing roads with physical barriers and obliteration; and the re-vegetation of 54.6 miles of existing roads.

A portion of the prescribed burning located in sections 10 and 15; T34S; R1W; SLBM has also been dropped. This proposal would have regenerated approximately 200 acres of aspen within the spruce/fir type, with a stand replacing prescribed fire.

An updated scoping notice is available at the office listed below. the DEIS is expected to be available for review by March 2001.

FOR FURTHER INFORMATION CONTACT: Cindy Calbaum, Interdisciplinary Team Leader, (435) 826–5400, Escalante Ranger District, PO Box 246, Escalante, Utah 84726.

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Dated: December 6, 2000.

Mary Wagner,

Forest Supervisor.

[FR Doc. 00–31982 Filed 12–14–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 15, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 3, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Janitorial/Custodial

Naval & Marine Corps Reserve Center, Peoria, Illinois
NPA: Community Workshop & Training Center, Peoria, Illinois
Naval & Marine Corps Reserve Center, Lehigh Valley, Pennsylvania
NPA: Via of the Lehigh Valley, Inc., Bethlehem, Pennsylvania
Mailroom Operation, McCoy Federal Building, Jackson, Mississippi
NPA: Mississippi Industries for the Blind, Jackson, Mississippi
Uniform Rental Service, National Institute of Health, Bethesda, Maryland
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Commodity

Floorboard, Wood, 2510–01–067–2630.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–31986 Filed 12–14–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 15, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 9, October 20 and October 27, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 36663, 63057 and 64420) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Services

Administrative Services

General Services Administration, Public Building Service, Property Development Division, 230 S. Dearborn Street, Chicago, Illinois

Administrative Services

U.S. Department of Commerce, National Weather Service NOAA, National Reconditioning Center, Kansas City, Missouri,
Eyewear Prescription Service, VA Outpatient Clinic, Port Richey, Florida
General Records Management Support, Corpus Christi Army Depot, Corpus Christi, Texas
Grounds Maintenance, Fort McPherson, Fort McPherson, Georgia
Janitorial/Custodial, Ford House Office Building, Washington, DC
Medical Transcription, Federal Bureau of Prisons, Federal Medical Center, Lexington, Kentucky
Temporary Administrative General Support Services, National Institute of Health, Bethesda, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48 and 51 CFR 41–2.4. Accordingly, the following commodities are hereby deleted from the Procurement List:

Commodities

Arming Wire
1350–00–889–8165
Arming Wire Assembly
1325–01–155–9965
1325–01–264–5465
1325–00–947–6698
Cleaning Compound
7930–01–398–0945
Detergent, General Purpose
7930–01–393–6761
Enamel
8010–01–332–3739
Stepladder
5440–00–227–1593
5440–00–171–9836
5440–00–227–1594
5440–00–227–1596
5440–00–227–1595
5440–00–227–1592
Stepladder, Fiberglass
5440–01–415–1238
5440–01–415–1240
5440–01–415–1241

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–31987 Filed 12–14–00; 8:45 am]

BILLING CODE 6353–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823, A–428–814, C–428–817, A–580–815, C–580–818, A–421–804, C–401–401]

Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Canada, Germany, Korea, the Netherlands, and Sweden.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the following antidumping and countervailing duty orders on certain carbon steel products from Canada (A–122–823), Germany (A–428–814, C–428–817), Korea (A–580–815, C–580–818), the Netherlands (A–421–804), and Sweden (C–401–401), is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See 65 FR 75301 (December 1, 2000). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the following antidumping and countervailing duty orders:

Product	Country	ITA Case No.
Cut-to-Length	Canada	A-122-823
Cold-Rolled	Germany	C-428-817
Cold-Rolled	Germany	A-428-814
Cold-Rolled	South Korea	A-580-815
Cold-Rolled	South Korea	C-580-818
Cold-Rolled	Netherlands	A-421-804
Cold-Rolled	Sweden	C-401-401

Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for International Trade Administration, US Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1999, the Department initiated (64 FR 47767), and the Commission instituted, (64 FR 47862) sunset reviews of the antidumping and countervailing duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the following antidumping and countervailing duty orders on certain carbon steel products would likely lead to continuation or recurrence of dumping and/or subsidization, and notified the Commission of the magnitude of the margins likely to prevail were the orders revoked:

Product	Country	ITA Case No.	Federal Register citation	Date
Corrosion-Resistant	Australia	A-602-803	65 FR 18049	04/06/00
Cut-to-Length	Belgium	A-423-805	65 FR 18292	04/07/00

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Product	Country	ITA Case No.	Federal Register citation	Date
Cut-to-Length	Belgium	C-423-806	65 FR 18066	04/06/00
Cut-to-Length	Brazil	A-351-817	65 FR 18052	04/06/00
Cut-to-Length	Brazil	C-351-818	65 FR 18065	04/06/00
Corrosion-Resistant	Canada	A-122-822	65 FR 47379	04/02/00
Cut-to-Length	Canada	A-122-823	65 FR 47383	08/02/00
Cut-to-Length	Finland	A-405-802	65 FR 18054	04/06/00
Corrosion-Resistant	France	A-427-808	65 FR 18050	04/06/00
Corrosion-Resistant	France	C-427-810	65 FR 18063	04/06/00
Cold-Rolled	Germany	A-428-814	65 FR 18046	04/06/00
Cold-Rolled	Germany	C-428-817	65 FR 47407	08/02/00
Corrosion-Resistant	Germany	C-428-817	65 FR 47407	08/02/00
Corrosion-Resistant	Germany	A-428-815	65 FR 18051	04/06/00
Cut-to-Length	Germany	C-428-817	65 FR 47407	08/02/00
Cut-to-Length	Germany	A-428-816	65 FR 18055	04/06/00
Corrosion-Resistant	Japan	A-588-826	65 FR 47380	08/02/00
Cold-Rolled	Korea	A-580-815	65 FR 18044	04/06/00
Cold-Rolled	Korea	C-580-818	65 FR 18973	04/10/00
Corrosion-Resistant	Korea	A-580-816	65 FR 18044	04/06/00
Corrosion-Resistant	Korea	C-580-818	65 FR 18973	04/10/00
Cut-to-Length	Mexico	A-201-809	65 FR 18052	04/06/00
Cut-to-Length	Mexico	C-201-810	65 FR 18067	04/06/00
Cold-Rolled	Netherlands	A-421-804	65 FR 47377	08/02/00
Cut-to-Length	Poland	A-455-802	65 FR 18054	04/06/00
Cut-to-Length	Romania	A-485-803	65 FR 47382	08/02/00
Cut-to-Length	Spain	A-469-803	65 FR 18056	04/06/00
Cut-to-Length	Spain	C-469-804	65 FR 18307	04/07/00
Cut-to-Length	Sweden	A-401-805	65 FR 18054	04/06/00
Cut-to-Length	Sweden	C-401-804	65 FR 18305	04/07/00
Cold-Rolled	Sweden	C-401-401	65 FR 18290	04/07/00
Carbon Steel Plate	Taiwan	A-583-080	65 FR 18043	04/06/00
Cut-to-Length	UK	C-412-815	65 FR 18309	04/07/00
Cut-to-Length	UK	A-412-814	65 FR 18056	04/06/00

On December 1, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping and countervailing duty orders on certain carbon steel products from Canada (A–122–823), Germany (C–428–817; A–428–814), Korea (C–580–818; A–580–815), the Netherlands (A–421–804), and Sweden (C–401–401) would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 75301 (December 1, 2000), as amended 65 FR 77074 (December 8, 2000), and USITC Publication 3364, Investigation Nos. AA1921–197 (Review), 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review), and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review) (November 2000).

Scope of the Orders: See Appendix.

Determination

As a result of the determination by the Commission that revocation of the antidumping and countervailing duty orders on cut-to-length steel products from Canada (A–122–823), cold-rolled steel products from Germany (A–428–814, C–428–817), cold-rolled steel products from Korea (A–580–815, C–580–818), cold-rolled steel products from the Netherlands (A–421–804), and cold-rolled steel products from Sweden (C–401–401), is not likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, and 19 CFR 351.222(i)(1), the Department hereby revokes the antidumping and countervailing duty orders on cut-to length steel plate from Canada (A–122–823), cold-rolled steel products from Germany (C–428–817, A–428–814), cold-rolled steel products from Korea (A–580–815, C–580–818), cold-rolled steel products from the Netherlands (A–421–804), and cold-rolled steel products from Sweden (C–401–401).

The Department will instruct the Customs Service to discontinue the suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The effective date of revocation of these antidumping and countervailing duty orders is January 1, 2000.

Dated: December 8, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Scope of Antidumping and Countervailing Duty Orders; Cold-Rolled Carbon Steel Products

The product covered by these antidumping and countervailing duty orders is certain cold-rolled carbon steel flat products from Germany (C–428–817; A–428–814), Korea (C–580–818; A–580–815), the Netherlands (A–421–804) and Sweden (C–401–401). The product includes cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7209.11.0000, 7209.12.0000, 7209.12.0030, 7209.12.0090, 7209.13.0000, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, 7217.39.5000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090.

Included in the scope of the antidumping and countervailing duty orders on cold-rolled steel products from Germany (C–428–817; A–428–814), Sweden (C–401–401), Korea (C–580–818; A–580–815), and the Netherlands (A–421–804), are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded are certain shadow mask steel; i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. The HTS item numbers in the scope of cold-rolled carbon steel products from Germany Korea, the Netherlands, and Sweden, are provided for convenience and custom purposes. The written description remains dispositive.

Cut-to-Length Steel Plate From Canada (A–122–823)

The scope of the antidumping duty order on cut-to-length steel plate from Canada includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.5030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from the antidumping duty order on cut-to-length from Canada is grade X–70 plate. Also excluded is cut-to-length carbon steel plate, meeting the following criteria: (1) 100 percent dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) 0.290 inches maximum thickness, plus 0.0, minus 0.030 inches; (3) 48.00 inch wide, plus 0.05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum).

On February 12, 1999, the Department revoked the order with respect to cut-to-length carbon steel plate from Canada, free of cobalt-60 and other radioactive nuclides; and with certain dimensions and other characteristics. See 64 FR 7167 (February 12, 1999). The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

[FR Doc. 00–31943 Filed 12–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–803, A–423–805, C–423–806, A–351–817, C–351–818, A–122–822, A–405–802, A–427–808, C–427–810, C–428–817, A–428–815, C–428–817, A–428–816, A–588–826, A–580–816, C–580–818, A–201–809, C–201–810, A–455–802, A–485–803, A–469–803, C–469–804, A–401–805, C–401–804, A–583–080, C–412–815, A–412–814]

Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom.

SUMMARY: The Department of Commerce ("the Department") and the International Trade Commission ("the Commission"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping and countervailing duty orders on certain carbon steel products would be likely to lead to continuation or recurrence of dumping or subsidization, and material injury to an industry in the United States within a foreseeable time. Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the following antidumping and countervailing duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kindgom ("UK"):

Product	Country	ITA Case No.
Corrosion-Resistant	Australia	A–602–803
Cut-to-Length	Belgium	A–423–805
Cut-to-Length	Belgium	C–423–806
Cut-to-Length	Brazil	A–351–817
Cut-to-Length	Brazil	C–351–818
Corrosion-Resistant	Canada	A–122–822
Cut-to-Length	Finland	A–405–802
Corrosion-Resistant	France	A–427–808
Corrosion-Resistant	France	C–427–810
Corrosion-Resistant	Germany	C–428–817

Product	Country	ITA Case No.
Corrosion-Resistant	Germany	A–428–815
Cut-to-Length	Germany	C–428–817
Cut-to-Length	Germany	A–428–816
Corrosion-Resistant	Japan	A–588–826
Corrosion-Resistant	Korea	A–580–816
Corrosion-Resistant	Korea	C–580–818
Cut-to-Length	Mexico	A–201–809
Cut-to-Length	Mexico	C–201–810
Cut-to-Length	Poland	A–455–802
Cut-to-Length	Romania	A–485–803
Cut-to-Length	Spain	A–469–803
Cut-to-Length	Spain	C–469–804
Cut-to-Length	Sweden	A–401–805
Cut-to-Length	Sweden	C–401–804
Carbon Steel Plate	Taiwan	A–583–080
Cut-to-Length	UK	C–412–815
Cut-to-Length	UK	A–412–814

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1999, the Department initiated (64 FR 47767), and the Commission instituted (64 FR 47862), sunset reviews of the antidumping and countervailing duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the UK pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the following antidumping and countervailing duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the UK would likely lead to continuation or recurrence of dumping and/or subsidization, and notified the Commission of the magnitude of the margins likely to prevail were the orders revoked:

Product	Country	ITA Case No.	Federal Register Citation	Date
Corrosion-Resistant	Australia	A–602–803	65 FR 18049	04/06/00
Cut-to-Length	Belgium	A–423–805	65 FR 18292	04/07/00
Cut-to-Length	Belgium	C–423–806	65 FR 18066	04/06/00
Cut-to-Length	Brazil	A–351–817	65 FR 18052	04/06/00
Cut-to-Length	Brazil	C–351–818	65 FR 18065	04/06/00
Corrosion-Resistant	Canada	A–122–822	65 FR 47379	08/02/00
Cut-to-Length	Finland	A–405–802	65 FR 18054	04/06/00
Corrosion-Resistant	France	A–427–808	65 FR 18050	04/06/00
Corrosion-Resistant	France	C–427–810	65 FR 18063	04/06/00
Corrosion-Resistant	Germany	C–428–817	65 FR 47407	08/02/00
Corrosion-Resistant	Germany	A–428–815	65 FR 18051	04/06/00
Cut-to-Length	Germany	C–428–817	65 FR 47407	08/02/00
Cut-to-Length	Germany	A–428–816	65 FR 18055	04/06/00
Corrosion-Resistant	Japan	A–588–826	65 FR 47380	08/02/00
Corrosion-Resistant	Korea	A–580–816	65 FR 18044	04/06/00
Corrosion-Resistant	Korea	C–580–818	65 FR 18973	04/10/00
Cut-to-Length	Mexico	A–201–809	65 FR 18052	04/06/00
Cut-to-Length	Mexico	C–201–810	65 FR 18067	04/06/00
Cut-to-Length	Poland	A–455–802	65 FR 18054	04/06/00
Cut-to-Length	Romania	A–485–803	65 FR 47382	08/02/00
Cut-to-Length	Spain	A–469–803	65 FR 18056	04/06/00
Cut-to-Length	Spain	C–469–804	65 FR 18307	04/07/00
Cut-to-Length	Sweden	A–401–805	65 FR 18054	04/06/00
Cut-to-Length	Sweden	C–401–804	65 FR 18305	04/07/00
Carbon Steel Plate	Taiwan	A–583–080	65 FR 18043	04/06/00
Cut-to-Length	UK	C–412–815	65 FR 18309	04/07/00
Cut-to-Length	UK	A–412–814	65 FR 18056	04/06/00

On December 1, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the above referenced antidumping and countervailing duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the UK would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 75301 (December 1, 2000), as amended 65 FR 77074 (December 8, 2000), and USITC Publication 3364, Investigation Nos. AA1921–197 (Review) 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review), and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review) (November 2000).

Scope of the Orders: See Appendix.

Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping and countervailing duty orders on certain carbon steel products would be likely to lead to continuation or recurrence of dumping or subsidization and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping and countervailing duty orders on certain carbon steel products referenced above.

The Department will instruct the Customs Service to continue to collect duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation and revocation of these orders will be the date of publication in the **Federal Register** of this notice. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of the above referenced orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the UK not later than November 2005.

Dated: December 8, 2000.

Joseph A. Spetrini,

Acting Assistont Secretary for Import Administration.

Appendix—Scope of the Antidumping and Countervailing Duty Orders; Corrosion-Resistant Carbon Steel Flat Products

Australia (A–602–803); Canada (A–122–822); France (A–427–808; C–427–810); Germany (A–428–815; C–428–817); Japan (A–588–826); Korea (A–580–816; C–580–818)

The products covered by these antidumping and countervailing duty orders on certain corrosion-resistant carbon steel flat products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.30.0030, 7210.30.0060, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7210.20.000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.1530, 7217.30.1560, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090.

Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating; clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness; and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. Excluded are certain electrolytic zinc-coated steel coiled rolls from Japan. Also excluded from the antidumping duty order on corrosion-resistant carbon steel flat products from Japan are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99 percent zinc, 0.5 percent cobalt, and 0.5 percent molybdenum followed by a layer consisting of chromate, and finally, a layer consisting of silicate. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Cut-to-Length

Belgium (A–423–805, C–423–806); Brazil (A–351–817, C–351–818); Finland (A–405–802); Germany (A–428–816, C–428–817); Mexico (A–201–809, C–201–810); Poland (A–455–802); Romania (A–485–803); Spain (A–469–803, C–469–804); Sweden (A–401–805, C–401–804); UK (A–412–814, C–412–815)

The products covered by these antidumping and countervailing duty orders on cut-to-length carbon steel plate products include hot-rolled carbon steel universal-mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), or rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, or rectangular shape, hot rolled, neither clad, plated, nor coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the United States Harmonized Tariff Schedule ("USHTS") under item numbers: 7208.22.000, 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.38.000, 7208.40.3030, 7208.40.3060, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.50.5000.

Excluded from the scope is grade X–70 plate. Also excluded from the scope of the antidumping duty orders on cut-to-length steel plate from Finland, United Kingdom and Germany, and the countervailing duty order on cut-to-length steel plate from Germany and the United Kingdom, are plate products with a maximum thickness of 80 mm in steel grades BS 7191, 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2. Also excluded from the antidumping duty order are cut-to-length steel plate from Canada meeting the following criteria: (1) 100 percent dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) 0.290 inches maximum thickness, plus 0.0, minus 0.030 inches; (3) 48.00 inch wide, plus 0.05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum). The Department revoked the antidumping duty order on cut-to-length carbon steel plate from Canada with respect to certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides; and with certain

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dimensions and other characteristics. The HTS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive.

Carbon Steel Plate

Taiwan (A–583–080)

Imports covered by this antidumping order are shipments of hot-rolled carbon steel plate, 0.1875 inch or more in thickness, over eight inches in width, not in coils, not pickled, not coated, or plated with metal, not clad, nor pressed or stamped to non-rectangular shape. Such merchandise was classifiable under HTS item number 607.6615. These imports are currently classifiable under the HTS item numbers 7208.40.3030, 7208.40.3060,7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, and 7211.14.0045.

The HTS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive.

[FR Doc. 00–31944 Filed 12–14–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815]

Cold-Rolled Carbon Steel Flat Products From the Republic of Korea: New Shipper Review

AGENCY: Import Administrations, International Trade Administration, Department of Commerce.

ACTION: Notice of recission of the new shipper review of Hyundai Pipe Co., Ltd. for the period August 1, 1999 through July 31, 2000.

SUMMARY: On October 5, 2000, in response to a request made by Hyundai Pipe Co., Ltd. (HDP), the Department of Commerce (Department) published the notice of initiation of a new shipper review regarding cold-rolled carbon steel flat products from the Republic of Korea., for the period August 1, 1999 through July 31, 2000. Because HDP has withdrawn its request for review, the Department is rescinding this review in accordance with 19 CFR 351.214(f)(1).

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone 202–482–0159.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

On August 31, 2000, HDP requested that the Department conduct a new shipper review with respect to HDP's U.S. entries of cold-rolled carbon steel flat products from Korea made during the period August 1, 1999 through July 31, 2000. On October 5, 2000, the Department published a notice of initiation of the new shipper review of cold-rolled carbon steel flat products from Korea, in accordance with 19 CFR 351.221(c)(1)(i). *See Certain Cold-Rolled Carbon Steel Flat Products from Korea: Initiation of New Shipper Antidumping Duty Administrative Review*, 65 FR 59390. On November 7, 2000, HDP withdrew its request for a review.

Rescission of Review

Pursuant to Departmental regulations, the Department will rescind a new shipper administrative review "if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.214(f)(1). HDP's withdrawal of its request for review was within the 60-day time limit; accordingly, we are rescinding the new shipper administrative review regarding HDP's U.S. entries of cold-rolled carbon steel flat products from Korea for the period August 1, 1999 through July 31, 2000, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.214(f)(3) and Section 777(i)(1) of the Act.

Dated: December 7, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–31942 Filed 12–14–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. The review covers nine producers/exporters of the subject merchandise.

The period of review (POR) is July 28, 1998, through June 30, 1999. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the *Final Results of Review* section.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Gabriel Adler, at (202) 482–3003 or (202) 482–3813, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue; NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

On August 8, 2000, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Preliminary Results of Antidumping Administrative Review: Fresh Atlantic Salmon from Chile*, 65 FR 48457 (August 8, 2000) (*Preliminary Results*). We invited parties to comment on the *Preliminary Results*. On September 12, 2000, we received case comments or case briefs from the Coalition for Fair Atlantic Salmon Trade (the petitioner), and from respondents Cultivos Marinos Chiloe, Ltda. (Cultivos Marinos), Pesquera Eicosal Ltda. (Eicosal), Fiordo Blanco, S.A. (Fiordo Blanco), Cultivadora de Salmones Linao Ltda. (Linao), Salmones Mainstream, S.A. (Mainstream), Pesquera Mares Australes Ltda. (Mares Australes), Salmones Pacific Star S.A. (Pacific Star), Salmones Pacifico Sur S.A. (Pacifico Sur), and Salmones Tecmar S.A. (Tecmar). We did not receive rebuttal briefs.

Scope of the Review

The product covered by this review is fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as item numbers 0302.12.0003, 0304.10.4093, 0304.90.1009, 0304.90.1089, and 0304.90.9091 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case comments and case briefs by parties to this administrative review are addressed in a decision memorandum dated December 6, 2000 (*Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the public version of this memorandum, which is on file in Room B–099 of the main Commerce building. In addition, a complete version of the public version of the *Decision Memorandum* can be accessed directly on the Web at *www.ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and analysis of comments received, we have made adjustments to the preliminary determination calculation methodology in determining the final dumping margins in the proceeding. These adjustments are discussed in the *Decision Memorandum*.

Final Results of Review

As a result of our review, we determine that the following weighted-average margins exist for the period of July 28, 1998, through June 30, 1999:

Exporter/manufacturer	Weighted-average margin percentage
Cultivos Marinos	0.01
Eicosal	0.18
Fiordo Blanco	1.46
Linao	0.00
Mainstream	0.00
Mares Australes	0.00
Pacific Star	3.94
Pacifico Sur	0.00
Tecmar	0.01

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. Where the assessment rate is above de minimis, we will instruct the Customs Service to assess duties on all entries of subject merchandise by that importer. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For all exporters/manufacturers covered by this review, the cash deposit rate will be the rate listed above, except where the margin is zero or de minimis, a cash deposit of zero will be required; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 4.57 percent, the "All Others" rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix

1. Cost of Production and Constructed Value: Monetary Corrections for Inflation
2. Constructed Value: Calculation of Profit and Selling Expense Rates
3. Normal Value: Difference-In-Merchandise Adjustment
4. Adverse Facts Available
5. Normal Value: Third-Country Sales
6. Normal Value: Home Market Price Calculation
4. Cost of Production: Financial Expense Ratio—Eicosal
7. Cost of Production: Financial Expense Ratio—Pacific Star
8. Cost of Production: General, Selling and Administrative Expense
9. Cost of Production: Cost Test Freight Expense
10. Constructed Value: Provision for Catastrophic Loss
11. Constructed Value: Use of Verified Data
12. Export Price: Treatment of U.S. Credit Expense

[FR Doc. 00–31945 Filed 12–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Notice of Postponement of Preliminary Countervailing Duty Determination: Honey from Argentina.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determination in the countervailing duty investigation of honey from Argentina from January 2, 2001 until no later than March 5, 2001. This extension is made pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Doug Campau, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1391 or (202) 482–1395, respectively.

Postponement of Preliminary Determination: On October 26, 2000, the Department initiated the countervailing duty investigation of honey from Argentina. *See Notice of Initiation of Countervailing Duty Investigation: Honey From Argentina,* 65 FR 65835 (November 2, 2000). On December 5, 2000, petitioners made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determination in accordance with section 703(c)(1) of the Tariff Act of 1930, as amended (the Act). Petitioners requested a postponement because of the complicated nature of the case, to allow petitioners adequate time to analyze submitted responses, and to allow time for the Department to determine the extent to which particular subsidies are being used.

For reasons identified by the petitioners, we see no compelling reason not to postpone the preliminary determination. *See Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement Joseph A. Spetrini to Assistant Secretary for Import Administration Troy H. Cribb,* dated December 8, 2000 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Therefore, we are postponing the preliminary determination under section 703(c)(1)(A) of the Act. We will make our preliminary determination in this investigation no later than March 5, 2001.

This notice of postponement is published pursuant to section 703(c)(2) of the Act.

Dated: December 8, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–31941 Filed 12–14–00; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0016, Compliance With Requirements for Designation as a Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, et seq., Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on compliance for requirements for designation as a contract market.

DATES: Comments must be submitted on or before February 13, 2001.

ADDRESSES: Comments may be mailed to Lamont L. Reese, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese (202) 418–5310; FAX: (202) 418–5527; email: lreese@cftc.gov.

SUPPLEMENT INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 USC 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 USC 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Compliance with Requirements for Designation as a Contract Market, OMB control number 3038–0016—Extension

Under Commission Rules 1.50 and 5.2, contract markets must demonstrate that they continue to meet the designation requirements contained in the Commodity Exchange Act, 7 U.S.C. 1, et seq., and that contract markets, prior to listing trading months for a then-dormant contract, submit a justification showing that the terms and conditions of the contract are in conformance with current commercial practices and that the contract can be expected to serve an economic purpose. These rules are promulgated pursuant to the Commission's rulemaking authority contained in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (1994).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
1.50; 5.2	11	On occasion	2	250	500

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests or such letters in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request may involve analytical work and analysis, as well as the work of drafting the request itself.

Dated: December 12, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–32016 Filed 12–14–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of The National Missile Defense Deployment Final Environmental Impact Statement

AGENCY: Office of the Secretary, Ballistic Missile Defense Organization, DoD.

ACTION: Notice of availability.

SUMMARY: The Ballistic Missile Defense Organization (BMDO) announces the availability of the National Missile Defense (NMD) Deployment Final Environmental Impact Statement (FEIS). The FEIS assesses the potential impacts associated with the deployment of the NMD system.

DATES: The review period for the FEIS will end on January 16, 2001 and comments must be received by this date.

ADDRESSES: Written comments and inquiries on the FEIS or a request for a copy of the FEIS should be directed to: SMDC–EM–V (Ms. Julia Hudson), U.S. Army Space and Missile Defense Command, PO Box 1500, Huntsville, AL 35807–3801, telephone (256) 955–4822.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Hudson, telephone (256) 955–4822.

SUPPLEMENTARY INFORMATION: The BMDO announced the availability of the National Missile Defense Deployment Draft Environmental Impact Statement (DEIS) on October 1, 1999 (64 FR 190 53364) providing notice that the DEIS was available for comment. The public review period was from October 1, 1999 through January 19, 2000. Public hearings were held October 26 through November 9, 1999. Comments from the DEIS review and public hearings have been considered and included along with responses in the FEIS. Additionally, availability of an Upgraded Early Warning Radar Supplement to the NMD Deployment DEIS was announced on March 3, 2000 (65 FR 43 11560) with the public comment period from March 3, 2000 to May 12, 2000. This analysis and the comments and responses to the supplement to the DEIS have been included in the NMD Deployment FEIS.

The NMD system would be a fixed, land-based, non-nuclear missile defense system with a land and space-based detection system capable of responding to limited strategic ballistic missile threats to the United States. Potential deployment locations for the NMD elements include sites in Alaska and North Dakota. In addition, as the operational requirements are refined other regions may be identified.

The Preferred Alternative is deployment of a NMD system with up to 100 Ground-Based Interceptor (GBI) silos and Battle Management Command and Control (BMC2) facilities at Fort Greely, Alaska; and an X-Band Radar (XBR) at Eareckson Air Station (AS) (Shemya Island), Alaska. Under the Preferred Alternative, the NMD system would make use of the existing Early Warning Radars (EWR), upgraded for NMD and the existing space-based detection system that would be in place at the time of deployment. The existing EWRs are located at Beale Air Force Base (AFB), California, Clear AS, Alaska, and Cape Cod AS, Massachusetts. If the proposed action to modify the EWRS to support a NMD deployment is selected, its implementation is contingent upon the outcome of the Air Force EIS that addresses modernization, maintenance, and sustainment of operations at the three radar facilities. The BMDO would reassess its proposed usage of the EWR facilities in light of the results of the Air Force EIS prior to installation of the NMD modifications. Due to the ongoing development of the operational requirements, proposed In-Flight Interceptor Communication System (IFICS) Data Terminals locations were not identified as the EIS was being drafted. The FEIS therefore analyzed the expected impacts on a programmatic basis. The BMDO will perform supplemental, site-specific environmental analysis for the IFICS data terminals and fiber optic cable line alignments, as required, based on the initial analysis in the FEIS.

Copies of the FEIS have been distributed to Federal, state, and local agencies; public officials; and organizations and individuals that previously requested copies of the DEIS or FEIS. Copies of the FEIS will be available for review at public libraries in communities adjacent to the potential NMD deployment sites. These communities include: Cavalier, Fargo, Grand Forks, and Langdon in North Dakota; Anchorage, Anderson, Delta Junction, Fairbanks, Healy, Kodiak, and Nenana in Alaska; Live Oak, Marysville, and Yuba City in California; Bourne, Falmouth, Mashpee, Sandwich, and West Barnstable in Massachusetts. The library locations and the FEIS are also available on the BMDO internet site:

www.acq.ods.mil/bmdo/bmdolink/html/nmd.html.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32046 Filed 12–14–00; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent (NOI) to Prepare a Programmatic Environmental Impact Statement (PEIS) for Implementation of the Army Transformation Campaign Plan (ATCP)

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army announces its intent to prepare a PEIS to identify and evaluate the environmental effects associated with implementation of the ATCP.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mealer at (703) 614–5050.

SUPPLEMENTARY INFORMATION: The prospect of a rapidly changing and more turbulent, unpredictable, global security environment underscores the need for a high level of defense preparedness. To meet the challenges of a wider range of threats and a more complex set of operating environments, the United States will require a world class Army capable of rapid response and dominance across the entire spectrum of operations in a joint, interagency and multinational environment. Today's Army force structure and supporting systems were designed for a different era and enemy. They lack the capability to operate optimally across the full range of likely future operations. The Army's superb heavy forces are unequalled in their ability to gain and hold terrain in the most intense, direct fire combat imaginable; and, once deployed, they are the decisive element in major theater wars. The current heavy forces, however, are challenged to get to contingencies where we have not laid the deployment groundwork and, once deployed, these forces have a large logistical footprint. On the other hand, the Army's current light forces can strike quickly but once inserted lack survivability, lethality and tactical mobility. Therefore, to meet the defense challenges of the future and provide the National Command Authority the decisive landpower forces necessary to support the National Security Strategy and National Military Strategy, the Secretary of the Army and the Chief of Staff of the Army have articulated a clear Army Vision that includes transforming all aspects of the most respected Army in the world into a strategically responsive force that is dominant across the full spectrum of operations.

The Army will implement transformation as rapidly as possible, while continually maintaining the warfighting readiness of its operational forces and taking care of its people. The ATCP will be the mechanism used to integrate and synchronize the implementation of the Army Vision. Indeed, Army transformation has already begun with the establishment of the Initial Force at Fort Lewis, Washington. The Initial Force is a two-brigade combat team force that will transform and will receive off-the-shelf equipment to support evaluation and refinement of the doctrinal Organizational and Operational concepts. This will be followed by the Interim Force consisting of six to eight brigades. The Interim Force is a transition force—one that seeks the Objective Force state-of-the-art technology, but leverages today's technology together with modernized legacy forces as a bridge to the future. The Objective Force is the force that achieves our transformation objective. It is a future force that will be strategically responsive Army, capable of dominating at every point across the full spectrum of operations and which can rapidly transition across mission requirements without loss of momentum. It will be able to operate as an integral member of the joint, multinational, interagency team and will be dominant against the asymmetric application of conventional, unconventional and weapons of mass destruction threat capabilities.

The PEIS is being prepared to comply with the National Environmental Policy Act (NEPA) of 1969. Implementation of the ATCP, as envisioned, will be a major undertaking entailing a series of changes to equipment, force structure and training practices. When all the changes are proposed for specific sites and for equipment acquisition and testing, there will undoubtedly be a range of effects on the environment. The PEIS will inform the public, regulators, concerned groups and Army decision-makers about potential environmental concerns that should be factored into any final decisions to implement the ATCP. In addition, it will provide these groups with a meaningful opportunity to present their views on significant environmental issues and concerns to Army decision-makers.

Alternatives:

1. No Action Alternative: Whereby the ATCP would not be implemented and needed changes to Army equipment, force structure and training practices would be separately analyzed on a piecemeal basis.

2. Action Alternative 1: Whereby the program for transformation of the Army to better meet present and future national security requirements and fulfill the Army Vision would be initiated in accordance with the ATCP including:

a. A comparison of the likely environmental effects at candidate (alternative) sites for placement of the brigades planned for the Interim Force.

b. Identification and analysis of the types of major actions contained in the ATCP leading to the Objective Force and their associated activities and consequential types and magnitude of effects.

3. Action Alternative 2: Whereby the ATCP would only be partially implemented because of budgetary or other constraints.

Significant issues: The issues to be analyzed in this PEIS include noise, impacts to wetlands and riparian areas, soil erosion, air and water quality, endangered species, cultural resources and other issues.

Scoping: Comments received as a result of the NOI will be used to assist the Army in identifying potential impacts to the quality of human and natural environments. Individuals or organizations may participate in the scoping process by providing written comment by mail or by facsimile through the Scoping Page on the Army Homepage web site (www.army.mil). The time and location for scoping via the web site will be announced by public notice in the national news media. To be considered in the draft PEIS, comments and suggestions should be received no later than 30 days following activation of the Scoping Page. Questions regarding this PEIS may be directed to Headquarters, Department of the Army, ATTN: ODCSOPS (DAMO–FMF), 400 Army Pentagon, Washington, D.C. 20310–0400 or by facsimile transmission to (703) 614–3601.

Dated: December 11, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 00–32000 Filed 12–14–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.342]

Preparing Tomorrow's Teachers To Use Technology

Office of Postsecondary Education, Department of Education Notice of requirements and invitation for applications for new awards for fiscal year (FY) 2001.

Purpose of Program: The Preparing Tomorrow's Teachers to Use Technology program provides grants to consortia that are helping future teachers become proficient in the use of modern learning technologies. This program addresses looming teacher shortages by developing well-qualified, technology-proficient teachers, who are prepared to teach in 21st century schools. This program provides support for two types of grants: implementation grants and catalyst grants.

Eligible Applicants: Only consortia may receive grants under this program. A consortium must include at least two members. Consortium members may include institutions of higher education (IHEs), schools of education, State educational agencies (SEAs), local educational agencies (LEAs), private schools, professional associations, foundations, museums, libraries, for profit agencies and organizations, nonprofit organizations, community-based organizations, and others.

Note: In each consortium a participating nonprofit member must be designated as the "applicant" for purposes of 34 CFR 75.128 and must act as the fiscal agent.

Applications Available: December 15, 2000.

Deadline for Receipt of Applications: February 22, 2001.

Note: All application materials must be received on or before the deadline date. Pursuant to 34 CFR 614.8 an application for a grant under this program must be received by the deadline date announced in this notice.

Deadline for Intergovernmental Review: May 8, 2001.

Estimated Available Funds: $31,750,000. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $200,000–$500,000 for implementation grants, and $500,000–$700,000 for catalyst grants.

Estimated Average Size of Awards: $350,000 for implementation grants, and $600,000 for catalyst grants.

Estimated Number of Awards: 65 implementation grants, and 15 catalyst grants.

Project Period: 36 months for implementation grants, and 36 months for catalyst grants.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for 75.102), 77, 79, 81, 82, 85, 86, 97, 98, and 99; (b) The regulation for this program is 34 CFR part 614. The selection criteria and factors to be used for this competition will be provided in the application package.

Application Review Procedures: The Secretary announces the use of a multi-tier review process to evaluate all applications submitted for new awards under the FY 2001 Preparing Tomorrow's Teachers to Use Technology program. The Secretary takes this action to ensure a thorough review and assessment of the large number of applications that are expected to be received under the FY 2001 competition. This multi-tier review process does not affect the contents of applications in this competition.

For Applications Contact: Preparing Tomorrow's Teachers to Use Technology, U.S. Department of Education, 1990 K Street, NW, Suite 6160, Washington DC 20202–5131. Telephone: (202) 502–7788. Fax: (202) 502–7775. Via Internet: *http://www.ed.gov/teachtech*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Pat Pilkerton, Preparing Tomorrow's Teachers to Use Technology, U.S. Department of Education, 1990 K Street, NW, Suite 6160, Washington DC 20202–5131. Telephone: (202) 502–7788. E-mail: *pat__pilkerton@ed.gov*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 6832.

Dated: December 11, 2000.

A. Lee Frischler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–31973 Filed 12–14–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policymakers

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of availability of final document.

SUMMARY: The Assistant Secretary for Civil Rights announces the availability of a final document entitled "The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policymakers." The resource guide is designed to provide educators and policymakers with an informative and practical tool that will assist in their development and implementation of policies that involve the use of tests in making high-stakes decisions for students. The guide provides information about relevant Federal non-discrimination standards and professionally recognized test measurement principles, as well as a collection of resources related to the non-discrimination and test measurement principles discussed in the guide.

FOR FURTHER INFORMATION CONTACT: Address requests for copies of the final document to Jeanette J. Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5212 Switzer Building, Washington, DC 20202–1100. Telephone: 1–800–421–3481. For all requests submitted by letter, you must include the term "Testing Guide." If you use a telecommunications device for the deaf (TDD), you may call the TDD number at 1–877–521–2172. The final document is also available through the

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Internet at the following site: http://www.ed.gov/offices/OCR/testing

If you prefer to send your request through the Internet, use the following address: ocr@ed.gov

You must include the term "Testing Guide" in the subject line of your electronic message.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Office for Civil Rights' Customer Service Team at 1–800–421–3481.

SUPPLEMENTARY INFORMATION: On July 6, 2000, we published a notice of availability of and a request for comments on the draft document entitled "The Use of Tests When Making High-Stakes Decisions for Students: A Resource Guide for Educators and Policymakers" in the **Federal Register** (65 FR 41643). The purpose of the resource guide is to provide educators and policymakers with information about Federal non-discrimination standards and test measurement principles concerning the proper use of tests as part of decision-making that has high-stakes consequences for students.

Earlier versions of the draft resource guide have been reviewed by the National Academy of Science's Board on Testing and Assessment (BOTA), the U.S. Department of Justice's Civil Rights Division, and dozens of groups and individuals, including educators, parents, teachers, business leaders, policymakers, test publishers, civil rights groups, individual Members of Congress, and others. BOTA conducted a public hearing on the resource guide on January 26, 2000.

In response to our invitation in the previous **Federal Register** notice of availability, 40 parties submitted comments on the draft document. We have considered these comments in drafting the final guide.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this notice is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: December 12, 2000.

Norma V. Cantú,

Assistant Secretary for Civil Rights.

[FR Doc. 00–31999 Filed 12–14–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–42–000]

Columbia Gas Transmission Corporation; Notice of Application

December 11, 2000.

On November 30, 2000, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed an application in Docket No. CP01–42–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and Section 157.18 of the Commission's Regulations for permission and approval to abandon by sale to Nicole Gas Production, LTD (Nicole), an Ohio limited liability company, certain natural gas facilities in West Virginia and Pennsylvania (Facilities) and authorization to abandon the related service associated with the Facilities, all as more fully set forth in the application which is on file with the commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Columbia states that the Facilities to be sold to Nicole were certificated by the Commission as transmission and storage facilities, which were constructed and operated as part of a low pressure transmission system that transported locally produced gas to Columbia's mainline for system supply and redelivery to various markets. Also included in the proposed sale is Columbia's Holbrook Storage Field. Holbrook was constructed in 1950. Columbia does not propose the separate sale of base gas in connection with the proposed sale since it has determined that the recovery of remaining base gas is such a small volume (approximately 1 Bcf) that it is economically unrecoverable. In lieu of Columbia filing a separate Section 4 filing, Columbia ask that the Commission waive its requirement and accept the information provided within the application in Exhibits Z–2 and Z–3 as its notice to terminate service.

Columbia and Nicole entered into a Purchase and Sale Agreement dated September 27, 2000 for the Facilities. Columbia will also sell Nicole various non-jurisdictional facilities (known as the CHEWP System) that the Commission approved for sale in Docket No. CP97–127–000,[1] as well as an additional 23.24 miles of 2- to 16-inch pipeline which was not part of the CP97–127–000 proceeding. The Facilities will be sold for a negotiated amount of $3,655,00. Nicole has advised Columbia that it intends to operate the Facilities as gathering facilities and to use the Facilities primarily for production and gathering activities. Columbia seeks such authorization on or before May 1, 2001.

According to Columbia, Nicole will assume the obligation to continue operating the Facilities, providing both firm and interruptible service to Columbia's customers receiving service through the Facilities on the date of closing, on terms and conditions acceptable to both Nicole and the customers, as well as to the mainline tap consumers of Columbia Gas of Pennsylvania and Mountaineer Gas Company. Thus, there will be no material change to, or interruption in, the services currently being provided to customers through the Facilities. Columbia does not propose any construction or facility removal in connection with the proposed abandonment.

Questions regarding the details of this proposed abandonment should be directed to Victoria J. Hamilton, Certificate Coordinator, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, call (304) 357–2297.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before January 2, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit

[1] 79 FERC ¶ 61,045 (1997).

14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

If the Commission decides to set the application for a formal hearing before an Administration Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–31971 Filed 12–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–44–000]

Nicole Gas Production, LTD; Notice of Application

December 11, 2000.

On November 30, 2000, Nicole Gas Production, LTD (Nicole) 513 E. Rich St., Suite 306, Columbus, Ohio 43215, filed an application in Docket No. CP01–44–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for a limited jurisdiction certificate authorizing the incidental use of certain facilities (Facilities) currently owned by Columbia Gas Transmission Corporation (Columbia) in West Virginia and Pennsylvania to deliver gas to existing customers of local distribution companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Upon acquiring the subject facilities, Nicole will continue to provide transportation of gas to these customers. Currently, Columbia transports locally produced gas through the Facilities to its mainline transmission system. Between the point of receipt and delivery to Columbia's transmission system, gas is delivered at numerous points to a LDC and its customers. According to Columbia, gas supply in certain portions of the system is insufficient to meet demand when there are episodes of high demand for gas. During such a time, gas from Columbia's main transmission system backflows into the gathering lines to satisfy any gas shortfall. Presently, Nicole is a natural gas production company engaged in the development and management of natural gas wells and associated facilities that it currently owns and operates facilities in West Virginia and Pennsylvania. Nicole asks that the Commission issue a limited jurisdictional certificate that does not include the full panoply of NGA rate and service obligations and which would extend only to the specific activity authorized, leaving the gatherer non-jurisdictional with respect to any remaining gathering activities.

Nicole states that the sale of the Facilities by Columbia to Nicole is in the public convenience and necessity because it will operate the Facilities for the benefit of its product shipper customers and meet the delivery needs of the LDC and its customer who currently receive gas from these facilities. Nicole requests that such action be taken so that the limited certificate can be issued by May 1, 2001.

Questions regarding the details of this proposed application should be directed to Freddie L. Fulson, Manager, Nicole Gas Production, LTD, 513 E. Rich Street, Suite 306, Columbus, Ohio 43215, call (614) 221–5004.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before January 2, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be

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taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–31970 Filed 12–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–34.000, et al.]

Delmarva Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

December 8, 2000.

Take notice that the following filings have been made with the Commission:

1. Delmarva Power & Light Company and Conective Energy Supply, Inc.

[Docket No. EC01–34–000]

Take notice that on December 1, 2000, Delmarva Power & Light Company (Delmarva) and Conectiv Energy Supply, Inc. (CESI) (collectively, the Applicants) tendered an application under the provisions of Section 203 of the Federal Power Act involving the assignment of Delmarva's rights and obligations under two wholesale power sales agreements (Agreements) to CESI.

The Applicants state that copies of this joint application have been served upon Delmarva's counter parties in Agreements and the pertinent state regulatory commissions.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF01–5111–000]

Take notice that on December 1, 2000, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–88, did confirm and approve on an interim basis, to be effective on January 1, 2001, the Western Area Power Administration's (Western) formula rates under Rate Schedules CAP–FT1, CAP–NFT1, and CAP–NITS1 for the Central Arizona Project 115-kV/230-kV Transmission System.

The formula rates under Rate Schedules CAP–FT1, CAP–NFT1, and CAP–NITS1 will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of these or of substitute rates on a final basis, ending December 31, 2005.

Comment date: December 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PSEG Fossil LLC

[Docket No. EG01–42–000]

Take notice that on December 6, 2000, PSEG Fossil LLC (Applicant), having its principal place of business at 80 Park Plaza, T–16, Newark, NJ 07102, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for redetermination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant is a limited liability company formed under the laws of the State of Delaware. The Applicant is engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 ("PUHCA"), exclusively in owning or owning and operating eligible electric facilities and participating in project development activities incidental to such eligible electric facilities as authorized under PUHCA. The Applicant owns and operates eligible facilities located in Pennsylvania and New Jersey.

Comment date: December 29, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. PPL Montour, LLC

[Docket No. EG01–43–000]

Take notice that on December 5, 2000, PPL Montour, LLC (PPL Montour) tendered for filing an Application for Redetermination of Status as an Exempt Wholesale Generator. On December 6, 2000, PPL Montour filed an amendment to its application.

Comment date: December 29, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Reliant Energy Mid-Atlantic Power Holdings, L.L.C.

[Docket No. EG01–44–000]

Take notice that on December 4, 2000, Reliant Energy Mid-Atlantic Power Holdings, L.L.C. (Applicant), having its principal place of business at Johnstown, Pennsylvania, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for redetermination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant is a limited liability company formed under the laws of the State of Delaware. Applicant is engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning or both owning and operating eligible electric facilities activities incidental to such eligible electric facilities as authorized under PUHCA. Applicant will enter into a lease agreement incidental to its ownership interest in the Keystone Electric Steam Station.

Comment date: December 29, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Constellation Power Source Generation, Inc.

[Docket No. EG01–45–000]

Take notice that on December 5, 2000, Constellation Power Source Generation, Inc. (Applicant), having its principal place of business at 111 Market Place, Suite 500, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for redetermination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations. The Applicant is a Maryland corporation and is engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 ("PUHCA"), exclusively in owning or owning and operating eligible electric facilities and participating in project development activities incidental to such eligible electric facilities as authorized under PUHCA. The Applicant owns and operates eligible facilities located in Maryland and Pennsylvania.

Comment date: December 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER01–592–000]

Take notice that on December 5, 2000, Western Resources, Inc. (Western Resources), tendered for filing a Notification of Change in Status and Petition for Acceptance of Revised Market Rate Schedules in anticipation of Western Resources' proposed merger with Public Service Company of New Mexico, all as more fully described in the Application.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER01–594–000]

Take notice that on December 5, 2000, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Riverside County Waste Management Department for acceptance by the Commission.

The ISO states that this filing has been served on Riverside County Waste Management Department and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective November 30, 2000.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Alabama Electric Marketing, LLC

[Docket No. ER01–596–000]

Take notice that on December 5, 2000, Alabama Electric Marketing, LLC, 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154 (AEM), tendered for filing with the Federal Energy Regulatory Commission an application for blanket authorization and certain waivers under regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of February 5, 2001, or the date of a Commission order granting approval of this Rate Schedule.

AEM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where AEM purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, AEM will be functioning as a marketer. In AEM's marketing transactions, AEM proposes to charge rates mutually agreed upon by the parties. In transactions where AEM does not take title to electric power and/or energy, AEM will be limited to the role of a broker and will charge a fee for its services. AEM is not in the business of producing electric power nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company

[Docket No. ER01–279–001]

Take notice that on December 5, 2000, Central Power and Light Company (CPL) tendered for filing First Revised Rate Schedule No. 104, an Interconnection Agreement between CPL and Sharyland Utilities, L.P. (Sharyland), to comply with the Commission's order of November 20, 2000 in the above-referenced docket.

Central Power and Light Company has served a copy of this compliance filing on Sharyland and the Public Utility Commission of Texas.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Boston Edison Company

[Docket No. ER01–575–000]

Take notice that on December 4, 2000, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and New England Power Company (NEP), as successor-in-interest to Montaup Electric Company (Montaup). The Standstill Agreement extends through February 5, 2001 the time in which NEP may institute a legal challenge to the 1998 true-up bill under Boston Edison's FERC Rate Schedule No. 69, governing sales to Montaup from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective December 5, 2000.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER01–580–000]

Take notice that on December 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Allegheny Energy Supply Company, LLC. This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER01–581–000]

Take notice that on December 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement

under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Florida Power & Light Company. This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER01–582–000]

Take notice that on December 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Coastal Merchant Energy, L.P., formerly known as Engage Energy US, L.P. This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER01–583–000]

Take notice that on November 28, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Entergy Power Marketing Corp. This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER01–584–000]

Take notice that on December 5, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Williams Energy Marketing & Trading Company. This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER01–587–000]

Take notice that on December 5, 2000, Cinergy Services, Inc. (Provider), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc., (Customer).

Provider and Customer are requesting an effective date of January 1, 2001.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER01–588–000]

Take notice that on December 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Alliant Energy Corporate Services, Inc., (AECS).

Cinergy and AECS are requesting an effective date of November 1, 2000.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER01–589–000]

Take notice that on December 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Strategic Energy L.L.C., (Strategic).

Cinergy and Strategic are requesting an effective date of November 1, 2000.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Central Vermont Public Service Corporation

[Docket No. ER01–590–000]

Take notice that on November 30, 2000, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS will not file a Forecast 2001 Cost Report for FERC Electric Tariff, Original Volume No. 3. No customers will take Tariff No. 3 transmission service during 2001 because such service was terminated effective December 31, 1999. CVPS provides transmission service under its FERC Electric Tariff, First Revised Volume No. 7.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. ER01–591–000]

Take notice that on November 30, 2000, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS will not file a Forecast 2001 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. California Independent System Operator Corporation

[Docket No. ER01–593–000]

Take notice that on December 5, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Riverside County Waste Management Department for acceptance by the Commission.

The ISO states that this filing has been served on Riverside County Waste Management Department and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective November 30, 2000.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Northern Indiana Public Service Company

[Docket No. ER01–595–000]

Take notice that on December 5, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with the Michigan Public Power Agency (MPPA).

Northern Indiana has requested an effective date of December 1, 2000.

Copies of this filing have been sent to MPPA, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER01–577–000]

Take notice that on December 4, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Williams Energy Marketing & Trading Company (Williams), as Transmission Customer.

A copy of the filing was served upon Williams.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. UGI Development Company

[Docket No. ER01–597–000]

Take notice that on December 5, 2000, UGI Development Company (UGID) tendered for filing a revised Wholesale Market-Based Rate Tariff. UGID requests an effective date of December 6, 2000. UGID also tendered for filing a Service Agreement under the revised Market-Based Rate Tariff for service to UGI Utilities.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Orion Power MidWest, L.P.

[Docket No. ER01–606–000]

Take notice that on December 7, 2000, Orion Power MidWest, L.P. (Orion Power MidWest), tendered for filing with the Federal Energy Regulatory Commission an Ancillary Services Agreement with Duquesne Light Company, designated as FERC Rate Schedule No. 10 for the sale of Regulation and Frequency Response, Operating Reserve—Spinning Reserve Service, Operating Reserve—Supplemental Reserve Service, and Reactive Supply and Voltage Control.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31955 Filed 12–14–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6917–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Control technology determinations for constructed and reconstructed major sources of hazardous air pollutants, EPA ICR #1658.02, OMB #2060–0284, expiration date February 28, 2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before Feburary 13, 2001.

ADDRESSES: Send all comments on this ICR to Ms. Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Interested persons may obtain a copy of the ICR without charge by contacting Ms. Smith at (919) 541–0641 or E-mail "smith.pam@epa.gov" and refer to EPA ICR Number 1658.02.

FOR FURTHER INFORMATION CONTACT: Kathy Kaufman at (919) 541–0102 and E-mail "kaufman.kathy@epa.gov."

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are those who must submit an application for a permit to construct or reconstruct a major source of hazardous air pollution, permitting agencies who review the permit applications, and EPA staff who review some permitting authority decisions.

Title: Information Collection Request for 40 CFR Part 63 Regulations Governing Constructed and Reconstructed Major Sources, EPA ICR Number 1658.02, OMB Control Number 2060–0284, Expiration date February 28, 2001.

Abstract: Section 112(g)(2)(B) of the Clean Air Act as amended in 1990 requires that maximum achievable control technology (MACT) standards be met by constructed or reconstructed major sources of hazardous air pollutants. Where no applicable emission limit has been set, the MACT determination shall be made on a case-by-case basis.

In order to receive a construction permit for a constructed or reconstructed major source, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

Permitting agencies, either State, local or Federal, review the permit application to affirm the proposed constructed or reconstructed major source will comply with the Clean Air Act (Act) and applicable regulations. The permitting Agency then provides for public review of the proposed project and issues the permit based on its consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the State and local programs for their effectiveness. Consequently, information prepared and submitted by the source is essential for the source to receive a permit, and for Federal, State and local environmental agencies to adequately review the permit application and thereby properly administer and manage the section 112(g) programs.

To facilitate adequate public participation, information is submitted by sources as a part of their permit application and should generally be a matter of public record. See sections 165(a)(2) and 110(a)(2)(C), (D), and (F) of the Act. Notwithstanding, to the extent that the information required for the completeness of a permit is proprietary, confidential, or of a nature that it could impair the ability of the source to compete in the marketplace, that information is collected and handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information

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(see 40 CFR part 2). See also section 114(c) of the Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The reporting and recordkeeping burden was estimated as follows:

Number of Respondents: 3877.

Frequency of Response: 1 per respondent.

Burden hours per response:

Industry: 150 hours.

Permitting Agencies: 80 hours.

Estimated total annual hour burden:

Industry: 581,521 hours.

Permitting Agencies: 310,144 hours.

Estimated Annualized Cost Burden: $6750. per response.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 4, 2000.

Steven J. Hitte,

Acting Director, Information Transfer and Program Integration Division.

[FR Doc. 00–32032 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed December 04, 2000 Through December 08, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000423, Final EIS, AFS, ID, Swan Flat Timber Sale, Proposal to Cut and Haul Sawtimber, Caribou National Forest, Land Resource Management Plan (LRMP), Montpelier Ranger District, Bear Lake County, ID, Due: January 16, 2001, Contact: Eric Mattson (208) 847–0375.

EIS No. 000424, Final EIS, IBW, El Paso—Las Cruces Regional Sustainable Water Project, To Secure Future Drinking Water Supplies, United States and Mexico, Due: January 16, 2001, Contact: Douglas Echlin (915) 832–7441.

EIS No. 000425, Final EIS, UAF, WI, Hardwood Air-to-Surface Gunnery Range Expansion and Associated Airspace Actions, Military Operation Areas (MOA), WI, Due: January 16, 2001, Contact: Harry Knuden (301) 836–8143.

EIS No. 000426, Final EIS, AFS, ID, West Mountain North Project, Timber Harvest, Road Construction and Reconstruction), Boise National Forest, Cascade Ranger District, Valley County, ID, Due: January 16, 2001, Contact: David D. Rittenhouse (208) 373–4100.

EIS No. 000427, Final EIS, AFS, MT, Taylor Fork Timber Sale and Road Restoration, Implementation, Buck Creek, Taylor Fork Creek and Eldridge Creek, Gallatin National Forest, Madison Ranger, Hebgen Lake Ranger District, Yellow Stone, Gallatin County, MT, Due: January 16, 2001, Contact: Julie Neff-Shea (406) 587–6701.

EIS No. 000428, Draft EIS, EPA, NC, New Wilmington Ocean Dredged Material Disposal Site, Designation, Wilmington Harbor, North Carolina State Port and the Military Ocean Terminal (Sunny Point (MOTSU), NC, Due: January 29, 2001, Contact: Gary Collins (404) 562–9395.

EIS No. 000429, Final EIS, AFS, ID, Brownlee Vegetation and Access Management Project, Implementation, Weiser Ranger District, Payette National Forest, Washington County, ID, Due: January 16, 2001, Contact: John Baglien (208) 549–4200.

EIS No. 000430, Final EIS, FHW, NV, Reno Railroad Corridor, Implementation of the Freight Railroad Grade Separation Improvements in the Central Portion of the City of Reno, Washoe County, NV, Due: January 16, 2001, Contact: John T. Price (775) 687–1204.

EIS No. 000431, Draft EIS, BLM, WY, North Jacobs Ranch Coal Lease Application (WYW 146744), Federal Coal Tract, Located in the Powder River Basin, Campbell County, WY, Due: February 13, 2001, Contact: Nancy Doelger (307) 261–7627.

EIS No. 000432, Draft EIS, NPS, CA, Santa Monica Mountains National Recreation Area General Management Plan, Implementation, Los Angeles County, CA, Due: February 28, 2001, Contact: Alan Schmierer (415) 427–1441.

EIS No. 000433, Final EIS, IBR, CA, East Bay Municipal Utility District, Supplemental Water Supply Project, American River Division of the Central Valley Project (CVP), Sacramento County, CA, Due: January 16, 2001, Contact: Rob Schroeder (916) 988–1707.

EIS No. 000434, Final EIS, BIA, WA, Colville Indian Reservation Integrated Resource Management Plan, Implementation, Colville Indian Reservation, Okanogan and Ferry Counties, WA, Due: January 16, 2001, Contact: James R. Orwin (509) 634–2308.

EIS No. 000435, Draft EIS, IBR, WA, Keechelus Dam Project, Safety of Dams Modification, Implementation, COE Section 404 Permit, Yakima, Kittitas, Benton, and Klickitat Counties, WA, Due: February 09, 2001, Contact: Dave Kaumheimer (509) 575–5848.

EIS No. 000436, Draft EIS, AFS, CO, Baylor Park Blowdown Project, Salvage and Treat Down and Damaged Timber, To Reduce Impact of Spruce Beetles, Implementation, White River National Forest, Sopris and Rifle Ranger Districts, Garfield, Mesa, and Pitkin Counties, CO, Due: January 29, 2001, Contact: Jan Spencer (970) 945–2521.

EIS No. 000437, Final EIS, FAA, RI, T. F. Green Airport Project, To Implement the Part 150 Noise Abatement Procedures in a Safe and Efficient Manner, Warwick County, RI, Due: January 16, 2001, Contact: Theresa Flieger (781) 238–7524.

EIS No. 000438, Revised Draft EIS, FTA, CA, Orange County Centerline Project, Transportation Improvements, Revised Alternatives, Advanced Rail Transit in the Heart of Orange County, CA, Due: January 29, 2001, Contact: A. Joseph Ossi (202) 366–1613.

EIS No. 000439, Draft EIS, JUS, CA, Pinal County Private Detention Facility, To Develop and Operate a Pre-Trail Detention Facility, Pinal County, CA, Due: January 29, 2001, Contact: Charles Coburn (202) 307–9045.

EIS No. 000440, Final EIS, DOE, TN, WA, ID, Programmatic— Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test, ID, TN, WA, Due: January 16, 2001, Contact: Colette Brown (877) 562–4593.

EIS No. 000441, Draft EIS, NOA, HI, GU, AS, Pelagic Fisheries of the Western Pacific Region, Fishery Management Plan, To Analyze Longline Fisheries, Commercial Troll and Recreational Troll Fisheries, Commercial Pelagic Handliners and Commerical Pole and Line Skipjack Fishery, Hawaii, American Samoa, Guam and Commonwealth of the Northern Mariana Island, Due: January 29, 2001, Contact: Charles Karnella (808) 973–2941.

EIS No. 000442, Final Supplement, UAF, FL, Homestead Air Force Base (AFB) Disposal and Reuse, Implementation, Dade County, FL, Due: January 16, 2001, Contact: Doug Heady (703) 693–7314.

EIS No. 000443, Final EIS, DOD, AK, ND, AS, National Missile Defense (N.D.) Deployment System, Selection of Possible Deployment Sites: AK, AS and ND, Due: January 16, 2001, Contact: Julia Hudson (256) 955–4822.

EIS No. 000444, Final EIS, IBR, AZ, NV, CA, Colorado River Interim Surplus Criteria, To Determine Water Surplus for use within the States Arizona, California and Nevada (from 2001 through 2015), Colorado River Basin, AZ, CA and NV, Due: January 16, 2001, Contact: Jayne Harkens (702) 293–8785.

EIS No. 000445, Final EIS, AFS, WA, ID, OR, MT, Eastside Ecosystem Based Lands Management Plan, Implementation, Interior Columbia Basin Ecosystem Management Project, WA, OR, ID and MT, Due: January 16, 2001, Contact: Susan Giannettino (208) 334–1770.

The US Department of the Interior's Bureau of Land Management and Department of Agriculture's Forest Service are Joint Lead Agencies for this project.

EIS No. 000446, Draft EIS, TVA, MS, Kemper County Combustion Turbine Plant, Construction and Operation, Addition of Electric General Peaking Capacity at Greenfield Sites, NPDES Permit, Kemper County, MS, Due: January 29, 2001, Contact: Roy V. Carter (256) 386–2832.

Amended Notices

EIS No. 000393, Draft EIS, BLM, OR, Rogue National Wild and Scenic River Hellgate Recreation Area (Applegate River to Grave Creek) Management Plan, Implementation, Bedford District, Josephine County, OR, Due: February 24, 2001, Contact: Cori Cooper (541) 618–2428. Published FR–11–24–00—Correction to Title.

EIS No. 000420, Draft Supplement, NOA, Atlantic Sea Scallop Fishery Management Plan (FMP), Updated Information, Framework Adjustment 14 to adjust the annual Amendment 7 day-at-sea allocation for 2001 and 2002 and to re-open portions of the Hudson Canyon and Virginia/North Carolina Areas for Scallop Fishing, Due: January 24, 2001, Contact: Patricia Kurkal (978) 281–9300. Published FR 12–08–00 Correction to Title and Contact Name and Phone.

Dated: December 12, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–32044 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 567–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–J65326–MT Rating EC2, Ashland Post-Fire Project, Proposal to Implement Restoration Activities to Maintain Watershed, Custer National Forest, Powder River and Rosebud Counties, MT.

Summary: EPA expressed concern regarding sediment production water quality impacts and aquatic monitoring. EPA recommended optimal balancing of environmental and resource trade-offs by developing a modified preferred alternative that reduces sediment production. ERP No. D–BLM–B65022–MA Rating LO, New Bedford Whaling National Historical Park, General Management Plan, Implementation, Bristol County, MA.

Summary: EPA had no objections to the project. ERP No. D–BLM–J67030–UT Rating EC2, 3R Minerals Coal Bed Canyon Mine Plan, Approval, Grand Staircase-Escalante National Monument, Garfield County, UT.

Summary: EPA expressed concern regarding potential impacts due to future expansion of this titanium and zirconium mineral resource. EPA requested additional information about the economic viability.

ERP No. DA–JUS–G11010–00 Rating LO, PROGRAMMATIC—Revised Draft Supplemental EIS US Naturalization Service (INS) and US Joint Task Force-Six (JTF–6) Activities Along the US/Mexico Border from Brownsville Texas to San Diego, California.

Summary: EPA expressed no concerns regarding the revised document.

Final EISs

ERP No. F–AFS–J67028–MT, Rocky Mountain Front Mineral Withdrawal, Implementation, Helena and Lewis and Clark National Forests, Great Falls, MT.

Summary: ERP No. F–AFS–L65336–ID, Brown Creek Timber Sale Project, Implementation, Payette National Forest, New Meadow Ranger District, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BOP–K80041–CA

Lassen County Federal Correctional Institution (FCI), Construction and Operation, To House Median-Security Inmates and Federal Prison Camp, Possible Site is Southwest Site, Lassen County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–E36178–00

Wolf River Ecosystem Restoration, Memphis, Tennessee Feasibility Study, Marshall, Benton and Tippah Counties,

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MS and Shelby, Fayette and Harderman, TN.

Summary: Structural measures of the proposed action will significantly improve fish and wildlife habitat in the watershed. Therefore, EPA has no objection to the proposed action.

Dated: December 12, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–32045 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6917–8]

Mobile Source Outreach Assistance Competition Fiscal Year 2001: Solicitation Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Today's notice announces the availability of funding and solicits proposals from State, local, multi-State, and tribal air pollution control agencies for mobile sources-related public education and outreach projects. The funding will be allocated by EPA's Office of Transportation and Air Quality (OTAQ) through the competitive process described in this notice.

DATES: The deadline for submitting final proposals is Friday, March 2, 2001. To allow for efficient management of the competitive process, OTAQ is requesting agencies to submit an informal intent to apply by January 7, 2001. (Instructions for submitting final proposals and intents to apply are found in section X. below.)

ADDRESSES: This proposal can also be found in two places on the Office of Transportation and Air Quality Web Page: "www.epa.gov/OTAQ/" click on "What's New" or "www.epa.gov/OTAQ/rfp.htm". Addresses for submitting final proposals can be found in section X. below.

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Director of Outreach, USEPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue NW, (mail code 6406J), Washington, DC, 20460. Telephone (202) 564–9856; Fax (202) 565–2085. Or email "bullard.susan@epa.gov"

SUPPLEMENTARY INFORMATION:

Contents by Section

I. Overview and Deadlines
II. Eligible Organizations
III. Funding Issues
IV. Program Emphasis
V. Selection Criteria
VI. Evaluation and Selection
VII. Proposals
VIII. Current OTAQ/Section 105 Funded Outreach Projects
IX. Other Items of Interest
X. How to Apply
XI. EPA Regional Grant Coordinators
XII. OTAQ Program Contact

Deadline for informal Intent to Apply—January 7, 2001

Deadline for Final Proposal—Friday midnight, March 2, 2001

This proposal can also be found on the Office of Transportation and Air Quality Web Page:

www.epa.gov/otaq/ Click on "What's New"
or
"www.epa.gov/OTAQ/rfp.htm"

Mobile Source Outreach Assistance Agreements 2001: Request for Proposals

Section I. Overview and Deadlines

A. Overview

Over the past four years, EPA's Office of Transportation and Air Quality (OTAQ) has entered into agreements and established partnerships with a number of organizations to (1) provide national support for community-based mobile source public education efforts supporting implementation of the Clean Air Act and, (2) encourage responsible choices for organizational and individual actions through public education. Current OTAQ/Section 105-Funded Outreach Projects are listed on the OTAQ web site "www.epa.gov/otaq/whatsnew" and emphasize transportation choices to reduce vehicle miles traveled; education of vehicle owners and drivers of the future; alternative fuels; car care and the role of the automotive technician; outreach to ethnic populations; environmental justice; and, related projects such as ozone mapping and small engines. EPA's Office of Transportation and Air Quality has set aside funds from the State and Tribal Assistance Grants (STAG) account to provide support to community-based mobile source-related projects. This Notice solicits proposals for public education and outreach projects which directly support state and local air management organizations in their efforts to improve air quality from mobile sources. Proposals will be accepted from state, local, tribal and multi-state air management agencies which are identified as such under Section 302(b) of the Clean Air Act.

Interested persons can also obtain copies of this solicitation at no charge by accessing the OTAQ Website at "www.epa.gov/otaq/" Click on "What's New" or "www.epa.gov/OTAQ/rfp.htm".

B. What Are the Deadlines For This Competition?

In order to efficiently manage the selection process, the Office of Transportation and Air Quality requests that an informal "Intent to Apply" be submitted by January 7, 2001 (Please provide project title or subject and email address for project contact). An "Intent to Apply" simply states in the form of e-mail, phone, or fax that your organization intends to submit a proposal to be received by the deadline. Submitting an "Intent to Apply" does not commit an organization to submit a final proposal. Those not submitting an Intent to Apply may still apply by the deadline. *The deadline for final proposals (original and six copies) is Friday, March 2, 2001.* The Office of Transportation and Air Quality expects to complete the Evaluation/Selection process in mid-April, 2001.

Section II. Eligible Organizations

C. Who Is Eligible to Submit Proposals?

According to funding policies associated with the State and Tribal Assistance Grants regulations (STAG funds), proposals can be accepted only from air pollution control agencies as defined under Section 302(b) of the Clean Air Act (for projects to be undertaken which will have replicability to other communities nationally), as well as multi-state organizations supporting Section 302(b) agencies. OTAQ has no discretion over this requirement.

Interested air management, non-governmental or related organizations which are not air pollution control agencies as defined under Section 302(b) of the Clean Air Act are encouraged to create partnerships with eligible organizations. In that situation, the eligible organization would be required to submit the final proposal and serve as the funding recipient if selected.

Section III. Funding Issues

D. What Is the Amount of Available Funding?

A minimum of $550K.

E. How Will Funds be Allocated?

The competition process will be managed by OTAQ and selected cooperative agreements will be awarded by EPA's Regional offices and funded through either Section 103 (for multi-state organizations as defined by law only) or Section 105 authority (state and local air pollution control agencies.) OTAQ has no discretion over this requirement.

F. How Many Agreements Will be Awarded?

Approximately six agreements will be awarded, none to exceed $100,000. The total dollar amount of the final awards must be within available funding.

G. Are Matching Funds Required?

Possibly. Clean Air Act Section 105 mandates that eligible agencies provide matching funds of at least 40%. Therefore, if an air pollution control agency submits a proposal for which they do not already have sufficient matching funds, they must include a statement in their proposal indicating that the match could be met if their proposal is selected. Organizations unable to meet a required match must be considered ineligible. (This requirement does not apply to multi state organizations.) Organizations which are unclear as to their matching status are recommended to contact their EPA Regional Grant Coordinator (see Section XII below).

H. Can Funding be Used to Acquire Services or Fund Partnerships?

Yes—subgrants and other procurement services are allowed. Because the method used to fund subgrants is not a federal matter, procedures governing your organization's procurement practices must be followed. Please indicate any intent to enter into such agreements in the proposal.

Section IV. Program Emphasis

This program is designed to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches) rather than grow ongoing projects.

I. Program Emphasis

—Voluntary Measures
—Commuter Choice initiatives
—Transportation choices
—Environmental Justice
—Car care (testing, repair, maintenance)
—On Board Diagnostics (OBD)
—Alternative fuels
—Involving youth in mobile source issues/environmental education
—Other mobile source issues (including but not limited to: diesel, particulate matter, heavy duty engines; nonroad engines; and ozone mapping/forecasting.)

Section V. Selection Criteria

J. Primary Criteria

—Clearly addresses environmental goals of improved air quality from mobile sources
—Demonstrates national or regional applicability/transferability
—Explanation of how project outcomes will be designed for replication in other communities
—Presents a strong public health message
—Demonstrates effectiveness of delivery mechanism to reach targeted audience
—Exhibits clearly-stated and appropriate levels of funding
—Includes effective evaluation methods
—Reflects potential for sustainability

K. Other Factors to be Considered

—Innovation in public awareness
—Effectiveness of collaborative activities and partnerships with other stakeholders needed to effectively develop or implement the project
—Integration with existing programs
—Willingness to coordinate with other OTAQ-funded outreach activities

L. Presentation Criteria

—Completeness
—Action-oriented
—Clearly-stated goals and objectives
—Reasonable time frames

Section VI. Evaluation and Selection

M. The Evaluation Team is Chosen to Address a Full Range of Mobile Source and EPA Program Expertise

In addition, each EPA Regional office is given the opportunity to review those proposals generated by eligible organizations within that Region. The Evaluation Team will base its evaluation solely on the criteria referenced in this Notice. Completed evaluations will be referred to a Selection Committee representing OTAQ senior managers and Regional representatives who are responsible for further consideration and final selection. To ensure equity and objectivity throughout the process, the OTAQ Program Contact (listed below) and staff who facilitate the process and participate in pre-application assistance, do not serve as members of either the Evaluation Team or the Selection Committee.

Section VII. Proposals

N. What Must be Included in the Proposal?

Proposals should be approximately 5–7 pages in length (*please do not include binders or spiral binding*) and must include:

(1) A brief statement that the candidate organization is defined as an air pollution control agency under Section 302(b) of the Clean Air Act;

(2) A statement that any required match will be met;

(3) A concise statement of project background/objectives highlighting relationship to improving air quality from mobile sources;

(4) A detailed project summary—description of specific actions to be undertaken, including estimated time line for each task;

(5) Associated work products to be developed;

(6) Explanation of project benefits;

(7) Detailed explanation of how project outcomes will be designed for replication in other communities;

(8) Description of collaborative activities and partnerships with other stakeholders;

(9) A detailed budget estimate (clearly explain how funds will be used, including estimated cost for each task.) (Note: Budget estimates should include funding for participation in the 3-day Annual Mobile Source Outreach and Partnerships Workshop typically held in Washington, DC in late fall/early winter.);

(10) Projected time frame for project from initiation through completion; and

(11) Project contact(s) (*must* provide name, organization, phone, fax, and e-mail).

O. Will 2-Year Proposals be Considered?

Yes. If a proposal with a 2-year project period is submitted, OTAQ requires that the budget and cost estimate be designed to indicate what will be accomplished in each of the first and second years.

P. May An Eligible Organization Submit More Than One Proposal?

An organization may submit more than one proposal only if the proposals are for different projects.

Q. May An Eligible Organization Resubmit a Proposal Which Was Previously Submitted to the Mobile Source Outreach Assistance Competition, But Was Not Selected?

Yes. The proposals received by OTAQ in previous competitions were generally of very high quality. Clearly, all proposals of merit could not be selected due to limited resources available.

R. May An Eligible Organization Submit a Proposal for this Fiscal Year, Even if it Were Previously Awarded Funding Under This Program?

Yes. Applicants awarded funding in previous competitions may submit new proposals to fund a different project. This program is designed to provide

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seed money to initiate new projects or advance existing projects that are new in some way (*e.g.* new audiences, new locations, new approaches).

S. Does This Funding Expire at the End of FY 01?

No. The statute states that State and Tribal Assistance Grants (STAG) for environmental programs remain available until expended ("no-year money").

T. Ineligible Proposals

Proposals will be determined to be ineligible if: (1) the candidate organization is not currently defined as an air pollution control agency under Section 302(b) of the Clean Air Act; (2) a required match cannot be met; (3) the proposal is incomplete (proposals must address each component outlined in Section VII. N.); or (4) the proposal is postmarked after the deadline.

Section VIII. Current OTAQ/Section 105 Funded Outreach Projects

U. Since this Program is Designed to Fund New Projects (Rather Than Duplicating or Growing Existing Programs), Potential Candidate Organizations are Recommended to Visit the OTAQ Web Site to Identify Projects Already Being Funded

The item, entitled "Current OTAQ/Section 105 Funded Outreach Projects," can be found at "www.epa.gov/otaq/ Click on "What's New" (scroll to "added September 14") and offers a brief sketch of projects funded through the Office of Transportation and Air Quality, either with Section 105 funding (indicated by year of funding) or projects that are intended to be national in scope, supported by OTAQ program funding (indicated by an asterisk "*"). (Note: Some web sites listed by funded organizations provide helpful information on a variety of air quality efforts being undertaken by the funded organization.)

Section IX. Other Items of Interest

V. Is There Other Information I Should Have Before Applying?

Yes.
—Submission of an Intent to Apply or a final proposal does not guarantee funding.
—Supplementary information, including letters of recommendation, will not be reviewed by the Evaluators.
—Only those organizations selected will be required to submit a complete "Application for Federal Assistance and Budget Information" (SF 424 and SF 424A) to the appropriate EPA Regional Office.

Section X. How to Apply

W. How Do I Apply?

Informal "Intents to Apply" may take the form of email, fax or phone call to the Program Contact listed below. Include organization, contact, phone, email and project title/subject. PLEASE SUBMIT INFORMAL "INTENTS TO APPLY" by January 7, 2001.

To be considered eligible, Completed Proposals must be postmarked or received on or before midnight, Friday, March 2, 2001 (original + 6—no binders or spiral binding please!)

Please Pay Special Attention to the Distinction in Addresses for Regular Mail and In-Person Delivery.

Via regular mail to: Susan Bullard, Director of Outreach, US EPA Office of Transportation and Air Quality, 1200 Pennsylvania Avenue NW, Mail Code 6406J, Washington, DC 20460.

Express mail which is to be delivered in-person (FedEx, UPS, Airborne, etc) must be received by no later than midnight on Friday, March 2, 2001 at the following address: Susan Bullard, Director of Outreach, US EPA Office of Transportation and Air Quality, 501 Third Street NW Room 5304D, (202) 564–9856, (202) 564–8991 (backup number for expressed proposals only).

[Note: Proposals e-mailed or faxed will serve only as a placeholder, and must be followed by a hard copy original and 6 copies postmarked or received no later than the deadline.]

Deadline for Completed Final Proposals

Received or postmarked no later than midnight on Friday, March 2, 2001

Section XI. EPA Regional Section 105 Grant Coordinators

Region 1	Paul Bryan	617–918–1673
Region 2	Marlon Gonzales	212–637–3769
Region 3	Russ Bowen	215–814–2057
Region 4	Todd Rinck	404–562–9062
Region 5	Robert Miller	312–353–0396
	Pamela Blakley	312–886–4447
Region 6	Rexene Hanes	214–665–2726
Region 7	Aaron Zimmerman	913–551–7333
Region 8	Scott Lee	303–312–7094
Region 9	Jack Colbourn	415–744–1239
	Valerie Cooper	415–744–1237
Region 10	David Debruyn	206–553–4218

Section XII. OTAQ Program Contact

Susan Bullard, Director of Outreach, EPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue, NW., (Mail Code 6406J), Washington, DC 20460, (Phone) 202/564–9856; (Fax) 202/565–2085, "bullard.susan@epa.gov".

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 00–32027 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34236; FRL–6759–5]

Organophosphate Pesticides; Availability of Interim Risk Management Decision Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the interim risk management decision documents for seven organophosphate and carbamate pesticides: Coumaphos, fenitrothion, mevinphos, oxamyl, phostebupirim, propetamphos, and tribufos. These decision documents have been developed as part of the public participation process that EPA and U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

FOR FURTHER INFORMATION CONTACT: Carol Stangel, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8007; e-mail address: stangel.carol@epa.gov.

For technical questions on an IRED or TRED listed, contact the appropriate Chemical Review Manager:

Chemical Name	Case No.	Chemical Review Manager	Telephone No.	e-mail Address
Coumaphos	0018	Monica Alvarez	(703) 308–8026	alvarez.monica@epa.gov
Fenitrothion	0445	Stephanie Nguyen	(703) 605–0702	nguyen.stephanie@epa.gov
Mevinphos	0250	Joseph Nevola	(703) 308–8037	nevola.joseph@epa.gov
Oxamyl	0253	Carmelita White	(703) 308–7038	white.carmelita@epa.gov
Phostebupirim	(none)	Stacey Milan	(703) 305–2505	milan.stacey@epa.gov
Propetamphos	2550	Gary Mullins	(703) 308–8044	mullins.gary@epa.gov
Tribufos	2145	Anne Overstreet	(703) 308–8068	overstreet.anne@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision documents for coumaphos, fenitrothion, mevinphos, oxamyl, phostebupirim, propetamphos, and tribufos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide interim risk management decision documents released to the public may also be accessed at http://www.epa.gov/REDs.

2. *In person.* The Agency has established an official record for this action under docket control numbers OPP–34236 and OPP–34196B for coumaphos, OPP–34197B for fenitrothion, OPP–34215B for mevinphos, OPP–34227A for oxamyl, OPP–34186B for phostebupirim, OPP–34174C for propetamphos, and OPP–34148B for tribufos. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. What Action is the Agency Taking?

EPA has assessed the risks of coumaphos, fenitrothion, mevinphos, oxamyl, phostebupirim, propetamphos, and tribufos and reached an Interim Reregistration Eligibility Decision (IRED) or a Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision for these organophosphate and carbamate pesticides. Provided that risk mitigation measures are adopted, or in some cases without additional risk mitigation, coumaphos, fenitrothion, mevinphos, oxamyl, phostebupirim, propetamphos, and tribufos fit into their own risk cups — their individual, aggregate risks are within acceptable levels.

The interim risk management decision documents for coumaphos, fenitrothion, mevinphos, phostebupirim, propetamphos, and tribufos were made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The interim risk management decision for oxamyl, a carbamate pesticide, was made through a similar public participation process.

EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision documents, which conclude the pilot public participation process for coumaphos, fenitrothion, mevinphos, oxamyl, phostebupirim, propetamphos, and tribufos. As part of the pilot public participation process, numerous opportunities for public comment were offered as these interim risk management decision documents were being developed. The coumaphos, fenitrothion, mevinphos, oxamyl, phostebupirim, propetamphos, and tribufos interim risk management decision documents therefore are issued in final form, without a formal public comment period. The docket remains open, however, and any comments submitted in the future will be placed in the public docket.

The risk assessments for coumaphos, fenitrothion, mevinphos, oxamyl,

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phostebupirim, propetamphos, and tribufos were released to the public through the following notices published in the **Federal Register**:

1. Notices for coumaphos were published on September 2, 1999 (64 FR 48164) (FRL–6380–9) and April 26, 2000 (65 FR 24468) (FRL–6556–7).

2. Notices for fenitrothion were published on September 2, 1999 (64 FR 48164) (FRL–6380–9) and March 1, 2000 (65 FR 11050) (FRL–6494–8).

3. Notices for mevinphos were published on January 12, 2000 (65 FR 1867) (FRL–6486–9) and June 30, 2000 (65 FR 40631) (FRL–6595–6).

4. A notice for oxamyl was published on June 28, 2000 (65 FR 39898) (FRL–6595–3).

5. Notices for phostebupirim were published on May 26, 1999 (64 FR 28469) (FRL–6083–4) and March 27, 2000 (65 FR 16197) (FRL–6551–4).

6. Notices for propetamphos were published on January 15, 1999 (64 FR 2644) (FRL–6056–9) and December 1, 1999 (64 FR 67263) (FRL–6397–5).

7. Notices for tribufos were published on September 9, 1998 (63 FR 48213) (FRL–6030–2) and September 24, 1999 (64 FR 51755) (FRL–6385–2).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision encompassing all the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision documents on coumaphos, fenitrothion, mevinphos, phostebupirim, propetamphos, and tribufos cannot be considered final until this cumulative assessment is complete. The interim risk management decision document for oxamyl cannot be considered final until EPA completes a cumulative risk assessment and risk management decision for the carbamate pesticides.

When the cumulative risk assessment for all organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision for coumaphos, fenitrothion, mevinphos, phostebupirim, propetamphos, and tribufos, and further risk mitigation measures may be needed. Similarly, when the cumulative risk assessment for all carbamate pesticides is completed, the Agency will issue its final tolerance reassessment decision and further risk mitigation may be needed for oxamyl.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 8, 2000.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–32033 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–964A; FRL–6756–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel C. Kenny, Fungicides Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7546; e-mail address: kenny.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–964A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

EPA received a pesticide petition from the Rohm and Haas Company proposing the establishment and/or amendment of regulations for residues of the pesticide chemical zoxamide (RH-117281 Technical) benzamide-3,5-dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methyl in or on the raw agricultural commodities tomatoes and cucurbits at 2 parts per million. This notice of filing of pesticide petition was published in the **Federal Register** on August 24, 2000. The notice of filing listed the wrong petition number. Therefore, EPA is issuing this correction to correct the petition number as follows:

In FR Doc. 00–21674, published in the **Federal Register** of August 24, 2000 at page 51612, change the pesticide number that now reads "PP 9F5058" and appears in the middle column of page 51613, to read "PP 0F6093".

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 6, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–32034 Filed 12–14–00; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50876; FRL–6757–8]

Experimental Use Permit; Receipt of Application Regarding a Transgenic Plant-Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application from Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268, to amend 68467–EUP–2 an experimental use permit (EUP) for the plant-pesticide Bacillus thuringiensis delta endotoxin as produced in corn by a cry1F gene and its controlling sequences as found on plasmid insert PHI8999. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50876, must be received on or before January 16, 2001.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50876 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," " Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–50876. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50876 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50876. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

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version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Mycogen Seeds c/o Dow AgroSciences LLC is requesting to amend 68467–EUP–2 for the plant-pesticide Bacillus thuringiensis delta endotoxin as produced in corn by a cry1F gene and its controlling sequences as found on plasmid insert PHI8999. This amendment request entails the transfer of 55 acres in Nebraska to Puerto Rico. Specifically, the 55 acres in Nebraska were part of an Agronomic Observation Trial that were not used this past summer. In Puerto Rico, the 55 acres will be planted to two protocols, 20 acres to Breeding and Observation Trials and 35 acres to Agronomic Observation Trials. The transfer reduces the state acreage in Nebraska from 161.96 to 106.96 acres and increases the state acreage in Puerto Rico from 34 to 89 acres. The transfer also adds the Agronomic Observation protocol to Puerto Rico. The transfer does not change the total acres under the EUP. All plantings of corn containing the *Bacillus thuringiensis* Cry1F protein under these experimental programs will be contained. No portion of the crops will be used as food or feed.

III. What Action is the Agency Taking?

Following the review of the Mycogen Seeds c/o Dow AgroSciences LLC application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this amended EUP program, and if amended, the conditions under which it is to be conducted. Any issuance of an amended EUP will be announced in the **Federal Register.**

IV. What is the Agency's Authority for Taking this Action?

This action is issued under the authority of 40 CFR Part 172.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 6, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–32036 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6917–5]

Palmyra Atoll; Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with Palmyra Atoll was executed by the United States Environmental Protection Agency (EPA) on November 16, 2000. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation & Recovery Act (RCRA), 42 U.S.C. 6973, against The Nature Conservancy, a District of Columbia non-profit corporation (the Purchaser). The Purchaser plans to acquire Palmyra Atoll, a group of coral islets approximately 680 acres in extent located in the tropical Pacific Ocean 900 miles south-southwest of Hawaii at Lat. 5o N, Long. 162o W, to preserve it as a wildlife refuge. The Purchaser will pay EPA $10,000 and commit to manage the atoll to protect its conservation values in cooperation with the U.S. Department of Interior's Fish & Wildlife Service.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before January 16, 2001.

ADDRESSES: The proposed Prospective Purchaser Agreement and additional background documents relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "The Nature Conservancy PPA, Palmyra Atoll" and "Docket No. 2001–04" and should be addressed to William Keener at the above address.

FOR FURTHER INFORMATION CONTACT: William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 744–1356; fax (415) 744–1041; e-mail: *keener.bill@epa.gov.*

Dated: December 7, 2000.

Michael Feeley,

Acting Director, Superfund Division, Region IX.

[FR Doc. 00–32029 Filed 12–14–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Availability of Final Environmental Impact Statement; Proposed Federal Courthouse and Office Building, Eugene/Springfield Metro Area, Lane County, Oregon

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the General Services Administration (GSA) has filed with the Environmental Protection Agency, and made available to other government and interested private parties, the Final Environmental Impact Statement (FEIS) for the proposed construction of a 265,290 gross square feet Courthouse and office building including 80 secured parking spaces, located in the urban center of either Eugene/Springfield, Lane County, Oregon.

The FEIS is on file and a copy may be obtained from U.S. General Services Administration, Region 10, Attention: Michael D. Levine, 10PCP, 400 15th Street, SW., Auburn, Washington 98001 (206) 931–7263. A summary of the FEIS can be viewed at the following website: www.northwest.gsa.gov/eugeneusch/intro.htm.

Dated: December 4, 2000.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 00–31965 Filed 12–14–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1223]

International Conference on Harmonisation; Guidance on E11 Clinical Investigation of Medicinal Products in the Pediatric Population; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "E11 Clinical Investigation of Medicinal Products in the Pediatric Population." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance sets forth critical issues in pediatric drug development and approaches to the safe, efficient, and ethical study of medicinal products in the pediatric population. The guidance is intended to encourage and facilitate the timely development of pediatric medicinal products internationally.

DATES: This guidance is effective December 15, 2000. Submit written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: M. Dianne Murphy, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2350, or Karen Weiss, Center for Biologics Evaluation and Research (HFM–570), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5093.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGP's) regulation (65 FR 56468, September 19, 2000), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedure for publishing ICH guidances. Beginning April 2000, we will no longer include the text of ICH guidances in the **Federal Register**. Instead, we will publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section of this document). Draft guidances will be left in the original ICH format. Final guidances will be reformatted to conform to the GGP style before publication.

In the **Federal Register** of April 12, 2000 (65 FR 19777), FDA published a draft tripartite guidance entitled "E11: Clinical Investigation of Medicinal Products in the Pediatric Population." The notice gave interested persons an opportunity to submit comments by May 30, 2000.

After consideration of the comments received and revisions to the guidance,

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a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in July 2000.

The guidance sets forth critical issues in pediatric drug development and approaches to the safe, efficient, and ethical study of medicinal products in the pediatric population. The guidance addresses the following clinical study issues: (1) Considerations when initiating a pediatric program for a medicinal product; (2) timing of initiation of pediatric studies during medicinal product development; (3) types of studies (pharmacokinetic, pharmacokinetic/pharmacodynamic, efficacy, safety); (4) age categories for studies; and (5) ethics of pediatric clinical investigation. The guidance is not comprehensive, but is intended to be used in conjunction with other ICH guidances and documents from regional regulatory authorities and pediatric societies. The guidance is intended to encourage and facilitate the timely development of pediatric medicinal products internationally.

This guidance represents the agency's current thinking on clinical investigation of medicinal products in the pediatric population. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Electronic Access

Copies of the guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm.

Dated: December 7, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31947 Filed 12–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1554]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a notice announcing that it has received a petition requesting exemption from the premarket notification requirements for pharmacy compounding systems classified within the intravascular administration set, a class II device (special controls). FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by January 16, 2001.

ADDRESSES: Submit written comments on this notice to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of the FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142). In the **Federal Register** of November 3, 1998 (63 FR 59222), FDA published a final rule codifying these exemptions.

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Petition

FDA received the following petition requesting an exemption from premarket notification for class II devices: Baxter Healthcare, Pharmacy Compounding Systems Classified within the *Intravascular administration set*, 21 CFR 880.5440.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this petition by January 16, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 5, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–31961 Filed 12–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 00M–1391, 00M–1536, 00M–1447, 00M–1522, 00M–0809, 00M–1517, 00M–1451, 00M–1448, 00M–1507, 00M–1389, 00M–1388, 00M–1508, 00M–1390, 00M–1386, 00M–1387, 00M–1414, 00M–1415, 00M–1416, 00M–1495, 00M–1437, 00M–1475, 00M–1483, 00M–1515, 00M–1524, 00M–1523]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMA's) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMA's through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit a written request for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summary of safety and effectiveness

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page at http://www.fda.gov on the Internet; by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMA's and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMA's for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from July 1, 2000, through September 30, 2000. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMA'S MADE AVAILABLE JULY 1, 2000, THROUGH SEPTEMBER 30, 2000

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P930016(S7)/00M–1391	VISX, Inc.	VISX STAR S2 Excimer Laser System	November 2, 1998
P920030(S2)/00M–1536	Chiron Corp.	CIBA Corning ACS PSA Immunoassay	December 8, 1998
P910065(S1)/00M–1523	Tosoh Medics, Inc.	AIA–PACK PA	September 10, 1999
P990010/00M–1447	CRS Clinical Research, Inc.	VISX Inc. Excimer Laser System Model C "STAR"	November 19, 1999
P940035(S2)/00M–1522	Matritech Inc.	Matritech NMP22® Test Kit	January 18, 2000
P990023/00M–0809	Alcon Laboratories	Cellugel® Ophthalmic Viscosurgical Device	February 24, 2000
P990054/00M–1517	Cardiac Pathways Corp.	Chilli® Cooled Ablation System	March 17, 2000
H990014/00M–1451	Medtronic Inc.	Enterra™ Therapy System (formerly named Gastric Electrical Stimulation (GES) System)	March 31, 2000
P990053/00M–1448	Nellcor Puritan Bennett	OxiFirst® Fetal Oxygen Saturation Monitoring System	May 12, 2000
P990028/00M–1507	Focal, Inc.	Focal Seal-L Synthetic Absorbable Sealant	May 26, 2000
P980050/00M–1389	Medtronic Inc.	Medtronic® Jewel® AF 7250 Dual Chamber Implantable Cardioverter Defibrillator	June 14, 2000
P990025/00M–1388	Biosense Webster, Inc.	NAVI–STAR Diagnostic/Ablation Deflectable Tip Catheter	June 15, 2000
P950032(S16)/00M–1508	Organogenesis, Inc.	Apligraf (Graftskin)	June 20, 2000
P99037/00M–1390	Vascular Solutions, Inc.	Vascular Solutions Duett Sealing Device	June 22, 2000
P990078/00M–1386	Sunrise Technologies	Hyperion LTK System	June 30, 2000
P990021/00M–1387	QLT Photo Therapeutics, Inc.	Diomed 630 PDT Laser, Model T2USA	June 30, 2000
P990018/00M–1414	Menicon USA, Inc.	Menicon™ Z Rigid Gas Permeable Contact Lens	July 11, 2000
P000006/00M–1415	Mentor Corp.	Alpha 1 Inflatable Penile Prosthesis	July 14, 2000
P990064/00M–1416	Medtronic Inc.	Mosaic® Porcine Bioprosthesic Heart Valve	July 14, 2000
P990034/00M–1495	Medtronic Inc.	Medtronic® IsoMed® Constant Flow Infusion System	July 21, 2000
P990039/00M–1437	Metra Biosystems, Inc.	QUS–2™ Calcaneal Ultrasonometer	August 1, 2000
P990072/00M–1475	Westcon Contact Lens Co., Inc.	W–55 (Methafilcon A) and Horizon 55 Soft Extended Wear Contact Lenses	August 22, 2000
P860057(S11)/00M–1483	Edwards Lifesciences, LLC	Carpentier-Edwards PERIMOUNT Pericardial Bioprosthesis	August 28, 2000
P970042/00M–1515	Medstone International, Inc.	Medstone STS™ Lithotripter	September 5, 2000
P990055/00M–1524	Bayer Corp.	Bayer Immuno 1™ Complexed PSA Assay	September 8, 2000

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 5, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–31960 Filed 12–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1392]

Draft Guidance for Industry on Botanical Drug Products; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the draft guidance for industry entitled "Botanical Drug Products" until March 15, 2001. This draft guidance explains the circumstances under which FDA approval of a new drug application (NDA) is required for marketing of a botanical drug product and when such a product may be marketed under an over-the-counter (OTC) drug monograph. It also provides guidance to researchers and manufacturers on conducting initial and expanded clinical investigations of botanical drug products. FDA is taking this action in response to a request for an extension.

DATES: Submit written comments on the draft guidance by March 15, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Yuan-Yuan Chiu, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 2000 (65 FR 49247), FDA published a notice announcing the availability of a draft guidance for industry entitled "Botanical Drug Products." The draft guidance is intended to encourage the clinical study and submission for marketing approval of botanical drug products. The guidance explains the circumstances under which FDA approval of an NDA is required for marketing a botanical drug and when such a drug may be marketed under an OTC drug monograph. The draft guidance also provides scientific and regulatory guidance to sponsors about conducting initial and expanded clinical investigations of botanical drugs, including those botanical products currently lawfully marketed as foods and dietary supplements in the United States. In particular, the guidance provides information on how the agency will interpret and apply to botanical drugs certain provisions of existing regulations on the submission of investigational new drug applications (IND's) (21 CFR part 312). Interested persons were given until October 10, 2000, to submit written comments on the draft guidance.

FDA received a letter, dated September 15, 2000, from Diane C. McEnroe of the firm of Sidley & Austin, in behalf of a research-based company based in Asia, requesting that the agency extend the comment period on the draft guidance by 90 days.

The draft guidance introduces several new and highly technical issues. Therefore, the agency has decided to reopen the comment period on the draft guidance until March 15, 2001, to allow the public more time to review and comment on its contents.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance document by March 15, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 7, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31948 Filed 12–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–32]

Management Review Report for Subsidized Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.,

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Review Report for Subsidized Multifamily Housing Programs.

OMB Control Number, if applicable: 2502–0259.

Description of the need for the information and proposed use: Owners are required to submit Management Review Reports when the owner changes management agents, when a project has been determined to be an unacceptable risk, or the owner and agent negotiate a new management fee and/or management agreement, or the agent makes major changes in its organization structure.

Agency form numbers, if applicable: HUD–9838.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents of HUD staff and Contract Administrators is 900; the frequency of responses is 1; estimated time to prepare collection is 8 hours per response, and the total annual burden hours are 7,200.

Status of the proposed information collection: Revision of currently approved collection.

Authority: The Paperwork Reduction Act of 1955, 44 U.S.C., Chapter 35, as amended.

Dated: December 11, 2000.

William C. Apgar,

Assistant Secretary for Housing—FHA.

[FR Doc. 00–31985 Filed 12–14–00; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–50]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for us to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning Branch, 441 G Street, Washington, DC 20314–1000; (202) 761–5737; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; (These are not toll-free numbers).

Dated: December 7, 2000.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V. FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/15/00

Suitable/Available Properties

Buildings (by State)

California

Bldg. S251
Army Reserve
6357 Woodly Ave.
Van Nuys Co: Los Angeles CA 91406–6496
Landholding Agency: Army
Property Number: 21200040043
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos, most recent use—storage, off-site use only

Georgia

Bldg. 223
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040044
Status: Unutilized
Comment: 0,220 sq. ft., most recent use—gen. purpose

Bldg. 228
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040045
Status: Unutilized
Comment: 20,220 sq. ft., most recent use—gen. purpose

Bldg. 2051
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040046
Status: Unutilized
Comment: 6077 sq. ft., most recent use—storage

Bldg. 2053
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040047
Status: Unutilized
Comment: 14,520 sq. ft., most recent use—storage

Bldg. 2677
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040048
Status: Unutilized
Comment: 19,326 sq. ft., most recent use—maint. shop

Bldg. T–339
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040049
Status: Unutilized
Comment: 2243 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. T–340
Fort Riley

Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040050
Status: Unutilized
Comment: 3000 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. T–341
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040051
Status: Unutilized
Comment: 1130 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. T–342
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040052
Status: Unutilized
Comment: 810 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. T–343
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040053
Status: Unutilized
Comment: 3912 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. T–344
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040054
Status: Unutilized
Comment: 9280 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. T–345
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040055
Status: Unutilized
Comment: 2888 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. T–348
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040056
Status: Unutilized
Comment: 2888 sq. ft., poor condition, most recent use—maint. bldg., off-site use only

Bldg. T–351
Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200040057
Status: Unutilized
Comment: 7595 sq. ft., poor condition, most recent use—maint. bldg., off-site use only

Missouri

Bldg. 1178
Fort Leonard Wood
Ft. Leonard Wood Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21200040058
Status: Unutilized
Comment: 3203 sq. ft., most recent use—fire station, off-site use only

New Mexico

9 MFH Units
White Sands Missile Range
White Sands Co: Dona Ana NM88002–
Location: 11201, 12210, 11214, 11217, 11220, 11223, 11244, 11247, 11264
Landholding Agency: Army
Property Number: 21200040062
Status: Unutilized
Comment: 1620 sq. ft. each, major repairs required, presence of asbestos, most recent use—housing, off-site use only

19 MFH Units
White Sands Missile Range
White Sands Co: Dona Ana NM88002–
Location: 11202, 12209, 11212, 11216, 11219, 11222, 11224, 11227, 11236, 11241, 11242, 11245, 11249, 11253, 11257, 11260, 11263, 11270, 11273
Landholding Agency: Army
Property Number: 21200040063
Status: Unutilized
Comment: 1606 sq. ft. each, major repairs required, presence of asbestos, most recent use—housing, off-site use only

34 MFU Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21200040064
Status: Unutilized
Comment: 1512 sq. ft. each, major repairs required, presence of asbestos, most recent use—housing, off-site use only

12 MFU Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Location: 11204, 11207, 11226, 11229, 11232, 11235, 11238, 11251, 11255, 11258, 11261, 11266
Landholding Agency: Army
Property Number: 21200040065
Status: Unutilized
Comment: 1590 sq. ft. each, major repairs required, presence of asbestos, most recent use—housing, off-site use only

Bldg. 23644
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21200040066
Status: Unutilized
Comment: 80 sq. ft., poor condition, presence of asbestos, most recent use—equip. facility, off-site use only

New York

Bldgs. 109, 110
Fort Hamilton
Brooklyn Co: NY 11252–
Landholding Agency: Army
Property Number: 21200040067
Status: Unutilized
Comment: 39,723 sq. ft., needs repair, presence of asbestos, most recent use—guest house, off-site use only

Bldg. T–270
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200040068
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldg. T–2276
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200040069
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—officer's quarters, off-site use only

300 acres
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200040070
Status: Unutilized
Comment: Approx. 300 acres, contains wetlands and rare flora.

Missouri

Bldg. 2172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21200040059
Status: Unutilized
Comment: 2892 sq. ft., most recent use—operations, off-site use only

Bldg. 5041
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21200040060
Status: Unutilized
Comment: 1000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21200040061
Status: Unutilized
Comment: 1000 sq. ft., most recent use—range support bldg., off-site use only

Washington

Ft. Lawton Comsite
California Ave.
Seattle Co: King WA
Landholding Agency: GSA
Property Number: 54200040009
Status: Excess
Comment: 2000 sq. ft. of flammable or explosive material
GSA Number: 9–C–WA–1189

Land (by State)

Massachusetts

USCG Loran Station
Siasconset Co: Nantucket MA 02564–0880
Landholding Agency: GSA
Property Number: 54200040008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–U–MA–858

[FR Doc. 00–31654 Filed 12–14–00; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–06]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St., SW, room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgage approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement

Approval of mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the fifth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are: (1) Those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender; and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgagee production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., suite 3214, Washington, DC 20024.

Action

The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Carolina Home Mortgage Groups, Inc.	125 Executive Pointe Blvd., Columbia, SC 29210.	Columbia, SC	10/27/2000	Atlanta.
Heritage Mortgage, LLC	1926 North Lake Parkway, Suite 200, Tucker, GA 30084.	Atlanta, GA	10/27/2000	Atlanta.
Home Loan Mortgage Corp	21250 Boxsprings Rd. #105, Moreno Valley, CA 92557.	Santa Ana, CA	10/27/2000	Santa Ana.
Home Mortgage Company	1118 Main Street, Gardendale, AL 35071.	Birmingham, AL	10/26/2000	Atlanta.
D & D Funding, Inc	494 North Garfield Avenue, Montebello, CA 90640.	Los Angeles, CA	09/29/2000	Santa Ana.

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
First Guaranty Mortgage	7833 Walker Drive, #510, Greenbelt, MD 20770.	Washington, DC	09/29/2000	Philadelphia.
Mortgage Capital Resource	10535 Foothill Blvd, Suite 460, Rancho Cucamonga, CA 91730.	Santa Ana, CA	09/29/2000	Santa Ana.
Ryans Express Equities	90 Merrick Avenue Ste 620, East Meadow, NY 11554.	New York, NY	09/29/2000	Philadelphia.

Dated: November 28, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–31984 Filed 12–14–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Issue a Final Comprehensive Conservation Plan, Associated Environmental Assessment, and Finding of No Significant Impact for Sevilleta National Wildlife Refuge in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a Final Comprehensive Conservation Plan (CCP), associated Environmental Assessment (EA), and a Finding of No Significant Impact (FONSI) for the Sevilleta Lake National Wildlife Refuge, San Acacia, New Mexico, pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations. The Regional Director, Southwest Regional Office, upon issuing a FONSI, considered a reasonable range of management framework alternatives.

Approval of the Sevilleta NWR CCP formalizes 10 goals which will result in:

- The enhancement, preservation, and protection of threatened and endangered species as they occur naturally or were historically present on the Sevilleta NWR so that viable, self-sustaining populations can be restored to their natural habitats. (Goal 1)
- The restoration and maintenance of the natural diversity of plants and animals as it occurred historically on the Sevilleta NWR. (Goal 2)
- The fostering and encouragement of research from bonafide research institutions, the provision of an atmosphere conducive to investigations into environmental processes on the refuge, and the assumption of pro-active role in facilitating research projects as they occur on the refuge. (Goal 3)
- The protection of existing, and acquisition of additional water rights and/or in-stream flow rights as necessary to protect the integrity of the riparian and aquatic habitats on the refuge. (Goal 4)
- The achievement of appropriate levels of public uses that are compatible with the purpose(s) for which the refuge was established and with the goals of the National Wildlife Refuge System; and the regulation of, as provided by law, all activities, uses, and practices that are potentially harmful to refuge resources. (Goal 5)
- The establishment of a formal program for public outreach, identification of important public resources, and implementation of environmental education programs accordingly. (Goal 6)
- The protection, maintenance, and monitoring of Service-managed cultural resources on Sevilleta NWR for the benefit of present and future generations. (Goal 7)
- The protection of existing lands associated with Sevilleta NWR for the benefit of fish and wildlife resources; the acquisition of additional lands; and the protection of the integrity of Refuge boundaries relative to adjacent lands. (Goal 8)
- The improvement of funding, facilities, and staffing that will result in enhancement of refuge habitat and wildlife resources, leading to the achievement of the goals of this plan and the goals of the National Wildlife Refuge System. (Goal 9)
- The strengthening of interagency and jurisdictional coordination on or near the Sevilleta NWR resulting in decisions benefitting fish and wildlife resources while avoiding duplication of effort. (Goal 10)

Some of the specific changes to the existing program changes include but are not necessarily limited to the following objectives:

- Continue implementation of the Mexican wolf captive propagation program on the refuge, and ensure continued operation within all applicable regulations, protocols, and safety guidelines.
- Preserve refuge habitat diversity and threatened and endangered species habitats by preserving and restoring habitats to their natural condition. This may involve aggressive removal of non-native plants (e.g., salt cedar) and wildlife (e.g., oryx, Barbary sheep).
- Maintain a viable population of silvery minnows on the Rio Grande within the refuge.
- Provide up to 100 acres of additional cottonwood/willow habitat for the southwestern willow flycatcher.
- By the end of FY 2001 (September 30, 2001), assess the refuge's full wilderness attributes, and determine appropriate areas within the full spectrum of the refuge for study and designation as Wilderness Study Areas. Included will be the dedication of between 3,000 and 8,000 acres as the Ladron Wilderness Study Area.
- Evaluate refuge grasslands potential as an introduction site for the endangered northern Aplomado falcon.
- Protect threatened and endangered species on the refuge and adjacent properties through outreach, educational activities and effective enforcement of fish and wildlife laws.
- Promote and support the introduction of native threatened and endangered species on the refuge.
- Ensure the integrity of all naturally occurring biotic communities on the Sevilleta NWR.
- Maintain migratory bird populations at healthy levels in the Upper/Middle Rio Grande Ecosystem.
- Reverse declining trends in quality and quantity of riparian/wetland habitats; restore, maintain, and enhance the species composition, aerial extent, and spatial distribution of riparian/wetland habitats.
- Protect, restore, and maintain upland terrestrial communities at the landscape level within the Upper/Middle Rio Grande Ecosystem.
- Use sound land use practices and management tools to protect upland terrestrial habitats in the Upper/Middle Rio Grande Ecosystem.
- Preserve, enhance, and restore hydrological regimes to perpetuate a

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healthy river ecosystem. Use the Rio Grande Initiative to form partnerships that address water management, habitat enhancement, and restoration, and impacts of non-native plants and animals on biological diversity and endangered species.

• Compile a database of the baseline natural conditions, processes, and species associated within refuge ecosystems.

• Attain baseline natural conditions, processes, and populations of species in 50 percent of each habitat type by 2010. If attainment is not possible, implement adaptive management strategies designed to attain desired conditions.

• Contribute to the integrity of the Upper/Middle Rio Grande Watershed using sound management tools and practices.

• Map and determine aquifer sources and characteristics of upland seeps, springs, and other water sources on the refuge.

• Quantify water needs to maintain 90 acres of existing refuge wetlands and to restore 500 acres of wetlands associated with the Rio Grande.

• Acquire in-stream flow rights for the perennial portion of the Rio Salado, Rio Puerco, and other tributary streams.

• Develop partnerships, relationships, and communications to improve implementation of refuge wildlife and habitat management goals.

• Minimize human impacts to refuge ecosystems.

• Encourage research that improves management and monitoring of species, communities, and processes on the refuge and the Upper/Middle Rio Grande.

• Permit and encourage research from a wide range of interested parties and institutions while protecting the plants and wildlife of the ecosystem from detrimental human intrusion and manipulative research protocols.

• Minimize impacts of formal research activities.

• Provide the research community a unique opportunity to conduct wildlife-related research, which in turn provides the refuge with management direction.

• Provide the general public with high quality, wildlife-dependent experiences on and off the refuge.

• Provide the general public with high quality environmental education and wildlife-dependent experiences on and off the refuge.

• Develop sound management practices to protect cultural resources, within the scope of Part 614 of the Service Manual and all applicable federal laws and regulations.

• Minimize obtrusive impacts to refuge lands or adjacent lands.

• Document the need for additional staffing.

• Obtain adequate staffing to implement management plans benefiting the Upper/Middle Rio Grande Ecosystem both on and off refuge lands.

• Improve facilities to enhance refuge capabilities and resources, including the construction of an 8,000- square foot visitor center/ administrative complex; two 1,500- square foot staff residences; and a multi-unit living facility for refuge volunteers.

• Relocate the law enforcement training shooting range to a new location to eliminate the current hazards.

The implementation of the above management approaches among others and employment of strategies associated with those approaches should assist in the achievement of the refuge's broad goals:

Based on a review and evaluation of the information contained in the CCP and EA for the Sevilleta NWR, the Regional Director, Southwest Region, U.S. Fish and Wildlife Service, has determined that the approval of the individual or cumulative approaches reflected in the Proposed Alternative and CCP Goals, Objectives and Strategies, is not deemed to constitute a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act (NEPA). Therefore, an Environmental Impact Statement is not required. However, it is the intent of the Service to revisit questions of potential significant environmental consequences in accordance with NEPA upon consideration of the implementation of site specific proposals called for and discussed in the final plan document.

ADDRESSES: A paper copy and/or a Compact Disk copy may be obtained by writing to: Mr. Tom Baca, Natural Resources Planner, Division of Refuges, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of these documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service considered comments and advice generated in response to draft documents issued in November 1998. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of the availability of the final documents.

Dated: November 30, 2000.

Thomas C. Bauer,

Acting Regional Director.

[FR Doc. 00–31747 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Bone Cave Harvestman (Texella reyesi) During Construction and Operation of Commercial Developments on Portions of 5.94 acres (Lots 1, 2, 3, 4, and 5) at RR 620 and Great Oaks Drive, Round Rock, Williamson County, Texas (Sultan & Kahn).

SUMMARY: Sultan and Kahn Partnership, Ltd. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–035525–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered Bone Cave Harvestman (*Texella reyesi*). The proposed take would occur as a result of the construction and occupation of two commercial developments on 5.94 acres (Lots 1, 2, 3, 4, and 5) at RR 620 and Great Oaks Drive, Williamson County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received before January 16, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Sybil Vosler, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–035525–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Bone Cave Harvestman. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: Sultan and Kahn Partnership, Ltd. plans to construct two commercial developments on 5.94 acres (Lots 1, 2, 3, 4, and 5) at RR 620 and Great Oaks Drive, Williamson County, Texas. This action will occur on less than 2.41 acres (Lots 1, 4, and portions of Lots 2 and 5) and will indirectly impact the ecosystem of Back Bat/Beck Crevice Cave and Beck Pride Cave, which contain the endangered Bone Cave Harvestman. The development will eliminate less than 1.6 acres of cave cricket habitat, upon which the Bone Cave Harvestman depends, and may cause deterioration of the cave ecosystem by encouraging fire ants, altering the surface and subsurface moisture and temperature regimes, and increasing human impacts. The applicant proposes to compensate for this incidental take of Bone Cave Harvestman habitat by planting a 30-foot-wide native plant landscape buffer between the development and the cave conservation area; monitoring and treating for introduced fire ants on the undeveloped portions of Lots 2, 3, and 5; restricting the use of pesticides and herbicides; and prohibiting the use of the premises for businesses that have the potential to contaminate sub-surface karst and/or groundwater, such as gas stations and dry cleaners.

Jeoffey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–31891 Filed 12–14–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Colville Indian Reservation Integrated Resource Management Plan, Colville Confederated Tribes, Colville Reservation, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file a Final Environmental Impact Statement (FEIS) for an Integrated Resource Management Plan (IRMP) for the Colville Indian Reservation, Washington, with the U.S. Environmental Protection Agency, and that the FEIS is now available for public review. The proposed action is BIA approval for the Colville Confederated Tribes to implement the IRMP for the period 2000–2014. Brief descriptions of the proposed action and seven alternatives are provided in the **SUPPLEMENTARY INFORMATION** section.

DATES: Written comments must arrive by January 15, 2001.

ADDRESSES: You may mail or hand carry written comments to Jim Orwin, Acting Superintendent, Colville Agency, Bureau of Indian Affairs, P.O. Box 111, Nespelem, Washington 99155–0111.

Persons wishing copies of this FEIS may contact the Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155–0150, Attention: William Nicholson, Acting Executive Director, telephone (509) 634–2238. Copies of the FEIS have been sent to all agencies and individuals that participated in the scoping process and to all others who have already requested copies.

FOR FURTHER INFORMATION CONTACT: Jim Orwin, (509) 634–2308, or William Nicholson, (509) 634–2238.

SUPPLEMENTARY INFORMATION: The BIA is proposing to approve an IRMP for the management of natural resources on the Colville Indian Reservation for the period 2000–2014. This FEIS analyzes the impacts of seven alternatives, as follows:

Alternative 1, no action, would continue the existing management plan. About 1,071.2 million board feet (MMBF) of timber would be harvested across 157,573 acres, and the range management units and allotments on the reservation would be managed as they are now.

Alternative 2 calls for the harvesting of about 953.1 MMBF of timber across 156,989 acres and for a 15 percent general reduction in range use.

Alternative 3 calls for the harvesting of about 818.7 MMBF of timber across 119,683 acres and for the withdrawal of about 269,000 acres of range allotments.

Alternative 4 emphasizes intermediate harvesting to move the structural stage class of stands on the Reservation towards the desired future conditions. About 757.9 MMBF of timber would be harvested across 157,573 acres and allowable animal unit months (AUMs) would be doubled to 121,800.

Alternative 5 emphasizes regenerative harvesting in order to reduce the existing impacts of insects and disease. About 1,421.4 MMBF of timber would be harvested across 157,573 acres and AUMs would increase by 50 percent to 91,350.

Alternative 6 emphasizes forest and watershed health as well as fish and wildlife habitat. About 1,105.1 MMBF of timber would be harvested across 123,556 acres and AUMs would be reduced by 50 percent.

Alternative 7, the preferred alternative, is the IRMP. This emphasizes desired future conditions for all resources, including forest health, watershed health, range management, fish and wildlife management and land revenue goals. About 1,164.5 MMBF of timber would be harvested across 125,680 acres and AUMs would increase by 50 percent to 91,350.

Public Comment Solicitation

As an alternative to submitting written comments regarding the FEIS to the location identified in the **ADDRESSES** section, interested persons may instead comment via the Internet to jim.orwin@colvilletribes.com. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive confirmation from the system that your Internet message was successfully received, contact us directly at (509) 634–2308.

Comments, including names and home addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may

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request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published pursuant to § 1503.1 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 437 *et seq.*) Department of the Interior Manual (510 DM1–7) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: December 6, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31951 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW146744]

Federal Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a draft environmental impact statement (DEIS) and notice of public hearing on the north Jacobs ranch federal coal lease application in the decertified Powder River federal coal production region, Wyoming.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of a DEIS for the North Jacobs Ranch Coal Lease Application, BLM serial number WYW146744, in the Wyoming Powder River Basin, and announces the scheduled date and place for a public hearing pursuant to 43 Code of Federal Regulations (CFR) 3425.4. The DEIS analyzes the impacts of issuing a Federal coal lease for the proposed North Jacobs Ranch Federal coal tract. The purpose of the hearing is to solicit public comments on the DEIS, the fair market value, the maximum economic recovery, and the proposed competitive sale of the coal included in the proposed North Jacobs Ranch Federal coal tract. The North Jacobs Ranch tract is being considered for sale as a result of a coal lease application received from Jacobs Ranch Coal Company (JRCC) on October 2, 1998. JRCC is a subsidiary of Kennecott Energy Company. The tract as applied for includes about 4,821.19 acres containing approximately 519 million tons of Federal coal reserves in Campbell County, Wyoming.

DATES: A public hearing will be held at 7 p.m. MDT, on January 17, 2001, at the Clarion Western Plaza Motel, 2009 S. Douglas Highway, Gillette, WY. An open house will start at 6:30 p.m., prior to the hearing, to answer questions related to the leasing process and this coal lease application. Written comments on the DEIS will be accepted for 60 days following the date that the Environmental Protection Agency (EPA) publishes their notice of availability of the DEIS in the **Federal Register**. We expect that the EPA will publish that notice on December 15, 2000.

ADDRESSES: Please address questions, comments or requests for copies of the Draft EIS to the Casper Field Office, BLM, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, Wyoming 82601; or you may e-mail them to the attention of Nancy Doelger at casper__wymail@blm.gov; or fax them to 307–261–7587.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: The application for the North Jacobs Ranch tract was filed as a maintenance tract coal lease-by-application (LBA) under the provisions of 43 CFR 3425.1

On October 2, 1998, JRCC filed coal lease application WYW146744 for the North Jacobs Ranch Federal coal tract with the BLM for the following lands:

T. 44 N., R. 70 W., 6th P.M., Campbell County, Wyoming

Sec. 26: Lots 9 and 10;
Sec. 27: Lots 1–16;
Sec. 28: Lots 1–16;
Sec. 29: Lots 1–16;
Sec. 30: Lots 5–20;
Sec. 31: Lots 5–20;
Sec. 32: Lots 1–16;
Sec. 33: Lots 4, 5, 12, 13.

T. 44 N., R. 71 W., 6th P.M., Campbell County, Wyoming

Sec. 25: Lots 1–16.

Total surface area applied for: 4,821.19 acres.

The Powder River Regional Coal Team (RCT) reviewed this competitive lease application at public meetings held on February 23, 1999, in Billings, Montana; October 27, 1999, in Gillette, Wyoming; and October 25, 2000, in Cheyenne, Wyoming. At these meetings, the RCT recommended that BLM process this LBA, pending resolution of the conflicts between proposed coal mining and existing and proposed oil and gas development, including proposed coalbed methane (CBM) development on the tract.

The Jacobs Ranch Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality (DEQ) and an approved air quality permit from the Air Quality Division of the Wyoming DEQ to mine up to 38 million tons of coal per year through 2001, and 50 million tons of coal per year to be mined in 2002 through 2004. According to the application filed for the North Jacobs Ranch tract, the maintenance tract would be mined to extend the life of the existing mine. JRCC estimates that, under the current mine plan, the existing recoverable reserves at the Jacobs Ranch Mine will be mined out in about 7 years at an average production rate of 30 million tons per year. The Black Thunder Mine is also contiguous to the lease application area.

JRCC previously acquired a maintenance coal lease (serial number WYW117924, issued effective October 1, 1992), containing approximately 1,709 acres adjacent to the Jacobs Ranch Mine using the LBA process.

The DEIS analyzes four alternatives. The Proposed Action is to lease the North Jacobs Ranch tract as applied for to the successful bidder at a competitive sealed bid sale. The second alternative, Alternative 1, is the No Action Alternative, which assumes that the application for the North Jacobs Ranch tract is rejected. The third and fourth alternatives evaluate issuing a lease for a tract that has been modified to avoid bypassing coal in the future and/or to reduce multiple mineral development conflicts with existing oil and gas development.

The Office of Surface Mining Reclamation and Enforcement is a cooperating agency in the preparation of this EIS because it is the Federal agency that would recommend approval or disapproval of the mining plan for the North Jacobs Ranch LBA tract to the Secretary of the Interior, if a lease is issued for the tract.

During the scoping process, the issues that were identified related to this lease application included: potential conflicts with existing conventional oil and gas development and proposed CBM development; potential cumulative impacts of increasing mineral development in the Powder River Basin; validity and currency of resource data; public access; potential impacts to threatened and endangered species and other species of concern; potential cumulative air quality impacts; potential impacts of nitrogen oxide emissions resulting from blasting of coal and overburden; and cumulative impacts of reasonably foreseeable actions such as the construction and operation of the DM&E railroad in the cumulative analysis.

Comments, including names and street addresses of respondents, will be available for public review at the BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 8, 2000.

Lynn E. Rust,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. 00–31870 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: Election of RAC Officers, weed free hay policy, proposed powerline in northeastern Nevada, Native American consultation presentation, status of Argenta Marsh, wild horse and burro program updates, update on sage grouse/sagebrush steppe habitat conservation planning, OHV update, and update on implementation of rangeland health standards and guidelines.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502; January 5 starting at 8:00 a.m.; public comments will be at 10:00 a.m. and 2:00 p.m.; tentative adjournment at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Diane Murray Public Affairs Specialist, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820, telephone (775) 635–4000.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Helen Hankins,

Field Office Manager, Elko Field Office.

[FR Doc. 00–31953 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection survey.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) to conduct a new survey on "Gulf of Mexico Labor Needs." We are also soliciting comments from the public on this ICR.

DATE: Submit written comments by January 16, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–NEW), 725 17th Street, N.W., Washington, D.C. 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. For details on the proposed survey or to obtain a copy of the survey questions, you may contact Harry Luton, in the MMS Gulf of Mexico Regional Office, telephone (504) 736–2784.

SUPPLEMENTARY INFORMATION:

Title: Survey—Gulf of Mexico Labor Needs.

OMB Control Number: 1010–NEW.

Abstract: MMS is responsible for managing mineral resources on the Federal outer continental shelf (OCS). The National Environmental Policy Act (NEPA) of 1969, the Outer Continental Shelf Lands Act (OCSLA), as amended, the Coastal Zone Management Act (CZMA) of 1996, and the Endangered Species Act of 1973, require MMS to assess, mitigate, and monitor the effects of the OCS program on the environment.

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The OCS oil and natural gas exploration and production industry impacts local and regional economies through many activities, including the demand for labor, the demand for services, and the demand for capital goods. Though thought to be in decline a decade ago, several mid-1990's changes have reinvigorated the industry. These include technical innovations such as three-and four-dimensional seismic surveys and subsurface completion systems that allow companies to operate in very deep water, as well as passage of the Deep Water Royalty Relief Act of 1995. This recent and unexpected growth has increased the significance and urgency of the need for MMS to obtain data on current Gulf of Mexico (GOM) OCS conditions and operating practices.

We propose to conduct a survey to collect and analyze information for use in MMS documents and management decisions. We will use the information within NEPA documents, with special emphasis on development in deep water. We will use the patterns and trends found in the data to support descriptions of how the GOM offshore oil and natural gas industry operates, how it resembles and differs from other regional markets, and what trends appear to be influencing its current direction. The OCSLA stipulates that MMS management of the OCS must include evaluations of the effects of industry activities on area resources. The CZMA policies on industrial and water use in the OCS affect many MMS decisions relating to planning, procedures, and interactions with industry, governments, and communities. The Endangered Species Act requires MMS to evaluate OCS activity and its affect on regional populations. The data collected through the proposed survey is necessary for MMS to successfully do each of these.

The information under the proposed data collection will be obtained by randomly sampling from the following eight populations: (1) Seismic companies; (2) platform and rig construction companies; (3) pipeline operating companies; (4) air transportation companies; (5) OCS field production operating companies; (6) employees from each of the previous sectors; (7) contracting organizations for operating companies; and (8) operating companies that have bid for a lease within the GOM. For the purposes of the proposed tests, an offshore employee "earns money by working in any of three segments " operating companies, service and supply companies, and transportation companies. The offshore worker charges time directly to GOM activities." The employee form will provide important economic information to supplement and cross check the industry data and will include demographic information to help characterize the economic effects of the program and the worker point of view concerning certain industry trends.

Questionnaire completion is voluntary. The questionnaires will be administered under the guidelines established under 45 CFR 46. Procedures designed to protect the confidentiality of the information provided will include the use of coded identification numbers to protect the identities of respondents and the businesses they represent. The final report will summarize data by geographic region, business type, or population category so that individual persons and companies will not be identifiable. Identifying information will be removed from data files.

We do not consider that the information requested in the proposed survey instruments necessitate a classification as Confidential Business Information. As stated, we will take efforts to ensure the anonymity of the collected data. As the test surveys are, and future surveys will be, voluntary, companies may choose not to respond to questions on proprietary information, but they can be assured that proprietary data will not be able to be associated with their company.

Frequency: This survey will be conducted once every 5 years.

Estimated Number and Description of Respondents: Estimated 6,338 respondents from the categories listed in the following chart.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: Estimated 10,792 burden hours as described in the following chart.

Respondent	Total hour burden (divided by)	Predicted no. of respondents (equals)	Predicted hour burden per respondent
Seismic	292.25	21	13.9
Platform/Rig Construction	1,065.75	63	16.9
Pipeline Operators	473.00	34	13.9
Air Transportation	83.50	6	13.9
Operators	2,667.00	126	21.2
Employees	4,398.25	5,865	0.75
Contractors	1,622.75	189	8.6
Bidders	189.75	34	5.6
Total	10,792.25	6,338	

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: Beyond labor, the proposed information collection poses no cost burden to respondents. MMS will pay for all postage and telephone charges. Respondents will incur no capital and operation and maintenance costs.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . ." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on July 31, 2000, we published a **Federal Register** notice (65 FR 46733) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. We received no comments in response to that initial notice. If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 16, 2001.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 27, 2000.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 00–32005 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Preparation for Proposed Lease Sale 180 in the Western Gulf of Mexico (2001)

AGENCY: Minerals Management Service.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment (EA) for proposed Lease Sale 180 (scheduled for August 2001) in the Western Gulf of Mexico Planning Area. In January 1997, MMS issued a Call for Information and Nominations/Notice of Intent to Prepare an EIS (Call/NOI) for the four proposed Western Gulf of Mexico sales in the current 5-year leasing program. In 1998, MMS prepared a single Environmental Impact Statement (EIS) for all four sales. The multisale Final EIS, filed in May 1998, included an analysis of a single, typical sale, and a cumulative analysis that included the effects of holding all four sales, as well as the cumulative effects of the long-term development of the planning area. The MMS stated in the EIS that an EA would be prepared for each lease sale after the first sale covered in the EIS (Sale 171).

The preparation of this EA is the first step in the prelease decision process for Sale 180. The proposal and alternatives for Sale 180 were identified by the Director of MMS in January 1997 following the Call/NOI and were analyzed in the Western Gulf multisale EIS, which is available from the Gulf of Mexico OCS Region's Public Information Office at 1–800–200–GULF. The proposed action analyzed in the multisale EIS was the offering of all available unleased acreage in the Western Gulf of Mexico Planning Area, with the following exceptions: Blocks A–375 (East Flower Garden Bank) and A–398 (West Flower Garden Bank) in the High Island Area, East Addition, South Extension, designated as a national marine sanctuary; and Blocks 793, 799, and 816 in the Mustang Island Area, identified by the Navy as needed for testing equipment and for training mine warfare personnel. The proposal to be addressed in this EA has been revised to the following extent: two additional blocks or portions of these blocks (High Island Area, East Addition, South Extension, Block A–401 and High Island, South Addition, Block A–513), which lie partially within the Flower Gardens National Marine Sanctuary, are deferred from the proposed action in light of the President's June 1998 withdrawal of all Marine Sanctuaries from oil and gas leasing. The proposed action includes existing regulations and proposed lease stipulations designed to reduce environmental risks. The EA will also analyze alternatives to exclude blocks near biologically sensitive topographic features, as well as the no action alternative. The analysis in the EA will reexamine the potential environmental effects of the proposal and alternatives based on any new information regarding potential impacts and issues that was not available at the time the Final EIS was prepared.

The MMS requests interested parties to submit comments regarding any such new information or issues that should be addressed in the EA to Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5400), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 by January 19, 2001. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a supplemental EIS. The MMS will then prepare and send consistency determinations to the affected States to determine whether the proposed sale is consistent with federally-approved State coastal zone management programs, and will send a proposed Notice of Sale to the Governors for their comments on the size, timing, and location of the proposed sale. The tentative schedule for the steps in the prelease decision process for Sale 180 are listed below:

Comments due to MMS, January 19, 2001;
EA/FONNSI or Supplemental EIS, March 2001;
Proposed Notice of Sale sent to Governors, March 2001;
Consistency Determinations sent to States, March 2001;
Final Notice of Sale in **Federal Register**, July 2001;
Sale, August 2001.

If you wish to comment, you may mail or hand-carry written comments to the Department of the Interior, Minerals Management Service, Regional Director (MS–5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Dennis Chew, telephone (504) 736–2793.

Dated: December 11, 2000.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–31964 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; AK

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: The National Park Service proposes to offer a concession contract authorizing lodging, food and beverage, gifts and merchandise, rental of outdoor recreation equipment, ground transportation and other services for the public at Katmai National Park &

Preserve, Alaska from January 1, 2001 through December 31, 2005.

EFFECTIVE DATE: January 16, 2001.

ADDRESSES: National Park Service, Alaska Support Office, Concessions Division, 2525 Gambell St., Room 107, Anchorage, AK, 99503; telephone 907 257–2594, fax 907 264–5679.

SUPPLEMENTARY INFORMATION: This contract is being offered to the incumbent concessioner—Katmailand, Inc. on a sole-source basis in accordance with 36 CFR 13.82(e). The visitor services required and/or authorized by this contract continue to be consistent with the purposes for which Katmai National Park & Preserve was established, as required by 36 CFR 13.82(e).

Dated: November 30, 2000.

Paul Anderson,

Deputy Regional Director, Alaska Region.

[FR Doc. 00–32014 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Extension of Expiring Contracts For Up to One Year; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice of correction.

SUMMARY: The National Park Service published notice of its intention to extend certain expiring concession contracts for a period of up to one year in the **Federal Register** on December 1, 2000 (pages 75296–75300). Certain contracts were incorrectly identified or improperly included in that notice. The following corrections should be made to that notice:

1. The following contracts are no longer in existence and should be deleted from the list:

Concessioner identification no.	Concessioner name	Park
YELL135	Linn Brothers Outfitting	Yellowstone National Park
YELL142	JR Outfitting & Guide Service	Yellowstone National Park
YELL150	Buffalo Horn Outfitters	Yellowstone National Park
YELL152	Crossbow Outfitters	Yellowstone National Park
YELL154	Star Valley Llama	Yellowstone National Park
YELL163	Bar Diamond G	Yellowstone National Park
YELL171	Swift Creek Outfitters	Yellowstone National Park

2. The concessioners' names on the following contracts were listed incorrectly, and should be changed as follows:

Concessioner identification no.	Concessioner name	Park
JODR007	Goosewing Ranch Snowmobile Safaries	John D. Rockefeller Memorial Parkway
JODR012	Cowboy Village Resort	John D. Rockefeller Memorial Parkway
YELL107	Wyoming Backcountry Adventures	Yellowstone National Park
YELL108	Bleu Sky Pack Station, Inc	Yellowstone National Park
YELL137	Miller's Wilderness Park Trips	Yellowstone National Park
YELL147	Farvalley Ranch	Yellowstone National Park
YELL149	T Lazy T Outfitters	Yellowstone National Park
YELL156	Two Ocean Pass Ranch	Yellowstone National Park
YELL159	Ron Dube's Wilderness Adventures	Yellowstone National Park
YELL164	Covered Wagon Ranch	Yellowstone National Park
YELL301	Loomis Enterprises	Yellowstone National Park
YELL400	Ace Snowmobile Tours	Yellowstone National Park
YELL408	Two Top Snowmobile Tours	Yellowstone National Park

EFFECTIVE DATE: December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone (202) 565–1210.

Dated: December 11, 2000.

Richard G. Ring,

Associate Director, Park Operations and Education.

[FR Doc. 00–32015 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Tallgrass Prairie National Preserve, Kansas

ACTION: Record of Decision.

Introduction: The National Park Service has prepared the Final General Management Plan/Final Environmental Impact Statement (GMP/EIS) for Tallgrass Prairie National Preserve, Kansas. This Record of Decision is a statement of the decisions made, other alternatives considered, the basis for the decision, the environmentally preferable alternative, measures proposed to mitigate environmental harm, and public involvement in the decision-making process.

Decision: The National Park Service will implement the proposed action as described in the Preferred Alternative and the Actions Common to all Action Alternatives sections of the General Management Plan/Environmental Impact Statement issued in September 2000.

Summary of the Selected Action: The goal of the selected action is the integrated management of the natural and cultural resources of the preserve. Two fundamental ideas form the basis for the preferred alternative: (1) Tallgrass Prairie National Preserve has been established as a unit of the National Park System to preserve, protect, and interpret for the public a remnant of the once vast tallgrass prairie ecosystem, and (2) this remnant exists today because of a complex history of interaction between people and the land. The proposed management plan seeks to reflect this long history of interaction. Management areas will be designated to provide guidance for implementing desired future conditions and visitor experience goals.

The National Park Service (NPS) will enter into a long-term legal agreement with the landowner, the National Park Trust (NPT), to manage the preserve. Initially, the NPS will acquire, through donation, approximately 29 acres of land from the NPT that includes the historic ranch headquarters and the Lower Fox Creek School areas.

The preserve will be managed to maintain and enhance the tallgrass prairie within its boundaries through the use of fire and historic and contemporary grazing regimes in different combinations that vary over time and location. Prescribed fire applications will make use of roads, fences, stream courses, topography, and burn frequencies to create a varied landscape or vegetative mosaic that will help maintain and enhance the tallgrass prairie and will encourage the wide variety of native plant and animal life associated with the prairie. Grazing regimes will include cattle and bison, separated by adequate fencing.

Decisions regarding natural and cultural resources will be guided by information generated through research and by ongoing inventory and monitoring programs.

Riparian areas will be protected from erosion and further loss of vegetation. Some bottomland prairie will be restored. Springs, seeps, and associated streams will receive additional protection if they are found to contain unique or rare native plant or animal species.

Some agricultural crops will be planted to create a historic scene, but no alien, non-indigenous species will be introduced into riparian areas or areas of native prairie. Existing exotic species that could impact preserve resources in a negative manner, or could spread rapidly, will be removed or controlled where practical.

Significant archeological and ethnological sites will be preserved and protected, and public access to these sites will be controlled. Specific resources may be made accessible to culturally affiliated tribes or traditionally associated groups by request. Any identified American Indian sacred sites will be protected, with access for sacred ceremonies allowed to appropriate tribes.

The ranching character of the area encompassing the historic ranch headquarters and the Lower Fox Creek School will be retained, with the buildings, associated structures, and landscape features restored, rehabilitated, and/or preserved.

A primary visitor information and orientation area will be developed near the junction of State Route 177 and U.S. 50, near Strong City. A variety of visitor activities and facilities appropriate for a national preserve will provide for a range of opportunities, time commitments, and levels of physical exertion. A range of on-site interpretive and educational programs will be offered, focusing on the natural history of the tallgrass prairie, ranching in the Flint Hills, and American Indian history and culture. A public transportation system, such as a shuttle, will be developed using existing roads and roadbeds to provide transportation, interpretive tours, and access to the prairie.

Lands east of the Fox Creek bottomland will provide day use opportunities for visitors to explore the prairie and its associated human history.

The NPS will actively seek partnerships and opportunities for cooperation with local communities, government agencies, nonprofit organizations, and other entities that may have an interest in helping to achieve the preserve's desired futures.

Other Alternatives Considered

Alternative A, "No Action." Tallgrass Prairie National Preserve represents an unusual situation in which to explore a "no action" alternative. The preserve is, and will remain, under the ownership of the National Park Trust (NPT), yet Congress has authorized the National Park Service (NPS) to manage the land. Currently an interim cooperative agreement is in place to allow the NPT and the NPS to work together to address the immediate operational needs. It is assumed that under this alternative the NPT would continue to own all the land and the NPS would continue to provide minimal management, in accordance with the terms of the interim agreement.

A 35-year grazing lease would continue on 98 percent of the preserve. Current practices include early, intensive stocking and annual burning of all the leased acreage. An access agreement between the NPT and the lessee would determine public access to preserve lands. Brome would continue to grow on preserve lands and riparian areas would continue to be used by cattle.

Historic structures and portions of the landscape would receive routine or limited maintenance.

Alternative B. The primary focus of this alternative would be on the cultural resources of the preserve. The majority of the preserve would be designated a cultural area, where most of the cultural resources would be restored, stabilized, or preserved, and visitor access to these resources would be maximized. A small area of the preserve would be set aside for prairie enhancement activities and low-impact visitor activities. Motorized traffic would be limited and visitor opportunities would require greater time commitments and moderate effort.

Alternative C, The primary focus of this alternative would be on offering diverse visitor opportunities. There would be management areas within the preserve for moderate use and an area for dispersed use. The moderate use area would offer public transportation, while the dispersed use area would be restricted to nonmotorized means of access. Cultural resources representing "best examples" of the story of human interaction with the prairie would be restored and preserved, others would be stabilized. Cattle operations would include cow-calf and season-long grazing to allow visitors the opportunity to observe ranching operations in all seasons. Prairie enhancement activities would occur in the dispersed use area.

Alternative D. This alternative would offer a "two-pronged" focus on ranching and tallgrass prairie management. Demonstrations of ranching activities would occur and traditional row crops would be planted in some areas to re-create the historic agricultural and ranching scene. Cultural resources would be maintained and used adaptively for ranch operations, demonstrations, and visitor facilities. Prairie management would be designed to promote diversity of native species.

Alternative E. The primary focus of this alternative would be on enhancing the tallgrass prairie ecosystem, including its associated creeks, springs, and seeps. Management activities would be designed to establish a dynamic mosaic of successional stages resulting from the interaction of climate, fire, and grazing. More than half the preserve would consist of a large native ungulate management area where visitor access would be limited. Other areas of the preserve would offer visitors more access and opportunities, such as demonstrations of traditional cattle ranching practices and demonstrations of alternative prairie management practices. Cultural resources in the ranch headquarters and Lower Fox Creek School areas would be preserved and protected.

The following two additional alternatives were considered but rejected early in the planning process:

Alternative F. Under this alternative the preserve would have been managed as a modern working ranch. Historic structures would have been adaptively used and other structures would have been updated and improved to meet modern needs. Prairie enhancement activities probably would not have occurred to a large extent, due to the need for profitability. Visitor access to the prairie and to the historic ranch

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headquarters area would have been limited for safety reasons, though visitors would have had the opportunity to observe how cattle are raised for market today.

Rehabilitation, restoration, and maintenance of the cultural resources and visitor access to those resources would have been very limited due to safety, liability concerns, and costs. Important elements of preservation and interpretation would be missing, including many of the cultural landscape elements. Significant changes might have been necessary to make the structures and facilities usable and efficient for ranching operations. These changes could have conflicted with the needs for interpretation, historic preservation, and visitor use.

Elements of the legislation, purpose, mission, desired futures, and visitor experience goals could not have been met under this alternative, because of safety, liability, and costs. The need to provide for operational efficiencies and profits in a modern ranching operation also could not be met.

Alternative G. Under this alternative, the majority of preserve lands would have been managed as a wilderness area. The historic ranch headquarters and Lower Fox Creek School areas would have been preserved, but most other developments would have been removed in order to restore all natural processes and enhance the prairie to the greatest extent possible. Visitor use would have been limited to nonmotorized and dispersed activities.

Alternative G placed the greatest, almost exclusive, emphasis on the natural resources. Therefore, important elements associated with the restoration, rehabilitation, and maintenance of the cultural resources, including the cultural landscapes, would have been lost through this alternative. Visitor understanding and appreciation of the history of human use of the preserve area would not have occurred with this alternative, particularly in relationship to the ranching resources.

Environmentally Preferable Alternative: The environmentally preferable alternative is defined as "the alternative or alternatives that will promote the national environmental policy as expressed in Section 101 of the National Environmental Policy Act. Ordinarily, this means the alternative that causes least damage to the biological and physical environment; it also means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources" ("Forty Most Asked Questions Concerning Council on Environmental Quality's [CEQ] National Environmental Policy Act Regulations," 1981).

The last clause within this guidance is particularly relevant in identifying the environmentally preferable alternative for the Tallgrass Prairie National Preserve general management plan. Public Law 104–333 sets forth two purposes for the preserve. First, the preserve was established ". . . to preserve, protect, and interpret for the public an example of a tallgrass prairie ecosystem . . ." Second, the preserve was established ". . : to preserve and interpret for the public the historic and cultural values represented on the Spring Hill Ranch." Preserving both the natural and cultural resources that are related to the tallgrass prairie requires careful balancing to ensure that neither type of resource receives inordinate adverse impacts.

In consideration of the dual purposes for which the preserve was established, the National Park Service has identified the Preferred Alternative as the environmentally preferable alternative. The preferred alternative would provide for greater expression of vegetative species diversity than other alternatives, and would have the lower impacts to vegetation from visitation and development. The alternative would provide for the greater knowledge of natural resources because of the emphasis on intensive inventory and monitoring programs and external research.

Alternative E shares these advantages. Alternative E also would provide for greater improvement to water quality. However, Alternative E would allow for more deterioration of cultural resources (as the emphasis of the alternative would be on the protection of the tallgrass prairie ecosystem). The Preferred Alternative, therefore, provides for more holistic protection of the preserve's resources.

Basis for Decision: While developing the various preliminary management alternatives, and through feedback from consultants and the public, the major focus of the proposed action was crystallized: the preserve represents a small remnant of the once vast tallgrass prairie and it is the long history of interaction of people with this land that has allowed that remnant to survive to this day. Thus, it was determined that the integration of the management of the cultural and natural resources, reflecting this long relationship of people and land, would be vital to the future protection of those resources and the interpretation of the story of the preserve. With that end in mind, the proposed action was developed out of the existing alternatives. It fully supports the park's purpose and significance; it accomplishes, to a great extent, the desired futures for the preserve; and it offers a broad level of both resource protection and visitor opportunities.

Measures Proposed to Mitigate Environmental Harm: All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. These measures are identified in the GMP/EIS. They include, but are not limited to, monitoring and management of natural and cultural resources, monitoring and management of visitor use, and continuing consultation with appropriate entities. Many other mitigation measures are described in the GMP.

Since the GMP/EIS offers a broad plan for the future, specific project and implementation plans will be developed later. These will be developed in compliance with the National Environmental Policy Act, the National Historic Preservation Act, and other applicable federal and state laws and regulations prior to project clearance and implementation.

Public Involvement: Five newsletters were produced; the first four issues went to all postal patrons in Chase County, to relevant agencies and organizations, and to those requesting to be on the mailing list. Chase County residents who requested to remain on the list were included in the mailing of the fifth issue. The planning mailing list currently contains approximately 1,435 addresses.

Informational open houses have been held throughout the planning process. Two were held in July 1997, in Cottonwood Falls and Topeka, to introduce the planning team and to explain the planning process. Two were held in October 1997, in Emporia and Council Grove, to provide an opportunity for the public to ask questions about planning activities and to share information. One hundred forty-one people attended these meetings. Two hundred sixty-seven written comments were received early in the planning effort, expressing thoughts and concerns about a vision for the future of the preserve.

In June 1998, when the preliminary management alternatives were developed, four open houses were held to present these alternatives: one each in Strong City, Wichita, Council Grove, and Lawrence. A total of 245 people attended those meetings, and during the comment period, 324 written comments were received.

Open houses were again held in these four cities and in Topeka, in February 1999, when the draft preferred alternative was developed. One hundred fifty-six people attended these meetings; 215 written comments were received.

About 500 copies of the Draft GMP/EIS were distributed to the public, interest groups, and government agencies in late 1999. In conjunction with the 60-day public review of the Draft GMP/EIS open houses were held in Cottonwood Falls, Wichita, and Lawrence. A total of 70 people attended these open houses. During the comment period, 69 written public comments were received. Copies of the plan were available for review in local government offices and libraries.

The Tallgrass Prairie National Preserve worldwide website (*www.nps.gov/tapr*) has contained planning information since June 1997, and electronic comment sheets were posted there during the public comment period for the preliminary alternatives, draft preferred alternative, and Draft GMP/EIS. Approximately 87 comments were received through that medium.

Newsletters and response forms were available at the preserve's administrative offices in Cottonwood Falls, Kansas as well as at the historic ranch headquarters, two miles north of Strong City, Kansas.

Conclusion: A notice of availability for the General Management Plan/Environmental Impact Statement for Tallgrass Prairie National Preserve was published in the **Federal Register** by the Environmental Protection Agency on October 20, 2000 and the 30-day no-action period ended on November 20, 2000. The National Park Service distributed approximately 315 copies of the Final GMP/EIS during this period. Eight letters commenting on the Final GMP/EIS were received. These letters either expressed support for the preferred alternative, repeated issues already addressed in responses to comments on the draft document, or raised issues more appropriately addressed in follow-up implementation planning. No changes to the GMP/EIS were made in response to comments on the final document.

The above factors and considerations justify the selection of the final plan, as described in the "Proposed Action" and "Actions Common to All Action Alternatives" sections of the Final Environmental Impact Statement. The General Management Plan is hereby approved.

Recommended:

Dated: December 4, 2000.

Stephen T. Miller,

Superintendent, Tallgrass Prairie National Preserve.

Approved:

Dated: December 5, 2000.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 00–31914 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Criteria

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of availability of a final environmental impact statement for the proposed adoption of Colorado River Interim Surplus Criteria: FES 00 52.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), has issued a Final Environmental Impact Statement (FEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin during the next 15 years.

DATES: Reclamation will issue a Record of Decision no sooner than January 16, 2001.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations and addresses where copies of the document may be reviewed.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins at the above address or telephone Ms. Harkins at (702) 293–8785. The FEIS is available for viewing on the Internet at *http://www.lc.usbr.gov* and *http://www.uc.usbr.gov*. Copies of the FEIS, in the form of a printed document or on compact disk, are available upon written request to Ms. Janet Steele, Attention BCOO–4601, PO Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8785, or by fax at (702) 293–8042.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior (Secretary) manages the lower Colorado River system in accordance with federal law (including the provisions of the 1964 U.S. Supreme Court decree, as supplemented, in *Arizona* v. *California* (the Decree), the Colorado River Basin Project Act of 1968 (CRBPA) and Long Range Operating Criteria (LROC) adopted pursuant to the CRBPA). Within this legal framework, the Secretary makes annual determinations regarding the availability of surplus water from Lake Mead by considering various factors, including the amount of water in storage and predictions for natural runoff. Pursuant to Article II(B)2 of the Decree, if there exists sufficient water available in a single year for pumping or release from Lake Mead to satisfy annual consumptive use in the states of California, Nevada, and Arizona in excess of 7.5 million-acre feet (maf), such water may be determined by the Secretary to be made available as "surplus" water. The Secretary is authorized to determine the conditions upon which such water may be made available.

The purpose of and need for establishing interim surplus criteria is to assist the Secretary in making annual determinations of surplus conditions, and will afford entities that have contracted for surplus water a greater degree of predictability with respect to the annual existence of surplus water available for diversion. This greater predictability would assist these entities in the management of their water resources.

The FEIS presents five possible action alternatives for implementation, plus a No Action Alternative. The action alternatives have been formulated to be consistent with applicable federal law and would serve to implement Article III (3)(B) of the LROC, described above. The five potential action alternatives are (1) "Flood Control Alternative," which would provide surplus water only when flood control releases from Lake Mead are needed, (2) "Basin States Alternative" (Preferred Alternative), (3) "Six States Alternative" and (4) "California Alternative," all of which specify various Lake Mead water surface elevations to be used as "triggers" to indicate when surplus conditions exist; and (5) "Shortage Protection Alternative," which is based on maintaining an amount of water in Lake Mead necessary to provide a normal annual supply of 7.5 maf for the Lower Division, 1.5 maf for Mexico and storage necessary to provide an 80 percent protection for the critical Lake Mead water elevation of 1083 mean sea level (minimum power generation elevation).

Libraries Where the Draft EIS Is Available for Public Review

- Department of the Interior, Natural Resources Library, 1849 C Street, NW, Washington, DC 20240.

- Lower Colorado Regional Office, PO Box 61470, Boulder City, Nevada 89006–1470.
- Phoenix Area Office, Concorde Commerce Center, 2222 West Dunlap Ave., Suite 100, Phoenix, Arizona 85069–1169.
- Yuma Area Office, 7301 Calle Aqua Salada, Yuma, Arizona, 85366–7504.
- Upper Colorado Regional Office, 125 South State St., Room 6107, Salt Lake City, Utah 84138–1102.
- Boulder City Library, 813 Arizona, Boulder City, NV 89005.
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Los Angeles Central Library, 630 W 5th St. Los Angeles, CA 90071.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Salt Lake City Public Library, 209 E 500 S., Salt Lake City, UT 84111.
- Albuquerque Public Library, 501 Copper Ave. NW, Albuquerque, NM 87102.
- Denver Public Library, 10 W 14th Ave. Pkwy, Denver, CO 80204.
- Laramie County Library, 2800 Central Ave., Cheyenne, WY 82001.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Government Reference Library, c/o Jo Reister, Tucson Pima Main Library, 101 North Stone Avenue, Tucson, AZ 85701.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ, 86403.
- Parker Public Library, 1001 South Navajo Ave., Parker, AZ 85344.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.

Dated: December 5, 2000.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance, Department of the Interior.

[FR Doc. 00–31962 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information under 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 16, 2001, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information in 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0051 and codified at 30 CFR 840.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on September 22, 2000 (65 FR 57371). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR Part 840.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for the public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, monthly, quarterly, annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 99,013.

Total Annual Burden Hours: 578,509.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: December 11, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–32040 Filed 12–14–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Sumbission for OMB Review; Comment Request

December 7, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Multiple Worksite Report (MWR) and the Report of Federal Employment and Wages (RFEW).

OMB Number: 1220–0134.

Affected Public: Business or other for-profit institutions; not for-profit institutions; Federal Government; and State, Local or Tribal government.

Frequency: Quarterly.

Form no.	Total respondents	Respondent	Total responses	Average time per response (in minutes)	Total burden (hours)
BLS 3020 (MWR)	112,783	Non-Federal	451,132	22.2	166,919
BLS 3021 (RFEW)	1,984	Federal	7,936	22.2	2,936
Totals	114,767		459,068		169,855

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: States use the Multiple Worksite Report to collect employment and wages data by worksite from employers covered by State Unemployment Insurance which are engaged in multiple operations within a State. These data are used for sampling, benchmarking, and economic analysis.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–31988 Filed 12–14–00; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payble on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration,

Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determination Decisions:

ME000017—See ME000016
ME000018—See ME000004
ME000019—See ME000005
ME000020—See ME000005
ME000021—See ME000005 and ME0000008
ME000022—See ME000007
ME000023—See ME000008
ME000024—See ME000015
ME000025—See ME000012
ME000026—See ME000006
ME000027—See ME000006
ME000028—See ME000029
ME000030—See ME000003
ME000031—See ME000009
ME000032—See ME000010
ME000033—See ME000009
ME000034—See ME000009
ME000035—See ME000009
ME000036—See ME000009 and ME000011
ME000037—See ME000005
ME000038—See ME000005

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

NEW HAMPSHIRE
NH000003 (FEB. 11, 2000)

VOLUME II

PENNSYLVANIA
PA000012 (FEB. 11, 2000)

VOLUME III

FLORIDA
FL000017 (FEB. 11, 2000)
SOUTH CAROLINA
SC000023 (FEB. 11, 2000)

VOLUME IV

MICHIGAN
MI000013 (FEB. 11, 2000)
MI000062 (FEB. 11, 2000)
MI000076 (FEB. 11, 2000)
MI000077 (FEB. 11, 2000)
MI000078 (FEB. 11, 2000)
MI000079 (FEB. 11, 2000)
MI000080 (FEB. 11, 2000)
MI000081 (FEB. 11, 2000)
MI000082 (FEB. 11, 2000)
MI000083 (FEB. 11, 2000)
MI000084 (FEB. 11, 2000)
MI000085 (FEB. 11, 2000)
MI000087 (FEB. 11, 2000)
MI000088 (FEB. 11, 2000)
MI000099 (FEB. 11, 2000)
MI000100 (FEB. 11, 2000)
MI000101 (FEB. 11, 2000)

VOLUME V

IOWA
IA000001 (FEB. 11, 2000)
IA000002 (FEB. 11, 2000)
IA000004 (FEB. 11, 2000)
KANSAS
KS000008 (FEB. 11, 2000)
KS000009 (FEB. 11, 2000)
KS000016 (FEB. 11, 2000)
KS000019 (FEB. 11, 2000)
KS000020 (FEB. 11, 2000)
KS000021 (FEB. 11, 2000)
KS000022 (FEB. 11, 2000)
KS000023 (FEB. 11, 2000)
KS000025 (FEB. 11, 2000)
KS000069 (FEB. 11, 2000)
KS000070 (FEB. 11, 2000)
NEBRASKA
NE000003 (FEB. 11, 2000)
NE000010 (FEB. 11, 2000)
TEXAS
TX000001 (FEB. 11, 2000)
TX000002 (FEB. 11, 2000)
TX000007 (FEB. 11, 2000)
TX000008 (FEB. 11, 2000)
TX000019 (FEB. 11, 2000)
TX000069 (FEB. 11, 2000)
TX000081 (FEB. 11, 2000)

VOLUME VI

NONE

VOLUME VII

CALIFORNIA
CA000009 (FEB. 11, 2000)
CA000028 (FEB. 11, 2000)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the reminder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 7th day of December, 2000.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–31718 Filed 12–14–00; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 11, 2000.

FEDERAL REGISTER Citation of previous announcement: Vol. 65, No. 236, at 76669, December 7, 2000.

Previously Announced

TIME AND DATE: 2:00 p.m., Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: The Commission meeting to consider and act upon Northern Illinois Steel Supply Co., Docket No. LAKE 99–78–RM, etc., has been canceled. No earlier announcement of the cancellation was possible.

Previously Announced

TIME AND DATE: The Commission meeting will commence following upon the conclusion of the Commission meeting to consider Northern Illinois Steel Supply Co., Docket No. LAKE 99–78–RM, etc., which commences at 2:00 p.m. on Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: As a result of the cancellation of the Commission meeting to consider Northern Illinois Steel Supply Co., Docket No. LAKE 99–78–RM, etc., the Commission meeting to consider Disciplinary Proceeding, Docket No. D 2000–1, will commence at 2:00 p.m. on Tuesday, December 12, 2000. No earlier announcement of the change in meeting time was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean Ellen,

Chief Docket Clerk.

[FR Doc. 00–32193 Filed 12–13–00; 4:02 pm]

BILLING CODE 6735–01–M

U.S. NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Policy Statement for the "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement," Maintenance of Existing Agreement State Programs, Request for Information through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.

2. Current OMB approval number: 3150–0183.

3. How often the collection is required: There are four activities that occur under this collection: IMPEP reviews conducted no less frequently than every four years; for States interested in becoming Agreement States; participation by Agreement States in the IMPEP reviews; and annual requirements for Agreement States to maintain their programs.

4. Who is required or asked to report: Any State receiving Agreement State status by signing Section 274b agreements with the NRC and any State interested in becoming an Agreement State. Presently, there are 32 Agreement States.

5. The number of annual respondents: 32.

6. The number of hours needed annually to complete the requirement or request: For States interested in becoming an Agreement State: Approximately 4,300 hours. For Agreement State participation in 9 IMPEP reviews (8 State and 1 NRC Region): 324 hours (an average of 36 hours per review). For maintenance of existing Agreement State programs: 239,040 hours (an average of 7,470 hours per State). For Agreement State response to 8 IMPEP questionnaires: 424 hours (an average of 53 hours per program). The total number of hours annually is 244,088 hours.

7. Abstract: States wishing to become an Agreement State are requested to provide certain information to the NRC as specified by the Commission's Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement." Agreement States need to ensure that the Radiation Control Program under the Agreement remains adequate and compatible with the requirements of Section 274 of the Atomic Energy Act (Act) and must maintain certain information. NRC conducts periodic evaluations through IMPEP to ensure that these programs are compatible with the NRC's, meet the applicable parts of the Act, and are adequate to protect public health and safety.

Submit, by February 13, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 11th day of December 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31966 Filed 12–14–00; 8:45 am]

BILLING CODE 7590–01–P

U.S. NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection:

NRC Forms 540 and 540A, Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page
NRC Forms 541 and 541A, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page
NRC Forms 542 and 542A, Uniform Low-Level Radioactive Waste Manifest, Index and Regional Compact Tabulation
NRC Forms 540 and 540A: 3150–0164
NRC Forms 541 and 541A: 3150–0166
NRC Forms 542 and 542A: 3150–0165

3. How often the collection is required: Forms are used by shippers whenever radioactive waste is shipped. Quarterly reporting or less frequent is made to NRC depending on specific license conditions.

4. Who is required or asked to report: All NRC-licensed low-level waste facilities. All generators, collectors, and

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processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

5. The number of annual respondents:

NRC Form 540: 2,500 licensees
NRC Form 541: 2,500 licensees
NRC Form 542: 22 licensees

6. The number of hours needed annually to complete the requirement or request:

NRC Form 540: 2,238 (0.167 hours per response)
NRC Form 541: 19,779 (1.48 hours per response)
NRC Form 542: 126 (0.167 hours per response)

7. *Abstract:* NRC Forms 540, 541, and 542, together with their continuation pages, designated by the "A" suffix, provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. NRC Form 540 contains information needed to satisfy DOT shipping paper requirements in 49 CFR Part 172 and the waste tracking requirements of NRC in 10 CFR Part 20. NRC Form 541 contains information needed by disposal site facilities to safely dispose of low-level waste and information to meet NRC and State requirements regulating these activities. NRC Form 542, completed by waste collections or processors, contains information which facilitates tracking the identity of the waste generator. That tracking becomes more complicated when the waste forms, dimensions, or packagings are changed by the waste processor. Each container of waste shipped from a waste processor may contain waste from several different generators. The information provided on NRC Form 542 permits the States and Compacts to know the original generators of low-level waste, as authorized by the Low-Level Radioactive Waste Policy Amendments Act of 1985, so they can ensure that waste is disposed of in the appropriate Compact.

Submit, by February 13, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJSI@NRC.GOV.

Dated at Rockville, Maryland, this 11th day of December, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–31967 Filed 12–14–00; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the third Financial Accounting and Auditing Technical Release, "Preparing and Auditing Direct Loan and Loan Guarantee Subsidies under the Federal Credit Reform Act." The Federal Accounting Standards Advisory Board cleared the technical release on July 31, 1999. Technical Release No. 3 is available on Financenet at *http://www.financenet.gov/financenet/fed/aapc/technicl.htm.*

ADDRESSES: Copies of Technical Release No. 3 may be obtained free of charge from the Federal Accounting Standards Advisory Board, 441 G Street NW, Mailstop 6K17V, Washington, DC 20548 (telephone 202–512–7350).

FOR FURTHER INFORMATION CONTACT: David Zavada (telephone: 202–395–3993), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503.

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–32008 Filed 12–14–00; 8:45 am]

BILLING CODE 3110–01–U

OFFICE OF MANAGEMENT AND BUDGET

Reporting on Non-Valued Seized and Forfeited Property

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the fourth Financial Accounting and Auditing Technical Release, "Reporting on Non-Valued Seized and Forfeited Property." The Federal Accounting Standards Advisory Board cleared the technical release on July 31, 1999. Technical Release No. 4 is available on Financenet at *http://www.financenet.gov/financenet/fed/aapc/technicl.htm.*

ADDRESSES: Copies of Technical Release No. 4 may be obtained free of charge from the Federal Accounting Standards Advisory Board, 441 G Street, NW, Mailstop 6K17V, Washington, DC 20548 (telephone 202–512–7350).

FOR FURTHER INFORMATION CONTACT: David Zavada (telephone: 202–395–3993), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW, Room 6025, Washington, DC 20503.

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–32009 Filed 12–14–00; 8:45 am]

BILLING CODE 3110–01–U

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 2000 is 4.91 percent (*i.e.*, 85 percent of the 5.78 percent yield figure for November 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 2000 and December 2000.

For premium payment years beginning in:	The assumed interest rate is:
January 2000	5.40
February 2000	5.64
March 2000	5.30
April 2000	5.14
May 2000	4.97
June 2000	5.23
July 2000	5.04
August 2000	4.97
September 2000	4.86
October 2000	4.96
November 2000	4.93
December 2000	4.91

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2001 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this day of December 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–31991 Filed 12–14–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Ramco Energy plc, American Depositary Shares (Representing Ordinary Shares, Nominal Value 10p Per Share) File No. 1–14582

December 11, 2000.

Ramco Energy plc, a company organized under the laws of Scotland ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its American Depositary Shares (representing Ordinary Shares, nominal value 10p per share) ("Security"), from listing and registration on the American Stock Exchange ("Amex").

While the Company's Security is listed and registered in the United States on the Amex, the Company's related Ordinary Shares are listed in England on the Alternative Investment Market of the London Stock Exchange. The Company has stated that the trading volume for its Security on the Amex is very limited. In order to avoid the direct and indirect costs of maintaining the Amex listing, therefore, the Company's board of directors unanimously approved a resolution on November 21, 2000, authorizing the Security's withdrawal from listing and registration on the Amex.

The Company has stated in its application that it has complied with the rules of the Amex governing the voluntary withdrawal of a security from listing and registration. In addition, the Company has stated that its application relates solely to the listing and registration of its Security on the Amex and shall have no effect on the continued listing of its related Ordinary Shares on the Alternative Investment Market of the London Stock Exchange.

Any interested person may, on or before January 3, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–31992 Filed 12–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Resource Bankshares Corporation, Common Stock, $1.50 Par Value) File No. 1–14319

December 11, 2000.

Resource Bankshares Corporation, a Virginia corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of

[1] 15 U.S.C. 781(d).

[2] 17 CFR 240.12d2–2(d).

[3] 17 CFR 200.30–3(a)(1).

1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.50 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

Counsel for the Company has stated that the Security has been approved for quotation on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq National Market"), effective at the opening of business on Friday, December 15, 2000.[3] The Amex will suspend trading in the Security on December 15, 2000, in conjunction with its being designated for quotation on the Nasdaq National Market. The Company made the decision to transfer its Security having determined that its long range plans for growth and investment will be better served by the dealer market of the Nasdaq National Market than by the auction market of the Amex.

The Company's application relates solely to the withdrawal of the Security from listing on the Amex and registration under Section 12(b) of the Act[4] and shall have no effect upon the Security's continued obligation to be registered under Section 12(g) of the Act.[5]

Any interested person may, on or before January 3, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–31993 Filed 12–14–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] Telephone conversation between T. Richard Litton Jr., Member, Kaufman & Canoles, and Matthew Boesch, Paralegal, Division of Market Regulation, Commission, on December 8, 2000.

[4] 15 U.S.C. 78*l*(b).

[5] 15 U.S.C. 78*l*(g).

[6] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:
[65 FR 77054, December 8, 2000]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: December 6, 2000.

CHANGE IN THE MEETING: Time change.

The closed meeting scheduled for Thursday, December 14, 2000 at 11:00 a.m., has been changed to Thursday, December 14, 2000, at 11:30 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 12, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–32070 Filed 12–12–00; 4:49 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43697; File No. SR–OPRA–00–08]

Options Price Reporting Authority; Order Approving an Amendment to the Options Price Reporting Authority Plan to Establish Standards for Determining a Participation Fee

December 8, 2000.

I. *Introduction*

On September 12, 2000, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" of "Commission"), pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] an amendment to the OPRA Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").[2] The proposed OPRA Plan amendment would incorporate in the OPRA Plan factors to be considered by OPRA in determining the amount of the participation fee described in the current OPRA Plan as payable by each new party to the OPRA Plan. Notice of the proposed OPRA Plan amendment was published in the **Federal Register** on October 3, 2000.[3] the Commission received one comment letter on the proposed OPRA Plan amendment.[4] This order approves the proposal.

II. *Description and Purpose of the Amendment*

The OPRA Plan currently provides that any national securities exchange or registered securities association whose rules governing the trading of standardized options have been approved by the Commission may become a party to the OPRA Plan, provided it agrees to conform to the terms and conditions of the OPRA Plan and pays a participation fee to OPRA The OPRA Plan does not establish the amount of the participation fee, but instead, states that the amount of the fee will be determined by OPRA in connection with each new application for participation, based upon standards incorporated in the OPRA Plan.[5] OPRA believes that this approach provides sufficient flexibility to permit the determination of the fee to take into account the unique circumstances of each new application while, at the same time assuring that the amount of the fee is based upon a set of established standards, thus enabling the fee to be administered in a fair and consistent manner. Under this structure, the amount of the participation fee will be determined in discussions with each applicant in light of the standards embodied in the OPRA Plan, under the general oversight of the Commission. OPRA represents that this is the same general approach that is reflected in the plans of other registered securities information processor, such as the Consolidated Tape Association and the Consolidated Quotation System.[6]

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[3] *See* Securities Exchange Act Release No. 43347 (September 26, 2000), 65 FR 59035.

[4] *See* letter from Gerald D. Putnum, Chief Executive Officer, Archipelago, L.L.C., to Jonathan G. Katz, Secretary, Commission, dated October 20, 2000 ("Archipelego Letter").

[5] *See* Securities Exchange Act Release No. 42817 (May 24, 2000), 65 FR 35149 (June 1, 2000) (File No. SR–OPRA–99–01).

[6] *See* Section III(c) of the Second Restatement of the CTA Plan as restated December 1995, and Section III(c) of the Restatement of the CQ Plan as restated December 1995.

Although the OPRA Plan currently provides for a participation fee to be determined in the manner described above, it does not reflect the specific standards to be applied in determining the amount of the fee. Instead, the OPRA Plan contemplates that these standards will be incorporated in the OPRA Plan by means of an amendment to be filed with and approved by the Commission prior to the determination of the participation fee to be paid by the International Securities Exchange, LLC ("ISE"), which, at present, is the only party to the OPRA Plan to which a fee based upon these standards will apply. OPRA proposes to amend the OPRA Plan for the purpose of incorporating in the OPRA Plan standards for determining a participation fee to be paid by a new participant to the OPRA Plan. OPRA represents that ISE, the only party currently subject to a participation fee to be determined on the basis of the standards now proposed, did not vote on the adoption of these standards, but did participate in the discussion of the proposed standards.

The purpose of the participation fee is to require each new party to the OPRA Plan to pay a fair share of the costs previously paid by the other parties for the development, expansion, and maintenance of the OPRA system. Consistent with the purpose, the standards now proposed to be embodied in the OPRA Plan for the determination of the participation fee are, for the most part, concerned with these categories of costs. Because OPRA, as an administrative committee of exchanges, does not account for any assets of its own, it does not capitalize any of its costs but instead, simply passes them on to the exchanges. However, OPRA believes that the concept of capitalized costs is an appropriate factor to be taken into account in determining what should be a proper participation fee. Accordingly, the first factor proposed to be included in the OPRA Plan for this purpose is to consider what would have been amortized as OPRA's capital expenditures over the past five years if OPRA were subject to generally accepted accounting principles. OPRA believes that five years is an appropriate time frame for this purpose not only because it represents a reasonable life for the kinds of computer hardware and software assets that make up the OPRA system, but also, because it is a short enough period to provide a reasonable basis for determining how much of OPRA's past expenses should be shared by a new party.

The next factor proposed to be considered is an assessment of costs incurred and to be incurred by OPRA in connection with any modifications to the OPRA system necessary to accommodate the new party, unless these costs have otherwise been paid or reimbursed by the new party. This, too, is a cost-based factor, and reflects OPRA's belief that it is appropriate for a new party to pay the costs uniquely associated with its becoming a party.

Finally, OPRA proposes that the determination of the participation fee would also take into account previous fees paid by other new parties. OPRA represents that the closer in time any such prior fees were paid and the greater the similarity of the circumstances between the participation of the other parties and the party that is to pay the participation fee under consideration, the greater will be the weight given to this factor, in the interest of fairness and consistency. Further, OPRA represents that ISE and the other OPRA participant exchanges have had discussions concerning what would be the amount of the fee if the standard proposed in this amendment were approved, and they have reached agreement on both the amount of the fee and the terms of payment.

III. Discussion

The Commission received one comment letter regarding the proposed OPRA Plan amendment.[7] The commenter expressed support for the proposed amendment to the OPRA Plan. Specifically, the commenter stated that the proposed standards for determining participation fees would treat new participants to the OPRA Plan in an equitable fashion.

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[8] Specifically, the Commission believes that the proposed OPRA Plan amendment is consistent with Section 11A of the Act[9] and Rule 11Aa3–2[10] thereunder in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission believes that it is reasonable for the OPRA Plan to provide for an initial participation fee to be paid by new parties to the OPRA Plan. The Commission notes that the proposal would establish specific factors for determining the amount of the fee payable by new participants to the OPRA Plan. The Commission believes that the proposed factors should foster a fair and reasonable method of determining the amount of a fee payable by new participants to the OPRA Plan.[11] Accordingly, the Commission finds that the proposed factors for determining the amount of the participation fee in the proposal are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[12] that the proposed OPRA Plan amendment, (SR–OPRA–00–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31997 Filed 12–14–00; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Archipelago Letter, *supra* note 4.

[8] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 240.11A3–2.

[11] The Commission notes that the amount of the participation fee for a new party to the OPRA Plan would be subject to review by the Commission if such new party and OPRA do not agree on the amount of the fee. *See* 15 U.S.C. 78k–1(b)(5).

[12] 17 CFR 240.11Aa3–2.

[13] 17 CFR 200.30(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43648; File No. SR–DTC–00–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of A Proposed Rule Change Relating to Service Fees

November 30, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 4, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will change DTC's service fee schedule.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC proposed to change its service fee schedule by adding the following Participant Terminal System (PTS) fees under the heading "GWIZ Service." [3] the proposed fees are designed to recover DTC's estimated service costs.

Service	Present fee	Proposed fee
For Original Issuance services, which combines descriptive and most recent event information.	None	$.25 per inquiry.
For DTC Processing services, which includes four pages of CONI information.	None	$.020 per inquiry.
For Agent, Distribution, Redemption and Corporate Action Screens.	None	$.09 per inquiry.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in DTC's possession or control.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change ReceiveD From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder because the proposed rule change establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–00–11 and should be submitted by January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31998 Filed 12–14–00; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] GWIZ is a new PTS function that offers DTC's participants improved search and navigation capabilities and expanded information about eligible securities. The GWIZ service combines corporate data from five currently separate PTS functions into one application and provides access to more up-to-the-minute information (*e.g.*, corporate actions, dividends, and redemptions) with fewer keystrokes to the GWIZ user. In addition, GWIZ provides links to other PTS functions for more detailed or participant-specific information.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43695; File No. SR–NASD–00–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Authority of the Director of Arbitration to Remove Arbitrators for Cause

December 8, 2000.

I. Introduction

On June 13, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] On July 28, 2000, NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change amends NASD Rules 10308 and 10312 to provide authority to the Director of Arbitration ("Director") to remove arbitrators for cause after hearings have begun. Notice of the proposed rule change was published for comment in the **Federal Register** on September 22, 2000.[4] The Commission received two comment letters regarding the proposal.[5] This order approves the proposed rule change.

[1] 17 CFR 240.19b–4.

[3] *See* Letter from Jean I. Feeney, Special Advisor to the President, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 27, 2000. Amendment No. 1 clarified certain portions of the description of the proposed rule change and made technical amendments to the text of the proposed rule langauge.

II. Description of the Proposed Rule Change

NASD Dispute Resolution proposes to amend NASD Rules 10308 and 10312, relating to arbitration, by permitting the disqualification or removal of arbitrators for cause after the first pre-hearing or hearing session begins, and by deleting current provisions to the contrary. Under the proposed amendments, disqualification or removal would only be permitted based on information that was required to be disclosed by the arbitrator pursuant to Rule 10312, and that was not known to the parties when the arbitrator was selected. The proposal further provides that only the Director or the President of NASD Dispute Resolution could so remove arbitrators. This authority could not be delegated.

In addition to the changes described above, NASD Dispute Resolution proposes to amend Rule 10312, its arbitrator disclosure rule, in several places. First, the word "personally" would be deleted from Rule 10312(a)(2), and the phrase "or circumstances" would be added to paragraphs (b) and (e). These changes are intended to broaden the categories of information to be disclosed by arbitrators, so that all such information, and not only information involving "relationships" (as stated in the current rule) is disclosed. Thus, the disclosure of any existing or past financial, business, professional, family, social, or other relationships or circumstances that are likely to affect impartiality, or that might reasonably create an appearance of partiality or bias, should be disclosed. Second, NASD Dispute Resolution proposes to amend Rule 10312 to clarify that the Director may entertain for-cause challenges based on sources of information other than the arbitrator. Finally, Rule 10312(f) would be deleted as unnecessary in light of the preceding changes.

III. Summary of Comments

The Commission received two letters regarding the proposed rule change. The National Futures Association ("NFA") supported the proposal, noting that it employed similar procedures in administering its arbitration program. NFA asserted that the proposal would be efficient, would ensure the integrity of arbitration proceedings, and would resolve conflicts without requiring the parties to seek judicial intervention.[6] A second letter from a practitioner in securities arbitration opposed the proposed rule change. The commenter stated that the authority to remove for cause presents conflicts of interest, and that determinations of bias should be resolved by the courts.[7]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[8] The Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,[9] which requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

The proposed rule change will permit the Director or the President of NASD Dispute Resolution to remove an arbitrator at any juncture, based on information not known to the parties at the time of the arbitrator's appointment and that should have been disclosed by the arbitrator pursuant to Rule 10312. The Commission notes that NASD Dispute Resolution's current rules do not allow for removal of an arbitrator with a subsequently discovered conflict of interest. In this situation, parties may be forced to resort to judicial intervention to address these conflicts. This creates litigation expenses, diminishes confidence in the arbitration system, and undermines the purpose of arbitration.

The Commission believes that these amendments to NASD Rules 10308 and 10312 should provide for the protection of, and will benefit, users of the arbitration program. The Commission notes that the Director already has the authority to remove arbitrators for cause before the first hearing or pre-hearing conference. This proposal extends that authority beyond the first hearing or pre-hearing conference. The new provisions should result in lower litigation expenses for parties, because they will be able to request the Director to remove an arbitrator, rather than be required to seek judicial intervention. The Commission further believes that the proposal will help ensure greater confidence in the fairness and neutrality of the administration of arbitration proceedings. Further, the Commission believes the proposed revisions will help protect investors' interests by allowing the Director the flexibility to remove arbitrators for cause at any time during an arbitration proceeding, based on information that should have been disclosed by the arbitrator, regardless of the source of that information. This authority is consistent with that provided for in the rules of other arbitration programs.[10] Finally, the proposed revisions should facilitate speedy resolution of potential conflicts of interest.

The Commission also believes that the proposed rule changes will benefit investors by providing for broader disclosure by arbitrators. The rule change will clarify that arbitrators are required to disclose not only personal relationships, but also any circumstances that are likely to affect their actual or perceived impartiality. This additional information should assist parties in arbitration in their efforts to select neutral and fair arbitrators. It should also increase confidence in the neutrality and objectivity of the arbitration process.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–00–34) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31959 Filed 12–14–00; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 34–43291 (September 14, 2000), 65 FR 59036 (September 22, 2000) ("Notice")

[5] *See* letters to the Secretary, Securities and Exchange Commission, from Jonathan Kord Lagemann, dated October 6, 2000 the Authority of the Director of Arbitration to Remove Arbitrators for Cause ("Lagemann letter"), and letter from Cynthia A. Cain, Director of Arbitration, National Futures Association ("NFA letter"), dated October 12, 2000.

[6] *See* NFA Letter.

[7] *See* Lagemann Letter.

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o(b)(6).

[10] *See* Notice, 65 FR 57413, 57415, notes 8, 10 and 11 (citing the rules of other arbitration programs).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43694; File No. SR–NYSE–00–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Adoption of Transaction Fees

December 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a specific transaction fee schedule to apply to investment company units listed under Section 703.16 of the Exchange's Listed Company Manual. The text of the proposed rule change is available upon request from the Office of the Secretary, the NYSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange anticipants that it will shortly list investment company units (more generally known as an exchange traded fund or ETF) based on the S&P Global 100 Index. The Exchange expects to list additional ETFs thereafter. Given that it is the practice in the industry to charge relatively nominal listing fees for ETFs, it is important for the Exchange to realize revenue from transaction fees on ETFs to support its entry into this market. Accordingly, the Exchange will impose a specific transaction fee schedule on ETFs, as follows:

On-Floor proprietary transactions (specialist and other)—$0.63 per 100 shares, capped at $300 per trade.

Off-Floor transactions (customer and broker/dealer)—$0.60 per 100 shares, capped at $100 per trade.

In addition, it should be noted that the Exchange's transaction charge exemption for system orders, currently covering orders up to 2,099 shares, will be extended to orders up to 5,099 shares in ETFs.

The NYSE Constitution provides that transaction fees on stocks and bonds will not exceed 2% of a member firm's commissions.[3] ETFs are a unique form of derivative security and therefore not subject to this Constitutional limitation. This is consistent with treatment afforded to standardized options when they were listed on the Exchange, and to other unique products such as the Exchange Stock Portfolios, a basket trading mechanism offered approximately a decade ago.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members of other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(e) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–56 and should be submitted by January 5, 2001.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] The NYSE reconfirmed its Board's discretion under Article X, Section 4 of the NYSE Constitution to impose transaction fees on its members. Telephone conversation between James Duffy, Senior Vice President and Deputy General Counsel, NYSE, and Deborah Flynn, Senior Special Counsel, Division of Market Regulation, Commission, December 7, 2000.
[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(4).
[6] 15 U.S.C. 78s(b)(3)(A)(ii).
[7] 17 CFR 240.19b–4(e).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31996 Filed 12–14–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43690; File No. SR–Phlx–00–90]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Basket Linked Notes

December 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 27, 2000, Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its rules to permit the listing and trading, or the trading pursuant to unlisted trading privileges, of Basket Linked Notes ("BLNs"), hybrid instruments whose values are linked to the performance of two or more highly capitalized, actively traded equity securities. New Section (k) of Rule 803 would provide listing standards for BLNs. Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Philadelphia Stock Exchange, Inc. Criteria for Listing—Tier 1

Rule 803. Unchanged.

(a)–(j) Unchanged.

(k) Basket Linked Notes ("BLNs").

Income instruments which are linked, in whole or in part, to the market performance of more than one common stock or non-convertible preferred stock will be considered for listing provided:

(1) Both the issue and the issuer of such security meet the criteria established in Rule 803(f) and the issue has a minimum term of one year.

(2) The issuer of such security will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirement set forth in Rule 803(a). In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 803(a), and (ii) not to have issued such securities where the original issue price of all the issuer's other equity and basket linked note offerings (combined with equity and basket linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(3) Each underlying linked stock either: (i) has a minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares.

(4) Each issuer of an underlying stock to which the instrument is to be linked shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting. In addition, if any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as sponsored American Depository Shares ("ADS"), ordinary shares or otherwise, then for each such security the Exchange shall either: (i) have in place a comprehensive surveillance sharing agreement with the primary exchange on which each non-U.S. security is traded, (in the case of an ADS, the primary exchange on which the security underlying the ADS is traded); or (ii) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security over the six month period preceding the date of listing; or (iii)(a) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in each non-U.S. security and in other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for a BLN listing, (b) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the selection of each non-U.S. security for a BLN listing is 100,000 or more shares, and (c) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of selection of each non-U.S. security for a BLN listing.

(5) Each underlying linked stock to which the instrument relates may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such linked security the instrument may not exceed: (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market. If any non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period

[8] 17 CFR 200.30–2(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] In Amendment No. 1, Phlx amended the text and description of the proposed rule change to require a one-year minimum term for the securities described herein. *See* letter from Carla Behnfeldt, Director, New Product Development Group, Legal Department, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2000.

preceding the date of listing, then the instrument may not be linked to that non-U.S. security. If an issuer proposes to list a BLN that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of BLNs that may be issued on a case-by-case basis.

(6) *BLNs will be treated as equity instruments.*

(7) *If any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such underlying linked security shall be 2,000.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 803(h) currently provides listing standards for equity linked notes ("ELNs"), hybrid instruments whose values are linked to the performance of a single highly capitalized, actively traded equity security. ELNs are non-convertible debt securities whose value is derived from the value of another issuer's common stock on non-convertible preferred stock.

The Exchange is now proposing to adopt Rule 803(k), separate listing standards for BLNs. BLNs are nonconvertible debt securities that are linked to more than one underlying equity security, each of which would be required to meet the listing standards set forth in the proposed rule. Proposed Rule 803(k) is substantially similar to American Stock Exchange ("Amex") Rule 107B as it applies to ELNs which are linked to two or more securities.[4]

Proposed Rule 803(k) would permit the Exchange to consider for listing income instruments which are linked, in whole or in part, to the market performance of more than one common stock or non-convertible preferred stock. Proposed Rule 803(k) would require the issue and the issuer of BLNs to meet the minimum assets/equity, earnings, distribution and aggregate market value/principal amount criteria established in existing Exchange Rule 803(f).[5]

Rule 803(k)(2) would establish a minimum tangible net worth requirement of at least $250,000,000 for issuers of securities to which BLNs will be linked, or an alternative minimum tangible net worth requirement of at least $150,000,000 if the issuer meets further financial requirements. In addition, issuers of BLNs and the underlying securities to which they are linked would be required to meet certain criteria which generally track those established in Amex Rule 107B for ELNs linked to more than one security. Rule 803(k)(3) would require each underlying linked stock to meet certain minimum market capitalization and trading volume tests. Rule 803(k)(4) would require each issuer of an underlying stock to which the BLN is linked to be a 1934 Act reporting company listed on a national securities exchange or traded through the facilities of a national securities system and subject to last sale reporting. Rule 803(k)(4) would impose additional requirements with respect to any underlying linked security which is stock of a non-U.S. company traded in the U.S. market as sponsored American Depositary Shares ("ADS"), ordinary shares or otherwise ("Foreign Securities"). Specifically, the proposed rule would require either that the Exchange have in place a comprehensive surveillance sharing agreement with the primary exchange on which each such Foreign Security is traded, or that the Foreign Security meets additional trading volume requirements. Proposed Rule 803(k)(5) would limit each underlying linked stock to which the BLN relates to 5% of the total common shares of such entity, with stricter requirements applicable to underlying linked stocks which are Foreign Securities. Proposed Rule 803(k)(6) provides that BLNs will be treated as equity instruments. Finally, Rule 803(k)(7) would require underlying linked securities which are Foreign Securities to have a minimum of 2,000 holders.

The Exchange will apply to BLNs a one-year minimum term requirement. The Exchange will put in place appropriate surveillance procedures for BLNS, and will cap the number of underlying securities that may be linked to a BLN at twenty. The trading rules and procedures established by the Exchange for ELNs will apply equally to BLNs.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5)[7] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–90 and should be submitted by January 5, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission notes that it has previously approved similar listing standards for equity linked products.[9] The proposed rule change will permit the Exchange to list and trade BLNs, thereby providing investors with an additional marketplace in which to trade these products. Thus, the proposal should bring increased efficiency, price competition, and greater liquidity to the markets for these products. The Commission believes that this proposal is also consistent with Section 6(b)(5) of the Act[10] because requiring each of the underlying securities linked to the BLNs to meet the established listing standards should strengthen the integrity of the security and reduce the susceptibility of BLNs to manipulation.[11]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. As noted above, the listing requirements for these instruments will be substantially similar to those of the Amex, which the Commission approved in the past.[12] The proposal thus concerns issues that already have been the subject of a full comment period pursuant to Section 19(b) of the Act.[13] The Commission does not believe that the proposed rule change raises novel regulatory issues that have not been addressed already. Therefore, the Commission finds good cause for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–00–90), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31994 Filed 12–14–00; 8:45 am]

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[4] See Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (granting accelerated approval of the Amex proposal to list and trade notes linked to a basket of equity securities). Amex Rule 107B applies both to ELNs linked to a single security and to ELNs linked to a basket of securities. Phlx is retaining its separate ELNs rule, Rule 803(h), applicable to hybrid securities linked to a single security. Proposed Rule 803(k) applies only in the case of multiple linked securities. Proposed Rule 803(k) does not include certain changes recently approved with respect to Amex Rule 107B that provide for ELNs linked to convertible bonds. See Securities Exchange Act Release No. 43162 (August 16, 2000), 65 FR 51374 (August 23, 2000).

[5] Exchange Rule 803(f) is the Exchange's listing standard for "Other Securities."

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] See *supra* note 4.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] See *supra* note 4.

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Phlx Rule 229.

[4] SuperDot is an order routing system of the NYSE.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43696; File No. SR–PHLX–00–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing Two Systems Changes and Corresponding Fees to Members and Member Organizations for Receiving Certain Equity Information on a Real-Time Basis

December 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2000, the Philadelphia Stock Exchange, Inc ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to effect a systems change and amend its schedule of dues, fees and charges to impose a $.10 per trade off-Exchange information fee for Phlx equity specialist units utilizing an enhancement to the Phlx electronic equity system, the Phlx Automated Communication and Execution ("PACE") System,[3] that provides equity specialists on the floor with real-time trade information respecting Super Designated Order Turnaround ("Super Dot") transactions in New York Stock Exchange, Inc. ("NYSE") securities.[4]

In addition, Phlx proposes to effect a systems change and amend its schedule of dues, fees and charges to impose a $300 per month remote information access fee on members and member organizations utilizing another enhancement to the PACE System that provides real-time trade information respecting trading positions to a remote access terminal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

The purpose of the proposed rule change is to effect a systems change and amend the Phlx's fee schedule to impose a $.10 per trade off-Exchange trade information fee and a $300 per month remote information access fee for Phlx specialist units, who choose to

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utilize respective enhancements to the PACE System. These fees address the cost of, and demand for, these new interfaces, which offer important new risk management tools to Phlx specialists.

$.10 Per Trade Off-Exchange Trade Information Fee. The first of the new enhancements provides certain real-time positions to Phlox specialist units. Specifically, it enhances the Exchange's proprietary risk management systems by allowing Phlx specialist units to obtain more complete data reflecting real-time positions for their respective trading accounts for DOT transactions by means of a real-time interface with the PACE System. The enhancement incorporates DOT trades on a real-time basis into the Phlx specialist unit's position reports, which are displayed electronically via the PACE System. This feature, including the interface, is voluntary.

The proposed fee is being instituted to defray costs of establishing real-time DOT interfaces with various member organizations, providing trade information to Phlx specialist units as well as to cover costs of maintenance and operation.[5] The real-time interface should contribute to enhancing the Phlx specialist unit's ability to track trading account positions by allowing more complete, time-sensitive position reports to be developed reflecting DOT transactions.

$300 Per Month Remote Information Access Fee. The second of the new enhancements allows specialist units to view trading positions from a remote access terminal off the trading floor. The new feature provides real-time positions to the off-floor (or "upstairs" offices of Phlx specialist units via a PACE System dial-up connection. This enhancement will enable the upstairs office of the Phlx specialist units access to data reflecting real-time positions for their respective trading accounts with specific detail, including the security, the last sale of that security, the profit or loss of the position, and a total long and/or short dollar value. This enhancement incorporates trades on a real-time basis into the specialist unit's position reports, which are displayed electronically at a remote access terminal via a dial-up connection. This feature, which is voluntary,[6] is a means for off-floor principals of Phlx specialist units to gauge their unit's risk exposure.

The proposed fee is being instituted to defray the costs of and demand for this risk management report as well as maintenance and operation of the dial-up connection service. The Exchange is choosing to charge a flat monthly fee for this service. The Exchange believes that a flat monthly fee is appropriate as the fee for the remote access feature reflects the cost of creating and maintaining a dial-up connection with the off-floor offices of the specialist. Information transmitted through this dial-up connection is substantially similar to the information currently received by the specialist unit on the floor of the Exchange. The remote access feature should contribute to enhancing the upstairs office's ability to track trading account positions by allowing more complete, time-sensitive position reports to be viewed by a principals of specialist units from off the floor.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) and (6)(5) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Action

The foregoing rule change, which (1) establishes or changes a due, fee, or other charge imposed by the Exchange and (2) effects a change in an existing order-entry or trading system of the Exchange that (i) does not significantly affect the protection of investors of the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) and (f)(5) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–00–99 and should be submitted by January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31995 Filed 12–14–00; 8:45 am]

BILLING CODE 8010–01–M

[5] As originally filed, the purpose section stated that the enhancement provided execution services to Phlx specialist units. The Exchange has clarified that the enhancement does not provide execution services to Phlx specialist units. Instead, the enhancement only provides trade information to Phlx specialist units, which the specialist units may then use as they see fit. As per telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Heather Traeger, Attorney, SEC, Division of Marker Regulation, on December 7, 2000.

[6] The Phlx confirmed that this feature is voluntary. *Id.*

[7] 15 U.S.C. 78f(b)(4) and (b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2) and (f)(5).

[10] 17 CFR 240.30–2(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3304]

State of Michigan; Amendment #2

In accordance with information received from the Federal Emergency Management Agency, dated December 1, 2000, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 18, 2000.

All other information remains the same, i.e., the deadline for filing applications for economic injury is July 17, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 7, 2000.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–31972 Filed 12–14–00; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of Treatment on Government Procurement of Products From Countries Designated Under the Caribbean Basin Economic Recovery Act

AGENCY: Office of the United States Trade Representative.

ACTION: Renewal of Treatment on Government Procurement of Products from Countries Designated under the Caribbean Basin Economic Recovery Act.

Under the authority delegated to me by the President in section 1–201 of Executive order 12260 of December 31, 1980, I hereby direct that products of countries, listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.) with the exception of the Dominican Republic, Honduras, and Panama, shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 2001. Such treatment shall not apply to products originating in these countries that are excluded from duty free treatment under 19 U.S.C. 2703(b). Decisions on the subsequent renewal of this treatment beyond September 30, 2001 will be based on beneficiaries' efforts to improve domestic procurement practices, on their support for relevant international initiatives, such as those in the World Trade Organization (WTO) Working Group on Transparency in Government Procurement and the Free Trade Area of the Americas (FTAA) Negotiating Group on Government Procurement, and on their progress toward acceding to the WTO Government Procurement Agreement.

List of Countries Designated as Beneficiary Countries for Purpose of the Caribbean Basin Economic Recovery Act (CBERA): Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic; El Salvador; Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Montserrat, Netherlands Antilles, Saint Kitts-Nevis, British Virgin Islands.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–32042 Filed 12–14–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The South Carolina Railroad Museum, Inc.

[Docket Number FRA–2000–8249]

The South Carolina Railroad Museum (SCMX), Inc. of Columbia, South Carolina, has petitioned for a permanent waiver of compliance for four passenger coaches and one dining car from the requirements of the Railroad Power Brakes and Drawbars, 49 CFR Part 232.17(b)(2), which requires that air brake equipment on passenger cars be cleaned, repaired, lubricated, and tested (COTS) as often as necessary, but not less frequently then as required in Standard S–045 in the Manual of Standards and Recommended Practices of the Association of American Railroads (AAR). Standard S–045 requires that these cars equipped with S–22 brake equipment receive COTS every 24 months. The museum requests that the maintenance interval be extended from 24 months to 60 months. SCMX indicates that cars are utilized in excursion service and for special charters and were used 53 days in the last calendar year.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–8249) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on December 11, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–31975 Filed 12–14–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8519]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GINGERSNAP.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at

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46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before January 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2000–8519. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* GINGERSNAP. *Owner:* Wesley Adams & Susan Adams.

(2) *Size, capacity and tonnage of vessel. According to the applicant:* "Length—26', Beam 8', Depth 6', Capacity 12 passengers, Tonnage 6.7 tons (measured by taking: the dry weight of the vessel = 7,500 lb she draws 3ft of her 6' hull thus displacing more than twice her weight 7,500 × 2 = 15000/2,240 lb = 6.696)."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "This vessel would be used as a sight-seeing boat in the Port Ludlow, WA area. Giving tourists a chance to see the surrounding waters on a vessel similar to those used in the area at the turn of the century." "The intended area of operation will include the north Puget Sound areas of Port Ludlow, north Hoods Canal, and Admiralty Inlet from Point No Point to Point Wilson (Washington State)."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* Unknown. *Place of construction:* Unknown.

(5) *A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:* "There are currently three Charter Services operating out of the Port Ludlow area: *Captain Bry's Charters:* Which I own. Currently operating a 26' sailboat. Specializing in 2 hour Sailboat Cruises & Lessons. *Captain Larry's Adventures:* Operating a 26' Orca Marine recreational fishing vessel specializing in day trips and fishing excursions. My new vessel will not compete at all with fishing (as it is not a fishing boat at all,) and as for tours * * * his boat cruises at 40knts and GINGERSNAP tops out at 9knts. Not really the same market. *PCO Marine:* Operating a 44' Tolly Motor Yacht. PCO specializes in day cruises featuring creature comforts and food and beverage service. Luxury cruises. As for the effect that Gingersnap will have on his business, Captain Ottnes is retired and runs the charters as a hobby. Gingersnap will not take away anyone that wants luxury * * * she's comfortable, but not luxurious—and not fast. There are also charters available from Port Townsend (most notably Captain Jack's, a 45'—30 passenger aluminum tour boat,) but none that would profit from $10 cruises around Port Ludlow, or taking small groups to and from Port Townsend. Most of the available charter services are run as hobbies, and there are none listed in our local phone book that operate locally. (That's why I started doing it!)"

(6) *A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:* "There should be no impact at all regarding builders from this waiver. Nobody builds launches like this anymore. There are still wooden boat builders, but the market for small launches of this sort is negligible. As for the shipyards * * * Gingersnap will give the local yards plenty of work due to her age. (It's the nature of wooden boats * * * they like to be worked on.)"

Dated: December 12, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32012 Filed 12–14–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8518]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel REFLECTION.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before January 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2000–8518. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An

electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: REFLECTION.

Owner: Gary and Roxanna Wagner D.B.A. Blue Heron Charters, Inc., a New York Corporation.

(2) Size, capacity and tonnage of vessel. According to the applicant: "REFLECTION is a cutter rig sailboat. 44'5" LOA, 35'4" LWL, 13' Beam, 6' draft, Displacement 23,400 lbs. With a keel of 10,300 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "We intend to engage in day and overnight charters of 6 passengers or less (OUPV). These will be of the "Black Tie" Day Sail and Custom overnight charters in the Coastal waters of the Northeast US."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1976. Place of construction: Oakhill, Ontario.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Sailing vessel REFLECTION will have negligible impact on activities in the Northeast as our intention is to provide service for 6 passengers or less as a day sail activity in the New Jersey/New York area waters and as an overnight "Black Tie" custom charters for 4 or less passengers. This activity will take place probably no more than four (4) or five (5) times per month. To our knowledge there is no sailing vessel making these cruises out of the Atlantic Highlands, New Jersey area. We have found only one (1) making day sails out of a New York City Harbor. Our intention is to sail out of a New Jersey location. We have found no OUPV charters running out of the Long Island Sound area sailing toward the Block Island waters. We have found no OUPV charters running out of the New Jersey area sailing toward the Cape May waters. We feel that the impact of our activities is of minimal or negligible impact to any activities currently in service in the Northeast waters of the U.S."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Sailing vessel REFLECTION will be serviced by small boatworks in the northeast. Current plans are to continue with relationships currently established with the Brewer Yards in Glen Cove, New York; Carriage House in Seabright, NJ; Marine Engine Service in New Jersey; and Bock Marina in Beaufort, North Carolina. These yards permit us to work on systems ourselves and where our expertise is "short" provide professional experts in a variety of boat maintenance and service disciplines. We feel that our impact will be minimal but of a positive nature as these yards (and others we will use as the occasion arises) use U.S. domestic labor and certified service providers."

Dated: December 12, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32010 Filed 12–14–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8520]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEASCAPE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before January 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2000–8520. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to

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properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SEASCAPE. *Owner:* Darryl and Cindy Aken.

(2) *Size, capacity and tonnage of vessel. According to the applicant:* "52 Feet, *Capacity:* 12 Persons, *Tonnage:* 25."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "I plan to charter the SEASCAPE for short periods for Harbor cruises in Marina del Rey and corporate sightseeing cruises. The geographic limits within which I will operate are in the Pacific Ocean from Santa Barbara to Newport Beach, CA and out to the Channel Islands and Catalina Island."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* Taiwan.

(5) *A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:* "Most of the commercial passenger vessels operating in the geographic area referred to in item 8 are large, with capacities from 50 to 500 passengers. I do not believe I will have any impact on them. I, in fact, will provide to smaller parties similar experiences to the larger groups."

(6) *A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:* "I do not believe the operation of my vessel will have any impact on U.S. shipyards."

Dated: December 12, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32011 Filed 12–14–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–8461; Notice 1]

Continental General Tire, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Continental General Tire, Inc., (Continental) has determined that approximately 3,187 P255/70R16 Ameri*660 AS passenger car tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." FMVSS No. 109 requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different. (S4.3(e)).

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliance with S4.3(e) relates to the mold number. Mold number 33460 ran for the production period of June 14, 2000 through July 29, 2000 with an incorrect sideplate on the bottom sidewall. This sideplate was not changed from a previous production run in which the construction was different. The stamping at the rim line read: "Tread 6 plies—2 Steel + 2 Polyester + 2 Nylon." It should have read: "Tread 4 Plies—2 Steel + 2 Polyester."

The manufacturer also said that "A second item should be included, which is not part of the FMVSS 109 requirement, but is considered a labeling inconsistency. The load index/speed rating stamping located on the bottom sidewall at both upper sidewall and rim line reads 109*H* should be 109*S*."

The P255/70R16 General Ameri*660 AS primarily is supplied to General Motors (GM) for original equipment pick up truck application.

Continental states that all molded labeling items on the LW outboard (customer) sidewall are correct and that a label showing correct identification is affixed to the tread. The customer would be sold the product for designed usage and the incorrect information would be on the inboard (non-customer) sidewall.

This situation has been reviewed with representatives of GM and they have indicated their support of registering this problem as an inconsequential noncompliance. Continental believes that there is no safety-related issue with respect to this equipment.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: January 16, 2001.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 11, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–31977 Filed 12–14–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33968]

Safe Handling Rail, Inc.—Operation Exemption—Maine Coast Railroad Corporation, Maine Central Railroad Company, Springfield Terminal Railway Company, and State of Maine Department of Transportation

Safe Handling Rail, Inc. (SHR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, by assignment, the operating rights of Maine Coast Railroad Corporation (MECO) over approximately 5.76 route miles of rail line in Rockland, Sagadahoc County, ME (subject line), between milepost 28.03 (Church Road) and milepost 33.79 (Hardings).[1] In addition, SHR also will acquire MECO's incidental overhead trackage rights on the rail line between milepost 27.5 and milepost 33.79 (trackage rights).[2] The State of Maine Department of Transportation (MDOT) owns the subject line, and MEC and STR have residual common carrier obligations on the subject line.[3] Certain traffic handled by SHR to and from the Bath Iron Works at Hardings, ME, will be handled in the account of MEC/STR, just as it has been handled by MECO.

The transaction is expected to be consummated on or soon after December 8, 2000, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33968, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Bruce A. Coggeshall, Esq., Pierce Atwood, One Monument Square, Portland, ME 04101.

[1] MECO acquired the authority to operate the subject line in *Maine Coast Railroad Corporation—Operation Exemption—Maine Central Railroad Company and Springfield Terminal Railway Company*, Finance Docket No. 32272 (ICC served June 21, 1993).

[2] MECO was granted trackage rights by Maine Central Railroad Corporation (MEC) and Springfield Terminal Railway Company (STR) in *Maine Coast Railroad Corporation—Trackage Rights Exemption—Maine Central Railroad Company and Springfield Terminal Railway Company*, Finance Docket No. 31768 (ICC served Nov. 26, 1990).

[3] SHR will replace MECO as the operator of the subject line and trackage rights, and MECO will have no further rail carrier rights or obligations on the subject line or trackage rights line. In a related proceeding, SHR has filed a notice for a modified certificate of public convenience and necessity to operate MDOT's rail lines (i) between milepost 33.79, in Brunswick, ME, and milepost 85.55, in Rockland, ME, and (ii) between milepost 29.40, at Rock Junction, in Brunswick, and milepost 63.00, in Augusta, ME. *See Safe Handling Rail, Inc.—Modified Rail Certificate*, STB Finance Docket No. 33967.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31879 Filed 12–14–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33914]

Texas Mexican Railway Company—Purchase Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 for Texas Mexican Railway Company (Tex Mex) to acquire from Union Pacific Railroad Company and operate (1) the Rosenberg Line, an 84.5-mile rail line between milepost 87.0 near Victoria and milepost 2.5 near Rosenberg, TX, and (2) approximately 6.3 miles of overhead trackage rights between mileposts 87.0 and 90.8 and between mileposts 2.5 and 0.0, subject to employee protective conditions.[1]

[1] Additionally, the Board is approving Tex Mex's request for permission to use the overhead trackage rights it acquired in *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996), to move the traffic that will originate or terminate on the Rosenberg Line.

DATES: This exemption is effective on December 21, 2000. Petitions to reopen must be filed by January 2, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to the exemption granted in STB Finance Docket No. 33914 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative, Richard A. Allen, 888 17th Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: For further information, refer to the Board's decision served December 11, 2000.

To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-To-Dā Office Solutions, 1925 K Street, NW, Room 405, Washington, DC 20006. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 8, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31907 Filed 12–14–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 7, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1700.
Form Number: IRS Form 8869.
Type of Review: Extension.
Title: Qualified Subchapter S Subsidiary Election.
Description: Effective for tax years beginning After December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly-owned subsidiary as a qualified subchapter S subsidiary (Qsub). Form 8869 is used to make this election.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hrs., 13 min.
Learning about the law or the form—53 min.
Preparing, copying, assembling and sending the form to the IRS—1 hr., 2 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 40,750 hours.

OMB Number: 1545–1702.
Form Number: IRS Form 8870.
Type of Review: Extension.
Title: Information Return for Transfers Associated With Certain Personal Benefit Contracts.
Description: Section 170(c) charitable organizations or section 664(d) charitable remainder trusts that paid premiums after February 8, 1999, on certain "personal benefit contracts" must file Form 8870.
Respondents: Not-for-profit institutions.
Estimated Number of Respondents/ Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—9 hrs., 48 min.
Learning about the law or the form—2 hrs., 22 min.
Preparing, copying, assembling, and sending the form to the IRS—2 hrs., 39 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 74,200 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–31954 Filed 12–14–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the "annual Financial Statement of Surety Companies—Schedule F."

DATES: Written comments should be received on or before Frebruary 13, 2001.

ADDRESSES: Direct all written comments to financial management Service, 3700 East-West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Surety Bond Branch, 3700 East-West Highway, Hyattsville, Maryland 20782 (202) 874–6775.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Annual Financial Statement of Surety Companies—Schedule F.
OMB Number: 1510–0012.
Form Number: FMS 6314.
Abstract: This form provides information that is used to determine the amount of unauthorized reinsurance of a Treasury Certified Company, and to compute its underwriting limitations. This computation is necessary to ensure the solvency of companies certified by Treasury, and their ability to carry out contractual surety requirements.
Current Actions: Extension of currently approved collection.
Type of Review: Regular.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 451.
Estimated Time Per Respondent: Varies from 8 hours–80 hours.
Estimated Total Annual Burden Hours: 19,108.
Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the Functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 7, 2000.
Judith R. Tillman,
Assistant Commissioner, Financial Operations.
[FR Doc. 00–32043 Filed 12–14–00; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Payments to Persons Who Hold Certain Categories of Judgment Against Cuba or Iran

AGENCY: Department of the Treasury; Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: This notice explains the manner in which the Department of the Treasury interprets the direction in Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, Public Law No. 106–386 ("Section 2002") to pay post-judgment interest on payments authorized by that section. This notice also explains that certain deficiencies in the information and documentation regarding payment information submitted by applicants will not prevent an application from being determined to be complying within the meaning of Part 3 of the **Federal Register** Notice published on November 22, 2000.

FOR FURTHER INFORMATION CONTACT: For questions regarding submission of applications, Rochelle E. Stern, Transactions Analysis Officer, Office of Foreign Assets Control. For legal questions, Brett D. Barkey, Attorney-Advisor, Office of the Chief Counsel (Foreign Assets Control). Both individuals can be reached at 202–622–2671 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Part 1

Section 2002 provides that persons who hold certain judgments against Iran or Cuba may elect to receive payments from the Department of the Treasury equaling 110 percent or 100 percent "of compensatory damages awarded by judgment of a court on a claim or claims brought by the person under section 1605(a)(7) of title 28, United States Code, plus amounts necessary to pay post-judgment interest under section 1961 of such title, and, in the case of a claim or claims against Cuba, amounts awarded as sanctions by judicial order on April 18, 2000 (as corrected on June 2, 2000), subject to final appellate review of that order," Section 2002(a)(1). This notice explains the manner in which the Department of the Treasury interprets the direction in Section 2002 to pay post-judgment interest under that section.

In making payments under Section 2002, subject to funds availability, the Department of the Treasury will pay post-judgment interest on 110 percent of compensatory damages or 100 percent of compensatory damages, according to whether the applicant elects to receive payment equaling 110 or 100 percent of compensatory damages. The Department of the Treasury will not pay post-judgment interest on portions of the judgment for which the applicant is not entitled to receive payment under Section 2002, including amounts awarded as punitive damages. Nor will the Department of the Treasury pay post-judgment interest on the amounts awarded as sanctions, as Section 2002(a)(1) does not provide for payment of post-judgment interest on sanctions awards.

Part 2

On November 22, 2000 at 65 FR 70382, the Office of Foreign Assets Control, Department of the Treasury, published a **Federal Register** Notice ("November Notice") specifying the procedures necessary for persons to establish eligibility for payments authorized by Section 2002. The November Notice specified information that applicants must submit to establish eligibility and provided that an application would be determined to be "complying if the Department of the Treasury determines that it has received, for its review, all the information and documentation specified in Part 2(a)–(f)" of the November Notice. November Notice, Part 3(a).

Part 2(a)(2) of the November Notice specifies payment information needed to effect a payment to the applicant. This information relates to the administrative processing of the payment, not to the applicant's eligibility for payment under Section 2002. The Department of the Treasury has therefore determined that deficiencies in the material submitted pursuant to Part 2(a)(2) of the November Notice will not prevent an application from being determined to be complying under Part 3 of the November Notice. The Department of the Treasury will contact the applicant in order to obtain any missing or additional payment information under Part 2(a)(2) that the Department of the Treasury needs in order to effect a payment. Any information so requested must be provided to the Department of the Treasury in order for the applicant to receive payment.

Dated: December 12, 2000.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 12, 2000.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 00–32100 Filed 12–13–00; 10:34 am]

BILLING CODE 4810–25–M

Corrections

Federal Register
Vol. 65, No. 242
Friday, December 15, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities: Recombinant DNA Research: Proposed Actions Under the NIH Guidelines

Correction

In notice document 00–31524 beginning on page 77655, in the issue of Tuesday, December 12, 2000, make the following correction:

1. On page 77655, in the third column, under the heading **DATES:**, in the seventh line, " February 10, 2002" should read " February 12, 2001".

2. On page 77656, in the first column, in the second paragraph, in the last line, after "URL:" add "*http://www.nih.gov/about/director/07122000.htm.*".

[FR Doc. C0–31524 Filed 12–14–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Friday,
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Part II

Postal Service

39 CFR Part 111
Changes to the Domestic Mail Manual to Implement Docket No. R2000–1; Final Rule

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POSTAL SERVICE

39 CFR Part 111

Changes to the Domestic Mail Manual to Implement Docket No. R2000–1

AGENCY: Postal Service.
ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the rate, fee, and classification changes for all classes of mail included in the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. R2000–1.

EFFECTIVE DATE: This final rule is effective at 12:01 a.m. on January 7, 2001.

FOR FURTHER INFORMATION CONTACT: Sherry Suggs, Office of Mail Preparation and Standards, 703–292–3648.

SUPPLEMENTARY INFORMATION: On January 12, 2000, the United States Postal Service, in conformance with sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et. seq.*), filed a request for a recommended decision by the Postal Rate Commission (PRC) on proposed rate, fee, and classification changes. The PRC designated this filing as Docket No. R2000–1. The PRC issued a notice of filing in Order No. 1279 on January 14, 2000.

On August 29, 2000, the Postal Service published for comment in the **Federal Register** a proposed rule (65 FR 52479) that provided information on the implementation rules for the rate, fee, and classification changes that the Postal Service proposed to adopt if its requested changes in Docket No. R2000–1 were recommended by the PRC and approved by the Governors of the Postal Service.

On November 13, 2000, pursuant to 39 U.S.C. 3624, the PRC issued its Recommended Decision on the Postal Service's Request to the Governors of the Postal Service. The PRC recommendations made revisions to some of the mail classification structure, rates, and fees requested by the Postal Service. Based on an extensive analysis of the PRC's Recommended Decision and deliberation as to its consequences to the Postal Service and its customers, and pursuant to 39 U.S.C. 3625, the Governors acted on the PRC's recommendations on December 4, 2000. The Governors determined to allow the recommended rates and fees and the majority of the classification recommendations to take effect under protest. The Governors expressed disagreement with the Commission's estimate of required revenues in the test year, and returned the Recommended Decision to the Commission for reconsideration of the Postal Services revenue requirement. In a separate decision, the Governors rejected the PRC's recommendation to establish a one-pound flat rate for Priority Mail and "shell" classifications for Information Based Indicia Program Mail and Courtesy Envelope Mail. The Governors also rejected the Commission's recommendation to include footnotes in the Standard Mail rate schedules indicating a 3.3 ounce maximum weight and breakpoint weight.

The Board of Governors set an implementation date of January 7, 2001, for the rates, fees, and classifications allowed to take effect. This final rule contains the DMM standards adopted by the Postal Service to implement the Governors' decision. The revised DMM standards will take effect on January 7, 2001.

Part A summarizes the major changes made to the DMM implementing language since publication of the proposed rule (65 FR 52479). This includes changes made because of differences in the Postal Service's proposal and the PRC's recommended decision, changes made in response to the Governors' decisions, and changes made by the Postal Service in response to mailer comments or for other reasons. Part B of this final rule summarizes, by class of mail and special service category, all of the revisions made to current DMM Issue 55 to implement R2000–1. Part C of this final rule contains an analysis of the comments received on the proposed rule and the Postal Service responses. Part D summarizes the changes by DMM module and section. The actual implementing language for the DMM follows at the end of this final rule.

As information, the DMM language in this final rule incorporates revisions to the DMM from four previously published **Federal Register** final rules that also will take effect on January 7, 2001. These final rules are:

1. "Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets" published on July 28, 2000 (65 FR 46361).

2. "Line-of-Travel Sequencing for Basic Carrier Route Periodicals" published on July 28, 2000 (65 FR 46363).

3. "Preparation Changes for Palletized Standard Mail (A) and Bound Printed Matter and for Standard Mail (A) and Standard Mail (B) Claimed at DBMC Rates" published on August 8, 2000 (65 FR 48385).

4. "Domestic Mail Manual Changes for Sacking and Palletizing Periodicals Nonletters and Standard Mail (A) Flats, for Traying First-Class Flats, and for Labeling Pallets" published on August 16, 2000 (65 FR 50054).

Accordingly, the numbering and the language of the DMM sections in this final rule have been synchronized with these other final rules and may not match the numbering and language in current DMM Issue 55.

A. Major Changes and Additions Other than Rate and Fee Levels Since Publication of the August 29, 2000, Proposed Rule

1. Express Mail

The Postal Service has added clarifying language to DMM S500.3.0 to provide for use of electronic option Delivery Confirmation with Priority Mail, Standard Mail parcels, and Package Services mail enclosed in Express Mail drop shipment mailings. Use of electronic option Signature Confirmation also will be permitted for Priority Mail and Package Services mail that is enclosed in Express Mail drop shipments. Retail option Delivery Confirmation and Signature Service is not available for mail enclosed in Express Mail drop shipment mailings.

2. Priority Mail

The Postal Service has added clarifying language to DMM S070 to provide for use of electronic option Delivery Confirmation with Standard Mail parcels and Package Services mail enclosed in Priority Mail drop shipment mailings. Use of electronic option Signature Confirmation also will be permitted for Package Services mail that is enclosed in Priority Mail drop shipments. Use of retail option Delivery Confirmation and Signature Confirmation is not permitted with Standard Mail and will not be permitted with Package Services mail enclosed in Priority Mail drop shipments. Delivery Confirmation (either retail or electronic option) is not available for the Priority Mail portion of the drop shipment.

3. First-Class Mail

a. Maximum Weight for Automation Heavy Letters

The maximum weight for First-Class Mail heavy letters that may qualify for automation letter rates will be 3.3 ounces (.2063 pound).

b. Barcodes on Automation Flats

DMM C840.3.0 has been revised to allow application of two POSTNET barcodes on the address side of flat-size automation rate pieces provided certain conditions are met.

4. Periodicals

a. DDU Rates for Periodicals Mail Entered under Exceptional Dispatch

Based on the Postal Rate Commission's recommended decision, the final rule will include DMM changes that will provide for DDU rates for Periodicals mail entered under exceptional dispatch. The change will limit DDU rates under exceptional dispatch to zones 1 and 2 and provides a restriction on eligibility to publications with circulation of 25,000 and under.

b. DMM Renumbering

The information contained in DMM E220 in the proposed rule has been renumbered as DMM E217.

c. Maximum Weight for Automation Heavy Letters

The maximum weight for Periodicals heavy letters that may qualify for automation letter rates will be 3.3 ounces (.2063 pound).

d. Barcodes on Automation Flats

DMM C840.3.0 has been revised to allow application of two POSTNET barcodes on the address side of flat-size automation rate pieces provided certain conditions are met.

5. Standard Mail (formerly Standard Mail (A))

a. Maximum Weight Limit for Automation Letters

The maximum weight for heavy letters that may qualify for automation letter rates will be 3.3 ounces (.2063 pound).

b. Computation of Postage

Proposed DMM E610.5.7 (formerly DMM E612.4.5) that contained language that mailers must compute postage using both piece and piece/pound rates and pay whichever is higher, was removed. Because all pieces weighing 3.3 ounces or less will pay postage using minimum per piece rates and all pieces weighing more than 3.3 ounces will pay postage using the piece/pound rates, this computation by mailers is not necessary.

c. Barcodes on Automation Flats

DMM C840.3.0 has been revised to allow application of two POSTNET barcodes on the address side of flat-size automation rate pieces provided certain conditions are met.

d. Permissible Use of Electronic Option Delivery Confirmation With Standard Mail Parcels Enclosed in a Priority Mail or Express Mail Drop Shipment

The Postal Service has added clarifying language to DMM S070 and S500.3.0 to provide for use of electronic option Delivery Confirmation with Standard Mail enclosed in Priority Mail Drop Shipment or Express Mail Drop Shipment mailings. Use of retail option Delivery Confirmation is not permitted with Standard Mail. Delivery Confirmation also is not available for the Priority Mail portion of the drop shipment.

6. Combined Package Services Mail for DSCF and DDU Rates

a. Overflow Sacks

Based on comments received on the proposed rule, standards were added to DMM E753.2 and 3 to provide for the preparation of 5-digit overflow sacks for Combined Package Services mailings prepared in sacks or on pallets.

b. Clarification of Destination Entry Rate Eligibility

In DMM E753, references to "destination entry" were changed to "DSCF and DDU" to clarify that DBMC rates are not available under DMM E753 for combined Package Services mailings.

c. Clarification of Minimum Pallet Volumes

Minor changes were made throughout DMM E753 for combined Package Services mail prepared on pallets to clarify that there are two options for meeting minimum pallet volumes. Pallets must contain (1) a minimum of 50 combined parcels and 250 pounds of combined Package Services mail, or (2) 36 inches of mail. In addition, E753.1.1b(2) was amended to clarify that the height of the pallet is excluded when determining the minimum of 36 inches of mail on pallets.

d. Clarification of Postage Payment Method

DMM E753.1.1g was revised and new DMM E753.1.1h added to clarify that postage for combined Package Services mailings must be paid by permit imprint under an approved manifest mailing system agreement.

e. Maximum Height for Pallet Boxes

DMM M041.4.2 has been revised to add a requirement that for mailings prepared in pallet boxes to qualify for the DSCF or DDU rate, the height of the pallet box may not exceed 60 inches (excluding the pallet) as is currently required for Parcel Select DSCF and DDU rate mail (DMM M041.4.2).

7. Bound Printed Matter

a. Eligibility of Flat-Size Presorted Bound Printed Matter for DDU Rates

The final implementing standards in DMM E753 permit flat-size Presorted Bound Printed Matter sorted to 5-digit containers or 5-digit bedloaded packages to qualify for DDU rates if the pieces weigh over one pound and are entered at the appropriate destination delivery unit. The Drop Shipment Product must be used to determine the correct destination entry facility for the 5-digit sorted flat-size Bound Printed Matter entered at Presorted rates. If the Drop Shipment Product lists multiple facilities for a single 5-digit ZIP Code, the mailer must inquire about the correct drop site when contacting the DDU to schedule an appointment.

b. Clarification of Package and Sack Minimums

DMM M045, M722, and M723 were amended to include a clarification of the term "whichever comes first," as it is used in the minimum size standards for preparing packages and sacks.

c. Correction of Summary of Changes to Machinable Parcel Sacking Standards

The summary of changes information in the proposed rule incorrectly stated that there were no changes to machinable parcel sack preparation other than eliminating the 1,000 cubic inch sack sortation option. The summary of changes in this final rule correctly shows that machinable parcel preparation is revised to add the "whichever comes first" criterion to the minimum sack requirements, and to allow mailers the option of preparing an ASF sack when such pieces are entered at the DBMC rates.

d. Clarification of Carrier Route Rate Eligibility

DMM E712.4.3, which was contained in the proposed rule, is deleted in this final rule. This section was erroneously included in the proposed rule and contained Carrier Route rate eligibility standards that conflicted with E712.2.0.

e. Clarification of Packaging Standards in M020

DMM M020 has been clarified to (1) show that mixed ADC packages may contain fewer than two physical pieces, (2) clarify that each physical package of Bound Printed Matter must always contain at least two pieces except for mixed ADC packages and, under the conditions described in that section,

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packages of Carrier Route mail prepared in sacks.

f. Revision of Maximum Individual Piece Weight for Package Preparation

The proposed rule preparation requirements for sacked mailings of irregular parcels stated that pieces weighing 10 pounds or less must be packaged prior to sacking. However, for Presorted rate irregular parcels, the minimum package size was proposed to be and is stated in this final rule to be 10 pieces or 10 pounds, whichever comes first, with a stipulation that each package must contain at least 2 pieces. Under this scenario, a single piece weighing 10 pounds would meet the minimum packaging standard and would also be required to meet the standard that each package contain at least 2 pieces. The standard requiring at least 2 pieces in each physical package would, for a 10-pound mailpiece, actually result in a minimum package size of 20 pounds rather than 10 pounds.

To eliminate this discrepancy, the cut-off weight for preparing irregular parcels in packages in DMM M722 has been changed from "weighing 10 pounds or less" to "weighing less than 10 pounds."

To keep the packaging requirements parallel, this change also has been made for carrier route irregular parcels in sacks (DMM M723) and for all packages on pallets (DMM M045).

g. Revised Sacking Criteria for Presorted Irregular Parcels Weighing 10 or More Pounds

DMM M722.4.0, Required Preparation—Irregular Parcels Weighing 10 Pounds or More, has been revised to remove the sacking criterion of 10 or more pieces. The proposed rule stated that irregular parcels each weighing over 10 pounds were to be sacked whenever there were at least 10 pieces or 20 pounds, whichever occurs first, for a presort destination. Under the stated "whichever occurs first" rule, pieces that weigh over 2 pounds would always be sacked under the minimum 20-pound rule. Since this section pertains to only pieces that individually weigh 10 or more pounds, the option to sack based on the criterion of at least 10 pieces for a presort destination would never be used and it is therefore deleted.

h. Exception to Packaging for Presorted Rate Irregular Parcels in 5-Digit Sacks

An exception has been added to the packaging requirement in DMM M722 for Presorted rate irregular parcels that are prepared in 5-digit sacks. Mailers of Presorted rate irregular parcels prepared in 5-digit sacks, may at their option, prepare such pieces loose in sacks without physical packaging provided the number of pieces in the sack meets the minimum package size and sack size requirements and the pieces in the 5-digit sack(s) are individually wrapped or enveloped.

i. Clarification of Mixed ADC Sack Preparation to Qualify for DBMC Rates

Mailers who opt to claim the DBMC rates for mail in mixed ADC sacks are required to prepare separate mixed ADC sacks for pieces eligible for and claimed at the DBMC rate and for pieces not claimed at the DBMC rate (one set of mixed ADC sacks containing packages qualifying for DBMC rates and one set of mixed ADC sacks for packages that do not qualify for DBMC rates). For this purpose, DMM E650 and E752 have been clarified to specify that mailers must assign ADC packages to the respective qualifying or nonqualifying mixed ADC sacks based on the "label to" ZIP code for the ADC (DMM L804). For mixed ADC packages, separate mixed ADC packages must be prepared based on the individual addresses on the pieces. That is, a mixed ADC package(s) for pieces within the ASF or BMC entry point must be prepared and a separate mixed ADC package(s) for pieces outside the entry ASF or DBMC area must be prepared (using either Exhibit E650.5.1 or Exhibit E751.1.3).

j. Correction of Eligibility of Presorted Rate Machinable Parcels for DSCF Rates

DMM E752.3.3 has been amended to remove the requirement that was incorrectly published in the proposed rule that stated mailers of palletized machinable parcels at Presorted rates would be required to determine if the 5-digit facility was able to handle pallets using the Drop Shipment Product maintained by the National Customer Support Center (NCSC) and that pallets could not be prepared if the 5-digit facility was unable to handle pallets.

k. Maximum Height for Pallet Boxes at DSCF and DDU Rates

DMM M041.4.2 has been revised to add a requirement that for mailings prepared in pallet boxes to qualify for the DSCF or DDU rate, the height of the pallet box may not exceed 60 inches (excluding the pallet) as is currently required for Parcel Select DSCF and DDU rate mail (DMM M041.4.2).

8. Parcel Post

Some of the standards for Parcel Post have been reorganized for clarity since the publication of the proposed rule. Specifically, the criteria for nonmachinable parcels for purposes of applicability of the nonmachinable surcharges for inter-BMC, Intra-BMC, and DBMC rate parcels have been moved from E711 to C700.

There have been no substantive changes to the standards for Parcel Post since publication of the proposed rule.

9. Media Mail and Library Mail

DMM M045.3.6 has been corrected to show that pallets of Presorted Media Mail and Presorted Library Mail must show "PSVC" on Line 2 to indicate the class of mail.

10, Special Services

a. Business Reply Mail

Effective November 5, 2000, the Postal Service completely rewrote DMM standards for business reply mail (see Postal Bulletin 22035 (10–19–00), available via www.usps.com). This rewrite was done for clarity and consistency. Therefore, standards for business reply mail in this final rule have been reorganized to reflect the new structure of DMM units E150, P014, R900, and S922.

A provision in the DMCS that required permit holders to maintain an advance deposit account solely for the use of business reply mail has been deleted. Therefore, DMM S922.3.3 is revised to show that permit holders will be able to maintain a single advance deposit account from which multiple items can be deducted (e.g., BRM, QBRM, merchandise return service, incoming shortpaid mail, address correction notices, etc.). If permit holders request separation of charges, then they must pay an annual accounting fee for each separation, as appropriate.

b. Insurance

DMM S913.1.5 was rewritten to clarify the additional services that can be added to insurance.

c. Registered Mail

A sentence was added to the DMM to clarify that registered items receive registered treatment while they are being forwarded or returned (DMM F010.5.4e). DMM S911.1.5 was rewritten to clarify the additional services that can be added to registered mail.

d. Return Receipt

Editorial changes were made to DMM S915.1.2 to clarify that certain special services can be combined with return receipt only at the time of mailing. DMM S915.1.7 was revised to allow Delivery Confirmation and Signature Confirmation services to be added as additional services, provided that one of the prerequisite services in DMM S915.1.2 is purchased first. DMM S915.2.2 was amended to remove instructions related to activation of the signature capture process. DMM S915.4.2 was amended to clarify procedures for requesting delivery information.

e. Return Receipt for Merchandise

Proposed DMM S917.1.2 is revised to remove First-Class Mail as eligible matter. Return receipt for merchandise service is not currently an option for First-Class Mail that is 13 ounces or less; the reference to First-Class Mail was included in the proposed rule in error. Return receipt for merchandise service is available only for Priority Mail, Standard Mail parcels that are subject to the residual shape surcharge, and Package Services.

f. Signature Confirmation

Minor changes were made to the DMM language to clarify how delivery information can be retrieved and to clarify requirements for the package identification code. In addition, mailers who have previously received certification for label printing under the Delivery Confirmation program are not required to obtain any additional certification to use Signature Confirmation (DMM S919.3.3). Standards were added to allow mailers to use an integrated barcode to combine Delivery Confirmation or Signature Confirmation and insurance services (DMM S919.1.7, 3.4, and 4.0). Waiver of signature is not available when Signature Confirmation is combined with other special services (DMM S919.1.10). DMM C850.1.4 was amended to include information about concatenated and integrated barcodes with Signature Confirmation service. Language was added to F020.3.7 to show that pieces with Signature Confirmation are forwarded without payment of additional special service fees. P014.2.34f was amended to add language for refunds for Signature Confirmation service. S913.2.5 was amended to add information about integrated barcodes with Signature Confirmation and insurance.

g. Mailing List Services

DMM A910.2.2 was revised to show that the minimum fee ($7.50) for correcting a mailing list applies to lists with fewer than 30 names or addresses. This revision was omitted from the proposed rule.

h. Merchandise Return Service

DMM S923.3.4 was amended to clarify that a separate accounting fee must be paid for each separate withdrawal (billing) requested by a permit holder. This change is consistent with current standards for business reply mail.

i. Payment Period for Fee Renewals

On December 14, 2000, the Postal Service revised current DMM sections E100.4.1, E612.4.7, E630.1.5, S922.2.3, S922.3.3, S923.3.1, and S924.3.1 to allow customers to renew fee payments any time during the last 60 days of the current period (see Postal Bulletin 22039 (12–14–00)). Affected sections in this final rule have been revised accordingly to be consistent with the 60-day payment period.

B. Summary by Class of Mail and Special Service of All DMM Revisions for R2000–1

1. Express Mail

a. Express Mail Rate Highlights

Overall, Express Mail rates will increase by an average of 3.6%. Moderate increases will occur for all Express Mail rates, except for a $0.30 decrease in the ½-pound rates for Custom Designed Service and for Next Day and Second Day Post Office to Post Office Service. The fee for pickup service will increase from $8.25 to $10.25 per occurrence. The fee for delivery stops (Custom Designed Service only) will increase from $8.25 to $10.25. The fee for every $100 increment of additional insurance desired above the standard $500 of coverage will increase from $0.95 to $1.00.

b. Express Mail Rate Structure

There are no changes to the rate structure of Express Mail. Same Day Airport Service is still suspended.

c. Express Mail Preparation Changes

There are no changes to mail preparation requirements for Express Mail.

2. Priority Mail

a. Priority Mail Rate Highlights

Overall, Priority Mail rates will increase by an average of 16%. The fee for pickup service will increase from $8.25 to $10.25 per occurrence.

b. Priority Mail Rate Structure

(1) One Pound or Less Priority Mail Rate

A unique Priority Mail rate has been implemented for pieces weighing 1 pound or less. Prior to this change all Priority Mail pieces weighing 2 pounds or less were charged the 2-pound rate. Mail that is placed in a Priority Mail flat-rate envelope will continue to be charged the 2-pound rate regardless of the actual weight of the piece.

(2) Keys and Identification Devices

Keys and identification devices that weigh more than 13 ounces but not more than 1 pound will be eligible for the new 1-pound Priority Mail rate plus the fee. The fee for keys and identification devices will increase from $0.30 to $0.35.

c. Priority Mail Preparation Changes

There are no changes to mail preparation requirements for Priority Mail.

3. First-Class Mail

a. First-Class Mail Rate Highlights

Overall, First-Class Mail rates will increase by an average of 1.8%. The single-piece first-ounce letter rate increases by only one cent, from $0.33 to $0.34, and the rate for each additional ounce reduces by one cent from $0.22 to $0.21. The single-piece card rate remains at $0.20.

The first-ounce letter rate for Qualified Business Reply Mail (QBRM) increases from $0.30 to $0.31, and the card rate for QBRM reduces from $0.18 to $0.17.

The nonstandard surcharge for single-piece rate mail weighing one ounce or less will remain the same at $0.11. The nonstandard surcharge for Presorted rate and Automation rate pieces will remain the same at $0.05.

The basic automation flat rate will increase from $0.30 to $0.31 for the first ounce. The combined 3/5-digit rate category for automation flats will be eliminated. New and separate automated rate categories for 3-digit automation flats and for 5-digit automation flats will be implemented. The annual presort mailing fee will increase from $100 to $125.

b. First-Class Mail Rate Structure

The current automation flats 3/5-digit rate will be split into two separate rates: a 3-digit automation rate and a 5-digit automation rate.

c. First-Class Mail Preparation Changes

(1) Maximum Weight Limit for Automation Heavy Letters (C810.2.3)

The maximum weight for heavy letters that may qualify for automation letter rates also will be 3.3 ounces (.2063 pound).

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(2) Automation Flats (DMM M011, M030, M033, M820, M910)

The Postal Service will change the standards for the preparation of 5-digit packages and 5-digit trays of automation flats under DMM 820 from required levels of sortation to optional levels of sortation. This is supported by the new rate structure that provides separate 5-digit and 3-digit rates for automation flats. All other current mail preparation requirements will remain the same.

The Postal Service will also add a new tray-based presort option for automation flats. When using this option, mailers will not need to prepare automation flats in 5-digit, 3-digit, ADC, and mixed ADC packages. Instead, mailers will prepare flat trays to 5-digit (optional), 3-digit, and ADC destinations whenever there are 90 or more pieces to a presort destination, and place remaining pieces in mixed ADC tray(s) that have no minimum tray quantity. Ninety is the average number of pieces that fills a flat tray up to the bottom of the handholds when at least a single stack of mail is lying flat on the bottom of the tray. When there are 90 or more pieces for a presort destination (other than mixed ADC), mailers will be required to physically fill flat tray(s) for that destination and will be allowed one less-than-full tray or one overflow tray per 5-digit, 3-digit, and ADC destination. Preparation of 5-digit trays also will be optional under this tray-based preparation option. Rates will be based on the sortation level of the tray to which a piece is sorted. Mailers choosing to prepare their mail using this option will not be eligible to prepare their mail as outlined in new M910 which will also go into effect when the rates resulting from the R2000–1 rate case are implemented. (M910 will permit co-traying of packages from automation rate mailings and packages from Presorted rate mailings that are part of the same mailing job and meet other criteria.)

(3) Tray Containers (DMM M033)

For clarification, new information has been added to M033.1.2 to show that the lids required to be placed on First-Class Mail flat trays must be placed on the tray green side up prior to strapping under M033.1.5b.

(4) Application of Two POSTNET Barcodes for Automation Flats (DMM C840.3.0)

Mailers have requested the ability to qualify flat-size mailpieces that bear two POSTNET barcodes for the automation flat rates. Mailers indicate that a mailpiece bearing a barcode that is not CASS-certified can in some instances be upgraded to contain a second delivery point barcode that meets the CASS- or MASS-certification criterion for eligibility for automation flat rates if it is subsequently processed through an MLOCR or other barcoding system.

However, unlike automated processing of letter mail, FSM barcode readers will read the first barcode it recognizes. Therefore, which barcode is read depends on the orientation of the mailpiece when fed through the flat sorter and the location of the barcodes on the mailpiece.

A cooperative effort between the Postal Service and MLOCR vendors led to the development of standards that will allow mailers to submit mailpieces that bear two POSTNET barcodes to qualify for automation flat-rates. The Postal Service believes these standards meet both the interest of the mailers in qualifying for the most advantageous postage rate discounts at the lowest possible mailing costs and the interest of the Postal Service to generate more barcoded flat-size mailpieces. In addition, MLOCR vendors plan to offer FASTforward℠ to their clients in the future to meet the First-Class Mail requirement for move update in DMM E140.

The Postal Service will allow the application of two POSTNET barcodes on the addressed side of flat-size automation rate pieces providing certain requirements are met. The presence of two POSTNET barcodes on a flat-size mailpiece will be permitted only when the first barcode is applied in the address block and that barcode is either a 5-digit barcode or it is a ZIP+4 or delivery point barcode that is not CASS-certified. The second barcode must be a delivery point barcode and must be CASS- or MASS-certified. It is preferred, but not required, that the second barcode be applied in the lower right area of the mailpiece parallel to and in the same direction as the delivery address. A greater than one-inch separation between the two barcodes is required. The second POSTNET barcode must not be placed near the return address. A no-spray clear zone of at least one inch below the return address is required. This is because OCRs on Postal Service flat sorting machines use the location of the POSTNET barcode to determine the location of the destination address block. If a POSTNET barcode is applied close to the return address and is scanned first, it is highly probable that the OCR will encode the return address and inadvertently return the mailpiece to the sender. The preferred location of the lower right area of the mailpiece will increase the likelihood that the CASS- or MASS-certified delivery point barcode is the first one read by the FSMs.

The application of two POSTNET barcodes is a temporary solution and may be revised subsequent to implementation of planet codes and/or testing and implementation of other options. At that time, MLOCR vendors and or mailers will be given a 90-day transition period to comply with the new requirements.

4. Periodicals

a. Periodicals Rate Highlights

The overall proposed average rate increase for Periodicals decreased from 12.7% to 9.5%. Outside-County Periodicals will have an average increase of 9.5% while Within-County Periodicals will have an average increase of 6.8%. Regular, Nonprofit and Classroom will have average increases of 9.9%, 7.2% and 9.6%, respectively.

Two of the preferred subclasses (Nonprofit and Classroom) will be combined with the Regular subclass to form an Outside-County subclass with one set of rates. Nonprofit and Classroom publications will receive a 5% discount on total Outside-County postage, excluding the postage for advertising pounds. The Within-County subclass will remain a separate subclass with a separate set of rates.

The nonadvertising percentage per piece discount, the delivery unit (Outside-County and In-County) per piece discounts, and the SCF per piece discount will increase. The Outside-County (except delivery unit, which decreases), Science-of-Agriculture (except delivery unit, which decreases), and In-County pound rates will increase along with all per piece rates for both subclasses (Outside-County and Within County). See DMM R200 for individual rates and discounts.

The fee for original entry will increase from $305 to $350. The re-entry and newsagents' fees will decrease from $50 to $40. The fee for additional entry will remain unchanged at $50.

DMM changes will provide for DDU rates for Periodicals entered under exceptional dispatch authorizations. The change will limit DDU rates under exceptional dispatch to mail destined to zones 1 and 2 and will generally restrict eligibility to publications with circulation of 25,000 and under.

b. Periodicals Rate Structure

Regular, Nonprofit, and Classroom publications will use the same Outside-County rate schedule. Nonprofit and Classroom publications will receive a 5% discount on total Outside-County postage, excluding the postage for advertising pounds. The 5% discount does not apply to commingled nonsubscriber copies in excess of the 10% allowance provided under DMM E215. In-County rates will remain a separate rate schedule.

c. Periodicals Mail Preparation Changes

(1) Bundles on Pallets

The current DMM describes a "bundle" as a group of packages secured together as a unit that equates to a sack. The current DMM provides both for preparation of packages on pallets under DMM M045.2.0 and for preparation of bundles on pallets under DMM M045.3.0. The Postal Service is not aware of any mailers that currently opt to prepare bundles on pallets. Accordingly, the Postal Service will delete the option to prepare bundles on pallets under current DMM M045.3.0. The provisions for preparing packages on pallets will remain in DMM M045.2.0.

(2) Maximum Weight Limit for Automation Heavy Letters (C810.2.3)

The maximum weight for heavy letters that may qualify for automation letter rates also will be 3.3 ounces (.2063 pound).

(3) Other Rulemakings

Mailers are reminded that three final rule **Federal Register** notices have previously been published that set forth required and optional preparation requirements for Periodicals that also will be effective on January 7, 2001. These are: (1) "Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets" published on July 28, 2000 (65 FR 46361), (2) "Line-of-Travel Sequencing for Basic Carrier Route Periodicals" published on July 28, 2000 (65 FR 46363), and (3) "Domestic Mail Manual Changes for Sacking and Palletizing Periodicals Nonletters and Standard Mail (A) Flats, for Traying First-Class Flats, and for Labeling Pallets" published August 16, 2000 (65 FR 50054). In addition, a final rule has been published concerning "Sack Preparation Changes for Periodicals Nonletter-Size Mailing Jobs that Include Automation Flat Rate and Presorted Rate Mailings." This final rule requires, effective January 7, 2001, use of the co-sacking preparation method in DMM M910 for Periodicals nonletter-size mailing jobs that include both an automation flats mailing and a Presorted flats mailing. Information concerning optional use of DMM M910 and its associated preparation criteria was published in Postal Bulletin 22036 (11–2–00). Information concerning required use of DMM M910 by Periodicals mailers will be published in Postal Bulletin 22039 (12–14–00) as "Preparation Changes for Periodicals Nonletter-Size Mailing Jobs."

5. Standard Mail (Formerly Standard Mail (A))

a. Standard Mail Rate Highlights

Regular rates will increase by an average of 8.8%. Rates for commercial Enhanced Carrier Route (ECR) mail will increase by an average of 4.5%. Rates for Nonprofit mail will increase by an average of 4.8%. Rates for Nonprofit Enhanced Carrier Route will increase by an average of 18.3%.

Discounts for destination entry rate mail (DBMC, DSCF, and DDU) have increased. The annual presort mailing fee increases from $100 to $125.

b. Standard Mail Rate Structure

All Standard Mail letters and non-letters are subject to a weight limit of 3.3 ounces (.2063 pound) for the minimum per piece rate.

A new machinable parcel barcoded discount of $0.03 will apply to Standard Mail machinable parcels that are subject to the residual shape surcharge and that meet other preparation requirements. This machinable parcel barcoded discount is available only for the Regular and Nonprofit Standard Mail subclasses (it will not be available for pieces mailed at the Enhanced Carrier Route and Nonprofit Enhanced Carrier Route subclasses).

There are two different residual shape surcharges: Enhanced Carrier Route and Nonprofit Enhanced Carrier Route mail have a residual shape surcharge of $0.15, and Regular and Nonprofit mail have a residual shape surcharge of $0.18.

Return receipt for merchandise, bulk insurance, and electronic option Delivery Confirmation are available for Standard Mail parcels that are subject to the residual shape surcharge.

c. Standard Mail Preparation Changes

(1) Name Change and DMM Restructuring

The name of the mail class "Standard Mail (A)" will change to "Standard Mail." Throughout this final rule, "Standard Mail" is used consistently in the DMM text to indicate the class formerly known as "Standard Mail (A)." For brevity, not all DMM sections for which only name changes apply were reproduced in this final rule. This change will, however, be implemented throughout all of DMM Issue 56, which will transmit the final implementing rules for R2000–1.

DMM sections C600, D600, E600, M600, P600, and R600 now contain standards for only Standard Mail. Matter in these sections that formerly contained standards for Package Services mail have been moved into new sections under C700, D700, E700, M700, P700, and R700, respectively. (Former P700, which contains information on special postage payment systems, is renumbered as P900.)

Matter pertaining only to Standard Mail in former E611 and E612 is consolidated and reorganized into new E610. DMM E620 and E630 are reorganized so that E620 pertains to Presorted rate Standard Mail and E630 pertains to Enhanced Carrier Route Standard Mail.

(2) Sack and Pallet Labels (DMM M031, M032, M045, M600)

Currently, the contents line of sack and pallet labels for irregular parcel and machinable parcel mailings must show "STD A" or "STD B" as applicable for the class being mailed. Because of the name changes of "Standard Mail (A)" to "Standard Mail" and of "Standard Mail (B)" to "Package Services," the use of "STD A" on "Standard Mail" sack and pallet labels for irregular parcel and machinable parcel mailings is changed to "STD" (Package Services labels will use "PSVC").

(3) Dimensions for Machinable Parcels (DMM C050)

The minimum dimensions for a machinable parcel in DMM C050.4.1a are changed to not less than 6 inches long, 3 inches high, ¼ inch thick, and 6 ounces in weight. (A mailpiece exactly ¼ inch thick is subject to the 3½-inch height minimum under C010.) Some parcels may be successfully processed on BMC parcel sorters although they do not conform to the new machinability standards in DMM C050.4.1. If this is the case, a BMC plant manager may authorize a mailer to enter such parcels as machinable parcels if the parcels are tested on BMC parcel sorters and prove to be machinable. Such an authorization will apply only to mail that is both entered at a post office within the service area of the authorizing BMC area and is for delivery to an address within the service area of that BMC. These changes also apply to Package Services mail.

(4) Preparation of Bundles (DMM M045, M600)

The current DMM describes a "bundle" as a group of packages secured

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together as a unit that equates to a sack. Because the Postal Service is not aware of any mailers that currently opt to prepare bundles on pallets, the provision in M045.3.0 that contains an option to prepare bundles on pallets is removed. The provisions for preparing packages on pallets will remain in DMM M045.2.0.

The current DMM also provides for preparation of bedloaded bundles of Presorted and Carrier Route rate mail under DMM M610.6.0 and M620.6.0, respectively. Such preparation requires Rates and Classification Service Center (RCSC) authorization. The records of the Postal Service currently indicate that there are no mailers authorized to prepare bedloaded bundles in the manner described in the DMM. Because of this, and because bedloaded bundles are generally not cost-efficient for the Postal Service to handle and process, the Postal Service is removing the options to prepare bedloaded bundles under DMM M610.6.0 and M620.6.0.

(5) Machinable Parcel Barcoded Discount (DMM C850, E610, E620, P600)

The new machinable parcel barcoded discount of $0.03 will apply to machinable parcels (as defined in DMM C050) for which the residual shape surcharge (RSS) surcharge is paid and that bear a correct, readable 5-digit barcode under C850 for the ZIP Code shown in the delivery address and are prepared as machinable parcels under M045 or M610. Machinable parcels prepared in 5-digit sacks or on 5-digit pallets entered at DSCF rates may qualify for the barcoded discount even though such pieces will not be processed using BMC barcode scanning equipment. Otherwise, rates for 5-digit sorted machinable parcels entered at DSCF rates could be higher than for BMC sorted machinable parcels that were entered at DBMC rates and which also qualified for the barcoded discount. Machinable parcels entered at DBMC rates may claim the machinable parcel barcoded discount only if they are entered at a BMC. An exception is that properly prepared machinable pieces of DBMC rate mail entered at the Phoenix, Arizona, ASF may claim the barcoded discount because that facility uses barcode scanning equipment. The machinable parcel barcoded discount is not available for pieces mailed at the Enhanced Carrier Route or Nonprofit Enhanced Carrier Route subclasses.

If all pieces in a mailing are eligible for the machinable parcel barcoded discount under E610 and E620, then the mailing may be paid with meter stamps, permit imprint, or precanceled stamps under the applicable standards. If fewer than 100 percent of the pieces in the mailing are eligible for the machinable parcel barcoded discount, then payment with precanceled stamps is not permitted; use of metered postage is permissible only if exact postage is affixed to each piece in the mailing; and use of permit imprints is permitted only under a manifest mailing system (P910).

(6) Special Services With Standard Mail (DMM E610, P600)

Standard Mail that is subject to the residual shape surcharge (pieces prepared as parcels or that are not letter-size or flat-size as defined in DMM C050) may receive the following additional special services upon payment of the appropriate fees: bulk insurance, return receipt for merchandise, and electronic option Delivery Confirmation. Other Standard Mail is not eligible for any special services. Mail prepared with detached address labels under A060 and mail using Bulk Parcel Return Service (BPRS) also are not eligible for any special services.

Mailpieces for which one or more of these special services are requested must bear a return address under A010 and must bear an ancillary service endorsement that results in return of the mailpiece to the sender if undeliverable as addressed (Address Service Requested, Forwarding Service Requested, or Return Service Requested).

Mailings for which bulk insurance is requested must pay postage and fees through a manifest mailing system (P910).

For electronic option Delivery Confirmation, the following postage payment requirements apply. If electronic option Delivery Confirmation is requested for all the pieces in the mailing and the mailing consists of pieces of identical weight, then postage may be paid with metered postage or permit imprints under the existing standards in P600.2.0 and P600.3.0 (as restructured in this final rule). However, if Delivery Confirmation is not requested for all pieces in the mailing, or if the pieces are not of identical weight, then either the exact metered postage must be affixed to each piece or a manifest mailing system must be used for permit imprint mail under P910. Precanceled stamps may not be used for postage payment on pieces with Delivery Confirmation (see DMM S918.1.5).

If return receipt for merchandise is requested for all the pieces in the mailing and the mailing consists of pieces of identical weight, then postage must be paid with metered postage or permit imprints under the applicable standards in DMM P600.2.0 and P600.3.0. If return receipt for merchandise is not requested for all of the pieces in the mailing, or if the pieces are not identical weight, then either the exact metered postage must be affixed to each piece, or a manifest mailing system must be used for permit imprint mail under P910. Precanceled stamps are not permitted for use with return receipt for merchandise.

(7) Maximum Weight Limit for Automation Heavy Letters (DMM C810.2.3)

The maximum weight for heavy letters that may qualify for automation letter rates also will be 3.3 ounces (.2063 pound).

(8) Barcodes on Automation Flats (DMM C840.3.0)

DMM C840.3.0 has been revised to allow application of two POSTNET barcodes on the address side of flat-size automation rate pieces provided certain conditions are met.

(9) Permissible Use of Electronic Option Delivery Confirmation With Standard Mail Parcels Enclosed in an Express Mail or Priority Mail Drop Shipment (DMM S070 and S500.3.0)

DMM S070 and S500.3.0 are amended to provide for use of electronic Delivery Confirmation with Standard Mail parcels enclosed in Priority Mail Drop Shipment or Express Mail Drop Shipment mailings.

6. Package Services (Formerly Standard Mail (B))—General

a. Name Change and DMM Restructuring

The name of this mail class will change from "Standard Mail (B)" to "Package Services." Package Services includes Parcel Post (including Parcel Select), Bound Printed Matter, Media Mail (formerly Special Standard Mail), and Library Mail.

The standards in current DMM sections C600, D600, M600, E600, P600, and R600 that pertain to Package Services have been moved to new sections under DMM C700, D700, E700, M700, P700, and R700. Former P700, which contains information on special postage payment systems, is renumbered as P900.

The standards for Package Services contained in current DMM E611 and E613 are consolidated and reorganized into new E710. Current DMM E630 and E650, which contain eligibility standards for Package Services, are moved into new DMM E700. Each of the four subclasses of Package Services mail has its own eligibility sections: DMM E711 for Parcel Post; DMM E712 for Bound Printed Matter; DMM E713 for Media Mail (formerly Special Standard Mail); and DMM E714 for Library Mail. Information pertaining to eligibility of Package Services mail for destination entry rates is moved to DMM E750. Current DMM M630 is moved and reorganized into new DMM M710 for Parcel Post, DMM M720 for Bound Printed Matter, DMM M730 for Media Mail, and DMM M740 for Library Mail.

b. Combining Different Subclasses of Package Services to Qualify for DSCF and DDU Rates

New provisions are added in DMM E753 that allow mailers to combine different subclasses of Package Services machinable, irregular, and nonmachinable parcels in the same 5-digit sack or on the same 5-digit pallet to qualify for DSCF and DDU rates. For sack preparation, 10 or more parcels of any combination of Package Services subclasses, except for mail at Carrier Route Bound Printed Matter rates, may be placed in the same 5-digit sack and entered at destination SCFs or at destination delivery units. For pallet preparation, 5-digit pallets that contain either 50 pieces and 250 pounds or that contain at least 36 inches of Package Services parcels (any combination of subclasses, except mail at Carrier Route Bound Printed Matter rates) may be prepared and entered at destination SCFs or at destination delivery units. Any Parcel Post pieces and any Presorted Bound Printed Matter in such sacks or on such pallets will be eligible for the appropriate DSCF or DDU rate provided all other eligibility requirements for the applicable destination entry rate are met. Media Mail and Library Mail pieces are subject to their respective single-piece or 5-digit rates depending upon whether the 500-piece minimum quantity requirement for the 5-digit rates is met for each subclass. Mailers must request authorization to use this preparation method and pay postage using permit imprints under a manifest mailing system agreement. See E753 for a full description of the requirements and rate applicability.

7. Parcel Post

a. Parcel Post Rate Highlights

Parcel Post rates will increase by an average of 2.7%. The nonmachinable surcharge for Inter-BMC Parcel Post will increase from $1.65 to $2.00 per parcel. The Parcel Post Origin BMC Presort and BMC Presort discounts will increase from $0.57 to $0.90 per piece and from $0.22 to $0.23 per piece, respectively. The barcoded discount for qualifying Parcel Post (including Parcel Select) machinable parcels will remain at $0.03 per piece. The annual destination entry fee for Parcel Select will increase from $100 to $125.

b. Parcel Post Rate Structure

Pieces weighing less than 16 ounces are now eligible for Parcel Post (including Parcel Select) rates. A one-pound rate is added. The rates for a piece weighing one pound or less and the rates for a piece weighing more than one pound but not more than 2 pounds are the same. A $1.35 nonmachinable surcharge for Intra-BMC Parcel Post and a $1.45 nonmachinable surcharge for DBMC Parcel Select are added.

c. Parcel Post Mail Preparation Changes

(1) Rate Markings (DMM M012 and M710)

There are no changes to the marking requirements for Parcel Post and Parcel Select.

(2) Sack and Pallet Labels (DMM M031, M032, M045, M710)

The abbreviation "STD" or "STD B" on the contents line of sack and pallet labels for Parcel Post (including Parcel Select) is changed to "PSVC" (an abbreviation for Package Services). Labels for 5-digit sacks and pallets prepared to qualify for Parcel Select DSCF and DDU rates are revised to add the processing category "PARCELS" to the contents line to read "PSVC PARCELS 5D." For containers of combined Package Services parcels, line 2 will also read "PSVC PARCELS 5D."

(3) Dimensions for Machinable Parcels (DMM C050)

The minimum dimensions for a machinable parcel in DMM C050.4.1a are changed to not less than 6 inches long, 3 inches high, ¼ inch thick, and 6 ounces in weight. (A mailpiece exactly ¼ inch thick is subject to the 3½-inch height minimum under C010.) (The previous minimum weight was 8 ounces unless certain other conditions were met.) Some parcels may be successfully processed on BMC parcel sorters although they do not conform to the machinability standards in new DMM C050.4.1. If this is the case, a BMC plant manager may authorize a mailer to enter such parcels as machinable parcels if the parcels are tested on BMC parcel sorters and prove to be machinable. Such an authorization applies only to mail that is both entered at a post office within the authorizing BMC's service area and is for delivery to an address within that BMC's service area. These changes also apply to Standard Mail.

(4) Machinable Parcel Preparation Requirements (DMM M045 and M710)

The rules for sacking and palletizing Parcel Post (including Parcel Select) machinable parcels are clarified to point out that they are optional preparation methods for Parcel Post. In addition, the sacking rules are modified to delete the 1,000 cubic inch option for preparing sacks of machinable parcels. If Parcel Post mailers choose to sack under the machinable parcel preparation standards, sacks for a 5-digit, ASF, or BMC destination have a minimum volume requirement of 10 pieces or 20 pounds.

(5) Postage Payment (P700)

P700 is clarified to indicate that precanceled stamps must not be used for postage payment of any Parcel Post or Parcel Select mail, including matter at single-piece rates.

8. Bound Printed Matter

a. Bound Printed Matter Rate Highlights

The Postal Service has calculated that Bound Printed Matter (BPM) rates will increase by an average of 9.8%. New destination entry discounts for Presorted rate and Carrier Route rate mailings of Bound Printed Matter are available to encourage the deposit of mail at the destination BMC, SCF, or delivery unit. There is an annual destination entry mailing fee for mail entered at destination entry rates of $125. The barcoded discount for qualifying Presorted Bound Printed Matter machinable parcels will remain at $0.03 per piece.

b. Bound Printed Matter Rate Structure

The local zone rate category has been eliminated for Bound Printed Matter. Destination entry rates for Presorted and Carrier Route Bound Printed Matter entered at destination BMCs, SCFs, and delivery units are provided. To qualify for destination entry rates mailers must pay the annual destination entry mailing fee described above and meet the preparation requirements in DMM E752 that are summarized below. There are no destination entry rates for single-piece Bound Printed Matter.

Another major change is that pieces weighing less than 16 ounces are eligible for Bound Printed Matter rates; however, there are no rate categories for pieces less than 1 pound for single-piece, Presorted, and Carrier Route mail. Therefore, single-piece Bound Printed Matter that weighs less than 1 pound will be charged the 1-pound rate (which is the same as the 1.5-pound rate), and

Presorted and Carrier Route Bound Printed Matter that weighs less than 1 pound will be charged the full 1-pound rate, plus the applicable per piece charge.

c. Bound Printed Matter Mail Preparation Changes

(1) Rate Markings (DMM M012 and M720)

There are two changes to the marking requirements for Bound Printed Matter. The first allows mailers to use the abbreviation "BPM" as the basic (subclass) marking that must appear in the postage area on each piece. The second prohibits mailers from using the "Presorted Standard" (or "PRSRT STD") marking on Presorted and Carrier Route Bound Printed Matter after a 1-year grace period. Because of the renaming of Standard Mail (B) to Package Services, "Standard" and "STD" are no longer applicable as class of mail descriptions for Bound Printed Matter. Mailers will have until January 1, 2002 to discontinue use of the "Presorted Standard" (or "PRSRT STD") marking.

(2) Sack and Pallet Labels (DMM M031, M032, M045, M700)

The abbreviations "STD" or "STD B" on the contents line of sack and pallet labels for Bound Printed Matter are changed to "PSVC" (an abbreviation for Package Services).

(3) Address Matching Requirements for Presorted Bound Printed Matter (DMM E712)

A new requirement is added that all 5-digit ZIP Codes included in addresses on pieces claimed at Presorted Bound Printed Matter rates must be verified and corrected within 12 months before the mailing date using a USPS-approved method. The mailer must certify on the postage statement that this standard has been met when the mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. See E712.3.1.

(4) Dimensions for Machinable Parcels (DMM M050)

The minimum dimensions for a machinable parcel in DMM C050.4.1a are changed to not less than 6 inches long, 3 inches high, ¼ inch thick, and 6 ounces in weight. (A mailpiece exactly ¼ inch thick is subject to the 3½-inch height minimum under C010.) (The previous minimum weight was 8 ounces unless certain other conditions were met.) Some parcels may be successfully processed on BMC parcel sorters although they do not conform to the machinability standards in DMM C050.4.1. If this is the case, a BMC plant manager may authorize a mailer to enter such parcels as machinable parcels if the parcels are tested on BMC parcel sorters and prove to be machinable. Such an authorization applies only to mail that is both entered at a post office within the authorizing BMC's service area and is for delivery to an address within that BMC's service area. These changes also apply to Standard Mail.

(5) Sortation for Sacked Presorted Rate Bound Printed Matter (DMM M722)

(a) *General.* All flats and all irregular parcels that weigh less than 10 pounds must be prepared in packages prior to sacking. Machinable parcels are still placed directly in sacks without packaging, and irregular parcels weighing 10 pounds or more must be placed into sacks without packaging. Irregular parcels weighing 10 pounds or more that are placed directly in sacks must be individually enveloped, be placed in a full-length sleeve or wrapper, or be polywrapped. The provisions for preparing sacks to a particular presort destination based on a 1,000 cubic inch minimum are deleted.

(b) *Flats.* For flats prepared in sacks, mailers are required to prepare packages whenever there are at least 10 pieces or 10 pounds of mail, whichever occurs first, for a presort destination (5-digit, 3-digit, ADC), with remaining pieces placed in mixed ADC packages. "Whichever occurs first" means a mailing of identical-weight pieces weighing one pound or less must be packaged using the 10-piece package minimum, and those that weigh more must be prepared using the 10-pound package minimum. (See M722 for information concerning mailings of nonidentical weight pieces.) The maximum weight of any package is 20 pounds, except that 5-digit packages placed in 5-digit sacks may weigh up to 40 pounds. This allows packages prepared in other than 5-digit sacks to be processed on small parcel and bundle sorters (SPBSs). Each physical package is required to contain at least 2 addressed pieces except for mixed ADC packages.

These packages are required to be placed in sacks whenever there are at least 20 pieces or 20 pounds, whichever occurs first, for a sack destination (5-digit, 3-digit, optional SCF, ADC), with remaining packages placed in mixed ADC sacks. "Whichever occurs first" means that if the individual pieces in the mailing weigh one pound or less they must be sacked whenever there are 20 or more pieces to a sack destination, and individual pieces that weigh more than one pound must be sacked when there are 20 or more pounds to a sack destination. (See M722 for information concerning mailings of nonidentical weight pieces.)

(c) *Irregular Parcels That Each Weigh Less Than 10 Pounds.* For Presorted irregular parcels, mailers are required to prepare the mail in packages if the individual pieces weigh less than 10 pounds. Packages must be prepared whenever there are at least 10 pieces or 10 pounds to a presort destination, whichever occurs first. "Whichever occurs first" means a mailing of identical-weight pieces weighing one pound or less must be packaged using the 10-piece package minimum, and those that weigh more must be prepared using the 10-pound package minimum. (See M722 for information concerning mailings of nonidentical weight pieces.) The package destinations are the same as for flat-size pieces (5-digit, 3-digit, ADC, and mixed ADC). Mixed ADC packages may contain fewer than 10 pieces or 10 pounds of mail.

Sortation to ADCs is made using DMM L004 instead of L603, and mixed ADC sacks are labeled using DMM L004 instead of L604. The maximum weight of any package is 20 pounds, except that 5-digit packages placed in 5-digit sacks may weigh up to 40 pounds. Each physical package is required to contain at least 2 addressed pieces except for mixed ADC packages.

There is one exception to the packaging requirement. Mailers of irregular parcel BPM prepared in 5-digit sacks, may at their option, prepare such pieces loose in sacks without physical packaging provided the number of pieces in the sack meets the minimum package size and sack size requirements and the pieces in the 5-digit sack(s) are individually wrapped or enveloped.

Packages must be placed in 5-digit, 3-digit, optional SCF, and ADC sacks whenever there are 10 or more pieces or 20 or more pounds, whichever occurs first, for a sack destination. Remaining packages must be placed in mixed ADC sacks. "Whichever occurs first" means that if the individual pieces in the mailing weigh two pounds or less they must be sacked whenever there are 10 or more pieces to a sack destination, and individual pieces weighing more than two pounds must be sacked when there are 20 or more pounds to a sack destination. (See M722 for information concerning mailings of nonidentical weight pieces.)

(d) *Irregular Parcels That Each Weigh 10 or More Pounds.* Presorted irregular parcels that each weigh 10 or more pounds are not packaged, but must be placed in 5-digit, 3-digit, optional SCF, and ADC sacks whenever there are 20 or more pounds for a sack destination.

Remaining pieces are placed in mixed ADC sacks. Sortation to ADCs is made using DMM L004 instead of L603, and mixed ADC sacks are labeled using DMM L004 instead of L604. Irregular parcel-size pieces that each weigh 10 or more pounds are required to be individually enveloped, be placed in a full-length sleeve or wrapper, or be polywrapped prior to sacking.

(e) *Machinable Parcels.* For machinable parcels, sacks are prepared when there are at least 10 pieces or 20 pounds, whichever occurs first, for a required or optional sack level. The option to use 1,000 cubic inches as a minimum sacking criterion is deleted. The new "whichever occurs first" criterion means that if the individual pieces in the mailing weigh two pounds or less they must be sacked whenever there are 10 or more pieces to a sack destination, and individual pieces weighing more than two pounds must be sacked when there are 20 or more pounds to a sack destination. (See M722 for information concerning mailings of nonidentical weight pieces.) In addition, an optional ASF sack sortation level using DMM L602 is added for pieces that are entered at DBMC rates.

(6) Sortation for Sacked Carrier Route Rate Bound Printed Matter (DMM M020, M723)

(a) *Flats.* For flat-size mail, the basic eligibility requirement to qualify for carrier route rates of a minimum of 10 pieces/20 pounds/1,000 cubic inches of mail for the same carrier route is changed to require a minimum of 10 pieces or 10 pounds of mail, whichever occurs first, prepared in a package or packages for the same carrier route. "Whichever occurs first" means a mailing of identical-weight pieces weighing one pound or less must be packaged using the 10-piece package minimum, and those that weigh more than one pound must be prepared using the 10-pound package minimum. (See M722 for information concerning mailings of nonidentical weight pieces.)

In addition, the maximum weight of any flat-size package is 40 pounds. Each physical package must contain a minimum of two addressed pieces. The only exception to a minimum two-piece package is that the last physical package to an individual carrier route destination may consist of a single addressed piece provided that all other packages to that carrier route destination contained at least two addressed pieces and that the total group of pieces to that carrier route meets the applicable Carrier Route rate eligibility minimum in E712 (for flats, 10 pieces or 10 pounds, whichever occurs first).

Packages of flat-sized mail must be sacked for an individual carrier route whenever there are at least 20 pieces or 20 pounds of mail for a carrier route, whichever occurs first. The new "whichever occurs first" criterion means that if the individual pieces in the mailing weigh one pound or less they must be sacked whenever there are 20 or more pieces to a sack destination, and individual pieces weighing more than one pound must be sacked when there are 20 or more pounds to a sack destination. (See M722 for information concerning mailings of nonidentical weight pieces.)

Remaining carrier route packages must be sacked in 5-digit carrier routes sacks or, at the mailer's option, sacked to 5-digit scheme carrier routes sacks using L001.

(b) *Irregular Parcels Weighing Less Than 10 Pounds Each.* For mailings of Carrier Route irregular parcels that each weigh less than 10 pounds, mailers must prepare the mail in packages prior to sacking. A package must be prepared whenever there are at least 10 pieces or 20 pounds of mail to an individual carrier route, whichever occurs first. The new "whichever occurs first" criterion means that if the individual pieces in the mailing weigh two pounds or less they must be packaged whenever there are 10 or more pieces to a carrier route destination, and individual pieces weighing more than two pounds must be packaged when there are 20 or more pounds to a carrier route destination. (See M722 for information concerning mailings of nonidentical weight pieces.)

Carrier route packages of irregular parcels must be placed in direct carrier route sacks when there are 10 or more pieces or 20 or more pounds to a carrier route, whichever occurs first. The new "whichever occurs first" criterion means that if the individual pieces in the mailing weigh two pounds or less they must be sacked whenever there are 10 or more pieces to a sack destination, and individual pieces weighing more than two pounds must be sacked when there are 20 or more pounds to a sack destination. (See M722 for information concerning mailings of nonidentical weight pieces.) Carrier route packages that cannot be placed in direct carrier route sacks must be placed in 5-digit carrier routes sacks. Preparation of 5-digit scheme carrier routes sacks for irregular parcels is not permitted.

(c) *Irregular Parcels That Each Weigh 10 or More Pounds.* For mailings of Carrier Route irregular parcels that each weigh 10 or more pounds, the mail is not prepared in packages, but must be placed only in direct carrier route sacks that each contain a minimum of 20 pounds of mail. Smaller volumes in a carrier route sack are not permitted.

(d) *Machinable Parcels.* Machinable parcels will be permitted to qualify for Carrier Route Bound Printed Matter rates if placed in direct carrier route sacks that each contain a minimum of 10 pieces or 20 pounds of mail, whichever occurs first. (Machinable parcels prepared on pallets under M045 are not eligible for Carrier Route Bound Printed Matter rates.) The new "whichever occurs first" criterion means that if the individual pieces in the mailing weigh two pounds or less they must be sacked whenever there are 10 or more pieces to a sack destination, and individual pieces that weigh more than two pounds must be sacked when there are 20 or more pounds to a sack destination. (See M722 for information concerning mailings of nonidentical weight pieces.) Smaller volumes in a sack are not permitted.

(e) *Residual Pieces.* The provisions for marking and sortation of residual pieces that do not qualify for the Carrier Route Bound Printed Matter rates have changed. Such pieces may no longer be sorted to carrier routes and may not bear the "Carrier Route Presort" marking. Such residual pieces are required to be marked and sorted in accordance with the requirements for Presorted rate mailings and will continue to qualify for the Presorted rates (see M723.1.5).

(7) Preparation of Packages on Pallets (DMM M040 and M045)

Flats prepared as packages on pallets are permitted to use optional scheme sort (DMM L001). For flat-size pieces prepared in a copalletized mailing job that contains both a Presorted rate mailing and a Carrier Route rate mailing, separate 5-digit pallets must be prepared for carrier route mail (optional 5-digit scheme carrier routes and required 5-digit carrier routes pallets), and separate 5-digit pallets must be

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prepared for Presorted rate mail (optional 5-digit scheme and required 5-digit pallets).

For irregular parcels prepared as packages on pallets, mailers must prepare co-palletized Carrier Route and Presorted mail on the same 5-digit pallet. Scheme sortation is not permitted for packages of irregular parcels on pallets.

For flats and irregular parcels, packages are required to be made to a required package destination (carrier route, 5-digit, 3-digit, ADC) whenever there are 10 or more pieces or 10 or more pounds for a presort destination, whichever occurs first, except that the last package to a presort destination may weigh less than 10 pounds. "Whichever occurs first" means a mailing of identical-weight pieces weighing one pound or less must be packaged using the 10-piece package minimum, and those that weigh more must be prepared using the 10-pound package minimum. (See M722 for information concerning mailings of nonidentical weight pieces.) When there are at least 10 pieces, but fewer than 10 pounds for a presort destination, the pieces must be prepared in a single physical package.

ADC packages must be prepared using DMM L004 instead of L603. The maximum physical package size is 20 pounds except as follows. For Presorted rate mail, 5-digit packages may weigh up to 40 pounds if placed on a 5-digit scheme (flats only) or 5-digit pallet. For Carrier Route rate mail, flat-size carrier route packages may weigh up to 40 pounds if they are placed on 5-digit scheme carrier routes, or 5-digit carrier routes pallets, and irregular parcel-size carrier route packages may weigh up to 40 pounds if they are placed on a 5-digit pallet. Each physical package is required to contain at least 2 pieces.

When individual pieces weigh 10 or more pounds, they cannot be prepared as packages on pallets (except in those instances where 40-pound packages are permitted as described above). Such pieces that weigh 10 or more pounds are required to be prepared either as machinable parcels on pallets (eligible only for Presorted rates) or in sacks under M722 (Presorted rates) and/or M723 (Carrier Route rates). The new 20-pound package weight limit for flats and irregular parcels allows the packages to be processed on small parcel and bundle sorters (SPBSs).

(8) PAVE Certification and Package Reallocation

A requirement for the use of standardized documentation or Presort Accuracy Validation and Evaluation (PAVE)-certified software for Bound Printed Matter has not been added to the standards. However, the Postal Service plans to develop PAVE tests for Bound Printed Matter in the future. At that time, standardized documentation requirements will be developed and a Federal Register proposed rule to require either use of standardized documentation or use of PAVE-certified software for Presorted and Carrier Route Bound Printed Matter will be published for comment. Because use of optional package reallocation to protect SCF and BMC pallets requires use of PAVE-certified software, use of package reallocation for Bound Printed Matter flats is not available at this time. Use of package reallocation will be offered for Bound Printed Matter once use of PAVE-certified software becomes available.

(9) Bedloaded Bundles (DMM M722, M723)

The provisions for preparing bedloaded bundles in previous DMM M630.7.0 have been removed. A "bundle" is described as a group of packages secured together as a unit that equates to a sack. The Postal Service does not believe that any mailers are currently preparing true bedloaded "bundles," although some mailers do prepare bedloaded "packages." The Postal Service is implementing preparation rules for Bound Printed Matter that are designed to reduce handling and processing costs. Bedloaded packages or bundles are generally not cost-efficient for the Postal Service to handle and process. Therefore, these final sortation rules eliminate the option to prepare bedloaded bundles and allow mailers to prepare bedloaded packages only for mail that is prepared for and entered at the DDU rates (because DDU rate mail must be unloaded by the mailer). Such bedloaded packages may weigh up to 40 pounds each. See M722 and M723.

(10) Destination Bulk Mail Center (DBMC) Rates (DMM E752)

Destination Bulk Mail Center (DBMC) rates apply to Presorted and Carrier Route Bound Printed Matter mailings that are prepared in any permissible sack or pallet level and that are deposited at a BMC or ASF, are addressed for delivery to one of the 3-digit ZIP Codes served by the BMC or ASF where deposited that are listed in Exhibit E751.1.3, and are placed in a sack or pallet that is labeled to the BMC or ASF where deposited, or labeled to a postal facility within the service area of that BMC or ASF under Exhibit E751.1.3.

Flats or irregular parcels in an ADC sack or in a palletized ADC package are eligible for the DBMC rates if the ADC facility ZIP Code (as shown in Line 1 of the corresponding sack label or the ADC facility that is the destination of the palletized ADC package as would be shown on an ADC sack label for that facility using DMM L004, Column B) is within the service area of the BMC or ASF at which the sack is deposited.

Flats or irregular parcels in mixed ADC sacks qualify for the DBMC rates only if all the pieces in the sack are for the service area of the DBMC or DASF as shown in Exhibit E751.1.3. Mailers who opt to claim the DBMC rates for mail in mixed ADC sacks are required to prepare separate mixed ADC sacks for pieces eligible for and claimed at the DBMC rate and for pieces not claimed at the DBMC rate (one set of mixed ADC sacks containing packages qualifying for DBMC rates and one set of mixed ADC sacks for packages that do not qualify for DBMC rates). For this purpose, DMM E650 and E752 specify that mailers assign ADC packages to the respective qualifying or nonqualifying mixed ADC sacks based on the "label to" ZIP Code for the ADC. For mixed ADC packages, separate mixed ADC packages must be prepared based on the individual addresses on the pieces. That is, a mixed ADC package(s) for pieces within the ASF or BMC entry point must be prepared and a separate mixed ADC package(s) for pieces outside the entry ASF or DBMC area (using either Exhibit E650.5.1 or E751.1.3) must be prepared.

Machinable parcels palletized under M045 or sacked under M722 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. Sortation of machinable parcels to ASFs is optional but is required to be eligible for DBMC rates for mail with a 3-digit ZIP Code prefix within the ASF service area in Exhibit E751.1.3. Mailers may opt to sort some or all machinable parcels for ASF service area ZIP Codes to ASFs only when the mail will be deposited at the respective ASFs where the DBMC rates are claimed, under applicable volume standards, using L602. Mailers may also opt to sort machinable parcels only to destination BMCs under L601. If machinable parcels are sorted to only destination BMCs under L601, then only mail for 3-digit ZIP Codes served by a BMC as listed in Exhibit E751.1.3 would be eligible for DBMC rates (mail for 3-digit ZIP Codes served by an ASF in Exhibit E751.1.3 sorted to the BMC pallet would not be eligible for DBMC rates, nor would mail for 3-digit ZIP Codes that do not appear in Exhibit E751.1.3).

Machinable parcels in mixed BMC sacks or on mixed BMC pallets that are sorted to the origin BMC under M045 or M722 are eligible for the DBMC rates only if both of the following conditions are met: (1) The mixed BMC sack or pallet is entered at the origin BMC facility to which it is labeled, and (2) the pieces are for 3-digit ZIP Codes listed as eligible destination ZIP Codes for that BMC in Exhibit E751.1.3.

(11) Destination Sectional Center Facility (DSCF) Rates (DMM E752)

Destination Sectional Center Facility (DSCF) rates apply to Presorted and Carrier Route Bound Printed Matter mailings that meet all of the following conditions:

(a) Are eligible for and prepared to qualify for Presorted or Carrier Route rates.

(b) Are deposited at an SCF listed in L005, except that machinable parcels prepared on pallets for the 5-digit ZIP Codes listed in Exhibit E751.6.0 must be entered at the corresponding BMC facility shown in that Exhibit (not at the SCF) unless an exception is requested and granted. An exception to Exhibit 751.6.0 must be requested at least 15 days in advance of the mailing in writing from the area manager of operations support who has jurisdiction over the BMC and SCF. Exceptions, if granted, will be for a limited time.

(c) Are addressed for delivery to one of the 3-digit ZIP Codes served by the SCF where deposited under L005.

(d) Are placed in a sack or on a pallet (subject to the standards for the rate claimed) that is labeled to the DSCF where deposited, or labeled to a postal facility within the service area of that SCF (see L005).

Flats in sacks for the carrier route, 5-digit carrier routes scheme, 5-digit carrier routes, 5-digit, 3-digit, and optional SCF sort levels may claim DSCF rates under the conditions described above. Flats on 5-digit scheme carrier routes, 5-digit carrier routes, 5-digit scheme, 5-digit, 3-digit, SCF, and ASF pallets may claim DSCF rates under the conditions described above.

Irregular parcels in sacks for the carrier route, 5-digit carrier routes, 5-digit, 3-digit, and optional SCF sort levels may claim DSCF rates under the conditions described above. Irregular parcels on 5-digit, 3-digit, SCF, and ASF pallets may claim DSCF rates under the conditions described above.

Machinable parcels in direct carrier route sacks, in 5-digit sacks, or on 5-digit pallets may claim DSCF rates under the conditions described above. Machinable parcels prepared to claim Carrier Route rates are eligible for DSCF rates only when prepared in direct carrier route sacks (machinable parcels qualify for Carrier Route rates only when prepared in direct carrier route sacks). Presorted rate machinable parcels on 5-digit pallets may claim DSCF rates under the conditions described above. Note that palletized machinable parcels for the 5-digit ZIP Codes listed in Exhibit E751.6.0 must be entered at the applicable BMC to claim DSCF rates.

For mailings prepared for the DSCF rate in pallet boxes, the height of the pallet box may not exceed 60 inches (excluding the pallet) as is currently required for Parcel Select DSCF rate mail (DMM M041.4.2).

(12) Destination Delivery Unit (DDU) Rates (DMM E752)

New Destination Delivery Unit (DDU) rates apply to Presorted and Carrier Route rate Bound Printed Matter mailings that are addressed for delivery within the ZIP Code(s) served by the destination delivery unit and are deposited at the appropriate destination delivery unit facility.

For flat-size Presorted Bound Printed Matter, DDU rates may be claimed only for individual pieces that weigh more than one pound. (This minimum weight may increase in the near future dependent on AFSM 100 machinability requirements.) To qualify for DDU rates, Presorted rate flats must be prepared in 5-digit sacks, or on optional 5-digit scheme or required 5-digit pallets, or be prepared as bedloaded 5-digit packages. The Drop Shipment Product must be used to determine the correct destination entry facility for the 5-digit destination of the container. If the Drop Shipment Product lists multiple facilities for a single 5-digit ZIP Code, the mailer must inquire about the correct drop site when contacting the DDU to schedule an appointment.

For flat-size Carrier Route Bound Printed Matter, DDU rates may be claimed for mail prepared in carrier route, optional 5-digit carrier routes scheme, and 5-digit carrier routes sacks; on 5-digit scheme carrier routes scheme and 5-digit carrier routes pallets; or in bedloaded carrier route packages. There is no minimum weight for individual flat-size pieces to qualify for Carrier Route rate flat-size pieces. Carrier Route rate flat-size mail must be entered at the facility where the carrier cases flat-size mail as shown in the Drop Shipment Product.

For irregular parcels of Carrier Route Bound Printed Matter, DDU rates may be claimed for mail prepared in carrier route and, for pieces each weighing less than pounds only, in 5-digit carrier routes sacks. For irregular parcels of Presorted Bound Printed Matter, DDU rates may be claimed for mail prepared in 5-digit sacks or on 5-digit pallets. Irregular parcels prepared as bedloaded carrier route packages or bedloaded 5-digit packages also are eligible for DDU rates.

For machinable parcels of Carrier Route Bound Printed Matter, DDU rates are available for carrier route parcels prepared in direct carrier route sacks. For machinable parcels of Presorted Bound Printed Matter, DDU rates are available for parcels prepared in 5-digit sacks or on 5-digit pallets.

To claim the DDU rates, both irregular and machinable parcels must be entered at the facility that delivers parcels to the addresses appearing on the deposited pieces. Mailers must use the Drop Shipment Product to determine the location of the 5-digit delivery facility and whether it can handle pallets. When the Drop Shipment Product shows that parcels for a single 5-digit ZIP Code area is delivered out of more than one postal facility, then the facility from which the majority of city carrier routes are delivered is the facility at which the DDU mail must be entered, unless the 5-digit ZIP Code is listed in Exhibit E751.7.0 or Exhibit E751.8.0. For ZIP Codes in Exhibit E751.7.0 and Exhibit E751.8.0, mailers would use the name of the facility associated with the 5-digit ZIP Code on the respective exhibit as the facility at which DDU mail for that 5-digit ZIP Code mail must be entered. Mailers who palletize machinable and irregular parcels must also determine if the 5-digit facility is able to handle pallets using the Drop Shipment Product. If the 5-digit facility is unable to handle pallets, and a mailer transports mail to the DDU facility on pallets, the driver will have to unload the pallets into a container specified by the delivery unit.

(13) Destination Entry Mail Preparation—Plant-Verified Drop Shipment (PVDS) (DMM E752)

Pieces must be part of a mailing of at least 300 pieces of Presorted Bound Printed Matter or part of a mailing of at least 300 pieces of Carrier Route Bound Printed Matter to qualify for DBMC, DSCF, and DDU rates. When Presorted Bound Printed Matter or Carrier Route Bound Printed Matter mailings are submitted under PVDS procedures, mailers may use the total of all line items for all destinations on a PVDS register or PVDS postage statement to meet the respective 300-piece minimum volume requirements. This means that a mailer may enter fewer than 300 pieces per Presorted or Carrier Route mailing at

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an individual destination, provided there is a total of at least 300 Presorted rate pieces and/or 300 Carrier Route rate pieces for all of the entry points for that single mailing job listed on the PVDS register or PVDS postage statement.

(14) Detached Address Label Mailings (DMM A060)

The preparation requirements for use of DALs with Bound Printed Matter mailings are revised. Mailers must prepare Bound Printed Matter with DALs either on pallets or in sacks as described in DMM A060.

When prepared on pallets, mailers may enter Bound Printed Matter prepared with DALs at any post office provided only 5-digit pallets are prepared and if the following additional requirements and restrictions are met. The 5-digit pallets must meet the minimum volume and other requirements for pallet preparation under M040 and M045, except that for flat-size mail, separate 5-digit pallets for Carrier Route rate and for Presorted rate mail are not required. The mail must not be prepared on pallets when the Drop Shipment Product indicates that the delivery unit that serves the 5-digit pallet destination cannot handle pallets. The destination delivery unit is determined using the Drop Shipment Product under the provisions for the DDU rate in E752. (For delivery units that cannot handle pallets, mail with DALs is required to be prepared in sacks.) The trays or cartons of DALs must be prepared under A060.3.0 and placed on the same pallet as the Bound Printed Matter. In addition, the Bound Printed Matter and the trays of DALs must be stretch-wrapped together as one unit on the pallet.

For mail prepared with DALs in sacks, the matter must be prepared in 5-digit sacks and must be entered at the destination delivery unit. The destination delivery unit must be determined using the Drop Shipment Product under the provisions for the DDU rate in DMM E752. The DALs must be packaged under A060.3.0 and presented to the destination delivery unit with the accompanying items to be distributed with the DALs. The standards for DALs are amended to clarify that items mailed with DALs may not be combined with any special services (new A060.1.7). In addition, the standards for DALs in A060.4.2 are amended to specify that an undeliverable-as-addressed DAL is disposed of as waste, and the accompanying item is treated as specified by the mailer under A060.4.1.

(15) Ancillary Service Endorsements

The handling of undeliverable-as-addressed Bound Printed Matter pieces that are not mailed with a special service or an ancillary service endorsement will be the same as for Standard Mail. Undeliverable-as-addressed Bound Printed Matter pieces mailed with no special service (*e.g.*, Delivery Confirmation, insured), and with no ancillary service endorsement, will be disposed of by the USPS as waste at the delivery unit. Mailers of Bound Printed Matter who want to have their undeliverable-as-addressed pieces forwarded and returned must choose the appropriate ancillary service endorsement and print it on their pieces to obtain such service. There are no other changes to the treatment of undeliverable-as-addressed Package Services mail (except for Bound Printed Matter prepared with detached address labels under DMM A060.4.2 as described earlier.)

(16) Postage Payment

DMM P700 is amended to clarify that precanceled stamps may not be used for payment of Bound Printed Matter postage.

9. Media Mail (Formerly Special Standard Mail)

a. Media Mail Rate Highlights

Media Mail (formerly Special Standard Mail) rates will increase by an average of 6.3%. The barcoded discount for qualifying Media Mail remains at $0.03 per piece. There are separate rate schedules for Media Mail and Library Mail as the shared rate structure is discontinued. The annual presort mailing fee for Media Mail increases to $125.

b. Media Mail Rate Structure

There are separate rate schedules for Media Mail and Library Mail.

c. Media Mail (formerly Special Standard Mail) Preparation Changes

(1) Rate Marking (DMM M012 and M730)

Special Standard Mail is renamed "Media Mail," and the marking that is required to appear on each piece is changed from "Special Standard" to "Media Mail." There is a phase-in period until January 1, 2002, to give mailers time to adjust to this change and deplete any existing stocks of permit imprints that may bear the " Special Standard" marking.

(2) Sack and Pallet Labels (DMM M031, M045, and M730)

The abbreviation "STD" or "STD B" that currently appears on sack and pallet labels for Package Services mailings is changed to "PSVC" (an abbreviation for Package Services).

(3) Clarification of Preparation Requirements

Former M630.4.0 provided for preparing Media Mail as bedloaded bundles under former M630.7.0. However, former M630.7.0 provided only for preparation of Bound Printed Matter as bedloaded bundles, and the eligibility requirements for the Media Mail rates in former E630.4.0 provided only for preparation of Media Mail in sacks, on pallets, or as outside parcels prepared as prescribed by the postmaster of the mailing office. Accordingly, the provisions for preparing bedloaded bundles of Media Mail are deleted from M730 that contains the requirements for presorted Media Mail.

Former E630.4.0 (renumbered as E713) provided for preparing 5-digit and BMC bundles of Media Mail on pallets. The terminology in new E713 is changed to provide for "packages" of Media Mail on pallets. Furthermore, the reference in former M630.4.0 that referred to preparing mail according to the machinable parcel preparation rules is not contained in new M730. There were no provisions for such preparation to qualify for presorted Media Mail rates in former E630.4.0, and such provisions were not added to new E713. The option to prepare sacks and qualify for presorted 5-digit or BMC rates based on a minimum of 1,000 cubic inches of mail is deleted; however, the eight-piece or 20-pound minimum per 5-digit sortation level and the four-piece or 20-pound minimum per BMC sortation level is retained.

(4) Postage Payment (DMM P700)

DMM P700 is amended to clarify that precanceled stamps may not be used for payment of Media Mail postage.

10. Library Mail

a. Library Mail Rate Highlights

Library Mail rates will increase by an average of 4.9%. The barcoded discount for qualifying Library Mail remains at $0.03 per piece. Separate rate schedules are implemented for Media Mail and Library Mail as the shared rate structure is discontinued. The annual presort mailing fee for Library Mail is increased to $125.

b. Library Mail Rate Structure

There are separate rate schedules for Library Mail and Media Mail.

c. Library Mail Preparation Changes

(1) Rate Markings (DMM M012 and M740)

The optional use of "Library Rate" as a rate marking for Library Mail is being discontinued. Matter mailed at Library Mail rates will be required to use only the marking "Library Mail." There is a phase-in period until January 1, 2002, to give mailers time to adjust to this change and deplete any existing stocks of permit imprints that may bear the "Library Rate" marking.

(2) Sack and Pallet Labels (DMM M031, M045, and M740)

The abbreviation "STD" or "STD B" that currently appears on sack and pallet labels for Package Services mailings is changed to "PSVC" (an abbreviation for Package Services).

(3) Sack Preparation Minimums (DMM M740)

The option to prepare sacks and qualify for presorted 5-digit or BMC rates based on a minimum of 1,000 cubic inches of mail is deleted (see M740).

(4) Postage Payment (DMM P700)

DMM P700 is amended to clarify that precanceled stamps may not be used for payment of Library Mail postage.

11. Special Services and Other Services

a. Address Changes for Election Boards (DMM A910)

The fee will increase from $0.17 to $0.23 for each address card. There are no classification changes for this service. See DMM R900.12.3.

b. Address Correction Notifications (DMM F030)

The manual (hard-copy) fee will increase from $0.50 to $0.60 for each notification. There is no change to the automated (electronic) fee notification (currently $0.20 each). There are no classification changes for this service. See DMM R900.1.0.

c. Bulk Parcel Return Service (DMM S924)

The per piece charge will decrease from $1.75 to $1.62 for each piece returned under Bulk Parcel Return Service (BPRS). The annual BPRS permit fee will increase from $100 to $125. A new annual accounting fee of $375 will be required for BPRS. This fee covers the costs of providing BPRS account maintenance services to mailers and is consistent with accounting fees charged for other special services. Current BPRS permit holders will have until February 5, 2001, to pay their initial annual accounting fee. See DMM R900.3.0.

No special services are available for pieces returned through BPRS.

d. Business Reply Mail

(1) Business Reply Mail (BRM) (DMM S922)

The annual business reply mail (BRM) permit fee will increase from $100 to $125.

The per piece charge for basic BRM (BRM without an annual accounting fee) will increase from $0.30 to $0.35. This per piece charge is in addition to single-piece First-Class Mail (or Priority Mail) postage. The per piece charge for high-volume BRM (BRM with an annual accounting fee) will increase from $0.08 to $0.10. This per piece charge is in addition to single-piece First-Class Mail (or Priority Mail) postage. The annual accounting fee, required for high-volume BRM, will increase from $300 to $375.

A provision in the DMCS that required permit holders to maintain an advance deposit account solely for the use of business reply mail has been deleted. Therefore, permit holders will be able to maintain a single advance deposit account from which postage, fees, and per piece charges for multiple items can be deducted (e.g., BRM, QBRM, merchandise return service, incoming shortpaid mail, address correction notices, etc.). If permit holders request separation of charges, then they must pay an annual accounting fee for each separation.

(2) Qualified Business Reply Mail (QBRM) (DMM E150, S922)

The discounted automation rate for qualified business reply mail (QBRM) letters will increase from $0.30 to $0.31 as described under the First-Class Mail Summary. The discounted automation rate for QBRM cards will decrease from $0.18 to $0.17. The annual accounting fee, required to participate in QBRM, will increase from $300 to $375.

QBRM will be split into two categories with different per piece charges to mirror the current fee structure of regular BRM. The first category is the existing classification and will be called "basic" QBRM. The per piece charge for basic QBRM will remain at $0.05. This per piece charge is in addition to the lower QBRM First-Class Mail postage listed in R100. See DMM R900.4.3.

A new classification, called "high-volume" QBRM, recognizes that, for large volume users, some costs are relatively fixed, rather than varying with marginal volume. High-volume QBRM includes a lower per piece charge and requires payment of a new quarterly fee in addition to the annual accounting fee. The per piece charge for high-volume QBRM will be $0.01. This per piece charge is in addition to the discounted automation QBRM First-Class Mail rate listed in R100. The quarterly fee will be $1,800 per quarter (in addition to the $375 annual accounting fee). Mailers may "opt in" to high-volume QBRM by paying the quarterly fee at any time as their volume warrants, thereby paying lower per piece charges when they expect a larger volume of returned pieces. See DMM R900.4.4.

Quarterly fees apply to any three consecutive calendar months, beginning with the first calendar day of the first month and ending on the last calendar day of the third month. If the quarterly fee is paid on or before the 15th of the month, then the quarterly fee is counted as if it was paid on the first day of that calendar month, but the lower per piece charges begin on the day the fee is paid. If the quarterly fee is paid after the 15th of the month, then the lower per piece charges begin immediately, but the quarterly fee is credited as if it was paid on the first day of the following calendar month and continues through three calendar months. Mailers may not apply for "retroactive" refunds of per piece charges for periods before the quarterly fee was paid.

(3) Bulk Weight Averaged Nonletter-Size Business Reply Mail (DMM S922)

Language has been added to clarify that the monthly maintenance fee applies only to bulk weight averaged nonletter-size BRM. The per piece charge will remain at $0.01. The maintenance fee will remain at $600 per month. The annual business reply mail permit fee will increase from $100 to $125. The annual accounting fee, required to participate in weight averaged nonletter-size BRM, will increase from $300 to $375. See DMM R900.4.5.

e. Carrier Sequencing of Address Cards (DMM A920)

The fee will increase from $0.20 to $0.25 for each card removed due to an incorrect or undeliverable address and for each card added with a new address. There are no classification changes for this service. See DMM R900.2.0.

f. Certificate of Mailing (DMM S914)

For individual pieces, the fee for the original certificate of mailing will increase from $0.60 to $0.75. The firm

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mailing book fee will remain at $0.25; the fee for an additional copy of a certificate of mailing will increase from $0.60 to $0.75.

For bulk quantities, the fee for one certificate of mailing (for the first 1,000 pieces) will increase from $3.00 to $3.50. There is no change to the fee for a certificate for each additional group of 1,000 pieces (currently $0.40). The fee for an additional copy of a bulk certificate of mailing will increase from $0.60 to $0.75.

There are no classification changes for this service. See DMM R900.6.0.

g. Certified Mail (DMM S912)

The fee will increase from $1.40 to $1.90 in order to cover newly estimated costs for this service. See DMM R900.7.0.

h. Collect on Delivery (COD) (DMM S921)

Fees will increase by $.50 for every $100 value level. The maximum COD value level will increase from $600 to $1,000, with a fee increment of $1.00 for each $100 increment. The fees for registered COD, the notice of nondelivery, and the alteration of COD charges (Form 3849–D) will remain at current levels. The money order limit will remain at $700; therefore, if a recipient pays in cash for COD amounts over $700, then the Postal Service will send two postal money orders to the mailer (and collect two money order fees from the recipient). See DMM R900.8.0.

i. Correction of Mailing Lists (DMM A910)

The charge per correction will increase from $0.20 to $0.25. In conjunction, the minimum charge per list for lists with fewer than 30 addresses will increase from $7.00 to $7.50. There are no classification changes for this service. See DMM R900.12.0.

j. Delivery Confirmation (DMM S918)

The fee for retail option Priority Mail Delivery Confirmation (*i.e.*, purchased by a customer over a retail counter) will increase from $0.35 to $0.40. The fee for retail option Package Services Delivery Confirmation will decrease from $0.60 to $0.50. There will continue to be no fee for electronic option Delivery Confirmation for Priority Mail. The fee for electronic option Delivery Confirmation for Package Services will decrease from $0.25 to $0.12.

Electronic option Delivery Confirmation service will be extended to Standard Mail parcels that are subject to the residual shape surcharge (both Regular and Nonprofit subclasses). Delivery Confirmation service will not be available for the Enhanced Carrier Route or Nonprofit Enhanced Carrier Route subclasses. No retail option will be available for Standard Mail. The fee for electronic option Delivery Confirmation for Standard Mail will be $0.12 per piece, which mirrors the new fee for Package Services. See DMM R900.9.0.

k. Express Mail Insurance (DMM S500)

Fees for Express Mail insurance will increase. There are no classification changes for this service. See DMM R900.10.0.

l. Insurance (DMM S913)

Fees for insurance will increase for all value levels. The fee for unnumbered insurance (items valued at $50 or less) will increase from $0.85 to $1.10. Separate bulk discounts for unnumbered and numbered insurance have been added. In addition, bulk insurance will be available for Standard Mail parcels that are subject to the residual shape surcharge (both Regular and Nonprofit subclasses). Bulk insurance will not be available for the Enhanced Carrier Route or Nonprofit Enhanced Carrier Route subclasses. Regular insurance is not available for Standard Mail. See DMM R900.11.0.

The Postal Service has removed the requirement that insured pieces sent at First-Class Mail and Priority Mail rates be marked "Standard Mail Enclosed." In addition, merchandise return service (MRS) customers (those who use MRS labels to return a parcel to the permit holder) will be permitted to add insurance to an MRS parcel at their own discretion and expense.

m. Mailing Fees

Presort mailing fees and destination entry mailing fees for all classes of mail will increase. Specific fees and classification changes are included under the separate summaries for each class of mail.

n. Merchandise Return Service (DMM S923)

The per piece (transaction) fee for parcels returned to the permit holder via merchandise return service (MRS) will be eliminated. A new annual accounting fee of $375 is established for MRS. This fee covers the costs of accounting services provided to permit holders and is consistent with accounting fees charged for other special services. Current MRS permit holders have until February 5, 2001, to pay their initial annual accounting fee. A separate annual accounting fee must be paid for each separation of charges and separate billing provided. This makes the application of the new annual accounting fee consistent with Business Reply Mail. See DMM R900.13.0.

If the permit holder has not specified insurance on the MRS label, then customers (those who use merchandise return service labels to return a parcel to the permit holder) will be permitted to add insurance to a MRS parcel at their own discretion and expense. No other special services may be added by the sender. Previously, insurance could be added to a parcel only if specified by the permit holder. The Postal Service has removed the requirement that MRS parcels sent at First-Class Mail and Priority Mail rates be marked "Standard Mail Enclosed."

Parcels that do not bear a class or rate marking, regardless of weight, will be treated as Parcel Post and will be charged Parcel Post Inter-BMC/ASF rates.

These same changes apply to penalty merchandise return service.

o. Money Orders (DMM S020)

The fee for domestic money orders will decrease from $0.80 to $0.75 per money order. The fee for APO/FPO money orders will decrease from $0.30 to $0.25 per money order. The inquiry fee will remain at $2.75. There are no classification changes for this service; the maximum amount for a single money order remains at $700. See DMM R900.15.0.

p. Parcel Airlift Service (PAL) (DMM S930)

There are no fee or classification changes for this service. See DMM R900.16.0.

q. Permit Imprint Application Fee (DMM P040)

The application fee for permit imprints will increase from $100 to $125. Other kinds of permit fees (*e.g.*, business reply mail) are covered under separate summary sections. See DMM R900.17.0.

r. Pickup Service (DMM D010)

The pickup service fee will increase from $8.25 to $10.25 per pickup. There are no classification changes for this service. See DMM R900.18.0.

s. Post Office Boxes, Caller Service, and Reserve Call Numbers (DMM D910 and D920)

The Postal Rate Commission has approved the Postal Service's proposal to restructure post office box fee groups and to establish fees for each of the new groups. A nonrefundable fee for each key, over two, requested by a customer has been established at $4.00. In addition, a $10.00 fee for a lock replacement initiated by a customer as been established.

The new structure for post office boxes aligns post office box fees more closely with costs by 5-digit ZIP Code. These costs include estimated real estate value of the space used to provide post office boxes.

The Postal Service submits that this post office box reclassification will result in fairer, more equitable post office box fees for all customers because the fees will more accurately reflect the true costs of providing that service. At this time, box restructuring is constrained based on current fee groups in order to mitigate large fee increases for customers.

Current post office box customers would not pay the new fees until their current box fee period ends. There are no changes to free (Group E) box service. Therefore, customers who currently qualify for free box service may continue to receive it. See DMM R900.19.0.

Post offices will be notified of their new cost group via a special publication that will be distributed before implementation of new rates and fees. Customers will be able to find their new post office box fees via their local post office, the Postal Service web site (www.usps.com), or by calling 1–800–ASK–USPS and providing the 5-digit ZIP Code.

The caller service fee will increase to $375 for all customers at all postal facilities. Caller service fees will no longer be broken out according to post office fee groups. The annual call number reservation fee will decrease from $36 to $30. See R900.5.0.

The Postal Service has deleted a provision from the DMCS that allowed customers with both a post office box and a regular street delivery address served by the same delivery unit to redirect the delivery of all of their mail, regardless of how it was addressed, to the post office box. This redirection of mail often depends on the memory of specific individuals or on an ad hoc handwritten note. The net result easily can be delivery of mail in a fashion contrary to a customer's intent. The Domestic Mail Manual currently does not contain standards related to this provision, although some local post offices redirect mail as a favor to customers. The policy of the Postal Service, as contained in the Domestic Mail Manual, is to deliver mail to the address specified on the mailpiece. Deleting section 921.222 of the DMCS is desirable from the point of view of the customer and the Postal Service. Customers will still be able to have their mail forwarded from one address to another, including a post office box, based on current forwarding procedures. Because no standard currently exists in the Domestic Mail Manual, no changes are necessary to support this DMCS change.

t. Registered Mail (DMM S911)

All registered mail fees will increase. The incremental fee for registered mail per value level will increase from $0.55 to $0.75. The handling charge per $1,000 in value, or fraction thereof, for items valued over $25,000 also will increase from $0.55 to $0.75. There are no classification changes for this service. See DMM R900.20.0.

u. Restricted Delivery (DMM S916)

The restricted delivery fee will increase from $2.75 to $3.20. There are no classification changes for this service. See DMM R900.21.0.

v. Return Receipt (DMM S915)

The regular return receipt fee will increase from $1.25 to $1.50. The return receipt for merchandise fee will increase from $1.40 to $2.35. The fee for a return receipt after mailing will decrease from $7.00 to $3.50. These changes reflect improved cost estimates and the impact of electronic signature capture. See DMM R900.22.0 and 23.0.

There are two classification changes for return receipt service. The first change allows return receipt for merchandise to be combined with unnumbered insurance. The second change extends return receipt for merchandise service to Standard Mail parcels that are subject to the residual shape surcharge (both Regular and Nonprofit subclasses). Return receipt for merchandise will not be available for the Enhanced Carrier Route or Nonprofit Enhanced Carrier Route subclasses.

w. Shipper Paid Forwarding (DMM F010)

The Postal Service is establishing an annual accounting fee of $375 for shipper paid forwarding for customers who choose to pay forwarding charges through a postage due account. This fee is consistent with accounting fees charged for other special services. See DMM R900.24.0.

x. Signature Confirmation (DMM S919)

The Postal Service is establishing a new classification and fee schedule for Signature Confirmation. Signature Confirmation will capture and provide access to all Delivery Confirmation data and an image of the recipient's signature. Signature Confirmation will be available only at the time of mailing for Priority Mail and all subclasses of Package Services. For Priority Mail Signature Confirmation, the fees are $1.25 for electronic option and $1.75 for retail option. For Package Services Signature Confirmation, the fees are $1.25 for electronic option and $1.75 for retail option. See DMM R900.25.0.

y. Special Handling (DMM S930)

There are no fee or classification changes for this service. See DMM R900.26.0.

z. ZIP Code Sortation of Mailing Lists (DMM A910)

Fees for sorting mailing lists by 5-digit ZIP Code for post offices with multiple ZIP Codes will increase from $70.00 to $73.00 per 1,000 addresses. There are no classification changes for this service. See DMM R900.12.0.

12. On-Site Meter Service (DMM P030)

The name of the service will change from "on-site meter settings" to "on-site meter service." The "single meter" and "unscheduled appointment" categories will be replaced with a new "meter service" category. The "additional meters" category will be replaced with a "meter reset and/or examined" category. These categories will consolidate similar fees and make the service easier to understand and use.

New fees have been established for these realigned categories. The fee for meter service is $31.00. The fee for getting a meter reset and/or examined is $4.00 per meter. The fee for checking a meter in or out of service will decrease from $8.00 to $4.00 per meter. See DMM R900.14.0.

The checking in/out fees will not apply to "secured postage" meters. To qualify as a secured postage meter, a meter must: (1) include a USPS-approved postal security device; (2) print information-based indicia; and (3) be remotely set. Because of the enhanced security that these meters provide, they do not require labor intensive activities during installation or withdrawal. Therefore, these meters do not have significant check-in/out costs.

13. Stamps and Stationery (DMM P021)

a. Stamped Cards

The fee for a single stamped card will increase from $0.01 to $0.02. The fee for double stamped cards will increase from $0.02 to $0.04; and the fee for a sheet of 40 stamped cards will increase from $0.40 to $0.80. These fees are in addition to the postage that is preprinted on the cards and covers the

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cost of printing and manufacturing stamped cards. See DMM R000.3.0.

b. Stamped Envelopes

The fees for all categories of stamped envelopes will increase. This fee is paid in addition to the postage preprinted on the envelopes. The following classification changes will apply to stamped envelopes:

(1) Merge the printed household 6¾ inch and 10 inch categories into a single category called printed household (basic).

(2) Eliminate the banded categories for 6¾ inch and 10 inch envelopes.

(3) Expand the hologram category to include all envelopes that have a patched-in stamp and rename that category "special" stamped envelopes.

See DMM R000.1.0 and R000.2.0.

C. Summary of Comments From the August 29, 2000, Proposed Rule (65 FR 52479)

The Postal Service received nine pieces of correspondence offering comments on the August 29, 2000, proposed rule. Commenters included two major mailer associations, six publishers, printers and/or mailers, and one individual.

The specific points raised in the comments are presented below, organized by general comments and then by class of mail and special service.

1. General Comments

One commenter commended the Postal Service on publishing a clear, concise, and orderly proposed rule.

One commenter supported the change of the minimum dimensions for a machinable parcel.

One commenter indicated they are pleased with the name change from Standard Mail (B) to Package Services.

One commenter indicated that their association had previously warned the Postal Service that eliminating the advertising requirement for Bound Printed matter would change the nature of that subclass and result in the entry of higher cost materials that would inevitably result in higher rates. This commenter further stated that although all mailers are concerned about rate increases the effect is much greater for catalog mailers than book mailers because books generally cost a substantial amount—$20.00 and more—and that book publishers can more easily absorb additional mailing costs. This commenter indicated it may be feasible to undo the damage by restoring Bound Printed Matter to its previous status by requiring it to contain advertising. This comment is outside the scope of this rulemaking and will not be addressed.

One commenter indicated that their association recommends that the Postal Service give Standard and Package Services mailers a grace period to implement the new tray, sack, and pallet labels for those classes. The Postal Service will work with individual mailers concerning any exceptions needed concerning the requirements of this final rule.

Two commenters indicated that the rate incentive for drop shipping Bound Printed Matter to a destination delivery unit to claim the DDU rates was not sufficient to compensate mailers for the additional costs of preparing and transporting the mail. These comments are outside the scope of this rulemaking process. The rates, rate structure, and basic standards for rates in Docket No. R2000–1 were subject to litigation before the Postal Rate Commission and cannot be revised unilaterally by the Postal Service in a rulemaking process.

2. Express Mail

No comments were received regarding Express Mail.

3. Priority Mail

No comments were received regarding Priority Mail.

4. First-Class Mail

No comments were received regarding First-Class Mail.

5. Periodicals

No comments were received regarding Periodicals.

6. Standard Mail (Formerly Standard Mail (A))

One commenter supported the change that they believed allowed Delivery Confirmation and ancillary service endorsements to be used with Standard Mail pieces subject to the residual shape surcharge that are mailed using Priority Mail Drop Shipment procedures. The Postal Service did not specifically propose use of electronic Delivery Confirmation with Standard Mail parcels entered under Priority Mail Drop Shipment procedures, but has added clarifying language to the final rule DMM language to provide for such use where appropriate.

7. Package Services—Combined Mailings

One commenter supported the change that allows the combining of any subclass into common containers to qualify for applicable DBMC, DSCF, and DDU rates. The Postal Service appreciates this comment but would like to point out that the provisions for Combined Package Services mailings in DMM E753 apply only to matter sorted to 5-digit containers for the purposes of meeting eligibility requirements for DSCF and DDU rates. There are no provisions for Combined Package Services mailings for DBMC rates.

One commenter requested that overflow sacks be permitted in the preparation standards for combined package services mailings in DMM E753 that allows parcels from all Package Services subclasses to be combined in 5-digit sacks to qualify for Parcel Post and Bound Printed Matter DSCF and DDU rates. The proposed rule indicated that each 5-digit sack must contain at least 10 pieces of any combination of Package Services mail. This commenter indicated that, if an overflow sack is not permitted, the number of pieces qualifying for this preparation option would always need to be perfectly divisible by 10 and that this is not a practical scenario for mailers. The Postal Service agrees that the standards for combined package services mailings should include the preparation of overflow sacks and have incorporated the preparation of overflow sacks into the standards in E753. Preparation of overflow sacks will be available both for sacked mailings and for mailings prepared on pallets.

This commenter also believed that irregular parcels were required to be prepared in packages under the Combined Package Services option in DMM E753. This commenter also questioned why irregular parcels were required to be packaged in 5-digit sacks as he believes there appears to be no operational reason for preparing irregular parcel in packages when they are in 5-digit containers. The Postal Service has clarified that packaging is not required for preparation of Combined Package Services mailings under DMM M753. In addition, the Postal Service has added an option to DMM M722 that will allow Presorted Bound Printed Matter irregular parcels prepared in 5-digit sacks to be prepared loose in sacks without packaging if the minimum package size requirement is met and the pieces are individually wrapped or enveloped.

This commenter also pointed out an omission in the wording of proposed DMM E753.2.1a(3). This section of the DMM has been revised in the final rule.

8. Parcel Post (Including Parcel Select)

Two commenters expressed concern that there would be inconsistencies in acceptance practices from location to location because of the proposed new nonmachinable surcharges for intra-BMC rate and DBMC rate parcels. These commenters stated that the inconsistencies could be caused by differences in how parcels will be measured at different acceptance points around the country. The commenters suggested training for acceptance personnel and a transition period for application and compliance with new standards. Postal Service acceptance personnel will receive training on the new provisions in this final rule including the new nonmachinable surcharges for intra-BMC rate and DBMC rate nonmachinable parcels. Postal employees will use the procedures currently in effect for determining if an inter-BMC parcel is nonmachinable when determining whether the nonmachinable surcharges apply to intra-BMC rate and DBMC rate parcels. The Postal Service will make every effort to ensure a smooth transition into new procedures. However, no transition or grace period for application of the nonmachinable surcharges can be granted.

One commenter indicated that use of the term "Parcel Post" in proposed DMM E711.2.2g pertaining to the barcoded discount was incorrect and that this term should be changed to "Parcel Select." The term Parcel Post used in the DMM encompasses all rate categories of Parcel Post including the destination entry rates, which have been named Parcel Select. DMM E E711.2.2f in this final rule now contains the provisions for the barcoded rate. This section has been amended to show that the barcoded discount and its applicable 50-piece minimum mailing requirement applies to all Parcel Post rate categories, including Parcel Select.

One commenter pointed out that Exhibit E711.2.2, BMC/ASF Service Areas, that is used to determine eligibility for intra-BMC rates had not been updated to move ZIP Code 893 from the Salt Lake City ASF to the Los Angeles BMC. This change was published in Postal Bulletin 22038, November 30, 2000.

9. Bound Printed Matter

One commenter expressed support for the change to ancillary service marking requirements for Bound Printed Matter.

Two commenters stated they were opposed to the proposed requirement to restrict DDU rates to carrier route mail. One of these commenters, a mailer association, indicated that the proposed rule requirement that Bound Printed Matter pieces would be eligible for destination delivery unit (DDU) rates only if prepared as part of a Carrier Route Bound Printed Matter mailing appears to be a "classification" rather than a regulatory change. This commenter indicated there was nothing in the Postal Service's proposal to the PRC that indicated the DDU discount would be limited to carrier route mail. The commenter indicated its belief that the Postal Service overstepped its regulatory authority by adding such a limit to the DDU rate. Another commenter indicated that this requirement does not make sense and would add to costs for both the mailer and the Postal Service.

The Postal Service submits that the proposed rule did not prohibit all Presorted Bound Printed Matter from obtaining DDU rates. The proposed restriction applied only to flat-size pieces at Presorted rates. This restriction contained in the proposed rule is consistent with the Postal Service's treatment of flat-size mail of other classes for eligibility for DDU rates. Currently, Standard Mail and Periodicals must be sorted to carrier route to obtain DDU rates. Furthermore, the Drop Shipment file also directs mailers to the delivery unit where the carrier is located that will deliver the flats. This assumes that the mailer must know the carrier route for flat-size mailpieces. This restriction was proposed in order to give the USPS the ability to process Presorted rate flat-size mail to carrier routes on Flat Sorting Machines at the plant, rather than manually sorting it to carrier routes at the delivery unit.

However, the Postal Service has reconsidered this requirement. The final rule will provide that flat-size pieces of Presorted Bound Printed Matter may qualify for the DDU rates provided each piece weighs over one pound, the pieces are sorted in 5-digit sacks, or on optional 5-digit scheme or required 5-digit pallets, or prepared as bedloaded 5-digit packages. 5-digit containers or in bedloaded 5-digit packages, and are entered at the appropriate destination delivery unit. The Drop Shipment Product must be used to determine the correct destination entry facility for the 5-digit sorted flat-size Presorted Bound Printed Matter. If the Drop Shipment Product lists multiple facilities for a single 5-digit ZIP Code, the mailer must inquire about the correct drop site when contacting the DDU to schedule an appointment. Mail weighing over one pound is less likely to be worked on AFSM 100s and is not processed on FSM 881s. Heavier mail that is directed to an FSM 1000 is less likely to be processed to carrier routes on the FSM at the current time, although that may change after full deployment of AFSM 100s. Therefore, allowing DDU rates currently makes sense for these heavier flats. However, the Postal Service will reassess this decision when it receives the results of the AFSM 100 machinability tests.

One commenter opposed the elimination of the marking "Presorted Standard" on Presorted Bound Printed Matter. This mailer has a customer that currently uses the "Presorted Standard" marking in the permit imprint indicia of pieces mailed at both Standard Mail (A) and Standard Mail (B) rates. For the portion of the mailing that is split off into a Standard Mail (B) mailing, the mailer ink-jets the "Bound Printed Matter" marking on the mailpieces directly to the left or below the permit imprint indicia. The Postal Service understands the concerns of the customer in question. However, the Postal Service In-Office Costing System relies heavily on such markings to appropriately attribute costs to classes and subclasses of mail. Having markings indicating two different classes of mail on the same mailpiece is potentially confusing to data collectors and could result in inaccuracies in data collection. Instructions as to which marking overrides the other would be possible but adds a level of complexity to an already complex system. Furthermore, such dual markings are also confusing to delivery unit employees and Computerized Forwarding System (CFS) employees who rely on such markings to correctly handle and process undeliverable-as-addressed mail. Accordingly, the Postal Service is retaining the prohibition against using the "Presorted Standard" marking on Presorted Bound Printed Matter. Mailers are reminded that they will have until January 1, 2002, to discontinue use of the "Presorted Standard" (or "PRSRT STD") marking.

One commenter disagreed that Bound Printed Matter weighing less than 1.5 pounds should be charged the rate equal to a piece weighing 1.5 pounds. This commenter recommended a piece-pound calculation be used so that a 1-pound item would be the minimum. The Postal Service will not adopt this suggestion. The instructions in the proposed rule for calculating rates do not differ from the current requirements for calculating Bound Printed Matter rates in DMM P013.5.0. It should be noted that the 1.5-pound weight category is contained in the single-piece rate Bound Printed Matter rate chart. The PRC recommended adding rate cells for pieces weighing not more than one pound to this rate schedule. The 1-pound rates that the PRC recommended are the same as the rates for the 1.5-pound weight cells. Furthermore, the column heading for the weights in rate

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schedule 522A, Domestic Mail Classification Schedule and in DMM R700 is "Weight not Exceeding (pounds)." This means that all mail that does not exceed the first weight category on the schedule pays rates shown for the first weight category. A piece and pound calculation is not performed for single-piece Bound Printed Matter.

One commenter supported the change to the handling of undeliverable-as-addressed Bound Printed Matter pieces that are not mailed with a special service or an ancillary service endorsement that will make it the same as for Standard Mail. This change provides that undeliverable-as-addressed (UAA) Bound Printed Matter pieces mailed with no special service (*e.g.*, Delivery Confirmation, insured), and with no ancillary service endorsement, will be disposed of by the USPS as waste at the delivery unit. Mailers of Bound Printed Matter who want to have their UAA pieces forwarded and returned must choose the appropriate ancillary service endorsement for the service they desire. Handling of mail for each ancillary service endorsement is in DMM F010. The commenter indicated that this change will allow catalog mailers that generally mail as Standard Mail to mail heavier catalogs, over one pound, without applying the ancillary service endorsement. This commenter indicated the previous requirement was confusing and sometimes costly for such mailers, who had no option for disposing of pieces.

One commenter suggested that packaging should not be required for Presorted Bound Printed Matter irregular parcels prepared in 5-digit sacks. The Postal Service has added to the final mail preparation standard the option of forgoing packaging provided the pieces in the sack meet the minimum packaging volume and the pieces are individually wrapped or enveloped.

Three commenters expressed concern regarding the proposed elimination of the bedloaded bundle preparation option for Bound Printed Matter. One of these commenters suggested that the Postal Service allow customers to continue bedloading on an exception basis or "grandfathering" of existing products because a transition to product palletization will require major changes in some mailer facilities. Another commenter also indicated they had a client that currently bedloads bundles for which the required pallet preparation would be costly, slow down their production process, and require at least until March or April, 2002 to install. That commenter requested that the Postal Service waive the requirements for this customer. The third commenter also indicated that requiring palletization for DSCF or DBMC rates would incur large costs to mailers and that they were not convinced the benefits to the Postal Service would be commensurate. This commenter requested that the Postal Service design a bedloaded entry option for DSCF or DBMC entry that would be subject to strict scheduling, advance notice and other requirements that would permit maximum Postal Service efficiency.

The mail preparation standards that were set forth in the proposed rule are designed to lower the Postal Service costs of handling Bound Printed Matter. Generally, bedloaded packages or bundles of Bound Printed matter are not machinable on BMC parcel sorters and are not cost-efficient for the Postal Service to handle and process. The requirement to sack or palletize mail is designed to enable more mail to be processed on sack sorters and to enable pallets of mail to be cross-docked at BMCs and processing plants, thereby reducing the number of individual piece handlings of Bound Printed Matter. The Postal Service believes that permitting bedloaded packages only when the mail is entered by the mailer at the destination delivery unit for the DDU rates is critical to lowering the overall costs of processing Bound Printed Matter. Accordingly, the sortation requirements in the final rule retain the restriction on bedloaded packages to mail prepared for the DDU rates. The Postal Service will work with mailers on a case-by-case basis to develop interim solutions for those who need time to convert their operations to pallet preparation.

One commenter indicated that lowering the maximum package weight for Bound Printed Matter on pallets from 40 pounds to 20 pounds will create production throughput problems because they will now be able to place only four catalogs in each package. This commenter indicated that this will require slowing their production lines to allow the production of the additional packages.

The Postal Service proposed the 20-pound maximum package size to allow packages to be handled on Small Parcel and Bundle Sorters (SPBSs). As indicated above, most packages of Bound Printed Matter are not prepared to withstand handling on BMC parcel sorting equipment. If packages exceed 20 pounds they cannot be processed on SPBSs. Allowing heavier packages would result in the Postal Service having to process such packages manually at a greater cost than mechanized processing. These costs are eventually reflected in the rates. Accordingly, the Postal Service is retaining the 20-pound package limit in the final rule, except that the following packages have a maximum weight limit of 40 pounds: (1) Carrier route packages in sacked mailings, (2) 5-digit packages in 5-digit sacks, (3) carrier route packages of flats on 5-digit scheme carrier routes or 5-digit carrier routes pallets, (4) carrier route packages of irregular parcels on 5-digit pallets, (5) 5-digit packages of flats on 5-digit scheme pallets, (6) 5-digit packages of flats or irregular parcels on 5-digit pallets, and (7) carrier route bedloaded packages or 5-digit bedloaded packages prepared for the DDU rate.

10. Special Services

The Postal Service received two comments related to special services. One commenter supported the proposal to allow mailers to add special services to Standard Mail (formerly Standard Mail (A)) pieces. Another commenter supported the proposal to add a new "high-volume" category for Qualified Business Reply Mail.

D. Summary by DMM Module of All R2000–1 Revisions

The following are changes organized by DMM module. They are intended as an overview only and should not be viewed by readers as defining every revision.

Global Name Changes

Throughout the DMM sections included in this document, the following name changes have been made:

1. "Special Standard Mail" has been changed to "Media Mail."
2. "Standard Mail (A)" has been changed to "Standard Mail."
3. "Standard Mail (B)" has been changed to "Package Services." Package Services includes all of the Standard Mail (B) subclasses: Parcel Post (including Parcel Select), Bound Printed Matter, Media Mail, and Library Mail.

In addition, the current DMM 600 series, which contains combined rules for Standard Mail (A) and Standard Mail (B), has been split into a 600 series for Standard Mail and a 700 series for Package Services. Within these new series, individual units and sections have been split up and reorganized for clarity. Current DMM P700, which contains standards for special postage payment systems, is renumbered as P900. Throughout the language in the DMM, references to "Standard Mail" have been retained as "Standard Mail" or changed to "Package Services" or "Standard Mail and Package Services," as appropriate.

A Addressing

A010 is amended to change DMM references to reflect new DMM module numbering. A060.1.4 is amended to incorporate new requirements for preparation of Bound Printed Matter mailings with DALs because of the elimination of local zone rates. Also, it is clarified that mailings made with DALs may not contain any special services or an ancillary service endorsement. A new A060.1.7 is added to exclude DALs on special services mail. A910.2.2 is amended to show that the minimum fee ($7.50) for correcting a mailing list applies to lists with fewer than 30 names or addresses.

C Characteristics and Content

C010 and C020 are revised to reflect new DMM module numbering. C050 is revised to decrease the machinable parcel minimum piece weight from 8 ounces to 6 ounces, to clarify that packaging requirements for soft goods may be found in C010, and to clarify that each destinating BMC manager may authorize the entry of parcels as machinable rather than as irregular if they are tested for machinability and are delivered within the service area of the authorizing facility. C200.5.0 is added to specify size and weight limitations for Periodicals. C600 is revised to delete sections 1.3 and 2.0, which pertain to Package Services. Those sections have been moved to new C700. C700 is added to include characteristics and content standards for Package Services (former C600.1.3 and 2.0 are included in this new section). C700.2.0 is amended to provide for the addition of new nonmachinable surcharges for intra-BMC and Parcel Select DBMC parcels, and to include the criteria for nonmachinability from E630.1.4. C810.2.3 is added to include instructions for determining the length and height for automation letters. C810.2.4 (former C810.2.3) is amended to provide for the revised maximum weight of 3.3 ounces for heavy letters. C840.3.0 is revised to include new requirements under which mailers may submit flat-size automation rate mailings in which pieces contain two POSTNET barcodes.

C850 is amended to add Standard Mail machinable parcels as items eligible for barcoded discounts. C850.1.4 is amended to include information about barcodes for Signature Confirmation service.

D Deposit, Collection, and Delivery

D210 is revised to provide for DDU rate eligibility for Periodicals mail entered under exceptional dispatch authorizations. The change will limit DDU rates under exceptional dispatch to mail destined to zones 1 and 2 and will provide a restriction on eligibility to publications with circulation of 25,000 and under.

D600 is revised to remove information pertaining to Package Services, to add information about deposit of mail under plant-verified drop shipment procedures, and to clarify language. D700 is added to include deposit information for Package Services (formerly contained in D600).

D910.1.5 is amended to clarify that post office box customers must pay the correct fee for the box service they receive. D910.1.7 is added to clarify that post office box service is provided in 6-month increments. D910.1.8 (formerly D910.1.7) is amended to add information about the new key duplication fee and the new lock resetting fee. D910.3.1 is amended for clarity. D910.3.7 is amended to clarify that a post office box may not be used when the primary purpose is to have the Postal Service redirect or transfer mail to another address. D910.4.1 is amended to change the basis of post office box fees. D910.4.3 is deleted to remove references to fee groups; subsequent sections are renumbered. Renumbered D910.4.3 is amended to specify the conditions under which post office box fees can change. D910.4.4 is amended to clarify when post office box fees must be paid. D910.4.7 is amended to show that the exception for payment periods is applicable to all offices with fewer than 500 post office boxes, regardless of fee group. D910.5.1 is amended to explain the new system for grouping ZIP Codes into fee groups. D910.5.2 and 5.3 are amended to clarify the conditions under which a customer could qualify for free (Group E) post office box service. Exhibits D910.5.3a and 5.3b are deleted because of the change to a new fee system. D910.6.1 is amended to clarify how refunds for post office box fees are calculated. D910.7.0 is revised to include the new fee for replacement or duplicate keys and the new fee for replacing post office box locks.

D920.1.4 is amended to move information about reserved caller numbers into new D920.1.5. D920.3.4 is amended to clarify that caller service may not be used when the primary purpose is to have the Postal Service redirect or transfer mail to another address. D920.4.0 is amended and Exhibit 4.1 is deleted to remove references to caller service fee groups. D920.4.2 is amended to clarify that reserved number fees are not refundable. D920.4.3 is amended to remove references to deleted sections. D920.4.5 is amended to clarify the payment periods for caller service. D920.4.8 is amended to show that the exception for payment periods is applicable to all offices with fewer than 500 post office boxes. D920.5.1 is amended to clarify how refunds for caller service fees are calculated. D920.5.3 is added to show that the reserve number fee is not refundable.

E Eligibility

Throughout the E module, references to "Regular" are changed to "Outside-County," as appropriate. E010.1.4 is amended to change references from "C600" to "C700." E010.1.6 is amended to add clarity to the first sentence. The first sentence of E020.1.4 is added to clarify that Express Mail cannot be sent through the Department of State. E020.2.3 is amended to show that Signature Confirmation is not available for mail sent through the Department of State. E040.4.1 is amended to change references from "C600" to "C700." E060 5.3 is amended to reflect the current requirement for a "Parcel Post" rate marking for single-piece rate Parcel Post. E060.10.1 is amended to clarify standards for penalty reply mail. E060.11.1 is amended to add QBRM as an option for penalty business reply mail and to clarify when the annual accounting fee is paid. E060.12.1 is amended by adding a reference to S923. A new E060.12.2 is added to clarify how penalty merchandise return service (MRS) parcels are charged postage and fees. A new E060.12.3 is added to require MRS permit holders to pay an annual accounting fee. E060.12.7c is added to indicate where the recommended rate marking should appear on the MRS label. E060.12.8 is amended to clarify standards for permit holders who choose to add insurance to MRS parcels. E060.12.9 is renumbered as E060.12.10, and new E060.12.9 is added to allow senders to add insurance to MRS parcels at their own discretion and expense. E070.4.2 is amended to change the reference from "E600" to "E700." E070.6.2 is revised to specify that if Presorted rates are claimed for both Media Mail and Bound Printed Matter, the mail must be prepared under the standards for Bound Printed Matter in M722.

E120.2.4 is revised to add provisions for a new minimum Priority Mail rate for pieces weighing 1 pound or less, and to add information on rates applicable to keys and identification devices.

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E130.2.2 is revised to clarify the fee for keys and identification devices. E130.2.3 is relocated to M110.1.0. E140.2.2 and E140.2.3 is revised to add separate 5-digit (optional) and 3-digit (required) rate eligibility requirements for automation flats. E150.2.0 is amended by removing the last sentence. E150.3.3 is amended by adding a quarterly QBRM fee under E150.3.2c.

E211.13.1 is amended by revising 13.1d(3) to reference the preferred rate discount. E211.13.2 is amended to clarify that no fee is charged if reentry is only to change eligibility to preferred rates or the preferred rate discount. E211.14.0 has been revised and renumbered as E217.1.0. E212.2.4 has been revised and renumbered as E217.4.0. E215.2.3 is amended by adding references to Preferred rate discount and clarifying qualification categories. New E215.2.4 is added for Publications of Institutions and Societies. E215.2.7 is amended by replacing the second sentence and deleting the third sentence. A new E217 is created that describes and clarifies basic rate eligibility standards for Periodicals including the new preferred rate discount for Nonprofit and Classroom publications that provides a 5% discount on total Outside-County postage, excluding the postage for advertising pounds. E250 is revised to incorporate changes that provide for DDU rates for Periodicals mail entered under exceptional dispatch authorizations. E270 is amended by removing 1.0 and 6.0 and renumbering 2.0 through 9.0 as 1.0 through 7.0 and replacing in 1.0 the word "RATES" with the word "ELIGIBILITY." Removing the word "rates" and replacing the reference 3.0 and 4.0 as 2.0 and 3.0 amends renumbered E270.1.1. Removing the word "regular" amends renumbered E270.1.3. E270.1.4 is removed. Replacing the word "RATES" with the word "ELIGIBILITY" amends renumbered E270.2.0 and 3.0. Sections E270.2.1 and E270.2.2 are amended by replacing the reference "3.3 through 3.10" with "2.3 through 2.10." Removing the word "regular" in the last sentence amends renumbered E270.4.0. E270.5.1 is amended by adding a new first sentence clarifying that the Preferred rate discount is available only after USPS authorization. E270.5.5, Rate Anomaly, renumbered as E270.4.5 is removed. In renumbered E270.5.0, 5.1 is removed and E270 5.2 and 5.3 are renumbered as 5.1 and 5.2. Renumbered E270.5.1 is amended by adding a new first sentence describing the Preferred rate discount and revising the second sentence applicable to authorization procedures for Nonprofit and Classroom publications. Adding reference to preferred rate and replacing "Regular Periodicals" with "Outside-County" amends renumbered E270.6.1 and E270.6.2. Renumbered E270.7.4 is amended by replacing "Regular" with "Outside-County," and the reference "9.5" with "7.5."

E611 is amended to provide basic eligibility requirements for only Standard Mail and is renumbered as E610. E610.1.0 is amended to show that Standard Mail no longer includes matter previously referred to as Standard Mail (B) or fourth-class mail, and adds the weight limit from former E612.1.0. E610.4.6 is removed because this section is no longer needed since all Package Services mail may now weigh less than 16 ounces. E610.5.0 (formerly E612.4.0) is amended for clarity and incorporates a revised maximum limit for minimum per piece rates. E610.5.4 is added to provide for the barcoded rate for machinable parcels. E610.5.5 is revised to provide for separate residual shape surcharges for Presorted rates and for Enhanced Carrier Route rates. E612.4.9 is renumbered as E610.8.0, is amended for clarity to provide for use of detached address labels. E610.5.6 (previously E612.4.4) is amended to provide for the residual shape surcharge and to include the first sentence of previously numbered E612.4.5. Former E612.4.5 is deleted. Renumbered E610.5.6 (previously E612.4.4) is amended to remove the reference to 4.6, to delete "bulk" and to change "pound rates" to "piece/pound rate." E612 is removed and, except as noted above, its information added to new E610. E620 is amended to remove information pertaining to Enhanced Carrier Route Mail, and to add new 4.0, which contains standards for the machinable parcel barcoded discount. E630 is revised to contain the eligibility criteria for Enhanced Carrier Route Standard Mail. (Information in former E630 has been moved to new E700.) E640 is amended to replace "Standard Mail (A)" with "Standard Mail" and to replace "E611 and E612" with "E610." E650 contains the contents of previously numbered E651 and has been amended to change references from "E611 and E612" to "E610." E670 is amended to change "P750" to "P950".

A new E700 is created for Package Services as part of the restructuring to establish separate modules for Standard Mail and Package Services mail. A new description has been added above E710 to match the description in the new E610 section. The appropriate provisions of former E611 and E613 are renumbered as the basic standards in E710. Former E613.1.0 is renumbered as E710.1.2 and amended to reflect that minimum weights for subclasses of Package Services mail have been eliminated. Provisions in former E630.1.0 are renumbered as E711 (Parcel Post). E711.2.3 is revised to clarify that certain parcels mailed at a balloon rate may be subject to a nonmachinable surcharge. Provisions in former E630.2.0 are renumbered as E712 (Bound Printed Matter). Provisions in former E630.3.0 and E630.4.0 (Special Standard Mail) are renumbered as E713 (Media Mail). The definition of a full sack is revised in E713 to eliminate the 1,000 cubic inch volume sacking criteria. Provisions in former E630.5.0 and E630.6.0 are renumbered as E714 (Library Mail). The definition of a full sack is revised in E714 to eliminate the 1,000 cubic inch volume sacking criteria. Provisions in former E630.7.0 are renumbered as E715. Former E630.1.4, that contains the description of items subject to Parcel Post nonmachinable surcharges, is renumbered and moved to C700.2.0. E652 is renumbered as E750 for destination entry Package Services mail. E751.4.4 and 4.5 are revised to clarify that an exception to the appointment requirement exists for destination entry shipments containing 100 percent Periodicals or shipments of perishables. E752 is created that contains the eligibility requirements for Bound Printed Matter destination entry discounts. An annual destination entry fee for mail entered at destination entry rates is added. E752 also explains Destination Entry Mail Preparation when mailing under plant-verified drop shipment (PVDS). E753 has been added to provide for the combining of Package Services parcels in 5-digit sacks (E753.2.0) and on 5-digit pallets (E753.3.0) for destination entry at the SCF and DDU levels if also presented with an approved manifest. Sacks containing at least 10 combined pieces or a combined weight of 20 pounds and pallets having at least 50 combined pieces and a combined weight of 250 pounds of mail, or 36 inches of mail, will be allowed. BPM parcels claimed at a Carrier Route rate may not be combined with the other Package Services parcels under E753.

F Forwarding and Related Services

F010.4.5 is amended to add that Standard Mail with insurance is forwarded and returned and to show that registered items are given registered service while they are being forwarded or returned. F010.4.6 is added to make the standards for undeliverable metered mail in this module consistent with standards elsewhere in the DMM.

F010.5.3g is added and the chart in F010.5.3 is amended to prohibit the use of the "Change Service Requested" endorsement on Standard Mail with special services. F010.5.4c is added and the chart F010.5.4 is amended to allow BPM with no ancillary service endorsement and no special service to be disposed of by the Postal Service. F010.7.4 is amended to specify that combination parcels are returned at Parcel Post inter-BMC/ASF rates.

F020.3.7 is amended to show that pieces with Delivery Confirmation and Signature Confirmation are forwarded without payment of additional special service fees. F030.2.5 is amended to give mailers participating in Shipper Paid Forwarding the option of paying forwarding charges through a postage due account. If mailers choose this option, then they must pay the annual accounting fee. F030.4.2 is amended to include information about forwarding and return of Standard Mail.

G General Information

G091.3.0 is amended to reflect the increase in the fee for certification of a system as functionally equivalent to Mailing Online from $100 to $125.

L Labeling Lists

L001 is amended to change the introductory paragraph to show that this labeling list may be used with Bound Printed Matter flats. L002 is amended to add "and per piece" to the rate description for Periodicals SCF rates. L004 is amended to show that it may be used with Bound Printed Matter. L601 is amended to show that packages of Bound Printed Matter irregular parcels on pallets may use this list and to show the instructions for labeling mixed BMC containers that were inadvertently omitted from the **Federal Register** published August 8, 2000 (65 FR 48385). L602 is amended to remove the term "bundles," and to provide for use of this list by Bound Printed Matter machinable parcels when DBMC rates are claimed.

M Mail Preparation and Sortation

M011.1.3 is amended to add preparation instructions for less-than-full and overflow flat trays and to revise the preparation instructions for 5-digit/scheme carrier routes sort and 5-digit/scheme sort to provide for use of these levels of sortation with BPM flats. M012.3.1 is amended to eliminate the use of "Library Rate" marking effective January 1, 2002 (after which only "Library Mail" may be used as the marking), and to change the marking "Special Standard" to "Media Mail" ("Special Standard" or "SPEC STD" may be used only until January 1, 2002). M012.3.2 is amended to add the marking "Parcel Select." M012.3.3 is amended to eliminate use of the marking "Presorted Standard" instead of "Presorted" with Presorted BPM effective January 1, 2002 (after which only "Presorted" and "Bound Printed Matter" may be used), and to add use of the abbreviation "BPM" as an optional marking for "Bound Printed Matter." M013.1.1 is updated to include a carrier route package optional endorsement line information for Carrier Route BPM. M013.2.5 is amended for clarity, to change the labeling list used for ADC sortation of BPM irregular parcels from L603 to L004, and to change the labeling list used for mixed ADC sortation from L604 to L004. M020.1.4 is amended to delete references to bundles. Current M020.1.5 and 1.6 are renumbered 1.6 and 1.7 and a new M020.1.5 is added to describe new physical preparation of BPM packages. M020.2.2 is amended to show that First-Class Mail automation flats prepared under the new tray-based preparation rules are not prepared in packages and to show that the exception in renumbered M020.1.7 also applies to First-Class Mail flats in trays. M020.3.0 is amended to show that the requirement for facing slips used to label carrier route packages applies to all classes of mail. M031.4.7 is amended to specify that the words "CARRIER ROUTES" must appear on 5-digit pallets of BPM only when the pallet consists entirely of irregular parcels eligible for the carrier route rate and that the words "CARRIER ROUTES" must appear after the "5D" pallet level description. M031.4.12 is amended to delete the term "bundle." M031.5.0 is amended to add new abbreviations for First-Class Mail and Package Services mail. Exhibit M032.1.3a is amended to reflect changes in the content line and CIN numbers of Package Services sack labels. M033.1.2 is amended to clarify that lids on First-Class flat trays must be placed on the trays green side up. M033 is amended to provide for less-than-full and overflow trays for First-Class Mail automation rate mailings prepared under the new tray-based option.

M041.5.6 is amended to require for flat-size BPM that Presorted rate mail must be placed on separate 5-digit pallets (5-digit scheme and 5-digit pallets) from Carrier Route rate mail (5-digit carrier routes or 5-digit scheme carrier routes pallets) and to remove references to palletized bundles. M045.2.0 is revised to clarify requirements and to revise the package minimums, maximums, and physical packaging requirements for BPM. Current M045.3.0, which provides for optional preparation of bundles on pallets for Periodicals and Standard Mail, is deleted. M045.4.0 (as set forth in the final rules published in 65 FR 50054 (August 16, 2000)) is renumbered as M045.3.0. M045.3.0 is amended to provide for separate pallet preparation requirements for BPM flats in M045.3.3 and for irregular parcels in M045.3.4, to renumber the remainder of that section, and to revise the class abbreviation on the contents lines for Package Services mail from "STD" or "STD B" to "PSVC." M045.3.5 (M045.4.4 as set forth in the final rule published in 65 FR 50054 (August 16, 2000)) is revised to provide for DBMC rates for Bound Printed Matter and to revise line 2 pallet labels to show "STD" instead of "STD A" and to show "PSVC" instead of "STD B." M045.3.6 (M045.4.5 as set forth in the final rule published in 65 FR 50054 (August 16, 2000)) is revised to change the line 2 pallet labels from "STD" or "STD B" to "PSVC." M045.5.0 through M045.15.0 (as set forth in the final rule published in 65 FR 50054 (August 16, 2000)) is renumbered as M045.4.0 through M045.14.0. Renumbered M045.6.4 and M045.9.2 are amended by changing the reference "M630" to "M710 or M720." Renumbered M045.10.0 and 11.0 are amended by changing "STD" or "STD B" to "PSVC." Renumbered M045.12.1 is amended to change "M630" to "M710," to change the pallet label contents lines class abbreviation from "STD B" to "PSVC," and to add "PARCELS" after the class abbreviation. Renumbered M045.12.2 is amended to change "M630" to "M710," to change the pallet label contents lines class abbreviation from "STD B" to "PSVC" and to add "PARCELS" after the class abbreviation. M045.12.3 is amended to change "Exhibits E652.7.0 and E652.8.0" to "Exhibits E751.7.0 and E751.8.0." M045.12.4 is amended to change "E652.6.0" to "E751.6.0." M045.13.0 is amended to change "M630" to "M710" and to change the class abbreviation on the contents line of the pallet label from "STD B" to "PSVC." M045.14.0 is amended to change the pallet label contents lines class abbreviation from "STD B" to "PSVC," and to add "PARCELS" after the class abbreviation. M072.2.4 is amended by changing "P710, P720, or P730" to "P910, P920, or P930," and by changing "E652" to "E751." M073.2.3 is amended to change "P710" to "P910."

M110 is added to show the preparation requirements for single-piece First-Class Mail formerly located in E130.2.3.

M610.6.0, which provided for preparation of Standard Mail bedloaded bundles, is deleted. M620.1.1a is amended by changing "E620" to "E630." M630.1.0, pertaining to Parcel Post, is renumbered in new M710.

M710.1.1 is added to describe general requirements for Parcel Post. M710.1.3 (formerly M630.1.2) is revised to show that DSCF and DDU rate mail need not be separated by zone at the time of acceptance and to change "P710, P720, or P730" to "P910, P920, or P930." M710.1.4 (formerly M630.8.0) is added to contain standard for commingled zones. M710.1.5 contains the documentation information formerly in M630.1.3 and is amended to clarify the standards and to change "P710, P720, or P730" to "P910, P920, or P930." M710.2.1 contains standards, formerly in M630.1.4, that are amended by changing the reference "1.5" to "2.2," by changing "Exhibit E652.6.0" to "Exhibit E751.6.0," and by changing the reference "Exhibit E652.7.0 and Exhibit E652.8.0" to "Exhibit E751.7.0 and Exhibit E751.8.0." M710.2.2 (formerly M630.1.5) contains standards that are amended to replace "STD B 5D" on the contents line of DSCF 5-digit sacks with "PSVC PARCELS 5D." M710.4.0 (formerly M630.6.0) is added to contain provisions for preparation of machinable parcels and is amended to show that this preparation is optional for Parcel Post. M720 (formerly M630.2.0 and 3.0) is added to contain standards for BPM. M721 contains the preparation standards for single-piece rate BPM. M722 contains the preparation standards for Presorted BPM. M722.2.0 contains new packaging and sacking requirements for Presorted BPM flats, including new line 2 sack labeling requirements that change the abbreviation "STD B" to "PSVC." M722.3.0 contains new packaging and sacking requirements for Presorted BPM irregular parcels weighing less than 10 pounds, including a requirement to use L004 instead of L603 for preparation of ADC sacks, to use L004 instead of L604 for mixed ADC sacks, and new line 2 sack labeling requirements that change the abbreviation "STD B" to "PSVC." M722.3.6 contains a provision to allow preparation of bedloaded 5-digit packages of Presorted BPM irregular parcels weighing up to 40 pounds when prepared for and entered at DDU rates. M722.4.0 contains preparation requirements for Presorted BPM irregular parcels weighing 10 or more pounds. M722.4.1 prohibits packaging of such pieces and requires that each individual piece must be enclosed in an envelope, full-length sleeve, full-length wrapper, or polywrap before being placed in sacks. M722.4.2 through M722.4.4 contains sacking requirements for Presorted BPM irregular parcels weighing 10 or more pounds including a requirement to use L004 instead of L603 for preparation of ADC sacks, to use L004 instead of L604 for mixed ADC sacks, and new sack labeling requirements that change the abbreviation "STD B" to "PSVC." M722.4.5 contains a provision to allow preparation of bedloaded 5-digit packages of Presorted BPM irregular parcels weighing up to 40 pounds when prepared for and entered at DDU rates. M722.5.0 contains provisions for preparing Presorted BPM machinable parcels. These provisions eliminate the 1,000 cubic inch sacking minimum option, provide for preparation of an ASF sack when DBMC rates are claimed, and change the line 2 sack labeling class abbreviation from "STD B" to "PSVC." M723 is added that contains the provisions for preparing Carrier Route BPM. M723.2.0 contains the preparation requirements for Carrier Route BPM flats. M723.2.1 contains new packaging requirements. M723.2.2 through M723.2.4 contains new sacking minimums, requires preparation of carrier route sacks, provides for optional preparation of 5-digit scheme carrier routes sacks for Carrier Route BPM flats and amends the Line 2 sack labels to change the class abbreviation from "STD B" to "PSVC." M723.2.5 contains a provision to allow preparation of bedloaded carrier route packages of BPM flats weighing up to 40 pounds when prepared for and entered at DDU rates. M723.3.0 contains preparation requirements for Carrier Route BPM weighing less than 10 pounds. M723.3.1 sets forth new packaging requirements for Carrier Route BPM irregular parcels weighing less than 10 pounds. M723.3.2 through M723.3.4 contain sack preparation requirements that change the carrier route sack minimum, make it a required level of sack, and amend line 2 sack labels to change the class abbreviation from "STD B" to "PSVC." M723.3.5 contains a provision to allow preparation of bedloaded carrier route packages of BPM irregular parcels weighing up to 40 pounds when prepared for and entered at DDU rates. M723.4.0 contains requirements for Carrier Route BPM irregular parcels weighing 10 or more pounds. M723.4.1 requires Carrier Route BPM irregular parcels weighing 10 or more pounds to be prepared only in direct carrier route sacks containing a minimum of 20 pounds of mail. M723.5.0 permits machinable parcels to qualify for Carrier Route BPM rates only if prepared in a direct carrier route sack that contains a minimum of 10 addressed pieces or 20 pounds. M730 is added to contain standards for Media Mail (formerly in M630.4.0) and is amended to reflect the subclass name change to "Media Mail." M730.1.0 contains basic standards. M730.2.1 (formerly M630.4.4) contains sack and package on pallet preparation for 5-digit Media Mail rates. M730.2.1 is amended to change "bundles" to "packages" and to remove "/1,000 cubic inches." M730.2.2 (formerly M630.4.5) contains sack preparation for BMC Media Mail rates and is amended to remove "/1,000 cubic inches." M730.2.3 contains line 2 sack label information for Media Mail (formerly in M630.4.6) amended to change "STD" and "STD B" to "PSVC." M740 is added that contains the standards for Library Mail in former M630.5.0. M740.1.0 (formerly M630.5.1 through 5.3) contains basic standards for Library Mail and is amended to discontinue use of the "Library Rate" marking beginning January 1, 2002. M740.2.1 (former M630.5.4) contains sack preparation requirements for the 5-digit Library Mail rates and is amended to remove "/1,000 cubic inches" and to change line 2 labels from "STD" and "STD B" to "PSVC."

M740.2.2 (formerly M630.5.5) contains sack preparation requirements for the BMC Library Mail rates and is amended to remove "/1,000 cubic inches." M740.2.3 (formerly M630.5.6) contains line 2 sack label information for Library Mail and is amended to change "STD" and "STD B" to "PSVC."

M820.1.2 is amended to incorporate the separate rates for 5-digit and 3-digit First-Class Mail automation flats. M820.1.5 is amended to exclude First-Class Mail automation flats prepared under the new tray-based preparation rules from package preparation standards. M820.1.11 is added to prohibit combining FSM 881 and FSM 1000 mailpieces in the same tray when the new tray-based preparation option for First-Class Mail automation flats is used. M820.2.1 is amended to make preparation of 5-digit packages for First-Class automation flats optional. M820.2.2 is amended to make preparation of 5-digit trays for First-Class automation flats optional. M820.3.0 is added to provide for an optional tray-based preparation for First-Class automation flats. M910.1.2 is amended to change the reference "M820" to the more specific reference "M820.2.1" so that it is clear the mail must be packaged and must not be prepared under the new option for First-Class Mail automation flats in M820.3.0 for tray-based preparation.

P Postage and Payment Methods

P011.1.1 is amended by renumbering 1.1b through 1.1e as 1.1c through 1.1f and by adding new 1.1b to include prepayment conditions for merchandise return service. P011.3.3 and 3.4 are added to clarify standards for advance deposit accounts and annual accounting fees. A separate annual accounting fee must be paid for each special service deducted from the same account. P012.2.2 is amended to require tray levels and tray destinations in the body elements of the standardized documentation for the new tray-based preparation option for First-Class Mail automation flats. P012.2.3 is amended to add the rate levels and abbreviations for the new tray-based option for First-Class Mail automation flats. P013.1.4 and 1.5 are amended to show how to properly affix postage to single-piece rate mailings and other-than-single-piece rate mailings. P013.2.4 is revised to reflect the new one-pound minimum Priority Mail rate. P013.2.6 is amended to reflect that keys and identification devices weighing more than 13 ounces but not more than one pound would be charged the new one-pound rate. P013.9.0 is amended to clarify how to calculate Package Services postage for pieces with postage affixed and for pieces paid with permit imprint. P014.2.4f is amended to show that customers may receive a refund for Signature Confirmation service. P014.2.4i is amended to include standards for when the destination entry mailing fee for Package Services and Bound Printed Matter is eligible for a full (100%) refund. P014.2.11 is amended to show that the QBRM quarterly fee is not refundable. P022.1.2 is amended to show that postage due stamps cannot be used to pay postage due. P030.3.5 is amended to reflect the new categories for on-site meter service and to exclude secured postage devices from the meter service fees. P070.5.4 is amended to specify that unmarked parcels are rated at the inter-BMC/ASF postage rates. P600.4.0 and 5.0 are added to clarify payment standards for Standard Mail pieces that claim the barcoded discount or are mailed with special services. Current P700, Special Postage Payment Systems, is redesignated as P900. Current P710, P720, P730, P750, and P760 are redesignated as P910, P920, P930, P950, and P960, respectively. A new P700 is created to contain payment standards for Package Services.

R Rates and Fees

The entire module is revised to reflect new rates and fees for all classes of mail.

S Special Services

S010.2.1 is amended to show that the sender of a merchandise return service parcel may file a claim for loss if the sender has purchased the insurance.

S911.1.5 is amended to clarify the additional services that can be added to registered mail and to add Signature Confirmation as an additional service. S912.1.4 is amended to specify the additional services that may be combined with certified mail and S912.1.5 is amended to clarify the standards for a delivery record. S912.2.5a is amended to specify the form number used by customers. S913.1.2 and 1.3 are amended to show that bulk insurance may be added to Standard Mail pieces that are subject to the residual shape surcharge and to remove the required "Standard Mail Enclosed" marking. S913.1.5 is amended to clarify the additional services that can be added to insurance and to add Signature Confirmation as an additional service. S913.1.6 is added to clarify that customers may request a delivery record after mailing. S913.2.5 is amended to include information about integrated barcodes with Signature Confirmation and insurance. S913.4.0 is amended to change "parcel" to "item."

S914.1.1 is amended to show that certificate of mailing is evidence that mail has been presented for mailing but does not provide a record of delivery. S914.1.2, 1.3, and 1.4 are rewritten for clarity; there are no changes to these standards for bulk certificate of mailing. S914.1.7 is added to specify the additional services that may be combined with certificate of mailing.

S915.1.1 is amended to show that the return receipt is mailed back to the sender. S915.1.2 is amended to show the classes of mail that are eligible for return receipt service and the prerequisite services. S915.1.7 is added to specify the additional services that may be combined with return receipt. S915.2.2 is amended to clarify how to apply for a delivery record after mailing. S915.2.3 is added to specify the time limit for requesting a delivery record after mailing. S915.4.2 is amended to clarify how to request delivery information. S916.1.2 is amended to clarify that restricted delivery cannot be used with Standard Mail. S916.1.7 is added to specify the additional services that may be combined with restricted delivery, including new Signature Confirmation service. S917.1.1 is amended to show that the return receipt is mailed back to the sender. S917.1.2 is amended to show that return receipt for merchandise service is available for Standard Mail pieces that are subject to the residual shape surcharge. S917.1.3 is amended to specify the special services that may be combined with return receipt for merchandise. S917.2.7 is added to clarify how mailers may request a delivery record if return receipt service was not provided. S917.3.0 is amended to remove information about the delivery record.

S918.1.2 is amended to show that electronic option Delivery Confirmation is available for Standard Mail pieces that are subject to the residual shape surcharge. S918.1.3 is amended to show that Delivery Confirmation service is not available for Standard Mail cards, letters, and flats (*i.e.*, pieces that are not subject to the residual shape surcharge). The last sentence of S918.5.0a is deleted to eliminate redundancy.

New unit S919 is added for Signature Confirmation service.

S921.1.1 is amended to show the new $1,000 limit for COD and to clarify that recipients who pay CODs with cash will be charged the applicable money order fee(s). S921.1.4 is amended to specify the additional services that may be combined with COD.

Effective November 5, 2000, the Postal Service completely rewrote DMM standards for business reply mail (see Postal Bulletin 22035 (10–19–00), available via www.usps.com). This rewrite was done for clarity and consistency. Therefore, standards for business reply mail in this final rule have been reorganized to reflect the new structure of DMM units E150, P014, R900, and S922. There have been no substantive changes to these standards since publication in the proposed rule.

S922.3.3 is amended to delete the requirement that BRM permit holders maintain a unique advance deposit account just for BRM. S922.7.7 and 7.8 are added to add a new classification of high-volume qualified business reply mail (QBRM) that includes a quarterly fee and a lower per piece charge.

S923.1.1, 1.3, and 2.7 are amended to remove references to the per piece fee for pieces returned through merchandise return service (MRS). S923.1.11 is amended and 1.12 is removed to show that unmarked MRS pieces will be treated as Parcel Post. S923.2.3 is amended to clarify references to the annual accounting fee. S923.2.7 is amended to remove references to the per piece fee for items returned via merchandise return service. S923.3.0 is amended in its entirety to clarify how postage is paid on returned pieces, to remove references to the per piece charge, and to add the annual accounting fee for the required advance deposit account. S923.4.1 and 4.2 are amended to show that the sender (the

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person using the merchandise return service label to return a parcel to the permit holder) may add insurance to a MRS parcel at their own discretion and expense. S923.5.6c is amended to clarify that rate markings are optional on MRS labels. All of the exhibits in S923 are amended to remove references to the per piece fee.

S924.1.1 is amended to add a sentence about payment information for Bulk Parcel Return Service (BPRS). S924.1.4 is added to show that no special services can be added to pieces sent through BPRS. S924.3.2, 3.3, and 3.4 are added to clarify the per piece charges and to describe the new annual accounting fee. S924.3.5 is added to specify that the permit holder is responsible for payment of all applicable fees. Exhibit S924.5.0 is amended to change the class marking to "Standard Mail." S930.1.3 is amended to specify that Signature Confirmation service can be combined with special handling. S930.1.7 is added to clarify that the Parcel Post nonmachinable surcharge is not added to parcels sent special handling. S930.2.3 is amended to specify the additional services that may be combined with parcel airlift service (PAL).

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as follows:

A ADDRESSING

A000 Basic Addressing

A010 General Addressing Standards

1.0 ADDRESS CONTENT AND PLACEMENT

* * * * *

[Amend 1.2 by replacing "and Standard Mail (A), Standard Mail (B)," with "Standard Mail, Package Services," no other changes to text.]

* * * * *

[Amend 1.6 by replacing "Standard Mail" with "Standard Mail, and Package Services"; and by replacing "E600" with "E600, and E700"; no other changes to text.]

* * * * *

4.0 RETURN ADDRESS

* * * * *

[Amend 4.3g by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

A060 Detached Address Labels (DALs)

1.0 USE

[Amend 1.2 and 1.3 by changing "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Revise 1.4 to reflect the elimination of the local zone and to add new 5-digit preparation and entry standards to read as follows:]

1.4 Bound Printed Matter

Unaddressed pieces of Bound Printed Matter may be mailed with DALs when:

a. The mail is prepared on 5-digit pallets meeting the standards in M040 and M045, except that for flat-size mail separate 5-digit pallets of Carrier Route and Presorted rate mail are not required. The mail may not be prepared on pallets when the Drop Shipment Product indicates that the delivery unit that serves the 5-digit pallet destination cannot handle pallets. The destination delivery unit is determined using the Drop Shipment Product under the provisions for the DDU rate in E752. (For such delivery units, mail with DALs must be prepared in sacks.) The trays or cartons of DALs must be prepared under 3.0 and placed on the same pallet as the pieces and must be stretch-wrapped together as one unit.

b. The mail is prepared in 5-digit sacks and entered at the destination delivery unit. The destination entry unit is determined by using the Drop Shipment Product under the provisions for the DDU rate in E752. DALs must be packaged under 3.0 and presented to the destination delivery unit with the accompanying items to be distributed with the DALs.

* * * * *

[Add a new 1.7 to read as follows:]

1.7 Special Services

Items mailed with DALs may not be combined with any special services.

* * * * *

3.0 MAIL PREPARATION

* * * * *

[Remove 3.7 and 3.8.]

* * * * *

4.0 DISPOSITION OF EXCESS OR UNDELIVERABLE MATERIAL

* * * * *

[Amend 4.2 by adding additional restrictions to undeliverable Bound Printed Matter to read as follows:]

4.2 Undeliverable DAL

A DAL that is undeliverable as addressed (UAA) is handled under F010. A UAA Standard Mail or Bound Printed Matter DAL is disposed of as waste. The accompanying item is treated as specified by the mailer under 4.1.

5.0 POSTAGE

* * * * *

[Amend 5.2b by changing "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Amend 5.3 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

A900 Customer Support

A910 Mailing List Services

* * * * *

2.0 FEE ASSESSMENT

2.1 Corrections

[Amend 2.1 to show that the minimum fee applies to lists with fewer than 30 corrections:]

The fee for correcting name and address lists or occupant lists is assessed for each name or street address on the list. Individual apartments are considered separate addresses. The minimum fee in R900 applies to lists with fewer than 30 names or addresses. (For assessing the fee, the USPS considers a list to be all the addresses sent at one time to the appropriate postal facility.)

* * * * *

C Characteristics and Content

C000 General Information

C010 General Mailability Standards

1.0 MINIMUM AND MAXIMUM DIMENSIONS

* * * * *

[Amend 1.3 by changing "(see C600)" to "(see C700)".]

* * * * *

C020 Restricted or Nonmailable Articles and Substances

* * * * *

C023 Hazardous Materials

1.0 GENERAL

[Amend 1.1f by replacing "Standard Mail" with "Standard Mail or Package Services"; no other changes to text.]

* * * * *

C050 Mail Processing Categories

1.0 BASIC INFORMATION

[Amend the second sentence of 1.0 to reflect changes in class names to read as follows:]

* * * Unless permitted by standard, any mailing at other than the single-piece Express Mail, Priority Mail, First-Class Mail, or Package Services rates may not contain pieces from more than one processing category.

* * * * *

[Amend Exhibit 2.0 to show new weight limit for machinable parcels.]

* * * * *

4.0 MACHINABLE PARCEL

4.1 Criteria

[Amend 4.1a to decrease the minimum piece weight from 8 ounces to 6 ounces to read as follows:]

A machinable parcel (see Exhibit 2.0) is any piece that is:

a. Not less than 6 inches long, 3 inches high, ¼ inch thick, and 6 ounces in weight. (A mailpiece exactly ¼ inch thick is subject to the 3½-inch height minimum under C010.)

* * * * *

[Remove 4.1c.]

4.2 Soft Goods

[Amend 4.2 to include reference to C010 for packaging standards to read as follows:]

Soft goods wrapped in paper or plastic bags and enveloped printed matter weighing up to 5 pounds are machinable only if all applicable packaging standards in C010 are met.

4.3 Exception

[Amend 4.3 to clarify the exception authority for machinable parcels to read as follows:]

Some parcels may be successfully processed on BMC parcel sorters even though they do not conform to the general machinability criteria in 4.1. A destinating BMC plant manager may authorize a mailer to enter such parcels as machinable parcels rather than as irregular parcels if the parcels are tested on BMC parcel sorters and prove to be machinable. In addition, the following requirements must be met: all mailed pieces must be properly labeled, entered at a post office within the service area of the authorizing BMC, and bear delivery addresses located within the service area of the authorizing BMC.

* * * * *

C200 Periodicals

1.0 PERMISSIBLE MAILPIECE COMPONENTS

[Amend 1.3, 1.8, and 1.10 to replace "Standard Mail (A)" with "Standard Mail."]

* * * * *

2.0 IMPERMISSIBLE MAILPIECE COMPONENTS

* * * * *

2.2 Prohibited Matter

[Amend 2.2c to replace "or Standard Mail" with "Standard Mail, or Package Services"; no other changes to text.]

* * * * *

[Amend heading and text of 2.4 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

[Add new section 5.0 to read as follows:]

5.0 PHYSICAL LIMITATIONS

Periodicals mail may not weigh more than 70 pounds or measure more than 108 inches in length and girth combined. Additional size limitations apply to individual Periodicals rate categories.

* * * * *

C600 Standard Mail

1.0 DIMENSIONS

[Revise the heading of 1.1 to read as follows:]

1.1 Basic Standards

[Amend 1.1 and Exhibit 1.1d by changing "Standard Mail (A)" to "Standard Mail."]

* * * * *

[Redesignate 1.3 as C700.1.0.]

[Redesignate current 2.0 as C700.2.0.]

[Add new 2.0 to read as follows:]

2.0 RESIDUAL SHAPE SURCHARGE

Mail that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge. There is one surcharge for mail entered at Regular and Nonprofit Presorted rates and a different surcharge for mail entered at Enhanced Carrier Route and Nonprofit Enhanced Carrier Route rates.

* * * * *

[Add new C700 as follows:]

C700 Package Services

[Redesignate C600.1.3 as C700.1.0 and amend the heading by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

[Redesignate C600.2.0 as C700.2.0. Insert the criteria for nonmachinability from E630.1.4 and amend to extend the nonmachinable surcharge to intra-BMC and Parcel Select-DBMC pieces to read as follows:]

2.0 NONMACHINABLE PARCEL POST PIECES

[Effective December 12, 2000, the Postal Service amended the criteria for nonmachinability (see Postal Bulletin 22038 (11–30–00), available via www.usps.com)). Those changes are reflected in the following paragraphs.]

Mailpieces described in this section and mailed at the inter-BMC/ASF Parcel Post, intra-BMC/ASF Parcel Post, and DBMC Parcel Select rates are subject to the applicable nonmachinable surcharge in R700 unless the applicable special handling fee is paid. An oversized parcel as described in 1.0c is not subject to the nonmachinable surcharge. Mailpieces are nonmachinable if they meet any of the following criteria:

a. A parcel more than 34 inches long, 17 inches wide, or 17 inches high, or weighing more than 35 pounds.

b. A parcel containing more than 24 ounces of liquid in glass containers, or 1 gallon or more of liquid in metal or plastic containers.

c. An insecurely wrapped or metal-banded parcel.

e. A can, roll, or tube, or wooden or metal box.

f. A shrub or tree.

g. A perishable such as eggs.

h. Books, printed matter, or business forms weighing more than 25 pounds.

i. A high-density parcel weighing more than 15 pounds and exerting more than 60 pounds per-square-foot pressure on its smallest side.

j. A film case weighing more than 5 pounds or with strap-type closures, except any film case the USPS authorizes to be entered as a machinable parcel under C050 and to be identified by the words "Machinable in United States Postal Service Equipment" permanently attached as a nontransferable decal in the lower right corner of the case.

k. Parcels with characteristics (such as inadequate packaging) that could result in damage to the contents or postal machinery if mechanical sortation is used.

[Add new 3.0 to read as follows:]

3.0 POSTAL INSPECTION

Package Services mail is not sealed against postal inspection. Package Services mail may be prepared for automated processing but must allow easy examination.

C800 Automation-Compatible Mail

C810 Letters and Cards

* * * * *

2.0 DIMENSIONS

* * * * *

[Redesignate 2.3 as 2.4; amend redesignated 2.4 by revising the maximum weight limit for heavy letters and by deleting 2.4d through f; and add new 2.3 to read as follows:]

2.3 Determining Height and Length

The length of an automation letter piece is the dimension parallel to the address when the address is read. The height is the dimension perpendicular to the length.

2.4 Maximum Weight

Maximum weight limits are as follows:

a. Upgradable Presorted First-Class Mail and Upgradable Presorted Standard Mail: 2.5 ounces (0.1563 pound).

b. Automation First-Class Mail, automation Periodicals, and automation Standard Mail: 3 ounces (0.1875 pound).

c. Automation First-Class Mail, automation Periodicals, and automation Standard Mail heavy letters, subject to 7.5: 3.3 ounces (0.2063 pound).

* * * * *

7.0 ADDITIONAL STANDARDS FOR SPECIFIC TYPES OF PIECES

* * * * *

7.5 Heavy Letter Mail

[Amend 7.5 by changing the reference "2.3" to "2.4"; no other changes to text.]

* * * * *

C820 Flats

* * * * *

3.0 DIMENSIONS FOR FSM 1000 PROCESSING

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3.4 Maximum Weight

[Amend 3.4 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

C840 Barcoding Standards for Letters and Flats

* * * * *

2.0 BARCODE LOCATION LETTER—SIZE PIECE

2.1 Barcode Clear Zone

[Amend 2.1 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Revise 3.0 to read as follows:]

3.0 BARCODE APPLICATION—FLAT-SIZE PIECE

3.1 General Requirements

On any flat-size piece claimed at automation rates, the piece may bear one POSTNET barcode under 3.2, or may bear two POSTNET barcodes under 3.3. Other mailer-applied non-POSTNET barcodes may appear on the address side of the piece if the barcode format is not detectable or confusing to automated postal equipment.

3.2 Applying One POSTNET Barcode

On any flat-size mailpiece claimed at an automation rate, the barcode may be anywhere on the address side as long as it is at least ⅛ inch from any edge of the piece. For FSM 1000 mailpieces, the preferred location of the barcode is at least 2 inches from the edge of the dimension that is the length for that type of automation piece (the longest edge or, for pieces with a folded or bound edge, the folded or bound edge). The portion of the surface of the piece on which the barcode is printed must meet the barcode dimensions and spacing requirements in 4.0 and the reflectance standards in 5.0. Address block barcodes are subject to the standards in 2.5a through 2.5e.

3.3 Applying a Second POSTNET Barcode

A second POSTNET barcode may be applied to the piece at the mailer's option only if the first POSTNET barcode on the piece is an address block barcode prepared under 3.2 that is not CASS-certified. In addition, the second barcode must meet the following requirements:

a. It must be a delivery point barcode (DPBC).

b. The preferred placement is the lower right corner of the mailpiece parallel to and in the same direction as the delivery address.

c. It must be placed at least 1 inch below the return address.

d. The space between the two POSTNET barcodes must be greater than 1 inch.

* * * * *

[Amend title of C850 by replacing "Standard Mail (B)" with "Standard Mail and Package Services" to read as follows:]

C850 Barcoding Standards for Standard Mail and Package Services Machinable Parcels

1.0 GENERAL

[Amend 1.1 by replacing "Standard Mail (B)" with "Standard Mail and Package Services," and replace "E630" with "E620, E720, E730, or E740"; no other changes to text.]

* * * * *

[Effective November 30, 2000, the Postal Service revised DMM C850.1.4 to include new information about integrated barcodes. See Postal Bulletin 22038 (11–30–00).]

[Amend 1.4 by replacing "Standard Mail (B)" with "Standard Mail and Package Services mail" and "E630" with "E620, E720, E730, or E740." Amend 1.4c to add information about Signature Confirmation to read as follows:]

1.4 Use with Delivery Confirmation and Signature Confirmation Services

A mailer may qualify for the machinable parcel barcode discount and may apply Delivery Confirmation and Signature Confirmation barcodes provided that the requirements in E600, E700, and S900 are met and the barcode(s) is prepared in one of the following ways:

a. Separate Barcodes. Mailers may place both a postal routing code prepared under 1.0 through 4.0 and separate Delivery Confirmation and Signature Confirmation barcodes on the same mailpiece.

b. Single Concatenated Barcode. Mailers may print on the same mailpiece a single concatenated barcode that combines the postal routing code and Delivery Confirmation and/or Signature Confirmation information as follows:

(1) Only the UCC/EAN Code 128 barcode symbology may be used.

(2) The barcode must be prepared according to the barcode specifications for the UCC/EAN Code 128 in S918, S919, and Publication 91.

(3) The barcode must be prepared according to the data format requirements for concatenated barcodes in Publication 91, Appendix G, Table 25. This format contains the start code, function one code, the "420" application identifier, the 5-digit code of the delivery address on the mailpiece, the function one code, the "91" application identifier, the service type code, the customer ID, the sequential package ID, the MOD 10 check digit, the MOD 103 check digit, and the stop code. The MOD 10 check digit must be calculated using only the Delivery Confirmation barcode or Signature Confirmation barcode elements. The function one codes, the "420" application identifier, and the 5-digit code of the delivery address are not included in the MOD 10 check digit calculation.

(4) Instead of the requirements in 3.0 and 4.0, mailers must use the format, placement, and human-readable information requirements found in S918, S919, and Publication 91. The human-readable numeric representation of the concatenated barcode must show the "420" application identifier, the 5-digit code of the delivery address, the "91" application identifier, the service type code, customer ID, sequential package ID, and MOD 10 check digit. The human-readable information also must include the "USPS Delivery Confirmation" or "USPS Signature Confirmation" text and identification bars.

(5) In addition to the human readable requirements in S918, S919, and Publication 91, the word "ZIP" must be printed to the left of the barcode in 12 point or larger sans serif type. A clear zone between the end of the word "ZIP" and the beginning of the barcode must be maintained. The clear zone must be no less than 10 times the average narrow bar or space element width and no more than ½ inch to the left of the barcode. A clear zone of 0.25 inch is recommended.

(6) If a mailpiece bears a concatenated barcode, then no other barcodes that appear on the mailpiece may contain the postal routing code structure (see 1.5).

(7) All barcode symbols must be printed on substrate material that preserves the optical specification as described in the AIM–USA Uniform Symbology Specification documents. Typically, white label stock commonly used for barcode generation is suitable, providing it is not glossy (causing mirror-like (specular) reflection) nor prone to smearing or smudging.

c. Integrated Barcode. An integrated barcode may be used by mailers who choose to combine Delivery Confirmation or Signature Confirmation with other special services on Priority Mail and Package Services. This option also is available for electronic option Delivery Confirmation with other special services on Standard Mail. Mailers may combine multiple services into a single barcode on the shipping label to eliminate multiple labels and barcodes on parcels. The only approved combinations are Delivery Confirmation combined with insurance and Signature Confirmation combined with insurance. Mailers printing their own barcodes and using the electronic option must meet existing specifications in S918 or S919. Two required changes are:

1. Change the text above the barcode to identify the service requested. Exhibits are included in Publication 91, Delivery Confirmation Technical Guide, November 2000 edition (which includes the addendum on Signature Confirmation and integrated barcodes.)

2. Change the service type code in the barcode to identify the class of mail and/or type of special service combined with Delivery Confirmation or Signature Confirmation. Additional information on the Service Type Code Matrix can be found in Publication 91, Delivery Confirmation Technical Guide, November 2000 edition.

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D DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information

D010 Pickup Service

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2.0 POSTAGE AND FEES

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[Amend 2.2 by changing "R600" to "R700".]

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D200 Periodicals

D210 Basic Information

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2.0 MAIL DEPOSIT

[Amend 2.0 by replacing "Standard Mail" with "Standard Mail and Package Services mail"; no other changes to text.]

3.0 EXCEPTIONAL DISPATCH

* * * * *

3.2 Intended Use

[Revise 3.2 by amending the first sentence and adding a new second sentence to read as follows:]

The provision for exceptional dispatch is intended for short-haul local distribution (zones 1 and 2) of publications with total circulation of no more than 25,000 and is not to be used to circumvent additional entry standards. Applications for exceptional dispatch for publications with over 25,000 total circulation may be considered on a case-by-case basis for possible waiver of the 25,000-circulation limit.

* * * * *

3.4 Destination Rates

[Revise 3.4 by changing the second sentence to read as follows:]

* * * Copies of Periodicals publications deposited under exceptional dispatch may be eligible for and claimed at the SCF rates if eligible for those rates at both the entry office from which the zone rate postage for those copies is computed and at the post office of deposit by exceptional dispatch. Copies of Periodicals publications deposited under exceptional dispatch may be eligible for and claimed at the destination delivery unit rates provided the applicable standards in E250 are met. * * *

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D600 Standard Mail

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2.0 MAIL DEPOSIT

[Amend 2.0 by removing 2.1 and 2.3; redesignating 2.2 and 2.4 as 2.1 and 2.2, respectively; revising the heading and amending the contents of redesignated 2.1 to remove the term "bulk rates," provide for mail entered under plant-verified drop shipment procedures, and amending the text of redesignated 2.2 for clarity to read as follows:]

2.1 General

Standard Mail must be presented at the post office where the permit or license is held and the presort mailing fee is paid. Mailings must be presented at the locations and times specified by the postmaster. Plant-verified drop shipment (PVDS) mailings must be presented for verification, acceptance, and entry under P750. Plant-loaded mailings must be presented, verified, accepted, and entered as specified by the plant load agreement and applicable standards. Metered Standard Mail may be deposited at other than the licensing post office only as permitted under D072. Nonprofit Standard Mail must be presented only at post offices where the organization producing the mailing has an approved nonprofit authorization (E670).

2.2 Separation of Mailings

Pieces at different rates (*e.g.*, 3/5 and basic) may be combined in the same mailing as provided in M011. Separate mailings may be reported on the same postage statement if the pieces in the mailings are in the same processing category (C050), are part of the same mailing job, and are presented for verification at the same time.

[Add new D700 to read as follows:]

D700 Package Services

1.0 SERVICE OBJECTIVES

The USPS does not guarantee the delivery of Package Services mail (Parcel Post (including Parcel Select), Bound Printed Matter, Media Mail, and

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Library Mail) within a specified time. Package Services mail might receive deferred service. The local post office can provide more information concerning delivery times within its area.

2.0 MAIL DEPOSIT

2.1 Single-Piece Rate Mailings

Single-piece rate Package Services mail must be deposited at a time and place specified by the postmaster or designee at the office of mailing. Metered mail may be deposited at other than the licensing post office only as permitted under D072. Permit imprint mail must be presented at the post office under P040 or P700.

2.2 Presorted, Carrier Route, Destination Entry, and Barcoded Discount Mailings

All presorted, carrier route, destination entry, and barcoded discount mailings must be presented for verification and acceptance at the post office where the permit or license is held. All such mailings must be deposited at locations and times specified by the postmaster or designee at the office that verifies and accepts the mailing. Plant-verified drop shipment (PVDS) mailings must be presented for verification, acceptance, and entry under P750.

Plant-loaded mailings must be presented as specified by the applicable standards and the plant load agreement. Metered mail may be deposited at other than the licensing post office only as permitted under D072.

2.3 Zoned Rates

Pieces paid at zoned rates must be entered at the post office from which the applicable zoned rate postage is computed unless an exception is permitted under E710.

2.4 Drop Shipment Information

Essential information for entering drop shipment Package Services mailings at specific postal facilities can be found in the Drop Shipment Product maintained by the National Customer Support Center (NCSC) (see G043). There is a charge for the Drop Shipment Product (E750).

D900 Other Delivery Services

D910 Post Office Box Service

1.0 BASIC INFORMATION

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1.5 Box Availability

[Amend 1.5 by adding the following sentence at the end of the paragraph:]

* * * Regardless of the box size applied for, customers must pay the correct fee for the service they receive.

* * * * *

[Redesignate current 1.7 as 1.8. Add new 1.7 to read as follows:]

1.7 Service Period

Post office box service is provided in 6-month increments.

[Amend redesignated 1.8 to add the new key duplication fee and the lock resetting fee read as follows:]

1.8 Fees

Post office box fees for each 6-month period are listed in R900. Each box customer is charged a refundable deposit for post office box keys. Customers also are charged fees for duplicate and replacement post office box keys and for initiating lock changes on post office boxes.

* * * * *

3.0 CONDITIONS OF USE

[Amend 3.1 by clarifying text to read as follows:]

3.1 Receiving Mail

A box customer may receive through the box any mail that is properly addressed to that box number.

* * * * *

[Amend 3.7 by clarifying to read as follows:]

3.7 Forwarding

A post office box may not be used when the primary purpose is to have the USPS forward or transfer mail to another address free of charge.

* * * * *

4.0 BASIS OF FEES AND PAYMENT

[Amend 4.1 to change the basis of post office box fees to read as follows:]

4.1 General

Post office box fees are based on the size of box provided and the fee group to which the box's 5-digit ZIP Code is assigned.

* * * * *

[Remove 4.3. Redesignate 4.4 through 4.11 as 4.3 through 4.10, respectively. Amend redesignated 4.3 to read as follows:]

4.3 Fee Changes

A change in post office box service fees applicable to a given 5-digit ZIP Code can arise from a general fee change. In addition, the Manager, Special Services, can assign a fee group to a new ZIP Code, and may authorize the reassignment of one or more 5-digit ZIP Codes to the next higher or lower fee group if the past fee group assignments were in error. The Postal Service also may regroup 5-digit ZIP Codes. No ZIP Code may be moved more than once a calendar year and a ZIP Code may be moved only into the next higher or lower fee group. Any change in post office box service fees takes effect on the date of the action that caused the change unless an official announcement specifies another date. If post office box service fees are increased, no customer must pay the new rate until the end of the current service period, and no retroactive adjustment is to be made for a payment received before the date of the change. The fee charged is that in effect on the date of payment.

4.4 Payment

[Amend 4.4 to specify when post office box fees must be paid to read as follows:]

All fees for post office box service are for a 6-month period. Except under 4.6, 4.7, and 4.10, fees must be paid in advance for each 6-month period. The fee may be paid for two periods at a time (*i.e.*, up to one year in advance), but not more. The fee that must be paid is the one that is in effect on the day that the fee is paid. Fees may be paid using cash, credit or debit card, or check or money order payable to the postmaster. A mailed payment must be received by the postmaster on or before the due date.

* * * * *

[Amend the heading of 4.7 by removing "for Group D Offices" to read as follows:]

4.7 Exception

[Amend the first sentence of 4.7 by removing reference to "Group D" to read as follows:]

Postmasters at offices with fewer than 500 post office boxes may set April 1 and October 1 as the beginning of payment periods for box customers in their offices. * * *

* * * * *

[Amend 5.0 by revising 5.1 through 5.3 to show the new fee group assignments:]

5.0 FEE GROUP ASSIGNMENTS

5.1 Regular Fee Groups

Post office boxes are assigned to fee groups listed in R900 based upon estimates of the facility space for post office boxes in each 5-digit ZIP Code. Local post offices can provide information about fees for a particular ZIP Code.

5.2 Free Box Service (Group E)

Customers may qualify for free (Group E) post office box service if their physical address or business location meets all of the following criteria:

a. The physical address or business location is within the geographic delivery ZIP Code boundaries administered by a post office.

b. The physical address or business location constitutes a potential carrier delivery point of service.

c. The USPS chooses not to provide carrier delivery to the physical address or business location.

d. The customer does not receive carrier delivery via an out-of-bounds delivery receptacle.

5.3 Additional Standards for Free Box Service

Only one free (Group E) post office box may be obtained for each potential carrier delivery point of service. Eligibility for Group E boxes does not extend to individual tenants, contractors, employees, or other individuals receiving or eligible to receive single-point delivery such as delivery to a hotel, college, military installation, or transient trailer park. A customer must pay the applicable fee for each additional box requested beyond the initial box obtained at the Group E fee.

[Remove Exhibits 5.3a and 5.3b.]

6.0 FEE REFUND

6.1 Calculation

[Amend 6.1 to clarify fee calculations to read as follows:]

When post office box service is terminated or surrendered by the customer, the unused portion of the fee may be refunded as follows:

a. If service is discontinued any time within the first 3 months of the service period, then one-half of the fee is refunded.

b. If service is discontinued after the beginning of the fourth month of the service period, then none of the fee is refunded.

c. If service is discontinued and the customer has prepaid for the next semi-annual service period, then the entire fee for that next period is refunded.

* * * * *

[Amend the heading of 7.0 by adding reference to "Locks" to read as follows:]

7.0 KEYS AND LOCKS

7.1 Key Deposit

[Amend 7.1 to clarify that customers must pay the refundable key deposit for all keys:]

Two post office box keys are initially issued to each new box customer. Box customers must pay a refundable key deposit on each of these keys. The refundable key deposit must be paid on each additional key requested under 7.2. When box service is terminated, the key deposit is refunded to the customer for each key (including additional or replacement keys in 7.2) that is returned to the post office where the box was issued.

7.2 Additional Key Fee

[Revise 7.2 to add a reference to the key fee to read as follows:]

A box customer may obtain additional or replacement keys by submitting Form 1094 and paying the refundable key deposit (see 7.1) and the key fee in R900. The fee for additional or replacement keys is not refundable. Worn or broken keys are replaced without charge when returned to the post office where the box is located.

* * * * *

[Add new 7.4 to explain the lock replacement fee to read as follows:]

7.4 Lock Replacement

The primary box customer (box applicant) may request that the post office box lock be changed. To change the lock, the customer must first pay the applicable lock fee in R900. Lock fees are charged for replacing keyed locks and combination locks and for re-setting combination locks. Lock fees are not refundable. Customers may turn in post office box keys for the old lock and get a refund of the key deposit. Two keys are provided with the new lock, with a refundable deposit for each key charged under 7.1. Customers may obtain additional keys for the new lock under 7.2.

* * * * *

D920 Caller Service

1.0 BASIC INFORMATION

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1.4 Caller Number Service

[Remove the last two sentences of 1.4.]

[Redesignate current 1.5 through 1.9 as 1.6 through 1.10, respectively. Add new 1.5 to read as follows:]

1.5 Reserving a Caller Number

Customers may reserve a caller number for future use by paying the caller number reservation fee in R900. The postmaster determines the reserved numbers and may restrict the availability of this service.

* * * * *

3.0 CONDITIONS OF USE

[Amend 3.4 by clarifying to read as follows:]

3.4 Forwarding

Caller service may not be used when the primary purpose is to have the USPS forward or transfer mail to another address free of charge.

* * * * *

4.0 BASIS OF FEES AND PAYMENT

4.1 Caller Service Fee

[Amend 4.1 by clarifying text to read as follows:]

Customers must pay the caller service fee listed in R900. The fee must be paid for each caller number or separation used, with the following exceptions:

a. If a caller uses many caller numbers but receives only a bulk delivery of mail not separated to those numbers, either because this mail is sorted to the customer's unique 5-digit ZIP Code or because sortation is made by caller name or other identification, then the caller service fee is charged only for each separation actually made. The reserved number fee is charged for each of the caller numbers to which mail received by the caller is addressed.

b. When a post office box service applicant is provided a single caller service separation because of a shortage in available post offices boxes, then the fee charged is the fee for the largest installed post office box. In this instance, neither the caller service fee nor the reserved number fee is charged.

[Remove Exhibit 4.1, Caller Service Groups.]

4.2 Reserved Number

[Amend 4.2 to clarify that reserved number fees are not refundable to read as follows:]

The reserved caller number fee in R900 is charged per calendar year or any part of a calendar year for each number reserved by a customer. Reserved caller number fees are not prorated.

4.3 Fee Changes

[Amend 4.3 by removing references to 4.1b and 4.1 to read as follows:]

A change in caller service fees (including reserved number fees) can arise from a general fee change. Any change in caller service fees takes effect on the date of the action that caused the change unless an official announcement specifies another date. If a caller service fee is increased, no customer must pay at the new rate until the end of the current service period, and no retroactive adjustment is to be made for a payment received before the date of

the change. The fee charged is that in effect on the date of payment.

* * * * *

4.5 Payment

[Amend 4.5 to clarify the payment periods for caller service to read as follows:]

The basic caller service fees are for a 6-month period. Fees must be paid in advance for each 6–month period. The fee may be paid for two periods at a time (*i.e.*, up to one year in advance), but not more. The fee that must be paid is the one that is in effect on the day that the fee is paid. Fees may be paid using cash, credit or debit card, or check or money order payable to the postmaster. A mailed payment must be received by the postmaster on or before the due date.

* * * * *

[Amend the heading of 4.8 by removing "for Group D Offices" to read as follows:]

4.8 Exception

[Amend the first sentence of 4.8 by removing reference to Group D offices to read as follows:]

Postmasters at offices with fewer than 500 post office boxes may set April 1 and October 1 as the beginning of payment periods for caller service customers in their offices. * * *

* * * * *

5.0 FEE REFUND

5.1 Discontinued Number

[Amend 5.1 to clarify when refunds can be made to read as follows:]

When caller service is terminated or surrendered by the customer, the unused portion of the fee may be refunded as follows:

a. If service is discontinued any time within the first 3 months of the service period, then one-half of the fee is refunded.

b. If service is discontinued after the beginning of the fourth month of the service period, then none of the fee is refunded.

c. If service is discontinued and the customer has prepaid for the next semi-annual service period, then the entire fee for that next period is refunded.

* * * * *

[Add new 5.3 to show that the reserved number fee is not refundable to read as follows:]

5.3 Reserved Number Fee

The reserved number fee is not refundable.

* * * * *

E ELIGIBILITY

E000 Special Eligibility Standards

E010 Overseas Military Mail

1.0 BASIC STANDARDS

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[Amend 1.2 to change "Standard Mail (B)" to "Package Services."]

* * * * *

1.4 Preparation

[Amend 1.4 by changing "C600" to "C700" and by changing "Standard Mail (B)" to "Package Services" to read as follows:]

Items sent by air or surface mail are subject to the size and weight standards in C100 or C700 unless limited further by this standard. Mail must be addressed under A010. Postage at the applicable Priority Mail or Package Services rates is charged for parcels sent by air or surface transportation.

* * * * *

1.6 Restriction

[Amend the first sentence of 1.6 for added clarity and to refer to the new class and subclass names "Package Services" and "Media Mail," respectively, to read as follows:]

Regardless of the postage payment method, the following types of mail weighing 16 ounces or more must be presented at a post office retail counter: all single-piece rate Priority Mail and all single-piece rate Package Services mail (Parcel Post, Bound Printed Matter, Media Mail, Library Mail).* * *

* * * * *

3.0 MILITARY ORDINARY MAIL (MOM)

[Amend 3.0 by changing "Standard Mail" to "Standard Mail and Package Services." Amend 3.0b by changing reference to "Standard Mail (A), or Standard Mail (B)" to "Standard Mail, or Package Services mail"; no other changes to text.]

E020 Department of State Mail

1.0 AVAILABILITY

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[Add new 1.4 to show that Express Mail is not eligible to be mailed through Department of State Mail to read as follows:]

1.4 Express Mail

Express Mail may not be sent through the Department of State.

2.0 CONDITIONS FOR AUTHORIZED MAIL

* * * * *

2.3 Special Services

[Amend 2.3 by removing references to Express Mail, which has been moved to new 1.4, and by adding Signature Confirmation to read as follows:]

The following special services are not available for mail transmitted through the Department of State: certified, COD, Delivery Confirmation, insured, registered, restricted delivery, return receipt, return receipt for merchandise, Signature Confirmation, and special handling. If one of those services is requested on this mail, it is returned to the sender endorsed "Service Not Available."

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E040 Free Matter for the Blind and Other Handicapped Persons

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4.0 PREPARATION

4.1 Basic Standards

[Amend 4.1b by changing "C600" to "C700."]

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E060 Official Mail (Penalty)

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5.0 SERVICES, CLASSES, RATES, PREPARATION, AND DETENTION

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5.3 Basic Preparation

[Amend 5.3d to require the Parcel Post marking to read as follows:]

Penalty mail must:

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d. For all methods of payment, be endorsed for class or rate except for single-piece rate First-Class Mail not exceeding 13 ounces.

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7.0 PENALTY METER

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[Amend 7.7 by changing title and references from "On-Site Setting" to "Meter Service" to read as follows:]

7.7 Meter Service

An agency wanting on-site meter service must pay the required fee in cash or with a check when the meter is set.

* * * * *

10.0 GENERAL STANDARDS FOR PENALTY REPLY MAIL

[Amend 10.1 by deleting the last phrase in the last sentence to read as follows:]

10.1 Restriction to Approved Formats

An agency may distribute penalty envelopes, cards, cartons, or labels to any person, concern, or organization. To distribute penalty reply mail, agencies must use the penalty business reply mail format, the penalty metered reply format, penalty mail adhesive stamps or penalty mail stamped stationery, or the penalty merchandise return service label.

* * * * *

11.0 PENALTY BUSINESS REPLY MAIL (BRM)

11.1 General

[Amend 11.1 to add QBRM as an option for penalty mailers and to clarify payment of the annual accounting fee to read as follows:]

An agency may participate in business reply mail service (including Qualified Business Reply Mail). Standards for business reply mail are in S922. Agencies can choose to pay postage and per piece charges for BRM with cash upon delivery or through an advance deposit account. If an agency chooses to pay through an advance deposit account, then it must pay an annual accounting fee, which is billed through an OMAS account. The postage, fees, and per piece charges are the same as those for private-sector customers (R900).

* * * * *

12.0 PENALTY MERCHANDISE RETURN SERVICE

12.1 Description

[Amend 12.1 by replacing "Standard Mail (B)" with "Package Services," replacing "Special Standard Mail" with "Media Mail," and adding a reference to S923 to read as follows:]

Merchandise return service allows an authorized permit holder to pay the postage and special service fees on single-piece rate First-Class Mail, Priority Mail, and Package Services (Parcel Post, Bound Printed Matter, and Media Mail) that is returned by the permit holder's customers via a special label produced by the permit holder as specified by S923.

[Redesignate current 12.2 through 12.12 as 12.4 through 12.14, respectively, add new 12.2 to show rate and fee application, and add new 12.3 to show the required accounting fee to read as follows:]

12.2 Postage and Special Service Fees

The standards for payment of postage and fees are:

a. The permit holder guarantees payment of the proper postage and special service fees on all returned merchandise return service articles distributed under the permit holder's permit number. Postage is collected for each article from an OMAS postage due account.

b. Returned parcels are charged single-piece rate postage and special service fees based on the class or subclass marking on the label. If a piece is unmarked, then it is charged Parcel Post rates. If the postage for the returned piece is zoned and there is no way to determine where it was sent from (i.e., no postmark or return address), then postage is calculated at zone 4 (for Priority Mail) or zone 4 inter-BMC rates (for Parcel Post).

c. There is no per piece charge per parcel returned.

12.3 Annual Accounting Fee

All MRS permit holders are required to pay the annual accounting fee in R900, which is assessed automatically through OMAS.

* * * * *

12.7 Label Format

[Amend redesignated 12.7 by changing "Exhibit 12.5a" to "Exhibit 12.7a" and "Exhibit 12.5b" to "Exhibit 12.7b" and to add new item c to indicate the location of the optional rate marking.]

* * * * *

c. Permit holders are encouraged, but are not required, to put the rate marking in the space to the right and above the "Merchandise Return Label" legend. The marking must be at least 3/16 inch high and be printed or rubber-stamped. Only the permit holder may apply this marking.

[Revise heading and amend content of redesignated 12.8 by clarifying to read as follows:]

12.8 Insurance Indicated by Permit Holder

The permit holder may obtain insured mail service with MRS. Indemnity under penalty mail merchandise return is limited to $100. Items requiring insurance greater than $100 may not be mailed under penalty merchandise return service. Only Package Services matter (i.e., matter not required to be mailed at First-Class Mail rates under E110) may be insured. Insured mail may be combined with other special services as listed in S913. To request insured mail service, the permit holder must preprint or rubber-stamp "Insurance Desired by Permit Holder for $_____ (value)" to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement on the merchandise return label. The value part of the endorsement, showing the dollar amount of insurance for the article, may be handwritten by the permit holder. If insurance is paid for by the MRS permit holder, then only the MRS permit holder may file a claim (S010).

[Redesignate 12.9 through 12.14 as 12.10 through 12.15, respectively. Add new 12.9 to show that MRS senders may add insurance at their discretion to read as follows:]

12.9 Insured Mail Added by Sender

If the permit holder has not indicated insured mail service on the MRS label, then the sender has the option of adding insurance at the sender's own expense. There is no limit on the indemnity coverage paid for by the sender. If insurance is paid by the sender, then only the sender may file a claim (S010).

[Amend redesignated 12.10, Registered Mail, by changing "Exhibit 12.5b" to "Exhibit 12.7b"; no other changes to text.]

[Amend redesignated 12.11, Special Handling, by changing "Exhibit 12.5a" to "Exhibit 12.7a" and by replacing "Standard Mail" with "Package Services"; no other changes to text.]

[Remove redesignated 12.12, Parcels, and 12.13, Postage and Fees. Redesignate 12.14, Permit Cancellation, and 12.15, Later Receipt, as 12.12 and 12.13, respectively.]

* * * * *

15.0 CONTRACTORS

* * * * *

15.2 Preparation

[Amend 15.2a to add the term "Package Services" to read as follows:]

Preparation standards for a contractor's penalty mailings include the following:

a. First-Class Mail, Standard Mail, and Package Services penalty mailings must be prepared with penalty permit imprints or penalty meters. Single-piece rate mailings may also be prepared with penalty mail stamps.

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E070 Mixed Classes

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2.0 ATTACHMENTS OF DIFFERENT CLASSES

[Amend the heading and contents of 2.1 to change "Standard Mail (A)" to "Standard Mail" and "Standard Mail" to "Standard Mail, or Package Services" to read as follows:]

2.1 First-Class Mail or Standard Mail

Letters or other pieces of First-Class Mail or Standard Mail may be placed in an envelope and attached to the address side of a Periodicals, Standard Mail, or Package Services piece. Combination

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envelopes or containers with separate parts for the two classes of mail may be used.

2.2 Rate Qualification

[Amend the introductory sentence of 2.2 by adding "Package Services" to read as follows:]

If a Periodicals, Standard Mail, or Package Services host piece qualifies for:

[Amend 2.2a through 2.2d by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend 3.2b by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend 3.3a through 3.3d by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend title of 4.0 by replacing "Standard Mail" with "Standard Mail and Package Services" to read as follows:]

4.0 ENCLOSURE IN STANDARD MAIL AND PACKAGE SERVICES PARCELS

[Amend 4.1 by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

[Amend 4.2 by replacing "Standard Mail (A)" with "Standard Mail"; by replacing "Standard Mail (B) with "Package Services"; and by replacing "E600" with "E700"; no other changes to text.]

5.0 INCIDENTAL FIRST-CLASS MAIL ATTACHMENT OR ENCLOSURE

[Amend 5.0 by replacing "Standard Mail (A)" with "Standard Mail" and by replacing "Standard Mail (B)" with "Package Services mail"; no other changes to text.]

[Amend the heading of 6.0 by replacing "Special Standard Mail" with "Media Mail" to read as follows:]

6.0 COMBINED MAILING OF MEDIA MAIL AND BOUND PRINTED MATTER

[Amend 6.1 by replacing "Special Standard Mail" with "Media Mail"; no other changes to text.]

[Revise 6.2 to specify that Presorted rate mail must be prepared under Bound Printed Matter standards to read as follows:]

6.2 Presorted Rates

Presorted rates may be claimed, subject to the applicable preparation standards. If presort rates are claimed on both subclasses, the mail must be prepared under the standards for Bound Printed Matter (M722).

* * * * *

E100 First-Class Mail

E110 Basic Standards

1.0 CLASSIFICATION AND DESCRIPTION

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[Amend 1.2 by replacing "Standard Mail" with "Standard Mail and Package Services" and by replacing "Special Standard Mail" with "Media Mail"; no other changes to text.]

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E120 Priority Mail

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2.0 RATES

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2.4 Keys and Identification Devices

[Amend 2.4 by adding reference to the 1-pound rate to read as follows:]

Keys and identification devices (identification cards or uncovered identification tags) that weigh more than 13 ounces but not more than 2 pounds are returned at the applicable 1- or 2-pound Priority Mail rate plus the fee as shown in R100 if they bear, contain, or have securely attached the name and complete address of a person, organization, or concern, with instructions to return the piece to that address and a statement guaranteeing payment of postage due on delivery.

* * * * *

E130 Nonautomation Rates

* * * * *

2.0 SINGLE-PIECE RATE

* * * * *

2.2 Keys and Identification Devices

[Amend the first sentence of 2.2 by replacing "$0.30" with a reference to R100 to read as follows:]

Keys and identification devices (identification cards or uncovered identification tags) that weigh 13 ounces or less are mailed at the applicable single-piece letter rate plus the fee as shown in R100 and, if applicable, the nonstandard surcharge. * * *

[Redesignate current E130.2.3 as M110.1.0. Add new 2.3 to read as follows:]

2.3 Preparation

Single-piece rate mail must be prepared under M110.

* * * * *

E140 Automation Rates

* * * * *

2.0 Rate Application

* * * * *

[Revise heading of 2.2 to read as follows:]

2.2 Flats—Package-Based Preparation

[Amend 2.2 to provide for separate 5-digit and 3-digit rates to read as follows:]

First-Class Mail automation rates apply to each piece that is sorted under M820.2.0 or M910.2.0 into the corresponding qualifying groups:

a. Pieces in 5-digit packages of 10 or more pieces qualify for the 5-digit automation rate. (Preparation to qualify for that rate is optional and need not be done for all 5-digit destinations.)

b. Pieces in 3-digit packages of 10 or more pieces qualify for the 3-digit automation rate.

c. Pieces in ADC and mixed ADC packages qualify for the basic automation rate.

[Add new 2.3 to read as follows:]

2.3 Flats—Optional Tray-Based Preparation

First-Class Mail automation rates apply to each piece that is sorted under M820.3.0 into the corresponding qualifying groups:

a. Groups of 90 or more pieces in 5-digit trays (and all pieces in one less-than-full overflow tray) qualify for the 5-digit automation rate. (Preparation to qualify for that rate is optional and need not be done for all 5-digit destinations.

b. Groups of 90 or more pieces in 3-digit trays (and all pieces in one less-than-full overflow tray) qualify for the 3-digit automation rate.

c. Groups of fewer than 90 pieces in origin 3-digit trays and all pieces in ADC and mixed ADC trays qualify for the basic automation rate.

E150 Qualified Business Reply Mail

[Effective November 5, 2000, the Postal Service rewrote and reorganized standards for business reply mail and qualified business reply mail (see Postal Bulletin 22035 (10–19–00), available via www.usps.com). The numbering in this final rule reflects those changes.]

* * * * *

2.0 AUTHORIZATION

[Amend 2.0 by removing the last sentence.]

3.0 POSTAGE, PER PIECE CHARGES, AND FEES

* * * * *

3.3 Fees

[Revise 3.3 to add new item c for the QBRM quarterly fee to read as follows:]

The following fees apply to QBRM First-Class Mail:

* * * * *

c. At the mailer's option, a quarterly fee.

E200 Periodicals

E210 Basic Standards

E211 All Periodicals

* * * * *

6.0 ELIGIBLE FORMATS

[Amend 6.1 by replacing "First-Class Mail or Standard Mail" with "First-Class Mail, Standard Mail, or Package Services"; no other changes to text.]

* * * * *

9.0 BACK NUMBERS AND REPRINTS

[Amend 9.0 by replacing "First-Class Mail or Standard Mail" with "First-Class Mail, Standard Mail, or Package Services"; no other changes to text.]

* * * * *

13.0 FEES

1.1 Fee Required

[Amend 13.1 by revising 13.1d(3) to read as follows:]

The required fee must accompany an application for:

* * * * *

d. Reentry (unless excepted in 13.2 or 13.3) to request a:

* * * * *

(3) Change in eligibility from preferred rates or the preferred rate discount to regular Outside-County rates.

* * * * *

13.2 No Fee

[Amend 13.2 for clarity to read as follows:]

No fee is charged if reentry is only to change eligibility to preferred rates or the preferred rate discount.

* * * * *

[Remove 14.0.]

E212 Qualification Categories

* * * * *

2.0 PUBLICATIONS OF INSTITUTIONS AND SOCIETIES

* * * * *

[Remove 2.4.]

* * * * *

4.0 REQUESTER PUBLICATIONS

[Amend 4.1 by replacing "Regular" with "Outside-County"; no other changes to text.]

* * * * *

6.0 NEWS AGENT REGISTRY

* * * * *

[Amend 6.4 by replacing "Regular" with "Outside-County"; no other changes to text.]

[Amend 6.5 by replacing "Standard Mail" with "Standard Mail or Package Services"; no other changes to text.]

E213 Periodicals Mailing Privileges

* * * * *

2.0 MAILING WHILE APPLICATION PENDING

[Amend 2.1 by replacing "First-Class Mail or Standard Mail" with "First-Class Mail, Standard Mail, or Package Services"; no other changes to text.]

[Amend 2.2 by replacing "Standard Mail" with "Standard Mail or Package Services"; no other changes to text.]

* * * * *

E214 Reentry

* * * * *

3.0 APPLICATION FOR REENTRY

* * * * *

[Amend 3.9a, 3.9c, and 3.10 by replacing "Standard Mail" with "Standard Mail or Package Services"; no other changes to text.]

* * * * *

E215 Copies Not Paid or Requested by Addressee

* * * * *

2.0 NONSUBSCRIBER AND NONREQUESTER COPIES

[Amend 2.1 and 2.2 by replacing "Regular" with "Outside-County"; no other changes to text.]

[Amend heading of 2.3 by adding "and the Preferred Rate Discount" to read as follows:]

2.3 Preferred Rates and the Preferred Rate Discount

[Amend 2.3 by adding references to Preferred rate discount and clarifying qualification categories to read as follows:]

For In-County rates, and Nonprofit, Classroom, and Science-of-Agriculture publications, nonsubscriber copies up to 10% of the total number of copies mailed to subscribers during the calendar year may be mailed at the applicable Preferred rates or Preferred rate discount, provided that the nonsubscriber copies would qualify as Preferred rate or Preferred rate discount publications if mailed to subscribers and if the copies are presorted under applicable standards. Nonsubscriber copies mailed over the 10% limit are not eligible for Preferred rates or the Preferred rate discount. To qualify for Outside-County rates, the nonsubscriber copies over the 10% limit must be part of a presorted commingled mailing (one that includes subscriber copies). Subject to E217.4.0, nonsubscriber copies may be mailed at In-County rates up to a 10% limit of the total number of subscriber copies of the publication mailed at In-County rates during the calendar year. Once the 10% calendar year limit is exceeded for the number of nonsubscriber copies that may be mailed at Preferred rates or the Preferred rate discount, nonsubscriber copies may not then be mailed at In-County rates even if the 10% limit separately applied to those rates (under E217.4.0) is not exceeded.

[Redesignate 2.4 through 2.7 as 2.5 through 2.8, respectively; add new section 2.4 to read as follows:]

2.4 Publications of Institutions and Societies

For publications of institutions and societies that are not authorized to contain general advertising under E212.2.3, all circulated copies are considered subscriber copies and the total number of such copies is the total paid circulation.

[Amend redesignated 2.5 and 2.6 by replacing "Regular" with "Outside-County"; no other changes to text.]

[Amend the heading of redesignated 2.7 by adding "noncommingled" to read as follows:]

2.7 Excess Noncommingled Mailing

[Amend redesignated 2.7 by replacing the second sentence and deleting the third sentence to read as follows:]

A mailing is not eligible for Periodicals rates if it consists entirely of nonsubscriber or nonrequester copies over the 10% limit of the total number of copies mailed to subscribers or requesters during the calendar year. These copies are subject to the appropriate Express Mail, First-Class Mail, Standard Mail, or Package Services rate.

[Amend redesignated 2.8 by replacing "Express Mail, First-Class Mail, or Standard Mail" with "Express Mail, First-Class Mail, Standard Mail, or Package Services"; no other changes to text.]

* * * * *

[Add new DMM section E217.0.]

E217 Basic Rate Eligibility

1.0 OUTSIDE-COUNTY RATES

Outside-County rates apply to all copies of an authorized Periodicals publication mailed by a publisher or news agent that are not eligible for In-County rates, except nonrequester and nonsubscriber copies under E215 for excess noncommingled mailings, unless

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the publication is authorized under E212.2.0 and is not authorized to contain general advertising. Nonrequester and nonsubscriber copies in excess of the 10% allowance under E215 are subject to Outside-County rates when commingled with requester or subscriber copies as appropriate. Publications authorized for Science-of-Agriculture rates under 3.0 are subject to separate Delivery Unit, SCF, and Outside-County zones 1 & 2 rates. Nonprofit and Classroom publications are subject to the Preferred rate discount under 2.0. Outside-County rates consist of a per piece charge, a zoned charge for the weight of the advertising portion of the publication, and a charge for the weight of the nonadvertising portion. Each piece rate requires specific preparation.

2.0 OUTSIDE-COUNTY PREFERRED RATE DISCOUNT

Periodicals publications qualifying as Nonprofit or Classroom Periodicals under E270 receive a 5% discount off the total Outside-County postage, excluding the postage for advertising pounds. Requester publications are not eligible for the Preferred rate discount. Nonsubscriber copies claiming the Preferred rate discount are subject to the standards in E215.

3.0 OUTSIDE-COUNTY SCIENCE-OF-AGRICULTURE RATES

3.1 Authorization

To be mailed at the Science-of-Agriculture Periodicals rates, a publication must be granted Periodicals entry in other than the requester category and granted a Science-of-Agriculture rate authorization.

3.2 Eligibility

Science-of-Agriculture rates apply to Outside-County copies of authorized Periodicals publications mailed by publishers or news agents when the total copies provided during any 12-month period to subscribers residing in rural areas are at least 70% of the total number of copies distributed by any means for any purpose.

3.3 Other Rates

All Outside-County rates and discounts apply except for separate rates for Delivery Unit, DSCF, and zones 1 & 2. Each piece must meet the standards for rates or discounts claimed. Nonsubscriber copies are subject to E215. Subject to E250, the DDU or DSCF piece rate applies to each piece claimed in the pound rate portion at the corresponding rate.

3.4 Nonadvertising Discount

The nonadvertising discount applies to Outside-County piece rate postage.

3.5 Application Procedures

The Science-of-Agriculture rate is available only after USPS authorization. An application or written request for Science-of-Agriculture rates must be filed at the publication's original entry post office. Application may be made by submitting a written request when applying for Periodicals mailing privileges (on Form 3501), by completing the relevant part of an application for Periodicals mailing privileges (on Form 3502), or by filing for reentry (on Form 3510) after Periodicals mailing privileges are authorized. The applicant must submit evidence to show eligibility under the corresponding standards in E217.

4.0 IN-COUNTY RATES

4.1 Subscriber Copies

In-County rates apply to subscriber copies of any issue of a Periodicals publication (except a requester publication) when they are entered within the county in which the post office of original entry is located for delivery to addresses within that county, if one of the following is met:

a. The total paid circulation of such issue is less than 10,000 copies.

b. The number of paid copies of such issue distributed within the county of publication is more than 50% of the total paid circulation of such issue.

4.2 Exceptional Conditions

The standard in 4.1 also is applied under any of these exceptional conditions:

a. If an entry office postmaster directs the publisher to deposit copies of the publication at a postal facility serving that office, those copies are considered as mailed at the entry office for purposes of In-County rates.

b. A copy addressed to a destination within the county of publication is eligible for In-County rates when the entry post office serving that address is outside the county.

c. Each Periodicals publication (except a requester publication or commingled nonsubscriber copies above the 10% allowance) having original entry at an incorporated city situated entirely within a county or contiguous to one or more counties in the same state, but politically independent of such county or counties, is considered within a part of the county with which it is principally contiguous. Copies mailed into that county are charged postage at the In-County rates. Where more than one county is involved, the publisher selects the principal county and notifies the postmaster.

4.3 Nonsubscriber Copies

During a calendar year, the total number of nonsubscriber copies mailed at In-County rates may not exceed 10% of the number of subscriber copies mailed at In-County rates. The number of nonsubscriber copies mailed at In-County rates must be included in the determination of the overall 10% allowance under E215. Effectively, the allowance for nonsubscriber copies mailable at the In-County rates is the 10% allowed under this standard or the overall 10% limit under E215, whichever occurs first.

4.4 Other Rates

Each piece also must meet the standards for the rates and discounts claimed. Subject to E250, the Delivery Unit piece rate applies to each piece claimed in the pound rate portion at the Delivery Unit rate.

5.0 DISCOUNTS

Postage for Periodicals is reduced by all applicable discounts. The nonadvertising discount applies to the Outside-County piece rate charges and is computed under P013. Presort and automation discounts are available under E230 and E240, respectively. Destination entry discounts are available under E250 for copies entered at specific USPS facilities.

6.0 COPIES MAILED BY PUBLIC

The applicable single-piece First-Class Mail, Priority Mail, or Package Services rate is charged on copies of publications mailed by the general public (*i.e.*, other than publishers or registered news agents) and on copies returned to publishers or news agents.

* * * * *

E250 Destination Entry

* * * * *

2.0 DDU RATE

2.1 Eligibility

[Amend 2.1 by replacing sentence one and two with new sentences one, two and three to read as follows:]

The destination delivery unit (DDU) rate applies to pieces, including exceptional dispatch pieces, entered at the facility where the carrier cases mail for the carrier route serving the delivery address on the mailpiece. Letter-size copies claimed at DDU rates must be part of a carrier route package placed in a carrier route tray or a 5-digit carrier routes tray, prepared under M200, and otherwise eligible for and claimed at a carrier route rate. Flat-size or irregular parcel-size copies claimed at DDU rates must be part of a carrier route package placed in a carrier route sack; a 5-digit carrier routes sack, a 5-digit scheme carrier routes sack, a merged 5-digit sack, or a merged 5-digit scheme sack prepared under M200 or M920, or palletized on a 5-digit carrier routes, 5-digit scheme carrier routes, merged 5-digit, or merged 5-digit scheme pallet prepared under M045, M920, M930, or M940, and otherwise eligible for and claimed at a carrier route rate. Except for the standards for preparing basic carrier route or walk-sequence carrier route rate mail, there is no additional minimum volume required for a DDU rate mailing.

* * * * *

2.4 Deposit Schedule

[Amend 2.4 by adding a new last sentence and by replacing "Standard Mail" with "Standard Mail or Package Services mail" to read as follows:]

The mailer may schedule deposit of DDU rate mailings at least 24 hours in advance by contacting the district office in whose service area the destination facility is located. The mailer must follow the scheduled deposit time provided. The mailer may request standing appointments for renewable 6-month periods by written application to the district office in whose service area the destination facility is located. Mixed loads of Periodicals and Standard Mail or Package Services mail require advance appointments for deposit. For DDU rate mail entered under exceptional dispatch, the application for exceptional dispatch required under D210 serves as a request for standing appointments.

* * * * *

E270 Preferred Periodicals

[Remove 1.0 and 6.0 and redesignate 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, and 9.0 as 1.0 through 7.0, respectively.]

[Amend the heading in redesignated 1.0 by replacing the word "RATES" with the word "ELIGIBILITY" to read as follows:]

1.0 NONPROFIT ELIGIBILITY—BASIC INFORMATION

1.1 Authorization

[Amend redesignated 1.1 by removing the word "rates" and replacing the reference "3.0 or 4.0" with "2.0 or 3.0" to read as follows:]

To be mailed as a Nonprofit Periodical, a publication must be granted Periodicals entry in other than the requester category and a Nonprofit authorization for which eligibility was established under 2.0 or 3.0.

* * * * *

[Amend redesignated 1.3 by removing the word "regular" in the last sentence.]

[Remove 1.4.]

* * * * *

[Amend the heading in redesignated 2.0 by replacing the word "RATES" with the word "ELIGIBILITY" to read as follows:]

2.0 NONPROFIT ELIGIBILITY—QUALIFIED ORGANIZATIONS

2.1 Types of Organizations

[Replace the reference "3.3 through 3.10" with "2.3 through 2.10."]

2.2 Primary Purpose

[Replace the reference "3.3 through 3.10" with "2.3 through 2.10."]

* * * * *

[Amend the heading in redesignated 3.0 by replacing the word "RATES" with the word "ELIGIBILITY" to read as follows:]

3.0 NONPROFIT ELIGIBILITY—OTHER QUALIFIED ORGANIZATIONS

3.1 Basic Eligibility

[Replace the reference "4.2" with "3.2."]

3.2 Eligibility Limitation

[Replace the reference "4.1c or 4.1d" with "3.1c or 3.1d."]

[Amend the heading in redesignated 4.0 by replacing the word "RATES" with the word "ELIGIBILITY" to read as follows:]

4.0 CLASSROOM ELIGIBILITY

* * * * *

[Amend redesignated 4.4 by removing the word "regular" in the last sentence.]

[Remove 4.5.]

* * * * *

5.0 APPLICATION

[In redesignated 5.0, remove 5.1 and redesignate 5.2 and 5.3 as 5.1 and 5.2.]

5.1 Procedures

[Amend redesignated 5.1 by adding a new first sentence and revising the second sentence (former first sentence) to read as follows:]

The Preferred rate discount is available only after USPS authorization. An application or written request for authorization as a Nonprofit or Classroom publication must be filed at the publication's original entry post office. Application may be made by submitting a written request when applying for Periodicals mailing privileges (on Form 3501), by completing the relevant part of an application for Periodicals mailing privileges (on Form 3502), or by filing for reentry (on Form 3510) after Periodicals mailing privileges are authorized.* * *

* * * * *

6.0 MAILING WHILE APPLICATION PENDING

[Amend redesignated 6.1 by adding reference to preferred rate and replacing "Regular Periodicals" with "Outside-County" and "Standard Mail" with "Standard Mail, or Package Services" to read as follows:]

6.1 Mailing Before Approval

A publisher or news agent may not mail at a Periodicals Preferred rate or deduct the Preferred rate discount until the RCSC manager approves the application for such privilege. Until approval is given, postage must be paid at the Outside-County rates (if the publication is authorized), or at the applicable First-Class Mail, Standard Mail, or Package Services rates (if the publication or news agent is in a pending status for Periodicals mailing privileges).

[Amend redesignated 6.2 by replacing "Standard Mail" with "Standard Mail or Package Services" and replacing "regular" with "Outside-County"; no other changes to text.]

7.0 DECISION ON APPLICATION

* * * * *

[Amend redesignated 7.4 (formerly 9.4) by replacing "Standard Mail" with "Standard Mail or Package Services"; replacing "Regular" with "Outside-County"; and the reference "9.5" with "7.5"; no other changes to text.]

7.5 No Refund

[Amend 7.5c (formerly 9.5c) by removing the word "Regular"; no other changes to text.]

* * * * *

E600 Standard Mail

E610 Basic Standards

[Matter pertaining only to Standard Mail (formerly Standard Mail (A)) in current E611 and E612 has been consolidated and reorganized into new E610. Unless otherwise indicated by the amend/revise instructions below, there are no changes to the content of these sections.]

[Remove the heading "E611, All Standard Mail."]

1.0 BASIC INFORMATION

[Redesignate E611.1.1 as E610.1.1, amend the heading and contents to show that Standard Mail no longer

includes matter previously referred to as Standard Mail (B) or fourth-class mail, and add the weight limit from former E612.1.0 to read as follows:]

1.1 Definition and Weight

Standard Mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (unless permitted or required by standard) and that weighs less than 16 ounces. Standard Mail includes matter formerly classified as Standard Mail (A) and third-class mail.

[Redesignate E611.1.2 as E610.1.2.]

* * * * *

[Redesignate E612.2.0 as E610.2.0; amend redesignated 2.1 and 2.2 by changing "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Redesignate E611.1.3 as E610.3.0, amend redesignated 3.0j by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Redesignate the heading of E612.3.0 as E610.4.0 to read as follows:]

4.0 ENCLOSURES AND ATTACHMENTS

[Redesignate E611.1.4 as E610.4.1; no other changes in text.]

[Redesignate E611.1.5 as E610.4.2, replace "Standard Mail (A)" with "Standard Mail," and "Standard Mail (B) with "Package Services mail"; no other changes to text.]

[Redesignate E612.3.1 as E610.4.3 and amend by changing "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Redesignate E612.3.2 as E610.4.4 and amend by changing "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Redesignate E612.3.3 as E610.4.5 and amend to change "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Redesignate E612.4.0 as E610.5.0 to read as follows:]

5.0 RATES

[Redesignate E612.4.1 through 4.3 as E610.5.1 through 5.3, amend for clarity, amend to incorporate new maximum limits for minimum per piece rates, and revise references to DMM section numbers, to read as follows:]

5.1 General Information

All Standard Mail rates are presorted rates (including all nonprofit rates). These rates apply to mailings meeting the basic standards in E610 and the corresponding standards for Presorted, Enhanced Carrier Route, or automation, under E620, E630, or E640. Destination entry discounted rates are available under E650 and barcoded discounts are available for machinable parcels in E620. A residual shape surcharge also is charged for pieces that are prepared as a parcel or that are not letter-size or flat-size. Nonprofit rates may be used only by organizations authorized by the USPS under E670. Not all processing categories qualify for every rate. Pieces are subject to either a single minimum per piece rate or a combined piece/pound rate, depending on the weight of the individual pieces in the mailing under 5.2 or 5.3.

5.2 Minimum Per Piece Rates

The minimum per piece rates (*i.e.*, the minimum postage that must be paid for each piece) apply as follows.

a. Basic Requirement. Pieces mailed at Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route rates are subject to minimum per piece rates when they weigh no more than 3.3 ounces (.2063 pound).

b. Letters and Nonletters. In applying the minimum per piece rates, mail is categorized as either letters or nonletters, based on whether the mail meets the letter-size standard in C050, without regard to placement of the address on the mailpiece. There are two exceptions to this rule: (1) Mailers that have pieces that meet both the definition of a letter in C050 and the definition of an automation flat in C820 may choose to prepare and enter mail at an automation flat (nonletter) rate; (2) address placement is used to determine the length when applying the size standards and aspect ratio requirements to qualify for automation letter rates under C810. For this purpose, the length is considered to be the dimension parallel to the address.

c. Individual Rates. There are separate minimum per piece rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the type of mailing and the level of presort within each mailing under E620, E630, and E640. Discounted per piece rates also may be claimed for destination entry mailings (destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under E650. DDU rates are available only for mail entered at Enhanced Carrier Route or Nonprofit Enhanced Carrier Route rates. See R600 for individual per piece rates.

5.3 Piece/Pound Rates

Pieces that exceed 3.3 ounces (.2063 pound) are subject to a two-part piece/pound rate that includes a fixed charge per piece and a variable pound charge based on weight. There are separate per piece rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the type of mailing and the level of presort within each mailing under E620, E630, and E640. There are separate per pound rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) under E620, E630, and E640. Discounted per pound rates also may be claimed for destination entry mailings (destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under E650.

[Add new 5.4 and 5.5 to read as follows:]

5.4 Machinable Parcel Barcoded Discount

Machinable parcels (C050) mailed at Regular or Nonprofit rates that are prepared with barcodes under C850 and meet the eligibility requirements in E620 may qualify for a barcoded discount. Pieces eligible for a barcoded discount are also subject to a residual shape surcharge under 5.5. Pieces mailed at Enhanced Carrier Route or Nonprofit Enhanced Carrier route rates are not eligible for a barcoded discount.

5.5 Residual Shape Surcharge

Mail that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge. There is one surcharge for mail entered at Regular or Nonprofit rates and a different surcharge for mail entered at Enhanced Carrier Route or Nonprofit Enhanced Carrier Route rates.

[Redesignate E612.4.4 as 5.6, amend to provide for the residual shape surcharge, and to add as the first sentence the first sentence of previous E612.4.5 to read as follows:]

5.6 Net Postage

Postage is computed at the applicable rates on the entire mailing to be mailed at one time. The net postage rate that must be paid is either the applicable minimum per piece rate or the piece/pound rate, as reduced by any discounts for which the piece is eligible, and/or as increased by any surcharge to which the piece is subject. The net postage rate is commonly designated by the name of the primary rate category or discount (*e.g.*, Enhanced Carrier Route rate, automation letter rate, automation flat rate, Presorted rate).

[Remove E612.4.5.]

[Remove E612.4.6. This section is no longer needed because all Package Services mail may now weigh less than 16 ounces.]

[Add new heading 6.0 to read as follows:]

6.0 FEES

[Redesignate E612.4.7 as E610.6.1 and amend to change "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Redesignate E611.1.6 as 6.2; and amend by adding "(R900)" at the end of the sentence; no other changes to text.]

[Remove current E611.1.7 and 1.8.]

[Redesignate E612.4.8 as E610.7.0 and amend to change "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

[Redesignate E612.4.9 as E610.8.0, amend to change "Standard Mail (A)" to "Standard Mail," amend redesignated 8.0c for clarity, amend redesignated 8.0e to provide for use of detached address labels as previously provided in E611.1.7, amend redesignated 8.0g to incorporate former E611.1.8, redesignate 8.0j as 8.0k, and add new 8.0j to read as follows:]

8.0 PREPARATION

Each Standard Mail mailing is subject to these general standards:

a. All pieces in a mailing must be of the same processing category, except that irregular and machinable parcels may be commingled in 5-digit sacks or on 5-digit pallets.

b. Each mailing must contain at least 200 pieces or 50 pounds of pieces. See E620 for volume requirement eligibility unique to Presorted Standard rate mailings. Other volume standards also can apply, based on the rate claimed.

c. For letter-size and flat-size mail, all pieces in an automation mailing must be eligible for an automation rate. Separate automation and Presorted rate mailings of flats may be co-sacked under M910. Separate automation, Presorted, and Enhanced Carrier Route mailings of flats may be co-containerized under M920, M930 or M940.

d. All pieces in a mailing must be sorted together and marked under the standards for the rate claimed.

e. Each piece must bear the addressee's name and delivery address, including the correct ZIP Code or ZIP+4 code, unless an alternative address format is used subject to A040. Detached address labels may be used subject to A060. Pieces in automation rate mailings, upgradable nonautomation rate pieces, or pieces prepared with detached address labels are subject to additional standards.

f. Postage must be paid under P600 with precanceled stamps, postage meter, or permit imprint.

g. A postage statement, completed and signed by the mailer, using the correct USPS form or an approved facsimile, must be submitted with each mailing. In addition, mailings must be documented under P012 and the standards for the rate claimed.

h. Each piece must meet the standards for any other rate or discount claimed.

i. Any POSTNET barcode on a mailpiece must be correct for the delivery address and must meet the standards in C840 and A950.

j. Any postal routing code barcode on a machinable parcel must be correct for the delivery address and must meet the standards in C850.

k. Mailings must be deposited at a business mail entry unit of the post office where the postage permit or license is held and the annual bulk fee paid, unless deposit elsewhere is permitted by standard.

[Redesignate E612.4.10 as E610.9.0 and revise to allow use of certain special services for matter subject to the residual shape surcharge and to specify the conditions for such use to read as follows:]

9.0 SPECIAL SERVICES

9.1 Eligible Matter

Standard Mail that is subject to the residual shape surcharge (pieces prepared as parcels or that are not letter-size or flat-size as defined in C050) may receive the following additional special services subject to the standards for the special service and upon payment of the appropriate special service fees: bulk insurance (S913), return receipt for merchandise (S917), and electronic option Delivery Confirmation (S918). No other special services may be used with Standard Mail. Standard Mail that is letter-size or flat-size (C050) and is prepared as letter-size or flat-size mail is not eligible for any special services. Machinable parcels using Bulk Parcel Return Service are not eligible for any special services. Pieces mailed with detached address labels under A060 is not eligible for any special services.

9.2 Additional Preparation Requirements

Pieces prepared using special services must bear a return address under A010 and must bear an ancillary service endorsement (F010) that results in return of the mailpiece to the sender if undeliverable as addressed (Address Service Requested, Forwarding Service Requested, or Return Service Requested).

[Revise the heading of E620 to read as follows:]

E620 Presorted Rates

[Revise the heading of 1.0 to read as follows:]

1.0 BASIC STANDARDS

[Revise the heading of 1.1 to read as follows:]

1.1 General

[Amend 1.1 by replacing in the first sentence of 1.1 and in 1.1b "Standard Mail (A)" with "Standard Mail," and by replacing in 1.1a "E611 and E612" with "E610"; no other changes to text.]

* * * * *

[Amend 1.3 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes in text.]

* * * * *

[Redesignate 1.5 as 2.0 and amend the heading by removing the word "Presorted"; no other changes to text.]

[Redesignate 1.6 as 3.0; no other changes to text.]

[Add 4.0 to read as follows:]

4.0 BARCODED DISCOUNT

The barcoded discount applies to Presorted rate machinable parcels (C050) that are subject to the residual shape surcharge in 3.0, bear a correct, readable barcode under C850 for the ZIP Code shown in the delivery address; and are prepared as machinable parcels under M045 or M610. Machinable parcels entered at the DSCF rates are eligible for the barcoded discount only if prepared in 5-digit sacks or on 5-digit pallets (*i.e.*, are not prepared in ASF, BMC, or mixed BMC sacks or pallets). Machinable parcels claiming the DBMC rates that are entered at an ASF are not eligible for the barcoded discount except that mail entered at the Phoenix, AZ, ASF may claim the barcoded discount because that facility uses barcode scanning equipment. See P600 for postage payment standards.

[Redesignate current E630.1.0 through E630.7.0 as E711 through E715, as directed later in this document.]

[Add new E630 to read as follows:]

E630 Enhanced Carrier Route Rates

1.0 BASIC STANDARDS

[Redesignate E620.2.1 as E630.1.1 and amend 1.1a by changing "E611 and E612" to "E610"; no other changes to text.]

[Redesignate E610.2.2 through 2.7 as E630.1.2 through 1.7, respectively.]

[Add new heading 2.0 to read as follows:]

2.0 Rates

[Redesignate E620.2.8 through E620.2.10 as E630.2.1 through E630.2.3, respectively and amend

redesignated 2.3 by changing "2.6 and 2.7" to "1.6 and 1.7"; no other changes to text.]

* * * * *

[Amend the heading of E640 by removing "Standard Mail (A)" to read as follows:]

E640 Automation Rates

1.0 REGULAR AND NONPROFIT RATES

1.1 All Pieces

[Amend the introductory sentence by replacing "Standard Mail (A)" with "Standard Mail"; amend 1.1a by replacing "E611 and E612" with "E610," no other changes to text.]

* * * * *

2.0 ENHANCED CARRIER ROUTE RATES

2.1 All Pieces

[Amend 2.1a by replacing "E611 and E612" with "E610," no other changes to text.]

* * * * *

E650 Destination Entry

[Remove the heading "E651, Regular, Nonprofit, and Enhanced Carrier Route Standard Mail."]

1.0 BASIC STANDARDS

[Amend 1.1 by replacing "E611 and E612" with "E610'; no other changes to text.]

* * * * *

[Amend 1.4 by replacing "Standard Mail (A)" with "Standard Mail."]

[Amend 1.5 by replacing "P750" with "P950."]

* * * * *

2.0 VERIFICATION

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[Amend 2.2 by replacing "P750" with "P950."]

* * * * *

3.0 DEPOSIT

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[Amend 3.3d by changing "Standard Mail (A)" to "Standard Mail" and by changing "Standard Mail (B)" to "Package Services mail."]

* * * * *

[Amend 3.10 by changing "Standard Mail (A)" to "Standard Mail."]

* * * * *

7.0 DDU DISCOUNT

[Amend 7.1 by changing "Standard Mail (A)" to "Standard Mail."]

* * * * *

[Redesignate E652 as E751. Amend E751 as specified later in this document.]

E670 Nonprofit Standard Mail

1.0 BASIC STANDARDS

* * * * *

[Amend 1.2 by replacing "P750" with "P950."]

[Amend 1.3 by replacing "E611 and E612" with "E610."]

* * * * *

3.0 QUALIFIED POLITICAL COMMITTEES AND STATE OR LOCAL VOTING REGISTRATION OFFICIALS

* * * * *

[Amend 3.3 by replacing "Standard Mail (A)" with "Standard Mail."]

* * * * *

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

[Amend 5.4d(2) by replacing "Standard Mail (A)" with "Standard Mail."]

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[Amend 5.6a by replacing "Standard Mail (A)" with "Standard Mail."]

* * * * *

[Amend 5.12 by replacing "Standard Mail (A)" with "Standard Mail."]

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9.0 MAILING WHILE APPLICATION PENDING

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[Amend 9.2 by replacing "Standard Mail (A)" with "Standard Mail."]

* * * * *

[Add new E700 as follows:]

E700 Package Services Mail

[Matter pertaining to only Package Services (formerly Standard Mail (B)) in current E611 and E613 has been consolidated, reorganized, and added as new E710. Unless otherwise indicated by the amend/revise instructions below, there are no changes to the content of these sections. They are reproduced here to assist in understanding the new organization.]

E710 Basic Standards

1.0 BASIC INFORMATION

[Redesignate E611.1.1 as E710.1.1 and amend by replacing "Standard Mail" with "Package Services" and including Package Services subclasses to read as follows:]

1.1 Definition

Package Services mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (unless permitted or required by standard). Package Services mail includes matter formerly classified as Standard Mail (B). There are four subclasses of Package Services mail: Parcel Post, Bound Printed Matter, Media Mail (formerly Special Standard), and Library Mail. Information on specific eligibility requirements to qualify for rates under each of the four subclasses is found in E711, E712, E713, and E714.

[Redesignate E613.1.0 as E710.1.2 and amend by eliminating the minimum weight of 1 pound and replacing "Special Standard Mail" with "Media Mail" to read as follows:]

1.2 Weight

There is no minimum weight for Package Services. A single piece of Parcel Post, Media Mail, and Library Mail can weigh no more than 70 pounds. A single piece of Bound Printed Matter can weigh no more than 15 pounds.

[Redesignate existing E611.1.2 as E710.1.3 and amend by changing the class name from "Standard Mail" to "Package Services" and by deleting references to electronic documents to read as follows:]

1.3 Postal Inspection

Package Services mail is not sealed against postal inspection. Regardless of physical closure, the mailing of articles at Package Services rates constitutes consent by the mailer to postal inspection of the contents.

[Redesignate existing E611.1.3 as E710.1.4 and amend by changing "Standard Mail (A)" to "Standard Mail" in 1.4j; no other changes to text.]

[Redesignate existing E611.1.4 as E710.1.5 and amend by replacing "Standard Mail" with "Package Services"; no other changes to text.]

[Redesignate existing E611.1.5 as E710.1.6 and remove references to "Standard Mail (A)" and "Standard Mail" to read as follows:]

1.6 Incidental First-Class Attachments and Enclosures

Incidental First-Class matter may be enclosed in or attached to any Package Services piece without payment of First-Class postage. An incidental First-Class attachment or enclosure must be matter that, if mailed separately, would require First-Class postage, is closely associated with but secondary to the host piece, and is prepared so as not to interfere with postal processing. An incidental First-Class attachment or enclosure may be a bill for the product or publication, a statement of account for past products or publications, or a personal message or greeting included with a product, publication, or parcel. Postage at the Package Services rate for the host piece is based on the combined weight of the host piece and the incidental First-Class attachment or enclosure.

[Redesignate E613.2.0 as E710.2.0.]

2.0 ZONED RATES

[Redesignate existing E613.2.1 as E710.2.1 and amend by replacing "Standard Mail" with "Package Services"; no other changes to text.]

[Redesignate existing E613.2.2 as E710.2.2, amend by changing "Standard Mail" to "Package Services" in the first sentence, and amend 2.2c by inserting "Parcel Post Intra-BMC" to read as follows:]

2.2 Redirected Mailings

A mailer who presents large mailings of zoned Package Services mail may be authorized or directed to deposit such mailings at another postal facility when processing or logistics make such an alternative desirable for the USPS, subject to these conditions:

a. Zoned postage need not be recomputed if both the original post office of mailing and the alternative facility use the same zone chart for computing zoned postage, based on the 3-digit prefix of their ZIP Codes.

b. Postage must be recomputed on pieces in mailings redirected to a postal facility that uses a different zone chart for computing zoned postage.

c. Postage for pieces claimed at the Parcel Post Intra-BMC local zone rates must be recomputed at the applicable zone rate for the alternative postal facility. Postage also may be recomputed for other pieces that are ineligible for the Parcel Post Intra-BMC local zone rates but could become eligible at the postal facility to which the mailing is redirected.

[Redesignate existing E613.2.3 as E710.2.3 and amend by changing "Standard Mail" to "Package Services"; no other changes.]

[Redesignate E613.3.0 as E710.3.0 and revise to read as follows:]

3.0 ADDRESSING

3.1 Delivery and Return Address

All Package Services mail must bear a delivery address. Except for single-piece rate Parcel Post, the delivery address on each piece must include the correct ZIP Code or ZIP+4 code. Alternative address formats or detached address labels may be used, subject to **A040** or **A060**. All Package Services mail must bear the sender's return address.

[Redesignate E611.1.6 as E710.3.2 and amend title by adding "Fees" to read as follows:]

3.2 Address Correction Fees

The fee for manual or automated address correction service is charged per notice issued (R700).

[Redesignate E611.1.8 as E710.4.0 and amend for clarity to read as follows:]

4.0 DOCUMENTATION

Each mailing must be accompanied by a correct, completed USPS postage statement form, or approved facsimile, signed by the mailer. A postage statement is not required for a Package Services mailing when the correct postage at the single-piece rate is affixed to each piece. Additional supporting documentation may be required by the standards for the rate claimed or postage payment method used.

[Add new E711 to read as follows:]

E711 Parcel Post

[Redesignate E630.1.0 as E711.1.0 and revise to read as follows:]

1.0 DEFINITION

Parcel Post (including Parcel Select) is Package Services mail that is not mailed as Bound Printed Matter, Media Mail, or Library Mail. Any Package Services matter may be mailed at Parcel Post rates, subject to the basic standards in E710.

[Add new E711.2.0 to read as follows:]

2.0 BASIC STANDARDS

[Redesignate E630.1.2 as E711.2.1 and change "Standard Mail (A)" to "Standard Mail" and change reference "E611" to "E710" to read as follows:]

2.1 Enclosures

Parcel Post (including Parcel Select) may contain any printed matter mailable as Standard Mail, in addition to the enclosures and additions listed in E710.

[Redesignate E630.1.3 as E711.2.2 and amend to add the Intra-BMC and Parcel Select-DBMC nonmachinable surcharges to read as follows:]

2.2 Rate Eligibility

There are five Parcel Post (including Parcel Select) rate categories: Intra-BMC, Inter-BMC, destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU). Destination entry rates are named Parcel Select. Intra-BMC and Inter-BMC Parcel Post rates and DBMC Parcel Select rates are calculated based on the zone to which the parcel is addressed and the weight of the parcel. DSCF and DDU Parcel Select rates are calculated based on the weight of the parcel. Generally, Intra-BMC rates apply to parcels mailed and delivered within the same BMC service area and Inter-BMC rates apply to parcels mailed in one BMC service area and delivered in a different BMC service area. Specific standards for Inter-BMC and Intra-BMC rates and applicable discounts are described below. Generally, to qualify for the Parcel Select DBMC, DSCF, or DDU rates, mailers must enter their parcels at the destination BMC, SCF, or delivery unit postal facility that will process or deliver the parcels. (See E750 for destination entry requirements.) Inter-BMC, Intra-BMC, and Parcel Select-DBMC Parcel Post is subject to a nonmachinable surcharge if the criteria specified in C050.4.1 for machinable parcels are not met. Additional requirements for Parcel Post rates and discounts are as follows:

a. Intra-BMC rates apply to all Parcel Post that originates and destinates in the service area of the same BMC or ASF. Intra-BMC rates also apply to Parcel Post that originates and destinates in the same state for Alaska and Hawaii and in the same territory for Puerto Rico. See Exhibit 2.2. Nonmachinable pieces (C050.4.1 and C700) mailed at Intra-BMC rates are subject to a nonmachinable surcharge in addition to the postage rate.

b. Inter-BMC rates apply to all Parcel Post that originates in the service area of a BMC or ASF or in Alaska, Hawaii, or Puerto Rico and destinates outside that area, state, or territory. Nonmachinable pieces (C050.4.1 and C700) mailed at Inter-BMC rates are subject to a nonmachinable surcharge in addition to the postage rate.

c. Parcel Post for which OBMC Presort, BMC Presort, and barcoded discounts are claimed and Parcel Post that is mailed at a destination entry rate (Parcel Select-DBMC, -DSCF, -DDU (E751)) must be part of a mailing of 50 or more Parcel Post rate pieces. Eligibility for one of those rates or discounts does not require a separate 50 qualifying pieces per rate or per discount. Eligibility for more than one of those rates or discounts in the same Parcel Post mailing is possible, provided there are a total of at least 50 pieces of mail qualifying for any or all Parcel Post rates in the mailing and all other preparation and eligibility requirements for the rates or discounts are met.

d. The BMC Presort per piece discount applies to pieces of inter-BMC Parcel Post sorted to BMC destinations under L601 for machinable pieces and sorted to BMC and ASF destinations for nonmachinable pieces under L605. To qualify, machinable pieces must be placed in pallet boxes on pallets, and nonmachinable pieces must be placed directly on pallets under M041 and

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M045. The mail must be entered at a postal facility that is not a BMC and must be part of a mailing containing 50 or more Parcel Post rate pieces.

e. The origin bulk mail center (OBMC) Presort per piece discount applies to pieces of Inter-BMC Parcel Post sorted to BMC destinations under L601 for machinable pieces and sorted to BMC and ASF destinations for nonmachinable pieces under L605. To qualify, machinable pieces must be placed in pallet boxes on pallets; and nonmachinable pieces must be placed directly on pallets under M041 and M045. The mail must be entered at a BMC listed in L601 and must be part of a mailing containing 50 or more Parcel Post rate pieces.

f. The barcoded discount applies to Parcel Post (including Parcel Select) machinable parcels (C050.4.1) that bear a correct, readable barcode under C850 for the ZIP Code of the delivery address; are part of a mailing of 50 or more Parcel Post (including Parcel Select) rate pieces; are not mailed at the DSCF or DDU rates; and, if claiming the DBMC rates, are not entered at an ASF. An exception is that properly prepared machinable pieces of DBMC rate mail entered at the Phoenix, AZ, ASF may claim the barcoded discount because that facility uses barcode scanning equipment.

g. The applicable oversized rate applies to pieces that measure over 108 inches but that are not more than 130 inches in combined length and girth.

h. The balloon rate applies to pieces that measure over 84 inches but that are not more than 108 inches in combined length and girth and also weigh less than 15 pounds; they are subject to the rate equal to that of a 15-pound parcel for the zone to which the parcel is addressed.

EXHIBIT 2.2.—BMC/ASF SERVICE AREAS

Service area	ZIP Code areas served
BMC:	
New Jersey	005, 068–079, 085–098, 100–119, 124–127, 340.
Springfield	010–067, 120–123, 128, 129.
Philadelphia	080–084, 137–139, 169–199.
Pittsburgh	150–168, 260–266, 439–447.
Washington	200–212, 214–239, 244, 254, 267, 268.
Greensboro	240–243, 245–249, 270–297, 376.
Cincinnati	250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474.
Atlanta	298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399.
Jacksonville	299, 313–316, 320–339, 341, 342, 344, 346, 347, 349.
Memphis	369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729.
St. Louis	420, 423, 424, 475–479, 614–620, 622–631, 633–639.
Detroit	434–436, 465–468, 480–497.
Chicago	463, 464, 530–532, 534, 535, 537–539, 600–611, 613.
Minneapolis/St. Paul	498, 499, 540–551, 553–564, 566.
Des Moines	500–516, 520–528, 612, 680, 681, 683–689.
Kansas City	640, 641, 644–658, 660–662, 664–679, 739.
Denver	690–693, 800–816, 820, 822–831.
Dallas	706, 710–712, 718, 733, 747, 750–799, 885.
Seattle	835, 838, 970–978, 980–986, 988–994.
Los Angeles	889–891, 893, 900–908, 910–928, 930–935.
San Francisco	894, 895, 897, 936–966.
ASF:	
Buffalo	130–136, 140–149.
Fargo	565, 567, 580–588.
Sioux Falls	570–577.
Billings	590–599, 821.
Oklahoma City	730, 731, 734–738, 740, 741, 743–746, 748, 749.
Salt Lake City	832–834, 836, 837, 840–847, 898, 979.
Phoenix	850, 852, 853, 855–857, 859, 860, 863, 864.
Albuquerque	865, 870–875, 877–884.
Other:	
Puerto Rico	006–009.
Hawaii	967–969.
Alaska	995–999.

[Redesignate E630.1.5 as E711.2.3 and change the reference in the last sentence to R700; no other changes to text.]

* * * * *

[Redesignate E630.2.0 as E712 and revise in its entirety as follows:]

E712 Bound Printed Matter

1.0 BASIC STANDARDS

1.1 Description

Bound Printed Matter (BPM) is a subclass of Package Services. BPM must:

a. Meet the basic standards for Package Services mail in E710.

b. Weigh no more than 15 pounds.

c. Consist of advertising, promotional, directory, or editorial material (or any combination of such material).

d. Be securely bound by permanent fastenings such as staples, spiral binding, glue, or stitching. Loose-leaf binders and similar fastenings are not considered permanent.

e. Consist of sheets of which at least 90% are imprinted by any process other than handwriting or typewriting with words, letters, characters, figures, or images (or any combination of them).

f. Not have the nature of personal correspondence.

g. Not be stationery, such as pads of blank printed forms.

1.2 Enclosures

In addition to the basic standards in E710, BPM may have the following additions and enclosures:

a. Any printed matter mailable as Standard Mail.

b. A merchandise sample attached to a bound page or to a permissible loose enclosure, if the sample represents only an incidental portion of the BPM piece and if the sample is not provided exclusively or primarily as a premium or an inducement promoting the sale of the BPM piece. The sample may be identified as a "free gift" when it is clear that the sample is offered to the addressee to market the gift product; such marketing may also promote the sale of the BPM.

1.3 Nonidentical-Weight Pieces

Mailings may contain nonidentical-weight pieces only if the correct postage is affixed to each piece or if the RCSC serving the post office of mailing has authorized payment of postage by permit imprint under P910 or P930.

1.4 POSTNET Barcodes on Flats

Addresses on BPM flats may include an accurate ZIP+4 or delivery point barcode that meets the standards in C840. There are no automation discounts for BPM flats. Pieces within a package must be either 100 percent barcoded or nonbarcoded.

2.0 RATES

BPM rates are based on the weight of a single addressed piece or 1 pound, whichever is higher, and the zone (where applicable) to which the piece is addressed. Rate categories are as follows:

a. Single-Piece Rate. The single-piece rate applies to BPM not mailed at the Presorted rate or Carrier Route rate.

b. Presorted Rate. The Presorted rate applies to BPM prepared in a mailing of at least 300 pieces, prepared and presorted as specified in M045 and M722.

c. Carrier Route Rate. The carrier route rate applies to BPM prepared in a mailing of at least 300 pieces presorted to carrier routes, prepared and presorted as specified in M045 and M723.

d. Barcoded Discount. The barcoded discount applies to BPM machinable parcels (C050.4.1) that bear a correct, readable barcode under C850 for the ZIP Code of the delivery address and are part of a single-piece rate mailing of 50 or more BPM pieces or are part of a Presorted rate mailing of at least 300 BPM pieces. Matter mailed at Presorted rates must be prepared under the machinable parcel preparation standards in M045 and M720. The barcoded discount is not available for pieces mailed at Presorted DDU or DSCF rates, or for Presorted DBMC rate mailings entered at an ASF other than Phoenix, AZ, ASF. Carrier Route rate mail is not eligible for the barcoded discount.

3.0 ADDITIONAL STANDARDS FOR PRESORTED RATES

3.1 ZIP Code Accuracy

All 5-digit ZIP Codes included in addresses on pieces claimed at Presorted rates must be verified and corrected within 12 months before the mailing date using a USPS-approved method. The mailer must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not a specific list or mailing. An address meeting this standard may be used in mailings at any other rates to which the standard applies during the 12-month period after its most recent update.

3.2 Preparation

Pieces claiming the Presorted rates must be prepared under the applicable standards in M045 or M722.

4.0 ADDITIONAL STANDARDS FOR CARRIER ROUTE RATES

4.1 Carrier Route Information

Except for mailings prepared with a simplified address format under A040, carrier route codes must be applied to mailings using CASS-certified software and the current USPS Carrier Route Product, or another AIS product containing carrier route information, subject to A930 and A950. The carrier route information must be updated within 90 days before the mailing date.

4.2 Preparation

Pieces claiming the carrier route rates must be prepared under the applicable standards in M045 or M723.

5.0 ADDITIONAL STANDARDS FOR DESTINATION ENTRY RATES

Eligibility standards for Presorted and Carrier Route Destination Delivery Unit (DDU) rates, Destination Sectional Center Facility (DSCF) rates, and Destination Bulk Mail Center (DBMC) rates are in E752.

6.0 ADDITIONAL STANDARDS FOR BEDLOADED MAILINGS

Bedloaded packages are permitted only when prepared for and entered at DDU rates. If prepared, bedloaded packages of BPM are required to be prepared under the sortation standards for flats or irregular parcels, as applicable, and are not eligible for barcoded discounts.

* * * * *

[Add new E713 as follows:]

E713 Media Mail

[Redesignate E630.3.1 as E713.1.0 and change the heading, class, subclass names, section order, and references to read as follows:]

1.0 RATE ELIGIBILITY

Media Mail is Package Services matter that meets the standards in E710 and those below. Media Mail rates are based on the weight of the piece without regard to zone. The rate categories and discounts are as follows:

a. Single-Piece Rate. The single-piece rate applies to Media Mail not mailed at a 5-digit or BMC presort rate.

b. 5-Digit Presort Rate. The 5-digit Presort rate applies to a mailing of at least 500 pieces of Media Mail that meets the other requirements of 4.0 and that is prepared and presorted to 5-digit ZIP Codes as specified in M730 or M041 and M045.

c. BMC Presort Rate. The BMC Presort rate applies to a mailing of at least 500 pieces of Media Mail that meets the other requirements of 4.0 and that is prepared and presorted to bulk mail centers as specified in M730 or M041 and M045.

d. Barcoded Discount. The barcoded discount applies to Media Mail machinable parcels (C050) that are included in a mailing of at least 50 pieces of Media Mail. The pieces must be entered either at single-piece rates or BMC presort rates and bear a correct, readable barcode for the ZIP Code shown in the delivery address as required by C850. The barcoded discount is not available for pieces mailed at Media Mail 5-digit Presort rates.

[Add new E713.2.0 to read as follows:]

2.0 QUALIFICATION

[Redesignate E630.3.2 as E713.2.1 and change the subclass name to Media Mail; no other changes to text.]

[Redesignate E630.3.3 as E713.2.2, change the class name from "Standard Mail (A)" to "Standard Mail" and the subclass name to Media Mail; no other changes to text.]

[Redesignate E630.3.4 as E713.2.3 and change the subclass name and cross references to read as follows:]

2.3 Enclosures in Books

Enclosures in books mailed at Media Mail rates are subject to these additional standards:

a. Either one envelope or one addressed postcard may be bound into the pages of a book. If also serving as an order form, the envelope or card may be in addition to the order form permitted by 2.3b.

b. One order form may be bound into the pages of a book. If also serving as an envelope or postcard, the order form may be in addition to the envelope or card permitted by 2.3a.

c. Announcements of books may appear as book pages. These announcements must be incidental and exclusively devoted to books, without extraneous advertising of book-related or other materials or services. Announcements may fully describe the conditions and methods of ordering books and may contain ordering instructions for use with a separate order form. Up to three of these announcements may contain as part of their format a single order form, which may also serve as a postcard. The order forms permitted with these announcements are in addition to, and not in place of, order forms that may be enclosed under 2.3a or 2.3b.

[Redesignate E630.4.0 as E713.3.0 and change the subclass name to read as follows:]

3.0 PRESORTED MEDIA MAIL

[Redesignate E630.4.1 as E713.3.1 and change the subclass name and change the cross reference to M730 from M630; no other changes to text.]

[Redesignate E630.4.2 as E713.3.2 and change the subclass name; no other changes to text.]

[Redesignate E630.4.3 as E713.3.3 and change the subclass name; no other changes to text.]

[Redesignate E630.4.4 as E713.3.4 and eliminate 1,000 cubic inches as a minimum quantity to read as follows:]

3.4 Definitions

For this standard:

a. Full sack means a sack containing at least eight pieces or a quantity of pieces weighing from 20 to 70 pounds.

b. Substantially full sack means either at least four pieces or a quantity of pieces weighing from 20 to 70 pounds.

[Redesignate E630.4.5 as E713.3.5, change the subclass name, change "bundles" to "packages," and remove "1,000 cubic inches" to read as follows:]

3.5 5-Digit Rate

To qualify for the Media Mail 5-digit presort rate, a piece must be in a mailing of at least 500 Media Mail pieces prepared and sorted either under M730 to full 5-digit sacks or under M045 to 5-digit pallets. These conditions also apply:

a. Mailings of at least 500 nonmachinable outside parcels may qualify for the Media Mail 5-digit presort rate if prepared to preserve sortation by 5-digit ZIP Code as prescribed by the postmaster of the mailing office. The postmaster may require 24-hour notice before the mailing is presented.

b. Mailings prepared as palletized packages must consist of 5-digit packages, each containing at least eight pieces or weighing 20 pounds, whichever occurs first. No package may exceed 40 pounds. If there are more than 20 pounds of mail to a 5-digit destination, the mailer must prepare the minimum number of packages that weigh from 20 to 40 pounds each.

[Redesignate E630.4.6 as E713.3.6, change the subclass name, change "bundles" to "packages," and remove "1,000 cubic inches" to read as follows:]

3.6 BMC Rate

To qualify for the Media Mail BMC presort rate, a piece must be in a mailing of at least 500 pieces of Media Mail prepared and sorted either under M730 to full or substantially full BMC sacks or to BMC pallets under M045. These conditions also apply:

a. Mailings of at least 500 nonmachinable outside parcels may qualify for the Media Mail BMC presort rate if prepared to preserve sortation by BMC as prescribed by the postmaster of the mailing office. The postmaster may require 24-hour notice before the mailing is presented.

b. Mailings prepared as palletized packages must consist of BMC packages, each containing at least eight pieces or weighing 20 pounds, whichever comes first. No package may exceed 40 pounds. If there are more than 20 pounds of mail to a BMC destination, the mailer must prepare the minimum number of packages that weigh from 20 to 40 pounds each.

[Add new E714 as follows:]

E714 Library Mail

[Redesignate E630.5.1 as E714.1.0 and amend by changing the class name to read as follows:]

1.0 RATE ELIGIBILITY

Library Mail is Package Services matter meeting the standards in E710 and those below. Library Mail rates are based on the weight of the piece without regard to zone. The rate categories and discounts are as follows:

a. Single-Piece Rate. The single-piece rate applies to Library Mail not mailed at a 5-digit or BMC rate.

b. 5-Digit Presort Rate. The 5-digit Presort rate applies to a mailing of at least 500 pieces of Library Mail that meets the other requirements of 3.0 and is prepared and presorted to 5-digit ZIP Codes as specified in M740 or M041 and M045.

c. BMC Presort Rate. The BMC Presort rate applies to a mailing of at least 500 pieces of Library Mail that meets the other requirements of 3.0 and is prepared and presorted to bulk mail centers as specified in M740 or M041 and M045.

d. Barcoded Discount. The barcoded discount applies to Library Mail machinable parcels (C050) that are included in a mailing of at least 50 pieces of Library Mail. The pieces must be entered either at single-piece rates or BMC Presort rates and bear a correct, readable barcode for the ZIP Code shown in the delivery address as required by C850. The barcoded discount is not available for pieces mailed at Library Mail 5-digit Presort rates.

[Add new E714.2.0 that follows:]

2.0 QUALIFICATION

[Redesignate E630.5.2 as E714.2.1 and amend the heading and references to read as follows:]

2.1 Sender, Recipient, and Contents

Each piece must show in the address or return address the name of a school, college, university, public library, museum, or herbarium or the name of a nonprofit religious, educational, scientific, philanthropic (charitable), agricultural, labor, veterans, or fraternal organization or association. For Library Mail standards, these nonprofit organizations are defined in E670. Only the articles described in 2.2 and 2.3 may be mailed at the Library Mail rate.

[Redesignate E630.5.3 as E714.2.2 and revise the heading to read as follows; no change to text:]

2.2 Qualified Mailings Between Entities

[Redesignate E630.5.4 as E714.2.3 and revise the heading to read as follows; no change to text.]

2.3 Qualified Mailings "To" or "From"

[Redesignate E630.5.5 as E714.2.4 and change the cross reference from E611 to E710; no other changes to text.]

[Redesignate E630.5.6 as E714.2.5 and change the cross reference from E611 to E710; no other changes to text.]

[Redesignate E630.6.0 as E714.3.0 and change the cross reference from M630 to M740; no other changes to text.]

* * * * *

[Redesignate E630.7.0 as new E715.]

E715 Bulk Parcel Post

[Reserved]

* * * * *

[Add new E750 as follows:]

E750 Destination Entry

[Add new heading E751 to read as follows:]

E751 Parcel Select

[Redesignate E652.1.0 as E751.1.0.]

1.0 BASIC STANDARDS

1.1 Definitions

[Amend 1.1 to change cross reference M630 to M710; no other changes to text.]

[Amend 1.2c to add provisions for PVDS mailings to read as follows:]

1.2 General

For Parcel Post mailings claimed at DBMC, DSCF, or DDU rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following criteria:

* * * * *

c. Be part of a single mailing of 50 or more pieces that are eligible for and claimed at any Parcel Post rate or rates. When Parcel Post mailings are submitted under PVDS procedures, mailers may use the total of all line items for all destinations on a PVDS register or PVDS postage statement to meet the respective 50-piece minimum volume requirement for destination entry rate mailings. This means that a mailer may enter fewer than 50 pieces at an individual destination, provided there is a total of at least 50 Parcel Post pieces for all of the entry points for that single mailing job listed on the PVDS register or PVDS postage statement.

1.3 DBMC Rates

[Amend 1.3 to replace M630 with M710; no other changes to text.]

1.4 DSCF and DDU Rates

[Amend 1.4a and b to replace M630 with M710; no other changes to text.]

1.5 Postage Payment

[Amend 1.5 to change class name from "Standard Mail (B)" to "Package Services" and change P750 to P950 as cross reference for plant-verified drop shipments; no other changes to text.]

* * * * *

[Redesignate E652.2.0 as E751.2.0.]

2.0 PREPARATION

* * * * *

2.2 Containers

[Amend 2.2a and b to replace the two references to M630 with M710 and M722, respectively; amend 2.2c to replace M630 with M710; no other changes to text.]

[Redesignate E652.3.0 as E751.3.0; no change to text.]

[Redesignate E652.4.0 through 4.13 as E751.4.0 through 4.13 and amend to read as follows:]

4.0 DEPOSIT

* * * * *

4.2 Mail Separation and Presentation

[Amend 4.2 to change the reference from P750 to P950; in 4.2a and b change references from M630 to M710; and in 4.2b change the references from P710, P720, and P730 to P910, P920, and P930, respectively; no other changes to text.]

* * * * *

4.4 Appointments

[Amend 4.4a to clarify that an exception exists for shipments containing 100% Periodicals and shipments of perishables, and amend 4.4d by changing "Standard Mail (B)" to "Package Services" to read as follows:]

Appointments must be made for destination entry rate mail as follows:

a. Except for local mailers, for shipments containing 100% Periodicals mail and for mailings of perishable commodities (C022) under 4.5, appointments for deposit of destination entry rate mail at BMCs, ASFs, and SCFs must be scheduled through the appropriate appointment control center at least one day in advance. * * *

* * * * *

d. When Periodicals are transported together with Standard Mail or Package Services mail as a mixed load (E250), an appointment must be obtained for deposit at a destination entry facility.

4.5 Exceptions to Scheduling Standard

[Redesignate the text of current 4.5 as 4.5a and add new 4.5b and c to clarify that scheduling exceptions are also made for shipments containing 100% Periodicals and shipments of perishables to read as follows:]

a. The scheduling standard in 4.4 does not apply when a mailer deposits mailings for verification and acceptance at the local post office serving the facility where the mail was prepared, if the mailings are not verified under a plant load authorization or plant-verified drop shipment postage payment system authorization. Under this exception, the mailer may claim the DBMC rates for mailings or portions of such mailings deposited at the local post office if the local post office is the DBMC/ASF or designated SCF that meets the application standards.

b. Exceptions to the scheduling standard are made for shipments of products recognized by the Postal Service as perishables under C020. While an appointment is not required for shipments of perishables, the destination facility must be notified at least 24 hours in advance of deposit to facilitate timely handling of the load.

c. No appointment is required for shipments containing 100% Periodicals mail, nor is notification to the destination facility of their arrival required. An advance notice of 24 hours is recommended to facilitate the development of facility unloading schedules.

* * * * *

[Redesignate E652.5.0 as E751.5.0; no changes to text.]

[Redesignate E652.6.0 and Exhibit E652.6.0 as E751.6.0 and Exhibit E751.6.0; no changes to text.]

[Redesignate E652.7.0 and Exhibit E652.7.0 as E751.7.0 and Exhibit E751.7.0 and change the class name to Package Services; no other changes to text.]

[Redesignate E652.8.0 and Exhibit E652.8.0 as E751.8.0 and Exhibit E751.8.0; no other changes to text.]

[Add new E752 to read as follows:]

E752 Bound Printed Matter

1.0 BASIC STANDARDS

1.1 General

Destination entry rates apply to Presorted and Carrier Route Bound Printed Matter (BPM) that is deposited at a destination bulk mail center (DBMC), destination sectional center facility (DSCF), or destination delivery unit (DDU) as specified below. Eligibility for a destination entry rate is determined by the sort level, processing category of the mail, and the type of container the mail is in (*i.e.*, sacked or palletized). Each piece can claim only one destination entry rate; an individual pallet may contain pieces claimed at different destination entry rates. There are no destination entry rates for single-piece BPM.

1.2 Volume

Each destination entry rate mailing must contain at least 300 pieces of Presorted BPM or 300 pieces of Carrier Route BPM. Each group of destination entry rate pieces prepared for deposit at different destination post offices must be presented as separate mailings meeting separate minimum volume

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requirements. Separate Presorted and Carrier Route BPM mailings may be co-palletized under M041 and M045. Pieces deposited at the same postal facility, but claimed at different destination entry rates, may be included in a single mailing and reported on the same postage statement (subject to one minimum volume requirement), if the destination entry post office is the proper facility for claiming each of the destination entry discounts. Alternatively, when Presorted BPM or Carrier Route BPM mailings are submitted under PVDS procedures, mailers may use the total of all line items for all destinations on a PVDS register or PVDS postage statement to meet the 300-piece minimum volume requirements for Presorted and Carrier Route mailings. This means that a mailer may enter fewer than 300 pieces per Presorted or Carrier Route mailing at an individual destination, provided there is a total of at least 300 Presorted rate pieces and/or 300 Carrier Route rate pieces for all of the entry points for that single mailing job listed on the PVDS register or PVDS postage statement.

1.3 Postage

Postage payment for destination entry mailings is subject to the same standards that apply generally to BPM. Postage and fees are paid to the post office that verifies the mailings.

1.4 Mailing Fee

A destination entry mailing fee (R700) must be paid once each 12-month period at each postal facility where the mailing(s) are verified. The fee may be paid in advance only for the next 12-month period and only during the last 60 days of the current service period. The fee charged is that in effect on the date of payment.

1.5 Documentation

Each mailing must be accompanied by the appropriate Form 3605 and, if applicable, Form 8125. No additional documentation is required for destination entry rates.

1.6 Plant Loads

Plant load mailings, including expedited plant load shipments, are not eligible for destination entry discounts.

2.0 DESTINATION BULK MAIL CENTER (DBMC) RATES

2.1 General Eligibility

Pieces in a mailing meeting the standards in 1.0, 2.0, and 5.0 through 7.0 are eligible for the DBMC rate when they meet all of the following conditions:

a. Are eligible for and prepared to qualify for Presorted or Carrier Route rates, subject to the corresponding standards for those rates.

b. Are deposited at a BMC or ASF.

c. Are addressed for delivery to one of the 3-digit ZIP Codes served by the BMC or ASF where deposited that are listed in Exhibit E751.1.3.

d. Are placed in a sack or pallet that is labeled to the BMC or ASF where deposited, or labeled to a postal facility within that BMC's or ASF's service area (see Exhibit E751.1.3).

2.2 Presorted Flats

Presorted flats in sacks or on pallets at all sort levels may claim DBMC rates. Separate mixed ADC sacks must be prepared for flats eligible for and claimed at the DBMC rate and for flats not claimed at the DBMC rate. Use the "label to" ZIP Code of the ADC to assign ADC packages to the respective mixed ADC sack. Use the address on the mailpieces to assign pieces to the respective mixed ADC package. All pieces in an ADC sack or in a palletized ADC package are eligible for the DBMC discount if the ADC facility ZIP Code (as shown in Line 1 of the corresponding sack label or the ADC facility that is the destination of the palletized ADC package as would be shown on an ADC sack label for that facility using DMM L004, Column B) is within the service area of the BMC or ASF at which the sack is deposited. Mail must be entered at the appropriate facility under 2.1.

2.3 Presorted Machinable Parcels

Presorted machinable parcels in sacks or on pallets at all sort levels may claim DBMC rates. Machinable parcels palletized under M045 or sacked under M722 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. Sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates. Mailers may opt to sort some or all machinable parcels for ASF service area ZIP Codes to ASFs only when the mail will be deposited at the respective ASFs where the DBMC rate are claimed, under applicable volume standards, using L602. Mailers also may opt to sort machinable parcels only to destination BMCs under L601. When machinable parcels are sorted under L601, only mail for 3-digit ZIP Codes served by a BMC as listed in Exhibit E751.1.3 are eligible for DBMC rates (*i.e.*, mail for 3-digit ZIP Codes served by an ASF in Exhibit E751.1.3 are not eligible for DBMC rates, nor are 3-digit ZIP Codes that do not appear on Exhibit E751.1.3). Machinable parcels prepared in mixed BMC sacks or on mixed BMC pallets that are sorted to the origin BMC under M045 or M722 are eligible for the DBMC rates if both of the following conditions are met: 1) the mixed BMC sack or pallet is entered at the origin BMC facility to which it is labeled, and 2) the pieces are for 3-digit ZIP Codes listed as eligible destination ZIP Codes for that BMC in Exhibit E751.1.3.

2.4 Presorted Irregular Parcels

Presorted irregular parcels in sacks or on pallets at all sort levels may claim DBMC rates. All pieces in an ADC sack or in a palletized ADC package are eligible for the DBMC discount if the ADC facility ZIP Code (as shown in Line 1 of the corresponding sack label or the ADC facility that is the destination of the palletized ADC package as would be shown on an ADC sack label for that facility using DMM L004, Column B) is within the service area of the BMC at which the sack is deposited under E751.5.6. Separate mixed ADC sacks must be prepared for pieces eligible for and claimed at the DBMC rate and for parcels not claimed at the DBMC rate. Use the "label to" ZIP Code for the ADC to assign ADC packages to the respective mixed ADC sack. Use the address on the parcels to assign parcels to the respective mixed ADC package or sack, as appropriate. Mail must be entered at the appropriate facility under 2.1.

2.5 Carrier Route Flats

Carrier Route flats in sacks or on pallets at all sort levels may claim DBMC rates. Mail must be entered at the appropriate facility under 2.1.

2.6 Carrier Route Machinable Parcels

Carrier Route machinable parcels in individual carrier route sacks may claim DBMC rates. Mail must be entered at the appropriate facility under 2.1.

2.7 Carrier Route Irregular Parcels

Carrier Route irregular parcels in sacks at both sort levels or on pallets at all sort levels may claim DBMC rates. Mail must be entered at the appropriate facility under 2.1.

3.0 DESTINATION SECTIONAL CENTER FACILITY (DSCF) RATES

3.1 General Eligibility

Pieces in a mailing meeting the standards in 1.0, 3.0, and 5.0 through 7.0 are eligible for the DSCF rate when they meet all of the following conditions:

a. Are eligible for and prepared to qualify for Presorted or Carrier Route rates, subject to the corresponding standards for those rates.

b. Are deposited at an SCF listed in L005, except that machinable parcels prepared on pallets for the 5-digit ZIP Codes listed in Exhibit E751.6.0 must be entered at the corresponding BMC facility shown in that Exhibit (not at the SCF) unless an exception is requested and granted. An exception to Exhibit E751.6.0 must be requested at least 15 days in advance of the mailing in writing from the Area Manager, Operations Support, who has jurisdiction over the BMC and SCF. Exceptions, if granted, will be for a limited time.

c. Are addressed for delivery to one of the 3-digit ZIP Codes served by the SCF where deposited under L005.

d. Are placed in a sack or pallet that is labeled to the SCF where deposited, or labeled to a postal facility within that SCF's service area (see L005).

3.2 Presorted Flats

Presorted flats in sacks for the 5-digit, 3-digit, and optional SCF sort levels or on pallets at the optional 5-digit scheme, 5-digit, optional 3-digit, SCF, and ASF sort levels may claim DSCF rates. Mail must be entered at the appropriate facility under 3.1.

3.3 Presorted Machinable Parcels

Presorted machinable parcels in sacks or on pallets at the 5-digit sort level may claim DSCF rates. For palletized mail, see 3.1b. Mail must be entered at the appropriate facility under 3.1.

3.4 Presorted Irregular Parcels

Presorted irregular parcels in sacks at the 5-digit, 3-digit, and optional SCF sort levels, or on pallets at the 5-digit, optional 3-digit, SCF, and ASF sort levels may claim DSCF rates. Mail must be entered at the appropriate facility under 3.1.

3.5 Carrier Route Flats

Carrier route flats in sacks at all sort levels or on pallets at optional 5-digit scheme carrier routes, 5-digit carrier routes, optional 3-digit, SCF, and ASF sort levels may claim DSCF rates. Mail must be entered at the appropriate facility under 3.1.

3.6 Carrier Route Machinable Parcels

Carrier Route machinable parcels in individual carrier route sacks may claim DSCF rates. Mail must be entered at the appropriate facility under 3.1.

3.7 Carrier Route Irregular Parcels

Carrier Route irregular parcels in sacks at both sort levels or on pallets at the 5-digit, optional 3-digit, SCF, and ASF sort levels may claim DSCF rates. Mail must be entered at the appropriate facility under 3.1.

4.0 DESTINATION DELIVERY UNIT (DDU) RATES

4.1 General Eligibility

Pieces in a mailing meeting the standards in 1.0 and 4.0 through 7.0 are eligible for the DDU rate when they meet all of the following conditions:

a. Are eligible for and prepared to qualify for Presorted or Carrier Route rates, subject to the corresponding standards for those rates.

b. Are addressed for delivery within the ZIP Code(s) served by the destination delivery unit.

c. Are deposited:

(1) For Carrier Route flats, at the DDU where the carrier cases the mail, as shown in the Drop Shipment Product.

(2) For Presorted flats, the Drop Shipment Product must be used to determine the correct destination entry facility for the 5-digit sorted flats entered at Presorted rates. If the Drop Shipment Product lists multiple facilities for a single 5-digit ZIP Code, then the mailer must inquire about the correct drop site when contacting the DDU to schedule an appointment.

(3) For all irregular parcels and machinable parcels, the Drop Shipment Product must be used to determine the 5-digit destination. When the Drop Shipment Product shows that mail for a single 5-digit ZIP Code area is delivered out of more than one postal facility, use the facility from which the majority of city carrier routes are delivered as the facility at which the DDU parcels must be entered and to determine whether that facility can handle pallets, unless the 5-digit ZIP Code is listed in Exhibit E751.7.0 or Exhibit E751.8.0. For ZIP Codes in Exhibit E751.7.0 and Exhibit E751.8.0, use the name of the facility associated with the 5-digit ZIP Code on the respective exhibit as the facility at which DDU mail must be entered for that 5-digit ZIP Code. This facility name should be used along with the Drop Shipment Product to determine if that facility can handle pallets. If a DDU facility cannot handle pallets and a mailer transports mail to the DDU facility on pallets, the driver must unload the pallets into a container specified by the delivery unit.

4.2 Presorted Flats

Presorted flats that weigh more than 1 pound in 5-digit sacks, on optional 5-digit scheme or required 5-digit pallets, or prepared as bedloaded 5-digit packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1. Presorted flats weighing 1 pound or less are not eligible for DDU rates.

4.3 Presorted Machinable Parcels

Presorted machinable parcels in 5-digit sacks or on 5-digit pallets may claim DDU rates. Mail must be entered at the appropriate facility under 4.1.

4.4 Presorted Irregular Parcels

Presorted irregular parcels in 5-digit sacks, on 5-digit pallets, or prepared as bedloaded 5-digit packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1.

4.5 Carrier Route Flats

Carrier Route flats in sacks, on optional 5-digit carrier routes scheme and 5-digit carrier routes pallets, or prepared as bedloaded carrier route packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1.

4.6 Carrier Route Machinable Parcels

Carrier Route machinable parcels sorted to carrier route sacks may claim DDU rates. Mail must be entered at the appropriate facility under 4.1.

4.7 Carrier Route Irregular Parcels

Carrier Route irregular parcels in sacks at both sort levels, on 5-digit pallets, or prepared as bedloaded packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1.

5.0 VERIFICATION

5.1 Place

As directed by the postmaster, the mailer must present destination entry mailings to USPS employees for verification either:

a. At the origin mailer's plant or the origin post office serving the mailer's plant under an authorized plant-verified drop shipment system.

b. At the destination post office or business mail entry unit.

5.2 Mail Separation and Presentation

Destination entry rate mail must be verified under a PVDS system (P950) or be presented for verification and acceptance at a BMEU located at a destination BMC, destination SCF, or other designated destination postal facility. Only plant-verified drop shipments may be deposited at a destination delivery unit not co-located with a post office or other postal facility having a business mail entry unit. When presented to the USPS, destination entry mailings must meet the following requirements:

a. Each mailing must be separated from other mailings for verification. For PVDS, destination entry rate mailings for deposit at one destination postal

facility must be separated from mailings for deposit at other facilities to allow for reconciliation with each accompanying Form 8125, 8125–C, or 8125–CD.

b. Mail must be separated from freight transported on the same vehicle.

c. If Periodicals mail is on the same vehicle as BPM, then the Periodicals mail should be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

d. Form 8125, 8125–C, or 8125–CD must accompany all PVDS mailings.

5.3 Form 8125

When mailings are verified and paid for at a postal facility different from the one at which they are accepted as mail and deposited into the mailstream, the mailer must ensure that they are accompanied by a Form 8125 completed by the mailer and the verifying post office.

5.4 At BMC

For a mailing to be verified at a BMC, the post office where the mailer's account or license is held must be within the service area of that BMC. The post office must authorize the BMC to act as its agent by sending Form 4410 to the BMC.

5.5 PVDS Seal

The mailer may ask that a PVDS band seal secure the vehicle containing verified mailings before dispatch to the destination facility.

5.6 Mailer Transport

The mailer must transport the PVDS mailing from the place where it was verified to the destination postal facility.

5.7 Volume Standards

Except as permitted for a local mailer under 7.0, destination entry mailings are subject to these volume standards:

a. Regardless of total volume, the pieces for which a destination rate is claimed must represent more than 50% of the mail (by weight or pieces, whichever is greater) presented by the same mailer within any 24-hour period. For this standard, mailer is the party presenting the material to the USPS (or for whom a transportation company has presented the material to the USPS).

b. The same mailer may not in a 24-hour period present for verification and acceptance more than four destination rate mailings at the same destination postal facility (or at another acting as its agent). The mailer may ask for a waiver of this limit when scheduling the deposit of the mailings. There is no maximum for plant-verified drop shipments.

6.0 DEPOSIT

6.1 When, Where

Each mailing claimed at a destination rate must be deposited at the time and location specified by the USPS. Mailings must be presented in vehicles that are compatible with dock, yard, and DDU operations, as applicable.

6.2 Freight

Drop shipments are freight until deposited and accepted as mail at the destination facility.

6.3 Appointments

Appointments must be made for destination entry rate mail as follows:

a. Except for a local mailer under 7.0 and mailings of perishable commodities, appointments for deposit of destination entry rate mail at BMCs, ASFs, and SCFs must be scheduled through the appropriate appointment control center at least one business day in advance. Same-day appointments may be granted by a control center only through a telephone request. All appointments for BMC loads must be scheduled by the appropriate BMC control center. Appointments for SCFs and ASFs must be scheduled through the appropriate district control center. Appointments may be made up to 30 calendar days before a desired appointment date. The mailer must adhere to the scheduled mail deposit time and location. The mailer must cancel any appointment by notifying the appropriate control center at least 24 hours in advance of a scheduled appointment.

b. Electronic appointments may be made through the Dropship Appointment System (DSAS) by a mailer or agent using a USPS-issued computer logon ID. Electronic appointments or cancellations must be made at least 12 hours before the desired time and date. All information required by the USPS appointment system regarding a mailing must be provided.

c. For deposit of DDU mailings, an appointment must be made by contacting the DDU at least 24 hours in advance. If the appointment must be canceled, the mailer must notify the DDU at least one business day in advance of a scheduled appointment. Recurring appointments are allowed if shipment frequency is once a week or more often.

d. When Periodicals are transported together with BPM as a mixed load (E250), an appointment must be obtained for deposit at a destination entry facility.

6.4 Advance Scheduling

Except under 7.0, a mailer must schedule deposit of destination entry rate mailings at least 24 hours in advance by contacting the proper district or BMC control center or destination delivery unit. Appointments at delivery units must be made by calling the delivery unit at least 24 hours in advance. Appointments for ASFs, SCFs, or for any multistop loads must be made through the USPS district control center or DSAS in 6.3. Appointments for BMC loads must be scheduled by the proper BMC control center. When making an appointment, or as soon as available, the mailer must provide the control center or DDU with the following information:

a. Mailer's name and address and, when applicable, the name and telephone number of the mailer's agent or local contact.

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

c. Where the mailing was verified.

d. Postage payment method.

e. Requested date and destination facility for mailing.

f. Vehicle identification number, size, and type.

6.5 Adherence to Schedule

The mailer must follow the scheduled deposit time or cancel the appointment by notifying the designated control center. Destination facilities may refuse acceptance or deposit of unscheduled mailings or shipments that arrive more than 2 hours after the scheduled appointment at ASFs, BMCs, or SCFs or more than 20 minutes at delivery units.

6.6 Redirection by USPS

A mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

6.7 Redirection at Mailer's Request

For service reasons, a mailer may ask to transport destination SCF rate mail to a facility other than the designated SCF. This exception may be approved only by the district control center serving the destination facility. To qualify for the SCF rate in this situation, mail deposited at a facility other than the SCF must destinate for processing within that facility and must not require backhauling to the SCF.

6.8 Recurring Appointments

Recurring appointments refer to a drop shipment that is delivered to a destination office with a frequency of at least once a week on the same time and day(s). Mailings must be of a comparable product in terms of mail class, size, volume, and containerization (pallets, pallet boxes, etc.). A request to establish recurring appointments must be written on company letterhead to the postal facility manager/postmaster. The drop shipment appointment control office/postmaster will respond to all requests within 10 days. Recurring appointments may be made for a period not to exceed 6 months. Thereafter, a new application must be submitted to ensure that up-to-date mailer information is on file. Written request for an additional 6 months may be made within 60 days prior to the expiration of a current arrangement. Failure to adhere to scheduled appointments or other abuse of the procedures will result in revocation of recurring appointment privileges. Requests for recurring appointments must include the following:

a. Name, address, and telephone number of the mailer.

b. Transportation agent's name (contact person) and telephone number(s).

c. Mail volume and preparation (trays/sacks/parcels).

d. Containerization.

e. Size and type of trailer(s) transporting mail.

f. Frequency/schedule.

6.9 Vehicle Unloading

Unloading of destination entry mailings is subject to these conditions:

a. Properly prepared containerized loads (e.g., pallets) are unloaded by the USPS at BMCs, ASFs, and SCFs. The USPS does not unload or permit the mailer (or mailer's agent) to unload palletized loads that are unstable or severely leaning or that have otherwise not maintained their integrity in transit.

b. At BMCs, and ASFs, the driver must unload bedloaded shipments within 8 hours of arrival. Combination containerized and bedloaded mailings are classified as bedloaded shipments for unload times. The USPS may assist in unloading.

c. At delivery units, the driver must unload all mail within 1 hour of arrival. If pallets (including pallet boxes on pallets) are stacked, the driver is required to unload, unstack, and unstrap them. If a mailer transports palletized mail (including sacks on pallets) to a DDU facility that cannot handle pallets, then the driver must unload the pallets into a container specified by the delivery unit.

d. When driver unloading is required, the driver or assistant must stay with and continue to unload the vehicle once at the dock.

e. The driver must remove the vehicle from USPS property after unloading. The driver and assistant are not permitted in USPS facilities except for the dock and designated driver rest area.

6.10 Demurrage

The USPS is not responsible for demurrage or detention charges incurred by a mailer who presents destination entry rate mailings.

6.11 Appeals

Mailers who believe they are denied equitable treatment may appeal to the manager, Customer Service (district), responsible for the destination postal facility.

7.0 EXCEPTION FOR LOCAL MAILER

The restrictions in 5.7 and 6.3 do not apply when a mailer deposits mailings for verification and acceptance at the local post office serving the facility where the mail was prepared, if the mailings are not verified under a plant load authorization or plant-verified drop shipment postage payment authorization. Under this exception, the mailer may claim the destination entry rates for mailings or portions of mailings deposited at the local post office that meet the standards in 2.0, 3.0, or 4.0.

[Add new E753 for combining Package Services parcels to read as follows:]

E753 Combining Package Services Parcels for DSCF and DDU Entry 1.0

1.0 COMBINING PARCELS

Package Services parcels—Parcel Post, Parcel Select, Bound Printed Matter, Media Mail, and Library Mail—may be combined, at the mailer's option and when authorized by the USPS, in the same 5-digit sack(s) or pallet(s) for entry either at a destination sectional center facility (DSCF) or a destination delivery unit (DDU). All applicable fees for presort and drop shipment must be paid and applicable minimum volume requirements for Presort rates and Parcel Select rates must be met. Combined Package Services mailings must meet the standards in E750, except as provided by this section. Parcels may not be combined for entry at a destination bulk mail center (DBMC). Carrier Route Bound Printed Matter may not be combined with other parcels under these standards. Presorted Media Mail and Presorted Library Mail claimed at BMC rates may not be combined with other parcels under these standards. Parcels combined under these standards are not eligible for the barcoded discount.

1.1 Basic Standards

Package Services parcels that qualify as machinable, nonmachinable, and irregular under C050 and meet the following conditions may be combined in the same 5-digit sack(s) or pallet(s) under these conditions:

a. Minimum volume requirements for Parcel Select, Presorted Bound Printed Matter, Presorted Library Mail, and Presorted Media Mail must be met separately before combining.

b. Postage must be paid via permit imprint under an approved manifest mailing system as provided in P910.

c. All parcels must be prepared in sacks under 2.0 or on pallets under 3.0. For mail entered at the DSCF rates, pallet preparation is not permitted for 5-digit ZIP Codes that are unable to handle pallets. Refer to the Drop Ship Product maintained by the National Customer Support Center (NCSC) (see G043) to determine which 5-digit delivery facilities can handle pallets. If a DDU facility cannot handle pallets, and a mailer transports mail to the DDU facility on pallets, the driver will have to unload the pallets into a container specified by the delivery unit.

d. Pieces may be claimed at single-piece rates, Presorted rates, and destination entry rates under 2.1 or 3.1.

e. Separate postage statements must be prepared for each subclass and destination entry rate as appropriate.

f. The deposit of combined Package Services mail at a DSCF or DDU must be in accordance with applicable drop shipment standards.

1.2 Authorization

Mailers apply for RCSC authorization to combine parcels as part of a manifest mailing agreement (P910). Current manifest mailers can apply for additional authorization to combine parcels. This authorization may not exceed two years.

2.0 COMBINED PARCELS PREPARED IN SACKS

2.1 Rate Eligibility

In addition to the applicable standards in E750 for destination entry Package Services, the following standards apply for combined Package Services mail prepared in sacks:

a. Parcel Select DSCF rates apply to parcels that are contained in 5-digit sacks, each containing at least 10 pieces of any combination of Package Services mail, or contained in overflow sacks

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under 2.2, provided all other requirements for the DSCF rate in E751 are met. Parcel Select DDU rates apply to parcels that are contained in 5-digit sacks, each containing at least 10 pieces of any combination of Package Services mail, or contained in overflow sacks under 2.2, provided all other requirements for the DDU rate in E751 are met.

b. Presorted Bound Printed Matter DSCF rates apply to parcels that are contained in 5-digit sacks, each containing at least 10 pieces of any combination of Package Services mail, or contained in overflow sacks under 2.2, provided all other requirements for the DSCF rate in E752 are met. Presorted Bound Printed Matter DDU rates apply to parcels that are contained in 5-digit sacks, each containing at least 10 pieces of any combination of Package Services mail, or contained in overflow sacks under 2.2, provided all other requirements for the DDU rate in E752 are met.

c. Presorted Library Mail 5-digit rates apply to parcels that are contained in 5-digit sacks, each containing at least 10 pieces of any combination of Package Services mail, or contained in overflow sacks under 2.2.

d. Presorted Media Mail 5-digit rates apply to parcels that are contained in 5-digit sacks, each containing at least 10 pieces of any combination of Package Services mail, or contained in overflow sacks under 2.2.

e. Single-piece rate Parcel Post, Bound Printed Matter, Library Mail, and Media Mail parcels that are contained in 5-digit sacks, each containing at least 10 pieces of any combination of Package Service mail, or contained in overflow sacks under 2.2, qualify for their applicable single-piece rates.

2.2 Sack Preparation

Only 5-digit sacks may be prepared. Each sack of combined Package Services mail must contain at least 10 pieces. One overflow sack containing fewer than 10 pieces is permitted per 5-digit destination.

2.3 Sack Labeling

Sack labels must be prepared as follows:

a. For Line 1, use 5-digit ZIP Code on mail.

b. For Line 2, use "PSVC PARCELS 5D."

3.0 COMBINED PARCELS PREPARED ON PALLETS

3.1 Rate Eligibility

In addition to the applicable standards in E750 for destination entry Package Services, the following standards apply for combined Package Services mail prepared on pallets:

a. Parcel Select DSCF rates apply to pieces that are prepared on 5-digit pallets, each containing at least 50 pieces and 250 pounds or 36 inches of Package Services mail, or contained in overflow sacks under 3.3, and deposited at a DSCF under E751. Parcel Select DDU rates apply to pieces that are prepared on 5-digit pallets, each containing at least 50 pieces and 250 pounds or 36 inches of Package Services mail, or contained in overflow sacks under 3.3, and deposited at a DDU under E751.

b. Presorted Bound Printed Matter DSCF rates apply to pieces that are prepared on 5-digit pallets, each containing at least 50 pieces and 250 pounds or at least 36 inches of Package Services mail, or contained in overflow sacks under 3.3, and deposited at a DSCF under E752. Presorted Bound Printed Matter DDU rates apply to pieces that are prepared on 5-digit pallets, each containing at least 50 pieces and 250 pounds or at least 36 inches of Package Services mail, or contained in overflow sacks under 3.3, and deposited at a DDU under E752.

c. Presorted Library Mail 5-digit rates apply to pieces that are prepared on 5-digit pallets, each containing at least 50 pieces and 250 pounds or 36 inches of Package Services mail, or contained in overflow sacks under 3.3.

e. Presorted Media Mail 5-digit rates apply to pieces that are prepared on 5-digit pallets, each containing at least 50 pieces and 250 pounds or 36 inches of Package Services mail, or contained in overflow sacks under 3.3.

f. Single-piece rate Parcel Post, Bound Printed Matter, Library Mail, and Media Mail parcels that are prepared on 5-digit pallets, each containing at least 50 pieces and 250 pounds or 36 inches of Package Services mail, or contained in overflow sacks under 3.3, qualify for their applicable single-piece rates.

3.2 Pallet Preparation

Only 5-digit pallets may be prepared. Each 5-digit pallet of combined Package Services mail must contain at least: (1) 50 parcels and 250 pounds of mail, or (2) 36 inches mail (excluding the height of the pallet). Pallets prepared using either minimum requirement may be combined in the same mailing.

3.3 Overflow Sacks

If, after filling a pallet(s) to a 5-digit destination, pieces remain that do not meet the minimum pallet requirements, they may be prepared in 5-digit overflow sacks and labeled under 2.2.

3.4 Pallet Labeling

Pallet labels must be prepared as follows:

a. For Line 1, use city, state, and 5-digit ZIP Code on mail.

b. For Line 2, use "PSVC PARCELS 5D."

4.0 DOCUMENTATION

Separate postage statements are required for each of the separate mailings contained within the combined mailing. All postage statements must be provided at the time of mailing and must be accompanied by a RCSC approved manifest prepared in accordance with P910 and this section.

F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010 Basic Information

* * * * *

3.0 DIRECTORY SERVICE

[Amend 3.0d by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

4.0 BASIC TREATMENT

* * * * *

4.5 Special Services

[Amend 4.5 by revising 4.5b to add instructions for treatment of insured Standard Mail; revise 4.5c by deleting the last sentence, and add new item e to read as follows:]

Mail with special services is treated according to the charts for each class of mail in 5.0, except that:

* * * * *

b. All insured First-Class Mail is forwarded and returned at no additional cost. All insured Standard Mail and Package Services mail is forwarded or returned.

c. Parcels with special handling that are undeliverable as originally addressed and forwarded to the addressee continue to receive special handling service without an additional special handling fee.

* * * * *

e. All registered mail items are treated as registered while they are being forwarded or returned.

* * * * *

[Add new 4.6 to read as follows:]

4.6 Metered Pieces

Mail paid by postage meter that does not have a delivery address and a return address is returned to the post office of mailing. The reason for nondelivery is attached but the address correction fee is not charged. The piece is returned to the meter licensee upon payment of the applicable return postage.

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

[Amend 5.1 by changing "E620" to "E620 and E630."]

* * * * *

[Amend heading of 5.3 by removing "(A)" to read as follows:]

5.3 Standard Mail

[Amend 5.3 by removing "(A)" from "Standard Mail (A)"; amend 5.3a by replacing "Standard Mail (B)" with "Package Services" and "Special Standard Mail" with "Media Mail."

Redesignate current items g and h, as h and i, respectively; amend redesignated i by removing "(A)" from "Standard Mail (A)" add new g to read as follows:]

Undeliverable Standard Mail is treated as described in the chart below and under these conditions:

* * * * *

Mailer endorsement	USPS action on UAA pieces
Change service requested[1]	• • • • • This endorsement is not available for mail with special services (*e.g.*, insured or delivery confirmation).

[Revise heading of 5.4 to read as follows:]

5.4 Package Services

[Amend 5.4 by replacing "Standard Mail (B)" with "Package Services." Remove item 5.4c. Add new item 5.4c to read as follows:]

Undeliverable Package Services is treated as described in the chart below and under these conditions:

* * * * *

c. Bound Printed Matter with no ancillary service endorsement and no special service is disposed of by USPS. It is not forwarded or returned to sender. Bound Printed Matter with no ancillary service endorsement with a special service is treated as if it is endorsed "Forwarding Service Requested."

* * * * *

[Amend chart in 5.4 by adding an exception for Bound Printed Matter under "No endorsement" to read as follows:]

Mailer endorsement	USPS action on UAA pieces
No endorsement	Same as USPS action for "Forwarding Service Requested." Exception: Bound Printed Matter with no special service added is disposed of by USPS.

* * * * *

6.0 ENCLOSURES AND ATTACHMENTS

* * * * *

[Amend heading and text of 6.2 by removing the "(A)" in Standard Mail; no other changes to text.]

[Revise title of 6.3 to read as follows:]

6.3 Package Services

[Amend 6.3 by replacing references to "Standard Mail (B)" with "Package Services"; no other changes to text.]

7.0 MIXED CLASSES

[Amend introductory paragraph of 7.1, 7.1a, and 7.2 by replacing "Standard Mail" with "Standard Mail or Package Services"; no other changes to text.]

* * * * *

7.4 Parcel

[Amend 7.4 to specify that combination parcels are returned at the Parcel Post Inter-BMC rate and by replacing "Special Standard Mail" with "Media Mail" to read as follows:]

A combination parcel containing Media Mail and Bound Printed Matter is charged postage at the Parcel Post Inter-BMC rate when forwarded or returned.

8.0 DEAD MAIL

[Amend 8.1b by replacing "Standard Mail (A)" with "Standard Mail." Amend 8.1e by replacing "Standard Mail (A)" with "Standard Mail" and "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

F020 Forwarding

* * * * *

2.0 FORWARDABLE MAIL

* * * * *

[Amend 2.3, 2.4, and 2.6 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

3.0 POSTAGE FOR FORWARDING

* * * * *

[Amend the title and contents of 3.5 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Revise title of 3.6 to read as follows:]

3.6 Package Services

[Amend 3.6 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

[Amend 3.7 by adding Delivery Confirmation and Signature Confirmation to read as follows:]

3.7 Special Services

Certified, collect on delivery (COD), Delivery Confirmation, insured, registered, Signature Confirmation, and special handling mail is forwarded without additional special service fees, subject to the applicable postage charge (to a domestic address only).

F030 Address Correction, Address Change, FASTforward, and Return Services

1.0 ADDRESS CORRECTION SERVICE

* * * * *

g. Standard Mail with insurance, return receipt for merchandise, or Delivery Confirmation must be endorsed "Address Service Requested," "Forwarding Service Requested," or "Return Service Requested."

* * * * *

[Amend the chart in 5.3 by adding the following under "Change Service Requested" to read as follows:]

[Amend 1.4 by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

2.0 ADDRESS CHANGE SERVICE (ACS)

[Amend 2.1 by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

2.5 Shipper Paid Forwarding

[Amend 2.5 by adding a reference to the accounting fee for a postage due account to read as follows:]

Shipper Paid Forwarding is an ACS fulfillment vehicle. It allows mailers of Standard Mail machinable parcels and most Package Services mail to pay forwarding charges via approved ACS participant code(s). For information about Shipper Paid Forwarding, contact the National Customer Support Center (see G043). Mailers have the option of paying forwarding charges through a postage due advance deposit account. Mailers who choose to do so must pay an annual accounting fee.

* * * * *

4.0 SENDER INSTRUCTION

* * * * *

4.2 Special Services

A change-of-address order covers certified, collect on delivery (COD), insured, registered, and return receipt for merchandise mail unless the sender gives other instructions or the addressee moves outside the United States. This mail is treated as follows:

[Amend 4.2d to read as follows:]

* * * * *

d. Insured Standard Mail is forwarded and returned.

* * * * *

[Amend 4.2e by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

G GENERAL INFORMATION

G000 The USPS and Mailing Standards

* * * * *

G090 Experimental Classifications and Rates

G091 NetPost Mailing Online

[In G091, change all references from "Standard Mail (A)" to "Standard Mail."]

* * * * *

3.0 FUNCTIONALLY EQUIVALENT SYSTEMS

[Amend the third sentence of 3.0 to provide for an increase in the fee for certification of a system as functionally equivalent to Mailing Online from $100 to $125, to read as follows:]

* * * Certification of functional equivalence requires payment of a $125 fee and demonstration that the service in comparable to NetPost Mailing Online service and capable of all of the following as specified by the USPS:

* * *

* * * * *

G094 Ride-Along Rate for Periodicals

1.0 BASIC ELIGIBILITY

[Amend 1.1, 1.2, and 1.3 by changing "Standard Mail (A)" to "Standard Mail," no other changes to text.]

* * * * *

L LABELING LISTS

L000 General Use

[Amend the heading and introductory paragraph of L001 to provide for class of mail name changes and to allow use of L001 with Bound Printed Matter flats to read as follows:]

L001 5-Digit Scheme—Periodicals Flats and Irregular Parcels, Standard Mail Flats, and Bound Printed Matter Flats

When 5-digit scheme sort is used for Periodicals flats and irregular parcels, Standard Mail flats, and Bound Printed Matter flats, mail for the 5-digit ZIP Codes shown in Column A must be combined on pallets (packages on pallets only on merged 5-digit scheme, 5-digit scheme carrier routes, or 5-digit scheme pallets, as applicable) or in sacks (merged 5-digit scheme or 5-digit scheme carrier routes sacks, as applicable) labeled to the corresponding destination shown in Column B.

* * * * *

L002 3-Digit ZIP Code Prefix Matrix

This matrix provides information about 3-digit ZIP Code prefixes as follows:

[Amend the last sentence of L002d to read as follows:]

d. * * * Destination SCF Standard Mail rates, destination SCF Package Services rates, or SCF zone and per piece Periodicals rates are available only to those ZIP Code areas for which an SCF is shown.

* * * * *

L004 3-Digit Code Prefix Groups—ADC Sortation

[Revise the next-to-last sentence of the L004 introduction to read as follows:]

* * * To order labels from the USPS Label Printing Center, use Form 1578-B and indicate set number 008 (First-Class Mail), set number 009 (Periodicals), or set number 010 (Standard Mail and Bound Printed Matter). * * *

[In L004, replace "[STD only]" with "[STD and BPM only]," replace "[PER and STD only]" with "[PER, STD, and BPM only]," and replace "[FCM and STD only]" with "[FCM, STD, and BPM only]."]

* * * * *

[Amend the heading of L600 to include Package Services to read as follows:]

L600 Standard Mail and Package Services

L601 BMCs

[Revise introductory paragraph to read as follows:]

Use this list for:

(1) Standard Mail machinable parcels except ASF mail prepared and claimed at DBMC rates.

(2) Standard Mail packages, letter trays, or sacks on pallets.

(3) Bound Printed Matter machinable parcels.

(4) Bound Printed Matter packages or sacks on pallets.

(5) Parcel Post except for ASF mail prepared and claimed at DBMC rates and non-machinable BMC Presort or OBMC Presort rate mail.

(6) Presorted Media Mail and Presorted Library Mail to BMC destinations. For labeling mixed BMC sacks and pallets, mailers must add "MXD" before the Column B information of the BMC serving the 3-digit ZIP Code prefix of the post office at which the mail is entered.

* * * * *

[Revise the heading of L602 to read as follows:]

L602 ASFs

[Revise the introductory paragraph to read as follows:]

Use this list for:

(1) Standard Mail machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

(2) Standard Mail packages, letter trays, or sacks on pallets.

(3) Bound Printed Matter machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

(4) Bound Printed Matter packages or sacks on pallets.

(5) Parcel Post machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

* * * * *

[Amend the title of L603 by adding "Standard Mail" to read as follows:]

L603 ADCs—Irregular Standard Mail Parcels

* * * * *

[Amend to title of L604 to indicate that the list is used only for Standard Mail irregular parcels to read as follows:]

L604 Originating ADCs—Standard Mail Irregular Parcels

* * * * *

L800 Automation Rate Mailings

* * * * *

[Amend the heading of L802 by changing "Standard Mail (A)" to "Standard Mail" to read as follows:]

L802 BMC/ASF Entry—Periodicals and Standard Mail

* * * * *

[Amend the heading of L803 by changing "Standard Mail (A)" to "Standard Mail" to read as follows:]

L803 Non-BMC/ASF Entry—Periodicals and Standard Mail

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

1.1 Presort Process

[Amend the third sentence of 1.1 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

1.3 Preparation Instructions

For purposes of preparing mail:

* * * * *

[M013.13 was amended in the amended final rule published in 65 FR 50054 (August 16, 2000). The section numbers in this final rule reflect those changes.]

[Redesignate 1.3f through 1.3z as 1.3h through 1.3ab, respectively, and add new 1.3f and 1.3g to read as follows:]

For purposes of preparing mail:

* * * * *

f. A less-than-full flat tray is one that contains First-Class Mail for the same destination regardless of quantity or whether a full tray was previously prepared for that destination. Less-than-full flat trays may be prepared only if permitted by the standards for the rate claimed.

g. An overflow flat tray is a less-than-full First-Class Mail tray that contains all pieces remaining after preparation of one or more full trays for the same destination. Overflow flat trays may be prepared only if permitted by the standards for the rate claimed.

* * * * *

[Amend redesignated 1.3j to provide for 5-digit/scheme carrier routes sortation for Carrier Route Bound Printed Matter, and to change "Standard Mail (A)" to "Standard Mail" to read as follows:]

j. A 5-digit/scheme carrier routes sort for carrier route rate Periodicals flats and irregular parcels, Enhanced Carrier Route rate Standard Mail flats, and Carrier Route Bound Printed Matter flats, prepared in sacks or as packages on pallets yields a 5-digit scheme carrier routes sack or pallet for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes sacks or pallets for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum sack or pallet volume, with no further separation by 5-digit ZIP Code required. Sacks or pallets prepared for a 5-digit scheme carrier routes destination that contain carrier route packages for only one of the schemed 5-digit areas are still considered 5-digit scheme carrier routes sorted and are labeled accordingly. The 5-digit/scheme sort is required for carrier route packages of flat-size and irregular parcel Periodicals, is optional for flat-size Enhanced Carrier Route rate Standard Mail, and is optional for Carrier Route Bound Printed Matter flats prepared in sacks or as packages on pallets. If preparation of 5-digit scheme carrier routes sacks or pallets is performed, they must be prepared for all 5-digit scheme destinations. A 5-digit/scheme carrier routes sort may be performed only for carrier route packages prepared in sacks or as packages on pallets.

[Amend redesignated 1.3k to provide for 5-digit/scheme sortation for Bound Printed Matter flats, and to change "Standard Mail (A)" to "Standard Mail" to read as follows:]

k. A 5-digit/scheme sort for Periodicals flats and irregular parcels, Standard Mail flats, and Bound Printed Matter flats prepared as packages on pallets yields 5-digit scheme pallets containing automation rate (not applicable to Bound Printed Matter) and Presorted rate 5-digit packages for those 5-digit ZIP Codes listed in L001 and yields 5-digit pallets containing automation rate (not applicable to Bound Printed Matter) and Presorted rate 5-digit packages for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum pallet volume, with no further separation by 5-digit ZIP Code required. Pallets prepared for a 5-digit scheme destination that contain 5-digit packages for only one of the schemed 5-digit areas are still considered 5-digit scheme sorted and are labeled accordingly. The 5-digit/scheme sort is required for flat-size and irregular parcel-size Periodicals, and is optional for flat-size Standard Mail and flat-size Bound Printed Matter that is prepared as packages on pallets and may not be used for other mail prepared on pallets, except for 5-digit packages of Standard Mail irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates. If preparation of 5-digit scheme pallets is performed, it must be done for all 5-digit scheme destinations.

* * * * *

[Amend the last sentence of 1.3p for clarity to read as follows:]

p. * * * The 3-digit/scheme sort is required for automation rate letter-size First-Class Mail, Periodicals, and Standard Mail and is not permitted to be used for mail entered at another rate.

* * * * *

[Amend redesignated 1.3z by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Amend the first and last sentences of 1.3aa by replacing "Parcel Post DSCF" with "Parcel Select (Parcel Post) DSCF," and by changing "M630" to "M710"; no other changes to text.]

[Amend the first and second sentences of 1.3ab by replacing "Parcel Post DSCF" with "Parcel Select (Parcel Post) DSCF"; no other changes to text.]

1.4 Mailing

* * * * *

[Amend 1.4e by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Amend 1.4f by replacing "Standard Mail (B)" with "Package Services" and "Special Standard" with "Media Mail"; no other changes in text.]

* * * * *

M012 Markings and Endorsements

1.0 MARKINGS—BASIC STANDARDS

1.1 Class and Rate

[Amend 1.1b by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Amend 1.1c by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

[Revise the heading of 2.0 by replacing "Standard Mail (A)" with "Standard Mail"; no other change.]

2.0 MARKINGS—FIRST-CLASS MAIL AND STANDARD MAIL

2.1 Placement

* * * * *

[Amend 2.1b and 2.1c by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

2.2 Exceptions to Markings

[Amend 2.2a and 2.2b by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend the heading of 3.0 by replacing "Standard Mail (B)" with "Package Services" to read as follows:]

3.0 MARKINGS—PACKAGE SERVICES

3.1 Basic Markings

[Amend 3.1 by changing the subclass name from "Special Standard Mail" to "Media Mail" and eliminating the "Library Rate" marking to read as follows:]

The basic required Package Services subclass marking—"Parcel Post" or "PP," "Bound Printed Matter" or "BPM," "Media Mail," or "Library Mail"—must be printed on each piece claimed at the respective rate. (The marking "Library Rate" may continue to be used on Library Mail until January 1, 2002. The marking "Special Standard Mail" (or "SPEC STD") may continue to be used on Media Mail until January 1, 2002.) For Parcel Post destination entry rate mail, the marking "Parcel Select" may be used as the basic required marking instead of "Parcel Post." The basic required marking must be placed in the postage area (*i.e.*, printed or produced as part of, or directly below or to the left of, the permit imprint indicia or meter stamp or impression).

[Amend the heading of 3.2 for clarity to read as follows:]

3.2 Additional Parcel Select (Parcel Post) Markings

[Amend the first sentence of 3.2 to read as follows:]

Each piece in a Parcel Select (destination entry Parcel Post) mailing must bear a marking to indicate that it was mailed at a destination entry rate.

* * *

[Amend the heading of 3.3 by changing "Other" to "Additional" and revise to read as follows:]

3.3 Additional Bound Printed Matter Markings

Each piece of Bound Printed Matter mailed at a Presorted rate must bear the marking "Presorted" (or "PRSRT") in addition to the basic marking in 3.1. Until January 1, 2002, mailers may use the marking "Presorted Standard" (or "PRSRT STD"). Each piece of Bound Printed Matter mailed at a Carrier Route rate must bear the marking "Carrier Route Presort" (or "CAR–RT SORT") in addition to the basic marking in 3.1. These additional markings may be placed in the postage area as specified in 3.1. Alternatively, these markings may be placed in the address area on the line directly above or two lines above the address if the marking appears alone, or if no other information appears on the line with the marking except postal optional endorsement line information under M013 or postal carrier route package information under M014.

[Amend the heading of 3.4 to reflect the new subclass name to read as follows:]

3.4 Additional Media Mail Markings

[Amend 3.4 to reflect the new subclass name to read as follows:]

Each piece of Media Mail mailed at a presorted rate must bear the required marking "Presorted" or "PRSRT" in addition to the basic marking specified in 3.1. This additional marking may be placed in the postage area as specified in 3.1. Alternatively, these markings may be placed in the address area on the line directly above or two lines above the address if the marking appears alone, or if no other information appears on the line with the marking except postal optional endorsement line information under M013.

[Amend the heading of 3.5 by changing "Other" to "Additional" and revise to read as follows:]

3.5 Additional Library Mail Markings

Each piece of Library Mail mailed at a presorted rate must bear the required marking "Presorted" or "PRSRT" in addition to the basic marking specified in 3.1. This additional marking may be placed in the postage area as specified in 3.1. Alternatively, these markings may be placed in the address area on the line directly above or two lines above the address if the marking appears alone, or if no other information appears on the line with the marking except postal optional endorsement line information under M013.

* * * * *

4.0 ENDORSEMENTS—DELIVERY AND ANCILLARY SERVICES

* * * * *

4.5 OCR Read Area

[Amend 4.5 by replacing "Standard Majl (A)" with "Standard Mail"; no other changes to text.]

M013 Optional Endorsement Lines

1.0 USE

1.1 Basic Standards

[Amend the chart in 1.1 by adding the sortation level and OEL example lines for Carrier Route Bound Printed Matter to read as follows:]

Sortation level	OEL example
. . .	. . .
Carrier Route—Bound Printed Matter	CAR-RT SORT**C–001
. . .	. . .

* * * * *

2.0 FORMAT

* * * * *

2.5 ZIP Code

[Amend 2.5 by removing the second sentence.]

[Amend the table in 2.5 by revising the entries for ADC and mixed ADC sortation levels to read as follows:]

Sortation level	Mail class	Labeling list
.	.	.
ADC	First-Class Mail (except automation letters), Periodicals (except automation letters), Standard Mail (except Presorted rate irregular and machinable parcels), Presorted Bound Printed Matter (except machinable parcels).	L004
ADC	Standard Mail irregular parcels	L603
Mixed ADC	First-Class Mail (except automation letters)	L002, Colum C
Mixed ADC	Periodicals (except automation letters), Standard Mail (except Presorted rate irregular and machine parcels), Presorted Bound Printed Matter (except machinable parcels).	L004
Mixed ADC	Standard Mail irregular parcels	L604
.	.	.

* * * * *

M014 Carrier Route Information Lines

* * * * *

2.0 FORMAT AND CONTENT

* * * * *

2.3 Route Code

* * * * *

[Amend 2.3b by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

M020 Packages

1.0 BASIC STANDARDS

* * * * *

1.4 Palletization

[Amend 1.4 by removing all references to bundles to read as follows:]

Packages on pallets must be able to withstand normal transit and handling without breakage or incurring injury to USPS employees. Heavy-gauge shrinkwrap over plastic banding, shrinkwrap alone, or banding material alone is acceptable if the package can stay together during normal processing. Except for packages of individually polywrapped pieces, packages on BMC pallets must be shrinkwrapped and machinable on BMC parcel sorters. Packages of individually polywrapped pieces may be secured with banding material only. Machinability is determined by the USPS. If used, banding material must be applied at least once around the length and once around the girth; wire and metal strapping are prohibited.

[Redesignate 1.5 and 1.6 as 1.6 and 1.7 and add new 1.5 to read as follows:]

1.5 Package Size—Bound Printed Matter

Each "logical" package (the total group of pieces for a package destination) of Bound Printed Matter must meet the applicable minimum package size prescribed in M045 or M722. The pieces in the "logical" package must then be secured in a physical package or packages. Wherever possible, each physical package for a logical package destination should contain at least the minimum package size. The size of each physical package for a specific logical package destination may, however, contain the exact package minimum, more pieces than the package minimum, or fewer pieces than the package minimum depending on the size of the pieces in the mailing or the total quantity of the pieces to that destination. However, except for mixed ADC packages and for carrier route packages prepared in sacks, each physical package of Bound Printed Matter must contain at least two pieces. For Carrier Route rate mail prepared in sacks, the "last physical package" to an individual carrier route destination may consist of a single addressed piece, provided that all other packages to that carrier route destination contain at least two addressed pieces, and that the total group of pieces to that carrier route (the "logical" package) meets the Carrier Route rate eligibility minimum in E712. Packages prepared on pallets must meet the additional packaging requirements under M045 and each physical package, including carrier route rate mail, must always contain at least two pieces.

[Amend the heading and the introductory phrase of redesignated 1.6 to read as follows:]

1.6 Package Size—Other Mail Classes

Except for Bound Printed Matter, an individual physical package may be prepared with fewer than the minimum number of pieces required by the standards for the rate claimed, without loss of rate eligibility under either of these conditions:

* * * * *

[Amend heading of 2.0 by replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

2.0 ADDITIONAL STANDARDS—FIRST-CLASS MAIL, PERIODICALS, STANDARD MAIL, AND FLAT-SIZE BOUND PRINTED MATTER FLATS

2.1 Cards and Letter-Size Pieces

[Amend 2.1c and 2.1d by changing "Standard Mail (A)" to "Standard Mail."]

* * * * *

[Amend 2.2 by revising the second sentence to read as follows:]

2.2 Flat-Size Pieces

* * * Flat-size pieces must be prepared in packages except under 1.7 and, for First-Class Mail, under M820.3.0.

* * * * *

[Amend the heading of 3.0 by adding "All," and amend the opening text to read as follows:]

3.0 FACING SLIPS—ALL CARRIER ROUTE MAIL

All facing slips used on carrier route packages must show this information:

* * * * *

M030 Containers

M031 Labels

* * * * *

2.0 ADDITIONAL STANDARDS—SACK LABELS

2.1 Specifications

[Amend 2.1a to reflect changes in mail class names to read as follows:]

A sack label must meet these specifications:

a. Color: white or manila for Priority Mail, First-Class Mail, Standard Mail, and Package Services mail; pink for Periodicals.

* * * * *

3.0 ADDITIONAL STANDARDS—TRAY LABELS PLACEMENT

* * * * *

3.2 SPECIFICATIONS

[Amend 3.2a to change "Standard Mail (A)" to "Standard Mail" to read as follows:]

A tray label must meet these specifications:

a. Color: White or manila for First-Class Mail and Standard Mail; pink for Periodicals.

* * * * *

4.0 PALLET LABELS

* * * * *

4.2 Specifications

[Amend 4.2 to reflect changes in mail class names to read as follows:]

Pallet labels must be pink for Periodicals mail or white for Standard Mail and Package Services mail. Pallet labels must measure at least 8 inches by 11 inches.

* * * * *

[Amend the last sentence of 4.7 (as it appeared in the final rule published in 65 FR 50054 (August 16, 2000)) to add the word "irregular parcel" in front of "Bound Printed Matter," and to change "processing category" to "5D pallet level" to read as follows:]

4.7 5-Digit, 5-Digit Carrier Routes, and 5-Digit Scheme Carrier Routes Pallets

All 5-digit carrier routes or 5-digit scheme carrier routes pallets must show the words "CARRIER ROUTES" (or "CR-RTS") after the processing category description on the content line under M045, M920, M930, and M940. 5-digit pallets of Bound Printed Matter irregular parcels that contain only carrier route rate mail also must show the words "CARRIER ROUTES" (or "CR-RTS") after the "5D" pallet level description on the contents line under M045.

[Amend the heading of 4.8 to read as follows:]

4.8 Automation/Nonautomation Status

[Amend 4.8 (as it appeared in Postal Bulletin 22036, 11–2–00) by changing "Standard Mail (A)" to "Standard Mail" to read as follows:]

All Periodicals and Standard Mail 5-digit, 5-digit scheme, 3-digit, SCF, ADC, ASF, and BMC pallets must show "BARCODED" or "BC" on the contents line if the pallet contains automation rate mail as provided in M045, M920, M930, and M940. Except for machinable parcels, all Periodicals and Standard Mail 5-digit and 5-digit scheme pallets must show "NONBARCODED" or "NBC" on the contents line if the pallet contains Presorted rate mail under M045, M920, M930, and M940. Except for machinable parcels, all Periodicals and Standard Mail 3-digit, SCF, ADC, ASF, BMC, Mixed ADC, and Mixed BMC pallets must show "NONBARCODED" or "NBC" on the contents line if the pallet contains Presorted rate and/or carrier route mail under M045, M920, M930, and M940. If a pallet contains copalletized automation rate and Presorted rate mail, or, for 3-digit, SCF, ADC, ASF, BMC, Mixed ADC, or Mixed BMC pallets, contains copalletized automation rate, Presorted rate, and carrier route mail, the separate "BARCODED" and "NONBARCODED" designations may be abbreviated "BC/NBC." (Note: if one of these pallets contains carrier route rate mail, but not Presorted rate mail, "NONBARCODED" or "NBC" is not required until July 15, 2001.)

[The following section was revised as M031.4.10 in the final rule published in 65 FR 50054 (August 16, 2000). Subsequent revisions to the DMM have redesignated this section as 4.9.]

4.9 Extraneous Information

Extraneous information is permitted no pallet labels if:

* * * * *

[Amend 4.9c to reflect changes in mail class names to read as follows:]

c. It does not appear on or between the lines reserved for USPS required information (blank lines are permitted). Exception: For combined mailings of Standard Mail and Package Services machinable parcels, mailer codes and extraneous information may appear between the content line and the post office of mailing line.

* * * * *

[The following section was added as M031.4.13 in the final rule published in 65 FR 50054 (August 16, 2000). Subsequent revisions to the DMM have redesignated this section as 4.12. Amend the title of 4.12 to delete the phrase "or Bundle" to read as follows:]

4.12 Pallet Package Information

* * * * *

5.0 SECOND LINE CODES

[Amend the chart in 5.0 to change "Standard Mail (A)" to "Standard Mail," add "First-Class Mail" and code "FCM," and add "Package Services" and code "PSVC" to read as follows:]

The codes shown below must be used as appropriate on Line 2 of sack, tray, and pallet labels.

Content type	Code
Barcoded	BC
Barcoded and Nonbarcoded	BC/NBC
Carrier Route	C (type of route)
Carrier Routes	CR–RTS (5-digit sack and pallet designation)
Digit	D
First-Class Mail	FCM
Flats	FLTS
General Delivery Unit	G
Highway Contract Route	H
Irregular Parcels	IRREG (Periodicals, Standard Mail, and Package Services only)
Letters	LTRS
Machinable Parcels	MACH (Standard Mail and Package Services only)
Mixed	MXD
Mixed Machinable and Irregular Parcels	MACH & IRREG (Standard Mail only)
Nonbarcoded	NON BC (sacks)
	NBC (pallets, and co-trayed or co-sacked mail under M910)
Package Services	PSVC
Parcels	PARCELS (First-Class Mail and Package Services only)
Periodicals	PER (see 1.7) NEWS (see 1.7)
Post Office Box Section	B
Rural Route	R
Scheme	SCH (Periodicals, Standard Mail, and (flats only) Bound Printed Matter 5-digit scheme carrier routes sacks and 5-digit scheme pallets only)
Standard Mail	STD

Content type	Code
Working	WKG

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

1.1 Use

[Amend 1.1 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend Exhibit 1.3a, 3-Digit Content Identifier Numbers, by replacing headings "STANDARD MAIL (A)" with "STANDARD MAIL," "STANDARD MAIL (B)" with "PACKAGE SERVICES MAIL," "Special Standard Mail" with "Media Mail," and making other changes in content line information to read as follows:]

Class and mailing	CIN	Human-readable content line
STANDARD MAIL		
Enhanced Carrier Route Irregular Parcels—Nonautomation:		
car. rt. sacks—saturation	599	STD IRREG WSS[1]
car. rt. sacks—high density	600	STD IRREG WSH[1]
car. rt. sacks—basic	601	STD IRREG LOT[1]
5-digit carrier routes sacks	598	STD IRREG CR–RTS
STD Irregular Parcels—Presorted:		
5-digit sacks	590	STD IRREG 5D
3-digit sacks	591	STD IRREG 3D
ADC sacks	592	STD IRREG ADC
mixed ADC sacks	594	STD IRREG WKG
STD Machinable Parcels—Presorted:		
5-digit sacks	670	STD MACH 5D
ASF sacks	672	STD MACH ASF
BMC sacks	673	STD MACH BMC
mixed BMC sacks	674	STD MACH WKG
STD Machinable and Irregular Parcels—Presorted:		
5-digit sacks	603	STD MACH & IRREG 5D
PACKAGE SERVICES MAIL		
Carrier Route Bound Printed Matter—Flats:		
carrier route sacks	657	PSVC FLTS CR[1]
5-digit scheme carrier routes sacks	659	PSVC FLTS CR–RTS SCH
5-digit carrier routes sacks	658	PSVC FLTS CR–RTS
Presorted Bound Printed Matter—Flats:		
5-digit sacks	649	PSVC FLTS 5D NON BC
3-digit sacks	650	PSVC FLTS 3D NON BC
SCF sacks	654	PSVC FLTS SCF NON BC
ADC sacks	651	PSVC FLTS ADC NON BC
mixed ADC sacks	653	PSVC FLTS NON BC WKG
Carrier Route Bound Printed Matter—Irregular Parcels:		
carrier route sacks	697	PSVC IRREG CR[1]
5-digit carrier routes sacks	698	PSVC IRREG CR–RTS
Presorted Bound Printed Matter—Irregular Parcels:		
5-digit sacks	690	PSVC IRREG 5D
3-digit sacks	691	PSVC IRREG 3D
SCF sacks	696	PSVC IRREG SCF
ADC sacks	692	PSVC IRREG ADC
mixed ADC sacks	694	PSVC IRREG WKG
Carrier Route Bound Printed Matter—Machinable Parcels:		
carrier route sacks	687	PSVC MACH CR[1]
Presorted Bound Printed Matter—Machinable Parcels:		
5-digit sacks	680	PSVC MACH 5D
ASF sacks	682	PSVC MACH ASF
BMC sacks	683	PSVC MACH BMC
mixed BMC sacks	684	PSVC MACH WKG
Presorted Media Mail and Presorted Library Mail Flats—5-Digit and BMC:		
5-digit sacks	649	PSVC FLTS 5D NON BC
BMC sacks	652	PSVC FLTS BMC NON BC

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Class and mailing	CIN	Human-readable content line
Presorted Media Mail and Presorted Library Mail Irregular Parcels—5-Digit and BMC:		
5-digit sacks	690	PSVC IRREG 5D
BMC sacks	693	PSVC IRREG BMC
Presorted Media Mail and Presorted Library Mail Machinable Parcels—5-Digit and BMC:		
5-digit sacks	680	PSVC MACH 5D
BMC sacks	683	PSVC MACH BMC
Parcel Post Machinable Parcels:		
5-digit sacks	680	PSVC MACH 5D
ASF sacks	682	PSVC MACH ASF
BMC sacks	683	PSVC MACH BMC
mixed BMC sacks	684	PSVC MACH WKG
Parcel Post DSCF and DDU Rates:		
5-digit sacks	688	PSVC PARCELS 5D
Combined PSVC Parcels:		
5-digit sacks	688	PSVC PARCELS 5D
Combined STD & PSVC Machinable Parcels:		
5-digit sacks	660	STD/PSVC MACH 5D
ASF sacks	662	STD/PSVC MACH ASF
BMC sacks	663	STD/PSVC MACH BMC
mixed BMC sacks	664	STD/PSVC MACH WKG

* * * * *

2.0 ADDITIONAL STANDARDS—BARCODED TRAY LABELS

2.1 Paper Stock, Size, and Color

[Amend 2.1a to replace the class name "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

3.0 ADDITIONAL STANDARDS—BARCODED SACK LABELS

[Amend 3.1a by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

* * * * *

1.2 Equipment

[Amend 1.2a and 1.2f by replacing "Standard Mail (A)" with "Standard Mail" and amend 1.2a by adding a second sentence to read as follows:]

a. First-Class Mail flat-size pieces must be prepared in USPS flat trays with lids. The lids to these flat trays must be placed green side up.

[Amend the heading of 2.0 by replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

2.0 FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL

* * * * *

2.2 Flat Tray Preparation (First-Class Mail Only)

[Amend 2.2 by adding new f through h to read as follows:]

All flat tray preparation is subject to these standards:

* * * * *

f. For automation rate mailings prepared under the optional tray-based preparation rules in M820, one less-than-full overflow tray may be prepared for a presort destination when the total number of pieces for that destination meets the minimum for preparation of the tray level under M820, and when one or more full trays for that destination are also prepared.

g. For automation rate mailings prepared under the optional tray-based preparation rules in M820, if the total number of pieces for a presort destination meets or exceeds the minimum number of pieces required to prepare a tray for that destination, but the total volume does not physically fill a single tray, then the mail for that presort destination may be prepared in a less-than-full tray.

h. Pieces prepared as automation flats under the tray-based preparation option in M820 do not have to be grouped by 3-digit ZIP Code prefix in ADC trays or by ADC in mixed ADC trays if the mailing is prepared using an MLOCR/barcode sorter and standardized documentation is submitted.

* * * * *

M040 Pallets

M041 General Standards

* * * * *

[M041.5.0 and 6.0 were amended in the amended final rule published in 65 FR 48385 (August 8, 2000) and in the final rule published in 65 FR 50054 (August 16, 2000). The language in this final rule reflects those amendments.]

5.0 PREPARATION

5.1 Presort

[Amend 5.1 to change the class name from "Standard Mail (A)" to "Standard Mail" and to delete the phrase "and bundles" to read as follows:]

Pallet preparation and pallet sortation are subject to the specific standards in M045, M920, M930, and M940. Pallet sortation is generally intended to presort the palletized portion of a mailing to at least the finest extent required for the corresponding class of mail and method of preparation. Pallet sortation is sequential from the lowest (finest) level to the highest and must be completed at each required level before the next optional or required level is prepared. Standard preparation terms for pallets are defined in M011, standard presort levels are defined in M045, and advanced presort levels are defined in M920, M930, and M940. For sacks, trays, or machinable parcels on pallets, the mailer must prepare all required pallet levels before any mixed ADC or mixed BMC pallets are prepared for a mailing or job. Packages prepared under M045 or M920, M930, or M940 must not be placed on mixed ADC or mixed BMC pallets. Packages that cannot be placed on pallets must be prepared in sacks under the standards for the rate claimed. The standards for package reallocation to protect the SCF or BMC pallet (M045.5.0 and 6.0) are optional methods of pallet preparation designed to retain as much mail as possible at the SCF or BMC level. These standards may result in some packages of Periodical flats and irregular parcels and Standard Mail (A) flats that are part of a mailing job prepared in part as palletized flats at automation rates not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using package reallocation (package reallocation is optional, but if performed, it must be done for the complete mailing job).

5.2 Required Preparation

[Amend 5.2 to change the class name from "Standard Mail (A)" to "Standard Mail" to read as follows:]

These standards apply to:

a. Periodicals, Standard Mail, and Package Services (except for Parcel Post BMC Presort and OBMC Presort, and except for Parcel Select DSCF and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals, Standard Mail, or Package Services mail in packages or sacks, or 500 pounds of parcels, or six layers of Periodicals or Standard Mail letter trays. For packages of Periodicals flats and irregular parcels on pallets that are prepared under the standards for package reallocation to protect the SCF pallet (M045.5.0), not all mail for a required 5-digit scheme carrier routes, 5-digit scheme, 5-digit carrier routes, or 5-digit pallet or for an optional merged 5-digit scheme, optional merged 5-digit, or optional 3-digit pallet is required to be on that corresponding pallet level. For packages of Standard Mail flats on pallets that are prepared under the standards for package reallocation to protect the SCF pallet (M045.5.0), not all mail for a required 5-digit carrier routes or 5-digit pallet or for an optional 5-digit scheme carrier routes, merged 5-digit scheme, 5-digit scheme, merged 5-digit pallet, or 3-digit pallet is required to be on that corresponding pallet level. For packages of Standard Mail flats on pallets prepared under the standards for package reallocation to protect the BMC pallet (M045.6.0), not all mail for a required ASF pallet is required to be on an ASF pallet. Mixed ADC or mixed BMC pallets of sacks, trays, or machinable parcels, as appropriate, must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

b. Parcel Post mailed at BMC Presort, OBMC Presort, DSCF, and DDU rates. Pallets must meet the requirements specifically prescribed for these rates in M045.

5.3 Minimum Load

[Amend 5.3a by replacing "Standard Mail (A)" with "Standard Mail" and by changing "M630" to "M710"; no other changes to text.]

* * * * *

5.6 Mail on Pallets

[Amend 5.6 (as it appeared in the final rule published in 65 FR 50054 (August 16, 2000)) to provide for separation of flat-size Bound Printed Matter Carrier Route mail from Presorted mail on 5-digit level pallets, to change "Standard Mail (A)" to "Standard Mail," to remove references to "bundles," and to clarify and reorganize to read as follows:]

These standards apply to mail on pallets:

a. Pieces in trays, packages, and sacks must be prepared under the standards for the class of mail and rate claimed.

b. When two or more Periodicals mailings, two or more Standard Mail mailings, or two or more Bound Printed Matter mailings are placed together on pallets, the mailer must keep records for each mailing as required by the standards for the class of mail.

c. For letter-size Standard Mail and Periodicals prepared in trays on pallets, carrier route rate mail (including automation carrier route) must be prepared on separate 5-digit pallets (5-digit carrier routes pallets) from non-carrier route automation rate or Presorted rate mail (5-digit pallets).

d. Heavier, fuller trays must be placed at the bottom of the load.

e. For Bound Printed Matter irregular parcels, Presorted and Carrier Route rate mail may be combined on all levels of pallet. For Bound Printed Matter flats, Presorted and Carrier Route rate mail may be combined on all levels of pallet except as provided in f and g.

f. For sacks of nonletter-size Periodicals mail on pallets (except for mail prepared with detached address labels), for sacks of nonletter-size Standard Mail on pallets (except for mail prepared with detached address labels and machinable parcels), and for sacks of flat-size Bound Printed Matter, carrier route rate mail must be prepared on separate 5-digit pallets (5-digit carrier routes pallets) from automation rate or Presorted rate mail (5-digit pallets).

g. For packages on pallets of nonletter-size Periodicals, nonletter-size Standard Mail, and flat-size Bound Printed matter, carrier route rate mail must be prepared on separate 5-digit pallets (5-digit carrier routes or 5-digit scheme carrier routes pallets) from automation rate or Presorted rate mail (5-digit pallets or 5-digit scheme pallets). Exception: When nonletter-size Periodicals and flat-size Standard Mail is prepared under h, carrier route rate mail, automation rate mail, and Presorted rate mail may be copalletized on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet for applicable 5-digit ZIP Codes.

h. Mailers of nonletter-size Periodicals and flat-size Standard Mail that prepare packages on pallets may copalletize carrier route rate mail, automation rate mail, and Presorted rate mail on the same merged 5-digit pallet or on the same merged 5-digit scheme pallet under the conditions in M920, M930, or M940.

* * * * *

6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE PIECES

* * * * *

[Amend the heading and contents of 6.4 to change the class name from "Standard Mail (A)" to "Standard Mail."]

* * * * *

M045 Palletized Mailings

1.0 BASIC USES

[Amend 1.0f by replacing "Standard Mail (A) and (B)" with "Standard Mail and Package Services" and 1.0i by replacing "Standard Mail" with "Package Services" and by replacing "M630" with "M700"; no other changes to text.]

[Amend the heading of 2.0 to add "ON PALLETS" to read as follows:]

2.0 PACKAGES ON PALLETS

[Revise 2.1 to read as follows:]

2.1 Applicability

Only packages of flats and packages of irregular parcels of Periodicals, Standard Mail, and Bound Printed Matter may be prepared in packages placed directly on pallets under the provisions of 2.2 through 2.5 and 3.0. Mail that cannot be placed on pallets under 2.0 and 3.0 must be prepared in sacks under the applicable provisions of M200, M600, and M700. Sacks containing packages for mixed ADC destinations, or containing packages remaining after all pallets are prepared, may be presented with the palletized portion of the mailing job (and, subject to 8.5, reported on the same postage statement) if the sacks are set apart from the palletized portion of the mailing job.

[Redesignate current 2.2 through 2.4 as 2.3 through 2.5, respectively. Delete current 2.5 and 2.6. Insert new 2.2 to read as follows:]

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2.2 Basic Packaging Standards

Package preparation for Periodicals, Standard Mail, and Bound Printed Matter must meet the general standards in M010 and M020 and the applicable packaging provisions of M200, M610, M620, M720, and M820, except as noted in 2.3 through 2.5. Packages must be sorted to pallets under 3.0. The palletized portion of a mailing may not include packages sorted to mixed ADCs or foreign destinations.

[Amend the heading of redesignated 2.3 by deleting "Size"; to read as follows:]

2.3 Periodicals

* * * * *

[Amend the heading of redesignated 2.4 by deleting "Size" and replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

2.4 Standard Mail

* * * * *

[Revise the heading and contents of redesignated 2.5 to read as follows:]

2.5 Bound Printed Matter

Bound Printed Matter on pallets must be packaged as follows:

a. Presorted Bound Printed Matter:

(1) Only individual pieces of flats or irregular parcels that weigh less than 10 pounds may be prepared as packages on pallets. Pieces that individually weigh 10 or more pounds must be prepared and palletized as machinable parcels under 3.5 or prepared in sacks under M722.

(2) Packages must be prepared to the package destinations in M722. The minimum package size is 10 addressed pieces or 10 pounds, whichever occurs first, except that the last package to a presort destination may contain fewer than 10 pieces or weigh less than 10 pounds. See 2.5c for a definition of the "whichever comes first" packaging requirement. When there are at least 10 pieces but fewer than 10 pounds for a presort destination, the pieces must be prepared in a single physical package. The maximum physical package size is 20 pounds, except that 5-digit packages that will be placed on a 5-digit scheme (flats only) or 5-digit pallet may weigh up to 40 pounds. The total number of physical packages for a single presort destination must not exceed the number of 10-pound increments to that destination. Each physical package must contain at least 2 addressed pieces. Each physical package must be labeled using optional endorsement lines or pressure sensitive labels under M722.

b. Carrier Route Bound Printed Matter:

(1) Only individual pieces of flats or irregular parcels that weigh less than 10 pounds may be prepared as packages on pallets. Pieces that individually weigh 10 or more pounds must either be prepared and palletized as machinable parcels under 3.5 and pay the Presorted rates, or be prepared in sacks to qualify for the Carrier Route rates under M723.

(2) The minimum package size is 10 addressed pieces or 10 pounds to a carrier route, whichever occurs first, except that the last package to a carrier route destination may contain fewer than 10 pieces or weigh less than 10 pounds. See 2.5c for a definition of the "whichever comes first" packaging requirement. When there are at least 10 pieces but fewer than 10 pounds for a presort destination, the pieces must be prepared in a single physical package. The maximum physical package size is 20 pounds, except that carrier route packages of flats that will be placed on a 5-digit scheme carrier routes or 5-digit carrier routes pallet and carrier route packages of irregular parcels that will be placed on a 5-digit pallet may weigh up to 40 pounds. The total number of physical packages for a single carrier route destination must not exceed the number of 10-pound increments to that destination. Each physical package must contain at least 2 addressed pieces. Each physical package must be labeled to the carrier route with facing slips under M723, optional endorsement lines under M013, or carrier route information lines under M014.

c. Minimum Package Size. Package mail under the minimum package size of "10 pieces or 10 pounds, whichever comes first" according to these standards:

(1) For identical-weight pieces, a single-piece weight of one pound results in 10 pieces weighing 10 pounds. Identical-weight pieces weighing one pound or less must be prepared using the 10-piece minimum; those that weigh more must be prepared using the 10 pound minimum.

(2) For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 10-pound minimum applies). Alternatively, package by the actual piece count or mail weight for each package destination, provided documentation can be provided with the mailing that shows (specifically for each package) the number of pieces and their total weight.

(3) Mailers must note on the accompanying postage statement whether they applied the 10-piece or 10-pound threshold, or both.

[Remove 3.0; redesignate 4.0 through 15.0 as 3.0 through 14.0, respectively.]

3.0 PALLET PRESORT AND LABELING

[The following section, Pallet Presort and Labeling, was originally revised as M045.4.0 in the final rule published in 65 FR 50054 (August 16, 2000). The revisions below are revisions to the language in that final rule.]

* * * * *

[Delete redesignated 3.3 pertaining to Bound Printed Matter (revised in the final rule published in 65 FR 50054 (August 16, 2000)). Redesignate 3.4 and 3.5 as 3.5 through 3.6. Add new 3.3 and 3.4 to read as follows:]

3.3 Bound Printed Matter Flats—Packages and Sacks on Pallets

Mailers must prepare pallets in the sequence listed below. Mailers who do not perform scheme sortation under 3.3a and 3.3b using L001 must begin preparing pallets under 3.3c. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. 5-Digit Scheme Carrier Routes. Optional. Permitted only for flat-size packages on pallets. May contain only Carrier Route rate packages for the same 5-digit scheme under L001. If scheme sort is performed, it must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit carrier routes pallets under 3.3c.

(1) Line 1: use L001, Column B.

(2) Line 2: "PSVC FLTS," followed by "CARRIER ROUTES" or "CR–RTS" and "SCHEME" or "SCH."

b. 5-Digit Scheme. Optional. Permitted only for flat-size packages on pallets. May contain only Presorted rate packages for the same 5-digit scheme under L001. If scheme sort is performed, it must be done for all 5-digit scheme destinations. For all 5-digit destinations that are not part of a scheme, prepare 5-digit pallets under 3.3d.

(1) Line 1: use L001, Column B.

(2) Line 2: "PSVC FLTS 5D" followed by "SCHEME" or "SCH."

c. 5-Digit Carrier Routes. Required for sacks and packages (except for packages prepared to 5-digit carrier route scheme pallets under 3.3a). May contain only Carrier Route rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PSVC FLTS," followed by "CARRIER ROUTES" or "CR–RTS."

d. 5-Digit. Required for sacks and packages (except for packages prepared to 5-digit scheme pallets under 3.3b). May contain only Presorted rate mail for the same 5-digit ZIP Code.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PSVC FLTS 5D."

e. 3-digit: Optional. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: use L002, Column A.

(2) Line 2: "PSVC FLTS 3D."

f. SCF. Required. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: use L002, Column C.

(2) Line 2: "PSVC FLTS SCF."

g. ASF. Required. May contain Carrier Route and/or Presorted rate mail. Sort ADC packages or sacks to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package or sack in L004. See E752 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L602.

(2) Line 2: "PSVC FLTS ASF."

h. BMC. Required. May contain Carrier Route and/or Presorted rate mail. Sort ADC packages or sacks to BMC pallets based on the label to ZIP Code for the ADC destination of the package or sack in L004. See E752 for additional requirements for DBMC rate eligibility.

(1) Line 1: use L601.

(2) Line 2: "PSVC FLTS BMC."

i. Mixed BMC (for sacks on pallets only). Optional. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: "MXD," followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code prefix of the entry post office (label to plant serving entry post office if authorized by the processing and distribution manager).

(2) Line 2: "PSVC FLTS" followed by "WKG."

3.4 Bound Printed Matter Irregular Parcels—Packages and Sacks on Pallets

Mailers must prepare pallets in the sequence listed below. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. 5-digit. Required. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "PSVC IRREG 5D" and, if the pallet contains only carrier route mail, followed by "CARRIER ROUTES" or "CR-RTS".

b. 3-digit. Optional. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: use L002, Column A.

(2) Line 2: "PSVC IRREG 3D."

c. SCF. Required. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: use L002, Column C.

(2) Line 2: "PSVC IRREG SCF."

d. ASF. Required. May contain Carrier Route rate and/or Presorted rate mail. Sort ADC packages or sacks to ASF pallets based on the "label to" ZIP Code for the ADC destination of the package or sack in L004.

(1) Line 1: use L602.

(2) Line 2: "PSVC IRREG ASF."

e. BMC. Required. May contain Carrier Route and/or Presorted rate mail. Sort ADC packages or sacks to BMC pallets based on the "label to" ZIP Code for the ADC destination of the package or sack in L004.

(1) Line 1: use L601.

(2) Line 2: "PSVC IRREG BMC."

f. Mixed BMC (for sacks on pallets only). Optional. May contain Carrier Route and/or Presorted rate mail.

(1) Line 1: "MXD," followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code prefix of the entry post office (label to plant serving entry post office if authorized by the processing and distribution manager).

(2) Line 2: "PSVC IRREG" followed by "WKG."

3.5 Machinable Parcels—Standard Mail, Bound Printed Matter, and Parcel Post (Except BMC Presort, OBMC Presort, and Parcel Select DDU and DSCF)

Mailers must prepare pallets in the sequence listed below. Mailers may prepare Parcel Post other than BMC Presort, OBMC Presort, and Parcel Select DDU and DSCF on pallets under this section as an option. If Parcel Post is optionally sorted under this section, it must meet all the requirements of this section. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. 5-digit. Required, except optional for Standard Mail if 3/5 rates are not claimed.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD MACH 5D" or "PSVC MACH 5D," as applicable.

b. If DBMC rates are not claimed: BMC. Required.

(1) Line 1: use L601.

(2) Line 2: "STD MACH BMC" or "PSVC MACH BMC," as applicable.

c. If DBMC rates are claimed: ASF/BMC. Option 1: Mailers may opt to sort mail to ASFs using L602 only when the mail on the ASF pallet will be deposited at the ASF to claim the DBMC rate. After ASF pallets are prepared (mail need not be sorted to all ASFs), remaining mail must be sorted to BMCs using L601. Mail on BMC pallets deposited at the applicable BMC facility will be eligible for DBMC rates only if its 3-digit ZIP Code prefix is listed in Exhibit E650.5.1 (Standard Mail) or Exhibit E751.1.3 (Parcel Post and Bound Printed Matter) for that entry BMC. Option 2: Mailers may sort mail only to BMCs using L601. Under option 2, only mail for 3-digit ZIP Codes served by a BMC listed in Exhibit E650.5.1 or Exhibit E751.1.3 are eligible for DBMC rates (i.e., mail for 3-digit ZIP Codes served by an ASF in Exhibit E650.5.1 or Exhibit E751.1.3 are not eligible for DBMC rates, nor are 3-digit ZIP Codes that do not appear on Exhibit E650.5.1 or Exhibit E751.1.3).

(1) Line 1: Option 1: use L602 for ASF pallets; use L601 for BMC pallets.

Option 2: use L601.

(2) Line 2: "STD MACH" or "PSVC MACH," as applicable; followed by "ASF" or "BMC," as applicable.

d. Mixed BMC. Optional.

(1) Line 1: "MXD," followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code prefix of the entry post office (label to plant serving entry post office if authorized by the processing and distribution manager).

(2) Line 2: "STD MACH" or "PSVC MACH," as applicable, followed by "WKG."

[Amend the title of 3.6 to read as follows:]

3.6 Presorted Media Mail and Library Mail

[Amend 3.6a(2) by changing "STD" and "STD B" to "PSVC."]

[Amend 3.6b by changing "Destination BMC" to "BMC" and by changing "STD" and "STD B" to "PSVC."]

[Amend the heading of redesignated 4.0 by adding "To Protect SCF Pallet" and by replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

4.0 PACKAGE REALLOCATION TO PROTECT SCF PALLET FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL FLATS ON PALLETS

* * * * *

[The following section (M045.5.0) was originally added as M045.6.0 in the amended final rule published in 65 FR 48385 (August 8, 2000). The revisions below are revisions to the language in that final rule.]

[Amend the heading of redesignated 5.0 by replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

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5.0 PACKAGE REALLOCATION TO PROTECT BMC PALLET FOR STANDARD MAIL FLATS ON PALLETS

* * * * *

6.0 PALLETS OF PACKAGES, SACKS, AND TRAYS

* * * * *

[Amend the heading of 6.2 to read as follows:]

6.2 Standard Mail

[Amend 6.2 by replacing the class name "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

6.4 Commingled Zones

[Amend 6.4 by replacing "Standard Mail (B)" with "Package Services mail," and by changing "M630" to "M710 or M720" to read as follows:]

Pieces of Package Services mail for different zones may be commingled only under M710 or M720.

* * * * *

[Amend the heading of 8.0 by replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

8.0 PALLETS OF COPALLETIZED PERIODICALS OR STANDARD MAIL FLAT-SIZE PIECES

* * * * *

[Amend the heading of 8.3 by replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

8.3 Standard Mail

[Amend the first sentence of 8.3 to read as follows:]

Additional standards apply to Standard Mail: * * *

* * * * *

8.5 Postage Statement

[Amend 8.5b by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

9.0 PALLETS OF MACHINABLE PARCELS

[Amend the heading of 9.1 to remove the "(A)" to read as follows:]

9.1 Standard Mail

* * * * *

[Revise the heading of 9.2 to read as follows:]

9.2 Package Services

[Amend 9.2 by changing "M630" to "M710 and M720."]

* * * * *

10.0 PARCEL POST—BULK MAIL CENTER (BMC) PRESORT DISCOUNT

10.1 Machinable Parcels

[Amend 10.1c by replacing the label class designation "STD B" with "PSVC" to read as follows:]

To qualify for the BMC Presort discount:

* * * * *

c. Pallet box Line 2 labeling: "PSVC MACH BMC."

10.2 Nonmachinable Parcels

[Amend 10.2c by replacing the label class designation "STD B" with "PSVC" to read as follows:]

* * * * *

c. Pallet Line 2 labeling: "PSVC NON MACH BMC" or "PSVC NON MACH ASF," as applicable.

11.0 PARCEL POST—ORIGIN BULK MAIL CENTER (OBMC) PRESORT DISCOUNT

11.1 Machinable Parcels

[Amend 11.1c by replacing the label class designation "STD B" with "PSVC" to read as follows:]

To qualify for the OBMC Presort discount:

* * * * *

c. Pallet box Line 2 labeling: "PSVC MACH BMC."

11.2 Nonmachinable Parcels

[Amend 11.2c by replacing the label class designation "STD B" with "PSVC" to read as follows:]

To qualify for the OBMC Presort discount:

* * * * *

c. Pallet Line 2 labeling: "PSVC NON MACH BMC" or "PSVC NON MACH ASF," as appropriate.

12.0 PARCEL POST DSCF RATES—PARCELS ON PALLETS

12.1 Basic Preparation, Parcels on Pallets

[Amend the first sentence of 12.1 by changing "M630" to "M710."]

* * * * *

[Amend 12.1d(2) by replacing the label class designation "STD B" with "PSVC" and adding "PARCELS" to read as follows:]

* * * * *

(2) For Line 2, use: "PSVC PARCELS 5D."

* * * * *

[Amend 12.1e by replacing "M630" with "M710."]

12.2 Alternate Preparation, Parcels on Pallets

[Amend 12.2a by replacing "M630" with "M710."]

* * * * *

[Amend 12.2c by replacing "M630" with "M710."]

[Amend 12.2d(2) by replacing the label class designation "STD B" with "PSVC" and adding "PARCELS" to read as follows:]

* * * * *

(2) For Line 2, use: "PSVC PARCELS 5D."

* * * * *

12.3 5-Digit ZIP Codes For Which Pallets May Not Be Prepared

[Amend 12.3 by changing "Exhibits E652.7.0 and E652.8.0" to "Exhibits E751.7.0 and E751.8.0" and by changing "M630" to "M710."]

12.4 5-Digit ZIP Codes Requiring BMC Entry

[Amend 12.4 by changing "E652.6.0" to "E751.6.0."]

13.0 PARCEL POST DSCF RATES—SACKS ON PALLETS

[Amend 13.0 by changing "M630" to "M710."]

[Amend 13.0b by replacing the label class designation "STD B" with "PSVC" to read as follows:]

* * * * *

b. Line 2: "PSVC PP 5D SACKS".

14.0 PARCEL POST DDU RATES

[Amend 14.0 by replacing "STD B" with "PSVC" and adding "PARCELS" in the fourth sentence to read as follows:]

* * * If pieces are sacked or palletized, they must be prepared to 5-digits and labeled as follows: Line 1 labeling, use city, state, and 5-digit ZIP Code destination; Line 2, use "PSVC PARCELS 5D." * * *

* * * * *

M050 Delivery Sequence

* * * * *

4.0 DOCUMENTATION

4.1 General

[Amend 4.1 by changing the class name "Standard Mail (A)" to "Standard Mail" in the fifth sentence; no other changes to text.]

4.2 High Density

[Amend 4.2a by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

M070 Mixed Classes

M071 Basic Information

1.0 MARKINGS

[Amend 1.1 and 1. 2 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend 1.3 by replacing "Standard Mail (A) Enclosed" with "Standard Mail Enclosed" and "Standard Mail parcel" with "Standard Mail and Package Services parcel"; no other changes to text.]

M072 Express Mail and Priority Mail Drop Shipment

* * * * *

2.0 ADDITIONAL STANDARDS FOR ENCLOSED MAIL

* * * * *

[Revise the heading and contents of 2.3 by changing "Standard Mail (A)" to "Standard Mail."]

[Revise the heading of 2.4 to "Package Services" to read as follows:]

2.4 Package Services

[Amend 2.4 by changing "P710, P720, or P730" to "P910, P920, or P930" and by changing "E652" to "E751."]

* * * * *

[Amend the heading of M073 to reflect the new class of mail names to read as follows:]

M073 Combined Mailings of Standard Mail and Package Services Parcels

1.0 COMBINED MACHINABLE PARCELS—RATES OTHER THAN PARCEL POST OBMC PRESORT, BMC PRESORT, DSCF, AND DDU

[Amend 1.1 by replacing "Standard Mail (A)" with "Standard Mail" and by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

[Amend 1.2 by replacing "Standard Mail (A)" with "Standard Mail," by replacing "Standard Mail (B)" with "Package Services mail," and by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

[Amend 1.4 and 1.5c by replacing "Standard Mail (A)" with "Standard Mail" and by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

[Amend 1.6a by replacing "Standard Mail (A)" with "Standard Mail," by changing "10 pieces/20 pounds/1,000 cubic inches" to "10 pieces or 20 pounds," and by changing "Exhibits E651.5.1 and E652.1.3" to "Exhibits E650.5.1 and E751.1.3."]

Amend 1.6b by replacing "STD A/B" with "STD/PSVC"; no other changes to text.]

2.0 COMBINED PARCELS—PARCEL POST OBMC PRESORT, BMC PRESORT, AND DSCF RATES

2.1 Qualification

[Amend 2.1a, b, and c by replacing "Standard Mail (A)" with "Standard Mail" and by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

2.2 Authorization

[Amend 2.2 by replacing "Standard Mail (A)" with "Standard Mail" and by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

2.3 Postage Payment

[Amend 2.3 by replacing "P710" with "P910."]

2.4 Preparation and Rates

[Amend 2.4 by replacing "Standard Mail (A)" with "Standard Mail" and by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

2.5 Documentation

[Amend 2.5 by replacing "Standard Mail (A)" with "Standard Mail" and by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

M074 Plant Load Mailings

* * * * *

3.0 INTERSERVICE AREA PLANT-LOADED SHIPMENTS

* * * * *

[Revise heading of 3.4 to reflect the new mail class names to read as follows:]

3.4 Standard Mail and Package Services

[Amend 3.4 by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

[Amend 3.7c by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

M100 First-Class Mail (Nonautomation)

[Add new headings M110 and 1.0 to read as follows:]

M110 Single-Piece First-Class Mail

1.0 PREPARATION

[Redesignate E130.2.3 as M110.1.0; no changes to text.]

* * * * *

M600 Standard Mail

[Amend the heading of M610 by removing "(A)" to read as follows:]

M610 Presorted Standard Mail

1.0 BASIC STANDARDS

* * * * *

[Amend the heading and contents of 1.3 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

4.0 FLAT-SIZE PIECES AND IRREGULAR PARCELS

* * * * *

[Amend 4.6 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend 4.8 by replacing "STD A IRREG" with "STD IRREG" and by replacing "STD A MACH" with "STD MACH," no other changes to text.]

5.0 MACHINABLE PARCELS

* * * * *

[Amend 5.3 by replacing "STD A MACH" with "STD MACH," no other changes to text.]

[Delete 6.0 pertaining to preparation of bedloaded bundles of flats.]

M620 Enhanced Carrier Route Standard Mail

1.0 BASIC STANDARDS

1.1 All Mailings

[Amend 1.1a by replacing "E620" with "E630."]

* * * * *

[Revise the heading of 1.4 to read as follows:]

1.4 Exception

[Amend 1.4 by replacing "Standard Mail (A)" with "Standard Mail."]

* * * * *

4.0 SACK PREPARATION—FLAT-SIZE PIECES AND IRREGULAR PARCELS

* * * * *

[Amend 4.3 by replacing "STD A IRREG" with "STD IRREG," no other changes to text.]

5.0 RESIDUAL PIECES

[Amend 5.0 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

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[Delete 6.0 pertaining to preparation of bedloaded bundles of flats.]

[Add new section M700 to read as follows:]

M700 Package Services

[Redesignate M630.1.0 as M710 to read as follows:]

M710 Parcel Post

[Add new heading 1.0 to read as follows:]

1.0 BASIC REQUIREMENTS

[Add 1.1 to read as follows:]

1.1 General

All mailings at Parcel Post rates are subject to these general standards:

a. Each mailing must meet the applicable standards in E710, E711, E751, and M010 and M030.

b. All pieces that are palletized must be prepared under M045.

c. There are no presort, sacking, or labeling standards for single-piece rate Parcel Post.

[Redesignate M630.1.1 as M710.1.2, no changes to text.]

[Redesignate M630.1.2 as M710.1.3, amend to show DSCF and DDU rate mail need not be separated by zone, and amend for numbering revisions to read as follows:]

1.3 Separation

Except for mail entered at DSCF or DDU rates (which are not zoned rates), Parcel Post pieces must be separated by zones when presented for acceptance unless either the correct postage is affixed to each piece or the mailing is prepared under 1.4, or the mailing is presented under a special postage payment system under P910, P920, or P930. If DSCF sacks prepared under 2.2 are included in the same mailing as DSCF pallets prepared under M045.12.1e, then at the time of acceptance the mailer must separate the sacks that are overflow from palletized mail from those sacks that were prepared under the provisions of 2.2.

[Redesignate M630.8.0 as M710.1.4; amend to delete references to Bound Printed Matter to read as follows:]

1.4 Commingled Zones

Zoned Parcel Post pieces need not be separated by zones when presented for verification, other than as individual pieces or with full correct postage affixed to each piece, subject to this section. Nonidentical-weight pieces not bearing the full correct postage may not be commingled unless authorized by the RCSC manager serving the office of mailing. The mail must be prepared and documented under either of the following:

a. P910 or P930; or

b. All of these conditions:

(1) A unique number is assigned to each sack/pallet in the mailing and printed on a separate line at the top of the sack/pallet label (above the Line 1 information).

(2) A detailed list accompanies each mailing or mailing segment, sequenced numerically by the numbers assigned to sacks/pallets in the mailing, that shows the post office where the mail is to be entered (entry post office), a unique identifier for the mailing or mailing segment that also appears on the corresponding postage statement(s), the name and address of the mailer, the permit number (if applicable), the date of mailing, individual line entries for each sack/pallet, and the total number of pieces to each zone and in the entire mailing or mailing segment. Line entries for sacks/pallets containing mail for only one zone must show the sack/pallet number, the sortation level, the zone for which the mail is destined, and the total number of pieces for the sack/pallet. Entries for sacks/pallets containing mail for more than one zone must also show (by zone) the number of pieces to each 3-digit ZIP Code area and the total number of pieces for that zone for the sack/pallet. Mailings are not accepted if there are discrepancies between the information in the detailed listing or on the postage statement and the results of USPS random verification of piece counts and postage.

* * * * *

[Redesignate M630.1.3 as M710.1.5, and amend by changing references from "P710, P720, or P730" to "P910, P920, or P930," and clarifying to read as follows:]

1.5 Documentation

Parcel Post mailings must be documented as follows:

a. Postage Statement. A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each bulk mailing (a mailing that includes pieces qualifying for rates that require a 50-piece minimum volume requirement).

b. Other Documentation. When presented for acceptance, documentation of postage by entry office and presort level (*e.g.*, by BMC for DBMC, OBMC Presort, and BMC Presort mail and by 5-digit ZIP Code for DSCF and DDU rates) is required under P910, P920, or P930. Except for DSCF rate mail palletized under the alternate preparation option that requires separate documentation, other documentation is not required when the correct rate is affixed to each piece, or when each piece is of identical weight and the pieces are separated by zone and within each zone are grouped by pieces subject to the same combination of rates. DSCF rate mail palletized under the alternate preparation option in M045 must submit the detailed documentation required in M045.12.2.

[Add 2.0 to read as follows:]

2.0 DSCF RATE

2.1 General

[Redesignate contents of M630.1.4 as M710.2.1; amend by changing the reference "1.5" to "2.2," by changing the reference "Exhibit E652.6.0" to "Exhibit E751.6.0," and by changing the reference to "Exhibit E652.7.0 and Exhibit E652.8.0" to "Exhibit E751.7.0 and Exhibit E751.8.0"; no other changes to text.]

2.2 DSCF Sack Preparation

[Redesignate M630.1.5 as M710.2.2; amend redesignated 2.2d by replacing "STD B 5D" with "PSVC PARCELS 5D"; no other changes to text.]

3.0 DDU RATE

[Redesignate M630.1.6 as M710.3.0; amend redesignated 3.0b by changing "E652" to "E751"; amend redesignated 3.0d by changing "Exhibit E652.7.0 and Exhibit E652.8.0" to "Exhibit E751.7.0 and Exhibit E751.8.0"; amend redesignated 3.0e(2) by changing "STD B 5D" with "PSVC PARCELS 5D," no other changes to text.]

[Add 4.0 to read as follows:]

4.0 OPTIONAL MACHINABLE PARCEL PREPARATION

4.1 Basic Standards

Mailers may opt to prepare Parcel Post machinable parcels in sacks under 4.2 or on pallets under M045. Pieces must be separated by zones when presented to the USPS unless either the correct postage is affixed to each piece or the mailing is prepared under 1.4. Pieces for more than one zone may not be placed in the same sack, and sacks must be separated by zone when presented to the USPS.

4.2 Sack Preparation

Sack size, preparation sequence, and Line 1 labeling:

a. 5-digit: required (minimum of 10 pieces/20 pounds, smaller volume not permitted); for Line 1, use 5-digit ZIP Code destination of pieces (see M031 for military mail).

b. Destination ASF: optional; allowed only for mail deposited at an ASF to claim the DBMC rate (minimum of 10 pieces/20 pounds, smaller volume not permitted); for Line 1, use L602. Exhibit E751.1.3d determines DBMC rate eligibility.

c. Destination BMC: required (minimum of 10 pieces/20 pounds, smaller volume not permitted); for Line 1, use L601. Exhibit E751.1.3d determines DBMC rate eligibility.

d. Mixed BMC: required (no minimum); for Line 1, use "MXD" followed by the Column B information in L601 for the BMC serving the 3-digit ZIP Code prefix of the entry post office.

4.3 Sack Line 2

Line 2:

a. 5-digit: "PSVC MACH 5D."

b. ASF: "PSVC MACH ASF."

c. Destination BMC: "PSVC MACH BMC."

d. Mixed BMC: "PSVC MACH WKG."

* * * * *

[Add new M720 to read as follows:]

M720 Bound Printed Matter

M721 Single Piece Rates

1.0 BASIC STANDARDS

1.1 General

There are no presort, sacking, or labeling standards for single-piece rate Bound Printed Matter (BPM).

1.2 Markings

Each piece mailed at single-piece BPM rates must be marked "Bound Printed Matter" (or "BPM") subject to M012.

M722 Presorted Bound Printed Matter

1.0 BASIC STANDARDS

1.1 General

All mailings of Presorted Bound Printed Matter (BPM) are subject to the standards in 2.0 through 4.0 and to these general standards:

a. Each mailing must meet the applicable standards in E710, E712, E752, and in M010, M020, and M030.

b. All pieces in a mailing must be within the same processing category as described in C050. A BPM irregular parcel is a piece that is not a machinable parcel as defined in C050.4.1 or a flat as defined in C050.3.1. Irregular parcels also are pieces that meet the size and weight standards for a machinable parcel but are not individually boxed or packaged to withstand processing on BMC parcel sorters under C010.

c. All pieces must be sorted to the finest extent possible under 2.0 through 4.0 or palletized under M045.

d. Subject to M012, pieces must be marked "Bound Printed Matter" (or "BPM") and "Presorted" (or "PRSRT").

1.2 Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing. Documentation of postage is not required if the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate (zone) when presented for acceptance.

1.3 Separation

Pieces for each zone must be sacked separately. When presented for verification, sacks must be separated by zone. Exception: Pieces for different zones may be sacked together and the sacks do not have to be separated by zone for verification if any of the following apply:

a. Full (exact) postage is affixed to each piece in the mailing.

b. The mailing is prepared under P910, P930, or 1.4.

1.4 Commingling Zones

Zone rated BPM need not be separated by zones when presented other than as individual pieces or with full correct postage affixed to each piece, subject to this section. Nonidentical-weight pieces not bearing the full correct postage may not be commingled unless authorized by the RCSC manager serving the office of mailing. The mail must be prepared and documented:

a. Under P910 or P930; or

b. Under all these conditions:

(1) A unique number is assigned to each pallet in the mailing and printed on a separate line at the top of the pallet label (above the Line 1 information).

(2) A detailed list accompanies each mailing or mailing segment, sequenced numerically by the numbers assigned to the pallets in the mailing, that shows the post office where the mail is to be entered (entry post office), a unique identifier for the mailing or mailing segment that also appears on the corresponding postage statement, the name and address of the mailer, the permit number, the date of mailing, individual line entries for each pallet, and the total number of pieces to each zone in the entire mailing or mailing segment. Line entries for pallets containing mail for only one zone must show the pallet number, the sortation level, the zone for which the mail is destined, and the total number of pieces for the pallet. Entries for pallets containing mail for more than one zone must also show (by zone) the number of pieces to each 3-digit ZIP Code area and the total number of pieces for that zone for the pallet. Mailings are not accepted if there are discrepancies between the information in the detailed listing or on the postage statement and the results of USPS random verification of piece counts and postage.

2.0 REQUIRED PREPARATION—FLATS

2.1 Required Packaging

A package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces or 10 pounds, whichever occurs first. Smaller volumes are not permitted except for mixed ADC packages. The maximum weight of each physical package is 20 pounds, except that 5-digit packages placed in 5-digit sacks may weigh a maximum of 40 pounds each. Each physical package must contain at least 2 addressed pieces (except mixed ADC packages). Packaging also is subject to these conditions:

a. Identical-weight pieces that weigh 1 pound or less must be prepared using the 10-piece minimum; those that weigh more than 1 pound must be prepared using the 10-pound minimum.

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 10-pound minimum applies), or package by the actual piece count or mail weight for each package, if documentation can be provided with the mailing that shows the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count, weight, or both.

2.2 Package Preparation

Packages must be prepared and labeled in the following required sequence:

a. 5-digit: required; red Label D or optional endorsement line (OEL).

b. 3-digit: required; green Label 3 or OEL.

c. ADC: required; pink Label A or OEL.

d. Mixed ADC: required (no minimum); tan Label MXD or OEL.

2.3 Required Sacking

A sack must be prepared when the quantity of mail for a required presort destination reaches either 20 addressed pieces or 20 pounds, whichever occurs first. Smaller are volumes not permitted (except mixed ADC sacks). Optional SCF sacks may only be prepared when there are at least 20 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. Sacking also is subject to these conditions:

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a. Identical-weight pieces that weigh 1 pound or less must be prepared using the 20-piece minimum; those that weigh more than 1 pound must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 20-piece or 20-pound minimum applies), or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

2.4 Sack Preparation

Required sequence and Line 1 sack labeling:

a. 5-digit: required; for Line 1, use 5-digit ZIP Code destination of packages (for military mail, the ZIP Code is preceded by the prefixes under M031).

b. 3-digit: required; for Line 1, use L002, Column A.

c. SCF: optional; for Line 1, use L005, Column B.

d. ADC: required; for Line 1, use L004, Column B.

e. Mixed ADC: required (no minimum); for Line 1, use "MXD" followed by the city/state/ZIP Code of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004, Column B.

2.5 Sack Label Line 2

Line 2 information:

a. 5-digit: "PSVC FLATS 5D NON BC."

b. 3-digit: "PSVC FLATS 3D NON BC."

c. SCF: "PSVC FLATS SCF NON BC."

d. ADC: "PSVC FLATS ADC NON BC."

e. Mixed ADC: "PSVC FLATS NON BC WKG."

3.0 REQUIRED PREPARATION—IRREGULAR PARCELS WEIGHING LESS THAN 10 POUNDS

3.1 Required Packaging

Packaging is not required for pieces placed in 5-digit sacks when such pieces are enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag, and the minimum package size is met. Otherwise, a package must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces or 10 pounds, whichever occurs first. Smaller volumes are not permitted (except mixed ADC packages). The maximum weight of each physical package is 20 pounds, except that 5-digit packages placed in 5-digit sacks or prepared for and entered at DDU rates may weigh a maximum of 40 pounds each. Each physical package must contain at least 2 addressed pieces (except mixed ADC packages). Packaging also is subject to these conditions:

a. Identical-weight pieces that weigh 1 pound or less must be prepared using the 10-piece minimum; those that weigh more than 1 pound must be prepared using the 10-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 10-pound minimum applies), or package by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count, weight, or both.

3.2 Package Preparation

Packages must be prepared and labeled in the following required sequence:

a. 5-digit: required; red Label D or optional endorsement line (OEL).

b. 3-digit: required; green Label 3 or OEL.

c. ADC: required; pink Label A or OEL.

d. Mixed ADC: required; (no minimum): tan Label MXD or OEL.

3.3 Required Sacking

A sack must be prepared when the quantity of mail for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except mixed ADC sacks). Optional SCF sacks may only be prepared when there are at least 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. Sacking also is subject to these conditions:

a. Identical-weight pieces weighing two pounds or less must be prepared using the 10-piece minimum, those that weigh more must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 20-pound minimum applies). Alternatively, sack by the actual piece count or mail weight for each package destination, provided that documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

3.4 Sack Preparation

Required sequence and Line 1 labeling:

a. 5-digit: required; for Line 1, use 5-digit ZIP Code destination of packages (for military mail, the ZIP Code is preceded by the prefixes under M031).

b. 3-digit: required; for Line 1, use L002, Column A.

c. SCF: optional; for Line 1, use L005, Column B.

d. ADC: required; for Line 1, use L004, Column B.

e. Mixed ADC: required (no minimum); for Line 1, use "MXD" followed by the city/state/ZIP Code of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004, Column B.

3.5 Sack Label Line 2

Line 2 information:

a. 5-digit: "PSVC IRREG 5D."

b. 3-digit: "PSVC IRREG 3D."

c. SCF: "PSVC IRREG SCF."

d. ADC: "PSVC IRREG ADC."

e. Mixed ADC: "PSVC IRREG WKG."

3.6 Exception to Sacking

Sacking is not required for 5-digit packages when prepared for and entered at DDU rates; such packages may be bedloaded and may weigh up to 40 pounds.

4.0 REQUIRED PREPARATION—IRREGULAR PARCELS WEIGHING 10 POUNDS OR MORE

4.1 Piece Preparation

Each piece must be enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag. Packaging is not permitted for pieces weighing 10 pounds or more except under 4.5.

4.2 Required Sacking

A sack must be prepared when the quantity of mail for a required presort destination reaches 20 pounds. Smaller volumes are not permitted (except mixed ADC sacks). Optional SCF sacks may be prepared only when there are at least 20 pounds. Smaller volumes are not permitted.

4.3 Sack Preparation

Required sequence and Line 1 labeling:

a. 5-digit: required; for Line 1, use 5-digit ZIP Code destination of packages (for military mail, the ZIP Code is preceded by the prefixes under M031).

b. 3-digit: required; for Line 1, use L002, Column A.

c. SCF: optional; for Line 1, use L005, Column B.

d. ADC: required; for Line 1, use L004, Column B.

e. Mixed ADC: required (no minimum); for Line 1, use "MXD" followed by the city/state/ZIP Code of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004, Column B.

4.4 Sack Label Line 2

Line 2 information:

a. 5-digit: "PSVC IRREG 5D."

b. 3-digit: "PSVC IRREG 3D."

c. SCF: "PSVC IRREG SCF."

d. ADC: "PSVC IRREG ADC."

e. Mixed ADC: "PSVC IRREG WKG."

4.5 Exception to Sacking

Pieces may be prepared only in 5-digit packages when entered at DDU rates; such packages may be bedloaded and may weigh up to 40 pounds.

5.0 REQUIRED PREPARATION—MACHINABLE PARCELS

5.1 Required Sacking DBMC Rates Not Claimed

A sack must be prepared when the quantity of parcels for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except origin (mixed) BMC sacks). Sacking also is subject to these conditions:

a. Identical-weight pieces that weigh two 2 pounds or less must be prepared using the 10-piece minimum; those that weigh more must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 20-pound minimum applies) or sack by the actual piece count or mail weight for each package destination, provided that documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

5.2 Sack Preparation DBMC Rates Not Claimed

Required sequence and Line 1 labeling:

a. 5-digit: required; for Line 1, use 5-digit ZIP Code destination of parcels (for military mail, the ZIP Code is preceded by the prefixes under M031).

b. BMC: required; for Line 1, use L601, Column B.

c. Origin (mixed) BMC: required (no minimum); for Line 1, "MXD" followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code of the entry post office.

5.3 Sack Label Line 2 DBMC Rates Not Claimed

Line 2 information:

a. 5-digit: "PSVC MACH 5D."

b. BMC: "PSVC MACH BMC."

c. Mixed BMC: "PSVC MACH WKG."

5.4 Required Sacking for DBMC Rates

A sack must be prepared when the quantity of parcels for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except origin (mixed) BMC sacks). Optional ASF sacks, if prepared, also must meet the minimum sack volume requirement. See E752 for DBMC rate eligibility. Sacking also is subject to these conditions:

a. Identical-weight pieces that weigh two pounds or less must be prepared using the 10-piece minimum; those that weigh more must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 20-pound minimum applies) or sack by the actual piece count or mail weight for each sack destination, provided that documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

5.5 Sack Preparation for DBMC Rates

Required sequence and line 1 labeling:

a. 5-digit: required; for Line 1, use 5-digit ZIP Code destination of parcels (for military mail, the ZIP Code is preceded by the prefixes under M031).

b. ASF: optional, allowed only for mail deposited at an ASF to claim DBMC rate; for Line 1, use L602. DBMC rate eligibility is determined by E752 and Exhibit E751.5.0.

c. BMC: required; for Line 1, use L601, Column B. DBMC rate eligibility is determined by E752 and Exhibit E751.5.0.

d. Origin (mixed) BMC: required (no minimum); for Line 1, "MXD" followed by the information in L601, Column B, for the BMC serving the 3-digit ZIP Code of the entry post office.

5.6 Sack Label Line 2 for DBMC Rates

Line 2 information:

a. 5-digit: "PSVC MACH 5D."

b. ASF: "PSVC MACH ASF."

c. BMC: "PSVC MACH BMC."

d. Mixed BMC: "PSVC MACH WKG."

M723 Carrier Route Bound Printed Matter

1.0 BASIC STANDARDS

1.1 General

All mailings of Carrier Route Bound Printed Matter (BPM) are subject to the standards in 2.0 through 4.0 and to these general standards:

a. Each mailing must meet the applicable standards in E710, E712, E752, and in M010, M020, and M030.

b. All pieces in a mailing must be within the same processing category as described in C050. A BPM irregular parcel is a piece that is not a machinable parcel as defined in C050.4.1 or a flat as defined in C050.3.1. Irregular parcels also are pieces that meet the size and weight standards for a machinable parcel but are not individually boxed or packaged to withstand processing on BMC parcel sorters under C010.

c. All pieces must be sorted to the finest extent possible under 2.0 through 4.0 or palletized under M045.

d. Subject to M012, pieces must be marked "Bound Printed Matter" (or "BPM") and "Carrier Route Presort" (or "CAR-RT SORT").

1.2 Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing. Documentation of postage is not required if the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate (zone) when presented for acceptance.

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1.3 Separation

Pieces for each zone must be sacked separately. When presented for verification, sacks must be separated by zone. Exception: Pieces for different zones may be sacked together and the sacks do not have to be separated for verification if any of the following apply:

a. Full postage is affixed to each piece in the mailing.

b. The mailing is prepared under P910, P930 or 1.4.

1.4 Commingling Zones

Zone rated BPM need not be separated by zones when presented other than as individual pieces or with full correct postage affixed to each piece, subject to this section. Nonidentical-weight pieces not bearing the full correct postage may not be commingled unless authorized by the RCSC manager serving the office of mailing. The mail must be prepared and documented:

a. Under P910 or P930; or

b. Under all these conditions:

(1) A unique number is assigned to each pallet in the mailing and printed on a separate line at the top of the pallet label (above the Line 1 information).

(2) A detailed list accompanies each mailing or mailing segment, sequenced numerically by the numbers assigned to the pallets in the mailing, that shows the post office where the mail is to be entered (entry post office), a unique identifier for the mailing or mailing segment that also appears on the corresponding postage statement, the name and address of the mailer, the permit number (if applicable), the date of mailing, individual line entries for each pallet, and the total number of pieces to each zone and in the entire mailing or mailing segment. Line entries for pallets containing mail for only one zone must show the pallet number, the sortation level, the zone for which the mail is destined, and the total number of pieces for the pallet. Entries for pallets containing mail for more than one zone must also show (by zone) the number of pieces to each 3-digit ZIP Code area and the total number of pieces for that zone for the pallet. Mailings are not accepted if there are discrepancies between the information in the detailed listing or on the postage statement and the results of USPS random verification of piece counts and postage.

1.5 Residual Pieces

Residual pieces not sorted under 2.0, 3.0, or 4.0 may be prepared as a Presorted Bound Printed Matter mailing under M722 provided that they are part of the same mailing job and reported on the same postage statement. Residual pieces paid at the Presorted rate do not need to meet a separate 300 piece minimum. These pieces must be separated from the Carrier Route portion when presented to the USPS for verification. Presorted flats weighing 1 pound or less are not eligible for DDU rates.

2.0 REQUIRED PREPARATION—FLATS

2.1 Required Packaging

A carrier route package (or packages) must be prepared when there are 10 or more addressed pieces or 10 or more pounds, whichever occurs first, for an individual carrier route. Smaller volumes are not permitted. The maximum weight of each physical package is 40 pounds. Each package must contain at least 2 addressed pieces except for the last package for each carrier route destination under M020. Packages must be labeled with a facing slip unless the package is labeled using a carrier route information line (M014) or an optional endorsement line (M013). Packaging also is subject to these conditions:

a. Identical-weight pieces that weigh 1 pound or less must be prepared using the 10-piece minimum; those that weigh more than 1 pound must be prepared using the 10-pound minimum.

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 10-pound minimum applies), or package by the actual piece count or mail weight for each package, if documentation can be provided with the mailing that shows the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

2.2 Required Sacking

A direct carrier route sack must be prepared when the quantity of mail for an individual carrier route reaches a minimum of 20 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. Remaining packages must be placed in a 5-digit scheme carrier routes sack and/or a 5-digit carrier routes sack, which have no minimum sack size. Carrier route sacking also is subject to these conditions:

a. Identical-weight pieces that weigh 1 pound or less must be prepared using the 20-piece minimum; those that weigh more than 1 pound must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 20-piece or 20-pound minimum applies), or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

2.3 Sack Preparation

Preparation sequence and Line 1 sack labeling:

a. Carrier route: required; for Line 1, use 5-digit ZIP Code destination of packages (for military mail, the ZIP Code is preceded by the prefixes under M031).

b. 5-digit scheme carrier routes: optional (no minimum); for Line 1, use L001, Column B.

c. 5-digit carrier routes: required (no minimum); for Line 1, use 5-digit ZIP Code destination of packages (see M031 for military mail).

2.4 Sack Label Line 2

Line 2 information:

a. Carrier route: "PSVC FLATS CR," followed by the route type and number.

b. 5-digit scheme carrier routes: "PSVC FLATS CR–RTS SCH."

c. 5-digit carrier routes: "PSVC FLATS CR–RTS."

2.5 Exception to Sacking

Sacking is not required for packages that are prepared for and entered at DDU rates; such packages may be bedloaded and may weigh up to 40 pounds each.

3.0 REQUIRED PREPARATION—IRREGULAR PARCELS WEIGHING LESS THAN 10 POUNDS

3.1 Package Preparation

Packaging is not required in direct carrier route sacks. Otherwise, a carrier route package (or packages) must be prepared when the quantity of addressed pieces for a carrier route reaches a minimum of 10 pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. The maximum weight of each physical package is 40 pounds. Each package must contain at least 2 addressed pieces except for the last package for each carrier route destination under M020. Packages must be labeled with a facing slip unless the package is labeled using a carrier route information line (M014) or an optional endorsement line (M013). Packaging also is subject to these conditions:

a. Identical-weight pieces that weigh two pounds or less must be prepared using the 10-piece minimum; those that weigh more must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 20-pound minimum applies), or package by the actual piece count or mail weight for each package destination, provided that documentation can be provided with the mailing that shows (specifically for each package) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count, weight, or both.

3.2 Required Sacking

A direct carrier route sack must be prepared when the quantity of mail for an individual carrier route reaches a minimum of 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. Remaining packages must be placed in 5-digit carrier routes sacks, which have no minimum sack size. Carrier route sacks also are subject to these conditions:

a. Identical-weight pieces that weigh two pounds or less must be prepared using the 10-piece minimum; those that weigh more must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 20-pound minimum applies), or sack by the actual piece count or mail weight for each sack destination, provided that documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

3.3 Sack Preparation

Sack preparation sequence and Line 1 labeling:

a. Carrier route: required; for Line 1, use 5-digit ZIP Code destination of packages (for military mail, the ZIP Code is preceded by the prefixes under M031).

b. 5-digit carrier routes: required (no minimum); for Line 1, use 5-digit ZIP Code destination of packages (for military mail, the ZIP Code is preceded by the prefixes under M031).

3.4 Sack Label Line 2

Line 2 information:

a. Carrier route: "PSVC IRREG CR," followed by the route type and number.

b. 5-digit carrier routes: "PSVC IRREG CR–RTS."

3.5 Exception to Sacking

Sacking is not required for packages when prepared for and entered at DDU rates; such packages may be bedloaded and may weigh up to 40 pounds.

4.0 REQUIRED PREPARATION—IRREGULAR PARCELS WEIGHING 10 POUNDS OR MORE

4.1 Carrier Route Sack Preparation

Irregular parcels must be prepared only in direct carrier route sacks. Each carrier route sack must contain a minimum of 20 pounds. Smaller volumes not permitted. Required preparation:

a. Line 1: use 5-digit ZIP Code destination of the pieces.

b. Line 2: "PSVC IRREG CR," followed by the route type and number.

5.0 REQUIRED PREPARATION—MACHINABLE PARCELS

5.1 Required Carrier Route Sacking

Machinable parcels may be prepared only in direct carrier route sacks. Each carrier route sack must contain a minimum of 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. Carrier route sacks also are subject to these conditions:

a. Identical-weight pieces that weigh two pounds or less must be prepared using the 10-piece minimum; those that weigh more must be prepared using the 20-pound minimum.

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 20-pound minimum applies), or sack by the actual piece count or mail weight for each sack destination, provided that documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying postage statement whether they applied the piece count or weight.

5.2 Sack Label

Required preparation:

a. Line 1: Use 5-digit ZIP Code destination of the pieces.

b. Line 2: "PSVC MACH CR," followed by the route type and number.

* * * * *

[Add new heading M730 to read as follows:]

M730 Media Mail

[Add heading 1.0 to read as follows:]

1.0 BASIC STANDARDS

[Redesignate M630.4.1 through M630.4.3 as M730.1.1 through M730.1.3, respectively.]

[Amend the heading of redesignated 1.1 to read as follows:]

1.1 General

[Revise redesignated 1.1 to read as follows:]

There are no presort, sacking, or labeling standards for single-piece Media Mail. Presorted Media Mail must be prepared under 2.0 unless prepared on pallets under M045, or as outside parcels under E713. Mailings of nonmachinable (outside) parcels eligible for presort rates must be prepared to preserve the required presort as instructed by the mailing office postmaster.

1.2 Marking

[Amend redesignated 1.2 by changing "Special Standard Mail" with "Media Mail" and "SPEC STD" with "Media Mail"; no other changes to text.]

* * * * *

[Add new heading 2.0 to read as follows:]

2.0 PREPARATION

[Redesignate M630.4.4 through M630.4.6 as M730.2.1 through M730.2.3, respectively.]

[Amend the heading of redesignated 2.1 to read as follows:]

2.1 Sacks or Packages on Pallet Preparation (5-Digit Rate)

[Amend 2.1 to read as follows:]

Five-digit sack or package size (for packages on pallets) and labeling: 5-

digit (only); required (minimum of eight pieces/20 pounds, smaller volume not permitted); 40-pound maximum for packages on pallets; no label required on packages; on sacks, use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the prefixes under M031.

2.2 Sack Preparation (BMC Rate)

[Amend redesignated M730.2.2 by removing "/1,000 cubic inches."]

2.3 Sack Line 2

[Amend redesignated M730.2.3a and 2.3b by replacing "STD" and "STD B" with "PSVC"; no other changes to text.]

* * * * *

[Add new heading M740 to read as follows:]

M740 Library Mail

[Add heading 1.0 to read as follows:]

1.0 BASIC STANDARDS

[Redesignate M630.5.1 through M630.5.3 as M7401.1 through M740.1.3, respectively.]

1.1 General

[Amend redesignated M740.1.1 by replacing "E630.5.0" with "E714"; no other changes to text.]

1.2 Marking

[Amend redesignated 1.2 to eliminate "Library Rate" as an optional marking in the first sentence and delete the last sentence to read as follows:]

Each piece claimed at Library Mail rates must be marked "Library Mail" under M012. Each piece claimed at presorted Library Mail rates also must be marked "Presorted" or "PRSRT" under M012.

* * * * *

[Add new heading 2.0 to read as follows:]

2.0 PREPARATION

[Redesignate M630.5.4 through M630.5.6 as M740.2.1 through M740.2.3, respectively.]

2.1 Sack Preparation (5-Digit Rate)

[Amend redesignated 2.1 by removing "/1,000 cubic inches".]

2.2 Sack Preparation (BMC Rate)

[Amend redesignated 2.2 by removing "/1,000 cubic inches".]

2.3 Sack Line 2

[Amend redesignated M740.2.3a and M740.2.3b by replacing "STD" and "STD B" with "PSVC"; no other changes to text.]

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M800 All Automation Mail

* * * * *

M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

1.2 Mailings

[Amend 1.2 by revising the second and third sentences to read as follows:]

* * * First-Class Mail and Periodical mailings may include pieces prepared at automation 5-digit, 3-digit, and basic rates, as applicable. Standard Mail mailings may include pieces prepared at automation 3/5 and basic rates. * * *

* * * * *

1.5 Package Preparation

[Amend the first sentence of 1.5 by adding the exception to read as follows; and amend the fourth sentence by replacing "3.1 or 4.1" with "4.1 or 5.1."]

Except for First-Class Mail prepared under 3.0, all pieces must be prepared in packages. * * *

* * * * *

[Add new 1.11 to read as follows:]

1.11 Tray-Based Preparation

For First-Class Mail prepared under the tray-based option in 3.0, mailers may not combine FSM 881 and FSM 1000 pieces in the same mailing.

* * * * *

[Revise 2.0 heading to read as follows:]

2.0 FIRST-CLASS MAIL—REQUIRED PACKAGE-BASED PREPARATION

2.1 Package Preparation

[Amend 2.1a to make preparation of 5-digit packages optional to read as follows:]

Package size, preparation sequence, and labeling:

a. 5-digit: optional, but required for 5-digit rate eligibility (10-piece minimum, fewer not permitted); red Label D or optional endorsement line (OEL).

* * * * *

2.2 Tray Preparation

[Amend 2.2a to make preparation of 5-digit trays optional and to change "M031" to "M032" to read as follows:]

Tray size, preparation sequence, and Line 1 labeling:

a. 5-digit: optional, but required for 5-digit rate eligibility, full trays, no overflow; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M032.

* * * * *

[Redesignate current 3.0 and 4.0 as 4.0 and 5.0, respectively, and add new 3.0 to read as follows:]

3.0 FIRST-CLASS MAIL—OPTIONAL TRAY-BASED PREPARATION

Tray size, preparation sequence, and Line 1 labeling:

a. 5-digit: optional, but 5-digit trays required for rate eligibility (90-piece minimum, fewer not permitted); one less-than-full or overflow tray allowed; for Line 1, use 5-digit ZIP Code destination of pieces (for military mail see M031). (Preparation to qualify for 5-digit rate is optional and need not be done for all 5-digit destinations.)

b. 3-digit: required (90-piece minimum, fewer not permitted); one less-than-full or overflow tray allowed; for Line 1, use L002, Column A for 3-digit destinations.

c. Origin 3-digit: required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; no minimum; for Line 1, use L002, Column A for 3-digit destinations.

d. ADC: required (90-piece minimum, fewer not permitted); one less-than-full or overflow tray allowed; group pieces by 3-digit ZIP Code prefix; for Line 1, use L004 (ZIP Code prefixes in Column A must be combined and labeled to the corresponding ADC destination shown in Column B). As an exception, pieces do not have to be grouped by 3-digit ZIP Code prefix in ADC trays if the mailing is prepared using a MLOCR/barcode sorter and standardized documentation is submitted.

e. Mixed ADC: required (no minimum for rate eligibility); group pieces by ADC; for Line 1, use "MXD" followed by the city/state/ZIP of the facility serving the 3-digit ZIP Code of the entry post office, as shown in L002, Column C. As an exception, pieces do not have to be grouped by ADCs in mixed ADC trays if the mailing is prepared using a MLOCR/barcode sorter and standardized documentation is submitted.

* * * * *

M900 Advanced Preparation Options

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Mailings

1.0 FIRST-CLASS MAIL

* * * * *

1.2 Package Preparation

[Amend 1.2 by changing "M820" to "M820.2.1" to read as follows:]

The automation rate mailing must be packaged and labeled under M820.2.1. The Presorted rate mailing must be packaged and labeled under M130.

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

P011 Payment

1.0 PREPAYMENT AND POSTAGE DUE

1.1 Prepayment Conditions

[Amend 1.1 by redesignating 1.1b through 1.1e as 1.1c through 1.1f, respectively. Add new item 1.1b to read as follows:]

The mailer is responsible for proper payment of postage. Postage on all mail must be fully prepaid at the time of mailing, except as specifically provided by standard for:

* * * * *

b. Merchandise return service (S923).

* * * * *

3.0 COLLECTION OF POSTAGE DUE

* * * * *

[Add new 3.3 and 3.4 to clarify standards for advance deposit accounts and annual accounting fees to read as follows:]

3.3 Advance Deposit Account

Mailers may choose to establish an advance deposit account(s) from which postage, per piece charges, and other fees are deducted. For certain special services, an advance deposit account is required. Mailers may use a single advance deposit account to pay postage due charges for more than one special service (*e.g.*, business reply mail, merchandise return service, and bulk parcel return service).

3.4 Annual Accounting Fee

Except for accounts used solely to pay postage due for shortpaid mail, address correction notices, and undeliverable-as-addressed pieces returned to sender (e.g., return service requested), mailers must pay a separate annual accounting fee for each special service paid through an advance deposit account. This fee covers the administrative cost of maintaining the account and provides the mailer with the accounting of all charges deducted from that account. The accounting fee is charged once each 12-month period on the anniversary date of the initial accounting fee payment. The fee may be paid in advance only for the next year and only during the last 60 days of the current service period. The fee charged is that which is in effect on the date of payment.

* * * * *

P012 Documentation

* * * * *

[Amend the heading of 2.0 by replacing "Standard Mail (A)" with "Standard Mail" to read as follows:]

2.0 STANDARDIZED DOCUMENTATION—FIRST CLASS MAIL, PERIODICALS AND STANDARD MAIL

2.1 Basic Standard

[Amend 2.1 by replacing "Standard Mail (A)" with "Standard Mail," no other changes to text.]

2.2 Format and Content

[Amend 2.2 by replacing "Standard Mail (A)" with "Standard Mail"; add new 2.2c(3)(c); and amend 2.2c(6) by adding second sentence to read as follows:]

* * * * *

c. For mail in trays or sacks, the body of the listing reporting these required elements:

* * * * *

(3) * * *; or (c) group destination for automation flats prepared under the tray-based option for each 3-digit in ADC trays and for each ADC in mixed ADC trays.

* * * * *

(6) * * * The tray identification number is optional for tray-based automation flats.

* * * * *

2.3 Rate Level Column Headings

* * * * *

[Amend 2.3 by replacing all references to "Standard Mail (A)" with "Standard Mail" and by revising 2.3a to provide for separate 5-digit and 3-digit rates for automation First-Class Mail flats to read as follows:]

The actual name of the rate level (or corresponding abbreviation) is used for column headings required by 2.2 and shown below:

a. Automation First-Class Mail, Periodicals, and Standard Mail:

Rate	Abbreviation
. . . . .	.
5-Digit [First-Class Mail letters/cards and flats, Periodicals letters and flats, and Standard Mail letters]	5B
3-Digit [First-Class Mail letters/cards and flats, Periodicals letters and flats, and Standard Mail letters]	3B
. . . . .	.
3/5 [Standard Mail flats]	3/5B
. . . . .	.

* * * * *

P013 Rate Application and Computation

1.0 BASIC STANDARDS

* * * * *

[Amend 1.3 by replacing "Special Standard Mail" with "Media Mail"; no other changes to text.]

1.4 Affixing Postage—Single-Piece Rate Mailings

[Amend 1.4 by replacing "Standard Mail (B)" with "Package Services" and amend the first sentence to read as follows:]

In a postage-affixed Express Mail, Priority Mail, single-piece First-Class Mail, or Package Services mailing, the mailer must affix to each piece a value in adhesive stamps or meter stamps equal to at least the postage required. A mailer also may use precanceled stamps on single-piece First-Class Mail. Less than the correct amount of postage may be affixed only when permitted by standard or specific USPS authorization.

1.5 Affixing Postage—Other Than Single-Piece Rate Mailings

[Amend 1.5 by replacing "Standard Mail" with "Standard Mail and Package Services" and amending the introductory paragraph to read as follows:]

In a First-Class Mail postage affixed mailing other than single-piece or a Standard Mail presorted mailing, the mailer must affix to each piece a value in precanceled stamps or meter impressions that equals at least the full amount of postage at the applicable rate.

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In a Package Services postage affixed mailing other than single-piece mailing, the mailer must affix to each piece a value in meter impressions that equals at least the full amount of postage at the applicable rate; or:

a. For First-Class Mail, the applicable postage at the lowest rate claimed in the mailing (or a lesser amount if authorized under P760) if all additional postage is paid at the time of mailing.

b. For Standard Mail, the minimum per piece charge, with the pound rate charge paid through an advance deposit account under the applicable standards; or the applicable postage at the lowest rate claimed in the mailing (or a lesser amount if authorized under P760) if all additional postage is paid at the time of mailing.

* * * * *

2.0 RATE APPLICATION—EXPRESS MAIL, FIRST-CLASS MAIL, AND PRIORITY MAIL

* * * * *

2.4 Priority Mail

[Amend 2.4 by revising the third sentence to read as follows:]

* * * The minimum postage amount per addressed piece is that for a piece weighing 1 pound. * * *

* * * * *

2.6 Keys and Identification Devices

[Amend 2.6 by revising the second sentence to read as follows:]

* * * Keys and identification devices weighing more than 13 ounces but not more than 1 pound are mailed at the 1-pound Priority Mail rate plus the fee in R100.9.0; keys and identification devices weighing over 1 pound but not more than 2 pounds are mailed at the 2-pound rate plus the fee in R100.9.0.

3.0 RATE APPLICATION—PERIODICALS

* * * * *

3.2 Applying Pound Rate

[Amend 3.2 by replacing "Regular and Preferred outside-county" with "Outside-County and Science-of-Agriculture Outside-County" in the second sentence to read as follows:]

* * * Outside-County and Science-of-Agriculture Outside-County pound rates are based on the weight of the advertising portion of the mail sent to each postal zone (as computed from the entry office) and the weight of the nonadvertising portion without regard to zone. * * *

[Amend 3.3 by replacing "Classroom rate" with "Classroom" in the fourth and last sentences.]

* * * * *

[Amend the title of 5.0 by replacing "Standard Mail (B)" with "Package Services" to read as follows:]

5.0 RATE APPLICATION—PACKAGE SERVICES

* * * * *

[Revise the heading of 5.4 to read as follows:]

5.4 Media Mail

[Amend 5.4 by replacing "Special Standard Mail" with "Media Mail"; no other changes to text.]

* * * * *

[Amend the heading of 8.0 by replacing "Standard Mail (A)" with "Standard Mail."]

[Amend the heading of 9.0 by replacing "Standard Mail (B)" with "Package Services" to read as follows:]

9.0 COMPUTING POSTAGE—PACKAGE SERVICES

[Revise 9.0 in its entirety to clarify how to calculate postage for Package Services to read as follows:]

9.1 Parcel Post (including Parcel Select), Media Mail, Library Mail, and Single-Piece Bound Printed Matter—Permit Imprint

To compute the total postage for a mailing, for each weight increment, multiply the number of pieces by the applicable rate per piece. Round each product off to four decimal places. Add the products and round up the total postage to the nearest whole cent.

9.2 Parcel Post (including Parcel Select), Media Mail, Library Mail, and Single-Piece Bound Printed Matter—Postage Affixed

For each piece, affix the postage for the weight increment and, if applicable, the zone to which the piece is addressed, as shown in R700. To calculate the total postage for the mailing, add all of the affixed postage amounts for each piece.

9.3 Presorted and Carrier Route Bound Printed Matter—Permit Imprint

Presorted and Carrier Route Bound Printed Matter mailings paid with permit imprint are charged a per pound rate and a per piece rate as follows:

a. Per pound rate:

(1) For pieces 1 pound or less, compute the per pound rate by multiplying the total number of addressed pieces by the 1-pound rate for the rate category and zone. Do not round this result.

(2) For pieces weighing more than 1 pound, compute the per pound rate by multiplying the unrounded total weight of the addressed pieces by the pound rate for the category and zone. Do not round this result.

b. Per piece rate. Multiply the total number of addressed pieces by the applicable piece rate.

c. Total Postage. Calculate total postage by adding the total per piece calculation to the total per pound calculation. Round off the total postage to the nearest whole cent.

9.4 Presorted and Carrier Route Bound Printed Matter—Postage Affixed

Presorted and Carrier Route Bound Printed Matter mailings with postage affixed are charged a per pound rate and a per piece rate as follows:

a. For each addressed piece, calculate the per pound rate:

(1) If the piece weighs 1 pound or less, the per pound rate is the rate listed in R700.2.0 for the rate category and zone.

(2) If the piece weighs more than 1 pound, compute the per pound rate by multiplying the unrounded weight of the piece by the pound rate for the category and zone. Do not round this result.

b. Postage per piece. Compute the postage for each piece by adding the calculated per pound rate to the per piece rate for the category and zone. Round this number up to the next tenth of a cent. Affix this amount of postage to the piece.

c. Total Postage for Mailing. Add all of the affixed postage amounts for each piece in the mailing.

P014 Refunds and Exchanges

* * * * *

2.0 POSTAGE AND FEES REFUNDS

* * * * *

[Amend 2.3 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

2.4 Full Refund

[Amend 2.4 by revising 2.4f and 2.4i to read as follows:]

A full refund (100%) may be made when:

* * * * *

f. Fees are paid for special handling, certified mail, Delivery Confirmation, or Signature Confirmation and the article fails to receive the special service for which the fee is paid.

* * * * *

i. An annual presort mailing fee is paid for Presorted First-Class Mail, Standard Mail, Presorted Media Mail, or Presorted Library Mail or a destination entry mailing fee is paid for destination entry Parcel Post and Bound Printed Matter and no mailings are made during the corresponding 12-month period.

* * * * *

[Effective November 5, 2000, the Postal Service added new P014.2.11 to clarify procedures for refunds for stamps affixed to business reply mail.]

[Amend the fourth sentence of 2.11 to add the new quarterly fee for Qualified Business Reply Mail:]

2.11 Business Reply Mail

A business reply mail (BRM) permit holder may request a credit or refund for postage stamps affixed to returned BRM pieces. Only the value of the postage stamps affixed may be credited or refunded. Refunds are not given for foreign postage stamps affixed to BRM. To receive a refund for postage stamps affixed to returned BRM pieces, the permit holder must submit a completed Form 3533 to the postmaster, documenting the excess postage payment for which a credit or refund is desired. The permit holder also must present to the designated office properly faced and banded packages of 100 identical BRM pieces with identical amounts of postage affixed. A charge of $15 per hour, or fraction thereof, is assessed for the workhours used to process the refund. With permission from the postmaster, a BRM permit holder may submit a package with fewer than 100 BRM pieces. Refunds are not given for any BRM or QBRM per piece charges, annual accounting fees, quarterly fees, or monthly maintenance fees.

* * * * *

4.0 REFUND REQUEST FOR EXCESS POSTAGE (VALUE ADDED REFUND)—AT TIME OF MAILING

[Amend 4.1, 4.13, 4.14c, 4.14d, 4.17a(5) and 4.17a(6) and by changing "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

* * * * *

P021 Stamped Stationery

* * * * *

2.0 PERSONALIZED STAMPED ENVELOPE

* * * * *

2.5 Optional information

[Amend 2.5b by changing "Standard Mail (A)" to "Standard Mail"; no other changes to text.]

* * * * *

P022 Postage Stamps

1.0 PURCHASE AND USE

1.2 Postage Due

[Amend 1.2 by removing the second sentence to read as follows:]

Postage due must be paid in cash.

* * * * *

P023 Precanceled Stamps

1.0 BASIC INFORMATION

* * * * *

1.2 Use

[Amend 1.2 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

3.0 MAILER PRECANCELLATION

* * * * *

3.5 Content of Postmark

[Amend 3.5a by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

P030 Postage Meters and Meter Stamps

1.0 BASIC INFORMATION

* * * * *

[Amend 1.5 by replacing "Special Standard Mail" with "Media Mail"; no other changes to text.]

* * * * *

3.0 METER SETTING

* * * * *

[Amend the title of 3.5 by replacing "Setting" with "Service" to read as follows:]

3.5 On-Site Meter Service Program

[Amend the last sentence of 3.5 to show the new categories for on-site meter setting and add a new sentence to exclude secured postage devices from the meter service fees to read as follows:]

* * * The licensee must pay applicable on-site meter service fees in R900 and postage by check or advance deposit account at the time of the meter service. Secured postage meters are not subject to checking in/checking out fees.

* * * * *

4.0 METER STAMPS

* * * * *

[Amend 4.8 and 4.9 by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

5.0 MAILINGS

[Amend 5.1 by replacing "Special Standard Mail" with "Media Mail" and by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

P040 Permit Imprints

1.0 BASIC INFORMATION

[Amend 1.1 by replacing "Standard Mail (A)" with "Standard Mail" and "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

2.0 INDICIA PREPARATION

* * * * *

[Amend 2.5 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

3.0 INDICIA CONTENT

* * * * *

[Amend 3.2 by replacing "Standard Mail" with "Standard Mail and Package Services" in the heading and content.]

* * * * *

[Amend 3.4a by replacing "Standard Mail" with "Standard Mail and Package Services."]

[Amend 3.4b by replacing "Standard Mail (A" with "Standard Mail"; no other changes to text.]

4.0 INDICIA FORMAT

* * * * *

[Amend heading of Exhibit 4.1a by replacing "Standard Mail (A) Official Mail" with "Standard Mail Official Mail" and "Standard Mail (B) Official Mail" with "Package Services Official Mail"; replace indicia example "SPECIAL STANDARD MAIL" with "MEDIA MAIL"; no other changes to exhibit.]

* * * * *

[Amend the title of Exhibit 4.1b to read as follows:]

Exhibit 4.1b Indicia Formats for First-Class Mail, Standard Mail, and Package Services

[Amend Exhibit 4.1b by replacing "Standard Mail (A)" with "Standard Mail," "Special Standard Mail" with "Media Mail," and "PP D/S" with "Parcel Select."]

* * * * *

P070 Mixed Classes

1.0 ATTACHMENTS OF DIFFERENT CLASSES

[Amend 1.1 by replacing "Standard Mail" with "Standard Mail and Package Service Mail"; no other changes to text.]

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[Amend 1.2 and 1.3 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

2.0 ENCLOSURE IN PERIODICALS PUBLICATION

[Amend 2.1 through 2.10 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Revise heading of 3.0 to read as follows:]

3.0 ENCLOSURE IN STANDARD MAIL AND PACKAGE SERVICES MAIL

[Amend 3.2 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend heading of 5.0 by replacing "Special Standard Mail" with "Media Mail" to read as follows:]

5.0 COMBINED MAILINGS OF MEDIA MAIL AND BOUND PRINTED MATTER

* * * * *

5.4 Rating of Unmarked Parcel

[Amend 5.4 by replacing "Special Standard Mail" with "Media Mail" and amend the introductory paragraph in 5.4 to include Inter-BMC/ASF rates to read as follows:]

A parcel containing Bound Printed Matter and Media Mail is charged postage at the Inter-BMC/ASF Parcel Post rates if it:

* * * * *

P200 Periodicals

1.0 BASIC INFORMATION

* * * * *

[Amend 1.4 by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

[Amend 1.9 by replacing "Standard Mail" with "Standard Mail and Package Services'; no other changes to text.]

* * * * *

P600 Standard Mail

1.0 BASIC INFORMATION

[Amend 1.1 by redesignating 1.1b as P700.1.1, redesignating 1.1a as 1.1, and replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Amend the heading of 2.0 to delete "Standard Mail (A)" to read as follows:]

2.0 PRESORTED AND ENHANCED CARRIER ROUTE RATES

* * * * *

[Amend the heading of 3.0 to delete "Standard Mail (A)" to read as follows:]

3.0 AUTOMATION RATES

* * * * *

[Add new 4.0 to read as follows:]

4.0 MACHINABLE PARCEL BARCODED DISCOUNT

4.1 All Parcels in Mailing Eligible

If 100% of the pieces in a mailing are eligible for the machinable parcel barcoded discount under E610 and E620, then the mailing may be paid with meter stamps, permit imprint, or precanceled postage under the applicable standards.

4.2 Less than 100% Eligibility

If less than 100% of the parcels in the mailing are eligible for the machinable parcel barcoded discount, then the following standards apply:

a. Payment with precanceled stamps is not permitted.

b. Metered postage may be used only if exact postage is affixed to each piece in the mailing.

c. Payment with permit imprint is permitted only under a manifest mailing system (P910).

[Add new 5.0 to read as follows:]

5.0 MAIL WITH SPECIAL SERVICES

5.1 Bulk Insurance

Mailings on which bulk insurance is requested must have postage and fees paid with permit imprint under a manifest mailing system (P910).

5.2 Electronic Option Delivery Confirmation

If electronic option Delivery Confirmation is requested for all of the pieces in the mailing and the mailing consists of pieces of identical weight, then postage may be paid with metered postage or permit imprint under the applicable standards in 2.0. If electronic option Delivery Confirmation is not requested for all of the pieces in the mailing, or if the pieces are not identical weight, then either the exact metered postage must be affixed to each piece or postage must be paid with permit imprint under a manifest mailing system (P910). Use of precanceled stamps is not permitted with Delivery Confirmation.

5.3 Return Receipt for Merchandise

If return receipt for merchandise is requested for all of the pieces in the mailing and the mailing consists of pieces of identical weight, then postage may be paid with metered postage or permit imprint under the applicable standards in 2.0. If return receipt for merchandise is not requested for all of the pieces in the mailing, or if the pieces are not identical weight, then either the exact metered postage must be affixed to each piece or postage must be paid with permit imprint under a manifest mailing system (P910). Use of precanceled stamps is not permitted with return receipt for merchandise.

[Redesignate the heading P700 as P900. Redesignate the heading and contents of P710, P720, P730, P750, and P760 as P910, P920, P930, P950, and P960, respectively.]

[Add new P700 to read as follows:]

P700 Package Services

1.0 BASIC INFORMATION

1.1 Payment Method

[Redesignate P600.1.1b as the contents of 1.1 and amend for clarity to read as follows:]

The mailer is responsible for proper postage payment. Subject to the corresponding standards, postage for Package Services mail may be paid by any method except precanceled stamps. Pieces with postage affixed must bear the correct postage unless excepted by standard. Permit imprint may be used for mailings that contain nonidentical-weight pieces only under P910, P920, or P930. Permit imprint may be used for identical weight pieces provided the mail can be separated at acceptance into groups that each contain pieces subject to the same zone and same combination of rates (e.g., all are zone 4, Inter-BMC, with a BMC presort discount and a barcoded discount). Identical weight permit imprint mail also may be mailed under P910, P920, or P930.

1.2 Postage Statement and Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each presorted and/or destination entry rate Package Services mailing, and any mailing paid with permit imprint. The postage statement must be supported by documentation as required by P012 and the rate claimed unless the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance.

P900 Special Postage Payment Systems

* * * * *

P920 Optional Procedure (OP) Mailing System

1.0 BASIC INFORMATION

[Amend 1.1 by replacing "Standard Mail" with "Standard Mail and Package Services Mail"; no other changes to text.]

* * * * *

P950 Plant-Verified Drop Shipment (PVDS)

1.0 DESCRIPTION

* * * * *

[Amend 1.2c and 1.3b by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

2.0 PROGRAM PARTICIPATION

* * * * *

[Amend 2.3e and 2.5 by replacing "Standard Mail" with "Standard Mail and Package Services"; no other changes to text.]

* * * * *

[Amend 2.7 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Revise heading of 2.8 to read as follows:]

2.8 Postage Statement—Package Services Mail

[Amend 2.8 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

4.0 POSTAGE

* * * * *

[Amend 4.2 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

[Revise heading of 4.3 to read as follows:]

4.3 Package Services Mail

[Amend 4.3 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

[Amend the heading of 5.0 by replacing "Standard Mail (A)" with "Standard Mail"; no other changes to text.]

* * * * *

[Revise heading of 6.0 to read as follows:]

6.0 PACKAGE SERVICES PVDS OPTION

* * * * *

[Amend 6.2 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

[Amend heading of P960 by removing "(A)" to read as follows:]

P960 First-Class or Standard Mail Mailings With Different Payment Methods

* * * * *

[Amend entire R module to read as follows:]

BILLING CODE 7710–12–P

R000 Stamps and Stationery

1.0 PLAIN STAMPED ENVELOPES (P021)

Fee, in addition to the postage value preprinted on the envelope:

Type	Size	Fee	
		Each	500
Basic[1]	6-3/4	$0.08	$12.00
	10	0.08	14.00
Special[2]	Any	0.09	19.00

1. Includes regular, window, precanceled regular, and precanceled window envelopes.
2. Includes envelopes with patched-in stamps (e.g., hologram envelopes).

2.0 PERSONALIZED STAMPED ENVELOPES (P021)

Fee, in addition to the postage value preprinted on the envelope:

Type	Size	Fee	
		50	500
Basic[1]	6-3/4	$3.50	$17.00
	10	3.50	20.00
Special[2]	Any	4.50	25.00

1. Includes regular, window, precanceled regular, and precanceled window envelopes.
2. Includes envelopes with patched-in stamps (e.g., hologram envelopes).

3.0 STAMPED CARDS (P021)

Fee, in addition to the postage value preprinted on the card:

Type	Fee
Single card	$0.02
Double reply-paid card	0.04
Sheet of 40 cards (uncut)	0.80

4.0 POSTAGE STAMPS

Postage stamps are available in the following denominations:

Purpose	Form	Denomination
Regular Postage	Panes of up to 100	$0.01, .02, .03, .04, .05, .06, .07, .08, .09, .10, .11, .14, .15, .17, .19, .20, .21, 22, .23, .25, .29, .30, .32, .33, .34, .35, .39, .40, .45, .46, .48, .50, .52, .55, .56, .60, .65, .75, .77, .78, .80, $1, $2, $3.50, $5, $12.25
	Booklets	$0.20 ($2.00 booklet)
		$0.34 ($3.40 and $6.80 booklets)
	Coils of 100	$0.05, .10, .20, .21 (additional ounce postage), .22, .29, .33, .34
	Coils of 3,000	$0.01, .02, .03, .04, .05, .10, .11, .12, .14, .15, .17, .19, .20, .22, .23, .25, .29, .33, .34
	Coils of 10,000	$0.01, .02, .03, .05, .10, .23, .25, .33, .34
Precanceled Presorted Rate Postage — First-Class Mail and Standard Mail	Coils of 500, 3,000, and 10,000	Various nondenominated (available only to permit holders)
Commemorative	Panes of up to 50	$0.34 and other denominations
	20-Stamp Booklets	$0.34 ($6.80 booklets)
Breast Cancer Research	Panes of up to 20	Purchase price of $0.40; postage value equivalent to First-Class Mail nonautomation single-piece rate ($0.34); remainder is contribution to fund breast cancer research.

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R100 First-Class Mail

1.0 NONAUTOMATION—SINGLE PIECES WEIGHING 13 OUNCES OR LESS

Card Rate 1.1

Single and double cards meeting the standards in C100:

Type	Rate
Single	$0.200

Letters, Flats, and Parcels 1.2

Letters, flats, and parcels (i.e., not card rate); nonstandard surcharge in 10.0 might apply:

Weight increment	Rate
First ounce or fraction of an ounce	$0.340
Each additional ounce or fraction	0.210

2.0 NONAUTOMATION—PRESORTED

Card Rate 2.1

Single and double cards meeting the standards in C100: $0.180 each.

Letters, Flats, and Parcels 2.2

Letters, flats, and parcels (i.e., not card rate); nonstandard surcharge in 10.0 might apply:

Weight increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.320
(For pieces weighing more than 2 ounces)	0.274
Each additional ounce or fraction	0.210

3.0 AUTOMATION—QUALIFIED BUSINESS REPLY MAIL

Card Rate 3.1

Single cards meeting the standards in E150 and S922:

Type	Rate[1]
Single	$0.170

1. QBRM is also subject to fees in R900.

Letters 3.2

Letter-size single pieces other than cards meeting the standards in E150 and S922:

Weight increment	Rate[1]
First ounce or fraction of an ounce	$0.310
Second ounce or fraction	0.210

1. QBRM is also subject to fees in R900.

4.0 AUTOMATION—BASIC

Card Rate 4.1

Single and double cards meeting the standards in C100: $0.164 each.

Letters 4.2

Letter-size pieces other than card rate:

Weight increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.278
(For pieces weighing more than 2 ounces)	0.232
Each additional ounce or fraction	0.210

Flats 4.3

Flat-size pieces; nonstandard surcharge in 10.0 might apply:

Weight increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.310
(For pieces weighing more than 2 ounces)	0.264
Each additional ounce or fraction	0.210

5.0 AUTOMATION—3-DIGIT

Card Rate 5.1

Single and double cards meeting the standards in C100: $0.158 each.

Letters 5.2

Letter-size pieces other than card rate:

Weight increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.267
(For pieces weighing more than 2 ounces)	0.221
Each additional ounce or fraction	0.210

Flats 5.3

Flat-size pieces; nonstandard surcharge in 10.0 might apply:

Weight increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.295
(For pieces weighing more than 2 ounces)	0.249
Each additional ounce or fraction	0.210

6.0 AUTOMATION—5-DIGIT

Card Rate 6.1

Single and double cards meeting the standards in C100: $0.151 each.

Letters 6.2

Letter-size pieces other than card rate:

Weight increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.253
(For pieces weighing more than 2 ounces)	0.207
Each additional ounce or fraction	0.210

Flats 6.3

Flat-size pieces; nonstandard surcharge in 10.0 might apply:

Weight Increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.275
(For pieces weighing more than 2 ounces)	0.229
Each additional ounce or fraction	0.210

7.0 AUTOMATION—CARRIER ROUTE

Card Rate 7.1

Single and double cards meeting the standards in C100: $0.140 each.

Letters 7.2

Letter-size pieces other than card rate:

Weight Increment	Rate
First ounce or fraction of an ounce	
(For pieces weighing 2 ounces or less)	$0.243
(For pieces weighing more than 2 ounces)	0.197
Each additional ounce or fraction	0.210

Summary of First-Class Rates 7.3

Letters, Flats, and Parcels Weight Not Over (ounces)	Nonautomation		Automation						
			Letter-Size				Flat-Size		
	Single-Piece	Presorted	Basic	3-Digit	5-Digit	Carrier Route	Basic	3-Digit	5-Digit
1	$0.340[1]	$0.320[1]	$0.278	$0.267	$0.253	$0.243	$0.310[1]	$0.295[1]	$0.275[1]
2	0.550	0.530	0.488	0.477	0.463	0.453	0.520	0.505	0.485
3[2]	0.760	0.694	0.652	0.641	0.627	0.617	0.684	0.669	0.649
4	0.970	0.904	0.862[3]	0.851[3]	0.837[3]	0.827[3]	0.894	0.879	0.859
5	1.180	1.114	—	—	—	—	1.104	1.089	1.069
6	1.390	1.324	—	—	—	—	1.314	1.299	1.279
7	1.600	1.534	—	—	—	—	1.524	1.509	1.489
8	1.810	1.744	—	—	—	—	1.734	1.719	1.699
9	2.020	1.954	—	—	—	—	1.944	1.929	1.909
10	2.230	2.164	—	—	—	—	2.154	2.139	2.119
11	2.440	2.374	—	—	—	—	2.364	2.349	2.329
12	2.650	2.584	—	—	—	—	2.574	2.559	2.539
13	2.860	2.794	—	—	—	—	2.784	2.769	2.749
Card Rate[4]									
Single	0.20	0.18	0.164	0.158	0.151	0.140	—	—	—

1. Nonstandard surcharge in 10.0 might apply: single-piece $0.11; presorted and automation $0.05.
2. Presorted and automation rates for pieces weighing over 2 ounces reflect a first-ounce discount of $0.046 per piece.
3. Weight not to exceed 3.3 ounces; pieces over 3 ounces subject to additional standards.
4. Rates shown apply to each single or double postcard when originally mailed; reply half of double postcard must bear postage at applicable rate when returned unless prepared as business reply mail.

8.0 PRIORITY MAIL

Weight Not Over (pounds)[1]	Zone					
	L, 1, 2, & 3	4	5	6	7	8
1	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50
2[2]	3.95	3.95	3.95	3.95	3.95	3.95
3	5.15	5.15	5.15	5.15	5.15	5.15
4	6.35	6.35	6.35	6.35	6.35	6.35
5	7.55	7.55	7.55	7.55	7.55	7.55
6	7.90	8.10	8.15	8.25	9.50	10.35
7	8.25	8.65	8.75	8.95	10.45	11.65
8	8.50	9.20	9.35	9.65	11.40	12.95
9	8.65	9.75	9.95	10.35	12.35	14.25
10	8.75	10.30	10.55	11.05	13.30	15.55
11	9.00	10.85	11.15	11.75	14.25	16.85
12	9.25	11.40	11.75	12.45	15.20	18.15
13	9.60	11.95	12.35	13.15	16.15	19.45
14	9.95	12.50	12.95	13.85	17.10	20.75
15	10.30	13.05	13.55	14.55	18.05	22.05
16	10.65	13.60	14.15	15.25	19.00	23.35
17	11.00	14.15	14.75	15.95	19.95	24.65
18	11.35	14.70	15.35	16.65	20.90	25.95
19	11.70	15.25	15.95	17.35	21.85	27.25
20	12.05	15.80	16.55	18.05	22.80	28.55
21	12.40	16.35	17.15	18.75	23.75	29.85
22	12.75	16.90	17.75	19.45	24.70	31.15
23	13.10	17.45	18.35	20.15	25.65	32.45
24	13.45	18.00	18.95	20.85	26.60	33.75
25	13.80	18.55	19.55	21.55	27.55	35.05
26	14.15	19.10	20.15	22.25	28.50	36.35
27	14.50	19.65	20.75	22.95	29.45	37.65
28	14.85	20.20	21.35	23.65	30.40	38.95
29	15.20	20.75	21.95	24.35	31.35	40.25
30	15.55	21.30	22.55	25.05	32.30	41.55
31	15.90	21.85	23.15	25.75	33.25	42.85
32	16.25	22.40	23.75	26.45	34.20	44.15
33	16.60	22.95	24.35	27.15	35.15	45.45
34	16.95	23.50	24.95	27.85	36.10	46.75
35	17.30	24.05	25.55	28.55	37.05	48.05
36	17.65	24.60	26.15	29.25	38.00	49.35
37	18.00	25.15	26.75	29.95	38.95	50.65
38	18.35	25.70	27.35	30.65	39.90	51.95
39	18.70	26.25	27.95	31.35	40.85	53.25
40	19.05	26.80	28.55	32.05	41.80	54.55
41	19.40	27.35	29.15	32.75	42.75	55.85
42	19.75	27.90	29.75	33.45	43.70	57.15
43	20.10	28.45	30.35	34.15	44.65	58.45
44	20.45	29.00	30.95	34.85	45.60	59.75
45	20.80	29.55	31.55	35.55	46.55	61.05
46	21.15	30.10	32.15	36.25	47.50	62.35
47	21.50	30.65	32.75	36.95	48.45	63.65
48	21.85	31.20	33.35	37.65	49.40	64.95
49	22.20	31.75	33.95	38.35	50.35	66.25
50	22.55	32.30	34.55	39.05	51.30	67.55
51	22.90	32.85	35.15	39.75	52.25	68.85
52	23.25	33.40	35.75	40.45	53.20	70.15
53	23.60	33.95	36.35	41.15	54.15	71.45
54	23.95	34.50	36.95	41.85	55.10	72.75
55	24.30	35.05	37.55	42.55	56.05	74.05
56	24.65	35.60	38.15	43.25	57.00	75.35
57	25.00	36.15	38.75	43.95	57.95	76.65
58	25.35	36.70	39.35	44.65	58.90	77.95
59	25.70	37.25	39.95	45.35	59.85	79.25
60	26.05	37.80	40.55	46.05	60.80	80.55
61	26.40	38.35	41.15	46.75	61.75	81.85
62	26.75	38.90	41.75	47.45	62.70	83.15
63	27.10	39.45	42.35	48.15	63.65	84.45
64	27.45	40.00	42.95	48.85	64.60	85.75
65	27.80	40.55	43.55	49.55	65.55	87.05
66	28.15	41.10	44.15	50.25	66.50	88.35
67	28.50	41.65	44.75	50.95	67.45	89.65
68	28.85	42.20	45.35	51.65	68.40	90.95
69	29.20	42.75	45.95	52.35	69.35	92.25
70	29.55	43.30	46.55	53.05	70.30	93.55

1. Parcels that weigh less than 15 pounds but measure more than 84 inches in combined length and girth are charged the applicable rate for a 15-pound parcel.
2. The 2-pound rate is charged for matter sent in a flat-rate envelope provided by the USPS, regardless of the actual weight of the piece.

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9.0 KEYS AND IDENTIFICATION DEVICES

Weight Not Over (ounces)	Rate[1]
1[2]	$0.69
2	0.90
3	1.11
4	1.32
5	1.53
6	1.74
7	1.95
8	2.16
9	2.37
10	2.58
11	2.79
12	3.00
13	3.21
1 pound	3.85
2 pounds	4.30

1. Includes $0.35 fee.
2. Nonstandard surcharge in 10.0 might apply.

10.0 NONSTANDARD SURCHARGES

Surcharge per piece:

a. Single-piece rate: $0.11.

b. Presorted and automation (flat-size) rate: $0.05.

11.0 FEES

Address Correction Service Fee 11.1 — Fees per correction:

a. Manual notice: $0.60.

b. Electronic notice: $0.20.

Presort Mailing Fee 11.2 — Presort mailing fee, per 12-month period, per office of mailing: $125.00.

Pickup Fee 11.3 — Priority Mail only, per occurrence: $10.25. May be combined with Express Mail and Package Services Parcel Post pickups.

R200 Periodicals

1.0 OUTSIDE-COUNTY—EXCLUDING SCIENCE-OF-AGRICULTURE

Pound Rates 1.1 — Per pound or fraction:

a. For the nonadvertising portion: $0.173.

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.148
SCF	0.188
1 & 2	0.230
3	0.245
4	0.283
5	0.341
6	0.401
7	0.474
8	0.537

Piece Rates 1.2 — Per addressed piece:

Presort Level	Nonautomation	Automation[1] Letter-Size	Automation[1] Flat-Size
Basic	$0.325	$0.260	$0.284
3-Digit	0.276	0.225	0.242
5-Digit	0.214	0.174	0.190
Carrier Route	0.136	—	—
High Density	0.111	—	—
Saturation	0.093	—	—

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 16 ounces (FSM 881) and 6 pounds (FSM 1000).

Discounts 1.3 — Piece rate discounts:

a. Nonadvertising adjustment for each 1% of nonadvertising content: $0.00065 per piece.

b. Delivery unit piece discount for each addressed piece eligible for the delivery unit rate under E250: $0.017.

c. SCF piece discount for each addressed piece eligible for the SCF rate under E250: $0.008.

Nonprofit 1.4 — Authorized nonprofit mailers receive a discount of 5% off the total Outside-County postage excluding the postage for advertising pounds. The 5% discount does not apply to commingled nonsubscriber copies in excess of the 10% allowance provided under E215.

Classroom 1.5 — Authorized Classroom mailers receive a discount of 5% off the total Outside-County postage excluding the postage for advertising pounds. The 5% discount does not apply to commingled nonsubscriber copies in excess of the 10% allowance provided under E215.

2.0 OUTSIDE-COUNTY—SCIENCE-OF-AGRICULTURE

Pound Rates 2.1 Per pound or fraction:

a. For the nonadvertising portion: $0.173.

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.111
SCF	0.141
1 & 2	0.173
3	0.245
4	0.283
5	0.341
6	0.401
7	0.474
8	0.537

Piece Rates 2.2 Per addressed piece:

		Automation[1]	
Presort Level	Nonautomation	Letter-Size	Flat-Size
Basic	$0.325	$0.260	$0.284
3-Digit	0.276	0.225	0.242
5-Digit	0.214	0.174	0.190
Carrier Route	0.136	—	—
High Density	0.111	—	—
Saturation	0.093	—	—

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 16 ounces (FSM 881) and 6 pounds (FSM 1000).

Discounts 2.3 Piece rate discounts:

a. Nonadvertising adjustment for each 1% of nonadvertising content: $0.00065 per piece.

b. Delivery unit piece discount for each addressed piece eligible for the delivery unit rate under E250: $0.017.

c. SCF piece discount for each addressed piece eligible for the SCF rate under E250: $0.008.

3.0 IN-COUNTY

Pound Rates 3.1 Per pound or fraction:

Zone	Rate
Delivery Unit	$0.113
All Others	0.144

Piece Rates 3.2 Per addressed piece:

		Automation[1]	
Presort Level	Nonautomation	Letter-Size	Flat-Size
Basic	$0.100	$0.049	$0.073
3-Digit	0.092	0.047	0.068
5-Digit	0.083	0.044	0.062
Carrier Route	0.047	—	—
High Density	0.032	—	—
Saturation	0.026	—	—

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 16 ounces (FSM 881) and 6 pounds (FSM 1000).

Discount 3.3 Delivery unit piece discount for each addressed piece eligible for the delivery unit rate under E250: $0.005.

4.0 RIDE-ALONG EXPERIMENT (G094)

Fee 4.1 Per piece: $0.10.

5.0 FEES

Application Fees 5.1 Per application:

a. Original entry: $350.00.

b. News agent registry: $40.00.

c. Additional entry: $50.00.

d. Reentry: $40.00.

Address Correction Service Fees 5.2 Fees per correction:

a. Manual notice: $0.60.

b. Electronic notice: $0.20.

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R500 Express Mail

1.0 EXPRESS MAIL—ALL SERVICE LEVELS

Weight Not Over (pounds)	Service[1] Custom Designed	Service[1] Next Day & Second Day PO to PO	Service[1] Next Day & Second Day PO to Addressee	Weight Not Over (pounds)	Service[1] Custom Designed	Service[1] Next Day & Second Day PO to PO	Service[1] Next Day & Second Day PO to Addressee
1/2	9.25	9.40	12.25	36	66.55	66.70	68.80
1	13.75	13.90	16.00	37	67.80	67.95	70.30
2[2]	13.75	13.90	16.00	38	69.35	69.30	71.90
3	16.65	16.80	18.85	39	70.95	70.60	73.50
4	19.45	19.60	21.70	40	72.55	72.00	75.10
5	22.25	22.40	24.50	41	74.15	73.60	76.70
6	25.05	25.20	27.30	42	75.75	75.20	78.35
7	27.75	27.90	30.00	43	77.35	76.80	79.90
8	28.95	29.10	31.20	44	78.95	78.40	81.50
9	30.20	30.35	32.45	45	80.55	80.00	82.90
10	31.40	31.55	33.65	46	81.85	81.55	84.15
11	32.90	33.05	35.15	47	83.25	83.20	85.60
12	35.30	35.45	37.55	48	84.60	84.75	86.90
13	36.55	36.70	39.25	49	85.90	86.05	88.20
14	37.95	38.10	40.20	50	87.20	87.35	89.50
15	39.15	39.30	41.40	51	88.60	88.80	90.95
16	40.50	40.65	42.75	52	89.90	90.05	92.20
17	41.85	42.00	44.10	53	91.30	91.45	93.60
18	43.10	43.25	45.35	54	92.60	92.75	94.90
19	44.40	44.55	46.65	55	93.90	94.10	96.25
20	45.75	45.90	48.00	56	95.35	95.50	97.65
21	47.00	47.20	49.25	57	96.60	96.75	98.90
22	48.30	48.45	50.55	58	97.95	98.10	100.30
23	49.65	49.85	51.90	59	99.45	99.60	101.75
24	50.90	51.05	53.15	60	101.00	101.15	103.30
25	52.20	52.40	54.45	61	102.70	102.85	105.00
26	53.50	53.65	55.75	62	104.25	104.40	106.60
27	54.85	55.00	57.05	63	105.85	106.00	108.15
28	56.10	56.25	58.35	64	107.50	107.70	109.85
29	57.45	57.60	59.65	65	109.10	109.25	111.40
30	58.75	58.90	61.00	66	110.80	110.95	113.10
31	60.05	60.20	62.25	67	112.35	112.50	114.65
32	61.35	61.50	63.60	68	114.05	114.20	116.35
33	62.65	62.80	64.85	69	115.60	115.75	117.90
34	63.95	64.10	66.20	70	117.20	117.35	119.50
35	65.25	65.40	67.45				

1. Same Day Airport service is currently suspended.
2. The 2-pound rate is charged for matter sent in a flat-rate envelope provided by the USPS, regardless of the actual weight of the piece.

2.0 FEES

Address Correction Service Fee 2.1 — Manual notice only, each: $0.60.

Pickup Fee 2.2 — Per occurrence: $10.25. May be combined with Priority Mail and Package Services Parcel Post pickups.

Fee for Delivery Stops 2.3 — Custom Designed Service only, each: $10.25.

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R600 Standard Mail

1.0 REGULAR STANDARD MAIL

Letter-Size Minimum Per Piece Rates
1.1

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Presorted		Automation[1]		
	Basic	3/5	Basic	3-Digit	5-Digit
None	$0.250	$0.230	$0.197	$0.187	$0.174
DBMC	0.231	0.211	0.178	0.168	0.155
DSCF	0.226	0.206	0.173	0.163	0.150
DDU	—	—	—	—	—

1. Pieces weighing over 3 ounces subject to additional standards.

Nonletter Per Piece Rates
1.2

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Presorted[1,2]		Automation	
	Basic	3/5	Basic	3/5
None	$0.319	$0.263	$0.275	$0.236
DBMC	0.300	0.244	0.256	0.217
DSCF	0.295	0.239	0.251	0.212
DDU	—	—	—	—

1. The residual shape surcharge of $0.18 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.
2. Machinable parcels for which the residual shape surcharge is paid may be eligible for the barcoded discount of $0.03 per piece (see E620). The barcoded discount is available for pieces entered at DSCF rates only if sorted to 5-digit sacks or pallets. Except for mail entered at the Phoenix, AZ, ASF, the barcoded discount is not available for DBMC rate mail entered at an ASF.

Piece and Pound Rates
1.3

Pieces more than 3.3 ounces (0.2063 pound):

Piece/Pound Rate[1]	Presorted[2,3]		Automation	
	Basic	3/5	Basic	3/5
Per Piece	$0.181	$0.125	$0.137	$0.098
Per Pound (includes entry discount if applicable)	PLUS	PLUS	PLUS	PLUS
None	$0.668	$0.668	$0.668	$0.668
DBMC	0.575	0.575	0.575	0.575
DSCF	0.554	0.554	0.554	0.554
DDU	—	—	—	—

1. Each piece is subject to both a piece rate and a pound rate.
2. Residual shape surcharge of $0.18 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.
3. Machinable parcels for which the residual shape surcharge is paid may be eligible for the barcoded discount of $0.03 per piece (see E620). The barcoded discount is available for pieces entered at DSCF rates only if sorted to 5-digit sacks or pallets. Except for mail entered at the Phoenix, AZ, ASF, the barcoded discount is not available for DBMC rate mail entered at an ASF.

2.0 ENHANCED CARRIER ROUTE STANDARD MAIL

Letter-Size Minimum Per Piece Rates
2.1

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Nonautomation			Automation[1]
	Basic	High Density	Saturation	Basic
None	$0.176	$0.151	$0.143	$0.155
DBMC	0.157	0.132	0.124	0.136
DSCF	0.152	0.127	0.119	0.131
DDU	0.147	0.122	0.114	0.126

1. Pieces weighing over 3 ounces subject to additional standards.

Nonletter Per Piece Rates
2.2

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Basic[1]	High Density[1]	Saturation[1]
None	$0.176	$0.154	$0.147
DBMC	0.157	0.135	0.128
DSCF	0.152	0.130	0.123
DDU	0.147	0.125	0.118

1. Residual shape surcharge of $0.15 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.

Piece and Pound Rates
2.3

Pieces more than 3.3 ounces (0.2063 pound):

Piece/Pound Rate[1,2]	Basic	High Density	Saturation
Per Piece	$0.044	$0.022	$0.015
Per Pound (includes entry discount if applicable)	PLUS	PLUS	PLUS
None	$0.638	$0.638	$0.638
DBMC	0.545	0.545	0.545
DSCF	0.524	0.524	0.524
DDU	0.498	0.498	0.498

1. Each piece is subject to both a piece rate and a pound rate.
2. Residual shape surcharge of $0.15 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.

3.0 NONPROFIT STANDARD MAIL

Letter-Size Minimum Per Piece Rates
3.1

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Presorted		Automation[1]		
	Basic	3/5	Basic	3-Digit	5-Digit
None	$0.155	$0.143	$0.130	$0.120	$0.105
DBMC	0.136	0.124	0.111	0.101	0.086
DSCF	0.131	0.119	0.106	0.096	0.081
DDU	—	—	—	—	—

1. Pieces weighing over 3 ounces subject to additional standards.

Nonletter-Size Minimum Per Piece Rates
3.2

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Presorted[1,2]		Automation	
	Basic	3/5	Basic	3/5
None	$0.217	$0.168	$0.176	$0.151
DBMC	0.198	0.149	0.157	0.132
DSCF	0.193	0.144	0.152	0.127
DDU	—	—	—	—

1. Residual shape surcharge of $0.18 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.
2. Machinable parcels for which the residual shape surcharge is paid may be eligible for the barcoded discount of $0.03 per piece (see E620). The barcoded discount is available for pieces entered at DSCF rates only if sorted to 5-digit sacks or pallets. Except for mail entered at the Phoenix, AZ, ASF, the barcoded discount is not available for DBMC rate mail entered at an ASF.

Piece and Pound Rates
3.3

Pieces more than 3.3 ounces (0.2063 pound):

Piece/Pound Rate[1]	Presorted[2,3]		Automation	
	Basic	3/5	Basic	3/5
Per Piece	$0.104	$0.055	$0.063	$0.038
Per Pound (includes entry discount if applicable)	PLUS	PLUS	PLUS	PLUS
None	$0.550	$0.550	$0.550	$0.550
DBMC	0.457	0.457	0.457	0.457
DSCF	0.436	0.436	0.436	0.436
DDU	—	—	—	—

1. Each piece is subject to both a piece rate and a pound rate.
2. Residual shape surcharge of $0.18 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.
3. Machinable parcels for which the residual shape surcharge is paid may be eligible for the barcoded discount of $0.03 per piece (see E620). The barcoded discount is available for pieces entered at DSCF rates only if sorted to 5-digit sacks or pallets. Except for mail entered at the Phoenix, AZ, ASF, the barcoded discount is not available for DBMC rate mail entered at an ASF.

4.0 NONPROFIT ENHANCED CARRIER ROUTE STANDARD MAIL

Letter-Size Minimum Per Piece Rates
4.1

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Nonautomation			Automation[1]
	Basic	High Density	Saturation	Basic
None	$0.116	$0.093	$0.087	$0.103
DBMC	0.097	0.074	0.068	0.084
DSCF	0.092	0.069	0.063	0.079
DDU	0.087	0.064	0.058	0.074

1. Pieces weighing over 3 ounces subject to additional standards.

Nonletter-Size Minimum Per Piece Rates
4.2

Pieces 3.3 ounces (0.2063 pound) or less:

Entry Discount	Basic[1]	High Density[1]	Saturation[1]
None	$0.116	$0.100	$0.095
DBMC	0.097	0.081	0.076
DSCF	0.092	0.076	0.071
DDU	0.087	0.071	0.066

1. Residual shape surcharge of $0.15 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.

Piece and Pound Rates
4.3

Pieces more than 3.3 ounces (0.2063 pound):

Piece/Pound Rate[1,2]	Basic	High Density	Saturation
Per Piece	$0.040	$0.024	$0.019
Per Pound (includes entry discount if applicable)	PLUS	PLUS	PLUS
None	$0.370	$0.370	$0.370
DBMC	0.277	0.277	0.277
DSCF	0.256	0.256	0.256
DDU	0.230	0.230	0.230

1. Each piece is subject to both a piece rate and a pound rate.
2. Residual shape surcharge of $0.15 per piece applies to items that are prepared as a parcel or are not letter-size or flat-size.

5.0 FEES

Mailing Fee
5.1

Mailing fee, per 12-month period: $125.00.

Address Correction Service Fees
5.2

Fees per correction:

a. Manual notice: $0.60.

b. Electronic notice: $0.20.

Bulk Parcel Return Service Fee
5.3

See R900.3.0.

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Weighted Fee
5.4 For return of pieces bearing the ancillary service markings "Address Service Requested" and "Forwarding Service Requested":

Single-Piece Weight Not Over (ounces)	Weighted Fee per Piece[1]
1	$0.85
2	1.36
3	1.88
4	2.40
5	2.92
6	3.44
7	3.96
8	4.48
9	5.00
10	5.52
11	6.04
12	6.56
13	7.07
15.999	8.66

1. Weighted fee equals single-piece First-Class Mail or Priority Mail rate multiplied by 2.472 (see F010).

6.0 RESIDUAL SHAPE SURCHARGE

Items that are prepared as a parcel or are neither letter-size nor flat-size, per piece:

Rate Category	Surcharge
Regular and Nonprofit	$0.18
Enhanced Carrier Route and Nonprofit Enhanced Carrier Route	0.15

7.0 BARCODED DISCOUNT

Deduct $0.03 per piece for machinable parcels with a barcode (see E610 and E620 for eligibility).

R700 Package Services

1.0 PACKAGE SERVICES PARCEL POST

Inter-BMC/ASF Single-Piece Machinable Parcel Post
1.1 Inter-BMC/ASF ZIP Codes only, no discount, no surcharge:

Weight Not Over (pounds)	Zone[1, 2, 3, 4, 5, 6]						
	1 & 2	3	4	5	6	7	8
1	$3.34	$3.39	$3.44	$3.45	$3.45	$3.45	$3.45
2	3.34	3.39	3.44	3.45	3.45	3.45	3.45
3	3.81	4.13	4.56	4.61	4.66	4.71	4.76
4	3.95	4.41	5.20	5.67	5.82	5.87	5.92
5	4.09	4.65	5.65	6.84	6.99	7.04	7.09
6	4.23	4.90	6.05	7.53	7.84	8.06	8.64
7	4.36	5.11	6.43	8.18	8.85	9.28	10.44
8	4.49	5.31	6.76	8.76	9.60	10.49	12.24
9	4.59	5.50	7.11	9.29	10.30	11.71	14.05
10	4.72	5.68	7.41	9.78	11.00	12.93	15.19
11	4.81	5.86	7.71	10.24	11.70	14.10	16.07
12	4.92	6.02	7.98	10.66	12.40	15.15	16.91
13	5.01	6.16	8.24	11.07	13.10	16.08	17.72
14	5.11	6.33	8.49	11.45	13.66	16.68	18.49
15	5.19	6.47	8.73	11.80	14.11	17.26	19.24
16	5.28	6.60	8.96	12.14	14.52	17.78	19.97
17	5.37	6.72	9.18	12.44	14.92	18.29	20.67
18	5.45	6.85	9.38	12.74	15.29	18.75	21.34
19	5.54	6.97	9.58	13.03	15.65	19.21	22.00
20	5.61	7.08	9.75	13.29	15.97	19.63	22.64
21	5.68	7.21	9.93	13.56	16.30	20.03	23.26
22	5.76	7.30	10.11	13.80	16.60	20.42	23.87
23	5.83	7.43	10.29	14.02	16.89	20.78	24.46
24	5.88	7.53	10.44	14.26	17.16	21.14	25.03
25	5.96	7.62	10.61	14.46	17.43	21.45	25.59
26	6.02	7.72	10.76	14.67	17.68	21.77	26.14
27	6.10	7.81	10.90	14.86	17.91	22.07	26.68
28	6.15	7.91	11.06	15.05	18.15	22.36	27.20
29	6.21	8.00	11.19	15.22	18.37	22.63	27.71
30	6.28	8.09	11.31	15.39	18.57	22.90	28.21
31	6.34	8.16	11.45	15.55	18.78	23.16	28.70
32	6.39	8.26	11.58	15.71	18.97	23.40	29.18
33	6.44	8.34	11.70	15.87	19.15	23.64	29.65
34	6.51	8.41	11.81	16.02	19.33	23.86	30.11
35	6.56	8.49	11.94	16.15	19.50	24.07	30.57

1. For barcoded discount, deduct $0.03 per parcel (machinable parcels only, 50-piece minimum).
2. For OBMC Presort discount, deduct $0.90 per parcel.
3. For BMC Presort discount, deduct $0.23 per parcel.
4. Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.
5. For parcels that weigh more than 35 pounds, see 1.2.
6. Regardless of weight, a parcel that meets any of the criteria in E711.2.3 must pay the rate for a nonmachinable parcel in 1.2.

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1.2 Inter-BMC/ASF Single-Piece Nonmachinable Parcel Post

Rates shown include the $2.00 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling. Regardless of weight, a parcel that meets any of the criteria in E711.2.3 must pay the rate listed in this table.

Weight Not Over (pounds)	Zone[1, 2, 3, 4]						
	1 & 2	3	4	5	6	7	8
1	$5.34	$5.39	$5.44	$5.45	$5.45	$5.45	$5.45
2	5.34	5.39	5.44	5.45	5.45	5.45	5.45
3	5.81	6.13	6.56	6.61	6.66	6.71	6.76
4	5.95	6.41	7.20	7.67	7.82	7.87	7.92
5	6.09	6.65	7.65	8.84	8.99	9.04	9.09
6	6.23	6.90	8.05	9.53	9.84	10.06	10.64
7	6.36	7.11	8.43	10.18	10.85	11.28	12.44
8	6.49	7.31	8.76	10.76	11.60	12.49	14.24
9	6.59	7.50	9.11	11.29	12.30	13.71	16.05
10	6.72	7.68	9.41	11.78	13.00	14.93	17.19
11	6.81	7.86	9.71	12.24	13.70	16.10	18.07
12	6.92	8.02	9.98	12.66	14.40	17.15	18.91
13	7.01	8.16	10.24	13.07	15.10	18.08	19.72
14	7.11	8.33	10.49	13.45	15.66	18.68	20.49
15	7.19	8.47	10.73	13.80	16.11	19.26	21.24
16	7.28	8.60	10.96	14.14	16.52	19.78	21.97
17	7.37	8.72	11.18	14.44	16.92	20.29	22.67
18	7.45	8.85	11.38	14.74	17.29	20.75	23.34
19	7.54	8.97	11.58	15.03	17.65	21.21	24.00
20	7.61	9.08	11.75	15.29	17.97	21.63	24.64
21	7.68	9.21	11.93	15.56	18.30	22.03	25.26
22	7.76	9.30	12.11	15.80	18.60	22.42	25.87
23	7.83	9.43	12.29	16.02	18.89	22.78	26.46
24	7.88	9.53	12.44	16.26	19.16	23.14	27.03
25	7.96	9.62	12.61	16.46	19.43	23.45	27.59
26	8.02	9.72	12.76	16.67	19.68	23.77	28.14
27	8.10	9.81	12.90	16.86	19.91	24.07	28.68
28	8.15	9.91	13.06	17.05	20.15	24.36	29.20
29	8.21	10.00	13.19	17.22	20.37	24.63	29.71
30	8.28	10.09	13.31	17.39	20.57	24.90	30.21
31	8.34	10.16	13.45	17.55	20.78	25.16	30.70
32	8.39	10.26	13.58	17.71	20.97	25.40	31.18
33	8.44	10.34	13.70	17.87	21.15	25.64	31.65
34	8.51	10.41	13.81	18.02	21.33	25.86	32.11
35	8.56	10.49	13.94	18.15	21.50	26.07	32.57
36	8.61	10.55	14.06	18.29	21.67	26.27	33.01
37	8.67	10.63	14.16	18.43	21.83	26.49	33.45
38	8.72	10.71	14.27	18.55	21.98	26.67	33.88
39	8.78	10.78	14.37	18.66	22.13	26.85	34.30
40	8.83	10.85	14.48	18.79	22.28	27.04	34.71
41	8.89	10.93	14.57	18.91	22.42	27.21	35.11
42	8.93	10.99	14.67	19.01	22.54	27.37	35.34
43	8.97	11.05	14.77	19.12	22.68	27.52	35.54
44	9.03	11.11	14.86	19.21	22.80	27.67	35.75
45	9.07	11.18	14.95	19.32	22.92	27.82	35.94
46	9.12	11.24	15.04	19.43	23.04	27.97	36.12
47	9.18	11.31	15.12	19.51	23.16	28.11	36.31
48	9.22	11.37	15.22	19.61	23.25	28.24	36.48
49	9.26	11.42	15.30	19.69	23.37	28.37	36.64
50	9.30	11.48	15.37	19.78	23.48	28.50	36.81
51	9.36	11.54	15.46	19.86	23.57	28.62	36.96
52	9.40	11.60	15.54	19.95	23.67	28.73	37.11
53	9.44	11.66	15.60	20.02	23.76	28.85	37.27
54	9.48	11.72	15.68	20.10	23.86	28.97	37.40
55	9.53	11.75	15.77	20.17	23.93	29.06	37.54
56	9.58	11.83	15.83	20.25	24.03	29.17	37.68
57	9.62	11.88	15.91	20.32	24.11	29.27	37.80
58	9.66	11.92	15.97	20.39	24.19	29.37	37.92
59	9.71	11.97	16.05	20.45	24.27	29.45	38.04
60	9.75	12.03	16.13	20.52	24.33	29.55	38.17
61	9.80	12.09	16.18	20.58	24.42	29.64	38.33
62	9.84	12.13	16.25	20.65	24.48	29.72	38.47
63	9.87	12.19	16.32	20.70	24.56	29.80	38.62
64	9.91	12.23	16.38	20.75	24.62	29.88	38.76
65	9.95	12.28	16.44	20.82	24.69	29.96	38.90
66	10.00	12.34	16.50	20.87	24.75	30.04	39.03
67	10.05	12.38	16.56	20.93	24.82	30.11	39.16
68	10.08	12.42	16.64	20.98	24.87	30.19	39.30
69	10.12	12.46	16.69	21.03	24.94	30.26	39.41
70	10.16	12.53	16.76	21.09	24.99	30.32	39.55
Oversized	34.75	38.94	45.10	54.87	66.41	82.14	106.00

1. For OBMC Presort discount, deduct $0.90 per parcel.
2. For BMC Presort discount, deduct $0.23 per parcel.
3. Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.
4. Regardless of weight, a parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

Local and Intra-BMC/ASF Single-Piece Machinable Parcel Post 1.3

Weight Not Over (pounds)	Zone[1, 2, 3, 4]				
	Local	1 & 2	3	4	5
1	$2.72	$2.97	$2.97	$2.97	$2.97
2	2.72	2.97	2.97	2.97	2.97
3	2.96	3.36	3.46	3.46	3.46
4	3.18	3.52	3.78	3.79	3.93
5	3.38	3.66	4.08	4.11	4.40
6	3.48	3.79	4.38	4.40	4.83
7	3.55	3.91	4.63	4.66	5.23
8	3.64	4.05	4.87	4.91	5.61
9	3.71	4.14	5.06	5.15	5.96
10	3.79	4.27	5.31	5.38	6.29
11	3.86	4.37	5.49	5.59	6.59
12	3.93	4.48	5.65	5.80	6.90
13	4.01	4.58	5.79	5.99	7.16
14	4.07	4.67	5.88	6.18	7.43
15	4.13	4.76	6.02	6.35	7.68
16	4.21	4.83	6.16	6.52	7.91
17	4.26	4.93	6.29	6.69	8.13
18	4.31	5.00	6.41	6.84	8.36
19	4.37	5.10	6.53	6.99	8.56
20	4.44	5.17	6.65	7.14	8.75
21	4.48	5.24	6.76	7.28	8.94
22	4.54	5.32	6.86	7.42	9.12
23	4.59	5.38	6.99	7.56	9.30
24	4.64	5.45	7.08	7.67	9.46
25	4.70	5.51	7.18	7.79	9.62
26	4.74	5.59	7.27	7.89	9.78
27	4.79	5.65	7.38	7.98	9.92
28	4.83	5.70	7.47	8.07	10.06
29	4.90	5.78	7.57	8.15	10.20
30	4.95	5.83	7.65	8.23	10.35
31	4.99	5.89	7.72	8.30	10.47
32	5.04	5.96	7.81	8.38	10.59
33	5.09	6.01	7.90	8.45	10.73
34	5.13	6.06	7.96	8.51	10.83
35	5.17	6.12	8.05	8.58	10.94

1. For barcoded discount, deduct $0.03 per parcel (machinable parcels only, 50-piece minimum).
2. Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.
3. For parcels that weigh more than 35 pounds, see 1.4.
4. Regardless of weight, a parcel that meets any of the criteria in E711.2.3 must pay the rate for a nonmachinable parcel in 1.4.

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Local and Intra-BMC/ASF Single-Piece Nonmachinable Parcel Post
1.4

Rates shown include the $1.35 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling. Regardless of weight, a parcel that meets any of the criteria in E711.2.3 must pay the rate listed in this table.

Weight Not Over (pounds)	Zone[1,2]				
	Local	1&2	3	4	5
1	$4.07	$4.32	$4.32	$4.32	$4.32
2	4.07	4.32	4.32	4.32	4.32
3	4.31	4.71	4.81	4.81	4.81
4	4.53	4.87	5.13	5.14	5.28
5	4.73	5.01	5.43	5.46	5.75
6	4.83	5.14	5.73	5.75	6.18
7	4.90	5.26	5.98	6.01	6.58
8	4.99	5.40	6.22	6.26	6.96
9	5.06	5.49	6.41	6.50	7.31
10	5.14	5.62	6.66	6.73	7.64
11	5.21	5.72	6.84	6.94	7.94
12	5.28	5.83	7.00	7.15	8.25
13	5.36	5.93	7.14	7.34	8.51
14	5.42	6.02	7.23	7.53	8.78
15	5.48	6.11	7.37	7.70	9.03
16	5.56	6.18	7.51	7.87	9.26
17	5.61	6.28	7.64	8.04	9.48
18	5.66	6.35	7.76	8.19	9.71
19	5.72	6.45	7.88	8.34	9.91
20	5.79	6.52	8.00	8.49	10.10
21	5.83	6.59	8.11	8.63	10.29
22	5.89	6.67	8.21	8.77	10.47
23	5.94	6.73	8.34	8.91	10.65
24	5.99	6.80	8.43	9.02	10.81
25	6.05	6.86	8.53	9.14	10.97
26	6.09	6.94	8.62	9.24	11.13
27	6.14	7.00	8.73	9.33	11.27
28	6.18	7.05	8.82	9.42	11.41
29	6.25	7.13	8.92	9.50	11.55
30	6.30	7.18	9.00	9.58	11.70
31	6.34	7.24	9.07	9.65	11.82
32	6.39	7.31	9.16	9.73	11.94
33	6.44	7.36	9.25	9.80	12.08
34	6.48	7.41	9.31	9.86	12.18
35	6.52	7.47	9.40	9.93	12.29
36	6.55	7.52	9.47	9.99	12.42
37	6.60	7.58	9.53	10.05	12.52
38	6.64	7.64	9.62	10.11	12.63
39	6.69	7.69	9.69	10.16	12.72
40	6.73	7.73	9.76	10.21	12.83
41	6.78	7.79	9.84	10.26	12.92
42	6.82	7.84	9.89	10.31	13.01
43	6.86	7.88	9.97	10.45	13.11
44	6.92	7.93	10.02	10.49	13.19
45	6.95	7.98	10.08	10.54	13.28
46	6.99	8.04	10.16	10.58	13.36
47	7.03	8.09	10.21	10.62	13.44
48	7.07	8.13	10.28	10.66	13.54
49	7.11	8.18	10.34	10.70	13.61
50	7.15	8.21	10.39	10.73	13.69
51	7.19	8.27	10.44	10.77	13.76
52	7.22	8.31	10.52	10.80	13.83
53	7.26	8.35	10.57	10.83	13.90
54	7.31	8.39	10.63	10.86	13.98
55	7.35	8.43	10.67	10.89	14.04
56	7.38	8.48	10.73	10.92	14.10
57	7.41	8.53	10.79	10.96	14.18
58	7.46	8.57	10.83	10.99	14.24
59	7.50	8.61	10.89	11.01	14.30
60	7.52	8.65	10.94	11.05	14.37
61	7.58	8.71	10.96	11.11	14.43
62	7.60	8.75	10.99	11.16	14.48
63	7.65	8.78	11.01	11.22	14.54
64	7.68	8.82	11.03	11.26	14.60
65	7.72	8.87	11.05	11.31	14.65
66	7.74	8.92	11.07	11.37	14.72
67	7.79	8.96	11.09	11.42	14.76
68	7.83	8.98	11.11	11.46	14.81
69	7.87	9.02	11.13	11.51	14.87
70	7.90	9.07	11.15	11.56	14.92
Oversized	19.82	28.99	28.99	28.99	28.99

1. Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.
2. Regardless of weight, a parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

Parcel Select — DBMC
1.5

Destination facility ZIP Codes only:

Weight Not Over (pounds)	Zone[1, 2, 3, 4]			
	1 & 2	3	4	5
1	$2.10	$2.45	$2.73	$2.92
2	2.10	2.45	2.73	2.92
3	2.33	2.85	3.27	3.41
4	2.54	3.23	3.74	3.88
5	2.74	3.59	4.06	4.35
6	2.92	3.92	4.35	4.78
7	3.10	4.24	4.61	5.18
8	3.27	4.54	4.86	5.56
9	3.42	4.82	5.10	5.91
10	3.57	5.09	5.33	6.24
11	3.72	5.35	5.54	6.54
12	3.86	5.60	5.75	6.85
13	3.99	5.74	5.94	7.11
14	4.11	5.83	6.13	7.38
15	4.24	5.97	6.30	7.63
16	4.35	6.11	6.47	7.86
17	4.47	6.24	6.64	8.08
18	4.58	6.36	6.79	8.31
19	4.68	6.48	6.94	8.51
20	4.78	6.60	7.09	8.70
21	4.88	6.71	7.23	8.89
22	4.98	6.81	7.37	9.07
23	5.07	6.94	7.51	9.25
24	5.16	7.03	7.62	9.41
25	5.25	7.13	7.74	9.57
26	5.34	7.22	7.84	9.73
27	5.42	7.33	7.93	9.87
28	5.50	7.42	8.02	10.01
29	5.58	7.52	8.10	10.15
30	5.66	7.60	8.18	10.30
31	5.73	7.67	8.25	10.42
32	5.81	7.76	8.33	10.54
33	5.88	7.85	8.40	10.68
34	5.95	7.91	8.46	10.78
35	6.02	8.00	8.53	10.89
36	6.08	8.07	8.59	11.02
37	6.15	8.13	8.65	11.12
38	6.21	8.22	8.71	11.23
39	6.27	8.29	8.76	11.32
40	6.33	8.36	8.81	11.43
41	6.39	8.44	8.86	11.52
42	6.44	8.49	8.91	11.61
43	6.48	8.57	9.05	11.71
44	6.53	8.62	9.09	11.79
45	6.58	8.68	9.14	11.88
46	6.64	8.76	9.18	11.96
47	6.69	8.81	9.22	12.04
48	6.73	8.88	9.26	12.14
49	6.78	8.94	9.30	12.21
50	6.81	8.99	9.33	12.29
51	6.87	9.04	9.37	12.36
52	6.91	9.12	9.40	12.43
53	6.95	9.17	9.43	12.50
54	6.99	9.23	9.46	12.58
55	7.03	9.27	9.49	12.64
56	7.08	9.33	9.52	12.70
57	7.13	9.39	9.56	12.78
58	7.17	9.43	9.59	12.84
59	7.21	9.49	9.61	12.90
60	7.25	9.54	9.65	12.97
61	7.31	9.56	9.71	13.03
62	7.35	9.59	9.76	13.08
63	7.38	9.61	9.82	13.14
64	7.42	9.63	9.86	13.20
65	7.47	9.65	9.91	13.25
66	7.52	9.67	9.97	13.32
67	7.56	9.69	10.02	13.36
68	7.58	9.71	10.06	13.41
69	7.62	9.73	10.11	13.47
70	7.67	9.75	10.16	13.52
Oversized	18.65	20.61	27.84	28.94

1. For barcoded discount, deduct $0.03 per parcel (machinable parcels only). Except for mail entered at the Phoenix, AZ, ASF, the barcoded discount is not available for DBMC mail entered at an ASF.
2. Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.
3. Regardless of weight, a parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
4. For nonmachinable Parcel Select DBMC parcels, add $1.45 per parcel. Any parcel that weighs more than 35 pounds or that meets any of the criteria in E711.2.3 must pay the nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

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Parcel Select—DSCF 1.6

Destination facility ZIP Codes only:

Weight Not Over (pounds)	DSCF[1,2]	Weight Not Over (pounds)	DSCF[1,2]	Weight Not Over (pounds)	DSCF[1,2]
1	$1.68	32	3.56	63	4.50
2	1.68	33	3.60	64	4.52
3	1.80	34	3.64	65	4.55
4	1.91	35	3.68	66	4.57
5	2.01	36	3.71	67	4.59
6	2.10	37	3.75	68	4.62
7	2.19	38	3.78	69	4.64
8	2.27	39	3.82	70	4.66
9	2.35	40	3.85	Oversized	11.61
10	2.43	41	3.88		
11	2.50	42	3.92		
12	2.57	43	3.95		
13	2.63	44	3.98		
14	2.69	45	4.01		
15	2.76	46	4.04		
16	2.81	47	4.07		
17	2.87	48	4.10		
18	2.93	49	4.13		
19	2.98	50	4.16		
20	3.03	51	4.19		
21	3.08	52	4.22		
22	3.13	53	4.24		
23	3.18	54	4.27		
24	3.23	55	4.30		
25	3.27	56	4.32		
26	3.32	57	4.35		
27	3.36	58	4.38		
28	3.40	59	4.40		
29	3.44	60	4.43		
30	3.49	61	4.45		
31	3.52	62	4.48		

1. Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.
2. Regardless of weight, a parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

Parcel Select—DDU 1.7

Destination facility ZIP Codes only:

Weight Not Over (pounds)	DDU[1,2]	Weight Not Over (pounds)	DDU[1,2]	Weight Not Over (pounds)	DDU[1,2]
1	$1.25	31	1.86	61	2.16
2	1.25	32	1.87	62	2.17
3	1.30	33	1.88	63	2.18
4	1.34	34	1.89	64	2.19
5	1.38	35	1.90	65	2.20
6	1.42	36	1.91	66	2.21
7	1.45	37	1.92	67	2.22
8	1.48	38	1.93	68	2.23
9	1.51	39	1.94	69	2.24
10	1.54	40	1.95	70	2.25
11	1.57	41	1.96	Oversized	7.53
12	1.59	42	1.97		
13	1.61	43	1.98		
14	1.63	44	1.99		
15	1.65	45	2.00		
16	1.67	46	2.01		
17	1.69	47	2.02		
18	1.70	48	2.03		
19	1.72	49	2.04		
20	1.73	50	2.05		
21	1.75	51	2.06		
22	1.76	52	2.07		
23	1.77	53	2.08		
24	1.79	54	2.09		
25	1.80	55	2.10		
26	1.81	56	2.11		
27	1.82	57	2.12		
28	1.83	58	2.13		
29	1.84	59	2.14		
30	1.85	60	2.15		

1. Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.
2. Regardless of weight, a parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

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2.0 BOUND PRINTED MATTER

Single-Piece Rates
2.1

Single-Piece Bound Printed Matter Rate:

Weight Not Over (pounds)	Zone[1]						
	Local, 1 & 2	3	4	5	6	7	8
1.0	$1.73	$1.76	$1.79	$1.85	$1.90	$1.97	$2.10
1.5	1.73	1.76	1.79	1.85	1.90	1.97	2.10
2.0	1.77	1.81	1.86	1.93	2.01	2.10	2.27
2.5	1.82	1.87	1.92	2.02	2.11	2.22	2.44
3.0	1.87	1.92	1.99	2.10	2.22	2.35	2.61
3.5	1.91	1.98	2.06	2.19	2.32	2.48	2.78
4.0	1.96	2.03	2.12	2.27	2.43	2.60	2.95
4.5	2.00	2.09	2.19	2.36	2.53	2.73	3.12
5.0	2.05	2.14	2.26	2.44	2.64	2.86	3.29
6.0	2.14	2.26	2.39	2.62	2.85	3.11	3.62
7.0	2.23	2.37	2.52	2.79	3.06	3.36	3.96
8.0	2.32	2.48	2.66	2.96	3.27	3.62	4.30
9.0	2.41	2.59	2.79	3.13	3.48	3.87	4.64
10.0	2.51	2.70	2.92	3.30	3.68	4.12	4.98
11.0	2.60	2.81	3.06	3.47	3.89	4.38	5.32
12.0	2.69	2.92	3.19	3.64	4.10	4.63	5.66
13.0	2.78	3.03	3.32	3.81	4.31	4.88	6.00
14.0	2.87	3.14	3.46	3.98	4.52	5.14	6.34
15.0	2.96	3.25	3.59	4.15	4.73	5.39	6.68

1. For barcoded discount, deduct $0.03 per parcel (machinable parcels only, 50-piece minimum).

Presorted and Carrier Route Rates
2.2

Each piece is subject to both a piece rate and a pound rate:

Rate	Zone						
	Local, 1 & 2	3	4	5	6	7	8
Per Piece							
Presorted[1]	$0.91	$0.91	$0.91	$0.91	$0.91	$0.91	$0.91
Carrier Route	0.81	0.81	0.81	0.81	0.81	0.81	0.81
Per Pound	0.07	0.09	0.11	0.15	0.19	0.23	0.32

1. For barcoded discount, deduct $0.03 per piece (machinable parcels only). Barcoded discount is not available for parcels mailed at Carrier Route rates.

Destination Entry Rates
2.3

Each piece is subject to both a piece rate and a pound rate:

Rate	DDU	DSCF	DBMC Zone[1]			
			1 & 2	3	4	5
Per Piece						
Presorted	$0.57[2]	$0.63	$0.78	$0.78	$0.78	$0.78
Carrier Route	0.47	0.53	0.68	0.68	0.68	0.68
Per Pound	0.03	0.05	0.06	0.09	0.11	0.15

1. For barcoded discount on Presorted pieces, deduct $0.03 per piece (machinable parcels only). Except for mail entered at the Phoenix, AZ, ASF, the barcoded discount is not available for DBMC mail entered at an ASF. Barcoded discount is not available for parcels mailed at Carrier Route rates.
2. This rate is not available for flats that weigh 1 pound or less.

3.0 MEDIA MAIL

Weight Not Over (pounds)	Single-Piece[1]	5-Digit	BMC[1]
1	$1.30	$0.70	$1.00
2	1.75	1.15	1.45
3	2.20	1.60	1.90
4	2.65	2.05	2.35
5	3.10	2.50	2.80
6	3.55	2.95	3.25
7	4.00	3.40	3.70
8	4.30	3.70	4.00
9	4.60	4.00	4.30
10	4.90	4.30	4.60
11	5.20	4.60	4.90
12	5.50	4.90	5.20
13	5.80	5.20	5.50
14	6.10	5.50	5.80
15	6.40	5.80	6.10
16	6.70	6.10	6.40
17	7.00	6.40	6.70
18	7.30	6.70	7.00
19	7.60	7.00	7.30
20	7.90	7.30	7.60
21	8.20	7.60	7.90
22	8.50	7.90	8.20
23	8.80	8.20	8.50
24	9.10	8.50	8.80
25	9.40	8.80	9.10
26	9.70	9.10	9.40
27	10.00	9.40	9.70
28	10.30	9.70	10.00
29	10.60	10.00	10.30
30	10.90	10.30	10.60
31	11.20	10.60	10.90
32	11.50	10.90	11.20
33	11.80	11.20	11.50
34	12.10	11.50	11.80
35	12.40	11.80	12.10
36	12.70	12.10	12.40
37	13.00	12.40	12.70
38	13.30	12.70	13.00
39	13.60	13.00	13.30
40	13.90	13.30	13.60
41	14.20	13.60	13.90
42	14.50	13.90	14.20
43	14.80	14.20	14.50
44	15.10	14.50	14.80
45	15.40	14.80	15.10
46	15.70	15.10	15.40
47	16.00	15.40	15.70
48	16.30	15.70	16.00
49	16.60	16.00	16.30
50	16.90	16.30	16.60
51	17.20	16.60	16.90
52	17.50	16.90	17.20
53	17.80	17.20	17.50
54	18.10	17.50	17.80
55	18.40	17.80	18.10
56	18.70	18.10	18.40
57	19.00	18.40	18.70
58	19.30	18.70	19.00
59	19.60	19.00	19.30
60	19.90	19.30	19.60
61	20.20	19.60	19.90
62	20.50	19.90	20.20
63	20.80	20.20	20.50
64	21.10	20.50	20.80
65	21.40	20.80	21.10
66	21.70	21.10	21.40
67	22.00	21.40	21.70
68	22.30	21.70	22.00
69	22.60	22.00	22.30
70	22.90	22.30	22.60

1. For barcoded discount, deduct $0.03 per parcel (machinable parcels only, 50-piece minimum for single-piece rate).

4.0 LIBRARY MAIL

Weight Not Over (pounds)	Single-Piece[1]	5-Digit	BMC[1]
1	$1.24	$0.67	$0.95
2	1.67	1.10	1.38
3	2.10	1.53	1.81
4	2.53	1.96	2.24
5	2.96	2.39	2.67
6	3.39	2.82	3.10
7	3.82	3.25	3.53
8	4.11	3.54	3.82
9	4.40	3.83	4.11
10	4.69	4.12	4.40
11	4.98	4.41	4.69
12	5.27	4.70	4.98
13	5.56	4.99	5.27
14	5.85	5.28	5.56
15	6.14	5.57	5.85
16	6.43	5.86	6.14
17	6.72	6.15	6.43
18	7.01	6.44	6.72
19	7.30	6.73	7.01
20	7.59	7.02	7.30
21	7.88	7.31	7.59
22	8.17	7.60	7.88
23	8.46	7.89	8.17
24	8.75	8.18	8.46
25	9.04	8.47	8.75
26	9.33	8.76	9.04
27	9.62	9.05	9.33
28	9.91	9.34	9.62
29	10.20	9.63	9.91
30	10.49	9.92	10.20
31	10.78	10.21	10.49
32	11.07	10.50	10.78
33	11.36	10.79	11.07
34	11.65	11.08	11.36
35	11.94	11.37	11.65
36	12.23	11.66	11.94
37	12.52	11.95	12.23
38	12.81	12.24	12.52
39	13.10	12.53	12.81
40	13.39	12.82	13.10
41	13.68	13.11	13.39
42	13.97	13.40	13.68
43	14.26	13.69	13.97
44	14.55	13.98	14.26
45	14.84	14.27	14.55
46	15.13	14.56	14.84
47	15.42	14.85	15.13
48	15.71	15.14	15.42
49	16.00	15.43	15.71
50	16.29	15.72	16.00
51	16.58	16.01	16.29
52	16.87	16.30	16.58
53	17.16	16.59	16.87
54	17.45	16.88	17.16
55	17.74	17.17	17.45
56	18.03	17.46	17.74
57	18.32	17.75	18.03
58	18.61	18.04	18.32
59	18.90	18.33	18.61
60	19.19	18.62	18.90
61	19.48	18.91	19.19
62	19.77	19.20	19.48
63	20.06	19.49	19.77
64	20.35	19.78	20.06
65	20.64	20.07	20.35
66	20.93	20.36	20.64
67	21.22	20.65	20.93
68	21.51	20.94	21.22
69	21.80	21.23	21.51
70	22.09	21.52	21.80

1. For barcoded discount, deduct $0.03 per parcel (machinable parcels only, 50-piece minimum for single-piece rate).

5.0 FEES

Address Correction Service Fees 5.1

Fees per correction:

a. Manual notice: $0.60.

b. Electronic notice: $0.20.

Destination Entry Mailing Fees 5.2

Destination entry mailing fees, per 12-month period:

a. Parcel Select: $125.00.

b. Bound Printed Matter (DBMC, DSCF, DDU): $125.00.

Pickup Fees 5.3

Parcel Post only, per occurrence: $10.25. May be combined with Express Mail and Priority Mail pickups.

Presort Mailing Fees 5.4

Presort mailing fees, per 12-month period:

a. Presorted Media Mail: $125.00.

b. Presorted Library Mail: $125.00.

6.0 BARCODED DISCOUNT

Deduct $0.03 for machinable parcels with a barcode (see E700 for eligibility).

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R900 Services

1.0 ADDRESS CORRECTION SERVICE (F030)

For all classes of mail:

a. Manual notice, each: $0.60.

b. Electronic notice, each: $0.20.

2.0 ADDRESS SEQUENCING SERVICE (A920)

Basic Service 2.1 — Each card removed because of an incorrect or undeliverable address: $0.25.

Blanks for Missing Addresses 2.2 — Each card removed because of an incorrect or undeliverable address: $0.25.
Insertion of blank cards for missing addresses: No charge.

Missing or New Addresses Added 2.3 — Each card removed because of an incorrect or undeliverable address: $0.25.
Each address added: $0.25.

3.0 BULK PARCEL RETURN SERVICE (BPRS) (S924)

Permit Fee 3.1 — Annual permit fee: $125.00.

Accounting Fee 3.2 — Annual accounting fee: $375.00.

Per Piece Charge 3.3 — For each piece returned, regardless of weight: $1.62.

4.0 BUSINESS REPLY MAIL (BRM) (S922)

Basic BRM 4.1
Annual permit fee: $125.00.
Per piece charge (in addition to the applicable First-Class Mail or Priority Mail postage (R100)): $0.35.

High-Volume BRM 4.2
Annual permit fee: $125.00.
Annual accounting fee (for advanced deposit account): $375.00.
Per piece charge (in addition to the applicable First-Class Mail or Priority Mail postage (R100)): $0.10.

Basic QBRM 4.3
Annual permit fee: $125.00.
Annual accounting fee (for advanced deposit account): $375.00.
Per piece charge (in addition to the automation First-Class Mail QBRM postage (R100.3.0)): $0.05.

High-Volume QBRM 4.4
Annual permit fee: $125.00.
Annual accounting fee (for advanced deposit account): $375.00.
Quarterly fee: $1,800.00.
Per piece charge (in addition to First-Class Mail QBRM postage (R100.3.0)): $0.01.

Bulk Weight Averaged Nonletter-Size BRM 4.5
Annual permit fee: $125.00.
Annual accounting fee (for advanced deposit account): $375.00.
Monthly maintenance fee: $600.00.
Per piece charge (in addition to the applicable First-Class Mail or Priority Mail postage (R100)): $0.01.

5.0 CALLER SERVICE (D920)

Fees are charged as follows:

a. For each separation provided, per semiannual period (all post offices): $375.00.

b. For each reserved call number, per calendar year (all post offices): $30.00.

6.0 CERTIFICATE OF MAILING (S914)

Per Piece 6.1 — Fee, in addition to postage:

a. For each Form 3817 or facsimile: $0.75.

b. For firm mailing books (Form 3877 or facsimile), per piece listed: $0.25 (minimum charge $0.75).

c. For duplicate copy of Form 3817, Form 3877, or facsimile, per page: $0.75.

Bulk Quantities 6.2 — Fee, in addition to postage for each Form 3606 (or facsimile):

Service	Fee
One certificate for first 1,000 pieces (or fraction thereof)	$3.50
Each additional 1,000 pieces (or fraction thereof)	0.40
Duplicate copy of Form 3606	0.75

7.0 CERTIFIED MAIL (S912)

Fee, in addition to postage and other fees, per piece: $1.90.

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8.0 COLLECT ON DELIVERY (COD) (S921)

Fee, in addition to postage and other fees, per piece:

Amount to be collected or insurance coverage desired[1]			Fee
$0.01	to	50.00	$4.50
50.01	to	100.00	5.50
100.01	to	200.00	6.50
200.01	to	300.00	7.50
300.01	to	400.00	8.50
400.01	to	500.00	9.50
500.01	to	600.00	10.50
600.01	to	700.00	11.50
700.01	to	800.00	12.50
800.01	to	900.00	13.50
900.01	to	1,000.00	14.50
Restricted delivery[2]			$3.20
Notice of nondelivery			3.00
Alteration of COD charges or designation of new addressee			3.00
Registered COD[3]			4.00

1. For Express Mail COD shipments, the COD fee charged is based on the amount to be collected.
2. Not available with Express Mail COD.
3. Fee for registered COD, regardless of amount to be collected or insurance value.

9.0 DELIVERY CONFIRMATION (S918)

Fee, in addition to postage and other fees, per piece:

Type	Fee
Priority Mail	
Electronic	$0.00
Retail	0.40
Standard Mail[1]	
Electronic	0.12
Package Services	
Electronic	0.12
Retail	0.50

1. Only available for pieces subject to the residual shape surcharge.

10.0 EXPRESS MAIL INSURANCE (S500)

Fee, in addition to postage and other fees:

a. For amount of merchandise insurance liability:

Insurance Coverage Desired			Fee
$ 0.01	to	$ 500.00	$0.00
500.01	to	5,000.00	$1.00 per $100 or fraction thereof over $500 in desired coverage

Express Mail merchandise maximum liability: $5,000.00.

b. Document reconstruction maximum liability: $500.00.

11.0 INSURED MAIL (S913)

Fee, in addition to postage and other fees, for merchandise insurance liability, per piece:

Insurance Coverage Desired			Fee	Bulk Insurance Fee
$ 0.01	to	$ 50.00[1]	$1.10	$0.50
50.01	to	100.00[2]	2.00	1.20
100.01	to	200.00	3.00	2.20
200.01	to	300.00	4.00	3.20
300.01	to	400.00	5.00	4.20
400.01	to	500.00	6.00	5.20
500.01	to	600.00	7.00	6.20
600.01	to	700.00	8.00	7.20
700.01	to	800.00	9.00	8.20
800.01	to	900.00	10.00	9.20
900.01	to	1,000.00	11.00	10.20
1,000.01	to	5,000.00	11.00 plus	10.20 plus
			$1.00 per $100 or fraction thereof over $1,000 in desired coverage	$1.00 per $100 or fraction thereof over $1,000 in desired coverage

Insured mail maximum liability: $5,000.00.

1. For merchandise insured for $50 or less, Form 3813 is used with an elliptical insured marking (no insured number is assigned).
2. For merchandise insured for more than $50, Form 3813-P is used with an insured number.

12.0 MAILING LIST SERVICE (A910)

List Correction 12.1 — For each address on list: $0.25. Minimum charge per list: $7.50.

5-Digit ZIP Code Sortation 12.2 — For sortation of mailing lists on cards into groups labeled by 5-digit ZIP Code, per 1,000 addresses or fraction: $73.00.

Election Boards 12.3 — For address changes provided to election boards and voter registration commissions, per Form 3575: $0.23.

13.0 MERCHANDISE RETURN SERVICE (S923)

Permit Fee 13.1 — Annual permit fee: $125.00.

Accounting Fee 13.2 — Annual accounting fee (for advance deposit account): $375.00.

Per Piece Charge 13.3 — For each piece retumed: $0.00.

14.0 METER SERVICE (P030)

Fees for on-site meter service:

a. Meter service (per employee, per visit): $31.00.

b. Meters reset/examined (per meter): $4.00.

c. Checking meters in/out service (per meter, except for Secured Postage meters): $4.00.

15.0 MONEY ORDERS (S020)

Fees, each:

a. Domestic money order: $0.75.

b. Postal military money order (issued by military facilities authorized by the Department of Defense): $0.25.

c. Inquiry (includes the issuance of a copy of a paid money order): $2.75.

16.0 PARCEL AIRLIFT (PAL) (S930)

Fee, in addition to postage and other fees, per piece:

Weight	Fee
Not more than 2 pounds	$0.40
Over 2 but not more than 3 pounds	0.75
Over 3 but not more than 4 pounds	1.15
Over 4 pounds but not more than 30 pounds	1.55

17.0 PERMIT IMPRINT (P040)

Application fee: $125.00.

18.0 PICKUP SERVICE (D010)

Available for Express Mail, Priority Mail, and Parcel Post, per pickup: $10.25.

19.0 POST OFFICE BOX SERVICE (D910)

For service provided:

a. Deposit per key issued: $1.00.

b. Key duplication or replacement (after first two keys), each: $4.00.

c. Post office box lock replacement, each: $10.00.

d. Box fee per semiannual (6-month) period:

	Box Size and Fee				
Fee Group	1	2	3	4	5
B2	$30.00	$45.00	$85.00	$170.00	$300.00
C3	27.50	40.00	75.00	150.00	250.00
C4	22.50	32.50	60.00	125.00	212.50
C5	19.00	27.50	50.00	87.50	150.00
D6	10.00	16.00	25.00	50.00	90.00
D7	8.50	13.00	22.50	40.00	65.00
E[1]	0.00	0.00	0.00	0.00	0.00

1. A customer ineligible for carrier delivery service may obtain one post office box at the Group E fee, subject to administrative decisions regarding customer's proximity to post office. See D910.

20.0 REGISTERED MAIL (S911)

Insurance Status	Declared Value			Fee (in addition to postage and handling charge)	Handling Charge (in addition to postage and fee)
Without Insurance	$ .00			$7.25	—
With Insurance (for declared value)	$ 0.01	to	100.00	7.50	—
	100.01	to	500.00	8.25	—
	500.01	to	1,000.00	9.00	—
	1,000.01	to	2,000.00	9.75	—
	2,000.01	to	3,000.00	10.50	—
	3,000.01	to	4,000.00	11.25	—
	4,000.01	to	5,000.00	12.00	—
	5,000.01	to	6,000.00	12.75	—
	6,000.01	to	7,000.00	13.50	—
	7,000.01	to	8,000.00	14.25	—
	8,000.01	to	9,000.00	15.00	—
	9,000.01	to	10,000.00	15.75	—
	10,000.01	to	25,000.00	$15.75 plus $0.75 per $1,000 or fraction over $10,000	—
With Insurance[1] (for declared value)	$25,000.01	to	$1,000,000.00	$27.00	plus 75 cents for each $1,000 (or fraction thereof) over $25,000
	1,000,000.01	to	15,000,000.00	758.25	plus 75 cents for each $1,000 (or fraction thereof) over $1,000,000
	15,000,000.01+			11,258.25	plus amount determined by the Postal Service based on weight, space, and value

1. Articles with a declared value of more than $25,000 can be registered, but compensation for loss or damage is limited to $25,000.

21.0 RESTRICTED DELIVERY (S916)

Fee, in addition to postage and other fees, per piece: $3.20.

22.0 RETURN RECEIPT (S915)

Fee, in addition to postage and other fees, per piece:

Type	Fee
Requested at time of mailing (showing to whom delivered, original signature, date of delivery, and addressee's address, if different)	$1.50
Requested after mailing (showing to whom delivered, signature, date of delivery, and delivery address)	3.50

23.0 RETURN RECEIPT FOR MERCHANDISE (S917)

Fee, in addition to postage and other fees, per piece:

Type	Fee
Requested at time of mailing (showing to whom delivered, signature, date of delivery, and delivery address if available)	$2.35
Delivery record	3.50

24.0 SHIPPER PAID FORWARDING (F010)

Annual accounting fee for (optional) advance deposit account: $375.00.

25.0 SIGNATURE CONFIRMATION (S919)

Fee, in addition to postage and other fees, per piece:

Type	Fee
Priority Mail	
Electronic	$1.25
Retail	1.75
Package Services	
Electronic	$1.25
Retail	1.75

26.0 SPECIAL HANDLING (S930)

Fee, in addition to postage and other fees, per piece:

Weight	Fee
Not more than 10 pounds	$5.40
Over 10 pounds	7.50

BILLING CODE 7710–12–C

S SPECIAL SERVICES

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

2.1 Who May File

[Amend 2.1 by revising 2.1a and 2.1c to read as follows:]

A claim may be filed by:

a. Only the sender, for the complete loss of a registered, insured, COD, or Express Mail item (including merchandise return service parcels to which special services were added and paid for by the sender).

* * * * *

c. Only the merchandise return permit holder, for merchandise return service parcels that are registered or insured as indicated by the permit holder on the MRS label.

* * * * *

S070 Mixed Classes

1.0 BASIC INFORMATION

1.1 Priority Mail Drop Shipment

[Amend 1.1 by replacing "Standard Mail (B)" with "Package Services"; and by providing for use of Delivery Confirmation and Signature Service with enclosed mail to read as follows:]

For a Priority Mail drop shipment, enclosed First-Class Mail may be sent certified or special handing; enclosed Standard Mail may be sent with electronic option Delivery Confirmation; enclosed Package Services mail may be sent special handling, electronic option Delivery Confirmation, or electronic option Signature Confirmation. Enclosed mail may not be sent registered, insured, or collect on delivery (COD). No special services may be added to the Priority Mail segment of the drop shipment.

1.2 Special Handling

[Amend 1.2 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

* * * * *

S500 Special Services for Express Mail

* * * * *

[Amend 2.0 by changing "Standard Mail" to "Package Services" and by providing for use of electronic option Delivery Confirmation and electronic option Signature Service with enclosed mail to read as follows:]

2.0 EXPRESS MAIL DROP SHIPMENT

Mail enclosed in an Express Mail drop shipment may be sent certified (if First-Class Mail) or special handling. For an Express Mail drop shipment, enclosed First-Class Mail may be sent certified or, if Priority Mail, with electronic option Delivery Confirmation service; enclosed Standard Mail parcels may be sent with electronic option Delivery Confirmation service; enclosed Package Services mail may be sent with special handling, electronic option Delivery Confirmation service, or electronic option Signature Confirmation service. The enclosed mail may not be sent collect on delivery (COD), insured, or registered. For Express Mail indemnity coverage, the content of each Express Mail pouch is considered one mailpiece.

S900 Special Postal Services

S910 Security and Accountability

S911 Registered Mail

1.0 BASIC INFORMATION

* * * * *

1.5 Additional Services

[Amend 1.5 by clarifying the additional services that can be used with registered mail to read as follows:]

Purchasing registered mail service allows customers to then purchase restricted delivery service or a return receipt. The following additional services may be combined with registered mail if the applicable standards for the services are met and the additional service fees are paid:

a. COD.

b. Delivery Confirmation.

c. Signature Confirmation.

* * * * *

S912 Certified Mail

1.0 BASIC INFORMATION

* * * * *

1.4 Additional Services

[Revise 1.4 to read as follows:]

Purchasing certified mail service allows customers to then purchase restricted delivery service or a return receipt.

[Add new 1.5 to specify that mailers may request a receipt after mailing to read as follows:]

1.5 Delivery Record

Mailers may request a delivery record after mailing under S915.

2.0 MAILING

* * * * *

2.5 Procedure

[Amend 2.5 by revising 2.5a to read as follows:]

A mailer of certified mail must:

a. Enter on Form 3800 the name and complete address of the person or firm to whom the mail is addressed.

* * * * *

S913 Insured Mail

1.0 BASIC INFORMATION

* * * * *

1.2 Eligible Matter

[Amend 1.2 by changing the class names, removing the "Standard Mail Enclosed" marking requirement, and adding bulk insurance to Standard Mail to read as follows:]

The following types of mail matter may be insured:

a. Package Services.

b. First-Class Mail (including Priority Mail), if it contains matter that may be mailed as Package Services.

c. Standard Mail pieces subject to the residual shape surcharge (bulk insurance only).

d. Official government mail endorsed "Postage and Fees Paid."

1.3 Ineligible Matter

[Amend 1.3 by revising 1.3f to read as follows:]

The following types of mail may not be insured:

* * * * *

f. Standard Mail cards, letters, and flats (i.e., pieces that are not subject to the residual shape surcharge).

* * * * *

1.5 Additional Services

[Revise 1.5 to read as follows:]

Insuring an item for more than $50 allows customers to then purchase restricted delivery service or a return receipt. The following additional services may be combined with insurance if the applicable standards for the services are met and the additional service fees are paid:

a. Delivery Confirmation.

b. Parcel airlift service (PAL).

d. Return receipt for merchandise (for items insured for up to $50).

f. Signature Confirmation.

g. Special handling.

[Add new 1.6 to show that customers may request a delivery record after mailing to read as follows:]

1.6 Delivery Record

Mailers may request a delivery record after mailing under S915.

* * * * *

2.0 MAILING

* * * * *

[Effective November 30, 2000, the Postal Service revised DMM S913.2.0 to include new information about integrated barcodes. See Postal Bulletin 22038 (11–30–00). The revisions below reflect those changes.]

2.5 Integrated Barcodes

[Amend 2.5 to include information about Signature Confirmation to read as follows:]

There are two other options available for mailers who print their own labels:

a. An integrated barcode may be used by Delivery Confirmation electronic option mailers who wish to combine insurance with Delivery Confirmation or insurance with Signature Confirmation into a single barcode on the shipping label to eliminate multiple labels and barcodes on packages. Additional information on the integrated barcode solution can be found in Publication 91, Delivery Confirmation Technical Guide, November 2000 edition (which includes the Addendum on Signature Confirmation and integrated barcodes.)

b. Mailers have a third option for privately printed labels with insurance. The privately printed form must meet the specifications described in Publication 91 (see Exhibit 2.4). Applicable certification procedures must be followed, also as specified in Publication 91.

* * * * *

4.0 DELIVERY

[Amend 4.0 by changing "parcel" to "item" to read as follows:]

An item insured for $50 or less is delivered as ordinary mail. Delivery of insured mail is subject to D042.

S914 Certificate of Mailing

1.0 BASIC INFORMATION

1.1 Description

[Amend 1.1 to read as follows:]

Certificate of mailing service provides evidence that mail has been presented to the Postal Service for mailing. Certificate of mailing service does not provide a record of delivery.

[Revise heading of 1.2 to read as follows:]

1.2 Eligible Matter—Bulk Quantities

[Amend 1.2 by clarifying text to read as follows:]

Form 3606 is used for a bulk mailing as a certificate to specify the number of pieces mailed. This certificate is provided only for a mailing of identical pieces of First-Class Mail, Standard Mail, and Package Services. This certificate states only the total number of articles mailed and must not be used as an itemized list. A certificate of mailing cannot be issued for a bulk mailing paid with a permit imprint.

[Revise heading of 1.3 to read as follows:]

1.3 Eligible Matter—Single Pieces

[Amend 1.3 by clarifying text to read as follows:]

Form 3817 is used for a certificate for a single piece of First-Class Mail (including Priority Mail) or Package Services. Privately printed forms also may be used.

[Revise heading of 1.4 to read as follows:]

1.4 Eligible Matter—Three or More Single Pieces

[Amend 1.4 by clarifying the first sentence to read as follows:]

When requesting a certificate of mailing for three or more pieces of single-piece rate mail presented at one time, a mailer may use Form 3877 (firm mailing book) or a privately printed facsimile, subject to payment of the applicable fee for each item listed.

* * *

* * * * *

[Add new 1.7 to read as follows:]

1.7 Additional Services

The following services may be combined with certificate of mailing on single pieces if the applicable standards for the services are met and the additional service fees are paid:

a. Parcel airlift service (PAL).

b. Special handling.

* * * * *

S915 Return Receipt

1.0 BASIC INFORMATION

1.1 Description

[Revise 1.1 to show that the return receipt is mailed back to sender:]

Return receipt service provides a mailer with evidence of delivery (to whom the mail was delivered and date of delivery). After delivery, the return receipt is mailed back to the sender. A return receipt requested before mailing also supplies the recipient's actual delivery address, if the delivery address is different from the address used by the sender. A return receipt may be requested before or after mailing.

[Revise 1.2 to read as follows:]

1.2 Eligible Matter

Return receipt service is available for Express Mail. It is available also for First-Class Mail (including Priority Mail) and Package Services when purchased at the time of mailing with one of the following services:

a. Certified mail.

b. COD.

c. Insurance (for more than $50).

d. Registered mail.

* * * * *

[Add new 1.7 to show additional services to read as follows:]

1.7 Additional Services

If return receipt service has already been purchased with one of the services listed in 1.2, then one or more of the following special services may be combined with those services at the time of mailing if the applicable standards for the services are met and the additional service fees are paid:

a. Delivery Confirmation (Priority Mail and Package Services only).

b. Parcel airlift service (PAL) (Priority Mail and Package Services only).

c. Restricted delivery.

d. Signature Confirmation (Priority Mail and Package Services only).

e. Special handling.

2.0 OBTAINING SERVICE

* * * * *

2.2 After Mailing

[Revise 2.2 to clarify how to apply for a delivery record after mailing:]

The mailer may request a delivery record after mailing for Express Mail, certified mail, registered mail, COD mail, and mail insured for more than $50. When a delivery record is available, the USPS provides the mailer information from that record, including to whom the mail was delivered and the date of delivery. The mailer requests a delivery record by completing Form 3811–A, paying the appropriate fee in R900, and submitting the request to one of the following offices:

a. For items mailed to an APO/FPO, U.S. territory or possession, or freely associated state (with the exception of Puerto Rico and the U.S. Virgin Islands), the form should be sent to the office of delivery.

b. For items delivered prior to activation of the signature capture process (August 1, 2000), send the form to the office of delivery.

c. For items delivered on or after activation of the signature capture process (August 1, 2000), send the form to any post office.

[Add new 2.3 to show the time limits for requesting a delivery record after mailing:]

2.3 Time Limit

A request for a return receipt after mailing for Express Mail must be submitted within 90 days after the date of mailing. All other requests must be submitted within 2 years from the date of mailing.

* * * * *

4.0 REQUESTS FOR DELIVERY INFORMATION

* * * * *

[Amend 4.2 to remove references to the "actual delivery record" to read as follows:]

4.2 Form 3811–A

The mailer must complete a Form 3811–A at any post office. The applicable fee is waived if the mailer can produce a receipt showing the applicable return receipt fee was paid.

* * * * *

S916 Restricted Delivery

1.0 BASIC INFORMATION

* * * * *

[Revise the heading and text of 1.2 to clarify that restricted delivery cannot be used with Standard Mail to read as follows:]

1.2 Eligible Matter

Restricted delivery service is available for First-Class Mail (including Priority Mail) and Package Services that is sent COD, insured for more than $50, registered, or certified.

* * * * *

[Add new 1.7 to read as follows:]

1.7 Additional Services

In addition to the prerequisites listed in 1.2, the following services may be combined with restricted delivery if the applicable standards for the services are met and the additional service fees are paid:

a. Delivery Confirmation.

b. Parcel airlift service (PAL).

c. Signature Confirmation.

d. Special handling.

* * * * *

S917 Return Receipt for Merchandise

1.0 BASIC INFORMATION

1.1 Description

[Add the following sentence after the first sentence:]

* * * After delivery, the return receipt is mailed back to the sender. * * *

* * * * *

[Revise heading of 1.2 to read as follows:]

1.2 Eligible Matter

[Amend 1.2 to add return receipt for merchandise service to Standard Mail:]

Return receipt for merchandise is available for merchandise sent as Priority Mail, Standard Mail pieces subject to the residual shape surcharge, and Package Services.

1.3 Additional Services

[Amend 1.3 by clarifying text to read as follows:]

The following services may be combined with return receipt for merchandise if the applicable standards for the services are met and the additional service fees are paid:

a. Delivery Confirmation.

b. Insurance (for up to $50).

c. Parcel airlift service (PAL).

d. Special handling.

* * * * *

[Add new 2.7 to specify how a mailer applies for a delivery record:]

2.7 Receipt Not Received

A mailer who does not receive return receipt for merchandise service for which the mailer has paid may request information from the delivery record, at no additional charge, by using Form 3811–A. Any request must be filed within 2 years after the date of mailing. Mailers cannot request a delivery record unless the item originally was sent with return receipt for merchandise.

3.0 DELIVERY

[Amend 3.0 to delete information about delivery records to read as follows:]

Delivery of return receipt for merchandise mail is subject to D042.

S918 Delivery Confirmation

1.0 BASIC INFORMATION

* * * * *

1.2 Eligible Matter

[Amend 1.2 by adding availability of electronic option to Standard Mail subject to residual shape surcharge to read as follows:]

Delivery Confirmation service is available for Priority Mail, Standard Mail pieces subject to the residual shape surcharge (electronic option only), and Package Services.

[Revise the heading and text of 1.3 to read as follows:]

1.3 Ineligible Matter

Delivery Confirmation is not available for the following:

a. Mail addressed to APO/FPO destinations or to United States territories, possessions, and freely-associated states listed in G011 (except for Puerto Rico and U.S. Virgin Islands, to which service is available).

b. Mail paid with precanceled stamps.

c. Standard Mail cards, letters, and flats (i.e., pieces that are not subject to the residual shape surcharge).

* * * * *

3.0 BARCODES

* * * * *

[Effective November 30, 2000, the Postal Service revised DMM S918.3.4 and S918.4.0c to include new information about integrated barcodes. See Postal Bulletin 22038 (11–30–00). The revisions below reflect those changes.]

3.4 Integrated Barcodes

An integrated barcode may be used by mailers printing their own barcodes and using the electronic service option. Mailers may combine Delivery Confirmation and insurance services into a single barcode on the shipping label and eliminate multiple labels and barcodes on packages. Mailers must still meet existing specifications in 3.1 and 3.2. Minor modifications allow users to request multiple special services on Priority Mail and Package Services. Two required changes are:

a. Change the text above the barcode to identify the service requested. Exhibits are included in Publication 91, Delivery Confirmation Technical Guide, November 2000 edition (which includes the Addendum on Signature Confirmation and integrated barcode).

b. Change the service type code in the barcode to identify the class of mail and/or type of special services combined with Delivery Confirmation. Additional information on the Service Type Code Matrix can be found in the Publication 91, Delivery Confirmation Technical Guide, November 2000 edition.

4.0 ELECTRONIC FILE TRANSMISSION

* * * * *

c. Mailers using the electronic option are required to include additional fields in the electronic file when planning to use the integrated barcode. For more information consult Publication 91, Delivery Confirmation Technical Guide, November 2000 edition.

5.0 ACCEPTANCE

[Amend 5.0 by deleting the last sentence in 5.0a.]

* * * * *

[Add new S919 for Signature Confirmation to read as follows:]

S919 Signature Confirmation

1.0 BASIC INFORMATION

1.1 Description

Signature Confirmation service provides the mailer with information about the date and time an article was delivered and, if delivery was attempted but not successful, the date and time of the delivery attempt. A delivery record, including the recipient's signature, is maintained by the USPS and is

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available, via fax or mail, upon request. No acceptance record is kept at the office of mailing. Signature Confirmation service is available only at the time of mailing. Signature Confirmation service does not include insurance.

1.2 Eligible Matter

Signature Confirmation is available for Priority Mail and Package Services.

1.3 Ineligible Matter

Signature Confirmation service is not available for the following:

a. Mail addressed to APO/FPO destinations or to United States territories, possessions, and freely-associated states listed in G011 (except for Puerto Rico and U.S. Virgin Islands, to which service is available).

b. Mail paid with precanceled stamps.

1.4 Service Options

The two Signature Confirmation service options are:

a. Retail option: Available at post offices at the time of mailing. A mailing receipt is provided. Mailers can access delivery information over the Internet at www.usps.com or by calling 1–800–222–1811 toll-free and providing the article number.

b. Electronic option: Available to mailers who apply identifying barcodes to each piece, establish an electronic link with the Postal Service to exchange acceptance and delivery data, provide an electronic file of Signature Confirmation pieces that are entered for mailing, and retrieve delivery status information electronically. No mailing receipt is provided. Mailers can access delivery information over the Internet at www.usps.com or through their electronic file. Requests for delivery records can be made over the Internet or by calling 1–800–222–1811 toll-free and providing the article number.

1.5 Fees and Postage

The applicable Signature Confirmation fee in R900 must be paid in addition to the correct postage. The fee and postage may be paid with postage stamps, meter stamps, or permit imprint.

1.6 Additional Services

The following special services may be combined with Signature Confirmation if the applicable standards for the services are met and the additional service fees are paid:

a. Collect on delivery (COD).

b. Insurance.

c. Registered mail.

d. Restricted delivery (if purchased with insurance for more than $50, COD, or registry service).

e. Special handling.

1.7 Where to Mail

A mailer may mail articles with retail option Signature Confirmation at a post office, branch, or station, or give articles to a rural carrier.

1.8 Firm Mailing Books

If three or more articles are presented for mailing at one time, the mailer may use Form 3877, Firm Mailing Book for Accountable Mail, provided by the Postal Service at no charge, or privately printed firm mailing bills. Privately printed or computer-generated firm mailing bills that contain the same information as Form 3877 may be used if approved by the local postmaster. The mailer may omit columns from Form 3877 that are not applicable to Signature Confirmation mail. Required elements are the package identification code (PIC), 5-digit destination ZIP Code, and applicable fees. If the mailer wants the firm mailing bills receipted by the Postal Service, the mailer must present the books with the articles to be mailed at a post office. The sheets of the books are the mailer's receipts. All entries made in firm mailing books must be made by typewriter or ink. Alterations must be initialed by the mailer and accepting postal employee. All unused portions of the addressee column must be obliterated with a diagonal line. A receipt is required for refund requests.

1.9 Signature Waiver

Customers who waive the signature requirement must accept the delivery employee's signature and date of delivery as proof of delivery. Customers who waive the signature requirement will be provided only the date of delivery in the delivery record, unless a special request for the delivery employee's signature is made. For retail labels, detach both parts of the gummed label and attach to the mailpiece. Waiver of signature is not available when Signature Confirmation is combined with other special services.

2.0 LABELS

2.1 Types of Labels

Mailers may use one of the three Signature Confirmation label options shown in Exhibit 2.1. Additional information may be found in a supplement to Publication 91, Delivery Confirmation Technical Guide (November 2000 edition):

a. Form 153 obtained from the post office at no charge. This form may be used only with the retail option (see Exhibit 2.1a).

[Exhibit 2.1a, PS Form 153, will be published at a later date.]

b. USPS Label 315, available at no charge to electronic option mailers (see Exhibit 2.1b).

[Exhibit 2.1b, Label 315, will be published at a later date.]

c. Privately printed barcoded labels that meet the requirements in 2.0 and 3.0 (see Exhibit 2.1c).

[Exhibit 2.1c, Privately Printed Label, will be published at a later date.]

2.2 Label Placement

The barcoded label section of Label 315 or Form 153 must be placed either above the delivery address and to the right of the return address or to the left of the delivery address. A privately printed Signature Confirmation label that is separate from a privately printed address label must be placed in close proximity to the address label. In all cases, the entire Signature Confirmation label must be placed on the address side of the mailpiece and not overlap any adjacent side.

3.0 BARCODES

3.1 Symbology

Labels printed by mailers must meet the following symbology requirements:

a. Mailers printing their own barcodes and using the retail option (1.4a) must print their barcodes using Automatic Identification Manufacturers' (AIM) Uniform Specifications for USS Code Interleaved 2 of 5.

b. Mailers printing their own barcodes and using the electronic option (1.4b) must use one of the following barcode symbologies: UCC/EAN 128, USS Code Interleaved 2 of 5, USS Code 39, or USS Code 128. Each barcode must represent a unique Package Identification Code (PIC) as specified in 3.2. The barcodes must meet the specifications in Publication 91.

3.2 Package Identification Code (PIC)

Each barcode symbology must represent a unique PIC:

a. For UCC/EAN 128, each barcode must represent a unique PIC and be made up of five fields totaling from 16 to 22 characters. Additional information and specifications can be found in Publication 91. The five required data fields are:

(1) Application Identifier (AI): two characters; identifies the barcode as a postal barcode.

(2) Service Type Code (STC): two characters; identifies the type of product or service used for each item.

(3) Customer ID: nine characters; DUNS® number that uniquely identifies the customer.

(4) Package Sequence Number (PSN): variable from 2 to 8 numbers.

(5) Modulus 10 Check digit: one character. See Publication 91 for use of the concatenated barcode for routing purposes.

b. For USS Code Interleaved 2 of 5, USS Code 39, and USS Code 128, each barcode must contain a unique PIC and be made up of four fields totaling 20 characters. The four required data fields are fields 2 through 5 above with a fixed sequential number of 8 digits. Additional information and specifications can be found in Publication 91. These symbologies do not use an Application Identifier (AI).

3.3 Printing

Labels printed by mailers must meet the following specifications:

a. Each barcoded label must bear a unique Signature Confirmation PIC barcode as specified in 3.2 and have "USPS SIGNATURE CONFIRMATION" printed between ⅛ inch and ½ inch above the barcode in minimum 12-point bold sans serif type. Human-readable characters that represent the barcode ID must be printed between ⅛ inch and ½ inch under the barcode in minimum 10-point bold sans serif type. These characters must be parsed in accordance with Publication 91. There must be a minimum of ⅛-inch clearance between the barcode and any printing. The preferred range of widths of narrow bars and spaces is 0.015 inch to 0.017 inch. The width of the narrow bars or spaces must be at least 0.013 inch but no more than 0.021 inch. All bars must be at least ¾ inch high. Bold (1/16 inch minimum) bars must appear between ⅛ inch and ½ inch above and below the human-readable endorsements to segregate the Signature Confirmation barcode from other areas of the shipping label. The line length must be equal to the length of the barcode (see Exhibit 2.1b).

b. Each barcode must meet the requirements in 3.1 for the type of service requested.

c. Mailers must obtain Postal Service certification for each printer used to print barcoded Signature Confirmation labels. For certification, a mailer must forward for evaluation and approval 20 barcoded labels/forms generated by each printer to the National Customer Support Center (NCSC), Attention Barcode Certification (see G043 for address). The Postal Service will issue the mailer a PS Form 3152, Delivery Confirmation Certification, for each printer certified. All barcodes must be in accordance with 2.0 and 3.0. Further certification instructions are included in Publication 91.

d. Barcodes that do not meet specifications will not be accepted by the USPS. The USPS will contact the mailer if problems with the barcodes are found and will try to resolve the problem. The USPS may suspend a mailer's certification if electronic file quality does not meet specifications.

e. Mailers who have previously received certification for label printing under the Delivery Confirmation program are not required to obtain any additional certification to use Signature Confirmation.

3.4 Integrated Barcodes

An integrated barcode may be used by mailers printing their own barcodes and using the electronic service option. Mailers may combine Signature Confirmation and insurance into a single barcode on the shipping label and eliminate multiple labels and barcodes on packages. Mailers must still meet existing specifications in 3.1 and 3.2. Minor modifications allow users to request multiple special services on Priority Mail and Package Services. Two required changes are:

a. Change the text above the barcode to identify the service requested. Exhibits are included in Publication 91, Delivery Confirmation Technical Guide, November 2000 edition (which includes the Addendum on Signature Confirmation and integrated barcode).

b. Change the service type code in the barcode to identify the class of mail and/or type of special services combined with Signature Confirmation. Additional information on the Service Type Code Matrix can be found in the Publication 91, Delivery Confirmation Technical Guide, November 2000 edition.

4.0 ELECTRONIC FILE TRANSMISSION

Mailers must meet the following standards for electronic file transmission:

a. Publication 91 contains specifications for electronic file transmission. A test file transmission must be uploaded and approved before mailings begin. Upon certification, USPS will issue to the mailer a Form 3152, Delivery Confirmation Certification.

b. Mailers using the electronic option will be required to transmit a file with a unique record for each article mailed. The USPS may suspend a mailer's certification if the electronic file quality does not meet specifications. In addition, USPS acceptance units will be notified to charge the customer the retail option Signature Confirmation fee.

c. Mailers who have previously received certification for electronic file transmission under the Delivery Confirmation program are not required to obtain any additional certification for Signature Confirmation service use.

d. Mailers using the electronic option are required to include additional fields in the electronic file when planning to use the integrated barcode. For more information, consult Publication 91.

5.0 ACCEPTANCE

Customers must meet the following requirements when presenting electronic option Signature Confirmation mail for acceptance:

a. Presorted or permit imprint mailings containing pieces for which fees are paid for Signature Confirmation service must be presented to a post office business mail entry unit (BMEU), detached mail unit (DMU) at the mailer's plant, bulk mail center or auxiliary service facility business mail entry unit, or other postal facility capable of properly verifying the mailing and at which the mailer has obtained the necessary permits or license and paid any applicable mailing fee.

b. Mailers who use the electronic option must submit a completed Form 3152 with each mailing. Each Form 3152 must contain the electronic file number or barcode equivalent, date of mailing, and, if available, the total number of pieces by class of mail. The barcode format must comply with standards in Publication 91.

S920 Convenience

S921 Collect on Delivery (COD) Mail

1.0 BASIC INFORMATION

1.1 Description

[Amend 1.1 to show the new $1,000 limit for COD to read as follows:]

Any mailer may use collect on delivery (COD) service to mail an article for which the mailer has not been paid and have its price and the cost of the postage collected from the recipient. If the recipient pays the amount due by check payable to the mailer, the USPS forwards the check to the mailer. If the recipient pays the amount due in cash, the USPS collects the money order fee(s) from the recipient and sends a postal money order(s) to the mailer. The amount collected from the recipient may not exceed $1,000. COD service provides the mailer with a mailing receipt, and a delivery record is maintained by the Postal Service.

[Amend 1.2 by replacing "Standard Mail (B)" with "Package Services" and "Special Standard Mail" with "Media Mail"; no other changes to text.]

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[Amend title of 1.4 by replacing "Other" with "Additional" to read as follows:]

1.4 Additional Services

[Amend 1.4 by clarifying the text to read as follows:]

Purchasing COD service allows customers to then purchase restricted delivery service or a return receipt. The following additional services may be combined with COD if the applicable standards for the services are met and the additional service fees are paid:

a. Delivery Confirmation (not available with Express Mail COD).

b. Registered mail.

c. Signature Confirmation.

d. Special handling.

* * * * *

[Effective November 5, 2000, the Postal Service completely rewrote DMM standards for business reply mail (see Postal Bulletin 22035 (10–19–00), available via www.usps.com). This rewrite was done for clarity and consistency. Therefore, standards for business reply mail in this final rule have been reorganized to reflect the new structure of DMM units E150, P014, R900, and S922. There have been no substantive changes to these standards since publication in the proposed rule.]

S922 Business Reply Mail (BRM)

* * * * *

3.0 POSTAGE, PER PIECE CHARGES, AND ACCOUNTING FEES

* * * * *

3.3 Annual Accounting Fee and Advance Deposit Account

[Amend 3.3 to show that BRM no longer requires a unique advance deposit account:]

A permit holder may choose to pay an annual accounting fee and establish an advance deposit account, which qualifies returned BRM pieces for the high-volume per piece charge. The accounting fee must be paid once each 12-month period at each post office where a permit holder holds an advance deposit account. Payment of the accounting fee is based on the anniversary date of the initial payment. The fee may be paid in advance only for the next 12-month period and only during the last 60 days of the current 12-month period. The fee charged is that which is in effect on the date of payment. An advance deposit account can be used for BRM under these conditions:

* * * * *

7.0 ADDITIONAL STANDARDS FOR QUALIFIED BUSINESS REPLY MAIL (QBRM)

* * * * *

[Add new 7.7 and 7.8 for the quarterly fee to read as follows:]

7.7 Quarterly Fee for High-Volume QBRM

Mailers may choose to pay a quarterly fee in addition to the annual accounting fee; payment of the quarterly fee entitles mailers to a lower per piece charge (the high-volume QBRM per piece charge listed in R900.4.4). The quarterly fee (and annual accounting fee) must be paid at each post office where mail is returned and for each separate billing desired. Mailers are committed to the "quarterly fee system" only for the time they pay the quarterly fee (*i.e.*, mailers can opt out of the quarterly fee and high-volume QBRM per piece charges by simply not paying the fee for the next quarter). The quarterly fee cannot be paid or renewed retroactively to receive a lower per piece charge on pieces already paid for and delivered. The quarterly fee can be paid for any three consecutive calendar months.

7.8 Payment Period for Quarterly Fee

The quarterly fee must be paid in advance for at least one but no more than four quarterly periods. A quarterly period begins on either the first day of the month (if a mailer pays on or before the 15th of the month) or the first day of the following month (if a mailer pays after the 15th of the month) and continues for three consecutive calendar months. A mailer who pays the quarterly fee is entitled to the high-volume QBRM per piece charge from the date of payment through the end of the quarterly period. The fee paid is that which is in effect on the date of payment.

* * * * *

S923 Merchandise Return Service

1.0 BASIC INFORMATION

1.1 Description

[Amend 1.1 by replacing "Standard Mail (B)" with "Package Services" and "Special Standard Mail" with "Media Mail" and by deleting references to the per piece fee to read as follows:]

Merchandise return service allows an authorized permit holder to pay the postage and special service fees on single-piece rate First-Class Mail, Priority Mail, and Package Services parcels that are returned to the permit holder by the permit holder's customers via a special label produced by the permit holder.

* * * * *

1.3 Payment Guarantee

[Revise 1.3 to read as follows:]

The permit holder guarantees payment of the proper postage and special service fees (except for insurance purchased by the sender) on all parcels returned via a special label produced by the permit holder.

* * * * *

1.8 Priority Mail Reshipment

[Amend 1.8 by replacing "Standard Mail" with "Package Services"; no other changes to text.]

* * * * *

1.11 Mailer Markings and Endorsements

[Amend 1.11 to show that unmarked pieces will be treated as Parcel Post to read as follows:]

It is recommended but not required that permit holders preprint a rate marking on the merchandise return service labels they distribute. Preprinting a rate marking guarantees that returned parcels will be given service and charged postage according to the wishes of the permit holder. Regardless of weight, all unmarked parcels will be treated as Parcel Post and charged Parcel Post rates.

[Remove item 1.12.]

2.0 PERMITS

* * * * *

2.3 Multiple Accounts

[Amend 2.3 to clarify the reference to the annual accounting fee:]

When an advance deposit account is kept at each entry location, a separate permit is needed and the annual merchandise return service permit and annual accounting fees must be paid at each office.

* * * * *

2.7 Permit Cancellation

[Amend 2.7 to remove references to the per piece fee and to delete the last sentence to read as follows:]

The USPS may cancel a permit if the permit holder refuses to accept and pay postage and fees on merchandise return service parcels, fails to keep sufficient funds in the advance deposit account to cover postage and fees, or distributes merchandise return labels or tags that do not meet USPS standards.

* * * * *

[Revise 3.0 to read as follows:]

3.0 POSTAGE AND FEES

3.1 Postage

Merchandise return service parcels are charged single-piece rate postage and special service fees based on the class or subclass marking on the label. If a parcel is unmarked, then it is charged Parcel Post rates. If the postage for the returned parcel is zoned and there is no way to determine where it was sent from (i.e., no postmark or return address), then postage is calculated at zone 4 (for Priority Mail) or zone 4 Inter-BMC/ASF rates (for Parcel Post). Postage is deducted from an advance deposit account.

3.2 Per Piece Charge

There is no per piece charge for returned parcels.

3.3 Permit Fee

A permit fee is charged once each 12-month period on the anniversary date of the permit. The fee may be paid in advance only for the next year and only during the last 60 days of the current service period. The fee charged is that which is in effect on the date of payment.

3.4 Advance Deposit Account and Annual Accounting Fee

The permit holder must pay postage and special service fees through an advance deposit account and must pay an annual accounting fee (see R900). The accounting fee is charged once each 12-month period on the anniversary date of the initial accounting fee payment. The fee may be paid in advance only for the next year and only during the last 60 days of the current service period. The fee charged is that which is in effect on the date of payment. A separate advance deposit account for MRS is not required; the annual accounting fee is charged if MRS postage and fees are paid from an existing account.

a. For each withdrawal, only one statement is provided for each annual accounting fee paid.

b. The permit holder must pay an annual accounting fee for each separate statement (accounting) requested. If only one annual account fee is paid, then the permit holder receives only one statement.

4.0 ADDITIONAL FEATURES

[Amend heading of 4.1 by adding "Indicated by Permit Holder" to read as follows:]

4.1 Insurance Indicated by Permit Holder

[Amend 4.1 by clarifying text to read as follows:]

The permit holder may obtain insured mail service with MRS. Only Package Services matter (i.e., matter not required to be mailed at First-Class Mail rates under E110) may be insured. Insured mail may be combined with Delivery Confirmation and special handling, or both. To request insured mail service, the permit holder must preprint or rubber-stamp "Insurance Desired by Permit Holder for $___(value)" to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement on the merchandise return label. The value part of the endorsement, showing the dollar amount of insurance for the article, may be handwritten by the permit holder. If insurance is paid for by the MRS permit holder, then only the MRS permit holder may file a claim (S010).

[Remove current 4.2. Add new 4.2 to read as follows:]

4.2 Insurance Added by Sender

If the permit holder has not indicated insured mail service on the MRS label, then the sender has the option of adding insurance and paying the applicable insured fee. If insurance is paid by the sender, then only the sender may file a claim (S010). The permit holder pays postage upon receipt, but does not pay the insured fee when insurance is added by the sender.

[Revise the title of 4.3 to read "Insured Markings"; no other changes to text.]

* * * * *

5.0 FORMAT

* * * * *

5.6 Format Elements

[Amend 5.6 by revising 5.6c to clarify that rate markings are optional on MRS labels.]

Format standards required for the merchandise return label are shown in Exhibit 5.6a, Exhibit 5.6b, Exhibit 5.6c, and Exhibit 5.6d, and described as follows:

* * * * *

c. Rate Marking. If the rate marking recommended in 1.11 is used, it must be placed in the space to the right and above the "Merchandise Return Label" legend. The marking must be at least 3/16 inch high and printed or rubber-stamped. Only the permit holder may apply this marking.

* * * * *

[Amend the postage and fee markings shown in 5.6d(2) to remove the entry for the merchandise return service fee.]

[Amend the postage and fee markings shown in 5.6e(2) to remove the entry for the merchandise return service fee.]

[Amend Exhibits 5.6a, 5.6b, 5.6d, and 5.6c to remove the entry for the merchandise return service fee.]

* * * * *

S924 Bulk Parcel Return Service

1.0 BASIC INFORMATION

1.1 Description

[Amend 1.1 to change "Standard Mail (A)" to "Standard Mail" and to add payment information:]

Bulk parcel return service (BPRS) allows mailers of large quantities of Standard Mail machinable parcels that are either undeliverable-as-addressed or opened and remailed by addressees to be returned to designated postal facilities. The mailer has the option of picking up all returned parcels from a designated postal facility at a predetermined frequency specified by the Postal Service or having them delivered by the Postal Service in a manner and frequency specified by the Postal Service. For this service a mailer pays an annual permit fee and a per piece charge for each parcel returned. Payment for the returned pieces is deducted from an advance deposit account.

1.2 Availability

[Amend 1.2 by replacing "Standard Mail (A)" with "Standard Mail" and "Standard Mail (B)" with "Package Services" in 1.2i; no other changes to text.]

* * * * *

[Add new 1.4 to indicate that bulk parcel return service cannot be used with special services to read as follows:]

1.4 Special Services

Special services cannot be added to pieces returned via bulk parcel return service.

* * * * *

[Amend 3.0 by replacing "Postage" with "Charges" to read as follows:]

3.0 CHARGES AND FEES

* * * * *

[Renumber current 3.2 as 3.5. Add new 3.2 through 3.4 to clarify the per piece charges and to describe the new annual accounting fee to read as follows:]

3.2 Per Piece Charge

Each piece returned through BPRS is charged only the per piece charge in R900. Postage is not charged for pieces returned through BPRS.

3.3 Advance Deposit Account

The permit holder must pay BPRS fees through an advance deposit account and pay an annual accounting fee (see

R900). This fee covers the administrative cost of maintaining the account and provides the mailer with a single accounting of all charges deducted from that account. The accounting fee is charged once each 12-month period on the anniversary date of the initial accounting fee payment. The fee may be paid in advance only for the next year and only during the last 60 days of the current service period. The fee charged is that which is in effect on the date of payment.

3.4 Existing Advance Deposit Account

A separate advance deposit account for BPRS is not required; the annual accounting fee is charged if BPRS postage and fees are paid from an existing account.

[Amend the title and content of renumbered 3.5 to clarify the payment guarantee to read as follows:]

3.5 Payment Guarantee

The permit holder guarantees payment of all applicable fees. The post office returns BPRS items to the permit holder only when there are sufficient funds in the advance deposit account to pay the fees on returned pieces.

* * * * *

5.0 FORMAT

[Amend Exhibit 5.0 to change the class marking to "Standard Mail."]

* * * * *

5.4 Class Endorsement

[Amend 5.4 to change "STANDARD MAIL A" to "STANDARD MAIL." No other changes to text.]

* * * * *

S930 Handling

1.0 SPECIAL HANDLING

* * * * *

1.2 Availability

[Amend 1.2 by replacing "Standard Mail (B)" with "Package Services" and "Special Standard Mail" with "Media Mail"; no other changes to text.]

1.3 Additional Services

[Amend 1.3 to clarify the opening sentence, to change "Standard Mail (B)" to "Package Services," and to add Signature Confirmation to read as follows:]

The following special services may be combined with special handling if the applicable standards for the services are met and the additional service fees are paid:

a. COD.
b. Delivery Confirmation.
c. Insurance.
d. PAL (for Package Services only).
e. Return receipt for merchandise.
f. Signature Confirmation.

* * * * *

[Add new 1.7 to clarify that the nonmachinable surcharge is not charged on pieces sent special handling:]

1.7 Nonmachinable Parcels

The Parcel Post nonmachinable surcharge is not charged on parcels sent special handling.

2.0 PARCEL AIRLIFT SERVICE (PAL)

* * * * *

[Amend 2.2 by replacing "Standard Mail (B)" with "Package Services"; no other changes to text.]

2.3 Additional Services

[Amend 2.3 to clarify the opening sentence to read as follows:]

The following special services may be combined with PAL if the applicable standards for the services are met and the additional service fees are paid:

* * * * *

An appropriate amendment to 39 CFR 111 to reflect these changes will be published.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 00–31357 Filed 12–14–00; 8:45 am]
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Part III

Federal Reserve System

12 CFR Part 203
Home Mortgage Disclosure; Proposed Rules

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FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1001]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; proposed staff interpretation.

SUMMARY: The Board is proposing amendments to Regulation C (Home Mortgage Disclosure) and to the commentary that applies and interprets Regulation C. These amendments would simplify the definition of a "refinancing," require lenders to report requests for preapproval, simplify the definition of a reportable home improvement loan, require lenders to report home-equity lines of credit, expand coverage of nondepository lenders, and require lenders to report the annual percentage rate of a loan, whether the loan is subject to the Home Ownership and Equity Protection Act, and whether the loan or application involves a manufactured home. The Board also proposes to reorganize the regulation and to make other changes.

DATES: Comments must be received by March 9, 2001.

ADDRESSES: Comments directed to the Board should refer to Docket No. R–1001 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, James H. Mann, Senior Attorney, or Kathleen C. Ryan, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–3667 or (202) 452–2412. For users of Telecommunications Device for the Deaf (TDD) *only*, contact Janice Simms at (202) 452–4984.

SUPPLEMENTARY INFORMATION:

I. Background on HMDA and Regulation C

The Home Mortgage Disclosure Act (HMDA) requires depository and certain for-profit, nondepository institutions to collect, report, and disclose data about originations and purchases of home mortgage and home improvement loans. Institutions must also report data about applications that do not result in originations.

The Board's Regulation C implements HMDA. Regulation C generally requires that institutions report data about:

- *Each application or loan,* including the application date; the action taken and the date of that action; the loan amount; the loan type and purpose; and, if the loan is sold, the type of purchaser;
- *Each applicant or borrower,* including national origin or race, gender, and annual income; and
- *Each property,* including occupancy status and location.[1]

HMDA data can be used to help determine whether institutions are serving the housing needs of their communities. The data help public officials target public investment to attract private investment where it is needed. HMDA data also assist in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes.

II. The Board's Review of Regulation C

The Board reviews its regulations periodically to identify ways to clarify and simplify the regulatory language; respond to technological and other developments; reduce undue regulatory burden on the industry; delete obsolete provisions; and improve the quality and usefulness of the data. The review of Regulation C began in March 1998 when the Board published an Advance Notice of Proposed Rulemaking (Advance Notice; 63 FR 12329 (March 12, 1998)). In the Advance Notice, the Board identified several possible areas for revision, including: reporting requests for preapproval; exempting loans acquired in a branch acquisition; reporting construction loans and other temporary financing; revising the definitions of reportable refinancings and home improvement loans; reporting manufactured home loans as a separate category; and requiring lenders to report additional data, such as reasons for denial and the appraised value of the property securing a loan. The Board received approximately 100 comment letters. Most commenters addressed only the issues identified in the Advance Notice.

The Board has received many suggestions on how it might use its authority under HMDA to increase understanding of the mortgage markets and to assist in fair lending enforcement. These suggestions have been the main focus of the Board's comprehensive review of the regulation and of its development of proposed revisions.

Other suggestions for change related to increased public and agency concerns about "predatory lending" practices.[2] Some of them were presented in *Curbing Predatory Home Mortgage Lending,* a report by the Department of Housing and Urban Development and the Department of the Treasury submitted to the Congress in June 2000 (HUD/Treasury Report). These suggestions include requiring reporting of the interest rate on a loan, the fees associated with a loan, whether a loan is subprime, and the applicant's credit score, debt-to-income ratio, and age. The Board received other suggestions at hearings on possible changes to the Home Ownership and Equity Protection Act (HOEPA) held in Charlotte, Boston, Chicago, and San Francisco. *See* 65 FR 42889 (July 12, 2000).[3]

The Board has analyzed the suggestions received from these and other sources—focusing on whether the likely benefits from each suggestion exceed the probable burdens. In the review of possible changes to Regulation C, the Board's staff met with a wide range of interested parties, including industry and consumer representatives, and officials of financial regulatory and

[1] Institutions report these data to their supervisory agencies on an application-by-application basis using a register format. Institutions must make their loan/application registers available to the public, with certain fields redacted to preserve applicants' privacy. The Federal Financial Institutions Examination Council (FFIEC), on behalf of the supervisory agencies, compiles the reported data and prepares an individual disclosure statement for each institution, aggregate reports for all covered institutions in each metropolitan area, and other reports. These disclosure statements and reports are also available to the public.

[2] While no precise definition of this term exists, predatory lending can be regarded as lending activities that, for example, involve targeting financially unsophisticated homeowners—frequently those having significant equity in their homes—for loans with high rates and fees and with repayment terms that are difficult or impossible to meet, thus putting their homes at risk. In addition, fraud or unlawful representations by brokers or lenders are often features of predatory lending.

[3] In 1994, HOEPA amended the Truth in Lending Act. 15 U.S.C. § 1601 *et seq.* The Act restricts certain loan terms, such as balloon payments in home-equity loans, where (1) the APR exceeds by more than 10 percentage points the yield on Treasury securities of comparable maturity to the loan, or (2) the total points and fees payable by the consumer exceed the greater of 8 percent of the loan amount or a dollar figure that is adjusted annually (currently $451).

fair lending enforcement agencies. The Board's analysis of possible changes has been guided by consideration of the purposes of the statute. In each case, the Board has considered whether changes to Regulation C could be proposed that might help the public and the regulatory agencies to better understand the mortgage markets, in light of changes that have been taking place in the past decade. The Board gave special attention to data associated with the subprime market—given that this sector has grown substantially in recent years and also in light of concerns that it is the market sector in which predatory lending practices appear more likely to occur.

The Board has considered carefully the many suggestions for amendments to Regulation C that have been received. This proposal reflects the Board's initial determination that Regulation C should be amended to reflect some of the suggestions but not others. Both types of suggestions are discussed below. The Board would find it helpful, in formulating a final rule, for the public to rank all these suggestions in two ways: First, by the importance or utility of the additional or revised data that would be reported; and second, by the cost of collecting and reporting those data.

Accordingly, based on the comments and on its own analysis, the Board is proposing certain changes to Regulation C. Each of the Board's proposals directly addresses one or more of HMDA's purposes, which include helping to determine whether financial institutions are serving the housing needs of their communities and assisting in fair lending enforcement.

The proposed changes pertaining to the coverage of transactions would broaden the data available on the home mortgage market generally and on the subprime market in particular; they would also reduce inconsistencies among the data reported. One recommended change would expand the coverage of nondepository lenders. Specifically, the Board proposes:

- *Simplifying the definition of a "refinancing."* The current definition offers lenders several options for deciding which refinancings to report; the proposed simplification would establish a definition applicable to all lenders. This would generate more complete and consistent data.
- *Requiring lenders to report requests for preapproval.* The rule proposed would capture requests for preapproval that are applications for credit, which are covered by the act. Requests for preapproval have been excluded from reporting under HMDA because of earlier concerns about how to differentiate between applications for credit and requests for prequalification. Defining coverage narrowly would limit compliance burden.
- *Simplifying the definition of a reportable home improvement loan.* In a change to the present reporting system, all loans for the purpose of home improvement would be reported; currently, lenders may exclude them if they do not classify them as home improvement loans. This would produce more consistent data.
- *Requiring lenders to report home-equity lines of credit.* The reporting of home-equity lines of credit, which is now optional, would become mandatory. Research by Board staff has shown that most home-equity lines of credit are used in part for home improvement purposes, so mandatory coverage would provide more complete information about the home improvement market. Gathering information about home improvement loans has been required by HMDA since its enactment in 1975.
- *Expanding coverage of nondepository lenders.* Nondepository lenders are particularly active in the subprime market. The Board proposes adding a dollar-volume threshold of $50 million to the current loan-percentage test to better ensure that all significant lenders are covered.

The Board's proposals would also require lenders to report additional items of data that would enhance understanding of the home mortgage market generally and the subprime market in particular. Capturing these data would also assist fair lending enforcement. Specifically, the Board proposes requiring institutions to report:

- The annual percentage rate (APR) of the loan and whether the loan is subject to HOEPA; and
- Whether the loan or application involves a manufactured home.

The Board has grouped under a single section (4(a)(9)) its proposals to require lenders to report additional data that it believes will help enhance public understanding of the home mortgage lending market in general and the subprime market in particular. In addition, as discussed under that section, the Board solicits comment on three other items of information (although it is not proposing their collection at this time): the reasons why a loan application was denied, the loan-to-value ratio (LTV), and the identity of an institution's parent company, if any.

Clarifying the definitions of refinancings and home improvement loans (including mandating the coverage of home-equity lines of credit) is necessary if those categories of HMDA data are to be made useful to the agencies and the public. Covering requests for preapproval is necessary to fully implement the statutory coverage of an "application" for credit. The narrowly drawn definition should mitigate the burden caused by the change. Amending the coverage test applicable to nondepository lenders will better ensure that significant participants in the mortgage market report under HMDA. The recommendations to require the reporting of pricing information and manufactured home status would produce data useful for fair lending analysis and helpful in understanding the subprime market. To reduce burden, these recommendations leverage existing regulatory definitions or requirements.

Some of the proposed changes have been under consideration for several years. For example, the Board has recognized for some time that the analysis of aggregate data on certain metropolitan areas is complicated by the lack of separate reporting of manufactured home transactions, which have underwriting standards significantly different from those of transactions involving site-built homes. The Board has waited to propose the separate reporting of these loans, together with other revisions, so that lenders could make all upcoming changes to their software and data collection systems at one time and minimize disruption.

There are many data collections suggested by other agencies and the public that, after careful consideration, the Board is not proposing; some of these include, for example, the credit score of the applicant, and certain loan terms, such as balloon payments. Generally, the Board determined—in the context of other changes being proposed—that in these and other cases a requirement to collect the additional data entailed burden not clearly justified by the resulting benefits. In some cases, the Board is proposing alternatives that the Board believes would generate greater benefits with less burden.

The Board believes that, taken as a whole, the proposed changes to Regulation C strike an appropriate balance between benefit and burden. The Board took account of the fact that the proposals cannot be evaluated in isolation, but must be assessed in the context of reporting requirements under other applicable laws and regulations.

The Board's proposal reflects its initial assessment on the merit of potential changes identified by the

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public and the Board's own internal review. The Board solicits the public's views on whether there are other ways in which to implement the proposed changes that would further lessen and mitigate the anticipated burden, on all other aspects of the proposed changes, and on any other issues that might warrant further review. The Board also would find it helpful, in formulating a final rule, for commenters to rank all the proposed and suggested changes on which they are commenting in two ways: first, by the importance or utility of the additional or revised data that would be reported; and second, by the relative cost or burden of collecting and reporting these data.

Solicitation of Comment on Alternative System of Categorizing Loans

The Board solicits comment, as discussed below, on proposals to revise the definition of loan categories reported under HMDA. In addition, the Board solicits comment on an alternative system for categorizing loans. Under the current regulation, the categories of loans reported are (1) home purchase loans, (2) home improvement loans, and (3) refinancings. An alternative approach to categorizing loans would require the reporting of more loans, but would simplify the process for determining which loans must be reported. It could also facilitate some depository institutions' reporting of data for purposes of the Community Reinvestment Act of 1977 (CRA; 12 U.S.C. 2901 *et seq.*). It would potentially limit the additional burden for depository institutions because of its similarity to categories familiar to them from the Call Report or the Thrift Financial Report.[4] The Board specifically solicits public comment on whether lenders would experience more burden than benefit under this approach.

The alternative approach would eliminate refinancings and home improvement loans (except for unsecured home improvement loans) as distinct categories.[5] Instead, the categories reported would be (1) home purchase loans (subdivided into first and junior liens), (2) other mortgage loans (similarly subdivided), (3) home-equity lines of credit, and (4) unsecured home improvement loans. The alternative approach would cover the mortgage lending market more fully than either the current regulation or the proposed revision—for example, by capturing closed-end home-equity loans that are not made for home improvement purposes.

III. Discussion of Proposed Revisions

The following discussion generally tracks the regulation (including its appendices) as the Board proposes to reorganize it. Proposed revisions to the staff commentary are addressed under the sections of the regulation that they interpret. Also discussed under the pertinent sections are issues regarding which the Board does not propose any revision. Proposed conforming and non-substantive changes to the regulation and commentary generally are not separately discussed. A few particularly significant features of the proposed reorganization are discussed specifically.

Section 203.2—Definitions

2(b) Application

Requests for preapproval. A consumer who wants to purchase a dwelling may request a lender to provide a "preapproval" or commitment, based on a comprehensive underwriting, to make a mortgage loan once the consumer identifies an acceptable property.[6] Regulation C currently instructs lenders not to report these requests. Under the present rule, if a request for preapproval ultimately results in an origination, it is the origination, not the preapproval, that is reported. Requests for preapproval disposed of in other ways—for example, those that are denied—go unreported.

The Advance Notice asked how requests for preapproval should be defined in the event they are covered. One option presented was to direct lenders to report all requests for credit that, in the case of denials, trigger an adverse action notice under Regulation B (Equal Credit Opportunity). These include all requests regarding which: (1) The creditor evaluates information about the consumer; (2) decides to decline the request; and (3) communicates the decision to the consumer. Some commenters believed that, assuming the Board amended Regulation C to cover requests for preapproval, parallel coverage under both regulations would reduce compliance burden. Other commenters countered that adopting the Regulation B approach would distort the data, capturing denied requests but not requests that are approved but do not lead to an origination.

The issue is whether a consumer who asks for preapproval has filed a credit application or whether a preapproval is a preliminary exercise. In August 1999, the Board published a proposed rule under Regulation B. 64 FR 44582 (August 16, 1999). The proposal revised the term "application" to include requests for preapproval made under procedures in which a creditor issues creditworthy persons a written commitment to extend credit that may be limited in three ways: (1) The lender specifies the maximum amount of credit that it commits to extend; (2) the lender specifies the period of time during which the commitment remains valid; and (3) the commitment may be subject to conditions.

Based on public comment and on further analysis, the Board proposes to cover requests for the preapproval of home purchase loans under Regulation C using the same definition as in the Regulation B proposal of August 1999. Under this approach, only a limited number of highly-structured preapproval programs would be covered—those most like programs involving traditional mortgage applications. The proposal would not cover more informal prequalification programs in which the underwriting may be less rigorous and the lender makes no binding, written commitment.

The statute requires that lenders report loan applications. The Board believes—in this context as under Regulation B—that requests for preapproval, defined in the fashion proposed, represent applications and thus should be reported. Moreover, requests for preapproval are an increasingly prevalent feature of the home mortgage lending process, and the proposed change would provide data about this developing part of the market. And although information about denied requests for preapproval would not include the property location, information about the race or national origin and gender of the applicant could be useful in fair lending enforcement.

The narrow scope of the proposed definition would promote the consistency and accuracy of the data collected—for example, all the data would include information about the amount of the commitment. The proposed definition would also avoid affecting home-ownership counseling programs, which typically do not involve a credit decision by a lender.

The Board considered whether to propose requiring lenders to differentiate requests for preapproval from other applications—for example, through a separate code—or to distinguish actions taken on requests for preapproval from actions taken on other applications. The Board believes the resulting burden would likely exceed the value of these data. The Board does solicit comment, however, on whether lenders should use separate codes to identify requests for preapproval and the actions taken on them.

Other matters. The current definition of an "application" refers to requests for credit made in accordance with "procedures established by a financial institution." To conform to the Board's proposed revision to Regulation B, the definition would be revised to refer to "procedures used by a financial institution." This would focus the definition on what institutions actually do, rather than what their procedures state.

2(d) Dwelling

The Board proposes to clarify, through the staff commentary, that the term "dwelling" does not apply to transitory residences such as college dormitories. This responds to requests that the Board clarify the meaning of the term "dwelling."

2(e) Financial Institution

Scope of coverage. HMDA defines a covered nondepository lender as "any person engaged for profit in the business of mortgage lending." Congress added this language to the statute in a 1989 amendment that for the first time brought unaffiliated nondepository mortgage lenders within the scope of HMDA.

To implement the statutory language, the Board adopted a coverage test focusing on a lender's home purchase mortgage lending as a proportion of its overall lending volume. Specifically, a nondepository mortgage lender is covered if in the preceding year its home purchase loan originations, including refinancings of home purchase loans, equaled or exceeded 10 percent of all its loan originations (by dollar volume).[7] The Board intended this test to avoid coverage of lenders that, although making some mortgage loans, arguably were not engaged "in the business of" mortgage lending.

The Board has noted for some time that this test exempts lenders originating large volumes of home purchase loans, when more than 90 percent of their originations involve credit card loans or other non-home purchase products. The HUD/Treasury Report recommended the modification or elimination of the 10 percent test.

The Board proposes to preserve the existing test, while adding a dollar-volume threshold for home purchase loan originations (and refinancings) to ensure coverage of nondepository lenders that are significant participants in the home mortgage market. Specifically, a nondepository lender would be required to report HMDA data if its prior-year home purchase loan originations, including refinancings of home purchase loans, equaled or exceeded $50 million, even if they did not equal or exceed 10 percent of total originations.

The average amount of a home purchase loan reported under HMDA is about $120,000, so a lender with annual home purchase originations (including refinancings) of $50 million would have originated between 400 and 500 loans. Among mortgage lenders covered in 1999, approximately half reported originations of $50 million or less. This suggests that a coverage threshold of $50 million is a reasonable test of whether such a lender is "engaged * * * in the business of mortgage lending." The Board solicits comment on whether $50 million is an appropriate threshold.

Other matters. As part of the reorganization of the regulation, coverage criteria that currently appear in section 203.3—"Exempt Institutions"—would be consolidated under the definition of "financial institution" in section 203.2(e). Correspondingly, several staff comments that now appear under section 203.3 would appear instead under section 203.2(e).

2(f) Home-Equity Line of Credit

The Board proposes to define a home-equity line of credit as an open-end credit plan (as defined by Regulation Z) secured by a dwelling. This is substantially consistent with the definition that the Board has long applied informally.

2(g) Home Improvement Loan

The Advance Notice solicited comment on whether the reporting categories currently in use should be modified to simplify compliance and improve the usefulness of the data. The Board received a range of responses. Some suggested that the Board change the existing categories—for example, by eliminating the requirement to report home improvement loans, or by eliminating the portion of the definition relating to how a lender classifies the loan. Others suggested replacing the existing home improvement and refinancing categories with a single category consisting of all nonpurchase loans secured by a dwelling.

The Board proposes limited changes to the home improvement category, as discussed below.

Classification. Regulation C defines a home improvement loan as any loan classified as such by the lending institution and any part of whose proceeds are to be used for the improvement of a dwelling or the related real property. This definition was intended to minimize burden by not requiring institutions to determine whether a loan is a home improvement loan for HMDA purposes if the loan is classified otherwise by the institution. For example, a lender that makes home improvement loans on an installment basis, and classifies them as installment loans (without differentiating between home improvement loans and loans for other purposes) is not required to report those home improvement loans under HMDA.

The resulting data have proven to be of limited usefulness to examiners, community groups, and other data users. Institutions' classification schemes differ, making the data inconsistent; and not all loans for home improvement purposes are reported because some are classified as other types of credit.

The Board proposes to drop the classification test. Instead, lenders would be required to report a loan as a home improvement loan if any part of the proceeds is to be used for home improvement, regardless of how the institution classifies the loan. In determining whether loan proceeds are intended for home improvement purposes, lenders could rely on applicants' statements, and would not be required to take any other steps to determine the purpose of the loan. For example, a lender could use a check-box on a loan application to determine

[4] The Call Report categories include first lien closed-end mortgage loans, junior lien closed-end mortgage loans, open-end mortgage loans (that is, home-equity lines of credit), and unsecured consumer loans, subdivided into open-end and closed-end loans. The Thrift Financial Report is similar, but does not subdivide closed-end mortgage loans into first and junior liens, and shows unsecured home improvement loans as a subdivision of unsecured closed-end consumer loans. Refinancings are not treated as a separate category in the Call Report or Thrift Financial Report.

[5] HMDA defines a loan subject to reporting as "a loan which is secured by residential real property or a home improvement loan," implying that unsecured home improvement loans are covered by the statute.

[6] Requests for preapproval are to be distinguished from requests for "prequalification." The latter generally involve a cursory review of the consumer's creditworthiness; they do not result in a conditional commitment to extend credit.

[7] In addition, under Regulation C, a nondepository lender is exempt if its total assets, combined with those of any parent corporation, were $10 million or less on the preceding December 31, and if the institution originated fewer than 100 home purchase loans (again, including refinancings of home purchase loans) in the preceding calendar year. There is also a location test, under which a nondepository lender is exempt if on the preceding December 31 it had no office in a metropolitan area, and received applications for, originated, or purchased fewer than five home purchase or home improvement loans in a metropolitan area in the preceding calendar year.

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whether or not a loan is intended for home improvement purposes. (*See* proposed comment 4(a)(2)–1.)

Redefining home improvement loans as proposed would increase reporting burden by requiring lenders to report a larger number of loans. The Board believes that this compliance burden is justified by the need to make home improvement loan data more consistent, complete, and, therefore, useful. The Board solicits comment, however, on whether the benefits of the proposed change justify the added burden.

Home-equity lines of credit. If a home-equity line of credit is to be used for home improvement purposes, an institution currently has the option to report the amount of the line to be used for those purposes as a home improvement loan or not to report credit lines at all. Although most home-equity lines are used, at least in part, for home improvement purposes, some institutions include home-equity credit lines in their reported home improvement loan data while others do not.[8]

To improve the completeness and comparability of data when lending proceeds are used for home improvement purposes, the Board proposes to require that all applications for home-equity lines of credit be reported. Also, to facilitate comparisons between the markets for open-end home-equity lines and closed-end home improvement loans—which have distinct demographic characteristics—the Board proposes that the two products be reported separately. Accordingly, the Board proposes to exclude home-equity lines of credit from the definition of a home improvement loan, and to place them in their own category.

To simplify the reporting of home-equity lines, and to make reporting more comparable with the reporting of home improvement loans, institutions would report the full amount of a credit line, rather than seeking to ascertain the amount that the borrower intends to use for home improvement purposes. The Board solicits comment on whether this approach would, in fact, simplify reporting, as well as on the more general question of whether the benefit resulting from the proposed changes regarding home-equity lines of credit justify the burden that would result from them. *See* section 203.4(a)(2) and Appendix A, paragraphs I.A.4. and I.A.6., below.

[8] *See* Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett, "Recent Developments in Home Equity Lending," *Federal Reserve Bulletin*, vol. 84 (April 1998), pp. 241–251.

2(h) Home Purchase Loan

A new staff comment would be added to clarify that if an institution making a first mortgage loan also makes a second mortgage loan that finances part or all of the borrower's downpayment, the institution reports each loan separately as a home purchase loan.

2(i) Manufactured Home

The Board proposes to add a definition of "manufactured home." *See* the discussion under section 4(a)(9), below, regarding additional data items relating to the home mortgage lending market in general and the subprime market in particular.

2(j) Metropolitan Area

Currently, Regulation C defines "metropolitan statistical area" or "MSA" to mean a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget (OMB). OMB is in the process of revising the standards for defining metropolitan areas. In August 2000, OMB published a notice and request for comment entitled "Final Report and Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas" (65 FR 51060 (August 22, 2000)). The report recommended that OMB adopt a new concept called a "core based statistical area" (CBSA) to replace the existing metropolitan statistical area and primary metropolitan statistical area concepts. CBSAs would be subdivided into two categories, "micropolitan areas," which would be defined based on urban cores of 10,000 to 49,999 population, and "metropolitan areas," based on urban cores of 50,000 or more population. The report further stated that, if OMB adopts the recommended standards, the first areas to be designated using the revised standards and Census 2000 data could be designated in 2003.

The Board proposes to replace the term "metropolitan statistical area" with "metropolitan area." "Metropolitan area" would have the same meaning as "metropolitan statistical area" does currently, until such time as OMB adopts and implements revised standards for metropolitan areas; at that time, the term would refer to the areas as defined in the revised standards.

2(k) Refinancing

Definition: Regulation C requires the reporting of refinancings of home purchase and home improvement loans. The regulation defines a refinancing as a loan that satisfies and replaces an existing obligation by the same borrower.

The Board has adopted several successive approaches to determining whether an application is for the refinancing of a home purchase or home improvement loan. At one time, Regulation C permitted the reporting of refinancings only if they involved an increase in the outstanding principal. This approach did not adequately cover refinancing activity, such as rate-driven refinancings.

For some years thereafter, Regulation C provided that a loan was covered if the balance owed on the existing loan, plus the amount of new money for home purchase or home improvement purposes, exceeded half of the total new loan amount. But lenders found this computation burdensome—for example, because they were often unable to determine the portion of new money used for the specified purposes. These difficulties also impaired the accuracy and consistency of the data.

To facilitate compliance, Regulation C currently identifies four scenarios typical of the refinancing of a home purchase or home improvement loan. It allows lenders to select from among them in deciding on which refinancings to report:

(1) The existing obligation was a home purchase or home improvement loan, as determined by the lender (for example, by reference to available documents); or

(2) The applicant states that the existing obligation was a home purchase or home improvement loan; or

(3) The existing obligation was secured by a lien on a dwelling; or

(4) the new obligation will be secured by a lien on a dwelling.

This rule eases burden, but it generates inconsistent data to the extent that different lenders choose different scenarios to determine if their refinancings are to be reported. Moreover, it is impossible for the data user to know what the data represent. The proposed rule makes it more likely that the HMDA reporting will capture refinancings of loans originally for home purchase or home improvement.

In the Advance Notice, the Board solicited comment about whether changes to the refinancing category would produce more useful data, as well as whether such changes could ease compliance burden. A number of commenters suggested modifications. Some, including community groups, federal agencies, and others, contended that the existing definition does not result in the collection of useful data because the types of refinancings reported can vary widely from one lender to another. Several financial institutions suggested dropping refinancings from coverage altogether. Others suggested permitting only those refinancings to be reported that satisfy and replace home purchase or home improvement loans, or suggested replacing the home improvement and refinancing categories with a single category consisting of all nonpurchase loans secured by a dwelling.

Based on the public comments and its own analysis, the Board proposes to revise the definition of a refinancing for reporting purposes. A refinancing would be defined as a new obligation satisfying and replacing an existing obligation by the same borrower, where both the existing obligation and the new obligation are secured by a lien on a dwelling. The proposed definition would reduce the inconsistency of refinancing data, because all lenders would report using a single two-pronged test.

This expanded reporting would entail additional burden to the extent that lenders must adopt a different regimen for identifying covered refinancings. The Board believes that the increased burden would be outweighed by benefits of more focused coverage and more consistent and complete data. The Board solicits comment, however, on whether the proposed change strikes the right balance between benefit and burden.

In addition, the Board solicits comment on whether the definition should include not only refinancings where the existing loan was a dwelling-secured loan, but in addition refinancings of unsecured debt, as long as the new loan is dwelling-secured. Under this alternative, for example, a lender that pays off a consumer's existing unsecured loan by extending a new, dwelling-secured loan to that consumer would report the new loan.

MECAs. The Board is not proposing any changes regarding modification, extension, and consolidation agreements (MECAs). Several commenters on the Advance Notice suggested that the Board consider treating certain MECAs as refinancings under Regulation C. MECAs substitute for traditional refinancings in some states, such as New York and Texas, to avoid mortgage recording fees and taxes. Such transactions currently are not reported because they do not meet the definition of a refinancing (satisfaction and replacement of an existing mortgage loan). Some commenters suggested that lenders should be allowed to report MECAs that are the functional equivalent of a refinancing.

The existing definition of a refinancing establishes a bright line test for reportable transactions, by defining refinancings as extensions of credit that satisfy and replace an existing loan. Covering other agreements that are "functionally equivalent" to refinancings would complicate the application of this test by requiring institutions and others to resolve innumerable questions about whether particular transactions are in fact functionally equivalent to refinancings. The Board believes that MECA data may be useful in certain instances, but that, under the existing loan-classification scheme, the advantages of a bright-line test for determining whether a transaction should be reported—especially in reducing compliance burden—outweigh the benefits of additional data on these transactions. Moreover, the bright-line test benefits the entire industry, whereas the benefits of a rule adapted to MECAs would be confined to a few states. Therefore, the Board does not propose to revise the definition of refinancing to include MECAs.

Section 203.4—Compilation of Loan Data

4(a) Data Format and Itemization

Consistent with the proposed revisions regarding the definitions of "home improvement loan," "refinancing," and "home-equity line of credit," the Board proposes to revise the introductory material in section 203.4(a) so that it refers to these loan types as distinct categories.

4(a)(1) Application Date

The staff commentary would be revised (proposed comment 4(a)(1)-5) to clarify that the date an institution receives an application is the date on which it or its agent first takes possession of a completed copy of the application.

4(a)(2) Type and Purpose of the Loan

See the discussion of home-equity lines of credit under section 2(f, above.

4(a)(5) Type of Action Taken and Date

Counteroffers. The staff commentary would be revised to clarify that an institution must report a denial on the original terms requested by the applicant when the institution makes a counteroffer—such as an offer of a different amount of credit from the amount requested—and the applicant does not accept the counteroffer or fails to respond. (*See* comment 4(a)(5)–1.)

Underwriting conditions. The staff commentary would be revised to clarify that if an institution issues a loan approval subject to the applicant's meeting underwriting conditions and the applicant does not meet them, the institution must report the action taken as a denial. Currently, the staff commentary excludes from this rule the situation in which an approval is subject to "customary conditions." Because of confusion about the scope of this term, and the impracticality of making it precise and comprehensive, the exclusion is being deleted. (*See* comment 4(a)(5)–4.)

Other matters. As part of the reorganization of the regulation, the Board proposes to move some material, regarding the date action is taken, from Appendix A into the staff commentary. *See* proposed comment 4(a)(5)–7.

4(a)(7) Race or National Origin

See Appendix A, paragraph I.D.3., below, regarding changes to conform to revised OMB guidance.

4(a)(9) Additional Items

The Board has received many suggestions that it amend Regulation C to require lenders to report additional data. The Board believes that some of the suggested additional data could be useful in helping the public and regulators to better understand mortgage lending patterns, particularly in the subprime market, and in enforcing the fair lending laws. Therefore, the Board proposes amending Regulation C to require the reporting of certain additional data, discussed below. This action would be taken pursuant to the Board's authority under section 305 of the statute to adopt new provisions to carry out the act's purposes.

Annual percentage rate. HMDA data currently include no information on loan pricing. The Board proposes to require that creditors report the annual percentage rate (APR) charged on a loan.

Information about the APR would permit the identification of subprime loans, which have different characteristics, such as denial rates, from other home mortgage loans. These data may also help the public and supervisory agencies identify practices that potentially raise fair lending concerns and warrant further investigation.

Some commenters recommended that the Board require lenders to identify subprime loans. The Board believes, however, that disclosure of the APR will be effective in identifying subprime loans, as these loans typically are priced higher than other loans. Disclosure of the APR would also impose less burden on lenders, given the lack of a generally accepted definition of a subprime loan. Similarly, the Board has not adopted the

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recommendation that lenders be required to report the interest rate and fees on a loan. The Board believes that the APR is a better measure of the overall cost of credit than the interest rate and fees on a loan, and would impose less burden on lenders than calculating the total fees on a loan.

To minimize the burden imposed, the requirement to report the APR would apply only to loans that are covered by the Truth in Lending Act (TILA) and for which the lender is required to disclose the APR to the consumer. (For example, if the borrower withdraws an application before the lender is required to disclose the APR under Regulation Z, the lender would not be required to report the APR under Regulation C.) The APR must be calculated and disclosed by the lender to comply with TILA in any case, although software changes would be required to capture APR data for HMDA reporting purposes.

Some loans covered by HMDA, such as loans made to corporate borrowers or for multifamily properties, would not be covered by the reporting requirement because they are not subject to TILA.[9]

HOEPA status. Obtaining information on the volume and pattern of lending covered under HOEPA would be useful for better understanding the mortgage market, particularly the subprime market. The Board proposes to require that HMDA reporters indicate whether a loan is covered by the HOEPA provisions as implemented in Regulation Z. To limit the burden imposed, reporting of this item would be required only for the same loans that would be subject to the APR-reporting requirement (loans covered by Regulation Z and for which the lender is required to disclose an APR).

Manufactured home status. Currently, loans to purchase mobile and other manufactured homes are reported together with loans to purchase site-built or other types of housing. The Advance Notice solicited comment on whether the Board could improve the usefulness of the HMDA data by requiring reporters to identify transactions involving mobile homes. (The Advance Notice referred to "mobile homes," which are a type of manufactured home. This proposal employs the broader term.)

Many commenters—including the federal agencies charged with enforcing the fair lending laws—believed that the Board should require creditors to distinguish loans and applications that involve manufactured homes from other transactions. These commenters contended that such a requirement would further HMDA's purpose of providing the public with data useful in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes. Manufactured home loans are typically underwritten differently from other home mortgage loans and have different denial rates. So distinguishing manufactured home transactions, commenters believed, would help those analyzing HMDA data to determine whether a lender's high denial rates are due to its focus on manufactured home lending rather than to some potentially unlawful practice. Other commenters—such as financial institution trade associations—opposed distinguishing transactions involving manufactured homes.

Based on the comments and on its own analysis, the Board proposes to require that creditors identify manufactured home loans and applications. The proposal would identify these loans by using a widely understood definition that appears in the Department of Housing and Urban Development (HUD) regulation that establishes construction and safety standards for manufactured homes.

Solicitation of comment on certain data collections not proposed. The Board solicits comment on whether it should consider requiring the collection of three items that are discussed below. Their collection is not proposed at this time

Denial Reasons. The statute permits, but does not require, a financial institution to report the reasons why a loan application was denied. Regulation C similarly gives institutions the option to report this information, although under section 305 the Board could make such reporting mandatory.

Institutions supervised by the Office of the Comptroller of the Currency and the Office of Thrift Supervision must report denial reasons under those agencies' rules. For institutions not required to report reasons for denial, the level of reporting has varied widely by supervisory agency. For example, in 1999, denial reasons were reported for approximately 77 percent of the loan/application register entries for denied loans submitted to the Federal Deposit Insurance Corporation and for approximately 64 percent of the entries for denied loans submitted to the Board. By contrast, about 34 percent of the entries for denied loans reported to HUD included denial reasons.

Most commenters who addressed this issue—including several financial institutions, one banking trade association, regulatory agencies, and civil rights and community groups—supported requiring all institutions covered by HMDA to report reasons for denial. These commenters argued that requiring such reporting would facilitate the identification of potential discrimination, and that all lending institutions should be subject to the same rules. They pointed out that reporting denial reasons in all cases would allow better comparison of data from different lenders. They also contended that reporting denial reasons would not be burdensome, because lenders currently must provide the reasons to applicants under the Equal Credit Opportunity Act and Regulation B (or at least inform them of their right to know the reasons).

Some commenters—primarily financial institutions—opposed mandatory reporting. These commenters maintained that denial reasons are not a reliable fair lending indicator because they may oversimplify the reasons for a credit decision. Thus, these commenters contended, users of the HMDA data could be led to believe that discrimination exists when in fact it does not. Some commenters also opposed mandatory reporting on the basis of cost and burden; others argued that the requirement is unnecessary, since examiners can obtain denial reasons from loan files.

Based on the comments and on its own initial analysis of the benefit and burden of collecting and reporting denial reasons, the Board does not propose to require reporting of denial reasons under Regulation C. The Board requests comment, however, on the value of requiring these data, relative to the burden that would be imposed on lenders.

Loan-to-Value Ratio/Appraised Value. In the Advance Notice, the Board requested comment on whether the appraised value of the property that secures a loan should be reported. Some commenters, primarily community groups, supported requiring lending institutions to report appraised value, or related information such as LTV, noting that such information could assist in identifying discriminatory practices in the performance and use of appraisals. Commenters stated that appraisals have a significant role in credit decisions affecting low-income communities, and that discrimination involving appraisals remains difficult to document.

The majority of commenters who addressed the issue—and almost all the financial institutions that addressed it—opposed a requirement to report either appraised value or LTV ratio, maintaining that the data would not be comparable, and thus not useful, due to the many different methods used for determining property value. Commenters also argued that reporting appraised value is unnecessary because examiners can get the information from loan files; that appraised value would not provide a reliable indicator of possible credit discrimination because many other factors enter into a credit decision; and that collection and reporting for appraised value would add cost and burden to HMDA compliance. Commenters noted that the information could not be reported in many instances; for example, a loan application may be denied or withdrawn before an appraisal is conducted.

The Board solicits comment on the relative merits of requiring that lenders report LTV or appraised value, in light of the potential burden imposed on institutions.

Identity of Parent Company. Regulation C previously required HMDA reporters to indicate the name of any parent company on the Transmittal Sheet. The requirement was eliminated a few years ago as part of a set of amendments to the regulation; at the time, the Board noted that the change would reduce burden, and that data users could ascertain the reporting institution's parent from National Information Center (NIC) data. 63 *Fed. Reg.* 52140 (September 30, 1998).

Many users of HMDA data clearly find it useful to have information on parent-subsidiary relationships included in HMDA data, rather than available only in a separate database. Although the additional reporting burden imposed by the suggested requirement would likely be minimal, there is another way to make data on parent-subsidiary relationships available without requiring any additional reporting. Board staff, in the course of processing reported HMDA data to produce the public disclosures, could add parent-subsidiary information based on NIC data. Although this option would increase the processing cost for the agencies slightly, it would avoid increasing reporting requirements for lending institutions, and would likely produce significantly more accurate and complete information on parent-subsidiary relationships. The Board requests comment on the comparative benefit and burden of requiring institutions, rather than the agencies, to provide these data.

[9] TILA disclosure requirements apply only to loans to consumers for personal, family, or household purposes; therefore, commercial loans are excluded. In addition, several other types of credit, such as public utility credit, securities credit, and credit over $25,000 not secured by a lien on a dwelling, are exempted from TILA.

4(b) Collection of Data on Race or National Origin, Sex, and Income

4(b)(2) Optional Collection

Regulation C currently provides, in accordance with the statute, that depository institutions with assets on the preceding year-end of $30 million or less may, but need not, collect the data on applicants' race or national origin, sex, and income. Also in accordance with the statute, Regulation C entirely exempts from coverage a depository institution with total assets on the preceding year-end at or below the threshold set annually by the Board based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers. In 1999, the Board set this threshold at $30 million for data collection in 2000.

Thus, institutions with assets of less than $30 million are now exempt not only from collecting certain types of data, but from the entire regulation. The more limited exemption is superfluous; the Board proposes to delete it.

4(d) Excluded Data

4(d)(3) Temporary Financing

The Board is not proposing any change to this provision.

Reporting. Regulation C generally does not permit lenders to report temporary financing. Rather than defining temporary financing, Regulation C provides illustrations, such as bridge and construction loans. While data about some of these loans are captured when a loan is converted to permanent financing, some persons have expressed concern that construction-only loans are not being reported. Also, some institutions have requested that Regulation C include a general, precise definition of temporary financing.

The Advance Notice solicited comment on the usefulness of data on construction lending and the burden of collecting such data. A few commenters, including community groups, believed the data would be useful and encouraged coverage. These commenters noted that some institutions offer only construction loans and do not provide permanent financing. These institutions are thus unable to report significant portions of their home lending activity.

The majority of commenters on this issue, however, believed that reporting construction lending generally would be duplicative because much of the same data would be captured when the permanent loan is reported. Some commenters also expressed concern about the difficulty of reporting the required property location information for properties that may lack street addresses at the construction phase.

The Board is not proposing to cover construction loans or other temporary financing. In some cases, the data would not be duplicative—such as where a lender originates construction loans but does not offer permanent financing. But these instances appear to be relatively few. Imposing additional burden industry wide would not be justified.

Time period. The Advance Notice also requested comment on whether the regulation should define "temporary loans" in terms of a time period. Some commenters suggested various periods, ranging from no more than one year to three or more years. Others supported leaving the term defined by example. In the absence of any generally accepted timeframe for "temporary financing," the Board is not proposing a "bright-line" definition. Instead, the regulation will continue to offer examples—such as construction financing.

4(d)(6) Purchased Loans

Branch acquisition. HMDA requires institutions to report all loans that they purchase, including loans purchased in bulk. Under the authority conferred by Section 305 of the statute, the Board has excluded loans acquired through a merger or acquisition from the reporting requirements of Regulation C. *See* 60 FR 63996 (December 11, 1995).

The Advance Notice solicited comment on whether HMDA data for loans purchased as part of a branch acquisition are useful or whether the exclusion currently allowed for loans obtained through a merger should be extended to such loans. Most commenters who addressed this issue—primarily financial institutions—believed the data would not be useful and need not be reported. These commenters argued that the purchase of a loan as part of a branch acquisition, like the purchase of loans as part of a merger, is not primarily a credit decision but rather is incidental to an investment decision—in this case, to acquire the branch. These commenters also contended that such reporting is burdensome. Some commenters, including community groups and a few financial institutions, urged the Board not to expand the merger exception because doing so would reduce the publicly available data about creditors' loan acquisitions.

Based on the comments and its own analysis, the Board proposes to exclude loans purchased as part of a branch acquisition from HMDA's reporting requirements. A "branch acquisition" entails the purchase of *all* the assets and liabilities of a branch of a depository

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institution; it need not involve the purchase of the branch's physical facilities. Loans purchased as part of a branch asset sale (not including sale of the branch's liabilities) would continue to be reported.

Bulk purchases. The Board is not proposing any change regarding bulk purchases. A number of commenters on the Advance Notice proposed excluding loans acquired through bulk purchases from the reporting requirements. However, unlike mergers and branch acquisitions, which are transactions driven by a number of factors, bulk purchases typically are based on a credit analysis of the portfolio being sold. Excluding bulk purchases, therefore, would result in the loss of data useful in determining whether institutions are serving the housing needs of their communities. Accordingly, the Board is not proposing to exclude bulk purchases.

Purchase of "seasoned loans." The Board is not proposing any changes regarding the purchase of "seasoned loans." The Advance Notice solicited comment on whether other revisions regarding purchased loans could improve data quality and reduce burden. The Advance Notice referred specifically to the possible exclusion of seasoned loans—such as those originated more than one or two years before the year being reported on. Several commenters, including financial institutions and trade associations, recommended excluding loans that had been originated, for example, more than six months, one year, or two years prior to purchase. These commenters contended that purchasing such loans does not reflect credit decisions by the acquirer, but rather decisions to purchase assets. They noted that reporting such loans was burdensome since data may be incomplete and difficult to locate.

Other commenters believed that seasoned loans should be reported. These commenters (including financial institutions and community groups) noted, for example, that certain programs prohibit the sale of loans before one or two years have passed—in order to ensure the loans are performing. Some commenters expressed concern that institutions would no longer receive positive consideration for purchases of these loans under the CRA, which could reduce the loans' marketability. Certain commenters believed that the burden of tracking seasoned loans in order to exclude them could outweigh the benefits of lessened reporting requirements.

Based on the comments and on further analysis, the Board believes that data on loan purchases generally, including seasoned loans, are useful in evaluating an institution's mortgage lending activity. The Board therefore does not propose to exclude seasoned loans from the reporting requirements.

Section 203.5—Disclosure and Reporting

5(b) Public Disclosure of Statement

The regulation requires that a financial institution make its disclosure statement available to the public, under certain circumstances, within a specified number of "business days." A paragraph would be added to the staff commentary to clarify that for this purpose a "business day" is any calendar day other than a Saturday, Sunday, or legal public holiday. (*See* proposed comment 5(b)–1.)

5(f) Loan Aggregation and Central Depositories

As part of the reorganization of the regulation, material on loan aggregation and central depositories that now appears in section 203.1—"Authority, purpose, and scope"—would be moved to section 203.5, as paragraph (f).

Section 203.6—Enforcement

As part of the reorganization of the regulation, material from the staff commentary (see comments 4(a)–1 and 6(b)–1) would be moved to this section of the regulation. This material clarifies that certain actions do not violate the act or regulation.

IV. Appendix A

The Board's proposed reorganization of the regulation entails non-substantive revisions of Appendix A, such as redesignating several provisions. The Board also proposes certain substantive changes that would conform Appendix A to proposals discussed above.

I. Instructions for Completion of Loan/Application Register

A. Application or Loan Information

4. Purpose

Code 5—Home-equity line of credit. The Board is proposing to add a code identifying home-equity lines of credit. *See* discussion under section 2(f), above.

Code 6—Manufactured home. The Board is proposing to add a code for loans and applications involving manufactured homes. *See* the discussion of "Manufactured home status" under section 4(a)(9), above. A reporting entity would use this code in addition to any other code identifying the purpose of the transaction. For example, an application to purchase a single-family manufactured home would be coded as "1, 6."

6. Loan Amount

The Board proposes to require institutions to report the full amount of home-equity credit lines. *See* discussion under section 2(f), above.

C. Property Location

Coordination with the CRA. Appendix A provides guidance to institutions that report data under the CRA regarding the reporting of property-location information for loans located outside the metropolitan areas where those lenders have offices. In response to inquiries from lenders, the Board proposes to clarify this guidance, without changing it substantively.

These lenders must report the metropolitan area, state, and county where the property is located. In general, they must also report the census tract. However, if the property is located in an untracted area, they may report either "NA" or the block numbering area instead of census tract information; and if the property is located in a county with a population of 30,000 or less, a lender may report either "NA" or the census tract number.

Requests for preapproval. The Board is proposing explicitly to include certain requests for preapproval in the definition of an "application" for credit. *See* section 2(b), above. Since these requests would not include data on property location, the Board proposes to clarify that lenders may report "NA" in the property location fields associated with requests for preapproval.

D. Applicant Information—Race or National Origin, Sex, and Income

3. Race or National Origin of Borrower or Applicant

The Office of Management and Budget (OMB) has revised its "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity." The revised standards prescribe five racial designations: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. For data on ethnicity, the standards provide for data on whether individuals are Hispanic or Latino, or do not fall within this category. 62 *Fed. Reg.* 58782 (October 30, 1997). The standards require that respondents be offered the option of selecting one or more designations.

Federal agencies use these OMB standards when racial and ethnic data are collected by means of respondent self-identification or by observers. The Bureau of the Census uses these standards, for example, in its decennial and other data collections.

The Board proposes to revise Regulation C to conform to the revised OMB standards. The Board is also proposing to continue permitting institutions to report that race and ethnicity data were not provided by an applicant in a mail or telephone application, or that such data are not applicable—for example, in connection with a loan to a corporation rather than to a natural person.

5. Income

The Board is not proposing any changes regarding the reporting of applicant income.

Section 203.4(a)(7) of Regulation C provides that an institution must report the "gross annual income relied upon in processing the application" on its loan/application register. In some instances, institutions make credit decisions based only on the portion of an applicant's income necessary for the applicant to qualify for a loan (such as the applicant's earned income), rather than on the applicant's total annual income from all sources.

CRA examiners evaluate a large retail institution's CRA performance in part based on the number and amount of home mortgages (as reported under HMDA) that the institution makes to low-, moderate-, middle-, and upper-income individuals. 12 CFR 228.22(b)(2)(iii) and (3)(i). The CRA regulations define these income categories based on the median family income for an area, which is calculated using gross annual income. If an institution reports only part of an applicant's income on its loan/application register, the applicant may appear to be in an income category that is lower than the applicant's actual income category, thus misstating the lender's CRA performance.

Changing Regulation C, however, would impose significant burden on institutions, many of which are not subject to CRA. It is unclear whether the difference between income relied upon and total annual income is large enough to have a material impact on an assessment of an institution's CRA performance. The Board believes that given this lack of information, imposing additional burden on institutions is not warranted.

G. Other Data

The Board proposes to add fields regarding the APR and HOEPA status. *See* the discussion under section 4(a)(9), above, of additional items proposed for data collection.

Form of Transmittal Sheet. The form of transmittal sheet that accompanies the loan/application register currently calls for the telephone and facsimile numbers of the reporting institution, but not for the e-mail address. The Board proposes to require the institution to provide its e-mail address, if one exists, on the transmittal sheet, for use in contacting the financial institution.

V. Appendix B

Appendix B would be revised to clarify that if an application is made entirely by telephone, the reporting institution is permitted, although not required, to request data on race or national origin and sex. (Lenders are reminded, however, that these data must be requested when an application is taken over the Internet.) This clarification makes explicit the Board's longstanding views on this issue. Other changes would reflect the revised OMB guidance discussed above.

VI. Reorganization of the Regulation

Currently, formal guidance for compliance with HMDA is contained in Regulation C, in the instructions for completing the loan/application register (Appendix A to the regulation), in the instructions for the collection of certain applicant data (Appendix B), and in the staff commentary. Informal guidance is provided in the FFIEC's "A Guide to HMDA Reporting: Getting It Right!" Compliance officers and other commenters have expressed concern about having to consult several sources to locate a requirement or interpretation dealing with a particular issue.

The Advance Notice solicited comment on the benefit of incorporating all of the interpretive materials into the commentary, reducing the instructions in Appendix A to code descriptions, and reorganizing the material within the regulation. These changes were supported by most of the commenters that addressed them—including both data reporters and data users. They believed that a reorganization would make the regulation easier to understand and decrease possible misinterpretations by reporters and others. For these commenters, the benefits of simplification outweighed the burden of learning a new system of organization.

Several financial institutions opposed any changes. They considered Regulation C easy to understand and expressed concern that the benefits of reorganization did not justify the burden of relearning the regulation. A few commenters recommended streamlining the reporting requirements, rather than the interpretive material, to reduce burden.

Based on the comments and its own analysis, the Board has reorganized the regulation and commentary, eliminated redundant provisions, revised the instructions to make reporting easier, and made other changes—such as rewording some provisions—so that the regulation becomes easier to use.

The cross-references to Appendix A in the staff commentary would be deleted; they would be unnecessary in view of the simplification and reorganization of Appendix A. "A Guide to HMDA Reporting: Getting It Right!" will continue to be published, in a format reflecting the reorganized regulation.

Provisions of the regulation, appendices, and commentary are redesignated as indicated in the tables below. The first five tables identify redesignated provisions in the first five sections of the regulation and in the corresponding paragraphs of the staff commentary; the sixth and seventh tables identify redesignated provisions in Appendices A and B. While the tables present a substantially complete summary of the proposed reorganization, they should not be used as a substitute for a detailed comparison of the proposal with the existing regulation.

TABLE 1.—SECTION 203.1—AUTHORITY, PURPOSE, AND SCOPE

Current	Proposed
Commentary 203.1(c)–2, 3, 4	Regulation 203.2(k)
Commentary 203.1(c)–5	Commentary 203.1(c)–2
Commentary 203.1(c)–6	Commentary 203.1(c)–3
Commentary 203.1(c)–7	Commentary 203.1(c)–4
Commentary 203.1(c)–8	Commentary 203.1(c)–5
Commentary 203.1(c)–9	Commentary 203.1(c)–6
Commentary 203.1(c)–10	Commentary 203.1(c)–7
Commentary 203.1(c)–11	Commentary 203.1(c)–8
Commentary 203.1(c)–12	Commentary 203.1(c)–9
Regulation 203.1(d)	Regulation 203.5(f)

TABLE 2.—SECTION 203.2—DEFINITIONS

Current	Proposed
Regulation 203.2(f)	Regulation 203.2(g)
Regulation 203.2(g)	Regulation 203.2(h)
Regulation 203.2(h)	Regulation 203.2(j)
Commentary 203.2(e)–1	Commentary 203.2(e)–5

TABLE 2.—SECTION 203.2—DEFINITIONS—Continued

Current	Proposed
Commentary 203.2(e)–2	Commentary 203.2(e)–6
Commentary 203.2(f)–1	Deleted
Commentary 203.2(f)–2	Commentary 203.4(a)(2)–1
Commentary 203.2(f)–3	Deleted
Commentary 203.2(f)–4	Deleted
Commentary 203.2(f)–5	Commentary 203.2(g)–1
Commentary 203.2(f)–6	Commentary 203.2(g)–2
Commentary 203.2(f)–7	Commentary 203.4(g)(4)–2
Commentary 203.2(f)–8	Commentary 203.2(g)–3
Commentary 203.2(g)–6	Deleted

TABLE 3.—SECTION 203.3—EXEMPT INSTITUTIONS

Current	Proposed
Regulation 203.3(a)(1)	Regulation 203.2(e)(1)
Regulation 203.3(a)(2)	Regulation 203.2(e)(2)
Regulation 203.3(b)	Regulation 203.3(a)
Regulation 203.3(c)(1)	Commentary 203.2(e)–1
Regulation 203.3(c)(2)	Regulation 203.3(b)
Commentary 203.3(a)–1	Commentary 203.2(e)–1
Commentary 203.3(a)–2	Commentary 203.2(e)–2
Commentary 203.3(a)–3	Commentary 203.2(e)–3
Commentary 203.3(a)–4	Commentary 203.4(c)–1

TABLE 4.—SECTION 203.4—COMPILATION OF LOAN DATA

Current	Proposed
Commentary 203.4(a)–1	Regulation 203.6(b)(3)
Commentary 203.4(a)(2)–1	Commentary 203.2(g)–4
Commentary 203.4(a)(3)–1	Deleted
Commentary 203.4(a)(3)–2	Commentary 203.4(a)(3)–1
Commentary 203.4(a)(4)–3	Deleted
Commentary 203.4(a)(4)–4	Commentary 203.4(a)(4)–3
Commentary 203.4(d)–1	Deleted

TABLE 5.—SECTION 203.5—DISCLOSURE AND REPORTING

Current	Proposed
Regulation 203.5(a)	Regulation 203.5(a)(1)
Regulation 203.5(b)(1)	Regulation 203.5(b)(2)
Regulation 203.5(b)(2)	Regulation 203.5(b)(3)
Commentary 203.5(a)–1	Commentary 203.5(a)–4
Commentary 203.5(a)–2	Commentary 203.5(a)–5

TABLE 6. APPENDIX A

Current	Proposed
I.A	Deleted
I.B	Deleted
I.C	Deleted
I.D	Deleted
I.E	Regulation 203.5(a)(2)
I.F	Regulation 203.3(a)(3)
II.A	Commentary 203.5(a)–1
II.B	Commentary 203.5(a)–2
II.C	Commentary 203.5(a)–3
II.D	Commentary 203.5(a)–3
II.E	Regulation 203.4(a)(8)
III.A	Deleted
III.B	Commentary 203.5(a)–6
III.C	Commentary 203.5(a)–7
III.D.1	Regulation 203.5(b)(1) and (2); Commentary 203.5(b)–1
III.D.1.a	Regulation 203.5(b)(3)

TABLE 6. APPENDIX A—Continued

Current	Proposed
III.D.1.b	Regulation 203.5(b)(3)
III.D.2	Commentary 203.5(b)–2
III.E.1	Regulation 203.5(c)
III.E.2	Commentary 203.5(c)–1
III.E.3	Regulation 203.5(c)
III.F.1	Commentary 203.5(e)–1
III.F.2	Commentary 203.5(e)–2
IV.A.1	Commentary 203.4(a)–1(i)
IV.A.2	Commentary 203.4(a)–1(ii)
IV.A.3	Commentary 203.4(a)–1(iii)
IV.A.4	Commentary 203.4(a)–1(iv)
IV.A.5	Commentary 203.4(a)–1(v)
IV.B	Deleted
V.A.1	1st paragraph App.A.I.A.1; 2nd paragraph Commentary 203.4(a)(1)–4
V.A.2	App. A.I.A.2
V.A.3	App. A.I.A.3
V.A.4	App. A.I.A.4
V.A.5	App. A.I.A.4; explanatory material regarding home purchase, HELOCs, deleted
V.A.6	App. A.I.A.5
V.A.7	App. A.I.A.5
V.A.8	App. A.I.A.6
V.B.1	App. A.I.B.1
V.B.2	App. A.I.B.1
V.B.3	App. A.I.B.2
V.C	App. A.I.C
V.C.1	App. A.I.C.1
V.C.2	App. A.I.C.2
V.C.3	App. A.I.C.3
V.C.4	App. A.I.C.4
V.C.5	App. A.I.C.5
V.C.6	Deleted
V.C.7	App. A.I.C.6
V.D	App. A.I.D
V.D.1	App. A.I.D.1
V.D.2	App. A.I.D.2; App.B. I.B.5
V.D.3	App. A.I.D.3
V.D.4	App. A.I.D.4
V.D.5	App. A.I.D.5
V.E.1., 2.a, b, c, e	App. A.I.E.
V.E.1., 2.d	Commentary 203.4(a)(8)–2
V.F	App. A.I.F
VI.	App. A.II.

TABLE 7. APPENDIX B

Current	Proposed
I.B.2	App. B.I.B.3
I.B.3	App. B.I.B.4
I.B.4	App. B.I.B.5
I.B.5	Deleted

VII. Form of Comment Letters

Comment letters should refer to Docket No. R–1001, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may, of course, be transmitted electronically to the address provided in this notice. Also, comments may be submitted on 3½ or 5½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format, if accompanied by an original document in paper form.

VIII. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposed revisions under the authority delegated to the Board by OMB. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0247.

The information collection requirements that would be revised by this rulemaking appear in 12 CFR part 203. The information collection is mandatory under 12 U.S.C. 2801–2810. It generates data used to help determine whether financial institutions are serving the housing needs of their

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communities, to help target investment to promote private investment where it is needed, and to provide data to assist in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes.

The respondents are all types of financial institutions that meet the tests for coverage under the regulation. Under the Paperwork Reduction Act, however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks, their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631). Other federal agencies account for the paperwork burden for the institutions they supervise. Respondents must maintain their loan/application registers and modified registers for three years, and their disclosure statements for five years.

The current estimated annual burden for this information collection varies from 10 to 10,000 hours, depending on individual circumstances, with estimated averages of 202 hours for state member banks and 160 hours for mortgage banking subsidiaries and other respondents. The current estimated annual burden for the 625 institutions under Federal Reserve supervision is approximately 122,000 hours.

The proposed revisions would increase by 10 to 20 percent the overall burden imposed on institutions with respect to the data collection and reporting requirements. The majority of the proposed revisions would require new information to be reported on the loan/application registers (requests for preapproval, home-equity lines of credit, APR of a loan, HOEPA status of a loan, and whether a loan is for manufactured housing) as well as redefined information (home improvement loans and refinancings). These proposed revisions would require extra training for all lenders. The hourly paperwork burden will increase due to the new requirements. The modification of the coverage test for nondepository lenders would increase by a small amount—probably well under 5 percent—the number of those lenders required to report HMDA data. The proposed exclusion for the reporting of loans acquired in a branch acquisition would slightly decrease the overall burden. The Federal Reserve expects individual institution burden to vary according to the amount and types of lending done by the institution.

In order to quantify the burden estimates, the Federal Reserve solicits comment on the incremental burden associated with collecting and reporting information on: requests for preapproval, home-equity lines of credit, the redefinition of home improvement loans and refinancings (as well as on the alternative of collecting and reporting information on nonpurchase home loans generally), APR data, HOEPA status, and manufactured housing status. The Federal Reserve also solicits comment on how many institutions have a "structured" preapproval program that would be covered by the proposed HMDA revisions and how long it would take those institutions to collect and report the preapproval data. The Federal Reserve solicits comment on the number of hours on average an institution spends training its staff in a year when no revisions are proposed and how many hours the institution foresees training staff to review these revisions.

The Board's Legal Division has determined that HMDA data collection and reporting are required by law; completion of the loan/application register, submission to the Federal Reserve, and disclosure to the public upon request are mandatory. The data, as modified according to the regulation, are made publicly available and are not considered confidential. Information that might identify an individual borrower or applicant is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).

The Paperwork Reduction Act requires that the Board solicit comment on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to OMB, Paperwork Reduction Project (7100–0247), Washington, D.C. 20530, with copies of such comments sent to Mary M. West, Federal Reserve Clearance Officer, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

IX. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board's Division of Research and Statistics has prepared a preliminary regulatory analysis of this proposal. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–3245. A summary of the preliminary analysis follows.

The major changes proposed for the regulation involve bringing more institutions and transactions under requirements for data collection and reporting and requiring more data on each covered transaction. Among the proposed revisions, those increasing the transactions covered and the data that are required to be reported for each transaction are the most significant in terms of potential benefits and in increasing regulatory burden. The proposal would affect all institutions currently within the scope of the regulation, including covered small institutions. The number of institutions that would newly be brought under the regulation is probably fairly limited; no newly covered institution would be a small mortgage lender in that, to be covered, institutions would have originated $50 million or more of home-purchase loans (including refinancings of such loans) in the prior calendar year and they may have significant other lending activities as well.

The draft proposal does not arise from a need to implement specific legislative changes. Rather, it is a consequence of Board policy to review its regulations periodically and a desire to update the regulation to reflect mortgage markets better, enhance consumer protection, and comply with new guidance from the Office of Management and Budget concerning collection of data on race and ethnicity by federal agencies.

It is difficult to quantify the benefits and costs associated with the proposed changes to the regulation. The expanded coverage will provide data to help identify possible discriminatory lending patterns and assist regulators in conducting examinations under the CRA and other laws. The data will also help inform the public about developments in the mortgage market by revealing the distribution of annual percentage rates on home loans and by ensuring that information is available about a significant and growing segment of the home loan market, home-equity lines of credit.

Although the proposed changes may offer a number of benefits they also will impose significant costs on lenders by requiring changes to their current procedures and systems for collecting and reporting required data. The regulatory agencies will take steps to mitigate these costs, but start-up costs for financial institutions to revise current computer and compliance systems are likely to be significant. The regulatory agencies themselves will also incur costs to revise computer software used to edit the HMDA data prior to its release to the public and to prepare required reports for both the regulated institutions and the public.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of Regulation C, Appendix B (including the Sample Data-Collection Form), and the Official Staff Commentary. New language is shown inside arrows, while language that would be deleted is set off in brackets. However, these conventions are not used in Appendix A because of the substantial number of changes; likewise, the changes to the forms in Appendix A are not highlighted, because these forms—which are very detailed—are easier to read without the conventions.

For the reasons set forth in the preamble, the Board proposes to revise 12 CFR part 203 to read as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

Sec.

203.1 Authority, purpose, and scope.
203.2 Definitions.
203.3 Exempt institutions.
203.4 Compilation of loan data.
203.5 Disclosure and reporting.
203.6 Enforcement.
Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register
Appendix B to Part 203—Form and Instructions for Data Collection on Race or National Origin and Sex
Supplement I to Part 203—Staff Commentary

Authority: 12 U.S.C. 2801–2810.

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget ►("OMB")◄ under 44 U.S.C. 3501 *et seq.* and have been assigned OMB numbers 1557–0159, 3064–0046, 1550–0021, [and] 7100–0247 ►, and 2502–0529,◄ for institutions reporting data to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, [and] the Federal Reserve System, ►and the Department of Housing and Urban Development ("HUD"),◄ respectively [; numbers]►. A number◄ for the National Credit Union Administration [and the Department of Housing and Urban Development are] ►is◄ pending.

(b) *Purpose.* (1) This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to certain financial institutions, including banks, savings associations, credit unions, and other mortgage lending institutions, as defined in § 203.2(e). ►The regulation◄ [It] requires an institution to report data to its supervisory agency about home purchase ►loans,◄ [and] home improvement loans, ►refinancings, and home equity lines of credit that◄ it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

[(d) *Loan aggregation and central data depositories.* Using the loan data made available by financial institutions, the Federal Financial Institutions Examination Council will prepare disclosure statements and will produce various reports for individual institutions for each metropolitan statistical area ("MSA"), showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. The disclosure statements and reports will be available to the public at central data depositories located in each MSA. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, D.C. 20006.]

§ 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended.

(b) *Application* means an oral or written request for a home purchase ►loan, a◄ [or] home improvement loan ►, a refinancing, or a home-equity line of credit◄ that is made in accordance with procedures [established] ►used◄ by a financial institution for the type of credit requested. ►The term includes a request for a preapproval under procedures in which a financial institution issues to creditworthy persons a written commitment for a home purchase loan up to a specified amount that is valid for a designated period of time, even if issued subject to the identification of a suitable property or other conditions.◄

(c) *Branch office* means: (1) Any office of a bank, savings association, or credit union that is approved as a branch by a federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines; and

(2) Any office of a ►for-profit◄ mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase ►loans◄ or home improvement loans. A ►for-profit◄ mortgage-lending institution is also deemed to have a branch office in a[n MSA] ►metropolitan area◄ if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase ►loans◄ or home improvement loans ►related to◄ [on] property located in that [MSA] ►metropolitan area◄.

(d) *Dwelling* means a residential structure (whether or not [it is] attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or [mobile or] manufactured home.

[(e) *Financial institution* means:

(1) A bank, savings association, or credit union that originated in the preceding calendar year a home purchase loan (other than temporary financing such as a construction loan) including a refinancing of a home purchase loan, secured by a first lien on a one-to four-family dwelling if—

(i) The institution is federally insured or regulated; or

(ii) The loan is insured, guaranteed, or supplemented by any federal agency; or

(iii) The institution intended to sell the loan to the Federal National

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Mortgage Association or the Federal Home Loan Mortgage Corporation;

(2) A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) whose home purchase loan originations (including refinancings of home purchase loans) equaled or exceeded ten percent of its loan-origination volume, measured in dollars, in the preceding calendar year.]

►(e) *Financial institution* means:

(1) A bank, savings association, or credit union that:

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Board for coverage by the act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in a metropolitan area;

(iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one-to-four-family dwelling; and

(iv) Meets at least one of the following three criteria:

(A) The institution is federally insured or regulated;

(B) The mortgage loan referred to in paragraph (e)(1)(iii) of this section was insured, guaranteed, or supplemented by a federal agency; or

(C) The mortgage loan referred to in paragraph (e)(1)(iii) oF THIS SECTION was intended by the institution for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(2) A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

(i) In the preceding calendar year either:

(A) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least ten percent of its loan-origination volume, measured in dollars; or

(B) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least $50 million;

(ii) Had either a home office or a branch office in a metropolitan area, on the preceding December 31; and

(iii) Either:

(A) Had total assets of more than $10 million, counting the assets of any parent corporation, on the preceding December 31; or

(B) Originated at least 100 home purchase loans, including refinancings of home purchase loans, in the preceding calendar year.

(f) *Home-equity line of credit* means an open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 CFR part 226.◄

[(f)]►(g)◄ *Home improvement loan* means any loan ►, other than a home-equity line of credit,◄ that [: (1)] is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling or improving a dwelling or the real property on which it is located ►.◄ [; and (2) is classified by the financial institution as a home improvement loan.]

[(g)]►(h)◄ *Home purchase loan* means any loan secured by and made for the purpose of purchasing a dwelling.

►(i) *Manufactured home* means any residential structure as defined under regulations of the Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2).◄

[(h)]►(j)◄ *Metropolitan [statistical] area [or MSA]* means a metropolitan area as defined by OMB.

►(k) *Refinancing* means a new obligation satisfying and replacing an existing obligation by the same borrower, where:

(1) For coverage purposes, the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents, or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings; and

(2) For reporting purposes, both the existing obligation and the new obligation are secured by a lien on a dwelling.◄

§ 203.3 Exempt institutions.

[(a) *Exemption based on location, asset size, or number of home purchase loans.* (1) A bank, savings association, or credit union is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31—

(i) The institution had neither a home office nor a branch office in an MSA; or

(ii) The institution's total assets were at or below the asset threshold established by the Board. The asset threshold was adjusted from $10 million to $28 million as of December 31, 1996. For subsequent years, the Board will adjust the threshold based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. The Board will publish any adjustment in the asset figure in December in the staff commentary.

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) is exempt from the requirements of this regulation for a given calendar year if—

(i) The institution had neither a home office nor a branch office in an MSA on the preceding December 31; or

(ii) The institution's total assets combined with those of any parent corporation were $10 million or less on the preceding December 31, and the institution originated fewer than 100 home purchase loans (including refinancings of home purchase loans) in the preceding calendar year.]

[(b)] ►(a)◄ *Exemption based on state law.* (1) A state-chartered or state-licensed financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and ►that◄ contains adequate provisions for enforcement.

(2) Any state-chartered or state-licensed financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall ►use the disclosure form required by its state law and◄ submit the data required by ►that◄ [the state disclosure] law to its state supervisory agency for purposes of aggregation.

[(c)] ►(b)◄ *Loss of exemption.* [(1) An institution losing an exemption that was based on the criteria set forth in paragraph (a) of this section shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.]

[(2)] An institution losing a[n] ►state-law◄ exemption under paragraph [(b)] ►(a)◄ of this section shall comply with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 203.4 Compilation of loan data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase ►loans,◄ [and] home improvement loans ►,◄ [(including]

refinancings [of both)] ►, and home-equity lines of credit◄ for each calendar year. These transactions shall be recorded, within thirty calendar days after the end of each calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application), on a register in the format prescribed in Appendix A of this part and shall include the following items:

(1) A►n identifying◄ number for the loan or loan application, and the date the application was received.

(2) The type and purpose of the loan ►or application◄.

(3) The owner-occupancy status of the property to which the loan ►or application◄ relates.

(4) The amount of the loan or application.

(5) The type of action taken, and the date.

(6) The location of the property to which the loan ►or application◄ relates, by ►metropolitan area◄ [MSA], state, county, and census tract, if the institution has a home or branch office in that ►metropolitan area◄ [MSA].

(7) The race or national origin and sex of the applicant or borrower, and the gross annual income relied on in processing the application.

(8) The type of entity purchasing a loan that the institution originates or purchases and then sells within the same calendar year ►(this information need not be included in quarterly updates).

(9) For a loan or application that is subject to Regulation Z (Truth in Lending, 12 CFR part 226), the following additional items:

(i) The annual percentage rate for the loan, as calculated and disclosed under § 226.14(b) or § 226.22 of Regulation Z.

(ii) An indication whether the loan is subject to the Home Ownership and Equity Protection Act of 1994, as implemented in § 226.32 of Regulation Z.◄

(b) *Collection of data on race or national origin, sex, and income.* (1) A financial institution shall collect data about the race or national origin and sex of the applicant or borrower as prescribed in appendix B ►of this part◄. [If the borrower or applicant chooses not to provide the information, the lender shall note the data on the basis of visual observation or surname, to the extent possible.]

(2) Race or national origin, sex, and income data may but need not be collected for[—

(i) Loans] ►loans◄ purchased by the financial institution►.◄[; or

(ii) Applications received or loans originated by a bank, savings association, or credit union with assets on the preceding December 31 of $30 million or less.]

(c) *Optional data.* A financial institution may report the reasons it denied a loan application.

(d) *Excluded data.* A financial institution shall not report:

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of loans (such as mortgage-participation certificates►, mortgage-backed securities, or real estate mortgage investment conduits◄); [or]

(5) The purchase solely of the right to service loans[.] ►; or

(6) Loans purchased as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in § 203.2(c)(1).◄

(e) *Data reporting under CRA for banks and savings associations with total assets of $250 million or more and banks and savings association that are subsidiaries of a holding company whose total banking and thrift assets are $1 billion or more.* As required by [agency] regulations that implement the Community Reinvestment Act ►of 1977 (12 U.S.C. 2901 *et seq.*)◄, banks and savings associations that had total assets of $250 million or more (or are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more) as of December 31 for each of the immediately preceding two years [,] shall also collect the location of property located outside the ►metropolitan areas◄ [MSAs] in which the institution has a home or branch office, or outside any ►metropolitan areas◄ [MSAs].

§ 203.5 Disclosure and reporting.

(a) *Reporting to agency.* ►(1)◄ By March 1 following the calendar year for which the loan data are compiled, a financial institution shall send its complete loan/application register to the agency office specified in appendix A of this part ►.◄ [and] ►The institution◄ shall retain a copy for its records for [a period of not less than] ►at least◄ three years.

►(2) A subsidiary of a bank or savings association shall complete a separate loan/application register. The subsidiary shall submit the register, directly or through its parent, to the agency that supervises its parent.◄

(b) *Public disclosure of statement.* ►(1) The Federal Financial Institutions Examination Council ("FFIEC") will prepare a disclosure statement from the data each institution submits.◄

[(1)] ►(2)◄ A financial institution shall make its [mortgage loan] disclosure statement ([to be] prepared by the [Federal Financial Institutions Examination Council] ►FFIEC◄) available to the public at its home office no later than three business days after receiving it from the [Examination Council] ►FFIEC◄.

[(2)] ►(3)◄ In addition, a financial institution shall either—

(i) Make its disclosure statement available to the public [(]within ten business days of receiving it [)] in at least one branch office in each additional ►metropolitan area◄ [MSA] where the institution has offices (the disclosure statement need only contain data relating to the ►metropolitan area◄ [MSA] where the branch is located); or

(ii) Post the address for sending written requests for the disclosure statement in the lobby of each branch office in a[n] ►metropolitan area◄ [MSA] where the institution has offices, and mail or deliver a copy of the disclosure statement, within fifteen calendar days of receiving a written request (the disclosure statement need only contain data relating to the ►metropolitan area◄ [MSA] for which the request is made). Including the address in the general notice required under paragraph (e) of this section satisfies this requirement.

(c) *Public disclosure of loan/application register.* A financial institution shall make its loan/application register available to the public after [modifying it in accordance with Appendix A.] ►removing the following information regarding each entry: the application or loan number, the date that the application was received, and the date action was taken.◄►An institution shall make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within 30 days for a request received after March 1. The modified register need only contain data relating to the ►metropolitan area◄ [MSA] for which the request is made.

(d) *Availability of data.* A financial institution shall make its modified register available to the public for a period of three years and its disclosure statement available for a period of five years. An institution shall make the data available for inspection and copying during the hours the office is normally open to the public for business. It may

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impose a reasonable fee for any cost incurred in providing or reproducing the data.

(e) *Notice of availability.* A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in a[n] ►metropolitan area◄ [MSA]. It shall ►provide◄ promptly upon request [provide] the location of the institution's offices where the statement is available for inspection and copying, or it may include the location in the ►lobby◄ notice.

►(f) *Loan aggregation and central data depositories.* Using the loan data made available by financial institutions, the FFIEC will produce reports for individual institutions for each metropolitan area, showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. These reports, as well as individual institution disclosure statements, will be available to the public at central data depositories located in each metropolitan area. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, D.C. 20006.◄

§ 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act, including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in appendix A [of this regulation] ►of this part◄.

(b) *Bona fide errors.* ►(1)◄ An error in compiling or recording loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

►(2) An incorrect entry for a census tract number is a bona fide error, and is not a violation of the act or this regulation, provided that the institution maintains reasonable procedures to avoid such errors.

(3) If an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within 30 days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of the act or this regulation provided that the institution corrects and completes the information prior to reporting the loan/application register to its regulatory agency.◄

►Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

Paperwork Reduction Act Notice

This report is required by law (12 U.S.C. 2801–2810 and 12 CFR part 203). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) Control Number. See 12 CFR 203.1(a) for the currently valid OMB Control Numbers, applicable to this information collection, for the agencies responsible for the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the respective agencies and to OMB, Office of Information and Regulatory Affairs, Paperwork Reduction Project, Washington, D.C. 20503. Be sure to reference the applicable agency and its OMB control number, as found in 12 CFR 203.1(a), when submitting comments to OMB.

I. Instructions for Completion of Loan/Application Register

A. Application or Loan Information

1. *Application or Loan Number.* a. Enter an identifying number that can be used later to retrieve the loan or application file. It can be any number of your choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both.

2. *Date Application Received.* a. For paper submissions only, enter the date the loan application was received by your institution by month, day, and year, using numerals in the form MM/DD/CCYY (for example, 01/15/2000). For institutions submitting data in electronic form, the proper format is CCYYMMDD. If your institution normally records the date shown on the application form you may use that date instead. Enter "NA" for loans purchased by your institution.

3. *Type.* Indicate the type of loan or application by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA, FSA, or RHS loans)

2—FHA-insured (Federal Housing Administration)

3—VA-guaranteed (Veterans Administration)

4—FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)

4. *Purpose.* Indicate the purpose of the loan or application by entering the applicable code from the following:

Code 1—Home purchase (one- to four-family)

Code 2—Home improvement (one- to four-family)

a. Report both secured and unsecured loans.

Code 3—Refinancings (one- to four-family)

a. Do not report a refinancing if, under the loan agreement, you are unconditionally obligated to refinance the obligation, or you are obligated to refinance the obligation subject to conditions within the borrower's control.

Code 4—Multifamily dwelling (home purchase, home improvement, and refinancings)

a. Code 4 applies to loans and applications on dwellings for five or more families, including home purchase loans, refinancings, and loans for repairing, rehabilitating, and remodeling purposes.

b. Do not use Code 4 for loans on individual condominium or cooperative units; use other Codes as applicable.

Code 5—Home-equity line of credit (one-to-four-family)

Code 6—Manufactured home

a. Use the applicable Code from Codes 1–5 and also use Code 6 if applicable.

5. *Owner Occupancy.* Indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal dwelling by entering the applicable code from the following:

Code 1—Owner-occupied as a principal residence

a. For purchased loans, use Code 1 unless the loan documents or application indicate that the property will not be owner-occupied as a principal residence.

Code 2—Not owner-occupied as a principal residence

a. Code 2 applies to second homes or vacation homes, as well as rental properties.

Code 3—Not applicable

a. Use Code 3 if the property to which the loan relates is a multifamily dwelling; is not located in a metropolitan area; or is located in a metropolitan area in which your institution has neither a home nor a branch office. Alternatively, at your option, you may use Code 1 or 2 for these situations, as applicable, to report the actual occupancy status.

6. *Loan Amount.* Enter the amount of the loan or application. Do not report loans below $500. Show the amount in thousands, rounding to the nearest thousand ($500 should be rounded up to the next $1,000). For example, a loan for $167,300 should be entered as 167 and one for $15,500 as 16.

a. For a home purchase loan that you originated, enter the principal amount of the loan.

b. For a home purchase loan that you purchased, enter the unpaid principal balance of the loan at the time of purchase.

c. For all home improvement loans, enter the entire amount of the loan—including unpaid finance charges if that is how such loans are recorded on your books—even if only a part of the proceeds is intended for home improvement.

d. Report the entire amount of a home-equity line of credit, but only in the year the line is established (or other action is taken, such as denial of an application).

e. For refinancings, indicate the total amount of the refinancing, including both the amount outstanding on the original loan and any amount of "new money."

f. For a loan application that was denied or withdrawn, enter the amount applied for.

B. Action Taken

1. *Type of action.* Indicate the type of action taken on the application or loan by using one of the following codes.

Code 1—Loan originated.

a. Use Code 1 for a loan that is originated, including one resulting from a counteroffer (your offer to the applicant to make the loan on different terms or in a different amount from the terms or amount initially applied for) that the applicant accepts.

Code 2—Approved but not accepted.

a. Use Code 2 when the application is approved but the applicant (or a loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time.

Code 3—Application denied.

a. Report as a denial the situation when an applicant turns down or fails to respond to your counteroffer.

Code 4—Application withdrawn.

a. Use Code 4 when the application is expressly withdrawn by the applicant before a credit decision was made.

Code 5—File closed for incompleteness.

a. Use Code 5 if you sent a written notice of incompleteness under § 202.9(c)(2) of Regulation B (Equal Credit Opportunity) and the applicant failed to respond to your request for additional information within the period of time specified in your notice.

Code 6—Loan purchased by your institution.

2. *Date of action.* For paper submissions only, enter the date by month, day, and year, using numerals in the form MM/DD/CCYY (for example, 02/22/2000). For institutions submitting data in electronic form, the proper format is CCYYMMDD.

a. For loans originated, enter the settlement or closing date.

b. For loans purchased, enter the date of purchase by your institution.

c. For applications denied, applications approved but not accepted by the applicant, and files closed for incompleteness, enter the date that the action was taken by your institution or the date the notice was sent to the applicant.

d. For applications withdrawn, enter the date you received the applicant's express withdrawal; or enter the date shown on the notification from the applicant, in the case of a written withdrawal.

C. Property Location

Except as otherwise provided, in these columns enter the applicant codes for the metropolitan area, state, county, and census tract for the property to which a loan relates.

1. *Metropolitan area* For each loan or loan application, indicate the location of the property by the metropolitan area number. Metropolitan area boundaries are defined by OMB; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of metropolitan areas is available from your supervisory agency or the FFIEC.

2. *State and County.* Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your supervisory agency or the FFIEC.

3. *Census Tract.* Indicate the census tract where the property is located. Notwithstanding paragraph 6:

a. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph 4 below). Alternatively, if the property is located in a block numbering area (BNA), you may enter the BNA number.

b. If the property is located in a county with a population of 30,000 or less in the 1990 census (as determined by the Census Bureau's 1990 CPH–2 population series), enter "NA" (even if the population has increased above 30,000 since 1990), or enter the census tract number (or the BNA number, if applicable).

4. *Census Tract Number.* For the census tract number, consult the U.S. Census Bureau's Census Tract/Street Index for 1990, and for addresses not listed in the index, consult the Census Bureau's census tract outline maps. Use the maps from the Census Bureau's 1990 CPH–3 series, or equivalent 1990 census data from the Census Bureau (such as the Census TIGER/Line file) or from a private publisher.

5. *Outside-Metropolitan Area.* For loans on property located outside the metropolitan areas in which the institution has a home or branch office, or outside any metropolitan area, an institution may choose one of the following two options. Under the first option, the institution may enter the metropolitan area, state, and county codes and the census tract number. It may enter "NA" in the metropolitan area or census tract column if no code or number exists for the property. In the census tract column, if there is a BNA number for the property rather than a census tract number, the institution may enter the BNA number at its option. (Codes exist for all states and counties). Under this first option, the codes and tract number must accurately identify the property location in question. Under the second option, which is not available if paragraph 6 applies, an institution enters "NA" in all four columns, whether or not the codes or numbers exist for the property.

6. *Data Reporting Under CRA for Banks and Savings Associations with Total Assets of $250 Million or More and Banks and Savings Associations that are Subsidiaries of a Holding Company Whose Total Banking and Thrift Assets are $1 Billion or More.* If you are a bank or savings association with total assets of $250 million or more as of December 31 for each of the immediately preceding two years, you must enter the location of property even if the property is outside metropolitan areas in which you have a home or branch office, or outside any metropolitan area. Enter this information also if you are a bank or savings association that is a subsidiary of a holding company with total banking and thrift assets of $1 billion or more as of December 31 for each of the immediately preceding two years.

7. *Requests for Preapproval.* Notwithstanding paragraphs 1–6, if the application is a request for preapproval, you may enter the code "NA" in all four columns.

D. Applicant Information—Race or National Origin, Sex, and Income

Appendix B of this part contains instructions for the collection of data on race or national origin and sex, and also contains a sample form for data collection.

1. *Applicability.* Report this information for loans that you originate as well as for applications that do not result in an origination.

a. You need not collect or report this information for loans purchased. If you choose not to, use the Codes for "not applicable."

b. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the Codes for "not applicable."

2. *Mail or Telephone Applications.* Any loan applications mailed to applicants must contain a collection form similar to that shown in appendix B of this part, and you must record on your register the data on race or national origin and sex if the applicant provides it. If the applicant chooses not to provide the data, enter the Code for "information not provided by applicant in mail or telephone application" specified in the next paragraph. (*See* Appendix B for complete information on the collection of these data in mail or telephone applications.)

3. *Race or National Origin of Borrower or Applicant.* Use the following Codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA."

If an applicant selects more than one designation, use all Codes corresponding to the applicant's selections. If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 8 for "not applicable" in the co-applicant column.

1—American Indian or Alaska Native
2—Asian
3—Black or African American
4—Native Hawaiian or Other Pacific Islander
5—White
6—Hispanic or Latino
7—Information not provided by applicant in mail or telephone application
8—Not Applicable

4. *Sex of Borrower or Applicant.* Use the following Codes to indicate the sex of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 4 for "not applicable."

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable

5. *Income.* Enter the gross annual income that your institution relied on in making the credit decision.

a. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in terms of thousands. For example, $35,500 should be reported as 36.

b. For loans on multifamily dwellings, enter "NA."

c. If no income information is asked for or relied on in the credit decision, enter "NA."

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E. Type of Purchaser

Enter the applicable code to indicate whether a loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

Code 0—Loan was not originated or was not sold in calendar year covered by register.

a. Use Code 0 for applications that were denied, withdrawn, or approved but not accepted by the applicant; and for files closed for incompleteness.

b. Use Code 0 if you originated or purchased a loan and did not sell it during that same calendar year. If you sell the loan in a succeeding year, you need not report the sale.

Code 1—FNMA (Federal National Mortgage Association)

Code 2—GNMA (Government National Mortgage Association)

a. Use Code 2 if you conditionally assign a loan to GNMA in connection with a mortgage-backed security transaction.

Code 3—FHLMC (Federal Home Loan Mortgage Corporation)

Code 4—FAMC (Federal Agricultural Mortgage Corporation)

Code 5—Commercial bank

Code 6—Savings bank or savings association

Code 7—Life insurance company

Code 8—Affiliate institution

a. Use Code 8 for loans sold to an institution affiliated with you, such as your subsidiary or a subsidiary of your parent corporation.

Code 9—Other type of purchaser

F. Reasons for Denial

1. You are not required to enter the reasons for denial of an application. But if you choose to do so you may indicate up to three reasons using the following codes. Leave this column blank if the "action taken" on the application is not a denial. For example, do not complete this column if the application was withdrawn or the file was closed for incompleteness.

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

2. If your institution uses the model form for adverse action contained in Appendix to Regulation B (Form C–1 in Appendix C, Sample Notification Form), use the foregoing codes as follows:

a. Code 1 for: Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. Code 2 for: Temporary or irregular employment, and Length of employment.

c. Code 3 for: Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. Code 4 for: Value or type of collateral not sufficient.

e. Code 6 for: Unable to verify credit references; Unable to verify employment; Unable to verify income; and Unable to verify residence.

f. Code 7 for: Credit application incomplete.

g. Code 9 for: Length of residence; Temporary residence; and Other reasons specified on notice.

G. Other Data

For an application or loan covered by the Truth in Lending Act (TILA), enter the following information:

1. *Annual Percentage Rate.* Enter the annual percentage rate (APR) as calculated and disclosed under Regulation Z (12 CFR part 226).

a. If the application or loan is not subject to TILA, or is subject to TILA but an APR was not required to be disclosed to the applicant (for example, because the application was withdrawn before the time disclosure was required), enter "NA."

b. If only an estimated APR was required to be disclosed to the applicant, enter the estimated APR.

c. Enter the APR to two decimal places. If the APR was disclosed to the applicant showing less than two decimal places, fill the remaining decimal places with zeros; if showing more than two decimal places, the APR may be rounded or the digits beyond two decimal places may be truncated.

d. In a home-equity line of credit with an introductory rate, where both the introductory and regular APR were required to be disclosed to the applicant, enter the regular APR.

2. *HOEPA status.* a. If the loan or application is covered by TILA, but is not covered by the Home Ownership and Equity Protection Act of 1994 (HOEPA), as implemented in Regulation Z, § 226.32, enter Code 0.

b. If the loan or application is covered by TILA and by § 226.32, enter Code 1.

c. If the loan or application is not covered by TILA, is covered by TILA but no APR was required to be disclosed to the applicant, or for any other reason it cannot be determined whether the loan or application is covered by § 226.32, enter Code 2.

II. Federal Supervisory Agencies

Send your loan/application register, direct any questions, and direct any requests (such as for a listing of metropolitan areas or FIPS codes) to the office of your federal supervisory agency as specified below. Terms used below that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the meanings given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

A. National Banks and Their Subsidiaries and Federal Branches and Federal Agencies of Foreign Banks

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

B. State Member Banks of the Federal Reserve System, Their Subsidiaries, Subsidiaries of Bank Holding Companies, Branches and Agencies of Foreign Banks (Other than Federal Branches, Federal Agencies, and Insured State Branches of Foreign Banks), Commercial Lending Companies Owned or Controlled By Foreign Banks, and Organizations Operating Under Section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the District in which the state member bank is located; for institutions other than state member banks, the Federal Reserve Bank specified by the Board of Governors.

C. Nonmember Insured Banks (Except for Federal Savings Banks) and Their Subsidiaries and Insured State Branches of Foreign Banks

Regional director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

D. Savings Institutions Insured Under the Savings Association Insurance Fund of the FDIC, Federally Chartered Savings Banks Insured Under the Bank Insurance Fund of the FDIC (but not Including State-Chartered Savings Banks Insured Under the Bank Insurance Fund), their Subsidiaries, and Subsidiaries of Savings Institution Holding Companies

Regional or other office specified by the Office of Thrift Supervision.

E. Credit Unions and Their Subsidiaries

National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, V.A. 22314.

F. Other Depository Institutions

Regional director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

G. Other Mortgage-Lending Institutions

Assistant Secretary for Housing, HMDA Reporting—Room 9233, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.◄

BILLING CODE 6210–01–P

Form FR HMDA-LAR
OMB No. 7100-0247. Approval expires May 31, 2000

LOAN/APPLICATION REGISTER

TRANSMITTAL SHEET

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

Reporter's Identification Number ____ Agency Code ____ Reporter's Tax Identification Number ____ Total line entries contained in attached Loan/Application Register ____

The Loan/Application Register that is attached covers activity during the year_____ and contains a total of _____ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

Name of Institution

Address

City, State, ZIP

Enter the name, telephone number, facsimile number, and e-mail address of a person who may be contacted about questions regarding your register:

Name | Telephone Number | Facsimile Number (if applicable) | e-mail address

An officer of your institution must complete the following section.

I certify to the accuracy of the data contained in this register.

Name of Officer | Signature | Date

LOAN/APPLICATION REGISTER Page___of___

Form FR HMDA-LAR

Name of Reporting Institution | City, State, ZIP | Reporter's Identification Number | Agency Code

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details.

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant						Other Data	
												Race or National Origin		Sex					
Application or Loan Number	Date Application Received (mm/dd/ccyy)	Type	Purpose	Owner Occupancy	Loan Amount in Thousands	Type	Date (mm/dd/ccyy)	Four-Digit Metropolitan Area Number	Two-Digit State Code	Three-Digit County Code	Six-Digit Census Tract	A	CA	A	CA	Gross Annual Income in thousands	Type of Purchaser of Loan	Reasons for Denial (optional)	APR	HOEPA Status
Example of Loan Originated																				
LB-687439	01/15/2000	2	1	1	65	1	02/22/2000	6840	51	059	4219.85	3,5		8	1	4	24	7		
Example of Application Denied																				
01234567890-9876543210	03/20/2000	1	1	1	125	3	04/30/2000	0450	01	015	0021.00	5,6		4	2	1	55	0	4,1,5	

LOAN/APPLICATION REGISTER CODE SHEET

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA-LAR explain the proper use of each code.

Application or Loan Information

Type:

1—Conventional (any loan other than FHA, VA, FSA, or RHS loans)
2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans Administration)
4—FSA/RHS (Farm Service Agency or Rural Housing Service)

Purpose:

1—Home purchase (one-to-four family)
2—Home improvement (one-to-four family)
3—Refinancing (one-to-four family)
4—Multifamily dwelling (home purchase, home improvement, and refinancings)
5—Home-equity line of credit (one-to-four family)
6—Manufactured home

Owner-Occupancy:

1—Owner-occupied as a principal dwelling
2—Not owner-occupied
3—Not applicable

Action Taken:

1—Loan originated
2—Application approved but not accepted
3—Application denied by financial institution
4—Application withdrawn by applicant
5—File closed for incompleteness
6—Loan purchased by your institution

Applicant Information

Race or National Origin:

1—American Indian or Alaska Native
2—Asian
3—Black or African American
4—Native Hawaiian or Other Pacific Islander
5—White
6—Hispanic or Latino
7—Information not provided by applicant in mail or telephone application
8—Not applicable

Sex:

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable

Type of Purchaser

0—Loan was not originated or was not sold in calendar year covered by register
1—FNMA (Federal National Mortgage Association)
2—GNMA (Government National Mortgage Association)
3—FHLMC (Federal Home Loan Mortgage Corporation)
4—FAMC (Federal Agricultural Mortgage Corporation)
5—Commercial bank
6—Savings bank or savings association
7—Life insurance company
8—Affiliate institution
9—Other type of purchaser

Reasons for Denial (optional)

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

HOEPA Status

0—Covered by TILA (Truth in Lending Act) but not HOEPA (Home Ownership and Equity Protection Act)
1—Covered by TILA and HOEPA
2—Not covered by TILA, or covered but no APR disclosed

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Appendix B to Part 203—Form and Instructions for Data Collection on Race or National Origin and Sex

I. Instructions on Collection of Data on Race or National Origin and Sex

[A. *Format.*]

You may list questions regarding the race or national origin and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample form below for recommended language.)

[B.] ►II.◄ *Procedures.*

[1] ►A.◄ You must ask the applicant for this information, but cannot require the applicant to provide it.

►B. You must offer the applicant the option of selecting one or more designations.◄

[2.] ►C.◄ If the applicant chooses not to provide the information for an application taken in person, note this fact on the form and note the data, to the extent possible, on the basis of visual observation or surname.

[3.] ►D.◄ Inform the applicant that the federal government is requesting his information in order to monitor compliance with federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the data on the basis of visual observation or surname.

[4.] ►E.◄ If an application is made entirely by telephone, [this information need not be requested] ►you are permitted to request this information but not required to do so◄. And the data need not be provided when an application is taken by mail, if the applicant fails to answer these questions on the application form. Whether an application was received by mail or telephone must be indicated, if it is not otherwise evident on the face of the application.

[5. The "other block is available only to the applicant who chooses to indicate some other appropriate category for race or national origin. If completing the form based on visual observation, do not use this category; use one of the other five categories.]

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SAMPLE DATA-COLLECTION FORM
INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. ► You may select one or more designations for "Race or National Origin." ◄ The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations the lender is required to note race or national origin and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

APPLICANT:

☐ I do not wish to furnish this information

Race or National Origin:

☐ American Indian, Alaska[n] Native
☐☐ Asian [, Pacific Islander]
☐☐ Black ►or African American◄
►☐◄ Native Hawaiian or Other Pacific Islander◄
☐☐ Hispanic ►or Latino◄
☐☐ White
[☐ Other (specify) _____]

Sex:

☐ Female
☐ Male

CO-APPLICANT:

☐ I do not wish to furnish this information

Race or National Origin:

☐ American Indian, Alaska[n] Native
☐☐ Asian [, Pacific Islander]
☐☐ Black ►or African American◄
►☐◄ Native Hawaiian or Other Pacific Islander◄
☐☐ Hispanic ►or Latino◄
☐☐ White
[☐ Other (specify) _____]

Sex:

☐ Female
☐ Male

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Supplement I to Part 203—Staff Commentary

Introduction

1. *Status [and citations].* The commentary in this supplement is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues formal staff interpretations of Regulation C (12 CFR part 203). [The parenthetical citations given are references to Appendix A to Regulation C, Form and Instructions for Completion of the HMDA Loan/Application Register.]

Section 203.1—Authority, Purpose, and Scope

1(c) *Scope.*

1. *General.* The comments in this section address issues affecting coverage of institutions ►and◄ exemptions from coverage [, and data-collection requirements].

2. *Meaning of refinancing.* A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term "refinancing" refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed, modified, extended, or consolidated (as in certain modification, extension, and consolidation agreements), the transaction is not a refinancing for purposes of HMDA.

3. *Refinancing—coverage.* The regulation bases coverage, in part, on whether an institution originates home purchase loans. For determining whether an institution is subject to Regulation C or is exempt from coverage, an origination of a home purchase loan includes the refinancing of a home purchase loan. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). Alternatively, an institution may—

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home purchase loan; or

ii. Assume that the new obligation is not a refinancing of a home purchase loan if either the existing obligation or the new obligation is not secured by a first lien on the dwelling.

4. *Refinancing—data collection.* The regulation requires collection and reporting of data on refinancings of home purchase and home improvement loans. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). Alternatively, an institution may—

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home purchase or home improvement loan; or

ii. Assume that the new obligation is a refinancing of a home purchase or home improvement loan only if the existing obligation was secured by a lien on a dwelling; or

iii. Assume that the new obligation is a refinancing of a home purchase or home-improvement loan only if the new obligation will be secured by a lien on a dwelling.]

[5.] ►2.◄ *The broker rule and the meaning of "broker" and "investor."* For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is acting as a "broker," and an institution that acquires a loan from a broker at or after closing is acting as an "investor." (The terms used in this commentary may have different meanings in certain parts of the mortgage lending industry, and other terms may be used in place of these terms, for example in the Federal Housing Administration mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. Thus, an institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in.

[6.] ►3.◄ *Illustrations of the broker rule.* Assume that, prior to closing, four investors receive the same application from a broker; two deny it, one approves it, and one approves it and acquires the loan. In these circumstances, the first two report denials, the third reports the transaction as approved but not accepted, and the fourth reports an origination (whether the loan closes in the name of the broker or the investor). Alternatively, assume that the broker denies a loan before sending it to an investor; in this situation, the broker reports a denial.

[7.] ►4.◄ *Broker's use of investor's underwriting criteria.* If a broker makes a credit decision based on underwriting criteria set by an investor, but without the investor's review prior to closing, the broker has made the credit decision. The broker reports as an origination a loan that it approves and closes, and reports as a denial an application that it turns down (either because the application does not meet the investor's underwriting guidelines or for some other reason). The investor reports as purchases only those loans it purchases.

[8.] ►5.◄ *Insurance and other criteria.* If an institution evaluates an application based on the criteria or actions of a third party other than an investor (such as a government or private insurer or guarantor), the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example).

[9.] ►6.◄ *Credit decision of agent is decision of principal.* If an institution approves loans through the actions of an agent, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another.

[10.] ►7.◄ *Affiliate bank underwriting (250.250 review).* If an institution makes an independent evaluation of the creditworthiness of an applicant (for example, as part of a preclosing review by an affiliate bank under 12 CFR 250.250, which interprets section 23A of the Federal Reserve Act), the institution is making a credit decision. If the institution then acquires the loan, it reports the loan as an origination whether the loan closes in the name of the institution or its affiliate. An institution that does not acquire the loan but takes another action reports that action.

[11.] ►8.◄ *Participation loan.* An institution that originates a loan and then sells partial interests to other institutions reports the loan as an origination. An institution that acquires only a partial interest in such a loan does not report the transaction even if it has participated in the underwriting and origination of the loan.

[12.] ►9.◄ *Assumptions.* An assumption occurs when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. An institution reports as a home purchase loan an assumption (or an application for an assumption) in the amount of the outstanding principal. If a transaction does not involve a written agreement between a new borrower and the institution, it is not an assumption for HMDA purposes and is not reported.

Section 203.2—Definitions

2(b) *Application.*

1. *Consistency with Regulation B.* Board interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 CFR part 202, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. *Prequalification.* A prequalification request is a request by a prospective loan applicant ►(other than a request for preapproval)◄ for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution's standards, or on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the HMDA–LAR, even though these requests may constitute applications under Regulation B.

2(c) *Branch office.*

1. *Credit union.* For purposes of Regulation C, a "branch" of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a federal or state agency. (*See* 12 U.S.C. 1752.)

2. *Depository institution.* A branch of a depository institution does not include a loan production office, the office of an affiliate, or the office of a third party such as a loan broker. (But see appendix A of this part, Paragraph ►I.C.6◄ [V.C.7], which requires certain depository institutions to report property location even for properties located outside those ►metropolitan areas◄ [MSAs] in which the institution has a home or branch office.)

3. *Nondepository institution.* A branch of a nondepository institution does not include the office of an affiliate or other third party such as a loan broker. (But [see appendix A of this part, Paragraph V.C.6, which requires] certain nondepository institutions ►must◄ [to] report property location even in ►metropolitan areas◄ [MSAs] where they do not have a physical location.)

2(d) *Dwelling.*

1. ►*Coverage*◄ [*Scope*]. The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and rental properties. A dwelling also includes [a mobile or manufactured home,] a multifamily structure (such as an apartment building) [, and a condominium or a cooperative unit. Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA].

►2. *Exclusions.* Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA. Also excluded are transitory residences—whose occupants previously occupied principal residences elsewhere and expect to do so again. Examples include hotels, hospitals, and college dormitories.◄

2(e) *Financial institution.*

►1. *General.* An institution that met the test for coverage under HMDA in year 1, and then ceases to meet the test (for example, because its assets fall below the threshold on December 31 of year 2) stops collecting HMDA data beginning with year 3. Similarly, an institution that did not meet the coverage test for a given year, and then meets the test in the succeeding year, begins collecting HMDA data for the calendar year following the year in which it meets the test for coverage. For example, a for-profit mortgage lending institution (other than a bank, savings association, or credit union) that, in year 1, falls below the thresholds specified in section 203.2(e)(2)(iii), but meets one of them in year 2 (and otherwise meets the criteria for coverage), need not collect data in year 2, but begins collecting data in year 3.

2. *Adjustment of exemption threshold for depository institutions.* Depository institutions with assets at or below $30 million are exempt from collecting data for 2000.

3. *Coverage after a merger.* Several scenarios of data-collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year.

i. Two institutions are not covered by Regulation C because of asset size. The institutions merge. No data collection is required for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.◄

►4. *Originations.* Institutions are reminded that coverage depends in part on whether they have originated home purchase loans. To determine whether their activities with respect to a particular loan constitute an origination, institutions should consult, among other parts of the staff commentary, the discussion of the broker rule under §§ 203.1(c) and 203.4(a).◄

[1.] ►5.◄ *Branches of foreign banks—treated as* [a] *bank*►*s*◄. A federal branch or a state-licensed insured branch of a foreign bank is a "bank" under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)), and is covered by HMDA if it meets the tests for a depository institution found in section[s] 203.2(e)(1) [and 203.3(a)(1)] of Regulation C.

[2.] ►6.◄ *Branches and offices of foreign banks—treated as [a] for-profit mortgage lending institution*►*s*◄. Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) are not "banks" under the Federal Deposit Insurance Act. These entities are nonetheless covered by HMDA if they meet the tests for a ►for-profit◄ nondepository mortgage lending institution found in section[s] 203.2(e)(2) [and 203.3(a)(2)] of Regulation C.

2[(f)] ►(g)◄ *Home improvement loan.*

[1. *Definition.* A home improvement loan is a loan that is made for the purpose of home improvement and that is classified by the institution as a home improvement loan.

2. *Statement of the applicant.* An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds

3. *Home-equity lines.* An institution that has chosen to report home-equity lines of credit reports as a home improvement loan only the part of a home-equity line that is intended for home improvement. An institution that reports home-equity lines reports the disposition of all applications, not just originations.

4. *Classification requirement.* An institution has "classified" a loan as a home improvement loan if it has entered the loan on its books as a home improvement loan, or has otherwise coded or identified the loan as a home improvement loan. For example, an institution that has booked a loan or reported it on a "call report" as a home improvement loan has classified it as a home improvement loan. An institution may also classify loans as home improvement loans in other ways (for example, by color-coding loan files).]

[5.] ►1.◄ *Improvements to real property.* Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping).

[6.] ►2.◄ *Commercial and other loans.* A ►home improvement◄ loan [for improvement purposes] ►may include a loan◄ originated outside an institution's [consumer] ►residential mortgage◄ lending division (such as a loan to improve an apartment building made through the commercial loan department)►.◄ [is reported if the institution classifies it as a home improvement loan.]

[7. *Multiple-purpose loan.* A loan for home improvement and for other purposes is treated as a home improvement loan even if less than 50 percent of the total loan proceeds are to be used for improvement, provided the institution classifies the loan as a home improvement loan. (But see comment (2)(f)–3 of this supplement on home-equity lines of credit.)]

[8.] ►3.◄ *Mixed-use property.* A loan to improve property used for residential and commercial purposes (for example, a building containing apartment units and retail space) [satisfies the purpose requirement] ►is a home improvement loan◄ if the loan proceeds are ►used◄ primarily to improve the residential portion of the property. If the loan proceeds are ►used◄ to improve the entire property (for example, to replace the heating system), the loan [satisfies the purpose requirement] ►is a home improvement loan◄ if the property itself is primarily residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. [To report the loan as a home improvement loan, the institution must also classify it as such.)

►4. *Multiple-category loans.* If a loan is a home improvement loan as well as a refinancing, an institution reports the loan as a home improvement loan.◄

2[(g)]►(h)◄ *Home purchase loan.*

1. *Multiple properties.* A home purchase loan includes a loan secured by one dwelling and used to purchase another dwelling.

2. *Mixed-use property.* A ►dwelling-secured◄ loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.

3. *Farm loan.* A loan to purchase property used primarily for agricultural purposes is not a home purchase loan even if the property includes a dwelling. An institution may use any reasonable standard to determine the primary use of the property, such as by reference to the exemption from Regulation X (Real Estate Settlement Procedures, 24 CFR 3500.5(b)(1)) for a loan on property of 25 acres or more. An institution may select the standard to apply on a case-by-case basis.

4. *Commercial and other loans.* A home purchase loan ►may◄ include[s] a loan

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originated outside an institution's residential mortgage lending division (such as a loan for the purchase of an apartment building made through the commercial loan department). [For home purchase loans, there is no classification test.]

5. *Construction and permanent financing.* A home purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. It does not include a construction-only loan, which is considered "temporary financing" under Regulation C and is not reported.

[6. *Home-equity line.* An institution that has chosen to report home-equity lines of credit reports as a home purchase loan only the part that is intended for home purchase. An institution may rely on the applicant's oral or written statement about the proposed use of the funds. An institution that reports home-equity lines reports the disposition of all applications, not just the originations.]

►6. *Second mortgages that finance the downpayments on first mortgages.* If an institution making a first mortgage loan to a home purchaser also makes a second mortgage loan to the same purchaser to finance part or all the home purchaser's downpayment, the institution reports each loan separately as a home purchase loan.

7. *Multiple-category loans.* If a loan is a home purchase loan as well as a home improvement loan, refinancing, or home-equity line of credit, an institution reports the loan as a home purchase loan.◄

Section 203.3—Exempt Institutions

[3(a) *Exemption based on location, asset size, or number of home purchase loans.*

1. *General.* An institution that ceases to meet the tests for HMDA coverage (such as the 10 percent test for nondepository institutions) or becomes exempt may stop collecting HMDA data beginning with the next calendar year. For example, a bank whose assets are at or below the threshold on December 31 of a given year reports data for that full calendar year, in which it was covered, but does not report data for the succeeding calendar year.

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2000, the asset-size exemption threshold is $30 million. Depository institutions with assets at or below $30 million are exempt from collecting data for 2000.

3. *Coverage after a merger.* Several scenarios of data-collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year.

i. Two institutions are exempt from Regulation C because of asset size. The institutions merge. No data collection is required for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.

4. *Mergers versus purchases in bulk.* If a covered institution acquires loans in bulk from another institution (for example, from the receiver for a failed institution) but no merger or acquisition of an institution is involved, the institution reports the loans as purchased loans.]

Section 203.4—Compilation of Loan Data

Paragraph 4(a) Data Format and Itemization.

►1. *Reporting requirements.* i. An institution reports data on covered loans that it originated and covered loans that it purchased during the calendar year described in the report. An institution reports these data even if the loans were subsequently sold by the institution.

ii. An institution reports the data for applications for covered loans that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year described in the report.

iii. In the case of brokered loan applications or applications forwarded through a correspondent, the institution reports as originations loans that it approved and subsequently acquired according to a pre-closing arrangement (whether or not they closed in the institution's name). Additionally, the institution reports the data for all applications that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would have closed in the institution's name). For all of these loans and applications, the institution reports the required data regarding the borrower's or applicant's race or national origin, sex, and income.

iv. Originations are to be reported only once. If the institution is the loan broker or correspondent, it does not report as originations loans that it forwarded to another lender for approval prior to closing, and that were approved and subsequently acquired by that lender (whether or not they closed in the institution's name).

v. An institution reports applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register.

vi. A financial institution submits all required data to its supervisory agency in one package, with the prescribed transmittal sheet. An officer of the institution certifies to the accuracy of the data.

vii. The transmittal sheet states the total number of line entries contained in the accompanying data transmission.◄

[1. *Quarterly updating.* An institution must make a good-faith effort to record all required data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in originations—fully and accurately within 30 days after the end of each calendar quarter. If some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C provided that the institution corrects and completes the information prior to reporting the HMDA–LAR to its regulatory agency.]

2. *Updating—agency requirements.* Certain state or federal regulations, such as the Federal Deposit Insurance Corporation's regulations, may require an institution to update its data more frequently than is required under Regulation C.

3. *Form of updating.* An institution may maintain the quarterly updates of the HMDA–LAR in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request.

Paragraph 4(a)(1) Application ►number and application◄ date.

1. *Application date—consistency.* In reporting the date of application, an institution reports the date the application was received or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

2. *Application date—application forwarded by a broker.* For an application forwarded by a broker, an institution reports the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks an institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction or as a new transaction. If the institution treats the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date.

►4. *Application or loan number.* An institution ensures that each reported identifying number is unique within the institution. If an institution's register contains data for branch offices, for example, the institution could use a letter or a numerical code to identify the loans or applications of different branches, or could assign a certain series of numbers to particular branches to avoid duplicate numbers. Institutions are strongly encouraged not to use the applicant's or borrower's name or social security number, for privacy reasons.

5. *Application—date of receipt.* For reporting purposes, the date a lender or broker receives an application is the date on which it or its agent first takes possession of a physical or electronic copy of the application in completed form. State law determines whether one party is the agent of another. For example, if a completed application is received by a lender on the Friday before a three-day weekend, and the lender uploads the application onto its computer system the following Tuesday, the lender should report Friday's date as the date it received the application.

6. *Application—year action taken.* An institution must report an application in the calendar year in which the institution takes final action on the application.◄

Paragraph 4(a)(2) Type and purpose.

►1. *Purpose—statement of applicant.* An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds. For example, a lender could use a check-box on a loan application to determine whether or not the applicant intends to use loan proceeds for home improvement purposes.◄

[1. *Purpose—multiple-purpose loan.* If a loan is for home improvement and another covered purpose, an institution reports the loan as a home improvement loan if the institution classifies it as a home improvement loan. Otherwise the institution reports the loan as a home purchase loan or a refinancing, as appropriate. An institution may determine how to report such loans on a case-by-case basis.]

Paragraph 4(a)(3) Occupancy.

[1. *Occupancy—actual occupancy status.* If a loan relates to multifamily property, property located outside an MSA, or property in an MSA where the institution has no home or branch office, the institution may either report the actual occupancy status or report using the code for "not applicable." (A nondepository institution may be deemed to have a home or branch office in an MSA under § 203.2(c)(2) of Regulation C.)]

[2.] ►1.◄ *Occupancy—multiple properties.* If a loan relates to multiple properties, the institution reports the owner occupancy status of the property for which property location is being reported. (See the comments to paragraph 4(a)(6), Property location.)

Paragraph 4(a)(4) Loan amount.

1. *Loan amount—counteroffer.* If an applicant accepts a counteroffer for an amount different from the amount initially requested, the institution reports the loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the loan amount initially requested.

2. *Loan amount—multiple-purpose loan.* [Except in the case of a home-equity line of credit, a]►A◄n institution reports the entire amount of the loan, even if only a part of the proceeds is intended for home purchase or home improvement.

[3. *Loan amount—home-equity line.* An institution that reports home-equity lines of credit reports only the part that is intended for home improvement or home purchase purposes. An institution may rely on the applicant's oral or written statement about the proposed use of the loan proceeds.]

[4.] ►3.◄ *Loan amount—assumption.* An institution that enters into a written agreement accepting a new party as the obligor on a loan reports the amount of the outstanding principal on the assumption as the loan amount.

Paragraph 4(a)(5) Type of action taken and date.

1. *Action taken—counteroffers.* If an institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity ►or in a different amount◄) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial ►on the original terms requested by the applicant.◄

2. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing, the institution, on a case-by-case basis, may report the transaction either as an origination or as an application that was approved but not accepted.

3. *Action taken—purchased loans.* An institution reports the loans that it purchased during the calendar year, and does not report the loans that it declined to purchase.

4. *Action taken—conditional approvals.* If an institution issues a loan approval subject to the applicant's meeting underwriting conditions [(other than customary loan-commitment or loan closing conditions, such as a clear-title requirement or an acceptable property survey)] and the applicant does not meet them, the institution reports the action taken as a denial.

5. *Action taken date—approved but not accepted.* For a loan approved by an institution but not accepted by the applicant, the institution reports using any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

6. *Action taken date—originations.* For loan originations, an institution generally reports the settlement or closing date. For loan originations that an institution acquires through a broker, the institution reports either the settlement or closing date, or the date the institution acquired the loan from the broker. If the disbursement of funds takes place on a date later than the settlement or closing date, the institution may use the date of disbursement. For a construction/permanent loan, the institution reports either the settlement or closing date, or the date the loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

►Notwithstanding this flexibility regarding the use of the closing date in connection with reporting the date action was taken, the year in which an origination goes to closing is the year in which the institution must report the origination.

7. *Action taken—pending applications.* An institution does not report any loan application still pending at the end of the calendar year; it reports that application on its register for the year in which final action is taken.◄

Paragraph 4(a)(6) Property location.

1. *Property location—multiple properties (home improvement/refinance of home improvement).* For a home improvement loan, an institution reports the property being improved. If more than one property is being improved, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA–LAR (with unique identifiers) and allocating the loan amount among the properties.

2. *Property location—multiple properties (home purchase/refinance of home purchase).* For a home purchase loan, an institution reports the property taken as security. If an institution takes more than one property as security, the institution reports the location of the property being purchased if there is just one. If the loan is to purchase multiple properties and is secured by multiple properties, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA–LAR (with unique identifiers) and allocating the loan amount among the properties.

3. *Property location—loans purchased from another institution.* The requirement to report the property location by census tract in a[n MSA] ►metropolitan area◄ where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that ►metropolitan area◄ [MSA] and did not collect the property-location information.

4. *Property location—[mobile or] manufactured home.* If information about the potential site of a [mobile or] manufactured home is not available, an institution reports using the code for "not applicable."

5. *Property location—use of BNA.* At its option, an institution may report property location by using a block numbering area (BNA). The U.S. Census Bureau, in conjunction with state agencies, has established BNAs as statistical subdivisions of counties in which census tracts have not been established. BNAs are generally identified in census data by numbers in the range 9501 to 9989.99.

Paragraph 4(a)(7) Applicant and income data.

1. *Applicant data—completion by applicant.* An institution reports the monitoring information as provided by the applicant. For example, if an applicant checks the ►"Asian"◄ ["other"] box the institution reports using the ►"Asian"◄ ["other"] code.

2. *Applicant data—completion by lender.* If an applicant fails to provide the requested information for an application taken in person, the institution reports the data on the basis of visual observation or surname. [As stated in paragraph I.B.5 to Appendix B of this part, the institution does not use the "other" code, but selects from the categories listed on the form.]

3. *Applicant data—application completed in person.* When an applicant meets in

person with a lender to complete an application that was begun by mail or telephone, the institution must request the monitoring information. If the meeting occurs after the application process is complete, for example, at closing, the institution is not required to obtain monitoring information.

4. *Applicant data—joint applicant.* A joint applicant may enter the government-monitoring information on behalf of an absent joint applicant. If the information is not provided, the institution reports using the code for "information not provided by applicant in mail or telephone application."

5. *Applicant data—video and other electronic-application processes.* An institution that accepts applications through electronic media with a video component treats the applications as taken in person and collects the information about the race or national origin and sex of applicants. An institution that accepts applications through electronic media without a video component (for example, the Internet or facsimile) treats the applications as accepted by mail. [(See Appendix B of this part for procedures to be used for data collection.)]

6. *Income data—income relied on.* An institution reports the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes this income to the extent relied upon. But an institution does not include the income of a guarantor who is only secondarily liable.

7. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in computing ratios and in evaluating creditworthiness, the institution reports only the income relied on.

8. *Income data—loan to employee.* An institution may report "NA" in the income field for loans to employees to protect their privacy, even though the institution relied on their income in making its credit decisions.

Paragraph 4(a)(8) Purchaser.

1. *Type of purchaser—loan-participation interests sold to more than one entity.* An institution that originates a loan, and then sells it to more than one entity, reports the "type of purchaser" based on the entity purchasing the greatest interest, if any. If an institution retains a majority interest, it does not report the sale.

►2. *Type of purchaser—swapped loans.* Loans "swapped" for mortgage-backed securities are to be treated as sales; the purchaser is the type of entity receiving the loans that are swapped.◄

4(c) Optional data.

1. *Agency requirements.* Certain state or federal entities, such as the Office of Thrift Supervision, require institutions to report the reasons for denial even though this is optional reporting under HMDA and Regulation C.

4(d) Excluded data.

[1. *Loan pool.* The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or "REMIC") is a purchase of an interest in a security under HMDA and is not reported on the HMDA–LAR.]

►1. *Mergers, purchases in bulk, and branch acquisitions.* If a covered institution acquires loans in bulk from another institution (for example, from the receiver for a failed institution) but no merger or acquisition of the institution, or acquisition of a branch, is involved, the institution reports the loans as purchased loans.◄ Section 203.5'Disclosure and Reporting

5(a) Reporting to agency.

►1. *Submission of data.* Institutions submit data to their supervisory agencies in an automated, machine-readable form. The format conforms to that of the HMDA–LAR. An institution should contact its federal supervisory agency for information regarding procedures and technical specifications for automated data submission; in some cases, agencies also make software for automated data submission available to institutions. The data are edited before submission, using the edits included in the agency-supplied software or equivalent edits in software available from vendors or developed in-house. (Institutions that report twenty-five or fewer entries on their HMDA–LAR may collect and report the data in paper form. An institution that submits its register in nonautomated form sends two copies that are typed or computer printed and must use the format of the HMDA–LAR (but need not use the form itself). Each page is numbered, and the total number of pages are given (for example, "Page 1 of 3").

2. *Procedures for entering data.* The required data are entered in the register for each loan origination, each application acted on, and each loan purchased during the calendar year. The institution should decide on the procedure it wants to follow—for example, whether to begin entering the required data, when an application is received, or to wait until final action is taken (such as when a loan goes to closing or an application is denied).

3. *Options for collection.* An institution may collect data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). Entries need not be grouped on the register by metropolitan area, or chronologically, or by census tract numbers, or in any other particular order.◄

[1.] ►4.◄ *Change in supervisory agency.* If the supervisory agency for a covered institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must report data to its new supervisory agency for the year of the change and subsequent years.

[2] ►5.◄ *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution.

►6. *Transmittal sheet—additional data submissions.* Each additional data submission that becomes necessary (for example, because the institution discovers that data were omitted from the initial submission, or because revisions are called for) must be accompanied by a separate transmittal sheet.

7. *Transmittal sheet—revisions or deletions.* If a data submission involves revisions or deletions of previously submitted data, state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository institutions must provide a list of the metropolitan areas in which they have home or branch offices.

5(b) Public disclosure of statement.

1. *Business day.* For purposes of § 203.5, a business day is any calendar day other than a Saturday, Sunday, or legal public holiday.

2. *Format.* An institution may make the disclosure statement available in paper form or, if the person requesting the data agrees, in automated form (such as by PC diskette or computer tape).

5(c) Public disclosure of loan/application register.

1. *Format.* An institution may make the modified register available in paper or automated form (such as by PC diskette or computer tape). Although institutions are not required to make the modified register available in census tract order, they are strongly encouraged to do so in order to enhance its utility to users.◄

5(e) Notice of availability.

1. *Poster—suggested text.* [The suggested wording of the poster text provided in Appendix A of this part is optional. An institution may use other text that meets the requirements of the regulation.] ►An institution may use any text that meets the requirements of the regulation. Some of the federal financial regulatory agencies and HUD provide HMDA posters that an institution can use to inform the public of the availability of its HMDA data, or the institution may create its own posters. If an institution prints its own, the following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; race, gender, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office regarding the locations where HMDA data may be inspected.

2. *Additional language for institutions making the disclosure statement available on request.* An institution that posts a notice informing the public of the address to which a request should be sent could include the following sentence, for example, in its general notice: "To receive a copy of these data send a written request to [address]."◄

Section 203.6—Enforcement

6(b) Bona fide errors.

1. *Bona fide error—information from third parties.* An institution that obtains the property-location information for applications and loans from third parties (such as appraisers or vendors of "geocoding" services) is responsible for ensuring that the information reported on its HMDA–LAR is correct. [An incorrect entry for a census tract number is a bona fide error, and is not a violation of the act or regulation, provided that the institution maintains reasonable procedures to avoid such errors (for example, by conducting periodic checks of the information obtained from these third parties).]

By order of the Board of Governors of the Federal Reserve System, December 8, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–31796 Filed 12–14–00; 8:45 am]

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Part IV

Department of the Interior

25 CFR Part 1000
Office of the Assistant Secretary—Indian Affairs; Tribal Self-Governance; Final Rule

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DEPARTMENT OF THE INTERIOR

25 CFR Part 1000

RIN 1076–AD21

Office of the Assistant Secretary—Indian Affairs; Tribal Self-Governance

AGENCY: Office of the Assistant Secretary—Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This is a rule to implement Tribal Self-Governance, as authorized by Title IV of the Indian Self-Determination and Education Assistance Act. This rule has been negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the U.S. Department of the Interior. The intended effect is to transfer to participating Tribes control of, funding for, and decision making concerning certain Federal programs.

EFFECTIVE DATE: January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Questions concerning this rule should be directed to: William Sinclair, Director, Office of Self-Governance, MS–2548 MIB, 1849 C Street NW, Washington, DC, 20240; telephone: 202–219–0240; electronic mail: William_Sinclair@IOS.DOI.GOV

SUPPLEMENTARY INFORMATION: These regulations are to implement Title II of Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994. This Act established the Tribal Self-Governance program on a permanent basis and was added as Title IV (Tribal Self Governance Act of 1994) of the Indian Self-Determination and Education Assistance Act of 1975 (the ISDEA) (Pub. L. 93–638). Title I of Pub. L. 103–413 consisted of amendments to the self-determination contracting provision of the ISDEA and regulations for Title I of Pub. L. 103–413 have already been promulgated. When Pub. L. 93–638 is mentioned in these regulations, it generally refers to what are now Sections 109 and Title I of the ISDEA, as amended.

The ISDEA has been amended by Congress by the following:

Pub. L. 98–250 Technical Amendments to Indian Self-Determination and Education Assistance Acts, April 3, 1984;

Pub. L. 100–202 Continuing Appropriations, Fiscal year 1988, December 22, 1987;

Pub. L. 100–446 Department of the Interior and Related Agencies Appropriations Act, 1989, September 27, 1988;

Pub. L. 100–472 Indian Self-Determination And Education Assistance Act Amendments of 1988, October 5, 1988;

Pub. L. 100–581 Review of Tribal Constitutions and Bylaws, November 1, 1988;

Pub. L. 101–301 Indian Law: Miscellaneous Amendments, May 24, 1990;

Pub. L. 101–512 Department of the Interior and Related Agencies Appropriations Act, 1991, November 5, 1990;

Pub. L. 101–644 Indian Arts and Crafts Act of 1990, November 29, 1990;

Pub. L. 102–184 Tribal Self-Governance Demonstration Project Act, December 4, 1991;

Pub. L. 103–413 Indian Self-Determination Act Amendments of 1994, October 25, 1994;

Pub. L. 103–435 Indian Technical Corrections, November 2, 1994;

Pub. L. 104–109 Technical Corrections to Law Relating to Native Americans, February 12, 1996;

Pub. L. 104–208 Omnibus Appropriations Act, September 30, 1996.

Since most of the legal citations are to Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994, the following table may be used to find pertinent parts of this act in 25 U.S.C.:

Section of Pub. L. 103–413	25 U.S.C. part
Sections 202, 203 and 401.	25 U.S.C. 458aa
Section 402	25 U.S.C. 458bb
Section 403	25 U.S.C. 458cc
Section 404	25 U.S.C. 458dd
Section 405	25 U.S.C. 458ee
Section 406	25 U.S.C. 458ff
Section 407	25 U.S.C. 458gg
Section 408	25 U.S.C. 458hh

The following table may be used to find the pertinent parts of Pub. L. 93–638, the ISDEA:

Section of Pub. L. 93–638	25 U.S.C. part
Section 3	25 U.S.C. 450a
Section 4	25 U.S.C. 450b
Section 5	25 U.S.C. 450c
Section 6	25 U.S.C. 450d
Section 9	25 U.S.C. 450e–1
Section 102	25 U.S.C. 450f
Section 103	25 U.S.C. 450h
Section 104	25 U.S.C. 450i
Section 105	25 U.S.C. 450j
Section 106	25 U.S.C. 450j–1
Section 107	25 U.S.C. 450k
Section 108	25 U.S.C. 450l
Section 109	25 U.S.C. 450m
Section 110	25 U.S.C. 450m–1
Section 111	25 U.S.C. 450n

The Indian Self-Determination Act Amendments of 1988 (Pub. L. 100–472), authorized the Tribal Self-Governance Demonstration Project for a 5-year period and directed the Secretary to select up to 20 Tribes to participate. The purpose of the demonstration project was to transfer to participating Tribes the control of, funding for, and decision making concerning certain Federal programs, services, functions and activities or portions thereof. In 1991, there were 7 annual funding agreements under the project, and this expanded to 17 in 1992. In 1991, the demonstration project was extended for an additional 3 years and the number of Tribes authorized to participate was increased to 30 (Pub. L. 102–184). The number of self-governance agreements increased to 19 in 1993 and 28 in 1994. The 28 agreements in 1994 represented participation in self-governance by 95 Tribes authorized to participate.

After finding that the Demonstration Project had successfully furthered Tribal self-determination and self-governance, Congress enacted the "Tribal Self-Governance Act of 1994", Public Law 103–413 that was signed by the President on October 25, 1994. The Tribal Self-Governance Act of 1994 made the Demonstration Project a permanent program and authorized the continuing participation of those Tribes already in the program.

A key feature of the 1994 Act included the authorization of up to 20 Tribes per year in the program, based on their successfully completing a planning phase, being duly authorized by the Tribal government body and demonstrating financial stability and management capability. The Act was amended by Public Law 104–208 on September 30, 1996, to allow up to 50 Tribes annually to be selected from the applicant pool. In 1996, the Act was also amended by Public Law 104–109, "An Act to make certain technical corrections and law related to Native Americans". Section 403 was amended to state:

(1) INCORPORATE SELF-DETERMINATION PROVISIONS.—At the option of a participating Tribe or Tribes, any or all provisions of title I of this Act shall be made part of an agreement entered into under title III of this Act or this title. The Secretary is obligated to include such provisions at the option of the participating Tribe or Tribes. If such provision is incorporated, it shall have the same force and effect as if set out in full in title III or this title.

The number of annual funding agreements grew by one to 29 in 1995 and grew to 53 and 60 agreements in 1996 and 1997, respectively, to include 180 and 202 Tribes. Self-Governance has continued to grow. In 1999, there were 67 annual funding agreements with BIA covering 209 Federally recognized Tribes. Also in 1999, there were three annual funding agreements between Self-Governance Tribes and non-BIA bureaus.

The Tribal Self-Governance Act of 1994, as amended, authorizes the following: (1) The Director of the Office of Self-Governance may select up to 50 Tribes annually from the applicant pool to participate in Tribal Self-Governance. (2) To be a member of the applicant pool each Tribe must have: (a) Successfully completed a planning phase that includes budgetary research and internal Tribal government planning and organizational preparation; (b) have requested to participate in Self-Governance by resolution; and (c) have demonstrated financial stability and financial management capability for the previous 3 years as evidenced by the Tribe having no material audit exceptions in their required annual audits of Self-Determination contracts. (3) The Secretary is to negotiate and enter into annual written funding agreements with the governing body of each participating Tribe that will allow that Tribe to plan, conduct, consolidate and administer programs that were administered by the Bureau of Indian Affairs (BIA) without regard to agency or office within which such programs were administered. Subject to such terms of the agreement, the Tribes are also authorized to redesign or consolidate programs and reallocate funds. (4) The Secretary is to negotiate annual funding agreements with Tribes for programs administered by the Department other than through BIA that are otherwise available to Indian Tribes. Annual funding agreements may also include programs from non-BIA bureaus that have a special geographic, historic or cultural significance to the participating Tribe. (5) Tribes may retrocede all or a portion of the programs. (6) For construction projects, the parties may negotiate specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations for inclusion in annual funding agreements. If not included, then such provisions do not apply. (7) Not later than 90 days before the effective date of the agreements, the agreements are to be sent to the Congress and to potentially affected Tribes. (8) Funding agreements shall provide for advance payments to the Tribes of amounts equal to what the Tribe would be eligible to receive under contracts and grants under this Act. This is to include direct program and contract support costs in addition to any funds that are specifically or functionally related to the provision of benefits and services by the Secretary to the Tribe or its members without regard to the organizational level within the Department where such functions are provided. (9) Except as otherwise provided by law, the Secretary shall interpret laws and regulations in a manner that will facilitate the inclusion of programs and the implementation of the agreements. (10) The Secretary has 60 days from the receipt of a Tribal request for a waiver of Departmental regulations in which to approve or deny such a request; denial can only be based upon a finding that such a waiver is prohibited by Federal law. (11) An annual report is to be submitted to the Congress regarding, among other things, the identification of the costs and benefits of Self-Governance and the independent views of the participating Tribes. The Secretary is to publish in the **Federal Register**, after consultation with the Tribes, a list of, and programmatic targets for, non-BIA programs eligible for inclusion in annual funding agreements. (12) Nothing in the Act shall be construed to limit or reduce in any way the services, contracts or funds that any other Indian Tribes or Tribal organizations are eligible to receive under any applicable Federal law or diminish the Secretary's trust responsibility to Indian Tribes, individual Indian or Indians with trust allotments.

The Act also authorized the formation of a negotiated rulemaking committee if so requested by a majority of the Indian Tribes with Self-Governance agreements. Such a request was made to the Department of the Interior and a rule making committee was formed. Under section 407 of the Act, membership was restricted to Federal and Tribal government representatives, with a majority of the Tribal members representing Tribes with agreements under the Act. Eleven Tribal representatives joined the Committee. Seven Tribal representatives were from Tribes with Self-Governance agreements and four were from Tribes that were not in the Self-Governance Program. Formation of the Rulemaking Committee was announced in the **Federal Register** on February 15, 1995.

The first meeting of the Joint Tribal/Federal Self-Governance Negotiated Rule Making Committee was held in Washington, DC on May 18,1995 prior to publication of the proposed rule, a total of 12 meetings of the full Committee were held in different locations throughout the country. Subsequently, several meetings were held to review public comments and to negotiate changes in the final rule. The last meeting was held in Washington, DC in March 1999. There were numerous workgroup meetings and teleconferences during this period that were used to develop draft material and exchange information in support of the full Committee meetings. At the first meeting of the Committee, protocols were developed. The main provisions of the protocols were: (1) The Committee meetings were open, and minutes kept. The Federal Advisory Committee Act did not apply under the Unfunded Mandates Reform Act of 1995. (2) A quorum consisted of 8 members, including 7 Tribal members and 1 Federal member. The Tribal and Federal representatives each selected co-chairs for the Committee and an alternate. (3) The Committee operated by consensus of the Federal and Tribal members and formed 5 working groups to address specific issues and make recommendations to the Committee. (4) The intended product of the negotiations is proposed regulations developed by the Committee on behalf of the Secretary and Tribal representatives. The Secretary agreed to use the preliminary report and the recommendations on the final regulations, developed by the Committee, as the basis for the Notice of Proposed Rulemaking. (5) The Committee has reviewed all comments received from the notice of the Proposed Rule making and has submitted a final report with recommendations to the Secretary for promulgation of a final rule. (6) The Federal Mediation and Conciliation Services was used to facilitate meetings.

The proposed regulation was published in the **Federal Register** on February 12, 1998 with a 90-day public comment period. Topics on which the Negotiating Committee had not reached agreement were identified in a preamble section titled, "Key Areas of Disagreement." The **Federal Register** notice specifically invited comments on these areas. Fifty-four comments were received from a wide variety of Tribal groups and individual Tribes, Federal entities, and other groups and individuals. Many comments presented positions on the areas of disagreement. Subpart S, which pertained to Property Donation in the preamble of the proposed rule, pertains to Conflicts of Interest in the final rule. Property Donation is now in subpart Q of the final rule.

To facilitate comparison from the Proposed Rule to the Final Rule, the following table is reflective of the section numbers from proposed to final. Sections 1000.1–1000.73 maintain the

same section numbers from proposed to final rule.

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.78	.80	.111	.121	.160	.170	.201	.221	.266	.307	.318	.359
.79	.81	.112	.122	.161	.171	.202	.222	.267	.308	.319	.360
.80	.82	.113	.125	.162	.172	.203	.223	.268	.309	.320	.361
.81	.83	.114	.126	.165	.173	.204	.224	.269	.310	.321	.362
.82	.84	.115	.128	.166	.173	.205	.225	.270	.311	.322	.363
.83	.85	.116	.129	.167	.173	.206	.226	.271	.312	.323	.364
.84	.86	.117	.130	.168	.174	.207	.227	.272	.313	.324	.365
.85	.87	.118	.131	.169	.175	.208	.228	.273	.314	.325	.366
.86	.88	.119	.132	.170	.176	.209	.229	.274	.315	.326	.367
.87	.89	.120	.133	.171	.177	.210	.230	.275	.316	.339	.380
.88	.91	.121	.134	.172	.178	.211	.231	.276	.317	.340	.381
.89	.92	.122	.135	.173	.179	.212	.232	.277	.318	.341	.382
.90	.93	.123	.136	.174	.180	.220	.240	.289	.330	.352	.390
.91	.94	.124	.137	.175	.181	.221	.241	.290	.331	.353	.391
.92	.95	.125	.138	.176	.182	.222	.242	.291	.332	.354	.392
.93	.96	.126	.139	.180	.190	.223	.243	.292	.333	.355	.393
.94	.97	.127	.140	.181	.191	.224	.245	.293	.334	.356	deleted
.95	.98	.128	.141	.182	.192	.225	.246	.294	.335	.357	.394
.96	.99	.129	.142	.183	.193	.226	.247	.295	.336	.358	.395
.97	.100	.130	.143	.184	.194	.227	.248	.296	.337	.359	.396
.98	.101	.150	.160	.185	.195	.228	.249	.297	.338	.360	.400
.99	.102	.151	.161	.186	.196	.229	.250	.298	.339	.361	.401
.100	.103	.152	.162	.187	.197	.230	.251	.310	.350	.362	.402
.101	.104	.153	.163	.188	.198	.259	.300	.311	.351	.363	.403
.102	.105	.154	.164	.190	.210	.260	.301	.312	.352	.364	.404
.103	.106	.155	.165	.191	.211	.261	.302	.313	.353	.365	.405
.104	.107	.156	.166	.192	.212	.262	.303	.314	.354	.366	.406
.105	.108	.157	.167	.193	.213	.263	.304	.315	.355	.367	.407
.106	.109	.158	.168	.194	.214	.264	.305	.316	.356		
.110	.120	.159	.169	.200	.220	.265	.306	.317	.358		

Summary of Regulations and Comments Received

The narrative and discussion of comments below is keyed to specific subparts of the rule. Matters addressed under the heading "Key Areas of Disagreement" in the Notice of Proposed Rulemaking are discussed under the appropriate subpart.

Subpart A—General Provisions

Summary of Subpart

This Subpart provides interpretation of the language used throughout the Self-Governance Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. 450. Subpart A also addresses the purpose and scope of the regulation and describes Congressional perspectives on the Tribal Self-Governance Act of 1994.

Comments

Several comments requested that the use of the word "Act" be clarified. The "Act" was then determined to mean the Tribal Self-Governance Act, Title IV of the Indian Self-Determination and Education Assistance Act of 1975.

A suggestion that the definition of construction management services be deleted from Section 1000.2 was accepted.

One comment suggested that a regulation be developed that would address tribal involvement in the budgets of non-BIA bureaus. This suggestion was not accepted. For budget consultation purposes, non-BIA bureaus can participate in the Self-Governance conferences, BIA budget consultations and their own consultations as a result of specific Self-Governance tribal requests. In addition, § 1000.4(c)(7) addresses communication with Tribal governments regarding budgetary matters.

There were many comments concerning the definition of inherently Federal functions. While there is no definition of inherently Federal functions contained in this rule, the Committee agreed that:

Sections 1000.91 through 1000.109 contain detailed provisions explaining what funds are available for inclusion in a BIA AFA. Sections 1000.94 and 1000.97 define "residual funds" and "Tribal shares", respectively. In defining what is a residual, a critical step is to determine what functions are inherently Federal. The regulations do not define the term "inherently Federal" function. The Department will decide what functions are residual or inherently Federal on a case by case basis after consultation with the Office of the Solicitor. For current guidance on inherently Federal functions (IFF) determinations, please see Solicitor's memorandum dated May 17, 1997. The Memorandum is available on the Office of Self-Governance's Internet web page or can be requested directly from the Office of Self-Governance. Determination that functions are inherently Federal shall be applied consistently in Central Office and all regional offices to all Tribes in a consistent and uniform manner. The Department shall provide information on why specific functions have been determined inherently Federal to Tribes in accordance with § 1000.95.

Several comments suggested that the definition of Tribal shares should reference the statute. This suggestion was accepted and the definition of Tribal shares was also changed to be identical with the definition of Tribal shares in § 1000.97.

Several comments noted that the definition of BIA and non-BIA programs does not mention program jointly administered with other Federal agencies. The definitions were not changed to accommodate this suggestion because the Committee believed that the issue has been addressed in § 1000.93. Several other comments suggested that annual

funding agreement for BIA and non-BIA programs be included in this definition section. This suggestion was not included and the definitions of annual funding agreement for BIA and non-BIA programs are covered in §§ 1000.81 and 1000.121 respectively.

Several comments recommended that a definition of a self-determination contract should be included in the definition section and be broad enough to have contracts also include as part of the definition the subcontracts between Tribal members and their Consortium for the operation of Federal programs. The suggestion to define self-determination contracts was not accepted because it is defined in Pub.L. 93–638. Further, the Act states that to be eligible for Self-Governance, a Tribe, among other things, must have "no material audit exception in the required annual audit of the self-determination contracts of the Tribes" [Title I sec. 402(c)]. Subcontracts between member Tribes and their Consortium are not considered to be the same as self-determination contracts.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Summary of Subpart

This subpart describes the eligibility and selection process that the Secretary uses to decide which Indian Tribes may participate in Tribal self-governance as authorized by section 402 of the Tribal Self Governance Act of 1994. Subpart B also describes when a Tribe withdraws from an AFA. It also specifies the documents that Tribes must submit for admission into the applicant pool and describes what a Tribe must do during the planning phase. The subpart explains what a "material audit exception" is and what the consequences are of having a "material audit exception". This subpart also summarizes what happens if a Tribe wishes to withdraw from a Consortium's annual funding agreement and how disputes between the Consortium and withdrawing Tribe are handled.

Comments

A comment suggested that although the Act does not employ standard accounting terms, it seems that the intent of the law is that applicants must have three successive audits that do not disclose any material weakness; consequently the comment recommended that 1000.21 be changed to reflect that a material audit exception is one where there is an identified material weakness or finding of substantial financial mismanagement. This suggestion was accepted. Another comment recommend that the level of questioned and subsequently disallowed costs should be changed from 5 percent of the total expenditures to a dollar threshold of anything in excess of $10,000. This recommendation was accepted because the percentage threshold could conceivably allow Tribes to enter Self-Governance that had financially mismanaged several millions of dollars given that some Tribes have total expenditures that exceed $100 million. Further, Office of Management and Budget (OMB) Circular A–133, which has been adopted as a common rule by the Department of the Interior requires auditors to report questioned costs that are greater than $10,000.

A comment recommended that participating Tribes that are members of a Consortium and are recipients of contracts with the Consortium for the delivery of programs covered by the annual funding agreement should be considered as eligible for entrance into Self-Governance once they have had three years of subcontracting experience free of material audit exceptions as defined in § 1000.21. This suggestion was not accepted because the Act states that to be eligible a Tribe, among other things, must have "* * * no material audit exceptions in the required annual audit of the self-determination contracts of the Tribes" (Title IV sec. 402(c)(2)). Subcontracts between member Tribes and their Consortium are not considered to be the same as self-determination contracts.

Several comments addressed the concern about what happens to funding and project delivery schedules for Indian Reservation Road projects if a member Tribe withdraws from a Consortium. It is anticipated that this issue will be a subject of the separate Tribal-Federal negotiated rulemaking process established under Transportation Equity Act for the 21st Century (TEA–21) (23 U.S.C. 202(d)(2)(C)), Pub. L. 105–178, and therefore was not addressed in this regulation.

Another comment said that § 1000.33(b) implies that a Tribe may withdraw from a Consortium within the middle of the year and suggested deleting reference to the 90-day Congressional review period. However, § 1000.32(c) indicates that the effective date of any withdrawal is the date on which the current funding agreement expires unless there is mutual agreement between the Tribe, Consortium, OSG and the appropriate bureau, in which case any and all issues would have to be resolved at that time. This suggestion was not accepted.

A comment identified a confusion in § 1000.34(b)(1) with the words "within 10 days" because it was unclear as to the reference point. Those words have been replaced with "at least 5 days before the 90-day Congressional review". Another comment suggested that the chart in § 1000.34 be modified to identify who the non-BIA official is who is receiving the decision from the non-BIA bureau head. This was accepted and the chart modified. The comment further asserts that the Office of Indian Education Programs (OIEP) is not properly identified. The chart was modified to specifically identify OIEP.

Subpart C—Section 402(d) Planning and Negotiation Grants

Summary of Subpart

Subpart C describes the criteria and procedures for awarding various self-governance negotiation and planning grants. These grants are discretionary and will be awarded by the Director of the Office of Self-Governance (OSG). The award amount and number of grants depends upon Congressional appropriation. If funding in any year is insufficient to meet total requests for grants and financial assistance, priority will be given first to negotiation grants and second to planning grants.

Negotiation grants are non-competitive. In order to receive a negotiation grant, a Tribe/Consortium must first be selected from the applicant pool and then submit a letter affirming its readiness to negotiate and requesting a negotiation grant. This subpart also indicates that Tribe/Consortium may also elect to negotiate for a self-governance agreement if selected from the applicant pool without applying for or receiving a negotiation grant. Planning grants will be awarded to Tribes/Consortia requesting financial assistance in order to complete the planning phase requirement for admission into the applicant pool.

Comments

A few comments requested that language be added to subpart C that indicate a commitment by the Department to provide funds annually for planning and negotiation grants as well as short fall funds to assist in implementing the Act. The Committee agreed that the Department cannot commit funding that is not appropriated. Another comment indicated that the language at § 1000.50(b), concerning material audit exceptions, was confusing and the Committee agreed to change the language from "be identified as eligible" to "be qualified as eligible."

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Subpart D—Other Financial Assistance for Planning and Negotiating Grants for Non-BIA Programs

Summary of Subpart

This subpart describes the financial assistance for planning and negotiating non-BIA programs available to any Tribe/Consortium that:

(a) Has an existing AFA;

(b) Is in the applicant pool; or

(c) Has been selected from the applicant pool.

Tribes/Consortia may submit only one application per year for a grant under this subpart. This financial assistance will support information gathering, analysis, and planning activities that may involve consulting with appropriate non-BIA bureaus, and negotiation activities. The subpart also describes the selection criteria, scoring, and notification process that Office of Self Governance will use to award planning and negotiation grants for a non-BIA program. The decision of the Director of OSG to not award a planning or negotiation grant for a non-BIA program is final for the Department.

Comments

A comment asked that the Director of the Office of Self Governance establish selection criteria and a review committee to select grants. Selection criteria are established at § 1000.70. The Committee believes that a review committee is an unnecessary and burdensome requirement. Several comments indicated that Tribe should have a right to appeal the decision of the Director of OSG to not award a planning or negotiation grant for a non-BIA program. Subpart D does not provide for an appeals process because the decision to award a grant will be made using selection criteria with associated points established by this rule. Those criteria and the point system were agreed to by the Committee. A comment indicated that the Director of OSG should seek and consider the comments on grant applications by the affected non-BIA bureau. The Committee found that this was not a regulatory matter.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

Summary of Subpart

This subpart describes the components of an Annual Funding Agreement (AFA) for BIA programs. An AFA is a legally binding and mutually enforceable written agreement between a self-governance Tribe/Consortium and BIA. It specifies the programs that are to be performed by BIA as inherently Federal functions identified as residuals, programs transferred to the Tribe/Consortium, and programs retained by BIA to be carried out for the self-governance Tribe. The division of the responsibilities between the Tribe/Consortium and BIA is to be clearly stated in the AFA.

Subpart E states that a Tribe/Consortium may include BIA-administered programs in its AFA regardless of BIA agency or office that performs the program. The Secretary must provide to the Tribe/Consortium:

(a) Funds equal to what the Tribe/Consortium would have received under contracts and grants under Title I of Pub. L. 93–638 (25 U.S.C. 450);

(b) Any funds specifically or functionally related to providing services to the Tribe/Consortium by the Secretary; and

(c) Any funds that are otherwise available to Indian Tribes for which appropriations are made to other agencies other than the Department of the Interior and are administered by the Department of the Interior.

Except for construction or when a waiver of regulations is involved, a Tribe/Consortium may redesign a program without approval from BIA except when the redesign first requires a waiver of a Departmental regulation. Redesign does not entitle Tribes/Consortia to an increase in the negotiated funding amount.

In determining the funding amount to be included in an AFA, this subpart defines residual funds as those funds needed to carry out BIA residual functions should all Tribes assume programmatic responsibility. The residual level will be determined through a process that is consistent with the overall process used by BIA.

The subpart defines Tribal shares as the amount determined for that Tribe/Consortium from a particular program. Tribal share amounts may be determined by either:

(a) A formula that has a reasonable basis in the function or service performed by BIA office and is consistently applied to all Tribes served by the regional and agency offices; or

(b) On a Tribe-by-Tribe basis, such as awarded competitive grants or special project funding.

Funding amounts may be adjusted while the AFA is in effect in order to adjust for certain Congressional actions, correct a mistake, or if there is mutual agreement. During the year, a Tribe/Consortium may reallocate funds between programs, except construction programs (see §§ 1000.254 and 255 in Subpart K of this part), without Secretarial approval.

This subpart also defines base budgets as the amount of recurring funding identified in the annual budget of the President as adjusted by Congressional action. Base budgets are derived from:

(a) A Tribe/Consortium's Pub. L. 93–638 contract amounts;

(b) Negotiated amounts of agency, regional, and central office funding;

(c) Other recurring funding;

(d) Special projects, if applicable;

(e) Programmatic shortfall; and

(f) Any other general increases/decreases to Tribal priority allocations that might include pay, retirement, or other inflationary cost adjustments.

Base budgets do not include any non-recurring program funds, Congressional earmarks, or other funds specifically excluded by Congress or other recurring programs that are currently in Tribal priority applications (TPA) such as general assistance, housing improvement program (HIP), road maintenance and contract support.

Once base budgets are established, a Tribe/Consortium need not renegotiate these amounts unless it wants to. If the Tribe/Consortium wishes to renegotiate, it also would be required to renegotiate all funding included in the AFA on the same basis as all other Tribes.

Comments

Several comments indicated § 1000.82 implies that residuals are limited to inherently Federal functions. However, § 1000.94 makes it clear that BIA residual funds are those funds that are necessary to carry out BIA residual activities and that these residual activities are those that can only be performed by BIA employees and may include some functions that are not "inherently Federal." Further, the Secretary must take into consideration the other statutory mandates, such as Section 406(a), in determining residuals.

Several comments recommended that the term "annual funding agreement" be changed to "funding agreement" throughout the regulation contending that these two terms are used interchangeably throughout the Act. This would also be consistent with § 1000.85 that allows Tribes/Consortia to negotiate an AFA with a term that exceeds one year in accordance with Section 105(c)(1) of Title I of Pub. L. 93–638 and subject to the availability of Congressional appropriations. The decision was made to retain the term "annual funding agreement" in these regulations because the Act is clear that the Secretary is authorized to negotiate "annual funding agreements". Even though § 1000.85 allows Tribes to negotiate an AFA that exceeds one year, this only applies to BIA programs, services, functions or activities. Moreover, most appropriations for non-BIA bureaus are annual in nature and do not permit multi-year terms in advance of appropriations.

Several comments expressed concerns about the effect of the proposed regulations on the Indian Reservation Road (IRR) program that is jointly administered by the Departments of Transportation and Interior. Following the publication of the proposed rule on February 12, 1998, the Transportation Equity Act for the 21st Century was enacted on June 9, 1998. This Act, known as TEA–21, made a number of changes to the Federal lands highway program, that includes IRR activities. Some of the comments received regarding the IRR program will be the subject of the separate Tribal-Federal negotiated rulemaking process established under TEA–21 (23 U.S.C. sec. 202(d)(2)(C)).

TEA–21 specifically makes funds for Indian roads and bridges available to Indian Tribes for Title I contracts and Title IV agreements in accordance with the Indian Self-Determination and Education Assistance Act of 1975, as amended. The pertinent provision reads as follows:

(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual or policy directive, all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions and activities or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian Tribes shall be made available upon request of the Indian Tribal government, to the Indian Tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

Pub. L. 105–178, sec. 1115(b)(4)(3)(A)

Accordingly, the Committee believes that the TEA–21 statute and these final regulations provide the mechanism for including IRR programs, functions, services and activities or portions thereof in Self-Governance agreements subject to § 1000.93 that defers to the requirements of funding agencies other than the Department of the Interior.

Several comments recommended that the regulations be specific that inherently Federal functions can not be transferred and be more specific about what can be included in an AFA. The Committee believes that what can be included in an AFA is adequately covered in § 1000.86. Further, § 1000.94 discusses residual and § 1000.95 discusses how residual information is determined. Several comments recommended that inherently Federal functions should be defined and included in the definition part of the regulation. The Solicitor has ruled that inherently Federal functions cannot be defined and must be determined on a case-by-case basis; consequently, this suggestion was not accepted.

In § 1000.92, the words "associated with programs" were added to the answer, following the word "funds", for clarity.

Sections 1000.91 and 1000.97 deal with negotiated and Tribal share amounts of central office operations. Many comments were received supporting the retention of central office shares in these sections, even though there has been a prohibition in the Department of the Interior and Related Agencies Appropriations Acts for the past three years. Several comments argued that Title IV of Pub. L. 93–638 is clear that Tribes have a right to negotiated shares of the central office and that the legislative prohibition is only an annual prohibition. Several commentaries emphasized that the central office issue is related only to BIA and that for non-BIA programs, any funds transferred to a self-governance Tribe should be those that the Department would have spent, either directly or indirectly, for the benefit of those Tribes.

The Committee agreed to retain central office in §§ 1000.91 and 1000.97. Should the Congressional prohibition be lifted, then BIA would be willing to negotiate a portion of central office operations that are not a part of BIA residual or inherently Federal responsibilities and can be shown to be specifically and functionally related to the responsibilities being assumed by a self-governance Tribe.

Section 1000.94 has been rewritten by deleting specific reference to inherently Federal functions and to indicate that residual functions are those functions that can only be performed by BIA employees. The reason for deleting the reference to inherently Federal functions is that there could be some functions that are not inherently Federal in nature but that still must be performed by a BIA employee. An example would be a function that could be performed by Tribe but because of the indivisibility (e.g. one forester serving four Tribes) the function would remain a residual function.

Section 1000.95 has been rewritten to focus on the residual information that will be made available to Tribes. This section also identifies the overall process that BIA will follow and the general principles that will be used in determining and providing the residual information to Tribes. Also included are procedures to have the Deputy Commissioner reconsider residual levels for particular programs, and procedures to appeal the Deputy Commissioner's determination to the Assistant Secretary-Indian Affairs. A comment recommended that the Assistant Secretary—Indian Affairs provide a written determination on a Tribe's appeal within 30 days of receiving it and this suggestion was accepted. Another comment suggested changes to Section 1000.95 to specify active tribal involvement in the determination of residuals. This suggestion was not accepted but a new subsection, (c)(9) was added to § 1000.4 that indicates that Executive Order 13084 on Consultation and Coordination with Indian Tribal governments will be applied in the implementation of these regulations.

Regarding § 1000.95, the Tribal team raised the issue that when BIA is determining residuals for a particular function, service, or activity, that consideration should be made without regard to the organizational level at which the functions are being performed. It is the intent of BIA in determining residuals to take into consideration those functions that the Secretary must retain to ensure that the Secretary's statutory and trust obligations are met. In making this determination, BIA will first look to the appropriate organization level at which the service is being provided which may be the agency, regional or central office when appropriate. Depending upon where the service is being provided, the residual determination will be made.

Section 1000.96 was modified by removing reference to an "annual list of residual activities" to be consistent with the changes made in § 1000.95.

Another comment suggested that the term "Tribal shares" comply with the language of the Act. This suggestion was accepted by adding references to section 403(g)(3) and 405(d) of the Act to § 1000.97.

A comment identified confusion in § 1000.100. This has been corrected by replacing the word "by" with the word "to" so that funds would be "distributed to a Tribe" not "distributed by a Tribe". Another comment suggested that allowing Tribes to take a share of a competitive grant program violates section 403(g) and section 406(a) of the Act. No change was made because this

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rule allows for a competitive grant funds to be distributed on a formula basis unless prohibited by Congress. If there is no Congressional prohibition to distributing all or a portion of a competitive grant program by formula, then other Tribes would be eligible to receive funds on a formula basis, as well.

The suggestion to change Section 1000.103 to allow funds to be reallocated to any program that is administered by the Tribe/Consortium rather than any program that the Tribe/Consortium administers under the AFA was not accepted. Section 403(b)(5) of the Act requires that the annual funding agreement specify "* * * the services to be provided, the functions to be performed and the responsibility of the tribe and the Secretary under the agreement." The Department believes that allowing reallocation to programs included in the annual funding agreement is consistent with the Act.

A comment suggested that the word "between" be changed to "among" in the answer of § 1000.104(a)(3) and this suggestion was accepted. Another comment suggested that the answer be changed to allow for more BIA discretion in distributing increases in an equitable manner. This suggestion was accepted by adding the word "and Tribes" after the word "regions" in (a)(3). A similar change was made to § 1000.109(a)(3). Another comment suggested that before any reduction in funds, that Tribes be notified in writing and agree to the reduction. No change was made since any reduction being addressed in this section will be a change that reflects Congressional appropriation. Further, § 1000.104 states that Tribes will be notified and that the Tribes will be given an opportunity to reconcile.

A comment recommended deleting contract support from base budgets and this suggestion was accepted. An item (c) was added to § 1000.105 to clarify that other recurring programs that are in TPA, such as general assistance, housing improvement program (HIP), road maintenance and contract support are not to be included in the base unless any of them should become eligible for base transfer for all Tribes. The reason for including item (c) is to make clear about what is excluded from base budgets. An additional comment recommended that item (c) not be included and this suggestion was not accepted. The four programs included in (c) either have a special method for distributing funds, such as contract support, or are based upon neediest of the needy. Further, (c) does indicate that Self-Governance tribes could have these four programs based transferred if such an option were made available to all tribes.

Several comments regarding §§ 1000.106 and 1000.107 objected to the language that requires a Tribe to negotiate all base budget funding in order to re-negotiate a specific line item contending that this is an incorrect interpretation of the Act. The Committee agreed to the wording in §§ 1000.106 and 1000.107 as the best way to handle the issue of re-negotiation of base amounts.

Another comment suggested that § 1000.109 needed to more thoroughly reflect BIA's intent and the amount of discretion it seeks to retain in allocating any general increases/decreases. No action was taken because the Committee believed that answer is clear enough regarding BIA's discretion for base budget adjustments.

Several comments noted that there is no statutory authority for the Secretary to suspend, withhold or delay payment under an annual funding agreement and such authority implies evaluation and oversight of Tribal actions. Even though such a provision is in Title I of the Act, it is absent in Title IV. Several other comments maintain that since annual funding agreements are legally binding and mutually enforceable written agreements that require some mechanism to withhold, delay, or suspend funds when there is a determination that the Tribe/Consortium has not substantially carried out the AFA. After discussion, the Committee agreed not to regulate this issue.

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

Summary of Subpart

This subpart describes program eligibility, funding for, and terms and conditions relating to, AFAs covering non-BIA programs. This subpart also establishes procedures for consultation with Tribes for preparation of an annual **Federal Register** listing of non-BIA programs that are eligible for negotiation by self-governance Tribes.

Sections 1000.122 through 1000.136 of this subpart contain rules on the eligibility of programs for inclusion in AFAs. Under the Tribal Self-Governance Act of 1994, non-BIA programs are eligible for negotiation and inclusion in AFAs based on either section 403(b)(2), (25 U.S.C. 485cc(b)(2)) (pertaining to programs available to Indians), or section 403(c), (25 U.S.C. 458cc(c) (pertaining to programs of special geographic, historical, or cultural significance to the participating Tribe/Consortium).

These provisions reflect the discretion afforded by the Act with respect to the terms of eligibility of non-BIA programs for inclusion in AFAs, as compared to agreements covering BIA programs. For instance, section 403(b)(2) authorizes a non-BIA bureau to negotiate terms that it may require in AFAs and section 403(b)(3) allows redesign and consolidation of non-BIA programs or reallocation of funds when the parties agree.

Sections 1000.137 through 1000.142 of this subpart describe how AFA funding is determined. Programs that would be eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (ISDEA) (Pub. L. 93–638, as amended) are to be funded at the same level as required for self-determination contracts.

Programs that are only available because of a special geographic, historical, or cultural significance eligible under section 403(c) of the Act are not eligible for self-determination contracting. The regulations provide that such programs generally are to be funded at the level that would have been spent by the bureau to operate the program, plus provisions for allowable indirect costs. The latter are generally based on rates negotiated by the Department of the Interior Inspector General, or the Inspector General of another applicable Federal agency.

Comments

This subpart of the regulations was one of the most contentious both to the Committee and to the many who commented. The central focus of concerns expressed was the degree of discretion that should be accorded to the Secretary in entering into AFAs for non-BIA programs. While the Tribal team and representative comments from several Tribes and Tribal organizations supported limited discretion, the Federal team and representative comments from outside Federal bureaus and non-governmental organizations supported broad Secretarial discretion. In addition to the issue of Secretarial discretion, the comments discussed what could be included in an AFA for a non-BIA bureau and, specifically, the term "otherwise available"; the degree to which a non-BIA bureau program could be redesigned for Tribal needs; the method of entering into successor agreements; the explanation of "nexus" as it applied to 403(c) programs; and the calculation of indirect costs for such programs. Despite the wide range of differing views and comments, the Committee did come to agreement on most disputed issues. Because the views of the Tribal team and representative comments from the several Tribes and Tribal organizations and the views of the Federal team and the representative comments from outside Federal bureaus and non-governmental organizations can be aligned between "Tribal" and "Federal", they are addressed as such below.

The Tribal view of "otherwise available" as it pertains to the inclusion of programs into AFAs for non-BIA bureaus is to interpret this phrase as meaning *any* Federal program unless it is an inherently Federal function of the non-BIA bureau. According to the Tribal comments, Section 403(b)(2) was meant to extend the reach of Title I and to increase Tribal operation of non-BIA programs within the Department of the Interior. The Federal team, however, views "otherwise available" under Section 403(b)(2) as essentially a different way of describing those programs that are eligible for contracting under Pub. L. 93–638. The Federal comments stressed the view that it was never the intention of Congress to give Tribes or Tribal organizations authority over non-BIA, non-Indian programs—such programs are not merely Tribal in scope but, rather, national in scope. The term "otherwise available," therefore, would simply extend the availability of those Indian programs "otherwise available" to Tribes for inclusion in AFAs with non-BIA bureaus. The Committee could not agree on this matter and the regulation, therefore, reflects the Federal view at §§ 1000.122 through 1000.136.

Tribal comments and Federal comments differed on the matter of whether non-BIA bureaus must negotiate and must contract with Tribes/Consortia on those programs that are not identified as "programs for the benefit of Indians because of their status as Indians." Tribal comments refer to the Congressional goal of providing opportunities for Tribes to have the dominant role in administering those programs that benefit Indians. Therefore, Tribal comments noted that unless a program, function, service or activity is inherently Federal, the non-BIA bureau must negotiate and enter into an AFA with the Tribe/Consortium. The Federal comments stressed that it is within the discretion of the Secretary to enter into an AFA with a Tribe/Consortium for those programs that may *coincidentally* benefit Indians but that are national in scope and were not by definition "programs for the benefit of Indians because of their status as Indians." The Committee did not agree on this matter and the regulation, therefore, reflects the Federal view at §§ 1000.122 through 1000.136.

Intertwined with the perceptions of Secretarial discretion and programs available for inclusion in AFAs with non-BIA bureaus is whether or not Tribes may reallocate program funds and otherwise redesign non-BIA programs to better suit Tribal needs. Tribal comments reflected their contention that the Tribal Self-Governance Act was meant to be inclusive and, therefore, Tribes should have broad authority to assume non-BIA programs and redesign them in a manner that best suits their needs. Federal comments continued to stress that Congress did not intend Tribes to assume the administration and operation of non-BIA, non-Indian programs unless specifically authorized by the Secretary. After much discussion in committee, it was decided that the Federal view on this matter prevail. Therefore, the regulations at §§ 1000.144–1000.145 reflect that the Tribe/Consortium may reallocate funds or otherwise redesign non-BIA programs if mutually agreed to by the non-BIA bureau and the Tribe/Consortium as reflected in an executed AFA.

With respect to successor agreements, Tribal comments noted that successor agreements should be "more or less" automatic. The difficulties in negotiating fine points of an AFA should have already been worked out and, therefore, the Tribal comments asked the Committee to more closely review the mechanisms for negotiating successor AFAs. The Federal concerns were that the regulations not give the impression that multi-year funding agreements were being negotiated—in violation of Federal appropriation laws. The Committee discussed this matter in some detail and agreed that the mechanism for negotiating successor AFAs would be the same as for initial AFAs; however, since the terms of such agreements had already been worked out previously, unless major changes were to be included in a successor agreement the process would be an expedited one. The negotiation process for successor agreements is now found in subpart G and reflects the Committee's agreement at §§ 1000.180–1000.182.

Both Tribal and Federal comments discussed the need to have more "complete" definitions of the geographical, historic, and cultural "nexus" that would be found in Section 403(c) non-BIA programs. With some modest revisions, the Committee agreed to more explanatory definitions that are reflected in the regulations at § 1000.126.

It was evident in reviewing Tribal and Federal comments that the notion of "indirect costs" is a confusing one. The Tribal comments indicated a confusion between "Tribal shares" and allowable indirect costs associated with the management and operation of a Federal program. In addition, the method of determining the rate of indirect costs was a matter of disagreement even among Tribal comments. The Federal comments noted a wariness of negotiating agreements that would require an indirect cost expense to the government that was above and beyond the funds that were available to expend. In committee it was clearly noted by the Federal team that the government was not opposed to giving Tribes/Consortia allowable indirect costs. However, the Federal team confessed confusion in determining how best to provide the Tribes/Consortia with all necessary funds to administer non-BIA programs and factor in a further indirect cost expense. The Committee agreed to allow the non-BIA bureaus and the Tribes/Consortia to negotiate the amount of indirect costs for one particular AFA that might be different from the established rate set by the Office of the Inspector General. Indeed, the non-BIA bureau and the Tribe are encouraged to negotiate fee-for-service alternatives that facilitate entering into an AFA. These agreements by the Committee are reflected in the regulations at §§ 1000.138–1000.142.

A suggestion was made to redraft Section 1000.145 to allow for the reallocation of funds in non-BIA annual funding agreements. This suggestion was accepted but modified to exclude construction projects.

Subpart G—Negotiation Process for Annual Funding Agreements

Summary of Subpart

This subpart establishes the process and time lines for a newly selected or participating Tribe/Consortium wishing to negotiate either an initial or a successor AFA with any DOI bureau. Under subpart G, the negotiation process consists of two phases, an information phase and a negotiation phase.

In the information phase, any Tribe/Consortium that has been admitted to the self-governance program or to the applicant pool may submit requests for information concerning programs they wish to administer under the Tribal Self-Governance Act of 1994. Although this phase is not mandatory, it is expected to facilitate successful

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negotiations by providing for a timely exchange of information on the requested programs.

The negotiation phase establishes detailed time lines and procedures for conducting negotiations with Tribes that have been accepted into the self-governance program, identifying the responsibilities of the Tribe/Consortium and bureau representatives in the negotiation process, and for executing AFAs. The deadlines for the negotiation process were chosen by the Committee to reflect the availability of annual budget information and the time needed for the bureau and the Tribe/Consortium to reach an agreement and the requirement under the Tribal Self-Governance Act of 1994 that each AFA must be submitted for Congressional review at least 90 days before its proposed effective date.

This subpart also establishes, in §§ 1000.180 through 1000.182, rules for the negotiation process for successor AFAs. A successor agreement is a funding agreement negotiated with a particular bureau after an initial agreement with that bureau. The procedures for negotiating a successor agreement are the same as those for initial agreements. The Committee expects, however, that successor agreements will build upon the prior agreements and will result in an expedited and simplified negotiation process.

The model compact serves as an umbrella document to recognize the government-to-government relationship between the Tribe(s) and the Department. Self-governance Tribes may choose to execute a compact with the Secretary but are not required to do so in order to enter into AFAs with Departmental bureaus. A model self-governance compact is provided in Appendix A. The model compact is not the same as an AFA and is not intended to replace, duplicate or lessen the importance of the AFA. Section 1000.163 permits the parties to agree to additional terms and conditions for inclusion in compacts.

The Committee agreed that for BIA programs only, a Tribe/Consortium may elect to continue under the terms of its pre-regulation compact as long as those provisions are in compliance with other Federal laws and are consistent with these regulations. For BIA programs, a Tribe/Consortium may include any term that may be included in a contract under Title I (Pub. L. 93–638; 25 U.S.C. 450) in the model compact.

Comments

A comment noted that the wording of § 1000.162 could be interpreted to require that Tribes/Consortia enter model compacts before an AFA could be negotiated. The Committee has noted this possible interpretation and has provided, in § 1000.164, that the Tribe/Consortium, at its option, can enter into an AFA without first entering into a model compact.

The Committee did not agree that any term under Title I could be included in a non-BIA bureau AFA at the Tribe's/Consortium's option. The Tribal team advocated for this position; however, the Federal team did not agree and noted that Title I programs are identified as Indian programs' and, therefore, would not necessarily have any relevance to non-BIA bureau programs. In a related matter, the Committee agreed that for BIA programs the Tribe/Consortium may include any provision of Title I in the model compact. The regulations at § 1000.163 reflect this position.

Several comments noted that Tribes/Consortia should be able to negotiate Tribal-specific provisions in their compacts. The Committee agreed with this premise as long as there was mutual agreement between the Tribe/Consortium and the bureau. The regulations at § 1000.163 reflect this position.

Compacts have been entered into with a number of Tribes/Consortia without final regulations in place. Therefore, concern was raised that compacts negotiated before the promulgation of final regulations should be validated after final regulations are in place. The Committee agreed and included a process in § 1000.165 that would allow for validation of existing compacts and renegotiation procedures for those terms and conditions from prior compacts that might be inconsistent with the final regulations. Disputes that might arise from this process are further provided for in subpart R of this part. A comment suggested that Section 1000.165 be modified to allow compacts to remain in effect even if they are inconsistent with these regulations. This suggestion was not accepted because initially compacts were created to clarify the relation between the Department and the Tribes/Consortia during the period when there were no regulations and many of the earlier compacts did not receive a careful legal review by the Department.

Concerns were raised about information collection from Departmental bureaus for initial and successor AFAs. The Committee has provided a comprehensive listing of information protocols in § 1000.172 that should address these concerns. Similarly, concerns were raised about the lack of a dispute resolution process. The Committee has provided such processes under § 1000.172 that refers to subpart R (Appeals) of these regulations.

With respect to the negotiation process itself, comments were made that asked for guidance on the designation of negotiators for both the Tribe/Consortium and the bureau(s). The regulations clearly provide for the designation of such negotiators in § 1000.173 and § 1000.174. It is within the discretion of the Tribe/Consortium and the bureau(s) to name such representatives according to their own policies and procedures, however the Committee agreed that these representatives must be authorized to negotiate on behalf of their respective governments as noted at § 1000.175 of these regulations.

Some comments noted that there should be no distinction between BIA and non-BIA programs on the issue of successor AFAs. The Committee agreed and made no distinction between BIA and non-BIA in the procedures for negotiating successor AFAs.

The Committee agreed that dispute resolution should be referenced to subpart R of these regulations and that a waiver of fees under the Freedom of Information Act would be entertained under that Act's provisions.

Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds

Summary of Subpart

This subpart describes the process used by the Secretary to determine whether the implementation of an AFA will cause a limitation or reduction in services, contracts or funds to any other Indian Tribe/Consortium or Tribal organization as prohibited by section 406(a) of Pub. L. 93–638 (25 U.S.C. 458ff(a)). Subpart H applies only to BIA programs and does not apply to the general public and non-Indians.

BIA may raise the issue of limitation and/or reduction of services, contracts, or funding to other Tribes from the beginning of the negotiation period until the end of the first year of implementation of the AFA. An adversely affected Tribe/Consortium may raise the issue of limitation or reduction of services, contracts, or funding during region-wide Tribal shares meetings before the first year of implementation, within the 90-day review period before the effective date of the AFA, and during the first year of implementation of the AFA. Claims not filed on time are barred.

A claim by either the Department or an adversely affected Tribe/Consortium or Tribal organization must be a written notification that specifies the alleged limitation or reduction of services, contracts, or funding. If a limitation and/or reduction exists, then BIA must use shortfall funding, supplemental funding, or other available BIA resources to prevent the reduction during the existing AFA year. BIA may, in a subsequent AFA, adjust the funding to correct a finding of actual reduction in services, contracts, or funds for that subsequent year. All adjustments under this subpart must be mutually agreed to between BIA and the Tribe/Consortium.

Comments

Some comments questioned the applicability of this subpart only to BIA. The concern was that Tribes should have the right to protest limitations or reductions in services regardless of whether or not the program was managed by BIA or a non-BIA bureau. The Committee took great care to ascertain that Section 406(a) of the Act could only apply to BIA since non-BIA bureaus do not contemplate providing services to the entire Indian community that would necessitate any formal parceling of services, activities, and resources. The types of non-BIA programs for which Tribes/Consortia would contract under self-governance would be limited to those discretionary programs already being provided to the general community. Therefore, there would never be an instance of program limitation or reduction in services to another Tribe/Consortium since the Tribe/Consortium contracting with the non-BIA bureau would be merely stepping into the place of the Federal entity and continuing to provide the same services as always to the general community.

Another comment wondered whether or not individual Indians should have the right to protest a limitation or reduction in services. The Committee considered this concept; however, it was determined that the Tribal Self-Governance Act of 1994 applies to sovereign Tribal governments as an expression of government-to-government relations between the Federal entity and Indian Nations. The particular case of an individual Tribal member's personal concerns must be handled, then, by that Tribal member's government and is not the subject of regulation by the Federal entity. Therefore, no revisions were made to the regulations.

Another comment noted that the time-frame for raising the issue of limitation or reduction of services was inconsistent with the statute. However, the Committee determined that the time-frames were necessary to allow for efficient management of the program.

Subpart I—Public Consultation Process

Summary of Subpart

This subpart describes when public consultation is appropriate and the protocols that should be used in this process. The roles of the Tribe/Consortium and the bureau are outlined, including notification procedures and the commitment to share information concerning inquiries about AFAs.

Public consultation is used when required by law or when appropriate under bureau discretion. When the law requires a public consultation process, the bureau will include the Tribe/Consortium to the maximum extent possible. When a public consultation process is a matter of bureau discretion, the bureau and the Tribe/Consortium may develop guidelines for the conduct of public meetings.

When the bureau conducts a public meeting, it must notify the Tribe/Consortium and involve the Tribe/Consortium in as much of the conduct of the meeting as is practicable and allowed by law. When someone other than the bureau conducts a meeting to discuss a particular AFA and the bureau is invited to attend, the bureau will notify the Tribe/Consortium of the invitation and encourage the meeting sponsor to invite the Tribe/Consortium to participate.

The bureau and the Tribe/Consortium will exchange information about other inquiries relating to the AFA under negotiation from other affected or interested parties.

Comments

The Committee was asked to clarify when a Tribe/Consortium may work jointly with the bureau to establish public consultation guidelines. Clarifying edits were made. Also, a comment asked that corresponding requirements for bureau participation in establishing Tribal guidelines for Tribal public consultation procedures be included in the final regulation. The Committee rejected this comment, because the Tribes/Consortia are considered sovereign entities and the Department of the Interior has no authority, therefore, to dictate guidelines for their internal purposes.

Subpart J—Waiver of Regulations

Summary of Subpart

This subpart implements section 403(i)(2)(A) of the Tribal Self-Governance Act of 1994 (25 U.S.C. 458cc(i)(2)(A)). It authorizes the Secretary to waive all DOI regulations governing programs included in an AFA, as identified by the Tribe/Consortium.

Subpart J also provides time lines, explains how a Tribe/Consortium applies for a waiver, the basis for granting or denying a waiver request, the documentation requirements for a decision, and establishes a process for reconsideration of the Secretary's denial of a waiver request.

The basis for the Secretary's denial of a waiver request depends on whether the request is made for a BIA or non-BIA program. For a BIA program, denial of a requested waiver must be predicated on a prohibition of Federal law. For a non-BIA program, denial of a requested waiver must be predicated on a prohibition of Federal law, or inconsistency with the express provisions of the AFA. Examples of waivers prohibited by law are provided in the body of the regulation.

This subpart does not specify whether or not a granted waiver must be requested with subsequent funding agreements. Many of the waivers that are granted are on a one time basis or are waivers that are intended to continue unless there is a change in the law, Federal regulations or what the tribe wants to do. Section 1000.220 states that the parties should identify waived regulations in the AFA's and because the funding agreements are annual, both the tribes and the Federal government have an opportunity to determine whether or not the current waivers are still appropriate.

Comments

A comment asked that provisions be included for formal bureau comment on the advisability of granting a waiver request. The Committee rejected the comment, however, as it did not want to place additional administrative burdens on bureaus that may slow or impede action on waiver requests.

Another comment asked whether or not the waiver provisions of the regulation would be inconsistent with the Unfunded Mandates Act of 1995. The Committee found that the regulation imposed no unfunded mandates on Tribes.

A comment from the Department of Transportation expressed concern that waivers of Department of Transportation regulations be "jointly reviewed" by the Secretary of the Interior and the Secretary of Transportation. The Committee notes that the only regulations that may be waived by the Secretary of the Interior are Department of the Interior regulations.

Some comments proposed language that would limit the discretion of the

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Secretary in granting waivers. The Committee agreed that the Act narrows the scope of Secretarial discretion and, therefore, the Committee would not be empowered to expand the scope of discretion beyond the limits already imposed by the statute.

Another comment proposed that waivers be disallowed only if prohibited by Federal law. The Committee agreed that this would be one of the factors to be considered in denying a waiver request. However, the Federal team allowed that a waiver request might *also* be denied if it was inconsistent with the express provisions of the AFA. This standard is included, therefore, in the final regulation.

A comment proposed that § 1000.226 be changed to deem a waiver request as being denied if a decision is not rendered by the Department within 60 days and this proposal was accepted.

A comment recommended that the regulations address appeals on the denial of a waiver request beyond the Secretary. The Committee rejected this comment, however, because it believes the regulations are clear that whenever all administrative appeals are exhausted, the Tribe/Consortium may avail itself of judicial review in a Federal District Court.

A comment noted that publication of approved waivers of regulations be published in the **Federal Register** to provide notice to Tribes/Consortia for prospective waiver requests. The Committee added language that would post approved waivers on the Office of Self-Governance web page and would additionally make such waivers available upon request from any Tribe/Consortium.

Subpart K—Construction

Summary of Subpart

Subpart K applies to all construction, both BIA and non-BIA. It is designed as a stand-alone subpart; that is, other subparts do not apply to construction agreements if they are inconsistent with the provisions in subpart K. The subpart specifies that construction program activities are subject to subpart K, such as design, construction management services, actual construction; and that are not, such as planning services, operation and maintenance activities, and certain construction programs that cost less than $100,000. The subpart specifies the roles and responsibilities of the Tribes and the Secretary in construction programs, including performance, changes, monitoring, inspections, and a special reassumption provision for construction. It addresses whether inclusion of a construction program in an AFA creates an agency relationship with self-governance Tribes.

Federal Acquisition Regulations provisions are specifically not incorporated into these regulations, however, they may be negotiated by the parties in the AFA. Also, construction AFAs must address applicable Federal laws, program statutes, and regulations. In addition to requirements for all AFAs referenced in subpart F, other special provisions are added for construction programs, including health and safety standards, brief progress reports, and suspension of work when appropriate. Building codes appropriate for the project must be used and the Federal agency must notify the Tribe when Federal standards are appropriate for any project.

Comments

Several comments expressed the view that all of the self-governance regulations should apply to all Title IV agreements, including construction. In the preamble to the proposed rule, the Federal team had recommended that several general sections of the rule should not apply to construction and that the construction subpart should be a stand-alone section. It was decided that the provisions of subpart K should take precedence over any other subpart provisions that are inconsistent with subpart K. A question and an answer were added to subpart K stating at § 1000.252, "Do all provisions of other subparts apply to construction portions of AFAs? Yes, unless they are inconsistent with this subpart."

Other issues raised in the preamble to the proposed rule are discussed separately below.

Several comments raised concerns about the effects that a withdrawal from a Consortium would have on AFAs concerning construction projects. The comments thereon involving Tribal withdrawals from Consortiums, the comments were adopted and new questions and answers were agreed upon as reflected in §§ 1000.35 and 1000.253.

A comment regarding § 1000.82 (now § 1000.84) did not require a change in the regulation because a Tribe could not properly adopt construction provisions of Title I of the Act out of context; i.e., it would be inconsistent with a properly drafted construction AFA to adopt the Model Contract, section 108 of the Act, which is inapplicable to construction in Title I.

With regard to comments on inherent Federal functions, residuals, and the Secretary's responsibility to ensure construction safety, a new question and an answer were added to the construction subpart to reserve a portion of project funds from the AFA so that the Secretary has the funds to carry out his statutory mandate of Title IV to ensure construction safety (see § 1000.256).

In response to comments in regarding BIA reallocation of funds in § 1000.100 (now § 1000.103), two new questions and answers were added to the final regulation, as §§ 1000.254 and 1000.255, discussing reallocation of funds.

A comment that recommended that Bureau of Land Management Cadastral Surveys in Alaska should be defined as being construction was not adopted because the regulations are sufficiently clear to provide guidance for cadastral surveys in AFAs.

Comments regarding proposed Title V to the Act involving the Indian Health Service were rejected as not relevant to Title IV.

A comment recommended that "construction management services" should be defined. The Committee agreed and a definition was added to the final regulation.

A comment that phrasing in Subpart K confuses the meaning of "design" as to whether it is included in construction or not was not adopted because the Committee believed that these two sections are clear on this subject.

A comment suggested that some activities described in § 1000.240(b) be deleted and not subject to Subpart K because they are more applicable to Subpart E. This suggestion was accepted and Section 1000.240(b)(1) was changed to make explicit what activities and functions are covered by Subpart K. In essence, those activities that are administrative in nature are not subject to Subpart K and those activities that are associated with the actual construction are subject to Subpart K. Another comment recommended that TEA–21 road construction funds derived from the Federal Highway Trust Fund and transferred to BIA should be exempt from Subpart K if the funds are for a tribe assuming the entire road construction program. This suggestion was not accepted. While some of the activities included in a road construction program can be regulated by Subpart E, the bulk of the activities involve specific road construction projects that should comply with Subpart K. Further the TEA–21 negotiated rule making effort currently underway assume that road construction projects included in a tribe's AFA need to comport to Subpart K.

Comments regarding the lack of clarity in § 1000.241 as to the meaning of "an agency relationship" were accepted and this section was modified in the final regulation.

The Committee adopted a comment recommending that § 1000.244 should be changed to delete the 5-day notice to a Tribe before suspending work in a emergency.

The comment that § 1000.223(e) of the proposed rule should be made into a separate section was adopted and is now § 1000.244. A comment recommended that § 1000.244 be changed to limit suspension of construction to a condition of imminent jeopardy to public health and safety only and this suggestion was not accepted. Another comment recommended that a new section be inserted that would indicate that compensation costs due to a suspension would not be paid from construction costs. This suggestion was accepted in part. Section 1000.244 was modified to indicate that project funds will not be used to compensate for costs associated with a suspension of construction work that occurs through no fault of the Tribe/Consortium.

A comment was made concerning the last sentence of § 1000.246 concerning the Secretary's option of accepting commonly accepted industry construction standards. The comment noted that this issue may create a problem in Alaska where building permits are not required in much of the state and "common standards" could be none at all. This comment was not adopted since the language in the regulation regarding commonly accepted industry standards is permissive and this section does permit the Federal agency to provide Federal standards that are mandatory unless a Tribally proposed standard is consistent with or exceeds the Federal standard. Other comments were also rejected because the Committee believed that this section of the regulation is clear.

A comment recommending that § 1000.246 use the concept of "scope of work" was not adopted because "project design" is appropriate language for construction projects.

Comments relating to 23 U.S.C., such as for § 1000.249, did not require clarification because § 1000.243(b) requires compliance with applicable Federal laws and program statutes.

A recommendation to add the citation to the Contract Disputes Act referenced in § 1000.251 was adopted.

A comment that to comply with the Solicitor's July 9, 1997, memorandum entitled, "Tribal Self-Governance Draft Regulations—Construction Safety", that a provision should be added that if the requirements of § 1000.243 are not met in an AFA, that the AFA should not be entered into, was considered unnecessary because it is obvious that the Secretary cannot properly enter into an AFA for construction projects if the criteria of § 1000.243 are not complied with in the AFA proposed by a Tribe/Consortium.

A comment suggested that § 1000.256 be deleted because it allows the Secretary to retain funds to monitor health and safety standards and that the residual funds identified in §§ 1000.94 to 1000.96 addresses this issue. This suggestion was not accepted because the funds identified in § 1000.256 are to cover the Secretary's necessary costs associated with specific construction projects. If the Secretary were not allowed to retain such costs from the specific project funds, then a higher than needed residual would be required at regional offices to accommodate for construction projects if and when they should be funded.

Subpart L—Federal Tort Claims

Summary of Subpart

This subpart explains the applicability of the Federal Tort Claims Act (FTCA).

Comments

A recommendation was made to incorporate FTCA rules from Title I. This suggestion was accepted and the appropriate Title I rules dealing with FTCA have been incorporated and modified slightly for Self-Governance. Sections 1000.270 to 100.286 replaced §§ 1000.240 to 1000.255 of the proposed rule.

Subpart M—Reassumption

Summary of Subpart

Reassumption is the Federally initiated action of reassuming control of Federal programs formerly performed by a Tribe. Subpart M explains the types of reassumption authorized under the Tribal Self-Governance Act of 1994, including the rights of a Consortium member, the types of circumstances necessitating reassumption, and Secretarial responsibilities including prior notice requirements and other procedures.

Subpart M also describes activities to be performed after reassumption has been completed, such as authorization for "windup" costs, Tribal obligations regarding the return of Federal property to the Secretary, and the effect of reassumption on other provisions of an AFA.

Comments

A comment recommended that language regarding those funds impacted by the notice of reassumption be more specific to the management of trust assets, resources, or the public health and safety. The Committee agreed. Other comments recommended editorial changes in the wording that were also agreed to by the Committee.

Subpart N—Retrocession

Summary of Subpart

Retrocession is the Tribally initiated action of returning control of certain programs to the Federal government. Subpart N defines retrocession, including how Tribes may retrocede, the effect of retrocession on future AFA negotiations, and Tribal obligations regarding the return of Federal property to the Secretary after retrocession.

Comments

A comment on this subpart recommended that the term "contractor status" be changed to read "contract status". The Committee agreed and the phrase was changed.

Subpart O—Trust Evaluation Review

Summary of Subpart

Subpart O establishes a procedural framework for the annual trust evaluation mandated by the Tribal Self-Governance Act of 1994. The purpose of the annual trust evaluation is to ensure that trust functions assumed by Tribes/Consortia are performed in a manner that does not place trust assets in imminent jeopardy.

Imminent jeopardy of a physical trust asset or natural resource (or their intended benefits) exists where there is an immediate threat and likelihood of significant devaluation, degradation, or loss to such asset. Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by Tribal action or inaction or as otherwise provided in an annual funding agreement.

Subpart O requires the Secretary's designated representative to prepare a written report for each AFA under which trust functions are performed by a Tribe. The regulation also authorizes a review of Federal performance of residual and nondelegble trust functions affecting trust resources.

Comments

Several comments were received on this subpart. A few dealt with editorial changes that the Committee agreed to

including: capitalizing "Federal" and "Tribal" throughout the regulation; striking a reference to the Code of Federal Regulations deemed to be unnecessary; and clarifying that the provisions of the AFA to be reviewed are the *trust* provisions. A comment recommended the addition of a question and answer that would address negotiating standards for review for purposes of the trust evaluation. The Committee agreed on the language to be used and that the question and answer should be added. A comment dealt with amending the section establishing standards to be used in the review of the Secretary's residual trust functions. The Committee agreed to add language that would articulate the criteria to be used in reviewing the Secretary's residual trust functions. A comment dealt with the need for clarification of the responsibilities of Consortia when a trust evaluation reveals problems in the performance of trust functions that do not rise to imminent jeopardy. The Committee agreed on clarifying language. A comment was concerned with establishing more Federal participation in assuring no breach of trust when a Tribe is operating a trust program and corrective action is necessary. The Committee agreed to language that clarified these responsibilities.

Subpart P—Reports

Summary of Subpart

This subpart describes the report on self-governance that the Secretary prepares annually for transmittal to Congress. It includes the requirements for the annual report that Tribes submit to the Secretary.

Comments

Comments noted that a Government Performance and Results Act (GPRA)-type reporting requirement should be applied to the Tribes and the bureaus as this would help justify more programs and services to Tribes/Consortia. While the Committee noted the merits of oversight and justification of further funding, it recognized that GPRA is a separate activity apart from self-governance. Further, there was no authority under the statute to mandate GPRA in this regulation. One comment suggested that the reporting requirement be made discretionary on the part of the tribes and this suggestion was accepted because there is no statutory basis requiring Tribes/Consortia to submit an annual report.

Subpart Q—Miscellaneous Provisions

Summary of Subpart

This subpart addresses many facets of self-governance not covered in the other subparts. Issues covered include the applicability of various laws and OMB circulars, how funds are handled in various situations, and the relationship between employees of the Tribe/Consortium and employees of the Federal government. Conflicts of Interest was moved to become Subpart S. For comments on Conflicts of Interest, see subpart S.

Comments

The committee agreed to delete § 1000.356 from the proposed rule which dealt with how payments will be made to self-governance Tribes/Consortia.

A suggestion was made to delete the requirement that tribe/consortium maintain minimum management standards that existed when the Tribe/Consortium first entered the Self-Governance program. This suggestion was not accepted. As an alternative § 1000.396 has been changed so that it is similar to what appears in the Title I regulations (§ 900.40)

Cash Management

It was suggested that § 1000.397, which addresses restrictions on the use of funds under the AFA, be deleted because it restricts the Tribe's/Consortium's ability to adopt programs and focus funds on local needs. This suggestion was not accepted. Section 403(b)(5) of the Act requires that the annual funding agreement specify "* * * the services to be provided, the functions to be performed and the responsibility of the tribe and the Secretary under the agreement." It is critical that the regulations reflect the general parameters for use of funds transferred under AFA's.

As to cash management, there was considerable discussion on the investment of funds transferred to the Tribe/Consortium under an AFA. In comment and committee, the overwhelming Tribal view was that the Tribe/Consortium should be allowed to invest any funds transferred to them under an AFA according to the prudent investor standard. It was stressed that such investments would allow the Tribes/Consortia to increase their cash holdings and, hence, allow for greater achievement in the management of their programs under Tribal Self-Governance. While the Federal team could agree that investment—when it paid off—was a good way to enhance cash reserves, the Federal team and comments from agencies other than DOI questioned the propriety of investing Federal funds in other than secured vehicles. The chance to lose Federal funds seemed to be inapposite to the goals of self-governance. After consultation with the Office of the Solicitor, it was decided by the Federal team to allow limited investment in secured transactions. This decision is reflected in the regulations at § 1000.398.

Property Donation

Several comments were received regarding this subpart. The issues centered around the procedures and obligation of the Department to transfer BIA and non-BIA property to Tribes for use under an AFA. Much of the Committee's discussion concerned the applicability of 105(f)(2)(A) of Pub. L. 93–638 to non-BIA bureaus. After consideration, the Committee concluded that it would not regulate this section. Instead, Tribes and the Department will be required to follow already existing statutes, regulations and guidance issued by the Federal government.

Supply Sources

Several comments were received supporting the Tribal proposal for language regarding supply sources. The Committee recognizes that Tribes have had difficulties with the General Services Administration (GSA). However, only the GSA has the legal authority over a Tribe's/Consortium's use of Federal supply sources. To assist Tribes in exercising their options with regard to Federal supply sources, the Committee agreed that the Department should help facilitate discussions between the GSA and a Tribe/Consortium. Therefore, the Committee agreed to accept the Tribal language with a modification to the last sentence. The last sentence to § 1000.408 now reads: While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribes/Consortia to resolve any barriers to full implementation that may arise to the fullest extent possible.

Subpart R—Appeals

Summary of Subpart

Subpart R prescribes the process Tribes/Consortia may use to resolve disputes with the Department arising before or after execution of an AFA or compact and certain other disputes related to self-governance. This subpart also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative

appeals to: (1) the Interior Board of Indian Appeals; (2) the Interior Board of Contract Appeals; (3) the Assistant Secretary for the bureau responsible for certain disputed decisions; (4) the Secretary for reconsideration of decisions involving self-governance compacts, and; (5) the bureau head for certain pre-award disputes.

Subpart R indicates those decisions that are *not* administratively appealable under this subpart and makes provisions for informal conferences to settle disputes before filing an appeal. Pre-award disputes of Title I-eligible programs, functions, services and activities may only be filed with the Interior Board of Indian Appeals under the regulations promulgated in 25 CFR 900.150(a)–(h), 900.152–169. Other pre-award disputes of non-Title I-eligible programs, functions, services, and activities may be appealed through the administrative route within the Department or directly to the Interior Board of Indian Appeals. With the exception of certain decisions concerning reassumption for imminent jeopardy, the Tribe/Consortium may appeal post-award administrative decisions to the Interior Board of Contract Appeals.

Subpart R does *not* provide an appeals process for disputes arising from construction AFAs, as these procedures are found in subpart K of these regulations.

Comments

Comments on this subpart asked the Committee to simplify the appeals process and otherwise refrain from unnecessary cross-referencing that only confuses the reader of the regulations. The Committee arranged the appeals subpart to clearly indicate areas of dispute resolution including informal conferences, administrative resolution of both pre-award and post-award disputes, and matters that were not administratively appealable under this subpart.

A comment indicated that Tribes/Consortia should be able to go to the Interior Board of Indian Appeals for reassumption for imminent jeopardy. The Committee agreed that the Tribe/Consortium may go to the Interior Board of Indian Appeals for Title 1-eligible programs; however, non-Title I-eligible programs would go before the Interior Board of Contract Appeals. The Committee agreed that a Tribe/Consortium may choose to appeal directly to the Interior Board of Indian Appeals on an "abuse of discretion" standard. The Tribal team had advocated that this standard be further qualified "as governed by the applicable canons of construction and the mandates of Section 403(i)(1)." However, the Federal team did not agree with this further qualification of the abuse of discretion of standard because it felt that canons of construction was a term of art during litigation and was inappropriate as a regulatory parameter. The regulations, therefore, do not refer to canons of construction.

There was some discussion of whether the appropriate assistant secretary or the bureau head should be the final arbitrator of administrative appeals. The Committee recognized that conflicts could arise where it would be inappropriate for the bureau to decide an appeal. Therefore, the regulations provide that the bureau head would be the first line of appeal, unless the decision being appealed was the decision of the bureau head in which case the appeal would go to the appropriate assistant secretary. If the Tribe/Consortium does not receive a favorable decision from the bureau head, the appeal is automatically sent forward to the appropriate assistant secretary for final decision.

Subpart S—Conflicts of Interest

Summary of Subpart

The conflict of interest regulation subpart applies only if the AFA fails to provide equivalent protection against conflict of interests to these regulations. Section 1000.460 defines an organizational conflict of interest and addresses only those conflicts discovered after an AFA is signed. Section 1000.463 defines personal conflicts of interest and requires a Tribe/Consortium to have a Tribally-approved mechanism to ensure that no officer, employee, or agent of the Tribe/Consortium has a financial or employment interest that conflicts with that of the trust beneficiary.

Comments

Several comments were received supporting the proposed Tribal position or questioning the need for a section on conflicts of interest. Ultimately, the Department must balance the Federal-Tribal government-to-government relationship with the Federal trust responsibilities. In recognition of this responsibility, and in an attempt to minimize any intrusion or burden on Tribes/Consortia, the Committee agreed to adopt the Federal regulations published in Pub. L. 93–638 (25 U.S.C. 450).

Comments suggested that it was improper to subject a Tribe/Consortium to conflicts of interest provisions and not impose similar regulations on Federal employees. Federal employees are subject to conflicts of interest standards under 5 CFR 2635.

Some comments objected to the Federal proposal because they were inconsistent with the Federal policy on self-governance. While there is a strong Federal policy of self-governance, it does not diminish the Federal government's trust responsibility. The standards adopted with this regulation balance the Federal government's trust responsibilities with the policy of self-governance. The organizational conflicts of interest apply only if the AFA affects the interests of allottees, trust resources or statutory obligations to a third party. The personal conflicts of interest regulations only apply to trust programs. These provisions would only apply in the absence of a Tribal code or AFA provision that adequately protects trust beneficiaries from conflicts of interest. The rule also acknowledges that Tribal codes and negotiated AFA provisions, that are agreed to by the Department, are the preferred manner to address conflicts of interest. A proposal was made to replace §§ 1000.462–.464 with a single question and answer that allows the Tribe/Consortium to have some procedure in place that will avoid as is practicable possible conflicts of interest. This suggestion was not accepted even though the Department acknowledges that such regulations may be difficult for some smaller tribes to implement. However, the Department must ensure that there is no conflict of interest when a Tribe/Consortium manages trust programs so that the Secretary's trust responsibility is not compromised.

Review Under Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-Tribal relations and will not interfere with the roles, rights, and responsibilities of States.

Review Under Executive Order 12630

The Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "takings" of private property interests, nor does it impact private property.

Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), BIA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule describes the process and procedures for negotiating annual funding agreements with Indian Tribes/consortia. Thus, the impact of the rule is confined to the federal government and the Indian trust beneficiaries and does not impose a compliance burden on the economy generally. No new monies are introduced into the stream of commerce with this rulemaking. Accordingly, it has been determined that this rule is not a "significant regulatory action" from an economic standpoint, or otherwise creates any inconsistencies or budgetary impacts to any other agency or federal program. However, the Department submitted the rule for review by the Office of Management and Budget (OMB) as a significant policy matter impacting federally-recognized tribes/consortia that participate in the Tribal Self-Governance Program administered by BIA.

Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under guidelines issues by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule establishes the process and procedures for negotiating annual funding agreements with Indian Tribes/consortia. Indian tribes are not small entities under the Regulatory Flexibility Act. Accordingly, the Department of the Interior has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

Review Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100 million or more. The rule establishes the process and procedures for negotiating annual funding agreements with Indian Tribes/consortia and no new monies are being introduced into the stream of commerce. The final rule will not result in a major increase in costs or prices. The effect of this final rule will be to ensure consistent administration of the Tribal Self-Governance Program. No increases in costs for administration will be realized and no prices would be impacted through this administrative rulemaking. The final rule will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the final rule will be realized by Indian Tribes/Consortia, and the administrative process and procedures promulgated in the final rule will not otherwise have a significant impact on any small businesses or enterprises.

Review Under Executive Order 13132—Federalism

The final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. While this final rule will impact tribal governments, there is no Federalism impact on the trust relationship or balance of power between the United States government and the various Indian Tribes/consortia affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This final rule will not result in the expenditure by the state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department, however, determined that because the rulemaking will uniquely affect tribal governments it would follow Departmental and Administration protocols in consulting with tribal governments on the rulemaking. As this final rule was the result of a negotiated rulemaking process, with both a "Tribal Team" and a "Federal Team," the Department asserts that appropriate consultation was achieved. Results of the ongoing negotiated rulemaking process were periodically reported and discussed in Federal/Tribal fora and these consultations met the mandates established by the President's Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Tribal officials and the effected tribal constituency were given the opportunity for meaningful and timely input in the development of the final rule.

NEPA Compliance

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Federal Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSG submitted the information collection and record keeping requirements of 25 CFR Part 1000 to the Office of Management and Budget (OMB) for review and approval. The OMB approved the self-governance information collection and assigned control number 1076–0143 to it.

25 CFR Part 1000

Title: Annual Funding Agreements Under the Tribal Self-Governance Act Amendments to the Indian Self-Determination and Education Act.

OMB Control Number: 1076–0143.

Abstract: The Department of the Interior and Indian government representatives negotiated a rule to implement section 407 of Pub. L. 103–413, the Tribal Self-Governance Act of 1994. As required by section 407 of the Act, the Secretary, upon request of a majority of the self-governance Tribes, initiated procedures under subchapter III of Chapter 5 of Title 5, U.S.C., to negotiate and promulgate regulations that are necessary to carry out title IV. This rule will allow the Department to negotiate annual funding agreements with self-governance Tribes for programs, services, functions and activities conducted by the Department. The Department developed this negotiated rulemaking with active Tribal participation, and it contains the proposed information collection.

Need for and Use: The information provided by the Tribes will be used by the Department of the Interior for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition, Tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool will provide information so that grants can be awarded to Tribes meeting basic eligibility (i.e. Tribal resolution indicating that the Tribe wants to plan for self-governance and has no material audit exceptions for the last three years). Other documentation is required to meet the reporting requirements as called for in Section 405 of the Act.

Respondents: Tribes and Tribal Consortia that may be affected by self-governance activities or request funding for projects or services.

Total Annual Burden: Refer to proposed 25 CFR 1000.3 for a detailed table of the burden estimates anticipated by this rulemaking.

Comments were invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the Department of the Interior, including whether the information will have practical utility;

(b) The accuracy of OSG's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents. No comments were received concerning the information collection requirements of this rule.

No comments were received on the information collection issues in the proposed regulation. Under the Paperwork Reduction Act, OSG must obtain OMB approval of all information and record keeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. This number appears in 25 CFR 1000.3. To obtain a copy of OSG's information collection clearance requests, explanatory information, and related form, contact the Information Collection Clearance Officer, Office of Self-Governance, at (202) 219–0240.

List of Subjects in 25 CFR Part 1000

Grant programs—Indians, Indians.

Dated: September 5, 2001.

Bruce Babbitt,

Secretary of the Interior.

For the reasons set out in the preamble, the Department of the Interior adds a new part 1000 in chapter VI of title 25 of the Code of Federal Regulations as set forth below.

PART 1000—ANNUAL FUNDING AGREEMENTS UNDER THE TRIBAL SELF-GOVERNMENT ACT AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ACT

Subpart A—General Provisions

Sec.
1000.1 Authority.
1000.2 Definitions.
1000.3 Purpose and scope.
1000.4 Policy statement.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Purpose and Definitions

1000.10 What is the purpose of this subpart?
1000.11 What is the "applicant pool"?
1000.12 What is a "signatory"?
1000.13 What is a "nonsignatory Tribe"?

Eligibility

1000.14 Who is eligible to participate in Tribal self-governance?
1000.15 How many additional Tribes/Consortia may participate in self-governance per year?
1000.16 What criteria must a Tribe/Consortium satisfy to be eligible for admission to the "applicant pool"?
1000.17 What documents must a Tribe/Consortium submit to OSG to apply for admission to the applicant pool?
1000.18 May a Consortium member Tribe withdraw from the Consortium and become a member of the applicant pool?
1000.19 What is done during the "planning phase"?
1000.20 What is required in a planning report?
1000.21 When does a Tribe/Consortium have a "material audit exception"?
1000.22 What are the consequences of having a material audit exception?

Admission Into the Applicant Pool

1000.23 How is a Tribe/Consortium admitted to the applicant pool?
1000.24 When does OSG accept applications to become a member of the applicant pool?
1000.25 What are the deadlines for a Tribe/Consortium in the applicant pool to negotiate a compact and annual funding agreement (AFA)?
1000.26 Under what circumstances will a Tribe/Consortium be removed from the applicant pool?
1000.27 How does the Director select which Tribes in the applicant pool become self-governance Tribes?
1000.28 What happens if an application is not complete?
1000.29 What happens if a Tribe/Consortium is selected from the applicant pool but does not execute a compact and an AFA during the calendar year?
1000.30 May a Tribe/Consortium be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1)?
1000.31 May a Tribe/Consortium be selected to negotiate an AFA under section 403(c) without negotiating an AFA under section 403(b)(1) and/or section 403(b)(2)?

Withdrawal From a Consortium Annual Funding Agreement

1000.32 What happens when a Tribe wishes to withdraw from a Consortium annual funding agreement?

1000.33 What amount of funding is to be removed from the Consortium's AFA for the withdrawing Tribe?
1000.34 What happens if there is a dispute between the Consortium and the withdrawing Tribe?
1000.35 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Subpart C—Section 402(d) Planning and Negotiation Grants

Purpose and Types of Grants

1000.40 What is the purpose of this subpart?
1000.41 What types of grants are available?

Availability, Amount, and Number of Grants

1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?
1000.43 May a Tribe/Consortium use its own resources to meet its self-governance planning and negotiation expenses?
1000.44 What happens if there are insufficient funds to meet the Tribal requests for planning/negotiation grants in any given year?
1000.45 How many grants will the Department make each year and what funding will be available?

Selection Criteria

1000.46 Which Tribes/Consortia may be selected to receive a negotiation grant?
1000.47 What must a Tribe/Consortium do to receive a negotiation grant?
1000.48 What must a Tribe do if it does not wish to receive a negotiation grant?

Advance Planning Grant Funding

1000.49 Who can apply for an advance planning grant?
1000.50 What must a Tribe/Consortium seeking a planning grant submit in order to meet the planning phase requirements?
1000.51 How will Tribes/Consortia know when and how to apply for planning grants?
1000.52 What criteria will the Director use to award advance planning grants?
1000.53 Can Tribes/Consortia that receive advance planning grants also apply for a negotiation grant?
1000.54 How will a Tribe/Consortium know whether or not it has been selected to receive an advance planning grant?
1000.55 Can a Tribe/Consortium appeal within DOI the Director's decision not to award a grant under this subpart?

Subpart D—Other Financial Assistance for Planning and Negotiations Grants for Non-BIA Programs

Purpose and Eligibility

1000.60 What is the purpose of this subpart?
1000.61 Are other funds available to self-governance Tribes/Consortia for planning and negotiating with non-BIA bureaus?

Eligibility and Application Process

1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?
1000.63 Under what circumstances may planning and negotiation grants be awarded to Tribes/Consortia?
1000.64 How does the Tribe/Consortium, know when and how to apply to OSG for a planning and negotiation grant?
1000.65 What kinds of activities do planning and negotiation grants support?
1000.66 What must be included in the application?
1000.67 How will the Director award planning and negotiation grants?
1000.68 May non-BIA bureaus provide technical assistance to a Tribe/Consortium in drafting its planning grant application?
1000.69 How can a Tribe/Consortium obtain comments or selection documents received or utilized after OSG has made a decision on a planning grant application?
1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?
1000.71 Can an applicant appeal a decision not to award a grant?
1000.72 Will OSG notify Tribes/Consortia and affected non-BIA bureaus of the results of the selection process?
1000.73 Once a Tribe/Consortium has been awarded a grant, may the Tribe/Consortium obtain information from a non-BIA bureau?

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

1000.80 What is the purpose of this subpart?
1000.81 What is an annual funding agreement (AFA)?

Contents and Scope of Annual Funding Agreements

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1000.84 Does a Tribe/Consortium have the right to include provisions of Title I of Pub. L. 93–638 in an AFA?
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1000.89 Can the terms and conditions in an AFA be amended during the year it is in effect?
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1000.97 What is a Tribal share?
1000.98 How does BIA determine a Tribe's/Consortium's share of funds to be included in an AFA?
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Eligibility

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1000.123 Are there non-BIA programs for which the Secretary must negotiate for inclusion in an AFA subject to such terms as the parties may negotiate?
1000.124 What programs are included under section 403(b)(2) of the Act?

1000.125 What programs are included under section 403(c)?
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1000.136 When will this determination be made?

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1000.139 Will the established indirect cost rate always apply to new AFAs?
1000.140 How does the Secretary determine the amount of indirect contract support costs?
1000.141 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?
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1000.146 Can a Tribe/Consortium negotiate an AFA with a non-BIA bureau for which the performance period exceeds one year?
1000.147 Can the terms and conditions in a non-BIA AFA be amended during the year it is in effect?
1000.148 What happens if an AFA expires before the effective date of the successor AFA?

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1000.163 Can a Tribe negotiate other terms and conditions not contained in the model compact?
1000.164 Can a Tribe/Consortium have an AFA without entering into a compact?
1000.165 Are provisions in compacts negotiated before January 16, 2001, effective after implementation?

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1000.167 Who may initiate the information phase?
1000.168 Is it mandatory to go through the information phase before initiating the negotiation phase?
1000.169 How does a Tribe/Consortium initiate the information phase?
1000.170 What is the letter of interest?
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1000.173 How does a newly selected Tribe/Consortium initiate the negotiation phase?
1000.174 How and when does the bureau respond to a request to negotiate?
1000.175 What is the process for conducting the negotiation phase?
1000.176 What issues must the bureau and the Tribe/Consortium address at negotiation meetings?
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1000.193 Who may raise the issue of limitation or reduction of services, contracts, or funding?
1000.194 When must BIA raise the issue of limitation or reduction of services, contracts, or funding?
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1000.196 What must be included in a finding by BIA or in a claim by or an affected Tribe/Consortium or Tribal organization regarding the issue of a limitation or reduction of services?
1000.197 How will BIA resolve a claim?
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1000.221 Can the Secretary grant a waiver of regulations to a Tribe/Consortium?
1000.222 How does a Tribe/Consortium obtain a waiver?
1000.223 When can a Tribe/Consortium request a waiver of a regulation?
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1000.225 Are meetings or discussions mandatory?
1000.226 On what basis may the Secretary deny a waiver request?
1000.227 What happens if the Secretary denies the waiver request?
1000.228 What are examples of waivers prohibited by law?
1000.229 May a Tribe/Consortium propose a substitute for a regulation it wishes to be waived?
1000.230 How is a waiver approval documented for the record?
1000.231 How does a Tribe/Consortium request a reconsideration of the Secretary's denial of a waiver?
1000.232 When must DOI respond to a request for reconsideration?

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1000.243 What special provisions must be included in an AFA that contains a construction program?
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1000.247 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act?
1000.248 What is the Tribe's/Consortium's role in a construction program included in an AFA?
1000.249 What is the Secretary's role in a construction program in an AFA?
1000.250 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA?
1000.251 What happens when a Tribe/Consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension?
1000.252 Do all provisions of other subparts apply to construction portions of AFAs?
1000.253 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?
1000.254 May a Tribe/Consortium reallocate funds from a construction program to a non-construction program?
1000.255 May a Tribe/Consortium reallocate funds among construction programs?
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1000.271 What other statutes and regulations apply to FTCA coverage?
1000.272 Do Tribes/Consortia need to be aware of areas which FTCA does not cover?
1000.273 Is there a deadline for filing FTCA claims?
1000.274 How long does the Federal government have to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?
1000.275 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?
1000.276 Does FTCA apply to a self-governance AFA if FTCA is not referenced in the AFA?
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1000.278 Does this coverage extend to subcontractors of self-governance AFAs?
1000.279 Is FTCA the exclusive remedy for a tort claim, including a claim concerning personal injury or death, resulting from the performance of a self-governance AFA?
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1000.281 Does FTCA cover employees of the Tribe/Consortium who are paid by the Tribe/Consortium from funds other than those provided through the self-governance AFA?
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1000.303 What is imminent jeopardy to natural resources?
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1000.305 In an imminent jeopardy situation, what must the Secretary do?
1000.306 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?
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1000.308 What will the notice of reassumption include?
1000.309 How much time will a Tribe/Consortium have to respond to a notice of imminent jeopardy?
1000.310 What information must the Tribe's/Consortium's response contain?
1000.311 How will the Secretary reply to the Tribe's/Consortium's response?
1000.312 What happens if the Secretary accepts the Tribe's/Consortium's proposed measures?
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1000.314 What must a Tribe/Consortium do when a program is reassumed?
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1000.333 How does a Tribe/Consortium retrocede a program?
1000.334 When will the retrocession become effective?
1000.335 How will retrocession affect the Tribe's/Consortium's existing and future AFAs?
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1000.337 Does the Tribe/Consortium have to return property used in the operation of a retroceded program?
1000.338 What happens to a Tribe's/Consortium's mature contractor status if it has retroceded a program that is also available for self-determination contracting?
1000.339 How does retrocession affect a bureau's operation of the retroceded program?

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1000.355 How are trust evaluations conducted?
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1000.358 Can an initial review of the status of the trust asset be conducted?
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1000.360 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?
1000.361 Will the annual review include a review of the Secretary's residual trust functions?
1000.362 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?
1000.363 What if the trust evaluation reveals problems that do not rise to the level of imminent jeopardy?

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1000.391 Can a Tribe/Consortium employee be detailed to a Federal service position?
1000.392 How does the Freedom of Information Act apply?
1000.393 How does the Privacy Act apply?
1000.394 What audit requirements must a self-governance Tribe/Consortium follow?
1000.395 Do OMB circulars and revisions apply to self-governance funding agreements?
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1000.397 Are there any restrictions on how AFA funds may be spent?
1000.398 May a Tribe/Consortium invest funds received under a self-governance agreement?
1000.399 How may interest or investment income that accrues on AFAs be used?
1000.400 Can a Tribe/Consortium retain savings from programs?
1000.401 Can a Tribe/Consortium carry over funds not spent during the term of the AFA?
1000.402 After a non-BIA AFA has been executed and the funds transferred to a Tribe/Consortium, can a bureau request the return of funds?
1000.403 How can a person or group appeal a decision or contest an action related to a program operated by a Tribe/Consortium under an AFA?
1000.404 Must self-governance Tribes/Consortia comply with the Secretarial approval requirements of 25 U.S.C. 81, 82a, and 476 regarding professional and attorney contracts?
1000.405 Are AFA funds non-Federal funds for the purpose of meeting matching requirements?
1000.406 Does Indian preference apply to services, activities, programs and functions performed under a self-governance AFA?
1000.407 Do the wage and labor standards in the Davis-Bacon Act apply to Tribes and Tribal Consortia?

Supply Sources

1000.408 Can a Tribe/Consortium use Federal supply sources in the performance of an AFA?

Prompt Payment Act

1000.409 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a non-BIA, non-Indian program AFA?

Subpart R—Appeals

1000.420 What does "Title-I eligible programs" mean in this subpart?
1000.421 What is the purpose of this subpart?
1000.422 How must disputes be handled?
1000.423 Are there any decisions that are not administratively appealable under this subpart?
1000.424 Does a Tribe/Consortium have a right to an informal conference to resolve any disputes?
1000.425 How does a Tribe/Consortium request an informal conference?
1000.426 How is an informal conference held?
1000.427 What happens after the informal conference?
1000.428 How may a Tribe/Consortium appeal a decision made after the AFA or compact or amendment to an AFA or compact has been signed?
1000.429 What statutes and regulations govern resolution of disputes concerning signed AFAs or compacts that are appealed to IBCA?
1000.430 To whom are appeals directed regarding reassumption for imminent jeopardy?
1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?
1000.432 To whom may a Tribe appeal a decision made before the AFA or an amendment to the AFA or compact is signed?
1000.433 When and how must a Tribe/Consortium appeal an adverse pre-award decision?
1000.434 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?
1000.435 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?
1000.436 How may a Tribe/Consortium seek reconsideration of the Secretary's decision involving a self-governance compact?
1000.437 When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?
1000.438 May Tribes/Consortia appeal Department decisions to a Federal court?

Subpart S—Conflicts of Interest

1000.460 What is an organizational conflict of interest?
1000.461 What must a Tribe/Consortium do if an organizational conflict of interest arises under an AFA?
1000.462 When must a Tribe/Consortium regulate its employees or subcontractors to avoid a personal conflict of interest?
1000.463 What types of personal conflicts of interest involving Tribal officers, employees or subcontractors would have to be regulated by a Tribe/Consortium?
1000.464 What personal conflicts of interest must the standards of conduct regulate?
1000.465 May a Tribe/Consortium negotiate AFA provisions on conflicts of interest to take the place of this subpart?
Appendix A—to Part 1000—Model Compact of Self-Governance Between the Tribe and the Department of the Interior

Authority: 25 U.S.C. 458aa–gg.

Subpart A—General Provisions

§ 1000.1 Authority.

This part is prepared and issued by the Secretary of the Interior under the negotiated rulemaking procedures in 5 U.S.C. 565.

§ 1000.2 Definitions.

403(c) Program means a non-BIA program eligible under section 403(c) of the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. 450 *et seq.* and, specifically, a program, function, service, or activity that is of special geographic, historical or cultural significance to a self-governance Tribe/Consortium. These programs may be referred to, also, as "nexus" programs.

Act means the Tribal Self-Governance Act, Title IV of the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93–638, as added by Pub. L. 103–413, amended by Pub. L. 104–109, as amended.

Applicant pool means Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance in accordance with § 1000.16 of these regulations.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BIA Program means any program, service, function, or activity, or portion thereof, that is performed or administered by the Department through the Bureau of Indian Affairs.

Bureau means a bureau or office of the Department of the Interior.

Compact means an executed document that affirms the government-to-government relationship between a self-governance Tribe and the United States. The compact differs from an annual funding agreement (AFA) in that parts of the compact apply to all bureaus within the Department of the Interior rather than a single bureau.

Consortium means an organization of Indian Tribes that is authorized by those Tribes to participate in self-governance under this part and is responsible for negotiating, executing, and implementing annual funding agreements and compacts.

Construction management services (CMS) means activities limited to

administrative support services, coordination, oversight of engineers and construction activities. CMS services include services that precede project design: all project design and actual construction activities are subject to Subpart K of these regulations whether performed by a Tribe subcontractor, or consultant.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period must carry over to the next business day unless otherwise prohibited by law.

Director means the Director of the Office of Self-Governance (OSG).

DOI or Department means the Department of the Interior.

Funding year means either fiscal or calendar year.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe or Tribe means any Indian Tribe, band, nation or other organized group or community, including pueblos, rancherias, colonies and any Alaska Native village, or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rates means the rate(s) arrived at through negotiation between an Indian Tribe/Consortium and the appropriate Federal agency.

Indirect costs means costs incurred for a common or joint purpose benefitting more than one program and that are not readily assignable to individual programs.

Nexus Program means a 403(c) Program as defined in this section.

Non-BIA Bureau means any bureau or office within the Department of the Interior other than the Bureau of Indian Affairs.

Non-BIA programs means those programs administered by bureaus or offices other than the Bureau of Indian Affairs within the Department of the Interior.

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary-Indian Affairs responsible for the implementation and development of the Tribal Self-Governance Program.

Program means any program, service, function, or activity, or portions of programs administered by a bureau within the Department of the Interior.

Pub. L. 93–638 means sections 1–9 and Title I of the Indian Self-Determination and Education Assistance Act of 1975, as amended.

Reassumption means that the Secretary reassumes control or operation of a program under § 1000.300 *et seq.*

Retained Tribal shares means those funds that were available as a Tribal share but under the AFA were left with BIA to administer.

Retrocession means the voluntary return by a Tribe/Consortium to a bureau of a program operated under an AFA before the agreement expires.

Secretary means the Secretary of the Interior (DOI) or his or her designee authorized to act on the behalf of the Secretary as to the matter at hand.

Self-governance Tribe/Consortium means a Tribe or Consortium that participates in permanent self-governance through application and selection from the applicant pool or has participated in the Tribal self-governance demonstration project. May also be referred to as "participating Tribe/Consortium."

Successor AFA means a funding agreement negotiated after a Tribe's/Consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

Tribal share means the amount determined for that Tribe/Consortium for a particular program at BIA region, agency, and central office levels under sec. 403(g)(3) and 405(d) of the Act.

§ 1000.3 Purpose and scope.

(a) *General.* This part codifies uniform and consistent rules for the Department of the Interior (DOI) in implementing Title IV of the Indian Self-Determination and Education Assistance Act (ISDEA) Public Law 93–638, 25 U.S.C. 450 *et seq.*, as amended by Title II of Pub. L. 103–413, the Tribal Self-Governance Act of 1994 (108 Stat. 4250, October 25, 1994).

(b) *Information Collection.* The information provided by the Tribes will be used by the Department for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition, Tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool, will provide information so that grants can be awarded to Tribes meeting basic eligibility (*i.e.* Tribal resolution indicating that the Tribe wants to plan for Self-Governance and has no material audit exceptions for the last three years of audits). There is no confidential information being solicited and confidentiality is not extended under the law. Other documentation is required to meet the reporting requirements as called for in section 405 of the Act. The information being provided by the Tribes is required to obtain a benefit, however, no person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. Comments were solicited from the Tribes and the general public with respect to this collection. No adverse comments were received. The information collection has been cleared by OMB. The number is OMB control #1076–0143. The approval expires on April 30, 2003.

§ 1000.4 Policy statement.

(a) *Congressional findings.* In the Tribal Self-Governance Act of 1994, the Congress found that:

(1) The Tribal right of self-governance flows from the inherent sovereignty of Indian Tribes and nations;

(2) The United States recognizes a special government-to-government relationship with Indian Tribes, including the right of the Tribes to self-governance, as reflected in the Constitution, treaties, Federal statues, and the course of dealings of the United States with Indian Tribes;

(3) Although progress had been made, the Federal bureaucracy, with its centralized rules and regulations, had eroded Tribal self-governance and dominated Tribal affairs;

(4) The Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian Tribes and the United States and to strengthen Tribal control over Federal funding and program management; and

(5) Congress has reviewed the results of the Tribal Self-Governance demonstration project and finds that:

(i) Transferring control over funding and decision making to Tribal governments, upon Tribal request, for Federal programs is an effective way to implement the Federal policy of government-to-government relations with Indian Tribes; and

(ii) Transferring control over funding and decision making to Tribal governments, upon request, for Federal programs strengthens the Federal policy of Indian self-determination.

(b) *Congressional declaration of policy.* It is the policy of the Tribal Self-Governance Act to permanently establish and implement self-governance:

(1) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian Tribes;

(2) To permit each Tribe to choose the extent of its participation in self-governance;

(3) To coexist with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Indian services by designated Federal agencies;

(4) To ensure the continuation of the trust responsibility of the United States to Indian Tribes and Indian individuals;

(5) To permit an orderly transition from Federal domination of programs and services to provide Indian Tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual Tribal communities; and

(6) To provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.

(c) *Secretarial self-governance policies.* (1) It is the policy of the Secretary to fully support and implement the foregoing policies to the full extent of the Secretary's authority.

(2) It is the policy of the Secretary to recognize and respect the unique government-to-government relationship between Tribes, as sovereign governments, and the United States.

(3) It is the policy of the Secretary to have all bureaus of the Department work cooperatively and pro-actively with Tribes and Tribal Consortia on a government-to-government basis within the framework of the Act and any other applicable provision of law, so as to make the ideals of self-determination and self-governance a reality.

(4) It is the policy of the Secretary to have all bureaus of the Department actively share information with Tribes and Tribal Consortia to encourage Tribes and Tribal Consortia to become knowledgeable about the Department's programs and the opportunities to include them in an annual funding agreement.

(5) It is the policy of the Secretary that all bureaus of the Department will negotiate in good faith, interpret each applicable Federal law and regulation in a manner that will facilitate the inclusion of programs in each annual funding agreement authorized, and enter into such annual funding agreements under Title IV, whenever possible.

(6) It is the policy of the Secretary to afford Tribes and Tribal Consortia the maximum flexibility and discretion necessary to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious, and institutional needs. These policies are designed to facilitate and encourage Tribes and Tribal Consortia to participate in the planning, conduct, and administration of those Federal programs, included, or eligible for inclusion in an annual funding agreement.

(7) It is the policy of the Secretary, to the extent of the Secretary's authority, to maintain active communication with Tribal governments regarding budgetary matters applicable to programs subject to the Act, and that are included in an individual self-governance annual funding agreement.

(8) It is the policy of the Secretary to implement policies, procedures, and practices at the Department to ensure that the letter, spirit, and goals of the Tribal Self-Governance Act are fully and successfully implemented.

(9) Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments and any subsequent Executive Orders regarding consultation will apply to the implementation of these regulations.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Purpose and Definitions

§ 1000.10 What is the purpose of this subpart?

This subpart describes the selection process and eligibility criteria that the Secretary uses to decide that Indian Tribes may participate in Tribal self-governance as authorized by section 402 of the Tribal Self-Governance Act of 1994.

§ 1000.11 What is the "applicant pool"?

The applicant pool is the pool of Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance.

§ 1000.12 What is a "signatory"?

A signatory is a Tribe or Consortium that meets the eligibility criteria in § 1000.16 and directly signs the agreements. A signatory may exercise all of the rights and responsibilities outlined in the compact and annual funding agreement and is legally responsible for all financial and administrative decisions made by the signatory.

§ 1000.13 What is a "nonsignatory Tribe"?

(a) A nonsignatory Tribe is a Tribe that either:

(1) Does not meet the eligibility criteria in § 1000.16 and, by resolution of its governing body, authorizes a Consortium to participate in self-governance on its behalf.

(2) Meets the eligibility criteria in § 1000.16 but chooses to be a member of a Consortium and have a representative of the Consortium sign the compact and AFA on its behalf.

(b) A non-signatory tribe under paragraph (a)(1) of this section:

(1) May not sign the compact and AFA. A representative of the Consortium must sign both documents on behalf of the Tribe.

(2) May only become a "signatory Tribe" if it independently meets the eligibility criteria in § 1000.16.

Eligibility

§ 1000.14 Who is eligible to participate in Tribal self-governance?

Two types of entities are eligible to participate in Tribal self-governance:

(a) Indian Tribes; and

(b) Consortia of Indian Tribes.

§ 1000.15 How many additional Tribes/Consortia may participate in self-governance per year?

(a) Sections 402(b) and (c) of the Act authorize the Director to select up to 50 additional Indian Tribes per year from an "applicant pool". A Consortium of Indian Tribes counts as one Tribe for purposes of calculating the 50 additional Tribes per year.

(b) Any signatory Tribe that signed a compact and AFA under the Tribal Self-Governance Demonstration project may negotiate its own compact and AFA in accordance with this subpart without being counted against the 50-Tribe limitation in any given year.

§ 1000.16 What criteria must a Tribe/Consortium satisfy to be eligible for admission to the "applicant pool"?

To be admitted into the applicant pool, a Tribe/Consortium must either be an Indian Tribe or a Consortium of Indian Tribes and comply with § 1000.17.

§ 1000.17 What documents must a Tribe/Consortium submit to OSG to apply for admission to the applicant pool?

In addition to the application required by § 1000.23, the Tribe/Consortium must submit to OSG documentation that shows all of the following:

(a) *Successful completion of a planning phase and a planning report.* The requirements for both of these are described in § 1000.19 and § 1000.20. A Consortium's planning activities satisfy this requirement for all its member Tribes for the purpose of the Consortium meeting this requirement;

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(b) *A request for participation in self-governance by a Tribal resolution and/or a final official action by the Tribal governing body.* For a Consortium, the governing body of each Tribe must authorize its participation by a Tribal resolution and/or a final official action by the Tribal governing body that specifies the scope of the Consortium's authority to act on behalf of the Tribe.

(c) *A demonstration of financial stability and financial management capability for the previous 3 fiscal years.* This will be done by providing, as part of the application, an audit report prepared in accordance with procedures promulgated under the Single Audit Act Amendments of 1996, 31 U.S.C. 7501, *et seq.*, for the previous 3 years of the self-determination contracts. These audits must not contain material audit exceptions as defined in § 1000.21.

§ 1000.18 May a Consortium member Tribe withdraw from the Consortium and become a member of the applicant pool?

In accordance with the expressed terms of the compact or written agreement of the Consortium, a Consortium member Tribe (either a signatory or nonsignatory Tribe) may withdraw from the Consortium to directly negotiate a compact and AFA. The withdrawing Tribe must do the following.

(a) Independently meet all of the eligibility criteria in §§ 1000.14 through 1000.20. If a Consortium's planning activities and report specifically consider self-governance activities for a member Tribe, that planning activity and report may be used to satisfy the planning requirements for the member Tribe if it applies for self-governance status on its own.

(b) Submit a notice of withdrawal to OSG and the Consortium as evidenced by a resolution of the Tribal governing body.

§ 1000.19 What is done during the "planning phase"?

The Act requires that all Tribes/Consortia seeking to participate in Tribal self-governance complete a planning phase. During the planning phase, the Tribe/Consortium must conduct legal and budgetary research and internal Tribal government and organizational planning. The availability of BIA grant funds for planning activities will be in accordance with subpart C. The planning phase may be completed without a planning grant.

§ 1000.20 What is required in a planning report?

As evidence that the Tribe/Consortium has completed the planning phase, the Tribe/Consortium must prepare and submit to the Secretary a final planning report.

(a) The planning report must:

(1) Identify BIA and non-BIA programs that the Tribe/Consortium may wish to subsequently negotiate for inclusion in a compact and AFA;

(2) Describe the Tribe's/Consortium's planning activities for both BIA and non-BIA programs that may be negotiated;

(3) Identify the major benefits derived from the planning activities;

(4) Identify the process that the Tribe/Consortium will use to resolve any complaints by service recipients;

(5) Identify any organizational planning that the Tribe/Consortium has completed in anticipation of implementing Tribal self-governance; and

(6) Indicate if the Tribe's/Consortium's planning efforts have revealed that its current organization is adequate to assume programs under Tribal self-governance.

(b) In supplying the information required by paragraph (a)(5) of this section:

(1) For BIA programs, a Tribe/Consortium should describe the process that it will use to debate and decide the setting of priorities for the funds it will receive from its AFA.

(2) For non-BIA programs that the Tribe/Consortium may wish to negotiate, the report should describe how the Tribe/Consortium proposes to perform the programs.

§ 1000.21 When does a Tribe/Consortium have a "material audit exception"?

A Tribe/Consortium has a material audit exception if any of the audits that it submitted under § 1000.17(c) identifies:

(a) A material weakness, that is a condition in which the design or operation of one or more of the internal control components does reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions;

(b) a single finding of known questioned costs subsequently disallowed by a contracting officer or awarding official that exceeds $10,000. If the audits submitted under § 1000.17(c) identify any of the conditions described in this section, the Tribe/Consortium must also submit copies of the contracting officer's findings and determinations.

§ 1000.22 What are the consequences of having a material audit exception?

If a Tribe/Consortium has a material audit exception, the Tribe/Consortium is ineligible to participate in self-governance until the Tribe/Consortium meets the eligibility criteria in § 1000.16.

Admission Into the Applicant Pool

§ 1000.23 How is a Tribe/Consortium admitted to the applicant pool?

To be considered for admission in the applicant pool, a Tribe/Consortium must submit an application to the Director, Office of Self-Governance, 1849 C Street NW; MS 2542–MIB; Department of the Interior; Washington, DC 20240. The application must contain the documentation required in § 1000.17.

§ 1000.24 When does OSG accept applications to become a member of the applicant pool?

OSG accepts applications to become a member of the applicant pool at any time.

§ 1000.25 What are the deadlines for a Tribe/Consortium in the applicant pool to negotiate a compact and annual funding agreement (AFA)?

(a) To be considered for negotiations in any year, a Tribe/Consortium must be a member of the applicant pool on March 1 of the year in which the negotiations are to take place.

(b) An applicant may be admitted into the applicant pool during one year and selected to negotiate a compact and AFA in a subsequent year. In this case, the applicant must, before March 1 of the negotiation year, submit to OSG updated documentation that permits OSG to evaluate whether the Tribe/Consortium still satisfies the application criteria in 1000.17.

§ 1000.26 Under what circumstances will a Tribe/Consortium be removed from the applicant pool?

Once admitted into the applicant pool, a Tribe/Consortium will only be removed if it:

(a) Fails to satisfy the audit criteria in § 1000.17(c); or

(b) Submits to OSG a Tribal resolution and/or official action by the Tribal governing body requesting removal.

§ 1000.27 How does the Director select which Tribes in the applicant pool become self-governance Tribes?

The Director selects up to the first 50 Tribes from the applicant pool in any given year ranked according to the earliest postmark date of complete applications. If multiple complete applications have the same postmark date and there are insufficient slots available for that year, the Director will determine priority through random selection. A representative of each Tribe/Consortium that has submitted an application subject to random selection may, at the option of the Tribe/Consortium, be present when the selection is made.

§ 1000.28 What happens if an application is not complete?

(a) If OSG determines that a Tribe's/Consortium's application is deficient, OSG will immediately notify the Tribe/Consortium of the deficiency by letter, certified mail, return receipt requested. The letter will explain what the Tribe/Consortium must do to correct the deficiency.

(b) The Tribe/Consortium will have 20 working days from the date of receiving the letter to mail or telefax the corrected material and retain the applicant's original postmark.

(c) If the corrected material is deficient, the date of entry into the applicant pool will be the date the complete application is postmarked.

(d) If the postmark or date on the applicant's response letter or telefax is more than 20 working days after the date the applicant received the notice-of-deficiency letter, the date of entry into the applicant pool will be the date of full receipt of a completed application.

§ 1000.29 What happens if a Tribe/Consortium is selected from the applicant pool but does not execute a compact and an AFA during the calendar year?

(a) The Tribe/Consortium remains eligible to negotiate a compact and annual funding agreement at any time unless:

(1) It notifies the Director in writing that it no longer wishes to be eligible to participate in the Tribal Self-Governance Program;

(2) Fails to satisfy the audit requirements of § 1000.17(c); or

(3) Submits documentation evidencing a Tribal resolution requesting removal from the application pool.

(b) The failure of the Tribe/Consortium to execute an agreement has no effect on the selection of up to 50 additional Tribes/Consortia in a subsequent year.

§ 1000.30 May a Tribe/Consortium be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1)?

Yes, a Tribe/Consortium may be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1).

§ 1000.31 May a Tribe/Consortium be selected to negotiate an AFA under section 403(c) without negotiating an AFA under section 403(b)(1) and/or section 403(b)(2)?

No, section 403(c) of the Act states that any programs of special geographic, cultural, or historical significance to the Tribe/Consortium must be included in AFAs negotiated under section 403(a) and/or section 403(b). A Tribe may be selected to negotiate an AFA under section 403(c) at the same time that it negotiates an AFA under section 403(b)(1) and/or section 403(b)(2).

Withdrawal From a Consortium Annual Funding Agreement

§ 1000.32 What happens when a Tribe wishes to withdraw from a Consortium annual funding agreement?

(a) A Tribe wishing to withdraw from a Consortium's AFA must notify the Consortium, bureau, and OSG of the intent to withdraw. The notice must be:

(1) In the form of a Tribal resolution or other official action by the Tribal governing body; and

(2) Received no later than 180 days before the effective date of the next AFA.

(b) The resolution referred to in paragraph (a)(1) of this section must indicate whether the Tribe wishes the withdrawn programs to be administered under a Title IV AFA, Title I contract, or directly by the bureau.

(c) The effective date of the withdrawal will be the date on which the current agreement expires, unless the Consortium, the Tribe, OSG, and the appropriate bureau agree otherwise.

§ 1000.33 What amount of funding is to be removed from the Consortium's AFA for the withdrawing Tribe?

When a Tribe withdraws from a Consortium, the Consortium's AFA must be reduced by the portion of funds attributable to the withdrawing Tribe. The Consortium must reduce the AFA on the same basis or methodology upon which the funds were included in the Consortium's AFA.

(a) If there is not a clear identifiable methodology upon which to base the reduction for a particular program, the Consortium, Tribe, OSG, and the bureau must negotiate an appropriate amount on a case-by-case basis.

(b) If a Tribe withdraws in the middle of a funding year, the Consortium agreement must be amended to reflect:

(1) A reduction based on the amount of funds passed directly to the Tribe, or already spent or obligated by the Consortium on behalf of the Tribe; and

(2) That the Consortium is no longer providing those programs associated with the withdrawn funds.

(c) Carryover funds from a previous fiscal year may be factored into the amount by which the Consortium agreement is reduced if:

(1) The Consortium, Tribe, OSG, and bureau agree it is appropriate; and

(2) The funds are clearly identifiable.

§ 1000.34 What happens if there is a dispute between the Consortium and the withdrawing Tribe?

(a) At least 15 days before the 90-day Congressional review period of the next AFA, the Consortium, OSG, bureau, and the withdrawing Tribe must reach an agreement on the amount of funding and other issues associated with the program or programs involved.

(b) If agreement is not reached:

(1) For BIA and OIEP programs, at least 5 days before the 90-day Congressional review, the Director must make a decision on the funding or other issues involved.

(2) For non-BIA programs, the bureau head will make a decision on the funding or other issues involved.

(c) A copy of the decision made under paragraph (b) of this section must be distributed in accordance with the following table.

If the program is . . .	then a copy of the decision must be sent to . . .
(1) A BIA program.	BIA regional director, the Deputy Commissioner of Indian Affairs, the withdrawing Tribe, and the Consortium.
(2) An OIEP program.	the OIEP line officer, the Director of OIEP, the withdrawing Tribe, and the Consortium.

(d) Any decision made under paragraph (b) of this section is appealable under subpart R of this part.

§ 1000.35 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under § 1000.32 of this part, a Tribe may withdraw from a Consortium and request that the Secretary award the Tribe its portion of a construction project's funds. The Secretary may decide not to award these funds if the Secretary determines that the award of the withdrawing Tribe's portion of funds would affect the ability of the remaining members of the Consortium to complete a severable or non-severable phase of the project within available funding.

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(a) An example of a non-severable phase of a project would be the construction of a single building to serve all members of a Consortium.

(b) An example of a severable phase of a project would be the funding of a road in one village where the Consortium would be able to complete the roads in other villages that were part of the project approved initially in the AFA.

(c) The Secretary's decision under this section may be appealed under § 1000.428 of these regulations.

Subpart C—Section 402(d) Planning and Negotiation Grants

Purpose and Types of Grants

§ 1000.40 What is the purpose of this subpart?

This subpart describes the availability and process of applying for planning and negotiation grants authorized by section 402(d) of the Act to help Tribes meet costs incurred in:

(a) Meeting the planning phase requirement of the Act, including planning to negotiate for non-BIA programs; and

(b) Conducting negotiations.

§ 1000.41 What types of grants are available?

Three categories of grants may be available:

(a) Negotiation grants may be awarded to the Tribes/Consortia that have been selected from the applicant pool as described in subpart B of this part;

(b) Planning grants may be available to Tribes/Consortia requiring advance funding to meet the planning phase requirement of the Act; and

(c) Financial assistance may be available to Tribes/Consortia to plan for negotiating for non-BIA programs, as described in subpart D and §§ 1000.42–1000.45 of this subpart.

Availability, Amount, and Number of Grants

§ 1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?

No, grants to cover some or all of the planning costs that a Tribe/Consortium may incur, depend upon the availability of funds appropriated by Congress. Notice of availability of grants will be published in the **Federal Register** as described in § 1000.45.

§ 1000.43 May a Tribe/Consortium use its own resources to meet its self-governance planning and negotiation expenses?

Yes, a Tribe/Consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning phase requirement of the Act or to negotiate a compact and an AFA.

§ 1000.44 What happens if there are insufficient funds to meet the Tribal requests for planning/negotiation grants in any given year?

If appropriated funds are available but insufficient to meet the total requests from Tribes/Consortia:

(a) First priority will be given to Tribes/Consortia that have been selected from the applicant pool to negotiate an AFA; and

(b) Second priority will be given to Tribes/Consortia that require advance funds to meet the planning requirement for entry into the self-governance program.

§ 1000.45 How many grants will the Department make each year and what funding will be available?

The number and size of grants awarded each year will depend on Congressional appropriations and Tribal interest. By no later than January 1 of each year, the Director will publish a notice in the **Federal Register** that provides relevant details about the application process, including the funds available, timeframes, and requirements for negotiation grants, advance planning grants, and financial assistance as described in subpart D of this part.

Selection Criteria

§ 1000.46 Which Tribes/Consortia may be selected to receive a negotiation grant?

Any Tribe/Consortium that has been accepted into the applicant pool and has been accepted to negotiate a self-governance AFA may apply for a negotiation grant. By March 15 of each year, the Director will publish a list of additional Tribes/Consortia that have been selected for negotiation along with information on how to apply for negotiation grants.

§ 1000.47 What must a Tribe/Consortium do to receive a negotiation grant?

If funds are available, a grant will be awarded to help cover the costs of preparing for and negotiating a compact and an AFA. These grants are not competitive. To receive a negotiation grant, a Tribe/Consortium must:

(a) Be selected from the applicant pool to negotiate an AFA;

(b) Be qualified as eligible to receive a negotiation grant in the **Federal Register** notice discussed in § 1000.45;

(c) Not have received a negotiation grant within the 3 years preceding the date of the latest **Federal Register** announcement;

(d) Submit a letter affirming its readiness to negotiate; and

(e) Formally request a negotiation grant to prepare for and negotiate an AFA.

§ 1000.48 What must a Tribe do if it does not wish to receive a negotiation grant?

A selected Tribe/Consortium may elect to negotiate without applying for a negotiation grant. In such a case, the Tribe/Consortium should notify OSG in writing so that funds can be reallocated for other grants.

Advance Planning Grant Funding

§ 1000.49 Who can apply for an advance planning grant?

Any Tribe/Consortium that is not a self-governance Tribe and needs advance funding to complete the planning phase requirement may apply. Tribes/Consortia that have received a planning grant within 3 years preceding the date of the latest **Federal Register** announcement are not eligible.

§ 1000.50 What must a Tribe/Consortium seeking a planning grant submit in order to meet the planning phase requirements?

A Tribe/Consortium must submit the following material:

(a) A Tribal resolution or other final action of the Tribal governing body indicating a desire to plan for Tribal self-governance.

(b) Audits from the last 3 years that document that the Tribe/Consortium is free from material audit exceptions. In order to meet this requirement, a Tribe/Consortium may use the audit currently being conducted on its operations if this audit is submitted before the Tribe/Consortium completes the planning activity.

(c) A proposal that includes:

(1) The Tribe's/Consortium's plans for conducting legal and budgetary research;

(2) The Tribe's/Consortium's plans for conducting internal Tribal government and organizational planning;

(3) A timeline indicating when planning will start and end, and;

(4) Evidence that the Tribe/Consortium can perform the tasks associated with its proposal (i.e., resumes and position descriptions of key staff or consultants to be used).

§ 1000.51 How will Tribes/Consortia know when and how to apply for planning grants?

The number and size of grants awarded each year will depend on Congressional appropriations. By no later than January 1 of each year, the Director will publish in the **Federal Register** a notice concerning the availability of planning grants for additional Tribes. This notice must identify the specific details for applying.

§ 1000.52 What criteria will the Director use to award advance planning grants?

Advance planning grants are discretionary and based on need. The Director will use the following criteria to determine whether or not to award a planning grant to a Tribe/Consortium before the Tribe/Consortium is selected into the applicant pool.

(a) Completeness of application as described in § 1000.50.

(b) Financial need. The Director will rank applications according to the percent of Tribal resources that comprise total resources covered by the latest A–133 audit. Priority will be given to applications that have a lower level of Tribal resources as a percent of total resources.

(c) Other factors that the Tribe may identify as documenting its previous efforts to participate in self-governance and demonstrating its readiness to enter into a self-governance agreement.

§ 1000.53 Can Tribes/Consortia that receive advance planning grants also apply for a negotiation grant?

Yes, Tribes/Consortia that successfully complete the planning activity and are selected may apply to be included in the applicant pool. Once approved for inclusion in the applicant pool, the Tribe/Consortium may apply for a negotiation grant according to the process in §§ 1000.46–1000.48.

§ 1000.54 How will a Tribe/Consortium know whether or not it has been selected to receive an advance planning grant?

No later than June 1, the Director will notify the Tribe/Consortium by letter whether it has been selected to receive an advance planning grant.

§ 1000.55 Can a Tribe/Consortium appeal within DOI the Director's decision not to award a grant under this subpart?

No, the Director's decision to award or not to award a grant under this subpart is final for the Department.

Subpart D—Other Financial Assistance for Planning and Negotiation Grants for Non-BIA Programs

Purpose and Eligibility

§ 1000.60 What is the purpose of this subpart?

This subpart describes the availability and process of applying for other financial assistance that may be available for planning and negotiating for a non-BIA program.

§ 1000.61 Are other funds available to self-governance Tribes/Consortia for planning and negotiating with non-BIA bureaus?

Yes, Tribes/Consortia may contact OSG to determine if OSG has funds available for the purpose of planning and negotiating with non-BIA bureaus under this subpart. A Tribe/Consortium may also ask a non-BIA bureau for information on any funds that may be available from that bureau.

Eligibility and Application Process

§ 1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?

Any Tribe/Consortium that is in the applicant pool, or has been selected from the applicant pool or that has an existing AFA.

§ 1000.63 Under what circumstances may planning and negotiation grants be awarded to Tribes/Consortia?

At the discretion of the Director, grants may be awarded when requested by the Tribe. Tribes/Consortia may submit only one application per year for a grant under this section.

§ 1000.64 How does the Tribe/Consortium know when and how to apply to OSG for a planning and negotiation grant?

When funds are available, the Director will publish a notice in the **Federal Register** announcing their availability and a deadline for submitting an application.

§ 1000.65 What kinds of activities do planning and negotiation grants support?

The planning and negotiation grants support activities such as, but not limited to, the following:

(a) Information gathering and analysis;

(b) Planning activities, that may include notification and consultation with the appropriate non-BIA bureau and identification and/or analysis of activities, resources, and capabilities that may be needed for the Tribe/Consortium to assume non-BIA programs; and

(c) Negotiation activities.

§ 1000.66 What must be included in the application?

The application for a planning and negotiation grant must include:

(a) Written notification by the governing body or its authorized representative of the Tribe's/Consortium's intent to engage in planning/negotiation activities like those described in § 1000.65;

(b) Written description of the planning and/or negotiation activities that the Tribe/Consortium intends to undertake, including, if appropriate, documentation of the relationship between the proposed activities and the Tribe/Consortium;

(c) The proposed timeline for completion of the planning and/or negotiation activities to be undertaken; and

(d) The amount requested from OSG.

§ 1000.67 How will the Director award planning and negotiation grants?

The Director must review all grant applications received by the date specified in the announcement to determine whether or not the applications include the required elements outlined in the announcement. OSG must rank the complete applications submitted by the deadline using the criteria in § 1000.70.

§ 1000.68 May non-BIA bureaus provide technical assistance to a Tribe/Consortium in drafting its planning grant application?

Yes, upon request from the Tribe/Consortium, a non-BIA bureau may provide technical assistance to the Tribe/Consortium in the drafting of its planning grant application.

§ 1000.69 How can a Tribe/Consortium obtain comments or selection documents received or utilized after OSG has made a decision on a planning grant application?

A Tribe/Consortium may request comments or selection documents under the Freedom of Information Act.

§ 1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?

The Director will use the following criteria and point system to rank the applications:

(a) The application contains a clear statement of objectives and timelines to complete the proposed planning or negotiation activity and demonstrates that the objectives are legally authorized and achievable. (20 points)

(b) The proposed budget expenses are reasonable. (10 points)

(c) The proposed project demonstrates a new or unique approach to Tribal self-governance or broadens self-governance to include new activities within the Department. (5 points)

§ 1000.71 Can an applicant appeal a decision not to award a grant?

No, all decisions made by the Director to award or not to award a grant under this subpart are final for the Department.

§ 1000.72 Will OSG notify Tribes/Consortia and affected non-BIA bureaus of the results of the selection process?

Yes, OSG will notify all applicant Tribes/Consortia and affected non-BIA

bureaus in writing as soon as possible after completing the selection process.

§ 1000.73 Once a Tribe/Consortium has been awarded a grant, may the Tribe/Consortium obtain information from a non-BIA bureau?

Yes, see § 1000.169.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

§ 1000.80 What is the purpose of this subpart?

This subpart describes the components of annual funding agreements for BIA programs.

§ 1000.81 What is an annual funding agreement (AFA)?

Annual funding agreements are legally binding and mutually enforceable written agreements negotiated and entered into annually between a self-governance Tribe/Consortium and BIA.

Contents and Scope of Annual Funding Agreements

§ 1000.82 What types of provisions must be included in a BIA AFA?

Each AFA must specify the programs and it must also specify the applicable funding:

(a) Retained by BIA for "inherently Federal functions" identified as "residuals" (See § 1000.94);

(b) Transferred or to be transferred to the Tribe/Consortium (See § 1000.91); and

(c) Retained by BIA to carry out functions that the Tribe/Consortium could have assumed but elected to leave with BIA. (See § 1000.101).

§ 1000.83 Can additional provisions be included in an AFA?

Yes, any provision that the parties mutually agreed upon may be included in an AFA.

§ 1000.84 Does a Tribe/Consortium have the right to include provisions of Title I of Pub. L. 93–638 in an AFA?

Yes, under Pub. L. 104–109, a Tribe/Consortium has the right to include any provision of Title I of Pub. L. 93–638 in an AFA.

§ 1000.85 Can a Tribe/Consortium negotiate an AFA with a term that exceeds one year?

Yes, at the option of the Tribe/Consortium, and subject to the availability of Congressional appropriations, a Tribe/Consortium may negotiate an AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93–638.

Determining What Programs May Be Included in an AFA

§ 1000.86 What types of programs may be included in an AFA?

A Tribe/Consortium may include in its AFA programs administered by BIA, without regard to the BIA agency or office that administers the program, including any program identified in section 403(b)(1) of the Act.

§ 1000.87 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the Tribe/Consortium and those retained by the Secretary?

(a) The AFA must specify in writing the services, functions, and responsibilities to be assumed by the Tribe/Consortium and the functions, services, and responsibilities to be retained by the Secretary.

(b) Any division of responsibilities between the Tribe/Consortium and BIA should be clearly stated in writing as part of the AFA. Similarly, when there is a relationship between the program and BIA's residual responsibility, the relationship should be in writing.

§ 1000.88 Do Tribes/Consortia need Secretarial approval to redesign BIA programs that the Tribe/Consortium administers under an AFA?

No, the Secretary does not have to approve a redesign of a program under the AFA, except when the redesign involves a waiver of a regulation.

(a) The Secretary must approve any waiver, in accordance with subpart J of this part, before redesign takes place.

(b) This section does not authorize redesign of programs where other prohibitions exist.

(c) Redesign shall not result in the Tribe/Consortium being entitled to receive more or less funding for the program from BIA.

(d) Redesign of construction project(s) included in an AFA must be done in accordance with subpart K of this part.

§ 1000.89 Can the terms and conditions in an AFA be amended during the year it is in effect?

Yes, terms and conditions in an AFA may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

§ 1000.90 What happens if an AFA expires before the effective date of the successor AFA?

If the effective date of the successor AFA is not on or before the expiration of the current AFA, subject to terms mutually agreed upon by the Tribe/Consortium and the Department at the time the current AFA was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent adequate resources are available. During this extension period, the current AFA shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671–2680 (1994), and the Tribe/Consortium may use any funds remaining under the AFA, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes an AFA to be continued beyond the completion of the program authorized under the AFA or the amended AFA. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe from receiving, additional funding under any successor AFA. The successor AFA must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the programs, functions, services, and activities or portions thereof (PFSAs) for the full period it was or will be performed.

Determining AFA Amounts

§ 1000.91 What funds must be transferred to a Tribe/Consortium under an AFA?

(a) At the option of the Tribe/Consortium, the Secretary must provide the following program funds to the Tribe/Consortium through an AFA:

(1) An amount equal to the amount that the Tribe/Consortium would have been eligible to receive under contracts and grants for direct programs and contract support under Title I of Pub. L. 93–638, as amended;

(2) Any funds that are specifically or functionally related to providing services and benefits to the Tribe/Consortium or its members by the Secretary without regard to the organizational level within BIA where such functions are carried out; and

(3) Any funds otherwise available to Indian Tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(b) Examples of the funds referred to in paragraphs (a)(1) and (a)(2) of this section are:

(1) A Tribe's/Consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated amounts of agency, regional and central office funds, including previously undistributed funds or new programs on the same basis as they are made available to other Tribes;

(3) Other recurring funding;

(4) Non-recurring funding;

(5) Special projects, if applicable;

(6) Construction;

(7) Wildland firefighting accounts;

(8) Competitive grants; and

(9) Congressional earmarked funding.

(c) An example of the funds referred to in paragraph (a)(3) of this section is Federal Highway Administration funds.

§ 1000.92 What funds may not be included in an AFA?

Funds associated with programs prohibited from inclusion under section 403(b)(4) of the Act may not be included in an AFA.

§ 1000.93 May the Secretary place any requirements on programs and funds that are otherwise available to Tribes/Consortia or Indians for which appropriations are made to agencies other than DOI?

No, unless the Secretary is required to develop terms and conditions that are required by law or that are required by the agency to which the appropriation is made.

§ 1000.94 What are BIA residual funds?

BIA residual funds are the funds necessary to carry out BIA residual functions. BIA residual functions are those functions that only BIA employees could perform if all Tribes were to assume responsibilities for all BIA programs that the Act permits.

§ 1000.95 How is BIA's residual determined?

(a) Generally, residual information will be determined through a process that is consistent with the overall process used by the BIA. Residual information will consist of residual functions performed by the BIA, brief justification why the function is not compactible, and the estimated funding level for each residual function. Each regional office and the central office will compile a single document for distribution each year that contains all the residual information of that respective office. The development of the residual information will be based on the following principles. The BIA will:

(1) Develop uniform residual information to be used to negotiate residuals;

(2) Ensure functional consistency throughout BIA in the determination of residuals;

(3) Make the determination of residuals based upon the functions actually being performed by BIA at the respective office;

(4) Annually consult with Tribes on a region-by-region basis as requested by Tribes/Consortia; and

(5) Notify Tribal leaders each year by March 1 of the availability of residual information.

(b) BIA shall use the residual information determined under subparagraph (a) as the basis for negotiating with individual Tribes.

(c) In accordance with the appeals procedures in subpart R of this part, if BIA and a participating Tribe/Consortium disagree over the content of residual functions or amounts, Tribe/Consortium can appeal as shown in the following table.

If a Tribe/Consortium . . .	the Tribe/Consortium may . . .	and . . .
(1) Disagrees with BIA's determination	appeal to the Deputy Commissioner	the Deputy Commissioner must make a written determination within 30 days of receiving the request.
(2) Disagrees with the Deputy Commissioner's determination.	appeal to the Assistant Secretary—Indian Affairs.	the Assistant Secretary's determination is final for the Department.

(d) Information on residual functions may be amended if programs are added or deleted, if statutory or final judicial determinations mandate or if the Deputy Commissioner makes a determination that would alter the residual information or funding amounts. The decision may be appealed to the Assistant Secretary in accordance with subpart R of this part. The Assistant Secretary shall make a written determination within 30 days.

§ 1000.96 May a Tribe/Consortium continue to negotiate an AFA pending an appeal of residual functions or amounts?

Yes, pending appeal of a residual function or amount, any Tribe/Consortium may continue to negotiate an AFA using the residual information that is being appealed. The residual information will be subject to later adjustment based on the final determination of a Tribe's/Consortium's appeal.

§ 1000.97 What is a Tribal share?

A Tribal share is the amount determined for a particular Tribe/Consortium for a particular program at BIA regional, agency and central office levels under section 403(g)(3) and 405(d) of the Act.

§ 1000.98 How does BIA determine a Tribe's/Consortium's share of funds to be included in an AFA?

There are typically two methods for determining the amount of funds to be included in the AFA:

(a) *Formula-driven.* For formula-driven programs, a Tribe's/Consortium's amount is determined by first identifying the residual funds to be retained by BIA and second, by applying the distribution formula to the remaining eligible funding for each program involved.

(1) Distribution formulas must be reasonably related to the function or service performed by an office, and must be consistently applied to all Tribes within each regional and agency office.

(2) The process in paragraph (a) of this section for calculating a Tribe's funding under self-governance must be consistent with the process used for calculating funds available to non-self-governance Tribes.

(b) *Tribal-specific.* For programs whose funds are not distributed on a formula basis as described in paragraph (a) of this section, a Tribe's funding amount will be determined on a Tribe-by-Tribe basis and may differ between Tribes. Examples of these funds may include special project funding, awarded competitive grants, earmarked funding, and construction or other one-time or non-recurring funding for which a Tribe is eligible.

§ 1000.99 Can a Tribe/Consortium negotiate a Tribal share for programs outside its region/agency?

Yes, where BIA services for a particular Tribe/Consortium are provided from a location outside its immediate agency or region, the Tribe may negotiate its share from BIA location where the service is actually provided.

§ 1000.100 May a Tribe/Consortium obtain discretionary or competitive funding that is distributed on a discretionary or competitive basis?

Funds provided for Indian services/programs that have not been mandated by Congress to be distributed on a competitive/discretionary basis may be distributed to a Tribe/Consortium under a formula-driven method. In order to receive such funds, a Tribe/Consortium must be eligible and qualified to receive

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such funds. A Tribe/Consortium that receives such funds under a formula-driven methodology would no longer be eligible to compete for these funds.

§ 1000.101 Are all funds identified as Tribal shares always paid to the Tribe/Consortium under an AFA?

No, at the discretion of the Tribe/Consortium, Tribal shares may be left, in whole or in part, with BIA for certain programs. This is referred to as a "retained Tribal share".

§ 1000.102 How are savings that result from downsizing allocated?

Funds that are saved as a result of downsizing in BIA are allocated to Tribes/Consortia in the same manner as Tribal shares as provided for in § 1000.98.

§ 1000.103 Do Tribes/Consortia need Secretarial approval to reallocate funds between programs that the Tribe/Consortium administers under the AFA?

No, unless otherwise required by law, the Secretary does not have to approve the reallocation of funds between programs that a Tribe/Consortium administers under an AFA.

§ 1000.104 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?

Yes, funding amounts negotiated in an AFA may be adjusted under the following circumstances:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortia, and Tribes/Consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate the amounts and make every effort to correct such errors.

(c) *Mutual Agreement.* Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

Establishing Self-Governance Base Budgets

§ 1000.105 What are self-governance base budgets?

(a) A Tribe/Consortium self-governance base budget is the amount of recurring funding identified in the President's annual budget request to Congress. This amount must be adjusted to reflect subsequent Congressional action. It includes amounts that are eligible to be base transferred or have been base transferred from BIA budget accounts to self-governance budget accounts. As allowed by Congress, self-governance base budgets are derived from:

(1) A Tribe's/Consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated agency, regional, and central office amounts;

(3) Other recurring funding;

(4) Special projects, if applicable;

(5) Programmatic shortfall;

(6) Tribal priority allocation increases and decreases;

(7) Pay costs and retirement cost adjustments; and

(8) Any other inflationary cost adjustments.

(b) Self-governance base budgets must not include any non-recurring program funds, construction and wildland firefighting accounts, Congressional earmarks, or other funds specifically excluded by Congress. These funds are negotiated annually and may be included in the AFA but must not be included in the self-governance base budget.

(c) Self-governance base budgets may not include other recurring type programs that are currently in Tribal priority allocations (TPA) such as general assistance, housing improvement program (HIP), road maintenance and contract support. Should these later four programs ever become base transferred to Tribes, then they may be included in a self-governance Tribe's base budget.

§ 1000.106 Once a Tribe/Consortium establishes a base budget, are funding amounts renegotiated each year?

No, unless otherwise requested by the Tribe/Consortium, these amounts are not renegotiated each year. If a Tribe/Consortium renegotiates funding levels:

(a) It must negotiate all funding levels in the AFA using the process for determining residuals and funding amounts on the same basis as other Tribes; and

(b) It is eligible for funding amounts of new programs or available programs not previously included in the AFA on the same basis as other Tribes.

§ 1000.107 Must a Tribe/Consortium with a base budget or base budget-eligible program amounts negotiated before January 16, 2001 negotiate new Tribal shares and residual amounts?

No, if a Tribe/Consortium negotiated amounts before January 16, 2001, it does not need to renegotiate new Tribal shares and residual amounts.

(a) At Tribal option, a Tribe/Consortium may retain funding amounts that:

(1) Were either base eligible or in the Tribe's base; and

(2) Were negotiated before this part is promulgated.

(b) If a Tribe/Consortium desires to renegotiate the amounts referred to in paragraph (a) of this section, the Tribe/Consortium must:

(1) Negotiate all funding included in the AFA; and

(2) Use the process for determining residuals and funding amounts on the same basis as other Tribes.

(c) Self-governance Tribes/Consortia are eligible for funding amounts for new or available programs not previously included in the AFA on the same basis as other Tribes/Consortia.

§ 1000.108 How are self-governance base budgets established?

At the request of the Tribe/Consortium, a self-governance base budget identifying each Tribe's funding amount is included in BIA's budget justification for the following year, subject to Congressional appropriation.

§ 1000.109 How are self-governance base budgets adjusted?

Self-governance base budgets must be adjusted as follows:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortia, and Tribes/Consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate such amounts and make every effort to correct the errors.

(c) *Mutual agreement.* Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

Purpose

§ 1000.120 What is the purpose of this subpart?

This subpart describes program eligibility, funding, terms, and conditions of AFAs for non-BIA programs.

§ 1000.121 What is an annual funding agreement for a non-BIA program?

Annual funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a Tribe/Consortium participating in the self-governance program that contain:

(a) A description of that portion or portions of a bureau program that are to be performed by the Tribe/Consortium; and

(b) Associated funding, terms and conditions under which the Tribe/Consortium will assume a program, or portion of a program.

Eligibility

§ 1000.122 What non-BIA programs are eligible for inclusion in an annual funding agreement?

Programs authorized by sections 403(b)(2) and 403(c) of the Act are eligible for inclusion in AFAs. The Secretary will publish annually a list of these programs in accordance with section 405(c)(4).

§ 1000.123 Are there non-BIA programs for which the Secretary must negotiate for inclusion in an AFA subject to such terms as the parties may negotiate?

Yes, those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

§ 1000.124 What programs are included under Section 403(b)(2) of the Act?

Those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

§ 1000.125 What programs are included under Section 403(c)?

Department of the Interior programs of special geographic, historical, or cultural significance to participating Tribes, individually or as members of a Consortium, are eligible for inclusion in AFAs under section 403(c).

§ 1000.126 What does "special geographic, historical or cultural" mean?

(a) *Geographic* generally refers to all lands presently "on or near" an Indian reservation, and all other lands within "Indian country," as defined by 18 U.S.C. 1151. In addition, "geographic" includes:

(1) Lands of former reservations;

(2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);

(3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and

(4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) *Historical* generally refers to programs or lands having a particular history that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

(c) *Cultural* refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering of medicines or materials such as grasses for basket weaving; or

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

§ 1000.127 Under Section 403(b)(2), when must programs be awarded non-competitively?

Programs eligible for contracts under Pub. L. 93–638 must be awarded non-competitively.

§ 1000.128 Is there a contracting preference for programs of special geographic, historical, or cultural significance?

Yes, if there is a special geographic, historical, or cultural significance to the program or activity administered by the bureau, the law affords the bureau the discretion to include the programs or activities in an AFA on a non-competitive basis.

§ 1000.129 Are there any programs that may not be included in an AFA?

Yes, section 403(k) of the Act excludes from the program:

(a) Inherently Federal functions; and

(b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the Tribe/Consortium, except as provided in § 1000.134.

§ 1000.130 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?

No, the Act favors the inclusion of a wide range of programs.

§ 1000.131 Will Tribes/Consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?

Yes, the Secretary must consult each year with Tribes/Consortia participating in self-governance programs regarding which bureau programs are eligible for inclusion in AFAs.

§ 1000.132 How will the Secretary consult with Tribes/Consortia in developing the list of available programs?

(a) On, or as near as possible to, October 1 of each year, the Secretary must distribute to each participating self-governance Tribe/Consortium the previous year's list of available programs in accordance with section 405(c)(4) of the Act. The list must include:

(1) All of the Secretary's proposed additions and revisions for the coming year with an explanation; and

(2) Programmatic targets and an initial point of contact for each bureau.

(b) The Tribes/Consortia receiving the proposed list will have 30 days from receipt to comment in writing on the Secretary's proposed revisions and to provide additions and revisions of their own for the Secretary to consider.

(c) The Secretary will carefully consider these comments before publishing the list as required by section 405(c)(4) of the Act.

(d) If the Secretary does not plan to include a Tribal suggestion or revision in the final published list, he/she must provide an explanation of his/her reasons if requested by a Tribe.

§ 1000.133 What else is on the list in addition to eligible programs?

The list will also include programmatic targets and an initial point of contact for each bureau. Programmatic targets will be established as part of the consultation process described in § 1000.132.

§ 1000.134 May a bureau negotiate with a Tribe/Consortium for programs not specifically included on the annual section 405(c) list?

Yes, the annual list will specify that bureaus will negotiate for other programs eligible under section 403(b)(2) when requested by a Tribe/Consortium. Bureaus may negotiate for section 403(c) programs whether or not they are on the list.

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§ 1000.135 How will a bureau negotiate an annual funding agreement for a program of special geographic, historical, or cultural significance to more than one Tribe?

(a) If a program is of special geographic, historical, or cultural significance to more than one Tribe, the bureau may allocate the program among the several Tribes/Consortia or select one Tribe/Consortium with whom to negotiate an AFA.

(b) In making a determination under paragraph (a) of this section, the bureau will, in consultation with the affected Tribes, consider:

(1) The special significance of each Tribe's or Consortium member's interest; and

(2) The statutory objectives being served by the bureau program.

(c) The bureau's decision will be final for the Department.

§ 1000.136 When will this determination be made?

It will occur during the pre-negotiation process, subject to the timeframes in § 1000.171 and § 1000.172.

Funding

§ 1000.137 What funds are included in an AFA?

Bureaus determine the amount of funding to be included in the AFA using the following principles:

(a) *403(b)(2) programs.* In general, funds are provided in an AFA to the Tribe/Consortium in an amount equal to the amount that it is eligible to receive under section 106 of Pub. L. 93–638.

(b) *403(c) programs.* (1) The AFA will include:

(i) Amounts equal to the direct costs the bureau would have incurred were it to operate that program at the level of work mutually agreed to in the AFA; and

(ii) Allowable indirect costs.

(2) A bureau is not required to include management and support funds from the regional or central office level in an AFA, unless:

(i) The Tribe/Consortium will perform work previously performed at the regional or central office level;

(ii) The work is not compensated in the indirect cost rate; and

(iii) Including management and support costs in the AFA does not result in the Tribe/Consortium being paid twice for the same work when negotiated indirect cost rate is applied.

(c) *Funding Limitations.* The amount of funding must be subject to the availability and level of Congressional appropriations to the bureau for that program or activity. As the various bureaus use somewhat differing budgeting practices, determining the amount of funds available for inclusion in the AFA for a particular program or activity is likely to vary among bureaus or programs.

(1) The AFA may not exceed the amount of funding the bureau would have spent for direct operations and indirect support and management of that program in that year.

(2) The AFA must not include funding for programs still performed by the bureau.

§ 1000.138 How are indirect cost rates determined?

The Department's Office of the Inspector General (OIG) or other cognizant Federal agency and the Tribe/Consortium negotiate indirect cost rates. These rates are based on the provisions of the Office of Management and Budget (OMB) Circular A–87 or other applicable OMB cost circular and the provisions of Title I of Pub. L. 93–638 (See § 1000.142). These rates are used generally by all Federal agencies for contracts and grants with the Tribe/Consortium, including self-governance agreements.

§ 1000.139 Will the established indirect cost rates always apply to new AFAs?

No, the established indirect cost rates will not always apply to new AFAs.

(a) A Tribe's/Consortium's existing indirect cost rate should be reviewed and renegotiated with the inspector general or other cognizant agency if:

(1) Using the previously negotiated rate would include the recovery of indirect costs that are not reasonable, allocable, or allowable to the relevant program; or

(2) The previously negotiated rate would result in an under-recovery by the Tribe/Consortium.

(b) If a Tribe/Consortium has a fixed amount indirect cost agreement under OMB Circular A–87, then:

(1) Renegotiation is not required and the duration of the fixed amount agreement will be that provided for in the fixed amount agreement; or

(2) The Tribe/Consortium and bureau may negotiate an indirect cost amount or rate for use only in that AFA without the involvement of the inspector general or other cognizant agency.

§ 1000.140 How does the Secretary determine the amount of indirect contract support costs?

The Secretary determines the amount of indirect contract support costs by:

(a) Applying the negotiated indirect cost rate to the appropriate direct cost base;

(b) Using the provisional rate; or

(c) Negotiating the amount of indirect contract support.

§ 1000.141 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?

No, indirect cost rates vary from Tribe to Tribe. The Secretary should refer to the appropriate negotiated indirect cost rates for individual Tribes, that apply government-wide. Although this cost rate is not capped, the amount of funds available for inclusion is capped at the level available under the relevant appropriation.

§ 1000.142 Instead of the negotiated indirect cost rate, is it possible to establish a fixed amount or another negotiated rate for indirect costs where funds are limited?

Yes, OMB Circular A–87 encourages agencies to test fee-for-service alternatives. If the parties agree to a fixed price, fee-for-service agreement, then they must use OMB Circular A–87 as a guide in determining the appropriate price (OMB circulars are available at http://www.whitehouse.gov/omb/ or see 5 CFR 1310.3).Where limited appropriated funds are available, negotiating the fixed cost option or another rate may facilitate reaching an agreement with that Tribe/Consortium.

Other Terms and Conditions

§ 1000.143 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

Yes, as provided for by section 403(b)(2) and 403(c) and as necessary to meet program mandates.

Reallocation, Duration, and Amendments

§ 1000.144 Can a Tribe reallocate funds for a non-BIA non-Indian program?

Yes, section 403(b) permits such reallocation upon joint agreement of the Secretary and the Tribe/Consortium.

§ 1000.145 Do Tribes/Consortia need Secretarial approval to reallocate funds between Title-I eligible programs that the Tribe/Consortium administers under a non-BIA AFA?

No, unless otherwise required by law, the Secretary does not have to approve the reallocation of funds with the exception of construction projects.

§ 1000.146 Can a Tribe/Consortium negotiate an AFA with a non-BIA bureau for which the performance period exceeds one year?

Yes, subject to the terms of the AFA, a Tribe/Consortium and a non-BIA bureau may agree to provide for the performance under the AFA to extend beyond the fiscal year. However, the Department may not obligate funds in excess and advance of available appropriations.

§ 1000.147 Can the terms and conditions in a non-BIA AFA be amended during the year it is in effect?

Yes, terms and conditions in a non-BIA AFA may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

§ 1000.148 What happens if an AFA expires before the effective date of the successor AFA?

If the effective date of a successor AFA is not on or before the expiration of the current AFA, subject to terms mutually agreed upon by the Tribe/Consortium and the Department at the time the current AFA was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent resources permit. During this extension period, the current AFA shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671–2680 (1994); and the Tribe/Consortium may use any funds remaining under the AFA, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes an AFA to be continued beyond the completion of the program authorized under the AFA or the amended AFA. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe from receiving, additional funding under any successor AFA. The successor AFA must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the programs, functions, services, and activities (PFSA) or portions thereof for the full period they were or will be performed.

Subpart G—Negotiation Process for Annual Funding Agreements

Purpose

§ 1000.160 What is the purpose of this subpart?

This subpart provides the process and timelines for negotiating a self-governance compact with the Department and an AFA with any bureau.

(a) For a newly selected or currently participating Tribe/Consortium negotiating an initial AFA with any bureau, see §§ 1000.173 through 1000.179.

(b) For a participating Tribe/Consortium negotiating a successor AFA with any bureau, see §§ 1000.180 through 1000.182.

Negotiating a Self-Governance Compact

§ 1000.161 What is a self-governance compact?

A self-governance compact is an executed document that affirms the government-to-government relationship between a self-governance Tribe and the United States. The compact differs from an AFA in that parts of the compact apply to all bureaus within the Department of the Interior rather than a single bureau.

§ 1000.162 What is included in a self-governance compact?

A model format for self-governance compacts appears in appendix A. A self-governance compact should generally include the following:

(a) The authority and purpose;

(b) Terms, provisions, and conditions of the compact;

(c) Obligations of the Tribe and the United States; and

(d) Other provisions.

§ 1000.163 Can a Tribe/Consortium negotiate other terms and conditions not contained in the model compact?

Yes, the Secretary and a self-governance Tribe/Consortium may negotiate into the model compact contained in appendix A additional terms relating to the government-to-government relationship between the Tribe(s) and the United States. For BIA programs, a Tribe/Consortium and the Secretary may agree to include any term in a contract and funding agreement under Title I in the model compact contained in appendix A to this part.

§ 1000.164 Can a Tribe/Consortium have an AFA without entering into a compact?

Yes, at the Tribe's/Consortium's option.

§ 1000.165 Are provisions in compacts negotiated before January 16, 2001, effective after implementation?

(a) Yes, all provisions in compacts that were negotiated with BIA before January 16, 2001, shall remain in effect for BIA programs only after January 16, 2001, provided that each compact contains provisions:

(1) That are authorized by the Tribal Self-Governance Act of 1994;

(2) Are in compliance with other applicable Federal laws; and,

(3) Are consistent with this part.

(b) BIA will notify the Tribe/Consortium in writing when BIA asserts that a provision or provisions of that Tribe's/Consortium's previously negotiated compact is not in compliance with the terms and conditions of this part. BIA and the Tribe/Consortium will renegotiate the provision within 60 days of the Tribe's/Consortium's receipt of the notification.

(c) If renegotiation is not successful within 60 days of the notice being provided, BIA's determination is final for the bureau and enforceability of the provisions shall be subject to the appeals process described in subpart R of this part. Pending a final appeal through the appeals process, BIA's determination shall be stayed.

Negotiation of Initial Annual Funding Agreements

§ 1000.166 What are the phases of the negotiation process?

There are two phases of the negotiation process:

(a) The information phase; and

(b) The negotiation phase.

§ 1000.167 Who may initiate the information phase?

Any Tribe/Consortium that has been admitted to the program or to the applicant pool may initiate the information phase.

§ 1000.168 Is it mandatory to go through the information phase before initiating the negotiation phase?

No, a Tribe/Consortium may go directly to the negotiation phase.

§ 1000.169 How does a Tribe/Consortium initiate the information phase?

A Tribe/Consortium initiates the information phase by submitting a letter of interest to the bureau administering a program that the Tribe/Consortium may want to include in its AFA. A letter of interest may be mailed, telefaxed, or hand-delivered to:

(a) The Director, OSG, if the request is for information about BIA programs;

(b) The non-BIA bureau's self-governance representative identified in the Secretary's annual section 405(c) listing in the **Federal Register**, if the request is for information concerning programs of non-BIA bureaus.

§ 1000.170 What is the letter of interest?

A letter of interest is the initial indication of interest submitted by the Tribe/Consortium informing the bureau of the Tribe's/Consortium's interest in seeking information for the possible negotiation of one or more bureau programs. For non-BIA bureaus, the program and budget information request should relate to the program and activities identified in the Secretary's section 405(c) list in the **Federal Register** or a section 403(c) request. A letter of interest should identify the following:

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(a) As specifically as possible, the program a Tribe/Consortium is interested in negotiating under an AFA;

(b) A preliminary brief explanation of the cultural, historical, or geographic significance to the Tribe/Consortium of the program, if applicable;

(c) The scope of activity that a Tribe/Consortium is interested in including in an AFA;

(d) Other information that may assist the bureau in identifying the programs that are included or related to the Tribe's/Consortium's request;

(e) A request for information that indicates the type and/or description of information that will assist the Tribe/Consortium in pursuing the negotiation process;

(f) A designated Tribal contact;

(g) A request for information on any funds that may be available within the bureau or other known possible sources of funding for planning and negotiating an AFA;

(h) A request for information on any funds available within the bureau or from other sources of funding that the Tribe/Consortium may include in the AFA for planning or performing programs or activities; and

(i) Any requests for technical assistance to be provided by the bureau in preparing documents of materials that may be required for the Tribe/Consortium in the negotiation process.

§ 1000.171 When should a Tribe/Consortium submit a letter of interest?

A letter of interest may be submitted at any time. To meet the negotiation deadlines below, letters should be submitted to the appropriate non-BIA bureaus by March 1; letters should be submitted to BIA by April 1 for fiscal year Tribes/Consortia or May 1 for calendar year Tribes/Consortia.

§ 1000.172 What steps does the bureau take after a letter of interest is submitted by a Tribe/Consortium?

(a) Within 15 calendar days of receipt of a Tribe's/Consortium's letter of interest, the bureau will notify the Tribe/Consortium about who will be designated as the bureau's representative to be responsible for responding to the Tribal requests for information. The bureau representative shall act in good faith in fulfilling the following responsibilities:

(1) Providing all budget and program information identified in paragraph (b) of this section, from each organizational level of the bureau(s); and

(2) Notifying any other bureau requiring notification and participation under this part.

(b) Within 30 calendar days of receipt of the Tribe's/Consortium's letter of interest:

(1) To the extent that such reasonably related information is available, the bureau representative is to provide the information listed in paragraph (c) of this section, if available and consistent with the bureau's budgetary process;

(2) A written explanation of why the information is not available or not being provided to the Tribe's/Consortium's contact and the date by which other available information will be provided; or

(3) If applicable, a written explanation of why the program is unavailable for negotiation.

(c) Information to be made available to the Tribe's/Consortium's contact, subject to the conditions of paragraph (b) of this section, includes:

(1) Information regarding program, budget, staffing, and locations of the offices administering the program and related administrative support program identified by the Tribe/Consortium,

(2) Information contained in the previous year, present year, and next year's budget proposed by the President at the national program level and the regional/local level.

(3) When appropriate, the bureau will be available to meet the Tribal representatives to explain the budget information provided.

(4) Information used to support budget allocations for the programs identified (e.g., full time equivalents and other relevant factors).

(5) Information used to operate and/or evaluate a program, such as statutory and regulatory requirements and program standards.

(6) If applicable, information regarding how a program is administered by more than one bureau, including a point of contact for information for the other bureau(s); and

(7) Other information requested by the Tribe/Consortium in its letter of interest.

(d) If a bureau fails to provide reasonably related information requested by a Tribe/Consortium, the Tribe/Consortium may appeal the failure in accordance with subpart R of this part. These requests shall be considered for a fee waiver under the Freedom of Information Act.

§ 1000.173 How does a newly selected Tribe/Consortium initiate the negotiation phase?

(a) To initiate the negotiation phase, an authorized official of the newly selected Tribe/Consortium submits a written request to negotiate an AFA as indicated in the following table:

For a . . .	the Tribe/Consortium should submit the request to . . .	and the request should identify . . .
(1) BIA program	the Director, OSG.	the lead negotiator(s) for the Tribe/Consortium.
(2) Non-BIA program	the bureau representative designated to respond to the Tribe's/Consortium's request for information.	the lead negotiator(s) for the Tribe/Consortium and the specific program(s) that the Tribe/Consortium seeks to negotiate.

(b) The Tribal/Consortium official must submit the information required by paragraph (a) of this section by the deadline shown in the following table:

Type of program	Type of tribe/consortium	Submission deadline
(1) BIA	Fiscal year	April 1.
(2) BIA	Calendar year	May 1.
(3) Non-BIA	Fiscal year or calendar year	May 1*.

*The request may be submitted later than this date where the bureau and the Tribe/Consortium agree that administration for a partial year funding agreement is feasible.

§ 1000.174 How and when does the bureau respond to a request to negotiate?

(a) Within 15 days of receiving a Tribe's/Consortium's request to negotiate, the bureau will take the steps in this section. If more than one bureau is involved, a lead bureau must be designated to conduct negotiations.

(b) If the program is contained on the section 405(c) list, the bureau will identify the lead negotiator(s) and awarding official(s) for executing the AFA.

(c) If the program is potentially of a special geographic, cultural, or historic significance to a Tribe/Consortium, the bureau will schedule a pre-negotiation meeting with the Tribe/Consortium as soon as possible. The purpose of the meeting is to assist the bureau in determining if the program is available for negotiation.

(d) Within 10 days after convening a meeting under paragraph (c) of this section:

(1) If the program is available for negotiation, the bureau will identify the lead negotiator(s) and awarding official(s); or

(2) If the program is unavailable for negotiation, the bureau will give to the Tribe/Consortium a written explanation of why the program is unavailable for negotiation.

§ 1000.175 What is the process for conducting the negotiation phase?

(a) Within 30 days of receiving a written request to negotiate, the bureau and the Tribe/Consortium will agree to a date to conduct an initial negotiation meeting. Subsequent meetings will be held with reasonable frequency at reasonable times.

(b) Tribe/Consortium and bureau lead negotiators must:

(1) Be authorized to negotiate on behalf of their government; and

(2) Involve all necessary persons in the negotiation process.

(c) Once negotiations have been successfully completed, the bureau and Tribe/Consortium will prepare and either execute or disapprove an AFA within 30 days or by a mutually agreed upon date.

§ 1000.176 What issues must the bureau and the Tribe/Consortium address at negotiation meetings?

The negotiation meetings referred to in § 1000.175 must address at a minimum the following:

(a) The specific Tribe/Consortium proposal(s) and intentions;

(b) Legal or program issues that the bureau or the Tribe/Consortium identify as concerns;

(c) Options for negotiating programs and related budget amounts, including mutually agreeable options for developing alternative formats for presenting budget information to the Tribe/Consortium;

(d) Dates for conducting and concluding negotiations;

(e) Protocols for conducting negotiations;

(f) Responsibility for preparation of a written summary of the discussions; and

(g) Who will prepare an initial draft of the AFA.

§ 1000.177 What happens when the AFA is signed?

(a) After all parties have signed the AFA, a copy is sent to the Tribe/Consortium.

(b) The Secretary forwards copies of the AFA to:

(1) The House Subcommittee on Native Americans and Insular Affairs; and

(2) The Senate Committee on Indian Affairs;

(c) For BIA programs, the AFA is also forwarded to each Indian Tribe/Consortium served by the BIA Agency that serves any Tribe/Consortium that is a party to the AFA.

§ 1000.178 When does the AFA become effective?

The effective date is not earlier than 90 days after the AFA is submitted to the Congressional committees under § 1000.177(b).

§ 1000.179 What happens if the Tribe/Consortium and bureau negotiators fail to reach an agreement?

(a) If the Tribe/Consortium and bureau representatives do not reach agreement during the negotiation phase by the mutually agreed to date for completing negotiations, the Tribe/Consortium and the bureau may each make a last and best offer to the other party.

(b) If a last and best offer is not accepted within 15 days, the bureau will provide a written explanation to the Tribe/Consortium explaining its reasons for not entering into an AFA for the requested program, together with the applicable statement prescribed in subpart R of this part, concerning appeal or review rights.

(c) The Tribe/Consortium has 30 days from receipt of the bureau's written explanation to file an appeal. Appeals are handled in accordance with subpart R of this part.

Negotiation Process for Successor Annual Funding Agreements

§ 1000.180 What is a successor AFA?

A successor AFA is a funding agreement negotiated after a Tribe's/Consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

§ 1000.181 How does the Tribe/Consortium initiate the negotiation of a successor AFA?

Although a written request is desirable to document the precise request and date of the request, a written request is not mandatory. If either party anticipates a significant change in an existing program in the AFA, it should notify the other party of the change at the earliest possible date so that the other party may plan accordingly.

§ 1000.182 What is the process for negotiating a successor AFA?

The Tribe/Consortium and the bureau use the procedures in §§ 1000.173—1000.179.

Subpart H—Limitation and/or Reduction of BIA Services, Contracts, and Funds

§ 1000.190 What is the purpose of this subpart?

This subpart prescribes the process that the Secretary uses to determine whether a BIA self-governance funding agreement causes a limitation or reduction in the services, contracts, or funds that any other Tribe/Consortium or Tribal organization is eligible to receive under self-determination contracts, other self-governance compacts, or direct services from BIA. This type of limitation is prohibited by section 406(a) of Pub. L. 93–638. For the purposes of this subpart, Tribal organization means an organization eligible to receive services, contracts, or funds under section 102 of Pub. L. 93–638.

§ 1000.191 To whom does this subpart apply?

Participating and non-participating Tribes/Consortia and Tribal organizations are subject to this subpart. It does not apply to the general public and non-Indians.

§ 1000.192 What services, contracts, or funds are protected under section 406(a)?

Section 406(a) protects against the actual reduction or limitations of services, contracts, or funds.

§ 1000.193 Who may raise the issue of limitation or reduction of services, contracts, or funding?

BIA or any affected Tribe/Consortium or Tribal organization may raise the issue that a BIA self-governance AFA

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limits or reduces particular services, contracts, or funding for which it is eligible.

§ 1000.194 When must BIA raise the issue of limitation or reduction of services, contracts, or funding?

(a) From the beginning of the negotiation period until the end of the first year of implementation of an AFA, BIA may raise the issue of limitation or reduction of services, contracts, or funding. If BIA and a participating Tribe/Consortium disagree over the residual information, a participating Tribe/Consortium may ask the Deputy Commissioner—Indian Affairs to reconsider residual levels for particular programs. [See § 1000.95(d)]

(b) After the AFA is signed, BIA must raise the issue of any undetermined funding amounts within 30 days after the final funding level is determined. BIA may not raise this issue after this period has elapsed.

§ 1000.195 When must an affected Tribe/Consortium or Tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?

(a) A Tribe/Consortium or Tribal organization may raise the issue of limitation or reduction of services, contracts, or funding for which it is eligible during:

(1) Region-wide Tribal shares meetings occurring before the first year of implementation of an AFA;

(2) Within the 90-day review period before the effective date of the AFA; and

(3) The first year of implementation of an AFA.

(b) Any Tribe/Consortium or Tribal organization claiming a limitation or reduction of contracts, services, or funding for which it is eligible must notify, in writing, both the Department and negotiating Tribe/Consortium. Claims may only be filed within the periods specified in paragraph (a) of this section.

§ 1000.196 What must be included in a finding by BIA or in a claim by an affected Tribe/Consortium or Tribal organization regarding the issue of a limitation or reduction of services?

An affected Tribe/Consortium must include in its claim a written explanation identifying the alleged limitation or reduction of services, contracts, or funding for which it is eligible. A finding by BIA must likewise identify the limitation or reduction.

§ 1000.197 How will BIA resolve a claim?

All findings and claims timely made in accordance with §§ 1000.194 through 1000.195 will be resolved in accordance with 25 CFR part 2.

§ 1000.198 How must a limitation or reduction in services, contracts, or funds be remedied?

(a) If funding a participating Tribe/Consortium will limit or reduce services, contracts, or funds for which another Tribe/Consortium or Tribal organization is eligible, BIA must remedy the reduction as follows:

(1) In the current AFA year BIA must use shortfall funding, supplemental funding, or other available BIA resources; and

(2) In a subsequent AFA year, BIA may adjust the AFA funding in an AFA to correct a finding of actual reduction in services, contracts, or funds for that subsequent year.

(b) All adjustments under this section must be mutually agreed between BIA and the participating Tribe/Consortium.

Subpart I—Public Consultation Process

§ 1000.210 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?

When required by law or when appropriate under bureau discretion, a bureau may use a public consultation process in negotiating an AFA.

§ 1000.211 Will the bureau contact the Tribe/Consortium before initiating public consultation process for a non-BIA AFA under negotiation?

Yes, the bureau and the Tribe/Consortium will discuss the consultation process to be used in negotiating a non-BIA AFA.

(a) When public consultation is required by law, the bureau will follow the required process and will involve the Tribe/Consortium in that process to the maximum extent possible.

(b) When public consultation is a matter of bureau discretion, at Tribal request the Tribe/Consortium and the bureau, unless prohibited by law, will jointly develop guidelines for that process, including the conduct of any future public meetings. The bureau and the Tribe/Consortium will jointly identify a list of potential project beneficiaries, third-party stakeholders, or third-party users (affected parties) for use in the public consultation process.

§ 1000.212 What is the role of the Tribe/Consortium when a bureau initiates a public meeting?

When a bureau initiates a public meeting with affected parties it will take the following actions:

(a) The bureau will notify the Tribe/Consortium of the meeting time, place, and invited parties:

(1) Ten days in advance, if possible; or

(2) If less than 10 days in advance, at the earliest practical time.

(b) When the bureau notifies the Tribe/Consortium, the bureau will invite the Tribe/Consortium to participate in and, unless prohibited by law, to co-sponsor or co-facilitate the meeting.

(c) When possible, the bureau and the Tribe/Consortium should meet to plan and discuss the conduct of the meeting, meeting protocols, and general participation in the proposed consultation meeting.

(d) The bureau and the Tribe/Consortium will conduct the meeting in a manner that facilitates and does not undermine the government-to-government relationship and self-governance;

(e) The Tribe/Consortium may provide technical support to the bureau to enhance the consultation process, as mutually agreed.

§ 1000.213 What should the bureau do if it is invited to attend a meeting with respect to the Tribe's/Consortium's proposed AFA?

If the bureau is invited to participate in meetings, hearings, etc., held or conducted by other parties, where the subject matter of the AFA under negotiation is expected to be raised, the bureau:

(a) Shall notify the Tribe/Consortium at the earliest practical time; and

(b) Should encourage the meeting sponsor to invite the Tribe/Consortium to participate.

§ 1000.214 Will the bureau and the Tribe/Consortium share information concerning inquiries about the Tribes/Consortia and the AFA?

Yes, the bureau and the Tribe/Consortium will exchange information about inquiries from affected or interested parties relating to the AFA under negotiation.

Subpart J—Waiver of Regulations

§ 1000.220 What regulations apply to self-governance Tribes?

All regulations that govern the operation of programs included in an AFA apply unless waived under this subpart. To the maximum extent practical, the parties should identify these regulations in the AFA.

§ 1000.221 Can the Secretary grant a waiver of regulations to a Tribe/Consortium?

Yes, a Tribe/Consortium may ask the Secretary to grant a waiver of some or all Department of the Interior regulation(s) applicable to a program, in whole or in part, operated by a Tribe/Consortium under an AFA.

§ 1000.222 How does a Tribe/Consortium obtain a waiver?

To obtain a waiver, the Tribe/Consortium must:

(a) Submit a written request from the designated Tribal official to the Director for BIA programs or the appropriate bureau/office director for non-BIA programs;

(b) Identify the regulation to be waived and the reasons for the request;

(c) Identify the programs to which the waiver would apply;

(d) Identify what provisions, if any, would be substituted in the AFA for the regulation to be waived; and

(e) When applicable, identify the effect of the waiver on any trust programs or resources.

§ 1000.223 When can a Tribe/Consortium request a waiver of a regulation?

A Tribe/Consortium may request a waiver of a regulation:

(a) As part of the negotiation process; or

(b) After an AFA has been executed.

§ 1000.224 How can a Tribe/Consortium expedite the review of a regulation waiver request?

A Tribe/Consortium may request a meeting or other informal discussion with the appropriate bureau officials before submitting a waiver request.

(a) To set up a meeting, the Tribe/Consortium should contact:

(1) For BIA programs, the Director, OSG; or

(2) For non-BIA programs, the designated representative of the bureau.

(b) The meeting or discussion is intended to provide:

(1) A clear understanding of the nature of the request;

(2) Necessary background and information; and

(3) An opportunity for the bureau to offer appropriate technical assistance.

§ 1000.225 Are meetings or discussions mandatory?

No, a meeting with the bureau officials is not necessary to submit a waiver request.

§ 1000.226 On what basis may the Secretary deny a waiver request?

The Secretary may deny a waiver request if:

(a) For a Title-I-eligible program, the requested waiver is prohibited by Federal law; or

(b) For a non-Title-I-eligible program, the requested waiver is:

(1) Prohibited by Federal law; or

(2) Inconsistent with the express provisions of the AFA.

§ 1000.227 What happens if the Secretary denies the waiver request?

If the Secretary denies a waiver request, the Secretary issues a written decision stating:

(a) The basis for the decision;

(b) The decision is final for the Department; and

(c) The Tribe/Consortium may request reconsideration of the denial.

§ 1000.228 What are examples of waivers prohibited by law?

Examples of when a waiver is prohibited by Federal law include:

(a) When the effect would be to waive or eliminate express statutory requirements;

(b) When a statute authorizes civil and criminal penalties;

(c) When it would result in a failure to ensure that proper health and safety standards are included in an AFA (section 403(e)(2));

(d) When it would result in a reduction of the level of trust services that would have been provided by the Secretary to individual Indians (section 403(g)(4));

(e) When it would limit or reduce the services, contracts, or funds to any other Indian Tribe or Tribal organization (section 406(a));

(f) When it would diminish the Federal trust responsibility to Tribes, individual Indians or Indians with trust allotments (Section 406(b)); or

(g) When it would violate Federal case law.

§ 1000.229 May a Tribe/Consortium propose a substitute for a regulation it wishes to be waived?

Yes, where a Tribe/Consortium wishes to replace the waived regulation with a substitute that otherwise maintains the requirements of the applicable Federal law, the Secretary may be able to approve the waiver request. The Tribe/Consortium and bureau officials must negotiate to develop a suggested substitution.

§ 1000.230 How is a waiver approval documented for the record?

The waiver decision is made part of the AFA by attaching a copy of it to the AFA and by mutually executing any necessary conforming amendments to the AFA. The decisions announcing the waiver also will be posted on the Office of Self-Governance web site and all such decisions shall be made available on request.

§ 1000.231 How does a Tribe/Consortium request reconsideration of the Secretary's denial of a waiver?

(a) The Tribe/Consortium may request reconsideration of a waiver denial. To do so, the Tribe/Consortium must submit a request to:

(1) The Director, OSG, for BIA programs; or

(2) The appropriate bureau head, for non-BIA programs.

(b) The request must be filed within 30 days of the day the decision is received by certified mail (return receipt requested) or by hand delivery. A request submitted by mail will be considered filed on the postmark date.

(c) The request must identify the issues to be addressed, including a statement of reasons supporting the request.

§ 1000.232 When must DOI respond to a request for reconsideration?

The Secretary must issue a written decision within 30 days of the Department's receipt of a request for reconsideration. This decision is final for the Department and no administrative appeal may be made.

Subpart K—Construction

§ 1000.240 What construction programs included in an AFA are subject to this subpart?

(a) All BIA and non-BIA construction programs included in an AFA are subject to this subpart. This includes design, construction, repair, improvement, expansion, replacement or demolition of buildings or facilities, and other related work for Federal, or Federally funded Tribal, facilities and projects.

(b) The following programs and activities are not construction programs and activities:

(1) Activities limited to providing planning services, administrative support services, coordination, responsibility for the construction project, day-to-day on-site management on site-management and administration of the project, which may include cost management, project budgeting, project scheduling and procurement except that all project design and actual construction activities are subject to all the requirements of subpart K, whether performed by a Tribe/Consortium. subcontractor, or consultant.

(2) Housing Improvement Program or road maintenance program activities of BIA;

(3) Operation and maintenance programs; and

(4) Non-403(c) programs that are less than $100,000, subject to section 403(e)(2) of the Act, other applicable Federal law, and § 1000.256 of this subpart.

§ 1000.241 Does this subpart create an agency relationship?

No, a BIA or non-BIA construction program does not automatically create

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an agency relationship. However, Federal law, provisions of an AFA, or Federal actions may create an agency relationship.

§ 1000.242 What provisions relating to a construction program may be included in an AFA?

The Secretary and the Tribe/Consortium may negotiate to apply specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations to a construction part of an AFA. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.

§ 1000.243 What special provisions must be included in an AFA that contains a construction program?

An AFA that contains a construction program must address the requirements listed in this section.

(a) The AFA must specify how the Secretary and the Tribe/Consortium must ensure that proper health and safety standards are provided for in the implementation of the AFA, including but not limited to:

(1) The use of architects and engineers licensed to perform the type of construction involved in the AFA;

(2) Applicable Federal, state, local or Tribal building codes and applicable engineering standards, appropriate for the particular project; and

(3) Necessary inspections and testing by the Tribe.

(b) The AFA must comply with applicable Federal laws, program statutes and regulations.

(c) The AFA must specify the services to be provided, the work to be performed, and the responsibilities of the Tribe/Consortium and the Secretary under the AFA.

(d) The Secretary may require the Tribe/Consortium to provide brief progress reports and financial status reports. The parties may negotiate in the AFA the frequency, format and content of the reporting requirement. As negotiated, these reports may include:

(1) A narrative of the work accomplished;

(2) The percentage of the work completed;

(3) A report of funds expended during the reporting period; and

(4) The total funds expended for the project.

§ 1000.244 May the Secretary suspend construction activities under an AFA?

(a) The Secretary may require a Tribe/Consortium to suspend certain work under a construction portion of an AFA for up to 30 days only if:

(1) Site conditions adversely affect health and safety; or

(2) Work in progress or completed fails to substantially carry out the terms of the AFA without good cause.

(b) The Secretary may suspend only work directly related to the criteria specified in paragraph (a) of this section unless other reasons for suspension are specifically negotiated in the AFA.

(c) Unless the Secretary determines that a health and safety emergency requiring immediate action exists, before suspending work the Secretary must provide:

(1) A 5 working days written notice; and

(2) An opportunity for the Tribe/Consortium to correct the problem.

(d) The Tribe/Consortium must be compensated for reasonable costs due to any suspension of work that occurred through no fault of the Tribe/Consortium. Project funds will not be used for this purpose. However, if suspension occurs due to the action or inaction of the Tribe/Consortium, then project funds will be used to cover suspension related activities.

§ 1000.245 May a Tribe/Consortium continue work with construction funds remaining in an AFA at the end of the funding year?

Yes, any funds remaining in an AFA at the end of the funding year may be spent for construction under the terms of the AFA.

§ 1000.246 Must an AFA that contains a construction project or activity incorporate provisions of Federal construction standards?

No, the Secretary may provide information about Federal standards as early as possible in the construction process. If Tribal construction standards are consistent with or exceed applicable Federal standards, then the Secretary must accept the Indian Tribe/Consortium's proposed standards. The Secretary may accept commonly accepted industry construction standards.

§ 1000.247 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act?

Yes, the relevant bureau may provide to the Tribe/Consortium project design criteria and other terms and conditions that are required for such a project. The project must be completed in accordance with the terms and conditions set forth in the AFA.

§ 1000.248 What is the Tribe's/Consortium's role in a construction program included in an AFA?

The Tribe/Consortium has the following role regarding a construction portion of an AFA:

(a) Under the Act, the Indian Tribe/Consortium must successfully complete the project in accordance with the terms and conditions in the AFA.

(b) The Tribe/Consortium must give the Secretary timely notice of any proposed changes to the project that require an increase to the negotiated funding amount or an increase in the negotiated performance period or any other significant departure from the scope or objective of the project. The Tribe/Consortium and Secretary may negotiate to include timely notice requirements in the AFA.

§ 1000.249 What is the Secretary's role in a construction program in an AFA?

The Secretary has the following role regarding a construction program contained in an AFA:

(a) Except as provided in § 1000.256, the Secretary may review and approve planning and design documents in accordance with terms negotiated in the AFA to ensure health and safety standards and compliance with Federal law and other program mandates;

(b) Unless otherwise agreed to in an AFA, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal Government purposes, designs produced in the construction program that are funded by AFA monies, including:

(1) The copyright to any work developed under a contract or subcontract; and

(2) Any rights of copyright that an Indian Tribe/Consortium or a Tribal contractor purchases through the AFA;

(c) The Secretary may conduct on-site monitoring visits as negotiated in the AFA;

(d) The Secretary must approve any proposed changes in the construction program or activity that require an increase in the negotiated AFA funding amount or an increase in the negotiated performance period or are a significant departure from the scope or objective of the construction program as agreed to in the AFA;

(e) The Secretary may conduct final project inspection jointly with the Indian Tribe/Consortium and may accept the construction project or activity as negotiated in the AFA;

(f) Where the Secretary and the Tribe/Consortium share construction program activities, the AFA may provide for the exchange of information;

(g) The Secretary may reassume the construction portion of an AFA if there is a finding of:

(1) A significant failure to substantially carry out the terms of the AFA without good cause; or

(2) Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety as provided in subpart M of this part.

§ 1000.250 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA?

If there is a reassumption for substantial failure to carry out an AFA, property and funding will be returned as provided in subparts M and N of this part.

§ 1000.251 What happens when a Tribe/Consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension?

(a) Except when the Secretary makes a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety as provided in subpart M of these regulations a finding of substantial failure to carry out the terms of the AFA without good cause must be processed under the suspension of work provision of § 1000.244.

(b) If the substantial failure to carry out the terms of the AFA without good cause is not corrected or resolved during the suspension of work, the Secretary may initiate a reassumption at the end of the 30-day suspension of work if an extension has not been negotiated. Any unresolved dispute will be processed in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601, *et seq.*

§ 1000.252 Do all provisions of other subparts apply to construction portions of AFAs?

Yes, all provisions of other subparts apply to construction portions of AFAs unless those provisions are inconsistent with this subpart.

§ 1000.253 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under § 1000.35 of this part, a Tribe may withdraw from a Consortium and request its portion of a construction project's funds. The Secretary may decide not to award these funds if the award will affect the Consortium's ability to complete a non-severable phase of the project within available funding. An example of a non-severable phase of a project would be the construction of a single building serving all members of the Consortium. An example of a severable phase of a project would be the funding for a road in one village where the Consortium would be able to complete the roads in the other villages that were part of the project approved initially in the AFA. The Secretary's decision under this section may be appealed under subpart R of this part.

§ 1000.254 May a Tribe/Consortium reallocate funds from a construction program to a non-construction program?

No, a Tribe/Consortium may not reallocate funds from a construction program to a non-construction program unless otherwise provided under the relevant appropriation acts.

§ 1000.255 May a Tribe/Consortium reallocate funds among construction programs?

Yes, a Tribe/Consortium may reallocate funds among construction programs if permitted by appropriation law or if approved in advance by the Secretary.

§ 1000.256 Must the Secretary retain project funds to ensure proper health and safety standards in construction projects?

Yes, the Secretary must retain project funds to ensure proper health and safety standards in construction projects. Examples of purposes for which bureaus may retain funds include:

(a) Determining or approving appropriate construction standards to be used in AFAs;

(b) Verifying that there is an adequate Tribal inspection system utilizing licensed professionals;

(c) Providing for sufficient monitoring of design and construction by the Secretary; and

(d) Requiring corrective action during performance when appropriate.

Subpart L—Federal Tort Claims

§ 1000.270 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) Coverage of claims arising out of the performance of functions under Self-Governance AFA's; and

(b) Procedures for filing claims under FTCA.

§ 1000.271 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations apply to FTCA coverage, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations in 28 CFR part 14.

§ 1000.272 Do Tribes/Consortia need to be aware of areas which FTCA does not cover?

Yes, there are claims against Self-Governance Tribes/Consortia which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. The following general guidance is not intended as a definitive description of coverage, which is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) What claims are expressly barred by FTCA and therefore may not be made against the United States, a Tribe or Consortium? Any claim under 28 U.S.C. 2680, including claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) What claims may not be pursued under FTCA?

(1) Claims against subcontractors arising out of the performance of subcontracts with a Self-Governance Tribe/Consortium;

(2) Claims for on-the-job injuries which are covered by workmen's compensation;

(3) Claims for breach of contract rather than tort claims; or

(4) Claims resulting from activities performed by an employee which are outside the scope of employment.

(c) What remedies are expressly excluded by FTCA and therefore are barred?

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and (2) Other remedies not permitted under applicable state law.

§ 1000.273 Is there a deadline for filing FTCA claims?

Yes, claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 1000.274 How long does the Federal government have to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

The Federal government has 6 months to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed.

§ 1000.275 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?

No, clauses about FTCA coverage are optional. At the request of Tribes/Consortia, self-governance AFA's shall include the following clause to clarify the scope of FTCA coverage:

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For purposes of Federal Tort Claims Act coverage, the Tribe/Consortium and its employees (including individuals performing personal services contracts with the tribe/consortium) are deemed to be employees of the Federal government while performing work under this AFA. This status is not changed by the source of the funds used by the Tribe/Consortium to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Tribe/Consortium.

§ 1000.276 Does FTCA apply to a self-governance AFA if FTCA is not referenced in the AFA?

Yes, FTCA applies even if the AFA does not mention it.

§ 1000.277 To what extent shall the Tribe/Consortium cooperate with the Federal government in connection with tort claims arising out of the Tribe's/Consortium's performance?

(a) The Tribe/Consortium shall designate an individual to serve as tort claims liaison with the Federal government.

(b) As part of the notification required by 28 U.S.C. 2679(c), the Tribe/Consortium shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the Tribe/Consortium or any of its employees that relates to performance of a self-governance AFA or subcontract.

(c) The Tribe/Consortium, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of Tribal and/or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State or tribal law, ordinance, or regulation;

(7) The Tribe's/Consortium's determination as to whether any of its employees (including Federal employees assigned to the Tribe/Consortium) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the contract at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The Tribe/Consortium shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the Tribe/Consortium shall make an assignment and subrogation of all the Tribe's/Consortium's rights and claims (except those against the Federal government) arising out of a tort claim against the Tribe/Consortium.

(f) If requested by the Secretary, the Tribe/Consortium shall authorize representatives of the Secretary to settle or defend any claim and to represent the Tribe/Consortium in or take charge of any action.

(g) If the Federal government undertakes the settlement or defense of any claim or action, the Tribe/Consortium shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 1000.278 Does this coverage extend to subcontractors of self-governance AFAs?

No, subcontractors or subgrantees providing services to a Pub. L. 93–638 Tribe/Consortium are generally not covered.

§ 1000.279 Is FTCA the exclusive remedy for a tort claim, including a claim concerning personal injury or death, resulting from the performance of a self-governance AFA?

Yes, except as explained in § 1000.272(b). No claim may be filed against a self-governance Tribe/Consortium or employee based upon performance of functions under a self-governance AFA. All claims shall be filed against the United States and are subject to the limitations and restrictions of FTCA.

§ 1000.280 What employees are covered by FTCA for medical-related claims?

The following employees are covered by FTCA for medical-related claims:

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-governance Tribe/Consortium to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the Tribe/Consortium; and,

(e) Federal employees assigned to the AFA.

§ 1000.281 Does FTCA cover employees of the Tribe/Consortium who are paid by the Tribe/Consortium from funds other than those provided through the self-governance AFA?

Yes, FTCA covers employees of the Tribe/Consortium who are not paid from AFA funds as long as the services out of which the claim arose were performed in carrying out the self-governance AFA.

§ 1000.282 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes, non-Indian individuals served under the self-governance AFA, may assert claims under this Subpart.

§ 1000.283 If the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the Tribe/Consortium do?

As part of the notification required by 28 U.S.C. 2679(c), if the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or complaint alleging a tort covered by FTCA, the Tribe/Consortium should immediately:

(a) Inform the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240,

(b) Inform the Tribe's/Consortium's tort claims liaison, and

(c) Forward all of the materials identified in § 1000.277(c) to the contacts given in § 1000.283 (a) and (b).

Subpart M—Reassumption

§ 1000.300 What is the purpose of this subpart?

This subpart explains when the Secretary can reassume a program without the consent of a Tribe/Consortium.

§ 1000.301 When may the Secretary reassume a Federal program operated by a Tribe/Consortium under an AFA?

The Secretary may reassume any Federal program operated by a Tribe/Consortium upon a finding of imminent jeopardy to:

(a) A physical trust asset;

(b) A natural resource; or

(c) Public health and safety.

§ 1000.302 "What is imminent jeopardy" to a trust asset?

Imminent jeopardy means an immediate threat and likelihood of significant devaluation, degradation, damage, or loss of a trust asset, or the intended benefit from the asset caused by the actions or inactions of a Tribe/Consortium in performing trust functions. This includes disregarding Federal trust standards and/or Federal law while performing trust functions if the disregard creates such an immediate threat.

§ 1000.303 What is imminent jeopardy to natural resources?

The standard for natural resources is the same as for a physical trust asset, except that a review for compliance with the specific mandatory statutory provisions related to the program as reflected in the funding agreement must also be considered.

§ 1000.304 What is imminent jeopardy to public health and safety?

Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by Tribal action or inaction or as otherwise provided in an AFA.

§ 1000.305 In an imminent jeopardy situation, what must the Secretary do?

In an imminent jeopardy situation, the Secretary must:

(a) The Secretary must immediately notify the Tribe/Consortium in writing following discovery of imminent jeopardy; or

(b) If there is an immediate threat to human health, safety, or welfare, the Secretary may immediately reassume operation of the program regardless of the timeframes specified in this subpart.

§ 1000.306 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?

Yes, the Secretary must reassume a program within 60 days of a finding of imminent jeopardy, unless the Secretary's designated representative determines that the Tribe/Consortium is able to mitigate the conditions.

§ 1000.307 What happens if the Secretary's designated representative determines that the Tribe/Consortium cannot mitigate the conditions within 60 days?

The Secretary will proceed with the reassumption in accordance with this subpart by sending the Tribe/Consortium a written notice of the Secretary's intent to reassume.

§ 1000.308 What will the notice of reassumption include?

The notice of reassumption under § 1000.307 will include all of the following items. In addition, if resources are available, the Secretary may offer technical assistance to mitigate the imminent jeopardy.

(a) A statement of the reasons supporting the Secretary's finding.

(b) To the extent practical, a description of specific measures that must be taken by the Tribe/Consortium to eliminate imminent jeopardy.

(c) A notice that funds for the management of the trust asset, natural resource, or public health and safety found to be in imminent jeopardy may not be reallocated or otherwise transferred without the Secretary's written consent.

(d) A notice of intent to invoke the return of property provision of the AFA.

(e) The effective date of the reassumption if the Tribe/Consortium does not eliminate the imminent jeopardy. If the deadline is less than 60 days after the date of receipt, the Secretary must include a justification.

(f) The amount of funds, if any, that the Secretary believes the Tribe/Consortium should refund to the Department for operation of the reassumed program. This amount cannot exceed the amount provided for that program under the AFA and must be based on such factors as the time or functions remaining in the funding cycle.

§ 1000.309 How much time will a Tribe/Consortium have to respond to a notice of imminent jeopardy?

The Tribe/Consortium will have 5 days to respond to a notice of imminent jeopardy. The response must be written and may be mailed, telefaxed, or sent by electronic mail. If sent by mail, it must be sent by certified mail, return receipt requested; the postmark date will be considered the date of response.

§ 1000.310 What information must the Tribe's/Consortium's response contain?

(a) The Tribe's/Consortium's response must indicate the specific measures that the Tribe/Consortium will take to eliminate the finding of imminent jeopardy.

(b) If the Tribe/Consortium proposes mitigating actions different from those prescribed in the Secretary's notice of imminent jeopardy, the response must explain the reasons for deviating from the Secretary's recommendations and how the proposed actions will eliminate imminent jeopardy.

§ 1000.311 How will the Secretary reply to the Tribe's/Consortium's response?

The Secretary will make a written determination within 10 days of the Tribe's/Consortium's written response as to whether the proposed measures will eliminate the finding of imminent jeopardy.

§ 1000.312 What happens if the Secretary accepts the Tribe's/Consortium's proposed measures?

The Secretary must notify the Tribe/Consortium in writing of the acceptance and suspend the reassumption process.

§ 1000.313 What happens if the Secretary does not accept the Tribe's/Consortium's proposed measures?

(a) If the Secretary finds that the Tribes/Consortia proposed measures will not mitigate imminent jeopardy, he/she will notify the Tribe/Consortium in writing of this determination and of the Tribe's/Consortium's right to appeal

(b) After the reassumption, the Secretary is responsible for the reassumed program, and will take appropriate corrective action to eliminate the imminent jeopardy which may include sending Department employees to the site.

§ 1000.314 What must a Tribe/Consortium do when a program is reassumed?

On the effective date of reassumption, the Tribe/Consortium must, at the request of the Secretary, deliver all property and equipment, and title thereto:

(a) That the Tribe/Consortium received for the program under the AFA; and

(b) That has a per item value in excess of $5,000, or as otherwise provided in the AFA.

§ 1000.315 When must the Tribe/Consortium return funds to the Department?

The Tribe/Consortium must repay funds to the Department as soon as practical after the effective date of the reassumption.

§ 1000.316 May the Tribe/Consortium be reimbursed for actual and reasonable "wind up costs" incurred after the effective date of retrocession?

Yes, the Tribe/Consortium may be reimbursed for actual and reasonable

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"wind up costs" to the extent that funds are available.

§ 1000.317 Is a Tribe's/Consortium's general right to negotiate an AFA adversely affected by a reassumption action?

A reassumption action taken by the Secretary does not affect the Tribe's/Consortium's ability to negotiate an AFA for programs not affected by the reassumption.

§ 1000.318 When will the Secretary return management of a reassumed program?

A reassumed program may be included in future AFAs, but the Secretary may include conditions in the terms of the AFA to ensure that the circumstances that caused jeopardy to attach do not reoccur.

Subpart N—Retrocession

§ 1000.330 What is the purpose of this subpart?

This subpart explains what happens when a Tribe/Consortium voluntarily returns a program to a bureau.

§ 1000.331 Is a decision by a Tribe/Consortium not to include a program in a successor agreement considered a retrocession?

No, a decision by a Tribe/Consortium not to include a program in a successor agreement is not a retrocession because the Tribe/Consortium is under no obligation beyond an existing AFA.

§ 1000.332 Who may retrocede a program in an AFA?

A Tribe/Consortium may retrocede a program. However, the right of a Consortium member to retrocede may be subject to the terms of the agreement among the members of the Consortium.

§ 1000.333 How does a Tribe/Consortium retrocede a program?

The Tribe/Consortium must submit:

(a) A written notice to:

(1) The Office of Self-Governance for BIA programs; or

(2) The appropriate bureau for non-BIA programs; and

(b) A Tribal resolution or other official action of its governing body.

§ 1000.334 When will the retrocession become effective?

Unless subsequently rescinded by the Tribe/Consortium, a retrocession is only effective on a date mutually agreed upon by the Tribe/Consortium and the Secretary, or as provided in the AFA.

§ 1000.335 How will retrocession affect the Tribe's/Consortium's existing and future AFAs?

Retrocession does not affect other parts of the AFA or funding agreements with other bureaus. A Tribe/Consortium may request to negotiate for and include retroceded programs in future AFAs or through a self-determination contract.

§ 1000.336 Does the Tribe/Consortium have to return funds used in the operation of a retroceded program?

The Tribe/Consortium and the Secretary must negotiate the amount of funding to be returned to the Secretary for the operation of the retroceded program. This amount must be based on such factors as the time remaining or functions remaining in the funding cycle or as provided in the AFA.

§ 1000.337 Does the Tribe/Consortium have to return property used in the operation of a retroceded program?

On the effective date of any retrocession, the Tribe/Consortium must return all property and equipment, and title thereto:

(a) That was acquired under the AFA for the program being retroceded; and

(b) That has a per item value in excess of $5,000 at the time of the retrocession, or as otherwise provided in the AFA.

§ 1000.338 What happens to a Tribe's/Consortium's mature contract status if it has retroceded a program that is also available for self-determination contracting?

Retrocession has no effect on mature contract status, provided that the 3 most recent audits covering activities administered by the Tribe have no unresolved material audit exceptions.

§ 1000.339 How does retrocession affect a bureau's operation of the retroceded program?

The level of operation of the program will depend upon the amount of funding that is returned with the retrocession.

Subpart O—Trust Evaluation Review

§ 1000.350 What is the purpose of this subpart?

This subpart describes how the trust responsibility of the United States is legally maintained through a system of trust evaluations when Tribes/Consortia perform trust functions through AFAs under the Tribal Self-Governance Act of 1994. It describes the principles and processes upon which trust evaluations will be based.

§ 1000.351 Does the Tribal Self-Governance Act of 1994 alter the trust responsibility of the United States to Indian Tribes and individuals under self-governance?

No, the Act does, however, permit a Tribe/Consortium to assume management responsibilities for trust assets and resources on its own behalf and on behalf of individual Indians. Under the Act, the Secretary has a trust responsibility to conduct annual trust evaluations of Tribal performance of trust functions to ensure that Tribal and individual trust assets and resources are managed in accordance with the legal principles and standards governing the performance of trust functions if trust assets or resources are found to be in imminent jeopardy.

§ 1000.352 What are "trust resources" for the purposes of the trust evaluation process?

(a) Trust resources include property and interests in property:

(1) That are held in trust by the United States for the benefit of a Tribe or individual Indians; or

(2) That are subject to restrictions upon alienation.

(b) Trust assets include:

(1) Other assets, trust revenue, royalties, or rental, including natural resources, land, water, minerals, funds, property, assets, or claims, and any intangible right or interest in any of the foregoing;

(2) Any other property, asset, or interest therein, or treaty right for which the United States is charged with a trust responsibility. For example, water rights and off-reservation treaty rights.

(c) This definition defines trust resources for purposes of the trust evaluation process only.

§ 1000.353 What are "trust functions" for the purposes of the trust evaluation process?

Trust functions are those programs necessary to the management of assets held in trust by the United States for an Indian Tribe or individual Indian.

Annual Trust Evaluations

§ 1000.354 What is a trust evaluation?

A trust evaluation is an annual review and evaluation of trust functions performed by a Tribe/Consortium to ensure that the functions are performed in accordance with trust standards as defined by Federal law. Trust evaluations address trust functions performed by the Tribe/Consortium on its own behalf as well as trust functions performed by the Tribe/Consortium for the benefit of individual Indians or Alaska Natives.

§ 1000.355 How are trust evaluations conducted?

(a) Each year the Secretary's designated representative(s) will conduct trust evaluations for each self-governance AFA. The Secretary's designated representative(s) will coordinate with the designated Tribe's/Consortium's representative(s) throughout the review process, including the written report required by § 1000.365.

(b) This section describes the general framework for trust reviews. However, each Tribe/Consortium may develop, with the appropriate bureau, an individualized trust evaluation process to allow for the Tribe's/Consortium's unique history and circumstances and the terms and conditions of its AFA. An individualized trust evaluation process must, at a minimum, contain the measures in paragraph (d) of this section.

(c) To facilitate the review process so as to mitigate costs and maximize efficiency, each Tribe/Consortium must provide access to all records, plans, and other pertinent documents relevant to the program(s) under review not otherwise available to the Department.

(d) The Secretary's designated representative(s) will:

(1) Review trust transactions;

(2) Conduct on-site inspections of trust resources, as appropriate;

(3) Review compliance with applicable statutory and regulatory requirements;

(4) Review compliance with the trust provisions of the AFA;

(5) Ensure that the same level of trust services is provided to individual Indians as would have been provided by the Secretary;

(6) Document deficiencies in the performance of trust functions discovered during the review process; and

(7) Ensure the fulfillment of the Secretary's trust responsibility to Tribes and individual Indians by documenting the existence of:

(i) Systems of internal controls;

(ii) Trust standards; and

(iii) Safeguards against conflicts of interest in the performance of trust functions.

(e) At the request of a Tribe/Consortium, at the time the AFA is negotiated, the standards will be negotiated, except where standards are otherwise provided for by law.

§ 1000.356 May the trust evaluation process be used for additional reviews?

Yes, if the parties agree.

§ 1000.357 May the parties negotiate standards of review for purposes of the trust evaluation?

Yes, unless standards are otherwise provided by Federal treaties, statutes, case law or regulations not waived, the Secretary's designated representative will negotiate standards of review at the request of the Tribe/Consortium.

§ 1000.358 Can an initial review of the status of the trust asset be conducted?

If the parties agree and it is practical, the Secretary may determine the status of the trust resource at the time of the transfer of the function or at a later time.

§ 1000.359 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?

The Secretary's representative(s) must prepare a written report documenting the results of the trust evaluation.

(a) Upon Tribal/Consortium request, the representative(s) will provide the Tribal/Consortium representative(s) with a copy of the report for review and comment before finalization.

(b) The representative(s) will attach to the report any Tribal/Consortium comments that the representative does not accept.

§ 1000.360 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?

No, Tribes/Consortia are under the same obligation as the Secretary to perform trust functions and related activities in accordance with trust protection standards and principles whether managing Tribally or individually owned trust assets. The process for conducting annual trust evaluations of Tribal performance of trust functions on behalf of individual Indians is the same as that used in evaluating performance of Tribal trust functions.

§ 1000.361 Will the annual review include a review of the Secretary's residual trust functions?

Yes, if the annual evaluation reveals that deficient performance of a trust function is due to the action or inaction of a bureau, the evaluation report will note the deficiency and the appropriate Department official will be notified of the need for corrective action. The review of the Secretary's trust functions shall be based on the standards in this subpart, other applicable law, and other Federal law.

§ 1000.362 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?

(a) A finding of imminent jeopardy triggers the Federal reassumption process (see subpart M of this part), unless the conditions in paragraph (b) of this section are met.

(b) The reassumption process will not be triggered if the Secretary's designated representative determines that the Tribe/Consortium:

(1) Can cure the conditions causing jeopardy within 60 days; and

(2) Will not cause significant loss, harm, or devaluation of a trust asset, natural resources, or the public health and safety.

§ 1000.363 What if the trust evaluation reveals problems that do not rise to the level of imminent jeopardy?

Where problems not rising to the level of imminent jeopardy are caused by Tribal action or inaction, the conditions must be:

(a) Documented in the annual trust evaluation report;

(b) Reported to the Secretary; and

(c) Reported in writing to:

(1) The governing body of the Tribe; and

(2) In the case of a Consortium, to the governing body of each Tribe on whose behalf the Consortium is performing the trust functions.

§ 1000.364 Who is responsible for corrective action?

The Tribe/Consortium is primarily responsible for identifying and implementing corrective actions for matters contained in the AFA, but the Department may also suggest possible corrective measures for Tribal consideration.

§ 1000.365 What are the requirements of the review team report?

A report summarizing the results of the trust evaluation will be prepared and copies provided to the Tribe/Consortium. The report must:

(a) Be written objectively, concisely, and clearly; and

(b) Present information accurately and fairly, including only relevant and adequately supported information, findings, and conclusions.

§ 1000.366 Can the Department conduct more than one trust evaluation per Tribe per year?

Trust evaluations are normally conducted annually. When the Department receives information of a threat of imminent jeopardy to a trust asset, natural resource, or the public health and safety, the Secretary, as trustee, may conduct a preliminary investigation. If the preliminary investigation shows that appropriate, sufficient data are present to indicate there may be imminent jeopardy, the Secretary's designated representative:

(a) Will notify the Tribe/Consortium in writing; and

(b) May conduct an on-site inspection upon 2 days' advance written notice to the Tribe/Consortium.

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§ 1000.367 Will the Department evaluate a Tribe's/Consortium's performance of non-trust related programs?

This depends on the terms contained in the AFA.

Subpart P—Reports

§ 1000.380 What is the purpose of this subpart?

This subpart describes what reports are developed under self-governance.

§ 1000.381 How is information about self-governance developed and reported?

Annually, the Secretary will compile a report on self-governance for submission to the Congress. The report will be based on:

(a) Audit reports routinely submitted by Tribes/Consortia;

(b) The number of retrocessions requested by Tribes/Consortia in the reporting year;

(c) The number of reassumptions that occurred in the reporting year;

(d) Federal reductions-in-force and reorganizations resulting from self-governance activity;

(e) The type of residual functions and amount of residual funding retained by BIA; and

(f) An annual report submitted to the Secretary by each Tribe/Consortium as described in

§ 1000.382 What may the Tribe's/Consortium's annual report on self-governance address?

(a) The Tribe's/Consortium's annual self-governance report may address:

(1) A list of unmet Tribal needs in order of priority;

(2) The approved, year-end Tribal budget for the programs and services funded under self-governance, summarized and annotated as the Tribe may deem appropriate;

(3) Identification of any reallocation of trust programs;

(4) Program and service delivery highlights, which may include a narrative of specific program redesign or other accomplishments or benefits attributed to self-governance; and

(5) At the Tribe's/Consortium's option, a summary of the highlights of the report referred to in paragraph (a)(2) of this section and other pertinent information the Tribes may wish to report.

(b) The report submitted under this section is intended to provide the Department with information necessary to meet its Congressional reporting responsibilities and to fulfill its responsibility as an advocate for self-governance. The Tribal reporting requirement is not intended to be burdensome, and Tribes are encouraged to design and present the report in a brief and concise manner.

Subpart Q—Miscellaneous Provisions

§ 1000.390 How can a Tribe/Consortium hire a Federal employee to help implement an AFA?

If a Tribe/Consortium chooses to hire a Federal employee, it can use one of the arrangements listed in this section:

(a) The Tribe can use its own Tribal personnel hiring procedures. Federal employees hired by the Tribe/Consortium are separated from Federal service.

(b) The Tribe can "direct hire" a Federal employee as a Tribal employee. The employee will be separated from Federal service and work for the Tribe/Consortium, but maintain a negotiated Federal benefit package that is paid for by the Tribe/Consortium out of AFA program funds; or

(c) The Tribe can negotiate an agreement under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable Federal law. The employee will remain a Federal employee during the term of the agreement.

§ 1000.391 Can a Tribe/Consortium employee be detailed to a Federal service position?

Yes, under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable law, when permitted by the Secretary.

§ 1000.392 How does the Freedom of Information Act apply?

(a) Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law.

(b) At the option of the Tribe/Consortium under section 108 of the Pub. L. 93–638, except for previously provided copies of Tribe/Consortium records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping system of the Department of the Interior, records of the Tribe/Consortium shall not be considered Federal records for the purpose of the Freedom of Information Act.

(c) The Freedom of Information Act does not apply to records maintained solely by Tribes/Consortia.

§ 1000.393 How does the Privacy Act apply?

At the option of the Tribe/Consortium, section 108(b) of Pub. L. 93–638, as amended, provides that records of the Tribe/Consortium must not be considered Federal records for the purposes of the Privacy Act.

§ 1000.394 What audit requirements must a self-governance Tribe/Consortium follow?

The Tribe/Consortium must provide to the designated official an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, 31 U.S.C. 7501, *et seq.*

§ 1000.395 Do OMB circulars and revisions apply to self-governance funding agreements?

Yes, OMB circulars and revisions apply, except for:

(a) Listed exceptions for Tribes and Tribal Consortia;

(b) Exceptions in 25 U.S.C. 450j–1(k); and

(c) Additional exceptions that OMB may grant.

§ 1000.396 Does a Tribe/Consortium have additional ongoing requirements to maintain minimum standards for Tribe/Consortium management systems?

Yes, the Tribe/Consortium must maintain management systems that are determined to be adequate by an independent audit through the annual single agency audit report that is required by the Act and OMB Circular A–133.

§ 1000.397 Are there any restrictions on how AFA funds may be spent?

Yes, funds may be spent only for costs associated with programs, services, functions, and activities contained in self-governance AFAs.

§ 1000.398 May a Tribe/Consortium invest funds received under a self-governance agreement?

Yes, self-governance funds may be invested if such investment is in:

(a) Obligations of the United States;

(b) Obligations or securities that are within the limits guaranteed or insured by the United States or mutual (or other) funds registered with the Securities and Exchange Commission and that only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(c) Deposits insured by an agency or instrumentality of the United States or are fully collateralized to ensure protection of the funds even in the event of a bank failure.

§ 1000.399 How may interest or investment income that accrues on AFAs be used?

Unless restricted by the AFA, interest or income earned on investments or deposits of self-governance awards may be:

(a) Placed in the Tribe's general fund and used for any purpose approved by the Tribe; or

(b) Used to provide expanded services under the self-governance AFA and to support some or all of the costs of investment services.

§ 1000.400 Can a Tribe/Consortium retain savings from programs?

Yes, for BIA programs, the Tribe/Consortium may retain savings for each fiscal year during which an AFA is in effect. A Tribe/Consortium must use any savings that it realizes under an AFA, including a construction contract:

(a) To provide additional services or benefits under the AFA; or

(b) As carryover; and

(c) For purposes of this subpart only, programs administered by BIA using appropriations made to other Federal agencies, such as the Department of Transportation, will be treated in accordance with paragraph (b) of this section.

§ 1000.401 Can a Tribe/Consortium carry over funds not spent during the term of the AFA?

This section applies to BIA programs, services, functions, or activities, notwithstanding any other provision of law. Any funds appropriated under the Snyder Act of 1921 (42 Stat. 208), for any fiscal year that are not obligated or spent by the end of the fiscal year for which they were appropriated shall remain available for obligation or expenditure during the following fiscal year. In the case of amounts made available to a Tribe/Consortium under an AFA, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are authorized to be used under the provisions of § 106(a)(3) of the Act, no additional justification or documentation of such purposes need be provided by the Tribe/Consortium to the Secretary as a condition of receiving or expending such funds.

§ 1000.402 After a non-BIA AFA has been executed and the funds transferred to a Tribe/Consortium, can a bureau request the return of funds?

The bureau may request the return of funds already transferred to a Tribe/Consortium only under the following circumstances:

(a) Retrocession;

(b) Reassumption;

(c) Construction, when there are special legal requirements; or

(d) As otherwise provided for in the AFA.

§ 1000.403 How can a person or group appeal a decision or contest an action related to a program operated by a Tribe/Consortium under an AFA?

(a) *BIA programs.* A person or group who is aggrieved by an action of a Tribe/Consortium with respect to programs that are provided by the Tribe/Consortium under an AFA must follow Tribal administrative procedures.

(b) *Non-BIA programs.* Procedures will vary depending on the program. Aggrieved parties should initially contact the local program administrator (the Indian program contact). Thereafter, appeals will follow the relevant bureau's appeal procedures.

§ 1000.404 Must self-governance Tribes/Consortia comply with the Secretarial approval requirements of 25 U.S.C. 81; 82a; and 476 regarding professional and attorney contracts?

No, for the period that an agreement entered into under this part is in effect, the provisions of 25 U.S.C. 81, 82a, and 476, do not apply to attorney and other professional contracts by participating Tribes/Consortia.

§ 1000.405 Are AFA funds non-Federal funds for the purpose of meeting matching requirements?

Yes, self-governance AFA funds can be treated as non-Federal funding for the purpose of meeting matching requirements under Federal law.

§ 1000.406 Does Indian preference apply to services, activities, programs, and functions performed under a self-governance AFA?

Tribal law must govern Indian preference in employment, where permissible, in contracting and subcontracting in performance of an AFA.

§ 1000.407 Do the wage and labor standards in the Davis-Bacon Act apply to Tribes and Tribal Consortia?

No, wage and labor standards of the Davis-Bacon Act do not apply to employees of Tribes and Tribal Consortia. They do apply to all other laborers and mechanics employed by contractors and subcontractors in the construction, alteration, and repair (including painting or redecorating of buildings or other facilities) in connection with an AFA.

Supply Sources

§ 1000.408 Can a Tribe/Consortium use Federal supply sources in the performance of an AFA?

A Tribe/Consortium and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) that must be available to the Tribe/Consortium and to its employees to the same extent as if the Tribe/Consortium were a Federal agency. While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribe/Consortium to resolve any barriers to full implementation that may arise. While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribes/Consortia to resolve any barriers to full implementation that may arise to the fullest extent possible.

Prompt Payment Act

§ 1000.409 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a non-BIA, non-Indian program AFA?

Yes, upon mutual agreement of the parties, an AFA may incorporate the Prompt Payment Act.

Subpart R—Appeals

§ 1000.420 What does "Title-I eligible programs" mean in this subpart?

Throughout this subpart, the phrase "Title I-eligible programs" is used to refer to all programs, functions, services, and activities that the Secretary provides for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department within which the programs, functions, services, and activities have been performed.

§ 1000.421 What is the purpose of this subpart?

This subpart prescribes the process Tribes/Consortia may use to resolve disputes with the Department arising before or after execution of an AFA or compact and certain other disputes related to self-governance. It also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

(a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes;

(b) The Interior Board of Contract Appeals (IBCA) for certain post-AFA disputes;

(c) The Assistant Secretary for the bureau responsible for certain disputed decisions;

(d) The Secretary for reconsideration of decisions involving self-governance compacts; and

(e) The agency head for certain pre-award AFA disputes.

§ 1000.422 How must disputes be handled?

(a) The Department encourages its Bureaus to seek all means of dispute resolution before the Tribe/Consortium files a formal appeal(s).

(b) Disputes shall be addressed through government-to-government

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discourse. This discourse must be respectful of government-to-government relationships and relevant Federal-Tribal agreements, treaties, judicial decisions, and policies pertaining to Indian Tribes.

(c) Title I-eligible program disputes may use an informal conference as set forth in 25 CFR 900.153–157.

(d) All disputes arising under this rule, including but not limited to Title I-eligible program disputes may use non-binding informal alternative dispute resolution at the option of the Tribe/Consortium, as prescribed in § 402 of this subpart. The Tribe/Consortium may ask for this alternative dispute resolution any time before the issuance of an initial decision of a formal appeal(s). The appeals timetable will be suspended while alternative dispute resolution is pending.

§ 1000.423 Are there any decisions that are not administratively appealable under this subpart?

Yes, the following types of decisions are not administratively appealable under this subpart but may be appealable under other substantive provisions of the Code of Federal Regulations:

(a) Decisions relating to planning and negotiation grants (subparts C and D of this part) and certain discretionary grants not awarded under Title IV (25 CFR part 2);

(b) Decisions involving a limitation and/or reduction of services for BIA programs (subpart H of this part)(25 CFR part 2);

(c) Decisions regarding requests for waivers of regulations (subpart J of this part);

(d) Decisions regarding construction (subpart K of this part) addressed in § 1000.251(b); and

(e) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act (see 43 CFR part 2).

§ 1000.424 Does a Tribe/Consortium have a right to an informal conference to resolve any disputes?

Yes, the Tribe/Consortium may request an informal conference (a non-binding alternative dispute resolution process). An informal conference is a way to resolve both Title I-eligible program and other disputes as quickly as possible, without the need for a formal appeal.

§ 1000.425 How does a Tribe/Consortium request an informal conference?

The Tribe/Consortium shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision.

(a) The Tribe/Consortium may either hand-deliver the request for an informal conference to that person's office, fax the request with confirmation or mail it by certified mail, return receipt requested.

(b) If the Tribe/Consortium mails the request, it will be considered filed on the date the Tribe/Consortium mailed it by certified mail.

§ 1000.426 How is an informal conference held?

For all purposes relating to these informal conference procedures, the parties are the designated representatives of the Tribe/Consortium and the bureau.

(a) The informal conference shall be held within 30 days of the date the request was received, unless the parties agree on another date.

(b) Where practicable, at the option of the Tribe/Consortium, the informal conference will be held at the Tribe's/Consortium's office. If the meeting cannot be held at the Tribe's/Consortium's office, the parties must agree on an alternative meeting place.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only the parties may make presentations at the informal conference.

(e) The informal conference is not a hearing on the record. Nothing said during an informal conference may be used by either party in litigation.

§ 1000.427 What happens after the informal conference?

(a) Within 10 business days of the informal conference, the person who conducted the informal conference shall mail to the Tribe/Consortium a brief summary of the informal conference. The summary must include any agreements reached or changes from the initial position of the bureau or the Tribe/Consortium.

(b) If in its judgment no agreement was reached, the Tribe/Consortium may choose to appeal the initial decision, as modified by any changes made as a result of the informal conference, under § 1000.421 of this subpart to the IBIA, bureau head/Assistant Secretary, or IBCA.

§ 1000.428 How may a Tribe/Consortium appeal a decision made after the AFA or compact or amendment to an AFA or compact has been signed?

With the exception of certain decisions concerning reassumption for imminent jeopardy (see § 1000.408 of this subpart), the Tribe/Consortium may appeal post-award administrative decisions to the IBCA.

§ 1000.429 What statutes and regulations govern resolution of disputes concerning signed AFAs or compacts that are appealed to IBCA?

Section 110 of Pub. L. 93–638 (25 U.S.C. 450 m–1) and the regulations at 25 CFR 900.216–900.230 apply to disputes concerning signed AFAs and compacts that are appealed to the IBCA, except that any references to the Department of Health and Human Services are inapplicable. For the purposes of such appeals:

(a) The terms "contract" and "self-determination contract" mean compacts and AFAs under the Tribal Self-Governance Act; and

(b) The term "Tribe" means "Tribe/Consortium'.

§ 1000.430 To whom are appeals directed regarding reassumption for imminent jeopardy?

Appeals regarding reassumption of Title I-eligible PFSAs are handled by the IBIA under those procedures set out in 25 CFR 900.171 through 900.176. Appeals regarding reassumption of PFSAs that are not Title I-eligible are handled by the IBCA under those procedures set out in 43 CFR part 4.

§ 1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes, EAJA claims against the DOI will be heard by IBIA or IBCA, as appropriate, under 43 CFR 4.601 through 4.619, Equal Access to Justice Act (Pub. L. No. 96–481, 92 Stat. 2325, as amended), section 504 of Title 5 U.S.C. and Section 2412 of Title 28 U.S.C.

§ 1000.432 To whom may a Tribe appeal a decision made before the AFA or an amendment to the AFA or compact is signed?

(a) *Title I-eligible PFSA pre-award disputes.* For Title I—eligible PFSA disputes, appeal may only be filed with IBIA under the provisions set forth in 25 CFR 900.150(a) through (h), 900.152 through 900.169.

(b) *Other pre-award disputes.* For all other pre-award disputes, including those involving PFSAs that are not Title I-eligible, appeals may be filed with the bureau head/Assistant Secretary or IBIA as noted below. However, the Tribe/Consortium may not avail itself of both paths for the same dispute.

(1) *Bureau head/Assistant Secretary appeal.* Unless the initial decision being appealed is one that was made by the bureau head (those appeals are forwarded to the appropriate Assistant Secretary—see § 1000.433(c) of this subpart), the bureau head will decide appeals relating to these pre-award matters, that include but are not limited to disputes regarding:

(i) PFSAs that are not Title 1-eligible;

(ii) Eligibility for the applicant pool of self-governance Tribes;

(iii) BIA residual functions;

(iv) Decisions declining to provide requested information as addressed in § 1000.172 of this part;

(v) Allocations of program funds when a dispute arises between a Consortium and a withdrawing Tribe; and

(vi) Inherently Federal functions.

(2) *IBIA appeal.* The Tribe/Consortium may choose to forego the administrative appeal through the bureau or the Assistant Secretary, as described in the paragraph (b)(1) of this section, and instead appeal directly to IBIA. The standard of review for such IBIA appeals will be an "abuse of discretion" standard.

§ 1000.433 When and how must a Tribe/Consortium appeal an adverse pre-award decision?

(a) If a Tribe/Consortium wishes to exercise its appeal rights under § 1000.432(b)(1), it must make a written request for review to the appropriate bureau head within 30 days of receiving the initial adverse decision. In addition, the Tribe/Consortium may request the opportunity to have a meeting with appropriate bureau personnel in an effort to clarify the matter under dispute before a formal decision by the bureau head.

(b) The written request for review should include a statement describing its reasons for a review, with any supporting documentation, or indicate that such a statement or documentation will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

(c) If the initial decision was made by the bureau head, any appeal shall be directed to the appropriate Assistant Secretary. If a Tribe does not request a review within 30 days of receipt of the decision, the initial decision will be final for the Department.

§ 1000.434 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?

Within 30 days of receiving the request for review and the statement of reasons described in § 1000.433, the bureau head or, where applicable, the appropriate Assistant Secretary must:

(a) Issue a written final decision stating the reasons for the decision; and

(b) Send the decision to the Tribe/Consortium.

§ 1000.435 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?

The appropriate Assistant Secretary will decide an appeal of any initial decision made by a bureau head (see § 1000.433). If the Tribe/Consortium has appealed the bureau's initial adverse decision of the bureau to the bureau head and the bureau head's decision on initial appeal is contrary to the Tribe's/Consortium's request for relief, or the bureau head fails to make a decision within 30 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation, the Tribe's/Consortium's appeal will be sent automatically to the appropriate Assistant Secretary for decision. The Assistant Secretary must either concur with the bureau head's decision or issue a separate decision within 60 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation. The decision of the Assistant Secretary is final for the Department.

§ 1000.436 How may a Tribe/Consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A Tribe/Consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for reconsideration to the Secretary within 30 days of receipt of the decision. A copy of this request must also be sent to the Director of the Office of Self-Governance.

§ 1000.437 When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary must respond in writing to the Tribe/Consortium within 30 days of receipt of the Tribe's/Consortium's request for reconsideration.

§ 1000.438 May Tribes/Consortia appeal Department decisions to a Federal court?

Yes, Tribes/Consortia may appeal decisions of Department officials relating to the self-governance program to an appropriate Federal court, as authorized by section 110 of Pub. L. 93–638 (25 U.S.C. 405m-1), or any other applicable law.

Subpart S—Conflicts of Interest

§ 1000.460 What is an organizational conflict of interest?

(a) An organizational conflict of interest arises when there is a direct conflict between the financial interests of the self-governance Tribe/Consortium and:

(1) The financial interests of beneficial owners of Indian trust resources;

(2) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed under the Alaska Native Claims Settlement Act 43 U.S. C. 1601 *et seq.*; or

(3) An express statutory obligation of the United States to third parties. This section only applies if the conflict was not addressed when the AFA was first negotiated.

(b) This section only applies where the financial interests of the Tribe/Consortium are significant enough to impair the Tribe's/Consortium's objectivity in carrying out the AFA, or a portion of the AFA.

§ 1000.461 What must a Tribe/Consortium do if an organizational conflict of interest arises under an AFA?

This section only applies if the conflict was not addressed when the AFA was first negotiated. When a Tribe/Consortium becomes aware of an organizational conflict of interest, the Tribe/Consortium must immediately disclose the conflict to the Secretary.

§ 1000.462 When must a Tribe/Consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

A Tribe/Consortium must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

§ 1000.463 What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by a Tribe/Consortium?

The Tribe/Consortium would need a tribally-approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Tribe/Consortium reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the tribe/consortium or an allottee. Interests arising from membership in, or employment by, a Tribe/Consortium or rights to share in a tribal claim need not be regulated.

§ 1000.464 What personal conflicts of interest must the standards of conduct regulate?

The personal conflicts of interest standards must:

(a) Prohibit an officer, employee, or agent (including a subcontractor) from

participating in the review, analysis, or inspection of trust transactions involving an entity in which such persons have a direct financial interest or an employment relationship;

(b) Prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Tribe/Consortium) with an in the trust transactions under review; and

(c) Provide for sanctions or remedies for violation of the standards.

§ 1000.465 May a Tribe/Consortium negotiate AFA provisions on conflicts of interest to take the place of this subpart?

(a) A Tribe/Consortium and the Secretary may agree to AFA provisions, concerning either personal or organizational conflicts, that:

(1) Address the issues specific to the program and activities contracted; and

(2) Provide equivalent protection against conflicts of interest to these regulations.

(b) Agreed-upon AFA provisions shall be followed, rather than the related provisions of this subpart. For example, the Tribe/Consortium and the Secretary may agree that using the Tribe's/Consortium's own written code of ethics satisfies the objectives of the personal conflicts provisions of subpart, in whole or in part.

Appendix A to Part 1000—Model Compact of Self-Governance Between The Tribe and the Department of the Interior

Article I—Authority and Purpose

Section 1—Authority

This agreement, denoted a compact of Self-Governance (hereinafter referred to as the "compact"), is entered into by the Secretary of the Interior (hereinafter referred to as the "Secretary"), for and on behalf of the United States of America under the authority granted by Title IV of the Indian Self Determination and Education Assistance Act, Pub. L. 93–638, as amended, and by the Tribe, under the authority of the Constitution and By-Laws of the Tribe (hereinafter referred to as the "Tribe").

Section 2—Purpose

This compact shall be liberally construed to achieve its purposes:

(a) This compact is to carry out Self-Governance as authorized by Title IV of Pub. L. 93–638, as amended, that built upon the Self Governance Demonstration Project, and transfer control to Tribal governments, upon Tribal request and through negotiation with the United States government, over funding and decision-making of certain Federal programs as an effective way to implement the Federal policy of government-to-government relations with Indian Tribes.

(b) This compact is to enable the United States to maintain and improve its unique and continuing relationship with and responsibility to the Tribe through Tribal self-governance, so that the Tribe may take its rightful place in the family of governments; remove Federal obstacles to effective self-governance; reorganize Tribal government programs and services; achieve efficiencies in service delivery; and provide a documented example for the development of future Federal Indian policy. This policy of Tribal self-governance shall permit an orderly transition from Federal domination of Indian programs and services to allow Indian Tribes meaningful authority to plan, conduct, and administer those programs and services to meet the needs of their people. In implementing Self-Governance, the Bureau of Indian Affairs is expected to provide the same level of service to other Tribal governments and to demonstrate new policies and methods to improve service delivery and address Tribal needs. In fulfilling its responsibilities under the compact, the Secretary hereby pledges that the Department will conduct all relations with the Tribe on a government-to-government basis.

Article II—Terms, Provisions and Conditions

Section 1—Term

This compact shall be effective when signed by the Secretary or an authorized representative and the authorized representative of the Tribe. The term of this compact shall commence (negotiated effective date) and must remain in effect as provided by Federal law or agreement of the parties.

Section 2—Funding Amount

In accordance with Section 403(g) of Title IV of Pub. L. 93–638, as amended, and subject to the availability of appropriations, the Secretary shall provide to the Tribe the total amount specified in each annual funding agreement.

Section 3—Reports to Congress

To implement Section 405 of Pub. L. 93–638, as amended, on each January 1 throughout the period of the compact, the Secretary shall make a written report to the Congress that shall include the views of the Tribe concerning the matters encompassed by Section 405(b) and (d).

Section 4—Regulatory Authority

The Tribe shall abide by all Federal regulations as published in the **Federal Register** unless waived in accordance with Section 403(i)(2) of Pub. L. 93–638, as amended.

Section 5—Tribal Administrative Procedure

The Tribe shall provide administrative due process right under the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, *et seq.*, to protect all rights and interests that Indians, or groups of Indians, may have with respect to services, activities, programs, and functions that are provided under the compact.

Article III—Obligations of the Tribe

Section 1—AFA Programs

The Tribe will perform the programs as provided in the specific AFA negotiated under the Act. The Tribe pledges to practice utmost good faith in upholding its responsibility to provide such programs, under the Act.

Section 2—Trust Services for Individual Indians

To the extent that the AFAs have provisions for trust services to individual Indians that were formerly provided by the Secretary, the Tribe will maintain at least the same level of service as was previously provided by the Secretary. The Tribe pledges to practice utmost good faith in upholding their responsibility to provide such service.

Article IV—Obligations of the United States

Section 1—Trust Responsibility

The United States reaffirms the trust responsibility of the United States to the _____ Tribe(s) to protect and conserve the trust resources of the Tribe(s) and the trust resources of individual Indians associated with this compact and any annual funding agreement negotiated under the Tribal Self-Governance Act.

Section 2—Trust Evaluations

Under Section 403(d) of Pub. L. 93–638, as amended, annual funding agreements negotiated between the Secretary and an Indian Tribe shall include provisions to monitor the performance of trust functions by the Tribe through the annual trust evaluation.

Article V—Other Provisions

Section 1—Facilitation

Nothing in this compact may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the Tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

Section 2—Officials Not To Benefit

No Member of Congress, or resident commissioner, shall be admitted to any share or part of any annual funding agreement or contract thereunder executed under this compact, or to any benefit that may arise from such compact. This paragraph may not be construed to apply to any contract with a third party entered into under an annual funding agreement under this compact if such contract is made with a corporation for the general benefit of the corporation.

Section 3—Covenant Against Contingent Fees

The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed under this compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

Section 4—Sovereign Immunity

Nothing in this compact or any AFA shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

In witness whereof, the parties have executed, delivered and formed this compact, effective the _____ day of _____, 20___.

THE _____ Tribe

The Department of the Interior.

By: _____

By: _____

[FR Doc. 00–31647 Filed 12–14–00; 8:45 am]

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Part V

Federal Trade Commission

16 CFR Part 23
Guides for the Jewelry, Precious Metals and Pewter Industries; Final Rule

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FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Final guides.

SUMMARY: The Federal Trade Commission (Commission) announces that it is revising §§ 23.13 and 23.22 of the Guides for the Jewelry, Precious Metals and Pewter Industries (Jewelry Guides or Guides), 16 CFR Part 23. The Commission has combined § 23.13, which addresses the disclosure of diamond treatments, with § 23.22, which addresses treatments of other gemstones. The Commission also has revised these sections to provide for disclosure of any treatment to gemstones that significantly affects the value of the gemstone, which would include laser-drilling of diamonds.

EFFECTIVE DATE: April 10, 2001.

ADDRESSES: Requests for copies of this document should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Copies also are available on the Commission's website at <www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, Attorney, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3740, <jewelry@ftc.gov>.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission announces that it is revising §§ 23.13 and 23.22 of its Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR Part 23 (Jewelry Guides or Guides). The Jewelry Guides address claims made about precious metals, diamonds, gemstones, and pearl products.[1] The Guides explain how to describe these products truthfully and non-deceptively and how to avoid unfair or deceptive practices. Sections 23.13 and 23.22 of the Guides address the disclosure of certain treatments to diamonds and other gemstones that are performed to improve their beauty or durability. Some treatments are not permanent because their effects fade over time. For example, gemstones sometimes are treated with a colorless oil that improves the color of the stone and helps to mask certain imperfections. Other treated gemstones require special care to retain the benefit of the treatment. For example, a stone that is fracture-filled (*i.e.*, injected with plastic or glass to hide cracks and improve its appearance) cannot be cleaned with certain types of jewelry cleaners, because the cleaner could adversely affect the treatment. In addition, re-cutting or re-setting a fracture-filled stone could damage the treatment.[2] Other gemstone treatments are permanent and do not create special care requirements, but the treated gemstone is not as valuable as a similar untreated stone..

On June 8, 1999, the Commission solicited comment on a proposal to revise § 23.13 of the Guides to require disclosure of laser-drilling of diamonds.[3] The Commission also solicited comment on a proposal to revise § 23.22 of the Guides, which addresses other gemstone treatments, to provide for the disclosure of treatments similar to laser-drilling—those that are permanent and do not create special care requirements for the stone, but significantly affect the value of the stone. The Commission received 40 comments.[4] After reviewing these comments, the Commission has decided to revise the Guides to provide for disclosure of permanent gemstone treatments that significantly affect the value of the gemstone, such as laser-drilling.

II. Background

On December 9, 1998, two jewelry trade associations, the Jewelers Vigilance Committee (JVC), a trade association promoting ethical jewelry sales practices, and the Diamond Manufacturers and Importers Association of America (DMIA), jointly petitioned the Commission to revise § 23.13 of the Jewelry Guides to add laser drilling to the list of diamond treatments that should be disclosed.[5] Laser drilling involves directing a laser beam at an inclusion and forcing acid through the resulting tunnel, thereby removing the inclusion or rendering it invisible to the naked eye. Thus, the diamond's appearance is improved.

In a 1996 review of the Guides, the Commission determined, based on the record before it, that the failure to disclose laser-drilling was not unfair or deceptive. The evidence presented in the comments to the Commission indicated that laser-drilling of diamonds was "a common practice and not an extraordinary process."[6] Moreover, the evidence demonstrated that, while laser-drilling produces a small surface opening on a diamond, "the majority of diamonds sold in the U.S. have similar surface imperfections."[7] Surface imperfections are to be expected in diamonds, except in diamonds described as flawless. The record also reflected that disclosing laser-drilling in each advertisement or promotional description could be costly and the additional advertising costs could be passed on to consumers in the form of higher prices.[8] At that time, there was a conflict in the industry regarding the need for and the appropriateness of disclosure. Therefore, the Commission decided not to amend § 23.13 of the Guides to require disclosure.

The JVC petition asks the Commission to reconsider its decision based on the following factors: (1) There is now widespread industry support for disclosure; (2) the amendment would promote industry disclosure and self-regulation; (3) disclosure would impose few costs on retailers, and therefore, no increased costs to consumers; (4) technological advances make it increasingly difficult for consumers to detect laser-drilling; (5) consumers would not necessarily learn about laser-drilling through grading reports because most diamonds sold in the US are small stones that typically are not accompanied by such a report; (6) consumers may suffer economic injury by purchasing laser-drilled diamonds without disclosure, because such stones are worth less than untreated diamonds; and, (7) laser drilling is no different than other permanent artificial processes that affect the value of products that already are required to be disclosed (e.g., cultured pearls must be identified as "cultured" because they are created by humans inserting an irritant into an oyster's shell and are worth less than natural pearls).

[1] The Commission issues industry guides to provide guidance for the public to conform with legal requirements. Industry guides are administrative interpretations of the laws the Commission administers. Industry guides explain how to describe products truthfully and non-deceptively and identify practices the Commission considers unfair or deceptive.

[2] The American Gem Trade Association (AGTA) publishes a manual that contains a comprehensive listing of gemstone treatments and information regarding the permanence of the treatment and special care requirements. AGTA–2 (022A).

[3] 64 FR 30448 (June 8, 1999).

[4] In the remainder of this FRN, the comments are cited to by an abbreviation of the comment name and the comment number. Attached to this FRN as Appendix A is a list of the comment name, abbreviation and comment number used to identify each commenter. The comments numbered 1 to 21 were received in response to the Commission's first request for comment dated June 8, 1999. 64 FR 30448. The comments numbered 1A to 22A were received after the Commission extended the deadline to submit comments. 64 FR 37051 (July 9, 1999). Three comments were submitted twice, by US mail and by electronic mail. These comments are listed once and are referred to in this FRN by the number of the comment that was received first.

[5] Fifteen trade associations joined the JVC and DMIA petition: World Federation of Diamond Bourses; International Diamond Manufacturers Association; Diamond Promotion Services; Diamond Dealers Club of New York; Gemological Institute of America; International Society of Appraisers; Jewelers of America; American Gemstone Society; American Gem Society; United States Carat Club; International Confederation of Jewelry, Silverware, Diamonds, Pearls and Stones; American Gemstone Trade Association; Manufacturing Jewelers and Suppliers of America; International Standards Organization; and Diamond High Council. The petition is on the public record and copies are available by contacting the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580. The petition also has been posted on the Commission's website at <www.ftc.gov>. For the remainder of this **Federal Register** Notice, the petition will be referred to as the JVC petition.

[6] 61 FR 27177, 27197 (May 30, 1996).

[7] Id. at 27196.

[8] Id. at 27197 n.305–06.

III. Laser-Drilling of Diamonds

A. Request for Comment

The Commission tentatively concluded that the JVC petition demonstrated, contrary to the record before the Commission in 1996, that the failure to disclose laser-drilling is an unfair or deceptive trade practice. Therefore, in June 1999 the Commission solicited comment on a proposal to include laser-drilling as a treatment that should be disclosed.[9] The FRN posed several questions regarding this proposed revision. Question 1 asked whether it was currently a prevalent practice in the industry to disclose laser-drilling at all levels of the transaction up to the sale to the consumer. Question 2 asked: "Would a provision in the Jewelry Guides to disclose laser-drilling to consumers inhibit advertising or create additional costs for retailers that could be passed on to consumers in the form of significantly higher prices?" Finally, Question 3 asked: "Is there a disparity in value between a laser-drilled diamond and an untreated diamond of the same clarity rating?'

B. Summary of the Comments

The comments, except for one, support revising the Guides to provide for disclosure of laser-drilling. The comments responding to Question 1, however, indicate that there is not an industry consensus on whether disclosure currently is the prevalent practice. Two comments state that disclosure is the industry practice.[10] One comment states that disclosure was the industry practice until the FTC revised the Jewelry Guides in 1996.[11] Because the Jewelry Guides, as revised in 1996, did not provide for disclosure of laser-drilling, this comment asserts that some industry members stopped disclosing the treatment. Two comments state simply that it is not an industry practice to disclose.[12] One comment explains that ethical sellers disclose but unethical ones do not.[13] With respect to Question 2 of the FRN, the comments are unanimous that disclosure will not result in additional costs.[14] Finally, the comments, responding to Question 3 of the FRN, are also unanimous that a laser-drilled diamond is worth less than a similar untreated diamond.[15] As one comment explains, a laser-drilled stone is not as rare as an untreated stone and therefore is less costly.[16]

C. Analysis of the Comments

The comments establish that a laser-drilled stone is worth less than an untreated stone of the same clarity rating. Diamonds are graded on clarity on a scale running from Flawless (F) to Included (I), reflecting the number and size of inclusions appearing in the stone.[17] Laser-drilling can elevate a lesser quality diamond to a higher grade on standard clarity rating scales, increasing the stone's value. The JVC petition stated that the price differential between a diamond that has a natural black inclusion and one where laser drilling has removed the inclusion could be as much as twenty-five percent. Even more important, however, is the fact that the laser-drilled stone is worth less than a untreated stone of the equivalent clarity rating.[18]

For example, if a diamond has a clarity rating of SI1 and has a natural black inclusion, the inclusion could be removed by laser-drilling, improving the clarity of the stone to VS2. The stone would now be worth more than it was as a non-laser-drilled stone with a clarity rating of SI1. At the same time, the laser-drilled stone with a clarity rating of VS2 is worth less than a non-laser-drilled stone with a clarity rating of VS2. Laser-drilling produces a small surface opening on a diamond. These surface imperfections are similar to natural surface imperfections that are expected in diamonds unless they are described as flawless. Industry buyers and consumers nevertheless have a preference for diamonds that contain only naturally occurring imperfections.[19] Accordingly, diamond appraisers and consumers place a lower value on laser-drilled stones in comparison to non-laser-drilled stones of the same clarity.[20]

In determining whether a practice is deceptive, the Commission considers whether there is a representation or omission that is likely to mislead consumers acting reasonably under the circumstances.[21] The representation or omission must be material. Previously, the Commission had no basis on which to conclude that there were any significant differences between naturally occurring and man-made inclusions. New evidence, provided in response to the FRN suggests, however, that consumers and appraisers place a lower value on laser-drilled diamonds than on comparable diamonds with naturally occurring inclusions. Because laser-drilled diamonds are worth less than comparable non-drilled diamonds, failure to disclose laser-drilling may lead consumers to believe a laser-drilled stone is as valuable as an untreated stone of the same clarity rating.[22] In addition, not providing for disclosure inadvertently may have created an avenue for unscrupulous marketers to overcharge consumers for laser-drilled stones. Consumers are at a disadvantage due to the imbalance of information that currently exists regarding laser-drilling of diamonds. As a result, unscrupulous marketers can charge consumers the same price for a laser-drilled stone with, *e.g.*, a VS2 clarity rating, that they would charge for a untreated stone with

[9] 64 FR 30448.

[10] JVC (006A); AGTA–1 (015A).

[11] Matlins (001A).

[12] NAJA (016); Zale (007A).

[13] ISA (014).

[14] Matlins (001A); ISA (014); NAJA (016); CJAQ (005A); JVC–1 (006A); Zale (007A); AGTA–1 (015A).

[15] Adamas (005); Sherman (007); Indenbaum (009); ISA (014); NAJA (016); Gaenzle (017); Matlins (001A); Rapeport (002A); Green (003A); Kapoor (004A); CJAO (005A); JVC–1 (006A); Zale (007A); Dua (013A); AGTA–1 (015A).

[16] Matlins (001A); see also NAJA (016) ("laser-drilled diamonds are less costly than similar clarity, non-drilled diamonds"); ISA (014) ("laser-drilled diamonds are generally less expensive than similar non-treated stones").

[17] The ratings in between, from highest to lowest, are: Internally Flawless (IF); Very, Very Small Inclusions 1 (VVS1); Very, Very Small Inclusions 2 (VVS2); Very Small Inclusions 1 (VS1); Very Small Inclusions 2 (VS2); Small Inclusions 1 (SI1); and Small Inclusions 2 (SI2).

[18] JVC Petition, at 6–8.

[19] Matlins (01A); NAJA (011); ISA (014); AGTA–2 (022A).

[20] See ISA (014) (International Society of Appraisers comment stating that "laser-drilled diamonds are generally less expensive than similar non-treated stones"); accord NAJA (011) (National Association of Jewelry Appraisers); see also Gaenzle (017) (consumer comment attaching a petition signed by 500 consumers requesting revision of the Jewelry Guides to provide for disclosure of laser-drilling of diamonds because consumers are being deceived as to the value of laser-drilled diamonds).

[21] Deception Policy Statement, Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984), Letter dated Oct. 14, 1983, from the Commission to Chairman John D. Dingell.

[22] See Gaenzle (017) (consumer comment attaching a petition signed by 500 consumers requesting revision of the Jewelry Guides to provide for disclosure of laser-drilling of diamonds because consumers are being deceived as to the value of laser-drilled diamonds).

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a VS2 clarity rating, even though the laser-drilled stone is worth less than the untreated stone.[23]

Because the record indicates that failure to disclose laser-drilling may mislead consumers as to the value of the diamond, the Commission has concluded that failure to disclose laser-drilling is deceptive and that the benefits to consumers of requiring sellers to disclose laser-drilling outweigh any potential costs.[24] Accordingly, the Commission is revising the Jewelry Guides to require laser-drilling of diamonds to be disclosed. The manner in which the Guides require disclosure of this treatment is discussed in Part V below.

IV. Other Permanent Gemstone Treatments

A. Request for Comment

The Commission's FRN also sought comment regarding proposed changes to § 23.22 of the Guides, which addresses treatments to gemstones generally. This section states that it is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements and to fail to disclose that the treatment is not permanent, if such is the case. As explained above, some gemstone treatments are not permanent and, as a result, the color of the stone may fade or inclusions may become more visible as the treatment fades. In addition, some treated gemstones require special care. The Commission determined, during the 1996 revision of the Guides, that consumers would not expect a gemstone to change over time and should be made aware of any special care requirements necessary to preserve the product. Accordingly, § 23.22 provides for disclosure of non-permanent gemstone treatments and treatments that create special care requirements for the gemstone.

In light of the petition's evidence about laser-drilling, the Commission sought comment on whether consumers may be injured by non-disclosure of other permanent gemstone treatments that do not create special care requirements but do affect the value of the stone. For instance, sapphires are often heat treated to enhance their color. This treatment is permanent and does not create special care requirements. An untreated sapphire, however, could be considered more valuable than a heat-treated stone, and absent disclosure consumers may be deceived as to the value of the stone. Further, new technologies for treating gemstones are continually developing that might affect the value of the gemstone, similar to how laser-drilling affects the value of diamonds. Accordingly, the Commission asked whether § 23.22 of the Jewelry Guides should be revised to require disclosure of permanent treatments that do not require special care, if the treatment has a significant effect on the stone's value and a consumer, acting reasonably under the circumstances, could not ascertain that the stone has been treated.

Specifically, the FRN asked: "Is there a disparity in value between a gemstone treated in a manner that is permanent and does not require special care and one that is not treated? How many different gemstones and gemstone treatments fall into this category?" The FRN also asked whether industry policy provides for disclosure of permanent gemstone treatments that do not create special care requirements. Finally, the FRN asked: "Would guidance in the Jewelry Guides calling for disclosure of permanent gemstone treatments that do not require special care inhibit advertising or create additional costs for retailers that could be passed on to consumers in the form of significantly higher prices? Would this guidance adversely impact competition in any way?"

B. Summary of the Comments

The comments state that currently it is not a widespread industry policy to disclose permanent gemstone treatments that do not create special care requirements.[25] But, the comments also contend that requiring disclosure of these treatments would not inhibit advertising or create additional costs for retailers in most instances.[26] Thus, overall, the comments support amending the Guides to provide for disclosure of permanent gemstone treatments.[27]

Eight comments discussed whether there is a disparity in value between a gemstone treated in a manner that is permanent and does not require special care and one that is not treated. All eight assert that a treated gemstone is less valuable than a untreated gemstone even if the treatment is permanent and does not create special care requirements.[28]

A number of comments also address the two proposed conditions that would trigger a disclosure: (1) The treatment has a significant effect on the stone's value; and, (2) a consumer, acting reasonably under the circumstances, could not ascertain that the stone has been treated. These proposed conditions generated significant comment, as discussed below.

C. Analysis of Comments

Based on the record and for the same reasons that the Commission is now requiring laser drilling to be disclosed, the Commission has determined that the Guides should require disclosure of permanent gemstone treatments that significantly affect a stone's value. As one comment explains "[t]here is definitely a disparity in price between natural unenhanced gemstones, and those which are enhanced. And it does not matter whether the treatment is permanent or not, or whether special care is required * * * Treated gems are less rare than non-treated gems, and cost less."[29] For example, blue sapphires are often heat treated to enhance their color. This treatment is permanent and the stone does not require special care. If one compared two sapphires of the same size and clarity but one obtained its rich, blue color naturally and the other from heat treatment, the treated sapphire would be worth less.[30] In fact, there are some retailers that specialize in untreated stones and charge a premium for these products.[31]

1. Conditions Triggering Disclosure

a. Significant Effect on Value. Although the record establishes that there is a disparity in value between treated and untreated gemstones, failure to disclose the treatment is deceptive only if the omission is material to consumers. Thus, the purpose of the first condition—that the treatment have a significant effect on value—was to trigger disclosure in circumstances where the information would be important to consumers and not where there were small value changes that were not likely to affect consumers' purchasing decisions. In addition, the Commission did not intend for the Guides to require disclosure of routine processing treatments, such as cutting and polishing, that all stones undergo that enhance their value. The comments, however, question whether conditioning disclosure upon whether the treatment has an effect on value is necessary and whether the term "significant" should modify this condition.

First, a few comments assert that the phrase "effect on value" is unclear. The comments note that the proposed language does not indicate what kind of effect on value triggers disclosure.[32] They note that treatments have two effects on value—first, the stone is more valuable than it was before it was treated; second, the stone may be less valuable than a similar untreated stone. As explained above, the Commission is concerned with the effect on value that is material to a consumer's purchasing decision, i.e., whether the treated stone is less valuable than a comparable untreated stone.

Another commenter, AGTA, opposes tying the treatment disclosure to value, stating:

> All treatments, permanent or otherwise, are performed to increase the value of untreated material. To propose otherwise implies that when comparing two gemstones with similar characteristics of quality, one treated and another untreated, they should be considered of equal value. This goes directly against the fundamental property of "rarity" with respect to untreated gemstones.[33]

Thus, AGTA instead proposes that all treatments to gemstones be disclosed regardless of permanence, special care, or their effect on value.

The Commission finds, however, that failure to disclose a gemstone treatment is deceptive only if absent disclosure consumers would falsely believe that the treated gemstone is as valuable as a similar untreated stone. Any treatment that in fact affects the value of a gemstone in a way that is material to consumers must be disclosed under the revised Guide.[34]

Second, with respect to the term "significant," several comments state that the term "significant" does not provide sufficient guidance as to when disclosure is required.[35] One comment explains that the word "significant" could create a loophole for unethical sellers to avoid disclosure by arguing that the treatment's effect on the value of the stone was not significant.[36] The Commission concludes that the term "significant" is necessary to limit the disclosure requirement to instances where the failure to disclose treatment information would be deceptive. Disclosure of permanent treatments is necessary only where the treatment's effect on value is likely to affect a consumer's purchasing decision.

The Commission often uses the term "significant" to establish materiality, that is claims or omissions that are likely to affect purchasing decisions. For example, the Commission's Deception Policy Statement explains that the Commission considers certain categories of information presumptively material, including claims that "significantly involve health, safety, or other areas with which the reasonable consumer would be concerned," including a claim that "concerns the purpose, safety, efficacy or cost of the product or service."[37] Thus, the inclusion of the word "significant" is meant to provide a practical, common sense limitation on when disclosures should be made.

The Commission also acknowledges that the value of the gemstone in a piece of jewelry may not be determinative of the price. Factors such as the workmanship of the piece and overall beauty undoubtedly affect the price charged for the product. Holding these factors constant, however, retailers should evaluate whether the gemstone treatment makes the product less valuable than it would be if it contained an untreated stone. The difference in value as a result of a gemstone treatment, although not large from the seller's point of view, might be significant to consumers who might reasonably expect to pay less for a product containing a treated stone or would choose a piece with an untreated stone if the treatment were disclosed. The consumer's point of view is the relevant viewpoint from which to analyze the necessity for disclosure.[38]

b. Consumer Acting Reasonably under the Circumstances. The comments also expressed concern regarding the second condition that triggered disclosure in the Commission's proposed changes to § 23.22—i.e., a consumer, acting reasonably under the circumstances, could not ascertain that the stone has been treated. This condition was designed to incorporate the concept of "reasonableness," which is an element of deception.[39] The test is whether it is reasonable for consumers to believe that two seemingly identical stones are identical or very comparable in value based either on the ad, the stones themselves or the seller's representation, about other characteristics of the stone (e.g., carat weight, cut and color).[40]

Based on the comments, the Commission concludes that consumers acting reasonably under the circumstances, in the absence of disclosure, could believe (incorrectly) that the treated stone and untreated stone have the same or nearly the same value. Thus, the Commission has determined that failure to disclose a gemstone treatment that has a significant effect on the value of the stone may mislead reasonable consumers as to the value of the stone and has revised the guide to require

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[23] Although laser-drilling adds to the cost of a stone, the amount added is substantially less than the price differential between a non-lasered stone of a certain clarity rating and a stone that achieves that clarity rating as a result of laser-drilling. JVC Petition, at 6–8.

[24] As explained above, the JVC petition asserts that disclosure will not result in additional costs because it is already industry practice to disclose laser-drilling at all levels of the transaction up to the sale to the consumers. Although the comments do not agree that disclosure is currently a widespread industry practice, the industry unanimously asserts that disclosure of laser-drilling to consumers will not result in additional costs that could be passed on to them in the form of higher prices. Thus, to the extent requiring disclosure changes industry practice, the changed practice will benefit consumers. Further, the disclosure requirement does not apply to general ads; the Guides only require that disclosure be made prior to sale.

[25] The following comments state that current industry policy is not to disclose. ISA (014); NAJA (016); Gaenzle (017); Matlins (001A); CJAO (005A). The following comments recommend disclosure. JVC–1 (006A); Zale (00A); AGTA–1 (016A).

[26] ISA (014); NAJA (016); Matlins (001A); Kapoor (004A); JVC–1 (006A); Zale (007A); AGTA–1 (015A).

[27] See DMIA (002); Lange (003); Chuck (004); Adamas (005); DiamondDude (006); Shrake (013); ISA (014); JIC–1 (015); Gaenzle (017); JIC–2 (018); Miranda (020); Matlins (001A); CJAO (005A); JVC–1 (006A); Zale (007A); Bothra (008A); Baum (011A); GE–1 (014A); AGTA–1 (015A); NRF (017A); AIS (018A).

[28] Matlins (001A); Adamas (005); NAJA (016); ISA (014); CJAO (005A); JVC–1 (006A); Zale (007A); AGTA–1 (015A).

[29] Matlins (001A); see also Adamas (005) ("[t]reatments applied to gemstones significantly effect the cost and ultimate value"); NAJA (016) ("[t]here is a disparity in rarity of treated vs. natural gemstones and therefore almost always some price differential exists.").

[30] Matlins (001A). This commenter explains, however, that untreated sapphires often do not sell for a higher price than treated stones. Some retailers do not charge a premium for the naturally colored stones because in order to explain the price differential the retailer would have to disclose that the other stones were treated.

[31] *Id.*

[32] NRF (017A); Zale (007A); AIS (018A).

[33] AGTA–2 (022A) (emphasis in original).

[34] If, in fact, all treatments have such an effect on the value of gemstones, then all treatments will need to be disclosed. There may, however, be some exceptions, such as the treatments to very small gemstones in jewelry pieces, which is discussed below.

[35] Gaenzle (017); JVC–1 (006A); NRF (017A); GE–2 (020A).

[36] GE–2 (020A).

[37] *Deception Policy Statement*, 103 F.T.C. at 182–83 (emphasis added, footnotes omitted). In addition, prior orders and guides also tie disclosures to situations involving significance. For example, an order against a pharmaceutical company prohibits the company from representing that "any such [mouthwash] product will have any **significant** beneficial effect on the symptoms of sore throats." *Warner-Lambert Co.*, 92 F.T.C. 191, 192 (1978) (emphasis added). Similarly, the Commission's Guides for the Use of Environmental Marketing Claims provide "[i]f an incidental component **significantly** limits the ability to recycle a product or package, a claim of recyclability would be deceptive." 16 CFR 260.7(d) (emphasis added).

[38] In evaluating whether a treatment should be disclosed retailers could ask themselves how a consumer would react if he discovers this treatment after he leaves the store (for example, when he takes the stone to an appraiser or attempts to sell the piece).

[39] In addition, it was designed to determine alternatively whether an element of unfairness had been met.

[40] Deception Policy Statement, 103 F.T.C. at 174.

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disclosure of such treatments. Accordingly, it is unnecessary to consider further whether a consumer could avoid injury by taking affirmative action, such as seeking an independent appraisal, before purchasing the product or to limit the disclosure requirement to situations where the consumer could not otherwise learn that the stone had been treated.[41]

2. Additional Issues Raised in the Comments

Although the comments support revising the Guides to provide for disclosure of permanent gemstone treatments that significantly affect the value of the gemstone, the comments raise two additional concerns regarding when disclosure is necessary. These concerns relate to disclosure of undetectable treatments and treatments to very small gemstones.

a. Undetectable Treatments. Several comments note that some gemstone treatments are not detectable, even by experts. These comments express concern that requiring disclosure of any gemstone treatment that has a significant effect on the stone's value would put retailers at a high risk for lawsuits for failing to disclose treatments even when the seller did not know or have reason to know about the treatments.[42] This concern stems largely from the new GE diamond treatment that is performed on diamonds with inferior color (*e.g.*, brown or very yellow diamonds), which permanently and greatly improves their color without any need for special care.[43] Currently, this treatment is not detectable.[44] Since the treatment only recently became available, it is unclear whether it will affect a diamond's value. Some industry groups have opined that the treatment will affect a diamond's value and, therefore, disclosure would be required under the proposed Guides.[45] Because the treatment is undetectable, however, these comments propose adding to § 23.22 a phrase that permanent treatments should be disclosed "if said treatments are known or reasonably should have been known to the seller at the time of sale."[46]

Adding such a phrase, however, might provide unscrupulous marketers with an opportunity to avoid disclosure by arguing that they did not know the gemstone had been treated. AGTA strongly opposes the addition of this language, noting such language would "leave loopholes in gemstone enhancement disclosure guidelines that would ultimately be damaging to our trade."[47] AGTA publishes a manual on gemstone treatments that advises that if a gemstone falls into a group that is routinely enhanced, the seller must assume that it has been enhanced, even if he is unaware of whether the treatment has been performed or not, and disclose the treatment.[48]

The Commission has decided not to add the limiting phrase because all members of the jewelry industry, not just retailers, have an obligation to disclose treatments to others in the line of distribution and a duty to make reasonable inquiries about whether the products they are purchasing have been treated. At the same time, the Commission is mindful that responsible retailers may be misled about whether the gemstones they have purchased have been treated or not. The Commission's ability and willingness to exercise prosecutorial discretion in such situations should alleviate retailers' concerns that they unreasonably would be held accountable for others' illegal conduct. To address the concern raised in the comments, however, the Commission has added a note to § 23.22 reiterating that the disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these Guides.[49]

b. Treatments to Small Gemstones. Several comments relate an additional concern regarding treatments to very small gemstones, such as stones weighing less than .10 carat.[50] These comments explain that very small stones generally are sold mounted in jewelry, not loose. Efforts to inspect the stones individually to detect treatments would be very expensive and would likely result in higher consumer prices.[51] In addition, the detection efforts might destroy the piece.[52] The comments further state that the price of the piece is not based on the value of the individual gemstones but on the jewelry piece as a whole. These comments request that the Commission craft an exemption to the disclosure provisions for very small stones.[53]

The Commission has determined that an exemption is not necessary to address gemstone disclosures for very small stones. If, as the comments state, the price of the piece is not based on the value of each individual gemstone, a permanent gemstone treatment performed on some or all of the stones may not significantly affect the value of a jewelry product containing very small gemstones. Thus, disclosure may not be required under the revised Guide.

The Guides, however, already require, regardless of the stone's size, that non-permanent gemstone treatments or treatments requiring special care still be disclosed. When the Commission revised the Guides to require disclosure of these treatments, it did not exempt very small gemstones. The Commission explained in 1996 that "if consumers are unaware of the non-permanency of a treatment or the special care requirements associated with a treatment, the gemstone may not meet their expectations, if the color fades or inclusions appear, etc."[54] This reasoning applies to all jewelry products regardless of the size of the gemstones contained in the product.

In addition, individual inspection of each stone is not necessary to disclose gemstone treatments. For example, if a jewelry piece contains very small emeralds, the retailer could disclose that the emeralds have likely been oiled and disclose that the treatment is not permanent and the special care requirements necessary to care for oiled emeralds. It is prudent and appropriate to disclose gemstone treatments, rather than remain silent, where there is a possibility that the stones have been treated.

The Commission is aware of several large retailers that currently employ this practice. For instance, some retailers selling jewelry on the Internet include a general disclosure on their websites such as: "Gemstone products are often treated to enhance their beauty. Some of these treatments are not permanent or the stone requires special care. Click here for more information about gemstone treatments." The link then provides information about gemstone treatments, including whether the treatments are permanent or require any special care to maintain. In addition, as required by the Guides, these disclosures are provided prior to consummation of the sale. Other large retailers use counter placards that are clearly and conspicuously placed above display cases showcasing gemstone products. The placards include general disclosures about gemstone treatments and direct consumers to ask a salesperson for more information. Pamphlets providing information about gemstone treatments are available on the counter near the placards. These methods of gemstone treatment disclosure comply with the Jewelry Guides and can be used to disclose gemstone treatments that significantly affect the value of gemstones.

[41] Because the omission or any implied misrepresentations may mislead consumers, the Commission has concluded that it is not necessary to determine separately whether the practice is unfair.

[42] JVC–1 (006A); Zale (007A); NRF (017A).

[43] See, *e.g.*, JVC–1 (006A); AIS (018A); Adamas (005); DiamondDude (006); Matlins (001A). In fact, the introduction of this treatment was the impetus for many comments' support for disclosure of permanent gemstone treatments that do not create special care requirements.

[44] GE–1 (014A).

[45] *E.g.*, AIS (018A); JVC–1 (006A). General Electric voluntarily is disclosing the treatment right now. GE–1 (014A).

[46] JVC–1 (006A); accord Zale (007A); NRF (017A).

[47] AGTA–2 (022A).

[48] *Id.*

[49] Several comments indicated that the Guides should specify that the disclosure provisions apply to all levels of trade.

[50] Zale (007A); NRF (017A); Indenbaum (009).

[51] One retailer stated that it could not continue to sell these types of pieces if disclosure were required because the cost would be so prohibitive. Zale (007A).

[52] Zale (007A).

[53] Zale (007A); NRF (017A); Indenbaum (009).

[54] 61 FR 27207.

V. Revisions to the Guides

As noted above, the Commission is revising the Jewelry Guides to require disclosure of laser-drilling and other permanent gemstone treatments that significantly affect the value of the gemstone. The Commission has determined to combine §§ 23.13 and 23.22. The first section addresses the disclosure of diamond treatments and the second addresses gemstone treatments. The current sections, and the originally proposed revisions, are not identical. Many comments requested that the Commission make the two sections consistent. The Commission has determined that there is no reason to treat the disclosure of treatments to diamonds and to gemstones differently. Therefore, the Commission is combining the two sections. Section 23.13, in the diamonds section of the Guides, will direct readers to § 23.22, which will address treatments to all gemstones, including diamonds.

Section 23.22 of the Guides is revised to include three sub-paragraphs addressing three categories of gemstone treatments. Section 23.22(a) require disclosure of non-permanent gemstone treatments and the fact that the treatment is not permanent. Section 23.22(b) requires disclosure of treatments that create special care requirements for the gemstone and advises sellers to disclose what those requirements are. Section 23.22(c) requires disclosure of gemstone treatments that significantly affect a stone's value.

Previously, the sections listed the various treatments that should be disclosed. The comments indicate that the jewelry industry is continually developing new treatments.[55] Thus, any examples of treatments included in the Guides could be out-of-date fairly quickly. Therefore, the Commission has determined that the Guides would be more useful to the industry if the treatment disclosure provisions provide general guidance that could be applied to whatever treatments are being used. Information regarding the application of the Guides to specific treatments will be addressed in the Commission's consumer and business education materials.[56] Finally, as noted above, revised § 23.22 contains a note stating that the disclosure provisions apply to all levels of trade.

List of Subjects in 16 CFR Part 23

Advertising, Jewelry, Labeling, and Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends Chapter I of Title 16 of the Code of Federal Regulations as follows:

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES.

1. The authority citation for part 23 continues to read as follows:

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

2. Revise § 23.13 to read as follows:

§ 23.13 Disclosure of treatments to diamonds

A diamond is a gemstone product. Treatments to diamonds should be disclosed in the manner prescribed in § 23.22 of these guides, Disclosure of treatments to gemstones.

3. Revise § 23.22 to read as follows:

§ 23.22 Disclosure of treatments to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated if:

(a) The treatment is not permanent. The seller should disclose that the gemstone has been treated and that the treatment is or may not be permanent;

(b) The treatment creates special care requirements for the gemstone. The seller should disclose that the gemstone has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser;

(c) The treatment has a significant effect on the stone's value. The seller should disclose that the gemstone has been treated.

Note to § 23.22: The disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these Guides, and they may be made at the point of sale prior to sale; except that where a jewelry product can be purchased without personally viewing the product, (e.g., direct mail catalogs, online services, televised shopping programs) disclosure should be made in the solicitation for or description of the product.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A

Abbreviation	Number	Commenter
Gross	001	Gross Diamond Corporation.
DMIA	002	Diamond Manufacturers & Importers Association of America.
Lange	003	Erik Lange.
Chuck	004	Chuck <*diamonds@execpc.com*>.
Adamas	005	Adamas Gemological Laboratory.
Diamond Dude	006	Diamond Dude.
Sherman	007	Alan Sherman.

[55] E.g., Matlins (001A); AIS (018A).

[56] For at least 20 years, the Commission has published a consumer education pamphlet describing the Jewelry Guides and advising consumers on jewelry industry terms and practices. This publication has been revised several times over the years to address developments in the industry. In 1998, the Commission published a business guide to assist business in complying with the Guides. These publications, "All That Glitters: How to Buy Jewelry," and the business guide, "In the Loupe: Advertising Diamonds, Gemstones and Pearls," are available by contacting the FTC Consumer Response Center, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (877) FTC–HELP or from the FTC website at <www.ftc.gov>.

The Commission also notes that for at least the past 10 years, AGTA has published a Gemstone Information Manual, which details gemstone enhancements and provides information regarding the permanency of treatments and special care requirements. This manual is updated frequently and can respond to industry trends more rapidly and with greater precision than the FTC Jewelry Guides. The industry is encouraged to use this and other industry resources in conjunction with the Commission's Jewelry Guides to avoid unfair or deceptive trade practices.

Abbreviation	Number	Commenter
Rist	008	John Rist.
Indenbaum	009	Arthur Indenbaum.
Brown	010	Grahame Brown.
Sagan	011	Van Sagan.
Park City	012	Park City Jewelers.
Shrake	013	Jim Shrake.
ISA	014	International Society of Appraisers.
JIC–1	015	Jewelry Information Center comment 1.
NAJA	016	The National Association of Jewelry Appraisers.
Gaenzle	017	Bonnie Burton Gaenzle.
JIC–2	018	Jewelry Information Center comment 2.
Jensen	019	Karen Jensen.
Miranda	020	Jose Miranda.
Themelis	021	Ted Themelis.
Matlins	001A	Antoinette Leonard Matlins.
Rapaport	002A (& 010A)	Martin Rapaport.
Green	003A	Green Brothers LLC.
Kapoor	004A (& 009A)	Amit Kapoor.
CJAO	005A (& 0012A)	CJAO.
JVC–1	006A	Jewelers Vigilance Committee comment 1.
Zale	007A	Zale Corporation.
Bothra	008A	Dharmesh Bothra.
Baum	011A	Baum Diamonds.
Dua	013A	Deep Singh Dua.
GE–1	014A	General Electric comment 1.
AGTA–1	015A	American Gem Trade Association comment 1.
Mason-Kay	016A	Mason-Kay, Inc.
NRF	017A	National Retail Federation.
AIS	018A	Appraisal Information Services.
JVC–2	019A	Jewelers Vigilance Committee comment 2.
GE–2	020A	General Electric comment 2.
Real Gems	021A	Real Gems, Inc.
AGTA–2	022A	American Gem Trade Association comment 2.

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Part VI

Environmental Protection Agency

40 CFR Part 799
Toxic Substances Control Act Test Guidelines; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42211; FRL–6551–2]

RIN 2070–AD16

Toxic Substances Control Act Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes 17 new Toxic Substances Control Act (TSCA) health effects test guidelines in the Code of Federal Regulations (CFR). Establishment of these guidelines provides a series of standardized test procedures and is necessary to ensure enforceable test standards in test rules promulgated under section 4 of TSCA. Codification of this series of TSCA test guidelines does not by itself impose obligations upon any person. Obligations are only imposed when these guidelines are cross-referenced in a test rule promulgated under section 4 of TSCA. The TSCA test guidelines are based on the harmonized test guidelines in the unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under TSCA, the Federal Food, Drug, and Cosmetic Act (FFDCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The process for developing and amending the harmonized test guidelines includes broad public participation and extensive involvement of the scientific community.

DATES: This rule is effective on December 15, 2000.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information regarding this action or related activities contact: Chemical Information and Testing Branch, Chemical Control Division, Office of Pollution Prevention and Toxics (7405), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8130; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION: This final rule establishes 17 new TSCA test guidelines in the series of TSCA test guidelines established in 40 CFR part 799.

I. General Information

A. Does this Action Apply to Me?

You may be particularly interested in this action if you manufacture (defined by statute to include import) or process a chemical substance that could become the subject of a proposed test rule under TSCA section 4. This action does not, however, impose any obligations on anyone until the test guidelines are incorporated in a future test rule that would be proposed under TSCA section 4. Therefore, entities potentially affected by this action may include, but are not limited to:

Type of Entity	NAICS	Examples of Potentially Affected Entities
Chemical Manufacturers or Importers	325, 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.
Chemical Processors	325, 32411	Persons who process one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–42211. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What are Test Guidelines?

Test guidelines are a standardized set of test procedures or protocols organized by health effect or other testing endpoint. These guidelines present generally formulated procedures for laboratory testing of an effect or characteristic deemed important for the evaluation of health and environmental hazards of a chemical. These guidelines are designed to, when followed, produce data which are accurate, reliable, and reproducible. Such data are necessary for the regulatory programs under TSCA.

In adding these 17 TSCA test guidelines to the existing series of 11 TSCA test guidelines, EPA recognizes concerns have been expressed about animal testing. EPA is committed to avoiding unnecessary or duplicative animal testing. As part of this commitment, the Agency plays an important role in the Federal Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) (http://iccvam.niehs.nih.gov/home.htm) whose goals are: (1) To encourage the reduction of the number of animals used in testing; (2) to seek opportunities to replace test methods requiring animals with alternative test methods when acceptable alternative methods are available; and (3) to refine existing test methods to optimize animal use when there is no substitute for animal testing. Further, where testing is needed to develop scientifically adequate data, the Agency is committed to reducing the number of animals used for testing, including, whenever possible, by incorporating *in vitro* (non-animal) test methods or other alternative approaches that have been scientifically validated and have received regulatory acceptance. EPA considers these goals and commitments to be important considerations in developing health effects data; however, they must be balanced with the essential need to conduct scientifically sound chemical hazard/risk assessments in support of the Agency's mission to protect human health and the environment.

The completion of this series of 28 TSCA test guidelines in part 799 provides EPA with a range of guidelines available for cross-referencing in TSCA actions. Several of these guidelines include in their design elimination of animals or reduction in the number of animals needed to conduct the tests. Some of the methods are designed to only develop data on chemical/physical properties. In addition, one of the guidelines involves the development of metabolism and pharmacokinetics data which could facilitate route-to-route extrapolations to existing (e.g., oral route) data and thus involve fewer test animals as compared to developing new data by, for example, the inhalation route. EPA believes that using these test guidelines will result in use of fewer test animals when it becomes necessary to conduct testing to fill identified data needs and will yield scientifically sound data.

B. What are TSCA Test Guidelines?

TSCA test guidelines are guidelines which were established to meet the regulatory needs of TSCA, particularly the needs of the TSCA section 4 testing program. The TSCA section 4 testing program is a regulatory program which is based on the promulgation of rules requiring certain persons identified in the rule, usually manufacturers and processors of the chemical to conduct testing of the chemical specified in the rule. Section 4(b)(1)(B) of TSCA specifically requires that test rules promulgated under the section 4 include "standards for the development of test data for such substance or mixture * * *." These "standards for the development of test data" specify how the study is to be conducted, what data will be collected, and how the data will be analyzed. Each test rule must specify such "test standards" which contain specifications for testing. Section 4(b)(1) of TSCA describes the elements which must be described in these test standards.

The Agency has found that most of these elements can be standardized into the common set of protocols which EPA defines as "test guidelines." These guidelines are organized by testing endpoint. The test rule itself can add or subtract to the requirements of the test guidelines in order to meet the unique testing circumstances for the particular chemical substance.

C. How are TSCA Test Guidelines Used?

The Agency uses this system of standardized guidelines, organized by testing endpoint and codified in a subpart of this part for use in cross-referencing in a TSCA section 4 action. When a section 4 test rule is promulgated, the test rule cross-references the appropriate TSCA test guideline for the bulk of the testing requirements. In this context, the public is given notice of, and an opportunity to comment on, these guidelines as they are applied in chemical-specific test rules. This approach eliminates the need to repeat the same test specifications for each substance-specific test rule since most of the specifications for testing do not change across substances. The test specifications in a guideline can be varied, when necessary, to the specific requirements of a test rule by language in the test rule itself.

D. Where Did the TSCA Test Guidelines Come From?

The TSCA test guidelines series were first promulgated in 1985 (50 FR 39252, September 27, 1985) and were established in 40 CFR parts 795 through 798. The Agency has over time amended and improved these guidelines (52 FR 19072, May 20, 1987) and in some cases revoked those guidelines which had not been cross-referenced in any test rules (60 FR 31917, June 19, 1995) (FRL–4955–2)).

In 1991, EPA began an effort to blend the testing guidance and requirements that existed in the Office of Pollution Prevention and Toxics (OPPT) appearing in 40 CFR parts 795 through 798, the Office of Pesticides Programs (OPP) guidelines which appeared in publications of the National Technical Information Service (NTIS), and the guidelines published by the international Organization for Economic Cooperation and Development (OECD). The product of this effort would be one set of guidelines which would be thus blended or "harmonized." These harmonized guidelines would then be made available to the EPA, other government agencies, and the public through the World Wide Web (Internet) and would be accessible by anyone with a personal computer and the ability to connect to the Internet. The EPA Internet web site would be the site and publication source for the "OPPTS Harmonized Guidelines" at http://www.epa.gov/opptsfrs/home/guidelin.htm.

In addition, EPA has published three new OPPTS harmonized test guidelines for three health effects end points. These three guidelines (with their OPPTS harmonized guideline reference) are: (1) Repeated dose 28-day oral toxicity study in rodents (OPPTS 870.3050), (2) Reproduction/developmental toxicity screening test (OPPTS 870.3550), and (3) Combined repeat dose toxicity study with the reproduction/developmental toxicity screening test (OPPTS 870.3650). Their publication was announced in the **Federal Register** of July 13, 2000 (65 FR 43329) (FRL–6393–5), with the guidelines available from the EPA Internet web site at http://www.epa.gov/opptsfrs/home/guidelin.htm. By adopting these combined testing guidelines, which incorporate more than one endpoint, the Agency is acknowledging the desirability of reducing costs and numbers of animals required to meet the Agency's testing needs. EPA recommends the use of combined protocols wherever feasible to meet data development requirements.

E. How were these OPPTS Harmonized Test Guidelines Developed?

The OPPTS harmonized test guidelines for health effects endpoints were first drafted by EPA scientists for specific testing endpoints. These drafts were reviewed by other EPA experts and, in some instances, presented at domestic and international colloquia in order to solicit the views of recognized experts and the regulated community. These draft harmonized guidelines were made available on the Internet as public drafts and a notice was published in the **Federal Register** of June 20, 1996 (61 FR 31522) (FRL–5367–7) announcing the availability of these draft guidelines soliciting public comment.

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After review of the public drafts, EPA published the final OPPTS harmonized guidelines for the health effects endpoints on the Internet and announced their availability to the public in the **Federal Register** of August 5, 1998 (63 FR 41845) (FRL–5740–1). EPA published the rationale for the changes made in finalizing the June 1996 OPPTS "Public Draft" guidelines to the August 1998 OPPTS "Final" guidelines in a document entitled "Overview and Summary of Changes made in the Harmonization of OPPTS 870 Toxicology Guidelines with OECD Guidelines" (which is available at http://www.epa.gov/opptsfrs/home/guidelin.htm).

F. What is Done to Make TSCA Test Guidelines From the OPPTS Harmonized Test Guidelines?

Harmonization has resulted in significantly improved guidelines. However, creating a single set of guidelines which can be used by both OPP, in its administration of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Federal Food, Drug and Cosmetic Act (FFDCA), and the Office of Pollution Prevention and Toxics (OPPT), which administers TSCA presents certain challenges. Under FIFRA, test guidelines are used in an interactive process between the Agency and registrants seeking registration of pesticides or food residue tolerances. Flexibility to tailor required testing to individual circumstances is critical, and the Agency has considerable discretion to determine whether submitted test results are adequate to support the requested action. Under this scheme, registrants have an intrinsic motivation to conduct well-grounded testing. Thus, pesticide testing protocols tend to have few absolute requirements specifying the details of the conduct of the testing.

Under section 4 of TSCA, on the other hand, the Agency imposes prescriptive test requirements using notice and comment rulemaking. Rules promulgated under section 4 of TSCA must specify classes of affected parties and specify the standards to be followed by these parties in conducting the required testing. In contrast to FIFRA, the Agency does not interact with companies on an individual basis in designing the testing requirements.

TSCA section 4 rulemakings typically take years to complete. Without initiating another rulemaking process, the Agency has the ability to require further testing only if the tests were not conducted in accordance with the procedures specified in the test rule. In addition, the Agency has an alternative process of negotiating TSCA testing requirements via enforceable consent agreements (ECAs), but these agreements require the consent of all the parties involved. Under TSCA section 4 enforceable test standards, much in the conduct of these test protocols is left to the judgment of those professionals conducting the testing. EPA believes that certain provisions must be mandatory whenever the guidelines are cross-referenced in specific test rules.

Therefore, the Agency has used the OPPTS harmonized test guidelines developed using the public notice and comment process to create the TSCA-specific test guidelines which are the subject of this rule. TSCA section 4 test rules now cross-reference only the part 799 guidelines rather than the older, non-harmonized guidelines established in 40 CFR parts 795 through 798 mostly in 1985. The only significant difference between the TSCA test guidelines and the OPPTS harmonized test guidelines is that certain discretionary procedures in the OPPTS harmonized test guidelines are made mandatory (i.e., the guideline states that they "must" be carried out) in order to ensure the enforcibility of the test standard.

EPA promulgated the first set of guidelines in the new part 799 guidelines series in a **Federal Register** document published on August 15, 1997 (62 FR 43820) (FRL–5719–5). Eleven health effects guidelines were published, including those for inhalation toxicity, developmental toxicity, reproductive effects, carcinogenicity, mutagenicity, and immunotoxicity. EPA amended 7 of these 11 guidelines in a **Federal Register** document published on June 30, 1999 (64 FR 35072) (FRL–6067–4). These amendments reflected changes made to the corresponding OPPTS harmonized guideline.

III. What Action is Being Taken?

EPA is adding 17 new health effects test guidelines to 40 CFR part 799. These 17 new guidelines are listed in the following table 1 with the OPPTS harmonized guideline from which it was developed:

TABLE 1

New TSCA test guideline name (and cite)	Original OPPTS harmonized guideline name (and cite)
TSCA partition coefficient (n-octanol/water) shake flask method (799.6755).	Partition coefficient (n-octanol/H2O) shake flask method (830.7550)
TSCA partition coefficient (n-octanol/water), generator column method (799.6756).	Partition coefficient (n-octanol/H2O), generator column method (830.7560)
TSCA water solubility: Column elution method; shake flask method (799.6784).	Water solubility: Column elution method; shake flask method (830.7840)
TSCA water solubility, generator column method (799.6786)	Water solubility, generator column method (830.7860)
TSCA acute oral toxicity (799.9110)	Acute oral toxicity (870.1100)
TSCA acute dermal toxicity (799.9120)	Acute dermal toxicity (870.1200)
TSCA acute inhalation toxicity (799.9130)	Acute inhalation toxicity (870.1300)
TSCA repeated dose 28-day oral toxicity study in rodents (799.9305)	Repeated dose 28-day oral toxicity study in rodents (870.3050)
TSCA 90-day oral toxicity in rodents (799.9310)	90-day oral toxicity in rodents (870.3100)
TSCA 90-day dermal toxicity (799.9325)	90-day dermal toxicity (870.3250)
TSCA reproduction/developmental toxicity screening test (799.9355)	Reproduction/developmental toxicity screening test (870.3550)
TSCA combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (799.9365).	Combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (870.3650)
TSCA chronic toxicity (799.9410)	Chronic toxicity (870.4100)
TSCA combined chronic toxicity/carcinogenicity (799.9430)	Combined chronic toxicity/carcinogenicity (870.4300)
TSCA *in vitro* mammalian chromosome aberration test (799.9537)	*In vitro* mammalian chromosome aberration test (870.5375)
TSCA developmental neurotoxicity (799.9630)	Developmental neurotoxicity (870.6300)
TSCA metabolism and pharmacokinetics (799.9748)	Metabolism and pharmacokinetics (870.7485)

IV. How are the New TSCA Test Guidelines Different From the OPPTS Harmonized Test Guideline From Which they were Derived?

EPA developed the TSCA test guideline from the original OPPTS test guideline shown in the right column of table 1 in Unit III. In keeping with the policy of using a unified set of test guidelines across OPPTS, only minimal changes were made to the OPPTS harmonized guidelines in the development of the TSCA guidelines. These minimal changes consisted of deleting references to FIFRA in the TSCA guidelines, where it was believed by the Agency to be irrelevant to the purpose of the TSCA test guideline, and to specify those provisions of the guidelines which the Agency believed must be made mandatory in order to ensure the integrity of any data produced by the test.

EPA sumarizes below, guideline-by-guideline, the changes the Agency made to the OPPTS harmonized test guideline in developing the TSCA test guideline.

A. Section 799.6755 TSCA Partition Coefficient (n-octanol/water), Shake Flask Method

1. EPA deleted references to FIFRA.
2. EPA made several grammatical changes.
3. EPA deleted references which were unavailable.

B. Section 799.6756 TSCA Partition Coefficient (n-octanol/water), Generator Column Method

1. EPA deleted references to FIFRA.
2. EPA made several grammatical changes.
3. EPA deleted references which were unavailable.

C. Section 799.6784 TSCA Water Solubility; Column Elution Method; Shake Flask Method

1. EPA deleted references to FIFRA.
2. EPA made several grammatical changes.
3. EPA deleted references which were unavailable.

D. Section 799.6786 TSCA, Water Solubility, Generator Column Method

1. EPA deleted references to FIFRA.
2. EPA made several grammatical changes.
3. EPA deleted references which were unavailable.

E. Section 799.9110 TSCA Acute Oral Toxicity

1. EPA clarified those provisions describing alternative acute testing procedures. EPA acknowledges that both the current OPPTS harmonized guideline and international consideration of acute toxicity guidelines are in a period of transition toward specifying reduced animal testing requirements.
2. EPA deleted references to FIFRA and discussions of pesticides.
3. EPA added "musts" to those requirements deemed critical to the successful production of scientifically-valid data for Agency risk assessment purposes.

F. Section 799.9120 TSCA Acute Dermal Toxicity

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA added "musts" to those requirements deemed critical to the successful production of scientifically-valid data for Agency risk assessment purposes.

G. Section 799.9130 TSCA Acute Inhalation Toxicity

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA added "musts" to those requirements deemed critical to the successful production of scientifically-valid data for Agency risk assessment purposes.
3. EPA revised and reorganized certain narrative sections for consistency with the comparable sections in the previously-promulgated 40 CFR 799.9135 (TSCA acute inhalation toxicity with histopathology).

H. Section 799.9305 TSCA Repeated Dose 28-day Oral Toxicity Study in Rodents

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA made editorial changes to text to ensure consistency with the TSCA series of guidelines.

I. Section 799.9310 TSCA 90-day Oral Toxicity in Rodents

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA added "musts" to those requirements deemed critical to the successful production of scientifically-valid data for Agency risk assessment purposes.
3. EPA removed the included neurotoxicity testing provisions in paragraphs (e)(8)(ii) through (e)(8)(v) because TSCA practice is to specify the more detailed neurotoxicity testing provisions of 40 CFR 799.9620.

J. Section 799.9325 TSCA 90-day Dermal Toxicity

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA added "musts" to those requirements deemed critical to the successful production of scientifically-valid data for Agency risk assessment purposes.
3. EPA removed the included neurotoxicity testing provisions in paragraphs (e)(9)(ii) through (e)(9)(v) because TSCA practice is to specify the more detailed neurotoxicity testing provisions of 40 CFR 799.9620.
4. EPA deleted references which were unavailable.

K. Section 799.9355 TSCA Reproduction/Developmental Toxicity Screening Test

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA made editorial changes to text to ensure consistency with the TSCA series of guidelines.

L. Section 799.9365 TSCA Combined Repeated Dose Toxicity Study With the Reproduction/Developmental Toxicity Screening Test

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA made editorial changes to text to ensure consistency with the TSCA series of guidelines.

M. Section 799.9410 TSCA Chronic Toxicity

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA removed recommendations for the use of particular non-rodent species.

N. Section 799.9430 TSCA Combined Chronic Toxicity/Carcinogenicity

1. EPA deleted references to FIFRA and discussions of pesticides.
2. EPA added "musts" to those requirements deemed critical to the successful production of scientifically-valid data for Agency risk assessment purposes.
3. EPA removed the included neurotoxicity testing provisions in paragraphs (e)(7)(ii)through (e)(7)(v) because TSCA practice is to specify the more detailed neurotoxicity testing provisions of 40 CFR 799.9620.
4. EPA deleted references which were unavailable.
5. EPA added a new provision (paragraph (e)(5)(ii)(J)) requiring that care be taken when the physical and chemical properties of the test substance show a low flash point or is otherwise known or thought to be explosive.

O. Section 799.9537 TSCA in vitro Mammalian Chromosome Aberration Test

1. EPA deleted references to FIFRA.
2. EPA made several provisions mandatory by specifying "must" instead of "should."

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3. EPA clarified the regulatory text in citing particular references in the standard.

P. Section 799.9630 TSCA Developmental Neurotoxicity

1. EPA deleted references to FIFRA.
2. EPA made several provisions mandatory by specifying "must" instead of "should."

Q. Section 799.9748 TSCA Metabolism and Pharmacokinetics

1. EPA deleted references to FIFRA.
2. EPA made several provisions mandatory by specifying "must" instead of "should."

V. Regulatory Assessment Requirements

A. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary. The test guidelines codified in this document by themselves have no substantive effect on any person until and unless the test guidelines are incorporated in a test rule promulgated under TSCA section 4. Before any such test rule is promulgated, EPA will provide notice and an opportunity to comment on the incorporation of a particular test guideline into a specific test rule. In addition, the process for developing and amending the harmonized test guidelines includes broad public participation and extensive involvement of the scientific community. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to codify these test guidelines without prior notice and comment, and that this rule may be made effective immediately, without a 30 day delay, pursuant to 5 U.S.C. 553(d)(3).

B. Do the Regulatory Assessment Requirements Apply to this Action?

No. As indicated previously, this final rule does not impose any requirements. It only incorporates test guidelines into the TSCA series of test guidelines that are published in the CFR and which would be considered for potential incorporation in a future test rule that would be proposed under TSCA section 4. At which time potentially affected entities are afforded an opportunity to comment on the incorporation of a particular test guideline into a specific test rule.

As such, this is not a "significant regulatory action" that requires review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735; October 4, 1993).

Since this action is not "economically significant" as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit V.A.), this action is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has also complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

C. Are there Any Applicable Voluntary Consensus Standards?

No. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

As indicated earlier, this final rule does not impose any obligations on anyone until the test guidelines are incorporated in a test rule promulgated under TSCA section 4. Before any such test rule is promulgated, EPA will provide notice and an opportunity to comment on the incorporation of a particular test guideline into that specific test rule, including the availability of applicable voluntary consent standards.

In addition, although the NTTAA requirements do not specifically apply to the issuance of the harmonized test guidelines, EPA has sought comments on the availability of applicable voluntary consensus standards that should be considered during the development of future rules under TSCA. This allows the Agency to consider such standards during the development of the harmonized test guidelines, upon which the TSCA test guidelines are based.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of December 15, 2000. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit V.A. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Health, Reporting and recordkeeping requirements.

Dated: November 27, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. A new subpart E, consisting of §§ 799.6755 to 799.6786 is added to read as follows:

Subpart E—Product Properties Test Guidelines

Sec.

799.6755 TSCA partition coefficient (*n*-octanol/water), shake flask method.
799.6756 TSCA partition coefficient (*n*-octanol/water), generator column method.
799.6784 TSCA water solubility: Column elution method; shake flask method.
799.6786 TSCA water solubility: Generator column method.

Subpart E—Product Properties Test Guidelines

§ 799.6755 TSCA partition coefficient (*n*-octanol/water), shake flask method.

(a) *Scope*—(1) *Applicability.* This section is intended to meet the testing requirements of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides and Toxics (OPPTS) harmonized test guideline 830.7550 (August 1996, final guideline). The source is available at the address in paragraph (f) of this section.

(b) *Introductory information*—(1) *Prerequisites.* Suitable analytical method, dissociation constant, water solubility, and hydrolysis (preliminary test).

(2) *Coefficient of variation.* The coefficient of variation on the mean values reported by the participants of the Organization for Economic Coopertion and Development (OECD) Laboratory Intercomparison Testing, Part I, 1979, appeared to be dependent on the chemicals tested; it ranges from 0.17 to 1.03.

(3) *Qualifying statements.* This method applies only to pure, water soluble substances which do not dissociate or associate, and which are not surface active. In order to use the partition coefficient (P) as a screening test for bioaccumulation, it should be ascertained that the impurities in the commercial product are of minor importance. Testing of P (*n*-octanol/water) cannot be used as a screening test in the case of organometallic compounds.

(4) *Alternative methods.* High-pressure liquid chromatography (HPLC) methods described in the references in paragraphs (f)(3), (f)(4), and (f)(5) of this section may be considered as an alternative test method.

(c) *Method*—(1) *Introduction, purpose, scope, relevance, application, and limits of test.* The P of a substance between water and a lipophilic solvent (*n*-octanol) is one model variable which may be used to describe the transfer of a substance from the aquatic environment into an organism and the potential bioaccumulation of the substance. Studies show a highly significant relationship between the P of different substances in the system water/*n*-octanol and their bioaccumulation in fish described in paragraph (f)(1) of this section.

(2) *Definitions—Partition coefficient* (P) is defined as the ratio of the equilibrium concentrations (C_i) of a dissolved substance in a two-phase system consisting of two largely immiscible solvents. The P therefore is the quotient of two concentrations and is usually given in the form of its logarithm to base 10 (log P). In this case *n*-octanol and water:

Equation 1:

$$P_{ow} = C_{n\text{-octanol}}/C_{water}$$

(3) *Reference substances.* The reference substances need not be employed in all cases when investigating a new substance. They are provided primarily so that calibration of the method may be performed from time to time and to offer the chance to compare the results when another method is applied. The values presented in table 1 of this section are not necessarily representative of the results which can be obtained with this test method as they have been derived from an earlier version of the test guideline.

TABLE 1.—DATA FOR REFERENCE SUBSTANCES

Tested substance [1]	P_{ow} [2]	
Di(2-ethylhexyl)phthalate (OECD)	1.3×10^5	$(4.6 \times 10^4 - 2.8 \times 10^5)$
Hexachlorobenzene (OECD)	3.6×10^5	$(1.1 \times 10^5 - 8.3 \times 10^5)$
o-Dichlorobenzene European Economic Community (EEC)	5.1×10^3	$(1.5 \times 10^3 - 2.3 \times 10^4)$
Dibutyl phthalate (EEC)	1.3×10^4	$(1.7 \times 10^3 - 2.8 \times 10^4)$
Trichloroethylene (OECD)	2.0×10^3	$(5.2 \times 10^2 - 3.7 \times 10^3)$
Urea (OECD)	6.2×10^{-2}	$(2.0 \times 10^{-2} — 2.4 \times 10^{-1})$

[1] Substances not tested: Ethyl acetate, 4-methyl-2,4-pentanediol.
[2] Total, mean, and range of mean values (in parentheses) submitted by the participants of the OECD or EEC Laboratory Intercomparison Testing.

(4) *Principle of the test method.* In order to determine a P, equilibrium between all interacting components of the system must be achieved, and the concentrations of the substances dissolved in the two phases must be determined. A study of the literature on this subject indicates that there are many different techniques which can be

used to solve this problem, i.e. the thorough mixing of the two phases followed by their separation in order to determine the equilibrium concentration for the substance being examined.

(5) *Quality criteria*—(i) *Repeatability.* In order to assure the precision of the P, duplicate determinations are to be made under three different test conditions, whereby the quantity of substance specified as well as the ratio of the solvent volumes may be varied. The determined values of the P expressed as their common logarithms should fall within a range of ±0.3 log units.

(ii) *Sensitivity.* The sensitivity of the method is determined by the sensitivity of the analytical procedure. This should be sufficient to permit the assessment of values of P_{ow} up to 105 when the concentration of the solute in either phase is not more than 0.01 mol/Liter (L). The substance being tested must not be water insoluble (mass concentration $\rho \leq 10^{-6}$ gram (g)/L.

(iii) *Specificity.* The Nernst Partition Law applies only at constant temperature, pressure, and pH for dilute solutions. It strictly applies to a pure substance dispersed between two pure solvents. If several different solutes occur in one or both phases at the same time, this may affect the results. Dissociation or association of the dissolved molecules result in deviations from the Nernst Partition Law. Such deviations are indicated by the fact that the P becomes dependent upon the concentration of the solution. Because of the multiple equilibria involved, this test guideline should not be applied to ionizable compounds without corrections being made. The use of buffer solutions in place of water should be considered for such compounds.

(iv) *Possibility of standardization.* This method can be standardized.

(d) *Description of the test procedure*—(1) *Preparations: Preliminary estimate of the P.* The size of the P can be estimated either by means of calculation or by use of published solubilities of the test substance in the pure solvents. Alternatively, it may be roughly determined by performing a simplified preliminary test. For this:

Equation 2:

$$P_{estimate} = (\text{saturation } C_{n\text{-octanol}})/(\text{saturation } C_{water})$$

(2) *Preparation of the solvents*—(i) *n-Octanol.* The determination of the P should be carried out with analytical grade *n*-octanol. Inorganic contaminants can be removed from commercial *n*-octanol by washing with acid and base, drying, and distilling. More sophisticated methods will be required to separate the *n*-octanol from organic contaminants with similar vapor pressure if they are present.

(ii) *Water.* Distilled water or water twice-distilled from glass or quartz apparatus should be employed. Water taken directly from an ion exchanger should not be used.

(iii) *Presaturation of the solvents.* Before a P is determined, the phases of the solvent system are mutually saturated by shaking at the temperature of the experiment. For doing this, it is practical to shake two large stock bottles of purified *n*-octanol or distilled water each with a sufficient quantity of the other solvent for 24 hours on a mechanical shaker, and then to let them stand long enough to allow the phases to separate and to achieve a saturation state.

(3) *Preparation for the test.* The entire volume of the two-phase system should nearly fill the test vessel. This will help prevent loss of material due to volatilization. The volume ratio and quantities of substance to be used are fixed by the following:

(i) The preliminary assessment of the P as discussed in paragraph (d)(1) of this section).

(ii) The minimum quantity of test substance required for the analytical procedure.

(iii) The limitation of a maximum concentration in either phase of 0.01 mol/L.

(iv) Three tests are carried out. In the first, the calculated volume ratio is added; in the second, twice the volume of *n*-octanol is added; and in the third, half the volume of *n*-octanol is added.

(4) *Test substance.* The test substance should be the purest available. For a material balance during the test a stock solution is prepared in *n*-octanol with a mass concentration between 1 and 100 milligram/milliliter (mg/mL). The actual mass concentration of this stock solution should be precisely determined before it is employed in the determination of the P. This solution should be stored under stable conditions.

(5) *Test conditions.* The test temperature should be kept constant (±1 °C) and lie in the range of 20–25 °C.

(6) *Performance of the test*—(i) *Establishment of the partition equilibrium.* Duplicate test vessels containing the required, accurately measured amounts of the two solvents together with the necessary quantity of the stock solution should be prepared for each of the test conditions. The *n*-octanol parts should be measured by volume. The test vessels should either be placed in a suitable shaker or shaken by hand. A recommended method is to rotate the centrifuge tube quickly through 180° about its transverse axis so that any trapped air rises through the two phases. Experience has shown that 50 such rotations are usually sufficient for the establishment of the partition equilibrium. To be certain, 100 rotations in 5 minutes are recommended.

(ii) *Phase separation.* In order to separate the phases, centrifugation of the mixture should be carried out. This should be done in a laboratory centrifuge maintained at room temperature, or, if a non-temperature-controlled centrifuge is used, the centrifuge tubes should be reequilibrated at the test temperature for at least 1 hour before analysis.

(7) *Analysis.* (i) For the determination of the P, it is necessary to analyze the concentrations of the test substance in both phases. This may be done by taking an aliquot of each of the two phases from each tube for each test condition and analyzing them by the chosen procedure. The total quantity of substances present in both phases should be calculated and compared with the quantity of the substance originally introduced.

(ii) The aqueous phase should be sampled by the following procedure to minimize the risk of including traces of the *n*-octanol: A glass syringe with a removable needle should be used to sample the water phase. The syringe should initially be partially filled with air. Air should be gently expelled while inserting the needle through the *n*-octanol layer. An adequate volume of aqueous phase is withdrawn into the syringe. The syringe is quickly removed from the solution and the needle detached. The contents of the syringe may then be used as the aqueous sample.

(iii) The concentration in the two-separated phases should preferably be determined by a substance-specific method. Examples of physical-chemical determinations which may be appropriate are:

(A) Photometric methods.

(B) Gas chromatography.

(C) HPLC.

(D) Back-extraction of the aqueous phase and subsequent gas chromatography.

(e) *Data and reporting*—(1) *Treatment of results.* The reliability of the determined values of P can be tested by comparison of the means of the duplicate determinations with the overall mean.

(2) *Test report.* The following should be included in the report:

(i) Name of the substance, including its purity.

(ii) Temperature of the determination.

(iii) The preliminary estimate of the P and its manner of determination.

(iv) Data on the analytical procedures used in determining concentrations.

(v) The measured concentrations in both phases for each determination. This means that a total of 12 concentrations must be reported.

(vi) The weight of the test substance, the volume of each phase employed in each test vessel, and the total calculated amount of test substance present in each phase after equilibration.

(vii) The calculated values of the P and the mean should be reported for each set of test conditions as should the mean for all determinations. If there is a suggestion of concentration dependency of the P, this should be noted in the report.

(viii) The standard deviation of individual P values about their mean should be reported.

(ix) The mean P from all determinations should also be expressed as its logarithm (base 10).

(f) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available from the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, excluding legal holidays.

(1) Neely, W.B. et al. Partition Coefficients to Measure Bioconcentration Potential of Organic Chemicals in Fish. *Environmental Science and Technology* 8:1113 (1974).

(2) Leo, A. et al. Partition Coefficients and Their Uses. *Chemical Reviews* 71:525 (1971).

(3) Miyake, K. and H. Terada, Direct measurements of partition coefficients in an octanol-water system. *Journal of Chromatography* 157:386 (1978).

(4) Veith G.D. and R.T. Morris, A Rapid Method for Estimating Log P for Organic Chemicals, EPA–600/3–78–049 (1978).

(5) Mirrless, M.S. et al., Direct measurement of octanol-water partition coefficient by high pressure liquid chromatography. *Journal of Medicinal Chemistry* 19:615 (1976).

(6) EPA Draft Guidance of September 8, 1978 (F–16).

(7) Konemann H. et al. Determination of log P_{oct} values of chlorosubstituted benzenes, toluenes, and anilines by high performance liquid chromatography on ODS silica, *Journal of Chromatography* 178:559 (1979).

(8) *Organization for Economic Cooperation and Development,* Guidelines for The Testing of Chemicals, OECD 107, Partition Coefficient (*n*-octanol/water) (Shake Flask Method, Adopted 27 July 1995), OECD, Paris, France.

§ 799.6756 TSCA partition coefficient (*n*-octanol/water), generator column method.

(a) *Scope*—(1) *Applicability.* This section is intended to meet the testing requirements of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Pollution Prevention, Pesticides and Toxic Substances (OPPTS) harmonized test guideline 830.7560 (August 1996, final guideline). This source is available at the address in paragraph (e) of this section.

(b) (1) *Purpose.* (i) The measurement and estimation of the *n*-octanol/water partition coefficient (K_{ow}), has become the cornerstone of a myriad of structure-activity relationships (SAR) property. The coefficient has been used extensively for correlating structural changes in drugs with changes observed in biological, biochemical, or toxic effects. These correlations are then used to predict the effect of a new drug for which a K_{ow} could be measured.

(ii) In the study of the environmental fate of organic chemicals, the K_{ow} has become a key parameter. K_{ow} is correlated to water solubility, soil/sediment sorption coefficient, and bioconcentration and is important to SAR.

(iii) Of the three properties that can be estimated from K_{ow}, water solubility is the most important because it affects both the fate and transport of chemicals. For example, highly soluble chemicals become quickly distributed by the hydrologic cycle, have low-sorption coefficients for soils and sediments, and tend to be more easily degraded by microorganisms. In addition, chemical transformation processes such as hydrolysis, direct photolysis, and indirect photolysis (oxidation) tend to occur more readily if a compound is soluble.

(iv) Direct correlations between K_{ow} and both the soil/sediment sorption coefficient and the bioconcentration factor are to be expected. In these cases, compounds that are more soluble in *n*-octanol (more hydrophobic and lipophilic) would be expected to partition out of the water and into the organic portion of soils/sediments and into lipophilic tissue. The relationship between K_{ow} and the bioconcentration factor, are the principal means of estimating bioconcentration factors. This relationship is discussed in the reference listed in paragraph (e)(14) of this section. These factors are then used to predict the potential for a chemical to accumulate in living tissue.

(v) This section describes a method for determining the K_{ow} based on the dynamic coupled column liquid chromatographic (DCCLC) technique, a technique commonly referred to as the generator column method. The method described herein can be used in place of the standard shake-flask method specified in § 799.6755 for compounds with a $\log_{10}K_{ow}$ greater than 1.0.

(2) *Definitions.* The following definitions apply to this section.

Extractor column is used to extract the solute from the aqueous solution produced by the generator column. After extraction onto a bonded chromatographic support, the solute is eluted with a solvent/water mixture and subsequently analyzed by high-performance liquid chromatography (HPLC), gas chromatography (GC), or any other analytical procedure. A detailed description of the preparation of the extractor column is given in paragraph (c)(1)(i) of this section.

Generator column is used to partition the test substance between the *n*-octanol and water phases. The column in figure 1 in paragraph (c)(1)(i)(A)(*2*) of this section is packed with a solid support and is coated with the test substance at a fixed concentration in *n*-octanol. The test substance is eluted from the column with water and the aqueous solution leaving the column represents the equilibrium concentration of the test substance that has partitioned from the *n*-octanol phase into the water phase. Preparation of the generator column is described in paragraph (c)(1)(i) of this section.

n-Octanol/water partition coefficient (K_{ow}) is defined as the ratio of the molar concentrations of a chemical in *n*-octanol and water, in dilute solution. The coefficient K_{ow} is a constant for a given chemical at a given temperature. Since K_{ow} is the ratio of two molar concentrations, it is a dimensionless

quantity. Sometimes K_{ow} is reported as the decadic logarithm ($\log_{10}K_{ow}$). In this equation, $C_{octanol}$ and C_{water} are the molar concentration of the solute in *n*-octanol and water, respectively, at a given temperature. This test procedure determines K_{ow} at 25 ± 0.05 °C. The mathematical statement of K_{ow} is:

Equation 1:

$$K_{ow} = C_{octanol}/C_{water}$$

Response factor (RF) is the solute concentration required to give a one unit area chromatographic peak or one unit output from the HPLC recording integrator at a particular recorder and detector attenuation. The factor is required to convert from units of area to units of concentration. The determination of the RF is given in paragraph (c)(3)(iii)(C)(*2*) of this section.

Sample loop is a 1/16 inch (in) outside diameter (O.D.) (1.6 millimeter (mm)) stainless steel tube with an internal volume between 20 and 50 µL. The loop is attached to the sample injection valve of the HPLC and is used to inject standard solutions into the mobile phase of the HPLC when determining the RF for the recording integrator. The exact volume of the loop must be determined as described in paragraph (c)(3)(iii)(C)(*1*) of this section when the HPLC method is used.

(3) *Principle of the test method.* (i) This test method is based on the DCCLC technique for determining the aqueous solubility of organic compounds. The development of this test method is described in the references listed in paragraphs (e)(6), (e)(12), and (e)(19) of this section. The DCCLC technique utilizes a generator column, extractor column, and HPLC coupled or interconnected to provide a continuous closed-flow system. Aqueous solutions of the test compound are produced by pumping water through the generator column that is packed with a solid support coated with an approximately 1.0% weight/weight (w/w) solution of the compound in *n*-octanol. The aqueous solution leaving the column represents the equilibrium concentration of the test chemical which has partitioned from the *n*-octanol phase into the water phase. The compound is extracted from the aqueous solution onto an extractor column, then eluted from the extractor column with a solvent/water mixture and subsequently analyzed by HPLC using a variable wavelength ultraviolet (UV) absorption detector operating at a suitable wavelength. Chromatogram peaks are recorded and integrated using a recording integrator. The concentration of the compound in the effluent from the generator column is determined from the mass of the compound (solute) extracted from a measured volume of water (solvent). The K_{ow} is calculated from the ratio of the molar concentration of the solute in the 1.0% (w/w) *n*-octanol and molar concentration of the solute in water as determined using the generator column technique.

(ii) Since the HPLC method is only applicable to compounds that absorb in the UV, an alternate GC method, or any other reliable quantitative procedure must be used for those compounds that do not absorb in the UV. In the GC method the saturated solutions produced in the generator column are extracted using an appropriate organic solvent that is subsequently injected into the GC, or any other suitable analytical device, for analysis of the test compound.

(4) *Reference chemicals.* (i) Columns 2, 3, 4, and 5 of table 1 in paragraph (b)(4)(ii) of this section list the experimental values of the decadic logarithm of the *n*-octanol/water partition coefficient ($\log_{10}K_{ow}$) at 25 °C for a number of organic chemicals as obtained from the scientific literature. These values were obtained by any one of the following experimental methods: Shake-flask; generator column; reverse-phase HPLC; or reverse-phase thin-layer chromatography, as indicated in the footnotes following each literature citation. The estimation method of Hawker and Connell as described in paragraph (e)(8) of this section, correlates $\log_{10}K_{ow}$ with the total surface area of the molecule and was used to estimate $\log_{10}K_{ow}$ for biphenyl and the chlorinated biphenyls. These estimated values are listed in column 7 of table 1 in paragraph (b)(4)(ii) of this section. Recommended values of $\log_{10}K_{ow}$ were obtained by critically analyzing the available experimental and estimated values and averaging the best data. These recommended values are listed in column 8 of table 1 in paragraph (b)(4)(ii) of this section.

(ii) The recommended values listed in table 1 of this section have been provided primarily so that the generator column method can be calibrated and to allow the chemical laboratory the opportunity to compare its results with these values. The testing laboratory has the option of choosing its reference chemicals, but references must be given to establish the validity of the measured values of $\log_{10}K_{ow}$.

TABLE 1.—N-OCTANOL/WATER PARTITION COEFFICIENT AT 25 °C FOR SOME REFERENCE COMPOUNDS

Chemical	Experimental $\log_{10}K_{ow}$				Estimated $\log_{10}K_{ow}$		Recommended $\log_{10}K_{ow}$
	Hansch and Leo[1]	Generator Column Method	Banerjee[2]	Other values	Hansch and Leo[3]	Hawker and Connell[4]	
Ethyl acetate	0.73, 0.66	[5]0.68	—	—	0.671	—	[17]0.685
1-Butanol	0.88, 0.89, 0.32, 0.88	[5]0.785	—	—	0.823	—	[23]0.852
1-Pentanol	1.28, 1.40	[5]1,53	—	—	1.35	—	[17]1.39
Nitrobenzene	1.85, 1.88, 1.79	[5]1.85	1.83	[6]1.82	1.89	—	[17]1.84
Benzene	2.15, 2.13	—	2.12	—	2.14	—	[17]2.14
Trichloroethylene	2.29	[5]2.53	2.42	—	2.27	—	[17]2.38
Chlorobenzene	2.84, 2.46	[7]2.98	—	[8]2.84	2.86	—	[18]2.80
o-Dichlorobenzene	3.38	[7]3.38	3.40	[8]3.38	3.57	—	[17]3.42
n-Propylbenzene	3.66, 3.66, 3.68, 3.57	[5]3.69	—	—	3.85	—	[17]3.69
Biphenyl	3.95, 4.17, 4.09, 4.04	[7]3.67, [9]3.89, [10]3.79	4.04	[6]3.75	4.03	4.09	[17]3.96

TABLE 1.—N-OCTANOL/WATER PARTITION COEFFICIENT AT 25 °C FOR SOME REFERENCE COMPOUNDS—Continued

Chemical	Experimental $\log_{10}K_{ow}$				Estimated $\log_{10}K_{ow}$		Recommended $\log_{10}K_{ow}$
	Hansch and Leo[1]	Generator Column Method	Banerjee[2]	Other values	Hansch and Leo[3]	Hawker and Connell[4]	
2-Chlorobiphenyl	—	[7]4.50, [9]4.38	—	[10]3.90, [11]3.75, [12]4.59, [13]4.54	—	4.99	[19]4.49
1,2,3,5-Tetrachlorobenzene	—	[7]4.65	4.46	—	4.99	—	[17]4.70
2,2′-Dichlorobiphenyl	—	[9]4.90	—	[9]4.90, [10]3.63, [11]3.55, [14]4.51, [15]5.02	—	4.65	[20]4.80
Pentachlorobenzene	—	[7]5.03	4.94	—	5.71	—	[24]4.99
2,4,5-Trichlorobiphenyl	—	[7]5.51, [9]5.81	—	[10]5.67, [10]5.86, [15]5.77	—	5.60	[17]5.70
2,3,4,5-Tetrachlorobiphenyl	—	[6]6.18, [7]5.72	—	—	—	6.04	[17]5.98
2,2′,4,5,5′-Pentachlorobi-phenyl	6.11	[9]6.50, [7]5.92	—	[13]6.11, [12]6.85	—	6.38	[17]6.31
2,2′,3,3′,6,6′-Hexachloro-biphenyl	—	[5]5.76, [7]6.63, [9]6.81	—	—	—	6.22	[17]6.36
2,2′,3,3′,4,4′,6-Heptachlorobiphenyl	—	[7]6.68	—	—	—	7.11	[17]6.90
2,2′,3,3′,5,5′,6,6′-Octachlorobiphenyl	—	[7]7.11, [9]7.14	—	[12]8.42	—	7.24	[21]7.16
2,2′,3,3′,4, 4′,5,6,6′-Nona-chlorobiphenyl	—	[5]7.52	—	—	—	7.74	[17]7.63
2,2′,3,3′,4, 5,5′6,6′-Nona-chlorobiphenyl	—	[7]8.16	—	—	—	7.71	[17]7.94
Decachlorobiphenyl	—	[7]8.26, [9]8.20	—	[12]9.60	—	8.18	[22]8.21

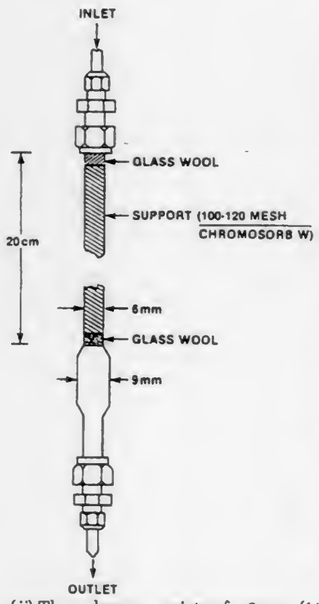
[1] Hansch and Leo (1979). Shake-flask method in paragraph (e)(8) of this section.
[2] Banerjee, Yalkowski, and Valvani (1980). Shake-flask method in paragraph (e)(1) of this section.
[3] Hansch and Leo (1984). Estimates $\log_{10}K_{ow}$ using the CLogP3 computer program in paragraph (e)(9) of this section.
[4] Hawker and Connell (1988). Generator column method and an estimation method correlating $\log_{10}K_{ow}$ with the total surface area of the molecule in paragraph (e)(8) of this section.
[5] Tewari et al. (1982). Generator column method in paragraph (e)(14) of this section.
[6] Veith, Austin, and Morris (1979). Reverse-phase HPLC method in paragraph (e)(16) of this section.
[7] Miller et al. (1984). Generator column method in paragraph (e)(11) of this section.
[8] Chiou and Schmedding (1982). Shake-flask method in paragraph (e)(4) of this section.
[9] Woodburn, Doucette, and Andren (1984). Generator column method in paragraph (e)(19) of this section.
[10] Rapaport and Eisenreich (1984). Reverse-phase HPLC method in paragraph (e)(13) of this section.
[11] Woodburn (1982). Reverse-phase HPLC method in paragraph (e)(18) of this section.
[12] Bruggemann, Van der Steen, and Hutzinger (1978). Shake-flask method in paragraph (e)(2) of this section.
[13] Tulp and Hutzinger (1978). Shake-flask method in paragraph (e)(15) of this section.
[14] Chiou, Porter, and Schmedding (1983). Shake-flask method in paragraph (e)(5) of this section.
[15] Bruggemann, Van Der Steen , and Hutzinger (1982). Reverse-phase thin-layer chromatography in paragraph (e)(2) of this section.
[16] Chiou et al. (1977). Shake-flask method in paragraph (e)(3) of this section.
[17] Average value using all the data.
[18] Average value using all the data except the datum point 2.46.
[19] Average value using all the data except the data points 3.90 and 3.75.
[20] Average value using all the data except the data points 3.63 and 3.55.
[21] Average value using all the data except the datum point 8.42.
[22] Average value using all the data except the datum point 9.60.
[23] Average value using all the data except the datum point 0.32.
[24] Average value using all the data excluding the estimated datum point 5.71.

(5) *Applicability and specificity.* The test guideline is designed to determine the K_{ow} of solid or liquid organic chemicals in the range $\log_{10}K_{ow}$ 1.0 to ≤6.0 (10 to ≤10^6).

(c) *Test procedure*—(1) *Test conditions*—(i) *Special laboratory equipment*—(A)(*1*) *Generator column.* Either of two different methods for connecting to the generator column shall be used depending on whether the eluted aqueous phase is analyzed by HPLC (Procedure A, as described in paragraph (c)(3)(iii) of this section) or by solvent extraction followed by GC analysis, or any other reliable method of solvent extract (Procedure B, as described in paragraph (c)(3)(iv) of this section).

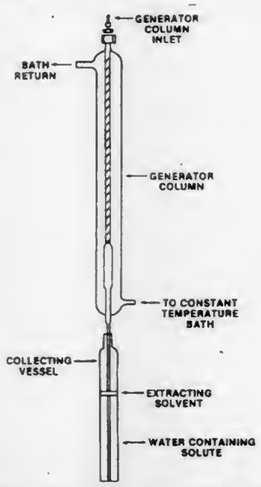
(*2*)(*i*) The design of the generator column is shown in the following figure 1:

Figure 1—Generator Column



(*ii*) The column consists of a 6 mm (¼ in) O.D. pyrex tube joined to a short enlarged section of 9 mm pyrex tubing which in turn is connected to another section of 6 mm (¼ in) O.D. pyrex tubing. Connections to the inlet teflon tubing (⅛ in O.D.) and to the outlet stainless steel tubing (1/16 in O.D.) are made by means of stainless steel fittings with teflon ferrules. The column is enclosed in a water jacket for temperature control as shown in the following figure 2:

Figure 2—Setup Showing Generator Column Enclosed in a Water Jacket and Overall Arrangement of the Apparatus Used in GC Method



(B) Constant temperature bath with circulation pump-bath and capable of controlling temperature to 25 ±0.05 °C. (Procedures A and B, as described in paragraphs (c)(3)(iii) and (c)(3)(iv) of this section, respectively).

(C) HPLC equipped with a variable wavelength UV absorption detector operating at a suitable wavelength and a recording integrator (Procedure A, as described in paragraph (c)(3)(iii) of this section).

(D) Extractor column—6.6 × 0.6 centimeter (cm) stainless steel tube with end fittings containing 5 micron frits filled with a superficially porous phase packing (such as Bondapack C_{18} Corasil: Waters Associates) (Procedure A, as described in paragraph (c)(3)(iii) of this section).

(E) Two 6-port high-pressure rotary switching valves (Procedure A, as described in paragraph (c)(3)(iii) of this section).

(F) Collection vessel—8 × ¾ in section of pyrex tubing with a flat bottom connected to a short section of ⅜ in O.D. borosilicate glass tubing. The collecting vessel is sealed with a ⅜ in teflon cap fitting (Procedure B, as described in paragraph (c)(3)(iv) of this section).

(G) GC, or any other reliable analytic equipment, equipped with a detector sensitive to the solute of interest (Procedure B, as described in paragraph (c)(3)(iv) of this section).

(ii) *Purity of n-octanol and water.* Purified *n*-octanol, described in paragraph (c)(2)(i) of this section, and water meeting appropriate American Society for Testing and Materials Type II standards, or an equivalent grade, are recommended to minimize the effects of dissolved salts and other impurities. An ASTM Type II water standard is presented in the reference listed in paragraph (e)(20) of this section).

(iii) *Purity of solvents.* It is important that all solvents used in this method be reagent or HPLC grade and contain no impurities which could interfere with the determination of the test compound.

(iv) *Reference compounds.* In order to ensure that the HPLC system is working properly, at least two of the reference compounds listed in table 1 in paragraph (b)(4)(ii) of this section should be run. Reference compounds shall be reagent or HPLC grade to avoid interference by impurities.

(2) *Preparation of reagents and solutions*—(i) *n-Octanol and water.* Very pure *n*-octanol can be obtained as follows: Wash pure *n*-octanol (minimum 98% pure) sequentially with 0.1N H^2SO_4, with 0.1N NaOH, then with distilled water until neutral. Dry the *n*-octanol with magnesium sulfate and distill twice in a good distillation column under reduced pressure [b.p. about 80°C at 0.27 kPa (2 torr)]. The *n*-octanol produced should be at least 99.9% pure. Alternatively, a grade equivalent to Fisher Scientific Co. No. A–402 "Certified Octanol–1" can be used. Reagent-grade water shall be used throughout the test procedure, such as ASTM Type II water, or an equivalent grade, as described in paragraph (c)(1)(ii) of this section.

(ii) *Presaturated water.* Prepare presaturated water with *n*-octanol to minimize the depletion of *n*-octanol from the column when measuring the $K_{ow}$of a test chemical. This is very important when the test chemical is lipophilic and the $\log_{10}K_{ow}$ ≤4.

(3) *Performance of the test.* Initially, an approximately 1.0% (w/w) solution of the test substance in *n*-octanol is prepared. Precise measurement of the solute concentration in this solution is required for the K_{ow}calculation. Subsequently, the 1.0% (w/w) solution is coated on the generator column and using either Procedure A or Procedure B as described in paragraphs (c)(3)(iii) and (c)(3)(iv) of this section, the molar concentration of the test substance in reagent-grade water is determined.

(i) *Test solution.* The test solution consists of an approximately 1.0% (w/w) solution of the test substance in *n*-octanol. A sufficient quantity (about 10–20 milliliter (mL)) of the test solution should be prepared to coat the generator column. The solution is prepared by accurately weighing out, using a tared bottle, quantities of both the test substance and *n*-octanol required to make a 1.0% (w/w) solution. When the weights are measured precisely (to the nearest 0.1 milligram (mg)), knowing the density of *n*-octanol (0.827 gram (g)/mL at 25 °C), then the molar concentration of the test substance in the *n*-octanol is sufficiently accurate for the purposes of the test procedure. If desired, however, a separate analytical determination (e.g., by GC, or any other reliable analytical method) may be used to check the concentration in the test solution. If storage is required, the test solution should be kept stoppered to prevent volatilization of the test chemical.

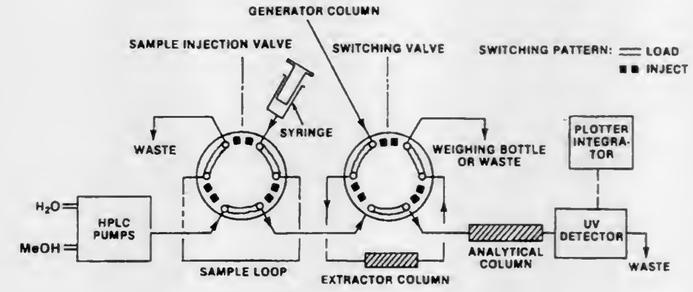
(ii) *Test procedures.* Prior to the determination of the K_{ow} of the test chemical, two procedures shall be followed:

(A) The saturated aqueous solution leaving the generator column shall be tested for the presence of an emulsion, using a Tyndall procedure (i.e. light scattering). If colloids are present, they must be removed prior to injection into the extractor column by lowering the flow rate of water.

(B) The efficiency of removal of the solute (the test chemical) by solvent extraction from the extractor column shall be determined and used in the determination of the K_{ow} of the test chemical.

(iii) *Procedure A—HPLC method.* (A) Procedure A covers the determination of the aqueous solubility of compounds which absorb in the UV. Two reciprocating piston pumps deliver the mobile phase (water or solvent/water mixture) through two 6-port high-pressure rotary valves and a 30 x 0.6 cm C_{18} analytical column to a UV absorption detector operating at a suitable wavelength. Chromatogram peaks are recorded and integrated with a recording integrator. One of the 6-port valves is the sample injection valve used for injecting samples of standard solutions of the solute in an appropriate concentration for determining RFs or standard solutions of basic chromate for determining the sample-loop volume. The other 6-port valve in the system serves as a switching valve for the extractor column which is used to remove solute from the aqueous solutions. The HPLC analytical system is shown schematically in the following figure 3:

Figure 3—Schematic of HPLC—Generator Column Flow System



(B) The general procedure for analyzing the aqueous phase after equilibration is as follows; a detailed procedure is given in paragraph (c)(3)(iii)(C)(*4*) of this section:

(*1*) Direct the aqueous solution from the generator column to "Waste" in figure 3 in paragraph (c)(3)(iii)(A) of this section with the switching valve in the inject position in order to equilibrate internal surfaces with the solution, thus insuring that the analyzed sample would not be depleted by solute adsorption on surfaces upstream from the valve.

(*2*) At the same time, water is pumped from the HPLC pumps in order to displace the solvent from the extractor column.

(*3*) The switching valve is next changed to the load position to divert a sample of the solution from the generator column through the extractor column, and the liquid leaving the extractor column is collected in a tared weighing bottle. During this extraction step, the HPLC mobile phase is changed to a solvent/water mixture to condition the analytical column.

(*4*) After the desired volume of sample is extracted, the switching valve is returned to the inject position for elution from the extractor column and analysis. Assuming that all of the solute was adsorbed by the extractor column during the extraction step, the chromatographic peak represents all of the solute in the extracted sample, provided that the extraction efficiency is 100%. If the extraction efficiency is less than 100%, then the extraction efficiency shall be measured and used to determine the actual amount of the solute extracted.

(*5*) The solute concentration in the aqueous phase is calculated from the peak area, the weight of the extracted liquid collected in the weighing bottle, the extraction efficiency, and the RF.

(C)(*1*) *Determination of the sample-loop volume.* Accurate measurement of the sample loop may be accomplished by using a spectrophotometric method such as the one described in the reference listed in paragraph (e)(6) of this section. For this method, measure absorbance, A_{loop}, at 373 nanometers (nm) for at least three solutions, each of which is prepared by collecting from the sample valve an appropriate number, n, of loopfuls of an aqueous stock solution of K_2CrO_4 (1.3% by weight) and diluting to 50 mL with 0.2% KOH. (For a 20 µL loop, use n = 5; for a 50 µL loop, use n = 2.) Also measure the absorbance, A_{stock}, of the same stock solution after diluting 1:500 with 0.2% KOH. Calculate the loop volume to the nearest 0.1 µL using the relation:

Equation 2:

$$V_{loop} = \left(A_{loop}/A_{stock}\right)\left(10^{-4}/n\right)$$

(*2*) *Determination of the RF.* (*i*) For all determinations adjust the mobile phase solvent/water ratio and flow rate to obtain a reasonable retention time on the HPLC column. For example, typical concentrations of organic solvent in the mobile phase range from 50 to 100% while flow rates range from 1 to 3 mL/minutes (min); these conditions often give a 3 to 5 min retention time.

(*ii*) Prepare standard solutions of known concentrations of the solute in a suitable solvent. Concentrations must

give a recorder response within the maximum response of the detector. Inject samples of each standard solution into the HPLC system using the calibrated sample loop. Obtain an average peak area from at least three injections of each standard sample at a set detector absorbance unit full scale (AUFS), i.e., at the same absorbance scale attenuation setting.

(*iii*) Calculate the RF from the following equation:

Equation 3:

$$\text{Response Factor (RF)} = \frac{\text{Concentration mol/L}}{(\text{Average Area})\,(\text{AUFS})}$$

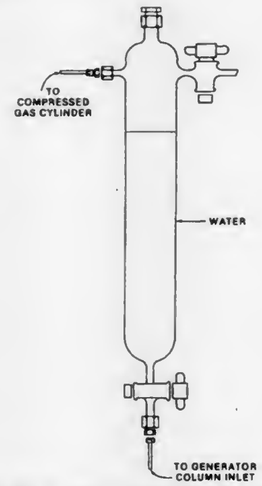
(*3*) *Loading of the generator column.* (*i*) The design of the generator column was described in paragraph (c)(1)(i) of this section and is shown in figure 1 in paragraph (c)(1)(i)(A)(*2*)(*i*) of this section. To pack the column, a plug of silanized glass wool is inserted into one end of the 6 mm pyrex tubing. Silanized diatomaceous silica support (about 0.5g of 100–120 mesh Chromosorb W chromatographic support material) is poured into the tube with tapping and retained with a second plug of silanized glass wool.

(*ii*) The column is loaded by pulling the test solution through the dry support with gentle suction and then allowing the excess solution to drain out. After loading the column, draw water up through the column to remove any entrapped air.

(*4*) *Analysis of the solute.* Use the following procedure to collect and analyze the solute:

(*i*) With the switching valve in figure 3 in paragraph (c)(3)(iii)(A) of this section in the inject position (i.e., water to waste), pump water through the generator column at a flow rate of approximately 1 mL/min for approximately 15 min to bring the system into equilibrium. Pump water to the generator column by means of a minipump or pressurized water reservoir as shown in the following figure 4:

Figure 4—Water Reservoir for GC Method



(*ii*) Flush out the organic solvent that remains in the system from previous runs by changing the mobile phase to 100% H_2O and allowing the water to reach the HPLC detector, as indicated by a negative reading. As soon as this occurs, place a 25 mL weighing bottle (weighed to the nearest mg) at the waste position and immediately turn the switching valve to the load position.

(*iii*) Collect an amount of water from the generator column (as determined by trial and error) in the weighing bottle, corresponding to the amount of solute adsorbed by the extractor column that gives a reasonable detector response. During this extraction step, switch back to the original HPLC mobile phase composition, i.e., solvent/water mixture, to condition the HPLC analytical column.

(*iv*) After the desired volume of sample has been extracted, turn the switching valve back to the inject position in figure 3 in paragraph (c)(3)(iii)(A) of this section. As soon as the switching valve is turned to the inject position, remove the weighing bottle, cap it and replace it with the waste container; at the same time turn on the recording integrator. The solvent/water mobile phase will elute the solute from the extractor column and transfer the solute to the HPLC analytical column.

(*v*) Determine the weight of water collected to the nearest mg and record the corresponding peak area. Using the same AUFS setting repeat the analysis of the solute at least two more times and determine the average ratio of peak area to grams of water collected. In this equation, S = solubility (M), RF = response factor, V_{loop} = sample-loop volume (L), and R = ratio of area to grams of water. Calculate the solute solubility in water using the following equation:

Equation 4:

$$S = (997\ \text{g/L})(RF)\left(V_{loop}\right)(AUFS)(R)$$

(iv) *Procedure B—GC Method.* In the GC method, or any other reliable quantitative method, aqueous solutions from the generator column enter a collecting vessel in figure 2 in paragraph (c)(1)(i)(A)(*2*)(*ii*) of this section containing a known weight of extracting solvent which is immiscible in water. The outlet of the generator column is positioned such that the aqueous phase always enters below the extracting solvent. After the aqueous phase is collected, the collecting vessel is stoppered and the quantity of aqueous phase is determined by weighing. The solvent and the aqueous phase are equilibrated by slowly rotating the collecting vessel. A small amount of the extracting solvent is then removed and injected into a GC equipped with an appropriate detector. The solute concentration in the aqueous phase is determined from a calibration curve constructed using known concentrations of the solute. The extraction efficiency of the solvent shall be determined in a separate set of experiments.

(A) *Determination of calibration curve.* (*1*) Prepare solute standard solutions of concentrations covering the expected range of the solute solubility. Select a column and optimum GC operating conditions for resolution between the solute and solvent and the solute and extracting solvent. Inject a known volume of each standard solution into the injection port of the GC. For each standard solution determine the average of the ratio R of peak area to volume (in µL) for the chromatographic peak of interest from at least three separate injections.

(*2*) After running all the standard solutions, determine the coefficients, a and b, using linear regression analysis on the equation of concentration (C) vs. R in the form:

Equation 5:

$$C = aR + b$$

(B) *Loading of the generator column.* The generator column is packed and loaded with solute in the same manner as for the HPLC method in paragraph (c)(3)(iii) of this section. As shown in figure 2 in paragraph (c)(1)(i)(A)(*2*)(*ii*) of this section, attach approximately 20 cm of straight stainless steel tubing to the bottom of the generator column. Connect the top of the generator column to a water reservoir in figure 4 in paragraph (c)(3)(iii)(C)(*4*)(*i*) of this section using teflon tubing. Use air or nitrogen pressure (5 PSI) from an air or nitrogen cylinder to force water from the reservoir through the column. Collect water in an Erlenmeyer flask for approximately 15 min while the solute concentration in water equilibrates; longer time may be required for less soluble compounds.

(C) *Collection and extraction of the solute.* During the equilibration time, add a known weight of extracting solvent to a collection vessel which can be capped. The extracting solvent should cover the bottom of the collection vessel to a depth sufficient to submerge the collecting tube but still maintain 100:1 water/solvent ratio. Record the weight (to the nearest mg) of a collection vessel with cap and extracting solvent. Place the collection vessel under the generator column so that water from the collecting tube enters below the level of the extracting solvent in figure 2 in paragraph (c)(1)(i)(A)(*2*)(*ii*) of this section. When the collection vessel is filled, remove it from under the generator column, replace cap, and weigh the filled vessel. Determine the weight of water collected. Before analyzing for the solute, gently rotate the collection vessel contents for approximately 30 min, controlling the rate of rotation so as not to form an emulsion; rotating the flask end over end five times per minute is sufficient. The extraction efficiency of the solvent shall be determined in a separate set of experiments.

(D) *Analysis of the solute.* (*1*) After rotating, allow the collection vessel to stand for approximately 30 min; then remove a known volume of the extracting solvent from the vessel using a microliter syringe and inject it into the GC. Record the ratio of peak area to volume injected and, from the regression equation of the calibration line, determine the concentration of solute in the extracting solvent. If the extraction efficiency is not 100%, the measured extraction efficiency shall be used to obtain the correct concentration of solute extracted. In this equation, C_{es} is the molar concentration of solute in extracting solvent, d_{H_2O} and d_{es} are the densities in grams per milliliter of water and extracting solvent, respectively, and g_{es} and g_{H_2O} are the grams of extracting solvent and water, respectively, contained in the collection vessels. The molar concentration of solute in water C(M) is determined from the following equation:

Equation 6:

$$C(M) = \left(C_{es}\right)\left[d_{H_2O}/d_{es}\right]\left[g_{es}/g_{H_2O}\right]$$

(*2*) Make replicate injections from each collecting vessel to determine the average solute concentration in water for each vessel. To make sure the generator column has reached equilibrium, run at least two additional (for a total of three) collection vessels and analyze the extracted solute as described in paragraph (c)(3)(iv)(D)(*1*) of this section. Calculate C(M) from the average solute concentration in the three vessels.

(*3*) If another analytical method is used in place of the GC, then Procedure B, as described in paragraph (c)(3)(iv) of this section, shall be modified and the new analytical procedure shall be used to determine quantitatively the amount of solute extracted in the extraction solvent.

(v) *Analysis of reference compounds.* Prior to analyzing the test solution, make duplicate runs on at least two of the reference compounds listed in table 1 in paragraph (b)(4)(ii) of this section. When using the reference compounds, follow the same procedure previously described for preparing the test solution and running the test. If the average value obtained for each compound is within 0.1 log unit of the reference value, then the test procedure and HPLC system are functioning properly; if not a thorough checking over of the HPLC and careful adherence to the test procedures should be done to correct the discrepancy.

(vi) *Modification of procedures for potential problems—Decomposition of the test compound.* If the test compound decomposes in one or more of the aqueous solvents required during the period of the test at a rate such that an accurate value for water solubility cannot be obtained, then it will be necessary to carry out detailed transformation studies, such as hydrolysis studies. If decomposition is due to aqueous photolysis, then it will be necessary to carry out the studies in the dark, under red or yellow lights, or by any other suitable method to eliminate this transformation process.

(d) *Data and reporting*—(1) *Test report.* (i) For the test solution, report the weights to the nearest 0.1 mg of the test substance and *n*-octanol. Also report the weight percent and molar concentration of the test substance in the *n*-octanol; the density of *n*-octanol at 25 °C is 0.827 grams per milliliter (gm)/mL.

(ii) For each run provide the molar concentration of the test substance in water for each of three determinations, the mean value, and the standard deviation.

(iii) For each of the three determinations calculate the K_{ow} as the ratio of the molar concentration of the test substance in *n*-octanol to the molar concentration in water. Also calculate and report the mean K_{ow} and its standard deviation. Values of K_{ow} shall be reported as their logarithms ($\log_{10}K_{ow}$).

(iv) Report the temperature (± 0.05 °C) at which the generator column was controlled during the test.

(v) For each reference compound report the individual values of $\log_{10}K_{ow}$ and the average of the two runs.

(vi) For compounds that decompose at a rate such that a precise value for the solubility cannot be obtained, provide a statement to that effect.

(2) *Specific analytical, calibration, and recovery procedures.* (i) For the HPLC method describe and/or report:

(A) The method used to determine the sample-loop volume and the average and standard deviation of that volume.

(B) The average and standard deviation of the RF.

(C) The extraction solvent and the extraction efficiency used.

(D) Any changes made or problems encountered in the test procedures.

(ii) For the GC method report:

(A) The column and GC operating conditions of temperature and flow rate.

(B) The average and standard deviation of the average area per microliter obtained for each of the standard solutions.

(C) The form of the regression equation obtained in the calibration procedure.

(D) The extracting solvent and extraction efficiency used.

(E) The average and standard deviation of solute concentration in each collection vessel.

(F) Any changes made or problems encountered in the test procedure.

(iii) If another approved analytical method is used to determine the concentration of the test chemical in water, then all the important test conditions shall be reported.

(iv) If the concentration of the test substance in *n*-octanol is determined by an independent analytical method such as GC, provide a complete description of the method.

(e) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available from the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, excluding legal holidays.

(1) Banerjee, S. et al., Water solubility and octanol/water partition coefficient of organics. Limitation of the solubility-partition coefficient correlation. *Environmental Science and Technology* 14:1227–1229 (1980).

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(3) Chiou, C.T. et al. Partition coefficient and bioaccumulation of selected organic chemicals. *Environmental Science and Technology* 11:475–478 (1977).

(4) Chiou, C.T. and Schmedding, D.W., Partitioning of organic compounds in octanol/water systems. *Environmental Science and Technology* 16:4–10 (1982).

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(6) DeVoe, H. et al. "Generator Columns and High Pressure Liquid Chromatography for Determining Aqueous Solubilities and Octanol-Water Partition Coefficients of Hydrophobic Substances," *Journal of Research of the National Bureau of Standards*, 86:361–366 (1981).

(7) Fujita, T. et al. "A New Substituent Constant, Derived from Partition Coefficients." *Journal of the American Chemical Society*, 86:5175 (1964).

(8) Hansch, C. and Leo, A. 1985 MEDCHEM Project, version 26. Pomona College, Claremont, CA. USA.

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(10) Hawker, D.W. and Connell, D.W. Octanol-water partition coefficients of polychlorinated biphenyl congeners. *Environmental Science and Technology* 22:382–387 (1988).

(11) May, W.E. et al. "Determination of the aqueous solubility of polynuclear aromatic hydrocarbons by a coupled column liquid chromatographic technique," *Analytical Chemistry*, 50:175–179 (1978).

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(17) Tulp, M.T.M. and Hutzinger, O. Some thoughts on aqueous solubilities and partition coefficients of PCB, and the mathematical correlation between bioaccumulation and physio-chemical properties. *Chemosphere* 10:849–860 (1978).

(18) Veith, G.D. et al. A rapid method for estimating $\log_{10}$ P for organic chemicals, *Water Research* 13:43–47 (1979).

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(20) Woodburn, K.B. Measurement and application of the octanol/water partition coefficients for selected polychlorinated biphenyls. Master's Thesis (1982), University of Wisconsin at Madison, Madison, WI.

(21) Woodburn, K.B. et al. Generator column determination of octanol/water partition coefficients for selected polychlorinated biphenyl congeners. *Environmental Science and Technology* 18:457–459 (1984).

(22) ASTM D 1193–91 (Approved Sep 15, 1991), "Standard Specification for Reagent Water." American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103.

§ 799.6784 TSCA water solubility: Column elution method; shake flask method.

(a) *Scope*—(1) *Applicability.* This section is intended to meet the testing requirements of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Pollution Prevention, Pesticides and Toxics (OPPTS) harmonized test guideline 830.7840 (March 1998, revised final guideline). This source is available at the address in paragraph (f) of this section.

(b) *Introductory information*—(1) *Prerequisites.* Suitable analytical method, structural formula, vapor pressure curve, dissociation constant, and hydrolysis independence of pH (preliminary test).

(2) *Coefficient of variation.* The coefficient of variation on the mean values reported by the participants of the Organization for Economic Cooperation and Development (OECD) Laboratory Intercomparison Testing, Part I, 1979, appeared to be dependent on the chemicals tested and the test temperatures; it ranges from 0.05 to 0.34 for the column elution method, and from 0.03 to 1.12 for the flask method.

(3) *Qualifying statements.* (i) The method is not applicable to volatile substances. Care should be taken that the substances examined are as pure as possible and stable in water. It must be ascertained that the identity of the substance is not changed during the procedure.

(ii) The column elution method is not suitable for volatile substances. The carrier material used here may not yet be optimal. This method is intended for material with solubilities below approximately 10^{-2} gram/Liter (g/L).

(iii) The flask method is intended for materials with solubility above 10^{-2} g/L. It is not applicable to volatile substances; this method may pose difficulties in the case of surface-active materials.

(c) *Method*—(1) *Introduction, purpose, scope, relevance, application, and limits of test.* (i) A solution is a homogeneous mixture of different substances in a solvent. The particle sizes of the dispersed substances are of the same magnitude as molecules and ions; therefore, the smallest volumes which can be obtained from a solution are always of uniform composition.

(ii) Solubility in water is a significant parameter because:

(A) The spatial and temporal movement (mobility) of a substance is largely determined by its solubility in water.

(B) Water soluble substances gain ready access to humans and other living organisms.

(C) The knowledge of the solubility in water is a prerequisite for testing biological degradation and bioaccumulation in water and for other tests.

(iii) No single method is available to cover the whole range of solubilities in water, from relatively soluble to very low-soluble chemicals. A general test guideline for the determination of the solubility in water must include methods which cover the whole range of water soluble substances. Therefore, this section includes two methods:

(A) One which applies to substances with low solubilities ($<10^{-2}$ g/L), referred to as the "column elution method."

(B) The other which applies to substances with higher solubilities ($\leq 10^{-2}$ g/L), referred to as the "flask method."

(2) *Definition.* The solubility in water of a substance is specified by the saturation mass concentration of the substance in water and is a function of temperature. The solubility in water is specified in units of weight per volume of solution. The SI-unit is killogram/meter $(kg/m)^3$; g/L may also be used.

(3) *Reference substances.* The reference substances need not be employed in all cases when investigating a new substance. They are provided primarily so that calibration of the method may be performed from time to time and to offer the chance to compare the results when another method is applied. The values presented in table 1 of this section are not necessarily representative of the results which can be obtained with this test method as they have been derived from an earlier version of the test method.

TABLE 1.—DATA FOR REFERENCE SUBSTANCES

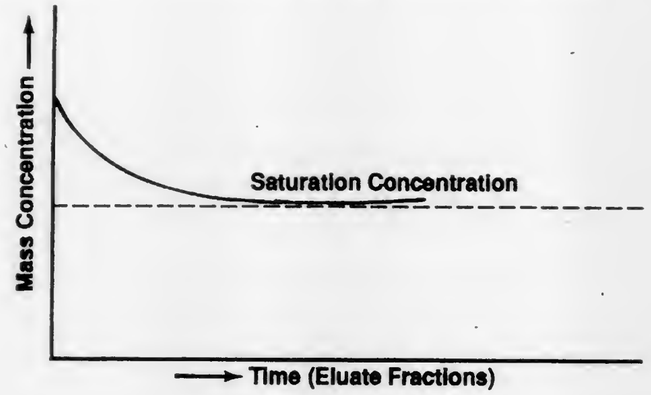
Method	T, °C	Mean (milligram (mg)/L)	Range (mg/L)	No. of labs
Fluoranthene				
Elution method	15	0.275	0.104 to 0.920	6
	25	0.373	0.198 to 1.050	7
Hexachlorobenzene				
Elution method	15	9.21×10^{-3}	2.06×10^{-3} to 2.16×10^{-2}	6
	25	9.96×10^{-3}	1.19×10^{-3} to 2.31×10^{-2}	7
γ-Hexachlorocyclohexane				
Elution method	15	6.50	4.43 to 10.5	6
	25	9.20	6.64 to 14.5	7
2,4-Dichlorophenoxyacetic acid				
Flask method	15	0.633	0.380 to 0.764	5
	25	0.812	0.655 to 0.927	5
Mercury(II) chloride:				
Flask method	15	53.0	47.7 to 56.5	4
	25	66.4	58.3 to 70.4	4
4-Nitrophenol:				
Flask method	15	9.95	8.88 to 10.9	6
	25	14.8	13.8 to 15.9	6

(4) *Principle of the test methods.* The approximate amount of the sample and the time necessary to achieve the saturation mass concentration should be determined in a simple preliminary test.

(i) *Column elution method.* This method is based on the elution of a test substance with water from a microcolumn which is charged with an inert carrier material such as glass beads, silica gel, or sand, and an excess of test substance. The water solubility is determined when the mass concentration of the eluate is constant. This is shown by a concentration plateau as a function of time in the following figure 1:

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Figure 1.—Concentration versus Time of Substance in the Eluate



(ii) *Flask method.* In this method, the substance (solids must be pulverized) is dissolved in water at a temperature somewhat above the test temperature. When saturation is achieved, the mixture is cooled and kept at the test temperature, stirring as long as necessary to reach equilibrium. Such a procedure is described in the reference listed in paragraph (f)(2) of this section. Subsequently, the mass concentration of the substance in the aqueous solution, which must not contain any undissolved particles, is determined by a suitable analytical method.

(5) *Quality criteria*—(i) *Repeatability.* For the column elution method <30% is acceptable; for the flask method <15% should be observed.

(ii) *Sensitivity.* This depends upon the method of analysis, but mass concentration determinations down to at least 10^{-6} g/L can be determined.

(iii) *Specificity.* These methods should only be applied to:

(A) Pure substance.

(B) Substances that are stable in water.

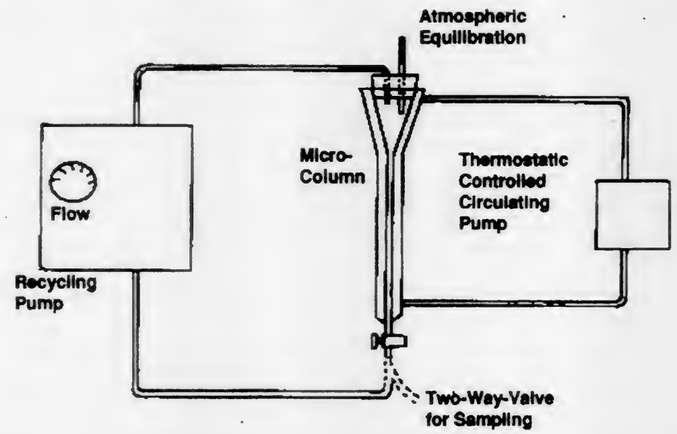
(C) Slightly soluble substances, i.e. <10^{-2} g/L for the column elution method.

(D) Organic substances for the column elution method.

(iv) *Possibility of standardization.* These methods can be standardized.

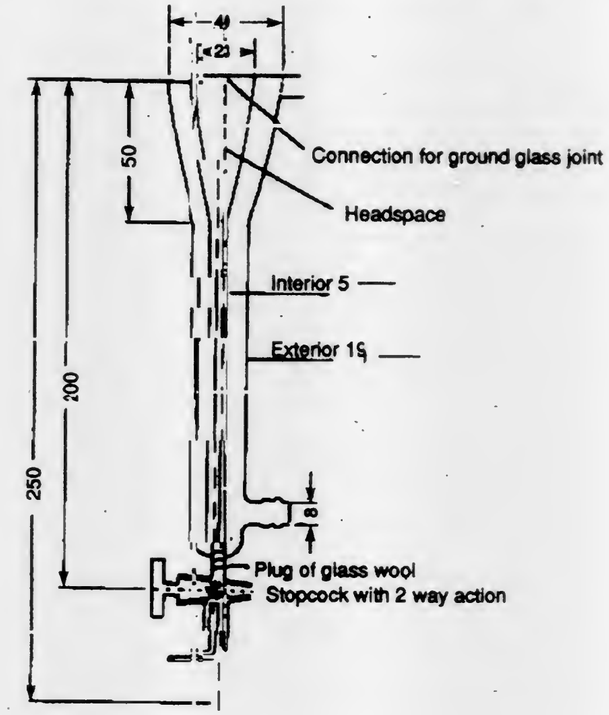
(d) *Description of the test procedures*—(1) *Preparations*—(i) *Apparatus*—(A) *Column elution method.* (*1*) The schematic arrangement of the system is presented in the following figure 2:

Figure 2.—Schematic Test Arrangement



(*2*) Although any size is acceptable, provided it meets the criteria for reproducibility and sensitivity. The column should provide for a head space of at least five bed-volumes of water and a minimum of five samples. Alternatively, the size can be reduced if make-up solvent is employed to replace the initial five bed-volumes removed with impurities. A suitable microcolumn is shown in the following figure 3:

Figure 3.—Microcolumn (all dimensions in millimeters)



(*3*) The column should be connected to a recycling pump capable of controlling flows of approximately 25 mL/hours (h). The pump is connected with polytetrafluoroethylene and/or glass connections. The column and pump, when assembled, should have provision for sampling the effluent and equilibrating the head space at atmospheric pressure. The column material is supported with a small (5 millimeter (mm)) plug of glass wool, which must also serve to filter particles.

(B) *Flask method.* For the flask method, the following material is needed:

(*1*) Normal laboratory glassware and instrumentation.

(*2*) A device suitable for the agitation of solutions under controlled constant temperatures.

(*3*) A centrifuge (preferably thermostatted), if required with emulsions.

(*4*) Equipment for analytical determinations.

(*2*) *Reagents.* The substance to be tested should be as pure as possible, particularly in the flask method where purification is not provided. The carrier material for the column elution method should be inert. Possible materials which can be employed are glass beads and silica. A suitable volatile solvent of analytical reaction quality should be used to apply the test substance to the carrier material. Double distilled water from glass or quartz apparatus should be employed as the eluent or solvent. Water directly from an ion exchanger must not be used.

(*3*) *Test conditions.* The test is preferably run at 20±0.5 °C (293 °K). If temperature dependence is suspected in the solubility (≤ 3%/°C), two other temperatures should also be used—both differing from each other and the initially chosen temperature by 10 °C. In this case the temperature control should be ± 0.1 °C. One of these additional temperatures should be below the initial temperature. The chosen temperature(s) should be kept constant in all parts of the equipment (including the leveling vessel).

(*4*) *Performance of the tests*—(i) *Preliminary test.* (A) To approximately 0.1 g of the sample (solid substances must be pulverized) in a glass-stoppered 10 milliliter (mL) graduated cylinder, increasing volumes of distilled water at room temperature are added according to the steps shown in Table 2 of this section:

TABLE 2.—DETERMINATION OF SOLUBILITY

Solubility data	step 1	step 2	step 3	step 4	step 5	step 6	step 7
Total volume H_2O added (mL)	0.1	0.5	1	2	10	100	≤100
Approximate solubility (g/L)	≤1,000	200	100	50	10	1	<1

(B) After each addition of water to give the indicated total volume, the mixture is shaken vigorously for 10 min and is visually checked for any undissolved parts of the sample. If, after a total of 10 mL of water has been added (step 5), the sample or parts of it remain undissolved, the contents of the measuring cylinder is transferred to a 100 mL measuring cylinder which is then filled up with water to 100 mL (step 6) and shaken. At lower solubilities the time required to dissolve a substance can be considerably long (24 h should be allowed). The approximate solubility is given in the table under that volume of added water in which complete dissolution of the sample occurs. If the substance is still apparently insoluble, further dilution should be undertaken to ascertain whether the column elution or flask solubility method should be used.

(ii) *Column elution*—(A) *Apparatus.* (*1*) The equipment is arranged as shown in figures 2 and 3 in paragraphs (d)(1)(i)(A)(*1*) and (d)(1)(i)(A)(*2*) of this section. Approximately 600 milligrams (mg) of carrier material is weighed and transferred to a 50 mL round-bottom flask. A suitable, weighed amount of test substance is dissolved in the chosen solvent, and an appropriate amount of the test substance solution is added to the carrier material. The solvent must be completely evaporated, e.g. in a rotary evaporator; otherwise water saturation of the carrier is not achieved due to partition effects on the surface of the carrier.

(*2*) The loading of carrier material may cause problems (erroneous results) if the test substance is deposited as an oil or a different crystal phase. The problem should be examined experimentally.

(*3*) The loaded carrier material is allowed to soak for about 2 h in approximately 5 mL of water, and then the suspension is added to the microcolumn. Alternatively, dry loaded carrier material may be poured in the microcolumn, which has been filled with water and then equilibrated for approximately 2 h.

(B) *Test procedure.* The elution of the substance from the carrier material can be carried out in two different ways: Leveling vessel or circulating pump. The two principles should be used alternatively.

(*1*) Leveling vessel, see figure 3 in paragraph (d)(1)(i)(A)(*2*) and figure 4 in paragraph (d)(4)(iii) of this section.

(*i*) The connection to the leveling vessel is made by using a ground glass joint which is connected by teflon tubing. It is recommended that a flow rate of approximately 25 mL/h be used. Successive eluate fractions should be collected and analyzed by the chosen method.

(*ii*) Fractions from the middle eluate range where the concentrations are constant (± 30%) in at least five consecutive fractions are used to determine the solubility in water.

(*iii*) A second run is to be performed at half the flow rate of the first. If the results of the two runs are in agreement, the test is satisfactory; if there is a higher apparent solubility with the lower flow rate, then the halving of the flow rate must continue until two successive runs give the same solubility.

(*2*) Circulating pump, see figures 2 and 3 in paragraphs (d)(1)(i)(A)(*1*) and (d)(1)(i)(A)(*2*) of this section.

(*i*) With this apparatus, the microcolumn must be modified. A stopcock with 2–way action must be used, see figure 3 in paragraph (d)(1)(i)(A)(*2*) of this section). The circulating pump can be, e.g. a peristaltic pump (be careful that no contamination and/or adsorption occurs with the tube material) or a membrane pump.

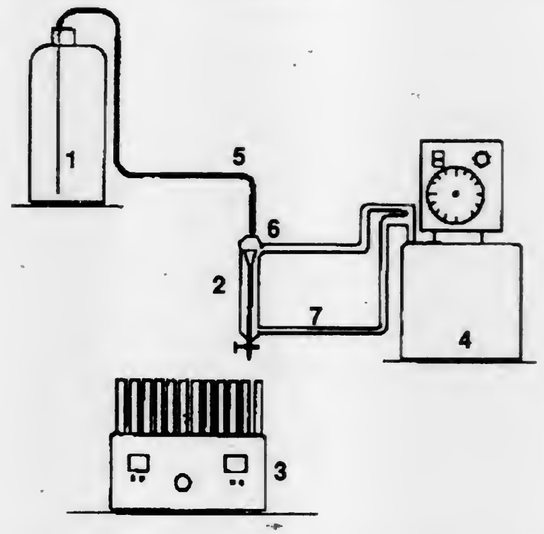
(*ii*) The flow through the column is started. It is recommended that a flow rate of approximately 25 mL/h be used (approximately 10 bed volumes per h for the described column). The first five-bed volumes (minimum) are discarded to remove water soluble impurities.

(*iii*) Following this, the recycling pump is connected and the apparatus allowed to run until equilibration is established, as defined by five successive samples whose concentrations do not differ by more than 30% in a random fashion (see paragraph (f)(2) of this section). These samples should be separated from each other by time intervals corresponding to the passage of at least 10 bed-volumes of the eluent.

(*3*) In both cases (using a circulation pump or a leveling vessel) the fractions should be checked for the presence of colloidal matter by examination for the Tyndall effect (light scattering). Presence of such particles invalidates the results, and the test should be repeated with improvements in the filtering action of the column. The pH of each sample should be recorded. A second run should be performed at the same temperature.

(iii) *Flask method: Test procedure.* The quantity of material necessary to saturate the desired volume of water is estimated from the preliminary test. The volume of water required will depend on the analytical method and the solubility range. About five times the quantity of material determined in paragraph (d)(4)(i)(A) of this section is weighed into each of three glass vessels fitted with glass stoppers (e.g. centrifuge tubes, flasks). The chosen volume of water is added to each vessel, and the vessels are tightly stoppered. The closed vessels are then agitated at 30 °C. (A shaking or stirring device capable of operating at constant temperature should be used, *e.g.* magnetic stirring in a thermostatically controlled water bath.) After 1 day, one of the vessels is removed and re-equilibrated for 24 h at the test temperature with occasional shaking. The contents of the vessel are then centrifuged at the test temperature, and the concentration of compound in the clear aqueous phase is determined by a suitable analytical method. The other two flasks are treated similarly after initial equilibration at 30 °C for 2 and 3 days, respectively. If the concentration results from at least the last two vessels agree with the required reproducibility, the test is satisfactory. The whole test should be repeated, using longer equilibration times if the results from vessels one, two, and three show a tendency to increasing values. The arrangement of the apparatus is shown in the following figure 4:

Figure 4.—Test Arrangement for the Determination of Solubility in Water of Slightly Soluble, Low Volatility Organic Substances



1 = Leveling vessel (e.g. 2.5 L chemical flask)
2 = Column (see figure 3 in paragraph (d)(1)(i)(A)(*2*) of this section)
3 = Fraction accumulator
4 = Thermostat
5 = Teflon tubing
6 = Glass stopper
7 = Water line (between thermostat and column, inner diameter: approximately 8 mm)

(iv) *Analysis.* A substance-specific analytical method is required for these determinations, since small amounts of soluble impurities can cause large errors in the measured solubility. Examples of such methods are gas or liquid chromatography, titration methods, photometric methods, and polarographic methods.

(e) *Data and reporting*—(1) *Column elution method*—(i) *Treatment of results.* The mean value from at least five consecutive samples taken from the saturation plateau (figure 1 in paragraph (c)(4)(i) of this section) should be determined for each run, as should the standard deviation. A comparison should be made between the two means to ensure that they agree with a repeatability of less than 30%.

(ii) *Test report.* The report should contain an indication of the results of the preliminary test plus the following information:

(A) The individual concentrations, flow rates and pHs of each samples.

(B) The means and standard deviations from at least five samples from the saturation plateau of each run.

(C) The average of the two successive, acceptable runs.

(D) The temperature of the runs.

(E) The method of analysis employed.

(F) The nature of the carrier material employed.

(G) Loading of carrier material.

(H) Solvent used.

(I) Statement that the identity of the substance in the saturated solution has been proved.

(2) *Flask method*—(i) *Treatment of results.* The individual results should be given for each of the three flasks and those results deemed to be constant (repeatability <15%) should be averaged and given in units of mass per volume of solution. This may require the conversion of mass units to volume units, using the density when the solubility is very high (100 g/L).

(ii) *Test report.* The report should include the following information:

(A) The individual analytical determinations and the average where more than one value was determined for each flask.

(B) The average of the value for the different flasks which were in agreement.

(C) The test temperature.

(D) The analytical method employed.

(f) *References.* For additional information on this test guideline, the following references should be consulted. These references are available from the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, excluding legal holidays.

(1) Veith, G.D. and V.M. Comstock. Apparatus for continuously saturating water with hydrophobic organic chemicals. *Journal of the Fishing Research Board of Canada* 32:1849–1851 (1975).

(2) *Organization for Economic Cooperation and Development,* Guidelines for The Testing of Chemicals, OECD 105, Water Solubility (Column Elution Method—Shake Flask Method), OECD, Paris, France (1981).

§ 799.6786 TSCA water solubility: Generator column method.

(a) *Scope*—(1) *Applicability.* This section is intended to meet the testing requirements of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Pollution Prevention, Pesticides and Toxics (OPPTS) harmonized test guideline 830.7860 (March 1998, revised final guideline). The source is available at the address in paragraph (e) of this section.

(b) *Introduction*—(1) *Purpose.* (i) The water solubility of a chemical is defined as the equilibrium concentration of the chemical in a saturated aqueous solution at a given temperature and pressure. The aqueous phase solubility is an important factor in governing the movement, distribution, and rate of degradation of chemicals in the environment. Substances that are relatively water soluble are more likely to be widely distributed by the hydrologic cycle than those which are

relatively insoluble. Furthermore, substances with higher water solubility are more likely to undergo microbial or chemical degradation in the environment because dissolution makes them "available" to interact and, therefore, react with other chemicals and microorganisms. Both the extent and rate of degradation via hydrolysis, photolysis, oxidation, reduction, and biodegradation depend on a chemical being soluble in water (i.e., homogeneous kinetics).

(ii) Water provides the medium in which many organisms live, and water is a major component of the internal environment of all living organisms (except for dormant stages of certain life forms). Even organisms which are adapted to life in a gaseous environment require water for normal functioning. Water is thus the medium through which most other chemicals are transported to and into living cells. As a result, the extent to which chemicals dissolve in water will be a major determinant for movement through the environment and entry into living systems.

(iii) The water solubility of a chemical also has an effect on its sorption into and desorption from soils and sediments, and on volatilization from aqueous media. The more soluble a chemical substance is, the less likely it is to sorb to soils and sediments and the less likely it is to volatilize from water. Finally, the design of most chemical tests and many ecological and health tests requires precise knowledge of the water solubility of the chemical to be tested.

(2) *Definitions.* The following definitions apply to this section.

Concentration (C) of a solution is the amount of solute in a given amount of solvent or solution and can be expressed as a weight/weight or weight/volume relationship. The conversion from a weight relationship to one of volume incorporates density as a factor. For dilute aqueous solutions, the density of the solvent is approximately equal to the density of the solution; thus, concentrations expressed in milligrams per liter (mg/L) are approximately equal to 10^{-3} g/10^3 g or parts per million (ppm); those expressed in micrograms per liter (µg/L) are approximately equal to 10^{-6} g/10^3 g or parts per billion (ppb). In addition, concentration can be expressed in terms of molarity, normality, molality, and mole fraction. For example, to convert from weight/volume to molarity molecular mass is incorporated as a factor.

Density is the mass of a unit volume of a material. It is a function of temperature, hence the temperature at which it is measured should be specified. For a solid, it is the density of the impermeable portion rather than the bulk density. For solids and liquids, suitable units of measurement are grams per cubic centimeter (g/cm^3). The density of a solution is the mass of a unit volume of the solution and suitable units of measurement are g/cm^3.

Extractor column is used to extract the solute from the saturated solutions produced by the generator column. After extraction onto a chromatographic support, the solute is eluted with a solvent/water mixture and subsequently analyzed by high-pressure liquid chromatography (HPLC), gas chromatography (GC), or any other suitable analytical procedure. A detailed description of the preparation of the extractor column is given in paragraph (c)(1)(i)(D) of this section.

Generator column is used to produce or generate saturated solutions of a solute in a solvent. The column, see figure 1 in paragraph (c)(1)(i)(A) of this section, is packed with a solid support coated with the solute, i.e., the organic compound whose solubility is to be determined. When water (the solvent) is pumped through the column, saturated solutions of the solute are generated. Preparation of the generator column is described in paragraph (c)(1)(i)(A) of this section.

Response factor (RF) is the solute concentration required to give a 1 unit area chromatographic peak or 1 unit output from the HPLC recording integrator at a particular recorder attenuation. The factor is required to convert from units of area to units of concentration. The determination of the RF is given in paragraph (c)(3)(ii)(B)(*2*) of this section.

Sample loop is a 1/16 inch (in) outer diameter (O.D.) (1.6 millimeter (mm)) stainless steel tube with an internal volume between 20 and 50 µL. The loop is attached to the sample injection valve of the HPLC and is used to inject standard solutions into the mobile phase of the HPLC when determining the RF for the recording integrator. The exact volume of the loop must be determined as described in paragraph (c)(3)(ii)(B)(*1*) of this section when the HPLC method is used.

Saturated solution is a solution in which the dissolved solute is in equilibrium with an excess of undissolved solute; or a solution in equilibrium such that at a fixed temperature and pressure, the concentration of the solute in the solution is at its maximum value and will not change even in the presence of an excess of solute.

Solution is a homogeneous mixture of two or more substances constituting a single phase.

(3) *Principle of the test method.* (i) This test method is based on the dynamic coupled column liquid chromatographic (DCCLC) technique for determining the aqueous solubility of organic compounds that was initially developed by May et al. (as described in the references listed in paragraphs (e)(5) and (e)(6) of this section), modified by DeVoe et al. (as described in the reference listed in paragraph (e)(1) of this section), and finalized by Wasik et al. (as described in the reference listed in paragraph (e)(11) of this section). The DCCLC technique utilizes a generator column, extractor column and HPLC coupled or interconnected to provide a continuous closed flow system. Saturated aqueous solutions of the test compound are produced by pumping water through the generator column that is packed with a solid support coated with the compound. The compound is extracted from the saturated solution onto an extractor column, then eluted from the extractor column with a solvent/water mixture and subsequently analyzed by HPLC using a variable wavelength ultraviolet (UV) detector operating at a suitable wavelength. Chromatogram peaks are recorded and integrated using a recording integrator. The concentration of the compound in the effluent from the generator column, i.e., the water solubility of the compound, is determined from the mass of the compound (solute) extracted from a measured volume of water (solvent).

(ii) Since the HPLC method is only applicable to compounds that absorb in the UV, an alternate GC method, or any other reliable procedure (which must be approved by OPPTS), can be used for those compounds that do not absorb in the UV. In the GC method the saturated solutions produced in the generator column are extracted using an appropriate organic solvent that is subsequently injected into the GC, or any other suitable analytical device, for analysis of the test compound.

(4) *Reference chemicals.* Table 1 of this section lists the water solubilities at 25 °C for a number of reference chemicals as obtained from the scientific literature. The data from Wasik et al. (as described in the reference listed in paragraph (e)(11) of this section), Miller et al. and Tewari et al. (as described in the references listed in paragraphs (e)(7) and (e)(10) of this section, respectively) were obtained from the generator column method. The water solubilities data were also obtained from Mackay et al. and Yalkowski et al. (as described in the references listed in paragraphs (e)(4) and (e)(12) of this section, respectively) and other scientists by the conventional shake flask method. These data have been provided primarily so that the generator column method can be calibrated from time to time and to allow the chemical testing laboratory an opportunity to compare its results with those listed in table 1 of this section. The water solubility values at 25 °C reported by Yalkowski et al. are their preferred values and, in general, represent the best available water solubility data at 25 °C. The testing laboratory has the option of choosing its own reference chemicals, but references must be given to establish the validity of the measured values of the water solubility.

TABLE 1.—WATER SOLUBILITIES AT 25 °C OF SOME REFERENCE CHEMICALS

Reference chemical	Water solubility (ppm at 25 °C)		
	Wasik (generator column method)	Yalkowski[1,5]	Other literature references
2-Heptanone	[2]4080	4300	[5]4330
1-Chlorobutane	[2]873	872.9	[7]666
Ethylbenzene	[2]187	208	[7]162
1,2,3-Trimethylbenzene	[2]65.5	75.2	[7]48.2
Biphenyl	[3,10]6.71	7.48	[8]6.62
Phenanthrene	[4]1.002	1.212	—
2,4,6-Trichlorobiphenyl	[3,10]0.226	0.225	[8]0.119
2,3,4,5-Tetrachlorobiphenyl	[3,10]0.0209	0.01396	[8]0.0192
Hexachlorobenzene	—	0.004669	[9]0.00996
2,3,4,5,6-Pentachlorobiphenyl	[3,10]0.00548	0.004016	[8]0.0068

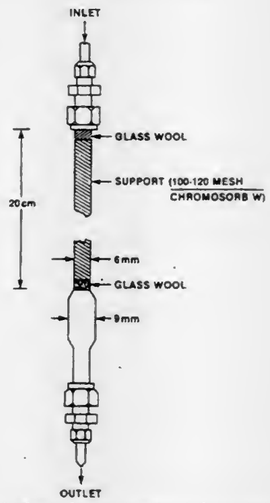
[1] Preferred water solubility at 25 °C by Yalkowski et al. (1990) in paragraph (e)(12) of this section based on a critical review of all the experimental water solubility data published.
[2] Tewari et al. (1982) in paragraph (e)(10) of this section.
[3] Leifer et al. (1983) in paragraph (e)(3) of this section.
[4] May, Wasik, and Freeman (1978, 1978a) in paragraphs (e)(5) and (6) of this section.
[5] Yalkowski et al. (1990) in paragraph (e)(12) of this section.
[6] Hansch et al. (1968) in paragraph (e)(2) of this section.
[7] Sutton and Calder (1975) in paragraph (e)(9) of this section.
[8] Mackay et al. (1980) in paragraph (e)(4) of this section.
[9] The elution chromatographic method from Organization for Economic Cooperation and Development (OECD) (1981) in paragraph (e)(8) of this section.
[10] Miller et al. (1984) in paragraph (e)(7) of this section.

(5) *Applicability and specificity.* (i) Procedures are described in this section to determine the water solubility for liquid or solid compounds. The water solubility can be determined in very pure water, buffer solution for compounds that reversibly ionize or protonate, or in artificial seawater as a function of temperature (i.e., in the range of temperatures of environmental concern). This section is not applicable to the water solubility of gases.

(ii) This section is designed to determine the water solubility of a solid or liquid test chemical in the range of 1 ppb to 5,000 ppm. For chemicals whose solubility is below 1 ppb, the water solubility should be characterized as "less than 1 ppb" with no further quantification. For solubilities greater than 5,000 ppm, the shake flask method should be used, see paragraph (e)(15) of this section.

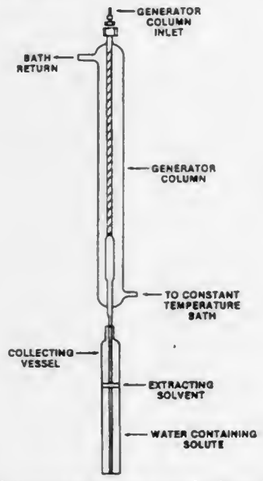
(c) *Test procedure*—(1) *Test conditions*—(i) *Special laboratory equipment*—(A) *Generator column.* (*1*) Either of two different designs shall be used depending on whether the eluted aqueous phase is analyzed by HPLC in paragraph (c)(3)(ii) of this section or by solvent extraction followed by GC (or any other reliable quantitative) analysis of solvent extract in paragraph (c)(3)(iv) of this section. The design of the generator column is shown in the following figure 1:

Figure 1—Generator Column



(*2*) The column consists of a 6 mm (¼ in) O.D. pyrex tube joined to a short enlarged section of 9 mm pyrex tubing which in turn is connected to another section of 6 mm (¼ in) O.D. pyrex tubing. Connections to the inlet teflon tubing (⅛ in O.D.) and to the outlet stainless steel tubing (1/16 in O.D.) shall be made by means of stainless steel fittings with teflon ferrules. The column is enclosed in a water jacket for temperature control as shown in the following figure 2:

Figure 2—Setup Showing Generator Column Enclosed in a Water Jacket and Overall Arrangement of the Apparatus Used in the GC Method



(B) Constant temperature bath with circulation pump-bath and capable of controlling temperature to ± 0.05 °C, see paragraph (c)(3) of this section.

(C) HPLC equipped with a variable wavelenth UV absorption detector operating at a suitable wavelength and a recording integrator in paragraph (c)(3)(ii) of this section.

(D) Extractor column—6.6 × 0.6 cm stainless steel tube with end fittings containing 5 µm frits filled with a superficially porous phase packing (Bondapack C^{18}/Corasil: Waters Associates) in paragraph (c)(3)(ii) of this section.

(E) Two 6-port high-pressure rotary switching valves in paragraph (c)(3)(ii) of this section.

(F) Collection vessel—8 × ¾ in section of pyrex tubing with a flat bottom connected to a short section of ⅜ in O.D. borosilicate glass tubing in figure 2 in paragraph (c)(1)(i)(A)(*2*) of this section. The collecting vessel is sealed with a ⅜ in teflon cap fitting in paragraph (c)(3)(iii) of this section.

(G) GC, or any other reliable analytical equipment, which has a detector sensitive to the solute of interest in paragraph (c)(3)(iii) of this section.

(ii) *Purity of water.* Water meeting appropriate American Society for Testing and Materials (ASTM) Type II standards, or an equivalent grade, are recommended to minimize the effects of dissolved salts and other impurities on water solubility. ASTM Type II water is presented in the reference listed in paragraph (e)(13) of this section.

(iii) *Purity of solvents.* All solvents used in this method must be reagent or HPLC grade. Solvents must contain no impurities which could interfere with the determination of the test compound.

(iv) *Seawater.* When the water solubility in seawater is desired, the artificial seawater described in paragraph (c)(2)(ii) of this section must be used.

(v) *Effect of pH on solubility.* For chemicals that reversibly ionize or protonate with a pK_a or pK_b between 3 and 11, experiments must be performed at pH's 5.0, 7.0, and 9.0 using appropriate buffers.

(*2*) *Preparation of reagents and solutions*—(i) *Buffer solutions.* Prepare buffer solutions as follows:

(A) pH 3.0—to 250 mL of 0.10M potassium hydrogen phosphate add 111 mL of 0.10 M hydrochloric acid; adjust the final volume to 500 mL with reagent grade water.

(B) pH 5.0—to 250 mL of 0.1M potassium hydrogen phthalate add 113 mL of 0.1M sodium hydroxide; adjust the final volume to 500 mL with reagent grade water.

(C) pH 7.0—to 250 mL of 0.1M potassium dihydrogen phosphate add 145 mL of 0.1M sodium hydroxide; adjust the final volume to 500 mL with reagent grade water.

(D) pH 9.0—to 250 mL of 0.075M borax add 69 mL of 0.1M HCl; adjust the final volume to 500 mL with reagent grade water.

(E) pH 11.0—to 250 mL of 0.05 M sodium bicarbonate add 3 mL of 0.10 M sodium hydroxide; adjust the final volume to 500 mL with reagent grade water.

(ii) Check the pH of each buffer solution with a pH meter at 25 °C and adjust to pH 5.0, 7.0, or 9.0, if necessary. If the pH of the solution has changed by ±0.2 pH units or more after the addition of the test compound, then a more concentrated buffer is required for that pH determination. The sponsor should then choose a more suitable buffer.

(iii) *Artificial seawater.* Add the reagent-grade chemicals listed in table 2 of this section in the specified amounts and order to 890 mL of reagent-grade water. Each chemical shall be dissolved before another one is added.

TABLE 2.—CONSTITUENTS OF ARTIFICIAL SEAWATER[1]

Chemical	Amount
NaF	3 mg
$SrCl_2.6H_2O$	20 mg
H_3BO_3	30 mg
KBr	100 mg
KCl	700 mg
$CaCl_2.2H_2O$	1.47 gram (g)
Na_2SO_4	4.00 g
$MgCl_2.6H_2O$	10.78 g
NaCl	23.50 g
$Na_2SiO_3.9H_2O$	20 mg
$NaHCO_3$	200 mg

[1] If the resulting solution is diluted to 1 L, the salinity should be 34±0.5 g/kilogram (kg) and the pH 8.0±0.2. The desired test salinity is attained by dilution at time of use.

(3) *Performance of the test.* Using either the procedures in paragraph (c)(3)(ii) or (c)(3)(iii) of this section, determine the water solubility of the test compound at 25 °C in reagent-grade water or buffer solution, as appropriate. Under certain circumstances, it may be necessary to determine the water solubility of a test compound at 25 °C in artificial seawater. The water solubility can also be determined at other temperatures of environmental concern by adjusting the temperature of the water bath to the appropriate temperature.

(i) Prior to the determination of the water solubility of the test chemical, two procedures shall be followed.

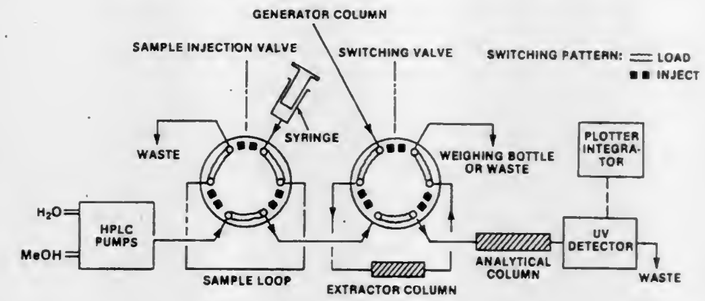
(A) The saturated aqueous solution leaving the generator column must be tested for the presence of an emulsion, using a Tyndall procedure. If colloids are present, they must be eliminated prior to the injection into the extractor column. This may be achieved by lowering the flow rate of the water.

(B) The efficiency of the removal of the solute (i.e. test chemical) by the solvent extraction from the extraction column must be determined and used in the determination of the water solubility of the test chemical.

(ii) *Procedure A—HPLC method*—(A) *Scope.* (*1*) Procedure A covers the determination of the aqueous solubility of compounds which absorb in the UV.

(*i*) The HPLC analytical system is shown schematically in the following figure 3:

Figure 3—Schematic of HPLC—Generator Column Flow System



(*ii*) Two reciprocating piston pumps deliver the mobile phase (water or solvent/water mixture) through two 6-port high-pressure rotary valves and a 30 × 0.6 cm C^{18}/Corasil analytical column to a variable wavelength UV absorption detector operating at a suitable wavelength; chromatogram peaks are recorded and integrated with a recording integrator. One of the 6-port valves is the sample injection valve used for injecting samples of standard solutions of the solute in an appropriate concentration for determining RFs of standard solutions of basic chromate for determining the sample-loop volume. The other 6-port valve in the system serves as a switching valve for the extractor column which is used to remove solute from the aqueous solutions.

(*2*) The general procedure for analyzing the aqueous phase is as follows (a detailed procedure is given in paragraph (c)(3)(ii)(B)(*4*) of this section).

(*i*) Direct the aqueous solution to "Waste," see figure 3 in paragraph (c)(3)(ii)(A)(*1*)(*i*) of this section, with the switching valve in the inject position in order to equilibrate internal surfaces with the solution, thus ensuring that the analyzed sample would not be depleted by solute adsorption on surfaces upstream from the valve.

(*ii*) At the same time, water is pumped from the HPLC pumps in order to displace the solvent from the extractor column.

(*iii*) The switching valve is next changed to the load position to divert a sample of the solution through the extractor column, and the liquid leaving this column is collected in a weighing bottle. During this extraction step, the mobile phase is changed to a solvent/water mixture to condition the analytical column.

(*iv*) After the desired volume of sample is extracted, the switching valve is returned to the inject position for elution and analysis. Assuming that there is no breakthrough of solute from the extractor column during the extraction step, the chromatographic peak represents all of the solute in the sample, provided that the extraction efficiency is 100%. If the extraction efficiency is less than 100%, then the extraction efficiency shall be used to determine the actual weight of the solute extracted.

(*v*) The solute concentration in the aqueous phase is calculated from the peak area and the weight of the extracted liquid collected in the weighing bottle.

(B) *Determinations*—(*1*) *Sample-loop volume.* Accurate measurement of the sample loop may be accomplished by using the spectrophotometric method of Devoe et al. under paragraph (e)(1) of this section. For this method measure absorbance, A_{loop}, at 373 nm of at least three solutions, each of which is prepared by collecting from the sample valve an appropriate number, n, of loopfuls of an aqueous stock solution of K_2CrO_4 (1.3% by weight) and diluting to 50 mL with 0.2% KOH. (For a 20 µL loop, use n = 5; for a 50 µL loop, use n = 2.) Also measure the absorbance, A_{stock}, of the same stock solution after diluting 1:500 with 0.2% KOH. Calculate the loop volume to the nearest 0.1 µL using the equation:

Equation 1:

$$V_{loop} = \left(A_{loop} / A_{stock}\right)\left(10^{-4}/n\right)$$

(*2*) *RF.* (*i*) For all determinations adjust the mobile phase solvent/water ratio and flow rate to obtain a reasonable retention time on the HPLC column. For example, typical concentrations of solvent in the mobile phase range from 50 to 100% while flow rates range from 1 to 3 mL/min; these conditions give a 3 to 5 min retention time.

(*ii*) Prepare standard solutions of known concentrations of the solute in a suitable solvent. Concentrations must give a recorder response within the maximum response of the detector. Inject samples of each standard solution into the HPLC system using the calibrated sample loop. Obtain an average peak area from at least three injections of each standard sample at a set absorbance unit full scale (AUFS), *i.e.*, at the same absorbance scale attenuation setting.

(*iii*) Calculate the RF from the following equation:

Equation 2:

$$\text{Response Factor (RF)} = \frac{\text{Concentration mol/L}}{(\text{Average Area})\,(\text{AUFS})}$$

(*3*) *Loading of the generator column.* (*i*) The design of the generator column was described in paragraph (c)(1)(i) of this section and is shown in figure 1 in paragraph (c)(1)(i)(A) of this section. To pack the column, a plug of silanized glass wool is inserted into one end of the 6 mm pyrex tubing. Silanized diatomaceous silica support (about 0.5g 100–120 mesh Chromosorb (W) chromatographic support material) is poured into the tube with tapping and retained with a second plug of silanized glass wool.

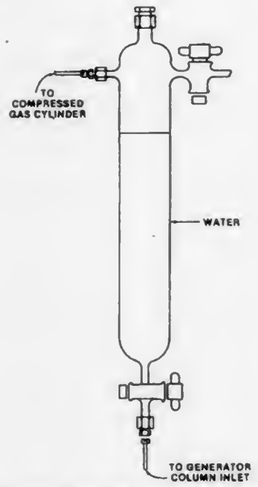
(*ii*) If the solute is a liquid, the column is loaded by pulling the liquid solute through the dry support with gentle suction. If the solute is a solid, a 1%

solution of the solid in a volatile solvent is added to the dry packing. The solvent is then distilled off the column under reduced pressure. After loading the column draw water up through the column to remove entrapped air.

(*4*) *Analysis of the solute.* Use the following procedure to collect and analyze the solute.

(*i*) With the switching valve (figure 3 in paragraph (c)(3)(ii)(A)(*1*)(*i*) of this section) in the inject position (i.e., water to waste), pump water through the generator column at a flow rate of approximately 1 mL/min for approximately 5 minutes (min) to bring the system into equilibrium. Pump water to the generator column by means of a minipump or pressurized water reservoir as shown in the following figure 4:

Figure 4—Water Reservoir for GC Method



(*ii*) Flush out the solvent that remains in the system from previous runs by changing the mobile phase to 100% H_2O and allowing the water to reach the HPLC detector, as indicated by a negative reading. As soon as this occurs, place a 25 mL weighing bottle (weighed to the nearest mg) at the waste position and immediately turn the switching valve to the load position.

(*iii*) Collect an amount of water (as determined by trial and error) in the weighing bottle, corresponding to the amount of solute adsorbed by the extractor column that gives a large on-scale detector response. During this extraction step, switch back to the original HPLC mobile phase composition, i.e., solvent/water mixture, to condition the HPLC analytical column.

(*iv*) After the desired volume of sample has been extracted, turn the switching valve back to the inject position (figure 3 in paragraph (c)(3)(ii)(A)(*1*)(*i*) of this section); at the same time turn on the recording integrator. The solvent/water mobile phase will elute the solute from the extractor column and transfer the solute to the HPLC analytical column.

(*v*) Remove the weighing bottle, cap it, and replace it with the waste container. Determine the weight of water collected to the nearest mg and record the corresponding peak area. Using the same AUFS setting repeat the analysis of the solute at least two more times and determine the average ratio of peak area to grams of water collected. In this equation, s = solubility (M), RF = response factor, V_{loop} = sample-loop volume (L), and R = ratio of area to grams of water. Calculate the solute solubility in water using the following equation:

Equation 3:

$$s = (997\ g/L)(RF)(V_{loop})(AUFS)(R)$$

(iii) *Procedure B—GC method*— (A) *Scope.* In the GC method, or any other analytical method, aqueous solutions from the generator column enter a collecting vessel (figure 2 in paragraph (c)(1)(i)(A)(*2*) of this section) containing a known weight of extracting solvent which is immiscible in water. The outlet of the generator column is positioned such that the aqueous phase always enters below the extracting solvent. After the aqueous phase is collected, the collecting vessel is stoppered and the quantity of aqueous phase is determined by weighing. The solvent and the aqueous phase are equilibrated by slowly rotating the collecting vessel. The extraction efficiency of the solvent must be determined at this time. A small amount of the extracting solvent is removed and injected into a gas chromograph equipped with an appropriate detector. The solute concentration in the aqueous phase is determined from a calibration curve constructed using known concentrations of the solute.

(B) *Alternative method.* If another (approved) analytical method is used instead of the GC, that method shall be used to determine quantitatively the amount of solute present in the extraction solvent.

(C) *Determinations*—(*1*) *Calibration curve.* (*i*) Prepare solute standard solutions of concentrations covering the range of the solute solubility. Select a column and optimum GC operating conditions for resolution between the solute and solvent and the solute and extracting solvent. Inject a known volume of each standard solution into the injection port of the GC. For each standard solution determine the average of the ratio R of peak area to volume (in microliters) for three chromatographic peaks from three injections.

(*ii*) After running all the standard solutions, determine the coefficients, a and b, using a linear regression equation of C vs. R in the following form:

Equation 4:

$$C = aR + b$$

(*iii*) If another analytical method is used, the procedures described in paragraph (c)(3)(iii)(C)(*1*) of this section shall be used to determine quantitatively the amount of solute in the extraction solvent.

(*2*) *Loading of the generator column.* The generator column is packed and loaded with solute in the same manner as for the HPLC method described under paragraph (c)(3)(ii)(B)(*3*) of this section. As shown in figure 2 in paragraph (c)(1)(i)(A)(*2*) of this section, attach approximately 20 cm of straight stainless steel tubing to the bottom of the generator column. Connect the top of the generator column to a water reservoir (figure 4 in paragraph (c)(3)(ii)(B)(*4*)(*i*) of this section) using teflon tubing. Use air or nitrogen pressure (5 PSI) from an air or nitrogen cylinder to force water from the reservoir through the column. Collect water in an Erlenmeyer flask for approximately 15 min while the solute concentration in water equilibrates; longer time may be required for less soluble compounds.

(*3*) *Collection and extraction of the solute.* During the equilibration time, add a known weight of extracting solvent to a collection vessel which can be capped. The extracting solvent should cover the bottom of the collection vessel to a depth sufficient to submerge the collecting tube but still maintain 100:1 water/solvent ratio. Record the weight (to the nearest mg) of a collection vessel with cap and extracting solvent. Place the collection vessel under the generator column so that water from the collecting tube enters below the level of the extracting solvent (figure 2 in paragraph (c)(1)(i)(A)(*2*) of this section). When the collection vessel is filled, remove it from under the generator column, replace cap, and weigh the filled vessel. Determine the weight of water collected. Before analyzing for the solute, gently shake the collection vessel contents for approximately 30 min, controlling the rate of shaking so as not to form an emulsion; rotating the flask end over end five times per minute is sufficient.

(*4*) *Analysis of the solute.* (*i*) After shaking, allow the collection vessel to stand for approximately 30 min; then remove a known volume of the extracting solvent from the vessel using a microliter syringe and inject it into the GC. Record the ratio of peak area to volume injected and, from the regression equation of the calibration line, determine the concentration of solute in the extracting solvent. In this equation, C_{es} is the concentration of solute in extracting solvent (M), d_{H2O} and d_{es} are the densities of water and extracting solvent, respectively, and g_{es} and g_{H2O} are the grams of extracting solvent and water, respectively, contained in the collection vessel. The concentration of solute in water C(M) is determined from the following equation:

Equation 5:

$$C(M) = (C_{es})\left[\left(d_{H_2O}/d_{es}\right)\right]\left[\left(g_{es}/g_{H_2O}\right)\right]$$

(*ii*) Make replicate injections from each collecting vessel to determine the average solute concentration in water for each vessel. To make sure the generator column has reached equilibrium, run at least two additional (for a total of three) collection vessels and analyze the extracted solute as described above. Calculate the water solubility of the solute from the average solute concentration in the three vessels.

(iv) *Modification of procedures for potential problems.* If the test compound decomposes in one or more of the aqueous solvents required during the period of the test at a rate such that an accurate value for water solubility cannot be obtained, then it will be necessary to carry out detailed transformation studies; e.g., hydrolysis in paragraph (e)(16) of this section. If decomposition is due to aqueous photolysis, then it will be necessary to carry out water solubility studies in the dark, under red or yellow lights, or by any other suitable method to eliminate this transformation process.

(d) *Data and reporting*—(1) *Test report.* (i) For each set of conditions, (e.g., temperature, pure water, buffer solution, artificial seawater) required for the study, provide the water solubility value for each of three determinations, the mean value, and the standard deviation.

(ii) For compounds that decompose at a rate such that a precise value for the water solubility cannot be obtained, provide a statement to that effect.

(iii) For compounds with water solubility below 1 ppb, report the value as "less than 1 ppb."

(2) *Specific analytical, calibration, and recovery procedures.* (i) For the HPLC method describe and/or report:

(A) The method used to determine the sample-loop volume and the average and standard deviation of that volume.

(B) The average and standard deviation of the RF.

(C) Any changes made or problems encountered in the test procedure.

(ii) For the GC, or any other analytical, method report:

(A) The column and GC operating conditions of temperature and flow rate, or the operating conditions of any other analytical method used.

(B) The average and standard deviation of the average area per microliter obtained for each of the standard solutions.

(C) The form of the regression equation obtained in the calibration procedure.

(D) The extracting solvent used, and its extraction efficiency.

(E) The average and standard deviation of solute concentration in each collection vessel.

(F) Any changes made or problems encountered in the test procedure.

(G) If applicable, a complete description of the analytical method which was used instead of the GC method.

(e) *References.* For additional information on this test guideline, the following references should be consulted. These references are available from the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, excluding legal holidays.

(1) DeVoe, H. et al., Generator columns and high pressure liquid chromatography for determining aqueous solubilities and octanol-water partition coefficients of hydrophobic substances. *Journal of Research, National Bureau of Standards,* 86:361–366 (1981).

(2) Hansch, C. et al., The linear free-energy relationship between partition coefficients, and the aqueous solubility of organic liquids. *Journal of Organic Chemistry* 33:347-350 (1968).

(3) Leifer, A. et al., Environmental transport and transformation of polychlorinated biphenyls. Chapter 1. U.S. Environmental Protection Agency Report: EPA-560/5–83–005 (1983).

(4) Mackay, D. et al., Relationships between aqueous solubility and octanol-water partition coefficient. *Chemosphere* 9:701-711 (1980).

(5) May, W.E. et al., Determination of the aqueous solubility of polynuclear aromatic hydrocarbons by a coupled column liquid chromatographic technique. *Analytical Chemistry* 50:175–179 (1978).

(6) May, W.E. et al. Determination of the solubility behavior of some polycyclic aromatic hydrocarbons in the water. *Analytical Chemistry,* 50:997–1000 (1978a).

(7) Miller, N.M. et al., Aqueous solubilities, octanol/water partition coefficients, and entropy of melting of chlorinated benzenes and biphenyls. *Journal of Chemical and Engineering Data* 29:184-190 (1984).

(8) OECD/Organization for Economic Cooperation and Development. Test Guideline No. 105. Water solubility column elution-flask method (1981).

(9) Sutton, C. and Calder, J.A., Solubility of alkylbenzenes in distilled water and seawater at 25 °C. *Journal of Chemical and Engineering Data* 20:320–322 (1975).

(10) Tewari, Y.B. et al., Aqueous solubility and octanol/water partition coefficient of organic compounds at 25 °C. *Journal of Chemical and Engineering Data* 27:451-454 (1982).

(11) Wasik, S.P. et al., Octanol/Water Partition Coefficient and Aqueous Solubilities of Organic Compounds. NBS Report NBSIR 81–2406. Washington, DC: National Bureau of Standards, U.S. Department of Commerce (1981).

(12) Yalkowski, S.H. et al., "Aquasol database of aqueous solubilities of organic compounds"; Fifth Edition. University of Arizona, College of Pharmacy, Tucson, AZ 85721 (1990) (available at http://www.pharm.arizona.edu/aquasol/index.html).

(13) ASTM D 1193–91, *Standard Specification for Reagent Water.* American Society for Testing and Materials (ASTM). 1916 Race St., Philadelphia, PA 19103.

Subpart H—[Amended]

3. Sections 799.9110, 799.9120, 799.9130, 799.9305, 799.9310, 799.9325, 799.9355, 799.9365, 799.9410, 799.9430, 799.9537, 799.9630, and 799.9748 are added to subpart H to read as follows:

§ 799.9110 TSCA acute oral toxicity.

(a) *Scope.* This section is intended to meet the testing requirements under section 4 of the Toxic Substances Control Act (TSCA). In the assessment and evaluation of the toxic characteristics of a substance, determination of acute oral toxicity is usually an initial step. It provides

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information on health hazards likely to arise from short-term exposure by the oral route. Data from an acute study may serve as a basis for classification and labeling. It is traditionally a step in establishing a dosage regimen in subchronic and other studies and may provide initial information on the mode of toxic action of a substance. An evaluation of acute toxicity data should include the relationship, if any, between the exposure of animals to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, the reversibility of observed abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects.

(b) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) harmonized test guideline 870.1100 (August 1998, final guideline). This source is available at the address in paragraph (f) of this section.

(c) *Definitions.* The following definitions apply to this section.

Acute oral toxicity is the adverse effects occurring within a short period of time after oral administration of either a single dose of a substance or multiple doses given within a 24–hour period.

Dosage is a general term comprising the dose, its frequency, and the duration of dosing.

Dose is the amount of test substance administered. Dose is expressed as weight of test substance (milligrams, grams) per unit weight of test animal (e.g., milligrams per kilogram).

Dose-effect is the relationship between the dose and the magnitude of a defined biological effect either in an individual or in a population sample.

Dose-response is the relationship between the dose and the proportion of a population sample showing a defined effect.

LD_{50} (median lethal dose) is a statistically derived estimate of single dose of a substance that can be expected to cause death in 50% of animals when administered by the oral route. The LD_{50} value is expressed in terms of weight of test substance per unit weight of test animal (milligrams per kilogram).

(d) *Alternative approaches to the determination of acute toxicity.* (1) EPA will accept the following procedures to reduce the number of animals used to evaluate acute effects of chemical exposure while preserving its ability to make reasoned judgments about safety:

(i) *Estimation of acute oral toxicity.* When further study is warranted, EPA generally supports limiting such tests to those using the lowest number of animals feasible. EPA will accept three alternative Organization for Economic Cooperation and Development (OECD) test methods in place of the "traditional" acute oral toxicity test. The three OECD alternatives are the following:

(A) The up and down procedure as described in OECD Guideline 425 referenced in paragraph (f)(4) of this section.

(B) The acute toxic class method as described in OECD Guideline 423 and referenced in paragraph (f)(6) of this section.

(C) The fixed dose method as described in OECD Guideline 420 and referenced in paragraph (f)(5) of this section.

(ii) *Limit test.* When data on structurally related chemicals are inadequate, a limit test may be considered. If rodents are used, a limit dose of at least 2,000 mg per kilogram of body weight may be administered to a single group of five males and five females using the procedures described in paragraph (e) of this section. If no lethality is demonstrated, no further testing for acute oral toxicity is needed. (Under current policy and regulations for pesticide products, precautionary statements may still be required unless there are data to indicate the LD_{50} is greater than 5,000 mg/kg.) If compound-related mortality is produced in the limit test, further study may need to be considered.

(2) [Reserved]

(e) *Conventional acute toxicity test*—(1) *Principle of the test method.* The test substance is administered orally by gavage in graduated doses to several groups of experimental animals, one dose being used per group. The doses chosen may be based on the results of a range finding test. Subsequently, observations of effects and deaths are made. Animals that die during the test are necropsied, and at the conclusion of the test the surviving animals are sacrificed and necropsied. This section is directed primarily to studies in rodent species but may be adapted for studies in nonrodents. Animals showing severe and enduring signs of distress and pain may need to be humanely sacrificed. Dosing test substances in a way known to cause marked pain and distress due to corrosive or irritating properties need not be carried out.

(2) *Substance to be tested.* Test, control, and reference substances are described in 40 CFR Part 792—Good Laboratory Practice Standards.

(3) *Test procedures*—(i) *Preparations.* Healthy young adult animals are acclimatized to the laboratory conditions for at least 5 days prior to the test before the test animals are randomized and assigned to the treatment groups.

(ii) *Animal selection*—(A) *Species and strain.* Although several mammalian test species may be used, the rat is the preferred species. Commonly used laboratory strains must be employed. If another species is used, the tester must provide justification and reasoning for its selection.

(B) *Age.* Young adult rats between 8– and 12–weeks–old at the beginning of dosing should be used. Rabbits should be at least 12 weeks of age at study initiation. The weight variation of animals used in a test must be within 20% of the mean weight for each sex.

(C) *Number and sex of animals.* (*1*) At least five experimentally naive rodents are used at each dose level. They should all be of the same sex. After completion of the study in one sex, at least one group of five animals of the other sex is dosed to establish that animals of this sex are not markedly more sensitive to the test substance. The use of fewer animals may be justified in individual circumstances. Where adequate information is available to demonstrate that animals of the sex tested are markedly more sensitive, testing in animals of the other sex may be dispensed with. An acceptable option would be to test at least one group of five animals per sex at one or more dose levels to definitively determine the more sensitive sex prior to conducting the main study.

(*2*) The females must be nulliparous and nonpregnant.

(*3*) In acute toxicity tests with animals of a higher order than rodents, the use of smaller numbers should be considered.

(D) *Assignment of animals.* Each animal must be assigned a unique identification number. A system to assign animals to test groups and control groups randomly is required.

(E) *Housing.* Animals may be group-caged by sex, but the number of animals per cage must not interfere with clear observation of each animal. The biological properties of the test substance or toxic effects (e.g., morbidity, excitability) may indicate a need for individual caging.

(*1*) The temperature of the experimental animal rooms should be at 22±3 °C for rodents.

(*2*) The relative humidity of the experimental animal rooms should be 30 to 70%.

(*3*) Where lighting is artificial, the sequence should be 12–hours light/12–hours dark.

(*4*) For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water.

(iii) *Dose levels and dose selection.* (A) Three dose levels must be used, spaced appropriately to produce test groups with a range of toxic effects and mortality rates. The data collected must be sufficient to produce a dose-response curve and permit an acceptable estimation of the LD_{50}. Range finding studies using single animals may help to estimate the positioning of dose groups so that no more than three dose levels will be necessary.

(B) Limit test. This test has been defined and described in paragraph (d)(1)(ii) of this section.

(C) Vehicle. Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, it should not elicit toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the use of an aqueous solution be considered first, followed by consideration of a solution in oil (e.g., corn oil), and then by consideration of possible solution in other vehicles. Toxic characteristics of nonaqueous vehicles should be known, and, if not known, should be determined before the test.

(D) Volume. The maximum volume of liquid that can be administered at one time depends on the size of the test animal. In rodents, the volume should not exceed 1 mL/100 g body weight, except when an aqueous solution is used in which case 2 mL/100 g may be administered. Either constant volume or constant concentration administration is acceptable when dosing, provided the following guidance is employed. When possible, the liquid test material should be dosed neat. Otherwise, it may be diluted, using the highest concentration possible, although volumes less than 0.5 mL per animal would not be required. Lower dose volumes are acceptable if they can be accurately administered. Solid materials should be suspended or dissolved in the minimum amount of vehicle and dosed at the highest concentration possible.

(iv) *Exposure and exposure duration.* (A) Animals must be fasted prior to test substance administration. For the rat, feed should be withheld overnight; for other rodents with higher metabolic rates a shorter period of fasting is appropriate.

(B) The test substance must be administered in a single dose by gavage, using a stomach tube or suitable intubation cannula.

(C) If a single dose is not possible, the dose may be given in smaller fractions over a period not exceeding 24 hours. Where a dose is administered in fractions, it may be necessary to provide the animals with food and water, depending on the length of the dosing period.

(D) After the substance has been administered, feed may be withheld for an additional 3–4 hours.

(v) *Observation period.* Although 14 days is recommended as a minimum observation period, the duration of observation should not be fixed rigidly. It should be determined by the toxic reactions, rate of onset, and length of recovery period, and may thus be extended when considered necessary. The time at which signs of toxicity appear, their duration, and the time to death are important, especially if there is a tendency for deaths to be delayed.

(vi) *Observation of animals.* (A) A careful clinical examination must be made at least once each day.

(B) Additional observations must be made daily, especially in the early days of the study. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation of weak or moribund animals).

(C) Observations must be detailed and carefully recorded, preferably using explicitly defined scales. Observations should include, but not be limited to, evaluation of skin and fur, eyes and mucous membranes, respiratory and circulatory effects, autonomic effects such as salivation, central nervous system effects, including tremors and convulsions, changes in the level of activity, gait and posture, reactivity to handling or sensory stimuli, altered strength, and stereotypies or bizarre behavior (e.g., self-mutilation, walking backwards).

(D) Individual weights of animals must be determined shortly before the test substance is administered, weekly thereafter, and at death. Changes in weights should be calculated and recorded when survival exceeds 1 day.

(E) The time of death should be recorded as precisely as possible.

(vii) *Gross pathology.* (A) At the end of the test, surviving animals must be weighed and sacrificed.

(B) A gross necropsy must be performed on all animals under test. All gross pathology changes should be recorded.

(C) If necropsy cannot be performed immediately after a dead animal is discovered, the animal should be refrigerated (not frozen) at temperatures low enough to minimize autolysis. Necropsies should be performed as soon as practicable, normally within a day or two.

(viii) *Additional evaluation.* Microscopic examination of organs showing evidence of gross pathology in animals surviving 24 hours or more should also be considered because it may yield useful information.

(ix) *Data and reporting*—(A) *Treatment of results.* Data must be summarized in tabular form, showing for each test group the number of animals at the start of the test, body weights, time of death of individual animals at different dose levels, number of animals displaying other signs of toxicity, description of toxic effects, and necropsy findings. Any methods used for calculation of the LD_{50} or any other parameters should be specified and referenced. Methods for parameter estimation are described in the references listed in paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(B) *Evaluation of results.* An evaluation should include the relationship, if any, between exposure of the animals to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects. The LD_{50} value should always be considered in conjunction with the observed toxic effects and any necropsy findings. The LD_{50} value is a relatively coarse measurement, useful only as a reference value for classification and labeling purposes, and for an expression of the lethal potential of the test substance by the ingestion route. Reference should always be made to the experimental animal species in which the LD_{50} value was obtained.

(C) *Test report.* In addition to the reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the following specific information must be reported. The test report shall include:

(*1*) Species, strain, sex, and source of test animals.

(*2*) Method of randomization in assigning animals to test and control groups.

(*3*) Rationale for selection of species, if other than that recommended.

(*4*) Tabulation of individual and test group data by sex and dose level (e.g., number of animals exposed, number of animals showing signs of toxicity and number of animals that died or were sacrificed during the test).

(*i*) Description of toxic effects, including their time of onset, duration, reversibility, and relationship to dose.

(*ii*) Body weights.

(*iii*) Time of dosing and time of death, after dosing.

(*iv*) Dose-response curves for mortality and other toxic effects (when permitted by the method of determination).

(*v*) Gross pathology findings.

(*vi*) Histopathology findings and any additional clinical chemistry evaluations, if performed.

(*5*) Description of any pretest conditioning, including diet, quarantine and treatment for disease.

(*6*) Description of caging conditions including: Number (or change in number) of animals per cage, bedding material, ambient temperature and humidity, photoperiod, and identification of diet of test animals.

(*7*) Manufacturer, source, purity, and lot number of test substance.

(*8*) Relevant properties of substance tested including physical state and pH (if applicable).

(*9*) Identification and composition of any vehicles (e.g., diluents, suspending agents, and emulsifiers) or other materials used in administering the test substance.

(*10*) A list of references cited in the body of the report. References to any published literature used in developing the test protocol, performing the testing, making and interpreting observations, and compiling and evaluating the results.

(f) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., NW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Chanter, D.O. and Heywood, R. The LD_{50} Test: Some Considerations of Precision. *Toxicology Letters* 10:303–307 (1982).

(2) Finney, D.J. Chapter 3—Estimation of the median effective dose and Chapter 4—Maximum likelihood estimation, *Probit Analysis*, 3rd ed. Cambridge, London (1971).

(3) Finney, D.J. The Median Lethal Dose and Its Estimation. *Archives of Toxicology* 56:215–218 (1985).

(4) Organization for Economic Cooperation and Development. OECD Guidelines for the Testing of Chemicals. OECD Guideline 425: Acute Oral Toxicity: Up-and-Down Procedure, Approved: June 1998.

(5) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 420: Acute Oral Toxicity—Fixed Dose Method, Adopted: July 17, 1992.

(6) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 423: Acute Oral Toxicity—Acute Toxic Class Method, Adopted: March 22, 1996.

(7) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 401: Acute Oral Toxicity, Adopted: February 24, 1987.

§ 799.9120 TSCA acute dermal toxicity.

(a) *Scope.* This section is intended to meet the testing requirements under section 4 of the Toxic Substances Control Act (TSCA). In the assessment and evaluation of the toxic characteristics of a substance, determination of acute dermal toxicity is useful where exposure by the dermal route is likely. It provides information on health hazards likely to arise from short-term exposure by the dermal route. Data from an acute study may serve as a basis for classification and labeling. It is an initial step in establishing a dosage regimen in subchronic and other studies and may provide information on dermal absorption and the mode of toxic action of a substance by this route. An evaluation of acute toxicity data should include the relationship, if any, between the exposure of animals to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, the reversibility of observed abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects.

(b) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) harmonized test guideline 870.1200 (August 1998, final guideline). This source is available at the address in paragraph (f) of this section.

(c) *Definitions.* The following definitions apply to this section.

Acute dermal toxicity is the adverse effects occurring within a short time of dermal application of a single dose of a substance or multiple doses given within a 24–hour period.

Dosage is a general term comprising the dose, its frequency and the duration of dosing.

Dose is the amount of test substance applied. Dose is expressed as weight of test substance (grams, milligrams) per unit weight of test animal (e.g., milligrams per kilogram).

Dose-effect is the relationship between the dose and the magnitude of a defined biological effect either in an individual or in a population sample.

Dose-response is the relationship between the dose and the proportion of a population sample showing a defined effect.

LD_{50} (median lethal dose), dermal, is a statistically derived estimate of a single dose of a substance that can be expected to cause death in 50% of treated animals when applied to the skin. The LD_{50} value is expressed in terms of weight of test substance per unit weight of test animal (milligrams per kilogram).

(d) *Approaches to the determination of acute toxicity.* (1) EPA recommends the following means to reduce the number of animals used to evaluate acute effects of chemical exposure while preserving its ability to make reasonable judgments about safety:

(i) Using data from substantially similar mixtures. In order to minimize the need for animal testing, the Agency encourages the review of existing acute toxicity information on mixtures that are substantially similar to the mixture under investigation. In certain cases it may be possible to glean enough information to make preliminary hazard evaluations that may reduce the need for further animal testing.

(ii) Limit test. When data on structurally related chemicals are inadequate, a limit test may be considered. If rodents are used, a limit dose of at least 2,000 mg/kg bodyweight may be administered to a single group of five males and five females using the procedures described in paragraph (e) of this section. If no lethality is demonstrated, no further testing for acute dermal toxicity is needed. If compound-related mortality is produced, further study may need to be considered.

(2) [Reserved]

(e) *Conventional acute toxicity test*—(1) *Principle of the test method.* The test substance is applied dermally in graduated doses to several groups of experimental animals, one dose being used per group. The doses chosen may be based on the results of a range finding test. Subsequently, observations of effects and deaths are made. Animals that die during the test are necropsied, and at the conclusion of the test the surviving animals are sacrificed and necropsied. This section is directed primarily to studies in either rats, rabbits, or guinea pigs but may be adapted for studies in other species. Animals showing severe and enduring signs of distress and pain may need to be humanely sacrificed. Dosing test substances in a way known to cause marked pain and distress due to corrosive or irritating properties need not be carried out.

(2) *Substance to be tested.* Test, control, and reference substances are discussed in 40 CFR Part 792—Good Laboratory Practice Standards.

(3) *Test procedures*—(i) *Preparations.* Healthy young adult animals are acclimatized to the laboratory conditions for at least 5 days prior to the test before the test animals are randomized and assigned to the treatment groups.

(ii) *Animal selection*—(A) *Species and strain.* The rat, rabbit, or guinea pig may be used. The albino rabbit is preferred because of its size, ease of handling, skin permeability, and extensive data base. Commonly used laboratory strains must be employed. If a species other than rats, rabbits, or guinea pigs is used, the tester must provide justification and reasoning for its selection.

(B) *Age.* Young adult animals, rats between 8– and 12–weeks–old, rabbits at least 12–weeks–old, and guinea pigs between 5– and 6–weeks–old at the beginning of dosing should be used. The weight variation of animals used in a test must be within 20% of the mean weight for each sex.

(C) *Number and sex of animals.* (*1*) At least five experimentally naive animals with healthy intact skin are used at each dose level. They should all be of the same sex. After completion of the study in one sex, at least one group of five animals of the other sex is dosed to establish that animals of this sex are not markedly more sensitive to the test substance. The use of fewer animals may be justified in individual circumstances. Where adequate information is available to demonstrate that animals of the sex tested are markedly more sensitive, testing in animals of the other sex may be dispensed with. An acceptable option would be to test at least one group of five animals per sex at one or more dose levels to definitively determine the more sensitive sex prior to conducting the main study.

(*2*) The females must be nulliparous and nonpregnant.

(*3*) In acute toxicity tests with animals of a higher order than those mentioned above, the use of smaller numbers should be considered.

(D) *Assignment of animals.* Each animal must be assigned a unique identification number. A system to randomly assign animals to test groups and control groups is required.

(E) *Housing.* Animals should be housed in individual cages.

(*1*) The temperature of the experimental animal rooms should be at 22 ± 3 °C for rodents, 20 ± 3 °C for rabbits.

(*2*) The relative humidity of the experimental animal rooms should be 30 to 70%.

(*3*) Where lighting is artificial, the sequence should be 12–hours light/12–hours dark.

(*4*) For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water.

(iii) *Dose levels and dose selection.* (A) Three dose levels must be used and spaced appropriately to produce test groups with a range of toxic effects and mortality rates. The data must be sufficient to produce a dose-response curve and permit an acceptable estimation of the median lethal dose. Range finding studies using single animals may help to estimate the positioning of the dose groups so that no more than three dose levels will be necessary.

(B) Limit test. This test is described in paragraph (d)(2)(ii) of this section.

(C) Vehicle. Solids should be pulverized when possible. The test substance should be moistened sufficiently with water or, where necessary, a suitable vehicle to ensure good contact with skin. If a vehicle or diluent is needed, it should not elicit toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. In addition, the influence of the vehicle on penetration of skin by the test substance should be taken into account. It is recommended that wherever possible the use of an aqueous solution be considered first, followed by consideration of a solution in oil (e.g., corn oil), and then by consideration of possible solution in other vehicles. For nonaqueous vehicles the toxic characteristics of the vehicle should be known, and if not known should be determined before the test. Acceptable alternative vehicles include gum arabic, ethanol and water, carboxymethyl cellulose, glycerol, propylene glycol, PEG vegetable oil, and mineral oil as long as the vehicle is not irritating and the inability to use water or saline is justified in the report.

(iv) *Exposure and exposure duration.* The test substance must be administered over a period of 24 hours.

(v) *Preparation of animal skin.* Fur must be clipped from the dorsal area of the trunk of the test animals. Shaving may be employed, but it should be carried out at least 24 hours before dosing. Care must be taken to avoid abrading the skin, which would alter its permeability.

(vi) *Application of test substance.* (A) The test substance must be applied uniformly over a shaved or clipped area which is approximately 10% of the body surface area. The area starting at the scapulae (shoulders) to the wing of the ileum (hip bone) and half way down the flank on each side of the animal should be shaved or clipped. Liquid test materials should be undiluted if possible. With highly toxic substances, the surface area covered may be less, but as much of the area as possible should be covered with as thin and uniform a film as practical. The test material is not removed until 24 hours after application. In the case where less than 10% of the surface area is covered an approximation of the exposed areas should be determined.

(B) The test substance must be held in contact with the skin with a porous gauze dressing (<8 ply) and nonirritating tape throughout a 24–hour exposure period. The test site must be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance. Restrainers may be used to prevent the ingestion of the test substance, but complete immobilization is not a recommended method. Although a semiocclusive dressing is preferred, an occlusive dressing will also be acceptable.

(C) At the end of the exposure period, residual test substance should be removed where practicable using water or an appropriate solvent.

(vii) *Observation period.* Although 14 days is recommended as a minimum observation period, the duration of observation should not be fixed rigidly. It should be determined by the toxic reactions, rate of onset, and length of recovery period, and may thus be extended when considered necessary. The time at which signs of toxicity appear, their duration, and the time to death are important, especially if there is a tendency for deaths to be delayed.

(viii) *Observation of animals.* (A) A careful clinical examination must be made at least once each day.

(B) Additional observations must be made daily, especially in the early days of the study. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation of weak or moribund animals).

(C) Observations must be detailed and carefully recorded, preferably using explicitly defined scales. Observations should include, but not be limited to, evaluation of skin and fur, eyes and mucous membranes, respiratory and circulatory effects, autonomic effects such as salivation, central nervous system effects, including tremors and convulsions, changes in the level of activity, gait and posture, reactivity to handling or sensory stimuli, altered

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strength, and stereotypies or bizarre behavior (*e.g.*, self-mutilation, walking backwards).

(D) Individual weights of animals must be determined shortly before the test substance is administered, weekly thereafter, and at death. Changes in weights should be calculated and recorded when survival exceeds one day.

(E) The time of death should be recorded as precisely as possible.

(ix) *Gross pathology.* (A) At the end of the test, surviving animals must be weighed and sacrificed.

(B) A gross necropsy must be performed on all animals under test. All gross pathology changes should be recorded.

(C) If necropsy cannot be performed immediately after a dead animal is discovered, the animal should be refrigerated (not frozen) at temperatures low enough to minimize autolysis. Necropsies should be performed as soon as practicable, normally within a day or two.

(x) *Additional evaluations.* Microscopic examination of organs showing evidence of gross pathology in animals surviving 24 hours or more should also be considered because it may yield useful information.

(xi) *Data and reporting*—(A) *Treatment of results.* Data must be summarized in tabular form, showing for each test group the number of animals at the start of the test, body weights, time of death of individual animals at different dose levels, number of animals displaying other signs of toxicity, description of toxic effects and necropsy findings. Any methods used for calculation of the LD_{50} or any other parameters should be specified and referenced. Methods for parameter estimation are described in the references listed in paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(B) *Evaluation of results.* An evaluation should include the relationship, if any, between exposure of the animals to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects. The LD_{50} value should always be considered in conjunction with the observed toxic effects and any necropsy findings. The LD_{50} value is a relatively coarse measurement, useful only as a reference value for classification and labeling purposes, and for an expression of the lethal potential of the test substance by the dermal route. Reference should always be made to the experimental animal species in which the LD_{50} value was obtained.

(C) *Test report.* In addition to the reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the following specific information must be reported. The test report must include:

(*1*) Species, strain, sex, and source of test animals.

(*2*) Method of randomization in assigning animals to test and control groups.

(*3*) Rationale for selection of species, if other than that recommended.

(*4*) Tabulation of individual and test group data by sex and dose level (*e.g.*, number of animals exposed, number of animals showing signs of toxicity and number of animals that died or were sacrificed during the test).

(*i*) Description of toxic effects, including their time of onset, duration, reversibility, and relationship to dose.

(*ii*) Body weights.

(*iii*) Time of dosing and time of death after dosing.

(*iv*) Dose-response curves for mortality and other toxic effects (when permitted by the method of determination).

(*v*) Gross pathology findings.

(*vi*) Histopathology findings and any additional clinical chemistry evaluations, if performed.

(*5*) Description of any pre-test conditioning, including diet, quarantine and treatment for disease.

(*6*) Description of caging conditions including: Number (or change in number) of animals per cage, bedding material, ambient temperature and humidity, photoperiod, and identification of diet of test animals.

(*7*) Manufacturer, source, purity, and lot number of test substance.

(*8*) Relevant properties of substance tested including physical state and pH (if applicable).

(*9*) Identification and composition of any vehicles (e.g., diluents, suspending agents, and emulsifiers) or other materials used in administering the test substance.

(*10*) A list of references cited in the body of the report. References to any published literature used in developing the test protocol, performing the testing, making and interpreting observations, and compiling and evaluating the results.

(f) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., NW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Chanter, D.O. and Heywood, R., The LD_{50} Test: Some Considerations of Precision, *Toxicology Letters* 10:303–307 (1982).

(2) Finney, D.J. Chapter 3—Estimation of the median effective dose and Chapter 4-Maximum likelihood estimation, *Probit Analysis*, 3rd ed. Cambridge, London (1971).

(3) Finney, D.J. The Median Lethal Dose and Its Estimation. *Archives of Toxicology* 56:215–218 (1985).

(4) Organization for Economic Cooperation and Development. OECD Guideline for the Testing of Chemicals. OECD Guideline 425: Acute Oral Toxicity: Up-and-Down Procedure. Adopted: September 21, 1998.

(5) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 420: Acute Oral Toxicity—Fixed Dose Method. Adopted: July 17, 1992.

(6) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 423: Acute Oral Toxicity—Acute Toxic Class Method. Adopted: March 22, 1996

(7) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 402: Acute Dermal Toxicity. Adopted: February 24, 1987.

§ 799.9130 TSCA acute inhalation toxicity.

(a) *Scope.* This section is intended to meet testing requirements under section 4 of the Toxic Substances Control Act (TSCA). Determination of acute toxicity is usually an initial step in the assessment and evaluation of the toxic characteristics of a substance that may be inhaled such as a gas, volatile substance, or aerosol/particle. It provides information on health hazards likely to arise from short-term exposure by the inhalation route. Data from an acute study may serve as a basis for classification and labeling. It is traditionally a step in establishing a dosage regimen in subchronic and other studies and may provide initial information on the mode of toxic action of a substance. An evaluation of acute toxicity data should include the relationship, if any, between the animals' exposure to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, the reversibility of observed abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects.

(b) *Source.* The source material used in developing this TSCA test guideline is the harmonized Office of Prevention, Pesticides, and Toxic Substances (OPPTS) test guideline 870.1300 (August 1998, final guideline). These sources are available at the address in paragraph (g) of this section.

(c) *Definitions.* The definitions in section 3 of TSCA and the definitions in 40 CFR Part 792—Good Laboratory Practice Standards apply to this section. The following definitions also apply to this section.

Acute inhalation toxicity is the adverse effect caused by a substance following a single uninterrupted exposure by inhalation over a short period of time (24 hours or less) to a substance capable of being inhaled.

Aerodynamic equivalent diameter is defined as the diameter of a unit-density sphere having the same terminal settling velocity as the particle in question, whatever its size, shape, and density. It is used to predict where in the respiratory tract such particles may be deposited.

Concentration is expressed as weight of the test substance per unit volume of air, e.g., milligrams per liter.

Geometric standard deviation (GSD) is a dimensionless number equal to the ratio between the mass median aerodynamic diameter (MMAD) and either 84% or 16% of the diameter size distribution (*e.g.*, MMAD = 2 m; 84% = 4 m; GSD = 4/2 = 2.0.) The MMAD, together with the GSD, describe the particle size distribution of an aerosol. Use of the GSD may not be valid for non-lognormally distributed aerosols. (If the size distribution deviates from the lognormal, it shall be noted).

Inhalable diameter refers to that aerodynamic diameter of a particle which is considered to be inhalable for the organism under study. It is used to refer to particles which are capable of being inhaled and deposited anywhere within the respiratory tract .

LC_{50} (median lethal concentration) is a statistically derived estimate of a concentration of a substance that can be expected to cause death during exposure or within a fixed time after exposure in 50% of animals exposed for a specified time. The LC_{50} value is a relatively coarse measurement useful only for classification and labeling purposes and an expression of the lethal potential of the test substance following inhalation. The LC_{50} value is expressed as weight of test substance per unit volume of air (milligrams per liter) or parts per million. For clarity, the exposure duration and test animal species should also be specified, *e.g.*, 4 hours LC_{50} in F344.

Mass median aerodynamic diameter (MMAD) is the median aero-dynamic diameter and, along with the geometric standard deviation, is used to describe the particle size distribution of any aerosol statistically, based on the weight and size of the particles. Fifty percent of the particles by weight will be smaller than the median diameter and 50% of the particles will be larger.

(d) *Approaches to the determination of acute toxicity.* (1) EPA recommends the following means to reduce the number of animals used to evaluate acute effects of chemical exposure while preserving its ability to make reasonable judgments about safety:

(i) Using data from substantially similar mixtures. In order to minimize the need for animal testing, the Agency encourages the review of existing acute toxicity information on mixtures that are substantially similar to mixtures under investigation. In certain cases, it may be possible to get enough information to make preliminary hazard evaluations that may reduce the need for further animal testing.

(ii) Limit test. When data on structurally related chemicals are inadequate, a limit test may be considered. In the limit test, a single group of five males and five females is exposed to 2 mg/L for 4 hours, or where this is not possible due to physical or chemical properties of the test substance, the maximum attainable concentration where a particle size distribution having an MMAD between 1 and 4 μm cannot be maintained, using the procedures described under paragraph (e) of this section. For fibers, the bivariate distribution of length and diameter must ensure inhalability. For gases and vapors, the concentrations need not be greater than 50,000 ppm or 50% of the lower explosive limit, whichever is lower. If a test at an aerosol or particulate exposure of 2 mg/L (actual concentration of respirable substance) for 4 hours or, where this is not feasible, the maximum attainable concentration, using the procedures described for this study, produces no observable toxic effects, then a full study using three concentrations will not be necessary. Similarly, if a test at a gas or vapor exposure of 50,000 ppm or 50% of the lower explosive limit, whichever is lower, produces no observable toxic effects, then a full study using three concentrations will not be necessary.

(2) [Reserved]

(e) *Conventional acute toxicity test*—(1) *Principle of the test method.* Several groups of experimental animals are exposed to the test substance in graduated concentrations for a defined period, one concentration being used per group. When a vehicle other than water is used to help generate an appropriate concentration of the substance in the atmosphere, a vehicle control group should be used when historical data are not available or adequate to determine the acute inhalation toxicity of the vehicle. Subsequently, observations of effects and death are made. Animals that die during the test are necropsied and at the conclusion of the test surviving animals are sacrificed and necropsied. This guideline is directed primarily to studies in rodent species but may be adapted for studies in non-rodents. Animals showing severe and enduring signs of distress and pain may need to be sacrificed. Dosing test substances in a way known to cause marked pain and distress due to corrosive or irritating properties need not be carried out.

(2) *Substance to be tested.* Test, control, and reference substances are discussed under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart f.

(3) *Test procedures*—(i) *Preparation.* Healthy young adult animals are acclimatized to the laboratory conditions for at least 5 days prior to the test. Before the test, animals are randomized and assigned to the required number of groups.

(ii) *Animal selection*—(A) *Species and strain.* (*1*) Although several mammalian test species may be used, the preferred species is the rat. Commonly used laboratory strains should be employed. If another mammalian species is used, the investigator should provide justification and reasoning for the selection.

(*2*) Health Status. Body weight and feed consumption are not sufficient indicators of the health status of animals prior to initiating an inhalation toxicity study. Prior to initiating the study, animals must be monitored for known viral and bacterial respiratory pathogens determined by conventional microbiological assays (e.g., serology). The animals must be free from pathogens at the start of exposure.

(B) *Age.* Young adult rats between 8–12 weeks old at the beginning of dosing, should be used. The weight variation in animals or between groups used in a test should not exceed ± 20% of the mean weight of each sex.

(C) *Number of animals and sex.* (*1*) At least five experimentally naive animals are used at each concentration and they must be of one sex. After completion of the study in one sex, at least one group of five animals of the other sex is exposed to establish that animals of this sex are not markedly more sensitive to

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the test substance. The use of fewer animals may be justified in individual circumstances. Where adequate information is available to demonstrate that animals of the sex tested are markedly more sensitive, testing in animals of the other sex is not required. An acceptable option would be to test at least one group of five animals per sex at one or more dose levels to definitively determine the more sensitive sex prior to conducting the main study.

(*2*) Females must be nulliparous and nonpregnant.

(*3*) In acute toxicity tests with animals of a higher order than rodents, the use of fewer animals per concentration group should be considered.

(D) *Assignment of animals.* (*1*) Each animal must be assigned a unique identification number. A system to assign animals to test groups and control groups randomly is required.

(*2*) Control groups. A concurrent untreated control group is not necessary. Where a vehicle other than water is used to generate an appropriate concentration of the test substance in the atmosphere and historical data are not available or adequate to determine the acute toxicity of the vehicle, a vehicle control group must be used. The vehicle control group must be a sham-treated group. Except for treatment with the test substance, animals in the vehicle control group must be handled in a manner identical to the test-group animals.

(E) *Housing.* The animals may be group-caged by sex, but the number of animals per cage must not interfere with clear observation of each animal. The biological properties of the test substance or toxic effects (e.g., morbidity, excitability) may indicate a need for individual caging. Animals must be housed individually in inhalation chambers during exposure to aerosols.

(*1*) Before and after exposure, the temperature of the animal room should be 22 ± 3 °C and the relative humidity 30–70%.

(*2*) Where lighting is artificial, the sequence should be 12 hours light/12 hours dark.

(*3*) For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water.

(F) *Inhalation equipment.* (*1*) Animals can be exposed to the substance by either a nose-only procedure or in a whole-body exposure chamber. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas. The nose-only exposure procedure is recommended for studies of aerosols to minimize exposures confounding resultant from test substance ingestion due to test animal fur licking following exposures. Animals must be acclimated to the nose-only exposure chamber prior to study and heat stress minimized during testing.

(*2*) Inhalation chambers. The animals must be tested in inhalation equipment designed to sustain a dynamic airflow for nose-only exposures of at least 300 ml/minute/animal or an airflow for whole-body exposures of at least 12 to 15 air changes per hour and ensure an adequate oxygen content of at least 19% and an evenly distributed exposure atmosphere. Where a whole-body chamber is used, its design must minimize crowding by providing individual caging. As a general rule, to ensure stability of a chamber atmosphere, the total "volume" of the test animals should not exceed 5% of the volume of the test chamber.

(*3*) Environmental conditions. The temperature at which the test is performed must be maintained at 22 °C (± 2 °C). Ideally, the relative humidity should be maintained between 40% and 60%, but in certain instances (e.g., tests using water as a vehicle), this may not be practical.

(G) *Physical measurements.* Measurements or monitoring must be made of the following:

(*1*) Chemical purity of the test material must be analyzed. If the test substance is present in a mixture, the mass and composition of the entire mixture, as well as the principal compound, must be measured. If there is some difficulty in measuring chamber analytical concentration due to precipitation, nonhomogeneous mixtures, volatile components, or other factors, additional analyses of components may be necessary.

(*2*) The rate of air flow should be monitored continuously, and must be recorded at least every 30 minutes during the exposure period.

(*3*) The actual concentrations of the test substance must be measured in the breathing zone. During the exposure period, the actual concentrations of the test substance must be held as constant as practicable, monitored continuously or intermittently depending on the method of analysis, and recorded at least three times (*i.e.*, at the beginning, at an intermediate time, and at the end) during the exposure period. Chamber concentration may be measured using gravimetric or analytical methods as appropriate. If trial run measurements are reasonably consistent (± 10% for liquid aerosol, gas, or vapor; ± 20% for dry aerosol), then a minimum of two measurements are sufficient. If measurements are not consistent, then a minimum of four measurements should be taken.

(*4*) During the development of the generating system, particle size analysis must be performed to establish the stability of aerosol concentrations. During exposure, analysis should be conducted as often as necessary to determine the consistency of particle size distribution. The MMAD particle size range should be between 1–4 μm. The particle size of hygroscopic materials must be small enough when dry to assure that the size of the swollen particle will still be within the 1–4 μm MMAD range. Characterization for fibers must include the bivariate distribution of length and diameter; this distribution must ensure inhalability. Measurements of aerodynamic particle size in the animal's breathing zone must be measured during a trial run. If MMAD values for each exposure level are within 10% of each other, then a minimum of two measurements during the exposures should be sufficient. If pretest measurements are not within 10% of each other, then a minimum of four measurements should be taken.

(*5*) Temperature and humidity must be monitored continuously, and must be recorded at least every 30 minutes.

(iii) *Exposure duration and concentration levels.* (A) Exposure duration. Shortly before exposure, the animals are weighed and then exposed to the test target concentration in the designated apparatus for 4 hour exposure period after equilibration of the chamber concentrations. The target concentration is defined by an average of 5% for gases and vapors and 15% for particles and aerosols. The animals are weighed again at the conclusion of the exposure period to determine body weight change. Other durations may be needed to meet specific requirements. Food must be withheld during exposure. Water may also be withheld in certain circumstances.

(B) Exposure concentration levels. At least three concentration levels and a vehicle control group, if required (see paragraph (e)(3)(ii)(D)(*2*) of this section), must be used. The concentration levels should be spaced appropriately to produce a concentration-response curve and permit an estimation of the median lethal concentration (LC_{50}). The concentrations can either be linearly or logarithmically spaced depending on the anticipated steepness of the concentration-response curve. A rationale for concentration selection should be provided to indicate that the selected concentrations will maximally support detection of concentration-response relationship. The high concentration should be clearly toxic or a limit concentration, but should not result in an incidence of fatalities that would preclude a meaningful evaluation of the data. The lowest concentration should define a no-observed-effects level (NOEL). Range-finding studies using single animals may help to estimate the positioning of the test groups so that no more than three concentration levels will be necessary.

(C) When the physical and chemical properties of the test substance show a low flash point or the test substance is otherwise known or thought to be explosive, care must be taken to avoid exposure level concentrations that could result in an exposure chamber explosion during the test.

(iv) *Observation period.* The observation period must be at least 14 days. However, the duration of observation should not be fixed rigidly. It should be determined by the toxic reactions, rate of onset, and length of recovery period, and thus may be extended when considered necessary. The time at which signs of toxicity appear, the duration of the signs observed, and the time of death must be recorded and are important, especially if there is a tendency for delayed effects.

(v) *Observation of animals.* (A) A careful clinical examination must be made at least once each day.

(B) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study, e.g., necropsy or refrigeration of those animals found dead and isolation of weak or moribund animals.

(C) Observations must be detailed and carefully recorded, preferably using explicitly defined scales. Observations should include, but not be limited to, evaluation of skin and fur, eyes and mucous membranes, respiratory and circulatory effects, autonomic effects such as salivation, central nervous system effects, including tremors and convulsions, changes in the level of activity, gait and posture, reactivity to handling or sensory stimuli, altered strength, and stereotypies or bizarre behavior (e.g., self mutilation, walking backwards).

(D) Individual weights of animals must be determined pre-exposure and post-exposure, weekly after exposure, and at death. Changes in weights should be calculated and recorded when survival exceeds 1 day.

(E) The time of death should be recorded as precisely as possible.

(vi) *Gross pathology.* (A) At the end of the test, surviving animals must be weighed, sacrificed and a gross necropsy must be performed on all animals under test, with particular reference to any changes in the respiratory tract. All gross pathology changes must be recorded.

(*1*) The gross necropsy must include examination of orifices and the cranial, thoracic, and abdominal cavities, and contents.

(*2*) At least the lungs, liver, kidneys, adrenals, brain, and gonads should be weighed wet, as soon as possible after dissection to avoid drying.

(*3*) Optionally, the following organs and tissues, or representative samples thereof, may be preserved in a suitable medium for possible future histopathological examination: All gross lesions; brain-including sections of medulla/pons; cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; pancreas; gonads; accessory genital organs (epididymis, prostrate, and, if present, seminal vesicles); aorta; skin; gall bladder (if present); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph nodes; thigh musculature; peripheral nerve; spinal cord at three levels cervical, midthoracic, and lumbar; and eyes. Respiratory tract tissues should be perfusion preserved in a suitable medium.

(B) If necropsy cannot be performed immediately after a dead animal is discovered during the observation period, the animal should be refrigerated (not frozen) at temperatures low enough to minimize autolysis. Necropsies should be performed as soon as possible after death (normally within 24 to 48 hours).

(vii) *Additional evaluations.* In animals surviving 24 hours or more, microscopic examination of organs showing evidence of gross pathology should be considered since it may yield useful information on the nature of acute toxic effects.

(f) *Data and reporting*—(1) *Treatment of results.* Data must be summarized in tabular form showing for each test group the number of animals at the start of the test, body weights, time of death of individual animals at different exposure levels, number of animals displaying other signs of toxicity, description of toxic effects and necropsy findings. The method used for calculation of the LC_{50} or any other parameters must be specified and referenced. Some acceptable methods for parameter estimation are described in the references described in paragraphs (g)(1), (g)(2), and (g)(3) of this section.

(*2*) *Evaluation of results.* The LC_{50} value should be considered in conjunction with the observed toxic effects and the necropsy findings. The evaluation should include the relationship, if any, between exposure of animals to the test substance and the incidence and severity of all abnormalities including behavioral and clinical abnormalities, gross lesions, body weight changes, mortality, and other toxic effects.

(*3*) *Test report.* In addition to the reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the following specific information must be reported. The test report shall include:

(i) Test conditions. (A) Description of exposure apparatus including design, type, dimensions.

(B) Source of air, system for generating the test article as particle, aerosol, gas, or vapor.

(C) Method for conditioning air, equipment for measuring temperature, humidity, particle size or particulate aerosol concentration size, and actual concentration.

(D) Treatment of exhaust air and the method of housing the animals in a test chamber when this is used.

(ii) Exposure data. The exposure data must be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and should include:

(A) Chemical purity of the test material.

(B) Airflow rates through the inhalation equipment.

(C) Temperature and humidity of the air.

(D) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(E) Actual (analytical or gravimetric) concentration in test breathing zone.

(F) Particle size distribution (calculated MMAD and GSD) and the bivariate distribution of fiber length and diameter, where appropriate.

(G) Explanation as to why the desired chamber concentration and/or particle size could not be achieved (if applicable), and the efforts taken to comply with these aspects of this section.

(iii) Species, strain, sex, and source of test animals.

(iv) Method of randomization in assigning animals to test and control groups.

(v) Rationale for selection of species, if other than that recommended.

(vi) Results. Tabulation of individual and test group data by sex and exposure

concentration level (e.g., number of animals exposed, number of animals showing signs of toxicity and number of animals that died or were sacrificed during the test).

(A) Description of toxic effects including time of onset, duration, reversibility, and relationship to the exposure concentration levels.

(B) Pre-exposure and post-exposure body weight change in animals, and weight change during the observation period.

(C) Time of dosing and time of death during or following exposure.

(D) Concentration-response curves for mortality and other toxic effects (when permitted by the method of determination).

(E) Gross pathology necropsy findings in the test animals and vehicle control animals, if included. Data must be tabulated to show the counts and incidence of gross alterations observed for each group tested and the number of animals affected by each type of lesion along with the location and frequency of each type of lesion.

(F) Histopathology findings and any additional evaluations (e.g., clinical chemistry), if performed.

(vii) Description of any pretest conditioning, including diet, quarantine and treatment for disease.

(viii) Description of caging conditions, including: number (or change in number) of animals per cage, bedding material, ambient temperature and humidity, photoperiod, and identification of diet of test animals.

(ix) Manufacturer (source), lot number, and purity of test substance.

(x) Identification and composition of any vehicles (e.g., diluents, suspending agents, and emulsifiers) or other materials , if used in administering the test substance.

(xi) A list of references cited in the body of the report. References to any published literature used in developing the test protocol, performing the testing, making and interpreting observations, and compiling and evaluating the results.

(g) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., NW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Chanter, D.O. and Heywood, R. The L_{D50} test: some considerations of precision. *Toxicology Letters* 10:303 307 (1982).

(2) Finney, D.G. Chapter 3 Estimation of the median effective dose, Chapter 4 Maximum likelihood estimation. *Probit Analysis.* 3rd Ed. (Cambridge, London. (1971).

(3) Finney, D.J. The Median Lethal Dose and Its Estimation, *Archives of Toxicology* 56:215 218 (1985).

(4) Organization for Economic Cooperation and Development. OECD Guidelines for the Testing of Chemicals. Final Draft OECD Guideline 425: Acute Oral Toxicity: Up-and-Down Procedure to be adopted in the Tenth Addendum to the OECD Guidelines for the Testing of Chemicals.

(5) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 403: Acute Inhalation Toxicity. Adopted: May 12, 1981.

(6) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 420: Acute Oral Toxicity Fixed Dose Method. Adopted: July 17, 1992.

(7) Organization for Economic Cooperation and Development. OECD Guidelines for Testing of Chemicals. Guideline 423: Acute Oral Toxicity Acute Toxic Class Method. Adopted: March 22, 1996.

(8) U. S. EPA. Interim Policy for Particle Size and Limit Concentration Issues in Inhalation Toxicity Studies. 2/1/94. Health Effects Division, Office of Pesticide Programs.

§ 799.9305 TSCA Repeated dose 28–day oral toxicity study in rodents.

(a) *Scope*—(1) *Applicability.* This section is intended to meet testing requirements of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides and Toxic Substances (OPPTS) harmonized test guideline 870.3050 (July 2000, final guidelines). This source is available at the address in paragraph (h) of this section.

(b) *Purpose.* (1) In the assessment and evaluation of the toxic characteristics of a chemical, the determination of oral toxicity using repeated doses may be carried out after initial information on toxicity has been obtained by acute testing. This study provides information on the possible health hazards likely to arise from repeated exposure over a relatively limited period of time. The method comprises the basic repeated dose toxicity study that may be used for chemicals on which a 90–day study is not warranted (*e.g.*, when the production volume does not exceed certain limits) or as a preliminary to a long term study. The duration of exposure should normally be 28 days although a 14–day study may be appropriate in certain circumstances; justification for use of a 14–day exposure period should be provided.

(2) This section places emphasis on neurological effects as a specific endpoint, and the need for careful clinical observations of the animals, so as to obtain as much information as possible, is stressed. The method should identify chemicals with neurotoxic potential, which may warrant further in-depth investigation of this aspect. In addition, the method may give an indication of immunological effects and reproductive organ toxicity.

(c) *Definitions.* The definitions in section 3 of TSCA and in 40 CFR Part 792—Good Laboratory Practice Standards apply to this section. The following definitions also apply to this section.

Dosage is a general term comprising of dose, its frequency and the duration of dosing.

Dose is the amount of test substance administered. Dose is expressed as weight (g, mg) or as weight of test substance per unit weight of test animal (e.g., mg/kg), or as constant dietary concentrations (parts per million (ppm)).

No-observed-effects level (NOEL) is the maximum dose used in a study which produces no adverse effects. The NOEL is usually expressed in terms of the weight of a test substance given daily per unit weight of test animals (milligrams per kilograms per day).

(d) *Principle of the test.* The test substance is orally administered daily in graduated doses to several groups of experimental animals, one dose level per group for a period of 28 days. During the period of administration the animals are observed closely, each day for signs of toxicity. Animals which die or are sacrificed during the test are necropsied and at the conclusion of the test surviving animals are sacrificed and necropsied.

(e) *Description of the method*—(1) *Selection of animal species.* The preferred rodent species is the rat, although other rodent species may be used. Commonly used laboratory strains of young healthy adult animals should be employed. The females should be nulliparous and non-pregnant. Dosing should begin as soon as possible after weaning and, in any case, before the animals are 9 weeks old. At the commencement of the study the weight variation of animals used should be minimal and not exceed ± 20% of the mean weight of each sex. Where a repeated dose oral study is conducted as a preliminary to a long term study, preferably animals from the same strain and source should be used in both studies.

(2) *Housing and feeding conditions.* The temperature in the experimental animal room should be 22 °C (± 3 °C). Although the relative humidity should be at least 30% and preferably not to exceed 70% other than during room cleaning, the aim should be 50–60%. Lighting should be artificial, the sequence being 12 hours light, 12 hours dark. For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water. The choice of diet may be influenced by the need to ensure a suitable admixture of a test substance when administered by this method. Animals may be housed individually, or be caged in small groups of the same sex; for group caging, no more than five animals should be housed per cage.

(3) *Preparation of animals.* Healthy young adult animals must be randomly assigned to the control and treatment groups. Cages should be arranged in such a way that possible effects due to cage placement are minimized. The animals are identified uniquely and kept in their cages for at least 5 days prior to the start of the study to allow for acclimatization to the laboratory conditions.

(4) *Preparation of doses.* (i) The test compound must be administered by gavage or via the diet or drinking water. The method of oral administration is dependent on the purpose of the study, and the physical/chemical properties of the test material.

(ii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. It is recommended that, wherever possible, the use of an aqueous solution/suspension be considered first, followed by consideration of a solution/emulsion in oil (e.g., corn oil) and then by possible solution in other vehicles. For vehicles other than water the toxic characteristics of the vehicle must be known. The stability of the test substance in the vehicle should be determined.

(f) *Procedure*—(1)*Number and sex of animals.* At least 10 animals (five female and five male) should be used at each dose level. If interim sacrifices are planned, the number should be increased by the number of animals scheduled to be sacrificed before the completion of the study. Consideration should be given to an additional satellite group of 10 animals (five per sex) in the control and in the top dose group for observation of reversibility, persistence, or delayed occurrence of toxic effects, for at least 14 days post treatment.

(2) *Dosage.* (i) Generally, at least three test groups and a control group should be used, but if from assessment of other data, no effects would be expected at a dose of 1000 mg/kg bodyweight/per day, a limit test may be performed. If there are no suitable data available, a range finding study may be performed to aid the determination of the doses to be used. Except for treatment with the test substance, animals in the control group should be handled in an identical manner to the test group subjects. If a vehicle is used in administering the test substance, the control group should receive the vehicle in the highest volume used.

(ii) Dose levels should be selected taking into account any existing toxicity and (toxico-) kinetic data available for the test compound or related materials. The highest dose level should be chosen with the aim of inducing toxic effects but not death or severe suffering. Thereafter, a descending sequence of dose levels should be selected with a view to demonstrating any dosage related response and NOEL at the lowest dose level. Two to four fold intervals are frequently optimal for setting the descending dose levels and addition of a fourth test group is often preferable to using very large intervals (e.g., more than a factor of 10) between dosages.

(3) *Limit test.* If a test at one dose level of at least 1000 mg/kg body weight/day or, for dietary or drinking water administration, an equivalent percentage in the diet, or drinking water (based upon body weight determinations), using the procedures described for this study, produces no observable toxic effects and if toxicity would not be expected based upon data from structurally related compounds, then a full study using three dose levels may not be considered necessary. The limit test applies except when human exposure indicates the need for a higher dose level to be used.

(4) *Administration of doses.* (i) The animals are dosed with the test substance daily 7 days each week for a period of 28 days; use of a 5–day per week dosing regime or a 14–day exposure period needs to be justified. When the test substance is administered by gavage, this should be done in a single dose to the animals using a stomach tube or a suitable intubation cannula. The maximum volume of liquid that can be administered at one time depends on the size of the test animal. The volume should not exceed 1ml/100g body weight, except in the case of aqueous solutions where 2ml/100g body weight may be used. Except for irritating or corrosive substances which will normally reveal exacerbated effects with higher concentrations, variability in test volume should be minimized by adjusting the concentration to ensure a constant volume at all dose levels.

(ii) For substances administered via the diet or drinking water it is important to ensure that the quantities of the test substance involved do not interfere with normal nutrition or water balance. When the test substance is administered in the diet either a constant dietary concentration (parts per million (ppm)) or a constant dose level in terms of the animals' body weight may be used; the alternative used must be specified. For a substance administered by gavage, the dose should be given at similar times each day, and adjusted as necessary to maintain a constant dose level in terms of animal body weight. Where a repeated dose study is used as a preliminary to a long term study, a similar diet should be used in both studies.

(5) *Observations.* (i) The observation period should be 28 days, unless the study duration is 14 days (see paragraph (b)(1) of this section). Animals in a satellite group scheduled for follow-up observations should be kept for at least a further 14 days without treatment to detect delayed occurrence, or persistence of, or recovery from toxic effects.

(ii) General clinical observations should be made at least once a day, preferably at the same time(s) each day and considering the peak period of anticipated effects after dosing. The health condition of the animals should be recorded. At least twice daily, all animals are observed for morbidity and mortality.

(iii) Once before the first exposure (to allow for within-subject comparisons), and at least once a week thereafter, detailed clinical observations should be made in all animals. These observations should be made outside the home cage in a standard arena and preferably at the same time, each time. They should be carefully recorded, preferably using scoring systems, explicitly defined by the testing laboratory. Effort should be made to ensure that variations in the test conditions are minimal and that observations are preferably conducted by observers unaware of the treatment. Signs noted should include, but not be limited to, changes in skin, fur, eyes, mucous membranes, occurrence of secretions and excretions and autonomic activity (e.g., lacrimation, piloerection, pupil size, unusual respiratory pattern). Changes in gait, posture and response to handling as

well as the presence of clonic or tonic movements, stereotypies (e.g., excessive grooming, repetitive circling) or bizarre behaviour (e.g., self-mutilation, walking backwards) should also be recorded.

(iv) In the fourth exposure week sensory reactivity to stimuli of different types (see paragraph (h)(2) of this section) (e.g., auditory, visual and proprioceptive stimuli), assessment of grip strength and motor activity assessment should be conducted. Further details of the procedures that could be followed are given in the respective references. However, alternative procedures than those referenced could also be used. Examples of procedures for observation are described in the references in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), and (h)(5) of this section.

(v) Functional observations conducted in the fourth exposure week may be omitted when the study is conducted as a preliminary study to a subsequent subchronic (90–day) study. In that case, the functional observations should be included in this follow-up study. On the other hand, the availability of data on functional observations from the repeated dose study may enhance the ability to select dose levels for a subsequent subchronic study.

(vi) Exceptionally, functional observations may also be omitted for groups that otherwise reveal signs of toxicity to an extent that would significantly interfere with the functional test performance.

(6) *Body weight and food/water consumption.* All animals should be weighed at least once a week. Measurements of food consumption should be made at least weekly. If the test substance is administered via the drinking water, water consumption should also be measured at least weekly.

(7) *Hematology.* (i) The following hematological examinations should be made at the end of the test period: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, platelet count and a measure of blood clotting time/potential.

(ii) Blood samples should be taken from a named site just prior to or as part of the procedure for sacrificing the animals, and stored under appropriate conditions.

(8) *Clinical Biochemistry.* (i) Clinical biochemistry determinations to investigate major toxic effects in tissues and, specifically, effects on kidney and liver, should be performed on blood samples obtained of all animals just prior to or as part of the procedure for sacrificing the animals (apart from those found moribund and/or intercurrently sacrificed). Overnight fasting of the animals prior to blood sampling is recommended.[1] Investigations of plasma or serum shall include sodium, potassium, glucose, total cholesterol, urea, creatinine, total protein and albumin, at least two enzymes indicative of hepatocellular effects (such as alanine aminotransferase, aspartate aminotransferase, alkaline phosphatase, gamma glutamyl transpeptidase, and sorbitol dehydrogenase). Measurements of additional enzymes (of hepatic or other origin) and bile acids may provide useful information under certain circumstances.

(ii) Optionally, the following urinalysis determinations could be performed during the last week of the study using timed urine volume collection; appearance, volume, osmolality or specific gravity, pH, protein, glucose and blood and blood cells.

(iii) In addition, studies to investigate serum markers of general tissue damage should be considered. Other determinations that should be carried out if the known properties of the test substance may, or are suspected to, affect related metabolic profiles include calcium, phosphate, fasting triglycerides, specific hormones, methemoglobin and cholinesterase. These must to be identified for chemicals in certain classes or on a case-by-case basis.

(iv) Overall, there is a need for a flexible approach, depending on the species and the observed and/or expected effect with a given compound.

(v) If historical baseline data are inadequate, consideration should be given to determination of hematological and clinical biochemistry variables before dosing commences.

(9) *Pathology*—(i)*Gross necropsy.* (A) All animals in the study must be subjected to a full, detailed gross necropsy which includes careful examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents. The liver, kidneys, adrenals, testes, epididymides, thymus, spleen, brain and heart of all animals (apart from those found moribund and/or intercurrently sacrificed) should be trimmed of any adherent tissue, as appropriate, and their wet weight taken as soon as possible after dissection to avoid drying.

(B) The following tissues should be preserved in the most appropriate fixation medium for both the type of tissue and the intended subsequent histopathological examination: all gross lesions, brain (representative regions including cerebrum, cerebellum and pons), spinal cord, stomach, small and large intestines (including Peyer's patches), liver, kidneys, adrenals, spleen, heart, thymus, thyroid, trachea and lungs (preserved by inflation with fixative and then immersion), ovaries, uterus, testes, epididymides, accessory sex organs (e.g., prostate, seminal vesicles), urinary bladder, lymph nodes (preferably one lymph node covering the route of administration and another one distant from the route of administration to cover systemic effects), peripheral nerve (sciatic or tibial) preferably in close proximity to the muscle, and a section of bone marrow (or, alternatively, a fresh mounted bone marrow aspirate). The clinical and other findings may suggest the need to examine additional tissues. Also any organs considered likely to be target organs based on the known properties of the test substance should be preserved.

(ii) *Histopathology.* (A) Full histopathology should be carried out on the preserved organs and tissues of all animals in the control and high dose groups. These examinations should be extended to animals of all other dosage groups, if treatment-related changes are observed in the high dose group.

(B) All gross lesions must be examined.

(C) When a satellite group is used, histopathology should be performed on tissues and organs identified as showing effects in the treated groups.

(g) *Data and reporting*—(1) *Data.* (i) Individual data should be provided. Additionally, all data should be summarized in tabular form showing for each test group the number of animals at the start of the test, the number of animals found dead during the test or sacrificed for humane reasons and the time of any death or humane sacrifice, the number showing signs of toxicity, a description of the signs of toxicity observed, including time of onset, duration, and severity of any toxic effects, the number of animals showing lesions, the type of lesions and the percentage of animals displaying each type of lesion.

[1] For a number of measurements in serum and plasma, most notably for glucose, overnight fasting would be preferable. The major reason for this preference is that the increased variability which would inevitably result from non-fasting, would tend to mask more subtle effects and make interpretation difficult. On the other band, however, overnight fasting may interfere with the general metabolism of the animals and, particularly in feeding studies, may disturb the daily exposure to the test substance. If overnight-fasting is adopted, clinical biochemical determinations should be performed after the conduct of functional observations in week 4 of the study.

(ii) When possible, numerical results should be evaluated by an appropriate and generally acceptable statistical method. The statistical methods should be selected during the design of the study.

(2)*Test report.* The test report must include the following information:

(i) Test substance:

(A) Physical nature, purity and physicochemical properties.

(B) Identification data.

(ii) Vehicle (if appropriate): Justification for choice of vehicle, if other than water.

(iii) Test animals:

(A) Species/strain used.

(B) Number, age and sex of animals.

(C) Source, housing conditions, diet, etc.

(D) Individual weights of animals at the start of the test.

(iv) Test conditions:

(A) Rationale for dose level selection.

(B) Details of test substance formulation/diet preparation, achieved concentration, stability and homogeneity of the preparation.

(C) Details of the administration of the test substance.

(D) Conversion from diet/drinking water test substance concentration (parts per million (ppm)) to the actual dose (mg/kg body weight/day), if applicable.

(E) Details of food and water quality.

(v) Results:

(A) Body weight/body weight changes.

(B) Food consumption, and water consumption, if applicable.

(C) Toxic response data by sex and dose level, including signs of toxicity.

(D) Nature, severity and duration of clinical observations (whether reversible or not).

(E) Sensory activity, grip strength and motor activity assessments.

(F) Hematological tests with relevant base-line values.

(G) Clinical biochemistry tests with relevant base-line values.

(H) Body weight at sacrificing and organ weight data.

(I) Necropsy findings.

(J) A detailed description of all histopathological findings.

(K) Absorption data if available.

(L) Statistical treatment of results, where appropriate.

(vi) Discussion of results.

(vii) Conclusions.

(h) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Tupper, D.E., Wallace, R.B. (1980). Utility of the Neurologic Examination in Rats. *Acta Neurobiological Exposure*, 40:999–1003.

(2) Gad, S.C. (1982). A Neuromuscular Screen for Use in Industrial Toxicology. *Journal of Toxicology and Environmental Health*, 9:691–704.

(3) Moser, V.C., McDaniel, K.M., Phillips, P.M. (1991). Rat Strain and Stock Comparisons Using a Functional Observational Battery: Baseline Values and Effects of Amitraz. *Toxicology and Applied Pharmacology*, 108:267–283.

(4) Meyer O.A., Tilson H.A., Byrd W.C., Riley M.T. (1979). A Method forthe Routine Assessment of Fore- and Hindlimb Grip Strength of Rats and Mice. *Neurobehavioral Toxicology*, 1:233–236.

(5) Crofton K.M., Howard J.L., Moser V.C., Gill M.W., Reiter L.W., Tilson H.A., MacPhail R.C. (1991). Interlaboratory Comparison of Motor Activity Experiments: Implication for Neurotoxicological Assessments. *Neurotoxicology and Teratology*, 13:599–609.

§ 799.9310 TSCA 90-day oral toxicity in rodents.

(a) *Scope.* This section is intended to meet the testing requirements under section 4 of the Toxic Substances Control Act (TSCA). In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic oral toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic oral study has been designed to permit the determination of the no-observed-effects level (NOEL) and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. This study is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). Extrapolation from the results of this study to humans is valid only to a limited degree. However, it can useful in providing information on health hazards likely to arise from repeated exposure by the oral route over a limited period of time, such as target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

(b) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) harmonized test guideline 870.3100 (August 1998, final guideline). This source is available at the address in paragraph (h) of this section.

(c) *Definitions.* The following definitions apply to this section.

Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of, the administered test substance or its metabolites in susceptible tissue.

Dose in a subchronic oral study is the amount of test substance administered daily via the oral route (gavage, drinking water or diet) for a period of 90 days. Dose is expressed as weight of the test substance (grams, milligrams) per unit body weight of test animal (milligram per kilogram) or as weight of the test substance in parts per million in food or drinking water per day.

No-observed-effects level (NOEL) is the maximum dose used in a study which produces no adverse effects. The NOEL is usually expressed in terms of the weight of a test substance given daily per unit weight of test animal (milligrams per kilogram per day).

Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral route for a part (approximately 10%) of the test animal's life span.

Target organ is any organ of a test animal showing evidence of an effect induced by a test substance.

(d) *Limit test.* If a test at one dose level of at least 1,000 mg/kg body weight (expected human exposure may indicate the need for a higher dose level), using the procedures described for this study, produces no observable toxic effects or if toxic effects would not be expected based upon data of structurally related compounds, then a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* A variety of rodent species may be used, although the rat is the preferred species. Commonly used laboratory strains must be employed.

(ii) *Age/weight.* (A) Testing should be started with young healthy animals as soon as possible after weaning and acclimatization.

(B) Dosing of rodents should generally begin no later than 8–9 weeks of age.

(C) At the commencement of the study the weight variation of animals used must be within 20% of the mean weight for each sex.

(iii) *Sex.* Equal numbers of animals of each sex must be used at each dose

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level, and the females shall be nulliparous and nonpregnant.

(iv) *Numbers.* (A) At least 20 rodents (10 males and 10 females) at each dose level.

(B) If interim sacrifices are planned, the number must be increased by the number of animals scheduled to be sacrificed before the completion of the study.

(C) To avoid bias, the use of adequate randomization procedures for the proper allocation of animals to test and control groups is required.

(D) Each animal must be assigned a unique identification number. Dead animals, their preserved organs and tissues, and microscopic slides must be identified by reference to the animal's unique number.

(v) *Husbandry.* (A) Animals may be group-caged by sex, but the number of animals per cage must not interfere with clear observation of each animal. The biological properties of the test substance or toxic effects (e.g., morbidity, excitability) may indicate a need for individual caging.

(B) The temperature of the experimental animal rooms should be at 22 ± 3 °C.

(C) The relative humidity of the experimental animal rooms should be 50 ± 20%.

(D) Where lighting is artificial, the sequence should be 12 hours light/12 hours dark.

(E) Control and test animals must be fed from the same batch and lot. The feed should be analyzed to assure adequacy of nutritional requirements of the species tested and for impurities that might influence the outcome of the test. For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water.

(F) The study should not be initiated until animals have been allowed a period of acclimatization/quarantine to environmental conditions, nor should animals from outside sources be placed on test without an adequate period of quarantine. An acclimation period of at least five days is recommended.

(2) *Control and test substances.* (i) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, the vehicle should not elicit toxic effects or substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the usage of an aqueous solution be considered first, followed by consideration of a solution in oil and then solution in other vehicles.

(ii) If possible, one lot of the test substance tested should be used throughout the duration of the study and the research sample should be stored under conditions that maintain its purity and stability. Prior to the initiation of the study, there should be a characterization of the test substance, including the purity of the test compound and, if technically feasible, the names and quantities of contaminants and impurities.

(iii) If the test or control substance is to be incorporated into feed or another vehicle, the period during which the test substance is stable in such a mixture should be determined prior to the initiation of the study. Its homogeneity and concentration should be determined prior to the initiation of the study and periodically during the study. Statistically randomized samples of the mixture should be analyzed to ensure that proper mixing, formulation, and storage procedures are being followed, and that the appropriate concentration of the test or control substance is contained in the mixture.

(3) *Control groups.* A concurrent control group is required. This group must be an untreated or sham-treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are required.

(4) *Satellite group.* A satellite group of 20 animals (10 animals per sex) may be treated with the high dose level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of appropriate length, normally not less than 28 days. In addition, a control group of 20 animals (10 animals of each sex) should be added to the satellite study.

(5) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to determine a dose-response relationship as well as a NOEL. Therefore, at least three dose levels plus a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest dose level) must be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a dose-response curve.

(ii) The highest dose level should result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation.

(iii) The intermediate dose levels should be spaced to produce a gradation of toxic effects.

(iv) The lowest dose level should produce no evidence of toxicity.

(6) *Administration of the test substance.* (i) If the test substance is administered by gavage, the animals are dosed with the test substance on a 7–day per week basis for a period of at least 90 days. However, based primarily on practical considerations, dosing by gavage on a 5–day per week basis is acceptable. If the test substance is administered in the drinking water, or mixed in the diet, then exposure should be on a 7–day per week basis.

(ii) All animals must be dosed by the same method during the entire experimental period.

(iii) For substances of low toxicity, it is important to ensure that when administered in the diet the quantities of the test substance involved do not interfere with normal nutrition. When the test substance is administered in the diet, either a constant dietary concentration (parts per million) or a constant dose level in terms of body weight should be used; the alternative used should be specified.

(iv) For a substance administered by gavage, the dose should be given at approximately the same time each day, and adjusted at intervals (weekly or biweekly) to maintain a constant dose level in terms of body weight.

(7) *Observation period.* (i) The animals must be observed for a period of 90 days.

(ii) Animals in the satellite group (if used) scheduled for follow-up observations should be kept for at least 28 days further without treatment to detect recovery from, or persistence of, toxic effects.

(8) *Observation of animals.* (i) Observations must be made at least twice each day for morbidity and mortality. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals). General clinical observations should be made at least once a day, preferably at the same time each day, taking into consideration the peak period of anticipated effects after dosing. The clinical condition of the animal should be recorded.

(ii) A careful clinical examination must be made at least once weekly. Observations should be detailed and carefully recorded, preferably using explicity defined scales. Observations should include, but not be limited to, evaluation of skin and fur, eyes and mucous membranes, respiratory and circulatory effects, autonomic effects such as salivation, central nervous system effects, including tremors and convulsions, changes in the level of activity, gait and posture, reactivity to handling or sensory stimuli, altered strength, and stereotypes or bizarre behavior (e.g., self-mutilation, walking backwards).

(iii) Signs of toxicity should be recorded as they are observed including the time of onset, degree and duration.

(iv) Measurements of food consumption and water consumption, if drinking water is the exposure route, must be made weekly.

(v) Individual weights of animals must be determined shortly before the test substance is administered, weekly thereafter, and at death.

(vi) Moribund animals should be removed and sacrificed when noticed and the time of death should be recorded as precisely as possible.

(vii) At termination, all survivors in the treatment and control groups must be sacrificed.

(9) *Clinical pathology.* Hematology and clinical chemistry examinations must be made on all animals, including controls, of each sex in each group. The hematology and clinical chemistry parameters should be examined at terminal sacrifice at the end of the study. Overnight fasting of the animals prior to blood sampling is recommended. Overall, there is a need for a flexible approach in the measures examined, depending on the observed or expected effects from a chemical, and in the frequency of measures, depending on the duration of potential chemical exposures.

(i) Hematology. The recommended parameters are red blood cell count, hemoglobin concentration, hematocrit, mean corpuscular volume, mean corpuscular hemoglobin, and mean corpuscular hemoglobin concentration, white blood cell count, differential leukocyte count, platelet count, and a measure of clotting potential, such as prothrombin time or activated partial thromboplastin time.

(ii) Clinical chemistry. (A) Parameters which are considered appropriate to all studies are electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity.

(B) The recommended clinical chemistry determinations are potassium, sodium, glucose, total cholesterol, urea nitrogen, creatinine, total protein and albumin. More than 2 hepatic enzymes, (such as alanine aminotransferase, aspartate aminotransferase, alkaline phosphatase, sorbitol dehydrogenase, or gamma glutamyl transpeptidase) should also be measured. Measurements of addtional enzymes (of hepatic or other origin) and bile acids, may also be useful.

(C) If a test chemical has an effect on the hematopoietic system, reticulocyte counts and bone marrow cytology may be indicated.

(D) Other determinations that should be carried out if the test chemical is known or suspected of affecting related measures include calcium, phosphorus, fasting triglycerides, hormones, methemoglobin, and cholinesterases.

(iii) Optionally, the following urinalysis determinations could be performed during the last week of the study using timed urine volume collection: appearance, volume, osmolality or specific gravity, pH, protein, glucose and blood/blood cells.

(10) *Ophthalmological examination.* Ophthalmological examinations using an ophthalmoscope or an equivalent device must be made on all animals prior to the administration of the test substance and on all high dose and control groups at termination. If changes in the eyes are detected, all animals in the other dose groups must be examined.

(11) *Gross necropsy.* (i) All animals must be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) The liver, kidneys, adrenals, testes, epididymides, ovaries, uterus, thymus, spleen, brain, and heart must be trimmed and weighed wet, as soon as possible after dissection.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination:

(A) Digestive system—salivary glands, esophagus, stomach, duodenum, jejunum, ileum, cecum, colon, rectum, liver, pancreas, gallbladder (when present).

(B) Nervous system—brain (including sections of medulla/pons, cerebellum and cerebrum), pituitary, peripheral nerve (sciatic or tibial, preferably in close proximity to the muscle), spinal cord (three levels: cervical, mid-thoracic and lumbar), eyes (retina, optic nerve).

(C) Glandular system—adrenals, parathyroid, thyroid.

(D) Respiratory system—trachea, lungs, pharynx, larynx, nose.

(E) Cardiovascular/hemopoietic system—aorta, heart, bone marrow (and/or fresh aspirate), lymph nodes (preferably one lymph node covering the route of administration and another one distant from the route of administration to cover systemic effects), spleen, thymus.

(F) Urogenital system—kidneys, urinary bladder, prostate, testes, epididymides, seminal vesicle(s), uterus, ovaries, female mammary gland.

(G) Others—all gross lesions and masses, skin.

(12) *Histopathology.* (i) The following histopathology must be performed:

(A) Full histopathology on the organs and tissues, listed in paragraph (e)(11)(iii) of this section, of all rodents in the control and high dose groups, and all rodents that died or were sacrificed during the study.

(B) All gross lesions in all animals.

(C) Target tissues in all animals.

(D) When a satellite group is used, histopathology should be performed on tissues and organs identified as showing effects in the treated groups.

(ii) If excessive early deaths or other problems occur in the high dose group compromising the significance of the data, the next dose level should be examined for complete histopathology.

(iii) An attempt should be made to correlate gross observations with microscopic findings.

(iv) Tissues and organs designated for microscopic examination should be fixed in 10% buffered formalin or a recognized suitable fixative as soon as necropsy is performed and no less than 48 hours prior to trimming.

(f) *Data and reporting*—(1) *Treatment of results.* (i) Data must be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) When applicable, all observed results, qualitative and quantitative, should be evaluated by an appropriate and generally accepted statistical method. Any generally accepted statistical methods may be used; the statistical methods, including significance criteria, should be selected during the design of the study.

(2) *Evaluation of study results.* The findings of a subchronic oral toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects and the necropsy and histopathological findings. The evaluation must include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects. A properly conducted subchronic test should provide a satisfactory estimation

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of a NOEL. It also can indicate the need for an additional longer-term study and provide information on the selection of dose levels.

(3) *Test report.* In addition to reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the following specific information must be reported:

(i) Test substance characterization should include:

(A) Chemical identification.

(B) Lot or batch number.

(C) Physical properties.

(D) Purity/impurities.

(ii) Identification and composition of any vehicle used.

(iii) Test system should contain data on:

(A) Species and strain of animals used and rationale for selection if other than that recommended.

(B) Age including body weight data and sex.

(C) Test environment including cage conditions, ambient temperature, humidity, and light/dark periods.

(D) Identification of animal diet.

(E) Acclimation period.

(iv) Test procedure should include the following data:

(A) Method of randomization used.

(B) Full description of experimental design and procedure.

(C) Dose regimen including levels, methods, and volume.

(v) Test results should include:

(A) Group animal data. Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals exposed.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals dying.

(B) Individual animal data. Data should be presented as summary (group mean) as well as for individual animals.

(*1*) Date of death during the study or whether animals survived to termination.

(*2*) Date of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(*4*) Feed and water (if collected) consumption data.

(5) Achieved dose (mg/kg/day) as a time-weighted average if the test substance is administered in the diet or drinking water.

(*6*) Results of ophthalmological examination.

(*7*) Results of hematological tests performed.

(*8*) Results of clinical chemistry tests performed.

(*9*) Results of urinalysis, if performed.

(*10*) Necropsy findings, including absolute and relative (to body weight) organ weight data.

(*11*) Detailed description of all histopathological findings.

(*12*) Statistical treatment of results, where appropriate.

(g) *Quality control.* A system must be developed and maintained to assure and document adequate performance of laboratory equipment. The study must be conducted in compliance with 40 CFR Part 792—Good Laboratory Practice Standards.

(h) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., NW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Boyd, E.M. Chapter 14. Pilot Studies, 15. Uniposal Clinical Parameters, 16. Uniposal Autopsy Parameters. Predictive Toxicometrics. Williams and Wilkins, Baltimore (1972).

(2) Fitzhugh, O.G. *Subacute Toxicity, Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd Printing 1975) pp. 26–35.

(3) Organization for Economic Cooperation and Development. OECD uidelines for Testing of Chemicals. Guideline 408: Subchronic Oral Toxicity-Rodent: 90-day Study, Adopted: May 12, 1981.

(4) Weingand K., Brown G., Hall R. et al. Harmonization of Animal Clinical Pathology Testing in Toxicity and Safety Studies. *Fundam. & Appl. Toxicol.* 29:198-201. (1996)

§ 799.9325 TSCA 90-day dermal toxicity.

(a) *Scope.* This section is intended to meet the testing requirements under section 4 of the Toxic Substances Control Act (TSCA). In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic dermal toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic dermal study has been designed to permit the determination of the no-observed-effects level (NOEL) and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. This study is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). Extrapolation from the results of this study to humans is valid only to a limited degree. It can, however, provide useful information on the degree of percutaneous absorption, target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

(b) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) harmonized test guideline 870.3250 (August 1998, final guideline). This source is available at the address in paragraph (h) of this section.

(c) *Definitions.* The following definitions also apply to this section.

Cumulative toxicity is the adverse effect of repeated doses occurring as a result of prolonged action or increased concentration of the administered test substance or its metabolites in susceptible tissues.

Dose in a subchronic dermal study is the amount of test substance applied daily to the skin for 90 days. Dose is expressed as weight of the test substance (grams, milligrams), per unit body weight of test animal (milligrams per kilogram), or as weight of the test substance per unit of surface area (milligrams per square centimeter) per day.

No-observed-effects level (NOEL) is the maximum dose used in a study which produces no adverse effects. The NOEL is expressed in terms of the weight of a test substance given daily per unit weight of test animal (milligrams per kilogram per day).

Subchronic dermal toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the dermal route for a part of the test animal's life span.

Target organ is any organ of a test animal showing evidence of an effect induced by a test substance.

(d) *Limit test.* If a test at one dose level of at least 1,000 mg/kg body weight (expected human exposure may indicate the need for a higher dose level), using the procedures described for this section, produces no observable toxic effects or if toxic effects would not be expected based upon data on structurally related compounds, a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* A mammalian species must be used for testing. The rat, rabbit, or guinea pig may be used. Commonly used laboratory strains must be employed. If other mammalian species are used, the tester must provide justification/reasoning for their selection. When a subchronic dermal study is conducted as a preliminary to a chronic dermal study, the same species and strain must be used in both studies.

(ii) *Age/weight.* (A) Testing should be started with young healthy animals as soon as possible after weaning and acclimatization.

(B) Dosing should generally begin in guinea pigs between 5–6 weeks of age, in rats between 8–9 weeks of age, and in rabbits at least 12 weeks old.

(C) At the commencement of the study, the weight variation of animals used must be within 20% of the mean weight for each sex.

(iii) *Sex.* Equal numbers of animals of each sex with healthy skin must be used at each dose level. The females shall be nulliparous and nonpregnant except for specially designed studies.

(iv) *Numbers.* (A) At least 20 animals (10 animals per sex) must be used at each dose level.

(B) If interim sacrifices are planned, the number must be increased by the number of animals scheduled to be sacrificed before completion of the study.

(C) To avoid bias, the use of adequate randomization procedures for the proper allocation of animals to test and control groups is required.

(D) Each animal must be assigned a unique identification number. Dead animals, their preserved organs and tissues, and microscopic slides must be identified by reference to the animal's unique number.

(v) *Husbandry.* (A) Animals should be housed in individual cages.

(B) The temperature of the experimental animal rooms should be at 22 ± 3 °C

(C) The relative humidity of the experimental animal rooms should be 50 ± 20%.

(D) Where lighting is artificial, the sequence should be 12 hours light/12 hours dark.

(E) Control and test animals must be fed from the same batch and lot. The feed should be analyzed to assure adequacy of nutritional requirements of the species tested and for impurities that might influence the outcome of the test. For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water.

(F) The study should not be initiated until animals have been allowed a period of acclimatization/quarantine to environmental conditions, nor should animals from outside sources be placed on test without an adequate period of quarantine. An acclimation period of at least five days is recommended.

(2) *Control and test substances.* (i) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, the vehicle should not elicit toxic effects or substantially alter the chemical or toxicological properties of the test substance. It is recommended that, whenever possible, the usage of an aqueous solution be considered first, followed by consideration of a solution of oil and then solution of other vehicles.

(ii) One lot of the test substance should be used, if possible, throughout the duration of the study, and the research sample should be stored under conditions that maintain its purity and stability. Prior to the initiation of the study, there should be a characterization of the test substance, including the purity of the test compound and if technically feasible, the name and quantities of unknown contaminants and impurities.

(iii) If the test substance is dissolved or suspended in a vehicle, the period during which the test substance is stable in such a mixture should be determined prior to the initiation of the study. Its homogeneity and concentration should be determined prior to the initiation of the study and periodically during the study. Statistically randomized samples of the mixture should be analyzed to ensure that proper mixing, formulation, and storage procedures are being followed, and that the appropriate concentration of the test or control substance is contained in the mixture.

(3) *Control groups.* A concurrent control group is required. This group must be an untreated or sham-treated control group or, if a vehicle is used in the application of the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or not available, both untreated/sham-treated and vehicle control groups are required.

(4) *Satellite group.* A satellite group of 20 animals (10 animals per sex) may be treated with the high dose level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of appropriate length, normally not less than 28 days. In addition a control group of 20 animals (10 animals per sex) should be added to the satellite study.

(5) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to determine a dose-response relationship as well as a NOEL. Therefore, at least three dose levels plus a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest dose level) group shall be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a dose-response curve.

(ii) The highest dose level should elicit signs of toxicity but not produce severe skin irritation or an incidence of fatality which would prevent a meaningful evaluation. If application of the test substance produces severe skin irritation, the concentration may be reduced, although this may result in a reduction in, or absence of, other toxic effects at the high dose level. If the skin has been badly damaged early in the study, it may be necessary to terminate the study and undertake a new one at lower concentrations.

(iii) The intermediate dose levels should be spaced to produce a gradation of toxic effects.

(iv) The lowest dose level should not produce any evidence of toxic effects.

(6) *Preparation of animal skin.* Shortly before testing, fur must be clipped from not less than 10% of the body surface area for application of the test substance. In order to dose approximately 10% of the body surface, the area starting at the scapulae (shoulders) to the wing of the ileum (hipbone) and half way down the flank on each side of the animal should be shaved. Shaving should be carried out approximately 24 hours before dosing. Repeated clipping or shaving is usually needed at approximately weekly intervals. When clipping or shaving the fur, care should be taken to avoid abrading the skin which could alter its permeability.

(7) *Preparation of test substance.* (i) Liquid test substances are generally used undiluted, except as indicated in paragraph (e)(5)(ii) of this section.

(ii) Solids should be pulverized when possible. The substance should be moistened sufficiently with water or, when necessary, a suitable vehicle to ensure good contact with the skin. When a vehicle is used, the influence of the vehicle on toxicity of, and penetration of the skin by, the test substance should be taken into account.

(iii) The volume of application should be kept constant, e.g., less than 300 µL for the rat; different concentrations of test solution shall be prepared for different dose levels.

(8) *Administration of test substance.* (i) The duration of exposure should be at least for 90 days.

(ii) Ideally, the animals should be treated with test substance for at least 6 hours per day on a 7-day per week basis. However, based on practical considerations, application on a 5-day per week basis is acceptable. Dosing should be conducted at approximately the same time each day.

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(iii) The test substance must be applied uniformly over the treatment site.

(iv) The surface area covered may be less for highly toxic substances. As much of the area should be covered with as thin and uniform a film as possible.

(v) During the exposure period, the test substance must be held in contact with the skin with a porous gauze dressing (less than or equal to 8 ply). The test site must be further covered with nonirritating tape to retain the gauze dressing and the test substance and to ensure that the animals cannot ingest the test substance. Restrainers may be used to prevent the ingestion of the test substance, but complete immobilization is not recommended. The test substance may be wiped from the skin after the six-hour exposure period to prevent ingestion.

(9) *Observation of animals.* (i) Observations must be made at least twice each day for morbidity and mortality. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals). General clinical observations must be made at least once a day, preferably at the same time each day, taking into consideration the peak period of anticipated effects after dosing. The clinical condition of the animal should be recorded.

(ii) A careful clinical examination must be made at least once weekly. Observations should be detailed and carefully recorded, preferably using explicity defined scales. Observations should include, but not be limited to, evaluation of skin and fur, eyes and mucous membranes, respiratory and circulatory effects, autonomic effects such as salivation, central nervous system effects, including tremors and convulsions, changes in the level of activity, gait and posture, reactivity to handling or sensory stimuli, altered strength, and stereotypes or bizarre behavior (e.g., self-mutilation, walking backwards).

(iii) Signs of toxicity should be recorded as they are observed including the time of onset, degree and duration.

(iv) Individual weights of animals must be determined shortly before the test substance is administered, weekly thereafter, and at death.

(v) Food consumption must also be determined weekly if abnormal body weight changes are observed.

(vi) Moribund animals should be removed and sacrificed when noticed and the time of death should be recorded as precisely as possible.

(vii) At termination, all survivors in the control and treatment groups must be sacrificed.

(10) *Clinicol pathology.* Hematology and clinical chemistry examinations must be made on all animals, including controls, of each sex in each group. The hematology and clinical chemistry parameters should be examined at terminal sacrifice at the end of the study. Overnight fasting of the animals prior to blood sampling is recommended. Overall, there is a need for a flexible approach in the measures examined, depending on the observed or expected effects from a chemical, and in the frequency of measures, depending on the duration of potential chemical exposures.

(i) Hematology. The recommended parameters are red blood cell count, hemoglobin concentration, hematocrit, mean corpuscular volume, mean corpuscular hemoglobin, and mean corpuscular hemoglobin concentration, white blood cell count, differential leukocyte count, platelet count, and a measure of clotting potential, such as prothrombin time or activated partial thromboplastin time.

(ii) Clinical chemistry. (A) Parameters which are considered appropriate to all studies are electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity.

(B) The recommended clinical chemistry determinations are potassium, sodium, glucose, total cholesterol, urea nitrogen, creatinine, total protein and albumin. More than 2 hepatic enzymes, (such as alanine aminotransferase, aspartate aminotransferase, alkaline phosphatase, sorbitol dehydrogenase, or gamma glutamyl transpeptidase) should also be measured. Measurements of additional enzymes (of hepatic or other origin) and bile acids, may also be useful.

(C) If a test chemical has an effect on the hematopoietic system, reticulocyte counts and bone marrow cytology may be indicated.

(D) Other determinations that should be carried out if the test chemical is known or suspected of affecting related measures include calcium, phosphorus, fasting triglycerides, hormones, methemoglobin, and cholinesterases.

(iii) Optionally, the following urinalysis determinations could be performed during the last week of the study using timed urine volume collection: appearance, volume, osmolality or specific gravity, pH, protein, glucose and blood/blood cells.

(11) *Ophthalmological examination.* Using an ophthalmoscope or an equivalent device, ophthalmological examinations must be made on all animals prior to the administration of the test substance and on all high dose and control groups at termination. If changes in the eyes are detected, all animals in the other dose groups must be examined.

(12) *Gross necropsy.* (i) All animals must be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) The liver, brain, kidneys, spleen, adrenals, testes, epididymides, uterus, ovaries, thymus and heart must be trimmed and weighed wet, as soon as possible after dissection.

(iii) The following organs and tissues, or representative samples thereof, must be preserved in a suitable medium for possible future histopathological examination:

(A) Digestive system—salivary glands, esophagus, stomach, duodenum, jejunum, ileum, cecum, colon, rectum, liver, pancreas, gallbladder (when present).

(B) Nervous system—brain (multiple sections, including cerebrum, cerebellum and medulla/pons), pituitary, peripheral nerve (sciatic or tibial, preferably in close proximity to the muscle), spinal cord (three levels, cervical, mid-thoracic and lumbar), eyes (retina, optic nerve).

(C) Glandular system—adrenals, parathyroid, thyroid.

(D) Respiratory system—trachea, lungs, pharynx, larynx, nose.

(E) Cardiovascular/Hematopoietic system—aorta, heart, bone marrow (and/or fresh aspirate), lymph nodes (preferably one lymph node covering the route of administration and another one distant from the route of administration to cover systemic effects), spleen, thymus.

(F) Urogenital system—kidneys, urinary bladder, prostate, testes, epididymides, seminal vesicle(s), uterus, ovaries, female mammary gland.

(G) Other—all gross lesions and masses, skin (both treated and adjacent untreated areas).

(13) *Histopathology.* (i) The following histopathology must be performed:

(A) Full histopathology on the organs and tissues, listed in paragraph (e)(12)(iii) of this section, of all animals in the control and high dose groups and all animals that died or were sacrificed during the study.

(B) All gross lesions in all animals.

(C) Target organs in all animals.

(D) When a satellite group is used, histopathology must be performed on tissues and organs identified as showing toxic effects in the treated groups.

(ii) If excessive early deaths or other problems occur in the high dose group compromising the significance of the data, the next dose level must be examined for complete histopathology.

(iii) An attempt should be made to correlate gross observations with microscopic findings.

(iv) Tissues and organs designated for microscopic examination should be fixed in 10% buffered formalin or a recognized suitable fixative as soon as necropsy is performed and no less than 48 hours prior to trimming.

(f) *Data and reporting*—(1) *Treatment of results.* (i) Data must be summarized in tabular form, showing for each test group, number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) When applicable, all observed results, qualitative and quantitative, should be evaluated by an appropriate and generally acceptable statistical method. Any generally accepted statistical method should be used; the statistical methods including significance criteria should be selected during the design of the study.

(2) *Evaluation of study results.* The findings of a subchronic dermal toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of toxic effects and the necropsy and histopathological findings. The evaluation should include the relationship between the dose of the test substance, the incidence and severity of abnormalities including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effect on mortality, and any other general or specific toxic effects. A properly conducted 90-day subchronic dermal study should provide information on the effects of repeated application of a substance and a satisfactory estimation of a NOEL. It also can indicate the need for an additional longer-term study and provide information on the selection of dose levels.

(3) *Test report.* In addition to reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the following specific information must be reported:

(i) Test substance characterization should include:

(A) Chemical identification.

(B) Lot or batch numbers.

(C) Physical properties.

(D) Purity/impurities.

(ii) Identification and composition of any vehicle if used.

(iii) Test system should contain data on:

(A) Species and strain of animals used and rationale for selection if other than that recommended.

(B) Age including body weight data and sex.

(C) Test environment including cage conditions, ambient temperature, humidity, and light/dark periods.

(D) Identification of animal diet.

(E) Acclimation period.

(iv) Test procedure should include the following data:

(A) Method of randomization used.

(B) Full description of experimental design and procedure.

(C) Dose regime including levels, method, and volume.

(v) Test results should include:

(A) Group animal data. Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals exposed.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals dying.

(B) Individual animal data. Data should be presented as summary (group mean) as well as for individual animals.

(*1*) Date of death during the study or whether animals survived to termination.

(*2*) Date of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(*4*) Feed consumption data, when collected.

(*5*) Results of ophthalmological examination.

(*6*) Results of hematological tests performed.

(*7*) Results of clinical chemistry tests performed.

(*8*) Results of urinalysis, when performed.

(*9*) Results of observations made.

(*10*) Necropsy findings, including absolute and relative (to body weight) organ weight data.

(*11*) Detailed description of all histopathological findings.

(*12*) Statistical treatment of results, where appropriate.

(g) *Quality control.* A system must be developed and maintained to assure and document adequate performance of laboratory equipment. The study must be conducted in compliance with the Good Laboratory Practice (GLP) regulations.

(h) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., NW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Organization for Economic Cooperation and Development. Guidelines for Testing of Chemicals, Section 4-Health Effects, Part 411 Subchronic Toxicity Studies, Paris, 1981.

(2) Weingand K, Brown G, Hall R et al. (1996). Harmonization of Animal Clinical Pathology Testing in Toxicity and Safety Studies. *Fundam. & Appl. Toxicol.* 29:198-201.

§ 799.9355 TSCA reproduction/developmental toxicity screening test.

(a) *Scope*—(1) *Applicability.* This section is intended to meet testing requirements of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) harmonized test guideline 870.3550 (July 2000, final guidelines). This source is available at the address in paragraph (h) of this section.

(b) *Purpose.* (1) This guideline is designed to generate limited information concerning the effects of a test substance on male and female reproductive performance such as gonadal function, mating behavior, conception, development of the conceptus, and parturition. It is not an alternative to, nor does it replace, the existing comprehensive test standards in §§ 799.9370 and 799.9380.

(2) This screening test guideline can be used to provide initial information on possible effects on reproduction and/or development, either at an early stage of assessing the toxicological properties of chemicals, or on chemicals of high concern. It can also be used as part of a set of initial screening tests for existing chemicals for which little or no toxicological information is available, as a dose range finding study for more extensive reproduction/developmental studies, or when otherwise considered relevant.

(3) This test does not provide complete information on all aspects of reproduction and development. In particular, it offers only limited means of detecting postnatal manifestations of prenatal exposure, or effects that may be induced during postnatal exposure. Due (amongst other reasons) to the relatively small numbers of animals in the dose groups, the selectivity of the end points,

and the short duration of the study, this method will not provide evidence for definite claims of no effects.

(c) *Definitions.* The definitions in section 3 of TSCA and in 40 CFR Part 792—Good Laboratory Practice Standards apply to this section. The following definitions also apply to this section.

Dosage is a general term comprising of dose, its frequency and the duration of dosing.

Dose is the amount of test substance administered. Dose is expressed as weight (g, mg) as weight of test substance per unit weight of test animal (e.g., mg/kg), or as constant dietary concentration parts per million (ppm).

No-observed-effects level (NOEL) is the maximum dose used in a study which produces no adverse effects. The NOEL is expressed in terms of the weight of a test substance given daily per unit weight of test animal (milligrams per kilograms per day).

(d) *Principle of the test.* (1) The test substance is administered in graduated doses to several groups of males and females. Males should be dosed for a minimum of four weeks and up to and including the day before scheduled sacrifice (this includes a minimum of two weeks prior to mating, during the mating period and, approximately, two weeks post-mating). In view of the limited pre-mating dosing period in males, fertility may not be a particular sensitive indicator of testicular toxicity. Therefore, a detailed histological examination of the testes is essential. The combination of a pre-mating dosing period of two weeks and subsequent mating/fertility observations with an overall dosing period of at least four weeks, followed by detailed histopathology of the male gonads, is considered sufficient to enable detection of the majority of effects on male fertility and spermatogenesis.

(2) Females should be dosed throughout the study. This includes two weeks prior to mating (with the objective of covering at least two complete oestrous cycles), the variable time to conception, the duration of pregnancy and at least four days after delivery, up to and including the day before scheduled sacrifice.

(3) Duration of study, following acclimatization, is dependent on the female performance and is approximately 54 days, (at least 14 days premating, (up to) 14 days mating, 22 days gestation, 4 days lactation).

(4) During the period of administration, the animals are observed closely each day for signs of toxicity. Animals which die or are sacrificed during the test period are necropsied and, at the conclusion of the test, surviving animals are sacrificed and necropsied.

(e) *Description of the method*—(1) *Selection of animal species.* This test standard is designed for use with the rat. If other species are used, appropriate modifications will be necessary. Strains with low fecundity or well-known high incidence of developmental defects should not be used. Healthy virgin animals, not subjected to previous experimental procedures, should be used. The test animals should be characterized as to species, strain, sex, weight and/or age. At the commencement of the study the weight variation of animals used should be minimal and not exceed 20% of the mean weight of each sex.

(2) *Housing and feeding conditions.* (i) The temperature in the experimental animal room should be 22 °C (± 3°). Although the relative humidity should be at least 30% and preferably not exceed 70% other than during room cleaning, the aim should be 50–60%. Lighting should be artificial, the sequence being 12 hours light, 12 hours dark. For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water. The choice of diet may be influenced by the need to ensure a suitable admixture of a test substance when administered by this method.

(ii) Animals may be housed individually or be caged in small groups of the same sex; for group caging, no more than five animals should be housed per cage. Mating procedures should be carried out in cages suitable for the purpose. Pregnant females should be caged individually and provided with nesting materials.

(3) *Preparation of the animals.* Healthy young adult animals must be randomly assigned to the control and treatment groups. Cages should be arranged in such a way that possible effects due to cage placement are minimized. The animals must be uniquely identified and kept in their cages for at least five days prior to the start of the study to allow for acclimatization to the laboratory conditions.

(4) *Preparation of doses.* (i) It is recommended that the test substance be administered orally unless other routes of administration are considered more appropriate. When the oral route is selected, the test compound is usually administered by gavage; however, alternatively, test compounds may be administered via the diet or drinking water.

(ii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. It is recommended that, wherever possible, the use of an aqueous solution/suspension be considered first, followed by consideration of a solution/emulsion in oil (e.g., corn oil) and then by possible solution in other vehicles. For vehicles other than water the toxic characteristics of the vehicle must be known. The stability of the test substance in the vehicle should be determined.

(f) *Procedure*—(1) *Number and sex of animals.* It is recommended that each group be started with at least 10 animals of each sex. Except in the case of marked toxic effects, it is expected that this will provide at least 8 pregnant females per group which normally is the minimum acceptable number of pregnant females per group. The objective is to produce enough pregnancies and offspring to assure a meaningful evaluation of the potential of the substance to affect fertility, pregnancy, maternal and suckling behaviour, and growth and development of the F_1 offspring from conception to day 4 post-partum.

(2) *Dosage.* (i) Generally, at least three test groups and a control group should be used. Dose levels may be based on information from acute toxicity tests or on results from repeated dose studies. Except for treatment with the test substance, animals in the control group should be handled in an identical manner to the test group subjects. If a vehicle is used in administering the test substance, the control group should receive the vehicle in the highest volume used.

(ii) Dose levels should be selected taking into account any existing toxicity and (toxico-) kinetic data available for the test compound or related materials. The highest dose level should be chosen with the aim of inducing toxic effects but not death or severe suffering. Thereafter, a descending sequence of dose levels should be selected in order to demonstrate any dose response relationships and no adverse effects at the lowest dose level. Two to four fold intervals are frequently optimal for setting the descending dose levels and addition of a fourth test group is often preferable to using very large intervals (e.g., more than a factor of 10) between dosages.

(3) *Limit test.* If an oral study at one dose level of at least 1000 mg/kg body weight/day or, for dietary or drinking water administration, an equivalent percentage in the diet, or drinking water using the procedures described for this study, produces no observable toxic effects and if toxicity would not be expected based upon data from

structurally related compounds, then a full study using several dose levels may not be considered necessary. The limit test applies except when human exposure indicates the need for a higher oral dose level to be used. For other types of administration, such as inhalation or dermal application, the physical chemical properties of the test substance often may dictate the maximum attainable concentration.

(4) *Administration of doses.* (i) The animals must be dosed with the test substance daily for seven days a week. When the test substance is administered by gavage, this should be done in a single dose to the animals using a stomach tube or a suitable intubation cannula. The maximum volume of liquid that can be administered at one time depends on the size of the test animal. The volume should not exceed 1 ml/100 g body weight, except in the case of aqueous solutions where 2 ml/100 g body weight may be used. Except for irritating substances which will normally reveal exacerbated effects with higher concentrations, variability in test volume should be minimized by adjusting the concentration to ensure a constant volume at all dose levels.

(ii) For substances administered via the diet or drinking water, it is important to ensure that the quantities of the test substance involved do not interfere with normal nutrition or water balance. When the test substance is administered in the diet either a constant dietary concentration (parts per million (ppm)) or a constant dose level in terms of the animals' body weight may be used; the alternative used must be specified. For a substance administered by gavage, the dose should be given at similar times each day, and adjusted at least weekly to maintain a constant dose level in terms of animal body weight.

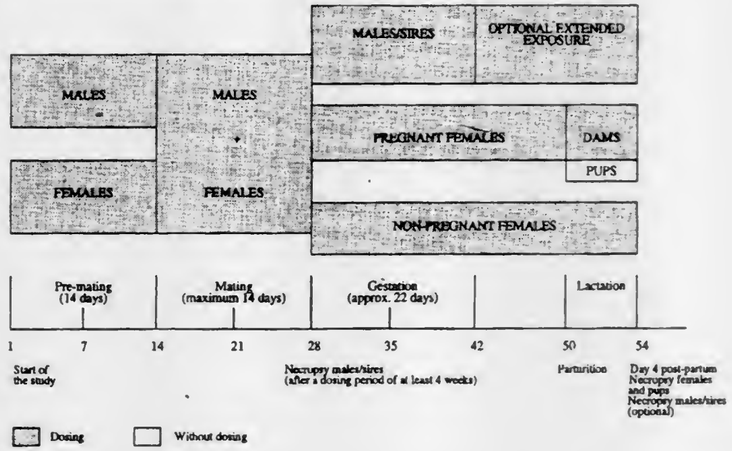
(5) *Experimental schedule.* (i) Dosing of both sexes should begin at least 2 weeks prior to mating, after they have been acclimatized for at least five days. The study should be scheduled in such a way that mating begins soon after the animals have attained full sexual maturity. This may vary slightly for different strains of rats in different laboratories, e.g., Sprague Dawley rats 10 weeks of age, Wistar rats about 12 weeks of age. Dams with offspring should be sacrificed on day 4 post-partum, or shortly thereafter. The day of birth (viz. when parturition is complete) is defined as day 0 post-partum. Females showing no-evidence of copulation are sacrificed 24–26 days after the last day of the mating period. Dosing is continued in both sexes during the mating period. Males should further be dosed after the mating period at least until the minimum total dosing period of 28 days has been completed. They are then sacrificed, or, alternatively, are retained and continued to be dosed for the possible conduction of a second mating if considered appropriate.

(ii) Daily dosing of the parental females should continue throughout pregnancy and at least up to, and including, day 3 post-partum or the day before sacrifice. For studies where the test substance is administered by inhalation or by the dermal route, dosing should be continued at least up to, and including, day 19 of gestation.

(iii) The experimental schedule is given in the following figure 1.

FIGURE 1

DIAGRAM OF THE EXPERIMENTAL SCHEDULE INDICATING THE MAXIMUM STUDY DURATION, BASED ON A FULL 14-DAY MATING PERIOD



(6) *Mating procedure.* Normally, 1:1 (one male to one female) matings should be used in this study. Exceptions can arise in the case of occasional deaths of males. The female should be placed with the same male until pregnancy occurs or two weeks have elapsed. Each morning the females should be examined for the presence of sperm or a vaginal plug. Day 0 of pregnancy is defined as the day a vaginal plug or sperm is found.

(7) *Observations.* (i) Throughout the test period, general clinical observations should be made at least once a day, and more frequently when signs of toxicity are observed. They should be made preferably at the same time(s) each day, considering the peak period of anticipated effects after dosing. Pertinent behavioural changes, signs of difficult or prolonged parturition and all signs of toxicity, including mortality, should be recorded. These records should include time of onset, degree and duration of toxicity signs.

structurally related compounds, then a full study using several dose levels may not be considered necessary. The limit test applies except when human exposure indicates the need for a higher oral dose level to be used. For other types of administration, such as inhalation or dermal application, the physical chemical properties of the test substance often may dictate the maximum attainable concentration.

(4) *Administration of doses.* (i) The animals must be dosed with the test substance daily for seven days a week. When the test substance is administered by gavage, this should be done in a single dose to the animals using a stomach tube or a suitable intubation cannula. The maximum volume of liquid that can be administered at one time depends on the size of the test animal. The volume should not exceed 1 ml/100 g body weight, except in the case of aqueous solutions where 2 ml/100 g body weight may be used. Except for irritating substances which will normally reveal exacerbated effects with higher concentrations, variability in test volume should be minimized by adjusting the concentration to ensure a constant volume at all dose levels.

(ii) For substances administered via the diet or drinking water, it is important to ensure that the quantities of the test substance involved do not interfere with normal nutrition or water balance. When the test substance is administered in the diet either a constant dietary concentration (parts per million (ppm)) or a constant dose level in terms of the animals' body weight may be used; the alternative used must be specified. For a substance administered by gavage, the dose should be given at similar times each day, and adjusted at least weekly to maintain a constant dose level in terms of animal body weight.

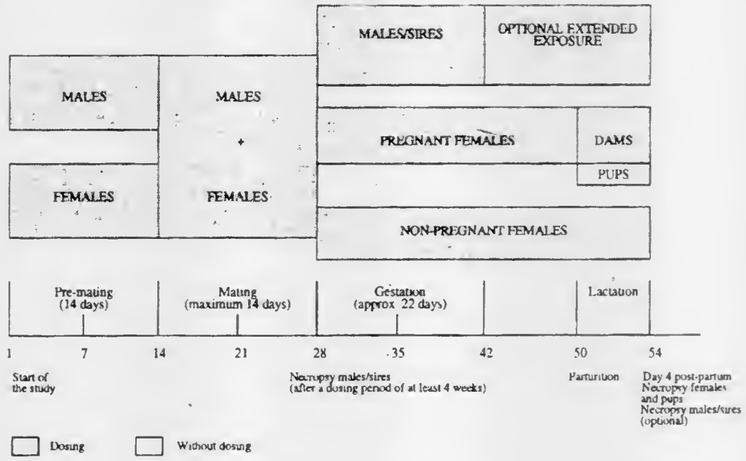
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(7) *Observations.* (i) Throughout the test period, general clinical observations should be made at least once a day, and more frequently when signs of toxicity are observed. They should be made preferably at the same time(s) each day, considering the peak period of anticipated effects after dosing. Pertinent behavioural changes, signs of difficult or prolonged parturition and all signs of toxicity, including mortality, should be recorded. These records should include time of onset, degree and duration of toxicity signs.

(ii) The duration of gestation should be recorded and is calculated from day 0 of pregnancy. Each litter should be examined as soon as possible after delivery to establish the number and sex of pups, stillbirths, live births, runts (pups that are significantly smaller than corresponding control pups) and the presence of gross abnormalities.

(iii) Live pups should be counted and sexed and litters weighed within 24 hours of parturition (day 1) and on day 4 post-partum. In addition to the observations on parent animals, described by paragraph (f)(7) of this section, any abnormal behaviour of the offspring should be recorded.

(8) *Body weight and food/water consumption.* (i) Males and females should be individually weighed on the first day of dosing, at least weekly thereafter, and at termination. During pregnancy, females should be weighed on days 0, 7, 14 and 20 and within 24 hours of parturition (day 1) and day 4 post-partum.

(ii) During pre-mating, pregnancy and lactation, food consumption should be measured at least weekly. The measurement of food consumption during mating is optional. Water consumption during these periods should also be measured when the test substance is administered via drinking water.

(9) *Pathology*—(i) *Gross necropsy.* (A) At the time of sacrifice or death during the study, the adult animals should be examined macroscopically for any abnormalities or pathological changes. Special attention should be paid to the organs of the reproductive system. The number of implantation sites should be recorded. Corpora lutea should be counted.

(B) The testes and epididymides of all male adult animals should be weighed.

(C) Dead pups and pups sacrificed at day 4 post-partum, or shortly thereafter, should, at least, be carefully examined externally for gross abnormalities.

(D) The ovaries, testes, epididymides, accessory sex organs and all organs showing macroscopic lesions of all adult animals should be preserved. Formalin fixation is not recommended for routine examination of testes and epididymides. An acceptable method is the use of Bouin's fixative for these tissues.

(ii) *Histopathology.* (A) Detailed histological examination should be performed on the ovaries, testes and epididymides of the animals of the highest dose group and the control group. The other preserved organs may be examined when necessary. Examinations should be extended to the animals of other dosage groups when changes are seen in the highest dose group.

(B) Detailed testicular histopathological examination (e.g., using Bouin's fixative, paraffin embedding and transverse sections of 4-5 ±m thickness) should be conducted with special emphasis on stages of spermatogenesis and histopathology interstitial testicular cell structure. The evaluation should identify treatment-related effects such as retained spermatids, missing germ cell layers or types, multinucleated giant cells or sloughing of spermatogenic cells into the lumen (the specifications for the evaluation are discussed in paragraph (g)(2) of this section). Examination of the intact epididymis should include the caput, corpus, and cauda, which can be accomplished by evaluation of a longitudinal section. The epididymis should be evaluated for leukocyte infiltration, change in prevalence of cell types, aberrant cell types, and phagocytosis of sperm. PAS and hematoxylin staining may be used for examination of the male reproductive organs. Histopathological examination of the ovary should detect qualitative depletion of the primordial follicle population.

(g) *Data and reporting*—(1) *Data.* Individual animal data should be provided. Additionally, all data should be summarised in tabular form, showing for each test group the number of animals at the start of the test, the number of animals found dead during the test or sacrificed for humane reasons, the time of any death or humane sacrifice, the number of fertile animals, the number of pregnant females, the number of animals showing signs of toxicity, a description of the signs of toxicity observed, including time of onset, duration, and severity of any toxic effects, the types of histopathological changes, and all relevant litter data.

(2) *Evaluation of results.* (i) The findings of this toxicity study should be evaluated in terms of the observed effects, necropsy and microscopic findings. This evaluation must include the relationship between the dose of the test substance and the presence or absence, incidence and severity of abnormalities, including gross lesions, identified target organs, infertility, clinical abnormalities, affected reproductive and litter performance, body weight changes, effects on mortality and any other toxic effects.

(ii) Because of the short period of treatment of the male, the histopathology of the testis and epididymus must be considered along with the fertility data, when assessing male reproductive effects.

(iii) Due to the limited dimensions of the study, statistical analysis in the form of tests for "significance" are of limited value for many endpoints, especially reproductive endpoints. If statistical analyses are used then the method chosen should be appropriate for the distribution of the variable examined, and be selected prior to the start of the study. Because of the small group size, the use of historic control data (e.g., for litter size), where available, may also be useful as an aid to the interpretation of the study.

(3) *Test report.* The test report must include the following information:

(i) Test substance:

(A) Physical nature and, where relevant, physicochemical properties.

(B) Identification data.

(ii) Vehicle (if appropriate): Justification for choice of vehicle if other than water.

(iii) Test animals:

(A) Species/strain used.

(B) Number, age and sex of animals.

(C) Source, housing conditions, diet, etc.

(D) Individual weights of animals at the start of the test.

(iv) Test conditions:

(A) Rationale for dose level selection.

(B) Details of test substance formulation/diet preparation, achieved concentrations, stability and homogeneity of the preparation.

(C) Details of the administration of the test substance.

(D) Conversion from diet/drinking water test substance concentration (parts per million (ppm)) to the actual dose (mg/kg body weight/day), if applicable.

(E) Details of food and water quality.

(v) Results (toxic response data by sex and dose):

(A) Time of death during the study or whether animals survived to termination.

(B) Nature, severity and duration of clinical observations (whether reversible or not).

(C) Body weight/body weight change data.

(D) Food consumption and water consumption, if applicable.

(E) Effects on reproduction, including information on mating/precoital interval, fertility, fecundity and gestation duration.

(F) Effects on offspring, including number of pups born (live and dead), sex ratio, postnatal growth (pup weights) and survival (litter size), gross abnormalities and clinical observations during lactation.

(G) Body weight at termination and organ weight data for the parental animals.

(H) Necropsy data, including number of implantations and number of corpora lutea.

(I) Calculations of pre- and postimplantation loss.

(J) Detailed description of histopathological findings.

(K) Statistical treatment of results, where appropriate.

(vi) Discussion of results.

(vii) Conclusions.

(4) *Interpretation of results.* The study will provide evaluations of reproduction/developmental toxicity associated with administration of repeated doses. It could provide an indication of the need to conduct further investigations and provides guidance in the design of subsequent studies.

(h) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) OECD (1995). Reproduction/ Developmental Toxicity Screening Test, OECD 421, OECD Guidelines for Testing of Chemicals.

(2) [Reserved]

§ 799.9365 TSCA combined repeated dose toxicity study with the reproduction/ developmental toxicity screening test.

(a) *Scope*—(1) *Applicability.* This section is intended to meet testing requirements of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides and Toxic Substances (OPPTS) harmonized test guideline 870.3650 (July 2000, final guidelines). This source is available at the address in paragraph (h) of this section.

(b) *Purpose.* (1) This screening test provides limited information on systemic toxicity, neurotoxicity, and/or immunotoxicity following repeated exposure over a limited time period. In addition, it can be used to provide initial information on possible effects on male and female reproductive performance such as gonadal function, mating behavior, conception, development of the conceptus, and parturition. It is not an alternative to, nor does it replace, the existing test guidelines in §§ 799.9370, 799.9380, 799.9620, and 799.9780 of this part.

(2) This test does not provide complete information on all aspects of reproduction and development. In particular, it offers only limited means of detecting postnatal manifestations of prenatal exposure, or effects that may be induced during postnatal exposure. Due (amongst other reasons) to the selectivity of the end points, and the short duration of the study, this method will not provide evidence for definite claims of no reproduction/ developmental effects.

(3) This test can be used to provide initial information either at an early stage of assessing the toxicological properties of chemicals, or chemicals of high concern. It can also be used as part of a set of initial screening tests for existing chemicals for which little or no toxicological information is available or when otherwise considered relevant. It also can serve as an alternative to conducting two separate screening tests for repeated dose toxicity as described in § 799.9305 of this part and reproductive/developmental toxicity as described in § 799.9355 of this part.

(c) *Definitions.* The definitions in section 3 of TSCA and in 40 CFR Part 792—Good Laboratory Practice Standards apply to this section. The following definitions also apply to this section.

Dosage is a general term comprising dose, its frequency and the duration of dosing.

Dose is the amount of test substance administered. Dose is expressed as weight (g, gm) or as weight of test substance per unit weight of test animal (e.g., mg/kg), or as constant dietary concentration (parts per million (ppm)).

No-observed-effects level (NOEL) is the maximum dose used in a study which produces no adverse effects. The NOEL is expressed in terms of the weight of a test substance given daily per unit weight of test animal (milligrams per kilogram per day).

(d) *Principle of the test.* (1) The test substance must be administered in graduated doses to several groups of males and females. Males should be dosed for a minimum of 4 weeks, up to and including the day before scheduled sacrifice (this includes a minimum of 2 weeks prior to mating, during the mating period and, approximately, 2 weeks post mating). In view of the limited pre-mating dosing period in males, fertility may not be a particularly sensitive indicator of testicular toxicity. Therefore, a detailed histological examination of the testes is essential. The combination of a pre-mating dosing period of 2 weeks and subsequent mating/fertility observations with an overall dosing period of at least 4 weeks, followed by detailed histopathology of the male gonads, is considered sufficient to enable detection of the majority of effects on male fertility and spermatogenesis.

(2) Females should be dosed throughout the study. This includes 2 weeks prior to mating (with the objective of covering at least two complete oestrous cycles), the variable time to conception, the duration of pregnancy and at least 4 days after delivery, up to and including the day before scheduled sacrifice.

(3) Duration of study, following acclimatization, is dependent on the female performance and is approximately 54 days, (at least 14 days pre-mating, (up to) 14 days mating, 22 days gestation, 4 days lactation).

(4) During the period of administration, the animals are observed closely each day for signs of toxicity. Animals which die or are sacrificed during the test are necropsied and, at the conclusion of the test, surviving animals are sacrificed and necropsied.

(e) *Description of the method*—(1) *Selection of animal species.* This test guideline is designed for use with the rat. If other species are used, appropriate modifications will be necessary. Strains with low fecundity or well-known high incidence of developmental defects should not be used. Healthy virgin animals, not subjected to previous experimental procedures, should be used. The test animals should be characterised as to species, strain, sex, weight and/or age. At the commencement of the study the weight variation of animals used should be minimal and not exceed ± 20% of the mean weight of each sex. Where the study is conducted as a preliminary study to a long-term or a full-generation study, preferably animals from the same strain and source should be used in both studies.

(2) *Housing and feeding conditions.* (i) The temperature in the experimental animal room should be 22 °C (± 3°). The relative humidity should be at least 30% and preferably not exceed 70% other than during room cleaning. Lighting should be artificial, the sequence being 12 hours light, 12 hours dark. For feeding, conventional laboratory diets may be used with an unlimited supply of drinking water. The choice of diet may be influenced by the need to ensure a suitable admixture of a test substance when administered by this method.

(ii) Animals may be housed individually or be caged in small groups of the same sex; for group caging, no more than five animals should be housed per cage. Mating procedures

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should be carried out in cages suitable for the purpose. Pregnant females should be caged individually and provided with nesting materials.

(3) *Preparation of the animals.* Healthy young adult animals must be randomised and assigned to the treatment groups and cages. Cages should be arranged in such a way that possible effects due to cage placements are minimized. The animals must be uniquely identified and kept in their cages for at least 5 days prior to the start of the study to allow for acclimatisation to the laboratory conditions.

(4) *Preparation of doses.* (i) It is recommended that the test substance be administered orally unless other routes of administration are considered more appropriate. When the oral route is selected, the test compound is usually administered by gavage; however, alternatively, test compounds may also be administered via the diet or drinking water.

(ii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. It is recommended that, wherever possible, the use of an aqueous solution/suspension be considered first, followed by consideration of a solution/emulsion in oil (e.g., corn oil) and then by possible solution in other vehicles. For non-aqueous vehicles the toxic characteristics of the vehicle must be known. The stability of the test substance in the vehicle should be determined.

(f) *Procedure*—(1) *Number and sex of animals.* It is recommended that each group be started with at least 10 animals of each sex. Except in the case of marked toxic effects, it is expected that this will provide at least eight pregnant females per group which normally is the minimum acceptable number of pregnant females per group. The objective is to produce enough pregnancies and offspring to assure a meaningful evaluation of the potential of the substance to affect fertility, pregnancy, maternal and suckling behaviour, and growth and development of the F_1 offspring from conception to day 4 post-partum. If interim sacrifices are planned, the number should be increased by the number of animals scheduled to be sacrificed before the completion of the study. Consideration should be given to an additional satellite group of five animals per sex in the control and the top dose group for observation of reversibility, persistence or delayed occurrence of systemic toxic effects, for at least 14 days post treatment. Animals of the satellite groups must not be mated and, consequently, must not used for the assessment of reproduction/ developmental toxicity.

(2) *Dosage.* (i) Generally, at least three test groups and a control group should be used. If there are no suitable general toxicity data available, a range finding study may be performed to aid the determination of the doses to be used. Except for treatment with the test substance, animals in the control group should be handled in an identical manner to the test group subjects. If a vehicle is used in administering the test substance, the control group should receive the vehicle in the highest volume used.

(ii) Dose levels should be selected taking into account any existing toxicity and (toxico-) kinetic data available for the test compound or related materials. It should also be taken into account that there may be differences in sensitivity between pregnant and non-pregnant animals. The highest dose level should be chosen with the aim of inducing toxic effects but not death nor obvious suffering. Thereafter, a descending sequence of dose levels should be selected with a view to demonstrating any dosage related response and no adverse effects at the lowest dose level. Two- to four-fold intervals are frequently optimum and addition of a fourth test group is often preferable to using very large intervals (e.g., more than a factor of 10) between dosages.

(3) *Limit test.* If an oral study at 1-dose level of at least 1000 mg/kg body weight/day or, for dietary administration, an equivalent percentage in the diet, or drinking water (based upon body weight determinations), using the procedures described for this study, produces no observable toxic effects and if toxicity would not be expected based upon data from structurally related compounds, then a full study using several dose levels may not be considered necessary. The limit test applies except when human exposure indicates the need for a higher dose level to be used. For other types of administration, such as inhalation or dermal application, the physical chemical properties of the test substance often may dictate the maximum attainable exposure.

(4) *Administration of doses.* (i) The animals are dosed with the test substance daily for 7 days a week. When the test substance is administered by gavage, this should be done in a single dose to the animals using a stomach tube or a suitable intubation cannula. The maximum volume of liquid that can be administered at one time depends on the size of the test animal. The volume should not exceed 1 ml/100 g body weight, except in the case of aqueous solutions where 2 ml/100 g body weight may be used. Except for irritating or corrosive substances which will normally reveal exacerbated effects with higher concentrations, variability in test volume should be minimized by adjusting the concentration to ensure a constant volume at all dose levels.

(ii) For substances administered via the diet or drinking water, it is important to ensure that the quantities of the test substance involved do not interfere with normal nutrition or water balance. When the test substance is administered in the diet either a constant dietary concentration (parts per million (ppm)) or a constant dose level in terms of the animals' body weight may be used; the alternative used must be specified. For a substance administered by gavage, the dose should be given at similar times each day, and adjusted at least weekly to maintain a constant dose level in terms of animal body weight.

(5) *Experimental schedule.* (i) Dosing of both sexes should begin 2 weeks prior to mating, after they have been acclimatized for at least 5 days. The study should be scheduled in such a way that mating begins soon after the animals have attained full sexual maturity. This may vary slightly for different strains of rats in different laboratories, e.g., Sprague Dawley rats 10 weeks of age, Wistar rats about 12 weeks of age. Dams with offspring should be sacrificed on day 4 post-partum, or shortly thereafter. In order to allow for overnight fasting of dams prior to blood collection (if this option is preferred), dams and their offspring need not necessarily be sacrificed on the same day. The day of birth (viz. when parturition is complete) is defined as day 0 post-partum. Females showing no-evidence of copulation are sacrificed 24–26 days after the last day of the mating period. Dosing is continued in both sexes during the mating period. Males should further be dosed after the mating period at least until the minimum total dosing period of 28 days has been completed. They are then sacrificed, or, alternatively, are retained and continued to be dosed for the possible conduction of a second mating if considered appropriate.

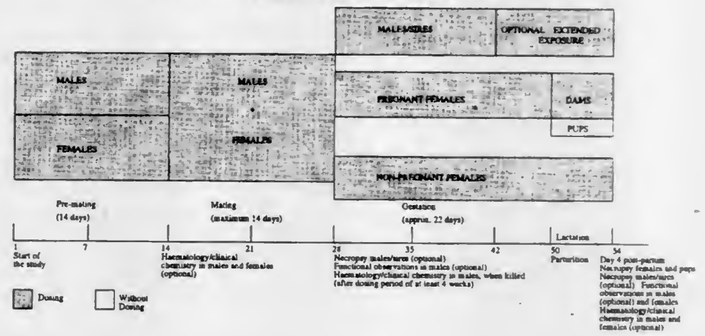
(ii) Daily dosing of the parental females should continue throughout pregnancy and at least up to, and including, day 3 post-partum or the day before sacrifice. For studies where the test substance is administered by inhalation or by the dermal route, dosing should be continued at least up to, and including, day 19 of gestation.

(iii) Animals in a satellite group scheduled for follow-up observations, if included, must not mated. They should be kept at least for a further 14 days after the first scheduled sacrifice of dams, without treatment to detect delayed occurrence, or persistence of, or recovery from toxic effects.

(iv) The experimental schedule is given in the following figure 1.

DIAGRAM 1

DIAGRAM OF THE EXPERIMENTAL SCHEDULE, INDICATING THE MAXIMUM STUDY DURATION, BASED ON A FULL 14-DAY MATING PERIOD



(6) *Mating procedure.* Normally, 1:1 (one male to one female) matings should be used in this study. Exceptions can arise in the case of occasional deaths of males. The female should be placed with the same male until pregnancy occurs or 2 weeks have elapsed. Each morning the females should be examined for the presence of sperm or a vaginal plug. Day 0 of pregnancy is defined as the day a vaginal plug or sperm is found. In case pairing was unsuccessful, re-mating of females with proven males of the same group could be considered.

(7) *Observotions.* (i) General clinical observations should be made at least once a day, preferably at the same time(s) each day and considering the peak period of anticipated effects after dosing. The health condition of the animals should be recorded. At least twice daily all animals must be observed for morbidity and mortality.

(ii) Once before the first exposure (to allow for within-subject comparisons), and at least once a week thereafter, detailed clinical observations should be made in all animals. These observations should be made outside the home cage in a standard arena and preferably at the same time, each day. They should be carefully recorded; preferably using scoring systems, explicitly defined by the testing laboratory. Effort should be made to ensure that variations in the test conditions are minimal and that observations are preferably conducted by observers unaware of the treatment. Signs noted should include, but not be limited to, changes in skin, fur, eyes, mucous membranes, occurrence of secretions and excretions and autonomic activity (e.g., lacrimation, piloerection, pupil size, unusual respiratory pattern). Changes in gait, posture and response to handling as well as the presence of clonic or tonic movements, stereotypies (e.g., excessive grooming, repetitive circling), difficult or prolonged parturition or bizarre behaviour (e.g., self-mutilation, walking backwards) should also be recorded.

(iii) At one time during the study, sensory reactivity to stimuli of different modalities (e.g., auditory, visual and proprioceptive stimuli) assessment of grip strength and motor activity assessment should be conducted in five males and five females, randomly selected from each group. Further details of the procedures that could be followed are given in the respective references. However, alternative procedures than those referenced could also be used. In males, these functional observations should be made towards the end of their dosing period, shortly before scheduled sacrifice but before blood sampling for hematology or clinical chemistry. Females should be in a physiologically similar state during these functional tests and should preferably be tested during lactation, shortly before scheduled sacrifice. In order to avoid hypothermia of pups, dams should be removed from the pups for not more than 30 to 40 minutes. Examples of procedures for observation are described in the references in paragraphs (h)(3), (h)(4), (h)(5), (h)(6), and (h)(7) of this section.

(iv) Functional observations made once towards the end of the study may be omitted when the study is conducted as a preliminary study to a subsequent subchronic (90-day) or long-term study. In that case, the functional observations should be included in this follow-up study. On the other hand, the availability of data on functional observations from this repeated dose study may enhance the ability to select dose levels for a subsequent subchronic or long-term study.

(v) Functional observations may also be omitted for groups that otherwise reveal signs of toxicity to an extent that would significantly interfere with the functional test performance.

(vi) The duration of gestation should be recorded and is calculated from day 0 of pregnancy. Each litter should be examined as soon as possible after delivery to establish the number and sex of pups, stillbirths, live births, runts (pups that are significantly smaller than corresponding control pups), and the presence of gross abnormalities.

(vii) Live pups should be counted and sexed and litters weighed within 24 hours of parturition (day 0 or 1 post-partum) and on day 4 post-partum. In addition to the observations on parental animals, described by paragraphs (f)(7)(ii) and (f)(7)(iii) of this section, any abnormal behaviour of the offspring should be recorded.

(8) *Body weight and food/water consumption.* (i) Males and females should be weighed on the first day of dosing, at least weekly thereafter, and at termination. During pregnancy, females should be weighed on days 0, 7, 14 and 20 and within 24 hours of parturition (day 0 or 1 post-partum), and day 4 post-partum. These observations should be reported individually for each adult animal.

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(ii) During pre-mating, pregnancy and lactation, food consumption should be measured at least weekly. The measurement of food consumption during mating is optional. Water consumption during these periods should also be measured, when the test substance is administered by that medium.

(9) *Hematology.* (i) Once during the study, the following hematological examinations should be made in five males and five females randomly selected from each group: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucocyte count, platelet count and a measure of blood clotting time/potential.

(ii) Blood samples should be taken from a named site. Females should be in a physiologically similar state during sampling. In order to avoid practical difficulties related to the variability in the onset of gestation, blood collection in females may be done at the end of the pre-mating period as an alternative to sampling just prior to, or as part of, the procedure for sacrificing the animals. Blood samples of males should preferably be taken just prior to, or as part of, the procedure for sacrificing the animals. Alternatively, blood collection in males may also be done at the end of the pre-mating period when this time point was preferred for females.

(iii) Blood samples should be stored under appropriate conditions.

(10) *Clinical biochemistry.* (i) Clinical biochemistry determinations to investigate major toxic effects in tissues and, specifically, effects on kidney and liver, should be performed on blood samples obtained from the selected five males and five females of each group. Overnight fasting of the animals prior to blood sampling is recommended[1]. Investigations of plasma or serum must include sodium, potassium, glucose, total cholesterol, urea, creatinine, total protein and albumin, at least two enzymes indicative of hepatocellular effects (such as alanine aminotransferase, aspartate aminotransferase and sorbitol dehydrogenase) and bile acids.

[1] For a number of measurements in serum and plasma, most notably for glucose, overnight fasting would be preferable. The major reason for this preference is that the increased variability which would inevitably result from non-fasting, would tend to mask more subtle effects and make interpretation difficult. On the other hand, however, overnight fasting may interfere with the general metabolism of the (pregnant) animals, disturbs lactation and nursing behaviour, and, particularly in feeding studies, may disturb the daily exposure to the test substance. If overnight fasting is adopted, clinical biochemical determinations should be performed after the conduct of functional observations in week 4 of the study.

Measurements of additional enzymes (of hepatic or other origin) may provide useful information under certain circumstances.

(ii) Optionally, the following urinalysis determinations could be performed in five randomly selected males of each group during the last week of the study using timed urine volume collection; appearance, volume, osmolality or specific gravity, pH, protein, glucose and blood or blood cells.

(iii) In addition, studies to investigate serum markers of general tissue damage should be considered. Other determinations that should be carried out if the known properties of the test substance may, or are suspected to, affect related metabolic profiles include calcium, phosphate, fasting triglycerides and fasting glucose, specific hormones, methemoglobin and cholinesterase. These need to be identified on a case-by-case basis.

(iv) Overall, there is a need for a flexible approach, depending on the observed and/or expected effect with a given compound.

(v) If historical baseline data are inadequate, consideration should be given to determination of hematological and clinical biochemistry variables before dosing commences.

(11) *Pathology*—(i) *Gross necropsy.* (A) All adult animals in the study must be subjected to a full, detailed gross necropsy which includes careful examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents. Special attention should be paid to the organs of the reproductive system. The number of implantation sites should be recorded. Corpora lutea should be counted.

(B) The testes and epididymides of all adult males should be weighed and the ovaries, testes, epididymides, accessory sex organs, and all organs showing macroscopic lesions of all adult animals, should be preserved.

(C) In addition, for five adult males and females, randomly selected from each group, the liver, kidneys, adrenals, thymus, spleen, brain and heart should be trimmed of any adherent tissue, as appropriate and their wet weight taken as soon as possible after dissection to avoid drying. Of the selected males and females, the following tissues should also be preserved in the most appropriate fixation medium for both the type of tissue and the intended subsequent histopathological examination: all gross lesions, brain (representative regions including cerebrum, cerebellum and pons), spinal cord, stomach, small and large intestines (including Peyer's patches), liver, kidneys, adrenals, spleen, heart, thymus, thyroid, trachea and lungs (preserved by inflation with fixative and then immersion), uterus, urinary bladder, lymph nodes (preferably 1 lymph node covering the route of administration and another one distant from the route of administration to cover systemic effects), peripheral nerve (sciatic or tibial) preferably in close proximity to the muscle, and a section of bone marrow (or, alternatively, a fresh mounted marrow aspirate).

(D) Formalin fixation is not recommended for routine examination of testes and epididymides. An acceptable method is the use of Bouin's fixative for these tissues. The clinical and other findings may suggest the need to examine additional tissues. Also, any organs considered likely to be target organs based on the known properties of the test substance should be preserved.

(E) Dead pups and pups sacrificed at day 4 post-partum, or shortly thereafter, should, at least, be carefully examined externally for gross abnormalities.

(ii) *Histopathology.* (A) Full histopathology should be conducted on the preserved organs and tissues of the selected animals in the control and high dose groups and all gross lesions. These examinations should be extended to animals of other dosage groups if treatment-related changes are observed in the high dose group.

(B) Detailed testicular histopathological examination (e.g., using Bouin's fixative, paraffin embedding and transverse sections of 4–5 ±m thickness) should be conducted with special emphasis on stages of spermatogenesis and histopathology interstitial testicular cell structure. The evaluation should identify treatment-related effects such as retained spermatids; missing germ cell layers or types, multinucleated giant cells or sloughing of spermatogenic cells into the lumen (the specifications for the evaluation are discussed in paragraph (g)(2) of this section). Examination of the intact epididymis should include the caput, corpus, and cauda, which can be accomplished by evaluation of a longitudinal section. The epididymis should be evaluated for leukocyte infiltration, change in prevalence of cell types, aberrant cell types, and phagocytosis of sperm. Periodic acid-Schiff (PAS) and hematoxylin staining may be used for examination of the male reproductive organs. Histopathological examination of the ovary should detect qualitative depletion of the primordial follicle population.

(C) When a satellite group is used, histopathology should be performed on

tissues and organs identified as showing effects in the treated groups.

(g) *Data and reporting*—(1)*Data.* Individual animal data should be provided. Additionally, all data should be summarised in tabular form, showing for each test group the number of animals at the start of the test, the number of animals found dead during the test or sacrificed for humane reasons, the time of any death or humane sacrifice, the number of fertile animals, the number of pregnant females, the number of animals showing signs of toxicity, a description of the signs of toxicity observed, including time of onset, duration, and severity of any toxic effects, the types of histopathological changes, and all relevant litter data.

(2)*Evaluation of results.* (i) The findings of this toxicity study should be evaluated in terms of the observed effects, necropsy and microscopic findings. The evaluation will include the relationship between the dose of the test substance and the presence or absence, incidence and severity of abnormalities, including gross lesions, identified target organs, infertility, clinical abnormalities, affected reproductive and litter performance, body weight changes, effects on mortality and any other toxic effects.

(ii) Because of the short period of treatment of the male, the histopathology of the testes and epididymides must be considered along with the fertility data, when assessing male reproduction effects. The use of historic control data on reproduction/development (e.g. for litter size) where available may also be useful as an aid to the interpretation of the study.

(iii) When possible, numerical results should be evaluated by an appropriate and general acceptable statistical method. The statistical methods should be selected during the design of the study. Due to the limited dimensions of the study, statistical analysis in the form of tests for "significance" are of limited value for many endpoints, especially reproductive endpoints. Some of the most widely used methods, especially parametric tests for measures of central tendency, are inappropriate. If statistical analyses are used then the method chosen should be appropriate for the distribution of the variable examined and be selected prior to the start of the study.

(3) *Test report.* The test report must include the following information:

(i) Test substance:

(A) Physical nature and, where relevant, physicochemical properties.

(B) Identification data.

(ii) Vehicle (if appropriate): Justification for choice of vehicle, if other than water.

(iii) Test animals:

(A) Species/strain used.

(B) Number, age and sex of animals.

(C) Source, housing conditions, diet, etc.

(D) Individual weights of animals at the start of the test.

(iv) Test conditions:

(A) Rationale for dose level selection.

(B) Details of test substance formulation/diet preparation, achieved concentration, stability and homogeneity of the preparation.

(C) Details of the administration of the test substance.

(D) Conversion from diet/drinking water test substance concentration (parts per mission (ppm)) to the actual dose (mg/kg body weight/day), if applicable.

(E) Details of food and water quality.

(v) Results (toxic response data by sex and dose):

(A) Time of death during the study or whether animals survived to termination.

(B) Nature, severity and duration of clinical observations (whether reversible or not).

(C) Body weight/body weight change data.

(D) Food consumption and water consumption, if applicable.

(E) Sensory activity, grip strength and motor activity assessments.

(F) Hematological tests with relevant baseline values,

(G) Clinical biochemistry tests with relevant baseline values.

(H) Effects on reproduction, including information on mating/precoital interval, fertility, fecundity and gestation duration.

(I) Effects on offspring, including number of pups born (live and dead), sex ratio, postnatal growth (pup weights) and survival (litter size), gross abnormalities and clinical observations during lactation:

(J) Body weight at termination and organ weight data for the parental animals.

(K) Necropsy data, including number of implantations and number of corpora lutea.

(L) Calculations of pre- and postimplantation loss.

(M) Detailed description of histopathological findings.

(N) Statistical treatment of results, where appropriate.

(vi) Discussion of results.

(vii) Conclusions.

(h) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., NW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Mitsumori, K., Kodama, Y., Uchida, O., Takada, K., Saito, M. Naito, K., Tanaka, S., Kurokawa, Y., Usami, M., Kawashima, K., Yasuhara, K., Toyoda, K., Onodera, H., Furukawa, F., Takahashi, M. and Hayashi, Y., (1994). Confirmation Study, Using Nitro-Benzene, of the Combined Repeat Dose and Reproductive/ Developmental Toxicity Test Protocol Proposed by the Organization for Economic Cooperation and Development (OECD). *Journal of Toxicology and Science*, 19:141–149.

(2) Tanaka, S., Kawashima, K., Naito, K., Usami, M., Nakadate, M., Imaida, K., Takahashi, M., Hayashi, Y., Kurokawa, Y. and Tobe, M. (1992). Combined Repeat Dose and Reproductive/Developmental Toxicity Screening Test (OECD): Familiarization Using Cyclophosphamide. *Fundamental and Applied Toxicology*, 18:89–95.

(3) Tupper D.E., Wallace R.B. (1980). Utility of the Neurologic Examination in Rats. *Acta Neurobiological Exposure*, 40:999–1003.

(4) Gad S.C. (1982). A Neuromuscular Screen for Use in Industrial Toxicology. *Journal of Toxicology and Environmental Health*, 9:691–704.

(5) Moser V.C., McDaniel K.M., Phillips P.M. (1991). Rat Strain and Stock Comparisons Using a Functional Observational Battery: Baseline Values and Effects of Amitraz. *Toxicology and Applied Pharmacology*, 108:267–283.

(6) Meyer O.A., Tilson H.A., Byrd W.C., Riley M.T. (1979). A Method for the Routine Assessment of Fore- and Hindlimb Grip Strength of Rats and Mice. *Neurobehavorial Toxicology*, 1:233–236.

(7) Crofton K.M., Howard J.L., Moser V.C., Gill M.W., Reiter L.W., Tilson H.A., MacPhail R.C. (1991). Interlaboratory Comparison of Motor Activity Experiments: Implication for Neurotoxicological Assessments. *Neurotoxicology and Teratology* 13:599–609.

§ 799.9410 TSCA chronic toxicity.

(a) *Scope*—(1) *Applicability.* This section is intended to meet the testing requirement of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides and Toxic Substances (OPPTS) harmonized test guideline 870.4100

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(b) *Purpose.* The objective of a chronic toxicity study is to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. A chronic toxicity study should generate data from which to identify the majority of chronic effects and to define long-term dose-response relationships. The design and conduct of chronic toxicity tests should allow for the detection of general toxic effects, including neurological, physiological, biochemical, and hematological effects and exposure-related morphological (pathological) effects.

(c) *Definitions.* The definitions in section 3 of TSCA and in 40 CFR Part 792—Good Laboratory Practice Standards apply to this section. The following definitions also apply to this section.

Chronic toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral, dermal, or inhalation routes of exposure.

Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of, the administered test substance or its metabolites in susceptible tissue.

Dose in a chronic toxicity study is the amount of test substance administered daily via the oral, dermal or inhalation routes for a period of at least 12 months. Dose is expressed as weight of the test substance (grams, milligrams) per unit body weight of test animal (milligram per kilogram), or as weight of the test substance in parts per million (ppm) in food or drinking water per day. For inhalation exposure, dose is expressed as weight of the test substance per unit volume of air (milligrams per liter) or as parts per million per day. For dermal exposure, dose is expressed as weight of the test substance (grams, milligrams) per unit body weight of the test animal (milligrams per kilogram) or as weight of the substance per unit of surface area (milligrams per square centimeter) per day.

No-observed-effects level (NOEL) is the maximum dose used in a study which produces no adverse effects. The NOEL is usually expressed in terms of the weight of a test substance given daily per unit weight of test animal (milligrams per kilogram per day).

Target organ is any organ of a test animal showing evidence of an effect induced by a test substance.

(d) *Limit test.* If a test at one dose level of at least 1,000 mg/kg body weight (expected human exposure may indicate the need for a higher dose level), using the procedures described for this study, produces no observable toxic effects and if toxicity would not be expected based upon data of structurally related compounds, a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Testing should be performed with two mammalian species, one a rodent and the other a nonrodent. The rat is the preferred rodent species. Commonly used laboratory strains must be employed.

(ii) *Age/weight.* (A) Testing must be started with young healthy animals as soon as possible after weaning and acclimatization.

(B) Dosing of rodents should generally begin no later than 8 weeks of age.

(C) Dosing of non-rodents should begin between 4 and 6 months of age and in no case later than 9 months of age.

(D) At commencement of the study, the weight variation of animals used should be within 20% of the mean weight for each sex.

(E) Studies using prenatal or neonatal animals may be recommended under special conditions.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) Females should be nulliparous and nonpregnant.

(iv) *Numbers.* (A) For rodents, at least 40 animals (20 males and 20 females) and for nonrodents at least 8 animals (4 females and 4 males) should be used at each dose level and concurrent control group.

(B) If interim sacrifices are planned, the number should be increased by the number of animals scheduled to be sacrificed during the course of the study.

(C) The number of animals at the termination of the study must be adequate for a meaningful and valid statistical evaluation of chronic effects. The Agency must be notified if excessive early deaths or other problems are encountered that might compromise the integrity of the study.

(D) To avoid bias, the use of adequate randomization procedures for the proper allocation of animals to test and control groups is required.

(E) Each animal should be assigned a unique identification number. Dead animals, their preserved organs and tissues, and microscopic slides should be identified by reference to the unique numbers assigned.

(v) *Husbandry.* (A) Rodents may be group-caged by sex, but the number of animals per cage must not interfere with clear observation of each animal. The biological properties of the test substance or toxic effects (e.g., morbidity, excitability) may indicate a need for individual caging. Rodents should be housed individually in dermal studies and during exposure in inhalation studies. Caging should be appropriate to the nonrodent species.

(B) The temperature of the experimental animal rooms should be at 22 ± 3 °C.

(C) The relative humidity of the experimental animal rooms should be 50 ± 20%.

(D) Where lighting is artificial, the sequence should be 12 hours light/12 hours dark.

(E) Control and test animals should be fed from the same batch and lot. The feed should be analyzed to assure adequacy of nutritional requirements of the species tested and for impurities that might influence the outcome of the test. Animals should be fed and watered ad libitum with food replaced at least weekly.

(F) The study should not be initiated until animals have been allowed a period of acclimatization/quarantine to environmental conditions, nor should animals from outside sources be placed on test without an adequate period of quarantine. An acclimation period of at least 5 days is recommended.

(2) *Control and test substances.* (i) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed it should not elicit toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the use of an aqueous solution be the first choice, followed by consideration of solution in oil, and finally, solution in other vehicles.

(ii) One lot of the test substance should be used, if possible, throughout the duration of the study, and the research sample should be stored under conditions that maintain its purity and stability. Prior to the initiation of the study, there should be a characterization of the test substance, including the purity of the test compound, and, if technically feasible, the names and quantities of contaminants and impurities.

(iii) If the test or control substance is to be incorporated into feed or another vehicle, the period during which the test substance is stable in such a mixture should be determined prior to the initiation of the study. Its homogeneity and concentration should be determined prior to the initiation of the study and periodically during the study. Statistically randomized samples

of the mixture should be analyzed to ensure that proper mixing, formulation, and storage procedures are being followed, and that the appropriate concentration of the test or control substance is contained in the mixture.

(3) *Control groups.* A concurrent control group is required. This group should be an untreated or sham-treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are required.

(4) *Satellite group.* A satellite group of 40 animals (20 animals per sex) for rodents and 8 animals (4 animals per sex) for nonrodents may be treated with the high-dose level for 12 months and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment of appropriate length, normally not less than 28 days. In addition, a control group of 40 animals (20 animals per sex) for rodents and 8 animals (4 animals per sex) for nonrodents should be added to the satellite study.

(5) *Dose levels and dose selections.* (i) In chronic toxicity tests, it is desirable to determine a dose-response relationship as well as a NOEL. Therefore, at least three dose levels with a control group and, where appropriate, a vehicle control (corresponding to the concentration of the vehicle at the highest exposure level) should be used. Dose levels should be spaced to produce a gradation of effects. A rationale must be provided for the doses selected.

(ii) The highest-dose level should elicit signs of toxicity without substantially altering the normal life span of the animal. The highest dose should be determined based on the findings from a 90-day study to ensure that the dose used is adequate to assess the chronic toxicity of the test substance. Thus, the selection of the highest dose to be tested is dependent upon changes observed in several toxicological parameters in subchronic studies. The highest dose tested need not exceed 1,000 mg/kg/day. If dermal application of the test substance produces severe skin irritation, then it may be necessary either to terminate the study and choose a lower high-dose level or to reduce the dose level. Gross criteria for defining severe irritation would include ulcers, fissures, exudate/crust(eschar), dead tissue, or anything leading to destruction of the functional integrity of the epidermis (e.g. caking, open sores, fissuring, eschar). Histological criteria for defining severe irritation would include follicular and interfollicular crust, microulcer, mild/moderate degeneration/necrosis, moderate/marked epidermal edema, marked dermal edema, and marked inflammation.

(iii) The intermediate dose levels should be spaced to produce a gradation of toxic effects.

(iv) The lowest-dose level should produce no evidence of toxicity.

(6) *Administration of the test substance.* The three main routes of administration are oral, dermal, and inhalation. The choice of the route of administration depends upon the physical and chemical characteristics of the test substance and the form typifying exposure in humans.

(i) *Oral studies.* Ideally, the animals should be dosed by gavage or with capsules on a 7-day per week basis for a period of at least 12 months. However, based primarily on practical considerations, dosing by gavage or capsules on a 5-day per week schedule is acceptable. If the test substance is administered via in the drinking water or mixed in the diet, exposure should be on a 7-day per week basis.

(ii) *Dermal studies.* (A) Preparation of animal skin. Shortly before testing, fur should be clipped from not less than 10% of the body surface area for application of the test substance. In order to dose approximately 10% of the body surface, the area starting at the scapulae (shoulders) to the wing of the ileum (hipbone) and half way down the flank on each side of the animal should be shaved. Shaving should be carried out approximately 24 hours before dosing. Repeated clipping or shaving is usually needed at approximately weekly intervals. When clipping or shaving the fur, care should be taken to avoid abrading the skin which could alter its permeability.

(B) Preparation of test substance. Liquid test substances are generally used undiluted, except as indicated in paragraph (e)(5)(ii) of this section. Solids should be pulverized when possible. The substance should be moistened sufficiently with water or, when necessary, with a suitable vehicle to ensure good contact with the skin. When a vehicle is used, the influence of the vehicle on toxicity of, and penetration of the skin by, the test substance should be taken into account.The volume of application should be kept constant, e.g., less than 100 µL for the mouse and less than 300 µL for the rat. Different concentrations of test solution should be prepared for different dose levels.

(C) Administration of test substance. The duration of exposure should be at least for 12 months. Ideally, the animals should be treated with test substance for at least 6 hours per day on a 7-day per week basis. However, based on practical considerations, application on a 5-day per week basis is acceptable. Dosing should be conducted at approximately the same time each day. The test substance should be applied uniformly over the treatment site. The surface area covered may be less for highly toxic substances. As much of the area should be covered with as thin and uniform a film as possible. For rats, the test substance may be held in contact with the skin with a porous gauze dressing and nonirritating tape if necessary. The test site should be further covered in a suitable manner to retain the gauze dressing plus test substance and to ensure that the animals cannot ingest the test substance. The application site should not be covered when the mouse is the species of choice. The test substance may be wiped from the skin after the six-hour exposure period to prevent ingestion.

(iii) *Inhalation studies.* (A) The animals should be exposed to the test substance for 6 hours per day on a 7-day per week basis, for a period of at least 12 months. However, based primarily on practical considerations, exposure for 6 hours per day on a 5-day per week basis is acceptable.

(B) The animals should be tested in dynamic inhalation equipment designed to sustain a minimum air flow of 10 air changes per hour, an adequate oxygen content of at least 19%, and uniform conditions throughout the exposure chamber. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into surrounding areas. It is not normally necessary to measure chamber oxygen concentration if airflow is adequate.

(C) The selection of a dynamic inhalation chamber should be appropriate for the test substance and test system. When a whole body chamber is used, individual housing must be used to minimize crowding of the test animals and maximize their exposure to the test substance. To ensure stability of a chamber atmosphere, the total volume occupied by the test animals should not exceed 5% of the volume of the test chamber. It is recommended, but not required, that nose-only or head-only exposure be used for aerosol studies in order to minimize oral exposures due to animals licking compound off their fur. The animals should be acclimated and heat stress minimized.

(D) The temperature at which the test is performed should be maintained at 22 ± 2 °C. The relative humidity should be

maintained between 40–60%, but in certain instances (e.g., use of water vehicle) this may not be practicable.

(E) The rate of air flow should be monitored continuously but recorded at least three times during the exposure.

(F) Temperature and humidity should be monitored continuously but should be recorded at least every 30 min.

(G) The actual concentrations of the test substance should be measured in the breathing zone. During the exposure period, the actual concentrations of the test substance should be held as constant as practicable, monitored continuously or intermittently depending on the method of analysis. Chamber concentration may be measured using gravimetric or analytical methods, as appropriate. If trial run measurements are reasonably consistent (± 10% for liquid aerosol, gas, or vapor; ± 20% for dry aerosol), then two measurements should be sufficient. If measurements are not consistent, three to four measurements should be taken. If there is some difficulty measuring chamber analytical concentration due to precipitation, nonhomogeneous mixtures, volatile components, or other factors, additional analysis of inert components may be necessary.

(H) During the development of the generating system, particle size analysis should be performed to establish the stability of aerosol concentrations with respect to particle size. The mass median aerodynamic diameter (MMAD) particle size range should be between 1–3 μm. The particle size of hygroscopic materials should be small enough when dry to assure that the size of the swollen particle will still be within the 1–3 μm range. Measurements of aerodynamic particle size in the animal's breathing zone should be measured during a trial run. If MMAD values for each exposure level are within 10% of each other, then two measurements during the exposures should be sufficient. If pretest measurements are not within 10% of each other, three to four measurements should be taken.

(I) Feed should be withheld during exposure. Water may also be withheld during exposure.

(7) *Observation period.* (i) Animals should be observed for a period of at least 12 months.

(ii) Animals in a satellite group (if used) scheduled for follow-up observations should be kept for at least 28 days further without treatment to detect recovery from, or persistence of, toxic effects.

(8) *Observation of animals.* (i) Observations should be made at least twice each day for morbidity and mortality. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals). General clinical observations should be made at least once a day, preferably at the same time each day, taking into consideration the peak period of anticipated effects after dosing. The clinical condition of the animal should be recorded.

(ii) A careful clinical examination should be made at least once prior to the initiation of treatment (to allow for within subject comparisons) and once weekly during treatment in all animals. These observations should be made outside the home cage, preferably in a standard arena, and at similar times on each occasion. Effort should be made to ensure that variations in the observation conditions are minimal. Observations should be detailed and carefully recorded, preferably using scoring systems, explicitly defined by the testing laboratory. Signs noted should include, but not be limited to, changes in skin, fur, eyes, mucous membranes, occurrence of secretions and excretions and autonomic activity (e.g., lacrimation, piloerection, pupil size, unusual respiratory pattern). Changes in gait, posture and response to handling as well as the presence of clonic or tonic movements, stereotypies (e.g., excessive grooming, repetitive circling) or bizarre behavior (e.g., self-mutilation, walking backwards) should be recorded.

(iii) Once, near the end of the first year of the exposure period and in any case not earlier than in month 11, assessment of motor activity, grip strength, and sensory reactivity to stimuli of different types (e.g., visual, auditory, and proprioceptive stimuli) should be conducted in rodents. Further details of the procedures that could be followed are described in the references listed under paragraphs (h)(2), (h)(7), (h)(8), and (h)(11) of this section.

(iv) Functional observations conducted towards the end of the study may be omitted when data on functional observations are available from other studies and the daily clinical observations did not reveal any functional deficits.

(v) Exceptionally, functional observations may be omitted for groups that otherwise reveal signs of toxicity to an extent that would significantly interfere with functional test performance.

(vi) Body weights should be recorded individually for all animals once prior to the administration of the test substance, once a week during the first 13 weeks of study and at least once every 4 weeks thereafter, unless signs of clinical toxicity suggest more frequent weighing to facilitate monitoring of health status.

(vii) Measurements of feed consumption should be determined weekly during the first 13 weeks of the study and at approximately monthly intervals thereafter unless health status or body weight changes dictate otherwise. Measurements of water consumption should be determined at the same intervals if the test substance is administered in the drinking water.

(viii) Moribund animals should be removed and sacrificed when noticed and the time of death should be recorded as precisely as possible. All survivors should be sacrificed at the end of the study period.

(9) *Clinical pathology.* Hematology, clinical chemistry, and urinalysis should be performed on 10 rats per sex per group, and on all nonrodents. In rodents, the parameters should be examined at approximately 6 month intervals during the conduct of the study and at termination. If possible, these collections should be from the same animals at each interval. In nonrodents, the parameters should be examined once or twice prior to initiation of treatment, at 6-month intervals during the conduct of the study, and at termination. If hematological and biochemical effects were seen in the subchronic study, testing should also be performed at 3 months. Overnight fasting of animals prior to blood sampling is recommended.

(i) *Hematology.* The recommended parameters are red blood cell count, hemoglobin concentration, hematocrit, mean corpuscular volume, mean corpuscular hemoglobin, and mean corpuscular hemoglobin concentration, white blood cell count, differential leukocyte count, platelet count, and a measure of clotting potential, such as prothrombin time or activated partial thromboplastin time.

(ii) *Clinical chemistry.* (A) Parameters which are considered appropriate to all studies are electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity.

(B) The recommended clinical chemistry determinations are potassium, sodium, calcium (nonrodent), phosphorus (nonrodent), chloride (nonrodent), glucose, total cholesterol, urea nitrogen, creatinine, total protein, total bilirubin (nonrodent), and albumin. More than two hepatic enzymes, (such as alanine aminotransferase, aspartate aminotransferase, alkaline phosphatase, sorbitol dehydrogenase, or gamma glutamyl transpeptidase) should also be measured. Measurements of additional enzymes (of hepatic or other origin) and bile acids, may also be useful.

(C) If a test chemical has an effect on the hematopoietic system, reticulocyte counts and bone marrow cytology may be indicated.

(D) Other determinations that should be carried out if the test chemical is known or suspected of affecting related measures include calcium, phosphorus, fasting triglycerides, hormones, methemoglobin, and cholinesterases.

(iii) *Urinalysis.* Urinalysis for rodents should be performed at the end of the study using timed urine collection. Urinalysis for nonrodents should be performed prior to treatment, midway through treatment and at the end of the study using timed urine collection. Urinalysis determinations include: appearance, volume, osmolality or specific gravity, pH, protein, glucose, and blood/blood cells.

(10) *Ophthalmological examination.* Examinations should be made of all animals using an ophthalmoscope or equivalent device prior to the administration of the test substance and at termination of the study on 10 rats of each sex in the high-dose and control groups and preferably in all nonrodents, but at least the control and high-dose groups should be examined. If changes in eyes are detected, all animals should be examined.

(11) *Gross necropsy.* (i) All animals should be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) At least the liver, kidneys, adrenals, testes, epididymides, ovaries, uterus, nonrodent thyroid (with parathyroid), spleen, brain, and heart should be weighed wet as soon as possible after dissection to avoid drying. The lungs should be weighed if the test substance is administered by the inhalation route.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination:

(A) Digestive system—salivary glands, esophagus, stomach, duodenum, jejunum, ileum, cecum, colon, rectum, liver, pancreas, gallbladder (when present).

(B) Nervous system—brain (multiple sections, including cerebrum, cerebellum and medulla/pons), pituitary, peripheral nerve (sciatic or tibial, preferably in close proximity to the muscle), spinal cord (three levels, cervical, mid-thoracic and lumbar), eyes (retina, optic nerve).

(C) Glandular system—adrenals, parathyroid, thyroid.

(D) Respiratory system—trachea, lungs, pharynx, larynx, nose.

(E) Cardiovascular/hematopoietic system—aorta, heart, bone marrow (and/or fresh aspirate), lymph nodes (preferably one lymph node covering the route of administration and another one distant from the route of administration to cover systemic effects), spleen.

(F) Urogenital system—kidneys, urinary bladder, prostate, testes, epididymides, seminal vesicle(s), uterus, ovaries, female mammary gland.

(G) Other—all gross lesions and masses, skin.

(iv) In inhalation studies, the entire respiratory tract, including nose, pharynx, larynx, and paranasal sinuses should be examined and preserved. In dermal studies, skin from treated and adjacent control skin sites should be examined and preserved.

(v) Inflation of lungs and urinary bladder with a fixative is the optimal method for preservation of these tissues. The proper inflation and fixation of the lungs in inhalation studies is considered essential for appropriate and valid histopathological examination.

(vi) Information from clinical pathology and other in-life data should be considered before microscopic examination, since they may provide significant guidance to the pathologist.

(12) *Histopathology.* (i) The following histopathology should be performed:

(A) Full histopathology on the organs and tissues (listed under paragraph (e)(11)(iii) of this section) of all rodents and nonrodents in the control and high-dose groups, and all rodents and nonrodents that died or were sacrificed during the study. The examination should be extended to all animals in all dosage groups if treatment-related changes are observed in the high-dose group.

(B) All gross lesions in all animals.

(C) Target tissues in all animals.

(ii) If the results show substantial alteration of the animal's normal life span, or other effects that might compromise the significance of the data, the next lower levels should be examined fully as described in paragraph (e)(12)(i) of this section.

(iii) An attempt should be made to correlate gross observations with microscopic findings.

(iv) Tissues and organs designated for microscopic examination should be fixed in 10% buffered formalin or a recognized suitable fixative as soon as necropsy is performed and no less than 48 hours prior to trimming.

(f) *Data and reporting*—(1) *Treatment of results.* (i) Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) When applicable, all observed results (quantitative and qualitative) should be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods including significance criteria should be selected during the design of the study.

(2) *Evaluation of study results.* The findings of a chronic toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects as well as the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence, incidence, and severity of abnormalities (including behavioral and clinical abnormalities), gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects.

(3) *Test report.* In addition to the reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the following specific information must be reported:

(i) Test substance characterization should include:

(A) Chemical identification.

(B) Lot or batch number.

(C) Physical properties.

(D) Purity/impurities.

(ii) Identification and composition of any vehicle used.

(iii) Test system should contain data on:

(A) Species and strain of animals used and rationale for selection if other than that recommended.

(B) Age including body weight data and sex.

(C) Test environment including cage conditions, ambient temperature, humidity, and light/dark periods.

(D) Identification of animal diet.

(E) Acclimation period.

(iv) Test procedure should include the following data:

(A) Method of randomization used.

(B) Full description of experimental design and procedure.

(C) Dose regimen including levels, methods, and volume.

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(v) Test results.

(A) Group animal data. Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals exposed.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals dying.

(B) Individual animal data. Data should be presented as summary (group mean) as well as for individual animals.

(*1*) Time of death during the study or whether animals survived to termination.

(*2*) Time of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(*4*) Feed and water (if collected) consumption data.

(*5*) Achieved dose (mg/kg/day) as a time-weighted average if the test substance is administered in the diet or drinking water.

(*6*) Results of ophthalmological examinations.

(*7*) Results of hematological tests performed.

(*8*) Results of clinical chemistry tests performed.

(*9*) Urinalysis tests performed and results.

(*10*) Results of observations made.

(*11*) Necropsy findings, including absolute and relative (to body weight) organ weight data.

(*12*) Detailed description of all histopathological findings.

(*13*) Statistical treatment of results, where appropriate.

(vi) In addition, for inhalation studies the following should be reported:

(A) Test conditions. The following exposure conditions must be reported:

(*1*) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulate and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(*2*) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size should be described.

(B) Exposure data. These data should be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and should include:

(*1*) Airflow rates through the inhalation equipment.

(*2*) Temperature and humidity of air.

(*3*) Actual (analytical or gravimetric) concentration in the breathing zone.

(*4*) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(*5*) Particle size distribution, calculated MMAD, and geometric standard deviation.

(*6*) Explanation as to why the desired chamber concentration and/or particle size could not be achieved (if applicable) and the efforts taken to comply with this aspect of the guidelines.

(g) *Quality control.* A system should be developed and maintained to assure and document adequate performance of laboratory staff and equipment. The study must be conducted in compliance with 40 CFR Part 792—Good Laboratory Practice Standards.

(h) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Benitz, K.F. Measurement of Chronic Toxicity. *Methods of Toxicology.* Ed. G.E. Paget. Blackwell, Oxford. pp. 82–131 (1970).

(2) Crofton K.M., Howard J.L., Moser V.C., Gill M.W., Leiter L.W., Tilson H.A., MacPhail, R.C. Interlaboratory Comparison of Motor Activity Experiments: Implication for Neurotoxicological Assessments. *Neurotoxicol. Terotol.* 13, 599–609. (1991)

(3) D'Aguanno, W. Drug Safety Evaluation––Pre-Clinical Considerations. *Industrial Pharmacology: Neuroleptic.* Vol. I, Ed. S. Fielding and H. Lal. Futura, Mt. Kisco, NY. pp. 317–332 (1974).

(4) Fitzhugh, O.G. Chronic Oral Toxicity, Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics. The Association of Food and Drug Officials of the United States. pp. 36–45 (1959, 3rd Printing 1975).

(5) Gad S.C. A Neuromuscular Screen for Use in Industrial Toxicology. *Journal of Toxicology and Environmental Health.* 9, 691–704. (1982)

(6) Goldenthal, E.I. and D'Aguanno, W. Evaluation of Drugs, Appraisal of the Safety of Chemicals in Foods, Drugs, and Cosmetics. The Association of Food and Drug Officials of the United States. pp. 60–67 (1959, 3rd Printing 1975).

(7) Meyer O.A., Tilson H.A., Byrd W.C., Riley M.T. A Method for the Routine Assessment of Fore- and Hind-Limb Grip Strength of Rats and Mice. *Neurobehav. Toxicol.* 1, 233–236. (1979)

(8) Moser V.C., McDaniel K.M., Phillips P.M. Rat Strain and Stock Comparisons using a Functional Observational Battery: Baseline Values and Effects of Amitraz. *Toxicol. Appl. Pharmacol.* 108, 267–283 (1991)

(9) Organization for Economic Cooperation and Development. Guidelines for Testing of Chemicals, Section 4-Health Effects, Part 452 Chronic Toxicity Studies, Paris (1981).

(10) Page, N.P. Chronic Toxicity and Carcinogenicity Guidelines. *Journal of Environmental Pathology and Toxicology.* 11:161–182 (1977).

(11) Tupper, D.E., Wallace R.B. Utility of the Neurologic Examination in Rats. *Acta. Neurobiol. Exp.* 40, 999–1003 (1980).

(12) Weingand K., Brown G., Hall R. et al. (1996). Harmonization of Animal Clinical Pathology Testing in Toxicity and Safety Studies. *Fundam. and Appl. Toxicol.* 29:198–201.

§ 799.9430 TSCA combined chronic toxicity/carcinogenicity.

(a) *Scope.* This section is intended to meet the testing requirements under section 4 of the Toxic Substances Control Act (TSCA). The objective of a combined chronic toxicity/carcinogenicity study is to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. The application of this section should generate data which identify the majority of chronic and carcinogenicity effects and determine dose-response relationships. The design and conduct should allow for the detection of neoplastic effects and a determination of the carcinogenic potential as well as general toxicity, including neurological, physiological, biochemical, and hematological effects and exposure-related morphological (pathology) effects.

(b) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) harmonized test guideline 870.4300 (August 1998, final guideline). This source is available at the address in paragraph (h) of this section.

(c) *Definitions.* The following definitions apply to this section.

Carcinogenicity is the development of neoplastic lesions as a result of the repeated daily exposure of experimental animals to a chemical by the oral, dermal, or inhalation routes of exposure.

Chronic toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral, dermal, or inhalation routes of exposure.

Cumulative toxicity is the adverse effects of repeated dose occurring as a result of prolonged action on, or increased concentration of, the administered test substance or its metabolites in susceptible tissues.

Dose in a combined chronic toxicity/carcinogenicity study is the amount of test substance administered via the oral, dermal, or inhalation routes for a period of up to 24 months. Dose is expressed as weight of the test substance per unit body weight of test animal (milligrams per kilogram), or as weight of the test substance in parts per million (ppm) in food or drinking water. When exposed via inhalation, dose is expressed as weight of the test substance per unit volume of air (milligrams per liter) or as parts per million per day. For dermal application, dose is expressed as weight of the test substance (grams, milligrams) per unit body weight of the test animal (milligrams per kilogram) or as weight of the substance per unit surface area (milligrams per square centimeter) per day.

No-observed-effects level (NOEL) is the maximum dose used in a study which produces no observed adverse effects. The NOEL is usually expressed in terms of the weight of a test substance given daily per unit weight of test animal (milligrams per kilogram per day).

Target organ is any organ of a test animal showing evidence of an effect induced by a test substance.

(d) *Limit test.* If a test at one dose level of at least 1,000 mg/kg body weight (expected human exposure may indicate the need for a higher dose level), using the procedures described for this study, produces no observable toxic effects or if toxic effects would not be expected based upon data of structurally related compounds, then a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Preliminary studies providing data on acute, subchronic, and metabolic responses should have been carried out to permit an appropriate choice of animals (species and strain). As discussed in other guidelines, the mouse and rat have been most widely used for assessment of carcinogenic potential, while the rat and dog have been most often studied for chronic toxicity. For the combined chronic toxicity/carcinogenicity study via the oral and inhalation routes, the rat is the species of choice and for the dermal route, the mouse is species of choice. If other species are used, the tester must provide justification/reasoning for their selection. The strain selected should be susceptible to the carcinogenic or toxic effect of the class of substances being tested, if known, and provided it does not have a spontaneous background incidence too high for meaningful assessment. Commonly used laboratory strains must be employed.

(ii) *Age/weight.* (A) Testing must be started with young healthy animals as soon as possible after weaning and acclimatization.

(B) Dosing should generally begin no later than 8 weeks of age.

(C) At commencement of the study, the weight variation of animals used must be within 20% of the mean weight for each sex.

(D) Studies using prenatal or neonatal animals may be recommended under special conditions.

(iii) *Sex.* (A) Equal numbers of animals of each sex must be used at each dose level.

(B) Females must be nulliparous and nonpregnant.

(iv) *Numbers.* (A) At least 100 rodents (50 males and 50 females) must be used at each dose level and concurrent control group. At least 20 additional rodents (10 males and 10 females) should be used for satellite dose groups and the satellite control group. The purpose of the satellite group is to allow for the evaluation of chronic toxicity after 12 months of exposure to the test substance.

(B) For a meaningful and valid statistical evaluation of long term exposure and for a valid interpretation of negative results, the number of animals in any group should not fall below 50% at 15 months in mice and 18 months in rats. Survival in any group should not fall below 25% at 18 months in mice and 24 months in rats.

(C) To avoid bias, the use of adequate randomization procedures for the proper allocation of animals to test and control groups is required.

(D) Each animal must be assigned a unique identification number. Dead animals (and their preserved organs) and tissues, and microscopic slides shall be identified by reference to the unique numbers assigned.

(v) *Husbandry.* (A) Animals may be group-caged by sex, but the number of animals per cage must not interfere with clear observation of each animal. The biological properties of the test substance or toxic effects (e.g., morbidity, excitability) may indicate a need for individual caging. Rodents should be housed individually in dermal studies and during exposure in inhalation studies.

(B) The temperature of the experimental animal rooms should be at 22 ± 3 °C.

(C) The relative humidity of the experimental animal rooms should be 50 ± 20%.

(D) Where lighting is artificial, the sequence should be 12 hours light/12 hours dark.

(E) Control and test animals should be fed from the same batch and lot. The feed should be analyzed to assure uniform distribution and adequacy of nutritional requirements of the species tested and for impurities that might influence the outcome of the test. Animals should be fed and watered ad libitum with food replaced at least weekly.

(F) The study should not be initiated until animals have been allowed a period of acclimatization/quarantine to environmental conditions, nor should animals from outside sources be placed on test without an adequate period of quarantine. An acclimation period of at least five days is recommended.

(2) *Control and test substances.* (i) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, it should not elicit toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the usage of an aqueous solution be considered first, followed by consideration of a solution in oil, and finally solution in other vehicles.

(ii) One lot of the test substance should be used throughout the duration of the study if possible, and the research sample should be stored under conditions that maintain its purity and stability. Prior to the initiation of the study, there should be a characterization of the test substance, including the purity of the test compound, and, if possible, the name and quantities of contaminants and impurities.

(iii) If the test or control substance is to be incorporated into feed or another vehicle, the period during which the test substance is stable in such a mixture should be determined prior to the initiation of the study. Its homogeneity and concentration should be determined prior to the initiation of the study and periodically during the study. Statistically randomized samples of the mixture should be analyzed to ensure that proper mixing, formulation, and storage procedures are being followed, and that the appropriate concentration of the test or control substance is contained in the mixture.

(3) *Control groups.* A concurrent control group is required. This group should be an untreated or sham-treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both

untreated and vehicle control groups are required.

(4) *Dose levels and dose selection.* (i) For risk assessment purposes, at least three dose levels must be used, in addition to the concurrent control group. Dose levels should be spaced to produce a gradation of effects. A rationale for the doses selected must be provided.

(ii) The highest dose level in rodents should elicit signs of toxicity without substantially altering the normal life span due to effects other than tumors. The highest dose should be determined based on the findings from a 90–day study to ensure that the dose used is adequate to assess the chronic toxicity and the carcinogenic potential of the test substance. Thus, the selection of the highest dose to be tested is dependent upon changes observed in several toxicological parameters in subchronic studies. The highest dose tested need not exceed 1,000 mg/kg/day.

(iii) The intermediate-dose levels should be spaced to produce a gradation of toxic effects.

(iv) The lowest-dose level should produce no evidence of toxicity.

(v) For skin carcinogenicity studies, when toxicity to the skin is a determining factor, the highest dose selected should not destroy the functional integrity of the skin, the intermediate doses should be a minimally irritating dose and the low dose should be the highest nonirritating dose.

(vi) The criteria for selecting the dose levels for skin carcinogenicity studies, based on gross and histopathologic dermal lesions, are as follows:

(A) Gross criteria for reaching the high dose:

(*1*) Erythema (moderate).
(*2*) Scaling.
(*3*) Edema (mild).
(*4*) Alopecia.
(*5*) Thickening.

(B) Histologic criteria for reaching the high dose:

(*1*) Epidermal hyperplasia.
(*2*) Epidermal hyperkeratosis.
(*3*) Epidermal parakeratosis.
(*4*) Adnexal atrophy/hyperplasia.
(*5*) Fibrosis.
(*6*) Spongiosis (minimal-mild).
(*7*) Epidermal edema (minimal-mild).
(*8*) Dermal edema (minimal-moderate).
(*9*) Inflammation (moderate).

(C) Gross criteria for exceeding the high dose:

(*1*) Ulcers-fissures, exudate/crust (eschar), nonviable (dead) tissues.
(*2*) Anything leading to destruction of the functional integrity of the epidermis (e.g., caking, fissuring, open sores, eschar).

(D) Histologic criteria for exceeding the high-dose:

(*1*) Crust (interfollicular and follicular).
(*2*) Microulcer.
(*3*) Degeneration/necrosis (mild to moderate).
(*4*) Epidermal edema (moderate to marked).
(*5*) Dermal edema (marked).
(*6*) Inflammation (marked).

(5) *Administration of the test substance.* The three main routes of administration are oral, dermal, and inhalation. The choice of the route of administration depends upon the physical and chemical characteristics of the test substance and the form typifying exposure in humans.

(i) *Oral studies.* If the test substance is administered by gavage, the animals are dosed with the test substance on a 7–day per week basis for a period of at least 18 months for mice and hamsters and 24 months for rats. However, based primarily on practical considerations, dosing by gavage on a 5–day per week basis is acceptable. If the test substance is administered in the drinking water or mixed in the diet, then exposure should be on a 7–day per week basis.

(ii) *Dermal studies.* (A) Preparation of animal skin. Shortly before testing, fur should be clipped from not less than 10% of the body surface area for application of the test substance. In order to dose approximately 10% of the body surface, the area starting at the scapulae (shoulders) to the wing of the ileum (hipbone) and half way down the flank on each side of the animal should be shaved. Shaving should be carried out approximately 24 hours before dosing. Repeated clipping or shaving is usually needed at approximately weekly intervals. When clipping or shaving the fur, care should be taken to avoid abrading the skin which could alter its permeability.

(B) Preparation of test substance. Liquid test substances are generally used undiluted, except as indicated in paragraph (e)(4)(vi) of this section. Solids should be pulverized when possible. The substance should be moistened sufficiently with water or, when necessary, with a suitable vehicle to ensure good contact with the skin. When a vehicle is used, the influence of the vehicle on toxicity of, and penetration of the skin by, the test substance should be taken into account.The volume of application should be kept constant, e.g., less than 100 µL for the mouse and less than 300 µL for the rat. Different concentrations of test solution should be prepared for different dose levels.

(C) Administration of test substance. The duration of exposure should be at least 18 months for mice and hamsters and 24 months for rats. Ideally, the animals should be treated with test substance for at least 6 hours per day on a 7-day per week basis. However, based on practical considerations, application on a 5-day per week basis is acceptable. Dosing should be conducted at approximately the same time each day. The test substance must be applied uniformly over the treatment site.The surface area covered may be less for highly toxic substances. As much of the area should be covered with as thin and uniform a film as possible. For rats, the test substance may be held in contact with the skin with a porous gauze dressing and nonirritating tape if necessary. The test site should be further covered in a suitable manner to retain the gauze dressing plus test substance and to ensure that the animals cannot ingest the test substance. The application site should not be covered when the mouse is the species of choice. The test substance may be wiped from the skin after the 6-hour exposure period to prevent ingestion.

(iii) *Inhalation studies.* (A) The animals should be exposed to the test substance, for 6 hours per day on a 7–day per week basis, for a period of at least 18 months in mice and 24 months in rats. However, based primarily on practical considerations, exposure for 6 hours per day on a 5–day per week basis is acceptable.

(B) The animals must be tested in dynamic inhalation equipment designed to sustain a minimum air flow of 10 air changes per hour, an adequate oxygen content of at least 19%, and uniform conditions throughout the exposure chamber. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into surrounding areas. It is not normally necessary to measure chamber oxygen concentration if airflow is adequate.

(C) The selection of a dynamic inhalation chamber should be appropriate for the test substance and test system. Where a whole body chamber is used, individual housing must be used to minimize crowding of the test animals and maximize their exposure to the test substance. To ensure stability of a chamber atmosphere, the total volume occupied by the test animals shall not exceed 5% of the volume of the test chamber. It is recommended, but not required, that nose-only or head-only exposure be used for aerosol studies in order to minimize oral exposures due to animals licking compound off their fur. The animals should be acclimated and heat stress minimized.

(D) The temperature at which the test is performed should be maintained at 22 ± 2 °C. The relative humidity should be maintained between 40 to 60%, but in certain instances (e.g., tests of aerosols, use of water vehicle) this may not be practicable.

(E) The rate of air flow must be monitored continuously but recorded at least three times during the exposure.

(F) Temperature and humidity must be monitored continuously but should be recorded at least every 30 minutes.

(G) The actual concentrations of the test substance must be measured in the animal's breathing zone. During the exposure period, the actual concentrations of the test substance must be held as constant as practicable and monitored continuously or intermittently depending on the method of analysis. Chamber concentration may be measured using gravimetric or analytical methods as appropriate. If trial run measurements are reasonably consistent (± 10% for liquid aerosol, gas, or vapor; ± 20% for dry aerosol), then two measurements should be sufficient. If measurements are not consistent, three to four measurements should be taken. If there is some difficulty in measuring chamber analytical concentration due to precipitation, nonhomogeneous mixtures, volatile components, or other factors, additional analyses of inert components may be necessary.

(H) During the development of the generating system, particle size analysis must be performed to establish the stability of aerosol concentrations with respect to particle size. The mass median aerodynamic diameter (MMAD) particle size range should be between 1–3 µm. The particle size of hygroscopic materials should be small enough when dry to assure that the size of the swollen particle will still be within the 1–3 µm range. Measurements of aerodynamic particle size in the animal's breathing zone should be measured during a trial run. If MMAD values for each exposure level are within 10% of each other, then two measurements during the exposures should be sufficient. If pretest measurements are not within 10% of each other, three to four measurements should be taken.

(I) Feed must be withheld during exposure. Water may also be withheld during exposure.

(J) When the physical and chemical properties of the test substance show a low flash point or the test substance is otherwise known or thought to be explosive, care must be taken to avoid exposure level concentrations that could result in an exposure chamber explosion during the test.

(6) *Observation period.* (i) This time period must not be less than 24 months for rats and 18 months for mice, and ordinarily not longer than 30 months for rats and 24 months for mice. For longer time periods, and where any other species are used, consultation with the Agency in regard to the duration of the study is advised.

(ii) Animals in a satellite group to assess chronic toxicity should be observed for 12 months.

(7) *Observation of animals.* (i) Observations must be made at least twice each day for morbidity and mortality. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals). General clinical observations shall be made at least once a day, preferably at the same time each day, taking into consideration the peak period of anticipated effects after dosing. The clinical condition of the animal should be recorded.

(ii) A careful clinical examination must be made at least once weekly. Observations should be detailed and carefully recorded, preferably using explicity defined scales. Observations should include, but not be limited to, evaluation of skin and fur, eyes and mucous membranes, respiratory and circulatory effects, autonomic effects such as salivation, central nervous system effects, including tremors and convulsions, changes in the level of activity, gait and posture, reactivity to handling or sensory stimuli, altered strength, and stereotypes or bizarre behavior (e.g., self-mutilation, walking backwards).

(iii) Signs of toxicity should be recorded as they are observed including the time of onset, degree and duration.

(iv) Body weights must be recorded individually for all animals once prior to administration of the test substance, once a week during the first 13 weeks of the study and at least once every 4 weeks thereafter unless signs of clinical toxicity suggest more frequent weighing to facilitate monitoring of health status.

(v) Measurements of feed consumption should be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals unless health status or body weight changes dictate otherwise. Measurements of water consumption should be determined at the same intervals if the test material is administered in drinking water.

(vi) Moribund animals must be removed and sacrificed when noticed and the time of death should be recorded as precisely as possible. At the end of the study period, all survivors must be sacrificed. Animals in the satellite group must be sacrificed after 12 months of exposure to the test substance (interim sacrifice).

(8) *Clinical pathology.* Hematology, clinical chemistry and urinalyses must be performed from 10 animals per sex per group. The parameters should be examined at approximately 6 month intervals during the first 12 months of the study. If possible, these collections should be from the same animals at each interval. If hematological and biochemical effects are seen in the subchronic study, testing shall also be performed at 3 months. Overnight fasting of animals prior to blood sampling is recommended.

(i) Hematology. The recommended parameters are red blood cell count, hemoglobin concentration, hematocrit, mean corpuscular volume, mean corpuscular hemoglobin, and mean corpuscular hemoglobin concentration, white blood cell count, differential leukocyte count, platelet count, and a measure of clotting potential, such as prothrombin time or activated partial thromboplastin time.

(ii) Clinical chemistry. (A) Parameters which are considered appropriate to all studies are electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity.

(B) The recommended clinical chemistry determinations are potassium, sodium, glucose, total cholesterol, urea nitrogen, creatinine, total protein, and albumin. More than two hepatic enzymes, (such as alanine aminotransferase, aspartate aminotransferase, alkaline phosphatase, sorbitol dehydrogenase, or gamma glutamyl transpeptidase) should also be measured. Measurements of addtional enzymes (of hepatic or other origin) and bile acids, may also be useful.

(iii) If a test chemical has an effect on the hematopoietic system, reticulocyte counts and bone marrow cytology may be indicated.

(iv) Other determinations that should be carried out if the test chemical is known or suspected of affecting related measures include calcium, phosphorus, fasting triglycerides, hormones, methemoglobin, and cholinesterases.

(v) Urinalyses. Urinalysis for rodents must be performed at the end of the first year of the study using timed urine collection. Urinalysis determinations include: appearance, volume, osmolality

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or specific gravity, pH, protein, glucose, and blood/blood cells.

(9) *Ophthalmological examination.* Examinations must be made on all animals using an ophthalmoscope or an equivalent device prior to the administration of the test substance and at termination of the study on 10 animals per sex in the high-dose and control groups. If changes in eyes are detected, all animals must be examined.

(10) *Gross necropsy.* (i) A complete gross examination must be performed on all animals, including those which died during the experiment or were sacrificed in a moribund condition.

(ii) At least, the liver, kidneys, adrenals, testes, epididymides, ovaries, uterus, spleen, brain, and heart should be trimmed and weighed wet, as soon as possible after dissection to avoid drying. The lungs should be weighed if the test substance is administered by the inhalation route. The organs should be weighed from interim sacrifice animals as well as from at least 10 animals per sex per group at terminal sacrifice.

(iii) The following organs and tissues, or representative samples thereof, must be preserved in a suitable medium for possible future histopathological examination:

(A) Digestive system—salivary glands, esophagus, stomach, duodenum, jejunum, ileum, cecum, colon, rectum, liver, pancreas, gallbladder (when present).

(B) Nervous system—brain (multiple sections, including cerebrum, cerebellum and medulla/pons), pituitary, peripheral nerve (sciatic or tibial, preferably in close proximity to the muscle), spinal cord (three levels, cervical, mid-thoracic, and lumbar), eyes (retina, optic nerve).

(C) Glandular system—adrenals, parathyroid, thyroid.

(D) Respiratory system—trachea, lungs, pharynx, larynx, nose.

(E) Cardiovascular/Hematopoietic system—aorta, heart, bone marrow (and/or fresh aspirate), lymph nodes (preferably one lymph node covering the route of administration and another one distant from the route of administration to cover systemic effects), spleen.

(F) Urogenital system—kidneys, urinary bladder, prostate, testes, epididymides, seminal vesicle(s), uterus, ovaries, female mammary gland.

(G) Other—all gross lesions and masses, skin.

(iv) In inhalation studies, the entire respiratory tract, including nose, pharynx, larynx, and paranasal sinuses should be examined and preserved. In dermal studies, skin from treated and adjacent control skin sites should be examined and preserved.

(v) Inflation of lungs and urinary bladder with a fixative is the optimal method for preservation of these tissues. The proper inflation and fixation of the lungs in inhalation studies is essential for appropriate and valid histopathological examination.

(vi) Information from clinical pathology and other in-life data should be considered before microscopic examination, since these data may provide significant guidance to the pathologist.

(11) [Reserved]

(12) *Histopathology.* (i) The following histopathology must be performed:

(A) Full histopathology on the organs and tissues, listed in paragraph (e)(10)(iii) of this section of all animals in the control and high dose groups and of all animals that died or were sacrificed during the study.

(B) All gross lesions in all animals.

(C) Target organs in all animals.

(ii) If the results show substantial alteration of the animal's normal life span, the induction of effects that might affect a neoplastic response, or other effects that might compromise the significance of the data, the next lower levels should be examined fully as described in paragraph (e)(12)(i) of this section.

(iii) An attempt should be made to correlate gross observations with microscopic findings.

(iv) Tissues and organs designated for microscopic examination should be fixed in 10% buffered formalin or a recognized suitable fixative as soon as necropsy is performed and no less than 48 hours prior to trimming.

(f) *Data and reporting*—(1) *Treatment of results.* (i) Data must be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) When applicable, all observed results, quantitative and qualitative, must be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods including significance criteria should be selected during the design of the study.

(2) *Evaluation of study results.* (i) The findings of a combined chronic toxicity/carcinogenicity study should be evaluated in conjunction with the findings of previous studies and considered in terms of the toxic effects, the necropsy and histopathological findings. The evaluation must include the relationship between the dose of the test substance and the presence, incidence and severity of abnormalities (including behavioral and clinical abnormalities), gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailablity of the test substance should be considered.

(iii) In order for a negative test to be acceptable, it should meet the following criteria—no more than 10% of any group is lost due to autolysis, cannibalism, or management problems, and survival in each group is no less than 50% at 15 months for mice and 18 months for rats. Survival should not fall below 25% at 18 months for mice and 24 months for rats.

(iv) The use of historical control data from an appropriate time period from the same testing laboratory (i.e, the incidence of tumors and other suspect lesions normally occurring under the same laboratory conditions and in the same strain of animals employed in the test) is helpful for assessing the significance of changes observed in the current study.

(3) *Test report.* (i) In addition to the reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the following specific information must be reported:

(A) Test substance characterization should include:

(*1*) Chemical identification.

(*2*) Lot or batch number.

(*3*) Physical properties.

(*4*) Purity/impurities.

(*5*) Identification and composition of any vehicle used.

(B) Test system should contain data on:

(*1*) Species and strain of animals used and rationale for selection if other than that recommended.

(*2*) Age including body weight data and sex.

(*3*) Test environment including cage conditions, ambient temperature, humidity, and light/dark periods.

(*4*) Identification of animal diet.

(*5*) Acclimation period.

(C) Test procedure should include the following data:

(*1*) Method of randomization used.

(*2*) Full description of experimental design and procedure.

(*3*) Dose regimen including levels, methods, and volume.

(*4*) *Test results.* (i) Group animal data. Tabulation of toxic response data by species, strain, sex, and exposure level for:

(A) Number of animals exposed.

(B) Number of animals showing signs of toxicity.

(C) Number of animals dying.

(ii) Individual animal data. Data should be presented as summary (group mean) as well as for individual animals.

(A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Feed and water consumption data, when collected.

(E) Achieved dose (milligrams/kilogram body weight) as a time-weighed average is the test substance is administered in the diet or drinking water.

(F) Results of ophthalmological examination, when performed.

(G) Results of hematological tests performed.

(H) Results of clinical chemistry tests performed.

(I) Results of urinalysis tests performed.

(J) Results of observations made.

(K) Necropsy findings including absolute/relative organ weight data.

(L) Detailed description of all histopathological findings.

(M) Statistical treatment of results where appropriate.

(N) Historical control data.

(iii) In addition, for inhalation studies the following should be reported:

(A) Test conditions. The following exposure conditions must be reported.

(*1*) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(*2*) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size should be described.

(B) Exposure data. These must be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and should include:

(*1*) Airflow rates through the inhalation equipment.

(*2*) Temperature and humidity of air.

(*3*) Actual (analytical or gravimetric) concentration in the breathing zone.

(*4*) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(*5*) Particle size distribution, and calculated MMAD and geometric standard deviation.

(*6*) Explanation as to why the desired chamber concentration and/or particle size could not be achieved (if applicable) and the efforts taken to comply with this aspect of the guidelines.

(g) *Quality control.* A system must be developed and maintained to assure and document adequate performance of laboratory equipment. The study must be conducted in compliance with 40 CFR Part 792—Good Laborary Practice Standards.

(h) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., NW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(1) Benitz, K.F. *Measurement of Chronic Toxicity.* Methods of Toxicology. Ed. G.E. Paget. Blackwell, Oxford. pp. 82–131 (1970).

(2) Crofton K.M., Howard J.L., Moser V.C., Gill M.W., Leiter L.W., Tilson H.A., MacPhail, R.C. Interlaboratory Comparison of Motor Activity Experiments: Implication for Neurotoxicological Assessments. Neurotoxicol. Teratol. 13, 599–609. (1991)

(3) D'Aguanno, W. *Drug Safety Evaluation—Pre-Clinical Considerations. Industrial Pharmacology: Neuroleptic.* Vol. I, Ed. S. Fielding and H. Lal. Futura, Mt. Kisco, NY. pp. 317–332 (1974).

(4) Fitzhugh, O.G. *Chronic Oral Toxicity, Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States. pp. 36–45 (1959, 3rd Printing 1975).

(5) Goldenthal, E.I. and D'Aguanno, W. *Evaluation of Drugs, Appraisal of the Safety of Chemicals in Foods, Drugs, and Cosmetics.* The Association of Food and Drug Officials of the United States. pp. 60–67 (1959, 3rd Printing 1975).

(6) Organization for Economic Cooperation and Development. Guidelines for Testing of Chemicals, Section 4-Health Effects, Part 453 Combined Chronic Toxicity/Carcinogenicity Studies, Paris. (1981).

(7) Page, N.P. Chronic Toxicity and Carcinogenicity Guidelines. *Journal of Environmental Pathology and Toxicology* 11:161–182 (1977).

(8) Page, N.P. Concepts of a Bioassay Program in Environmental Carcinogenesis, Advances in Modern Toxicology. Vol.3, Ed. Kraybill and Mehlman. Hemisphere, Washington, DC pp. 87–171 (1977)

(9) Sontag, J.M. et al. Guidelines for Carcinogen Bioassay in Small Rodents. NCI-CS-TR-1 (Bethesda: United States Cancer Institute, Division of Cancer Control and Prevention, Carcinogenesis Bioassay Program.

(10) Summary of the EPA Workshop on Carcinogenesis Bioassay via the Dermal Route. EPA Report 50/6–89–002; 50/6–89–003. Washington, DC.

(11) The Atlas Of Dermal Lesions, EPA Report 20T–004, U.S Environmental Protection Agency, Washington, DC.

§ 799.9537 TSCA in vitro mammalian chromosome aberration test.

(a) *Scope*—(1) *Applicability.* This section is intended to meet testing requirements under section 4 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601).

(2) *Background.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) harmonized test guideline 870.5375 (August 1998, final guidelines). The source is available at the address in paragraph (i) of this section.

(b) *Purpose.* (1) The purpose of the *in vitro* chromosome aberration test is to identify agents that cause structural chromosome aberrations in cultured mammalian cells (see paragraphs (i)(1), (i)(2), and (i)(3) of this section). Structural aberrations may be of two types, chromosome or chromatid. With the majority of chemical mutagens, induced aberrations are of the chromatid type, but chromosome-type aberrations also occur. An increase in polyploidy may indicate that a chemical has the potential to induce numerical aberrations. However, this guideline is not designed to measure numerical aberrations and is not routinely used for that purpose. Chromosome mutations and related events are the cause of many human genetic diseases and there is substantial evidence that chromosome mutations and related events causing alterations in oncogenes and tumour-suppressor genes of somatic cells are involved in cancer induction in humans and experimental animals.

(2) The *in vitro* chromosome aberration test may employ cultures of established cell lines, cell strains or primary cell cultures. The cells used are selected on the basis of growth ability in culture, stability of the karyotype, chromosome number, chromosome diversity, and spontaneous frequency of chromosome aberrations.

(c) *Definitions.* The definitions in section 3 of TSCA and in 40 CFR Part 792—Good Laboratory Practice

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Standards apply to this test guideline. The following definitions also apply to this test guideline.

Chromatid-type aberration is structural chromosome damage expressed as breakage of single chromatids or breakage and reunion between chromatids.

Chromosome-type aberration is structural chromosome damage expressed as breakage, or breakage and reunion, of both chromatids at an identical site.

Endoreduplication is a process in which after an S period of DNA replication, the nucleus does not go into mitosis but starts another S period. The result is chromosomes with 4, 8, 16,...chromatids.

Gap is an achromatic lesion smaller than the width of one chromatid, and with minimum misalignment of the chromatid(s).

Mitotic index is the ratio of cells in metaphase divided by the total number of cells observed in a population of cells; an indication of the degree of proliferation of that population.

Numerical aberration is a change in the number of chromosomes from the normal number characteristic of the cells utilized.

Polyploidy is a multiple of the haploid chromosome number (n) other than the diploid number (i.e., 3n, 4n, and so on).

Structural aberration is a change in chromosome structure detectable by microscopic examination of the metaphase stage of cell division, observed as deletions and fragments, intrachanges, and interchanges.

(d) *Initial considerations.* (1) Tests conducted *in vitro* generally require the use of an exogenous source of metabolic activation. This metabolic activation system cannot mimic entirely the mammalian *in vivo* conditions. Care should be taken to avoid conditions which would lead to positive results which do not reflect intrinsic mutagenicity and may arise from changes in pH, osmolality, or high levels of cytotoxicity (the test techniques described in the references under paragraphs (i)(4) and (i)(5) of this section may be used).

(2) This test is used to screen for possible mammalian mutagens and carcinogens. Many compounds that are positive in this test are mammalian carcinogens; however, there is not a perfect correlation between this test and carcinogenicity. Correlation is dependent on chemical class and there is increasing evidence that there are carcinogens that are not detected by this test because they appear to act through mechanisms other than direct DNA damage.

(e) *Principle of the test method.* Cell cultures are exposed to the test substance both with and without metabolic activation. At predetermined intervals after exposure of cell cultures to the test substance, they are treated with a metaphase-arresting substance (e.g., Colcemid® or colchicine), harvested, stained, and metaphase cells are analysed microscopically for the presence of chromosome aberrations.

(f) *Description of the method*—(1) *Preparations*—(i) *Cells.* A variety of cell lines, strains, or primary cell cultures, including human cells, may be used (e.g., Chinese hamster fibroblasts, human, or other mammalian peripheral blood lymphocytes).

(ii) *Media and culture conditions.* Appropriate culture media, and incubation conditions (culture vessels, CO^2 concentration, temperature and humidity) must be used in maintaining cultures. Established cell lines and strains must be checked routinely for stability in the modal chromosome number and the absence of *Mycoplasma* contamination and should not be used if contaminated. The normal cell-cycle time for the cells and culture conditions used should be known.

(iii) *Preparation of cultures*—(A) *Established cell lines and strains.* Cells are propagated from stock cultures, seeded in culture medium at a density such that the cultures will not reach confluency before the time of harvest, and incubated at 37 °C.

(B) *Lymphocytes.* Whole blood treated with an anti-coagulant (e.g., heparin) or separated lymphocytes obtained from healthy subjects are added to culture medium containing a mitogen (e.g., phytohemagglutinin) and incubated at 37 °C.

(iv) *Metabolic activation.* Cells must be exposed to the test substance both in the presence and absence of an appropriate metabolic activation system. The most commonly used system is a co-factor-supplemented post-mitochondrial fraction (S9) prepared from the livers of rodents treated with enzyme-inducing agents such as Aroclor 1254 (the test techniques described in the references under paragraphs (i)(6), (i)(7), (8)(i), and (i)(9) of this section may be used), or a mixture of phenobarbitone and β-naphthoflavone (the test techniques described in the references under paragraphs (i)(10), (i)(11), and (i)(12) of this section may be used). The post-mitochondrial fraction is usually used at concentrations in the range from 1-10% v/v in the final test medium. The condition of a metabolic activation system may depend upon the class of chemical being tested. In some cases, it may be appropriate to utilize more than one concentration of post-mitochondrial fraction. A number of developments, including the construction of genetically engineered cell lines expressing specific activating enzymes, may provide the potential for endogenous activation. The choice of the cell lines used should be scientifically justified (e.g., by the relevance of the cytochrome P450 isoenzyme for the metabolism of the test substance).

(v) *Test substance/preparation.* Solid test substances should be dissolved or suspended in appropriate solvents or vehicles and diluted, if appropriate, prior to treatment of the cells. Liquid test substances may be added directly to the test systems and/or diluted prior to treatment. Fresh preparations of the test substance should be employed unless stability data demonstrate the acceptability of storage.

(2) *Test conditions*—(i) *Solvent/vehicle.* The solvent/vehicle should not be suspected of chemical reaction with the test substance and must be compatible with the survival of the cells and the S9 activity. If other than well-known solvent/vehicles are used, their inclusion should be supported by data indicating their compatibility. It is recommended that wherever possible, the use of an aqueous solvent/vehicle be considered first. When testing water-unstable substances, the organic solvents used should be free of water. Water can be removed by adding a molecular sieve.

(ii) *Exposure concentrations.* (A) Among the criteria to be considered when determining the highest concentration are cytotoxicity, solubility in the test system, and changes in pH or osmolality.

(B) Cytotoxicity should be determined with and without metabolic activation in the main experiment using an appropriate indication of cell integrity and growth, such as degree of confluency, viable cell counts, or mitotic index. It may be useful to determine cytotoxicity and solubility in a preliminary experiment.

(C) At least three analyzable concentrations should be used. Where cytotoxicity occurs, these concentrations should cover a range from the maximum to little or no toxicity; this will usually mean that the concentrations should be separated by no more than a factor between 2 and $\sqrt{10}$. At the time of harvesting, the highest concentration should show a significant reduction in degree of confluency, cell count or mitotic index, (all greater than 50%). The mitotic index is only an indirect measure of cytotoxic/cytostatic effects and depends on the time after treatment. However, the mitotic index is acceptable for suspension cultures in which other toxicity measurements may be cumbersome and impractical. Information on cell-cycle kinetics, such as average generation time (AGT), could be used as supplementary information. AGT, however, is an overall average that does not always reveal the existence of delayed subpopulations, and even slight increases in average generation time can be associated with very substantial delay in the time of optimal yield of aberrations. For relatively non-cytotoxic compounds the maximum concentration should be 5 μg/ml, 5mg/ml, or 0.01M, whichever is the lowest.

(D) For relatively insoluble substances that are not toxic at concentrations lower than the insoluble concentration, the highest dose used should be a concentration above the limit of solubility in the final culture medium at the end of the treatment period. In some cases (e.g., when toxicity occurs only at higher than the lowest insoluble concentration) it is advisable to test at more than one concentration with visible precipitation. It may be useful to assess solubility at the beginning and the end of the treatment, as solubility can change during the course of exposure in the test system due to presence of cells, S9, serum etc. Insolubility can be detected by using the unaided eye. The precipitate should not interfere with the scoring.

(iii) *Controls.* (A) Concurrent positive and negative (solvent or vehicle) controls both with and without metabolic activation must be included in each experiment. When metabolic activation is used, the positive control chemical must be the one that requires activation to give a mutagenic response.

(B) Positive controls must employ a known clastogen at exposure levels expected to give a reproducible and detectable increase over background which demonstrates the sensitivity of the test system. Positive control concentrations should be chosen so that the effects are clear but do not immediately reveal the identity of the coded slides to the reader. Examples of positive-control substances include:

Metabolic activation condition	Chemical	CAS number
Absence of exogenous metabolic activation	Methyl methanesulfonate	[66–27–3]
	Ethyl methanesulfonate	[62–50–0]
	Ethylnitrosourea	[759–73–9]
	Mitomycin C	[50–07–7]
	4-Nitroquinoline-N-Oxide	[56–57–5]
Presence of exogenous metabolic activation	Benzo(a)pyrene	[50–32–8]
	Cyclophosphamide (monohydrate)	[50–18–0] ([6055–19–2])

(C) Other appropriate positive control substances may be used. The use of chemical class-related positive-control chemicals may be considered, when available.

(D) Negative controls, consisting of solvent or vehicle alone in the treatment medium, and treated in the same way as the treatment cultures, must be included for every harvest time. In addition, untreated controls should also be used unless there are historical-control data demonstrating that no deleterious or mutagenic effects are induced by the chosen solvent.

(g) *Procedure*—(1) *Treatment with test substance.* (i) Proliferating cells are treated with the test substance in the presence and absence of a metabolic-activation system. Treatment of lymphocytes should commence at about 48 hours after mitogenic stimulation.

(ii) Duplicate cultures must be used at each concentration, and are strongly recommended for negative/solvent control cultures. Where minimal variation between duplicate cultures can be demonstrated (the test techniques described in the references under paragraphs (i)(13) and (i)(14) of this section may be used), from historical data, it may be acceptable for single cultures to be used at each concentration.

(iii) Gaseous or volatile substances should be tested by appropriate methods, such as in sealed culture vessels (the test techniques described in the references under paragraphs (i)(15) and (i)(16) of this section may be used).

(2) *Culture harvest time.* In the first experiment, cells should be exposed to the test substance both with and without metabolic activation for 3–6 hours, and sampled at a time equivalent to about 1.5 normal cell-cycle length after the beginning of treatment (the test techniques described in the references under paragraph (i)(12) of this section may be used). If this protocol gives negative results both with and without activation, an additional experiment without activation should be done, with continuous treatment until sampling at a time equivalent to about 1.5 normal cell-cycle lengths. Certain chemicals may be more readily detected by treatment/sampling times longer than 1.5 cycle lengths. Negative results with metabolic activation need to be confirmed on a case-by-case basis. In those cases where confirmation of negative results is not considered necessary, justification should be provided.

(3) *Chromosome preparation.* Cell cultures must be treated with Colcemid® or colchicine usually for 1 to 3 hours prior to harvesting. Each cell culture must be harvested and processed separately for the preparation of chromosomes. Chromosome preparation involves hypotonic treatment of the cells, fixation and staining.

(4) *Analysis.* (i) All slides, including those of positive and negative controls, must be independently coded before microscopic analysis. Since fixation procedures often result in the breakage of a proportion of metaphase cells with loss of chromosomes, the cells scored must therefore contain a number of centromeres equal to the modal number ± 2 for all cell types. At least 200 well-spread metaphases should be scored per concentration and control equally divided amongst the duplicates, if applicable. This number can be reduced when high numbers of aberrations are observed.

(ii) Though the purpose of the test is to detect structural chromosome aberrations, it is important to record polyploidy and endoreduplication when these events are seen.

(h) *Data and reporting*—(1) *Treatment of results.* (i) The experimental unit is the cell, and therefore the percentage of cells with structural chromosome aberration(s) should be evaluated. Different types of structural

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chromosome aberrations must be listed with their numbers and frequencies for experimental and control cultures. Gaps are recorded separately and reported but generally not included in the total aberration frequency.

(ii) Concurrent measures of cytotoxicity for all treated and negative control cultures in the main aberration experiment(s) should also be recorded.

(iii) Individual culture data should be provided. Additionally, all data should be summarized in tabular form.

(iv) There is no requirement for verification of a clear positive response. Equivocal results should be clarified by further testing preferably using modification of experimental conditions. The need to confirm negative results has been discussed in paragraph (g)(2) of this section. Modification of study parameters to extend the range of conditions assessed should be considered in follow-up experiments. Study parameters that might be modified include the concentration spacing and the metabolic activation conditions.

(2) *Evaluation and interpretation of results.* (i) There are several criteria for determining a positive result, such as a concentration-related increase or a reproducible increase in the number of cells with chromosome aberrations. Biological relevance of the results should be considered first. Statistical methods may be used as an aid in evaluating the test results (see paragraphs (i)(3) and (i)(13) of this section). Statistical significance should not be the only determining factor for a positive response.

(ii) An increase in the number of polyploid cells may indicate that the test substance has the potential to inhibit mitotic processes and to induce numerical chromosome aberrations. An increase in the number of cells with endoreduplicated chromosomes may indicate that the test substance has the potential to inhibit cell-cycle progression (the test techniques described in the references under paragraphs (i)(17) and (i)(18) of this section may be used).

(iii) A test substance for which the results do not meet the criteria in paragraphs (h)(2)(i) and (h)(2)(ii) of this section is considered nonmutagenic in this system.

(iv) Although most experiments will give clearly positive or negative results, in rare cases the data set will preclude making a definite judgement about the activity of the test substance. Results may remain equivocal or questionable regardless of the number of times the experiment is repeated.

(v) Positive results from the *in vitro* chromosome aberration test indicate that the test substance induces structural chromosome aberrations in cultured mammalian somatic cells. Negative results indicate that, under the test conditions, the test substance does not induce chromosome aberrations in cultured mammalian somatic cells.

(3) *Test report.* The test report must include the following information.

(i) Test substance.

(A) Identification data and CAS no., if known.

(B) Physical nature and purity.

(C) Physicochemical properties relevant to the conduct of the study.

(D) Stability of the test substance, if known.

(ii) Solvent/vehicle.

(A) Justification for choice of solvent/vehicle.

(B) Solubility and stability of the test substance in solvent/vehicle, if known.

(iii) Cells.

(A) Type and source of cells.

(B) Karyotype features and suitability of the cell type used.

(C) Absence of *Mycoplasma*, if applicable.

(D) Information on cell-cycle length.

(E) Sex of blood donors, whole blood or separated lymphocytes, mitogen used.

(F) Number of passages, if applicable.

(G) Methods for maintenance of cell cultures if applicable.

(H) Modal number of chromosomes.

(iv) Test conditions.

(A) Identity of metaphase arresting substance, its concentration and duration of cell exposure.

(B) Rationale for selection of concentrations and number of cultures including, e.g., cytotoxicity data and solubility limitations, if available.

(C) Composition of media, CO^2 concentration if applicable.

(D) Concentration of test substance.

(E) Volume of vehicle and test substance added.

(F) Incubation temperature.

(G) Incubation time.

(H) Duration of treatment.

(I) Cell density at seeding, if appropriate.

(J) Type and composition of metabolic activation system, including acceptability criteria.

(K) Positive and negative controls.

(L) Methods of slide preparation.

(M) Criteria for scoring aberrations.

(N) Number of metaphases analyzed.

(O) Methods for the measurements of toxicity.

(P) Criteria for considering studies as positive, negative or equivocal.

(v) Results.

(A) Signs of toxicity, e.g., degree of confluency, cell-cycle data, cell counts, mitotic index.

(B) Signs of precipitation.

(C) Data on pH and osmolality of the treatment medium, if determined.

(D) Definition for aberrations, including gaps.

(E) Number of cells with chromosome aberrations and type of chromosome aberrations given separately for each treated and control culture.

(F) Changes in ploidy if seen.

(G) Dose-response relationship, where possible.

(H) Statistical analyses, if any.

(I) Concurrent negative (solvent/vehicle) and positive control data.

(J) Historical negative (solvent/vehicle) and positive control data, with ranges, means and standard deviations.

(vi) Discussion of the results.

(vii) Conclusion.

(i) *References.* For additional background information on this test guideline, the following references should be consulte. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

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§ 799.9630 TSCA developmental neurotoxicity.

(a) *Scope*—(1) *Applicability.* This section is intended to meet the testing requirements *under* section 4 of the Toxic Substances Control Act (TSCA).

(2) *Source.* The source material used in developing this TSCA test guideline is the OPPTS harmonized test guideline 870.6300 (August 1998).

(b) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical substance or mixture (test substance), determination of the potential for developmental neurotoxicity is important. This study is designed to develop data on the potential functional and morphological hazards to the nervous system which may arise in the offspring from exposure of the mother during pregnancy and lactation.

(c) *Principle of the test method.* The test substance is administered to several groups of pregnant animals during gestation and early lactation, one dose level being used per group. Offspring are randomly selected from within litters for neurotoxicity evaluation. The evaluation includes observations to detect gross neurologic and behavioral abnormalities, determination of motor activity, response to auditory startle, assessment of learning, neuropathological evaluation, and brain weights. This protocol may be used as a separate study, as a followup to a standard developmental toxicity and/or adult neurotoxicity study, or as part of a two-generation reproduction study, with assessment of the offspring conducted on the second (F^2) generation.

(d) *Test procedure*—(1) *Animal selection*—(i) *Species and strain.* Testing must be performed in the rat. Because of its differences in timing of developmental events compared to strains that are more commonly tested in other developmental and reproductive toxicity studies, it is preferred that the Fischer 344 strain not be used. If a sponsor wishes to use the Fischer 344 rat or a mammalian species other than the rat, ample justification/reasoning for this selection must be provided.

(ii) *Age.* Young adult (nulliparous females) animals must be used.

(iii) *Sex.* Pregnant female animals must be used at each dose level.

(iv) *Number of animals.* (A) The objective is for a sufficient number of pregnant rats to be exposed to the test substance to ensure that an adequate number of offspring are produced for neurotoxicity evaluation. At least 20 litters are recommended at each dose level.

(B) On postnatal day 4, the size of each litter should be adjusted by eliminating extra pups by random selection to yield, as nearly as possible, four male and four females per litter. Whenever the number of pups of either sex prevents having four of each sex per litter, partial adjustment (for example, five males and three females) is permitted. Testing is not appropriate for litters of less than seven pups. Elimination of runts only is not appropriate. Individual pups should be identified uniquely after standardization of litters. A method that may be used for identification can be found under paragraph (f)(1) of this section.

(v) *Assignment of animals for behavioral tests, brain weights, and neuropathological evaluations.* After standardization of litters, one male or one female from each litter (total of 10 males and 10 females per dose group) must be randomly assigned to one of the following tests: Motor activity, auditory startle, and learning and memory, in weanling and adult animals. On postnatal day 11, either 1 male or 1 female pup from each litter (total of 10 males and 10 females per dose group) must be sacrificed. Brain weights must be measured in all of these pups and, of these pups, six per sex per dose must be selected for neuropathological evaluation. At the termination of the study, either 1 male or 1 female from each litter (total of 10 males and 10 females per dose group) must be sacrificed and brain weights must be measured. An additional group of six animals per sex per dose group (one male or one female per litter) must be sacrificed at the termination of the study for neuropathological evaluation.

(2) *Control group.* A concurrent control group is required. This group must be a sham-treated group or, if a vehicle is used in administering the test substance, a vehicle control group. The vehicle must neither be developmentally toxic nor have effects on reproduction. Animals in the control group must be handled in an identical manner to test group animals.

(3) *Dose levels and dose selection.* (i) At least three dose levels of the test substance plus a control group (vehicle control, if a vehicle is used) must be used.

(ii) If the test substance has been shown to be developmentally toxic either in a standard developmental toxicity study or in a pilot study, the highest dose level must be the maximum dose which will not induce in utero or neonatal death or malformations sufficient to preclude a meaningful evaluation of neurotoxicity.

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(iii) If a standard developmental toxicity study has not been conducted, the highest dose level, unless limited by the physicochemical nature or biological properties of the substance, must induce some overt maternal toxicity, but must not result in a reduction in weight gain exceeding 20 percent during gestation and lactation.

(iv) The lowest dose should not produce any grossly observable evidence of either maternal or developmental neurotoxicity.

(v) The intermediate doses must be equally spaced between the highest and lowest doses used.

(4) *Dosing period.* Day 0 of gestation is the day on which a vaginal plug and/or sperm are observed. The dosing period must cover the period from day 6 of gestation through day 10 postnatally. Dosing should not occur on the day of parturition in those animals who have not completely delivered their offspring.

(5) *Administration of the test substance.* The test substance or vehicle must be administered orally. Other routes of administration may be acceptable, on a case-by-case basis, with ample justification/reasoning for this selection. The test substance or vehicle must be administered based on the most recent weight determination.

(6) *Observation of dams.* (i) A gross examination of the dams must be made at least once each day before daily treatment.

(ii) Ten dams per group must be observed outside the home cage at least twice during the gestational dosing period (days 6–21) and twice during the lactational dosing period (days 1–10) for signs of toxicity. The animals must be observed by trained technicians who are unaware of the animals' treatment, using standardized procedures to maximize interobserver reliability. Where possible, it is advisable that the same observer be used to evaluate the animals in a given study. If this is not possible, some demonstration of interobserver reliability is required.

(iii) During the treatment and observation periods under paragraph (d)(6)(ii) of this section, observations must include:

(A) Assessment of signs of autonomic function, including but not limited to:

(*1*) Ranking of the degree of lacrimation and salivation, with a range of severity scores from none to severe.

(*2*) Presence or absence of piloerection and exophthalmus.

(*3*) Ranking or count of urination and defecation, including polyuria and diarrhea.

(*4*) Pupillary function such as constriction of the pupil in response to light or a measure of pupil size.

(*5*) Degree of palpebral closure, e.g., ptosis.

(B) Description, incidence, and severity of any convulsions, tremors, or abnormal movements.

(C) Description and incidence of posture and gait abnormalities.

(D) Description and incidence of any unusual or abnormal behaviors, excessive or repetitive actions (stereotypies), emaciation, dehydration, hypotonia or hypertonia, altered fur appearance, red or crusty deposits around the eyes, nose, or mouth, and any other observations that may facilitate interpretation of the data.

(iv) Signs of toxicity must be recorded as they are observed, including the time of onset, degree, and duration.

(v) Animals must be weighed at least weekly and on the day of delivery and postnatal days 11 and 21 (weaning) and such weights must be recorded.

(vi) The day of delivery of litters must be recorded and considered as postnatal day 0.

(7) *Study conduct*—(i) *Observation of offspring.* (A) All offspring must be examined cage-side at least daily for gross signs of mortality or morbidity.

(B) A total of 10 male offspring and 10 female offspring per dose group must be examined outside the cage for signs of toxicity on days 4, 11, 21, 35, 45, and 60. The offspring must be observed by trained technicians, who are unaware of the treatment being used, using standardized procedures to maximize interobserver reliability. Where possible, it is advisable that the same observer be used to evaluate the animals in a given study. If this is not possible, some demonstration of interobserver reliability is required. At a minimum, the end points outlined in paragraph (d)(6)(iii) of this section must be monitored as appropriate for the developmental stage being observed.

(C) Any gross signs of toxicity in the offspring must be recorded as they are observed, including the time of onset, degree, and duration.

(ii) *Developmental landmarks.* Live pups must be counted and each pup within a litter must be weighed individually at birth or soon thereafter, and on postnatal days 4, 11, 17, and 21 and at least once every 2 weeks thereafter. The age of vaginal opening and preputial separation must be determined. General procedures for these determinations may be found in paragraphs (f)(1) and (f)(11) of this section.

(iii) *Motor activity.* Motor activity must be monitored specifically on postnatal days 13, 17, 21, and 60 (+2 days). Motor activity must be monitored by an automated activity recording apparatus. The device must be capable of detecting both increases and decreases in activity, (i.e., baseline activity as measured by the device must not be so low as to preclude detection of decreases nor so high as to preclude detection of increases in activity). Each device must be tested by standard procedures to ensure, to the extent possible, reliability of operation across devices and across days for any one device. In addition, treatment groups must be balanced across devices. Each animal must be tested individually. The test session must be long enough for motor activity to approach asymptotic levels by the last 20 percent of the session for nontreated control animals. All sessions must have the same duration. Treatment groups must be counter-balanced across test times. Activity counts must be collected in equal time periods of no greater than 10 minutes duration. Efforts must be made to ensure that variations in the test conditions are minimal and are not systematically related to treatment. Among the variables that can affect motor activity are sound level, size and shape of the test cage, temperature, relative humidity, light conditions, odors, use of home cage or novel test cage, and environmental distractions. Additional information on the conduct of a motor activity study may be obtained in § 799.9620.

(iv) *Auditory startle test.* An auditory startle habituation test should be performed on the offspring around the time of weaning and around day 60. Day of testing should be counterbalanced across treated and control groups. Details on the conduct of this testing may be obtained under paragraph (f)(1) of this section. In performing the auditory startle task, the mean response amplitude on each block of 10 trials (5 blocks of 10 trials per session on each day of testing) must be made. While use of prepulse inhibition is not a requirement, it is highly recommended. Details on the conduct of this test may be obtained in paragraph (f)(10) of this section.

(v) *Learning and memory tests.* A test of associative learning and memory should be conducted around the time of weaning and around day 60. Day of testing should be counterbalanced across treated and control groups. The same or separate tests may be used at these two stages of development. Some flexibility is allowed in the choice of tests for learning and memory in weanling and adult rats. However, the tests must be designed to fulfill two

criteria. First, learning must be assessed either as a change across several repeated learning trials or sessions, or, in tests involving a single trial, with reference to a condition that controls for nonassociative effects of the training experience. Second, the tests must include some measure of memory (short-term or long-term) in addition to original learning (acquisition). If the tests of learning and memory reveal an effect of the test compound, it may be in the best interest of the sponsor to conduct additional tests to rule out alternative interpretations based on alterations in sensory, motivational, and/or motor capacities. In addition to the above two criteria, it is recommended that the test of learning and memory be chosen on the basis of its demonstrated sensitivity to the class of compound under investigation, if such information is available in the literature. In the absence of such information, examples of tests that could be made to meet the above criteria include: Delayed-matching-to-position, as described for the adult rat (see paragraph (f)(3) of this section) and for the infant rat (see paragraph (f)(9) of this section); olfactory conditioning, as described in paragraph (f)(13) of this section; and acquisition and retention of schedule-controlled behavior (see paragraphs (f)(4) and (f)(5) of this section). Additional tests for weanling rats are described under paragraphs (f)(20) and (f)(12) of this section, and for adult rats under paragraph (f)(16) of this section.

(vi) *Neuropathology.* Neuropathological evaluation must be conducted on animals on postnatal day 11 and at the termination of the study. At 11 days of age, one male or female pup must be removed from each litter such that equal numbers of male and female offspring are removed from all litters combined. Of these, six male and six female pups per dose group will be sacrificed for neuropathological analysis. The pups will be sacrificed by exposure to carbon dioxide and immediately thereafter the brains should be removed, weighed, and immersion-fixed in an appropriate aldehyde fixative. The remaining animals will be sacrificed in a similar manner and immediately thereafter their brains removed and weighed. At the termination of the study, one male or one female from each litter will be sacrificed by exposure to carbon dioxide and immediately thereafter the brain must be removed and weighed. In addition, six animals per sex per dose group (one male or female per litter) must be sacrificed at the termination of the study for neuropathological evaluation. Neuropathological analysis of animals sacrificed at the termination of the study must be performed in accordance with § 799.9620. Neuropathological evaluation of animals sacrificed on postnatal day 11 and at termination of the study must include a qualitative analysis and semiquantitative analysis as well as simple morphometrics.

(A) *Fixation and processing of tissue samples for postnatal day 11 animals.* Immediately following removal, the brain must be weighed and immersion fixed in an appropriate aldehyde fixative. The brains must be postfixed and processed according to standardized published histological protocols such as those discussed in references listed under paragraphs (f)(6), (f)(14), (f)(17), and (f)(21) of this section. Paraffin embedding is acceptable but plastic embedding is preferred and recommended. Tissue blocks and slides must be appropriately identified when stored. Histological sections must be stained for hematoxylin and eosin, or a similar stain according to standard published protocols such as those discussed in references listed under paragraphs (f)(2), (f)(18), and (f)(23) of this section. For animals sacrificed at the termination of the study, methods for fixation and processing of tissue samples are provided in § 799.9620(e)(7)(iv)(A).

(B) *Qualitative analysis.* The purposes of the qualitative examination are threefold—to identify regions within the nervous system exhibiting evidence of neuropathological alterations, to identify types of neuropathological alterations resulting from exposure to the test substance, and to determine the range of severity of the neuropathological alterations. Representative histological sections from the tissue samples should be examined microscopically by an appropriately trained pathologist for evidence of neuropathological alterations. The following stepwise procedure is recommended for the qualitative analysis. First, sections from the high dose group are compared with those of the control group. If no evidence of neuropathological alterations is found in animals of the high dose group, no further analysis is required. If evidence of neuropathological alterations are found in the high dose group, then animals from the intermediate and low dose group are examined. Subject to professional judgment and the kind of neuropathological alterations observed, it is recommended that additional methods such as Bodian's or Bielchowsky's silver methods and/or immunohistochemistry for glial fibrillary acid protein be used in conjunction with more standard stains to determine the lowest dose level at which neuropathological alterations are observed. Evaluations of postnatal day 11 pups is described in paragraphs (d)(7)(vi)(B)(*1*) and (d)(7)(vi)(B)(*2*) of this section. For animals sacrificed at the termination of the study, the regions to be examined and the types of alterations that must be assessed are identified in § 799.9620(e)(7)(iv)(B).

(*1*) *Regions to be examined.* The brains should be examined for any evidence of treatment-related neuropathological alterations and adequate samples should be taken from all major brain regions (e.g., olfactory bulbs, cerebral cortex, hippocampus, basal ganglia, thalamus, hypothalamus, midbrain (tectum, tegmentum, and cerebral peduncles), brainstem and cerebellum) to ensure a thorough examination.

(*2*) *Types of alterations.* Guidance for neuropathological examination for indications of developmental insult to the brain can be found in paragraphs (f)(8) and (f)(22) of this section. In addition to more typical kinds of cellular alterations (e.g., neuronal vacuolation, degeneration, necrosis) and tissue changes (e.g., astrocytic proliferation, leukocytic infiltration, and cystic formation) particular emphasis should be paid to structural changes indicative of developmental insult including but not restricted to:

(*i*) Gross changes in the size or shape of brain regions such as alterations in the size of the cerebral hemispheres or the normal pattern of foliation of the cerebellum.

(*ii*) The death of neuronal precursors, abnormal proliferation, or abnormal migration, as indicated by pyknotic cells or ectopic neurons, or gross alterations in regions with active proliferative and migratory zones, alterations in transient developmental structures (e.g., the external germinal zone of the cerebellum, see paragraph (f)(15) of this section).

(*iii*) Abnormal differentiation, while more apparent with special stains, may also be indicated by shrunken and malformed cell bodies.

(*iv*) Evidence of hydrocephalus, in particular enlargement of the ventricles, stenosis of the cerebral aqueduct and general thinning of the cerebral hemispheres.

(C) *Subjective diagnosis.* If any evidence of neuropathological alterations is found in the qualitative examination, then a subjective diagnosis will be performed for the purpose of

evaluating dose-response relationships. All regions of the brain exhibiting any evidence of neuropathological changes must be included in this analysis. Sections of each region from all dose groups will be coded as to treatment and examined in randomized order. The frequency of each type and the severity of each lesion will be recorded. After all sections from all dose groups including all regions have been rated, the code will be broken and statistical analyses performed to evaluate dose-response relationships. For each type of dose related lesion observed, examples of different ranges of severity must be described. The examples will serve to illustrate a rating scale, such as 1+, 2+, and 3+ for the degree of severity ranging from very slight to very extensive.

(D) *Simple morphometric analysis.* Since the disruption of developmental processes is sometimes more clearly reflected in the rate or extent of growth of particular brain regions, some form of morphometric analysis must be performed on postnatal day 11 and at the termination of the study to assess the structural development of the brain. At a minimum, this would consist of a reliable estimate of the thickness of major layers at representative locations within the neocortex, hippocampus, and cerebellum. For guidance on such measurements see Rodier and Gramann under paragraph (f)(19) of this section.

(e) *Data collection, reporting, and evaluation.* The following specific information must be reported:

(1) *Description of test system and test methods.* A description of the general design of the experiment should be provided. This must include:

(i) A detailed description of the procedures used to standardize observations and procedures as well as operational definitions for scoring observations.

(ii) Positive control data from the laboratory performing the test that demonstrate the sensitivity of the procedures being used. These data do not have to be from studies using prenatal exposures. However, the laboratory must demonstrate competence in evaluation of effects in neonatal animals perinatally exposed to chemicals and establish test norms for the appropriate age group.

(iii) Procedures for calibrating and ensuring the equivalence of devices and the balancing of treatment groups in testing procedures.

(iv) A short justification explaining any decisions involving professional judgement.

(2) *Results.* The following information must be arranged by each treatment and control group:

(i) In tabular form, data for each animal must be provided showing:

(A) Its identification number and the litter from which it came.

(B) Its body weight and score on each developmental landmark at each observation time.

(C) Total session activity counts and intrasession subtotals on each day measured.

(D) Auditory startle response amplitude per session and intrasession amplitudes on each day measured.

(E) Appropriate data for each repeated trial (or session) showing acquisition and retention scores on the tests of learning and memory on each day measured.

(F) Time and cause of death (if appropriate); any neurological signs observed; a list of structures examined as well as the locations, nature, frequency, and extent of lesions; and brain weights.

(ii) The following data should also be provided, as appropriate:

(A) Inclusion of photomicrographs demonstrating typical examples of the type and extent of the neuropathological alterations observed is recommended.

(B) Any diagnoses derived from neurological signs and lesions, including naturally occurring diseases or conditions, should also be recorded.

(iii) Summary data for each treatment and control group must include:

(A) The number of animals at the start of the test.

(B) The body weight of the dams during gestation and lactation.

(C) Litter size and mean weight at birth.

(D) The number of animals showing each abnormal sign at each observation time.

(E) The percentage of animals showing each abnormal sign at each observation time.

(F) The mean and standard deviation for each continuous endpoint at each observation time. These will include body weight, motor activity counts, auditory startle responses, performance in learning and memory tests, regional brain weights and whole brain weights (both absolute and relative).

(G) The number of animals in which any lesion was found.

(H) The number of animals affected by each different type of lesion, the location, frequency and average grade of each type of lesion for each animal.

(I) The values of all morphometric measurements made for each animal listed by treatment group.

(3) *Evaluation of data.* An evaluation of test results must be made. The evaluation must include the relationship between the doses of the test substance and the presence or absence, incidence, and extent of any neurotoxic effect. The evaluation must include appropriate statistical analyses. The choice of analyses must consider tests appropriate to the experimental design and needed adjustments for multiple comparisons. The evaluation must include the relationship, if any, between observed neuropathological and behavioral alterations.

(f) *References.* For additional background information on this test guideline, the following references should be consulted. These references are available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

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(2) Bennett, H.S., Wyrick, A.D., Lee, S.W., and McNeil, J.H. Science and art in preparing tissues embedded in plastic for light microscopy, with special reference to glycol methacrylate, glass knives and simple stains. *Stain Technology* 51:71–97 (1976).

(3) Bushnell, P.J. Effects of delay, intertrial interval, delay behavior and trimethyltin on spatial delayed response in rats. *Neurotoxicology and Teratology* 10:237–244 (1988).

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(5) Cory-Slechta, D.A., Weiss, B., and Cox, C. Delayed behavioral toxicity of lead with increasing exposure concentration. *Toxicology and Applied Pharmacology* 71:342–352 (1983).

(6) Di Sant Agnese, P. A. and De Mesy Jensen, K.L. Dibasic staining of large epoxy tissue sections and application to surgical pathology. *American Journal of Clinical Pathology* 81:25–29 (1984).

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(9) Green, R.J. and Stanton, M.E. Differential ontogeny of working memory and reference memory in the rat. *Behavioral Neuroscience* 103:98–105 (1989).

(10) Ison, J.R. Reflex modification as an objective test for sensory processing following toxicant exposure. *Neurobehavioral Toxicology and Teratology* 6:437–445 (1984).

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(12) Krasnegor, N.A., Blass, E.M., Hofer, M.A., and Smotherman, W.P. (eds.) *Perinatal Development: A Psychobiologicol Perspective.* Academic Press, Orlando. pp.11–37, 145–167. (1987).

(13) Kucharski, D. and Spear, N.E. Conditioning of aversion to an odor paired with peripheral shock in the developing rat. *Developmental Psychobiology* 17:465–479 (1984).

(14) Luna, L. G. (editor). *Manual of Histologic Staining Methods of the Armed Forces Institute of Pathology.* (Third Edition). McGraw-Hill, New York. pp. 1–31 (1968).

(15) Miale, I. L. and Sidman, R.L. An autoradiographic analysis of histogenesis in the mouse cerebellum. *Experimental Neurology.* 4:277–296 (1961).

(16) Miller, D.B. and Eckerman, D.A. Learning and memory measures. In: *Neurobehavioral Toxicology,* Z. Annau (ed). Johns Hopkins University Press, Baltimore. pp. 94–149 (1986).

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§ 799.9748 TSCA metabolism and pharmacokinetics

(a) *Scope.* (1) This section is intended to meet the testing requirements under section 4 of the Toxic Substances Control Act (TSCA). (1) Testing of the disposition of a test substance is designed to obtain adequate information on its absorption, distribution, biotransformation, and excretion and to aid in understanding the mechanism of toxicity. Basic pharmacokinetic parameters determined from these studies will also provide information on the potential for accumulation of the test substance in tissues and/or organs and the potential for induction of biotransformation as a result of exposure to the test substance. These data can be used to assess the adequacy and relevance of the extrapolation of animal toxicity data (particularly chronic toxicity and/or carcinogenicity data) to human risk assessment.

(2) Metabolism data can also be used to assist in determining whether animal toxicity studies have adequately addressed any toxicity concerns arising from exposure to plant metabolites, and in the setting of tolerances, if any, for those metabolites in raw agricultural commodities.

(b) *Source.* The source material used in developing this TSCA test guideline is the Office of Prevention, Pesticides and Toxic Substances (OPPTS) harmonized test guideline 870.7485 (August 1998, final guideline). This source is available at the address in paragraph (h) of this section.

(c) *Definitions.* The following definitions apply to this section.

Metabolism (biotransformation) is the sum of the processes by which a foreign chemical is subjected to chemical change by living organisms.

LOEL is the lowest observable effects level.

NOEL is the no observable effects level.

Pharmacokinetics is the quantitation and determination of the time course and dose dependency of the absorption, distribution, biotransformation, and excretion of chemicals.

(d) *Good laboratory practice standards.* The pharmacokinetics and metabolism tests outlined in this guideline must conform to the laboratory practices stipulated in 40 CFR Part 792—Good Laboratory Practice Standards.

(e) *Test Procedures.* Test procedures presented below utilize a tier system to minimize the use of resources and to allow flexibility in the conduct of metabolism studies. The proposed tier system consists of a basic data set (Tier 1) and additional studies (Tier 2). These additional studies may be requested based upon the existing toxicology data base and/or the results of Tier 1 testing which are found to impact upon the risk assessment process. For Tier 1 testing, the oral route will typically be required; however, if the use pattern results in other types of exposure, other routes (dermal and/or inhalation) may be required for initial testing of the disposition of a chemical substance. The registrant should justify the route of exposure to the Agency. Complete descriptions of the test procedures for these other routes of exposure can be found in paragraph (i) of this section. Except in unusual circumstances, the tiered approach to metabolism testing should apply to all listed routes of exposure.

(1) *Pilot studies.* The use of pilot studies is recommended and encouraged for the selection of experimental conditions for the pharmacokinetics and metabolism studies (mass balance, analytical procedures, dose-finding, excretion of CO_2, etc.).

(2) *Animal selection*—(i) *Species.* The rat must normally be used for testing because it has been used extensively for metabolic and toxicological studies. The use of other or additional species may be required if critical toxicology studies demonstrate evidence of significant toxicity in these species or if metabolism is shown to be more relevant to humans in the test species.

(ii) *Strain.* Adult animals of the strain used or proposed to be used for the determination of adverse health effects associated with the test substance.

(3) *Material to be tested*—(i) *Test substance.* (A) A radiolabeled test substance using ^{14}C should be used for all material balance and metabolite identification aspects of the study. Other radioactive and stable isotopes may be used, particularly if the element is responsible for or is a part of the toxic portion of the compound. If it can be demonstrated that the material balance and metabolite identification requirements can be met using unlabeled test substance, then radiolabeled compound need not be used. If possible, the radiolabel should be located in a core portion of the molecule which is metabolically stable (it is not exchangeable, is not removed metabolically as CO_2, and does not become part of the one-carbon pool of the organism). Labeling of multiple sites of the molecule may be necessary to

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follow the metabolic fate of the compound.

(B) The label should follow the test compound and/or its major metabolites until excreted. The radiopurity of the radioactive test substance shall be the highest attainable for a particular test substance (ideally it should be greater than 95%) and reasonable effort should be made to identify impurities present at or above 2%. The purity, along with the identity of major impurities which have been identified, shall be reported. For other segments of the study, nonradioactive test substance may be used if it can be demonstrated that the analytical specificity and sensitivity of the method used with nonradioactive test substance is equal to or greater than that which could be obtained with the radiolabeled test substance. The radioactive and nonradioactive test substances shall be analyzed using an appropriate method to establish purity and identity. Additional guidance will be provided in chemical specific test rules to assist in the definition and specifications of test substances composed of mixtures and methods for determination of purity.

(ii) *Administration of test substance.* Test substance should be dissolved or suspended homogeneously in a vehicle usually employed for acute administration. A rationale for the choice of vehicle should be provided. The customary method of administration will be by oral gavage; however, administration by gelatin capsule or as a dietary mixture may be advantageous in specific situations. Verification of the actual dose administered to each animal should be provided.

(4) *Tier testing.* (i) The multiplicity of metabolic parameters that impact the outcome of toxicological evaluations preclude the use of a universal study design for routine toxicological evaluation of a test substance. The usefulness of a particular study design depends upon the biological activity of a compound and circumstances of exposure. For these reasons, a tiered system is proposed for evaluation of the metabolism/kinetic properties of a test substance.

(ii) The first tier data set is a definitive study by the appropriate route of exposure conducted in male rats to determine the routes and rate of excretion and to identify excreted metabolites. First tier data will also provide basic information for additional testing (Tier 2) if such testing is considered necessary. In the majority of cases, Tier 1 data are expected to satisfy regulatory requirements for biotransformation and pharmacokinetic data on test chemicals.

(iii) Second tier testing describes a variety of metabolism/kinetic experiments which address specific questions based on the existing toxicology data base and/or those results of Tier 1 testing impacting significantly on the risk assessment process. For conduct of these studies, individualized protocols may be necessary. Protocols for these studies, if required, can be developed as a cooperative effort between Agency and industry scientists.

(f) *Tier 1 data requirements (minimum data set).* At this initial level of testing, biotransformation and pharmacokinetic data from a single low dose group will be required. This study will determine the rate and routes of excretion and the type of metabolites generated.

(1) *Number and sex of animals.* A minimum of four male young adult animals must be used for Tier 1 testing. The use of both sexes may be required in cases where there is evidence to support significant sex-related differences in toxicity.

(2) *Dose selection.* (i) A single dose is required for each route of exposure. The dose should be nontoxic, but high enough to allow for metabolite identification in excreta. If no other toxicity data are available for selection of the low dose, a dose identified as a fraction of the LD_{50} (as determined from acute toxicity studies) may be used. The magnitude of the dose used in Tier 1 studies should be justified in the final report.

(ii) For test substances of low toxicity a maximum dose of 1,000 mg/kg should be used; chemical-specific considerations may necessitate a higher maximum dose and will be addressed in specific test rules.

(3) *Measurements*—(i) *Excretion.* (A) Data obtained from this section (percent recovery of administered dose from urine, feces, and expired air) will be used to determine the rate and extent of excretion of test chemical, to assist in establishing mass balance, and will be used in conjunction with pharmacokinetic parameters to determine the extent of absorption. The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately at appropriate time intervals.

(B) If a pilot study has shown that no significant amount of radioactivity is excreted in expired air, then expired air need not be collected in the definitive study.

(C) Each animal must be placed in a separate metabolic unit for collection of excreta (urine, feces and expired air). At the end of each collection period, the metabolic units must be rinsed with appropriate solvent to ensure maximum recovery of radiolabel. Excreta collection must be terminated at 7 days, or after at least 90% of the administered dose has been recovered, whichever occurs first. The total quantities of radioactivity in urine must be determined at 6, 12, and 24 hours on day 1 of collection, and daily thereafter until study termination, unless pilot studies suggest alternate or additional time points for collection. The total quantities of radioactivity in feces should be determined on a daily basis beginning at 24 hours post-dose, and daily thereafter until study termination. The collection of CO_2 and other volatile materials may be discontinued when less than 1% of the administered dose is found in the exhaled air during a 24-hour collection period.

(ii) *Tissue distribution.* At the termination of the Tier 1 study, the following tissues should be collected and stored frozen: Liver, fat, gastrointestinal tract, kidney, spleen, whole blood, and residual carcass. If it is determined that a significant amount of the administered dose is unaccounted for in the excreta, then data on the percent of the total (free and bound) radioactive dose in these tissues as well as residual carcass will be requested. Additional tissues must be included if there is evidence of target organ toxicity from subchronic or chronic toxicity studies. For other routes of exposure, specific tissues may also be required, such as lungs in inhalation studies and skin in dermal studies. Certain techniques currently at various stages of development, e.g., quantitative whole-body autoradiography, may prove useful in determining if a test substance concentrates in certain organs or in determining a specific pattern of distribution within a given tissue. The use of such techniques is encouraged, but not required, and may be employed to limit the number of tissues collected to those shown to contain a measurable amount of radioactivity.

(iii) *Metabolism.* Excreta must be collected for identification and quantitation of unchanged test substance and metabolites as described in paragraph (f)(3)(i) of this section. Pooling of excreta to facilitate metabolite identification within a given dose group is acceptable. Profiling of metabolites from each time period is recommended. However, if lack of sample and/or radioactivity precludes this, pooling of urine as well as pooling of feces across several time points is acceptable. Appropriate qualitative and quantitative methods must be used to assay urine, feces, and expired air from treated animals. Reasonable efforts should be made to identify all metabolites present at 5% or greater of the administered dose and to provide a metabolic scheme for the test chemical. Compounds which have been characterized in excreta as comprising 5% or greater of the administered dose should be identified. If identification at this level is not possible, a justification/explanation should be provided in the final report. Identification of metabolites representing less than 5% of the administered dose might be requested if such data are needed for risk assessment of the test chemical. Structural confirmation should be provided whenever possible. Validation of the methods used in metabolite identification should be included.

(g) *Tier 2 data requirements.* Studies at the Tier 2 level are designed to answer questions about the disposition of test chemicals based on the existing toxicology data base and/or results of Tier 1 testing which may have a significant impact on the risk assessment for the test chemical. Such studies may address questions regarding absorption, persistence, or distribution of the test chemical, or a definitive alteration in the metabolic profile occurring with dose which may be of toxicological concern. At the Tier 2 level, only those studies which address a specific concern are required, and if required must be conducted according to mutual agreement between the registrant and the Agency. Flexibility will be allowed in the design of specific experiments as warranted by technological advances in this field.

(1) *Absorption.* (i) If the extent of absorption cannot be established from Tier 1 studies, or where greater than 20% of the administered dose is present in feces, a study to determine the extent of absorption will be required. This can be accomplished either through intravenous administration of test material and measurement of radioactivity in excreta or after oral administration of test material and measurement of radioactivity in bile.

(ii) For the intravenous study, a single dose (not to exceed the oral dose used in Tier 1) of test chemical using an appropriate vehicle should be administered in a suitable volume (e.g., 1 mL/kg) at a suitable site to at least three male rats (both sexes might be used if warranted). The disposition of the test chemical should be monitored for oral dosing as outlined in paragraph (f)(3)(i) of this section. Metabolite identification will not be required for this study.

(iii) If a biliary excretion study is chosen the oral route of administration may be requested. In this study, the bile ducts of at least three male rats (or of both sexes, if warranted) should be appropriately cannulated and a single dose of the test chemical should be administered to these rats. Following administration of the test chemical, excretion of radioactivity in bile should be monitored as long as necessary to determine if a significant percentage of the administered dose is excreted via this route.

(2) *Tissue distribution time course.* (i) A time course of tissue distribution in selected tissues may be required to aid in the determination of a possible mode of toxic action. This concern may arise from evidence of extended half-life or possible accumulation of radioactivity in specific tissues. The selection of tissues for this type of study will be based upon available evidence of target organ toxicity and/or carcinogenicity, and the number of time points required will be based upon pharmacokinetic information obtained from Tier 1 data. Flexibility will be allowed in the selection of time points to be studied.

(ii) For this type of study, three rats per time point will be administered an appropriate oral dose of test chemical, and the time course of distribution monitored in selected tissues. Only one sex may be required, unless target organ toxicity is observed in sex-specific organs. Assessment of tissue distribution will be made using appropriate techniques for assessment of total amount distributed to tissue and for assessment of metabolite distribution.

(3) *Plasma kinetics.* The purpose of this experiment is to obtain estimates of basic pharmacokinetic parameters (half-life, volume of distribution, absorption rate constant, area under the curve) for the test substance. Kinetic data may be required if the data can be used to resolve issues about bioavailability and to clarify whether clearance is saturated in a dose-dependent fashion. For this experiment a minimum of three rats per group is required. At least two doses will be required, usually the NOEL and LOEL from the critical toxicology study. Following administration of test substance, samples should be obtained from each animal at suitable time points appropriate sampling methodology. Total radioactivity present (or total amount of chemical, for nonradioactive materials) should be analyzed in whole blood and plasma using appropriate methods, and the blood/plasma ratio should be calculated.

(4) *Induction.* (i) Studies addressing possible induction of biotransformation may be requested under one or more of the following conditions:

(A) Available evidence indicates a relationship between induced metabolism and enhanced toxicity.

(B) The available toxicity data indicate a nonlinear relationship between dose and metabolism.

(C) The results of Tier 1 metabolite identification studies show identification of a potentially toxic metabolite.

(D) Induction can plausibly be invoked as a factor in such effects where status may depend on the level of inducible enzymes present. Several *in vivo* and *in vitro* methods are available for assessment of enzyme induction, and the experiments which best address the issue at hand can be determined between Agency and industry scientists. If induction is demonstrated, the relationship of this phenomenon to toxicity observed from subchronic and/or chronic toxicity studies will need to be addressed.

(ii) [Reserved]

(iii) If toxicologically significant alterations in the metabolic profile of the test chemical are observed through either *in vitro* or *in vivo* experiments, characterization of the enzyme(s) involved (for example, Phase I enzymes such as isozymes of the Cytochrome P450–dependent mono-oxygenase system, Phase II enzymes such as isozymes of sulfotransferase or uridine diphosphate glucuronosyl transferase, or any other relevant enzymes) may be requested. This information will help establish the relevance of the involved enzyme(s) to human risk, as it is known that certain isozymes are present in animal species which are not present in humans, and vice versa.

(5) *Physiologically-based modeling.* Traditional methods of modeling have been used to determine kinetic parameters associated with drug and xenobiotic disposition, but have assumed a purely mathematical construct of mammalian organisms in their operation. On the other hand, more recent models which take into account the physiological processes of the animal have been used with success in defining biological determinants of chemical disposition as well as the relationship between tissue dose and tissue response. These so-called physiologically-based models, also allow for cross-species extrapolation which is often necessary in the risk-assessment process. The use of physiologically-based modeling as an experimental tool for addressing specific issues related to biotransformation and pharmacokinetics of a test substance is encouraged.

Information as derived from physiologically-based modeling experiments may aid in the comparison of biotransformation and pharmacokinetics of a test substance between animal species and humans, and in the assessment of risk under specific exposure conditions. At the discretion of the Agency, or by mutual agreement, results of physiologically based pharmacokinetic (PBPK) studies with parent compound may be submitted in lieu of other studies, if it is determined that such data would provide adequate information to satisfy this guideline.

(h) *Reporting of study results.* In addition to the reporting requirements specified under EPA Good Laboratory Practice Standards at 40 CFR part 792, subpart J, the completed study (Tier 1 or Tier 2) should be presented in the following format:

(1) *Title/cover page.* Title page and additional requirements (requirements for data submission, good laboratory practice, statements of data confidentiality claims and quality assurance) if relevant to the study report, should precede the content of the study formatted below. These requirements are to be found in 40 CFR parts 790, 792, and 799.

(2) *Table of contents.* A concise listing must precede the body of the report, containing all essential elements of the study and the page and table number where the element is located in the final report of the study. Essential elements of the table of contents should include a summary, an introduction, the materials and methods section, results, discussion/conclusions, references, tables, figures, appendices, and key subsections as deemed appropriate. The table of contents should include the page number of each of these elements.

(3) *Body of the report.* The body of the report must include information required under this section, organized into sections and paragraphs as follows:

(i) *Summary.* This section of the study report must contain a summary and analysis of the test results and a statement of the conclusions drawn from the analysis. This section should highlight the nature and magnitude of metabolites, tissue residue, rate of clearance, bioaccumulation potential, sex differences, etc. The summary should be presented in sufficient detail to permit independent evaluation of the findings.

(ii) *Introduction.* This section of the report should include the objectives of the study, guideline references, regulatory history, if any, and a rationale.

(iii) *Materials and methods.* This section of the report must include detailed descriptions of all elements including:

(A) *Test substance.* (*1*) This section should include identification of the test substance—chemical name, molecular structure, qualitative and quantitative determination of its chemical composition, and type and quantities of any impurities whenever possible.

(*2*) This section should also include information on physical properties including physical state, color, gross solubility and/or partition coefficient, and stability.

(*3*) The type or description of any vehicle, diluents, suspending agents, and emulsifiers or other materials used in administering the test substance should be stated.

(*4*) If the test substance is radiolabeled, information on the following should be included in this subsection: The type of radionuclide, position of label, specific activity, and radiopurity.

(B) *Test animals.* This section should include information on the test animals, including: Species, strain, age at study initiation, sex, body weight, health status, and animal husbandry.

(C) *Methods.* This subsection should include details of the study design and methodology used. It should include a description of:

(*1*) How the dosing solution was prepared and the type of solvent, if any, used.

(*2*) Number of treatment groups and number of animals per group.

(*3*) Dosage levels and volume.

(*4*) Route of administration.

(*5*) Frequency of dosing.

(*6*) Fasting period (if used).

(*7*) Total radioactivity per animal.

(*8*) Animal handling.

(*9*) Sample collection.

(*10*) Sample handling.

(*11*) Analytical methods used for separation.

(*12*) Quantitation and identification of metabolites.

(*13*) Other experimental measurements and procedures employed (including validation of test methods for metabolite analysis).

(D) *Statistical analysis.* If statistical analysis is used to analyze the study findings, then sufficient information on the method of analysis and the computer program employed should be included so that an independent reviewer/statistician can reevaluate and reconstruct the analysis. Presentation of models should include a full description of the model to allow independent reconstruction and validation of the model.

(iv) *Results.* All data should be summarized and tabulated with appropriate statistical evaluation and placed in the text of this section. Radioactivity counting data should be summarized and presented as appropriate for the study, typically as disintegrations per minute and microgram or milligram equivalents, although other units may be used. Graphic illustrations of the findings, reproduction of representative chromatographic and spectrometric data, and proposed metabolic pathways and molecular structure of metabolites should be included in this section. In addition the following information is to be included in this section if applicable:

(A) Justification for modification of exposure conditions, if applicable.

(B) Justification for selection of dose levels for pharmacokinetic and metabolism studies.

(C) Description of pilot studies used in the experimental design of the pharmacokinetic and metabolism studies, if applicable.

(D) Quantity and percent recovery of radioactivity in urine, feces, and expired air, as appropriate. For dermal studies, include recovery data for treated skin, skin washes, and residual radioactivity in the covering apparatus and metabolic unit as well as results of the dermal washing study.

(E) Tissue distribution reported as percent of administered dose and microgram equivalents per gram of tissue.

(F) Material balance developed from each study involving the assay of body tissues and excreta.

(G) Plasma levels and pharmacokinetic parameters after administration by the relevant routes of exposure.

(H) Rate and extent of absorption of the test substance after administration by the relevant routes of exposure.

(I) Quantities of the test substance and metabolites (reported as percent of the administered dose) collected in excreta.

(J) Individual animal data.

(v) *Discussion and conclusions.* (A) In this section the author(s) should:

(*1*) Provide a plausible explanation of the metabolic pathway for the test chemical.

(*2*) Emphasize species and sex differences whenever possible.

(*3*) Discuss the nature and magnitude of metabolites, rates of clearance, bioaccumulation potential, and level of tissue residues as appropriate.

(B) The author(s) should be able to derive a concise conclusion that can be supported by the findings of the study.

(vi) *Optional sections.* The authors may include additional sections such as appendices, bibliography, tables, etc.

(i) *Alternate routes of exposure for Tier 1 testing*—(1) *Dermal*—(i) *Dermal treatment.* One (or more if needed) dose levels of the test substance must be used in the dermal portion of the study. The low dose level should be selected in accordance with paragraph (f)(2) of this section. The dermal doses must be dissolved, if necessary, in a suitable vehicle and applied in a volume adequate to deliver the doses. Shortly before testing, fur is to be clipped from the dorsal area of the trunk of the test animals. Shaving may be employed, but it should be carried out approximately 24 hour before the test. When clipping or shaving the fur, care should be taken to avoid abrading the skin, which could alter its permeability. Approximately 10% of the body surface should be cleared for application of the test substance. With highly toxic substances, the surface area covered may be less than approximately 10%, but as much of the area as possible is to be covered with a thin and uniform film. The same nominal treatment surface area must be used for all dermal test groups. The dosed areas are to be protected with a suitable covering which is secured in place. The animals must be housed separately.

(ii) *Dermal washing study.* (A) A washing experiment must be conducted to assess the removal of the applied dose of the test substance by washing the treated skin area with a mild soap and water. A single dose must be applied to two animals in accordance with paragraph (f)(2) of this section. After application (2 to 5 minutes) the treated areas of the animals must be washed with a mild soap and water. The amounts of test substance recovered in the washes must be determined to assess the effectiveness of removal by washing.

(B) Unless precluded by corrosiveness, the test substance must be applied and kept on the skin for a minimum of 6 hours. At the time of removal of the covering, the treated area must be washed following the procedure as outlined in the dermal washing study. Both the covering and the washes must be analyzed for residual test substance. At the termination of the studies, each animal must be sacrificed and the treated skin removed. An appropriate section of treated skin must be analyzed to determine residual radioactivity.

(2) *Inhalation.* A single (or more if needed) concentration of test substance must be used in this portion of the study. The concentration should be selected in accordance with paragraph (f)(2) of this section. Inhalation treatments are to be conducted using a "nose-cone" or "head-only" apparatus to prevent absorption by alternate routes of exposure. If other inhalation exposure conditions are proposed for use in a chemical-specific test rule, justification for the modification must be documented. A single exposure over a defined period must be used for each group—a typical exposure is 4–6 hours.

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Part VII

Securities and Exchange Commission

Self-Regulatory Organizations; Filing of a Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Relating to the Archipelago Exchange; Notice

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43608; File No. SR–PCX–00–25]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Relating to the Archipelago Exchange

November 21, 2000.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary PCX Equities, Inc. ("PCXE" or "Corporation") pursuant to delegated authority, filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. On November 9, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCXE, proposes to create a new electronic trading facility of the PCXE, called the Archipelago Exchange ("Arca"). The text of the proposed rule change has been posted to the Commission's web site, www.sec.gov, and is attached here (in blacklined version) as Appendix A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCXE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCXE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice represents Amendment No. 1 and replaces the proposed rule change, as originally filed, in its entirety. See letter from Cherie Macauley, Counsel for the Exchange, Wilmer, Cutler, & Pickering, to John Polise, Senior Special Counsel, Division of Market Regulation, dated November 9, 2000 ("Amendment No. 1").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCXE proposes to establish rules for Arca, a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.[4] Arca, which is to be operated by Archipelago Exchange, L.L.C., would be an electronic securities communications and trading facility intended for the use of Equity Trading Permit ("ETP") Holders and their customers.[5] Arca would provide automatic order execution capabilities in the equity securities listed or traded on the PCXE. It is the PCXE's intent to operate the Arca facility in the place of the PCXE's traditional floor trading environment and thus PCXE also proposes to eliminate the existing PCXE Rules related to floor trading.

1. Relationship of Archipelago Exchange, L.L.C., to PCX Equities, Inc.

The PCX and PCXE have entered into various agreements with Archipelago Holdings, L.L.C., under which Archipelago Exchange, L.L.C., a subsidiary of Archipelago Holdings, L.L.C., would operate Arca as a facility of the PCXE. Pursuant to these agreements, PCX and PCXE would maintain responsibility for all regulatory functions related to the facility and Archipelago Exchange, L.L.C., would be responsible for the business of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of PCX and PCXE.

The relationship between the PCX, PCXE, and the Archipelago entities is explained further in proposed PCXE Rule 14.3.[6] Under proposed PCXE Rule 14.3(a), the books, records, premises, officers, directors, agents and employees of Archipelago Exchange, L.L.C., would be deemed to be the books, records, premises, officers, directors, agents and employees of PCX and PCXE for purposes of, and subject to, oversight pursuant to the Act. The books and records of Archipelago Exchange, L.L.C., would be subject at all times to inspection and copying by the PCX, PCX Equities, and the SEC. In addition, proposed PCXE Rule 14.3(b) states that "[a]ll officers and directors of Archipelago Holdings, L.L.C., shall be deemed to be officers and directors of PCX and PCXE for purposes of and subject to oversight pursuant to the Securities Exchange Act." As set forth in proposed PCXE Rule 14.3(c), however, paragraphs (a) and (b) of proposed PCXE Rule 14.3 would not be deemed to create any rights or benefits for any person or entity other than the SEC.

2. Archipelago Exchange

The PCXE describes Arca, the proposed electronic trading venue, as a limit order book, characterized by price-time priority that would provide execution enhancements such as additional order types. Under the proposal, market makers would participate electronically in Arca to enhance liquidity in the book and could interact with order flow subject to automatic price improvement requirements. In addition, orders could be crossed on Arca subject to price improvement where the price and time priority of the limit order book is protected.

Arca is described in more detail in the following subsections. Specifically, subsection (a) describes who may access Arca. Subsection (b) discusses the registration requirements as well as the trading obligations of market makers and Odd Lot Dealers. Subsection (c) describes trading on Arca in detail, including a description of how orders are executed during Arca's three trading sessions. Finally, subsections (d) through (g) discusses the proposed rules regarding trade execution and reporting, clearance and settlement, Arca's interaction with OptiMark, and the limitation of liability with regard to Arca, respectively.

a. *Access to the Archipelago Exchange.* The PCXE would authorize any ETP Holder or Sponsored Participant (collectively, "Users")[7] who meet certain enumerated requirements to obtain access to Arca. A "Sponsored Participant" is a person, such as an institutional investor, who has entered into a sponsorship arrangement with an ETP Holder.[8] The requirements for access are as follows: First, all Users—both ETP Holders and Sponsored Participants—would have to enter into a User Agreement[9] with Archipelago Exchange, L.L.C., the operator of the Arca facility.[10] Second, Sponsored Participants would have to enter into a sponsorship arrangement with a "Sponsoring ETP Holder," which is defined as an ETP Holder that has been designated by a Sponsored Participant to execute, clear and settle transactions on Arca.[11] The sponsorship arrangement consists of three separate components. First, the Sponsored Participant would have to enter into and maintain a customer agreement with its Sponsoring ETP Holder, establishing a proper relationship and account through which the Participant may trade on Arca.[12]

Second, the Sponsored Participant and its Sponsoring ETP Holder would have to enter into a written agreement which incorporates the Sponsorship Provisions,[13] which include the following:

(1) The Sponsoring ETP Holder acknowledges and agrees that: (i) All orders entered by its Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring ETP Holder and (ii) the Sponsoring ETP Holder is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(2) The Sponsored Participant agrees that it will comply with the PCXE Certificate of Incorporation, Bylaws, Rules and procedures with regard to its activity on Arca, as if the Sponsored Participant were an ETP Holder.

(3) The Sponsored Participant agrees that it will maintain, keep current and provide to the Sponsoring ETP Holder a list of its Authorized Traders who may obtain access to Arca on behalf of the Sponsored Participant(s).

(4) The Sponsored Participant agrees that it will familiarize its Authorized Traders with all of the Sponsored Participant's obligations under its Arca-related agreements and the PCXE Rules and will assure that they receive appropriate training prior to any use or access to Arca.

(5) The Sponsored Participant agrees that it will not permit anyone other than Authorized Traders to use or obtain access to Arca.

(6) The Sponsored Participant agrees that it will take reasonable security precautions to prevent unauthorized use or access to Arca, including unauthorized entry of information into Arca, or the information and data made available therein. The Sponsored Participant understands and agrees that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(7) The Sponsored Participant acknowledges its responsibility for establishing adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use of and access to Arca for compliance with the terms of the Sponsorship Provisions.

(8) The Sponsored Participant agrees that it will pay when due all amounts, if any, payable to the Sponsoring ETP Holder, Archipelago Exchange, L.L.C., PCXE, or any other third parties that arise from the Sponsored Participant's access to and use of Arca. Such amounts include, but are not limited to, applicable exchange and regulatory fees.[14]

Finally, the Sponsoring ETP Holder would have to provide PCXE with a "Notice of Consent,[15] which acknowledges the Sponsoring ETP Holder's its responsibility for the orders, executions and actions of its Sponsored Participant.[16]

As a further condition to access to Arca, each ETP Holder would have to maintain an up-to-date list of persons who could obtain access to Arca on behalf of the ETP Holder or the ETP Holder's Sponsored Participants, *i.e.*, Authorized Traders,[17]) and provide the list to the PCXE upon request. In addition, each ETP Holder would have to have have reasonable procedures to ensure that all of its Authorized Traders maintain the physical security of Arca and otherwise comply with the PCXE Rules. If the PCXE determines that an Authorized Trader has caused an ETP Holder to violate the PCXE Rules, the PCXE may could direct the ETP Holder to suspend or withdraw the person's status as an Authorized Trader.[18]

b. *Market Makers.* The PCXE intends to replace its traditional floor specialists with makers[19] trading on Arca. Based on this change, the PCXE proposes to delete all existing PCXE Rules related to specialists and substitute rules related to market makers, as discussed in more detail below.[20] The registered market makers would be designated as dealer-specialists on the PCXE for all purposes under the Act.[21]

i. *Registration of Market Makers.* To act as a market maker on Arca, an ETP Holder would have to register as a market maker by filing a written application with the PCXE.[22] In determining whether to approve a market maker application, the PCXE will would consider, among other things, the ETP Holder's capital operations, personnel, technical resources, and disciplinary history.[23] The applicant's registration would become effective upon receipt by the ETP Holder of notice of the PCXE's approval of the registration. If the application is disapproved, the applicant would have the opportunity to be heard upon the specific grounds of the denial under the provisions of Rule 10.13.[24]

A market maker's registration could be suspended or terminated by the PCXE upon a determination of any substantial or continued failure by the market maker to engage in dealings in accordance with the market maker's obligations under proposed PCXE Rule 7.23, as discussed below.[25] In addition, a registered market maker could withdraw its registration by giving written notice to the PCXE. The withdrawal would become effective on the tenth business day following the PCXE's receipt of the notice. A market maker who fails to give a ten-day notice of withdrawal could be subject to formal disciplinary action pursuant to PCXE Rule 10. After a withdrawal, the ETP Holder shall would not be permitted to re-register as a market maker for a period of six months.[26]

In addition to registering as a market maker generally, a market maker also would have to register in each security in which it wishes to make a market on Arca. To become registered in a security, a market maker would have to

[4] Under the Act the "term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." *See* 15 U.S.C. 78c(a)(2).

[5] *See* proposed PCXE Rule 1.1(e) (definition of "Archipelago Exchange").

[6] In addition to proposed PCXE Rule 14.3, the PCXE proposes to clarify the Delegation Plan by adding the following language to proposed PCXE Rule 14.1(b): "and all officers, directors, employees, and agents of PCX Equities are officers, directors, employees, and agents of the PCX for purposes of the Act. The books and records of PCX Equities would be subject at all times to inspection and copying by the PCX."

[7] *See* proposed PCXE Rule 1.1(oo) (definition of "User").

[8] *See* proposed PCXE Rule 1.1(jj) (definition of "Sponsored Participant").

[9] *See* proposed PCXE Rule 1.1(pp) (definition of "User Agreement").

[10] *See* proposed PCXE Rule 7.29(a).

[11] *See* proposed PCXE Rule 1.1(kk) (definition of "Sponsoring ETP Holder"). A Sponsoring ETP Holder must be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. *Id.*

[12] *See* proposed PCXE Rule 7.29(b)(1).

[13] *See* proposed PCXE Rule 1.1(ll) (definition of "Sponsorship Provisions").

[14] *See* proposed PCXE Rule 7.29(b)(2).

[15] *See* proposed PCXE Rule 1.1(y) (definition of "Notice of Consent").

[16] *See* proposed PCXE Rule 7.29(b)(3).

[17] *See* proposed PCXE Rule 1.1(g) (definition of "Authorized Trader").

[18] *See* proposed PCXE Rule 7.30 ("Authorized Traders").

[19] *See* proposed PCXE Rule 1.1(u) (definition of "Market Maker").

[20] The Commission notes that the proposal does not require that a market be assigned to every PCXE security traded through Arca, and thus it is possible that PCXE trades on Arca could occur without the benefit of a market maker.

[21] *See* proposed PCXE Rule 7.20(a).

[22] *See* proposed PCXE Rule 7.20(a) and& (b).

[23] *See* proposed PCXE Rule 7.20(b).

[24] *See* proposed PCXE Rule 7.20(c).

[25] *See* proposed PCXE Rule 7.20(d).

[26] *See* proposed PCXE Rule 7.20(e).

file a security registration application form with the PCXE. In determining whether to approve or disapprove the market maker's registration in a security, the PCXE may could consider: (1) The financial resources available to the market maker; (2) the market maker's experience, expertise and past performances in making markets, including the market maker's performance in other securities; (3) the market maker's operational capability; (4) the maintenance and enhancement of competition among market makers in each security in which it is registered; (5) the existence of satisfactory arrangements for clearing the market maker's transactions; and (6) the character of the market for the security (*e.g.*, price, volatility, and relative liquidity). Registration in a security will would become effective on the first business day following the PCXE's approval of the registration.[27]

Under the proposal, PCXE could terminate a market maker's registration in a security if the market maker fails to enter quotations in the security within five business days after the market maker's registration in the security becomes effective.[28] Furthermore, PCXE could suspend or terminate the market maker's registration in a security or securities whenever, in the PCXE's judgment, the interests of a fair and orderly market are best served by such action.[29]

In addition, a market maker could voluntarily terminate its registration in a security by providing PCXE with a one-day written notice. A market maker that failed to give advanced written notice of such termination could be subject to formal disciplinary action pursuant to PCXE Rule 10.[30] Finally, an ETP Holder could seek review of any action taken by the PCXE pursuant to proposed PCXE Rule 7.22 governing a market maker's registration in a security, including the denial of the application for, or the termination or suspension of, a market maker's registration in a security or securities, in accordance with PCXE Rule 10.[31]

ii. *Market Maker Authorized Traders.* Each market maker would have to apply in writing to the PCXE to register a "Market Maker Authorized Trader" or "MMAT," [32] which is an Authorized Trader that performs market making activities on behalf of his or her market maker. An MMAT would have to be an officer, partner, employee or another associated person of a market maker, who is properly qualified to perform market making activities and has been trained and certified in the use of Arca.[33] Once registered, an MMAT could only submit orders for the account of its own market maker.[34] The PCXE may suspend or withdraw an MMAT's registration if the PCXE determines that: (1) The person has caused the market maker to fail to comply with the securities laws, rules and regulations or the Bylaws, Rules or procedures of the PCXE; (2) the person is not properly performing the responsibilities of an MMAT; (3) the person has failed to pass the Series 7 or to acquire the requisite certification and/or training, as necessary; or (4) PCXE believes it is in the interest of maintaining fair and orderly markets. If the PCXE suspended the registration of a person as an MMAT, the market maker could not allow the person to submit orders to Arca. In addition, PCXE would withdraw the registration of an MMAT upon the written request of the MMAT's market maker.[35]

iii. *Obligations of Market Makers.* Market makers electronically engage in a course of dealings for their own account to enhance liquidity available to Arca and to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets. In addition, market makers may interact with directed order flow, subject to price improvement requirements and certain obligations and duties.

Specifically, market makers would have to satisfy the following responsibilities and duties during Core Trading Hours: [36] (1) maintain continuous, two-sided Q Orders, which are limit orders submitted to Arca by a market maker, in those securities in which the market maker is registered to trade; [37] (2) maintain adequate minimum capital in accordance with PCXE Rule 4.1; (3) remain in Good Standing [38] with the PCXE; (4) inform PCXE of any material change in financial or operational condition or in personnel; (5) clear and settle transactions through the facilities of a registered clearing agency; and (6) enter and maintain a Cleanup Order in each security in which the market maker is registered as such for each Market Order Auction.[39] If the PCXE found any substantial or continued failure by a market maker to meet the above responsibilities and duties, the PCXE could subject the market maker to disciplinary action or suspension or revoke the market maker's registration in one or more securities. In accordance with PCXE Rule 10, an ETP Holder could seek review of actions taken by the PCXE pursuant to this Rule 7.23.[40]

The market maker could apply to the PCXE to withdraw temporarily from its market maker status. This request would have to be based on a demonstrated legal or regulatory requirement that necessitates its temporary withdrawal. The PCXE would act promptly on the request and, if the request is granted, the PCXE could temporarily reassign the securities to another market maker.[41]

iv. *Odd Lot Dealers.* In addition to the market maker obligations discussed above, a market maker would have to become an Odd Lot Dealer [42] for each security in which it is registered as a market maker.[43] Furthermore, a market maker could apply to register as an Odd Lot Dealer in any other security.

Any market maker could become registered as an Odd Lot Dealer in any security by filing an odd lot registration form with the PCXE. Registration as an Odd Lot Dealer becomes effective on the first business day following the PCXE's approval of the registration. In considering the approval of the registration of the market maker as an Odd Lot Dealer in a security, the PCXE would consider such factors as financial resources, capital operations, personnel, technical resources and disciplinary history. If the PCXE denies an application to become an Odd Lot Dealer in a security or securities, the applicant could seek review of the decision in accordance with PCXE Rule 10.13.[44]

Once registered, an Odd Lot Dealer is obligated to: (1) Maintain an Odd Lot Tracking Order, as described in proposed PCXE Rule 7.31(g), during each day in which the PCXE is open for business for each security in which the Odd Lot Dealer is registered as such; [45] and (2) register and maintain registration as an Odd Lot Dealer in a minimum of 100 securities if the Odd Lot Dealer registers as such in any security for which it is not registered as a market maker.[46]

Under proposed PCXE Rule 7.25(d) an Odd Lot Dealer's registration in a security or securities could be suspended or terminated if: (1) The PCXE determines that the Odd Lot Dealer has substantially or continually failed to engage in dealings as required of an Odd Lot Dealer; or (2) if, in the PCXE's judgment, the interests of a fair and orderly market are best served by such action. An ETP Holder could seek review of any such termination or suspension in accordance with proposed PCXE Rule 10.[47]

Finally, an Odd Lot Dealer could voluntarily terminate its registration as such in a security or securities by providing the PCXE with a one-day written notice of such termination. An Odd Lot Dealer that fails to give advance notice of termination to the PCXE could be subject to formal disciplinary action pursuant to proposed PCXE Rule 10.[48]

v. *Limitations on Dealings.* Under the proposed rules, a market maker could: (1) Conduct an investment banking or public securities business; (2) function as a General Authorized Trader ("GAT"), *i.e.*, an Authorized Trader who performs only non-market making activities on behalf of an ETP Holder; [49] or (3) make markets in the options overlying the security in which it makes markets; (collectively, "Other Business Activities") or it could be affiliated with a broker-dealer that engages in Other Business Activities only if there is an Information Barrier (also commonly referred to as a Chinese Wall) between the market making activities and the Other Business Activities.[50]

An Information Barrier is an organizational structure in which the market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted in a manner that impedes the free flow of communications between MMATs and persons conducting the Other Business Activities. However, upon request and not on his or her own initiative, an MMAT performing the function of a market maker could furnish to persons at the same firm or an affiliated firm ("affiliated persons") the same sort of market information that the MMAT would make available to any other person in the normal course of its market making activity. The MMAT would have to provide such information to affiliated persons in the same manner that he or she would make such information available to a non-affiliated person.[51]

Procedures would have to be implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. The procedures, at a minimum, would have to provide that (1) The MMAT performing the function of a market maker does not take advantage of knowledge of pending transactions, order flow information, corporate information, or recommendations arising from Other Business Activities; and (2) all information pertaining to the market maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier.[52]

Although persons on one side of the barrier could not exercise influence or control over persons on the other side of the barrier, the following could occur: (1) The market making function and the Other Business Activities could be under common management as long as any general management oversight does not conflict with or compromise the market maker's responsibilities; (2) the same person or persons (the "Supervisor") could be responsible for the supervision of the market making and the GAT functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliate firms. While the Supervisor could establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor could not (1) act as either an MMAT or GAT; (2) provide to any GAT any information relating to market making activity beyond the information that an MMAT would normally provide to any other person in the course of its market making activity; or (3) provide an MMAT with specific information regarding the firm's pending transactions or order flow arising out of its GAT activities.[53]

An ETP Holder that intends to implement an Information Barrier would have to submit to the PCXE a written statement setting forth the following:

(1) The manner in which it intends to comply with the requirements of an Information Barrier (as discussed above) and the compliance and audit procedures it will implement to maintain the Barrier;

(2) The names and titles of the person(s) responsible for the maintenance and surveillance of the procedures;

(3) A commitment to provide the PCXE with such information and reports as the PCXE could request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Rule or the ETP Holder's internal compliance and audit procedures and that it recognizes that the PCXE could take appropriate remedial action in the event of such a violation;

(5) Whether the ETP Holder or an affiliate intends to clear its proprietary trades, and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier (which procedures, at a minimum, would have to be the same as those used by the ETP Holder or the affiliate to clear for unaffiliated third parties). These procedures would have to provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, could be made available only to those employees specifically authorized to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to market making activity. Furthermore, any margin financing arrangements would have to be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the PCXE Rules; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls could be a violation of the Act, or the rules thereunder, or PCXE Rules.[54]

After the submission of the written statement detailing the internal controls and compliance and audit procedures to PCXE, if the PCXE determines that the structure and procedures are acceptable, PCXE will inform the ETP Holder in writing of their acceptability. Absent a

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[27] *See* proposed PCXE Rule 7.22(a).

[28] *See* proposed PCXE Rule 7.22(b).

[29] *See* proposed PCXE Rule 7.22(d).

[30] *See* proposed PCXE Rule 7.22(c).

[31] *See* proposed PCXE Rule 7.22(e). *See also* proposed PCXE Rule 10.13(a)(5).

[32] *See* proposed PCXE Rule 1.1(v) (definition of "MMAT").

[33] *See* proposed PCXE Rule 7.21(b). Proposed Rule PCXE 7.21(b)(2) states that, "[t]o be eligible for registration as a MMAT, a person must successfully complete the General Securities Representative Examination (Series 7) and complete a training and certification program sponsored by the Corporation; provided, however, the requirement to complete the Series 7 Examination may be waived by the Corporation if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application." *See also* proposed PCXE Rule 7.21(b)(5) and proposed PCXE Rule 2.4(b)(10)(A).

[34] *See* proposed PCXE Rule 7.21(a).

[35] *See* proposed PCXE Rule 7.21(c).

[36] *See* proposed PCXE Rule 1.1(j) ("Core Trading Hours" mean the hours of 6:30 a.m. through 1:00 p.m. (Pacific Time) or such other hours as may be determined by the PCXE from time to time).

[37] *See* proposed PCXE Rule 7.31(k) (definition of "Q Order"). A Q Order may not be a Working Order.

[38] *See* proposed PCXE Rule 1.1(p) (definition of "Good Standing").

[39] *See* proposed PCXE Rule 7.23(a) and & (b).

[40] *See* proposed PCXE Rule 7.23(c). *See also* proposed PCXE Rule 10.13(a)(6).

[41] *See* proposed PCXE Rule 7.23(d).

[42] *See* proposed PCXE Rule 1.1(aa) (definition of "Odd Lot Dealer").

[43] *See* proposed PCXE Rule 7.25(b).

[44] *See* proposed PCXE Rule 7.25(a).

[45] For a discussion of Odd Lot Tracking Orders and the execution thereof, see Section (2)(c)(iv).

[46] *See* proposed PCXE Rule 7.25(c).

[47] *See* proposed PCXE Rule 7.25(d).

[48] *See* proposed PCXE Rule 7.25(e). *See also* proposed PCXE Rule 10.13(a)(7).

[49] *See* proposed PCXE Rule 1.1(o) (definition of "General Authorized Trader").

[50] *See* proposed PCXE Rule 7.26(a).

[51] *See* proposed PCXE Rule 7.26(b)(1).

[52] *See* proposed PCXE Rule 7.26(b)(2).

[53] *See* proposed PCXE Rule 7.26(b)(3).

[54] *See* proposed PCXE Rule 7.26(c).

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finding that an ETP Holder's Information Barrier procedures are acceptable, a market maker could not conduct Other Business Activities.[55]

Finally, an ETP Holder or an affiliate of the ETP Holder could clear the ETP Holder's market maker transactions if it establishes procedures to ensure that information with respect to clearing activities would not be used to compromise the Information Barrier. In this regard, the procedures would have to provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, could be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity. Furthermore, any margin financing arrangements would have to be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the PCXE Rules.[56]

c. *Trading on the Archipelago Exchange.* i. *Order Entry*—Users would enter into Arca the following standard types of orders: Market orders, limit orders, Day Orders, Good-Til-Canceled (GTC) Orders, Immediate-or-Cancel Orders, Stop Orders, Stop Limit Orders, Do Not Reduce, Do Not Increase, and Timed Orders.[57]

In addition, Users could utilize Working Orders, which are defined to include "any order with a conditional or undisplayed price and/or size designated as a 'Working Order,'" including All-or-None, Discretionary, and Reserve Orders.[58] An All-or-None Order is a limit order which is to be executed in its entirety or not at all.[59] A Discretionary Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price (the "discretionary price"), in addition to at a specified, displayed price ("displayed price").[60] For example, a User could submit a Discretionary Order to buy 5000 shares of XYZ at 20, with discretion to 20.25. In that case, the User represents a displayed price of 20, but the User is willing to buy the 5000 shares at a price up to the discretionary price of 20.25. A Reserve Order is a limit order with a portion of the size displayed and with a reserve portion of the size ("reserve size") that is not displayed on the Arca book.[61] For example, a User could submit a Reserve Order to buy 5000 shares of XYZ at 20 with a request that 1000 shares be displayed. Therefore, the 1000 shares are displayed and 4000 shares, as the reserve size, are not displayed.

Arca would also accept NOW Orders.[62] A NOW Order is a Limited Price Order[63] that is to be executed in whole or in part on Arca, and the portion not so executed would be routed pursuant to Rule 7.37(d) only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient would be cancelled. If a NOW Order is not marketable when it is submitted to the PCXE, it would be cancelled. NOW Orders cannot be Directed Orders.[64] For the purposes of a NOW Order, a NOW Recipient means any exchange, ECN, or other broker-dealer (1) with which Arca maintains an electronic linkage, which includes ITS, and (2) which provides instantaneous responses to NOW Orders routed from Arca. The PCXE would designate from time to time those exchanges, ECNs, or other broker-dealers that qualify as NOW Recipients.[66] An Auction-Only Limit Order, which is a limit order that could be executed only during the Market Order Auction, would also be submitted to Arca.[67] In addition, Users could submit Primary Only Orders ("PO Orders") which are market orders, for exchange-listed securities only, that are to be routed as a market-on-open order to the primary market for participation in the primary market opening process. A PO Order would have to be entered before 6:28 a.m. (Pacific Time) and it would not be included in the Market Order Auction.

Furthermore, as discussed in more detail in other sections, Users could submit Tracking Orders, Odd Lot Tracking Orders, Directed Orders, Directed Fills, Q Orders, Fill-or-Return Orders, Fill-or-Return Plus Orders, PNP Orders, Cross Orders and Cleanup Orders as well.[68]

Finally, as a general matter, consistent with proposed PCXE Rules, ETP Holder Users of Arca could enter both proprietary orders and agency orders for the account of a customer. Proprietary orders entered into Arca are subject to the same display and execution processes as agency orders. An ETP Holder User that enters a proprietary order into Arca would mark the order with the appropriate designator to identify the order as proprietary.[69]

ii. *Order Ranking and Display.* Arca would maintain an electronic file of orders, called the Arca Book, which contains all the User's orders in the four components, called Processes, of the Arca Book.[70] Specifically, the Arca Book contains the Directed Order, Display Order, Working Order, and Tracking Order Processes.[71] Limited Price Orders of Users submitted to Arca (other than such orders as Directed Fills and Tracking Orders) would be ranked and maintained in the Display Order Process and/or Working Order Process of the Arca Book according to price-time priority, such that within each price level, all orders would be organized by the time of entry, as discussed in more detail below.

The displayed portion of orders are ranked in the Display Order Process. One category of orders—limit orders, with no other conditions—would be ranked in the Display Order Process based on the specified limit price and the time of original order entry. With regard to Reserve Orders, the displayed portion of Reserve Orders (not the reserve size) would be ranked in the Display Order Process at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented in its entirety, the displayed portion of the Reserve Order would be refreshed for the displayed amount from the reserve portion and would be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed. Finally, Discretionary Orders would be ranked in the Display Order Process based on the displayed price (not the discretionary price) and the time of order entry. If a Discretionary Order is decremented, it remains ranked based on the displayed price and the time of original order entry.

[55] *See* proposed PCXE Rule 7.26(d).
[56] *See* proposed PCXE Rule 7.26(e).
[57] *See generally* proposed PCXE Rule 7.31.
[58] *See* proposed PCXE Rule 7.31(h).
[59] *See* proposed PCXE Rule 7.31(h)(1).
[60] *See* proposed PCXE Rule 7.31(h)(2).
[61] *See* proposed PCXE Rule 7.31(h)(3).
[62] *See* proposed PCXE Rule 7.31(v).
[63] *See* proposed PCXE Rule 1.1(s) ("Limited Price Order" is defined as any order with a specified price or prices (e.g., limit orders and Working Orders), other than Stop Orders).
[64] *See* proposed Rule 7.31(i) (definition of "Directed Order").
[66] *See* proposed PCXE Rule 1.1(z) (definition of "NOW Recipient").
[67] *See* proposed PCXE Rule 7.31(t). *See* Section 2(c)(vii) for a discussion of the Auction-Only Limit Orders role in the Market Order Auction.
[68] *See generally* proposed PCXE Rule 7.31.
[69] *See* proposed PCXE Rule 7.33.
[70] *See* proposed PCXE Rule 1.1(a) (definition of "Arca Book").
[71] See proposed PCXE Rule 1.1(e) (definition of "Arca Book").

Only All-or-None Orders and the undisplayed portion of Reserve Orders and Discretionary Orders are ranked in the Working Order Process. The reserve portion of Reserve Orders would be ranked in the Working Order Process based on the specified limit price and the time of original order entry. After the displayed portion of a Reserve Order is refreshed from the reserve portion, the reserve portion remains ranked based on the original time of order entry, while the displayed portion is sent to the Display Order Process with a new time-stamp. Discretionary Orders would be ranked in the Working Order Process based on the displayed price and the time of original order entry. After a Discretionary Order is decremented, it remains ranked as described above. All-or-None Orders would be ranked in the Working Order Process based on the specified limit price and the time of order entry.

PCXE offers the following example to clarify how orders are ranked in the Display and Working Order Processes. Suppose that the following orders are submitted to Arca by Users:

10:00 a.m.—Order A—Limit order to buy 1000 XYZ at 20
10:01 a.m.—Order B—Reserve Order to buy 5000 XYZ at 20 (show 1000)
10:02 a.m.—Order C—Limit order to buy 500 XYZ at 20
10:03 a.m.—Order D—Discretionary Order to buy 5000 XYZ at 20 (discretion to 20.25)
10:04 a.m.—Order E—All-or-None to buy 1500 XYZ at 20
10:05 a.m.—Order F—Q Order to buy 1000 XYZ at 20
10:06 a.m.—Order G—Limit order to buy 700 XYZ at 20
10:07 a.m.—Order H—Q Order to buy 500 XYZ at 20
10:08 a.m.—Order I—Discretionary Order to buy 10,000 XYZ at 20 (discretion to 20.25)

Orders A–H would be ranked in the Arca Book as follows: In the Display Order Process, the orders would be ranked in the following order: (1) Order A; (2) Order B1 (the displayed 1000 shares of Order B); (3) Order C; (4) Order D1 (the displayed price of 20 for Order D); (5) Order F; (6) Order G; (7) Order H; and (8) Order I1 (the displayed price of 20 for Order I). In the Working Order Process, the orders would be ranked in the following order: (1) Order B2 (4000 shares of the reserve portion of Order B); (2) Order D2 (the discretionary price up to 20.25 for Order D); (3) Order E; and (4) Order I2 (the discretionary price up to 20.25 for Order I).

iii. *Order Display and Dissemination.* Arca would operate the Arca Book on an open basis. All orders at all price levels in the Display Order Process of the Arca Book would be displayed to all Users on an anonymous basis. In addition, the same information would be made available to other interested parties.[72] Furthermore, the best-ranked displayed order(s) to buy and sell in the Arca Book and the corresponding aggregate size of such orders associated with such prices would be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 11Ac1–1[73] under the Act.[74]

iv. *Order Execution.* Subject to the restrictions on short sales under Rule 10a-1 under the Exchange Act,[75] like-priced orders, bids and offers would be matched for execution by following Steps 1 through 5, as described below; provided, however, that for an execution to occur in any Order Process the price would have to be equal to or better than the NBBO,[76] unless Arca has routed orders to all away markets at the NBBO:

Step 1: Directed Order Process. The first step of the Arca execution algorithm is the Directed Order Process. Through this process, Users could direct an order to a market maker with whom they have a relationship and the market maker would execute the order. To access this process, the User would have to submit a Directed Order, which is a market or limit order to buy or sell which has been directed to a particular market maker by the User.[77] Any type of order other than a Directed Order would skip the Directed Order Process and immediately enter Step 2, the Display Order Process. The Directed Order Process is available only during Core Trading Hours.[78]

In the Directed Order Process, the User's Directed Order would be executed against a Directed Fill, which is the order of the User's designated market maker. Specifically, any market maker could submit a standing instruction to Arca for the parameters of a Directed Fill, including, but not limited to, the size of the order, the Users that could send such market maker a Directed Order, the price improvement algorithm, and the period of time the instruction is effective. The market maker's Directed Fill described in the instruction would be generated only in response to a Directed Order directed to such market maker. The Directed Fill is a limit order with a size that is equal to or less than the size of the Directed Order and a price that improves the BBO[79] by an automatically preset amount, which would have to be equal to or greater than the Minimum Price Improvement Increment,[80] pursuant to a price improvement algorithm; provided, however, that the Directed Fill would not be generated if the price is not equal to or better than the NBBO. In other words, a market maker may not execute against a Directed Order without improving the best price on the Arca Book. A market maker may modify the parameters of the instruction for a Directed Fill from time to time, as the PCXE permits.[81]

If a User submits a marketable[82] Directed Order to Arca and the User's designated market maker has a standing instruction for a Directed Fill, the Directed Order would be executed against the Directed Fill of the designated market maker. If a User submits a marketable Directed Order and the User's designated market maker has not submitted an instruction for a Directed Fill, or if a User submits any order other than a marketable Directed Order, the Directed Order would enter the Display Order Process without interacting with any Directed Fills.[83]

Step 2: Display Order Process. If an incoming marketable order has not been executed in its entirety in the Directed Order Process, any remaining part of the order would be routed to the Display Order Process, Step 2 of the execution algorithm.[84] In the Display Order Process, Arca would match an incoming marketable order against orders in the Display Order Process at the display price of the resident order for the total size available at that price or for the size of the incoming order, whichever is smaller. For the purposes of the Display Order Process, the size of an incoming Reserve Order includes the displayed and reserve size and the size of the portion of the Reserve Order resident in the Display Order Process is equal to its displayed size. If the incoming marketable order has not been executed in its entirety, the remaining part of the

[72] See proposed PCXE Rule 7.36(b).
[73] 17 CFR 240.11Ac1–1.
[74] See proposed PCXE Rule 7.36(c).
[75] 17 CFR 240.10a–1.
[76] *See* proposed PCXE Rule 1.1(x) (the term "NBBO" refers to the national best bid or offer).
[77] *See* proposed PCXE Rule 7.31(i) (definition of "Directed Order").
[78] *See* proposed PCXE Rule 7.37(a).
[79] *See* proposed PCXE Rule 1.1(h) (the term "BBO" refers to the best bid or offer on Arca).
[80] *See* proposed PCXE Rule 7.6, Commentary .06.
[81] *See* proposed PCXE Rule 7.31(j) (definition of "Directed Fill").
[82] *See* proposed PCXE Rule 1.1(t) ("Marketable" means, for a Limited Price Order, the matches or price crosses the NBBO on the other side of the market. Market orders are always considered marketable.).
[83] *See* proposed PCXE Rule 7.37(a).
[84] *See* proposed PCXE Rule 7.37(b).

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order would be routed to the Working Order Process.[85]

An incoming order that is not marketable would skip the Display Order Process and enter the Working Order Process to be executed against any Discretionary Orders at or better than the NBBO.[86]

Step 3: Working Order Process. An incoming marketable order would be matched for execution against orders in the Working Order Process in the following manner: An incoming marketable order would be matched against orders within the Working Order Process in the order of their ranking, at the price of the displayed portion (or in the case of an All-or-None Order, at the limit price), for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller. If the BBO is outside the NBBO and any Discretionary Orders within the Working Order Process have a discretionary price equal to or better than the NBBO, the incoming order would execute against such Discretionary Order(s) at the NBBO up to the size of the smaller of the two orders. If an incoming marketable order is a Discretionary Order or a Reserve Order and its prices overlap with the prices of a Discretionary Order(s) in the Working Order Process, then the orders would be executed at the display price of the order that was entered first up to the size of the smaller of the two orders. For the purposes of this subsection, the size of the incoming Reserve Order includes the displayed and reserve size. If the incoming marketable order has not been executed in its entirety, the remaining part of the order would be routed to the Tracking Order Process.[87]

An incoming order that is not marketable would be matched for execution against orders in the Working Order Process in the following manner: The incoming order would be matched against any Discretionary Orders in the Working Order Process that have discretionary prices that would satisfy an otherwise displayable incoming Limited Price Order. The execution would occur at the limited price of the incoming order. If the incoming order is a Discretionary Order and its prices overlap with the prices of a Discretionary Order in the Working Order Process, then the orders would be executed at the discretionary price of the incoming order that would be the best price available for the order entered first. If any change in the NBBO or other available away trading interest would cause a potential match between the away order and an order in the Working Order Process, a commitment to trade would be sent to that market center or market participant [88] pursuant to Step 5 below.[89]

Step 4: Tracking Order Process. During Core Trading Hours only, the fourth step of the execution algorithm is the Tracking Order Process. If an order has not been executed in its entirety in the Directed, Display, or Working Order Processes, Arca then would match and execute any remaining part of the order in the Tracking Order Process, unless the order or portion thereof was received from another market center or market participant, in which case it would be cancelled immediately.[90]

If the unfilled order or portion of an order that enters the Tracking Order Process is a mixed lot or round lot order, Arca would match the order against any Tracking Orders.[91] Any User could submit an instruction to Arca for the parameters of a Tracking Order at any time during the day, where such parameters include: (1) the maximum aggregate size, which is the aggregate size of all partial orders generated in the Tracking Order Process for a particular security that the User is willing to trade on that day; (2) the maximum tradeable size, which is the maximum size of any partial order generated in response to an order entering the Tracking Order Process that the User is willing to trade on that day; (3) the price in relation to the NBBO; and (4) the relevant security. Once a User has submitted an instruction for the parameters of the Tracking Order, the instruction would remain in effect until closing or until the User has traded its maximum aggregate size for that day, whichever comes first.[92]

Users who have submitted an instruction for the parameters of a Tracking Order would be assigned trades on a price/time rotating basis, such that within each price level, trades would be assigned by the time the Users' instructions are received by Arca. Within each price level, the first User to send an instruction for a Tracking Order would be the first User to be assigned a trade in the rotation process. For each order that enters the Tracking Order Process, the Tracking Order Process would rotate once through the Users in the rotation pattern. In each rotation, the User would be responsible for one trade up to the User's maximum tradeable size.

The order described in the User's Tracking Order instruction would be generated only if an unfilled round or mixed lot order enters the Tracking Order Process and it is such User's turn as determined by the Tracking Order Process rotation pattern.

Each partial order generated in a rotation is a limit order in which (1) the price is set at or better than the NBBO at the time the unfilled order enters the Tracking Order Process, based on the User's parameters; and (2) the size is (i) equal to the User's maximum tradeable size if the unfilled order is equal to or larger than the maximum tradeable size; or (ii) equal to the size of the unfilled order if the unfilled order is smaller than the maximum tradeable size. A User could modify the parameters of the instruction for the Tracking Order from time to time, as the PCXE permits.

After the order has been matched against any Tracking Orders, if the order has not been executed in its entirety and the remaining part of the order is an odd lot, the odd lot order would be executed in the Odd Lot Tracking Order Process, as described below. Otherwise the order would be routed pursuant to the final step of the execution algorithm.

If the unfilled order or portion of an order that enters the Tracking Order Process is an odd lot, Arca would match the order against any Odd Lot Tracking Orders [93] ("OLTOs"), using the same rotation process described above with regard to Tracking Orders.[94] An OLTO, which could only be submitted to Arca by a registered Odd Lot Dealer, is a Tracking Order in which: (1) the maximum aggregate size is unlimited; (2) the maximum tradeable size is 99 shares; (3) the price is set at the NBBO; (4) the security is one in which the Odd Lot Dealer is registered as such; and (5) the instruction would have to be in effect for the duration of Core Trading Hours. The order described in the instruction would be generated only if an unfilled odd lot market order enters the Odd Lot Tracking Order Process or an odd lot limit order causes a locked market as described in proposed PCXE Rule 7.56.

Whenever in the judgment of the PCXE, because of an influx of orders, a system malfunction, or other unusual conditions or circumstances, the interests of a fair and orderly market so require, the PCXE could suspend the Tracking Order Process. If the PCXE suspends the Tracking Order Process, the Process would become operational again when the PCXE determines that the conditions supporting the suspension no longer exist.[95]

Step 5: Routing. The fifth step of the Arca execution algorithm, which involves routing orders away to other market centers or market participants, is available only to those ETP Holders who have entered into a Routing Agreement. A Routing Agreement is an agreement between an ETP Holder and a broker-dealer affiliate of Archipelago Exchange, L.L.C., under which the broker-dealer affiliate agrees to act as agent for routing orders of the ETP Holder and the ETP Holder's Sponsored Participants to other market centers or broker-dealers for execution, whenever routing is required.[96]

For those ETP Holders that are parties to a Routing Agreement and indicate that they wish the order to be routed away, if necessary, if the order has not been executed in its entirety pursuant to the other Order Processes, the order would be routed to another market center or market participant as follows:[97] Arca would route the order to another market center or market participant as a limit order priced at the quote published by the market center or market participant. Arca would attempt to match the part of the order that has not been routed away against then available trading interest in the Arca Book for an internal fill by following Steps 1 through 4 again.

Orders routed to other market centers or market participants would remain outside Arca for a prescribed time period during which such orders could be executed (in whole or in part) or declined. While an order remains outside Arca, it would have no time standing relative to other orders received from Users at the same price which could be executed against the Arca Book. Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside Arca would be processed, subject to applicable trading rules of the relevant market center or market participant.

In the event that a marketable order routed from Arca to another market center or market participant is not executed in its entirety at the other market center or market participant's quote (*i.e.*, all attempts to fill the order are declined or timed-out), Arca would attempt to match the residual or declined market order against then available trading interest in the Arca Book for an internal fill by following Steps 1 through 4 above. Any remaining unmatched trading interest would be re-routed to another market center or market participant at the next available displayed price level.

When routing an order away to another market center, the PCXE would utilize such electronic intermarket linkages and order delivery facilities as could be approved by the Board of Directors from time to time, subject to such applicable requirements as could be agreed to with the relevant market center.

Under the proposal, if an ETP Holder has not entered into a Routing Agreement, the ETP Holder and its Sponsored Participants could submit to Arca only Fill-or-Return, Fill-or-Return Plus, or PNP Orders, which are orders that could not be routed outside of Arca.[98] Specifically, a Fill-or-Return Order is an order to buy or sell that is to be executed in whole or in part on the PCXE, and any portion not executed on the PCXE is to be cancelled, without routing the order to another market center or market participant.[99] Similarly, a Fill-or-Return Plus Order is a Fill-or-Return Order, except, in the event any portion of the order is not executed on the PCXE and would have to be cancelled, Arca, after canceling the unexecuted portion of the order, would send an administrative message to an ETP Holder designated by the order entry ETP Holder informing the designated ETP Holder that a portion of the order was cancelled.[100] A Post No Preference ("PNP") Order is a limit order to buy or sell that is to be executed in whole or in part on the PCXE, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center. However, the PCXE would cancel a PNP Order that would lock or cross the NBBO.[101] Therefore, if an order has not been executed in its entirety pursuant to the other Order Processes and it has been designated as a Fill-or-Return, Fill-or-Return Plus Order, or a PNP Order, the order would be cancelled at the routing step, without routing the order away from Arca.[102]

Finally, if an order has not been executed in its entirety after following Steps 1—5, the order would be ranked in the Arca Book pursuant to Rule 7.36.[103]

Examples. The following examples clarify the order execution process for the Arca Book. Assuming PCXE has the orders in the Arca Book as specified in the ranking example above (*see* Section 2(c)(ii)), suppose an incoming order, which is not a Directed Order and therefore bypasses the Directed Order Process, enters Arca:

Example 1. Suppose the incoming order is a market order to sell 1000 shares of XYZ. The market order would execute against Order A, filling both Order A and the incoming order for 1000 shares at the price of 20.

Example 2. Suppose the incoming order is a market order to sell 5000 shares of XYZ.

(1) The incoming order would execute against Order A, filling Order A and executing 1000 shares of the incoming order at 20.

(2) Next, 1000 shares of the incoming order would execute against the 1000 displayed shares of Order B1 at 20, without affecting the 4000 undisplayed shares of Order B2 in the Working Order Process.

(3) Third, the incoming order would execute against Order C, filling both Order C and executing 500 shares of the incoming order at 20.

(4) Finally, the remaining 2500 shares of the incoming order would execute against 2500 shares of D1 at 20, completing the incoming order.

Example 3. Suppose the incoming order is a market order to sell 25,200 shares of XYZ.

(1) The incoming order would execute against Orders A, B1, and C in the same manner as in Example 3.

(2) Then, the incoming order would execute against Order D1 for 5000 shares at 20, filling Order D.

(3) Next, the incoming order would execute against Order F for 1000 shares at 20, thereby filling Order F.

(4) The incoming order then would execute against Order G for 700 shares at 20, thereby filling Order G.

(5) Then, the incoming order would execute against Order H for 5000 shares at 20, thereby filling Order H.

(6) Then, the incoming order would execute against Order I1 for 10,000 shares at 20, thereby filling Order I.

(7) Then, because the incoming order has exhausted orders in the Display Order Process and has not been filled in its entirety, it enters the Working Order Process. First, the incoming order is

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[85] *See* proposed PCXE Rule 7.37(b)(1).

[86] *See* proposed PCXE Rule 7.37(b)(2).

[87] *See* proposed PCXE Rule 7.37(b)(2)(A).

[88] *See* proposed PCXE Rule 1.1(w) ("Market Participant" includes ECNs, dealer-specialists registered with a national securities exchange and market makers registered with a national securities association).

[89] *See* proposed PCXE Rule 7.37(b)(2)(B).

[90] *See* proposed PCXE Rule 7.37(c).

[91] *See* proposed PCXE Rule 7.37(c)(1).

[92] *See* proposed PCXE Rule 7.31(f) (definition of "Tracking Order").

[93] *See* proposed PCXE Rule 7.31(g) (definition of "OLTO").

[94] *See* proposed PCXE Rule 7.37(c)(2).

[95] *See* proposed PCXE Rule 7.31(f)(7).

[96] *See* proposed PCXE Rule 1.1(gg) (definition of "Routing Agreement").

[97] *See* proposed PCXE Rule 7.37(d)(2).

[98] *See* proposed PCXE Rule 7.32.

[99] *See* proposed PCXE Rule 7.31(p) (definition of "Fill-or-Return").

[100] *See* proposed PCXE Rule 7.31(r) (definition of "Fill-or-Return Plus").

[101] *See* proposed PCXE 7.31(w).

[102] *See* proposed PCXE Rule 7.37(d)(1).

[103] *See* proposed PCXE Rule 7.37(e).

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executed against the 4000 shares of reserve size for Order B2. This fills the balance of Order B.

(8) The incoming order does not interact with Order D2 in the Working Order Process because Order D was filled in the Display Order Process.

(9) The incoming order then executes against the 1500 shares of Order E at 20, thereby filling both Order E and the incoming order.

Example 4. Suppose the incoming order is a market order to sell 25,300 shares of XYZ. The order would be executed as described in Example 3, paragraphs (1)–(9). The remaining 100 shares would be routed to the Tracking Order Process, where they would be executed against Tracking Order(s), if any.

Example 5. Suppose the incoming order is a market order to sell 25,250 shares of XYZ. The order would be executed as described in Example 3, paragraphs (1)–(9). The remaining 50 shares would be routed to the Tracking Order Process, where they would be executed against Odd Lot Tracking Order(s), if any.

v. *Crosses.* Arca permits the execution of a Cross Order, which is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the "cross price"), subject to price improvement requirements described below.[104] A Cross Order would be executed as follows; provided, however, no Cross Orders would be matched at the cross price without interacting with any orders in the Arca Book unless the cross price improves the BBO by the Minimum Price Improvement Increment.[105]

(1) If the cross price is equal to or better than the NBBO and is between the BBO, the orders could be crossed without interacting with any other orders.

(2) If the cross price is equal to or better than the NBBO and is at the BBO, the remainder of the Cross Order could be crossed, after any relevant portion is matched against any displayed orders with priority in the Arca Book.

(3) If the cross price is outside the NBBO and is between the BBO, the remainder of the Cross Order could be crossed, after the relevant portion is routed away to other markets for execution.

(4) If the cross price is outside the NBBO and is at the BBO, the remainder of the Cross Order could be crossed, after any relevant portion is first routed away to other markets for execution and then any relevant portion is matched against any displayed orders with priority in the Arca Book.

(5) If the cross price is outside the NBBO and the BBO and the NBBO is better than the BBO, the relevant portion of the order first would be routed away to other markets for execution. Then, the Cross Order would be matched at the displayed price (if the Cross Order is smaller than block size[106]) or at the cross price (if the Cross Order is of block size) against displayed orders with priority in the Arca Book. Then, the Cross Order would be matched at the price at which the Working Order is represented in the Book against all Working Orders with priority. Finally, any remainder of the Cross Order would be matched at the cross price.

(6) If the cross price is outside the NBBO and the BBO and the NBBO equals the BBO, then the Cross Order first would be matched at the displayed price (if the Cross Order is smaller than block size) or at the cross price (if the Cross Order is of block size) against displayed orders with priority in the Arca Book. Then, the Cross Order would be matched at the price at which the Working Order is represented in the Book against all Working Orders with priority. Then, the relevant portion of the order would be routed away to other markets for execution. Finally, any remainder of the Cross Order would be matched at the cross price.

vi. *Trading Sessions.* Arca would have three trading sessions each day the PCXE is open for business: the Opening Session, the Core Trading Session and the Late Trading Session. The Opening Session begins at 5:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction[107] would occur during the Opening Session. The Core Trading Session begins for each security at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00 p.m. (Pacific Time). Finally, the Late Trading Session begins after the conclusion of the Core Trading Session and concludes at 5:00 p.m. (Pacific Time).[108]

During the Core Trading Session, market makers would be obligated to enter Q Orders in securities in which they are registered by the time Core Trading Hours begin. During the Opening Session and the Late Trading Session, market makers are not obligated to enter Q Orders in securities in which they are registered. Market makers are required to enter at least one Cleanup Order for all securities in which they are registered for each Market Order Auction.[109]

Any Day Order entered into Arca could remain in effect for one or more consecutive trading sessions on a particular day. For each Day Order entered into Arca, the User would have to designate for which trading session(s) the order would remain in effect. Any GTC Order entered into Arca would remain in effect only during Core Trading Sessions, unless the User indicates that the GTC Order would remain in effect for the Opening and/or Late Trading Sessions.[110]

For each trading session, some order types are eligible to be executed and others are not eligible to be executed. During the Opening Session, orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process that have been designated as available for the Opening Session are eligible for entry into and execution on Arca. Stop Orders are not eligible for execution during the Opening Session. Users could enter market and Auction Only Limit Orders for inclusion in the Market Order Auction. Market orders and Auction Only Limit Orders are not eligible for execution during the Opening Session, except during the Market Order Auction. Neither the Directed Order Process nor the Tracking Order Process is available during the Opening Session. For the purposes of the Opening Session, market Directed Orders are eligible for execution in the Market Order Auction. NOW Orders are eligible for execution during the Opening Session; however, NOW Orders are not eligible for the Opening Auction or the Market Order Auction. PNP Orders are eligible for execution during the Opening Session.[111]

During the Core Trading Session, market orders, Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order, and Tracking Order Processes are eligible for entry into and execution on Arca.[112]

During the Late Trading Session, orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process, including NOW Orders and PNP Orders, that have been designated as available for the Late Trading Session are eligible for entry into and execution on Arca. Market orders and Stop Orders are not eligible for execution during the Late Trading Session. The Directed Order Process and Tracking Order Process are not available during the Late Trading Session.[113]

Because Arca would operate the Opening and Late Trading Sessions outside of traditional trading hours, the PCXE requires certain customer disclosures.[114] In particular, no ETP Holder could accept an order from a non-ETP Holder for execution in the Opening or Late Trading Session without disclosing to such non-ETP Holder that:

(1) Except for market orders eligible for execution during the Market Order Auction, Limited Price Orders are the only orders that are eligible for execution during the Opening and Late Trading Sessions;

(2) An order would have to be designated specifically for trading in the Opening and/or Late Trading Session to be eligible for trading in the Opening and/or Late Trading Session; and

(3) Extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The disclosures required pursuant to this paragraph could take the following form or such other form as provides substantially similar information:

1. *Risk of Lower Liquidity.* Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

2. *Risk of Higher Volatility.* Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular markets hours.

3. *Risk of Changing Prices.* The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.

4. *Risk of Unlinked Markets.* Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

5. *Risk of News Announcements.* Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

6. *Risk of Wider Spreads.* The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

Finally, trades on Arca executed and reported outside of the Core Trading Session would have to be designated as .T trades.[115]

vii. *Opening Session Auctions. Definitions.* Arca would operate two auctions during its Opening Session—the Opening Auction and the Market Order Auction. In preparation for a description of these two auctions, PCXE would define several new terms applicable to the auctions.

First, for the purposes of the Opening Auction and the Market Order Auction, PCXE proposes to define the term "Indicative Match Price" to mean "for each security" (1) the price at which the maximum volume of orders are executable; or (2) if there are two or more prices at which the maximum volume of orders are executable, the price that is closest to the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape."[116]

In addition, the PCXE defines the term "Imbalance" as the number of buy or sell shares orders that can not be matched with other orders at the Indicative Match Price at any given time.[117]

Finally, the PCXE introduces the Cleanup Order for the Market Order Auction.[118] Cleanup Orders (1) could be submitted only by Market makers; (2) would have to be submitted to Arca before 6:15 a.m. (Pacific Time) and remain in effect until the conclusion of the Market Order Auction; (3) would have to be 2500 shares in size; (4) would have to be entered as both buy or sell orders, provided, however, the Cleanup Order could be executed only on the side of the market opposite the Imbalance; (5) would be executed at the Indicative Match Price as of the time of the Market Order Auction; and (6) would be executed only if: (i) there was an Imbalance of eligible orders at the conclusion of the Market Order Auction, as provided in proposed PCXE Rule 7.35; and (ii) the Imbalance is less than or equal to aggregate size of all Cleanup Orders in the relevant security. If there is an Imbalance and Cleanup Orders would be executed, the market orders which make up the Imbalance would be divided equally among, and allocated to, all Market makers registered in the relevant security and executed against such market makers' Cleanup Orders. If no Imbalance exists at the time of the Market Order Auction, all Cleanup Orders would be cancelled at that time.

Order Entry and Cancellation Before the Opening Auction.[119] Users could submit any orders to Arca beginning at 4:30 a.m. (Pacific Time). Any such Limited Price Orders designated for the Opening Session would be queued until 5:00 a.m. (Pacific Time) at which time they would be eligible to be executed pursuant to the Opening Auction. Any such market orders would be queued until the Market Order Auction at which time they would be executed pursuant to the Market Order Auction.

Only Limited Priced Orders designated for the Opening Session would be eligible for the Opening Auction. Market orders entered before the Opening Auction would participate

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[104] *See* proposed PCXE Rule 7.31(s) (definition of a "Cross Order").

[105] For a description of the Minimum Price Improvement Increment, *see* proposed PCXE Rule 7.6(a), Commentary .06.

[106] For the purposes of a Cross Order, an order of block size would have the same meaning as set forth in proposed PCXE Rule 7.57 regarding ITS. *See* proposed PCXE Rule 7.31(s).

[107] For a discussion of the Opening Auction and the Market Order Auction, *see Section 2(c)(vii).*

[108] *See* proposed PCXE Rule 7.34(a).

[109] *See* proposed PCXE Rule 7.34(b).

[110] *See* proposed PCXE Rule 7.34(c).

[111] *See* proposed PCXE Rule 7.34(d)(1).

[112] *See* proposed PCXE Rule 7.34(d)(2).

[113] *See* proposed PCXE Rule 7.34(d)(3).

[114] *See* proposed PCXE Rule 7.34(e).

[115] *See* proposed PCXE Rule 7.34(f).

[116] *See* proposed PCXE Rule 1.1(r) (definition of "Indicative Match Price").

[117] *See* proposed PCXE Rule 1.1(q) (definition of "Imbalance").

[118] *See* proposed PCXE Rule 7.31(u) (definition of "Cleanup Order").

[119] *See* proposed PCXE Rule 7.35(a).

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in the Market Order Auction. Limited Price Orders not designated for the Opening Session would become eligible for execution pursuant to Rule 7.37 at the commencement of the Core Trading Session.

Beginning at 4:30 a.m. (Pacific Time), and various times thereafter as determined from time to time by the PCXE, the Indicative Match Price of the Opening Auction, and any Imbalance associated therewith, would be published via electronic means as determined from time to time by the PCXE. Orders that are eligible for the Opening Auction could not be cancelled between 4:58 a.m. (Pacific Time) and the conclusion of the Opening Auction.

Opening Auction. At 5:00 a.m. (Pacific Time), Limited Price Orders designated for the Opening Session are matched and executed in the Opening Auction. The orders in the Opening Auction would be executed at the Indicative Match Price as of the time of the Opening Auction. Orders that are eligible for, but not executed in, the Opening Auction would become eligible for the Opening Session immediately upon conclusion of the Opening Auction.[120]

For example, if the last .T sale is 50, Arca has a limit order to buy 1000 shares at 50.5 and a limit order to sell 1000 shares at 50.2, the opening execution would occur at 50.2 for 1000 shares. As another example, suppose the last .T sale is at 50 and Arca has (1) a limit order to buy 1500 shares at 50.5; (2) a limit order to sell 1000 shares at 50.25; and (3) a limit order to sell 300 at 50.5. The opening execution would occur at 50.5 for 1300 shares. The remaining 200 shares would be bid at 50.5 in the Opening Session.

Market Order Auction.[121] Beginning at 5:00 a.m. (Pacific Time), and various times thereafter as determined from time to time by the PCXE, the Indicative Match Price of the Market Order Auction and the volume available to trade at such price, would be published via electronic means as determined from time to time by the PCXE. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), Arca would indicate via electronic means that an Indicative Match Price does not exist. In addition, beginning at 5:00 a.m. (Pacific Time), and various times thereafter as determined from time to time by the PCXE, the market order Imbalance associated with the Market Order Auction, if any, would be published via electronic means as determined from time to time by the PCXE. If the difference between the Indicative Match Price and the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the PCXE, Arca would assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the PCXE.

For example, suppose Arca has the following orders: (1) market order to buy 5000 shares; (2) Auction-Only Limit Order to sell 1000 at 50; (3) limit order to sell 1000 at 50.50; and (4) limit order to sell 500 at 50.75. Arca would publish an Indicative Match Price of 50.75, a volume of 2500 shares and a buy Imbalance of 2500 shares.

As another example, suppose Arca has the following orders: (1) market order to buy 3000 shares; (2) market order to sell 1000; (3) limit order to sell 1000 at 41.00; and (4) limit order to sell 1000 at 41.25. Arca would publish an Indicative Match Price of 41.25 and a volume of 3000 shares and would not publish an Imbalance.[122]

Any Imbalance in the Market Order Auction could be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority: (1) Market orders; (2) Limited Price Orders eligible for the Opening Session; (3) Limited Price Orders entered before 6:28 a.m. (Pacific Time); (4) Auction-Only Limit Orders; and (5) Cleanup Orders. Between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction, Limited Price Orders eligible for the Opening Session or the Core Trading Session could be cancelled, but market orders, Auction-Only Limit Orders and Cleanup Orders could not be cancelled. In addition, between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction, market orders and Auction-Only Limit Orders could not be entered on the same side as the Imbalance. Market orders and Auction-Only Limit Orders may could be entered on the opposite side of the Imbalance, however, any time before the Market Order Auction.[123]

Arca would determine the price of the Market Order Auction as follows: If there is no Imbalance, orders would be executed in the Market Order Auction at the Indicative Match Price as of 6:30 a.m. (Pacific Time). If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible would be matched, on a time priority basis, (1) at the midpoint of the NBBO at 6:30 a.m. (Pacific Time), in the case of exchange-listed securities for which the PCXE is not the primary market; or (2) at the midpoint of the NBBO at 6:30 a.m. (Pacific Time), in the case of Nasdaq securities, provided that the NBBO is not crossed; (3) at the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed but the BBO is not crossed by the NBBO; (4) at the bid (offer) of the BBO that was crossed prior to 6:30 a.m. (Pacific Time), in the case of Nasdaq securities in which the BBO is crossed by a market participant; or (5) at the Indicative Match Price as of 6:30 a.m. (Pacific Time) in the case of those issues for which the PCXE is the primary market; if an equilibrium exists between buy and sell market orders, the match price would be the last Corporation sale price in the security regardless of the trading session, provided that, if the last Corporation sale price is inferior to the BBO, the match price would be the Corporation bid (offer). Such executions would be designated with a modifier to identify them as Market Order Auction trades. The market orders that are eligible for, but not executed in the Market Order Auction, would become eligible for execution in the Core Trading Session immediately upon conclusion of the Market Order Auction.[124]

The following examples clarify how the Market Order Auction works:

Example 1. Suppose Arca has the following orders: (1) Market order to buy 5000; (2) Opening Session active limit order to buy 1000 at 50; (3) Opening Session active limit order to sell 1000 at 50.5; (4) Core Session limit order to sell 500 at 50.25; (5) Auction Only Limit order to sell 3000 at 50.5 and; (6) One Market maker Cleanup Order for 2500 shares. The Market Order Auction would occur at 50.5 with the market order being executed against orders in the following manner: (1) 1000 executed against the Opening Session Limit sell order; (2) 500 executed against the Core Session limit order; (3) 3000 executed against the Auction Only Limit Order; and (4) 500 executed against the Cleanup Order.

Example 2. Suppose Arca has the following orders: (1) Market order to buy 5000; (2) Market order to sell 5000; and (3) NBBO at 6:30 is 50 to 50.5. The Market Order Auction would occur at 50.25 with the market buy order being executed against the market sell order at the mid-point of the spread.

Example 3. Suppose Arca has the following orders: (1) Market order to buy 5000; (2) Market order to sell 5000; and (3) NBBO at 6:30: 50.6 bid quoted at 6:29 and 50.5 offer quoted at 6:15. The Market Order Auction would occur at 50.55 with the market buy order being executed against the market sell order at the price of the most recent quote.

Example 4. Suppose Arca has the following orders for Nasdaq securities: (1) Market order to buy 5000; (2) Market order to sell 5000; (3) Opening Session active limit order to sell 1000 at 50.5; and (4) NBBO at 6:30: 50.6 bid quoted at 6:29 and 50.5 offer quoted at 6:15 (Arca). The Market Order Auction would occur at 50.5 with the market buy order being executed against the market sell order at the price of the Arca quote that has been locked crossed.

Transition to Core Trading Session. Limited Price Orders entered before 6:28 a.m. (Pacific Time) would participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 a.m. (Pacific Time) would become eligible for execution at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later. Market orders entered after 6:28 a.m. (Pacific Time) and before 6:30 a.m. (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, would become eligible for execution at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in proposed Rule 7.350(c)(2)(C). Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.[125]

viii. *Odd and Mixed Lots.* In addition to round lots, Users could also submit odd and mixed lots to Arca and, therefore, proposed PCXE Rule 7.38 describes the treatment of odd and mixed lots on Arca. All odd lot orders submitted by Users to Arca would have to be market orders or limit orders, where such orders are subject to no additional conditions. In other words, odd lot orders could not be Working Orders, Directed Orders, Directed Fills, Tracking Orders, or other similar orders. As an exception to this prohibition on conditional odd lot orders, Odd Lot Dealers could submit Odd Lot Tracking Orders. Mixed lot orders could be any order type supported by Arca.[126]

Round lot, mixed lot, and odd lot orders are treated in the same manner in Arca, except in the Tracking Order Process. The Tracking Order Process treats odd lot orders in a different manner from mixed lot and round lot orders, as discussed above.[127]

Finally, proposed PCXE Rule 7.38(c) states that the following actions related to odd lot orders would be considered conduct inconsistent with just and equitable principles: (1) combining odd lot orders given by different customers into a round lot order or orders unless specifically requested to do so by the customers giving the orders; (2) unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts; (3) failing to aggregate odd lot orders into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and (4) entering both buy and sell odd lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the spread in the stock.[128]

ix. *Miscellaneous Trading Rules.* A. *Trading Units and Differentials.* The PCXE proposes to reduce the unit of trading in stocks from the current 100 shares to 1 share.[129] The PCXE also proposes to establish the minimum price variation for equity securities traded on Arca as 1/64 of $1.00 for those securities that are quoted in fractions and $0.01 for those equity securities that are quoted in decimals. However, at all times, the minimum price variation must would have to be consistent with the Decimalization Implementation Plan.[130] In addition, the PCXE proposes to make the Minimum Price Improvement Increment on Arca equal to $0.01 or 10% of the spread, whichever is more.[131]

B. *Firm Orders and Quotes.* The proposed rules require that ETP Holders submit firm quotes and orders to Arca. Proposed PCXE Rule 7.17(a) states no ETP Holder could submit to the PCXE an order (including Q Orders) to buy from or sell to any person any security at a stated price and/or size unless such ETP Holder is prepared to, and, upon submission of an appropriate contra-side order, does, purchase or sell, as the case may be, at such price and/or size and under such conditions as are stated at the time of submission of such order to buy or sell. Additionally, proposed PCXE Rule 7.17(b) requires that all bids and all offers be made in accordance with the provisions of Rule 11Ac1–1 under the Act,[132] governing the dissemination of quotations for reported securities.

C. *Trading Halts and Suspensions.* The PCXE guidelines for trading halts and suspensions are set forth in proposed PCXE Rules 7.12 and 7.13. PCXE proposes to keep current PCXE Rule 7.47, entitled "Trading Halts Due to Extraordinary Market Volatility," renumbered as proposed PCXE Rule 7.12. In addition, proposed PCXE Rule 7.13 regarding trading suspensions states that, except as otherwise stated in the proposed rules, the Chair of the Board or the President, or the officer designee of the Chair or the President, would have the power to suspend trading in any and all securities traded on the PCXE whenever in his or her opinion such suspension would be in the public interest. No such action would continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.[133]

D. *Clearly Erroneous Policy.* Given the change from a manual to an electronic trading environment, the PCXE proposes to adopt a rule regarding clearly erroneous submissions to Arca.[134] Proposed PCXE Rule 7.11 would allow an ETP Holder that receives an execution on an order that was submitted erroneously to the PCXE for its own or customer account to request that the PCXE review the transaction. Such a request for review could be made via telephone and in writing via facsimile or e-mail. The telephonic request should be submitted immediately and the written request should be submitted within fifteen (15) minutes of the time the trade in question was executed. Once the request has been received, an officer of the PCXE designated by the President would review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For the purposes of proposed PCXE Rule 7.11, the terms of a transaction executed on the PCXE are "clearly erroneous" when there is an obvious error in any term, such as price,

[120] *See* proposed PCXE Rule 7.35(b).

[121] *See* proposed PCXE Rule 7.35(c).

[122] *See* proposed PCXE Rule 7.35(c)(1).

[123] *See* proposed PCXE Rule 7.35(c)(2).

[124] *See* proposed PCXE Rule 7.35(c)(3).

[125] *See* proposed PCXE Rule 7.35(e).

[126] *See* proposed PCXE Rule 7.38(e).

[127] *See* proposed PCXE Rule 7.38(b). For e discussion of the Tracking Order Process, *see* Section 2(c)(iv).

[128] *See* proposed PCXE Rule 7.38(c).

[129] *See* proposed PCXE Rule 7.5.

[130] *See* proposed PCXE Rule 7.6(a), Commentary .05.

[131] *See* proposed PCXE Rule 7.6(a), Commentary .06.

[132] 17 CFR 240.11Ac1–1.

[133] Proposed PCXE Rule 7.13 would replace existing PCXE Rule 7.46, entitled "Trading Halts and Suspensions."

[134] *See* proposed PCXE Rule 7.11.

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number of shares or other unit of trading, or identification of the security. Each party to the transaction would provide, on a timely basis, any supporting written information as could be reasonably requested by the designated officer to aid resolution of the matter.

Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial written request for review, the transaction under dispute would be reviewed, and a determination would be rendered by the designated PCXE officer. If the officer determines that the transaction is not clearly erroneous, the officer would decline to take any action in connection with the completed trade. In the event that the officer determines that the transaction in dispute is clearly erroneous, the officer would declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The officer would promptly notify the parties of the determination reached and would issue a written resolution of the matter. The ETP Holder aggrieved by the officer's determination could appeal such determination in accordance with the provisions of proposed PCXE Rule 10.13.

In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the PCXE, the Chief Executive Officer or the President could declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer or President would be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction would be notified as soon as practicable, and the ETP Holder aggrieved by the action could appeal such action in accordance with the provisions of proposed PCXE Rule 10.13.

E. *Trading Ahead of Customer Limit Orders.* PCXE proposes to adopt a rule prohibiting ETP Holders from trading ahead of customer limit orders.[135] Proposed PCXE Rule 6.16 states that:

No ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are:

(1) For institutional customer accounts, where such account is defined as the account of:

(A) A bank, savings and loan association, insurance company, or registered investment company;

(B) An investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940[136] or with a state securities commission (or agency or office performing like functions); or

(C) Any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million; or

(2) 10,000 shares or more, unless such orders are less than $100,000 in value.

Proposed PCXE Rule 6.16 would not apply to a customer limit order if the limit order is marketable at the time it is received by the ETP Holder; provided, however, if the limit order were marketable when received and then becomes non-marketable, the limit order would be subject to the Rule's prohibitions. Nothing in proposed PCXE Rule 6.16 would require ETP Holders to accept limit orders from customers. For the purposes of proposed PCXE Rule 6.16 an ETP Holder that controls or is controlled by another ETP Holder would be considered a single entity, absent appropriate information barriers. Thus, if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms would be considered a single entity.

d. *Trade Execution and Reporting.* Under the proposal, executions occurring as a result of orders matched against the Arca Book would be reported by the PCXE to an appropriate consolidated transaction reporting system. Executions occurring as a result of orders routed away from Arca would be reported to an appropriate consolidated transaction reporting system by the relevant reporting market center. Arca would promptly notify Users of all executions of their orders as soon as the executions take place.[137]

e. *Clearance and Settlement* Under the proposed rule for clearance and settlement, each ETP Holder would have to be a clearing firm, clear transactions on the PCXE through a clearing firm, or clear transactions through an entity duly authorized by the PCXE.[138] Pursuant to proposed PCXE Rule 7.14, an ETP Holder would have to must give up the name of the clearing firm through whom each transaction on the PCXE would be cleared. If the identity of the clearing firm subsequently changed, the ETP Holder would have to report such change to the PCXE at least five (5) business days in advance.[139]

Pursuant to proposed PCXE Rule 7.14, each clearing firm must would have to be admitted to the PCXE as an ETP Holder, by meeting the qualification requirements for becoming an ETP Holder. However, if a clearing firm becomes an ETP Holder for the sole purpose of acting as a clearing firm on the PCXE, the clearing firm would not have to pay the regular ETP Holder fee. As a general matter, the clearing firm would be responsible for the clearance of the transactions effected by each ETP Holder which gives up such clearing firm's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such clearing firm to such ETP Holder, which authorization would be submitted to the PCXE.[140]

Notwithstanding any other provisions contained in proposed PCXE the Rule 7.14 to the contrary, the Board could extend or postpone the time of the delivery of a transaction on the PCXE whenever, in its opinion, such action is called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions. In such case, delivery would be effected at such time, place and manner as directed by the Board of Directors.[141]

The details of each transaction executed within Arca would be automatically processed for clearance and settlement on a locked-in basis. ETP Holders would not have to separately report their transactions to the PCXE for trade comparison purposes. All transactions effected by a Sponsored Participant would be cleared and settled, using the relevant Sponsoring ETP Holder's mnemonic or its clearing firm's mnemonic, as applicable.[142]

f. *Interaction with PCXE Application of the OptiMark System.* The PCXE Application of the OptiMark System would continue to operate as it does now. In addition, however, the

[135] *See* proposed PCXE Rule 6.16, which would replace current PCXE Rule 6.7.

[136] 15 U.S.C. 80b–3.

[137] *See* proposed PCXE Rule 7.40.

[138] *See* proposed PCXE Rule 7.14(a).

[139] *See* proposed PCXE Rule 7.14(b).

[140] *See* proposed PCXE Rule 7.14(c).

[141] *See* proposed PCXE Rule 7.14(d).

[142] *See* proposed PCXE Rule 7.41.

information from the Arca Book, but not the orders themselves, would be submitted to OptiMark at relevant times during Core Trading Hours in the form of Arca Profiles.[143] Arca Profiles are defined as "the satisfaction profile generated by the OptiMark System from processing the Arca Book."[144] Any Order generated from a Cycle representing matches involving Arca Profiles would be routed as an Immediate-or-Cancel Order to Arca for execution against the relevant Arca limit order. If the relevant limit order is no longer available on Arca, the Order generated from the Cycle would be automatically cancelled.[145]

g. *Limitation of Liability.* The PCXE proposes to limit the liability of the PCXE, Archipelago Exchange, L.L.C., and their respective affiliates with regard to Arca.[146] Specifically, proposed PCXE Rule 7.42 states that:

Neither the PCXE, any affiliate of the PCXE, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., would be liable to Users for any loss, damages, claim or expense:

(1) growing out of the use or enjoyment of Arca; or

(2) arising from or occasioned by any inaccuracy, error or delay in, or omission of or from the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from Arca, resulting either from any act or omission by the PCXE, any affiliate of the PCXE, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., or from any act, condition or cause beyond the reasonable control of the PCXE, any affiliate of the PCXE, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction.

In addition, proposed PCXE Rule 7.42(b) provides that "[e]ach ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., and any affiliate of the Archipelago Exchange, L.L.C., and any officers, directors, employees and agents thereof, of and from all claims and damages arising from their acceptance and use of Archipelago Exchange."

Furthermore, proposed PCXE Rule 7.42(c) states that "[n]either the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., makes any express or implied warranties or conditions to Users as to results that any person or party may obtain from Archipelago Exchange for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to Arca are hereby disclaimed."

3. *PCXE Membership Structure: Equity Trading Permits.* With the introduction of Arca, the PCXE intends to simplify its membership rules to reflect more accurately the change from a traditional floor trading environment. The PCXE would only have one category of members, as that term is defined in the Section 3 of the Act:[147] ETP Holders.[148] Any registered broker-dealer who wishes to be a member once Arca begins operation would have to must become an ETP Holder by purchasing an Equity Trading Permit ("ETP")[149] from the PCXE.[150] By becoming an ETP Holder, the registered broker-dealer may effect approved securities transactions on the PCXE's two trading facilities, Arca and the PCXE Application of OptiMark. As is the case under the current PCXE Rules, an ETP Holder: (1) Must agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the PCXE, and by all applicable rules and regulations of the SEC; (2) haves no ownership or distribution rights in the PCXE; and (3) have limited voting rights to nominate two Directors to the PCXE's Board of Directors and one Governor to the Board of Governors of the PCX Parent.

With the elimination of the trading floor and the introduction of remote electronic trading on the PCXE, two aspects of the current PCXE Rules relating to memberships become obsolete. First, under the existing PCXE Rules, an ETP Firm must have a natural person, a Nominee, to act as its representative on the PCXE. Because an ETP Firm no longer needs a natural person to act on its behalf on the floor, the concept of a Nominee of the ETP Firm has been eliminated.[151] Therefore, an ETP Firm would be re-designated as an ETP Holder.[152] In addition, the definition of an ETP Holder would no longer be defined as a "natural person" or "Nominee," but rather a "sole proprietorship, partnership, corporation, limited liability company or other organization" that has been issued an ETP.[153]

Second, an important difference between an Equity Automated Systems Access Permits ("ASAP") and an ETP today is that an ETP allows its holder to transact business on the floor of the PCXE, whereas the Equity ASAP does not.[154] Because the PCXE proposes to eliminate the floor, there will no longer be a need for two separate membership categories. Therefore, Equity ASAP Holders would be re-designated as ETP Holders and the rules related to Equity ASAP Holders would be deleted.[155]

4. *Applicability of Existing PCXE Rules.* In addition to the new proposed rules set forth above, the PCXE proposes to delete the following existing PCXE Rules, which relate primarily to floor trading and specialists or are otherwise inapplicable to the new trading environment: PCXE Rule 1.1(g) (Floor Trader); PCXE Rule 1.1(o) (Non-Resident Organization); PCXE Rule 2.12(a); PCXE Rule 2.24 (Trading Floor Employees of ETP Firms); PCXE Rule 4.1(b–c) (Minimum Net Capital for Specialist Firms); PCXE Rule 4.2 (Specialist Post Capital); PCXE Rule 6.8 (Discretionary Transactions); PCXE Rule 6.16(b) (Miscellaneous Prohibitions); PCXE Rule 7.1(a)(6) (Freely Transferable Security); PCXE Rule 7.1(a)(8) (Local Security); PCXE Rule 7.1(a)(9) (Dually

[143] *See* proposed PCXE Rules 7.39(a) and 7.47(b). Proposed PCXE Rule 7.47(b) replaces PCXE Rule 7.73(b) which described a specialist's obligations regarding the OptiMark System.

[144] *See* proposed PCXE Rule 7.45(e)(6).

[145] *See* proposed PCXE Rules 7.39(b), 7.45(a)(5) and 7.48(b).

[146] *See* proposed PCXE Rule 7.42.

[147] 15 U.S.C. 78c.

[148] *See* proposed PCXE Rule 1.1(n) (definition of "ETP Holder").

[149] *See* proposed PCXE Rule 1.1(m) (definition of "ETP").

[150] *See* proposed PCXE Rule 2.100 (Any PCX member, as defined in the PCX Parent Rule 1.1, or Equity ASAP Holder that wishes to continue to effect securities transactions without interruption on the PCXE's Trading Fecilities must obtain an ETP prior to the first day Arca becomes operational. If the PCX member or Equity ASAP Holder fails to obtain an ETP prior to that date, the PCX member or Equity ASAP Holder will not be permitted to effect securities transactions on the PCXE's Trading Fecilities until such time as it does obtain an ETP).

[151] PCXE proposes to delete the following Nominee-related PCXE Rules or sections thereof: PCXE Rule 1.1(n) (definition of "Nominee"); PCXE Rule 2.1(b)(2) ("Securities Business"); PCXE Rule 2.2 ("Qualifications and Application of Individual Applicants"); PCXE Rule 2.3(b)–(d) ("Qualifications of Firm Applicants"); PCXE Rule 2.11(b)–(c) ("Sole Proprietors"); PCXE Rule 2.21(c) ("Termination of Trading Privileges"); and PCXE Rule 2.22(c) ("Limited Transferability").

[152] PCXE proposes to delete PCXE Rule 1.1(m) ("ETP Firm").

[153] *Compare* PCXE Rule 1.1(l) ("ETP Holder") with proposed PCXE Rule 1.1(n) ("ETP Holder").

[154] *Compare* PCXE Rule 1.1(i) ("Equity ASAP") with proposed PCXE Rule 1.1(m) ("ETP").

[155] PCXE proposes to delete the following Equity ASAP-related: PCXE Rule 1.1(i) (definition of "Equity ASAP"); PCXE Rule 1.1(j) (definition of "Equity ASAP Holder") and Rule 2.16 (Terms and Conditions Relating to Equity ASAPs).

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Traded Security); PCXE Rule 7.2, Comm. 01; PCXE Rule 7.4 (Types of Orders); PCXE Rule 7.5 (Authority of Trading Officials); PCXE Rule 7.8 (Trading Floor Standards); PCXE Rule 7.12 (Recognized Quotations); PCXE Rule 7.14 (Trading in "When Issued/Distributed" Securities); PCXE Rule 7.17 (Manner of Bidding and Offering); PCXE Rule 7.18 (Types of Bids or Offers); PCXE Rule 7.19 (Priority and Precedence of Bids and Offers); PCXE Rule 7.20 (Cabinet Dealings); PCXE Rule 7.21 (Error Accounts); PCXE Rule 7, Section 5 (ETP Holders Acting as Specialists); PCXE Rule 7, Section 6 (Specialists Acting as Odd-lot Dealers); PCXE Rule 7, Section 7 (Trading Practices and Procedures) (except for Rule 7.40—Short Sales, Rule 7.45—Stock Option Transactions and Rule 7.47—Trading Halts Due to Extraordinary Market Volatility); PCXE Rule 7, Section 8 (Contracts in Securities) (except for Rules 7.50 & 7.51—Definitions and General Provisions and Rule 7.53—Delivery of Securities); PCXE Rule 7.69 (Liability of Corporation Relating to Operation of ITS); PCXE Rule 7.70 (Pacific Computerized Order Access System ("P/COAST")); PCXE Rule 10.12(g) (Floor Citations); PCXE Rule 10.13 (Summary Sanction Procedures); and PCXE Rule 12.1(a); PCXE Equity Floor Procedure Advices.

Furthermore, minor conforming changes have been made throughout the existing PCXE Rules to conform the proposed rules to the new terminology associated with Arca. For example, PCXE we have deleted references to, among other things, Equity ASAP Holders, ETP Firms and the trading floor throughout the PCXE Rules. Finally, any other existing PCXE rules which have not been deleted or amended as specified remain in effect as they are currently.

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[156] in general, and furthers the objectives of Section 6(b)(5),[157] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

[156] 15 U.S.C. 78f(b).

[157] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, PCX and PCXE believe that the introduction of a fully electronic trading venue will serve to enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SEC's Solicitation of Comments

The PCX proposes that Arca become a facility of PCXE that would replace the PCX's traditional floor-based auction market for equity securities. The PCX's proposal presents several novel issues with respect to the operation of a national securities exchange. In addition to requesting comments concerning the overall proposal, the Commission requests comments addressed to the following specific items: (1) Discretionary Orders, (2) the minimum price improvement level, (3) customer order priority, and (4) the opening and late trading sessions.

First, the PCX's proposal would enable users to submit "Discretionary Orders" for execution on Arca. Proposed PCXE Rule 7.31(h)(2) defines a Discretionary Order as "an order to buy or sell a stated amount of a security at a specified, undisplayed price (the 'discretionary price'), in addition to at a specified, displayed price." For example, an incoming marketable limit order may be matched for execution against the displayed price of a Discretionary Order. An otherwise non-marketable incoming limit order, however, may trigger an execution against a Discretionary Order at a price within the undisplayed, discretionary price range of the Discretionary Order. The PCX believes that Discretionary Orders will help replicate the dynamic of a traditional floor-based auction market, in particular the trading discretion of a floor broker.[158]

The Commission notes that, pursuant to Rule 11Ac1–1 under the Act[159] (the "Quote Rule"), each responsible broker or dealer is required promptly to communicate to its exchange or association, pursuant to the procedures established by that exchange or association, its best bids, offers, and quotation sizes for any subject security. The Commission seeks general comments on the proposed availability of Discretionary Orders on Arca in the light of the Quote Rule. In addition, the Commission seeks specific comments on the following:

- What are the potential advantages or disadvantages of Discretionary Orders with regard to:
  (a) price discovery;
  (b) market transparency; and
  (c) transaction costs for investors?
- Should a distinction be made between Discretionary Orders placed on behalf of public customers and Discretionary Orders placed by PCXE market makers trading for their own accounts?

Second, proposed PCXE Rule 7.6(a), Commentary .06, would establish a minimum price improvement increment of $.01 or 10% of the spread, whichever is greater, with regard to the execution of Directed Orders[160] and Cross Orders.[161] Accordingly, under the PCX's proposal, the minimum price improvement increment for Directed Orders and Cross Orders would not be less than $.01. The Commission notes that, under the PCX's proposal, the minimum price variation for equity securities traded on Arca would be 1/64 of $1.00 for securities that are quoted in fractions, and $.01 for equity securities that are quoted in decimals.[162] The Commission seeks comment on whether the PCX's proposed minimum price

[158] Telephone conversation between Peter Bloom, Director of Regulatory Projects, PCX, and Patrick Joyce, Special Counsel, Commission, November 16, 2000.

[159] 17 CFR 240.11Ac1–1.

[160] *See* proposed PCXE Rules 7.31(i) (definition of "Directed Order") and (j) (definition of "Directed Fill"). The Commission notes that only executions of Directed Orders against Directed Fills would be subject to the minimum price improvement increment. *See* proposed PCXE Rule 7.37.

[161] *See* proposed PCXE Rule 7.31(s) (definition of "Cross Order").

[162] The proposed rule further specifies that the minimum price variation shall be consistent with the Decimal Implementation Plan. *See* proposed PCXE Rule 7.6(a), Commentary .05.

improvement interval that may be greater than the minimum price variation for internalized or otherwise preferenced orders is appropriate.[163]

Third, historically, securities exchanges have adopted rules that give priority to the agency orders of public customers over the proprietary trades of member firms, in recognition that traders on the floor of an exchange generally possess an informational advantage over public customers. Because the PCX seeks to establish Arca as a purely electronic facility that would not employ a trading floor, the PCX does not believe that its users would possess any informational advantage over public customers who submit agency orders for execution on the Arca Book. Accordingly, the Arca Book would not give precedence to agency orders over principal orders, but rather would rank orders based upon price/time priority.[164] The Commission seeks comment on the order execution priority of the Arca Book, including whether market makers' orders should have priority equal to orders of the same type placed by public customers.

Fourth, and finally, the PCX proposes to operate three distinct trading sessions: an opening session, a core trading session, and a late trading session. The opening session, which would begin at 5:00 a.m. (Pacific Time) and run until the start of the core trading session, would include an Opening Auction at the start of the opening session and a Market Order Auction that would begin at 6:30 a.m. (Pacific Time). The core trading session for each security would begin immediately after conclusion of the Market Order Auction for such security. The Commission seeks comments about the opening session, particularly the opening procedures and the transition from the opening session to the core trading session.

The PCX also proposes to operate a late trading session that would begin when the core trading session ends and conclude at 5:00 p.m. (Pacific Time), contingent upon arrangements with the Consolidated Tape Association. Currently, after-hours trading sessions for listed securities end at 3:30 p.m. (Pacific Time). The Commission invites comments about the PCX's proposed late trading session, including the possible extension of the late trading session to 5:00 p.m. (Pacific Time).

The Commission invites interested persons to submit written data, views, and arguments concerning the proposed rule change, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–25 and should be submitted by January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[165]

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Rules of PCX Equities, Inc.

Rule 1

Definitions

Rule 1.1 Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

Arca Book

(a) The term "Arca Book" shall refer to the Archipelago Exchange's electronic file of orders, which contains all the User's orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.

Affiliate

(b)[(a)] An "affiliate" of, or person "affiliated["] with" a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

Allied Person

(c)[(b)]The term "Allied Person" shall refer to an individual, who is:

(1) an employee of an ETP [Firm or Equity ASAP] Holder who controls such firm, or

(2) an employee of an ETP [Firm or Equity ASAP] Holder corporation who is a director or a principal executive officer of such corporation, or

(3) an employee of an ETP [Firm or Equity ASAP] Holder limited liability company who is a manager or a principal executive officer of such limited liability company, or

(4) a general partner in an ETP [Firm or Equity ASAP] Holder partnership; and who has been approved by the Corporation as an Allied Person.

Approved Person

(d)[(c)]The term "Approved Person" shall refer to a person who is not an ETP Holder, nor an employee or an Allied Person of an [ETP Firm or Equity ASAP] Holder, and who:

(1) is a director of an ETP [Firm or Equity ASAP] Holder, or

(2) controls an ETP [Firm or Equity ASAP] Holder, or

(3) beneficially owns, directly or indirectly, 5% or more of the outstanding equity securities of an ETP [Firm or Equity ASAP] Holder, or

(4) has contributed 5% or more of the partnership capital, and who has been approved by the Corporation as an Approved Person.

Archipelago Exchange

(e) The term "Archipelago Exchange" shall mean the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

Associated Person

(f)[(d)]The term "Associated Person" shall refer to a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an ETP [Firm or Equity ASAP] Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP [Firm or Equity ASAP] Holder.

Authorized Trader

(g) The term "Authorized Trader" or "AT" shall mean a person who may submit orders to the Corporation's Trading Facilities on behalf of his or her ETP Holder or Sponsored Participant.

BBO

(h) The term "BBO" shall refer to the best bid or offer on the Archipelago Exchange.

Control

(i)[(e)]—No change.

Core Trading Hours

(j) The term "Core Trading Hours" shall mean the hours of 6:30 am through 1:00 pm (Pacific Time) or such other hours as may be determined by the Corporation from time to time.

Corporation

(k)[(f)] The term "Corporation" shall mean PCX Equities, Inc., as described in the *PCX Equities, Inc.'s* [Corporation's] Certificate of Incorporation and [the PCX Equities, Inc.] Bylaws.

Eligible Security

(l) The term "Eligible Security" shall mean any equity security (i) either listed on the

[163] The Commission notes that no other registered national securities exchange has such a requirement, but that the NASD requires a registered Nasdaq market maker to improve the price of a customer order that it holds by at least 1/16 or one-half of the spread, whichever *is less*.

[164] The Commission notes that proposed PCXE Rule 6.16 would prohibit a market maker from trading for its proprietary account on Arca ahead of its own customer's limit order at the same price.

[165] 17 CFR 200.30–3(a)(12).

Corporation or traded on the Corporation pursuant to a grant of unlisted trading privileges under Section 12(f) of the Exchange Act and (ii) specified by the Corporation to be traded on the Archipelago Exchange, PCXE Application or other facility, as the case may be.

[Floor Trader]

[(g)—Deleted.]

[Equity ASAP]

[(i)—Deleted.]

[Equity ASAP Holder]

[(j)—Deleted.]

ETP

(m)[(k)]—No change.

ETP Holder

(n)[(1)] The term "ETP Holder" shall refer to a [natural person, in good standing, who] *sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that* has been issued an ETP[, or has been named as a Nominee]. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934[, or a nominee or an associated person of a registered broker or dealer that has been approved by the Corporation to conduct business on the Corporation's trading facilities]. An ETP Holder shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation, and by all applicable rules and regulations of the Securities and Exchange Commission.

An ETP Holder shall not have ownership or distribution rights in the Corporation. An ETP Holder will have limited voting rights to nominate two *Directors* [members] to the Corporation's Board of Directors and one *Governor* [member] to the Board of Governors of the PCX Parent. An ETP Holder will have status as a "member" of the PCX Parent as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

[ETP Firm]

[(m)—Deleted.]

General Authorized Trader

(o) The term "General Authorized Trader" or "GAT" shall mean an authorized trader who performs only non-market making activities on behalf of an ETP Holder.

Good Standing

(p)[(h)] The term "good standing" shall refer to an ETP Holder[, Equity ASAP Holder or ETP Firm] who is not in violation of any of its agreements with the Corporation or any of the provisions of the Rules or Bylaws of the Corporation, and who has maintained all of the conditions for approval of the ETP.

Imbalance

(q) For the purposes of the Opening Auction and the Market Order Auction, as the case may be, the term "Imbalance" shall mean the number of buy or sell orders that can not be matched with other orders at the Indicative Match Price at any given time.

Indicative Match Price

(r) For the purposes of the Opening Auction or the Market Order Auction, as the case may be, the term "Indicative Match Price" shall mean for each security (1) the price at which the maximum volume of orders are executable; or (2) if there are two or more prices at which the maximum volume of orders are executable, the price that is closest to the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape.

Limited Price Order

(s) The term "Limited Price Order" shall mean any order with a specified price or prices (e.g., limit orders and Working Orders), other than Stop Orders.

Marketable

(t) The term "Marketable" shall mean, for a Limited Price Order, the price matches or crosses the NBBO on the other side of the market. Market orders are always considered marketable.

Market Maker

(u) The term "Market Maker" shall refer to an ETP Holder that acts as a Market Maker pursuant to Rule 7.

Market Maker Authorized Trader

(v) The term "Market Maker Authorized Trader" or "MMAT" shall mean an authorized trader who performs market making activities pursuant to Rule 7 on behalf of a Market Maker.

Market Participant

(w) For the purposes of Rule 7, the term "Market Participant" shall include electronic communications networks ("ECN"), dealer-specialists registered with a national securities exchange, and market makers registered with a national securities association.

NBBO

(x) The term "NBBO" shall refer to the national best bid or offer.

[Nominee]

[(n)—Deleted.]

[Non-Resident Organization]

[(o)—Deleted.]

Notice of Consent

(y) The term "Notice of Consent" shall mean a written statement provided to the Corporation by a Sponsoring ETP Holder by which the Sponsoring ETP Holder acknowledges responsibility for the orders, executions and actions of its Sponsored Participant(s).

NOW Recipient

(z) The term "NOW Recipient" shall mean any exchange, ECN or other broker-dealer (1) with which the Archipelago Exchange maintains an electronic linkage, which includes ITS, and (2) which provides instantaneous responses to NOW Orders routed from the Archipelago Exchange. The Corporation shall designate from time to time those exchanges, ECNs or other broker-dealers that qualify as NOW Recipients.

Odd Lot Dealer

(aa) The term "Odd Lot Dealer" shall refer to a Market Maker that is registered as an Odd Lot Dealer as described in Rule 7.25.

Parent

(bb) [(p)]—A "parent" of a specified person or organization is an affiliate controlling such person or organization directly[,] or indirectly through one or more intermediaries.

Participant

(cc) The term "Participant" shall mean any ETP Holder, Allied Person, partner, approved person, stockholder associate, registered employee or other full-time employee of an ETP Holder.

PCX Parent

(dd) [(q)] The term "PCX Parent" shall refer to the Pacific Exchange, Inc., a Delaware corporation and national securities exchange as the term is defined *in* [by] Section 6 of the Securities Exchange Act of 1934, as amended. The Pacific Exchange, Inc. is the sole shareholder of the Corporation.

Person

(ee) [(r)]—No change.

Registered Employee

(ff) The term "Registered Employee" shall mean any person soliciting or conducting business in securities on behalf of an ETP Holder.

Routing Agreement

(gg) The term "Routing Agreement" shall mean the form of Agreement between an ETP Holder and the broker-dealer affiliate of Archipelago Exchange, L.L.C., under which the broker-dealer affiliate of Archipelago Exchange, L.L.C., agrees to act as agent for routing orders of the ETP Holder and the ETP Holder's Sponsored Participants entered into the Archipelago Exchange to other market centers or broker-dealers for execution, whenever such routing is required.

Security

(hh) The terms "security" and "securities" mean any security as defined in Rule 3(a)(10) under the Securities Exchange Act of 1934.

Self-Regulatory Organization ("SRO")

(ii) [(s)]—No change.

Sponsored Participant

(jj) The term "Sponsored Participant" shall mean a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to Rule 7.29.

Sponsoring ETP Holder

(kk) The term "Sponsoring ETP Holder" shall mean a broker-dealer that has been issued an ETP by the Corporation who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the Archipelago Exchange. The Sponsoring ETP Holder shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.

Sponsorship Provisions

(ll) The term "Sponsorship Provisions" shall mean the provisions sent forth in Rule 7.29(b)(2). For a Sponsored Participant to obtain authorized access to the Archipelago Exchange, the Sponsored Participant and its Sponsoring ETP Holder must enter into an agreement which incorporates the Sponsorship Provisions.

Stockholder Associate

(mm) The term "Stockholder Associate" means a person who is the employee of an ETP Holder, who is actively engaged in its business and devotes the major portion of his or her time thereto, who is not an ETP Holder or Allied Person, and who, as a holder of equity securities, has been approved by the Corporation as a stockholder associate.

Trading Facilities

(nn) [(t)] The term "Trading Facilities" *or "Facilities"* shall refer to [the Corporation's Los Angeles and San Francisco trading floors, office space] *any and all electronic or automatic trading systems* provided by the Corporation to ETP Holders [and ETP Firms in connection with their floor trading activities, and any and all electronic or automatic systems access programs provided by the Corporation to ETP Holders, ETP Firms and Equity ASAP Holders].

User

(oo) The term "User" shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the Archipelago Exchange pursuant to Rule 7.29.

User Agreement

(pp) The term "User Agreement" shall mean an appropriate subscription agreement entered into by the User with Archipelago Exchange, L.L.C.

Wholly Owned Subsidiary

(qq) [(u)] The term "wholly owned subsidiary" *shall* mean[s] a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly owned subsidiaries.

Rule 2

Equity Trading Permits [and Equity ASAPs]

Securities Business

Rule 2.1(a) Every ETP Holder[, ETP Firm and Equity ASAP Holder] shall have as its principal purpose the conduct of a securities business.

(b) An ETP Holder[, ETP Firm and Equity ASAP Holder] shall be deemed to have such a purpose if and so long as[:]

[(1)] the ETP Holder[, ETP Firm or Equity ASAP Holder, as the case may be,] has qualified and acts in respect of its business in an approved capacity pursuant to the Certificate of Incorporation, Bylaws, Rules and procedures of the Corporation; and all transactions are in compliance with Section 11(a) of the Securities Exchange Act of 1934 as amended and the Rules and regulations adopted thereunder[; or]

[(2) the ETP Holder is a general partner, executive officer or nominee of an ETP Firm who has conferred ETP trading privileges upon that ETP Firm].

(c) No ETP Holder[, ETP Firm or Equity ASAP Holder] shall utilize any scheme, device, arrangement, agreement or understanding designed to circumvent or avoid, by reciprocal means or in any other manner, the provisions of this Rule 2.1.

Qualifications [and Application of Individual Applicants] *of Applicants*

[Rule 2.2—Deleted.]

[Qualifications of Firm Applicants]

Rule [2.3.] *2.2*

[(a)] An ETP [or Equity ASAP] may be held by an entity which is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability companies. A corporation, limited liability company, or limited liability partnership must be organized under the laws of one of the states of the United States or under other laws as the Corporation's Board *of* Directors shall approve.

[(b)–(d)—Deleted.]

Application Procedures

Rule [2.4.] *2.3*

(a) Every [individual] *person* applying to become an ETP Holder[, every individual applying to become the Nominee of an ETP Firm, every entity upon whom an ETP Holder will confer trading privileges, and every entity applying to become an Equity ASAP Holder] shall complete an application on a form prescribed by the Corporation and shall file it with the Corporation. The application shall be filed with such application fees and such documents as may be required by the Corporation. Application fees are not transferable and not refundable.

(b) Within a reasonable period of time following receipt of an application for an ETP [or Equity ASAP], the name of the applicant[, and in the case of an entity, the individual in whose name the permit will be held,] shall be distributed to all ETP Holders and [Equity ASAP Holders and] shall be posted by the Corporation by publishing the name of each applicant in the Corporation's Weekly Bulletin for at least ten (10) calendar days prior to the approval or rejection of the application by the Corporation.

(c) Every [individual] applicant and[, in the case of applicant entities,] all persons associated with the [entity,] *applicant* may be investigated by the Corporation. The applicant shall file with the Corporation such additional documents as may be requested by the Corporation.

(d) Upon completion of the application process, the Corporation shall consider and then approve or reject the application, unless there is just cause for delay. [Individual] *Sole proprietor* applicants and persons associated with applicant entities may be required to appear in person before the Corporation. The Corporation may also require any ETP Holder[, Equity ASAP Holder] or person associated with an ETP [Firm or Equity ASAP] Holder who may possess information relevant to the applicant's suitability for holding an ETP [or Equity ASAP] to provide information or testimony.

(e) The Corporation shall approve an application if it finds that the applicant meets all of the qualifications for holding an ETP [or Equity ASAP]. The Corporation shall reject an application if it does not make such a finding or if it finds that, if the application were approved, the permit holder would be subject to suspension or expulsion under the provisions of the Bylaws, Rules or procedures of the Corporation or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, as amended.

(f)—No change.

(g) In the event that an application is rejected by the Corporation, the applicant shall have an opportunity to be heard upon the specific grounds for the rejection, in accordance with the provisions of Rule 10. An applicant denied an ETP [or Equity ASAP] may challenge the denial by filing with the Corporate Secretary, a petition for review of the denial by the Corporation's Board Appeals Committee. Such petition shall be filed within thirty (30) calendar days of the date upon which the Corporation's decision was mailed to the applicant and shall be filed in accordance with the provisions of Rule [10.14] *10.13*.

Denial of or Conditions to ETPs [or Equity ASAPs]

Rule [2.5.] *2.4*(a) The Corporation may deny (or may condition) trading privileges under an ETP or [Equity ASAP or] may bar a natural person from becoming associated (or may condition an association) with an ETP [Firm or Equity ASAP] Holder for the same reasons that the Securities and Exchange Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Securities Exchange Act of 1934, as amended.

(b) The Corporation may deny or may condition trading privileges under an ETP [or Equity ASAP], or may prevent a natural person from becoming associated (or may condition an association) with an ETP [Firm or Equity ASAP] Holder when the applicant directly or indirectly:

(1) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Corporation and Securities and Exchange Commission policies, [Rules] *rules* and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures;

(2) has previously violated, and there is a reasonable likelihood such applicant will again engage in acts or practices violative of, any applicable Corporation or Securities and Exchange Commission policies, [Rules] *rules* and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those [Rules] *rules* of other self-regulatory organizations of which such applicant is or was a member[:]

(3)–(5)—No change.

(6) owes an undisputed debt to an ETP Holder[, ETP Firm or Equity ASAP Holder] arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP [or Equity ASAP] upon the execution of an agreement regarding repayment of the debt;

(7) allegedly owes a debt to an ETP Holder[, ETP Firm or Equity ASAP Holder] arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP [or Equity ASAP] upon the debt being submitted to arbitration pursuant to Rule 12 at the request of the ETP [Holder, ETP Firm or Equity ASAP] Holder to whom the debt is allegedly owed;

(8)–(10)—No change.

Series 7 Requirement [for Off-Floor Traders]

(A) Traders of ETP [Firms and Equity ASAP] Holders for which the Corporation is the Designated Examining Authority ("DEA") must successfully complete the General Securities Registered Representative Examination (Test Series 7), if the primary business of the ETP [Firm or Equity ASAP] Holder involves the trading of securities that is unrelated to the performance of the functions of a registered [specialist or registered floor broker] *Market Maker. Unless required to complete the Series 7 under Rule 7.21(b)(2), the* [The] following are exempt from the requirement to successfully complete the Series 7 Examination: ETP Holders who are performing the function of a registered [specialist or registered floor broker] *Market Maker* (pursuant to Rule [7.22(a)] *7*).

For purposes of this Rule:

(i) The term "trader" means a person (a) who is directly or indirectly compensated by an ETP [Firm or Equity ASAP] Holder, or who is any other associated person of an ETP [Firm or Equity ASAP] Holder and (b) who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities; and

(ii) The term "primary business" means greater than 50% of the ETP [Firm's or Equity ASAP] Holder's business.

(B) Each ETP [Firm and Equity ASAP] Holder for which the Corporation is the DEA must complete, on an annual basis, and on a form prescribed by the Corporation, a written attestation as to whether the ETP [Firm's or Equity ASAP] Holder's primary business is conducted in the performance of the function of a registered [specialist or a registered floor broker] *Market Maker* (pursuant to Rule [7.22(a)] *7*).

(C) The requirement to complete the Series 7 Examination will apply to current traders of ETP [Firms and to Equity ASAP] Holders that meet the criteria of subsection (A), above, as well as to future traders of ETP [Firms or Equity ASAP] Holders that meet the criteria of subsection (A), above, at a later date. Traders of ETP [Firms or Equity ASAP] Holders that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Corporation.

(11)–(13)—No change.

(c) The Corporation may waive or modify a required examination for any applicant if, within two years of the date such applicant applied to the Corporation for an ETP [or Equity ASAP], such applicant has successfully completed a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.

(d) The Corporation shall regard the failure by any applicant to carry out any contract or honor any financial commitment with an ETP Holder[, ETP Firm or Equity ASAP Holder] as a violation of just and equitable principles of trade, and an indication of a broker or dealer applicant's inability to meet such standards of financial responsibility as may be set by the Corporation.

(e) No change.

(f) The Corporation's Business Conduct Committee may take action against an ETP Holder[, ETP Firm or Equity ASAP Holder] under Rule 10 when any of the above reasons for denying or conditioning the issuance of an ETP [or Equity ASAP, as the case may be,] come into existence after an application has been approved and an ETP [or Equity ASAP] has been issued.

Publication of Approved ETP [and Equity ASAP] Applications

Rule [2.6] *2.5* With respect to each ETP [and Equity ASAP] that is issued, the Corporation shall promptly distribute a notice thereof to all ETP Holders[, ETP Firms or Equity ASAP Holders] by publishing the name of each new ETP Holder[, ETP Firm and Equity ASAP Holder] in the Corporation's Weekly Bulletin.

Requirements of Holding an ETP [or Equity ASAP]

Requirements Applicable Generally

Revocable Privilege

Rule [2.7] *2.6*. The issuance of an ETP [or an Equity ASAP] constitutes only a revocable privilege and confers on its holder no right or interest of any nature to continue as an ETP Holder[, ETP Firm or Equity ASAP Holder, as the case may be].

No Liability for Using Trading Facilities

Rule [2.8] *2.7*. The Corporation shall not be liable for any damages sustained by an ETP Holder[, ETP Firm or Equity ASAP Holder] growing out of the use or [employment] *enjoyment* by such ETP [Holder, ETP Firm or Equity ASAP] Holder of the facilities afforded by the Corporation in the conduct of [their] *its* business. Each ETP Holder[, ETP Firm and Equity ASAP Holder] expressly [agree] *agrees*, in consideration of the issuance of the ETP [or Equity ASAP, as the case may be], to release and discharge the Corporation, its officers, directors, employees and agents, of and from claims or damages arising from their acceptance and use of such ETP [or Equity ASAP] and their agreement to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation.

Corporation Not Bound By ETP Holder[, ETP Firm or Equity ASAP Holder] Agreements

Rule [2.9] *2.8*. Nothing contained in any partnership agreement, limited partnership agreement, articles of incorporation, resolutions, by-laws or any other organizational documents, or amendment thereto, of an ETP [Firm or Equity ASAP] Holder, not any other agreements between any ETP [Holder, ETP Firm and/or Equity ASAP] Holder and a third party, or any amendment thereto, even though submitted to or filed with the Corporation, shall obligate or be binding upon the Corporation.

Only ETP [Firms and Equity ASAP Holders To Trade Under Firm Name] *Holder Organizations May Carry Customer Accounts*

[Rule 2.10.] *Rule 2.9*. [Only Equity ASAP] *Only ETP* Holders [and ETP Firms] which are partnerships, limited liability partnerships, corporations or limited liability companies shall carry accounts for customers or conduct business under a firm name[, except that if by death or otherwise, an ETP Firm is reduced to the ETP Holder, such ETP Firm may continue business in the firm name for such a period only as may be allowed by the Corporation].

Sole Proprietors [and Individual ETP Holders]

[Rule 2.11] *Rule 2.10(a)* A sole proprietor *ETP Holder* may not carry public customer accounts.

[(b)–(c)—Deleted.]

[(d)]*(b) Sole proprietor* ETP Holders shall comply with such additional requirements as the Corporation may from time to time prescribe.

ETP [Firms and Equity ASAP Holders] *Holder Organizations*

[Rule 2.12] *Rule 2.11*[(a)—Deleted.]

[(b)] *(a)* Each ETP [Firm and Equity ASAP] Holder shall maintain at the Corporation at all times a record of the name and address of the individual duly authorized by such [Firm or] *ETP* Holder to receive and accept legal or other notices on its behalf.

[(c)] *(b)* An ETP [Firm or Equity ASAP] Holder shall adopt such restrictions on the conduct of its affairs as may be prescribed by the Corporation, including, without limitation, restrictions to the payment of dividends and loans to officers, directors, stockholders, partners or members.

Rule [2.13] *2.12*. An ETP [Firm or Equity ASAP] Holder that intends to admit any person to partnership, or to elect or appoint any person as an officer or director, or to enter into a partnership agreement, or to form a corporation or limited liability company or other entity, or to alter the terms of an existing partnership agreement or articles of incorporation or limited liability company agreement or other similar operating agreement shall notify the Corporation in writing of such proposed admission, arrangement, or alteration before said becomes effective and shall submit such papers and information and comply with such requirements in connection therewith as the Corporation may prescribe.

Rule [2.14] *2.13*

(a) Allied Persons and Approved Persons, as defined in Rule 1, shall be subject to approval by the Corporation. An ETP [Firm or Equity ASAP] Holder which proposes to admit an Allied Person or an Approved Person shall notify the Corporation in writing, shall pay any applicable fees and shall submit such information as may be reasonably required by the Corporation.

(b) In order to maintain its trading privileges, each ETP [Firm and Equity ASAP] Holder shall obtain approval from the Corporation for all persons required to be approved, and each such ETP [Firm and Equity ASAP] Holder shall maintain continuous compliance with all standards prescribed by the Bylaws and Rules of the Corporation.

(c) Each ETP [Firm and Equity ASAP] Holder shall promptly give the Corporation written notice on such form as may be required by the Corporation of the death, retirement, or other termination of any ETP Holder, [Equity ASAP Holder,] Allied Person, Approved Person and of the dissolution of the ETP [Firm or Equity ASAP] Holder.

(d) Each ETP [Firm and Equity ASAP] Holder shall designate "principal executive officers" of such corporation who must[, in the case of ETP Firms,] be [ETP Holders or] Allied Persons, and who[, in either case,] must exercise supervision and control over the various areas of the business of such [Firm or] *ETP* Holder in such areas as the Rules of the Corporation may prescribe.

(e) Each ETP [Firm and Equity ASAP] Holder shall include in its name an appropriate identifier of its corporate or business association status, in English (e.g., Incorporated, Corporation, Limited Liability Company, Limited Liability Partnership, or an appropriate abbreviation thereof).

(f) The Corporation may require each applicant becoming a general partner, officer, voting stockholder, limited liability company member, or director of any ETP [Firm or Equity ASAP] Holder to pass an examination to demonstrate that they have adequate experience and knowledge of the securities business before undertaking any active duties with the firm. Compliance with this requirement may be waived if the principal is a member of an ETP [Firm or Equity ASAP] Holder belonging to another national securities exchange having comparable requirements.

(g) Each ETP [Firm] *Holder* shall be liable for all [of the] liabilities to the Corporation of [the ETP Holders, as the case may be, conferring his or her on their ETP trading privileges on the firm] *authorized traders*, which shall include, without limitation, the payment of all [Corporation] fees and charges as well as meeting all obligations accruing in the course of [the firm's (or its respective ETP Holders')] *an ETP Holder's or AT's* business with the Corporation.

(h) Each [ETP Holder, Equity ASAP Holder,] Approved Person, Allied Person, Affiliate, and Associated Person shall be liable to the same discipline and penalties for the acts and omissions of his or her ETP [Firm or Equity ASAP] Holder[, as the case may be,] as for their own acts.

(i) Claims of [ETP Holders, Equity ASAP Holders,] Affiliates, Allied Persons, directors, officers, and Associated Persons of an ETP [Firm or Equity ASAP] Holder shall be subordinate in right of payment to payment or provision for payment of all claims of customers of such ETP Holder[, ETP Firm or Equity ASAP Holder].

(j) Each ETP [Firm and Equity ASAP] Holder shall submit to the Corporation, at such times as the Corporation may require, an affidavit listing, to the best of its knowledge and belief, the name of each party directly or indirectly beneficially owning 1% or more of its outstanding voting stock and showing the percentage of such ownership.

(k) No parent or person controlling any parent of an ETP [Firm or Equity ASAP] Holder may engage in any transaction or action for the purpose of circumventing any Rule of the Corporation governing the activities of an ETP [Firm or Equity ASAP Holder, as the case may be.] *Holder*.

(l) ETP [Firms and Equity ASAP] Holders shall comply wit such additional requirements as the Corporation may from time to time prescribe.

Rule [2.15] *2.14*.

(a) Each ETP [Firm and Equity ASAP] Holder that is a partnership (whether general or limited) and which has only one general partner shall provide in its partnership agreement that:

(1)–(2)—No change.

(b) Upon the death or withdrawal of any partner, if the partnership business is continued by the surviving partners, the continuing partnership will not be recognized as an ETP [Firm or Equity ASAP] Holder[, as the case may be,] if the unsubordinated claim of the deceased or withdrawing partner to a return of such deceased or withdrawing partner's capital contribution would result in a net capital impairment of the continuing partnership. The continuing partnership will ordinarily be recognized as an ETP [Firm or Equity ASAP] Holder[, as the case may be,] during the period of subordination of such claim if subordination provisions substantially as follows are included in the partnership agreement:

Upon the death of a withdrawal of any partner, if the surviving partners desire to continue to the partnership business, the capital contribution of such deceased or withdrawing partner shall remain at the risk of the business and shall be considered capital of such continuing firm for a period of fifteen (15) calendar days to the extent necessary to comply with the net capital requirements of the Corporation. Any claim of the withdrawing partner or of the personal representative of the deceased partner to the repayment of such deceased or withdrawing partner's capital contribution during such period shall be subordinated to the payment in full of such claims of all present and future creditors of the continuing partnership arising out of any matters occurring before the end of such period.

[Terms and Conditions Relating to Equity ASAPs]

[Rule 2.16.—Deleted]

Responsibilities of Non-resident Firms

Rule [2.17.] *2.15*(a) An ETP [Firm or Equity ASAP] Holder that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Securities and Exchange Commission and the Corporation must:

(1)—No change.

(2) Reimburse the Corporation for any expenses incurred in connection with examinations of the ETP Holder[, ETP Firm or Equity ASAP] Holder to the extent that such expenses exceed the cost of examining an ETP [Holder, ETP Firm or Equity ASAP] Holder located within the continental United States in the geographic location most distant from the principal office of the Corporation or, in such other amount as the Corporation may deem to be an equitable allocation of such expenses,

(3)—No change.

(4) Utilize, either directly or indirectly, the services of a broker/dealer registered with the Securities and Exchange Commission, a bank or a clearing agency registered with the Securities and Exchange Commission located in the United States in clearing all transactions involving persons affiliated with the ETP Holder [, ETP Firm or Equity ASAP Holder,] except where both parties to a transaction agree otherwise.

Amendments to ETP [Firm and Equity ASAP] Holder Documents

Rule [2.18.] *2.16*(a) All formation documents for ETP [Firms and Equity ASAP] Holders, such as articles of incorporation, by-laws, partnership agreements, limited liability company agreements, and all amendments thereto, now in effect or adopted in the future, shall be filed with the Corporation and shall be subject to approval by the Corporation.

(b) Each ETP [Holder, ETP Firm and Equity ASAP] Holder must submit to the Corporation any amendment to any document submitted as part of their application, including but not limited to amendments to documents required by Rule[4] *2.3*, amendments to the [permit holder's] *ETP Holder's* Form BD, and changes to the [permit holder's] *ETP Holder's* home or business address, within fifteen (15) business days of such amendment or change.

ETP Charges

Rule [2.19.] *2.17*(a) Securities and Exchange Commission Registration Fee: Section 31 of the Securities Exchange Act of 1934 imposes upon every national securities exchange the payment of a fee of 1/300th of 1 percentum of the aggregate dollar amount of the sales of securities transacted on the exchange, subject to some limitations. There shall be paid to the Corporation by each ETP Holder[, ETP Firm or Equity ASAP Holder] in such manner and at such times as the Corporation shall direct, Section 31 fees equal to the sum of one cent for each $300 or fraction thereof of the aggregate dollar amount of the sales of securities transacted by it through the Corporation, except in respect of transactions in securities which are direct obligations of or guaranteed as to principal or interest by the United States, or such securities issued, or obligations guaranteed by corporations in which the United States has a direct or indirect interest as may be designated for exemption therefrom by the Secretary of the Treasury. Such sum shall be paid by the selling ETP Holder[, ETP Firm or Equity ASAP Holder] as appearing on the comparison ticket of each transaction effected. The selling ETP [Holder, ETP Firm or Equity ASAP] Holder shall charge and collect such sum from the persons for whom he, she or it was acting in making the transaction. [Specialists] *Market Makers* shall pay such sum of both odd lots and round lots that they sell.

(b) Other Charges: In addition to transaction fees and the Securities and exchange Commission registration fee, the

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Corporation may from the time fix and impose other charges or fees to be paid by ETP Holders[, ETP Firms and Equity ASAP Holders] for the use of equipment or facilities or for services or privileges granted.

Exemption from Registration Requirements

Rule [2.20.] *2.18.* An ETP [Firm or Equity ASAP] Holder shall be exempt from such registration requirements as the Corporation may designate if it is a member organization of another self-regulatory organization, which is the appointed Designated Examining Authority ("DEA") for such organization by the Securities and Exchange Commission.

Termination of [Trading Privileges] ETP

[Rule 2.21] *Rule 2.19*(a) [Trading privileges conferred by an] An ETP [or Equity ASAP] will terminate upon the occurrence of any one of the following conditions:

(1) the expulsion of the ETP Holder[, ETP Firm or Equity ASAP Holder] from the Corporation's Trading Facilities;

(2) the suspension of the ETP Holder[,] *where such* ETP [Firm or Equity ASAP] Holder [where such Holder or Firm] failed to be reinstated at the expiration of the period of suspension, including any extension of such period which may have been granted by the Corporation;

(3) the formal or informal dissolution or winding up of an ETP [Firm or Equity ASAP] Holder;

(4)–(5)—No change.

(b) Obligations of Terminating ETP Holders[, ETP Firms and Equity ASAP Holders]: Every ETP [Firm, and Equity ASAP] Holder, and any successor-in-interest thereto, and each ETP [Holder and Equity ASAP] Holder whose trading privileges are terminated due to expulsion, suspension without reinstatement, death, declaration of incompetency, dissolution, winding up, or other cessation of business, must be current in all filings and payments of dues, fees and charges relating to that ETP [or Equity ASAP, as the case may be], including, without limitation, filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation. if any ETP Holder, [ETP Firm, or Equity ASAP Holder,] or any successor-in-interest thereto, fails to make all such filings, or to pay all such dues, fees and charges, the Secretary of the Corporation shall retain such jurisdiction over such former ETP Holder[, ETP Firm or Equity ASAP] Holder to require such filings and collect such outstanding dues fines and charges until such time as they have been filed and/or paid.

[(c)—Deleted.]

Limited Transferability

Rule [2.22] *2.20*(a) Transfer by Purchase, Sale or Lease Prohibited. ETPs [and Equity ASAPs] may not be purchased (other than from the Corporation), sold or leased. Any purported purchase (other than from the Corporation), sale or lease of an ETP [or Equity ASAP] shall be void abe inition within further action by the Corporation.

(b) Private Transfer Void: An ETP [Holder, ETP Firm or Equity ASAP] Holder which attempts to transfer an ETP [or Equity ASAP] by private sale or lease, or otherwise, may be adjudged guilty of conduct detrimental to the interest and welfare of the Corporation, and any purported transfer shall be void ab initio without further action by the Corporation and will confer no rights upon the purported transferee.

[(c)—Deleted.]

Employees of ETP [Firms and Equity ASAP] Holders Registration

Rule [2.23] *2.21*(a) Every employee, including *any* branch office [*managers*] *manager*, of an ETP [Firm or Equity ASAP] Holder who is compensated directly or indirectly for the solicitation or handling of business in securities, including trading in securities for the account of the organization, whether such securities are those dealt in on the Corporation or those dealt in over-the-counter, must be registered with an approved by the Corporation.

The Corporation may waive compliance with the requirements of Rule [2.23(a)] 2.21(a) in the event the ETP [Firm or Equity ASAP] Holder is also a member organization of another national securities exchange having comparable requirements.

(b)–(c)—No change.

(d) A registered employee may not be engaged in any other business or be employed by another employer in any capacity or receive compensation, without the prior written and continuing approval of his or her ETP Holder[, ETP Firm or Equity ASAP Holder, as the case may be,] and such registered employee shall devote a substantial portion of the business day to the activities of his or her [Firm or] *ETP* Holder.

(e) No ETP [Holder, ETP Firm or Equity ASAP] Holder may employee any employee of the Corporation during the hours of regular employment by the Corporation. No ETP [Holder, ETP Firm or Equity ASAP] Holder may employ any employee of the Corporation outside the hours of regular employment by the Corporation without having obtained the prior, written approval therefore of the Corporation and registering therewith the name of said employee, the nature of the services rendered and the amount of said compensation.

(f) No ETP [Holder, ETP Firm or Equity ASAP] Holder shall give any compensation or gratuity in any one calendar year in excess of $100 to any employee of any other ETP Holder, [ETP Firm or Equity ASAP Holder,] to ro any employee of a broker or dealer, bank or institution that is not an ETP Holder, [ETP Firm or Equity ASAP Holder,] without the prior consent of the employee's employer.

(g) No ETP [Holder, ETP Firm or Equity ASAP] Holder shall give any compensation to any officer, director, employee or other agent of the Corporation without the prior written consent of the Corporation. No ETP [Holder, ETP Firm or Equity ASAP] Holder shall give any gratuity or gift in any one calendar year in excess of $100 to any officer, director, employee or other agent of the Corporation without the prior written consent of the Corporation. All requests for such consent should contain the following information.

(1)–(5)—No change.

(h) Termination of the employment of a registered employee shall be reported to the Corporation, and the Corporation shall be notified in writing of the specific grounds for termination immediately when the employment of any persion is terminated by an ETP Holder[, ETP Firm or Equity ASAP Holder] under circumstances involving misconduct, fraud or unethical practices.

[Trading Floor Employees of ETP Firms]

[Rule 2.24—Deleted.]

Managatory Decimal Pricing Testing

Rule [2.25] *2.22*(a)[(1)]. *Point-to-Point Testing.* Each ETP Holder[, Equity ASAP Holder or ETP Firm] that has an electronic interface with the Corporation must participate in point-to-point testing with the Corporation of its computer systems designed to ascertain decimal pricing conversion compatibility of those computer systems, in a manner and frequency as prescribed by the Corporation. An ETP Holder[, Equity ASAP Holder or ETP Firm) that has its electronic interface through a service provider need not participate in point-to-point testing if, by a time designated by the Corporation.

[(A)] *(1)* The service provider conducts successful tests with the Corporation on behalf of the firms it serves.

[(B)] *(2)* The ETP Holder[, Equity ASAP Holder or ETP Firm] conducts successful point-to-point testing with the service provider and

[(C)] *(3)* The Corporation agrees that further testing is not necessary.

[(2)] *(b) Industry Wide Testing.*The Corporation may require certain of its ETP Holders[, Equity ASAP Holders or ETP Firms] to participate in industry wide testing of computer systems for decimal pricing conversion. The Corporation may require any ETP Holder[, Equity ASAP Holder or ETP Firm] who will participate in industry wide testing to also participate in any tests necessary to ensure preparedness to participate in industry wide testing.

[(3)] *(c) Reports.* ETP Holders[, Equity ASAP Holders or ETP Firms] participating in point-to-point testing (whether between the firm and the Corporation, between the firm and its service provider, or between the ETP Holder's[, Equity ASAP Holder's or ETP Firm's] service provider and the Corporation) or industry wide testing must file reports with the Corporation concerning the required tests in the manner and frequency required by the Corporation.

[(4)] *(d)* Documentation. ETP Holders[, Equity ASAP Holders or ETP Firms] must maintain adequate documentation of tests required by this Rule and the results of such testing for examination by the Corporation.

Commentary

.01 This rule will expire automatically upon the full implementation fo decimal pricing.

Transition

Rule 2.100. Any PCX member, as defined in the PCX Parent Rule 1.1, or Equity ASAP Holder that wishes to continue to effect securities transactions without interruption of the Corporation's Trading Facilities must obtain an ETP prior to the first day the Archipelago Exchange becomes operational. If the PCX members or equity ASAP Holder fails to obtain an ETP prior to the first day the Archipelago Exchange becomes operational, the PCX member or equity ASAP holder will not be permitted to effect securities transactions on the Corporation's Trading Facilities until such PCX member of Equity ASAP Holder obtains an ETP.

Rule 3

Organization and Administration

Part I—Committees of the Corporation

Overview

Rule 3.1(a).—No change.

Equity Committees

Rule 3.2.

(a) General Provisions:

(1)–(7)—No change.

(8) Eligibility for and Appointment to Equities Committees. Any ETP [Holder and Equity ASAP] Holder of the Corporation in good standing or allied person of an ETP [Firm or Equity ASAP] Holder, or any person from the public is eligible for appointment or election to Equity Committees. Only one person affiliated with the same ETP [Firm or Equity ASAP] Holder shall be eligible for service on the same Equity Committee. Except as otherwise set forth in these Rules, the Chief Executive Officer of the Corporation shall appoint eligible ETP Holders [, Equity ASAP Holders] and persons from the public to the positions so allocated on Equity Committees for terms of one (1) year.

(9) Alternate Members. The Chief Executive Officer of the Corporation may designate one or more ETP Holders, [Equity ASAP Holders,] an allied person of an ETP [Firm or Equity ASAP] Holder, and persons from the public as alternate members of any Equity Committee, who may replace any absent or disqualified member at any meeting of such committee.

(10)–(11)—No change.

(b) Equity Committees. As set forth below, the Board of Directors has delegated certain authority and functions to its committees. Action taken pursuant to delegated authority, however, is subject to review, ratification or rejection by the Board of Directors.

(1) Business Conduct Committee.

(A) Composition. In addition to any members of the public on the Business Conduct Committee, the Business Conduct Committee shall have [proportional representation of all (i) ETP Holders and ETP Firms and (ii) Equity ASAP Holders, with] a minimum of one ETP Holder or allied person of an ETP [Firm and one Equity ASAP] Holder [or allied person of an Equity ASAP Holder].

(B) Functions and Authority. The Business Conduct Committee shall, in accordance with the Bylaws, Rules and procedures of the Corporation, have the following functions and authority:

(i) Examine the business conduct and financial condition of ETP Holders [, ETP Firms, Equity ASAP Holders,] and associated persons;

(ii)–(iii)—No change.

(iv) Require the production of detailed financial reports of an ETP Holder[, ETP Firm, or ASAP Holder] and such other operational reports as it may deem relevant.

(C) This Committee shall have authority, whenever it appears that an ETP [Firm, ETP Holder, or Equity ASAP] Holder is in violation of Rule 4, to direct a representative of such ETP [Firm, ETP Holder, or Equity ASAP] Holder to appear before the Committee for examination upon 48 hours notice, either orally or in writing. After such examination, the Committee shall have authority to suspend such ETP [Firm, ETP Holder, or Equity ASAP] Holder until the requirements of Rule 4 are fully met. Any such suspension directed by the Committee shall be subject to review by the Board. Such review shall not operate as a stay of the suspension unless specifically allowed by the Board. In the event of a reversal of the suspension imposed by the Committee, an ETP [Firm, ETP Holder, Equity ASAP] Holder or officer, partner, director, stockholder, or representative thereof shall be prohibited from instituting a lawsuit in any forum against the Corporation or the members of the Committee, based in whole or in part upon the suspension imposed by the Committee.

(D)—No change.

(2) Nominating Committee.

(A) Composition. The Nominating Committee shall have seven members consisting of six ETP Holders [and/or Equity ASAP Holders] and one person from the public. [The six ETP Holders and/or Equity ASAP Holders on the Nominating Committee shall represent proportionally all (i) ETP Holders and ETP Firms and (ii) Equity ASAP Holders, with a minimum of one ETP Holder or allied person of an ETP Firm and one Equity ASAP Holder or allied person of an Equity ASAP Holder.]

(B) Nomination, Appointment and Election.

(i) Nomination. Sixty-five days prior to the expiration of the term of its members, the Nominating Committee shall publish a slate of six eligible nominees to fill the positions during the next annual term of the Nominating Committee. ETP [Holders and Equity ASAP] Holders in good standing may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill [ETP/Equity ASAP] *ETP* positions during the next annual term, and upon written petition of at least 10 percent of ETP Holders [and Equity ASAP Holders, considered as one group,] in good standing on or before the forty-fifth day preceding the expiration of the existing term such person(s) shall also be nominated by the Nominating Committee.

(ii)—No change.

(iii) Election. In the event that ETP Holders [or Equity ASAP Holders], or allied persons of an ETP [firm or Equity ASAP] Holders, are nominated by the Nominating Committee pursuant to petition by the ETP Holders [and/or Equity ASAP Holders], and there are more than six nominees to fill the [ETP/Equity ASAP] *ETP* Holders positions on the Nominating Committee, the Nominating Committee shall submit the nominees to the ETP Holders [and the Equity ASAP Holders], collectively for election. Each ETP [Holder and Equity ASAP] Holder in good standing shall be permitted to vote for up to six nominees and the six nominees receiving the most votes shall fill the [ETP/Equity ASAP] *ETP* positions as members during the next annual term of the Nominating Committee. Tie votes shall be decided by the Board of Directors at its first meeting following the election.

(iv) Acclamation of Slate. In the event there are only six nominees to fill the [ETP/Equity-ASAP] *ETP* positions on the Nominating Committee on or after the forty-fifth day prior to the expiration of the terms of the outgoing Nominating Committee, those six nominees shall be deemed elected to the next annual term of the Nominating Committee.

(C) Representatives to the Board of Directors of the Corporation and the Board of Governors of the Pacific Exchange, Inc.

(i) Nomination. Sixty-five days prior to the expiration of the term of its Directors, the Nominating Committee shall publish the names of two (2) ETP Holders, [Equity ASAP Holders,] or persons affiliated with such Holders (in any combination) as its nominees for the Board of Directors of the Corporation and one ETP Holder, [Equity ASAP Holder,] or allied [persons] *person* of an ETP [Firm or Equity ASAP] Holder, as nominee for the Board of Governors of the Pacific Exchange, Inc. The nominee for the Board of Governors may be a person nominated to the Board of Directors. ETP [Holders and Equity ASAP] Holders in good standing may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill [ETP/Equity ASAP] *ETP* positions during the next term, and upon written petition of at least 10 percent of ETP Holders [and Equity ASAP Holders, considered as one group,] in good standing on or before the forty-fifth day preceding the expiration of the existing term such person(s) shall also be nominated by the Nominating Committee.

(ii) Selection of Nominees. In the event that [ETP/Equity ASAP] *ETP* positions are nominated by the Nominating Committee pursuant to petition by the ETP Holders [and Equity ASAP Holders], and there are three or more nominees for the Board of Directors or two or more nominees for the Board of Governors, the Nominating Committee shall submit the contested nomination(s) to the ETP Holders [and Equity ASAP Holders, considered as one group,] for selection. Each ETP [Holder and Equity ASAP] Holder in good standing may select two nominees for contested seats on the Board of Directors and one nominee for contested seats on the Board of Governors. With respect to contested positions, the two nominees for the Board of Directors and the nominee for the Board of Governors selected by the most ETP Holders [and Equity ASAP Holders, considered as one group,] shall be submitted by the Nominating Committee to the Board of Directors of the Corporation or the Board of Governors of the Pacific Exchange, Inc., as the case may be. Similarly, the Nominating Committee shall submit uncontested nominees to the Board of Directors of the Corporation or the Board of Governors of the Pacific Exchange, Inc., as the case may be. Tie votes shall be decided by the respective Board at its first meeting following the election.

(3)—No change.

(c)—No change.

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Board Committees

Rule 3.3(a). Board Committees.

(1) Board Appeals Committee.

(A) Composition. The Board of Directors may appoint one or more Appeals Committees to conduct reviews of matters subject to the applicable provisions of Rule 3.2b(b)(1)(C), 5 or 10. The Board of Directors will determine the size of any Appeals Committee that it appoints. Each Appeals Committee will contain at least one public director and at least one director that is an ETP Holder[,] *or* allied person of an ETP [Firm, Equity ASAP] Holder [or allied person of an Equity ASAP Holder].

(B)—No change.

Part II—Regulation

Self-Regulatory Responsibilities

Rule 3.4. The Pacific Exchange, Inc. ("PCX Parent"), as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary, PCX Equities, Inc. ("Corporation"). Notwithstanding the delegation of authority to the subsidiary, as set forth below in Rule 3.5, the PCX Parent shall review and ratify any rule change adopted by *the* Board of Directors of the Corporation before such rule change becomes the final action.

Delegation of Authority

Rule 3.5(a). Except as otherwise provided in the Bylaws, Rules and procedures of the Corporation, the Chief Regulatory Officer or such other designated officer of the Corporation shall have the following delegated authority.

(1) To establish and interpret rules and regulations for ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons including, but not limited to trading rules, fees, access to and use of system facilities, and arbitration procedures.

(2) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons. This includes, but is not limited to, the following:

(A) Arbitration of disputes between ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons arising from transactions on the facility;

(B) Financial responsibility;

(C) Clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons in general; and

(D) Qualification requirements for ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons.

(3)—No change.

(4) To administer programs and systems for the surveillance and enforcement of rules governing the conduct and trading activities of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons.

(5)—No change.

(6) To examine and investigate ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons to determine if they have violated the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules, and regulations that the Corporation has the authority to administer, interpret, or enforce.

(7) To place restrictions on the business activities of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.

(8)—No change.

(9) To appoint [Trading Officials] *staff, as necessary,* that shall be responsible for the general supervision of the conduct and dealings of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons on the trading [facility] *facilities.* These duties include, but are not limited to, the following:

(A) Arbitrate differences between ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons arising from transactions on the trading [facility] *facilities;*

(B) Supervise all connections or means of communication with the trading [facility] *facilities,* which may require the discontinuance of any such connection or means of communication that is deemed contrary to the welfare or interest of the Corporation;

(C) Issue a [Floor Citation] *citation* when it appears that a Minor Rule Plan violation has occurred as specified in Rule 10;

(D) Declare a "fast [market" or] *market,"* invoke a trading halt in a security due to an influx of orders or other unusual market conditions or circumstances[. Take], *or take* such other actions as are deemed necessary in the interest of maintaining a fair and orderly market; and

(E) Supervise and regulate the operation of ITS, or any other application of the system during active openings, heavy trading and unusual situations.

(10) To administer or enforce policies and Rules of the Corporation [(including) (*as well as* federal and state regulations) governing the initial and continued listing or trading of securities on the Corporation.

Surveillance Agreements

Rule 3.6.—No change.

Part III—Dues, Fees and Fines

Dues, Fees and Charges

Rule 3.7. ETP Holders[, ETP Firms, and Equity ASAP Holders] of the Corporation, whether or not in good standing, shall pay to the Corporation such dues, fees and charges as the Board of Directors shall prescribe.

Liability for Payment

Rule 3.8. An ETP Firm or Equity ASAP Holder] failing to pay any dues, fees, charges or fines to the Corporation for thirty days after the same shall become payable, may be suspended by the Board of Directors or the Chief Executive Officer of the Corporation in accordance with Rule 11.2.

Fines

Rule 3.9.—No change.

Rule 4

Capital Requirements, Financial Reports, Margins

Section 1. Capital Requirements

Minimum Net Capital

Rule 4.1[(a). To the extent applicable, every ETP Holder, ETP Firm and Equity ASAP Holder). *ETP Holders that are subject to Rule 15c3 under the Securities Exchange Act of 1934 ("Exchange Act"), as amended,* shall maintain a minimum net capital in accordance with the provisions of Rule 15c3–1 under the [Securities] Exchange Act [of 1934 ("Exchange Act"), as amended. For). *Each* ETP [Holders and ETP Firms, this requirement is in addition to the requirements of Rule 4.2 (Specialist Post Capital). Each ETP Holder, ETP Firm and Equity ASAP] Holder shall promptly notify the Corporation and, pursuant to the provisions of Rule 17a–11 under the Exchange Act, the Securities and Exchange Commission if such ETP [Holder, ETP Firm or Equity ASAP] Holder's net capital does not equal or exceed the appropriate minimum required by Rule 15c3–1 or if notice is otherwise required by Rule 17a–11.

[(b)–(c)—Deleted.]

[(d)) Each [specialist firm) *Market Maker* shall report its net capital to the Corporation in a form and manner prescribed by the Corporation.

Commentary

.01 ETP [Firms] *Holders* Who Do Not Carry Customers' Accounts

An ETP Holder[, Equity ASAP Holder or ETP Firm] operating under paragraph (a)(2) of SEC Rule 15c3–1 shall file a written application with the Corporation for approval on a form prescribed by the Corporation.

.02 Trading in Gold and Silver Bullion:

(a) Where gold or silver bullion, which upon payment to the seller is within the ETP [Firm's] *Holder's* control in good deliverable form and covered by appropriate insurance, is purchased by customers under agreements wherein full payment is required and is made within seven business days after the date of purchase, or full payment is required and made within an extended or longer period of time as approved by the Corporation upon application, such purchases may be considered bona fide cash transactions which require no deduction from net worth in computing net capital. In all other purchases by customers of such gold or silver bullion, which liquidate to an equity, cash required, if any, to provide margin equal to 25% (10% if hedged by futures contracts in the same commodity) of the market value of the gold or silver bullion in each such customer's account in equity shall be deducted from net worth in computing net capital.

(b) If upon payment to the seller, gold or silver bullion purchased by customers and paid for by them is not within the ETP [Firm's] *Holder's* control in good deliverable form and covered by appropriate insurance, the market value of such gold or silver bullion shall be deducted from net worth in computing net capital so long as the ETP [Firm] *Holder* is accountable therefore. If upon payment to the seller, gold or silver bullion purchased for a proprietary account is not within the ETP [Firm's] *Holder's* control in good deliverable form and covered by appropriate insurance, such gold or silver bullion shall be considered to have no market value for purposes of net capital.

(c) Definitions:

(1) "Within the ETP [Firm's] *Holder's* Control"

Gold or silver in bullion form, identified by serial number or otherwise, and subject to immediate disposition at the direction of the [member firm] *ETP Holder.*

Storage arrangements acceptable to insurance carriers will satisfy the Corporation provided the coverage complies with the "appropriate insurance" requirement discussed below. While the Corporation will not specify acceptable bullion depositories to [ETPs] *ETP Holders,* certain custodial requirements must be satisfied whenever gold or silver bullion is stored in outside depositories. The ETP [Firm] *Holder* shall satisfy itself that the depository will maintain physical possession or control of the bullion stored for its customers free of any lien or claim on such bullion other than that arising out of, and limited to the extent of, any margin transaction or other unpaid for transaction. Records shall be maintained to separately identify customer pledged gold and silver bullion subject to lien from that customer bullion not pledged and fully paid for. The ETP [Firm] *Holder* shall include as part of a written agreement with the depository such other protections as may be deemed necessary. ETP [Firms] *Holders* considering the utilization of foreign depositories are cautioned to familiarize themselves with foreign laws on banking and bankruptcy to insure compliance with this paragraph, since these laws may differ significantly from those of the United States.

(2)—No change.

(3) "Appropriate Insurance"

All gold or silver under the control of an ETP [Firm] *Holder,* whether stored in a depository, in its own custody, in transit, or in any other location, within the ETP [Firm's] *Holder's* control, shall be covered by insurance of the ETP [Firm] *Holder.*

"Appropriate insurance" is defined to mean inclusion of gold and silver bullion as covered property under a broker's blanket bond as required by Rule 2, subject to the following additional criteria which specifically apply to gold and silver bullion wherever stored:

(A) That gold and silver stored meets the ETP [Firm's] *Holder's* insurance carrier's standards including specific identification so as to preclude non-coverage as an inventory loss;

(B) that gold and silver bullion be insured at full market value when in transit;

(C) that no dollar amount of gold and silver bullion stored in depository exceed the sum of the ETP [Firm's (a)] *Holder's (i)* insurance coverage and [(b)] *(ii)* excess net capital; and

(D) that the value of any bullion stored in a depository and in transit in excess of the sum of [(iii)(a)] (C)(i) and [(b)] (ii) is charged to net capital. (The ETP [Firm] *Holder* may, should it wish, avoid this capital charge by acquiring separate insurance to fully cover bullion exceeding the amount in the broker's blanket bond.) ETP [Firms] *Holders* shall file with the Corporation copies of letters from its insurance underwriters setting forth the extent of its coverage for bullion stored in its depositories.

(d) Further Customer Protections—To further ensure protection of customers of [member organizations, the Exchange] *ETP Holders, the Corporation* has established the following guidelines:

(1) Disclosure to Customer

The ETP [Firm] *Holder* shall fully disclose to its customer all relevant information pertaining to a transaction, including, but not limited to, names and locations of depositories, insurance coverage, charges incidental to storage, requirements and costs related to taking physical delivery of the bullion (e.g., possible need for assay), and applicable [Federal] *federal,* state or local laws or regulations (e.g., sales tax implications of the purchase).

Communications to the public with regard to gold and silver shall state that SIPC coverage is not available. Due to the varying degrees of fineness, and the need for the customer to be informed as to the quality of bullion being purchased and its attendant variation in price, the fineness, weight, price per ounce, and any markup, commissions, fees, taxes or other costs shall be disclosed to the customer. Salesmen must convey to each customer the special risks and expenses involved in investing in gold and silver bullion. In particular, the customer must be given the opportunity to take delivery of the gold or silver and be informed whether or not the [member organization) *ETP Holder* will buy it back at a later date, and if so, on what basis.

(2) Sale or Saleback of Gold and Silver

All sales of gold and silver bullion shall be long, whether for customer or proprietary accounts.

Under no circumstances shall [a member organization) *an ETP Holder* release the proceeds of sale of gold or silver to a customer unless the customer's gold or silver has been assayed by an acceptable assayer (as defined above) or is in a form acceptable to such assayer. Gold or silver which is to be sold should be within an ETP [Firm's] *Holder's* control before it is sold, but in no event later than two business days after the trade date. An ETP [Firm] *Holder* may, however, submit a plan for review by the Corporation, the effect of which would allow a customer longer than two days to deliver the bullion within the ETP [Firm's] *Holder's* control on a "buy-back" transaction, where the customer is selling bullion originally purchased from that ETP [Firm] *Holder.*

(3)—No change.

(e) Cash Transactions—Purchases of gold or silver bullion in a customer's cash commodity account must be paid for as promptly as possible, but no later than the fifth business day after the date of purchase. A charge against capital will result if full payment has not been received by the seventh business day after purchase.

Although the amendment allows ETP [Firms] *Holders* to request extensions of time for payments not received within seven business days, the Corporation does not anticipate granting any such extension except in rare cases.

Extension requests should be submitted in letter form, giving the full particulars of the transaction, the customer's name and ID number, the reason for the request, and any other pertinent data. The letter should be signed by an authorized individual or officer. These extension requests will be handled separately from securities extensions, but will, as mentioned above, be restrictly granted.

(f) Margin Transactions—Required margin shall be furnished within five business days after date of purchase or made within an extended or longer period of time as approved by the Corporation upon application.

Extension requests on margin transactions will be subject to the same requirements applicable to cash transactions.

(1) Initial Margin

For the [purchase] *purpose* of effecting new transactions, the margin required shall be an amount equivalent to the requirements stated below, or such greater amounts as the Corporation may from time to time require, with an minimum equity in the account of at least $2,000, except that cash need not be deposited in excess of the cost of any new transaction.

Withdrawals of cash or spot commodities may be made, provided that after such withdrawal the equity in the account is at least the greater of $2,000 or the amount required by the maintenance requirement stated below.

(2) Maintenance

Margin must be maintained in margin accounts of customers, including [members, Allied members, organization or nonmembers] *ETP Holders, Allied Persons thereof and non-ETP Holders* and shall be as follows:

(A) 25% of the market value of gold or silver spot commodities "long" in each customer's account, or

(B) 10% of the market value of the gold and silver spot commodities if "hedged by futures contracts" in the same commodity. Gold or silver bullion which is carried on margin for customers must be within the control of the [member organization] *ETP Holder,* in good deliverable form and covered by appropriate insurance.

(g) Records—ETP [Firms] *Holders* shall make, keep current and preserve books and records on spot commodities as are required for securities.

(h) Conduct of Accounts—Rule 9 requires the diligent supervision of accounts. All information requirements or assessments applicable to other customers' accounts shall apply to customers effecting transactions in gold or silver bullion.

ETP [Firms] *Holders* should give serious consideration to securing an adequate deposit before executing any customer orders for gold. This will serve to demonstrate the customer's ability to consummate the transaction as well as protecting the [member organization) *ETP Holder* from potential market fluctuations in the event of customer default. Upward variations in deposit may be advisable for new customers, or when the ETP [Firm] *Holder* anticipates unusual volatility in the price of gold.

Currently, international settlement of spot gold transactions take place on the second

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business day following the order. Accordingly, ETP [Firms] *Holders* will have to pay for or deliver gold on that second business day. In view of this fact, ETP [Firms] *Holders* are hereby put on notice that good business practice would in most instances, require substantial cash deposits in advance of all purchases of gold or silver.

(i) Business Plan—An ETP [Firm] *Holder* shall file with the Corporation a detailed business plan for approval by the Corporation prior to effecting any transactions in gold or silver bullion. Such a plan shall comply with the standards enunciated herein, and the ETP [Firm] *Holder* may utilize the below checklist in drafting its business plan.

(j) Gold and Silver Business Plan Checklist:

(1) Structure and Nature

(A) Will activities be processed through the ETP [Firm] *Holder* subsidiary, affiliate, holding company, or joint venture? Name the affiliate/subsidiary responsible for bullion business, if applicable.

(B)—No change.

(C) Will the organization position bullion for its own account and/or act as a [market maker] *Market Maker?*

(D)–(F)—No change.

(2) Legal Review

(A)—No change.

(B) Has the organization requested counsel to review the plan for compliance with other [Federal] *federal*, state or local applicable laws?

(C)–(10)—No change.

(3)–(10)—No change.

[.03—Deleted.]

[Specialist Post Capital]

[Rule 4.2—Deleted.]

Rule 4.2. Reserved.

Corporate Affiliates and Subsidiaries

Rule 4.3(a). An ETP [Firm or Equity ASAP] Holder shall not a corporate affiliate or subsidiary without the prior written approval of the Corporation. All affiliates or subsidiaries of an ETP [Firm or Equity ASAP] Holder shall be subject to compliance with the Bylaws, Rules and procedures of the Corporation, or other conditions as may be established by the Corporation. ETP Holders[, Equity ASAP Holders,] and Allied Persons of ETP [Firms or Equity ASAP] Holders shall be responsible for any fraud committed by a corporation affiliate or subsidiary organization or for any act or proceeding thereof contrary to just equitable principles of trade or detrimental to the interest or welfare of the Corporation.

An ETP [Firm or Equity ASAP] Holder proposing to organize an affiliate or subsidiary corporation shall submit full details to the Corporation.

[The above] Rule *4.3* shall apply to all ETP [Firms or Equity ASAP] Holders of the Corporation unless the ETP [Firm or Equity ASAP] Holder is subject to the jurisdiction of another national securities exchange or association designated by the Board of Directors as having comparable standards, or it is subject to the jurisdiction of another national securities exchange or association designated by the Securities and Exchange Commission as the primary regulatory body.

Changes in Stockholder Status

Rule 4.3(b). Whenever a person owning 5% or more of any class of equity securities, directly or indirectly, of an ETP [Firm or an Equity ASAP] Holder ceases to be an ETP Holder, [Equity ASAP Holder,] Allied Person or Approved Person, the firm shall redeem or convert such securities to fixed income securities so that such security interest is less than 5%. Provided, however, that if such redemption or conversion would cause such ETP [Firm or Equity ASAP] Holder not to comply with the capital requirement of Rule 4, the ETP [Firm or Equity ASAP] Holder will so notify the Corporation and the assets which the person receives upon redemption of such securities, will be loaned by the person to the ETP [Firm or Equity ASAP] Holder as a loan subordinated to the claims of all customers and general creditors of the ETP [Firm or Equity ASAP] Holder, or the fixed income securities which the person receives upon conversion of such securities will be subordinated to the claims of all customers and general creditors of the ETP [Firm or Equity ASAP] Holder. Any such subordination shall be pursuant to an agreement approved by the Corporation.

Trading in Firm's Securities

Rule 4.3(c). An ETP [Firm or Equity ASAP] Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its parents or affiliates (other than registered investment companies) and any parents or affiliates of an ETP [Firm or Equity ASAP] Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its affiliates, or those of the ETP [Firm or Equity ASAP] Holder (other than registered investment companies).

Change in Capitalization

Rule 4.3(d). No ETP [Firm or Equity ASAP] Holder shall make any change in its capitalization without prior written approval of the Corporation.

Owners of 5% or More Equity Securities

Rule 4.3(e). Every party who owns beneficially 5% or more of any class of equity security, either directly or indirectly, of the firm shall be an ETP [Firm or Equity ASAP] Holder,] Allied Person or Approved Person.

Conditions for Issuance of Freely Transferable Securities

Rule 4.3(f). ETP [Firm or Equity ASAP] Holders which issue freely transferable securities must maintain a ratio of not more than 50 percent of property subordinated debt equity (including common and preferred stock) after giving the effect to any public financing, and ETP [Firm or Equity ASAP] Holders or parents thereof which issue freely transferable securities must:

(1)—No change.

(2) Have two years of operations by the ETP [Firm or Equity ASAP] Holder as a bona fide broker-dealer.

(3)—No change.

(4) Pay a filing fee for approval by the Corporation of the ETP [Firm's or Equity ASAP] Holder's issuance of freely transferable securities.

Rule 4.3(g). Reserved.

Voting Agreement

Rule 4.3(h). None of the stock of a corporate ETP [Firm or Equity ASAP] Holder shall at any time be held under or subject to any voting agreement whereby the voting of such stock is pooled or joined with the stock of any then ETP Holder, [ETP Firm Equity ASAP Holder,] Allied Person, stockholder associate or Approved Person unless approved by the Board of Directors.

Participation in ETP [Firms] *Holders*

Rule 4.3(i). The Corporation hereby specifically approves the beneficial ownership of an interest in any other ETP [Firm or Equity ASAP] Holder by an ETP Holder, [Equity ASAP Holder,] Allied Person, or Approved Person of any ETP [Firm or Equity ASAP] Holder.

(1)–(2)—No change.

(3) In connection with his, her or its activity as a [market maker] *Market Maker* in such stock, in which event the ETP Holder[, ETP Firm or Equity ASAP Holder] or Allied Person, or Approved Person thereof shall be required to be registered with the Corporation as a [market maker] *Market Maker* in such stock.

Restrictions on ETP [and Equity ASAP] *Holder* Activities

Rule 4.4 The Corporation may restrict the conduct of an ETP [Holder's, ETP Firm's or Equity ASAP] Holder's activities if at any time the ETP [Firm or Equity ASAP] Holder appears to be approaching financial difficulties or appears to be experiencing difficulties in its daily operations.

(a) The Corporation may implement the provisions of Paragraph (b) of this Section if it determines the existence of one or more of the following conditions:

(1) The ETP [Holder, ETP Firm or Equity ASAP] Holder fails to maintain net capital, above requirements of Rule 4, equivalent to the greater of (i) one-half of the losses of an ETP [Holder, ETP Firm or Equity ASAP] Holder in the twelve-month period immediately preceding the date of such computation, or (ii) the loss experienced by the ETP [Holder, ETP Firm or Equity ASAP] Holder in the six-month period immediately preceding such computation.

In determining profit or loss, the ETP [Holder, ETP Firm or Equity ASAP] Holder shall mark its trading accounts to the market, and, its expenses shall reflect, among other things, all partners' drawings and salaries, and appropriate amounts for assets doubtful of collection.

(2) The ETP [Holder, ETP Firm or Equity ASAP] Holder has subordinated capital which will mature within the next 180 days, and which, if not renewed, would cause (i) the ratio of aggregate indebtedness to net capital to exceed 12 to 1, or, in the case of an ETP [Holder, ETP Firm or Equity ASAP] Holder which is operating pursuant to paragraph (f) of SEC Rule 15c3–1 (Alternative Net Capital Requirement), net capital to be less than 6% of the aggregate debits; (ii) a reduction in excess of net capital below the standard set forth in subparagraph (1) of this Section, or (iii) a reduction in net capital below 120% of the minimum required net capital.

(3) The ETP [Holder, ETP Firm or Equity ASAP] Holder has experienced a reduction in net capital of 15% in the preceding month or 30% in the three-month period immediately preceding such computation, other than as a result of increased capital haircuts on firm proprietary securities positions.

(4) The ETP [Holder's, ETP Firm's or Equity ASAP] Holder's net capital is less than $1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 8 to 1, or (ii) its net capital is less than 150% of the minimum required net capital.

(5) The ETP [Holder's, ETP Firm's or Equity ASAP] Holder's net capital equals or exceeds $1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 10 to 1, or (ii) its net capital is less than 120% of the minimum required net capital.

(6) Notwithstanding the provisions of subparagraphs (4) and (5) above, if the ETP [Holder, ETP Firm or Equity ASAP] Holder is operating pursuant to Paragraph (f) of SEC Rule 15c3–1 (Alternative Net Capital Requirement), its net capital is less than the greater of $200,000 or 6% of its aggregate debits.

(7) The ETP [Holder, ETP Firm or Equity ASAP] Holder has experienced a substantial change in the nature of the business conducted which, in the view of the Corporation, increases the potential risk of loss to customers[,] *and* ETP [Holders, ETP Firms and Equity ASAP] Holders.

(8) The ETP [Holders, ETP Firms or Equity ASAP] Holder's books and records are not maintained in accordance with the provisions of SEC Rules 17a–3 and 17a–4.

(9) The ETP [Holder, ETP Firm or Equity ASAP] Holder is unable to demonstrate compliance with applicable net capital requirements.

(10) The ETP [Holder, ETP Firm or Equity ASAP] Holder has substantial unsecured loans, advances or other similar receivables relative to its net capital position. For purposes of this provision, 15% is considered substantial.

(11) The ETP [Holders, ETP Firms or Equity ASAP] Holder's subordinated capital equals or exceeds 40% of its debt-equity total, as defined under paragraph (d) of SEC Rule 15c1–1.

(12) The ETP [Holder, ETP Firm or Equity ASAP] Holder is subject to undue concentration charges on proprietary positions, the aggregate market value of which equals or exceeds 15% of the total market value of all proprietary positions.

(13) The ETP [Holder, ETP Firm or Equity ASAP] Holder is unable to clear and settle transactions promptly.

(14) The ETP [Holder, ETP Firm or Equity ASAP] Holder is not in compliance, or is unable to demonstrate compliance, with SEC Rule 15c3–3 (Customer Protection-Reserves and Custody of Securities).

(15) The ETP [Holder, ETP Firm or Equity ASAP] Holder is subject to the reporting provisions of SEC Rule 17a–11.

(b) If the Corporation determines that any of the conditions listed under Paragraph (a) of this Section exist, or otherwise determines that the ETP [Holder, ETP Firm or Equity ASAP] Holder is guilty of (i) conduct inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Corporation; or (iii) conduct contrary to an established practice of the Corporation, the Corporation may require that the ETP [Holder, ETP Firm or Equity ASAP] Holder take appropriate action by effecting one or more of the following or similar steps, until such time as the Corporation determines otherwise:

(1)—No change.

(2) Promptly effect delivery to customers of all fully paid securities in the ETP [Holder's, ETP Firm's or Equity ASAP] Holder's physical possession or control.

(3) Introduce all or a portion of its business to another ETP [Holder, ETP Firm or Equity ASAP] Holder on a fully disclosed basis.

(4)–(7)—No change.

(8) Undertake an immediate audit by an independent public accountant at the ETP [Holder's, ETP Firm's or Equity ASAP] Holder's expense.

(9) Restrict the payment of salaries or other sums to partners, officers, directors, shareholders or affiliated persons of the ETP [Holder, ETP Firm or Equity ASAP] Holder.

(10)–(12)—No change.

(c) The provisions contained in this Section do not limit the Corporation's authority to use other standards or to impose other restrictions, or take other action deemed appropriate under the circumstances in the public interest and for the protection of ETP Holders[, Equity ASAP Holders, and ETP Firms].

Commentary

.01.—No change.

Section 2. Financial Reports

Reports To Be Filed

Rule 4.5 Unless the Corporation determines otherwise, every ETP Holder, [ETP Firm and Equity ASAP Holder,] except as otherwise provided in Rule 4.7, shall file with the Corporation the reports prescribed by this Section.

Monthly Reports

Rule 4.5(a). Part I of SEC Form X–17A–5 shall be filed monthly by any ETP Holder[, ETP Firm or Equity ASAP Holder] which carries or clears accounts for customers. Such report shall be due by the tenth business day following the end of the month being reported upon.

Part II Quarterly Reports

Rule 4.5(b). Two manually signed copies of Part II of SEC Form X–17A–5 shall be filed for each calendar quarter by any ETP Holder[, ETP Firm or Equity ASAP Holder] which carries or clears accounts for customers. Such report shall be due by the fifteenth calendar day following the end of the calendar quarter being reported upon.

Part IIA Quarterly Reports

Rule 4.5(c). Two manually signed copies of Part IIA of SEC Form X–17A–5 shall be filed for each calendar quarter by any ETP Holder[, ETP Firm or Equity ASAP Holder] which does not carry or clear accounts for customers. Such report shall be due by the fifteenth calendar day following the end of the calendar quarter being reported upon.

Part II or Part IIA Filings on Other Than Calendar Quarters

Rule 4.5(d). An ETP Holder[, ETP Firm or Equity ASAP Holder] shall file an additional Part II or Part IIA of SEC Form X–17A–5, as appropriate, within fifteen calendar days after the date selected for the annual audited financial statements of the ETP Holder, [ETP Firm or Equity ASAP Holder,] pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

Periodic Reports

Rule 4.5(e). Every ETP Holders[, Equity ASAP Holders, and ETP Firm] shall submit, as required by the Corporation periodic reports with respect to short positions in securities.

Commentary

01. Short Positions. ETP Holders[, Equity ASAP Holders, and ETP Firm] for which the Corporation is the designated examining authority ("DEA") are required to report "short" positions, including odd lots, in each stock or warrant listed or traded on the Corporation, and in each other stock or warrant not listed or traded on the Corporation (and not otherwise reported to another self-regulatory organization), using such automated format and methods as prescribed by the Corporation. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Corporation.

Every ETP Holder[, Equity ASAP Holder, and ETP Firm] for which the Corporation is not the DEA must report "short" positions to the self-regulatory organization that is the DEA for such ETP Holder[, Equity ASAP Holder or ETP Firm] if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such ETP Holder[, Equity ASAP Holder or ETP Firm] must comply with the provisions of this Rule 4.5(e).

ETP [Holders, ETP Firms or Equity ASAP] Holders whose short positions have been properly reported to, and are carried by, a non-ETP [or non-Equity ASAP] clearing organization will be in compliance with this Rule 4.5(e) if adequate arrangements have been made for such clearing organization to report such positions to the Corporation or to another self-regulatory organization.

"Short" positions to be reported are those resulting from "short" sales as defined in SEC Rule 3b–3, but excluding positions resulting from sales specified in clauses (1), (6), (7), (8), (9) and (10) of paragraph (e) of SEC Rule 10a–1. Also to be excluded are "short" positions carried for other ETP Holders[, Equity ASAP Holders, and ETP Firms] reporting for themselves.

Only one report should be made for each stock or warrant in which there is a short position. If more than one account has a short position in the same stock or warrant, the combined aggregate should be reported.

The term "designated examining authority" means the self-regulatory organization that has been assigned responsibility for examining an ETP Holder[, Equity ASAP Holder, or ETP Firm] for

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compliance with applicable financial responsibility rules.

.02 ETP Holders[, Equity ASAP Holders, and ETP Firms] for which the Corporation is the DEA need not report "short" positions to the Corporation as provided in Commentary .01 if such ETP Holder[, Equity ASAP Holder, or ETP Firm] has made arrangements, satisfactory to the Corporation, to report such positions to another self-regulatory organization.

Accelerated Reporting

Rule 4.6. Unless the Corporation determines otherwise, if any of the conditions described in this Section is applicable, an ETP Holder[, Equity ASAP Holder or ETP Firm] subject to the provisions of Rule 4.5 shall file with the Corporation on a monthly basis (or more frequently if the Corporation so determines) Part II or Part IIA of SEC Form X–17A–5, as appropriate, together with a schedule of proprietary securities and commodities, and related "haircuts", and any other supplementary schedules deemed appropriate by the Corporation. Such reports shall be due by the fifteenth calendar day following the end of the month during which this Section becomes applicable to [a] *an* ETP Holder[, Equity ASAP Holder, or ETP Firm,] and such accelerated reports shall continue to be filed each month thereafter (or more frequently is the Corporation so determines) until the ETP Holder[, Equity ASAP Holder, or ETP Firm] is otherwise advised by the Corporation[:].

SIPC Referral

Rule 4.6(a). An ETP Holder[, Equity ASAP Holder or ETP Firm] subject to the referral provisions of Section 59a) of the Securities Investor Protection Act will be notified by the Corporation to file accelerated reports.

Financial or Operational Condition

Rule 4.6(b). An ETP Holder[, Equity ASAP Holder, or ETP Firm] that has exceeded or is exceeding the financial or operational parameters set forth in Rule 4.4 shall file without further notice the reports required by this Section.

General Conditions

Rule 4.6(c). The Corporation requires the filing of accelerated reports for reasons relating to (i) the financial or operational condition of the ETP Holder[, Equity ASAP Holder, or ETP Firm] (notwithstanding the provisions of paragraph (b) of this Section), (ii) the condition of the securities markets, or (iii) the condition of the securities industry, in which events the Corporation will notify the ETP Holder[, Equity ASAP Holder, or ETP Firm] to file accelerated reports.

Exemptions

Rule 4.7(a). An ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be exempt from the filing requirements prescribed by Rules 4.5 and 4.6 under the following conditions:

[(1)] Any ETP Holder[, Equity ASAP Holder or ETP Firm] which is a member of another self-regulatory organization which has been designated the examining authority for such ETP Holder[, Equity ASAP Holder or ETP Firm] by the Securities and Exchange Commission.

(b) An ETP Holder[, Equity ASAP Holder or ETP Firm] qualifying for an exemption pursuant to this Paragraph shall file with the Corporation a copy of Notice and Part II of SEC Form X–17A–5, including such supplementary schedules as may be required, pursuant to the provisions of Rule 17a–11 under the Securities Exchange Act of 1934, as amended, at such time and at such frequency as prescribed by such other designated examining authority or by any applicable rule.

Report Filed Upon Termination of Membership Interest

Rule 4.8. If an ETP Holder[, Equity ASAP Holder or ETP Firm] holding any membership interest in a national securities exchange ceases to be a member in good standing of such exchange, such ETP Holder[, Equity ASAP Holder or ETP Firm] shall, within two business days after such event, file with the Securities and Exchange Commission and with the Corporation, Part II of Form X–17A–5, as of the date of such event, pursuant to the provisions of Paragraph (b) of Rule 17a–5 under the Securities Exchange Act of 1934, as amended.

Customer Statements

Rule 4.9. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall furnish to its customers, principal stockholders and subordinated lenders, and shall file with the Securities and Exchange Commission, the Corporation, and any other self-regulatory organizations of which it is a member, certain financial statements in accordance with the provisions of Paragraph (c) of Rule 17a–5 under the Securities Exchange Act of 1934, as amended.

Annual Filing of Audited Financial Statements

Rule 4.10. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall file annually a report which shall be audited by an independent public accountant in accordance with the provisions of paragraphs (d) through (n) of Rule 17a–5 under the Securities Exchange Act of 1934, as amended.

Financial Reports

Rule 4.11(a). Every ETP Holder[, Equity ASAP Holder or ETP Firm] which is not a member of another national securities exchange or registered national securities association which is the Designated Examining Authority for that ETP Holder[, Equity ASAP Holder or ETP Firm] shall file with the Corporation answers to Financial Questionnaires, Reports of Income and Expenses and additional financial information in the type, form, manner and time prescribed by the Corporation.

Rule 4.11(b).

(1) Each ETP Holder[, Equity ASAP Holder, or ETP Firm] shall file with the Corporation a Report of Financial Condition on SEC Form X–17A–5 as required by Securities and Exchange Commission Rules 17a–5 and 17a–10. Any ETP Holder[, Equity ASAP Holder or ETP Firm] who fails to file such Report of Financial Condition in a timely manner shall be subject to late filing charges as follows:

Number of Days Late	Amount of Charge
1–30	$20.00
31–60	400.00
61–90	800.00

Repeated or aggravated failure to file such Report of Financial Condition or failure to file such report for more than ninety (90) days will be referred to the Business Conduct Committee for appropriate disciplinary action.

(2) Each ETP Holder[, Equity ASAP Holder or ETP Firm] for which the Corporation is the designated collection agent must file with the Corporation such forms and assessments as are required pursuant to the Securities Investor Protection Act of 1970. Any ETP Holder[, Equity ASAP Holder or ETP Firm] that fails to file such form or assessment in a timely manner will be subject to a late filing charge as follows:

Number of days late	Amount of charge
1–30	$100.00
31–60	200.00
61–90	300.00

Provided however:

(A) if an ETP Holder[, Equity ASAP Holder or ETP Firm] files its SIPC form and assessment after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such ETP Holder[, Equity ASAP Holder or ETP Firm] will be subject to a fine pursuant to Rule 10.12(i)(2); and

(B) if an ETP [Firm] *Holder* fails to file its SIPC form and assessment within five business days after its receipt of SIPC's final late notice, such ETP [Firm] *Holder* will be subject to formal disciplinary action pursuant to Rule 10.4.

Commentary

.01 An ETP Holder[, Equity ASAP Holder or ETP Firm] that files its SIPC form and assessment more than 90 days late but before its receipt of SIPC's final late notice will be subject to a late charge of $800.

.02—No change.

Financial Responsibility and Operational Condition

Rule 4.11(c). The Corporation shall have the authority to examine the financial responsibility and/or operational conditions of any ETP Holder[, Equity ASAP Holder, or ETP Firm]. In conducting such examinations, the Corporation may require an ETP Holder[, Equity ASAP Holder, or ETP Firm] to furnish requested information. If the Corporation deems it necessary, ETP Holders[, Equity ASAP Holders or ETP Firms] shall make available their books and records as well as provide sworn or unsworn testimony. All examinations shall be conducted in a manner consistent with the rules and regulations governing the duty of the Corporation.

Underwriting Commitments

Rule 4.12. Each ETP Holder[, Equity ASAP Holder or ETP Firm,] for which the Corporation is the designated examining authority, which enters into a security underwriting commitment, either with respect to an original or a secondary distribution of securities, whether or not admitted to dealing on the Corporation, shall notify the Corporation thereof in such manner as the Corporation shall prescribe.

Lawsuits

Rule 4.13. Each ETP Holder[, Equity ASAP Holder or ETP Firm] for which the Corporation is the designated examining authority, shall give written notice to the Corporation regarding all lawsuits involving such ETP Holder[, Equity ASAP Holder or ETP Firm] or any participant therein, including a description of the nature and principal allegations of such lawsuits, and a statement of the amount of damages claimed therein. Similar notice shall be given to the Corporation regarding any claims or contingent liabilities that appear likely to result in litigation.

Section 3. Margins

Daily Margin Record

Rule 4.14(a). Each ETP Holder[, Equity ASAP Holder, or ETP Firm] registered on the Corporation, carrying margin accounts for customers shall make and maintain a record of every case in which initial or additional margin must be obtained in a customer's account because of transactions effected in such account. This record shall show for each account the date of the transaction, the customer's name, the amount of margin required and the time when and manner in which such margin is furnished or obtained. This record shall be in a form acceptable to the Corporation and contain such additional information as the Corporation may from time to time prescribe. This record shall be preserved for at least twelve months.

Margin by Liquidation

Rule 4.14(b). No ETP Holder[, Equity ASAP Holder, or ETP Firm] registered on the Corporation shall permit a customer to make a practice of effecting transactions requiring initial or additional margin pursuant to rules of the Corporation or regulations of the Board of Governors of the Federal Reserve System and then furnishing such margin by the liquidation of the same or other commitments; except that the provisions of this section shall not apply to any account maintained for another broker or dealer in which are carried only the commitments of the customers of such other broker or dealer exclusive of his partners, provided such other broker or dealer [i] is an ETP Holder[, or Equity ASAP Holder] of the Corporation[, or an ETP Firm registered thereon]; or (ii) has agreed in good faith with the ETP Holder[, Equity ASAP Holder, or ETP Firm] carrying the account that [he] *it* will maintain a record equivalent to that referred to in Rule 4.14(a); or (iii) is not subject to the regulations of the Board of Governors of the Federal Reserve System.

Members Other Exchanges

Rule 4.14(c). An ETP Holder[, Equity ASAP Holder, or ETP Firm] registered as a member on another national securities exchange or association which has comparable standards and which has been designated by the Securities and Exchange Commission as the primary regulator is exempt from the provisions of this [rule] *Rule*, unless otherwise stated.

Customer Defined

Rule 4.14(d). For the purpose of this [rule] *Rule*, the term customer shall include any person or entity for whom securities are purchased or sold or to whom securities are sold or from whom securities are purchased whether on a regular way, when issued, delayed or future delivery basis. It will also include any person or entity for whom securities are held or carried. The term will not include a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the ETP Holder[, Equity ASAP Holder or ETP Firm] or its customers.

Initial Margin

Rule 4.14(e)—No change.

Margin Requirements

Rule 4.15(a). For the purpose of effecting new securities transactions and commitments, the margin required shall be an amount equivalent to the requirements of paragraph (b) of this section, or such greater amount as the Corporation may from time to time require for specific securities, with a minimum equity in the account of at least $2,000, except that cash need not be deposited in excess of the cost of any security purchased. The foregoing minimum equity and cost of purchase provisions shall not apply to "when distributed" securities in cash accounts and the exercise of rights to subscribe.

Withdrawals of cash or securities may be made from any account, provided that after such withdrawal the equity in the account is at least the greater of $2,000 or the amount required by the maintenance requirement of this [rule] *Rule*.

Maintenance Margin Rule

Rule 4.15(b). The margin which must be maintained in margin accounts of customers, whether ETP Holder, [Equity ASAP Holders, ETP Firms,] Allied Persons thereof or non-ETP [or non-Equity ASAP Firms] *Holders*, shall be as follows:

(1)–(5)—No change.

Exceptions to Rule

Rule 4.15(c). The foregoing requirements of this Rule are subject to the following exceptions:

(1)—No change.

(2) Exempted Securities.

(A)–(B)—No change.

(C) Cash Transactions With Customers—Special Provisions—When a customer purchases an issued "exempted" security from or through an ETP Holder, [Equity ASAP Holder, or ETP Firm,] in a cash account, full payment shall be made promptly. If, however, delivery or payment therefore is not made promptly after the trade date, a deposit shall be required as if it were a margin transaction, unless it is a transaction with a bank, trust company, insurance company, investment trust or charitable or nonprofit educational institution.

In connection with any net position resulting from any transaction in issued "exempted" securities made for an ETP Holder[, Equity ASAP Holder or ETP Firm,] or a non-ETP [or non-Equity ASAP] broker-dealer, or made for or with a bank, trust company, insurance company, investment trust or charitable or non-profit educational institution, no margin need be required and such net position need not be marked to market. However, where such net position is not marked to the market, an amount equal to the loss at the market in such position shall be considered as cash required to provide margin in the computation of the net capital of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the Corporation's capital requirements.

(3) Joint Accounts in Which the Carrying Firm or a Partner or Stockholder Therein Has an Interest—in the case of a joint account carried by a firm, in which such firm, or any partner, ETP [Holder, Equity ASAP] Holder, Allied Person or stockholder (other than a holder of freely transferable stock only) of such ETP [Firm] *Holder* participate with others, the interest of each participant other than the carrying ETP [Firm] *Holder* shall be margined by each such participant pursuant to the provisions of this [rule] *Rule* as if such interest were in a separate account.

(4)—No change.

(5) [Specialists' and] Market Maker['s] Accounts

(A) The account of an ETP Holder[, Equity ASAP Holder or ETP Firm] in which are effected only transactions in securities in which he is [registered and acts as a specialist] *a Market Maker* may be carried upon a margin basis which is satisfactory to the [specialist] *Market Maker* and the ETP Holder[, Equity ASAP Holder or ETP Firm]. The amount of any deficiency between the margin deposited by the [specialist] *Market Maker* and the haircut requirements of SEC Rule 15c3–1 shall be considered as a debit item in the computation of the net capital of ETP [Holder, Equity ASAP Holder or ETP Firm] *Holders* under the Corporation's capital requirements.

(A) In the case of joint accounts carried by an ETP Holder[, Equity ASAP Holder or ETP Firm for specialists] for *Market Makers*, in which the ETP Holder[, Equity ASAP Holder or ETP Firm] participates, the margin deposited by the other participants may be in any amount which is mutually satisfactory. The amount of any deficiency between the amount deposited by the other participant, or participants, based upon their proportionate share of the haircut requirements of SEC Rule 15c3–1, shall be considered as a debit item in the computation of the net capital of ETP [Holder, Equity ASAP Holder or ETP Firm] *Holders* under the Corporation's capital requirements.

(6) Broker/Dealer Accounts

(A) An ETP Holder[, Equity ASAP Holder or ETP Firm] may carry the proprietary account of another broker-dealer that is registered with the Securities and Exchange Commission, upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in

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the account and the haircut requirements of SEC Rule 15c3–1 shall be deducted in computing the Net Capital of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the Corporation's Capital Requirements.

(B) Joint Back Offices Arrangements. An arrangement may be established between two or more registered broker-dealers pursuant to Regulation T, Section 220.11 to form a joint back office ("JBO") arrangement for carrying and clearing, or carrying accounts of participating broker-dealers. ETP Holders[, Equity ASAP Holders or ETP Firms] must provide written notification to the Corporation prior to establishing a JBO.

(i) A carrying and clearing, or clearing ETP Holder[, Equity ASAP Holder or ETP Firm] must:

(a) maintain a minimum Tentative Net Capital of $25 million as computed pursuant to SEC Rule 15c3–1, except that an ETP Holder[, Equity ASAP Holder or ETP Firm] whose primary business consists of the clearance of options market-maker accounts, may carry JBO accounts provided that it does not allow its Net Capital, as computed pursuant to SEC Rule 15c3–1, to fall below $7 million for a period in excess of three consecutive business days. In addition, the ETP Holder[, Equity ASAP Holder or ETP Firm] must include in its ratio of gross options market maker deductions to Net Capital required by the provisions of SEC Rule 15c3–1, gross deductions for JBO participant accounts. Clearance of options market maker accounts shall be deemed to be a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ration are options market maker deductions;

(b) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers which shall be made available to the Corporation upon request; and

(c) deduct from Net Capital haircut requirements pursuant to SEC Rule 15c3–1 in excess of the equity maintained in the amounts of participating broker-dealers.

(ii) A participating broker-dealer must:

(a) be a registered broker-dealer subject to the SEC's Net Capital Rule;

(b) maintain an ownership interest in the carrying/clearing ETP Holder[, Equity ASAP Holder or ETP Firm] pursuant to Regulation T, Section 220.11; and

(c) maintain a minimum liquidating equity of $1 million in the Joint Back Office arrangement exclusive of the ownership interest established in (b) above. When the minimum liquidating equity decreases below the $1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T.

(d) If at any time a clearing ETP Holder[, Equity ASAP Holder or ETP Firm] operating pursuant to subsection 6(b)(1)(a) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable requirements, such clearing ETP Holder[, Equity ASAP Holder or ETP Firm] must immediately notify the Corporation of such deficiency by telegraphic or facsimile notice; and such clearing ETP Holder[, Equity ASAP Holder or ETP Firm] will be subject to the prohibitions against withdrawal of equity capital set forth in SEC Rule 15c3–1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(1) of SEC Rule 15c3–1, as if such broker or dealer's net capital were below the minimum standards specified by each of these paragraphs.

Other Provisions

Rule 4.15(d). Determination of Value for Margin Purposes.

(1) Active securities dealt in on a recognized exchange shall, for margin purposes, be valued at current market prices. Other securities shall be valued conservatively in the light of current market prices and the amount which might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried are subject to unusually rapid or violent change sin value, or do not have an active market on a recognized exchange, or where the amount carried is such that it cannot be liquidated promptly.

To qualify for margin value, securities shall be in negotiable form and, except for bearer securities, shall be registered in street name (firm name, or firm agent, or firm nominee or in process of being transferred to such) after constructive receipt thereof. A cash margin deficiency shall be treated as a debit item in the computation of [Net Capital] *net capital*.

(2) Puts, Calls Other Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants.

(A)—No change.

(B) The issuance, guarantee or sale (other than a "long" sale) for a customer of a put or a call shall be considered as a security transaction subject to Rule 4.15(a). The short sale for a customer of a currency warrant, currency index warrant or stock index warrant shall be considered as a security transaction subject to paragraph (a) of this Rule 4.15[(d)].

(C)—No change.

(D) The margin on any put, call, currency warrant, currency index warrant or stock index warrant issued, guaranteed or carried "short" in a customer's account shall be:

(i)—No change.

(ii) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation which [represent] *represents* options on GNMA obligations in the principal amount of $100,000, 130% of the current market value of the option plus $1,500, except that the margin required need not exceed $5,000 plus the current market value of the option.

(iii)—No change.

(E)—No change.

(F) (1)–(3)—No change.

(4)—No change.

(G)—No change.

(H) "Long" and "Short" Positions in Securities and Options. (1)–(4)—No change.

(5) Bank Guarantee Letters—

No margin need be required in respect of a put option contract carried in a "short" position where the customer has delivered to the ETP Holder[, Equity ASAP Holder or ETP Firm] with which such position is maintained a letter of guarantee issued by a bank approved to issue escrow receipts under Rule 610 of the Rules of the Options Clearing Corporation, in form satisfactory to the Corporation, which certifies that such bank holds on deposit for the account of the customer cash in the full amount of the aggregate exercise price of such put option contract, and that such amount will be paid to the ETP Holder[, Equity ASAP Holder or ETP Firm] against delivery of the underlying security covered by such put option contract.

(6) No margin is required in respect of a warrant on a market index carried in a short position where the customer has delivered, promptly after the warrant has been sold short, to the ETP Holder[, Equity ASAP Holder or ETP Firm] with which such position is maintained, a Market Index Warrant Escrow Receipt in a form satisfactory to the Corporation, issued by a bank or trust company pursuant to specific authorization from the customer certifying that the issuer of the agreement holds for the account of the customer: (1) cash, (2) cash equivalents, (3) one or more qualified equity securities, or (4) a combination thereof; that such deposit has an aggregate market value, at the time the warrant has been sold short, or not less than 100% of the aggregate currency index value; and that the issuer will promptly pay the ETP Holder[, Equity ASAP Holder or ETP Firm] the exercise settlement amount in the event the account is assigned an exercise notice.

(7)—No change.

(I) When an ETP Holder[, Equity ASAP Holder or ETP Firm] issues or guarantees an option to receive or deliver securities for a customer, such option shall be margined as if it were a put or call.

(J) Option Specialists, Market Makers and Traders. Notwithstanding the other provisions of this sub-section (d)(2), an ETP Holder[, Equity ASAP Holder or ETP Firm] may clear and carry the listed option transactions of one or more registered specialists, registered market makers or registered traders in options (which registered traders are deemed specialists for all purposes under the Securities Exchange Act of 1934 pursuant to the rules of a national securities exchange) (hereafter referred to as "specialists(s)"), upon a "Good Faith" margin basis satisfactory to the concerned parties, provided the "Good Faith" margin requirement is not less that the Net Capital haircut deduction of the ETP Holder[, Equity ASAP Holder or ETP Firm] carrying the transaction pursuant to SEC Rule 15c3–1. In lieu of collecting the "Good Faith" margin requirement, a carrying ETP Holder[, Equity ASAP Holder or ETP Firm] may elect to deduct in computing its net capital the amount of any deficiency between the equity maintained in the account and the "Good Faith" margin required.

For purposes of the subsection (d)(2)(J), a permitted offset position means, in the case of an option in which a specialist makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist makes a market, a position in options overlying the securities in which a specialist makes a market. Accordingly, a specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

(i)–(ii)—No change.

(iii)—No change.

(iv)–(vi)—No change.

(vii) a specified portfolio type as referred to in SEC Rule 15c3–1, including its appendices, or any applicable SEC staff interpretation or no-action position.

Permitted offset transactions must be effected for market making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation of customer orders, or other similar market making purposes.

For purposes of this paragraph (d)(2)(J), the term "in or at the money" means the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; [the term "in the money" means the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option;] and, the term "overlying option" means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased or a put option written against a short position in an underlying asset.

Securities, including options, in such accounts shall be valued conservatively in the light of current market prices and the amount that might be realized upon liquidation. Substantial additional margin must be required or excess net capital maintained in all cases were the securities carried: (i) are subject to unusually rapid or violent [chances] *changes* in value including volatility in the expiration months of options, (ii) do not have an active market, or (iii) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying organization's net capital and its overall exposure to material loss.

(K)—No change.

(L) Exclusive designation—A customer may designate at the time an option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the ETP Holder[, Equity ASAP Holder or ETP Firm]; or the customer may have a standing agreement with the ETP Holder[, Equity ASAP Holder or ETP Firm] as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account that serves in lieu of the required margin for a short put or short call shall be unavailable to support any other option transaction in the account.

(M) Cash account transactions.—An ETP Holder[, Equity ASAP Holder or ETP Firm] may make option transactions in a customer's cash account, providing:

(i)–(ii)—No change.

(3) "When Issued" and "When Distributed" Securities—

(A)—No change.

(B) Cash Accounts

In connection with any transactions or net position resulting from contracts for a "when issued" security in an account other than that of an ETP Holder, [Equity ASAP Holder or ETP Firm,] non-ETP [or non-Equity ASAP] broker or dealer, bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution, deposits shall be required equal to the margin required were such transaction or position in a margin account.

In connection with any net position resulting from contracts for a "when issued" security made for or with a non-ETP [or non-Equity ASAP] broker or dealer, no margin need be required, but such net position must be marked to the market.

In connection with any net position resulting from contracts for a "when issued" security made for an ETP Holder[, Equity ASAP Holder or ETP Firm] or for or with a bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution, no margin need be required and such net position need not be marked to the market. However, where such net position is not marked to the market, an amount equal to the loss at the market in such position shall be considered as cash required to provide margin in the computation of the net capital of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the Corporation's capital requirements.

The provisions of this subparagraph shall not apply to any position resulting from contracts on a "when issued" basis in a security

(i)–(ii)—No change.

(4) Guaranteed Accounts—Any account guaranteed by another account may be consolidated with such other account and the required margin may be determined on the net position of both accounts, provided the guarantee is in writing and permits the ETP Holder[, Equity ASAP Holder or ETP Firm] carrying the account, without restriction, to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein; and provided further that such guaranteeing account is not owned directly or indirectly by (a) a partner, ETP Holder, [Equity ASAP Holder, ETP Firm,] Allied Person thereof or any stockholder (other than a holder of freely transferable stock only) in the firm carrying such account or (b) an ETP Holder, [Equity ASAP Holder, ETP Firm,] a partner, Allied Person, or any stockholder (other than a holder of freely transferable stock only) therein having a definite arrangement for participating in the commissions earned on the guaranteed account. However, the guarantee of a limited partner or of a holder of non-voting stock, if based upon his resources other than his capital contribution to or other than his interest in an ETP Holder[, Equity ASAP Holder or ETP Firm,] is not affected by the foregoing prohibition, and such a guarantee may be taken into consideration in computing margin in the guaranteed account.

(5)–(6)—No change.

(7) Practice of Meeting Margin Calls by Liquidation Prohibited—No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall permit a customer to make a practice of effecting transactions requiring margin and then either deferring the furnishing of margin beyond the time when such transactions would ordinarily be settled or cleared, or meeting such demand for margin by the liquidation of the same or other commitments in his account.

(8) Free Riding in Cash Accounts Prohibited—No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall permit a customer (other than a broker/dealer or bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution) to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall permit such a customer to make a practice of selling securities which were purchased in a cash account at another broker-dealer and are not yet paid for. A customer shall not be deemed to be continuing this practice if for a period of 90 days (or less with the approval of the Corporation) no such transactions have taken place. An ETP Holder[, Equity ASAP Holder or ETP Firm] transferring an account which is under restraint to another broker-dealer shall inform the receiving broker-dealer of the restraint.

(9) BOUNDs

(A)–(F)—No change.

(G)(i)—No change.

(ii) When a BOUND and a LEAP with the same expiration and strike price are issued, guaranteed or carried "short" against an existing net "long" position in the security underlying the BOUND and LEAP, or in any security that meets the requirements of Rule [6.1(1)(23)] *6.1(a)(23)* of the PCX Parent relating to covered options or in any security immediately exchangeable or convertible, other than warrants without restriction including the payment of money, into the security underlying the BOUND and LEAP, no margin need be required on either the BOUND or the LEAP provided (1) such net "long" position is adequately margined in accordance with this Rule and (2) the right to exchange or convert the net "long" position does not expire on or before the expiration date of the "short" BOUND or LEAP.

(iii)–(iv)—No change.

(H) Notwithstanding the other provisions of this paragraph (d)(9), the account of a person in which are effected only transaction in which such person is registered and acts as a specialist or market maker on an exchange, and the account of a registered trader containing only transactions effected

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by him in his capacity as a registered trader, may be cleared and carried on a margin basis which is satisfactory to the specialist, market maker or registered trader and the ETP Holder[, Equity ASAP Holder or ETP Firm] carrying the account.

(l)—No change.

Commentary

.01—No change.

Notice to Corporation

Rule 4.16. An ETP Holder[, Equity ASAP Holder, or ETP Firm] commencing to carry margin accounts shall immediately notify the Corporation in writing.

Location of Records

Rule 4.17. An ETP Holder[, Equity ASAP Holder, or ETP Firm] shall maintain at its main office the daily margin record required by Rule [4(a)] *4.14(a)*. An ETP Holder[, Equity ASAP Holder, or ETP Firm] maintaining margin records at two or more offices shall maintain such records at each office for inspection.

Determination of Margin

Rule 4.18—No change.

Fidelity Bonds

Rule 4.19(a). Each ETP Holder[, Equity ASAP Holder or ETP Firm] which transacts business with the public or clears transactions for other ETP Holders[, Equity ASAP Holders, or ETP Firms] shall carry fidelity bonds in such form and in such amounts as the Corporation may require covering the [individual] *sole proprietor* ETP [Holder, Equity-ASAP] Holder, or, in the case of an [Equity ASAP] *ETP* Holder [or ETP Firm] *organization*, its general partners or officers and its employees.

(b) ETP Holders[, Equity ASAP Holders or ETP Firms] subject to this Rule are required to maintain basis and specific coverages in amounts not less than those prescribed in this Rule. Where applicable such coverage must also extend to limited partners as employees, and outside organizations providing electronic data processing services and the handling of U.S. Government securities in bearer form.

(c) Each ETP Holder[, Equity ASAP Holder or ETP Firm] that introduces customers' accounts on a fully disclosed basis must maintain coverage as follows:

(i) Minimum basis coverage for such ETP Holder[, Equity ASAP Holder or ETP Firm] whose net capital requirement under Rule 4:

A.–B—No change.

(ii) Specific coverage for such ETP Holders[, Equity ASAP Holders or ETP Firms] shall be as follows:

A—No change.

B. Fraudulent Trading (not required of ETP Holders, [Equity ASAP Holders,] those not associated with an ETP [Firm] *Holder* or partnerships having no employees)—the greater of $25,000 or 50% of the basis bond minimum requirement, up to $500,000.

C.—No change.

(d) Each ETP Holder[, Equity ASAP Holder on ETP Firm] which carries customers' accounts or clears transactions for other ETP Holders[, Equity-ASAP Holders, ETP Firms] must maintain coverage as follows:

(i) Minimum basis coverage for such ETP Holder[, Equity ASAP Holder or ETP Firm] shall be based on their net capital requirement under Rule 4 as follows:

Net capital requirement under rule 4	Basis minimum coverage
$25,000–$50,000	$200,000
$50,001–$100,000	300,000
$100,001–$200,000	500,000
$200,001–$300,000	600,000
300,001–$500,000	700,000
$500,001–$1,000,000	800,000
$1,000,001–$2,000,000	1,000,000
$2,000,001–$3,000,000	1,500,000
$3,000,001–$4,000,000	2,000,000
$4,000,001–$6,000,000	3,000,000
$6,000,001–$12,000,000	4,000,000
$12,000,001 and higher	5,000,000

(ii) Specific coverages for such ETP Holder[, Equity ASAP Holder or ETP Firm] shall be as follows:

A.–C. No change.

(iii) Misplacement, Fraudulent Trading, Check Forgery and Securities Forgery.

A. Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall be expected to review carefully any need for coverage greater than that provided by the required minimums. Where experience or the nature of the business warrants additional coverage, the Corporation expects the ETP Holder[, Equity ASAP or ETP Firm] to acquire it.

B. ETP Holder[, Equity ASAP Holders, and ETP Firms] required to carry the above form(s) of insurance shall advise the Corporation in writing if such insurance is entirely or partially canceled.

(e)—No change.

Rule 5

Listings

Section 1. General Provisions and Definitions

General Provisions and Definitions

RULE 5.1(a)—No change.

RULE 5.1(b). Definitions. The following terms used in Rules 5.2 through 5.5 shall, unless otherwise indicated, have the meanings herein specified:

(1)–(3)—No change.

(4) The term "listed"; and the phrase "listed" on the Corporation [means] *mean* a security that has been listed on the PCX Parent pursuant to Section 12(b) of the Securities Exchange Act of 1934. Such security shall be listed pursuant to a formal application and request for such listing filed by the issuing company.

(5)–(15)—No change.

Section 2. Applications to List

RULE 5.2(a)–5.2(f)—No change.

Contingent Value Rights ("CVRs")

RULE 5.2(g)—No change.

Commentary

.01 Prior to the commencement of trading of securities admitted to listing under this Rule 5.2(g), the Corporation will distribute a circular to its membership explaining the specific risks associated with CVRs and providing guidance regarding [member firm] *ETP Holder* compliance responsibilities when handling transactions in such securities.

Unit Investment Trusts ("UITs")

RULE 5.2(h)—No change.

Commentary

.01 Customers must be provided with a prospectus and an explanation of any special characteristics and risks attendant to trading MIT interests. Before [a] *an* ETP Holder, [ETP Firm, or Equity ASAP Holder,] or an officer, partner, or employee of such [a] *an* ETP [Firm, or Equity ASAP] Holder, undertakes to recommend a transaction in the UIT interest or in the component securities, such officer, partner or employee should make a determination that such UIT interests, components or units are not unsuitable for such customer, and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction and constituent interest.

.02 An ETP Holder[, Equity ASAP Holder or ETP Firm] must provide a prospectus to an investor in connection with each transaction in a UIT interest, unless such ETP [Holder, ETP Firm, or Equity ASAP] Holder has in place a procedure by which to verify previous receipt of a current prospectus. The investor must receive such prospectus prior to or concurrently with the transaction confirmation.

.03—No change.

RULE 5.2(i)—No change.

Other Securities

RULE 5.2(j)(1)—No change.

Commentary

.01 Prior to commencement of trading of securities admitted to listing pursuant to this Rule 5.2(j)(1), the Corporation will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the ETP Holders[, ETP Firms and Equity ASAP] Holders providing guidance regarding the [Firm or] Holder's compliance responsibilities when handling transactions in such securities.

Equity Linked Notes ("ELNs")

RULE 5.2(j)(2). In the case of ELNs, the following listing requirements must be met:

(A) Issuer Listing Standards

(i) The issuer of ELNs must be an entity that:

(*a*) is listed on a national securities exchange or the Nasdaq National Market or is an affiliate of a company listed on a national securities exchange or the Nasdaq National Market; and

(b)— has a minimum net worth of $150 million.

(ii)—No change.

(B)–(D)—No change.

(E) Prior to the commencement of trading of particular ELNs listing pursuant to this Rule, the Corporation will distribute a circular to ETP [Firms and Equity ASAP] Holders providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.

RULE 5.2(j)(3)—No change.

RULE 5.2(k)–(n)—No change.

Section 3. Corporate Governance and Disclosure Policies

RULE 5.3(a)–(i)—No change.

Financial Reports and Related Notices

RULE 5.3(i)(1). Companies applying for listing enter into agreements with the Corporation and become subject to its [Rules] *rules*, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Corporation and the Rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934, each listed company is required to submit the following information:

(i)–(ii)—No change.

Commentary

.01–.04—No change.

RULE 5.3(i)(2)—No change.

Procedure for Public Dissemination

RULE 5.3(i)(3). A listed company is expected to make timely and adequate disclosure to its shareholders, the financial community, and investing public of any news or information that might reasonably be expected to materially affect the market for its securities. Furthermore, a company should also act promptly to dispel any unfounded rumors that result in unusual market activity or price variations.

The following information will provide guidance to a listed company in making appropriate public disclosure and, therefore, ensure the maintenance of a fair and orderly marketplace to all participants:

(1)–(ii)—No change.

(iii) Relationships between Company Officials and Others

(A)—No change.

(B) [Specialists:] *Market Makers*

[The Specialist is] *Market Makers are* obligated to contribute, insofar as reasonably practical, to the maintenance of a fair and orderly market pursuant to the Rules and procedures of the Corporation. In fulfilling this responsibility, it is desirable for the [Specialist] *Market Makers* to have appropriate liaison with one or more corporate officials. Such liaison, properly conducted, provides opportunity for communication in the event of particular questions or problems encountered by either the [Specialist] *Market Makers* or the company. Company officials should be informed of any unusual market problems if deemed appropriate and would be free to call the Securities Qualification Department or Surveillance Department [(not the Specialist)] for information if a question arises about the market in the security.

There is a point beyond which it is improper for the company to go in providing information to [the Specialist] *Market Makers*. Therefore, for the company to give advance earnings, dividend, stock split, or merger information to a [Specialist] *Market Maker* or anyone else would be inappropriate. Alternatively, it is entirely appropriate for company officials to discuss matters such as the trend of business with [the Specialist] *a Market Maker*, much as they would with shareholders, security analysts, or anyone having a legitimate interest in the company. In this way, [the Specialist] *a Market Maker* may be better able to maintain a market beneficial to the company and its present and prospective shareholders.

Content and Preparation of Public Announcements

RULE 5.3(i)(4)—No change.

Section 4. Suspension or Issuer Withdrawal from Listing

Suspension

RULE 5.4(a)–(b)—No change.

Section 5. Maintenance Requirements and Delisting Procedures

RULE 5.5(a)—No change.

Tier I Securities

Maintenance Requirements

Common Stock—Select Market Companies

RULE 5.5(b). In the case of common stock, the following maintenance requirements must be met:

(1)–(4)—No change.

Commentary

.01—No change.

.02 With regard to the share bid price requirements, as set forth *in* Rule 5.5(b), the Corporation may waive such requirements upon consideration of market conditions, the issuer's capitalization, the number of outstanding and publicly held shares, and any other factors the Corporation deems appropriate.

RULE 5.5(c)–(1)—No change.

Delisting Procedures

RULE 5.5(m). Whenever the Corporation determines that it is appropriate to either suspend dealings in and/or remove securities from listing pursuant to this Rule 5.5, except for other than routine reasons (e.g., redemptions, maturities, etc.), it will follow, insofar as practicable, the following procedures:

(1)–(2)—No change.

(3) Concurrent with the Corporation's decision to delist the issuer's security, the Corporation will prepare a press announcement, which will be disseminated to the [specialist] *Market Makers* and the investing public no later than the opening of trading the business day following the Corporation's decision (the Securities Qualification Department will also distribute [a floor bulletin] *the information* to the ETP [Holders, ETP Firms and Equity ASAP] Holders). Accordingly, the suspension of trading in the issuer's security will become effective at the opening of business on the day following the Corporation's decision.

4–(6)—No change.

(7) Any documents or other written material the issuer wishes to consider should be submitted to the appropriate office of the Corporation at least five (5) business days prior to the date of the hearing.

(8)–(9)—No change.

Rule 6

Business Conduct

Adherence to Law

Rule 6.1. The acceptance of any account, whether on a disclosed or undisclosed basis, by an ETP Holder[, Equity ASAP Holder or ETP Firm] shall at all times comply with fair and equitable principles of trade, the applicable regulations of the Securities and Exchange Commission and of the Federal Reserve Board, *and* the Bylaws and Rules of the Corporation.

Prohibited Acts

Rule 6.2. Any ETP Holder[, Equity ASAP Holder, ETP Firm] or any [other] associated person *thereof* found guilty in accordance with the Rules and procedures of the Corporation of any of the following prohibited acts shall be subject to the imposition of penalties in accordance with the Rules of the Corporation.

(a)—No change.

(b) Conduct or proceeding inconsistent with just and equitable principles of trade, it being declared among other things, that the willful violation of any provision of the federal securities laws, the regulations of the Securities and Exchange Commission and of the Federal Reserve Board, *and* the Bylaws and Rules and procedures of the Corporation shall be considered conduct or proceedings inconsistent with just and equitable principles of trade.

(c)—No change.

(d) Willful failure to carry out any contract with another ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation.

(e) Willful action deemed to be detrimental to the welfare of investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation.

(f) Subjecting the Corporation or any Director or officer thereof to litigation seeking to restrain the lawful exercise of powers and duties under the Bylaws [and], Rules and procedures of the Corporation.

Prevention of the Misuse of Material, Nonpublic Information

Rule 6.3. Every ETP Holder], Equity ASAP Holder or ETP Firm] must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such ETP Holder's[, Equity ASAP Holder's or ETP Firm's] business, to prevent the misuse of material, non-public information by such ETP Holder[, Equity ASAP Holder or ETP Firm] or persons associated with such ETP Holder[, Equity ASAP Holder or ETP Firm]. ETP Holders for whom the Corporation is the Designated Examining Authority ("DEA") that are required, pursuant to Rule [6.7] 4.5, to file SEC form X–17A–5 with the Corporation on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgments stating that the procedures mandated by this Rule have been established, enforced and maintained. Any ETP Holder[, Equity ASAP Holder or ETP Firm] or associated person who becomes aware of a possible misuse of material, non-public information must promptly notify the Corporation's Surveillance Department.

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Commentary:

.01—No change.

.02 The terms "associated person" and "person associated with an ETP Holder[, Equity ASAP Holder or ETP Firm]" mean anyone who directly is engaged in the ETP Holder's[, Equity ASAP Holder's or ETP Firm's] trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder[, Equity ASAP Holder or ETP Firm] or any employee of the ETP Holder[, Equity ASAP Holder or ETP Firm].

For the purposes of this Rule, the term "employee" includes every person who is compensated directly or indirectly by the ETP Holder[, Equity ASAP Holder or ETP Firm] for the solicitation or handling of business in securities, including individuals trading securities for the account of the ETP Holder[, Equity ASAP Holder or ETP Firm], whether such securities are dealt in on an exchange or are dealt over-the-counter.

.03 Rule 6.3 provides that, at a minimum, each ETP Holder, [Equity ASAP Holder or ETP Firm] establish, maintain, and enforce the following policies and procedures:

A. All associated persons must be advised in writing of the prohibition against the misuse of material, non-public information; and

B. All associated persons of the ETP Holder[, Equity ASAP Holder or ETP Firm] must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and

C. Each ETP Holder[, Equity ASAP Holder or ETP Firm] must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the ETP Holder[, Equity ASAP Holder or ETP Firm] for the purpose of detecting the possible misuse of material, non-public information; and

D. All associated persons must disclose to the ETP Holder[, Equity ASAP Holder or ETP Firm] whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock [or option thereon] of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

Maintenance of the foregoing policies and procedures will not, in all cases, satisfy the requirements and intent of Rule 6.3; the adequacy of each ETP Holder's[, Equity ASAP Holder's or ETP Firm's] policies and procedures will depend upon the nature of such ETP Holder's[, Equity ASAP Holder's or ETP Firm's] business.

Rumors

Rule 6.4. No ETP Holder[, Equity ASAP Holder or ETP Firm] or any participant therein shall circulate, in any manner, rumors of a character which might affect market conditions on the Corporation; provided, however, that this rule shall not prohibit discussion of unsubstantiated information when its source and unsubstantiated nature are disclosed.

Manipulation

Rule 6.5. No ETP Holder[, Equity ASAP Holder or ETP Firm] or any participant therein shall effect or induce the purchase or sale or otherwise effect transactions in any security for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security.

Front-Running of Block Transactions

6.6. An ETP Holder[, Equity ASAP Holder or ETP Firm] or associated person obtaining information of an immediate pending transaction or a transaction executed but not yet reported on any national securities exchange or association involving 5,000 shares or more of a security including an equivalent number of option contracts admitted to dealings on the Pacific Exchange, *Inc.*, or securities, underlying *the* options so admitted, shall not initiate or transmit an order in the security involved, or options relating to that security, [on] through the facilities of the Corporation for any account in which he or *she or* his *or her* organization are participants until after the transaction appears on the ticker or is otherwise disclosed, in the case of orders pertaining to equities, or until two minutes after such disclosure, in the case of orders pertaining to options. Exceptions will require prior approval from the Corporation.

[Limitations on Trading Because of Customers' Orders]

[Rule 6.7—Deleted.]

[Discretionary Transactions]

[Rule 6.8—Deleted.]

Excessive Trading

Rule [6.9] *6.8.* No ETP Holder[, Equity ASAP Holder, ETP Firm,] nor any participant therein shall effect [on] through the facilities of the Corporation purchases or sales for any account in which such ETP Holder[, Equity ASAP Holder, ETP Firm] or participant therein is directly or indirectly interested, which purchases or sales are excessive in view of the financial resources of such ETP Holder[, Equity ASAP Holder, ETP Firm] or participant therein or in view of the market for such security.

Commentary

.01 An ETP Holder[, Equity ASAP Holder or ETP Firm] who issues a commitment to trade from the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security [on] through the facilities of the Corporation as referred to in this Rule.

Taking or Supplying Securities to Fill Customer's Order

Rule [6.10] *6.9*(a). No ETP Holder[, Equity ASAP Holder or ETP Firm] who has accepted for execution, personally or through the ETP [Firm or Equity ASAP] Holder or any participant therein, an order for the purchase of securities shall fill such order by selling such securities for any account in which the ETP Holder[, Equity ASAP Holder, ETP Firm] or any participant therein has a direct or indirect interest, or having so accepted an order for the sale of securities, shall fill such order by buying such securities for such an account, except as follows:

(1) An ETP Holder[, Equity ASAP Holder or ETP Firm] who neglects to execute an order may be compelled to take for or supply from such ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* account [or] the securities named in the order;

(2) An ETP Holder[, Equity ASAP Holder or ETP Firm,] acting for another ETP Holder, [Equity ASAP Holder or ETP Firm,] may take or supply the securities named in the order provided the price is justified by the condition of the market and provided that the ETP Holder[, Equity ASAP Holder or ETP Firm] who gave the order shall directly, or through a broker authorized to act for him *or her*, after prompt notification, accept the trade;

(3) An ETP Holder, [Equity ASAP Holder or ETP Firm,] acting as a broker, is permitted to report to his *or her* principals a transaction as made with himself *or herself* when he *or she* has offsetting orders from two principals to buy and to sell and not to give up;

(4) A [specialist] *Market Maker* in accordance with his *or her* duty to provide an orderly market in the securities in which he *or she* is registered may purchase or sell for principal account, such securities named in his *or her* firm's customer's order and record the transaction [on] through the facilities of the Corporation provided that:

(i) the price is consistent with the market;

(ii) full disclosure to his *or her* customer is made on the confirmation of the transaction in a manner that defines the interest of the ETP Holder[, Equity ASAP Holder or ETP Firm].

(5) An ETP Holder[, Equity ASAP Holder or ETP Firm] may purchase or sell for principal account the securities named in his customer's order, and record the transaction [on] through the facilities of the Corporation provided that:

(i) the price is consistent with the market;

(ii) full disclosure of the interest of the ETP Holder[, Equity ASAP Holder or ETP Firm] is made to his customer on the confirmation of the transaction[,].

ETP Holders Holding Options

Rule [6.11] *6.10*(a). No ETP Holder [or ETP Firm while on the Floor] shall initiate the purchase or sale [on] through the facilities of the Corporation for his *or her* own account or for any account in which the ETP Holder [or ETP Firm] or any participant therein is directly or indirectly interested, of any security admitted to dealings [on] through the facilities of the Corporation in which he or *she* holds or has granted any put, call, straddle or option, or in which he or *she* has

knowledge that the ETP [Firm] *Holder* or any participant therein holds or has granted any put, call, straddle or option, unless such put, call, straddle, or option is issued by the Options Clearing Corporation and is immediately reported to the Corporation in accordance with such procedures as may be prescribed by the Corporation.

Commentary

.01 An ETP Holder [or ETP Firm] who issues a commitment to trade from the facilities of the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale or a security [on] through the facilities of the Corporation as referred to in this Rule.

(b) Each ETP Holder [or ETP Firm] shall report to the Corporation such information as may be required with respect to any substantial option relating to securities admitted to dealings [on] through the facilities of the Corporation in which such ETP Holder [or ETP Firm] or any participant therein is directly or indirectly interested or of which such ETP Holder [or ETP Firm] or any participant therein has knowledge by reason of transactions executed by or through such ETP Holder [or ETP Firm]. The Corporation may disapprove of the connection of any ETP Holder [or ETP Firm] or any participant therein with any such option which it shall determine to be contrary to the best interest or welfare of the Corporation or to be likely to create prices which will not fairly reflect market values.

Disclosure of Financial Arrangements

Rule [6.12] *6.11*(a). An ETP Holder[, Equity ASAP Holder, or ETP Firm] who enters into a financial arrangement with any other person or entity shall disclose to the Corporation the identity of such person or entity and the terms of the arrangement. For the purposes of this rule, a financial arrangement is defined as:

(1) the direct financing of an ETP Holder's[, ETP Firm's or Equity ASAP Holder's] dealings upon the Corporation; or

(2)–(3)—No change.

(b) ETP Holders[, Equity ASAP Holders and ETP Firms] with financial arrangements must submit to the Corporation notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Corporation within ten (10) business days of the effective date of such arrangements or within such shorter period of time as the Corporation may require. Failure to disclose the terms of such financial arrangements to the Corporation may result in disciplinary action.

Joint Accounts

Rule [6.13] *6.12*(a). No ETP Holder [or ETP firm while on the Floor,] shall, without the prior approval of the Corporation, initiate the purchase or sale [on] through the facilities of the Corporation of any security admitted to dealings [on] through the facilities of the Corporation for any account in which the ETP Holder[, ETP Firm] or any participant therein is directly or indirectly interested with any person other than such ETP [Firm] *Holder* or participant therein.

The provisions of this rule shall not apply to any purchase or sale (1) by any ETP Holder [or ETP Firm] for any joint account maintained solely for effecting bona fide domestic or foreign arbitrage transactions or (2) by a [specialist] *Market Maker* for any joint account in which he or *she* is expressly permitted to have an interest or participation by this Rule.

Commentary

.01 An ETP Holder [or ETP Firm] who issues a commitment to trade [on] through the facilities of the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security [on] through the facilities of the Corporation as referred to in this Rule.

(b) Reporting. No ETP Holder[, Equity ASAP Holder or ETP Firm,] nor any participant therein shall directly or indirectly hold any interest or participation in any substantial joint account for buying or selling any security [on] through the facilities of the Corporation, unless such joint account is reported to and not disapproved by the Corporation. Such reports, in form prescribed by the Corporation, shall be filed with the Corporation before any transaction is completed [on] through the facilities of the Corporation for such joint account.

The Corporation shall require weekly reports, in *a* form prescribed by the Corporation, to be filed with it with respect to every substantial joint account for buying or selling any specific security on the Corporation and with respect to every joint account which actively trades in any security on the Corporation in which any ETP Holder[, Equity ASAP Holder, or ETP Firm] or participant therein holds any interest or participation or of which such ETP Holder[, Equity ASAP Holder or ETP Firm] or participant therein has knowledge by reason of transactions executed by or through such ETP Holder[, Equity ASAP Holder, ETP Firm] or participant therein; provided, however, that this paragraph shall not apply to joint accounts specifically permitted by this Rule.

In the event the requirements hereof should be applicable to a security also dealt in on another national securities exchange having requirements substantially equivalent hereto and an ETP Holder[, Equity ASAP Holder or ETP Firm] is a member or member firm of such other exchange and complies with such requirements of such other exchange, then such ETP Holder[, Equity ASAP Holder or ETP Firm] need not comply with the reporting provisions hereof.

Disciplinary Action By Other Organizations

Rule [6.14] *6.13.* Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall promptly notify the Corporation in writing of any disciplinary action, including the basis therefore, taken by any national securities exchange or association, clearing corporation, commodity futures market or government regulatory body against the ETP Holder[, Equity ASAP Holder or ETP Firm] or its associated persons, and shall similarly notify the Corporation of any disciplinary action taken by the ETP Holder[, Equity ASAP Holder or ETP Firm] itself against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500.00, or any other significant limitation on activities.

Officers and Employees Restricted

Rule [6.15] *6.14*(a)—No change.

(b) No salaried officer or employee of the Corporation or salaried officer or employee of any corporation in which the Corporation owns the majority of the corporate stock may purchase or sell for his own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of Rule [6.15] *6.14.*

Miscellaneous Prohibitions

Rule [6.16] *6.15.* No ETP Holder[, Equity ASAP Holder, ETP Firm] or any participant therein shall:

(a)—No change.

[(b)—Deleted.]

[(c)] (*b*)—No change.

[Rule 6.17—Deleted.]

Trading Ahead of Customer Limit Orders

Rule 6.16(a) No ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account ot prices that would satisfy the customer's limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are:

(1) for institutional customer accounts, where such account is defined as the account of:

(A) a bank, savings and loan association, insurance company, or registered investment company;

(B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing like functions); or

(C) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least 450 million; or

(2) 10,000 shares or more, unless such orders are less than $100,000 in value.

(b) Paragraph (a) of this Rule shall not apply to a customer limit order if the limit order is marketable at the time it is received by the ETP Holder; provided, however, if the limit order was marketable when received and then becomes non-marketable, once the limit order becomes non-marketable, it becomes subject to the prohibitions of paragraph (a) of this Rule.

(c) Nothing in this Rule requires ETP Holders to accept limit orders from customers.

(d) For the purposes of this Rule, an ETP Holder that controls or is controlled by another ETP Holder shall be considered a single entity, absent appropriate information barriers, so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity.

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Rule 7

Equities Trading

Section 1. [Definitions and] General Provisions

[Rule 7.1—Deleted.]

Hours of Business

Rule *7.1* [7.2]. Unless otherwise ruled by the Board of Directors, the Corporation shall be open for the transaction of business daily except on Saturdays and Sundays. The hours at which trading sessions shall open and close shall be established by the Board.

Dealings upon the Corporation shall be limited to the hours during which the Corporation is open for the transaction of business. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall make any bid, offer or transaction [on] through the facilities of the Corporation, or issue a commitment to trade through ITS [on] through the facilities of the Corporation before or after those hours, except that a *Market Maker* [specialist] may issue and receive pre-opening notifications and pre-opening responses, pursuant to the provisions of the Plan relating to the Pre-Opening Application of the Systems, before the official opening of the Corporation and loans of securities may be made after those hours.

[Commentary:]

[.01—Deleted.]

Holidays

Rule *7.2*[7.3].—No change.
[Rule 7.4–7.5—Deleted.]

Commissions

Rule *7.3*[7.6] (a). Fixed Rates. Nothing contained in the *Rules* [rules] of the Corporation or its practices shall be construed to require or authorize its ETP Holders[, Equity ASAP Holders, ETP Firms,] or any associated person, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission for transactions effected on, or effected by the use of, the facilities of the Corporation.

(b) Acting as Broker. In all transactions in which an ETP Holder[, Equity ASAP Holder or ETP Firm] acts solely as a broker, the bills and confirmations rendered must so indicate, and all commissions charged, if any, shall be appropriately identified.

(c) Acting as Principal. In all transactions in which an ETP Holder[, Equity ASAP Holder or ETP Firm) acts as principal or in which the ETP Holder[, Equity ASAP Holder ETP Firm] or any of its [nominees,] Allied Persons, partners, approved persons or stockholder associates have an interest as principal in any manner, the bills and confirmations rendered must so indicate.

Ex-Dividend or Ex-Right Dates

Rule *7.4*[7.7]. Transactions in stocks, traded "regular" shall be "ex-dividend" or "ex-rights" as the case may be, on the second business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board of Directors rules otherwise. Should such record date or such closing of transfer books occur upon a day other than a business day this *Rule* [rule] shall apply for the third preceding business day.

[Section 2. Admission to and Conduct on the Trading Floor]

[Rule 7.8—Deleted.]

[Section 3. Units of Trading, Bids, Offers and Quotations]

Trading Units

Rule *7.5*[7.9]. The unit of trading in stocks shall be *1* [100] share[s] and the unit of trading in bonds shall be $1,000 in par value thereof unless otherwise designated by the Corporation. *For stocks, 100 shares shall constitute a "round lot," any amount less than 100 shares shall constitute an "odd lot," and any amount greater than 100 shares that is not a multiple of a round lot shall constitute a "mixed lot." For bonds, a* [A] designated unit of trading shall constitute a "round lot[.]" *and any* [Any] lesser amount shall constitute an "odd lot."

Trading Differentials

Rule *7.6*[7.10](a). The Corporation shall determine the trading differentials for equity securities traded on the Corporation.

Commentary

.01—No change.

.02 Notwithstanding Commentary .01, [an ETP Holder may trade on the Floor at increments of 1/32 or 1/64] *the Corporation may allow trading at smaller increments* in order to match bids and offers displayed by other markets for the purpose of preventing Intermarket Trading System trade-throughs.

.03—No change.

.04 The minimum price variation for orders generated from Profiles designated for the midpoint pricing service by the OptiMark System will be the variation of the midpoint price between the highest published bid and the lowest published offer displayed on the Consolidated Quotation System. Any executions resulting from processing Profiles designated for midpoint pricing will be priced and reported in increments as small as 1/64th or, upon conversion to decimals, one-half of the minimum price variation.

.05 The minimum price variation ("MPV") for equity securities traded on the Archipelago Exchange shall be 1/64 of $1.00 for those securities that are quoted in fractions and $0.01 for those equity securities that are quoted in decimals; provided, however, at all times the MPV shall be consistent with the Decimalization Implementation Plan.

.06 The minimum price improvement increment ("MPII") on the Archipelago Exchange shall be equal to $0.01 or 10% of the spread, whichever is more.

(b) Bonds. Bids or offers in bonds shall not be made at a lesser variation than 1/8 of 1% of the principal amount, except that the Corporation may fix a lesser variation in specific issues.

Transmission of Bids or Offers

Rule *7.7*[7.11](a). The names of ETP Holders [or ETP Firms] bidding for or offering securities [on] through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade [on] through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

(b) Except as *otherwise permitted by these Rules* [stated in Rule 7.12(b)], no ETP Holder [or ETP Firm] shall transmit [on] through the facilities of the Corporation any information regarding a bid, offer or other indication of an order to a non-holder of an ETP until such bid, offer or other indication of an order has been disclosed and permission to transmit such information has been obtained from the originating ETP Holder [or ETP Firm].

[Rule 7.12—Deleted.]

Bid or Offer Deemed Regular Way

Rule *7.8* [7.13]—No change.
[Rule 7.14—Deleted.]

Execution Price Binding

Rule *7.9* [7.15]. *Notwithstanding Rules 7.10 and 7.11, the* [The] price at which an order is executed shall be binding notwithstanding the fact that an erroneous report in respect thereto may have been rendered. [A report shall not be binding if an order was not actually executed but was in error reported to have been executed; however, an order which was executed, but in error reported as not executed, shall be binding. No ETP Holder, Equity ASAP Holder or ETP Firm shall assume or pay any part of the difference between the price at which an order is executed and the price at which it may have been erroneously reported.]

Cancellation of Revisions in Transactions

Rule *7.10* 7.16. A sale made in *demonstrable* error and canceled by both parties *may be removed, if the parties do not object, subject to the approval of the Corporation* [is subject to removal, if there is no objection.]

[Commentary:]

[.01 Specialists and floor brokers are responsible for the satisfactory execution of orders accepted by them and] *Disagreements* [disagreements] with respect thereto shall be referred to the appropriate trading authority of the Corporation.

A dispute arising on bids, offers or sales if not settled by agreements between the parties interested, shall be settled by the Corporation.

Clearly Erroneous Policy

Rule 7.11(a). Definition. For the purposes of this Rule, the terms of a transaction executed on the Corporation are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(b) Request for Corporation Review. An ETP Holder that receives an execution on an order that was submitted erroneously to the Corporation for its own or customer account may request that the Corporation review the transaction under this Rule. Such request for review shall be made via telephone and in writing via facsimile or e-mail. The telephone request should be submitted immediately and the written request should be submitted within fifteen (15) minutes of the time the trade in question was executed. Once the request has been received, an officer of the Corporation designated by the President shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Each party to the transaction shall provide, on a timely basis, any supporting written information as may be reasonably requested by the designated officer to aid resolution of the matter.

(c) Review Procedures. Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial written request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the designated Corporation officer. If the officer determines that the transaction is not clearly erroneous, the officer shall decline to take any action in connection with the completed trade. In the event that the officer determines that the transaction in dispute is clearly erroneous, the officer shall declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The officer shall promptly notify the parties of the determination reached and shall issue a written resolution of the matter. The ETP Holder aggrieved by the officer's determination may appeal such determination in accordance with the provisions of Rule 10.13.

(d) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Corporation, the Chief Executive Officer or the President may declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer or President pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of Rule 10.13.

[Rules 7.17–7.39—Deleted.]
[Rules 7.41–7.44—Deleted.]
[Rule 7.46—Deleted.]

Trading Halts Due to Extraordinary Market Volatility

Rule *7.12* [7.47] (a)–(c)—No change.

Commentary

.01–.02—No change.

.03 The reopening of trading following a trading halt under this Rule will be conducted pursuant to procedures adopted by the Corporation and communicated by notice to its ETP Holders[, Equity ASAP Holders, and ETP Firms].

.04 Nothing in this Rule should be construed to limit the ability of the Corporation to otherwise halt or suspend the trading in any stock or stocks traded on the Corporation pursuant to any other Corporation *Rule* [rule] or policy.

Trading Suspensions

Rule 7.13. Except as otherwise stated in Rule 5.5, the Chair of the Board or the President, or the officer designee of the Chair or the President, shall have the power to suspend trading in any and all securities traded on the Corporation whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

Clearance and Settlement

Rule 7.14(a). Each ETP Holder shall either:

(1) Be a clearing firm;

(2) clear transactions on the Corporation through a clearing firm; or

(3) clear transactions through an entity duly authorized by the Corporation.

(b) An ETP Holder must give up the name of the clearing firm through which each transaction on the Corporation will be cleared. If there is a subsequent change in identity of the clearing firm through which the transaction on the Corporation will be cleared, the ETP Holder shall report such change to the Corporation at least five (5) business days in advance.

(c) Each clearing firm must be admitted to the Corporation as an ETP Holder by meeting the qualification requirements set forth above in Rule 2; provided, however, if the clearing firm has become an ETP Holder for the sole purpose of acting as a clearing firm on the Corporation, such clearing firm need not pay the regular ETP Holder fee. The clearing firm shall be responsible for the clearance of the transactions effected by each ETP Holder which gives up such clearing firm's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such clearing firm to such ETP Holder, which authorization shall be submitted to the Corporation.

(d) Notwithstanding any other provisions contained in the Rule to the contrary, the Board may extend or postpone the time of the delivery of a transaction on the Corporation whenever in its opinion, such action is called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions. In such case, delivery shall be effected at such time, place and manner as directed by the Board of Directors.

Stock Option Transactions

Rule *7.15*[7.45](a). No *Market Maker* [specialist] nor his *or her* firm, nor any participant therein, shall, directly or indirectly, be interested in a pool dealing or trading in any security in which he *or she* is registered as *a Market Maker* [specialist].

(b) No *Market Maker* [specialist], nor his *or her* firm, nor any participant therein shall acquire, hold or grant, directly or indirectly, any interest in any option to buy or to sell or to receive or to deliver shares of any security in which he *or she* is registered as *a Market Maker* [specialist], unless such option is issued by the Options Clearing Corporation and is immediately reported to the Corporation in accordance with such procedures as may be prescribed by the Corporation.

Short Sales

Rule *7.16* [7.40](a) (1) Except as provided in subsection (d) hereof, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall for his, *her* or its own account or for the account of any other person, effect [on] through the facilities of the Corporation a short sale of any security for which trades are reported pursuant to a consolidated transaction reporting system operated in accordance with a plan declared effective under the Securities Exchange Act Rule *11Aa3–1* [17a–15] (a "consolidated system") (A) below the price at which the last sale thereof, regular way, was reported in such consolidated system, or (B) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported in such consolidated system.

(2) Except as provided in subsection (d) hereof, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall for his, *her* or its own account, or for the account of any other person, effect [on] through the facilities of the Corporation a short sale of any security not covered by paragraph (1) of this subsection (A) below the price at which the last sale of such security, regular way, was effected [on] through the facilities of the Corporation, or (B) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected [on] through the facilities of the Corporation.

(3) Notwithstanding paragraph (1) of this subsection (a), the Board of Directors of the Corporation, in its discretion, may determine that it is necessary or appropriate in the public interest or for the protection of investors that short sales in any security for which trades are reported in a consolidated system be subject to the *Rule* [rule] set forth in paragraph (2) hereof. Following any such designation of any such security by the Board of Directors, compliance with the terms of paragraph (2) shall constitute compliance with this subsection (a).

(b) Order Identification. No ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation shall, by the use of any facility of the Corporation, execute any sell order unless such order is indicated as either "long" or "short".

(c) Marking Orders. No ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation shall mark a sell order "long" unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected, or (2) such ETP Holder[, Equity ASAP Holder, or ETP Firm] is informed that the seller owns the security ordered to be sold, and as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.

(d) Exceptions. The provisions of subsection (a) hereof shall not apply to:

(1) Any sale by any person, for an account in which he *or she* has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense;

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(2) Any ETP Holder[, Equity ASAP Holder, or ETP Firm] in respect of a sale, for an account in which it has no interest, pursuant to an order to sell which is marked "long";

(3) Any sale of a security for which trades are reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule *104* [10b–7]) by a registered *market maker* [specialist] in such security for its own account (i) effected at a price equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan; or (ii) effected at a price equal to the most recent offer communicated for the security by such registered specialist pursuant to the Securities Exchange Act Rule 11Ac1–1 if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan. This exemption shall not be available for a short sale of any security not covered by paragraph (a)(1) of this Rule *7.16* [7.40];

(4) Any sale by *an odd lot dealer registered with the Corporation for such security* [a specialist] to offset odd lot orders of customers;

(5) Any sale by *an odd lot dealer registered with the Corporation for such security* [a specialist] to liquidate a long position which is less than a round lot, provided such sale does not change the position of such *Market Maker* [specialist] by more than the unit of trading;

(6) Any sale of a security for which trades are not reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule *104* [10b–7]) effected with the approval of the Corporation which is necessary to equalize the price of such security on the Corporation with the current price of such security on another national securities exchange which is the principal exchange market for such security;

(7) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he *or she* is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold, provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any class of securities of the issuer;

(8) Any sales of a security on the Corporation effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on the Corporation, provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him *or her* to cover such sale is then available to him in such foreign securities market and intends to accept such offer, immediately;

[(9) Any sale of a security effected in accordance with a special offering plan declared effective by the Securities and Exchange Commission pursuant to paragraph (d) of Securities Exchange Act Rule 10b–2; or]

(9)[(10)] Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights [pursuant to Securities and Exchange Act Rule 10b–8] or a standby underwriting commitment.

(11) Any sale of a security for which trades are reported in a consolidated system (except a sale to a stabilizing bid complying with the Securities and Exchange Act Rule *104* [10b–7]) by any broker or dealer, for his *or her* own account or for the account of any other person, effected at a price equal to the most recent offer communicated by such broker or dealer pursuant to the Securities and Exchange Act Rule 11Ac1–1 in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was (A) above the price at which the last sale, regular way, for such security was reported pursuant to an effective transaction reporting plan; or (B) at such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan. This exemption shall not be available for a short sale of any security not covered by paragraph (a)(1) of this Rule *7.16* 7.40.

For the purpose of paragraph (8) of this subsection (d) a depository receipt for a security shall be deemed to be the same security as the security represented by such receipt.

(e) Short Sales After "Ex" Date. In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-rights or ex-any other distribution, all sales prices prior to "ex" date may be reduced by the value of such distribution.

(f) Covering Short Sales. No ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation shall lend, or arrange for the loan of any security for delivery to the broker for the purchaser after sale, or shall fail to deliver a security on the date delivery is due, if such ETP Holder[, Equity ASAP Holder, or ETP Firm] knows or has reasonable grounds to believe that the sale was effected, or will be effected, pursuant to an order marked "long" unless such ETP Holder[, Equity ASAP Holder, or ETP Firm] knows, or has been informed by the seller (i) that the security sold has been forwarded to the account for which the sale was effected, or (ii) that the seller owns the security sold, that it is then impracticable to deliver such security to such account and that delivery will be made as soon as is possible without undue inconvenience or expense. The provisions of this subsection (f) shall not apply to:

(1) The lending of a security by *an* [a] ETP Holder[, Equity ASAP Holder, or ETP Firm] through the medium of a loan to another ETP Holder[, Equity ASAP Holder, or ETP Firm]; or

(2) Any loan, or arrangement for the loan, of any security, or any failure to deliver any security if, prior to such loan, arrangement, or failure to deliver, the Corporation finds (A) that such sale resulted from a mistake made in good faith; (B) either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a "purchase for cash" or that the mistake was made by the seller's broker and the sale was at a price permissible for a short sale under Rule *7.16* [7.40]; and (C) that due diligence was used to ascertain that the circumstances specified in clause (1) of Rule *7.16(c)* [7.40(c)] existed or to obtain the information specified in clause (2) thereof.

Firm Orders and Quotes

Rule 7.17(a) Orders at Stated Prices and Sizes. No ETP Holder shall submit to the Corporation an order (including Q Orders) to buy from or sell to any person any security at a stated price and/or size unless such ETP Holder is prepared to, and, upon submission of an appropriate contra-side order, does, purchase or sell, as the case may be, at such price and/or size and under such conditions as are stated at the time of submission of such order to buy or sell.

(b) Firm Quotes. All bids made and all offers made shall be in accordance with the provisions of Rule 11Ac1–1 under the Securities Exchange Act of 1934, governing the dissemination of quotations for reported securities.

[Rule 7.18. Reserved.
[Rule 7.19. Reserved.
[Rules 7.48–7.49—Deleted.]
[Rule 7.52—Deleted.]
[Rules 7.54–7.65—Deleted.]

Section 2. Market Makers

Registration of Market Makers

Rule 7.20(a). No ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Corporation pursuant to this Rule and the Corporation has not suspended or canceled such registration. Registered Market Makers are designated as dealers on the Corporation for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(b) As applicant for registration as a Market Maker shall file an application in writing on such form as the Corporation may prescribe. Applications shall be reviewed by the Corporation, which shall consider such factors including, but no limited to capital operations, personnel, technical resources, and disciplinary history.

(c) An applicant's registration as a Market Maker Shall become effective upon receipt by the ETP Holder of notice of an approval of registration by the Corporation. In the event that an application is disapproved by the Corporation, the applicant shall have an opportunity to be heard upon the specific grounds for the denial, in accordance with the provisions of Rule 10.13.

(d) The registration of a Market Maker may be suspended or terminated by the Corporation upon a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rule 7.23.

(e) Any registered Market Maker may withdraw its registration by giving written notice to the Corporation. Such withdrawal of registration shall become effective on the tenth business day following the Corporation's receipt of the notice. A Market Maker who fails to give a ten-day written notice of withdrawal, the ETP Holder shall not be permitted to re-register as a Market Maker for a period of six months.

Obligations of Market Maker Authorized Traders

Rule 7.21(a). General. MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered.

(b) Registration of Market Maker Authorized Traders. The Corporation may, upon receiving an application in writing from a Market Maker on a form prescribed by the Corporation, register a person as a MMAT.

(1) MMAT's may be officers, partners, employees or other associated persons of ETP Holders that are registered with the Corporation as Market Maker.

(2) To be eligible for registration as a MMAT, a person must be successfully complete the General Securities Representative Examination (Series 7) and complete a training and certification program sponsored by the Corporation; provided, however, the requirement to complete the Series 7 Examination may be waived by the Corporation if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application.

(3) The Corporation may require a Market Maker to provide additional information the Corporation considers necessary to establish whether registration should be granted.

(4) The Corporation may grant a person conditional registration as a MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(5) A Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.

(c) Suspension or Withdrawal of Registration.

(1) The Corporation may suspend or withdraw the registration previously given to a person to be a MMAT if the Corporation determines that:

(A) the person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the Bylaws, Rules and procedures of the Corporation;

(B) the person is not properly performing the responsibilities of a MMAT.

(C) the person has failed to meet the conditions set forth under paragraphs (b) above; or

(D) the Corporation believes it is in the interest of maintaining fair and orderly markets.

(2) If the Corporation suspends the registration of a person as a MMAT, the Market Maker must not allow the person to submit orders into the Archipelago Exchange.

(3) The registration of a MMAT will be withdrawn upon the written request of the ETP Holder for which the MMAT is registered. Such written request shall be submitted on the form prescribed by the Corporation.

Registration of Market Makers in a Security

Rule 7.22(a). A Market Maker may become registered in a newly authorized security or in a security already admitted on the Corporation by filing a security registration form with the Corporation. Registration in the security shall become effective on the first business day following the Corporation's approval of the registration. In considering the approval of the registration of the Market Maker in a security, the Corporation may consider;

(1) the financial resources available to the Market maker;

(2) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;

(3) the Market Maker's operational capability;

(4) the maintenance and enhancement of competition among Market Makers in each security in which they are registered;

(5) the existence of satisfactory arrangements for clearing the Market Maker's transactions;

(6) the character of the market for the security, e.g., price, volatility, and relative liquidity.

(b) A Market Maker's registration in a security may be terminated by the Corporation if the Market Maker fails to enter quotations in the security within five (5) business days after the Market Maker's registration in the security becomes effective.

(c) Voluntary Termination of Security Registration. A Market Maker may voluntarily terminate its registration in a security by providing the Corporation with a one-day written notice of such termination. A Market Maker that fails to give advanced written notice of termination to the Corporation may be subject to formal disciplinary action pursuant to Rule 10.

(d) The Corporation may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever, in the Corporation's judgment, the interests of a fair and orderly market are best served by such action.

(e) An ETP Holder may seek review of any action taken by the Corporation pursuant to this Rule, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities, in accordance with Rule 10.13.

Obligations of Market Makers

Rule 7.23(a). General. ETP Holders who are registered as Market Makers in one or more securities traded on the Corporation must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Corporation in accordance with this Rule. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

(1) Maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade;

(2) Maintain adequate minimum capital in accordance with Rule 4.1;

(3) Remain in Good Standing with the Corporation;

(4) Inform the Corporation of any material change in financial or operational condition or in personnel.

(5) Clear and settle transaction through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another ETP Holder that clears trades through such agency.

(6) Enter and maintain a Cleanup Order in each security in which the Market Maker is registered as such for each Market Order Auction.

(b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during the Core Trading Hours on all days in which the Corporation is open for business.

(c) If the Corporation finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Corporation in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Board of Directors under the Bylaws, Rules, or procedures of the Corporation with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule. In accordance with Rule 10, an ETP Holder may seek review of actions taken by the Corporation pursuant to this Rule.

(d) Temporary Withdrawal. A Market Maker may apply to the Corporation to withdraw temporarily from its Market Maker status in the securities in which it is registered. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Corporation an opinion of counsel certifying that such legal or regulatory basis exists. The Corporation will act promptly on such request and, if the request is granted, the Corporation may temporarily reassign the securities to another Market Maker.

Rule 7.24. Reserved.

Registration of Odd Lot Dealers

Rule 7.25(a). Eligibility. Any Market Maker may become registered as an Odd Lot Dealer in any security by filing an odd lot registration form with the Corporation. Registration as an Odd Lot Dealers shall become effective on the first business day following the Corporation's approval of the registration. In considering the approval of the registration of the Market Maker as an Odd Lot Dealer in o security, the Corporation shall consider such factors including, but not limited to, financial resources, capital operations, personnel, technical resources and disciplinary history. If the Corporation denies an application to become an Odd Lot

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Dealer in a security or securities, the applicant may seek review of the decision in accordance with Rule 10.13.

(b) Market Makers Registered in a Security. For each security in which a Market Maker is registered, the Market Maker must become an Odd Lot Dealer in that security.

(c) Obligations of Odd Lot Dealers. An Odd Lot Dealer must:

(1) Maintain an OLTO, as described in Rule 7.31(g), during each day in which the Corporation is open for business for each security in which the Odd Lot Dealer is registered as such; and

(2) Register and maintain registration as an Odd Lot Dealer in a minimum of 100 securities if the Odd Lot Dealer registers as such in any security for which it is not registered as a Market Maker.

(d) Termination of Odd Lot Dealer Registration. The Corporation may suspend or terminate an Odd Lot Dealer's registration in a security or securities:

(1) If the Corporation determines that the Odd Lot Dealer has substantially or continually failed to engage in dealings in accordance with paragraph (c); or

(2) If, in the Corporation's judgment, the interest of a fair and orderly market are best served by such action.

An ETP Holder may seek review of any such termination or suspension in accordance with Rule 10.

(e) Voluntary Termination of Registration. An Odd Lot Dealer may voluntarily terminate its registration as such in a security or securities by providing the Corporation with a one-day written notice of such termination. An Odd Lot Dealer that fails to give advance notice of termination to the Corporation may be subject to formal disciplinary action pursuant to Rule 10.

Limitations on Dealings

Rule 7.26(a) General. A Market Maker on the Corporation may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier (also commonly referred to as "Chinese Wall") between the market making activities and the Other Business Activities. "Other Business Activities" mean:

(1) conducting an investment banking or public securities business;

(2) making markets in the options overlying the security in which it makes markets; or

(3) functioning as a GAT.

(b) Information Barrier. For the purposes of this rule, an Information Barrier is an organizational structure in which:

(1) The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between MMATs, and persons conducting the Other Business Activities. However, upon request and not on his/her own initiative, a MMAT performing the function of a Market Maker may furnish to persons at the same firm or an affiliated firm ("affiliated persons"), the same sort of market information that the MMAT would make available in the normal course of its market making activity to any other person. The MMAT must provide such information to affiliated persons in the same manner that he/she would make such information available to a non-affiliated person.

(2) There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. These procedures, at a minimum, must provide that:

(A) the MMAT performing the function of a Market Maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and

(B) all information pertaining to the Market Maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier.

(3) Persons on one side of the barrier may not exercise influence or control over persons on the other side of the barrier, provided that:

(A) the market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the Market Maker's responsibilities under the Rules of the Corporation; and

(B) the same person or persons (the "Supervisor") may be responsible for the supervision of the market making and the GAT functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliated firms. While the Supervisor may establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor may not:

(i) actually perform the function either of MMAT or GAT;

(ii) provide to any person performing the function of a GAT any information relating to market making activity beyond the information that a MMAT performing the function of a Market Maker may provide under subparagraph (b)(1), above; nor

(iii) provide a MMAT performing the function of Market Maker with specific information regarding the firm's pending transactions or order flow arising out of its GAT activities.

(c) Documenting and Reporting of Information Barrier Procedures. An ETP Holder implementing an Information Barrier pursuant to this Rule shall submit to the Corporation a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Rule, and the compliance and audit procedures it proposes to implement to ensure that the Information Barrier is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Corporation with such information and reports as the Corporation may request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Rule or the ETP Holder's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and that it recognizes that the Corporation may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a Market Maker, in the event of such a violation;

(5) Whether the ETP Holder or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the ETP Holder's Information Barrier, which procedures, at a minimum, must be the same as those used by the ETP Holder or the affiliate to clear for unaffiliated third parties; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of Rules 10b–5 and 14e–3 under the Exchange Act or on or more other provisions of the Exchange Act, the rules thereunder or the Rules of the Corporation, and that the Corporation intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.

(d) Approval of Information Barrier Procedures. The written statement required by paragraph (c) of this Rule must detail the internal controls that the ETP Holder will implement to satisfy each of the conditions stated in that Rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Corporation determines that the organizational structure and the compliance and audit procedures proposed by the ETP Holder are acceptable under this Rule, the Corporation shall so inform the ETP Holder, in writing. Absent the Corporation finding an ETP Holder's Information Barrier procedures acceptable, a Market Maker may not conduct Other Business Activities.

(e) Clearing Arrangements. Subparagraph (c)(5) permits an ETP Holder or an affiliate of the ETP Holder to clear the ETP Holder's Market Maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier. In this regard:

(1) The procedures must provide that any information pertaining to Market Maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.

(2) Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any Market Maker to meet market making or other obligations under the Corporation's Rules.

Rule 7.27. Reserved.

Rule 7.28. Reserved.

Section 3. Archipelago Exchange

Access

Rule 7.29(a). General. The Archipelago Exchange shall be available for entry and execution of orders by Users with authorized access. To obtain authorized access to the Archipelago Exchange, each User must enter into a User Agreement.

(b) Sponsored Participants. A Sponsored Participant may obtain authorized access to the Archipelago Exchange only if such access is authorized in advance by one or more Sponsoring ETP Holders as follows:

(1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring ETP Holders establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Archipelago Exchange. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.

(2) For a Sponsored Participant to obtain and maintain authorized access to the Archipelago Exchange, a Sponsored Participant and its Sponsoring ETP Holder must agree in writing to the following Sponsorship Provisions:

(A) Sponsored Participant and its Sponsoring ETP Holder must have entered into and maintained a User Agreement with Archipelago Exchange, L.L.C. The Sponsoring ETP Holder must designate the Sponsored Participant by name in its User Agreement as such.

(B) Sponsoring ETP Holder acknowledges and agrees that

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respect on the Sponsoring ETP Holder and

(ii) Sponsoring ETP Holder is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(C) Sponsored ETP Holder shall comply with the PCXE Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Archipelago Exchange and Sponsored Participant shall comply with PCXE Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Archipelago Exchange, as if Sponsored Participant were an ETP Holder.

(D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring ETP Holder a list of Authorized Traders who may obtain access to the Archipelago Exchange on behalf of the Sponsored Participant.

(E) Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Archipelago Exchange.

(F) Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to the Archipelago Exchange.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use of access to the Archipelago Exchange, including unauthorized entry of information into the Archipelago Exchange, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use and access to the Archipelago Exchange for compliance with the terms of this agreement.

(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring ETP Holder, Archipelago Exchange, L.L.C., PCXE or any other third parties that arise from the Sponsored Participants access to and use of the Archipelago Exchange. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(3) The Sponsoring ETP Holder must provide the Corporation with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

Authorized Traders

Rule 7.30(a). An ETP Holder shall maintain a list of ATs who may obtain access to the Archipelago Exchange on behalf of the ETP Holder or the ETP Holder's Sponsored Participants. The ETP Holder shall update the list of ATs as necessary. ETP Holders must provide the list of ATs to the Corporation upon request.

(b) An ETP Holder must have reasonable procedures to ensure that all ATs comply with the trading Rules and procedures related to the Archipelago Exchange and all other Rules of the Corporation.

(c) An ETP Holder must suspend or withdraw a person's status as an AT if the Corporation has determined that the person has caused the ETP Holder to fail to comply with the Rules of the Corporation and the Corporation has directed the ETP Holder to suspend or withdraw the person's status as an AT.

(d) An ETP Holder must have reasonable procedures to ensure that the ATs maintain the physical security of the equipment for accessing the facilities of the Corporation to prevent the improper use of access to the systems, including unauthorized entry of information into the systems.

Orders and Modifiers

Rule 7.31.

(a) Market Order. An order to buy or sell a stated amount of a security that is to be executed at the best price obtainable when the order reaches the Corporation.

(b) Limit Order. An order to buy or sell a stated amount of a security at a specified price or better. A "marketable" limit order is a limit order to buy (sell) at or above (below) the consolidated best offer (bid) for the security.

(c) Day Order. An order to buy or sell which, if not executed, expires at the end of the day on which it was entered.

(d) Good-Till-Canceled ("GTC") Order. An order to buy or sell which remains in effect until it is executed or canceled. The Corporation will modify GTC Orders as appropriate in light of stock events (e.g., stock split or reverse split).

(e) Immediate-or-Cancel Order. A market or limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as canceled.

(f) Tracking Order.

(1) Any User may submit an instruction to the Archipelago Exchange for the parameters of a Tracking Order at any time during the day. The parameters shall include:

(A) the maximum aggregate size, which is the aggregate size of all partial orders generated in the Tracking Order Process for a particular security that the User is willing to trade on that day;

(B) the maximum tradeable size, which is the maximum size of any partial order generated in response to an order entering the Tracking Order Process that the User is wiling to trade on that day;

(C) the price in relation to the NBBO; and

(D) the relevant security.

(2) Once a User has submitted an instruction for the parameters of the Tracking Order, the instruction will remain in effect until closing or until the User has traded its maximum aggregate size for that day, whichever comes first.

(3) The Tracking Order Process rotation is as follows: Users who have submitted an instruction for the parameters of a Tracking Order will be assigned trades on a price/time rotating basis, such that within each price level, trades shall be assigned by the time the Users' instructions are received by the Archipelago Exchange. Within each price level, the first User to send an instruction for a Tracking Order will be the first User to be assigned a trade in the rotation process. For each order that enters the Tracking Order Process, the Tracking Order Process will rotate once through the Users in the rotation pattern. In each rotation, the User will be responsible for one trade up to the User's maximum tradeable size.

(4) The order described in the User's Tracking Order instruction will only be generated if:

(A) an unfilled round or mixed lot order enters the Tracking Order Process and

(B) it is such User's turn as determined by the Tracking Order Process rotation pattern.

(5) Each partial order generated in a rotation is a limit order in which:

(A) the price is set or better than the NBBO at the time the unfilled order enters the Tracking Order Process, based on the User's parameters; and

(B) the size is (i) equal to the User's maximum tradeable size if the unfilled order is equal to or larger than the maximum tradeable size; or (ii) equal to the size of the unfilled order if the unfilled order is smaller than the maximum tradeable size.

(6) A User may modify the parameters of the instruction for the Tracking Order from time to time, as the Corporation permits.

(7) Whenever in the judgment of the Corporation, because of an influx of orders, a system malfunction or other unusual conditions or circumstances, the interests of a fair and orderly market so require, the Corporation may suspend the Tracking Order Process. The Tracking Order Process shall resume when the Corporation determines that the conditions supporting the suspension no longer exist.

(g) Odd Lot Tracking Order.

(1) Only Odd Lot Dealers may submit an Odd Lot Tracking Order or "OLTO" to the Archipelago Exchange.

(2) An OLTO is a Tracking Order, as described in paragraph (f), in which:

(A) the maximum aggregate size is unlimited;

(B) the maximum tradeable size is 99 shares;

(C) the price is set at the NBBO; and

(D) the security is one in which the ODD Lot Dealer is registered as such; and

(E) the instruction must be in effect for the duration of Core Trading Hours;

provided, however, the order described in the OLTO instruction will only be generated if

(1) an unfilled odd lot market order enters the Odd Lot Tracking Order Process pursuant to Rule 7.37(c); or

(2) an odd lot limit order causes a locked market as described in Rule 7.56.

(h) Working Order. Any order with a conditional or undisplayed price and/or size designated as a "Working Order" by the Corporation, including, without limitation:

(1) All-or-None Order. A limit order which is to be executed in its entirety or not at all.

(2) Discretionary Order. An order to buy or sell a stated amount of a security at a specified, undisplayed price (the "discretionary price"), in addition to at a specified, displayed price ("displayed price.")

(3) Reserve Order. A limit order with a portion of the size displayed and with a reserve portion of the size ("reserve size") that is not displayed on the Corporation.

(i) Directed Order. Any market or limit order to buy or sell which has been directed to a particular Market Maker by the User.

(j) Directed Fill. Any Market Maker may submit a standing instruction to the Archipelago Exchange for the parameters of a Directed Fill, including, but not limited to, the size of the order, the Users that may send such Market Maker a Directed Order, the price improvement algorithm and the period of time the instruction is effective. The Market Maker's Directed Fill described in the instruction will only be generated in response to a Directed Order directed to such Marker Maker. The Directed Fill is a limit order with (1) a size that is equal to or less than the size of the Directed Order and (2) a price that improves the BBO by an automatically preset amount, which must be equal to or greater than the MPII, pursuant to a price improvement algorithm; provided, however, the Directed Fill will not be generated if the price is not equal to or better than the NBBO. A Marker Maker may modify the parameters of the instruction for a Directed Fill from time to time, as the Corporation permits.

(k) Q Order. A limit order submitted to the Archipelago Exchange by a Market Maker. A Q Order may not be a Working Order.

(l) Stop Order. A Stop Order to buy becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or above the stop price. A Stop Order to sell becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or below the "stop" price. Stop Orders shall not have standing in any Order Process in the Arca Book and shall not be displayed.

(m) Stop Limit Order. A Stop Limit Order to buy becomes a limit order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or above the stop price. A Stop Limit Order to sell becomes a limit order when a transaction in the security occurs on the Corporation or on another national securities exchange of association at or below the stop price.

(n) Do Not Reduce. A limit order to buy, a Stop Order to sell or a Stop Limit Order to sell which is not to be reduced by the amount of an ordinary cash dividend on the ex-dividend date. A Do Not Reduce Order applies only to ordinary cash dividends; it should be reduced for other distributions such as when a stock goes "ex" a stock dividend or ex rights.

(o) Do Not Increase. A limit order to buy, a Stop Order to sell or a Stop Limit Order to sell which is not to be increased in shares on the ex-date as a result of a stock dividend or stock distribution.

(p) Fill-or-Return. An order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be cancelled, without routing the order to another market center or market participant.

(q) Timed Order. An order to buy or sell which is to remain in effect from and/or until a specified time, after which such order or the portion thereof not executed is to be treated as cancelled.

(r) Fill-or-Return Plus. An order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be cancelled, without routing the order to another market center or market participant. In the event any portion of the order is not executed on the Corporation and must be cancelled, the Archipelago Exchange, after canceling the unexecuted portion of the order, shall send an administrative message to an ETP Holder designated by the order entry ETP Holder informing the designated ETP Holder that portion of the order was cancelled.

(s) Cross Order. A two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the "cross price"). For the purposes of this Rule 7.31(s), an order of block size shall have the same meaning as set forth in Rule 7.57. A Cross Order will be executed as follows; provided, however, no Cross Orders shall be matched at the cross price without interacting with any orders in the Arca Book unless the cross price improves the BBO by the MPII:

(I) If the cross price is equal to or better than the NBBO.

(A) and the cross price is between the BBO, the Cross Order shall be matched at the cross price without interacting with any orders in the Arca Book.

(B) and the cross price is at the BBO.

(i) first, the Cross Order shall be matched at the displayed price, against all pre-existing displayed orders in the Display Order Process of the Arca Book with priority according to Rule 7.36; and

(ii) then, any remainder of the Cross Order shall be matched at the cross price.

(2) If the cross price is outside the NBBO,

(A) and the cross price is between the BBO,

(i) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursuant to Section 5 of Rule 7; and

(ii) then, the remainder of the Cross Order shall be matched at the cross price without interacting with any orders in the Arca Book.

(B) and the cross price is at the BBO,

(i) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursaunt to Section 5 of Rule 7;

(ii) then, the Cross Order shall be matched, at the displayed price, against all pre-existing displayed orders in the Display Order Process of the Arca Book with priority according to Rule 7.36; and

(iii) then, any remainder of the Cross Order shall be matched at the cross price.

(C) and the cross price is outside the BBO,

(i) and the NBBO is better than the BBO,

(I) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursuant to Section 5 of Rule 7;

(2) then, the Cross Order shall be matched,

(a) at the displayed price (if the Cross Order is smaller than block size) or at the cross price (if the Cross Order is of block size), against all pre-existing orders in the Display Order Process of the Arca Book with priority according to Rule 7.36; and

(b) at the price at which the Working Order is represented in the Arca Book, against all pre-existing orders in the Working Order Process of the Arca Book with priority according to Rule 7.36.

The Cross Order shall be matched against any displayed and/or Working Order at a better price level before being matched to any displayed and/or Working Order at the next best price level.

(2) then, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursuant to Section 5 of Rule 7;

(3) then, any remainder of the Cross Order shall be matched at the cross price.

(t) Auction-Only Limit Order. A limit order that is to be executed only during the Market Order Auction.

(u) Cleanup Order.

(1) Only Market Makers may submit Cleanup Orders to the Archipelago Exchange.

(2) Cleanup Orders must be submitted to the Archipelago Exchange before 6:15 a.m. (Pacific Time) and remain in effect until the conclusion of the Market Order Auction.

(3) Cleanup Orders must be 2500 shares in size.

(4) Cleanup Orders must be entered as both buy or sell orders, provided, however, the Cleanup Order may only be executed on the side of the market opposite the Imbalance.

(5) Cleanup Orders will be executed at the Indicative Match Price as of the time of the Market Order Auction.

(6) Cleanup Orders will only be executed if:

(A) There is an Imbalance of Market Orders at the conclusion of the Market Order Auction, as provided in Rule 7.35; and

(B) The Imbalance is less than or equal to aggregate size of all Cleanup Orders in the relevant security.

(7) If there is an Imbalance and Cleanup Orders will be executed based on the criteria in paragraph (6), the market orders which make up the Imbalance will be divided equally among, and allocated to, all Market Makers registered in the relevant security and executed against such Market Makers' Cleanup Orders.

(8) If no Imbalance exists at the time of the Market Order Auction, all Cleanup Orders shall be cancelled at that time.

(v) NOW Order. A Limited Price Order that is to be executed in whole or in part on the Corporation, and the portion not so executed shall be routed pursuant to Rule 7.37(d) only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient shall be cancelled. If a NOW Order is not marketable when it is submitted to the Corporation, it shall be cancelled. NOW Orders may not be Directed Orders.

(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO.

(x) Primary Only Order (PO Order). For exchange-listed securities only, a market order that is to be routed as a market-on-open order to the primary market for participation in the primary market opening process. A PO Order must be entered before 6:28 a.m. (Pacific Time) and it will not be included in the Market Order Auction.

Order Entry

Rule 7.32. Users may enter into the Archipelago Exchange the types of orders listed in Rule 7.31; provided, however, no User may enter an order other than a Fill-or-Return, Fill-or-Return Plus or PNP Order unless the User or the User's Sponsoring ETP Holder has entered into a Routing Agreement.

ETP Holder Users

Rule 7.33. Consistent with Rules of the Corporation, ETP Holder Users of the Archipelago Exchange may enter proprietary orders and agency orders for the account of a customer. Proprietary orders accepted by the Archipelago Exchange from ETP Holder Users are subject to the same display and execution processes as agency orders. An ETP Holder User that enters a proprietary order into the Archipelago Exchange shall mark the order with the appropriate designator to identify the order as proprietary.

Trading Sessions

Rule 7.34(a) Sessions. The Archipelago Exchange shall have three trading sessions each day the Corporation is open for business:

(1) Opening Session. The Opening Session shall begin at 5:00:00 a.m. (Pacific Time) and conclude at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

(2) Core Trading Session. The Core Trading Session shall begin for each security at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and conclude at 1:00:00 p.m. (Pacific Time).

(3) Late Trading Session. The Late Trading Session shall begin following the conclusion of the Core Trading Session and conclude at 5:00:00 p.m. (Pacific Time).

(b) Market Maker Obligations. During the Core Trading Session, Market Makers will be obligated to enter Q Orders in securities in which they are registered in accordance with Rule 7.23 by the time Core Trading Hours begin. During the Opening Session and the Late Trading Session, Market Makers are not obligated to enter Q Orders in securities in which they are registered. Market Makers are required to enter at least one Cleanup Order for all securities in which they are registered for each Market Order Auction.

(c) Order Designation. Any Day Order entered into the Archipelago Exchange may remain in effect for one or more consecutive trading sessions on a particular day. For each Day Order entered into the Archipelago Exchange, the User must designate for which trading session(s) the order will remain in effect. Any GTC Order entered into the Archipelago Exchange will remain in effect only during Core Trading Sessions, unless the User indicates that the GTC Order will remain in effect for the Opening and/or Late Trading Sessions.

(d) Orders Permitted in Each Session.

(1) During the Opening Session:

(A) Orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process that have been designated as available for the Opening Session are eligible for entry into and execution on the Archipelago Exchange.

(B) Stop Orders are not eligible for execution during the Opening Session.

(C) Users may enter market and Auction-Only Limit Orders for inclusion in the Market Order Auction. Market orders and Auction-Only Limit Orders are not eligible for execution during the Opening Session, except during the Market Order Auction.

(D) Neither the Directed Order Process nor the Tracking Order Process is available during the Opening Session. For the purposes of the Opening Session, market Directed Orders are included in the Market Order Auction.

(E) NOW Orders are eligible for execution during the Opening Session, provided, however, NOW Orders are not eligible for the Opening Auction or the Market Order Auction.

(F) PNP Orders are eligible for execution during the Opening Session.

(2) During the Core Trading Session, market orders, Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order and Tracking Order Processes are eligible for entry into and execution on the Archipelago Exchange.

(3) During the Late Trading Session:

(A) Orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process, including NOW Orders and PNP Orders, than have been designated as available for the Late Trading Session are eligible for entry into and execution on the Archipelago Exchange.

(B) Market orders and Stop Orders are not eligible for execution during the Late Trading Session.

(C) The Directed Order and Tracking Order Processes are not available during the Late Trading Session.

(e) Customer Disclosures. No ETP Holder may accept an order from a non-ETP Holder for execution in the Opening or Late Trading Session without disclosing to such non-ETP Holder that:

(1) except for market orders eligible for execution during the Market Order Auction, Limited Price Orders are the only orders that are eligible for execution during the Opening and Late Trading Sessions;

(2) an order must be designated specifically for trading in the Opening and/or Late Trading Session to be eligible for trading in the Opening and/or Late Trading Session; and

(3) extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

The disclosures required pursuant to this subparagraph (e)(3) may take the following form or such other form as provides substantially similar information:

1. Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price of securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

2. Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular markets hours.

3. Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end

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of regular market hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.

4. Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

5. Risk of New Announcements. Normally, issues make news announcements that may affect the price of securities after regular market hours. Similarly important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

6. Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

(f) Trades on the Archipelago Exchange executed and reported outside of the Core Trading Session shall be designated as .T trades.

Opening Session Auctions

Rule 7.35(a) Order Entry and Cancellation Before Opening Auction

(1) Users may submit any orders to the Archipelago Exchange beginnings at 4:30 am (Pacific Timer). Any such Limited Price Orders designated for the Opening Session will be queued until 5:00 am (Pacific Time) at which time they will be eligible to be executed pursuant to paragraph (b) of this Rule. Any such market orders will be queued until the Market Order Auction at which time they will be executed pursuant to paragraph (c) of this Rule.

(2) Only limited priced orders designated for the Opening Session will be eligible for the Opening Auction. Market orders entered before the Opening Auction will participate in the Market Order Auction. Limited Price Orders not designated for the Opening Session will become eligible for execution pursuant to Rule 7.37 at the commencement of the Core Trading Session.

(3) Beginning at 4:30 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Opening Auction, and any Imbalance associated therewith, shall be published via electronic means as determined from time to time by the Corporation.

(4) Orders that are eligible for the Opening Auction may not be cancelled between 4:58 am (Pacific Time) and the conclusion of the Opening Auction.

(b) Opening Auction.

(1) At 5:00 am (Pacific Time), Limited Price Orders designated for the Opening Session are matched and executed in the Opening Auction.

(2) The orders in the Opening Auction shall be executed at the Indicative Match Price as of the time of the Opening Auction.

(3) Orders that are eligible for, but not executed in, the Opening Match shall become eligible for the Opening Session immediately upon conclusion of the Opening Auction.

(c) Market Order Auction.

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 5:00 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Market Order Auction and the volume available to trade at such price, shall be published via electronic means as determined from time to time by the Corporation. If such a price does not exist (i.e., there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Beginning at 5:00 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Market Order Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.

(C) If the difference between the Indicative Match Price and the closing price of the price of the previous trading day's normal market hours, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.

Example: (1) Market order to buy 5000 shares;

(2) Auction-Only Limit Order to sell 1000 at 50;

(3) Limit order to sell 1000 at 50.50; and

(4) Limit order to sell 500 at 50.75.

The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares and a buy Imbalance of 2500 shares.

Example: (1) Market order to buy 3000 shares;

(2) Market order to sell 1000;

(3) Limit order to sell 1000 at 41.00; and

(4) Limit order to sell 1000 at 41.25.

The Archipelago Exchange will publish an Indicative Match price of 41.25 and a volume of 3000 shares and will not publish an Imbalance.

(2) Reduction of Imbalances

(A) Any Imbalance in the Market Order Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market orders;

(ii) Limited Price Orders eligible for the Opening Session;

(iii) Limited Price Orders entered before 6:28 am (Pacific Time);

(iv) Auction-Only Limit Orders; and

(v) Cleanup Orders.

(B) Between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, Limited Price Orders eligible for the Opening Session or the Core Trading Session may be cancelled, but market orders, Auction-Only Limit Orders and Cleanup Orders may not be cancelled.

(C) Between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, market orders and Auction-Only Limit Orders may not be entered on the same side as the Imbalance. Market orders and Auction-Only Limit Orders may,be entered on the opposite side of the Imbalance, however, any time before the Market Order Auction.

(3) Determination of Market Order Auction Price

(A) If there is no Imbalance, orders will be executed in the Market Order Auction at the Indicative Match Price as of 6:30 am (Pacific Time).

(B) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis,

(i) at the midpoint of the NBBO at 6:30 am (Pacific Time), in the case of exchange-listed securities for which the Corporation is not the primary market; or

(ii) at the midpoint of the NBBO at 6:30 am (Pacific Time), in the case of Nasdaq-listed securities, provided that the NBBO is not crossed; or

(iii) at the midpoint of the first uncrossed NBBO after 6:30 am (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed but the BBO is not crossed by the NBBO; or

(iv) at the bid (offer) of the BBO that was crossed prior to 6:30 am (Pacific Time), in the case of Nasdaq securities in which the BBO is crossed by a market participant; or

(v) at the indicative Match Price as of 6:30 am (Pacific Time) in the case of those issues for which the Corporation is the primary market. If equilibrium exists between buy and sell market orders, the match price shall be the last Corporation sale price in the security regardless of the trading session, provided that, if the last Corporation sale price is inferior to the BBO, the match price shall be the Corporation bid (offer).

Such executions shall be designated with a modifier to identify them as Market Order Auction trades. The market orders that are eligible for, but not executed in the Market Order Auction, shall become eligible for execution in the Core Trading Session immediately upon conclusion of the Market Order Auction.

(d) Reserved.

(e) Transition to Core Trading Session.

(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.30(c)(2)(C).

(3) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

Order Ranking and Display

Rule 7.36. The Archipelago Exchange shall display to Users and other market participants all non-marketable limit orders in the Display Order Process. The Archipelago Exchange will also disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Corporation and other market centers.

(a) Ranking. Orders of Users shall be ranked and maintained in the Display Order Process and/or Working Order Process of the Arca Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry in the following manner.

(1) Display Order Process. Within the Display Order Process:

(A) Limit orders, with no other conditions, shall be ranked based on the specified limit price and the time of original order entry.

(B) The displayed portion of Reserve Orders (not the reserve size) shall be ranked at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented in its entirety, the displayed portion of the Reserve Order shall be refreshed for the displayed amount from the reserve portion and shall be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed.

(C) Discretionary Orders shall be ranked based on the displayed price (not the discretionary price) and the time of order entry. If a Discretionary Order is decremented, it remains ranked based on the displayed price and the time of original order entry.

(2) Working Order Process. Within the Working Order Process:

(A) The reserve portion of Reserve Orders shall be ranked based on the specified limit price and the time of original order entry. After the displayed portion of a Reserve Order is refreshed from the reserve portion, the reserve portion remains ranked based on the original time of order entry, while the displayed portion is sent to the Display Order Process with a new time-stamp.

(B) Discretionary Orders shall be ranked based on the displayed price and the time of original order entry. After a Discretionary Order is decremented, it remains ranked as described above.

(C) All-or-None Orders shall be ranked based on the specified limit price and the time of order entry.

(b) Display. All Orders at all price levels in the Display Order Process of the Arca Book shall be displayed to all Users and other market participants on an anonymous basis.

(c) Dissemination. The best-ranked displayed order(s) to buy and the best ranked displayed order(s) to sell in the Arca Book and the aggregate displayed size of such orders associated with such prices shall be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 11Ac1–1 under the Exchange Act.

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur on any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to all away markets at the NBBO.

(a) Step 1: Directed Order Process. During Core Trading Hours only, orders may be matched and executed in the Directed Order Process as follows:

(1) If a User submits a marketable Directed Order to the Archipelago Exchange and the User's designated Market Maker has a standing instruction for a Directed Fill to the Archipelago Exchange, the Directed Order shall be executed against the Directed Fill of the designated Market Maker.

(2) If a User submits a marketable Directed Order to the Archipelago Exchange and the User's designated Market Maker has not submitted an instruction for a Directed Fill, the Directed Order shall enter the Display Order Process, as described in subsection (b) of this Rule.

(3) If a User submits any order other than a marketable Directed Order to the Archipelago Exchange, the User's order immediately shall enter the Display Order Process, as described in subsection (b) of this Rule, without interacting with any Directed Fills.

(b) If an incoming marketable order has not been executed in its entirety pursuant to paragraph (a) of this Rule, any remaining part of the order shall be routed to the Display Order Process.

(1) Step 2: Display Order Process.

(A) An incoming marketable order shall first attempt to be matched for execution against orders the Display Order Process at the display price of the resident order for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller. For the purposes of this subsection, the size of an incoming Reserve Order includes the displayed and reserve size and the size of the portion of the Reserve Order resident in the Display Order Process is equal to its displayed size. If the incoming marketable order has not been executed in its entirety, the remaining part of the order shall be routed to the Working Order Process.

(B) An incoming order that is not marketable shall enter the Working Order Process to be executed against any Discretionary Orders at or better than the NBBO.

(2)Step 3: Working Order Process.

(A) An incoming marketable order shall be matched for execution against orders in the Working Order Process in the following manner:

(i) An incoming marketable order shall be matched against orders within the Working Order Process in the order of their ranking, at the price of the displayed portion (or in the case of an All-or-None Order, at the limit price), for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller.

(ii) If the BBO is outside the NBBO and any Discretionary Order(s) within the Working Order Process have a discretionary price equal to or better than the NBBO, the incoming order shall execute against such Discretionary Order(s) at the NBBO up to the size of the smaller of the two orders.

(iii) If an incoming marketable order is a Discretionary Order or a Reserve Order and its prices overlap with the prices of a Discretionary Orders in the Working Order Process, then the orders will be executed at the display price of the order that was entered first up to the size of the smaller of the two orders. For the purposes of this subsection, the size of the incoming Reserved order includes the displayed and reserve size.

(iv) If the incoming marketable order has not been executed in its entirety, the remaining part of the order shall be routed to the Tracking Order Process.

(B) An incoming order is not marketable shall be matched for execution against orders in the Working Order Process in the following manner:

(i) The incoming order shall be matched against any Discretionary Orders in the Working Order Process that have discretionary prices that would satisfy an otherwise displayable incoming Limited Price Order. The execution shall occur at the limited price of the incoming order.

(ii) If the incoming order is a Discretionary Order and its prices overlap with the prices of a Discretionary Order in the Working Order Process, then the orders will be executed at the discretionary price of the incoming order that would be the best price available for the order entered first.

(C) If any change in the NBBO or other available away trading interest would cause a potential match between the away order and an order in the Working Order Process, a commitment to trade shall be sent to that market center or market participant pursuant to Step 5 below.

(c) Step 4: Tracking Order Process. During Core Trading Hours only, orders may be matched and executed in the Tracking Order Process as follows: If an order has not been executed in its entirety pursuant to paragraphs (a) and (b) of this Rule, the Archipelago Exchange shall match and execute any remaining part of the order in the Tracking Order Process in the following manner; provided, however, any portion of an order received from another market center or market participant shall be cancelled immediately:

(1) If the unfilled order is a mixed lot or round lot order, the order shall be matched against any Tracking Orders pursuant to the rotation pattern described in Rule 7.31(f)(3) for immediate execution thereafter. After the order has been matched against any Tracking Orders, if the order has not been executed in its entirety and the remaining part of the order is an odd lot, the odd lot order shall been executed in the Odd Lot Tracking Order Process, as described in paragraph (2).

(2) If the unfilled order is an odd lot, the order shall be matched in the Odd Lot Tracking Order Process against any OLTOs pursuant to the rotation pattern described in Rule 7.31(f)(3) for immediate execution thereafter.

(d) Step 5: Routing Away.

(1) If an order has not been executed in its entirety pursuant to paragraphs (a) through (c) of this Rule and it has been designated as a Fill-or-Return, Fill-or-Return Plus Order or PNP Order, the Order shall be cancelled, without routing the order to another market center or market participant.

(2) If an order has not been executed in its entirety pursuant to paragraphs (a) through (c) of this Rule and it has not been designated as a Fill-or-Return, Fill-or-Return Plus Order or PNP Order, the order shall be routed for execution as follows:

(A) The order shall be routed, either in its entirety or as component orders, to another market center or market participant as a limit order priced at the quote published by the market center or market participant.

(B) the Archipelago Exchange shall attempt to match the part of the order that has not been routed away against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above.

(C) Orders routed to other market centers or market participants shall remain outside the Archipelago Exchange for a prescribed time period during which they may be executed (in whole or in part) or declined. While an order remains outside the Archipelago Exchange, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the Arca Book. Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside the Archipelago Exchange shall be processed, subject to the applicable trading rules of the relevant market center or market participant.

(D) In the event that a marketable order routed from the Archipelago Exchange to another market center or market participant is not executed in its entirety at the other market center or market participant's quote (*i.e.*, all attempts at the fill are declined or timed-out), the Archipelago Exchange shall attempt to match the residual or declined market order against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above. Any remaining unmatched trading interest shall be rerouted to another market center or market participant at the next available displayed price level pursuant to this paragraph (d)(2) above.

(E) When routing an order in an Eligible Security away to another market center, the Corporation shall utilize such electronic intermarket linkages and order delivery facilities as may be approved by the Board of Directors from time to time, subject to such applicable requirements as may be agreed to with the relevant market center.

(e) If an order has not been executed in its entirety after following Steps 1–5, the order shall be ranked in the Arca Book pursuant to Rule 7.36.

Odd and Mixed Lots

Rule 7.38(a) Order Types.

(1) Odd Lots. All odd lot orders submitted by Users to the Archipelago Exchange must be market orders or limit orders, where such orders are subject to no additional conditions (e.g., odd lot orders may not be Working Orders, Directed Orders, Directed Fills, Tracking Orders, etc.), provided, however, Odd Lot Dealers may submit OLTOs.

(2) Mixed Lots. Mixed lot orders submitted by Users to the Archipelago Exchange may be any order type supported by the Archipelago Exchange.

(b) Ranking and Execution. Round lot, mixed lot and odd lot orders are treated in the same manner in the Archipelago Exchange; provided, however, the Tracking Order Process treats odd lot orders in a different manner from mixed lot and round lot orders.

(c) Prohibitions. It shall be considered conduct inconsistent with just equitable principle for ETP Holders to engage in the following actions:

(1) Combining odd lot orders given by different customers into a round lot order or orders unless specifically requested to do so by the customers giving the orders;

(2) Unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts;

(3) Failing to aggregate odd lot orders into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and

(4) Entering both buy and sell odd lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the spread in the stock.

Interaction with PCXE Application of the OptiMark System

Rule 7.39(a) The information from the Arca Book (including Working Orders), but not the orders themselves, shall be submitted to the PCXE Application at all relevant times during Core Trading Hours, as set forth in Rule 7.47.

(b) The Archipelago Exchange may receive Immediate-or-Cancel Orders from the PCXE Application as set forth in Rule 7.48. Such Immediate-or-Cancel Orders shall be treated as a User order once submitted to the Archipelago Exchange.

Trade Execution and Reporting

Rule 7.40. Executions occurring as a result of orders matched against the Arca Book shall be reported by the Corporation to an appropriate consolidate transaction reporting system. Executions occurring as a result of orders routed away from the Archipelago Exchange shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting market center. The Archipelago Exchange shall promptly notify Users of all executions of their orders as soon as executions take place.

Clearance and Settlement

Rule 7.41. The details of each transaction executed within the Archipelago Exchange shall be automatically processed for clearance and settlement on a locked-in basis. ETP Holders need not separately report their transactions to the Corporation for trade comparison purposes. All transactions effected by a Sponsored Participant shall be cleared and settle, using the relevant Sponsoring ETP Holder's mnemonic (or its clearing firm's mnemonic as applicable).

Limitation of Liability

Rule 7.42(a). Neither the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., shall be liable to Users for any loss, damages, claim or expense:

(1) growing out of the use or enjoyment of the Archipelago Exchange; or

(2) arising from or occasioned by any inaccuracy, error or delay in, or omission of or from the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from the Archipelago Exchange, resulting either from any act or omission by the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., or from any act condition or cause beyond the reasonable control of the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, insurrection, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction.

(b) Each ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., and any affiliate of the Archipelago Exchange, L.L.C., and any officers, directors, employees and agents thereof, of and from all claims and damages arising from their acceptance and use of the Archipelago Exchange.

(c) Neither the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., makes any express or implied warranties or conditions to Users as to results that any person or party may obtain from the Archipelago Exchange for trading or for any other purpose, and all warranties of. merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the Archipelago Exchange are hereby disclaimed.

Rule 7.43. Reserved.

Rule 7.44. Reserved.

Section *4* [10]. *PCXE Application of the OptiMark System* [Automatic Execution Systems]

[Rule 7.70—Deleted.]

PCX Equities, Inc. Application of the OptiMark System

Definitions

Rule *7.45*[7.71](a). Definitions. Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

(1)—No change.

(2) The term "Designated Broker" shall mean a broker-dealer that has been issued an ETP [or Equity ASAP] by the Corporation who has been designated by a non-ETP [or non-Equity ASAP] User to execute, clear and settle transactions resulting from the Application.

[(3) The term "Eligible Securities" shall mean the equity securities currently listed or traded on the Corporation.]

(3)[4] The term "Supplemental Account Agreement" shall mean the form of Agreement between a non-ETP [or non-Equity ASAP] User and a Designated Broker under which Orders of the non-ETP [or non-Equity ASAP] User and resulting transactions will be executed, cleared and settled, using the Designated Broker's mnemonic (or its clearing broker's mnemonic as applicable).

(4) [(5)]—No change.

(5) [(6)] The term "Orders" shall mean one or more orders generated from a Cycle at specific prices and sizes at which execution immediately may occur; *provided, however, an Order to be matched against a limit order from the Arca Book shall be routed to the Archipelago Exchange as an Immediate-or-Cancel Order.* Orders in Eligible Securities for execution on the Corporation or other ITS participating market centers shall be in round lots equal to or greater than 1,000 shares, except for Orders resulting from processing COS Profiles (as defined below) and those Profiles created from the *Arca Book* [PCX Specialist's book] that may be in any round lot size, and in price increments conforming to the requirements of the Corporation's [rules] *Rules* and policies applicable to all orders executed on the *Archipelago Exchange* [Floor]; provided, however, that Orders may be generated from central processing of the Profiles designated for the midpoint service by the OptiMark System in conformance with the trading differential in Rule [7.10] *7.6*(a), Commentary .04. Such orders shall be considered "immediate or *cancel* [Cancel]" orders within the meaning of the Corporation's Rule *7.31* [7.4] and shall include the following information:

(A) the stock ticker symbol;

(B) a designation as "buy," "sell long," or "sell short"; and

(C) such other information as may be required by the Board

(6) [(7)] The term "Profile" shall mean the expression of trading interest received by the OptiMark System in the form of a satisfaction profile that shows the User's degree of satisfaction (expressed as a number between zero and one) to trade at each coordinate of the price/size grid. The term "COS Profile" means the satisfaction profile generated by the OptiMark system from processing quotations of other market centers from the COS that can be accessed by ITS/CAES. *The term "Arca Profile" means the satisfaction profile generated by the OptiMark System from processing the Arca Book.*

(7) [(8)] the term "PCX*E* Application" (or "Application") shall mean the Corporation's trading service facility consisting of certain electronic communications and information services of the OptiMark System provided on a non-exclusive basis through the necessary communications interfaces ("PCX Interfaces") between the OptiMark System and the Corporation's computerized order system and other facilities to permit execution of Orders in Eligible Securities and to receive executions and reports in respect thereof, all in accordance with these Rules and other applicable Rules and policies of the Corporation.

(8) [(9)]—No change.

(9) [(10)]—No change.

Access

Rule *7.46* [7.72]. The PCX*E* Application shall be available for all interested ETP Holders[, Equity ASAP Holders, and ETP Firms] that decide to become Users. [The Corporation will assure that each PCX Specialist is provided with appropriate access to the PCX Application for the purpose of submitting Profiles from the Specialist's Post.] A non-ETP *Holder* User may obtain access to the PCX*E* Application only if such access is authorized in advance by one or more Designated Brokers in accordance with the terms of the applicable Supplemental Account Agreement and the Designated Broker Consent Agreement. Both agreements shall be in force before a non-ETP [or non-Equity ASAP] User may be given the authorization to obtain access to the PCX*E* Application. At a minimum, the Supplemental Account Agreement and the Designated Broker Consent Agreement shall include any applicable credit limits imposed by the Designated Broker on the non-ETP *Holder* User; the Designated Broker's undertaking that it is responsible for that non-ETP *Holder* [or non-/Equity ASAP] User's Orders and resulting transactions; and such other terms and conditions that may be agreed to from time to time. The Corporation shall be provided with a written statement from the Designated Broker acknowledging its responsibility for such Orders and resulting transactions.

Entry of Profiles and Generation of Orders

Rule *7.47* [7.73] (a)—No change.

(b) *Interaction with the Archipelago Exchange. The information from the Arca Book (including Working Orders) shall be submitted to the PCXE Application at all relevant times during Core Trading Hours in the form of Arca Profiles.* [Specialist Obligations. Specialists must ensure that at all relevant times during regular trading hours, their best bids and offers (whether reflecting limit orders or the Specialist's own interest) will be included in the OptiMark System as Profiles.]

(c)—No change.

Commentary

.01. For the purpose of this *Rule* [rule], a profile for the proprietary account of an ETP Holder[, Equity ASAP Holder, or ETP Firm] (other than for a *Market Maker* [specialist or floor broker]) will be deemed "principle exempt" and therefore receive the priority treatment of agency profiles but only when such person does not hold or have knowledge that his *or her* firm or any participant therein holds or has knowledge of a customer's profile or order at the same price or better. If the ETP Holder[, ETP Firm or Equity ASAP Holder] holds or has knowledge of such customer profile or order, the ETP Holder[, ETP Firm or Equity ASAP Holder] will be deemed non-exempt and must designate any proprietary profile as "principal non-exempt."

.02. After screening for price and standing, the matching algorithm will rank the following categories of profiles and order types for time priority purposes:

(1) *Arca Profiles* [PCX Book—limit orders from the PCX limit order book];

(2) Agency—other public customer profiles, non-ETP [or non-Equity ASAP] profiles, and "principal-exempt" proprietary profiles entered directly into OptiMark;

(3) Principal—proprietary profiles submitted by *Market Makers* [specialists and floor brokers], and "non-exempt" ETP Holders[, Equity ASAP Holders, and ETP Firms] ([all three] considered "principal non-exempt"); and

(4) [Consolidated Quote System ("]CQS["] profiles.

(d) Frequency. Cycles respecting an Eligible Security shall be scheduled at one or more specified times throughout the trading day after the opening of the market in that security and prior to the closing of the market. The maximum frequency with which Cycles may take place throughout the trading day shall be 90 seconds, while the minimum shall be once a day. The exact frequency of Cycles as to any given *Corporation* [PCX] Security shall be determined by OptiMark Services, Inc., based on the general characteristics of the security, the robustness of the associated Profile flow over a period and the current level of interest expressed by Users, and may be subsequently altered in response to subsequent developments in the above-stated market circumstances. Any change in the frequency of Cycles will be effective upon three days' notice to the User in advance; provided, however, that at all relevant times, the Corporation finds any such scheduling of Cycles to be commensurate with the demand for the PCX*E* Application among ETP Holders[, Equity ASAP Holders or ETP Firms] and their customers and also consistent with the safeguards in place to ensure system capacity and integrity.

Order Execution and Reporting

Rule *7.48(a)* [7.74]—No change.

(b) Notwithstanding paragraph (a) of this Rule, any Order generated from a Cycle representing matches involving Arca Profiles shall be routed to the Archipelago Exchange for execution against the relevant the Archipelago Exchange limit order as an Immediate-or-Cancel Order. If the relevant Archipelago Exchange limit order is no longer available, the Order generated from the Cycle shall be automatically canceled.

Hours of Operation

Rule *7.49* [7.75]. The PCX*E* Application will be available for execution of Orders and routing of ITS commitments during the regular trading hours.

Errors

Rule *7.50* [7.76]. Whenever a User discovers an error in a transaction resulting from the PCX*E* Application, such error may be corrected in accordance with the rules of the applicable market center and clearing

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arrangement through which the transaction is executed and settled.

Trading Suspension and Halts

Rule *7.51* [7.77]. In the event of a suspension in trading of an Eligible Security pursuant to Rule *7.12* [7.46(b)], the Corporation shall suspend the related trading activities respecting that security through the PCX*E* Application. In addition, the trading activities through the PCX*E* Application respecting all Eligible Securities shall halt whenever the President or, in the President's absence, Chief Operating Officer or other PCX*E* Officer(s) as the President may designate, determines that market conditions warrant such a halt. The Corporation may suspend the trading activities through the PCX*E* Application relating to one or more Eligible Securities at any other time upon consultation with OptiMark Technologies, Inc., if deemed necessary and proper to preserve system capacity and integrity.

Limitation of Liability

Rule *7.52* [7.78](a). Limitation of Liability. Neither the Corporation, any affiliate, nor any operator, licensor or administrator of the OptiMark System shall have any liability to Users or Designated Brokers for any loss, damages, claim or expense arising from or occasioned by any inaccuracy, error or delay in, or omission of or from:

(1) the PCX*E* Application of the OptiMark System or

(2) the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from the PCX*E* Application or the OptiMark System, resulting either from any act or omission by the Corporation or any affiliate, or any operator, licensor or administrator of the OptiMark System or from any act, condition or cause beyond the reasonable control of the Corporation or any affiliate, or any operator, licensor or administrator of the OptiMark System, including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment of software malfunction.

(b) Neither the Corporation, any affiliate, nor any operator, licensor or administrator of the OptiMark System makes any express or implied warranties or conditions to Users or Designated Brokers as to results that any person or party may obtain from the PCX*E* Application for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the PCX*E* Application are hereby disclaimed.

Rule 7.53. Reserved.

Rule 7.54. Reserved.

Section 5 [9]. Intermarket Trading System Plan

Definitions

Rule *7.55* [7.66](a). Definitions. Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

(1)–(4)—No change.

(5) The term "Pre-Opening Application" shall mean the application of the System which permits a market maker in one participating market, who wishes to open his *or her* market in an Eligible Listed Security, to obtain from other market makers registered in that security in other participating markets, any pre-opening interests such other market makers might decide to disclose as set forth in the Plan.

(6)–(10)—No change.

[(11)—Deleted.]

Intermarket Trading System Application

(b) Provisions of the Plan. The Corporation has agreed to comply to the best of its ability, and, absent reasonable justification or excuse, to enforce compliance by its ETP Holders, [Equality ASAP Holders and ETP Firms,] with the provisions of the Plan. In this connection, the following shall apply:

Intermarket Trading System (ITS)

(1) All transactions effected through ITS shall be on a "regular way" basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which ITS transactions may be compared and settled and which agrees to supply each participating market center with data reasonably requested in order to permit such market center to enforce compliance by its *members* [ETP Holders, Equity ASAP Holders and ETP Firms] with the provisions of the Act, the rules and regulations thereunder, and the rules of such market center.

(2) Any "commitment to trade", which is transmitted by an ETP Holder [or ETP Firm], *via the facilities of the Corporation*, to another participating market center through ITS, shall be firm and irrevocable for the period of time applicable to such commitment. All such commitments to trade shall:

(A) specify the security which is the subject of the commitment; [,]

(B) designate the commitment as either a commitment to buy or a commitment to sell; [,]

(C) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof; [,]

(D) specify the price at or below which the security is to be bought or the price at or above which the security is to be sold, or specify that the commitment is a commitment to trade "at the market;" [,"]

(E) designate the commitment "short" or "short exempt" whenever it is a commitment to sell which, if it should result in an execution in the market of the receiving market center, would result in a short sale to which the provisions of paragraph (a) of Rule 10a–1 under the Act would apply; *and* [,]

(F)—No change.

(3) No change.

(4) The ETP Holder [or ETP Firm on the Floor] who made the bid or offer which is sought by a commitment to trade received [on the Floor] through ITS shall accept such commitment to trade, *via the facilities of the Corporation*, up to the amount of the bid or offer if the bid or offer is still available [on the Floor] when the commitment to trade is received by such ETP Holder [or ETP Firm], *via the facilities of the Corporation*, unless acceptance is precluded by the *Rules* [rules] of the Corporation. In the event that the bid or offer which is sought by a commitment to trade is no longer available *through the facilities of the Corporation* [on the Floor] when the commitment is received, but a new bid or offer is available *through the facilities of the Corporation* [on the Floor] which would enable the commitment to trade to be executed at a price which is more favorable than the price specified in such commitment, then the ETP Holder [or ETP firm] who [has] made *the* [such new] bid or offer shall accept, *via the facilities of the Corporation*, such commitment at the price, and up to the amount of, *the new* [his] bid or offer, unless acceptance is precluded by the *Rules* [rules] of the Corporation.

(5) Any ETP Holder [or ETP Firm] who receives, *via the facilities of the Corporation*, a commitment to trade through ITS from another market center and who intends to reject that commitment shall notify, *via the facilities of the Corporation*, the market center from which the commitment was sent of such rejection as promptly as possible.

(6) Any commitment to trade received [on the Floor] through ITS and any execution thereof and any commitment to trade issued by an ETP Holder [or ETP Firm], *via the facilities of the Corporation*, through ITS shall be subject to such *Rules* [rules] as the Corporation may from time to time determine.

Pre-Opening Application

(7) The provisions of subparagraph (1) above shall also be applicable to any transaction effected through the Pre-Opening Application. The Pre-Opening Application applies in two instances. First, it applies whenever a market maker in any Participant *market* [Market], in arranging an opening transaction in his *or her* market in a System security, anticipates that the opening transaction will be at a price that represents a change from the security's "previous day's consolidated closing price" at more than the "applicable price change." Second, it applies whenever an "indication of interest" [i.e., an anticipated opening price range) is sent to the CTA Plan Processor as required or permitted by the CTA Plan or a Participant market's rules.

(8) Openings

(A) [(i)] Notification Requirements

(i) [(A)] Applicable Price Change

(1) Initial Notification—Whenever a *Market Maker* [specialist], in arranging an opening transaction *through the facilities of* [on] the Corporation in any Eligible Listed Security, anticipates that the opening transaction [on] through the facilities of the Corporation will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" (as defined below), he *or she*, *via the facilities of the Corporation*, shall notify the other Participant markets of the situation by sending a "pre-opening notification" through the System. Thereafter, the *Market Maker* [specialist] shall not open the security in his *or her* market until not less than three minutes after *the* [his]

transmission of the pre-opening notification.
The "applicable price changes" are:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	.10 or ⅛ point
	$15 or over*	.25 or ¼ point
Network B	Under $5	.10 or ⅛ point
	$5 or over*	.25 or ¼ point

—A pre-opening notification shall:
(A) be designated as a pre-opening notification ("IND");
(B) identify the participant market ("P"), the *Market Maker* [specialist] and the security ("XYZ"); and
(C) indicate the "applicable price range" by being formatted as a standardized pre-opening administrative message as follows:
IND P/XYZ (RANGE)

The price range shall not exceed the "applicable price range" shown below:

Network A	Under $50	.50 or ½ point
	$50 or over*	1 point or, for stocks trading in decimals, 1.00
Network B	Under $10	.50 or ½ point
	$10 or over*	1 point or, for stocks trading in decimals, 1.00

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (*e.g.*, a.10–.60 or ⅛–⅝ price range would be permissible if the previous day's consolidated closing price were .10 or .60 or ⅛ or ⅝, but not if the closing price were .25, or .40 or .50 or ¼, or ⅜ or ½).

*If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price range" is two dollars.

*If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Depository Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price range" is two dollars.

(2) Subsequent Notifications—If, after sending a pre-opening notification, the situation in a *Market Maker's* [specialist's] market changes, he *or she* may have to issue, *via the facilities of the Corporation*, a subsequent pre-opening notification. The three situations requiring subsequent pre-opening notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the *Market Maker* [specialist] shall wait either (A) one minute or (B) until the balance of the original three-minute waiting period expires whichever is longer, before opening his *or her* market (*i.e.*, if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the *Market Maker* [specialist] must wait for the rest of the period to pass before opening his *or her* market).

(I) Increase or Decrease in Applicable Price Range—Where, prior to the *Market Maker's* [specialist's] opening of his *or her* market in the security, his *or her* anticipated opening price shifts so that it (1) is outside of the price range specified in his *or her* pre-opening notification but (2) still represents a change from the previous day's consolidated closing price of more than the applicable price change, he *or she* shall issue, *via the facilities of the Corporation*, a replacement preopening notification (an "additional" notification) through the System before opening his *or her* market in the security. An additional notification contains the same kind of information as is required in an original preopening notification.

(II) [II.] Shift to Within Applicable Price Change Parameter—

(a) The *Market Maker* [specialist] shall, by issuing, *via the facilities of the Corporation*, a "cancellation" notification through the System, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which he *or she* anticipates opening his *or her* market shifts so that it (1) is outside of the price range specified in his *or her* pre-opening notification but (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

(b) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price: (1) may or may not be outside of the price range specified in the pre-opening notification and (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.***

(III) Participation as Principal Precluded ("Second Look")—If a responding market maker who has shown in his *or her* pre-opening response interest as principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (*e.g.*, his *or her* responding principal interest is to sell at a price ⅛ or more below the opening price established by paired agency orders), the *Market Maker* [specialist] shall send, *via the facilities of the Corporation*, a "second look" notification through the System notifying such responding market maker of the price and size at which he *or she* could participate as principal (*i.e.*, in the parenthetical example above, the total amount of the security that he *or she* would have to sell at the ⅛ better price to permit the opening transaction to occur at that price).

(ii)[(B)] Tape Indications—If the CTA Plan or the Corporation's *Rules* [rules] require or permit that an "indication of interest" (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading, or reopening of trading following a halt or suspension in trading in one or more Eligible Listed Securities, then the furnishing of an indication of interest, in such situations shall, without any other additional action required of the *Market Maker* [specialist], (1) initiate the Pre-Opening process, and, (2) if applicable, substitute for and satisfy the requirements of paragraphs *(8)(A)(i)(1), (8)(A)(i)(2)(I) and (8)(A)(i)(2)(II)* [(8)(i)(A)(1), (8)(i)(A)(2)(I) and (8)(i)(A)(2)(II)). (While the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this *Rule* [rule], *a Market Maker* [a specialist] should also transmit, *via the facilities of the Corporation*, the indication through the System in the format of a standardized pre-opening administrative message.) In any such situation the *Market Maker* [specialist] shall not open or reopen the security until not less than three minutes after *the* [his] transmission of the opening or reopening indication of interest. For the purpose of paragraphs *(8)(B)(i), (8)(B)(iii), (8)(A)(i)(2)(III), (8)(B)(iv), (8)(B)(v), (8)(C) and (8)(A)(ii)* [8(ii)(A), 8(ii)(C), 8(i)(A)(2)(III), 8(i)(D), 8(ii)(E), 8(iii) and 8(i)(B)] "pre-opening

***Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges 30—½; 30⅛—⅝; or 30¼—¾. It is then determined that the stock will open at 29¾ or ⅞. Under paragraph (II)(a), the *Market Maker* [specialist] "shall" send, *via the facilities of the Corporation*, cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, the *Market Maker* [specialist] need not reindicate stock, *via the facilities of the Corporation*, pursuant to paragraph (II)(b).

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notification" includes an indication of interest furnished to the consolidated last sale reporting service.

(B)[(ii)] Pre-Opening Responses

(i) [Decision on Opening Transaction—Subject to paragraph *8(B)(ii)* [(8)(ii)(B)]. If a *Market Maker* [specialist] who has issued, *via the facilities of the Corporation*, a pre-opening notification receives, *via the facilities of the Corporation*, "pre-opening responses" through the System containing "obligation to trade" from market makers in other Participant markets ("responding market makers"), he *or she* shall combine those obligations with orders he *or she* already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the *Market Maker* [specialist] has received, *via the facilities of the Corporation*, more than one-pre-opening response from a Participant market, he *or she* shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response whether or not the most recent response expressly cancels the preceding response(s). An original or revised response, *via the facilities*, received after the *Market Maker* [specialist] has affected his *or her* opening transaction shall be to no effect.

(ii)[(B)] Pre-Opening Responses from Open Markets—A *Market Maker, via the facilities of the Corporation*, [specialist] must accept only those pre-opening responses sent to the Corporation by market makers in other Participant markets prior to the opening of the[ir] market[s] for trading in the security.[1] Following a halt or suspension in trading on the Corporation, a *Market Maker, via the facilities of the Corporation*, [specialist] must accept only those pre-opening responses sent by market makers to the Corporation from other Participant markets that halted trading in the security contemporaneously with the Corporation and that had not resumed trading in the security at the time the pre-opening response is sent.

In the event that one or more market makers from Participant markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in a security contemporaneously with the Corporation, or has already resumed trading in a security, respond to a pre-opening notification in that security, the *Market Maker* [specialist] need not, but may in his *or her* discretion, accept, *via the facilities of the Corporation*, such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in that Participant market sending a pre-opening response but prior to the opening or reopening transaction on the Corporation, the market maker who sent the pre-opening response to the Corporation must confirm the pre-opening response by sending an administrative message through the System stating that the response remains valid: if the market maker fails to so confirm the pre-opening response, the *Market Maker* [specialist] need not, but may in his *or her* discretion, accept, *via the facilities of the Corporation*, the original response for the purpose of inclusion in the opening or reopening transaction.

(iii)[(C)] Allocation of Imbalances—Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the *Market Maker* [specialist] may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the *Market Maker* [specialist] shall allocate the remaining imbalance (which may be greater than 50 percent if the *Market Maker* [specialist] elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself *or herself* to take or supply as principal at the opening price in his *or her* pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph *8(B)(iii)* [(8)(ii)(C)], multiple responding market makers in the same Eligible Listed Security in the same Participant market shall be deemed to be a single responding market maker.

(iv)[(D)] Treatment of Obligations to Trade—In receiving a pre-opening response *via the facilities of the Corporation*, a *Market Maker* [specialist], *via the facilities of the Corporation*, shall accord to any obligation to trade as agent included in the response the same treatment as he *or she* would to an order entrusted to him *or her* as agent on the *Corporation* [Exchange] at the same time such obligation was received.

(v)[(E)] Responses Increasing the Imbalance—A *Market Maker* [specialist] shall not reject, *via the facilities of the Corporation*, a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

(C)[(iii)] Reports of Participation—Promptly following the opening in any security as to which a *Market Maker, via the facilities of the Corporation*, [an Exchange specialist] issued pre-opening notification, the *Market Maker, via the facilities of the Corporation*, [specialist] shall report to each Participant responsible for a market in which one or more responding market makers are located (A) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof or (B) if the responding market maker's response(s) included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

[9] Opening in Other Participating Markets

(A)[(i)] Pre-Opening Responses—Subject to paragraph *(9)(B)* [(9)(ii)], whenever a *Market Maker, via the facilities of the Corporation*, [specialist] who has received a pre-opening notification as provided in the ITS Plan in any Eligible Listed Security as to which he *or she* is registered as a *Market Maker* [specialist] wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he *or she* may do so by sending, *via the facilities of the Corporation*, obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall:

(i)[(A)] be designated as a pre-opening response ("RES")

(ii)[(B)] Identify the Participant market P, the *Market Maker* [specialist] and the security ("XYZ"), and

(iii) [(C)] Show the *Market Maker's* [specialist's] interest (if any), both as principal for his *or her* own account ("P") and as agent for orders left with him *or her* ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40⅜, reflected on a netted share basis by being formatted as a standardized pre-opening administrative message as follow: RES/P/XYZ BUY A—P 40⅜

The response may also show market orders separately.

(B)[(ii)] Response When the Corporation is Open—Notwithstanding paragraph *(9)(A)* [(9)(i)], a *Market Maker* [specialist] who has received *via the facilities of the Corporation*, a pre-opening notification in any Eligible Listed Security in which he *or she* is registered as a *Market Maker* [specialist] should not send, *via the facilities of the Corporation*, a pre-opening response to the originator of such notification if *(i)* [(A)] the market for trading in the security is open on the Corporation or *(ii)* [(B)] the Participant market from which the notification emanated had declared a halt or suspension in trading in such security, and the Corporation either had not halted trading in the security reasonably contemporaneously with the Participant Market or had resumed trading during the halt or suspension in trading.

(C) [(iii)] Revised Responses—a *Market Maker* [specialist] may cancel or modify his *or her* pre-opening response by sending through the System, *via the facilities of the Corporation*, a revised response that cancels the obligations to trade contained in this original responses and, if a modification is desired, that substitutes new obligations to trade stating the *Market Maker's* [specialist's] aggregate interest (*i.e.*, his *or her* interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.

(D)[iv] Sole Means of Pre-Opening Routing—Once a pre-opening notification as to any security is received *through the facilities of* [on] the Corporation, the one or more *Market Makers* [specialists] in such security shall submit, *via the facilities of the Corporation*, any obligations to trade that security as principal for his, *her* or their own accounts to the Participant market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for his, *her* or their own accounts to such Participant market for participation at the opening in that market by any other means. The foregoing sentence shall have no application to orders sent to that market by the *Market Makers, via the facilities of the Corporation*, [specialists(s)] prior to the issuance of a pre-opening notification.

(E) Use of System before Opening or Reopening—No ETP Holder[, Equity ASAP Holder or ETP Firm] where acting as principal or agent, shall send, *via the facilities of the Corporation*, an obligation to trade, commitment to trade or order in any security in the Participant market (or prior to the resumption of trading in the security in the Participant market following the initiation of a halt or suspension in trading in the security until a pre-opening notification in the security has been issued from the other Participant market, or, if no pre-opening notification is required, until the market in the security has opened in such other Participant market.

(F)[(iv)] Duration of Obligations to Trade—Responses to pre-opening notifications shall be voluntary, but each obligation to trade that at a *Market Maker* [specialist] includes, *via the facilities of the Corporation*, in any pre-opening response, or in any modification of a pre-opening reponse, shall remain binding on him *or her*, and on any person for whom he *or she* is acting, until the security has opened in the Participant market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such *Participant* [participant] market, and any such modification shall itself be binding on the *Market Maker* [specialist] or such person until a subsequent cancellation or modification thereof has been received in such Participant market. The preceding sentence applies to obligations to trade even if included in pre-opening responses contravening paragraph *(8)(B)* [(8)(ii)].

Commentary

.01. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall buy against a commitment to sell designated as "short" which is received *through* [on] the facilities of the Corporation if the resulting transaction would violate the short selling rules.

.02. Any purchase or sale against a commitment to trade received *through* [on] the facilities of the Corporation shall be effected in accordance with the *Rules* [rules] applicable to the making of bids, offers and transactions on the *facilities of the Corporation* [facility].

.03. For the purposes of this *Rule* [rule], the market in a security is opened (or reopened) with either a trade or quotation, if trades are being reported to the Consolidated Tape and quotes are being disseminated to the Consolidated Quotation System.

[.04—Deleted.]

ITS "Trade-Throughs" and "Locked Markets"

Rule *7.56* [7.67](a). Definitions.

(1) An "*Exchange* trade-through," as that term is used in this Rule, occurs whenever an ETP Holder [or ETP Firm] initiates the purchase of an Eligible Listed Security *through the facilities of* [on] the Corporation at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security *through the facilities of* [on] the Corporation at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the bid (offer) then being displayed [on the Floor] from such other market center. The ETP Holder [or ETP Firm] described in the foregoing sentence is referred to in this Rule as the ETP Holder [or ETP Firm] who initiated a trade-through.

(2)—No change.

(3) A "third participating market center trade-through," as that term is used in this Rule, occurs whenever an ETP Holder [or ETP Firm on the Corporation] initiates the purchase of an Eligible Listed Security by sending a commitment, *via the facilities of the Corporation*, to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending, *via the facilities of the Corporation*, a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of purchase (or sale) in another ITS participating market center, as reflected by the offer (bid) then being displayed through the facilities of the Corporation. The *ETP Holder* [member] described in the foregoing sentence is referred to in this Rule as the "ETP Holder [or ETP Firm] who initiated a third participating market center trade-through."

(4) A "trade-through," as that term is used in this Rule, means either an *Exchange* trade-through [on the facilities of the Corporation] or a third participating market center trade-through.

(b) Trade Throughs.

When purchasing or selling, either as principal or agent, any Eligible Listed Security *through the facilities of* [on] the Corporation or by issuing, via the facilities of the Corporation, a commitment to trade through the System, ETP Holders[, Equity ASAP Holder or ETP Firms] should avoid initiated a trade-through unless the provisions of paragraphs (b)(3) below are applicable.

(2)(A) Except as provided in paragraph (b)(3) below, if a trade-through occurs and a complaint thereof is received by the Corporation through the System from the party whose bid or offer was traded-through ("the aggrieved party", then:

(i) In the case of an *Exchange* trade-through [on through the facilities of the Corporation] only, if the ETP Holder[or ETP Firm] who initiated the trade-through and the party on the contra side of the transaction each initiated the transaction [while on] through the facilities of the Corporation for his or *her* own account or any account in which he *or she* has an interest, the transaction shall be deemed void and a cancellation therefore shall be reported through the consolidated last sale reporting system;

(ii) Except as provided in paragraph (b)(2)(A)(i) above, (a) the ETP Holder [or ETP Firm] who initiated the trade-through shall satisfy, or cause to be satisfied the bid or offer traded-through in its entirely either at the price of such bid or offer, or, at the price that caused the trade-through (as determined in accordance with paragraph (b)(2)(B) below) or, (b) if he *or she* elects not to do so (and, in the case of an third participating market center trade-through he *or she* obtains the agreement of the contra party within the ITS participating market center that received the commitment that caused that trade-through), then the price of the transaction which constituted the trade-through shall be corrected to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system.

(B) The price at which the bid or offer traded-through shall be satisfied pursuant to clause (a) of paragraph (b)(2)(A)(ii) shall be the price of such bid or offer except if:

(i) the transaction that constituted the trade-through was of "block size" but did not constitute a "block trade" (as those terms are defined in Rule *7.57* [7.68]); and

(ii) the ETP Holder [or ETP Firm] who initiated the trade-through did not make every reasonable effort to satisfy or cause to be satisfied, through the System, the bid or offer traded-through at its price and in its entirety within two (2) minutes from the time the report of this transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale report system. In the case of such exception, the price at which the bid or offer traded-through shall be satisfied shall be the price that caused the trade-through.

Whenever paragraph (b)(2)(A)(ii) applies, if the ETP Holder [or ETP Firm] who initiated the trade-through, or the party (or the broker/dealer within another ITS participating market center) on the contra side of the transaction was, of if both such parties were executing (in whole or in part) orders that originated from off *the facilities of the Corporation or off the Floor of the other* [their] respective *market centers* [Floor], each such order to portion thereof that was executed in the transaction that constituted the trade-through (whether such order or portion thereof was executed by the party who initiated the trade-through or by the member or a broker/dealer within another ITS participating market center on the contra side of the transaction) shall receive the price that caused the trade-through or the price at which the bid or offer traded-through was satisfied, if it was satisfied, pursuant to clause (a) of paragraph (b)(2)(A)(ii) or the adjusted price, if there was an adjustment, pursuant to clause (b) of paragraph (b)(2)(A)(ii), whichever price is most beneficial to the order or portion. Resulting money differences shall be the liability of the party who initiated the trade through.

[1] For purposes of this section, the market in a security is opened (or reopened) with either a trade or a quotation, if trades are being reported to the Consolidated Tape and quotes are being disseminated on the Consolidated Quotation System.

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(3) The provisions of paragraph (b)(2) above shall not apply under the following conditions:

(A)–(C)—No change.

(D) the trade-through occurred during a period when, with respect to the Eligible Listed Security which was the subject of the trade-through, ETP Holders [and ETP Firms of the Corporation] were relieved of their obligations under paragraph (c)(2) of Rule 11 Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1; provided, however, that, unless the provisions of this paragraph (b)(3) (other than those of this proviso) apply, during any such period ETP Holders [and ETP Firms] shall make every reasonable effort to avoid trading-through any bid or offer displayed on the Floor from another ITS participating market center whose members are not relieved of their obligations under said paragraph (c)(2) with respect to such bid or offer;

(E)–(G)—No change.

(c) Complaints and Responses to Complaints.

(1) When a trade-through complaint is received by the Corporation, it shall be the duty of the ETP Holder [or ETP Firm] who initiated the trade-through to respond as promptly as practicable to the aggrieved party. Such a response shall notify the aggrieved party either:

(A)–(B)—No change.

(2)—No change.

(A)—No change.

(B) the loss proximately caused by the trade-through that would have been suffered by the aggrieved party had he *or she* purchased or sold the security subject to the trade-through so as to mitigate his *or her* loss and had such purchase or sale been effected at the "loss basis price."

For purposes of this paragraph, the "loss basis price" shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system, in the security in question, after one hour has lapsed from the time the complaint is received by the Corporation (or, if the complaint is so received within the last hour of trading on the Corporation on any day, then the price of the opening transaction in such security being displayed through the facilities of [on] the Corporation on the next day on which the Corporation trades that security).

(3) Any ETP Holder [or ETP Firm] who is an aggrieved party may at any time, at his *or her* discretion, take steps to establish and mitigate any loss he *or she* might incur as a result of the trade-through. He *or she* shall give prompt notice to the other *market* [exchange] center of any such action.

(4) If a complaint of a purported trade-through is received by the Corporation and the complained-of transaction resulted from an ETP Holder's [or ETP Firm's] execution [on] through the facilities of the Corporation of a commitment to trade received from another ITS participating market center, the ETP Holder [or ETP Firm] should, if circumstances permit, make reasonable efforts to notify the complaining party as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated [on] through the facilities of the Corporation and (B) of the identity of the ITS participating market center that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the ETP Holder [or ETP Firm] for any loss associated with the complained-of transaction.

(5) If a transaction that resulted from *the* [an] ETP Holder's [or ETP Firm's] execution [on] through the facilities of the Corporation of a commitment to trade constitutes a trade-through under the rules of the originating ITS participating market center, then:

(A) if the broker/dealer on such market center who initiated the transaction requests that the ETP Holder [or ETP Firm] correct the price of such transaction in accordance with the counterpart in such market center's trade-through rule to paragraph (b)(2)(A)(ii)(b) of this Rule, the ETP Holder [or ETP Firm] may, but need not, acquiesce and so correct the price; and

(B) paragraph (b)(2)(C) of this *Rule* [rule] shall apply as if the ETP Holder [or ETP Firm] were a contra party within the meaning of that paragraph.

(d) *Locked Markets.*

(1) Except as provided in paragraph (d)(2) below, an ETP Holder [or ETP Firm] who makes a bid for an Eligible Listed Security [on] through the facilities of the Corporation and, in so doing, causes a locked market with another ITS participating market center, and the Corporation receives a complaint through the *System* [system] from the market center whose offer was locked, the ETP Holder [or ETP Firm] responsible for the locking shall, as specified in the complaint, either promptly (A) send, *via the facilities of the Corporation,* a commitment to trade to such other market center seeking the offer he *or she* has equaled or exceeded, which commitment shall be for either the number of shares he *or she* has bid for or the number of shares offered on the other market center, whichever is less; or (B) "unlock" (i.e., adjust his *or her* locking bid so as not to cause a locked market). If the complaint specifies "unlock", he *or she* may nevertheless ship instead. The same principle shall apply to an ETP Holder [or ETP Firm] who makes an offer for an Eligible Listed Security *through the facilities of* [on] the Corporation and causes a locked market with another ITS participating market center.

(2) The provisions of paragraph (d)(1) above shall not apply when:

(A)—No change.

(B) the ETP Holder [for ETP Firm] who caused a locked market makes every reasonable effort to comply with paragraph (d)(1) above, but is unable to comply because of a system/equipment failure or malfunction;

(C)—No change.

(D) the locked market occurred at a time when, with respect to the Eligible Listed Security which was the subject of the locked market, ETP Holders [or ETP Firms either] on [through the facilities of] the Corporation or *members* in the ITS participating market center in which the aggrieved member is located were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1; or

(E)—No change.

(F) the locking bid or offer no longer prevails [on the Floor] at the time the complaint is received [on the Floor]. This exemption is not intended to discourage a locking member from electing to send a commitment if the complaint requests him *or her* to do so.

Commentary

.01 The provisions of this Rule shall not apply to (1) purchases and sales effected by members participating in the opening (or reopening) transaction in an Eligible Listed Security, or (2) any "block trade" as defined in Rule *7.57* [7.68].

[.02—Deleted.]

.02 [.03] A *Market Maker* [Specialist] utilizing an automatic quotation system for quotation changes cannot quote a size greater than one round lot bid and offer.

.03 [.04]—No change.

Block Trade Policy

Rule *7.57*[7.68](a). Definitions.

(1) A "block trade," as that term is used in this Rule, means a trade *executed* [on] through the facilities of the Corporation that:

(A)–(B)—No change.

(C) involves either:

(i) a cross of block size (where the *ETP Holder* [member] represents all of one side of the transaction and all or a portion of the other side); or

(ii) any other transaction of block size (i.e., in which the ETP Holder [or ETP Firm] represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Corporation.

Contemporaneous transactions at the same price filling an order or orders then or theretofore represented *through the facilities of* [on] the Corporation by an ETP Holder [or ETP Firm] (including transactions resulting from commitments to trade sent, *via the facilities of the Corporation,* by the ETP Holder [or ETP Firm] pursuant to paragraph (b) below) shall be deemed to constitute a single transaction for the purpose of this definition.

(2) A "current bid or offer on the Corporation," as that term is used in paragraph (a)(1)(c)(ii) above, means the price of the current quotation on the facilities of the Corporation established independently of the order to buy or sell that is represented by the ETP Holder [or ETP Firm].

(3) A "bid or offer displayed from another ITS participating market center" (or any derivative phrase), as that term is used in this Rule, means the current quotation from another ITS participating market center displayed *through the facilities* [on the Floor] of the Corporation as required by the ITS Plan, and does not include "away-from-the-market" limit orders or other interests that may be represented in such other ITS participating market center.

(b) Obligation to Send Commitments. Unless one or more of the conditions described in paragraph (c) below exist, *the* ETP Holder [or ETP Firm] representing the block-size order(s) shall at the time of execution of a block trade send, or cause to be sent, *via the facilities of the Corporation,* through ITS to each other ITS participating market center displaying a bid (offer) superior to the execution price, a commitment to trade at the execution price and for the number of shares displayed with that market center's better-priced bid (offer).

(c) Inapplicability. Paragraph (b) above shall not apply under the following conditions:

(1)—No change.

(2) the ETP Holder [or ETP Firm] representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS participating market center but was unable to because of a systems/equipment failure or malfunction;

(3)—No change.

(4) the block was executed during a period when, with respect to the Eligible Listed Security that was the subject of the block trade, ETP Holders [on of the Corporation] were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1; provided, however, that, unless one of the conditions of this paragraph (c) (other than that of this subparagraph (4)) applies, *on* ETP Holder [or ETP Firms] shall nevertheless make every reasonable effort during any such period to satisfy through ITS, *via the facilities of the Corporation,* any better-priced bid or offer displayed *through the facilities of* [on] the Corporation from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1;

(5)—No change.

(6) the better-priced bid or offer had caused a "locked marked," as that term is defined in Rule *7.56*[7.67], in the Eligible Listed Security that was the subject of the block trade.

Commentary

.01 A transaction not subject to this Rule may be subject to the trade-through provisions of Rule *7.56*[7.67]. An ETP Holder or ETP Firm who makes a bid or offer *through the facilities of* [on] the Corporation otherwise than in connection with a block trade may be subject to the locked market provisions of Rule *7.56*[7.67].

[Rule 7.69—Deleted.]

Rule *7.58*[7.45]—No change.

Rule 7.59. Reserved.

Section 6[8]. Contracts in Securities

Definitions and General Provisions

Rule *7.60*[7.50]—No change.

Rule *7.61*[7.51](a). ETP [or Equity ASAP] Contracts. All contracts in the ordinary course of business of an ETP Holder[, Equity ASAP Holder, or ETP Firm of the Corporation] with any other ETP Holder[, Equity ASAP Holder, or ETP Firm of the Corporation] for the purchase, sale, borrowing, loaning or hypothecating of securities, or for the borrowing, loaning or payment of money, whether occurring *through the facilities* [upon the Floors] of the Corporation or elsewhere, are ETP [or Equity ASAP] contracts of the Corporation unless made subject to the *rules* [Rules] of another exchange.

(b) Provisions Included in ETP [or Equity ASAP] Contracts. All bids made and accepted, and all offers made and accepted in accordance with the Bylaws, Rules, and procedures of the Corporation shall be binding. The applicable provisions of the Bylaws, Rules, and procedures of the Corporation and all other regulations adopted pursuant thereto, shall be part of the terms and conditions of all ETP *contracts* [or Equity ASAP Contracts] and all contracts thereby effected, and shall be subject to said provisions and to the exercise by the Board of Directors of the Corporation of the powers in respect thereto vested in them.

(c) Extend or Postpone Time, Prescribe Special Terms. Notwithstanding the foregoing subparagraphs (a) and (b) of this Rule or any other provisions of the Bylaws or Rules of the Corporation to the contrary, the Board of Directors may extend or postpone the time or prescribe special terms and conditions for the performance or settlement of ETP *contracts* [or Equity ASAP Contracts] whenever such action is called for by the public interest or by just and equitable principles of trade.

Delivery of Securities

Rule *7.62* [7.53](a). Depository Eligibility.

(1)—No change.

(2) A security depository's inclusion of the CUSIP number identifying a security in its file of eligible issues does not render a security "depository eligible" within the meaning of Rule *7.60(a)(2)* [7.50(a)(2)] until:

(A)–(B)—No change.

(3)—No change.

(b) Book Entry Settlement of Transactions.

(1) An ETP Holder[, Equity ASAP Holder, ETP Firm] shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another financial intermediary or a member of a national securities exchange or a registered securities association.

(2) An ETP Holder[, Equity ASAP Holder, ETP Firm] shall not effect a delivery-versus-payment or receipt-versus-payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.

(3) This *Rule* [rule] shall not apply to transactions that are settled outside of the United States.

(4) The requirements of this *Rule* [rule] shall supersede any inconsistent requirements under the Bylaws and Rules of the Corporation.

(5) This *Rule* [rule] shall not apply to any transaction where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and

(A)–(B)—No change.

Section 7. Special Offerings

Approval

Rule *7.63E*[7.79](a). The Corporation may, subject to the following conditions and provisions, permit a "Special Offering" as defined hereinafter, to be made through the facilities of the Corporation shall have determined that the regular market on the *facilities* [Floor] of the Corporation cannot, within a reasonable time and at a reasonable price or prices, absorb the particular block of stock which is to be the subject of such Special Offering. In making such determination the following factors may be taken into consideration:

(1) Price range and the volume of transactions in such stock on the *facilities* [Floor] of the Corporation during the preceding month;

(2) Attempts which have been made to dispose of the stock in the regular market on the *facilities* [Floor] of the Corporation;

(3) The existing condition of the *Arca Book* [specialist's book] with respect to such stock;

(4) The apparent past and current interest in such stock in such regular market on the *facilities of the Corporation* [Floor]; and

(5)—No change.

Except in special circumstances a "Special Offering" will not be permitted unless the offering involves at least 1,000 shares of stock or shares having an aggregate market value of $25,000, whichever is greater.

Definition—Price—Special Commission

(b) A Special Offering is defined as an offering (designated as a fixed price offering) by one or more ETP Holders[, Equity ASAP Holders, or ETP Firms] acting for his, *her* or their own account or for the account of one or more other persons, for the sale of a block of stock dealt in on the Corporation, through the facilities of the Corporation, at a price not in excess of the last sale of such stock or the current offer of such stock, in the regular market on the *facilities* [Floor] of the Corporation, whichever is the lower; but not lower than the current bid for such stock in such market, unless otherwise specifically permitted by the Corporation, whereby the offeror may agree to pay a special commission to such ETP Holders[, Equity ASAP Holders, or ETP Firms] as may accept all or any part of such Offering for the account of his, *her* or their customers.

(c) Conditions. No Special Offering, as provided by this *Rule* [rule], shall be made unless all of the following conditions are satisfied:

(1) Stabilizing. The person for whose account such Special offering is to be made shall at the time of such offering be the owner of the entire block of stock so to be offered, except that, for the purpose of stabilizing, there also may be sold for such person's account, or for the account of any ETP Holder[, Equity ASAP Holder or ETP Firm] offering the block of stock on his *or her* behalf as part of the Special Offering, an amount not to exceed 10% of the shares owned and originally offered in the Special Offering by such person.

(2) All to be Offered within Reasonable Time. The person for whose account such Special Offering is to be made shall include within the Offering all of the security which he *or her* then intends to offer within a reasonable time; and there shall be furnished to the Corporation before the Offering is made a written statement by the offeror to that effect, or a written statement by his *or her* broker stating that the broker has been so advised by the offeror.

(3)—No change.

(4) Agreement by Offeror. The person for whose account such Special Offering is made

shall agree that during the period such offering is open he *or her* will not offer in the regular market on the *facilities* [floor] of the Corporation any shares of the stock which is the subject of such Special Offering, unless the prior permission of the Corporation is first obtained.

(5) No Special Commission Member, Etc. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall directly or indirectly receive any pat of the special commission referred to in Section 1(b) in connection with any purchase for his, *her* or its own account or the account of any participant therein or for the account of any other ETP Holder[, Equity ASAP Holder, or ETP Firm] or any participant therein, made pursuant to a Special Offering, except that an ETP Holder[, Equity ASAP Holder, or ETP Firm] may accept and retain such special commission for his, *her* or its own account in respect of securities purchased as principal for the bona fide purpose of distribution, even though such firm has been unable to distribute the securities.

(6)–(7)—No change.,

(8) Allotments. The offeror may, at the time of the announcement of a Special Offering, allot on a firm basis to ETP Holder[, Equity ASAP Holder, or ETP Firms] engaged in the distributing business not more than 50% of the securities involved in the offering. When buying orders in a Special Offering exceed the amount of the offering, the remainder of the offered securities will be allocated in reasonably proportionate amounts.

(d)—No change.

(e) Information on Tape. The terms of a Special Offering shall be printed on the tape before it is effective, with statement, if such be the fact, that stabilizing transaction have been effected or are contemplated and that it is intended to over allot shares as permitted by Rule *7.63(c)(1)* [7.79(c)(1)]. Transactions effected pursuant to a Special Offering shall when feasible be printed currently on the tape, and the tape shall show the gross price and the special commission in a legend such as "SPOFF 100 XYZ 40 COM .50 or ½," as well as the number of orders involved in such transaction where more than one order is involved; and after the close of the market, any unprinted remainder of such transactions executed during the day shall be so printed. When the offering is terminated, an announcement to that effect shall be printed on the tape; and when the intention to stabilize is terminated, such fact shall be announced on the tape together with a statement that stabilizing transactions have been effected, if such be the fact.

(f)–(g)—No change.

(h)(1) Confirmations. An ETP Holder[, Equity ASAP Holder, or ETP Firm] effecting for the account of a customer, a purchase pursuant to a Special Offering, shall confirm such transaction to such customer at the offering price and shall not charge to or collect from such customer any commission on account of such transaction.

The confirmation by an ETP Holder[, Equity ASAP Holder, or ETP Firm] to a buyer or seller in a Special Offering shall state in full the terms and conditions of the Special Offering. The confirmation to a buyer shall state at least:

(A)–(B)—No change.

(C) That the seller is to pay a special commission to the ETP Holder[, Equity ASAP Holder, or ETP Firm], if such be the fact;

(D)–(E)—No change.

(F) The nature of the ETP Holder[, Equity ASAP Holder, or ETP Firm] interest in the special offering, if any, other than its interest as a recipient of the special commission.

(2) Soliciting Orders. An ETP Holder[, Equity ASAP Holder, or ETP Firm] soliciting purchase orders for execution pursuant to a Special Offering shall advise the person so solicited of the terms and conditions of such Offering before effecting any transaction for such person pursuant thereto. Such disclosure shall include at least the items described in paragraphs *(A) to (F) of Rule 7.63(h)(1)* [(a) to (f) of Rule 7.79(h)(1)].

(3) More Advantageous Price. An ETP Holder[, Equity ASAP Holder, or ETP Firm]

(A)–(B)—No change.

(C) Proposing, pursuant to discretionary authority from a customer, to effect a purchase of stock which is the subject of a Special Offering then in effect, shall, before executing any such order or effecting any such purchase pursuant to such Special Offering make a bona fide attempt to execute such order or to effect such purchase in the regular market on the *facilities* [Floor] of the Corporation at a price more advantageous to the customer than the gross offering price under the Special Offering.

(i) Size of Offering. Rule *7.63(a)* [7.79(a)] places a general limitation on the size of Special Offerings, except in special circumstances. Such an exception might be a Special Offering of a stock designated as an "inactive" stock.

(j) Preliminary Information Required. The broker for the offeror will be required to furnish the following information to the Corporation, prior to the announcement of the Special Offering on the tape:

(1)–(7)—No change.

(8) Description of efforts to dispose of the security *through the facilities* [in the auction market on the Floor] of the Corporation.

(9) Written assurance of the offeror, or the broker upon advice from the offeror, that the shares contained in the Offering are all of the security which he *or she* then intends to offer within a reasonable time, as required in Rule *7.63(c)(2)* [7.79(c)(2)]

(10)–(11)—No change.

(12) Statement as to whether the offeror or his *or her* agent intends, for the purpose of stabilizing, to sell stock in the Special Offering in excess of that owned and included in the original offer as permitted to Rule *7.63(c)(1)* [7.79(c)(1)].

(13)—No change.

The foregoing information should be given to the Corporation as soon as possible in advance of the time it is proposed to make the Special Offering. Announcement will not be made on the tape of the Special Offering (and the Special Offering thus cannot become effective) until the Corporation has the requisite information and has approved it.

(k) Ownership. The offeror in a Special Offering must be the owner of the entire block of stock offered for sale, except for the purpose of stabilizing as permitted by Rule *7.63(c)(1)* [7.79(c)(1)].

(l)—No change.

(m) Other Offers. It should be noted that under Rule *7.63(c)(4)* [7.79(c)(4)], an offeror may not, while his *or her* Special Offering is open, offer any shares of the same stock in the regular *trading through the facilities* [auction market] without prior permission of the Corporation.

(n) Orders After Close. Orders accumulated after the close shall be completed on the *facilities* [Floor] of the Corporation at the opening of the next market session.

(o) Special Offering Transactions. [Purchases in Special Offerings shall be completed on the Floor of the Corporation at the Post or Posts where the stock is traded.] The handling of the order on either the purchase or the offering side may be entrusted to a *Market Maker* [Floor broker or specialist] in the same manner as in the case of regular orders. In connection with a special Offering, the broker for the buyer is acting in an agency capacity and the agency obligation to buy at the most advantageous price to the customer shall be observed.

(p)—No change.

(q) Odd Lot Stop Orders. Transactions effected pursuant to Special Offerings shall not elect Stop Orders or open odd lot orders for execution in the regular [auction] market.

(r) Confirmations. Confirmation need not be on a specially prepared form but must show clearly in type no smaller than 8-point that the purchase was part of a Special Offering; that no commission is to be charged to the customer; that the seller is to pay a special commission to the ETP Holder[, Equity ASAP Holder, or ETP Firm], if such be the fact; the amount of such special commission; the information printed on the tape regarding stabilizing transactions or the intention to stabilize; and the nature of ETP Holder's[, Equity ASAP Holder's, or ETP Firm's] interest in the Special Offering, if any, other than its interest as a recipient of the special commission.

Confirmations used by the broker for the seller similarly need not be on a specially prepared form, but must show clearly in type no smaller than 8-point that the sale is part of a Special Offering of * * * shares of * * * stock at * * * per share less * * * special commission, and, separately, the selling commission charged by the broker for the seller.

(s)—No change.

Section *8* [12]. Exchange Distributions

Rule *7.64* [7.80](a). Definition. An important feature of an Exchange Distribution is that an ETP Holder[, Equity ASAP Holder, or ETP Firm] may now pay compensation to its registered representatives for soliciting others to purchase *through the facilities* [in the regular auction market on the Floor] of the Corporation a security admitted to dealing which is the subject of an approved Exchange Distribution. Or it may on its own behalf or on behalf of a customer make an arrangement to pay a special commission, as mutually agreed, for distributing the security to one or more *ETP Holders* [members firms], who may in turn give special compensation to their registered representatives for purchases they have solicited in connection with the distribution.

Under an Exchange Distribution, purchase orders may be grouped from time to time, as they are received, and sent to the *facilities of the Corporation* [Floor] together with an order to sell an equal amount and "crossed" under the rules of the Corporation.

(b) Similar to Special Offering. An Exchange Distribution is somewhat similar to a Special Offering in the following respects:

(1)—No change.

(2) Approval will be given only when it is determined that the regular market on the *facilities* [Floor] could not, within a reasonable time and at a reasonable price or prices, otherwise absorb the block of securities;

(3)—No change.

(4) All transactions will take place on the facilities of the Corporation [(but unlike a Special Offering, will be done in the regular auction market)];

(5) Only ETP Holders[, Equity ASAP Holders, or ETP Firms] are eligible for participation in the solicitation of purchase orders and in the special commission, if any, paid by the offeror on purchases resulting from such solicitation;

(6) The person for whose account the distribution is to be made shall, at the time of the distribution, be the owner of the entire block of the security to be so distributed, and shall include within the distribution all of the security which he *or she* then intends to offer within a reasonable time;

(7) Each ETP Holder[, Equity ASAP Holder, or ETP Firm] soliciting purchase orders in connection with an Exchange Distribution must advise the person being solicited, before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares being offered in an Exchange Distribution and that he *or she* is receiving a special commission from the seller or his *or her* broker, if that is the case.

(c) Differences from Special Offering. An Exchange Distribution differs from a Special Offering in that:

(1) It is effected in the regular [auction] market and not at a fixed price;

(2)–(3)—No change.

(4) During the period when the distribution is being made, neither the person for whose account the distribution is being made nor the ETP Holders, [Equity ASAP Holders, or ETP Firms] who are parties to the distribution, shall bid for or purchase any of the securities for an account in which the ETP Holder, [, Equity ASAP Holder, or the ETP Firm] has a direct or indirect interest;

(5) No ETP Holder[, Equity ASAP Holder, or ETP Firm] who is connected in any way with an Exchange Distribution may, with respect to such distribution, (A) effect stabilizing transactions, (B) effect short sales, (C) make firm allotments, (D) accept over-subscriptions.

(d) Procedure. To effect an "Exchange Distribution" of a block of a security admitted to dealing on the Corporation, an ETP Holder[, Equity ASAP Holder, or ETP Firm] for his, *her* or its own account, or the account of a customer, may

(1) Make an arrangement with one or more other ETP Holders[, Equity ASAP Holders, or ETP Firms] under which

(A) The ETP Holders[, Equity ASAP Holders, or ETP Firms], with whom the arrangement is made, solicit others to purchase such security;

(B) The selling ETP Holder[, Equity ASAP Holder, or ETP Firm] may pay to the ETP Holders[, Equity ASAP Holders, or ETP Firms], whom the arrangement is made, a special commission which is mutually agreeable; and

(C) ETP Holders[, Equity ASAP Holders, or ETP Firms], with whom the arrangement is made, may pay a special commission to their registered representatives; and/or

(2) Pay a special commission to his, *her* or its registered representatives for soliciting others to purchase such security.

(E) Approval Required. An "Exchange Distribution" may be made only with the prior approval of the Corporation. Such a Distribution shall not be approved unless the Corporation shall have determined that the regular market on the *facilities* [Floor] of the Corporation cannot, within a reasonable time and at a reasonable price or prices, otherwise absorb the block of securities which is to be the subject of the "Exchange Distribution." In making such determination, the following factors may be taken into consideration:

(1) Price range and the volume of transactions in such security on the *facilities* [Floor] of the Corporation during the preceding month;

(2) Attempts which have been made to dispose of the security on the *facilities* [Floor] of the Corporation;

(3) The existing conditions of the *Arca Book* [specialist's book and Floor quotations] with respect to such security;

(4) The apparent past and current interest in such security on the *facilities* [Floor]; and

(5)—No change.

(f) Conditions. No "Exchange Distribution" shall be made unless all of the following conditions are satisfied:

(1)—No change.

(2) The person for whose account the Distribution is to be made shall include within the Distribution all of the security which he *or she* then intends to offer within a reasonable time; and there shall be furnished to the Corporation, before the Distribution is made, a written statement by the offeror to the effect or a written statement by his *or her* broker stating that the broker has been so advised by the offeror;

(3) The person for whose account the Distribution is made shall agree that during the period the Distribution is being made he *or she* will not bid for or purchase any of the security for any account in which he *or she* has a direct or indirect interest;

(4) The ETP Holders[, Equity ASAP Holders, or ETP Firms] who are parties to the arrangement for the Distribution shall not, during the period the Distribution is being made, bid for or purchase any of the security for an account in which they have a direct or indirect interest;

(5) No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be granted approval to effect an "Exchange Distribution" of a block of a security for an account in which he *or she* has a direct or indirect interest if he *or she* is registered as a *Market Maker* [specialist] in such security, unless the Corporation has determined that such *Market Maker* [specialist] has been unable, within a reasonable period of time, to dispose of the block of the security in the ordinary course of his *or her* dealings as a *Market Maker* [specialist]. Such approval shall stipulate that the *Market Maker* [specialist] may not deal directly with the public but must make an arrangement with one or more other ETP Holders[, Equity ASAP Holders, or ETP Firms] to solicit others to purchase the security, and pay, if any, a special commission to such other ETP Holders[, Equity ASAP Holders, or ETP Firm] as provided under Section 1(a) of this *Rule* [rule];

(6) Each ETP Holder[, Equity ASAP Holder, or ETP Firm] soliciting purchase orders for execution in the Distribution shall advise the person so solicited, before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares or bonds being offered in an "Exchange Distribution," and that he *or she* or it

(A) is acting for the seller and will receive a special commission from the seller or his *or her* broker if that is the case, or is acting as a principal; and

(B) is charging the buying customer a commission, if any, or is making the sale at a net amount, whichever the case may be.

(7) No "short" sale may be made in connection with the Distribution except that securities may be borrowed to make delivery where the person owns the securities sold and intends to deliver such securities as soon as possible without undue inconvenience or expense.

The conditions set forth in (2)(3) and (4) above shall not apply

(A) To transactions effected on the Corporation, for the purpose of maintaining a fair and orderly market, by *an ETP Holder* [a member] in a security in which he *or she* is registered as a *Market Maker* [specialist] and which is the subject of an Exchange Distribution for an account in which he *or she* has an interest, except that, when such Distribution is in effect, he *or she* shall not bid for or purchase such stock [on] through the facilities of the Corporation for an account in which he *or she* has an interest:

(i) at a price above the preceding sale, or

(ii) at a price above the next preceding sale, or

(B) To transactions effected by an ETP Holder[, Equity ASAP Holder or ETP Firm] on the Corporation in less than the unit of trading for the purpose of purchasing odd lots offered to him *or her* in a security in which he *or she* is registered as a *Market Maker* [specialist] and which is the subject of an Exchange Distribution in which he *or she* has an interest.

The conditions set forth in (3) and (4) above shall not apply to purchases necessitated solely in connection with "crossing" orders pursuant to the Distribution.

(g) Execution. In effecting an "Exchange Distribution" the orders for the purchase of the securities being distributed must be sent to the *facilities of the Corporation* [Floor] together with an order to sell an equal amount to be "crossed" in accordance with

the *Rules* [rules] applicable to the crossing of orders on the *facilities* [Floor], and such transactions shall be printed on the ticker tape.

(h) Reports. The ETP Holder[, Equity ASAP Holder, or ETP Firm] selling securities in an "Exchange Distribution" shall report to the Corporation all transactions in such securities effected by him, *her* or it for any account in which the seller had a director indirect interest, commencing with the time arrangements for the Distribution were made and ending with the time the Distribution was completed.

Rule 8

Trading of Certain Equity Derivatives

Section 1. Currency and Index Warrants

Rule 8.1–8.3—No change.

Account Approval

Rule 8.4. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall accept and order from a customer to purchase or sell a stock index, currency index or currency warrant unless the customer's account has been approved for options trading pursuant to Rule 9.18(b).

Rule 8.5—No change.

Discretionary Accounts

Rule 8.6. Rule 9.6(a) shall not apply to customer accounts insofar as an ETP Holder[, Equity ASAP Holder, or ETP Firm] exercises discretion to trade in stock index, currency index and currency warrants, and any such account shall instead be subject to the provisions of Rule 9.18(e) with respect to such trading. For purposes of this Rule, the term "option" as used in Rule 9.18(e) shall be deemed to include such warrants.

Supervision of Accounts

Rule 8.7. Rule 9.18(d) shall not apply to all customer accounts of an ETP Holder[, Equity ASAP Holder, or ETP Firm] in which transactions in stock index, currency index or currency warrants are effected. The term "option" as used in Rule 9.18(d) shall be deemed to include such warrants.

Customer Complaints

Rule 8.8 Rule 9.18(1) shall apply to all customer complaints received by an ETP Holder[, Equity ASAP Holder or ETP Firm] regarding stock index, currency index or currency warrants. The term "options" as used in Rule 9.18(1) shall be deemed to include such warrants.

Prior Approval of Certain Communications to Customers

Rule 8.9(a) No ETP Holder[, Equity ASAP Holder, or ETP Firm] or person associated with an ETP Holder[, Equity ASAP Holder, or ETP Firm] shall utilize any advertisement, educational material, sales literature or other communication to any customer or member of the public concerning stock index, currency index or currency warrants that:

(1)–(3)—No change.

(b) All advertisements, sales literature and educational material issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] to any customer or member of the public pertaining to stock index, currency index or currency warrants shall comply with the requirements set forth in the Commentaries to Rule 9.28. For purposes or this Rule, the term "option" as used in such Commentaries shall be deemed to include such warrants, and the term "The Options Clearing Corporation" as used in such Commentaries shall be deemed to mean the issuer(s) of such warrants.

(c) All advertisements, sales literature (except completed worksheets) and educational materials issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] to any customer or member of the public pertaining to stock index, currency index or currency warrants shall be approved in advance by a Compliance Registered Options Principal or designee thereof. Copies of such advertisements, literature or materials, together with the names of the persons who prepared them, the names of the persons who approved them and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder[, Equity ASAP Holder or ETP Firm] and be kept in an easily accessible place for examination by the Corporation for a period of three years.

(d) In addition to the approval required by subsection (c) of this Rule, every advertisement and all educational material of an ETP Holder[, Equity ASAP Holder or ETP Firm] pertaining to stock index, currency index and currency warrants shall be submitted to the Corporation at least ten days prior to use (or such shorter time as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until such material has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

(1)—No change.

(2) advertisements in which the only reference to stock index, currency index or currency warrants is contained in a listing of services of an ETP Holder[, Equity ASAP Holder or ETP Firm].

(e)—No change.

Position Limits

Rule 8.10(a). Except with prior written approval of the Corporation in each instance, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall effect for any account in which such ETP Holder[, Equity ASAP Holder, or ETP Firm] has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a purchase or sale transaction (whether on the Corporation or on or through the facilities of, or otherwise subject to the rules of, another national securities exchange or national securities association) in a stock index warrant if the ETP Holder[, Equity ASAP Holder, or ETP Firm] has reason to believe that as a result of such transaction the ETP Holder[, Equity ASAP Holder, or ETP Firm] or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly, control an aggregate position in an index warrant issue, or in all warrants issued on the same stock index group, on the same side of the market, in excess of the following position limits:

(1)–(2)—No change.

(b) Whenever the Corporation determines that a person or group of persons acting in concert holds or controls an aggregate position (whether long or short) in stock index warrants in excess of the applicable position limits established pursuant to paragraph (a) of this Rule 8.10, it may direct all ETP Holders[, Equity ASAP Holders, or ETP Firms] carrying a position in stock index warrants for such person or persons to liquidate such position, as expeditiously as possible consistent with the maintenance of an orderly market, to the extent necessary to assure that such person or persons are in compliance with applicable position limits. Whenever such a directive is issued by the Corporation, no ETP Holder[, Equity ASAP Holder, or ETP Firm] receiving notice thereof shall accept any order to purchase or sell any stock index warrants based on the same stock index for the account of the person or persons named in such directive, unless in each instance the Corporation provides its express approval therefor, or until such directive is rescinded.

Commentary

.01—No change.

.02 The Corporation may establish higher position limits for [specialists'] *Market Maker* transactions than those applicable with respect to other accounts. Whenever a [specialist] *Market Maker* reasonably anticipates that he *or she* may exceed such position limits in the performance of his [specialist] *or her Market Maker* functions, he *or she* must consult with and obtain the prior approval of [a Trading Official] *the regulatory staff.*

Exercise Limits

Rule 8.11. Except with the prior approval of the Corporation in each instance, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall exercise, for any account in which such ETP Holder[, Equity ASAP Holder, or ETP Firm] has an interest, or for the account of any partner, officer, director or employee thereof, or, for the account of any customer, a long position in any stock index warrant dealt in on the Corporation if as a result thereof such ETP Holder[, Equity ASAP Holder, or ETP Firm] or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in the number of stock index warrants set forth in Rule 8.10. The Corporation may from time to time institute other limitations concerning the exercise of stock index warrants. All such exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

Trading Halts or Suspensions

Rule 8.12—No change.

Reporting of Warrant Positions

Rule 8.13(a). Each ETP Holder[, Equity ASAP Holder, and ETP Firm] shall file with the Corporation a report with respect to each account in which the ETP Holder[, Equity ASAP Holder, or ETP Firm] has an interest, each account of a partner, officer, director, or employee of such ETP [Firms or Equity ASAP] Holder and each customer account, that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying index, currency or currency index, combining for purposes of this [rule] *Rule*: (1) long positions in put warrants and short positions in call warrants, and (2) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by the Corporation and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the ETP Holder[, Equity ASAP Holder, or ETP Firm] filing the same file with the Corporation such additional periodic reports with respect to such account as the Corporation may from time to time prescribe. In computing reportable positions, warrants on a stock index shall not be aggregated with: (1) warrants on any other stock index, (2) options on any stock index or (3) options or warrants on any stock or group of stocks included in such index.

(b) In addition to the reports required by subsection (a) of this rule, each ETP Holder[, Equity ASAP Holder, or ETP Firm] shall report promptly to the Corporation any instance in which such ETP Holder[, Equity ASAP Holder, or ETP Firm] has reason to believe that a person, acting alone or in concert with others, has exceeded or is attempting to exceed the position limits prescribed in Rule 8.10 or the exercise limits prescribed in Rule 8.11.

(c)—No change.

Section 2. Portfolio Depository Receipts

Portfolio Depositary Receipts

Rule 8.100(a)–(b)—No change.

(c) ETP Holders[, Equity ASAP Holders, or ETP Firms] shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Corporation, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders[, Equity ASAP Holders, and ETP Firms] shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by [a] *an* ETP Holders[, Equity ASAP Holder, or ETP Firms] to customers or the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts]."

An ETP Holder[, Equity ASAP Holder, or ETP Firm] carrying an omnibus account for a non-ETP Holder [or non-Equity ASAP Holder] broker-dealer is required to inform such non-ETP Holder [or non-Equity ASAP Holder] that execution of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-ETP Holder [or non-equity ASAP Holders] to make such written description available to its customers on the same terms as are directly applicable ETP Holders[, Equity ASAP Holders and ETP Firms] under this [rule] *Rule.*

Upon request of a customer, and ETP Holders[, Equity ASAP Holder, or ETP Firm] shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(d)–(e)—No change.

Rule 8.100(f)–(g)—No change.

Rule 9

Conducting Business with the Public

Section 1. Conducting Business with the Public

Register with the Corporation

Rule 9.1(a). Each office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall be registered with the Corporation.

Joint Quarters

Rule 9.1(b). ETP Holders[, Equity ASAP Holders, and ETP Firms] may not occupy joint quarters with anyone other than another ETP Holder[, Equity ASAP Holder, or ETP Firm] without the prior and continuing approval of the Corporation.

Office Supervision

Rule 9.1(c) (1) Each office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall be under the supervision and control of such [Equity ASAP] *ETP* Holder [or ETP Firm] to assure compliance with applicable securities laws and regulations and rules of the Corporation.

(2) The ETP Holders[, Equity ASAP Holders, ETP Firms] and Allied Persons thereof shall designate from among their group a person or persons to assume authority and responsibility for supervision of the firm's activities and establishment and maintenance of appropriate procedures and follow-up and review to determine that such control and supervision is maintained.

Rule 9.1(d). ETP Holders[, Equity ASAP Holders, and ETP Firms] shall at all times have responsibility for the proper supervision and control of their registered employees and as provided in Rule 9.1(c) shall designate a principal of the firm to be responsible for the execution of such supervisory procedures.

Guarantees

Rule 9.1(e) (1) No registered employee shall guarantee the payment of the debit balance in a customer's account to his *or her* employer or to any other creditor carrying such account without the prior consent of the Corporation.

(2) No registered employee shall represent to any customer that he *or she* will personally guarantee the account of such customer.

(3) No registered employee shall guarantee any customer against losses in his *or her* account, or in any way represent to any customer that he or *she or* his *or her* employer will guarantee the customer against such losses.

Rule 9.1(f).—No change.

Compensation Rebate

Rule 9.1(g). No registered employee shall directly or indirectly, rebate to any person, firm or corporation any part of the compensation he *or she* may receive as a registered employee; nor shall he *or she* pay such compensation or any part thereof, directly or indirectly, to any person, firm, or corporation, as a bonus, commission, fee or other consideration, for business sought or produced for him *or her* or any ETP Holder[, Equity ASAP Holder, or ETP Firm].

Registered Employee Compensation

Rule 9.1(h). No registered employee shall, directly or indirectly, take, accept or receive, from any person, firm, corporation or association, other than the ETP Holder[, Equity ASAP Holder, or ETP Firm] with whom he *or she* is registered, compensation of any nature, as a bonus, commission fee, gratuity or other consideration, in connection with any securities transactions, unless the provisions of Rule 4.3(b) have been previously complied with.

Diligence As To Accounts

Rule 9.2(a). Every ETP Holder, [Equity ASAP Holder or ETP Firm,] through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder[, Equity ASAP Holder or ETP Firm] and every person holding power of attorney over any account accepted or carried by such ETP Holder[, Equity ASAP Holder or ETP Firm].

Account Supervision

Rule 9.2(b). Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall supervise diligently all accounts accepted or carried by such firm and shall exercise diligence in supervising the business practices of its registered persons and otherwise licensed persons. An ETP Holder[, Equity ASAP Holder or ETP Firm] shall adopt appropriate procedures for the opening and the maintaining of accounts, including the maintaining of records prescribed by the Bylaws and Rules of the Corporation and by the rules and regulations of the Securities and Exchange Commission, which shall include:

(1)–(5)—No change.

Customer Records

Rule 9.2(c). The ETP Holder[, Equity ASAP Holder or ETP Firm] shall keep and preserve records concerning all accounts of customers in such form and substance as to disclose at least the following information:

(1)–(4)—No change.

(5) Signature of a general partner, a principal executive officer or an authorized person who approved the opening of the account prior to or promptly after the completion of any transaction for the account of or with a customer; provided, however, that in the case of branch offices, the opening of an account for a customer may be

approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner, a principal executive officer or an authorized person designated as having such authority by the general partner or by the principal executive officer who has the overall authority and responsibility for account supervision and control. The general partner, principal executive officer or authorized person approving the opening of the account shall, prior to giving his *or her* approval, be personally informed as to the essential facts relative to the customer and to the nature of and the investment objectives of the proposed account and shall indicate his *or her* approval in writing.

Commentary

.01 In the case of a margin account carried by an ETP Holder[, Equity ASAP Holder or ETP Firm] for a non-ETP [or non-Equity ASAP] corporation, definite knowledge should be had to the effect that the non-ETP [or non-Equity ASAP] corporation has the right under its charter and by-laws to engage in margin transactions for its own account and that the persons from whom orders and instructions are accepted have been duly authorized by the corporation to act on its behalf. It is advisable in each such case for the carrying firm to have in its possession a copy of the corporate charter, by-laws and authorizations. Where it is not possible to obtain such documents, an Allied Person in the ETP [Firm or Equity ASAP] Holder carrying the account should prepare and sign a memorandum for its files indicating the basis upon which he *or she* believes that the corporation may properly engage in margin transactions and that the persons acting for the corporation have been duly authorized to do so.

In the case of a cash account carried for a non-ETP [or non-Equity ASAP] corporation, the ETP [Firm or Equity ASAP] Holder should assure itself through a general partner or an officer who is a holder of voting stock that persons entering orders and issuing instructions with respect to the account do so upon the proper authority.

.02 When an agency account is carried by an ETP [Firm or Equity ASAP] Holder its files should contain the name of the principal for whom the agent is acting and written evidence of the agent's authority.

.03 When Estate and Trustee accounts are involved an ETP [Firm or Equity ASAP] Holder should obtain counsel's advice as to the documents which should be obtained.

Employee Accounts

Rule 9.3(a). No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall, without the prior consent of the employer, make:

(1) A cash or margin transaction or carry a margin account in securities or in commodities in which an employee of the Corporation, or of any ETP Holder, [Equity ASAP Holder, or ETP Firm,] is directly or indirectly interested. Duplicate reports and statements shall be sent promptly to the employer.

(2) A margin transaction or carry a margin account in securities or in commodities in which an employee of a bank, trust company, savings institution, insurance company or any individual or firm engaged in the business of dealing in securities, is directly or indirectly interested.

This [rule] *Rule* applies to all employees of insurance companies regardless of whether they are compensated on a salary or commission basis. However, it is not considered applicable to independent insurance agents.

A person who is clearly designated by the charter or by-laws of a bank, trust company, insurance company, etc., as an officer of such institution is not considered an "employee" for the purpose of this Rule.

ETP Holder and Allied Person Accounts

Rule 9.3(b). No ETP Holder[, Equity ASAP Holder or ETP Firm] shall carry an account for [an] another ETP Holder[, Equity ASAP Holder,] or Allied Person of another ETP Holder[, Equity ASAP Holder or ETP Firm] without the prior written consent of another person who is an ETP Holder[, Equity ASAP Holder,] or Allied Person of such other firm.

Duplicate reports and statements shall be sent to such general partner or an officer who is a holder of voting stock designated in such consent unless their submission is waived in writing and a permanent record of such waiver is retained by both the carrying firm and the consenting firm.

Proxies Voting

Rule 9.4. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall sign or give a proxy to vote any stock registered in the name or under control of such ETP Holder[, Equity ASAP Holder, or ETP Firm] unless (a) the ETP Holder[, Equity ASAP Holder, or firm] is the actual owner thereof, (b) pursuant to the written instructions of such actual owner, or (c) pursuant to the rules of another national securities exchange to which he or *she* or his or *her* firm is responsible.

Solicitation Expense

Rule 9.5. Any expense incident to the securing of proxy instructions shall be charged by the ETP Holder[, Equity ASAP Holder, or ETP Firm] to the party or parties requesting their solicitation.

Discretion as to Customers' Accounts

Rule 9.6(a). No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall permit any person employed by such ETP Holder[, Equity ASAP Holder, or ETP Firm] or by any other ETP Holder[, Equity ASAP Holder, or ETP Firm] to exercise discretion in the handling of a transaction for a customer of such ETP Holder[, Equity ASAP Holder, or ETP Firm], and no ETP Holder[, Equity ASAP Holder, or ETP Firm] or any participant therein shall delegate to any such employee any discretionary power vested by a customer in such ETP Holder[, Equity ASAP Holder, or ETP Firm] unless in either case the prior written authorization of the customer has been received; and if such discretionary authority runs, directly or by redelegation, to an employee of another ETP Holder[, Equity ASAP Holder, or ETP Firm,] the carrying ETP Holder[, Equity ASAP Holder, or ETP Firm] must obtain the prior written consent of the employer of the individual authorized to exercise discretion. An ETP Holder[, Equity ASAP Holder, or ETP Firm] or Allied Person of the carrying ETP [Firm or Equity ASAP] Holder shall approve and initial each discretionary order entered by an employee of such ETP [Firm or Equity ASAP] Holder of another ETP [Firm or Equity ASAP] Holder on the day the order is entered. The provisions of this Rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

Records of Discretionary Accounts

Rule 9.6(b). The ETP Holder[, Equity ASAP Holder, or ETP Firm] shall keep and preserve records of all customer discretionary accounts pursuant to the provisions of this [rule] *Rule* which shall include the signature of the individual who may exercise discretion in handling the account. All such accounts shall be reviewed by a general partner or principal executive officer at frequent intervals.

Marking Discretionary Orders

Rule 9.6(c). Every ETP Holder[, Equity ASAP Holder, or ETP Firm] shall identify each discretionary order by appropriately marking each discretionary order accordingly.

Pledging Customer Securities

Rule 9.7(a). An agreement between an ETP Holder[, Equity ASAP Holder, or ETP Firm] and a customer authorizing the ETP Holder[, Equity ASAP Holder, or ETP Firm] to pledge securities carried for the account of a customer or to lend such securities does not justify pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said ETP Holder[, Equity ASAP Holder, or ETP Firm].

Use of Customer Securities

Rule 9.7(b). The improper use of customer fully-paid and excess margin securities is inconsistent with just and equitable principles of trade, and no form of general agreement between an ETP Holder[, Equity ASAP Holder, or ETP Firm] and a customer shall warrant the use or lending of such securities by the ETP Holder[, Equity ASAP Holder, or ETP Firm].

Customer Protection—Reserves and Custody of Securities

Rule 9.7(c). An ETP Holder[, Equity ASAP Holder, or ETP Firm] shall obtain custody and control of securities and maintain reserves as prescribed by Rule 15c3–3 promulgated under the Securities Exchange Act of 1934.

Agreements for Use of Customer Securities

Rule 9.7(d). No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall lend, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless such ETP Holder[, Equity ASAP Holder, or ETP Firm] shall first have obtained a separate written authorization from such customer permitting the loaning of such securities by the ETP Holder[, Equity ASAP Holder, or ETP Firm].

Business Connections

Rule 9.8. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be directly or indirectly interested in or associated in business with, or have his *or her* office directly or indirectly connected by public or private wire or other method or contrivance with, or transact any business directly or indirectly with or for

(a)–(c)—No change.

Margin Agreements

Rule 9.9. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall hypothecate or rehypothecate customer securities unless such ETP Holder[, Equity ASAP Holder, or ETP Firm] has obtained from its customer an executed margin agreement in a form satisfactory to the Corporation.

Assuming Losses

Rule 9.10. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall assume for his *or her* own account of his *or her* firm, a contract made for a customer after a loss to the customer has been established or ascertained, unless the contract was made by mistake or unless approval of the Corporation has first been obtained.

Confirmations

Rule 9.11. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall address confirmations, statements or other communications to a non-ETP [or non-Equity ASAP] customer in care of a person holding power of attorney over the customers' account unless either (a) the customer has instructed the ETP Holder[, Equity ASAP Holder or ETP Firm] in writing to send such confirmations, statements or other communications in care of such person, or (b) duplicate copies are sent to the customer at some other address designated in writing by him *or her*, or at the address of any ETP Holder[, Equity ASAP Holder or ETP Firm,] or in care of a partner or employee of any firm.

Upon written request, the Corporation may waive these requirements.

COD Orders—Partial Delivery

Rule 9.12(a). No ETP Holder[, Equity ASAP Holder or ETP Firm] shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless all of the following procedures are complied with:

(1) The ETP Holder[, Equity ASAP Holder or ETP Firm] shall have received from the customer prior to or at the time of accepting the order, the name and address of the agent and the name and account number of the customer on file with the agent;

(2)—No change.

(3) The ETP Holder[, Equity ASAP Holder or ETP Firm] delivers to the customer a confirmation, or all relevant data customarily contained in a confirmation with respect to the execution of the order. in whole or in part, not later than the close of business on the next business day after any such execution; and

(4) The ETP Holder[, Equity ASAP Holder or ETP Firm] has obtained an agreement from the customer that the customer will furnish his *or her* agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each confirmation, or the relevant data as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will assure that such instructions are delivered to his *or her* agent no later than:

(A)–(B)—No change.

(5) The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgement, and book entry settlement of all depository eligible transactions.

(A) For the purpose of this [rule] *Rule* "securities depository" shall mean a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.

(B) For the purpose of this [rule *Rule*, "depository eligible transactions" shall mean transactions in those securities for which confirmation, acknowledgement, and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 9.12(a)(5)(A).

(b) The following transaction shall be exempt from the provisions of paragraph (a)(5) of this [rule] *Rule*:

(1)—No change.

(2) Transactions wherein both an ETP Holder[, Equity ASAP Holder or ETP Firm] and its agent are not participants in a securities depository;

(3)—No change.

Long Sales

Rule 9.13(a). For the purposes of effecting delivery within the time period required under regular settlement procedures:

(1) Any sale of a security for a customer which is designated as a "long" sale may be effected only if:

(A) The customer is "long," in good deliverable form, the security to be sold on the books [on] *of* the selling ETP Holder, [Equity ASAP Holder or ETP Firm,] or

(B) The selling ETP Holder[, Equity ASAP Holder or ETP Firm] notes on he order ticket that

(i)–(ii)—No change.

(2)—No change.

(3) the customer presents to the selling ETP Holder, [Equity ASAP Holder or ETP Firm,] with proper instructions, a security convertible into or exchangeable for, or an option, warrant or right which entitles him *or her* to purchase, together with the necessary funds, prior to settlement date, the security to be sold.

Account Designation

Rule 9.14. Before any order for a customer of an ETP Holder[, Equity ASAP Holder or ETP Firm] is executed, including the case where an order is to be executed by the issuance [from the Floor] of a commitment to trade through ITS or any other Application of the System, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change in such account name or designation shall be made unless the change has been authorized by the ETP Holder[, Equity ASAP Holder or ETP Firm] or a partner, who shall, prior to giving his or *her* approval of such change, be personally informed of the essential facts relative thereto and shall indicate his *or her* approval of such change in writing on the order.

Statements of Account to Customers

Rule 9.15. Except with the permission of the Corporation, ETP Holders[, Equity ASAP Holders or ETP Firms] shall send their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. (See also SEC Rule 15c3–2 concerning quarterly notices of free credit balances on statements.)

Statement or Notice on Interest

Rule 9.16—No change.

Books and Records

Rule 9.17. ETP Holders[, Equity ASAP Holder or ETP Firms] shall make and retain all the books and records prescribed by the Bylaws and Rules of the Corporation, the rules and regulations of the Securities and Exchange Commission and the constitution, rules and regulations of other regulatory or governmental bodies to which such ETP Holders[, Equity ASAP Holders or ETP Firms] are subject. Such books and records shall be retained for periods as prescribed and shall be made available for inspection by the Corporation.

Doing a Public Business in Options

Rule 9.18. Rule 9.18 shall be applicable to ETP Holder[, Equity ASAP Holders, or ETP Firms] transacting business with the public in option contracts issued by the Options Clearing Corporation. Except to the extent that specific provisions of Rule 9.18 govern, or unless the context otherwise requires, the provisions of all other sections of this [rule] *Rule* shall be applicable to the conduct of accounts.

(a) Registration of Principals and Representatives.

No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be approved to transact business with the public in option contracts, unless those persons associated with the ETP Holder[, Equity ASAP Holder, or ETP Firm] who are designated as Options Principals or who are designated as Registered Representatives have been approved by and registered with the Corporation as such, pursuant to the provisions of Rule 9.26 and Rule 9.27, as appropriate.

(b) Opening of Accounts

No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall accept an order from a customer for the purchase or sale (writing) of an option contract unless the customer's account has been approved for options trading in accordance with the provisions of Rule 9.18.

(1) Diligence in Opening Account—In approving a customer's account for options transactions, and ETP Holder[, Equity ASAP Holder, or ETP Firm] shall exercise due diligence to learn the essential facts as to the customer and his *or her* investment

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objectives and financial situation, and shall make a record of such information which shall be retained in accordance with Rule 9.18(d). Based upon such information, the branch office manager or other Registered Options Principal shall approve in writing the customer's account for options transactions; provided, that if the branch office manager is not a Registered Options Principal, his *or her* approval shall within a reasonable time be confirmed by a Registered Options Principal.

(2) Disclosure—At or prior to the time a customer's account is approved for options trading, the ETP Holder[, Equity ASAP Holder or ETP Firm] shall deliver to the customer a current Options Disclosure Document in accordance with the requirements of paragraph (g) of this Section.

(3) Account Agreement—Within 15 days after a customer's account has been approved for options transactions an ETP Holder[, Equity ASAP Holder or ETP Firm] shall obtain from the customer a written agreement that (A) the customer is aware of and agrees to be bound by the Rules of the Corporation and the PCX Parent applicable to the trading of option contracts and the Rules of the Options Clearing Corporation and (B) the customer agrees not to violate, either alone or in concert with others, the position limits or the exercise limits established by the PCX Parent.

(4) Verification of Customer Background and Financial Information—The background and financial information upon which the account of every new customer that is a natural person has been approved for options trading, unless the information is included in the customer's account agreement, shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for options transactions. A copy of the background and financial information on file with the ETP Holder[, Equity ASAP Holder or ETP Firm] shall also be sent to the customer for verification within fifteen (15) days after the ETP Holder[, Equity ASAP Holder or ETP Firm] becomes aware of any material change in the customer's financial situation.

(5) Options Disclosure document to be Furnished—At or prior to the time a customer's account is approved for options transactions, an ETP Holder[, Equity ASAP Holder or ETP Firm] shall furnish the customer with a current Options Disclosure Document in accordance with the requirements of Rule 9.18(g).

(6) Every ETP Holder[, Equity ASAP Holder or ETP Firm] transacting business with the public in uncovered options contracts shall develop, implement, and maintain specific written procedures governing the conduct of such business which shall include, but not be limited to, the following:

(A)–(E)—No change.

Commentary

.01 In fulfilling its obligations pursuant to paragraph (b)(1) of Rule 9.18 with respect to options customers that are natural persons, an ETP Holder[, Equity ASAP Holder or ETP Firm] shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

1.–8.—No change.

In addition, the customer's account records shall contain the following information, if applicable:

a.–g.—No change.

The ETP Holder[, Equity ASAP Holder, or ETP Firm] should consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

.02—No change.

.03 The requirement of paragraph (b)(4) of Rule 9.18 for the initial and subsequent verification of customer background and financial information may be satisfied by sending to the customer the information required in Items 1 through 6 of Commentary .01 above as contained in the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* records and providing the customer with an opportunity to correct or complete the information. In all cases, absent from the customer to the contrary, the information will be deemed to be verified.

.04 Before approving an account of a trust, pension fund, profit sharing plan or other fiduciary for options trading, an ETP Holder[, Equity ASAP Holder or ETP Firm] shall be satisfied that the instruments under which the fiduciary is acting permit options trading.

.05 Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the ETP Holder[, Equity ASAP Holder or ETP Firm] for options trading, the ETP Holder[, Equity ASAP Holder or ETP Firm] shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.

.06 Before approving an account of an investment partnership or an investment club for options trading, the ETP Holder[, Equity ASAP Holder or ETP Firm] shall obtain written evidence of the authority of the person signing the agreement required by this paragraph to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of the respective partners or member of the partnership or investment club.

.07—No change.

(c) Suitability.

(1) No ETP Holder[, Equity ASAP Holder or ETP Firm] or registered person thereof shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract, currency warrant, or an index warrant unless such ETP Holder[, Equity ASAP Holder or ETP Firm] or registered person has reasonable grounds to believe that the entire recommended transaction is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other information known by such ETP Holder[, Equity ASAP Holder or ETP Firm] or registered person.

(2) No ETP Holder[, Equity ASAP Holder or ETP Firm,] Registered Options Principal or Registered Representative shall recommend to a customer an opening transaction in any option contract, currency warrant, or index warrant unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he *or she* may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract, currency warrant, or index warrant.

(d) Supervision of Accounts.

Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall comply with the provisions of rule 9.1(b) in exercising its supervisory responsibilities. In addition to such provisions, every ETP Holder[, Equity ASAP Holder or ETP Firm] shall comply with the following provisions as they relate to its options business.

(1) Senior Registered Options Principal—Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall develop and implement a written program for the review of the organization's non-ETP [or non-Equity ASAP] customer accounts and all orders in such accounts, insofar as such accounts and orders relate to option contracts. This program shall be under the supervision of a designated Senior Registered Options Principal ("Senior ROP") who is an officer (in the case of a corporation) or general partner (in the case of a partnership) of the ETP Holder[, Equity ASAP Holder or ETP Firm] who is specifically identified to the Corporation as the senior ROP.

(2) Compliance Registered Options Principal—ETP [Holder, Equity ASAP Holder or ETP Firm] *Holders* shall designate and specifically identify to the Corporation a Compliance Registered Options Principal, (who may be the Senior Registered Options Principal), who shall have no sales functions and shall be responsible to review and to propose appropriate action to secure the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* compliance with securities laws and regulations in respect of its options business. The Compliance Registered Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Registered Options Principal is not himself *or herself* the compliance officer) and to other senior management of the ETP Holder[, Equity ASAP Holder or ETP Firm]. The requirement that the Compliance Registered Options Principal shall have no sales functions does not apply to an ETP Holder[, Equity ASAP Holder or ETP Firm] that has received less than $1,000,000 in gross commissions on options business as reflected in its FOCUS Report for either of the preceding two fiscal years or that currently has 10 or fewer Registered Options Representatives.

(3)—No change.

(4) Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall maintain at the principal supervisory office having jurisdiction over the office servicing the customer's account, or have readily accessible and promptly retrievable, information to permit review of each customer's options account, on a timely basis to determine (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; (v) undue concentration in any options class or classes, and (vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

Commentary

.01—No change.

.02 Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall establish, maintain and enforce written procedures which detail the methods used to supervise exchange options transactions. These procedures should also detail the methods used to supervise all non-ETP [or non-Equity ASAP] customer accounts including all orders in such accounts, insofar as such accounts and orders relate to option contracts.

.02 Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) option positions and specifically providing for frequent supervisory review of such accounts.

(e) Discretionary Accounts

(1) Authorization and Approval Required—No ETP Holder[, Equity ASAP Holder or ETP Firm] shall exercise any discretionary power with respect to trading in option contracts, currency warrants, or index warrants in a customer's account, or accept orders for currency warrants, index warrants or option contracts for an account from a person other than the customer, except in compliance with the provisions of Rule 9.6(a) and in addition (i) the written authorization of the customer required by Rule 9.6(a) shall specifically authorize options trading in the account; (ii) the account shall have been accepted in writing by a Registered Options Principal. The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account has a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he *or she* shall maintain a record of the basis for his *or her* determination. Each discretionary order shall be approved and initiated on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, his *or her* approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Registered Options Principal. The provisions of this subparagraph shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed.

(2) Prohibited Transactions—No ETP Holder[, Equity ASAP Holder or ETP Firm] having discretionary power over a customer's account shall, in the exercise of such discretion, execute or cause to be executed therein any purchases or sales of option contracts, currency warrants, or index warrants which are excessive in size or frequency in view of the financial resources in such account.

(3) Record of Transactions—A record shall be made of every transaction in option contracts, currency warrants, or index warrants in respect to which an ETP Holder[, Equity ASAP Holder or ETP Firm] has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, currency warrants, or index warrants the premium and the date and time when such transaction was effected.

(4)—No change.

Commentary

.01—No change.

(f) Confirmations.

Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying stock, the expiration month, the exercise price, the number of option contracts, the premium, commissions, the transaction and settlement dates, whether the transaction was a purchase or a sale (writting) transaction, whether the transaction was an opening or a closing transaction, and whether the transaction was effected on a principal or agency basis. The confirmation shall by appropriate symbols distinguish between exchange option transactions and other transactions in option contracts and between such transactions and transactions in other options.

(g) Delivery of Current Options Disclosure Document and Prospectus

(1) Options Disclosure Documents. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall deliver a current Options Disclosure Document (the formal title of which is "Understanding the Risks and Uses of Listed Options") to each customer at or prior to the time each customer's account is approved for options trading. Thereafter, each amended Options Disclosure Document shall be distributed to every customer having an account approved for options trading, or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into an options transaction. The term "current Options Disclosure Document" means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b–1 under the Securities Exchange Act of 1934.

(2) Prospectus. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall deliver a copy of the current prospectus of the Options Clearing Corporation to each customer who requests one. The Corporation will advise ETP Holder[, Equity ASAP Holder or ETP Firm] when a new prospectus is available. The term "current prospectus of the Options Clearing Corporation" means the prospectus portion of Form S–20 which then meets the delivery requirements of Rule 153(b) of the Securities Act of 1933.

(3) The written description of risks required by Rule 9.18(b)(6) shall be in a format prescribed by the Corporation or in a format developed by the ETP Holder[, Equity ASAP Holder or ETP Firm,] provided it contains substantially similar information as the prescribed Corporation format and has received prior written approval of the Corporation.

Commentary

.01 Where the customer of an ETP Holder[, Equity ASAP Holder or ETP Firm] is a broker or dealer entering his *or her* orders with the ETP Holder[, Equity ASAP Holder or ETP Firm] in a single omnibus account, such ETP Holder[, Equity ASAP Holder or ETP Firm] shall take reasonable steps to assure that the broker or dealer is furnished reasonable quantities of current Options Disclosure Documents, as requested by him *or her* in order to enable him *or her* to comply with the requirements of this paragraph (g).

.02 Where a broker or dealer enters orders for his *or her* customers with, or clears transactions through, an ETP Holder[, Equity ASAP Holder or ETP Firm] on a fully disclosed basis and such ETP Holder[, Equity ASAP Holder or ETP Firm] carries the accounts of such customers, the responsibility for delivering a current Options Disclosure Document as provided herein shall rest with the carrying ETP Holder[, Equity ASAP Holder or ETP Firm]. However, such ETP Holder[, Equity ASAP Holder or ETP Firm] may rely upon the good faith representation of the introducing broker or dealer that a current Options Disclosure Document has been delivered in compliance with this paragraph (g).

(h) Transactions with Issuers.

No ETP Holder[, Equity ASAP Holder or ETP Firm] shall accept an order for the account of any corporation which is the issuer of an underlying stock for the sale (writing) of an option contract with respect to that underlying stock.

(i) Restricted Stock.

For the purposes of: (i) Covering a short position in a call option contract, or (ii) delivery pursuant to the exercise of a put option contract, or (iii) satisfying an exercise notice assigned in respect of a call option contract, no ETP Holder[, Equity ASAP Holder or ETP Firm] shall accept shares of an underlying stock, which may not be sold by the holder thereof except upon registration pursuant to the provisions of the Securities Act of 1933 or pursuant to SEC rules promulgated under the Securities Act of 1933, unless, at the time such securities are accepted and at any later time such securities are delivered, applicable provisions of the Securities Act of 1933 and the rules thereunder have been complied with by the holder of such securities.

(j) Statement of Accounts.

Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall send to its customers statements of account showing security and money positions entries, interest charges and any special charges that have been assessed

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against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to options customers having a general (margin) account, such statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit balance in the account, and the general (margin) account equity. The statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed option transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request.

Statements of account shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and not less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to an option contract.

The statement shall also bear a legend requesting the customer to promptly advise the ETP Holder[, Equity ASAP Holder or ETP Firm] of any material change in the customer's investment objectives or financial situation.

Commentary

.01 For purposes of the foregoing Section, general (margin) account equity shall be computed by subtracting the total of the "short" security values and any debit balance from the total of the "long" security values and any credit balance.

(k) Doing Business with the Public.

An [individual] *sole proprietor* ETP [Holder or Equity ASAP Holder] may not transact business with the public, unless such Holder receives prior written approval from the Corporation. To qualify to transact business with the public, the [individual] *sole proprietor* ETP [Holder or Equity ASAP] Holder shall demonstrate compliance with the general requirements of the Corporation as prescribed by the Bylaws, Rules and procedures of the Corporation.

(l) Customer Complaints.

(1) Every ETP Holder[, Equity ASAP Holder or ETP Firm] conducting a non-ETP [or non-Equity ASAP] customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The term "options-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with listed options. The central file shall be located at the principal place of business of the ETP Holder[, Equity ASAP Holder or ETP Firm] or such other principal office as shall be designated by the ETP Holder[, Equity ASAP Holder or ETP Firm]. At a minimum, the central file shall include: (i) Identification of complainant, (ii) date complaint was received, (iii) identification of Registered Representative servicing the account, (iv) a general description of the matter complained of, and (v) a record of what action, if any, has been taken by the ETP Holder[, Equity ASAP Holder or ETP Firm] with respect to the complaint. Each options-related complaint received by a branch office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office. A copy of every options-related complaint shall be maintained at the branch office that is the subject of the complaint.

(m) Branch Offices of [Equity ASAP] *ETP* Holders [or ETP Firms].

No branch office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options Principal; provided, that this requirement shall not apply to branch offices in which not more than three Registered Representatives are located so long as the [Equity ASAP] *ETP* Holder [or ETP Firm] can demonstrate that the options activities of such branch offices are appropriately supervised by a Registered Options Principal.

Transfer of Accounts

Rule 9.19. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall, upon written request of a customer, expedite the transfer of a customer's account pursuant to such customer's instructions.

Transactions for Public Customers

Rule 9.20(a). Where an ETP Holder[, Equity ASAP Holder or ETP Firm] is doing business with the public in accordance with these Rules and is also associated with a Market Maker, such ETP Holder[, Equity ASAP Holder or ETP Firm] shall file such reports as the Corporation may require of transactions for customers in classes of option contracts to which such Market Maker has been appointed pursuant to *PCX Parent* Rule 6.35.

Telemarketing

Rule 9.20(b). No ETP Holder[, Equity ASAP Holder or ETP Firm] or associated person of such Holder [or Firm] may:

(1)—No change.

(2) Make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

(A) the identity of the caller and the ETP Holder[, Equity ASAP Holder or ETP Firm];

(B)–(C)—No change.

(3) The prohibitions of subsections (b)(1) and (b)(2), above, do not apply to telephone calls by any person associated with an ETP Holder[, Equity ASAP Holder or ETP Firm,] or another associated person acting at the direction of such person for the purpose of maintaining and servicing an account of an existing customer of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the control of or assigned to such associated person if such person places such calls:

(A)–(C)—No change.

The scope of this Rule 9.20(b) is limited to the telemarketing calls described herein. The terms of this Rule do not otherwise expressly or by implication impose on ETP Holders[, Equity ASAP Holders or ETP Firms] or participants any additional requirements with respect to the relationship between at ETP Holder[, Equity ASAP Holder or ETP Firm] or participant and a customer or between a person associated with an ETP Holder[, Equity ASAP Holder or ETP Firm] or participant organization and a customer. For the purposes of subsection (b)(3), the term "existing customer" means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account.

(c) Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall make and maintain a centralized list of persons who have informed the ETP Holder[, Equity ASAP Holder or ETP Firm] or any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on that list.

(d) No ETP Holder[, Equity ASAP Holder or ETP Firm] or person associated with an ETP Holder, [Equity ASAP Holder or ETP Firm,] may obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall maintain the authorization required by this subsection (d) for a period of three years.

Commentary

.01 ETP Holders[, Equity ASAP Holders or ETP Firms] that engage in telephone solicitation to market their products and services ("telemarketing" or "cold calling") are subject to the requirements of the rules of the Federal Communications Commission and the Securities and Exchange Commission relating to telemarketing practices and the rights of telephone users. This includes, but is not limited to, the requirement to make and maintain a list of persons who do not want to receive telephone solicitation (a "do-not-call" list).

Section 2. Advertising and Sales Literature

Policy

Rule 9.21(a). It shall be considered conduct inconsistent with just and equitable principals of trade for an ETP Holder, [Equity ASAP Holder or ETP Firm,] directly or indirectly, to publish, circulate or distribute any advertisement, sales literature or market letter that the ETP Holder[, Equity ASAP Holder or ETP Firm] knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Exemptions

Rule 9.21(b). The following [rules] *Rules* shall apply to all ETP Holders[, Equity ASAP Holders or ETP Firms] of the Corporation unless the ETP Holder[, Equity ASAP Holder or ETP Firm] is subject to the jurisdiction of another national securities exchange or association designated by the Board of Directors as having comparable standards.

Advertisements

Rule 9.22(a). All advertisements prior to publication shall be submitted to the Corporation for approval as to form and presentation, except such routine advertisements as (1) Business cards or so-called tombstone ads, (2) announcements that specific securities are bought, sold or quoted, (3) offering literature concerning a specific security or securities, (4) announcements relating to changes in an ETP Holder, [Equity ASAP Holder or ETP Firm,] (5) inclusion of an ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* name in an underwriting advertisement, or (6) advertisements complying with any rule or regulations of the Securities and Exchange Commission under the Securities Act of 1933, or Securities Exchange Act of 1934. Copies of all ads should be retained by the ETP Holder[, Equity ASAP Holder or ETP Firm] for at least 3 years.

Refer to Pacific Exchange

Rule 9.22(b). Advertisements by ETP Holders[, Equity ASAP Holders or ETP Firms] for insertion in local papers or other media should refer to the *Archipelago Exchange, a facility of PCX Equities, Inc. and the* Pacific Exchange, Inc., when a reference is made to membership in any securities exchange.

Sales Literature—Market Letters

Rule 9.23. Each market letter, research report and all sales literature prepared and issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] for general distribution to customers or the public shall be approved in advance by a principal of the firm who has been designated such authority. Market letters, research reports and sales literature that refer to the market or to companies or securities, listed or unlisted, must be retained by the issuing ETP Holder[, Equity ASAP Holder or ETP Firm] for at least 3 years. The copies retained must contain the name of the individual approving its issuance and will be subject to delivery upon request to the Corporation and must at all times within the 3 year period be readily available. For purposes of this Rule, scripts that are used for telemarketing calls as described in Rule 9.20(b), are deemed to be "sales literature."

Radio, Television, Telephone and Other Reports

Rule 9.24. ETP Holders[, Equity ASAP Holders, or ETP Firms] for which the Corporation is the designated examining authority ("DEA") desiring to broadcast Corporation quotations on radio or television programs, or in public telephone market reports, or to make use of radio or television broadcasts for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public, must first obtain the consent of the Corporation by submitting an outline of the program to the Corporation.

The text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by ETP Holders[, Equity ASAP Holders, or ETP Firms] on radio, television or public telephone market reports, or the Internet, or program material supplied to these media must be sent to the Corporation promptly following the program in which it is used.

Standards

Rule 9.25. The Corporation cannot be responsible for the accuracy and completeness of factual information, nor the opinions of ETP Holders[, Equity ASAP Holders, or ETP Firms] in advertisements, sales literature or radio or television broadcasts. However, general policy to be followed in written communications with the public should be substantially as follows:

(a) In making recommendations there should be a reasonable basis for the recommendation and the following facts disclosed:

(1)–(2)—No change.

(3) If (2) applies, whether the ETP Holder[, Equity ASAP Holder, or ETP Firm] intends to buy or sell the securities recommended for his *or her* own account;

(4)–(5)—No change.

(6) If material issued refers to past recommendations, all such recommendations as to the same type, kind, grade or classification of securities made by an ETP Holder[, Equity ASAP Holder, or ETP Firm] within the last year should be set forth. Longer periods of years may be covered if they are consecutive and include the most recent year. The material must name each security recommended, the date and nature of recommendation (buy or sell), the price at the time, the price range within which to act upon, and if the period was one of generally rising or falling markets;

(7) Material that makes no recommendations, but offers to furnish a list of all recommendations made by an ETP Holder[, Equity ASAP Holder, or ETP Firm] within the past year or over a longer period of consecutive years shall contain same information as stated in item (6) above.

(b)–(d)—No change.

(e) Claims for research:

No claim or implication may be made for research or other facilities beyond those which the ETP Holder[, Equity ASAP Holder, or ETP Firm] actually posses or has reasonable capacity to provide.

(f)–(g)—No change.

Registration of Options Principals

Rule 9.26. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall transact any business with the public in option contracts unless those persons engaged in the management of the ETP [Holder, Equity ASAP Holder, or ETP Firm's] *Holder's* business pertaining to option contracts are registered with and approved by the Corporation as Options Principals. No individual ETP Holder [or Equity ASAP Holder] shall transact any business directly with the public in option contracts unless he *or she* is registered with and approved by the Corporation as an Options Principal. In connection with their registration, Options Principals shall file an application with the Corporation on a form prescribed by the Corporation and shall be required to successfully complete an examination prescribed by the Corporation for the purpose of demonstrating an adequate knowledge of options trading generally, the Rules of the Corporation applicable to trading of option contracts and theRules of the Options Clearing Corporation. In the event the employment of any Registered Options Principal is terminated or any Registered Options Principal ceases to act in such capacity, such fact shall be reported promptly to the Corporation together with a brief statement of the reason therefore.

Commentary

.01 Each ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be required to designate a Registered Options Principal who is a general partner or officer as the person responsible for overall supervision and training in areas relating to transactions in option contracts.

.02—No change.

Registration of Representatives

Rule 9.27(a). *General.* No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been registered with and approved by the Corporation pursuant to the provisions of Rule [2.23(a)] *2.21(a)* through Rule [2.23(d)] *2.21(d).* Persons who perform duties for the ETP Holder[, Equity ASAP Holder, or ETP Firm] which are customarily performed by sales representatives, solicitors, customers' men or branch office managers shall be designated as Representatives.

(b) *Registered Options Representatives.* No person associated with an ETP Holder[, Equity ASAP Holder, or ETP Firm] shall transact any business with the public in option contracts, unless those persons are registered with and approved by the Corporation pursuant to the provisions of paragraph (a) of this Section and are registered with and approved by the Corporation as Options Representatives. In connection with their registration as Options Representatives, such persons shall file an application with the Corporation on a form prescribed by the Corporation, shall successfully complete a training course and an examination for the purpose of demonstrating adequate knowledge in the trading of option contracts, and shall sign an agreement to abide by the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing Corporation; provided, however, that representatives of an ETP Holder[, Equity ASAP Holder, or ETP Firm] which is a member of another national securities exchange or association which has standards of approval acceptable to the Corporation may be deemed to be registered with and approved by the Corporation, so long as such representatives are registered with and approved by the Corporation, so long as such representatives are registered with and approved by such other exchange or association. An ETP Holder[, Equity ASAP Holder, or ETP Firm] whose representatives are deemed registered and approved pursuant to the last clause of the preceding sentence shall inform their representatives of their obligation to adhere to the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing

Corporation. Termination of employment or affiliation of any Registered Options Representative in such capacity shall be reported promptly to the Corporation together with a brief statement of the reason for such termination, pursuant to Rule [2.23(h)] *2.21(h)*.

Commentary

.01–.03—No change.

Regulatory Element

Rule 9.27(c). No ETP Holder[, Equity ASAP Holder or ETP Firm] shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of this Rule 9.27(c).

Each registered person shall complete the Regulatory element of the continuing education program on three occasions, after the occurrence of their second, fifth and tenth registration anniversary dates, or as otherwise prescribed by the Corporation. On each of these three occasions, the Regulatory Element must be completed within one hundred twenty (120) days after the person's registration anniversary date. The content of the Regulatory Element of the program shall be prescribed by the Corporation.

(1) Registered person who have been continuously registered for more than ten years as of the effective date of this Rule shall be exempt from participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten (10) years as enumerated in subsection [(c)(3)(i)–(iii)]*(c)(3)(A)–(B)* of this Rule. Persons who have been currently registered for ten (10) years or less as of the effective date of this Rule shall initially participate in the Regulatory Element of the continuing education program within one hundred twenty days (120) after the occurrence of the second, fifth or tenth registration anniversary date, whichever anniversary date first applies, and on the applicable registered anniversary date(s) thereafter. Such persons will have satisfied the requirements of the Regulatory Element of the program after participation on the tenth registration anniversary.

All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element of the program, subject to re-entry into the program as set forth in subsection (c)(3) of this Rule.

(2)–(3)—No change.

Re-entry shall commence with the initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of [(i)] *(A)* above, or the disciplinary action becoming final, in the case of [(ii) *(B)* or [(iii)] *(C)* above, and on three additional occasions thereafter, at intervals of two, five and ten years after re-entry, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program.

(d) Firm Element

(1) Persons Subject to the Firm Element—The requirements of this Rule 9.27(d) shall apply to any registered person who has direct contact with customers in the conduct of the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* securities sales, trading or investment banking activities, and to the immediate supervisors of such persons (collectively, "covered registered persons").

(2) Standards.

(A) Each ETP Holder[, Equity ASAP Holder or ETP Firm] must maintain a continuing and current education program for its covered registered person to enhance their securities knowledge, skills and professionalism. At a minimum, each ETP Holder[, Equity ASAP Holder or ETP Firm] shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.

(B) Minimum Standards for Training Programs—Programs used to implement an ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* training plan must be appropriate for the business of the ETP Holder[, Equity ASAP Holder or ETP Firm] and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the ETP Holder[, Equity ASAP Holder or ETP Firm]:

(i)–(iii)—No change.

(C) Administration of Continuing Education Program—Each ETP Holder[, Equity ASAP Holder or ETP Firm] must administer its continuing education program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

(3) Participation in the Firm Element—Covered registered persons included in an ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the ETP Holder[, Equity ASAP Holder or ETP Firm].

(4) Specific Training Requirements—The Corporation may require an ETP Holder[, Equity ASAP Holder or ETP Firm,] either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas that the Corporation deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

Commentary

.01 For purposes of this Rule, the term "registered person" means any ETP Holder, [Equity ASAP Holder or ETP Firm,] Allied Person thereof, registered representative or other person registered or required to be registered under the Rules of the Corporation, but does not include any such person whose activities are limited solely to the transaction of business on the facilities of the Corporation with ETP Holders[, Equity ASAP Holders, ETP Firms] or registered broker-dealers.

.02 For purposes of this Rule, the term "customer" means any natural person or any organization, other than a registered broker or dealer, executing transactions in securities or other similar instruments with or through, or receiving investment banking services from, an ETP Holder[, Equity ASAP Holder or ETP Firm].

.03 A registered person who has been continuously registered for more than ten (10) years as of the date of implementation of this Rule who has been subject to a disciplinary action as enumerated in subsections [(c)(3)(i)–(ii)] *(c)(3)(A)–(B)* of the Rule within the last ten years, will be required to satisfy the requirements of the Regulatory Element of the continuing education program by participation for the period from the date of implementation of this Rule to ten years after the occurrence of the disciplinary action.

.04–.05—No change.

Advertisements, Market Letters and Sales Literature Relating to Options

Rule 9.28(a). General Rule. No ETP Holder[, Equity ASAP Holder or ETP Firm] or person associated therewith shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

(1)–(4)—No change.

(b) Approval by Compliance Registered Option Principal. All advertisements, sales literature (except completed worksheets), and educational material issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] pertaining to options shall be approved in advance by the Compliance Registered Options Principal or designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder[, Equity ASAP Holder or ETP Firm] and be kept at an easily accessible place for examination by the Corporation for a period of three years.

(c) Approval Required for Options Advertisements. In addition to the approval required by paragraph (b) of this Rule, every advertisement of an ETP Holder[, Equity ASAP Holder or ETP Firm] pertaining to options shall be submitted to the Corporation at least ten days prior to use (or such shorter period as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

(1)—No change.

(2) advertisements in which the only reference to options is contained in a listing of the services of an ETP Holder[, Equity ASAP Holder or ETP Firm].

(d)–(e)—No change.

Commentary

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications respecting options, the following guidelines should be observed:

A. Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his or *her* risk of loss", should be balanced by a statement such as "of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

B.–C.—No change.

.02—No change.

.03 Written communications (other than advertisements) pertaining to options shall conform to the following standards:

A.–D.—No change.

E. Options worksheets utilized by ETP Holders, [Equity ASAP Holders or ETP Firms,] or associated persons must comply with the requirements applicable to sales literature.

F.—No change.

Rule 10

Disciplinary Proceedings, Other Hearings, and Appeals

Disciplinary Jurisdiction

Rule 10.1.

(a) An ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who is alleged to have violated or aided and abetted a violation of any provision of the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, any provision of the Corporation's Bylaws or Rules or any commentary thereof, any resolution of the Board of Directors of the Corporation regulating the conduct of business of the Corporation, or any policy or procedure of the Corporation shall be subject to the disciplinary jurisdiction of the Corporation under this Rule, and after notice and opportunity for a hearing may be appropriately disciplined by cancellation of trading privileges, suspension, limitation of activities, functions, and operations, suspension or bar from association with an ETP [Firm or Equity ASAP] Holder, fine, censure or any other fitting sanction, in accordance with the provisions of this Rule. An ETP [Firm or Equity ASAP] Holder may be charged with any violation committed by its employees or [its ETP Holder or] other person who is associated with such ETP [Firm or Equity ASAP] Holder, as though such violation were its own.

(b) Any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall continue to be subject to the disciplinary jurisdiction of the Corporation following suspension or cancellation of ETP [or Equity ASAP] trading privileges or termination of association with an ETP [Firm or Equity ASAP] Holder with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Corporation to such former ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder within one year of receipt by the Corporation of written notice of the termination of such person's status as an ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder.

Investigations and Regulatory Cooperation

Rule 10.2(a). The Corporation's Chief Regulatory Officer and his or her delegees will function independently of the commercial interest of the Corporation and the commercial interests of the ETP Holders[, ETP Firms and Equity ASAP Holders] and the Chief Regulatory Officer or his or her delegees will have the discretion to investigate, and will investigate, possible violations within the disciplinary jurisdiction of the Corporation. The Regulatory Staff may consult as necessary with the PCX Parent Regulatory Staff. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

(b)—No change.

(c) An ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP Firm or Equity ASAP Holder is entitled to be represented by counsel during any investigation by the Corporation.

(d) No ETP Holder, [ETP Firm, Equity ASAP Holder,] associated person of an ETP [Firm or Equity ASAP] Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may impede or delay a regulatory investigation with respect to possible violations within the disciplinary jurisdiction of the Corporation nor refuse to furnish testimony, documentary materials or other information requested by the Corporation during the course of its investigation. Failure to furnish such testimony, documentary materials, or other information requested by the Corporation pursuant to this Rule on the date or within the time period required by the Corporation will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

(e) An ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder must submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Corporation from time to time, in regard to such transactions or transactions as may be the subject of a particular request for information made by the Corporation. Failure to submit such data in the required format will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

Commentary

.01(A) If the transaction [was] *were* a proprietary transaction effected or caused to be effected by the ETP Holder[, ETP Firm or Equity ASAP Holder] for any account in which such ETP [Holder, ETP Firm, Equity ASAP] Holder or associated person of an ETP [Firm or Equity ASAP] Holder is directly or indirectly interested, such ETP [Holder, ETP Firm, or Equity ASAP] Holder shall submit or cause to be submitted the following information:

(i) Clearing house number(s), or alpha symbol(s), as used by the ETP Holder[, ETP Firm, or Equity ASAP Holder] submitting the data;

(ii) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the ETP Holder(s)[, ETP Firm(s), or Equity ASAP Holder(s)] on the opposite side of the transaction;

(iii)–(viii)—No change.

(B) If the transaction [was] *were* effected or caused to be effected by the ETP [Holder, ETP Firm, or Equity ASAP] Holder for any customer account, such ETP [Holder, ETP Firm, or Equity ASAP] Holder shall submit or cause to be submitted the following information:

(i)–(ii)—No change.

(iii) If the transaction [was] *were* effected for a customer of a broker-dealer, whether the broker-dealer was acting as principal or agent on the transaction that is the subject of the Corporation's request.

(C) In addition to the above trade data elements, an ETP [Holder, ETP Firm, or Equity ASAP] Holder shall submit such other information in such automated format as may be prescribed by the Corporation, as may from time to time be required.

(D)—No change.

(f) No ETP Holder, [ETP Firm, Equity ASAP Holder,] associated person of an ETP [Firm or Equity ASAP] Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Corporation requests such information or testimony in connection with any inquiry resulting from an agreement entered into by the Corporation or its self-regulatory organization. The requirements of this Rule 10.2(f) will apply regardless of whether the Corporation has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.4.

Commentary

.01–.02—No change.

Ex Parte Communications

Rule 10.3(a). Prohibited Communications. Unless on adequate notice and reasonable opportunity for all parties to participate:

(1) No person who is a subject of a pending investigation by the Corporation ("Subject")

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or a Respondent in a pending disciplinary proceeding, or counsel for a representative of the Subject or the Respondent, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; (d) a member of the Business Conduct Committee or Board Appeals Committee; or (e) a member of the PCX Board of Governors.

(2) No person who is a member of the Business Conduct Committee or Conduct Panel with knowledge of a pending investigation or disciplinary proceeding, or any interested Corporation staff, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff; (d) the Subject of a pending investigation by the Corporation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (e) a member of the PCX Board of Governors.

(3) No person who is a member of the Board of Directors, or any person who advises the Board of Directors, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) any member of the Corporation's Regulatory Staff; (b) the Subject to a pending investigation by the Corporation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; (c) a member of the Business Conduct Committee; or (d) a member of the PCX Parent Board of Governors.

(b) Disclosure of Prohibited Communications. Any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to the Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding:

(1) all such written communications;

(2) memoranda stating the substance of all such oral communications; and

(3) all written responses and memoranda stating the substance of any oral responses to such communications.

(c) Remedies. Any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who made or knowingly caused to be made [a] *an ex parte* communication prohibited by subsection (a) will be subject to disciplinary action. Furthermore, the Business Conduct Committee, to the extent consistent with the interests of justice, may issue to the ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder, or interested Corporation staff, responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the ETP Holder, [ETP Firm, Equity ASAP Holders,] or associated person of an ETP [Firm or Equity ASAP] Holder, or interested Corporation staff, should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and the Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the investigation or disciplinary proceeding.

(d) Permitted Communications. Nothing in this Rule prohibits the members of a disciplinary committee or the Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) the adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

(e) No member of the Business Conduct Committee or Conduct Panel, *as defined in Rule 10.5(a),* may participate in a matter governed by Rule 10.3(c) as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or *herself* or shall be disqualified as follows:

(1) The Chief Regulatory Officer shall have the authority to direct the disqualification of the interested member of the Business Conduct committee or Conduct Panel.

(2) The Chief Executive Officer shall have the authority to direct the disqualification of the Chief Regulatory Officer.

Commentary

.01 "Ex parte communication" means an oral or written communication made without notice to all parties, i.e., the Corporation's Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

.02 A disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.4 until the proceeding, including any appeals, becomes final.

Complaints

Rule 10.4(a). The Chief Regulatory Officer and his or her delegee(s) have the authority to determine whether there is probable cause for finding that a violation within the disciplinary jurisdiction of the Corporation has occurred and if further proceedings are warranted. If the Regulatory Staff, on behalf of the Corporation, ("the Complainant") determines that further proceedings are warranted, [the] *then* the Corporation will initiate a formal disciplinary action by preparing a statement of charges ("the Complaint") against any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder alleged to have committed a violation ("the Respondent") specifying the acts in which the Respondent is alleged to have engaged in, or which the Respondent is alleged to have omitted, and alleging the specific provisions of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, of which such acts or omissions are alleged to be in violation.

(b)–(c)—No change.

Commentary

.01—No change.

Hearing

Rule 10.5

(a)–(c)—No change.

(d) At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Corporation, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Conduct Panel and other parties. The Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the record.

(e)—No change.

Rule 10.6–10.7—No change.

Review

Rule 10.8(a)—No change.

(b) The Board Appeals Committee may appoint a Board Appeals Committee Panel ("Appeals Panel") to conduct reviews of disciplinary proceedings, or may decide to conduct review proceedings on its own. The composition of the Appeals Panel will be determined by the Board Appeals Committee in accordance with Rule 3.3. The body conducting the review, either the Board Appeals Committee itself or the Appeals

Panel, is referred to herein as "the Review Board." Unless the Review Board shall decide to open the record for the introduction of new evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The standard of review shall be de novo. Based upon such review, the Review Board may affirm, reverse or modify in whole or in part, the decision of the Conduct Panel. Such modification may include an increase or decrease of the sanction. The decision of the Review Board shall be in writing and, shall become fifteen (15) calendar days after notifying the parties; provided, however, that if a request for review of such determination is filed pursuant to Rule 10.8(c) or Rule 10.8(d) below, the penalty shall be stayed pending the outcome of that review.

Each Review Board member shall be required to disclose to the Board Appeals Committee any circumstances which might preclude such Review Board member from rendering an objective and impartial determination. Prior to the commencement of the first hearing session, the Board Appeals Committee may remove a Review Board member who discloses such information. The Board Appeals Committee shall also inform the parties of any information disclosed pursuant to this section, if the Review Board member who disclosed the information is not removed.

In the event that any Review Board member, after the commencement of the Review, but prior to the rendition of the decision, should become disqualified, resign, die, refuse or be unable to perform or discharge his or *her* duties, the Board Appeals Committee, upon such proof as they deem satisfactory, shall either (a) appoint a new member to the Review Board to replace such member; or (b) direct that the review proceed without the substitution of a new member.

(c)–(e)—No change.

Judgment and Penalty

Rule 10.9(a). An ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall be subject to appropriate discipline by the Corporation for violations under this Rule including: cancellation or suspension of trading privileges, limitation of activities, functions and operations, suspension or bar from association with an ETP Holder, [ETP Firm or Equity ASAP Holder,] fine, censure, or any other fitting sanction.

(b)–(c)—No change.

Miscellaneous Provisions

Rule 10.10—No change.

Appeal of [Floor Citations and] Minor Rule Plan Sanctions

Rule 10.11(a). This Section provides the following procedures for persons aggrieved by action taken by the Corporation pursuant to the provisions of the Bylaws and Rules of the Corporation for which action an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has been sanctioned [via floor citation or] pursuant to Rule 10.12 (the Minor Rule Plan), and applies for an opportunity to make an oral presentation or to have the matter reviewed on the papers alone. (This Section shall not apply to disciplinary action taken pursuant to Rule 10.4 herein, non-disciplinary action taken pursuant to Rule [10.14] *10.13* herein, or to an action in Arbitration.)

(b) Submission of Application to Corporation. Any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who is aggrieved by any action of the Corporation within the scope of this Section and who desires the opportunity to make an oral presentation with respect to such action or to have such action reviewed on the papers alone shall file a written application with the Business Conduct Committee within five (5) business days after notification that such action has been taken. The notification submitted by the Corporation shall state the specific grounds for the action taken by the Corporation, and shall notify the party of the party's right to make an oral presentation or to have the matter reviewed on the papers alone. The application shall contain: (1) An identification of the Corporation action over which the review is being requested; (2) the reason(s) why the applicant disagrees with such action; and (3) the relief sought. In addition, the application shall indicate whether the applicant desires to make an oral presentation, in which event it shall be considered a "request for a hearing," or to proceed only upon the existing and/or any additional documents or materials, in which event it shall be considered a "request for a review on the papers." Hereinafter, the terms "hearing" and "review on the papers" shall be referred to jointly as the "Proceeding(s)."

(c)—No change.

(d) Procedure Following Application for Hearing and/or Review on the Papers.

(1)–(2)—No change.

(3) Conduct of the Proceeding. Whether the Proceeding is a hearing or a review on the papers alone, the Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the Proceeding. The formal rules of evidence shall not apply. In the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses pursuant to paragraph (d)(2), present documentary evidence, cross-examine witnesses and present closing arguments. The Conduct Panel shall have the right to question all parties and witnesses to the Proceeding. The Conduct Panel may also request the production of documentary evidence and witnesses. No ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.

(4)—No change.

(5) If after a hearing or review on the papers pursuant to subsection (d) of this Rule, the Conduct Panel determines that an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of a ETP [Firm or Equity ASAP] Holder has violated one or more rules of the Corporation, as alleged, the Conduct Panel: (i) may impost any one or more of the disciplinary sanctions authorized by the Corporation's Bylaws and Rules; and (ii) shall impose a forum fee against the person charged in the amount of two hundred fifty dollars ($250) if the determination was reached based on a review of the papers, or in the amount of five hundred dollars ($500) if a hearing was conducted. However, notwithstanding the foregoing, in the event that the Conduct Panel determines that the ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has violated one or more Rules of the Corporation, as alleged, and the sole disciplinary sanction imposed by the Conduct Panel for such rule violation(s) is a fine which is less than the total fine initially imposed by the Regulatory Staff for the subject violation(s), the Conduct Panel shall have the discretion to waive the imposition of a forum fee.

(6)—No change.

(e)–(f)—No change.

Minor Rule Plan

Rule 10.12.

(a) In lieu of initiating a formal disciplinary action or proceeding, the Corporation may, subject to the requirements set forth in this Rule, impose a fine not to exceed five thousand dollars ($5,000) on any ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder, for any violation of a Rule of the Corporation that has been determined to be minor in nature.

(b) Whenever it appears that an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP (Firm or Equity ASAP] Holder has violated a [rule] *Rule* under this Minor Rule Plan, the Corporation shall serve on such person or organization a written statement setting forth (i) the Rule(s) alleged to have been violated; (ii) the act or omission constituting each such violation; and (iii) notice that such person or organization may submit a written statement to a designated committee for its consideration.

(c)–(e)—No change.

(f) Nothing in this Rule shall require the Corporation to impose a fine for a violation of any [rule] *Rule* under this Minor Rule Plan. If the Corporation determines that any violation is not minor in nature, the Corporation may, at its discretion, proceed under Rule 10.4 rather than under this Rule.

[(g) Floor Citations. A Trading Official may issue a Floor Citation to any ETP Holder, ETP Firm, or associated person of an ETP Firm, when it appears to such Official(s) that a Minor Rule Plan violation specified in subsection (h) or (i) of this Rule has occurred. In issuing a Floor Citation, the Trading Official shall:

(1) Apprise the person cited of the alleged violation;

(2) Ask the person cited to indicate by signature on the citation acknowledgement of receipt of the citation; provided that the

requested signature is for receipt purposes only and a failure or unwillingness to sign is not to be considered as invalidating the issuance of the citation;

(3) Give the top copy of the citation to the person alleged to have committed the violation; and

(4) Give the remaining copies of the citation to the appropriate staff person, who will then forward such copies of the Regulatory Staff for processing.]

[Except as provided in Rule 10.13 (the Summary Sanction Procedure), the] *The* circumstances underlying the issuance of each [floor] citation shall be reviewed by the Business Conduct Committee for a determination of whether the evidence is sufficient to find a violation of any Rules of the Corporation.

[(h)] *(g)* Minor Rule Plan: [Floor Decorum and] Minor Trading Rule Violations.

[(1)–(8)—Deleted.]

[(9)] *(1)* Short Sale Rules. (Rule [7.40] *7.16)*

[(10) Dissemination of Quotations in Local Issues. (EFPA 2–B)]

[(11)] *(2)* Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System ("ITS"). (Rules [7.67–7.69)] *7.55–7.57)*

[(12) failure to Clear the Post Properly. (EFPA 1–B)]

[(i)] *(h)* Minor Rule Plan: Record Keeping and Other Minor rule Violations.

(1)–(3)—No change.

(4) Failure to notify the Corporation of any change of address where notices may be served. (Rule [2.18(b))] *2.16(b))*

(5)–(6)—No change.

[(j)] *(i)* Minor Rule Plan: Recommended Fine Schedule.

	Fines		
	1st violation	2nd violation	3rd violation
(1) [Floor Decorum and] Minor Trading Rule Violations [1]			
[1.–.8—Deleted.]			
[9] *1.* Short Sale Rules. (Rule [7.40)] *7.16*)	$500.00	$1,000.00	$2,500.00
[10. Dissemination of Quotations in Local Issues (EFPA 2–B))]			$100.00
[11] *2.* Failure to follow the provisions of *the rules* and regulations governing the use of the Intermarket Trading System ("ITS"). (Rules *7.55–7.57)* [7.67–7.69)]	$500.00	$1,000.00	$2,000.00
[12. Failure to Clear the Post Properly. (EFPA 1–B))	Official Warning]	$250.00	$500.00
(2) Record Keeping and Other Minor Rule			
1. Failure to submit trade data to the [Exchange] *Corporation* in a timely manner. (Rule 10.2(e))	$250.00	$500.00	$750.00
2. Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule 4.11(b))	$500.00	$1,000.00	$1,500.00
3. Failure to furnish in a timely manner [books,] records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. (Rule 4.11(c))	$250.00	$500.00	$750.00
4. Failure to notify the Corporation of a change of address where notices may be served. (Rule [2.18(b))] *2.16(b)*)	$250.00	$500.00	$750.00
5. Failure to file a financial report or financial information in the type, form, manner and time prescribed by the [Exchange] *Corporation*. (Rule 4.11(a))	$250.00	$500.00	$750.00
6. Delaying, impeding or failing to cooperate in [an Exchange] *a Corporation* investigation. (Rule 10.2(d))	$500.00	$1,000.00	$2,000.00

[1] Fines for multiple violations of [Equity Floor Decorums and] Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running one-year basis.

[Summary Sanction Procedure]

[Rule 10.13—Deleted.]

Hearings and Review of Decisions by the Corporation

Rule [10.14] *10.13.*

(a) General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are:

(1) the denial of an ETP [or Equity ASAP];

(2) the barring of any person from becoming associated with an ETP [Firm or Equity ASAP] Holder;

(3) the suspension or cancellation of ETP trading privileges [or Equity ASAP trading privileges];

(4) the prohibition or limitation with respect to access to services provided by the Corporation, or the access to services of any ETP [Firm or Equity ASAP] Holder taken pursuant to the Bylaws, or Rules or procedures of the Corporation; or

(5) actions taken by the Corporation pursuant to Rule 7.22, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities;

[(5)] (*6*) actions taken *by the Corporation* pursuant to [rule 7.22] *Rule 7.23* [and 7.29];

[(6)] *(7) actions taken by the Corporation pursuant to Rule 7.25, including the denial of the application for, or the termination or suspension of, an Odd Lot Dealer's registration in a security or securities.* [denial of an applicant specialist for the appointment as a registered specialist].

The provisions of this Rule shall not apply to reviews of the following:

(A)–(C)—No change.

For purposes of this Section, a person must be "aggrieved" in an economic sense.

(b)—No change.

(c) Extension of Time. An application not filed within the time specified in Rule [10.14(b)] *10.13(b)* shall not be considered by the Board Appeals Committee, unless an extension of time is allowed by the Board Appeals Committee upon a showing of good cause. In order to obtain an extension of time within which to file an appeal, the applicant must, within the time specified in Rule [10.14(b)] *10.13(b)* file with the Secretary of the Corporation a request for an extension of time within which to submit the application. The request for extension will be ruled upon by the Board Appeals Committee, whose ruling will be given in writing. Rulings on requests for extension of time are not subject to appeal under Rule 10.

(d)–(m)—No change.

Miscellaneous Provision

Rule [10.15] *10.14.*—No change.

Rule 11

Cancellation, Suspension and Reinstatement

Notice of Expulsion or Suspension

Rule 11.1(a) An ETP Holder[, ETP Firm, or Equity ASAP Holder] which is expelled or suspended from any self-regulatory organization, encounters financial difficulty or operating inadequacies, fails to perform contracts, or become insolvent shall give prompt written notification to the Corporation of any such occurrence.

(b) An ETP [Firm or Equity ASAP] Holder shall give prompt written notification to the Corporation with respect to the expulsion or suspension of any [nominee or any other] associated person of such ETP [Firm or Equity ASAP] Holder by any self-regulatory organization.

Procedures for Suspension

Rule 11.2(a) This Rule sets forth the procedures for certain suspensions, cancellations, bars, limitations and prohibitions on access to the Corporation's services.

(1) Summary Suspension. In accordance with Section 6(d)(3) of the Exchange Act, the Board of Directors of the Corporation or a committee thereof may summarily:

(i) suspend the trading privileges of an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(ii) suspend the trading privileges of an ETP Holder, [ETP Firm, Equity ASAP Holder,] who is in such financial or operating difficulty that the Corporation determines and so notifies the Commission that such suspension is necessary for the protection of the investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation;

(iii) suspend the trading privileges of an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who is found in violation of any of the prohibited acts as specified in Rule 6.2(a)–(f) that are violations of Rules of the Corporation; or

(iv) limit or prohibit any person with respect to access to services offered by the Corporation if subparagraph (i) or (ii) is applicable to such person or, in the case of a person who is not an ETP Holder, [ETP Firm or Equity ASAP Holder,] if the Corporation determines that such person does not meet the qualification requirements or prerequisites for such access with safety to investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation.

(2) Non-Summary Suspension. The Corporation also may take the following actions, after written notice, after the passage of any grace period and/or applicable cure period, and after opportunity for hearing:

(i) cancel ETP trading privileges of an ETP Holder [or ETP Firm] that becomes ineligible for ETP trading privileges, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with an ETP Holder [or ETP Firm] because such person is or becomes ineligible for association under Rule [2.21(a)] *2.19(a);*

[(ii)—Deleted.]

[(iii)]*(ii)* suspend or cancel trading privileges of an ETP [Holder, ETP Firm or Equity ASAP] Holder for failure to pay any fees, charges, assessments, or fines to the Corporation under Rule 3.8; or failure to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Rule 12;

[(iv)]*(iii)* cancel trading privileges of an ETP [Holder, ETP Firm, or Equity ASAP] Holder for failure to file or submit or request any report, document, or other information required to be filed with or requested by the Corporation under Rule 10.2(d); or

[(v)]*(iv)* limited or prohibit any ETP [Holder, ETP Firm, Equity ASAP] Holder, or associated person of an ETP [Firm or Equity ASAP] Holder or other person with respect to access to services offered by the Corporation, if the Corporation determines that such person does not meet the qualification requirements or prerequisites for such access or such person cannot be permitted to continue to have access with safety to investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation.

(b)—No change.

(c) Any action taken pursuant to Rule 11.2(a)(1) or (2) shall also be subject to the applicable provisions of Rule [10.14]*10.13.*

Commentary

.01—No change.

Effect of Suspension or Cancellation

Rule 11.3. When an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has its trading privileges suspended or canceled by the Corporation for any reason specified in Rule 11.2(a)(1) or (2), such a person or organization shall be deprived during the term of the suspension of all rights and trading privileges conferred by the ETP [or Equity ASAP], except as otherwise provided in the Rules of the Corporation. The person or organization having trading privileges suspended or canceled shall remain subject to the disciplinary power of the Corporation with respect to any disciplinary action as provided by the Rules of the Corporation.

Disciplinary Measures During Suspension

Rule 11.4. An ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) or (2) may be disciplined pursuant to the Rules of the Corporation for any offense committed either before or after the announcement of the suspension, in all respects as if no suspension were in effect.

Investigation Following Summary Suspension

Rule 11.5. Every ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) shall immediately afford every facility required by the Corporation for the investigation of its affairs as required by the Board of Directors and shall, after the notification of the suspension, file with the Corporation a written statement covering all information required by the Corporation.

Grounds for Cancellation

Rule 11.6. If an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has had privileges suspended under the provisions of Rule 11.2(a)(1) and such person or organization does not request a hearing within thirty (30) calendar days to review such suspension or at such hearing it is determined that the suspension was properly imposed, and such person or organization, has not within forty-five (45) calendar days after the suspension remedied the reason for such suspension and has not applied for reinstatement, the Board may cancel the trading privileges of such person or organization. If application for reinstatement is made within forty-five (45) calendar days of suspension as provided in this Rule, and such application is disapproved, the Board may cancel the trading privileges of such [the] person or organization.

Reinstatement

Rule 11.7. When an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has had trading privileges suspended under the provisions of Rule 11.2(a)(1) or (2) applies for reinstatement, it must be demonstrated to the satisfaction of the Corporation that the problem or problems responsible for such suspension have been satisfactorily resolved. If such problem involves financial difficulty or operating inadequacies, the person or organization shall furnish to the Corporation comprehensive financial and operating reports in a form and manner to be prescribed by the Corporation. If the ETP Holder[, ETP Firm, Equity ASAP] Holder, or associated person of an ETP [Firm or Equity ASAP] Holder furnishes satisfactory proof of a resolution of the problem or problems responsible for such suspension, the Corporation shall notify in writing all ETP [Holders, ETP Firms, and Equity ASAP] Holders of the application for reinstatement and that a meeting of the Board to consider it will be held on a designated date which shall be not less than ten (10) business days subsequent to such notice. At such meeting at which a quorum is present the ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder may be reinstated provided not less than a majority of the Directors voting approve the application.

Failure To Obtain Reinstatement

Rule 11.8. If an ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder whose trading privileges have been suspended under the provisions of this Rule fails or is unable to apply for reinstatement in accordance with Rule 11.7, or fails to obtain reinstatement as therein provided, trading privileges conferred by an ETP [or Equity ASAP] will terminate.

Rule 12

Arbitration

Matters Subject to Arbitration

Rule 12.1. For purposes of this Rule, the following definitions apply:

(a) [the term "ETP" shall mean both ETP and Equity ASAP permits.]

[(b)] the terms "service" or "serve" shall mean effecting the delivery of a document to persons via first class mail, overnight delivery, hand delivery, or facsimile.

[(c)] *(b)* the term "associated person" shall also include "affiliated" person "approved person" and "allied person".

[(d)] *(c)* the term "Director of Arbitration" shall mean any person appointed or designated by the Corporation's Chief Executive Officer to direct the Corportion's arbitration program.

Rule 12.2.

(a) Any dispute, claim or controversy between parties who are ETP Holders [,ETP

Firms] or associated persons arising in connection with the securities business of such parties shall, at the request of any such party, be submitted for arbitration in accordance with this Rule.

(b)—No change.

(c) Any dispute, claim or controversy between a customer or non-ETP Holder and an ETP Holder[, ETP Firm] and/or associated person arising in connection with the securities business of such ETP Holder[, ETP Firm] and/or associated person shall be arbitrated under this Rule as provided by any duly executed and enforceable written agreement, or upon the request of the customer or non-ETP Holder.

(d)—No change.

(e) Class Action Claims

(1)–(2)—No change.

(3) No ETP Holder[, ETP Firm] or associated person shall seek to enforce any agreement to arbitrate against a customer that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (i) the class certification is denied; (ii) the class is decertified; (iii) the customer is excluded from the class by the court; or (iv) the customer elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(4) No ETP Holder[, ETP Firm] and/or associated person shall be deemed to have waived any of its rights under this Rule or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph (e).

(f)–(g)—No change.

(h) It may be deemed conduct inconsistent with just and equitable principles of trade for an EPT Holder or [an ETP Firm, or] a person associated with an ETP Holder [or an ETP Firm] to fail to submit to arbitration on demand under the provisions of this Rule, or to fail to appear or to provide any document in his or her or its possession or control as directed pursuant to the provisions of this Rule or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(i)—No change.

(j) For purposes of this Rule, the terms ETP Holder, [ETP Firm,] associated person and employee of an ETP Holder [or ETP Firm] shall be deemed to encompass those persons who were ETP Holders, [ETP Firms] or associated persons or employees thereof at the time the circumstances occurred which gave rise to the controversy.

Simplified Arbitration for Public Customers

Rule 12.3(a). Any dispute, claim or controversy arising between a public customer(s) and an ETP Holder[, an ETP Firm] and/or person associated with an ETP Holder [or an ETP Firm] required to be arbitrated under the Bylaws and Rules of the Corporation and involving a dollar amount not exceeding $10,000, exclusive of attendant costs and interest, shall upon demand of the customer(s) or by written consent of the parties be arbitrated as hereinafter provided.

(b)–(1)—No change.

Rule 12.4–12.8—No change.

Designation of Number of Arbitrators

Rule 12.9.

(a)—No change.

(b In arbitration matters involving public customers and where the amount in controversy exceeds $30,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which [consist] *consists* of no fewer than three (3) arbitrators, nor more than five (5), at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(c) An arbitrator will be deemed as being from the securities industry if he or she:

(1) is a person associated with an ETP Holder, [ETP Firm,] broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor, or

(2)–(4)—No change.

(d)—No change.

(e) ETP Holder Controversies. In all arbitration matters not involving public customers, the Director of Arbitration shall assign the matter to a panel consisting of ETP Holders [or ETP Firm] representatives. Such members of the arbitration panel shall not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard. For controversies involving an amount of $10,000 or less, the panel shall consist of one (1) ETP Holder [or ETP Firm] representative. For all other controversies, the panel shall consist of three (3) ETP [Holders or ETP Firm] *Holder* representatives.

(f)–(g)—No change.

Rule 12.10–12.13—No change.

Initiation of Proceedings

Rule 12.14. Except as otherwise provided herein, an arbitration proceeding under this Rule shall be instituted as follows:

(a)–(b)—No change.

(c) Service and Filing with the Director of Arbitration

(1)—No change.

(2) If an ETP [Firm] *Holder* and a person associated with the ETP [Firm] *Holder* are named parties to an arbitration proceeding at the time of the filing of the Statement of Claim, service on the associated person may be made by service on the named ETP [Firm] *Holder* and the ETP [Firm] *Holder* shall then perfect service upon the associated person. If the ETP [Firm] *Holder* does not undertake to represent the associated person, the ETP [Firm] *Holder* shall serve the associated person with the Statement of Claim, shall advise all parties and the Director of Arbitration of that fact, and shall provide such associated person's current address.

(d) Joining and Consolidation

(1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to these claimants will arise in the action.

All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence or series [or] *of* transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action.

A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

(2)–(4)—No change.

Rule 12.15–12.21—No change.

Power To Direct Appearances and Production of Documents

Rule 12.22. The arbitrators shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any ETP Holder [or ETP Firm] and/or direct the production of any records in the possession or control of such persons, ETP Holders [or ETP Firms). Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

Rule 12.23–12.31—No change.

Schedule of Fees

Rule 12.32(a)–(i)—No change.

(j) In an industry or clearing controversy, where the ETP Holder [or ETP Firm] claim or controversy does not involve or disclose a money claim, or is unspecified, the filing fee will be $300 and the hearing session deposit shall be $1,000 per hearing session.

Schedule of Fees

PUBLIC CUSTOMER CLAIMANT

(E.g., public customer v. ETP [Firm and/or ETP] Holder)

Amount in dispute (exclusive of interest and expenses) *	Filing fee	Hearing session deposit	
		Documents only	*Hearing w/1 arbitrator*
$.01–$1,000.00	$15	$15	$15

PUBLIC CUSTOMER CLAIMANT—Continued

(E.g., public customer v. ETP [Firm and/or ETP] Holder)

Amount in dispute (exclusive of interest and expenses)	Filing fee	Hearing session deposit	
		Documents only	*Hearing w/1 arbitrator*
$1,000.01–$2,500.00	25	25	25
$2,500.01–$5,000.00	50	75	100
$5,000.01–$10,000.00	75	75	200

Amount in dispute (exclusive of interest and expenses)	Filing fee	Hearing session deposit	
		One arbitrator or pre-hearing conference	Three arbitrators
$10,000.01–$30,000.00	$100	$300	$400

Amount in dispute (exclusive of interest and expenses)	Filing fee	Hearing session deposit	
		Pre-hearing conference	Three arbitrators
$30,000.01–$50,000.00	120	*$300	400
$50,000.01–$100,000.00	150	**300	500
$100,000.01–$500,000.00	200	**300	750
$500,000.01–$5,000,000.00	250	**300	1,000
Above $5,000.00	300	**300	1,500

INDUSTRY/CLEARING CLAIMANT

(E.g., ETP Holder [or Firm] v. customer

Amount in dispute (exclusive of interest and expenses)	Filing fee	Hearing session deposit	
		Documents only	*Hearing w/1 arbitrator*
$01–$10,000.00	$500	$75	$300

Amount in dispute (exclusive of interest and expenses)	Filing fee	Hearing session deposit	
		One arbitrator	*Three arbitrators*
$10,000.01–$30,000.00	$500	*$300	$600
$30,000.01–$100,000.00	500	**300	600

Amount in dispute (exclusive of interest and expenses)	Filing fee	Hearing session deposit	
		Pre-hearing conference	Three arbitrators
$100,000.01–$500,000.00	$500	**$300	$750
$500,000.01–$5,000,000.00	500	**300	1,000
Above $5,000,000.00	500	**300	1,500

* This would apply to the following cases:
(a) where parties elect to have claims between $10,000 and $30,000 resolved by a single arbitrator pursuant to Rule 12.9.
(f) pre-hearing conferences with a single arbitrator in cases where a three person panel has been appointed.
** For pre-hearing conferences only.

ETP HOLDER [OR ETP FIRM] CONTROVERSIES

(E.g., associated person v. ETP Holder [or Firm])

Amount in dispute (exclusive of interest and expenses)	Filing fee	Hearing session deposit	
		One arbitrator	*Three arbitrators*
$.01–$10,000.00	$100	$200	–NA–
$10,000.01–$100,000	200	–NA–	$750
$100,000.01 or more	300	–NA–	1,000

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ETP Holder Surcharge

Rule 12.33(a). Each ETP Holder[, ETP Firm] or associated person who is named a party to an arbitration proceeding, whether in a claim, counterclaim, third-party claim, or cross-claim shall be assessed a non-refundable surcharge pursuant to the schedule in Rule 12.33(c) when the Arbitration Department perfects service of the claim naming the ETP Holder[, ETP Firm] or associated person on any party to the proceeding.

For each associated person who is named, the surcharge shall be assessed against the ETP Holder(s) [or ETP firm(s)] which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy.

No ETP Holder [or ETP Firm] shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under rule 12.32.

(b) For purposes of this Rule, service is perfected when the Arbitration Department properly serves the Respondent(s) to the arbitration proceeding under Rule 12.14(c).

(c) Schedule of Surcharge Rates:

Amount in dispute	Surcharge
$0.01 to $10,000	$100
$10,000.01 to $50,000	200
$50,000.01 to $100,000	300
$100,000.01 to $500,000	350
About $500,000	500

Requirements when Using Pre-Dispute Arbitration Agreements With Customers

Rule 12.34—No change.

Rule 13

Liability of Directors and Corporation

Liability of Directors

Rule 13.1. Any provision of the [Articles] *Certificate* of Incorporation, Bylaws, or the Rules of the Corporation that provides or purports to provide that the members of the Board of Directors shall not be liable to the Corporation or its ETP Holders[, Equity ASAP Holders, and ETP Firms] for monetary damages for breach of fiduciary duty as a Director shall not be applied in any instance in which such liability arises directly or indirectly as a result of a violation of federal securities laws.

Liability of Corporation

Rule 13.2(a). Except as otherwise expressly provided in these [rules] *Rules*, neither the Corporation nor its Directors, officers, committee members, employees or agents shall be liable to the ETP Holders[, Equity ASAP Holders, and ETP Firms] of the Corporation or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Corporation, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Corporation except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Corporation or its officers, employees or agents acting within the scope of their authority. The limitation of liability set forth in this paragraph shall not apply to violations of federal securities laws.

Without limiting the generality of the foregoing and subject to the same exception, the Corporation shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, or any reports of transactions in or quotations for securities traded on the Corporation.

The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Corporation or any reporting authority designated by the Corporation, including but not limited to reports of transactions in or quotations for securities traded on the Corporation, or reports index values or related data, and the Corporation makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, any other provisions of the Bylaws or Rules.

(b) Whenever custody of an unexecuted order is transmitted by an ETP Holder[, Equity ASAP Holder, or ETP Firm] to or through the Corporation's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Corporation whereby the Corporation assumes responsibility for the transmission or execution of the order, provided that the Corporation has acknowledged receipt of such order, the Corporation's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph (b), and no assets of the Corporation shall be applied or shall be subject to such liability in excess of the following limits:

(1) As to any one or more claims made by a single ETP Holder[, Equity ASAP Holder, or ETP Firm] growing out of the use or [employment] *enjoyment* of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of $100,000, or the amount of any recovery obtained by the Corporation under any applicable insurance maintained by the Corporation;

(2) As to the aggregate of all claims made by all ETP Holders[, Equity ASAP Holders, and ETP Firms] growing out of the use or [employment] *enjoyment* of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of $250,000 or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation.

(3) As to the aggregate of all claims made by all ETP Holders[, Equity ASAP Holders, and ETP Firms] growing out of the use or enjoyment of the facilities afforded by the Corporation during a single calendar month, the Corporation shall not liable in excess of the larger of $500,000, or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation.

(c)—No change.

Legal Proceedings Against Directors, Officers, Employees or Agents

Rule 13.3. No ETP Holder[, Equity ASAP Holder, ETP Firm], or any other associated person shall institute a lawsuit or other legal proceeding against any Director, officer, employee, agent or other official of the Corporation or any subsidiary of the Corporation, for actions taken or omitted to be taken in connection with the official business of the Corporation or any subsidiary, except to the extent such actions or omissions constitute violations of federal securities laws for which a private right of action exists and except with respect to the Directors of the Corporation, to the extent inconsistent with the [Articles] *Certificate* of Incorporation. This Rule shall not apply to appeals of disciplinary actions or other actions by the Corporation as provided for in the Rules.

Corporation's Costs of Defending Legal Proceedings

Rule 13.4. Any ETP Holder[, Equity ASAP Holder, ETP Firm,] or any other associated person who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Corporation or any of its Directors, officers, committee members, employees or agents, and related to the business of the Corporation, shall pay to the Corporation all reasonable expenses, including attorney's fees, incurred by the Corporation in the defense of such proceeding, but only in the event that such expenses exceed Fifty Thousand Dollars ($50,000.00). This provision shall not apply to disciplinary actions by the Corporation, to administrative appeals of actions of the Corporation or in any specific instance where the Board of Directors has granted a waiver of this Rule.

Rule 14

Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc.

Pacific Exchange, Inc.

Rule 14.1. The Pacific Exchange, Inc. ("PCX"), the registered national securities exchange, is the parent company of the wholly-owned subsidiary PCX Equities Inc. ("PCX Equities). The term "Exchange" shall refer to the PCX and PCX Equities collectively.

(a) Functions and Authority of the PCX. The PCX shall have ultimate responsibility for the rules and regulations of the Exchange and its operation and administration. As set forth below in Rule 14.2(a), the PCX has delegated certain authority and functions to PCX Equities. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the PCX Board of Governors ("PCX Board") in accordance with procedures established by that Board. Any function or responsibility as a registered national securities exchange under the Securities Exchange Act of 1934 ("Act"), or as set forth in the [Certification]

Certificate of Incorporation, the Constitution or the PCX Rules is hereby reserved, except as expressly delegated to PCX Equities. In addition, the PCX expressly retains the following authority and functions:

(1)–(9)—No change.

(b) Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of PCX Equities. Notwithstanding the delegation of authority to PCX Equities, as set forth in Rule 14.2(a) below, the staff, books, records, premises, officers, directors, employees and agents of the PCX Equities are subject to the oversight of the PCX pursuant to the Act, *and all officers, directors, employees, and agents of PCX Equities are officers, directors, employees, and agents of the PCX for purposes of the Act.* The books and records of PCX Equities shall be subject at all times to inspection and copying by the PCX.

PCX Equities Inc. ("PCX Equities")

Rule 14.2[a) Delegation of Functions and Authority.

(1) Subject to Rule 14.1(a)(9), the PCX hereby delegates to PCX Equities and its subsidiary Pacific Clearing Corporation and PCX Equities assumes the following responsibilities and functions with respect to the equities business of the Exchange:

(A) To establish and interpret rules and regulations and provide exemptions for ETP Holders[, ETP Firms, Equity ASAP Holders] or associated persons including, but not limited to trading rules, fees, access to and use of system facilities and arbitration procedures.

(B) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons. This includes, but is not limited to,

(i) arbitration of disputes among and between ETP Holders[, ETP Firms, Equity ASAP Holders] *and* associated persons and customers arising from transactions on the facility;

(ii)—No change.

(iii) qualifications for ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons;

(iv) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons in general and securities traded on PCX Equities;

(v)–(vi)—No change.

(C) To take necessary or appropriate action to assure compliance with the [rules] *Rules* and procedures of PCX Equities, the federal securities laws, and other laws, rules and regulations that the PCX Equities has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

(D) To administer programs and systems for the surveillance and enforcement of rules governing ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons' conduct and trading activities on PCX Equities.

(E) To examine and investigate ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons to determine if they have violated the [rules] *Rules* or procedures of PCX Equities, the federal securities laws, and other laws, rules, and regulations that the Exchange has the authority to administer, interpret, or enforce.

(F)–(G)—No change.

(H) To determine whether ETP Holder [and Equity ASAP Holder] applicants have met the requirements established by PCX Equities for holding an ETP [or Equity ASAP].

(I) To determine whether persons seeking to register as associated persons of ETP Holders[, ETP Firms or Equity ASAP Holders] have met such qualifications for registration as may be established by PCX Equities, including whether statutorily disqualified persons will be permitted to associate with particular ETP Holders[, ETP Firms or Equity ASAP Holders] and the conditions of such association.

(J) To place restrictions on the business activities of ETP [Holders, ETP Firms, Equity ASAP] Holders and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.

(K) To establish and assess fees and other charges on ETP Holders, [ETP Firms, Equity ASAP Holders,] associated persons, issuers and others using the products, services or facilities of PCX Equities.

(L)–(O)—No change.

(P) To develop and adopt [rules] *Rules*, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of PCX Equities.

(Q)—No change.

(R) To develop, adopt, administer and enforce policies and [rules] *Rules* of PCX Equities governing listing standards applicable to securities traded on PCX Equities and the issuers of those securities.

(S)–(U)—No change.

(2)–(c)—No change.

Archipelago Exchange, L.L.C., and Archipelago Holdings, L.L.C.

Rule 14.3(a) Access to and Status of Books, Records, Premises, Officers, Directors, Agents and Employees of Archipelago Exchange, L.L.C. The books, records, premises, officers, directors, agents and employees of Archipelago Exchange, L.L.C., shall be deemed to be the books, records, premises, officers, directors, agents and employees of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of Archipelago Exchange, L.L.C., shall be subject at all times to inspection and copying by the PCX, PCX Equities and the SEC.

(b) Access to and Status of Officers and Directors of Archipelago Holdings, L.L.C. All officers and directors of Archipelago Holdings, L.L.C., shall be deemed to be officers and directors of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act.

(c) Paragraphs (a) and (b) above shall not be deemed to create any rights or benefits for any person or entity other than the SEC.

[PCX Equities, Inc.]

[Equity Floor Procedure Advices]

[1–A—3–A—Deleted.]

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H.J. Res. 128/P.L. 106–540

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 8, 2000; 114 Stat. 2571)

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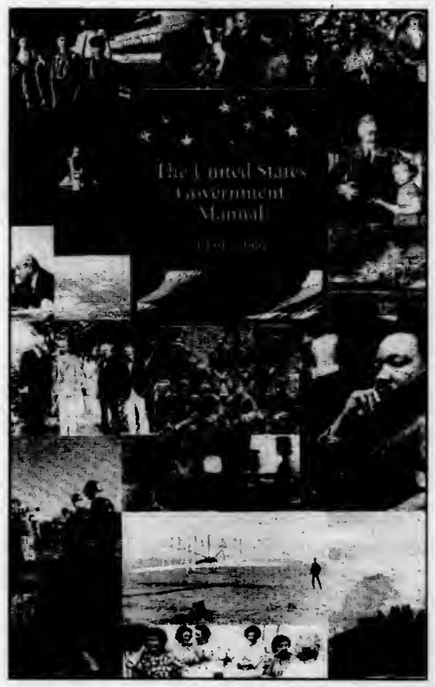
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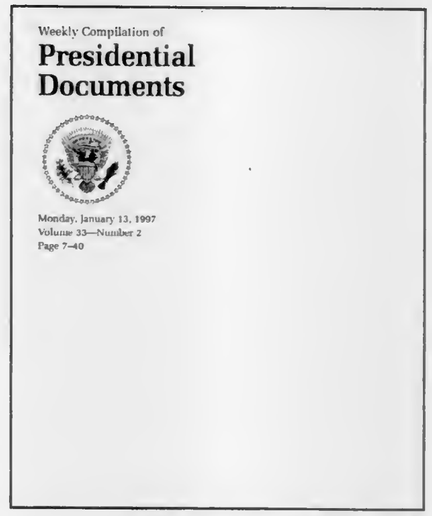
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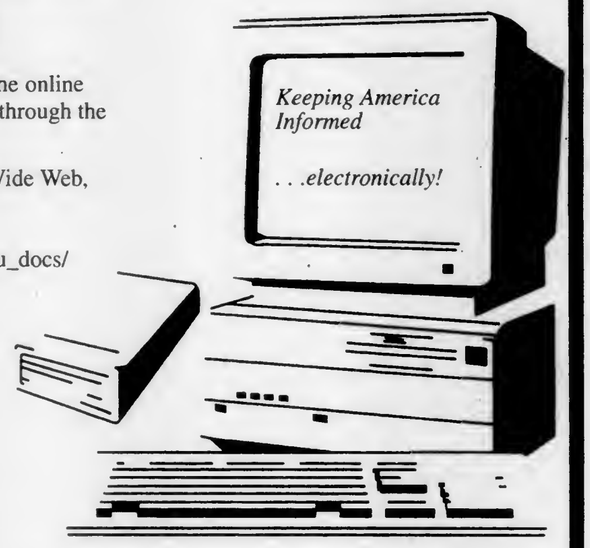
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2001–04 of December 11, 2000

Determination to Authorize the Furnishing of Emergency Military Assistance to the United Nations Mission in Sierra Leone (UNAMSIL), Countries Participating in UNAMSIL, and Other Countries Involved in Peacekeeping Efforts or Affiliated Coalition Operations With Respect to Sierra Leone

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a) (1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318 (a) (1) (A) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists that requires immediate military assistance to UNAMSIL, countries currently or in the future participating in UNAMSIL, and other countries involved in peacekeeping efforts or affiliated coalition operations with respect to Sierra Leone, including the Government of Sierra Leone, and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a) (1) of the Act.

I therefore direct the drawdown of defense articles from the stocks of the Department of Defense, defense services from the Department of Defense, and military education and training of an aggregate value not to exceed $36 million to UNAMSIL and such countries to support peacekeeping efforts with respect to Sierra Leone.

The Secretary of State is authorized and directed to report this Determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 11, 2000

[FR Doc. 00–32282
Filed 12–15–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 65, No. 243
Monday, December 18, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–115–1]

Specifically Approved States Authorized To Receive Mares and Stallions Imported from Regions Where CEM Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Oregon to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis (CEM). We are taking this action because Oregon has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves unnecessary restrictions on the importation of mares and stallions from regions where CEM exists.

DATES: This rule will be effective on February 16, 2001, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 17, 2001.

ADDRESSES: Please send four copies (an original and three copies) of your comments or notice of intent to submit adverse comments to: Docket No. 00–115–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–115–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James, Assistant Director, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION

Background

The animal importation regulations (contained in 9 CFR part 93 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases. In § 93.301, paragraph (c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Paragraph (c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported for permanent entry from regions where CEM exists must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. The Administrator of the Animal and Plant Health Inspection Service (APHIS) has approved these States to receive stallions or mares over 731 days of age from regions where CEM exists because each State has entered into a written agreement with the Administrator to enforce State laws and regulations to control CEM, and each State has agreed to quarantine, test, and treat mares and stallions over 731 days of age from a region where CEM exists in accordance with § 93.301(e).

Oregon has entered into a written agreement with the Administrator of APHIS and has agreed to comply with all of the requirements in § 93.301(e) for importing mares and stallions over 731 days old from regions where CEM exists. Therefore, this direct final rule will add Oregon to the lists of States in § 93.301(h)(6) and (h)(7) approved to receive certain stallions and mares imported into the United States from regions where CEM exists.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comments. This rule will be effective, as published in this document, February 16, 2001 unless we receive written adverse comments or written notice of intent to submit adverse comments by January 17, 2001.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice in the **Federal Register** before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Horse Imports From CEM-Affected Regions

The share of purebred breeding horse imports coming from CEM-affected regions is a relatively small fraction of the total number of horses imported, ranging between 5 and 10 percent between 1996 and 1999 (table 1). However, horses supplied by CEM-affected countries are generally highly valued. In 1999, for example, the average value of a purebred breeding horse imported from a CEM-affected region was $52,300, whereas the average value of a purebred breeding horse imported from anywhere in the world (i.e., from both CEM-affected and CEM-free regions) was $11,700.

During these same 4 years, the United States imported 28,374 horses classified as "except purebred breeding" from CEM-affected regions (table 2). While it is possible that some of these horses from CEM-affected regions may be for breeding, it is more likely that they are imported for racing or exhibition.[1] During 1996–1999, about one of every five "except purebred breeding" horses imported into the United States came from CEM-affected countries. Their combined annual value comprised, on average, 60 percent of the value of all "except purebred breeding" horse imports.

TABLE 1.—QUANTITY AND VALUE OF PUREBRED BREEDING HORSES IMPORTED FROM CEM-AFFECTED REGIONS, 1996–1999

Year	Quantity		Value	
	Number	Percent of all purebred breeding imports	Dollars (in millions)	Percent of all purebred breeding imports
1996	69	5.2	$2.0	26.7
1997	115	7.2	2.7	19.9
1998	200	10.0	31.3	77.8
1999	187	8.1	9.8	36.2

Source: U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), "Global Agricultural Trade System," using data from the United Nations Statistical Office. Harmonized tariff schedule 010111.

TABLE 2.—QUANTITY AND VALUE OF HORSES "EXCEPT PUREBRED BREEDING" IMPORTED FROM CEM-AFFECTED REGIONS, 1996–1999

Year	Quantity		Value	
	Number	Percent of all "except purebred breeding" imports	Dollars (in millions)	Percent of all "except purebred breeding" imports
1996	2,642	8.7	$93.5	26.7
1997	3,677	15.5	99.9	76.7
1998	17,044	40.7	147.9	83.6
1999	5,011	17.9	170.9	54.8

Source: USDA, FAS, "Global Agricultural Trade System," using data from the United Nations Statistical Office. Harmonized tariff schedule 010119.

CEM Testing

To minimize the risk of the CEM organism entering the United States, restrictions are applied to stallions and mares imported from CEM-affected regions, including health certification and preembarkation and postentry testing and treatment. During 1996 through 1999, 21,882 cultures were tested at approved laboratories for CEM and a similar CEM-like organism. Forty of the cultures tested positive, of which at least one-third to one-half were infections by the CEM-like organism (several of domestic origin). Thus, the likelihood of a specimen testing CEM-positive during this period was roughly about 0.1 percent.

As this small percentage indicates, breeding horses imported from CEM-affected regions rarely test positive for CEM. When they do, they are treated and remain in isolation until examined and subsequent cultures test negative. Nevertheless, the potential consequences of the establishment of CEM in the United States make the risk posed by this disease a serious concern. Besides the health costs associated with infected horses, establishment of CEM would have a disruptive impact on U.S. horse exports, especially on high-value breeding horses. At a minimum, more extensive testing and extended quarantining would be required of exporters. The addition of Oregon to the list of approved States is explicit recognition of the capability of Oregon facilities to carry out postentry testing and treatment requirements.

Affected Entities

Importers of breeding horses in Oregon—owners of horse farms and race horses—are the entities most likely to be affected by this rule. This rule will enable importers in Oregon to import stallions and mares directly from CEM-affected regions, whereas at present, those animals must first be imported into another approved State, the closest of which is California, and undergo postentry testing and treatment before being transported to Oregon.

The Regulatory Flexibility Act requires that agencies consider the impacts of their rules on small entities. Whether affected entities may be considered small depends on their annual gross receipts. Annual receipts of $500,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in raising horses and other equines (NAICS code 112920). For operations owning race horses (NAICS code 711219), the small entity criterion is annual gross receipts of $5 million or less.

Most horse owners in Oregon will be unaffected by this rule, since they do not purchase horses imported from CEM-affected countries. Of those firms that will be affected, it is reasonable to assume that at least some may be small entities. According to the 1997 Census of Agriculture, a total of 13,952 horses were sold by 2,579 farms in Oregon in 1997, implying an average income per farm from horse sales of $5,410. However, given the generally higher value of breeding horses from CEM-affected countries, larger operations will be the more likely affected entities.

The impact for affected Oregon establishments will be positive in terms of postentry transport cost savings; the horses will be able to be imported directly into Oregon rather than through California or other approved States. However, the savings is not expected to be large when compared to the value of the imported horses, and a substantial number of small entities are not expected to be significantly affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.301 [Amended]

2. Section 93.301 is amended as follows:

a. In paragraph (h)(6), by adding, in alphabetical order, "The State of Oregon".

b. In paragraph (h)(7), by adding, in alphabetical order, "The State of Oregon".

Done in Washington, DC, this 11th day of December 2000.

Bobby R. Acord,

Acting Administrator, Animol and Plant Health Inspection Service.

[FR Doc. 00–31981 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 331

Removal of Asset and Liability Backup Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: On June 9, 1999, the FDIC published an interim final rule (64 FR 30869) requiring asset and liability backup programs (ALBPs) for limited deposit account and loan account information in a small number of institutions. The rule was intended to facilitate timely restoration of key financial records in the event that an FDIC-insured depository institution experienced a Year 2000 (Y2K) computer problem that required it to be placed in receivership. Because this rule was created to meet a contingency related to Y2K, the FDIC did not contemplate that it would remain effective after the contingency period ended. A sunset provision was therefore included in the rule to the effect that its procedures would not be required after June 30, 2000. This action confirms that the rule is no longer needed, and removes it from the Code of Federal Regulations.

EFFECTIVE DATE: December 18, 2000.

FOR FURTHER INFORMATION CONTACT: James Crum, Project Manager, Bank Technology Group, (202) 736–0586; or Nancy Schucker Recchia, Counsel, Legal Division (202) 898–8885, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the FDIC, the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) provided extensive Y2K-readiness guidance to the banking industry. Despite best efforts in preparing for Y2K, there remained the possibility that some institutions would not be Y2K ready and might have to be closed. The FDIC planned for a broad range of contingencies and on June 9, 1999, published an interim final rule to ensure that, if an affected institution experienced a Y2K problem and was closed, the FDIC would be able to make federally insured deposits available to depositors expeditiously. The rule also facilitated the quick acquisition or transfer of servicing of assets to help maintain public confidence in, and minimize any related disruption to, the financial system.

The interim final rule, 12 CFR 331, became effective on July 9, 1999, including the provision at 12 CFR 331.6 that the ALBP procedures contained in the rule would not be needed after June 30, 2000. As anticipated, the procedures are no longer needed. Therefore, with this action, the FDIC is rescinding the rule.

For the reasons set out in the preamble and under the authority of 12 U.S.C. 1818 (a) and (b) and 12 U.S.C. 1819(a) (Seventh and Tenth), 12 CFR Part 331 is removed and reserved.

Dated at Washington, D.C., this 13th day of December, 2000.

[1] As stated in the Harmonized Tariff Schedule of the United States (2000), "The expression 'purebred breeding animals' covers only animals certified to the U.S. Customs Service by the Department of Agriculture as being purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, imported specially for breeding purposes, whether intended to be used by the importer himself or for sale for such purposes."

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 00–32173 Filed 12–15–00; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 509, and 560

[No. 2000–102]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.
ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications to reflect existing practices and to provide consistency among the Federal banking agencies, updated statutory and other references, and a correction of a typographical error.

EFFECTIVE DATE: December 18, 2000.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Senior Paralegal (Regulations), (202) 906–7135, or Karen A. Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. These changes are outlined below:

Part 506—Information Collection Requirements under the Paperwork Reduction Act

OTS is updating its table displaying the OMB control numbers assigned to various OTS regulations under the Paperwork Reduction Act. *See* 12 CFR 506.1(b). OTS is revising the table to add and correct the references to the control numbers.

Part 509—Rules of Practice and Procedure in Adjudicatory Proceedings

OTS is making two technical amendments to the Uniform Rules of Practice and Procedure. First, OTS is amending § 509.19(c) to conform its default provisions to the rules of the other banking agencies. Under the current OTS rule, if a respondent fails to file a timely answer to a notice of charges in an administrative proceeding, the Administrative Law Judge (ALJ), upon motion of Enforcement Counsel, "shall . . . file a recommended decision with the Director containing the findings and the relief sought in the complaint." The other banking agencies' rules are similar, but require the ALJ to make the additional determination that "no good cause exists for a respondent's failure to file a timely answer." [1]The ALJs in OTS administrative proceedings have generally given the respondents an opportunity to explain a failure to respond through this good cause process. OTS believes that this technical amendment is necessary to update the rule to reflect existing practices, to provide greater consistency with the other federal banking agencies, and to be more explicit in the requirements of the administrative law judge before recommending a decision based on a default.

OTS is also correcting a typographical error in § 509.31, which governs scheduling and prehearing conferences. The rule currently refers to the ALJ's authority to direct counsel to the parties to meet to address "matters of which *office* notice may be taken (emphasis added)." This reference is replaced with term "official notice."

Part 560—Lending and Investment

Finally, OTS is revising the lending and investment powers chart at § 560.30 to provide corrected statutory citations. The Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law No. 104–208, removed section 5(c)(3)(A) of the Home Owners' Loan Act and redesignated sections 5(c)(3)(B) through (D) as 5(c)(3)(A) through (C). OTS has made corresponding changes to the powers chart.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

The OTS has found good cause to dispense with both prior notice and comment on this final rule and a 30-day delay of its effective date mandated by the Administrative Procedure Act.[2] OTS believes that it is contrary to public interest to delay the effective date of the rule, as it corrects and clarifies provisions that have caused confusion. Because the amendments in the rule are not substantive, making them effective immediately will not detrimentally affect savings associations.

In addition, this document is exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[3] that regulations must not take effect before the first day of the quarter following publication, as it imposes no new requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[4] it is certified that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 509

Administrative practice and procedure, Penalties.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended in paragraph (b) by removing the entry for § 563.134 and adding three new entries in numerical order to read as follows:

[1] *See e.g.*, 12 CFR 19.19(c)(OCC).
[2] 5 U.S.C. 553.
[3] Pub. L. No. 103–325, 12 U.S.C. 4802.
[4] Pub. L. No. 96–354, 5 U.S.C. 601.

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) *Display.*

* * * * *

12 CFR part or section where identified and described	Current OMB control No.
. . . . .	
536.40	1550–0106
. . . . .	
563.143 through 563.146	1550–0059
. . . . .	
Part 573	1550–0103
. . . . .	

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

3. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

4. Section 509.19 is amended by revising the second sentence of paragraph (c)(1) and by adding a new sentence following it to read as follows:

§ 509.19 Answer.

* * * * *

(c) *Default*—(1) *Effect of failure to answer.* * * * If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Director a recommended decision containing the findings and the relief sought in the notice. * * *

* * * * *

5. Section 509.31(b)(3) is revised to read as follows:

§ 509.31 Scheduling and prehearing conferences.

* * * * *

(b) *Prehearing conferences.* * * *

(3) Matters of which official notice may be taken;

* * * * *

PART 560—LENDING AND INVESTMENT

6. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

7. Section 560.30 is amended by revising the following three entries in the Lending and Investment Powers Chart and Note 3 following the chart to read as follows:

§ 560.30 General lending and investment powers of Federal savings associations.

* * * * *

LENDING AND INVESTMENT POWERS CHART

Category	HOLA authorization	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
. . . . .		
Community development loans and equity investments.	5(c)(3)(A)	5% of total assets, provided equity investments do not exceed 2% of total assets.[3]
Construction loans without security	5(c)(3)(C)	In the aggregate, the greater of total capital or 5% of total assets.
. . . . .		
Nonconforming loans	5(c)(3)(B)	5% of total assets.
. . . . .		

Notes:

* * * * *

[3] The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(A) (formerly 5(c)(3)(B)), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available at www.ots.treas.gov).

* * * * *

By the Office of Thrift Supervision.
Dated: December 8, 2000.

Ellen Seidman,

Director.

[FR Doc. 00–31871 Filed 12–15–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–69–AD; Amendment 39–12035; AD 2000–25–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation) PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80–26–05, which currently requires you to repetitively inspect the main landing gear (MLG) inboard door hinges and attachment angles for cracks on certain The New Piper Aircraft, Inc. (Piper) PA–31 series airplanes. AD 80–26–05 also requires you to replace any cracked MLG inboard door hinge or attachment angle with parts of improved design. This AD results from the Federal Aviation Administration's policy on aging commuter-class aircraft and the determination that an improved design MLG inboard door hinge and attachment assembly, when incorporated, will eliminate the need for the currently required repetitive short-interval inspections; however, we have received reports of cracks in the improved design MLG inboard door hinge assemblies on the affected airplanes. This AD retains the current repetitive inspections contained in AD 80–26–05, and requires inspections on the improved design parts. The actions specified by this AD are intended to detect and correct cracked MLG inboard door hinge assemblies. These cracked door hinge assemblies could result in the MLG becoming jammed, with consequent loss of control of the airplane during landing operations.

DATES: This AD becomes effective on January 19, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 19, 2001.

ADDRESSES: You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–69–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: *william.o.herderich@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

What prior AD action did FAA take on this subject? In 1980, FAA issued AD 80–26–05, Amendment 39–3994, in order to detect and correct cracked main landing gear (MLG) inboard door hinge assemblies on certain Piper PA–31 series airplanes. AD 80–26–05 currently requires you to repetitively inspect the MLG inboard door hinges and attachment angles for cracks; and requires you to replace any cracked MLG inboard door hinge or attachment angle.

On December 1, 1995, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper PA–31 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 7, 1995 (60 FR 62774), and proposed to supersede AD 80–26–05, Amendment 39–3994. The NPRM proposed to:

—Retain the requirement of repetitively inspecting the MLG inboard door hinge assemblies for cracks, and replacing any cracked MLG inboard door hinge assembly; and

—Require incorporating a MLG inboard door hinge assembly of improved design (part number (P/N) 47529–32) or FAA-approved equivalent part number, as terminating action for the repetitive inspection requirement.

Accomplishment of the proposed inspections would have been required in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980.

This NPRM was consistent with FAA's aging commuter-class aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on FAA's determination that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. The alternative to installing the improved design hinge assemblies on the affected airplanes would be to rely on the repetitive inspections required by AD 80–26–05 to detect cracks in these areas.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of this amendment. Due consideration was given to the one comment received.

What issue did this comment address? The comment received on the NPRM contained information that the improved design MLG inboard door hinge assemblies, P/N 47529–32, are also susceptible to fatigue cracking, and that installing this assembly should not eliminate the need for the repetitive inspections currently required by AD 80–26–05. The commenter stated that its airplane fleet has experienced three failures and three incidents related to fatigue cracking of the P/N 47529–32 hinge assemblies.

What action did FAA take? We conducted a review of the manufacturer's service history and service difficulty reports in FAA's database associated with the P/N 47529–32 MLG inboard door hinge assembly. Based on a review of this information, including the information received from the commenter, we determined that more information and analysis were needed before mandating MLG inboard door hinge assembly replacements through an AD.

We then issued an advance notice of proposed rulemaking (ANPRM) on February 11, 1997. The ANPRM was published in the **Federal Register** on February 19, 1997 (62 FR 7375). The purpose of the ANPRM was to encourage interested persons to provide information that describes what they consider the best action (if any) for FAA to take regarding the P/N 47529–32 MLG inboard door hinge assembly issue. The FAA also withdrew the NPRM. We received no information or comments regarding the ANPRM.

We then re-evaluated the information in our service difficulty database. The database, at that time, contained 10 reports of failure or cracks found in the MLG inboard door hinge assembly on the affected airplanes. The commenter to the original NPRM had submitted six

of these reports. Three of these six incident reports were specifically attributed to the original MLG inboard door hinge assemblies and three to the improved design MLG inboard door hinge assemblies. The four reports that others submitted do not specifically identify whether the original MLG inboard door hinge assemblies were installed or the improved design assemblies were installed. Since the incidents occurred on high service time airplanes and since there is no AD action mandating the installation of the improved-design MLG inboard door hinge assemblies, we presumed that the original hinge assemblies were installed.

The FAA then reviewed the three incident reports on the improved design MLG inboard door hinge assemblies and, along with the National Transportation Safety Board (NTSB), performed extensive testing and analysis of the improved design MLG inboard door hinge assemblies. Based on this review, testing, and analysis, we determined that:

—The incidents were isolated and that mandating repetitive inspections was not needed when the P/N 47529–32 MLG inboard door hinge assemblies are installed; and

—AD action should be taken to eliminate the repetitive short-interval inspections that AD 80–26–05 requires and to prevent separation of a MLG door from the airplane caused by a cracked inboard door hinge assembly.

On October 14, 1997, FAA issued an NPRM to address these issues. The NPRM was published in the **Federal Register** on October 21, 1997 (62 FR 54595).

What has happened to justify this AD action? Since issuance of the NPRM, we have received additional reports of cracks in the MLG inboard door hinge assemblies. The reports reference incidents on both the original design assemblies and the improved design hinges. As of the issue date of this document, we have reports of the following:

—27 reports of cracked improved design MLG inboard door hinge assemblies; and

—41 reports of cracked original design MLG inboard door hinge assemblies.

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper PA–31 series airplanes. This proposal was published in the **Federal Register** as a supplemental NPRM on July 21, 2000 (65 FR 45323). The supplemental NPRM proposed to supersede AD 80–26–05, Amendment 39–3994, with a new AD that proposed to require:

—Repetitively inspecting the MLG inboard door hinge assemblies (regardless of part number); and

—Immediately replacing any cracked MLG inboard door hinge assembly with a new MLG inboard door hinge assembly, Piper part number (P/N) 47529–32 (or FAA-approved equivalent part number).

What is the potential impact if FAA took no action? These actions are necessary to detect and correct cracked MLG inboard door hinge assemblies. These cracked door hinge assemblies could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Piper Part Number (P/N) 47529–32 MLG Door Hinge Assemblies Are Not Made of Steel

What is the commenter's concern? The commenter states that the NPRM incorrectly identifies the Piper P/N 47529–32 MLG door hinge assemblies as parts made of steel. The commenter explains that these assemblies are made of aluminum.

What is FAA's response to the concern? We concur that the Piper P/N 47529–32 MLG door hinge assemblies are made of aluminum. We inadvertently referenced these parts as steel parts in the supplemental NPRM.

We are changing the final rule AD accordingly.

Comment Issue No. 2: All MLG Door Hinge Assemblies Should Be Inspected at 100-Hour TIS Intervals

What is the commenter's concern? The commenter expresses doubt that the Piper P/N 47529–32 MLG door hinge assemblies can go as long as 2,000-hour TIS intervals between inspections before cracking. The commenter recommends 100-hour TIS interval inspections for these assemblies.

What is FAA's response to the concern? We determined that the 2,000-hour TIS interval was an adequate compliance time for these parts based on our conservative estimate of all quantitative information available. The service reports indicate failures on airplanes ranging from a low of 3,615 total hours TIS to a high of 14,852 total hours TIS.

We are not changing the final rule AD as a result of this comment.

Comment Issue No. 3: FAA Underestimated the Cost Impact

What is the commenter's concern? The commenter states that the cost impact presented in the supplemental NPRM is incorrect because:

—Removal of the hinges provides the most practical method of fluorescent dye-penetrant inspections and this would raise the inspections costs from $120 to $500; and

—The cost of Piper P/N 47–528–32 MLG door hinge assemblies is approximately $465 instead of $270 as specified in the supplemental NPRM.

What is FAA's response to the concern? We do not concur with changing the cost to accomplish the inspection. While removing the hinges from the airplane to accomplish the inspection is an option, FAA has determined that you can adequately accomplish the inspections without removing the hinges.

After checking with the manufacturer, we concur that the cost for the replacement MLG door hinge assemblies is approximately $465.

We are changing the Cost Impact section of this document accordingly.

Comment Issue No. 4: AD Should Not Apply to MLG Door Hinge Assemblies That Are Made of Steel

What is the commenter's concern? The commenter states that the AD should follow Piper Service Bulletin No. 682 and not require inspections on airplanes that have MLG door hinge assemblies that are made of steel. The commenter also requests that FAA include a list of the two outside sources that currently provide assemblies made of steel.

What is FAA's response to the concern? We concur that the AD should not apply to MLG door hinge assemblies that are made of steel and we are changing the final rule accordingly.

However, FAA is not including the list of those outside sources that currently provide assemblies made of steel. If we did include this list, out of fairness, we would feel obligated to revise the AD anytime an outside source developed and received approval for installation of MLG door hinge assemblies made of steel on the affected airplanes.

A list of outside vendors with FAA-approved assemblies made of steel is always available from the FAA address included in the AD.

The FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and editorial corrections. These changes and corrections provide the intent that was proposed in the supplemental NPRM for correcting the unsafe condition and do not impose any additional burden than what was intended in the supplemental NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 2,344 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
2 workhours × $60 per hour = $120	No parts required for the inspection	$120 per airplane	$281,280

We estimate the following costs to accomplish the replacement, if necessary:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 per hour = $120	$465 per airplane	$585 per airplane.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 80–26–05, Amendment 39–3994, and by adding a new AD to read as follows:

2000–25–01 The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment 39–12035; Docket No. 96–CE–69–AD; Supersedes AD 80–26–05, Amendment 39–3994.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are:

(1) Certificated in any category; and

(2) Equipped with Piper part number 46653–00 or 47529–32 main landing gear door hinge assemblies made of aluminum (or FAA-approved equivalent part numbers).

Models	Serial Nos.
PA–31	31–2 through 31–900 and 31–7300901 through 31–8312019.
PA–31–300	31–2 through 31–900 and 31–7300901 through 31–8312019.
PA–31–350	31–5001 through 31–5004 and 31–7305005 through 31–8553002.
PA–31–325	31–7400990, 31–7512001 through 31–8312019.
PA–31P	31P–1 through 31P–109 and 31P–7300110 through 31P–7730012.
PA–31T	31T–7400002 through 31T–8120104.
PA–31T1	31T–7804001 through 31T–8104073; 31T–8104101; 31T–8304001 through 31T–8304003; and 31T–1104004 through 31T–1104017.
PA–31T2	31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008.
PA–31T3	31T–8275001 through 31T–8475001, and 31T–5575001.
PA–31P–350	31P–8414001 through 31P–8414050.

Note 1: Aircraft referred to as Model PA–31–310 are actually Model PA–31 airplanes. Actions specified for PA–31 airplanes must also be performed. See also AD 80–26–05, Piper Service Bulletin No. 682, dated July 24, 1980, and type certificate data sheet A20SO.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked main landing gear (MLG) inboard door hinge assemblies. This could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) For airplanes with any MLG inboard door hinge assembly that is Piper part number 47529–32 (or FAA-approved equivalent part number), accomplish the following: (i) Inspect all hinges and hinge attachment angles in the MLG inboard door hinge assembly; and (ii) Replace any cracked MLG inboard door hinge assembly with a Piper part number 47529–32 assembly (or FAA-approved equivalent part number)	Inspect upon accumulating 2,000 hours time-in-service (TIS) on the MLG inboard door hinge assembly or within the next 100 hours TIS after January 19, 2001 (the effective date of this AD), whichever occurs later; and thereafter at intervals not to exceed 2,000 hours TIS. Accomplish the replacement, if necessary, prior to further flight after the inspection	Accomplish in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980
(2) For airplanes with any aluminum MLG inboard door hinge assembly that is not Piper part number 47529–32 (or FAA-approved equivalent part number) or any assembly that is not made of steel, accomplish the following: (i) Inspect all hinges and hinge attachment angles in the MLG inboard door hinge assembly; and. (ii) Replace any cracked MLG inboard door hinge assembly with a Piper part number 47529–32 assembly (or FAA-approved equivalent part number)	Inspect at the next inspection required by AD 80–26–05 or within the next 100 hours time-in-service (TIS) after January 19, 2001 (the effective date of this AD), whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS. Accomplish the replacement, if necessary, prior to further flight after the inspection where the cracked assembly was found	Accomplish in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 80–26–05 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where con I get information about any already-approved alternative methods of compliance?* Contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: *william.o.herderich@faa.gov.*

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piper Service Bulletin No. 682, dated July 24, 1980. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from The New Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 80–26–05, Amendment 39–3994.

(j) *When does this amendment become effective?* This amendment becomes effective on January 19, 2001.

Issued in Kansas City, Missouri, on November 30, 2000.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 00–31451 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–121–AD; Amendment 39–12036; AD 2000–25–02]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation 7, 8, and 11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–05–04, which currently requires you to repetitively inspect the front and rear wood spars for damage (including installing any as-needed inspection holes) and repair or replace any damaged wood spar on certain American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes. Damage is defined as cracks, compression cracks, longitudinal cracks through the bolt holes or nail holes, or loose or missing nails. This AD retains the actions of AD 98–05–04 for the ACAC Model 8GCBC airplanes; extends the actions to all ACAC 7, 8, and 11 series airplanes (except the inspections are not repetitive for certain 7 and 11 series airplanes); incorporates

alternative methods of accomplishing the actions; and requires reporting any damage found. This AD is the result of a review of the service history of the affected airplanes that incorporate wood wing spars where damage was found in this area and consideration of all public comments received. The actions specified by this AD are intended to detect and repair or replace damaged wood wing spars. Continued operation with such damage could progress to in-flight structural failure of the wing with consequent loss of control of the airplane.

DATES: This amendment becomes effective on January 19, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of January 19, 2001.

ADDRESSES: You may get service information referenced in this AD from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: *www.amerchampionaircraft.com*. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7697; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

What prior AD action did FAA take on this subject? A review of the service history of ACAC 7, 8, and 11 series airplanes that incorporate wood wing spars caused FAA to initiate AD rulemaking action. In-flight wing structural failures on ACAC Model 8GCBC airplanes and several incidents and accidents on other affected airplane models where damage was found on the front and rear wood spars prompted this review. Those rulemaking actions are:

—AD 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998), which applies to ACAC Model 8GCBC airplanes, and requires you to accomplish the following: (1) inspect (repetitively) the front and rear wood spars for damage (including installing any necessary inspection holes); and (2) repair or replace any damaged wood spar; and

—a notice of proposed rulemaking (NPRM) (Docket No. 97–CE–79–AD) that, if followed by a final rule, would have required the same actions as AD 98–05–04 on all ACAC 7, 8, and 11 series airplanes (excluding the Model 8GCBC airplanes). This NPRM was published in the **Federal Register** on November 3, 1997 (62 FR 59310).

What is the potential impact if FAA took no action? Continued operation with such cracks and damage could progress to in-flight structural failure of the wing with consequent loss of the airplane.

Did we receive comments on the NPRM (Docket No. 97–CE–79–AD)? The FAA encouraged interested persons to participate in the rulemaking aspects of this subject. We received numerous comments on the NPRM (Docket No. 97–CE–79–AD). Many of these comments proposed that we combine the actions of the NPRM and AD 98–05–04 into one AD that would affect all ACAC 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions. Based on these comments, FAA:

—Withdrew the NPRM Docket No. 97–CE–79–AD (64 FR 29969, June 4, 1999); and

—Issued an NPRM that proposed to supersede AD 98–05–04 with a new AD that would combine the actions of AD 98–05–04 and Docket No. 97–CE–79–AD; and incorporate recommended alternative methods for complying with those actions. This NPRM was published in the **Federal Register** on June 4, 1999 (64 FR 29972).

Accomplishment of the proposed inspection as specified in the NPRM would be required in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998.

Was the public invited to comment on the NPRM? The FAA encouraged interested persons to participate in the making of this amendment. At the request of several commenters, FAA reopened the comment period for the NPRM on July 29, 1999. This action was published in the **Federal Register** on August 4, 1999 (64 FR 42297). A summary of the comments on both the original NPRM and the reopening of the comment period follow, along with FAA's responses.

Comment Issue No. 1: Extend the Comment Period to 60 Days

What is the commenters' concern? Several commenters request an extension to the comment period in order to have more time to provide information on the proposed rule.

What is FAA's response to the concern? As discussed previously, FAA reopened the comment period to give the public an additional 30 days to respond.

We are not changing the final rule as a result of these comments.

Comment Issue No. 2: Only Require a One-Time Inspection for Certain 7 and 11 Series Airplanes

What is the commenters' concern? Numerous commenters agree with the AD pertaining to ACAC airplane models. However, the commenters state that certain lightweight 7 and 11 series airplanes with low horsepower engines should only be subject to a one-time spar inspection because they are not certificated for aerobatic flight and are not subjected to the same operations as the heavier high horsepower airplanes.

What is FAA's response to the concern? The FAA has determined that wing damage incidents are the major cause of compression cracks and other spar damage in low horsepower and lightweight airplanes. Therefore, a one-time inspection is acceptable for ACAC Models 7AC, 7ACA, S7AC, 7BCM (L–16A), 7CCM (L–16BA), S7CCM, 7DC, S7DC, 7EC, S7EC, 7FC, 7JC, 11AC, S11AC, 11BC, S11BC, 11CC, and S11CC airplanes. These airplanes have engines that are 90 horsepower and lower (includes 60- to 90-horsepower engines). You must repetitively inspect airplanes that are modified with engines greater than 90 horsepower.

You must also accomplish the inspection any time one of the affected airplanes is involved in any accident or incident where the wing is involved.

We are changing the final rule AD to only require an initial inspection on certain ACAC 7 and 11 series airplanes, with any subsequent inspections required for any affected airplane involved in an incident/accident (that happens after the effective date of this AD) where wing damage occurs (*e.g.*, surface deformations such as abrasions, gouges, scratches, or dents, etc.).

Comment Issue No. 3: Exclude Certain Airplanes From the Proposed AD

What is the commenters' concern? Numerous commenters request that FAA remove lightweight and low horsepower airplanes from the Applicability of the AD. The commenters state that these airplanes are not certificated for aerobatic operation and, therefore, do not receive the stress levels in the spar that caused the need for this AD.

What is FAA's response to the concern? We do not concur that these lightweight and low horsepower airplanes should be removed from the AD. We have received compression crack and spar damage reports on lightweight and low horsepower airplane models (*i.e.*, Model 7AC). The following is a synopsis from a service difficulty report (SDR) for a Model 7AC airplane:

> During annual inspection, found rear spar right wing cracked across width of spar outboard rear strut attach point next to doubler. Defect was found using an inspection mirror and strong light through an inspection hole. The removal of fabric material on the bottom of the wing in the area of suspicion verified the defect. Submitter suggests immediate inspection of all Aeronca Champ 7AC aircraft both on the top and bottom of the aft wing strut spar attach points outboard.

This information caused us to propose (in the NPRM) a requirement for submitting all findings of airplane wing damage. You can accomplish this by describing the damage in a Malfunction or Defect Report (M or D), FAA Form 8010–4, and sending a copy of the report to the Chicago Aircraft Certification Office. (You may submit M or D reports electronically through the FAA AFS–600 web page at *http://www.mmac.jccbi.gov/afs/afs600*. Because you will lose access to the report once you electronically submit it, we recommend that you print two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records). We will evaluate the data as it is received and initiate further rulemaking action, if necessary.

We are not changing the AD based on these comments. However, as discussed in the previous comment, the AD will only require an initial inspection on the airplanes equipped with low horsepower engines. Subsequent inspections are required for any affected airplane involved in an incident/accident (that happens after the effective date of this AD) where wing damage occurs (*e.g.*, surface deformations such as abrasions, gouges, scratches, or dents, etc.).

Comment Issue No. 4: The AD Should Only Apply to Aerobatic Aircraft

What is the commenters' concern? Two commenters state that spar damage is a direct result of aerobatic flight. The commenters suggest that FAA change the proposal to affect only aircraft certificated for aerobatic activity.

What is FAA's response to the concern? We do not concur. Reports indicate that spar damage occurs on low horsepower airplane models that are not certificated for aerobatic flight. We have determined that wing damage incidents are the primary cause of compression cracks on the lower horsepower airplanes.

We are not changing the AD based on these comments.

Comment Issue No. 5: Exclude Airplanes With Damaged Spars That Can Still Support the Required Load

What is the commenter's concern? One commenter requests that FAA exclude airplanes from the Applicability of the AD if any wing with a compression crack can still pass testing to 150-percent of design limit load.

What is FAA's response to the concern? We do not concur. Compression cracked test spar specimens may not represent wood spars where compression cracks occur randomly along the spar length. The only assurance that the specimen was in a "Pass" condition was if the specimen's compression crack was identical to that of a failed spar. All compression cracks are not identical. Even slight compression cracks may seriously reduce the strength of the material. The approved type design of the affected airplanes does not allow cracked spars.

We are not changing the AD based on these comments.

Comment Issue No. 6: Properly Performed Annual Inspections are Sufficient

What is the commenters' concern? Several commenters state that, if you accomplish a proper annual inspection, then there is no need for this AD. These commenters state that the required maintenance programs provide the procedures to detect spar damage. These commenters also state that part 43 of the Federal Aviation Regulations (14 CFR part 43) requires inspection of the wing spars.

What is FAA's response to the concerns? We concur that maintenance manuals for the ACAC 7, 8, and 11 series airplanes and part 43 of the Federal Aviation Regulations (14 CFR part 43) specify inspecting the wing spars for cracks during annual and 100-hour inspections, particularly at the butt ends and strut attach points. However, this existing guidance does not provide instructions for sufficiently accessing the spar or identifying damage. For example, compression cracks appear as barely visible, minute, and jagged series of lines that run across the grain on the top or bottom of the spar. If not viewed with detailed instructions and the proper equipment, you could overlook them. SDR's submitted since the issuance of AD 98–05–04 have confirmed the importance of inspecting the wing spars in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998. We can only require compliance with service information through AD action.

We are not changing the AD based on these comments.

Comment Issue No. 7: Exempt Airplanes With Wings That Were Recently Rebuilt

What is the commenters' concern? Two commenters request that FAA exempt from the AD airplanes where the wing spars were recently inspected and found to be free of damage or where the spars were replaced.

What is FAA's response to the concern? We do not concur. To adequately inspect the wing spars for cracks and compression cracks, you must utilize the detailed inspection procedures in ACAC Service Letter 406, Revision A, dated May 6, 1998 (or procedures approved by FAA). Information available to FAA reveals that mechanics have overlooked compression cracks when not following these procedures.

We are not changing the AD based on these comments

Comment Issue No. 8: Eliminate, Minimize, or Provide Alternatives to Installing Top Inspection Covers

What is the commenters' concerns? Several commenters request that FAA remove from this AD the option of installing inspection covers on the top surface of the wings of the ACAC 7, 8, and 11 series airplanes. Specific concerns are as follows:

1. Top wing inspection covers could leak, cause water damage to the spar, and result in structural degradation of the wing;

2. Top wing inspection covers could come off during flight due to the negative pressure on the top surface, and result in wing damage; and

3. Top wing inspection covers will cause aerodynamic and performance concerns.

What is FAA's response to the concerns? We do not concur with removing the option of installing top inspection covers from the AD. ACAC Service Letter 406, Revision A, dated May 6, 1998, allows the mechanic to utilize a variety of procedures and techniques (including the installation of top inspection covers) to perform a thorough inspection depending on his/her experience, equipment, and the aircraft configuration without mandating a specific number, type, or

location of inspection holes/covers. The service information only specifies the installation of additional FAA-approved holes/covers as needed to accomplish a thorough spar inspection. The mechanic performing the inspection is in the best position to determine the minimum number, type, and location of inspection holes/covers needed to accomplish a thorough spar inspection. We also do not concur that the installation of these covers will cause other safety concerns. Our response to each specific concern is as follows:

1. Water damage to the spar: The manufacturer designed and tested an FAA-approved watertight seal for the as-needed wing inspection cover installation. This minimizes the potential for water damage.

2. Wing damage: The manufacturer designed the covers specifically to not cause damage to the reinforced cutout if the eight screws that attach the covers are inadvertently left off or not tightened, and the covers come off the airplane. Testing indicates that the covers easily flip backward off the wing if all screws are omitted.

3. Aerodynamic and performance concerns: FAA flight test personnel have evaluated these as-needed top inspection covers. As of the issuance of this document, we have not received any reports of decreased performance or service difficulty reports concerning any of the over 200 sets (400 inspection covers) that have already been delivered to the field.

We are not changing the AD based on these comments.

Comment Issue No. 9: Require the Installation of Top Inspection Covers

What is the commenter's concerns? One commenter requests that we not require the mechanics to inspect with a high intensity light source and mirrors. The commenter states that compression cracks are extremely difficult to detect and are easily overlooked.

The commenter also states that the initial inspection method described in ACAC Service Letter 406, Revision A, dated May 6, 1998, is inadequate and the best way to detect compression cracks is by removing a section of the leading edge and looking directly at the top of the spar. This commenter suggests requiring the installation of FAA-approved inspection holes/covers that are better situated on top of the wing than the holes/covers referenced in ACAC Service Letter 417, Revision C, dated May 6, 1998.

What is FAA's response to the concern? ACAC Service Letter 406, Revision A, dated May 6, 1998, allows the mechanic to utilize a variety of procedures and techniques to perform a thorough inspection depending on his/her experience, equipment, and the aircraft configuration without mandating a specific number, type and/or location of inspection holes/covers. The service information only specifies the installation of additional FAA-approved holes/covers as needed to accomplish a thorough spar inspection. The mechanic performing the inspection is in the best position to determine the type, number, and location of inspection holes/covers needed to accomplish a thorough spar inspection.

Mechanics utilizing ACAC Service Letter 406, Revision A, dated May 6, 1998, have detected compression cracks on the wing spars that were not detected during previous annual inspections. We have determined that the procedures in the service letter, as proposed in the NPRM, provide sufficient information to detect compression cracks in the wing spars of ACAC 7, 8, and 11 series airplanes.

We are not changing the AD based on these comments.

Comment Issue No. 10: Cost Impact Is Too Low

What is the commenter's concern? One commenter believes that the cost of installing inspection covers will be significantly greater than we estimated in the NPRM. We infer that the commenter is referring to the additional costs associated with cosmetic paint refinishing costs after the installation of any needed inspection holes/covers.

What is FAA's response to the concern? The cost impact of this AD reflects 11 as-needed inspection holes installed in the bottom of each wing (a total of 22) and 2 as-needed inspection holes/covers installed in the top of each wing. The decision on the number and location of any as-needed inspection holes/covers is at the discretion of the inspector in order to adequately inspect the entire surface of both wing spars.

Cosmetic considerations are not reflected. If you utilize the alternative inspection method referenced in ACAC Service Letter 406, Revision A, dated May 6, 1998, the number of as-needed inspection holes/covers would be reduced. This would further reduce the cost impact of this AD.

We are not changing the AD based on these comments.

Comment Issue No. 11: Provide Additional Inspection Guidance to Service Letter 406A and/or Require Additional Training for Inspectors

What is the commenters' concerns? Five commenters state that compression cracks are extremely difficult to detect and are easily overlooked. Because of this, the commenters believe that FAA should:

—Include additional guidance to the AD to assure a thorough inspection is performed; and

—Require mechanics to obtain additional training in the detection of compression cracks on ACAC 7, 8, and 11 series airplanes.

What is FAA's response to the concerns? We concur that the compression cracks are difficult to detect and mechanics could easily overlook them if they are not experienced in detecting damage specific to wood structure. ACAC Service Letter 406, Revision A, dated May 6, 1998, contains a detailed description of compression cracks. This service letter also:

—Includes a recommendation that mechanics should have previous compression crack detection experience to perform certain methods of inspection; and

—Allows the mechanic to utilize different procedures and techniques to perform a thorough inspection depending on his/her experience, equipment, and the aircraft configuration without mandating a specific number, type, and/or location of inspection holes/covers.

Mechanics have detected compression cracks in aircraft while utilizing ACAC Service Letter 406, Revision A, dated May 6, 1998. We have determined that the procedures in the service letter, as proposed in the NPRM, provide sufficient information to detect compression cracks in the wing spars of ACAC 7, 8, and 11 series airplanes.

We are not changing the AD based on these comments.

Comment Issue No. 12: Proposed Inspection Is Too Broad.

What is the commenters' concern? Two commenters suggest that FAA narrow the areas of inspection for compression cracks. These commenters state that this will not affect the inspection results.

What is FAA's response to the concern? We do not concur. The Inspection: (Bottom/Top) section of ACAC Service Letter 406, Revision A, contains the following:

> Both front and rear spars need to be inspected. The key areas to be concerned with are shown in figure 1.

Figure 1 of this service letter depicts an isolated area that requires inspection of the top and bottom surfaces of the spar (near the strut attachments). The service letter only includes procedures for the installation of top inspection covers in this area for the front spar. However, as stated as a warning in the service letter, loose rib nails may indicate compression cracks behind the rib flanges and you need to inspect these.

Compression cracks have been detected in locations other than the strut attachment area. The forward or aft face of the spar needs to be inspected for indication of damage. This position has also been supported by an SDR on an ACAC Model 7GCBC airplane on the aft spar. This SDR contains the following information:

> Subject spar indicated irregular lines across the grain at 163 inches from the root end. Fore and aft spar faces cleaned and sanded & the vertical lines remained. Pressure applied to the spar each side indicated slight movement. A hard downward pressure force caused the spar to crack along the apparent fault lines. Submitter enclosed a copy of the page taken from the wood encyclopedia, which describes compression failures in wood. Submitter suggests that this could have been caused by ground contact of the wing tip, sometime in the aircraft's history.

We also have received photos of a badly cracked front spar from an ACAC Model 7GCAA airplane. This compression crack occurred just outboard of the first rib outboard and adjacent to the fuel tank bay and it extended 2/3 upward from the bottom of the spar. The report specifies that the aircraft had just over 500 hours time-in-service (TIS).

We are not changing the AD based on these comments.

Comment Issue No. 13: Improper Wing Rigging Causes Many Compression Cracks

What is the commenter's concern? One commenter believes improper rigging of the aircraft wings causes many compression cracks. This commenter requests additional service information.

What is FAA's response to the concern? While FAA agrees that improper rigging could lead to compression cracks, all information available to us indicates the problem does not result from improper rigging alone. The reporting requirement in the AD will allow us to continue to collect data and investigate the cause of compression cracks and other reported damage. We may initiate further rulemaking action on this subject based on the information received.

We are always open for groups such as the manufacturer and type clubs to work together to come up with valuable information, such as standardized rigging criteria and procedures.

We are not changing the AD based on these comments.

Comment Issue No. 14: Change the Wording in the AD

What is the commenters' concern? Two commenters suggest that the phrase "to prevent possible compression cracks and other * * *" that is included in the NPRM be changed to read "to detect possible compression cracks and other * * *"

What is FAA's response to the concern? We concur that the word detect should be added. We are changing this part of the final rule AD to read:

> * * * to detect and repair or replace damaged wood wing spars. Continued operation with such damage could progress to in-flight structural failure of the wing with consequent loss of control of the airplane.

Comment Issue No. 15: Use Carbon Tetrachloride in the Compression Crack Inspection Method

What is the commenter's concern? One commenter states that use of carbon tetrachloride would improve the compression crack inspection method.

What is FAA's response to the concern? The FAA agrees that the use of carbon tetrachloride may enhance the inspection of unvarnished wood and may have limited benefit if used on varnished spars. However, the Environmental Protection Agency (EPA) has classified carbon tetrachloride as a carcinogen. Health concerns and the availability of this substance prevent us from requiring its use through this AD.

If desired, the application of any commercially-available "light weight" (not thick or viscous) wood stain instead of carbon tetrachloride may enhance the inspection process.

We obtained this information from the Forest Products Laboratory, which is a unit of the research organization of the Forest Service, U.S. Department of Agriculture.

We have determined that the application of a high intensity light source directly on the varnished surface, as specified in Service Letter 406, Revision A, dated May 6, 1998, adequately highlights compression cracks.

We are not changing the AD based on these comments.

Comment Issue No. 16: Only Require Inspection During Fabric Recovering

What is the commenters' concern? Two commenters suggest that FAA only require inspection during fabric recovering. These commenters state that this should be adequate to detect wing spar damage.

What is FAA's response to the concern? The FAA does not concur. Information tells us differently. For example, Advisory Circular (AC) 43.13–1B, paragraph 2.2.a., contains the following:

> Polyester fabric deteriorates only by exposure to ultraviolet radiation as used in aircraft covering environment. When coatings completely cover the fabric, its service life is infinite.

Therefore, the special instructions contained in ACAC Service Letter 406, Revision A, dated May 6, 1998, are required to identify certain types of damage that may occur in the span of 10, 20, or more years of service. Additionally, the above-referenced AC also specifies "Therefore, it is very important to * * * provide adequate inspection access to all areas of (man-made) fabric covered components * * *"

We are not changing the AD based on these comments.

Comment Issue No. 17: Preflight of Aircraft Should Include Wing Flexing

What is the commenter's concern? One commenter states that he was taught to always "jack the wings back and forth" during the preflight inspection. The commenter recommends we consider adding this preflight technique to the AD. Since the commenter did not elaborate on the reason for this technique, we infer that the commenter believes this technique will help to audibly detect wing spar damage.

What is FAA's response to the concern? The FAA does not concur. This technique may not detect most types of damage and may actually initiate damage if performed too aggressively.

We are not changing the AD based on these comments.

The FAA's Determination and an Explanation of the Provisions of the AD

What have we decided? After careful review of all available information related to the subject presented above, including the above-referenced comments, FAA has determined that:

—Air safety and the public interest require the adoption of the rule as proposed except for the changes described in the above comment disposition and minor editorial corrections; and

—These changes and minor corrections will not add any additional burden upon the public than was already proposed.

What does this AD require? This AD retains the inspection and repair or

replacement requirements of AD 98–05–04 for the ACAC Model 8GCBC airplanes; extends all these actions to all ACAC 7, 8, and 11 series airplanes, except the inspections are not repetitive for certain 7 and 11 series airplanes; requires that all damage be reported to FAA; and incorporates alternative methods of accomplishing certain actions.

Why is the compliance time in calendar time instead of hours time-in-service? The compliance time of this AD is presented in calendar time and TIS. We are utilizing repetitive inspection compliance times that will coincide with the owner's/operator's annual inspection program. This should have the least impact upon operators because the costs of having the airplane out of service can be absorbed with regularly scheduled down-time.

To assure that compression cracks do not go undetected in the wood spars of the affected airplanes, we are using the following compliance times:

1. The initial inspection at the first annual inspection that occurs 30 calendar days or more after the effective date of the AD or within 13 calendar months after the effective date of the AD, whichever occurs later; and

2. The repetitive inspections (for those airplanes affected) thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first.

Cost Impact

How did we determine the cost impact of this AD? The following cost analysis is based on the presumption that 26 as-needed inspection holes/covers (11 per wing on the bottom surface and 2 per wing on the top surface) will be installed on each affected airplane, in order to complete a thorough inspection in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998. All of these inspection holes/covers may not be needed, which will reduce the cost impact upon U.S. operators of the affected airplanes.

How many airplanes are impacted by this AD? The FAA estimates that 6,701 airplanes in the U.S. registry will be affected by this AD.

What is the cost impact of the initial inspection on owners/operators of the affected airplanes? We estimate that it will take approximately 6 workhours (Installations: 5 workhours; Initial Inspection: 1 workhour) per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $292 per airplane, provided that each airplane will have 11 as-needed standard inspection holes/covers per wing bottom surface and 2 as-needed inspection holes/covers per wing top surface (total of 26 new covers per airplane) installed. If the airplane needs more inspection covers installed (*e.g.*, a result of previous non-factory wing recover work), the cost could be slightly higher. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,369,052, or $652 per airplane.

What about the cost of repetitive inspections and possible repairs and replacements? These cost figures are based on the presumption that no affected Model 8GCBC airplane owner/operator has accomplished the installations or the initial inspection as currently required by AD 98–05–04, and do not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur over the life of his/her airplane.

However, each repetitive inspection will cost substantially less than the initial inspection because the initial cost of the as-needed inspection hole/cover installations will not be repetitive. If installed, as-needed inspection holes/covers allow easy access for the inspection of the wood spars, and the compliance time will enable the owners/operators of the affected airplanes to accomplish the repetitive inspections at regularly scheduled annual inspections.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998), and by adding a new AD to read as follows:

2000–25–02 American Champion Aircraft Company (ACAC): Amendment 39–12036; Docket No. 98–CE–121–AD; Supersedes AD 98–05–04, Amendment 39–10365.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models, all serial numbers, certificated in any category, that are equipped with wood wing spars:

(1) Group 1 airplanes: ACAC Models 7AC, 7ACA, S7AC, 7BCM (L–16A), 7CCM (L–16B), S7CCM, 7DC, S7DC, 7EC, S7EC, 7FC, 7JC, 11AC, S11AC, 11BC, S11BC, 11CC, and S11CC airplanes that have not been modified to incorporate an engine with greater than 90 horsepower.

(2) Group 2 airplanes: ACAC Models 7ECA, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBA, 7GCBC, 7HC, 7KC, 7KCAB, 8GCBC, and 8KCAB airplanes; and any of the airplane models referenced in paragraph (a)(1) of this AD that have been modified to incorporate an engine with greater than 90 horsepower.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and repair or replace damaged wood wing spars. Continued operation with such cracks and damage could progress to an in-flight structural failure of the wing with consequent loss of control of the airplane.

(d) *What actions must be accomplished on all Group 1 airplanes to address this problem?* For any Group 1 airplane as referenced in paragraph (a)(1) of this AD, the following must be accomplished to address the problem:

Action	Compliance time	Procedures
(1) Inspection Requirements: Inspect (detailed visual) the entire length of the front and rear wood wing spars for cracks, compression cracks, longitudinal cracks through the boltholes or nail holes, or loose or missing rib nails. We will refer to these conditions as damage throughout the rest of this section.	Initially inspect at the first annual inspection that occurs 30 calendar days or more after January 19, 2001 (the effective date of this AD), whichever occurs later.	Accomplish in accordance with the instructions in ACAC Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies as an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(2) Additional Inspection Requirements: If, after January 19, 2001 (the effective day of this AD), any airplane is involved in an accident/incident that involves wing damage (*e.g.*, wing surface deformations such as abrasions, gouges, scratches, or dents, etc.), accomplish the inspection required in paragraph (d)(1) of this Ad.	Prior to further flight after each accident/incident that involved wing damage.	Accomplish in accordance with the instructions in ACAC Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies as an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(3) Replacement Requirements: If any damage is found during any inspection required by this AD, repair or replace the wood spar.	Prior to further flight after the inspection where the damage is found.	In accordance with Advisory Circular (AC) 43.13–1B, Acceptable Methods, Techniques, and Practices; or other data that is FAA-approved for wing spar repair or replacement.
(4) Reporting Requirements: If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA. (i) Include the airplane model and serial number, the extent of the damage (location and type), and the number of total hours time-in-service (TIS) on the damaged wing. (ii) You may submit M or D reports electronically by accessing the FAA AFS–600 web page at *http://www.mmac.jccbi.gov/afs/afs600*. Because you will lose access to the report once you electronically submit it, we recommend that you print two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records. (iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (14 U.S.C. 3501 *et seq.*). The OMB assigned this approval Control Number 2120–0056.	Within 10 days after the inspection where the damage was found or within 10 days after January 19, 2001 (the effective date of this AD), whichever occurs later.	Mail the information to: FAA, Chicago Aircraft Certification Office (ACO), Attention: Docket No. 98–CE–121–AD, 2300 E. Devon avenue, Des Plaines, Illinois 60018; facsimile: (847) 294–7834. You may also file electronically as discussed in this AD.

(e) *What actions must be accomplished on all Group 2 airplanes to address this problem?* For any Group 2 airplane as referenced in paragraph (a)(2) of this AD, the following must be accomplished to address the problem:

Action	Compliance time	Procedures
(1) Inspection Requirements: Inspect (detailed visual) the entire length of the front and rear wood wing spars for cracks, compression cracks, longitudinal cracks through the boltholes or nail holes, or loose or missing rib nails. We will refer to these conditions as damage throughout the rest of this section.	Initially inspect at the first annual inspection that occurs 30 calendar days or more after January 19, 2001 (the effective dae of this AD) or within the next 13 calendar months after January 19, 2001 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours time-in-service (TIS) or 12 calendar months, whichever occurs first.	Accomplish in accordance with the instructions in American Champion Aircraft Corporation (ACAC) Service Letter No. 406, Revision A, dated May 6, 1998. This service bulleting specifies an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.

Action	Compliance time	Procedures
(2) Additional Inspection Requirements: If, after January 19, 2001 (the effective date of this AD), any airplane is involved in an accident/incident that involves wing damage (*e.g.*, wing surface deformations such as abrasions, gouges, scratches, or dents, etc.), accomplish the inspection required in paragraph (e)(1) of this AD.	Prior to further flight after each accident/incident that involved wing damage.	Accomplish in accordance with the instuctions in American Champion Aircraft Corporation (ACAC) Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(3) Replacement Requirements: If any damage is found during any inspection required by this AD, repair or replace the wood spar.	Prior to further flight after the inspection where the damage is found.	In accordance with Advisory Circular (AC) 43.13–1B, Acceptable Methods, Techniques, and Practices; or other data that is FAA-approved for wing spar repair or replacement.
(4) Reporting Requirement: If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA. (i) Include the airplane model and serial number, the extent of the damage (location and type), and the number of total TIS on the damaged wing. (ii) You may submit M or D reports electronically by accessing the FAA AFS–600 web page at *http://www.mmac.jccbi.gov/afs/afs600*. Because you will lose access to the report once you electronically submit it, we recommend printing two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records. (iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (14 U.S.C. 3501 *et seq.*). The OMB assigned this approval Control Number 2120–0056.	Within 10 days after the inspection where the damage was found or within 10 days after January 19, 2001 (the effective date of this AD), whichever occurs later.	Mail the information to: FAA, Chicago Aircraft Certification Office (ACO), Attention: Docket No. 98–CE–121–AD, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; facsimile: (847) 294–7834. You may also file electronically as discussed in this AD.

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Chicago Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) ACAC Service Letter 406, Revision A, and ACAC Service Letter 417, Revision C, both dated May 6, 1998, specify additional inspection and installation alternatives over that included in the original issue of these service letters. All inspection and installation alternatives presented in these service letters are acceptable for accomplishing the applicable actions of this AD.

(3) Alternative methods of compliance approved in accordance with AD 98–05–04, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (817) 294–7697; facsimile: (817) 294–7834.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* The inspections required by this AD must be done in accordance with American Champion Aircraft Corporation (ACAC), Service Letter 406, Revision A, dated May 6, 1998. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: "www.amerchampionaircraft.com". You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *Are other AD's affected by this action?* This amendment supersedes AD 98–05–04, Amendment 39–10365.

(k) *When does this amendment become effective?* This amendment becomes effective on January 19, 2001.

Issued in Kansas City, Missouri, on December 4, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31450 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–365–AD; Amendment 39–12041; AD 2000–25–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes. This action requires repetitive inspections of the aft end of each inboard flap track of the wing outboard flap, and corrective actions, if necessary. This action is necessary to detect and correct damage of the aft end of each flap track, which could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane.

DATES: Effective January 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–365–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–365–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S; FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that cracking of the aft end of an inboard flap track of the wing outboard flap was found on a Model 737–200 series airplane having improved flap tracks installed. The cracking was found during an inspection that was conducted to resolve problems with the trim that occurred during flight. The airplane had accumulated 38,484 flight cycles. The inner and outer webs of the track, as well as the upper and lower flanges, were severed. The only component holding the aft end of the flap track together was the fail-safe bar, which was bolted to the flap track. There was also a small section broken off the upper outboard chord. Further investigation revealed that the cracks were caused by corrosion at the fasteners that attach the fail-safe bar to the inner and outer webs. Such conditions, if not detected and corrected, could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing All Operator Message (AOM) M–7200–00–01854, dated July 27, 2000, which describes procedures for a close (detailed) visual inspection to detect damage (corrosion, cracking) of the aft end of the left- and right-hand inboard flap tracks of the wing outboard flap, and corrective actions. The corrective actions consist of, among other things, repair or rework of any damaged flap tracks.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct damage of the aft end of each flap track at the wing buttock line of the inboard flap track of the wing outboard flap, which could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane. This AD requires accomplishment of the inspection and corrective actions specified in the service information described previously, except as discussed below.

Differences Between All Operators Message and This AD

Operators should note that the effectivity listing of the AOM specifies all Boeing Model 737–100 and –200 series airplanes. However, this AD is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes on which the flap tracks have certain Boeing part numbers. The subject flap tracks may have been removed from an airplane and re-installed, without being inspected, on another airplane. Therefore, the FAA finds it necessary to revise the applicability of this AD by limiting the repetitive inspections to only certain Boeing Model 737–100, –200, and –200C series airplanes on which certain flap tracks have been installed.

The AOM specifies a one-time close visual inspection of the aft end of the left- and right-hand inboard flap tracks of the wing outboard flap. This AD requires the applicable inspection to be repeated at intervals not to exceed 1,200 flight cycles, regardless of detection of cracking. The FAA has determined that, because of the safety implications and consequences associated with fracture of the aft end of each inboard flap track of the wing outboard flap, repetitive inspections are necessary.

The AOM references only one flap track part number (P/N) 65–46428–25. The FAA has determined that there are other flap tracks with similar configurations at the aft end that have different P/N's, and those flap tracks would be subject to the same unsafe condition.

Additionally, the AOM specifies that the manufacturer may be contacted for disposition of certain repair conditions, however, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and

opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–365–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–25–07 Boeing: Amendment 39–12041. Docket 2000–NM–365–AD.

Applicability: Model 737–100, –200, and –200C series airplanes; on which the left- or right-hand inboard flap tracks of the wing outboard flap have a part number (P/N) listed in Table 1 (below) of this AD; certificated in any category.

TABLE 1.—BOEING FLAP TRACKS SUBJECT TO THIS AD

Name	Part Number
Boeing	65–46428–9
	65–46428–15
	65–46428–17
	65–46428–19
	65–46428–21
	65–46428–23
	65–46428–25
	65–46428–27
	65–46428–33
	65–46428–35

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the aft end of each inboard flap track of the wing outboard flap, which could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Do a detailed visual inspection to detect damage (corrosion, cracking) of the aft end of the left- and right-hand inboard flap tracks of the wing outboard flap, per Boeing All Operator Message (AOM) M–7200–00–01854, dated July 27, 2000; at the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,200 flight cycles.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) Within 30 days after the effective date of this AD.

(2) Within 1,200 flight cycles after the last documented inspection or overhaul of the aft end of each flap track.

(3) Before the accumulation of 15,000 total flight cycles.

Corrective Actions

(b) If any damage (corrosion, cracking) is detected, before further flight, repair or rework the flap track per the "Repair and Rework Instructions" specified in Boeing AOM M–7200–00–01854, dated July 27, 2000. Where the AOM specifies that the manufacturer may be contacted for disposition of certain corrective actions (*i.e.*, repair and/or rework of the flaps), this AD requires such repair and/or rework to be done per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued per §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done per Boeing All Operator Message M–7200–00–01854, dated July 27, 2000. This incorporation by reference was approved by the Director of the Federal Register per 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on December 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31448 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ANM–16]

RIN 2120–AA66

Establishment of Restricted Area, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area 3203D (R–3203D) at Orchard, ID. The Idaho Army National Guard has requested that this restricted area be established to support its annual training requirements. This restricted area will be established adjacent to the existing R–3203A and be used for a maximum of three weeks annually.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On April 25, 2000, the FAA proposed to establish R–3203D, at Orchard, ID, to provide essential ground maneuvering space to meet the Idaho Army National Guard annual training requirements (65 FR 24141). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received objecting to the proposal. Except for editorial changes, and minor corrections to the Southern boundary of R–3203D, aligning it with the boundary of the existing R–3202A, this amendment is the same as that proposed in the Notice.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated October 2, 2000.

The Rule

This amendment to 14 CFR part 73 (part 73) establishes R–3203D, Orchard, ID, adjacent to the existing R–3203A to assist the Idaho Army National Guard annual training. The restricted area will be effective for a period of time not exceeding three weeks annually. Expansion in the number of gun batteries assigned to field artillery units, along with requirements that each assigned battery accomplish several moves per day to different firing points, has created the need to expand the available restricted airspace, for a period of time each year, to provide for more effective annual training tests. All artillery firing will be directed into existing impact areas located approximately in the center of R–3203A. This restricted area is needed to provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing restricted area.

The restricted area will be utilized for a period of time not exceeding three weeks per year by the Idaho Army National Guard Field Artillery and will be released to the FAA for public use during periods when it is not required for military training.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has reviewed the environmental analysis contained within the Army National Guard Supplemental Environmental Assessment for the fielding of the Paladin Weapon System at Orchard Training Area. We find it provides the requisite update of the environmental conditions presented in the Army National Guard Environmental Impact Statement (ARNG EIS) dated August 1988 entitled "Orchard Training Areas; Birds of Prey Advisory Committee; Endangered Species Survey."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

* * * * *

R–3203D Boise, ID, Orchard Training Area [New]

Boundaries. Beginning at lat. 43°14′00″ N., long. 116°16′33″ W.; at lat. 43°17′51″ N., long. 116°16′25″ W.; at lat. 43°19′02″ N., long. 116°14′45″ W.; at lat. 43°19′02″ N., long. 116°06′36″ W.; at lat. 43°15′58″ N., long. 116°01′12″ W.; at lat. 43°15′00″ N., long. 116°01′03″ W.; at lat. 43°17′00″ N., long. 116°05′03″ W.; at lat. 43°17′00″ N., long. 116°12′03″ W.; to the point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance not to exceed three weeks annually.

Controlling agency. FAA Boise ATCT.

Using agency. Commanding General Idaho Army National Guard.

* * * * *

Issued in Washington, DC, on December 12, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–32176 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30221; Amdt. No. 426]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on December 12, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption for the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

Part 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO I.F.R. ALTITUDES & CHANGEOVER POINTS

[Amendment 426 effective date: January 25, 2001]

From	To	MEA
Color Routes		
§ 95.10 Amber Federal Airway 7 Is Amended To Read in Part		
CAMPBELL LAKE, AK NDB	MINERAL CREEK, AK NDB	12000

REVISIONS TO I.F.R. ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 426 effective date: January 25, 2001]

From	To	MEA
§ 95.1001 District Routes—U.S.		
Atlantic Routes—AR001 Is Amended To Read In Part		
TORRY, FL FIX *18000—MRA MAA—45000	*METTA, SC FIX	25000
Atlantic Routes—AR003 Is Amended To Read In Part		
OLDEY, SC FIX *18000—MRA MAA—45000	*PANAL, OA FIX	2500
PANAL, OA FIX MAA—45000	CAROLINA BEACH, NC NDB	2500
Atlantic Routes—AR004 Is Amended To Read In Part		
Ashly, SC NDB *18000—MRA	*METTA, SC FIX.	
Atlantic Routes—AR007 Is Amended To Read In Part		
ADOOR, FL FIX *18000—MRA MAA—45000	*MILOE, OA FIX	25000
MILOE, OA FIX *18000—MRA MAA—45000	*PANAL, OA FIX	2500
PANAL, OA FIX MAA—45000	DIXON, NC NDB/DME	2500
Atlantic Routes—AR014 Is Amended To Read In Part		
*METTA, SC FIX MAA—45000 *18000—MRA	DIXON, NC NDB/DME	18000
§ 95.6001 Victor Routes—U.S.		
§ 95.6066 VOR Federal Airway 66 Is Amended To Delete		
ABILENE, TX VORTAC	BOWIE, TX VORTAC	3500
BOWIE, TX VORTAC	BONHAM, TX VORTAC	3700
BONHAM, TX VORTAC	SULPHUR SPRINGS, TX VOR/DME	2500
SULPHUR SPRINGS, TX VOR/DME	TEXARKANA, AR VORTAC	2000
§ 95.6069 VOR Federal Airway 69 Is Amended To Delete		
BELCHER, LA VORTAC *3000—MRA	*COTTA, LA FIX	2000
COTTA, LA FIX *3000—MRA	*GOURD, LA FIX	2000
GOURD, LA FIX	EL DORADO, AR VORTAC	20000
§ 95.6094 VOR Federal Airway 94 Is Amended To Read In Part		
DEMING, NM VORTAC **1000—MRA **7700—MOCA	*MOLLY, NM FIX	**9000
§ 95.6163 VOR Federal Airway 131 Is Amended To Delete		
MC ALESTER, OK VORTAC	BASAY, OK FIX	2700
HOFFE, OK FIX	OKMULGEE, OK VOR/DME	2600
§ 95.6163 VOR Federal Airway 163 Is Amended To Delete		
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000
MILLSAP, TX VORTAC *2500—MOCA	BOWIE, TX VORTAC	*3000
BOWIE, TX VORTAC	ARDMORE, OK VORTAC	3000
ARDMORE, OK VORTAC	WILL ROGERS, OK VORTAC	3000

REVISIONS TO I.F.R. ALTITUDES & CHANGEOVER POINTS—Continued
[Amendment 426 effective date: January 25, 2001]

From	To	MEA
§ 95.6208 VOR Federal Airway 208 Is Amended To Read In Part		
HANKSVILLE, UT VORTAC	CARBON, UT VOR/DME	10000
§ 95.6305 VOR Federal Airway 305 Is Amended To Delete		
BELCHER, LA VORTAC *3000—MOCA	*COTTA, LA FIX	2000
COTTA, LA FIX *3500—MRA	*FOSTE, LA FIX	2000
FOSTE, LA FIX	EL DORADO, AR, VORTAC	2000
§ 95.6358 VOR Federal Airway 358 Is Amended To Read In Part		
SAN ANTONIO, TX VORTAC *2700—MOCA	GUADA, TX FIX	*4000
GUADA, TX FIX	STONEWALL, TX VORTAC	4000
§ 95.6358 VOR Federal Airway 358 Is Amended To Delete		
WACO, TX VORTAC	GLEN ROSE, TX VORTAC	3000
GLEN ROSE, TX VORTAX	MILLSAP, TX VORTAC	3000
MILLSAP, TX VORTAC *2500—MOCA	BOWIE, TX VORTAC	*3000
BOWIE, TX VORTAC	ARDMORE, OK VORTAC	3000
ARDMORE, OK VORTAC	ALEXX, OK FIX	3000
ALEXX, OK FIX	CAMAF, CA FIX	3000
CAMAF, CA FIX	WILL ROGERS, OK VORTAC	3000
§ 95.6382 VOR Federal Airway 382 Is Amended To Delete		
BRYCE CANYON, UT VORTAC *10000—MAA *13300—MOCA	*GREEL, UT FIX	**16000
GREEL, UT FIX *1400—MCA SAKES, UT FIX, SW BND *13300—MOCA	*SAKES, UT FIX	**16000
SAKES, UT FIX *9200—MOCA	GRAND JUNCTION, CO VORTAC	*11000
§ 95.6457 VOR Federal Airway 457 Is Amended To Read		
ILIAMNA, AK NDB/DME	*AWOMY, AK FIX	**5300
	W BND	*5300
	E BND	*9000
*7000—MCA AWOMY FIX *5300—MOCA	E BND	
AWOMY, AK FIX *7000—MCA MOFOF FIX	*MOFOF, AK FIX	9000
	W BND	
MOFOF, AK FIX	KENAI, AK VOR/DME	
	W BND	*3000
	E BND	*9000
*2700—MOCA		
§ 95.6568 VOR Federal Airway 568 Is Amended To Read In Part		
SAN ANTONIO, TX VORTAC *2700—MOCA	GUADA, TX FIX	*4000
GUADA, TX FIX	STONEWALL, TX VORTAC	4000

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7151 Jet Route No. 151 Is Amended To Read In Part**			
VULCAN, AL VORTAC	FARMINGTON, MO VORTAC	25000	41000

From	To	Changeover points: Distance	Changeover points: From
95.8003 VOR Federal Airway Changeover Points **ALASKA V–457 Is Added To Read**			
ILAMNA, AK NDB/DME	KENAI, AK VOR/DME	47	ILIAMNA

[FR doc. 00–32178 Filed 12–15–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 000817239–0239–01]

RIN: 0691–AA37

Direct Investment Surveys: BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend the reporting requirements for the quarterly BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate.

The BE–577 survey is a mandatory survey and is conducted quarterly by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. BEA will send BE–577 survey forms to potential respondents each quarter; responses will be due within 30 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when reports should be filed within 45 days. The survey is a cut-off sample survey that obtains data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents.

These final rules increase the exemption level for the survey—the level at or below which reports are not required—from $20 million to $30 million in total assets, sales or gross operating revenues, and net income (positive or negative) of the U.S.-owned foreign business enterprise. This change will reduce the number of respondents that otherwise must report in the survey, thus reducing respondent burden, particularly for small companies.

EFFECTIVE DATE: These final rules will be effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: On September 21, 2000 the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, published in the **Federal Register**, volume 65, No. 184, FR 57121–57123, a notice of proposed rulemaking setting forth revised reporting requirements for the BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 806.14 to set forth reporting requirements for the BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. BEA will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108) hereinafter, "the Act." Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible—

(1) Conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States; and

(2) Conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment and trade in services which may have significant implications for the economic welfare and national security of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The quarterly survey of U.S. direct investment abroad collects data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. The BE–577 is a cut-off sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, and the national income and product accounts. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of foreign affiliate.

Under these final rules, BEA is increasing the exemption level for reporting on the BE–577 quarterly survey from $20 million to $30 million. The exemption level is the level of a foreign affiliate's assets, sales, or net income at or below which a Form BE–577 is not required. Thus, if a foreign business is owned 10 percent or more by the U.S. parent, but its total assets, sales or gross operating revenues, and net income all are $30 million (positive or negative) or less, the U.S. parent will not have to report it. The exemption level for the BE–577 survey was last raised following the 1994 benchmark survey and was first applicable to the quarterly survey covering the second quarter of 1995. The current changes in exemption level will first apply to the reports for the first quarter of 2001.

BEA has made a few changes to the report forms themselves in addition to raising the exemption level. These changes, however, did not require rule changes and are not reflected in the final rules. BEA is extending the use of the North American Industry Classification System (NAICS) to the BE–577 survey. NAICS is already being used on all BEA surveys of foreign direct investment in the United States and BEA used NAICS to collect industry information on the 1999 BE–10

benchmark survey of U.S. direct investment abroad. In addition, BEA is modifying the detail on affiliated services by type of service by dropping the category for communication services in the by-type breakdown and adding the presumably larger measurement and consulting and research and development categories. BEA is also clarifying the instructions.

Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608–0004) under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The survey is expected to result in the filing of about 12,500 foreign affiliate reports by an estimated 1,500 U.S. parent companies. A parent company must file one form per affiliate. The respondent burden for this collection of information is estimated to vary from 0.5 hours to 4 hours per response, with an average of 1.25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Because reports are filed 4 times per year, 50,000 responses annually are expected. Thus the total annual respondent burden of the survey is estimated at 62,500 hours (12,500 respondents times 4 times 1.25 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0004, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Although the BE–577 survey does not itself collect data on the size of the U.S. companies that must respond, data collected on related BEA surveys indicate that the U.S. companies that have direct investments abroad tend to be quite large. The exemption level for the BE–577 survey is set in terms of the size of a U.S. company's foreign affiliates (foreign companies owned 10 percent or more by the U.S. company); if a foreign affiliate has assets, sales, or net income greater than the exemption level, it must be reported. Usually, the U.S. parent company that is required to file the report is many times larger than its largest foreign affiliate.

Small U.S. businesses tend to have few, if any, foreign affiliates and the foreign affiliates that they do own are small. With the increase in the exemption level for the BE–577 survey from $20 million to $30 million (stated in terms of the foreign affiliate's assets, sales, and net income), even fewer small U.S. businesses will be required to file reports for their foreign affiliates. The estimated annual cost to a U.S. business reporting for five or fewer foreign affiliates is estimated to be less than $1,000.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Penalties, Reporting and recordkeeping requirements, United States investment abroad.

Dated: December 1, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

§806.14 [Amended]

2. Section 806.14(e) is amended by removing "$20,000,000" and adding "$30,000,000" in its place.

[FR Doc. 00–32090 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 000714208–0208–01]

RIN 0691–AA40

Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad.

The BE–11 survey is a mandatory survey and is conducted annually by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. BEA will send the annual survey to potential respondents in March of each year; responses will be due by May 31. The last BE–11 annual survey was conducted for 1998. (A BE–11 survey is not conducted in a year, such as 1999, when a BE–10 Benchmark Survey of U.S. Direct Investment Abroad is conducted.) The survey is a cut-off sample survey that obtains financial and operating data covering the overall operations of nonbank U.S. parent companies and their nonbank foreign affiliates.

These final rules increase the exemption level for reporting on the BE–11B(SF) short form and the BE–11C form from $20 million to $30 million; increase the exemption level for reporting on the BE–11B(LF) long form from $50 million to $100 million; and direct U.S. Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $100 million (positive or negative) to report only selected items on the BE–11A form. These changes will reduce the number of reports that otherwise must be filed, thus reducing respondent burden, particularly for small companies.

EFFECTIVE DATE: These final rules will be effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, published in the **Federal Register**, volume 65, No. 184, FR 57123–57126, a notice of proposed rulemaking setting forth revised reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 806.14 to set forth the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. BEA will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, "the Act." Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible—

(1) Conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States; and

(2) Conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment which may have significant implications for the economic welfare and national security of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey of U.S. direct investment abroad provides a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The BE–11 is a cut-off sample survey that covers all foreign affiliates (and their U.S. parent companies) above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent.

The survey consists of an instruction booklet, a claim for not filing the BE–11, and the following report forms:

1. Form BE–11A—Report for nonbank U.S. Reporters;

2. Form BE–11B(LF) (Long Form)—Report for majority-owned nonbank foreign affiliates with assets, sales, or net income greater than $100 million (positive or negative);

3. Form BE–11B(SF) (Short Form)—Report for majority-owned nonbank foreign affiliates with assets, sales, or net income greater than $30 million, but not greater than $100 million (positive or negative); and

4. Form BE–11C—report for minority-owned nonbank foreign affiliates with assets, sales, or net income greater than $30 million (positive or negative).

Under these final rules, BEA is increasing the exemption level for reporting on the BE–11B(SF) short form and BE–11C form from $20 million to $30 million and the exemption level for reporting on the BE–11B(LF) long form from $50 million to $100 million. The exemption level for these forms is the level of a foreign affiliate's assets, sales, or net income at or below which a form is not required. In addition to raising the exemption levels, BEA is directing U.S. Reporters with total assets, sales, or gross operating revenues, and net income less than or equal to $100 million (positive or negative) to report only selected items on the BE–11A form.

For fiscal year 2002 only, these final rules will require the largest nonbank foreign affiliates owned between 10 and 20 percent to be reported on Form BE–11C, along with affiliates owned between 20 and 50 percent. In all years, reporting on Form BE–11C is required if an affiliate is owned between 20 and 50 percent by all U.S. Reporters combined and if its assets, sales, or net income exceed $30 million (positive or negative). Primarily to reduce reporting burden of the survey, affiliates owned less than 20 percent do not have to be reported annually. However, U.S. direct investment abroad is defined by law to include all foreign business enterprises owned 10 (not 20) percent or more, directly or indirectly, by a U.S. person. BEA conducts periodic benchmark surveys of U.S. direct investment abroad (the BE–10), covering all foreign affiliates owned 10 percent or more. A benchmark survey for the year 1999 is now being conducted; the next benchmark survey will cover the year 2004. In order to maintain reliable estimates of data for the universe of all foreign affiliates in nonbenchmark years, reporting for the largest affiliates owned between 10 and 20 percent is needed for at least one year between benchmark surveys. Although the U.S. ownership percentages in these affiliates are low, some of the affiliates are very large and have a sizable impact on the estimates. Under these final rules, submission of Form BE–11C for nonbank foreign affiliates owned directly and/or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which assets, sales, or net income exceed $100 million (positive or negative) would be required for fiscal year 2002 only.

These new rules will first apply to the survey covering fiscal year 2000. The 2000 forms will be mailed out in March 2001 and will be due May 31, 2001.

BEA has made a few changes to the report forms themselves. These changes, however, did not require rule changes and are not reflected in the final rules. BEA is extending the use of the North American Industry Classification System (NAICS) to the annual survey. NAICS is already being used on all BEA surveys of foreign direct investment in the United States and BEA used NAICS to collect industry information on the 1999 BE–10 benchmark survey of U.S. direct investment abroad.

In addition to the change in industry classification, BEA is adding equity ownership, interest received, and interest paid to the BE–11B(LF); expanding the owner's equity section on the BE–11B(LF); reducing the detail collected on the composition of external finances of the foreign affiliate on the BE–11B(LF); and deleting production royalty payments on the BE–11B(LF). Finally, BEA is making improvements in the layout of the survey forms, and in the placement and clarify of instructions. The design follows that used for the BE–10 benchmark survey.

Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608–0053) under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The survey is expected to result in the filing of reports from about 1,500 respondents. The respondent burden for this collection of information is estimated to vary from 4 to 3,000 hours per response, with an average of 68.4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden of the survey is estimated at 102,600 hours (1,500 respondents times 68.4 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0053, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. U.S. companies that have direct investments abroad tend to be quite large. The exemption level for the BE–11 survey is set in terms of the size of a U.S. company's foreign affiliates (foreign companies owned 10 percent or more by the U.S. company); if a foreign affiliate has assets, sales, or net income greater than the exemption level, it must be reported on Form BE–11B(LF), BE–11B(SF), or BE–11C. Usually, the U.S. parent company that is required to file the report is many times larger than its largest foreign affiliate. With the increase in the exemption level for the BE–11 survey from $20 million to $30 million, even fewer small U.S. businesses will be required to file. To further reduce the reporting burden on small businesses, U.S. Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $100 million (positive or negative) are required to report only selected items on the BE–11A form for U.S. Reporters in addition to forms they may be required to file for their foreign affiliates.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Penalties, Reporting and recordkeeping requirements, United States investment abroad.

Dated: December 1, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O., 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.14(f)(3)(i), (f)(3)(ii), (f)(3)(iii), and (f)(3)(iv)(A) through (C), are revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) * * *

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each nonbank U.S. person having a foreign affiliate reportable on form BE–11B(LF), BE–11B(SF), or BE–11C. If the U.S. reporter is a corporation, Form BE–11A is required to cover the fully consolidated U.S. domestic business enterprise.

(A) If for a nonbank U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $100 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE–11A. It must also file a Form BE–11B(LF), BE–11B(SF), or BE–11C, as applicable, for each nonexempt foreign affiliate.

(B) If for a nonbank U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE–11A only items 1 through 27 and Part IV. It must also file a Form BE–11B(LF), BE–11B(SF), or BE–11C, as applicable, for each nonexempt foreign affiliate.

(ii) (Form BE–11B(LF) or (SF) (Report for Majority-owned Foreign Affiliate).

(A) A BE–11B(LF) (Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $100 million (positive or negative) at the end of, or for, for the affiliate's fiscal year.

(B) A BE–11B(SF)(Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $30 million (positive or negative), but for which no one of these items was greater than $100 million (positive or negative), at the end of, or for, the affiliate's fiscal year.

(iii) Form BE–11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph(f)(3)(ii)(A) of this section was greater than $30 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2002 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) * * *

(A) None of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $30 million (positive or negative).

(B) For fiscal year 2002 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $100 million (positive or negative).

(C) For fiscal years other than 2002, it is less than 20 percent owned, directly or indirectly by all U.S. Reporters of the affiliate combined.

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[FR Doc. 00–32089 Filed 12–15–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket Nos. 97–2295 (Formerly 96–47), 97–3032, 98–3644, 98–4720, 99–5704, 99–6298, 99–6575, and 99–6576]

RIN 2125–AE11, AE25, AE38, AE50, AE58, AE66, AE71, and AE72

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices for Streets and Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendments to the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

SUMMARY: This document contains the complete revision to the MUTCD as adopted by the FHWA. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F and recognized as the national standard for traffic control devices on all public roads. The new MUTCD has incorporated technological advances and application change, as well as improved the overall organization to clarify the discussion of the content.

DATES: The final rule is effective January 17, 2001. However, the FHWA is setting later compliance dates for some portions of the MUTCD; see the **SUPPLEMENTARY INFORMATION** section for further details. Incorporation by reference of the publication listed in the regulations is approved by the Director of the **Federal Register** as of January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest D. L. Huckaby, Office of Transportation Operations (HOTO–1), (202) 366–9064, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Room 3412, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web site at *http://www.access.gpo.gov/nara.*

The text for the millennium edition of the MUTCD is available from the FHWA Office of Transportation Operations' web site at: *http://mutcd.fhwa.dot.gov*

Background

The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions (*i.e.*, both English and metric dimensions will be included in the text) and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD.

Although the Federal Highway Administrator is responsible for adopting the changes contained in this new millennium edition, the National Committee on Uniform Traffic Control Devices (NCUTCD) took the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the National Association of County Engineers (NACE), the American Public Works Association (APWA), the Institute of Transportation Engineers (ITE), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting, reformatting and editing the entire 1988 MUTCD into an updated and more user friendly document.

The FHWA reviewed and incorporated most of the NCUTCD's proposals for revising the MUTCD in several **Federal Register** notices of proposed amendments. This document contains the disposition of the comments to the dockets of the notices of proposed amendments which were published in the **Federal Register**, shown in the table below. The table also shows the number of letters submitted to each docket and the number of separate comments addressed as part of the FHWA review and deliberation.

Adopted changes to the MUTCD text, as discussed herein, are available on the MUTCD Internet site *(http://mutcd.fhwa.dot.gov).* The final rule text will be available on the MUTCD Internet site in December 2000. Anyone unable to download the text should write to the Federal Highway Administration, Office of Transportation Operations, HOTO–1, 400 Seventh Street, SW., Washington, DC 20590.

TABLE OF NOTICES OF PROPOSED AMENDMENTS PUBLISHED BY FHWA

MUTCD part	Title	Docket number and date	Number of letters received	Separate comment entries
Part 1	General provisions/Definitions	97–3032 12/05/97	24	86
Part 1 (update)	General provisions/Definitions	99–6575 12/30/99	14	60
Chapters 2A,D,E,F,I	Signs	98–3644 06/11/98	47	800
Chapters 2G, 2H	Tourist oriented directional signs, & recreation & cultural interest signs.	98–4720 06/24/99	80	95

TABLE OF NOTICES OF PROPOSED AMENDMENTS PUBLISHED BY FHWA—Continued

MUTCD part	Title	Docket number and date	Number of letters received	Separate comment entries
Chapter 2C	Warning signs	99–5704 06/24/99	42	329
Chapter 2B	Regulatory signs	99–6298 12/21/99	86	304
Part 3	Markings	97–2295 01/06/97	40	247
Part 3 (update)	Markings	99–6575 12/30/99	27	181
Part 4	Signals	97–2295 01/06/97	24	264
Part 4 (update)	Signals	99–6575 12/30/99	111	578
Part 5	Low volume roads	99–6298 12/21/99	23	231
Part 6	Temporary traffic control	99–6576 12/30/99	56	2652
Part 7	Traffic controls for school areas	97–3032 12/05/97	20	156
Part 8	Traffic control systems for railroad-highway grade crossings.	97–2295 01/06/97	29	210
Part 8 (update)	Highway-rail grade crossings	99–6298 12/21/99	23	210
Part 9	Traffic controls for bicycles	98–4720 06/24/99	79	357
Part 10	Traffic controls for highway-light rail grade crossings	99–5704 06/24/99	46	381

Summary of Comments

The FHWA has reviewed the comments received in response to the dockets listed above and other information related to the MUTCD and these proposals. The FHWA is acting on the following items published in the notice of proposed amendments. Each action and its basis is summarized below:

Discussion of Adopted Amendments to Part 1—General Provisions

The FHWA received 146 comments from 38 commenters concerning Part 1. Only the technical (not editorial) comments are addressed in this discussion. Two notices of proposed amendments (NPA) were published at 62 FR 64324 on December 5, 1997, and at 64 FR 73612 on December 30, 1999.

1. In Part 1 Introduction, the FHWA is incorporating a discussion on defining the following condition headings: STANDARD, OPTION, GUIDANCE, and SUPPORT. This change addresses many comments received regarding the difficulty in distinguishing between distinct sections in previous editions of the MUTCD. In the NPA for Part 1, this discussion was covered in Section 1A.10 MUTCD Changes, Interpretations, and Experimentations. Based on docket comments, the FHWA believes it is important for the reader to see this discussion before proceeding to the other sections of the manual. Therefore, the FHWA is moving this discussion to the Introduction.

The FHWA is also changing the way that these condition headings appear throughout the text. The FHWA received many comments expressing a need for improvement in the blocked headings found in the notice of proposed amendments. An explanation of both the terms and new heading style is included in the Introduction.

Also being added is a new STANDARD statement indicating that any traffic control device design or application provision contained in the MUTCD shall be considered in the public domain. The FHWA will not include any copyrighted or patented devices in the MUTCD with the exception of the Interstate Shield, a copyrighted device developed by the American Association of State Highway and Transportation Officials (AASHTO). Since this is a frequently asked question, the FHWA has decided to include language in the MUTCD to address this policy.

A new GUIDANCE paragraph is added to Part 1 Introduction to discuss the use of the International System of Units, a modernized version of the Metric system, and English units used throughout the MUTCD. The FHWA recommends that a decision be made to consistently use either the International System of Units (Metric) or English units in the design and installation of traffic control devices.

2. In Table I.1, Evolution of the MUTCD, two other revisions to the 1988 MUTCD are added for a total of seven revisions to the 1988 MUTCD, instead of the five revisions previously shown in the table. The FHWA has also added the new millennium edition to this table.

3. In Section 1A.01 Purpose of Traffic Control Devices, paragraph 1, the term "road users" is referenced. Road user is the preferred term because it encompasses both motorized and non-motorized traffic. The term "road user" is defined in Section 1A.13. The FHWA did not receive any docket comments on this change.

4. In Section 1A.02 Principles of Traffic Control Devices, under the SUPPORT statement, the term "speed" is added as a variable that governs the design, operation, placement, and location of various traffic control devices. The traveling speed of road users can affect their ability to appropriately respond to the driving task. The FHWA did not receive any docket comments on this change.

5. In Section 1A.03 Design of Traffic Control Devices, under the STANDARD statement, the term "colors" is added to the statement that all symbols not shown in the "Standard Highway Signs" [1] book shall be adopted using the

[1] "Standard Highway Signs," FHWA, 1979 Edition is included by reference in the 1988 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

procedures described in Section 1A.10, "MUTCD Changes, Interpretations, and Experimentations." The FHWA did not receive any docket comments on this change.

Also in this section, an OPTION is added to explain that State and local highway agencies may develop word message signs to notify road users of special regulations or situations. The FHWA did not receive any docket comments on this change.

6. In Section 1A.05 Maintenance of Traffic Control Devices, GUIDANCE is added to explain the difference between functional and physical maintenance. The FHWA did not receive any docket comments on this change.

7. In Section 1A.07 Responsibility for Traffic Control Devices, under the STANDARD statement, a reference to 23 CFR 655.603 is added to adopt the MUTCD as the national standard for all traffic control devices, and require that any State or other Federal agency MUTCD shall be in substantial conformance with the national standards. The FHWA did not receive any docket comments on this change.

8. In Section 1A.08 Authority for Placement of Traffic Control Devices, (titled in the 1999 NPA as "Placement Authority,") paragraph 1, STANDARD language is added to require that all traffic control devices and any other signs or messages within the street or highway right-of-way shall be placed only as authorized by a public authority or official having jurisdiction for the street or highway. The FHWA did not receive any docket comments on this change.

Also in Section 1A.08, GUIDANCE is added to indicate that any unauthorized traffic control device or any non-essential sign or message placed within the highway right-of-way should be removed. The FHWA did not receive any docket comments on this change.

9. In Section 1A.09 Engineering Study and Engineering Judgment (titled in the 1999 NPA as "Engineering Study or Judgment Required"), a clarification discussion on the difference between engineering study and engineering judgment is added. The FHWA did not receive any docket comments opposed to adding this discussion.

Also in Section 1A.09, one commenter stated that the word "required" in the title of this section (titled in the 1999 NPA as "Engineering Study or Judgment Required"), conflicts with the GUIDANCE given in this section. The FHWA agrees and has changed the title of this section to "Engineering Study and Engineering Judgment," because that title more appropriately conveys the objective of the section.

The same commenter also recommended that the STANDARD statement, which provides that the inclusion of a traffic control device in the MUTCD is not a legal requirement for their installation, be deleted from this section because he did not see its purpose. The FHWA disagrees because the STANDARD statement complements the GUIDANCE paragraphs in this section that discuss that the decision to use a particular device should be made on the basis of an engineering study or the application of engineering judgment.

10. In Section 1A.10 Interpretations, Experimentations, and Changes, STANDARD language is added to paragraph 1 to prohibit the design, application, and placement of traffic control devices other than those adopted in the MUTCD, unless the process for an interpretation, experimentation, or change is followed.

Also in Section 1A.10, is a new GUIDANCE statement indicating that any request for permission to experiment with a new traffic control device should contain a legally binding statement certifying that the traffic control device is not protected by a patent or a copyright since patented or copyright protected traffic control devices are not permitted in the MUTCD, except for the Interstate Shield.

11. A new Section 1A.13 Definitions of Words and Phrases, is added. Definitions in this section are provided for terms that are universally used throughout the MUTCD. The definitions for terms found in only one section of the MUTCD can be found within the specific section. The FHWA did not receive any docket comments opposed to this change. However, the FHWA did receive editorial comments on some of the definitions, and they are incorporated as minor modifications to the text.

12. A new Section 1A.14 Abbreviations Used on Traffic Control Devices, is added. These abbreviations shall be the STANDARD for word messages used in conjunction with traffic control devices. The FHWA did not receive any docket comments opposed to this change. However, the FHWA did receive editorial comments which have been incorporated as minor modifications to the text.

Discussion of Adopted Amendments to Chapter 2A—General Provisions and Standards

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

13. The heading for Chapter 2A is changed from "Introduction and General Standards" to "General Provisions and Standards." This title better describes the discussion in this chapter. There were no docket comments on this change.

14. In Section 2A.01 Function and Purpose of Signs, the STANDARD is modified to make the design and application standards for "all" signs dependent on the particular class of highway on which they are used. The 1988 MUTCD only specified "guide" signs rather than "all" signs. The FHWA has also added "special purpose roads" to the list of highway classification definitions in this section. The FHWA received no docket comments on this section.

15. In Section 2A.07 the title is changed from "Variable Message Signs" to "Changeable Message Signs" which is more commonly used within the transportation field and throughout MUTCD Sections 6F.02 and 6F.52. The FHWA is also referring readers to Section 6F.02 for more detailed discussion on changeable message signs. There were no docket comments on this section.

16. In Section 2A.08 Illumination and Retroreflectivity, two tables are added (Table 2A.1 and 2A.2) to help clarify the text that used to be in Sections 2A.16, 2A.17, and 2A.18 of the 1988 MUTCD. The FHWA received no docket comments on this section. In the STANDARD statement, the requirement of sign retroreflectivity or illumination is extended to include guide signs. This requirement applies to all signs unless specifically stated otherwise in the MUTCD text for a particular sign or group of signs. The FHWA believes this will improve safety and visibility during adverse ambient conditions. There were no docket comments on this section.

17. In Section 2A.10 Shapes, a new Table 2A.3, Use of Shapes, is added. In this new table, the following shapes are for exclusive use: STOP sign, YIELD sign, pennant; crossbuck, and trapezoid. The trapezoid shape is exclusively for recreational signs. However, as one commenter noted, since most recreational signs currently installed are

rectangular, the FHWA has also included the recreation signs in the guide signs category (see double asterisk in new table).

18. In Section 2A.1l Sign Colors, a new Table 2A.4, Uses of Sign Colors is added. The FHWA has also included a statement that the color coordinates and values shall conform to those shown in the color specifications described in the "Standard Highway Signs" (SHS) Book.[2] There were no docket comments on this section.

The FHWA believes that including this statement will help promote uniformity of colors where traffic control signs are designed and installed by providing the reader with a specific reference source for determining the proper color coordinates and values.

19. In Section 2A.13 Symbols, paragraph 2 explains that new symbol signs shall be adopted by FHWA based on research evaluation studies to determine comprehension data and recognition/legibility distance for the symbol sign. The FHWA added an OPTION statement for State and/or local highway agencies to conduct these research studies. There were no docket comments on this section.

20. In Section 2A.14 Word Messages, paragraph 2 provides GUIDANCE for determining sign letter heights is added. Sign letter heights should be determined based on 1 inch per 40 feet of legibility distance. The FHWA believes this amendment will improve sign legibility for all road users, especially for older road users whose vision may be diminished. The FHWA received no docket comments on this section.

In paragraph 5, an OPTION is provided for State and local highway agencies to use the combination of lowercase letters with initial uppercase letters for street name signs. In Section 2A.15 of the 1988 MUTCD, this OPTION only applied to destination guide signs and did not give States this flexibility. The FHWA has also eliminated the restriction for using series B alphabets only on street name signs. States now have the flexibility to use other standard series alphabets, as appropriate. There were no docket comments on this section.

21. In Section 2A.17 Overhead Sign Installations, the FHWA removed the restriction for placing signs on bridges located along only "urban" freeways and expressways in the OPTION statement. Overhead signs may be placed on "any" freeway or expressway bridge where feasible, to enhance safety and economy. This change provides more installation flexibility to State and local highway agencies. There were no docket comments on this section.

22. In Section 2A.18 Mounting Height, paragraph 7 allows State and local highway agencies the OPTION to adjust the mounting height of signs when the sign supports are located near the edge of the right-of-way on a steep backslope. There were no docket comments on this section.

23. In the first paragraph of Section 2A.19 Lateral Offset, a STANDARD is added that requires sign supports within the clear zone to be breakaway or shielded for the safety of the road user particularly in run-off-road incidents. There were no docket comments on this section.

24. In Section 2A.23 Maintenance, GUIDANCE is added to paragraph 2 which recommends that maintenance inspections be conducted both day and night. Although this is a general practice among many engineering and transportation officials, the FHWA believes it is a practice worth reiterating in the MUTCD. There were no docket comments on this section.

25. In Section 2A.24 Wrong-Way Traffic Control, the FHWA has deleted the OPTION and SUPPORT text that appeared in the NPA and modified the figures to more accurately show the typical sign application for wrong-way traffic control. This change helps the text read clearer and is based on the FHWA internal review process which identified inconsistencies, redundancy, and confusion between the text and the accompanying typical figures.

Discussion of Adopted Amendments to Chapter 2B—Regulatory Signs

The FHWA received 304 comments from 86 commenters concerning Chapter 2B Regulatory Signs. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 71358 on December 21, 1999.

26. In Section 2B.03 Size of Regulatory Signs, the FHWA received several comments requesting the addition of a table that depicts sign sizes. The FHWA has adopted a similar format to the one recommended by the NCUTCD that expands the sign category headings to cover additional sizes. Table 2B–1 lists sign sizes for Conventional Roads, Expressways, and Freeways, "minimum" and "oversized" signs.

27. In Section 2B.04 STOP Sign, paragraph 3, under the STANDARD statement, we proposed text requiring the use of the 4-way supplemental plaque (R1–3) at intersections where all approaches are controlled by STOP signs. This practice was optional in the 1988 MUTCD. The FHWA received one comment in opposition to this adopted change. The FHWA has adopted this requirement because it believes the use of the supplemental plaque will provide additional emphasis and motorist information at the stop location.

The FHWA is providing a phase-in compliance period of 3 years after the effective date of this final rule for existing installations to minimize any potential impact to State and local highway agencies. This period will allow for replacement of the existing signs after the normal service life. This change takes effect immediately for all new installations.

28. The proposed amendment to Section 2B.05 STOP Sign Applications recommended changing the title of this section from "Warrants for Stop Signs" to "STOP Sign Applications." This change eliminates the misunderstanding created by the term "warrants" which has a "legal sanctions" connotation. No commenters objected to this amendment, therefore the FHWA has changed the section title as proposed.

Several commenters indicated disappointment that the GUIDANCE statement in Section 2B.05, paragraph 1, was not upgraded to a STANDARD since many local governments receive frequent requests for STOP signs to be installed for speed control. Traffic engineers would like to have the language in the MUTCD that would back up their decision when faced with political pressure to install STOP signs to control speed. The FHWA does not consider this sufficient justification to elevate this GUIDANCE to a STANDARD requirement, particularly when you consider the potential impacts on local governments. Two commenters questioned why an engineering study, as opposed to an engineering judgment, was not required in the NPA. The FHWA believes that it is more practical to recommend that an engineering study be done for multi-way stops and that engineering judgment be used for one-way or two-way stops.

29. The FHWA received no objections to the proposed language in Section 2B.06 Stop Sign Placement, changing the language from OPTION to GUIDANCE for using STOP lines to supplement a STOP sign. The FHWA believes that the use of the STOP line will provide the road user with additional information for making safe traffic operation decisions, therefore the proposal is adopted.

Also in this section, under GUIDANCE, the FHWA received no comments objecting to the proposed language stating that the STOP signs should not be placed on the far side of the intersection. The text has been modified to clarify that when only one sign is installed, the STOP sign should not be placed on the far side of the intersection. This would allow the use of a supplemental STOP sign on the left side which may be appropriate in some cases.

30. In Section 2B.07 Multi-way Stop Sign Applications, paragraph 3, the FHWA added GUIDANCE to recommend that the decision to install Multi-way Stop signs should be based on an engineering study. The FHWA offers the same rationale that was provided in Section 2B.05, which addresses the reasoning for the use of engineering judgment as opposed to engineering study.

Several commenters responded to the GUIDANCE statement (in item C.1) which lists the criteria to consider in an engineering study for a multi-way STOP sign installation. There is a misunderstanding that the criteria was reduced from 500 to 300 vehicles per hour. The 1988 MUTCD provides for 500 vehicles per hour from all approaches and 200 combined vehicular and pedestrian units per hour from the minor-street approaches. The revised text provides: "1. The vehicular volume entering the intersection from the major street approaches (total of both approaches) averages at least 300 vehicles per hour for any eight hours of an average day, and 2. The combined vehicular, pedestrian, and bicycle volume entering the intersection from the minor street approaches (total of both approaches) averages at least 200 units per hour for the same eight hours, with an average delay to minor-street vehicular traffic of at least 30 seconds per vehicle during the highest hour * * * " This is the same criteria presented in a slightly different manner.

Additionally, Item C.2 of the criteria includes bicycle volumes to the combination volume studies of vehicles and pedestrians. The FHWA believes that bicycle travel is an integral part of traffic control considerations. Therefore, this should improve the traffic data when considering installation of traffic control devices. One commenter pointed out that typical count methods do not allow for comprehensive counting of bicycles over long time periods. The FHWA agrees that manual counts are routinely done over an 8–12 hour period in order to gather pedestrian and bicyclist data. It is true that automatic 24-hour counts, typically done by machines with rubber tubes across the roadway, cannot count bicycles; however, video methods offer a highly effective means to capture this data. Since the language is provided under GUIDANCE, the FHWA does not believe that this will cause an inconvenience to traffic engineers.

31. In Section 2B.11 Speed Limit Sign, a sentence is added to the OPTION statement to read: "A changeable message sign that changes for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times." In the NPA this was suggested as an addition to Section 2B.13 Night Speed Limit Sign. After reconsideration by the FHWA and from comments provided on this issue, it was determined that it be placed in Section 2B.11, because this is not necessarily a night condition.

32. In Section 2B.16 Reduced Speed Ahead Sign (R2–5 series), the FHWA received one comment regarding the proposed assembly method B under OPTION which when applied to a metric assembly, could require a five-sign configuration for an advance notice of change in speed limit. The FHWA believes that since this method is "optional" and not a requirement, its inclusion under OPTION is appropriate.

Also in this section, one comment was received suggesting that the background color for the supplemental plaques in GUIDANCE be changed from the color yellow to white so that motorists will not confuse this sign assembly with the School Speed Limit Sign Assembly. The FHWA agrees and has modified the language to read "When used with Speed Limit assemblies, the supplemental plaques should have a white background with a black legend and border, except for the METRIC plaque (see Section 2B.11)." The FHWA believes that it is essential that the METRIC plaque be distinct to draw attention to the use of metric units in that particular jurisdiction. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This period will allow for replacement of existing signs after the normal service life. This change is effective immediately for new sign installations.

33. In Section 2B.17 Turn Prohibition Signs (R3–1 to R3–4) (referenced in the NPA as Section 2B.15), the FHWA is combining the language for the Turn Prohibition and the U-Turn Prohibition signs into one section. No negative comments were received for this amendment.

The FHWA received one comment suggesting that the following text be added as an OPTION: "Where ONE WAY signs are used, Turn Prohibition signs may be omitted (see Section 2B.31)." The FHWA agrees and is adding this language because this may reduce the number of sign messages and prevent driver message overload.

34. In Section 2B.19 Mandatory Movement Lane Control Signs (R3–5, R3–5a and R3–7) (referenced in the NPA as Section 2B.16), the FHWA proposed adding a new Mandatory Movement Lane Control Sign (R3–5a) under OPTION to explain to road users that they must stay in the same lane and proceed straight through an intersection. Two comments were received that recommended changing the name of this sign to a "Straight Through Only" sign, which is a more specific description of the sign's intent. The FHWA agrees and is adopting this change.

Also in Section 2B.19 Mandatory Movement Lane Control Signs, a GUIDANCE statement is added to read: "Mandatory Movement Lane Control signs should be accompanied by lane control pavement markings, especially where traffic volumes are high, where there is a high percentage of commercial vehicles, or where other distractions exist." This was proposed as a requirement in the NPA, which stated that whenever lane use control signs are installed, lane-use pavement markings shall also be installed, and seven commenters objected to this proposal and mentioned that many jurisdictions are successfully using this signing without markings, and that making this condition mandatory may constitute an unfunded mandate creating serious hardships on many jurisdictions. The FHWA agrees with these suggestions, and believes that this language is more appropriately included as an OPTION in Section 2B.19.

35. In Section 2B.30 WRONG WAY Sign (R5–1a), the FWHA proposed to include a reference to Figure 2–5a which shows the signing and pavement marking treatments for divided highway intersections with medians 9 m (30 ft). Based on the negative comments received on the proposed figure, the FHWA has revised the figure to only depict WRONG WAY signing. The figure is renumbered Figure 2B–2, "Typical Wrong Way Signing for Divided Highways."

36. In Section 2B.32 ONE WAY Sign (R6–1, R6–2), the FHWA proposed to change the recommendation regarding placement of the One Way signs from a recommendation to a requirement. The FHWA received one negative comment regarding the change from GUIDANCE to STANDARD, stating the rationale that alley traffic is familiar traffic and that the current practice has been proven over time to be adequate. The FHWA disagrees with this comment and is adopting the proposed amendment. Not

[2] Ibid.

all traffic in alleys will always be familiar traffic, and this new requirement will increase safety by reducing the chance of road users inadvertently making wrong-way movements.

Another commenter to this section suggested adding a compliance period to relieve the cost burden on local agencies. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule to minimize any impact on State and local highway agencies. This period will allow for replacement of the existing signs after the normal service life.

37. In Section 2B.35 Design of Parking, Standing, and Stopping Signs, the FHWA inadvertently omitted the proposed text, stating that all street parking signs are to be illuminated or retroreflective. This text is consistent with Section 2A.08 Illumination and Retroreflectivity, which discusses the general provisions and standards for signs. The FHWA believes the language that addresses retroreflectivity and illumination is best discussed as a STANDARD in Section 2B.01 Application of Regulatory Signs. The FHWA is adopting the following text: "Regulatory signs shall be retroreflective or illuminated to show the same shape or similar color by both day and night, unless specifically stated otherwise in the MUTCD text discussion of a particular sign or group of signs (see Section 1A.08).

38. In Section 2B.37 Emergency Restriction Signs (referenced in the NPA as Section 2B.36, paragraph 3), FHWA is providing States with the choice of either using red or black legend and border on a white background for these signs. The FHWA did not receive any comments opposed to this adopted change.

39. The 1988 MUTCD contained a sentence that the WALK ON LEFT (R9–1) and NO HITCHHIKING (R9–4) signs do not have to be retroreflective. However, the FHWA is changing this and requiring that all signs, including these pedestrian signs, shall be either illuminated or retroreflective. The FHWA did not receive any comments opposed to this adopted change.

40. In Section 2B.40 Traffic Signal Signs, the FHWA proposed adding two new symbol signs for NO RIGHT TURN ON RED (R10–11c) and NO LEFT TURN ON RED (R10–11d). Three commenters disagreed with the use of these symbol signs as alternatives to the word legend R10–11a and R10–11b signs. Their concern was that these new symbol signs may be confused with the R3–1R (NO RIGHT TURN) and the R3–1L (NO LEFT TURN) symbol signs and will lead to increased violations for No Right Turn or No Left Turns situations. The FHWA believes that since the use of the proposed signs is an OPTION and not a requirement, that jurisdictions should be able to have the option of using either word message signs or these new symbol signs. Therefore, the text has been modified to read: "A symbolic NO TURN ON RED sign (R10–11c) may be used as an alternate to the R10–11a and R10–11b signs."

41. The FHWA added two new sections to address High Occupancy Vehicle (HOV) signing: Section 2B.49 High Occupancy Vehicle Lanes, and Section 2B.50 High Occupancy Vehicle Sign Applications and Placement. No commenters objected to this amendment.

The FWHA has deleted the R3–18 and R3–19 HOV signs from the text and Table 2B–1. These signs have been replaced by the remaining HOV signs found in Table 2B–1. The FHWA is providing a phase-in compliance period of 6 years after the effective date of the final rule to minimize any potential impact on State and local highway agencies. This period will allow for replacement of the existing signs after the normal service life. Immediate compliance is required for all new installations.

Discussion of Adopted Amendments to Chapter 2C—Warning Signs

The FHWA received 329 comments from 42 commenters concerning Chapter 2C. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999, under docket number FHWA–1999–5704.

42. The following general changes are in Chapter 2C: the various sizes of warning signs are shown in Table 2C–2; and the sections in 2C are grouped and discussed according to category type and application. Table 2C–1 shows the categories, application, appropriate sections, and sign numbers for the warning signs discussed in Chapter 2C. The table is designed so that it is easy to reference this information. The section topics are grouped by roadway-related, traffic-related, and non-vehicle related categories.

43. In Section 2C.02 Application of Warning Signs, paragraph 2 includes language that was proposed in the NPA as Section 2C.35 Motorized Traffic Signs. The language indicating that warning signs should be removed or covered when conditions or activities are seasonal or temporary is more appropriate for inclusion in Section 2C.02 which discusses general application for all warning signs. This language is removed from the section on "Motorized Traffic Signs."

In Table 2C–2 Warning Sign Sizes, the minimum sizes of the following signs are increased from 600 mm (24 inches) to 750 mm (30 inches): Merge Sign (W4–1), Narrow Bridge Sign (W5–2), Two-Way Traffic Sign (W6–3), and the Double Arrow Sign (W12–1). This change makes the minimum size consistent with other signs in the respective sign series and improve the sign visibility for road users, particularly older drivers. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing installations to minimize any potential impact to State and local highway agencies. This period will allow for replacement of existing signs after their normal service life. This change is effective immediately for all new installations.

The FHWA received comments from the Washington Department of Transportation (WDOT) and an engineering concerning Table 2C–2. The WDOT suggested that all diamond warning signs in this table should be the same size for a given roadway type facility. The example given was that the Curve Sign (W1 Series) requires more decision and reaction time than the Merge Sign (W4 Series). Therefore, the WDOT suggests that the Curve Sign, when used on expressways and freeways, should be at least the same size as shown for the Merge Sign which is 1200 mm x 1200 mm (48 inches by 48 inches). The FHWA agrees that there is a need to further study this issue of sign size consistency, and we will revisit it as part of a future notice of proposed amendments.

An engineering consultant suggested that the FHWA delete the term "standard size" used as a heading in Table 2C–2 because in tort liability cases, the term "standard size" is misunderstood and requires explanation. Based on this comment, the FHWA has revised Table 2C–2 to relate the warning sign sizes to the roadway classification using the following headings: Conventional Roads, Expressway, and Freeway. The FHWA has added a supplemental Table 2C–2a to show the minimum and oversized warning sign sizes.

44. In Section 2C.06 Horizontal Alignment Signs, the discussion for each of the horizontal alignment signs (W1–1 through W1–5) are combined into one section. A Table 2C–4 has been added to provide guidance for determining when to use the horizontal alignment signs based on the number of alignment changes and based on whether or not the advisory speed is

greater than, equal to, or less than 50 km/h (30 mph).

45. In Section 2C.07 Combination Horizontal Alignment/Advisory Speed Sign, a new W1–9 sign is added to the MUTCD. The W1–9 sign combines the Turn (W1–1) Sign or the Curve (W1–2) Sign with the Advisory Speed Plaque (W13–1) to create one sign. The FHWA has also included a reference to this sign in Section 2C.06 Horizontal Alignment Signs. In the NPA, the FHWA indicated that the W1–9 sign shall be installed within the turn or curve. However, based on the docket comments from the Illinois DOT, the Ohio DOT, and the Ohio Institute of Transportation Engineers, the FHWA has revised paragraph 2 to indicate that this sign shall be installed at the beginning of the turn or curve to give motorists prior warning before they enter the curve. The FHWA also received a comment from Pierce County, Washington indicating that this sign has potential application in urban or lower speed conditions. The FHWA agrees and has included a minimum size of 900 mm x 900 mm (36 x 36 inches) when this sign is used on low speed facilities.

46. In Section 2C.08 Combination Horizontal Alignment/Intersection Sign, a new W1–10 sign is added to the MUTCD. The W1–10 sign combines the Turn (W1–1) sign or the Curve (W1–2) sign with the Cross Road (W2–1) sign or Side Road (W2–2, W2–3) signs to create one sign. The FHWA has added a reference to this sign in Section 2C.06. The FHWA has deleted the following paragraph which was formerly paragraph 3 in the NPA: "The Combination Horizontal Alignment/Intersection sign should not be used if there is adequate roadway length to provide for separate signs showing each of the applicable features." Based on comments received, the FHWA believes that even when adequate space is available to install separate signs, this combination sign can provide a clearer message to the road user, and the decision to use this sign should be left to the State or local agency's discretion.

47. In Section 2C.10 Chevron Alignment Sign, based on a docket comment that the FHWA received from the Illinois DOT, the FHWA has added an OPTION to install the Chevron Alignment (W1–8) sign on the far side of an intersection to inform road users of a change in horizontal alignment through an intersection.

48. In Section 2C.12 Truck Escape Ramp Signs, a new TRUCK ESCAPE RAMP word message (W7–4c) sign is added to the MUTCD. Since this term is more widely and commonly used, the FHWA has included it as an OPTION to the RUNAWAY TRUCK RAMP word message (W7–4) sign. The FHWA has included GUIDANCE for installing No Parking (R8–3 series) signs near the ramp entrance due to the potential hazard caused by parking at these ramp locations.

49. In Section 2C.13 Road Narrows Sign, an OPTION to use the Advisory Speed (W13–1) plaque with the ROAD NARROWS (W5–1) sign is added.

50. In Section 2C.20 Low Clearance Sign, the use of the Low Clearance (W12–2) sign is required to notify road users of clearances less than 12 inches above the statutory maximum vehicle height or minimum structure height. Providing this critical information is especially important to operators of large vehicles.

51. A new Section 2C.22 Speed Hump Sign and new word message sign (W17–1) is added. The FHWA received a docket comment from the NCUTCD requesting this new word message sign. With the prevalent application of traffic calming techniques within residential communities and the possibility of States developing their own word message signs, the FHWA believes it is appropriate to include a standard word message sign in the MUTCD. In an effort to promote uniformity and discourage a proliferation of States using a variety of signs, the FHWA adopts the SPEED HUMP sign recommended by the NCUTCD. The addition of this new section means that the section numbers for the sections following 2C.22 are changed.

52. In Section 2C.24 Shoulder Signs, language is added to describe the application of the SOFT SHOULDER (W8–4) sign, the LOW SHOULDER (W8–9) sign, the SHOULDER DROP-OFF (W8–9a) sign, and the UNEVEN LANE (W8–11) sign. These word message signs are also appropriate for use in work zones (MUTCD Part 6). Since Part 6 references the signs but does not include a description, the FHWA has included an application discussion for these signs. The symbols for these existing signs have created confusion and misunderstanding. Therefore, the symbol signs are deleted in lieu of word messages. A phase-in compliance period of 10 years from the effective date of this final rule is provided so that State and local agencies can replace their existing symbol signs with word message signs over the course of the normal service life of the signs.

53. In Section 2C.26 Advance Traffic Control Signs (W3 series), all of the Advance Traffic Control signs are combined into one section. The Advance Traffic Control signs include: The Stop Ahead (W3–1a), the Yield Ahead (W3–2a), the Signal Ahead (W3–3), and a new BE PREPARED TO STOP (W3–4) sign. A new word message sign was submitted as a docket comment from the NCUTCD. This word message sign was already adopted in MUTCD Part 6, Work Zones. The MUTCD Part 6 shows the sign but does not have any descriptive text accompanying the sign. The FHWA believes this word message sign is appropriate for inclusion in both Chapter 2C and Part 6 because it advises road users that they may encounter traffic congestion or stopped traffic caused by traffic signals. This amendment includes descriptive text to discuss the application of the BE PREPARED TO STOP sign.

Also in this section, the FHWA received comments from the city of Bellevue, Washington and the Washington DOT indicating that they have installed Street Name plaques with the Advance Traffic Control signs and have had no negative effects. Therefore, in the first OPTION statement of Section 2C.26 the FHWA has modified the sentence to allow the OPTION of installing a supplemental Street Name plaque above or below any Advance Traffic Control sign rather than just the Signal Ahead sign because it gives States more flexibility.

54. In Section 2C.27 Cross Traffic Does Not Stop plaque, a new (W4–4P) plaque is added. This plaque is intended to warn road users that they are approaching a 2-way stop controlled intersection. This new word message plaque is based on research conducted by the Texas Transportation Institute[3] and on recommendations included in the "Older Driver Highway Design Handbook."[4] The FHWA believes it is appropriate from a safety standpoint to add this new warning sign to help road users quickly identify the type of stop controlled intersection. The FHWA did not receive any docket comments opposed to this new plaque. However, the FHWA did receive a comment suggesting that we add the OPTION to use this plaque on 1-way stop controlled T-intersections and the FHWA has included this modification.

The FHWA also received comments from the city of Bellevue, Washington and the Texas DOT questioning the

[3] Picha, D.L., C.E. Schuckel, J.A. Parham, and C.T. Mai, "Traffic Control Devices at Two-Way Stop Controlled Intersections," Research Report 1374–IF, Texas Transportation Institute, College Station, Texas, November 1996.

[4] "Older Driver Highway Design Handbook," Report No. 1 FHWA–RD–97–135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

appropriate color of the CROSS TRAFFIC DOES NOT STOP plaque. In response to these comments, and since this plaque is intended as a warning message to provide advance notice of an upcoming situation, language is added that the plaque colors are black legend on a yellow background. In State and local jurisdictions where this plaque is intended to regulate traffic, this plaque may be placed on the same post as the STOP sign. When used with the STOP sign, the colors are black legend on a white background.

55. In Section 2C.30, paragraph 4, a new sentence is added that roadway delineation may also be used to notify road users of lane reduction situations. The OPTION to use pavement markings in addition to the Lane Ends signs will provide additional guidance information to the road users.

Also in paragraph 5 of this section, GUIDANCE is included to indicate that, in situations where an extra lane has been added for slower moving traffic, a Lane Ends sign should be installed in advance of the end of the extra lane.

56. In Section 2C.33 Advisory Exit, Ramp, and Curve Speed Signs, GUIDANCE is added to clarify the difference between when the Exit Speed (W13–2) signs and the Ramp Speed (W13–3) signs should be used. Based on deliberation comments made to the docket review, the FHWA has changed the title of this section and included a new Curve Speed (W13–5) sign. This sign was not discussed in the NPA, but the FHWA believes it should be included in the MUTCD because it provides the advisory speed on roads and highways at the beginning of horizontal alignment changes. The Curve Speed sign is designed exactly like the Exit and Ramp Speed sign.

57. In Section 2C.34 Intersection Warning Signs, an OPTION to install an Advance Street Name (W16–8) plaque in conjunction with the intersection warning signs is provided. This change provides helpful advance information to the road user.

Also in this section, the FHWA has added a new Circular Intersection (W2–6) symbol sign that was submitted by the NCUTCD. The FHWA received comments from the Texas, Missouri, and Oregon DOTs in favor of a different symbol that was similar to the roundabout symbol used in Europe. With the advent of traffic calming practices in residential communities, the FHWA believes it is important to take advantage of this opportunity to include a sign in the MUTCD for circular intersections. Until further research can be done on another symbol, the FHWA plans to include the symbol submitted by the NCUTCD and to include language indicating that the symbol be accompanied by an educational word message plaque.

58. A new Section 2C.36 Motorized Traffic Signs is added. Motorized traffic signs are used to alert road users to unexpected entries into the roadway by trucks, farm vehicles, emergency vehicles, and other vehicles.

Also in this section, a new EMERGENCY SIGNAL AHEAD (W11–12) warning sign for use with the Emergency Vehicle (W11–8) symbol sign is added. These two signs are required in advance of all emergency vehicle traffic control signals (Chapter 4F).

Based on FHWA internal comments made during the docket review deliberations, this section has also been revised to include an OPTION to use other word message warning signs to indicate the type of emergency vehicle station ahead (such as rescue squad, etc.) in situations when no emergency signal is present.

59. In Section 2C.37 Crossing Signs, a new design and application for advance crossing and crossing signs is added. In the past, the crossing signs were distinguished from the advance crossing signs by the use of crosswalk lines on the sign. However, people rarely noticed the difference. The FHWA has changed the design of these signs by deleting the crosswalk lines and using one sign for both the advance and the crossing location. The crossing sign when used to provide advance notice to road users is supplemented with the legend "AHEAD" or with an appropriate distance plaque. The crossing sign is used adjacent to crossings and must be supplemented with a diagonal downward pointing arrow when the crossing does not have pavement markings. If pavement markings are used to mark the crosswalk, then only the crossing sign is needed and the diagonal downward pointing arrow is optional. The FHWA is providing a phase-in compliance period of 10 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This change is effective immediately for new sign installations.

Discussion of Adopted Amendments to Chapter 2D—Guides Signs for Conventional Roads

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

60. Throughout Chapter 2D, the FHWA is replacing the word "marker" with the word "sign," since these route and auxiliary markers are generally considered signs. The sign numbers, however, will continue to carry the "M" designation (example: M1–4) so that the State's sign inventory will not need to change. Also, a reference to Chapter 2A is included to remind readers to check there for placement, location, and other general criteria for signs, since this information is not repeated in every section. There were no docket comments on this section.

61. In Section 2D.03 Color, Retroreflection, and Illumination, the STANDARD statement in paragraph 3 is modified to extend the general requirements for retroreflectivity and/or illumination to "all" guide sign messages and legends, unless specific exceptions are provided. This is consistent with Section 2A.08 which requires all signs to be retroreflective and/or illuminated. There were no docket comments on this section.

62. In Section 2D.09 Numbered Highway Systems, a sentence is added to paragraph 5 which states that the highest priority route sign legend shall be placed on top or to the left of the sign panel. This will help the road user better identify the class of roadway (example: Interstate vs. County route). There were no docket comments on this section.

63. In Section 2D.11 Design of Route Signs, paragraph 6 allows the OPTION of placing a white sign panel behind the Off-Interstate Business Route signs when they are installed on a green guide sign. This amendment will improve the sign's contrast and conspicuity. There were no docket comments on this section.

64. In Section 2D.15 Cardinal Direction Auxiliary Sign, the first letter of cardinal direction messages is increased by 10 percent. Increasing the first letter of cardinal direction signs such as EAST and WEST, helps the road user in the navigation task by providing a clearer distinction between the similar appearance of these two messages. This same principle is true for the NORTH and SOUTH cardinal directions. This change was previously adopted in revision number 5 to the 1988 MUTCD and is mentioned here to bring attention to the compliance date which was December 31, 1994. The FHWA received no docket comments on this section.

65. In Section 2D.33 Destination and Distance Signs, the OPTION statement is changed to add the placement of the route sign and cardinal direction within the destination sign panel. When this option is used, the size of the route sign and cardinal direction auxiliary sign should be at least the minimum size specified for these signs. There were no docket comments on this section.

66. In Section 2D.34 Destination Signs, paragraph 9 recommends that when there are four destinations, they should be shown on two separate sign panels. The FHWA has changed this from a requirement (as shown in the 1988 edition of the MUTCD) to a GUIDANCE in order to allow State and local highway agencies more flexibility. The FHWA believes this change is appropriate since the OPTION in paragraph 10 allows all four destinations on one sign panel in situations where spacing is critical. The FHWA received no docket comments on this section.

67. In the 1988 edition of the MUTCD, distance signs were required to be placed approximately 500 feet outside the municipal limits or at the edge of the built-up district. Section 2D.37 Location of Distance Signs, eliminates this specific distance requirement and allows the State and local highway agencies the flexibility to determine the appropriate sign location. There were no docket comments on this section.

68. The FHWA received comments from the Minnesota Department of Transportation and reviewed the recommendations in the "Older Driver Highway Design Handbook," [5] which suggest that a discussion for installing street name signs on overhead mast arms be included in the MUTCD. Since many State and local highway agencies are already using this application and it does improve sign visibility, the FHWA is adopting this as an OPTION in paragraph 11 of Section 2D.38 Street Name Sign. At intersections having two different street names, the FHWA is also adopting the OPTION to show both street names on one panel with appropriate directional arrows. This is consistent with the "Older Driver Highway Design Handbook" and will also optimize sign visibility for the road user.

69. In Section 2D.44 General Service Signs, paragraph 15 is changed to eliminate the term "opaque background" since all backgrounds shall be either retroreflective or illuminated as discussed in Section 2D.03. There were no docket comments on this section.

In this same section, an OPTION is added to use the new word message sign "ROAD CONDITION DIAL 511" to notify road users of road and traffic conditions. This is a new OPTION that was not included in the NPA because at the time, it had not been approved by the Federal Communications Commission.

70. The title of Section 2D.45 proposed in the NPA is changed from "Milepost Markers" to "Reference Posts." This change is based on internal review discussions during the FHWA's deliberation of docket comments. The FHWA has changed the title of this section to "Reference Posts" since this is a more accurate description.

The FHWA has also modified this section in paragraph 11 of the OPTION statement to eliminate the provision for placement of the kilometer (mile) fractions on the back of the post or on a separate small plate. The text in the 1988 edition of the MUTCD was written more for road maintenance and public works activities. This modification is being made to help road users better identify their location in emergency situations.

Discussion of Amendments to Chapter 2E—Guide Signs, Expressways and Freeways

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

71. Chapters 2E (Guide Signs—Expressway) and 2F (Guide Signs—Freeways) in the 1988 MUTCD are combined into a new Chapter 2E titled "Guide Signs—Freeways and Expressways." The FHWA did not receive any comments.

72. In Section 2E.05, a STANDARD sentence is added in paragraph 1 to provide that signs which are not illuminated must be retroreflective.

Also in this section, paragraph 4 recommends that all overhead sign installations should be illuminated unless an engineering study shows that retroreflection alone will perform effectively. The FHWA did not receive any comments.

73. In Section 2E.06 Characteristics of Urban Signing, the first paragraph adds item H concerning visual clutter from roadside development to the list of features which characterize urban conditions. Growth in business development and environmental changes make this an appropriate item to consider when installing signs since excessive signs may create information overload for some road users and may complicate the navigation task. The FHWA did not receive any comments.

Also in this section, the second paragraph contains a list of special sign treatments for improving travel on urban freeways and expressways. The FHWA is amending item H to this list as follows: "Frequent use of street names as the principal message in guide signs." This amendment improves the guidance information provided to road users. The FHWA did not receive any comments.

74. In Section 2E.08 Memorial Highway Signing, the GUIDANCE in paragraph 1 is expanded to include all freeways and expressways in the discussion of classes of highways that should not be signed as memorial highways. The FHWA did not receive any comments.

75. In Section 2E.09 Amount of Legend on Guide Signs, paragraph 1 clarifies the previous GUIDANCE in the 1988 MUTCD which addressed the appropriate number of destinations on major guide signs in general. The FHWA is changing the wording to clarify that not more than two destination names or street names should be shown on the following specific signs: Advance Guide signs or Exit Direction signs. The FHWA did not receive any comments.

76. In Section 2E.12 Designation of Destinations, paragraph 4 highlights the fact that AASHTO is responsible for the selection of control cities shown on guide signs.

77. In Section 2E.16 Abbreviations, the second paragraph in GUIDANCE provides for using periods on expressway and freeway signs. It provides that periods should not be used except when a cardinal direction is abbreviated as part of a destination name. The FHWA did not receive any comments.

78. In Section 2E.17 Symbols, paragraph 1 requires that symbol designs be essentially like those shown in the MUTCD and the "Standard Highway Signs Book." [6]

79. In Section 2E.19 Diagrammatic Signs, the FHWA in the NPA proposed as a STANDARD the requirement of showing only one destination for each directional arrowhead on diagrammatic signs. Based on comments to the docket by the Missouri Department of Transportation, the FHWA has decided to recommend rather than require the practice of showing only one destination for each arrowhead on a

[5] Ibid.

[6] "Standard Highway Signs," FHWA, 1979 Edition is included by reference in the 2000 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.

diagrammatic sign. The recommended number of destinations is two for each sign. However, the FHWA recognizes that there are some special situations where there are more than two principle destinations at the interchange and changing this sentence to GUIDANCE provides more flexibility to State and local highway agencies.

80. In Section 2E.20 Signing for Interchange Lane Drops, the last sentence in paragraph 1 is added to prohibit the use of the EXIT ONLY panel on diagrammatic signs at any major bifurcation or split. This change is intended to eliminate a potentially confusing situation for road users. The FHWA did not receive any comments.

81. In Section 2E.21 Changeable Message Signs, the FHWA is including GUIDANCE in paragraph 3(a) to indicate that the desirable letter size for changeable message signs is 450 mm (18 inches) or a minimum letter size of 265 mm (10.6 inches). The FHWA is also including additional criteria (as discussed in MUTCD Part 6) for the use of changeable message sign.

82. In Section 2E.24 Lateral Clearance, paragraph 1 adds a discussion on the importance of the clear zone and breakaway supports when determining the horizontal clearance distance for sign installation.

83. In Section 2E.29 Interchange Exit Numbering, paragraph 2 increases the vertical dimension of the exit number panel from 600 mm (24 inches) to 750 mm (30 inches). This change is adopted because it improves the visibility of critical sign information for directing the road users to their destinations. Since the FHWA received comments from North Carolina, Missouri, and Minnesota Departments of Transportation expressing concern regarding the impact of implementing this change for existing installations, the FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing installations to minimize any potential impact to State and local highway agencies. This period will allow for replacement of existing signs after the normal service life. This change takes effect immediately for all new installations.

Also in this section, the text in the OPTION statement is modified to recommend the use of milepost numbering as the preferred method for interchange exit numbering. Consecutive numbering is optional for those States which are still working towards changing over to milepost numbering. The FHWA received a docket comment from the Ohio Department of Transportation suggesting this change.

Additionally in this section, the FHWA has included an OPTION to add the word "LEFT" to the exit number panel. Since left exits are generally fewer and tend to violate expectancy, the FHWA believes that this OPTION will help the road user identify proper lane placement prior to the exit.

84. In Section 2E.31 Advance Guide Signs, the paragraph 2 GUIDANCE statement includes placement of Advance Guide signs in advance of the exit gore. The distance of an Advance Guide sign is changed from "400m to 1km" to "1 to 2 km (½ to 1 mile)" from the exit gore. This change places the Advance Guide sign back further from the exit gore in order to provide more decision and reaction time to the road user. Although the FHWA did not receive any comments expressing concern with this change, the FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing installations in order to minimize any potential impact to State and local highway agencies. This period will allow for replacement of the existing signs after their normal service life. This change is effective immediately for all new installations.

85. In Section 2E.33 Other Supplemental Guide Signs, paragraph 2 adds GUIDANCE for installing only one supplemental guide sign on each interchange approach. The FHWA did not receive any comments on this section.

86. In Section 2E.34 Exit Direction Signs, paragraph 2 prohibits the use of population figures or other similar information on Exit Direction signs. The FHWA did not receive any comments on this section.

Also in this section, the second GUIDANCE statement deletes the words "cantilevered support" and allows the Exit Direction sign to be installed on any overhead support located over the exit lane in advance of a gore point.

The change in the last sentence of Section 2E.34, paragraph 10 is revised from that proposed in the NPA in response to a docket comment from the Minnesota Department of Transportation. Instead of recommending that the Exit Direction sign should be mounted on the face of the overhead structure, the FHWA is changing this to an OPTION to allow more flexibility at those locations that may not have available overhead structures.

87. In Section 2E.41 Signing by Type of Interchange, paragraph 3 provides GUIDANCE that the signing layout should be similar for interchanges which have only one exit ramp in the direction of travel. The FHWA did not receive any comments on this section.

88. In Section 2E.42 Freeway-to-Freeway Interchange, an OPTION is added for installing overhead guide signs at the 1 km (½ mile) and 4 km (2 mile) points. This OPTION is in addition to the required overhead guide signs at the 2 km (1 mile) point and at the theoretical gore of each connecting ramp.

89. In Section 2E.48 Closely-Spaced Interchanges, paragraph 1 is changed from that proposal in the NPA in response to a docket comment from the Minnesota Department of Transportation. Instead of mandating or requiring that the advance guide signs for the next interchange should be mounted on an overhead structure, the FHWA is changing the GUIDANCE to an OPTION in an effort to allow more flexibility at those locations that may not have available overhead structures.

90. In Section 2E.52 General Service Signs, paragraph 2 adds an OPTION that allows an action message, such as NEXT RIGHT, to be placed on general service signs which do not have exit numbers included on the sign. Figure 2E–38 has been added as an example. The FHWA did not receive any comments on this section.

Also in this section, paragraph 4, GUIDANCE is added that recommends the distances to services should be shown on general service signs when the service is more than 2 km (1 mile) from the interchange.

Additionally, paragraph 4a(1), is changed based on comments from the Ohio Department of Transportation and logo organizations in 9 States, which suggested that the FHWA delete tire repair from the list of criteria for selecting and installing general service signs for gas stations. The FHWA is adopting this modification since the majority of businesses offering gas today, no longer provide tire repair services. This same change applies to Section 2F.01, paragraph 8, item 1.

Also in this section, paragraph 4b(4), 4c(4), and 4f(3) are revised to add "modern sanitary facilities" as a criteria for food, lodging, and camping services.

Additionally, paragraph 4b(2) modifies the number of days that a food service, selected for general service sign, is open. The 1988 MUTCD showed 7 days per week, and the new edition states at least 6 days per week. This amendment also applies to Section 2F.01, paragraph 9, item D(b). This revision to the MUTCD is made in order to comply with the requirement of Federal law, Public Law 105–178, 112 Stat. 214, which was effective on June 9, 1998. There were no docket comments on this section.

Also in this section, a STANDARD is added which requires that general service signs that are operated on a seasonal basis shall be removed or covered during periods when the service is not available. This amendment reduces the chance of road users mistakenly leaving their routes only to find that the particular service is closed. The FHWA received no comments on this section.

91. In Section 2E.57 Radio Information Signing, paragraph 1 allows State and local highway agencies the OPTION of using a word message Radio-Traffic Information (D12–4) sign in conjunction with traffic management systems. The FHWA received no comments on this section.

Also in this section, paragraph 2 establishes three as the maximum number of frequencies shown on each Radio-Traffic Information sign. The FHWA did not receive any comments on this change.

Discussion of Adopted Amendments to Part 2F—Specific Service Signs

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

92. Since the FHWA has combined chapters 2E and 2F of the 1988 MUTCD into one chapter, the new chapter for Specific Service Signs is Chapter 2F (formerly Chapter 2G in the 1988 MUTCD). There were no docket comments on combining Chapters 2E and 2F.

93. In Section 2F.01 Eligibility, paragraph 4 adopts Title VI of the Civil Rights Act of 1964 as a STANDARD for selecting eligible specific services. This is consistent with the requirements of other Federal programs. The FHWA received no docket comments on this section.

Also in this section, paragraphs 5 and 12 adopt a new specific service sign category for attraction signs. This increases the Specific Service Sign categories to five (gas, food, lodging, camping, and attractions). There were no docket comments on this section.

Additionally, paragraph 7 is changed from that proposal in the NPA as a result of docket comments received from six logo organizations suggesting that the FHWA modify the discussion for Specific Service Sign eligibility to include the following text shown in bold: "If facilities for the specific service being considered are not available within the 5 km (3 miles) limit or choose not to participate in the program, then the limit of eligibility may be extended in 5 km (3 miles) increments until one or more facilities for the services being considered choose to participate or until 25 km (15 miles) are reached, whichever comes first." The FHWA is adopting this modification to give states more flexibility in the selection of eligible specific service facilities

In paragraph 9, item (A)(1), under GUIDANCE, the FHWA adds "alternative fuels" to the list of qualification criteria for specific service signs. No comments were received regarding this change.

94. The FHWA received 11 comments from representatives of various State logo organizations requesting that FHWA modify the proposed Section 2F.02 Application, paragraph 2, to allow for up to three types of services to be displayed on a specific service sign (example: gas, food, and lodging). The FHWA is adopting three types of specific services on one sign as the maximum along with the requirement that if three types of services are allowed on one sign, then the logo panels (businesses) shall be limited to two for each type of service. This would allow for a total of six logo panels per sign which is consistent with the STANDARD in Section 2F.04 Number and Size of Logos and Signs. The FHWA believes that this change will give the states more flexibility in the selection of specific service facilities.

Also in this section under the STANDARD statement, paragraph 2 is changed to delete the requirement for a separate sign for each type of specific service at freeway and expressway interchanges.

95. In Section 2F.04 Number and Size of Logos and Signs, the proposed paragraph 2 allowed a maximum of six logo panels for any specific service category shown on a sign. Based on 12 docket comments received from State Departments of Transportation, representatives of various motorist information services, and logo organizations, the FHWA is also amending paragraph 2 to allow a maximum of four logo panels for one of the two service types on the same sign (example: four food logo panels and two lodging logo panels). When four logo panels for one type of service are installed on a sign, the maximum number of logo panels still shall not exceed six. The FHWA believes that this change will give the States more flexibility in the selection of specific service facilities.

Also in this section, the maximum logo panel size for expressway intersections is increased from 900 mm × 600 mm (36 inches × 24 inches) to 1500 mm × 900 mm (60 inches × 36 inches). There were no docket comments on this section.

96. In Section 2F.05 Size of Lettering, Table II–5, "Letter and Numeral Sizes for Specific Service Signs" as shown in the 1988 MUTCD is deleted. In the 1988 MUTCD, a category 1 size was included for use on expressways where access to crossroads was provided by at-grade intersections. The FHWA is deleting Table II–5 and the related categories. The FHWA is adopting a minimum height of 250 mm (10 inches) for all letters and numerals on specific service signs on freeways and expressways, and 150 mm (6 inches) for signs on conventional roads and ramps. The FHWA is providing a phase-in compliance period of 10 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This change is effective immediately for new sign installations.

97. In Section 2F.06 Signs at Interchanges, the requirement for a separate Specific Service sign for each type of services is deleted.

Also in this section, paragraph 2 adds GUIDANCE that specific service ramp signs should be spaced at least 30 m (100 feet) from the exit gore sign, from each other, and from the ramp terminal. The FHWA received no docket comments on this section.

98. In Section 2F.07 Single-Exit Interchanges, paragraph 4 adds an OPTION to install the exit number panel on top of specific service signs on the freeway or expressway for the single-exit interchanges. There were no docket comments on this section.

99. In Section 2F.09 Signs at Intersections, paragraph 3 deletes the reference to a specific distance at which logo panels should not be displayed because they are visible from the roadway or highway. The FHWA believes that the State and local highway agencies should determine the acceptable visibility limits. The FHWA did not receive any comments regarding this change.

Also in this section, paragraph 6 adds an OPTION to install the NEXT RIGHT (LEFT) and other directional information below the logos on the specific service signs.

Discussion of Adopted Amendments to Chapter 2G—Tourist-Oriented Directional Signs.

The FHWA received 52 comments from 10 commenters concerning

Chapter 2G. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999.

100. In Section 2G.01 Purpose and Application, the FHWA is defining the term "tourist-oriented directional sign." The term "panel" is also defined in Chapter 1. The FHWA received no comments on the definition.

One commenter suggested defining "immediate area" in the first STANDARD or allowing the States to provide a definition in their State policy. The FHWA believes that defining "immediate area" is best addressed through State policy (Section 2G.07), and is revising that section to include a definition as an element of the policy.

A State transportation department pointed out that requiring the use of tourist-oriented directional signs in place of specific service signing may conflict with State statutes. To avoid conflict with State statutes, the FHWA believes that this text would be better addressed as GUIDANCE, and is changing the section accordingly. This change gives the needed encouragement without eliminating the flexibility that some agencies might need.

Three State transportation departments suggested uniform placement of tourist-oriented directional signs regardless of whether the facility and its on-premise advertising signs are readily visible or not from the roadway. Additionally, one State transportation department recommended a definition of "readily visible from the roadway" be included. The FHWA believes that for positive guidance, tourist-oriented directional signs should be installed regardless of whether or not the facility and/or its on-premise advertising is readily visible from the roadway. The FHWA has deleted this text from the GUIDANCE.

101. In Section 2G.02 Design, the FHWA is including a STANDARD that each tourist-oriented directional panel shall display only one eligible business, service or activity facility. None of the commenters disagreed with this change and the American Traffic Safety Services Association, Inc. commented favorably.

102. In Section 2G.03 Style and Size of Lettering, the National Committee on Uniform Traffic Control Devices (NCUTCD) recommended deleting the text related to the legend on rural roads. The FHWA agrees with this recommendation and removed it from the GUIDANCE. Using smaller letters on "less important rural roads" is not helpful to the unfamiliar road user. One commenter suggested that text referencing the "Standard Alphabets for Highway Signs and Pavement Markings" [7] be added. The FHWA agrees with this recommendation and is adding it to the STANDARD, since it is the design standard for letters, numerals, and spacing.

103. In Section 2G.04 Arrangement and Size of Signs, the FHWA limits the size of a tourist-oriented directional sign to a maximum of 1.8m (6 ft.). One commenter suggested that the limitation should be on the number of panels on the sign, rather than the physical size of the sign. The FHWA agrees that there should be a limitation on the number of panels as well as the size of the sign. A maximum sign size is specified to prevent visual obstructions.

Also, under the first GUIDANCE in Section 2G.04, it was proposed in the NPA that no more than three panels should be displayed on each sign. One State transportation department objected. The FHWA agrees because this may place an undue burden for sign removal on those jurisdictions with existing signs. Therefore, the FHWA will continue to allow display of four panels per tourist-oriented directional sign.

Several comments were received on the text regarding installation of intersection approach signs. The text in the first GUIDANCE contained conflicting language. The FHWA is revising the first GUIDANCE to allow for a straight ahead approach sign and is clarifying that intersection approach signs for tourist-oriented destinations to the left, right and straight ahead should be installed in advance of the intersection and that no more than four panels should be displayed on each sign. The FHWA is adding other clarifications to the text, based on the comments received, including: (1) Recommending the order in which signs should be installed; for consistency signs should appear in the following order: (a) The left turn sign should be located farthest from the intersection, (b) then the right turn sign, and (c) the straight ahead sign located closest to the intersection; (2) recommending that when there are multiple destinations in the same direction that the panels on the tourist-oriented directional sign should be displayed in order based on the destination's distance from the intersection (the closest destination should appear first); (3) clarifying that the left, right or straight ahead turn panels may be combined on the same sign, but that the straight ahead sign should not be combined with a sign displaying both the left and right turn destinations, and (4) allowing signs for destinations in the straight ahead direction when there are signs for destinations in either the left or right direction.

104. In Section 2G.05 Advance Signs, the first OPTION regarding installation of advance signs in the NPA has been moved to the GUIDANCE statement in Section 2G.07 State Policy, which is a more appropriate location. Also, in Section 2G.05, the FHWA is including GUIDANCE to clarify that in cases where directional word messages such as NEXT RIGHT (LEFT) or AHEAD are appropriate for application, this additional information may be added to the 1.8m (6 ft) maximum sign height. None of the commenters disagreed with this change and the American Traffic Safety Services Association, Inc., commented in support of the change. One State transportation department objected to installation of the directional word messages above the business identification panels. The destinations on tourist-oriented directional signs and where to turn are priority information; therefore, the directional word message action should be shown first. There were several comments requesting sign dimensions be shown on the figures. The dimensions were inadvertently left off the figures in the NPA and the dimensions in the 1988 Manual will be used with the appropriate metric conversions.

105. Section 2G.06 Sign Locations, require that the location of all other traffic control devices shall take precedence over the location of tourist-oriented directional signs, and that tourist-oriented directional signs shall not obstruct the road user's view of other traffic control devices. None of the commenters disagreed with this change.

The NCUTCD and two other commenters objected to the exception, found in Section 2G.06 GUIDANCE, for the location of the straight ahead sign. The FHWA agrees and has deleted the exception. For positive guidance, a straight ahead business should have a sign in advance of the intersection.

Also in this section, one commenter suggested that the location of and distance between signs, for the advance signs was excessive. The FHWA believes that locating advance signs 1 km (½ mi) from the intersection is an appropriate distance, but agrees that the

[7] The "Standard Alphabets for Highway Signs and Pavement Markings," 1977 Edition, is published by the Federal Highway Administration. It may be obtained from the FHWA, Office of Transportation Operations, 400 7th Street, SW, Washington, DC 20590. It is available for inspection and copying at the FHWA headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

spacing between signs is excessive and has reduced the distance to 152 m (500 ft). Since this is a shorter minimum distance than the current MUTCD, this will not have any impact on State or local highway agencies.

One commenter objected to the phrase in the OPTION paragraph. The Executive Order referenced in the comment was revoked by Executive Order 13132 dated August 4, 1999, and effective on November 2, 1999. However, the FHWA is modifying this paragraph by deleting "but within the right-of-way" to be consistent with other parts of the Manual which do not reference right-of-way limits for sign placement.

106. In Section 2G.07 State Policy, the FHWA proposed to add the equal opportunity criteria of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241) as a STANDARD condition for destinations to be eligible for tourist-oriented directional signs. One State transportation department and one State chapter of the Institute of Transportation Engineers objected to including civil rights requirements in the Manual, while the American Traffic Safety Services Association, Inc. supported their inclusion. The FHWA disagrees with these objections to include the civil rights requirements. This paragraph was added as a condition for destinations eligible for tourist-oriented directional signs, because most Federal programs require compliance with Title VI regulations. This paragraph is consistent with Chapter 2F Specific Service Signs.

Also in Section 2G.07, the GUIDANCE statement is revised to include a definition of "immediate area" for the area to be served. "Immediate Area" was used in the first STANDARD of Section 2G.01 Purpose and Application, of the NPA. In order to give the State highway agencies more flexibility, the FHWA believes that the definition is best addressed through State policy.

Discussion of Adopted Amendments to Chapter 2H—Recreational and Cultural Interest Area Signs

The FHWA received 46 comments from eight commenters concerning Chapter 2H. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999.

As proposed in the NPA, the FHWA is modifying the following recreational and cultural interest signs to improve their visibility and make the sign design less complex: Litter Container (RG–130), Ranger Station (RG–170), Picnic Area (RM–120), Laundry (RA–060), Sleeping Shelter (RA–110) and Interpretative Trail (RL–130).

Also, the FHWA is adopting the following Forest Service symbols [8] and will include them in the "Standard Highway Signs" book [9] Motor Home (RM–200), Group Picnicking (RM–220), Group Camping (RM–210), Dog (RG–240), Seaplane (RG–260), Family Restroom (RA–150), Helicopter (RA–160), All-Terrain Vehicle (RL–170), Archer (RL–190), Hang Glider (RL–210), Fishing Pier (RW–160), Hand Launch for Boating (RW–170), Kayak (RW–190), Wind Surf (RW–210) and Chairlift for Skiing (RS–100). The FHWA has only included new or modified symbol signs in the revised manual.

None of the commenters disagreed with the modified or adopted symbols. However, one State transportation department recommended that we mandate that titles be used with the signs. The FHWA disagrees with the need for this clarification because Section 2A.13 permits an education plate to accompany a symbol sign that is not readily recognizable by the public.

107. In Section 2H.01 Scope, use of recreational and cultural interest signs is expanded by providing the OPTION of using these symbols on directional guide signs found on expressways and freeways. The American Traffic Safety Services Association supported the expanded use of these symbols. Two commenters opposed the expanded use of the symbols suggesting the possible overloading of road users with too many signs along freeways, especially in congested areas. The FHWA disagrees because the GUIDANCE in Section 2H.02 encourages agencies to adopt policies for recreational and cultural interest signing, and cautions agencies not to use them where they might be confused with other traffic control signs.

Also, in this section, the STANDARD paragraph has been removed. General signing requirements are covered in Chapter 2A.

108. In Section 2H.02 Application of Recreational and Cultural Interest Signs, one State transportation department recommended removing the text related to nonvehicular events and amenities. The FHWA disagrees with the recommendation because the Manual has jurisdiction over the signing that leads road users to nonvehicular events and amenities such as trails, structures, and facilities.

109. In Section 2H.04 General Design Requirements for Recreational and Cultural Interest Area Symbol Signs, several commenters recommended including examples of the usage and series categories and one State chapter of the Institute of Transportation Engineers opposed the removal of the Category and Usage Chart. The FHWA agrees with this last recommendation. A Category Chart is included. This chart is similar to the Category and Usage Chart included in the 1988 Manual, except the road/type usage information has been removed. It is no longer appropriate to specify usage since the use of the symbols has been expanded to include both conventional roads and expressways and freeways.

Also, in Section 2H.04, the FHWA has removed the SUPPORT paragraph proposed in the NPA. The use of recreational and cultural interest symbol signs is discussed in Section 2H.01.

110. In Section 2H.05 Symbol Sign Sizes, sign information is discussed in paragraph format. The FHWA received no negative comments regarding the removal of Table II–7, "Sign Sizes." The American Traffic Safety Services Association recommended that a minimum size of 750 mm × 750 mm (30 in × 30 in) be used for expressway and freeway installation to ensure legibility and increase comprehension commensurate with today's higher speeds and complexities evidenced on these types of roadways. The FHWA agrees with this recommendation. The recommended expressway/freeway sign size text is contained in GUIDANCE.

111. In Section 2H.06 Use of Educational Plaques, GUIDANCE recommends that, if used, the educational plaque should be the same width as the symbol sign. None of the commenters disagreed with this change.

112. One State transportation department recommended deleting the proposed Section 2H.08 Color Format. The FHWA agrees with this recommendation and has removed Section 2H.08 as referenced in the NPA, because sign design requirements, including color, are addressed in Section 2H.04.

113. In Section 2H.08 Placement of Recreational and Cultural Interest Area Symbol Signs (referenced in the NPA as Section 2H.09), one State transportation department suggested that the exception to the vertical mounting height for

[8] Based on a Memorandum of Understanding between the FHWA and the U.S. Department of Agriculture Forest Service, many of the symbols used by the Forest Service are adopted by reference in the MUTCD. These symbols are referred to as the "88 Forest Service Symbol Signs."

[9] "Standard Highway Signs," FHWA, 1979 Edition is included by reference in the 2000 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.

symbol signs on low speed, low volume roads is not necessary and may cause some signs to be installed so that they are no longer crashworthy. The FHWA disagrees with the recommendation to eliminate the exception. Chapter 2A of the Manual requires all signs within the clear zone to be mounted at 2.1 m (7 ft) in urban areas, and at 1.5m (5 ft) in rural areas.

114. In Section 2H.09 Destination Guide Signs (referenced in the NPA as Section 2H.10), one State transportation department recommended that both the recreational and cultural interest area symbol signs and destination guide signs be white on brown. The FHWA disagrees with the recommendation. The GUIDANCE lists the order of preference for use of shapes and colors. While rectangular, white on green is listed first, States may use rectangular, white on brown. This provides maximum flexibility to the States.

Also, in this section, one State transportation department recommended deleting the requirement that advance guide signs and exit direction signs have the white on green color combination where there are destinations other than a recreational or cultural interest area. The FHWA disagrees with the recommendation. Guide signs shall be white on green, except white on brown may be used when solely recreational or cultural interest area destinations are shown.

Several commenters recommended removal of the trapezoidal shape. The FHWA is retaining the GUIDANCE that allows use of the trapezoidal shape. However, the FHWA will consider this recommendation in the future after further study.

115. The FHWA received no objections to deleting Sections 2H.10 through 2H.15 of the 1988 Manual, as proposed in the NPA. These sections gave a general description of the categories of recreation and cultural interest symbol signs.

Discussion of Adopted Amendments to Chapter 2I—Emergency Management

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

116. With the renumbering of Part 2, Chapter 2J is changed to Chapter 2I. The FHWA received a recommendation from the National Committee on Uniform Traffic Control Devices to change the title of Chapter 2I from "Signing for Civil Defense" to "Emergency Management Signing." The FHWA has adopted this new title and has deleted reference to civil defense because the more prevalent concerns today are from emergency traffic management situations such as natural disasters and chemical warfare threats.

117. In Section 2I.02 Design of Emergency Management Signs, the Civil Defense symbol is deleted from the evacuation route sign. The evacuation route plaque number is changed from CD–1 to EM–1. All of the emergency management sign numbers discussed in Chapter 2I now have the EM prefix.

118. In Section 2I.04 Area Closed Sign, the reference to "dangerous radiological or biological contamination" is deleted since the AREA CLOSED sign is not limited to these type areas but can be used for other emergencies such as natural disasters. The AREA CLOSED sign number is EM–2.

119. In Section 2I.05, the title is changed from "Traffic Regulation Post Sign" to "Traffic Control Point Sign." The FHWA believes that this is a more appropriate title since these signs are used at checkpoint locations where traffic is stopped and controlled by designated officials.

The sign number for the TRAFFIC CONTROL POINT sign is EM–3.

120. In Section 2I.07, the title is changed to include both a ROAD USE PERMIT REQUIRED FOR THRU TRAFFIC (EM–5) sign or an AREA USE PERMIT REQUIRED FOR THRU TRAFFIC (EM–5a) sign. There may be situations when the area use permit may be the more appropriate signing message. Therefore, the FHWA has included the OPTION to use this message as an alternative.

121. In Section 2I.09, the title is changed to "Shelter Directional Sign" which is a more general heading than "Fallout Shelter Directional Sign." The Shelter Directional Signs may carry one of the following legends: EMERGENCY SHELTER, HURRICANE SHELTER, FALLOUT SHELTER, or CHEMICAL SHELTER.

Discussion of Proposed Amendments to Chapter 2A Which Were Not Adopted

122. In Section 2A.03, the FHWA has deleted the OPTION sentence which indicated that traffic engineering judgment or studies may show that signs would be unnecessary at certain locations. By definition, the purpose of engineering judgment and studies is to determine whether or not a sign or other traffic control device is needed.

123. In Section 2A.18, paragraph 1, the FHWA has decided not to adopt the proposal to require the minimum mounting height of 2.1 m (7 feet) for all signs. This decision is based on crash-worthiness research results [10] which did not justify universal application of the increased mounting height. It is also based on docket comments received from 8 county highway agencies which opposed the increased mounting height for all signs. The minimum mounting height will remain at 5 feet for rural areas and 7 feet for urban areas where parking and other obstructions to view may occur. This minimum mounting height does not preclude the installation of signs at higher heights.

Discussion of Not Adopted Amendments to Chapter 2E—Expressway and Freeway Guide Signs

124. In Section 2E.29, paragraph 2, the FHWA has decided not to adopt the amendment to increase the vertical dimension of the exit number sign panel from 600 mm (24 inches) to 750 mm (30 inches). The FHWA received comments from North Carolina, Missouri and Minnesota Departments of Transportation expressing disagreement with the idea of increasing the vertical dimension of the exit number sign panel to 30 inches, particularly in the absence of specific data to indicate that the 24 inch panels are not performing adequately. The FHWA agrees and will revisit as part of a future research study.

Discussion of Not Adopted Amendments to Chapter 2F—Specific Service Signs

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

125. In Section 2F.02, paragraph 4, the FHWA has decided not to limit the use of the ATTRACTION to expressways and freeways since in paragraph 5, the other specific service categories may be used on any class of highway.

Discussion of Adopted Amendments to Part 3—Markings

The FHWA received 352 comments from 40 commenters concerning Part 3 under docket number 96–47 (in mid-1997 this docket was scanned into the U.S. Dockets Facility as FHWA–1997–2295 and may be retrieved electronically with this number). Also, the FHWA received 181 comments from 27 commenters in response to docket number 99–6575. The two notices of proposed amendments (NPA) were published at 62 FR 691 on January 6, 1997, and at 64 FR 73612 on December 30, 1999. Only the technical (not editorial) comments are addressed in this discussion.

[10] Marzougui, Dhafer; Bedewi, Nabih; Meczkowski, Leonard; and Taylor, Harry W.; "Sign Support Height Analysis Using Finite Element Simulation." Presented at International Journal on Crash Conference, September 6–8, 2000. To be published in the International Journal on Crash.

126. Chapter A, General Principles, of the 1988 MUTCD is renamed "General." Several sections within this chapter are more appropriately relocated to Chapter B as follows: (a) Section 3A.08 is moved to 3B.08 Extensions Through Intersections or Interchanges, (b) Section 3A.09 is moved to 3B.15 Transverse Markings, and (c) Section 3A.10 is moved to Section 3B.07 Warrants for Use of Edge Lines. Section 3A.07 of the 1988 MUTCD discussed the different types of yellow and white lines. This discussion was reorganized and moved to Section 3B. Each type of line in Section 3A.07 is now discussed in the first six sections of Section 3B, which is organized by color of longitudinal lines.

127. In Section 3A.06 Widths and Patterns of Longitudinal Line Markings, the FHWA is adding to the OPTION statement a recommended ratio for line segments and gaps for "dotted lines." One comment was received from a State highway agency recommending that a definition be provided for the wording "or longer gaps." Since the proposed text did not contain any guidance on the maximum spacing of the longer gaps, the FHWA is including an OPTION statement recommending a maximum ratio of 1:3 for line segments and gaps, respectively, for dotted lines.

128. The section headings on Chapter B, Pavement and Curb Markings, are renamed and reorganized to read as follows:

3B.01 Yellow Longitudinal Line and Left Edge Line Pavement Markings and Warrants
3B.02 No-Passing zone Markings
3B.03 Other Yellow Longitudinal Pavement Markings
3B.04 White Longitudinal Line and Right Edge Line Markings and Warrants
3B.05 Other White Longitudinal Pavement Markings
3B.06 Edge Line Markings
3B.07 Warrants for Use of Edge Lines
3B.08 Extensions Through Intersections or Interchanges
3B.09 Lane Reductions Transition Markings
3B.10 Approach Markings for Obstructions
3B.11 Raised Pavement Markers
3B.12 Raised Pavement Markers as Vehicle Positioning Guides with Other Longitudinal Markings
3B.13 Raised Pavement Markers Supplementing Other Markings
3B.14 Raised Pavement Markers Substituting for Pavement Markings
3B.15 Transverse Markings
3B.16 Stop and Yield Lines
3B.17 Crosswalk Markings
3B.18 Parking Space Markings
3B.19 Pavement Word and Symbol Markings
3B.20 Speed Measurement Markings
3B.21 Curb Markings
3B.22 Preferential Lane Word and Symbol Markings
3B.23 Preferential Lane Longitudinal Markings for Motorized Vehicles
3B.24 Markings for Roundabouts
3B.25 Markings for Other Circular Intersections
3B.26 Speed Hump Markings
3B.27 Advance Speed Hump Markings

129. Sections 3B.01 Yellow Longitudinal Line and Left Edge Line Pavement Markings and Warrants, 3B.02 No-Passing Zone Markings, and 3B.03 Other Yellow Longitudinal Pavement Markings (all referenced in the NPA as Section 3B.01); Section 3B.04 White Longitudinal Line and Right Edge Line Markings and Warrants, and Section 3B.05 Other White Longitudinal Pavement Markings (both referenced in the NPA as 3B.02); and 3B.06 Edge Line Markings, and 3B.07 Warrants for Use of Edge Lines (both referenced in the NPA as Section 3B.03), are modified to include the provisions of the amendments on standards for center line and edge line markings published as a Final Rule at 65 FR 9 on January 3, 2000. There were 96 commenters on the proposed amendments to include the center line and edge line Final Rule into the proposed Section 3B.01 and 3B.03. Sixty-one commenters opposed the proposed text, and 45 of these commenters suggested two technical corrections. Most of the comments opposed to the proposed text were concerned about the warrants for center line and edge line markings which required edge lines on rural roads before center lines. The FHWA agreed with the comments and changed the text to make the warrants for rural center line and edge line markings consistent. Many commenters suggested a technical correction concerning the ADT values in the proposed warrants. The discussion in the final amendments of January 3, 2000 on center line and edge line markings (65 FR 9, January 3, 2000) stated that "The FHWA believes that jurisdictions should be aware of the average daily traffic (ADT) volumes and widths of the major roadways now specified in the standards and that the ADTs are an estimate that can be performed at a jurisdiction's judgment." The FHWA agrees with the commenters and included a SUPPORT statement "If a traffic count is not available, the ADTs described in this section can be estimates that are based on engineering judgment." Many comments included suggestions that were addressed in the final rule published on January 3, 2000. Many commenters also suggested revisions lowering the STANDARDS, which cannot be accepted because it would adversely impact safety to the traveling public.

As noted in the final amendments for center line and edge line pavement markings, dated January 3, 2000, the compliance date for these sections is January 3, 2003 or when pavement lane markings are replaced within an established pavement marking program, or when the highway is resurfaced or reconstructed, whichever date is earlier.

130. Section 3B.01 Yellow Longitudinal Line and Left Edge Line Pavement Markings and Warrants, now contains GUIDANCE on the speed definition in the warrants for no-passing zones at curves which was in the 1988 MUTCD in Section 3B.05. The text in the NPA for these warrants reduced the minimum passing sight distances because it was based on posted or statutory speed limits as shown in Table 3B–1. In the 1988 MUTCD, the minimum passing sight distances were determined based on the greater of the off-peak 85th percentile speed or the posted speed limits. The FHWA received eight comments that opposed deleting the use of the 85th percentile speed because using the 85th percentile improves safety. Accordingly, the FHWA is returning to the use of the 85th percentile speed because it agrees that this improves safety.

131. In Section 3B.02 No-Passing Zone Pavement Markings and Warrants, the FHWA is changing the first paragraph of the first OPTION to be consistent with Section 8B.16 Pavement Markings, the STANDARD for highway-rail grade crossings. The STANDARD will read: "No-passing zone markings shall be used on approaches to highway-rail grade crossings in conformance with Section 8B.16 Pavement Markings." The second paragraph of the first OPTION will remain an OPTION and will read: "No-passing zone markings may also be used at other locations where the prohibition of passing is appropriate."

132. In Section 3B.04 White Longitudinal Line and Right Edge Line Markings and Warrants, and Section 3B.05 Other White Longitudinal

Pavement Markings (referenced in the NPA as 3B.02 White Longitudinal Line Markings), 11 commenters had concerns about specific wording in the text or details about the figures as proposed and suggested technical or editorial revisions to make them acceptable. Of these suggested revisions, five concerned lane lines within a crosswalk. The FHWA agrees with these comments and the lines are removed from within the crosswalks.

After the NPA was published at 62 FR 691 on January 6, 1997, the FHWA noted that text requiring lane line markings was inadvertently omitted from the proposed amendment and was included in the updated text published 64 FR 73612 on December 30, 1999. One comment, received in response to the second NPA, noted that the standard for lane lines on Interstate highways was omitted from the proposed text and that it should be reinserted. The FHWA agrees and is including this STANDARD in the final text.

133. The FHWA is revising the STANDARD for the extension of dotted lines through intersections in Section 3B.08 Extensions Through Intersections (referenced in the NPA as 3B.04 Extensions Through Intersections or Interchanges). One commenter was opposed to the color being the color of the line extended, rather than the color of the line to which it is extended. One commenter was opposed to the width of the marking being the same as the line it extends. The FHWA believes that the proposed text is appropriate because it will provide the most consistent application of dotted line extensions. The FHWA will retain the proposed text in the final version.

Also in this section, paragraph 2, the FHWA added Figure 3B–11, sheet 2 of 2, Typical Pavement Marking Applications (referenced in the NPA as Figure 3–9a, Typical Pavement Marking Applications), to show more examples of the use of dotted line markings in intersections. This figure was in response to older driver research that shows that motorists benefit by having these additional markings. The FHWA received nine, mostly editorial, comments. Two commenters suggested reducing the GUIDANCE to an OPTION which would reduce safety. One commenter suggested adding curvature of the roadway to the list of examples where line extensions should be considered. The FHWA agrees to include "* * * on curved roadways * * *" into the final text.

134. In Section 3B.13 Raised Pavement Markers Supplementing Other Markings, and 3B.14 Raised Pavement Markers Substituting for Pavement Markings (both referenced in the NPA as 3B.07 Raised Pavement Markers, Retroreflective and Non-Retroreflective), the FHWA received 21 comments about raised pavement markers. Two comments, from northern States, opposed the minimum height of the raised pavement marker. Since the height definition is SUPPORT and not a STANDARD or GUIDANCE, the proposed text is retained. Seven of the comments proposed technical changes to the spacing of the raised pavement markers. Since the space of raised pavement markers is GUIDANCE, the proposed text will be retained until research indicates that different spacing would provide better information to road users. The FHWA received no comments, however, about the color of raised pavement markers conforming to the color of the pavement marking where they are placed. The FHWA received five comments about the use of raised pavement markers at right edge lines. Two comments addressed the use of raised pavement markers in construction work zones. One comment recommended that raised pavement markers be permitted, and another opposed the use of raised pavement markers on right edge lines. Several commenters agreed that raised pavement markers should not be used on right edge lines. Since there is not a consensus on using raised pavement markers on right edge lines at this time, the FHWA is retaining the proposed GUIDANCE that raised pavement parkers should not supplement right edge line markings.

135. In Section 3B.16 Stop and Yield Lines (referenced in the NPA as Section 3B.09), paragraphs 2, 4, and 6, the FHWA is adding an optional "Yield Line" marking for use where it is important to indicate the point behind which vehicles are required to yield. Figure 3–24, Typical Yield Line Layout, provides an illustration of these markings. The FHWA received ten comments. Five of the comments opposed the proposal and indicated that the proposed markings were not needed. The FHWA believes that improved public awareness of yield line markings will lead to consistency in the use of the stop line marking for mandatory stops and the yield line when a yield is the appropriate action. Since these markings would be optional, State and local highway agencies would not be required to use them.

Also in this section, the FHWA received one comment which suggested that the wording of the following phrase be clarified as follows: "Where through lanes *of traffic approaching an intersection* become the mandatory turn lanes." The FHWA is incorporating the above underlined words into the final text to clarify the sentence. The FHWA received two comments suggesting reductions to the use of blue markings to designate parking spaces for persons with disabilities. The FHWA believes the suggestions would reduce the visibility of the markings and is adopting the text as proposed in the NPA.

136. In Section 3B.19 Pavement Word and Symbol Markings (referenced in the NPA as Section 3B.12), third OPTION, paragraph 5, the FHWA is adding a "Yield Ahead" triangle symbol marking for optional use in advance of intersections where approaching traffic will encounter a YIELD sign. Figure 3B–24 provides an illustration of these markings. The FHWA received 14 comments, of which only four opposed the proposal. Three comments addressed text and figures that had not changed from the 1988 MUTCD and that will be retained. Only one comment opposed the proposed yield ahead markings. The FHWA is adopting the yield ahead marking as proposed in the NPA.

Also in Section 3B.19 Pavement Word and Symbol Markings, second SUPPORT, the second paragraph states: "Where crossroad channelization of ramp geometry do not make wrong-way movements physically difficult, guidance to a potential wrong-way road user can be provided by placing a lane-use arrow * * *." The FHWA is changing this SUPPORT to GUIDANCE to be consistent with the GUIDANCE, paragraph B, in Part 2E.50 Wrong-Way Traffic Control at Interchange Ramps which states "Where crossroad channelization or ramp geometrics do not make wrong-way movements difficult, a lane-use arrow should be placed in each lane * * *."

137. In Section 3B.22 Preferential Lane Word and Symbol Markings (referenced in the NPA as Section 3B.13), the FHWA is differentiating between types of preferential lanes. The diamond pavement marking symbol is for exclusive HOV lane use. In situations where a preferential lane is not an HOV lane, then the word message (Bus, Taxi, etc.) or symbol (Bike, etc.) for the type of traffic allowed would be used. The FHWA received three comments that suggested editorial changes to this section, and it has made one minor editorial change to the second STANDARD, paragraph 2, to include a reference to Figure 3B–25.

138. In Section 3B.21 Curb Markings (referenced in the NPA as 3B.15), paragraph 5, the FHWA is adding paved median noses to the locations that should have retroreflective solid yellow markings. This addition is made in response to recommendations for older drivers [11], which shows the benefits of having these additional markings. The FHWA received two comments which suggested that the text be changed to an OPTION, and one technical comment that suggested that additional guidance be included on the placement of the markings. The FHWA is adopting the text as proposed in the NPA because the FHWA believes that retroreflective markings should be placed to increase the visibility of paved median noses. The FHWA also believes that the portion of the paved median nose that should be marked should be left to each jurisdiction's judgment.

139. In Section 3B.23 Preferential Lane Longitudinal Markings for Motorized Vehicle (referenced in the NPA as Section 3B.16), is added to provide the STANDARDS for longitudinal lane line markings for physically and non-physically separated, reversible and non-reversible, and left and right side concurrent flow preferential lanes for motorized vehicles. Table 3B–2 was added to list the standards in a tabular format. Figure 3B–25 provides an illustration of these markings.

Furthermore, GUIDANCE is added on marking the neutral area between a preferential use lane and a regular traffic lane, when the distance between them is greater than 1.2 m (4 ft). The FHWA received eight comments concerning this section. Several comments were about showing a double yellow centerline on the figures. The FHWA believes that since the figures clearly show that there is a median, the use of a double yellow centerline is not appropriate. One commenter suggested using a double white dashed line for the right lane line on concurrent flow HOV lanes. Another commenter suggested that the double wide white longitudinal lines should be double normal white longitudinal lines. The FHWA believes that the longitudinal lines shown in the proposed figures provide reasonable options which will promote uniformity of markings to the road users. The FHWA is retaining the proposed figures in the final version.

140. Section 3B.24 Markings for Roundabouts (referenced in the NPA as Section 3B.17), Figure 3B–26 (referenced in the NPA as Figure 3–26), Typical Markings for Roundabouts with One Lane, and Figure 3B–27, Typical Markings for Roundabouts with Two Lanes, (referenced in the NPA as Figure 3–27), are added to incorporate standard markings for roundabouts to the MUTCD. The FHWA disagrees with one commenter opposed to this section which suggested a reduction from GUIDANCE to OPTION. The FHWA did receive 14 editorial comments on the text and figures and they are incorporated as minor modifications to the text.

141. Section 3B.25 Markings for Other Circular Intersections (referenced in the NPA as Section 3B.18), is added to incorporate optional standard markings for other circular intersections including rotaries, traffic circles, and residential traffic calming designs. Figures 3B–26, Typical Markings for Roundabouts with One Lane, and 3B–27, Typical Markings for Roundabouts with Two Lanes, provides illustrations of typical markings for other circular intersections. The FHWA received one comment about the placement of the crosswalk in advance of the yield line in the figures. The FHWA believes that the location of the crosswalk in advance of the yield lines as shown in the figures provides the shortest and safest location for pedestrians to walk. The FHWA will retain the proposed figures in the final version.

142. Section 3B.26 Speed Hump Markings (referenced in the NPA as Section 3B.19), is added to provide pavement markings to assist motorists in identifying the locations of speed humps. Figures 3B–28, Pavement Markings for Speed Humps, and 3B–29, Pavement Markings for Speed Humps, provide illustrations of typical speed hump markings. The FHWA received 11 comments, none of which opposed having speed hump markings. Most, however, were concerned that the markings were excessive and would be difficult to maintain. The FHWA is retaining the text and figures because these markings are optional and the FHWA is not convinced that the alternate markings are better.

143. Section 3B.27 Advance Speed Hump Markings (referenced in the NPA as 3B.20), is added to provide pavement markings to assist motorists in identifying the locations of speed humps. Figure 3B–30, Advance Warning Markings for Speed Humps, provides an illustration of typical advance warning markings for speed humps. The FHWA received four comments. One commenter stated that the advance warning for speed hump markings should not be used because they are similar in appearance to stop lines. The FHWA disagrees with the commenter, because the advance warning markings are a series of transverse bars located in advance of a speed hump, which would not be found at an intersection where a stop bar is located.

144. In Section 3F.02 Channelizing Devices, the FHWA received seven comments on a new STANDARD that states that the color of cones and tube markers used outside construction and maintenance areas shall be the same as the pavement markings. Three comments had concerns about allowing orange as the color of a tubular marker on a white or yellow lane line. One commenter wanted the STANDARD to be more restrictive by excluding orange as a substitute color. Another commenter called the STANDARD difficult to achieve and enforce in practice. The third commenter suggested orange as the predominant color, with permanently mounted tubular markers to be only white. The FHWA will adopt the proposed wording because orange is a universal color for cones and tubular markers. While it is preferable that the color of cones in non-work zones match the color of line that they supplement or are substituted for, the FHWA believes motorists will understand if orange cones or tubular markers are used.

Discussion of Adopted Amendments to Part 4—Highway Traffic Signals

The FHWA received 842 comments from 135 commenters concerning Part 4. Only the technical (not editorial) comments are addressed in this discussion. Two notices of proposed amendments (NPA) were published at 62 FR 691 on January 6, 1997, and 64 FR 73612 on December 30, 1999.

145. For Section 4A.02 Definitions Relating to Highway Traffic Signals, the FHWA reviewed the text of Part 4 to ensure all terms that need to be explained are defined in this section and that all terms in the definitions are used in the text. Based on this review, the FHWA is adding new definitions for the terms "signal housing" and "walk interval" because these terms are used in the text of Part 4, but were never defined. The definition for "signal installation" is removed because it is no longer used in the text. This section is significantly expanded from four definitions to seventy-one definitions that are being used throughout Part 4.

146. In Section 4C.01 through 4C.09 concerning warrants, the number of warrants are increased from seven, as noted in the 1997 NPA, to eight (The School Crossing Warrant, which was moved to Section 7D.04 in the 1997 NPA, is being moved back to Chapter 4C to keep all the signal warrants together, eliminating the need for the reader to

[11] "Older Driver Highway Design Handbook," Report No. 1 FHWA–RD–97–135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

use two parts of the MUTCD. See 62 FR 693). The FHWA did not receive any comments opposed to moving the school crossing warrant from Part 7 back to Part 4.

147. The FHWA inadvertently omitted Section 4C.06 Warrant 5, School Crossing, from the previous NPAs. Section 4C.06 is essentially the same as the 1988 version, with some minor exceptions. The exceptions are:

(1) A new SUPPORT paragraph explaining that the School Crossing Warrant is to be applied in instances where school children crossing the street is the principal reason to consider installing a traffic signal. The FHWA is deleting this paragraph from Warrant 4, Pedestrian Volume, and moving it to Section 4C.06.

(2) To be more consistent with the other STANDARD wording used in the MUTCD, the statement concerning the need for a traffic control signal is changed from "may be warranted when * * *" to "shall be considered when * * *."

(3) To match the other chapters in Part 4, the FHWA is adding a new STANDARD paragraph which will indicate that, before deciding to install a traffic control signal, "consideration shall be given to implementation of other remedial measures."

(4) To match Warrant 4, Pedestrian Volume, a new STANDARD paragraph is added to Warrant 5 which will state that the School Crossing warrant shall not be applied within 300 feet of another traffic signal, unless the proposed signal will not restrict the progressive movement of traffic.

(5) Due to a desire to assist in the reduction of traffic congestion, a new GUIDANCE paragraph is added that states, "If installed within a signal system, the traffic control signal should be coordinated."

(6) The use of pedestrian detectors is changed from an OPTION to a GUIDANCE to match Warrant 4, Pedestrian Volume. The GUIDANCE now reads, "At an intersection, the traffic control signal should be traffic-actuated and should include pedestrian detectors."

(7) The FHWA is deleting the sentence from the 1988 MUTCD which reads, "Special police supervision and/or enforcement should be provided for a new non-intersection installation" because the effectiveness of this depends on the local traffic characteristics and should be determined by local engineering judgment.

148. In Section 4D.04 Meaning of Vehicular Signal Indications, the FHWA is retaining the phrase "Unless otherwise determined by law" in the first paragraph under STANDARD. Two comments were received, both in opposition to the proposal to delete this phrase in the January 1997 NPA on the basis that the proposed deletion would infringe on the States' rights to have additional or different meaning of signal indications. The FHWA withdrew this proposal in the December 1999 NPA and put the phrase back in this section. The FHWA encourages States and local entities to achieve uniform rules of the road that are in accord with chapter 11, Rules of the Road, in the "Uniform Vehicle Code (UVC) and Model Traffic Ordinance," 1992, published by the National Committee on Uniform Traffic Laws and Ordinances, Alexandria, Virginia.[12]

149. In Sections 4D.04, 4D.05, 4D.06, 4D.07, 4D.08, 4D.11, and 4D.16, the text concerned with the use of red arrows is being retained in the MUTCD. In the 1999 NPA, it was suggested that this text be removed for reasons of motorist confusion as to the meaning of the red arrow indication. Comments were received from 8 States, 21 cities, 6 counties, 8 consultants, the National Committee on Uniform Traffic Control Devices (NCUTCD), and 9 others that objected to the removal of the red arrow from the MUTCD. Most of the comments pointed out that the red arrow has now been in widespread use for many years, and drivers, including older drivers, understand its meaning and are using it safely. It was pointed out that the research summarized in the "Older Driver Highway Design Handbook"[13] was conducted shortly after the red arrow was introduced; therefore, the education of the motoring public, especially older drivers, was still underway. Most of the comments also pointed out that significant funds would need to be spent to convert to circular red displays for protected only mode left-turn phases, including adding LEFT TURN SIGNAL signs on span wires and mast arms, some of which might not be able to handle the additional load. No comments supporting the removal of red arrows were received. The FHWA agrees with these comments and has decided to retain the text concerned with the use of red arrows in the MUTCD.

150. In Section 4D.05 Application of Steady Signal Indications, three commenters questioned the accuracy of item d(3) of the NPA that states a YELLOW ARROW can be terminated by a CIRCULAR YELLOW. The FHWA agrees that this statement is inaccurate and is removing the phrase, "a CIRCULAR YELLOW indication or" from this section. Also, the revised text is now part of item E4 of this section.

151. In Section 4D.06 Application of Steady Signal Indications For Left Turns, the 1999 NPA proposed to add a new STANDARD statement and a new OPTION statement in an attempt to favor the leading protected only mode left-turn phases over the other types of left-turn phasing based on the "Older Driver Highway Design Handbook." Comments were received from ten cities, one county, the NCUTCD, and three others that objected to the inclusion of these paragraphs in the MUTCD. Most of the comments mentioned that the decision as to the type of left-turn phasing to use should be made on a case-by-case basis and that a proliferation of leading protected only mode left-turn phases would not be in the interest of anyone, including older drivers. Because there are many legitimate uses for both protected/permissive and lagging left-turn phases, the FHWA is replacing these two paragraphs with an OPTION paragraph regarding special consideration for older drivers in the design of left-turn phasing.

Also in this section, four cities asked that clarifying text allowing the use of "Dallas phasing" be added in compliance with the1993 interpretation request by the Texas Department of Transportation. "Dallas phasing" provides for a protected/permissive (five section) signal to display a circular green for the left turn approach while the through movement approach signal displays a circular red. The FHWA interpreted the MUTCD "to permit "Dallas phasing" if the five section display for the left turn is shielded, hooded, louvered, positioned or designed so that the left turn signal displays are not seen by the through movement driver." Based on these requests, the FHWA is adding a second means of providing protected/permissive mode left-turn phasing. This second means involves an exclusive left-turn signal face instead of a shared left-turn signal face. Therefore, "Dallas phasing" is allowed in both of the above described situations.

152. In Section 4D.12 Flashing Operation of Traffic Control Signals, the FHWA received one comment that additional information needs to be added to clarify the procedures for changing from flashing to steady mode. The FHWA is adding language to this section describing the process of changing from either a yellow-red or a red-red flashing mode to a steady mode. This additional language is needed to ensure a safe transition from a flashing to a steady (stop-and-go) operation.

Another commenter stated that a new GUIDANCE paragraph needs to be added to Section 4D.12 to recommend that, for any steady red clearance interval provided during the change from red-red flashing mode to steady (stop-and-go) mode, the minimum duration should be 6 seconds. The FHWA agrees and is adding a new GUIDANCE paragraph to this section.

153. In Section 4D.13 Preemption and Priority Control of Traffic Control Signals, one comment was received that revisions need to be made regarding the shortening or omission of pedestrian intervals in priority control sequences. The FHWA is adding text to this section's STANDARD paragraph to clarify that pedestrian intervals may be omitted if the entire vehicular phase is also omitted.

154. In Section 4D.15, the FHWA is changing the title from "Number and Location of Signal Faces by Approach" to "Size, Number, and Location of Signal Faces by Approach." This was done based one comment suggesting the information on the size of signal faces is more appropriately contained in this section than as shown in Section 4D.16 Number and Arrangement of Sections in Signal Faces, in the 1999 NPA.

Also in Section 4D.15, a new paragraph D is added to the first GUIDANCE statement listing a fourth recommended reason to use 12 inch signals. This new GUIDANCE is to use 12 inch signals at locations where there is a significant percentage of elderly drivers. Comments received from two States, two cities, the NCUTCD, and one consultant objected to the inclusion of this paragraph in the SUPPORT statement of Section 4D.16 as proposed in the 1999 NPA. Most of the commenters stated that the STANDARDS and GUIDANCE found elsewhere in Chapter 4D adequately address the decision as to which size lenses to use. The FHWA decided the new paragraph D was a more appropriate location for this information.

155. In Section 4D.16, the FHWA is changing the title from "Number and Arrangement of Sections in Signal Faces" to "Number and Arrangement of Signal Sections in Vehicular Traffic Control Signal Faces." This was done based on a comment suggesting the need to clarify that this section deals only with vehicular traffic control signals. This allows items a, c, and d to be deleted from the proposed STANDARD paragraph since they are not vehicular traffic control signals.

156. In Section 4D.17 Visibility, Shielding, and Positioning of Signal Faces, the FHWA has removed the first sentence of the last SUPPORT paragraph listed in the 1999 NPA. Comments received from three States, three cities, the NCUTCD, and two consultants objected to the inclusion of this sentence describing the size of the backplates in the MUTCD. Most of the comments noted that the use of backplates three times the diameter of the signal would cause infrastructure problems because of inordinate size; a backplate of that size is not needed.

Also in this section and in response to a comment, proposed paragraph 3 in the 1999 NPA under the STANDARD statement, and proposed paragraph 5 in the 1999 NPA under the GUIDANCE statement, are removed because it is not appropriate to aim signal heads in a direction that does not serve drivers at the stop line. Most agencies provide an additional signal face if one is needed to attract the attention of drivers approaching a signal on a curved approach. The FHWA is also adding an OPTION to address the possibility of providing an additional head on the approach.

In response to another comment, the FHWA is adding a GUIDANCE paragraph to Section 4D.17 about the preferability of using visors instead of louvers. The FHWA is adding this paragraph since visors are preferred because they do not diminish light output.

157. In Section 4D.20 Temporary Traffic Control Signals (referenced in the NPA as Section 4D.19), the FHWA is revising the text to remove references to portable traffic control signals (except for the definition of a portable traffic control signal) because a portable traffic control signal is a temporary traffic control signal that is easily moved. Also, the STANDARDS, GUIDANCE, and SUPPORT in this section deal with both portable and temporary. The FHWA is changing the definition of a portable traffic control signal to, "A portable traffic control signal shall be defined as a temporary traffic control signal that is designed so that is can be easily transported and reused at different locations."

158. The FHWA is adding two new sections, 4E.06 Accessible Pedestrian Signals and 4E.08 Accessible Pedestrian Signal Detectors, to provide GUIDANCE and STANDARDS for accessible pedestrian signals and accessible pedestrian signal detectors. Text related to accessible pedestrian signals has also been added in various other sections, such as Sections 4C.01 and 4D.03. This was done in response to numerous comments that were received, including 65 comments from the U.S. Architectural and Transportation Compliance Board and 16 comments from The Environmental Access Committee of Division Nine of the Association for Education and Rehabilitation of the Blind and Visually Impaired. The FHWA is providing a phase-in compliance period of 4 years after the effective date of this final rule for existing installations of accessible pedestrian signals and accessible pedestrian signal detectors to minimize any impact on State and local highway agencies. This change is effective immediately for new installations.

159. In Section 4E.06 Accessible Pedestrian Signals, based on a comment received, the FHWA is adding a phrase to the third STANDARD statement that requires the walk tone to have a faster repetition rate only if the walk tone is similar to the tone for the pushbutton locator tone.

160. In Section 4E.07 Pedestrian Detectors, the FHWA is changing the title proposed in the 1999 NPA as "Pedestrian Signal Timing" to "Pedestrian Detectors," because the new title accurately reflects information contained in this section. The FHWA is also including a paragraph 8, GUIDANCE, and a paragraph 10, STANDARD, that are part of the 1988 MUTCD, but were inadvertently left out of the NPAs. The GUIDANCE paragraph reads, "If used, special purpose pushbuttons (to be operated only by authorized persons) should include a housing capable of being locked to prevent access by the general public." The STANDARD paragraph reads, "If used, a pilot light or other means of indication installed with a pedestrian pushbutton shall not be illuminated until actuation. Once it is actuated, it shall remain illuminated until the pedestrian's green or WALKING PERSON (symbolizing WALK) signal indication is displayed."

161. In Section 4E.08 Accessible Pedestrian Signal Detectors, a new OPTION paragraph is added that allows the use of pushbutton locator tones with accessible pedestrian signals. This is being added to clarify the rest of the text in Section 4E.08.

Also, based on a comment, the FHWA is adding a new phrase to the second STANDARD statement to read, "When used, pushbutton locator tones shall be easily locatable, shall have a duration of 0.15 seconds or less, and shall repeat at one-second intervals."

[12] National Committee on Uniform Traffic Laws and Ordinances, 107 S. West St, #110, Alexandria, VA 22314.

[13] "Older Driver Highway Design Handbook," Report No. 1 FHWA-RD-97-135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

162. In Section 4E.09 Pedestrian Intervals and Signal Phases, two commenters objected to the change in the duration of the pedestrian clearance time being calculated to the far side of the traveled way. The 1988 MUTCD text states the duration of the pedestrian clearance time should be calculated to the center of the farthest traveled lane. The proposed change would have added time to flashing DON'T WALK intervals and would have forced many agencies to retime their traffic signal systems. This would place an undue burden on many local and State jurisdictions. The FHWA agrees with the two commenters and is reverting to the 1988 MUTCD text that refers to the center of the farthest traveled lane.

Also in this section another commenter stated that a change to the second paragraph in the STANDARD statement is needed to make the sentence accurate. It is only the first portion of the pedestrian clearance time that is comprised of the flashing DON'T WALK interval. The FHWA is revising the text to make it clear that the yellow and red intervals can also be included in the pedestrian clearance time.

163. In Section 4F.02 Design of Emergency-Vehicle Traffic Control Signals, the FHWA has changed paragraph 5 from GUIDANCE to STANDARD to be consistent with the STANDARD statement in Section 2B.40 Traffic Signal Signs. The STANDARD in Section 2B.40 states that the R10–13 sign, bearing the legend EMERGENCY SIGNAL, shall be used with the emergency-vehicle traffic control signal on each major street approach. In addition, a sentence will be added to Section 4F.02, paragraph 5, to be consistent with the GUIDANCE in Section 2B.40 that the EMERGENCY SIGNAL sign be mounted adjacent to an overhead emergency-vehicle traffic control signal.

164. In Section 4K.03 Warning Beacon, the FHWA is adding the phrase "except for SCHOOL SPEED LIMIT sign beacons" to the second paragraph in the STANDARD statement to clarify that SCHOOL SPEED LIMIT sign beacons are allowed to be included within the border of the sign to be consistent with Section 7B.10.

165. In Section 4L.02 In-Roadway Warning Lights at Crosswalks, a commenter suggested that the third paragraph in the OPTION statement proposed in the 1999 NPA, concerned with the placement of the lights in the center of lanes and on lane lines be relocated to the GUIDANCE statement. In order to provide clear recommendations to agencies regarding the proper installation of these new optional devices, the FHWA is making this change and also adding the phrase "away from the normal tire track paths" at the end of the paragraph. The paragraph now reads as follows: "If used, In-Roadway Warning Lights should be installed in the center of each travel lane, at the centerline of the roadway, at each edge of the roadway or parking lanes, or at suitable locations away from the normal tire track paths.

Discussion of Adopted Amendments to Part 5—Low Volume Roads

The FHWA received 231 comments from 23 commenters concerning Part 5. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 71358 on December 21, 1999.

166. A new Part 5 is added to the MUTCD entitled, "Traffic Control Devices for Low Volume Roads." After consideration, the NPA's proposed title, "Low Volume Rural Roads" was revised because these roads are not exclusive to rural areas.

167. In Section 5A.01 Function, 16 commenters requested that the maximum volume on low volume roads be raised from the proposed 200 AADT (average annual daily traffic) to 400 AADT. The FHWA agrees and is adopting a maximum volume of 400 AADT because AASHTO uses 400 vehicles per day as the breakpoint for low-volume roads in its current version of "A Policy on Geometric Design of Highway and Streets." [14] Also, recent on-going research conducted by Midwest Research Institute as part of NCHRP 20–7(108) indicates that those geometric design guidelines applicable to roads with AADTs of 400 vehicles per day or less differ from geometric design guidelines normally applied to higher volume. This change provides State and local jurisdictions with more flexibility when installing and maintaining traffic control devices to provide for efficient and safe traffic flow within their fiscal restraints.

Also in this section, several commenters requested a change in the proposed definition of low volume roads which restricted these roads to those facilities outside the corporate limits of communities. The FHWA is changing the language to describe low volume roads as facilities lying outside built-up areas of cities, towns and communities. The FHWA is adopting this definition to avoid confusion caused by varying corporate limit treatments practiced by State and local agencies.

Additionally in Section 5A.01, in the STANDARD statement, the classification scheme for low volume roads is being changed to paved and unpaved. This modification replaces the proposed Categories 1 through 3 in this section and throughout Part 5. Several commenters expressed problems with applications of the proposed categories, and the FHWA agrees that the classification change will eliminate most of the confusion.

168. In Section 5A.03 Design, in the second paragraph of the STANDARD statement, proposed Table 5A–1 is mentioned. The heading for this table is changed to "Minimum Sign Sizes for Low Volume Roads," and a number of signs are eliminated that typically would not be used on low volume roads. The following signs have been removed from Part 5:

R2–3 Night Speed Limit
R3–1 Turn Prohibition
R9–1 WALK ON LEFT FACING TRAFFIC
R10–7 DO NOT BLOCK INTERSECTION
R13–1 Weigh Station
R14–1 TRUCK ROUTE
R14–3 Hazardous Cargo Prohibition

The above changes to Table 5A–1 do not prevent a jurisdiction from using the above signs or any other sign in the MUTCD that is appropriate for its roadways.

Also in Table 5A–1, the FHWA has changed minimum sizes for several signs so that all signs in the table are consistent with dimensions published in other parts of the MUTCD. This will not impose any additional requirement to State and local highway agencies. Minimums for the following signs have been modified:

R1–1 STOP
W5–2 NARROW BRIDGE
W8–3 PAVEMENT ENDS
W11–(XX) Entering/Crossing
W10–2, 3, 4 Railroad Crossing Warning
W14–3 NO PASSING ZONE
W20–1 ROAD WORK XX M (FT)
W20–7a Flagger
W20–7b BE PREPARED TO STOP
W21–1a Workers
W21–6 Survey Crews

The above changes to Table 5A–1 will have no impact on State or local jurisdictions.

169. In Section 5C.09 Motorized Traffic and Crossing Signs (W–11 Series and W8–6), the proposed section on seasonal or temporary signing is changed from a STANDARD statement to GUIDANCE statement in the final

[14] "A Policy on Geometric Design of Highway and Streets" 1994 Edition (American Association of State Highway and Transportation Officials-AASHTO).

MUTCD amendment. Although it is good practice to remove or cover such signs when the activities described will not be occurring for an extended period of time, it is not imperative for low volume roads.

170. In Section 5E.02 Center Line Markings, the FHWA has eliminated the proposed OPTION stating a minimum width for roadways with center line markings. There are no definitive guidelines, supported by research, for such minimums on low volume roads.

171. In Section 5E.05 Object Markers, the FHWA has changed the proposed first phrase of the GUIDANCE statement to an OPTION statement for when to consider to use TYPE III barricades to mark the end of a low volume road. Commenters pointed out that such barriers are typically not warranted for low volume roads and should not be recommended as a general treatment for such facilities.The FHWA agrees because no supporting data has been presented showing that the barricades are needed on all low volume roads.

172. In Section 5F.05 Pavement Markings, the proposed STANDARD statement is removed as it only directed readers to Sections 8B.9 and 8B.10. The proposed SUPPORT statement is changed to GUIDANCE on when to install pavement markings in advance of highway-rail grade crossings on low-volume roads. The FHWA agrees with the commenters who suggested that on a paved road with center line markings, the unfamiliar motorist would have no knowledge of the low AADT and, therefore, would expect highway-rail grade crossing markings. These markings should increase safety at these highway-rail grade crossings. This should have no impact on State or local jurisdictions because this is not a change from the current MUTCD requirements.

Discussion of Adopted Amendments to Part 6—Temporary Traffic Control

The FHWA received 2875 comments from 56 commenters concerning Part 6. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 73606 on December 30, 1999.

173. The title of Part 6 is changed from "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations" to "Temporary Traffic Control" as indicated in the NPA.

174. In Chapter 6A General, the FHWA has moved a portion of the STANDARD from the end of Chapter 6B Fundamental Principles because it applies to all Chapters of Part 6. The moved portion reads, "There shall be adequate statutory authority for the implementation and enforcement of needed traffic regulations, parking controls, speed zoning, and incident management. Such statutes shall provide sufficient flexibility in the application of traffic control to meet the needs of changing conditions in the temporary traffic control zone."

175. In Chapter 6B Fundamental Principles of Temporary Traffic Control, paragraph 3b of the GUIDANCE statement, a number of commenters suggested the need to indicate conditions under which permanent traffic control devices do not have to be removed in a temporary traffic control zone. The FHWA is retaining language similar to that used in the 1988 MUTCD, Revision 3 dated September 3, 1993, which clearly indicated which traffic control devices to be used. The last sentence reads, "However, in intermediate-term stationary, short term and mobile operations where visible permanent devices are inconsistent with intended travel paths, devices that highlight or emphasize the appropriate path should be used."

In Chapter 6B Fundamental Principles of Temporary Traffic Control, paragraph 4c of the GUIDANCE statement, a commenter suggested the need to describe ambient conditions factors. The FHWA is retaining the modifiers "road user volumes, light, and weather" from the 1988 Edition of MUTCD, Revision 3 to describe ambient conditions. This change should have no impact on State or local highway agencies since the FHWA is retaining the current MUTCD requirements.

176. In Section 6C.01 Temporary Traffic Control Plans, the FHWA is adding a fourth GUIDANCE statement to provide additional information on minimizing the need to reduce speed limits in temporary traffic control zones. It reads, "Reduced speed limits should be used only in the specific portion of the temporary traffic control zone where the above conditions or restrictive features are present; however, frequent changes in speed limit should be avoided. A traffic control plan should be designed so that vehicles can safely travel through the temporary traffic control zone with a speed limit reduction of no more than 10 mph. A reduction of more than 10 mph in the speed limit should be used only when required by restrictive features in the temporary traffic control zone. Where restrictive features justify a speed reduction of more than 10 mph, additional driver notification should be provided. The speed limit should be stepped down in advance of the location requiring the lowest speed, and additional warning should be used." This change will have no economic impact on State and local highway agencies. However, roadway safety and efficiency should increase because research has shown that speed reductions should be no more than a 10 mph increment.

177. A new Section 6C.02 Temporary Traffic Control Zones, is added to the MUTCD to better define temporary traffic control zones. It contains only general information concerned with temporary traffic control zones. A new definition for "temporary traffic control zones" includes a work area or an incident area. In the NPA this text was included as part of the Section 6C–2 Components of Temporary Traffic Control Zones. This change is not adding any new requirements for State or local jurisdictions.

178. Section 6C.03 Components of Temporary Traffic Control Zones (referenced in the NPA as Section 6C.2) includes information concerned exclusively with the four components of a temporary traffic control zone, *i.e.*, the advance warning area, the transition area, the activity area, and the termination area. The examples of a work zone area and an incident area are removed from this Section 6C.2 and relocated to Chapter 6G which is concerned with types of temporary traffic control zone activities. In the NPA, the text of Sections 6C.02 and 6C.03 was combined into just one section and four commenters suggested that the NPA language was too cumbersome and recommended that the text be split. The FHWA agrees and has made the change to clarify the text.

179. In Section 6C.06 Activity Area (referenced in the NPA as Section 6C.5), Table 6–1, "Guidelines for Length of Minimum Advance Working Area," was incorrectly titled and located in the NPA. The FHWA is renumbering the table as Table 6E–1, is moving the table to Section 6E.05 Flagger Stations, and re-titling it "Distance of Flagger Station in Advance of Work Space." This table provides information on the distance a flagger should be in advance of the work area based on the speed of approaching traffic. The information in the table has nothing to do with Activity Areas and lengths of minimum advance working areas.

180. In Section 6C.07 Termination Area (referenced in the NPA as Section 6C.6), the FHWA has changed the first SUPPORT statement to a STANDARD as the statement is a definition, and definitions are by their very nature STANDARDS.

The GUIDANCE statement dealing with END ROAD WORK signs has been moved to Section 6F.49 END ROAD WORK Sign (G20–2) as it most appropriately goes in the section that describes the sign and not in this section discussing a termination area.

In place of the GUIDANCE statement, an OPTION statement has been added to this section indicating the need for an END ROAD WORK, speed limit, or other sign to indicate to road users that they may resume normal operations. The above changes were made to be consistent throughout the MUTCD and to add guidance to optimize road user performance in temporary traffic control zones.

181. In Section 6C.08 Tapers (referenced in the NPA as Section 6C.7), in the sixth proposed SUPPORT statement regarding a One-Lane, Two-Way Taper, the last sentence, "Typically, traffic is controlled by a flagger or temporary traffic control signal." Seven commenters suggested the need that this and other sections be more specific on providing temporary traffic control for two-way traffic using a one-lane roadway. The FHWA agrees and has changed the text accordingly. The text is being revised and relocated to the sixth GUIDANCE statement in the MUTCD because anywhere two-way traffic is moved in a one-lane of a road, there needs to be some type of temporary traffic control to maintain traffic flow and safety. The GUIDANCE statement reads, "Traffic should be controlled by a flagger or temporary traffic signal (if sight distance is limited), or a STOP or a YIELD sign." This change should have no impact on State and local jurisdictions while improving road user safety by providing positive direction to road users during temporary traffic control operations.

182. In Section 6C.10 One-Lane, Two-Way Traffic Control (referenced in the NPA as Section 6C.9), the FHWA is changing the first proposed GUIDANCE statement indicating the need for some type of temporary traffic control for one-lane, two-way traffic flow operations to a STANDARD. Anywhere two-way traffic is moved in a one-lane of a road, there needs to be some type of temporary traffic control to maintain traffic flow and safety. This change should have no impact on State and local jurisdictions while improving road user safety by providing positive direction to road users during temporary traffic control operations.

183. In Section 6D.01 Pedestrian Considerations, the proposed third STANDARD statement is changed to a GUIDANCE statement because there are no acceptable measures to judge "when pedestrians are especially vulnerable to impact by errant vehicles, all pedestrians shall be separated and protected by a temporary barrier." Three commenters recommended this change and the FHWA agrees. The fifth GUIDANCE statement now reads, "When pedestrian and motor vehicle paths are rerouted to a closer proximity to each other, consideration should be given to separating them with a temporary barrier." This will provide more flexibility to State and local highway agencies and, thereby, reducing the impacts on them.

Also in this section, the first STANDARD statement is relocated from the end of proposed Section 6D.2 Worker Considerations, because it is applicable to both pedestrian and worker safety. These changes were based on comments from the NCUTCD as well as other commenters. The FHWA agrees and it now reads, "the various traffic control provisions for pedestrian and worker safety set forth in this Part shall be applied by qualified persons after appropriate evaluation and engineering judgment."

184. In Section 6E.01 Qualifications for Flaggers, the FHWA is changing the first proposed SUPPORT sentence to a STANDARD as the statement is a definition and definitions are by their very nature STANDARDS.

185. In Section 6E.03 Hand-Signaling Devices, the proposed statement "When flashing lights are used at night, the illumination shall not blind drivers." was questioned by three commenters because there no acceptable measures to determine this. The FHWA agrees and has removed the statement from the second GUIDANCE of this section.

In the second STANDARD the word "red" was inadvertently left out of the NPA. The STANDARD now reads, "When used at nighttime, flags shall be retroreflectorized red." This is identical wording to that in the 1988 Edition of MUTCD, Revision 3. This should have no impact on State or local governments since the FHWA is retaining the current requirements.

186. In Section 6F.01 Types of Devices, the proposed first SUPPORT statement is changed to a GUIDANCE statement and revised to read, "The design and application of temporary traffic control devices used in temporary traffic control zones should consider the needs of all road users." This change is made to emphasize the need to consider all road users, pedestrians, bicyclists, transit, and railroads as well as motor vehicle traffic, when designing and applying traffic control devices.

187. In Section 6F.02 General Characteristics of Signs, the FHWA has added an OPTION statement which retains language from the 1988 MUTCD, Revision 3 dated September 3, 1993, that allows the use of non-black on orange pedestrian warning signs in work zones. The new OPTION statement reads, "In order to maintain the systematic use of yellow or fluorescent yellow-green background for pedestrian, bicycle, and school warning signs in a jurisdiction, the yellow or fluorescent yellow-green background for pedestrian, bicycle, and school warning signs may be used in temporary traffic control zones." This OPTION is modified to include the fluorescent yellow-green color because many jurisdictions have adopted this optional warning sign color for pedestrian, bicyclist and school facilities and locations. In addition, this provides more flexibility to State and local highway agencies to increase awareness of pedestrians and bicyclists in temporary traffic control zones.

188. In Section 6F.03 Sign Placement, the FHWA is adding the GUIDANCE statement, "Neither portable nor permanent sign supports should be located on sidewalks, bicycle lanes, or areas designated for pedestrian or bicycle traffic." The Insurance Institute for Highway Safety commented on this omission that would allow the placement of temporary traffic control signs to hinder the movement of pedestrians and bicyclists. The FHWA agrees and this should not have an impact on State or local governments.

189. In Section 6F.09 LOCAL TRAFFIC ONLY Signs (R–11–3, R11–4), the FHWA is changing the first STANDARD statement to a GUIDANCE statement to provide more flexibility in signing in rural communities where the temporary traffic control zone may be within a residential block and not kilometers (miles) down a road without intersections.

190. Section 6F.15 Warning Sign Function (as referenced in the NPA) has been combined with Section 6F.16 Warning Sign Design and Application (as referenced in the NPA), and renamed, "Section 6F.15 Warning Sign Function, Design, and Application." These changes were made because the FHWA agrees with the comments from six commenters that the material in the two sections really belongs together.

Also in Section 6F.15, the STANDARD statement and GUIDANCE statement proposed in the NPA concerning flexible signs are removed as these items are adequately addressed in Section 6F.02 Signs, and in Section 6F.03 Sign Placement. Five commenters indicated this overlap.

191. Section 6F.16 Position of Advance Warning Sign (referenced as Section 6F.17 in the NPA) has been combined with Section 6F.18 Other Advance Warning Signs (as referenced in the NPA) and Section 6F.19 Application of Warning Signs for Maintenance, Minor Road Work, and Utility Sites (as referenced in the NPA) and has been moved and named, "Section 6F.16 Position of Advance Warning Signs." These changes were made because the FHWA agrees with the five commenters that indicated the overlap in technical issues in these three sections.

192. In Section 6F.20 ONE LANE ROAD Sign (W20–4) (referenced in the NPA as Section 6F.23), the FHWA has moved to Section 6C.10 One-Lane, Two-Way Traffic Control, the proposed GUIDANCE statement concerning how to temporarily control two-way traffic on a one-lane roadway. This GUIDANCE statement has been reworded to read, "If traffic on the affected one-lane roadway is not visible from one end to the other, then flagging procedures or traffic signal control should be used to control alternate traffic flows." This GUIDANCE has been clarified and is more appropriately placed in Section 6C.10.

193. In Section 6F.28 EXIT OPEN, EXIT CLOSED signs (E5–2) (referenced in the NPA as Section 6F.31), one commenter suggested that a complementary sign, EXIT CLOSED (E5–2a), was inadvertently left out of the NPA. The FHWA agrees and has included this sign in this section as an OPTION. In temporary traffic control work zones in and around interchanges it is important to provide current traveler information such as notifying motorists that an exit is, in fact, closed. This change provides for uniformity for signs used at exit locations and will have no impact on State or local highway agencies.

194. In Section 6F.52 Portable Changeable Message Signs (referenced in the NPA as Section 6F.55), the FHWA is changing the first SUPPORT statement to a STANDARD statement as the statement is a definition and definitions are by their very nature STANDARDS. The statement is revised to read, "Portable Changeable Message Signs are traffic control devices with the flexibility to display a variety of messages. Each message consists of either one or two phases, only. Typically, a phase consists of up to three lines of eight characters per line."

195. In Section 6F.53 ARROW PANELS (referenced in the NPA as Section 6F.56), the FHWA is changing the first proposed SUPPORT statement in the NPA to a STANDARD as the statement is a definition and definitions are by their very nature STANDARDS.

Additionally, since arrow panels are similar to portable changeable message signs, the FHWA is adding a GUIDANCE statement to Section 6F.53 identical to the GUIDANCE statement for locating and providing protection for portable changeable message signs. The GUIDANCE statement reads, "An arrow panel should be placed on the shoulder of the roadway or, if practical, further from the traveled lane. It should be delineated with retroreflective temporary traffic control devices or when within the clear zone, shielded with a barrier or crash cushion. When an arrow panel is not being used, it should be removed; if not removed, shielded; or if the previously two options are not feasible, delineated with retroreflective temporary traffic control devices." This GUIDANCE will maintain traffic flow efficiency and improve safety.

196. In Section 6F.55 Channelizing Devices, Subsection A General (referenced in the NPA as Section 6F.58), the FHWA changed the second paragraph of the second SUPPORT paragraph in the NPA "Standard designs of channelizing devices are shown in Figure 6F–06," to a STANDARD at the beginning of the section. The design dimensions in Figure 6F–06 have always been STANDARDS. One commenter pointed out this discrepancy.

Also in this section, in Subsection D Vertical Panels, the requirement that vertical "panel strip widths shall be 150 mm (6 in), except where panel heights are less than 900 mm (36 in), then 100 mm (4 in) stripes may be used" was inadvertently reversed in the NPA. The FHWA has corrected this wording making it similar to that in the1988 MUTCD, Revision 3 dated September 3, 1993. Since this change is keeping the current requirements of the MUTCD, there is no impact on State or local highway agencies.

Additionally, Subsection G Direction Indicator Barricade, the FHWA has changed the proposed first GUIDANCE statement to an OPTION statement to read: "The Direction Indicator Barricade may be used in tapers, transitions, and other areas where specific directional guidance to motorists is necessary." Direction indicator barricades do not have to always be used in these situations. This provides State and local highway agencies more flexibility in selecting temporary traffic control devices for work zones.

Subsection J Opposing Traffic Lane Divider, is more appropriately relocated to this section from proposed Section 6F.67 as referenced in the NPA because it provides directional guidance to motorists.

197. In Section 6F.69 Lighting Devices, Subsection D(4) Warning Lights (referenced in the NPA as Section 6F.60), the FHWA relocated to this Subsection a GUIDANCE statement from Figure TA–34 and Figure TA–36. The GUIDANCE statement reads, "The maximum spacing for warning lights should be identical to the channelizing device spacing requirements." This GUIDANCE is applicable to any situation where lighting devices are used, not just in the two typical application Figures.

The FHWA is moving the SUPPORT statement (referenced in the NPA as Subsection D(4) Flashing Beacon (Vehicle Mounted)) "During normal daytime maintenance operations, the functions of flashing warning beacons are adequately provided by rotating lights or strobe lights on a maintenance vehicle" to the beginning of the Section. Furthermore, the FHWA is retaining a STANDARD statement, "The use of the vehicle hazard warning lights shall not be used instead of rotating lights or strobe lights" and an OPTION statement, "The vehicle hazard warning lights may only supplement the rotating lights or strobe lights" to clarify the intent of 'rotating lights or strobe lights'. The STANDARD and OPTION statements were added to MUTCD in January 9, 1997, and were inadvertently omitted in the NPA.

198. In Section 6F.74 Temporary Traffic Control Signals (referenced in the NPA as Section 6F.61), the first GUIDANCE is revised to read: "When temporary traffic control signals are used, conflict monitors that are typically used in traditional traffic signal operations should be used." This was corrected because the spacing between traffic signal installations, as proposed in the NPA, has nothing to do with the need for a conflict monitor. This has no impact on State or local governments since the FHWA is retaining existing MUTCD requirements.

199. In Section 6F.75 Temporary Traffic Barriers (referenced in the NPA as Section 6F.62), the FHWA is changing a GUIDANCE statement to a STANDARD statement. The statement reads, "In order to mitigate the effect of striking the end of a temporary traffic barrier, the end shall be installed in accordance with the AASHTO Roadside Design Guide by flaring until the end is outside the acceptable clear zone or by providing with crashworthy end treatments." This requirement should improve safety because research indicates that there are no acceptable methods of providing the required

degree of safety other than flaring or providing crashworthy end treatments.

200. In Section 6F.76 Crash Cushions, Subsection B Truck-Mounted Attenuators, the second proposed SUPPORT statement is changed to a STANDARD in the new MUTCD as the statement is a definition of "truck-mounted attenuators" and definitions are by their very nature STANDARDS.

Under this same Subsection B, the proposed the first STANDARD statement is changed to a GUIDANCE statement in the new MUTCD to provide more flexibility in the spacing of the shadow vehicle behind the workers and their work vehicles.

201. In Section 6G.05 Work Outside of Shoulder (referenced in the NPA as Section 6G.6), the FHWA has changed to an OPTION statement the GUIDANCE statement which reads, "Where the activity is spread out over a distance of more than 3.2 km (2 mi), the sign should be repeated every 1.6 km (1 mi)." Since the work being performed is outside the shoulder, there may not always be a need to install signs that frequently. This will provide more flexibility to State and local highway agencies.

202. In Section 6G.06 Work on the Shoulder With No Encroachment (referenced as Section 6G.7, Subsection B in the NPA), the GUIDANCE statement "Truck off-tracking should be considered when determining whether the minimum lane width of 3 m (10 ft) is adequate" from Figure TA–43 has been added to Section 6G.06 Subsection B Minor Encroachment on the Traveled Way. It is in this Subsection that minimum lane widths are discussed and accounting for truck off-tracking is applicable to all temporary traffic control zones with minimum lane widths.

203. Section 6G.08 Work Within the Median, is added to the new MUTCD as a separate section. It was referenced in the NPA as the GUIDANCE statement under Section 6G.3. The new section reads, "If work in the median of a divided highway is within 4.5 m (15 ft) from the edge of the traveled way for either direction of travel, traffic control should be used through the use of advance warning signs and channelization devices." This change provides for improved road user safety in temporary traffic control work zones.

204. In Section 6G.10 Work Within Traveled Way of Urban Streets, Subsection B. Bicyclists, the FHWA is changing a proposed SUPPORT statement to a STANDARD statement to ensure that bicyclists are accommodated during a temporary traffic control zone. The statement reads, "If the work area affects the movement of bicyclists, adequate access to the roadway, bicycle path, or shared-use path shall be provided. For details on controlling bicycle traffic, see Part 9." This change should provide for increased safety for bicyclist in temporary traffic control work zones and has no significant impact on State or local government agencies.

205. In Section 6G.18 Work in the Vicinity of Highway-Rail Grade Crossings, a new GUIDANCE statement is added to read, "Early coordination with the railroad company should occur before work starts." As it is important that all users of the work area are aware of temporary changes and for continued highway-rail grade crossing operations. This early coordination should improve road user operations and improve safety while having no economic impact on State and local highway agencies.

Discussion of Adopted Amendments to Part 7—Traffic Controls for School Areas

The FHWA received 156 comments from 20 commenters concerning Part 7. The notice of proposed amendments (NPA) was published at 62 FR 64324 on December 5, 1997.

206. In Section 7A.01, the Typical School Route Plan Map (Figure 7A–1) is revised as proposed in the NPA. Several comments were received suggesting modifications to the figure. The figure has been enlarged and printed in color to better identify signals and stop signs. The arrow heads reflecting direction of travel are enlarged. Traffic control devices are added where intersecting streets meet the collector road.

The FHWA received no negative comments regarding our proposal to include middle and high schools in the development plans for school routes. This amendment to Section 7A.01, paragraph 6, adopts the following GUIDANCE: "A school route plan for each school serving elementary to high school students should be prepared * * *."

The amendment to Section 7A.01, paragraph 8, requires the traffic control devices in the school plan to be related to the volume and speed of vehicle traffic, street width, and the number and age of children using the crossing. There were no negative comments to this change.

207. The FHWA received two comments that objected to the deletion of the text found in Sections 7A.05 through 7A.10, 7B.01 through 7B.04, 7B.07, and 7B.08 of the 1988 MUTCD. The FHWA believes that retaining this text is not necessary with the new layout of the MUTCD, because this information is provided in other sections.

208. Six comments were received on the proposed text in Section 7B.01 which found the sign size terminology confusing. Based on these comments, the heading is revised to read "Size of School Signs." The FHWA received no other negative comments regarding this amendment. However, there were three comments regarding Table 7B–1 "Size of School Area Signs and Plaques." One comment suggested using "centimeters" to display metric units. In a final rule published at 64 FR 33751 on June 24, 1999, the FHWA adopted two American Association of State Highway and Transportation Officials publications for the design of traffic control devices for use on all roads open to public travel. These documents use millimeters, not "centimeters." Another comment noted that the proposed table was not in agreement with the "Standard Highway Signs" book.[15] This book is also undergoing revision. The FHWA will ensure that there are no conflicts with sign sizes shown in both publications. There was a comment regarding the "older driver" issue of sign size and legibility. The FHWA believes this issue is adequately covered in the OPTION statement that reads: "The 'special' sized sign may be used for applications that require increased emphasis, improved recognition or increased legibility."

Based on comments received, the OPTION statement has been expanded to define where the minimum size signs are used.

209. A new section, 7B.07 Sign Color for School Warning Signs, is added that addresses the optional use of the color fluorescent yellow green for school warning signs. This amendment was adopted in a final rule published at 63 FR 33546 on June 19, 1998. The FHWA has included this OPTION for use of the color and GUIDANCE that addresses the systematic approach for the use of this color.

210. Section 7B.08 School Advance Warning Sign (S1–1) was referenced in the NPA as Section 7B.07 School Advance Warning Sign (S1–1). Section 7B.09 School Crosswalk Warning Assembly (S1–1 with Diagonal Arrow) was referenced in the NPA as Section 7B.08 School Crosswalk Warning Sign (S2–1). The text for both sections is modified to be consistent with Section 2C.36 which discusses a new application for advance crossing and crossing signs. The FHWA is eliminating the crosswalk lines on the crossing signs since road user comprehension studies show that they generally do not know the difference between the two signs. Instead of using crosswalk lines within the sign to indicate where the actual crossing is located, the new application consists of a crossing sign with supplemental downward pointing arrow plaque to show the crossing location. For advance crossing situations, the new application will consist of a crossing sign supplemented with an "Ahead" or "XX feet" plaque. This assembly shall be used in advance of the first installation of the School Speed Limit Sign assembly. The FHWA believes that the supplemental plaques must be used (not optional) to ensure safety of children at crosswalks in school zones. The FHWA is providing a phase-in compliance period of 10 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This period will allow for replacement of existing signs after their normal service life. This change is effective immediately for new sign installations.

[15] "Standard Highway Signs," FHWA, 1979 Edition is included by reference in the 1988 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

211. In Section 7B.09, paragraph 4, under the GUIDANCE statement, new text recommends that an engineering study should be conducted before installing the School Crosswalk Warning Sign. No commenters objected to this amendment. However, as mentioned above, the sign is now referred to as the School Crosswalk Warning Assembly sign.

212. Section 7B.11 changes the title to "School Speed Limit Assembly (S4–1, S4–2, S4–3, S4–4, S5–1)." The FHWA is adopting this amendment based on two comments received indicating that this section describes the complete assembly of signs that make up a school speed limit sign, not just the plates. The FHWA concurs with this recommendation.

Also in Section 7B.11, one commenter suggested moving the text for the "End School Zone" (S5–2) sign to a separate section, since it is a separate sign from the others found in 7B.11. This text is moved to new Section 7B.13.

213. The title of Section 7B.12 is changed to "School Reduced Speed Ahead Assembly." This amendment is based on one comment received suggesting changing the title to better reflect the actual sign used and illustrated. The appropriate text is also modified to reflect this change.

214. One comment was received for Section 7B.14 Parking and Stopping Signs (R7 and R8 Series), suggesting that "No Standing" signs be addressed as an example. The FHWA agrees with this suggestion and a discussion is included in paragraph 2.

Figure 7–2, "Placement of the S1–1 sign" which was shown in the 1988 MUTCD, is deleted based on three comments that pointed out that this subject is covered in Section 2C, and revised Figure 7B–1 "Typical Signing for School Area Traffic Control" that is depicted in this Final Rule. The FHWA has renumbered the remaining figures appropriately.

The revised Figure 7B–1 is corrected to reflect the assembly signs with the diagonal arrow and the "AHEAD" and "XX FEET" plaques as discussed in Sections 7B.08 and 7B.09. The figure has also been expanded to show the metric versions of the speed limit signs along with English units.

215. In Section 7C Markings, four commenters indicated conflict with the text in Part 3 Markings. The FHWA has amended the text for consistency with Part 3.

216. A GUIDANCE statement in Section 7C.04 Stop Line Markings, paragraph 1, is adopted for the placement of a Stop line in the absence of a marked crosswalk.

217. This amendment to Section 7C.06, the OPTION statement, clarifies that the "SCHOOL" word markings may extend across two lanes. (See Figure 7C–1). In the proposed text, this OPTION was inadvertently shown in the GUIDANCE discussion, and was brought to FHWA's attention by a docket comment.

218. In Chapter 7D Signals, the text is deleted and the reader is referred to Part 4 Signals, Section 4C.06 School Crossing Signal Warrant. The FHWA only received one comment in opposition to this change.

219. Chapter 7E Crossing Supervision deletes the discussion on legal authority for adult guards and student patrols since the state and local agencies are responsible for establishing laws regarding these crossing supervisors. There were no objections received on this change.

220. This amendment to Section 7E.04, paragraph 2, is based on a comment that the FHWA received indicating that mentioning "daytime, nighttime, and twilight hours," and the reference to Section 6E.03 is redundant. The FWHA agrees and the reference to "daytime, nighttime, and twilight hours" is deleted.

The FHWA is also amending the text in the last paragraph of Section 7E.04 to include "police officers" in addition to adult guards and student patrols in wearing high-visibility retroreflective material or clothing, since police officers may be used for crossing supervision as mentioned in Section 7E.06.

221. The discussion on the use and size of the Stop paddle in Section 7E.05, paragraph 2, is changed the from OPTION to GUIDANCE. It was also suggested that the STANDARD in paragraph 3 be modified to indicate that the paddles should be "at least" 450mm (18 in). The FHWA agrees and is adopting this change. This would then allow the use of a larger paddle. Paragraph 3 is also modified to require the word "STOP" on both sides of the paddle instead of "one or both sides" since it is important for traffic to read and respond to this command from both directions of travel.

222. Section 7E.10 High Visibility Clothing has been eliminated since this text is a duplicate to that stated in Section 7E.04.

Discussion of Adopted Amendments to Part 8—Traffic Controls for Highway-Rail Grade Crossings

The FHWA received 412 comments from 52 commenters concerning Part 8. Only the technical (not editorial) comments are addressed in this discussion. Two notices of proposed amendments (NPA) were published at 64 FR 691 on January 6, 1997 and at 64 FR 71358 on December 21, 1999.

223. In Section 8A.01 Introduction, commenters from 4 States and 1 county recommended that the last sentence in Paragraph 3 of the 1999 NPA, a SUPPORT statement, be changed to reflect that the responsibility for determining the need and selection of devices at a grade crossing should be shared with the highway agency, the regulatory agency, and the railroad company, instead of just resting with the highway agency. The FHWA and the Federal Railroad Administration have reviewed Federal law, regulations, and guidance and found that although they encourage voluntary railroad involvement (as members of diagnostic teams where Federal funds are involved) in the analysis of need for and type of protection, they do not impose on railroads the responsibility to make, or share in making, determinations of need for or selection of traffic control devices. Therefore, the FHWA is not making the suggested changes.

224. The FHWA is changing the title for Section 8A.05 from "Traffic Controls in Work Zones During Construction or Maintenance," to "Temporary Traffic

Control," to be consistent with Part 6 of this Manual.

225. In proposed Section 8A.08 Private Highway-Rail Grade Crossings, a State commented that paragraph 4 in the GUIDANCE statement containing a recommendation to evaluate a private crossing by means of an engineering study to determine possible closure or the appropriate type of traffic control, be downgraded to OPTION or deleted. The FHWA has decided to delete this section on Private Highway-Rail Grade Crossings. The Federal Railroad Administration will be addressing the private highway-rail grade crossing issue in an upcoming safety inquiry.

226. In Section 8B.02 Highway-Rail Grade Crossing (Crossbuck) Sign (R15–1, R15–2), the FHWA has added a STANDARD statement (as proposed in the 1999 NPA) to require the placement of a strip of retroreflective white material on the back of each Crossbuck sign for the length of each blade, except where Crossbuck signs are installed back-to-back. The FHWA also added a STANDARD statement (as proposed in the 1999 NPA) to require the placement of a strip of retroreflective white material on the front and back of each Crossbuck support. The FHWA is providing a phase-in compliance period of 10 years for existing installations to minimize any potential impact to State and local highway agencies. This change takes effect immediately for all new installations.

227. In Section 8B.03 Highway-Rail Grade Crossing Advance Warning Signs, a State recommended the continued inclusion of the phrase, "Where physical conditions do not permit even a partially effective display of the sign," under the STANDARD statement. The FHWA agrees and is including this item, which is one of the exceptions to the mandated use of the W10–1 Highway-Rail Grade Crossing Advance Warning sign, because it is still relevant.

In response to a comment, the FHWA is upgrading the proposed last paragraph of Section 8B.03 from GUIDANCE to STANDARD and placing it as Item A in the first paragraph of this section. This item will require the use of the W10–2, W10–3, or W10–4 sign on the parallel highway when the parallel highway is less than 100 feet from the railroad track.

In response to another commenter, the FHWA is adding the phrase "(using the speed of the turning maneuver)" to paragraph 4, STANDARD, to clarify what speed to use to determine placement distance on the parallel highway for the W10–2, W10–3, or W10–4 advance warning signs.

228. In Section 8B.06 DO NOT STOP ON TRACKS Sign, paragraph 1, GUIDANCE, the FHWA is changing "engineering study" to "engineering judgment" because engineering experience and familiarity with local traffic and geometric conditions is sufficient to determine whether the potential for vehicles stopping on tracks is high.

229. In Section 8B.12 NO SIGNAL Sign, a State, a county, and the Association of American Railroads commented on the inclusion of the NO SIGNAL sign in the MUTCD. They believe that the sign does not convey any needed information and just adds to sign clutter. The FHWA is retaining this optional sign because of comments from members of Congress and the FHWA's desire to provide warning to the road user that the crossing does not have active warning devices. In addition, no jurisdiction is required to install this sign. However, if a jurisdiction determines it is needed, this is a standard sign it may use.

230. The FHWA decided to change the sequence of sections near the end of Chapter 8B so that all signs are discussed first, then pavement markings for better continuity. The headings for Sections 8B.14, 8B.15, 8B.16, 8B.17, and 8B.18 now read as follows:

8B.14 Low Ground Clearance Highway-Rail Grade Crossing Sign (W10–5)
8B.15 Storage Space Signs (W10–11, W10–11a, W10–11b)
8B.16 Pavement Markings
8B.17 Stop Lines
8B.18 Dynamic Envelope Delineation

231. In Section 8B.14 Low Ground Clearance Highway-Rail Grade Crossing Sign (W10–15) (referenced in the NPA as Section 8B.16), several commenters suggested relocation of text concerning a hang-up of long wheelbase vehicles or trailers with low ground clearance from the STANDARD statement to the GUIDANCE statement. The FHWA moved the text because there are no established means for determining which crossings will create a hang-up of long wheelbase vehicles or trailers with low ground clearance.

232. In Section 8B.15 Storage Space Signs (referenced in the NPA as Section 8A.7), commenters from a State and a county remarked that the W10–11 Storage Space sign does not convey the information that there is limited space beyond the crossing. The FHWA agrees that the GUIDANCE should include the use of the W10–11a word message "storage distance" sign in conjunction with the W10–11 sign. Another commenter stated that the letter size on the W10–11a sign with four lines of text on a 24" by 24" (600 mm by 600 mm) panel will not be large enough to be legible to drivers at normal highway speeds. The FHWA agrees and is including a drawing of the W10–11a as a 30" by 36" (750 mm by 900 mm) sign with a 4-inch letter size in the MUTCD and in the Standard Highway Signs manual.[16]

Also, the FHWA is adding a new W10–11b word message storage distance sign as an OPTION to remind motorists of the storage distance space between the intersection and the tracks behind them.

233. In Section 8B.18 Dynamic Envelope Delineation (referenced in the NPA as Section 8A.6), a railroad company commented that the use of dynamic envelope delineation markings should be made an OPTION instead of GUIDANCE. There were a number of other comments about these markings being mistaken for stop lines, about how far from the tracks the markings should be placed, and the design of the markings.

One State requested that the entire section be deleted. Because of the comments and lack of real-world experience with these markings, the FHWA is changing this section to an OPTION until research on this concept is done. The FHWA would appreciate the assistance of the State and local jurisdictions that use these markings in determining their effectiveness.

234. In Section 8D.01 Introduction, the U.S. Architectural and Transportation Compliance Board requested that a number of provisions of the Americans with Disabilities Act (42 U.S.C. 1201 *et seq.*) be complied with when a "pedestrian circulation route" crosses a railroad track. The FHWA is adding a new GUIDANCE paragraph that reads, "If a pedestrian route is provided, sufficient clearance from supports, posts, and gate mechanisms should be maintained for pedestrian travel."

235. In Section 8D.03, the FHWA is changing the title from "Flashing-Light Signals, Cantilevered Supported" to "Flashing-Light Signals, Overhead Structures" because flashing-light signals are not only mounted on cantilevered supports, but also on overhead structures that extend over the entire width of the roadway.

236. In Section 8D.04 Automatic Gates, a comment was received on using medians at grade crossings that do not have four-quadrant gates. The FHWA agrees that text regarding median islands, which is adequately covered in

[16] Ibid.

Section 8D.05 in conjunction with four-quadrant gates, should also be covered in this section for automatic gates in general. The FHWA is adding a new OPTION paragraph to Section 8D.04 that reads, "Automatic gate installations may include median islands between opposing lanes on an approach to a highway-rail grade crossing."

237. Several comments were received on Section 8D.04, paragraph 4 in the 1999 NPA, GUIDANCE, and Section 8D.05, paragraph 5 in the 1999 NPA, GUIDANCE, that pointed out the paragraphs had both a "shall" and a "should" in the same sentence. They requested the FHWA change the "should" to a "shall," thus making the entire sentence a STANDARD. The FHWA agrees that the gate going back to its upright position after the train is gone be mandatory, not just recommended, and is changing this sentence to a STANDARD, and therefore the "should" to a "shall." Those submitting comments also wanted to delete the 12-second time period, but the FHWA is retaining the 12-second time period as GUIDANCE.

238. In Section 8D.07 Traffic Control Signals at or Near Highway-Rail Grade Crossings, paragraphs 1 and 3, the FHWA is reverting to the STANDARD and OPTION language used in the 1988 MUTCD describing the use of traffic signals at highway-rail grade crossings based on comments that the proposed language was not as clear about the types of crossings where traffic signals are appropriate. Also, a comment was received suggesting that this section clarify that the preemption condition should be terminated only when the crossing gates are energized to start their upward movement. The person submitting the comment felt clarification on preemption termination would make a difference in responding to situations when a second train approaches as the preemption associated with the first train is terminating. The FHWA agrees and is inserting clarifying wording.

Discussion of Adopted Amendments to Part 9-Traffic Controls for Bicycle Facilities

The FHWA received 357 comments from 79 commenters concerning Part 9. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999.

239. The FHWA received no objections to deleting Sections 9A.01, 9A.04, 9A.06, 9A.07, and 9A.09. The information found in these sections can be found in Part 1 of the MUTCD.

240. In Section 9A.03, the FHWA is modifying the definitions by adopting the definitions published in the "Guide for the Development of Bicycle Facilities," 1999 edition, AASHTO[17]. The term "Shared Roadway" has been deleted from the definitions relating to bicycle facilities since this term is not used in Part 9. The adoption of these definitions was recommended by the NCUTCD and concurred in by 65 commenters.

241. In Section 9A.05, the FHWA received comments from the NCUTCD and 65 other commenters to change the text related to the reference to the "Uniform Vehicle Code and Model Traffic Ordinance" [18] published by the National Committee on Uniform Traffic Laws and Ordinance, from a STANDARD to SUPPORT to better reflect the information included in this section. The FHWA agrees that this change is also consistent with the language found in Part 1 of the MUTCD.

242. In Section 9B.01, the FHWA received no negative comments regarding the consolidation of application and location of signs into this section. In paragraph 5 of this section, the NCUTCD and 68 other commenters suggested adding language discussing the maximum mounting height of 1.5m (5 ft) which is shown in Figure 9B–1. The FHWA agrees that this omission was an oversight and should have been stated in the text of Section 9B.01, therefore it is reviewing this section accordingly. In addition, there were no negative comments received concerning the minimum mounting height remaining 1.2m (4 ft) as reflected in Section 9B.01 paragraph 5, and Figure 9B–1.

There were several favorable comments received on Table 9B–1 "Bikeway Sign Sizes." Several signs have been added to the table that were inadvertently left out of the NPA. The column reflecting sign sizes has been modified to read "Minimum Sign Size." The signs have been reordered to reflect the order found in Part 2.

243. In Section 9B.02, the statement that sign sizes for shared use paths should be those shown in Table 9B–1 is changed from GUIDANCE to STANDARD since sign sizes are considered STANDARDS in other parts of the MUTCD. An OPTION statement is added to allow the use of larger size signs when appropriate.

Also in Section 9B.02, the OPTION statement regarding the use of fluorescent yellow green warning signs for "Bicycle Crossing" warning signs has been moved to Section 9B.15 Bicycle Crossing Warning Signs which is a more appropriate location for this discussion.

244. In Section 9B.03, text has been added to the OPTION statement that allows the use of larger STOP and YIELD signs when appropriate. One commenter recommended adding GUIDANCE on assignment of priority at path/roadway intersections and to recommend selection of appropriate intersection control. The FHWA is adding this language to this section.

245. In Section 9B.04 (referenced in the NPA as Section 9B.06 with the Proposed title "Preferential Bicycle Land Signs"), the title of this section is modified to read "Bicycle Lane Signs" to be consistent with the definition found in Section 9A. The word "preferential" is deleted throughout the text for consistency. Three comments were received that addressed the inconsistency between this section and Section 9C.04 Markings For Bicycle Lanes.

Two paragraphs have been added to Section 9B.04 as an OPTION statement that addresses the use of the R3–16a and R3–17a "Bicycle Lane" signs that were shown in the NPA but not addressed in the text. The R3–16a sign may be used to notify the bicyclist that the bicycle lane is ending. The R3–17a sign may be used to notify bicyclists that they may encounter parked vehicles where parking is allowed.

The proposed deletion of the preferential lane symbol (diamond) for bicycles was well received. Both the R3–16 and R3–17 signs and appropriate figures that were proposed to be modified in the NPA, and there were no objections to this change. The FHWA is providing a phase-in compliance period of 5 years after the effective date of this final rule for existing markings to minimize any impact on State and local highway agencies. This change is effective immediately for new signing installations.

246. In Section 9B.05 (referenced in the NPA as Section 9B.10 and proposed changing the title from "Lane Use Control Signs" to "Bicycle Preferential Lane-Use Control Signs"), the NCUTCD and 65 other commenters recommended changing this sign to "Begin Right Turn Lane Yield to Bikes Sign" (R4–4), to better define the sign's use. A comment was received and concurred with by 66 others that the OPTION statement

[17] The "Guide for the Development of Bicycle Facilities," 1999 edition, AASHTO, is available for inspection as prescribed at 49 CFR part 7. It may be purchased from AASHTO, 444 North Capitol Street, NW., Suite 249, Washington, DC 20001, or electronically at *http://www.aashto.org.*

[18] The "Uniform Vehicle Code and Model Traffic Ordinance," 1992 Revision, is published by the National Committee on Uniform Traffic Laws and Ordinances, 107 S. West Street, #110, Alexandria, Virginia 22314. It is available for inspection as prescribed at 49 CFR part 7.

should be revised to reduce redundancy and to clarify the intent of this sign to be used at the beginning of right turn only lanes with parallel through bicycle lanes. The FHWA is revising this section to substitute the word "weave" for "merge" to better describe the movements at these locations.

Also, the R3–7 sign mentioned in Section 9B.10 is not specifically a bicycle-related sign, but is instead related to right turn only lanes. The FHWA agrees that this sign is adequately addressed in Part 2B and is deleted from this section.

247. In Section 9B.08 (referenced in the NPA as Section 9B.09), the title is changed from "No Parking Signs" to "No Parking Bicycle Lane Signs." None of the commenters disagreed with this change.

One comment was received regarding the language found in the NPA Section 9B.09 and pointed out that due to variances in State and local laws affecting parking in bicycle lanes that this STANDARD text would be better addressed as GUIDANCE. The FHWA disagrees with this change in condition and is adding the text "If the installation of signs is necessary to restrict parking * * *" in order to clarify that when these signs are posted, this concept shall be followed. This addition to the text allows flexibility and has no impact on State and local jurisdictions.

248. In Section 9B.09 Bicycle Regulatory Signs (referenced in the NPA as Section 9B.05 Bicycle Restriction Signs), several commenters recommended changing the title and text to "Bicycle Regulatory Signs" since these signs are more appropriately noted as regulatory signs, not specifically as restriction signs. The FHWA agrees with this recommendation and is changing the title. It was also suggested that text be added to the OPTION statement in Section 9B.09 to address the use of the R10–3 sign at locations without pedestrian signals. The FHWA agrees and is adding this OPTION. The GUIDANCE statement is modified deleting the phrase "where bicyclists are expected to dismount and walk with pedestrians while crossing the street" since the State's law or Uniform Vehicle Code may not require bicyclists to dismount.

249. The proposed amendment to Section 9B.10 recommended changing the name of this sign from "Travelpath Restriction Signs" to "Shared-Use Path Restriction Sign." None of the commenters disagreed with this change. The proposed change is adopted.

250. A new Section 9B.11 Other Regulatory Signs is added after it was suggested that there are other regulatory signs that may be applicable to shared use paths and other bicycle facilities.

251. Several comments were received on the text regarding Intersection Warning Signs in Section 9B.13 (proposed as Section 9B.14). The text was in conflict with that found in Section 2C.33. The text found under OPTION of Section 2C.33 has been inserted in this section and modified to include "shared use paths." Several commenters also questioned the language in the second OPTION statement that also conflicted with the GUIDANCE statement found in Section 2C.33. The FHWA has deleted this second OPTION and added language to be consistent with the GUIDANCE statement found in Section 2C.33 that states that intersection warning signs should not be used when the path approach to the intersection has a stop, yield, or signal control.

252. In Section 9B.14, 67 commenters remarked that the word "Hazardous" in the Bicycle Hazardous Condition Warning sign be changed to "Surface" since the word may be misinterpreted for the warning condition ahead in the bicycle path surface. The FHWA agrees and the sign and text is changed to read "Bicycle Surface Condition Warning Sign."

It was also proposed in 9B.14 that the SLIPPERY WHEN WET plaque be made a supplemental plaque similar to other specific surface conditions (DIP, BUMP). The SLIPPERY WHEN WET plaque has been assigned the designation "W8–10p."

253. The text in Section 9B.15 Bicycle Crossing Warning Signs has been replaced with text that was published in Section 2C.36 which proposed a new application for advance crossing and crossing signs. The FHWA eliminated the crosswalk lines on the crossing signs since road user's comprehension studies show that they generally do not know the difference between the two signs. Instead of using crosswalk lines within the sign to indicate where the actual crossing is located, the FHWA is requiring a crossing sign with supplemental downward pointing arrow plaque to show the crossing location. In an advance crossing situation, the FHWA is requiring using a crossing sign supplemented with an "AHEAD" or "XX FEET" plaque. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This period will allow for replacement of existing signs after their normal service life. This change is effective immediately for new sign installation.

It was also suggested that the text in the GUIDANCE paragraph of Section 9B.15 be revised to remove the distances stated for low and high speed roadways and refer the reader to Table 2C–3 which states the guidelines for advance placement of warning signs. The FHWA agrees with this recommendation and has deleted the duplicate language.

254. In Section 9B.16, the FHWA received no negative comments on the proposed text under OPTION, published at 62 FR 1364 on January 9, 1997. The text is modified to clarify that the Share the Road word message plaque (W16–1) may be used in conjunction with the W11–1 Bicycle Crossing sign. One comment was received suggesting a picture of the sign be added. This sign has been added to the page with warning signs.

The SUPPORT paragraph found in Section 9B.20 Warning Signs is relocated to 9B.16 Other Bicycle Warning Signs in order to consolidate references to other warning signs.

255. In Section 9B.18 Bicycle Route Markers (referenced in the NPA as Section 9B.17), the FHWA is changing the GUIDANCE which recommends that the M1–8 marker should be used to establish a unique designation for a State or local bicycle route to an OPTION. The FHWA did not receive any comments opposing this proposal.

The NCUTCD recommended that the M1–9 Bicycle Route Marker that is shown in the NPA be revised to be consistent with the M1–9 design depicted in the "Standard Highway Signs"[19] book. The M1–9 design shows the route number above and the bicycle below which improves the legibility of the route number. The FHWA agrees with this recommendation, and has modified the M1–9 bicycle route marker.

256. In Section 9B.19 Destination Arrow and Supplemental Plaque Signs for Bicycle Route Signs, the NCUTCD recommended that the discussion of color of the M7–1 through M7–7 signs be stated as a STANDARD instead of GUIDANCE. The FWHA agrees and the discussion of sign colors is changed to a STANDARD to ensure uniformity.

257. In Figure 9B–2, the title has been revised by replacing the word "typical" with "example" and now reads "Example Signing for the Beginning and End of a Bicycle Route" since this may not be considered a "typical" drawing. Other modifications to the figure are made on comments received, including removing the crosswalk lines, extending the centerline through the roadway, adding a curb line at the beginning/end of the bicycle route, and extending the size of the arrow sign (M7–1) to match the D11–1 sign.

[19] "Standard Highway Signs," FHWA, 1979 Edition is included by reference in the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). It is available for purchase from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250–7954. It is available for inspection and copying as prescribed at 49 CFR part 7.

258. Figure 9C–3, "Typical Signing for the Beginning and End of a Bikeway of a Preferential Bicycle Lane," is removed from the MUTCD. The NCUTCD submitted a figure that shows recommended signing and markings for bicycle lanes combined on one figure. The FHWA agrees with this concept, therefore a new Figure 9C–5, "Typical Pavement Marking for Bicycle Lanes on Two-way Street," is added with accompanying text to Chapter 9C MARKINGS.

259. The FHWA received no objections to the proposed language in Section 9C.02 regarding pavement markings for bicycle facilities. The text in GUIDANCE is modified to include all bicycle facilities, not merely bicycle lanes. Also, the text in Section 9C.02 regarding "pavement marking materials that will minimize loss of traction under wet conditions" is changed to a more generalized statement since some materials may be slippery to bicyclists when dry as well as wet.

260. The FHWA received no objections to the proposal in Section 9C.03 to change the language from GUIDANCE to OPTION for using a solid white line to separate different types of users on shared use paths. The proposed change is adopted.

261. In Section 9C.04, the title now reads "Markings for Bicycle Lanes" in order to be consistent with the revised definition of this term. It was recommended that the word "preferential" be deleted throughout Part 9 to be consistent with the language found in the "Guide for the Development of Bicycle Facilities," 1999 edition, AASHTO.[20] This was adopted. Also, the proposed amendment to Section 9C.04 included text requiring signs to be used with preferential lane symbols. Commenters suggested deleting this text from this section since it is covered in Section 9B. The FHWA believes requiring the use of these signs is of importance and is including the proposed text in Section 9C.

The FHWA is adding a GUIDANCE statement to indicate how bicycle lanes are specifically defined by marking. This paragraph reads "Longitudinal pavement markings should be used to define bicycle lanes."

Also in Section 9C.04, the FHWA is changing the STANDARD so that both markings and signs are mandatory. Use of pavement markings only would not alert drivers to the presence of the lane to the same extent as markings and signs together would, especially in inclement weather conditions.

Three commenters found the language proposed in Section 9C.04 regarding the placement of bicycle lane symbols immediately after an intersection confusing. The FHWA is revising the text to include maximum distance between markings. The sentence reads "If used, the bicycle lane symbol shall be placed immediately after, but not closer than 20m (65 ft) from the cross road, or other locations as needed."

262. Several comments were received regarding Figure 9C–4, "Intersection Pavement Markings—Designated Bicycle Lane with Left Turn Area, Heavy Turn Volumes, Parking, One-way Traffic, or Divided Roadway." The FHWA is adopting a figure submitted by the NCUTCD which more clearly shows recommended signs and symbols for a bicycle lane. Several comments were received regarding Figures 9C–7, Typical Bicycle Lane Treatment at Parking Lane into Right Turn Only Lane" and 9–8, "Typical Bicycle Lane Treatment at Right Turn Only Lane." The figure legends that were proposed in the NPA are revised and corrected.

263. In Section 9C.06, the FHWA is expanding the discussion of markers on shared use paths in the STANDARD paragraph and is adding text to be consistent with the text found in Section 3C.02.

264. The FHWA's proposal to add a separate Section 9C.07 to cover the discussion on pavement markings used for obstruction received no objections, however, the title is simplified to "Pavement Markings for Obstructions."

The SUPPORT statement in Section 9C.07 is modified by changing the word "condition" to "obstruction" to better define the application of this marking. The second sentence in the statement is deleted because such obstruction may not always be visible to bicyclists, and may lead to the marking not being used in locations where it is appropriate.

The GUIDANCE statement in Section 9C.07 is revised to make the marking applicable to obstructions other than drainage grates, and to specify that such markings should be used specifically for hazards near the roadway edge and not in the center of the roadway. The sentence reads "In roadway situations where a drainage grate or other roadway obstruction that is inappropriate for bicycle travel cannot be eliminated, white markings applied as shown in Figure 9C–7 should be used."

265. In Section 9D.02 Signal Operations for Bicycles, one commenter recommended combining the discussion on visibility requirements with the discussion on signal operations for bicycles and using the term "visibility-limited signal faces." There were no other negative comments received. One commenter recommended revising the language in the second paragraph. The FHWA agrees, and the text is revised to read "On bikeways, the needs of bicyclists shall be considered when setting signal timing."

266. Modifications are made to several of the figures in Part 9 based on comments received. The Figure 9C–5 (NPA Figure 9–6) is divided into two figures based on comments received from the NCUTCD. The top two diagrams are numbered and titled "Figure 9B–3. Typical Signs and Marking for Shared-Use Paths." The bottom right diagram on NPA Figure 9–6 is deleted because it is not considered necessary. The bottom two diagrams remain and are numbered and titled "Figure 9C–6. Optional Word and Symbol Pavement Markings for Bicycle Lanes."

A new figure is added, numbered and titled "Figure 9C–2. Center Line Markings for Shared-Use Paths." This figure depicts centerline and obstruction markings for paths. This figure is added to more clearly show how to divide a shared use path of sufficient width into two opposing lanes and how to delineate an obstruction.

The NPA Figure 9–9 is replaced with a figure that was submitted by the NCUTCD and is renumbered and titled "Figure 9C–7. Obstruction Pavement Marking." This figure is also found in AASHTO's "Guide of Development of Bicycle Facilities," and clearly shows marking details and taper rates.

267. As proposed in Part 9C of the NPA, the FHWA is deleting the preferential lane symbol (diamond) for bicycle signs and pavement markings. The American Traffic Safety Services Association commented that the 7 to 10 year phase-in is too long and should be shortened to 3 to 5 years if the use of the diamond symbol on preferential lanes has caused confusion among the public. The FHWA agrees that the use of the diamond symbol on preferential lanes is confusing and with ATSSA's suggestion requiring that all new projects comply now. The FHWA agrees

[20] The "Guide for the Development of Bicycle Facilities," 1999 edition, AASHTO, is available for inspection as prescribed at 49 CFR part 7. It may be purchased from AASHTO, 444 North Capitol Street, NW., Suite 249, Washington, DC 2001, or electronically at *http://www.aashto.org.*

that the 7 to 10 year phase-in is excessive and is revising the proposed phase-in period to 6 years. This change takes effect immediately for new installations.

Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings

The FHWA received 381 comments from 46 commenters concerning part 10. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 33806 on June 24, 1999.

268. Part 10 is added to the MUTCD. The FHWA received 5 comments supporting the addition of Part 10 to the MUTCD.

269. In Section 10A.01 Introduction, a new paragraph 3 is added under the SUPPORT statement to read: "An initial educational campaign along with an ongoing program to continue to educate new drivers is beneficial when introducing light rail operations to an area and, hence, new traffic control devices." This paragraph is added to address docket comment concerns about road users' comprehension of new traffic control devices that pertain to light rail operation.

Also in this section, a new paragraph 5 under STANDARD is added to read: "Where light rail transit and railroads use the same track or adjacent tracks, the traffic control devices, systems, and practices for railroad crossings shall be used. (See Part 8)." This paragraph is added based on review of docket comments concerning the use of the W10–6 sign (light rail transit advance warning sign) proposed to be added in Part 10 versus the W10–1 sign (highway-rail advance warning sign) that is required in Part 8. This paragraph clarifies that the traffic controls described in Part 8 have precedence when a track or adjacent tracks are used by both heavy and light rail.

The FHWA has removed from this section proposed paragraphs 4 (STANDARD) and 5 (OPTION) from the 1999 NPA, regarding applicability of Part 10 to only new and modernized locations and when consistent with Federal and State laws and regulations. The compliance date for automatic gates, flashing-light signals and blank-out signs is 5 years after the effective date of this final rule. This 5-year phase-in period for automatic gates, flashing-light signals and blank-out signs is given in order to not cause an undue economic burden on the affected jurisdictions.

270. In Section 10A.05 Temporary Traffic Control Zones, the FHWA is changing paragraph 7 concerning lane restrictions or the performance of flagging near highway-light rail transit grade crossings from GUIDANCE to STANDARD to be consistent with the STANDARD paragraph in Section 8A.05 Temporary Traffic Control Zones. This change will require that lane restrictions, flagging or other operations not be performed in a manner that would cause vehicles to stop on the tracks with no means of escape.

271. In Chapter 10C Signs, Illumination and Markings (titled "Signs, Pavement Markings, and Illumination" in the 1999 NPA), the FHWA is reordering the sections to follow other parts of the Manual (regulatory, warning, information, illumination and pavement markings). Within the regulatory category, the FHWA reordered the sections as: at the crossing, near the crossing, and then signs for mixed-use alignment operation. The new order is: 10C.01 Introduction, 10C.02 Look Sign, 10C.03 STOP or YIELD Sign, 10C.04 DO NOT STOP ON TRACKS Sign, 10C.05 STOP HERE ON RED Sign, 10C.06 Light Rail Transit-Activated Blank-Out Turn Prohibition Signs, 10C.07 Divided Highway With Light Rail Transit Crossing Sign, 10C.08 No Vehicles On Tracks Sign, 10C.09 Light Rail Transit Only Lane Signs, 10C.10 Do Not Pass Light Rail Transit Sign, 10C.11 Highway-Rail Advance Warning Signs, 10C.12 Light Rail Transit Approaching-Activated Blank-Out Warning Sign, 10C.13 Light Rail Station Sign, 10C.14 Illumination at Highway-Light Rail Transit Crossings, and 10C.15 Dynamic Envelope Delineation Markings.

272. In Section 10C.01 Introduction, the proposed OPTION paragraph in the 1999 NPA, concerning the use of smaller than standard size signs, is removed. A commenter stated that unlike bicycle facilities, for light rail transit, sign sizes and placement similar to standard highway signs are required because of the similarity of motor vehicle driver needs. The FHWA agrees with this comment and is removing the OPTION so that the signs conform to Chapter 2A as stated in the STANDARD. Since this issue is provided for in Chapter 2A, it should not be stated as an OPTION in this section.

273. Proposed Section 10C.02 Light Rail Transit Warning Signs (W10–6, W10–6a) has been removed and replaced with a new Section 10C.02 entitled, "LOOK Sign (R15–8)." Based on docket comments received about the W10–6 light rail transit advance warning sign and review of the section, the FHWA agrees that allowing the use of a warning sign at crossings to supplement the Crossbuck (Figure 10–6 in the 1999 NPA) is not appropriate (warning signs are used in advance to warn the road user of an approaching unexpected condition, not at the condition). The FHWA agrees to include the option to use the LOOK sign (R15–8) as a supplemental panel to the Crossbuck at light rail transit grade crossings. The LOOK sign is currently an OPTION allowed in Part 8, Traffic Control for Highway-Rail Grade Crossings; therefore, to be consistent the FHWA is adding it to Part 10.

The FHWA received several comments in response to the proposal to add a new standard Light Rail Transit Warning Sign (W10–6) and a Light Rail Transit Both Directions Warning Sign (W10–6a, W10–6b). Three docket commenters stated that the W10–1 sign is already a universally accepted advance warning sign standard at all highway-rail grade crossings. They stated that the new light rail transit warning sign provides the potential for confusion and may fail to elicit the appropriate degree of caution. In an effort to create uniform standards, they recommend the W10–1 sign be installed instead of W10–6. One commenter wanted this sign to be an OPTION instead of a requirement, thinking that at signalized intersections with light rail transit crossing one leg the placement of the sign would be subject to different interpretations as to what approaches qualify for such an installation. One commenter suggested that the W10–6 and the W10–6a be round to match the shape of the W10–1. Another commenter stated that the distinction provided between the W10–6 and the W10–6a and W10–6b appears to be unnecessary and potentially hazardous and that drivers should be alert to the possibility of bi-directional rail traffic at all crossings.

In response to the above comments, the FHWA is removing the section referenced in the 1999 NPA as 10C.2 Light Rail Transit Warning Signs (W10–6, W10–6a) and replacing it with Section 10C.11 Highway-Rail Advance Warning Signs (W10–1, W10–2, W10–3, W10–4). The W10–1 sign is already a universally accepted advance warning sign standard at all highway-rail grade crossings and is currently required in Part 8 of the MUTCD. This will remove the potential for confusion and the potential of not achieving the appropriate degree of caution. The compliance date removal of existing W10–6 series signs is 5 years after the effective date of this final rule. This 5-year phase-in period for removal of existing W10–6 series signs is given in order to not cause an undue economic burden on the affected jurisdictions.

274. In Section 10C.03 STOP or YIELD Signs (R1–1, W3–1, R1–2, W3–2), two commenters suggested the wording on the use of STOP AHEAD or YIELD AHEAD signs be changed to match that in Section 2C.25 (use on approaches with insufficient sight distance). The FHWA agrees with these comments and made text changes to reflect this change.

One commenter requested a change from a STANDARD to an OPTION, and another commenter requested a change from a STANDARD to a GUIDANCE when STOP or YIELD signs are used to control the highway-light rail transit crossing. The FHWA disagrees that the STANDARD should be changed to an OPTION or a GUIDANCE. A clarifying phrase is added to the end of the first paragraph that indicates the STOP AHEAD and YIELD AHEAD signs shall be installed in accordance with Section 2C.25. Section 2C.25 indicates that these signs shall be installed if there is a sight distance problem.

Six commenters suggested the addition of two new characteristics for deciding whether to use a STOP or YIELD sign. The FHWA will consider the proposal for adding two new characteristics for deciding if a crossing should use a STOP or YIELD sign in the future.

One commenter indicated that proposed paragraph 4 in the 1999 NPA (covering not installing a STOP or YIELD sign near a crossing such that vehicles might extend into the path of an approaching light rail transit vehicle) is in conflict with State laws concerning when a light rail crosses a local road that intersects a State highway, the local road is required to stop before entering the highway. The FHWA agrees and is removing this sentence and replacing it with a new paragraph that gives GUIDANCE about posting a DO NOT STOP ON TRACKS sign if a STOP or YIELD sign is installed near a crossing where vehicle queues are likely to extend into the path of a light rail transit train.

One commenter took exception to the GUIDANCE recommending that STOP or YIELD signs be erected on a separate post. He stated that this guidance was unnecessarily restrictive and that there is no reason why a STOP sign could not be mounted on an existing fixture (*e.g.*, a street light pole) if that fixture is in a suitable position. He said that the other requirements of this paragraph are already covered by Part 2, and the entire paragraph 4 (referenced in the 1999 NPA as paragraph 3) should be deleted. The FHWA agrees that STOP and YIELD signs may be installed on another suitable post and is changing that paragraph to an OPTION instead of deleting it.

After review of this section, the FHWA is removing proposed paragraph 5 in the 1999 NPA, (OPTION) regarding the option to install a STOP or YIELD sign as an interim measure while waiting for active devices to be installed and operational. This paragraph is no longer appropriate because Section 10B.01 Introduction and other paragraphs in Section 10C.03 give the authority to use STOP and YIELD signs at crossings for other than interim measures.

275. In Section 10C.06 Light Rail Transit-Activated Blank-Out Turn Prohibition Sign (R3–1a to R3–2a) (referenced in the 1999 NPA as Section 10C.04), a commenter questioned the appropriateness of transit-activated turn prohibitions. His experience with such blank-out signs showed that road users often fail to note and respond to the activation of such signs. He found this problem significant in cases of high volumes or permissive left turns across heavy traffic. He recommended using traffic signal phasing with protected/prohibited operation instead of these signs. The FHWA disagrees. These signs are appropriate for use, and road users are helped by and do respond to the message. If protected-only left-turn phasing is used, it would not be necessary to install a blank-out turn-prohibition sign for the left-turn movement.

One commenter objected to the blank-out sign because he said the detail on the sign cannot be reproduced on a fiber optic sign. A problem was also found with adding the railroad tracks to the sign because it may weaken turn prohibitions where no specified hazard is identified on the sign. The FHWA disagrees with this comment. There are a number of different technologies that can be used to convey this message if the use of fiber optic technology for this sign is in question.

After a review of this section, the FHWA realized that the GUIDANCE given in proposed paragraph 2 of the 1999 NPA unduly prohibited the use of this sign on mixed-use alignments. In proposed paragraph 3 of the 1999 NPA, the words "on a semi-exclusive alignment" also unduly prohibited the use of this sign on mixed-use alignments. The FHWA is removing paragraph 2 from GUIDANCE and the words, "on a semi-exclusive alignment" from paragraph 3 to allow the light rail transit-activated blank-out turn prohibition signs to be used in mixed-use and semi-exclusive alignments.

276. In Section 10C.08 No Vehicles on Tracks Sign (R15–6, R15–6a) (referenced in the 1999 NPA as Section10C.07), several comments were received as well as the results from the FHWA research study, "Evaluation of Selected Potential MUTCD Signs."[21] One commenter requested that the use of this sign be extended to locations where the tracks are only separated by pavement markings. The FHWA agrees with this comment and is making the appropriate text changes to this section.

Another commenter suggested that the use of this sign is more appropriate when adjacent traffic lanes are separated from the transit lane only by striping or lane designation, and that it is obvious when curbs are used that vehicles are prohibited from driving on the tracks and the curb itself provides a deterrent. The FHWA partially agrees with this comment. However, we believe an important application of this sign is at intersections in order to inform drivers not to proceed down the wrong (light rail transit) side of the curb.

A third commenter thought the sign would call attention to the tracks and be misinterpreted as indicating traffic may travel on the exclusive roadway as long as they do not drive on the tracks. He also suggested using turn restrictions and DO NOT ENTER signs instead. The FHWA disagrees with the suggestion to substitute a DO NOT ENTER sign for a No Vehicles on Tracks symbol sign—it is important to tell drivers why they are not permitted to enter or turn onto the light rail transit track area, as some drivers intentionally violate turn restriction signs when they think that they will not be putting their safety in jeopardy. When the guideway is not paved, most agencies will not exercise their option to use this sign. However, the FHWA agrees that in some instances a DO NOT ENTER (R5–1) sign is appropriate. The FHWA is removing the phrase from paragraph 1 (SUPPORT) that suggests the No Vehicles on Tracks sign is appropriate for streets solely for light rail transit. The FHWA is adding as the new second paragraph in Section 10C.08 the following GUIDANCE language: The DO NOT ENTER (R5–1) sign should be used where a road user could wrongly enter a light rail transit only street." A DO NOT ENTER conveys the message better for this situation.

The fourth commenter recommended a word message sign be used instead of the symbol sign because the symbol is confusing. The FHWA disagrees that only a word message sign (DO NOT DRIVE ON TRACKS, R15–6a) should be

[21] "Evaluation of Selected Potential MUTCD Signs," Publication Number FHWA–RD–00–053, is available from National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

used. However, the FHWA is adding an optional word message sign that could be used in lieu of the symbol sign based on this docket comment and results from the FHWA symbol sign research.[22]

277. In Section 10C.09 Light Rail Transit Only Lane Signs (R15–4 Series) (referenced in the 1999 NPA as Section 10C.05), one commenter suggested that the use of the "Light Rail Transit Only Lane" regulatory (R15–4 series) sign in mixed alignments (an alignment where motor vehicles and light rail transits operate in the same lane) does not appear to be appropriate. He recommended that the OPTION paragraph be revised. The FHWA disagrees with this comment because the purpose of these signs is for mixed-use alignments.

278. In Section 10C.10 Do Not Pass Light Rail Transit Sign (R15–5) (referenced in the 1999 NPA as Section 10C.06), the FHWA conducted a symbol sign research evaluation.[23] Based on the results of that study, an optional word message sign is added: "DO NOT PASS STOPPED TRAIN" (R15–5a).

279. In Section 10C.12 Light Rail Transit Approaching-Activated Blank-Out Warning Sign (W10–7) (referenced in the 1999 NPA as Section 10C.11), one commenter found the proposed W10–7 sign to be unclear and had the potential to be confused with the I–12 sign. The commenter believes that by shape and color, the W10–7 sign appears to be regulatory rather than warning. He also believes that standard railroad warning signs and exclusive signal phases appear to be adequate without the W10–7 sign. The FHWA partially agrees and is adding descriptive wording to the text to reinforce that the W10–7 sign is a warning sign.

Six commenters suggested that the proposed third paragraph be changed from an OPTION to GUIDANCE, recommending these signs be used at traffic signals where traffic turning across tracks is not controlled by exclusive signal phases. The FHWA disagrees because many agencies do not want to use these signs. Changing this to GUIDANCE would force these agencies to justify their decision to not use a device that should only be an OPTION.

One commenter suggested that a special sign is not needed for this situation because the road user does not distinguish between heavy and light rail. The FHWA disagrees because there is no similar sign for heavy rail.

One commenter stated that the proposed format of the blank-out sign does not convey a message that the light rail transit car may be approaching from behind the driver. Also, the use of a verbal message format should be an OPTION. The FHWA disagrees. This sign is not required, but is a device the traffic engineer may use. The FHWA is adding descriptive words to the text to improve this section.

280. In Section 10C.14 Illumination at Highway-Light Rail Transit Crossings, the FHWA is removing proposed paragraph 2 of the 1999 NPA, (STANDARD) of this section, dealing with location of luminaires, because it is already covered in paragraph 2 (referenced in the 1999 NPA as paragraph 3), which references a recommended practice for roadway lighting.

281. In Section 10C.15 Dynamic Envelope Delineation (referenced in the 1999 NPA as Section 10C.13), one commenter recommended deleting the proposed fifth paragraph of the 1999 NPA where GUIDANCE is provided on delineation along the roadway between intersections in mixed-use alignments. He believed that this practice could confuse road users and diminish their respect for the distinctive paving at locations where its purpose is to deter vehicle encroachment into a reserved trackway. The FHWA disagrees because delineation of the dynamic envelope along the roadway in mixed-use alignments will better communicate to road users where to expect the light rail transit train. This is especially important in mixed-use alignments because road users may have a greater number of possible crossings with a light rail transit train (depending on lane restrictions). However, the FHWA is changing this paragraph to an OPTION so the decision of whether to delineate the dynamic envelope in mixed-use alignments can be made based on local conditions.

One commenter suggested changing the proposed sixth paragraph of the 1999 NPA (on extending the markings across all highway-light rail transit crossings) from GUIDANCE to OPTION because it may be more appropriate to use a stop line so motorists don't pull up to the dynamic envelope marking thinking it serves as a stop line and be in the way of a descending gate. The FHWA agrees with changing this paragraph to an OPTION; and includes the drawing of the dynamic envelope pavement marking for a semi-exclusive alignment (currently shown in Figure 8B–4 in Part 8) in Figure 10C–2. The FHWA is modifying the length of the pavement marking in that figure to extend across the width of the entire roadway so it will not be confused with a stop line.

One commenter suggested that markings should only be installed when an engineering study demonstrates a need to define the envelope. The FHWA agrees with this suggestion and is changing paragraph 2 of this section to be an OPTION in the MUTCD. The FHWA also is adding a phrase to the end of paragraph 7 explaining that if used, markings should extend across all crossings, "unless a four quadrant gate system (see Section 10D.04) is used."

One commenter stated that additional guidance is needed on pavement marking colors, line style, etc. The FHWA agrees and is modifying paragraph 3 to add the words, "and shall be a 100 mm (4 in) normal solid white line" to the end of the paragraph. The current text refers to Part 3, but there is no mention of the size and colors of dynamic envelope delineation in Part 3.

282. In Section 10D.01 Introduction, one commenter stated that, based on experience with light rail transit operating speeds, the speeds mentioned in paragraph 6 (referenced in the 1999 NPA as paragraph 2) need to be changed from a maximum speed of 55 mph to a maximum speed of 65 mph. The FHWA agrees and is making this change to the text.

Another commenter suggested deleting proposed paragraph 4 of the 1999 NPA (the last paragraph in SUPPORT) and proposed paragraph 5 of the 1999 NPA (the first paragraph in GUIDANCE) because they do not make any substantive contribution to Part 10. The FHWA agrees that these paragraphs are unnecessary and is removing them.

Six commenters suggested paragraph 5 (referenced in the 1999 NPA as paragraph 7), on audible devices, be changed from OPTION to GUIDANCE in order to provide adequate warning for the visually impaired community and to meet the American with Disabilities Act (ADA) Requirements. The FHWA disagrees because the ADA requirements do not require audible devices at every grade crossing. The FHWA believes that changing paragraph 5 to GUIDANCE could mean significant financial burdens to State and local governments. In addition, the FHWA believes that the jurisdictions that need these devices will conduct the appropriate engineering studies and install these devices. FHWA will investigate this issue further.

283. The FHWA is adding two new sections to Chapter 10D Highway-Light Rail Transit Active Traffic Control Grade Crossing Systems. The FHWA is adding Section 10D.02 Four Quadrant Gate Systems to mirror the current wording in Part 8 (Traffic Control for Highway-Rail Grade Crossings) to govern four quadrant gate systems, if used. This decision is based on the inclusion of a section on four quadrant gates in Part 8 and the current use of four quadrant gates at highway-light rail transit grade crossings. The FHWA is adding Section 10D.04 Flashing-Light Signals, to properly categorize some of the wording from Section 10D.03 Automatic Gates (referenced in the 1999 NPA as Section 10D.02) and to cover the aspects of flashing-light signals that are unique to light rail transit.

284. In Section 10D.03 Automatic Gates (referenced in the 1999 NPA as Section 10D.02 Traffic Gates), one commenter suggested that the title should be changed from "Traffic Gates," to "Automatic Gates" because the term "Automatic Gates" is used in Part 8. The FHWA agrees and has changed the title to "Automatic Gates" for this section (to match Part 8).

Another commenter suggested the FHWA not use the term "automatic gate" since most, if not all, gates at highway-rail grade crossings and highway-light rail transit grade crossings are operated by power and controlled by electrical circuits that make them automatic. However, there was concern that the term "traffic gate" failed to distinguish between Barrier (Resistance) Gates, and Warning Gates. He suggested that "traffic gates" be replaced by "barrier traffic gates." The FHWA disagrees because, before changing to a term other than "automatic gates" (as used in Part 8), the development of new technical definitions needs to be addressed by the rail and traffic engineering professions.

Six commenters suggested changing paragraph 3 (referenced in the 1999 NPA as paragraph 2) from a GUIDANCE to a STANDARD. They stated that industry experience has found gated light rail transit grade crossings safer than ungated crossings, especially at speeds above 60 km/h (35 mph). In addition, they stated that the California Public Utilities Commission requires that gates be used where light rail transit speeds exceed 60 km/h (35 mph). Where light rail transit speeds exceed 60 km/h (35 mph), the commenters said the need for gates is due to both the increased stopping distance required for light rail vehicles traveling over this speed and the increase in property damage, injuries and fatalities reported when light rail transit collisions occur at speeds above 60 km/h (35 mph). The commenters also say this is standard design practice for all new light rail transit systems in the United States, and so would not create an additional financial burden for light rail transit systems. The FHWA disagrees with changing this paragraph to a STANDARD at this time. Additionally, the USDOT Highway/Rail Grade Crossing Technical Working Group is developing a report that may recommend changes in GUIDANCE at active highway-rail grade crossings. Based on that report, the FHWA will consider whether changes to Part 10 are needed.

Six commenters suggested that paragraph 5 (referenced in the 1999 NPA as paragraph 4), concerning the OPTION to install automatic gates and flashing-light signals when the highway-light rail transit grade crossing is not at an intersection and when light rail transit speeds greater than 40 km/h (25 mph), be changed from OPTION to STANDARD because of industry experience. The commenters state that motorists are not expecting to stop at mid-block locations, and as such the need for traffic gates is greater at lower light rail transit speeds to provide a physical barrier between the motorist and the tracks. The FHWA disagrees with changing this paragraph to a STANDARD. This proposed change would need to be part of a future notice of proposed amendment to allow the public a chance to comment. Additionally, the USDOT Highway/Rail Grade Crossing Technical Working Group is developing a report that may lead to changes in GUIDANCE at active crossings. After reviewing that report, the FHWA will consider whether changes are needed to Part 10.

Two commenters questioned the restriction of light rail transit speeds in paragraph 5 (referenced in the 1999 NPA as paragraph 4). The FHWA disagrees with these objections because paragraph 5 defines when traffic control signals may be used instead of flashing-light signals or gates. That paragraph is not an attempt to control speeds of light rail transit operations or drivers of other motor vehicles. The criteria listed in this paragraph are not speed limits. Paragraph 5 contains valuable information to most agencies, however it is not a STANDARD. This paragraph allows a particular agency to use traffic control signals at a grade crossing that has light rail transit speeds in excess of 60 km/h (35 mph). This paragraph does not limit light rail transit speeds; it discusses the use of gates depending on speed.

285. In Section 10D.05 Traffic Control Signals (referenced in the 1999 NPA as Section 10D.03). One commenter suggested a change to paragraph 3, GUIDANCE, saying 60 meters (200 ft) is inadequate for desirable interconnection. He recommended 200 m (650 ft) and recommended that this be a STANDARD requirement. The FHWA disagrees because 60 meters (200 feet) is the distance used in other parts of the MUTCD for guidance related to railroad preemption.

Six commenters suggested two new paragraphs (concerning the use of traffic control signals at highway-light rail transit grade crossings based on an engineering study, light rail transit speeds, and traffic control devices at the crossings) be added as OPTIONS. The FHWA partially agrees, but is only adding the phrase, "at a location other than an intersection," to paragraph 9 of Section 10D.05. The remainder of the suggested new paragraph will not be added because the FHWA does not want road users to disregard the importance of traffic signals. If traffic signals are placed at grade crossings where they would display GREEN for a majority of the time, there will be a disregard for traffic signals. The suggested second paragraph would conflict with Part 8.

Three commenters requested that the paragraph referenced in the 1999 NPA as paragraph 7 (exclusive only turn phase with arrow indications) be changed from OPTION to GUIDANCE. They stated that industry experience has demonstrated that, at intersections with exclusive turn lanes parallel to the tracks, a protected only turn phase should be provided to minimize the potential for a road user to run in front of a light rail vehicle approaching from behind. As a result of these docket comments, the FHWA has changed this paragraph to a STANDARD instead of the requested GUIDANCE to improve safety at highway-light rail transit grade crossings. This paragraph was reworded to require a red indication to be displayed so that vehicles are prohibited from turning onto the tracks when trains are approaching or occupying the crossing. The FHWA also has moved this paragraph into the Traffic Signal Preemption Turning Restrictions section (now renumbered as Section 10D.06).

286. In Section 10D.06 Traffic Signal Preemption Turning Restrictions (referenced in the 1999 NPA as Section 10D.04), two commenters opposed the restriction of turn movements at nearby signalized intersections. They believed the restriction should be changed to provide for an engineering study of site conditions. The FHWA disagrees. Motorists, pedestrians, and bicyclists should not be trapped when crossing the tracks due to a lack of storage distance and should not run into the path of an oncoming train.

[22] "Evaluation of Selected Potential MUTCD Signs," FHWA, 2000 (Publication No. FHWA–RD–00–053)

[23] Ibid.

287. In Section 10D.07 Use of Traffic Control Signals for Control of Light Rail Transit Vehicles at Grade Crossings (referenced in the 1999 NPA as Section 10D.05), six commenters recommended that paragraph 3 (referenced in the 1999 NPA as paragraph 2), concerning allowing standard traffic signals to be used for light rail transit signals, be deleted. They stated that industry experience has demonstrated that motorist confusion occurs if standard traffic signal indications are used in lieu of special light rail transit signal indications. They stated that existing systems that have standard traffic signals in place to control light rail transit movements will not be affected by this because of the provisions in the 1999 NPA in paragraphs 4 and 5 in Section 10A.01. The FHWA disagrees with deleting paragraph 3. There is no reason why green-yellow-red signals cannot be used to control light rail transit traffic, especially since the GUIDANCE (erroneously shown as the second paragraph of SUPPORT in Section 10D.5, paragraph 6 of the 1999 NPA) states that the indications should be positioned so as not to be visible to motorists. In addition, proposed paragraphs 4 and 5 in the 1999 NPA for Section 10A.01 have been deleted. The FHWA has changed this GUIDANCE concerning positioning of indications to a STANDARD in paragraph 4, to emphasize the importance of positioning green-yellow-red signals.

One commenter recommended that the second sentence in paragraph 5 (referenced in the 1999 NPA as paragraph 3), concerning termination of the light rail transit phase, be moved to GUIDANCE. He indicated that it is not always practical to terminate the light rail phase until after the light rail transit vehicle has cleared the crossing. The FHWA disagrees because we believe that modern electronics technology can accomplish this STANDARD and because it does not seem safe to terminate a light rail transit phase prior to the light rail transit clearing the crossing.

Another commenter also recommended deletion of the second sentence in paragraph 5 (referenced in the 1999 NPA as paragraph 3), concerning termination of the light rail transit phase, because this requirement would preclude the use of fixed time traffic controllers on light rail transit intersections. The FHWA disagrees because of the hazard associated with the light rail transit phase terminating prior to the clearing of the crossing and because actuated controller equipment can be used. In addition, a pre-timed controller set up with special cabinet wiring that allows stop-timing on the light rail transit phase would satisfy this STANDARD.

Six comments were received regarding paragraph 2 (referenced in the 1999 NPA as paragraph 4) and Figure 10D–1 (numbered as Figure 10–1 in the 1999 NPA). Two commenters suggested the GUIDANCE was too specific regarding the white bars and that it is not a proper function of the Manual to dictate the specifics of railway signaling. They stated that green, yellow and red signal indications are universally recognized, and other coding systems increase the opportunity for error. One commenter opposed the language on the use of white bars, because white bars are used for track switching operations, and a switching operation signal should be different from a stop and go signal. He recommended adopting the California Traffic Control Devices Committee (CTCDC) language of a T shape, or a vertical or horizontal bar for the Go signal. Another commenter said the CTCDC permits a shape and a triangle in addition to the bars. He recommended that the triangle and T shape be added to the list of signal indications. One commenter suggested that an amber color should be allowed for the horizontal bar with a white color for the vertical bar. Another commenter recommended deletion of the language governing diverging routes in Figure 10D–1. Based on these docket comments, the FHWA is changing this paragraph to an OPTION and is making it less specific regarding railway signaling. The FHWA is also modifying Figure 10D–1 to say "Typical," not "Recommended."

Two commenters opposed the 8 ft separation between the light rail transit signals and traffic signals described in paragraph 7 (referenced in the 1999 NPA as paragraph 8). They suggested a minimum 3 ft separation. One reasoned that the separation is unnecessary since the signals are required to be distinctly different, and such a requirement could force the placement of a light rail transit signal into a sub-satisfactory position. The other commenter stated that since the light rail transit signal and traffic signal displays are dissimilar such a restriction would correspond to requiring a pedestrian signal and vehicular traffic signal to be separated by 8 feet. The FHWA partially agrees but believes some separation is desirable. Therefore, the FHWA is changing the requirement to a 1m (3 ft) separation.

288. In Section 10D.08 Pedestrian and Bicyclist Signals and Crossings (referenced in the 1999 NPA as Section 10D.06 Non-Motorist Signals and Crossings), one commenter suggested that the term "non-motorist" be replaced with "pedestrian" because "non-motorist" is both cumbersome and strange. The FHWA partially agrees and is changing the term "non-motorist" to "pedestrian and bicyclist" in the title of this section and throughout this section.

Six commenters recommended the first sentence of proposed paragraph 3 of the 1999 NPA, concerning the use of flashing-light signals, be changed from OPTION to GUIDANCE. The FHWA agrees and is changing this sentence to GUIDANCE, with minor modifications to the sentence to respond to another comment.

One commenter suggested that paragraph 4 be changed to recommend flashing-light signals instead of gates at pedestrian crossings where an engineering study has determined sight distance is insufficient for completion of crossing prior to arrival of light rail transit, or where light rail transit speeds are greater than 60 km/h (35mph). The commenter suggested gates be allowed as an OPTION if flashing-light signals are not sufficient. The FHWA agrees that flashing-light signals should be added before or with gates, and is making appropriate text changes to paragraph 4.

One commenter indicated that the text and the figure reference in paragraph 4 disagree. The commenter suggested text be added to indicate that a traffic gate may be used as a combination vehicle/pedestrian control device by placing the gate behind the sidewalk, keeping in mind that the flashing-light signals need to be clearly visible to road users and the lights shall not be obstructed by walls, buildings, trees, etc. The commenter further recommended another restriction for such an installation should be that the gate arm length not be excessive, as determined by industry standards. The FHWA partially agrees; however, gates do not necessarily need to be placed behind the sidewalk. Figure 10D–3 shows this type of combination vehicle/pedestrian traffic control device. The FHWA is correcting the references to the figures in this section. The third sentence suggested by the commenter referred to industry standards that the FHWA is not aware of, so that sentence is not included in the text.

The same commenter recommended that paragraph 5 would then no longer be relevant and should be deleted. The FHWA disagrees because the SUPPORT paragraph is still relevant to describe the optional gates.

One commenter suggested criteria be added to Section 10D.08 for the use of swing gates or that paragraph 6, which mentions swing gates, be deleted. The FHWA disagrees because the swing gates are described and illustrated in an acceptable manner. The purpose of swing gates is to prevent pedestrians from entering the track area.

Another commenter recommended new figures be added to Part 10 that show light rail transit/pedestrian and bicycle crossings that take up a smaller amount of right-of-way. The FHWA disagrees because the text and figures in Part 10 do not refer to the amount of right-of-way needed for accommodating light rail transit parallel to a roadway.

One commenter stated that physically blocking the sidewalk with an automatic gate, shown in Figures 10D–3, 10D–4, and 10D–5 (numbered in the 1999 NPA as Figures 10–3, 10–4, and 10–5) can be problematic and should not be considered "typical." The commenter believed that this matter is addressed sufficiently in the text and these illustrations should be deleted. The FHWA disagrees. Blocking sidewalks with automatic gates during the passage of trains or light rail transit vehicles is done all the time and is safe, not problematic.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. Most of the changes in this final rule provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and the safety of roadways at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act 5 (U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities, including small governments. This final rule adds some alternative traffic control devices and only a very limited number of new or changed requirements. Most of the changes are expanded guidance and clarification information. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in the MUTCD directly preempts any State law or regulation. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. Note that the overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and that changes made in this notice are directed at enhancing safety. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

This action does not contain a collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act of 1995

Note that the revisions directed by this action can be phased in by the States over specified time periods in order to minimize hardship. The changes made to traffic control devices that would require an expenditure of funds all have effective dates sufficiently long to allow normal maintenance funds to replace the devices at the end of the material life-cycle. To the extent the involved revisions require expenditures by the States and local governments on Federal-aid projects, they are reimbursable. This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant program-transportation, Highways and roads, Incorporation by reference, Signs, and Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below.

PART 655—TRAFFIC OPERATIONS

1. Revise the authority citation for part 655 to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32 and; 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways [Amended]

2. Revise § 655.601, paragraph (a), to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition, FHWA dated December, 2000. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC. It is available for inspection and copying at FHWA, 400 Seventh Street, SW., Room 3408, Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' web site at: *http://mutcd.fhwa.dot.gov.*

* * * * *

Issued on: December 11, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 00–31974 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AA98

Changes to Implement the Patent Business Goals

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule and correction to final rule.

SUMMARY: The United States Patent and Trademark Office (Office) published a final rule in the Federal Register of September 8, 2000, revising the rules of practice in patent cases to implement the Patent Business Goals. This document corrects errors in that final rule and amends the Rules of Practice for consistency with the Patent business Goals final rule.

DATES: *Effective Date:* December 18, 2000. *Applicability date:* For fees paid prior to November 7, 2000, the two-year time period for requesting a refund is extended to expire on the later of February 16, 2001.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein ((703) 305–8713) or Robert W. Bahr ((703) 308–6906), Senior Legal Advisors, or Robert J. Spar, Director ((703) 308–5107), Office of Patent Legal Administration (OPLA), directly by phone, or by facsimile to (703) 305–1013, marked to the attention of Mr. Bernstein, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Office published a final rule in the **Federal Register** of September 8, 2000 (65 FR 54604), entitled "Changes to Implement Patent Business Goals" (final rule). This document corrects errors in that final rule as discussed below.

The final rule is corrected to indicate that the changes to §§ 1.52(e), 1.96, and 1.821 *et seq.* concerning the submission of computer program listings and sequence listings are effective on September 8, 2000, rather than November 7, 2000.

The final rule is corrected to indicate that the time period for requesting a refund for fees paid prior to November 7, 2000, expires the later of November 8, 2000 (rather than November 7, 2002), or two years from the date the fee was paid. Since this correction will not be published until after November 7, 2000, the two-year time period for requesting a refund is extended to expire on the later of the date that is sixty days after publication of this correction notice in the **Federal Register** or the date that is two years from the date the fee was paid.

The final rule is corrected to eliminate the sentences indicating that only the paper portions of the application will be published as patent application publications or patents. Portions of an application submitted on an electronic medium under § 1.52(e) will be available (published) at least through an electronic medium.

The final rule is corrected to indicate that if continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the application data sheet will not appear in the first line of the specification in the patent. In such a situation, the continuity data will only appear on the front page of the patent.

The final rule is corrected to delete the sentence indicating that § 1.78(a)(4) is additionally amended by deletion of the term "copending" as a requirement for a nonprovisional application to claim priority to a provisional application. Section 1.78 was previously amended to delete the copendency requirement for a nonprovisional application claiming priority to a provisional application. *See Changes to Application Examination and Provisional Application Practice,* interim rule, 65 FR 14865, 14867, 14872 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47, 48, 53 (Apr. 11, 2000).

Section 1.14(h) in the final rule is corrected to refer to "§ 1.47(c)" rather than "§§ 1.47(a) and (b)" (the relevant portion of §§ 1.47(a) and (b) was transferred to new § 1.47(c)).

Sections 1.16(a) through (l), 1.17(a) through (e), (r) and (s), 1.18(a) through (c), 1.20(d) through (h) and 1.492(a) through (e) are corrected to change their reference to "§ 1.9(f)" to a reference to "§ 1.27(a)" (the substance of former § 1.9(f) was transferred to § 1.27(a)).

Section 1.20(b) is corrected to indicate that its fee is a processing fee (rather than a petition fee).

Section 1.53(c) is corrected to change its reference to "§ 1.78(a)(3)" to a reference to "35 U.S.C. 119(e) and § 1.78(a)(4)" (the substance of former § 1.78(a)(3) was transferred to "§ 1.78(a)(4)).".

Section 1.366 is corrected to change its reference to "§ 1.28(b)" to a reference to "§ 1.27(g)" (the substance of former § 1.28(b) was transferred to § 1.27(g)).

In rule FR Doc. 00–22392, published on September 8, 2000 (65 FR 54604), make the following corrections and 37 CFR Part 1 is amended as follows:

1. On page 54604, in column 1, the sentence "This rule is effective November 7, 2000, except that the changes to §§ 1.27, 1.78, 1.131, 1.132, 1.137, 1.152, 1.155, 1.324, 1.366, 1.740, and 1.760, and the removal of § 1.44 are effective September 8, 2000" should read "This rule is effective November 7, 2000, except that the changes to §§ 1.27, 1.78, 1.52(e), 1.96, 1.131, 1.132, 1.137, 1.152, 1.155, 1.324, 1.366, 1.740, 1.760, 1.821, 1.823, 1.824, and 1.825, and the removal of § 1.44 are effective September 8, 2000."

2. On page 54608, in the sentence bridging columns 2 and 3, "The two year time period for requesting a refund will end two years and sixty days from the date of publication in the **Federal Register** for fees paid prior to sixty days from the date of publication in the **Federal Register**, or two years from payment of the fee for fees paid on or after sixty days from the date of publication in the **Federal Register**" should read "For fees paid prior to sixty days from the date of publication in the **Federal Register**, the two-year time period for requesting a refund will expire on the later of November 7, 2000, or the date that is two years from the date the fee was paid."

3. On page 54621, in column 1, third paragraph, remove the sentences "Only the paper portions of the application will, under our current procedures, be published, either as published applications or patents" and "The Office can thus require that certain information, such as related to an elected species, be submitted in the proper form (paper) to be printed."

4. On page 54626, in column 3, first incomplete paragraph, the sentence "If continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the first line of the patent will be taken from the application data sheet" should read "If continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the application data sheet will not be printed in the first line of the specification in the patent."

5. On page 54628, in column 1, fourth paragraph, remove the sentence "Section 1.78(a)(4) is additionally amended by deletion of the term 'copending' as a requirement for a nonprovisional application claiming priority to a provisional application in view of the 'American Inventors Protection Act of 1999.'"

§ 1.14 [Corrected]

6. On page 54658, in the first column, § 1.14, paragraph (h), line 5, correct "§§ 1.47(a) and (b)" to read "§ 1.47(c)".

PART 1—RULES OF PRACTICE IN PATENT CASES

7. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

8. Section 1.16 is amended by revising paragraphs (a) through (l) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:

By a small entity (§ 1.27(a))	$355.00
By other than a small entity	$710.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))	$40.00
By other than a small entity	$80.00

(c) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.27(a))	$9.00
By other than a small entity	$18.00

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))	$135.00
By other than a small entity	$270.00

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application, except provisional applications:

By a small entity (§ 1.27(a))	$65.00
By other than a small entity	$130.00

(f) Basic fee for filing each design application:

By a small entity (§ 1.27(a))	$160.00
By other than a small entity	$320.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.27(a))	$245.00
By other than a small entity	$490.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.27(a))	$355.00
By other than a small entity	$710.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.27(a))	$40.00
By other than a small entity	$80.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.):

By a small entity (§ 1.27(a))	$9.00
By other than a small entity	$18.00

(k) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a))	$75.00
By other than a small entity	$150.00

(l) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(c)(1)) on a date later than the filing date of the provisional application:

By a small entity (§ 1.27(a))	$25.00
By other than a small entity	$50.00

* * * * *

9. Section 1.17 is amended by revising paragraphs (a) through (e), (r) and (s) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

By a small entity (§ 1.27(a))	$55.00
By other than a small entity ...	$110.00

(2) For reply within second month:

By a small entity (§ 1.27(a))	$195.00
By other than a small entity ...	$390.00

(3) For reply within third month:

By a small entity (§ 1.27(a))	$445.00
By other than a small entity ...	$890.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a))	$695.00
By other than a small entity ...	$1,390.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a))	$945.00
By other than a small entity ...	$1,890.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.27(a))	$155.00
By other than a small entity ...	$310.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a))	$155.00
By other than a small entity ...	$310.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a))	$135.00
By other than a small entity ...	$270.00

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a))	$355.00
By other than a small entity ...	$710.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a))	$355.00
By other than a small entity ...	$710.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a))	$355.00
By other than a small entity ...	$710.00

10. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.27(a))	$620.00
By other than a small entity ...	$1,240.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a))	$220.00
By other than a small entity ...	$440.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.27(a))	$300.00
By other than a small entity ...	$600.00

* * * * *

11. Section 1.20 is amended by revising paragraphs (b) and (d) through (h) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(b) Processing fee for correcting inventorship in a patent (§ 1.324)—$55.00.

* * * * *

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.27(a))	$55.00
By other than a small entity ...	$110.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.27(a))	$425.00
By other than a small entity ...	$850.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.27(a))	$975.00
By other than a small entity ...	$1,950.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a))	$1,495.00
By other than a small entity ...	$2,990.00

(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980:

By a small entity (§ 1.27(a))	$65.00
By other than a small entity ...	$130.00

* * * * *

12. Section 1.53 is amended by revising paragraph (c)(4) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(4) A provisional application is not entitled to the right of priority under 35 U.S.C. 119 or 365(a) or § 1.55, or to the benefit of an earlier filing date under 35 U.S.C. 120, 121 or 365(c) or § 1.78 of any other application. No claim for priority under 35 U.S.C. 119(e) or § 1.78(a)(4) may be made in a design application based on a provisional application. No request under § 1.293 for a statutory invention registration may be filed in a provisional application. The requirements of §§ 1.821 through 1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

* * * * *

13. Section 1.366 is amended by revising paragraph (f) to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(f) Notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. See § 1.27(g).

* * * * *

14. Section 1.492 is amended by revising paragraphs (a) through (e) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))	$345.00
By other than a small entity ...	$690.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))	$355.00
By other than a small entity ...	$710.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))	$500.00
By other than a small entity ...	$1,000.00

(4) Where the international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.27(a))	$50.00
By other than a small entity ...	$100.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.27(a))	$430.00
By other than a small entity ...	$860.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))	$40.00
By other than a small entity ...	$80.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.27(a))	$9.00
By other than a small entity ...	$18.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))	$135.00
By other than a small entity ...	$270.00

(e) Surcharge for filing the oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.27(a))	$65.00
By other than a small entity ...	$130.00

* * * * *

Dated: December 8, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–31958 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL164–2; FRL 6917–7]

Approval and Promulgation of Air Quality Plans; Illinois; Post-1996 Rate of Progress Plan for the Chicago Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the post-1996 Rate-of-Progress (ROP) plan submitted by the State of Illinois for the Chicago ozone nonattainment area, as a requested revision of the State Implementation Plan (SIP) for ozone. A post-1996 ROP plan is required for the Chicago ozone nonattainment area under the Clean Air Act (Act). The purpose of the post-1996 ROP plan is to incrementally reduce ground-level ozone (smog) pollution in the Chicago ozone nonattainment area and to provide for progress toward attainment of the 1-hour ozone standard in this nonattainment area. The submitted plan, which covers the period of 1996 through 1999 and emission reductions occurring prior to November 15, 1999, shows that Illinois reduced emissions of ozone-forming pollutants by the amounts required by the Act to occur prior to November 15, 1999. These pollutants include emissions of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X). The submittal includes a demonstration that the Chicago area has also achieved a sufficient emission reduction to meet contingency measure requirements under the Act. In addition to the post-1996 ROP plan and the contingency measure provisions, the EPA is approving, as a revision to the SIP, certain Transportation Control Measures (TCM) included in the plan. EPA is also approving a 1999 on-road mobile source emissions budget of 279.3 tons/day of volatile organic compounds for the Chicago ozone nonattainment area. EPA proposed approval on this SIP revision submittal on March 3, 2000. This final action addresses public comments submitted regarding the proposed rulemaking and the State submittal.

DATES: This final rule is effective January 17, 2001.

ADDRESSES: You can access copies of the SIP revision request and the Technical Support Document (TSD) for the proposed rulemaking on the SIP revision request at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, U.S. Environmental Protection Agency, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used, we mean EPA.

The supplemental information is organized in the following order:

I. What Is EPA Approving In This Action?
II. What Is the Procedural Background of the Illinois Submittal and EPA Rulemaking?
III. The Illinois Post-1996 ROP Plan.
  A. What is a post-1996 ROP plan?
  B. What is the contingency measure requirement?
  C. What environmental benefits does the post-1996 ROP plan provide?
  D. What Illinois counties are in the Chicago ozone nonattainment area?
  E. Who is affected by the Illinois post-1996 ROP plan?
  F. What criteria must a post-1996 ROP plan meet to be approved?
  G. What are the special requirements for claiming NO_X reductions?
IV. Illinois' Calculation of the Needed ROP Reduction.
  A. How does Illinois demonstrate that it meets the requirements for claiming NO_X reductions?
  B. How did Illinois calculate the needed ROP and contingency measure reduction?
  1. Proportion of VOC to NO_X Emission Reduction.
  2. Emission Baselines.
  3. 1999 Emission Target Level to Meet ROP Emission Reduction Requirement.
  4. 1999 Projected Growth Level.
  5. Emission Reduction Needed for ROP Reduction Net-Of-Growth.
  6. Calculation of the Needed Contingency Measure Emission Reduction.
V. The Illinois Post-1996 ROP Plan Control Strategies.
  A. What are the criteria for acceptable control strategies?
  B. What are the control strategies under the Illinois post-1996 ROP plan?
  1. Point/Area Sources.
  a. Title IV Acid Rain Power Plant Controls.
  b. 1999 Cold Cleaning Degreasing.
  c. Stepan Batch Processes.
  d. Municipal Solid Waste Landfills.
  e. Coke Oven By-Product Plants.
  2. Mobile Sources.
  a. Enhanced Vehicle Inspection/Maintenance Program.
  b. Phase I Reformulated Gasoline.
  c. Post-1994 Tier 1 Vehicle Emission Rates.
  d. 1992 Vehicle Inspection/Maintenance Amendments.
  e. Federal Gasoline Detergent Additive.
  f. Federal Non-Road Small Engine Standards.
  g. Federal Non-Road Heavy-Duty Engine Standards.
  h. Clean-Fuel Fleet Vehicle Program.
  i. Energy Policy Act.
  j. TCMs.
  C. What are the **Federal Register** citations for the Federal approval or promulgation of the control measures?
  D. How did Illinois calculate the emission reductions for the control strategies?
  E. What amount of emission reduction is achieved by each control strategy?
VI. Public Comment on Proposed Rulemaking and EPA's Response.
VII. EPA's Approval of the TCMs in the Post-1996 ROP Plan.
  A. What are TCMs?
  B. What are the TCMs included in the Illinois post-1996 ROP plan?
  C. How do TCMs become approvable as revisions to the SIP?
  D. Are the Chicago Area 1996–1999 TCMs approvable?
VIII. EPA Review of the Illinois Post-1996 ROP Plan.
  A. Why is the Illinois post-1996 ROP plan approvable?
  B. Why is the contingency measure portion of the plan approvable?
IX. Transportation Conformity Mobile Source Budget.
X. Final Rulemaking Action.
XI. Administrative Requirements.
  A. Executive Order 12866
  B. Executive Order 13045
  C. Executive Order 13084
  D. Executive Order 13132
  E. Regulatory Flexibility
  F. Unfunded Mandates
  G. Submission to Congress and the Comptroller General
  H. National Technology Transfer and Advancement Act
  I. Petitions for Judicial Review

I. What Is EPA Approving in This Action?

We are approving the following:

A. The post-1996 ROP plan for the Illinois portion of the Chicago ozone nonattainment area (see the definition of the Chicago ozone nonattainment area and the Illinois portion of this area below);

B. The contingency measure plan for this area; and,

C. TCMs implemented between 1996 and 1999 in the area.

We are approving the post-1996 ROP plan because it adequately demonstrates that the State has achieved a permanent and enforceable emission reduction as required for a post-1996 ROP plan by the Act and has made adequate incremental progress toward attaining the 1-hour ozone standard in the Chicago ozone nonattainment area. The post-1996 plan addressed in this rulemaking covers VOC and NO_X emission reductions occurring prior to November 15, 1999.

The State also submitted with the post-1996 ROP plan a demonstration that the Chicago area meets the contingency measure requirements of the Act. We are approving the contingency measure demonstration because it adequately shows a 3 percent reduction in emissions beyond that which is necessary to meet the ROP plan requirements.

We are approving certain TCMs submitted with the post-1996 ROP plan as a revision to the SIP. The plan relies on these TCMs as part of the overall strategy to meet the ROP emission reduction requirement. To be creditable, the TCMs must be incorporated into the SIP.

II. What Is the Procedural Background of the Illinois Submittal and EPA Rulemaking?

On December 18, 1997, the State of Illinois submitted the post-1996 ROP plan for the Chicago ozone nonattainment area as a requested SIP revision. The plan was submitted to meet the Act's requirement, in section 182(c)(2)(B), that the State demonstrate a 9 percent reduction of VOC emissions in the Chicago ozone nonattainment area for the 3 year period between 1996 and 1999. The State submitted proposed amendments to the plan on December 17, 1999, and January 14, 2000, with a request for us to parallel process the plan, as amended, pursuant to the provisions of 40 CFR part 51, appendix V. On January 21, 2000, the Illinois Environmental Protection Agency (Illinois EPA) transmitted further changes to the plan in response to public comments received at the State's January 18, 2000 public hearing. On March 3, 2000, we published a proposed approval, through parallel process, on the Illinois proposed plan as amended January 21, 2000. (See 65 FR 11525). On February 17, 2000, Illinois completed its public review process on the amended plan, which was necessary to receive final approval by us. The State completed its Responsiveness Summary to public comments on February 17, 2000. Illinois also submitted its final, adopted post-1996 ROP plan on February 17, 2000. No changes were made to the plan as proposed on January 14, 2000.

During the 30-day public comment period for our March 3, 2000 proposed rulemaking, we received one public comment letter on the proposal. We address these comments in section VI of this action.

III. The Illinois Post-1996 ROP Plan

A. What Is a Post-1996 ROP Plan?

An ROP plan is a strategy to achieve timely periodic reductions of emissions that produce ground-level ozone (smog) in areas that are not attaining the ozone National Ambient Air Quality Standards (NAAQS). A post-1996 ROP plan demonstrates how ozone-forming VOC emissions affecting an area will be reduced by 9 percent between 1996 and 1999 (in post-1996 ROP plans, NO_X emission reductions may be substituted for VOC emission reductions, as discussed below).

ROP plans are a requirement of the Act under section 182. Section 182(c)(2)(B) requires States with ozone nonattainment areas classified as serious and above to adopt and implement plans to achieve periodic reductions in VOC emissions after 1996. The requirement is intended to ensure that an area makes progress toward attainment of the ozone NAAQS. The post-1996 ROP emission reductions are to occur at a rate of 3 percent per year relative to the 1990 baseline emissions, net of emission growth, averaged over three-year periods. States must achieve the first three-year 9 percent milestone, called the "post-1996 ROP plan," by November 15, 1999. Because the Chicago ozone nonattainment area is classified as severe, the area is subject to the post-1996 ROP requirement.

In lieu of the 9 percent VOC emission reduction, under section 182(c)(2)(C) of the Act, the post-1996 ROP plan (and subsequent ROP plans) may provide for reductions of both VOC and NO_X emissions as long as the combination of VOC and NO_X emission reductions result in ozone concentration reductions equivalent to or exceeding the ozone concentration reductions resulting from the 9 percent VOC emissions reduction. The substitution of NO_X emission reductions is further discussed below.

The post-1996 ROP plan contains: (1) Documentation showing how the State calculated the emission reduction(s) needed on a daily basis to achieve a 9 percent VOC emission reduction (or its equivalent in combined VOC and NO_X emission reductions); (2) a description of the control measures used to achieve the emission reduction; and (3) a description of how the State has determined the emission reduction from each control measure.

On December 18, 1997, we approved a 15 percent ROP plan for the Chicago Area which showed a 15 percent VOC emission reduction between 1990 and 1996, as required under section 182(b)(1) of the Act (see 62 FR 66279). This 15 percent reduction is a measure of progress toward achieving attainment. The Chicago nonattainment area, however, has not reached attainment of the 1-hour ozone NAAQS through the 15 percent reduction alone. The post-1996 ROP plan will contribute to continued progress toward achieving attainment by the Act's mandated date of November 15, 2007 for the Chicago ozone nonattainment area.

B. What Is the Contingency Measure Requirement?

In addition to the post-1996 ROP plan, the Illinois submittal also addresses contingency measures required under the Act.

Section 172(c)(9) of the Act requires States with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or fails to attain the NAAQS within the time-frame specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revisions for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the State or by the EPA Administrator upon failure by the State to: meet ROP emission reduction milestones; achieve attainment of the 1-hour ozone NAAQS by the Act's required deadline; or achieve other applicable milestones of the Act.

Our policy, as provided in the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498), states that the contingency measures, in total, must generally be able to provide for a 3 percent reduction of 1990 VOC baseline emissions beyond the reduction required for a particular milestone year.

While all contingency measures must be fully adopted rules or measures, States can use the measures in two different ways. A State can choose to implement contingency measures before the milestone deadline. Alternatively, a State may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure must be implemented within one year following identification of a milestone failure.

In the December 18, 1997 rulemaking approving the 15 percent ROP Plan for the Chicago Area, we indicated that the 15 percent ROP plan had enough emission reductions to provide a 3 percent reduction beyond the 15 percent reduction required for 1996. The General Preamble indicates that the 3 percent reduction "buffer" must be maintained through each ROP milestone. Therefore, Illinois must demonstrate that the Chicago area has enough contingency measure reductions in addition to the reductions claimed for the post-1996 ROP plan to maintain the 3 percent emissions reduction buffer. Because of this requirement, Illinois' post-1996 ROP plan identifies, for contingency purposes, a 3 percent emission reduction beyond the emission reduction required for ROP.

C. What Environmental Benefits Does the Post-1996 ROP Plan Provide?

The proposed Illinois post-1996 ROP plan shows reductions of both VOC and NO_X emissions. VOC and NO_X contribute to the formation of ground-level ozone in the atmosphere.

The reactivity of ozone causes health problems because it damages lung tissue, reduces lung function and sensitizes the lungs to other irritants. When inhaled, even at low levels, ozone can:

- Cause acute respiratory problems such as shortness of breath, chest pain, wheezing, and coughing;
- Aggravate asthma;
- Cause significant temporary decreases in lung capacity;
- Cause inflammation of lung tissue;
- Lead to hospital admissions and emergency room visits; and,
- Impair the body's immune system, making people more susceptible to respiratory illness, including bronchitis and pneumonia.

Repeated exposure to ozone at elevated concentrations for several months may cause permanent structural damage to the lungs.

Because ozone usually forms in hot weather, anyone who spends time outdoors in the summer is at risk, particularly children, moderate exercisers, and outdoor workers. Children are at greatest risk from exposure to ozone because their respiratory systems are still developing and are more susceptible to environmental threats. Children also breathe more air per pound of body weight than adults, thus increasing the potential impacts of their exposure.

People with existing lung disease, including asthma, chronic bronchitis, and emphysema, are at particular risk from high ozone levels. Since they already suffer from reduced ability to breathe, these individuals are often greatly affected by the increased impairment that can result from exposure to ozone.

Ozone also affects vegetation and ecosystems, leading to reductions in agricultural and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests, and other environmental stresses (*e.g.*, harsh weather). In long-lived species, these effects may become evident only after several years or even decades, thus having the potential for long-term effects on forest ecosystems. Ground-level ozone damage to the foliage of trees and other plants also can decrease the aesthetic value of ornamental species as well as the natural beauty of our national parks and recreation areas.

The overall ROP emissions reduction includes VOC emissions reductions from sources (industries, vehicles, etc.) within the Chicago ozone nonattainment area, and NO_X emission reductions from sources within the State boundaries, but outside of the Chicago and Metro-East/St. Louis ozone nonattainment areas.

Although the plan's NO_X reductions come from outside the nonattainment area, the reductions are nonetheless creditable toward meeting the overall required ROP reduction. (See "What are the special requirements for claiming NO_X reductions?," below). This is because downstate NO_X emissions contribute to ozone formation in the Chicago ozone nonattainment area, and reducing such emissions helps the Chicago area achieve attainment of the ozone NAAQS.

It should be noted that the Illinois ROP plan documentation refers to the term "Volatile Organic Material" (VOM) rather than VOC. The State's definition of VOM is equivalent to EPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and EPA policy, we are using the term VOC in this rulemaking.

D. What Illinois Counties Are in the Chicago Ozone Nonattainment Area?

The Illinois portion of the Chicago ozone nonattainment area includes the counties of Cook, DuPage, Kane, Lake, McHenry, and Will, and the townships of Aux Sable and Goose Lake in Grundy County, and Oswego in Kendall County.

E. Who Is Affected by the Illinois Post-1996 ROP Plan?

The post-1996 ROP plan does not create any new control requirements. Rather, it is a demonstration that existing regulations and control programs achieved a 9 percent emission reduction.

The post-1996 ROP plan refers to various emission control regulations that have contributed to achieving the required emission reduction for the Chicago area. These regulations, both Federal and State, affect a variety of industries, businesses, and, through the vehicle inspection and maintenance program, motor vehicle owners. These regulations are already federally enforceable through separate SIP revisions or through separate EPA promulgation.

The TCMs submitted with the post-1996 ROP plan are the only State ROP measures that are not already part of the federally approved SIP. We are approving these TCMs in this rulemaking action, and we discuss the TCM approval in section VII of this rulemaking.

F. What Criteria Must a Post-1996 ROP Plan Meet To Be Approved?

Section 182(c)(2)(B) establishes certain elements a post-1996 ROP plan must contain for approval. These elements are: (1) An emission baseline; (2) an emission target level; (3) an emission reduction estimate to compensate for emission growth projections and to reach the ROP emission reduction goal; and (4) emission reduction estimates for the plan's control measures. Through these elements, the plan must show that the nonattainment area will achieve a 9 percent VOC emission reduction by November 15, 1999 (or its equivalent in combined VOC and NO_X emission reductions).

We have issued several guidance documents for States to use in developing approvable post-1996 ROP plans. These documents address such topics as: (1) The relationship of ROP plans to other SIP elements required by the Act; (2) calculation of baseline emissions and emission target levels; (3) procedures for projecting emission growth; and (4) methodology for determining emission reduction estimates for various control measures, including federal measures.

Our January 1994, policy document, *Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration* (post-1996 policy), provides States with an appropriate method to calculate the emission

reductions needed to meet the ROP emission reduction requirement. A complete list of ROP guidance documents is provided in the Technical Support Document (TSD) for the March 3, 2000 proposed rulemaking (65 FR 11525) on the State's post-1996 ROP plan. The TSD for the proposed rulemaking can be obtained from the Region 5 office at the address indicated above.

G. What Are the Special Requirements for Claiming NO_X Reductions?

If a post-1996 ROP plan relies on NO_X reductions, it is subject to certain additional requirements. As noted above, under section 182(c)(2)(C) of the Act, a plan can substitute NO_X reductions for VOC if the resulting reduction in ozone concentrations is at least equivalent to the ozone reduction that would occur under a plan that relies only on VOC reductions. As required by section 182(c)(2)(C), we issued policy concerning the conditions for demonstrating equivalency (see "NO_X Substitution Guidance," December 1993). Our NO_X substitution policy provides that a ROP plan based in part on a NO_X substitution strategy must show that the sum of the creditable VOC and NO_X reduction percentages (relative to 1990 baseline emissions) equal or exceed a total of 9. Moreover, the State must provide technical justification that the NO_X reductions will reduce ozone concentrations within the nonattainment area.

On December 29, 1997, we issued a policy memorandum entitled, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS" (December 1997 policy). This policy document provides that a State included in the core part of the Ozone Transport Assessment Group (OTAG) domain (within the fine grid area where NO_X emission reductions will be required) can claim ROP credit for NO_X reductions that occur within the State's boundaries. (For more information on OTAG, see *http://www.epa.gov/ttn/rto/otag*). Illinois is within the core of the OTAG domain. Consequently, the State can claim NO_X reductions from outside of the Chicago ozone nonattainment area, but within the State's boundaries, for its post-1996 ROP plan, provided the State submits a technical analysis showing that NO_X reductions outside of the nonattainment area will reduce ozone concentrations in the nonattainment area.

The December 1997 policy also states that a nonattainment area which has been granted a NO_X waiver can still claim NO_X reductions from outside the nonattainment area, but within the State's boundaries, if such reductions will reduce ozone concentrations within the nonattainment area. We granted a NO_X waiver for the Chicago ozone nonattainment area on January 26, 1996 (61 FR 2428) and proposed a NO_X waiver for the Illinois portion of the St. Louis ozone nonattainment area on April 17, 2000 (65 FR 20404). NO_X waivers are authorized under section 182(f) of the Act. A State can obtain a waiver to exempt an area from local NO_X control requirements if it can show that local NO_X reductions are not beneficial for attainment of the ozone NAAQS. Illinois made this demonstration for the Chicago ozone nonattainment area, and a NO_X waiver was granted. Illinois has made a similar demonstration for the Illinois portion of the St. Louis nonattainment area. OTAG modeling, however, has shown that several NO_X waiver areas actually benefit from NO_X reductions upwind and outside of the specific local areas. Therefore, under the December 1997 policy, a State can credit NO_X reductions outside a NO_X waiver area, but within the State's boundaries, if the State provides a technical analysis showing that the NO_X reductions will lower ozone concentrations within the nonattainment area.

IV. Illinois' Calculation of the Needed ROP Reduction

A. How Does Illinois Demonstrate That it Meets the Requirements for Claiming NO_X Reductions?

To justify claiming upwind NO_X reductions for ROP, Illinois submitted results of both the OTAG regional ozone modeling study, and ozone modeling done in January 1999 by the Lake Michigan Air Directors Consortium (LADCO). The modeling results show that downstate NO_X reductions contribute to a reduction of ozone background concentrations in the Chicago Area. These reduced background concentrations lead to reduced ozone concentrations within and downwind of the Chicago area. Illinois, therefore, satisfies the requirement set forth in the December 1997 policy that NO_X reductions outside of the nonattainment area must reduce ozone concentrations within the nonattainment area to be creditable as ROP reductions.

B. How Did Illinois Calculate the Needed ROP and Contingency Measure Reduction?

The following tables summarize the State's post-1996 ROP calculations for determining the needed 9 percent ROP and 3 percent contingency measure emission reductions. The calculation of required emission reductions was based on a combination of VOC and NO_X emission reductions. To achieve the 9 percent emission reduction, the State chose a VOC/NO_X emission reduction blend of a 2 percent VOC emission reduction and a 7 percent NO_X emission reduction.

NEEDED VOC REDUCTION BY 1999

	Tons VOC/Day
Calculation of the VOC Target Level for 1999	
1990 Chicago Area Total VOC Emissions	1,363.40
1990 ROP VOC Emissions (Anthropogenic only)	1,216.56
1990–99 Noncreditable Reductions	179.57
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1,036.99
2 percent of Adjusted Base Year Emissions	20.74
1999 Fleet Turnover Correction Factor	28.46
1996 Target Level (From 15 percent ROP Plan)	857.02
1999 Target Level (1996 Target Level minus 2 percent Reductions minus Fleet Turnover Correction Factor)	807.82
Calculation of the Needed VOC Reduction Net-of-Growth	
1996 VOC Emissions with 15 percent ROP Plan Measures	835.81
1999 Projected VOC Emissions (1996 VOC Emissions Grown to 1999 plus Noncreditable Emission Reductions Only)	929.61

NEEDED VOC REDUCTION BY 1999—Continued

	Tons VOC/Day
VOC Creditable Reduction Needs by 1999 Net-of-Growth (1999 Projected Emissions minus 1999 Target Level)	121.79
Contingency Measure Requirement (3 percent of Adjusted Base Year Emissions)	31.11
Total VOC Emission Reductions Required	152.90

NEEDED NO_X REDUCTION BY 1999

	Tons NO_X/Day
Calculation of the NO_X Target Level For 1999	
1990 Attainment Area Total NO_X Emissions	2085.80
1990 ROP NO_X Emissions (Anthropogenic only)	2085.80
1990–99 Noncreditable Reductions	128.26
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1957.54
7 percent of Adjusted Base Year Emissions	137.03
1999 Target Level: (1990 Adjusted Base Year Emissions minus 7 percent Reductions)	1820.51
Calculation of the Needed NO_X Reduction Net-of-Growth	
1999 Projected NO_X Emissions (1996 NO_X Emissions Grown to 1999 plus Noncreditable Emission Reductions Only)	2063.03
Creditable Reduction Needs by 1999 Net-of-Growth (1999 Projected Emissions minus 1999 Target Level)	242.52
Contingency Measure Requirement (All Contingency Coming From VOC Portion of ROP Plan)	0
Total NO_X Emission Reduction Required	242.52

Using our post-1996 policy, Illinois calculated the needed emissions reduction by taking the following steps:

(1) Determine what proportion of the 9 percent reduction is VOC and what proportion is NO_X;

(2) Establish the emission baselines for both VOC and NO_X;

(3) Calculate the emission target levels to meet the overall 9 percent reduction by 1999;

(4) Estimate the projected emission growth that would occur if no 9 percent emission reduction takes place;

(5) Subtract the projected emission level from the emission target to determine the VOC and NO_X emission reduction needed, net of growth; and,

(6) Calculate the needed contingency measure reduction.

The State obtained data for developing the plan from the Chicago ozone nonattainment area 15 percent ROP Plan, EPA guidance documents, and information received from industry and public agencies.

1. Proportion of VOC to NO_X Emission Reduction

Illinois' post-1996 ROP plan relies on both VOC and NO_X reductions to meet the 9 percent reduction in ozone precursors. Under Illinois' plan, the VOC reduction is a 2 percent reduction of the VOC emissions in the Illinois portion of the Chicago nonattainment area, and the NO_X reduction is a 7 percent reduction of the NO_X emissions within the State, but outside of the NO_X waiver areas (outside of the ozone nonattainment areas).

2. Emission Baselines

Under our post-1996 policy, ROP plans that rely on both VOC and NO_X reductions should have separate emission baselines for VOC and NO_X. The Act requires baselines to represent 1990 anthropogenic emissions on a peak ozone season weekday basis. Peak ozone season weekday emissions represent the average VOC and NO_X daily emissions that occur on weekdays during the peak 3-month ozone period of June through August.

Illinois used the Chicago area's 1990 base year emission inventory as the basis for the VOC baseline. We approved the Chicago area 1990 inventory as a SIP revision on March 14, 1995 (see 60 FR 13631).

For the NO_X baseline, Illinois used the 1990 statewide NO_X emission inventory it submitted to EPA in response to the NO_X SIP Call (see **Federal Register** 63 FR 57356, October 27, 1998). The NO_X baseline consists of the 1990 emissions which occurred statewide, but excluding emissions from the Chicago and Metro-East/St. Louis ozone nonattainment areas. The State excluded the nonattainment area emissions from the baseline because the State is relying on NO_X reductions only from the State's ozone attainment area, and because the State has an approved waiver from NO_X emission controls in the Chicago ozone nonattainment area and has sought a waiver from certain NO_X controls in the Metro-East/St. Louis ozone nonattainment area. The EPA proposed to approve the Metro-East/St. Louis NO_X waiver on April 17, 2000 (see **Federal Register** 65 FR 20404, April 17, 2000). Illinois EPA's technical analysis for supporting NO_X substitution shows that NO_X reductions which occur in the attainment area reduces ozone concentrations in the Chicago ozone nonattainment area. Therefore, Illinois' NO_X baseline is consistent with the State's technical analysis submitted to justify NO_X substitution in the Chicago nonattainment area post-1996 ROP plan.

The Act requires that the ROP baseline be "adjusted" to exclude emissions eliminated by the Federal Motor Vehicle Control Program (FMVCP) and Federal Reid Vapor Pressure (RVP) regulations promulgated before November 15, 1990. Because these regulations were promulgated before the 1990 amendments to the Act, the Act prohibits States from claiming ROP reductions from these regulations. To achieve an accurate ROP target, however, the State must subtract the noncreditable reductions from the baseline to reflect the impact of these reductions on 1999 emissions. The resulting inventory is called the "adjusted base year inventory."

The adjusted base year inventory under the Illinois post-1996 ROP plan is different than the adjusted inventory used under the 15 percent ROP Plan.

This is because the emission reduction associated with the FMVCP program changes over time as fleet turnover occurs, *i.e.,* old vehicles in an area are replaced with new vehicles. Illinois EPA determined the emission reduction associated with the noncreditable FMVCP and RVP programs by using our MOBILE emission factors program.

3. 1999 Emission Target Level to Meet ROP Emission Reduction Requirement

After the State establishes the adjusted base year emission inventories, the next step is to calculate the VOC and NO_X emission target levels for 1999. Our post-1996 policy provides the method for calculating target levels. To calculate the VOC target, the State first identified the previous milestone target, which in this case is the 1996 target level under the 15 percent plan. From the 1996 target level, the State subtracted (1) the percent reduction required to meet the ROP requirement, and (2) the fleet turnover correction factor.

The State obtained the 1996 VOC target level from the 15 percent ROP Plan. The percent reduction used is 2 percent of the adjusted base year inventory. The fleet turnover correction factor represents the emission reduction that has occurred under the pre-1990 Act FMVCP and RVP regulations between consecutive milestone years, *i.e.,* 1996 to 1999. Since the 1996 target level and the 2 percent ROP reduction do not factor in these reductions, the fleet turnover correction factor is necessary to accurately calculate the emission level that must be achieved by 1999.

For NO_X, a 1996 target level from a 15 percent plan does not exist. Therefore, the State needs only to subtract the 7 percent adjusted emission inventory reductions, and the noncreditable NO_X reductions from the pre-1990 Act FMVCP program, from the 1990 adjusted base year emission inventory. No fleet correction factor is necessary when calculating the NO_X target this way.

4. 1999 Projected Growth Level

To account for source emission growth between 1990 and 1999, the State must develop projected emission inventories for VOC and NO_X. The projected emission inventories represent what emissions would be expected in 1999 if no post-1996 ROP control measures had been implemented.

The State established the projected emission inventories for point, area, and nonroad source categories by taking the 1990 emission inventories and applying either EPA growth factors, or State justified growth factors. Projected vehicle emissions were established using the MOBILE model. The projected emission inventory for NO_X is consistent with the emission inventory data which the State submitted to us in response to the NO_X SIP call.

5. Emission Reduction Needed for ROP Reduction Net-Of-Growth

According to the State's calculations, a 152.90 TPD VOC emission reduction is needed in the Chicago ozone nonattainment area, and a 242.52 TPD NO_X emission reduction is needed in the Illinois ozone attainment areas to meet the 9 percent ROP requirement.

6. Calculation of the Needed Contingency Measure Emission Reduction

Consistent with guidance provided in the General Preamble, Illinois determined the emission reduction needed to meet the contingency measure requirement by multiplying 3 percent of the 1990 adjusted base year VOC emissions. Based on this calculation, the needed contingency measure reduction for the Chicago nonattainment area is 31.11 TPD of VOC.

V. The Illinois Post-1996 ROP Plan Control Strategies

A. What Are the Criteria for Acceptable Control Strategies?

Under section 182(b)(1)(C) of the Act, emission reductions claimed for ROP must be creditable to the extent that the reductions have actually occurred before the applicable ROP milestone date, *i.e.,* by November 15, 1999.

To meet this requirement, our policy provides that all credited emission reductions must be real, permanent, and enforceable. In addition, the plan's control measures must be adopted and implemented before November 15, 1999.

Post-1996 plans must also adequately document the methods used to calculate the emission reduction for each control measure. Our policy under the General Preamble provides that, at a minimum, the methods should meet the following four principles: (1) Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and, (4) control measures must be accountable.

Section 182(b)(1)(D) of the Act places limits on what control measures States can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP requirements promulgated by January 1, 1990; (2) RVP regulations promulgated by November 15, 1990; (3) Reasonably Available Control Technology (RACT) "Fix-Up" regulations required under section 182(a)(2)(A) of the Act; and (4) Inspection and Maintenance (I/M) program "Fix-Ups" as required under section 182(a)(2)(B) of the Act.

B. What Are the Control Strategies Under the Illinois Post-1996 ROP Plan?

1. Point/Area Sources

a. *Title IV Acid Rain Power Plant Controls.* Under title IV of the Clean Air Act, certain power plants are required to limit NO_X emissions to reduce acid rain. These NO_X reductions, in turn, benefit the Chicago area in dealing with its ozone nonattainment problem.

Phase I of the acid rain regulation began on January 1, 1996, and Phase II began January 2000. Illinois is claiming credit for NO_X control measures that certain power plants have implemented to meet the Federal acid rain rules.

The power plants that Illinois is claiming NO_X reductions from are the following:

Plant name	Unit(s)	Control technology	Emission Reduction NO_X TPD
Illinois Power	Baldwin 1	Selective Catalytic Reduction	50.00
Illinois Power	Baldwin 2	Selective Catalytic Reduction	44.85
Illinois Power	Baldwin 3	Low NO_X Burner	16.10
Illinois Power	Vermillion 1 –2	Low NO_X Burner	5.48
Illinois Power	Hennepin 1–2	Boiler Tuning Modifications	3.78
Electric Energy	Joppa 1–6	Low NO_X Burner	51.85
Commonwealth Edison	Powerton 5–6	Change to Low-Sulfur Coal	14.30
Dominion Energy	Kincaid 1–2	Change to Low-Sulfur Coal	18.39

Plant name	Unit(s)	Control technology	Emission Reduction NO_X TPD
Cilco	Edwards 2–3	Low NO_X Burner	17.18

Baldwin 3, Vermillion 1–2, Hennepin 2, and Joppa 1–6 are subject to Phase I NO_X emission rates under the Federal acid rain rules. Powerton 5–6 and Kincaid 1–2 were required to change to low-sulfur coal to meet sulfur dioxide limitations under the Federal acid rain rules; low-sulfur coal has reduced NO_X emission rates at these plants.

Baldwin 1–2, and Edwards 2–3 are subject to the acid rain Phase II NO_X emission limitations, which took effect January 2000. NO_X reductions from these sources are creditable because the power plants actually implemented control measures to meet the Phase II requirements prior to November 15, 1999.

The State determined emission reductions using OTAG data, as well as data from Continuous Emission Monitors (CEM) at the plants.

b. *1999 Cold Cleaning Degreasing.* This rule establishes vapor pressure standards for cold cleaning degreasing solvents sold or used in the Chicago ozone nonattainment area. Cold cleaning degreasing takes place at auto repair shops, car dealerships, machine shops and other metal fabrication, and manufacturing businesses. Cold cleaning degreasers typically consist of a holding tank containing solvent, connecting hoses, and a small vat where components are sprayed and brushed clean. The rule regulates both the suppliers and users of cold cleaning degreasing solvents in the nonattainment area. Beginning March 15, 1999, the rule limits the vapor pressure of solvent to 2.0 millimeters of mercury (0.038 pounds per square inch) measured at 20 degrees Celsius (68 degrees Fahrenheit).

c. *Stepan Batch Processes.* On April 2, 1996, we approved Illinois' batch process RACT rule as a revision to the SIP. Under the rule, the process vents at batch operations must be controlled with a reduction efficiency of 90 percent (or down to a VOC concentration of no more than 20 parts per million volume). Illinois had claimed credit for the rule under the 15 percent plan. At the time of rulemaking on the 15 percent plan, however, we did not allow credit for controls at Stepan Company's Milldale facility because of uncertainty whether the controls at the facility were implemented before or after 1990. As part of the December 17, 1999 post-1996 ROP amended submittal, Illinois submitted documentation showing that the controls were implemented after 1990. Therefore, in this rulemaking, we are approving credit for the emission reductions which occurred at Stepan Company. These emission reductions were ultimately not needed for approval of Illinois' 15 percent ROP plan, and, therefore, are creditable toward the post-1996 ROP plan requirements.

d. *Municipal Solid Waste Landfills.* On November 23, 1998 (63 FR 64628), we approved Illinois' section 111(d)/129 State Plan for municipal solid waste landfills. The State plan includes regulations requiring the control of Non-Methane Organic Compound (NMOC) emissions at existing landfills that have a design capacity threshold equal to or greater than 2.5 million megagrams (Mg) measured in mass units and 2.5 million cubic meters measured in volume units, and that have an annual emissions equal to or greater than 50 Mg/year of NMOC gases. The rule adopts our March 12, 1996, Emission Guidelines for this source category (see 61 FR 9905). Subject landfills must install a well-designed and well-operated collection and control system to reduce NMOC gases. A portion of NMOC is VOC, and therefore landfill controls are creditable toward the ROP plan. In the Chicago ozone nonattainment area, there are twelve landfills which have installed and are operating the required gas collection and control systems pursuant to construction permits.

e. *Coke Oven By-Product Plants.* This Federal National Emission Standard for Hazardous Air Pollutants (NESHAP) applies to all furnace and foundry coke oven by-product recovery plants. The NESHAP requires that process vessels and tar storage tanks in furnace and foundry coke by-product recovery plants be enclosed and that emissions be ducted to an enclosed point in the by-product recovery process where they are to be recovered or destroyed. This requirement is based on the use of a gas blanketing system. The same requirement also applies to storage tanks for benzene, benzene-toluene-xylene mixtures, and light-oil in furnace coke by-product recovery plants. The standard also calls for visual inspections and monitoring (leak detection and repair) as well as annual maintenance inspections.

It should be noted that Illinois originally claimed credit in the December 18, 1997, post-1996 ROP plan submittal for the Emission Reduction Marketing System (ERMS), a new State regulation establishing a VOC cap and trade requirement for Chicago area stationary sources. The ERMS program, however, has been delayed beyond November 15, 1999. Therefore, Illinois is not claiming credit in the final post-1996 ROP plan for ERMS. Nonetheless, Illinois EPA plans to rely on the ERMS program in future ROP plans.

2. Mobile Sources

a. *Enhanced Vehicle Inspection/Maintenance Program.* The Act requires Illinois to establish an enhanced vehicle I/M program in the Chicago area to achieve a higher emission reduction than the State's original I/M program. Enhanced I/M covers more vehicles in operation in the fleet and employs more effective techniques for finding high emitting vehicles. The new program also has additional features to ensure that all vehicles are tested properly and are effectively repaired.

We approved the Illinois' enhanced I/M program for the Chicago ozone nonattainment area on February 22, 1999 (64 FR 8517). The State began testing vehicles under the new program on February 1, 1999.

A single contractor, Envirotest, Inc., operates a test-only centralized network for inspections and re-inspection. The I/M contractor has constructed or retrofitted all the emission test sites required under the State I/M contract.

The Illinois I/M program requires coverage of all 1968 and newer gasoline-powered light-duty passenger cars and light-duty trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR). The program requires all applicable 1981 and newer vehicles to meet an IM240 exhaust test (a test that simulates actual driving conditions using a dynamometer). These vehicles must also undergo a gas cap check to reduce evaporative emissions. All applicable 1968 through 1980 vehicles will be subject to a basic idle emission exhaust test. The frequency of the test is biennial, with the first four years of a new vehicle excluded.

Due to the delay in implementation of the enhanced I/M program, we requested Illinois EPA to revise its original VOC emission reduction estimate from 30.10 TPD to 15 TPD, which represents only the level of

emission reduction that occurred between February 1, 1999, and November 15, 1999. Since the 15 TPD reduction does not reflect the program's full cutpoints, and thus, emission reduction potential, additional emission reduction credit will be available for use in future ROP plans.

b. *Phase I Reformulated Gasoline.* Beginning January 1, 1995, EPA regulations require only reformulated gasoline to be sold in the Chicago ozone nonattainment area. Reformulated gasoline is specially designed to result in less VOC emissions occurring from motor vehicle operation and gasoline evaporation. Illinois ran our MOBILE model and determined that Phase I of the reformulated gasoline requirement achieved 65.5 TPD of VOC emission reductions in the Chicago ozone nonattainment area in 1999.

c. *Post-1994 Tier 1 Vehicle Emission Rates.* Pursuant to section 202 of the Act, we promulgated new standards that tighten emission control requirements for passenger cars and light-duty trucks, called "Tier 1" standards. The standards, fully effective in 1996, are approximately twice as stringent as pre-1990 vehicle standards.

Tier 1 standards require both VOC and NO_X emission reductions. Illinois is claiming VOC reductions from Tier 1 that occur within the Chicago ozone nonattainment area, and NO_X reductions that occur within the Illinois ozone attainment areas.

d. *1992 Vehicle Inspection/Maintenance Amendments.* In 1992, Illinois added improvements to its original I/M program as a result of an agreement resolving a lawsuit between Wisconsin and EPA. Illinois added a tamper check and two-speed idle test to the basic I/M program in the Chicago metropolitan area. The State also increased the coverage of the program over the Chicago metropolitan area. Illinois fully implemented these changes to the I/M program in 1992.

e. *Federal Gasoline Detergent Additive.* Beginning January 1, 1995, Federal regulations require that gasoline sold nationwide must contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiency of engine systems and reduces VOC emissions resulting from engine efficiency degradation.

f. *Federal Non-Road Small Engine Standards.* Illinois is claiming emission reduction credit from two Federal rules which affect gasoline nonroad engines, the 1995 Federal emission standards for nonroad engines at 25 horsepower (hp) and below, and the 1996 marine gasoline engine standards.

The nonroad engine standards, beginning in model year 1997, primarily affects two stroke and four stroke lawn and garden equipment, and light commercial, construction, and logging equipment. The marine engine rule applies to marine spark-ignition engines for outboards, personal watercraft, and jet boats, beginning in model year 1998. Illinois EPA estimated the emission reduction for these standards through the use of our guidance document, "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," dated November 28, 1994.

The State also claims an emission reduction for the impact the reformulated gasoline program has on nonroad engines. Our guidance document, "VOC Emission Benefits for Nonroad Equipment with the Use of Federal Phase I Reformulated Gasoline," dated August 18, 1993, provides the methodology for determining the emission reduction impact of reformulated gasoline on nonroad engines and was used by Illinois to determine the emission reduction credit for this control measure.

g. *Federal Non-Road Heavy-Duty Engine Standards.* In 1994, we promulgated national NO_X emission standards for large nonroad Compression Ignition (CI) engines at 50 hp and above. Such engines include farm tractors, bulldozers, and forklifts. This standard is the "Tier 1" standard for CI engines at or above 50 hp. Implementation of the standard began January 1, 1996. Illinois is claiming credit for the NO_X reductions this regulation achieves in the Illinois ozone attainment area.

h. *Clean-Fuel Fleet Vehicle Program.* The State has a Clean-Fuel Fleet (CFF) rule which requires certain vehicle fleets in the Chicago ozone nonattainment area to purchase vehicles with tighter emission standards than conventional vehicles. The program affects fleets with ten or more vehicles which can be centrally fueled. Beginning with model year 1999, covered fleets must ensure that a certain percentage of new vehicle acquisitions are certified to meet EPA's Low Emission Vehicle (LEV) emission standards. In model year 1999, 30 percent of new light-duty vehicles and 50 percent of heavy-duty vehicles acquired by covered fleets must be certified LEVs.

i. *Energy Policy Act.* The National Energy Policy Act (EPAct) was enacted in October 1992. EPAct mandates implementation (use) of Alternative Fueled Vehicles (AFVs) in Federal, State, and utility company fleets. EPAct requires that 25 percent of new vehicle purchases by Federal fleets, 10 percent of new vehicle purchases by State fleets, and 30 percent of new vehicle purchases by utility fleets must be AFVs beginning in 1996. Illinois EPA estimated that, by 1996, 2,000 AFVs were operating in the Chicago ozone nonattainment area.

j. *TCMs.* See Part VII of this **Federal Register** document, "EPA's approval of the TCMs in the post-1996 ROP plan," for a description of the TCMs for which Illinois is claiming credit to meet the 9 percent reduction requirement.

*C. What are the **Federal Register** citations for the Federal approval or promulgation of the control measures?*

FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES

Control measure	Date of EPA approval or promulgation
Title IV Acid Rain Power Plant Controls	Federal Regulation, 40 CFR 72–78, April 13, 1995 (60 FR 18761).
1999 Cold Cleaning Degreasing	November 26, 1997 (62 FR 6295).
Batch Process Rule	April 2, 1996 (61 FR 14484).
Municipal Solid Waste Landfills	November 23, 1998 (63 FR 64628).
Coke Oven By-Products Recovery NESHAP	Federal Regulation, 40 CFR 61 Subpart L, September 14, 1989 (54 FR 38047).
Enhanced Vehicle I/M Program	February 22, 1999 (64 FR 8517).
Reformulated Gasoline	Federal Regulation, 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).
Post-1994 Tier 1 Vehicle Emission Rates	Federal Regulation, 40 CFR 86, June 5, 1991 (56 FR 25724).
1992 Vehicle I/M Program Amendments	April 9, 1996 (61 FR 15715).
Federal Gasoline Detergent Additive	Federal Regulation, 40 CFR 80, Subpart G, November 1, 1994 (59 FR 54706).

FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES—Continued

Control measure	Date of EPA approval or promulgation
TCMs	EPA is promulgating approval in this rulemaking action.
1992 EPAct	Federal Regulation, 10 CFR 490, March 14, 1996 (61 FR 10621).
Federal Nonroad Small Gasoline Engine Standards	Federal Regulation, 40 CFR 90, July 3, 1995 (60 FR 34582).
Federal Marine Spark—Ignition Engine Standard	Federal Regulation, 40 CFR 91, October 4, 1996 (61 FR 52087).
Federal Nonroad Large Diesel Engine Standards	Federal Regulation, 40 CFR 89, June 17, 1994 (59 FR 31306).
CFF Vehicle Program	March 19, 1996 (61 FR 11139).

D. How Did Illinois Calculate the Emission Reductions for the Control Strategies?

We have issued several policy documents, listed in the TSD for the April 17, 2000 proposed rulemaking, which provide assumptions for States to use in quantifying emission reductions. We have also developed the MOBILE model for the States to calculate emission reductions from mobile sources.

The State appropriately used our policy documents and MOBILE model for calculating emission reductions. Illinois obtained the necessary data for quantifying the source baselines and emission reductions from its 1990 emission inventory, OTAG inventory submittal, CEM data (for acid rain reductions), permit information, and from surveying affected industries. Where Illinois had to develop its own assumptions regarding emission reductions, the assumptions were adequately justified based on existing data.

It should be noted that Illinois is claiming post-1996 ROP credit for mobile and nonroad source measures that were part of the 15 percent ROP Plan, including Tier 1, I/M expansion, Phase I reformulated gasoline, nonroad small engine standards, Federal detergent additive, and EPAct. No double-counting of emission reductions, however, has occurred. Unlike other 15 percent control measures, the State did not consider these measures when calculating the 1999 projected growth inventory. The State treated these reductions separately because the impacts of these measures change over time due to fleet turnover.

As noted in section IV of this final rulemaking, the State calculated the projected growth in emissions assuming no post-1996 ROP emission reductions in place, and subtracted the 1999 target from the projected emissions to find the needed reduction net-of-growth. The impact on the plan would be the same if Illinois factored in the above control measures in the 1999 projected growth inventory and had not treated these measures as creditable post-1996 ROP reductions. Therefore, Illinois can claim reductions from these measures as legitimate post-1996 ROP reductions.

E. What Amount of Emission Reduction Is Achieved by Each Control Strategy?

The following tables summarize the State's VOC and NO_X reduction claims for the post-1996 ROP control measures, and the amount of reductions we find acceptable.

Control measure	VOC reduction state claimed tons/day	VOC reduction credit accepted tons/day
Mobile Source Measures		
Post-1994 Tier 1 Vehicle Emission Rates	16.80	16.80
Phase I Reformulated Gasoline	65.50	65.50
Federal Detergent Additive Gasoline	2.20	2.20
1992 I/M Program Improvements	7.00	7.00
Enhanced I/M Program	30.10	15.00
Conventional TCMs	2.00	2.00
National Energy Policy Act of 1992	0.20	0.20
Federal Non-Road Small Engine Standards	23.43	23.43
National Low Emission Vehicle Program	Deferred	Deferred
Clean Fuel Fleet Vehicle Program	0.30	0.30
Subtotal	147.53	132.43
Industrial Source Measures		
ERMS	Deferred	Deferred
Stepan Batch Process Rule Credit	9.40	9.40
Municipal Solid Waste Landfill	1.06	1.06
Coke Oven By-Product NESHAP	2.65	2.65
Subtotal	13.11	13.11
Area Source Measures		
1999 Cold Cleaning Degreasing Limits	11.35	11.35
Total 1999 creditable VOC reductions	171.99	156.89

Control measure	NO_X reduction state claimed tons/day	NO_X reduction credit accepted tons/day
Mobile Source Measures		
Post-1994 Tier 1 Vehicle Emission Rates	24.30	24.30
Federal Heavy-Duty Non-Road Engine Standards	15.75	15.75
Subtotal	40.05	40.05
Industrial Source Measures		
Title IV Acid Rain Controls	221.92	221.92
Total 1999 Creditable NO_X reductions	261.97	261.97

VI. Public Comment on Proposed Rulemaking and EPA's Response

EPA received one public comment letter regarding our proposed rulemaking of the Illinois post-1996 ROP plan. The comment letter was submitted by the American Lung Association of Metropolitan Chicago.

The commenter disagrees with our proposed rulemaking because we accept downstate NO_X emission reductions as one of the control strategies for the Chicago area post-1996 ROP demonstration. The following discussion summarizes the commenter's arguments against crediting downstate NO_X reductions, and provides our responses.

Comment: The commenter believes that the Act prohibits NO_X reductions from outside the Chicago ozone nonattainment area from being claimed as creditable ROP reductions under the post-1996 ROP plan. Section 182(c)(2)(B) of the Act states that the post-1996 ROP plan shall reduce by 9 percent "baseline emissions," as described in section 182(b)(1)(B). Section 182(b)(1)(B), in turn, defines "baseline emissions" to mean the total amount of actual VOC or NO_X emission from all anthropogenic sources in the area during 1990, excluding emissions reduced by pre-1990 vehicle emissions regulations and 1990 gasoline volatility regulations. Based on section 182(b)(1)(B), the commenter asserts that, since baseline emissions under the Act's definition reflect only VOC or NO_X emissions within the ozone nonattainment area, and a 9 percent ROP plan is to reduce the emission baseline, Illinois is prohibited from claiming NO_X reductions from outside of the nonattainment area.

Response: We disagree with the commenter. Claiming downstate NO_X reductions is consistent with the Act's requirements concerning ROP plans and NO_X substitution.

The Act's provision for NO_X substitution is separate from the sections of the Act focused on by the commenter. Section 182(c)(2)(B) of the Act discusses the reduction of VOC emissions by a post-1996 ROP plan. Section 182(c)(2)(C) provides that NO_X reductions can be substituted for or combined with VOC reductions to meet the ROP requirements under section 182(c)(2)(B). Section 182(c)(2)(C) does not state such NO_X reductions must come from "baseline emissions" as defined under section 182(b)(1)(B). Rather, section 182(c)(2)(C) defers to the EPA Administrator to determine "the conditions under which NO_X control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution." The only caveat to NO_X substitution under 182(c)(2)(C) is that NO_X reductions claimed under the ROP plan, in combination with VOC reductions, "would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reduction required under section 182(c)(2)(B)." Accordingly, the Act directs us to use our technical judgement to determine what types of NO_X control would be suitable for NO_X substitution strategies under section 182(c)(2)(C).

As discussed in section III of this final rulemaking, we have made the technical determination that, for areas within the OTAG fine grid, upwind NO_X reductions can result in reductions in ozone concentrations that are equivalent to results achievable from local VOC reductions. In Part IV of this **Federal Register** document, we discussed how we provided Illinois with guidance on how to establish VOC/NO_X reduction equivalency with respect to upwind NO_X reductions, and how the State appropriately followed that guidance. The ozone modeling contained in the State's April 1998 attainment demonstration shows upwind NO_X emissions significantly contribute to high ozone concentrations in the Chicago area. Even if the Chicago area reduces VOC emissions significantly beyond current levels, the area would not reach attainment without reduction of upwind NO_X emissions. These findings are consistent with the results of OTAG's study of NO_X transport on ozone nonattainment areas. Moreover, the State submitted, as part of the post-1996 ROP Plan, modeling results from the Lake Michigan Air Directors Consortium (LADCO) and from OTAG to demonstrate that upwind NO_X reductions do reduce ozone concentrations in the Chicago area. All of this is consistent with guidance in the December 29, 1997 policy, which explains the conditions under which a NO_X waiver area may claim ROP credit for upwind NO_X reductions. (See our answer to "How does Illinois demonstrate that it meets the requirements for claiming NO_X reductions?" in Part IV of this **Federal Register** document.) Therefore, ROP credit for upwind NO_X reductions is consistent with section 182(c)(2)(C), which directs that the substitution of NO_X for VOC control, or the combination of NO_X and VOC control, "maximize the reduction in ozone air pollution."

Comment: The commenter alleges that the State's Post-1996 ROP Plan has not met the requirement under section 182(c)(2)(C) that the specific NO_X reductions credited toward ROP provide reductions in ozone concentrations at least equivalent to that which would result from a 9% reduction in VOC emissions.

Response: We disagree with the commenter and believe the State's plan is consistent with the requirements of section 182(c)(2)(C) and EPA guidance interpreting that section, and does indeed ensure VOC/NO_X equivalency.

We issued NO_X substitution guidance initially on December 15, 1993 and clarified the guidance on August 8, 1994.[1] In each case, the guidance requires a demonstration that substitution of NO_X for VOC controls will provide at least equivalent ozone benefits. The 1993 guidance stated that States should "justify substitution by illustrating 'consistency' between the cumulative emission changes emerging from the reasonable further progress/substitution and the emission reductions in the model attainment demonstration (or comparable modeling analysis)." In the 1994 guidance, EPA required either photochemical grid modeling or regional modeling results to show that NO_X control is beneficial in helping an area to attain the ozone NAAQS.

As described in the 1993 guidance, any combination of VOC and NO_X emission reduction percentages which total to 3 percent per year, *e.g.*, 2 percent NO_X and 1 percent VOC, and which meet other SIP consistency requirements described in that document are allowed (VOC and NO_X emission reductions are equated on a percentage equivalency basis). These requirements ensure that the cumulative ROP reductions are consistent with the emission reduction measures identified in the model attainment demonstration. Further, the NO_X emission reductions credited toward ROP may be capped by the cumulative reductions dictated by the attainment demonstration. For example, a control strategy emerging from a modeled attainment demonstration might show reductions of 6% NO_X and 40% VOC are needed to attain. Assuming zero creditable NO_X emission reductions from 1990 through 1996, NO_X reductions averaging 2% per year over the 3 years from 1996 to 1999 represent a cap on the NO_X ROP reductions. In allowing a combination of NO_X and VOC controls or the substitution of NO_X emissions reductions for VOC emissions reductions, section 182(c)(2)(C) of the statute states that the resulting reductions "in ozone concentrations" must be "at least equivalent" to that which would result from the 3% VOC reductions required as a demonstration of ROP under section 182(c)(2)(B). The second sentence of Section 182(c)(2)(C) requires us to issue guidance "concerning the conditions under which NO_X control may be substituted for [or combined with] VOC control." In particular, we are authorized to address in the guidance the appropriate amounts of VOC control and NO_X control needed, in combination, "in order to maximize the reduction in ozone air pollution." Further, the Act explicitly provides that the guidance may permit ROP demonstrations which allow a lower percentage of VOC emission reductions. In light of the entire set of language and Congress' evident intent under this subsection to maximize the opportunity for ozone reductions, we believe that section 182(c)(2)(C) confers on us the discretion to select, for purposes of determining equivalent reductions, a percentage of NO_X emission reductions which is reasonably calculated to achieve both the ozone reduction and attainment progress goals intended by Congress.

The NO_X control measures relied on by the Chicago Post-1996 ROP Plan, *i.e.*, Federal acid rain rules, Tier I vehicle emission standards, and non-road engine standards, are also relied upon in the Chicago ozone attainment demonstration submittal. Based on our review of all the information submitted in support of this attainment demonstration, it is our belief that the percentage of ozone reduction benefits achieved by application of NO_X controls, for both ozone reduction and attainment progress goals, is "at least equivalent" as that achieved by application of VOC controls. This is because both the NO_X and VOC controls are necessary if the area is to realize ozone reduction benefits and to ultimately attain the ozone NAAQS. That is, the "basis for equivalency is the ability of a given control strategy (*i.e.*, any particular mix of NO_X and VOC emission reductions) to effect attainment of the ozone NAAQS by the designated attainment year." (NO_X substitution guidance at page 2).

Comment: The commenter argues that, assuming the State could claim ROP credit in the Chicago area for downstate NO_X reductions, there is no rational basis for excluding the East St. Louis area from the baseline.

Response: We disagree with the commenter because the exclusion of emission reductions from the East St. Louis ozone nonattainment area from the Chicago area ROP demonstration is reasonable and consistent with the Act's requirements.

Nothing in the Act or our NO_X substitution policy mandates that States which claim NO_X emission reductions from outside the nonattainment area must claim NO_X reductions state-wide. Rather, consistent with our NO_X substitution policy, a State need only claim those NO_X reductions as are necessary to meet the ROP plan's NO_X reduction target in a given milestone year. The State did not claim East St. Louis area NO_X reductions to meet the Chicago area Post-1996 ROP plan's 1999 NO_X reduction target. Illinois wanted to avoid potential "double counting" issues that it believes may arise by claiming emission reductions from one nonattainment area as part of an ROP demonstration in another nonattainment area. Since the State's decision to exclude these reductions does not interfere with the Chicago area's ability to meet its ROP and attainment objectives, we find no valid basis for rejecting the Chicago Area 9% ROP plan because it did not claim NO_X reductions from the East St. Louis area.

In conclusion, throughout the preceding section we have considered the commenter's objections to our proposed rulemaking, and, for the reasons presented above, we continue to believe that upwind NO_X reductions are creditable toward ROP under the Act. Moreover, we have determined that the State's demonstration meets the VOC/NO_X equivalency requirement in section 182(c)(2)(C) as interpreted under the Agency's NO_X substitution policy. Therefore, we are taking final action to approve the Chicago area post-1996 ROP plan.

VII. EPA's Approval of the TCMs in the Post-1996 ROP Plan

A. What Are TCMs?

TCMs are programs that encompass elements of transportation system management and/or transportation demand management. Transportation system management strategies are typically low capital intensive transportation improvements that increase the efficiency of transportation facilities and services. Transportation demand management involves policies, programs, and actions directed toward increasing the use of high occupancy vehicles (transit, carpooling, and vanpooling), and the use of bicycling and walking.

The Chicago Area Transportation Study (CATS), a Metropolitan Planning Organization (MPO), implements TCMs in the Chicago area. CATS implements a number of TCM projects to both reduce Vehicle Miles Traveled (VMT) and VOC emissions per VMT. The projects have been programmed and funded through the areas' Transportation Improvement Programs (TIP) under the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ).

B. What Are the TCMs Included in Illinois Post-1996 ROP Plan?

The post-1996 ROP plan claims emission reduction credit for those TCMs implemented between 1990 and 1996 which were not included in the 15

[1] "Transmittal of NO_X Substitution Guidance," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Air Division Directors, December 15, 1993. "Clarification of Policy for Nitrogen Oxides (NO_X) Substitution," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Air Division Directors, August 8, 1994.

percent plan, and the TCMs implemented between 1996 and 1999.

CATS has documented TCM implementation and estimated emission reductions in the following documents:

(1) "Transportation Control Measures Committal to the State Implementation Plan," November 5, 1992;

(2) "Transportation Control Measures Contribution to the 15 percent Rate of Progress State Implementation Plan," December 9, 1993;

(3) "Transportation Control Measures Contribution to the Control Strategy State Implementation Plan," March 9, 1995;

(4) "Transportation Control Measures Contribution to the Post-1996 Rate-Of-Progress State Implementation Plan," March 22, 1996;

(5) "Transportation Control Measures Contribution to the 9 percent Control Strategy State Implementation Plan," June 11, 1998; and,

(6) "1999 Transportation Control Measures Contribution to the 9 percent Rate of Progress Control Strategy State Implementation Plan," December 9, 1999.

The November 5, 1992, document provides a comprehensive discussion of the TCM planning and implementation process in the Chicago region. Illinois submitted the December 9, 1993, and March 9, 1995, documents with the Chicago Area VMT Offset SIP revision, and provided the basis for emission reductions claimed as part of the 15 percent ROP Plan.

On September 21, 1995, we incorporated into the SIP 127 TCMs when we approved the Illinois' Vehicle Miles Traveled (VMT) Offset SIP (60 FR 48896). As indicated in the September 21, 1995 rulemaking, the combined VOC emission reduction from these TCMs is 2.78 TPD by 1996. Of this reduction, the State claimed 2 TPD in the 15 percent plan, which leaves 0.78 TPD for use in the post-1996 ROP plan.

The 1995, 1996, 1998, and 1999 TCM documents demonstrate an additional 1.22 TPD from TCMs which have been implemented by November 15, 1999. These TCMs include:

(1) Improved public transportation, such as fixed guideway transit and rail station infrastructure improvements;

(2) Traffic flow improvements, such as traffic signalization and intersection and road widening;

(3) Increased park and ride service, parking at major transit stations, and fringe parking to serve major highway facilities; and,

(4) Bicycle and pedestrian programs, including increased bicycle lanes and paths, racks and storage facilities, and sidewalks and walkways.

C. How Do TCMs Become Approvable as Revisions to the SIP?

States can take credit for TCMs that we have approved as revisions to the SIP. Our requirements for TCMs are summarized in the June 1993, guidance document, "Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans," dated June 1993.

The required elements are:

(1) A complete description of the measure, and, if possible, its estimated emission reduction benefit;

(2) Evidence that the measure was properly adopted by a jurisdiction(s) with legal authority to execute the measure;

(3) Evidence that funding will be available to implement the measure;

(4) Evidence that all necessary approvals have been obtained from all appropriate government offices;

(5) Evidence that the implementing agencies have adopted a complete schedule to plan, implement, and enforce the measure; and,

(6) A description of any monitoring program to evaluate the measure's effectiveness and to allow for necessary in-place corrections or alterations.

D. Are the Chicago Area 1996–1999 TCMs Approvable?

The TCM documents cited above provide the necessary documentation to incorporate into the SIP the TCMs implemented between 1996 and 1999 in the Chicago ozone nonattainment area.

VIII. EPA Review of the Illinois Post-1996 ROP Plan

A. Why Is the Illinois Post-1996 ROP Plan Approvable?

We reviewed the documentation submitted with the Illinois post-1996 ROP plan. From this review, we find that the plan is approvable.

The State provided sufficient justification that the attainment area NO_X reductions will reduce ozone concentrations in the Chicago ozone nonattainment area. Illinois also correctly calculated, following our guidance documents, the emission reduction needed to meet the 9 percent ROP reduction requirement. The plan's control measures are creditable because the emissions reductions achieved are real, permanent, and enforceable. All claimed emission reductions from the plan's control measures occurred by November 15, 1999, the Act's deadline by which creditable reductions are to occur.

The State's emission reduction estimates for the control strategies follow our guidance documents, where applicable, and are adequately documented with acceptable emission control assumptions.

Finally, the post-1996 ROP plan shows that it will achieve a reduction of ozone precursor emissions sufficient to achieve the required ROP toward attaining the 1-hour ozone NAAQS in the Chicago ozone nonattainment area.

COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS

	TPD
VOC Reduction Needed to Meet 2 percent ROP	121.79
VOC Reduction Needed to Meet 3 percent Contingency	31.11
VOC Reduction Needed for ROP and Contingency	152.90
Total Creditable VOC Reduction	156.89
NO_X Reduction Needed to Meet 7 percent ROP	242.52
Total Creditable NO_X Reduction	261.97

For these reasons, we are approving Illinois' Chicago Area post-1996 ROP plan, as meeting the requirements of section 182(c)(2)(B).

B. Why Is the Contingency Measure Portion of the Plan Approvable?

The post-1996 ROP plan achieves, in addition to the required ROP VOC and NO_X emission reductions, a 3 percent reduction in VOC emissions through creditable control measures. For this reason, the contingency measure portion of the post-1996 ROP plan satisfies the contingency measure requirements of the Act. We therefore approve the contingency measure portion of the plan.

IX. Transportation Conformity Mobile Source Budget

In Illinois' December 17, 1999, supplemental submittal, the State clearly identified in the proposed post-1996 ROP plan the establishment of the 1999 motor vehicle emissions budget of 279.3 TPD of VOC. The 1999 budget in the supplemental submittal is a revision to the budget in the earlier ROP submission. The revisions in the credit granted for the control strategies resulted in a change to the 1999 on-road mobile source emissions total. This emissions level serves as the emissions budget for determining transportation conformity. This **Federal Register** approval also approves the 1999 on-road mobile source budget of 279.3 TPD of VOC.

X. Final Rulemaking Action

In this rulemaking action, we are approving Illinois' SIP revisions, submitted on December 18, 1997, December 17, 1999, January 14, 2000, and January 21, 2000, establishing the post-1996 ROP plan and contingency measures for the Chicago ozone nonattainment area. We are approving certain TCMs which were submitted with the post-1996 ROP plan and were implemented between 1996 and 1999. We are also approving the 1999 on-road mobile source budget of 279.3 TPD of VOC.

XI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective January 17, 2001.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: December 5, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraphs (w), (x) and (y) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(w) *Approval*—On December 18, 1997, December 17, 1999, January 14, 2000, and January 21, 2000, Illinois submitted a post-1996 Rate Of Progress Plan for the Chicago ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. This plan reduces ozone precursor emissions by 9 percent from 1990 baseline emissions by November 15, 1999. This plan also supports a mobile source emissions budget of 279.3 tons/day of volatile organic compounds for transportation conformity purposes.

(x) *Approval*—On December 18, 1997, Illinois submitted a contingency measure plan as part of the Chicago Area post-1996 Rate of Progress Plan. This plan reduces volatile organic compound emissions in the Chicago ozone nonattainment area by 3 percent from 1990 baseline emissions by November 15, 1999.

(y) *Approval*—On December 18, 1997, Illinois submitted Transportation Control Measures (TCMs) as part of the post-1996 Rate Of Progress Plan for the Chicago ozone nonattainment area. The TCMs being approved are listed in the following documents published by the Chicago Area Transportation Study: "Transportation Control Measures Contribution to the Post-1996 Rate-Of-Progress State Implementation Plan," March 22, 1996; "Transportation Control Measures Contribution to the 9 percent Control Strategy State Implementation Plan," June 11, 1998; and "1999 Transportation Control Measures Contribution to the 9 percent Rate of Progress Control Strategy State Implementation Plan," December 9, 1999.

[FR Doc. 00–32026 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA078–01–7211b; A–1–FRL–6914–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revisions to Stage II Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This submittal contains a revised Stage II vapor recovery regulation. The intended effect of this action is to approve Massachusetts' revised Stage II rule. This action is being taken in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This rule will become effective on January 17, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking?
What revisions did Massachusetts make to its Stage II rule?
Why is EPA approving Massachusetts' revised Stage II rule?
What comments did EPA receive on its proposed approval of this rule and what is EPA's response to these comments?

What Action Is EPA Taking?

EPA is approving Massachusetts' revised 310 CMR 7.24(6) "Dispensing of Vehicle Fuel" and incorporating this rule into the Massachusetts SIP. The Massachusetts Department of Environmental Protection (DEP) submitted the revised rule to EPA for parallel processing on August 9, 2000 and submitted the final version of the rule on September 11, 2000. EPA published a notice of proposed rulemaking (NPR) for Massachusetts' revised Stage II rule on August 21, 2000 (65 FR 50669).

What Revisions Did Massachusetts Make to its Stage II Rule?

In order to justify the level of emission reductions claimed in its SIP, Massachusetts added the following new provisions to its Stage II rule: (1) A provision explicitly requiring the installation of CARB (California Air Resources Board) approved Stage II systems; (2) a provision requiring annual Stage II system compliance testing and certification; and (3) a provision explicitly requiring weekly visual inspections of the Stage II system components. In addition, a provision addressing the direct refueling of a motor vehicle from a tank truck is included in Massachusetts' revised Stage II rule. This provision was adopted by DEP and submitted to EPA as a SIP revision in 1995 but has not yet been approved into the Massachusetts SIP. Each of the four new provisions are discussed in more detail in EPA's NPR.

Why Is EPA Approving Massachusetts' Revised Stage II Rule?

EPA is approving Massachusetts' revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. Previously, the resources DEP devoted to Stage II enforcement and the wording of the existing rule called into question the Stage II reductions assumed in the Massachusetts SIP. With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

What Comments Did EPA Receive on its Proposed Approval of This Rule and What Is EPA's Response to These Comments?

EPA received two comment letters pursuant to the publication of its proposed approval of Massachusetts' revised Stage II rule. Comments were submitted by ExxonMobil Refining and Supply Company and by the Massachusetts Petroleum Council. A summary of the comments received and EPA's response is presented below.

Comment #1: ExxonMobil commented that the requirements for facility compliance certification should be more specific in outlining who should certify the various operating and testing requirements, noting that their company owns, and directly operates with company employees, certain retail stores but also leases certain stores to independent dealer/operators who directly operate these stores with their own employees.

Response: The revised 310 CMR 7.24(6)(c)(8) states, "Any certification submitted * * * shall be signed by an individual who is a responsible official regarding the Stage II system * * *." The rule, however, is silent as to who is the appropriate responsible official. As stated in the response to comments document [1] prepared by the DEP, the DEP intends to leave the identification of the responsible official to be worked out between each facility's owner, operator, lessee, or controller on a case-by-case basis. The DEP document also notes that the responsible official's compliance certification may rely, as necessary, on the inquiry of other parties who may have responsibility for various aspects of a facility's compliance program. Specifically, 310 CMR 7.24(c)(8)(a) requires the responsible official to certify that "I personally examined the foregoing and am familiar with the information contained in this document and all the attachments and that, *based on my inquiry of those persons immediately responsible for obtaining the information,* I believe that the information is true, accurate and complete." (Emphasis added.) Furthermore, in response to industry's concerns, DEP added a provision to the final rule regarding the person immediately responsible for obtaining certification information. Specifically, 310 CMR 7.24(c)(9) states, "Any person immediately responsible for obtaining information referenced in 310 CMR 7.24(6)(c)(8)(a) who knowingly and willfully makes false, inaccurate, incomplete, or misleading statements pursuant to any certification or notification required under 310 CMR 7.24(6), may be in violation of 310 CMR 7.24(6)." These provisions should address the concern that, in some cases, the person providing the certification may not be the person immediately responsible for obtaining all of the information.

Comment #2: Both commenters called into question the DEP's basis for adopting revisions to its Stage II vapor recovery regulation.

Response: EPA believes there was a justifiable basis for DEP proceeding with revisions to its Stage II rule. Previously, EPA raised concerns regarding the lack of Stage II enforcement oversight by the DEP and the high rate of non-compliance by facilities. Specifically, the DEP was not conducting annual inspections of each Stage II subject facility as recommended in EPA's Stage II enforcement guidance.[2] Also, as indicated in DEP's background document,[3] DEP conducted inspections of 122 facilities in 1997 and found that only 54% of the inspected facilities were correctly operated and maintained. Clearly the DEP needed to take action to ensure that the anticipated Stage II emissions reductions would be achieved. Additionally, it is not disputed that the measures in this rule, taken as a whole, will reduce emissions associated with activities covered by the rule, and that the amended rule will be more enforceable. Disputes about the adequacy of the state's substantive basis for adopting these rules are matters for the state. Procedurally, the rule submission appears sound. Therefore, the comment does not provide EPA with suitable justification for rejecting a state submission that enhances the SIP's stringency.

EPA is approving Massachusetts' revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

Final Action

EPA is approving Massachusetts' revised 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel" and incorporating this rule into the Massachusetts SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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[1] "Response to Comments Document: Proposed Amendments to Stage II Vapor Recovery Program," September 2000.

[2] "Enforcement Guidance for Stage II Vehicle Refueling Control Programs," Office of Mobile Sources, October 1991.

[3] "Background Document for Proposed Revisions to 310 CMR 7.24(6) dispensing of Motor Vehicle Fuel (The State II Vapor Recovery Program)," December 1999.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: November 28, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(116) to read as follows:

§ 52.1120 Identification of plan

* * * * *

(c) * * *

(116) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on August 9, 2000, September 11, 2000 and July 25, 1995.

(i) Incorporation by reference.

(A) 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," effective in the Commonwealth of Massachusetts on September 29, 2000.

(B) 310 CMR 7.00 definitions of the following terms associated with 310 CMR 7.24(6) and effective in the Commonwealth of Massachusetts on September 29, 2000: "commence operation"; "emergency situation"; "executive order"; "Stage II system"; "substantial modification"; "vacuum assist system"; and "vapor balance system."

(C) 310 CMR 7.00 definitions of the following terms associated with 310 CMR 7.24(6) and effective in the Commonwealth of Massachusetts on June 30, 1995: "emergency motor vehicle;" and "tank truck."

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations 310 CMR 7.00 and 310 CMR 7.24(6) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.00	Definitions	07/25/95 08/09/00 9/11/00	12/18/00	[Insert *FR* citation from published date].	116	Definitions associated with State II vapor recovery rule.
310 CMR 7.24(6)	Dispensing Motor Vehicle Fuel.	08/09/00 09/11/00	12/18/00	[Insert *FR* citation from published date].	116	Rule revised to include annual compliance testing and certification.

[FR Doc. 00–32024 Filed 12–15–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6918–4]

Protection of Stratospheric Ozone: Notice 14 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Acceptability; Request for Information.

SUMMARY: The Environmental Protection Agency (EPA) is expanding the list of acceptable substitutes for ozone-depleting substances (ODS) under our Significant New Alternatives Policy (SNAP) program. Substitutes are for the refrigeration and air conditioning, foams, non-aerosol solvent cleaning, and aerosol solvents and propellants sectors. Today's action also requests information from readers on the composition and safety of certain refrigerants for motor vehicle air conditioners; the possible expansion of the SNAP program to include review of, and potentially to establish use conditions for, operations that involve manual (hand) cleaning with solvents for precision, electronics, and metals cleaning; and the possible restriction of non-aerosol solvent substitutes to equipment that meets the cleaning equipment standards in the National Emission Standards for Halogenated Solvent Cleaning. Finally, this action updates readers on the SNAP program's review of n-propyl bromide for use as a substitute for ozone-depleting solvents used in the non-aerosol solvents cleaning, aerosol solvents and propellants, and adhesives, coatings and inks sectors.

EFFECTIVE DATE: December 18, 2000.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. You may inspect the docket between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2141, by e-mail at sheppard.margaret@epa.gov, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, N.W., Washington, D.C., 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/.

SUPPLEMENTARY INFORMATION:

I. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Foams
C. Non-Aerosol Solvent Cleaning
D. Aerosol Solvents and Propellants
II. Request for Information on Refrigerants for Motor Vehicle Air Conditioners
III. Request for Information on Expanding SNAP Non-Aerosol Solvent Cleaning Program Review to Include Operations that Involve Manual Precision, Electronics, or Metals Cleaning with Solvents
IV. Request for Information on Restricting SNAP Acceptability Decisions in the Non-Aerosol Solvent Cleaning Sector to Operations that Involve the Use of Equipment that Meets Equipment Standards in the National Emission Standards for Halogenated Solvent Cleaning
V. Status of EPA Review of n-Propyl Bromide
VI. Section 612 Program
A. Statutory Requirements
B. Regulatory History
VII. Additional Information
VIII. References
Appendix A—Summary of Acceptable Decisions

I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the refrigeration and air conditioning, non-aerosol solvent cleaning, and aerosol solvents and propellants sectors. For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996. You also can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/chron.html.

The sections below present a detailed discussion of the acceptability decisions EPA is making today. The table summarizing today's listing decisions is in Appendix A. The comments contained in the table in Appendix A provide additional information, but are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments section of the table is not mandatory for use of a substitute, unless the comments refer to applicable regulatory requirements. Nevertheless, EPA strongly encourages users to use these substitutes in a manner consistent with the recommendations in the comments section. In many instances, the comments simply refer to standard operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of these recommendations, if adopted, would not require significant changes in existing operating practices for the affected industry. In addition, such

recommendations should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute.

A. Refrigeration and Air Conditioning

1. HFE–7100

EPA's Decision

Hydrofluoroether 7100 is acceptable for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems using:

- CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502 in industrial process refrigeration;
- CFC–12 and R–502 in retail food refrigeration; and
- CFC–113, R–13B1, and R–503 in very low temperature refrigeration.

HFE–7100 is also acceptable as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22 in retrofit and new equipment in non-mechanical heat transfer. Hydrofluoroether 7100 is also known as HFE–7100; $C_4F_9OCH_3$; $C_6F_9OH_5$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether.

Environmental Information

HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a global warming potential (GWP) of 390 over a 100-year time horizon. These values are lower than the atmospheric lifetime and GWP of the substances HFE–7100 would be replacing.

Flammability Information

HFE–7100 is non-flammable.

Toxicity and Exposure Data

HFE–7100 exhibits low toxicity, with a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

2. HFE–7200

EPA's Decision

Hydrofluoroether 7200 is acceptable for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems using:

- CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502 in industrial process refrigeration;
- CFC–12 and R–502 in retail food refrigeration; and
- CFC–113, R–13B1, and R–503 in very low temperature refrigeration.

HFE–7200 is also acceptable as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22 in retrofit and new equipment in non-mechanical heat transfer. Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_5F_{10}H_2$; and ethoxynonafluorobutane, iso and normal.

Environmental Information

HFE–7200 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 55 over a 100-year time horizon. These values are much lower than the atmospheric lifetime and GWP of the substances HFE–7200 would be replacing.

Flammability Information

The flammability range in air is 2.4–12.4%. HFE–7200 has no flashpoint.

Toxicity and Exposure Data

The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). The Agency also expects that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

3. and 4. FOR12A and FOR12B

EPA Decision

The chemical blends submitted to EPA with the unregistered trade names of FOR12A and FOR12B are acceptable as substitutes for CFC–12 in the following end-uses:

- industrial process refrigeration and air-conditioning
- cold storage warehouses
- refrigerated transport
- retail food refrigeration
- ice machines
- vending machines
- water coolers
- centrifugal chillers
- reciprocating chillers
- household refrigerators and freezers

Inha University of Inchon, Korea and TechnoChem Co., Ltd, the joint submitters of FOR12A and FOR12B, claim that the compositions of these blends are confidential business information.

Environmental Information

The blends do not contain any significant ozone-depleting chemical, but do contain constituents with a GWP. The GWP for the FOR12A blend is approximately 1100 and the GWP for the FOR12B blend is approximately 1000. These values are lower than the GWP of the substances that FOR12A and FOR12B would be replacing. The contribution of these constituents to global warming will be minimized in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act. This section prohibits venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and requires proper disposal of these substances, such as recycling or recovery.

Flammability and Fractionation Information

Fractionation and flammability tests by the submitters have determined that although a constituent of each blend is flammable, FOR12A and FOR12B as blended are not flammable. Further testing has shown that FOR12A and FOR 12B do not become flammable after leakage.

Toxicity and Exposure Data

Both blends have low toxicity. Only one of the constituents of the blends exhibits toxicity, and this substance has an 8-hour acceptable exposure limit of 150 to 170 ppm.

5. NU–22

EPA Decision

NU–22, an HFC blend, is acceptable as a substitute for HCFC–22 in new and retrofit applications in the following end-uses:

- industrial process refrigeration and air-conditioning
- centrifugal chillers
- reciprocating chillers
- residential air conditioning and heat pumps
- residential dehumidifiers
- refrigerated transport
- motor vehicle air conditioning (buses only)

ICOR International, the submitter of NU–22, claims that its composition is confidential business information.

Environmental Information

The blend has no ozone-depleting potential. The blend contains constituents exhibiting GWPs, with the highest GWP being 1600. This value is lower than the GWP of the substance that NU–22 would be replacing. The contribution of this blend to global warming will be minimized in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act. This section prohibits venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and requires proper disposal of these substances, such as recycling or recovery.

Flammability and Fractionation Information

Fractionation and flammability tests by the submitter have determined that although one component of this blend is flammable, this refrigerant blend is not flammable.

Toxicity and Exposure Data:

This blend's constituents are all non-toxic.

6. SP34E

EPA's Decision

SP34E is acceptable for use as a substitute for CFC–12 in the following end uses:

- Household refrigerators and freezers (retrofit and new)
- Refrigerated transport (retrofit and new)
- Retail food refrigeration (retrofit and new)
- Cold storage warehouses (retrofit and new)
- Vending machines (retrofit and new)
- Water coolers (retrofit and new)
- Reciprocating chillers (retrofit and new)

SP34E is acceptable for use as a substitute for CFC–12, subject to use conditions for motor vehicle air conditioning (retrofit and new).

SP34E is an HFC refrigerant with additives. Solpower, the submitter, has claimed the composition is confidential business information.

Conditions for use in Motor Vehicle Air Conditioning Systems:

Regulations regarding recycling and prohibiting venting issued under section 609 of the Clean Air Act apply to this blend.

On October 16, 1996, (61 FR 54029), EPA promulgated a final rule that prospectively applied certain conditions on the use of any refrigerant used as a substitute for CFC–12 in motor vehicle air conditioning systems (Appendix D of subpart G of 40 CFR part 82). That rule provided that EPA would list new refrigerants in future notices of acceptability. Therefore, the use of SP34E as a CFC–12 substitute in motor vehicle air conditioning systems must follow the standard conditions imposed on previous refrigerants, including:

- The use of unique fittings designed by the refrigerant manufacturer,
- The application of a detailed label,
- The removal of the original refrigerant prior to charging with SP34E, and
- The installation of a high-pressure compressor cutoff switch on systems equipped with pressure relief devices.

The October 16, 1996 rule gives full details on these use conditions.

You must use the following fittings to use SP34E in motor vehicle air conditioning systems:

Fitting type	Diameter (inches)	Thread Pitch (threads/inch)	Thread Direction
Low-side service port	.5 (8/16)	18	Left
High-side service port	.4375 (7/16)	14	Right
Large containers (>20 lb.)	.5 (8/16)	18	Left

Currently, there is no fitting for small cans. Thus, small cans may not be used for distribution of this product until either cans are developed that can use the fittings above or EPA issues a future acceptability notice identifying an alternative fitting. The labels will have a tan background and black text.

Required Changes in Technology

When using this refrigerant, you would need to use a filter dryer appropriate for use with R–134a. The submitter claims that SP34E is a replacement for CFC–12 that allows the use of mineral oil instead of synthetic oil. EPA has not evaluated any claims about the effectiveness of SP34E or whether it may be used with mineral oil. You may find materials in Docket A–91–42 concerning these claims.

Environmental Information

SP34E has an ozone depletion potential (ODP) of zero. Some of the constituents of SP34E have GWPs, with the highest GWP over 100 years being 1300. This value is lower than the GWP of the substance that SP34E would be replacing. The longest-lived constituent has an atmospheric lifetime of 14.6 years. The contribution of this blend to global warming will be minimized through requirements under sections 608(c)(2) and 609 of the Clean Air Act. Section 608(c)(2) prohibits venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and requires proper disposal of these substances, such as recycling or recovery. Section 609 requires refrigerant recycling and training and certification for people repairing or servicing motor vehicle air conditioning systems.

Flammability Information

Some constituents of the blend are flammable. Flammability testing by an independent laboratory has determined that SP34E as blended is not flammable. SP34E has no flash point.

Toxicity and Exposure Data

SP34E exhibits low toxicity. Two of its constituents have manufacturer acceptable exposure limits (AELs) of 1000 ppm over an 8-hour time-weighted average. For the remaining constituent, the Occupational Safety and Health Administration (OSHA) has issued a permissible exposure limit of 1000 ppm over an 8-hour time-weighted average. SP34E was submitted to the Agency as a Premanufacture Notice (PMN) under the Toxic Substances Control Act.

7. Correction: "Furan" Corrected to Perfluoro (oxacyclopentane)

The April 11, 2000 notice of acceptability at 65 FR 19327 incorrectly said that EPA was approving "furan" as a substitute for CFC–114 for use in uranium isotope separation processing (retrofit uses). The proper name of the substitute approved for this purpose is perfluoro (oxacyclopentane). It may also be called octafluorotetrahydrofuran or furan, octafluorotetrahydro. Its formula is c-C_4F_8O. Perfluoro (oxacyclopentane) is a cyclic perfluoroether (PFE), with similar atmospheric properties to those of perfluorocarbons (PFCs): long atmospheric lifetime and high global warming potential. Therefore, the same care as recommended for PFCs should be applied in handling this cyclic PFE in order to minimize emissions.

B. Foams

1. Methyl Formate

EPA Decision

Methyl formate is acceptable as a substitute for CFCs and HCFCs in the following end-uses:

- Rigid polyurethane and polyisocyanurate laminated boardstock;
- Rigid polyurethane appliance;

- Rigid polyurethane slabstock and other foams;
- Rigid polyurethane commercial refrigeration and sandwich panels; and
- Polyurethane integral skin foam.

Environmental Information

Methyl formate has no ODP and very low or zero global warming potential (GWP). Users should be aware that methyl formate is a volatile organic compound (VOC) and may be subject to state or federal requirements developed under Title I of the Clean Air Act. Also, because methyl formate is considered hazardous, spills and disposal should be handled in accordance with requirements of the Resource Conservation and Recovery Act (RCRA).

Flammability Information

Methyl formate is flammable and should be handled with proper precautions. Use of methyl formate will require safe handling and shipping as prescribed by OSHA and DOT (for example, using personal safety equipment and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173).

Toxicity and Exposure Data

Methyl formate is toxic and should be handled with proper precautions. Use of methyl formate will require safe handling and shipping as prescribed by OSHA and DOT (for example, using personal safety equipment, observing permissible exposure limits, and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173). OSHA established a permissible exposure limit for methyl formate of 100 ppm for a time-weighted average over an eight-hour work shift. The National Institute of Occupational Safety and Health and the American Conference of Governmental Industrial Hygienists recommend a 15-minute short term exposure limit (STEL) of 150 ppm.

C. Non-Aerosol Solvent Cleaning

1. HFE–7100

EPA Decision

Hydrofluoroether 7100 is acceptable as a substitute for HCFC–141b and HCFC–22 in metals cleaning, precision cleaning, and electronics cleaning applications. Hydrofluoroether 7100 is also known as HFE–7100; $C_4F_9OCH_3$; $C_6F_9OH_5$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether. EPA previously found HFE–7100 acceptable as a substitute for CFC–113 and methyl chloroform in metals cleaning, precision cleaning, and electronics cleaning applications (61 FR 47015).

Environmental Information

HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a global warming potential (GWP) of 390 over a 100-year time horizon. These values are lower than the atmospheric lifetime and GWP of the substances HFE–7100 would be replacing.

Flammability Information

HFE–7100 is non-flammable.

Toxicity and Exposure Data

HFE–7100 exhibits low toxicity, with a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

2. HFE–7200

EPA Decision

Hydrofluoroether 7200 is acceptable as a substitute for HCFC–141b and HCFC–22 in metals cleaning, precision cleaning, and electronics cleaning applications. Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_5F_{10}H_2$; and ethoxynonafluorobutane, iso and normal. EPA previously found HFE–7200 acceptable as a substitute for CFC–113 and methyl chloroform in metals cleaning, precision cleaning, and electronics cleaning applications (64 FR 68039).

Environmental Information

HFE–7200 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 55 over a 100-year time horizon. These values are much lower than the atmospheric lifetime and GWP of the substances HFE–7200 would be replacing.

Flammability Information

The flammability range in air is 2.4–12.4%. HFE–7200 has no flashpoint.

Toxicity and Exposure Data

The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). The Agency also expects that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

3. Heptafluorocyclopentane

EPA Decision

Heptafluorocyclopentane is acceptable as a substitute for CFC–113, methyl chloroform, and HCFC–141b in precision cleaning, electronics cleaning, and metals cleaning applications within the non-aerosol solvent cleaning sector. Heptafluorocyclopentane is also known as HFCPA and $C_5H_3F_7$, and by the trade name Zeorara-H®.

Environmental Information

HFCPA is a hydrofluorocarbon, and thus has no ozone-depleting potential. The GWP is 250 over a 100-year time horizon, and the atmospheric lifetime is 1.8 years. These values are either lower or comparable to the GWPs and atmospheric lifetimes of the substances HFCPA would be replacing.

Flammability Information

HFCPA has no flash point below its boiling point.

Toxicity and Exposure Data

Although this acceptability determination is not subject to any use conditions or narrowed use restrictions, EPA expects users to adhere to the manufacturer's recommended exposure guideline of 123 ppm over an eight-hour time-weighted average, with a ceiling of 500 ppm.

4. HFC–365mfc

EPA Decision

HFC–365mfc is acceptable as a substitute for CFC–113, methyl chloroform, and HCFC–141b in precision cleaning, electronics cleaning, and metals cleaning applications within the non-aerosol solvent cleaning sector. HFC–365mfc is a halogenated alkane.

Environmental Information

HFC–365mfc contains no chlorine or bromine and does not contribute to ozone depletion. The GWP is 790 over a 100-year time horizon and the atmospheric lifetime is 10.2 years. These values are either lower or comparable to the GWPs and atmospheric lifetimes of the substances HFC–365mfc would be replacing.

Flammability Information

HFC–365mfc has no flash point. The lower and upper flammability limits are 3.8% and 13.3%, respectively.

Toxicity and Exposure Data

The submitting manufacturer has set a preliminary acceptable exposure limit (AEL) of 500 ppm.

D. Aerosol Solvents and Propellants

1. HFE–7100

EPA Decision

Hydrofluoroether 7100 is acceptable as a substitute for CFC–11 and HCFC–141b as a solvent in aerosol products. Hydrofluoroether 7100 is also known as HFE–7100; $C_4F_9OCH_3$; $C_6F_9OH_5$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether. EPA previously found HFE–7100 acceptable as a substitute for CFC–113 and methyl chloroform in aerosol solvents (61 FR 47015).

Environmental Information

HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a global warming potential (GWP) of 390 over a 100-year time horizon. These are lower than the atmospheric lifetime and GWP of the substances HFE–7100 would be replacing.

Flammability Information

HFE–7100 is non-flammable.

Toxicity and Exposure Data

HFE–7100 exhibits low toxicity, with a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

2. HFE–7200

EPA Decision

Hydrofluoroether 7200 is acceptable as a substitute for CFC–11, and HCFC–141b as a solvent in aerosol products. Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_5F_{10}H_2$; and ethoxynonafluorobutane, iso and normal. EPA previously found HFE–7200 acceptable as a substitute for CFC–113 and methyl chloroform in aerosol solvents (64 FR 68039).

Environmental Information

HFE–7200 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 55 over a 100-year time horizon. These values are much lower than the atmospheric lifetime and GWP of the substances HFE–7200 would be replacing.

Flammability Information

The flammability range in air is 2.4–12.4%. HFE–7200 has no flashpoint.

Toxicity and Exposure Data

The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). The Agency also expects that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

3. HFC–365mfc

EPA Decision

HFC–365mfc is acceptable as a substitute for CFC–113, methyl chloroform, and HCFC–141b as an aerosol solvent. HFC–365mfc is a halogenated alkane.

Environmental Information

HFC–365mfc contains no chlorine or bromine and does not contribute to ozone depletion. The GWP is 790 over a 100-year time horizon and the atmospheric lifetime is 10.2 years. These values are either lower or comparable to the GWPs and atmospheric lifetimes of the substances HFC–365mfc would be replacing.

Flammability Information

HFC–365mfc has no flash point. The lower and upper flammability limits are 3.8% and 13.3%, respectively.

Toxicity and Exposure Data

The submitting manufacturer has set a preliminary acceptable exposure limit (AEL) of 500 ppm.

II. Request for Information on Refrigerants for Motor Vehicle Air Conditioners

EPA requests information on the refrigerants Enviro-Safe, Red Tek, Maxi-Frig, ES–12A, and Auto Cool. EPA has received numerous inquiries regarding the SNAP acceptability of the above refrigerants for use in motor vehicle air conditioners (MVACs). Materials disseminated through mailings and the internet (Air Docket A–91–42, item IX–B–60) have made consumers question whether the products listed above are acceptable substitutes under the SNAP program for CFC–12 (R12 or freon) and other ozone-depleting CFC–12 substitutes. Under Section 612(e) of the CAA, any person who produces a substitute for a CFC is required to submit information to EPA at least 90 days before the substitute is introduced into interstate commerce. The refrigerants listed above have not been submitted to EPA for review under the SNAP program. Therefore, the Agency believes that they cannot be sold as replacements for CFC–12 or other ozone-depleting CFC substitutes in MVACs.

Additionally, based on advertising materials, Material Safety Data Sheets (MSDSs) and independent laboratory testing (Air Docket A–91–42, item IX–B–60), EPA believes the refrigerants listed above may be flammable hydrocarbon-based blends. In June 1995, flammable refrigerants were listed as unacceptable as substitutes for CFC–12 in MVACs because a comprehensive risk assessment on the use of flammable refrigerants had not been submitted to EPA (60 FR 31092). EPA welcomes the submission of such a risk assessment. However, until EPA receives sufficient information on the potential risks of flammable refrigerants in MVACs, all flammable refrigerants are unacceptable as substitutes for CFC–12 and ozone-depleting freon substitutes in MVACs, unless specifically listed as acceptable. Consumers should also be aware that the following 19 states ban the use of flammable refrigerants in MVACs: Arkansas, Arizona, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Nebraska, North Dakota, Oklahoma, Texas, Utah, Virginia, Wisconsin, Washington, and the District of Columbia. For further information about flammable refrigerants, see EPA's web site (http://www.epa.gov/spdpublc/title6/snap/hc12alng.html).

EPA requests information on the composition and the flammability of Enviro-Safe, Red Tek, Maxi-Frig, ES–12A, and Auto Cool. We also would welcome any formal risk assessment on these refrigerants.

III. Request for Information on Expanding SNAP Program Review of the Non-Aerosol Solvent Cleaning Sector to Include and Potentially to Establish Use Conditions for Operations that Involve Manual Precision, Electronics, or Metals Cleaning

In the non-aerosol solvent cleaning sector, EPA has historically applied SNAP review only to large industrial cleaning applications, including cold cleaning and vapor degreasing and defluxing operations, where ozone-depleting substances have been historically used. Within industrial cleaning, the three main applications that in the past used ozone-depleting solvents are precision cleaning, electronics cleaning, or general metals cleaning, and solvents used in those applications are subject to SNAP

review.[1] The preamble language to the original SNAP rule of March 18, 1994 provided EPA's interpretation that its SNAP regulation excludes some applications within metals, precision and electronics cleaning. Specifically, the preamble stated that:

> The SNAP determinations issued in the solvent cleaning sector focus on substitutes for CFC–113 and methyl chloroform (MCF) when used in industrial cleaning equipment, since this application comprises the largest use of ozone-depleting solvents. . . . Other applications for ozone-depleting solvents exist as well, such as in dry cleaning of textiles or in hand cleaning or maintenance cleaning as a spray. In addition, these solvents are used as bearer media (such as lubricant carriers), mold release agents, component testing agents, or in other non-cleaning applications. CFC–11 is also occasionally used as a cleaning solvent in specialized applications. . . . The Agency intends to exclude cleaning substitutes for CFC–113, MCF and CFC–11 in these applications—with the exception of aerosol substitutes—from the SNAP determinations at this time. As a result, the Agency is not at this time issuing any determinations on acceptability of such substitutes, and will neither approve nor restrict their uses.

(59 FR 13090) Based on this language, EPA has not required SNAP review of substitutes for CFC–113, methyl chloroform and other ozone-depleting solvents when those substitutes are used in the following specific manual cleaning applications for metals, electronics or precision cleaning:

- Bearer media (e.g., substitutes for CFC–113 in depositing lubricants on medical catheters);
- Plasma etching;
- Mold release agents (for nonaerosol applications);
- Motor vehicle air conditioning flushing;
- Hand wiping or maintenance cleaning with a non-aerosol spray;
- Dry cleaning of textiles;
- Substitutes for CFC–11 (although note that EPA reviews substitutes to CFC–11 when it is used as an aerosol propellant); and
- Flushing of oxygen systems.

There are a wide variety of cleaning operations. Some of these operations are more emissive, and present more risks to workers handling the equipment, than others. EPA is concerned that for certain solvents reviewed under the SNAP program, it may not make sense to determine that use of that compound is acceptable without conditions or restrictions, or alternatively that it is unacceptable, in both manual and machine cleaning operations. EPA is considering pursuing the use of certain narrowed use restrictions on SNAP acceptability decisions for manual metals, electronics, or precision cleaning. We believe that this would better implement the intent of the Clean Air Act Section 612 mandate to evaluate the overall health and environmental risks associated with potential substitutes to ozone-depleting substances.

Because of the emissive nature of many manual cleaning operations and relatively high volumes of ozone-depleting solvents and their substitutes used in manual cleaning,[2] EPA is now considering expanding the scope of SNAP review in the non-aerosol solvent cleaning sector to include one or more of the manual cleaning applications above for metals cleaning, electronics cleaning, or precision cleaning.[3] In most manual cleaning operations, solvent use is not contained within equipment, and the potential for soil and groundwater contamination is a major issue. Contamination is also a concern where solvents are allowed to fall on concrete or other porous floors. In addition to solvents causing soil and groundwater contamination, the evaporation of solvents often results in atmospheric damage. Many solvents used in manual cleaning are volatile organic compounds (VOCs), which contribute to ground-level ozone pollution. In addition, a significant number of solvents contribute to global warming and/or to stratospheric ozone depletion. Human health risk is another concern: cleaning manually rather than with automated processes will more likely result in significant worker exposures to solvents, some of which have been assigned, either by manufacturers, governmental agencies, or voluntary standard-setting organizations, relatively low exposure limits due to their potential short-term or long-term toxicity. Other potential hazards to workers from manual cleaning include skin absorption of solvents, contact dermatitis, contact burns, exposure to flammable vapors, and exposure to compounds that may react with chemicals from other processes.

Manual cleaning occurs in electronic and precision cleaning as well as in metals cleaning. Manual cleaning encompasses a diverse set of cleaning operations. It can involve organic solvents, water-based cleaners, impingement cleaning, and/or mechanical cleaning. It is generally, but not always, cold cleaning (i.e., cleaning where the removal of soils is accomplished by solvents, solvent blends, or water-based cleaners that are at room temperature or are otherwise below their boiling points). Sometimes the applications are small-scale; in some applications, the part to be cleaned may be several stories high. Manual cleaning may be one or a few steps of an overall cleaning process that involves hundreds or thousands of cleaning steps. Techniques of manual cleaning include:

- Non-automated wiping, swabbing, scraping, sanding, brushing, pressure-washing or abrasively blasting surfaces with a cloth, swab, brush, sponge, pad or other implement that is moistened with solvent or other cleaner, manually applying the solvent or other cleaner directly to surfaces to agitate the surface soils, and then wiping, swabbing, brushing or pressure-washing the surfaces;
- Submerging parts in a solution that includes water, solvents and/or surfactants (this may include ultrasonic cleaning); and
- Using spraying equipment, whether the spray is from an aerosol can, other pressurized can, or non-pressurized container (such as a pump).

Swabs are generally used in specific spots, wipers can cover a larger specific area, and sprays are used over a more general area. Manual cleaning can be performed with either aqueous or solvent-based cleaning fluids or sprays, and includes the following operations:

- Spot cleaning,
- Cleaning large metal surfaces such as milking machines and other tanks and vessels,
- Cleaning small batches of parts, and
- Cleaning articles such as medical examination instruments, optical instruments, labware or circuit boards, and process equipment.

Examples of applications that involve manual cleaning include:

- Removal of paints, mineral deposits, dirt and oils during the overhauling, repairing, or rebuilding of automotive parts, machinery parts or instruments,
- Removal of residual rosin flux during the manufacture and service of electronics assemblies,
- Removal of rosin flux, oil, dirt, and mineral deposits during the repair of heavy-use military assemblies,
- Removal of burnt-on carbonized and/or caramelized oil during the repair of compressors after burnout,
- Removal of flux, oils, polishing compounds and fingerprints from large, critical aerospace components,
- Removal of oils, fluxes and fingerprints from high-value, critical biomedical devices, and
- Removal of residue polishing compounds in precision optics and in semiconductor manufacturing wafer fabrication.

EPA has previously regulated manual cleaning with solvents in the National Emission Standards for Hazardous Air Pollutants (NESHAPs) under § 112(b) of the Act. The September 1, 1995 NESHAP for Aerospace Manufacturing and Reworking Facilities defines "hand-wipe cleaning operation" as "the removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component by physically rubbing it with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent." (60 FR 45958) The NESHAP rule differentiates between hand-wipe cleaning operations, spray gun cleaning, and "flush cleaning," in which contaminants are removed by "passing solvent over, into, or through the item being cleaned." (60 FR 45958) Similarly, EPA is considering differentiating between manual cleaning and other methods for solvent cleaning under the SNAP program.

As part of EPA's efforts to comply with the intent of the mandate in Section 612 of the Clean Air Act to evaluate the overall health and environmental risks associated with potential substitutes to ozone depleting substances, we are interested in receiving comments and information on the following:

- Appropriateness of SNAP review of ODS substitutes used in manual cleaning,
- Potential health and environmental benefits from SNAP review of solvents used in manual cleaning,
- Other solvent applications not currently reviewed under SNAP, but where SNAP review of solvents used in these applications may result in environmental benefits, and
- Consequences of the expansion of SNAP review into manual cleaning. For example, since HCFC–141b is already listed as unacceptable in all non-aerosol solvent cleaning applications (i.e., in precision, electronics, and metals cleaning), the use of HCFC–141b as a substitute for CFC–113 or methyl chloroform in manual wiping would automatically become prohibited if EPA were to promulgate a final rule expanding the scope of SNAP to include manual cleaning. In addition, when EPA promulgates rules in the future that list acceptability determinations for particular solvents, we could prohibit the use of those solvents in manual cleaning.

The Agency hopes that today's action will give the public an opportunity to provide input at an early stage in this decision-making process. If EPA pursues this expansion of the scope of SNAP review, we will do so through notice-and-comment rulemaking.

IV. Request for Information on Restricting SNAP Acceptability Decisions in the Non-Aerosol Solvent Cleaning Sector to Operations That Involve the Use of Equipment That Meets Equipment Standards in the National Emission Standards for Halogenated Solvent Cleaning

As discussed in the previous section of this action, EPA has historically applied SNAP review in the non-aerosol solvent cleaning sector only to large industrial cleaning applications where ozone-depleting substances have been historically used. Within industrial cleaning, the three main applications that in the past used ozone-depleting solvents are precision cleaning, electronics cleaning, or general metals cleaning. Solvents used in these applications are subject to SNAP review.

Each of these applications includes a wide range of cleaning operations and equipment: cold cleaning methods such as pail-and-brush, hand wipe, recirculating over-spray ("sink-on-a-drum") parts washers, immersion cleaning into dip tanks with manual parts handling, automated immersion cleaning using multiple dip tanks, and either automated or manual immersion cleaning that incorporates ultrasonic or mechanical agitation, and heated cleaning methods such as heated dip tanks and vapor degreasing. Some of these operations are more emissive, and present more risks to workers handling the equipment, than others. The Agency is interested in pursuing regulatory options within the SNAP decisionary framework in order to better account for these differences. In other words, for certain solvents reviewed under the SNAP program, it may not make sense to determine that use of that compound is acceptable without conditions or restrictions, or alternatively that it is unacceptable, in all precision (or electronic, or metals) cleaning operations. EPA is interested in pursuing the use of certain narrowed use restrictions on SNAP acceptability decisions that would better implement the intent of the Clean Air Act Section 612 mandate to evaluate the overall health and environmental risks associated with potential substitutes to ozone-depleting substances.

EPA is specifically interested in receiving comments and information on the appropriateness of restricting SNAP acceptability decisions for newly submitted non-aerosol solvents to operations that involve the use of equipment that meets the requirements set forth in 40 CFR 63.462, Batch cold cleaning machine standards, and 40 CFR 63.463, Batch vapor and in-line cleaning machine standards, which are set forth in the national emission standards for halogenated solvent cleaning ("HSC NESHAP").[4] Does it

[1] In a February 24, 1998 Notice of Acceptability in the **Federal Register** (63 FR 9151), EPA clarified the definitions of these applications as follows:

"(1) Electronics Cleaning. Primarily the removal of flux residues from wiring assemblies after a soldering operation has been completed. This is considered a high value end use application where performance is critical.

"(2) Metals Cleaning. The removal of a wide variety of contaminants from metal objects during a manufacturing or maintenance process. At each stage in the manufacturing process contaminants must be removed from the piece to ensure a clean metal surface for the next step in the production process or for final consumption. These parts tend to be metal objects ranging from fully assembled aircraft down to small metal parts stamped out in high volume. These contaminants are most often greases, cutting oils, coatings, large particles, and metal chips.

"(3) Precision Cleaning. Applies to components and surfaces of any composition for which an extremely high level of cleanliness is necessary to ensure satisfactory performance during the manufacturing process or in final consumption. This end use is characterized as very high value end use segment based on a non-cost criteria. Examples of such criteria would be: high value products, protection or safeguarding of human life, compatibility concerns with plastics, temperature and mechanical stress limitations, precision mechanical assemblies/components with demanding machining tolerances or complex geometrics, and base or mix of metals readily pitted, corroded, eroded or otherwise compromised".

[2] EPA uses the terms "hand cleaning" and "manual cleaning" synonymously.

[3] Manual cleaning has never been excluded from the scope of SNAP in the aerosol solvents and propellants sector, or in the adhesives, coatings and inks sector.

[4] For reference, the HSC NESHAP provisions at 40 CFR 63.461 (July 1, 1999 revision) include the following definitions:

Batch cleaning machine means a solvent cleaning machine in which individual parts or a set of parts move through the entire cleaning cycle before new parts are introduced into the solvent cleaning machine. An open-top vapor cleaning machine is a type of batch cleaning machine. A solvent cleaning machine, such as a ferris wheel cleaner, that cleans multiple batch loads simultaneously and is manually loaded is a batch cleaning machine.

Cold cleaning machine means any device or piece of equipment that contains and/or uses liquid solvent, into which parts are placed to remove soils from the surfaces of the parts or to dry the parts. Cleaning machines that contain and use heated, nonboiling solvent to clean the parts are classified as cold cleaning machines.

Open-top vapor cleaning machine means a batch solvent cleaning machine that has its upper surface open to the air and boils solvent to create solvent vapor used to clean and/or dry parts.

Immersion cold cleaning machine means a cold cleaning machine in which the parts are immersed in the solvent when being cleaned.

In-line cleaning machine or *continuous cleaning machine* means a solvent cleaing machine that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned. These units are fully

Continued

make sense to add a narrowed use restriction to SNAP "acceptable" or "acceptable subject to use conditions" determinations that would permit the use of the solvent in the appropriate application (i.e., precision cleaning, electronics cleaning, or metals cleaning) only if the solvent is used in conjunction with equipment that meets the HSC NESHAP? This restriction might be stated as follows: "May only be used in conjunction with batch cold cleaning machines or batch vapor or in-line cleaning machines that conform to 40 CFR 63.462 or 40 CFR 63.463." If an acceptability decision were restricted in this manner, and if EPA were to regulate manual cleaning as discussed in the previous section of the preamble, then the solvent presumably could not be used in (a) manual cleaning in that application, (b) any other cleaning process in that application not subject to the HSC NESHAP, or (c) any cleaning process in that application subject to the HSC NESHAP but not in conformance with the NESHAP.

Another alternative would be to restrict a solvent's use to some subset of the applications mentioned above. For example, there could be conditions prohibiting the solvent's use for any cleaning machines in that application not subject to the HSC NESHAP, or for any cleaning process in that application subject to the HSC NESHAP but not in conformance with the NESHAP. This alternative restriction might be stated as follows: "If used in cleaning machines, may only be used in conjunction with batch cold cleaning machines or batch vapor or in-line cleaning machines that conform to 40 CFR 63.462 or 40 CFR 63.463." Or, the restriction could apply to cleaning processes that are subject to the HSC NESHAP and to manual cleaning applications. Under this second alternative, the narrowed use restriction might be stated as follows: "If used in conjunction with batch cold cleaning machines or batch vapor or in-line cleaning machines that are subject to 40 CFR 63.462 or 40 CFR 63.463, may only be used in conjunction with equipment that meets the requirements set forth in these provisions. Also may not be used in manual cleaning operations."

EPA is also interested in receiving comments and information on the following:

- What are the potential health and environmental benefits from the SNAP program adding these types of restrictions to future SNAP acceptability determinations?
- Which solvents submitted to the SNAP program in the future, if any, should be subject to the HSC NESHAP restriction? For example, should this restriction be attached to acceptability determinations for any compound for which the eight-hour time-weighted average exposure limit, whether set by the chemical manufacturer, a voluntary industry organization, or a federal or state health or safety agency, is 100 ppm or less? 150 ppm or less? 50 ppm or less?
- Should any solvents that EPA has already listed as "acceptable" be subject to this type of restriction, in order to prevent worker exposures or atmospheric emissions?

The Agency hopes that today's action will give the public an opportunity to provide input at an early stage in this decision-making process. If EPA pursues this expansion of the scope of SNAP review, we will do so through notice-and-comment rulemaking.

V. Status of EPA Review of n-Propyl Bromide

EPA is in the process of reviewing n-propyl bromide (nPB) as a potential substitute for CFC–113, methyl chloroform and HCFC–141b in the non-aerosol solvent cleaning sector for general metals, precision, and electronics cleaning applications, as well as in adhesive and coatings applications, and aerosol propellant and solvent applications. On February 18, 1999, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** at 64 FR 8043, which requested comment and information on nPB, particularly with regard to its ozone-depletion potential (ODP) and its toxicity, in order to assist in the development of effective regulatory options.

Through the publication of the ANPRM, EPA summarized and made publicly available the information it had received on nPB so that interested parties could evaluate these data. The ANPRM noted that EPA will supplement the public docket as new information is received, and issue an additional notice of data availability. Today's action serves to provide the public with an update on the information EPA has received to date (which has been added to the public docket), and provides a summary of anticipated next steps in developing regulations under SNAP for nPB.

The discussion below presents this new information for each of the main areas previously identified in the February 1999 ANPRM where significant uncertainties existed or data were incomplete.

Ozone Depletion Potential. Since the publication of the ANPRM, EPA has received new information about ongoing modeling efforts to estimate nPB's ODP. These new efforts involve development and refinement of three-dimensional (3–D) chemical transport models that account for the relatively short-atmospheric lifetime of nPB (11–14 days according to Nelson et al. 1997; Wuebbles et al., 1998; 1999a, and 19–20 days according to Wuebbles et al., 2000) and for the location and timing of emissions. While two-dimensional models can treat longer-lived gases (e.g., CFCs, halons) that are well-mixed in the atmosphere as if they are uniformly emitted at all latitudes and longitudes, they are not designed to adequately account for variations in concentrations and transport of short-lived compounds and their degradation products. As discussed in a March 1999 workshop on short-lived compounds sponsored by EPA and NASA (Wuebbles and Ko, 1999), the ODPs for short-lived compounds ideally would be defined as a function of location and perhaps time of emission. 3–D models can examine questions related to convective transport rates of these short-lived compounds and their degradation products at different latitudes, and the relative importance of transient versus steady-state effects. Using the most recent version of the MOZART2 3–D model and considering the full degradation chemistry of nPB in the atmosphere, Wuebbles et al. 2000 (available from the EPA Air Docket) derived a range of ODP values that are strongly dependent on location of the emissions, especially with respect to latitude. For example, the ODP averaged for all global emissions is estimated to range from 0.033 to 0.040, but the ODP for emissions from the tropics (India, Southeast Asia, and Indonesia) is estimated to be much larger, 0.87 to 0.105. The authors attribute the difference to the strong effect of the deep convective transport in the tropics in rapidly moving gases to the upper troposphere. Assuming that emissions occur only over the contiguous United States, the ODP is estimated to range from 0.016 to 0.019. While many of the previously identified uncertainties with respect to the potential impacts of nPB on stratospheric ozone are addressed in this study, the authors note that considerable uncertainties remain related to the lack of empirical data on reaction rate constants and products for the degradation chemistry associated with nPB. Additional uncertainties also remain that are common to any 3–D modeling of short-lived gases related to the treatment of convective processes, boundary layer processes, surface deposition, and rainout.

The Agency remains interested in receiving from the public any other information pertaining to the atmospheric effects and ozone depletion potential of short-lived atmospheric chemicals (e.g., shorter than three months), and any additional information on the ODP of nPB, specifically. EPA will make any new information accessible to the public as it becomes available by placing it in the docket identified in the Addresses section of this document, and if appropriate, will issue a notice of data availability in the **Federal Register** to insure that the public is aware of any new information.

Toxicity. As with other solvents, occupational exposure to nPB may occur via both inhalation and skin absorption. Potential health effects related to overexposure to nPB (and many other solvents) may include irritation of the eyes, mucous membranes, upper respiratory tract, and skin. At higher exposure levels, central nervous system effects (characterized by headache and dizziness, possibly leading to loss of consciousness) may occur. Animal studies indicate that exposure to nPB at concentrations above 400 parts per million for "sub-chronic" durations of 28–90 days is associated with liver toxicity and reproductive system effects (reduced sperm counts and motility). Reproductive system effects have also been observed in both rats and humans exposed to 2-bromopropane (iPB), an isomer of nPB which also has tested positive in some in vitro cancer assays.

As discussed in the February 1999 ANPRM, the reproductive and developmental effects of nPB are especially uncertain, and require additional data before the Agency issues a proposed regulation. In cooperation with EPA, a consortium of nPB manufacturers conducted a study to evaluate the effects of nPB exposures on the developmental and reproductive systems in two generations of rats. This study was recently completed, and we expect that its results will be available for Agency review early in 2001.

EPA is also aware of recent Japanese studies that have shown adverse neurotoxicological and reproductive toxicological effects in rats exposed to nPB levels as low as 200 ppm, which is a lower level for adverse effects than has been previously demonstrated (Ichihara et al., 2000a, b). The Agency intends to review the protocols followed in these studies in order to estimate the significance of the findings.

EPA plans on issuing a proposed nPB regulation as soon as possible once we have had an opportunity to evaluate the results of these recent toxicological studies. In the event that EPA lists uses of nPB in certain applications as acceptable, we expect that the final action will include a recommended exposure limit. In the February 1999 ANPRM, EPA recommended that until exposure levels are set, either on a voluntary basis by a standard-setting organization such as the American Conference of Governmental Industrial Hygienists (ACGIH) or the American Industrial Hygienists Association (AIHA), or on a mandatory basis by OSHA, nPB users should adhere to a preliminary exposure limit of 50–100 ppm over an eight-hour time-weighted average. The nPB manufacturers' current company-set limit at that time was 100 ppm. However, based on the preliminary review of the two-year study discussed above, one manufacturer of nPB has revised its recommended exposure limit to 25 ppm on an 8-hour, time-weighted average basis (see docket A–91–42, item IX-B–61). As indicated by at least one manufacturer's decision and as noted in the February 1999 ANPRM, the results from developmental and reproductive testing may require a lower limit than EPA's preliminary recommendation of 50–100 ppm to be protective.

The U.S. Occupational Safety and Health Administration (OSHA) has submitted nPB and iPB to the National Institute of Environmental Health Sciences' National Toxicology Program (NTP) for further assessment. In its submission, OSHA recommended that NTP consider administering the following tests: Carcinogenicity study in both sexes of rats and mice; a multi-generation reproductive study; developmental studies (inhalation by pregnant animals); a subchronic neuro-toxicity study; a genotoxicity battery; and toxicokinetic/mechanistic studies. These studies would likely take several years to complete. EPA anticipates that once the assessment is finalized, OSHA will work to develop a mandatory exposure limit for nPB use in the workplace. The results of OSHA's review could result in a limit that is lower than EPA's preliminary recommendation of 50–100 ppm.

EPA is presenting and making publicly available the information it has received so that interested parties may evaluate these data for themselves and use it as guidance if they choose to use nPB until a proposal and final rule are in place. EPA remains interested in receiving additional information on human health and toxicological risks associated with exposure to nPB. As EPA receives new information, we will add it to the docket, along with a notice of data availability in the **Federal Register**, as appropriate.

VI. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's

enclosed except for the conveyor inlet and exit portals. In-line cleaning machines can be either cold or vapor cleaning machines.

Solvent cleaning machine means any device or piece of equipment that uses halogenated HAP solvent liquid or vapor to remove soils from the surfaces of materials. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines.

Vapor cleaning machine means a batch or in-line solvent cleaning machine that boils liquid solvent generating solvent vapor that is used as a part of the cleaning or drying cycle.

unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this action EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/chron.html. This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

VI. Additional Information

Contact the Stratospheric Protection Hotline at (800) 296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST). For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as all EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/ and from the Stratospheric Protection Hotline, the toll-free telephone number of which is listed above.

VII. References

The following referenced documents are available for inspection and copying at the EPA Docket.

Ichihara, G., et al., "1-Bromopropane, an Alternative to Ozone Layer Depleting Solvents, Is Dose-Dependently Neurotoxic to Rats in Long-Term Inhalation Exposure," Toxicological Sciences 55, 116–123 (2000a), available through the EPA Air Docket and at http://toxsci.oupjournals.org/cgi/content/full/55/1/116.

Ichihara, G., et al., "Reproductive Toxicity of 1-Bromopropane, a Newly Introduced Alternative to Ozone Layer Depleting Solvents, in Male Rats," Toxicological Sciences 54, 416–423 (2000b), available through the EPA Air Docket and at http://toxsci.oupjournals.org/cgi/content/full/54/2/416).

Wuebbles, D.J., Patten, K.O., Johnson, M.T., Kotomarthi, R.; The New Methodology for Ozone Depletion Potentials of Short-Lived Compounds: n-Propyl Bromide as an Example June 26, 2000 Draft.

Web site for Albemarle Corporation, "Regulatory Status" and "Product Data" for Abzol cleaners, available through the EPA Air Docket and at http://www.albemarle.com/abztopicsfrm.htm.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 6, 2000.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A: Summary of Acceptable Decisions

End-Use	Substitute	Decision	Comments
REFRIGERATION and AIR CONDITIONING			
industrial process refrigeration, for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems.	Hydrofluoroether 7100 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502.	Acceptable.	

End-Use	Substitute	Decision	Comments
retail food refrigeration, for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems.	Hydrofluoroether 7100 as a substitute for CFC–12 and R–502.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–12 and R–502.	Acceptable.	
very low temperature refrigeration, for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems.	Hydrofluoroether 7100 as a substitute for CFC–113, R–13B1, and R–503.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–113, R–13B1, and R–503.	Acceptable.	
non-mechanical heat transfer, for use in retrofit and new equipment.	Hydrofluoroether 7100 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22.	Acceptable.	
industrial process refrigeration and air-conditioning (retrofit and new).	FOR12A as a substitute for HCFC–22.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–22.	Acceptable.	
industrial process refrigeration (retrofit and new).	SP34E as a substitute for CFC–12.	Acceptable.	
cold storage warehouses (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
refrigerated transport (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–22.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
retail food refrigeration (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
ice machines (new)	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
vending machines (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
water coolers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	

End-Use	Substitute	Decision	Comments
	SP34E as a substitute for CFC–12.	Acceptable.	
centrifugal chillers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–12.	Acceptable.	
reciprocating chillers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
household refrigerators and freezers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
residential air conditioning and heat pumps (retrofit and new).	NU–22 as a substitute for HCFC–22.	Acceptable.	
residential dehumidifiers (retrofit and new).	NU–22 as a substitute for HCFC–22.	Acceptable.	
motor vehicle air conditioning, buses only (retrofit and new).	NU–22 as a substitute for HCFC–22.	Acceptable.	
motor vehicle air conditioning (retrofit and new).	SP34E as a substitute for CFC–12.	Acceptable	Users must use the unique fittings and label specified by the manufacturer, as required by Appendix D to subpart G of 40 CFR part 82. Use is subject to requirements under § 609 of the Clean Air Act.
FOAMS			
• rigid polyurethane and polyisocyanurate laminated boardstock. • rigid polyurethane appliances. • rigid polyurethane slabstock and other foams. • rigid polyurethane commercial refrigeration and sandwich panels. • polyurethane integral skin foam.	Methyl formate as a substitute for CFCs and HCFCs.	Acceptable.	
NON-AEROSOL SOLVENT CLEANING			
all metals cleaning, precision cleaning, and electronics cleaning applications.	Hydrofluoroether 7100 as a substitute for HCFC–141b and HCFC–22.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for HCFC–141b and HCFC–22.	Acceptable.	
	Heptafluorocyclopentane as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable.	EPA expects users to adhere to an exposure limit of 123 ppm over an eight-hour time-weighted average, with a ceiling of 500 ppm.
	HFC–365mfc as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable.	

End-Use	Substitute	Decision	Comments
AEROSOL SOLVENTS AND PROPELLANTS			
aerosol solvents	Hydrofluoroether 7100 as a substitute for CFC–11 and HCFC–141b.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–11 and HCFC–141b.	Acceptable.	
	HFC–365mfc as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable.	

[FR Doc. 00–32150 Filed 12–15–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–352]

Waivers, Reductions and Deferrals of Regulatory Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rule regarding petitions for reduction of regulatory fees. The current rule permits a petition for regulatory fee waiver to be submitted with less than full fee payment, which is contrary to the text and intent of the order establishing the regulatory fee waiver rules. The revised rule requires full fee payment to be submitted with any petition for reduction of fee. The revised rule also provides that petitions for reduction that do not include full fee payment will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

DATES: Effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Carla Conover, Office of General Counsel, (202) 418–7882.

SUPPLEMENTARY INFORMATION: 1. It has come to our attention that our rule on regulatory fee waivers does not conform to the text and intent of our order addressing requests for reductions of fees. On our own motion therefore, we amend and correct our rule on fee waivers. Specifically, in our order adopting rules on regulatory fee waivers, we concluded that the required fee must be submitted with any request for waiver or reduction of regulatory fees. *Implementation of Section 9 of the Communications Act*. 9 FCC Rcd 5333, 5344 through 5345 (1994) (hereinafter *Order*). We excepted only the rare petitions requesting waiver or reduction based on financial hardship and which present compelling cases of financial hardship. We specifically rejected comments arguing that we should not generally require that fees be paid when requests for waiver or reduction of regulatory fees are filed. The language of the rule adopted in the *Order*, however, inadvertently included the phrase "less the amount of the requested reduction," following "the full fee payment," and did not include language regarding dismissing petitions not accompanied by full fee payment. (The rule was originally designated as 47 CFR 1.1165(a)(4), but has since been redesignated 47 CFR 1.1166(d).) Our correction to the rule deletes the phrase "less the amount of the requested reduction" and adds the final sentence to conform the language of the rule to the text and intent of paragraphs 33 to 35 of the *Order*. We therefore revise paragraph (d) of 47 CFR 1.1166 accordingly.

2. In the interests of fairness, we will ensure that no party that relied on the unamended language of 47 CFR 1.1166(d) will be prejudiced. The amended rule will apply only to petitions filed after the effective date of the amended rule.

3. Accordingly, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 159, & 303(r), part 1 of the Commission's rules, 47 CFR part 1, is amended as set forth and is effective January 17, 2001.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 1 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(4), 309.

2. Section 1.1166 is amended by revising paragraph (d) to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

* * * * *

(d) Petitions for reduction of a fee must be accompanied by the full fee payment and Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Attention: Petitions, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251–5835. Petitions for reduction that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

[FR Doc. 00–31946 Filed 12–15–00; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 00–405]

Wireless Radio Services; Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document the Commission denies two petitions for reconsideration of the Second Memorandum Opinion and Order in this proceeding, which modified the Commission's wireless Enhanced 911 (E911) rules to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. The Commission take this actions to respond to these petitions for reconsideration.

DATES: Effective December 18, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Memorandum Opinion and Order (Fifth MO&O) in CC Docket No. 94–102; FCC 00–405, adopted November 9, 2000, and released November 22, 2000. The complete text of this Fifth MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Fifth Memorandum Opinion and Order

1. In this Fifth Memorandum Opinion and Order (Fifth MO&O), the Commission denies two petitions for reconsideration of the Second Memorandum Opinion and Order (see Second MO&O, 64 FR 72951, December 29, 1999) in this proceeding, in which the Commission modified its Enhanced 911 (E911) to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. In January 2000, Rural Cellular Association (RCA) and CorrComm, L.L.C. filed petitions for reconsideration of that decision. In April 2000, RCA filed a peittion for stay of the implementation of the amended cost recovery rule, which became effective on April 27, 2000. Inasmuch as the Commission now denies the petitions for reconsideration of the Second MO&O, the petition for stay is denied as moot.

2. In denying the petitions for reconsideration the Commission affirms that: (1) Adequate notice and opportunity for comment was provided, (2) a complete record supports our conclusion that the rule resulted in a significant impediment to Phase I implementation that was inconsistent with our rules and the statute, and (3) we fully considered the impact of removing the carrier cost recovery requirement on all carriers, including rural carriers.

Final Regulatory Flexibility Analysis

3. The Commission has not prepared an additional Final Regulatory Flexibility Analysis (FRFA) of the possible economic impact on small entities of the Commission's decisions. See generally, the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, because this Fifth MO&O does not promulgate or revise any rules, and the previous FRA analyses in this proceeding remain unchanged.

Authority

4. This action is taken pursuant to sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201, 303, 309, and 332.

Ordering Clauses

5. The Petitions for Reconsideration filed by Corr Wireless Communications, L.L.C. (formerly CorrComm, L.L.C.) and Rural Cellular Association are denied. The Petition for Stay filed by Rural Cellular Association is denied as moot.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–32134 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 00–428]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission we adopt the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) for phasing down the interim hold-harmless provision of the forward-looking high-cost universal service support mechanism for non-rural carriers. Specifically, the Commission adopts the Joint Board's recommendations that Long Term Support (LTS) be maintained under the current rules until the Commission considers appropriate reforms for the LTS program in connection with the pending proceedings for high-cost reform for rural carriers and/or interstate access charge reform for rate-of-return carriers and the balance of interim hold-harmless support, excluding LTS, be phased down through $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter, except that interim hold-harmless support transferred to a rural carrier when it acquires telephone exchanges from a non-rural carrier shall not be phased down following the transfer.

DATE: Effective December 18, 2000.

FOR FURTHER INFORMATION CONTACT: William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Thirteenth Report and Order in CC Docket No. 96–45 released on December 8, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Thirteenth Report and Order, we adopt the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) for phasing down the interim hold-harmless provision of the forward-looking high-cost universal service support mechanism for non-rural carriers. Specifically, we adopt measures to phase down interim hold-harmless support, excluding Long-Term Support (LTS), through $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter until there is no more interim hold-harmless support. For the reasons discussed, we believe that these measures will ensure a prompt, equitable phase-down of interim hold-harmless support without causing undue rate disruption. We conclude that several issues, such as appropriate

reforms for the LTS program, should be addressed in the context of our pending proceedings for rural high-cost reform and/or interstate access charge reform for rate-of-return carriers.

II. Phase Down of Interim Hold-Harmless Support

A. Long-Term Support

2. We adopt the Joint Board's recommendation regarding LTS. The forward-looking mechanism adopted in the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, does not replace LTS for non-rural carriers, contrary to the Commission's originally anticipated outcome. Therefore, we agree with the Joint Board that LTS for non-rural carriers should be preserved until we have considered further reform of the LTS program. In addition, maintaining LTS for non-rural carriers is consistent with our objective to maintain the current support structure, as modified, for rural LTS recipients pending rural high-cost reform. Because LTS is geared primarily to the needs of small, rural carriers, we find that this determination should take place in the context of our related proceedings to reform the high-cost support mechanism for rural carriers and the interstate access charge system for rate-of-return carriers. We will examine these matters in the near future.

B. High-Cost Loop Support for Non-Rural Carriers Under Part 36 of the Commission's Rules

3. We adopt the Joint Board's recommendation that interim hold-harmless support, excluding LTS, be phased down beginning January 1, 2001, through annual $1.00 reductions in each carrier's average monthly, per-line support until this support is eliminated. This approach will promptly phase out interim hold-harmless support for the majority of carriers currently receiving less than $1.00 per-line/per-month, without reducing any carrier's average monthly, per-line support by more than $1.00 per year. Thus, there will be no significant, sudden reductions in per-line support to an individual study area. We agree with the Joint Board that this approach is a reasonable means of ensuring a prompt, equitable phase-down of interim hold-harmless support without causing undue rate disruption, consistent with the objectives we announced in the *Ninth Report and Order*.

4. We also agree with the Joint Board that the phase-down schedule should be reexamined in conjunction with our review of the forward-looking mechanism, which is to be completed by January 1, 2003. At that time, Puerto Rico Telephone Company is likely to be the only carrier still receiving interim hold-harmless support, and more information will be available on the impact of the phase-down in Puerto Rico.

a. Mechanics of Phase-Down

5. To ensure that the phase-down conforms with the quarterly schedule on which interim hold-harmless support is calculated, the Joint Board recommended that the applicable annual reductions be subtracted from the interim hold-harmless support that a carrier otherwise would be eligible to receive on an ongoing, quarterly basis. We adopt this recommendation.

6. We also conclude that the targeting provisions of the *Ninth Report and Order* should govern the distribution of phased-down support. Although non-rural carriers receive interim hold-harmless support based on embedded costs averaged over their entire study areas, the support is targeted for competitive purposes to their highest-cost exchanges based on forward-looking economic costs. The Joint Board did not address the issue of whether phased-down support should be targeted to individual exchanges, except in connection with transferred exchanges. We find, however, that targeting phased-down interim hold-harmless support to a carrier's highest-cost exchanges is consistent both with the Joint Board's recommendations and with the *Ninth Report and Order*.

b. Calculation of High-Cost Loop Support for Rural Carriers

7. We adopt the Joint Board's recommendation that the "interim cap" on high-cost loop support for rural carriers be calculated as if phased-down interim hold-harmless support were being distributed to non-rural carriers, pending reform of the high-cost support mechanism for rural carriers. Under the current rules, universal service support for all carriers under Part 36 is restricted by a cap that limits the total increase in support each year to the annual growth in nationwide loops. To avoid smaller annual increases in the support available to rural carriers as a result of the shift to forward-looking support for non-rural carriers, we directed in the *Ninth Report and Order* that the cap be calculated as if all carriers continue to participate in the preexisting Part 36 high-cost support mechanism. Subtracting phased-down support amounts from calculation of the cap likewise could result in smaller annual cap increases, because the prior year support level used to calculate the cap includes the high-cost loop support for non-rural carriers under Part 36 that will be phased down as a result of the approach we adopt herein. Accordingly, we agree with the Joint Board that an interim "placeholder" measure is warranted to avoid significant and immediate changes in high-cost support for rural carriers as a result of the phase-down. In accordance with the Joint Board's recommendations, we also conclude that phased-down support for non-rural carriers (support calculated as a "placeholder") should not be collected or distributed to other carriers. We note that we expect this placeholder to remain in effect for a limited time, as we are committed to moving forward expeditiously on high-cost reform for rural carriers.

c. Transferred Interim Hold-Harmless Support

8. We are mindful of the Joint Board's concerns regarding the operation of § 54.305 of the Commission's rules. As the Joint Board recognized, however, the rule serves the important purpose of preventing carriers receiving support based on the size of their study areas and embedded costs from "placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges[.]" Section 54.305 was adopted as a temporary measure to be utilized during our transition to universal service support mechanisms that provide support to all carriers based on the forward-looking economic costs of operating a given exchange. The Joint Board is currently considering reform of the rural high-cost support mechanism, including the operation of § 54.305 for rural carriers. We believe that the rural high-cost reform proceeding is the most appropriate context in which to reexamine the operation of § 54.305 with regard to transfers involving rural carriers.

9. We therefore adopt the Joint Board's recommendation not to phase down interim hold-harmless support for eligible exchanges transferred to rural carriers until we reexamine § 54.305 or until rural high-cost reform is complete.

10. We also adopt the Joint Board's recommendation that interim hold-harmless support for exchanges transferred to non-rural carriers be phased down over the same time period as the seller's support would have been phased down. We agree with the Joint Board that this approach will ensure a prompt and equitable phase-down of transferred interim hold-harmless support, and discourage carriers from transferring exchanges to delay or avoid the phase-down of interim hold-

harmless support. In addition, we adopt the recommendation that targeted support for exchanges transferred to non-rural carriers be phased down by an equal percentage for each year of the phase-down period, on an exchange-by-exchange basis. This approach will be administratively simple and predictable for acquiring non-rural carriers.

III. Procedural Matters

A. Regulatory Flexibility Act Certifications—Final and Initial

11. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of proposed policies and rules, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in Standard Industrial Classification Code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

12. We conclude that a FRFA is not required here. The foregoing Thirteenth Report and Order adopts a final rule. The rules adopted affect the amount of high-cost support provided to non-rural carriers. Non-rural carriers generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. Thus, the final rules adopted here do not affect a substantial number of small entities. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the Thirteenth Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Thirteenth Report and Order and of this certification to the Chief Counsel for Advocacy of the SBA. In addition, this certification will be published in the **Federal Register**. The Commission will send a copy of this Thirteenth Report and Order, including a copy of this certification, in a report to Congress pursuant to the SBREFA.

B. Effective Date of Final Rules

13. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register**. In this Thirteenth Report and Order we conclude that the phase-down of interim hold-harmless support, excluding LTS, will be implemented beginning January 1, 2001. Thus, the amendments must become effective by January 1, 2001. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required January 1, 2001 implementation date. This implementation date is important because January 1, 2001 is the beginning of a new funding year, and interim hold-harmless support is a transitional funding mechanism that increases the size of the federal high-cost fund and should be phased down as rapidly as possible without causing undue disruption to consumer rates in high-cost areas. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

C. Paperwork Reduction Act

14. The instant Report and Order contains no information collections.

IV. Ordering Clauses

21. Pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, this Thirteenth Report and Order is adopted.

22. Part 36 of the Commission's rules is amended as set forth, effective December 18, 2000.

23. Part 54 of the Commission's rules is amended as set forth, effective December 18, 2000.

24. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Thirteenth Report and Order, including the Regulatory Flexibility Act Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36 and 54 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Subpart F—Universal Service Fund

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403 and 410.

2. In § 36.601, add the following sentence at the end of paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) * * *

Support amounts calculated pursuant to this subpart F but not received due to the phase down of interim hold-harmless support or the receipt of forward-looking support pursuant to § 54.311 of this chapter shall not be redistributed to other carriers.

* * * * *

PART 54—UNIVERSAL SERVICE

Subpart D—Universal Service Support for High Cost Areas

3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

4. In § 54.311, paragraph (d) is added to read as follows:

§ 54.311 Interim hold-harmless support for non-rural carriers.

* * * * *

(d) *Phase down of interim hold-harmless support.* Beginning January 1, 2001, the interim hold-harmless support for which a non-rural incumbent local exchange carrier qualifies under paragraph (a) of this section, excluding Long Term Support, shall be phased down through annual $1.00 reductions in average monthly, per-line support. Applicable annual reductions shall be subtracted from the total amount of interim hold-harmless support that a non-rural incumbent local exchange carrier otherwise would be eligible to receive on an ongoing, quarterly basis. The provisions of paragraph (b) of this section shall apply to the total amount of phased-down interim hold-harmless support provided to each non-rural incumbent local exchange carrier.

(1) Interim hold-harmless support for a wire center transferred to a carrier that does not meet the definition of rural telephone company in § 51.5 of this chapter shall be phased down following the transfer over the same time period as the seller's support would have been phased down, by an equal percentage for each year of the phase-down period.

(2) Interim hold-harmless support for a wire center transferred to a carrier that meets the definition of rural telephone company in § 51.5 of this chapter shall remain frozen at the per-line support level as of the sale date.

[FR Doc. 00–32071 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 121200H]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for North Carolina

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of North Carolina has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in North Carolina for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in North Carolina.

DATES: Effective 0001 hours, December 17, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in North Carolina is 27.44584 percent, or 3,049,560 lb (1,383,257 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of North Carolina has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 17, 2000, further landings of summer flounder in North Carolina by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 17, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in North Carolina for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–32136 Filed 12–13–00; 3:26 pm]

BILLING CODE: 3510–22 –S

Proposed Rules

Federal Register
Vol. 65, No. 243
Monday, December 18, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. I

Grain Inspection, Packers and Stockyards Administration

7 CFR Ch. VIII

[Docket Number FGIS–2000–001a]

RIN 0580–AA73

Request for Public Comments on How USDA Can Best Facilitate the Marketing of Grains, Oilseeds, Fruits, Vegetables, and Nuts in Today's Evolving Marketplace

AGENCY: Agricultural Marketing Service Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: The United States Department of Agriculture (USDA) published a document in the **Federal Register** of November 30, 2000, concerning request for comments on How USDA Can Best Facilitate the Marketing of Grains, Oilseeds, Fruits, Vegetables, and Nuts in Today's Evolving Marketplace. The document omitted e-mail as a means of filing public comments.

FOR FURTHER INFORMATION CONTACT: Marianne Plaus, 202–690–3460.

Correction

In the **Federal Register** of November 30, 2000, in FR Doc. 00–30140, on page 71272, in the second column, correct the first paragraph of the "Addresses" caption to read:

ADDRESSES: Interested persons are invited to submit written comments on this notice to Richard Hardy, GIPSA, USDA, 1400 Independence Avenue, SW., Room 0757–S, Washington, DC 20250–3650. Comments may also be sent by fax to (202) 720–2459, filed via the Internet through the GIPSA homepage at www.usda.gov/gipsa. or filed via e-mail at anpr@gipsadc.usda.gov.

Dated: December 12, 2000

David R. Shipman,

Deputy Administrator, Grain Inspection, Packers and Stockyards Administration.

Michael D. Fernandez,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–32158 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–EN–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 907 and 908

[No. 2000–42]

RIN 3069–AB–03

Rules of Practice and Procedure

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations to implement the provisions of Title VI of the Gramm-Leach-Bliley Act, Public Law 106–102 (1999) and to establish rules of practice and procedure governing hearings on the record in certain administrative enforcement actions. The proposed rule is intended to provide Finance Board personnel, the Federal Home Loan Banks (Banks), the Office of Finance (OF) and the directors and executive officers of the Banks and OF, as well as any other interested parties, with sufficient notice and guidance to fully utilize the procedures.

The Finance Board is also proposing to make certain conforming amendments to its existing rules.

DATES: The Finance Board will accept written comments on the proposed rule that are received on or before January 17, 2001.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov*. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. The Federal Home Loan Bank Act

The twelve Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1421–1449 (Act). The Banks are a "government sponsored enterprise" (GSE), i.e., a federally chartered but privately owned institution created by Congress to serve a public purpose. The purpose of the Banks is to support the financing of housing and community development lending. *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), (j)(10). The Banks are cooperatives, meaning that only a member of a Bank may own the Bank's capital stock and share in its profits. An institution that is eligible (typically, an insured depository institution) may become a member of a Bank if it satisfies certain statutory criteria and purchases a specified amount of the Bank's capital stock. 12 U.S.C. 1424, 1426. Only members and certain eligible housing associates (such as state housing finance agencies) may borrow from or use other products and services offered by the Banks. 12 U.S.C. 1426, 1430(a), 1430b.

The Banks, together with the OF, comprise the Federal Home Loan Bank System (Bank System), which operates under the supervision of the Finance Board, an independent agency in the executive branch of the Federal government.[1] Under the Act, the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that duty, the Finance Board is required to supervise the Banks, ensure that they carry out their housing finance mission, and ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A), (B).

Section 2B of the Act sets forth the powers and duties of the Finance Board. 12 U.S.C. 1422b. In general, the Finance Board is empowered to supervise the Banks and to promulgate and enforce such regulations and orders as are necessary to carry out the provisions of the Act. 12 U.S.C. 1422b(a)(1). The Finance Board also is authorized to suspend or remove for cause a director, officer, employee or agent of any Bank or OF. The Act requires that the Finance Board communicate in writing to the subject individual and the Bank or OF the cause of any such suspension or removal. 12 U.S.C. 1422b(a)(2). With the enactment of the Gramm-Leach-Bliley Act in 1999, the Finance Board's enforcement powers were significantly expanded.

[1] The Finance Board was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, 103 Stat. 412 (FIRREA).

B. The Gramm-Leach-Bliley Act Amendments

On November 12, 1999, the Gramm-Leach-Bliley Act, Public Law No. 106–102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act), was enacted. Title VI of the GLB Act, known as the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), substantially amended the Act. In particular, section 606 of the Modernization Act amended section 2B of the Act, 12 U.S.C. 1422b(a)(5), to confer on the Finance Board certain administrative enforcement powers with respect to the Banks and the Office of Finance, and their executive officers and directors, which are substantially the same as those granted to the Office of Federal Housing Enterprise Oversight (OFHEO) with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the housing finance enterprises), or the directors or executive officers of the housing finance enterprises, by the enforcement provisions in Subtitle C of Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) in sections 1371 through 1379B (codified at 12 U.S.C. 4631–4641), and those granted to the appropriate Federal banking agency with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, *as amended*. (codified at 12 U.S.C. 1818(b)(6) and (7)).

Specifically, section 606 of the Modernization Act enumerates the grounds pursuant to which the Finance Board may issue a notice of charges; incorporates by reference the authority and procedures provided for in sections 1371(c) and (f) of the Safety and Soundness Act (12 U.S.C. 4631(c) and (f)) with regard to the issuance of a notice of charges and cease and desist orders (C&D orders); confers on the Finance Board the same authority to issue corrective orders as the appropriate Federal banking agencies have with respect to insured depository institutions as set forth in 12 U.S.C. 1818(b)(6) and (7); and provides that the Finance Board has all other powers to enforce the Act that OFHEO has under Subtitle C of Title XIII of the Safety and Soundness Act to enforce its statutes, including the authority to issue a temporary C&D order and to assess a civil money penalty (CMP) (12 U.S.C. 4632 and 4636, respectively). *See* 12 U.S.C. 1422b(a)(5). The Modernization Act also incorporates OFHEO's statutory authority and procedures for hearings, judicial review of final orders, the issuance of subpoenas and subpoenas *duces tecum* to obtain testimony and documents, and the enforcement of final orders (12 U.S.C. 4633–4641). *See id.* These expanded powers in no way restrict the ability of the Finance Board under its existing authority to supervise the Banks or to promulgate and enforce orders or directives under section 2B(a)(1) or any other provision of the Act.

II. Synopsis of the Proposed Rule

The Act requires the Finance Board to adopt rules of practice and procedure consistent with the Administrative Procedure Act, 5 U.S.C. 500–559 (APA), for all matters to be determined by the Finance Board on the record after an opportunity for a hearing, including cease-and-desist orders and civil money penalty assessments.[2] Thus, the rules of practice and procedure set forth in the proposed rule are intended to supplement the APA requirements for adjudicatory hearings required by the statute to be held on the record.[3]

Subpart A of the proposed rule defines terms appearing in this part, prescribes the scope of the regulation, and relates the general rules of construction. Subpart B of the proposed rule recites the scope of the Finance Board's authority with respect to certain enforcement proceedings, including cease and desist orders, temporary cease and desist orders and civil money penalties, suspension and removal authority, judicial review of final orders, public disclosure of final orders, and the limitation on any implied private right of action. The proposed rule also provides for the service of a notice of charges on a former executive officer or director of a Bank or OF, within two years of their separation from service.

Subpart C of the proposed rule provides the general rules that govern the process and recites the authority of the Finance Board, Board of Directors and the presiding officer. The presiding officer is defined to mean an Administrative Law Judge (ALJ), or other neutral, qualified individual who is appointed by the Finance Board under applicable law (presiding officer), to preside over the hearing from the time of the appointment until he or she files the record, including a recommended decision and order, for a final decision.

The Board of Directors may intervene in any matter to perform, direct the performance of, or waive the performance of any authorized action of the presiding officer. The presiding officer is authorized to: Change the hearing date, time or place; issue or modify subpoenas or subpoenas *duces tecum;* issue protective orders; administer oaths and affirmations; regulate the course of the hearing and hold conferences to address issues arising in the hearing; and rule on non-dispositive motions.

All hearings are open to the public, unless the Finance Board determines that an open hearing would be contrary to the public interest. Consistent with a Finance Board determination to hold an open hearing, the presiding officer may limit public and media access to any public hearing. Any party may file a motion with the presiding officer for a closed hearing in accordance with the applicable limitations. Additionally, the Finance Board may file any document or portion of a document under seal and the presiding officer is required to take all appropriate steps to preserve the confidentiality of such document(s) or parts thereof.

The proposed rule provides that every filing or submission of record shall be signed by at least one representative of record to certify that the document has been read and that to the best of the representative's knowledge it is supported in fact and is not made for any improper purpose. *Ex parte* communications are prohibited. Any party or representative who makes or elicits an *ex parte* communication may be subject to appropriate sanctions. The Finance Board anticipates that in the future, under applicable law, the agency will have the necessary technological ability to enable the parties to submit documents by electronic media, and may specify the conditions for such electronic transmission. Until further notice, for purposes of this regulation,

[2] *See* 12 U.S.C. 1422b(a)(5), which incorporates the OFHEO requirement from the Safety and Soundness Act of 1992 (12 U.S.C. 4633(a)(3)).

[3] The procedures set forth in part 908 are distinct from those described in part 907, and are not contingent upon the issuance of an examination finding, any order or directive concerning safety and soundness or compliance, or any other order of the Finance Board under section 2B(a)(1) of the Act.

all papers filed by the parties shall be filed in accordance with the requirements set out in proposed § 908.25(c).

Any respondent may submit a settlement proposal to the Finance Board in accordance with proposed § 908.30. Submission of a settlement offer does not provide a basis for delaying a proceeding, and no settlement offer is admissible in evidence in the adjudicative proceeding or any court. Importantly, nothing in the rule prohibits or restricts the authority of the Finance Board to conduct any examination or inspection of any Bank, or to conduct or to continue any form of investigation authorized by law.

Under subpart D, the Finance Board commences the hearing process by issuing and serving a notice of charges on a respondent. During the course of a hearing, the presiding officer controls virtually all aspects of the proceeding. The presiding officer: determines the hearing schedule; presides over any pre-hearing conferences; rules on motions, discovery, and evidentiary issues; and ensures that the proceeding is fair, equitable, and impartial. The presiding officer does not, however, have the authority to make a ruling that disposes of the proceeding. Only the Board of Directors has the authority to dismiss the proceeding or to make a final determination on the merits of the proceeding following a hearing on the record or a negotiated disposition.

Subpart E of the proposed rule governs hearings and post-hearing proceedings. Section 908.60 of the proposed rule provides that hearings shall be conducted in accordance with the APA, and any other applicable law. The parties to the proceeding have the right to present evidence and witnesses at the hearing and to examine and cross-examine the witnesses. At the completion of the hearing, the parties may submit proposed findings of fact and conclusions of law and a proposed order. The presiding officer then submits the complete record to the Board of Directors for consideration and action. The record includes the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order. The record also includes all pre-hearing and hearing transcripts, exhibits, rulings, motions, briefs and memoranda, and all supporting papers filed in connection with the hearing. The Board of Directors shall issue a final ruling within 90 days of the date the presiding officer serves notice on the parties that the record is complete and the case has been submitted to the Board of Directors for final decision, or at such time as is practicable within the discretion of the Board of Directors.

Subpart F, "Rules of Practice Before the Finance Board," governs the parties and their representatives appearing before the Finance Board under this rule and provides for the imposition of disciplinary sanctions—censure, suspension or disbarment—by the presiding officer or the Board of Directors against parties or their representatives. This subpart covers parties and individuals that appear before the Finance Board in a representational capacity. The presiding officer may decide what notice and responses are appropriate where sanctions are at issue for conduct arising in an adjudicatory proceeding or hearing. The proposed rule prescribes when sanctions may be imposed, and what those sanctions may be. Covered representation may include, but is not limited to, the practice of attorneys and accountants. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart. The Finance Board may also apply these qualification and disciplinary rules to parties or representatives in an administrative proceeding under part 907 of the Finance Board's rules and regulations governing requests for regulatory interpretations, approvals, waivers, case-by-case determinations or review of disputed supervisory determinations, which are not required by statute to be resolved following a hearing on the record. *See* 12 CFR part 907.

III. Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications, that is, regulations or actions that have substantial, direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities between Federal and State Government. The Finance Board has determined that this proposed rule has no federalism implications that warrant consultation with the states or the preparation of a federalism summary impact statement in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

In order to make the regulatory process more efficient, Executive Order 12866 requires the centralized review of regulatory action. The Finance Board has determined that this proposed rule is not a significant regulatory action as such term is defined in Executive Order 12866, has so indicated to the Office of Management and Budget (OMB), and was not notified by OMB that the rule must be reviewed by OMB.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This proposed rule meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires for any rule that includes a Federal mandate that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million, that an agency prepare an assessment statement of the anticipated costs and benefits of the Federal mandate. *See* 2 U.S.C. 1532(a). The proposed rule does not include such a Federal mandate, and, therefore, it does not warrant the preparation of such an assessment statement.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include a regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The proposed rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, when promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act seeks to minimize the paperwork burden for individuals, small businesses, and other entities resulting from the collection of information by or for the Federal government. *See* 44 U.S.C. 3501 *et seq.* This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. 44 U.S.C. 3502(3). Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 907

Administrative practice and procedures, Federal Home Loan Banks.

12 CFR Part 908

Administrative practice and procedures, Penalties.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR parts 907 and 908 as follows:

PART 907—PROCEDURES

1. The authority citation for part 907 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1).

2. In § 907.15, add paragraph (j) to read as follows:

§ 907.15 General provisions.

* * * * *

(j) *Rules of practice.* In connection with any matter initiated or pending pursuant to subpart C of this part, petitioners, requestors or intervenors shall be subject to the provisions of subpart F of 12 CFR part 908. No other provision of part 908 shall apply to administrative matters under this part.

3. Add a new part 908 to read as follows:

PART 908—RULES OF PRACTICE AND PROCEDURE IN HEARINGS ON THE RECORD

Subpart A—Introduction

Sec.
908.1 Definitions.
908.2 Scope.
908.3 Rules of construction.

Subpart B—Scope and Authority—Enforcement and Removal Proceedings

908.4 Cease and desist orders.
908.5 Temporary cease and desist orders.
908.6 Civil money penalties.
908.7 Suspension and removal.
908.8 Subpoenas.
908.9 Hearings on the record.
908.10 Judicial review.
908.11 Jurisdiction, enforcement of orders and notice.
908.12 Notice after separation.
908.13 Public disclosure of final orders.
908.14 No implied private right of action.
908.15—908.19 [Reserved]

Subpart C—General Rules

908.20 Authority of the Board of Directors.
908.21 Authority of the presiding officer.
908.22 Public hearings.
908.23 Good faith certification.
908.24 Ex parte communications.
908.25 Filing of papers.
908.26 Service of papers.
908.27 Computing time.
908.28 Change of time limits.
908.29 Witness fees and expenses.
908.30 Settlement or other dispute resolution.
908.31 Right to supervise the Banks.
908.32 Collateral attacks on adjudicatory proceeding.
908.33—908.39 [Reserved]

Subpart D—Pre-Hearing Proceedings

908.40 Commencement of proceeding and contents of notice of charges.
908.41 Answer.
908.42 Amended pleadings.
908.43 Failure to appear.
908.44 Consolidation and severance of actions.
908.45 Motions.
908.46 Discovery.
908.47 Request for document discovery from parties.
908.48 Document subpoenas to nonparties.
908.49 Deposition of witness unavailable for hearing.
908.50 Interlocutory review.
908.51 Summary disposition.
908.52 Partial summary disposition.
908.53 Scheduling and prehearing conferences.
908.54 Prehearing submissions.
908.55 Hearing subpoenas.
908.56–908.59 [Reserved]

Subpart E—Hearing and Post-Hearing Proceedings

908.60 Conduct of hearings.
908.61 Evidence.
908.62 Post hearing filings.
908.63 Recommended decision and filing of record.
908.64 Exceptions to recommended decision.
908.65 Review by Board of Directors.
908.66 Exhaustion of administrative remedies.
908.67 Stay of order pending judicial review.
908.68–908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

908.70 Scope.
908.71 Practice before the Finance Board.
908.72 Appearance and practice in proceedings before the Finance Board.
908.73 Conflicts of interest.
908.74 Sanctions.
908.75 Censure, suspension, disbarment and reinstatement.

Authority: 12 U.S.C. 1422b(a)(5), 4631(c) and (f), and 4632–4641. Section 908.4 is also authorized by 12 U.S.C. 1818(b)(6) and (7). Section 908.7 is also authorized by 12 U.S.C 1422b(a)(2).

Subpart A—Introduction

§ 908.1 Definitions.

For purposes of this part—

(a) *Adjudicatory proceeding or hearing* means a proceeding conducted pursuant to this part and leading to the formulation of a final order other than a regulation;

(b) *Decisional employee* means any employee of the Finance Board or any member of the presiding officer's staff who has not engaged in an investigative or prosecutorial role in an adjudicatory proceeding or hearing and who may assist the Board of Directors or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this part.

(c) *OF* means the Office of Finance as defined in § 985.1 of this chapter.

(d) *Notice of charges* means a written order so titled, which is issued by the Finance Board to a respondent, and that describes the alleged violations with sufficient specificity to put the respondent on notice of the nature and scope of the charges being brought against the respondent pursuant to this part.

(e) *Party* means any person named in any notice issued by the Finance Board under this part.

(f) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, Bank, the OF, or other entity or organization.

(g) *Presiding officer* means an administrative law judge or other qualified, neutral individual who is appointed by the Finance Board under applicable law, and, pursuant to Title 5 of the United States Code, may conduct a hearing or adjudicatory proceeding under this part.

(h) *Representative of record* means an individual who is authorized to represent a person or who is representing himself at an adjudicatory proceeding or hearing conducted under this part and who has filed a notice of appearance in accordance with § 908.72.

(i) *Respondent* means any person named in a notice of charges issued by the Finance Board.

(j) *Safety and Soundness Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501–4641) (Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550).

(k) *Violation* includes any act or omission by a person, undertaken alone or with one or more others, that causes directly or indirectly, counsels, participates in, or otherwise furthers, aids or abets a violation of the Act or any other applicable law, regulation or policy.

§ 908.2 Scope.

This subpart prescribes rules of practice and procedure applicable to an adjudicatory proceeding or hearing with regard to:

(a) Cease and desist proceedings under section 2B(a)(5) of the Act; or

(b) Civil money penalty assessment proceedings against a Bank or OF, or any executive officer or director of any Bank or OF, under section 2B(a)(5) of the Act.

§ 908.3 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

Subpart B—Scope and Authority—Enforcement and Removal Proceedings

§ 908.4 Cease and desist orders.

(a) *General rule.* The Finance Board may issue and serve a notice of charges upon a Bank, OF, or any executive officer or director of a Bank or OF, if in the determination of the Finance Board, the Bank, OF, or any executive officer or director of a Bank or OF, is engaging or has engaged in, or, if the Finance Board has reasonable cause to believe that the Bank, OF, or the executive officer or director of a Bank or OF, is about to engage in:

(1) An unsafe or unsound practice in conducting the business of the Bank or OF;

(2) Any conduct that violates any provision of the Act or any applicable law, order, rule or regulation; or

(3) Any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank or OF, or any written agreement entered into by the Bank or OF with the Finance Board.

(b) *Actions to limit activities and remedial authority.* (1) *Remedial actions.* The authority of the Finance Board to issue and serve a notice of charges under this part includes the authority to require a Bank or OF or any executive officer or director of a Bank or OF to—

(i) Make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) Such Bank or party was unjustly enriched in connection with the violation, conduct or practice described in the notice of charges under paragraph (c) of this section; or

(B) The violation, conduct or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Finance Board;

(ii) Restrict the growth of the Bank;

(iii) Dispose of any loan or asset involved;

(iv) Rescind any agreement or contract;

(v) Employ qualified officers or employees (who may be subject to approval by the Finance Board at the direction of the Finance Board); and

(vi) Take such other action as the Finance Board determines to be appropriate.

(2) *Authority to limit activities.* The authority to issue a notice of charges under this section includes the authority to place limitations on the activities or functions of any Bank or OF, or any executive officer or director of a Bank or OF.

(c) *Procedure.* (1) *Statements in notice of charges.* A notice of charges issued pursuant to paragraph (a) of this section shall contain a statement of the facts constituting the alleged conduct or violation and shall fix a time and place at which a hearing on the record will be held to determine whether an order to cease and desist from such conduct or violation should issue.

(2) *Issuance of order.* If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of charges has been established, or, if a Bank, OF or an executive officer or director of a Bank or OF, is deemed to have consented to the relief sought in the notice of charges pursuant to § 908.43 (or otherwise consents), the Board of Directors may issue and serve upon the Bank, OF, or an executive officer or director of the Bank or OF, an order requiring such party to cease and desist from any such conduct or violation, to take affirmative action to correct or remedy the conditions resulting from any such conduct or violation, or to comply with such limitations on activities or functions as may be prescribed therein, in accordance with paragraph (a) in this section.

(3) *Effective date of order.* An order issued under paragraph (c)(2) of this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the subject Bank, OF, or executive officer or director of a Bank or OF, (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Board of Directors or otherwise as provided for in this part.

§ 908.5 Temporary cease and desist orders.

(a) *Grounds for issuance and scope.* (1) Whenever the Finance Board determines that any conduct or violation, or threatened conduct or violation, specified in a notice of charges issued and served upon a Bank, the OF, or an executive officer or director of a Bank or the OF, under this part, or the continuation thereof, is likely to cause insolvency; to cause a significant depletion of the total capital of a Bank; to cause irreparable harm to a Bank or OF; or to make the books and records of a Bank or OF to be so incomplete or inaccurate such that the Finance Board would be unable, through the normal supervisory process, to determine the true financial condition of the Bank or OF or the purpose of any transaction or transactions that may have a material effect on the financial condition of a Bank or OF, the Finance Board may issue a temporary order requiring a Bank, the OF, or an executive officer or director of a Bank or the OF, to immediately cease and desist from any such conduct or violation, or such threatened conduct or violation, and to take immediate affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings.

(2) Additionally, the Finance Board may issue a temporary order requiring:

(i) The cessation of any activity or practice that caused or contributed, whether in whole or in part, to the incomplete or inaccurate state of the books or records of a Bank or the OF; or

(ii) Affirmative action to restore the books or records to a complete and accurate state.

(3) The Finance Board may issue a temporary cease and desist order under § 908.5 prior to the initiation or completion of a proceeding conducted pursuant to § 908.4.

(b) *Effective date and effective period.* (1) *Effective date.* Any temporary order issued pursuant to paragraph (a) of this section shall become effective upon service upon the Bank, OF, or executive officer or director of a Bank or the OF.

(2) *Effective period.* Any temporary order issued under paragraph (a) of this section, unless set aside, limited, or suspended by a court in a proceeding under paragraph (c) of this section, shall remain in effect and enforceable:

(i) Pending the completion of a hearing pursuant to § 908.9 on the notice of charges issued under § 908.4, and:

(A) The temporary order is superceded by a cease and desist order issued by the Board of Directors under section § 908.4; or

(B) The Board of Directors dismisses or otherwise finally resolves the charges specified in the notice of charges; or

(ii) Until the date the Finance Board determines, by examination or otherwise, that the books and records of the Bank or the OF are accurate and reflect the true financial condition of the Bank or the OF, and the Board of Directors issues a written determination that terminates the temporary order.

(c) *Judicial review.* A Bank, the OF, or any executive officer or director of a Bank or the OF, that has been served with a temporary order pursuant to this subsection may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the hearing pursuant to the notice of charges served upon the Bank or the OF, or an executive officer or director of a Bank or the OF, under §§ 908.4 and 908.9. In accordance with § 908.9, the district court shall have jurisdiction only to issue such injunction.

(d) *Enforcement of temporary order.* Pursuant to § 908.10, in the case of a violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Finance Board may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such temporary order. If the district court finds any such violation, threatened violation, or failure to obey, the district court shall issue such injunction.

§ 908.6 Civil money penalties.

(a) *Violations or conduct subject to penalty.* The Finance Board may assess a civil money penalty on any Bank, OF, or any executive officer or director of a Bank or the OF, that:

(1) Violates any provision of the Act, or any order, rule, or regulation issued under the Act;

(2) Violates any final or temporary order issued by the Finance Board pursuant to the Act;

(3) Violates any written agreement between a Bank, or an executive officer or director of a Bank and the Finance Board, or the terms of any condition imposed in writing by the Finance Board in connection with the grant or approval of an application or request by a Bank; or

(4) Engages in any conduct that causes a loss, or that the Finance Board has reasonable cause to believe may cause a loss to a Bank, or any conduct that constitutes an unsafe and unsound practice or a breach of fiduciary duty.

(b) *Amount of penalty.* (1) The amount of a civil money penalty the Finance Board may assess under paragraph (a) of this section, except as otherwise provided, shall not exceed $5,000.00 for each day that such violation or conduct continues;

(2) The Finance Board may assess a civil money penalty on an executive officer or director of a Bank or OF in an amount not to exceed $10,000.00, or on a Bank or the OF in an amount not to exceed $25,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct is part of a pattern of misconduct, or involved or continues to involve recklessness and caused or would be likely to cause a material loss to a Bank or, with respect to OF, adverse financial or market conditions; or

(3) The Finance Board may assess a civil money penalty on an executive officer or director of a Bank or OF in an amount not to exceed $100,000.00, or on a Bank or OF in an amount not to exceed $1,000,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to a Bank or the OF.

(c) *Factors in determining the amount of the penalty.* In determining the amount of the civil money penalty to be assessed under this section, the Finance Board shall consider such factors as the gravity of the violation, any history of prior violations, the good faith of the officer or director of a Bank or OF, the effect of the penalty on promoting or protecting the safety and soundness of a Bank or the Bank System, any injury to members of the subject Bank or to the public at large, any benefits received, and the potential for the deterrence of future violations.

(d) *Order shall be made on the record after hearing.* An order to assess a civil money penalty on a Bank or OF, or an executive officer or director of a Bank or OF, shall be issued in writing and made on the record only after the subject Bank or OF, or executive officer or director of a Bank or OF, has been given the opportunity for a hearing on the record in accordance with the procedures set forth in § 908.9.

(e) *Limitation on judicial review.* An order of the Board of Directors assessing a civil money penalty under this subsection shall not be subject to judicial review except as otherwise provided in § 908.10.

(f) *Judicial enforcement of an order imposing a penalty.* If a Bank, OF, or an executive officer or director of a Bank or OF, fails to comply with an order of the Board of Directors assessing a civil money penalty, the Finance Board may seek to enforce the order as follows:

(1) After the order is final and no longer subject to judicial review under § 908.10, the Finance Board may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against a Bank, OF, or the executive officer or director of a Bank or OF;

(2) The Finance Board may, in addition, seek such other relief as may be available from the District Court;

(3) The monetary judgment may, in the discretion of the District Court, include any attorneys fees and other expenses incurred by the Finance Board in connection with the action; and

(4) The validity and appropriateness of the Board of Directors' order assessing a civil money penalty shall not be subject to review of the United States District Court for the District of Columbia.

(g) *Board of Directors' authority to review.* The Board of Directors may:

(1) Review any determination or order to assess a civil money penalty or any interlocutory ruling arising from a hearing on the record, or

(2) Settle, modify, or remit in whole or in part, any civil money penalty, which may be or may have been assessed under this section.

(h) *Availability of other remedies.* Any civil money penalty assessed under this section shall be in addition to any other available civil remedy and may be assessed whether or not the Finance Board imposes other administrative sanctions pursuant to this part.

(i) *Prohibition of reimbursement or indemnification.* A Bank shall not reimburse, indemnify, or otherwise compensate directly or indirectly any individual for any penalty that may be assessed against such individual under this part.

(j) *Applicability.* Any penalty under this part may be assessed for conduct occurring or discovered after November 12, 1999.

(k) *Adjustment of civil money penalties by the rate of inflation.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, Pub. Law No. 104–134 (1996) (collectively, the Inflation Adjustment Act) (to be codified at 28 U.S.C. 2461 note), the

Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years. The adjustment is based on the formula prescribed in section 5(b) of the Inflation Adjustment Act.

§ 908.7 Suspension and removal.

(a) *Authority.* The Finance Board may suspend or remove for cause any director, officer, employee, or agent of any Bank or the OF.

(b) *Issuance of order.* The cause of such suspension or removal shall be communicated in writing to such person(s) and the board of directors of the Bank or the OF, as appropriate.

(c) *Cause.* Cause for suspension or removal may, in the discretion of the Finance Board, include without limitation:

(1) Misfeasance in office involving a failure to carry out the duties required of the director, officer, employee or agent of a Bank or OF by the Act or other applicable law, regulation, or order of the Finance Board, including without limitation any failure to operate a Bank in a safe and sound manner, to maintain applicable capital standards, to carry out the housing finance mission, or to maintain the ability of any Bank or OF to raise funds in the capital markets;

(2) Commission of an act by a director, officer, employee or agent of a Bank or OF that constitutes a violation of any state or Federal criminal law involving dishonesty or breach of fiduciary duty or trust, including without limitation, corruption, misapplication of funds, extortion, receipt of illegal fees or gratuities, or the conviction of a director, officer, employee or agent for such an illegal act, and irrespective of whether such act(s) were undertaken in connection with the performance of his or her official Bank or OF duties; or

(3) Conduct on the part of a director, officer, employee or agent of a Bank or OF, which need not be intrinsically improper or illegal, that the Finance Board determines to be a material inefficiency or an abuse of authority or discretion and not in the best interest of the Bank, OF or the Bank System.

(d) *Procedure.* (1) *Effective date.* An order issued pursuant to paragraph (a) of this section shall be a final order, which shall become effective upon service upon the executive officer, director, employee or agent of a Bank or the OF, and unless set aside, limited or suspended by the United States Court of Appeals for the District of Columbia Circuit in an action to review the final order under § 908.10, shall remain in effect pending completion of the proceeding.

(2) *Enforcement of order.* If an executive officer, director, employee or agent of a Bank or OF fails to comply with an order issued pursuant to paragraph (a) of this section, the Finance Board may seek to enforce the order by filing an action in the United States District Court for the District of Columbia to obtain injunctive relief against the individual(s) and other relief as may be available from the Court, which the Court shall have jurisdiction to grant. The validity and appropriateness of the suspension or removal order shall not be subject to the review of the United States District Court for the District of Columbia under this paragraph.

(e) *Judicial Review.* Any executive officer, director, employee or agent of a Bank or OF upon whom a suspension or removal order has been served pursuant to § 908.7(a) may seek judicial review of the order exclusively as provided in § 908.10.

(f) *No automatic stay.* The commencement of an action for judicial review of an order pursuant to paragraph (e) of this section shall not operate as a stay of any such suspension or removal order in whole or in part, unless the United States Court of Appeals for the District of Columbia Circuit specifically orders a stay of the order in whole or in part.

§ 908.8 Subpoenas.

(a) *Authority.* The Finance Board, in the course of or in connection with an administrative proceeding or hearing under this part, shall have the authority:

(1) To administer oaths and affirmations;

(2) To take and preserve testimony under oath;

(3) To issue subpoenas and subpoenas *duces tecum;* and

(4) To revoke, quash, or modify subpoenas and subpoenas *duces tecum* issued by the Finance Board pursuant to this part.

(b) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) *Enforcement.* The Finance Board may file an action in the United States district court for the judicial district where the proceeding is being conducted or where the witness resides, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena *duces tecum* issued pursuant to this section. Such courts shall have jurisdiction over such actions and power to order and require compliance with such subpoenas and subpoenas *duces tecum.*

§ 908.9 Hearings on the record.

(a) *Requirements.* (1) *Venue and record.* Any adjudicatory proceeding or hearing conducted pursuant to §§ 908.4 or 908.6 shall be held on the record in the District of Columbia.

(2) *Timing.* Any adjudicatory proceeding or hearing shall be set for a date not earlier than 30 days nor later than 60 days after service of a notice of charges under § 908.4 or a determination or order to assess a civil money penalty under § 908.6, unless an earlier or a later date is set by the presiding officer at the request of the party served.

(3) *Procedure.* Any adjudicatory proceeding or hearing held pursuant to §§ 908.4 or 908.6 shall be conducted in accordance with chapter 5 of Title 5 of the United States Code.

(4) *Failure to appear.* If a party who has been served with a subpoena under § 908.8 fails to appear at an adjudicatory proceeding or hearing individually or through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease and desist order or the imposition of the penalty for which the hearing is held.

(b) *Issuance of final order.* After a hearing on the record has been concluded, and within 90 days after the parties have been notified that the case has been submitted to the Board of Directors for final decision, the Board of Directors shall render the final decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding a final order or orders consistent with the provisions of this part.

(c) *Judicial review and modification of final orders.* Judicial review of any such final order shall be exclusively as provided for in § 908.10. Unless a petition for review is timely filed as provided in § 908.10, and thereafter until the record in the proceeding has been filed as so provided, the Board of Directors may at any time modify, terminate, or set aside any such final order, upon such notice and in such manner as the Board of Directors, in its sole discretion, considers proper. Upon such filing of the record, the Board of Directors may modify, terminate, or set aside any such final order with permission of the court.

§ 908.10 Judicial review.

(a) *Authority and commencement of action to obtain judicial review of final order.* Any respondent or party to an adjudicatory proceeding or hearing under §§ 908.4 or 908.6 may obtain judicial review of a final order issued under §§ 908.4 or 908.6 by filing a written petition exclusively in the United States Court of Appeals for the District of Columbia Circuit, within thirty (30) days after the date of service of the final order, to request the court of appeals to modify, terminate or set aside the final order.

(b) *Service.* Rule 4 of Federal Rules of Civil Procedure shall govern service of process of a petition on the Finance Board.

(c) *Filing of record.* The clerk of the Court of Appeals shall transmit a copy of the petition to the Finance Board. The Finance Board shall file with the Court of Appeals the hearing record, as provided in section 2112 of Title 28 of the United States Code (28 U.S.C. 2112).

(d) *Jurisdiction.* Upon the filing of a petition, the Court of Appeals shall have jurisdiction, which upon the filing of the record by the Finance Board (except as otherwise provided in § 908.9 of this part) shall be exclusive, to affirm, modify, terminate or set aside, in whole or in part, a final order of the Board of Directors.

(e) *Review.* Review by the Court of Appeals of the final order and the record of the adjudicatory proceeding or hearing conducted pursuant to this part shall be governed by chapter 7 of Title 5 of the United States Code (5 U.S.C. 701 *et seq.*).

(f) *Order to pay civil money penalty.* In connection with the Court of Appeal's review of a final order pursuant to this part, the Court of Appeals shall have authority to order payment of any civil money penalty assessed by the Finance Board.

(g) *No automatic stay.* The commencement of an action for judicial review of a final order shall not operate as a stay of any such final order, unless the court specifically orders a stay of the final order in whole or in part.

§ 908.11 Jurisdiction, enforcement of orders and notice.

(a) *Enforcement.* The Finance Board may bring an action in the United States District Court for the District of Columbia for the enforcement of any notice, determination or order issued by the Board of Directors under this part. Such court shall have jurisdiction and power to order and require compliance with any such notice, determination, or order of the Board of Directors.

(b) *Limitation on jurisdiction.* Except as otherwise provided in the Act or this part, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice, determination or order issued by the Board of Directors under this part, or to review, modify, suspend, terminate, or set aside any such notice, determination or order.

(c) *Notice of service.* Any service required or authorized to be made by the Finance Board under this part may be made by registered mail, or in such other manner reasonably calculated to give actual notice.

§ 908.12 Notice after separation.

The resignation, termination of employment or participation, or separation of a director or executive officer of a Bank or the OF shall not affect the jurisdiction and authority of the Finance Board to issue any notice and proceed under this part against any such director or executive officer, if such notice is served before the end of the two-year period beginning on the date such director or executive officer ceases to be associated with the Bank.

§ 908.13 Public disclosure of final orders.

(a) *In general.* The Finance Board shall make available to the public—

(1) Any written agreement or other written statement for which a violation may be redressed by the Finance Board on any modification to or termination thereof, unless the Finance Board in its discretion, determines that public disclosure would be contrary to the public interest;

(2) Any order that is issued by the Finance Board and that has become final in accordance with this part; and

(3) Any modification to or termination of any final order made public pursuant to this part.

(b) *Delay of public disclosure under exceptional circumstances.* If the Finance Board makes a determination in writing that the public disclosure, pursuant to paragraph (a) of this section, of any final order or final decision of the Board of Directors would seriously threaten the financial health or security of the Bank System, or a Bank individually, the Finance Board may delay the public disclosure of such order for a reasonable time.

(c) *Documents filed under seal in public enforcement hearings.* The Finance Board may file any document or part thereof under seal in any hearing commenced by the Finance Board under this part, if it determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Finance Board shall keep and maintain a record, for not less than 6 years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Finance Board under this part or any other law.

(e) *Disclosure to Congress.* This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

§ 908.14 No implied private right of action.

This part shall not create any private right of action on behalf of any person against a Bank, the OF, or any director or executive officer of a Bank or the OF, or impair any existing private right of action under applicable law.

§ 908.15—908.19 [Reserved]

Subpart C—General Rules

§ 908.20 Authority of the board of directors.

The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive the performance of any act that could be done or ordered by the presiding officer.

§ 908.21 Authority of the presiding officer.

(a) *General rule.* All proceedings governed by this subpart shall be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay and assure that a record of the proceeding is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding, including settlement conferences, mediation or other consensual methods of dispute resolution;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, subpoenas *duces tecum*, and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas;
(6) Take and preserve testimony under oath;
(7) Rule on motions and other procedural matters appropriate in an adjudicatory proceeding, except that only the Board of Directors shall have the power to grant any motion to dismiss the proceeding or make a final determination of the merits of the proceeding;
(8) Regulate the scope and timing of discovery;
(9) Regulate the course of the hearing and the conduct of representatives and parties;
(10) Examine witnesses;
(11) Receive, exclude, limit, or otherwise rule on evidence;
(12) Upon motion of a party, take official notice of facts;
(13) Recuse herself/himself upon motion made by a party or on her or his own motion;
(14) Prepare and present to the Board of Directors a recommended decision as provided in this part;
(15) Establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and
(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 908.22 Public hearings.

(a) *General rule.* All adjudicatory proceedings and hearings shall be open to the public, unless the Finance Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. The Finance Board may make such determination *sua sponte* at any time by written notice to all parties.
(b) *Motion for closed hearing.* Within 20 days of service of a notice or a notice of charges, any party or respondent may file with the presiding officer a motion for a non-public hearing and any party or respondent may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Board of Directors, who shall make a final determination. Such motions and replies shall be governed by § 908.45.
(c) *Filing documents under seal.* The Finance Board, in its discretion , may file any document, or any part of any document, under seal if the agency makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 908.23 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Finance Board shall be signed by at least one representative of record in her or his individual name and shall state that representative's address and telephone number and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.
(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—
(i) The representative of record or party has read the filing or submission of record;
(ii) To the best of her or his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation or Finance Board policy or order; and
(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.
(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of her or his knowledge, information, and belief, formed after reasonable inquiry, such expressions or statements are well-grounded in fact and are warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation, or Finance Board policy or order, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 908.24 Ex parte communications.

(a) *Definition.* (1) *Ex parte* communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between—
(i) An interested person outside the Finance Board (including the person's representative); and
(ii) The presiding officer handling the proceeding, the Board of Directors or any member thereof, a decisional employee of the Finance Board assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.
(2) A communication that does not concern the merits of an adjudicatory proceeding, such as a request for status of the proceeding, does not constitute an ex parte communication.
(b) *Prohibition of ex parte communications.* From the time the notice commencing the proceeding is issued by the Finance Board until the date that the Board of Directors issues its final decision pursuant to § 908.65, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an *ex parte* communication. The Board of Directors, any member thereof individually, the presiding officer, or an employee of the Finance Board, shall not knowingly make or cause to be made an *ex parte* communication.
(c) *Procedure upon occurrence of ex parte communication.* If an *ex parte* communication is received by any person identified in paragraph (a) of this section, that person promptly shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the *ex parte* communication or the written record of an oral communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.
(d) *Sanctions.* Any party or representative for a party who makes an *ex parte* communication, or who encourages or solicits another person or entity to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board of Directors or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.
(e) *Consultations by presiding officer.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the presiding officer may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate.
(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for the Finance Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Board of Directors' review under § 908.65 of the recommended decision, except as a witness or counsel in the public proceedings.

§ 908.25 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with the Finance Board, 1777 F Street, NW, Washington, DC 20006.
(b) *Manner of filing.* Unless otherwise specified by the Finance Board or the presiding officer, filing shall be accomplished by:
(1) Personal service;
(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;
(3) Mailing by first class, registered, or certified mail; or
(4) Transmission by electronic media upon any conditions specified by the Finance Board or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.
(c) *Formal requirements as to papers filed.* (1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11-inch paper and must be clear and legible.
(2) *Signature.* All papers must be dated and signed as provided in § 908.23.
(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Finance Board and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.
(4) *Number of copies.* Unless otherwise specified by the Finance Board or the presiding officer, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 908.26 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.
(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:
(1) Personal service;
(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;
(3) Mailing by first class, registered, or certified mail; or
(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 908.26(c).
(c) *By the Finance Board or the presiding officer.* (1) All papers required to be served by the Finance Board or the presiding officer upon a party who has appeared in the proceeding in accordance with § 908.72 may be served by any means specified in paragraph (b) of this section.
(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with § 908.72, the Finance Board or the presiding officer shall make service upon the party by any of the following methods:
(i) By personal service;
(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;
(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;
(iv) By registered or certified mail addressed to the person's last known address; or
(v) By any other method reasonably calculated to give actual notice.
(d) *Subpoenas.* Subject to applicable provisions in this part, service of a subpoena may be made:
(1) By personal service;
(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;
(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;
(4) By registered or certified mail addressed to the person's last known address; or
(5) By any other method reasonably calculated to give actual notice.
(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.
(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as prima facie evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 908.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is 10 days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays and Federal holidays are not included.
(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective—
(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing in the case of filing, and as agreed among the parties in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Finance Board or the presiding officer in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits shall be calculated as follows:

(1) If service was made by first class, registered, or certified mail, or by delivery to the U.S. Postal Service for longer than overnight delivery service, add three calendar days to the prescribed period for the responsive filing.

(2) If service was made by U.S. Postal Service or reliable commercial overnight delivery service, add 1 calendar day to the prescribed period for the responsive filing.

(3) If service was made by electronic media transmission, add one calendar day to the prescribed period for the responsive filing, unless otherwise determined by the Board of Directors or the presiding officer in the case of filing, or by agreement among the parties in the case of service.

§ 908.28 Change of time limits.

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or order issued in the proceedings. After the referral of the case to the Finance Board pursuant to § 908.63, the Finance Board may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties, or on the Finance Board's or the presiding officer's own motion.

§ 908.29 Witness fees and expenses.

Witnesses (other than parties) subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid to witnesses pursuant to the Federal Rules of Civil Procedure (title 28 of the U.S. Code) governing proceedings in the United States district courts, in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Finance Board is the issuer of the subpoena. The Finance Board shall not be responsible for or required to pay any fees to or expenses of any witness not subpoenaed by the Finance Board.

§ 908.30 Settlement or other dispute resolution.

Any respondent may, at any time in the proceeding, unilaterally submit to the Finance Board's counsel of record written offers or proposals for settlement of a proceeding without prejudice to the rights of any of the parties. Any such offer or proposal shall be made exclusively to the Finance Board. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. Any party to a proceeding under this part may request a neutral individual preside over settlement negotiations. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding under this part or any court.

§ 908.31 Right to supervise the banks.

Nothing contained in this part shall limit in any manner the right of the Finance Board to conduct any examination, inspection, or visitation of any Bank or the OF, or the right of the Finance Board to conduct or continue any form of investigation authorized by law. Nothing set forth in this part shall restrict or be deemed to restrict the authority of the Finance Board to supervise the Banks or to issue or enforce orders or directives pursuant to section 2B(a)(1) or any other provision of the Act.

§ 908.32 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding or hearing, the challenged adjudicatory proceeding or hearing shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding or hearing within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 908.33—39 [Reserved]

Subpart D—Pre-Hearing Proceedings

§ 908.40 Commencement of proceeding and contents of notice of charges.

Proceedings under this subpart are commenced by the issuance of a notice of charges by the Finance Board that must be served upon the respondent. Such notice shall state all of the following:

(a) The legal authority for the proceeding and for the Finance Board's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that the Finance Board is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) The time, place and nature of the hearing;

(e) The time within which to file an answer;

(f) The time within which to request a hearing; and

(g) The address for filing the answer and/or request for a hearing.

§ 908.41 Answer.

(a) *Deadline for filing answer.* Unless otherwise specified by the Finance Board in the notice, respondent shall file an answer within 20 days of service of the notice.

(b) *Content of answer.* An answer shall respond specifically to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer shall set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, the Finance Board's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer shall be deemed to be an order issued upon consent.

§ 908.42 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Board of Directors or the presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the notice or answer, and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 908.43 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized representative at the hearing constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 908.44 Consolidation and severance of actions.

(a) Consolidation. On the motion of any party, or on the Finance Board's or the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of the Finance Board or any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 908.45 Motions.

(a) *Written motions.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions shall state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally at an adjudicative proceeding or hearing on the record unless the presiding officer directs that such motion be reduced to writing. Oral motions must be made a part of the record of the adjudicative proceeding or hearing with an accompanying proposed order.

(c) *Filing of motions.* Motions shall be filed with the presiding officer, except that following the filing of a recommended decision with the Board of Directors, motions must be filed with the Board of Directors.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Board of Directors. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions shall be governed by §§ 908.51 and 908.52.

§ 908.46 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs (b), (d), and (e) of this section, any party to a hearing under this part may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term *documents* may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 908.47.

(c) *Forms of discovery.* Document discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories may be permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents shall not be discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's

deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 908.47 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by the Finance Board at § 910.9(g) of this chapter for requests for documents filed under the Freedom of Information Act, 5 U.S.C. 552. The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 908.45 requesting the presiding officer order the request be stricken or otherwise limited. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 908.45 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer has discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 908.45 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may, within five days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses to motions pursuant to this section has expired, the presiding officer shall rule promptly on all such motions. If the presiding officer determines that a discovery request or any of its terms calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the presiding officer its intention to file a timely motion for interlocutory review of the presiding officer's order to produce the documents, until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the presiding officer issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 908.48 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for production in response to the subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 908.47. The party requesting the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The presiding officer shall promptly issue any document subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be determined by the presiding officer.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena shall be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 908.47 and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with any part of the subpoena that the presiding officer has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§ 908.49 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section to the presiding officer for the issuance of a subpoena, including a subpoena *duces tecum*, requiring the attendance of the witness at a deposition. The presiding officer may issue a deposition subpoena under this section upon a showing that—

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness, or infirmity, or will be otherwise unavailable;

(ii) The witness' unavailability was not produced or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States and its possessions and territories in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) A subpoena shall be promptly issued upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. The presiding officer shall make a determination that there is a valid basis for issuing the subpoena. The presiding officer may require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than 10 days' notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its possessions or territories on any person doing business anywhere within the United States or its possessions or territories, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion under § 908.25 with the presiding officer to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than 10 days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section shall accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena shall be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers and objections must be recorded.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition shall be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 908.50 Interlocutory review.

(a) *General rule.* The Board of Directors may review a ruling of the presiding officer prior to the certification of the record to the Board of Directors only in accordance with the procedures set forth in this section.

(b) *Scope of review.* The Board of Directors may exercise interlocutory review of a ruling of the presiding officer if it finds that—

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within ten days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Board of Directors for final disposition. In referring the matter to the Board of Directors, the presiding officer may indicate agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board of Directors under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Board of Directors.

§ 908.51 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Board of Directors issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that—

(1) There is no genuine issue as to any material fact; and

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Board of Directors under § 908.63. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion.

§ 908.52 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision to the Board of Directors as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 908.53 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or at such other time as the parties may agree, the presiding officer shall direct representatives for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery and the exchange of any pre-hearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Pre-hearing conference.* The presiding officer may, in addition to the scheduling conference, on his own motion or at the request of any party, direct representatives for the parties to meet with him (in person or by telephone) at a pre-hearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The presiding officer, in his discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at such party's expense.

(d) *Scheduling or pre-hearing orders.* Within a reasonable time following the conclusion of the scheduling conference or any pre-hearing conference, the presiding officer shall serve on each party an order setting forth any agreements reached and any procedural determinations.

§ 908.54 Pre-hearing submissions.

(a) *Service deadline.* Within the time set by the presiding officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party the serving party's:

(1) Pre-hearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the pre-hearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 908.55 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any State, commonwealth, possession, territory of the United States, or the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with this subpart. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than 10 days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 908.8(c). A party's right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§§ 908.56–908.59 [Reserved]

Subpart E—Hearing and Post-hearing Proceedings

§ 908.60 Conduct of hearings.

(a) *General rules.* (1) *Hearings.* Hearings shall be conducted in accordance with chapter 5 of Title 5 of the United States Code (5 U.S.C. 501–559), and other applicable law, so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross-examination of witnesses as may be required for full disclosure of the facts.

(2) *Order of hearing.* The Finance Board shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. The Finance Board shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order or presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) *Examination of witnesses.* Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer's own motion.

§ 908.61 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551–559) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence (*see generally,* 28 U.S.C.) is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence (28 U.S.C.) may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Finance Board shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by the Finance Board or by another Federal or State financial institutions regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Board of Directors.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 908.29, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 908.62 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) Any party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings and conclusions and proposed order are due. Reply briefs must be limited strictly to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party's filing of its brief.

§ 908.63 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 908.52(b), the presiding officer shall file with and certify to the Board of Directors, for decision, the record of the proceeding. The record must include the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order; all pre-hearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) *Filing of index.* At the same time the presiding officer files with and certifies to the Board of Directors, for final determination, the record of the proceeding, the presiding officer shall furnish to the Board of Directors a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 908.64 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 908.63, a party may file with the Finance Board written exceptions to the presiding officer's recommended decision, recommended findings and conclusions, or proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board of Directors if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Finance Board on motion.

(3) Each party may submit one reply brief within ten days of service of exceptions and briefs in support of exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Finance Board on motion.

§ 908.65 Review by Board of Directors.

(a) *Notice of submission to the Board of Directors.* When the Board of Directors determines that the record in the proceeding is complete, the Finance Board shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision.

(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Board of Directors within the time for filing exceptions under § 908.64, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision and order of the presiding officer. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision. Oral argument before the Board of Directors must be transcribed.

(c) *Board of Directors's final decision.* (1) Decisional employees may advise and assist the Board of Directors in the consideration and disposition of the case. The final decision of the Board of Directors will be based upon review of the entire record of the proceeding, except that the Board of Directors may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Board of Directors shall render a final decision and issue an appropriate order within 90 days after notification of the parties that the case has been submitted for final decision, unless the Board of Directors orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings. Copies of the final decision and order of the Board of Directors shall be served upon each party to the proceeding and upon other persons required by statute.

§ 908.66 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer's recommendations, a party must file exceptions with the Board of Directors under § 908.64. A party must exhaust administrative remedies as a precondition to seeking judicial review of any final decision, in whole or in part, issued under § 908.65.

§ 908.67 Stay of order pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Board of Directors may not, unless specifically ordered by the Board of Directors or a reviewing court, operate as a stay of any order issued by the Board of Directors. The Board of Directors may, in its discretion and on such terms as it finds just, stay the effectiveness of all or any part of an order of the Board of Directors pending a final decision on a petition for review of that order.

§ 908.68—908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

§ 908.70 Scope.

This subpart contains rules governing practice by parties or their representatives in any proceeding before the Finance Board. These rules of practice may apply to any proceeding before the Finance Board, including adjudicatory proceedings or hearings, or appearances before the Board of Directors, under this part. This subpart also addresses the imposition of sanctions by the Finance Board or a presiding officer against parties or their representatives in an adjudicatory proceeding or hearing under this part. In the sole discretion of the Finance Board, §§ 908.74 and 908.75 may be applied to persons who appear in a representational capacity in an administrative procedure under part 907 of this chapter, an adjudicatory proceeding or hearing under this part 908, or in any other matter connected with presentations to the Finance Board relating to a client's or other principal's rights, privileges, or liabilities, including presentations to or communications with the Board of Directors or any member of the Board of Directors. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart.

§ 908.71 Practice before the finance board.

Practice before the Finance Board for the purposes of this subpart, includes, but is not limited to, transacting any business with the Finance Board as counsel, representative or agent for any other person, unless the Finance Board orders otherwise. Practice before the Finance Board also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with the Finance Board in any certification, notification, application, report, or other document, with the consent of such counsel, representative or agent. Practice before the Finance Board does not include work prepared for a Bank solely at the request of the Bank for use in the ordinary course of its business.

§ 908.72 Appearances and practice in proceedings before the Finance Board.

(a) *Appearances in proceedings before the Finance Board.* (1) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession, territory of the United States, or the District of Columbia and who is not currently suspended or disbarred from practice before the Finance Board.

(2) *By non-attorneys.* An individual may appear on his own behalf. A member of a partnership may represent the partnership and a duly authorized officer, board of director member, employee, or other agent of any corporation or other entity not specifically listed herein may represent such corporation or other entity; provided that such officer, board of director member, employee, or other agent is not currently suspended or disbarred from practice before the Finance Board. A duly authorized officer or employee of any Government unit, agency, or authority may represent that unit, agency, or authority.

(b) *Notice of appearance.* Any person appearing in a representative capacity on behalf of a party, including the Finance Board, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraphs (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 908.73 Conflicts of interest.

(a) *Conflict of interest in representation.* No representative shall represent another person in an adjudicatory proceeding if it reasonably

appears that such representation may be limited materially by that representative's responsibilities to a third person or by that representative's own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel or other representative represents two or more parties to an adjudicatory proceeding or also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 908.7:

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 908.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any adjudicatory proceeding or hearing or before the Board of Directors;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that may be just;

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, and after such notice and responses as may be directed by the presiding officer, may impose any sanction authorized by this section. The presiding officer shall submit to the Board of Directors for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Finance Board from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

(d) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction.

§ 908.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Finance Board may censure any individual who practices or attempts to practice before it or suspend or revoke the privilege to appear or practice before the Finance Board of such individual if, after notice of and opportunity for a hearing in the matter, that individual is found by the Finance Board—

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the Act or the rules or regulations issued under the Act or any other law or regulation governing Bank operations;

(v) To have engaged in contemptuous conduct before the Finance Board;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last 10 years, to have been convicted of an offense involving moral turpitude, dishonesty or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii), (iii), (iv), (v), (vi) and (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Finance Board for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) If the final order against the respondent is for censure, the individual may be permitted to practice before the Finance Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Finance Board's files.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession, territory of the United States or the District of Columbia; any accountant or other licensed expert whose license to practice has been revoked in any State, commonwealth, possession, territory of the United States or the District of Columbia; any person who has been and remains suspended or barred from practice before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of Federal Housing Enterprise Oversight, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before the Finance Board. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before the Finance Board under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) *Notices to be filed.* (1) Any individual appearing or practicing before Finance Board who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Finance Board a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before the Finance Board who is or within the last 10 years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 shall file a notice promptly with the Finance Board. The notice shall include a copy of the order imposing the sentence or fine, together with any related opinion or statement of the court involved.

(d) *Reinstatement.* (1) Unless otherwise ordered by the Finance Board, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. An applicant for reinstatement under this paragraph (d)(1) may, in the Finance Board's sole discretion, be afforded a hearing.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than 1 year after the applicant's most recent application. An applicant for reinstatement for good cause under this paragraph (d)(2) may, in the Finance Board's sole discretion, be afforded a hearing. However, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated upon written application notifying the Finance Board that the grounds have been removed.

(e) *Conferences.* (1) The Finance Board may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, disbarment or suspension, regardless of whether a proceeding for censure, disbarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(2) Resignation or voluntary suspension. In order to avoid the institution of or a decision in a disbarment or suspension proceeding, a person who practices before the Finance Board may consent to censure, suspension or disbarment from practice. At the discretion of the Finance Board, the individual may be censured, suspended or disbarred in accordance with the consent offered.

(f) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this part, provided that in proceedings to terminate an existing suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application supported with proof that the suspension should be terminated. The Finance Board may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment be limited to written submissions. All hearings held under this section shall be closed to the public unless the Finance Board, on its own motion or upon the request of a party, otherwise directs that the hearing be open to the public.

Dated: November 30, 2000.

By the Board of Directors of the Federal Housing Finance Board.

William C. Apgar,

HUD Secretary's Designee to the Board.

[FR Doc. 00–31978 Filed 12–15–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–AWP–13]

Proposed Establishment and Redesignation of Restricted Areas; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to redesignate Restricted Area (R) 4804 Twin Peaks, NV, as R–4804A, and establish R–4804B from FL 180 to FL 350. Additionally, this action proposes to redesignate R–4813 Carson Sink, NV, as R–4813A, and establish R–4813B from FL 180 to FL 350. This action also proposes to revoke R–4802 Lone Rock, NV, and designate the U.S. Navy (USN) Naval Strike and Warfare Center Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

DATES: Comments must be received on or before February 1, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 00-AWP–13, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division,

ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AWP–13." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: Field Manager, Bureau of Land Management 5665 Morgan Mill Road, Carson City, NV 89701 ATTN: Navy EIS Project Manager. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to redesignate R–4804 Twin Peaks, NV, as R–4804A, and establish R–4804B from FL 180 to FL 350. Additionally, this action proposes to redesignate R–4813 Carson Sink, NV, as R–4813A, and establish R–4813B from FL 180 to FL 350. The proposed establishing of restricted areas (R–4804B and R–4813B respectively) would increase the vertical limits of two existing restricted areas but would not increase the lateral boundaries of the existing airspace. This action also proposes to revoke R–4802 Lone Rock, NV, and designate the USN Naval Strike and Warfare Center Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

The USN is requesting these modifications to meet the Chief of Naval Operations training requirements resulting from a real world threat environment that requires flight crews to develop and maintain an ability to deliver ordnance (bombs, missiles, bullets, etc.) from high altitudes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated September 1, 2000.

Environmental Review

This proposal will be subjected to further environmental review prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.32 [Amended]

2. Section 73.48 is amended as follows:

* * * * *

R–4802 Lone Rock, NV [Revoke]

R–4804 Twin Peaks, NV [Revoke]

R–4813 Carson Sink, NV [Revoke]

R–4804A Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″ N., long. 118°12′45″ W.; and a 3-nautical-mile radius centered at lat. 39°14′15″ N., long. 118°17′33″ W.

Designated altitudes. Surface to but not including FL 180 excluding 2,000 feet AGL up to but not including 8,500 feet MSL, north of and within 1 NM of U.S. Highway 50 between the intersection of U.S. Highway 50 with long. 118°26′00″ W., and long. 118°08′00″ W.

Controlling agency. FAA, Oakland ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4804B Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″ N., long. 118°12′45″ W.; and a 3-nautical-mile radius centered at lat. 39°14′15″ N., long. 118°17′33″ W.;

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813A Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″ N., Long. 118°38′04″ W.; to lat. 40°01′00″ N., long. 118°15′04″ W.; to lat. 40°01′00″ N., long. 118°01′03″ W.; to lat. 39°58′00″ N., long. 118°01′03″ W.; to lat. 39°38′00″ N., long. 118°17′03″ W.; thence via the arc of a 15 NM radius circle centered at lat. 39°52′36″ N., long. 118°20′31″ W.; to lat. 39°45′50″ N., long. 118°38′04″ W.; thence to point of beginning.

Designated altitudes. Surface to but not including FL 180.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813B Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″ N., Long. 118°38′04″ W.; to lat. 40°01′00″ N., long. 118°15′04″ W.; to lat. 40°01′00″ N., long. 118°01′03″ W.; to lat. 39°58′00″ N., long. 118°01′03″ W.; to lat. 39°38′00″ N., long. 118°17′03″ W.; thence via the arc of a 15 NM radius circle centered at lat. 39°52′36″ N., long. 118°20′31″ W.; to lat. 39°45′50″ N., long. 118°38′04″ W.; thence to point of beginning.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

* * * * *

Issued in Washington, DC, on December 12, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–32177 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[REG–106542–98]

RIN 1545–AW24

Election To Treat Trust as Part of an Estate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that relate to an election to have certain revocable trusts treated and taxed as part of an estate. This document provides the procedures and requirements for making the election, rules regarding the tax treatment of the trust and the estate while the election is in effect, and rules regarding the termination of the election. This document also provides clarification of the reporting rules for a trust, or portion of a trust, that is treated as owned by the grantor, or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code, for the taxable year ending with the death of the grantor or other person. In addition, this document provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 19, 2001. Requests to speak (with outlines of oral comments) at a public hearing scheduled for February 21, 2001, at 10 a.m., must be submitted by January 31, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–106542–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–106542–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html (the IRS Internet site). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Faith Colson, (202) 622–3060; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1578.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed regulations under section 645 relating to certain revocable trusts for which an election is made to be treated and taxed as part of an estate. This document also contains proposed amendments to the Income Tax Regulations under section 671 relating to reporting for a trust, or portion of a trust, for the taxable year ending with the death of the grantor or other person treated as the owner of the trust, or portion of the trust.

Explanation of Provisions

A. Overview of Section 645

Both estates and trusts can function to settle the affairs of a decedent and distribute assets to heirs. In the case of a revocable inter vivos trust, the grantor transfers property to a trust that the grantor may revoke during the grantor's lifetime. When the grantor dies, the power to revoke ceases, and the trustee performs the settlement functions typically performed by an estate executor. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 711 (1997).

Section 1305 of the TRA 1997 added section 646 to the Internal Revenue Code. Section 646 was redesignated section 645 by section 6013(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998). Section 645 provides that an election may be made to have certain revocable trusts treated and taxed as part of an estate.

Under section 645, if both the executor (if any) of an estate and the trustee of a qualified revocable trust (QRT) elect the treatment provided in section 645, the trust shall be treated and taxed for income tax purposes as part of the estate (and not as a separate trust) during the election period.

A QRT is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). In accordance with the legislative history

accompanying section 645, the proposed regulations provide that a trust that was treated as owned by the decedent under section 676 solely by reason of a power held by a nonadverse party is not a QRT. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 711 (1997). In addition, a trust that was treated as owned by the decedent under section 676 by reason of a power held by the decedent that was exercisable by the decedent only with the approval or consent of another person is not a QRT. Further, a QRT must be a domestic trust under section 7701(a)(30)(E). A section 645 election for a QRT must result in a domestic estate under section 7701(a)(30)(D). A section 645 election may be made with respect to more than one QRT.

B. The Election

The section 645 election may be made whether or not a personal representative is appointed for the decedent's estate. Under the proposed regulations, if a personal representative is appointed for the decedent's estate, the personal representative and the trustee of the QRT make the section 645 election by attaching a statement to the Form 1041, "U.S. Income Tax Return for Estates and Trusts," filed for the first taxable year of the decedent's estate (related estate). If a personal representative is not appointed for the decedent's estate, the trustee makes a section 645 election for the QRT by attaching a statement to the Form 1041 filed for the first taxable year of the trust treating the trust as an estate.

Rev. Proc. 98–13 (1998–1 C.B. 370) sets forth procedures for making the section 645 election. These proposed regulations, when finalized, will replace Rev. Proc. 98–13. The proposed regulations, in some instances, contain different procedures than those provided in Rev. Proc. 98–13. Rev. Proc. 98–13, in most situations, requires a trust that will make a section 645 election to obtain a taxpayer identification number (TIN) and file a Form 1041 for the trust's short taxable year beginning with the decedent's death and ending December 31 of that year. In these situations, Rev. Proc. 98–13 provides that the section 645 election is made at the time the Form 1041 is filed for the trust. If a Form 1041 is not required to be filed for the trust, the election is considered made when the Form 1041 is filed for the estate. The proposed regulations, however, provide that if a section 645 election will be made for a trust, the trustee and the personal representative, if any, may choose not to obtain a TIN for the trust or file a Form 1041 for the trust's short taxable year. Under the proposed regulations, the section 645 election is considered made only upon the filing of a Form 1041, with the required election statement attached, for the first taxable year of the related estate, or, if there is no personal representative, the first taxable year of the trust filing as an estate.

C. General Form 1041 Filing Requirements and TINs for the Related Estate and Electing Trust During the Election Period

During the election period, the personal representative files one Form 1041 for the combined electing trust and related estate under the name and TIN of the related estate. Thus, the electing trust must furnish payors of the trust with the TIN of the related estate. Except as required under the separate share rule of section 663(c), for purposes of filing the Form 1041 and computing the tax, the items of income, deduction, and credit of the electing trust and the related estate are combined. The proposed regulations do not provide rules for apportioning the tax liability of the combined estate and electing trust. The personal representative and trustee must allocate the tax burden of the combined electing trust and related estate to the trust and the estate in a manner that reasonably reflects the tax obligations of each. If the tax burdens are not reasonably allocated, gifts may be deemed to have been made.

If there is no personal representative, the trustee of the electing trust must file a Form 1041 treating the trust as an estate under section 645 during the election period. The trustee of the trust must obtain a TIN to be used by the trust during the election period to file as an estate and must furnish this TIN to payors of the trust.

D. Tax Treatment of the Electing Trust and Related Estate During the Election Period

Under the proposed regulations, the personal representative treats the electing trust as part of the related estate for all purposes of subtitle A of the Internal Revenue Code.

The electing trust and related estate are treated as separate shares under section 663(c) for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. The proposed regulations provide rules for adjusting the DNI of the separate shares with respect to distributions made from one share to another share of the combined electing trust and related estate to which sections 661 and 662 would apply had the distribution been made to a beneficiary other than another share. Under the proposed regulations, the share making the distribution reduces its DNI by the amount of the distribution deduction that it would have been entitled to under section 661 had the distribution been made to a beneficiary other than another share of the combined related estate and electing trust, and, solely for purposes of calculating its DNI, the share receiving the distribution increases its gross income by this amount.

If there is no personal representative, the trustee of the electing trust treats the trust as an estate for all purposes of subtitle A of the Internal Revenue Code. Thus, the trustee of the electing trust may adopt a taxable year other than a calendar year.

E. Duration of the Election Period

The proposed regulations provide that the election period begins on the date of the decedent's death and terminates on the day before the applicable date. If a Form 706 is not required to be filed for the decedent's estate, the applicable date is the day which is two years after the date of the decedent's death.

If a Form 706 is required to be filed, the applicable date is the day that is 6 months after the date of final determination of liability for estate tax. The proposed regulations provide that the final determination of liability for estate tax is the earliest day on which any of the following has occurred: (A) The issuance of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within six months after the issuance of the letter; (B) the final disposition of a claim for refund that resolves the liability for the estate tax, unless suit is instituted within six months of the disposition of the claim; (C) the execution of a settlement agreement that resolves the liability for estate tax; (D) the issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for estate tax unless a notice of appeal or petition for certiorari is filed within 90 days after the issuance of the decision, judgment, decree, or other order of a court; or (E) the expiration of the period of limitations for assessment of the estate tax provided in section 6501.

F. Tax Treatment of the Electing Trust and Related Estate Upon Termination of the Election Period

At the close of the last day of the election period, the combined related estate and electing trust, if there is a personal representative, or the electing trust, if there is no personal representative, is deemed to distribute all the assets and liabilities of the share (or shares) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. Thus, the combined related estate and electing trust, or the electing trust, as appropriate, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust must include the deemed distribution in gross income to the extent required under section 662.

At the end of the election period, the new trust must obtain a new TIN. The related estate continues to report under the TIN assigned to the combined related estate and electing trust during the election period.

Following the termination of the election period, the taxable year of the new trust must be the calendar year. The related estate must continue to use the taxable year chosen by the combined related estate and electing trust during the election period.

G. Clarification of the Reporting Rules for Grantor Trusts Under § 1.671–4

In the process of drafting these proposed regulations regarding section 645, the IRS and the Treasury Department received many taxpayer questions concerning the section 645 election procedures and the proper application of the reporting rules under § 1.671–4 to a trust, or a portion of a trust, treated as owned by a grantor or another person for the taxable year ending with the death of the grantor or other person. Accordingly, these proposed regulations amend § 1.671–4 to clarify those reporting rules.

The proposed regulations clarify that a trust, or portion of a trust, reports under § 1.671–4 for the taxable year that ends with the death of the grantor or other person (decedent) treated as the owner of the trust. If the trust was filing a Form 1041 under § 1.671–4(a) during the life of the decedent, the proposed regulations also provide that the due date for the return for the trust or portion of the trust for the taxable year ending with the death of the decedent shall be the date specified under section 6072 as though the decedent had lived throughout the decedent's last taxable year.

The proposed regulations provide that a trust that was wholly owned by the decedent must obtain a new TIN upon the death of the decedent whether or not a TIN was obtained for the trust prior to the death of the decedent; however, if a section 645 election will be made for the trust, a new TIN need not be obtained for the trust. For administrative convenience, the proposed regulations clarify that with respect to a trust which was treated as owned by two or more grantors or other persons, following the death of one of the deemed owners, the trust, including the portion formerly owned by the decedent (if it remains part of the original trust following the death of the deemed owner), continues to report under the TIN used by the trust prior to the death of the decedent.

Proposed Effective Date

These regulations are proposed to apply on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the understanding of the IRS and Treasury Department that the number of trusts and estates making the election is not substantial, and none are small entities within the meaning of the Regulatory Flexibility Act. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** caption) to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 21, 2001, beginning at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 31, 2001. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.645–1 also issued under 26 U.S.C. 645. * * *

Par. 2. Section 1.641(b)–3 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 1.641(b)–3 Termination of estates and trusts.

(a) * * * Notwithstanding the above, if the estate has joined a valid election under section 645 to treat a qualified revocable trust, as defined under section 645(b)(1), as part of the estate, the estate shall not terminate under this paragraph prior to the termination of the section 645 election period. See section 645 and the regulations thereunder for rules regarding the termination of the section 645 election period.

* * * * *

Par. 3. In § 1.642(c)–1, the last sentence of paragraph (a)(1) is revised to read as follows:

§ 1.642(c)–1 Unlimited deduction for amounts paid for a charitable purpose.

(a) * * * (1) * * * In applying this paragraph without reference to paragraph (b) of this section, a deduction shall be allowed for an amount paid during the taxable year in respect of gross income received in a previous taxable year, but only if no deduction was allowed for any previous taxable year to the estate or trust, or in the case of a section 645 election, to a related estate, as defined under § 1.645–1(b), for the amount so paid.

* * * * *

Par. 4. Section 1.645–1 is added under a new undesignated center heading to read as follows:

Election by Certain Revocable Trusts To Be Treated as Part of Estate

§ 1.645–1 Election by certain revocable trusts to be treated as part of estate.

(a) *In general.* If an election is filed for a qualified revocable trust, as defined in paragraph (b)(1) of this section, in accordance with the rules set forth in paragraph (c) of this section, the qualified revocable trust is treated and taxed as part of its related estate, as defined in paragraph (b)(4) of this section (and not as a separate trust) during the election period, as defined in paragraph (b)(6) of this section. Rules regarding the use of taxpayer identification numbers (TINs) by an electing trust, as defined in paragraph (b)(2) of this section, are in paragraph (d) of this section. Rules regarding obtaining a TIN and filing requirements for a qualified revocable trust for which a section 645 election will or may be made are also in paragraph (d) of this section. Rules regarding the tax treatment of an electing trust and related estate and the general filing requirements for the combined entity during the election period are in paragraph (e)(2) of this section. Rules regarding the tax treatment of an electing trust and its filing requirements during the election period if no personal representative, as defined in paragraph (b)(5) of this section, is appointed for a related estate are in paragraph (e)(3) of this section. Rules for determining the duration of the section 645 election period are in paragraph (f) of this section. Rules regarding the tax effects of the termination of the election are in paragraph (h) of this section. Rules regarding the tax consequences of the appointment of a personal representative after a trustee has made a section 645 election believing that a personal representative would not be appointed for a related estate are in paragraph (g) of this section.

(b) *Definitions.* For purposes of this section:

(1) *Qualified revocable trust.* A *qualified revocable trust* (QRT) is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). A trust that was treated as owned by the decedent under section 676 by reason of a power that was exercisable by the decedent only with the approval or consent of another person is not a QRT. In addition, a trust that was treated as owned by the decedent under section 676 solely by reason of a power held by a nonadverse party is not a QRT. A QRT must be a domestic trust as defined in section 7701(a)(30)(E). A section 645 election for a QRT must result in a domestic estate as defined in section 7701(a)(30)(D).

(2) *Electing trust.* An *electing trust* is a QRT for which a valid section 645 election has been made. Once a section 645 election has been made for the trust, the trust shall be treated as an electing trust throughout the entire election period.

(3) *Decedent.* The *decedent* is the individual who was treated as the owner of the QRT under section 676 on the date of that individual's death.

(4) *Related estate.* A *related estate* is the estate of the decedent who was treated as the owner of the QRT on the date of the decedent's death. A related estate must be a domestic estate as defined in section 7701(a)(30)(D).

(5) *Personal representative.* A *personal representative* is an executor or administrator that has obtained letters of appointment to administer the decedent's estate through formal or informal appointment procedures.

(6) *Election period.* The *election period* is the period of time during which an electing trust is treated and taxed as part of its related estate. The rules for determining the duration of the election period are in paragraph (f) of this section.

(7) *Payor.* A *payor* is any person who is required by any provision of the Internal Revenue Code and the regulations thereunder to make any type of information return with respect to an electing trust or the related estate for the taxable year. A payor includes a person who makes payments to an electing trust or related estate and a person who collects (or otherwise acts as a middleman with respect to) payments on behalf of an electing trust or related estate.

(c) *The election*—(1) *Filing the election if there is a personal representative*—(i) *Time and manner for filing the election.* If there is a personal representative of the related estate, the trustee of the QRT and the personal representative of the related estate make an election under section 645 and this section to treat a QRT as part of its related estate in a written statement described in paragraph (c)(1)(ii) of this section. The statement must be attached to the Form 1041, "U.S. Income Tax Return for Estates and Trusts," filed for the first taxable year of the related estate. See paragraph (e)(2) for rules regarding the filing of this return. For the election to be valid, the Form 1041 and the attached statement must be filed not later than the time prescribed under section 6072 (including extensions) for filing the return for such taxable year.

(ii) *Written statement.* The written statement must—

(A) Identify the election as an election under section 645;

(B) Contain the name, address, date of death, and TIN of the decedent;

(C) Contain the name and address of the QRT and, if a TIN has been obtained after the death of the decedent, the TIN of the QRT;

(D) Contain the name, address and TIN of the related estate;

(E) Provide a representation that the trust for which the election is being made meets the definition of a QRT under section 645 and paragraph (b)(1) of this section;

(F) Contain a statement from the personal representative, signed and dated under penalties of perjury, stating that the personal representative elects to treat the QRT as part of the related estate under section 645 and that the personal representative understands that the personal representative is required to make a timely return of income for the combined related estate and QRT on Form 1041 and to pay timely any tax due thereon; and

(G) Contain a statement from the trustee of the QRT, signed and dated under penalties of perjury, stating that the trustee elects to treat the trust as part of the related estate under section 645 and agrees to cooperate with the personal representative to insure that a return of income is timely made for the combined related estate and QRT, and that any tax due thereon is timely paid.

(2) *Filing the election if there is no personal representative*—(i) *Time and manner for filing the election.* If there is no personal representative for a related estate, an election to treat a QRT as an estate is made by the trustee, in a written statement described in paragraph (c)(2)(ii) of this section. The statement must be attached to the Form 1041 filed for the first taxable year of the QRT taking into account the trustee's election to treat the trust as an estate under section 645. See paragraph (e)(3) for other rules regarding the filing of this return. For the election to be valid, the Form 1041 of the QRT and the attached statement must be filed not later than the time prescribed under section 6072 (including extensions) for filing the return for such taxable year.

(ii) *Written statement.* The written statement must—

(A) Identify the election as an election under section 645;

(B) Contain the name, address, date of death, and TIN of the decedent;

(C) Contain the name and address of the QRT and, if a TIN has been obtained after the death of the decedent, the TIN of the QRT;

(D) Provide a representation that the trust for which the election is being made meets the definition of a QRT under section 645 and paragraph (b)(1) of this section;

(E) Provide a representation that there is no personal representative and to the trustee's knowledge and belief, one will not be appointed;

(F) Contain the TIN obtained by the trust to file as an estate under § 301.6109–1(a)(4)(ii)(B) of this chapter; and

(G) Contain a statement from the trustee of the QRT, signed and dated under penalties of perjury, stating that the trustee elects to treat the trust as an estate under section 645 and that the trustee understands that the trustee is required to make a timely return of income for the trust on Form 1041 taking into account the section 645 election and to pay timely any tax due thereon.

(d) *TIN for an electing trust and QRT*—(1) *Obtaining a TIN*—(i) *For an electing trust*—(A) *If there is a personal representative.* If there is a personal representative, a TIN must be obtained for the related estate but the electing trust is not required to obtain a TIN in its own name. See § 301.6109-1(a)(4)(ii)(A)(1) of this chapter for rules for completing the Form SS–4, "Application for Employment Identification Number," filed for the related estate.

(B) *If there is no personal representative.* If there is no personal representative, the trustee must obtain a TIN to file as an estate. See § 301.6109–1(a)(4)(ii)(B) of this chapter for rules regarding obtaining a TIN for an electing trust to file as an estate during the election period. The trustee is not required to obtain a TIN for the electing trust to file as a trust.

(ii) *Obtaining a TIN and filing a Form 1041 for a QRT*—(A) *Option not to obtain a TIN or file a Form 1041 for a QRT for which a section 645 election will be made.* If a section 645 election will be made for a QRT, the personal representative of the related estate, if any, and the trustee of the QRT may treat the QRT as an electing trust from the decedent's date of death until the due date for the section 645 election. Accordingly, the trustee of the QRT is not required to obtain a TIN for the QRT following the death of the decedent as required under § 301.6109–1(a)(3)(i) of this chapter or file a Form 1041 for the QRT for the short taxable year beginning with the decedent's date of death and ending with December 31 of that year. However, if a QRT is treated as an electing trust under this paragraph from the decedent's date of death until the due date for the section 645 election and a valid section 645 election is not made for the QRT, the QRT will be subject to penalties and interest for failing to obtain a TIN and file a Form 1041 and pay the tax due thereon.

(B) *Requirement to obtain a TIN and file a Form 1041 for QRT if paragraph (d)(1)(ii)(A) of this section does not apply*—(*1*) *Requirement to obtain TIN and file Form 1041.* If the trustee of the QRT and the personal representative of the related estate, if any, do not treat the QRT as an electing trust as provided under paragraph (d)(1)(ii)(A) of this section, or if the trustee of the electing trust and the personal representative, if any, are uncertain whether a section 645 election will be made for a QRT, the trustee of the QRT must obtain a TIN in the name of the QRT as required under § 301.6109–1(a)(3)(i) of this chapter and must file a Form 1041 for the short taxable year beginning with the decedent's death and ending December 31 of that year (unless, the QRT is not required to file a Form 1041 under section 6012 for this period).

(*2*) *Requirement to amend return if section 645 election is made.* If a valid section 645 election is made for a QRT after a Form 1041 is filed for the QRT pursuant to paragraph (d)(1)(ii)(B)(*1*) of this section, the trustee must amend the Form 1041. The trustee must indicate on the Form 1041 that the return is a final return and must attach a copy of the statement described in paragraph (c) of this section to the amended Form 1041 filed pursuant to this paragraph. In addition, the trustee must provide the following statement at the top of the return: "FILED PURSUANT TO § 1.645–1." The QRT's items of income, deduction, and credit must be excluded from the amended Form 1041 filed under this paragraph and must be included on the Form 1041 filed for the first taxable year of the related estate under paragraph (e)(2)(ii)(A) of this section, if there is a personal representative, or for the first taxable year of the electing trust under (e)(3)(ii) of this section, if there is no personal representative. The section 645 election is not considered made upon the filing, under this paragraph, of an amended Form 1041 for the QRT with the attached statement. To be valid, a section 645 election must be filed in the time and manner specified in paragraph (c) of this section.

(2) *Furnishing TIN to payors*—(i) *If there is a personal representative for a related estate.* If there is a personal representative, all payors of an electing trust shall be furnished a Form W–9, "Request for Taxpayer Identification Number and Certification," or an acceptable substitute Form W–9 with the name of the related estate as the primary name on the form, the name of the electing trust as the secondary name on the form, the TIN of the related estate, and the address of the trustee. The form must be signed under penalties of perjury by the personal representative. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W–9, depending on the type of reportable payments made by the payor to the trust.

(ii) *If there is no personal representative.* If there is no personal representative, the trustee of the electing trust shall furnish a Form W–9 or an acceptable substitute Form W–9 with the name required by, and the TIN obtained under, § 301.6109–1(a)(4)(ii)(B) of this chapter. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W–9, depending on the type of reportable payments made by the payor to the trust.

(e) *Tax treatment and general filing requirements of electing trust and*

related estate during the election period—(1) *Effect of election.* The section 645 election once made is irrevocable.

(2) *If there is a personal representative*—(i) *Tax treatment of the combined electing trust and related estate.* If there is a personal representative, during the election period the personal representative treats the electing trust as part of the related estate for all purposes of subtitle A of the Internal Revenue Code. For example, the electing trust is treated as part of the related estate for purposes of the subchapter S shareholder requirements of section 1361(b)(1) and the special offset for rental real estate activities in section 469(i)(4).

(ii) *Filing requirements*—(A) *Filing the Form 1041 for the combined electing trust and related estate during the election period.* If there is a personal representative, one income tax return is filed under the name and TIN of the related estate for the electing trust and the related estate. See § 301.6109–1(a)(4)(ii)(A)(1) of this chapter. Except as required under the separate share rule of section 663(c), for purposes of filing the Form 1041 under this paragraph and computing the tax, the items of income, deduction, and credit of the electing trust and related estate are combined. One personal exemption in the amount of $600 is permitted under section 642(b) and the tax is computed under section 1(e), taking into account section 1(h), for the combined taxable income.

(B) *Filing a Form 1041 for the electing trust is not required.* The trustee of the electing trust does not file a Form 1041 for the electing trust during the election period. In certain situations, the trustee of a QRT may be required to file a Form 1041 for the QRT's short taxable year beginning with the decedent's date of death and ending December 31 of that year. See paragraph (d)(1)(ii) of this section.

(iii) *Application of the separate share rules*—(A) *Distributions to beneficiaries (other than to a share (or shares) of the combined electing trust and related estate).* Under the separate share rules of section 663(c), the electing trust and related estate are treated as separate shares for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. Further, the electing trust share or the related estate share may each contain two or more shares. Thus, if during the taxable year, a distribution is made by the electing trust or the related estate, the DNI of the share making the distribution must be determined and the distribution provisions of sections 661 and 662 must be applied using the separately determined DNI applicable to the distributing share.

(B) *Adjustments to the DNI of the separate shares for distributions between shares to which sections 661 and 662 would apply.* A distribution from one share to another share to which sections 661 and 662 would apply if made to a beneficiary other than another share of the combined related estate and electing trust affects the computation of the DNI of the share making the distribution and the share receiving the distribution. The share making the distribution reduces its DNI by the amount of the distribution deduction that it would be entitled to under section 661, had the distribution been made to another beneficiary, and, solely for purposes of calculating DNI, the share receiving the distribution increases its gross income by the same amount. The distribution has the same character in the hands of the recipient share as in the hands of the distributing share. The following example illustrates the provisions of this paragraph (e)(2)(iii)(B):

Example. (i) A's will provides that after the payment of debts, expenses, and taxes, the residue of A's estate is to be distributed to Trust, an electing trust. The sole beneficiary of Trust is C. The estate share has $15,000 of gross income, $5,000 of deductions, and $10,000 of taxable income and DNI for the taxable year based on the assets held in A's estate. During the taxable year, A's estate distributes $15,000 to Trust. The distribution reduces the DNI of the estate share by $10,000, the amount of the distribution deduction A's estate would be entitled to if A's estate made the distribution to a beneficiary other than Trust.

(ii) For the same taxable year, the trust share has $25,000 of gross income and $5,000 of deductions. None of the modifications provided for under section 643(a) apply. In calculating the DNI for the trust share, the gross income of the trust share is increased by $10,000, the amount of the reduction in the DNI of the estate share as a result of the distribution to Trust. Thus, solely for purposes of calculating DNI, the trust share has gross income of $35,000, and taxable income of $30,000. Therefore, the trust share has $30,000 of DNI for the taxable year.

(iii) During the same taxable year, Trust distributes $35,000 to C. The distribution deduction reported on the Form 1041 filed for A's estate and Trust is $30,000. As a result of the distribution by Trust to C, C must include $30,000 in gross income for the taxable year. The gross income reported on the Form 1041 filed for A's estate and Trust is $40,000.

(iv) *Application of the governing instrument requirement of section 642(c).* A deduction is allowed in computing the taxable income of the combined related estate and electing trust to the extent permitted under section 642(c) for—

(A) Any amount of the gross income of the related estate that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the related estate for a purpose specified in section 170(c); and

(B) Any amount of gross income of the electing trust that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the electing trust for a purpose specified in section 170(c).

(3) *If there is no personal representative*—(i) *Tax treatment of the electing trust.* If there is no personal representative, during the election period the trustee treats the electing trust as an estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, an electing trust is treated as an estate for purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities under section 469(i)(4). The trustee may also adopt a taxable year other than a calendar year.

(ii) *Filing the Form 1041 for the electing trust.* If there is no personal representative, during the election period the trustee of the electing trust must file Form 1041 treating the trust as an estate. See § 301.6109–1(a)(4)(ii)(B) of this chapter for rules regarding the name and TIN to be used in filing a Form 1041 under this paragraph (e)(3)(iii). Any return filed by a trustee of an electing trust, in accordance with this paragraph, shall be treated under section 6012 as a return filed for the electing trust and not as a return filed for any subsequently discovered related estate. Accordingly, the period of limitations provided in section 6501 for assessments with respect to a subsequently discovered related estate does not start until a return is filed with respect to the related estate.

(f) *Duration of election period*—(1) *In general.* The election period begins on the date of the decedent's death and terminates on the day before the applicable date. The election does not apply to successor trusts.

(2) *Definition of applicable date*—(i) *Applicable date if no Form 706 (United States Estate (and Generation Skipping Transfer) Tax Return) is required to be filed.* If a Form 706 is not required to be filed for the decedent's estate, the applicable date is the day which is 2 years after the date of the decedent's death.

(ii) *Applicable date if a Form 706 is required to be filed.* If a Form 706 is required to be filed for the decedent's estate, the applicable date is the day that is 6 months after the date of final determination of liability for estate tax. Solely for purposes of determining the applicable date under section 645, the date of final determination of liability is the earliest day on which any of the following has occurred—

(A) The issuance by the Internal Revenue Service of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within six months after the issuance of the letter;

(B) The final disposition of a claim for refund, as defined in paragraph (f)(2)(iii) of this section, that resolves the liability for the estate tax, unless suit is instituted within six months after a final disposition of the claim;

(C) The execution of a settlement agreement with the Internal Revenue Service that determines the liability for the estate tax;

(D) The issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for the estate tax unless a notice of appeal or a petition for certiorari is filed within 90 days after the issuance of a decision, judgment, decree, or other order of a court; or

(E) The expiration of the period of limitations for assessment of the estate tax provided in section 6501.

(iii) *Definition of final disposition of claim for refund.* For purposes of paragraph (f)(2)(ii)(B) of this section, a claim for refund shall be deemed finally disposed of by the Secretary when all items have been either allowed or disallowed. If a waiver of notification with respect to disallowance is filed with respect to a claim for refund prior to disallowance of the claim, the claim for refund will be treated as disallowed on the date the waiver is filed.

(iv) *Examples.* The application of this paragraph (f)(2) is illustrated by the following examples:

Example 1. A died on October 20, 1999. The personal representative of A's estate and the trustee of Trust, an electing trust, made a section 645 election. A Form 706 is not required to be filed for A's estate. The applicable date is October 20, 2001, the day that is two years after A's date of death. The last day of the election period is October 19, 2001. Beginning October 20, 2001, Trust will no longer be treated and taxed as part of A's estate.

Example 2. Assume the same facts as *Example 1*, except that a Form 706 is required to be filed for A's estate. The Internal Revenue Service issues an estate tax closing letter accepting the Form 706 as filed on March 15, 2001. The estate does not file a claim for refund by September 15, 2001, the day that is six months after the date of issuance of the estate tax closing letter. The final determination of liability is March 15, 2001 and the applicable date is September 15, 2001. The last day of the election period is September 14, 2001. Beginning September 15, 2001, Trust will no longer be treated and taxed as part of A's estate.

Example 3. Assume the same facts as *Example 1*, except that a Form 706 is required to be filed for A's estate. The Form 706 is audited and a notice of deficiency authorized under section 6212 is mailed to the personal representative of A's estate as a result of the audit. The personal representative files a petition in Tax Court. The Tax Court issues a decision resolving the liability for estate tax on December 14, 2003 and neither party appeals. The final determination of liability is December 14, 2003. The applicable date is June 14, 2004, the day that is six months after the date of final determination of liability. The last day of the election period is June 13, 2004. Beginning June 14, 2004, Trust will no longer be treated and taxed as part of A's estate.

(g) *Personal Representative appointed after the section 645 election is made*—(1) *Effect on the election.* If a personal representative for the related estate is not appointed until after the trustee has made a valid section 645 election, the personal representative is deemed to agree to the election and to accept the associated responsibilities unless, within 60 days of appointment, the personal representative notifies the trustee in writing of the personal representative's refusal to agree to the election. If the personal representative refuses to agree to the election, the election period terminates the day before the effective date of the personal representative's appointment. If the personal representative and the trustee are the same person, the personal representative cannot refuse to agree to the election.

(2) *Continuation of election period.* If the personal representative does not refuse to agree to the section 645 election, the personal representative of the related estate and the trustee of the electing trust must file amended Forms 1041 reflecting the items of income, deduction, and credit of the related estate and the electing trust for all taxable years ending after the death of the decedent. If the period of limitations for making assessments has expired with respect to the electing trust for any of the Forms 1041 filed by the trustee, the personal representative must obtain a TIN for the related estate and file Forms 1041 for any items of income, deduction, and credit of the related estate that cannot be properly included on amended forms for the electing trust.

(3) *Termination of the election period.* If the election period terminates as a result of the personal representative's refusing to agree to the election, the personal representative must obtain a new TIN for the related estate. The personal representative must file returns under the new TIN for all taxable years of the related estate ending after the death of the decedent. The trustee of the electing trust is not required to amend any returns filed for the electing trust during the election period. Following termination of the election period, the trustee of the electing trust must obtain a new TIN as required under § 301.6109–1(a)(4)(iii) of this chapter.

(h) *Treatment of an electing trust and related estate following termination of the election*—(1) *The share (or shares) comprising the electing trust is deemed to be distributed by its related estate upon termination of the election period.* On the close of the last day of the election period, the combined related estate and electing trust, if there is a personal representative, or, the electing trust, if there is no personal representative, is deemed to distribute the share (or shares, as determined under section 663(c)) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. Thus, the combined related estate and electing trust, if there is a personal representative, or the electing trust, if there is no personal representative, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust shall include such distribution in gross income to the extent required under section 662.

(2) *Filing of the Form 1041 upon the termination of the section 645 election*—(i) *If there is a personal representative*—If there is a personal representative, the Form 1041 filed under the name and TIN of the related estate for the taxable year in which the election terminates includes—

(A) The items of income, deduction, and credit of the electing trust attributable to the period beginning with the first day of the related estate and electing trust's taxable year and ending with the last day of the election period;

(B) The items of income, deduction, and credit, if any, of the related estate for the taxable year; and

(C) A deduction for the deemed distribution of the share (or shares) comprising the electing trust to the new trust as provided for under paragraph (h)(1) of this section.

(ii) *If there is no personal representative.* If there is no personal representative, the taxable year of the electing trust closes on the last day of the election period. A Form 1041 is filed in the manner prescribed under

paragraph (e)(3)(ii) of this section reporting the items of income, deduction, and credit of the electing trust for the short period ending with the last day of the election period. The Form 1041 filed under this paragraph includes a distribution deduction for the deemed distribution provided for under paragraph (h)(1) of this section. The Form 1041 must indicate that it is a final return.

(3) *Use of TINs following termination of the election.* Upon termination of the section 645 election, a former electing trust must obtain a new TIN, as required under § 301.6109–1(a)(4)(iii) of this chapter. If the related estate continues after the termination of the election period, the related estate must continue to use the TIN assigned to the estate during the election period.

(4) *Taxable year of estate and trust upon termination of the election*—(i) *Estate.* Upon termination of the election, if the estate will continue, the taxable year of the estate is the same taxable year used during the election period.

(ii) *Trust.* Upon termination of the election, the taxable year of the new trust is the calendar year. See section 644.

(i) *Reserved.*

(j) *Effective date.* This section applies on or after the date final regulations are published in the **Federal Register**.

Par. 5. Section 1.671–4 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for newly designated paragraph (d)(1).

2. Paragraph (d)(2) is added

3. Paragraphs (h) and (i) are redesignated as paragraphs (i) and (j).

4. New paragraph (h) is added.

The additions and revisions read as follows:

§ 1.671–4 Method of Reporting.

* * * * *

(d) *Due date and other requirements with respect to statement required to be furnished by trustee*—(1) *In general.*

* * *

(2) *Statement for the taxable year ending with the death of the grantor or other person treated as the owner of the trust.* If a trust ceases to be treated as owned by the grantor, or other person, by reason of the death of that grantor or other person (decedent), the due date for the statement required to be furnished for the taxable year ending with the death of the decedent shall be the date specified by section 6034A(a) as though the decedent had lived throughout the decedent's last taxable year. See paragraph (h) of this section for special reporting rules for a trust or portion of the trust that ceases to be treated as owned by the grantor or other person by reason of the death of the grantor or other person.

* * * * *

(h) *Reporting rules for a trust, or portion of a trust, that ceases to be treated as owned by a grantor or other person by reason of the death of the grantor or other person*—(1) *Definition of decedent.* For purposes of this paragraph (h), the *decedent* is the grantor or other person treated as the owner of the trust, or portion of the trust, under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code on the date of death of that person.

(2) *In general.* The provisions of § 1.671–4 apply to a trust, or portion of a trust, treated as owned by a decedent for the taxable year that ends with the decedent's death. Following the death of the decedent, the trust or portion of a trust that ceases to be treated as owned by the decedent, by reason of the death of the decedent, may no longer report under § 1.671–4. A trust, all of which was treated as owned by the decedent, must obtain a new TIN upon the death of the decedent, if the trust will continue after the death of the decedent. See § 301.6109–1(a)(3)(i) of this chapter for rules regarding obtaining a TIN upon the death of the decedent. An electing trust as defined in § 1.645–1(b)(2) is not required to obtain a TIN following the death of the decedent. A qualified revocable trust, as defined in section 645(b) and § 1.645–1(b)(1), for which a section 645 election will be made, need not obtain a TIN. See § 301.6109–1(a)(4) of this chapter and § 1.645–1(d)(1)(ii)(A).

(3) *Special rules*—(i) *Trusts reporting pursuant to paragraph (a) of this section for the taxable year ending with the decedent's death.* The due date for filing of a return pursuant to paragraph (a) of this section for the taxable year ending with the decedent's death shall be the due date provided for under § 1.6072–1(a)(2). The return filed under this paragraph for a trust all of which was treated as owned by the decedent must indicate that it is a final return.

(ii) *Trust reporting pursuant to paragraph (b)(2)(B) of this section for the taxable year of the decedent's death.* A trust that reports pursuant to paragraph (b)(2)(B) of this section for the taxable year ending with the decedent's death must indicate on each Form 1096 (Annual Summary and Transmittal of the U.S. Information Returns) that it files (or appropriately on magnetic media) for the taxable year ending with the death of the decedent that it is the final return of the trust.

(iii) *Trust reporting under paragraph (b)(3) of this section.* If a trust has been filing under paragraph (b)(3) of this section, the trustee may not report under that paragraph if any portion of the trust has a short taxable year by reason of the death of the decedent and the portion treated as owned by the decedent does not terminate on the death of the decedent.

* * * * *

(4) *Effective date.* This paragraph (h) applies on or after the date final regulations are published in the **Federal Register**.

Par. 6. Section 1.6072–1 is amended as follows:

1. The text of paragraph (a) is redesignated as paragraph (a)(1) and a paragraph heading is added for newly designated paragraph (a)(1).

2. Paragraph (a)(2) is added.

The additions are as follows:

§ 1.6072–1 Time for filing returns of individuals, estates, and trusts.

(a) *In general*—(1) *Returns of income for individuals, estates and trusts.** * *

(2) *Return of trust, or portion of a trust, treated as owned by a decedent*—(i) *In general.* In the case of a return of a trust, or portion of a trust, that was treated as owned by a decedent under subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code as of the decedent's date of death that is filed in accordance with § 1.671–4(a) for the fractional part of the year ending with the date of death of the decedent, the due date of such return shall be the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year.

(ii) *Effective date.* This paragraph (a)(2) applies on or after the date final regulations are published in the **Federal Register**.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. Section 301.6109–1 is amended as follows:

1. Paragraph (a)(2)(iii) is removed.

2. Paragraphs (a)(3) through (a)(6) are added.

The additions are as follows:

§ 301.6109–1 Identifying numbers.

(a) * * *

(3) *Obtaining a taxpayer identification number for a trust, or portion of a trust, following the death of the individual treated as the owner*—(i) *In general*—(A) *A trust all of which was treated as owned by a decedent.* In general, a trust all of which is treated as owned by a decedent under subpart E (section 671 and following), part 1, subchapter J, chapter 1 of the Internal Revenue Code as of the decedent's date of death must obtain a new taxpayer identification number following the death of the decedent if the trust will continue after the death of the decedent. See, however, § 301.6109–1(a)(4) for rules regarding obtaining a taxpayer identification number for a qualified revocable trust, as defined in section 645(b)(1), for which a section 645 election has been or will be made.

(B) *Taxpayer identification numbers of trust with multiple owners.* With respect to a portion of a trust treated as owned under subpart E (section 671 and following), part 1, subchapter J, chapter 1 of the Internal Revenue Code by a decedent as of the date of the decedent's death, if, following the death of the decedent, the portion treated as owned by the decedent remains part of the original trust and the other portion (or portions) of the trust continue to report under the taxpayer identification number assigned to the trust prior to the decedent's death, the portion of the trust treated as owned by the decedent prior to the decedent's death continues to report under the taxpayer identification number used for reporting by the other portion (or portions) of the trust.

(ii) *Furnishing correct taxpayer identification number to payors following the death of the decedent.* If the trust continues after the death of the decedent and is required to obtain a new taxpayer identification number under paragraph (a)(3)(i)(A) of this section, the trustee must furnish payors with a new Form W–9, or an acceptable substitute Form W–9, containing the new taxpayer identification number required under paragraph (a)(3)(i)(A) of this section, the name of the trust, and the address of the trustee.

(4) *Taxpayer identification numbers if a section 645 election has been, or will be, made*—(i) *Definitions.* For purposes of this paragraph (a)(4), the terms *qualified revocable trust* (QRT), *electing trust, related estate, election period,* and *personal representative* shall have the meanings provided in § 1.645–1(b) of this chapter.

(ii) *Taxpayer identification number to be used during the election period*—(A) *If there is a personal representative*—(*1*) *In general.* If there is a personal representative for a related estate, a taxpayer identification number does not need to be obtained for an electing trust. The personal representative of the related estate must obtain a taxpayer identification number in the name of the estate. A trustee of a QRT for which a section 645 election will be made and the personal representative of the related estate, if any, may choose to treat the QRT as an electing trust and not obtain a taxpayer identification number for the trust. See § 1.645–1(d)(1)(ii)(A) of this chapter. If the personal representative knows that a section 645 election has been made for an electing trust or will be made for a QRT at the time the personal representative files the Form SS–4, "Application for Employer Identification Number," for the related estate, the personal representative may enter the name of the trust as a secondary name on the form. All returns filed for the combined related estate and electing trust during the election period must be filed using the name of the related estate as the primary name on the return.

(*2*) *Obligations of persons who make payments to electing trusts.* Any payor that is required to file an information return with respect to payments of income or proceeds to an electing trust must show the name of the related estate, as the primary name on the return, the name of the electing trust as the secondary name on the return, and the taxpayer identification number of the related estate on the return. Nevertheless, the statement to recipients must be furnished by the payor to the trustee of the trust, rather than the personal representative of the related estate. Under these circumstances, the payor satisfies all information reporting sections that require the payor to show the name and taxpayer identification number of the payee on the information return and to furnish the statement to recipients to the person whose taxpayer identification number is required to be shown on the form.

(B) *If there is no personal representative.* If there is no personal representative for a related estate, the trustee of an electing trust must obtain a taxpayer identification number as an estate. The name entered on the Form SS–4 filed by the trustee must be the name of the trust followed by "filing as an estate under section 645." Any returns filed by the electing trust in accordance with section 645 during the election period must be filed under the name required to be entered on the Form SS–4 under this paragraph and under the taxpayer identification number obtained pursuant to this paragraph. A trustee of a QRT for which a section 645 election will be made may choose to treat the QRT as an electing trust and obtain a taxpayer identification number as an estate under this paragraph and not as a trust. See § 1.645–1(d)(1)(ii)(A) of this chapter.

(iii) *Taxpayer identification number to be used by a trust upon termination of the election period.* Upon the termination of the election period, the trustee must obtain a taxpayer identification number in the name of the new trust. If there is no personal representative and the trustee obtained a taxpayer identification number under paragraph (a)(4)(ii)(B) of this section for the trust to file as an estate under section 645, the trustee must obtain a new taxpayer identification number for the new trust. See § 1.645–1(h) of this chapter for rules regarding the treatment of an electing trust upon termination of the election period. The trustee must furnish to all payors of the trust a completed Form W–9 or acceptable substitute Form W–9 signed under penalties of perjury by the trustee providing each payor with the name of the new trust, the TIN required to be used under this paragraph (a)(4)(iii), and the address of the trustee.

(5) *Persons treated as payors.* For purposes of paragraphs (a)(2), (3), and (4) of this section, a *payor* is a person described in §§ 1.671–4(b)(4) and 1.645–1(b)(7) of this chapter.

(6) *Effective date.* Paragraphs (a)(3), (4), and (5) of this section apply on or after the date final regulations are published in the **Federal Register**.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.645–1	1545–1578
. . . . .	

David A. Mader,
Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 00–31648 Filed 12–15–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC82

Special Regulations, Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to phase out snowmobile use in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and, with some exceptions, in Grand Teton National Park, and to prohibit snowplane use in Grand Teton National Park, by the winter of 2003–2004. We also are proposing interim measures to limit the impacts of snowmobiles before their use is prohibited. This proposal is in conjunction with the Winter Use Management Plan and FEIS written for the three NPS areas and implements provisions of the Record of Decision from that Management Plan. That Record of Decision, overall, will shift oversnow motorized use of the parks from snowmobile use to snowcoach use, to allow continued winter use of the parks while eliminating the impacts on park resources and values from snowmobile use.

DATES: Written comments will be accepted through January 17, 2001.

ADDRESSES: Comments should be addressed to: National Park Service, Ranger Activities Division, 1849 C Street, NW., Room 7408, Washington, DC 20240. Fax: (202) 208–6756. Email: WASO_Regulations@nps.gov.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, N.W., Room 7413, Washington, DC 20240. Telephone: (202) 208–4206. Fax: (202) 208–6756. Email: Kym_Hall@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Much of the public use of these three parks in winter is snowmobile use. In the winter of 1999–2000, 76,571 visitor-days of snowmobile use occurred in Yellowstone, representing over 60 percent of all visitors, and 23,399 visitor-days of snowmobile use occurred in the Parkway. Less snowmobile use occurred in Grand Teton, with 1,329 visitor-days of snowmobile use on the Continental Divide Snowmobile Trail that traverses the park and 2,867 visitor-days of snowmobile use on other park trails. On Jackson Lake in Grand Teton, there also were 1,091 visitor-days of the use of snowplanes—ski-mounted motor vehicles, driven across the ice by rear-mounted propellers. In Yellowstone and the Parkway, snowcoaches—larger vehicles, comparable to passenger vans (which often are converted vans)—also operate on routes open to snowmobile use. This motorized, oversnow use of the parks is a relatively recent development, with virtually no such use present in the parks in the 1970s.

In May 1997, the National Park Service was sued in U.S. District Court for the District of Columbia by The Fund for Animals, Biodiversity Legal Foundation, Predator Project, Ecology Center, and five individuals for allegedly failing to comply with the National Park Service's Organic Act (16 U.S.C. 1–4), the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act (ESA), and other federal laws and regulations in connection with winter use in these three contiguous parks. The NPS subsequently settled the suit, in part, by an agreement to prepare a winter use plan for all three parks, based on a comprehensive environmental impact statement (EIS).

Nine cooperating agencies joined the NPS in the preparation of the EIS. They are the U.S. Forest Service; the States of Idaho, Montana, and Wyoming; and the Counties of Gallatin and Park, Montana, Park and Teton, Wyoming, and Fremont, Idaho. To develop the scope of the winter use plan, scoping brochures were mailed to about 6,000 interested parties, 12 public meetings were held in the Greater Yellowstone Area, 4 public meetings were held in other parts of the country, and about 2,000 public comments were considered. In July 1999, the NPS published a draft EIS for public comment. Five public hearings were held in the region, and one in Colorado. About 46,500 public comments were received by the December 1999 deadline.

Separately, in January 1999, the NPS received a petition for rulemaking from the Bluewater Network and some 60 other conservation organizations, requesting that we begin immediate rulemaking to prohibit snowmobile use within the 44 units of the national park system in which it is allowed, including the three parks involved in this rulemaking. That petition prompted an agency review of our policies and practices on snowmobile use in parks. As part of that review, the NPS conducted a survey of parks in which snowmobile use is currently allowed. The survey gathered information from each relevant park on such matters as the basis on which a decision was originally made to allow snowmobile use in that park; how extensive that use is; what is known about the impacts of that use on park resources and values, including the enjoyment of other visitors; and what monitoring, if any, is conducted to determine those impacts. Additionally, the NPS also held a two-day snowmobile "summit" in February 2000 at which officials from the Department of the Interior (including the Office of the Solicitor) and the National Park Service (including all but one of the 44 affected parks) reviewed the snowmobile use now occurring in the national park system. We learned through the survey and the snowmobile "summit" that much of the snowmobile use that occurs in the national park system is not consistent with management objectives or the protection of park resources and values, and is not in compliance with the requirements of the two executive orders and the NPS general regulations on snowmobile use.

In April 2000, the Department and NPS publicly announced an intention to propose changes in the snowmobile use allowed in parks, including the three parks involved here, to protect park resources and values, to meet management objectives for the parks,

and to come into compliance with the legal requirements applying to that use.

The final EIS (FEIS) for winter use in these three parks was published on October 10, 2000, and notice of its availability was published in the **Federal Register** on October 20, 2000. 65 FR 63,076. A Record of Decision on the winter use plan for the parks was signed on November 22, 2000. These regulations are necessary to implement portions of that decision, which generally emphasizes cleaner, quieter access to the parks using the technologies available today.

Existing Laws and Regulations

Snowmobile use in national parks is subject to the provisions of various laws and regulations, principally the NPS Organic Act, the Clean Air Act, two Executive Orders, and NPS regulations.

NPS Organic Act

Section 1 of the NPS Organic Act (16 USC 1) provides that the NPS:

> * * * shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservation * * * by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

This prohibition on impairment is the single most important statutory direction Congress has provided for the management of the national parks.

NPS Directors Order #55 details how the NPS interprets and implements the Organic Act's prohibition on impairment. Key elements include:

An impairment is defined to be an impact on a park's resources and values that harm the integrity of that park's resources and values. The Service may not allow the impairment of park resources and values, unless directly and specifically provided for by statute.

The resources and values to which this standard applies are a park's scenery, natural and historic objects, and wildlife; the natural forces and conditions that create and sustain those resources; and opportunities for public enjoyment of them. Resources and values that are particularly relevant to snowmobile use in these parks include, to the extent present in the parks, natural visibility, natural soundscapes and smells; water and air resources; soils; wilderness qualities; native plants and animals; and opportunities for public enjoyment of the parks' resources and values.

In its decision-making as to whether particular impacts to park resources and values constitute an impairment, the NPS must assure the preservation of the high public value and integrity of the national park system, the national dignity of parks, the superlative environmental quality of parks, and the important role of parks in providing benefit and inspiration for all the people of the United States.

When the NPS determines that an ongoing activity is causing an impairment, the Service must take appropriate action, to the extent possible within the Service's authorities and available resources, to eliminate the impairment.

Clean Air Act

The Clean Air Act includes several provisions relevant to snowmobile use in these national parks. Under the Clean Air Act, federal agencies must ensure that any activities occurring within federal lands do not cause or contribute to a violation of any State or National Ambient Air Quality Standards, set to protect the public from the harmful effects of air pollutants. Yellowstone and Grand Teton are Class I areas under the Prevention of Significant Deterioration program, meaning that they are subject to the strictest limits on the maximum allowable increases of air pollutants; only small increases in particulate matter (PM), nitrogen dioxide and sulfur dioxide are allowable. The Act also requires the prevention of any future impairment and the remedying of any existing visibility impairment in Class I federal areas. By EPA regulation, visibility impairment is defined as any perceptible change in visibility. EPA has published regulations to ensure reasonable progress toward the national visibility goal; in particular, states are required to develop plans to achieve steady and continuing reductions in emissions that contribute to visibility impairment, with the goal of restoring natural visibility by 2060. The Act provides that the NPS has an affirmative responsibility to protect the air quality related values of the parks. EPA has the authority under the Act to establish national standards for emissions of air pollutants from snowmobiles, but has not yet done so. If EPA does establish snowmobile emission standards, past practices indicate that there likely will be a few years before manufacturers are required to have newly-manufactured snowmobiles comply with the emission standards.

Executive Orders

Executive Order 11644 on off-road vehicle use, issued by President Nixon in 1972, provides, among other things, that snowmobile use may be allowed in national parks only if NPS determines that the snowmobile use on those areas and trails will not adversely affect the park's natural, aesthetic, or scenic values. It requires NPS to monitor the effects of authorized snowmobile use in parks. It also requires NPS; on the basis of the information gathered through that monitoring, to close or change the areas and trails open to snowmobile use as necessary to avoid adverse effects on the park's natural, aesthetic, or scenic values.

Executive Order 11989, also on off-road vehicle use, issued by President Carter in 1977, requires NPS, whenever it determines that the use of snowmobiles will cause or is causing considerable adverse effects on the natural resources of a park, to take steps to prevent those effects, including immediately halting that use.

NPS Regulations

NPS general regulations on snowmobile use, 36 CFR 2.18(c), state that:

> The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources."

The three parks subject to these proposed regulations have park specific regulations that designate areas and routes open to snowmobile (and snowplane) use.

Impacts to Park Resources and Values

The NPS has determined that the snowmobile use occurring in all three parks, and the snowplane use occurring in Grand Teton, harms the integrity of the resources and values of the parks, and therefore constitutes an impairment. We have also determined that the snowmobile use occurring in all three parks is inconsistent with the requirements of the Clean Air Act, Executive Orders 11644 and 11989, the NPS's general snowmobile regulations, and NPS management objectives for the parks. The types of impacts on which these determinations are based are summarized below.

Natural Soundscapes

The impact of noise from snowmobiles and snowplanes on the natural soundscapes of all three parks is one of the reasons that their current use causes an impairment of the resources and values of the park, which is prohibited by the NPS Organic Act, is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

The NPS has drawn on four separate studies of the existing natural background and human-generated sound levels in the parks, as explained in the FEIS.

In open terrain with a quiet background, the sound of a single snowmobile is audible for about 4,120 feet, a group of four snowmobiles for 7,510 feet, and a single snowplane for 7,340 feet. By comparison, an automobile in the same circumstances is audible for 2,330 feet. According to daytime audibility monitoring, in Yellowstone, snowmobile noise can be heard 95 percent of the time by visitors at Old Faithful and 87 percent of the time at the Grand Canyon of the Yellowstone; in the Parkway, 63 percent of the time at Flagg Ranch; and in Grand Teton, snowmobile or snowplane noise can be heard 44 percent of the time at Colter Bay.

Wildlife

The impact on wildlife from snowmobile use is one of the reasons that the use causes an impairment of the resources and values of Yellowstone and in all three parks is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

The impact on wildlife from snowmobile use is documented not only in the FEIS but also in a report to the federal interagency Greater Yellowstone Coordinating Committee, Effects of Winter Recreation on Wildlife of the Greater Yellowstone Area: A Literature Review and Assessment (T. Olliff, K. Legg, and B. Kaeding, editors. 1999)

Snowmobile use in the parks takes place during the season when animals are most stressed by high snow depths, extreme cold, and food shortages. Disturbance or harassment of wildlife during this sensitive time can adversely affect individual animals and, in some cases, populations as a whole. One review, cited in the FEIS, of 232 publications on the impacts of recreation on wildlife concluded that recreational users, because of their numbers and sometimes inappropriate behavior, were causing severe impacts because of harassment and the habituation of particular species. In these parks, bison, elk, moose, and deer travel on roadways groomed for snowmobile use, which can lead to collisions with or other disturbance of the wildlife. Wildlife movements are also inhibited by traffic and snow berms created by plowing and grooming operations. Although bison habituate to snowmobiles to some degree, when there was a response to snowmobiles, most often the bison fled from the snowmobiles, with snowmobiles frequently herding them down the packed roadway. One study reported that 60 percent of all bison groups observed traveling on groomed roads had negative reactions to snowmobiles, with most of those reactions including running from the snowmobiles.

Air Quality

The impact on air quality from snowmobile use is one of the reasons that the use causes an impairment of the resources and values of Yellowstone and Grand Teton and in all three parks is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

The effects of snowmobiles on air quality in these parks are documented not only in the FEIS but also in the NPS report, *Air Quality Concerns Related to Snowmobile Usage in National Parks* (NPS 2000).

Even though snowmobiles are present in Yellowstone for only three months of the year and there are fewer of them than there are of other motor vehicles during the remainder of the year, the snowmobiles contribute more air pollution to the park than do other motor vehicles. The contribution from snowmobiles to total annual hydrocarbon emissions from all mobile sources can range from 68% to 90% at Yellowstone, depending on which emission factors are used to estimate emissions. Similarly, snowmobiles can contribute from 35% to 68% of total carbon monoxide annual emissions.

Air quality monitoring at Yellowstone's West Gate shows carbon monoxide levels approaching, although not exceeding, the standards for carbon monoxide levels, which are expressed in terms of maximum average concentrations over 8-hour and one-hour periods. Monitoring of carbon monoxide levels over shorter periods, during peak snowmobile use, show much higher concentrations. Employees at the entrance station have complained of adverse health effects from emissions from snowmobiles. In addition, monitoring in the wake of a snowmobile indicate that substantial carbon monoxide levels remain in the roadway, where other snowmobilers could be exposed to them. In 1993 and 1994, Yellowstone received over 1,200 complaint letters concerning employee and visitor health and excessive snowmobile pollution.

The Environmental Protection Agency, in comments on the FEIS, has noted that the maximum allowable increase for particulate matter under the Prevention of Significant Deterioration may have already been exceeded at Yellowstone, and that snowmobile emissions may be adding to that exceedance. Modeling suggests that to be the case.

Snowmobiles can cause localized, perceptible decreases in visibility near the West Entrance and Old Faithful in Yellowstone, near Flagg Ranch in the Parkway and, under certain viewing conditions, along heavily used roadway segments in those parks.

Water Quality

The impact on water quality from snowmobile and snowplane use in all three parks is one of the reasons that the use is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

Deposition of airborne pollutants from snowmobiles and snowplanes onto frozen lake surfaces and snowpack can lead to those pollutants entering groundwater and surface water when the snow and ice melts. In Yellowstone, studies have found that concentrations of ammonium, sulfate, benzene and toluene in the snowpack are correlated with the amount of oversnow traffic. Concentrations of ammonium and sulfate at the sites in the snowpacked roadways between West Yellowstone and Old Faithful were greater than those observed at any of the 50 to 60 other snowpack-sampling sites in the Rocky Mountain region. The use of snowmobiles and snowplanes directly on the frozen surface of Jackson Lake is likely causing the direct deposition of pollutants into lake water with ice and snowmelt, with the potential for a moderate to high adverse impact on water quality.

Effects on Other Visitors

The impact on other visitors from snowmobile use in all three parks is one of the reasons that the use causes an impairment of the resources and values of the parks and is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

Winter visitor surveys indicate that the most important factors for visitor enjoyment in the parks are opportunities to view scenery and wildlife, the safe behavior of others, and opportunities to experience clean air and solitude. As explained elsewhere in this background statement, snowmobiles can cause decreases in visibility and increased air pollution within the parks; disturb the natural presence and behavior of wildlife; interfere with the natural soundscapes of the parks, reducing a sense of solitude; and adversely affect public safety.

Safety Considerations

The impact on public safety from snowmobile use in all three parks is one of the reasons that the use is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

In the last 10 years, eight fatalities in Yellowstone resulted from snowmobile accidents. In 1994, 44 percent of all park fatalities resulted from snowmobile accidents. During the past five winters, 92 percent of all incidents requiring response from an NPS ranger involved snowmobiles, which account for 61 percent of all winter users. During all of fiscal year 1998, snowmobilers, who represent two percent of all park visitors in the year, were involved in nine percent of Yellowstone's motor vehicle accidents. In Grand Teton, the use of snowmobiles on the groomed surface of the Continental Divide Snowmobile Trail immediately adjacent to highways open to other motor vehicles is a particular safety concern. Similar co-location of that snowmobile trail and an open highway has contributed to automobile-snowmobile collisions outside of the park, with several injuries and one fatality resulting.

NPS Management Objectives

Prohibiting snowmobile use in Yellowstone and the Parkway, and snowplane and most snowmobile use in Grand Teton, and providing instead for greater winter use of the parks by snowcoaches, is consistent with NPS's management objectives for these parks. Doing so would reduce adverse impacts on park resources and values, better provide for public safety, and provide for public enjoyment of the parks in winter.

Snowcoaches have lower impacts on park resources and values than snowmobiles. For example, a single newer snowcoach, capable of carrying eight or more passengers, emits much lower levels of air pollutants and much less noise than a single snowmobile, which carries one or two passengers. Also, snowcoaches, operated by professional, trained drivers operating under NPS concession contracts or permits, are much less likely to be operated in a way that disturbs wildlife than snowmobiles. As a result, expanding the use of snowcoaches and eliminating most use of snowmobiles will make it possible to accommodate large numbers of winter visitors to the parks, while still preserving an enjoyable experience for most visitors and avoiding substantial adverse impacts on park resources.

If the NPS were to continue to allow snowmobiles in the parks (other than on short routes for limited purposes in Grand Teton), it would be necessary to establish very strict limitations on that use to remain consistent with the NPS Organic, the relevant Executive Orders, the NPS general snowmobile regulations, and other applicable requirements. Even with strict user limitations, however, snowmobiles would continue to have substantial adverse impacts on natural soundscapes, wildlife, air quality, the experience of other park visitors, and other park resources and values. The remaining impacts would be substantial enough that it might be necessary to also limit the number of other types of users, at least including snowcoach users, to ensure that overall winter visitor impacts would not unlawfully or unacceptably affect park resources and values. Rather than establishing limitations on both snowmobile and snowcoach users, the NPS prefers to eliminate most snowmobile use in the parks and allow unlimited access to the parks by snowcoach users and other visitors.

Other Legal Requirements

The NPS has been unable to find any evidence that the Service, before now, made the determinations required by Executive Order 11644—that snowmobile use in particular areas and on particular trails in these parks will not adversely affect the park's natural, aesthetic, or scenic values of the parks—before deciding to allow snowmobile use in the parks. Further, until making this proposal for new rules, the NPS has not complied with the requirement of that Executive Order that the Service rescind or amend the designation or areas open to snowmobile use as necessary to avoid adverse effects on the park's natural, aesthetic, or scenic values.

Also, prior to proposing this rule, the NPS has not complied with the requirement of Executive Order 11989 that the Service, whenever it determines that the use of snowmobiles will cause or is causing considerable adverse effects on the natural resources of a park, take steps to prevent those effects, including immediately halting that use.

The special regulation for Grand Teton National Park that designates the Potholes-Baseline Flats area as open to snowmobile use is inconsistent with the requirement in the NPS's general snowmobile regulation that snowmobiles may be allowed only on "designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons." 36 C.F.R. 2.18(c). The Potholes-Baseline Flats area is not open to motor vehicles during other seasons.

The NPS currently allows snowmobile use on the Continental Divide Snowmobile Trail in Grand Teton and the Parkway, although it has not been designated by regulation as a snowmobile route as required by the NPS's general snowmobile regulation.

Description of Proposed Rule

The proposed rule does not include any changes in regulations governing snowmobile and snowplane use for the winter of 2000–2001. By the time this proposed rule will be final, the winter season will be largely over, and there would not be adequate notice to users of any changes for the remainder of the winter. Instead, the NPS will take non-regulatory management actions this winter to reduce the impacts of snowmobile and snowplane use, as described in our Record of Decision on winter use in the parks.

The rule would add the Continental Divide Snowmobile Trail, in both Grand Teton and the Parkway, to the list of designated snowmobile trails, effective through the winter use season of 2002–2003. This trail, in both parks, is now open to snowmobile use, although it is not currently a designated route.

For the winter use season 2001–2002, the rule would establish numerical limits on the numbers of snowmobiles and snowplanes that may enter the parks through designated entrances, or that may use designated areas of the parks. The daily entrance limits proposed for this season are based on the average peak day of snowmobile use by entrance or road segment for snowmobile use figures collected over the last seven years. These limits are intended to prevent increases in use to occur on the busiest peak days of the season, while allowing current use patterns to continue.

Also for the winter of 2001–2002, the proposed rule will repeal the designation of five routes in Yellowstone and one area in Grand Teton that are included in the parks' current special regulations in 36 CFR Part 7, but that are not now actually open to snowmobile use. Those routes have not been open to use for some

time, because of prior park management decisions that are reflected in the respective Superintendent's Compendium of park rules. The currently closed area in Grand Teton, the Pothole-Baseline Flats area, is an area not open to other motor vehicles in other seasons, so its designation is also inconsistent with the general NPS snowmobile regulation establishing criteria for routes eligible to be designated for snowmobile use.

For the winter of 2002–2003, for Grand Teton the rule would prohibit snowmobile and snowplane use on Jackson Lake in Grand Teton National Park and repeal the designations of all snowmobile trails in the park except for the Continental Divide Snowmobile Trail. For all three parks, the rule would establish numerical limits on snowmobile use in the parks. The limits have been chosen to lead to an approximate 50 percent reduction in snowmobiles entering Yellowstone's West and South Gates, where snowmobile use, and the impacts from that use, are greatest. The limits for this winter will require less change, if any, in other areas, where the snowmobile use and the impacts from it are lesser. Snowmobiles in Yellowstone would be limited to groups, and each group would have to be guided by an NPS-permitted guide, to reduce impacts on park resources and values (particularly wildlife) and to improve public safety. The rule would authorize the Superintendent to require snowmobiles to travel in groups, and to be guided by an NPS permitted guide in Grand Teton and the Parkway.

The following table summarizes current snowmobile use levels and the limits on that use to be established for the winters of 2001–2002 and 2002–2003.

TABLE 1.—LIMITS ON SNOWMOBILES IN YELLOWSTONE (YNP), ROCKEFELLER PARKWAY (JDRMP) AND GRAND TETON (GTNP)

Road segments	7-year average daily use	2001–2002 Daily limits	2002–2003 Daily limits
YNP North Entrance	41	60	60
YNP West Entrance	555	1030	278
YNP East Entrance	37	100	65
YNP South Entrance to JDRMP Flagg Ranch	176	330	90
JDRMP Grassy Lake Road	25	40	25
JDRMP CDST from Flagg Ranch to GTNP eastern park boundary	25	70	25
GTNP Jackson Lake	30	30	0
GTNP Tenton Park Road	11	20	0
GTNP Moose-Wilson Road	3	10	0

Effective the winter of 2003–2004, snowmobile use would be prohibited in Yellowstone, the Parkway, and in most areas of Grand Teton. Oversnow motorized access to the parks in this winter, and thereafter, will be by snowcoaches. Exceptions to the snowmobile prohibition will be certain relatively short routes in Grand Teton that provide snowmobile access to national forest areas open to snowmobile use under U.S. Forest Service management decisions, and to private property for which snowmobile access is the only reasonable, or an appropriate, means of access in winter. Access to these public lands and to private property within and adjacent to the park boundary are provided for in the enabling legislation for Grand Teton National Park. Snowmobile use on these routes would be limited to travel to the national forest areas and the private properties. For the routes to private properties, only the owners and their representatives or guests will be permitted to use those routes and only for access purposes, not recreational uses.

For all three parks, the rule includes several provisions that are intended to ensure safe and appropriate use of snowmobiles. These are mostly drawn from the Superintendent's Compendium of park rules for one or more of the parks. These provisions include prohibitions on excessive idling of snowmobiles, requirements that snowmobiles stopped on a designated route to be pulled over to the edge of the roadway, requirements that operators have valid motor vehicle operator or learner permits, and requirements that snowmobiles be properly registered and registration tags be appropriately displayed. The hours of snowmobile use will be restricted to avoid snowmobile operations during the early morning and late evening hours to mitigate safety concerns, to reduce conflicts with plowing or grooming operations, and to minimize the disturbance to wildlife.

Throughout the regulation there are references to designated routes being marked. It is important to note that because of the natural scenery in the park, the erection of signs will be kept to a minimum. Instead, the use of snow poles or other less intrusive markers will be used to help designate appropriate routes for snowmobile or snowcoach use. Additionally, the berms—large snow banks on the sides of the roads created by plowing or grooming—will also serve to designate the boundaries for snowmobile routes.

The proposed regulation will eliminate the impairment of park resources and values in Grand Teton by the winter of 2002–2003, and in Yellowstone and the Parkway by the winter of 2003–2004.

The NPS has determined, based on the FEIS and other studies and information, that the snowcoach use that we expect to occur in these parks, and the snowmobile use that will continue be allowed in Grand Teton in the winter of 2003–2004 and thereafter, will be consistent with the requirements of the NPS Organic Act, the relevant Executive Orders, and the NPS general regulations on snowmobile use.

We solicit comments on, first, any additional mitigation measures, beyond those identified in the FEIS and Record of Decision, that could be undertaken in conjunction with the proposed regulation to reduce the possible adverse economic impacts of it on small businesses. Second, we also solicit comments on any alternative approach to the proposed regulation—such as a limitation on the number of snowmobiles that may use a park in a day, a restriction on the distance any snowmobile may travel within a park in a day, a limitation on the hours of use of such snowmobiles, a restriction on use of snowmobiles to certain authorized routes, technical or mechanical changes to snowmobiles (*e.g.*, better mufflers) that would be required to enable their use in the parks, or use fees or other market-based

regulatory mechanisms—that could both accomplish the objectives and fulfill the requirements of the laws, executive orders, and regulations applying to snowmobile use in these parks and minimize any possible adverse economic impact of the proposed regulation on small businesses. Finally, we solicit comments on whether the schedule of changes in the proposed regulation should be changed, either (1) to implement one year sooner, in the winter of 2002–2003, the regulations identified in the proposal as taking effect in the winter of 2003–2004, thereby eliminating the impacts from snowmobile use sooner; or (2) to implement those regulations one year later, in the winter of 2004–2005, thereby reducing any possible adverse economic impact on small businesses.

Compliance with Other Laws

Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1)This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

From the Final Environmental Impact Statement (FEIS), estimated economic output and employment impacts of implementing actions under this rule are: In the five-county, greater Yellowstone area, an estimated loss of 14.4 to 19.2 million dollars; in the three-state area surrounding the parks, a variance of a possible 17.7 million dollar loss to a 7.0 million dollar increase. Increased winter visitation from current summer visitors to the park under this management option could substantially offset the estimated losses and employment reductions from current winter visitors.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementing actions under this rule will not interfere with wither agencies or local government plans, policies, or controls. This is an agency specific change.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule will only address the recreational use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues.

The issue of the prohibition of snowmobile use has generated local as well as national interest on the subject in the greater Yellowstone area. Subsequently, tens of thousands of public comments have been received and analyzed in the development of the supporting FEIS and Winter Use Management Plan.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Though the ultimate prohibition of recreational snowmobiles use in these three parks in this rule may initially cause a loss of income to local communities around the parks, the NPS is undertaking several significant steps to mitigate the economic impacts.

First, elimination of snowmobiles from most of the areas in the three parks will be phased over four winter seasons. The gradual elimination of this type of recreational activity will allow a significant period of time for the small businesses in surrounding communities to adjust their mode of serving park visitors. An abrupt prohibition on snowmobiles from the three parks would have had a much more significant adverse effect on small businesses in these communities.

Second, while snowmobile use in these parks will be curtailed, access will be provided by multi-passenger snowcoaches and the parks will remain open in winter to serve visitors. With elimination of the impacts of snowmobiles and replacement with snowcoaches, the winter capacity of the parks to accommodate visitors will actually increase, providing the potential for economic expansion in surrounding communities.

Third, during the third winter of the phase-out schedule, snowmobile use in Yellowstone National Park will require group travel with a certified and trained commercial guide. This guided trip requirement will offer an additional employment opportunity for private individuals and small businesses in the surrounding communities.

Fourth, snowcoach access to the parks will require a concession permit from the NPS. These permits will be awarded to numerous small businesses in the surrounding communities. To make this initial business opportunity a smooth transition, NPS has authority to offer temporary commercial use permits for up to three years without regard to competition or numerical limitations (except for keeping the total number of permits below a level that would cause adverse impacts to park resources). NPS will utilize its discretion under this authority to support existing businesses in the surrounding communities during this initial period of years. As a consequence, these existing businesses will experience a shift in their business activity, not elimination of it.

Finally, NPS recognizes that significant changes in visitor use patterns often cause confusion and misinformation among the general public and potential visitors. Therefore, NPS will join with the affected states' travel and tourism offices and their counterparts in the five surrounding counties, as well as the various destination marketing organizations and the state and national levels, to market winter visitation to Yellowstone and Grand Teton without snowmobiles. NPS has committed $100,000 of its FY 2001 funding for this purpose.

We solicit comments on the potential impacts that this rule may have on small entities. We welcome comments with information regarding the number and type of entities impacted, the specific costs that may be imposed by this rule on small entities, and whether and why these impacts may be considered significant.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. From the FEIS, estimated economic loss and employment impacts of implementing actions under this rule are: In the five-county, greater Yellowstone area, an estimated loss of 14.4 to 19.2 million dollars; in the three state area surrounding the parks, a possible loss of 17.7 million dollars to a possible increase of 7.0 million dollars. Increased winter visitation from current summer visitors to the park under this management option could substantially offset the estimated loss and employment reductions from current winter visitors.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

The potential loss of revenue from snowmobile users will likely be offset by visitors using mass transit methods

of visiting the park. Additionally, the summer visitation to the region would continue to exist and wouldn't likely cause the local business to need to raise prices to maintain an income.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rulemaking has no effect on methods of manufacturing or production and specifically effects the Wyoming region, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

This rule addresses public access issues and management of resources within the agency. It imposes no other requirements on other agencies or governments. Mandates only exist if visitors or concessioners desire to operate oversnow vehicles within the park.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

This rule proposes to abolish routes designated for snowmobile use in NPS regulations. Private property within the boundaries of those parks will still be afforded access during the winter use season. No other property is affected.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule effects use by the public of NPS administered lands. It has no outside effects on other areas and only addresses a portion of the use within the parks.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB for 83–I is not required.

National Environmental Policy Act

This rule constitutes a major Federal action significantly affecting the quality of the human environment.

An Environmental Impact Statement has been completed and a Record of Decision issued to support that statement. A copy of the EIS is available by contacting the Superintendent of Yellowstone or Grand Teton National Parks.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Numerous tribes surrounding the greater Yellowstone area were consulted in the development of the Winter Use Plan and FEIS. The chief concerns expressed by the tribes were the affects on wildlife by snowmobiles. This rule serves to address those concerns (to a degree) but has no effect on tribal lands or trusts.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section appears in bold type and is precede by the symbol "§ " and a numbered heading; for example § 7.13 Yellowstone National Park [amended].) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the National Park Service, Ranger Activities Division, 1849 C Street, N.W., Washington, DC 20240. You may also comment via the Internet to WASO_Regulations@nps.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1024–AC82" in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, N.W., Room 7413, Washington, DC. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organization or businesses, and from individual identifying themselves as representatives or officials of organization or businesses, available for public inspection in their entirety.

Drafting Information

The principle contributors to this proposed rule are Stephen C. Saunders, Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks; T. Destry Jarvis, Senior Advisor to the Assistant Secretary for Fish and Wildlife and Parks; Karen S. Kovacs, Senior Advisor to the Assistant Secretary for Fish and Wildlife and Parks; Michael Tiernan, Attorney-Advisor, Solicitor's Office; Debra Hecox, Attorney-Advisory, Solicitor's Office; Kym A. Hall, NPS Regulations Program Manager; Sarah Creachbaum, Outdoor Recreation Planner, Grand Teton National Park; Bob Rossman, Outdoor Recreation Planner, Grand Teton National Park; and John Sacklin, Supervisory Planner, Yellowstone National Park.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

We propose to amend 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q) 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.13 Yellowstone National Park.

2. Paragraph (l) of § 7.13 is revised to read as follows:

* * * * *

(l)(1) *May I operate a snowmobile in Yellowstone National Park?* You may operate a snowmobile in Yellowstone National Park in compliance with the public use limits and operating conditions established in this regulation during the winter use seasons of 2001–2002 and 2002–2003. Effective November 15, 2003, snowmobile use in Yellowstone National Park is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

(2) *What is a winter use season?* A winter use season is that portion of the winter months that begins each year in approximately late November, through the following year ending in approximately the middle of March. Specific dates are dependent on weather conditions and the availability of NPS facilities and resources and may be adjusted at the discretion of the Superintendent. Appropriate notice will be given to the public of determined start and ending dates each season.

(3) *When snowmobile use is authorized, where may I operate my snowmobile?* You may operate your snowmobile upon designated routes established within the park. On designated routes, snowmobile use is limited to the unplowed roadway, which is distinguished as that portion of the roadway located between the road shoulders and is designated by snow poles or other poles, ropes, fencing, or signs erected to regulate snowmobile activity. The unplowed roadway may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. Snowmobiles may also be operated in pullouts or parking areas that are groomed or marked similarly to roadways.

(4) *What routes are designated for snowmobile use in the park?* During the winter use seasons of 2001–2002 and 2002–2003, the following routes may be designated for snowmobile use:

(i) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Junction.

(iii)The Grand Loop Road from Norris Junction to Madison Junction.

(iv) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(v) The Grand Loop Road from Madison Junction to West Thumb.

(vi) The South Entrance Road from the South Entrance to West Thumb.

(vii)The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(viii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(ix) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(x) The South Canyon Rim Drive.

(xi) Any groomed or marked pullouts or parking areas along each of these routes.

(xii) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris, snowmobile routes to scenic points of interest, lodging, and other facilities will be designated by appropriate snow poles and signs and will be limited to the unplowed roadways in those areas.

(xiii) The Superintendent may open or close these routes after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety.

(xiv) Maps detailing the designated routes will be available from Park Headquarters.

(5) *What criteria may the Superintendent use to determine the routes within the developed areas mentioned in paragraph (l)(4)(xii)?* The Superintendent may use a variety of criteria to determine use routes within the developed areas of Madison Junction, Old Faithful, Grant Village, Lake; Fishing Bridge, Canyon, Indian Creek and Norris including the most direct route of access, weather and snow conditions, and those routes necessary to eliminate congestion and improve the circulation of the visitor use patterns in the interest of public safety.

(6) *What limits are established for the numbers of snowmobiles permitted to use the park each day?* (i) For the winter use season of 2001–2002, the numbers of snowmobiles allowed to use the park each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
Yellowstone NP	
North entrance	60
West entrance	1030
East entrance	100
South entrance	330

*Maximum daily allowed per gate.

(ii) For the winter use season 2002–2003, the numbers of snowmobiles allowed to use the park each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles
Yellowstone NP	
North entrance	60
West entrance	278
East entrance	65
South entrance	90

*Maximum daily allowed per gate.

(7) *May I operate a snowcoach in Yellowstone National Park?* Snowcoaches may be operated in Yellowstone National Park under a Concessions Contract or Permit authorized by the Superintendent. Snowcoach operation is subject to the conditions of the permit and all other conditions identified in this section.

(8) *What is a snowcoach?* A snowcoach is a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, having a capacity of at least 8 passengers.

(9) *What routes are designated for snowcoach use?* Snowcoaches may operate on the same routes designated for snowmobile use in paragraph (l)(4) of this section and the following designated routes:

(i) Firehold Canyon Drive.
(ii) Fountain Flat Road.
(iii) Virginia Cascades Drive.
(iv) North Canyon Rim Drive.
(v) Riverside Drive.
(vi) Lake Butte Overlook Drive.
(vii) The portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs Overlook.

(10) *What other conditions are placed on snowmobile and snowcoach operations?* Snowmobiles and snowcoaches may be operated in the park under the following conditions:

(i) Snowmobiles and snowcoaches may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

(ii) Idling a snowmobile or snowcoach is limited to 10 minutes at any one time.

(iii) Snowmobiles or snowcoaches that stop on designated routes must pull

over to the far right next to the snow berm. Stopping the vehicle in a hazardous location, or where the view of the vehicle might be obscured, such as on a curve, is prohibited. Pullouts must be utilized when available and accessible.

(iv) Snowmobiles and snowcoaches must be properly registered and display a valid state registration sticker.

(v) Snowmobile operators must possess a valid state motor vehicle operator's license or learner's permit. The license or permit must be carried on the operator's person at all times.

(vi) Persons operating a snowmobile while possessing a learner's permit must be accompanied and supervised within line of sight, but no further than 100 yards, by a responsible person 21 years of age or older possessing a valid state motor vehicle operator's license.

(vii) Allowing or permitting an unlicensed driver to operate a snowmobile is prohibited.

(viii) During the winter use season of 2002–2003, snowmobiles must be accompanied by an NPS permitted guide and may not travel in groups of more than 11 snowmobiles.

(11) *May I operate a snowplane in the park?* No, the operation of snowplanes in Yellowstone National Park is prohibited.

(12) *What is a snowplane?* A snowplane is a self-propelled vehicle intended for over-the-snow travel and driven by a pusher-propeller.

(13) *Are there any other forms of over-snow transportation allowed in the park?* No other forms of motorized over-snow transportation are permitted for use in the park unless specifically approved by the Superintendent and are consistent with the requirements of the Winter Use Plan and the applicable Executive Orders.

* * * * *

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

3. Paragraph (a) of § 7.21 is revised to read as follows:

(a)(1) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance within the public use limits and operating conditions established in this regulation during the winter use seasons of 2001–2002 and 2002–2003. Effective November 15, 2003, snowmobile use in the Parkway is prohibited except for essential administrative use and in emergency situations as determined by the Superintendent.

(2) *What is a winter use season?* A winter use season is that portion of the winter months that begins each year in approximately late November through the following year ending in approximately the middle of March. Dates are dependent on weather conditions and the availability of NPS facilities and resources and may be adjusted at the discretion of the Superintendent. Appropriate notice will be given to the public of determined start and ending dates each season.

(3) *What routes are designated for snowmobile use in the Parkway?* During the winter use seasons of 2001–2002 and 2002–2003, the following routes may be designated for snowmobile use:

(i) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway to Flagg Ranch.

(ii) Along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the Parkway.

(iii) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(iv) The Superintendent may open or close these routes after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety.

(v) Maps detailing the designated routes will be available from Park Headquarters.

(4) *What limits are established for the numbers of snowmobiles permitted to use the Parkway each day?* (i) For the winter use season of 2001–2002, the numbers of snowmobiles allowed to use the Parkway each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
John D. Rockefeller, Jr., Memorial Parkway	
Continental Divide Snowmobile Trail (along U.S. 89/287) from the southern boundary of the Parkway to Flagg Ranch	70
(Along U.S. 89/287) Flagg Ranch to northern boundary of Parkway	330
Grassy Lake Road	40

*Maximum daily allowed per gate.

(ii) For the winter use season 2002–2003, the numbers of snowmobiles allowed to use the Parkway each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
John D. Rockefeller, Jr., Memorial Parkway	
Continental Divide Snowmobile Trail (along U.S. 89/287) from the southern boundary of the JDR Parkway to Flagg Ranch	25
(Along U.S. 89/287) Flagg Ranch to northern boundary of Parkway	90
Grassy Lake Road	25

*Maximum daily allowed per gate.

(5) *May I operate a snowcoach in the Parkway?* Snowcoaches may be operated in the Parkway under a Concessions Contract or Permit authorized by the Superintendent. Snowcoach operation is subject to the conditions of the permit and all other conditions identified in this section.

(6) *What is a snowcoach?* A snowcoach is a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, having a capacity of at least 8 passengers.

(7) *What routes are designated for snowcoach use?* Snowcoaches may operate on the routes designated for snowmobile use in paragraph (a)(3)(ii) and (iii) of this section.

(8) *What other conditions are placed on snowmobile and snowcoach operations?* Snowmobiles and snowcoaches may be operated under the following conditions:

(i) Snowmobiles or snowcoaches may not be operated in the Parkway between the hours of 9 p.m. and 8 a.m. except by authorization.

(ii) Snowmobiles or snowcoaches that stop on designated routes must pull over to the far right next to the snow berm. Stopping the vehicle in a hazardous location, or where the view of the vehicle might be obscured, such as on a curve, is prohibited. Pullouts must be utilized when available and accessible.

(iii) Snowmobiles and snowcoaches must be properly registered and display a valid state registration sticker.

(iv) Snowmobile operators must possess a valid state motor vehicle operator's license or learner's permit. The license or permit must be carried on the operator's person at all times.

(v) Persons operating a snowmobile while possessing a learner's permit must be accompanied and supervised within line of sight, but no further than 100 yards, by a responsible person 21 years of age or older possessing a valid state motor vehicle operator's license.

(vi) Allowing or permitting an unlicensed driver to operate a snowmobile is prohibited.

(vii) During the winter use season of 2002–2003, the Superintendent may determine that snowmobiles be required to be accompanied by an NPS permitted guide or to travel in groups of not more than 11 snowmobiles.

(9) *May I operate a snowplane in the Parkway?* No, the operation of snowplanes in the Parkway is prohibited.

(10) *What is a snowplane?* A snowplane is a self-propelled vehicle intended for over-the-snow travel and driven by a pusher-propeller.

(11) *Are there any other forms of over-snow transportation allowed in the Parkway?* No other forms of motorized over-snow transportation are permitted for use in the Parkway unless specifically approved by the Superintendent and are consistent with the requirements of the Winter Use Plan and the applicable Executive Orders.

4. Revise paragraph (g) of § 7.22 to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with the public use limits and operating standards established by the Superintendent during the winter use seasons of 2001–2002 and 2002–2003. Effective the winter use season of 2003–2004, snowmobile use will be restricted to the routes and purposes in paragraph (g)(8), (g)(9), (g)(10) and (g)(11) of this section. All other snowmobile use is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

(2) *What is a winter use season?* A winter use season is that portion of the winter months that begins each year in approximately late November, through the following year ending in approximately the middle of March. Specific dates are dependent on weather conditions and the availability of park facilities and resources and may be adjusted at the discretion of the Superintendent. Appropriate notice will be given to the public of determined start and ending dates each season.

(3) *What routes are designated for snowmobile use in the park?* For the winter use season of 2001–2002, the following routes may be designated for snowmobile use:

(i) Teton Park Road from Taggert Lake Trailhead to Signal Mountain Lodge. Additional side routes open from this route include the Signal Mountain Road to the summit of Signal Mountain, the access road to String and Jenny Lakes and the scenic route to Jenny Lake's east side, and the gravel surface road to Spalding Bay at the south end of Jackson Lake.

(ii) Moose-Wilson Road from the Granite Canyon Trailhead to the JY Ranch entrance.

(iii) The unpaved road paralleling the eastern park boundary from the Shadow Mountain access to Cunningham Cabin, and the access road from U.S. 26/89 near the Snake River Overlook east to the unpaved road.

(iv) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from Moran to the eastern park boundary, and along U.S. 89/287 from Moran to the north boundary of the park including the side route from Jackson Lake Junction to Signal Mountain Lodge.

(v) The frozen surface of Jackson Lake.

(vi) Any groomed or marked pullouts or parking areas along each of these routes.

(vii) The Superintendent may open or close these routes after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety.

(viii) Maps detailing designated routes will be available from Park Headquarters.

For the winter use season of 2002–2003, the following route may be designated for snowmobile use:

(ix) The CDST along U.S. 26/287 from Moran to the eastern park boundary and along U.S. 89/287 from Moran to the north park boundary.

(4) *What limits are established for the numbers of snowmobiles permitted to use the park each day?* (i) For the winter use season 2001–2002, the numbers of snowmobiles allowed to use the park each day are listed in the tables below.

Park entrance gate or area	Number of snowmobiles*
Grand Teton NP	
Teton Park Road	20
Moose Wilson Road	10
Continental Divide Snowmobile Trail from the east park boundary (along U.S. 26/287) to northern park boundary (along U.S. 89/287)	70
Jackson Lake	30

*Maximum daily allowed per gate.

(ii) For the winter use season 2002–2003, the numbers of snowmobiles allowed to use the park each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
Grand Teton NP	
Continental Divide Snowmobile Trail from east park boundary (along U.S. 26/287) to northern park boundary (along U.S. 89/287)	25

*Maximum daily allowed per gate.

(5) *What other conditions are placed on snowmobile operations?* Snowmobiles may be operated in the park under the following conditions:

(i) Snowmobiles may not operate in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

(ii) Snowmobiles that stop on designated routes must pull over to the far right next to the snow berm. Stopping the vehicle in a hazardous location, or where the view of the vehicle might be obscured, such as on a curve, is prohibited. Pullouts must be utilized when available and accessible.

(iii) Snowmobiles must be properly registered and display a valid state registration sticker.

(iv) Snowmobile operators must possess a valid state motor vehicle operator's license or learner's permit. The license or permit must be carried on the operator's person at all times. Snowmobile operators are not required to possess a valid drivers license while operating on the public access routes designated in paragraph (g)(8) and the private property access routes designated in paragraph (g)(10) of this section.

(v) Persons operating a snowmobile while possessing a learner's permit must be accompanied and supervised within line of sight, but no farther than 100 yards, by a responsible person 21 years of age or older possessing a valid state motor vehicles operator's license.

(vi) Allowing or permitting an unlicensed driver to operate a snowmobile is prohibited.

(vii) During the winter use season of 2002–2003, the Superintendent may require that snowmobiles be accompanied by an NPS permitted guide and must travel in groups of not more than 11 snowmobiles.

(6) *May I operate a snowplane in the park?* If you had a permit to operate snowplane on Jackson Lake during the winter use season 2000–2001, you may obtain a permit to operate a snowplane on Jackson Lake during the winter use

season of 2001–2002. Beginning the winter use season 2002–2003, snowplane use in Grand Teton National Park is prohibited.

(7) *What is a snowplane?* A snowplane is a self-propelled vehicle intended for over-the-snow travel and driven by a pusher-propeller.

(8) *May I continue to access public lands via snowmobile through the park?* Yes, reasonable and direct access via snowmobile to adjacent public lands will continue to be permitted on designated routes through Grand Teton National Park. The following routes are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) From the Cunningham Cabin pullout on U.S. 26/89 near Triangle X to the east park boundary.

(9) *For what purpose may I use the routes designated in paragraph (g)(8)?* You may use those routes designated in paragraph (g)(8) of this section to gain direct access to public lands adjacent to the park boundary.

(10) *May I continue to access private property within or adjacent to the park via snowmobile?* Yes, reasonable and direct access via snowmobile to private property will continue to be permitted via designated routes in Grand Teton National Park. The following routes are designated for access to private property within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to that piece of land commonly referred to as the "Clark Property".

(iii) From the Moose-Wilson Road to the land commonly referred to as the "Barker Property" until the Department of the Interior takes full possession of that land.

(iv) From the Moose-Wilson Road to the land commonly referred to as the "Wittimer Property" until the Department of the Interior takes full possession of that land.

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the "Halpin Properties".

(vi) From either end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the "JY Ranch".

(vii) From Highway 26/89/187 to those lands commonly referred to as the "Meadows", the "Circle EW Ranch", the "Moulton Property", the "Levinson Property" and the "West Property".

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X the piece of land commonly referred to as the "Lost Creek Ranch".

(ix) Maps detailing designated routes will be available from Park Headquarters.

(11) *For what purpose may I use the routes designated in paragraph (g)(10)?* Those routes designated in paragraph (g)(10) of this section are to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowner or their representatives or guests. Recreational use of these roads by anyone is prohibited.

(12) *Are there any forms of over-snow transportation allowed in the park?* No other forms of motorized over-snow transportation are permitted for use in the park unless specifically approved by the Superintendent and are consistent with the requirements of the Winter Use Plan and the applicable Executive Orders.

Dated: December 13, 2000.

Stephen C. Saunders,

Acting Assistant Secretary, Fish and Wildlife and Parks.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–47;GA–52; GA–55–200030; FRL–6914–8]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In a December 16, 1999, **Federal Register** document, EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration) which was submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. In a letter dated November 23, 1999, the GAEPD agreed to meet the following commitments: To submit rules requiring the implementation of nitrogen oxide (NO_X) and volatile organic compound (VOC) reasonably available control technology (RACT) in the 32 additional counties for sources with emissions in excess of 100 tons per year; to complete an early assessment of attainment prior to 2003; to identify and adopt regulations for sources that will be controlled to achieve the additional emission reductions that are needed for attainment as determined by EPA's Method 1. These revisions address those commitments. EPA is proposing in this document to approve these revisions. Final action on these rule revisions will occur at the same time, or prior to, final action on the 1-hour ozone attainment demonstration for the Atlanta nonattainment area.

DATES: Written comments must be received on or before January 17, 2001.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin at (404) 562–9036. martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration) which was submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. In a letter dated November 23, 1999, the GAEPD agreed to meet the following commitments: To submit rules requiring the implementation of nitrogen oxide (NO_X) and volatile organic compound (VOC) reasonably available control technology (RACT) in the 32 additional counties for sources with emissions in excess of 100 tons per year; to complete an early assessment of attainment prior to 2003; to identify and adopt regulations for sources that will be controlled to achieve the additional emission reductions that are needed for attainment as determined by EPA's Method 1. These revisions address those commitments as well as comment received on the regulations. EPA is proposing in this document to approve these revisions.

II. Analysis of State's Submittal

The Clean Air Act as amended in 1990, (CAA) requires that serious ozone nonattainment areas perform photochemical grid modeling to help determine the level of emission reductions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) necessary to attain the 1-hour ozone standard. The GAEPD fulfilled this requirement primarily through the application of the Urban Airshed Model, Variable Grid Version (UAM–V). When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the ozone standard is likely. The process by which this is done is called a weight of evidence (WOE) determination. For a more detailed discussion of UAM–V modeling and WOE, please reference the December 16, 1999, **Federal Register** (64 FR 70478).

The GAEPD relied on WOE to demonstrate attainment of the 1-hour ozone standard. GAEPD used EPA's Method 1 technique to identify the additional percentage reduction in NO_X and VOC, from the 1996 emissions, needed for attainment. A detailed discussion of the steps used in Method 1 to calculate the additional emission reductions needed for attainment is provided in the technical support document (TSD) which can be obtained from the Regional Office contact.

GAEPD's application of this procedure estimates that additional reductions of 3.94 percent (35.75 tpd) NO_X and 3.59 percent (20.81 tpd) VOC are needed for attainment. Per EPA guidance, the State has flexibility to substitute NO_X reductions for VOC and VOC for NO_X. Adequate supporting documentation for the basis of any substitution must be submitted to EPA along with the adopted regulations. The following table summarizes the reductions including the emission reduction changes from rules included in the October 28, 1999, submittal which will be used to achieve the shortfall. A detailed discussion of each measure follows the table.

Required NO_X Reductions	Total of 35.75 tpd
Industrial Open Burning Ban	−0.24
Commercial Open Burning Ban.	−0.19
Residential Open Burning Ban.	−3.66
Slash Burning Ban	−3.66
Additional Electrical Generating Unit Controls.	−44.06
Relieve New Source Review in 26 Counties.	+1.73
Relieve RACT in 26 Counties	+10.98
Delay RACT in 6 Counties ...	+0.81
New Combustion Turbine Rule.	−3.1
Extra NO_X Reductions Beyond Those Required.	5.64
Required VOC Reductions ...	20.81
Industrial Open Burning Ban	−0.91
Commercial Open Burning Ban.	−0.96
Residential Open Burning Ban.	−18.48
Slash Burning Ban	−17.55
Prescribed Burning Ban	−3.5
Relieve New Source Review in 26 Counties.	+0.2
Delay RACT in 6 Counties ...	+3.69
Relieve RACT in 26 Counties	+10.66
Extra VOC Reductions Beyond Those Required.	6.04

Description of Major Revisions to Rules for Air Quality Submitted on January 31, 2000

The January 31, 2000, submittal included several regulations that will reduce emissions of NO_X and VOC in the Atlanta modeling domain. EPA is proposing to approve the revisions to Georgia's Rules for Air Quality Control Chapter 391–3–1 described below.

The October 28, 1999, submittal expanded the coverage of several rules outside the 13 county nonattainment area to an additional 32 counties for a total of 45 counties. After receiving adverse comment from many of the counties affected by the expansion, the EPD agreed to revise the rules to reduce the economic hardship imposed on the smaller and more rural counties. The following 26 counties shall no longer be subject to the requirements of the rules listed below: Banks, Barrow, Butts, Chattooga, Clarke, Dawson, Floyd, Gordon, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pickens, Pike, Polk, Putnam, Troup and Upson. 391–3–1–.02(2)(tt) VOC Emissions from Major Sources, (vv) Volatile Organic Liquid Handling and Storage, (yy) Emissions of Nitrogen Oxides from Major Sources, (ccc) VOC Emissions from Bulk Mixing Tanks, (ddd) VOC Emissions from Offset Lithography, (eee) VOC Emissions from Expanded Polystyrene Products Manufacturing, (hhh) Wood Furniture Finishing and Cleaning Operations and 391–3–1–.03(8)(c)(14) Additional Provisions for Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Nonattainment Area. In addition to the 13 counties in the Atlanta 1-hour ozone nonattainment area, Bartow, Carroll, Hall, Newton, Spalding, and Walton counties shall be subject to the rules listed above.

Rule 391–3–1–.02(2)(jjj) relating to "NO_X Emissions from Electric Utility Steam Generating Units" is being amended to expand the coverage of the rule to include affected coal-fired electric utility steam generating units in the counties of Monroe and Putnam and to include a lower average NO_X emissions limit for all affected units.

Effective May 1, 2003, the NO_X emissions from all affected units at Plants Bowen (Bartow County), Hammond (Floyd County), McDonough (Cobb County), Wansley (Heard County), and Yates (Coweta County) will be limited to the equivalent of 0.13 lb/million BTU five plant average. An overlapping requirement, also effective May 1, 2003, limits NO_X emissions from all the same units described above plus the units at Plants Branch (Putnam County) and Scherer (Monroe County) to the equivalent of 0.20 lb/million BTU seven plant average. Compliance will be determined potentially in two steps. First, each source will be assigned a specific alternative emission limit. If the actual emission rate from each source is less than its alternative limit, then all affected sources would be in compliance. If the actual emission rate from any source is greater than its alternative limit, then compliance would be demonstrated by showing that

the actual BTU-weighted average emission rate for all affected sources is less than 0.13 lb/million BTU for the 5 plants and 0.20 lb/million BTU for the 7 plants listed above. Compliance with the alternative emission limits would be determined such that their BTU-weighted average does not exceed the 0.13 and 0.20 lb/million BTU limits. The compliance period will be based on a 30-day rolling average beginning May 1 and ending September 30 of each year.

Rule 391–3–1–.02(2)(kkk) relating to "VOC Emissions from Aerospace Manufacturing and Rework Facilities" is being amended by adding compliance dates. Compliance dates have been added which give affected sources located outside of the Atlanta 1-hour ozone nonattainment area until January 1, 2001, to comply with the rule.

Rule 391–3–1–.02(2)(mmm) relating to " NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity" is being amended to remove an exemption from the rule. The exemption, "Stationary engines used exclusively in the handling and distribution of natural gas," is being removed. Stationary engines used to pump, compress, or liquefy natural gas are still exempt under another exemption which exempts engines not connected to an electrical generator. Therefore, the removal of the exemption makes engines used to generate electricity at natural gas pumping, compression, or liquefaction plants subject to the rule consistent with other industries.

Rule 391–3–1–.03(8)(c)(15) relating to "Additional Provisions for Electrical Generating Units Located in Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Nonattainment Area" is being added. "Electrical generating unit" is defined as a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system that serves a generator which produces electricity for sale. Any new electrical generating unit located at a "major source" (which is defined as any source which has the potential to emit at least 100 tons per year NO_X) or any physical change or change in the method of operation of an existing electrical generating unit located at an existing major source which results in a net increase of 40 tons or more NO_X is subject to additional permitting requirements. This rule is applicable to electrical generating units at major sources located in 26 counties surrounding the 13 county Atlanta nonattainment area and the six counties subject to Rule 391–3–1–.03(8)(c)(14). Sources subject to this rule are required to use best achievable control technology (BACT) to control emissions and are required to obtain emission offsets at a ratio of 1.1 to 1. Sources located in the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Clarke, Dawson, Floyd, Gordon, Hall, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Monroe, Morgan, Newton, Oconee, Pickens, Pike, Polk, Putnam, Spalding, Troup, Upson, and Walton (32 county area) shall be subject to this rule.

Rule 391–3–1–.03(13) relating to "Emission Reduction Credits" is being amended. The purpose of this rule is to facilitate construction permitting for sources undertaking major modifications or new constructions in federally designated ozone nonattainment areas and areas contributing to ambient concentrations of ozone in nonattainment areas in the state of Georgia. The proposed amendments to this rule revise the eligibility requirements for major sources to make them consistent with corresponding changes that are being proposed for Rule 391–3–1–.03, Section (8); respond to comments received from EPA concerning applicability of its recently issued Economic Incentives Program to the Emission Reductions Credit Program; clarify the provisions for discounting of credits based on time banked; consolidate and move all definitions to the end of the rule; and strike a section referring to provisions of Rule 391–3–1–.03, Section (8).

Description of Major Revisions to Rules for Air Quality Submitted on July 31, 2000

Rule 391–3–1–.01, Definitions, subsection (nnnn) "Procedure for Testing and Monitoring Sources of Air Pollutants" is amended to reference a revised version of the Procedures for Testing and Monitoring Sources of Air Pollutants ("PTM") effective April 1, 2000, which includes changes to specific test methods and procedures and to include a new section describing compliance procedures and monitoring requirements for a new emission standard for large combustion turbines. These revisions have been reviewed and meet applicable requirements.

Rule 391–3–1–.02(2)(lll) relating to " NO_X Emissions from Fuel-Burning Equipment" is being amended to exempt fuel burning equipment brought on site by May 1, 1999, but which had not been installed or obtained an air quality permit under 391–3–1–.03(1) by May 1, 1999 and to provide an exemption for duct burners associated with combined cycle gas turbine systems. The original rule exempted existing boilers in their current locations because the cost of retrofitting existing boilers to comply with this rule was determined to be prohibitive. The rule was amended in January 2000, with an effective date of February 16, 2000, to exempt fuel burning equipment which had been permitted by May 1, 1999, even if the equipment was not yet installed and operational by that date. The intent was to grandfather such units because the permittee was likely to have contracted for a new boiler that could have not complied with the emission limit and incurred unrecoverable expense. Likewise, the intent in proposing this second amendment is to grandfather fuel burning equipment which had been purchased and brought on site, but which had not been installed nor made application sufficiently in time to obtain a permit by May 1, 1999. Another exemption is being added for duct burners associated with combined cycle gas turbine systems. These emission units will be subject to more stringent NO_X limits under Georgia Rule 391–3–1–.02(2)(nnn) or Georgia Rule 391–3–1–.03(8)(c) as part of the overall combined cycle system.

Rule 391–3–1–.02(2)(nnn) relating to " NO_X Emissions from Large Stationary Gas Turbines" is being amended. This rule will regulate NO_X emissions from new and existing stationary gas turbines greater than 25MW that are located in a 45 county area in and around Atlanta (i.e., the 13 county nonattainment area and the 32 county area adjacent to the nonattainment area). NO_X emissions from affected stationary gas turbines permitted before April 1, 2000 will be limited to not more than 30 parts per million (or 50 parts per million for the oil-fired unit) at 15 percent oxygen with a compliance date of May 1, 2003. NO_X emissions from affected stationary gas turbines permitted on or after April 1, 2000, will be limited to not more than 6 parts per million at 15 percent oxygen with a compliance requirement upon startup. The limits in this rule will apply during the period May 1 through September 30 of each year. New units subject to a NO_X limit under 391–3–1–.03(8)(c)14. or 15. would be exempt from this rule. For existing units, a provision was included in the rule allowing the owner/operator to petition the Director for a revision to the rule in case a source is unable to meet the 30 parts per million (or 50 parts per million for the oil-fired unit) through combustion modifications. A SIP submittal to EPA would be required to revise the rule.

Rule 391–3–1–.02(5) relating to "Open Burning" is being amended. The coverage of the rule is being expanded beyond the existing 13 county Atlanta 1-hour ozone nonattainment area to include the additional 32 county area. Subparagraph (a) is amended to add a "prescribed burning" and a "slash burning" exemption to the rule. Subparagraph (b) is reorganized to add clarity to the rule and is amended to add county specific restrictions for the six counties of Bartow, Carroll, Hall, Newton, Spalding, and Walton as well as the remaining 26 counties of the 32 county area. The six counties listed above will have the same restrictions as those in the Atlanta nonattainment area. The twenty-six remaining counties of the 32 county area will have the same restrictions as those in the Atlanta nonattainment area with the exception that "prescribed burning" is allowed in the twenty-six counties. Subparagraph (f) is added to include the definitions for "Prescribed Burning" and "Slash Burning."

Rule 391–3–1–.03(6)(h)3 relating to "SIP Permit Exemptions for Industrial Operations" is being amended. A new exemption from permitting for small feed mill or grain mill ovens and for surface coating drying ovens is being added.

Rule 391–3–1–.03(8) Permit Requirements is being amended. Provisions for internal offsets at a ratio of 1.3 to 1 to avoid New Source Review permitting requirements are being restored in paragraphs (c)(13)(iii) and (iv). These provisions will allow existing sources located within the Atlanta 1-hour ozone nonattainment area to avoid becoming subject to federal New Source Review permitting requirements by offsetting emission increases associated with modifications at a 1.3 to 1.0 ratio. See CAA section 182(c)8 Special Rule for Modifications of Sources Emitting Greater than 100 tons per year.

Rule 391–3–1–.03(11) relating to "Permit by Rule" is being amended. A typographical error in the citation of federal operating permit regulations is being corrected. The reference to 40 CFR 70.5(6)(f) is being replaced with the correct reference to 40 CFR 70.6(f).

III. Proposed Action

EPA is proposing to approve the revisions to Atlanta attainment demonstration as discussed above because they meet EPA and CAA requirements and provide reductions to meet the additional reductions identified as needed to support the attainment demonstration.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 16, 2000.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 00–32151 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 078–0031; FRL–6918–5]

Disapproval of Implementation Plans, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) concerning visible emission sources. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 17, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1135.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule proposed for disapproval with the date that it was adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule/Title	Adopted	Submitted
ADEQ	R18–2–702	General Provisions	11/13/93	07/15/98

On December 18, 1998, we determined that the rule submittal in Table 1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule R18–2–702 into the ADEQ portion of the Arizona SIP, as Rule R9–3–501, Visible Emissions: General, on April 23, 1982 (47 FR 17485).

C. What Are the Changes in the Submitted Rule?

- The rule was changed to apply only to existing sources.
- The opacity method was changed to EPA Method 9 to simplify EPA enforcement.
- An expired and therefore outdated exemption for certain copper smelters was removed.
- A procedure for calculating process weight rate was added to the rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

We evaluated this rule for enforceability and consistency with the CAA as amended in 1990, with 40 CFR 51, and with EPA's PM–10 policy. Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). The area regulated by the rule contains five counties that are PM–10 moderate nonattainment areas: Cochise County, Santa Cruz County, Gila County, Mohave County, and Yuma County. Therefore, the rule must meet the requirements of RACM/RACT. While the rule does not specifically establish PM–10 limits for a process, an opacity standard limits PM–10 emissions. We believe that a general 20% opacity standard is an important control level for PM–10 achievable with reasonably available control technology.

The guidance and policy documents that we used to define specific enforceability and SIP relaxation requirements includes the following:

- PM–10 Guideline Document, (EPA–452/R093–008).

B. Does the Rule Meet the Evaluation Criteria?

Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rule Deficiencies?

ADEQ Rule R18–2–702 contains the following deficiencies:

- The change of scope to apply only to existing sources without a replacement for new sources is a SIP relaxation. The opacity determination is an enforcement tool for both existing and new sources.
- The 40% opacity standard does not meet the requirements of RACM/RACT. A 20% opacity standard has been determined to be reasonably available across the country.
- The enforceability is limited by the discretion of the Director to relax the opacity standard if the source complies with the associated mass standard for the source. Relaxing the opacity standard below the RACM/RACT level does not meet the requirements of RACM/RACT.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect our current action but are recommended for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing a disapproval of the submitted PCAQCD Rule R18–2–702. If finalized, this action would retain the existing SIP rule in the SIP, including the 40% opacity limit which does not fulfill RACM/RACT. If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c).

We will accept comments from the public for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(A) and (B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 186(a) and 189(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 186(a)(1) and 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a

significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 30, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–32149 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–01–043–6991b; A–1–FRL–6918–6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance program. The intended effect of this action is to reduce motor vehicle emissions through identification of high emitting vehicles and require repair of these high emitters. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before January 17, 2001.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, One Congress Street, 11th floor, Boston, MA and Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. What action is EPA proposing today?
II. How can EPA propose approval of a draft plan?
III. What Rhode Island SIP revision is the topic of this action?
IV. What are the major items included in this state submittal?
V. What are the EPA requirements for approval of the Rhode Island inspection and maintenance program and how has the state addressed each?
VI. What emission reduction credit may Rhode Island assume in the interim until the EPA has information available to assign appropriate credit?
VII. What is EPA's proposed action on this submittal?
VIII. How can the public participate in this process?
IX. Administrative Requirements

I. What Action Is EPA Proposing Today?

We are proposing approval of the Rhode Island enhanced motor vehicle inspection and maintenance program SIP revision which was submitted in draft form on November 17, 2000.

II. How Can EPA Propose Approval of a Draft Plan?

EPA can propose approval of a SIP revision through a process called parallel processing. This process allows EPA to propose approval of a state SIP at the same time that the state is having its required public comment period. The public has the opportunity to review the State's proposed program, plus EPA's discussion in this notice of the non-regulatory program commitments Rhode Island must submit, for the purposes of commenting on this proposed SIP revision. If there are no substantive changes as a result of the state public hearing process, and if there are no substantive adverse comments in response to this notice that cause EPA to require changes in the program beyond the additions already discussed in this notice, EPA can go forward with a final rulemaking notice. If substantive changes are made or substantive adverse comments received that require a program change then EPA must repropose the revision for public comment.

III. What Rhode Island SIP Revision Is the Topic of This Action?

On November 17, 2000, Rhode Island Department of Environmental Management (DEM) submitted a draft revision to its SIP for motor vehicle inspection and maintenance. The revision will be the subject of a public hearing in Rhode Island on December 21, 2000. The SIP revision proposes to revise the Rhode Island SIP to add the enhanced motor vehicle inspection and maintenance program which is required by EPA's inspection and maintenance

regulation Title 40, Part 51—Subpart S—Requirements for Preparation, Adoption, and Submittal of Implementation Plans (I/M rule).

This approval will apply to the inspection and maintenance program which is now operating in the state and will not require any changes to the program beyond the non-regulatory program commitments described in the notice. The Rhode Island I/M program is operated statewide at licensed private garages which also perform required safety tests on vehicles. The test performed every two years on most vehicles is a 31 second dynamometer test. The test equipment is computerized and connected to a central computer. Enforcement is by windshield stickers, but will be changed to registration denial in January 2001.

IV. What Are the Major Items Included in This State Submittal?

The revision consists of a narrative description of the program, the Rhode Island Department of Environmental Management and Department of Motor Vehicles regulations, equipment and test specifications, legal authority, emission factor modeling, the vehicle inspection manual, the quality assurance and quality control plan, technician training information, and the technical proposal from Keating Technologies which includes a public awareness plan.

V. What Are the EPA Requirements for Approval of the Rhode Island Inspection and Maintenance Program and How Has the State Addressed Each?

We have reviewed the Rhode Island submittal to determine how it addresses all aspects of the Clean Air Act and EPA's I/M Rule. Below is a summary of how the Rhode Island submittal addresses each section of EPA's I/M rule:

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the Clean Air Act and 40 CFR 51.350(a) require all states in the Northeast Ozone Transport Region (OTR) which contain Metropolitan Statistical Areas (MSAs) or parts thereof with a population of 100,000 or more to implement an enhanced I/M program. Rhode Island is part of the OTR and contains the Providence-Pawtucket-Fall River CMSA or parts thereof with a population of 100,000 or more.

Before the EPA finding made on June 9, 1999 (64 FR 30911) that the 1-hour ozone standard was no longer applicable, the entire State of Rhode Island was also classified as a serious ozone nonattainment area. As such it was required to implement an enhanced I/M program per section 182(c)(3) of the CAA and 40 CFR 51.350(a)(2). On July 20, 2000 (65 FR 45181), EPA reinstated the applicability of the 1-hour ozone standard in all areas for which EPA had taken action determining that the standard no longer applied. The effective date of the reinstatement for Rhode Island is January 16, 2001, after which Rhode Island will once again be considered a serious ozone nonattainment area and again subject to the section 182(c) requirement to implement an enhanced I/M program.

Under the requirements of the Clean Air Act, all counties in Rhode Island are subject to I/M program requirements. The Rhode Island I/M regulation requires that the enhanced I/M program be implemented statewide. The I/M legislative authority Rhode Island General Law Chapter 31-38, Inspection of Motor Vehicles, and Chapter 31–47.1, Motor Vehicle Emissions Inspection Program, provide the legal authority to establish a statewide enhanced program. This part of the submittal meets the requirements of 40 CFR 51.350 of the federal I/M rule and is part of the basis for this proposed approval of the Rhode Island I/M SIP.

The federal I/M rule requires that the state program not terminate until it is no longer necessary. EPA interprets the federal rule as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The Rhode Island submittal does not address the length of time the program will be in effect. The program must continue past the attainment dates for all applicable nonattainment areas in Rhode Island. In the absence of a sunset date, EPA interprets the SIP submittal as requiring the I/M program to continue indefinitely, and proposes to approve the program on this basis. Once approved, this unlimited term of the program will be federally enforceable as a requirement of the SIP.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard is established using local characteristics, such as vehicle age mix and local fuel controls, and the following model I/M program parameters: Network type, start date, test frequency, model year, vehicle type coverage, exhaust emission test type, emission standards, emission control device inspection, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Rhode Island submittal the most current version was MOBILE5b. Areas shall meet the performance standard in 2002 for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas or areas in the Ozone Transport Region, the performance standard must be met for both nitrogen oxides (NO_X) and hydrocarbons (HC). This Rhode Island submittal must meet the enhanced I/M performance standard for HC and NO_X throughout the state.

The 15 percent rate of progress (ROP) plan for Rhode Island which was approved in the **Federal Register** on December 8, 1998 (63 FR 67594) does not rely on I/M emission credits to meet the required reduction. This allows Rhode Island to meet the low enhanced I/M performance standard pursuant to 40 CFR 51.351(g).

The Rhode Island submittal includes the following program design parameters:

Network type—Test and repair
Start date—2000
Test frequency—biennial
Model year/ vehicle type coverage—most recent 25 years, light and heavy duty, gasoline
Exhaust emission test type—transient
Emission standards—1.2 HC, 20.0 CO, 3.0 NO_X
Emission control device check—yes
Evaporative system function checks—gas cap only
Stringency (pre-1981 failure rate)—N/A
Waiver rate—3%
Compliance rate—96%
Evaluation date(s)—2002 and 2004

Rhode Island has submitted modeling demonstrations using the EPA computer model MOBILE5b showing that the low enhanced performance standard reductions will be met in 2002 with the proposed state program. This demonstration assumed a 96% compliance rate, 3% waiver rate, and 75% of IM 240 credits. (See Section VI below for a discussion on interim emission reduction credit.)

Rhode Island's modeling shows that the program will meet the "low enhanced I/M performance standard" for HC, and NO_X by 2002. This part of the submittal meets the requirements of

40 CFR 51.351 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program shall include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Clean Air Act and the federal I/M rule. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

Rhode Island has designed a test-and-repair network with dynamometer testing in a computer connected network. The program evaluation testing will consist of a NYTEST test conducted immediately after the RI2000 test on 350 randomly selected vehicles. In addition, annual remote sensing data from on-road testing will be compared with remote sensing data collected prior to the start of the program and for subsequent years to provide an alternative assessment method. EPA's regulations at 40 CFR 51.353 allow a state to submit a demonstration that a decentralized test-and-repair network achieves the level of credit, as compared to a centralized program, that a state is claiming for its program. Rhode Island is assembling data for a full demonstration of the efficacy of its test-and-repair network, some of which EPA has already received, and EPA is requiring Rhode Island to submit additional documentation before EPA finally approves this program. EPA is nevertheless prepared to propose full approval of Rhode Island's I/M program pending submittal of their demonstration. Rhode Island has submitted data concerning failure rate by model year upon which we will base our proposed approval and Rhode Island will be submitting data concerning actual waiver rates and station audit results which will be incorporated into the analysis before final approval. While absolute network effectiveness may not be known with this limited data, EPA believes that Rhode Island's network effectiveness demonstration meets the same standard applied to effectiveness demonstrations applied to other states under section 51.353. This element is part of the basis for proposed approval of the Rhode Island I/M SIP.

Adequate Tools and Resources—40 CFR 51.354

The federal I/M rule requires Rhode Island to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

Rhode Island has provided for a dedicated fund to provide the additional resources, in addition to the resources assigned to the existing safety program, needed to implement the program. A portion of the fee goes directly to the contractor ($13.00) and part of it goes to the state ($2.00) to support the program. Rhode Island submitted a breakdown of funds and full time employees for the Department of Motor Vehicles (DMV) and DEM to operate the program. These resources along with the contractor resources appear to be adequate to meet these needs. An annual budget estimate is included in Section 6 of the submittal. This part of the submittal meets the requirements of 40 CFR 51.354 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Rhode Island program provides biennial testing in a test-and-repair network. The test-and-repair structure of the program and approximately 350 test stations are expected to provide customer convenience. The contract specifies criteria to provide convenient locations throughout the state. Legal authority is provided in 31–47.1–3 of The General Laws of Rhode Island. The performance standard is achieved with this biennial format. This part of the submittal meets the requirements of 40 CFR 51.355 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a).

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions, including the percentage and number of vehicles to be impacted by the exemption. Such exemptions shall be accounted for in the analysis of the program's potential emission reduction.

The Rhode Island program tests light duty gasoline vehicles less than 25 years old. The mobile modeling contains a model year profile provided by the state for the Rhode Island vehicles included in the program. Legal authority is provided in Section 31–47.1–3 of the General Laws of Rhode Island and section 1.2, Applicability, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1. Exemptions are also specified in this regulation and have been addressed in the modeling. Rhode Island is not significantly impacted by vehicles outside the program area, since the Rhode Island program is implemented statewide and each surrounding state (*i.e.*, Connecticut and Massachusetts) is implementing a statewide enhanced I/M program. This part of the submittal meets the requirements of 40 CFR 51.356 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Federally owned vehicles operated in Rhode Island are required to meet the same requirements as Rhode Island registered vehicles. However, EPA is not requiring states to implement 40 CFR 51.356(a)(4) dealing with federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that this regulation be revised since it appears to grant states authority to regulate federal installations in circumstances where the federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. Therefore, for these reasons, EPA is not proposing approval or disapproval of the specific requirements which apply to federal facilities at this time.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA documents entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA–AA–EPSD–IM–93–1, dated April 1994 and "Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA–AA–RSPD–IM–96–2, dated July 1996.

Rhode Island will use the RI2000 test (BAR31 test with NYTEST equipment). Test procedures and standards are specified in: (1) Section 9 and Appendix A, Equipment and Test Specifications, of the November 17, 2000 SIP submittal; (2) section 1.4, Rhode Island Vehicle Inspection Program Procedures, and section 1.5, Emission Standards and Criteria, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1; and (3) Air Pollution Control Regulation No. 34, Rhode Island Motor Vehicle Inspection/Maintenance Program. This part of the submittal meets the requirements of 40 CFR 51.357 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The specifications for the computerized test equipment to be used in the program are included in Appendix A, Equipment and Test Specifications, of the November 17, 2000 SIP submittal. This part of the submittal meets the requirements of 40 CFR 51.358 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Rhode Island's November 17, 2000 SIP submittal includes provisions which describe and establish quality control measures for the emission measurement equipment, and record keeping requirements in Section 12, Quality Assurance/Quality Control, and Appendix I, QA/QC Plan. This part of the submittal meets the requirements of 40 CFR 51.359 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Rhode Island has chosen to allow cost waivers and compliance via diagnostic inspection. The Rhode Island waiver requirements are described in section 13 of the submittal and will require $450 plus CPI adjusted cost waiver. After January 1, 2001, $450 must be spent on appropriate repairs and the amount will subsequently be adjusted to account for CPI changes by January 1, 2004. Only repairs performed by a registered repair technician can be credited toward a waiver. Section 1.9 of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No.1 specifies waiver requirements including requirements that creditable cost of repairs shall not include costs covered by warranty or tampering reversal, and must be made by a Certified Inspection Repair Technician. The submittal assumes a maximum 3% waiver rate and a commitment to revise the SIP if it is exceeded. Rhode Island submitted these waiver provisions for the purpose of addressing the waiver provisions of EPA's I/M rule. This element of the submittal is part of the basis for proposed approval of the Rhode Island I/M SIP.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program, which was operating prior to passage of the 1990 Clean Air Act Amendments, and it can be demonstrated that the alternative has

been more effective than registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Section 14 of the submittal explains enforcement procedures for the program. Legal authority is contained Rhode Island General Law Chapter 31–47.1, Motor Vehicle Emissions Inspection Program. Registration denial will start January, 2001, and will be in effect before final EPA action on the I/M SIP is taken. The data base will be maintained by the contractor and tied in with the Department of Motor Vehicles database. Section 1.4.2, Registration, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No.1 specifies registration denial requirements starting January 1, 2001. Rhode Island used a 96% compliance rate for modeling purposes, but did not commit to this rate. The final submittal must have a commitment to maintain 96% compliance rate in practice. This part of the submittal meets the requirements of 40 CFR 51.361 of the federal I/M rule except for the absence of the commitment to maintain a 96% compliance rate in the program. This commitment must be submitted prior to final action by EPA.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The contract between the state and the program provider details the coordination of data between the workstation and DMV to enforce, audit and evaluate this requirement. However, the submittal does not address training, auditing, and oversight of the DMV functions of the enforcement program. This documentation must be submitted prior to final EPA action on the SIP. This part of the submittal meets the requirements of 40 CFR 51.362 of the federal I/M rule with the exception of DMV training, auditing, and oversight functions, which must be submitted prior to final action by EPA.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The quality assurance program is described in Section 12, Quality Assurance/Quality Control, and Appendix I, QA/QC Plan, of the submittal. This element of the submittal is part of the basis for proposed approval of the Rhode Island I/M SIP.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

Section 15 of the submittal, Enforcement—Program Manager, AIRS, and Inspectors, describes provisions for enforcement against stations and inspectors. Sufficient resources have been provided to enforce the program and are addressed in the resources section. The contractor may disconnect inspection stations from the computer system without a prior hearing if there is a problem with calibration or if the station is suspected of conducting improper inspections. The contract terms provide for penalties against the contractor. In addition, section 31–47.1–9 of the General Laws of Rhode Island provides for fines and civil penalties of up to $1,000 fine or imprisonment for up to 30 days or both for violations. This part of the submittal meets the requirements of 40 CFR 51.364 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The Rhode Island SIP provides a commitment to meet all of the data collection requirements and has listed all the required data which will be collected in Section 16, Data Collection, of the state submittal. Data collection for quality control is addressed in Appendix I, QA/QC plan, of the submittal. This part of the submittal meets the requirements of 40 CFR 51.365 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: Testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

Section 17 of the submittal addresses data analysis and reporting procedures and are supported in the contract. This part of the submittal meets all of the requirements of 40 CFR 51.366 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

Section 1.14, Authorization and Certification, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No.1 requires training and certification of inspectors. The contractor is required to train and test inspectors with the appropriate curriculum as specified in the federal I/M rule. The training manual and an example test are included in Appendix I, QA/QC Plan, of the submittal. This part of the submittal meets the requirements of 40 CFR 51.367 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs.

Section 19, Public Information and Consumer Protection, of the submittal and Section 3 of the contractor's RFP response contain a detailed public awareness plan for the 7 years of the contract. Consumer protection will be provided through the public awareness plan and a challenge test program. This part of the submittal meets the requirements of 40 CFR 51.368 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation, and a description of the repair technician training resources available in the community.

As described in Section 20, Improving Repair Effectiveness, of the submittal, Rhode Island will be providing subsidized mechanic training through a CMAQ grant, a diagnostic center, and a technician performance evaluation and monitoring system. This part of the submittal meets the requirements of 40 CFR 51.369 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Compliance with Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

EPA will adopt regulations to require submittal of this information by manufacturers to develop a database to support this requirement. The Rhode Island I/M SIP commits to ensuring compliance with EPA I/M recall rules when they are finalized. This part of the I/M rule will be reevaluated after EPA adopts the needed rule.

On-Road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area.

The Rhode Island SIP submittal describes an on-road testing program which is a requirement of the program contract. The on-road testing program meets the minimum testing requirements of the federal I/M rule.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The Rhode Island program started mandatory testing on January 1, 2000 in accordance with the terms of the contract. Although this is beyond the start date specified in EPA's I/M rule, that date has already passed and it is now impossible to start by that date. The program has now started and EPA believes it is appropriate to approve this currently operating program.

VI. What Emission Reduction Credit May Rhode Island Assume in the Interim Until the EPA Has Information Available To Assign Appropriate Credit?

Rhode Island and Massachusetts use the same testing equipment and testing cycle. Specifically the New York state test equipment (NYTEST), and the BAR31 test cycle. In EPA's supplementary proposed rule on the Massachusetts I/M SIP published on November 30, 1999 (64 FR 66829), EPA stated that there was no data available at the time to assign the exact emission reduction credit for the combination of test type and equipment that Massachusetts was implementing (*i.e.*, a 31 second transient test utilizing the BAR 31 trace and NYTEST equipment). We did state that, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates compliance with EPA's performance standard for a low enhanced program. This is also the case for Rhode Island. We also acknowledged that Massachusetts will conduct necessary comparison testing to determine the appropriate emission reduction for SIP credit using the combination of the BAR 31 transient trace with NYTEST equipment. Rhode Island will be able to utilize this same information to establish more accurate emission reduction credits for future SIP planning by Rhode Island.

Rhode Island is at this time using 75% of IM240 credit for future planning. Based on recent information on the NYTEST system, EPA believes this is a reasonable assumption. EPA has evaluated a test program which evaluated the difference in effectiveness between EPA's IM240 equipment and NYTEST equipment which is utilized by Rhode Island. This test program quantified the effectiveness of NYTEST and granted it 95% of the IM240 hydrocarbon (HC) reduction credit and 99% of the IM240 reduction credit for both carbon monoxide (CO) and nitrogen oxides (NO_X).

In November 25, 1996, EPA had quantified the BAR31 cycle currently run in Oregon (OR31) as receiving 90% of the IM240 HC credit and 95% of the IM240 CO and NO_X credit. Although the OR31 uses the same cycle as the RI2000 test, the OR31 employs IM240 equipment, which is more accurate than the BAR97 (NYTEST) equipment specified in the RI2000 test. Therefore, the credit afforded the RI2000 at this time needs to be slightly reduced to reflect this equipment discrepancy. The NYTEST equipment analysis taken in concert with the earlier information defining the relationship between OR31 and IM240 cycles results in the Agency agreeing, based on our best engineering judgment, that the level of credit Rhode Island is assuming (75% of IM240) from the I/M program for future air quality planning appears currently to be acceptable. Therefore, EPA is proposing to approve this interim level of credit for planning purposes.

Once the comparison study results are available from the Massachusetts study, EPA will establish appropriate credit for the BAR31 test done on NYTEST equipment. If the emission reduction credits assigned do not meet or exceed

the credit assumed by Rhode Island, Rhode Island and EPA will take appropriate action to correct any SIP shortfall in any SIP demonstrations that may rely on credit from the I/M program.

VII. What Is EPA's Proposed Action on This Submittal?

EPA's review of this material indicates that with the exception of three nonregulatory items, the submittal addresses the requirements of the I/M rule. EPA is proposing to approve the Rhode Island SIP revision for enhanced motor vehicle inspection and maintenance, which was submitted on November 17, 2000. Prior to EPA taking final action, however, Rhode Island must include in its final submittal: (1) A commitment to maintain a 96% compliance rate (or revise the SIP accordingly), (2) the appropriate enforcement oversight provisions for the DMV, and 3) a demonstration of the performance of its test-and-repair network. Additionally, we are also proposing approval of an interim level of emission reduction credit for the inspection and maintenance program that can be utilized by Rhode Island for SIP planning. If the state fails to submit the required items in its final SIP submittal, EPA proposes to grant only a limited approval of the program. In this case, the I/M SIP would be approved as a SIP strengthening measure, and not approved as meeting the CAA requirements for an enhanced I/M program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VIII. How Can the Public Participate in This Process?

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA-New England office listed in the *Addresses* section of this notice.

Interested parties are encouraged to participate in the concurrent state process by presenting oral or written testimony at Rhode Island's December 21, 2000 public hearing, at 10 am in Conference Room "C" at One Capitol Hill, Providence, RI. Written comments will be accepted until 12 noon on December 22, 2000 at Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

IX Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as addressing Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 12, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

[FR Doc. 00–32236 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6919–1]

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources for Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to amend final rules.

SUMMARY: Section 129 of the Clean Air Act (CAA) directs us to develop new source performance standards (NSPS) and emission guidelines (EG) for municipal waste combustors (MWC). The final NSPS and EG limit periods of startup, shutdown, or malfunction to 3 hours per occurrence. Recently, it has come to our attention that there are a few types of malfunction which require shutdown, but, because of the nature of the malfunction and ensuing safety concerns, require longer than 3 hours for shutdown of the MWC. This notice announces our intent to amend the NSPS and EG for large MWC to provide regulatory relief from this 3-hour limitation for shutdowns due to these types of malfunction.

ADDRESSES: Dockets No. A–90–45 and A–89–08 contain the supporting information for development of NSPS and EG for large MWC and are available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. These dockets are available at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5251, electronic mail address: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION: Section 129 of the CAA requires us to develop NSPS and EG for several categories of solid waste incinerators, one of which is MWC. On December 19, 1995, we promulgated final NSPS and EG for large MWC (60 FR 65387). These NSPS and EG contain a provision requiring large MWC to comply with the standards (*i.e.,* emission limits) at all times, except during periods of startup, shutdown, and malfunction. Periods of startup, shutdown, and malfunction, however, are limited to 3 hours per occurrence. If it takes longer than 3 hours to startup or shutdown, or if a malfunction continues for longer than 3 hours, a large MWC is required to comply with the standards during that period of startup, shutdown, or malfunction which exceeds 3 hours.

Recently, it has come to our attention that there are a few types of malfunction which require shutdown, but, because of the nature of the malfunction and the ensuing safety concerns, require longer than 3 hours to shutdown the MWC. For the most part, this does not present a problem; proper operation of the emission control systems permit the MWC to maintain compliance with the emission limits, with one exception. This exception is the emission limit for carbon monoxide (CO).

Operating experience has identified three types of malfunction which require shutdown, but which require in excess of 3 hours for shutdown, during which it is not possible to comply with the emission limit for CO. The first is waterwall boiler tube failure, the second is loss of a combustion air fan, and the third is combustion grate failure.

These three types of malfunction lead to increased CO emissions. However, attempting to shutdown an MWC rapidly in these situations can present a risk of explosion which, in the extreme, could result in serious injury or even death of plant personnel. To avoid this risk, more than 3 hours is needed to safely shutdown the MWC under these situations.

The purpose of today's notice is to announce that we intend to amend the NSPS and EG for large MWC to provide regulatory relief from compliance with the CO emission limit during these types of malfunction and shutdown. While we intend to proceed quickly with adopting such amendments, we believe it is appropriate to announce our intent in advance.

Dated: December 13, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–32237 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–428]

Federal–State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission seeks comment on the narrow issue of whether to continue to apply certain sections of the Commission's rules to transfers of telephone exchanges between non-rural carriers following the phase-down of the interim hold-harmless support.

DATES: Comments are due on or before January 17, 2001, and reply comments are due on or before February 1, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on December 8, 2000. This is a companion to the Commission's Thirteenth Report and Order in CC Docket No. 96–45 also released December 8, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek comment on the narrow issue of whether to continue to apply § 54.305 of the Commission's rules to transfers of telephone exchanges between non-rural carriers following the phase-down of interim hold-harmless support for non-rural carriers, as provided for in the Commission's companion Thirteenth Report and Order in CC Docket No. 96–45 released on December 8, 2000. Section 54.305 requires a carrier that acquires an exchange to step into the seller's shoes for universal service support purposes. The Commission adopted the rule in 1997 as a stopgap measure to prevent carriers receiving support based on the size of their study areas and embedded costs from "placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges[.]" Because all non-rural carriers will receive support based on forward-looking economic costs following the phase-down of interim hold-harmless support, we believe that the need for § 54.305 would no longer exist with regard to transfers between non-rural carriers once the phase-down is complete.

II. Further Notice of Proposed Rulemaking

2. Following the phase-down of interim hold-harmless support, all non-rural carriers will receive high-cost support based on the forward-looking economic costs of operating a given exchange. As a result, "the level of support will not be a primary factor in a [non-rural] carrier's decision to purchase exchanges because the carrier's support will not be based on the size of the study area nor embedded costs." We believe this rule change is necessary regardless of the outcome of the current Federal–State Joint Board on Universal Service examination of the

Rural Task Force Recommendation on § 54.305, because application of § 54.305 to transfers between non-rural carriers may impede operation of the forward-looking mechanism by preventing calculation of the forward-looking economic costs of operating a transferred exchange on an ongoing, quarterly basis. We, therefore, seek comment on whether to amend § 54.305 of our rules so that it does not apply to transfers of exchanges between non-rural carriers following the phase-down of interim hold-harmless support.

III. Procedural Matters

a. Regulatory Flexibility Act Certifications—Final and Initial

3. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of proposed policies and rules, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in Standard Industrial Classification Code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

4. We conclude that an IRFA is not required here. The foregoing Further Notice of Proposed Rulemaking proposes a rule change. The proposed rules affect the amount of high-cost support provided to non-rural carriers. Non-rural carriers generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. Thus, the rules proposed here do not affect a substantial number of small entities. Therefore, we certify, pursuant to section 605(b) of the RFA, that the rule change proposed in the Further Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Further Notice of Proposed Rulemaking and of this certification to the Chief Counsel for Advocacy of the SBA. In addition, this certification will be published in the **Federal Register**. The Commission will send a copy of this Further Notice of Proposed Rulemaking, including a copy of this certification, in a report to Congress pursuant to the SBREFA.

b. Paperwork Reduction Act

5. The instant Further Notice of Proposed Rulemaking proposes no information collections.

c. Comment Filing Procedure

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 17, 2001, and reply comments on or before February 1, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. In addition, parties who choose to file by paper must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

IV. Ordering Clauses

21. Pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking is adopted and comments are requested as described.

22. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Further Notice of Proposed Rulemaking, including the Regulatory Flexibility Act Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–32072 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2791, MM Docket No. 00–246, RM–9859]

Digital Television Broadcast Service; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KRTV Communications, Inc., licensee of station KRTV(TV), NTSC Channel 3, Great Falls, Montana, requesting the substitution of DTV Channel 7 for its assigned DTV Channel 44. DTV Channel 7 can be allotted to Great Falls, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 47–32–09 N and 111–17–02 W. However, since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel 7 to Great Falls with a power of 160 (kW) and a height average terrain (HAAT) of 180 meters.

DATES: Comments must be filed on or before February 5, 2001, and reply comments on or before February 20, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802 (Counsel for KRTV Communications, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–246, adopted December 14, 2000, and released December 15, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana is amended by removing DTV Channel 44 and adding DTV Channel 7 at Great Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–32133 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2603, MM Docket No. 00–6, RM–9791, RM–9890]

Radio Broadcasting Services; McCook, Alliance, Imperial, NE, Limon, Parker, Aspen, Avon, Westcliffe, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, in response to the counterproposal of The Meadowlark Group, permittee of Station KAVD(FM), Limon, CO, requesting the substitution of Channel 276C for Channel 276C1, its reallotment to Parker, CO, as the community's first local aural service, and the modification of Station KAVD's permit accordingly, issues an Order to Show Cause to Halstead Communications, licensee of Station KPNY, Channel 271C1, Alliance, NE, as to why its license should not be modified to specify operation on Channel 263C1 and to Imperial Media Association, permittee of a new station on Channel 275C, Imperial, NE, as to why its permit should not be modified to specify operation on Channel 271C. The counterproposal was filed in response to the proposed allotment of Channel 271C1 to McCook, NE. *See* 65 FR 4798, February 1, 2000.

DATES: Comments must be filed on or before January 8, 2001, and reply comments must be filed on or before January 23, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The Commission proposes the following channel changes to accommodate the allotment of Channel 276C to Parker, CO, at coordinates 39–26–08 NL; 104–02–05 WL, or alternatively, to Limon, CO, at coordinates 39–25–27 NL; 104–00–38 WL: (1) The substitution of Channel 249C2 for Channel 276C2 at Avon, CO, at coordinates 39–37–52 NL; 106–27–42 WL, and modify the license of Station KZYR; (2) substitute Channel 276C3 for Channel 249C3 at Aspen, CO, at coordinates 39–13–33 NL; 106–50–00 WL, and modify the license of Station KSPN–FM; (3) substitute Channel 227A for vacant Channel 276A at Westcliffe, CO, at coordinates 38–04–28 NL; 105–32–13 WL; (4) substitute Channel 263C1 for Channel 271C1 at Alliance, NE, at coordinates 42–07–01 NL; 103–07–09 WL, and modify the license of Station KPNY; (5) substitute Channel 271C for Channel 275C at Imperial, NE, at coordinates 40–45–31 NL; 101–54–32 WL, and modify the construction permit of Imperial Media Association (BPH–19970924ML); allot Channel 275C1 to McCook, NE, at coordinates 40–12–00 NL; 100–51–25 WL. This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 00–6, adopted November 8, 2000, and released November 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 276C3 and removing Channel 249C3 at Aspen, adding Channel 249C2 and removing Channel 276C2 at Avon, adding Channel 227A and removing Channel 276A at Westcliffe, adding Channel 276C and removing Channel 276C1 at Limon. Alternatively, remove Channel 276C1 at Limon and add Parker, Channel 276C.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Channel 263C1 and removing Channel 271C1 at Alliance, adding Channel 275C1 at McCook, and by adding Channel 271C and removing Channel 275C at Imperial.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–31311 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 392 and 393

[FMCSA Docket No. FMCSA–97–2289]

RIN 2126–AA27

Development of a North American Standard for Protection Against Shifting and Falling Cargo

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to revise the regulations concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) engaged in interstate commerce. We would issue new cargo securement standards based on the North American Cargo Securement Standard Model Regulations, reflecting: The results of a multi-year comprehensive research program to evaluate current U.S. and Canadian cargo securement regulations; the motor carrier industry's best practices; and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. Generally, the proposed revision would require motor carriers to change the way they use cargo securement devices to prevent certain articles from shifting on or within, or falling from CMVs. In some instances, the proposed changes could require motor carriers to increase the number of tiedown devices used to secure certain types of cargoes. The intent of this rulemaking is to reduce the number of accidents caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian, and Mexican cargo securement regulations.

DATES: You must submit comments on or before March 19, 2001.

ADDRESSES: You can mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit your comments electronically at *http://dms.dot.gov*. We can view the NPRM and all items in the docket at that same internet address. You should include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments in the Docket Management System (DMS) from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to be notified that we received your comments please include a self-addressed, stamped envelope or postcard, or print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–1790; or Mr. Charles E. Medalen, Office of the Chief Counsel, MC–CC, (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1993, the House of Representatives held a hearing concerning the adequacy of Federal regulations on cargo securement, as well as the enforcement of those regulations ("Truck Cargo Securement Regulations and Enforcement, 1993: Hearing Before the Subcommittee on Investigations and Oversight of the House of Representatives' Committee on Public Works and Transportation," 103rd Cong., 1st Sess. 32 (1993)) . The report of the July 1993 hearing is included in the public docket. The hearing was prompted by several cargo securement accidents that occurred in New York between 1990 and 1993. During the hearing, the Federal Highway Administrator stated that the Ontario Ministry of Transportation had requested that the FHWA review a proposal prepared on behalf of the Canadian Council of Motor Transport Administrators (CCMTA)—a non-profit association of senior officials from Federal, Provincial, and Territorial departments and agencies responsible for the administration, regulation, and control of motor vehicle transportation and highway safety—for a research program to evaluate cargo securement regulations and industry practices. The Administrator informed the subcommittee that the FHWA would participate in the research effort and consider incorporating the results of the research into the Federal Motor Carrier Safety Regulations (FMCSRs).

A cargo securement research working group was organized by the CCMTA and the Ontario Ministry of Transportation to discuss the research methodology with industry groups and Federal, State, and Provincial governments in the United States and Canada. The working group, which included representatives from the FHWA, Transport Canada (the Federal department responsible for developing and enforcing the regulatory aspects of motor vehicle and motor carrier safety in Canada), the CCMTA, the Commercial Vehicle Safety Alliance (CVSA), several States and Provinces, and U.S. and Canadian industry, held its first meeting August 16–17, 1993. A report identifying the cargo securement issues to be examined through the research program and describing the selected research methodology was published by the Ontario Ministry of Transportation in November of 1993. A copy of the minutes of the first meeting and a copy of the report entitled "A Proposal for Research to Provide a Technical Basis for a Revised National Standard on Load Security for Heavy Trucks" are included in the public docket.

Discussion of the Research Project

The North American Load Security Research Project was initiated to develop an understanding of the mechanics of cargo securement on heavy trucks. The research was intended to provide a sound technical basis for development of the North American Cargo Securement Standard Model Regulations. Tests were conducted to examine the fundamental issues of anchor points, tiedowns, blocking and friction, and issues related to securement of dressed lumber (representative of cargoes that are loaded lengthwise on a vehicle and secured with transverse tiedowns), large metal coils, concrete pipe, intermodal containers, and other commodities. The research is documented in the following reports:

1. "Experimental Evaluation of Friction Coefficients of Typical Loads and Trailer Decks Under Vertical Vibration, North American Load Security Research Project, Report 2," Canadian Council of Motor Transport Administrators, 1997.
2. "Slippage Tests with Anti-skid Mats, North American Load Security Research Project, Report 3," Canadian Council of Motor Transport Administrators, 1997.
3. "Dressed Lumber Tiedown Tests, North American Load Security Research Project, Report 4," Canadian Council of Motor Transport Administrators, 1997.
4. "Effect of Cargo and Tiedown Characteristics on Equalization of Tension in the Spans of Tiedowns, North American Load Security Research Project, Report 5," Canadian Council of Motor Transport Administrators, 1997.
5. "Effect of Binder Type and Chain Length on Tension in Chain Tiedowns, North American Load Security Research Project, Report 6," Canadian Council of Motor Transport Administrators, 1997.
6. "Friction Coefficients Between Typical Cargo and Truck Decks, North American Load Security Research Project, Report 7," Canadian Council of Motor Transport Administrators, 1997.
7. "Load Capacity of Nailed Wood Blocking, North American Load Security Research Project, Report 8," Canadian Council of Motor Transport Administrators, 1997.
8. "Effect of Cargo Movement on Tension in Tiedowns, North American Load Security Research Project, Report 9," Canadian Council of Motor Transport Administrators, 1997.
9. "Evaluation of the Strength and Failure Modes of Heavy Truck Cargo Anchor Points, North American Load Security Research Project, Report 10," Canadian Council of Motor Transport Administrators, 1997.
10. "Tests on Methods of Securement for Thick Metal Plate, North American Load Security Research Project, Report 11," Canadian Council of Motor Transport Administrators, 1997.
11. "Tests on Methods of Securement of Large Boulders, North American Load Security Research Project, Report 12," Canadian Council of Motor Transport Administrators, 1997.
12. Bending Strength of Trailer Stakes, North American Load Security Research Project, Report 13, Canadian Council of Motor Transport Administrators, 1997.
13. "Effect of Tiedowns on Wood Blocks Used as Dunnage, North American Load Security Research Project, Report 14," Canadian Council of Motor Transport Administrators, 1997.
14. "Tests on Methods of Securement for Metal Coils, North American Load Security Research Project, Report 15," Canadian Council of Motor Transport Administrators, 1997.
15. "Tests on Methods of Securement for ISO Containers, North American Load Security Research Project, Report 15," Canadian Council of Motor Transport Administrators, 1997.
16. "Analysis of Heavy Truck Cargo Anchor Points, North American Load Security Research Project, Report 16," Canadian Council of Motor Transport Administrators, 1997.
17. "North American Load Security Research Project Summary Report, North American Load Security Research Project, Report 18," Canadian Council of Motor Transport Administrators, 1997.
18. "Assessing a Securement Method for the Transportation of Heavy Machinery Using a Combination of Highway Vehicles, North American Load Security Research Project, Report 19," Canadian Council of Motor Transport Administrators, 1997.

A copy of each of the reports listed above is in the public docket. Copies of these reports may be purchased from the CCMTA, 2323 St. Laurent Boulevard, Ottawa, Ontario K1G 4J8. The telephone number for the CCMTA is 613–736–1003; the web site address is *http://www.ccmta.ca*.

There were a number of important findings, conclusions, and recommendations discussed by the researchers. The following is a summary of three of the major concerns discussed by the authors and how they apply to the transportation of a wide range of commodities.

Anchor Points

The researchers believe the results of their work indicate that vehicles used to transport heavy articles, such as metal coils, should be equipped with anchor points designed for the load. The anchor points on CMVs should be provided with a load-rating based on the manufacturer's analysis of the possible directions that the applied forces will act on the anchor point.

Tiedowns

The researchers observed that tiedowns either resist applied forces, or increase friction between the cargo and the vehicle deck. The researchers believe that if more attention is focused on other means of cargo securement (i.e., blocking and bracing, etc.) it may be possible to improve current cargo securement methods without any change to the tiedown requirements. The authors indicated that the current requirement for aggregate working load limits may be adequate for general commodities secured by transverse tiedowns, but other cases may require a different tiedown capacity depending on the other securement provided.

Friction

The researchers concluded that friction is the principal factor that keeps most cargo from shifting, so its role should be formally recognized. Trailer decks, and cargo handling equipment like skids used during transportation, should be designed with high coefficients of friction. Rubber mats appear to increase the coefficient of friction beyond 0.5 for many combinations of cargo and deck, and the use of these mats should be encouraged. However, friction should never be the sole means of cargo securement.

Use of Research Results

As various portions of the research were completed, the results were provided to the Standard Drafting Group which was responsible for leading the effort at drafting the North American Model Regulations. Almost all of the research was completed by late 1997, with a few remaining items completed in 1998. The drafting group was responsible for reviewing the draft research reports to determine how the information could best be used to improve specific cargo securement requirements in the U.S., Canada, and Mexico.

Process for Development of the North American Model Regulations

The Standard Drafting Group developed the outline for the model regulations with most of the detailed performance criteria added as the research reports were completed. Membership in the drafting group included representatives from the FHWA, Transport Canada, CCMTA, the Ontario Ministry of Transportation, Quebec Ministry of Transportation—Ontario and Quebec conducted most of the research—and the CVSA. The CVSA was included in the drafting group because it is an organization of Federal, State, and Provincial government agencies and representatives from private industry in the United States, Canada, and Mexico dedicated to improvement of commercial vehicle safety. The membership of the drafting group was limited because there was an informal agreement among the interested parties that it would have been impractical to draft a technical document with a larger number of participants.

The process used for further developing this outline for the model regulations involved the North American Cargo Securement Harmonization Committee, a group which reviewed major portions of this outline as it was completed by the drafting group. Membership in the harmonization group was open to all interested parties in the U.S., Canada, and Mexico. This process was intended to ensure that all interested parties had an opportunity to participate in the development of the model regulations, and to identify and consider the concerns of the Federal, State, and Provincial governments, carriers, shippers, industry groups, and associations, as well as safety advocacy groups and the general public. The harmonization group held public meetings at locations in the United States and Canada, during which drafts

of the North American Cargo Securement Standard were presented for review and comment. Representatives of the CCMTA and the CVSA served as co-chairpersons for the harmonization group and organized the public meetings. The meetings held in the U.S. concerning the review of substantive material that would be included in the model regulations were announced by the FHWA in the **Federal Register**. There were nine meetings held in the U.S. and Canada. Copies of the minutes from the meetings, including lists of the agencies, organizations and companies represented at the meetings, are in the public docket.

For individuals and groups unable to attend the meetings, the CCMTA posted information on the Internet. The Internet address is *http://www.ab.org/ccmta/ccmta.html*. Individuals and organizations with Internet electronic mail addresses were provided with the opportunity to have their names added to an electronic mailing list to receive information on the development of the standard.

After all interested parties were given the opportunity to comment and their concerns had been considered, the final version of the North American Cargo Securement Standard was published in May 1999 by the CCMTA. A copy of the standard is in the public docket. Federal, State, and Provincial governments throughout North America have now been encouraged to adopt it through their respective rulemaking processes.

Publication of Advance Notice of Proposed Rulemaking

On October 17, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) concerning the development of the North American Cargo Securement Standard Model Regulations (61 FR 54142). The agency requested comments on its consideration of a rulemaking to overhaul the Federal cargo securement regulations based on the research program described above and other published cargo-securement related research, such as Southern Illinois University's March 1995 report entitled "Analysis of Rules and Regulations for Steel Coil Truck Transport." A copy of this report is included in the public docket. The agency also requested comments on the process that would be used to develop the North American Cargo Securement Standard Model Regulations.

Discussion of Comments to the ANPRM

We analyzed 10 comments that we received in response to the ANPRM. The commenters were: Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); the CCMTA; CVSA; the Illinois Department of Transportation (IDOT); Insurance Corporation of British Columbia (ICBC); the International Brotherhood of Teamsters; Landstar Gemini (Landstar); the Truck Trailer Manufacturers Association (TTMA); and the Web Sling and Tiedown Association.

Generally, the commenters agreed with the agency's plan to participate in the research program to evaluate cargo securement systems, and the approach the agency described for developing the North American Cargo Securement Standard Model Regulations. However, some of the commenters expressed concerns about specific issues they believe were not discussed adequately in the research and standards development program described in the ANPRM.

General Comments

The Illinois Department of Transportation stated that the use of a diverse "drafting group" to develop guidelines and performance standards based upon current research appears to be a viable method of regulatory development. They asked that the standards be based on sound engineering principles. The output should be both user friendly and enforceable.

The CCMTA and CVSA indicated that they strongly support the agency's decision to use the research results to overhaul the Federal cargo securement regulations. Both organizations stated that they believe a uniform, performance-based cargo securement standard will not only improve highway safety, but also will provide equipment manufacturers and carriers with increased flexibility to meet the objectives of the standard.

The Web Sling and Tiedown Association indicated that it supports updating the current regulations to improve the safe transportation of cargo. The association believes that allowing industry to participate in the writing of standards will be beneficial both to the public and to industry.

Accident Data

The ATA and TTMA indicated that they believe the agency should review currently available accident data prior to making significant changes to the cargo securement regulations. They suggested that the agency should also conduct a study of accidents to learn from actual experience where improper loading has either caused or contributed to safety problems. Among their concerns were that the new rules not be burdensome with details for every type of cargo to be secured.

The TTMA pointed out that since accidents involving metal coils seemed to be the impetus for this rule, a rule for coils should precede this current NPRM. Then, if data supported a broader application of securement rules, at that time rules for other types of cargo should be implemented.

Securement of Intermodal Containers

Landstar believed the rules for securing intermodal cargo must be unambiguous. They recommended using integral pins on chassis, avoiding using cargo containers only secured by chains, straps, or other binders, and using integral locking devices.

Crashworthiness Standards for Cargo Securement Systems

The Advocates requested that the agency develop standards that would ensure that cargo remains inside or on the CMV during a collision or rollover, and accommodate a variety of crash types, especially rollovers and trailer detachment collisions.

FMCSA Response to Comments

The FMCSA believes the adoption of the North American Cargo Securement Standard Model Regulations would ensure that the FMCSRs concerning protection against shifting and falling cargo provide clear and objective guidelines to both motor carriers and enforcement officials on what is necessary to ensure safety and achieve compliance with the rules. At the same time, the rulemaking would ensure that the rules are technically sound. This rulemaking would close the gap between the letter and the purpose of the regulations, so that the intent of the rules is better expressed in the regulatory language.

On the issue of harmonization of the cargo securement regulations, the FMCSA agrees with the CCMTA and CVSA that there is a need to establish more uniform requirements among all the jurisdictions in North America and that the requirements should be based on engineering data and test results. There is no readily apparent reason why the cargo securement rules should vary significantly from jurisdiction to jurisdiction in North America. There may be differences in the exact wording, but there need not be substantial differences in what is required.

While the FMCSA agrees with commenters that the uniform regulations being considered should be performance-based, the agency believes

the rules must contain sufficient detail to be easily understood, used, and enforced. The rules should be performance-based to the greatest extent practicable, but must be written in a manner that ensures that motor carriers and enforcement officials will find the rules meaningful. The agency believes that its proposed adoption of the North American Cargo Securement Standard Model Regulations would accomplish this objective.

With regard to comments about the need to study accident data, the agency believes that it is always important to consider accident data in determining whether to initiate a rulemaking. However, it is not always necessary to have accident data to justify initiating a rulemaking to improve the technical adequacy of safety regulations and to expand the regulatory text to better explain what is required of motor carriers.

Currently available accident data indicates that shifting or falling cargo is a contributing factor in less than one percent of the accidents self-reported by motor carriers that typically complied with the agency's former accident reporting requirements under 49 CFR part 394.

Note: On February 2, 1993 (58 FR 6726), the FHWA published a final rule amending the FMCSRs by removing part 394, Notification and Reporting of Accidents. As a result of that rulemaking, motor carriers are no longer required to file accident reports (Form MCS 50–T, Form MCS 50–B) with the agency or to make notification of fatal accidents. The effective date for the final rule was March 4, 1993.

Although the data suggests that the occurrence of cargo securement-related accidents is low compared to some other contributing factors for CMV accidents, the fact that these accidents continue to happen is reason enough for the agency to consider taking action.

The TTMA is correct that a major factor prompting Federal, State and Provincial agencies to participate in the research and standard development effort is accidents involving metal coils transported on flat-bed or platform trailers. The FMCSA does not, however, believe this rulemaking should be limited to the development of requirements for the transportation of metal coils, while the adoption of rules covering other commodities is postponed indefinitely until the agency gathers accident statistics to support rulemaking for those commodities. Metal coils result in some of the most horrific cargo securement-related accidents, but they are not the only commodity associated with accidents. Some effort is required not only to reduce the occurrence of metal coils shifting on or within vehicles, but to ensure proper securement of other commodities that can cause an accident resulting in fatalities and serious injuries when they are not properly secured.

In response to the ATA's statement about the importance of determining whether accidents are the result of rules that are technically incorrect, or improper loading and securement practices, the agency believes the current regulations have served their purpose well. They have provided performance-based requirements that allow for flexibility in the means for securing cargo. However, the research reports listed above identify several issues for which the current regulations do not include adequate guidance on proper securement. For example, the current regulations do not specifically account for the role friction plays in keeping certain loads in place. As a result, some motor carriers focus almost exclusively on the tiedowns and not enough on actions to increase the level of friction between cargo, the load-carrying surfaces of the CMV, and the level of friction between articles being transported.

Another example is that the current regulations do not make a distinction between direct and indirect tiedowns. Despite concerns that some participants expressed in the public meetings there is a fundamental difference between direct and indirect tiedowns.

Note: A "direct tiedown" is one that is intended to provide direct resistance to potential shifting of an article being transported. A direct tiedown may be attached to an article and to an anchor point on the CMV, or it may be attached to an anchor point, go around or through an article, then be attached to another anchor point. An "indirect tiedown" is one that is intended to increase the pressure of an article or stack of articles on the CMV. An indirect tiedown is attached to the vehicle, runs directly over or through an article, then is attached to another anchor point on the other side of the article, and is tightened.

This difference should not be overlooked when determining the number of tiedowns needed for heavy loads such as metal coils and construction equipment. Under the current rules, motor carriers could secure loads in a manner that complies with the safety regulations, but would provide a relatively small safety factor. If the motor carrier overestimated the strength of its securement system by a slight amount, there would be an increased likelihood that the load would shift or fall from the vehicle. By taking into account the differences between direct and indirect tiedowns, the rules would increase the safety factor and further reduce the likelihood of a cargo securement-related accident.

The proposal would make the regulations easier to understand, use, and enforce. Through an improved understanding of what is necessary to prevent cargo from shifting on or within a CMV, or falling from a vehicle, motor carriers that experience these types of accidents may learn effective methods to prevent future occurrences. Regulations that provide greater detail in specifying what is required of motor carriers would also help enforcement officials who must determine whether motor carriers have satisfied the rules.

In response to Landstar's comments about the securement of intermodal containers, and a question raised by the TTMA on the same issue, the FMCSA believes this rulemaking will establish appropriate requirements for the transportation of intermodal cargo containers. The agency has long recognized safety concerns about the transportation of intermodal cargo containers on flatbed and lowboy trailers.

On August 23, 1993, the FHWA published an advance notice of proposed rulemaking, Parts and Accessories for Safe Operation; Intermodal Cargo containers. The ANPRM announced that the agency was considering changes to the rules concerning securement of cargo containers (58 FR 44485, FHWA Docket No. MC–93–24). At that time the FHWA noted that there were substantial differences between the regulatory requirements of the FMCSRs, several States' cargo securement regulations, and industry practices. Some cargo containers are transported on container chassis or other trailers with twist locks, while others are transported on flatbed trailers or lowboy trailers and secured with chains and straps. The former method complies with current Federal regulations while the latter appears to be a common practice that can be done safely and effectively provided certain guidelines are followed. The proposed rule would include requirements for both methods of transporting cargo containers.

In a separate document to be published at a later date, the FMCSA will terminate the rulemaking started on August 23, 1993. The agency has considered all of the comments submitted in response to the 1993 ANPRM and shared this information with other members of the drafting group responsible for writing the North American Cargo Securement Standard Model Regulations. The agency does not believe it is necessary to handle the

issue of intermodal cargo container securement separately from all other cargo securement issues. Since the research included an examination of the performance of tiedowns used to secure cargo containers to vehicles other than container chassis, the agency believes there is sufficient technical data to support the proposed requirement.

On the subject of crashworthiness standards for cargo securement systems raised by Advocates, the FMCSA believes it would be extraordinarily expensive, and probably impracticable, to require that all cargo securement systems be capable of keeping loads in place during moderate to severe collisions, rollover accidents, and trailer detachments. The cargo securement regulations were never intended to provide protection against shifting and falling cargo under such circumstances, and there is no evidence that a significant number of secondary injuries or fatalities are caused by the impact of cargo thrown from a CMV as the result of an accident, as opposed to the impact of the CMV itself with the roadway, nearby objects or other vehicles. Crashworthiness standards would probably require many vehicles to be withdrawn from service (in the absence of a grandfather clause) and would certainly require others to be redesigned or retrofitted with additional equipment. The agency believes that its safety objectives can be accomplished at far lower cost by developing regulations directed at collision avoidance (*i.e.*, ensuring the prevention of cargo movement which could contribute to the accident) instead of imposing heavy regulatory burdens to manage the outcome of the crash.

Discussion of Proposal

The FMCSA proposes these rules based upon the North American Cargo Securement Standard Model Regulations. The agency would replace its current cargo securement-related regulations under § 392.9, concerning driver inspection of cargo and cargo securement systems, and §§ 393.100 through 393.106 concerning cargo securement methods.

The agency also proposes to amend § 393.5 to adopt definitions of: Aggregate working load limit; anchor point; bell pipe concrete; blocking; bracing; direct tiedown; frame vehicle; friction mat; hook-lift container; indirect tiedown; integral securement system; longwood; rail vehicle; shortwood; sided vehicle; tiedown; tractor-pole trailer; void filler; well; and working load limit. The agency would adopt these definitions to ensure a common understanding of the terminology used in the regulations. The definitions would be based on those in the model regulations.

The FMCSA notes that there are numerous other definitions in the model regulations. However, the agency does not believe it is necessary to adopt many of those definitions because the terms are already defined in the FMCSRs, even though with slightly different wording.

Inspection of Cargo and Securement Devices

The FMCSA would revise § 392.9 to propose that drivers be required to inspect the cargo and the securement devices within the first 50 miles (80.4 kilometers). Currently, § 392.9 requires inspection within the first 25 miles (40.2 kilometers). The FMCSA believes research concerning the effects of vibration on cargo securement devices and changes in the tension of indirect tiedowns, suggests that conditions of the securement system which would require the driver to make readjustments are more likely to occur after the vehicle has been driven between 25 and 50 miles, rather than 0 to 25 miles. This is because traveling beyond 25 miles would subject the vehicle to more vibration and forces over a longer period of time. However, the agency believes the maximum distance the vehicle could be operated safely prior to the inspection of the tiedowns should not exceed 50 miles. All other requirements currently contained in § 392.9 would remain the same. The agency would rewrite the section by putting it into plain language, but is not proposing any other substantive changes.

Applicability of the Proposed Rules

The FMCSA proposes that § 393.100 establish the applicability for the cargo securement rules under subpart I of part 393. The applicability of the proposed rule would be the same as the existing rule, covering all cargo-carrying commercial motor vehicles (as defined in 49 CFR 390.5) operated in interstate commerce.

Performance Criteria

The agency would establish new performance requirements concerning the longitudinal, lateral, and vertical accelerations that cargo securement systems must withstand to satisfy the proposed rules. Acceleration is the rate at which the speed or velocity of an object increases and deceleration is the rate at which the velocity decreases. Accelerations are commonly reported as a proportion of the acceleration due to gravity (g). This acceleration is 9.81 meters/second/second (32.3 feet/second/second), which means that the velocity of an object dropped from a high elevation increases by 9.81 meters/second (32.3 feet/second). The FMCSA would require that cargo securement systems be capable of withstanding the following three forces, applied separately:

(1) 0.8 g deceleration in the forward direction;

(2) 0.5 g deceleration in the rearward direction; and

(3) 0.5 g acceleration in a lateral direction.

The values chosen are based on the researchers' analysis of previous studies concerning commercial motor vehicle performance. The analysis indicated that the highest deceleration likely for an empty or lightly loaded vehicle with an antilock brake system, all brakes properly adjusted, and warmed to provide optimal braking performance, is in the range of 0.8–0.85 g. However, a typical loaded vehicle would not be expected to achieve a deceleration greater than 0.6 g on a dry road.

The typical lateral acceleration while driving a curve or ramp at the posted advisory speed is in the range 0.05–0.17 g. Loaded vehicles with a high center of gravity roll over at a lateral acceleration above 0.35 g. Lightly loaded vehicles, or heavily loaded vehicles with a lower center of gravity, may withstand lateral acceleration forces greater than 0.50 g. The FMCSA believes the information presented by the researchers supports the use of the decelerations listed above and requests public comment on this issue.

Safe and Proper Working Condition for Tiedowns

The FMCSA would add new regulatory language requiring that all vehicle structures, systems, parts, and components used to secure cargo must be in proper working order. The agency would also prohibit the use of devices that have visible damage, including but not limited to, cracks, cuts, and deformation. Although these defects are not currently discussed in the FMCSRs, it is understood that the use of damaged tiedowns is a violation. The FMCSA would revise the rule to make it clear that this is a violation.

Standards for Tiedowns

The current FMCSRs incorporate by reference manufacturing standards for certain types of tiedowns including steel strapping, chain, synthetic webbing, wire rope, and cordage. The FMCSA would update its reference to the National Association of Chain Manufacturers' (NACM) Welded Steel Chain Specifications, June 15, 1990, edition to incorporate by reference the May 1, 1996 version. The agency notes that some of the working load limit values in the 1996 version differ slightly from those in the 1990 version. Also, the 1996 version includes working load limits for a new grade of alloy chain, grade 100. The FMCSA encourages commenters to compare the current table of working load limits in § 393.102 (b) with those in the proposed rule to determine if the different values presented in the 1996 version of the NACM publication would adversely affect their motor carrier operations or make it more difficult to comply with the FMCSRs.

Securement of Intermodal Containers and the Contents of Such Containers

The FMCSA proposes commodity-specific requirements which would apply to intermodal cargo containers. The agency is also proposing specific rules for metal coils transported in intermodal cargo containers. Although the agency does not believe the proposed rules would create difficulties for motor carriers or shippers offering loaded containers for transportation, the agency requests comments concerning actions motor carriers believe they would have to take to ensure compliance when transporting containers from foreign countries.

For example, § 392.9(a) requires drivers to assure themselves that cargo is properly distributed and adequately secured before operating a commercial motor vehicle. Section 392.9(b) requires drivers to examine the cargo and load-securing devices during the trip and make adjustments when necessary to maintain the security of the load. Section 392.9(b) provides an exception for driver's of sealed commercial motor vehicles who have been ordered not to open the vehicle to inspect its cargo, or to drivers of vehicles loaded in a manner that makes inspection of the cargo impracticable. The requirements of § 392.9 when combined with the explicit requirements concerning the securement of the contents inside intermodal containers would make it clear that each motor carrier and each driver must ensure that such loads are properly secured. Unless containers are sealed and motor carriers instructed not to open it for inspection of the cargo, the proposed rules would require an inspection of the loads inside containers. The FMCSA requests comments about motor carriers' ability to inspect the contents of the intermodal containers they typically transport. The FMCSA also requests comments on whether the cargo securement methods typically used by shippers of intermodal containers would comply with the proposed rules.

Direct Versus Indirect Tiedowns

The FMCSA would adopt the North American Cargo Securement Standard Model Regulations provision concerning direct and indirect tiedowns. The agency would continue to require that the aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. However, instead of determining the aggregate working load limit by simply adding up the working load limit of all the tiedowns being used, motor carriers would have to determine whether the tiedown is a direct or indirect tiedown, and make appropriate adjustments in the calculation. When direct tiedowns are used, the aggregate working load limit would be the sum of:

(1) One-half of the working load limit of each direct tiedown that is connected between the motor vehicle and the article or cargo; and

(2) The working load limit of each direct tiedown that is attached to the vehicle, passes through or around the cargo, or is attached to it, and again to the vehicle.

When indirect tiedowns are used, the aggregate working load limit of all indirect tiedowns would be the sum of the working load for each tiedown which goes from one part of the vehicle, over an article, to another part of the vehicle.

The FMCSA notes that this approach differs significantly from the current regulations, which do not distinguish between direct and indirect tiedowns. The agency believes the proposed change would require motor carriers to learn a new way of determining compliance with tiedown provision of the cargo securement rules. However, the change is not so great that it would be difficult to master the proposed rules. The agency requests comments on this issue.

Front End Structures on CMVs

Although the model regulations do not include a provision concerning front end structures (*i.e.*, headerboards) used as part of a cargo securement system, the FMCSA proposes to retain its current front-end structure rules for CMVs. The FMCSA would, however, revise its current rule (§ 393.106) by changing the applicability to cover CMVs transporting cargo that is in contact with the front-end structure of the vehicle. By contrast, the current rule establishes requirements for, and requires that vehicles be equipped with, front-end structures irrespective of whether the device is being used as part of a cargo securement system.

The current rules emphasize occupant protection rather than cargo securement. It is expected that cargo that is not braced against a front-end structure could shift forward, and the structure would prevent the load from penetrating the driver's compartment. While this concept may have merit for certain types of cargo, the FMCSA believes the best way to ensure driver safety is to have tougher standards to prevent the cargo from shifting forward. For example, if the vehicle is transporting metal coils, once the load begins to move forward, it is unlikely that a front-end structure would save the driver. The FMCSA requests comments on whether the agency should include revised front-end structure requirements in its cargo securement regulations.

Specific Securement Requirements by Commodity Type

The FMCSA would adopt detailed requirements for the securement of the following commodities: Logs; dressed lumber; metal coils; paper rolls; concrete pipe; intermodal containers; automobiles, light trucks and vans; heavy vehicles, equipment and machinery; flattened or crushed vehicles; roll-on/roll-off containers; and large boulders. During public meetings concerning the development of the model regulations, participants said that these commodities cause the most disagreement between industry and enforcement agencies as to what is required for proper securement.

The FMCSA notes that each of these commodities must be properly secured under the current performance-based cargo securement rules. However, with the exception of metal coils, there is no detailed guidance for motor carriers and enforcement officials. The agency believes that accidents may be prevented through the establishment of much more detailed rules that clearly spell out what is required to achieve the desired level of safety. The rules would eliminate confusion about what constitutes an acceptable cargo securement system.

Provisions of the Model Regulations That Are Not Being Adopted

Generally, the FMCSA would not adopt provisions of the model regulations that are inconsistent with the agency's approach to establishing performance-based rules. Two specific aspects of the model rules that were considered inconsistent are: (1) Requirements for specific types or grades of securement devices; and (2)

rules requiring tiedowns to be positioned at certain angles irrespective of the practicability of doing so.

Other Issues Under Consideration

There are a number of issues that were discussed during the development of the model regulations, and are included in the model regulations but are not included in the proposed rules. The FMCSA did not include proposed regulatory text concerning these issues because the agency does not believe there is sufficient accident data or information to adequately assess the costs and benefits at this time.

Prohibition on the Use of Unmarked Tiedowns

Among those issues, a prohibition on the use of unmarked tiedown devices was considered by participants in the harmonization group meetings. Many participants believe that it is important that all tiedown devices have a working load limit rating marked on the device, or some form of standardized marking which could be used to determine the working load limit. The FMCSA agrees with this principle.

The use of unmarked tiedowns would not be a cause for concern if all such tiedowns of the same size and general appearance were the same grade or strength. The FMCSA has no facts indicating that this is the case. While many manufacturers have some form of marking, others may choose, for whatever reason, not to mark their products. If unmarked tiedowns of varying grades are readily available, motor carriers could unknowingly violate the current rule and the proposed rule by failing to have an adequate number of securement devices. The consequences for a load such as metal coils could be fatal to other motorists.

The risks of such an accident could be greatly minimized by prohibiting motor carriers from using unmarked tiedowns. Before doing so, the FMCSA would have to quantify the potential economic burden on the motor carrier industry and those involved with the manufacture, sale, and distribution of unmarked securement devices. Since the FMCSA has no reliable information on the number of manufacturers, distributors, and retailers of unmarked tiedowns, the quality or strength of such devices, or the amount of these tiedowns currently in use by motor carriers and in retailers' stock, it would be inappropriate to propose a prohibition at this time. However, in view of the potential safety hazards of motor carriers misidentifying unmarked tiedowns, the FMCSA proposes that all unmarked welded steel chain be considered to have a working load limit equal to that of grade 30 proof coil, and other types of unmarked tiedowns be considered to have a working load limit equal to the lowest rating for that type in the table of working load limits. The FMCSA specifically requests comments on this issue.

Mandatory Rating and Marking of Anchor Points

Many of the participants in the harmonization group meetings believe it is important that anchor points on semitrailers and trailers be marked with a working load limit. Some believe that anchor points on certain semitrailers and trailers should be required to meet minimum strength requirements similar to Transport Canada's Canadian Motor Vehicle Safety Standard No. 905. While the FMCSA agrees with the principle of rating and marking anchor points, the agency does not believe it is appropriate to propose such requirements at this time. Although the TTMA has established a recommended practice, "RP 47–99, Testing, Rating, and Labeling Platform and Van Trailers for Cargo Securement Capability" June 1, 1999, concerning test procedures and general performance specifications for tiedown anchor points, front-end structures, and sidewall structures, the FMCSA does not have any information on the extent to which trailer manufacturers follow these recommendations. As the FMCSA gathers information about the extent to which manufacturers follow the recommended practices, the agency will consider incorporating by reference the TTMA's recommended practice. The agency would have to be certain that newly manufactured trailers satisfied the guidelines in the recommended practice and that motor carriers would not be prohibited from using suitable semitrailers and trailers solely on the basis that the vehicle lacked a rating and marking of the anchor points. Based on the anecdotal information available to date, the vast majority of cargo-securement related accidents do not involve problems with the anchor points. The majority of these accidents involve an inadequate number of tiedown devices, improper placement of the tiedowns, or other factors unrelated to the design or performance capability of the anchor points.

The agency requests comments on the marking and rating of anchor points and information from enforcement officials and others who are aware of accidents involving the failure of an anchor point.

Development of Training Program

The agencies and organizations participating in the North American Cargo Securement Program have established a Training and Education Committee responsible for developing a training package for motor carriers and enforcement officials to ensure that the model regulations now being considered for adoption throughout North America are understood by all affected parties. The training package would cover all of the requirements in the model regulations, and to some extent, best practices for securing cargo. The training materials would be used to help motor carriers better understand how to properly secure different types of cargo and to ensure they are aware of what is required. Enforcement officials could also use the training material to ensure that they have an understanding of the new requirements. It is anticipated that the training materials would be completed and available to the public from the FMCSA before the effective date of the final rule. The FMCSA would post publications on its website to assist individuals with Internet access. The FMCSA would also consider making copies of the training materials available through the U.S. Department of Commerce's National Technical Information Service.

Proposed Implementation Date

Depending on the comments received in response to this notice of proposed rulemaking, the FMCSA intends to publish a final rule in 2001 with an effective date as close as possible to July 1, 2001. This is the date that jurisdictions involved in the development of model regulations have agreed to use as a target for adoption of the new rules. The FMCSA believes this time frame is appropriate and would provide motor carriers and enforcement officials sufficient time to prepare for the transition from the current requirements to rules compatible with the model regulations. The agency requests comments on this issue.

Request for Comments

The FMCSA is requesting comments on all aspects of the proposed revision of the cargo securement regulations. Although the FMCSA's goal is to adopt most of the provisions in the North American Cargo Securement Standard Model Regulations, the agency does not intend to do so without considering all public comments. If the comments received indicate that certain portions of the proposal may need to be reconsidered or modified, the agency will take appropriate action. The agency is concerned first and foremost with improving its cargo securement regulations for the purpose of preventing accidents, injuries, and fatalities.

The FMCSA believes its safety objectives can be achieved while harmonizing its cargo securement regulations with those of Canada and Mexico. Commenters are encouraged to compare the North American Cargo Securement Standard Model Regulations with the proposed regulatory language, and the current regulations, and provide the agency with any information they believe is relevant to this issue.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. Although the agency preliminarily determined at the ANPRM stage that this rulemaking is significant under Department of Transportation policies and procedures, the agency has held a number of public meetings, completed a review of the comments submitted in response to the ANPRM, and now believes the rulemaking is not DOT-significant.

The FMCSA received 10 comments to the public docket. While each docket comment is important to the agency, this small number of comments does not suggest a level of public interest that would warrant a "significant" classification. Also, based on the information currently available, the cost to the motor carrier industry for compliance with the proposed rules, and the cost to the States for adopting and enforcing the new requirements would be far less than the $100,000,000 threshold used as one of the factors in determining the significance of a rulemaking.

This rule would require that motor carriers operating in interstate commerce comply with improved cargo securement regulations based on the following: (1) The results of a multi-year comprehensive research program to evaluate current U.S. and Canadian cargo securement regulations; (2) the motor carrier industry's best practices; and (3) recommendations presented during a series of public meetings. Generally, the proposed revision would require motor carriers to change the way cargo securement devices are used to prevent certain articles from shifting on or within, or falling from, CMVs, and how calculations are done. In some instances, the proposed changes would require motor carriers to increase the number of tiedown devices used to secure certain types of cargoes.

The agency believes the vast majority of motor carriers have a sufficient supply of tiedown devices on board their vehicles at all times. The proposal would allow motor carriers to continue using those tiedowns provided the devices meet the applicable manufacturing standards currently incorporated by reference in § 393.102 (b).

Most of the costs associated with this rulemaking are believed to be associated with the training of drivers, motor carrier employees responsible for loading CMVs, and enforcement officials to ensure that they understand the requirements being considered. The FMCSA believes the proposed rule concerning the distinction between direct and indirect tiedowns under § 393.106 is the only portion of the rulemaking that differs significantly from the technical concepts in the current rules and the best practices of the motor carrier industry, such that training may be desirable for some individuals. It is more likely than not that compliance with the remainder of the proposed regulations could be achieved with much less training than may be necessary to master § 393.106. This is because the commodity-specific rules have been drafted to enable the reader to use the rules as step-by-step instructions for securing the commodity being transported.

With regard to costs to the States to train inspectors, the agency is working with its State and Provincial partners to develop training materials that could be used to minimize the costs for the enforcement community and the motor carrier industry. For States participating in the Motor Carrier Safety Assistance Program (MCSAP), training costs are considered an eligible expense. This means the States could receive Federal funds to help cover the costs of training their roadside inspectors. Therefore, based upon the information above, the agency estimates that the economic impact associated with this rulemaking action would be minimal and a full regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined that this rule would affect a substantial number of small entities but would not have a significant impact on them.

Generally, the proposed revision would require motor carriers to change the way cargo securement devices are used to prevent certain articles from shifting on or within, or falling from CMVs. In some instances, the proposed changes would require motor carriers to increase the number of tiedown devices used to secure certain types of cargoes. However, the rulemaking would not require motor carriers to purchase new equipment.

The FMCSA believes the vast majority of motor carriers have a sufficient supply of tiedown devices on board their vehicles at all times. The agency believes the number of tiedowns on board and the strength of these devices are usually sufficient to secure whatever types of loads the motor carrier is transporting, or intends to transport. The cargo securement problems typically observed during roadside inspections of flatbed trailers are ones in which motor carriers do not use enough of the tiedowns that they already have on board their vehicles. In the case of van type trailers, the problem is that some motor carriers do not use any securement devices to prevent loads from shifting. Therefore, the FMCSA believes that motor carriers already have all the hardware they need to comply with the proposed changes. The challenge for motor carriers would be to learn how to properly use tiedown devices to further reduce the occurrence of cargo securement-related accidents.

Motor carriers are currently required to use tiedown devices that meet applicable manufacturing standards incorporated by reference in § 393.102(b). Under the proposed rulemaking, the agency would continue to require motor carriers to use only tiedown devices that meet manufacturing standards currently specified § 393.102(b). If the tiedowns are in safe and proper condition, and meet the applicable manufacturing standards, use of the devices would not be prohibited by this rulemaking.

As indicated above, additional costs could be associated with training of motor carrier employees responsible for loading CMVs, drivers, and enforcement officials to ensure that they understand the requirements being considered. The FMCSA believes the proposed rule concerning the distinction between direct and indirect tiedowns under § 393.106 is the only portion of the rulemaking that differs significantly from the technical concepts in the current rules and the best practices of the motor carrier industry, such that training may be desirable for some

individuals. It is more likely than not that compliance with the remainder of the proposed regulations could be achieved with much less training than may be necessary to master § 393.106. This is because the commodity-specific rules have been drafted to enable the reader to use the rules as step-by-step instructions for securing the commodity being transported.

For motor carriers that provide training for their drivers, the costs would vary with the number of hours for training, and the number of drivers being trained. At a minimum, training costs would include wages for the drivers. The FMCSA reviewed earnings information from the U.S. Department of Labor. The FMCSA used the "Occupational Outlook Handbook," 2000–01 Edition, Bulletin 2520. The median hourly earnings of drivers of light and heavy trucks were $11.67 in 1998. The middle 50 percent earned between $8.80 and $15.57 an hour. The lowest 10 percent earned less than $6.51 and the highest 10 percent earned more than $19.14 an hour.

If a motor carrier provided one hour of training for 10 drivers in the middle 50 percent, the cost would be $155.70 (10 drivers × $15.57 an hour per driver × 1 hour) In wages for the drivers to attend training, plus the cost for the instructor and course materials. If the training for the same group of drivers was expanded to four hours the cost would be $622.80 (10 drivers × $15.57 an hour per driver × 4 hours) in wages for the drivers to attend training, plus the cost for the instructor, and course materials. If the drivers earned $20 an hour, the costs for the group of drivers to attend class for 4 hours would be $800. These examples indicate how the costs per motor carrier could vary greatly depending on the number of drivers to be trained, and the amount of training required.

The FMCSA cannot determine at this time the amount of training drivers and other motor carrier employees may need. However, the agency estimates that for a small entity employing 10 drivers the costs would not exceed $1,000 ($800 for drivers' wages + $200 for the instructor and course materials). The agency believes the economic impact on such motor carriers of these training costs would be minimal. The agency requests comments on this issue.

Accordingly, the FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this rulemaking does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This final rule does not impose additional costs or burdens on the States.

List of Subjects

49 CFR Part 392

Highway safety, Motor carriers.

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 392—[AMENDED]

1. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31502; and 49 CFR 1.73.

2. Section 392.9 is revised to read as follows:

§ 392.9 Inspection of cargo, cargo securement devices and systems.

(a) *General.* A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100 through 393.142 of this subchapter.

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo are secured; and

(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides, interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) *Drivers of trucks and truck tractors.* Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle's cargo and its load securement devices periodically during the course of transportation and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle. A periodic reexamination and any necessary adjustments must be made—

(i) When the driver makes a change of his/her duty status; or

(ii) After the commercial motor vehicle has been driven for 3 hours; or

(iii) After the commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

PART 393—[AMENDED]

3. Revise the authority citation for part 393 to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

4. Amend § 393.5 to add the following definitions in alphabetical order:

§ 393.5 Definitions.

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Aggregate working load limit. The summation of the working load limits or restraining capacity of all devices used to secure an article on a vehicle.

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Anchor point. Part of the structure, fitting or attachment on a vehicle or cargo to which a tiedown is attached.

* * * * *

Bell pipe concrete. Pipe whose flanged end is of larger diameter than its barrel.

Blocking. A structure, device or another substantial article placed against or around an article to prevent horizontal movement of the article.

Bracing. A structure, device, or another substantial article placed against an article to prevent it from tipping, that may also prevent it from shifting.

* * * * *

Direct tiedown. A tiedown that is intended to provide direct resistance to potential shift of an article.

* * * * *

Frame vehicle. A vehicle with skeletal structure fitted with one or more bunk units for transporting logs. A bunk unit consists of a U-shaped front and rear bunks that together cradle logs. The bunks are welded, gusseted or otherwise firmly fastened to the vehicle's main beams, and are an integral part of the vehicle.

Friction mat. A device placed between the deck of a vehicle and cargo, or between articles of cargo, intended to provide greater friction than exists naturally between these surfaces.

* * * * *

g. The acceleration due to gravity, 32.2 ft/sec^2 (9.823 m/sec^2).

* * * * *

Hook-lift container. A specialized container, primarily used to contain and transport materials in the waste, recycling, construction/demolition and scrap industries, which is used in conjunction with specialized vehicles, in which the container is loaded and unloaded onto a tilt frame body by an articulating hook-arm.

* * * * *

Indirect tiedown. A tiedown whose tension is intended to increase the pressure of an article or stack of articles on the deck of the vehicle.

Integral securement system. A system on certain roll-on/roll-off containers and hook-lift containers and their related transport vehicles in which compatible front and rear hold down devices are mated to provide securement of the complete vehicle and its cargo.

* * * * *

Longwood. All logs that are not shortwood, i.e., are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

* * * * *

Rail vehicle. A vehicle whose skeletal structure is fitted with stakes at the front and rear to contain logs loaded crosswise.

* * * * *

Shortwood. All logs typically up to 4.9 m (16 feet) long. Such logs are often described as cut-up logs, cut-to-length logs, bolts or pulpwood. Shortwood may be loaded lengthwise or crosswise, though that loaded crosswise is usually no more than 2.6 m (102 inches) long.

* * * * *

Sided vehicle. A vehicle whose cargo compartment is enclosed on all four sides by walls of sufficient strength to contain cargo, where the walls may include latched openings for loading and unloading, and includes vans, dump bodies, and a sided intermodal container carried by a vehicle.

* * * * *

Tiedown. A combination of securing devices which forms an assembly that attaches cargo to, or restrains cargo on, a vehicle or trailer, and is attached to anchor point(s).

Tractor-pole trailer. A combination vehicle that carries logs lengthwise so that they form the body of the vehicle. The logs are supported by a bunk located on the rear of the tractor, and another bunk on the skeletal trailer. The tractor bunk may rotate about a vertical axis, and the trailer may have a fixed, scoping, or cabled reach, or other mechanical freedom, to allow it to turn.

* * * * *

Void filler. Material used to fill a void between articles of cargo and the structure of the vehicle that has sufficient strength to prevent movement of the articles of cargo.

* * * * *

Well. The depression formed between two cylindrical articles when they are laid with their eyes horizontal and parallel against each other.

* * * * *

Working load limit (WLL). The maximum load that may be applied to a component of a cargo securement system during normal service, usually assigned by the manufacturer of the component.

5. Subpart I of part 393 is revised to read as follows:

Subpart I—Protection Against Shifting and Failing Cargo

Sec.

393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?
393.102 What are the minimum performance criteria for cargo securement devices and systems?
393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?
393.106 What are the general requirements for securing cargo against shifting or falling?
393.108 How is the working load limit of a tiedown determined?
393.110 What else do I have to do to determine the minimum number of tiedowns?

393.112 What is the strength required for load binders and associated hardware?
393.114 What is the minimum strength of an attachment point on a vehicle?
393.116 What is the minimum strength for a winch or fastening device?
393.118 Must a tiedown be adjustable?
393.120 What are the requirements for front end structures used as part of a cargo securement system?

Specific Securement Requirements by Commodity Type

393.122 What are the rules for securing logs?
393.124 What are the rules for securing dressed lumber or similar building products?
393.126 What are the rules for securing metal coils?
393.128 What are the rules for securing paper rolls?
393.130 What are the rules for securing concrete pipe?
393.132 What are the rules for securing intermodal containers?
393.134 What are the rules for securing automobiles, light trucks and vans?
393.136 What are the rules for securing heavy vehicles, equipment and machinery?
393.138 What are the rules for securing flattened or crushed vehicles?
393.140 What are the rules for securing roll-on/roll-off and hook lift containers?
393.142 What are the rules for securing large boulders?

§ 393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?

(a) *Applicability.* The rules in this subpart are applicable to trucks, truck tractors, semitrailers, full trailers, and pole trailers.

(b) *Prevention against loss of load.* Each commercial motor vehicle must, when transporting cargo on public roads, be loaded and equipped, and the cargo secured, in accordance with this subpart to prevent the cargo from spilling or falling from the motor vehicle.

(c) *Prevention against shifting of load.* Cargo must be contained or secured in accordance with this subpart to prevent shifting upon or within the vehicle.

§ 393.102 What are the minimum performance criteria for cargo securement devices and systems?

(a) *Performance criteria.* Cargo securement devices and systems must be capable of withstanding the following three forces, applied separately:

(1) 0.8 g deceleration in the forward direction;

(2) 0.5 g deceleration in the rearward direction; and

(3) 0.5 g acceleration in a lateral direction.

(b) *Performance criteria for devices to prevent vertical movement of loads that are not contained within the structure of the vehicle.* Securement systems must provide a downward force equivalent to at least 20 percent of the weight of the cargo if the cargo is not fully contained within the structure of the vehicle.

(c) *Prohibition on exceeding working load limits.* Cargo securement devices and systems must be designed, installed, and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the working load limit for the devices under the conditions listed in paragraphs (a) and (b) of this section.

§ 393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?

(a) *General.* All devices and systems used to secure cargo to or within a vehicle must be capable of meeting the performance requirements of § 393.102.

(b) *Prohibition on the use of damaged securement devices.* All vehicle structures, systems, parts, and components used to secure cargo must be in proper working order when used to perform that function and must not have any visible damage, including but not limited to, cracks, cuts, and deformation.

(c) *Vehicle structures and anchor points.* Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts and associated mounting pockets used to contain or secure cargo must be strong enough to meet the performance criteria of § 393.102.

(d) *Tiedown assemblies.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure cargo to, or in, commercial motor vehicles must conform to the following applicable standards:

An assembly component of . . .	Must conform to . . .
(1) Steel strapping [1] [2]	Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM) D3953–91, 1991.[4]
(2) Chain	National Association of Chain Manufacturers' Welded Steel Chain Specifications, May 1, 1996.[4]
(3) Webbing	Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Webbing Tiedowns, 1991.[4]
(4) Wire rope [3]	Wire Rope Technical Board's Wire Rope Users Manual, 2nd rope Edition, November 1985.[4]
(5) Cordage	Cordage Institute rope standard: (i) PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, January 1993;[4] (ii) PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, August 1992;[4] (iii) CRS–1, Polyester/Polypropylene Composite Rope Specifications, 3-Strand and 8-Strand Standard Construction, May 1979;[4] (iv) NRS–1, Nylon Rope Specifications, 3-Strand and 8-Strand Standard Construction, May 1979;[4] and (v) C–1, Double Braided Nylon Rope Specifications DBN, January 1984.[4]

[1] Steel strapping not marked by the manufacturer with a working load limit will be considered to have a working load limit equal to one-fourth of the breaking strength listed in ASTM D3953–91.
[2] Steel strapping 25.4 mm (1 inch) or wider must have at least two pairs of crimps in each seal and, when an end-over-end lap joint is formed, must be sealed with at least two seals.
[3] Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the manual.
[4] See § 393.7(b) for information on the incorporation by reference and availability of this document.

§ 393.106 What are the general requirements for securing cargo against shifting or falling?

(a) *General.* The rules in this section are applicable to the transportation of all types of cargo, except commodities in bulk that lack structure or fixed shape (e.g., liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are transported in a tank, hopper, box or similar device that forms part of the structure of a commercial motor vehicle. The rules in this section apply to the cargo types covered by the commodity-specific rules of § 393.122 through § 393.142. The commodity-specific rules take precedence over the general requirements of this section when additional requirements are given for a commodity listed in those sections.

(b) *Minimum strength of cargo securement devices and systems.* The aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles.

(1) *Direct tiedowns.* The aggregate working load limit of all direct tiedowns used to restrain an article or articles is the sum of:

(i) One-half of the working load limit of each direct tiedown that is connected between the motor vehicle and the article of cargo; and

(ii) The working load limit of each direct tiedown that is attached to the vehicle, passes through or around the cargo, or is attached to it, and again attached to the vehicle.

(2) *Indirect tiedowns.* The aggregate working load limit of all indirect tiedowns used to restrain an article or articles is the sum of the working load limit for each tiedown which goes from one part of the vehicle, over an article, to another part of the vehicle.

§ 393.108 How is the working load limit of a tiedown determined?

(a) The working load limits of tiedowns may be determined by using either the tiedown manufacturer's markings or by using the tables in this section. The working load limits listed in the tables are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits that differ from the tables, shall be considered to have a working load limit equal to the value for which they are marked.

(b) Synthetic cordage (e.g., nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

(c) Welded steel chain which is not marked or labeled to enable identification of its grade or working load limit shall be considered to have a working load limit equal to that for grade 30 proof coil chain.

(d)(1) Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the Wire Rope Users Manual.

(2) Wire which is not marked or labeled to enable identification of its construction type shall be considered to have a working load limit equal to that for 6 × 37, fiber core wire rope.

TABLES TO § 393.108
[Working Load Limits (WLL)]

Chain

Size mm (inches)	WLL in kg (pounds)				
	Grade 30 proof coil	Grade 43 high test	Grade 70 transport	Grade 80 alloy	Grade 100 alloy
1. 7 (1/4)	580 (1,300)	1,180 (2,600)	1,430 (3,150)	1,570 (3,500)	
2. 8 (5/16)	860 (1,900)	1,770 (3,900)	2,130 (4,700)	2,000 (4,500)	2,600 (5,700)
3. 10 (3/8)	1,200 (2,650)	2,450 (5,400)	2,990 (6,600)	3,200 (7,100)	4,000 (8,800)
4. 11 (7/16)	1,680 (3,700)	3,270 (7,200)	3,970 (8,750)		
5. 13 (1/2)	2,030 (4,500)	4,170 (9,200)	5,130 (11,300)	5,400 (12,000)	6,800 (15,000)
6. 16 (5/8)	3,130 (6,900)	5,910 (13,000)	7,170 (15,800)	8,200 (18,100)	10,300 (22,600)
Chain Mark Examples:					
Example 1	PC	HT		T	
Example 2	3	4	7	8	10
Example 3	30	40	70	80	100

Synthetic Webbing

Width mm (inches)	WLL kg (pounds)
45 (1 3/4)	790 (1,750)
50 (2)	910 (2,000)
75 (3)	1,360 (3,000)
100 (4)	1,810 (4,000)

Wire Rope (6 × 37, Fiber Core)

Diameter mm (inches)	WLL kg (pounds)
7 (1/4)	640 (1,400)
8 (5/16)	950 (2,100)
10 (3/8)	1,360 (3,000)
11 (7/16)	1,860 (4,100)
13 (1/2)	2,400 (5,300)
16 (5/8)	3,770 (8,300)
20 (3/4)	4,940 (10,900)
22 (7/8)	7,300 (16,100)
25 (1)	9,480 (20,900)

Manila Rope

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	90 (205)
11 (7/16)	120 (265)
13 (1/2)	150 (315)
16 (5/8)	210 (465)
20 (3/4)	290 (640)
25 (1)	480 (1,050)

Polypropylene Fiber Rope WLL (3–Strand and 8–Strand Constructions)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	180 (400)
11 (7/16)	240 (525)
13 (1/2)	280 (625)
16 (5/8)	420 (925)
20 (3/4)	580 (1,275)
25 (1)	950 (2,100)

Polyester Fiber Rope WLL (3–Strand and 8–Strand Constructions)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	250 (555)
11 (7/16)	340 (750)
13 (1/2)	440 (960)
16 (5/8)	680 (1,500)
20 (3/4)	850 (1,880)
25 (1)	1,500 (3,300)

Nylon Rope

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	130 (278)
11 (7/16)	190 (410)
13 (1/2)	240 (525)
16 (5/8)	420 (935)
20 (3/4)	640 (1,420)
25 (1)	1,140 (2,520)

Double Braided Nylon Rope

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	150 (336)
11 (7/16)	230 (502)
13 (1/2)	300 (655)
16 (5/8)	510 (1,130)
20 (3/4)	830 (1,840)
25 (1)	1,470 (3,250)

Steel Strapping

Width × thickness mm (inches)	WLL kg (pounds)

31.7 × .74 (1¼ × 0.029)	540 (1,190)
31.7 × .79 (1¼ × 0.031)	540 (1,190)
31.7 × .89 (1¼ × 0.035)	540 (1,190)
31.7 × 1.12 (1¼ × 0.044)	770 (1,690)
31.7 × 1.27 (1¼ × 0.05)	770 (1,690)
31.7 × 1.5 (1¼ × 0.057)	870 (1,925)
50.8 × 1.12 (2 × 0.044)	1,200 (2,650)
50.8 × 1.27 (2 × 0.05)	1,200 (2,650)

§ 393.110 What else do I have to do to determine the minimum number of tiedowns?

(a) In addition to the requirements of § 393.106, the minimum number of tiedowns required to secure an article or group of articles against movement depends on whether indirect or direct tiedowns are used and the length of the article(s) being secured.

(b) When an article is not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is positioned to prevent movement, or other appropriate blocking devices, it must be secured by at least:

(1) One tiedown for articles 5 feet (1.52 meters) or less in length, and 1,100 pounds (500 kg) or less in weight;

(2) Two tiedowns if the article is:

(i) 5 feet (1.52 meters) or less in length and more than 1,100 pounds (500 kg) in weight; or

(ii) Longer than 5 feet (1.52 meters) but less than or equal to 10 feet (3.04 meters) in length, irrespective of the weight.

(3) Two tiedowns if the article is longer than 10 feet (3.04 meters), and one additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length.

§ 393.112 What is the strength required for load binders and associated hardware?

The strength of load binders and hardware that are part of, or used in conjunction with, a tiedown assembly must be equal to, or greater than, the minimum strength specified for that tiedown assembly in § 393.106.

§ 393.114 What is the minimum strength of an attachment point on a vehicle?

The strength of a hook, bolt, weld, or other connector attaching the tiedown assembly to the commercial motor vehicle and the place and means of mounting the connector must be equal to, or greater than, the minimum strength required by § 393.106 for that tiedown assembly.

§ 393.116 What is the minimum strength for a winch or fastening device?

A winch or other fastening device mounted on a commercial motor vehicle and used in conjunction with a tiedown assembly must have a combined strength equal to or greater than the strength of the tiedown assembly.

§ 393.118 Must a tiedown be adjustable?

A tiedown assembly, associated connectors, and attachment devices must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. However, this section does not apply to the use of steel strapping.

§ 393.120 What are the requirements for front end structures used as part of a cargo securement system?

(a) *Applicability.* The rules in this section are applicable to commercial motor vehicles transporting cargo that is in contact with the front end structure of the vehicle. The front end structure on these cargo-carrying vehicles must meet the performance requirements of this section.

(b) *Height and width.* (1) The front end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item of cargo being carried on the vehicle, whichever is lower.

(2) The front end structure must have a width which is at least equal to the width of the vehicle or which blocks forward movement of any item of cargo being transported on the vehicle, whichever is narrower.

(c) *Strength.* The front end structure must be capable of withstanding the following horizontal forward static load:

(1) For a front end structure less than 6 feet in height, a horizontal forward static load equal to one-half (0.5) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire portion of the front end structure that is within 4 feet above the vehicle's floor or that is at or below a height above the vehicle's floor at which it blocks forward movement of any item of the vehicle's cargo, whichever is less; or

(2) For a front end structure 6 feet in height or higher, a horizontal forward static load equal to four-tenths (0.4) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire front end structure.

(d) *Penetration resistance.* The front end structure must be designed, constructed, and maintained so that it is capable of resisting penetration by any item of cargo that contacts it when the vehicle decelerates at a rate of 20 feet per second, per second. The front end structure must have no aperture large enough to permit any item of cargo in contact with the structure to pass through it.

(e) *Substitute devices.* The requirements of this section may be met by the use of devices performing the same functions as a front end structure, if the devices are at least as strong as, and provide protection against shifting cargo at least equal to, a front end structure which conforms to those requirements.

Specific Securement Requirements by Commodity Type

§ 393. 122 What are the rules for securing logs?

(a) *Applicability.* The rules in this section are applicable to the transportation of logs that are unitized by banding or other comparable means. Loads that consist of no more than four processed logs may be transported in accordance with the general cargo securement rules of §§ 393.100 through 393.120. Firewood, stumps, log debris and other such short logs must be transported in a vehicle or container enclosed on both sides, front, and rear and of adequate strength to contain them. Longer logs may also be so loaded. This section applies to transportation of all other logs. A stack of logs that is composed of both shortwood and longwood must be treated as shortwood.

(b) *Components of a securement system.* (1) Logs must be transported on a vehicle designed and built, or adapted, for the transportation of logs. Any such vehicle must be fitted with bunks, bolsters, stakes or standards, or other equivalent means, that cradle the logs and prevent them from rolling.

(2) All vehicle components involved in securement of logs must be designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit.

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes and bolsters to secure the load.

(c) *Use of securement system.* (1) Logs must be solidly packed, and the outer bottom logs must be in contact with and resting solidly against the bunks, bolsters, or stakes.

(2) Each outside log must touch at least two bunks, bolsters, or stakes, but if one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the end of the stake.

(3) The center of the highest outside log on each side or end must be below the top of each stake.

(4) Each log that is not held in place by contact with other logs or the stakes must be held in place by an indirect tiedown. Additional tiedowns or securement devices must be used when the condition of the wood results in such low friction between logs that they are likely to slip upon each other.

(d) *Frame vehicle(s).* (1) Shortwood loaded lengthwise must be cradled in a bunk unit, and must be secured to the vehicle by at least two indirect tiedowns.

(2) Longwood must be cradled in two or more bunks, and must be secured to the vehicle by at least two indirect tiedowns at locations along the load that provide effective securement.

(3) The aggregate working load limit for all tiedowns securing a stack of logs must be no less than one-sixth the weight of the stack of logs.

(4) Shortwood loaded crosswise must be secured in the same manner as required for rail trucks and trailers.

(e) *Rail vehicle(s).* (1) Logs in the bottom tier of shortwood loaded crosswise must be supported by vehicle structure within 30 cm (12 inches) of each end.

(2) One stack of shortwood loaded crosswise must be secured with at least two indirect tiedowns. These must attach to the vehicle frame at the front and rear of the load, and must cross the load lengthwise.

(3) Where two indirect tiedowns are used, they must be positioned about one-third of the logs' length in from each end of the logs.

(4) A rail vehicle over 10 m (33 feet) long must be fitted with center stakes to divide it into two sections about equal in length. Where a vehicle is so divided, each tiedown must secure the highest log on each side of the center stake, and must be fastened below these logs. It may be fixed at each end and tensioned from the middle, or fixed in the middle and tensioned from each end, or may pass through a pulley or equivalent in the middle and be tensioned from one end.

(5) Any structure or stake that is subjected to an upward force when the tiedowns are tensioned must be anchored to resist that force.

(6) If two stacks of shortwood can fit side-by-side within the allowable width, they may be so loaded, provided:

(i) There is no space between the two stacks of logs;

(ii) The outside of each stack is raised at least 2.5 cm (1 in) within 10 cm (4 in) of the end of the logs or the side of the vehicle;

(iii) The highest log is no more than 2.44 m (8 ft) above the deck; and

(iv) At least one tiedown is used lengthwise across each stack of logs .

(f) *Flatbed vehicle(s).* (1) Shortwood loaded crosswise must be secured in the same manner as required for rail vehicle(s).

(2) Shortwood loaded lengthwise must be contained by stakes.

(3) Each stack of logs must be secured by at least two indirect tiedowns. However, if all logs in any stack are blocked in the front by a headboard strong enough to restrain the load, or another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure, the stack may be secured with one tiedown. If one tiedown is used, it must be about midway between the stakes.

(4) Longwood loaded lengthwise must be contained by stakes.

(5) The aggregate working load limit for all tiedowns must be no less than one-sixth the weight of the stack logs.

(6) Each outside log must be secured by at least two indirect tiedowns.

(g) *Securement of logs transported on pole trailers.* (1) The load must be secured by at least one tiedown at each bunk, or alternatively, by at least two tiedowns used as wrappers that encircle the entire load at locations along the load that provide effective securement.

(2) The front and rear wrappers must be at least 3.04 meters (10 feet) apart.

(3) Large diameter single and double log loads must be immobilized with chock blocks or other equivalent means to prevent shifting.

(4) Large diameter logs that rise above stakes must be secured to the underlying load with at least two additional wrappers.

§ 393.124 What are the rules for securing dressed lumber or similar building products?

(a) *Applicability.* The rules in this section apply to the transportation of bundles of dressed lumber, packaged lumber, building products such as plywood, gypsum board or other materials of similar shape. Lumber or building products which are not bundled or packaged must be treated as loose items and transported in accordance with §§ 393.100 through 393.120 of this subpart. For the purpose of this section, "bundle" refers to packages of lumber, building materials or similar products which are unitized for securement as a single item of cargo.

(b) *Securement of bundles transported using no more than one tier.* (1) Bundles must be placed side by side in direct contact with each other, or a means must be provided to prevent bundles shifting towards each other.

(2) Bundles carried on one tier must be secured in accordance with the general provisions of §§ 393.100 through 393.120.

(c) *Securement of bundles transported using more than one tier.* Bundles carried in more than one tier must be either:

(1) Blocked against lateral movement by stakes on the sides of the vehicle and secured by indirect tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.120; or

(2) Restrained from lateral movement by blocking or high friction devices between tiers and secured by indirect tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.120; or

(3) Placed directly on top of other bundles or on spacers and secured in accordance with the following:

(i) The length of spacers between bundles must provide support to all pieces in the bottom row of the bundle.

(ii) The width of individual spacers must be greater than the height.

(iii) If spacers are comprised of layers of material, the layers must be unitized or fastened together in a manner which ensures that the spacer performs as a single piece of material.

(iv) The arrangement of the tiedowns for the bundles must be:

(A) Secured by indirect tiedowns over the second tier of bundles, or at a height of 1.85 m (6 ft) above the trailer deck, whichever is greater. If the top tiers are less than 1.85 m (6 ft) above the trailer deck, they may be secured in accordance with the general provisions of §§ 393.100 through 393.120; and

(B) Secured by indirect tiedowns over the top tier of bundles, in accordance with the general provisions of §§ 393.100 through 393.120 with a minimum of two indirect tiedowns for bundle(s) longer than 1.52 m (5 ft); or

(C) Secured by indirect tiedowns laid out over each tier of bundles, in accordance with §§ 393.100 through 393.120 using a minimum of two indirect tiedowns over each top bundle(s) longer than 1.52 m (5 ft), in all other circumstances.

§ 393.126 What are the rules for securing metal coils?

(a) *Applicability.* The rules in this section apply to the transportation of one or more metal coils which, individually or together, weigh 2268 kg (5000 pounds) or more. Shipments of metal coils that weigh less than 2268 kg (5000 pounds) may be secured in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Coils with eyes vertical on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil.* Tiedowns must be arranged in a manner to prevent the coils from tipping in the forward, rearward, and lateral directions. The restraint system must include the following:

(i) At least one indirect tiedown attached diagonally from the left side of the vehicle or intermodal container (near the forwardmost part of the coil), across the eye of the coil, to the right side of the vehicle or intermodal container (near the rearmost part of the coil);

(ii) At least one indirect tiedown attached diagonally from the right side of the vehicle or intermodal container (near the forward-most part of the coil), across the eye of the coil, to the left side of the vehicle or intermodal container (near the rearmost part of the coil);

(iii) At least one indirect tiedown attached transversely over the eye of the coil; and

(iv) Either blocking and bracing, friction mats or direct tiedowns must be used to prevent longitudinal movement in the forward direction.

(2) *Coils grouped in rows.* For vehicles transporting coils which are grouped and loaded side by side in a transverse or longitudinal row, the coils must be secured by the following:

(i) At least one direct tiedown attached to the front of the row of coils, restraining against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(ii) At least one direct tiedown attached to the rear of the row of coils, restraining against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one indirect tiedown over the top of each coil or transverse row of coils, restraining against vertical motion. Indirect tiedowns going over the top of a coil(s) must be as close as practicable to the eye of the coil and positioned to prevent the tiedown from slipping or becoming unintentionally unfastened while the vehicle is in transit; and

(iv) Direct tiedowns, blocking or bracing must be arranged to prevent shifting or tipping in the forward, rearward and lateral directions.

(c) *Coils with eyes crosswise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil.* The coil must be secured by the following:

(i) A means (*e.g.,* timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one direct tiedown through its eye, restricting against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container; and

(iii) At least one direct tiedown through its eye, restricting against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container.

(2) *Prohibition on crossing of chains when coils are transported with eyes crosswise.* Attaching direct tiedowns diagonally through the eye of a coil to form an X-pattern when viewed from above the vehicle is prohibited.

(d) *Coils with eyes lengthwise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil—option 1.* The coil must be secured by:

(i) A means (*e.g.,* timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one direct tiedown attached diagonally through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one direct tiedown attached diagonally through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one direct tiedown transversely over the top of the coil; and

(v) Either blocking, or friction mats to prevent longitudinal movement in the forward direction.

(2) *An individual coil—option 2.* The coil must be secured by:

(i) A means (*e.g.,* timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one direct tiedown attached straight through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), and, whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one direct tiedown attached straight through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one indirect tiedown transversely over the top of the coil; and

(v) Either blocking, or friction mats to prevent longitudinal movement in the forward direction.

(3) *An individual coil—option 3.* The coil must be secured by:

(i) A means (e.g., timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one indirect tiedown over the top of the coil, located near the forward-most part of the coil;

(iii) At least one indirect tiedown over the top of the coil located near the rearmost part of the coil; and

(iv) Either blocking or friction mats to prevent longitudinal movement in the forward direction.

(4) *Rows of coils.* A transverse row of coils having approximately equal outside diameters must be secured with:

(i) A means (e.g., timbers, chocks or wedges, a cradle, etc.) to prevent each coil in the row of coils from rolling. The means of preventing rolling must support each coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least two indirect tiedowns over the top of each coil or transverse row; and

(iii) Either blocking, bracing or friction mats to prevent longitudinal movement in the forward direction for each coil.

(e) *Coils in a sided vehicle or intermodal container without anchor points.* Metal coils transported in a vehicle with sides or an intermodal container without anchor points must be loaded in a manner to prevent shifting and tipping. The coils must be secured to prevent lateral and longitudinal movement and tipping by the use of friction mats, or a system of blocking and bracing or tiedowns, and either blocking and bracing.

§ 393.128 What are the rules for securing paper rolls?

(a) *Applicability.* The rules in this section apply to shipments of paper rolls which, individually or together, weigh 2268 kg (5000 lb) or more. Shipments of paper rolls that weigh less than 2268 kg (5000 lb), and paper rolls that are unitized on a pallet, may either be secured in accordance with the rules in this section or the requirements of §§ 393.100 through 393.120.

(b) *Rules for paper rolls loaded with eyes vertical in a sided vehicle.* (1) Paper rolls must be placed tightly against the walls of the vehicle, other paper rolls, or other cargo, to prevent movement during transit.

(2) If there are not enough paper rolls in the shipment to reach the walls of the vehicle, lateral movement must be prevented by filling the void, blocking, bracing, tiedowns or friction mats. The paper rolls may also be banded together.

(3) When any void behind a group of paper rolls, including that at the rear of the vehicle, exceeds the diameter of the paper rolls, rearward movement must be prevented by friction mats, blocking, bracing, tiedowns, or banding to other rolls.

(4)(i) If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing, or tiedowns.

(ii) If the forwardmost roll(s) in a group of paper rolls is not prevented from tipping or falling forwards by vehicle structure or other cargo and it is restrained against forward movement by friction mat(s) alone, and its width is more than 1.75 times its diameter, it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

(iii) Otherwise, when a paper roll or the forwardmost roll in groups of rolls that are not prevented from tipping or falling forwards by vehicle structure or other cargo and its width exceeds 1.25 times its diameter it must be prevented from tipping or falling by banding to other rolls, bracing or tiedowns.

(5) If paper rolls are banded together, the rolls must be placed tightly against each other to form a stable group. The bands must be applied tightly, and must be secured so that they cannot fall off the rolls or to the deck.

(6) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(c) *Rules for split loads of paper rolls loaded with eyes vertical in a sided vehicle.* (1) If a paper roll in a split load is not prevented from forward movement by vehicle structure or other cargo, it must be prevented from forward movement by filling the open space, or by blocking, bracing, tiedowns, friction mats, or some combination of these.

(2) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(d) *Rules for stacked loads of paper rolls loaded with eyes vertical in a sided vehicle.* (1) Paper rolls must not be loaded on a layer of paper rolls beneath unless that layer extends to the front of the vehicle.

(2) Paper rolls in the second and subsequent layers must be prevented from forward, rearward or lateral movement by means as allowed for the bottom layer, or by use of a blocking roll from a lower layer.

(3) The blocking roll must be at least 50 mm (2 in) taller than other rolls, or must be raised at least 38 mm (1.5 in) using dunnage.

(4) A roll in the rearmost row of any layer must not be raised using dunnage.

(e) *Rules for securing paper rolls loaded with eyes crosswise in a sided vehicle.* (1) The paper rolls must be prevented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.

(2) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(3) The rearmost roll must not be secured using the rear doors of the vehicle or intermodal container, or by blocking held in place by those doors.

(4) If there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle, void fillers, blocking, bracing, friction mats, or tiedowns must be used to prevent the roll from shifting towards either wall.

(f) *Rules for stacked loads of paper rolls loaded with eyes horizontal and crosswise in a sided vehicle.* (1) Rolls must not be loaded in a second layer unless the bottom layer extends to the front of the vehicle.

(2) Rolls must not be loaded in a higher layer unless all wells in the layer beneath are filled.

(3) The foremost roll in each upper layer, or any roll with an empty well in front of it, must be secured against forward movement by:

(i) Banding it to other rolls, or
(ii) Blocking against an adequately secured eye-vertical blocking roll resting on the floor of the vehicle which is at least 1.5 times taller than the diameter of the roll being blocked, or
(iii) Placing it in a well formed by two rolls on the lower row whose diameter is equal to or greater than that of the roll on the upper row.
(4) The rearmost roll in each upper layer must be secured by banding it to other rolls if it is located in either of the last two wells formed by the rearmost rolls in the layer below.
(5) Rolls must be secured against lateral movement by the same means allowed for the bottom layer when there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle.

(g) *Paper rolls loaded with the eyes lengthwise in a sided vehicle.* (1) Each roll must be prevented from forward movement by contact with vehicle structure, other cargo, blocking or tiedowns.
(2) Each roll must be prevented from rearward movement by contact with other cargo, blocking, friction mats or tiedowns.
(3) The paper rolls must be prevented from rolling or shifting laterally by contact with the wall of the vehicle or other cargo, or by chocks, wedges or blocking of adequate size.
(4) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(h) *Rules for stacked loads paper rolls loaded with the eyes lengthwise in a sided vehicle.* (1) Rolls must not be loaded in a higher layer if another roll will fit in the layer beneath.
(2) An upper layer must be formed by placing paper rolls in the wells formed by the rolls beneath.
(3) A roll in an upper layer must be secured against forward and rearward movement by any of the means allowed for the bottom layer, by use of a blocking roll, or by banding to other rolls.

(i) *Paper rolls loaded on a flatbed vehicle or in a curtain-sided vehicle*—(1) *Paper rolls with eyes vertical or with eyes lengthwise.* (i) The paper rolls must be loaded and secured as described for a sided vehicle, and the entire load must be secured by tiedowns in accordance with the requirements of §§ 393.100 through 393.120.
(ii) Stacked loads of paper rolls with eyes vertical are prohibited.
(2) *Paper rolls with eyes crosswise.* (i) The paper rolls must be prevented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.
(ii) Chocks, wedges or blocking must be held securely in place by some means in addition to friction so that they cannot become unintentionally unfastened or loose while the vehicle is in transit.
(iii) Transverse or longitudinal tiedowns must be used to prevent lateral movement.

§ 393.130 What are the rules for securing concrete pipe?

(a) *Applicability.* (1) The rules in this section apply to the transportation of concrete pipe on flatbed trailers and vehicles, and lowboy trailers.
(2) Concrete pipe bundled tightly together into a single rigid article that has no tendency to roll, and concrete pipe loaded in a sided vehicle or container must be secured in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Aggregate working load limits for tiedowns.* The aggregate working load limit of all tiedowns on any group of pipe must not be less than half the total weight of all pipe in the group.

(c) *Blocking.* (1) Blocking may be one or more pieces placed symmetrically about the center of a pipe.
(2) One piece must extend at least half the distance from the center to each end of the pipe, and two pieces must be placed on the opposite side, one at each end of the pipe.
(3) Blocking must be placed firmly against the pipe, and must be secured to prevent it moving out from under the pipe.
(4) Timber blocking must have minimum dimensions of at least 10 × 15 cm (4 × 6 in).

(d) *Arranging the load*—(1) *Pipe of different diameter.* If pipe of more than one diameter are loaded on a vehicle, groups must be formed that consist of pipe of only one size, and each group must be separately secured.
(2) *Arranging a bottom tier.* The bottom tier must be arranged to cover the full length of the vehicle, or as a partial tier in one group or two groups.
(3) *Arranging an upper tier.* Pipe must be placed only in the wells formed by adjacent pipes in the tier beneath. An upper tier must not be started unless all wells in the tier beneath are filled.
(4) *Arranging the top tier.* The top tier must be arranged as a complete tier, a partial tier in one group, or a partial tier in two groups.
(5) *Arranging bell pipe.* (i) Bell pipe must be loaded on at least two longitudinal spacers of sufficient height to ensure that the bell is clear of the deck.
(ii) Bell pipe loaded in one tier must have the bells alternating on opposite sides of the vehicle.
(iii) The ends of consecutive pipe must be staggered, if possible, within the allowable width, otherwise they must be aligned.
(iv) Bell pipe loaded in more than one tier must have the bells of the bottom tier all on the same side of the vehicle.
(v) Pipe in every upper tier must be loaded with bells on the opposite side of the vehicle to the bells of the tier below.
(vi) If the second tier is not complete, pipe in the bottom tier which do not support a pipe above must have their bells alternating on opposite sides of the vehicle.

(e) *Securing pipe with an inside diameter up to 1,143 mm (45 in)*—(1) *Stabilizing the bottom tier.* (i) The bottom tier must be contained longitudinally at each end by blocking, vehicle end structure, stakes, a locked pipe unloader, or other equivalent means.
(ii) Other pipe in the bottom tier may also be held in place by blocks and/or wedges.
(iii) Every pipe in the bottom tier must also be held firmly in contact with the adjacent pipe by direct tiedowns though the front and rear pipes.
(iv) The direct tiedown on the front pipe of the bottom tier must run aft at an angle not more than 45 degrees with the horizontal, whenever practicable.
(v) The direct tiedown on the rear pipe of the bottom tier must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable.
(2) *Use of tiedowns.* (i) Direct tiedowns through the pipe must be chains.
(ii) Longitudinal indirect tiedowns may be chain or wire rope.
(iii) Pipe may be secured individually with a direct tiedown through the pipe.
(iv) A direct tiedown through a pipe in an upper tier is considered to secure all those pipe beneath on which that tiedown causes pressure.
(v) If each pipe is not secured individually with a tiedown, then:
(A) Two indirect tiedowns must be placed longitudinally over the group of pipes; and
(B) One transverse tiedown (direct or indirect) must be used for every 3.0 m (10 ft) of load length. The transverse tiedowns may be placed through a pipe, or over both longitudinal tiedowns between two pipes on the top tier.

(vi) If the first pipe of a group in the top tier is not at the front of the tier beneath, it must be secured by an additional direct tiedown that runs rearward at an angle not more than 45 degrees to the horizontal, whenever practicable. This direct tiedown must pass either through the front pipe of the upper tier, or outside it and over both longitudinal indirect tiedowns.
(vii) If the last pipe of a group in the top tier is not at the rear of the tier beneath, it must be secured by an additional direct tiedown that runs forward at an angle not more than 45 degrees to the horizontal, whenever practicable. This tiedown must pass either through the rear pipe of the upper tier or outside it and over both longitudinal tiedowns.

(f) *Securing large pipe, with an inside diameter over 1143 mm (45 in).* (1) The front pipe and the rear pipe must be secured by blocking or wedges.
(2) The blocking or wedges must be pushed firmly under the pipe.
(3) Each pipe must be secured by tiedowns through the pipe.
(4) Direct tiedowns are required through each pipe in the front half of the load, which includes the middle one if there are an odd number, and must run rearward at an angle not more than 45 degrees with the horizontal, whenever practicable.
(5) Direct tiedowns are required through each pipe in the rear half of the load, and must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable, to hold each pipe firmly in contact with adjacent pipe.
(6) If the front or rear pipe is not also in contact with vehicle end structure, stakes, a locked pipe unloader, or other equivalent means, at least two direct tiedowns must be used through that pipe.

(g) *Conditions of low friction.* Ice must be removed from concrete pipe before it is loaded.

§ 393.132 What are the rules for securing intermodal containers?

(a) *Applicability.* The rules in this section apply to the transportation of intermodal containers. Cargo contained within an intermodal container must be secured in accordance with the provisions of §§ 393.100 through 393.120 or, if applicable, the commodity specific rules of this part.

(b) *Rules for transporting intermodal containers on container chassis vehicle(s).* (1) The intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit.
(2) The securement devices must restrain the container from moving more than 1.27 cm (½ in) forward, more than 1.27 cm (½ in) aft, more than 1.27 cm (½ in) to the right, more than 1.27 cm (½ in) to the left, or more than 2.54 cm (1 in) vertically.
(3) The front and rear of the container must be secured independently.

(c) *Rules for transporting intermodal containers on vehicles other than container chassis vehicle(s).* (1) All lower corners of the intermodal container must rest upon the vehicle, or the corners must be supported by a structure capable of bearing the weight of the container and that support structure must be independently secured to the motor vehicle.
(2) All lower corners of intermodal containers must be secured to the vehicle by chains, wire rope, or integral locking devices.
(3) The front and rear of the container must be secured independently.
(4) Each chain, wire rope, or integral locking device must be attached to the container in a manner that prevents it from being unintentionally unfastened while the vehicle is in transit.

§ 393.134 What are the rules for securing automobiles, light trucks and vans?

(a) *Applicability.* The rules in this section apply to the transportation of automobiles, light trucks, and vans which individually weigh 4,500 kg. (10,000 lb) or less. Vehicles which are heavier than 4,500 kg (10,000 lb) must be secured in accordance with the provisions of § 393.136 of this part.
(b) Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two direct tiedowns.
(c) Direct tiedowns that are designed to be affixed to the structure of the automobile, light truck, or van shall use the mounting points on those vehicles that have been specifically designed for that purpose.
(d) Direct tiedowns that are designed to fit over or around the wheels of an automobile, light truck, or van shall provide restraint in the lateral, longitudinal and vertical directions.
(e) Edge protectors are not required for synthetic webbing at points where the webbing comes in contact with the tires.

§ 393.136 What are the rules for securing heavy vehicles, equipment and machinery?

(a) *Applicability.* The rules in this section apply to the transportation of heavy vehicles, equipment and machinery which operate on wheels or tracks, such as front end loaders, bulldozers, tractors, and power shovels and which individually weigh 4,536 kg (10,000 lb.) or more. Vehicles, equipment and machinery which is lighter than 4,536 kg (10,000 lb.) may also be secured in accordance with the provisions of this section, with § 393.134, or in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Preparation of equipment being transported.* (1) Accessory equipment, such as hydraulic shovels, must be completely lowered and secured to the vehicle.
(2) The parking brake on the equipment being transported must be engaged, where applicable.
(3) Articulated vehicles shall be restrained in a manner that prevents articulation while in transit.

(c) *Rules for transporting heavy vehicles, equipment or machinery with crawler tracks or wheels.* (1) Heavy equipment or machinery with crawler tracks must be restrained against movement in the lateral, forward, rearward, and vertical direction using a minimum of four direct tiedowns.
(2) The direct tiedown must be affixed at the front and rear of the vehicle, or mounting points on the vehicle that have been specifically designed for that purpose.

§ 393.138 What are the rules for securing flattened or crushed vehicles?

(a) *Applicability.* The rules in this section apply to the transportation of vehicles such as automobiles, light trucks, and vans which have been flattened or crushed.

(b) *General requirements.* Flattened or crushed vehicles must be transported so that:
(1) The cargo does not shift upon the transport vehicle while in transit; and
(2) Loose parts from the flattened vehicles do not become dislodged and fall from the transport vehicle.

(c) *Prohibition on the use of synthetic webbing.* The use of synthetic webbing to secure flattened or crushed vehicles is prohibited.

(d) *Securement of flattened or crushed vehicles.* Flattened or crushed vehicles must be transported on vehicles which have:
(1) Containment walls or comparable means on four sides which extend to the full height of the load and which block against movement of the cargo in the forward, rearward and lateral directions; or
(2)(i) Containment walls or comparable means on three sides which extend to the full height of the load and

which block against movement of the cargo in the forward, rearward and the lateral direction for which there is no containment wall or comparable means, and

(ii) A minimum of two indirect tiedowns are required per vehicle stack; or

(3)(i) Containment walls on two sides which extend to the full height of the load and which block against movement of the cargo in the forward and rearward directions, and

(ii) Three indirect tiedowns are required per vehicle stack; or

(4) A minimum of four indirect tiedowns per vehicle stack.

(e) *Containment of loose parts.* (1) Measures must be taken to ensure that loose parts from flattened or crushed vehicles do not fall from the transport vehicle while in transit.

(2) Vehicles used to transport flattened or crushed vehicles must be equipped with a means to prevent loose parts from falling from all four sides of the vehicle which extends to the full height of the cargo.

(3) The means used to contain loose parts may consist of structural walls, sides or sideboards, or suitable covering material, alone or in combinations.

(4) The use of synthetic material for containment of loose parts is permitted.

§ 393.140 What are the rules for securing roll-on/roll-off and hook lift containers?

(a) *Applicability.* The rules in this section apply to the transportation of roll-on/roll-off and hook lift containers.

(b) *General requirements.* Any container carried on a vehicle which is not equipped with an integral securement system must be:

(1) Blocked against forward movement by the lifting device, stops, a combination of both or other suitable restraint mechanism;

(2) Secured to the front of the vehicle by the lifting device or other suitable restraint against lateral and vertical movement;

(3) Secured to the rear of the vehicle with at least one of the following mechanisms:

(i) One indirect tiedown that secures the side rails of the vehicle chassis to and the container chassis at the same time;

(ii) Two tiedowns installed lengthwise, each securing one side of the container to one of the vehicle's side rails; or

(iii) Two hooks, or an equivalent mechanism, securing both sides of the container to the vehicle chassis at least as effectively as the tiedowns in the two previous items.

(4) The mechanisms used to secure the rear end of a roll-on/roll off or hook lift container must be installed no more than two meters (6 ft 7 in) from the rear of the container.

(5) In the event that one or more of the front stops or lifting devices are missing, damaged or not compatible, additional manually installed tiedowns must be used to secure the container to the vehicle, providing the same level of securement as the missing, damaged or incompatible components.

§ 393.142 What are the rules for securing large boulders?

(a) *Applicability.* (1) The rules in this section are applicable to the transportation of any large piece of natural, irregularly shaped rock weighing in excess of 5,000 kg (11,000 lb.) or with a volume in excess of 2 cubic-meters on an open vehicle, or in a vehicle whose sides are not designed and rated to contain such cargo.

(2) Pieces of rock weighing more than 100 kg (220 lb.), but less than 5,000 kg (11,000 lb.) must be secured, either in accordance with this section, or in accordance with the provisions of §§ 393.100 through 393.120, including:

(i) Rock contained within a vehicle which is designed to carry such cargo; or

(ii) Secured individually by tiedowns, provided each piece can be stabilized and adequately secured.

(3) Rock which has been formed or cut to a shape and which provides a stable base for securement must also be secured, either in accordance with the provisions of this section, or in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Rules concerning positioning of boulders on the vehicle.* (1) Each boulder must be placed with its flattest and/or largest side down.

(2) Each boulder must be supported on at least two pieces of hard wood blocking at least 10 cm × 10 cm (4 inches × 4 inches) side dimensions extending the full width of the boulder.

(3) Hardwood blocking pieces must be placed as symmetrically as possible under the boulder and should support at least three-fourths of the length of the boulder.

(4) If the flattest side of a boulder is rounded or partially rounded, so that the boulder may roll, it must be placed in a crib made of hardwood timber fixed to the deck of the vehicle so that the boulder rests on both the deck and the timber, with at least three well-separated points of contact that prevent its tendency to roll in any direction.

(5) If a boulder is tapered, the narrowest end must point towards the front of the vehicle.

(c) *Rules concerning the use of tiedowns.* (1) Only chain may be used as tiedowns to secure large boulders.

(2) Indirect tiedowns which are in direct contact with the boulder should, where possible, be located in valleys or notches across the top of the boulder, and must be arranged to prevent sliding across the rock surface.

(d) *Options for arranging tiedowns.* There are three arrangements of tiedowns that may be used, depending upon the shape of the boulder:

(1) *Cubic shaped boulder.* (i) The boulder must be secured individually with at least two chain tiedowns placed transversely across the vehicle.

(ii) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(iii) The tiedowns must be placed as closely as possible to the wood blocking used to support the boulder.

(2) *Irregular shaped boulder—with stable base.* (i) The boulder must be secured individually with at least two chain tiedowns forming an "X" pattern over the boulder.

(ii) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(iii) The tiedowns must pass over the center of the boulder and must be attached to each other at the intersection by a shackle or other connecting device.

(3) *Irregular shaped boulder—with unstable base.* Each boulder must be secured by a combination of chain tiedowns as follows:

(i) One chain must surround the top of the boulder (at a point between one-half and two-thirds of its height). The working load limit of the chain must be at least half the weight of the boulder.

(ii) Four chains must be attached to the surrounding chain and the vehicle to form a blocking mechanism which prevents any horizontal movement. Each chain must have a working load limit of at least one-fourth the weight of the boulder. Whenever practicable, the angle of the chains must not exceed 45 degrees from the horizontal.

Issued on: December 8, 2000.

Brian M. McLaughlin,

Acting Assistant Administrator.

[FR Doc. 00–31919 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 65, No. 243

Monday, December 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain, and Pacific Northwest Regions

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–918–01–1610–DH–UCRB]

Interior Columbia Basin Ecosystem Management Project, States of Oregon, Washington, Idaho, Montana

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of availability of a final environmental impact statement (EIS) and proposed decision for the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

SUMMARY: The Forest Service and Bureau of Land Management have developed a scientifically sound, ecosystem-based management strategy for certain lands under their jurisdiction east of the Cascade crest in Oregon and Washington and in the Columbia River Basin in Idaho and Montana. The final EIS is now available for public review. The responsible officials of the Forest Service and Bureau of Land Management are proposing a decision, based on the analysis in the final EIS. The proposed decision is also available, and, before its approval, may be protested by those who have participated in the planning process and have an interest that is, or may be, adversely affected by the proposed decision. This protest opportunity is being offered by both the Forest Service and the Bureau of Land Management and is the only administrative review available in this process. The Forest Services' appeal process will not be applied to this decision.

DATES: Protests of the proposed decision must be filed with the Director of the Bureau of Land Management and the Chief of the Forest Service by January 16, 2001.

ADDRESSES: Copies of the final EIS and proposed decision may be obtained from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334–1770, ext. 120. The final EIS and proposed decision are also available via the internet (http://www.icbemp.gov).

FOR FURTHER INFORMATION CONTACT: Susan Giannettino, Project Manager, or Geoff Middaugh, Deputy Project Manager, 304 North 8th St., Room 250, Boise, Idaho 83702, phone (208) 334–1770. For information specific to the protest process, contact Gary Wyke at the same address and telephone number.

SUPPLEMENTARY INFORMATION: On April 4, 2000, the responsible officials for the ICBEMP published a notice of availability in the **Federal Register** of the supplemental draft EIS for the ICBEMP. A 90-day public review and comment period was provided. Refinements in the EIS have been made in response to public comment and internal review. Responses to comments and changes to the supplemental draft EIS are included in the final EIS. The responsible officials have also proposed a decision, which is to approve and implement alternative S2 from the supplemental draft EIS, as refined in response to public comment.

This proposed decision has been distributed to the public, along with the final EIS. The proposed decision, when approved, will amend land use plans for the administrative units of the Forest Service and Bureau of Land Management within the ICBEMP area as follows:

Forest Service: Boise, Payette, Salmon-Challis, and Sawtooth National Forests and the portion of the Caribou National Forest addressed by the Science Assessment (PNW–GTR–405) in the Intermountain Region; Idaho Panhandle, Clearwater, Nez Perce, Kootenai, Lolo, Flathead, Helena, Deerlodge, and Bitterroot National Forests in the Northern Region; and Ochoco, Winema, Malheur, Deschutes, Fremont, Wallowa-Whitman, Umatilla, Okanogan, and Colville National Forests in the Pacific Northwest Region.

Bureau of Land Management: Lower Snake River District, Upper Snake River District, and the Upper Columbia-Salmon Clearwater District in Idaho; Missoula Field Office in Montana; and Prineville, Lakeview, Burns, Vale, and Spokane Districts in Oregon/Washington.

The Bureau of Land Management planning regulations (43 CFR Part 1610) and the Forest Service planning regulations (36 CFR 219) both provide the public with the opportunity to request administrative review of a proposed land use plan decision. The Bureau of Land Management regulations describe a protest process (43 CFR 1610.5–2):

Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

The Forest Service regulations provide that (36 CFR 219.32(e)):

Where the Forest Service is a participant in a multi-agency decision subject to objection under this part, the responsible official and reviewing officer may waive the objection procedures of this part to adopt the administrative review procedure of another participating federal agency, if the responsible official and the responsible official of the other agencies agree to provide a joint response to those who have filed for administrative review of the multi-agency decision.

The Bureau of Land Management and the Forest Service are participating in a multi-agency decision. The responsible officials of the Forest Service and Bureau of Land Management have agreed to provide a joint response to those who file for administrative review of the proposed decision. The responsible officials of the Forest Service (the Regional Foresters of the Northern, Intermountain, and Pacific Northwest Regions) and the reviewing officer (the Chief of the Forest Service) waive the objection procedures under part 219.32 to adopt the administrative review procedure of the Bureau of Land Management. The reasons for this decision are as follows:

—The Forest Service and Bureau of Land Management jointly share the lead for the Interior Columbia Basin Ecosystem Management Project.

—The two agencies have gone jointly to the public for scoping, information-

gathering, and review since the inception of the Project.
—Using one administrative review procedure lets the public request review from both agencies at one time, rather than having to make two separate, potentially redundant requests.
—Using two separate administrative review procedures, including potential changes in the proposed Project decision, could result in the two agencies' recording two different decisions. This result would fail to meet the original purpose of this action, which was to develop and analyze a strategy for management of lands administered by both the Forest Service and the Bureau of Land Management.

To request administrative review of the proposed decision for the Interior Columbia Basin Ecosystem Management Project use the following procedure:
—Put the protest in writing and mail it to the Director of the Bureau of Land Management and the Chief of the Forest Service at the following address: Director, Bureau of Land Management and Chief, US Forest Service, ICBEMP Project, PO Box 65480, Washington, DC 20035.
—The protest shall be filed with the Director and Chief by January 16, 2001.
—The protest shall contain:

The name, mailing address, telephone number and interest of the person filing the protest;

A statement of the issue or issues being protested;

A statement of the part or parts of the amendment being protested;

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

A concise statement explaining why the responsible officials' decision is believed to be wrong.

The BLM Director and Forest Service Chief will promptly render a joint decision on the protest. The decision will be in writing and will set forth the reasons for the decision. The decision will be sent to the protesting party by certified mail, return receipt requested.

The joint decision of the Director and Chief shall be the final decision of the Department of the Interior and the Department of Agriculture.

The protest process described here is the only administrative review opportunity available in the ICBEMP decision-making process. The Forest Service appeal process, familiar to some participants, will not be used in this planning effort.

Reviewers who do not request administrative review of the proposed decision may not preserve their standing to litigate the final decision.

Dated: December 7, 2000.

Martha Hahn,

State Director, Bureau of Land Management.

Dated: December 7, 2000.

Jack Blackwell,

Forest Service.

[FR Doc. 00–32101 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF AGRICULTURE

[00–02–S]

Grain Inspection, Packers and Stockyards Administration; Designation for the Minnesota, Virginia, Frankfort (IN), and Indianapolis (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** of December 1, 2000, concerning Designation for the Minnesota, Virginia, Frankfort (IN), and Indianapolis (IN) Areas. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail janhart@gipsadc.usda.gov.

Correction

In the **Federal Register** of December 1, 2000, in FR Doc. 00–304898, on page 75239, correct the first date in the "Designation end" column of the chart to read 09/30/2003.

Dated: December 4, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–32157 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Field Office Technical Guide of NRCS in South Dakota; Availability of Proposed Changes

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of Availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of NRCS in South Dakota for review and comment.

SUMMARY: It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practices: Irrigation Canal or Lateral (320); Irrigation Storage Reservoir; Irrigation System, Sprinkler (442); Irrigation System, Tailwater Recovery (447); Land Clearing (460); Land Smoothing (466); Open Channel (582); and Pond (378).

DATES: Comments on this notice must be received on or before January 17, 2001.

ADDRESSES: All comments concerning the proposed conservation practice standards changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fouth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: December 4, 2000.

Dean Fisher,

State Conservationist, Natural Resources Conservation Service, Huron, South Dakota 57350.

[FR Doc. 00–32174 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Field Office Technical Guide of NRCS in South Dakota; Availability of Proposed Changes

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of Availability of proposed changes to conservation practice standards in Section IV of the FOTG of NRCS in South Dakota for review and comment.

SUMMARY: It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practice Irrigation Pit or Regulating Reservoir, Irrigation Pit (552A).

DATES: Comments on this notice must be received on or before January 17, 2001.

ADDRESSES: All comments concerning the proposed conservation practice standard changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fourth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: December 6, 2000.

Shelli Moore,

Assistant State Conservationist for Operations, Natural Resources Conservation Service, Huron, South Dakota 57350.

[FR Doc. 00–32175 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

[I.D. 121200B]

Submission for OMB Review; Comment request.

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: American Fisheries Act: Pollock Fishery Vessel Monitoring System.

Form Numbers(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,600.

Number of Respondents: 150.

Average Hours Per Response: 6 hours to install a vessel monitoring system, 4 hours for annual maintenance of the system, and 5 seconds per automated position transmission.

Needs and Uses: Participants in the Bering Sea–Aleutian Islands pollock fishery would be required to purchase a vessel monitoring system that automatically transmits location data every 20 minutes during a fishing trip. The vessel owner would be responsible for installation and data transmission charges. The position information is necessary for NMFS to enforce regulations regarding fishing in the Steller sea lion conservation area.

Affected Public: Business and other for–profit organizations.

Frequency: Position reports every 20 minutes, installation once.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at Clayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–32051 Filed 12–15–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Special Shrimp Scientific and Statistical Committee (SSC) on January 3, 2001, and a meeting of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) on January 4, 2001.

DATES: The Standing and Special Shrimp SSC will meet beginning at 2:00 p.m. on January 3, 2001. The Standing and Special Reef Fish SSC will meet beginning at 9:00 a.m. on January 4, 2001.

ADDRESSES: The meetings will be held at the Chateau LeMoyne, 301 Dauphine Street, New Orleans, LA 70130; telephone: 504–581–1303.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Standing and Special Shrimp SSC will meet to review a revision to Draft Amendment 11 to the Shrimp Fishery Management Plan which clarifies that sanctions for fishing violations can be exercised against both a shrimp vessel registration and a shrimp vessel permit.

The Standing and Special Reef Fish SSC will meet to review a report of the Reef Fish Stock Assessment Panel and to recommend total allowable catches (TACs) for red grouper and greater amberjack. The SSC will also make recommendations on a proposed red snapper recovery plan that calls for converting from a constant catch to a constant fishing mortality rate strategy beginning in 2004, and thereafter a review and adjustment of TAC at five-year intervals. Dr. Bob Shipp, University of South Alabama, will make a presentation to the SSC on historical perspectives of the red snapper stock. In addition, the SSC will review an early draft of options being considered for including in a new Reef Fish plan amendment. These options deal with a longline limited entry system, moving the longline boundary line, phasing out the use of longlines, the use of cut–up reef fish for bait, an electronic vessel monitoring system for longline and fish trap vessels, the use of powerheads when spearfishing, requiring operator permits for commercial and charter/headboat operators, a commercial grouper fishery endorsement, grouper closed seasons, prohibiting the import of undersized red snapper, eliminating dormant reef fish permits, and changes to the species listed in the reef fish management unit and deep-water grouper aggregation. Additional options may be added or deleted as this options paper is developed into Reef Fish Amendment 18.

Although other non-emergency issues not on the agenda may come before the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 27, 2000.

Dated: December 12, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–32168 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Reef Fish Advisory Panel (AP) on January 5, 2001.

DATES: The Reef Fish AP will meet beginning at 9:00 a.m. on January 5, 2001.

ADDRESSES: The meeting will be held at the Chateau LeMoyne, 301 Dauphine Street, New Orleans, LA 70130; telephone: 504–581–1303.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Reef Fish AP will meet to review a report of the Reef Fish Stock Assessment Panel and to recommend total allowable catches (TACs) for red grouper and greater amberjack. The AP will also make recommendations on a proposed red snapper recovery plan that calls for converting from a constant catch to a constant fishing mortality rate strategy beginning in 2004, and thereafter a review and adjustment of TAC at five-year intervals. In addition, the AP will review an early draft of options being considered for including in a new Reef Fish plan amendment. These options deal with a longline limited entry system, moving the longline boundary line, phasing out the use of longlines, the use of cut-up reef fish for bait, an electronic vessel monitoring system for longline and fish trap vessels, the use of powerheads when spearfishing, requiring operator permits for commercial and charter/headboat operators, a commercial grouper fishery endorsement, grouper closed seasons, prohibiting the import of undersized red snapper, eliminating dormant reef fish permits, and changes to the species listed in the reef fish management unit and deep–water grouper aggregation. Additional options may be added or deleted as this options paper is developed into Reef Fish Amendment 18.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson–Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December, 27, 2000.

Dated: December 12, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–32169 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120700D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad–Hoc Groundfish Strategic Plan Implementation Oversight Committee (SPOC) will a hold work session, which is open to the public.

DATES: The SPOC will meet Wednesday, January 10, 2001, 10 a.m. to 5 p.m., and Thursday, January 11, 2001, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific States Marine Fisheries Commission, Large Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027; telephone: (503) 650–5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck or Don McIsaac, Pacific Fishery Management Council; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this work session is to review topic areas and issues contained in the Groundfish Strategic Plan; prioritize the various topic areas and issues; develop a draft implementation schedule; discuss the make–up of management-alternative development teams; and develop recommendations to the Council about the implementation process and schedule, and membership of the development teams.

This meeting is the first step in implementing the Groundfish Strategic Plan. In September 2000, the Council adopted the following guidelines for implementing the plan:

1. At the September 2000 Council meeting, the Council adopts the Final Groundfish Strategic Plan document (per revisions incorporated after the summer public comment phase).

2. The Council directs the formation of a "Groundfish Strategic Plan Implementation Oversight Committee" which should be composed of Council members, some of which will have been members of the Strategic Plan Development Committee, to ensure continuity and an effective transition to implementation.

3. At its discretion, the Implementation Oversight Committee may establish small implementation development teams to develop specific alternative(s) for implementing elements of the Strategic Plan. Implementation development teams will be comprised of Council subpanel, management team, and committee members from the Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, Enforcement Committee, and members of the public as deemed necessary by the Implementation Oversight Committee.

4. The Implementation Oversight Committee works at the direction of the Council and is tasked with making recommendations regarding implementation of the strategic plan.

5. The Implementation Oversight Committee goals should include: (a) effective transition to the implementation phase, (b) ensuring the plan is implemented in a timely fashion, and (c) whenever possible, doing so in a fashion that provides for constituent acceptance and buy-in.

6. At the direction of the Council, the Implementation Oversight Committee will develop recommended schedules for carrying out all components of the strategic plan.

7. The Implementation Oversight Committee will develop recommendations for all components of the strategic plan that can be developed further: (a) directly by the Council, (b) via advisory entity assignments, or (c) through formation and use of a implementation development team approach, e.g., capacity reduction implementation development team(s), which would handle all of the complexities of addressing the implementation of capacity reduction. For example, there might be four teams – with industry representatives from trawl, fixed gear, open access with groundfish target, and open access with non-groundfish target. Each of these teams will also have a representative from the Implementation Oversight Committee, with a charge to develop a plan and product by "x" date. The Implementation Oversight Committee considers the work of the implementation development teams and develops the final recommendations for the Council. Clarification, input, and technical support will be available to all teams with "on-call" availability from Council staff, states, NMFS staff and General Counsel, etc.

8. It will be important to consider current conditions in the groundfish fishery, including the effects of recent changes in resource status, fishery management, and the environment, as part of the strategic plan implementation process.

Although non-emergency issues not contained in the SPOC meeting agenda may come before the SPOC for discussion, those issues may not be the subject of formal SPOC action during the meeting. SPOC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the SPOC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: December 11, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–32052 Filed 12–15–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120700C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) and Highly Migratory Species Advisory Subpanel (HMSAS) will hold work sessions, which are open to the public.

DATES: The HMSPDT and HMSAS will meet jointly on Monday, January 8, 2001, 8 a.m. to 5 p.m.; Tuesday, January 9, 2001, 8 a.m. to 5 p.m.; and Wednesday, January 10, 2001, 8 a.m. to 5 p.m. The HMSPDT will convene for a work session on Thursday, January 11, 2001, 8 a.m. to 5 p.m. and Friday, January 12, 2001, 8 a.m. until business for the day is completed.

ADDRESSES: The work sessions will be held in the large conference room at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA 92038–0271; telephone: (619) 546–7000.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work sessions is to review and revise sections of the draft fishery management plan (FMP) for highly migratory species (HMS); the draft FMP is scheduled for review by the Council in March 2001.

The proposed FMP and its associated regulatory analyses would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson–Stevens Act, efforts by the United Nations to promote conservation and management of HMS resources through domestic and international programs, and the increased scope of international activities related to HMS fisheries in the eastern Pacific Ocean.

Although non–emergency issues not contained in the HMSPDT/HMSAS meeting agenda may come before the HMSPDT and/or HMSAS for discussion, those issues may not be the subject of formal HMSPDT nor HMSAS action during these meetings. HMSPDT and/or HMSAS action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson–Stevens Act, provided the public has been notified of the HMSPDT's and/or HMSAS's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 11, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–32053 Filed 12–15–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Groundfish Management Process Committee (GMPC) will hold a work session, which is open to the public.

DATES: The GMPC will meet Thursday, January 11, 2001, 2 p.m. to 5 p.m. and Friday, January 12, 2001, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific States Marine Fisheries Commission, Large Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027; telephone: (503) 650-5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck or Don McIsaac, Pacific Fishery Management Council; (503) 326-6352.

SUPPLEMENTARY INFORMATION: The formation of this Ad-Hoc committee is in response to a Council request (November 2000) for a formal review of the current groundfish management process. Thus, the primary purpose of this work session is to review the Council's annual groundfish management process. Specifically, the GMPC will discuss problems associated with the current process and options to address these problems. The GMPC will also begin development of recommendations for changes to the process. The recommendations of the GMPC will be reviewed at the March 2001 Council meeting.

Although non-emergency issues not contained in the GMPC meeting agenda may come before the GMPC for discussion, those issues may not be the subject of formal GMPC action during the meeting. GMPC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the GMPC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: December 12, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00-32166 Filed 12-15-00; 8:45 am]

BILLING CODE: 3510-22 -S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Automation of Paper Comment Cards

AGENCY: Office of Administration and Management, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Administration and Management announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 16, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of Administration and Management/Quality Management Office, ATTN: Ms. Joyce Mussey, 1777 N. Kent St. Suite 14038, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Office of Administration and Management/Quality Management Office (703) 588-8142.

Title and OMB Number: Interactive Customer Evaluation System, Customer Comment Cards: OMB Number 0704-[To be Determined].

Needs and Uses: The Interactive Customer Evaluation System automates and (eventually) eliminates the current manual paper comment cards, which exist at various customer service locations throughout the Department of Defense.

Affected Public: Individuals or households; business or other for-profit.

Annual Burden Hours: 144.

Number of Respondents: 2880.

Responses per Respondent: 1.

Average Burden Per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Members of the public who respond on these automated comment cards are authorized customers and have been provided a service through DoD customer service organizations. They have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. They also have the opportunity to provide any comments that might be beneficial in improving the process and in turn the service to the customer. This is a management tool for improving customer services.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00-32065 Filed 12-15-00 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity (TMA), DOD.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), TMA, announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways of enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received February 16, 2000.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TMA, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041-3206, ATTN: LTC Thomas Williams.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call LTC Thomas Williams at (703) 681-3636.

Title; Associated Form; and OMB Number: Formulary Survey of Prescribers in Military Treatment Facilities (MTFs) and TRICARE Contracts.

Needs and Uses: A confidential survey will be completed at two points in time, before and after the implementation of the new uniform formulary program by DoD, by prescribers working for MTFs and TRICARE Contractors. The two surveys will collect information which will be used to assess their experiences prescribing formulary and non-formulary medications. This information will inform future implementation and enforcement of the uniform formulary system within the Military Health System (MHS) as mandated by Congress.

Affected Public: Individuals—MTSs and TRICARE contract providers.

Annual Burden Hours: 330.

Number of Respondents: 1000 per survey; 2000 total.

Respondents per Respondent: 1 per person.

Average Burden Per Response: 20 minutes per survey.

Frequency: Two times; before and after the implementation of the uniformed formulary.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

National Defense Research Institute (NDRI), an OSD-sponsored federally funded research and development center at RAND, will undertake an evaluation of the DoD's Uniform Formulary Program for TMA, focusing on the issues identified in the legislation and which address the interests of Congress in MHS formulary management, and producing the two required reports in Congress. NDRI will collect the information and generate the analyses necessary to meet the requirements outlined in Section 701 of the National Defense Authorization Act for FY2000.

Activities include the collection and analysis of information obtained confidentially at two points in time from prescribers (physicians, physician, assistants, and nurse practitioners) within the MTF and TRICARE contract providers: prior to and following complete implementation of a uniform formulary. Information will be collected on the extent to which the prescribing activities and behaviors of current prescribers within TRICARE and the MTFs are affected by the implementation of a uniform formulary. Furthermore, the survey will ask prescribers their thoughts about the impact of a uniform formularly on the aggregate cost, quality and accessibility of health care provided to covered beneficiaries. Finally, this effort will also gather information on the prescribers' beliefs and attitudes regarding the rationale behind implementing an integrated formulary system within the Military Health System (MHS).

The evaluation reports will address all the legislative requirements, which include providing information about the opinions of prescribers about formulary development (*i.e.* it use and its usefulness) the impact of formulary restrictions on prescribers' clinical decision-making, and the prescribers' view of the impact of formulary restrictions on the cost, quality and accessibility of healthcare provided to MHS beneficiaries.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00-32066 Filed 12-15-00; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Air Force Academy Candidate Personal Data Record; USAF Form 146; OMB Number 0701-0064.

Type of Request: Extension.

Number of Respondents: 7,233.

Responses per Respondent: 1.

Annual Responses: 7,233.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 3,617.

Needs and Uses: The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00-32063 Filed 12-15-00; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Air Force Academy Request for Secondary School Transcript; USAF Form 148; OMB Number 0701-0066.

Type of Request: Reinstatement.

Number of Respondents: 6,954.

Responses per Respondent: 1.

Annual Responses: 6,954.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 3,477.

Needs and Uses: The information collection requirement is necessary to obtain data on a candidate's background and aptitude in determining eligibility and selection to the Air Force Academy. The information is required by 10 U.S.C. 9346. Respondents are students who are applying for admission to the Air Force Academy. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32064 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Services for Fiscal Year 2001

SUMMARY: Notice is hereby given that on September 30, 2000, the Deputy Chief Financial Officer approved the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 2001. These rates were effective October 1, 2000.

The FY 2001 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, section 1095. Due to size, the sections containing the Drug Reimbursement Rates (section IV.C) and the rates for Ancillary Services Requested by Outside Providers (section IV.D.) are not included in this package. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: *http://www.tricare.osd.mil/ebc/rm/rmhome.html.* The medical and dental service rates in this package (including the rates for ancillary services and other procedures requested by outside providers) were effective October 1, 2000. Pharmacy rates are updated on an as needed basis.

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates [1] [2]

Per inpatient day	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$4,144.00	$5,694.00	$6,016.00
B. Surgical Care Services (Cosmetic Surgery)	1,895.00	2,604.00	2,752.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG).[3]			

1. Average FY 2001 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$2,986.00	$5,712.00	$6,002.00
Other Urban/Rural	3,468.00	6,633.00	7,004.00
Overseas	3,872.00	9,045.00	9,489.00

2. Overview

The FY 2001 inpatient rates are based on the cost per Diagnosis Related Group (DRG), which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. Each large urban or other urban/rural Military Treatment Facility (MTF) providing inpatient care has their own ASA rate. The MTF-specific ASA rate is the published ASA rate adjusted for area wage differences and indirect medical education (IME) for the discharging hospital (see Attachment 1). The MTF-specific ASA rate submitted on the claim is the rate that payers will use for reimbursement purposes. Overseas MTFs use the rates specified in paragraph I.C.1. For providers performing inpatient care at a civilian facility for a DoD beneficiary, see note 3. For a more complete description of the development of MTF-specific ASAs and how they are applied refer to the ASA Primer at: http://www.tricare.osd.mil/org/pae/asa_primer/asa_primer1.html.

An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital (Reynolds Army Community Hospital) in Other Urban/Rural areas.

a. The cost to be recovered is the MTF cost for medical services provided. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.2244. (DRG statistics shown are from FY 1999.)

c. The MTF-applied ASA rate is $6,831 (Reynolds Army Community Hospital's third party rate as shown in Attachment 1).

d. The MTF cost to be recovered is the RWP factor (2.2244) in subparagraph 3.b., above, multiplied by the amount ($6,831) in subparagraph 3.c., above.

e. Cost to be recovered is $15,195.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020	Nervous System Infection Except Viral Meningitis.	2.2244	8.3	5.8	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	MTF-applied ASA
Reynolds Army Community Hospital	Other Urban/Rural	.9156	1.0	$7,004	$6,831

Patient	Length of stay	Days above threshold	Relative weighted product			TPC amount***
			Inlier*	Outlier**	Total	
#1	7 days	0	2.2244	000	2.2244	$15,195
#2	21 days	0	2.2244	000	2.2244	15,195
#3	35 days	6	2.2244	.7594	2.9838	20,382

*DRG Weight.
**Outlier calculation=33 percent of per diem weight × number of outlier days.
=.33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold).
=.33 (2.2244/5.8) × (35–29).
=.33 (.38352) × 6 (take out to five decimal places).
=.12656 × 6 (carry to five decimal places).
=.7594 (carry to four decimal places).
***MTF-Applied ASA × Total RWP.

II. Outpatient Rates—Per Visit [1] [2]

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Medicare Care			
BAA	Internal Medicine	$147.00	$204.00	$216.00
BAB	Allergy	80.00	111.00	117.00
BAC	Cardiology	129.00	180.00	190.00
BAE	Diabetic	105.00	146.00	154.00
BAF	Endocrinology (Metabolism)	151.00	210.00	222.00
BAG	Gastroenterology	183.00	255.00	269.00
BAH	Hematology	286.00	398.00	420.00
BAI	Hypertension	216.00	301.00	318.00
BAJ	Nephrology	221.00	307.00	324.00
BAK	Neurology	165.00	229.00	242.00
BAL	Outpatient Nutrition	69.00	96.00	101.00
BAM	Oncology	201.00	280.00	295.00
BAN	Pulmonary Disease	186.00	259.00	273.00
BAO	Rheumatology	139.00	194.00	205.00
BAP	Dermatology	115.00	160.00	169.00
BAQ	Infectious Disease	181.00	252.00	266.00
BAR	Physical Medicine	115.00	160.00	169.00
BAS	Radiation Therapy	169.00	235.00	248.00
BAT	Bone Marrow Transplant	190.00	264.00	279.00
BAU	Genetic	330.00	460.00	485.00
BAV	Hyperbariac	344.00	480.00	506.00
	B. Surgical Care			
BBA	General Surgery	$215.00	$299.00	$316.00
BBB	Cardiovascular and Thoracic Surgery	419.00	584.00	616.00
BBC	Neurosurgery	249.00	347.00	366.00
BBD	Ophthalmology	130.00	181.00	191.00
BBE	Organ Transplant	1,106.00	1,541.00	1,625.00
BBF	Otolaryngology	149.00	207.00	219.00
BBG	Plastic Surgery	168.00	235.00	247.00
BBH	Proctology	125.00	174.00	184.00
BBI	Urology	164.00	228.00	240.00
BBJ	Pediatric Surgery	89.00	125.00	131.00
BBK	Peripheral Vascular Surgery	98.00	137.00	145.00
BBL	Pain Management	138.00	193.00	203.00
BBM	Vascular and Interventional Radiology	493.00	687.00	724.00

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	C. Obstetrical and Gynecological (OB-GYN) Care			
BCA	Family Planning	$76.00	$106.00	$111.00
BCB	Gynecology	127.00	177.00	187.00
BCC	Obstetrics	104.00	144.00	152.00
BCD	Breast Cancer Clinic	240.00	334.00	352.00
	D. Pediatric Care			
BDA	Pediatric	$92.00	$128.00	$134.00
BDB	Adolescent	83.00	115.00	121.00
BDC	Well Baby	63.00	87.00	92.00
	E. Orthopaedic Care			
BEA	Orthopaedic	$143.00	$200.00	$211.00
BEB	Cast	89.00	123.00	130.00
BEC	Hand Surgery	76.00	106.00	112.00
BEE	Orthotic Laboratory	93.00	130.00	137.00
BEF	Podiatry	80.00	112.00	118.00
BEZ	Chiropractic	38.00	53.00	55.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	$165.00	$230.00	$242.00
BFB	Psychology	115.00	160.00	169.00
BFC	Child Guidance	92.00	128.00	135.00
BFD	Mental Health	148.00	206.00	217.00
BFE	Social Work	147.00	205.00	217.00
BFF	Substance Abuse	141.00	197.00	208.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	$107.00	$149.00	$157.00
BHA	Primary Care	109.00	151.00	160.00
BHB	Medical Examination	111.00	155.00	163.00
BHC	Optometry	72.00	100.00	105.00
BHD	Audiology	52.00	73.00	77.00
BHE	Speech Pathology	122.00	170.00	180.00
BHE	Community Health	85.00	118.00	125.00
BHG	Occupational Health	108.00	151.00	159.00
BHH	TRICARE Outpatient	74.00	104.00	109.00
BHI	Immediate Care	161.00	225.00	237.00
	H. Emergency Medical Care			
BIA	Emergency Medical	$173.00	$242.00	$255.00
	I. Flight Medical Care			
BJA	Flight Medicine	$124.00	$173.00	$182.00
	J. Underseas Medical Care			
BKA	Undersea Medicine	$77.00	$108.00	$114.00
	K. Rehabilitative Services			
BLA	Physical Therapy	$56.00	$79.00	$83.00
BLB	Occupational Therapy	75.00	104.00	110.00

III. Ambulatory Procedure Visit (APV)—Per Visit[5 1]

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Medical Care			
BB	Surgical Care	$1,313.00	$1,829.00	$1,929.00
BE	Orthopaedic Care	1,664.00	2,319.00	2,446.00

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
All Other	B clinics other than BB and BE, to include those B clinics where: 1. There is an APU established within DoD guidelines AND 2. There is a rate established for that clinic in section II. Some B clinics, such as BF, BI, BJ and BL, perform the type of services where the establishment of an APU would not be within appropriate clinical guidelines.	378.00	527.00	556.00

IV. Other Rates and Charges[12]

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Per Each			
FBI	Immunization	$22.00	$31.00	$32.00
	B. Family Member Rate (formerly Military Dependents Rate)			
		$11.45		
	C. Reimbursement Rates for Drugs Requested by Outside Providers[6 15]			
	D. Ancillary Services Requested by an Outside Provider—Per Procedure[7 5]			
DB	Laboratory procedures requested by an outside provider CPT '00 Weight Multiplier.	$15.00	$22.00	$23.00
DC, DI	Radiology procedures requested by an outside provider CPT '00 Weight Mutiplier.	79.00	115.00	120.00
	E. Dental Rate—Per Procedure[11]			
	Dental Service	$73.00	$112.00	$117.00
	ADA code weight multiplier			
	F. Ambulance Rate—Per Hour[12]			
FEA	Ambulance	$81.00	$113.00	$120.00
	G. AirEvac Rate—Per Trip (24 hour period)[13]			
	AirEvac Services—Ambulatory	$339.00	$473.00	$499.00
	AirEvac Services—Litter	989.00	1,379.00	1,454.00
	H. Observation Rate—Per Hour[14]			
	Observation Services—Hour	$20.00	$28.00	$30.00

V. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT)[8]	FY 2001 charge[9]	Amount of change
Mammaplasty—augmentation	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem or APV	(a b)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Surgical Care Per Diem or APV	(a b)
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mentoplasty (Augmentation/Reduction).	76.68, 76.67	21208, 21209	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Lipectomy Suction per region[10]	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT)[8]	FY 2001 charge[9]	Amount of change
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Chemical Peel	8624	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Arm/Thigh Dermolipectomy	86.83	15836/15832	Inpatient Surgical Care Per Diem or APV	(a b)
Refractive surgery			APV or applicable Outpatient Clinic Rate	(b c e)
Radial Keratotomy		65771.		
Other Procedure (if applies to laser or other refractive surgery).		66999.		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	(b c)
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in section I.B. (See notes 8 through 10, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in section III. (See notes 8 through 10, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure until (APU).

[c] Charges for outpatient clinic visits are listed in sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

[d] Charge is solely determined by the location of where the care is provided and is not to be based on any other criteria. An APV rate can only be billed if the location has been established as an APU following all required DoD guidelines and instructions.

[e] Refer to Office of the Assistant Secretary of Defense (Health Affairs) Policy on vision Correction Via Laser Surgery For Non-Active Duty Beneficiaries, April 7, 2000, for further guidance on billing for these services. It can be downloaded from: http://www.tricare.osd.mil/policy/2000poli.htm.

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

MTFs without inpatient services, whose providers are performing inpatient care in a civilian facility for a DoD beneficiary, can bill payers the percentage of the charge that represents professional services as provided in [1] above. The ASA rate used in these cases, based on the absence of a ASA rate for the facility, will be based on the average ASA rate for the type of metropolitan statistical area the MTF resides, large urban, other urban/rural, or overseas (see paragraph I.C.1.). The Uniform Business Office must receive documentation of care provided in order to produce a bill.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

MEPRS Code

B: Outpatient Care (Functional Category)
BA: Medical Care (Summary Account)
BAA: Internal Medicine (Subaccount)

[5] Ambulatory procedure visit is defined in DoD Instruction 6025.8, "Ambulatory Procedure Visit (APV)," dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (for freestanding outpatient clinic) that is specially equipped, staffed, and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF established APU associated with the referring clinic. The BB and BE APV rates are to be used only by clinics that are subaccounts under these summary accounts (see [4] for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used *only* by those clinics that are *not* a subaccount under BB or BE. In addition, APV rates may only be utilized for clinics where there is a clinic rate established. For example, BLC, Neuromuscular Screening, no longer has an established rate. Therefore, an APU cannot be defined and an APV cannot be billed for this clinic.

[6] Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from MTFs that are prescribed by providers external to the MTF (e.g., physicians and dentists). Eligible beneficiaries (family members or retirees with medical insurance) are not liable personally for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the DoD-wide average cost of the drug, calculated by National Drug Code (NDC) number. The prescription charge is calculated by multiplying the number of units (e.g. tablets or capsules) by the unit cost and adding $6.00 for the cost of dispensing the prescription. Dispensing costs include overhead, supplies, and labor, etc. to fill the prescription.

The list of drug reimbursement rates is too large to include in this document. Those rates are available form the TRICARE Management Activity's Uniform business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

[7] The list of FY 2001 rates for ancillary services requested by outside providers and obtained at a MTF is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

Charges for ancillary services requested by an outside provider (e.g., physicians and dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD-established weight for the Physicians' Current Procedural Terminology (CPT 00) code by either the laboratory or radiology multiplier (section IV.D.). Radiology procedures performed by Nuclear Medicine use the same methodology as Radiology for calculating a charge because their workload and expenses are included in the establishment of the Radiology multiplier.

Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for ancillary services.

[8] The attending physician is to complete the CPT 00 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[9] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in section V. The patient shall be charged the rate as specified in the FY 2001 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the "Other" rate) for inpatient per diem surgical care services in section I.B., ambulatory procedure visits as contained in section III., or the appropriate outpatient clinic rate in sections II.A–K. The patient is responsible for the cost of the implants) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[10] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[11] Dental service rates are based on a dental rate multiplied by the DoD established weight for the American Dental Association (ADA) code performed. For example, for ADA code 00270, bite wing single film, the weight is 0.15. The weight of 0.15 is multiplied by the appropriate rate, IMET, IAR, or Full/Third Party rate to obtain the charge. If the Full/Third Party rate is used, then the charge for this ADA code will be $17.55 ($117 × .15=$17.55).

The list of FY 2001 ADA codes and weights for dental services is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.htm1.

[12] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in section IV.F. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[13] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient during a 24-hour period. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately.

[14] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round to nearest hour. For example, if a patient has received 1 hour and 20 minutes of observation, then you bill for 1 hour of service. If the status of a patient changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not separately billed. If a patient is released from observation status and is sent to an APV, the charges for observation services and not billed separately but are added to the APV rate to recover all expenses.

[15] Final rule 32 CFR Part 220, published February 16, 2000, eliminated the dollar threshold for high cost ancillary services and the associated term "high cost ancillary service." The phrase "high cost ancillary service" is replaced with the phrase "ancillary services requested by an outside provider." The elimination of the threshold also eliminated the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeds $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR part 220.

Attachment 1

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY

DMISID	MTF name	SERV	Full cost rate	Interagency rate	IMET rate	TPC rate
0003	Lyster AH—Ft. Rucker	A	$6,637	$6,286	$3,286	$6,637
0004	502nd Med Grp—Maxwell AFB	F	6,984	6,614	3,458	6,984
0005	Bassett ACH—Ft. Wainwright	A	7,152	6,774	3,541	7,152
0006	3rd Med Grp—Elmendorf AFB	F	7,041	6,668	3,486	7,041
0009	56th Med Grp—Luke AFB	F	5,986	5,697	2,978	5,986
0014	60th Med Grp—Travis AFB	F	9,912	9,387	4,907	9,912
0018	30th Med Grp—Vandenberg AFB	F	7,035	6,663	3,483	7,035
0019	95th Med Grp—Edwards AFB	F	7,004	6,633	3,468	7,004
0024	NH Camp Pendleton	N	7,614	7,245	3,787	7,614
0028	NH Lemoore	N	6,997	6,627	3,465	6,997
0029	NH San Diego	N	9,744	9,273	4,847	9,744
0030	NH Twenty Nine Palms	N	6,111	5,815	3,039	6,111
0032	Evans ACH—Ft. Carson	A	6,946	6,578	3,439	6,946
0033	10th Med Grp—USAF Academy	F	6,994	6,623	3,463	6,994
0037	Walter Reed AMC—Washington DC	A	9,010	8,574	4,482	9,010
0038	NH Pensacola	N	8,939	8,465	4,426	8,939
0039	NH Jacksonville	N	7,537	7,173	3,749	7,537

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	SERV	Full cost rate	Interagency rate	IMET rate	TPC rate
0042	96th Med Grp—Eglin AFB	F	8,309	7,869	4,114	8,309
0043	325th Med Grp—Tyndall AFB	F	7,002	6,631	3,467	7,002
0045	6th Med Grp—MacDill AFB	F	5,991	5,702	2,980	5,991
0047	Eisenhower AMC—Ft. Gordon	A	8,550	8,098	4,233	8,550
0048	Martin ACH—Ft. Benning	A	7,987	7,564	3,954	7,987
0049	Winn ACH—Ft. Stewart	A	6,644	6,292	3,289	6,644
0052	Tripler AMC—Ft. Shafter	A	9,533	9,029	4,720	9,533
0053	366th Med Grp—Mountain Home AFB	F	6,982	6,612	3,457	6,982
0055	375th Med Grp—Scott AFB	F	7,625	7,256	3,793	7,625
0056	NH Great Lakes	N	6,063	5,770	3,016	6,063
0057	Irwin AH—Ft. Riley	A	6,521	6,176	3,229	6,521
0060	Blanchfield ACH—Ft. Campbell	A	6,605	6,255	3,270	6,605
0061	Ireland ACH—Ft. Knox	A	6,829	6,467	3,381	6,829
0064	Bayne-Jones ACH—Ft. Polk	A	6,573	6,225	3,254	6,573
0066	89th Med Grp—Andrews AFB	F	8,062	7,672	4,010	8,062
0067	NNMC Bethesda	N	9,786	9,313	4,868	9,786
0073	81st Med Grp—Keesler AFB	F	8,772	8,308	4,343	8,772
0075	Wood ACH—Ft. Leonard Wood	A	6,539	6,193	3,237	6,539
0078	55th Med Grp—Offutt AFB	F	8,697	8,236	4,306	8,697
0079	99th Med Grp—Nellis AFB	F	6,002	5,712	2,986	6,002
0083	377th Med Grp—Kirtland AFB	F	6,971	6,602	3,452	6,971
0084	49th Med Grp—Holloman AFB	F	7,004	6,633	3,468	7,004
0086	Keller ACH—West Point	A	7,296	6,909	3,612	7,296
0089	Womach AMC—Ft. Bragg	A	7,817	7,403	3,870	7,817
0091	NH Camp LeJeune	N	6,744	6,387	3,339	6,744
0092	NH Cherry Point	N	6,788	6,429	3,361	6,788
0093	319th Med Grp—Grand Forks AFB	F	7,032	6,660	3,482	7,032
0094	5th Med Grp—Minot AFB	F	6,857	6,494	3,395	6,857
0095	74th Med Grp—Wright-Patterson AFB	F	10,371	9,822	5,135	10,371
0096	72nd Med Grp—Tinker AFB	F	6,001	5,711	2,985	6,001
0097	97th Med Grp—Atlus AFB	F	6,976	6,607	3,454	6,976
0098	Reynolds ACH—Ft. Sill	A	6,831	6,469	3,382	6,831
0100	NH Newport	N	6,002	5,712	2,986	6,002
0101	20th Med Grp—Shaw AFB	F	6,964	6,595	3,448	6,964
0103	NH Charleston	N	6,879	6,514	3,406	6,879
0104	NH Beaufort	N	6,871	6,507	3,402	6,871
0105	Moncrief ACH—Ft. Jackson	A	6,961	6,592	3,446	6,961
0106	28th Med Grp—Ellsworth AFB	F	6,939	6,572	3,436	6,939
0108	Wm Beaumonth AMC—Ft. Bliss	A	8,329	7,888	4,124	8,329
0109	Brooke AMC—Ft. Sam Houston	A	8,511	8,099	4,233	8,511
0110	Darnall AH—Ft. Hood	A	8,606	8,151	4,261	8,606
0112	7th Med Grp—Dyess AFB	F	6,892	6,528	3,413	6,892
0113	82nd Med Grp—Sheppard AFB	F	6,903	6,537	3,418	6,903
0117	59th Med Wing—Lackland AFB	F	8,640	8,222	4,297	8,640
0119	75th Med Grp—Hill AFB	F	5,983	5,693	2,976	5,983
0120	1st Med Grp—Langley AFB	F	5,954	5,666	2,962	5,954
0121	McDonald ACH—Ft. Eustis	A	5,649	5,376	2,810	5,649
0123	Dewitt AH—Ft. Belvoir	A	8,237	7,839	4,097	8,237
0124	NH Portsmouth	N	7,469	7,107	3,715	7,469
0125	Madigan AMC—Ft. Lewis	A	11,018	10,435	5,455	11,018
0126	NH Bremerton	N	8,165	7,733	4,043	8,165
0127	NH Oak Harbor	N	6,283	5,979	3,125	6,283
0129	90th Med Grp—F.E. Warren AFB	F	6,989	6,619	3,460	6,989
0131	Weed ACH—Ft. Irwin	A	7,003	6,633	3,467	7,003
0449	24th Med Grp—Howard	F	9,489	9,045	3,872	9,489
0606	95th CSH—Heidelberg	A	9,489	9,045	3,872	9,489
0607	Landstuhl Rgn MC	A	9,489	9,045	3,872	9,489
0609	67th CSH—Wurzburg	A	9,489	9,045	3,872	9,489
0612	121st Gen Hosp—Seoul	A	9,489	9,045	3,872	9,489
0615	NH Guantanamo Bay	N	9,489	9,045	3,872	9,489
0616	NH Roosevelt Roads	N	9,489	9,045	3,872	9,489
0617	NH Naples	N	9,489	9,045	3,872	9,489
0618	NH Rota	N	9,489	9,045	3,872	9,489
0620	NH Guam	N	9,489	9,045	3,872	9,489
0621	NH Okinawa	N	9,489	9,045	3,872	9,489
0622	NH Yokosuka	N	9,489	9,045	3,872	9,489
0623	NH Keflavik	N	9,489	9,045	3,872	9,489
0624	BH Sigonella	N	9,489	9,045	3,872	9,489
0633	48th Med Grp—RAF Lakenhealth	F	9,489	9,045	3,872	9,489
0635	39th Med Grp—Incirlik AB	F	9,489	9,045	3,872	9,489
0638	51st Med Grp—Osan AB	F	9,489	9,045	3,872	9,489

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	SERV	Full cost rate	Interagency rate	IMET rate	TPC rate
0639	35th Med Grp—Misawa	F	9,489	9,045	3,872	9,489
0640	374th Med Grp—Yokota AB	F	9,489	9,045	3,872	9,489
0805	52nd Med Grp—Spangdahlem	F	9,489	9,045	3,872	9,489
0808	32st Med Grp—Aviano	F	9,489	9,045	3,872	9,489

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32068 Filed 12–15–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: December 11, 2000 (8 a.m. to 8 p.m.).

ADDRESSES: The Defense Intelligence Agency, 2000 MacDill Blvd., Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Victoria J. Prescott, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32067 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on March 7–8, 2001; May 16–17, 2001; and October 24–25, 2001, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32062 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Marine Corps

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Delete a system of records.

SUMMARY: The U.S. Marine Corps proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 17, 2001, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B.L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report.

Dated: December 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MMN00020

SYSTEM NAME:

Pet Registration (February 22, 1993, 58 FR 10630).

REASON:

These records are now being maintained under a Department of the Army Privacy Act system of records notice identified as A0040–905 DASG, Defense Privately Owned Animal Record Files.

[FR Doc. 00–32059 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB meeting. This Board will meet from 0730–1630 on Tuesday, 06 February 2001, and 0730–1630 on Wednesday, 07 February 2001, and 0730–1300 on Thursday, 08 February 2001. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session. The meeting location will be at the Tripler Army Medical Center, Hawaii.

This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–31979 Filed 12–15–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Program for Qualifying Department of Defense (DoD) Brokers

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Program Director for the Department of Defense (DoD), Proposes to allow relocation companies operating as brokers to participate as transportation providers in the movement of personal property under the current program for both domestic and international traffic. Therefore, the carrier qualification program is being amended to add qualification standards for brokers and to expand the Tender of Service to include brokers. The effect is that brokers will be eligible to compete in DoD's Personal Property Program. Under these procedures, brokers interested in competing for DoD traffic can apply for qualification by complying with all requirements as set forth in the current personal property program. Requirements can be assessed via the worldwide web at www.mtmc.army.mil, click Transportation Services, then click on Personal Property & POV. Follow the "How to Do Business in the Personal Property Program," instructions located under Carriers Approvals & Performance.

DATES: Comments must be submitted on or before February 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Walker, Headquarters, Military Traffic Management Command, ATTN: MTPP–HQ, Room 10N67–51, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–5000; Telephone (703) 428–2982; Telefax (703) 428–3388.

SUPPLEMENTARY INFORMATION:

Background

HQMTMC is allowing relocation companies operating as brokers to participate in the current personal property program. A broker is defined as a person or company who, for compensation, provides transportation services for DoD shippers, with reasonable diligence, according to the terms and conditions of transportation contracts, rate tenders and Government bills of lading (GBL's) negotiated between MTMC and the broker. The broker understands that its initial approval and retention of approval are contingent upon its meeting or exceeding all the requirements set forth in the current personal property program, both domestic and/or international, which ever is applicable. Brokers may participate in one or both programs. Brokers must also establish and maintain to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and service. Sufficient resources include equipment, personnel, facilities and finances to handle traffic anticipated by DoD/MTMC under the broker's proposed scope of operations in accordance with the service requirements of the shipper. The broker understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. Applications may be submitted to Sylvia Walker at the address shown above.

Regulatory Flexibility Act

This proposed change of procurement policy is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act 44 U.S.C. 3501 *et seq.* does not apply because no information collection requirements or records keeping responsibilities are imposed on offerors, contractors, or members of the general public.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–31980 Filed 12–15–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend and Delete Systems of Records.

SUMMARY: The Department of the Army is proposing to delete four systems of records notices and amend one in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 17, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

A0600–8 NGB

SYSTEM NAME:

Standard Installation/Division Personnel System Army National Guard (SIDPERS–ARNG) (October 18, 1999, 64 FR 56195).

REASON:

Records have been incorporated into A0600–8–23 DAPE, Standard Installation/Division Personnel System.

A0600–8b TAPC

SYSTEM NAME:

Standard Installation/Division Personnel System (SIDPERS) (February 22, 1993, 58 FR 10002).

REASON:

Records have been incorporated into A0600–8–23 DAPE, Standard Installation/Division Personnel System.

A0608–4 DAMO

SYSTEM NAME:

Trophy Firearm Registration (February 22, 1993, 58 FR 10002).

REASON:

These records are no longer maintained, and have been destroyed.

A0640 ARPC

SYSTEM NAME:

Personnel Management/Action Officer Files (December 23, 1997, 62 FR 67055).

REASON:

ARPC no longer maintains these records. Records formerly in this system of records can now be found in A0640–10a, Military Personnel Records Jacket (MPRJ) and A0640–10b TAPC, Official Military Personnel.

AMENDMENT:

A0195–2A USACIDC

SYSTEM NAME:

Source Register (July 7, 1997, 62 FR 36266).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'CID Form 20 voucher'.

* * * * *

STORAGE:

Delete entry and replace with "Paper files and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "By individual's name, source control number, and Social Security Number."

* * * * *

RETENTION AND DISPOSAL:

Delete first sentence.

* * * * *

A0195–2a USACIDC

SYSTEM NAME:

Source Register.

SYSTEM LOCATION:

PRIMARY LOCATION:

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

Segments of the system exist at subordinate elements of the U.S. Army Criminal Investigation Command which exercise local administrative and technical control of sources. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals, civilian or military, who are used as sources by the U.S. Army Criminal Investigation Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain cross indexed code numbers, name, race, military occupational specialty, sex, date and place of birth, home of record, educational level, area of utilization, civilian employment, handler, letters, vouchers, personal history, performance, citizenship, marital status, physical description, criminal history, expertise, talents, actions taken, other related personal data and CID Form 20 voucher.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 195–2, Criminal Investigation Activities; and E.O. 9397 (SSN).

PURPOSE(S):

To monitor performance and reliability; to check utilization of sources; to maintain an accounting of expenditures connected with the sources; to answer Congressional inquiries concerning misuse or mistreatment of sources or those who allege they are not sources; to document fear-of-life transfers for military sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to foreign countries under the provisions of Status of Forces Agreements or Treaties.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic storage media.

RETRIEVABILITY:

By individual's name, source control number and Social Security Number.

SAFEGUARDS:

All information is stored in locked containers within secured buildings; information is accessible only by designated officials having a need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

At Headquarters, U.S. Army Criminal Investigation Command, information concerning other sources is retained for 10 years after termination of source's service. At locations of U.S. Army Criminal Investigation Command, source files and cross-index cards are retained for 3 years after termination of source's service; master source cards are retained until no longer needed to control or facilitate work. Destruction is by shredding. Retention period for automated records varies according to Headquarters, U.S. Army Criminal Investigation Command and field element, but total retention may not exceed 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010

6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

For verification purposes, individual should provide the full name, Social Security Number, date of birth, current address, timeframe of being a source, and signature.

RECORD ACCESS PROCEDURES:

Individual seeking access to information about themselves contained in this system should address written inquiries to the Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

For verification purposes, individual should provide the full name, Social Security Number, date of birth, current address, timeframe of being a source, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the military personnel records if the source is military, or the civilian personnel records if source is a civilian employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3); (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 00–32060 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 12, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Evaluation of Independent Programs.

Frequency: One time.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 1,003, Burden Hours: 639.

Abstract: The Rehabilitation Services Administration (RSA), in the Office of Special Education and Rehabilitation Services (OSERS), U.S. Department of Education, has funded a comprehensive two-year evaluation of Parts B and C of the Centers for Independent Living (CIL) program.

CIL programs promote a philosophy of independent living-consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy-the goal is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and enhance the integration and full inclusion of individuals with disabilities into the mainstream of American society.

This evaluation will include questionnaire surveys of all CIL directors and a nationally representative sample of current and former consumers of CIL services. The study will examine two major areas: (1) Consumer satisfaction and outcomes of services, and (2) systems advocacy and change.

The results of the study will be used to complement Section 704 Annual Performance Report data; support RSA Government Performance and Results Act (GPRA) reporting requirements; assist CILs to identify successful service and advocacy strategies; and inform advocates and policy makers about the Independent Living Programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–32093 Filed 12–15–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Solicitation for Financial Assistance Applications; Million Solar Roofs Initiative Small Grant Program for State and Local Partnerships

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications number DE–PS36–01GO90001

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Million Solar Roofs Program for State and Local Partnerships. The selected applicants will receive financial assistance under a grant with DOE.

DATES: The solicitation will be issued in mid December, 2000.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties must access the Golden Field Office Application, Award and Solicitation page at http://www.golden.doe.gov/businessopportunities.html, click on "solicitations" and then locate the solicitation number identified above. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: DOE's Million Solar Roofs (MSR) Initiative is an initiative to install solar energy systems on one million U.S. buildings by 2010. It was announced by President Clinton on June 26, 1997 in his speech before the United Nations Session on Environment and Development. This effort includes two types of solar energy technology—photovoltaics that produce electricity from sunlight and solar thermal panels that produce heat for domestic hot water, space heating or heating swimming pools. A key strategy of the Initiative is to catalyze market demand in local areas through the establishment of State and Local MSR Partnerships. The overall goal of this solicitation is to assist State and Local Partnerships in contributing to the installation of one million solar energy systems on U.S. rooftops by the year 2010.

The MSR Partnerships bring together business, government and community organizations, (*e.g.*, solar energy educational organizations, or not-for-profit housing agencies) at the regional level with a commitment to install a pre-determined number of solar energy systems. DOE provides access to a variety of financing options, training and technical assistance from DOE=s existing infrastructure, recognition and support, and a link to solar energy businesses, associations and related industries that can provide assistance. New MSR Partnerships can declare their intent to join the Initiative by including such a letter with their application for this solicitation. A complete description of partnerships and their representative activities can be found on the MSR website at *http://www.eren.doe.gov/millionroofs/* DOE's Office of Energy Efficiency and Renewable Energy will only consider proposals from interested State and Local Partnerships to help fund their MSR program development and implementation activities. Grant awards will be administered by the DOE Regional Offices. DOE intends to allocate a portion of total available funding to each of the six DOE regions based on the number of MSR Partnerships and the potential for new partnerships to be established in each Region. Applicants will only be competing against other partnerships in their DOE region. The project or activity must be conducted in a designated MSR partnership community. Any member of a State or Local Partnership, except industry associations, can apply on behalf of the Partnership, including builders, energy service providers, utilities, non-governmental organizations, local governments, or state governments. The different organizations/offices involved in a State or Local Partnership are encouraged to collaborate on their response to this solicitation. There is no cost-sharing requirement for these grants although cost-sharing will be favorably considered in the selection process. Subject to the availability of funds, 20–50 awards totaling $1,500,000 (DOE funding) in FY 2001 are anticipated to be awarded as a result of this Solicitation. DOE funding for individual awards will be up to $50,000 in size. Solicitation number DE–PS36–01GO90001 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting applications for funding. No pre-application conference is planned. Issuance of the solicitation is planned for mid December, with applications due 45 days after the solicitation has been issued.

FOR FURTHER INFORMATION CONTACT: James McDermott, Contract Specialist, at 303–275–4732, e-mail jim_mcdermott@nrel.gov. Responses to questions will be made by amendment to the solicitation and will be posted on the DOE Golden Field Office Home Page.

Issued in Golden, Colorado, on December 7, 2000.

Jerry Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 00–32119 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Thursday, January 4, 2001, 6 p.m. to 9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update by Colorado Department of Public Health and Environment.
2. Educational session on earned value system being used with the new Kaiser-Hill contract at Rocky Flats.
3. Presentation on Radionuclide Soil Action Level report regarding new science.
4. Review and approve EMSSAB Stewardship Workshop draft recommendations.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of

operations for the Public Reading Room are 9:00 a.m. to 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on December 13, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–32117 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Wednesday, January 11, 2001, 10:30 am to 5:30 pm and Thursday, January 12, 2001, 8:30 am to 12:30 pm.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22206.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, SW., Washington DC 20585, Telephone Number 202.586.0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Wednesday, January 11, 2001

Welcome remarks
Status of Nuclear Energy's FY 2001 Budget
Overview of the Advanced Accelerator Applications Program
Report of Task Force on Technical Opportunities for Increasing Proliferation Resistence of Global Civilian Nuclear Power Systems (TOPS)
Report of other NERAC Subcommittees and Panels

Thursday, January 12, 2001

Report of Subcommittee on Generation IV Technology Planning
Discussion of the future of university research reactors
Public comment period

Public Participation: The day and a half meeting is open to the public. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:a.m. and 4:p.m., Monday through Friday, except holidays.

Issued in Washington, DC on December 13, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–32118 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications

AGENCY: Department of Energy (DOE).

ACTION: Notice of supplemental announcement (01) to the Fiscal Year 2001 broad based solicitation for submission of financial assistance applications involving research, development, and demonstration.

SUMMARY: The Hydrogen Program of the DOE Office of Energy Efficiency and Renewable Energy (EERE) is issuing a Supplemental Announcement to the EERE Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–01GO90000, dated November 27, 2000. Under this Supplemental Announcement, DOE is seeking proposals that can advance and demonstrate the use of fuel cell technology in hydrogen-powered, mobile, underground mining vehicles. DOE is proposing to undertake this effort under the provisions of the Hydrogen Future Act of 1996. DOE anticipates selecting one Application for negotiation of an award under this Supplemental Announcement. The award will be a Cooperative Agreement with a term to be determined based upon the proposed demonstration time frame of the selected Applicant. A minimum cost share of 50% of the total project costs is required for an Application to be considered for award under this Supplemental Announcement.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement in Mid—December, 2000. The closing date of the Supplemental Announcement is February 15, 2001.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html* under "Solicitations".

FOR FURTHER INFORMATION CONTACT: Shirley Johnson, Contract Specialist, at Facsimile 303–275–4788 or e-mail *Shirley_Johnson@nrel.gov.*

Issued in Golden, Colorado, on December 8, 2000.

Jerry L. Zimmer,

Procurement Director, Golden Field Office.

[FR Doc. 00–32120 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–588–001, FERC–588]

Information Collection Submitted for Review and Request for Comments

December 12, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and

should address a copy of those comments to the commission, as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 5, 2000 (65 FR 53709) and made this notation in its submission to OMB.

DATES: Comments regarding this collection are best assured of having their full effect if received on or before January 17, 2001.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Commission Desk Officer, 725 17th Street NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE., Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–588, "Emergency Natural Gas Transportation, Sale and Exchange Transactions."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0144. The Commission is requesting reinstatement, with change, of the previously approved data collection for which approval expired July 31, 2000, and a three-year approval of the collection of data. This is a mandatory information collection requirement and the Commission does not consider the information to be confidential.

4. *Necessity of Collection of information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of Section 7(c) of the Natural Gas Act (Pub. L. 75–688) and provisions of the Natural Gas Policy Act of 1978 (NGPA).

Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, section 7(c) exempts from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, or local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies file the necessary information with the Commission so that it may determine if the transaction/operation qualifies for exemption. A report within forty-eight hours of the commencement of the transportation, sale or exchange, or a request to extend the sixty-day term of the emergency transportation if needed, and a termination report are required. The data required to be filed for the forty-eight hour report is specified by 18 CFR 284.270.

5. *Respondent Description:* The respondent universe currently comprises approximately 15 natural gas pipeline companies.

6. *Estimated Burden:* 150 total burden hours, 15 respondents, 15 responses annually, 10 hours per response.

Statutory Authority: Section 7(c) of the NGA (15 U.S.C. 717–717w) and provisions of NGPA (15 U.S.C. 3301–3432).

David P. Boergers,

Secretary.

[FR Doc. 00–32084 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–331–000 and RP01–23–000]

Algonquin Gas Transmission Company; Notice of Technical Conference

December 12, 2000.

On June 15, 2000, Algonquin Gas Transmission Company (Algonquin) submitted a filing to comply with Order No. 637. Several parties have protested various aspects of Algonquin's filing. Subsequently, on October 2, 2000, Algonquin submitted a filing in Docket No. RP01–23–000 to comply with Order Nos. 587–G and 587–L. The Commission accepted the 587–L filing subject to further consideration in Algonquin's Order No. 637 compliance proceeding.

Take notice that a technical conference to discuss the various issues raised by Algonquin's filings will be held on Wednesday, January 10, 2001, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties protesting aspects of Algonquin's filings should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–32073 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–23–002]

Algonquin Transmission Corporation; Notice of Compliance Filing

December 12, 2000.

Take notice that on November 27, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective on November 1, 2000:

Sub First Revised Sheet No. 671
Sub First Revised Sheet No. 672

Algonquin states that the filing is being made in compliance with the Commission's October 27 Order, "Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)].

Algonquin also states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of

paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32076 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–332–000]

Allegheny Energy Supply Hunlock Creek, LLC; Notice of Issuance of Order

December 12, 2000.

Allegheny Energy Supply Hunlock Creek, LLC (Allegheny) submitted for filing a rate schedule under which Allegheny will engage in wholesale electric power and energy transactions at market-based rates. Allegheny also requested waiver of various Commission regulations. In particular, Allegheny requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Allegheny.

On December 11, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Allegheny should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Allegheny is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Allegheny's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 11, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32130 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–015]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

December 12, 2000.

Take notice that on December 4, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following Agreement to a recently filed negotiated rate transaction:

ITS–2 Service Agreement No. 70069 between Columbia Gulf Transmission Company and Matrix Oil & Gas, Inc. dated November 17, 2000.

Columbia Gulf states that transportation service which was scheduled to commence upon Commission approval.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32086 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–177–000]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

December 12, 2000.

Take notice that on December 6, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 112, with an effective date of February 1, 2001.

Cove Point states that the purpose of the instant filing is to propose a new tariff provision which will permit Cove Point, under certain limited circumstances, to reserve capacity for future expansion projects. Cove Point states that its proposed tariff revisions are consistent with current Commission policy that pipelines may reserve certain capacity for future expansion projects in a not unduly discriminatory manner.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32080 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3641–000 and ER00–3641–001]

The Dayton Power and Light Company; Notice of Issuance of Order

December 12, 2000.

The Dayton Power & Light Company (DP&L) submitted for filing a rate schedule under which DP&L will engage in wholesale electric power and energy transactions at market-based rates. DP&L also requested waiver of various Commission regulations. In particular, DP&L requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by DP&L.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by DP&L should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, DP&L is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of DP&L's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene protests, as set forth above, is January 8, 2001.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32123 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3619–000, ER00–3619–001; ER00–3620–000, ER00–3620–001; ER00–3621–000, ER00–3621–001; ER00–3746–000, ER00–3746–001, and ER00–3746–002]

Dominion Nuclear Marketing II, Inc., Dominion Nuclear Marketing I, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing III, L.L.C.; Notice of Issuance of Order

December 12, 2000.

Dominion Nuclear Marketing II, Inc., Dominion Nuclear Marketing I, Inc., Dominion Nuclear Connecticut, Inc. and Dominion Nuclear Marketing III, L.L.C. (collectively hereafter "Applicants") submitted for filing rate schedules under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates. The Applicants also requested waiver of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32122 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–000]

Dominion Transmission, Inc.; Notice of Technical Conference

December 12, 2000.

In the Commission's order issued on October 31, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, January 11, 2001, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–32075 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 93 FERC 61,119 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–174–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 4, 2000, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2001:

First Revised Sheet No. 256
First Revised Sheet No. 2200
First Revised Sheet No. 2203
First Revised Sheet No. 2204
First Revised Sheet No. 2205
First Revised Sheet No. 2206
First Revised Sheet No. 2207
First Revised Sheet No. 2208
First Revised Sheet No. 2209
Original Sheet No. 2210
Original Sheet No. 2211
Original Sheet No. 2212

DTI states that it is proposing changes to its Rate Schedule IT and its E–SCRIPT System Contact Information and the E–SCRIPT System User Request Form. The proposed changes to Rate Schedule IT are not substantive but would simply renumber tariff sections. DTI states that its changes to the tariff for E–SCRIPT related matters revise DTI's E–SCRIPT tariff form and make various administrative and ministerial language changes required to update the tariff for recent technological changes.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32078 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–22–004]

Dominion Transmission, Inc.; Notice of Report of Refunds

December 12, 2000.

Take notice that on November 30, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing its report of refunds attributable to the resolution of the captioned proceedings. DTI states that the reported refunds and billing adjustments reflect DTI's implementation of the rates contained in the Commission Order dated June 16, 2000.

DTI states that the purpose of this filing is to report refunds and billing adjustments, with associated interest, that DTI made on November 1, 2000, and November 6, 2000. DTI further states that these refunds and billing adjustments were made as a result of DTI's implementation of the Commission's orders dated June 16, 2000 and October 2, 2000, in Docket Nos. TM00–1–22–000, *et al.* 91 FERC ¶61,281 (2000) and 93 FERC ¶61,010 (2000).

DTI states that copies of its report and summary workpapers are being mailed to affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32082 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–015]

Dominion Transmission, Inc.; Notice or Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 4, 2000, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with an effective date of September 23, 2000.

Substitute Original Sheet No. 1401

DTI states that the purpose of this filing is to incorporate an approved tariff sheet from DTI's Second Revised Volume No. 1 into DTI's currently effective Third Revised Volume No. 1.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32085 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–241–000]

Duke Energy Washoe, LLC; Notice of Issuance of Order

December 12, 2000.

Duke Energy Washoe, LLC (Duke Washoe) submitted for filing a rate schedule under which Duke Washoe will engage in wholesale electric power and energy transactions at market-based rates. Duke Washoe also requested waiver of various Commission regulations. In particular, Duke Washoe requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Duke Washoe.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Washoe should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Duke Washoe is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Washoe's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32128 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–140–000]

Dynegy Danskammer, L.L.C.; Notice of Issuance of Order

December 12, 2000.

Dynegy Danskammer, L.L.C. (Dynegy Danskammer) submitted for filing a rate schedule under which Dynegy Danskammer will engage in wholesale electric power and energy transactions at market-based rates. Dynegy Danskammer also requested waiver of various Commission regulations. In particular, Dynegy Danskammer requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Dynegy Danskammer.

On December 5, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Dynegy Danskammer should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Dynegy Danskammer is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Dynegy Danskammer's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 5, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32126 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–141–000]

Dynegy Roseton, L.L.C.; Notice of Issuance of Order

December 12, 2000.

Dynegy Roseton, L.L.C. (Dynegy Roseton) submitted for filing a rate schedule under which Dynegy Roseton will engage in wholesale electric power and energy transactions at market-based rates. Dynegy Roseton also requested waiver of various Commission regulations. In particular, Dynegy Roseton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Dynegy Roseton.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Dynegy Roseton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Dynegy Roseton is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Dynegy Roseton's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32127 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–324–000]

Fulton Cogeneration Associates, L.P.; Notice of Issuance of Order

December 12, 2000.

Fulton Cogeneration Associates, L.P. (Fulton) submitted for filing a rate schedule under which Fulton will engage in wholesale electric power and energy transactions at market-based rates. Fulton also requested waiver of various Commission regulations. In particular, Fulton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Fulton.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Fulton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Fulton is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Fulton's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32129 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3604–000 and ER00–3604–001]

Georgia-Pacific Corporation; Notice of Issuance of Order

December 12, 2000.

Georgia-Pacific Corporation (Georgia-Pacific) submitted for filing a rate schedule under which Georgia-Pacific will engage in wholesale electric power and energy transactions at market-based rates. Georgia-Pacific also requested waiver of various Commission regulations. In particular, Georgia-Pacific requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Georgia-Pacific.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Georgia-Pacific should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Georgia-Pacific is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Georgia-Pacific's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32121 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3717–000 and ER00–3717–001]

Mirabito Gas & Electric, Inc.; Notice of Issuance of Order

December 12, 2000.

Mirabito Gas & Electric, Inc. (Mirabito) submitted for filing a rate schedule under which Mirabito will engage in wholesale electric power and energy transactions at market-based rates. Mirabito also requested waiver of various Commission regulations. In particular, Mirabito requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mirabito.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mirabito should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Mirabito is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mirabito's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32124 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–178–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 6, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on January 6, 2001:

Fifth Revised Sheet No. 135D
Tenth Revised Sheet No. 144

Northern states that the purpose of this filing is to modify Northern's FDD and IDD Rate Schedules applicable to firm and interruptible storage services to provide increased service flexibility and enhance market liquidity through the addition of eight (8) points available for receipt and delivery of storage services.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32081 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–173–000]

Questar Pipeline Company; Notice of Tariff Filing

December 12, 2000.

Take notice that on December 5, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective December 22, 2000.

Sixth Revised Sheet No. 51
Fifth Revised Sheet No. 52
Second Revised Sheet No. 52A
Third Revised Sheet No. 55
Fourth Revised Sheet No.56
First Revised Sheet No. 56A
Fourth Revised Sheet No. 73
Second Revised Sheet No. 73A

Questar stated that the purpose of this filing is to, at customers request, simplify the process used in bidding for unsold capacity on Questar's pipeline system.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Davis P. Boergers,

Secretary.

[FR Doc. 00–32077 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–137–000]

Tenaska Alabama II Partners, L.P.; Notice of Issuance of Order

December 12, 2000.

Tenaska Alabama II Partners, L.P. (Tenaska Alabama) submitted for filing a rate schedule under which Tenaska Alabama will engage in wholesale electric power and energy transactions at market-based rates. Tenaska Alabama also requested waiver of various Commission regulations. In particular. Tenaska Alabama requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Tenaska Alabama.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Tenaska Alabama should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Tenaska Alabama is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Tenaska Alabama's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32125 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–468–000 and RP01–25–000]

Texas Eastern Transmission Corporation; Notice of Technical Conference

December 12, 2000.

On August 15, 2000, Texas Eastern Transmission Corporation (Texas Eastern) (Texas Eastern) filed to comply with Order No. 637. A number of parties have protested various aspect of Texas Eastern's filing. Subsequently, on October 2, 2000, Texas Eastern submitted a filing in Docket No. RP01–25–000 to comply with Order No. 587–L. The Commission accepted the 587–L filing subject to further consideration in Texas Eastern's Order No. 637 compliance proceeding.

Take notice that the technical conference to discuss the various issues raised by Texas Eastern's filing will be held on Tuesday, January 9, 2001, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties protesting aspects of Texas Eastern's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–32074 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–83–006]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 4, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, a corrected electronic version of a notice that should have accompanied its November 13, 2000 filing in First Revised Volume No. 1, Substitute First Revised Sheet No. 126 and Second Substitute First Revised Sheet No. 278.

Texas Gas states that the revised tariff sheets are being filed to comply with the Commission's Order issued on October 30, 2000, 1 in Docket No. RP00–83–004 and RP00–83–005, implementing a new summer no-notice (SNS) service on the Texas Gas system. Texas Gas also states that the November 13, 2000 filing was noticed as having been filed on November 21, 2000, whereas the actual filing date was November 13, 2000.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers, interested state commissions, and those parties appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32087 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–175–000]

Total Peaking Services, L.L.C.; Notice of Tariff Change

December 12, 2000.

Take notice that on December 5, 2000, Total Peaking Services, L.L.C. (Total Peaking), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariffs, with an effective date of:

Revised Tariff Sheets Nos. 64 and 82

Total Peaking states that the Revised Sheets remove language from Total Peaking's Tariff that currently subjects customers to imbalance penalties.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32079 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–434–000]

Wisconsin Public Service Corporation; Notice of Issuance of Order

December 12, 2000.

Wisconsin Public Service Corporation (WPSC) submitted for filing a rate schedule under which WPSC will engage in wholesale electric power and energy transactions at market-based rates. WPSC also requested waiver of various Commission regulations. In particular, WPSC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by WPSC.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WPSC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WPSC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WPSC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32131 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket Nos. CP01–22–000 and No. CP01–23–000; CSLC EIR No. 703, BLM Reference No. CACA–42662]

North Baja Pipeline, LLC; Notice of Intent/Preparation To Prepare a Joint Environmental Impact Statement/Report for the Proposed North Baja Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

December 12, 2000.

The staffs of the Federal Energy Regulatory commission (FERC or Commission) and the California State Lands Commission (CSLC) will jointly prepare an environmental impact statement/report (EIS/EIR) that will discuss the environmental impacts of North Baja Pipeline, LLC's (NBP) proposed North Baja Pipeline Project in La Paz County, Arizona, and Riverside and Imperial Counties, California.[1] The North Baja Pipeline Project would involve the construction and operation of about 79.8 miles of 36- and 30-inch-diameter pipeline and a new 18,810-horsepower (hp) compressor station. The FERC will use this EIS/EIR in its decision-making process to determine whether the project is in the public convenience and necessity. The CSLC will use the document to consider NBP's application for leasing the State's Sovereign and School Lands for the pipeline.

The FERC will be the lead Federal agency in the preparation of this EIS/EIR while the CSLC will be the State Lead Agency for California. The joint document, which will avoid much duplication of environmental analyses, will satisfy the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

If you are a landowner receiving this notice, you may be contacted by a NBP representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could

[1] NBP's applications in Docket Nos. CP01–22–000 and CP01–23–000 were filed with the FERC under sections 7(c) and 3 of the Natural Gas Act, respectively.

initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" should have been attached to the project notice NBP provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website *www.ferc.fed.us*).

This notice is being sent to affected landowners along NBP's proposed and alternative routes; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries, newspapers, and television stations; commentors on the FERC Notice of Application; and the commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this notice we [2] are asking other Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS/EIR. These agencies may choose to participate once they have evaluated NBP's proposal relative to their responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described later in this notice.

Because of the federally-managed land that the proposal would affect, NBP has filed a right-of-way application with the El Centro Field Office of the Bureau of Land Management (BLM). As part of considering NBP's application, the BLM has agreed to meet its NEPA responsibilities by participating as a cooperating agency in the preparation of this EIS/EIR. Also, the BLM will consider a plan amendment which may be necessary for pipeline construction outside of the designated utility corridors as described in the California Desert Conservation Area Plan, 1980 (as amended).

Summary of the Proposed Project

NBP's proposed action consists of the construction and operation of:

- About 79.8 miles of 36-inch-diameter (11.5 miles) and 30-inch-diameter (68.3 miles) natural gas pipeline (North Baja Pipeline) extending from an interconnection with El Paso Natural Gas Company (El Paso) in La Paz County, Arizona, through Riverside and Imperial Counties, California, to an interconnection at the international border between the United States and Mexico;
- A new compressor station (Ehrenburg Compressor Station) consisting of three 6,270-hp, gas-fired centrifugal compressor units (with one additional 6,270-hp spare unit) at the El Paso interconnect in La Paz County, Arizona;
- Two meter stations, one at the interconnect with El Paso at the Ehrenberg Compressor Station site (Ehrenberg Meter Station) and one in Imperial County, California near the interconnect at the international border (Ogilby Meter Station); and
- A pig launcher facility at the Ehrenberg Compressor Station site; a pig receiver facility at the Ogilby Meter Station site; and a separate pig launcher/receiver facility (Rannells Trap) in Riverside County, California.

The general location of the major project facilities is shown in appendix 1.[3]

In addition, NPB requests in Docket No. CP01–23–000 a Presidential Permit to site, construct, operate, and maintain pipeline facilities at the international border between the U.S. and Mexico.

The proposed facilities would be used to transport 500 million cubic feet per day of natural gas from the proposed interconnect with the existing El Paso pipeline to the U.S./Mexico border where it would interconnect with a new pipeline, Gasoducto Bajanorte, to be constructed by Sempra Energy Mexico (Sempra). The natural gas would then be transported westward on the Gasoducto Bajanorte pipeline to an interconnection with the existing Transportadora de Gas Natural de Baja California (TGN) pipeline in Baja California, Mexico. The TGN pipeline extends from Rosarita, Mexico to an interconnection with San Diego Gas and Electric Company pipeline facilities at the San Diego/Tijuana border. The natural gas transported on these pipelines would supply existing and planned power plants in Mexico that would serve electric power demand in northern Baja California, Mexico, and western U.S. markets.

The North Baja Pipeline Project is scheduled to be in service in September 2002. Construction is scheduled to take place between April and September 2002, although construction may occur outside this time period. The approximate duration of construction is 6 months for the compressor station and 4 months for the pipeline.

Land Requirements for Construction

Construction of NBP's proposed facilities would affect a total of about 942.2 acres of land. Following construction, about 457.3 acres would be retained as permanent right-of-way. The remaining 484.9 acres of temporary work space would be restored and allowed to revert to former use.

The nominal construction right-of-way for pipeline would be 80 feet wide, with 50 feet retained as permanent right-of-way. However, where the pipeline is proposed for construction within 18th Avenue on the southern outskirts of Blythe, California (about 7.6 miles), the nominal construction right-of-way would be about 60 feet, with 5 feet retained as permanent right-of-way. About 63 percent of the pipeline route would abut or overlap existing road or powerline rights-of-way. Additionally, a total of about 70 percent of the land affected by construction and operation of the North Baja Pipeline Project would be on public lands managed by the BLM (59 percent), the CSLC (1 percent), or California counties (10 percent).

The Ehrenberg Compressor Station, Ehrenberg Meter Station, and a pig launcher would be constructed on 12.4 acres of land within an approximate 80-acre site has been acquired by NBP. The Rannells Trap pig launcher/receiver facility would be constructed on a 0.7-acre site that would be leased/acquired from a private landowner. The Ogilby Meter Station and a pig receiver would be constructed on a 0.9-acre site that would be leased from the BLM. Mainline valves would be installed within each of these aboveground facilities and another four mainline valves would be spaced as required within the permanent pipeline right-of-way along the pipeline route.

The EIS/EIR Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The CSLC, as State Lead Agency for California, is required to consider the same potential impacts within the State of California under CEQA. The EIS/EIR we are preparing will give both the FERC and the CSLC the information we need to do that.

NEPA and CEQA also require us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS/EIR on the important environmental issues. By this notice, we are requesting public comments on the scope of the issues to be analyzed and presented in the EIS/EIR. All comments received are considered during the preparation of the EIS/EIR.

Our independent analysis of the issues will result in the publication of a Draft EIS/EIR. The Draft EIS/EIR will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Indian tribes; affected landowners; local libraries, newspapers, and television stations; other interested parties; and the Commission's official service list for this proceeding. We will consider all comments on the Draft EIS/EIR and revise the document, as necessary, before issuing a Final EIS/EIR. The Final EIS/EIR will include our response to all comments received.

Currently Identified Environmental Issues

The EIS/EIR will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by NBP. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils:
  - — Assessment of potential geologic hazards.
  - — Effect on prime farmland soils.
  - — Desert construction, erosion control, and restoration.
- Water Resources and Wetlands:
  - — Directional drill of the Colorado River and All American Canal.
  - — Dry crossings of irrigation canals and drains in the Palo Verde Irrigation District.
  - — Open-cut crossings of 579 dry washes.
  - — Effect on 2.5 acres of wetlands.
- Vegetation and Wildlife:
  - — Effect on 573.2 acres of Sonoran creosote bush scrub.
  - — Effect on 96.9 acres of desert wash woodland.
- Endangered and Threatened Species:
  - — Potential effect on 9 federally listed species (including the desert tortoise).
  - — Potential effect on 31 state-listed species.
- Cultural Resources:
  - — Effect on historic and prehistoric sites.
  - — Native American and tribal concerns.
- Land Use, Recreation, and Visual Resources:
  - — Temporary effect on 13.8 acres of agricultural land.
  - — Permanent conversion of 13.1 acres of land from agricultural to industrial use.
  - — Temporary disturbance to residents who use 18th Avenue as access to their homes and businesses.
  - — Effect on about 56 miles of public land.
  - — Amendment to the California Desert Conservation Area Plan.
  - — Visual impacts.
- Socioeconomics:
  - — Potential effects on transportation and traffic.
  - — Effects of construction workforce demands on public services and temporary housing.
- Air Quality and Noise:
  - — Effects on local air quality and noise environment from construction and operation of the Ehrenberg Compressor Station.
- Reliability and Safety:
  - — Assessment of hazards associated with natural gas pipelines.
- Alternatives:
  - — Assessment or alternative routes and existing systems to reduce or avoid environmental impacts.
  - — Route alternatives in the Blythe and Cibola areas.
  - — Deviations from California Desert Conservation Area Desert Plan designated Utility Corridor J.
- Cumulative Impact:
  - — Assessment of the effect of the proposed project when combined with other projects that have been or may be proposed in the same region and similar time frame.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS/EIR and considered by the Commission and the CSLC. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP01–22–000;
- Label one copy of your comments for the attention of the Gas Group 1, PJ–11.1;
- Send an additional copy of your letter to the following individual: Goodyear K. Walker, California State Lands Commission, 100 Howe Ave., Suite 100 South, Sacramento, CA 95825.
- Mail your comments so that they will be received in Washington, DC on or before February 5, 2001.

Comments may also be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at http://www.ferc.fed.us/efi/doorbell.htm under the link to the User's Guide. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account."

Everyone who responds to this notice or comments throughout the EIS/EIR process will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS/EIR, please return the Information Request (appendix 3). You must send comments or return the Information Request for your name to remain on the mailing list.

Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings that the FERC, CSLC, and BLM will conduct in the project area. The locations and times for these meetings are listed below.

Wednesday, January 10, 2001, 7:00 p.m.: Vacation Inn, 2000 Cottonwood Circle, El Centro, California 92243, (760) 352–9523

Thursday, January 11, 2001, 7:00 p.m.: Blythe City Council Chamber, 235 North Broadway, Blythe, California 92225, (760) 922– 6161

The public scoping meetings are designed to provide you with more detailed information and another opportunity to offer your comments on

[2] "We," "us," and "our" refer to the staffs of the FERC's Office of Energy Projects and the CSLC.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS, refer to the page 10 of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

the proposed project NBP representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS/EIR. A transcript of each meeting will be made so that your comments will be accurately recorded.

On January 10 and 11, 2001, we will also be conducting a site visit to the project area. This will be an on-the-ground inspection, conducted by automobile on public roads, or where access to private property has been granted (specific locations to be determined later). Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS/EIR scoping process, you may want to become an official party to the proceeding, known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (*www.ferc.fed.us*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS Menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Information concerning the involvement of the CSLC in the EIS/EIR process may be obtained from Kirk Walker, EIR Project Manager, at (916) 574–1893, or on the California State Lands website at *http://www/slc.ca.gov.*

David P. Boergers,

Secretary.

[FR Doc. 00–32083 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6918–3]

Clean Water Act Section 303(d): Availability of Proposed Determinations That Total Maximum Daily Loads (TMDLs) Are Not Needed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment EPA proposed determinations that TMDLs are not needed for 54 waterbody/pollutant combinations in the Mermenatu and Vermilion/Teche river basins. EPA prepared the proposed determinations in response to a Court Order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Under this court order, EPA is required to prepare TMDLs when needed for waters on the Louisiana 1998 section 303(d) list by December 31, 2007. EPA is also required to add or delete waters to the schedule as new data confirms that waters are or are not meeting water quality standards.

DATES: Comments on the 54 proposed determinations that TMDLs are not needed must be submitted in writing to EPA on or before January 17, 2001.

ADDRESSES: Comments on the proposed determinations should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for the proposed determinations is available for public inspection at this address as well. The administrative record file may be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

EPA SEEKS COMMENTS ON 54 PROPOSED DETERMINATIONS THAT TMDLS ARE NOT NECESSARY

Waterbody	Waterbody description	Suspected pollutant	Reason for delisting
050101	Bayou Des Cannes—Headwaters to Mermentau	Turbidity	Assessment of new data and information shows it is meeting Water Quality Standards (WQS).
050102	Bayou Joe Marcel	Turbidity	Assessment of new data and information show it is meeting WQS.
050103	Bayou Mallet	Turbidity	Assessment of new data and information show it is meeting WQS.
050201	Bayou Plaquemine Brule—Headwaters to Bayou Des Cannes.	Chlorides Sulfates	Assessment of new data and information show it is meeting WQS.

EPA SEEKS COMMENTS ON 54 PROPOSED DETERMINATIONS THAT TMDLS ARE NOT NECESSARY—Continued

Waterbody	Waterbody description	Suspected pollutant	Reason for delisting
050301	Bayou Nezpique—Headwaters to Mermentau River	Turbidity	Assessment of new data and information show it is meeting WQS.
050401	Mermentau River—Origin To Lake Arthur	Turbidity	Assessment of new data and information show it is meeting WQS.
050402	Lake Arthur and Lower Mermentau	Turbidity	Assessment of new data and information shows it is meeting WQS.
050501	Bayou Que de Tortue—Headwaters to Mermentau River.	Chlorides Sulfates Phosphorus	Assessment of new data and information shows it is it meeting WQS.
050602	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
050701	Grand Lake	Turbidity	Assessment of new data and information shows it is meeting WQS.
050702	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
050703	White Lake	Sulfates	Assessment of new data and information shows it is meeting WQS.
050901	Bays and Gulf Waters to State 3-mile Limit	Turbidity	Assessment of new data and information shows it is meeting WQS.
060202	Bayou Cocodrie	Turbidity	Assessment of new data and information shows it is meeting WQS.
060203	Chicot Lake	Turbidity	Assessment of new data and information shows it is meeting WQS.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal.	Chlorides Turbidity	Assessment of new data and information shows it is meeting WQS.
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10.	Turbidity	Assessment of new data and information shows it is meeting WQS.
060207	Bayou des Glaises Diversion Channel	Turbidity	Assessment of new data and information shows it is meeting WQS.
060208	Bayou Boeuf—Headwaters to Bayou Courtableau	Chlorides Sulfates Turbidity	Assessment of new data and information shows it is meeting WQS.
060209	Irish Ditch/Big Bayou—Unnamed Ditch to Irish Ditch	Salinity/TDS Chlorides Sulfates	Assessment of new data and information shows it is meeting WQS.
060210	Bayou Carron	Turbidity	Assessment of new data and information shows it is meeting WQS.
060211	West Atchafalaya Borrow Pit Canal	Chlorides Turbidity	Assessment of new data and information shows it is meeting WQS.
060212	Chatlin Lake Canal and Bayou DuLac	Turbidity	Assessment of new data and information shows it is meeting WQS.
060401	Bayou Teche—Keystone Locks and Dam to Charenton Canal.	Turbidity	Assessment of new data and information shows it is meeting WQS.
060501	Bayou Teche—Charenton Canal to Wax Lake Outlet	Turbidity	Assessment of new data and information shows it is meeting WQS.
060601	Charenton Canal	Turbidity	Assessment of new data and information shows it is meeting WQS.
060701	Tete Bayou	Turbidity	Assessment of new data and information shows it is meeting WQS.
060702	Lake Fausse Point and Dauterive Lake	Turbidity	Assessment of new data and information shows it is meeting WQS.
060703	Bayou du Portage	Turbidity	Assessment of new data and information shows it is meeting WQS.
060801	Vermilion River—Head-waters at Bayou Fusilier—Bourbeaux Junction to New Flanders (Ambassador Caffery Bridge at Hwy 3073).	Chlorides Salinity/TDS Turbidity	Assessment of new data and information shows it is meeting WQS.
060802	Vermilion River—From New Flanders (Ambassador Caffery Bridge at Hwy 3073) To Intracoastal Waterway.	Salinity/TDS Chlorides Temp. Turbidity	Assessment of new data and information shows it is meeting WQS.
060803	Vermilion River Cutoff	Turbidity	Assessment of new data and information shows it is meeting WQS.
060804	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
060901	Bayou Petite Anse	Turbidity	Assessment of new data and information shows it is meeting WQS.
060902	Bayou Carlin (Delcambre Canal)—Lake Peigneur to Bayou Petite Anse (Estuarine).	Turbidity	Assessment of new data and information shows it is meeting WQS.
060903	Bayou Tigre	Turbidity	Assessment of new data and information shows it is meeting WQS.

EPA SEEKS COMMENTS ON 54 PROPOSED DETERMINATIONS THAT TMDLS ARE NOT NECESSARY—Continued

Waterbody	Waterbody description	Suspected pollutant	Reason for delisting
060904	Vermilion River B890 Basin New Iberia Southern Drainage Canal.	Turbidity	Assessment of new data and information shows it is meeting WQS.
060906	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
060909	Lake Peigneur	Turbidity	Assessment of new data and information shows it is meeting WQS.
061102	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the 54 proposed determinations that TMDLs are not necessary. EPA will review all data and information submitted during the public comment period and revise the determinations where appropriate.

Dated: November 27, 2000.

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 00–32148 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1350–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1350–DR), dated December 6, 2000, and related determinations.

EFFECTIVE DATE: December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 6, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the damage in certain areas of beginning on October 31, 2000, and continuing through November 20, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. 106–390, 114 Stat. 1552 (2000) (Stafford Act), I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven R. Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Carter, Fallon, Richland, Roosevelt, Sheridan, and Wibaux Counties for Public Assistance.

All counties within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–32048 Filed 12–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3157–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3157–EM), dated December 4, 2000, and related determinations.

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 4, 2000, the President declared an emergency under the authority of The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Public Law 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the impact in certain areas of the State of New York, resulting from the near record snow on November 19–21, 2000, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Public Law 106–390, 114 Stat. 1552 (2000), ("Stafford Act"). I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

The counties of Cattaraugus, Chautauqua and Erie for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–32047 Filed 12–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1349–DR]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1349–DR), dated November 27, 2000, and related determinations.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 27, 2000:

Jackson County for Public Assistance.
Oklahoma County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–32049 Filed 12–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 2000–N–7]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled "Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances" to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on December 31, 2000.

DATES: Interested persons may submit comments on or before January 17, 2001.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Senior Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2932, by electronic mail at *raudenbushe@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

In July 2000, the Finance Board promulgated a final rule that, among other things, authorizes the Federal Home Loan Banks (Banks), on a permanent program basis, to acquire residential mortgage loans from or through their members and housing associates and to hold these mortgages as investments. *See* 65 FR 43969 (July 17, 2000). The regulations governing the acquisition of these mortgages, known as "acquired member assets," or "AMA," are now codified in part 955 of the Finance Board's regulations. 12 CFR part 955. Under this AMA regulation, Banks engaging in AMA transactions are required to collect and maintain, and report to the Finance Board on a quarterly basis, certain loan-level data on each residential mortgage held. *See* 12 CFR 955.4. While this data is provided directly to the Finance Board by the Banks (which are government-sponsored enterprises), each Bank must initially collect the information from the private-sector member or housing associate institution from which the Bank acquires the mortgage.

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is charged with the duty to "ensure that the * * * Banks carry out their housing finance mission." 12 U.S.C. 1422a(a). The Bank Act also authorizes the Finance Board to promulgate and enforce such regulations and orders as are necessary * * * to carry out the provisions" of the Bank Act. *Id.* 1422b(a)(1). The Finance Board believes that the loan-level data reporting is essential in order to monitor the extent to which the Banks are fulfilling their statutory housing finance mission through their AMA programs.

The Finance Board uses the information collection to create a database and reporting infrastructure for monitoring the Banks' achievement of the public purpose of their residential mortgage purchase programs on a par with that currently imposed on entities entering into secondary mortgage market transactions with the other housing government-sponsored enterprises (*i.e.*, Fannie Mae and Freddie Mac).

The OMB number for the information collection is 3069–0058. The OMB clearance for the information collection expires on December 31, 2000.

The likely respondents and/or recordkeepers include the Banks, institutions that are members or housing associates of a Bank and the Finance Board.

B. Burden Estimate

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents—412.

b. Total annual responses—1600.

Percentage of these responses collected electronically—75%.

c. Total annual hours requested—38,632.

d. Current OMB inventory—264,400.

e. Difference—(225,768).

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs—$300,000.00.

b. Total annual costs (O&M)—0.

c. Total annualized cost requested—$1,196,768.72.

d. Current OMB inventory $2,524,697.92.

e. Difference—($1,327,929.20).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding the information collection as part of the final AMA rulemaking, which appeared in the **Federal Register** on July 17, 2000. *See* 65 FR 43969 (July 17, 2000). The 60-day comment period closed on September 15, 2000. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: December 1, 2000.

James L. Bothwell,

Managing Director.

[FR Doc. 00–32110 Filed 12–15–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, December 20, 2000.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule: Capital Requirements for Federal Home Loan Banks

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 00–32217 Filed 12–13–00; 5:09 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Summit Bank Corporation, Atlanta, Georgia; to acquire at least 35 percent and up to 100 percent of the voting shares of Global Commerce Bank, Doraville, Georgia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Indiana United Bancorp, Greensburg, Indiana; to acquire 100 percent of the voting shares of Regional Bank, New Albany, Indiana (also known as Regional FSB),which will convert to a state chartered commercial bank.

2. Worth Bancorp, Spartanburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Worth Bank (in organization), Spartanburg, Indiana.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Remada Financial Holdings, Inc., Minnetonka, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Claremont Financial Services, Inc., St. Paul, Minnesota, and thereby indirectly acquire voting shares of Alliance Bank of Blooming Prairie, Blooming Prairie, Minnesota.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Dickinson Holdings, Inc., Dickinson, Texas, and Dickinson Holdings of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Citizens State Bank of Dickinson, Dickinson, Texas, and League City Bank & Trust, League City, Texas.

Board of Governors of the Federal Reserve System, December 12, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–32098 Filed 12–15–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee in Vital and Health Statistics (NCVHS), National Health Information Infrastructure Workgroup, Health Statistics for the 21st Century Workgroup.

Time and Date: January 11, 2001, 9 a.m.–5 p.m.

Place: Lowe's Hotel at L'Enfant Plaza, 480 L'Enfant Plaza, Washington, DC 20201, (202) 484–1000.

Status: Open.

Purpose: Two Workgroups of the NCVHS, the National Health Information Infrastructure Workgroup and the Health Statistics for the 21st Century Workgroup, are conducting a joint public hearing to solicit opinions from the public, including oral and written testimony, about the issues raised in two interim reports: "Toward a National Health Information Infrastructure" and "Shaping a Vision for 21st Century Health Statistics." The interim reports may be downloaded from the NCVHS homepage at: *http://www.ncvhs.hhs.gov/* and all participants are encouraged to review them before the meeting.

The hearing will explore challenges to the development and implementation of a National Health Information Infrastructure (NHII). As envisioned in the interim report, the NHII is the set of technologies, standards, applications, systems, values, and laws that support all facets of individual health, health care, and public health. The broad goal of the NHII is to deliver information to individuals—consumers, patients, and professionals—when and where they need it, so they can use this information to make informed decisions about health and health care. Speakers invited by the NHII workgroup will discuss barriers to accomplishing the objectives described in the report, including financial and technical barriers to the NHII, along with recommendations for actions which could be taken to overcome constraints. Speakers will also address consumer interests and concerns and the role of principal stakeholder groups in achieving the NHII vision. The Workgroup will also hear additional testimony from the public on these areas.

The hearing will also seek comments about major trends and issues in population health and their implications for future information needs described in the report, "Shaping a Vision for 21st Century Health Statistics." The report outlines themes that have emerged from national consultations involving health statistics users, public health providers, advocacy groups and health care providers at local, state, and Federal levels. The Workgroup's national consultative process has helped to identify trends and gaps in shaping the vision, as well as cross-cutting issues involved and several principles have emerged as essential qualities for developing the health statistics vision. Speakers invited by the 21st Century Workgroup will be asked to discuss specific local and state health statistics needs, specific means for generating private and public cooperation in defining health statistics needs and generating health statistics collaborations. Invited speakers will also be asked to provide specific comments and suggestions on the interim report, particularly as it relates to local and state health statistics needs and private and public cooperation.

Joint panels of speakers will address confidentiality and privacy issues pertinent to both Workgroups and will consider other topics of mutual relevance. The January hearing is the fourth and final of a series of joint public hearings conducted in several regions of the country to solicit testimony on the reports. Information from the hearings will be incorporated in the final reports expected to be completed in early 2001.

Person who would like to make a brief oral comment (3–5 minutes) during the January hearing will be placed on the agenda as time permits. To be included on the agenda, please submit testimony by January 3, 2001, to Debbie M. Jackson at (301) 458–4614, by e-mail at djackson@cdc.gov, or postal address at NCHS, Presidential Building, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782. Persons wishing to submit written testimony only (no more than 2–3 typewritten pages) should also adhere to the due date of January 3, 2001. Testimony will also be accepted on-site as time permits. Please consult Ms. Jackson for further information about these arrangements. Additional information about the meeting will be provided by the NCVHS homepage at: http://www.ncvhs.hhs.gov/ shortly before the meeting date.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/.

Dated: December 11, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–32132 Filed 12–15–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #01001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, PA #01001, meeting.

Times and Dates: 7:30 p.m.–8 p.m., January 28, 2001 (Open); 8 p.m.–10 p.m., January 28, 2001 (Closed); 8 a.m.–6 p.m., January 29, 2001 (Closed); 8 a.m.–5 p.m., January 30, 2001 (Closed).

Place: Embassy Suites River Center, 10 E. River Center Boulevard, Covington, Kentucky 41011.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 01001.

CONTACT PERSON FOR MORE INFORMATION: Bernadine Kuchinski, Occupational Health Consultant, Office of Extramural Coordination and Special Projects,

National Institute for Occupational Safety and Health, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Phone 404/639–3342, e-mail bbk1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 11, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–32102 Filed 12–15–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1631]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on "Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies" (VICH GL23); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance document for industry (No. 116) entitled "Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies" (VICH GL23). This draft guidance document has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from a guidance regarding pharmaceuticals for human use, which was adopted by the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use (ICH). This draft VICH guidance document recommends a basic battery of tests that can be used to evaluate the genotoxicity of veterinary drug residues in human food in the European Union, Japan, and the United States.

DATES: Submit written comments on the draft guidance document by January 17, 2001, to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance document entitled "Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies" (VICH GL23) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/TOCs/guideline.html. Persons without Internet access may submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

You may submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the VICH: Sharon Thompson, Center for Veterinary Medicine, (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e–mail: sthompso@cvm.fda.gov, or Carole R. Andres, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6524, e-mail: candres1@cvm.fda.gov.

Regarding the draft guidance document: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: lmulliga@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the: European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/ New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Genotoxicity Studies

The VICH Steering Committee held a meeting on June 14 through 16, 2000, and agreed that the draft guidance document entitled "Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies" (VICH GL23) should be made available for public comment. This draft guidance document has been adapted for veterinary use by the VICH from guidances regarding pharmaceuticals for human use which were adopted by the ICH and published in the **Federal Register** of April 24, 1996 (61 FR 18197), and November 21, 1997 (62 FR 62471). This draft guidance document is one of a series of VICH guidances developed to facilitate the mutual acceptance of safety data necessary for the establishment of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory authorities. The guidance on the overall strategy for the evaluation of veterinary drug residues in human food (VICH Guidance on General Testing Approach) will be made available at a later time. This guidance was developed after consideration of the existing ICH guidances for pharmaceuticals for human use: "Genotoxicity: A Standard Battery of Genotoxicity Testing of Pharmaceuticals" and "Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals." Account was also taken of the Organisation for Economic Cooperation and Development methodological guidances and of the current practices for evaluating the safety of veterinary drug residues in human food in the European Union, Japan, the U.S.A., Australia, and New Zealand.

Comments about the draft guidance documents will be considered by the FDA and the VICH Safety Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidances and publish them as future guidance. (Information collection is covered under OMB No. 0910–0117. Information collection also could be covered by OMB No. 0910–0032.)

III. Significance of Guidance

This draft guidance document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (65 FR 56468, September 19, 2000). For example, the documents have been designated "guidance" rather than "guideline." Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as "must," "shall," and "will" in the original VICH documents have been substituted with "should." Similarly, words such as "require" or "requirement" have been replaced by "recommendation" or "recommended" as appropriate to the context.

The draft guidance document represents the agency's current thinking on genotoxicity safety studies for veterinary drug residues in human food. This guidance document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments by January 17, 2001, to ensure adequate consideration in preparation of the final guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32113 Filed 12–15–00; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2001. The Prescription Drug User Fee Act of 1992 (the PDUFA), as amended by the Food and Drug Administration Modernization Act of 1997 (the FDAMA), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Fees for applications for FY 2001 were set by the PDUFA, as amended, subject to adjustment for inflation. Total application fee revenues fluctuate with the number of fee-paying applications FDA receives. Fees for establishments and products are calculated so that total revenues from each category will approximate FDA's estimate of the revenues to be derived from applications.

FOR FURTHER INFORMATION CONTACT: Frank P. Claunts, Office of Management and Systems (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Public Law 102–571), as amended by the FDAMA (Public Law 105–115), referred to as the PDUFA II in this document, establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 1998 through 2002, under the PDUFA II, the application fee rates are set in the statute, but are to be adjusted annually for cumulative inflation since FY 1997. Total application fee revenues are structured to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases.

Each year from FY 1998 through 2002, FDA is required to set establishment fees and product fees so that the estimated total fee revenue from each of these two categories will equal the total revenue FDA expects to collect from application fees that year. This procedure continues the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2001 for application, establishment, and product fees. These fees are retroactive to October 1, 2000, and will remain in effect through September 30, 2001. For fees already paid on applications and supplements submitted on or after October 1, 2000, FDA will bill applicants for the difference between fees paid and fees due under the new fee schedule. For applications and supplements submitted after December 31, 2000, the new fee schedule must be used. Invoices for establishment and product fees for FY 2001 will be issued in December 2000, using the new fee schedule.

II. Inflation and Workload Adjustment Process

The PDUFA II provides that fee rates for each FY shall be adjusted by notice in the **Federal Register**. The adjustment must reflect the greater of: (1) The total percentage change that occurred during the preceding FY in the Consumer Price Index (CPI) (all items; U.S. city average), or (2) the total percentage pay change for that FY for Federal employees stationed in the Washington, DC, metropolitan area. The PDUFA II provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)(1)).

The PDUFA II also structures the total application fee revenue to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases. This provision allows revenues to rise or fall as this portion of FDA's workload rises or falls. To implement this provision, each year FDA will estimate the number of fee-paying applications it anticipates receiving. The number of applications estimated will then be multiplied by the inflation-adjusted statutory application fee. This calculation will produce the FDA estimate of total application fee revenues to be received.

The PDUFA II also provides that FDA shall adjust the rates for establishment and product fees so that the total revenues from each of these categories is projected to equal the revenues FDA expects to collect from application fees that year. The PDUFA II provides that the new fee rates based on these calculations be adjusted within 60 days after the end of each FY (21 U.S.C. 379h(c)(2)).

III. Inflation Adjustment and Estimate of Total Application Fee Revenue

The PDUFA II provides that the application fee rates set out in the statute be adjusted each year for cumulative inflation since 1997. It also provides for total application fee revenues to increase or decrease based on increases or decreases in the number of fee-paying applications submitted.

A. Inflation Adjustment to Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data for safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A) and 379h(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fees described above are set out in the PDUFA II for FY 2001 ($267,606 for applications requiring clinical data, and $133,803 for applications not requiring clinical data or supplements requiring clinical data) (21 U.S.C. 379h(b)(1)), but must be adjusted for cumulative inflation since 1997. That adjustment each year is to be the greater of: (1) The total percentage change that occurred during the preceding FY in the CPI, or (2) the total percentage pay change for that FY for Federal employees stationed in DC, as adjusted for any locality-based payment. The PDUFA II provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)).

The adjustment for FY 1998 was 2.45 percent (62 FR 64849, December 9, 1997). This was the greater of the CPI increase for FY 1997 (2.15 percent) or the increase in applicable Federal salaries (2.45 percent).

The adjustment for FY 1999 was 3.68 percent. (63 FR 70777 at 70778, December 22, 1998). This was the greater of the CPI increase for FY 1998 (1.49 percent) or the increase in applicable Federal salaries (3.68 percent).

The adjustment for FY 2000 was 4.94 percent (64 FR 72669 at 72670, December 28, 1999). This was the greater of the CPI increase for FY 1999 (2.62 percent) or the increase in applicable Federal salaries (4.94 percent).

The adjustment for FY 2001 is 3.81 percent. This is the greater of the CPI increase for FY 2000 (3.45 percent) or the increase in applicable Federal salaries (3.81 percent).

Compounding these amounts (1.0245 times 1.0368 times 1.0494 times 1.0381) yields a total compounded inflation increase of 15.71 percent for FY 2001. The adjusted application fee rates are computed by adding one to the decimal equivalent of this percent (0.1571) and multiplying this amount (1.1571) by the FY 2001 statutory application fee rates stated above ($267,606 for applications requiring clinical data, and $133,803 for applications not requiring clinical data or supplements requiring clinical data). For FY 2001 the adjusted application fee rates are $309,647 for applications requiring clinical data, and $154,823 for applications not requiring clinical data or supplements requiring clinical data. These amounts must be submitted with all applications during FY 2001.

B. Estimate of Total Application Fee Revenue

Total application fee revenues for FY 2001 will be estimated by multiplying the number of fee-paying applications FDA receives in FY 2001 (from October 1, 2000, through September 30, 2001) by the fee rates calculated in the preceding paragraph. Before fees can be set for establishment and product fee categories, each of which are projected to be equal to total revenues FDA collects from application fees, FDA must first estimate its total FY 2001 application fee revenues. To do this FDA first determines its FY 2000 fee-paying full application equivalents, and uses that number in a linear regression analysis to predict the number of fee-paying full application equivalents expected in FY 2001. This is the same technique applied in each of the previous 2 fiscal years.

In FY 2000, FDA received and filed 117 human drug applications that require clinical data for approval, 21 that did not require clinical data for approval, and 131 supplements to human drug applications that required clinical data for approval. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee, the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by 2. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications that may be subject to full application fees.

In addition, as of September 30, 2000, FDA refused to file, or firms withdrew before filing, 11 applications that required clinical data, and 5 applications that either did not require clinical data or that were supplements requiring clinical data. The full applications refused for filing or withdrawn before filing pay one-fourth the full application fee and are counted as one-fourth of an application; the applications that do not require clinical data and the supplements refused for filing or withdrawn before filing pay one-eighth of the full application fee and are each counted as one-eighth of an application.

Using this methodology, the number of full application equivalents that were submitted for review in FY 2000 was 196.4, before any exemptions, waivers or reductions. Under the PDUFA II, FDA waives application fees for certain small businesses submitting their first application and for certain orphan products. Certain application supplements for pediatric indications are also exempt from fees. In addition, the PDUFA II provides a number of other grounds for waivers (public health necessity, preventing significant barriers to innovation, and fees exceed the cost). In FY 2000 waivers or exemptions were applied to 42.9 full application equivalents (14 for orphan products, 8 for small businesses, 12.5 for pediatric supplements, and 8.4 miscellaneous exemptions/waivers). Therefore, for FY 2000, FDA estimates that it received the equivalent of 153.5 (196.4 minus 42.9) full application equivalents that will pay fees, after allowing for exemptions, waivers and reductions.

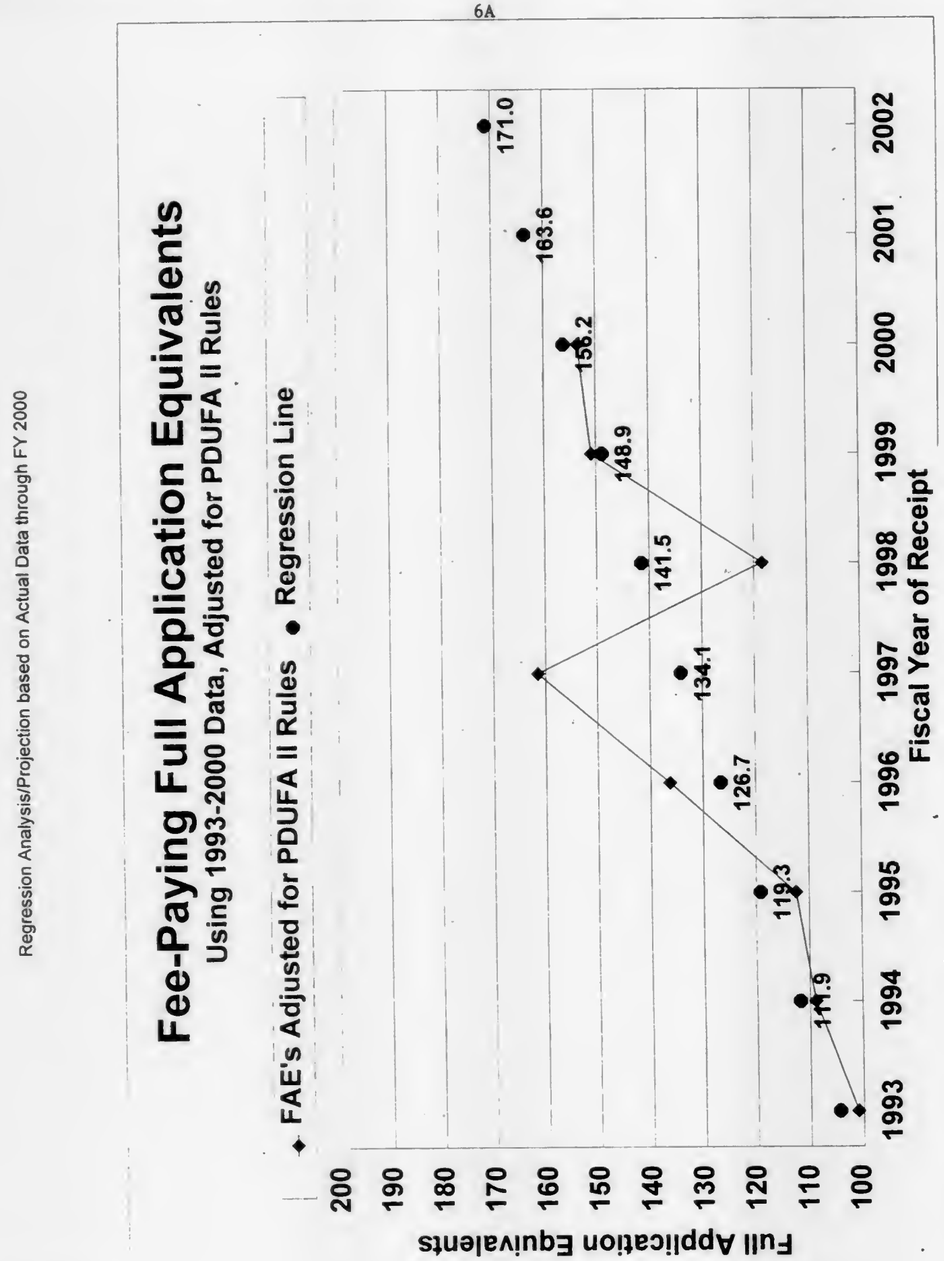
A linear regression line based on the adjusted number of fee-paying full application equivalent submissions since 1993, and including our FY 2000 total of 153.5 fee-paying full application equivalents, projects the receipt of 163.6 fee-paying full application equivalent (FAE) submissions in FY 2001, as reflected in table 1 of this document and graph below.

TABLE 1.

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001
Adjusted fee-paying FAE's	101.0	108.9	112.5	136.3	161.5	118.5	150.9	153.5	
Regression line	104.5	111.9	119.3	126.7	134.1	141.5	148.9	156.2	163.6

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The total FY 2001 application fee revenue is estimated by multiplying the adjusted application fee rate ($309,647) by the equivalent number of applications projected to qualify for fees in FY 2001 (163.6), for a total estimated application fee revenue in FY 2001 of $50,658,249. This is the amount of revenue that FDA is also expected to derive both from establishment fees and from product fees.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of the PDUFA II, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379h(g)(4)).

In FY 1998, Congress appropriated a total of $117,122,000 to FDA in the PDUFA II fee revenue. To date, collections for FY 1998 total $117,446,776—a total of $324,776 in excess of the appropriation limit. This is the only fiscal year since 1997 in which FDA has collected more in the PDUFA II fees than Congress appropriated.

FDA also has requests for waivers or reductions of FY 1998 fees pending that, if granted, would eliminate the excess collections. For this reason FDA is not reducing its FY 2001 fees to offset excess collections at this time. An offset will be considered next year, when fees for FY 2002 are established, if FDA still has collections in excess of appropriations for FY 1998 after the pending requests for FY 1998 waivers and reductions have been resolved.

V. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2000, the establishment fee was based on an estimate of 318 establishments subject to fees. For FY 2000, 372 establishments qualified for and were billed for establishment fees, before all decisions on requests for waivers or reductions were made. FDA estimates that a total of 25 establishment fee waivers or reductions will be made in FY 2000, for a net of 347 fee-paying establishments, and will use this number for its FY 2001 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($50,658,249), by the estimated 347 establishments, for an establishment fee rate for FY 2001 of $145,989 (rounded to the nearest dollar).

B. Product Fees

At the beginning of FY 2000, the product fee was based on an estimate that 2,262 products would be subject to product fees. By the end of FY 2000, 2,369 products qualified and were billed for product fees before all decisions on requests for waivers or reductions were made. Assuming that there will be about 55 waivers and reductions made, FDA estimates that 2,314 products will qualify for product fees in FY 2000, after allowing for waivers and reductions, and will use this number for its FY 2001 estimate. Accordingly, the FY 2001 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($50,658,249) by the estimated 2,314 products for a product fee rate of $21,892 (rounded to the nearest dollar).

VI. Adjusted Fee Schedule for FY 2001

The fee rates for FY 2001 are set out in table 2 of this document:

TABLE 2.

Fee Category	Fee Rates for FY 2001
Applications	
Requiring clinical data	$309,647
Not requiring clinical data	$154,823
Supplements requiring clinical data	$154,823
Establishments	$145,989
Products	$21,892

VII. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA II that is submitted after December 31, 2000, must be accompanied by the appropriate application fee established in the new fee schedule. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee ID number on your check. Your check can be mailed to: Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Food and Drug Administration (360909) Mellon Client Service Center rm. 670, 500 Ross St., Pittsburgh, PA 15262–0001. (Note: This is a new Mellon Bank Address for courier delivery only.)

Please make sure that the FDA P.O. Box number (PO Box 360909) is on the enclosed check.

FDA will bill applicants who submitted lower application fees from October 1 to December 31, 2000, for the difference between the amount they submitted and the amount specified in the Adjusted Fee Schedule for FY 2001.

B. Establishment and Product Fees

By December 31, 2000, FDA will issue invoices for establishment and product fees for FY 2001 under the new Adjusted Fee Schedule. Payment will be due by January 31, 2001. FDA will issue invoices in October 2001 for any products and establishments subject to fees for FY 2001 that qualify for fees after the December 2000 billing.

Dated: December 7, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31949 Filed 12–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1632]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance on "Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)" (VICH GL24); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance for industry (#117) entitled "Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)" (VICH GL24). This draft guidance has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products. (VICH). This draft guidance is intended to describe the reporting system for identification of possible adverse events following the use of marketed veterinary medicinal products (VMP's) submitted to the European Union, Japan, and the United States.

DATES: Submit written comments concerning the draft guidance to ensure their adequate consideration in preparation of the final document by January 17, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments concerning the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

Copies of the draft guidance entitled "Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)" (VICH GL24) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/TOCs/guideline.html. Persons without Internet access may submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov, or Carole R. Andres, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6524, e-mail: candres1@cvm.fda.gov.

Regarding the guidance document: Neal Bataller, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0163, e-mail: nbatalle@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically-based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary pharmaceutical products. The VICH is concerned with developing harmonized technical requirements for the approval of VMP's in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on AER's

The VICH Steering Committee held a meeting on June 15, 2000, and agreed that the draft guidance entitled "Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)" (VICH GL24) should be made available for public comment.

The draft guidance is intended to describe the harmonized and common systems, common definitions, and standardized terminology within pharmacovigilance. Harmonization of those elements between the VICH regions facilitates the reporting responsibilities for the marketing authorities or drug sponsors, many with worldwide activities. More specifically, the draft guidance presents the terms and definitions intended to harmonize other previously used terms referring to similar pharmacovigilance concepts. The draft guidance describes the various components of information flow within the pharmacovigilance system. Finally, the draft guidance defines data elements that are sufficiently comprehensive to cover complex reports from most sources for the purpose of electronic transmission. (This information collected is authorized by OMB Control No. 0910–0012).

III. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). For example, the documents have been designated "guidance" rather than "guideline." Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as "must," "shall," and "will" in the original VICH documents have been substituted with "should." Similarly, words such as "requirement" or "acceptable" or phrases such as "minimum standards" or "minimum needed" have been replaced by "recommendation" or "recommended" as appropriate to the context.

The draft guidance represents the agency's current thinking on the management of AER's of approved new animal drugs. This draft guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final guidance by January 17, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32056 Filed 12–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1629]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidances for Industry on "Effectiveness of Anthelmintics: Specific Recommendations for Feline" (VICH GL20) and "Effectiveness of Anthelmintics: Specific Recommendations for Poultry" (VICH GL21); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of two draft guidances for industry (Nos. 113 and 114, respectively) entitled "Effectiveness of Anthelmintics: Specific Recommendations for Feline" (VICH GL20) and "Effectiveness of Anthelmintics: Specific Recommendations for Poultry" (VICH GL21). These related draft guidance documents have been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). They are intended to standardize and simplify methods used in the evaluation of new anthelmintics submitted for approval to the European Union, Japan, and the United States.

DATES: Submit written comments on the draft guidance documents by January 17, 2001, to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance documents entitled "Effectiveness of Anthelmintics: Specific Recommendations Feline" (VICH GL20) and "Effectiveness of Anthelmintics: Specific Recommendations for Poultry" (VICH GL21) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/TOCs/guideline.html. Persons without Internet access may submit written requests for single copies of the draft guidances to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

You may submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the VICH: Sharon Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514, e-mail: sthompso@cvm.fda.gov, or Carole R. Andres, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–2977, e-mail: candres1@cvm.fda.gov.

Regarding the guidance documents: Thomas Letonja (HFV–135), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7576, e-mail: tletonja@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory recommendations. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical recommendations for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical recommendations for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical recommendations for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical recommendations for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the: European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Anthelmintics

The VICH Steering Committee held a meeting from June 14 through 16, 2000, and agreed that the two draft guidance documents entitled "Effectiveness of Anthelmintics: Specific Recommendations for Feline" (VICH GL20) and "Effectiveness of Anthelmintics: Specific Recommendations for Poultry" (VICH GL21) should be made available for public comment.

The two draft guidances, VICH GL20 and VICH GL21, should be read in conjunction with the "Effectiveness of Anthelmintics: General Recommendations (EAGR)" (64 FR 38445, July 16, 1999). The guidances for feline and poultry are part of the EAGR, and the aim of these two draft guidances is to: (1) Be more specific for certain issues not discussed in the general

guidance, (2) highlight differences with the EAGR on effectiveness data recommendation, and (3) give explanations for disparities with the EAGR. Comments about the draft guidance documents will be considered by the FDA and the VICH Anthelmintic Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidances and publish them as future guidances.

These draft documents, developed under the VICH process, have been revised to conform to FDA's good guidance practices (65 FR 56468, September 19, 2000). For example, the documents have been designated "guidance" rather than "guideline." Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as "must," "shall," and "will" in the original VICH documents have been substituted with "should." Similarly, words such as "require" or "requirement" have been replaced by "recommendation" or "recommended" as appropriate to the context.

These draft documents represent current FDA thinking on effectiveness recommendations for certain veterinary anthelmintic medicinal products. These documents do not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations.

III. Comments

These draft guidance documents are being distributed for comment purposes only and are not intended for implementation at this time. Interested persons should submit to the Dockets Management Branch (address above) written comments regarding the draft guidance documents by January 17, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance documents and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32057 Filed 12–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Tobacco Regulation for Substance Abuse Prevention and Treatment—45 CFR Part 96—(OMB No. 0930–0165; Extension, no change)—This final rule provides guidance to States regarding compliance with section 1926 of the Public Health Service Act (42 USC 300x–26) related to sale and distribution of tobacco to minors. The final rule implements section 1926 by specifying the content of the State's annual report on the provisions of the rule and application for block grant funds. The reporting burden shown below represents the average total hours to assemble, format and produce the information for the block grant provision on minors' access to tobacco, in accordance with the requirements of 45 CFR Part 96. These burden hours are counted towards the total burden for the annual Substance Abuse Prevention and Treatment Block Grant Application Format (OMB No. 0930–0080) for which separate approval is obtained.

45 CFR Citation	Number of responses	Respondents/ respondent	Hours/ response	Total hour burden
Annual report:				
96.122(f)	59	1	0	[1] 0
96.130(e)(1–3)	59	1	15	885
State Plan:				
96.122(g)(21)	0	0	0	[2] 0
96.130(e)(4–5)	59	1	14	826
96.130(g)	59	1	5	295
Total			34	2,006

[1] This section describes requirements tor the first applicable, which has passed for all States. Therefore, no burden is associated with this section.

[2] This section duplicates the information collection language in section 96.130(e). The burden is shown for 96.130(e).

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–32103 Filed 12–15–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under

OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Substance Abuse Prevention and Treatment Block Grant Regulations—45 CFR part 96 (OMB No. 0930–0163; Extension, no change)—This interim final rule provides guidance to States regarding the Substance Abuse Prevention and Treatment Block Grant legislation. The rule implements the reporting and recordkeeping requirements of 42 U.S.C. 300x21–35 and 51–64 by specifying the content of the States' annual report on and application for block grant funds. The reporting burden hours are counted towards the total burden for the Substance Abuse Prevention and Treatment Block Grant Application Format (OMB No. 0930–0080) for which separate approval is obtained. The total annual reporting and recordkeeping burden estimate is shown below:

45 CFR Citation	Number of respondents	Responses/ respondent	Hours/ response	Total hour burden
Reporting Burden				
Annual Report:				
96.122(d) [1]	60	1	0	0
96.122(f); 96.126(f)	60	1	152	9,120
96.134(d)	60	1	16	960
State Plan:				
96.122(g)	60	1	162	9,720
96.124(c)(1)	60	1	40	2,400
96.127(b)	60	1	8	480
96.131(f)	60	1	8	480
96.133(a)	60	1	80	4,800
Waivers: [2]				
96.122(d)	26	1	1	26
96.124(d)	0	1	40	0
96.132(d)	0	1	16	0
96.134(b)	3	1	40	120
96.135(d)	0	1	8	8
Total Reporting Burden [3]	60	1		28,106
Recordkeeping Burden				
96.129(a)(13)	60	1	16	960

[1] There was a one-time burden associated with change of the due date for the annual report effective with the FY 2001 application.

[2] The number of respondents per year for the waiver requests is based on actual experience over the past several years.

[3] All reporting burden is associated with the annual report, State plan, and waivers is approved under OMB control number 0930–0080. Only the information collection language in the regulation and the recordkeeping burden are approved under OMB control number 0930–0163.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–32104 Filed 12–15–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Issuance of Permits, to Incidentally Take Threatened and Endangered Species, to the City of Sacramento and Sutter County in Association with a revised Natomas Basin Habitat Conservation Plan, Sacramento and Sutter Counties, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service (Service), is considering approval of a revised Natomas Basin Habitat Conservation Plan (Plan) and re-issuance of an Endangered Species Act Incidental Take Permit (Permit), under section 10(a)(1)(B) of the Endangered Species Act, to the City of Sacramento (City) and issuing a Permit to Sutter County. These municipalities have the majority of land use authority in the Natomas Basin. The permit would authorize incidental take of listed species and unlisted species that may be listed in the future. Incidental take of listed species could occur as a result of urban development, certain on-going rice farming activities, and management of habitat reserves.

Pursuant to the National Environmental Policy Act, the Service intends to prepare an Environmental Impact Statement addressing the proposed action of approving the Plan and issuing Permits. The Plan covers the entire 53,341-acre Natomas Basin, including portions of the City and Sacramento and Sutter Counties that occur within the basin. The Environmental Impact Statement will also serve as an Environmental Impact Report under the California Environmental Quality Act. The Plan addresses the incidental take of the federally listed threatened giant garter snake (*Thamnophis gigas*), Aleutian Canada goose (*Branta canadensis leucopareia*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), the endangered vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), conservancy fairy shrimp

(*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Colusa grass (*Neostapfia colusana*), Sacramento Orcutt grass (*Orcuttia viscida*), slender Orcutt grass (*Orcuttia tenuis*), and 16 currently unlisted species and their habitats resulting from development, certain agricultural activities, and species and habitat management actions in the Natomas Basin. The Plan includes a process for covering third party development and agricultural activities within the two jurisdictions that are carried out in conformance with the Plan.

This notice describes the proposed action and possible alternatives, invites public participation in the scoping process for preparation of the joint Environmental Impact Statement/ Environmental Impact Report, solicits written comments, and identifies the Service official to whom questions and comments concerning the proposed action should be directed.

DATES: Written comments are encouraged and should be received on or before January 16, 2001.

Public Meeting: The Service, City, and Sutter County will hold public scoping meetings on January 3, 2001, 2:00 p.m. to 5:00 p.m., Holt Tractor Manufacturing, large conference room, 7310 Pacific Avenue, Pleasant Grove, California; and, January 4, 2001, 2:00 p.m. to 5:00 p.m. and 6:00 p.m. to 8:00 p.m., City of Sacramento, 1231 I Street, First Floor, Room 102, Sacramento, California. Verbal and written comments will be accepted at the meetings. For additional meeting information, contact Vicki Campbell, Division Chief, Conservation Planning at (916) 414–6600.

ADDRESSES: Information, written comments, or questions related to the preparation of the Environmental Impact Statement/Environmental Impact Report and the National Environmental Policy Act process should be submitted to Vicki Campbell, Division Chief, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Lori Rinek or Kelly Hornaday, Fish and Wildlife Biologists, Sacramento Fish and Wildlife Office at (916) 414–6600. Persons wishing to obtain background materials should contact Grace Hovey, City of Sacramento, 1231 I Street, Suite 300, Sacramento, California 85814 at (916) 264–7601, or Jeff Pemstein, Sutter County, 10461 Old Placerville Road, Suite 110, Sacramento, California 95827 at (916) 361–8384, extension 203.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize "incidental take" of listed animal species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Prior to adoption of the Plan and the Service's issuance of the Permit to the City in December 1997, an Environmental Assessment was prepared by the Service in accordance with the National Environmental Policy Act and a Negative Declaration was prepared by the City pursuant to the California Environmental Quality Act. A Federal court ruling on August 15, 2000, held that the Service's decisions to issue the Permit to the City and its decision not to prepare an Environmental Impact Statement for the project were arbitrary and capricious. The City and Sutter County are preparing a revised Plan for the Natomas Basin that will address the court's concerns and support the issuance of Permits to both the City and Sutter County. The goals of the Plan, as revised, are to conserve listed and unlisted species and their habitat in the basin while accommodating compatible development and certain on-going agricultural activities.

The Plan study area comprises the entire 53,341-acre Natomas Basin within both Sacramento and Sutter Counties, California. Agriculture is the dominant land use in the Natomas Basin. The predominant crops are rice, corn, sugar beets, grain, tomatoes, and pasture land. Natural and uncultivated vegetation types are interspersed throughout the agricultural areas of the Natomas Basin. Natural areas are found primarily along irrigation canals, drainage ditches, pasture lands, and uncultivated fields. Narrow strips of emergent vegetation and/or wooded riparian areas are associated with borders of the irrigation canals and drainage ditches.

Portions of the Natomas Basin that are within the jurisdiction of the City were included in the original December 1997 Plan and Permit. The City is seeking re-issuance of its Permit for urban development activities and certain on-going rice farming activities, and Sutter County is seeking issuance of a Permit for urban development and rice farming in its portion of the Natomas Basin. In addition, a separate Permit application is under review by the Service for the Metro Air Park Property Owners Association. The Metro Air Park application proposes participation in the Basin-wide conservation program. The Metro Air Park Permit would cover the urbanization of approximately 2,000 acres of land within the Natomas Basin portion of unincorporated Sacramento County. The total acreage within the basin for which take resulting from urban development activities is being sought under the revised Natomas Basin Plan and the Metro Air Park Plan is 17,500 acres.

Under the Plan, the effects of urbanization and other activities are expected to be minimized and mitigated through the City and Sutter County's participation in a Basin-wide conservation program, which will be described in the revised Plan. The focus of this Basin-wide conservation program is the preservation and enhancement of ecological communities that support species associated with wetland and upland habitats. Through the payment of development fees, one-half acre of mitigation land is expected to be established for every acre of land developed within the Basin. The mitigation land will be acquired by the Natomas Basin Conservancy, a non-profit conservation organization established in 1998 to implement the original Plan. Mitigation fee amounts, and the mitigation and minimization strategies will be subject to the adjustment required under the Plan, as revised. The Plan also contains take avoidance and minimization measures that include the requirements for developers and landowners to conduct pre-construction surveys and to carry out minimization measures prior to site development.

The City, County, and Service have selected CH2M Hill to prepare the joint Draft Environmental Impact Statement/ Environmental Impact Report. The Environmental Impact Statement will be prepared in compliance with the National Environmental Policy Act and the Environmental Impact Report will be prepared in compliance with the California Environmental Quality Act.

Although CH2M Hill will prepare the Draft Environmental Impact Statement/ Environmental Impact Report, the Service will be responsible for the scope and content of the Environmental Impact Statement, and the City and County will be responsible for the scope and content of the Environmental Impact Report.

The Environmental Impact Statement/ Environmental Impact Report will consider the proposed action (issuance of section 10(a)(1)(B) Endangered Species Act permits to the City and Sutter County), and a reasonable range of alternatives as summarized below. Plan components related to the court's ruling that will be addressed, include the following:

1. The Plan's mitigation fee structure, mitigation land ratio, and rice farming best management practices;
2. The viability of the Plan if fewer than all of the three jurisdictions with land in the basin participate in the Plan with respect to mitigation fees, the quality and location of habitat that would be lost and preserved under the Plan, and the impacts to the covered species and their habitats;
3. Analysis of the species and the quality, quantity and location of habitat within each jurisdiction;
4. Analysis of the effect on giant garter snakes if the Plan's goals of large, connected blocks of reserve lands cannot be met, and the design of a process to be built into the plan to assure its habitat goals are achieved;
5. Analysis of the midcourse review procedure incorporated into the plan to respond to new information and address implementation issues if the City (or Sutter County) is the only permittee; and
6. Analysis of the effectiveness of the monitoring and adaptive management provisions of the Plan if the City (or Sutter County) is the sole permittee.

Potential alternatives may include a decreased development alternative, an increased mitigation ratio alternative, and a No Action alternative. Under the No Action alternative, the Service would not issue section 10(a)(1)(B) permits to the City and Sutter County in the Natomas Basin.

Environmental review of the revised Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), National Policy Act regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement/ Environmental Impact Report.

Comments and participation in the scoping process are hereby solicited. The 1997 Plan, upon which the revised Plan is based, was subject to extensive public review. However, because of likely changes in the Plan, including addition of the benefits of the "No Surprises" regulation (63 FR 8859) and the Services' "Five-Point Policy" (65 FR 35242), additional public review and input is being sought.

The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. Interested persons are encouraged to provide comments on the scope of issues and alternatives to be addressed in the Draft Environmental Impact Statement/Environmental Impact Report.

Dated: December 11, 2000.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–32095 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1050–PF–01–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0182

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of an existing approval to collect certain information from Alaska Natives interested in conducting reindeer grazing activities on BLM administered lands. This information allows BLM to begin the assessment of the compatibility of reindeer grazing on public lands with multiple-use objectives (43 CFR 4300).

DATES: You must submit your comments to BLM at the appropriate address below on or before February 16, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comment may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComment@blm.gov.* Please include "ATTN: 1004–0182" your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Larry Field, BLM Northern Field Office, on (907) 474–2343 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Field.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 2812 to solicit comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Act of September 1, 1937 (50 Stat. 900; 25 U.S.C. 500 *et seq.*) authorizes the Secretary of the Interior to manage the reindeer industry in Alaska to maintain a self-sustaining industry for Natives of Alaska. The Act also authorizes the Secretary to issue permits to those Natives for grazing reindeer on public lands. The implementing regulations at 43 CFR 4300 authorize Alaska Natives to apply to BLM for permits to graze reindeer and to construct improvements on the land.

The Grazing Lease or Permit Application (Form 4210–1) and the Reindeer Grazing Permit (Form 4132–2)

are designed to record all information required under 43 CFR 4300.20 and 43 CFR 4300.57. BLM uses the information provided by the applicant(s) and permittee(s) to determine whether applicant qualifies to receive a reindeer grazing permit and whether permittee meets the specified terms and conditions of the granted permit.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected estimates to average 1 hour per application and 15 minutes for the permit. The respondents are Alaska Natives. The frequency of response is once every 5 years for the renewal applications and once per year for the reindeer grazing permits. The estimated number of responses per year totals 18. The estimated total annual burden is 23 hours (5 hours annual burden on permittees and 18 hours to apply for the renewal of existing reindeer grazing permits). BLM specifically requests your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 12, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–32004 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–057–1040–PH–GP1–0020]

OMB Approval Number 1004–XXXX; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On August 3, 2000, BLM published a notice in the **Federal Register** (65 FR 47796) requesting comment on this proposed collection. The comment period ended on October 2, 2000. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, D.C. 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Bureau of Land Management's Program Evaluation for the National Riparian Service Team and Extended Riparian Network, OMB approval number: 1004–NEW.

Abstract: The Bureau of Land Management is proposing a new information collection for the purpose of conducting a program evaluation for the National Riparian Service Team (NRST) and the extended reparian network. The BLM will conduct surveys and interviews of individuals who work within or receive services from the interagency NRST or the extended riparian network. The information will allow the BLM to measure satisfaction and program effectiveness, and comply with the requirements and spirit of the Government Performance and Results Act of 1993 and Executive Order No. 12862. Questions will address the following areas: (1) Satisfaction with the team as a facilitator of cooperative riparian restoration/management; (2) program effectiveness (*e.g.*, on-the-ground implementation and/or achievement of interim steps toward implementation of riparian management strategies; impact of thought process, PFC as a tool for creating a common vocabulary, for facilitating effective cooperation); and (3) general demographic information.

Bureau Form Number: None.

Frequency: Once every other year (biennial).

Description of Respondents: The respondents will be individuals who work with or receive services from the National Riparian Service Team or the extended riparian network, including: Federal, State, Local and Tribal Government employees; individuals affiliated with non-profit organizations; and members of the general public. Estimated completion time: (survey) 25 minutes/.42 hours per respondent (500 respondents), and (interview) 45 minutes/.75 hours per respondent (40 respondents).

Annual Responses: 540 (bennial).

Filing Fee Per Response: None.

Annual Burden Hours: 250 (biennial).

Bureau Clearance Officer: Michael Schwartz, 202–452–5033.

Dated: October 26, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–32097 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–79203]

Utah—Notice of Invitation To Participate In Coal Exploration Program; Lodestar Energy, Inc.,

Lodestar Energy, Inc. is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Carbon County, Utah:

T. 13S., R. 7E., SLM, UT
Sec. 19, E2SE, SWSE, SESW;
Sec. 20, W2SW;
Sec. 29, NWNW;
Sec. 30, E2, NENW.

Containing 640.00 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, and to Dave Miller, Lodestar Energy, Inc., White Oak Mine, HC 35 Box 370, Helper, Utah 84526. Such written notice must be received within thirty days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Lodestar Energy, Inc., detailing the scope and timing of this exploration program, is available for public review during normal business hours in the public room of the BLM State Office, 324 South State Street, Salt Lake city, Utah, under serial number UTU–79203.

Douglas M. Koza,

Deputy State Director, Division of Natural Resources.

[FR Doc. 00–32105 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–AC]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Friday and Saturday, Feb. 2 and 3, 2001, in the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: The meeting begins Friday, Feb. 2, at 10 a.m. in the Conference Room of the Eagle Lake Field Office. Agenda items include an overview of livestock grazing consultation requirements, a status report on rangeland health assessments, an update on water quality management planning, a report on conservation planning for sage grouse, a report on a juniper shearing test, and discussions about off-highway vehicle management. Members of the public can also comment on these or other public lands management issues during the public comment period. Depending on the number of persons wishing to speak, a time limit may be established.

On Saturday, Feb. 3, the council will convene at 9 a.m. at the same location for a public forum on juniper management. Speakers will provide information on the current extent of juniper stands in northeastern California, and provide perspectives on management.

FOR FURTHER INFORMATION CONTACT: BLM Alturas Field Manager Tim Burke at (530) 257–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–32192 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 30749]

Public Land Order No. 7467; Withdrawal of National Forest System Lands for San Francisco Peaks/Mount Elden Recreation Area; Arizona; Correction

Correction

In notice document 00–26435 on page 61181 in the issue of Monday, October 16, 2000, make the following correction:

On page 61181, in the third column, in the 15th line from the top, replace "NE¼SE¼" with "NW¼SE¼".

Dated: December 6, 2000.

Alvin L. Burch,

Acting Deputy State Director, Resources Division.

[FR Doc. 00–32058 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(SDM 44591)

Notice of Proposed Withdrawal Extension; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to extend Public Land Order No. 5793 for an additional 20-year period. This order withdrew National Forest System land from location or entry under the United States mining laws for protection and development of the Terry Peak Electronic Site.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

SUPPLEMENTARY INFORMATION: On December 8, 2000, the Forest Service filed an application to extend Public Land Order No. 5793 for an additional 20-year period. Public Land Order No. 5793 withdrew the following-described National Forest System land from location or entry under the United States mining laws, subject to valid existing rights:

Black Hills National Forest

Black Hills Meridian

T. 4 N., R. 2 E.,
Sec. 11, a portion of the NE¼ covered by M.S. 2025, excluding lots 1, 2, and 3.

The area described contains 25 acres in Lawrence County.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: December 12, 2000.

Howard A. Lemm,

Chief, Branch of Land Resources.

[FR Doc. 00–32106 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Cancellation of December Meeting and Notice of Meetings for Calendar Year 2001

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Tuesday, December 26, 2000 at Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California is canceled.

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for calendar year 2001 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco and at Point Reyes Station, California:

Tuesday, January 23	San Francisco, CA.
Saturday, January 27	Point Reyes, CA.
Tuesday, February 27.	San Francisco, CA.
Tuesday, March 27 ..	San Francisco, CA.
Tuesday, April 24	San Francisco, CA.
Saturday, May 5	Point Reyes, CA.
Tuesday, May 22	San Francisco, CA.
Tuesday, June 26	San Francisco, CA.
Tuesday, July 24	San Francisco, CA.
Tuesday, August 28	San Francisco, CA.
Tuesday, September 25.	San Francisco, CA.
Saturday, October 20	Point Reyes, CA.

Tuesday, October 23	San Francisco, CA.
Tuesday, November 27.	San Francisco, CA.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service areas in Marin, San Francisco and San Mateo Counties. Current members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Lennie Roberts
Dr. Edgar Wayburn
Mr. Michael Alexander
Mr. Gordon Bennett
Ms. Anna-Marie Booth
Ms. Yvonne Lee
Ms. Susan Giacomini Allan
Mr. Trent Orr
Mr. Redmond Kernan
Mr. Doug Nadeau
Ms. Betsey Cutler
Mr. Trent Orr
Mr. Dennis Rodoni
Mr. John J. Spring
Mr. Fred Rodriguez
(one position vacant)

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except the Saturday, January 27, Saturday, May 5 and Saturday, October 20 meetings, which will be held at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California. However, some meetings may be held at other locations in Marin County or at locations in San Mateo County. Information confirming the time and location of all Advisory Commission meetings or cancelations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561–4733.

Anticipated agenda items at meetings during calendar year 2001 may include:

- Updates on Planning Issues for Fort Baker
- Doyle Drive Scoping Overview and Public Comment
- Updates on Presidio Vegetation Management Plan
- Updates on Marin Comprehensive Transportation Planning
- Reports on Park Site Ferry Planning
- Updates on Park 5-Year Strategic Plan
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Reports on Presidio Mott Visitor Center and Crissy Field Education Center
- Reports on GGNRA education programs
- Update on Plans for Crissy Field projects
- Reports and updates on the Cliff House Restoration Plan and other elements of the Sutro Design Plan, including the Merrie Way Visitor Center
- Update Reports on Fort Mason Center Pier One and Pier 2 Seismic Work
- Reports on park equestrian permits
- GGNPA annual briefing
- Redwood Creek Watershed Planning
- Reports on Alcatraz Historic Preservation and Safety Construction
- Pacifica Boundary Expansion Public Comment and Commission Action
- Issues affecting San Mateo County national park lands
- Update reports on "Park Partner" programs, including Bay Area Discovery Museum plans and Marine Mammal Center planning
- Updates on Fort Mason Reuse projects and Upper Fort Mason planning
- Updates on Presidio Trails Master Plan and Presidio Mountain Lake projects
- Updates on issues concerning areas managed by the Presidio Trust, and
- updates on issues concerning management and planning at Point Reyes NS, including Point Reyes NS General Management Plan updates.

These meetings will also contain Superintendent's Report and a Presidio Trust Director's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. A verbatim transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 5, 2000.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 00–32186 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Arizona in the Possession of San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of San Diego State University, San Diego, CA.

This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by San Diego State University professional staff in consultation with representatives of the Tohono O'odham Nation of Arizona.

At an unknown date, human remains representing a minimum of one individual were recovered from site SDSU–0370 (1959–2), in the vicinity of Hujuli Juk, Casa Grande/Gila Butte, AZ, by person(s) unknown under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were recovered from site SDSU–0371 (19701–10), in the vicinity of Tucson, AZ, by persons unknown under unknown circumstances. No known individuals were identified. The two associated funerary objects are a cremation olla and a projectile point.

Based on manner of interment, these individuals have been identified as Native American. Geographic affiliation is consistent with the historically documented territory of the Tohono O'odham Nation of Arizona.

Based on the above-mentioned information, officials of San Diego State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of San Diego State University also have determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of San Diego State University have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Tohono O'odham Nation of Arizona.

This notice has been sent to officials of the Tohono O'odham Nation of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Lynne E. Christenson, Director, Collections Management Program, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–4443, telephone (619) 594–2305, before January 17, 2001. Repatriation of the human remains and associated funerary objects to the Tohono O'odham Nation of Arizona may begin after that date if no additional claimants come forward.

Dated: December 7, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–32112 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of San Diego State University, San Diego, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by San Diego State University professional staff in consultation with representatives of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California.

In 1977, human remains representing a minimum of one individual were recovered from site SDSU–0036, SDI–946, SDMM–W–149, in the vicinity of La Costa, CA, during the La Costa North project undertaken by RECON, a local environmental firm. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, geographic location, ethnographic information, and oral history evidence presented during consultation, these human remains have been identified as Native American and the individual represented by these remains has been identified as Luiseno. Luiseno have continuously occupied this territory since their arrival in San Diego County and within this time period are represented by late prehistoric lithics and an absence of ceramics.

In 1979, human remains representing a minimum of one individual were recovered from the Circle R site, SDSU–0269, SDI–5069, in the vicinity of Gopher Canyon, CA. Excavations were conducted by RECON. No known individual was identified. No associated funerary objects are present.

Based on geographic location, ethnographic information, and oral history evidence presented during consultation, these remains have been identified as Native American and the individual represented by these remains has been identified as Luiseno. Luiseno have continuously occupied this territory since their arrival in San Diego County and within this time period are represented by late prehistoric lithics and an absence of ceramics.

Based on the above-mentioned information, officials of the San Diego State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of three individuals of Native American ancestry. Officials of San Diego State University also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California.

This notice has been sent to officials of the La Jolla Band of Luiseno Misssion Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California. Representatives of any other Indian tribe that believes

itself to be culturally affiliated with these human remains and associated funerary objects should contact Lynne Christenson, Director, Collections Management Program, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–0701, telephone (619) 594–2305, before January 17, 2001. Repatriation of the human remains and associated funerary objects to the La Jolla Band of Luiseno Misssion Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California may begin after that date if no additional claimants come forward.

Dated: December 7, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships

[FR Doc. 00–32111 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement and to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Dates and Location: The AMWG will conduct one public meeting as follows:

Phoenix, Arizona—January 11–12, 2001. The meeting will begin at 9:30 a.m. and conclude at 4 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the following: management objectives, basin hydrology, FY 2002 budget, development of the AMP Strategic Plan, environmental compliance, Fish and Wildlife Service recovery goals, and other administrative and resource issues pertaining to the AMP.

Dates and Location: The Glen Canyon Technical Work Group will conduct the following public meetings:

Phoenix, Arizona—January 9–10, 2001. The meeting on January 9th will begin at 10 a.m. and conclude at 5 p.m. and will be held at the Crowne Plaza Hotel, Pueblo Room, 100 N. First Street, Phoenix, Arizona. The meeting on January 10th will begin at 8 a.m. and conclude at 5 p.m. and will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to continue work on the Strategic Plan (in preparation for the AMWG Meeting) and other administrative and resource issues.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation's website under Environmental Programs at: *http://www.uc.usbr.gov.* Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the TWG and AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: *rpeterson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG and AMWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov.*

Dated: December 13, 2000.

Christopher L. Kenney,

Acting Commissioner.

[FR Doc. 00–32187 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Pick-Sloan Missouri Basin Program, Eastern and Western Division Proposed Project Use Power Rate

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Proposed Pick-Sloan Missouri Basin Program, Eastern and Western Division, Project Use Power Rate Adjustment.

SUMMARY: The Bureau of Reclamation (Reclamation) is proposing a rate adjustment (proposed rate) for Project Use Power for the Pick-Sloan Missouri Basin Program (P–SMBP), Eastern and Western Division. The proposed rate for Project Use Power is to recover all annual operating, maintenance, and replacement expenses. The analysis of the proposed Project Use Rate is included in a booklet available upon request. The proposed rate for Project Use Power will become effective April 1, 2001.

This notice provides the opportunity for public comment. After review of comments received, Reclamation will consider them, revise the rates if necessary, and recommend a proposed rate for approval to the Commissioner of the Bureau of Reclamation.

DATES: The comment period will begin with publication of this notice in the **Federal Register**. To be assured consideration, please submit comments on or before January 17, 2001.

ADDRESSES: Written comments should be sent to Jim L. Wedeward, GP–2020, Power O&M Administrator, Bureau of Reclamation, P.O. Box 36900, Billings MT 59107–6900.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

All booklets, studies, comments, letters, memoranda, and other documents made or kept by Reclamation for the purpose of developing the proposed rate for Project Use Power will be made available for inspection and copying at the Great Plains Regional Office, located at 316 North 26th Street, Billings, Montana 59107–6900.

FOR FURTHER INFORMATION CONTACT: Jim L. Wedeward (406) 247–7705, Internet: jwedeward@gp.usbr.gov.

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP are established pursuant to the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h (c)) and the Flood Control Act of 1944 (58 Stat. 887).

Beginning April 1, 2001, Reclamation proposes to:

(a) Increase the energy charge from 2.5 mills/kWh to 10.76 mills/kWh

(b) the monthly demand charge will remain at zero.

The Project Use Power rate will be reviewed each time Western Area Power Administration (Western) adjusts the P–SMBP Firm power rate. Western will conduct the necessary studies and use the methodology identified in this rate proposal to determine a new rate.

The existing rate schedule MRB–P10 placed into effect on November 1, 1986, will be replaced by rate schedule MRB–P11.

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and Reclamation's Regulations (10 CFR Part 1021), Reclamation has determined that this action is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement.

Dated: December 12, 2000.

Gerald W. Kelso,

Assistant Regional Director, Great Plains Region, Bureau of Reclamation.

[FR Doc. 00–32107 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Generic clearance for customer service surveys.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by January 31, 2000. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be delivered to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Lauren Wittenberg, Department of Justice Desk Officer, 725 17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–4718. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Wittenberg at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 16, 2001. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Generic Clearance for Customer Service Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. File No. OMB–9. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information is collected using customer service surveys to assess needs, identify problems, and plan for programmatic improvements in the delivery of immigration services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 150,000 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 12, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–32054 Filed 12–15–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Petition for nonimmigrant worker.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by December 26, 2000. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Lauren Wittenberg, Department of Justice Desk Officer, 725—17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–4718. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Wittenberg at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this the information collection. Comments are encouraged and will be accepted until February 16, 2001. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or a for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 1 hour and 55 minutes (1.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 706,904 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 12, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–32055 Filed 12–15–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice Inviting Proposals for Selected Demonstration Projects for Youth Offenders

AGENCIES: Employment and Training Administration, Department of Labor.

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: This notice contains all of the necessary information and forms to apply for grant funding. The U.S. Department of Labor, Employment and Training Administration is authorized to award grants to provide services aimed at youth who are or have been under criminal justice supervision or involved in gangs. Therefore, youth employment and developmental activities funded under this grant will be used for a structured set of activities focused primarily on placing youth offenders, gang members, and at-risk youth ages 14–24 employment into long term (part-time for ages 14–15) at wage levels that will (1) prevent future dependency and/or (2) break the cycle of crime and juvenile delinquency that contributes to recidivism and non-productive activities. The Department of Labor (DOL) has worked with the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the U.S. Department of Justice (DOJ) in deciding to use these funds for three categories of projects to serve youth offenders. These categories are: I.— Model Community Projects; II.—Education and Training for Youth Offenders Initiative; and III.—Community-Wide Capacity Building Projects.

For Categories I and III, Workforce Investment Boards (WIBs), political subdivisions of the State, and private entities are eligible to receive grant funds under this announcement. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private

colleges and universities, and other qualified private organizations. Private entities include non-profit organizations but do not include for-profit organizations or individuals. For Category II, State or local juvenile justice agencies or juvenile correctional agencies shall be the eligible applicant and should identify one juvenile correctional facility within their state where the project will operate. Applicants can only apply under one of these categories which must be clearly identified on the face sheet of the application. Local workforce investment areas who were awarded grants to administer Youth Offender Demonstration Projects in 1999 are ineligible to apply under this Solicitation.

DATES: The closing date for receipt of applications is February 28, 2001 at 4:00 p.m. Eastern Standard Time (EST) at the address below.

ADDRESSES: Applications must be mailed to Denise Roach, U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210, Reference: SGA/DFA–01–101.

FOR FURTHER INFORMATION CONTACT: Technical questions should be faxed to Denise Roach, Division of Federal Assistance, Fax (202) 693–2879. This is not a toll-free number. All inquiries should include the SGA number SGA/DFA 01–101 and a contact name and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's web site, to access: 1. *http://www.doleta.gov*; 2. Click Grant & Contract Applications; 3. Click Competitive Grant Opportunities; 4. Grant Forms. Award notifications will also be published on the web site.

Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it: (a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications *e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post-marked by the 15th of the month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to the specified address not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and federal holidays. The term "post-marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M. (Eastern Standard Time), on the closing date at the specified address.

Telegraphed and/or faxed applications will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

Review and Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the established criteria under each Category. The panel results are advisory in nature and are not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussion, an award will be based on the offeror's signature on the SF 424. The final decision on awards will be based on what is most advantageous to the Federal Government, taking into account factors such as geographic diversity, mix of Empowerment Zones (EZs) and Enterprise Communities (ECs), and demographic characteristics.

Cost sharing/leveraging funds: Applicants also should discuss their plans to leverage and align with other funds or resources in order to build permanent partnerships for the continuation of services, and should provide some discussion of the nature of these leveraged resources, *i.e.*, Federal, non-Federal, cash or in-kind, State and county, foundation, capital equipment, and other matching funds. For example, the Federal Bonding Program and the Work Opportunity Tax Credit (WOTC) should be considered as potential tools to assist with youth offender employment placements. Information about these programs may be found on ETA's website at http://www.doleta.gov.

Reporting requirements: Applicants must clearly define their procedures for reporting progress on a monthly basis (including data elements listed in **SUPPLEMENTARY INFORMATION** and for identifying and presenting the results of project interventions. Proposals should also describe in detail the specific reports and other deliverables to be provided to ETA as documentation of progress and results in terms of improved outcomes for the target population. An implementation plan to be submitted within 60 days of the grant execution, monthly reports, an annual report, and a final report summarizing progress are required for projects under this SGA.

SUPPLEMENTARY INFORMATION: Approximately $8,250,000 is available for all three categories. Funding for these awards is authorized under the Workforce Investment Act (WIA). Applicants must clearly identify which category they are applying for. This information must appear on the face sheet of the application. It is strongly recommended that each application be submitted using the face sheet included in appendix "A" because it will greatly enhance the review process.

As a condition for award, all applicants must agree to participate in a separately funded evaluation. Applicants should not set aside funds for evaluation activities. All applicants must provide assurances in their proposals that they will cooperate with the evaluators and provide access to the data necessary to the evaluations. Awardees of the grants further agree to make available upon request to DOL-authorized evaluation contractor(s) data for a period not to exceed 24 months beyond the demonstration period (which should not exceed 24 months) through a no-cost extension of the grants.

The availability of this data beyond the demonstration period will enable, if appropriate, the contractor to perform follow-up analysis. In addition, proposals should specify the linkages between the Youth Offender project and the local WIA Youth Council through the One-Stop delivery system to ensure coordination of workforce development services. These linkages shall include both existing and proposed strategies.

All demonstration sites will be required to collect and maintain participant records through administrative data so that these projects can document results and accomplishments and provide a learning experience for the workforce development system, DOL, and DOJ. These data include:

A. Number recruited;
B. Number enrolled;
C. Number who entered training;
D. Number who entered or reentered secondary school;
E. Number who entered or reentered post-secondary school;
F. Number who entered employment;
G. Number "served by aftercare" programs;
H. Number who entered the military;
I. Number referred to other services such as dropout prevention, drug rehabilitation;
J. Number who entered other job training programs;
K. Number referred to apprenticeship programs;
L. Number of in-school youth served; and
M. Number of out-of-school youth served.

In addition, if applicable, data elements associated with the Workforce Investment Act may be required (to be specified in the grantee's statement of work).

Application Submittal

Applicants must submit four (4) copies of their proposal, with original signatures. There are three required sections of the application: Section I—Project Financial Plan; Section II—Executive Summary; and Section III—Project Narrative (including Appendices, not to exceed thirty pages). Applications that fail to meet the requirements will not be considered. The Project Narrative must be double-spaced, and on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two (2) single-spaced, single-sided pages. A font size of at least twelve (12) pitch is required throughout.

Part I—Project Financial Plan

Section I of the application must include the following two required elements: (1) Standard Form (SF) 424, "Application for Federal Assistance," (Appendix B) and (2) "Budget Information Form." (Appendix C) All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funds. Applicants shall indicate on the SF 424 the organization's IRS Status, if applicable.

According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance (CFDA) number is 17–249. Section I will not count against the application page limits.

The Financial Plan must describe all costs associated with implementing the project that are to be covered with grant funds. In addition, Section I should include a budget narrative/justification which will detail the cost breakout of each line item on the Budget Information Form. This must provide sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes. The budget must be for the full duration of the project but may not exceed 30 months. All costs should be necessary and reasonable according to the Federal guidelines set forth in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (also known as the "Common Rule"), codified at 29 CFR Part 97 (97.22) and "Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations" (also known as OMB Circular A–110), codified at 29 CFR Part 95, (95.27).

Part II—Executive Summary (Format Requirements Limited To No More Than Two Single-Spaced, Single-Sided Pages)

Each application shall provide a project synopsis which identifies the following:

- The applicant;
- Identification of consortium partners and the type of organizations they represent;
- The project service area;
- Whether the service area is an entire local workforce investment area, more than one local area, and/or all local areas in a State;
- The specific areas of focus in the announcement which are addressed by the project;
- The planned period of performance;
- The comprehensive strategy (*e.g.*, who will provide services, who will be accountable for the project, etc.) for providing seamless service delivery and for addressing the multi-faceted barriers to training and employment which affect youth who are or who have been under criminal justice supervision or involved in gangs or who are at-risk of involvement;
- How counseling and other support needs will be addressed in the One-Stop delivery system;
- The actions already taken by the State or Local Workforce Investment Board to address the needs of at-risk youth in the One-Stop delivery system;
- The level of commitment the applicant (including all consortium members, if any) and other partners have to serving at-risk youth;
- The linkages between the project and the local WIA Youth Council through the One-Stop delivery system, as well as linkages with the business and education communities and juvenile justice agencies; and
- A written confirmation that the applicant will cooperate with the evaluators.

Part III—Project Narrative (Format Requirements Limited To No More Than Thirty (30) Double-Spaced, Single-Sided, Numbered Pages)

Section III of the application, the project narrative, shall contain the technical proposal that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice.

Applicants MUST limit the project narrative section to no more than thirty (30) double-spaced and single-sided pages, which include any attachments provided by the applicants. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limit. However, letters of commitment are required from partner/consortia organizations and will not count against the page limit.

Background

The Workforce Investment Act (WIA) of 1998 establishes comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner Peyser Act, Adult Education and Literacy Act, the Rehabilitation Act and supersedes the Job Training Partnership Act (JTPA). WIA provides a framework for a national workforce development system designed to meet both the needs of the nation's businesses and the needs of job seekers who want to further their careers. A number of other Federal programs are also identified as required partners under the One-Stop delivery system with the intention of providing comprehensive services for all Americans to access the information and resources available to them in the development and implementation of their career goals. The intention of the One-Stop delivery system is to establish programs and providers in co-located, coordinated and integrated settings that are coherent and accessible for individuals and businesses alike in approximately 600 workforce investment areas which have been established throughout the nation.

The Workforce Investment Act establishes State and Local Workforce Investment Boards (WIBs) focused on strategic planning, policy development, and oversight of the workforce system with significant authority for the Governor and chief elected officials to build on existing reforms in order to implement innovative and comprehensive One-Stop delivery systems. In addition, Youth Councils, subgroups of the local WIBs, are required to develop parts of the local plan relating to youth, recommend providers of youth services, and coordinate local youth programs and initiatives. With its mandated requirements to form these interdisciplinary Youth Councils and to develop one comprehensive plan for youth services, WIA presents a unique opportunity to change the way workforce investment programs (and other youth development programs as well) are organized and operated to serve youth. WIA and the Youth Councils offer local areas the chance to look at how both in-school and out-of-school youth services are blended and deployed. They provide the framework that local areas can build on in order to realign, enhance, and improve youth services so that they are more closely coordinated, better utilized, and more effective.

In setting aside funds for this Solicitation, Congress noted "the severe problems facing out-of-school youth in communities with high poverty and unemployment and the inter-relatedness of poverty, juvenile crime, child abuse and neglect, school failure, and teen pregnancy." (These grants are included within the Administration's Youth Violence Prevention initiative.) This SGA provides a unique opportunity for selected workforce investment areas to address the needs of a special youth population—youth offenders, gang members, and at-risk youth ages 14–24 through a WIA consorted effort.

Category I—Model Community Projects

Demonstration projects in this category will be based in heavily impoverished communities in need of comprehensive community-wide approaches to assist youth offenders, gang members, and those at risk of becoming involved in gangs. Grantees will be required to expand services in each of 3 areas: (1) Gang prevention and suppression activities; (2) alternative sentencing for first-time offenders; and (3) after-care and case management for incarcerated youth. In addition, grantees shall provide education and mental health services, employment training, sports and recreation, and community services projects in order to reduce recidivism and procure for the target population long-term employment at livable wage levels. The grantees must place particular emphasis on enhancing existing case management and job placement services for youth on probation or for those who are reentering the community from corrections facilities. These support services should be provided throughout the entire employment search continuum, *i.e.*, from the beginning of the employment search until well after the procurement of employment. The projects also will maintain records of the number of contacts made after placement and the type of support services provided.

The projects also will implement an intensive and comprehensive aftercare system to reduce juvenile recidivism. Aftercare systems should be implemented while youth are still incarcerated to establish community links with faith-based organizations, parents or guardians, schools, training and educational opportunities, parole systems, social contacts and activities, and mentors. The aftercare services planned for those individuals incarcerated must involve the staff and administrators of the juvenile corrections facilities where the youth are institutionalized.

Eligible Applicants

Workforce Investment Boards (WIBs), political subdivisions of the State, and private entities are eligible to receive grant funds under this announcement. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private colleges and universities, and other qualified private organizations.

Private entities include non-profit organizations but do not include for-profit organizations and individuals. Organizations or areas that operate the Department of Justice's Safe Futures or Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression demonstrations can also apply through their WIBs.

Entities other than a WIB or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the WIB(s) and its Youth Council for the area in which the project is to operate. The term "in conjunction with" shall mean that the application must include a signed certification by both the applicant and the appropriate WIB(s) indicating that:

1. The applicant has consulted with the appropriate WIB (and its Youth Council) during the development of the application; and

2. The activities proposed in the application are consistent with, and will be coordinated with, the One-Stop delivery system efforts of the WIB(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the efforts which were undertaken to consult with the WIB and its Youth Council and indicating that the WIB was provided, during the proposal solicitation period, a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Department of Labor. "Sufficient opportunity for WIB review and comment" shall mean at least 30 calendar days. Failure to provide information describing the efforts which were undertaken to consult with WIB(s) will disqualify applicants.

The certification, or evidence of efforts to consult, must be with each WIB in the service area in which the proposed project is to operate. These certifications must be included in the grant application, and will not count against the established page limitations. For the purposes of this portion of the application, evidence of efforts to consult with the WIB must be demonstrated by written documentation, such as registered mail receipt, that attempts were made to share project applications with the WIB in a timely manner. WIB applicants and applicants that provide a signed certification by the applicant and the appropriate WIB(s) will be given preference for award.

Funding Availability

The Department expects to award three (3) grants approximately $1.5 million each under this category.

Performance Period

The period of performance for all grants awarded under this competition, within this category, will be for 30 months from the date the grant is awarded. The first 24 months must be devoted to providing program services to eligible youth as defined in this notice. The final six months will be solely for organizing participant case files, providing the files to the demonstration's evaluator within two months after grant-funded services terminate, and participating in a final site visit interview with the evaluators. The budget submitted for the period of performance must cover the full 30 months.

Program Components

The grant awards must be used to enhance and augment presently existing strategies which serve youth offenders, out-of-school youth, and gang members or those at-risk of becoming gang-involved. In addition to intensifying current systems, the projects also will link with and build upon available community resources such as educational (including special education), support, workforce development (engaging local WIBs/Youth Councils), child care, and transportation services. The projects will use these community resources to accomplish the successful transition of youth to independent living within the community, a reduction in recidivism, and the accomplishment of employment, training, and education goals. In order to address specifically the distinct needs and problems of youth offenders, gang members, and those at-risk of becoming gang-involved who are living in high-poverty localities, the overarching strategy for the model community projects should encompass the following:

Purpose/Need

Applicants should describe the need in the target neighborhood as demonstrated by issues such as severity of gang problems, the number of youth offenders residing in the target community, and the inability for existing services to address the needs of youth offenders and gang members. Applicants should also relate the need to the overall purpose of the planned program components.

Alternative Sentencing/Education

Grantees should describe their plans for expanding alternative sentencing, including enhanced education services for youth offenders. Project case managers and other staff must prepare the target population for sustainable high-quality employment by providing assistance to remain in school, return to school, enroll in GED and high school equivalency classes, or participate in additional alternative education such as long-distance learning programs or on-line courses.

Applicants should describe the educational services that will be offered by the project, with particular attention given to the utilization of existing educational system services and the involvement of the schools in the area. In addition, applicants should describe the overall use of project case managers and other staff in the planned program components that will provide educational services.

Case Management/Support Services

Project case managers must prepare the target population for sustainable high-quality employment by utilizing intensive training and support services, including drug and alcohol treatment, mentoring and tutoring, child care, counseling, and other case management services. Service strategies should also focus on providing assistance to engage in job training, secure employment, fulfill legal restitution obligations, or establish successful independent living. Because this wide range of services should be provided by the proposed partnerships of community organizations, applicants must submit memoranda of understanding (MOUs) with the local WIA partnership and other critical agencies specifying the role of each party in the project. Applicants must describe the intensive training and support services as identified above that will be offered as part of the planned program components, and should detail the role of project case managers in the provision of these training and support services.

Youth Offender and Gang Prevention Advisory Board

In order to institute a holistic approach to assisting the target population, employment, education, criminal justice, and community-based youth programs must be incorporated into the projects. In developing this interrelated system, grant funds shall be used to create a youth offender and gang prevention advisory board that participates in the coordination of all activities and provides input and community support to the project's leadership. The advisory board should be comprised of public and private sector representation, parents, youth members, and graduates of other youth offender programs and will link with the local Youth Council to provide seamless delivery of services and maximize use of available resources. Applicants should describe the planned composition of the advisory board, with particular emphasis upon the process for selecting and seating the representation of the board. The applicant should describe the functions of the board and the process planned to utilize the board in designing the holistic delivery expected under the project. Grantees should also describe their plans for expanding gang prevention and suppression efforts in the target community, including expanded efforts by local law enforcement agencies.

Aftercare: Grant funds should link with existing resources to provide intensive aftercare services for youth offenders transitioning from secure confinement in a juvenile corrections facility to the community. Projects must strategically coordinate community-wide efforts and resources to address reentry issues such as surveillance, supervision, graduated sanctions and incentives, linkages to community support systems (families, peers, schools, employers), transitional housing, and job training and placement activities. Applicants should describe clearly detailed reentry plans for youth offenders scheduled for release to their communities and their capacity to sustain their activities for 2 years after funding is no longer available. Strategies for effective case management services in aftercare programming include:

- Use of a reliable and validated risk assessment and classification instrument for establishing eligibility of the targeted population;
- Individual case planning that incorporates a family and community perspective;
- A mix of intensive surveillance and enhanced service delivery;
- Comprehensive, interagency transition planning that involves all critical stakeholders;
- A balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions;
- Work-related or work-oriented activities such as exposure to the workplace, on-the-job training, work experience, job shadowing, etc.;
- Coordination of resources of juvenile correctional agencies, juvenile courts, juvenile parole agencies, law enforcement agencies, social service providers, and local Workforce Investment Boards; and
- "Soft skills" training, *i.e.*, job behavior and life skills training; self determination and social skills training; conflict resolution and anger management; parenting classes; exposure to post-secondary education opportunities; and community service learning projects.

Partnerships/Linkages: In addition to enhancing already existing services and programs, projects must center any newly developed and implemented activities upon the needs of youth involved, or at risk of becoming involved, with the juvenile justice system and gangs. In order to accomplish this, applicants should use partnerships both (1) to enhance the youth offender programs funded under this grant and (2) to provide complementary programs so as to link

services within the target community and provide a diversity of options for all youth offenders within the target area. These partnerships must agree to:

- Implement an education and employment program for youth offenders, gang members, and at-risk youth in the target area, including coordination with the private sector to develop a specified number of career-track jobs for target area youth offenders;
- Establish alternative sentencing and community service options for youth offenders, gang members, and at-risk youth in the target area; and
- Expand gang suppression activities in the target area.

Applicants should outline how they will involve residents, youth, and others of the community in planning and involvement in the effort. Proposals should describe the efforts within the project to utilize existing services and programs, particularly those offered through the WIA One-Stop delivery system and the juvenile justice system. Applicants should describe the efforts to be undertaken to coordinate services with private sector entities, including commitments for private sector jobs. Proposals should describe newly developed and implemented services and how these will enhance and augment presently existing strategies in the community.

Category I rating criteria: Each application under this category will be evaluated against the following rating criteria:

- Need in target neighborhood, as demonstrated by severity of gang problem, the number of youth offenders residing in target community, and the barriers facing existing services to reach youth offenders and gang members (10 points);
- Plan to enhance and augment alternative sentencing, including educational and supportive services and case management; role of project case managers in these delivery strategies; plan for linking with schools for co-enrollment, etc. (20 points);
- Plan for enhancing gang prevention and suppression efforts, and use of a youth offender and gang prevention advisory board to achieve coordination; establishment of creative partnerships with local community grassroots organizations which provide services to the target population (20 points);
- Plan and capacity for conducting intensive comprehensive aftercare for preventing recidivism (20 points);
- Planned or committed level of investments (cost sharing and leveraging of funds) from educational agencies/schools and other public sector, WIA, and private sector partners; employment-related connections with the business community (25 points); and
- Plan to fulfill reporting requirements; and confirmation of cooperation with DOL evaluators (5 points).

Category II—Education and Training for Youth Offenders Initiative

These projects will provide a comprehensive school-to-work education and training curriculum for youth offenders in a juvenile correctional facility and aftercare/reentry services, with an emphasis on job placement and retention, upon a youth's return to his or her community. The comprehensive school-to-work education and training services developed under this initiative will serve as a model for other juvenile correctional facilities across the nation.

Eligible Applicants

State or local juvenile justice agencies or juvenile correctional agencies shall be the eligible applicant and should identify one juvenile correctional facility within their state where the project will operate. Applications must show the involvement/commitment of the following partners: the state/local Workforce Investment Board which is the administrative entity of WIA; the local Youth Councils; the state and local school-to-work partnership to which a majority of the youth offenders will return; and representatives of major employer networks connected to the school-to-work effort.

Funding Availability

The Department expects to award one (1) grant of approximately $2 million under this category.

Performance Period

The period of performance for the grant awarded under this competition, within this category, will be for 30 months from the date the grant is awarded. The first 24 months must be devoted to providing program services to eligible youth as defined in this notice. The final 6 months will be solely for organizing participant case files, providing the files to the demonstration's evaluator within two months after grant-funded services terminate, and participating in a final site visit interview with the evaluators. The budget submitted for the period of performance must cover the full 30 months.

Program Components

Grant funds shall be used to enhance an existing system currently serving youth offenders. Programs must be designed to (1) raise the quality of work and learning for incarcerated juvenile offenders through the school-to-work component and (2) strengthen aftercare/reentry services for youth transitioning to their communities following confinement by building connections to local workforce development and school-to-work systems through the aftercare component. Involvement with the local Youth Council of the local WIB is critical to ensuring that this occurs. This overall strategy needs to be responsive to the particular problems of youth offenders and gang members in juvenile correctional facilities, and must include the following:

School-to-work: This component includes the development and/or strengthening of a comprehensive school-to-work curriculum within the juvenile correctional facility, with ties to vocational development and youth employment services funded under WIA. This school-to-work system must contain the following core elements (for additional information, see Attachment I from Evaluation of the School-to-Work-Out-of-School Youth Demonstration and Job Corps Model Centers: Final Report for the Job Corps Model Centers, Research and Evaluation Report Series 00–E, U.S. Department of Labor/Employment and Training Administration, 2000):

- *School-based Learning:* school-wide classroom instruction based on high academic and business-defined occupational skill standards;
- *Work-based Learning:* career exploration, work experience, structured training, and mentoring at job sites; and
- *Connecting Activities:* course integrating classroom and on-the-job instruction, matching students with participating employers, training of mentors, and the building of bridges between school and work.

The jointly developed curriculum should include input from corrections education, the state school-to-work partnership, local school districts and employer networks connected to the school-to-work effort. Projects are also encouraged to work with Job Corps centers in the development of a school-to-work based education curriculum. This curriculum should closely parallel the curriculum developed for the communities to which youth offenders will be returning and structured in such a way as to enable the youth to transition from the institution to the

community and continue in a sequential manner with their educational and vocational development.

Aftercare: Grant funds should link with existing resources to provide intensive aftercare services for youth offenders transitioning from secure confinement in a juvenile corrections facility to the community. Aftercare services must strategically coordinate community-wide efforts and resources to address reentry issues such as surveillance, supervision, graduated sanctions and incentives, linkages to community support systems (families, peers, schools, employers), transitional housing, and job training and placement activities. Applicants should describe clearly detailed reentry plans for youth offenders scheduled for release into their communities. Strategies for effective case management services in aftercare programming include:

- Use of a reliable and validated risk assessment and classification instrument for establishing eligibility of the targeted population;
- Comprehensive, interagency transition planning that involves all critical stakeholders;
- Individual case planning that incorporates a family and community perspective;
- A mix of intensive surveillance and enhanced service delivery;
- A balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions;
- Work-related or work-oriented activities such as exposure to the workplace, on-the-job training, work experience, job shadowing, etc.;
- Coordination of resources of local Workforce Investment Boards, juvenile correctional agencies, juvenile courts, juvenile parole agencies, law enforcement agencies, health and social service providers, and community organizations; and
- "Soft skills" training, *i.e.*, job behavior and life skills training; self-determination and social skills training; conflict resolution and anger management; parenting classes; exposure to post-secondary education opportunities; and community service learning projects.

Partnerships/linkages: Applicants should use partnerships to (1) enhance the school-to-work component funded under this grant and (2) provide complementary programs which enable communities to be better able to provide aftercare services for returning youth offenders. The state recipients of a Juvenile Accountability Incentive Block Grant (JAIBG) are strongly encouraged to contribute, in the form of a cash match, 10% of the total program cost, except when the JAIBG funds are used for construction or renovation of permanent correction facilities. Partners under this category should agree to:

- Augment a school-to-work program in one targeted juvenile correctional facility;
- Assist the applicant with the seamless delivery of case management and aftercare services and supervision to youth returning to the community;
- Develop linkages to local school-to-work efforts with assistance from the State school-to-work partnership; and
- Coordinate with the private sector to develop a specified number of career-track jobs for target area youth offenders.

Proposals should specify the linkages between the Youth Offender project and the local WIA Youth Council through the One-Stop delivery system to ensure coordination of workforce development services. These linkages shall include both existing and proposed strategies. Grant funds may be used for staff and teacher training in order to facilitate an effective system of connected classroom-based and work-based activities.

Additional funding sources may include Juvenile Justice and Delinquency Prevention Act formula grant monies and JAIBG funds. The Federal Bonding Program and WOTC should be considered as important tools to assist with youth offender employment placements. Information about these programs is available at ETA's website, *http://www.doleta.gov.*

Category II Rating Criteria: Each application for funding under this category will be reviewed and rated against the following criteria:

- The stated need in the targeted juvenile correctional facility and state or local juvenile corrections system, as demonstrated by the effectiveness of the current correctional education curriculum and the number of youth who will benefit (20 points);
- Implementation plan for conducting the project, including detailed project scope of the aftercare services to be provided in the community (30 points);
- Planned or committed level of investments of schools, other public sector partners including school-to-work partnerships, and private sector partners with commitments for jobs; employment-related connections to the business community (25 points);
- Planned or committed linkages and coordination of services within the local workforce investment systems (15 points);
- Plan to fulfill reporting requirements (5 points); and
- Confirmation of cooperation with DOL and DOJ evaluators (5 points).

Category III—Community-Wide Capacity Building Projects

This program component will provide smaller grants for impoverished communities within small to medium-sized cities with high crime rates. Grants awarded under this category will create models for use by States and local boards to increase assistance to high-risk youth. These models will build service capacity into the One-Stop delivery system to expand the range and quality of currently existing services designed to prepare high-risk youth for high-quality employment with career development ladders and livable wages. These projects will work with local Youth Councils and service providers to develop linkages that will strengthen the coordination of prevention and recovery services for youth offenders. Linkages to existing community programs such as the WIA year-round youth training and summer jobs for low-income youth, school to work programs, other federal programs, and sports and recreation programs could contribute to juvenile crime prevention.

These grants are to strengthen or build infrastructures that address the needs of this youth population. Providing services to youth is only a means of measuring the effectiveness of the infrastructure. The goal of this category is to develop strategies and integrated service models which will then be implemented. Because of the challenges associated with building strong partnerships leading to comprehensive services, special technical assistance will be made available to successful applicants of this category to assist with their development and implementation processes.

Eligible Applicants

Workforce Investment Boards (WIBs) and private entities located within high-crime communities with a population of at least 100,000 and not greater than 400,000 and a significant youth gang and youth crime problem are eligible to apply. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private colleges and universities, and other qualified private organizations.

Private entities include non-profit organizations but do not include for-profit organizations and individuals. Applicants should provide documentation from their local law enforcement agency showing support for the existence or emerging gang problem and other serious youth crime problems. WIBs and private entities applying under this category must demonstrate a strong commitment to developing capacity building models which States and local boards will use to serve high-risk individuals under the WIA system.

Entities other than a WIB or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the WIB(s) and its Youth Council for the area in which the project is to operate. The term "in conjunction with" shall mean that the application must include a signed certification by both the applicant and the appropriate WIB(s) indicating that:

1. The applicant has consulted with the appropriate WIB (and its Youth Council) during the development of the application; and
2. The activities proposed in the application are consistent with, and will be coordinated with, the One-Stop delivery system efforts of the WIB(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the efforts which were undertaken to consult with the WIB and its Youth Council and indicating that the WIB was provided, during the proposal solicitation period, a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Department of Labor. "Sufficient opportunity for WIB review and comment" shall mean at least 30 calendar days. Failure to provide information describing the efforts which were undertaken to consult with WIB(s) will disqualify applicants.

The certification, or evidence of efforts to consult, must be with each WIB in the service area in which the proposed project is to operate. These certifications must be included in the grant application, and will not count against the established page limitations. For the purposes of this portion of the application, evidence of efforts to consult with the WIB must be demonstrated by written documentation, such as registered mail receipt, that attempts were made to share project applications with the WIB in a timely manner. WIB applicants and applicants that provide a signed certification by the applicant and the appropriate WIB(s) will be given preference for award.

Funding Availability

The Department expects to award five (5) grants approximately $350,000 each to Community-Wide Capacity Building Projects under this competition.

Performance Period

The period of performance for all grants awarded under this competition, within this category, will be for 30 months from the date the grant is awarded. The first 24 months must be devoted to strengthening or building infrastructures that address the needs of this youth population, by developing strategies and integrated service models. The final six months will be solely for organizing partnership records for developed strategies and integrated service models, providing the final records to the demonstration's evaluator within two months after grant-funded activities terminate, and participating in a final site visit interview with the evaluators. The budget submitted for the period of performance must cover the full 30 months.

Program Components

In order to develop capacity building models, grant funds shall be used to build upon an existing system currently serving in-school and out-of-school youth, youth offenders, or youth in gangs or prone to joining gangs. Efforts should be made to integrate youth into a full range of educational and alternative programs when appropriate. In order to be responsive to the particular problems of youth offenders, gang members, and those at-risk in high-poverty, high-crime areas, the overall strategy for the capacity building projects should encompass the following:

Career preparation services: The capacity building projects should provide for employment preparation, job placement, and linkages with the workforce development system. Models should focus on programs that train individuals for employment in fields in which technology skills are critical aspects of the jobs emerging in the regional labor market. Training models may also include basic skills and pre-apprenticeship training (as appropriate). Applicants must address the various strategies that their models will employ to actively recruit the target population, and should discuss the projected length of time necessary to determine the efficacy of their models' technical assistance.

Case management/support services: Proposals must demonstrate how the applicants plan to enhance the capacity of the WIA system to assist high-risk youth who are transitioning from dependency to independent living by including innovative service strategies which address their barriers to employment and the flexibility of services available. The framework for the proposed capacity building model should provide for (as applicable): Individual needs assessment; individual service strategies; long-term follow-up services; and linkages with human services, education, and transportation services. Other strategies may include "soft skills" training like job behavior and life skills training, social skills and self-determination, conflict resolution, parenting classes, exposure to post-secondary education opportunities, and service learning projects. Applicants should detail their capacity to sustain these activities for 2 years after funding under this solicitation is no longer available.

Partnerships/Linkages: Applicants should use partnerships both (1) to enhance the currently existing youth offenders programs and WIA services and (2) to provide complementary programs so as to make the target community an available service area for all youth offenders. Applicants should also agree to a good faith effort to continue projects started under this grant beyond the 24-month grant period. Partners should also agree to:

- Build upon existing employment and training, recreation, conflict resolution, and other youth crime and gang prevention programs to include youth offenders and gang members;
- Establish alternative sentencing and community service options for target area youth and gang members;
- Provide work-related or work-oriented activities such as exposure to the workplace, on-the-job training, work experience, job shadowing, etc.
- Establish or continue gang suppression activities within the target area; and
- Build connections to local workforce investment systems, such as linkages with WIBs while demonstrating approaches that ensure that high-risk youth are provided with quality workforce development services.

Youth Offender and Gang Prevention Advisory Board: In order to institute a holistic approach to assisting the target population, employment, education, criminal justice, and community-based youth programs should be incorporated into the projects. In developing this interrelated system, grant funds shall be used to create a youth offender and gang prevention advisory board that participates in the coordination of all activities and provides input and community support to the project's leadership. The advisory board should be comprised of public and private sector representation, parents, youth members, and graduates of other youth

offender programs and will link with the local Youth Council to provide seamless delivery of services.

In addition, proposals should specify the linkages between the Youth Offender project and the local WIA Youth Council through the One-Stop delivery system to ensure coordination of workforce development services. These linkages should include both existing and proposed strategies.

Category III rating criteria: Applications received for funding under this category shall be rated against the following criteria:

- Need in target neighborhood, as demonstrated by severity of gang problem and the number of youth offenders residing in the target community, and the inability for existing services to include youth offenders and gang members (10 points);
- Plan to enhance and augment presently existing youth offender programs and youth crime prevention strategies (20 points);
- Plan and capacity for developing and implementing models, including plan for preventing recidivism (30 points);
- Planned or committed level of investments (cost sharing and leveraging of funds) from educational agencies/schools and other public sector, WIA, and private sector partners, including commitments for private sector jobs (15 points);
- Planned or committed linkages and coordination of services within the local workforce investment systems; use of a youth offender and gang prevention advisory board to achieve coordination; establishment of creative partnerships with local community grassroots organizations which provide services to the target population (15 points);
- Plan to fulfill reporting requirements (5 points); and
- Confirmation of cooperation with DOL evaluators (5 points).

Signed at Washington, D.C. this date, December 11, 2000.

Laura A. Cesario,

Grant Officer, Division of Federal Assistance.

Appendices

Appendix A: Application Face Sheet
Appendix B: SF–424—Application for Federal Assistance
Appendix C: Budget Information Form

BILLING CODE 4510–30–P

APPENDIX A

COVERSHEET

Application for funding under SGA/DFA -110 "Community Audits"

Name of Applicant:_____

_____

Contact Person:_____

Phone Number:_____

Category: (MUST CHECK ONE)

____ Category I - Model Community Projects

____ Category II - Education & Training for Youth Offenders Initiatives

____ Category III - Community-Wide Capacity Building Projects

APPENDIX B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipa; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H Independent School Dist.; I State Controlled Institution of Higher Learning; J . Private University; K Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$	$	$
2. Fringe Benefits (Rate%)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate%)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$	$	$

SECTION B - Cost Sharing/Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution	$		
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate%)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 00–32018 Filed 12–15–00; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 12, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King {{202} 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 {{202} 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Preliminary Estimates of Average Employer Contribution Rates.

OMB Number: 1205–0228.

Form Number: ETA 205.

Frequency: Annually.

Affected Public: State, Local, or Tribal government.

Number of Respondents: 53.

Estimated Time per Respondent: 16 minutes.

Total Burden Hours: 14.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The average tax rates collected from States are used to compute an average tax rate for the U.S., and along with the current tax rate schedules, are used to certify that States are complying with the law.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 00–32163 Filed 12–15–00; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting; Change in Meeting Time and Date

PREVIOUSLY ANNOUNCED TIME AND DATE: 2 p.m., Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

CHANGES IN THE MEETING: The time and date of the Commission meeting to consider and act upon Disciplinary Proceeding, Docket No. D 2000–1, has been changed to commence following upon the conclusion of the Commission meeting starting at 10 a.m., December 13, 2000, to consider the Commission's general procedures for handling requests to vacate defaults. No earlier announcement of these changes was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–32258 Filed 12–14–00; 12:22 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (00–143)

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Wednesday, January 31, 2001, 12:00 Noon–1:00 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support the new crew and the American and Russian flight team's preparedness to accomplish the Expedition Two mission.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: December 13, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–32108 Filed 12–15–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL COUNCIL ON DISABILITY

Establishment of Advisory Committee

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice announces the establishment of NCD's Cultural Diversity Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mark S, Quigley, Committee Management Officer, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), mquigley@ncd.gov (e-mail).

Agency Mission

NCD is an independent federal agency making recommendations to the President and Congress on disability policy. It is composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. NCD's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Cultural Diversity Advisory Committee

The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

This committee is necessary because people with disabilities from culturally diverse backgrounds face dual discrimination and are disproportionately represented among those with disabilities.

This committee will have a balanced membership representing a variety of disabling conditions and culturally diverse populations from across the United States.

Signed in Washington, DC, on December 12, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–32096 Filed 12–15–00; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Base Civil Penalties for Loss, Abandonment, or Improper Transfer or Disposal of Sources; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions," (NUREG–1600) (Enforcement Policy or Policy) to establish separate base civil penalty amounts for loss, abandonment, or improper transfer or disposal of sealed sources and devices containing NRC-licensed material.

DATES: This action is effective February 16, 2001. Comments on this revision should be submitted by January 17, 2001, and will be considered by the NRC before the next revision of the Enforcement Policy.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room at 11555 Rockville Pike, Rockville, MD 20852.

The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at www.nrc.gov/OE/.

FOR FURTHER INFORMATION CONTACT: Bill Borchardt, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Telephone (301) 415–2741, e-mail rwb1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In a companion final rule published in today's **Federal Register**, the NRC is amending its regulations in 10 CFR Parts 30, 31, and 32, governing certain industrial devices containing byproduct material that are licensed pursuant to the general license provisions of 10 CFR 31.5. A proposed rule was published in the **Federal Register** on July 26, 1999 (64 FR 40295), which indicated that the NRC planned to increase the civil penalty amounts specified in its Enforcement Policy for violations involving sources or devices that are lost or improperly disposed of. The stated intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

In the notice of proposed rulemaking, the Commission stated that it was considering three levels of base civil penalty for loss or improper disposal, with the higher tiers for sources that are relatively costly to dispose of. The three levels of base civil penalty were to be $5,500, $15,000, and $45,000. The three tiers were to be based approximately on three times the average cost of proper transfer or disposal of the source or device. The intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

In this Enforcement Policy, the change to the base civil penalty structure considers both the cost of proper disposal and the relative risk to the public from sources that are lost, abandoned, or improperly transferred or disposed of. The Commission believes that a base civil penalty amount roughly equivalent to three times the cost of proper disposal will provide for sufficient deterrence and an economic incentive for licensees to expend the necessary resources to ensure compliance. If the civil penalty were less than the cost of proper disposal, the licensee would receive an economic benefit from an improper disposal, whether intentional or not. A civil penalty roughly equivalent to the cost of disposal may not provide a sufficient deterrent because the violation could go undetected, which would still allow an economic benefit. Additionally, the civil penalty amount should be sufficient to assure that the cost of proper disposal of sealed sources and devices does not cause licensees to purposefully violate applicable disposal requirements.

Sources and devices containing small amounts of radioactive material, such as gas chromatographs, and devices containing hydrogen-3 (tritum) can be disposed of for less than one third of the lowest base civil penalty amount under the current Enforcement Policy, which is not $6,000. The proposed rule notice of July 26, 1999, suggested that the lowest tier amount would be $5,500. However, in another recent revision to the Enforcement Policy (October 4, 2000; 65 FR 59274), which adjusted civil monetary penalties for inflation in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, the base civil penalty that would otherwise have been applicable was raised from $5,500 to $6,000. It would be illogical to establish a lower base civil penalty amount specifically for loss, abandonment, or improper transfer or disposal. Therefore, this action establishes $6,000 as the lowest base civil penalty amount for these violations.

The companion final rule to this Enforcement Policy incorporates criteria for registration of devices containing material of the types and quantities listed in 10 CFR 31.5(c)(13)(i). These are devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, and 37 MBq (1mCi) of americium-241 or any other transuranic (i.e., element with atomic number grater than uranium (92)). Annual registration is being required for these devices because they are considered to present a higher risk for potential exposure to

the public and for loss of property (due to contamination) if the device is lost, abandoned, or improperly transferred or disposed of. Based on the higher risk, violations involving loss, abandonment, or improper transfer or disposal of sources and devices in this category have been assigned a base civil penalty amount of $15,000.

With the exception of sources and devices containing hydrogen-3 (tritum), the highest activity sources and devices (i.e., those with activities greater than 3.7×10^4 MBq (1 Curie)), have an approximate average cost of disposal of $15,000. The base civil penalty amount for loss or improper disposal of these sources and devices has been set at $45,000, which is three times the average cost of disposal.

The Commission believes that normally a civil penalty at least in the amount of the base civil penalty is appropriate in the case of loss, abandonment, or improper transfer or disposal of a sealed source or device. This is to ensure that the associated enforcement action properly reflects the significance of such violations. This change has been implemented in Section VII.A.1(g) of the Enforcement Policy. However, NRC may mitigate or escalate a civil penalty amount, as provided in the Enforcement Policy, based on the merits of a specific case. In doing so, NRC may consider information concerning the actual expected cost of authorized disposal and the actual consequences of the loss, abandonment, or improper transfer or disposal.

Scope

The base civil penalties established in this change to the Enforcement Policy apply to violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or the type of licensee.

Paperwork Reduction Act

The NRC Enforcement Policy does not contain a new or amended information collection requirement and therefore is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

VI. Enforcement Actions

* * * * *

C. Civil Penalty

* * * * *

1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device are treated separately, regardless of the use or the type of licensee. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs, and for loss, abandonment or improper transfer or disposal of a sealed source or device. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider necessary increases or decreases on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

TABLE 1A.—BASE CIVIL PENALTIES

* * * * *	
f. Loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or type of licensee:[3]	
1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)	$45,000
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	$15,000
3. Sources and devices not otherwise described above	$6,000

[3] These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

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VII. Exercise of Discretion

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A. Escalation of Enforcement Sanctions

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1. Civil Penalties

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(g) Cases involving the loss, abandonment, or improper transfer or disposal of a sealed source or device. Notwithstanding the outcome of the normal civil penalty assessment process, these cases normally should result in a civil penalty of at least the base amount; or

* * * * *

Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31874 Filed 12–15–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. R2000–1; Order No. 1301]

Notice and Order of Request for Reconsideration of Commissions Docket No. R2000–1 Opinion and Recommendation Decision

AGENCY: Postal Rate Commission.

ACTION: Notice and order on request for reconsideration of Commission's docket no. R2000–1 opinion and recommendation decision.

SUMMARY: This document informs the public that the Governors of the Postal Service have requested reconsideration of the Commission's opinion and recommended decision in docket no. R2000–1. It also establishes deadlines for comments from the Postal Service and other rate case participants on stated issues.

DATES: Initial Postal Service comments are due January 3, 2001; participants' comments are due January 24, 2001; and Postal Service reply comments are due January 31, 2000. Alternative deadlines are identified in the Supplementary Information section.

ADDRESSES: Send comments to the attention of Margaret P. Crenshaw, Secretary, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

A. Authority to Reconsider the Decision

39 U.S.C. 3625(d).

B. Background

On December 5, 2000 the Governors of the United States Postal Service issued two decisions on the Commission's November 13, 2000 opinion and recommended decision in docket no. R2000–1. The Postal Service provided separate notices with these two decisions indicating that they had been mailed to the service list in docket no. R2000–1.

The decision of the Governors of the United States Postal Service on the recommended decision of the Postal Rate Commission on postal rate and fee changes, docket no. R2000–1 (decision of the Governors), states at 1, "we allow the recommended decision to take effect, under protest, and return it to the Commission for reconsideration and a further recommended decision as expeditiously as possible." By this order, the Commission initiates action to reconsider the Postal Service request in this docket, consistent with 39 U.S.C. 3624.[1]

Participants in docket no. R2000–1 will be accorded a reasonable opportunity to provide their views on each of the issues on which reconsideration is sought. These issues include the rates that would be recommended should the Commission, on reconsideration, determine that it should adjust its findings on the issues identified by the Governors.

The decision of the Governors notes at 2, that the Commission directed the Postal Service to provide updated cost information during the course of the hearings in this proceeding, and that the information provided by the Service "suggested that the projected test year revenue requirement had increased to over $69.8 billion." The Governors' subsequent finding "that the revenue requirement is $69.832 billion[,]" *id.* at 12, evidently relies on the updated costs used in the Commission's recommended decision of November 13, as does their determination of a $1.695 billion contingency amount, versus the $1.680 billion originally requested. The rates recommended by the Commission produce $68.819 billion, a difference of more than one billion dollars.

The Governors have advised that the test year revenue requirement for the Postal Service should be increased by including the $200 million field reserve, adding $97 million in supervisor costs, and increasing the provision for contingencies by $687 million.[2] The Governors also protest that rates should be increased to recover the purported cost consequences of increased volumes of heavier First-Class Mail, to correct a perceived error in the computation of bound printed matter rates, to offset revenues lost if nonprofit standard mail rates are reduced to conform better with amended 39 U.S.C. 2626 and, possibly, to allow for a reduction in certain parcel post surcharges.

The Commission will review the evidentiary record and the applicable legal standards applicable to each of these seven issues. The first step in this process will be to call upon the Postal Service to provide detailed statements on each of these issues, setting out evidentiary and legal support for the outcomes deemed proper by the Governors. Other participants, having been fully informed of the rationales underlying the decision of the governors, will then have an opportunity to provide their views. Finally, the Postal Service will be given a last opportunity to respond to arguments presented by other participants.

Throughout the proceeding to this point the Postal Service has indicated that it sought "only the revenue goals embodied in its Request." Postal Service Brief at 1–13. Consistent with this position, it urged the Commission to recommend the rate and fee proposals embodied in the Postal Service request of January 12, 2000.[3] *Id.* at 1–14. In its initial submission in response to this order, the Postal Service is to present its views on the appropriate portions of total revenues that each subclass and service should contribute toward collecting sufficient test year revenues in light of the Governors' revenue requirement finding. The Service may also suggest specific rates that would achieve these subclass and service specific revenue goals.

Participants may also comment on how to recognize other matters referred to in the decision of the Governors. For example, the Governors apparently view their rejection of the proposed Priority Mail flat rate envelop classification change and the final FY 2000 deficit as altering the perceived test year revenue deficiency.

The Governors have requested that the reconsideration process be conducted as expeditiously as possible. Nonetheless, this process will be most effective if all participants have adequate time to prepare throughful, carefully reasoned presentations. Therefore, the Commission will allow at least three weeks for the submission of views from each participant. Recognizing that the year-end holiday season is rapidly approaching, the deadline for the submission of initial Postal Service comments will be extended further, until January 3, 2001. Other participants' comments are to be submitted by January 24, 2001, and the final Postal Service response will be due on January 31, 2001.

It is of course quite possible that the Postal Service already prepared much of the analysis needed for the initial Postal Service comments during the process of assisting the Governors. If the Postal Service provides its initial comments on or before December 20, 2000, then the date for participant comments shall be January 12, 2001, and the date for the final Postal Service response will be January 19, 2001.

It is ordered:

The Postal Service and other participants shall provide their views on the Decision of the Governors requesting reconsideration in accordance with the schedule set out in the body of this order.

Dated: December 12, 2000.

Margaret P. Chenshaw,

Secretary.

[FR Doc. 00–32099 Filed 12–15–00; 8:45 am]

BILLING CODE 7710–FW–M

[1] A separate decision of the Governors of the United States Postal Service on the recommended decisions of the Postal Rate Commission on select mail classification matters, docket no. R2000–1 did not request reconsideration of any issue, and thus is not before the Commission except as it impacts on test year after rates revenues.

[2] The $687 million is derived by subtracting the $1.012 [billion] figure allowed in the Commission opinion and recommended decision from the $1.695 [billion] figure shown in the decision of the Governors at 12.

[3] The Postal Service did not support lower rates for Periodicals and rates for preferred mail that conform with 39 U.S.C. 3626.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43704; File No. SR–ISE–00–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange LLC, Relating to Fee Changes

December 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2000, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. On December 7, 2000, ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing changes to its fees regarding: (i) Customer transactions; (ii) multiple "Click" order entry terminals; (iii) "enhanced cabinets"; and (iv) continuing registration and transfer fees for associated persons. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to effect the following changes to the ISE's fees:

Customer Transaction Fees: The ISE currently waives customer transaction fees. This waiver will expire on November 26, 2000. The Exchange proposes extending this waiver for an additional six months.

Click Terminals: The Exchange imposes fees on "Click" order entry devices (used by Electronic Access Members) of: (i) $500 per terminal for up to five terminals and $250 for additional terminals; and (ii) $250 per application program interface ("API") associated with a terminal for up to five APIs and $100 for additional APIs. To encourage members to send order flow to the Exchange, the ISE proposes to eliminate Click and API fees for a member's third and subsequent terminal if the member has an average daily volume ("ADV") on the Exchange of 500 customer or firm proprietary contracts per "free" terminal.[4]

Enhanced Cabinets: Certain market makers have requested that the Exchange provide them with an "enhanced cabinet" on their premises, containing three, rather than the standard two, gateways to the Exchange. The Exchange proposes an increase of $250 to the standard fee to reflect the incremental cost of the third gateway.

Associated Persons: The ISE is the only options exchange that does not at least partially offset its regulatory costs by levying an annual "central registration depository" fee for members' associated persons and for processing the transfer of such persons. The proposed rule change would impose the following fees: $30 annual fee and $25 transfer fee.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[5] that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3(A) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] because the proposed rule change establishes or changes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the proposed rule change to delete a fee related to inactive memberships, as well as delete a minimum monthly bin fee. These fees are addressed in a separate filing, SR–ISE–00–26. *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 6, 2000 ("Amendment No. 1").

[4] Assume a member has 10 Click terminals. With ADV of 4,000 contracts per month (500 contracts per terminal on the eight potentially "free" terminals), it would pay Click and API fees for the first two terminals, with the fees for the other eight terminals waived. With ADV of 3,500 contracts, the members would qualify for an exemption on all but one of the eight terminals.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

submissions should refer to the File No. SR–ISE–00–12 and should be submitted by January 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32116 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43701; File No. SR–NASD–00–64]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Allow In-Firm Delivery of the Regulatory Element of the Continuing Education Requirements

December 11, 2000.

I. Introduction

On October 25, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would permit the in-firm delivery of the Regulatory Element of the Continuing Education Requirements. Notice of the proposed rule change appeared in the **Federal Register** on November 6, 2000.[3] The Commission received one comment on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

NASD Regulation proposes to amend NASD Rule 1120(a) to permit the in-firm delivery of the Regulatory Element of the Continuing Education Requirements. Currently, this computer-based training program can be administered to registered persons only at the location of an outside vender.

The Regulatory Element is a 3½ hour computer-based training program. NASD Rule 1120(a) requires that each registered person, who is not exempt from the Rule, complete the Regulatory Element on the occurrence of his or her second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person who has not completed the Regulatory Element within the prescribed time period is deemed to be inactive until the Regulatory Element has been fulfilled, and may not conduct, or be compensated for, activities requiring a securities registration.

The Securities Industry/Regulatory Council on Continuing Education ("Council") is responsible for the oversight of the continuing education program for the securities industry. The Council's duties include recommending and helping to develop specific content and questions for the Regulatory Element, and minimum core curricula for the Firm Element. The Council is comprised of representatives from a broad cross section of broker/dealers, and six self-regulatory organizations, including the NASD. The Council, working with representatives from the North American Securities Administrators Association has developed a model under which broker/dealers may deliver the Regulatory Element computer-based training on firm premises. The model requires that the broker/dealer meet certain conditions for in-firm delivery relating to computer hardware and to the security of the training delivery environment. The proposed amendments to Rule 1120(a) encapsulate the delivery requirements as specified by the Council. Firms of any size may take advantage of the in-firm delivery procedures.

III. Summary of Comments

The ICI expressed its support for the proposal, stating that the proposed changes may facilitate the ability of ICI's members to comply with the Regulatory Element requirements.[5] Additionally, the ICI believes the proposed amendment will reduce the time and any related travel costs that registered representatives spend to take the Regulatory Element.[6] Finally, the ICI believes that the conditions proposed in the amendment regarding in-firm delivery adequately balance the interest of NASD Regulation in protecting the integrity of the Regulatory Element with the interest of member firms in not being unduly burdened when exercising this option.[7] For these reasons, the ICI expressed its support of the proposed amendments to NASD Rule 1120.

IV. Discussion

The Commission has reviewed carefully the proposed rule change, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder.[8] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)[9] of the Act.

Section 15A(b)(6)[10] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest. The Commission believes that the proposal should facilitate compliance with the Regulatory Element of the Continuing Education Requirements by making the program easily accessible to registered persons via in-firm delivery, as opposed to requiring that it be administered at the location of an outside vendor, and by allowing firms of any size to partake of the in-firm delivery procedures. The Commission is satisfied that the proposal provides reasonable safeguards to uphold the integrity of the program, as well as delineating proper conditions for in-firm delivery relating to computer hardware, consistent with the requirements specified by the Council. Finally, the Commission believes the proposal establishes reasonable requirements with regard to the security of the training delivery environment, as specified by the Council.

V. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 15A(b)(6),[11] in particular.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43492 (October 27, 2000), 65 FR 66576.

[4] *See* November 22, 2000 letter from Tamara K. Reed, Associate Counsel, Investment Company Institute ("ICI") to Jonathan G. Katz, Secretary, SEC ("ICI Letter").

[5] *See* ICI Letter at p. 1.

[6] *Id.*

[7] *See* ICI Letter at p. 2.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NASD–00–64), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32092 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43699; File No. SR–NSCC–00–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Certain Securities Undergoing Reorganization

December 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 10, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's procedures to permit the processing of securities subject to certain voluntary corporate action in NSCC's continuous net settlement ("CNS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to modify NSCC's Rules and Procedures to permit securities that are subject to certain voluntary corporate action which would normally cause them to be exited from NSCC's CNS system to continue to be processed in CNS.[3] From time to time a security may become subject to an offer that has a feature which would normally require it to be exited from CNS. Consistent with the industry's goal to increase automated transaction processing, NSCC has been working to enhance the CNS system to enable it to process securities with reorganization events that have a wider and more varied range of features. The proposed rule change would provide that when NSCC determines that it has the operational capability to continue to process such an issue, the issue would continue to be CNS eligible, and NSCC would establish procedures necessary for NSCC to accommodate the issue in CNS. NSCC would issue an Important Notice to its members detailing how the security would be processed.

NSCC's Rules and Procedures permit NSCC to continue to process certain securities undergoing corporate reorganizations and specify how NSCC shall handle those issues. For example, currently NSCC's Procedure VII provides for the processing in CNS of securities subject to tender offers with protect periods of three or more days. Securities subject to tender offers with protect periods of less than three days cannot currently be processed in CNS, and NSCC would normally exit such securities from the CNS system. In that case, NSCC would issue receive/deliver instructions to participants with long or short positions in the subject security. The proposed rule change would allow securities subject to tender offers with no protect periods or protect periods of less than three days to be processed in CNS.

Another example, would be issues subject to multiple tender offers. Currently, NSCC's Rules and Procedures provide for the establishment of up to two CNS reorganization subaccounts for issues subject to two tender offers. Under NSCC's proposal, it could, provided it has the operation capability to do so, establish multiple CNS subaccounts for issues subject to multiple tender offers.

In addition, in order to eliminate the possibility of error which arises from manual processing, NSCC has determined not to continue providing certain features which were processed on a manual basis. For example, the rule would no longer permit new input on the last day of the protect period.

NSCC intends to implement these changes, subject to SEC approval, on or about February 9, 2001.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, NSCC believes that because the proposed rule change would allow additional corporate actions to be processed in a CNS environment, it would facilitate the prompt and accurate clearance and settlement of such securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. However, NSCC has worked closely with the Securities Industry Association's Corporate Action division in developing the proposed CNS modifications, and they concur with the proposed changes. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] As a part of its filing, NSCC is proposing to modify its Rules and Procedures to refer to reorganization events as voluntary and mandatory instead of as voluntary and involuntary.

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–10 and should be submitted by January 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32114 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43689; File No. SR–NYSE–98–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Creation of a Floor Audit Trail

December 7, 2000.

I. Introduction

On August 4, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, the NYSE seeks to adopt new provisions in NYSE Rule 123, to provide for the capturing of details of an order systemically on the Floor of the Exchange. The proposed provisions require that the details of all orders be recorded in an electronic system prior to being represented or executed on the Floor. On December 21, 1998, and June 8, 1999, respectively, the Exchange filed Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on August 12, 1999.[4] The Commission received no comments on the proposed rule change and this order approves it.

II. Description of the Proposal

The Exchange has proposed a series of initiatives to strengthen the regulation of activities of members on the Floor. In this filing, the Exchange proposes to adopt new provisions in NYSE Rule 123 for recording the details of an order, as well as any modification or cancellation of such order, in an electronic system prior to representing or executing an order on the Floor.

The proposed amendment to NYSE Rule 123 defines an order as any written, oral or electronic instruction to effect a transaction. Paragraph (e) of the proposed rule requires that, prior to being represented, an order, including any changes in its terms and any cancellations, must be entered into an electronic system that records the order details and records the time the order details were entered into the system and the time of any modification or cancellation. Nevertheless, the proposed rule excludes transactions initiated on the Floor and executed by a registered competitive market maker, a competitive trader or a specialist for their own account, as such trades may be initiated on the Floor and are already reported to the Exchange. In addition, the proposed rule provides that members may use either a proprietary or an Exchange system to comply with the rule, and if a proprietary system is used, order details must be sent to a designated NYSE database.

The proposal requires that, other than as noted above, before representing or executing an order on the Floor, a member, whether acting as agent for another member on the Floor or otherwise, is obligated to make sure that the details of such order have been entered in an electronic system in accordance with the requirements of the rule. The Exchange represents that the details of the order may be entered into the system by an individual or organization other than the member who is representing or executing the order, but if this were to occur, the member with the order could not represent or execute the order until the details of the order were recorded in an electronic system.

According to the NYSE, this proposed rule change does not replace existing requirements for recording orders contained in Exchange or Commission rules. For example, NYSE Rule 123, under the heading "Receipt of Orders," requires each member to preserve for three years a record of every order received by that member on the Floor from off the Floor, including the time when such order was received. NYSE Rule 410 requires each member or member organization to preserve for three years a record of every order transmitted to the Floor or received and carried to the Floor by such member or member organization, including the name and amount of security, the terms of the order, the time it was transmitted or received, and the time an execution report was received.

The proposal requires that members enter the following order details: symbol; clearing member organization; order identifier (as assigned by the member or member organization recording the order details)[5] that uniquely identifies the order; identification of member or member organization recording order details; quantity; side of market (*e.g.*, buy, sell long, sell short, sell short exempt); designation as market, limit, stop or stop limit; limit price, stop price and stop limit price (if applicable); time in force (*e.g.*, day, GTC, GTX);[6] designation as held or not held,[7] special conditions (*e.g.*, Rule 10b–18, "G" order and any request by a customer that an order not be displayed); and, a system-generated timestamp. The proposed rule would also require the systematic entry of such other details as the Exchange may require from time to time.

Along with this rule change, the Exchange proposes to design a database

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from James E. Buck, Senior Vice President, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 18, 1998; and from Daniel P. Odell, Assistant Secretary, NYSE, to Richard Strasser, Division, Commission, dated June 7, 1999.

[4] *See* Securities Exchange Act Release No. 41706 (August 4, 1999), 64 FR 44069.

[5] According to the Exchange, its Broker Booth Support System ("BBSS") automatically assigns a unique order identifier to the order, but a member or member organization can choose instead to override this feature and assign its own unique identifier.

[6] The Exchange represents that an order designated as good until a specific time will be recorded in a separate memo field (rather than in the time in force field) as a special condition or special instruction.

[7] The Exchange represents that this designation will also be recorded in a separate memo field (or fields) that will allow other special instructions and special conditions to be entered in a free format.

system that it believes will enable compliance with this rule and enhance the ability of its BBSS to support various trading floor business models, while minimizing the impact on the timely execution of orders. According to the NYSE, these systems are being developed in consultation with various member committees as well as the individuals on the Upstairs Traders Advisory Committee and the Exchange Traders Advisory Committee. In addition, the Exchange represents that it has interviewed individual brokers, member firm technology departments, and service bureaus.

In addition to recording the data elements required by NYSE Rule 123, the Exchange represents that its database system will be able to record optional order data elements, including special instructions (e.g., go along, percent of volume), account type identifier (this is optional on order entry but mandatory on submission to trade comparison for audit trail), account number and any other information the firm chooses to include in the record, provided it is consistent with the format(s) accepted by the Exchange.

The Exchange also plans to modify the existing BBSS to enable compliance at trading floor booths for firms that choose an NYSE (versus a proprietary) system to comply with the proposed rule. According to the Exchange, the BBSS enables firms to enter orders that are phoned to the Floor to receive orders delivered to the booth systemically via a proprietary system/NYSE system interface; and to enter orders from off-floor using an NYSE system. The Exchange represents that the planned enhancements to BBSS are designed to support entry of all order types and all required information as well as to speed data entry by providing quick entry templates and other data entry enhancements. The Exchange believes that the BBSS upgrade would also improve order and information management features resulting in operational efficiencies for the firms.

According to the Exchange, BBSS currently is capable of accepting orders with prices per share as low as $.01 and as high as $99,999.[8] However, in the event that BBSS cannot accommodate an order at the time NYSE Rule 123 becomes effective, the Exchange represents that brokers relying on BBSS to comply with the Rule would be exempt for orders that could not be entered through BBSS until such time as BBSS is compatible with the entry of such orders. According to the Supplementary Material of the proposed rule, orders that by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with the proposed rule shall be exempt from the order entry requirements of the proposed rule. However, if a proprietary system is used, the proposed rule requires that the system must be capable of transmitting details of all orders to the Exchange database.

With regards to system specifications, the NYSE represents that its systems development plan includes building a new database to collect and consolidate records of orders in NYSE systems and orders that are sent to the Exchange Floor for execution through a member firm's proprietary system. Further, the NYSE represents that its systems will be designed to provide for members firms' proprietary systems interface to the NYSE database in Common Message Switch ("CMS"), Financial Information Exchange Protocol ("FIX"), or other NYSE-approved industry standard format. According to the NYSE, such systems must submit a copy of the order details to the NYSE database upon receipt of the order by the member firm's proprietary system on the Floor.[9] In addition, the NYSE requires an "as of" time indicator for orders entered late due to system problems, and if this occurs, member firms would have to notify the Exchange by the end of the following day and provide documentation of the system problem that necessitated the use of an "as of" time indicator.

The Exchange represents that it intends to communicate its system plan to member firms, then finalize NYSE system specifications, and issue interface specifications to member firms. The effective date of the proposed rule will be based on the implementation of enhancements to NYSE systems as well as the state of readiness of the member firm community. The Exchange represents that the NYSE systems have been tested; however, the implementation date is still subject to the completion of specification and design work, as well as the finalization of development, and cutover schedules.[10]

The Exchange believes that the implementation of this system will allow the NYSE to track more accurately via systemic records whether an order has been received on the Floor prior to its execution. The Exchange also believes it would address the issue of falsification of order entry times. Therefore, the Exchange believes that its ability to surveil for anomalous trading situations—such as on-floor trading and the creation of inaccurate records, frontrunning of orders, and improper execution of customers' orders—will be enhanced.

With regards to the enforcement of violations of the proposed rule, the NYSE represents that if it determines that a particular violation of this proposed rule is minor in nature, it could issue a cautionary letter. Moreover, the NYSE represents that it would consider seeking approval to add the proposed provisions of NYSE Rule 123 to the list of rules contained in NYSE Rule 476A, which provides for the imposition of fines for minor violations of rules. In those instances where the investigation reveals a more serious violation or repetitive violations of NYSE Rule 123, the Exchange represents that it would commence disciplinary procedures under NYSE Rule 476.[11]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] Specifically, the Commission believes that by strengthening the Exchange's ability to examine and surveil activities on the Exchange Floor, the proposal is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[14]

The proposed rule change is intended to fulfill some of the undertakings contained in the order issued by the Commission relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with Section 11(a) and Rule 11a–1 of the Act and NYSE rules 90, 95, and 111.[15] The SEC Order found that the NYSE's floor broker regulatory program suffered from two major deficiencies: (1) The NYSE failed to take appropriate action to police for profit-sharing or other performance-based compensation of independent floor brokers; and (2) the NYSE suspended its routine independent floor broker surveillance for extensive periods of time.[16] In addition, although not part of the findings in the SEC Order, the Commission's initial and amended complaints and the Office of the United States Attorney for the Southern District of New York's indictment charged, among other things, that independent floor brokers profited from the information they acquired on the NYSE floor by trading ahead of customer orders and, in some instances, engaging in frontrunning in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Act and rule 10b–5 thereunder.

As part of the SEC Order, the NYSE agreed and was ordered to continue the development and implementation of an electronic floor system ("Phase I Floor Audit Trail") that will be used to enter details related to orders before these orders can be represented on the trading floor. To accomplish this undertaking, the NYSE was ordered to submit a proposed rule change setting forth the complete details and specifications of the Phase I Floor Audit Trail, and to fully implement the Phase I Floor Audit Trail nine months after Commission approval of the proposal. This proposed rule change addresses this undertaking. The Commission believes that, by strengthening the Exchange's ability to examine and surveil members' activities on the Exchange Floor, the proposed rule change is consistent with and is an important step toward satisfying certain of the undertakings relating to oversight of the trading floor.

The proposal requires that members and member organizations enter the details of an order before they can represent or execute the order on the floor of the Exchange. Among other things, the member must electronically time stamp the order before representing or executing it on the floor and must record any changes in the terms of the order or cancellations of the order.[17] The Commission finds that requiring members and member organizations to electronically record the details of an order before representing or executing the order on the floor will enhance the Exchange's ability to deter and detect violations of the securities laws and the Exchange's rules, such as trading ahead of customer orders or frontrunning. Specifically, the rule enhances the NYSE's ability to track the handling of an order from receipt until execution. For example, this information can be used to reconstruct markets to determine whether an independent floor broker traded ahead of a customer order. The Commission also finds that enhancing the surveillance of members' activities on the floor is consistent with the Exchange's responsibility, under Section 6(b)(5) of the Act, to prevent fraudulent and manipulative acts and practices.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–98–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32091 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

[8] Previously, BBSS could not accept orders with orders fractional prices less than 1/64th or integer prices greater than $99,999. The Exchange has updated the BBSS capacity to accommodate decimal pricing. The Exchange represents that under the new parameters, all orders should be compatible for entry into BBSS. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on November 20, 2000.

[9] According to the Exchange, "upon receipt" means as soon as practicable, but no later than 60 seconds after receipt. This 60 seconds is intended to provide flexibility in implementation and is not intended to be incorporated into proprietary systems; e.g., a system that was programmed to routinely transmit a copy to the Exchange database system 60 seconds after receipt of an order would not comply with the system requirement.

[10] Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Jennifer Colihan, Attorney, Division, Commission, on November 21, 2000. The Commission notes, however, that pursuant to the SEC Order, Phase I of the Floor Audit Trail must be implemented within nine months after the date of this approval order. *See* In the Matter of New York Stock Exchange, Inc., SEC Release No. 34–41574, June 29, 1999; Administrative Proceeding File No. 3–9925 ("SEC Order").

[11] The Exchange represents that it does not include specific reference to disciplinary matters in each rule because it believes the language in NYSE Rules 476 and 476A is all-encompassing.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See* note 10, *supra.*

[16] *Id.*

[17] The Commission notes that in a pending proposed rule change, the NYSE is proposing to require that members synchronize business clocks to record the date and time of any event that the Exchange requires to be recorded. *See* SR–NYSE–99–51 (proposal to implement Phase II of the Floor Audit Trail System).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43700; File No. SR–NYSE–00–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Reduce the Maximum Original Listing Fee and To Impose a New Allocation Fee on Exchange Specialists

December 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4[2] thereunder, notice hereby is given that on November 29, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule chanve as described in items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to reduce the maximum original listing fee applicable to companies listing on the Exchanged and to recapture the lost revenue through an allocation fee imposed on Exchange specialists. The proposed rule change is available at the principal office of the NYSE and at the Commission's Public Reference Room.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] According to the NYSE, the proposed specialist allocation fee would not appear in the NYSE's rules or price list. Therefore, with respect to this part of the filing, there is no proposed rule text as such. The NYSE will notify affected members of the new fee via an information circular. Telephone conversation between James F. Duffy, Senior Vice President and Associate General Counsel, NYSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on December 11, 2000.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

Original listing fees are levied on the number of shares issued and outstanding at the time of listing plus a one time special charge of $36,800 for a newly listed company. Currently, the NYSE caps original listing fees at $500,000. To accommodate prospective listed companies with a lower maximum fee while continuing to maintain revenue at a level suitable to support the Exchange's programs, the NYSE is proposing to reduce the original listing fee cap to $250,000.[4]

The reduction in listing fee revenues resulting from reduction of the maximum listing fee will be offset in total by implementation of a new Specialist Allocation Fee. Newly listed companies are allocated to a specialist unit through the Exchange's allocation process. Specialists apply for the allocation of new listings, and, upon listing, companies have the choice of one of two options for allocation of their security. The first option is to authorize the Exchange's Allocation Committees to determine who will be the company's specialist. Under the second option, the Allocation Committee selects a pool of between three to five specialists from those who have applied, and the listing company then interviews each of the candidates to determine who will be its specialist.

The new Specialist Allocation Fee will be levied on the specialist unit that has been selected, under either option one or option two, to be the specialist for the new listing. The fee will be equal to the difference between the original listing fee calculated under the new $250,000 cap and the fee that would have been applicable under a $500,000 cap. Accordingly, the Specialist Allocation Fee itself will be a maximum of $250,000. The following examples demonstrate how this fee will be applied in different circumstances:

Company A:	
Shares Outstanding	100 million
Calculated Fee Based on Per Share Rate.	$417,100
Listed Company Original Fee (Capped).	$250,000
Specialized Allocation Fee	$167,100
Company B:	
Shares Outstanding	50 million
Calculated Fee Based on Per Share Rate.	$242,100
Listed Company Original Fee (Capped).	$242,000
Specialized Allocation Fee	$0
Company C:	
Shares Outstanding	130 million
Calculated Fee Based on Per Share Rate.	$522,100
Listed Company Original Fee (Capped).	$250,000
Specialized Allocation Fee	$250,100

Both the reduction in the listing fee cap and the new Specialist Allocation Fee will be implemented January 1, 2000.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[5] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement of Burden on Competition

The NYSE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Rreceived From Members, Participants, or Others

The NYSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 under the Act.[7] Pursuant thereto the rule change may become operative 30 days after November 29, 2000, the date of filing. At any time within 60 days of filing, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–48 and should be submitted by January 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32115 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

[4] The reduced maximum original listing fee will be reflected in an amendment to Sections 902.02 (domestic companies) and 902.04 (non-U.S. companies) of the NYSE Listed Company Manual.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12)

DEPARTMENT OF STATE

[Public Notice 3511]

Culturally Significant Objects Imported for Exhibition Determinations: "William Blake"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "William Blake," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, in New York, NY, from on or about March 26, 2001 to on or about June 24, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 8, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–32145 Filed 12–15–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–70]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91 of Part 11.

Issued in Washington, D.C., on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No.: FAA–2000–8055.

Petitioner: Honeywell International, Inc.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/Disposition: To permit Honeywell to make its Inspection Procedures Manual (IPM) available electronically to it's supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 11/06/2000, Exemption No. 7378*

Docket No.: FAA–2000–7982.

Petitioner: Pierce County Washington United Way

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit PCWUW to conduct a local sightseeing flight at Tacoma Industrial Airport, Tacoma, Washington, for a charitable event in October 2000, for compensation or hire, without complying with certain anti-drug alcohol misuse prevention requirements of part 135. *Grant, 10/27/2000, Exemption No. 7375*

[FR Doc. 00–32179 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–71]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8187.
Petitioner: Department of the Air Force.
Section of 14 CFR Affected: 14 CFR 91.169(b).
Description of Relief Sought/ Disposition: To permit the Department of Air Force to list alternate airports in instrument flight rules (IFR) flight plans for military aircraft in accordance with regulations prescribed by the Department of the Air Force *Grant, 11/28/2000, Exemption No. 7389*

Docket No.: FAA–2000–8140.
Petitioner: Alaska Island Air, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit ASA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7387*

Docket No.: FAA–2000–8050.
Petitioner: Alexandria Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit AAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7384*

Docket No.: FAA–2000–8084.
Petitioner: Alpine Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit AHI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7385*

Docket No.: FAA–2000–7990.
Petitioner: Lake and Peninsula Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit LPA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7388*

Docket No.: FAA–2000–7988.
Petitioner: RGT Air Freight.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit RGT to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7386*

Docket No.: FAA–2000–8178.
Petitioner: Compoende Aeronáutica Ltda.
Section of 14 CFR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Compoende to use the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment. *Grant, 11/30/2000, Exemption No. 6550C.*

Docket No.: FAA–2000–7983.
Petitioner: Whisper Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 133.43(a) and (b).
Description of Relief Sought: To permit Whisper Airlines, Inc., to use its helicopters to conduct acts by an aerial performer on certain rigging apparatuses without using an approved external-load-attaching means or an approved quick-release device. *Grant, 11/20/2000, Exemption No. 6563B.*

Docket No.: FAA–2000–8100.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.401(c), 121.433(c)(1)(iii), 121.440(a), and 121.441(a)(1) and (b)(1); appendix F to part 121; and Special Federal Aviation Regulation (SFAR) No. 58, paragraph 6(b)(4)(ii)(A).
Description of Relief Sought: To allow NWA to combine recurrent flight and ground proficiency checks for NWA's flight crewmembers in a single annual training and proficiency evaluation program and meet the line check requirements of 121.440(a) and SFAR No. 58 through an FAA-approved alternative line check program. *Grant, 11/20/2000, Exemption No. 5815D.*

Docket No.: FAA–2000–7945.
Petitioner: Boeing Commercial Airplane Group.
Section of 14 CFR Affected: 14 CFR 61.57(a) and (b).
Description of Relief Sought/ Disposition: To permit Boeing production and engineering flight test pilots to use any type of Boeing airplane or Level B, C, or D simulator that represents any type of Boeing airplane to meet the takeoff and landing recency of experience requirements of § 61.57 without Boeing holding a 14 CFR part 142 certificate. *Grant, 11/20/2000, Exemption No. 6843A.*

[FR Doc. 00–32181 Filed 12–15–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–72]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–8218.
Petitioner: Bombardier Aerospace, Inc.
Section of 14 CFR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought: To relieve Bombardier Aerospace, Inc., from the requirements of 14 CFR 25.1435(b)(1) for static testing of a complete hydraulic system to 1.5 times the design operating pressure for the CL–600–2D24 (Regional Jet CRJ–900) airplane.

[FR Doc. 00–32181 Filed 12–15–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–73]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91 of Part 11.

Issued in Washington, D.C., on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–7994.
Petitioner: AirNet Express.
Section of 14 CFR Affected: 14 CFR § 135.85.
Description of Relief Sought: To permit AirNet to carry cockpit crewmembers who are employed by other certificated air carriers on its all cargo Learjet aircraft.

Docket No.: FAA–2000–7993.
Petitioner: Federal Express Corporation.
Section of 14 CFR Affected: 14 CFR 45.15(a)(4) ad.
Description of Relief Sought: To Federal Express to install replacement or modification parts designated for installation on Douglas DC–10 airplanes on McDonnell Douglas MD–10 airplanes.

[FR Doc. 00–32182 Filed 12–15–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–74]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 8000

Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91 of Part 11.

Issued in Washington, DC, on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8063.

Petitioner: Eagle Canyon Airlines, Inc. dba Scenic Airlines.

Section of 14 CFR Affected: 14 CFR 121.345(c)(2).

Description of Relief Sought/ Disposition: To permit Scenic Air to operate certain aircraft under part 121 without a TSO–C112 (Mode S) transponder installed on those aircraft. In your letter, you include a revised list of Scenic Air aircraft to be covered by the extension. *Grant, 10/13/2000, Exemption No. 6839A*

Docket No.: FAA–2000–8048.

Petitioner: Western North Carolina Pilots Association, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit WNCPA to conduct local sightseeing flights at Asheville Regional Airport, Asheville, North Carolina, for its two-day Fall Color Scenic Rides in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/20/2000, Exemption No. 7371*

[FR Doc. 00–32183 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–75]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91 of Part 11.

Issued in Washington, DC, on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8092.

Petitioner: Ms. Elizabeth C. Huck.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Ms. Huck to a conduct local sightseeing flight at Butler County Regional airport for a charitable event benefiting the Soroptimist International of Cincinnati club on a date before November 1, 2001, to be determined by you and the passenger(s), for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 11/03/2000, Exemption No. 7377*

Docket No.: FAA–2000–8000.

Petitioner: Delta Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit Delta to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 10/24/2000, Exemption No. 7376*

Docket No.: FAA–2000–7981.

Petitioner: Air Transport Association of America.

Section of 14 CFR Affected: 14 CFR 121.583(a).

Description of Relief Sought/ Disposition: To permit ATA member airlines and other similarly situated part 121 certificate holders to allow FAA air traffic controllers and certain technical representatives to ride in the cockpit observer's seat of all-cargo aircraft when those aircraft do not meet the passenger-carrying requirements of part 121 except as described in §§ 1212.583(b), 121.583(c), and 121.583(d). *Grant, 10/30/2000, Exemption No. 5562D*

Docket No.: FAA–2000–FAA–2000–7980.

Petitioner: Air Transport Association of America.

Section of 14 CFR Affected: 14 CFR 121.311(b).

Description of Relief Sought/ Disposition: To permit ATA-member airlines and other similarly situated part 121 operators to permit qualified flight attendants not required by § 121.391(c) to perform duties related to the safety of the airplane and its occupants during aircraft movement on the surface. *Grant, 10/24/2000, Exemption No. 5533D*

[FR Doc. 00–32184 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–76]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2001.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARN–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of Part 11 of 14 CFR.

Issued in Washington, DC, on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 17145.

Petitioner: United Airlines.

Section of the 14 CFR Affected: 14 CFR 121.665 and 121.697(a) and (b).

Description of Relief Sought/ Disposition: To permit UAL to use computerized load manifests that bear the printed name and position of the person responsible for loading the aircraft, instead of that person's signature. Grant, 10/26/00, Exemption No. 2466L.

Docket No.: 24237.

Petitioner: Department of the Air Force.

Section of the 14 CFR Affected: 14 CFR 91.177(a)(2) and 19.179(b)(1).

Description of Relief Sought/ Disposition: To permit the Air Force to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segments in uncontrolled airspace. The amendment you request would allow the United States Army Special Operations Command (USASOC), 160th Special Operations Aviation Regiment (160th SOAR) to operate under Exemption No. 4371, as amended, when the 160th SOAR and the Air Force Special Operations Command (AFSOC) are conducting joint operations. Grant, 10/25/00, Exemption No. 4371F.

[FR Doc. 00–32185 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on April 14, 2000, (65 FR 20257). Comments were due June 13, 2000. No comments were received.

DATES: Comments must be submitted on or before January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Evie K. Chitwood, Office of Intermodal Development, 400 Seventh Street, SW, Room 7209, Washington, D.C. 20590, telephone number (voice) 202–366–5127, (fax) 202–366–6988.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: "Intermodal Access to U.S. Ports Survey" "Intermodal Access to U.S. Marine Terminals Survey."

OMB Control Number: 2133–NEW.

Type of Request: Approval of a new information collection.

Affected Public: U.S. Ports and Terminals (including the top U.S. deepwater ports, the top container ports and the strategic ports as well as the major shallow draft ports).

Form(s): Forms MA–.

Abstract: The "Intermodal Access to U.S. Ports Survey" and the "Intermodal Access to U.S. Marine Terminals Survey" were designed to be a questionnaire of critical infrastructure impediments that impact the Nation's ports and marine terminals. The collection will provide key highway, truck, rail and waterside access data and will highlight the access impediments that affect the flow of cargo through U.S. ports and terminals. The annual data received will be used to statistically demonstrate the change in access impediments to the Nation's ports and terminals.

Annual Estimated Burden Hours: 81 Hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: December 13, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32162 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8537]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OLD TIMER.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before January 17, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2000–8537. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel: Old Timer.* Owner: Robert E. Smith.

(2) Size, capacity and tonnage of vessel. According to the applicant: "39′ 11″, Tonnage, gross 28, net 22, USCG simplified formula."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Dolphin watching cruises in local waters. Boat & Breakfast. Southeast U.S."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There are numerous dolphin charters in the area, which carry 30 or more passengers. Since I would be limited to the number of passengers, there should be no impact on these vessels. Also there are no Boat & Breakfast vessels in the area."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "No negative impact on U.S. shipyards. The only effect will be positive-ship repair."

Dated: December 13, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32161 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub–No. 4)]

Railroad Cost of Capital—2000

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2000 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2000. The decision solicits comments on: (1) The Railroads' 2000 cost of debt capital; (2) the railroads' 2000 current cost of preferred stock equity capital; (3) the railroads' 2000 cost of common stock equity capital; and (4) the 2000 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 12, 2001. A service list will then be prepared and issued by January 26, 2001. Statements of the railroads are due by March 30, 2001. Statements of other interested persons are due by April 20, 2001. Rebuttal statements by the railroads are due by May 11, 2001.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 6.1, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Da-to-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339] A copy of the decision can also be obtained from the Board's Internet site (www.stb.dot.gov).

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 12, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–32155 Filed 12–15–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–434 (Sub–No. 2X)]

Winchester & Western Railroad Company—Abandonment Exemption—in Winchester, VA

Winchester & Western Railroad Company (W&W) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.63-mile line of railroad between milepost 115.27 and the end of the line at milepost 115.9 inside the city limits of Winchester, VA. The line traverses United States Postal Service Zip Code 22601.

W&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 17, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 28, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 8, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John D. Heffner, Esq., Rea, Cross & Auchincloss, Suite 570, 1707 L Street, NW., Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

W&W has filed an environmental report which addresses the effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 22, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), W&W shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by W&W's filing of a notice of consummation by December 18, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 6, 2000.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31631 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Maintained By Brewers.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rich Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Maintained By Brewers.

OMB Number: 1512–0333.

Recordkeeping Requirement ID Number: ATF REC 5130/1.

Abstract: ATF audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax. The recordkeeping requirement associated with this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,400.
Estimated Time Per Respondent: 0.
Estimated Total Annual Burden Hours: 1 hour.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–32137 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Marks on Equipment and Structures, Marks and Labels on Containers of Beer.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rich Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:
Title: Marks on Equipment and Structures, Marks and Labels on Containers of Beer.
OMB Number: 1512–0478.
Recordkeeping Requirement ID Number: ATF REC 5130/3, Marks on Equipment and Structures and ATF REC 5130/4, Marks and Labels on Containers of Beer.
Abstract: Marks, signs and calibrations are necessary on equipment and structures for identifying major equipment for accurate determination of tank contents, and segregation of taxpaid and nontaxpaid beer. Marks and labels on containers of beer are necessary to inform consumers of container contents, and to identify the brewer and place of production. This information collection requires the marking of tanks, containers and signs identifying rooms. There is no recordkeeping requirement associated with this collection.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,400.
Estimated Time Per Respondent: 0.
Estimated Total Annual Burden Hours: 1 hour.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–32138 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:
Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.
OMB Number: 1512–0116.
Form Number: ATF F 5200.11.
Abstract: ATF F 5200.11 documents removal or release of tobacco products without payment of tax from U.S. Customs custody or return by a U.S. Government agency to bonded tobacco products factories and manufacturers of cigarette papers and tubes.
Current Actions: The instructions have been revised on the form in order to comply with the Cigarette Compliance Act of 2000.
Type of Review: Extension with changes.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 153.
Estimated Time Per Respondent: 15 minutes.
Estimated Total Annual Burden Hours: 306.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–32139 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Request for Disposition of Offense.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

SUPPLEMENTARY INFORMATION:
Title: Request for Disposition of Offense.
OMB Number: 1512–0390.
Form Number: ATF F 5020.29.
Abstract: The information provided on this form determines whether an applicant is eligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the Clerk of the Court or Custodian of Records to ascertain the disposition of the case. Records are kept indefinitely for this information collection.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: State, Local or Tribal Government.
Estimated Number of Respondents: 3,000.
Estimated Time Per Respondent: 30 minutes.
Estimated Total Annual Burden Hours: 1,500.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–32140 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Identification of Explosive Materials.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to William O'' Brien, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8171.

SUPPLEMENTARY INFORMATION:
Title: Identification of Explosive Materials.
OMB Number: 1512–0559.
Abstract: The regulations of 27 CFR 55.109 require that manufacturers of explosive materials place marks of identification on the materials manufactured. Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,563.
Estimated Time Per Respondent: None.
Estimated Total Annual Burden Hours: 1.
Request for Comments:
Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–32141 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bond-Drawback of Tax on Tobacco Products, Cigarette Papers, or Tubes.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts -2-Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:
Title: Bond-Drawback of Tax on Tobacco Products, Cigarette Papers, or Tubes.
OMB Number: 1512–0118.
Form Number: ATF F 2148 (5200.17).
Abstract: ATF F 2148 (5200.17) is necessary to secure payment for tobacco articles on which a drawback (refund on tariff or other tax) has been claimed and paid. The bond will secure payment in the event that a claim was not lawfully refunded. The bond describes the particular conditions under which the surety company and drawback claimant adhere to and description of the what the bond covers. The recordkeeping requirement for this information collection is 3 years.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Not-for-profit institutions.
Estimated Number of Respondents: 50.
Estimated Time Per Respondent: 1 hour.
Estimated Total Annual Burden Hours: 50.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–32142 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for License, Collector of Curios and Relics.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

SUPPLEMENTARY INFORMATION:
Title: Application for License, Collector of Curios and Relics.
OMB Number: 1512–0518.
Form Number: ATF F 7CR (5310.16).
Abstract: ATF F 7CR (5310.16) is used by the public when applying for a Federal firearms license to collect curios and relics in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.
Affected Public: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Time Per Respondent: 15 minutes.
Estimated Total Annual Burden Hours: 1,500.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–32143 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning an information collection titled, "Share Exchange Notification."

DATES: You should submit written comments by February 16, 2001.

ADDRESSES: You should direct all written comments to the Public Information Room, Attention: 1557–SHEX, Mailstop 1–5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202)874–4448, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Jessie Dunaway or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division (1557–SHEX), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing the following information collection:
Title: Share Exchange Notification.
OMB Number: 1557–to be assigned.
Form Number: Not applicable.
Description: This information collection consists of a notification of share exchange conducted by a national bank and its holding company. The OCC needs this information to ensure a public record of the share exchange and to provide an effective date of completion of the exchange in the event applicable state corporate law does not provide for applicability to nationally chartered institutions.
Type of Review: New collection.
Affected Public: Businesses or other for-profit.
Estimated Number of Respondents: 25.
Estimated Total Annual Responses: 25.
Frequency of Response: On occasion.
Estimated Total Annual Burden: 25 burden hours.
An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.
Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:
(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
(b) The accuracy of the agency's estimate of the burden of the collection of information;
(c) Ways to enhance the quality, utility, and clarity of the information to be collected;
(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 12, 2000.
Mark J. Tenhundfeld,
Assistant Director, Legislative & Regulatory Activities Division.
[FR Doc. 00–32069 Filed 12–15–00; 8:45 am]
BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) hereby gives notice of the weighted average poverty threshold established for 1999 for one person (unrelated individual) as established by the Bureau of the Census. The amount is $8,501.

DATES: For VA determinations, the 1999 poverty threshold is effective September 26, 2000, the date on which it was established by the Bureau of the Census.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: We published a final rule amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, 55 FR 31,579. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. The provisions of 38 CFR 4.16(a) use the poverty threshold as a standard in defining marginal employment when considering total disability ratings for compensation based on unemployability of an individual. We stated we would publish subsequent poverty threshold figures as notices in the **Federal Register.**

The Bureau of the Census recently published the weighted average poverty thresholds for 1999. The threshold for one person (unrelated individual) is $8,501.

Dated: December 11, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 00–32109 Filed 12–15–00; 8:45 am]

BILLING CODE 8320–01–M



Federal Register

Monday,
December 18, 2000

Part II

Nuclear Regulatory Commission

10 CFR Parts 30, 31, and 32
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, and 32

RIN 3150—AG03

Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the use of byproduct material in certain detecting, measuring, gauging, or controlling devices, and devices to produce light or an ionized atmosphere. The amendments include explicit provisions for a registration process authorized under a provision of the existing regulations. A registration fee will be required for each registration. Although the amendments apply to all users of these devices (general licensees), the registration and associated fee apply to a limited fraction of these general licensees, not including, for example, users of exit signs. The final rule also modifies the reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices. The final rule is intended to allow the NRC to better track certain general licensees and the devices they possess, and to better ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material.

EFFECTIVE DATES: February 16, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6264, or e-mail at CRM@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the Atomic Energy Commission (AEC) amended its regulations to provide a general license (10 CFR 30.21(c)) for the use of byproduct material contained in certain measuring, gauging, or controlling devices, and devices for producing light or an ionized atmosphere. Under the regulations currently in 10 CFR 31.5, certain persons may receive and use a device containing byproduct material under this general license that has been manufactured and distributed according to a specific license issued by the NRC or by an Agreement State. (An Agreement State is a State that has entered into an agreement with the NRC that gives it the authority to license and inspect persons using or possessing certain radioactive materials, called byproduct, source, and special nuclear materials, within their borders.) A specific license authorizing distribution of generally licensed devices is issued if a regulatory authority (the NRC, or where provided by a memorandum of agreement, an Agreement State) determines that the safety features of the device and the instructions for its safe operation are adequate and meet regulatory requirements.

The person or organization who receives such a device is a general licensee. These general licensees are subject to requirements for maintaining labels, following instructions for safe use, storing or disposing of the device properly, and reporting transfers and failure of or damage to the device. For some devices, the general licensee must also comply with testing requirements for leakage and for proper operation of on-off mechanisms. General licensees are also subject to the terms and conditions in § 31.2 concerning general license requirements, transfer of byproduct material, reporting and recordkeeping, and inspection. General licensees must comply with the safety instructions contained in or referenced on the label of the device and must have the testing or servicing of the device performed by an individual who is authorized to manufacture, install, or service these devices except as indicated on the label.

A generally licensed device usually consists of radioactive material, contained in a sealed source, within a shielded housing. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. The general license simplifies the licensing process so that a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary.

There are about 40,000 general licensees authorized by § 31.5 to possess about 600,000 devices that contain byproduct material. The NRC has not contacted or inspected these general licensees on a regular basis because of the relatively small radiation risk posed by these devices.

Individuals who possess devices under this general license are not always aware of applicable requirements. The NRC is most concerned about occurrences where generally licensed devices have not been handled or disposed of properly. In some cases, this has resulted in radiation exposure to the public and contamination of property. Some generally licensed devices have been accidentally melted in steel mills causing considerable contamination of the mill, the steel product, and the wastes from the process (*i.e.* the slag and the baghouse dust). Although known exposures have generally not exceeded the public dose limits, there is a potential for significant exposures.

In July 1995, the NRC, with assistance from the Organization of Agreement States, formed a working group to evaluate the issues related to the loss of control of both generally and specifically licensed devices. The working group consisted of both NRC and Agreement State regulatory personnel and encouraged the involvement of all persons having a stake in the process and its final recommendations. All working group meetings were open to the public. A final report was published in October 1996 as NUREG–1551, "Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices." In considering the recommendations of this working group, the NRC decided, among other things, to initiate rulemaking to establish an annual registration of some of the devices generally licensed under § 31.5.

The Atomic Energy Act of 1954 (AEA), as amended, provides the NRC with the authority to request information from its licensees concerning licensed activities. However, the Commission had not included an explicit provision in its regulations that would require § 31.5 general licensees to provide information on request. On December 2, 1998 (63 FR 66492), the Commission published a proposed rule to explicitly require general licensees who possess certain measuring, gauging, or controlling devices to provide the NRC with information about the devices. The final rule was published on August 4, 1999 (64 FR 42269), and became effective October 4, 1999. The NRC intends to use that general provision primarily to conduct a registration program. The NRC is using the criteria developed by the working group for determining which sources should be subject to the registration program. Registration is being required only for those devices considered to present a higher risk (compared to other generally licensed devices) of potential exposure of the public or property damage in the case of loss of control. This does not include self-luminous exit signs.

These criteria were based on considerations of risk and are limited to radionuclides currently used in devices covered under this general license. If quantities of other radionuclides that would present a similar risk are used in these devices in the future, the criteria may be revised to include the additional radionuclides.

That rulemaking was not made a matter of compatibility for Agreement States. The final rule was estimated to impact 5100 general licensees. However, in the interim, Ohio and Oklahoma have become Agreement States. Using the same criteria, and eliminating the general licensees in Ohio and in Oklahoma, approximately 4300 NRC general licensees will be subject to the registration requirement.

On July 26, 1999 (64 FR 40295), the Commission published another proposed rule to add specific requirements concerning the registration of devices and additional provisions for an enhanced regulatory oversight program for all § 31.5 general licensees. The rule also proposed to require compatibility for Agreement State regulations so that an increased level of oversight for general licensees in Agreement States would also be required. Some States have already instituted some form of enhanced oversight for these general licensees. In a few cases, States have instituted a registration program. Also, a few States have exercised a higher level of control over these devices by requiring specific licenses. The proposed category of compatibility for § 31.5 would have required the essential objectives of the regulation to be adopted by the States to avoid regulatory conflicts, duplications, or gaps. However, the manner of addressing the essential objectives of the regulation would not have been required to be the same as used by the NRC. Strict compatibility was proposed only for revisions to the requirements applicable to distributors. The Compatibility Categories assigned to some provisions have been reconsidered by the Commission. Changes to the proposed designations are discussed below.

General Discussion

The August 4, 1999, final rule provides one of the key elements in improving the accountability and control over devices of particular concern through the institution of a registration process. However, regulatory provisions were still inadequate to allow the NRC to track general licensees and the specific devices they possess. The NRC needs to keep track of these general licensees so that they can be contacted or inspected, when appropriate. The NRC also wishes to keep track of each generally licensed device, so that the responsible party can be identified when a device is found in an inappropriate situation. Tracking devices will also allow the NRC to contact the appropriate general licensees if a generic defect in a group of devices is identified. As previously noted, that rule did not require Agreement State regulations to be compatible.

There are other means for reducing the likelihood of incidents of lost sources. The Commission reconsidered the provisions in its 1991 proposed rule, evaluated the recommendations of the NRC-Agreement State Working Group, and identified additional issues concerning these devices in developing the proposed rule published on July 26, 1999, for public comment. The Commission has considered the public comments received on that rule, comments made on the December 2, 1998, proposed rule that related to the issues in this rule, and the comments made at two public meetings held on July 27–28, 1999, and October 1, 1999, in completing this final rule.

Summary and Discussion of New Requirements

Revisions to the Requirements for General Licensees Under § 31.5

Registration. This rule adds explicit provisions delineating the annual registration requirements, including the requirement for a registration fee. The registration fee will be established as a part of the FY 2001 fee rulemaking. The registration process is being initiated under the more general provision in § 31.5(c)(11), which became effective October 4, 1999. Paragraph 31.5(c)(11) requires licensees to respond to requests for information from NRC within 30 days or as otherwise specified. The provisions in this rule (new § 31.5(c)(13)) are consistent with the Commission's plans for the registration process discussed in the August 4, 1999, final rule. This final rule specifically requires that licensees verify information about devices through a physical inventory and by checking label information. The advantage of including more specific requirements in the regulation is that information about the registration process will be more clearly defined and more readily available. When the distributor of a device supplies copies of § 31.5 to its customers under § 32.51a(a), the potential general licensees will be made aware of the registration requirement, the devices to which it applies, the nature of the registration information, and the registration fee.

An organization that uses generally licensed devices at numerous locations is considered a separate general licensee at each location. Different facilities at the same complex or campus are not, however, considered separate locations. In the case of portable devices that are routinely used at multiple field sites, there is one general licensee for each primary place of storage, not for each place of use. Thus, an organization must complete more than one registration if it possesses devices subject to registration at multiple distinct locations.

The final rule adds a provision to specifically exclude Agreement State general licensees using a device in NRC jurisdiction for less than 180 days in any calendar year from the registration requirement. This is discussed further under section C.

A fee will be required for each annual registration. Based on the current budgeted costs, FTE rate, and the estimated number of general licensees subject to registration, the fee is expected to be approximately $440–$450. The FTE rate is the rate established in part 170 to recover the costs for a professional employee. The fee is not being finalized at this time because it is anticipated that the first registration subject to the registration fee would not be filed until FY 2002. Therefore, the final fee will be established as part of the FY 2001 notice and comment fee rulemaking based on that year's budgeted costs, FTE rate, and number of registrants. The registration fee will be for each general licensee filing a registration under § 31.5(c)(13) regardless of the number of devices. As noted above, an organization is considered to be a separate general licensee at each address at which devices are used (or stored), and will be assessed a registration fee for each location of use. The first round of registration will be completed without assessing fees.

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90), to recover approximately 100 percent of its budget through fees. Since OBRA–90 was enacted, all costs of the general license program have been recovered through annual fees paid by specific licensees. The registration fee will recover the cost of the general license program associated with this group of general licensees in an equitable way, as required by law. Those who use devices subject to registration under the general license will now bear the operational cost of the program instead of those who hold specific licenses.

The costs to be recovered through the registration fee will include the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, the costs of processing and reviewing the registrations, and the costs for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, may be exempt from the fee under §.170.11. Costs not recovered from this small segment of the general licensees registering devices will continue to be recovered from annual fees paid by holders of specific licenses.

This registration process is somewhat different from that used in the Commission's other registration programs, in which blank forms are filled out by registrants. Instead, registration requests containing the information recorded in the Commission's database are being sent, that ask the general licensee to verify, correct, and/or add to the information provided. This process is similar to the approach typically used by many States for the renewal of automobile registrations and is intended to be more efficient for the general licensees and the Commission.

The time of year for registration varies for licensees. However, NRC's requests for renewal of registration will be made approximately 1 year after the previous registration request for that licensee. Although registration is not required before the receipt of a device, the Commission plans to send requests for registration to new general licensees subject to registration that are identified in distributors' quarterly material transfer reports submitted under § 32.52 shortly after the NRC receives and records this information. If a general licensee has previously registered devices and receives additional devices requiring registration, the new devices will be registered when the annual reregistration is carried out.

Other revisions for § 31.5 general licensees. The rule establishes additional requirements for all general licensees under § 31.5.

(1) An explicit requirement for the general licensee to appoint an individual: to be responsible for knowing what regulatory requirements are applicable to the general licensee; to have authority to take required actions to comply with the applicable regulations; and through whom the general licensee carries out its regulatory responsibilities (new § 31.5(c)(12)).

Rationale: The "person" who holds a general license is usually a corporation, or public or private institution, rather than an individual. In practice, for the general licensee to comply with existing regulations, an individual in the corporation or institution must be aware of the requirements and be authorized to take the required actions. Appointing a specific individual to be responsible for knowing about and taking actions to comply with regulations is an appropriate operational practice. If a device is not subject to testing under § 31.5(c)(2), there are no routine actions required to be taken, because the requirements are generally restrictions on actions, such as not abandoning the device, or actions to be taken only in the case of particular, non-routine events, such as notification of NRC of the transfer or failure of the device. It is this type of situation where knowledge of the nature of the device, the general license, and the associated regulations is unlikely to be maintained and passed on to individuals using the device. Requiring the assignment of a specific individual to be responsible for knowing, and to have authority to take required actions for complying with, the regulations should improve the probability that the general licensees will comply with the regulations. This individual does not have to be physically present where and when the device is used and does not have to conduct all required actions, but should be responsible to ensure that the general licensee is aware of required actions to be taken. This assignment does not, however, relieve the general licensee of its regulatory responsibilities.

(2) A provision that limits the amount of time a general licensee can keep an unused device in storage and allows the deferment of testing (if required under § 31.5(c)(2) and (3)) during the period of storage; the final version includes an exception for devices in standby for future use (new § 31.5(c)(15)). These provisions do not relieve the general licensee from the requirement to register devices annually and pay a registration fee, if applicable.

Rationale: The rule limits to 2 years the time a licensee can keep a device and not use it. When a device is not in use for a prolonged time, it is particularly susceptible to being forgotten and ultimately disposed of or transferred inappropriately. Experience shows that often a device being held in storage indefinitely is being held to avoid the costs of proper disposal.

Some devices are subject to leak testing or testing of on-off mechanisms under § 31.5(c)(2) and (3). Normal time intervals for this testing are set for the particular device. If a period of storage exceeds the normal interval for testing, this testing will not be required until the device is to be put back into use again. This will relieve the burden of unnecessary testing during the period of storage as well as eliminate any unnecessary exposure that could occur during testing for that period. The final rule makes an exception to the 2-year limit for devices held in standby for future use if the licensee conducts quarterly inventories. Other options if a general licensee intends to use a device after a period of more than 2 years of nonuse, are, as noted in the proposed rule: the device could be sent back to the supplier to be held under the distributor's specific license until later use, or the general licensee could request an exemption from § 31.5(c)(15) indicating the reason(s) why the licensee intends to use the device after 2 years and prefers to keep it on site in the interim. Licensees should have appropriate reasons for holding a device in standby, such as when a gauge is kept on site as an essential spare part for a production process, or when a university or other research facility has intermittent needs for certain types of devices and a clear expectation of continued use at some point.

(3) A provision to allow transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to transfers to part 32 (and Agreement State) licensees; to allow transfers to other specific licensees but only with prior written NRC approval; and to add the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device; the final version removes the exception to reporting in the case of device replacement (revision of § 31.5(c)(8)).

Rationale: This proposed revision provides some flexibility to the general licensee in transferring a device while ensuring that it is transferred appropriately. It allows a general licensee to transfer a device directly to a waste collector for disposal, rather than going through a distributor. It also allows the transfer of a device to other specific licensees, but requires NRC approval in these cases so that NRC can ensure that the recipient is authorized to receive the device. The final rule removes the exception to the transfer report requirement in the case of a device replacement. This change is discussed below under "Public Comments on the Proposed Rule."

The inclusion of a recipient's license number in the report of transfer will better ensure that the general licensee has verified that the recipient is a part 32 licensee, a part 30 waste collection licensee, or a specific licensee under equivalent Agreement State regulations authorized to receive the device. It also provides an additional means for NRC to identify the recipient, because company names and addresses sometimes change. The addition of the date of transfer will make the transfer easier to track and help to ensure that the general licensee makes the report in a timely manner (required within 30 days of transfer).

(4) A provision to notify NRC of address changes, including name changes (new § 31.5(c)(14)).

Rationale: The quarterly reports required of distributors under § 32.52(a) and (b) are intended to provide NRC and the Agreement State regulatory agencies with the names of general licensees in their jurisdictions and the addresses where these general licensees can be contacted (under this rule, the mailing address for the location of use of the generally licensed device). These general licensees can then be contacted or inspected. If general licensees move their operations without notifying the NRC, or appropriate Agreement State agency, they may be difficult to locate. Even a change of name can cause mail to be returned. This requirement to report address changes applies to the mailing address for the location of use and, for portable devices, the mailing address for the primary place of storage, although the devices may be used at multiple field sites. Registration information may include more than one address. For those registering devices, changes in addresses other than the mailing address for the location of use will be provided at the time of the next registration. Changes to the general licensee, other than a simple name change, such as in the case of a sale of a company, require reporting of additional information under § 31.5(c)(9)(i).

This simple change of address notification is intended to keep track of licensee moves and to maintain current mailing address information.

(5) A revision of the information required to be sent to NRC in the case of device damage or failure, which adds a plan for ensuring that premises and environs are suitable for unrestricted access in the case of device damage or failures that are likely to, or are known to, have resulted in contamination; a change to the addressee for reporting information concerning a failure; a note that the criteria in § 20.1402, "Radiological criteria for unrestricted use," may be applied by the Commission in the case of contamination in spite of the exemption in § 31.5(c)(10); the final version adds a clarification that byproduct material no longer in the device may only be transferred to a licensee authorized to receive it or as otherwise approved by the Commission. (revision to § 31.5(c)(5)).

Rationale: General licensees are not subject to decommissioning requirements. A general license is granted by regulation and, under normal circumstances, does not involve any termination of license process. If a generally licensed device fails or is seriously damaged so as to cause significant contamination of the premises or environs, the NRC may respond to the notification of an incident made under § 31.5(c)(5) to ensure that a facility is properly decontaminated. Following this type of incident, the NRC would determine what actions are necessary on a case-by-case basis and, if necessary, would apply the criteria set out in § 20.1402, "Radiological criteria for unrestricted use." The general licensee is exempt from this section of part 20 when in possession of an intact generally licensed device. However, when a device has been damaged, the material in the device may no longer be fully contained within the device (*i.e.*, it may also be unsealed radioactive material). The NRC can take action under § 30.61, "Modification and revocation of licenses," as this section is applicable to general licensees. The revision in this action requires that the general licensee propose to the Commission how it will be shown that the premises are or will be adequately cleaned up. Depending on the nature of the event, the remedial action taken (and reported under preexisting requirements) along with any confirmatory surveys may be sufficient.

The addressee for submitting information under § 31.5(c)(5) is being changed from Regional Administrator to Director, Office of Nuclear Material Safety and Safeguards so there will be a single addressee specified in § 31.5 for reports by these licensees and to eliminate the need for the general licensee to refer to part 20 to determine the appropriate addressee. The addressee and address for registration are specified in the NRC registration request. Adding a note concerning the possible applicability of § 20.1402 is a clarification.

(6) A revision of the reporting requirement, in the case of a transfer to a general licensee taking possession of a device at the same location, to provide the serial number of the device and the name, title, and phone number for the person designated as the responsible individual, rather than simply a contact name, and specifying the required address as the mailing address for the location of use; the final version also adds to the information to be provided by the transferor to the transferee, copies of additional applicable regulatory provisions. (revision to § 31.5(c)(9)(i)).

Rationale: Consistent with the provision for appointing an individual through whom the general licensee will ensure compliance with the applicable regulations and requirements, and other new reporting requirements, it is more effective for the general licensee to provide the name of the new responsible individual when another general licensee takes over the facility and responsibility for the device. The additional change in the final rule is to ensure that new general licensees receive appropriate regulatory information, even in the case of a transfer from another general licensee.

An additional amendment to § 31.5 is intended to clarify the status of a person who receives a device through an unauthorized transfer and also removes a restriction on devices. Paragraph (b) is revised to (1) limit the applicability of the general license to those who receive a device through an authorized transfer, and (2) remove the restriction to the applicability of the general license to devices authorized for distribution by an Agreement State that have a general license covering these devices within that State.

Concerning the first of these issues, the NRC has generally interpreted the general license to apply to any recipient within the group identified in § 31.5(a) (*i.e.*, "* * * commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies.."), even if the device is received through an unauthorized transfer. The new language clearly provides that the general license does not apply if the device is obtained through an unauthorized transfer. In the case of an unauthorized transfer, the recipient would possess the device without a license.

Paragraph 31.5(b) previously restricted applicability of the general license in the case of devices from distributors in Agreement States, to those devices from Agreement States

that authorize the devices to be used under a general license within their respective States. However, the NRC practice has been to allow a device to be used under the general license in § 31.5, that is distributed in accordance with a license issued under equivalent regulations to § 32.51 by an Agreement State that did not authorize devices to be used under a general license within their State. This approach reserved for NRC the right to require distributors in this situation to obtain an NRC distribution license to transfer devices into NRC jurisdiction, but did not require them to do so as long as the State issued acceptably equivalent licenses. Through NRC's oversight of Agreement State programs, NRC ensures the safety of these devices. Given this fact and the experience to date with these few States, the Commission believes that this restriction is no longer necessary. In addition, under the change of the compatibility requirement to category B, these Agreement States should be establishing a comparable general license provision in the future.

In addition to the changes to § 31.5, other amendments are being made that clarify which sections of the regulations in part 30 apply to all of the part 31 general licensees. Section 31.1, "Purpose and scope," is amended to clarify that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees. Section 31.2, "Terms and conditions," is amended to reference the sections of part 30 that are applicable to all of the part 31 general licensees, including § 30.7, "Employee protection," § 30.9, "Completeness and accuracy of information," and § 30.10, "Deliberate misconduct." The clarification makes it easier for general licensees to be aware of applicable regulations. In addition, future amendments to part 30 that would apply to part 31 general licensees would include a conforming amendment to part 31. Note, however, that while § 31.2 specifies sections of part 30 generally applicable to general licenses, it does not eliminate the applicability of other parts of the Commission's regulations that may apply.

The applicability of § 30.34(h) on bankruptcy notification to general licensees also needed clarification. Under the previous regulations, this requirement appeared to apply to all licensees. However, because it was not referenced in § 31.2 or § 31.5, its application to general licensees was not clear. This rule makes the bankruptcy notification requirement applicable only to those general licensees subject to the registration requirement. These licensees possess devices for which the Commission believes a higher level of oversight is appropriate. Thus, notification that such a general licensee is filing for bankruptcy may be important to allow the Commission to intervene to ensure that the financial status of the licensee does not lead to the improper disposal or abandonment of a device.

Requirements for Manufacturers and Initial Distributors of Devices

This rule modifies the requirements for specific licensees who distribute these generally licensed devices, specifically, the quarterly transfer reporting, recordkeeping, and labeling requirements and the requirement for providing information to users. These requirements are a matter of strict compatibility for Agreement State regulations, that is, the State regulations were required to be essentially identical to NRC regulations. The amendments are also a matter of strict compatibility so that revisions to Agreement State regulations will be necessary and distributors in Agreement States will be affected. The basis for this compatibility requirement is significant direct transboundary implications because devices are distributed under various Agreement State and NRC authorities into other jurisdictions where different regulatory agencies regulate the possession and use of the devices. There are now 21 NRC licensed distributors and approximately 83 licensed distributors in Agreement States.

Reporting. Paragraphs 32.52(a) and (b) are revised to require the following additional information in the quarterly transfer reports: (1) The serial number and model number of the device; (2) the date of transfer; (3) for devices received from a general licensee, the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor; (4) information on changes to required label information; (5) name and license number of reporting company; and (6) the specific reporting period. The model number of the device was already required in reports to Agreement States. The general licensee address is specified as the mailing address for the location of use of the generally licensed device.

The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements replaces the name and/or position of a simple contact between the Commission and the general licensee.

A form will be provided for use in making these reports. However, the use of the form is not required as long as the report is clear and legible and includes all of the required information. The new information must be included beginning in the report which covers the first full reporting period occurring after the effective date of the rule.

The previous reporting requirement was intended to provide NRC and the Agreement State regulatory agencies with the identity of general licensees in their jurisdictions, addresses at which the general licensees could be contacted (which were usually the location of use of the devices), the particulars of the type of device possessed, and the name (or position) of an individual who constitutes a point of contact between the NRC or the Agreement State and the general licensee. These general licensees can then be contacted or inspected. Including the serial number will allow the NRC and Agreement States to keep track of individual devices distributed in the future.

The previous reporting requirement in § 31.5(c)(8) did not require the general licensee to report a transfer if it were for the purpose of obtaining a replacement. This was consistent with the original intent of this regulation in that the status of the general licensee is unchanged, only the specific device is changed. For individual devices to be tracked, the NRC or Agreement State needs to be informed of such a transfer. The proposed rule would have required that the distributor provide this information either to NRC or the appropriate Agreement State specifically in the case of devices replaced. Under preexisting requirements, quarterly reports are required to include specifics on any new device transferred but not on the devices returned. The final rule requires information for all devices received from a general licensee. The NRC believes that the distributor can include this additional information in the quarterly reports without a significant burden and that it will be simpler than the proposed provision involving identification of replacements. Experience shows that the distributor is likely to be more reliable than the general licensee in providing this information. Including this information will also verify receipt of the devices.

The name and license number of the reporting company and the specific reporting period are typically included in the reports to show compliance with the reporting requirement. However, this information is not always readily identifiable.

The individual who acts as contact with the NRC or the Agreement State concerning the general license should have knowledge of the device, the general license, and the regulations pertaining to the general license, or at least know who in the organization does. This was the intent of the previous requirement. However, in practice, the name given to the distributor and reported to the NRC (or the Agreement State) frequently was not an individual with this type of knowledge. The rule specifies that the contact designated be the person (1) assigned responsibility for ensuring that the general licensee is aware of its regulatory responsibilities, and (2) who has authority to take required actions for complying with the applicable regulations.

Recordkeeping. The final rule revises the content of recordkeeping requirements in § 32.52(c) by requiring maintenance of supporting information for the revised reports. The period of retention for recordkeeping requirements concerning transfers is reduced from 5 years from the date of the recorded event, to 3 years from the date of reported event.

All of the information needed to generate the transfer reports must be kept long enough for NRC to receive and process the information, identify and resolve any discrepancies or require any needed clarifications. It is very important that this information is reported and recorded correctly as it takes the place of the application and approval process in obtaining, amending, and terminating specific licenses.

In addition, distributors are required to make records of final disposition of devices available to the various regulatory agencies in the case of bankruptcy or termination of license (new paragraph § 32.51a(e)). When a distributor goes out of business and terminates its license, the distributor can no longer be required to retain these records. This requirement will give NRC, as well as State regulatory agencies, the opportunity to obtain records of this type kept by the distributor. These records could be helpful in verifying information used to track devices relative to the final disposition of devices. This provision does not require distributors to automatically provide these records unless the NRC or the Agreement State in which the device was distributed makes a request for these records. In the case of bankruptcy, NRC or the Agreement State may want to secure these records early in the process, in case financial difficulties interfere with the licensee fulfilling its responsibilities.

Labeling. The final rule amends the existing labeling requirements to require an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration (new paragraphs § 32.51(a)(4) and (5) and § 32.51a(d)). The NRC will consider a label "permanent," if, for example, it were embossed, etched, stamped, or engraved in metal. Under these requirements, new distributors will have labels approved as part of obtaining a license; distributors, including existing licensees, have the new labeling requirements as conditions of license in § 32.51a(d). Approval of the new labels by NRC for existing distributors is not required. However, distributors may voluntarily submit information for NRC review on how they plan to comply with the new labeling requirements. In any case, labeling is subject to inspection. The new labeling requirements supercede anything contradictory in individual license conditions. The individual license conditions will be updated to include specifics related to the new requirements during the first license renewal or amendment following the effective date of those paragraphs of the rule.

The first change simply carries out the initial intent of the previous requirement for devices where the source may be separable in a housing that does not include the label. It is important that this housing, if separated from the remainder of the device, can also be identified. The permanent label for devices requiring registration will provide better assurance that even when a device has been exposed to other than normal use conditions, for example, when a building has been refurbished or demolished with the device in place, the label will be intact and the device may be identified and proper actions can be taken. Distributors have 1 year after the effective date of the rule to implement these changes to minimize any impact to the manufacturing and distributing process.

Information to be provided to general licensees. The final rule amends the requirements pertaining to the information distributors must provide to the general licensee (§ 32.51a(a) and (b)). Distributors have been required to provide general licensees with a copy of § 31.5 when the device was transferred. The rule requires that a copy of § 31.5 be provided before transfer. The final rule allows omission of paragraphs that are not applicable to the particular device. The distributor will also be required to provide: (1) Copies of additional applicable sections of the regulations; (2) a listing of the services that can only be performed by a specific licensee; (3) information regarding disposal options for the devices being transferred; and (4) a statement indicating that NRC's policy is to issue high civil penalties for improper disposal. This last item was added in the final rule and is applicable only for transfers to NRC general licensees. The disposal options are to include the estimated cost for disposal of the device. For transfers to general licensees in Agreement States, the distributor may furnish either the applicable NRC regulations or the comparable ones of the Agreement State. In addition, the distributor will furnish the name or title, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained. The final rule provides that the distributor may propose for Commission approval some alternative to that prescribed for adequately disclosing information to their customers (new § 32.51a(c)).

The general licensee should be aware of the specific requirements before purchasing a generally licensed device, rather than afterward. While the Commission does not want to get involved with details of licensees' business practices, it is the Commission's intent that "prior to transfer" will be before a final decision to purchase so that the information can be considered in making that decision.

While § 31.5 contains the primary requirements related to the general license, it does not reference the applicable sections of part 30; thus, § 31.2 should also be provided. The general licensee should also have copies of at least those regulations that may require an action on his part, so §§ 20.2201, 20.2202, and 30.51 are added. The sections of the regulation that are included in this requirement are believed to be the most important for the general licensee to be aware of. The inclusion of a listing of services that can only be performed by a specific licensee will clarify the services that can and cannot be performed by the general licensee. These services vary depending on the nature and design of the particular device and so are not specified in the regulations. Information on the estimated cost for disposal of the device at the end of its useful life may be a significant factor in a decision to purchase a device because of the high costs of disposing of radioactive materials. In some cases, the cost of

disposal could exceed the purchase price of the device.

Additional clarifying amendments are being made in §§ 30.31, 30.34(h), and 31.5(c)(9)(ii). The amendment to § 30.34(h) is consistent with the previously discussed change concerning reporting bankruptcy.

The revision of § 31.5(c)(9)(ii) to include the term, "intermediate person," is intended to provide clarification about intermediate persons holding devices for later use by an end-user. Specifically, intermediate persons holding devices in their original shipping containers at their intended location of use are general licensees. Distributors licensed under § 32.51, or equivalent Agreement State regulations, must provide information about both intermediate persons and intended users in their quarterly reports submitted under § 32.52(a) or equivalent Agreement State regulations. Transfers from intermediate persons to intended users under § 31.5(c)(9)(ii) do not need to be reported to NRC because information about the intended user must be reported by the distributor under § 32.52(a) or equivalent Agreement State regulations.

Public Meetings

An Agreement State Workshop, open to the public, was held on July 27–28, 1999, just after publication of the proposed rule. The purposes of the workshop were to answer questions to clarify the proposed provisions, to solicit input of the Agreement States on a number of particular issues related to the rulemaking, and also to discuss an application from Seaman Nuclear to allow certain moisture density gauges to be distributed for use under § 31.5. Specific topics included: compatibility and timing of compatible requirements, moves between different jurisdictions, temporary work locations in a different jurisdiction, increasing civil penalties for lost or improperly disposed devices, and lessons learned from Agreement State programs for increased accountability. There were a wide range of opinions concerning such issues as compatibility requirements and portable devices. Although not included in the detailed discussion of written public comments below, the opinions expressed were considered in developing this final rule and implementation procedures.

Another public meeting was held on October 1, 1999, to discuss implementation issues related to this rulemaking and related aspects of the program being developed to improve accountability of generally licensed devices. The focus of the meeting was to obtain input from the distributors of these devices concerning the practical aspects of implementation and how the program could be most efficient and effective. Most of the issues discussed at the meeting were reflected in written comments submitted by the distributors and others. A few issues were discussed more explicitly at that meeting than in the written comments discussed below. The following takes note of the few points made specifically at the meeting and not included in written comments. A transcript of the meeting is available on the NRC website at: http://www.nrc.gov/NRC/PUBLIC/GLTS/index.html.

Public Comments on the Proposed Rule

The NRC reviewed the public comments received on the July 26, 1999 (64 FR 40295), proposed rule. Thirty-nine comment letters were received, including one which provided supplemental input from the same commenter. The commenters included: The Steel Manufacturers Association (SMA), the Nuclear Energy Institute (NEI), the National Automobile Dealers Association (NADA), three Agreement States, one non-Agreement State, twelve distributors of generally licensed devices, a couple of utilities, several other specific licensees who are also general licensees, and several general licensees. One source material licensee also wrote in about a loss of control problem related to an exempt source material product.

Most commenters were supportive of the rule with respect to the goals and primary provisions. Most negative comments came from users and sellers of tritium exit signs, some of whom had not realized that the registration and fee provisions were not proposed to apply to users of tritium exit signs. A few others thought the impact on general licensees was too great. These included one distributor of a thickness gauge using Am-241 who voiced strong opposition to the proposal.

A few commenters, including the State of New Jersey and the SMA, thought that the rule did not go far enough to solve the problems of accountability of radioactive sources. For example, a few noted that the rule did not address improvement of accountability for specifically licensed devices.

Most of the distributors of generally licensed devices generally supported the proposed rule, but all raised some concerns about implementation problems related to specific provisions of the rule. Some of these concern the variations among the numerous industries using devices falling under this general license. Both the distributors and their customers vary widely in size and type of organization and how they do business.

A. Broad Comment About Applicability of the Requirements

Comment: One commenter thought that tritium exit signs should be exempt from general license requirements. A few general licensees were concerned with the possible applicability of registration and fees to tritium exit signs. A few commenters did not support applying any of the new provisions to any of the general licensees other than those included in the registration requirement. Three distributors of exit signs recommended that exit signs be removed from the § 31.5 general license and covered by a separate section of the regulations. This was in part related to their contention that fewer requirements should be applied. Another reason given was the confusion created by the fact that § 31.5 includes some provisions that do not apply to exit signs. These commenters discussed the low hazard presented by exit signs, the fact that they are an important safety device, and the difficulties of applying some of the provisions of the rule to such a large number of devices and diverse categories of users. One commenter, however, suggested that exit signs be handled differently because they are more likely to be disposed of improperly than an expensive gauge.

Response: Because exit signs do not require any testing, there are no routine actions to be taken by the user. As a result of this, the types of users involved, and, in some cases, misleading information provided by at least one distributor of exit signs, users of exit signs generally have the lowest level of awareness of the regulations. Although they do represent a relatively low potential for public exposure, it would not be appropriate to exempt them from all requirements, such that all would be disposed of in normal trash. The Commission believes that the requirements added for all § 31.5 general licensees are not burdensome and are justified to improve general licensee awareness of responsibilities and accountability for the devices. These general licensees are not subject to the registration and fee requirements.

There is difficulty with presenting adequate information to the users of devices, particularly exit signs, without causing confusion due to the amount and complexity of the information. The final rule provides some flexibility in the requirement for providing information to prospective customers.

This is discussed further below under § 32.51a in section B.

Comment: Three of the commenters were concerned that some of the requirements were inappropriate and unnecessary for power reactors using such devices. They suggested that power reactors should be exempt from all general license requirements. Two of these commenters suggested that all specific licensees should be excluded. One commenter suggested that the requirement to obtain written NRC approval before transferring an item to a licensee's specific license will be unnecessarily costly, time consuming, and cumbersome. The commenter stated that when the specific license already authorizes possession of the type of material in question, a notification to the NRC of the transfer, in lieu of obtaining permission, will still enable NRC to track the devices. This commenter believed that a notification in this case would be more cost effective and efficient for industry.

Response: Although this might be true to some extent, the reporting system that allows the Commission to keep track of generally licensed devices presents some difficulties with exempting some specific licensees from the general license requirements. For example, inputting the data from the material transfer reports would involve the additional step of identifying and eliminating those exempt. Also, devices sold as generally licensed devices are labeled to indicate that they are generally licensed. As mentioned in the Statement of Considerations for the proposed rule, specific licensees have the option of obtaining devices under their specific license initially or transferring a generally licensed device to a specifically licensed status. This latter option is not particularly difficult, especially for reactor licensees and broad scope licensees, who already have broad authority to possess radioactive materials. The communication with the NRC allows NRC to update its information on licensee status and ensure that the appropriate authority is in the particular license. Specific licensee users and distributors should communicate about whether a new device is to be held under a general or specific license. It should be labeled appropriately. If it is to be specifically licensed, it should not be included in distributors' material transfer reports.

Comment: One commenter asked whether the Commission intends to reclassify any devices from general license status to specific license status or vice versa.

Response: The Commission does not plan on making any regulatory changes at this time that would affect whether a device may be distributed for use under the general license in § 31.5. The criteria on which a decision to allow a device to be used under the general license in § 31.5 are contained in § 32.51. A specifically licensed device could be reclassified as generally licensed using these criteria through a licensing action.

Comment: One commenter recommended that the proposed rule be modified to require annual registration by specific licensees of devices and sources containing the radionuclides and activities specified by § 31.5(c)(13)(i).

This commenter provided the following reasons for taking the position that there is no basis for requiring special registration, labeling, etc. for generally licensed devices when there are no comparable regulations for sources and devices with the same radionuclides that happen to be held under specific licenses. The commenter noted that naturally occurring radioactive material (NORM) is the largest single contributor to the problem of radioactive contamination in metal scrap, that NRC has not been given authority to regulate the use of naturally occurring or accelerator-produced radioactive material, and that this limitation on NRC's jurisdiction is a serious problem in itself and an issue that should be reviewed. The proposed rule also ignores a large fraction of sources and devices that are major contributors to the metal scrap problem and that NRC does have clear authority to regulate. The commenter stated that specifically licensed devices generally contain larger quantities of the same radionuclides (*e.g.* cobalt-60 (Co-60) and cesium-137 (Cs-137)) that have been identified for special requirements in the proposed rule for general licensees and that loss of source/device control is not limited to general licensees. The commenter believes that whenever the justification for ignoring specific licensees in the proposed rule has been addressed, much has been made of the ongoing contact between the licensee and NRC and believes that this ongoing contact is greatly overstated. In fact, many specific licensees go years between inspections and license renewals—ample time for organizational changes that compromise source/device accountability.

Another commenter stated that the proposed rule has become so extreme that some sections require more information of general licensees than from existing specific licensees. The commenter contended that the NRC must establish some sense of consistency in order to meet the goals and objectives outlined in SECY–97–273 dated November 26, 1997. Some examples of inconsistency noted were reporting of specifics on devices and individual transfers and the suggestion of a backup responsible person.

Response: As noted by the commenter, NRC does not have jurisdiction to control sources of NORM or accelerator-produced radioactive material. Although it is true that some specific licensees are not inspected very often, the regulations in place provide an adequate basis for requiring accountability for specifically licensed devices. In any case, the scope of this rulemaking is limited to devices generally licensed under § 31.5.

Comment: One commenter requested that because the intent of these proposed regulations is to increase the oversight of 5,100 licensees with 20,000 sources deemed higher risk, paragraphs 31.5(c)(12), (c)(14), and (c)(15) should only be applicable to general licensees who must register under § 31.5(c)(13), and not to all general licensees. Otherwise, the burden is imposed upon 40,000 general licensees with 580,000 devices. The commenter suggested grouping these paragraphs with the registration requirements or reference the applicability to § 31.5(c)(13).

Response: Although the registration process is being limited to higher risk devices, it is desirable to improve licensee awareness of regulatory responsibilities and accountability for all devices generally licensed under § 31.5. The provisions being applied to all § 31.5 general licensees are considered to be an appropriate means of doing so with minimal burden on licensees and NRC staff. As discussed below, some revisions have been made to § 31.5(c)(15) to minimize burden, and to § 31.5(c)(14) for clarity.

Comment: One distributor who currently sells very few generally licensed devices asserts that the cost of changing systems and procedures and of training personnel to implement the proposed requirements would be very significant relative to the income derived from sales of these devices. Further, he contends that the registration program fees would adversely affect existing customers and discourage potential new customers from buying these products.

Response: For most devices subject to registration, the registration fee is considered to be small compared to the cost of the device. The NRC does not believe that the fees represent a significant burden to industry for the benefits gained. The registration fee will be established in 10 CFR part 170 under the Independent Offices Appropriation

Act (IOAA), which authorizes agencies to charge fees for special benefits rendered to identifiable persons. The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority, less amounts appropriated from the Nuclear Waste Fund, by assessing IOAA and annual fees. The registration fee will be established as part of the FY 2001 fee rulemaking and will be based on the budgeted costs and FTE rates for that FY, as well as the number of general licensees subject to registration. Based on the current estimated budgeted costs, FTE rate, and, estimated number of general licensees in this group, we expect the registration fee to be approximately $440 to $450.

B. Comments Relating to Specific Provisions of the Proposed Amendments

Requirements for General Licensees

Section 30.31—Revision to reconcile the apparent conflict between the description of a general license and a registration requirement.

Comment: One commenter noted that the registration of particular general licensees is mentioned in § 30.31(b), stating that the registration requirements, however, are buried in § 31.5(c)(13). The commenter thought that the provision would not easily be located by general licensees, many of whom do not regularly read the regulations.

Response: Section 30.31 is a general description of the two types of licenses provided by the Commission for the use of byproduct material (general and specific). Section 31.5 contains the primary requirements applicable to these general licensees and would be the requirements the general licensees are most likely to be aware of.

Section 30.34(h)(1)—Revision to make the bankruptcy notification requirement applicable only to those general licensees subject to the registration requirement.

Comment: Two commenters believed that the bankruptcy reporting requirement should apply to all general licensees. One stated that the requirement imposes little additional burden on licensees, and the possibility that a licensee could lose sources is heightened following bankruptcy.

Response: The Commission does not believe it is justified to apply this requirement to all general licensees. There would be limited additional benefit with requiring bankruptcy reporting for users of relatively low risk devices. The costs to be considered include, in addition to the minimal effort required for licensees to report bankruptcy, the efforts involved in making and keeping the general licensees aware of such a requirement, enforcing it, and following up on reports of bankruptcy.

Section 31.1—Revision to clarify that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees.

Section 31.2—Revision to clarify references to the sections of part 30 that are applicable to all of the part 31 general licensees.

Comment: One commenter stated that, in order to clarify which parts apply to general licensees, all the items that apply to a general licensee should be put in one place in the regulations so that a booklet can be given to a general licensee by the NRC or the manufacturer and the general licensee will have all the necessary information in one place.

Response: This would create a great deal of duplication in the regulations. The information that this rule will require distributors to provide to their customers will include copies of the primary applicable requirements. The Commission is also developing a pamphlet summarizing basic information the general licensee needs to know. It appears as Appendix K in the draft of NUREG–1556, Vol. 16, "Consolidated Guidance about Material Licenses: Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees." This document will be published in final in the near future. The pamphlet may be used by NRC, the Agreement States, or the distributors of generally licensed devices as information for general licensees.

Section 31.5(c)(2) through (4)—No revision.

Comment: One commenter suggested that even though a six-month physical inventory is implied by the testing requirements, it should be clearly stated and the licensee must be required to verify, as a minimum, the name plate information (*i.e.*, manufacturer, model and serial number, assay date, isotope, activity, location of device).

Response: The Commission does not believe at this time that adding an inventory requirement for all generally licensed devices is appropriate. Those persons subject to registration will be required to conduct an annual inventory as part of the registration process. Those subject to testing must test and make records of testing at various intervals applicable to the particular device; this involves an inventory process to ensure compliance with the testing and recordkeeping requirements. For at least some of the devices that are not subject to either testing or registration, such as exit signs, a requirement to check all the name plate information every six months would not be justified.

Section 31.5(c)(8)—Proposed revision to allow transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to previously allowed transfers to part 32 (and Agreement State) licensees; to allow transfers to other specific licensees, but only with prior written NRC approval; and to add the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device.

Comment: Most comments on § 31.5(c)(8) concerned possible confusion over the concept of "replacement." There was considerable concern for this problem also with respect to the use of "replacement" as a determinant in the reports of receipts made by distributors under § 32.52.

Response: The concept of "replacement" was previously in § 31.5(c)(8). Reports of transfer were not required if the device transferred was being replaced. The original intent of the reporting requirement was only to maintain up-to-date information on the basic status of the general licensee, such as whether a licensee possesses a particular type of device. Given this purpose, potential problems with the general licensee reporting under § 31.5(c)(8) were limited. The proposed rule would have extended the use of "replacement" as a determinant on whether a particular type of transfer needed to be reported by the distributor under § 32.52(a) or (b). This was proposed in order to minimize changes being made to the requirements for general licensees. However, this would have created greater practical problems for the distributors with respect to § 32.52(a) or (b), as discussed below. The use of the replacement process as a determinant as to who must report a particular transfer has been removed from the final rule. Paragraph 31.5(c)(8) has been revised to require the general licensees to report all device transfers to NRC even if they are obtaining a replacement.

Section 31.5(c)(9)(i)—Proposed revision to add to the reporting requirement, in the case of a transfer to a general licensee taking over possession of a device at the same location, the serial number of the device and the name and phone number of the person identified as having knowledge of, and authority to take required actions to ensure compliance with, the appropriate regulations and requirements, rather than simply a contact name.

Section 31.5(c)(9)(ii)—Revision to add the term, "intermediate person," to clarify that a report of transfer is not required only in the situation where the information on both an intermediate person and an intended user would have been provided through the distributor in a quarterly material transfer report.

Comment: One comment on § 31.5(c)(9) concerned the words describing the responsible individual. This commenter thought this person should be in management as in EPA permits or OSHA standards, and that a certified statement be required by the president/ owner, etc. Another commenter stated that a general licensee taking over a facility should provide the name of a responsible individual (and backup) and that these individuals should have knowledge of the device, general license, and relevant regulations.

Response: The Commission believes that it is adequate for there to be an individual assigned the responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations. These requirements will apply to the new general licensee as well. However, it is the general licensee transferring the property who is required to provide the information on the new general licensee, including the name of the new responsible individual, to NRC.

Section 31.5(c)(12)—New provision to add an explicit requirement for the general licensee to appoint an individual assigned responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations.

Comment: A number of commenters specifically supported the concept of assigning a responsible individual. No one specifically objected to the requirement, although one suggested that the requirement be limited to those subject to the registration requirement. Most who commented on this subject were concerned about the following issues:

1. Further clarification that the ultimate responsibility resides with the general licensee;
2. Whether the responsible individual must be present on site at the location of use; and
3. Whether the responsible individual must be an employee of the general licensee.

One commenter wanted the rule to specifically require documentation that the individual has been informed of their assigned responsibilities. Some commenters gave support for allowing the responsible individual to be a non-employee, stating that a consultant may be more likely to be well informed and make sure management is also informed. Some commenters also supported flexibility in assigning someone who is not on site, one stating that centralized radiation safety programs may be best. One specifically wanted to know if the RSO (Radiation Safety Officer) for a specific licensee would have to fill the role of responsible individual. One commenter thought that these clarifications needed to be made in the regulation itself.

Response: On the first of these issues, the rule specifically notes that the general licensee is not relieved from responsibility. Beyond this, it should be understood that responsible individuals will be answerable to their management as they would regarding any assigned duties, but the general licensees are answerable to the Commission for meeting regulatory requirements. It should also be understood that a person who is assigned duties must be made aware of those duties in order to perform them. The Commission should not need to require documentation of these internal procedures of the general licensees.

The proposed rule text did not include restrictions on who can be appointed as the responsible individual, only that he or she have "the authority for taking required actions to comply with appropriate regulations and requirements." The Commission agrees that the person assigned does not need to be on site, nor necessarily an employee of the general licensee, nor, in the case of a specific licensee, the RSO. However, the Commission does not believe that the rule should address non-existent restrictions. The regulations should be concise and allow focus on the words that are most important to understanding the requirement. Further, the distributor in obtaining information about responsible individuals from their customers should be cognizant of the Commission's interpretations and be able to answer questions in this regard. Guidance will also be available to assist with informing general licensees.

Section 31.5(c)(13)—New provision to add an explicit requirement for the general licensee to register devices meeting certain criteria, which specifies the information to be provided and references the fee requirement in § 170.31.

Comment: One commenter stated that once a registration policy and annual fees are implemented for certain general licensees, these licensees should be changed to a new category of specific licensees for these devices. The commenter believed that this would be consistent with other license types that present a potential higher risk and are assessed an annual fee.

Response: The revisions made in this rule are designed to improve control and accountability of generally licensed devices especially for certain devices that are being registered. The devices are designed to be inherently safe to use so that an application process to evaluate the prospective licensee is not necessary. Making these licensees specifically licensed would be a major change in the approach for these licensees and is not considered necessary.

Comment: This commenter also requested clarification as to who is responsible for doing the certifying in § 31.5(c)(13)(iii)(E) and (F) which require "certification by the responsible representative of the general licensee." Specifically, do these paragraphs require this "certification" by the licensee's management or the "responsible individual"? The NRC requires specific licensee's management to review and sign all licensing actions.

Response: In § 31.5(c)(13)(iii)(E) and (F), "the responsible representative of the general licensee" is intended to mean the responsible individual as appointed under § 31.5(c)(12). As noted earlier, the Commission believes that it is adequate for there to be an individual assigned the responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations. This person is the appropriate person to handle the registration. A second signature, that of a manager, is not required. The general licensee is nonetheless responsible for providing complete and accurate information and not engaging in deliberate misconduct.

Comment: Another commenter brought up the problem of distributors or "intermediates." This commenter stated that beyond the technicality that anyone possessing or storing the device before its final installation is also a general licensee, the focus needs to be on the end user. The use of a "registration card" similar to the common warranty card that comes with nearly every appliance should be instituted. The registration card should have the appropriate device, source holder, and source model and serial

numbers pre-printed. The end user need only fill in the facility information and address it to the appropriate agency. The manufacturer continues to report "distributions," the agency cross checks the distributions against end user cards, and follows up with the manufacturer or distributor if all devices leaving the manufacturer are not reported to be installed after some appropriate time.

Response: There is a problem with secondary distributors believing they fall within the intent of the "intermediate person." This is discussed further under § 32.52(a) and (b). The Commission agrees that the focus should be on the end user. The Commission does not currently plan to register general licensees who are intermediate persons, holding devices temporarily at the intended place of use, although the Commission may do so if considerable time passes before the property is taken over by the intended user. Because the registration process is initiated by NRC, there is no need to exempt intermediate persons in the rule to carry out this policy.

The Commission has given consideration to the use of a registration card and decided against requiring this additional documentation at this time. This is discussed further under § 32.51a(a) and (b).

Comment: One commenter, who was against the proposed rule, suggested that if implemented, it could be made less burdensome by adopting a four-year registration requirement instead of an annual registration requirement. He believed that this change would substantially reduce financial and other impacts on stakeholders while, combined with the other reporting requirements contained in the rule (*i.e.*, report of transfer and disposal), meeting NRC accountability needs. This commenter stated that only after experience with this type of rule should the NRC consider a more burdensome requirement.

Another commenter stated that charging fees every four years to lessen the cost of collection sounds good except that the issue is "contact" with the general licensee. That commenter noted that the annual registration and fee collection is also the opportunity to "jog the general licensee" on "responsible individual," leak testing, inventory, storage limitation, etc., and that it would be easier on the budget to keep the fee relatively constant and "low".

Response: The Commission believes that annual contact is important to improving compliance with all of the general licensee requirements and that registration at significantly longer intervals such as four years would not save as much as might be assumed. The fee will be established to recover the cost of the registration program. The general licensees will be able to plan for the fee because it will be required with each annual registration.

Comment: Another commenter was concerned about the requirement in the new § 31.5(c)(13)(ii) that the user will be required to respond to the notification within 30 days. It was suggested that in the first round of notifications, this requirement could cause substantial burden for the manufacturers and distributors. Because there are many general licensees who do not realize the requirement(s) imposed by a general license, these users will likely contact the manufacturers and/or distributor of the device and look for assistance in providing the required information. This commenter also suggested that mailing all of the notifications simultaneously may cause an undue burden on the supplier. This commenter would like NRC to take this into account and provide the extra time required for the first round of registrations.

Response: The existing § 31.5(c)(11) is being used as a basis for requesting the first round of registrations. Both this provision and the specific registration provision give the staff flexibility to adjust the amount of time allowed for licensee response. The Commission is beginning the registration allowing 45 days for response. Once a registration program has been implemented along with the new provisions for improving the upfront disclosure to general licensees, 30 days is considered adequate for response. Too much time can lead to requests being put aside and forgotten. Also, the requests for registration are being spread out over the year for efficiency.

Comment: One commenter believed that the NRC currently has the necessary authority and resources in place to effectively run the program. The effect of the registration is to improve accountability. The commenter noted that all manufacturers currently provide transfer and sales information to the NRC for generally licensed devices within the NRC's authority, and that regulations do not require the reporting of gauges that are sold to specific license holders. The only method the NRC has in place for the tracking of material for specific licensees is through inventories, and reliance on the integrity of the licensee. This commenter believed that the proposed regulations would create a third class of license holders, who would be subject to more restrictive regulations, with less reliance placed on the integrity of the licensee.

Response: The difference between these types of licensees relates to the level of knowledge and training rather than integrity. Generally licensed devices must be designed to be used safely by persons with no radiation protection training. The important aspect of these devices is that they be disposed of properly. Because control and accountability are of primary importance, a different approach to licensing is appropriate. The general licensees are required to do certain things that specific licensees are not; however, the requirements are not more restrictive overall. The general license, even with registration, is simpler than obtaining a specific license.

Comment: Another commenter, although not supporting the creation of a registration program for general licensees at this time, thought that § 31.5(c)(13)(ii) was particularly unnecessary and inappropriate. This commenter believed that the rule should be changed to require the general licensee to register within a specific time period after receipt of the device, regardless of whether contacted by the Commission. See also the comments in response to the first and second of the Commission's specific questions, discussed under section D. below.

Response: The Commission believes that it will be more efficient to contact the general licensees to begin the registration process and provide the information currently in its records for verification and supplementation. Many general licensees would not know about the registration requirement if they were not contacted, others would have difficulty understanding what is required. Also, there would be increased burden on distributors handling requests for assistance from general licensees. If the Commission is unable to contact the general licensees to request registration because of missing information on their identities and addresses, it would also be unable to contact them to inform them of the requirement.

Section 31.5(c)(13)(i)—Criteria for registration.

Comment: One commenter believed that all general licensees should be registered. Another wanted nickel-63 (Ni-63) added to the list of those radioactive elements targeted for registration and tracking because of the expected improvement in the NRC's ability to track their devices once they leave their control. This commenter has been contacted by many customers who have inherited their devices without receiving necessary regulatory information from the previous owners and learn of those requirements only by chance or when a state regulatory agency representative shows up at the door. This commenter believed that a $420 annual fee is cheap compared to the panic these customers experience. One commenter believed that the physical design of devices to contain the byproduct material should be considered. Another commenter opposed the idea of exempting "robust" sources stating that this rule is based on a history of smelted sources, among other concerns and that so-called "robust" sources are not smelter-proof. This commenter also stated that if radioactivity is present, the risk is present and some enterprising soul will someday find a way, probably inadvertently, to defeat whatever safety barriers have been put in place.

One commenter thought that it was unclear whether any of the devices (*e.g.*, exit signs, static eliminators, or thickness gauges) potentially used at auto dealerships would be subject to the proposal's registration requirements and that such requirements would be excessive given the nature of these devices and their use.

One commenter wanted to know what criteria will be used to amend § 31.5(c)(13)(i) to add additional devices to the list of devices that require registration and stated that these criteria should be specified so that knee jerk reactions by the NRC to improper management, use or disposal of certain generally licensed devices does not occur.

Response: The Commission does not believe there is adequate justification to make any changes to the criteria for registration at this time. If the Commission considers any changes in the future, consideration will be given to the risks of inappropriate exposure to the public and possible costs for cleanup of incidents involving lost sources. Another factor will be the efficiency and effectiveness of the registration program, based on experience in implementing it.

Comment: At the public meeting of October 1, 1999, one distributor suggested that registration would create a competitive disadvantage where radionuclides included in and those not included in registration are used in competing products (portable gas and aerosol detectors, and X-ray fluorescence analyzers).

Response: The rule is based on the risk of the device not the economic advantage of the types or activities of the radionuclides.

Section 31.5(c)(14)—New requirement for general licensees to notify NRC of address changes.

Comment: One commenter noted that the requirement for reporting changes of addresses does not provide for the exemption from reporting if the device is transferred to the specific licensee to obtain a replacement device from the same specific licensee as previously described in § 31.5(c)(8)(ii). The commenter raised the question that if a replacement is purchased from the specific licensee, shouldn't the same provision be made in § 31.5(c)(14).

Response: This provision is for address changes and is separate from any reporting of device transfers. The replacement process as a designator of when to report has been removed. A change of address can occur either from the movement of a general licensee's business to another location or the changing of a company name or building identification such that only the mailing address itself changes.

Section 31.5(c)(15)—Proposed revision to limit to 2 years the amount of time a general licensee can keep an unused device in storage and allow the deferment of testing during the period of storage.

Comment: Many commenters did not agree with the 2-year storage limit. This seemed to be the issue of most concern for the general licensees who commented. One commenter asked the Commission to extend the storage of devices to 3 years, stating that this would allow customers to maintain a spare probe. The spare probe would be on the same schedule for leak testing and would ensure that the probe was accounted for. Another recommended that the permitted storage time period be changed to 5 years. This commenter did not agree that "general licensees are unlikely to keep a device unused for more than 2 years." The commenter believed that the imposition of a 2-year limit on storage would be a hardship for the university research community. The commenter pointed out that it is often the nature of scientific research in a university setting for radioactive devices to be used intermittently. For instance, funding of grants to conduct research utilizing generally licensed devices is sometimes not forthcoming and a device may need to be stored until the project is again funded. The commenter gave as an example of a common laboratory device, the liquid scintillation counter, and suggested that the proposed rule might require disposal of this expensive piece of lab equipment, which would almost certainly be used at a future time.

Another commenter stated that it is not uncommon for these devices to be stored for periods exceeding 2 years and then be put back into use for special projects and noted that the Safe Drinking Water Act specifies testing for contaminants on 3- and 9-year intervals. The commenter also stated that while some devices may be in use during this timeframe, other devices may be in storage for use during the peak demand time. In addition, a device needing foil replacement may be kept on hand to minimize down time. The device is eventually shipped out for foil replacement while another device is kept in service. In addition, other devices currently unaccounted for may have found their way to other general licensees capable of caring properly for them. The commenter thought that owners of these devices, when faced with a 2-year maximum storage time, may be reluctant to admit the presence of all of the devices on the premises, in particular, any devices they may have acquired without authorization. In such cases, the 2-year maximum holding time may actually run contrary to the purpose of the proposed rule and encourage some to withhold disclosing the presence of these devices or improperly dispose of the devices. The commenter stated that accounting for all of the devices is far more important than time restrictions on device storage and suggested NRC consider eliminating the time restrictions on storage of devices or alternately, consider exempting devices with replaceable isotopes from the time-based storage rule.

Another commenter urged the Commission to limit the 2-year storage provision to nuclear sources that have been removed from service and are either awaiting transfer back to a specific licensee for disposal or have been temporarily removed from service. The commenter provided these two reasons: (1) Because NRC's proposal would provide for procedures to assure that sources (including those kept in storage) would be properly managed, there is no compelling reason to limit storage time for unused sources to 2 years; and (2) Some sealed nuclear gauges are essential spare parts for production processes. The commenter gave the example of a gauge to control the level of material inside a chemical reactor, saying that in several instances, there is no feasible alternative to a nuclear gauge measuring device. If the level gauge fails, the equipment must be shut down until the gauge is replaced. In this case, it is essential to have an onsite spare. It would be excessively restrictive if the 2-year storage requirement were to apply to this situation. A facility would be forced to recycle a new, unused gauge and

purchase a new one merely because an arbitrary time limit had passed.

One commenter also stated that the requirement that a general licensee not hold devices that are not in use for longer than 2 years would prove burdensome. Generally licensed devices may be placed in storage and not be used for a period of more than 2 years. The owner may intend to use the device at a later date. This proposed rule would preclude this activity and would require the general licensee to dispose and repurchase the generally licensed device.

Another commenter questioned the short time period of 2 years as the life expectancy of their devices is in the decades, and different product life expectancies vary depending on equipment type and half-life of the radioactive materials in them.

Another commenter noted that a general licensee who receives a copy of these regulations after the final rule will not have the comments as outlined on 64 FR 40299 to guide him as to what must be done with a device after 2 years of storage. This commenter suggested that, for clarity, the regulation should state possible actions such as: (a) Disposal of device via an authorized licensee; (b) Send the device back to the supplier (or authorized licensee) for interim storage (The supplier may not want to provide this service and/or almost certainly will impose a storage charge); or (c) Request an exemption from this paragraph from the NRC (will a "timely request" prevent enforcement action until the request is acted upon?). This commenter pointed out that it possesses several gas chromatographs with generally licensed Ni-63 electron capture sources which have not been used for more than 2 years. However, research interests change and the units may be used again.

One commenter suggested that any rule provision that does not directly affect the accountability issue be deleted. This commenter stated that additional requirements on labeling, length of storage, or the information supplied to the customer will have little or no effect on the accountability of the radioactive material. This commenter believed that these rules place an arbitrary limit on the storage of devices not in service. They requested that NRC provide clarification for devices that may be out of service but are planned to be reused at a future date that could be several years. They stated that, in addition, for some critical applications, a spare device might be kept in storage for years. It is also possible for a general licensee to possess a device that is kept in secure storage because there is no path for disposal or transfer. Americium-241 (Am-241) is an example of what would be orphaned waste. This commenter also stated that the portions of this rule that require a responsible individual and reporting will be sufficient to ensure accountability of sources in storage.

Another commenter suggested that a note be added that devices containing only krypton need not be tested for leakage.

One commenter stated that devices in storage should still be required to be subject to six month physical inventory requirements.

Another commenter supported the proposed requirement to limit the period during which a device may be stored and unused to 2 years and agreed that when a device is not used for a prolonged period of time, it is susceptible to neglect and improper disposal. This commenter believed that the provision would compel licensees to decide whether to use, return, or properly dispose of their sources, and would hold licensees accountable for their decisions.

Response: The Commission had not anticipated the level of difficulty this provision might cause and the number of instances that devices are currently held in storage purposefully for future use rather than simply being taken off line and put aside rather than being properly disposed. In the proposed rule notice, it was noted that there are options if one did want to keep a device which is likely to be used again. It noted specifically that the device could be returned to the supplier to be held under the distributor's specific license until later use, or the general licensee could request an exemption from § 31.5(c)(15) indicating the reason(s) why the licensee intends to use the device after 2 years and prefers to keep it on site in the interim. However, if this is as common a practice as indicated in the comments, use of these options alone would be burdensome. The final rule has been revised to allow for standby for future use. To address the fact that devices not in use can quickly be forgotten and lost track of, this provision requires quarterly inventory of devices in standby. This provision does not relieve these general licensees from the registration requirement or the requirement to pay a registration fee.

Comment: A commenter indicated that they would prefer to see customers required to maintain the current wipe test frequency during storage as this keeps the customer knowledgeable of the device's ownership and location. This commenter suggested that, if the Commission does allow a 2-year exemption of testing during storage, the NRC should build upon the proposal and require that a wipe test be performed at the time of removal from storage by an authorized organization, forbidding installation or use of the device until acceptable results are obtained.

Response: The provision does require testing for leakage (wipe test) before use or transfer, if the normal schedule for testing has been exceeded. Paragraph 31.5(c)(5) indicates that a device may not be used if contamination is detected (0.005 microcuries (185 bequerels) or more removable contamination). These two provisions together do what was suggested.

Comment: Another commenter noted that persons holding generally licensed devices that have been in storage for more than 2 years will be in immediate noncompliance if this rule is implemented in its present form. This commenter stated that public safety will be better served if general licensees are given a reasonable amount of time after implementation of this rule to properly dispose of devices. If the storage provisions become effective 2 years after the passage of the rule, general licensees with material currently in storage will have the same amount of time as general licensees with newly acquired devices to arrange for proper disposition of the devices.

Response: The Commission interprets this provision such that the time before the effective date does not count towards the 2-year limit. However, if the general licensee considers a device in standby for future use, he is to begin conducting quarterly inventories as of the effective date of the rule.

Comment: One commenter noted that some devices, specifically static eliminators, are distributed without serial numbers, and that makes them difficult to inventory, and thus it would be very difficult for the responsible individual to determine when such a device has been held in storage for longer than 2 years. This commenter believes that the additional regulatory burden required by the proposed rule is not warranted in light of the following: Typically, the devices employed by the pharmaceutical industries, as with many other industries, are those which present a lower risk. These devices are sealed sources which are designed to be inherently safe with regard to radiation safety. Therefore, to require a general licensee to inventory and assure that devices are not stored for more than 2 years poses an undue regulatory burden.

Response: The labeling requirements of § 32.51(a)(3) require inclusion of a serial number. This requirement is a

Compatibility Category B (*i.e.*, Agreement State regulations must be essentially identical). Thus, all distributors should be labeling devices distributed for use under § 31.5 or comparable Agreement State regulations with a serial number. If this is not the case, there is noncompliance on the part of the distributor, or possibly inconsistency in some Agreement State regulations. The Commission will address this through inspection and enforcement of the labeling requirement. Note also, most static eliminators contain polonium-210 (Po-210), which is relatively short-lived and would not be kept in storage for long except when awaiting disposal.

Section 170.31—Proposed revision would have added a $420 registration fee for general licensees subject to § 31.5(c)(13). The fee is not being finalized at this time because it is anticipated that the first registrations subject to the fee will not be filed until FY 2002. The final fee will be established as part of the FY 2001 notice and comment fee rulemaking based on that year's budgeted costs, FTE rate, and the number of registrants. Based on current budgeted costs, FTE rate, and the estimated number of registrants, the fee is expected to be approximately $440–$450.

Comment: Two commenters objected to registration of exit signs, stating that most people would replace them with nonradioactive alternatives rather than pay a fee. One of these commenters also suggested that there are alternatives for thickness gauges, gas chromatographs, level detectors, etc., and that a fee charged over a ten-year life could significantly affect life cycle cost analysis. This commenter believed that significant numbers of people will go to nonradioactive alternatives, reducing the number of people to collect fees from, leading to higher fees, and further reduction in use of products, and suggested that fees for smoke detectors would increase the numbers to divide costs among.

Response: Exit signs are not included in the registration requirement. Neither are some of the devices of the other types mentioned. The fee will be established in the FY 2001 notice and comment fee rulemaking to recover the costs for the registration program for the devices covered by the registration requirement. It would not be appropriate to extend the registration requirement to other devices for the sole purpose of potentially reducing the fee for each registrant. For at least most of the devices subject to registration, the Commission believes that the amount of the registration fee will not create a significant effect on the market for these devices.

Comment: One commenter noted that NRC has always had in the rule the requirement and ability to maintain accountability of general license devices via the manufacturer's required general license distribution reports. This commenter stated that it is unclear as to the rationale of an annual $420 fee and suggested that this be an initial start up fee and that further evaluation for maintenance/inspection fees be conducted after the program has been in place for a few years.

Another commenter believes the proposed $420 annual fee to be a modest and reasonable fee for all licensees, including small businesses. This commenter asserted that the current regulatory regime has shifted the costs of lax accountability and control onto steel makers, insurers, and the taxpayers and noted that general licensees do not pay directly for their licenses. The cost has instead fallen on steel producers to detect the sources, on the steel producers and taxpayers to arrange for proper disposal, and on steel producers and their insurers to pay the cost when a source is inadvertently melted. The cost has also fallen on the general public, in the form of increased risk to health and safety from unanticipated exposure to dangerous levels of radioactivity. This commenter believes that general licensees, who benefit economically from the manufacture, sale and/or use of radioactive devices, should be required to shoulder their fair share of this burden to protect the public and that an annual fee in the neighborhood of $420 is not only equitable, but entirely reasonable.

Response: The Commission believes that it is appropriate to increase its efforts to improve compliance of general licensees specifically in the area of accountability, that this can be done through more regular contact with licensees, and that an annual registration process is an efficient way to do this. Charging the general licensees a registration fee to cover the cost of this process, including needed followup, is a matter of equity. The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90), to recover approximately 100 percent of its budget through fees. The registration fees will recover the cost of the general license program associated with this group of general licensees in an equitable way, as required by law. Those who are allowed to use devices under the general license would now bear the operational cost of the program instead of those who hold specific licenses. In accordance with the Chief Financial Offices Act of 1990, the NRC conducts a biennial review of part 170 fees and revises those fees as necessary to reflect costs in providing the services. Thus, the fees will be revised to reflect any changes that occur in the program.

There were no comments other than minor editorial suggestions on §§ 31.5(b) and 31.5(c)(5).

There was no comment on §§ 170.2, 170.3, 171.5, and 171.16.

Requirements for Distributors

Section 32.51(a)(4) and (5)—Adds requirement for an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration.

Section 32.51a(c)—Proposed revision to make labeling requirements a condition of license 1 year after effective date of rule. Redesignated § 32.51a(d) in the final rule.

Comment: Two commenters recommended that the wording in proposed § 32.51(a)(4) be changed to replace the word "permanent" with the word "durable." These commenters stated that distributors of these devices must be able to remove the labeling as required by § 20.1904(b). If "permanent" markings are truly added, this will not be possible. Similarly, another commenter noted that all containers or devices are required to be labeled now by § 20.1904(a). This commenter believed that the wording that refers to "permanent", "embossed" or "engraved" will result in confusion. This commenter stated that many components that would be shipped as part of the manufacturing process would be labeled and contain no radioactive material and that any label must be removable to meet the requirements of § 20.1904(b). This commenter also stated that additional requirements on labeling, length of storage, or the information supplied to the customer will have little or no effect on the accountability of the radioactive material and suggested that any rulemaking that does not directly affect the accountability issue be deleted. Also, these commenters believed that additional rulemaking on labeling is unnecessary and should be considered part of the device registration.

One commenter supported the requirement of additional labeling on any separable source housing. This commenter stated that steel companies have received, on several occasions, improperly discarded sources and source housings on which the label has been removed. A marking of the serial number on the source housing would

alert NRC and the public to the existence of the missing source. This commenter also supported the requirement that labels be embossed, etched, stamped, or engraved on the devices for the reasons NRC listed in its proposal. This commenter believed that permanent labeling would help alleviate the problem of removed labels and that it would also help to prove criminally improper disposal, as the effort and deliberation required to remove such labeling would indicate the willfulness of the offense.

Response: The rule requires that the label itself be "permanent" and that it be affixed to the device. Labels on all devices must be durable. The intent of this provision is to apply a higher standard of durability for these "higher risk" devices. The Commission recognizes that labels on devices must be removable. Labels should be securely affixed to the device, tamper resistant, but able to be removed, defaced, or otherwise marked to indicate no radioactive material to meet requirements in § 20.1904(b). In many cases, the current designs will satisfy the new labeling requirements. The Commission believes that is appropriate to include these additional details concerning labeling in the regulation to ensure consistency and that proper labeling does contribute to accountability. No change has been made to the proposed rule changes to the labeling requirements.

Section 32.51o(a) and (b)—Revision to amend the requirements pertaining to the information distributors must provide to the general licensee. Distributors are now required to provide general licensees with a copy of § 31.5 before transfer rather than at the time of transfer. The distributor is also required to provide copies of additional applicable sections of the regulations, and other information.

Comment: The majority of those commenting on this issue were in favor of ensuring that general licensees are better informed of regulatory requirements, etc. Three of the distributors, however, claimed that the requirement to provide information to their customers was unnecessary or would not affect accountability. A few thought that having the information provided in the package is more effective as it would likely get to the person actually using the device. However, another thought that when information is included with other documentation accompanying the device, that often the "responsible individual" does not receive it. One of the general licensees who commented claimed that no information had been provided when the company had purchased exit signs. An Agreement State noted the importance of the general licensees being informed specifically about any regulatory fees that will be required and that doing so would lead to better cooperation and reduce the potential for unauthorized transfer of devices.

One commenter argued that making a requirement for the distributor of the generally licensed device to provide applicable regulations to the general licensee is insufficient. If the regulations are part of a large packet of information they are too easily overlooked. Also, if the individual is unfamiliar with regulations, the significance of the information may not be understood.

Response: Although the new provision cannot completely resolve the difficulties of ensuring that the general licensees, and the appropriate persons within the general licensees' organization, are fully aware of all regulatory requirements, the Commission believes that the requirement for providing the primary applicable regulations and additional information to customers prior to sale, together with the requirement for general licensees to appoint a "responsible individual" should significantly improve general licensee awareness of and ultimately compliance with regulatory requirements.

Comment: A State commented that the information provided to recipients of the generally licensed devices should also include a Safety Analysis Summary (SAS) for each generally licensed device transferred. The SAS should provide information that would be useful to regulating agencies and end users during normal use and accident conditions. The commenter noted that the NRC recognizes the fact that general licensees have no radiation background and, therefore, the NRC should recognize that general licensees would not be able to answer any questions raised by the employees about the hazards associated with routine use of the device or working in the area of such a device. Additionally, the general licensee would not know how to deal with incidents involving their device. This State believed that a well thought-out SAS should provide general recommendations that should be taken to reduce contamination and unnecessary radiation exposure in dealing with incidents, and that this information could be used by the general licensee in a manner similar to Material Safety Data Sheets, used routinely by many industrial facilities.

Response: The general license is based on the standard that the device can be used safely by someone without radiation protection training. Distributors are required to provide instructions and precautions necessary to assure safe installation, operation, and servicing of a device on the label or in operating and service manuals referenced on the label. Paragraph 31.5(c)(5), which is included in the information that the distributor must also provide to general licensees, requires the general licensee, in the event of a failure or damage to a device, to suspend operation of the device until it has been repaired by or disposed of by transfer to a specific licensee authorized to do so. This paragraph requires the general licensee to report the event to the Commission. If the event is likely to have resulted in contamination of the premises or environs, the revised § 31.5(c)(5) also requires the general licensee to submit a plan for ensuring that the premises and environs are acceptable for unrestricted use. In the unusual event of damage to a device involving significant contamination of the premises and/or environs, the general licensee should consult with the distributor or other person with the appropriate training in radiation protection. Therefore, beyond the requirements discussed here, the Commission does not believe additional instructions are needed.

Comment: One commenter was concerned that companies selling devices sell to the individual researcher or department within the institution and the institution is oftentimes unaware that the device is in its possession. The commenter claimed that only one of its six vendors routinely notifies the institution when a new source is transferred.

Response: It is the responsibility of the licensed organization to communicate appropriately within house. Information provided before purchase on the requirement for a "responsible individual" should lead to some improvement in this area. It is not the distributor's responsibility to ensure that all appropriate persons within the general licensee's organization are informed.

Comment: There was particular concern about the proposed requirement to provide information on options for disposal and estimated costs of disposal. The primary reason stated was that disposal availability and costs for disposal change continually and any estimated costs are likely to be meaningless at the actual time of disposal. This is considered particularly problematic for devices with useful lifetimes of 30 or more years, and for devices containing Am-241 because there is no viable disposal option. One commenter stated that the information would likely be wrong and misleading. It was also pointed out that disposal costs are not required to be given to a specific licensee.

Response: The commenters are correct in that the costs of disposal may change dramatically between purchase and ultimate disposal, particularly for devices with long lifetimes. The distributor can only provide current information and indicate that it could change considerably by the time of disposal. The Commission believes that this amount of information should be made available to the purchaser in spite of the uncertainties in the ultimate cost of disposal. Some information about the situation needs to be provided even in the case of Am-241. In some cases, the distributor can agree to take back devices. Customers should be able to assume that there is always some uncertainty whether they will be around to fulfill that promise.

Comment: There were questions concerning how compliance with the requirement can be shown and specifically whether there would have to be written proof to demonstrate that each customer has been informed. One of the distributors recommended that a validation form be sent along with § 31.5 to end users purchasing devices, requiring the user to sign the form indicating they had received, read, understood, and would comply with the regulation(s) provided, because people have a much greater tendency to read and comply with something if they must put their signature to it. Another option suggested was for the distributor to provide a registration type card, similar to warranty registration cards, that would be sent to the regulator rather than the distributor.

Response: Although some distributors may find a system using a validation card effective in communicating with their customers, the Commission believes requiring this extra documentation for all distributors may not be justified and that some would find this burdensome. Which method of providing disclosure information is most efficient and effective is likely to vary amongst different businesses. If a particular distributor finds that it is appropriate for their organization to get a signed card back from its customers to ensure compliance, they may chose to do this. The Commission will not require written proof to verify that each customer has received the required information before deciding to purchase a device. NRC inspectors have a variety of means at their disposal for determining compliance, including reviews of the written material that the distributor provides to the general licensee, conducting interviews with the distributor's staff, and sampling the distributor's customers if necessary.

On the option of a registration type card provided by the distributor and sent by the general licensee to the regulator, the Commission believes at this time that this will not be cost effective. There could be considerable cost resulting from reconciliation of quarterly transfer report information with the cards received from general licensees and followup when general licensees fail to send in the card.

Comment: A few commenters were concerned over the amount of paperwork "thrown at a proposed customer." One suggested that § 31.5 is critical for review before the sale, but that additional information could be provided with the product at time of delivery. It was suggested that the distributor may be better able to accomplish the communication of necessary information, if they could indicate that further regulatory requirements are specified with the delivery of the product. The exit sign distributors, although suggesting that exit signs be removed from § 31.5 and put into a separate provision, were concerned that their customers found it particularly difficult to understand the regulations. At the public meeting on October 1, 1999, they pointed out specifically that some of the provisions in § 31.5 do not apply, and even the title of the section doesn't include reference to that type of device.

Response: A few changes have been made in the final rule to help reduce confusion on the part of exit sign users, as well as address others' concerns about the amount of information to be provided prior to sale. The title of § 31.5 has been changed to be more inclusive of all the devices covered. It may have been an added cause of confusion that exit signs did not fall into the shorter title. The provisions to provide copies of § 31.5 or, in the case of Agreement State customers, comparable Agreement State regulations, have been changed to allow specific paragraphs not applicable to a particular device to be omitted. Also, a provision (§ 32.51a(c)) has been added that would provide some flexibility to distributors for properly informing their customers. Distributors would have to receive Commission approval before using a substitute to the prescribed information. One might, as suggested, provide a more simply stated summary of regulatory requirements in sales information and provide actual copies of regulations at transfer.

In addition, the Commission staff has added another pamphlet designed as guidance specifically for self-luminous exit sign users as Appendix L to the final version of NUREG–1556, Vol. 16, "Consolidated Guidance about Material Licenses: Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees," to be published shortly. It may be used by NRC, the Agreement States, or the distributors of exit signs as information for users.

Comment: One commenter questioned the value of indicating a person's name instead of the title "Director" for a contact at an Agreement State regulatory agency. The commenter indicated that at least one of the Agreement States had asked that the state director's name not be used in quarterly reports and suggested that the same information be provided to customers.

Response: In § 32.51a(b), the title has been added as an alternate to the name of an individual as a contact at an Agreement State regulatory agency. A particular agency may prefer the use of a title in lieu of an individual's name whose position may change.

Comment: There were three issues that commenters wanted clarified: (1) The fact that the specific sections of the regulations included in the information to be provided does not match the applicable requirements mentioned in § 31.2; (2) how the services that can only be performed by a specific licensee are determined; and (3) the alternative of providing NRC's regulations to customers in Agreement States is not as clear in the proposed text as in the existing rule.

Response: On the first of these issues, the portions of the regulations which must be provided to customers are those considered most important for the general licensees to be aware of. The required sections are not all inclusive of sections of the regulations that may apply. However, §§ 31.2 and 31.5(c)(10) make reference to the other applicable regulations.

On the second issue, § 32.51 requires an applicant for a license to distribute devices for use under § 31.5 to provide information about labeling, including instructions and precautions to assure safe use and installation, operation and servicing of the device. It also requires the applicant to propose whether the general licensee can perform certain testing procedures. This application process is where the details of which activities can be performed by the general licensee or must be performed by a specific licensee are determined for a particular device. The Commission believes it is easier to specify what services only the specific licensee can

perform, rather than what the general licensee is allowed to do.

On the third issue, the Commission believes these options are clear but further clarifying language has been added.

Section 32.52(a) and (b)—Proposed revision to add the following information to the existing quarterly transfer reporting requirement: the serial number and model number of the device; the date of transfer; indication if device is a replacement, and if so, the type, model number, and serial number of the one returned; name and license number of reporting company; and the specific reporting period. Also, the general licensee address is specified as the mailing address for the location of use of the generally licensed device.

The name and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements replaces the name and/or position of a simple contact between the Commission and the general licensee. Also, a form (NRC Form 653) will be provided for use in making these reports. However, the use of the form is not required as long as the report is clear and legible and includes all of the required information.

Comment: The distributors who commented were concerned about the difficulty of identifying a replacement device. They noted that the replaced device may be returned long after obtaining another. If the distributors were required to include the information pertaining to the replaced device in the transfer report, in anticipation of its return, the replaced device would be deleted from NRC's database, although it may never be returned. They claimed that adding the tracking of which device replaces another device to their recordkeeping would be burdensome. One of the Agreement States had a similar comment and suggested that the report include information on the device returned regardless of whether or not it was replaced.

Response: The Commission agrees that identifying when a device replaces another and reporting the receipt and transfer of both devices in the same quarterly report is impractical. The final rule has been changed to remove the replacement process as a determinant for which transfers (by general licensees) or receipts (by distributors) must be reported. The final rule requires the distributors to include information on all devices received from general licensees. "Indication if device is a replacement, and if so, the type, model number, and serial number of the one returned," is replaced by, "For devices received from a general licensee, * * * the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor."

Comment: One commenter was concerned that there was no definition of the term "intermediate person" defined in any of the regulations. He understood that intermediate persons referred to general licensees who receive a radioactive device but are not the ultimate user and that it does not refer to holders of materials licenses to receive and redistribute general license devices.

Response: The commenter is correct in this interpretation. Some distributors and redistributors apparently have misinterpreted this requirement in the past. The Commission believes that the new wording of §§ 31.5(c)(9), 32.51a and 32.52 should help to clarify this issue; therefore, a definition is not needed. Redistribution is not allowed under the general license, except that an intermediate person may possess the devices at their intended place of use. However, a warehouseman may be exempt from licensing under § 30.13 to the extent that they temporarily store a device being transferred to a general licensee known to the initial distributor. This exemption would not allow a warehouseman to stock devices for future sale.

Comment: One commenter said that the distributors should be told that the institution is the general licensee and not the individual researcher or department within the institution.

Response: In the case of universities, the general license is provided to the educational institution, an individual working for a university is not a general licensee. Thus, the distributor should not list an individual researcher as the general licensee.

Comment: An Agreement State said that the report should specify the type, model, and serial numbers of the device, source holder, and source, as appropriate, noting that many devices have multiple (different) serial numbers used to identify the various components. The concern was that any of these numbers could be reported by themselves at different times leading to mis-identification of transfers, returns, and deliveries. They concluded that all numbers associated with a device should be reported.

Response: Each device should have a device serial number. As noted, devices may have multiple sources and some have their sources changed routinely. This rule is intended to allow the Commission to keep track of individual devices distributed in the future, and those already in use that are subject to registration. Although a separate source housing will be required to have a source serial number, the Commission believes that the extra reporting necessary to keep track of all source serial numbers is not cost effective at this time. There would be many source replacements to report. In the unusual event of finding an intact source outside of the device, the source could usually be traced back to the general licensee through the distributor. Also, sources that are readily separable from the device for replacement purposes, often contain short-lived nuclides which present relatively low risks.

Comment: One commenter made the following statements concerning reporting the specific location of use rather than the mailing address of location of use, or identifying the precise physical location: "This is 'nice to have' information if the agency intends to routinely inspect the facility. We believe the burden of locating the device should fall on the general license. If the general licensee cannot locate a device in a timely manner, it should be presumed 'lost' and the appropriate fine would be in order."

Response: The Commission agrees. The distributor may have difficulty obtaining this information. The device could later be moved, in which case, the information the NRC has would become incorrect. Having to report moves within building(s) at the same address would not be justified. The mailing address for location of use continues to be the only required information on the location of use. An exception to that, however, has been added only if the address reported is not directly associated with the location of use, because there is no mailing address for the location of use, such as on a pipeline.

Comment: One of the distributors at the public meeting pointed out that sometimes labels are changed on a device making information the Commission has incorrect. This can happen in a source changeout if the radionuclide or activity is different (not just because of decay) and in the case where the distributor uses the same serial number for the device and source. The question was raised as to whether the distributor should report these changes. It was also noted that, on occasion, the change of a source could even change whether registration is required.

Response: The Commission agrees that the distributors should report any changes to the device to accurately maintain accountability of the device. Only service providers, who are specifically licensed to change the information on the label which is required under § 32.51, are allowed to do so. The service providers should report these changes to the NRC or Agreement State. The final rule has been changed to require this of § 32.51 licensees. This information will include the old and new information regarding the device. However, many service providers are not distributors licensed under § 32.51, and licensing action will be necessary to get all changes reported.

Comment: One of the distributors urged the NRC to move quickly toward allowing electronic submission of quarterly reports.

Response: The Commission is exploring a means for the quarterly report data to be submitted electronically.

Section 32.52(c)—Proposed revision was to add to the recordkeeping requirements, information on final disposition of devices and significantly extend the retention period for recordkeeping concerning transfers.

Comment: One of the distributors thought that extension of recordkeeping was unnecessary, because the same information would be submitted in quarterly transfer reports. This commenter also asserted that maintaining the records would not be as simple as assumed by the Commission, stating that long term retention of records to meet a regulatory requirement requires more rigorous systems, procedures, and training than are necessary to meet normal business needs and involves commensurately greater time and costs.

Response: Under the proposed rule, long term retention would have been required of all the information required in the reports and additional information on final disposition of returned devices. As the final rule requires information to be reported on all devices received, there is no need for long term retention of records or for specifying information on final disposition of returned devices. Instead, the retention period is reduced from 5 years after the reported event to 3 years after the reported event. Three years should be adequate to cover the time from the transfer through the time reported, time for NRC to record the information, and time for NRC to verify and correct any inconsistencies or obtain clarification from the distributors. The rule also revises the content of recordkeeping requirements by specifying that information supporting the revised reports needs to be retained.

There were no comments on § 32.51a(d), which was redesignated § 32.51a(e) in the final rule.

C. Comments on Compatibility Category for Agreement States

Comment: Most of the distributors who commented presented considerable argument that Compatibility Category C was not appropriate because of significant direct transboundary implications. They strongly urged that §§ 31.5 and 31.6, be made Compatibility Category B. One commenter suggested that Category A might be appropriate saying that the loss or non-accountability of radioactive material is a serious matter that is contrary to the basic principles of radiation safety. Two of the commenters stated that the time radiation safety personnel spend attempting to comply with any Agreement States' unique versions of §§ 31.5 and 31.6 is directly at the expense of efforts that are meaningful to product safety, training, following up with customers who have not returned devices, etc. One commenter concluded that consistency in the regulations significantly improves the chance of compliance by both the end user and the distributor, thereby increasing safety.

These distributors presented a number of arguments for consistent regulations, noting that a few States have required specific licensing for these devices. One commenter stated that Agreement States are in essence voiding other Agreement States sealed source and device registry reviews and technical positions. Many complained about the difficulty of staying current on all jurisdictions' regulations. There is no mechanism in place for someone who is not a licensee in a particular state to be made aware of any changes of staff and rules.

The case of a recent rulemaking by the State of New York was discussed. Under the regulations that are New York's current version of § 31.5, certain devices (gamma gauges, Sr-90, transuranics) may no longer be possessed under a general license within the State of New York. This change affects customers in New York who have been required to apply for and obtain specific licenses for these gauges. Distributors are affected in terms of providing additional customer support for licensing, assuring shipments don't occur before specific license verification, and added recordkeeping. In addition, there is another seemingly unintended, but real consequence of permitting different Agreement State versions of § 31.5. In non-Agreement States, distributors and other servicers provide gauge service to end users under § 31.6. This permits work under the detailed terms of their specific license for gauge service, issued by an Agreement State, without needing to apply for a specific license from NRC and without being required to work under the reciprocity provision in 10 CFR 150.20. Like most other Agreement States, New York regulations contain a provision similar to § 31.6; however, with New York's new version of § 31.5, their regulation comparable to § 31.6 no longer authorizes distributors or servicers licensed by NRC or other Agreement States to provide installation or on-going service to New York end users of some gauges. New York's version of reciprocity requires filing for permission a minimum of 7 days in advance of the activity and is limited to 30 days of work per calendar year. Because there are distributors' employees who live and report to work on a daily basis at end-user sites in New York State, these reciprocity provisions are too restrictive to be useful on an ongoing basis. As a result, some of the distributors and other servicers will be required, in order to continue to offer service to all customers, to apply for a specific license from the State of New York, even though they already have specific licenses issued by NRC or Agreement States that were designed to regulate their installation and service activities throughout the country. If § 31.5 is designated Category C compatibility and other Agreement States eliminate the general license for certain gauges, those states and the out-of-state service providers working within those states will be involved in the time-consuming process of negotiating new specific licenses (in duplication of existing licenses).

Response: The Commission agrees that there are significant transboundary implications of these regulations. The compatibility requirements for §§ 31.5 and 31.6 are being made a Category B. After the Agreement States make the required changes to their regulations (in about three years), the distributors' and other servicers' problems with reciprocity for servicing will be eliminated. There will be limited possible changes in various regulations for distributors to keep up with, such as fee amounts. Although Part 170 provisions are not amongst the regulations which must be provided to customers, it is expected that distributors will be asked and will inform customers on the amount of fees.

In implementing the Agreement State Program through the regulations in 10

CFR part 150 in 1962, the Commission (then AEC) stated: "The Commission's decision not to exercise its authority to license the transfer of products containing atomic energy materials (other than products designed for distribution to the general public) is based on the assumption that agreement States will maintain continuing compatibility between their programs and Commission programs; and that procedures will be devised assuring reasonable, reciprocal recognition of licenses and licensing requirements among such States and the Commission." This will unfortunately require a number of Agreement States to revise existing registration programs; however, the Commission believes consistency of regulations in this area is very important to improve the effectiveness of the general license program.

Comment: One Agreement State thought that the supplementary information was unclear on how general licensees in Agreement States must demonstrate that they can account for devices and are knowledgeable of the applicable requirements; specifically, that it did not say if NRC intends to request that Agreement States keep track of general licensees and individual devices. Because establishing a tracking system is a significant undertaking, they recommended that NRC clarify its expectations of the Agreement States.

Response: For there to be complete accountability for devices and the ability to trace orphaned devices to responsible parties, tracking by all jurisdictions will be necessary. If NRC were to develop a National Database in the future, Agreement States would have to provide detailed data for general licensees and devices in their jurisdictions. In addition, with all reporting requirements necessary for keeping track of individual devices being Compatibility Category B, the necessary information will be required to be provided by all licensees in the future. It is expected that if a jurisdiction requires information to be reported, it would keep and make use of that information.

Other Comments Concerning Transboundary Activities

Comment: One commenter recommended that supplementary information for the final rulemaking explicitly describe the conditions under which an Agreement State licensee would be allowed to use a portable generally licensed device in an area of NRC jurisdiction.

Response: Although there is no reciprocity for general licenses, the general license in § 31.5 applies automatically without application for license or other permission as long as the device has been manufactured or distributed by an appropriate specific licensee and obtained in an authorized manner. The user of a portable device in NRC jurisdiction would be using the authority of § 31.5 and would be subject to NRC regulation. However, the NRC would not require registration of a device used in NRC jurisdiction by a company located in another jurisdiction, as the registration is based on the address of the primary place of storage. The NRC would be relying on the Agreement State to have appropriate controls in place under equivalent regulations to ensure accountability for the device. An additional provision has been added to § 31.5(c)(13) to specifically exclude from the registration requirement Agreement State general licensees using a device temporarily in NRC jurisdiction. This provision limits the time this exclusion is applicable to less than 180 days in any calendar year. This is consistent with the reciprocity provision for specific licensees in § 150.20 and is intended to avoid, for example, the situation of a general licensee purposefully storing a device normally used in NRC jurisdiction in another jurisdiction to avoid NRC registration.

Comment: There was comment on whether portable and "mobile fixed" gauges should be allowed under a general license. An Agreement State commenter stated that there are obvious transboundary implication to this practice and reciprocal recognition of the general license is not provided (and should not be). Another Agreement State supported limiting portable and "mobile fixed" gauges to specific license only.

Response: The Commission believes that it is reasonable for each jurisdiction to allow the use of portable or "mobile fixed" devices under a general license within its jurisdiction that are being regulated by another jurisdiction. This should be particularly true with the regulations in § 31.5 a Compatibility Category B. Each jurisdiction relies on the others in approving devices for use under a general license.

Timing of Adoption of Requirement for Augmented Material Transfer Reports

Comment: The three Agreement States that commented all opposed an accelerated implementation by the Agreement States, favoring the normal three years. However, one referred only to the difficulty of having all of the States revise their regulations. Another discussed the difficulty of developing an infrastructure (a state registration program) which may not already exist. This commenter did indicate that, if necessary, they could apply appropriate license conditions for their several distributors.

Response: The proposal for accelerated adoption of the Agreement States was only for updating distributors' material transfer reporting requirements. It is assumed that this would likely be done by applying license conditions, if required to do so quickly. The States would still have the normal three years to implement a registration program and to make changes to their regulations. The Commission would like to start getting the additional information from all jurisdictions as soon as possible. Because the new reporting requirements include all the necessary information that was required previously, it will not be a problem for States to start receiving the augmented material transfer reports before revising their rules or implementing a registration program. The Commission is requiring that the Agreement States require their distributors to make their material transfer reports consistent with this rule 6 months after the effective date of this rule.

D. Comments on Specific Questions Posed

1. The Commission seeks comment on whether the registration requirement should include a provision that would require the general licensee to complete registration by a certain time, whether or not the NRC requests registration.

Comment: There were about equal responses for and against such a provision. A non-Agreement State wanted registration to be completed in 30 days after receipt. One commenter noted that general licensees will have difficulty knowing whether the registration requirement applies to them. They stated that it would be inappropriate to cause general licensees to attempt to register unnecessarily and that registration should be a response to an NRC or Agreement State directive based on agency assessment of the devices received. Another argument against was that if an entity is unaware that a device should be registered because they have not been notified by a manufacturer, distributor, NRC or Agreement State, it would be unfair to impose a penalty on them. One of those presenting this view stated that the burden for the initial implementation should not be placed on the general licensee, but should be on the NRC, associated Agreement State, or the specific licensee distributor.

Response: Although there may be some general licensees for which the NRC does not have current name and address information and who may not get registered, the Commission has decided not to add a requirement that the general licensee complete registration by a certain time, whether or not the NRC requests registration. The NRC will rely instead on its process of specifically requesting the general licensee to register those sources and devices to which the registration requirement applies. No change has been made to the proposed rule.

2. The Commission requests comment on whether it is appropriate for new devices obtained by registrants to be registered when the annual reregistration is carried out without the NRC having earlier contact after additional devices are received. Earlier contact could be made either by an acknowledgment by NRC to the user or by a required response from the general licensee to account for the additional device(s).

Comment: There was a mix of responses to this question. Three commenters, including two States, would like to see earlier acknowledgement. The other two States that commented, as well as a couple of general licensees, thought it was logical, efficient, and effective to add new devices at the time of reregistration.

Response: The Commission believes that updating at time of reregistration is adequate, and that the additional paperwork of reporting receipts in the interim is not justified. No change has been made from the proposed rule.

3. The Commission solicits comment on whether general licensees should be required to assign a backup responsible individual (BRI).

Comment: Two commenters supported the addition of a requirement for a backup responsible individual. Many others were against it. The main concern of those supporting a BRI was that if the person in that role leaves the company, no one else may know about the general license and associated requirements. Those opposed thought it was unnecessary and impractical especially in the case of very small businesses.

Response: The Commission continues to believe that a requirement to appoint a BRI is not appropriate. It should be noted that the process of appointing an RI involves management; someone other than the RI would know that there is a general license and associated requirements. As this is a management appointment, management would know to reassign these duties if the individual leaves the organization. An employee should not be obtaining a device and assuming that he can act as the RI without his management being aware of these responsibilities.

4. The Commission seeks comment on how best to achieve and enforce the intent that full disclosure of information required to be provided to general licensee customers by distributors be made early enough to be considered in a decision to purchase. For example: Would it be better to use the words, "prior to purchase" in the regulatory text?

Comment: Some commenters objected to the possible use of the words "prior to purchase." Some expressed the concern that "prior to transfer" would not be adequate to achieve the objective. Most commenters talked about the importance of achieving the objective of disclosure before decision, without commenting on the best approach. A couple of the commenters wanted written acknowledgment that the information had been received and read before transfer. However, a couple of the distributors thought it was unreasonable and less effective to require information to be provided prior to transfer instead of at transfer.

Response: The Commission believes the words, "prior to purchase," is unnecessarily restrictive and presents more problems than "prior to transfer." Therefore, the final rule requires that the required information regarding the device be provided to the purchaser "before the device may be transferred." Although providing information with the device at the time of transfer may, in a few cases, not always get it to the person actually using the device, the Commission believes that overall, upfront disclosure prior to transfer of the device is preferable. The general licensee personnel considering the purchase should see the requirement for appointing a "responsible individual," and, if they purchase the device, will have to provide the distributor the name of the person appointed. The final rule also allows flexibility to the distributor to use another approach to disclose the information, if approved by the Commission. For example, if the distributor believes that providing some of the detailed regulatory text at the time of transfer would be more effective for his customers, he may propose this to the Commission; the Commission would have to determine whether the upfront disclosure under the proposal is adequate.

5. The Commission seeks comment on the advantages and disadvantages of implementing a national database of general licensees and their devices.

Comment: There was considerable support for establishing a national database but also some concerns about integrity and security. Those supporting a national database pointed to the ease of tracking the responsible parties when abandoned devices are found. Some commenters thought it would make discrepancies easier to reconcile. Cost was mentioned as a possible concern for both a national database and separate databases in each jurisdiction. Potential disadvantages included potential misuse by outsiders. There were questions about who would have the authority to make changes, how changes and additions would be made, what mechanism would be used to ensure accuracy and completeness, and who would pay the cost of establishing a national database. One Agreement State suggested that a new database may or may not be effective during the first 5 years of operation, based on their experience, which revealed difficulties that were overcome only with time and experience. They stated that, they would be reluctant to exchange their existing database for one introduced by NRC until the new national database had been proven effective over several years at no additional cost to the regulated community. Another Agreement State indicated that it would likely maintain its own database to support its registration program. That State thought that even though a national database would be quicker in tracking a device, there was no urgency with identifying a responsible party, once a source is secured. It also noted that once a source is smelted there is no serial number or similar information to trace.

Response: The Commission believes that it is best to implement the new database for NRC general licensees, use it for implementing a registration program, gain experience with it, and give consideration to expanding the database at a later date.

E. Additional Comment on Implementation Issues

Comment: One commenter asked whether there is a way for general licensees to request a list of devices that should be in their possession, stating that this would be a great benefit to the "responsible individual" once these proposed rules are implemented.

Response: General licensees can and have contacted NRC to obtain this type of information. They can write to Director, Office of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comment: One commenter recommended that the NRC develop a list of § 31.5 licensed devices and make the list readily available to the public, possibly via the NRC web site. The list should contain the manufacturer, model number, and brief description of the device and should also state whether the device meets the registration criteria. This would assist current general licensees in identifying § 31.5 devices already in their possession.

Response: Information is available on the Internet on manufacturers of devices, model numbers, etc. in the Sealed Source and Device Registry (SSDR) at http://www.hsrd.ornl.gov/nrc/ssdr/ssdrindx.htm. The electronic version is not currently complete, but is expected to be complete relatively soon. The SSDR includes devices that are generally licensed, specifically licensed, and exempt. Creating a separate set of information on the Internet of devices allowed under a general license would be a significant effort, and would still not allow the general licensee to identify which devices have been received. The current information is organized by name of manufacturer and can provide additional information about a device if one knows the manufacturer and model number. However, the SSDR provides a maximum activity that is allowed in a device and the individual device may have a lesser amount of activity. Thus the SSDR information would not and can not allow one to determine whether a device is subject to registration. However, the general licensee does not need to determine this in advance, as the NRC will contact the licensee requesting verification of registration information. The NRC is not assessing a fee the first time this request is being made for devices held before the registration requirement.

F. Comment on Enforcement and Civil Penalties

Comment: One commenter asked whether past inspection and enforcement history of a specific license may be used to escalate the enforcement actions against the general license and vice versa. He also asked if that were the case, is there precedence set for these actions?

Response: The NRC's enforcement actions are guided by its written Enforcement Policy (General Statement of Policy and Procedure for NRC Enforcement Actions, NUREG–1600). The Enforcement Policy encourages licensees to achieve a high standard of compliance in all regulated activities. The NRC's civil penalty assessment process considers, as one of its decisional points, whether there has been any previous escalated enforcement action, regardless of the activity area (Enforcement Policy, Section VI.B.2.). Thus, in a situation where an entity holds both a specific and a general license, escalated enforcement action for activities conducted under one of those licenses may be considered in determining the appropriate enforcement action for activities conducted under the other license. Precedence is not the controlling factor. Each enforcement action is dependent on the circumstances of the case.

Comment: One commenter believed that the civil penalties proposed for the loss or unauthorized disposal do not reflect real safety implications, stating that, in the case of polonium-210 (Po-210), the safety hazard involved is minimal.

Response: As explained in the statement of considerations for the proposed rule, the change to the base civil penalty amounts for loss or unauthorized disposal of a sealed source or device will better relate the size of the civil penalty to the costs avoided by the failure to dispose of the source in an authorized manner. While safety implications are an important consideration, a licensee should not receive an economic benefit by committing a violation. A separate notice, published elsewhere in today's **Federal Register**, establishes the new civil penalty amounts and gives a more complete explanation. The base civil penalties range from $6,000 to $45,000.

Comment: One commenter suggested that the NRC was creating a new class of license. The commenter stated that although a license is not required, there are still several requirements the user has to meet before getting the device, that in essence there are additional prerequisites that must be accomplished by the vendor (distributor) and end user before receiving the device. The commenter also stated that many of these prerequisites are going to be difficult to demonstrate compliance.

Response: General licenses are established in various Parts of Title 10, Code of Federal Regulations. Some convey only after certain requirements, such as registration, are fulfilled; others convey automatically. In some cases, general licensees must obtain NRC-licensed materials only from distributors who are specifically licensed to supply them. The practical effect of this restriction is that distributors who wish to supply materials to general licensees must obtain a specific license to do so, and must meet certain NRC requirements. Thus, the Commission does not see this rule as creating a new class of license. Where licensees are required to "demonstrate compliance," such as by maintaining records, that requirement is specifically noted in the regulation or the license. In the absence of a specific requirement, such as recordkeeping, NRC inspectors have a variety of means at their disposal for determining compliance, including interviews, sampling, etc.

Comment: A question raised at the public meeting was: In order for high civil penalties to be a deterrent to improper disposal, how do we keep the general licensee aware of the penalties?

Response: A copy of the **Federal Register** Notice stating the policy of establishing separate civil penalties for loss, abandonment, or improper transfer or disposal is being sent to current § 31.5 general licensees along with this notice. The rule has been revised to require the distributors to also provide a general statement concerning the Enforcement Policy of the NRC with respect to the improper disposal of generally licensed devices.

G. Comments Outside the Scope of the Rulemaking

Comment: One source material licensee presented detailed concerns about the exemption in § 40.13(c)(5) for depleted uranium in aircraft counterweights, calling it a parallel problem, with a more immediate and much larger potential for public exposure.

Response: The commenter has since submitted a petition for rulemaking (PRM–40–28) to address his concern related to aircraft counterweights. This issue is outside the scope of this rulemaking but will be considered in resolving the petition.

Comment: One commenter stated that because the purpose of these regulation changes is to increase the accountability of devices, the limit for Cs-137 that requires registration should be lowered. Currently, some manufacturers are attempting to circumvent the rules and the interest of public health and safety by packaging or directing other people to repackage exempt quantities of radioactive material. If the proposed rule were to state that any quantity of Cs-137, Co-60, strontium-90, Am-241 or any other transuranic distributed under § 31.5 would require registration, the loophole that allows significant quantities to be unaccounted for and improperly disposed of could be closed. This would still allow for the use of individual exempt quantities of material to be used as calibration or check sources.

Response: The issue concerns the improper use of exempt sources in devices to avoid licensing under § 31.5, so adjusting registration criteria in § 31.5 would not address the problem. Thus, this issue is outside the scope of this rulemaking. The Commission is considering action regarding this issue separate from this rulemaking.

Comment: One commenter was concerned about the use of the provision in the recently issued final rule (64 FR 42269; August 4, 1999), providing for the occasional solicitation of information from general licensees stating that with respect to small business general licensees, these solicitations should be conducted only when absolutely necessary.

Response: With the exception of the first round of registration to be conducted under § 31.5(c)(11), the Commission is not expecting to make numerous requests for information from general licensees under this provision and will give appropriate consideration to the justification of any burden placed on these licensees when making such requests.

In addition, editorial changes have been made in the revisions to improve the organization and readability of the regulations being revised. These types of changes are not discussed further in this notice. A few comments were received concerning possible clarifications of the rule language. These have been considered in writing the final rule.

Availability of Detailed Summary of Comments

A more detailed document that presents all of the comments sorted by subject is available. This document is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. Single copies may be obtained by calling Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC, 20555–0001; telephone (301) 415–6264; or e-mail at CRM@nrc.gov.

Additional Revisions in Final Rule

During the development of plans for implementing the revised regulations, some issues were identified related to the efficiency of the program. Some minor changes have been made in the final rule to improve the clarity of the regulation and the efficiency of implementing it.

Section 31.5(c)(5)—It has been clarified that, in addition to the device itself, any radioactive material no longer within the device, can only be transferred to a specific licensee authorized to receive it or as otherwise approved by the Commission. Section 30.41 would limit such transfers; however, it is preferable for this point to be clear in § 31.5.

Section 31.5(c)(8)—Paragraph 31.5(c)(7) allows export of a device in accordance with part 110. This would seem in conflict with the limited set of options for transfer in § 31.5(c)(8). An exception such as already exists for transfers under § 31.5(c)(9) has been added. Also, a requirement to report in the case of export has also been added to allow the NRC to update its records in the case of disposition of the device by export. This is estimated to occur rarely and add few additional transfer reports.

Before 1978, § 31.5(c)(7) indicated that a specific license was required to export devices. When part 110 was added to incorporate all the requirements for import and export of nuclear equipment and material, § 31.5(c)(7) was revised to indicate that devices can only be exported in accordance with part 110. Section 110.23 provides a general license to export byproduct material. There are restrictions on types and quantities of materials and export to certain countries is not permitted. This section has been revised over time. Currently, most, if not all devices under § 31.5 would be allowed to be exported under this general license without any reporting requirement. Because a specific license is no longer required, the Commission would not know when a general licensee has exported devices. Thus, the need to add this circumstance to the reporting requirement.

Section 31.5(c)(9)(i)—The address of the transferee is specified as the mailing address of the transferee for location of use. This is a clarification and consistent with the specification of the address to be provided by the distributors under § 32.52(a) and (b). It also tends to remove any implication that the location of use may change. The title of the responsible person is added to the information provided about the transferee. It should help to reduce the incidence of mail being returned because the individual named no longer works for the general licensee.

In addition, it adds to the information to be provided to the transferee, copies of additional applicable sections of the regulations. This is consistent with the changes to § 32.51a with respect to providing regulatory information to new general licensees.

Section 31.5(c)(13)—For clarification, a statement concerning the practice of considering each addressee at a different location of use as a separate general licensee has been added. This had been included in the discussion, but not the regulatory text of the proposed rule.

Section 31.5(c)(8), (9), and (13)—In each place where the name of the manufacturer of a device is to be provided to the NRC, the words, "(or initial distributor)" has been added in case the manufacturer's name is not known to the general licensee. In the case of a U.S. distributor of a device manufactured elsewhere, the name of the initial transferor (distributor) may appear on the label in accordance with the labeling requirements in § 32.51(a)(3) (or comparable Agreement State regulations). The label is a likely source of information for the general licensee in reporting under each of these requirements.

Section 31.5(c)(14)—The address change requirement has been changed to specify that changes are to be reported specifically for the mailing address of the location of use. This is a clarification and consistent with the specification of the address to be provided by the distributors under § 32.52(a) and (b).

Some clarification concerning this requirement needs to be made. In the Statement of Considerations of the proposed rule, it was stated that this would only apply to previously supplied mailing addresses. The reference to previously provided addresses was meant to limit the requirement to the primary address used by NRC for tracking the general licensee (as obtained from the distributor), and not for alternate addresses such as the mailing address of the responsible individual if different from the mailing address for the location of use. The specification of the mailing address for the location of use also limits the requirement to the primary address to be used by NRC, and relieves the general licensee of trying to determine what was previously supplied.

The Statement of Considerations also stated that it was intended to track moves into and within NRC jurisdiction. However, the Commission interprets this provision such that general licensees moving out of NRC jurisdiction are also required to report. Although the period allowed to make a report of an address change extends to a time after leaving NRC jurisdiction, a general licensee is not relieved of the requirement to report the address change because he leaves the Commission's jurisdiction before the time allowed for reporting runs out. If a general licensee intends to move from one jurisdiction to another, he should contact the applicable regulatory authority, NRC or the particular

Agreement State, before doing so to determine the applicable, current regulations in that jurisdiction, even though the requirement allows after-the-fact reporting. Currently, all jurisdictions do not have a comparable general license and certain provisions of the general license may vary among jurisdictions.

Section 31.5(c)(5), (8), (9), and (14)—"ATTN: GLTS" has been added to the address for all submittals under § 31.5 to improve the efficiency of mail routing within NRC.

Section 32.52(a) and (b)—The title of the responsible individual has been added to the information to be provided about the general licensees' responsible individual in the distributors' material transfer reports. This one additional item should not change the effort involved in obtaining and reporting this information. It should help to reduce the incidence of mail being returned because the individual named no longer works for the general licensee. Although a general licensee, in complying with § 31.5(c)(12), would have to appoint a replacement to a responsible individual when that person leaves or changes assignments, he would only be reporting these changes through the registration process, if subject to registration. Followup for returned mail involves additional effort for NRC, general licensees, and distributors.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" published on September 3, 1997 (62 FR 46517), the final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The revisions to part 32 and § 31.5 are classified as Category B. Through this action, existing provisions of § 31.5 are also being reclassified from Category D to Category B and § 31.6 is being reclassified from Category C to Category B. Although changes are being made to §§ 30.31, 30.34(h)(1), 31.1, and 31.2 as part of this rulemaking, the existing compatibility designations for these regulations are not affected.

Category B means the provisions affect a program element with significant direct transboundary implications. The State program element should be essentially identical to that of NRC. Category C means the provisions affect a program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps in the national program. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met.

Specific information about the compatibility or health and safety components assigned to this rule may be found at the Office of State and Tribal Programs website, http://www.hsrd.ornl.gov/nrc/home.html.

As discussed above, revised § 32.52(a) and (b) would add the following information to the existing distributors' quarterly transfer reporting requirements: the serial number and model number of the device, the date of transfer, the name and license number of the reporting company, and the specific reporting period. The revisions also require the name, title, and phone number of a general licensee's "responsible individual" rather than simply a contact and specify that the address of the general licensee be the mailing address for the location of use. According to NRC Management Directive (MD) 5.9, "Adequacy and Compatibility of Agreement State Programs," NRC regulations that should be adopted by an Agreement State for purposes of compatibility should be adopted in a time frame such that the effective date of the State requirement is no later than 3 years after the effective date of NRC's final rule. MD 5.9 also provides that some circumstances may warrant that the States adopt certain regulations in less than the recommended 3-year time frame or that the effective dates for both NRC licensees and Agreement State licensees be the same. The Commission believes it is important to the implementation of this program, and to Agreement State programs, to begin receiving the additional information in the distributors' quarterly transfer reports as soon as possible. The Commission requests Agreement States to require distributors to provide all the information consistent with this rule (§ 32.52(a) and (b)) within 6 months following the effective date of this final action. Agreement States have the flexibility to adopt this provision through rulemaking, license conditions, or other legally binding requirements.

Summary of Final Amendments by Paragraph With Compatibility Categories

Section 30.31—Revision reconciles the apparent conflict between the description of a general license and a registration requirement. (Category C)

Section 30.34(h)(1)—Revision makes the bankruptcy notification requirement applicable to those general licensees subject to the registration requirement. (Category D/H & S)

Section 31.1—Revision clarifies that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees. (Category D)

Section 31.2—Revision clarifies references to the sections of part 30 that are applicable to all of the part 31 general licensees. (Category D)

Section 31.5(b)—Revision clarifies the status of a person who receives a device through an unauthorized transfer by limiting the applicability of the general license to those who receive a device through an authorized transfer; and removes the restriction on devices distributed by Agreement State licensees in Agreement States without a general license. (Category B)

Section 31.5(c)(5)—Revision adds a plan for ensuring that premises and environs are suitable for unrestricted access, to the information that must be sent to NRC in the case of a failure, when device damage or failure is likely to or known to have resulted in contamination; changes the addressee for reporting information concerning a failure; and clarifies that the criteria in § 20.1402 may be applied and that byproduct material no longer in the device may only be transferred to a licensee authorized to receive it or as otherwise approved by the Commission. (Category B)

Section 31.5(c)(8)—Revision allows transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to previously allowed transfers to part 32 (and Agreement State) licensees; allows transfers to other specific licensees, but only with prior written NRC approval; and adds the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device. Revision also requires a report in the case of export under § 31.5(c)(7) and removes the exception to reporting when a device is being replaced. (Category B)

31.5(c)(9)(i)—Revision adds to the reporting requirement, in the case of a transfer to a general licensee taking over possession of a device at the same location, to provide the serial number of the device and the name, title, and phone number of the person identified as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements, rather than simply a contact name. It also specifies that the address of the transferee be the mailing address at the location of use. In addition, it adds to the information to be provided to the transferee, copies of additional applicable sections of the regulations. (Category B)

Section 31.5(c)(9)(ii)—Revision adds the term, "intermediate person," to clarify that the only time a report of transfer is not required, is when the information on both an intermediate person and an intended user was provided through the distributor in a quarterly material transfer report. (Category B)

Section 31.5(c)(12)—Adds an explicit requirement for the general licensee to appoint an individual assigned responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations. (Category B)

Section 31.5(c)(13)—Adds an explicit requirement for the general licensee to register devices meeting certain criteria, specifying the information to be provided and referencing the fee requirement in Section 170.31. (Actual fee to be added to § 170.31 in next overall fee rulemaking.) (Category B)

Section 31.5(c)(14)—Adds a requirement for the general licensee to notify NRC of changes to the mailing address for the location of use. (Category B)

Section 31.5(c)(15)—Limits to 2 years the amount of time a general licensee can keep an unused device in storage and allows the deferment of testing during the period of storage. It allows a device to be held longer in standby for future use, if the general licensee conducts quarterly inventory for these devices. (Category B)

Section 32.51(a)(4) and (5)—Adds a requirement for an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration. (Category B)

Section 32.51a(a) and (b)—Revision amends the requirements pertaining to the information distributors must provide to the general licensee. Distributors were previously required to provide general licensees with a copy of § 31.5 when the device is transferred. This rule requires that § 31.5 be provided before transfer. The distributor is also required to provide copies of additional applicable Sections of the regulations, a listing of the services that can only be performed by a specific licensee, information regarding disposal options for the devices being transferred, including estimated costs of disposal, and a statement concerning the policy of assessing high civil penalties for improper disposal. For transfers to general licensees in Agreement States, the distributor may furnish either the applicable NRC regulations or the comparable ones of the Agreement State. In addition, the distributor shall furnish the name or title, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained. (Category B)

Section 32.51a(c)—Allows distributor to propose alternative approach to informing his customers for Commission approval. (Category B)

Section 32.51a(d)—Makes labeling requirements a condition of license 1 year after effective date of rule. (Category B)

Section 32.51a(e)—Adds a requirement for distributors to make available records of final disposition of devices to the various regulatory agencies in the case of bankruptcy or termination of the distributor's license. (Category B)

Section 32.52(a) and (b)—Revision adds the following information to the existing quarterly transfer reporting requirement: the serial number and model number of the device; the date of transfer; for devices received from a general licensee, the type, model number, and serial number of the devices received, the identity of the general licensee by name and address, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor; information that has been changed on device labels; the name and license number of the reporting company; and the specific reporting period. Also, the general licensee address is specified as the mailing address for the location of use of the generally licensed device.

The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements, replaces the name and/or position of a simple contact between the Commission and the general licensee. Also, a form (NRC Form 653) will be provided for use in making these reports. However, the use of the form is not required as long as the report is clear and legible and includes all of the required information. (Category B)

Section 32.52(c)—Revises the content of the recordkeeping requirement through specifying that information supporting the revised reports is to be maintained. The period of retention for recordkeeping concerning transfers is reduced from 5 years to 3 years from the date of the recorded event. (Category B)

Early State Input

These final amendments were provided to the Agreement States during their development via the use of the NRC Technical Conference Website and notification to the States of its availability. Input was received following posting from the State of Nebraska. Their comments concerned two areas. The primary issue was the difficulty of keeping track of devices possessed by general licensees, when distributors report all devices transferred to general licensees, but information is not received on those returned. They were in favor of the distributors reporting serial numbers of those devices returned for replacement. They were also concerned about the clarity of which proposed regulatory provisions would apply to all § 31.5 general licensees and which would apply only to those who will register and pay fees.

National Database

The Commission has developed a new computer database to handle information about general licensees and generally licensed devices. Among other improvements from the previous system, it has been designed to handle the registration process efficiently with automated features. The Commission has given some consideration to whether a national database should be established in which information on the identity of general licensees and device information for all jurisdictions would be maintained, making this information accessible to all Agreement States and the NRC. There are variations on the exact approach that might be taken particularly with respect to access and update authority. At this time, the Commission has not yet found it practical to resolve all the issues related to having broad access to the database.

The Commission will give further consideration to establishing such a database at a later date after experience is gained with the new database and the registration program. Establishing a national database would not require rulemaking. However, if it were to be established, one option would be to change the material transfer reporting requirements so that distributors would report all transfers to the NRC rather than reporting to the various jurisdictions into which devices are transferred.

A primary advantage of a national database would be the ease of tracing a "found" device back to the general licensee owner responsible for the device. A "found" generally licensed device would be considered an orphan

source until the responsible general licensee is identified and the device is returned to the licensee. The Commission is in the process of modifying the Nuclear Materials Events Database (NMED) to accept and track information on orphan sources nationally (*i.e.*, all States). Access to the NMED will be available to the NRC and all the States. The Commission will encourage the States to use NMED for this purpose so that this category of information will be shared nationally. However, NMED will rely on reporting of events for its data. In order for a device to be traced back to the responsible general licensee, each jurisdiction would have to search its own files. In addition, a national general license database would contain the most complete information about general licensees and generally licensed devices and would make that information immediately available.

The primary disadvantage of a national database would be the difficulty of maintaining the security of the data, which is primarily made up of proprietary information. A national database would also present more risk to the integrity of the data, because there would be a higher potential for illicit corruption of data.

Enforcement Policy

On March 9, 1999 (64 FR 11508), the Commission established an interim enforcement policy for violations of § 31.5 that licensees discover and report during the initial cycle of the registration program. This policy supplements the normal NRC Enforcement Policy in NUREG–1600, Rev. 1. It will remain in effect through one complete cycle of the registration program.

Under this interim enforcement policy, enforcement action normally will not be taken for violations of § 31.5 that are identified by the general licensee, and reported to the NRC if reporting is required, provided that the general licensee takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems and otherwise has undertaken good faith efforts to respond to NRC notices and provide requested information. This change from the Commission's normal enforcement policy is to remove the potential for the threat of enforcement action to be a disincentive for the licensee to identify deficiencies. This approach is warranted given the limited NRC inspections of general licensees. This approach is intended to encourage general licensees to determine if applicable requirements have been met, to search their facilities to ensure sources are located, and to develop appropriate corrective action when deficiencies are found. Under the interim enforcement policy, enforcement action, including issuance of civil penalties and Orders, may be taken where there is—

(a) Failure to take appropriate corrective action to prevent recurrence of similar violations;

(b) Failure to respond and provide the information required by regulation;

(c) Willful failure to provide complete and accurate information to the NRC; or

(d) Other willful violations, such as willfully disposing of generally licensed material in an unauthorized manner.

As noted in the December 2, 1998 (63 FR 66492) proposed rule, the Commission also planned to increase the civil penalty amounts specified in its Enforcement Policy in NUREG–1600, Rev. 1, for violations involving lost or improperly disposed sources or devices. This increase will better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device. Due to the diversity of the types of sources and devices, the Commission is establishing three levels of base civil penalty for loss or improper disposal. The higher tiers are for sources that are relatively costly to dispose of and is based on approximately three times the average cost of proper transfer or disposal of the source or device.

A separate notice, published elsewhere in today's **Federal Register**, establishes the new civil penalty amounts and gives a more complete explanation.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. There are no voluntary consensus standards available concerning accountability of such devices.

The amendments are primarily administrative in nature and include explicit requirements for a registration process and a clarification on which provisions of the regulations apply to all general licenses for byproduct material. This rule also modifies the reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices. Therefore, this action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that the revisions made in this final rule are the types of actions described in the categorical exclusions in § 51.22(c)(1) through (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection requirements in this rule have been approved by the Office of Management and Budget, approval numbers 3150–0017, 3150–0016, and 3150–0001.

The public reporting burden for this information collection is estimated to average 19 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The time involved is small because many of the amendments are minor revisions to existing information collection requirements. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017, 3150–0016, and 3150–0001), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this final regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

Single copies of the analysis may be obtained by calling Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001; telephone (301) 415–6264; or e-mail at CRM@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The most significant cost of this final rule is the fee to be assessed for each registration. The fee will be established as part of the FY 2001 notice and comment fee rulemaking based on that year's budgeted costs, FTE rate, and number of registrants. Based on current information, the fee is expected to be approximately $440–$450. Portions of the final rule apply to the approximately 40,000 persons possessing products under an NRC general license, many of whom may be classified as small entities. However, the annual registration requirement and associated fee apply to about 4300 of these general licensees. Based on input received previously from small entities who hold specific materials licenses, the NRC believes that the part 170 registration fee will not have a significant economic impact on a substantial number of small entities. The NRC believes that the economic impact of the other requirements on any general licensee would be a negligible increase in administrative burden.

The final rule also revises requirements for specifically licensed distributors of certain generally licensed devices. Currently, there are 21 NRC licensed distributors and approximately 83 Agreement State licensed distributors. Many of these licensees are not small entities and the impact to any of these distributors is not expected to be significant in any case.

Backfit Analysis

The NRC has determined that the backfit rule, § 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that impose backfits as defined in § 50.109(a)(1).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 31, and 32.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended, (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Sec. 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486; sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.31 is revised to read as follows:

§ 30.31 Types of Licenses.

Licenses for byproduct material are of two types: General and specific.

(a) The Commission issues a specific license to a named person who has filed an application for the license under the provisions of this part and parts 32 through 36, and 39.

(b) A general license is provided by regulation, grants authority to a person for certain activities involving byproduct material, and is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. However, registration with the Commission may be required by the particular general license.

3. In § 30.34, paragraph (h)(1) is revised to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(h)(1) Each general licensee that is required to register by § 31.5(c)(13) of this chapter and each specific licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code by or against:

(i) The licensee;

(ii) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(iii) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

* * * * *

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

4. The authority citation for Part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

5. Section 31.1 is revised to read as follows:

§ 31.1 Purpose and scope.

This part establishes general licenses for the possession and use of byproduct material and a general license for ownership of byproduct material. Specific provisions of 10 CFR Part 30 are applicable to general licenses established by this part. These provisions are specified in § 31.2 or in the particular general license.

6. Section 31.2 is revised to read as follows:

§ 31.2 Terms and conditions.

The general licenses provided in this part are subject to the general provisions of Part 30 of this chapter (§§ 30.1 through 30.10), the provisions of §§ 30.14(d), 30.34(a) to (e), 30.41, 30.50 to 30.53, 30.61 to 30.63, and Parts 19,

20, and 21, of this chapter [1] unless indicated otherwise in the specific provision of the general license.

7. In § 31.5, the title and paragraphs (b), (c)(5), (c)(8), and (c)(9) are revised and paragraphs (c)(12), (13), (14), and (15) are added to read as follows:

§ 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.[2]

* * * * *

(b)(1) The general license in paragraph (a) of this section applies only to byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in—

(i) A specific license issued under § 32.51 of this chapter; or

(ii) An equivalent specific license issued by an Agreement State.

(2) The devices must have been received from one of the specific licensees described in paragraph (b)(1) of this section or through a transfer made under paragraph (c)(9) of this section.

(c) * * *

* * * * *

(5) Shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 bequerel (0.005 microcurie) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair such devices that was issued under parts 30 and 32 of this chapter or by an Agreement State. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the byproduct material in the device or as otherwise approved by the Commission. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 0.005 microcurie or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days. Under these circumstances, the criteria set out in § 20.1402, "Radiological criteria for unrestricted use," may be applicable, as determined by the Commission on a case-by-case basis;

* * * * *

(8)(i) Shall transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of this section, by transfer to another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license issued under parts 30 and 32 of this chapter, or part 30 of this chapter that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under paragraph (c)(8)(iii) of this section.

(ii) Shall furnish a report to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days after the transfer of a device to a specific licensee or export. The report must contain—

(A) The identification of the device by manufacturer's (or initial transferor's) name, model number, and serial number;

(B) The name, address, and license number of the person receiving the device (license number not applicable if exported); and

(C) The date of the transfer.

(iii) Shall obtain written NRC approval before transferring the device to any other specific licensee not specifically identified in paragraph (c)(8)(i) of this section.

(9) Shall transfer the device to another general licensee only if—

(i) The device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of this section, a copy of §§ 31.2, 30.51, 20.2201, and 20.2202 of this chapter, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001—

(A) The manufacturer's (or initial transferor's) name;

(B) The model number and the serial number of the device transferred;

(C) The transferee's name and mailing address for the location of use; and

(D) The name, title, and phone number of the responsible individual identified by the transferee in accordance with paragraph (c)(12) of this section to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(ii) The device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee.

* * * * *

(12) Shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(13)(i) Shall register, in accordance with paragraphs (c)(13)(ii) and (iii) of this section, devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, or 37 MBq (1 mCi) of americium-241 or any other transuranic (*i.e.*, element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address for a location of use, as described under paragraph (c)(13)(iii)(D) of this section, represents a separate general licensee and requires a separate registration and fee.

(ii) If in possession of a device meeting the criteria of paragraph (c)(13)(i) of this section, shall register these devices annually with the Commission and shall pay the fee required by § 170.31 of this chapter. Registration must be done by verifying, correcting, and/or adding to the information provided in a request for registration received from the Commission. The registration information must be submitted to the NRC within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of paragraph (c)(13)(i) of this section is subject to the bankruptcy notification requirement in § 30.34(h) of this chapter.

(iii) In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Commission—

[1] Attention is directed particularly to the provisions of Part 20 of this chapter concerning labeling of containers.

[2] Persons possessing byproduct material in devices under a general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of § 31.5 in effect on January 14, 1975.

(A) Name and mailing address of the general licensee.

(B) Information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label).

(C) Name, title, and telephone number of the responsible person designated as a representative of the general licensee under paragraph (c)(12) of this section.

(D) Address or location at which the device(s) are used and/or stored. For portable devices, the address of the primary place of storage.

(E) Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information.

(F) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

(iv) Persons generally licensed by an Agreement State with respect to devices meeting the criteria in paragraph (c)(13)(i) of this section are not subject to registration requirements if the devices are used in areas subject to NRC jurisdiction for a period less than 180 days in any calendar year. The Commission will not request registration information from such licensees.

(14) Shall report changes to the mailing address for the location of use (including change in name of general licensee) to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage.

(15) May not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by paragraph (c)(2) of this section need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

8. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

9. In § 32.51, paragraphs (a)(4) and (5) are added to read as follows:

§ 32.51 Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer.

(a) * * *

(4) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in § 20.1901 of this chapter, and the name of the manufacturer or initial distributor.

(5) Each device meeting the criteria of § 31.5(c)(13)(i) of this chapter, bears a permanent (*e.g.*, embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in § 20.1901 of this chapter.

* * * * *

10. Section 32.51a is revised to read as follows:

§ 32.51a Same: Conditions of licenses.

(a) If a device containing byproduct material is to be transferred for use under the general license contained in § 31.5 of this chapter, each person that is licensed under § 32.51 shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes—

(1) A copy of the general license contained in § 31.5 of this chapter; if paragraphs (c)(2) through (4) or (c)(13) of § 31.5 do not apply to the particular device, those paragraphs may be omitted.

(2) A copy of §§ 31.2, 30.51, 20.2201, and 20.2202 of this chapter;

(3) A list of the services that can only be performed by a specific licensee;

(4) Information on acceptable disposal options including estimated costs of disposal; and

(5) An indication that NRC's policy is to issue high civil penalties for improper disposal.

(b) If byproduct material is to be transferred in a device for use under an equivalent general license of an Agreement State, each person that is licensed under § 32.51 shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes—

(1) A copy of the Agreement State's regulations equivalent to §§ 31.5, 31.2, 30.51, 20.2201, and 20.2202 of this chapter or a copy of §§ 31.5, 31.2, 30.51, 20.2201, and 20.2202 of this chapter. If a copy of the NRC regulations is provided to a prospective general licensee in lieu of the Agreement State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted.

(2) A list of the services that can only be performed by a specific licensee;

(3) Information on acceptable disposal options including estimated costs of disposal; and

(4) The name or title, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained.

(c) An alternative approach to informing customers may be proposed by the licensee for approval by the Commission.

(d) Each device that is transferred after (insert date 1 year after the effective date of this rule) must meet the labeling requirements in § 32.51(a)(3) through (5).

(e) If a notification of bankruptcy has been made under § 30.34(h) or the license is to be terminated, each person licensed under § 32.51 shall provide, upon request, to the NRC and to any appropriate Agreement State, records of final disposition required under § 32.52(c).

11. Section 32.52 is revised to read as follows:

§ 32.52 Same: material transfer reports and records.

Each person licensed under § 32.51 to initially transfer devices to generally licensed persons shall comply with the requirements of this section.

(a) The person shall report all transfers of devices to persons for use under the general license in § 31.5 of this chapter and all receipts of devices from persons licensed under § 31.5 to the Director of the Office of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The report must be submitted on a quarterly basis on Form 653—"Transfers of Industrial Devices Report" or in a clear and legible report containing all of the data required by the form.

(1) The required information for transfers to general licensees includes—

(i) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use.

(ii) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(iii) The date of transfer;

(iv) The type, model number, and serial number of the device transferred; and

(v) The quantity and type of byproduct material contained in the device.

(2) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(3) For devices received from a § 31.5 general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(4) If the licensee makes changes to a device possessed by a § 31.5 general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(5) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(6) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(7) If no transfers have been made to or from persons generally licensed under § 31.5 of this chapter during the reporting period, the report must so indicate.

(b) The person shall report all transfers of devices to persons for use under a general license in an Agreement State's regulations that are equivalent to § 31.5 of this chapter and all receipts of devices from general licensees in the Agreement State's jurisdiction to the responsible Agreement State agency. The report must be submitted on Form 653—"Transfers of Industrial Devices Report" or in a clear and legible report containing all of the data required by the form.

(1) The required information for * transfers to general licensees includes—

(i) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use.

(ii) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(iii) The date of transfer;

(iv) The type, model number, and serial number of the device transferred; and

(v) The quantity and type of byproduct material contained in the device.

(2) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(3) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(4) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(5) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(6) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(7) If no transfers have been made to or from a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency.

(c) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by this section. Records required by this paragraph must be maintained for a period of 3 years following the date of the recorded event.

Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31873 Filed 12–15–00; 8:45 am]

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Federal Register

Monday,
December 18, 2000

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Determinations of Prudency and Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and Notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service, have reconsidered our findings concerning whether designating critical habitat for 38 federally protected plants from the islands of Maui and Kahoolawe, some of which may also occur on other Hawaiian Islands, listed between 1991 and 1996, would be prudent. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We have determined that critical habitat is prudent for 37 of these species since the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks of designation that may result from human activity. We propose that designation of critical habitat is not prudent for one species, which is no longer extant in the wild and for which no genetic material is currently extant, because such designation would not be beneficial to this species.

We propose critical habitat designations for a total of 50 species in 52 units on Maui and 4 units on Kahoolawe at this time. The approximate land area within these units totals 13,574 hectares (33,614 acres) on Maui and 207 hectares (512 acres) on Kahoolawe. This proposed rule includes proposed designations for 33 of the 37 species mentioned above. Critical habitat is not proposed for four species that are currently only found in areas on Maui that are permanently protected and managed. In addition, critical habitat is being proposed for six other species from Maui and Kahoolawe that were listed in 1999. We are also proposing critical habitat on Maui and Kahoolawe for 11 species which also occur on Kauai.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We must receive comments from all interested parties by February 16, 2001. Public hearing requests must be received by February 1, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

You may send comments by electronic mail (e-mail) to mandk_crithab_pr@fws.gov. See the Public Comments Solicited section in **SUPPLEMENTARY INFORMATION** below for file format and other information about electronic filing.

You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service (Service), have reconsidered our previous findings concerning whether designating critical habitat for some of the 69 Federally protected plants currently or historically found on the islands of Maui and Kahoolawe is prudent. Table 1 lists the species that are currently found on Maui and/or Kahoolawe, reported to occur on these islands, or were historically present (not seen for more than 30 years). Seventeen of these species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea mceldowneyi, Dubautia plantaginea* ssp. *humilis, Geranium arboreum, Geranium multiflorum, Kanaloa kahoolawensis, Lipochaeta kamolensis, Melicope adscendens, Melicope balloui, Melicope ovalis, Remya mauiensis, Schiedea haleakalensis,* and *Tetramolopium capillare*) are endemic to the islands of Maui and/or Kahoolawe, while 33 species (*Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Diellia erecta, Flueggea neowawraea, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Mariscus pennatiformis, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) are known from Maui and/or Kahoolawe, as well as one or more other islands (Table 1). Two species, *Bidens micrantha* ssp. *kalealaha* and *Cyanea lobata*, were known from Maui and Lanai, but are currently only extant on Maui. *Lysimachia lydgatei* was known from Maui and Oahu, while *Diplazium molokaiense* was known from several islands, but currently both species are extant only on Maui. We believe that one species, *Acaena exigua*, may be extinct. The fourteen remaining species are known only from historical records (pre-1970) on Maui and/or Kahoolawe or from undocumented observations. While these species do occur on other islands, we do not believe they still occur on Maui or Kahoolawe.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 69 SPECIES FROM MAUI AND KAHOOLAWE

Species (common name)	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Acaena exigua (liliwai)	H				H		
Alectryon macrococcus (mahoe)	C	C	C		C		
Argyroxiphium sandwicense ssp. *macrocephalum* (ahinahina).					C		
Asplenium fragile var. *insulare* (NCN*)					H	C	
Bidens micrantha ssp. *kalealaha* (ko oko olau)				H	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano)		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia lindseyana (oha wai)					C	C	
Clermontia oblongifolia ssp. *mauiensis (oha wai)*				C	C		
Clermontia peleana (oha wai)					H	C	
Clermontia samuelii (oha wai)					C		
Colubrina oppositifolia (kauila)		C			C	C	
Ctenitis squamigera (pauoa)	H	C	H	C	C	H	
Cyanea copelandii ssp. *haleakalaensis* (haha)					C		
Cyanea glabra (haha)					C		
Cyanea grimesiana ssp. *grimesiana* (haha)		C	C	C	C		
Cyanea hamatiflora ssp. *hamatiflora* (haha)					C		
Cyanea lobata (haha)				H	C		
Cyanea mceldowneyi (haha)					C		
Cyrtandra munroi (ha iwale)				C	C		
Delissea undulata (NCN)	C				H	C	Ni (H)
Diellia erecta (Asplenium-leaved diellia)	H	H	C	H	C	C	
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia plantaginea ssp. *humilis* (na ena e)					C		
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Geranium arboreum (nohoanu)					C		
Geranium multiflorum (nohoanu)					C		
Gouania vitifolia (NCN)		C			H	C	
Hedyotis coriacea (kioele)		H			C	C	
Hedyotis mannii (pilo)			C	C	C		
Hesperomannia arborescens (NCN)		C	C	H	C		
Hesperomannia arbuscula (NCN)		C			C		
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)
Ischaemum byrone (Hilo ischaemum)	R	H	C	D	C	C	
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni (H)
Kanaloa kahoolawensis (kohe malama malama o kanaloa).							Ka (C)
Lipochaeta kamolensis (nehe)					C		
Lysimachia lydgatei (NCN)		H			C		
Mariscus pennatiformis (NCN)	H	H			C	H	NW Isles (C)
Melicopoe adcendens (alani)					C		
Melicope balloui (alani)					C		
Melicope knudenii (alani)	C				C		
Melicope mucronulata (alani)			C		C		
Melicope ovalis (alani)					C		
Neraudia sericea (NCN)			C	H	C		Ka (H)
Nototrichium humile (kului)		C			H		
Peucedanum sandwicense (makou)	C	C	C		C		
Phegmariurus mannii (wawae iole)	H				C	C	
Phyotegia mannii (NCN)			C		H		
Phyllostegia mollis (NCN)		C	H		C		
Phyllostegia parviflora (NCN)		C			H	H	
Planatago princeps (laukahi kuahiwi)	C	C	C		C	H	
Plantanthera holochila (NCN)	C	H	C		C		
Peteris lidgatei (NCN)		C	H		C		
Remya mauiensis (NCN)					C		
Sanicula purpurea (NCN)		C			C		
Schiedea haleakalensis (NCN)					C		
Schiedea hookeri (NCN)		C			H		
Schiedea nuttallii (NCN)	C	C	C		R		
Sesbania tomentosa (NCN)	C	C	C	H	C	C	Ni (H); Ka (C), NW Isles (C)
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Sptermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium arenarium (NCN)						H	C
Tetramologpium capillare (pamakani)					C		
Tetramologpium remyi (NCN)				C	H		

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 69 SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species (common name)	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Vigna o-waheuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C)
Zanthoxylum hawaiiense (a w)	C		C	H	C	C	
KEY							

C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
* NCN—no common name.

When 38 of the above species where listed between 1991 and 1996 (*Acaena exigua, Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mollis, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Tetramolopium capillare, and Vigna o-wahuensis*), we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. However, after reevaluating our previous decision, we propose that critical habitat designation for 37 of these species would be prudent because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks, resulting from human activity, of designation (see CRITICAL HABITAT section below). We propose that designation of critical habitat is not prudent for *Acaena exigua*, which we believe may be extinct, because such a designation would not be beneficial to this species, since we believe the species may be extinct.

Proposed determinations for 11 species that also occur on the island of Kauai (*Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawraea, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense*) were published in a previous proposal (65 FR 66808). In addition, the designation of critical habitat was found to be prudent for six species (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis*) when they were listed as endangered in 1999.

An additional 14 species listed in Table 1 are known only from historical records (pre-1970) on Maui and/or Kahoolawe or from undocumented observations. Since these species do not currently occur on Maui or Kahoolawe, is it not prudent to designate critical habitat for them on these islands. However, proposed determinations and critical habitat designations or non-designations for these species will be included in other proposed rules for the islands on which they currently occur (Table 2).

TABLE 2.—PROPOSED RULES IN WHICH PRUDENCY AND CRITICAL HABITAT DESIGNATIONS/NON-DESIGNATIONS WILL BE PROPOSED FOR 14 SPECIES THAT NO LONGER OCCUR ON MAUI OR KAHOOLAWE.

SPECIES	Proposed rule in which prudency will be proposed	Proposed rule in which critical habitat designations/non designations will be discussed
Asplenium fragile var *insulare*	Hawaii	Hawaii
Brighamia rockii	Molokai	Molokai
Clermontia peleana	Hawaii	Hawaii
Delissea undulata	Hawaii	Hawaii
Gouania vitifolio	Hawaii	Hawaii; Oahu
Isodendrion pyrifolium	Hawaii	Hawaii
Nototrichium humile	Oahu	Oahu
Phyllostegia mannii	Oahu	Oahu
Phyllostegia parviflora	Oahu	Oahu
Schiedea hookeri	Oahu	Oahu
Schiedea nuttallii	Kauai (65 FR 66808)	Kauai; Oahu; Molokai
Solanum incompletum	Hawaii	Hawaii
Tetramolopium arenarium	Hawaii	Hawaii
Tetramolopium remyi	Lanai	Lanai

The plants discussed in this proposed rule were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. At the time many of these plants were listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. These not prudent determinations, along with 196 others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii. On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002. (See 65 FR 66808 for complete discussion about the above litigation.)

In addition, a second court order (*Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–002283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000)) requires that we propose critical habitat for 10 other plant species, 6 of which are addressed in this proposed rule (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis, Kanaloa kahoolawensis*) for which determination was found to be prudent at the time of listing. This second court order requires us to publish proposed critical habitat designations by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

To comply with these court orders, we plan to publish seven proposed rules, between now and April 30, 2002, in the following island groupings: Kauai and Niihau; Maui and Kahoolawe; Lanai; Molokai; Northwest Hawaiian Islands; Hawaii; and Oahu. Each notice will contain the proposed prudency determinations for species occurring on that island for which prudency determinations have not been previously proposed, and proposed designations or non-designations of critical habitat for each plant species known to occur from that island. The proposed prudency determination and proposed rule for Kauai and Niihau plants was published in the **Federal Register** on November 7, 2000 (65 FR 66808). When a plant species occurs on more than one island, critical habitat may be proposed in all of the proposed rules that cover the respective islands.

The Islands of Maui and Kahoolawe

Maui, the second largest island in Hawaii at 1,888 square kilometers (sq km) (729 square miles (sq mi)) in area, was formed from the remnants of two large shield volcanoes, the older west Maui volcano (1.3 million years) on the west and the larger, but much younger Haleakala volcano on the east. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 1,764 meters (m) (5,787 feet (ft)) elevation, which has an average rainfall of 1,020 centimeters (cm) (400 inches (in.)) per year, making it the second wettest spot in Hawaii (Department of Geography 1998). Having erupted just 200 years ago, East Maui's Haleakala crater, reaching 3,055 m (10,023 ft) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on the slopes of Haleakala is about 89 cm (35 in.) per year, with its windward (northeastern) slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is below the level at which precipitation develops, and is sheltered from moisture-laden winds (Gagne and Cuddihy 1999).

The island of Kahoolawe measures about 17.7 km (11 mi) long by 11.3 km (7 mi) wide, comprising some 11,655 hectares (ha) (28,800 acres (ac)). Located in the lee of Haleakala, the island lies approximately 11 km (6.7 mi) from East Maui. The highest point is the rim of an extinct volcano at 450 m (1,477 ft) above sea level. The estimated annual precipitation is approximately 500 millimeters (mm) (20 in.), with most if it falling from November through March. In addition to the low precipitation, Kahoolawe is the windiest of the Hawaiian Islands (Gon et al. 1992).

Discussion of the Plant Taxa

Species Endemic to Maui and/or Kahoolawe

Argyroxiphium sandwicense ssp. *macrocephalum*

Argyroxiphium sandwicense ssp. *macrocephalum*, a long-lived perennial and a member of the aster family (Asteraceae), is called the Haleakala silversword. It is a distinctive, globe-shaped rosette plant with a dense covering of silver hairs. This subspecies is distinguished from *Argyroxiphium sandwicense* ssp. *sandwicense* by the shape and ratio of the dimensions of the inflorescence, the number of ray florets per head, and the combination of its longer, three-angled leaves; its silvery leaf hairs, which completely hide the leaf surface; and its longer achenes (Carr 1985, 1999a).

This monocarpic (flowers only once, at the end of its lifetime) plant matures from seed to its final stage in approximately 15–50 years (Loope and Medeiros, in press). The plant remains a compact rosette until it sends up an erect, central flowering stalk, sets seed, and dies. Flowering occurs from June to September, with annual numbers of flowering plants varying dramatically from year to year. Reliable counts of flowering plants were made in 1935 (217 flowered) and in 1941 (815 flowered) (Loope and Crivellone 1986). Numbers recorded in recent years have ranged from zero in 1970 to 6,632 in 1991. The environmental stimulus for synchronous flowering is as yet unknown. An apparent relationship of the 1991 mass flowering event to stratospheric alteration by the eruption of Pinatubo Volcano in the Philippines has been considered. Investigations are underway by R. Pharis of the University of Calgary and L.L. Loope to explore whether enhanced flowering is related to increased UV–B radiation due to temporary reduction of stratospheric ozone (United States Fish and Wildlife Service (USFWS) 1997). Flying insects, especially native bees, moths, flies, bugs, and wasps, many of which are pollinators, are attracted in large numbers to the giant, aromatic inflorescences. It has been demonstrated that *Argyroxiphium sandwicense* ssp. *macrocephalum* cannot fertilize itself and is reliant on insect pollinators for reproduction. Rarely, hybrids between *A. sandwicense* ssp. *macrocephalum* and *Dubautia menziesii,* have been observed. Primarily found within Haleakala Crater, especially on Puu o Pele and Puu o Maui cinder cones, these hybrid individuals flower for several years before dying (Carr 1985).

Currently, *Argyroxiphium sandwicense* ssp. *macrocephalum* occupies all of its historic range, a 1,000 ha (2,500 ac) area at 2,100–3,000 m (6,890–9,840 ft) elevation in the crater and outer slopes of Haleakala Volcano, within Haleakala National Park, and The Nature Conservancy of Hawaii's (TNCH) Waikamoi Preserve (Loope and Crivellone 1986; TNC 1998). There are a total of seven populations on Federal and privately owned land, with 39,013 to 44,013 individual plants (TNCH 1998; Geographic Decision Systems International (GDSI) 2000; Hawaii Natural Heritage Program (HINHP) Database 2000).

The habitat of this species consists primarily of dry, well-drained, otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones. Mean annual precipitation is approximately 75–125 cm (29–49 in.). The substrate has almost no soil development and is subject to frequent formation of ice at night and extreme heating during cloudless days (USFWS 1997). This species is found in alpine dry shrubland with native species including: *Agrostis sandwicensis* (bent grass), *Deschampsia nubigena* (hair grass), *Dubautia menziesii* (na ena e), *Silene*

struthioloides (catchfly), *Styphelia tameiameiae* (pukiawe), *Metrosideros polymorpha* (ohia), *Tetramolopium humile* (pamakani), and *Trisetum glomeratum* (pili uka) (USFWS 1997).

The threats to this species are loss of pollinators due to the Argentine ant (*Iridomyrmex humilis*) and alien yellowjackets (*Vespula pennsylvanica*); native seed-eating and herbivorous insects such as the tephritid fly (*Trupanea cratericola*), the larvae of a native phycitid moth (*Rhynchephestia rhabdotis*), and the endemic cerambycid beetle (*Plagithmysus terryi*); limited natural range which makes it vulnerable to extinction due to catastrophic events, such as a natural disaster; competition from the alien plant species *Verbascum thapsus* (mullein) and *Pennisetum setaceum* (fountain grass); and human impacts (trampling and site degradation). Although goats (*Capra hircus*) and cattle (*Bos taurus*) have been removed from the park, they remain a potential threat (USFWS 1997; 57 FR 20772).

Clermontia samuelii

Clermontia samuelii, a short-lived perennial in the bellflower family (Campanulaceae), is a terrestrial shrub with elliptical leaves which are sometimes broader at the tips. *Clermontia samuelii* ssp. *hanaensis* is differentiated from *C. samuelii* ssp. *samuelii* by the greenish white to white flowers; longer, narrower leaves with the broadest point near the base of the leaves; and fewer hairs on the lower surface of the leaves. This species is separated from other members of this endemic Hawaiian genus by the size of the flowers and the hypanthium (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically, *Clermontia samuelii* has been reported from Haleakala and from Keanae Valley on the windward side to Manawainui on the more leeward (southeastern) side of Haleakala (Medeiros and Loope 1989; HINHP Database 2000). Currently, *C. samuelii* ssp. *hanaensis* is known from the northeastern side of Haleakala, within Haleakala National Park, Hanawi Natural Area Reserve (NAR), and Hana Forest Reserve. There is a total of five populations with 600 individual plants on State and Federal lands (HINHP Database 2000; GDSI 2000; B. Hobdy *in litt.* 2000; K. Wood *in litt.* 2000). *C. samuelii* ssp. *samuelii* is known from three populations totaling 50 to 100 individuals on State and Federal lands within Haleakala National Park, Hanawi NAR, and the Hana and Koolau forest reserves (Warshauer 1998; USFWS 1999; GDSI 2000; HINHP Database 2000; K. Wood *in litt.* 2000).

Clermontia samuelii ssp. *hanaensis* is found between 735 and 1,060 m (2,400 and 3,475 ft) elevation, while *C. samuelii* ssp. *samuelii* is typically found between 1,725 to 2,100 m (5,660 to 6,900 ft) elevation (64 FR 48307; HINHP Database 2000; K. Wood *in litt.* 2000). *C. samuelii* ssp. *hanaensis* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Dicranopteris linearis* (uluhe) forest with *Tetraplasandra oahuensis* (ohe mauka), *Hedyotis terminalis* (manono), *Hedyotis hillebrandii* (manono), *Broussaisia arguta* (kanawao), *Cibotium* sp. (hapuu), *Argyroxiphium grayanum* (greensword), *Dubautia* sp. (na ena e), *Clermontia arborea* (oha wai), *Psychotria mariniana* (kopiko), *Melicope clusifolia* (alani), *Diplazium sandwichianum* (NCN), *Peperomia obovatilimba* (ala ala wai nui), *Adenophorus tamariscinus* (pendant fern), *Vaccinium* sp. (ohelo), *Carex alligata* (NCN), *Melicope* sp. (alani), and *Cheirodendron trigynum* (olapa) (HINHP Database 2000). *Clermontia samuelii* ssp. *samuelii* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest with *Hedyotis hillebrandii*, *Cibotium* sp., *Broussaisia arguta*, *Dubautia* sp., *Diplazium sandwichianum*, *Rubus hawaiiensis* (akala), *Clermontia arborescens* ssp. *waihiae* (oha wai), *Vaccinium* sp., *Carex alligata*, and *Melicope* sp. (HINHP Database 2000).

Threats to *Clermontia samuelii* ssp. *hanaensis* include habitat degradation and/or destruction by feral pigs (*Sus scrofa*) and competition with alien plant taxa such as *Tibouchina herbacea* (glorybush), *Paspalum urvillei* (vasey grass), *Paspalum conjugatum* (Hilo grass), *Juncus* sp. (NCN), *Hedychium coronarium* (ginger), and *Hedychium gardnerianum* (64 FR 48307; K. Wood *in litt.* 2000). In addition, two extremely invasive alien plant taxa, *Miconia calvescens* (velvet tree) and *Clidemia hirta* (Koster's curse), are found in nearby areas and may invade this habitat if not controlled (64 FR 48307). The habitat of *C. samuelii* ssp. *samuelii* was extensively damaged by pigs in the past, and pigs are still a major threat to the populations on State owned lands. The population within the National Park has been fenced and pigs have been eradicated. However, due to the large populations of pigs in adjacent areas, the park populations must constantly be monitored to prevent further occurrence (64 FR 48307). Competition with alien plant taxa such as *Holcus lanatus* (velvet grass) and *Juncus planifolius* (NCN) is a major threat to this subspecies (K. Wood *in litt.* 2000). In addition, rats (mainly black rat (*Rattus rattus*)) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus, and therefore are a potential threat to both subspecies (64 FR 48307).

Cyanea copelandii ssp. *haleakalaensis*

Cyanea copelandii ssp. *haleakalaensis*, a short-lived perennial member of the bellflower family (Campanulaceae), is a vine-like shrub with sprawling stems and tan latex sap. This subspecies is differentiated from the other subspecies by its shorter elliptical leaves. The species differs from others in this endemic Hawaiian genus by the vine-like stems and the yellowish flowers that appear red due to the covering of hairs (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea copelandii* ssp. *haleakalaensis* was reported from the windward side of Haleakala and from Waikamoi to Kipahulu Valley (Lammers 1999). Currently, this taxon is known from three populations with a total of 205 individuals in Kipahulu Valley within Haleakala National Park; west of Kuhiwa Stream and Valley in Hanawi NAR; and on lower Waikamoi flume, which is privately owned (64 FR 48307; Warshauer 1998; HINHP Database 2000; GDSI 2000).

Cyanea copelandii ssp. *haleakalaensis* is found on stream banks and wet scree (a sloping mass of rocks at the base of a cliff) slopes in montane wet or mesic forest dominated by *Acacia koa* (koa) and/or *Metrosideros polymorpha* at elevations between 730 and 1,340 m (2,400 and 4,400 ft) (64 FR 48307; HINHP Database 2000). Associated species include *Cibotium* sp., *Perrottetia sandwicensis* (olomea), *Psychotria hawaiiensis* (kopiko ula), *Broussaisia arguta*, and *Hedyotis acuminata* (au) (64 FR 48307; HINHP Database 2000).

The major threats to this species are habitat degradation and/or destruction by feral pigs; competition with several alien plant taxa; rats; slugs; and potential extinction due to random environmental events due to small population sizes (64 FR 48307).

Cyanea glabra

Cyanea glabra, a member of the bellflower family (Campanulaceae), is a short-lived, perennial shrub, with the leaves of juvenile plants deeply pinnately lobed, while those of the adult plants are more or less entire and elliptical. This species is differentiated from others in this endemic Hawaiian genus by the size of the flower and the pinnately lobed juvenile leaves (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea glabra* has been reported from West Maui and on Haleakala, East Maui (64 FR 48307; HINHP Database 2000). Currently, this species is known from a single population of 12 individual plants on privately owned land in Kauaula Valley (GDSI 2000; HINHP Database 2000).

Cyanea glabra is found on soil and rock stream banks in wet lowland forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*, at elevations between 800 to 1,340 m (2,625 to 4,400 ft) (HINHP Database 2000).

The threats to this species are slugs; habitat degradation and/or destruction by feral pigs; flooding; competition with several alien plant taxa; rats; the two-spotted leafhopper (*Saphonia rufofascia*); and extinction caused by random environmental events due to the small number individuals in the only remaining population (64 FR 48307).

Cyanea hamatiflora ssp. *hamatiflora*

Cyanea hamatiflora ssp. *hamatiflora*, a short-lived perennial and member of the bellflower family (Campanulaceae), is a palm-like tree with tan colored latex. This subspecies is differentiated from the listed subspecies (*C. hamatiflora* ssp. *carlsonii*) by its longer calyx lobes and shorter individual flower stalks. This species is separated from others in this endemic Hawaiian genus by fewer flowers per inflorescence and narrower leaves (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea hamatiflora* ssp. *hamatiflora* was known from the windward side of Haleakala, stretching from Puu o Kakae to Manawainui (HINHP Database 2000). Currently, this taxon is known from nine populations with a total of 22 individuals in Haipuaena Gulch in the Koolau Forest Reserve; along East Wailuaki Stream in the Koolau Forest Reserve; upper Kipahulu Valley in Haleakala National Park; and between Puu Ahulili and Kaupo Gap (State, Federal, and privately owned lands) (Warshauer 1998; GDSI 2000; HINHP Database 2000).

Typical habitat for this taxon is montane wet forest dominated by *Metrosideros polymorpha*, with a *Cibotium* sp. and/or native shrub understory and closed *Acacia koa-M. polymorpha* wet forest from 975 to 1,500 m (3,200 to 4,920 ft) elevation (HINHP Database 2000). Associated native plant taxa include *Dicranopteris linearis*, *Cheirodendron trigynum*, *Broussaisia arguta*, *Cyanea solenocalyx* (haha), *Cyanea kunthiana* (haha), *Vaccinium* sp., *Melicope* sp., and *Myrsine* sp. (kolea) (64 FR 48307; HINHP Database 2000).

The threats to this species are habitat degradation and/or destruction by feral pigs; landslides; competition with the alien plant *Ageratina adenophora* (Maui pamakani); rats; and slugs (64 FR 48307).

Cyanea mceldowneyi

Cyanea mceldowneyi (a member of the bellflower family (Campanulaceae)) is a short-lived, unbranched perennial shrub with rough to prickly stems. This species is distinguished from other species of *Cyanea* by the combination of a densely armed trunk, long (40 mm (1.6 in.)) white-colored corollas, and leaf blade size and shape (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1997).

Historically, *Cyanea mceldowneyi* was known from rainforest west of Waikamoi to Honomanu on northwestern Haleakala (Lammers 1999). Currently, this species is known from six populations with a total of 31 individuals, in the vicinity of Waikamoi Drainage on East Maui, on or near State and privately owned lands (Warshauer 1998; GDSI 2000; HINHP Database 2000).

The habitat of this species is montane wet forest with mixed *Metrosideros polymorpha-Acacia koa* at elevations between 925 and 1,280 m (3,030 and 4,200 ft) (Lammers 1999; HINHP Database 2000). Associated native plants include *Melicope clusiifolia* (kolokolo mokihana), *Hedyotis* sp. (NCN), *Clermontia arborescens*, *Diplazium sandwichianum*, *Broussaisia arguta*, *Cibotium* sp., *Cyrtandra* sp. (haiwale), *Dicranopteris linearis*, and *Cheirodendron trigynum* (57 FR 20772).

The threats to this species are habitat degradation and physical destruction by feral pigs; small number of populations and individuals (57 FR 20772); and competition with alien plant species, especially *Setaria palmifolia* (palmgrass) (USFWS 1997).

Dubautia plantaginea ssp. *humilis*

Dubautia plantaginea ssp. *humilis*, a short-lived perennial of the aster family (Asteraceae), is a dwarf shrub less than 80 cm (30 in.) tall with hairless or strigullose (bulbous-based hairs, all pointing in the same direction) stems. This species differs from other Hawaiian members of the genus by the number of nerves in the leaves and by the close resemblance of the leaves to the genus *Plantago* (Carr 1985, 1999b). The subspecies *humilis* differs from the other two subspecies (*D. plantaginea* ssp. *magnifolia* and *Dubautia plantaginea* ssp. *plantaginea*) by having fewer heads per inflorescence, but more florets per head (Carr 1999b).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Dubautia plantaginea ssp. *humilis* has only been reported from two locations in Iao Valley, on West Maui. These populations, totaling 60–65 individuals, are on or near State and privately owned lands (GDSI 2000; HINHP Database 2000).

The typical habitat of the species is wet, barren, steep, rocky, wind-blown cliffs between 350 to 400 m (1,150 to 1,300 ft) elevation. Associated native plant taxa include *Metrosideros polymorpha*, *Pipturus albidus* (mamaki), *Eragrostis variabilis* (kawelu), *Carex* sp. (NCN), *Hedyotis formosa* (NCN), *Lysimachia remyi* (kolokolo kuahiwi), *Bidens* sp. (kookoolau), *Pritchardia* sp. (loulu), and *Plantago princeps* (64 FR 48307; HINHP Database 2000).

Threats to *Dubautia plantaginea* ssp. *humilis* include landslides and competition from alien plant taxa (64 FR 48307). Random environmental events, such as landslides, are a threat because of the limited number of individuals and populations and their narrow distribution.

Geranium arboreum

Geranium arboreum, a long-lived perennial and a member of the geranium family (Geraniaceae). It is a many branched, spreading, woody shrub about 1.8 to 3.7 m (6 to 12 ft) tall. This species can be distinguished from other *Geranium* by its red petals with the upper three petals erect and the lower

two reflexed, causing the flower to appear curved (Wagner *et al.* 1999).

Geranium arboreum is the only species in its genus that appears to be adapted to bird-pollination (Funk 1982, 1988). Native honeycreepers appear to be a mājor pollination vector. *G. arboreum* from the southwest area of Haleakala in the Kula Forest Reserve produce seeds that are larger and fuller than seeds from the northwest extension of its distribution (USFWS 1997). Native honeycreepers are reasonably abundant in both areas (USFWS 1997).

The original range and abundance of the species is unknown, but late 19th and early 20th century collections indicate that it once grew on the southern slopes of Haleakala and that its distribution on the northern slopes extended beyond its presently known range. There are ten populations totaling 142 to147 individuals, on State, private, and federally owned lands (Warshauer 1998; GDSI 2000; HINHP Database 2000). These populations are found in Waiohuli; west side of Puu Nianiau; west side of Puu Koolau; Waiakoa and Kealahou; Hapapa Gulch; Kaonoulu; southeast and southwest side of Puu Keokea; and Papaanui (Warshauer 1998; HINHP Database 2000).

Geranium arboreum grows in steep, damp, and shaded narrow canyons and gulches, steep banks, and along intermittent streams in *Sophora chrysophylla* (mamane) subalpine dry shrubland and *Metrosideros polymorpha* montane forest, between 1,525 to 2,135 m (5,000 and 7,000 ft) in elevation. Associated native plant species include *Vaccinium reticulatum* (ohelo ai), *Dodonaea viscosa* (aalii), *Styphelia tameiameiae*, *Rubus hawaiiensis*, and *Dryopteris wallichiana* (NCN) (USFWS 1997).

The greatest immediate threat to the survival of this species is the encroachment and competition from naturalized, exotic vegetation, chiefly grasses and trees. Soil disturbance, caused by trampling cattle and rooting by feral pigs, also is a major threat as it destroys plants and facilitates the encroachment of competing species of naturalized plants. Other less important threats include browsing by cattle; fires; and pollen from exotic pine trees, which at times of the year completely cover the stigmas of the geraniums, precluding any fertilization by its own species (Funk 1982, 1988). The small number of individual plants increases the potential for extinction from random environmental events, and the limited gene pool may depress reproductive vigor (57 FR 20580; USFWS 1997).

Geranium multiflorum

Geranium multiflorum, a long-lived member of the geranium family (Geraniaceae). This perennial is a 1 to 3 m (3 to 10 ft) tall, many-branched shrub. Flowers are in clusters of 25 to 50, and have 5 white petals that are 10 to 15 mm (0.4 to 0.6 in.) long with purple veins or bases. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (57 FR 20772; Wagner *et al.* 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1997).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Waianapanapa on East Maui (HINHP Database 2000). This species is now known from Haleakala National Park, Hanawi NAR, Koolau Forest Reserve, and Waikamoi Preserve on Federal, State, and private lands (Warshauer 1998; GDSI 2000; HINHP Database 2000). The nine known populations extend over a distance of about 10.5 by 5.5 km (6.5 by 3.5 mi). Due to the inaccessibility of the populations and the difficulty in determining the number of individuals (due to the plant's multi-branched form), the total number of individuals of this species is not known; however, it probably does not exceed 3,000 plants (57 FR 20772; HINHP Database 2000).

Geranium multiflorum is found in wet or mesic *Metrosideros polymorpha* montane forest and alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands, between 1,580 and 2,450 m (5,180 and 8,040 ft) in elevation (Wagner *et al.* 1999; HINHP Database 2000). Associated native species include *Coprosma montana* (pilo), *Dryopteris glabra* (hohui), *Dryopteris wallichiana*, *Rubus hawaiiensis*, *Ranunculus* sp. (makou), *Vaccinium* sp., *Hedyotis* sp., and *Sadleria cyatheoides* (amau) (HINHP Database 2000).

The major threat to *Geranium multiflorum* is competition with encroaching alien plant species, particularly *Rubus argutus* (prickly Florida blackberry) (57 FR 20772). A potential threat is habitat destruction by feral pigs and goats in unfenced areas.

Kanaloa kahoolawensis

Kanaloa kahoolawensis, a short-lived perennial and a member of the legume family (Fabaceae), is a densely branched shrub 0.75 to 1 m (2.5 to 3.5 ft) tall. The leaves are divided into three pairs of leaflets, with a leaf nectary (nectar-bearing gland) at the joint between each pair of leaflets. One to three inflorescences are found in the leaf axils (joint between leaf and stem), developing with the flush of new leaves. The inflorescence is a globose head with 20 to 54 white flowers. Up to four fruits develop in each flowering head. One slender, brown seed, about 2 mm (0.08 in.) long, is found in each fruit. There is no other species of legume in Hawaii that bears any resemblance to this species or genus (Lorence and Wood 1994).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (64 FR 48307).

Kanaloa kahoolawensis was unknown to science until its discovery by Steve Perlman and Ken Wood in 1992 on a steep rocky spire on the coast of Kahoolawe. The only known location of *Kanaloa kahoolawensis* is this rocky stack on the southern coast of the island of Kahoolawe, which is owned by the State of Hawaii (Lorence and Wood 1994). While there are no previous records of the plant, pollen core studies on the island of Oahu revealed a legume pollen that could not be identified until this species was discovered. The pollen cores indicate that *K. kahoolawensis* was a codominant with *Dodonaea viscosa* and *Pritchardia* sp. from before 1210 B.C. to 1565 A.D., at which point *K. kahoolawensis* disappeared from the pollen record and *D. viscosa* and *Pritchardia* sp. declined dramatically (Athens *et al.* 1992; Athens and Ward 1993; Lorence and Wood 1994). Only one population with two living individuals is known (Paul Higashino, Kahoolawe Island Reserve Commission (KIRC), pers. comm. 2000).

The only known habitat is mixed coastal shrubland on steep rocky talus slopes at 45 to 60 m (150 to 200 ft) elevation. Associated native plant taxa include *Sida fallax* (ilima), *Senna gaudichaudii* (kolomona), *Bidens mauiensis* (kookoolau), *Lipochaeta livarum* (nehe), *Portulaca molokinensis* (ihi), and *Capparis sandwichiana* (maia pilo) (64 FR 48307).

The major threats to *Kanaloa kahoolawensis* are landslides and the alien plant taxa *Emilia fosbergii* (pualele), *Chloris barbata* (swollen finger grass), and *Nicotiana glauca* (tobacco tree) (Lorence and Wood 1994). Goats played a major role in the destruction of vegetation on Kahoolawe before they were removed (Cuddihy and Stone 1990), and *K. kahoolawensis* probably survived only because the rocky stack is almost completely separated from the island and inaccessible to goats (Lorence and Wood 1994). Rats are a potential threat to *Kanaloa kahoolawensis*, because the species has seeds similar in appearance and presentation to the seeds of the federally endangered *Caesalpinia kavaiense* (Uhiuhi), which are eaten by rats. Rats may have been the cause of the decline of this species 800 years ago. Trampling and habitat degradation from cats and seabirds are also potential threats (P. Higashino, pers. comm. 2000). Random environmental events and/or reduced reproductive vigor are also a threat to this species, because only two individuals are known (64 FR 48307).

Lipochaeta kamolensis

Lipochaeta kamolensis, a short-lived perennial herb of the aster family (Asteraceae), has trailing or climbing stems that are woody at the base and reach a length of 0.3 to 3 m (1 to 10 ft). This species is distinguished from others of the genus by the simple leaves which are pinnately lobed or cut and by the size of the flower heads (Wagner *et al.* 1999).

Lipochaeta kamolensis has been observed flowering from December through February, as well as in April. The growing season coincides with the wet season between November and April/May. Plants are dry and appear to be metabolically inactive during the dry season. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 7.2 km (11.8 mi) southeast of Ulupalakua Ranch Office (Wagner *et al.* 1999). This species still occurs in the Kamole Gulch, as well as Kepuni Gulch, both above and below Highway 31 on State-owned and private lands. The only known population, which extends over an area of about 40 ha (100 ac), is estimated to contain less than 500 individuals (GDSI 2000, HINHP Database 2000; Kenneth Wood, National Tropical Botanical Garden (NTBG) *in litt.* 1999).

Lipochaeta kamolensis typically grows along the bottom of rock ledges in dry to mesic scrub or dry lowland forests at elevations from 220 to 250 m (720 to 820 ft) (Wagner *et al.* 1999). Associated vegetation includes *Dodonaea viscosa*, *Plumbago zeylanica* (iliee), and *Ipomoea indica* (koali awa) (K. Wood, *in litt.* 1999).

The major threats to *Lipochaeta kamolensis* are habitat destruction and predation by cattle and goats, competition with alien plants such as *Lantana camara*, fire, and the small number of populations subject to extinction by random environmental events (57 FR 20772; USFWS 1997).

Melicope adscendens

Melicope adscendens, a long-lived perennial of the citrus family (Rutaceae), is a sprawling shrub with long, slender branches covered with gray hairs when young, which become hairless when older. *M. adscendens* is distinguished from other species of the genus by its growth habit, the distinct follicles of its fruit, and the persistent (remaining attached) sepals and petals (Stone *et al.* 1999).

Melicope adscendens fruits have been collected in March and July. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Melicope adscendens has been found only on the southwestern slope of Haleakala; two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, there are a total of three known populations on State and private lands: one of the original plants persists near Puu Ouli on privately owned land, 26 individuals are known from Auwahi, and one individual has been found in the Kanaio NAR (GDSI 2000, HINHP Database 2000).

This species typically grows at elevations between 770 and 1,220 m (2,520 and 4,000 ft) in *Nestegis sandwicensis* (olopua) lowland mesic forest or open dry forest on a'a lava flows (a particular type of lava flow with very sharp edges) with pockets of soil. Associated native plant species include: *Pleomele auwahiensis* (hala pepe), *Dodonaea viscosa*, *Osteomeles anthyllidifolia* (ulei), *Alphitonia ponderosa* (kauila), *Chamaesyce celastroides* var. *lorifolia* (akoko), *Santalum ellipticum* (iliahialo e), *Pouteria sandwicensis* (alaa), *Styphelia tameiameiae* and *Xylosma hawaiiensis* (maua) (HINHP Database 2000, K. Wood, *in litt.* 1999).

Major threats are habitat damage and trampling by cattle, competition with alien plant species, including *Lantana camara*, *Bocconia frutescens* (NCN), and *Pennisetum clandestinum*, and reduced reproductive vigor or extinction from random environmental events due to the small number of individuals and narrow distribution. Potential threats include habitat degradation and damage to plants by axis deer (*Axis axis*), feral goats, feral pigs, black twig borer, fire, and ranch activities (59 FR 62346; USFWS 1997; HINHP Database 2000).

Melicope balloui

Melicope balloui, a long-lived perennial of the citrus family (Rutaceae), is a small tree or shrub. New growth has yellowish brown woolly hairs and waxy scales; plant parts later become nearly hairless. *M. balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule and usually persistent sepals and petals (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Melicope balloui has been found only on the northern and southeastern slopes of Haleakala. There are two known populations, located approximately 4.0 km (2.5 mi) apart; one near Puu o Kakae on privately owned land and the second on federally owned land in Kipahulu Valley within Haleakala National Park. The two populations are comprised of approximately 50 individuals (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha* dominated montane wet forest at elevations between 760 and 1,520 m (2,500 and 5,000 ft). Associated taxa include *Machaerina angustifolia* (uki), *Cheirodendron trigynum*, *Labordia hedyosmifolia* (kamakahala), *Coprosma* sp. (pilo), *Dicranopteris linearis*, *Joinvillea ascendens* ssp. *ascendens* (ohe), and *Peperomia subpetiolata* (ala ala wai nui) (HINHP Database 2000, USFWS 2000).

Major threats are habitat degradation and damage to plants by feral pigs and axis deer and reduced reproductive vigor or extinction caused by random environmental events due to the small number of existing populations and individuals. Potential threats include competition with alien plant taxa, such as *Paspalum conjugatum*, *Clidemia hirta*, *Paspalum urvillei*, *Andropogon virginicus* (broomsedge), and *Psidium cattleianum* (strawberry guava); susceptibility to black twig borer; and predation by rats (59 FR 62346; USFWS 1997; HINHP Database 2000).

Melicope ovalis

Melicope ovalis, a long-lived perennial of the citrus family

(Rutaceae), is a tree growing up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs, but soon becomes hairless. Leaves are opposite, leathery, and broadly elliptic. The upper and lower surfaces of the leaves are hairless, and bruised foliage has an anise odor similar to that of *M. anisata*. Each flower cluster is on a main stalk and comprises three to seven flowers on individual stalks. Further details of the flowers are unknown. The fruit, a capsule, has carpels that are fused along almost their entire length. Each fertile carpel contains one or two glossy black seeds. The exocarp and endocarp are both hairless. *M. ovalis* is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Melicope ovalis has been found only on the eastern and southeastern slopes of Haleakala. There is one known population with less than 300 individuals, found on federally owned land in Kipahulu Valley in Haleakala National Park (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams at elevations between 850 and 1,430 m (2,800 and 4,700 ft). Associated taxa include *Dicranopteris linearis, Machaerina angustifolia, Labordia hedyosmifolia, Wikstroemia oahuensis* (akia), *Dubautia plantaginea, Hedyotis hillebrandii, Broussaisia arguta, Cheirodendron trigynum*, and *Perrottetia sandwicensis* (USFWS 1997; HINHP Database 2000).

Major threats to the only known population are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction due to random environmental events. Competition with introduced plants such as *Paspalum conjugatum, Clidemia hirta, Rubus rosifolius* (thimbleberry) and *Psidium cattleianum*, seed predation by rats, and susceptibility to black twig borer are also threats to this species (59 FR 62346; USFWS 1997; HINHP 2000; K. Wood *in litt.* 1999). Habitat degradation and damage to plants by feral goats and axis deer are potential threats if the integrity of the fence currently surrounding the population is compromised.

Remya mauiensis

Remya mauiensis is a short-lived perennial member of the aster family (Asteraceae). The genus *Remya* is endemic to the Hawaiian Islands. It is a small perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling, or scandent to weakly erect branches, covered with a fine tan fuzz near their tips. The leaves are narrow, up to about 15 cm (6 in.) long, and are bunched at the ends of the branches. The coarsely toothed leaf blade is 5 to 12 times longer than wide, has a long-attenuate base, and a petiole of less than 1 cm (0.4 in.) long. The leaves are green on the upper surface and covered with a dense mat of fine white hairs on the lower surface. The flowers are small, about 0.7 cm (0.3 in.) in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. Currently, *R. mauiensis* is known from three small populations on adjacent ridges on State-owned land in West Maui: Manawainui, Papaalua Gulch, and Ukemehame (GDSI 2000). Because of the sprawling habit of this species, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however, there is an estimate of 26 individuals (HINHP Database 2000).

Remya mauiensis grows chiefly on steep, north or northeast-facing slopes between 850 to 1,250 m (2,800 to 4,100 ft) in elevation, primarily in mixed mesophytic forests, *Metrosideros polymorpha* montane wet forest, or the remnants of such forests. Associated species include: *Diospyros sandwicensis* (lama), *Xylosma hawaiiensis, Nestegis sandwicensis, Myrsine lessertiana* (kolea lau nui), *Wikstroemia* sp. (akia), *Dodonaea viscosa, Diplazium sandwichianum, Lysimachia remyi, Microlepia strigosa* (palapalai), *Melicope* sp., *Alyxia oliviformis* (maile), *Psychotria mariniana, Ctenitis squamigera, Pleomele auwahiensis*, and *Styphelia tameiameiae* (HINHP Database 2000, USFWS 1997).

This species is threatened by extinction due to random catastrophic environmental events by virtue of the extremely small size of the populations coupled with a limited distribution of the remaining populations. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to this species is the loss and degradation of its habitat due to the introduction of alien plants, such as *Rubus rosifolius* and *Tibouchina herbacea*, and feral pigs (56 FR 1450; USFWS 1997).

Schiedea haleakalensis

Schiedea haleakalensis, a short-lived perennial of the pink family (Caryophyllaceae), is a hairless shrub, with slightly fleshy, narrow leaves and a single vein. Flowers are arranged in clusters at the ends of the branches. The flower has 5 green, oval sepals; no petals; 5 nectaries; and 10 stamens. Capsules contain grayish to reddish brown seeds. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Wagner *et al.* 1999).

Schiedea haleakalensis is gynodioecious (individuals either have only female flowers or only perfect flowers) and so likely needs cross pollination by small insects. Small, short-flighted flies and moths have been observed visiting flowers. Fruits and seeds have been observed from August through September. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from Holua and the west side of Kaupo Gap in the federally owned Haleakala National Park (GDSI 2000; HINHP Database 2000). The two populations are estimated to contain a total of 100 to 200 individuals, which together extend over a total area of 11 ha (28 ac) (HINHP Database 2000).

Schiedea haleakalensis typically grows on sheer, north-facing arid subalpine cliffs at elevations of 1,830 to 2,140 m (6,000 to 7,020 ft) (Wagner *et al.* 1999). Associated vegetation includes *Artemisia mauiensis* (hinahina), *Bidens micrantha* (NCN), *Dubautia* sp., and *Viola chamissoniana* (pamakani) (USFWS 1997; HINHP Database 2000).

The greatest threats to *Schiedea haleakalensis* are fire and other catastrophic events that could severely impact the species due the small number and restricted distribution of remaining individuals and populations (57 FR 20772; USFWS 1997).

Tetramolopium capillare

Tetramolopium capillare, a short-lived perennial of the sunflower family (Asteraceae), is a sprawling shrub with stems measuring 50 to 80 cm (20 to 31 in.) long and covered with many glands when young. The very firm, stalkless leaves are involute (edges rolled under). Flower heads are situated singly at the ends of stalks. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in.) high and 7 to 10 mm (0.3 to 0.4 in.) in diameter. In each flower head, 30 to 50 white, male ray florets are surround by 15 to 25 greenish yellow tinged with red, functionally female florets. The achenes (dry, one-seeded fruits) are topped by a white pappus comprising a single series of bristles. *T. capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *T. remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Historically, *Tetramolopium capillare* is known from Lahainaluna to Wailuku on West Maui (Lowrey 1999). Currently, four known populations with a total of between 130 and 150 individuals are known to be extant near Halepohaku, Koai, and Kauaula on State and privately owned lands (GDSI 2000; USFWS 2000).

Tetramolopium capillare typically grows on rocky substrates at elevations between 610 and 1,050 m (2,000–3,440 ft) in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland or in *Heteropogon contortus* (pili grass) lowland dry forest. Plant species associated with the higher elevation populations include *Dodonaea viscosa, Metrosideros polymorpha*, and *Styphelia tameiameiae. Dodonaea viscosa, Heteropogon contortus*, and *Myoporum sandwicense* (naio) are associates of the other populations (USFWS 1997).

The major threats to *Tetramolopium capillare* are fires; competition from alien plant species, particularly *Lantana camara, Leucaena leucocephala* (koa haole), and *Rhynchelytrum repens* (natal redtop); and reduced reproductive vigor and/or extinction from random environmental events due to the small number of existing populations and individuals (59 FR 49860; USFWS 1997).

Multi-Island Species

Alectryon macrococcus

Alectryon macrococcus, a long-lived perennial and a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and net-veined paper or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, only when young in *A. macrococcus* var. *macrococcus*, and persistent in *A. macrococcus* var. *auwahiensis*. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (1 in.) or more in diameter (57 FR 20772; Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *A. macrococcus*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown.

Historically and currently, *Alectryon macrococcus* var. *macrococcus* is known from Kauai, Oahu, Molokai, and Maui. On Maui, this taxon is found along the Honokowai Ditch Trail and in Launiupoko Valley, on or near State and privately owned lands (GDSI 2000; HINHP Database 2000). There are three populations with a total of four individuals (HINHP Database 2000). Currently, *A. macrococcus* var. *auwahiensis* is known from three populations with 22 individuals on leeward East Maui in the Auwahi and Kanaio districts, and on the slopes of Haleakala on private land and State-owned, but privately leased, ranchland (Medeiros *et al.* 1986; GDSI 2000; HINHP Database 2000).

The habitat of *Alectryon macrococcus* var. *macrococcus* is dry slopes or in gulches in dense mesic mixed *Metrosideros polymorpha* forest or *Diospyros sandwicensis* forest at elevations of 360–1,070 m (1,180–3,510 ft) (HINHP Database 2000). Associated native plants include *Nestegis sandwicensis* and *Antidesma platyphyllum* (hame). The habitat of *A. macrococcus* var. *auwahiensis* is mixed lowland dry forest at elevations of 360–1,070 m (1,180–3,510 ft). Associated native plants include *Diospyros sandwicensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nestegis sandwicensis, Streblus pendulinus* (aiai), and *Pleomele auwahiensis* (HINHP Database 2000; K. Wood, *in litt.* 1999).

The threats to *Alectryon macrococcus* var. *macrococcus* on Maui include feral goats and pigs; alien plant species, such as *Melinus minutiflora* (molasses grass), *Pennisetum clandestinum* (kikuyu grass), *Schinus terebinthifolius* (Christmasberry), and *Psidium cattleianum*; damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic. The threats to *A. macrococcus* var. *auwahiensis* on Maui are damage from the black twig borer; seed predation by rats and mice; habitat degradation by feral pigs and escaped cattle; seed predation by insects (probably *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic (57 FR 20772).

Bidens micrantha ssp. *kalealaha*

Bidens micrantha ssp. kalealaha, a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished from other subspecies by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (57 FR 20772; Ganders and Nagata 1999).

Bidens micrantha is known to hybridize with other native *Bidens*, such as *B. mauiensis* and *B. menziesii*, and possibly *B. conjuncta* (Ganders and Nagata 1999). Little else is known about the life history of *Bidens micrantha* ssp. *kalealaha*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown.

Historically, *Bidens micrantha ssp. kalealaha* was known from Lanai, the south slope of Haleakala on East Maui,

and from one locality on West Maui (Ganders and Nagata 1999; HINHP Database 2000). Currently, this taxon remains only on East Maui in Kahua, Manawainui to Wailaulau, and in Haleakala National Park, on State and Federal lands. There are a total of four populations with less than 2,000 individuals altogether (USFWS 1999; GDSI 2000; HINHP Database 2000).

The habitat of *Bidens micrantha ssp. kalealaha* is blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, or cliff faces at elevations of 1,600 to 2,300 m (5,250 to 7,550 ft) (Ganders and Nagata 1999; HINHP Database 2000). Associated native species include *Styphelia tameiameiae, Coprosma montana, Dodonaea viscosa, Lysimachia remyi, Viola chamissoniana, Dubautia menziesii,* and *Dubautia platyphylla* (na ena e) (Ganders and Nagata 1999; HINHP Database 2000).

The threats to this species on Maui are habitat destruction by feral goats, pigs, and cattle; competition from a variety of invasive plant species; and fire (57 FR 20772).

Bonamia menziesii

Bonamia menziesii, a short-lived perennial member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, one location on West Maui, and the island of Hawaii (HINHP Database 2000). Currently, this species is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Maui, this species is known from Puu o kali; Honokowai Ditch Trail; and Kanaio NAR. Currently there are three populations containing a total of 11 individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Bonamia menziesii is found on a'a lava in mixed open dry forest, or *Erythrina sandwicensis* (wiliwili) lowland dry forest, and in mesic mixed *Metrosideros polymorpha* forest at elevations between 150 and 850 m (490 and 2,800 ft) (HINHP database 1999; K. Wood, *in litt.* 1999). Associated species include *Nestegis sandwicensis, Pleomele auwahiensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nothocestrum latifolium* (aiea), *Pouteria sandwicensis, Achyranthes splendens* (NCN), *Acacia koaia* (koaia), *Sida fallax, Reynoldsia sandwicensis* (ohe), *Sicyos* sp. (anunu), *Lipochaeta rockii* (nehe), *Nototrichium* sp. (kului), *Myoporum sandwicense* (HINHP Database 2000; K. Wood, *in litt.* 1999).

The primary threats to this species on Maui are habitat degradation and possible predation by feral pigs, goats, axis deer, and cattle; competition with a variety of alien plant species, particularly *Pennisetum setaceum, Lantana camara,* and *Bocconia frutescens;* and an alien beetle (*Physomerus grossipes*) (59 FR 56333).

Cenchrus agrimonioides

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades which are flat or folded and have a prominent midrib. There are two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown, however, this species has been observed to produce fruit year round (USFWS 1999).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from the Oahu, Lanai, and the south slope of Haleakala and Ulupalakua on Maui, and an undocumented report from the Island of Hawaii (61 FR 53108). Historically, *C. agrimonioides* var *laysanensis* was known from Laysan, Kure, and Midway, all within the Northwestern Hawaiian Islands National Wildlife Refuge. This variety has not been seen since 1973 (61 FR 53108; Corn 1980). Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Maui, this variety is known from a single population within the Kanaio NAR, containing an unknown number of individuals (HINHP Database 2000).

Cenchrus agrimonioides var. *agrimonioides* is found on rough a'a lava scree in mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 560 and 820 m (1,830 and 2,700 ft). Associated plants include *Alyxia oliviformis, Canthium odoratum* (alahee), *Carex* sp., *Diospyros* sp. (lama), *Styphelia tameiameiae,* and *Eragrostis variabilis* (61 FR 53108; HINHP Database 2000).

The major threats to the only known population of *Cenchrus agrimonioides* var. *agrimonioides* on Maui are competition with alien plants; browsing and habitat degradation by goats and cattle; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (61 FR 53108).

Centaurium sebaeoides

Centaurium sebaeoides is an annual herb in the gentian family (Gentianaceae), with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea,* which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (56 FR 55770; Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains (USFWS 1995c). Other than that, little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental regulations, and limiting factors are generally unknown.

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999). On Maui, there are three populations of this species, with a total of more than 50 individuals, on or near State and privately owned lands, north of Waihee; Puu Koae; and near the mouth of Makamakaole Stream (HINHP Database 2000).

This species typically grows in volcanic or clay soils or on cliffs in arid coastal areas below 250 m (820 ft) elevation (56 FR 55770; Wagner *et al.* 1999). Associated species include *Panicum torridum* (kakonakona), *Lysimachia mauritiana* (kolokolo kuahiwi), *Schiedea globosa* (NCN), *Lipochaeta integrifolia* (nehe), *Argemone glauca* (pua kala), *Bidens mauiensis, Lycium sandwicense* (ohelo kai), and *Dicranopteris linearis* (HINHP Database 2000).

The major threats to this species on Maui are habitat degradation by feral goats and cattle; competition from the alien plant species *Leucaena leucocephala;* trampling by humans on or near trails; and fire (56 FR 55770).

Clermontia lindseyana

Clermontia lindseyana, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a small, branched tree that grows 2.5–6 m (8.2 to 20 ft) tall (Lammers 1999). *Clermontia lindseyana* is either terrestrial or epiphytic, living on the surface of other plants. The upper surface of the oblong-shaped leaves is dark green while the lower is pale green or purplish and hairy. Leaf stalks are 2.5–7 cm (1–2.8 in.) long and hairy. Berries are 2.5–4 cm (1–1.6 in.) wide, almost round, and orange. *Clermontia lindseyana* is easily separable from the other taxa within this genus by several characters: much larger leaves and flowers, similar petals and sepals, and spreading floral lobes (Cuddihy *et al.* 1983; Lammers 1999). Rock (1962) commented on the leaves being conspicuously hairy beneath.

This species was observed in fruit from June to October, and in flower from February to August (HINHP Database 2000). No other life history information is currently available.

Historically, *Clermontia lindseyana* was known on Maui from the southern slope of Haleakala and the eastern portion of the island, and on the island of Hawaii. Since 1975, populations of *Clermontia lindseyana* have been identified on Maui and Hawaii (59 FR 10305). The two Maui populations are located in Waiopai and Wailaulau Gulches in the Kahikinui Forest Reserve and in Kula Forest Reserve on State and private lands, and are estimated to total about 330 individuals (Arthur Medeiros, U.S. Geological Survey, Biological Resources Division, *in litt.* 2000; HINHP Database 2000; GDSI 2000).

The extant populations grow in remnant *Acacia koa* mesic forest on the leeward slopes between 1,311 and 2,150 m (4,300 and 7,041 ft). Associated native taxa include the following native plant species: *Cyrtandra oxybapha,* native fern species, *Phlegmariurus mannii, Ilex anomala* (aiea), *Coprosma* sp., and *Myrsine* sp. (HINHP Database 2000; USFWS 1996).

The threats to *Clermontia lindseyana* are trampling and grazing by cattle, trampling and browsing by goats, and rooting and trampling by pigs; competition with the alien plant *Pennisetum clandestinum;* and consumption of berries, flowers, and vegetation by black rats (59 FR 10305).

Clermontia oblongifolia ssp. *mauiensis*

Clermontia oblongifolia ssp. *mauiensis,* a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves on leaf stalks (petioles). *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium) (57 FR 20772; Lammers 1988, 1999). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while ssp. *oblongifolia* is only known from Oahu and ssp. *brevipes* is only known from Molokai.

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July (Rock 1919). Little is known regarding pollination vectors, seed dispersal, or other factors.

Historically, *Clermontia oblongifolia* ssp. *mauiensis* was known from Lanai and from Honomanu Valley on Haleakala, East Maui (57 FR 20772; Lammers 1999). Currently, it is reported from Lanai and Maui. On West Maui, this taxon is known from one population with an unknown number of individuals, along the trail to Puu Kukui in the Honokowai section of the West Maui NAR on or near State and privately owned lands (GDSI 2000; HINHP Database 2000; Lammers 1999).

This plant typically grows on the sides of ridges in *Metrosideros polymorpha*-dominated montane wet forest at elevations between 850–1,000 m (2,800–3,280 ft) (57 FR 20772; HINHP Database 2000). Associated native species include *Dicranopteris linearis, Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., and *Melicope* sp. (57 FR 20772; HINHP Database 2000).

The only known population of this species on Maui is vulnerable to extinction from a natural or human-caused environmental disturbance due to its small size; depressed reproductive vigor; and habitat degradation by feral pigs (57 FR 20772; USFWS 1997).

Colubrina oppositifolia

Colubrina oppositifolia, a member of the buckthorn family (Rhamnaceae), is a long-lived tree with extremely hard red wood. This species is readily distinguished from the other species in Hawaii by the opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

This species was observed in fruit and flower during September 1929 and June 1968, and in flower during December 1947 and January 1984 (HINHP Database 2000). No other life history information is currently available.

Historically and currently, *Colubrina oppositifolia* is known from Oahu, Maui, and the Island of Hawaii (59 FR 10305). Currently on Maui, there are two populations containing one individual each on privately owned lands in the Kapunakea Preserve on West Maui and on privately owned lands in the Auwahi area of East Maui (Warshauer 1998; GDSI 2000; HINHP Database 2000).

Habitats of this species are lowland dry and mesic forests dominated by *Diospyros sandwicensis,* and found at elevations between 240 and 915 m (800 and 3,000 ft). Associated native species include *Dodonaea viscosa, Canavalia* sp. (awikiwiki), *Wikstroemia* sp., *Canthium odoratum,* and *Reynoldsia sandwicensis* (HINHP Database 2000).

The threats to this species on Maui are habitat destruction by feral pigs; competition with the alien plants *Lantana camara, Pennisetum setaceum,* and *Schinus terebinthifolius;* black twig borer; Chinese rose beetles (*Adoretus sinicus*); fire; and its small population numbers and limited distribution (59 FR 10305; USFWS 1996).

Ctenitis squamigera

Ctenitis squamigera is a short-lived perennial of the wood fern family (Dryopteridaceae) (Wagner and Wagner 1992). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in.) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in.) long and 1 mm (0.04 in.) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments (Degener and Degener 1957). The indusium is whitish before wrinkling, thin, suborbicular with a narra sinus extending about half way, glabrous except for a circular margin which is ciliolate with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base (Degener and Degener 1957). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Wagner and Wagner 1992).

Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown.

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii (HINHP Database 2000). It is currently found on Oahu, Lanai,

Molokai, and Maui. There are currently six populations with between 52 and 58 individuals on State and privately owned lands on the island of Maui (GDSI 2000; Hank Oppenheimer, Maui Pineapple Co., *in litt.* 2000; K. Wood, pers. comm. 2000; Joel Lau, HINHP, pers. comm. 2000 and *in litt.* 2000). These populations are all on West Maui, in Honolua Valley; Kahanaiki Gulch; Kanaha Valley; Ukumehame Valley; Kapunakea Preserve; and Iao Valley (H. Oppenheimer, *in litt.* 2000; K. Wood and J. Lau, pers. comm. 2000).

This species is found in the forest understory at elevations of 380 to 1,000 m (1,250 to 3,280 ft) (HINHP Database 2000; H. Oppenheimer, pers. comm. 2000), in *Metrosideros polymorpha* montane wet forest, *Metrosideros polymorpha-Diospyros* sp. mesic forest and diverse mesic forest (HINHP Database 2000). Associated native plant taxa include *Alyxia oliviformis, Freycinetia arborea* (ieie), *Coprosma* sp., *Pleomele* sp. (hala pepe), *Thelypteris globulifera* (NCN), *Sadleria* sp. (amau), *Doodia* sp. (okupukupu lauii), *Pittosporum* sp. (ho awa), *Dryopteris* sp., *Bobea* sp. (ahakea), *Antidesma* sp. (hame), *Peperomia* sp., *Dicranopteris linearis, Schiedea pubescens* var. *pubescens, Hibiscus kokio* ssp. kokio (kokio), *Hedyotis formosa, Pritchardia forbesiana* (loulu), *Myrsine* sp., *Psychotria* sp. (kopiko), and *Xylosma* sp. (maua) (USFWS 1998a; HINHP Database 2000).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs, goats, and axis deer; competition with alien plant taxa, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; and extinction from naturally occurring events due to the small number of existing populations and individuals (USFWS 1998a).

Cyanea grimesiana ssp. *grimesiana*

Cyanea grimesiana ssp. *grimesiana*, a short-lived member of the bellflower family (Campanulaceae), is a perennial shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

Little is known about the life history of this plant. On Molokai, flowering plants have been reported in July and August. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and scattered locations on Maui (61 FR 53108). Currently on Maui, there are two populations with a total of five individuals in Iao Valley on State and privately owned lands (61 FR 53108; GDSI 2000; HINHP Database 2000).

This species is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*, on rocky or steep slopes of stream banks, at elevations between 350 and 945 m (1,150 and 3,100 ft). Associated plants include *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., and *Xylosma* sp. (61 FR 53108).

The threats to this species on Maui are habitat degradation and/or destruction caused by axis deer, goats, and pigs; competition with various alien plants; randomly naturally occurring events that could cause extinction due to the small number of existing individuals; trampling by hikers; landslides; rats; and slugs (61 FR 53108; USFWS 1999).

Cyanea lobata

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1999).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in.) in height (Rock 1919, Degener 1936).

Historically, *Cyanea lobata* was known from Lanai and West Maui (Lammers 1999; HINHP Database 2000). It is no longer extant on Lanai, and was rediscovered at 600 m (1,970 ft) elevation on privately owned land in Waikapu Valley on West Maui in 1982 (HINHP Database 2000). The single known plant of this species was later destroyed by a landslide triggered by heavy rains (Hobdy *et al.* 1990; HINHP Database 2000). Another population of three individuals was discovered in 1996 at 560 m (1,840 ft) elevation on privately owned land in Honokohau Valley on West Maui (GDSI 2000; HINHP Database 2000).

This species has been seen and collected on steep stream banks in deep shade in wet forest at elevations of 550–915 m (1,800–3,000 ft) with *Touchardia latifolia* (olona), *Morinda trimera* (noni), and *Athyrium* sp. (akolea) (57 FR 20772; Lammers 1999; HINHP Database 2000).

The threats to this species on Maui are habitat degradation by feral pigs; depressed reproductive vigor; and natural or human-caused environmental disturbance that could easily be catastrophic to the only known population due to the small number of remaining individuals and the limited and scattered distribution of the species (57 FR 20772; USFWS 1997).

Cyrtandra munroi

Cyrtandra munroi, a short-lived perennial and member of the African violet family (Gesneriaceae), is a shrub with opposite, elliptic to almost circular leaves which are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.* 1999).

Some work has been done on the reproductive biology of some species of *Cyrtandra* (USFWS 1995b), but not on that of *C. munroi* specifically. The pollinators of these plants have not been identified, although studies indicate that a specific pollinator may be necessary for successful pollination. Seed dispersal may be carried out by birds which eat the fruits (USFWS 1995b). Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Historically and currently, *Cyrtandra munroi* is known from Lanai and West Maui (Wagner *et al.* 1999; HINHP Database 2000). Currently on Maui, there is a single population in Kahana Valley containing more than 30 individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000).

The habitat of this species is lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest, typically on rich, moist to wet, moderately steep talus slopes from 300 to 920 m (980–3,020 ft). It occurs on soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops. Associated native species include *Diospyros* sp., *Hedyotis acuminata, Clermontia* sp., *Alyxia oliviformis, Bobea* sp., *Coprosma* sp., *Freycinetia arborea, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp. (mamaki), *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp. (naupaka), *Xylosma* sp., and other *Cyrtandra* sp. (57 FR 20772; HINHP Database 2000).

The threats to this species on Maui are from browsing and habitat disturbance by axis deer; competition with the alien plant species *Psidium cattleianum, Myrica faya* (firetree), *Leptospermum scoparium* (tea tree), *Pluchea symphytifolia* (sourbush), *Melinis minutiflora, Rubus rosifolius,* and *Paspalum conjugatum* (Hilo grass); loss of appropriate pollinators; a very small number of extant individuals which can cause depressed reproductive vigor; and the effects of random environmental events that could easily be catastrophic to the only known population on Maui (57 FR 20772; USFWS 1995b).

Diellia erecta

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of 3 to 9 lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in.) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Smith 1934; Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of this taxon. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, scattered locations on Maui, and various locations on the Island of Hawaii (USFWS 1999). Currently, it is only known from Molokai, Maui, and Hawaii. On Maui, there are four known populations containing 23 individual plants on or near State or privately owned lands in Iao Valley, Manawainui Plant Sanctuary, Papalaua Gulch, and Waiopai Gulch (GDSI 2000; HINHP Database 2000).

This species is found in deep shade on steep slopes or gulch bottoms in *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest at elevations between 210 and 1,590 m (700 and 5,200 ft) (HINHP Database 2000; USFWS 1999). Associated native plant species include *Nestegis* sp., *Styphelia tameiameiae, Melicope* sp., *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata* (NCN), *Myrsine* sp., *Psychotria* sp., *Pleomele auwahiensis, Syzygium sandwicensis* (ohia ha), and *Wikstroemia* sp. (HINHP Database 2000; USFWS 1999).

The major threats to *Diellia erecta* on Maui are habitat degradation by pigs, goats, and cattle; competition with alien plant species, including *Blechnum occidentale* (NCN); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 56333; USFWS 1996).

Diplazium molokaiense

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

There is little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Ainahou Valley and Maliko Gulch (East Maui) and Wailuku (Iao) Valley and Waikapu (West Maui) on Maui (HINHP Database 2000). Currently, this species is only known from Maui. Two populations with one individual each are found in Waiopai Gulch and Makawao Forest Reserve, on or near State or privately owned lands (Warshauer 1998; GDSI 2000; HINHP Database 2000).

This species occurs near water falls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest between 850 and 1,680 m (2,800 and 5,500 ft) in elevation (USFWS 1998a; HINHP Database 2000).

The primary threats on Maui are habitat degradation by feral goats, cattle, pigs, and axis deer; competition with alien plant taxa; decreased reproductive vigor; and extinction from randomly occurring natural events due to the small number of populations and individuals (59 FR 49025; USFWS 1998a; HINHP Database 2000).

Flueggea neowawraea

Flueggea neowawraea, a long-lived perennial and a member of the spurge family (Euphorbiaceae), is a large tree with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Linney 1982; Hayden 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed (Hayden 1999). Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Flueggea neowawraea* was known from the islands of Molokai, Oahu, Kauai, and Hawaii (HINHP Database 2000). Currently, populations are known from Kauai, Oahu, East Maui, and Hawaii. It is now known from two populations with a total of three trees on East Maui at Auwahi, and above the Lualailua Hills on the southwest slope of Haleakala, on State and privately owned lands (GDSI 2000; HINHP Database 2000; Mahealani Kaiaokamelie, (formerly with) Ulupalakua Ranch, *in litt.* 2000).

Flueggea neowawraea occurs in dry or mesic forest at elevations of 250 to 1,000 m (820 to 3,280 ft) (Hayden 1999). Associated native plant species include *Alectryon macrococcus, Bobea timonioides* (ahakea), *Charpentiera* sp. (papala), *Hibiscus* sp. (aloalo), *Melicope* sp., *Myrsine lanaiensis* (kolea), *Tetraplasandra* sp. (ohe ohe), *Psychotria mariniana* (kopiko), *Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum* (keahi), *Diospyros* sp., *Antidesma pulvinatum* (hame), *A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis* (hao), *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis,* and *Streblus pendulinus* (HINHP Database 2000).

The threats to the populations on Maui are the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with alien plant species; depressed reproductive vigor; the risk of extinction from a random environmental event due to the small number of individuals; and predation of the fruit by rats (59 FR 56333; USFWS 1999; HINHP Database 2000).

Hedyotis coriacea

Hedyotis coriacea, a member of the coffee family (Rubiaceae), is a small, short-lived perennial shrub with leathery leaves which are generally elliptic to oblong in shape, 3 to 8 cm (1.2 to 3.1 in.) long and usually 1.5 to 3 cm (0.6 to 1.2 in.) wide. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are

longer than wide and flower buds which are square in cross section (Wagner *et al.* 1999).

Little is known about the life history of this plant. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hedyotis coriacea* was known from Oahu and the Island of Hawaii (HINHP Database 2000). Considered extinct on all islands in recent years, this species was rediscovered in 1990 by Steve Perlman in the State-owned Lihau section of the West Maui NAR and in 1991 on the 1859 lava flow in the Pohakuloa Training Area, Island of Hawaii (HINHP Database 2000; USFWS 1997). Currently, only a single individual is known from West Maui on State-owned land (GDSI 2000; HINHP Database 2000).

Hedyotis coriacea is found on steep, rocky, slopes in dry lowland *Dodonaea viscosa* dominated shrublands at elevations between 470 to 2,300 m (1,540 to 7,550 ft) (HINHP Database 2000). Associated species include *Sida fallax, Gouania hillebrandii* (NCN), *Bidens menziesii, Lipochaeta livarum, Myoporum* sp. (naio), and *Schiedea menziesii* (NCN) (HINHP Database 2000).

The single remaining individual of *Hedyotis coriacea* on Maui is threatened by extinction from a random naturally occurring event.

Hedyotis mannii

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial plant with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or winged. The leaves are opposite, thin in texture, and elliptic to sometimes lance-shaped. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular. Flowers are arranged in loose clusters up to 30 cm (1 ft) long at the ends of the stems and are either bisexual or female. This species' growth habit, its quadrangular or winged stems, the shape, size, and texture of its leaves, and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Currently, no life history information is available for this species (USFWS 1996).

Currently and historically, *Hedyotis mannii* is known from Lanai, West Maui, and Molokai (USFWS 1992). On Maui, there is a single population of approximately 20 individuals located on private land in Kauaula Valley (GDSI 2000; K. Wood *in litt.* 2000).

The population on Maui is found on basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest between 825 and 885 m (2,700 and 2,900 ft) (K. Wood *in litt.* 2000). Associated plant species include *Machaerina* sp. (uki), *Carex meyenii* (NCN), *Phyllostegia* sp. (NCN), Hedyotis *acuminata, Cyrtandra platyphylla* (haiwale), *Cyanea* sp. (haha), and *Isachne distichophylla* (ohe) (K. Wood *in litt.* 2000).

Hedyotis mannii on Maui is threatened by landslides; competition with the alien plant species *Rubus rosifolius, Ageratina adenophora, Buddleia asiatica* (butterfly bush), *Pluchea carolinensis* (sourbush), and *Clidemia hirta;* and the low number of individuals makes it extremely vulnerable to extinction by random naturally occurring events (USFWS 1996; K. Wood *in litt.* 2000).

Hesperomannia arborescens

Hesperomonnia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species was observed in flower from April through June and fruit during March 1993 and June 1997 (USFWS 1998). No other information is available on reproductive cycles, longevity, specific environmental requirements, and limiting factors.

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu (HINHP Database 2000). This species is now known from Oahu, Molokai, and Maui. There is currently one population with four individuals on East Maui, between Lanilili and Keahikauo on State and privately-owned lands (GDSI 2000; HINHP Database 2000).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest between 360 and 750 m (1,180 and 2,460 ft) in elevation, in association with *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Isachne distichophylla, Pipturus* sp., *Antidesma* sp., *Psychotria* sp., *Clermontia* sp., *Cibotium* sp., *Dicranopteris linearis, Bobea* sp., *Coprosma* sp., *Sadleria* sp., *Melicope* sp., *Machaerina* sp., *Cheirodendron* sp., and *Freycinetia arborea* (HINHP Database 2000).

The major threats to *Hesperomannia arborescens* on Maui are habitat degradation by feral pigs and goats; competition with alien plant taxa; extinction due to random environmental events or reduced reproductive vigor due to the small number of individuals in one remaining population; and impact by humans (59 FR 14482; HINHP Database 2000).

Hesperomannia arbuscula

Hesperomannia arbuscula, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

Hesperomannia arbusculo usually flowers in the spring depending on precipitation. Seeds mature in about six weeks and trees last about 10 to 15 years (USFWS 1995c). No other information is available on reproductive cycles, longevity, specific environmental requirements, and limiting factors.

Historically and currently, *Hesperomannia arbuscula* is known from Oahu and West Maui (HINHP Database 2000). On Maui, this species is found in three populations, containing 13 individuals, on privately owned land in Iao and Waihee Valleys (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Hesperomannia arbuscula typically grows on slopes and ridges in mesic or wet forest dominated by *Acacia koa* and *Metrosideros polymorpha* at elevations of 350 to 900 m (1,150 to 2,950 ft) (Wagner et al. 1999; HINHP Database 2000). Associated species include *Bidens* sp., *Tetroplasandra* sp., *Alyxia oliviformis*, and *Psychotria* sp. (HINHP Database 2000).

The major threats to *Hesperomannia arbuscula* on Maui are habitat degradation by feral pigs, competition from alien plant species, trampling by humans, and extinction from naturally occurring random events due to the small number of populations (56 FR 55770).

Hibiscus brackenridgei

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae). The species is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length (USFWS 1999). Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and Hawaii (USFWS 1999; HINHP Database 2000). *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined (USFWS 1999). Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is known from Oahu and from undocumented observations on Kauai (Bates 1999; USFWS 1999). *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and Hawaii. On Maui, *Hibiscus brackenridgei* ssp. *brackenridgei* is found in five populations, containing 38 individuals, on or near State and privately owned lands at the northern base of Puu o kali, in the Lihau section of the West Maui NAR, Kaonohua Gulch, Keokea, and south of Puu o kali (GDSI 2000; HINHP Database 2000).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry forest from 130 to 800 m (425 to 2,625 ft) in elevation, sometimes with *Erythrina sandwicensis* as the dominant tree (Geesink *et al.* 1999; HINHP Database 2000). Associated plant species include *Myoporum* sp., *Chenopodium* sp. (ahe ahea), *Achyranthes* sp. (NCN), *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Canthium odoratum, Eurya sandwicensis* (anini), *Isachne distichophylla*, and *Sida fallax* (HINHP Database 2000).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Maui are habitat degradation and possible predation by pigs, goats, cattle, axis deer, and rats; competition with alien plant species; and susceptibility to extinction caused by random environmental events or reduced reproductive vigor due to small population size and a limited number of populations (59 FR 56333).

Ischaemum byrone

Ischaemum byrone, a short-lived member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a di- or trichotomously-branching inflorescence (O'Connor 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1996).

Historically, *Ischaemum byrone* was reported from Oahu, Molokai, East Maui, the Island of Hawaii, and an undocumented site on Kauai (59 FR 10305; HINHP Database 2000). Currently, this species is found on Molokai, Hawaii, and Maui. On Maui, it is known from along the coast on private and State owned lands at Kahanu Gardens, Pauwalu Point, Honokalani, Kauiki Head, and on the following offshore islets: Keopuka Islet, Mokuhuki Islet, and Puukii Islet (GDSI 2000; HINHP Database 2000). There is a total of six populations with less than 3,000 individuals (HINHP Database 2000).

The habitat of *Ischaemum byrone* is coastal dry shrubland, occurring near the ocean among rocks or on basalt cliffs between sea level and 75 m (250 ft) (O'Connor 1999). Associated taxa include *Bidens* sp., *Fimbristylis cymosa* (Maui u aki aki), and *Scaevola sericea* (naupaka kahakai) (HINHP Database 2000).

The most serious threat to *Ischaemum byrone* is the invasion of alien plants, particularly *Digitaria ciliaris* (Henry's crabgrass), *Ardisia elliptica* (shoebutton ardesia) and *Casuarina equisetifolia* (paina). Additionally, fire may pose a threat in areas infested with alien grasses, provided enough fuel is present. Other potential threats include grazing and browsing by goats and axis deer; disturbance incurred from these ungulates further promotes the introduction and establishment of alien weeds. Some populations are also threatened from residential development (59 FR 10305; USFWS 1996; HINHP Database 2000).

Lysimachia lydgatei

Lysimachia lydgatei, a short-lived perennial member of the primrose family (Primulaceae), is a sprawling, branched shrub with stems from 1 to 1.3 m (3 to 4 ft) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Lysimachia lydgatei was known historically from a gulch behind Lahaina on West Maui and from Oahu. Currently, it is found only on Maui in the following locations on State-owned land in the Lihau section of the West Maui NAR: Halepohaku, Helu, and Kauaula-Olowalu (Wagner *et al.* 1999; HINHP Database 2000). The three Maui populations number approximately 240 individuals (GDSI 2000).

Lysimachia lydgatei typically grows on the sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros-Cheirodendron* montane forest between elevations of about 915 to 1,415 m (3,000–4,640 ft) (HINHP Database 2000). Associated vegetation includes *Lycopodium* sp. (wawae iole), *Ilex* sp., *Dodonaea viscosa, Vaccinium* sp., *Eurya sandwicensis, Styphelia tameiameiae, Coprosma* sp., *Ochrosia* sp. (holei), *Astelia* sp. (painiu), *Broussaisia arguta*, and mat ferns, such as *Dicranopteris* sp. (HINHP Database 2000).

The greatest threats to *Lysimachia lydgatei* are the threat of extinction from a random environmental event due to the small number of populations; competition with alien plant species, such as *Rubus argutus;* and fire (57 FR 20772; USFWS 1997).

Mariscus pennatiformis

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. *Mariscus pennatiformis* is subdivided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis*, which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the achenes. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1999).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements,

and limiting factors is generally unknown (USFWS 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui (Keanae Valley, Hana, and Nahiku), the Island of Hawaii, and from Laysan in the Northwestern Hawaiian Islands (HINHP Database 2000). *M. pennatiformis* ssp. *bryanii* is only known from Laysan Island in the Northwestern Hawaiian Islands National Wildlife Refuge. *M. pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. One population of approximately 30 individuals is found on State owned land near the mouth of Hanawi Stream (GDSI 2000; K. Wood *in litt.* 1999).

On Maui, *Mariscus pennatiformis* ssp. *pennatiformis* is found at elevations between sea-level and 6 m (20 ft) on brown soil with talus in *Pandanus* coastal wet cliffs and within reach of ocean spray. Associated native plant species include: *Sadleria pallida* (amau), *Pandanus tectorius* (hala), *Lysimachia mauritiana* (kolokolo kuahiwi), *Cyperus laevigatus* (makaloa), *Eragrostis variabilis*, and *Ipomoea* sp. (morning glory) (Koyama 1999; HINHP Database 2000; K. Wood *in litt.* 1999).

Threats to the only known population of *Mariscus pennatiformis* ssp. *pennatiformis* on Maui include grazing and habitat destruction caused by ungulates; competition from alien plant species; and extinction from random naturally occurring events (59 FR 56333; USFWS 1999).

Melicope knudsenii

Melicope knudsenii, a long-lived perennial and a member of the citrus family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The species is distinguished from *M. haupensis* and other members of the genus by the distinct carpels present in the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown.

Historically, *Melicope knudsenii* was known only from the southeast slope of Haleakala on Maui and from Kauai (HINHP Database 2000). This species remains on Kauai, but is only found on privately owned lands at the following locations on Maui: Auwahi, Puu Mahoi, and the Kanaio area. There are three populations with a single individual at each location (GDSI 2000; HINHP Database 2000).

Melicope knudsenii grows on forested flats or talus slopes in *Nestegis-Pleomele* mixed open dry forests at elevations of about 450 to 1,220 m (1,480 to 4,000 ft) (Stone *et al.* 1999). Associated native plant species include *Dodonaea viscosa*, *Osteomeles anthyllidifolia*, *Alphitonia ponderosa*, *Santalum ellipticum*, and *Xylosma hawaiiensis* (HINHP Database 2000).

Threats to *Melicope knudsenii* include habitat degradation by alien animals, such as goats and pigs; reduced reproductive vigor; fire; natural aging and death; and invasive plant species, such as *Pennisetum clandestinum* (59 FR 9304; USFWS 1995a).

Melicope mucronulata

Melicope mucronulata, a long-lived perennial of the citrus family (Rutaceae), is a small tree up to 4 m (13 ft) tall with oval to elliptic-oval leaves, 8 to 16 cm (3 to 6.5 in.) long and 3.5 to 6.5 cm (1.5 to 2.5 in.) wide. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983 when it was reported from State land with an unknown number of plants. This species was also found two years later on East Molokai (Stone *et al.* 1999; GDSI 2000; HINHP Database 2000).

Melicope mucronulata typically grows on steep, west- or north-facing, dry to mesic, forested lowland slopes at elevations of 670 to 1,070 m (2,200 to 3,500 ft) (HINHP Database 2000). Associated native species include *Dodonaea viscosa*, *Metrosideros polymorpha*, *Styphelia tameiameiae*, and *Dubautia linearis* (na ena e) (USFWS 1997).

The major threat to the continued existence of the only known population of *Melicope mucronulata* on Maui is the risk of extinction from a random environmental event. Habitat degradation by goats and pigs, predation by goats, and competition with alien plants, particularly *Melinis minutiflora*, also pose immediate threats to this species (57 FR 20772; USFWS 1997).

Neraudia sericea

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *N. sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1999).

Neraudia sericea was known historically from Molokai, Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from Kahoolawe (HINHP Database 2000). Currently, this species is known from Molokai and Maui. On Maui, three populations totaling more than four individuals are found in Pohakea Gulch (West Maui) and in Manawainui and Kamole Gulches (East Maui). These populations occur on State and privately owned lands (GDSI 2000; HINHP Database 2000; M. Kaiaokamelie, *in litt.* 2000).

Neraudia sericea generally occurs in lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest between 670 and 1,480 m (2,200 and 4,850 ft) in elevation (Wagner *et al.* 1999; HINHP Database 2000; M. Bruegmann *in litt.* 1995). Other associated plant species include *Huperzia mannii* (NCN), *Urera glabra* (opuhe), *Cyrtandra oxybapha* (haiwale), *Cyrtandra platyphylla*, *Sida fallax*, *Diospyros* sp., *Bobea* sp., *Coprosma* sp., and *Hedyotis* sp. (HINHP Database 2000; M. Bruegmann *in litt.* 1995).

The primary threats to *Neraudia sericea* on Maui are habitat degradation by feral pigs and goats; competition with the alien plants, *Melinus minutiflora*, *Pennisetum clandestinum*, *Holcus lanatus*, *Cymbopogon refractus* (barbwire grass), and nonnative *Eragrostis* sp. (love grass); and a risk of extinction due to random environmental events (59 FR 56333; USFWS 1999).

Peucedanum sandwicense

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a short-lived, parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1995a).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai (HINHP Database 2000). Discoveries in 1990 extended the known distribution of this species to the island of Oahu (USFWS 1995a). A population is known from State-owned Keopuka Islet, off the coast of Maui with a total of between 20–30 individuals (GDSI 2000; HINHP Database 2000).

This species grows in cliff habitats from sea level to above 900 m (2,950 ft) (Constance and Affolter 1999) and is associated with native species such as *Chamaesyce* sp. (akoko), *Eragrostis* sp., *Diospyros* sp., and *Metrosideros polymorpha* (USFWS 1995a; HINHP Database 2000).

Competition with introduced plants is the major threat to *Peucedanum sandwicense* on Keopuka Rock (59 FR 9304; USFWS 1995a).

Phlegmariurus mannii

Phlegmariurus mannii, a short-lived member of the clubmoss family (Lycopodiaceae), is a hanging epiphyte (growing on the outside of other plants instead of being rooted in the ground) with clustered, delicate red stems and forked reproductive spikes; these traits distinguish it from others in the genus in Hawaii (Degener and Degener 1959; St. John 1981; Wagner and Wagner 1992).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui (Haelaau and Hanaula), and the Island of Hawaii (HINHP Database 2000). Currently, this species is found on Maui and Hawaii. On Maui, this species is now known on State and private lands from Kaupo, Nuanualoa Stream, and Manawainui on East Maui; and from Lihau and Puu Kukui on West Maui (GDSI 2000; HINHP Database 2000). There are five populations with fewer than 300 individuals total (HINHP Database 2000).

On Maui, *Phlegmariurus mannii* typically grows in moist protected gulches on the native tree species *Metrosideros polymorpha*, and *Acacia koa*, in mesic to wet montane *M. polymorpha-A. koa* forests at elevations of 900 to 1,600 m (2,950 to 5,250 ft) (HINHP Database 2000). Associated native species include *Thelypteris* sp., *Athyrium* sp., *Styphelia tameiameiae*, *Cyanea* sp., *Machaerina* sp., *Cyrtandra* sp., *Sadleria* sp., *Vaccinium* sp., *Dodonaea viscosa*, *Astelia menziesiana* (kaluaha), *Coprosma* sp., *Cheirodendron trigynum*, *Ilex anomala*, and *Myrsine* sp. (HINHP Database 2000).

The primary reasons for the endangerment of this species are habitat alteration by goats, cattle and pigs, and the impacts of alien plant species. Additionally, small population sizes also make the species subject to extinction due to random environmental events (57 FR 20772; USFWS 1997).

Phyllostegia mollis

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth. Flowers, usually in groups of 6, are spaced along a stem; there are 2 shorter-flowering stems directly below the main stem. The flowers have fused sepals and white petals fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets. A suite of technical characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Wagner *et al.* 1999).

Individual *Phyllostegia mollis* plants live for approximately five years. The species is known to flower in late winter and spring. Additional information on the life history of this plant, reproductive cycles, specific environmental requirements, and limiting factors is generally unknown (USFWS 1998b).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui (Wagner *et al.* 1999, HINHP Database 2000). Currently, this species is only known from Oahu and Maui. On East Maui, a single population of an unknown number of individuals remains on State and private lands in Waiopai Gulch (GDSI 2000; HINHP Database 2000).

Phyllostegia mollis typically grows on steep slopes and in gulches in diverse mesic to wet forests at an elevation of 450 to 1,830 m (1,480 to 6,000 ft) (Wagner *et al.* 1999). Associated plants include ferns, *Psychotria* sp., and *Pisonia* sp. (papala kepau) (HINHP Database 2000).

The major threats to *Phyllostegia mollis* are competition from the alien plant species *Rubus* sp. and *Schinus terebinthifolius*; and a risk of extinction of the only known population of this species on Maui due to random environmental events (56 FR 55770; USFWS 1998b).

Plantago princeps

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala*, *laxiflora*, *longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (USFWS 1999).

Plantago princeps is historically and currently found on Kauai, Oahu, Molokai, and Maui. It is no longer extant on the Island of Hawaii. *Plantago princeps* var. *anomala* is currently known from Kauai and Oahu; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Maui, there are five populations of *Plantago princeps* var. *laxiflora*, with a total of 67 individuals, on State, Federal and privately owned lands. This variety is found on East Maui at Koolau Gap, Kaupo Gap, and Kipahulu Valley, and on West Maui in Iao Valley and Kauaula Valley (USFWS 1999; GDSI 2000; HINHP Database 2000).

On Maui, *Plantago princeps* var. laxiflora is typically found on basalt cliffs in *Metrosideros polymorpha* lowland wet forest or *Acacia koa-M. polymorpha* montane wet forest or *M. polymorpha* montane wet shrubland, from 400 to 2,050 m (1,300 to 6,700 ft)

elevation (Wagner *et al.* 1999). Associated plant species include *Eragrostis variabilis, Hedyotis formosa,* and *Dubautia plantaginea* spp. *humilis* (USFWS 1999; HINHP Database 2000).

The primary threats to *Plantago princeps* var. *laxiflora* on Maui are herbivory and habitat degradation by feral pigs and goats, and competition with various alien plant species (59 FR 56333; USFWS 1999).

Platanthera holochila

Platanthera holochila, a short-lived, perennial member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai (HINHP Database 2000). Currently, *Platanthera holochila* is extant on Kauai, Molokai, and Maui (HINHP Database 2000). On Maui, three populations with 28 individuals are reported on State and privately owned lands from Hanaula and the Kapaloa Gulch rim on West Maui, and from Koolau Gap on East Maui (GDSI 2000; HINHP Database 2000).

Platanthera holochila is found in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed montane bog or mesic scrubby *M. polymorpha* forest between 1,050–2,120 m (3,440–6,960 ft) elevation. Associated native plants include *Cibotium* sp., *Coprosma ernodeoides* (nene), *Oreobolus furcatus* (NCN), *Styphelia tameiameiae, Wikstroemia* sp., *Scaevola chamissoniana* (naupaka kuahiwi), *Sadleria* sp., *Lythrum maritimum* (pukamole), *Deschampsia* sp., *Metrosideros polymorpha, Luzula hawaiiensis* (wood rush), *Sisyrinchium acre* (Maui u la ili), *Broussaisia arguta, Clermontia* sp., *Lycopodium cernuum* (wawae iole), *Dubautia scabra* (na ena e), *Polypodium pellucidum, Gahnia gahniiformis* (NCN), and *Vaccinium reticulatum* (61 FR 53108; USFWS 1999).

The primary threats to *Platanthera holochila* on Maui are habitat degradation and/or destruction by feral pigs; competition with alien plants; and a risk of extinction on Maui from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by slugs may also be a potential threat to this species (61 FR 53108; USFWS 1999).

Pteris lidgatei

Pteris lidgatei, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in.) thick and at least 10 cm (3.9 in.) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in.) long and 20 to 45 cm (8 to 18 in.) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions being common (Wagner 1949). *P. lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner and Wagner 1992).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1998a).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and Waihee on West Maui (HINHP Database 2000). Currently, this species is known from Oahu and Maui. Two populations with approximately 20 individuals occur on Maui, one population on privately owned land in Kahuaula Valley and the other population on State owned land near Kahakuloa Stream (GDSI 2000; HINHP Database 2000).

This species grows on steep stream banks between 915 to 1,070 m (3,000 to 3,500 ft) elevation in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest with mosses and other ferns, including *Cibotium chamissoi* (hapuu), *Dicranopteris linearis, Elaphoglossum crassifolium* (ekaha), *Sadleria squarrosa* (amau), and *Sphenomeris chusana* (palaa) (HINHP Database 2000).

The primary threats to *Pteris lidgatei* on Maui are the alien plant *Clidemia hirta,* habitat destruction by feral pigs, and a risk of extinction due to random environmental events (59 FR 49025; USFWS 1998a).

Sanicula purpurea

Sanicula purpurea, a short-lived member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in.) tall, arising from a massive perennial stem. The stems are tufted and branched, with the lower portion of the stem lying close to the ground, while the upper portion rises. The basal leaves are numerous and leathery in texture and are kidney-shaped or circular to egg-heart-shaped, with three to seven lobes. The leaf lobes are circular to inversely egg-shaped. The leaf veins are impressed on the upper surface and prominent on the lower surface. The leaf margins bear short, sharp teeth. The basal leaf stalks are slender and abruptly sheathed at the base. The leaves are palmately three-to five-lobed. The small purple, or cream-colored with a purple tinge, flowers occur in branched terminal clusters, each of which contains six to ten flowers. Each flower cluster contains one to three perfect flowers and five to seven staminate flowers. Below the inflorescence is a series of about ten oblong or inversely lance-shaped bracts. The nearly spherical fruits are covered with prickles. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1999).

Historically and currently, *Sanicula purpurea* is known from Oahu and West Maui (HINHP Database 2000). On West Maui, four populations totaling between 130 and 250 individuals are currently known on State and private lands in Keahikauo, Eke Crater, Violet Lake, and Puu Kukui (GSDI 2000; HINHP Database 2000).

This species typically grows in open *Metrosideros polymorpha* mixed montane bogs between 1,000 and 1,620 m (3,280 and 5,330 ft) elevation (HINHP Database 2000). Associated plant taxa include *Styphelia tameiameiae, Gahnia beechyi* (NCN), *Geranium humile* (nohoanu), *Myrsine vaccinioides* (kolea), *Viola mauiensis* (pamakani), *Argyroxiphium caliginis* (eke silversword), *Plantago pachyphylla* (laukahi kuahiwi), *Lycopodium* sp., *Argyroxiphium grayanum, Lagenifera mauiensis* (howaiaulu), *Machaerina* sp., and *Oreobolus furcatus* (HINHP Database 2000).

Habitat degradation by feral pigs, a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations are the major threats to *Sanicula purpurea* (61 FR 53108; USFWS 1999; HINHP Database 2000).

Sesbania tomentosa

Sesbania tomentosa, a short-lived member of the legume family (Fabaceae), is typically a sprawling shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon tinged with yellow, orange-red, scarlet or rarely, pure yellow. *S. tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink et al. 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit Sesbania flowers, the majority of successful pollination is accomplished by native bees of the genus Hylaeus and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year (USFWS 1999). Other aspects of this plant's life history are unknown.

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). It is no longer extant on Niihau and Lanai (59 FR 56333; USFWS 1999; GDSI 2000; HINHP Database 2000). On Maui, *S. tomentosa* is known from seven populations with a total of 83 individuals. The populations are located on State-leased land at Kanaio Training Area on East Maui; and on State and privately owned lands at Olowalu Canyon, Mokolea Point, Kahakuloa, Nakalele Point, and Poelua Bay on West Maui(GDSI 2000; HINHP Database 2000; B. Hobdy *in litt.* 2000). Off the south central coast of Kahoolawe, approximately 100 individuals of *S. tomentosa* are found on a small islet, Puu Koae, a State-owned seabird sanctuary (USFWS 1999; HINHP Database 2000).

Sesbania tomentosa is found in *Scaevola sericea* coastal dry shrublands on windswept slopes, sea cliffs and cinder slopes between sea level and 580 m (1,900 ft) elevation (HINHP Database 2000). Associated plant species include *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis* (pa uohiaka), *Rhynchelytrum repens, Sida fallax,* and *Dodonaea viscosa* (USFWS 1999; HINHP Database 2000).

The primary threats to *Sesbania tomentosa* on Maui are habitat degradation caused by competition with various alien plant species such as *Lantana camara, Waltheria* sp., and grass species; feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, alien insects; fire; and destruction by off-road vehicles and other human disturbances (59 FR 56333; USFWS 1999). Threats to *Sesbania tomentosa* on Puu Koae include habitat degradation caused by competition with various alien plant species, erosion, and trampling by cats and seabirds (P. Higashino, pers. comm. 2000).

Spermolepis hawaiiensis

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a nonsucculent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii (HINHP Database 2000). Currently, it is extant on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii (59 FR 56333; GDSI 2000; HINHP Database 2000). On Maui, there are three known populations with hundreds to thousands of individuals on State owned lands in Kuia NAR and Kanaio NAR, and on privately owned land in Lihau (USFWS 1999; GDSI 2000; HINHP Database 2000; C. Chimera, pers. comm. 2000).

Spermolepis hawaiiensis is known from shady spots in *Dodonaea viscosa* lowland dry shrubland, at elevations from 300 to 550 m (980 to 1,800 ft). Associated plant species include *Eragrostis variabilis, Wikstroemia* sp., *Erythrina sandwicensis, Diospyros* sp., *Pleomele* sp., *Lipochaeta livarum, Sida fallax, Myoporum sandwicensis, Santalum ellipticum,* and *Heteropogon contortus* (USFWS 1999; HINHP Database 2000; C. Chimera, pers. comm. 2000).

The primary threats to *Spermolepis hawaiiensis* on Maui are habitat degradation by feral goats, pigs, and axis deer; competition with various alien plants, such as *Rhynchelytrum repens* and *Lantana camara;* and erosion, landslides, and rockslides due to natural weathering which result in the death of individual plants, as well as habitat destruction (59 FR 56333; USFWS 1999).

Vigna o-wahuensis

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, long-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and on East Maui in Makawao, Waiakoa, and Haleakala, and at an unspecified site on West Maui (HINHP Database 2000). Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. There are no currently known populations on Niihau or Oahu (HINHP Database 2000). On the State-owned island of Kahoolawe, there are a total of three populations with an unknown number of individuals in the Makaalae/Lua Kealialalo area at 140 m (460 ft) elevation, the Puhi a Nanue area near a tidal pond, and on Lua Makika (GDSI 2000; HINHP Database 2000). On Maui, there is a single population of 2 individuals on State owned land in the Kanaio Beach area of East Maui (GDSI 2000; C. Chimera, pers. comm. 2000)

On Kahoolawe, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland from 10 to 140 m (30 to 460 ft) in elevation (Geesink *et al.* 1999;

HINHP Database 2000). Associated plant species include *Sida fallax*, *Chenopodium* sp., *Dubautia menziesii*, and *Osteomeles anthyllidifolia* (HINHP Database 2000). On Maui, *Vigna o-wahuensis* occurs in dry forests around 12 m (40 ft) elevation (C. Chimera, pers. comm. 2000). Associated plant species on Maui include *Dodonaea viscosa*, *Chamaesyce* sp., *Nothocestrum latifolium*, and *Nesoluma polynesicum* (C. Chimera, pers. comm. 2000).

The primary threats to *Vigna o-wahuensis* on Kahoolawe are competition with various alien plant species; fire; and a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations and individuals (59 FR 56333; USFWS 1999). The primary threats to this species on Maui are competition with the alien plant species *Lantana camara* and *Cenchrus ciliaris* (buffelgrass) and herbivory by axis deer and goats.

Zanthoxylum hawaiiense

Zanthoxylum hawaiiense, a long-lived perennial, is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1996).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, Hawaii, and southern and southwestern slopes of Haleakala on Maui. Currently, *Zanthoxylum hawaiiense* is extant on Kauai, Molokai, Maui, and Hawaii. This species is found on eastern Maui in three populations (unknown number of individuals) on private and State lands at Auwahi, Lualailua, and Kanaio (GDSI 2000; HINHP Database 2000).

Zanthoxylum hawaiiense is reported from open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, or montane dry forest, at elevations between 550 and 1,740 m (1,800 and 5,710 ft) (59 FR 10305; Stone *et al.* 1999; HINHP Database 2000). Associated species include *Metrosideros polymorpha*, *Diospyros sandwicensis*, *Pisonia* sp., *Xylosma hawaiiensis*, *Santalum ellipticum*, *Alphitonia ponderosa*, *Osteomeles anthyllidifolia*, *Alectryon macrococcus*, *Charpentiera* sp., *Melicope* sp., *Dodonaea viscosa*, *Streblus pendulinus*, *Myrsine lanaiensis*, and *Sophora chrysophylla* (HINHP Database 2000).

The threats to *Zanthoxylum hawaiiense* on Maui include browsing, grazing, and trampling by feral goats and cattle; competition with the alien plant species *Melia azedarach* (chinaberry), *Lantana camara*, and *Pennisetum setaceum*; fire; human disturbance; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of populations (59 FR 10305; USFWS 1996).

A summary of populations and landownership for the 55 plant species on Maui and Kahoolawe is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 55 SPECIES ON MAUI AND KAHOOLAWE

Species	Number of current populations	Landownership		
		Federal	State	Private
Acaena exigua	0			
Alectryon macrococcus	6		X	X
Argyroxiphium sandwicense	7	X		X
Bidens micrantha ssp. *kalealaha*	4	X	X	
Bonamia menziesii	3		X	X
Cenchrus agrimonioides	1		X	
Centaurium sebaeoides	3		X	X
Clermontia lindseyana	2		X	X
Clermontia oblongifolia ssp. *mauiensis*	1		X	X
Clermontia samuelii	8	X	X	
Colubrina oppositifolia	2			X
Ctenitis squamigera	6		X	X
Cyanea copelandii ssp. *haleakalaensis*	3	X	X	X
Cyanea glabra	1			X
Cyanea grimesiana spp. *grimesiana*	2		X	X
Cyanea hamatiflora spp. *hamatiflora*	9	X	X	X
Cyanea lobata	1			X
Cyanea mceldowneyi	6		X	X
Cyrtandra munroi	1		X	X
Diellia erecta	4		X	X
Diplazium molokaiense	2		X	X
Dubautia plantaginea spp. *humilis*	2		X	X
Flueggea neowawraea	2		X	X
Geranium arboreum	10	X	X	X
Geranium multiflorum	9	X	X	X
Hedyotis coriacea	1		X	
Hedyotis mannii	1			X
Hesperomannia arborescens	1		X	X
Hesperomannia arbuscula	3			X
Hibiscus brackenridgei	5		X	X
Ischaemum byrone	6		X	X
Kanaloa kahoolawensis	1		X	
Lipochaeta kamolensis	1		X	X
Lysimachia lydgatei	3		X	

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 55 SPECIES ON MAUI AND KAHOOLAWE—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Mariscus pennatiformis	1		X	
Melicope adscendens	3		X	X
Melicope balloui	2	X		X
Melicope knudsenii	3			X
Melicope mucronulata	1		X	
Melicope ovalis	1	X		
Neraudia sericea	3		X	X
Peucedanum sandwicense	1		X	
Phlegmariurus mannii	5		X	X
Phyllostegia mollis	1		X	X
Plantago princeps	5	X	X	X
Platanthera holochila	3		X	X
Pteris lidgatei	2		X	X
Remya mauiensis	3		X	
Sanicula purpurea	4		X	X
Schiedea haleakalensis	2	X		
Sesbania tomentosa	8		X	X
Spermolepis hawaiiensis	3		X	X
Tetramolopium capillare	4		X	X
Vigna o-wahuensis	4		X	
Zanthoxylum hawaiiense	3		X	X

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bonamia menziesii*, *Clermontia lindseyana*, *Colubrina oppositifolia*, *Cyanea glabra* (as *Cyanea scabra* var. *variabilis*), *Cyanea lobata* (as *Cyanea baldwinii*), *Cyanea mceldowneyi*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Geranium arboreum*, *Geranium multiflorum* (as *Geranium multiflorum* var. *multiflorum*, var. *obatifolium*, and var. *superbum*), *Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hesperomannia arbuscula*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. "from Hawaii"), *Ischaemum byrone*, *Melicope balloui* (as *Pelea balloui*), *Melicope knudsenii* (as *Pelea multiflora*), *Melicope ovalis* (as *Pelea ovalis*), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Peucedanum sandwicense* (as *Peucedanum kauaiense*), *Phyllostegia mollis*, *Plantago princeps* (as *Plantago princeps* var. *elata*, var. *laxifolia*, var. *princeps*), *Remya mauiensis*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citiodora*), were considered to be endangered; *Cyrtandra munroi*, *Diellia erecta*, and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered to be threatened; and, *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* spp. *kalealaha*), *Ctenitis squamigera*, *Diplazium molokaiense*, *Hedyotis coriacea*, *Melicope knudsenii* (as *Pelea knudsenii* and *Pelea tomentosa*), *Melicope mucronulata* (as *Pelea mucronulata*), *Phlegmariurus mannii* (as *Lycopodium mannii*), *Plantago princeps* (as *Plantago princeps* var. *acaulis*, var. *denticulata*, and var. *queleniana*), *Pteris lidgatei*, and *Tetramolopium capillare* were considered extinct. On July 1, 1975, the Service published notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and gave notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa considered to be endangered or thought to be extinct except for *Cyanea glabra* and *Cyrtandra munroi*; additionally, *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *Argyroxiphium macrocephalum*) appeared in the 1976 proposed rule as endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398). A summary of the status categories for the 55 plant species in the 1980–1997 notices of review can be found in Table 4(a). The 55 species were listed as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 55 PLANT SPECIES ON MAUI AND KAHOOLAWE

Species	FEDERAL REGISTER Notice of Review					
	1980	1985	1990	1993	1996	1997
Acaena exigua	C1	C1	C1			
Alectryon macrococcus	C1	C1	C1			
Argyroxiphium sandwicense ssp. *macrocephalum*	C1	C1	C1			
Bidens micrantha ssp. *kalealaha*	C1	C1	C1			
Bonamia menziesii	C1	C1	C1			
Cenchrus agrimonioides						
Centaurium sebaeoides			C1			
Clermontia lindseyana	C1	C1	C1			
Clermontia oblongifolia ssp. *mauiensis*			C1			
Clermontia samuelii						
Colubrina oppositifolia	C1	C1	C1			
Ctenitis squamigera	C1*	C1*	C1*			
Cyanea copelandii ssp. *haleakalaensis*					C	
Cyanea glabra					C	
Cyanea grimesiana spp. *grimesiana*	C1	C1		C2		
Cyanea hamatiflora spp. *hamatiflora*					C	
Cyanea lobata	C1	C1	C1			
Cyanea mceldowneyi	C1	C1	C1			
Cyrtandra munroi	C2	C2	C1			
Diellia erecta	C1	C1	C1			
Diplazium molokaiense	C1*	C1*	C1			
Dubautia plantaginea spp. *humilis*			C2	C2	C	
Flueggea neowawraea	C1	C1	C1			
Geranium arboreum	C1	C1	C1			
Geranium multiflorum	C1	C1	C1			
Hedyotis coriacea	C1	C1	C1			
Hedyotis mannii	C1	C1	C1			
Hesperomannia arborescens	C1	C1	C1			
Hesperomannia arbuscula	C1	C1	C1			
Hibiscus brackenridgei	C1	C1	C1			
Ischaemum byrone	C1	C1	C1			
Kanaloa kahoolawensis					C	
Lipochaeta kamolensis	C1	C1	C1			
Lysimachia lydgatei			C1			
Mariscus pennatiformis		C1	C1			
Melicope adscendens			3A			
Melicope balloui	C1	C1	C1*			
Melicope knudsenii	C1*	C1*	C1			
Melicope mucronulata	C1	C1	C1			
Melicope ovalis	C1	C1*	C1*			
Neraudia sericea	3A	3A	C1			
Peucedanum sandwicense	C2	C2	C2			
Phlegmariurus mannii	C1	C1	C1			
Phyllostegia mollis	C1	C1	C1			
Plantago princeps	C2	C2	C1			
Platanthera holochila	C1	C1	C1	C2		
Pteris lidgatei	C1	C1	C1			
Remya mauiensis	C1	C1				
Sanicula purpurea						
Schiedea haleakalensis			C1	C1		
Sesbania tomentosa	C1*	C1*	C1			
Spermolepis hawaiiensis			C1			
Tetramolopium capillare	C1*	C1*	C1*			
Vigna o-wahuensis	C1	C1	C1			
Zanthoxylum hawaiiense	C1	C1	C1			

Key:
C: Taxa for which the Service sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened taxa.
C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

Federal Register Notice of Review
1980: 45 FR 82479
1985: 50 FR 39525
1990: 55 FR 6183
1993: 58 FR 51144
1996: 61 FR 7596
1997: 62 FR 49398

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 55 PLANT SPECIES ON MAUI AND KAHOOLAWE

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Acaena exigua	E	05/24/91	56 FR 23842	05/15/92	57 FR 20787
Alecryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Argyroxiphium sandwicense ssp. *macrocephalum*	T	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Bidens micrantha ssp. *kalealaha*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Cenchrus agrimonioides	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Clermontia lindseyana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Clermontia oblongifolia ssp. *mauiensis*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Clermontia samuelii	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Colubrina oppositifolia	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Cyanea copelandii ssp. *haleakalaensis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea glabra	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea grimesiana ssp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Cyanea hamatiflora ssp. *hamatiflora*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Cyanea mceldowneyi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Diplazium molokaiense	E	06/24/93	58 FR 34241	09/09/94	59 FR 49025
Dubautia plantaginea ssp. *humilis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Flueggea neowawraea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Geranium arboreum	E	01/23/91	56 FR 2490	05/13/92	57 FR 20589
Geranium multiflorum	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Hedyotis coriacea	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482
Hesperomannia arbuscuia	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Kanaloa kahoolawensis	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Lipochaeta kamolensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Lysimachia lydgatei	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Mariscus pennatiformis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Melicope adscendens	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Melicope balloui	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Melicope knudsenii	E	10/30/91	56 FR 5562	02/25/94	59 FR 09304
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Melicope ovalis	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Peucedanum sandwicense	T	10/30/91	56 FR 5562	02/25/94	59 FR 09304
Phlegmariurus mannii	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Phyllostegia mollis	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Pteris lidgatei	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Remya mauiensis	E	10/02/89	54 FR 40447	01/14/91	56 FR 1450
Sanicula purpurea	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Schiedea haleakalensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Tetramolopium capillare	E	03/25/93	58 FR 16164	09/30/94	59 FR 49860
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305

Key:
E=Endangered
T=Threatened

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for six of these plants

(Clermontia samuelii, Cyanea copelandii ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis)* and not prudent for the other 49 plants because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations were challenged in *Conservation Council for Hawaii* v. *Babbitt.* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 49 of these 55 species. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. *Id.* At 1283—85. The court also held that we failed to balance any risks of designating critical habitat against any benefits. *Id.* For example, the court suggested that, before concluding critical habitat would not be prudent, the Service should consider whether designation might prevent an inadvertent act of destruction by educating the public.

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species *Id.* at 1286–88. In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation *Id.* at 1288. The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public and State and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on the private property in the future, even though no such activity may be occurring there at the present *Id.* at 1285–88.

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002. 24 F. Supp. 2d 1074.

At the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis* (64 FR 48307) we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these six taxa, along with four others, at the same time we developed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001. This notice responds to the court orders.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received over 100 responses from individuals, non-profit organizations, the State of Hawaii's Division of Forestry and Wildlife, county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggest, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On December 29, 1999, we mailed letters to over 130 landowners on the islands of Maui and Kahoolawe requesting any information considered germane to the management of any of the 245 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants that may be on his/her property, and a handout containing general information on critical habitat. We received 20 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: fencing; weeding; access to hunters or limited hunting; ungulate control; scientific research; fire control; and propagation and/or planting of native plants. We held two open houses on the island of Maui, at the Lahaina Civic Center and the Wailuku Community Center, on January 11 and 12, 2000, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of 30 people attended the two open houses.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for Kauai and Niihau plants (65 FR 66808). In that proposal, we determined that critical habitat was prudent for eleven species *(Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawraea, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis, and Zanthoxylum hawaiiense)* from Kauai and/or Niihau that also occur on Maui and/or Kahoolawe.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as " * * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements , as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under Section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the Section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redetermination

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each of the 38 species discussed in this rule for which a prudency determination has not been made previously, we analyzed the potential threats and benefits for each species in accordance with the court's order. One species, *Acaena exigua,* known only from Kauai and Maui, is no longer extant in the wild. On Kauai, this species was only known from a collection by Heinrich Wawra between 1869–1870 (Wagner *et al.* 1999). *Acaena exigua* was last collected on West Maui between April 22–24, 1997; however, no individuals were seen in two subsequent visits (1998 and 1999) to the only known location (H. Oppenheimer and S. Perlman, pers. comm. 2000). In addition, this species is not known to be in storage or under propagation. Therefore, we believe this species may be extinct. Under these circumstances,

we propose that designation of critical habitat for *Acaena exigua* is not prudent because such designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available. *See* 16 U.S.C. 1532(5)(B); 50 CFR 424.12(f).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 37 plants may be vulnerable to unrestricted collection, vandalism or disturbance. However, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity that would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 37 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At least fourteen of these species are reported from federally owned lands (*Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kaleolaha, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Geranium arboreum, Geranium multiflorum, Melicope balloui, Melicope ovalis, Plantago princeps,* and *Schiedea haleakalaensis*) or lands under Federal jurisdiction (*Sesbania tomentosa*), or lands subject to federally funded actions such as the clearing of military ordinance on Kahoolawe (*Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis*) (see Table 3), where most actions would be subject to section 7. While a majority of these species are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that critical habitat is prudent for 37 plant species: *Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mollis, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Tetramolopium capillare,* and *Vigna o-wahuensis.*

Prudency determinations have previously been made for the other 17 species discussed in this proposed rule. Therefore, a critical habitat designation is prudent for 54 of the 69 plant species historically or currently found on Maui and Kahoolawe.

B. Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As described above in the discussion for each of the 54 species, very little is known about the specific physical and biological requirements of these species. The recovery plans that have been published for many of these species generally discuss management practices that are needed for the conservation of these species (e.g., rodent, invasive species, and ungulate control), as oppose to identifying essential areas need by the species. As a result, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas in which the plant species are currently found, including the type of plant community and their physical location (e.g., steep rocky cliffs, talus slopes, stream banks) and elevation. Therefore, the descriptions of the physical elements of the locations of each of these species and the plant community associated with the species, as described in the **Discussion of the Plant Taxa** section above, constitute the primary constituent elements for these species.

C. Methods for Selection of Areas for Proposed Critical Habitat Designations

Critical habitat is defined as the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i)). As discussed above, although we have published recovery plans for most of these species, very little is known about the specific physical and biological requirements of most of these 54 species. However, given that all of these species are either threatened or endangered with extinction, we feel that all existing sites where these plants occur needs to be designated. Therefore, we have defined primary constituent elements based on the general habitat features of the areas in which they currently occur, such as the type of plant community the plants are growing in, their physical location (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 54 plant species.

Critical habitat may also include areas outside the geographic area presently occupied by a species upon a determination that such areas are essential to the conservation of the species (16 U.S.C. 1532(5)(A)(ii)). This may include, for example, potentially suitable unoccupied habitat that is important to the recovery of the species. However, we have not included such areas in the proposed designations for these 54 species because of our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species), and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species that would be needed, for instance, to determine where to reintroduce a species.

The historical (pre-1970) or even post-1970 records for a species may be based on herbarium specimens that contain only the most rudimentary collection information, such as only the name of the island from which the specimen was collected or a general place name (e.g., west Maui, Haleakala, above Lahaina). In the main Hawaiian Islands, climatic and ecological conditions such as rainfall, elevation, slope, and aspect, may vary dramatically within a relatively short distance. Therefore, a simple place name does not provide adequate information on the physical and biological features that may have occurred there or may occur there now.

The unpredictable distribution of Hawaiian plant species also makes it difficult to designate potentially suitable unoccupied habitat. For example, currently a species may be known from northern and southern (or eastern and western) locations on an island, but not from intervening locations in similar habitat. Based on the best available information, we are unable to determine whether a species once occurred in the intervening areas and disappeared from there prior to Polynesian or European times (thus never having been collected or documented there) or simply never occurred there.

The Service considers reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery. However, native plant reintroductions are difficult, and successful efforts are not common. We do not know enough about these 54 species to identify areas where reintroductions are likely to be successful. We will continue to support experimental efforts to reintroduce species that may eventually provide us with additional information on the physical and biological features essential to the conservation of these species, and thus, may eventually result in identification of unoccupied habitat for future revisions of the appropriate designations.

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain those physical and biological features that are essential for the survival and recovery of the 54 plant species. This information included site-specific species information from the Hawaii Natural Heritage Program (HINHP) and our rare plant database, species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum, recent biological surveys and reports, our recovery plans for 48 of these 54 species, discussions with botanical experts, and recommendations (see below) from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (USFWS 1995a, 1995b, 1995c, 1996, 1997, 1998a, 1998b, 1999; HPPRCC 1998; HINHP Database 2000; S. Perlman, pers. comm. 2000; R. Hobdy, pers. comm. 2000; CPC *in litt.* 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (USFWS 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (HPPRCC 1998). Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat, as defined by the Act. While these habitat maps are a planning tool to focus conservation efforts on the areas that may be most important to the conservation of Hawaii's listed plant species, as well as other plant species of concern, it does not substitute for the more exacting regulatory process of designating critical habitat. Therefore, the proposed critical habitat designations in this proposed rule do not include all of the habitat, in particular unoccupied habitat, identified by the HPPRCC.

For these 54 plant species from Maui and Kahoolawe, currently occupied habitat was examined and critical habitat boundaries were delineated as multi-species units in such a way that locations with a high density of endangered plants could be depicted clearly. However, these multi-species critical habitat units were not homogenous or uniform in nature. Critical habitat units often encompassed a number of plant community types.

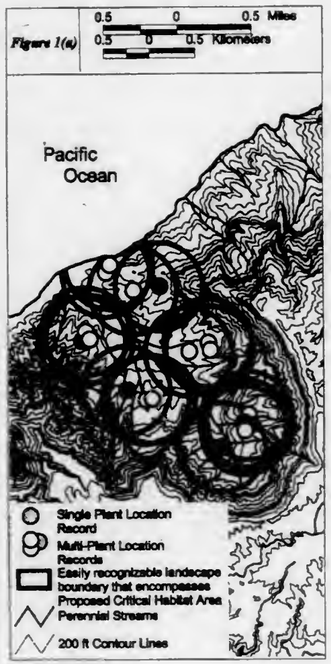
When developing critical habitat units, every current (post-1970) location of every plant specimen was delineated within a 586 m (1,924 ft) radius circle, in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plant. Due to inaccuracies in mapping locations, it has been determined that the actual location of the plant specimen is within 536 m (1,760 ft) of the center of the delineated circle. The 536 m (1,760 ft) distance is consistent with standard mapping methodology for rare species used by the HINHP (1996). An additional 50 m (164 ft) included in the delineated circle to be consistent with the guidelines identified in the recovery plans for these species for minimum-sized exclosures for rare plants (USFWS 1994, 1995, 1996, 1998a, 1998b, 1999). In cases of isolated species' locations, an area with a radius of roughly 586 m (1,924 ft) is proposed as critical habitat (HINHP 1996; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999).

In areas with multiple species locations, critical habitat units were developed as follows.

- Known current locations of each species were delineated using the guidelines explained above (Figure 1(a)).
- The perimeter boundaries of individual circular areas were connected to form unit area boundaries (Figure 1(b)).
- Unit area boundaries were delineated to follow significant topographic features (50 CFR 424.12(c)) such as coastlines, ridgelines, and valleys (Figure 1(c)).

This delineation method was used to facilitate identification of boundary lines and to aid in implementation of on-the-ground conservation measures. When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of the 54 species.

Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine), and other man-made features, do not contain, and are not likely to develop, constituent elements. Therefore, these features or structures would not be included in the critical habitat designation.







All currently occupied sites containing one or more of the primary constituent elements were first evaluated to determine if the site was essential to the conservation of the listed plant species. If the site was considered essential to the conservation of any of these 54 plant species, the site was then examined to determine if additional special management considerations or protection is required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; State of Hawaii, Division of Forestry and Wildlife (DOFAW) planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (i.e., county, state, or Federal government holdings) and private landowner on Maui and Kahoolawe with a known occurrence of one of the 54 species was contacted by mail. We reviewed all information received during the public comment period held in response to our landowner mailing and open houses held on Maui on January 11 and 12, 2000. When clarification was required

on the information provided to us, we followed up with a telephone contact. Lastly, because of the large amount of land on Maui under State of Hawaii jurisdiction, we met with staff from the Maui DOFAW office to discuss their current management for the plants on their lands. In addition, we contacted the State's Department of Hawaiian Home Lands regarding management for the plants on lands under their jurisdiction.

Pursuant to the definition of critical habitat, an area must also require "special management considerations or protections." This is a term that originates in the definition of critical habitat in section 3 of the Act. Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and manages for the long-term conservation of the species. The Service considers a plan adequate when it meets all of the following three criteria: (1) The plan provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the management plan will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) the plan provides assurances the conservation plan will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

- The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered and threatened plants in Hawaii, the major threats include adverse impacts due to nonnative plant and animal species. Direct browsing, digging, and trampling by ungulates, including pigs, goats, cattle, sheep, and deer, and direct competition from nonnative plants have led to the decline of Hawaii's native flora (Smith 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; USFWS 1995, 1996a, 1996b, 1997, 1998, 1999; Loope *in* Mack *et al.* 1998). Ungulate activity in most areas results in an increase of nonnative plants because most of these nonnative plants are able to colonize newly disturbed areas more quickly and effectively than Hawaii's native plants (Cuddihy and Stone 1990; Mack 1992; Scott *et al.* 1986; Smith 1985; Tunison *et al.* 1992; USFWS 1995, 1996a, 1996b, 1997, 1998, 1999).
- The recommendations from the HPPRCC in their 1998 report to the Service ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved with ungulates (e.g., pigs, goats, deer, and sheep) present in Essential Habitat Areas.
- The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in the Service's recovery plans for 48 of the 54 species (USFWS 1995a, 1995b, 1995c, 1996, 1997, 1998a, 1998b, 1999), in the 1998 HPPRCC report to the Service (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire control; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants:

- Feral ungulate control;
- Nonnative plant control;
- Rodent control;
- Invertebrate pest control;
- Fire control;
- Maintenance of genetic material of the endangered and threatened plant species;
- Propagation; reintroduction and/or augmentation of existing populations into areas deemed essential for the recovery of the species;
- Ongoing management of the wild, outplanted and augmented populations;
- Maintenance of natural pollinators and pollinating systems, when known;
- Habitat management and restoration in areas deemed essential for the recovery of the species;
- Monitoring of the wild, outplanted and augmented populations;
- Rare plant surveys; and
- Control of human activities/access.

As shown in Table 3, these 54 species of plants occur on Federal, State, and private lands on the islands of Maui and Kahoolawe. In response to our two public notices, letters to the landowners, open houses, and meetings, along with information in our files, we received varying amounts and various types of information on the conservation management actions occurring on these lands. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, control of human access, scientific research, fire control, and propagation and/or planting of native plants.

Contractors for the U.S. Navy are clearing the state-owned island of Kahoolawe of military ordinance utilizing Congressional funding that expires in 2003. The Navy has consulted with the Service under section 7 of the Endangered Species Act, as amended, to ensure protection of threatened and endangered species during the clearance activities. In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that additional special management is not required for the listed plant species, and areas on the island are included within the proposed critical habitat units for *Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis.*

Protective fencing and monitoring of the endangered plant *Sesbania tomentosa* on the leased U.S. military

lands (Hawaii Army National Guard) at Kanaio Training Area, Maui, were initially funded in 1998. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Therefore, this area has been included within the proposed critical habitat units.

Eleven species *(Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Geranium arboreum, Geranium multiflorum, Melicope balloui, Melicope ovalis, Plantago princeps,* and *Schiedea haleakalaensis)* are reported from U.S. National Park lands at Haleakala National Park, Maui (GDSI 2000; HINHP 2000). Two of these species, *Melicope ovalis* and *Schiedea haleakalaensis,* are currently only found in Haleakala National Park.

Haleakala National Park was established by Congress in 1916 as the Haleakala Section of Hawaii National Park. In 1960, an Act of Congress established Haleakala as an independent unit of the National Park System to preserve for visitor enjoyment and scientific study the outstanding scenic, geological, and biological resources and the natural environment of Haleakala Crater (Resources Management Division 1999). Management programs, objectives, and their implementation schedules are documented in the Park's 1999 draft *Resources Management Plan* (Resources Management Division 1999). This plan details the management issues and strategies used by the Park to protect, restore, and enhance the rare and native plants and their habitats within the park (Resources Management Division 1999). These management strategies address factors which led to the listing of the 11 species including control of, or research on, nonnative species of ungulates, rodents, invertebrates, and weeds. Management strategies for control of fire within the Park are outlined in their fire management plan (Resources Management Division 1999). In addition, habitat restoration, including propagation and outplanting of native and endangered plants, and monitoring are also included in this plan. Because the *Resources Management Plan* and the park's fire management plan provides conservation benefits to the listed species within the park and provides assurances that the plan will be effective and will continue to be implemented, these lands are not in need of special management considerations or protection. Therefore, we have determined that the Federal lands within Haleakala National Park do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat.

Twelve species *(Alectryon macrococcus, Argyroxiphium sandwicense ssp. macrocephalum, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Melicope balloui, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea)* are reported from The Nature Conservancy's Waikamoi and Kapunakea Preserves which are located on the northeast slopes of Haleakala and in the West Maui mountains, respectively (The Nature Conservancy of Hawaii (TNCH) 1997, 1998; GDSI 2000; HINHP Database 2000). Both preserves were established by grants of perpetual conservation easements from the private landowners to TNCH and are included in the state's Natural Area Partnership (NAP) program which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997, 1998).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the six-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always six years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every six years. By April 1 of any year, the managing partner may notify the state that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing six year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if state funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the Department of Land and Natural Resources (DLNR) and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat.§§ 195–1—195–11; Hawaii Administrative Rules § 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1997, 1998, 1999). These management measures address factors which led to the listing of the 12 species including control of nonnative species of ungulates, rodents, and weeds. In addition, habitat restoration and monitoring are also included in these plans.

The primary management goals for both Kapunakea and Waikamoi Preserves are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; (3) increase the understanding of threats posed by small mammals and reduce their negative impact, where possible; (4) prevent extinction of rare species in the preserve; (5) track the biological and physical resources in the preserves and to evaluate changes in these resources over time; (6) identify new threats to the preserves before they become established pests; and (7) build public understanding and support for the preservation of natural areas, and to enlist volunteer assistance for preserve management (TNCH 1997, 1998).

The goal of the ungulate program is to bring pig populations to zero as rapidly as possible. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs), annual monitoring of ungulate presence transects, and trained staff and volunteer hunting. Since axis deer may also pose a threat to the preserves, TNCH is a member of the Maui Axis Deer Group (MADG) and staff meet regularly with other MADG members to seek solutions. In Waikamoi Preserve, the management actions also include working with community hunters in conjunction with the East Maui Watershed Partnership (EMWP). In Kapunakea Preserve, a system of transects extend the length of the preserve to monitor resource threats, including ungulate presence. By monitoring ungulate activity within the preserve, the staff is able to assess the success of the hunting program. If increased hunting pressure does not reduce feral ungulate activity in the preserves, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1997, 1998).

The nonnative plant control program within both preserves focuses on controlling habitat modifying nonnative plants (weeds) in intact native communities and preventing the introduction of additional alien plants. Based on the degree of threat to native ecosystems, a weed priority list has been compiled for the preserves, and control and monitoring of the highest priority species are on-going. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders, and hiking participants) who enter the preserves. This protocol includes such things as brushing footgear before entering the preserves to remove seeds of nonnative plants. Weeds are monitored along transects annually, weed priority maps are maintained, staff participate as members of the Melastome Action Committee and the Maui Invasive Species Committee (MISC), and cooperate with the Division of Conservation and Resources Enforcement (DOCARE) in marijuana control, as needed.

The effects of nonnative invertebrates and small mammals on native Hawaiian ecosystems is poorly understood. Initial control measures such as anti-coagulant diphacinone bait stations are being used to control rats in areas of suspected impact; however, valid conclusions from data gathered have not been drawn. Adaptive management will be applied when new information becomes available (TNCH 1997, 1998).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserves and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserves to document long term ecological changes, and rare plant species are monitored to assess population status. Cuttings of endangered plants are taken to the University of Hawaii's tissue culture lab at Lyon Arboretum for propagation. In addition, the preserve staff provides logistical support to scientists and others who are conducting research within the preserves.

Kapunakea Preserve is adjacent to two areas that are also managed to protect natural resources: Puu Kukui Watershed Management Area (WMA) and the Honokawai section of the state West Maui NAR. The Conservancy currently acts as a consultant to Maui Land and Pineapple Co., managers of Puu Kukui WMA, and has a Master Cooperative Agreement with the state DOFAW. These agreements are used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency.

Waikamoi Preserve is adjacent to three other large areas that are also managed to protect natural resources: Haleakala National Park, the state's Koolau Forest Reserve, and the state Hanawi NAR. An agreement between the Division of Land and Natural Resources (DLNR), East Maui Irrigation Co., Keola Hana Maui Inc., Haleakala Ranch Company, County of Maui, The Nature Conservancy, and Haleakala National Park implementing a joint management plan (East Maui Watershed Partnership Plan) for the entire East Maui Watershed. Management efforts at Waikamoi will, as much as possible, complement the objectives of the plan. The partnership agreement will be used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency (TNCH 1998).

Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provided a conservation benefit to the species and are permanently protected and managed, these lands meet the three criteria for determining that an area is not in need of special management. Therefore, we have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Should the status of any of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

Seven species *(Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Hesperomannia arbuscula, Phlegmariurus mannii, Pteris lidgatei,* and *Sanicula purpurea)* are reported from the Maui Pineapple Company's Puu Kukui Watershed Management Area (Puu Kukui WMA), located in the West Maui mountains (GDSI 2000; HINHP Database 2000; Maui Land and Pineapple Co., Ltd. undated). At just over 8,600 acres, the Puu Kukui WMA is the largest privately-owned preserve in the State. In 1993, the Puu Kukui WMA became the first private landowner participant in the Natural Areas Partnership program. In the sixth fiscal year (1999) of the Natural Area Partnership program with the Hawaii Department of Land and Natural Resources, Puu Kukui Watershed Management Area staff is pursuing four management programs stipulated in their Long Range Management Plan with an emphasis on reducing nonnative species that immediately threaten the management area (Maui Pineapple Company 1999).

The primary management goals within Puu Kukui WMA are to (1) eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of nonnative invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction of rare species within the watershed.

Specific management actions to address feral ungulates include the construction of fences surrounding 10 management units, and allowing public hunting with State permit holders within the Puu Kukui WMA.

The nonnative plant control program within Puu Kukui WMA focuses on habitat modifying nonnative plants (weeds), prioritizing them according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects, and manual/mechanical control. Biological control of the melastome plant, *Clidemia hirta* was tried by releasing *Antiblemma acclinalis* moth larvae.

Natural resource monitoring and research address the need to track biological and physical resources of the Puu Kukui WMA and evaluate changes to these resources in order to guide management programs. Vegetation is monitored through permanent photo points, alien species are monitored along permanent transects, and rare, endemic, and indigenous species are monitored. Additionally, logistical and other support for approved research projects, interagency cooperative agreements, remote survey trips within the watershed are provided.

The management of Puu Kukui WMA meets the three criteria for determining that an area is not in need of special management (see above). Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat in the Act, and we are not proposing designation of this land as critical habitat. Should the status of this reserve change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

Two plant species, *Geranium multiflorum* and *Clermontia samuelii* ssp. *hanaensis*, are reported from the upper areas of Hanawi Natural Area Reserve (HNAR) (GDSI 2000; HINHP Database 2000). The HNAR was established in 1986, and comprises 7,500 acres of diverse native ecosystems and endangered forest bird habitats. Natural Area Reserves are managed by the Department of Land and Natural Resources (DLNR), except that any use must be specifically approved by the Natural Area Reserve System Commission. Natural Area Reserves are held in trust by the State and may not be alienated except upon a finding by the DLNR of an imperative and unavoidable necessity. DLNR must provide public notice and conduct public hearings before revoking or modifying an executive order that sets aside lands for the reserve system (Haw. Rev. Stat. §§ 195–1—195–11). The primary goals of the HNAR are to (1) protect the upper areas of the reserve by fencing smaller manageable units to restrict pig movements; (2) prevent degradation of native forest by reducing feral ungulate damage; and (3) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing of smaller manageable units, and staff hunting. Currently, the upper 2,000 acres has been fenced and pigs removed. Fences are constructed along the western boundaries of the HNAR, along the 1,585 m (5,200 ft) contour to the east up to the Haleakala National Park boundary on state land. The Haleakala National Park fence serves as the upper fence boundary for HNAR. Additionally, fences have been constructed to separate three distinct management units: Puu Alaea Unit, Poouli Unit, and Kuhiwai/Waieleele Unit. Since the removal of pigs in these upper forest units of the HNAR, vegetation monitoring has been implemented to determine recovery of native plant species. Currently, a fence is being constructed along the 1,100 m (3,600 ft) contour of the HNAR which will comprise the "middle forest unit" (B. Evanson, pers. comm. 1999).

The nonnative plant control program within HNAR focuses on habitat modifying nonnative plants (weeds). A weed priority list has been compiled for HNAR and control and monitoring of the highest priority species are on going. Weeds are controlled manually, chemically, or through a combination of both. Monitoring transects will help locate developing populations of other priority weed species and, if necessary, removal of these populations will be conducted (DLNR 1989).

Because these plants and their habitats within the upper areas of Hanawi NAR (above 1,525 m (5,000 ft)) are permanently protected and managed and because the continued successful management of this area is assured, this area is not in need of special management considerations or protection. Therefore, we have determined that the State land within the upper areas of Hanawi NAR does not meet the definition of critical habitat in the Act, and we are not proposing designation of this area as critical habitat. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

In summary, we believe that the habitat within Waikamoi and Kapunakea Preserves, Puu Kukui Watershed Management Area, the upper area (above 1,525 m (5,000 ft)) of Hanawi Natural Area Reserve, and Haleakala National Park are being adequately managed for the conservation of the listed species that occur within these areas and are not in need of special management considerations or protection. Therefore, we have determined that these lands do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Four species include in this proposed rule *(Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakolensis)* are currently only found in Waikamoi Preserve and/or Haleakala National Park. Since these two areas are not in need of special management, critical habitat is not proposed for these four species. However, we are specifically soliciting comments on the appropriateness of this approach.

As described above, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the islands of Maui and Kahoolawe. The Service supports these efforts and provides technical assistance whenever possible. In addition, we are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately address the threats to these listed species. We are also soliciting comments on whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements) should trigger revision of proposed critical habitat to exclude such lands and, if so, by what mechanism.

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 50 plant species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision-making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership are shown in Tables 5(a) and 5(b). Proposed critical habitat includes habitat for 50 species predominantly in the upland areas on the eastern and western sides of Maui. Lands proposed as critical habitat have been divided into 52 units on Maui and four units on Kahoolawe. A brief description of each unit is presented below.

TABLE 5(A).—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI. MAUI COUNTY, HAWAII

Unit name	County or state	Private	Federal	Total
Maui A	2 ha	47 ha	N/A	49 ha
	(5 ac)	(116 ac)	N/A	(121 ac)
Maui B	21 ha	46 ha	N/A	67 ha
	(52 ac)	(114 ac)	N/A	(166 ac)
Maui C	144 ha	0.1 ha	N/A	144.1 ha
	(357 ac)	(0.3 ac)	N/A	(357.3 ac)
Maui D	36 ha	9 ha	N/A	45 ha
	(90 ac)	(21 ac)	N/A	(111 ac)
Maui E	34 ha	45 ha	N/A	79 ha
	(83 ac)	(111 ac)	N/A	(194 ac)
Maui F	N/A	61 ha	N/A	61 ha
	N/A	(150 ac)	N/A	(150 ac)
Maui G	1 ha	N/A	N/A	1 ha
	(2 ac)	N/A	N/A	(2 ac)
Maui H	1 ha	41 ha	N/A	42 ha
	(2 ac)	(102 ac)	N/A	(104 ac)
Maui I	0.1 ha	N/A	N/A	0.1 ha
	(0.3 ac)	N/A	N/A	(0.3 ac)
Maui J	19 ha	44 ha	N/A	63 ha
	(48 ac)	(109 ac)	N/A	(157 ac)
Maui K	N/A	61 ha	N/A	61 ha
	N/A	(150 ac)	N/A	(150 ac)
Maui L	50 ha	N/A	N/A	50 ha
	(124 ac)	N/A	N/A	(124 ac)
Maui M	0.3 ha	14 ha	N/A	14.3 ha
	(0.7 ac)	(35 ac)	N/A	(35.7 ac)
Maui N	114 ha	1 ha	N/A	115 ha
	(282 ac)	(2 ac)	N/A	(284 ac)
Maui O	278 ha	N/A	N/A	278 ha
	(688 ac)	N/A	N/A	(688 ac)
Maui P	58 ha	N/A	N/A	58 ha
	(144 ac)	N/A	N/A	(144 ac)
Maui Q	759 ha	1,579 ha	N/A	2,338 ha
	(1,880 ac)	(3,911 ac)	N/A	(5,791 ac)
Maui R	0.1 ha	299 ha	N/A	299.1 ha
	(0.3 ac)	(740 ac)	N/A	(740.3 ac)
Maui S	109 ha	34 ha	N/A	143 ha
	(270 ac)	(84 ac)	N/A	(354 ac)
Maui T	391 ha	189 ha	N/A	580 ha
	(968 ac)	(468 ac)	N/A	(1,436 ac)
Maui U	104 ha	16 ha	N/A	120 ha
	(258 ac)	(40 ac)	N/A	(298 ac)
Maui V	N/A	103 ha	N/A	103 ha
	N/A	(255 ac)	N/A	(255 ac)
Maui W	67 ha	2 ha	N/A	69 ha
	(167 ac)	(5 ac)	N/A	(172 ac)
Maui X	197 ha	7 ha	N/A	204 ha
	(488 ac)	(17 ac)	N/A	(505 ac)
Maui Y	107 ha	9 ha	N/A	116 ha
	(265 ac)	(22 ac)	N/A	(287 ac)
Maui Z	60 ha	55 ha	N/A	115 ha
	(148 ac)	(136 ac)	N/A	(284 ac)
Maui Aa	74 ha	0.3 ha	N/A	74.3 ha
	(183 ac)	(0.7 ac)	N/A	(183.7 ac)
Maui Bb	12 ha	340 ha	N/A	352 ha
	(30 ac)	(842 ac)	N/A	(872 ac)
Maui Cc	N/A	117 ha	N/A	117 ha
	N/A	(290 ac)	N/A	(290 ac)
Maui Dd	N/A	213 ha	N/A	213 ha
	N/A	(528 ac)	N/A	(528 ac)
Maui Ee	130 ha	58 ha	N/A	188 ha
	(322 ac)	(144 ac)	N/A	(466 ac)
Maui Ff	119 ha	N/A	N/A	119 ha
	(295 ac)	N/A	N/A	(295 ac)
Maui Gg	177 ha	N/A	N/A	177 ha
	(438 ac)	N/A	N/A	(438 ac)
Maui Hh	117 ha	N/A	N/A	117 ha
	(290 ac)	N/A	N/A	(290 ac)
Maui Ii	879 ha	N/A	N/A	879 ha
	(2,177 ac)	N/A	N/A	(2,177 ac)
Maui Jj	93 ha	N/A	N/A	93 ha

TABLE 5(A).—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI, MAUI COUNTY, HAWAII—Continued

Unit name	County or state	Private	Federal	Total
	(230 ac)	N/A	N/A	(230 ac)
Maui Kk	144 ha	N/A	N/A	144 ha
	(357 ac)	N/A	N/A	(357 ac)
Maui Ll	N/A	45 ha	N/A	45 ha
	N/A	(111 ac)	N/A	(111 ac)
Maui Mm	133 ha	34 ha	N/A	167 ha
	(329 ac)	(84 ac)	N/A	(413 ac)
Maui Nn	510 ha	182 ha	N/A	692 ha
	(1,263 ac)	(451 ac)	N/A	(1,714 ac)
Maui Oo	116 ha	N/A	N/A	116 ha
	(287 ac)	N/A	N/A	(287 ac)
Maui Pp	82 ha	31 ha	N/A	113 ha
	(203 ac)	(77 ac)	N/A	(280 ac)
Maui Qq	973 ha	N/A	N/A	973 ha
	(2,410 ac)	N/A	N/A	(2,410 ac)
Maui Rr	104 ha	11 ha	N/A	115 ha
	(258 ac)	(27 ac)	N/A	(285 ac)
Maui Ss	1,014 ha	910 ha	N/A	1,924 ha
	(2,512 ac)	(2,254 ac)	N/A	(4,766 ac)
Maui Tt	103 ha	11 ha	N/A	114 ha
	(255 ac)	(27 ac)	N/A	(282 ac)
Maui Uu	79 ha	42 ha	N/A	121 ha
	(196 ac)	(104 ac)	N/A	(300 ac)
Maui Vv	76 ha	1 ha	N/A	77 ha
	(188 ac)	(2 ac)	N/A	(190 ac)
Maui Ww	133 ha	N/A	N/A	133 ha
	(329 ac)	N/A	N/A	(329 ac)
Maui Xx	4 ha	56 ha	N/A	60 ha
	(10 ac)	(139 ac)	N/A	(149 ac)
Maui Yy	29 ha	1,089 ha	N/A	1,118 ha
	(72 ac)	(2,697 ac)	N/A	(2,769 ac)
Maui Zz	118 ha	N/A	N/A	118 ha
	(292 ac)	N/A	N/A	(292 ac)
Total	7,771.5 ha	5,802.4 ha	N/A	13,573.9 ha
	(19,248.3 ac)	(14,366.0 ac)	N/A	(33,614.3 ac)

TABLE 5 (B).—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAHOOLAWE, MAUI COUNTY, HAWAII

Unit name	County or state	Private	Federal	Total
Kahoolawe B	38 ha	N/A	N/A	38 ha
	(94 ac)	N/A	N/A	(94 ac)
Kahoolawe C	50 ha	N/A	N/A	50 ha
	(124 ac)	N/A	N/A	(124 ac)
Kahoolawe D	114 ha	N/A	N/A	114 ha
	(282 ac)	N/A	N/A	(282 ac)
Total	207 ha	N/A	N/A	207 ha
	(512 ac)	N/A	N/A	(512 ac)

Descriptions of Critical Habitat Units

Maui A

The proposed Maui A provides critical habitat for one species: *Sesbania tomentosa*. This unit contains a total of 49 ha (121 ac). The lands contained within this unit are owned by Maui County and a private entity. The natural feature found in this unit is Nakalele Point.

Maui B

The proposed Maui B provides critical habitat for one species: *Sesbania tomentosa*. This unit contains a total of 67 ha (166 ac). The lands contained within this unit are owned by the State and a private entity. The natural features found in this unit are Keawalua, Corral, Akaluanui, and Akhluaiki. This area is bound on the north by Poelua Bay.

Maui C

The proposed Maui C provides critical habitat for one species: *Sesbania tomentosa*. This unit contains approximately 144 ha (357 ac). The land contained within this unit is predominately owned by the State, with a very small portion privately owned. The natural features found in this unit are Mokolea Point, portions of Alapapa Gulch, Papanalahoa Point, and Kaikaina.

Maui D

The proposed Maui D provides critical habitat for two species: *Centaurium sebaeoides* and *Sesbania tomentosa*. This unit contains 45 ha (111 ac). The lands contained within this unit are owned by the State and a private entity. The natural features found in this unit are Kahakuloa Head, Puu Koae, and Puu Kahulianapa. This unit is bound on the west by Kahakuloa Bay, on the southwest by Kahakuloa town, and on the east by Mahinanui.

Maui E

The proposed Maui E provides critical habitat for one species: *Centaurium sebaeoides*. This unit contains a total of 79 ha (194 ac). The lands contained within this unit are owned by State and private owners. The natural features found in this unit are portions of Makamakaole Stream, Lahoole and Waiokila Gulch.

Maui F

The proposed Maui F provides critical habitat for one species: *Centaurium sebaeoides*. This unit contains a total of 61 ha (150 ac). The land contained within this unit is owned solely by a private owner. The natural feature found in this unit is Kupaa Gulch.

Maui G

The proposed Maui G provides critical habitat for two species: *Ischaemum byrone* and *Peucedanum sandwicense*. This unit contains a total of 1 ha (2 ac). The land contained within this unit is owned by the State. This unit is the entire Keopuka Islet.

Maui H

The proposed Maui H provides critical habitat for one species: *Ischaemum byrone*. This unit contains a total of 42 ha (104 ac). The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Pauwalu Point, Paepaemoana Point, and Waianu.

Maui I

The proposed Maui I provides critical habitat for one species: *Ischaemum byrone*. This unit contains a total of 0.1 ha (0.3 ac). The land contained within this unit is owned by the State. This unit is Moku Huki.

Maui J

The proposed Maui J provides critical habitat for one species: *Mariscus pennatiformis*. This unit contains a total of 63 ha (157 ac). The lands contained within this unit are owned the State and private owners. The natural feature found in this unit is Hanawi Stream.

Maui K

The proposed Maui K provides critical habitat for one species: *Ischaemum byrone*. This unit contains a total of 61 ha (150 ac). The land contained within this unit is owned solely by private owners. The natural feature found in this unit is Kalahu Point.

Maui L

The proposed Maui L provides critical habitat for one species: *Ischaemum byrone*. This unit contains a total of 50 ha (124 ac). The land contained within this unit is owned by the State. The natural features found in this unit are portions of Keakulikuli Point, Kapukaulua, Pukaulua Point and Waianapanapa Cave. This unit is bound on the east by Keauaiki and Pailoa Bays.

Maui M

The proposed Maui M provides critical habitat for one species: *Ischaemum byrone*. This unit contains a total of 14.3 ha (35.7 ac). The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is Kauiki Head.

Maui N

The proposed Maui N provides critical habitat for one species: *Lipochaeta kamolensis*. This unit contains a total of 115 ha (284 ac). The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is Kepuni Gulch.

Maui O

The proposed Maui O provides critical habitat for two species: *Bonamia menziesii* and *Hibiscus brackenridgei*. This unit contains a total of 278 ha (688 ac). The land contained within this unit is owned by the State. The natural feature found in this unit is Puu o kali.

Maui P

The proposed Maui P provides critical habitat for one species: *Clermontia oblongifolia* ssp. *mauiensis*. This unit contains a total of 58 ha (144 ac) and is found in the State's Honokowai section of the West Maui NAR and the West Maui Forest Reserve. The land contained within this unit is owned solely by the State. The natural feature found in this unit is a portion of Amalu Stream.

Maui Q

The proposed Maui Q provides critical habitat for 15 species: *Alectryon macrococcus, Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis mannii, Hesperomannia arbuscula, Lysimachia lydgatei, Phlegmariurus mannii, Plantago princeps, Pteris lidgatei, Sanicula purpurea* and *Tetramolopium capillare*. This unit contains a total of 2,338 ha (5,791 ac) and is found in the State's Lihau and Panaewa sections of the West Maui NAR and the West Maui Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are portions of Kahoma Stream, Kanaha Stream, Makila Stream, Launiupaku Stream, Kinihapai Stream, Ae Stream, Olowalu Stream, Nukalaloa Stream, and Poohahoahoa Stream; portions of Kahoolewa Ridge; Kauaula; Helu; Launiupoko; Lihau; Olowalu; Halepohaku; Ulaula; portions of Ukumehame Gulch and Stream; Koai; portions of the back of Iao Valley and Stream; the Needle; portions of Kapilau Ridge; Paunau; portions of Waikapu Valley; and Hanaula.

Maui R

The proposed Maui R provides critical habitat for two species: *Hesperomannia arbuscula* and *Sanicula purpurea*. This unit contains a total of 299.1 ha (740.3 ac). The lands contained within this unit are owned by a private owner and the State. The natural feature found in this unit is a portion of Waihee River.

Maui S

The proposed Maui S provides critical habitat for one species: *Sanicula purpurea*. This unit contains a total of 143 ha (354 ac). The lands contained within this unit are owned by the State and a private owner. The natural features found in this unit are Kahakuloa, portions of Kahakuloa Stream and Hulupueo Stream, and Keahikauo.

Maui T

The proposed Maui T provides critical habitat for five species: *Ctenitis squamigera, Diellia erecta, Neraudia sericea, Platanthera holochila*, and *Remya mauiensis*. This unit contains a total of 580 ha (1,436 ac) and is found in the State's West Maui Forest Reserve and Manawainui Plant Sanctuary. The lands contained within this unit are owned by the State and a private owner. The natural features found in this unit are portions of Pohakea Gulch, Kaonehua Gulch, Papalaua Gulch, and Manawainui Gulch; portions of Ukumehame; Hanaulaiki; Polanui; and Puu Anu.

Maui U

The proposed Maui U provides critical habitat for one species: *Spermolepis hawaiiensis*. This unit contains a total of 120 ha (298 ac). The lands contained within this unit are

owned by the State and a private land owner. The natural feature found in this unit is a portion of Kanaha Stream.

Maui V

The proposed Maui V provides critical habitat for one species: *Hibiscus brackenridgei*. This unit contains a total of 103 ha (255 ac). The land contained within this unit are owned solely by private owners. The natural features found in this unit are portions of Kaunoahua ridge, portions of Paleaahu Gulch, and portions of Kaonohua Gulch.

Maui W

The proposed Maui W provides critical habitat for two species: *Phlegmariurus mannii* and *Sanicula purpurea*. This unit contains a total of 69 ha (172 ac) and is found in the State's Kahakuloa section of the West Maui NAR. The lands contained within this unit are owned by the State and a private land owner. The natural features found in this unit are Violet Lake and a portion of Kapuloa Stream.

Maui X

The proposed Maui X provides critical habitat for four species: *Hedyotis coriacea, Hibiscus brackenridgei, Sesbania tomentosa,* and *Spermolepis hawaiiensis*. This unit contains a total of 204 ha (505 ac) and is found in the State's Lihau section of the West Maui NAR. The lands contained within this unit are owned by the State and a private owner. This unit is bound on the east by Olowalu.

Maui Y

The proposed Maui Y provides critical habitat for one species: *Cyrtandra munroi*. This unit contains a total of 116 ha (287 ac) and is found within the State's West Maui Forest Reserve. The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is a portion of Makamakaole Stream.

Maui Z

The proposed Maui Z provides critical habitat for one species: *Hesperomannia arborescens*. This unit contains a total of 115 ha (284 ac) and is found within the State's Kahakuloa section of the West Maui NAR and the West Maui Forest Reserve. The lands contained within this unit are owned by the State and a private owner. The natural features found in this unit are portions of Makamakaole Stream, portions of Huluhulupueo Stream, and Lanilili.

Maui Aa

The proposed Maui Aa provides critical habitat for one species: *Pteris lidgatei*. This unit contains a total of 74.3 ha (183.7 ac) and is found within the State's Kahakuloa section of the West Maui NAR. The lands contained within this unit are owned privately and by the State. The natural features found in this unit are Kahakuloa and Honokohau.

Maui Bb

The proposed Maui Bb provides critical habitat for two species: *Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi*. This unit contains a total of 352 ha (872 ac) and is located within the State's Makawao Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Haiku Uka, portions of Opana Gulch, portions of Kailua Stream, portions of Waiohiwi Gulch, and portions of Waikamoi Stream.

Maui Cc

The proposed unit Maui Cc provides critical habitat for one species: *Cyanea hamatiflora* ssp. *hamatiflora*. This unit contains a total of 117 ha (290 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are portions of Haipuaena Stream and Puohakamoa Stream.

Maui Dd

The proposed Maui Dd provides critical habitat for two species: *Cyanea hamatiflora* ssp. *hamatiflora* and *Cyanea mceldowneyi*. This unit contains a total of 213 ha (528 ac). The land contained within this unit is owned solely by a private land owner. The natural features found in this unit are portions of Puohokamoa Stream and Haipuaena Stream.

Maui Ee

The proposed Maui Ee provides critical habitat for one species: *Geranium multiflorum*. This unit contains a total of 188 ha (466 ac) and is found in the State's Koolau Forest Reserve. The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is Puu Alaea.

Maui Ff

The proposed Maui Ff provides critical habitat for one species: *Cyanea hamatiflora* ssp. *hamatiflora*. This unit contains a total of 119 ha (295 ac) and is found in the State's Hanawi NAR and Koolau Forest Reserve. The land contained within this unit is owned by the State. The natural features found in this unit are portions of the east Wailuaiki Stream and portions of the Kopiliula Stream.

Maui Gg

The proposed Maui Gg provides critical habitat for two species: *Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi*. This unit contains a total of 177 ha (438 ac) and is found within the State's Hanawi NAR. The land contained within this unit is owned by the State. The natural features found in this unit are western portions of Kuhiwa Valley and portions of Kuhiwa Stream and Mukupiui Stream.

Maui Hh

The proposed Maui Hh provides critical habitat for two species: *Clermontia samuelii* ssp. *hanaensis* and *Cyanea mceldowneyi*. This unit contains a total of 117 ha (290 ac) and is found in the State's Hanawi NAR. The land contained within this unit is owned by the State. The natural feature found in this unit is the eastern portion of Kuhiwa Valley.

Maui Ii

The proposed Maui Ii provides critical habitat for one species: *Clermontia samuelii*. This unit contains a total of 879 ha (2,177 ac) and is found in the State's Koolau and Hana Forest Reserves. The land contained within this unit is owned by the State. The natural feature found in this unit is portions of the Mokulehua Gulch.

Maui Jj

Proposed Maui Jj provides critical habitat for one species: *Phlegmariurus mannii*. This unit contains a total of 93 ha (230 ac) and is found in the State's Kipahulu Forest Reserve. The lands contained within this unit are owned by the State. The natural features found in this unit are portions of Healani Stream and western portions of Manawainui Valley.

Maui Kk

The proposed Maui Kk provides critical habitat for two species: *Phlegmariurus mannii* and *Cyanea hanatiflora* ssp. *hamatiflora*. This unit contains a total of 144 ha (357 ac) and is found within the State's Kipahulu Forest Reserve. The lands contained within this unit are owned by the State. The natural features found in this unit are northeastern portions of Manawainui Valley, Puu Ahulili, and Niniao.

Maui Ll

The proposed Maui Ll provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 45 ha (111 ac). The lands contained within this unit are owned privately. The natural feature found in this unit is a portion of Kamehaneiki Gulch.

Maui Mm

The proposed Maui Mm provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 167 ha (413 ac) and is found in the State's Kula Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are a portion of Keahuaiwi Gulch, Waiakoa, and a portion of Naalae Gulch.

Maui Nn

The proposed Maui Nn provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 692 ha (1,714 ac) and is found in the State's Kula and Kahikinui Forest Reserves. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are a portion of Kaipoioi Gulch, Kaonoulu, Waiohuli, portions of Waiohuli Gulch, and Papaanui.

Maui Oo

The proposed Maui Oo provides critical habitat for one species: *Bidens micrantha* ssp. *kalealaha*. This unit contains a total of 116 ha (287 ac). The land contained within this unit is owned by the State. The natural features found in this unit are Kahua and Kahikinui.

Maui Pp

The proposed Maui Pp provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 113 ha (280 ac) and is found in the State's Kula and Kahikinui Forest Reserves. The lands contained within this unit are owned by the State and private owners. The natural feature found in this unit is Kanaio.

Maui Qq

The proposed Maui Qq provides critical habitat for seven species: *Bidens micrantha* ssp. *kalealaha; Clermontia lindseyana, Diellia erecta, Diplazium molokaiense, Neraudia sericea, Phlegmariurus mannii,* and *Phyllostegia mollis*. This unit contains a total of 973 ha (2,410 ac) and is found in the State's Kahikinui Forest Reserve. The land contained within this unit is owned by the State. The natural features found in this unit are portions of Waiopai Gulch, Manawainui Gulch, Wailaulau Gulch, and Kapuni Gulch, and Kula.

Maui Rr

The proposed Maui Rr provides critical habitat for one species: *Alectryon macrococcus*. This unit contains a total of 115 ha (285 ac) and is found in the State's Kahikinui Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Kula and portions of Panini Gulch.

Maui Ss

The proposed Maui Ss provides critical habitat for ten species: *Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Colubrina oppositifolia, Flueggea neowawraea, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense*. This unit contains a total of 1,924 ha (4,766 ac), portions of which are found in the Kanaio NAR. The land contained within this unit is owned by the State and private owners. The natural features found in this unit are Puu Ouli, Maunanu, Kalmaloo, Luapelani, Puu Mahoe, Auwahi, and Kanaio.

Maui Tt

The proposed Maui Tt provides critical habitat for one species: *Sesbania tomentosa*. This unit contains a total of 114 ha (282 ac). The lands contained within this unit are owned by the State and leased by the U.S. Department of Defense (Hawaii Army National Guard) for the Kanaio Training Area, and private owners. The natural features found in this unit are Pimoe and Kanaio.

Maui Uu

The proposed Maui Uu provides critical habitat for one species: *Hibiscus brackenridgei*. This unit contains a total of 121 ha (300 ac). The lands contained within this unit are owned by the State and private owners. The natural feature found in this unit is Keokea.

Maui Vv

The proposed Maui Vv provides critical habitat for one species: *Vigna o-wahuensis*. This unit contains a total of 77 ha (190 ac). The land contained within this unit is owned by the State. The natural features found in this unit are Kamanamana, a portion of Kaloi, and a portion of Kaunauhane.

Maui Ww

The proposed Maui Ww provides critical habitat for one species: *Flueggea neowawraea*. This unit contains a total of 133 ha (329 ac). The lands contained within this unit are owned by the State. The natural feature found in this unit is a portion of the Lualailua Hills.

Maui Xx

The proposed Maui Xx provides critical habitat for one species: *Ctenitis squamigera*. This unit contains a total of 60 ha (149 ac) and is found within the State's West Maui Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Kahana, portions of Kahanaiki Gulch, Mahinahina, and Moomoku.

Maui Yy

The proposed Maui Yy provides critical habitat for one species: *Clermontia lindseyana*. This unit contains a total of 1,118 ha (2,769 ac). The lands contained within this unit are owned by the State and private owners. The natural features found within this unit are Kamaole, Keauhou, Keonenelu, and Waihou Spring.

Maui Zz

The proposed Maui Zz provides critical habitat for one species: *Ctenitis squamigera*. This unit contains a total of 118 ha (292 ac). The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are portions of Kanaha Stream, Panaewa, and Kuia.

Kahoolawe A

The proposed Kahoolawe A, the islet Puu Koae off the southern coast of Kahoolawe, provides critical habitat for one species: *Sesbania tomentosa*. This unit contains a total of 5 ha (12 ac). The land contained within this unit is owned by the State.

Kahoolawe B

The proposed Kahoolawe B provides critical habitat for one species: *Kanaloa kahoolawensis*. This unit contains a total of 38 ha (94 ac). The land contained within this unit is owned by the State. The natural feature found in this unit is Aleale.

Kahoolawe C

The proposed Kahoolawe C provides critical habitat for one species: *Vigna o-wahuensis*. This unit contains a total of 50 ha (124 ac). The land contained within this unit is owned by the State. The natural feature found in this unit is a tidal pond.

Kahoolawe D

The proposed Kahoolawe D provides critical habitat for one species: *Vigna o-wahuensis*. This unit contains a total of 114 ha (282 ac). The land contained within this unit is owned by the State.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat. Further, some Federal agencies may have conferenced with us on proposed critical habitat. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on lands being proposed as critical habitat for these 50 species or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat include, but are not limited to:

(1) Activities that degrade or destroy habitat defined as a primary constituent element, including but not limited to: Overgrazing; maintenance of feral ungulates; clearing, cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire.

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that wet forest or bog vegetation is significantly affected;

(3) Recreational activities that degrade vegetation; and

(4) Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of any one of the 50 species is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit from critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Regulation of grazing and recreation, and federally funded silviculture/forestry projects and research by the U.S. Department of Agriculture (Forest Service);

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Road construction and maintenance by, or funded by, the U.S. Department of Transportation;

(6) Military training or similar activities of the U.S. Department of Defense (Hawaii Army National Guard) on lands under their jurisdiction;

(7) Unexploded ordinance clean-up or similar activities of the U.S. Department of Defense (Navy) or their contractors on the island of Kahoolawe;

(8) Federally funded importation of alien species for research, agriculture, and aquiculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(9) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act.;

(10) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(11) Installation and maintenance of U.S. Coast Guard navigational aids;

(12) Construction of communication sites licensed by the Federal Communications Commission;

(13) Construction activities by the U.S. Department of Interior (National Park Service); and

(14) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

All lands designated as critical habitat are within the geographical area occupied by these species. Thus, we consider all critical habitat proposed in this rule to be occupied. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Because of this, we do not expect any additional project modifications or restrictions or anticipate additional regulatory protection will result from critical habitat designation.

If you have questions regarding whether specific activities may affect or will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and general inquiries regarding prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Ave., Portland, Oregon 97232–4181 (telephone 503–231–2063; facsimile 503–231–6243).

Consideration of Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will have a comment period for 30 days at that time to accept comments.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and any public hearings, if requested, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

In this proposed rule, we do not propose to designate critical habitat on the private lands within Waikamoi and Kapunakea Preserves, Puu Kukui Watershed Management Area, and on the State lands in the upper areas of Hanawi Natural Area Reserve because these areas are permanently dedicated to conservation and managed to address the threats to the plant species at issue. We believe that these areas are not in need of special management considerations or protection and, therefore, do not meet the definition of critical habitat in the Act. Since we do not believe these areas meet the definition of critical habitat, critical habitat is not proposed for the four species that are only found in Waikamoi Preserve and/or Haleakala National Park (*Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis)*. However, we are specifically soliciting comments on the appropriateness of this approach.

The Service also invites comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from designation in the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

In determining whether an action is likely to be implemented, we will generally consider the following:

- Whether or not a management plan or agreement exists which specifies the management actions being implemented, or if to be implemented, the schedule for implementation;
- Whether there are responsible party(ies) and funding source(s) or other resources necessary to implement the

actions, with a high level of assurance that the funding will be provided; and

• The authority and long-term commitment of the party(ies) to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we would generally consider whether or not the plan is specific concerning the threats to be addressed by the management actions; whether such actions have been successful in the past; whether there are provisions for monitoring and assessment of the effectiveness of the management actions; and whether adaptive management principles have been incorporated into the plan.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Maui. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation would outweigh any threats to these species due to designation;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532(5));

(3) Specific information on the amount and distribution of habitat for *Acaena exigua, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families; and

(6) Economic and other potential values associated with designating critical habitat for the above 50 plant species such as those derived from non-consumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

2. If you would like to submit comments by e-mail (*mandk_crithab_pr@fws.gov*), please submit e-mail comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AH70" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541–3441. Please note that the e-mail address will be closed out at the termination of the public comment period.

3. You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand

including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget (OMB). We are in the process of preparing an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we may exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act at this time, we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required.

The 50 plants were listed as endangered or threatened species between the years 1991 and 1999. The areas proposed for critical habitat are currently occupied by one or more of these species. Under section 7 of the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 50 PLANTS FROM MAUI AND KAHOOLAWE

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal activities potentially affected [2].	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior.	None.
Private or other non-Federal activities potentially affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals; fragmentation of habitat).	None.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 also requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience, due to the limited number of individuals and populations, and limited range, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat for any of these 50 species would also likely cause "jeopardy" to that species. Accordingly, the designation of currently occupied areas as critical habitat would not have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal involvement in their actions are not restricted by the designation of critical habitat.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 50 plant species since their listing between 1991 and 1999. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is currently occupied.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 5 (see "Methods for Selection of Areas for Proposed Critical Habitat Designations") we have designated property owned by Federal and State governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Federally funded silviculture/forestry projects and research and research by the U.S. Department of Agriculture (Forest Service);

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Road construction and maintenance by, or funded by, the U.S. Department of Transportation;

(6) Military training or similar activities of the U.S. Department of Defense (Hawaii Army National Guard) on lands under their jurisdiction;

(7) Unexploded ordnance clean-up or similar activities of the U.S. Department of Defense (Navy) or their contractors on the island of Kahoolawe;

(8) Federally funded importation of alien species for research, agriculture, and aquiculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(9) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(10) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(11) Installation and maintenance of U.S. Coast Guard navigational aids;

(12) Construction of communication sites licensed by the Federal Communications Commission; and

(13) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

Many of these activities authorized or funded by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the protections of the Act that are triggered by listing, such as avoiding jeopardy to these species, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current State restrictions concerning take of listed threatened or endangered plant species remain in effect, and this rule would impose no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal agency that funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of these 50 plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the 50 plant species would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the plant species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, "Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

We determined that no Tribal lands are essential for the conservation of the plant species discussed in this proposed ruler because they do not support populations or suitable habitat. Therefore, we are not proposing to designate critical habitat for these species on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Ecoregion Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Michelle Stephens, and Marigold Zoll of the Pacific Islands Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope knudsenii; Melicope* (=*Pelea*) *mucronulata, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* under "FLOWERING PLANTS" and *Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Phlegmariurus* (=*Lycopodium,* =*Huperzia*) *mannii,* and *Pteris lidgatei* under "FERNS AND ALLIES" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	
Alectryon macrococcus.	Mahoe	U.S.A.(HI)	Sapindaceae	E	467	17.96(a)	NA
•	•	•	•	•	•	•	
Bidens micrantha ssp. *kalealaha.*	Ko'oko'olau	U.S.A.(HI)	Asteraceae	E	467	17.96(a)	NA
•	•	•	•	•	•	•	
Bonamia menziesii	None	U.S.A.(HI)	Convolvulaceae	E	559	17.96(a)	NA
•	•	•	•	•	•	•	
Cenchrus agrimonioides.	Kamanomano (=Sandbur, agrimony).	U.S.A.(HI)	Poaceae	E	592	17.96(a)	NA
•	•	•	•	•	•	•	
Centaurium sebaeoides.	Awiwi	U.S.A.(HI)	Gentianaceae	E	448	17.96(a)	NA
•	•	•	•	•	•	•	
Clermontia lindseyana.	'Oha wai	U.S.A.(HI)	Campanulaceae	E	467	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Clermontia oblongifolia ssp. *mauiensis.*	'Oha wai	U.S.A.(HI)	Campanulaceae	E	466	17.96(a)	NA
Clermontia samuelii	'Oha wai	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
Colubrina oppositifolia.	Kauila	U.S.A.(HI)	Rhamnaceae	E	532	17.96(a)	NA
Cyanea copelandii ssp. *haleakalaensis.*	Haha	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
Cyanea glabra	Haha	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
Cyanea grimesiana ssp. *grimesiana.*	Haha	U.S.A.(HI)	Campanulaceae	E	592	17.96(a)	NA
Cyanea hamatiflora ssp. *hamatiflora.*	Haha	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
Cyanea lobata	Haha	U.S.A.(HI)	Campanulaceae	E	467	17.96(a)	NA
Cyanea mceldowneyi	Haha	U.S.A.(HI)	Campanulaceae	E	467	17.96(a)	NA
Cyrtandra munroi	Ha'iwale	U.S.A.(HI)	Gesneriaceae	E	467	17.96(a)	NA
Dubautia plantaginea ssp. *humilis*	Na'ena'e	U.S.A.(HI)	Asteraceae	E	666	17.96(a)	NA
Flueggea neowawraea.	Mehamehame	U.S.A.(HI)	Euphorbiaceae	E	559	17.96(a)	NA
Geranium arboreum	Hawaiian red-flowered Geranium.	U.S.A.(HI)	Geraniaceae	E	465	17.96(a)	NA
Geranium multiflorum.	Nohoanu	U.S.A.(HI)	Geraniaceae	E	467	17.96(a)	NA
Hedyotis coriacea	Kio'ele	U.S.A.(HI)	Rubiaceae	E	467	17.96(a)	NA
Hedyotis mannii	Pilo	U.S.A.(HI)	Rubiaceae	E	480	17.96(a)	NA
Hesperomannia arborescens.	None	U.S.A.(HI)	Asteraceae	E	536	17.96(a)	NA
Hesperomannia arbuscula.	None	U.S.A.(HI)	Asteraceae	E	448	17.96(a)	NA
Hibiscus brackenridgei.	Ma'o hau hele	U.S.A.(HI)	Malvaceae	E	559	17.96(a)	NA
Ischaemum byrone	Hilo ischaemum	U.S.A.(HI)	Poaceae	E	532	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Kanaloa kahoolawensis.	Kohe malama malama o kanaloa.	U.S.A.(HI)	Fabaceae	E	666	17.96(a)	NA
Lipochaeta kamolensis.	Nehe	U.S.A.(HI)	Asteraceae	E	467	17.96(a)	NA
Lysimachia lydgatei	None	U.S.A.(HI)	Primulaceae	E	467	17.96(a)	NA
Mariscus pennatiformis.	None	U.S.A.(HI)	Cyperaceae	E	559	17.96(a)	NA
Melicope adscendens.	Alani	U.S.A.(HI)	Rutaceae	E	565	17.96(a)	NA
Melicope knudsenii	Alani	U.S.A.(HI)	Rutaceae	E	530	17.96(a)	NA
Melicope (= *Pelea*) *mucronulata*)	Alani	U.S.A.(HI)	Rutaceae	E	467	17.96(a)	NA
Neraudia sericea	None	U.S.A.(HI)	Urticaceae	E	559	17.96(a)	NA
Peucedanum sandwicense.	Makou	U.S.A.(HI)	Apiaceae	T	530	17.96(a)	NA
Phyllostegia mollis	None	U.S.A.(HI)	Lamiaceae	E	448	17.96(a)	NA
Plantago princeps	Laukahi kuahiwi	U.S.A.(HI)	Plantaginaceae	E	559	17.96(a)	NA
Platanthera holochila	None	U.S.A.(HI)	Orchidaceae	E	592	17.96(a)	NA
Remya mauiensis	Maui remya	U.S.A.(HI)	Asteraceae	E	413	17.96(a)	NA
Sanicula purpurea	None	U.S.A.(HI)	Apiaceae	E	592	17.96(a)	NA
Sesbania tomentosa	Ohai	U.S.A.(HI)	Fabaceae	E	559	17.96(a)	NA
Spermolepis hawaiiensis.	None	U.S.A.(HI)	Apiaceae	E	559	17.96(a)	NA
Tetramolopium capillare.	Pamakani	U.S.A.(HI)	Asteraceae	E	555	17.96(a)	NA
Vigna o-wahuensis	None	U.S.A.(HI)	Fabaceae	E	559	17.96(a)	NA
Zanthoxylum hawaiiense.	A'e	U.S.A.(HI)	Rutaceae	E	532	17.96(a)	NA
FERNS AND ALLIES							
Ctenitis squamigera	Pauoa	U.S.A.(HI)	Dryopteridaceae	E	553	17.96(a)	NA
Diellia erecta	Asplenium-leaved diellia.	U.S.A.(HI)	Aspleniaceae	E	559	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
.	.	.	.	.	.	.	.
Diplazium molokaiense.	None	U.S.A.(HI)	Aspleniaceae	E	553	17.96(a)	NA
.	.	.	.	.	.	.	.
Phlegmariurus (Lycopodium, =Huperzia) mannii.	Wawae'iole	U.S.A.(HI)	Lycopodiaceae	E	467	17.96(a)	NA
.	.	.	.	.	.	.	.
Pteris lidgatei	None	U.S.A.(HI)	Adiantaceae	E	553	17.96(a)	NA
.	.	.	.	.	.	.	.

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add introductory text to paragraph (a)(1)(i), add paragraph (a)(1)(i)(C) and (a)(1)(i)(D), and revise paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

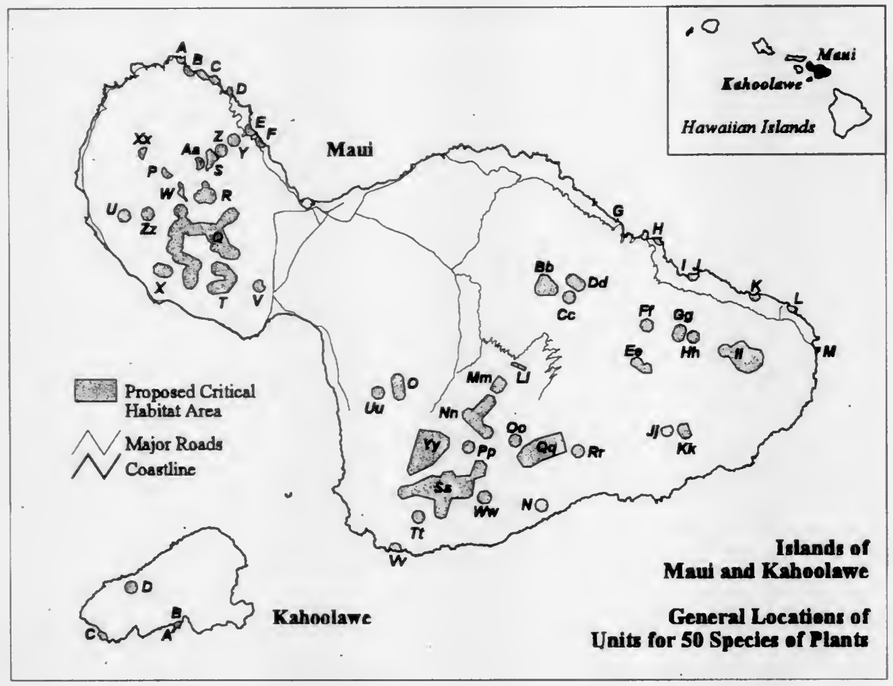
(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian islands. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunication equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine), and other man-made features, do not contain, and are not likely to develop, the constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section. Therefore, these features or structures are not included in the critical habitat designation.

* * * * *

(C) *Maui.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 52 critical habitats units designated on the island of Maui.

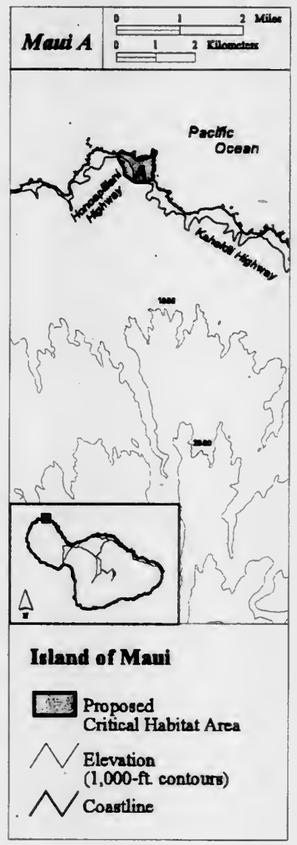
Note: Map Follows:



Critical Habitat Maui A (49 ha; 121 ac)

Unit consists of the following seven boundary points and the intermediate coastline: 750633, 2326772; 750456, 2326683; 750130, 2326703; 749888, 2326884; 749886, 2327030; 749750, 2327258; 749774, 2327433.

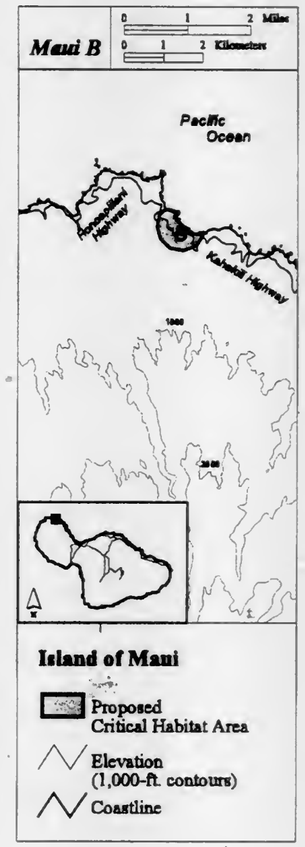
Note: Map follows:



Critical Habitat Maui B (67 ha; 166 ac)

Unit consists of the following nine boundary points and the intermediate coastline: 751694, 2325923; 751701, 2325885; 751529, 2325612; 751186, 2325473; 750835, 2325553; 750612, 2325770; 750532, 2326078; 750587, 2326375; 750748, 2326531.

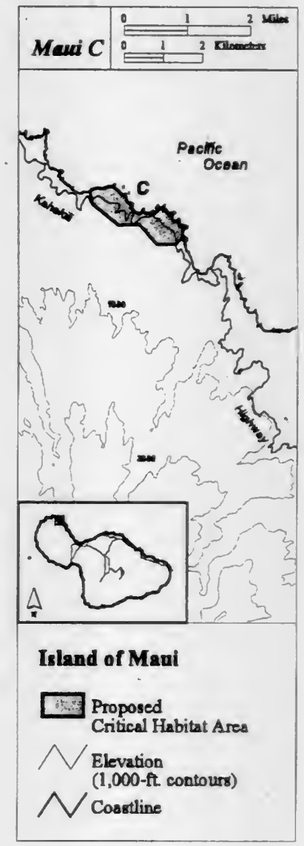
Note: Map follows:



Critical Habitat Maui C (144.1 ha; 357.3 ac)

Area consists of the following seven points and intermediate coastline: Start approximately at the coastline at UTM coordinate 754097, 2324739; 753959, 2324610; 753471, 2324616; 753034, 2325110; 752505, 2325093; 751841, 2325621; 751777, 2325920.

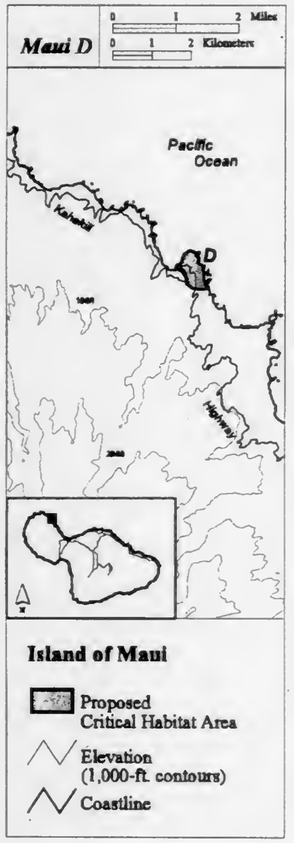
NOTE: Map follows:



Critical Habitat Maui D (45 ha; 111 ac)

Unit consists of the following nine boundary points and the intermediate coastline: 755603, 2323416; 755458, 2323375; 755192, 2323407; 755029, 2323524; 755023, 2323623; 754989, 2323720; 754905, 2323851; 754823, 2323887; 754754, 2323893.

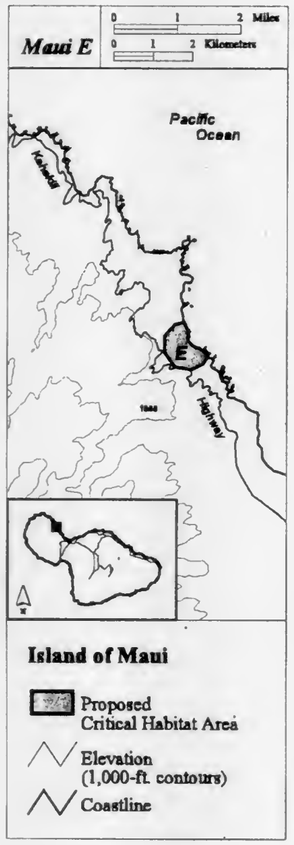
NOTE: Map follows:



Critical Habitat Maui E (79 ha; 194 ac)

Unit consists of the following eight boundary points and the intermediate coastline: 757806, 2319806; 757685, 2319625; 757377, 2319478; 756960, 2319544; 756704, 2319914; 756704, 2320323; 756970, 2320617; 757205, 2320672.

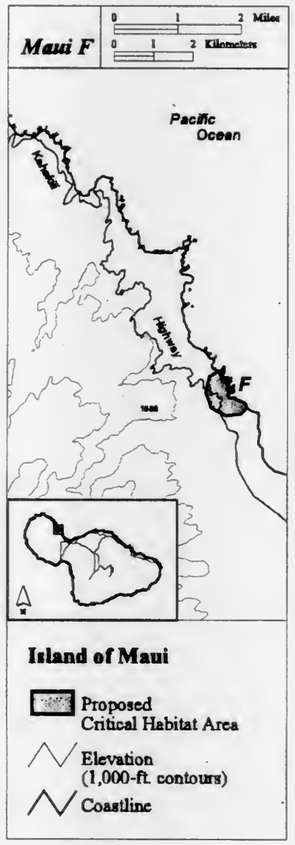
NOTE: Map follows:



Critical Habitat Maui F (61 ha; 150 ac)

Unit consists of the following seven boundary points and the intermediate coastline: 758780, 2318541; 758624, 2318378; 758239, 2318333; 757873, 2318527; 757741, 2318914; 757835, 2319306; 758062, 2319448.

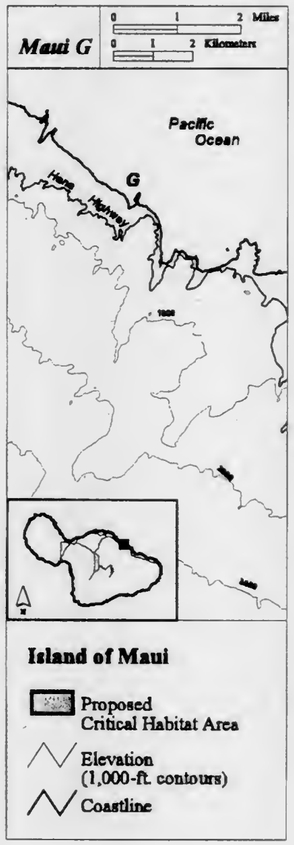
Note: Map follows:



Critical Habitat Maui G (1 ha; 2 ac)

Unit consists of the entire island, located at UTM coordinate 794211, 2310986.

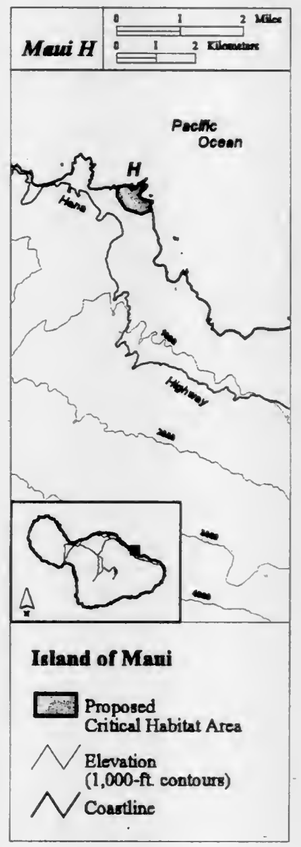
Note: Map follows:



Critical Habitat Maui H (42 ha; 104 ac)

Unit consists of the following five boundary points and the intermediate coastline: 798775, 2308545; 798511, 2308422; 798109, 2308552; 797895, 2308879; 797900, 2309107.

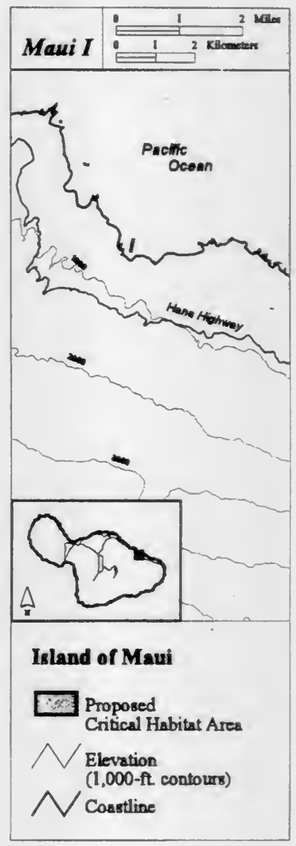
Note: Map follows:



Critical Habitat Maui I (0.1 ha; 0.3 ac)

Unit consists of the entire island, located at UTM coordinate 800254, 2305748.

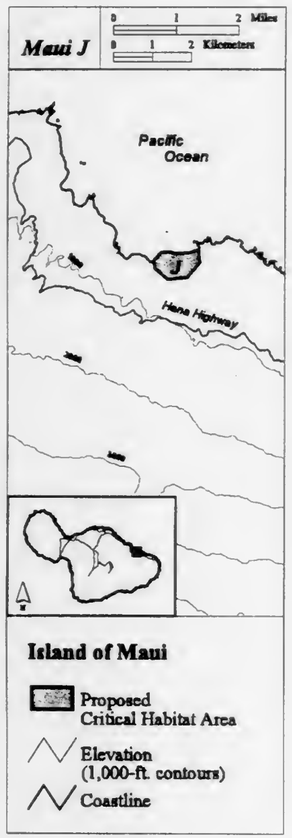
Note: Map follows:



Critical Habitat Maui J (63 ha; 157 ac)

Unit consists of the following six boundary points and the intermediate coastline: 802363, 2305610; 802394, 2305272; 802072, 2304901; 801579, 2304862; 801251, 2305132; 801206, 2305331.

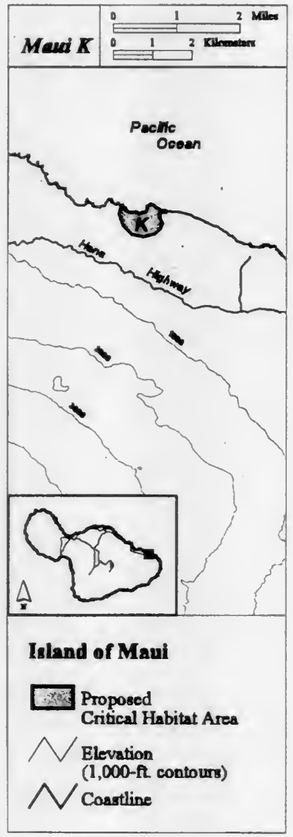
Note: Map follows:



Critical Habitat Maui K (61 ha; 150 ac)

Unit consists of the following twelve boundary points and the intermediate coastline: 808655, 2303467; 808652, 2303423; 808501, 2303430; 808499, 2303256; 808577, 2303146; 808506, 2303006; 808369, 2302880; 808087, 2302805; 807783, 2302870; 807561, 2303089; 807460, 2303384; 807518, 2303589.

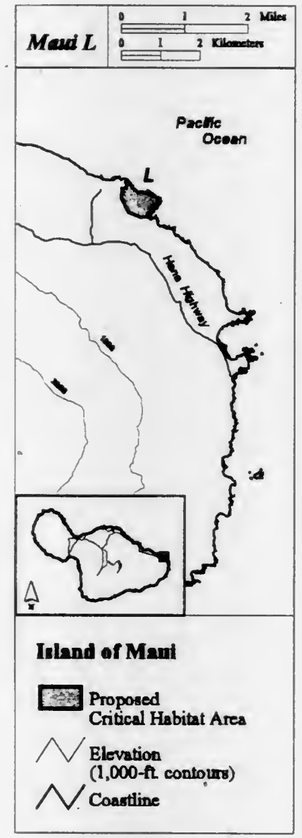
Note: Map follows:



Critical Habitat Maui L (50 ha; 124 ac)

Unit consists of the following nine boundary points and the intermediate coastline: 811990, 2301607; 811819, 2301595; 811486, 2301731; 811327, 2302067; 811331, 2302315; 811456, 2302318; 811455, 2302431; 811419, 2302481; 811458, 2302548.

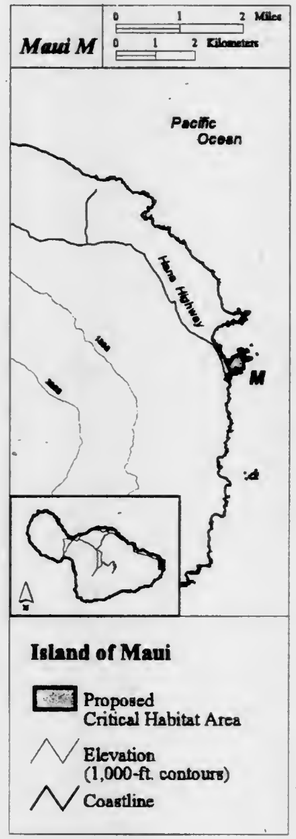
Note: Map follows:



Critical Habitat Maui M (14.3 ha; 35.7 ac)

Unit consists of the following eight boundary points and the intermediate coastline: 814158, 2297468; 814095, 2297500; 814187, 2297634; 814242, 2297672; 814116, 2297928; 814198, 2297932; 814268, 2297968; 814303, 2298064.

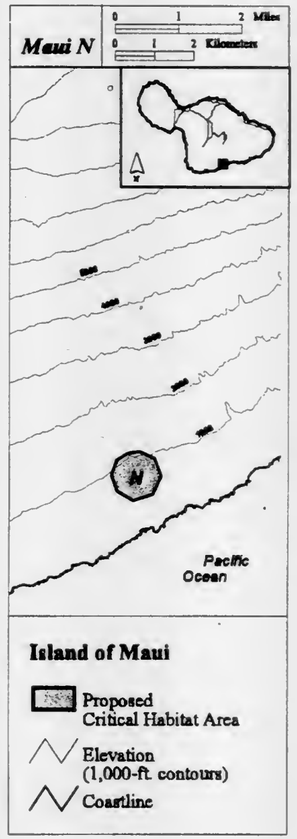
Note: Map follows:



Critical Habitat Maui N (115 ha; 284 ac)

Unit consists of the following nine boundary points: 786248, 2282907; 786554, 2282957; 786936, 2282772; 787107, 2282321; 786893, 2281864; 786401, 2281705; 785985, 2281950; 785844, 2282345; 785967, 2282728.

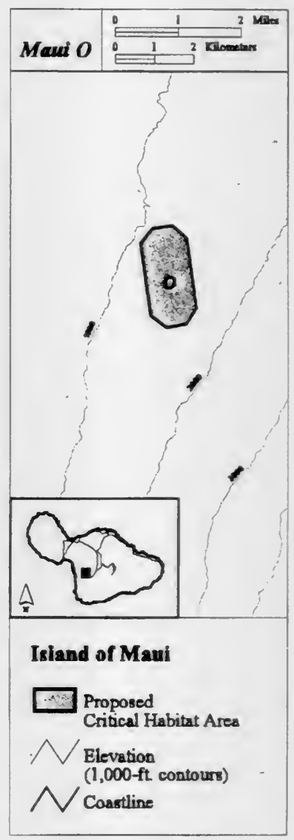
Note: Map follows:



Critical Habitat Maui O (278 ha; 688 ac)

Unit consists of the following eight boundary points: 771668, 2295517; 772176, 2295586; 772539, 2295263; 772790, 2293479; 772527, 2293084; 772026, 2292986; 771623, 2293297; 771351, 2295136.

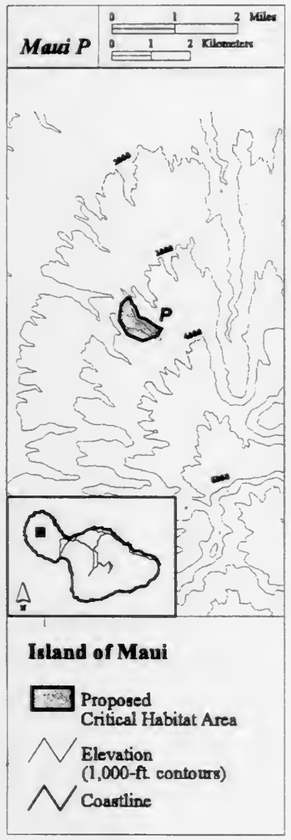
Note: Map follows:



Critical Habitat Maui P (58 ha; 144 ac)

Unit consists of the following thirteen boundary points: 748750, 2315870; 748926, 2315818; 749219, 2315615; 749336, 2315565; 749244, 2315410; 748854, 2315265; 748457, 2315426; 748247, 2315790; 748306, 2316197; 748486, 2316360; 748551, 2316304; 748584, 2316209; 748668, 2316115.

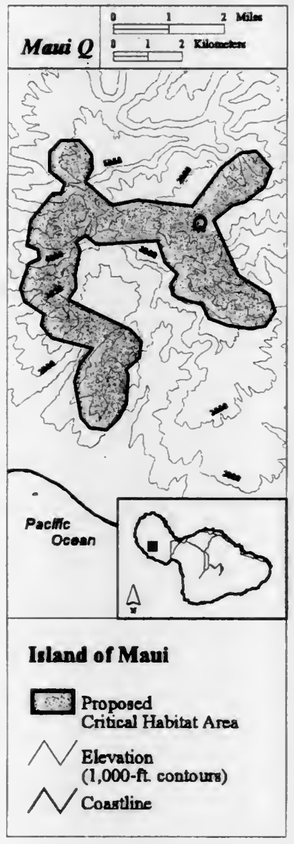
Note: Map follows:



Critical Habitat Maui Q (2,338 ha; 5,791 ac)

Unit consists of the following sixty-five boundary points: 750771, 2312124; 750790, 2311697; 750578, 2311354; 751367, 2310653; 752118, 2310799; 753695, 2310630; 754534, 2311735; 755091, 2312174; 755559, 2312225; 756008, 2311720; 755784, 2311189; 755248, 2310771; 754859, 2310651; 754315, 2310226; 755033, 2308654; 755940, 2308099; 756110, 2307598; 755825, 2307180; 755406, 2307098; 754741, 2307185; 754188, 2307390; 753983, 2307802; 753340, 2307955; 753129, 2308088; 753088, 2308412; 753261, 2308676; 752903, 2309029; 752695, 2309644; 750916, 2309529; 750598, 2309792; 750316, 2309596; 750439, 2309356; 750292, 2308660; 750320, 2308277; 750095, 2307938; 751915, 2307054; 752216, 2306733; 752165, 2306253; 751768, 2305894; 751845, 2305755; 751784, 2304903; 751556, 2304475; 751223, 2304157; 750736, 2304202; 750467, 2304503; 750289, 2305559; 750449, 2306075; 750805, 2306520; 749621, 2306816; 749314, 2307195; 749385, 2307517; 748814, 2307874; 748699, 2308271; 748949, 2308977; 749251, 2309111; 749218, 2309383; 748891, 2309495; 748997, 2310228; 749635, 2310991; 749876, 2310977; 749988, 2311296; 749540, 2311646; 749543, 2312185; 749873, 2312535; 750410, 2312543.

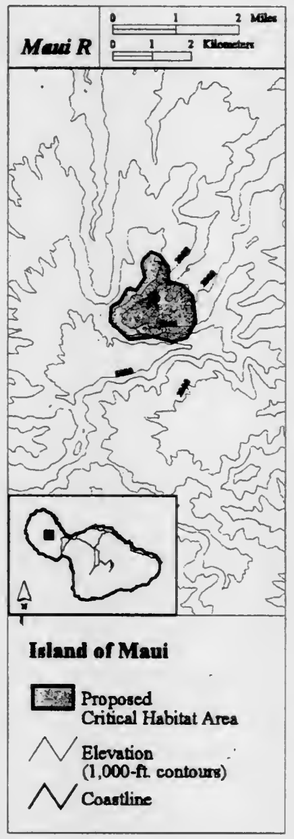
Note: Map follows:



Critical Habitat Maui R (299.1 ha; 740.3 ac)

Unit consists of the following twenty-one boundary points: 752540, 2314961; 752773, 2314883; 752997, 2314576; 752995, 2314200; 753348, 2314121; 753615, 2313849; 753691, 2313211; 753468, 2312810; 753085, 2312694; 752612, 2312832; 751992, 2312757; 751497, 2313211; 751524, 2313557; 751582, 2313614; 751746, 2313692; 751933, 2314010; 752006, 2314036; 752164, 2313975; 752394, 2314306; 752308, 2314642; 752358, 2314769.

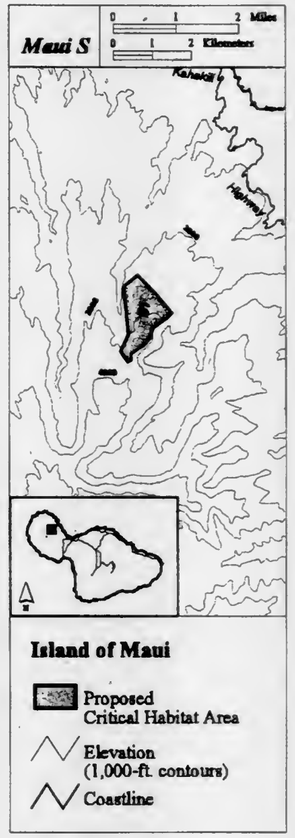
Note: Map follows:



Critical Habitat Maui S (143 ha; 354 ac)

Unit consists of the following thirteen boundary points: 752751, 2317904; 753106, 2318187; 753571, 2317718; 753990, 2317221; 753879, 2317115; 753513, 2316860; 753439, 2316618; 753273, 2316414; 752929, 2316198; 752932, 2316027; 752839, 2315991; 752670, 2316256; 752869, 2316683.

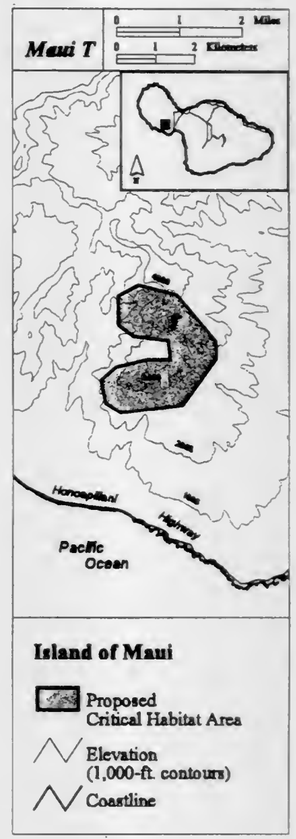
Note: Map follows:



Critical Habitat Maui T (580 ha; 1,436 ac)

Unit consists of the following fifteen boundary points: 753246, 230584; 753238, 2306579; 753759, 2306849; 754750, 2306605; 755757, 2305428; 755763, 2305006; 754900, 2303806; 753297, 2303611; 752908, 2303851; 752785, 2304448; 753174, 2304779; 753962, 2304969; 754581, 2304970; 754515, 2305458; 753623, 2305561.

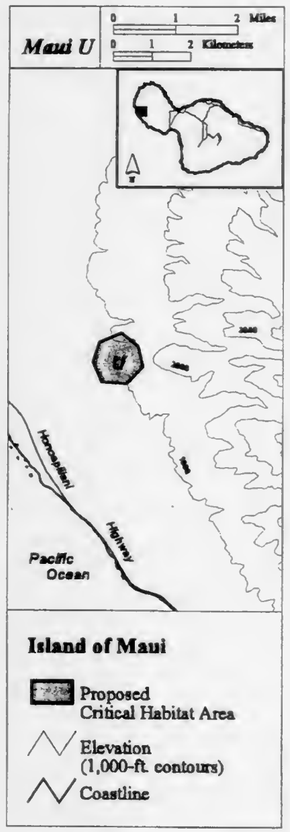
Note: Map follows:



Critical Habitat Maui U (120 ha; 298 ac)

Unit consists of the following seven boundary points: 744526, 2312185; 744948, 2311845; 745071, 2311334; 744655, 2310891; 744008, 2310932; 743776, 2311456; 743947, 2311954.

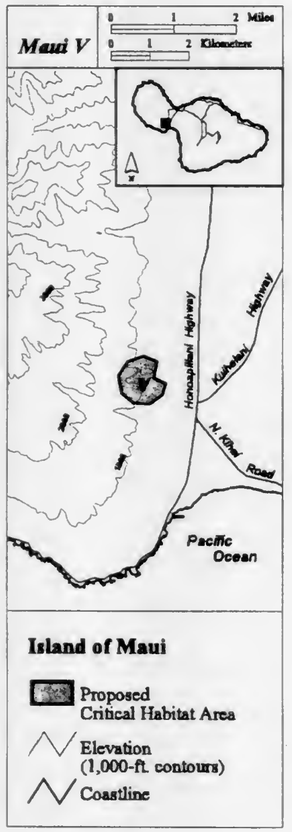
Note: Map follows:



Critical Habitat Maui V (103 ha; 255 ac)

Unit consists of the following ten boundary points: 758083, 2305035; 758421, 2304900; 758346, 2304479; 758653, 2304334; 758566, 2304050; 758222, 2303804; 757824, 2303841; 757517, 2304094; 757436, 2304539; 757665, 2304897.

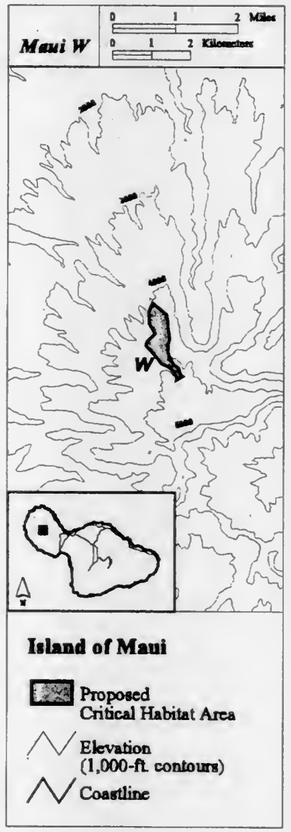
Note: Map follows:



Critical Habitat Maui W (69 ha; 172 ac)

Unit consists of the following twenty-one boundary points: 750403, 2314584; 750470, 2313939; 750431, 2313836; 750429, 2313611; 750465, 2313493; 750581, 2313305; 750705, 2313201; 750756, 2313045; 750814, 2312992; 750650, 2312902; 750660, 2312967; 750541, 2313163; 750455, 2313243; 750267, 2313325; 750046, 2313596; 749865, 2313788; 749906, 2313905; 750108, 2314098; 749945, 2314364; 749932, 2314648; 750027, 2314876.

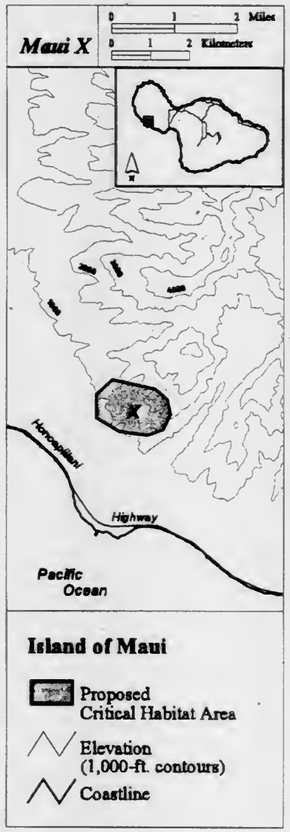
Note: Map follows:



Critical Habitat Maui X (204 ha; 505 ac)

Unit consists of the following nine boundary points: 747781, 2306743; 748893, 2306503; 749197, 2306248; 749279, 2305850; 749084, 2305460; 748688, 2305318; 747967, 2305419; 747371, 2305769; 747379, 2306377.

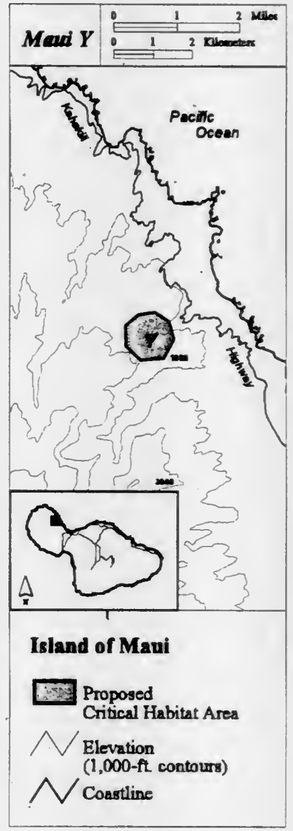
Note: Map follows:



Critical Habitat Maui Y (116 ha; 287 ac)

Unit consists of the following eight boundary points: 755267, 2319597; 755686, 2319662; 756061, 2319419; 756179, 2318978; 755912, 2318493; 755321, 2318439; 754959, 2318795; 754947, 2319319.

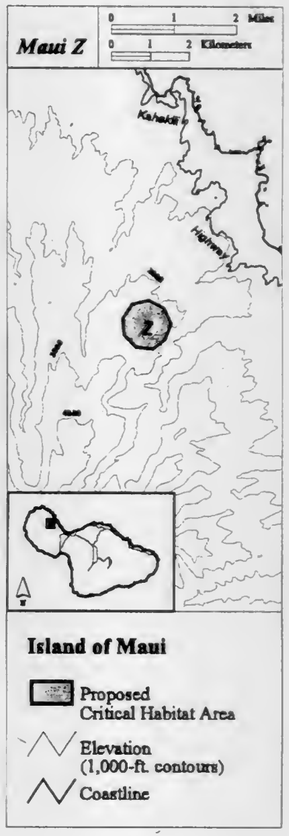
Note: Map follows:



Critical Habitat Maui Z (115 ha; 284 ac)

Unit consists of the following nine boundary points: 754334, 2318638; 754726, 2318445; 754908, 2318033; 754740, 2317636; 754431, 2317403; 754002, 2317451; 753690, 2317749; 753658, 2318167; 753894, 2318536.

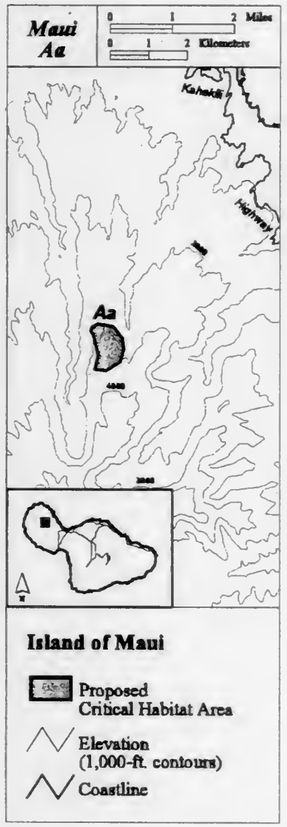
Note: Map follows:



Critical Habitat Maui Aa (74.3 ha; 183.7 ac)

Unit consists of the following twelve boundary points: 751685, 2317244; 751861, 2317323; 752265, 2317256; 752494, 2316959; 752538, 2316661; 752442, 2316337; 752076, 2316112; 751770, 2316146; 751858, 2316497; 751827, 2316694; 751730, 2317048; 751671, 2317144.

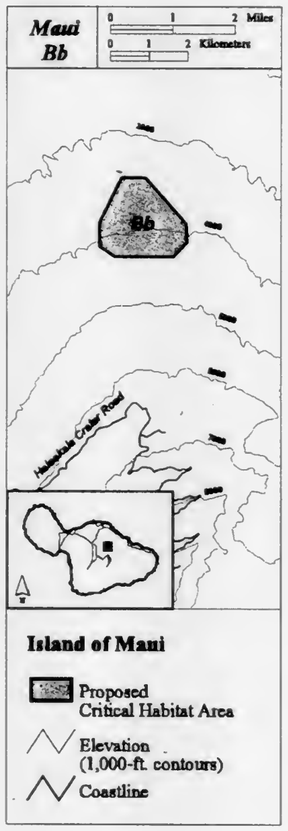
Note: Map follows:



Critical Habitat Maui Bb (352 ha; 872 ac)

Unit consists of the following eight boundary points: 786494, 2305496; 787116, 2305481; 788158, 2304306; 788186, 2303838; 787832, 2303458; 786315, 2303459; 785903, 2303731; 785907, 2304339.

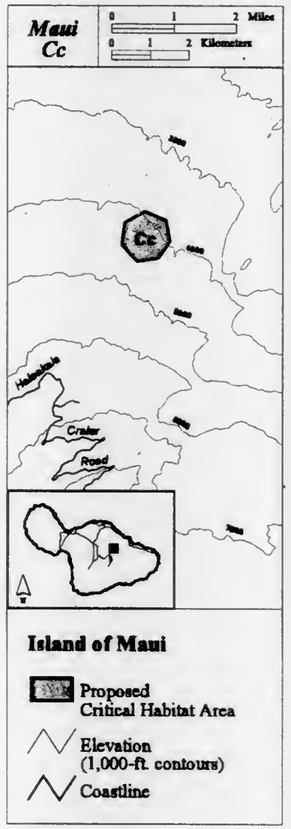
Note: Map follows:



Critical Habitat Maui Cc (117 ha; 290 ac)

Unit consists of the following seven boundary points: 789332, 2303848; 789877, 2303630; 789978, 2303093; 789690, 2302650; 789130, 2302572; 788734, 2302992; 788804, 2303568.

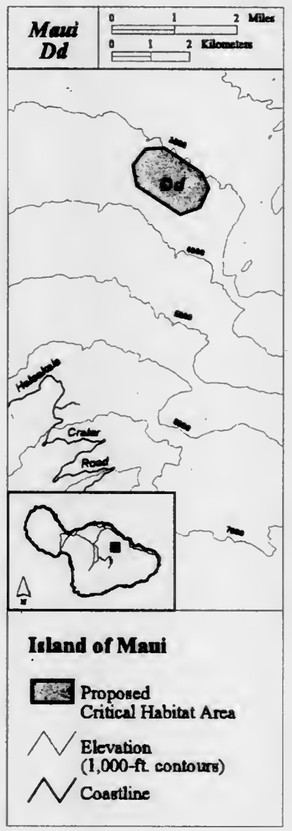
Note: Map follows:



Critical Habitat Maui Dd (213 ha; 528 ac)

Unit consists of the following eight boundary points: 789799, 2305535; 790790, 2304877; 790965, 2304501; 790745, 2304009; 790234, 2303824; 789107, 2304563; 789014, 2305084; 789332, 2305496.

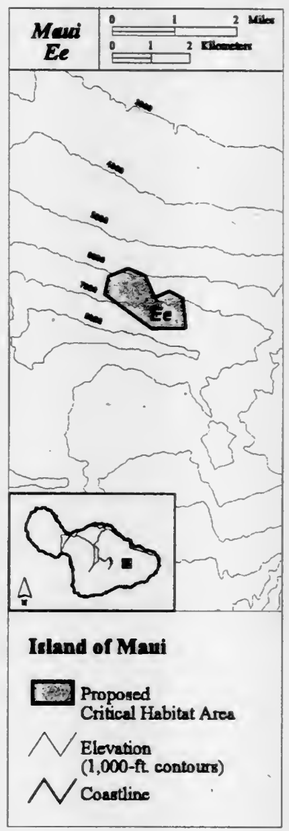
Note: Map follows:



Critical Habitat Maui Ee (188 ha; 466 ac)

Unit consists of the following eleven boundary points: 796711, 2295634; 796710, 2295635; 795482, 2296515; 795599, 2296973; 796086, 2297177; 796536, 2297003; 796794, 2296434; 797172, 2296594; 797523, 2296403; 797594, 2295645.

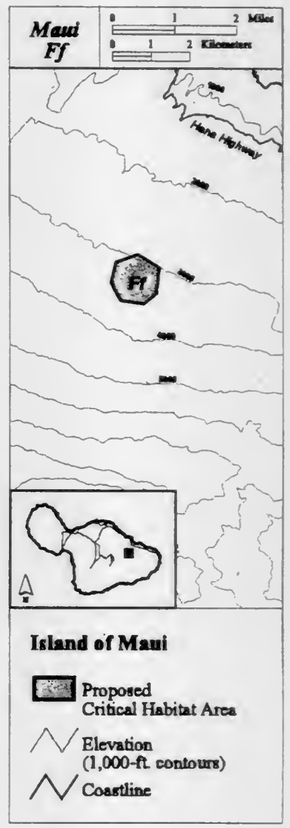
Note: Map follows:



Critical Habitat Maui Ff (119 ha; 295 ac)

Unit consists of the following seven boundary points: 797202, 2301058; 797754, 2300721; 797684, 2300057; 797349, 2299792; 796752, 2299869; 796501, 2300323; 796630, 2300861.

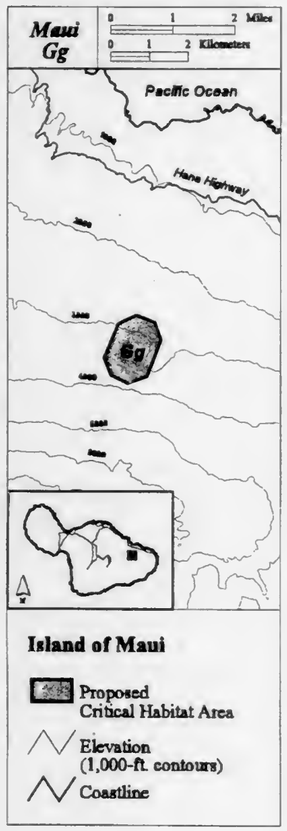
Note: Map follows:



Critical Habitat Maui Gg (177 ha; 438 ac)

Unit consists of the following eight boundary points: 800493, 2300503; 800980, 2300308; 801139, 2299872; 800770, 2298929; 800273, 2298755; 799837, 2298965; 799657, 2299406; 800037, 2300287.

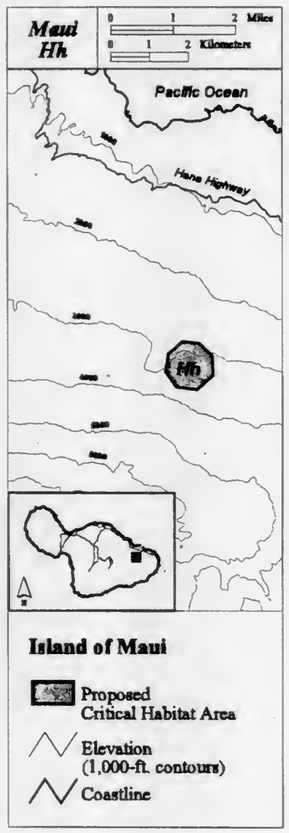
Note: Map follows:



Critical Habitat Maui Hh (117 ha; 290 ac)

Unit consists of the following eight boundary points: 802095, 2299801; 802425, 2299477; 802436, 2298965; 802041, 2298606; 801503, 2298668; 801221, 2299078; 801288, 2299532; 801656, 2299847.

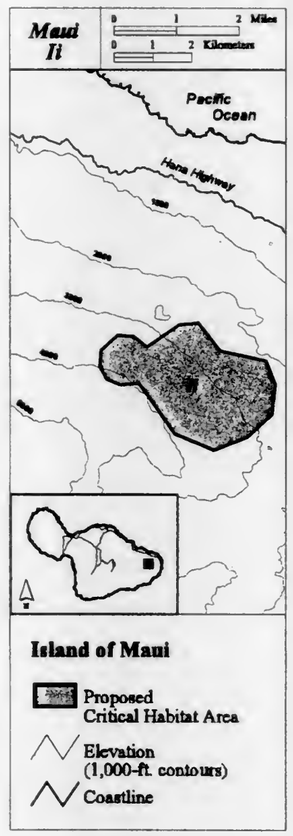
Note: Map follows:



Critical Habitat Maui Ii (879 ha; 2,177 ac)

Area consists of the following seventeen boundary points: 805238, 2298452; 805576, 2298173; 806413, 2298749; 806900, 2298797; 807464, 2298080; 808649, 2297831; 808888, 2297229; 808802, 2296455; 808162, 2295863; 807311, 2295538; 806298, 2295949; 805380, 2297248; 804885, 2297212; 804541, 2297354; 804363, 2297678; 804389, 2298093; 804817, 2298473.

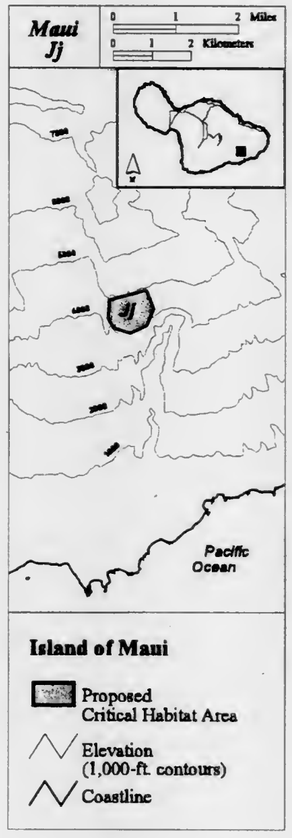
Note: Map follows:



Critical Habitat Maui Jj (93 ha; 230 ac)

Area consists of the following seven boundary points: 799552, 2290323; 799747, 2289854; 799568, 2289425; 799156, 2289228; 798721, 2289360; 798574, 2289611; 798604, 2290076.

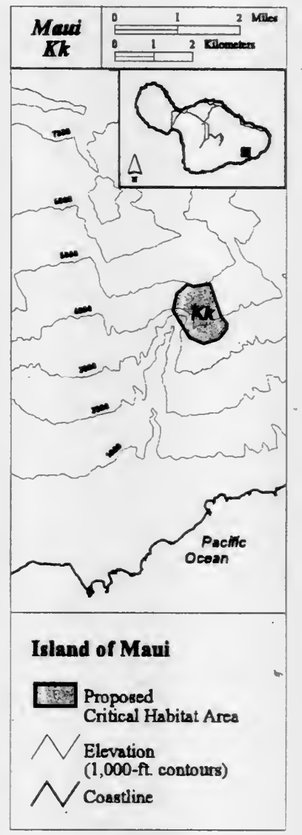
Note: Map follows:



Critical Habitat Maui Kk (144 ha; 357 ac)

Area consists of the following eleven boundary points: 801153, 2290510; 801442, 2289674; 801609, 2289474; 801598, 2289363; 801378, 2289110; 800998, 2288986; 800631, 2289145; 800196, 2289818; 800288, 2290244; 800574, 2290492; 800729, 2290430.

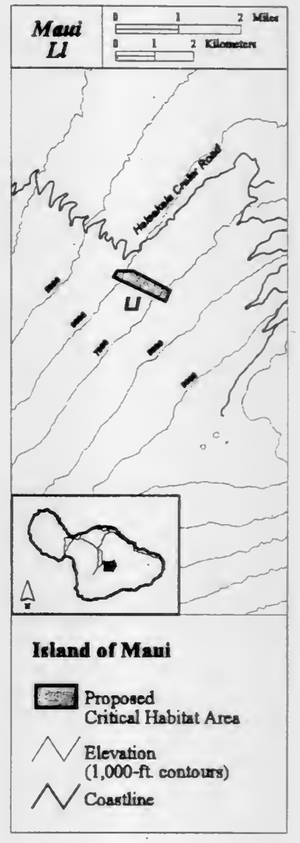
Note: Map follows:



Critical Habitat Maui Ll (45 ha; 111 ac)

Unit consists of the following five boundary points: 783589, 2296659; 784000, 2296654; 784967, 2296159; 784832, 2295889; 783494, 2296508.

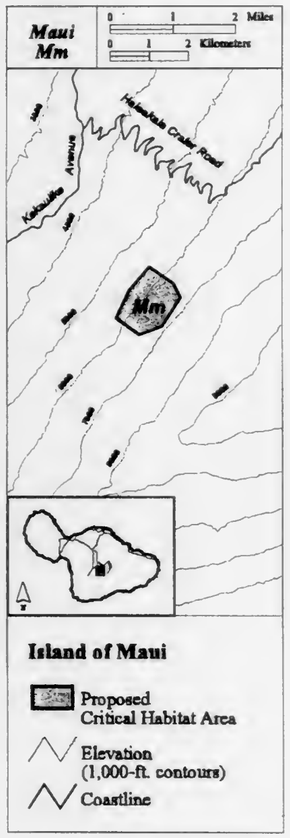
Note: Map follows:



Critical Habitat Maui Mm (167 ha; 413 ac)

Unit consists of the following seven boundary points: 782830, 2294931; 783011, 2294575; 782534, 2293852; 781957, 2293641; 781364, 2294063; 781685, 2294761; 782208, 2295353.

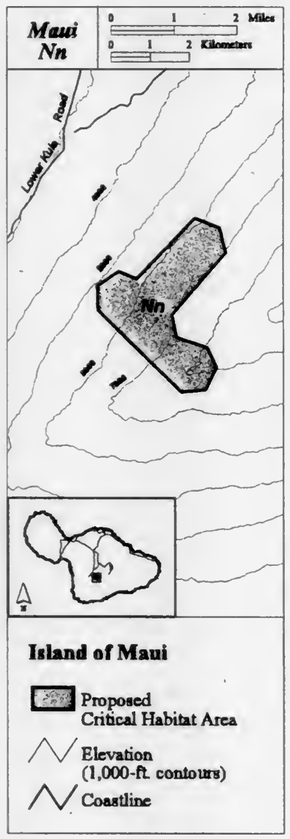
Note: Map follows:



Critical Habitat Maui Nn (692 ha; 1,714 ac)

Unit consists of the following thirteen boundary points: 781075, 2293492; 781722, 2293238; 781873, 2292610; 780491, 2291044; 780607, 2290475; 781404, 2290215; 781633, 2289724; 781347, 2289152; 780735, 2289097; 778589, 2291163; 778569, 2291767; 779128, 2292134; 779587, 2291948.

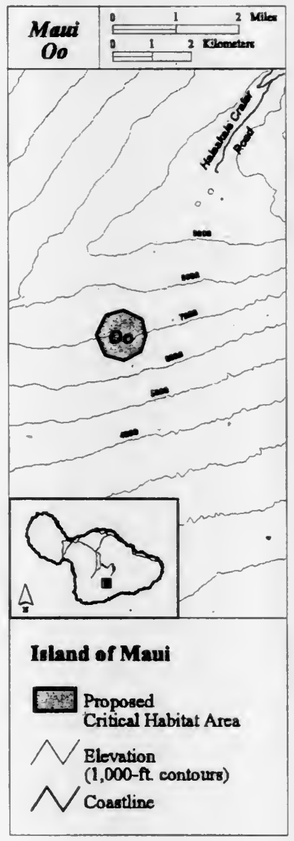
Note: Map follows:



Critical Habitat Maui Oo (116 ha; 287 ac)

Unit consists of the following eight boundary points: 783432, 2289367; 783891, 2289477; 784355, 2289252; 784455, 2288843; 784320, 2288448; 783896, 2288229; 783412, 2288353; 783182, 2288863.

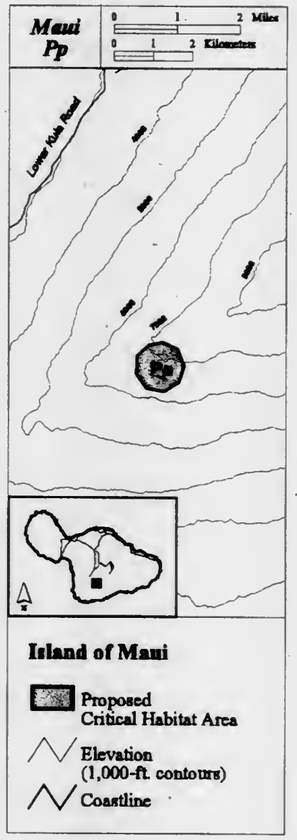
Note: Map follows:



Critical Habitat Maui Pp (113 ha; 280 ac)

Unit consists of the following nine boundary points: 779224, 2288833; 779613, 2288669; 779777, 2288242; 779648, 2287836; 779274, 2287608; 778821, 2287681; 778552, 2288052; 778584, 2288508; 778865, 2288759.

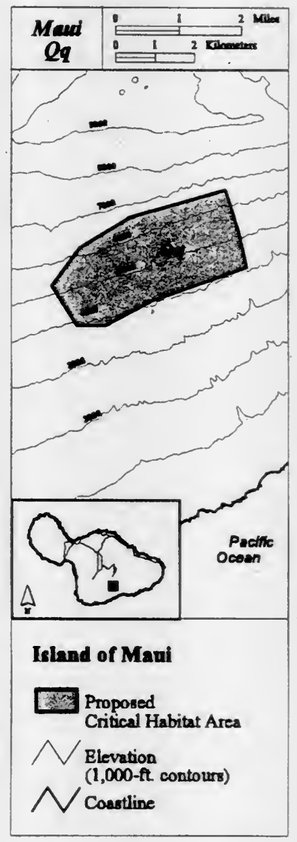
Note: Map follows:



Critical Habitat Maui Qq (973 ha; 2,410 ac)

Area consists of the following nine boundary points: 788449, 2289678; 788781, 2288670; 788991, 2287745; 786579, 2286901; 785388, 2286272; 784631, 2286272; 783991, 2287256; 784711, 2288228; 785979, 2288989.

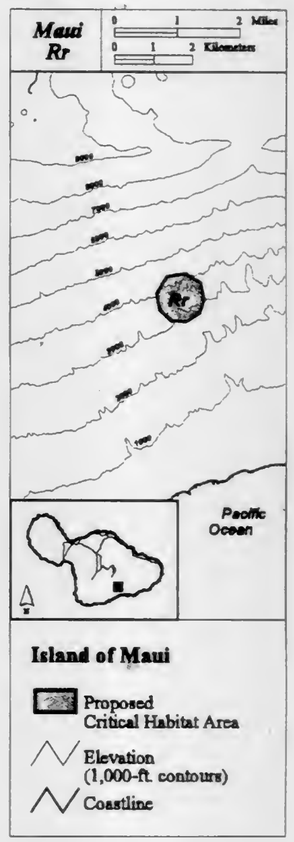
Note: Map follows:



Critical Habitat Maui Rr (115 ha; 285 ac)

Unit consists of the following nine boundary points: 790276, 2288397; 790690, 2288169; 790792, 2287741; 790666, 2287391; 790310, 2287180; 789926, 2287204; 789627, 2287483; 789552, 2287894; 789817, 2288315.

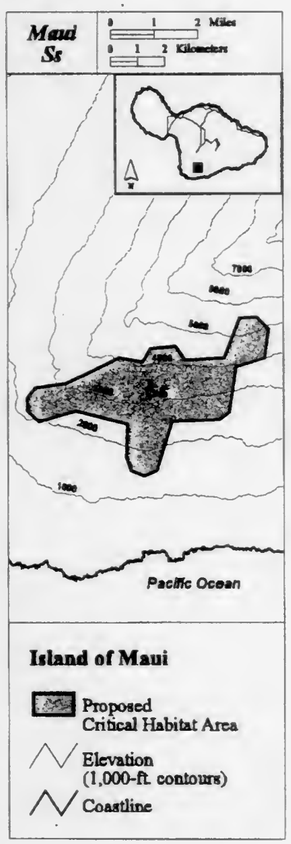
Note: Map follows:



Critical Habitat Maui Ss (1,924 ha; 4,766 ac)

Area consists of the following twenty-five boundary points: 780501, 2286848; 780927, 2286422; 780770, 2285354; 779731, 2285040; 779466, 2283384; 779123, 2283100; 777373, 2283047; 776807, 2281254; 776345, 2281058; 775844, 2281254; 775677, 2281738; 775731, 2282933; 773830, 2283419; 772456, 2283024; 772033, 2283419; 772016, 2283883; 772325, 2284261; 773463, 2284406; 775419, 2285365; 776282, 2285216; 776574, 2285704; 777509, 2285789; 777862, 2285268; 779290, 2285366; 779854, 2286823.

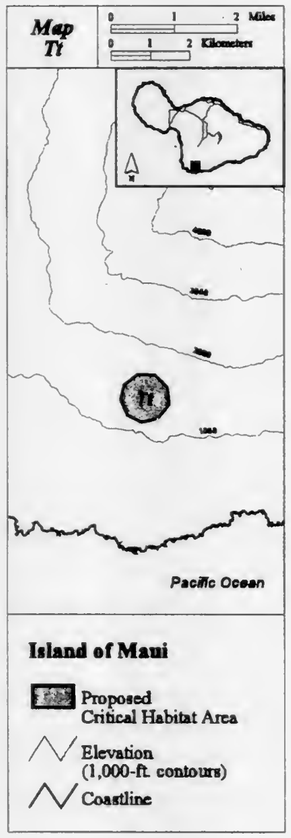
Note: Map follows:



Critical Habitat Maui Tt (114 ha; 282 ac)

Unit consists of the following nine boundary points: 774319, 2281799; 774618, 2281476; 774669, 2281046; 774382, 2280688; 773988, 2280597; 773613, 2280770; 773436, 2281145; 773519, 2281543; 773869, 2281811.

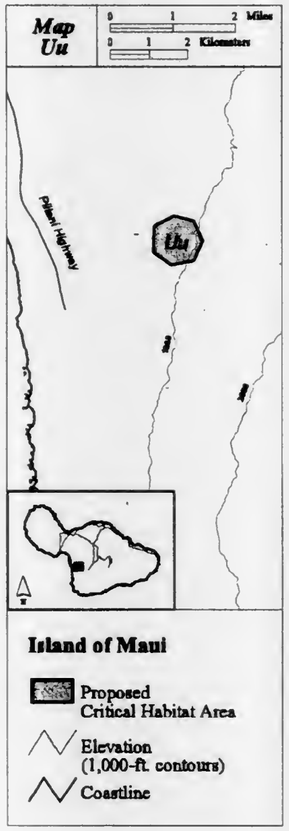
Note: Map follows:



Critical Habitat Maui Uu (121 ha; 300 ac)

Unit consists of the following seven boundary points: 769955, 2294333; 770473, 2294204; 770702, 2293706; 770473, 2293188; 769886, 2293079; 769428, 2293417; 769448, 2294075.

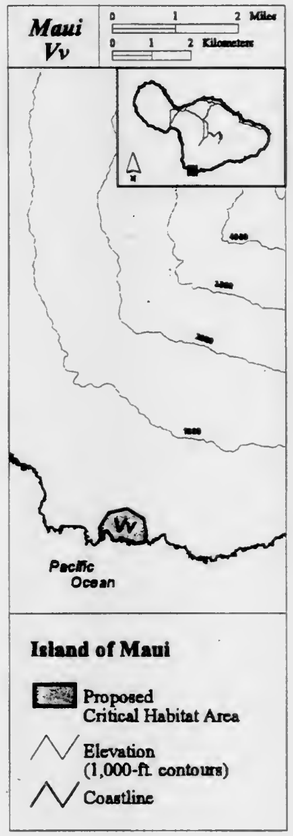
Note: Map follows:



Critical Habitat Maui Vv (77 ha; 190 ac)

Area consists of the following six points and intermediate coastline: 771083, 2278155; 771319, 2278521; 771790, 2278629; 772219, 2278359; 772290, 2277919; 772238, 2277802.

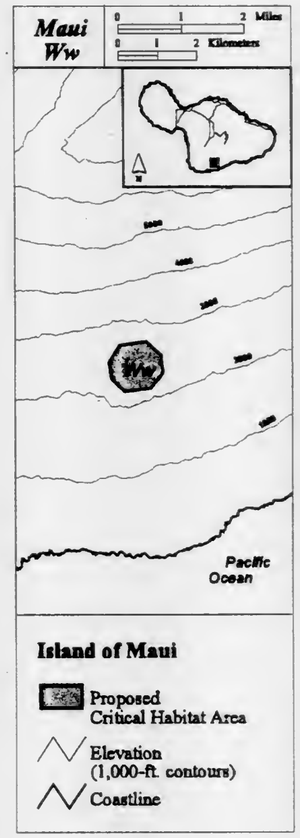
Note: Map follows:



Critical Habitat Maui Ww (133 ha; 329 ac)

Area consists of the following eight boundary points: 780044, 2283292; 780309, 2283700; 780996, 2283798; 781368, 2283449; 781414, 2282999; 781117, 2282618; 780439, 2282530; 780114, 2282850.

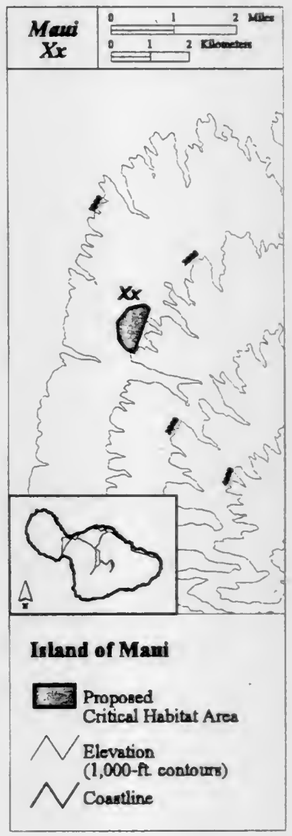
Note: Map follows:



Critical Habitat Maui Xx (60 ha; 149 ac)

Unit consists of the following seven boundary points: 746756, 2318265; 746358, 2317155; 746152, 2317238; 745959, 2317483. 745933, 2317923; 746230, 2318270; 746618, 2318351.

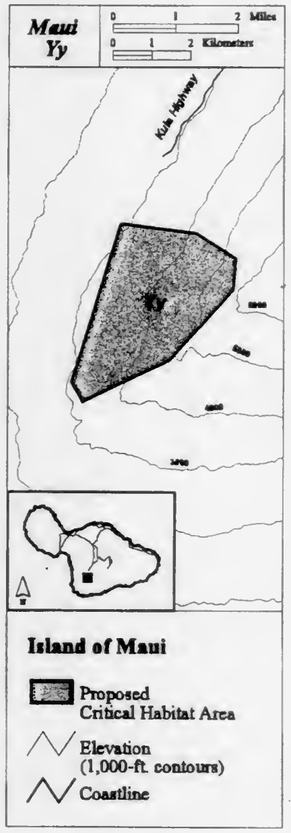
Note: Map follows:



Critical Habitat Maui Yy (1,118 ha; 12,769 ac)

Unit consists of the following seven boundary points: 774248, 2289989; 776203, 2289741; 777204, 2289104; 777136, 2288299; 775497, 2286508; 773256, 2285420; 772970, 2285926.

Note: Map follows:



Critical Habitat Maui Zz (118 ha; 292 ac)

Unit consists of the following seven boundary points: 746920, 2312344; 747339, 2312013; 747462, 2311502; 747063, 2311063; 746450, 2311101; 746173, 2311638; 746338, 2312122.

Note: Map follows:

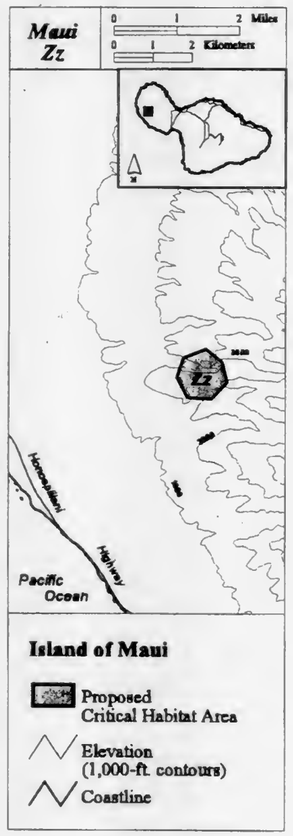


TABLE (A)(1)(I)(C).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON MAUI

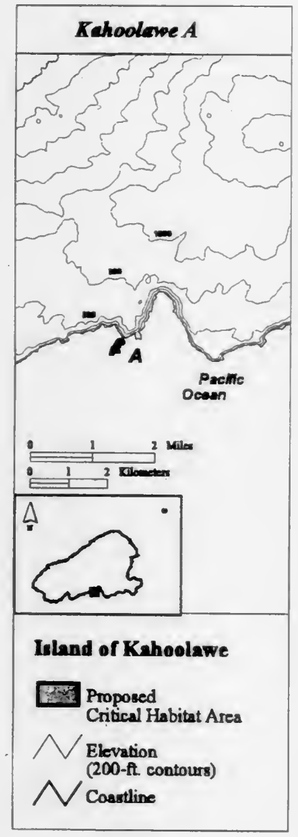
Unit name	Species
Maui A	*Sesbania tomentosa.*
Maui B	*Sesbania tomentosa.*
Maui C	*Sesbania tomentosa.*
Maui D	*Centaurium sebaeoides* and *Sesbania tomentosa.*
Maui E	*Centaurium sebaeoides.*
Maui F	*Centaurium sebaeoides.*
Maui G	*Ischaemum byrone* and *Peucedanum sandwicense.*
Maui H	*Ischaemum byrone.*
Maui I	*Ischaemum byrone.*
Maui J	*Mariscus pennatiformis.*
Maui K	*Ischaemum byrone.*
Maui L	*Ischaemum byrone.*
Maui M	*Ischaemum byrone.*
Maui N	*Lipochaeta kamolensis.*
Maui O	*Bonamia menziesii* and *Hibiscus brackenridgei.*
Maui P	*Clermontia oblongifolia* ssp. *mauiensis.*
Maui Q	*Alectryon macrococcus, Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis mannii, Hesperomannia arbuscula, Lysimachia lydgatei, Phlegmariurus mannii, Plantago princeps, Pteris lidgatei, Sanicula purpurea,* and *Tetramolopium capillare.*
Maui R	*Hesperomannia arbuscula* and *Sanicula purpurea.*
Maui S	*Sanicula purpurea.*
Maui T	*Ctenitis squamigera, Diellia erecta, Neraudia sericea, Platanthera holochila,* and *Remya mauiensis.*
Maui U	*Spermolepis hawaiiensis.*
Maui V	*Hibiscus brackenridgei.*
Maui W	*Phlegmariurus mannii* and *Sanicula purpurea.*
Maui X	*Hedyotis coriacea, Hibiscus brackenridgei, Sesbania tomentosa,* and *Spermolepis hawaiiensis.*
Maui Y	*Cyrtandra munroi.*
Maui Z	*Hesperomannia arborescens.*
Maui Aa	*Pteris lidgatei.*
Maui Bb	*Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi.*
Maui Cc	*Cyanea hamatiflora* ssp. *hamatiflora.*
Maui Dd	*Cyanea hamatiflora* ssp. *hamatiflora* and *Cyanea mceldowneyi.*
Maui Ee	*Geranium multiflorum.*
Maui Ff	*Cyanea hamatiflora* ssp. *hamatiflora.*
Maui Gg	*Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi.*
Maui Hh	*Clermontia samuelii* and *Cyanea mceldowneyi.*
Maui Ii	*Clermontia samuelii.*
Maui Jj	*Phlegmariurus mannii.*
Maui Kk	*Cyanea hamatiflora* ssp. *hamatiflora* and *Phlegmariurus mannii.*
Maui Ll	*Geranium arboreum.*
Maui Mm	*Geranium arboreum.*
Maui Nn	*Geranium arboreum.*
Maui Oo	*Bidens micrantha* ssp. *kalealaha.*
Maui Pp	*Geranium arboreum.*
Maui Qq	*Bidens micrantha* ssp. *kalealaha; Clermontia lindseyana, Diellia erecta, Diplazium molokaiense, Neraudia sericea, Phlegmariurus mannii,* and *Phyllostegia mollis.*
Maui Rr	*Alectryon macrococcus.*
Maui Ss	*Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Colubrina oppositifolia, Flueggea neowawraea, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.*
Maui Tt	*Sesbania tomentosa.*
Maui Uu	*Hibiscus brackenridgei.*
Maui Vv	*Vigna o-wahuensis.*
Maui Ww	*Flueggea neowawraea.*
Maui Xx	*Ctenitis squamigera.*
Maui Yy	*Clermontia lindseyana.*
Maui Zz	*Ctenitis squamigera.*

(D) *Kahoolawe.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83).

Critical Habitat Kahoolawe A (5 ha; 12 ac)

Unit consists of the entire islet, located at UTM coordinate 749248, 2269914.

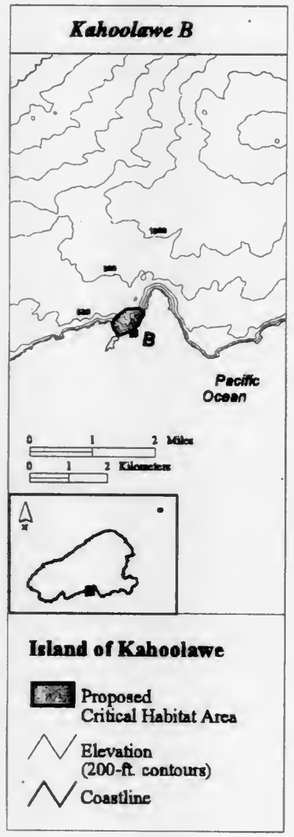
Note: Map follows:



Critical Habitat Kahoolawe B (38 ha; 94 ac)

Unit consists of the following five boundary points: 749258, 2270360; 749316, 2270548; 749609, 2270771; 749934, 2270789; 750070, 2270730.

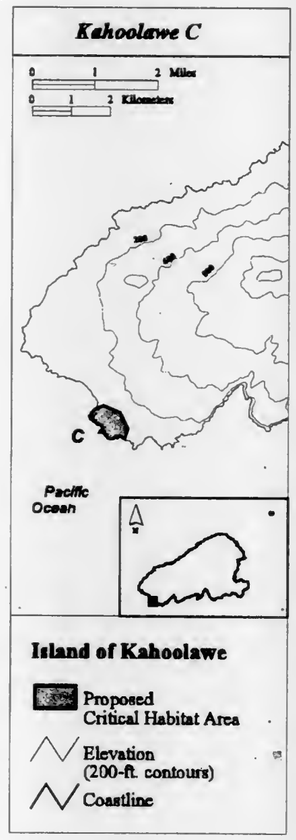
Note: Map follows:



Critical Habitat Kahoolawe C (50 ha; 124 ac)

Unit consists of the following five boundary points: 741673, 2269672; 741903, 2269761; 742323, 2269587; 742526, 2269182; 742449, 2268925.

Note: Map follows:



Critical Habitat Kahoolawe D (114 ha; 282 ac)

Unit consists of the following eight boundary points: 745602, 2274210; 745392, 2273720; 744942, 2273560; 744467, 2273770; 744329, 2274239; 744543, 2274682; 744977, 2274799; 745382, 2274666.

Note: Map follows:

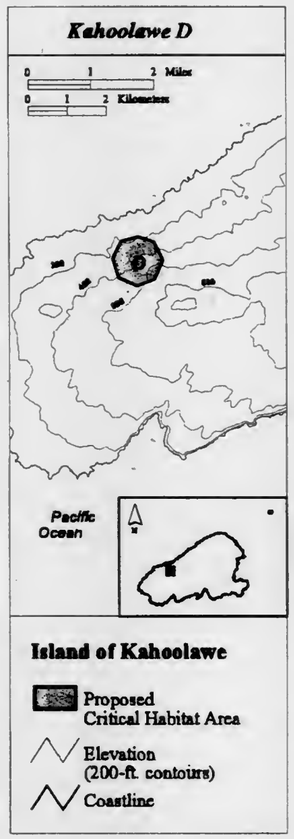


TABLE (A)(1)(i)(D).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON KAHOOLAWE

Unit name	Species
Kahoolawe A	*Sesbania tomentosa.*
Kahoolawe B	*Kanaloa kahoolawensis.*
Kahoolawe C	*Vigna o-wahuensis.*
Kahoolawe D	*Vigna o-wahuensis.*

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

i. Kauai F, G, I, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliff habitats (a) in mixed shrub coastal dry cliff communities or diverse mesic forest and (b) containing one or more of the following associated native plant species: *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha;* and (2) elevations from sea level to above 915 m (3,000 ft).

ii. Maui unit G, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Peucedanum sandwicense* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Peucedanum sandwicense* on Maui are habitat components that provide: (1) cliff habitats containing one or more of the following associated native species: *Chamaesyce* sp., *Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha;* and (2) elevations from sea level to above 900 m (2,950 ft).

Family Apiaceae: *Sanicula purpurea* (No Common Name)

Maui units Q, R, S, and W, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Sanicula purpurea* on Maui. Within these units the currently known primary constituent elements of critical habitat for Sanicula purpurea on Maui are the habitat components that provide: (1) Open *Metrosideros polymorpha* mixed montane bogs containing one or more of the following associated plant taxa: *Styphelia tameiameiae, Gahnia beechyi, Geranium humile, Myrsine vaccinioides, Viola mauiensis, Argyroxiphium caliginis, Plantago pachyphylla, Lycopodium* sp., *Argyroxiphium grayanum, Lagenifera mauiensis, Machaerina* sp., or *Oreobolus furcatus;* and (2) elevations between 1,000 and 1,620 m (3,280 and 5,330 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (No Common Name)

i. Kauai B and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides, Sida fallax, Doryopteris* sp., or *Gouania hillebrandii;* and (2) elevations of about 305 to 610 m (1,000 to 2,000 ft).

ii. Maui units U and Ss, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Spermolepis hawaiiensis* on Maui are the habitat components that provide: (1) Shady spots (a) in *Dodonaea viscosa* lowland dry shrubland and (b) containing one or more of the following associated native species: *Eragrostis variabilis, Wikstroemia* sp., *Erythrina sandwicensis, Diospyros* sp., *Pleomele* sp., *Lipochaeta livarum, Sida fallax, Myoporum sandwicensis, Santalum ellipticum,* or *Heteropogon contortus;* and (2) elevations of 300 to 550 m (980 to 1,800 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (Kaulu)

Kauai F, G, I, M, Q, T, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea,*

Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, or Pouteria sandwicensis;* and (2) elevations between 250 to 610 m (820 to 2,000 ft).

Family Araliaceae: *Munroidendron racemosum* (No Common Name)

Kauai G, I, M, and N, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep exposed cliffs or ridge slopes (a) in coastal or lowland mesic forest and (b) containing one or more of the following associated plant taxa: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Diospyros* sp.; and (2) elevations between 120 to 400 m (395 to 1,310 ft).

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (Ko'oko'olau)

Maui units Oo and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui are the habitat components that provide: (1) Blocky lava flows with little or no soil development, deep pit craters, or sheer rock walls (a) in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, or cliff faces; and (b) containing one or more of the following associated native plant species: *Styphelia tameiameiae, Coprosma montana, Dodonaea viscosa, Lysimachia remyi, Viola chamissoniana, Dubautia menziesii,* or *Dubautia platyphylla;* and (2) elevations of 1,600 to 2,300 m (5,250 to 7,550 ft).

Family Asteraceae: *Dubautia latifolia* (Na'ena'e)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gentle or steep slopes on well drained soil in (a) semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* or *Scaevola* sp.; and (2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

Family Asteraceae: *Dubautia pauciflorula* (Na'ena'e)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, description above, constitutes critical habitat for *Dubautia pauciflorula* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland wet forest within stream drainages; and (2) elevations between 670–700 m (2,200–2,300 ft).

Family Asteraceae: *Dubautia plantaginea* ssp. *humilis* (Na'ena'e)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui are the habitat components that provide: (1) Wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Metrosideros polymorpha, Pipturus albidus, Eragrostis variabilis, Carex* sp., *Hedyotis formosa, Lysimachia remyi, Bidens* sp., *Pritchardia* sp., or *Plantago princeps;* and (2) elevations between 350 to 400 m (1,150 to 1,300 ft).

Family Asteraceae: *Hesperomannia arborescens* (No Common Name)

Maui unit Z, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hesperomannia arborescens* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Hesperomannia arborescens* on Maui are the habitat components that provide: (1) Slopes or ridges (a) in lowland mesic or wet forest and (b) containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis, Isachne distichophylla, Pipturus* sp., *Antidesma* sp., *Psychotria* sp., *Clermontia* sp., *Cibotium* sp., *Dicranopteris linearis, Bobea* sp., *Coprosma* sp., *Sadleria* sp., *Melicope* sp., *Machaerina* sp., *Cheirodendron* sp., or *Freycinetia arborea;* and (2) elevations between 360 and 750 m (1,180 and 2,460 ft).

Family Asteraceae: *Hesperomannia arbuscula* (No Common Name)

Maui units Q and R, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Hesperomannia arbuscula* on Maui are the habitat components that provide: (1) Slopes and ridges (a) in mesic or wet forest dominated by *Acacia koa* and *Metrosideros polymorpha* and (b) containing one or more of the following associated native plant species: *Bidens* sp., *Tetraplasandra* sp., *Alyxia oliviformis,* or *Psychotria* sp.; and (2) elevation between 350 to 900 m (1,150 to 2,950 ft).

Family Asteraceae: *Hesperomannia lydgatei* (No Common Name)

Kauai F, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks with rich brown soil and silty clay (a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and (b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra,* and *Syzygium sandwicensis;* and (2) elevations between 410–915 m (1,345–3,000 ft).

Family Asteraceae: *Lipochaeta fauriei* (Nehe)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Moderate shade to full sun on the sides of steep gulches (a) in diverse lowland mesic forests and (b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis, or Hibiscus waimeae;* and (2) elevations between 480 and 900 m (1,575 and 2,950 ft).

Family Asteraceae: *Lipochaeta kamolensis* (Nehe)

Maui unit N, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lipochaeta kamolensis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Lipochaeta kamolensis* on Maui are the habitat components that provide: (1) Bottoms of rock ledges (a) in dry to mesic scrub or dry lowland forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Plumbago zeylanica,* or *Ipomoea indica;* and (2) elevations between 219 to 250 m (720 to 820 ft).

Family Asteraceae: *Lipochaeta micrantha* (Nehe)

i. Kauai I and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are habitat components that provide: (1) Cliffs, ridges, or slopes (a) in grassy, shrubby or dry mixed communities and (b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., or *Lepidium bidentatum;* and (2) elevations between 305–430 m (1,000–1,400 ft).

ii. Within these units, the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are habitat components that provide: (1) Basalt cliffs, stream banks, or level ground (a) in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest and (b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp. (kului), *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa;* and (2) elevations between 610–720 m (2,000–2,360 ft).

Family Asteraceae: *Lipochaeta waimeaensis* (Nehe)

Kauai B, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Lipochaeta waimeaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Precipitous, shrub-covered gulch (a) in diverse lowland forest and (b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata;* and (2) elevations between 350 and 400 m (1,150 and 1,310 ft).

Family Asteraceae: *Remya kauaiensis* (No Common Name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast facing slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis,* or *Claoxylon sandwicensis;* and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Remya mauiensis* (No Common Name)

Maui unit T, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Remya mauiensis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Remya mauiensis* on Maui are the habitat components that provide: (1) Steep, north or northeast-facing slopes (a) in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and (b) containing one or more of the following associated native species: *Diospyros sandwicensis, Xylosma hawaiiense, Nestegis sandwicensis, Myrsine lessertiana, Wikstroemia* sp., *Dodonaea viscosa, Diplazium sandwichianum, Lysimachia remyi, Microlepia strigosa, Melicope* sp., *Alyxia oliviformis, Pleomele auwahiensis, Psychotria mariniana, Ctenitis squamigera,* or *Styphelia tameiameiae;* and (2) elevations between 850 and 1,250 m (2,800 and 4,100 ft).

Family Asteraceae: *Remya montgomeryi* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls (a) in *Metrosideros polymorpha mixed mesic forest and (b) containing one or more of the following associated native plant species: Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* spp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea, Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Tetramolopium capillare* (Pamakani)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Tetramolopium capillare* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Tetramolopium capillare* on Maui are the habitat components that provide: (1) Rocky substrates (a) in *Heteropogon contortus* lowland dry forest and (b) containing one or more of the following associated native plants: *Dodonaea viscosa,* or *Myoporum sandwicense;* or (c) in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland and (d) containing one or more of the following associated plants: *Metrosideros polymorpha,* and *Styphelia tameiameiae,* and *Dodonaea viscosa;* and (2) elevations between 609 and 1,050 m (2,000 and 3,440 ft).

Family Asteraceae: *Wilkesia hobdyi* (Dwarf Iliau)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Wilkesia hobdyi* on Kauai. Within these units, the currently known

primary constituent elements of critical habitat are habitat components that provide: (1) Coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium*, *Lipochaeta connata*, *Lobelia niihauensis*, *Peucedanum sandwicensis*, *Hibiscus kokio* ssp. *saint johnianus*, *Canthium odoratum*, *Peperomia* sp., *Myoporum sandwicense*, *Sida fallax*, *Waltheria indica*, *Dodonaea viscosa*, or *Eragrostis variabilis*; and (2) elevations between 275 to 400 m (900 to 1,310 ft).

Family Campanulaceae: *Brighamia insignis* ('Olulu)

Kauai E, G, and M, identified in the legal descriptions in paragraph a)(1)(i)(A) of this section, and Niihau B, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges with little soil or steep sea cliffs (a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and (b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides*, *Canthium odoratum*, *Eragrostis variabilis*, *Heteropogon contortus*, *Hibiscus kokio*, *Hibiscus saintjohnianus*, *Lepidium serra*, *Lipochaeta succulenta*, *Munroidendron racemosum*, or *Sida fallax*; and (2) elevations between sea level to 480 m (1,575 ft) elevation.

Family Campanulaceae: *Clermontia lindseyana* ('Oha Wai)

Maui units Qq and Yy, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia lindseyana* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Clermontia lindseyana* on Maui are the habitat components that provide: (1) Remnant *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Cyrtandra oxybapha*, native fern species, *Phlegmariurus mannii*, *Ilex anomala*, *Coprosma* sp., or *Myrsine* sp.; and (2) elevations between 4,300 and 7,041 ft (1,311 and 2,150 m).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* ('Oha Wai)

Maui unit P, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui are the habitat components that provide: (1) The sides of ridges (a) in *Metrosideros polymorpha*-dominated montane wet forest and (b) containing one or more of the following associated native plant species: *Dicranopteris linearis*, *Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., or *Melicope* sp.; and (2) elevations between 850 and 1,000 m (2,800 and 3,280 ft).

Family Campanulaceae: *Clermontia samuelii* ('Oha Wai)

Maui units Hh and Ii, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia samuelii* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Clermontia samuelii* ssp. *hanaensis* on Maui are the habitat components that provide: (1) Wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Dicranopteris linearis* forest containing one or more of the following associated native plant species: *Tetraplasandra oahuensis*, *Hedyotis terminalis*, *Hedyotis hillebrandii*, *Broussaisia arguta*, *Cibotium* sp., *Argyroxiphium grayanum*, *Dubautia* sp., *Clermontia arborea*, *Psychotria mariniana*, *Melicope clusifolia*, *Diplazium sandwichianum*, *Peperomia obovatilimba*, *Adenophorus tamariscinus*, *Vaccinium* sp., *Carex alligata*, *Melicope* sp., or *Cheirodendron trigynum*; and (2) elevations between 915 and 1,059 m (3,000 and 3,600 ft). Within these units, the currently known primary constituent elements of critical habitat for *Clermontia samuelii* ssp. *samuelii* on Maui are the habitat components that provide: (1) Wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Cheirodendron trigynum* forest and containing one or more of the following native plant species: *Hedyotis hillebrandii*, *Cibotium* sp., *Broussaisia arguta*, *Diplazium sandwichianum*, *Rubus hawaiiensis*, *Clermontia arborescens* ssp. *waihiae*, *Dubautia* sp., *Clermontia* sp., *Hedyotis* sp., *Vaccinium* sp., *Carex alligata*, or *Melicope* sp.; and (2) elevations between 1,726 to 2,100 m (5,870 to 6,900 ft).

Family Campanulaceae: *Cyanea asarifolia* (Haha)

Kauai R and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pockets of soil on sheer rock cliffs (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Hedyotis elatior*, *Machaerina angustifolia*, *Metrosideros polymorpha*, *Touchardia latifolia*, or *Urera glabra*; and (2) elevations between 330 to 730 m (1,080 to 2,400 ft).

Family Campanulaceae: *Cyanea copelandii* ssp. *haleakalaensis* (Haha)

Maui units Bb and Gg, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui are the habitat components that provide: (1) Stream banks and wet scree slopes (a) in montane wet or mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following associated native plant species: *Cibotium* sp, *Perrottetia sandwicensis*, *Psychotria hawaiiensis*, *Broussaisia arguta*, or *Hedyotis acuminata*; and (2) elevations between 730 and 1,340 m (2,400 and 4,400 ft).

Family Campanulaceae: *Cyanea glabra* (Haha)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea glabra* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea glabra* on Maui are the habitat components that provide: (1) Soil and rock stream banks (a) in wet lowland forest and dominated by *Acacia koa* and/or *Metrosideros polymorpha*; and (2) elevations from 800 to 1,340 m (2,625 to 4,400 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (Haha)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui are the habitat components that provide: (1) Rocky or steep slopes of stream banks (a) in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis*, *Psychotria* sp., or *Xylosma* sp.; and (2) elevations between 350 and 945 m (1,150 and 3,100 ft).

Family Campanulaceae: *Cyanea hamatiflora* ssp. *hamatiflora* (Haha)

Maui units Cc, Dd, Ff, and Kk, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui are the habitat components that provide: (1) Montane wet forest dominated by *Metrosideros polymorpha*, with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-Metrosideros polymorpha* wet forest containing one or more of the following associated native plant species: *Dicranopteris linearis*, *Cheirodendron trigynum*, *Broussaisia arguta*, *Cyanea solenocalyx*, *Cyanea kunthiana*, *Vaccinium* sp., *Melicope* sp., or *Myrsine* sp.; and (2) elevations from 975 to 1,500 m (3,200 to 4,920 ft).

Family Campanulaceae: *Cyanea lobata* (Haha)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea lobata* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea lobata* on Maui are the habitat components that provide: (1) Steep stream banks in deep shade (a) in wet forest and (b) containing one or more of the following associated native plant species: *Touchardia latifolia*, *Morinda trimera*, or *Athyrium* sp.; and (2) elevations of 550 to 915 m (1,800 to 3,000 ft).

Family Campanulaceae: *Cyanea mceldowneyi* (Haha)

Maui units Bb, Dd, Gg, and Hh, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea mceldowneyi* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Cyanea mceldowneyi* on Maui are the habitat components that provide: (1) Montane wet forest with mixed *Metrosideros polymorpha-Acacia koa* containing one or more of the following associated native plant species: *Melicope clusiifolia*, *Hedyotis* sp., *Clermontia arborescens*, *Diplazium sandwichianum*, *Broussaisia arguta*, *Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis*, or *Cheirodendron trigynum*; and (2) elevations between 925 and 1,280 m (3,034 and 4,200 ft).

Family Campanulaceae: *Cyanea recta* (Haha)

Kauai K, O, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gulches or slopes (a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and (b) containing one or more of the following native plant species: *Dicranopteris linearis*, *Psychotria* sp., *Antidesma* sp., *Cheirodendron platyphyllum*, *Cibotium* sp., or *Diplazium* sp.; and (2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

Family Campanulaceae: *Cyanea remyi* (Haha)

Kauai L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp., *Broussaisia arguta*, *Metrosideros polymorpha*, *Freycinetia arborea*, *Hedyotis terminalis*, *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Psychotria hexandra*, or *Syzygium sandwicensis*; and (2) elevations between 360 to 930 m (1,180 to 3,060 ft).

Family Campanulaceae: *Cyanea undulata* (Haha)

Kauai L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Cyanea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and (2) elevations between 630 to 800 m (2,070 to 2,625 ft).

Family Campanulaceae: *Delissea rhytidosperma* (No Common Name)

Kauai F, G, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-drained soils with medium or fine-textured subsoil (a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests and (b) containing one or more of the following native species: *Euphorbia haeleeleana*, *Psychotria hobdyi*, *Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa*, *Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis*, *Diospyros sandwicensis*, *Styphelia tameiameiae*, or *Nestegis sandwicensis*; and (2) elevations between 120 and 915 m (400 and 3,000 ft).

Family Campanulaceae: *Delissea rivularis* ('Oha)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea rivularis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes near streams (a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest and (b) containing one or more of the following native plant species: *Broussaisia arguta*, *Carex* sp., *Coprosma* sp., *Melicope clusiifolia*, *M. anisata*, *Psychotria hexandra*, *Dubautia knudsenii*, *Diplazium sandwichianum*, *Hedyotis foggiana*, *Ilex anomala*, or *Sadleria* sp.; and (2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

Family Campanulaceae: *Delissea undulata* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum*, *Nothocestrum breviflorum*, or *Acacia koa*; and (2) elevations between 610–1,740 m (2,000–5,700 ft).

Family Campanulaceae: *Lobelia niihauensis* (No Common Name)

Kauai F, G, I, and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the

following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus, Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi, Hibiscus kokio* ssp. *saint johnianus, Nototrichium* sp., *Schiedea apokremnos, Chamaesyce celastroides, Charpentiera* sp., or *Artemisia* sp.; and (2) elevations between 100 to 830 m (330 to 2720 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (Kuawawaenohu)

Kauai G and H, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Montane wet forests (a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis, Astelia* sp., or *Broussaisia arguta*; and (2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest and (b) containing one or more of the following native plant species: *Alyxia olivaeformis, Bidens cosmoides, Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa, Gahnia* sp., *Ilex anomala, Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides*; and (2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (Ma'oli'oli)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea apokremnos* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of near-vertical coastal cliff faces (a) in sparse dry coastal shrub vegetation and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum*, or *Peperomia* sp.; and (2) elevations between 60 to 330 m (200 to 1,080 ft).

Family Caryophyllaceae: *Schiedea helleri* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Ridges and steep cliffs (a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and (b) containing one or more of the following associated native plant species: *Dubautia raillardioides, Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron* sp., *Cyanea hirtella, Dianella sandwicensis, Viola wailenalenae*, or *Poa sandvicensis*; and (2) elevations between 1,065–1,100 m (3,490–3,610 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in diverse mesic or wet forest and (b) containing one or more of the following associated plant taxa: *Psychotria mariniana, Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense*, or *Euphorbia haeleeleana;* and (2) elevations between 680–790 m (2,230–2,590 ft).

Family Caryophyllaceae: *Schiedea membranacea* (No Common Name)

Kauai G, I, and K, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs or cliff bases (a) in mesic or wet habitats, (b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* and (c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum*, or *Poa sandvicensis;* and (2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (No Common Name)

Kauai M, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant, containing one or more of the following associated native plant species: *Antidesma* sp, *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., or *Hedyotis acuminata;* and (2) elevations between 415 and 790 m (1,360 and 2,590 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (No Common Name)

Kauai C, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya*, or *Plectranthus parviflorus;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (laulihilihi (=ma'oli'oli))

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and (b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and (2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

Family Convolvulaceae: *Bonamia menziesii* (No Common Name)

(i.) Kauai G and L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis*, or *Sapindus oahuensis;* and (2) elevations between 150 and 850 m (500 and 2,800 ft).

(ii.) Maui units O and Ss, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bonamia menziesii* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Bonamia menziesii* on Maui are the habitat components that provide: (1) A'a lava (a) in mixed open dry forest or *Erythrina sandwicensis* lowland dry forest, or in mesic mixed *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Nestegis sandwicensis, Pleomele auwahiensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nothocestrum latifolium, Pouteria sandwicensis, Achyranthes splendens, Acacia koaia, Sida fallax, Reynoldsia sandwicensis, Sicyos* sp., *Lipochaeta rockii, Nototrichium* sp., *or Myoporum sandwicense;* and (2) elevations between 150 and 854 m (490 and 2,800 ft).

Family Cyperaceae: *Cyperus trachysanthos* (pu'uka'a)

Kauai G, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, and Niihau A, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet sites (mud flats, wet clay soil, or wet cliff seeps) (a) on coastal cliffs or talus slopes and (b) containing the native plant species *Hibiscus tiliaceus;* and (2) elevations between 3 and 160 m (10 and 525 ft).

Family Cyperaceae: *Mariscus pennatiformis* (No Common Name)

Maui unit J, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Mariscus pennatiformis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* on Maui are the habitat components that provide: (1) Cliffs with brown soil and talus within reach of ocean spray (a) in *Pandanus* coastal wet forests and (b) containing one or more of the following associated native plant species: *Sadleria pallida, Pandanus tectorius, Lysimachia mauritiana, Cyperus laevigatus, Eragrostis* sp., or *Ipomoea* sp.; and (2) elevations between sea-level and 6 m (20 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes of gulches (a) in mesic *Acacia koa* forests and (b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum*, or *Styphelia tameiameiae;* and (2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* ('Akoko)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland mixed mesic or dry forest that (a) is often dominated by *Metrosideros polymorpha, Acacia koa*, or *Diospyros* sp. and (b) containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Claoxylon* sp., *Carex meyenii, Carex wahuensis, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pleomele aurea, Psychotria mariniana, P. greenwelliae, Pteralyxia sandwicensis, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sapindus oahuensis, Tetraplasandra kauaiensis, Pouteria sandwicensis, Pisonia sandwicensis*, or *Xylosma* sp.; and (2) elevations between 205 and 670 m (680 and 2,200 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (Mehamehame)

(i.) Kauai F, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Munroidendron*

racemosum, Tetraplasandra sp., *Kokia kauaiensis, Isodendrion* sp., *Pteralyxia kauaiensis, Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis, Xylosma* sp., *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

(ii.) Maui units Ss and Ww, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Flueggea neowawraea* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Flueggea neowawraea* on Maui are the habitat components that provide: (1) Dry or mesic forest containing one or more of the following associated native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Hibiscus* sp., *Melicope* sp., *Myrsine lanaiensis, Tetraplasandra* sp., *Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis,* or *Streblus pendulina;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

Family Fabaceae: *Kanaloa kahoolawensis* (Kohe Malama Malama O Kanaloa)

Kahoolawe unit B, identified in the legal description in paragraph (a)(1)(i)(D) of this section, constitutes critical habitat for *Kanaloa kahoolawensis* on Kahoolawe. Within this unit the currently known primary constituent elements of critical habitat for *Kanaloa kahoolawensis* on Kahoolawe are the habitat components that provide: (1) Steep rocky talus slopes (a) in mixed coastal shrubland and (b) containing one or more of the following associated native plants: *Sida fallax, Senna gaudichaudii, Bidens mauiensis, Lipochaeta livarum, Portulaca molokinensis,* or *Capparis sandwichiana;* and (2) elevations between 45 to 60 m (150 to 200 ft).

Family Fabaceae: *Sesbania tomentosa* ('Ohai)

(i.) Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sandy beaches, dunes, soil pockets on lava, or pond margins (a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and (b) containing one or more of the following associated native plant species: *Sida fallax, Heteropogon contortus, Myoporum sandwicense, Sporobolus virginicus, Scaevola sericea,* or *Dodonaea viscosa;* and (2) elevations between sea level and 12 m (0 and 40 ft).

(ii.) Maui units A, B, C, D, X, Tt, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, and the Kahoolawe unit A, identified in the legal descriptions in paragraph (a)(1)(i)(D) of this section, constitute critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe, respectively. Within these units the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe are the habitat components that provide: (1) Windswept slopes, sea cliffs and cinder slopes (a) in *Scaevola sericea* coastal dry shrublands and (b) containing one or more of the following associated native plant species: *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis, Rhynchelytrum repens, Sida fallax,* and *Dodonaea viscosa;* and (2) elevations between sea-level and 580 m (1,900 ft).

Family Fabaceae: *Vigna o-wahuensis* (No Common Name)

Maui unit Vv, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, and Kahoolawe units C and D, identified in the legal descriptions in paragraph (a)(1)(i)(D) of this section, constitute critical habitat for *Vigna o-wahuensis* on Maui and Kahoolawe, respectively. Within these units the currently known primary constituent elements of critical habitat for *Vigna o-wahuensis* on Maui and Kahoolawe are the habitat components that provide: (1) Dry or mesic grassland or shrubland containing one or more of the following associated plant taxa: *Sida fallax, Chenopodium* sp., *Dubautia menziesii, Dodonaea viscosa, Chamaesyce* sp., *Nothocestrum latifolium,* and *Nesoluma polynesicum,* or *Osteomeles anthyllidifolia;* and (2) elevations from 10 to 140 m (30 to 460 ft).

Family Flacourtiaceae: *Xylosma crenatum* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse *Acacia koa-Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or *Diplazium sandwichianum;* and (2) elevations between 975 to 1,065 m (3,200 to 3,490 ft).

Family Gentianaceae: *Centaurium sebaeoides* ('Awiwi)

(i.) Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following native plant species: *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and (2) elevations above 250 m (800 ft).

(ii.) Maui units D, E, and F, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Centaurium sebaeoides* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Centaurium sebaeoides* on Maui are the habitat components that provide: (1) Volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following associated native plant species: *Panicum torridum, Lysimachia mauritiana, Schiedea globosa, Lipochaeta integrifolia, Argemone glauca, Bidens mauiensis, Lycium sandwicense,* or *Dicranopteris linearis;* and (2) elevations below 250 m (820 ft).

Family Geraniaceae: *Geranium arboreum* (Nohoanu)

Maui units Ll, Mm, Nn, and Pp, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Geranium arboreum* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Geranium arboreum* on Maui are the habitat components that provide: (1) Steep, damp and shaded narrow canyons and gulches, steep banks, and intermittent streams (a) in *Sophora chrysophylla* subalpine dry shrubland or *Metrosideros polymorpha* montane forest and (b) containing one or more of the following associated native plant species: *Vaccinium reticulatum, Dodonaea viscosa, Styphelia tameiameiae, Rubus hawaiiensis,* or *Dryopteris wallichiana;* and (2) elevations between 1,525 to 2,135 m (5,000 and 7,000 ft).

Family Geraniaceae: *Geranium multiflorum* (Nohoanu)

Maui unit Ee, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Geranium multiflorum* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Geranium multiflorum* on Maui are the habitat components that provide: (1) Wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana, Dryopteris glabra, Dryopteris wallichiana, Rubus hawaiiensis, Ranunculus* sp., *Vaccinium* sp., *Metrosideros polymorpha, Hedyotis* sp., *Styphelia tameiameiae* or *Sadleria cyatheoides;* and (2) elevations between 1,580 and 2,450 m (5,180 and 8,040 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (Mapele)

Kauai K, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes or cliffs near streams or waterfalls (a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and (2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (Ha'iwale)

Kauai A, F, K, L, O, P, Q, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp, *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and (2) elevations between 245 and 915 m (800 and 3,000 ft).

Family Gesneriaceae: *Cyrtandra munroi* (Hiawale)

Maui unit Y, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyrtandra munroi* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyrtandra munroi* on Maui are the habitat components that provide: (1) Rich, moist to wet, moderately steep talus slopes (a) in lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest and (b) containing one or more of the following associated native plant species: *Diospyros* sp., *Hedyotis acuminata, Clermontia* sp., *Alyxia oliviformis, Bobea* sp., *Coprosma* sp., *Freycinetia arborea, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp., *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Xylosma* sp., or other *Cyrtandra* sp.; and (2) elevations from 300 to 920 m (980 to 3,020 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros sp., Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* spp., *Pouteria sandwicensis,* or *Pritchardia minor;* and (2) elevations between 865–975 m (2,840–3,200 ft).

Family Lamiaceae: *Phyllostegia mollis* (No Common Name)

Maui unit Qq, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Phyllostegia mollis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Phyllostegia mollis* on Maui are the habitat components that provide: (1) Steep slopes and gulches (a) in diverse mesic or wet forests and (b) containing one or more of the following associated native plant taxa: ferns, *Psychotria* sp., or *Pisonia* sp.; and (2) elevations between 450 and 1,830 m (1,480 to 6,000 ft).

Family Lamiaceae: *Phyllostegia wawrana* (No Common Name)

Kauai G, I, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and (2)

elevations between 780–1,210 m (2,560–3,920 ft).

Family Lamiaceae: *Stenogyne campanulata* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Stenogyne campanulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rock faces of nearly vertical, north-facing cliffs (a) in diverse lowland or montane mesic forest and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis,* or *Remya montgomeryi;* and (2) an elevation of 1,085 m (3,560 ft).

Family Loganiaceae: *Labordia lydgatei* (Kamakahala)

Kauai F, K, L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum* var. *hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and (2) elevations between 635 and 855 m (2,080 to 2,800 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (Kamakahala)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Streambanks (a) in lowland wet forests dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp., *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and (2) elevations between 300 to 920 m (985 to 3,020 ft).

Family Malvaceae: *Hibiscadelphus woodii* (Hau Kuahiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Basalt talus or cliff walls (a) in *Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and (2) elevations around 915m (3,000 ft).

Family Malvaceae: *Hibiscus brackenridgei* (Ma'o Hau Hele)

Maui units O, V, X, and Uu, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Hibiscus brackenridgei* on Maui are the habitat components that provide: (1) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Myoporum* sp., *Chenopodium* sp., *Achyranthes* sp., *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Canthium odoratum, Eurya sandwicensis, Isachne distichophylla,* or *Sida fallax;* and (2) elevations between 130 to 800 m (425 to 2,625 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's Hibiscus)

Kauai N, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Slopes (a) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest and (b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and (2) elevations between 230 to 350 m (750 to 1,150 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (Koki'o Ke'oke'o)

Kauai F, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and (2) elevations between 190 and 560 m (620 and 1,850 ft).

Family Malvaceae: *Kokia kauaiensis* (Koki'o)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium sandwicensis, Antidesma* sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus, Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp., *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata, Tetraplasandra* sp., *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis;* and (2) elevations between 350–660 m (1,150–2,165 ft).

Family Myrsinaceae: *Myrsine linearifolia* (Kolea)

Kauai F, G, H, I, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida, Myrsine* sp., *Syzygium sandwicensis; Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp., *Melicope* sp., *Eurya sandwicensis, Psychotria* sp., *Lysimachia* sp., or native ferns; and (2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

Family Orchidaceae: *Platanthera holochila* (No Common Name)

(i.) Kauai H, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Platanthera holochila* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog containing one or more of the following associated native plants: *Myrsine denticulata, Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae,* or *Vaccinium* sp.; and (2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

(ii.) Maui unit T, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Platanthera holochila* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Platanthera holochila* on Maui are the habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *Metrosideros polymorpha* mixed montane bog or mesic scrubby *Metrosideros polymorpha* forest containing one or more of the following associated native plants: *Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae, Wikstroemia* sp., *Scaevola chamissoniana, Sadleria* sp., *Lythrum maritimum, Deschampsia* sp., *Metrosideros polymorpha, Luzula hawaiiensis, Sisyrinchium acre, Broussaisia arguta, Clermontia* sp., *Lycopodium cernuum, Dubautia scabra, Polypodium pellucidum, Gahnia gahniiformis,* and *Vaccinium reticulatum;* and (2) elevations between 1,050 and 2,120 m (3,440 and 6,960 ft).

Family Plantaginaceae: *Plantago princeps* (Laukahi Kuahiwi)

(i.) Kauai G, K, P, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, rock walls, or bases of waterfalls (a) in mesic or wet *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea, Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi, Stenogyne campanulata, Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia;* and (2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

(ii.) Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Plantago princeps* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Plantago princeps* on Maui are the habitat components that provide: (1) Basalt cliffs (a) in *Metrosideros polymorpha* lowland wet forest; or *Acacia koa-Metrosideros polymorpha* montane wet shrubland and (b) containing one or more of the following associated native plant species: *Eragrostis variabilis, Hedyotis formosa,* and *Dubautia plantaginea* spp. *humile;* and (2) elevations between 400 and 2,050 m (1,300 and 6,700 ft).

Family Poaceae: *Cenchrus agrimonioides* (Kamanomano (=Sandbur, Agrimony))

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cenchrus agrimonioides* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cenchrus agrimonioides* on Maui are the habitat components that provide: (1) Rough a'a lava scree (a) in mesic *Metrosideros polymorpha-Acacia koa* forest and (b) containing one or more of the following associated native plant species: *Alyxia oliviformis, Canthium odoratum, Carex* sp., *Diospyros* sp., *Styphelia tameiameiae,* or *Eragrostis variabilis;* and (2) elevations between 560 and 820 m (1,830 and 2,700 ft).

Family Poaceae: *Ischaemum byrone* (Hilo Ischaemum)

Maui units G, H, I, K, L, and M, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Ischaemum byrone* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Ischaemum byrone* on Maui are the habitat components that provide: (1) Close proximity to the ocean, among rocks or on basalt cliffs (a) in coastal dry shrubland and (b) containing one or more of the following associated native plant species: *Bidens* sp., *Fimbristylis cymosa,* or *Scaevola sericea;* and (2) elevations from sea level to 75 m (250 ft).

Family Poaceae: *Panicum niihauense* (Lau 'ehu)

Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Panicum niihauense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sand dunes (a) in coastal shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Cassytha filiformis, Scaevola sericea, Sida fallax, Vitex rotundifolia,* or *Sporobolus* sp.; and (2) elevations of 100 m or less (330 ft).

Family Poaceae: *Poa mannii* (Mann's Bluegrass)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Poa mannii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs, rock faces, or stream banks (a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis, Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides, Luzula hawaiiensis, Carex meyenii, C. wahuensis, Cyrtandra wawrae, Dodonaea viscosa, Exocarpos luteolus, Labordia helleri, Nototrichium* sp., *Schiedea amplexicaulis, Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae,* or *Kokia kauaiensis;* and (2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

Family Poaceae: *Poa sandvicensis* (Hawaiian Bluegrass)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa sandvicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet, shaded, gentle or steep

slopes, ridges, or rock ledges (a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated native species: *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis;* and (2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

Family Poaceae: *Poa siphonoglossa* (No Common Name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Shady banks near ridge crests (a) in mesic *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, Carex wahuensis,* or *Wilkesia gymnoxiphium;* and (2) elevations between 1,000 to 1,200 m (3,300 and 3,900 ft).

Family Primulaceae: *Lysimachia filifolia* (No Common Name)

Kauai T, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Lysimachia filifolia* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus,* or *Melicope* sp.; and (2) elevations between 240 to 680 m (800 to 2,230 ft).

Family Primulaceae: *Lysimachia lydgatei* (No Common Name)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lysimachia lydgatei* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Lysimachia lydgatei* on Maui are the habitat components that provide: (1) Sides of steep ridges (a) in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros polymorpha-Cheirodendron* sp. montane forest and (b) containing one or more of the following associated native plant species: *Lycopodium* sp., *Ilex* sp., *Dodonaea viscosa, Vaccinium* sp., *Eurya* sp., *Styphelia tameiameiae, Coprosma* sp., *Ochna* sp., *Astelia* sp., *Broussaisia arguta* or mat ferns; and (2) elevations between 915 and 1,415 m (3,000 and 4,640 ft).

Family Rhamnaceae: *Colubrina oppositifolia* (Kauila)

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Colubrina oppositifolia* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Colubrina oppositifolia* on Maui are the habitat components that provide: (1) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* containing one or more of the following associated native plant species: *Dodonaea viscosa, Canavalia* sp., *Wikstroemia* sp., *Canthium odoratum,* or *Reynoldsia sandwicensis;* and (2) elevations between 240–915 m (800 and 3,000 ft).

Family Rhamnaceae: *Gouania meyenii* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges, cliff faces, or ridge tops (a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following native plant species: *Dodonaea viscosa, Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii;* and (2) elevations between 490 to 880 m (1,600 to 2,880 ft).

Family Rubiaceae: *Hedyotis cookiana* ('Awiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Streambeds or steep cliffs close to water sources in lowland wet forest communities; and (2) elevations between 170 and 370 m (560 and 1,210 ft).

Family Rubiaceae: *Hedyotis coriacea* (Kio'ele)

Maui unit X, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hedyotis coriacea* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Hedyotis coriacea* on Maui are the habitat components that provide: (1) Steep, rocky, slopes (a) in dry lowland *Dodonaea viscosa* dominated shrublands and (b) containing one or more of the following associated native plant species: *Sida fallax, Gouania hillebrandii, Bidens menziesii, Lipochaeta livarum, Myoporum* sp., or *Schiedea menziesii;* and (2) elevation of 470 to 2,300 m (1,540 to 7,550 ft).

Family Rubiaceae: *Hedyotis mannii* (Pilo)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hedyotis mannii* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Hedyotis mannii* on Maui are the habitat components that provide: (1) Basalt cliffs along stream banks (a) in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest and (b) containing one or more of the following associated native plant species: *Machaerina* sp., *Carex meyenii, Phyllostegia* sp., *Hedyotis acuminata, Cyrtandra platyphylla, Cyanea* sp., and *Isachne distichophylla;* and (2) elevation of 826 to 882 m (2,800 to 3,000 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali Beach Hedyotis)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hedyotis st.-johnii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of north-facing, near-vertical coastal cliff faces within the spray zone (a) in sparse dry coastal shrubland and (b) containing one or more of the following native plant species: *Myoporum sandwicense, Eragrostis variabilis, Lycium sandwicense, Heteropogon contortus, Artemisia australis* or *Chamaesyce celastroides;* and (2) elevations above 75 m (250 ft).

Family Rutaceae: *Melicope adscendens* (Alani)

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope adscendens* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Melicope adscendens* on Maui are the habitat components that provide: (1) A'a lava with pockets of soil (a) in *Nestegis sandwicensis-Pleomele* lowland mesic forest or open dry forest and (b) containing one or more of the following associated native plant taxa: *Pleomele auwahiensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Chamaesyce celastroides* var. *lorifolia, Santalum ellipticum, Pouteria sandwicensis, Styphelia tameiameiae* or *Xylosma hawaiiensis;* and (2) elevations between 768 and 1,220 m (2,520 and 4,000 ft).

Family Rutaceae: *Melicope haupuensis* (Alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Moist talus slopes (a) in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata, M. anisata, M. barbigera, Dianella sandwicensis, Pritchardia minor, Tetraplasandra waimeae, Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii, Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* or *Antidesma* sp; and (2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

Family Rutaceae: *Melicope knudsenii* (Alani)

(i.) Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Forested flats or talus slopes (a) in lowland dry or montane mesic forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis;* and (2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

(ii.) Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope knudsenii* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Melicope knudsenii* on Maui are the habitat components that provide: (1) Forested flats or talus slopes (a) in *Nestegis-Pleomele* mixed open dry forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum,* or *Xylosma hawaiiensis;* and (2) elevations between 450 and 1,220 m (1,480 and 4,000 ft).

Family Rutaceae: *Melicope mucronulata* (Alani)

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope mucronulata* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Melicope mucronulata* on Maui are the habitat components that provide: (1) Steep west or north-facing slopes (a) in lowland dry to mesic forest and (b) containing one or more of the following associated species: *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* or *Dubautia linearis;* and (2) elevations between 670 and 1,070 m (2,200 and 3,500 ft).

Family Rutaceae: *Melicope pallida* (Alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep rock faces (a) in lowland or montane mesic or wet forests or shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Sapindus oahuensis, Tetraplasandra* sp., or *Xylosma hawaiiense;* and (2) elevations between 490 to 915 m (1,600 to 3,000 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (A'e)

(i.) Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland dry or mesic forests, or montane dry forest, (a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis,* and (b) containing one or more of the following associated plant species: *Pleomele auwahiensis, Antidesma platyphyllum, Pisonia* sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Streblus pendulinus, Myrsine lanaiensis, Sophora chrysophylla,* or *Dodonaea viscosa;* and (2) elevations between 550 and 730 m (1,800 and 2,400 ft).

(ii.) Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Zanthoxylum hawaiiense* on Maui are the habitat components that provide: (1) Open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, or montane dry forest containing one or more of the following associated native species: *Metrosideros polymorpha, Diospyros sandwicensis, Pisonia* sp., *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa, Osteomeles anthyllidifolia, Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Dodonaea viscosa, Streblus pendulinus, Myrsine lanaiensis,* or *Sophora chrysophylla;* and (2) elevations between 550 and 1,740 m (1,800 and 5,710 ft).

Family Santalaceae: *Exocarpos luteolus* (Heau)

Kauai G, H, I, L, and S, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet places bordering swamps; open, dry ridges (a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities and (b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandvicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae,* or *Dicranopteris linearis;* and (2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

Family Sapindaceae: *Alectryon macrococcus* (Mahoe)

(i.) Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry slopes or gulches (a) in *Diospyros* sp., *Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, (b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia oliviformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis,* or *Bobea timonioides;* and (2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

(ii.) Maui units Q, Rr, and Ss, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Alectryon macrococcus* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Alectryon macrococcus* var. *auwahiensis* on Maui are the habitat components that provide: (1) Mixed lowland dry forest containing one or more of the following associated native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nestegis sandwicensis, Streblus pendulinus,* or *Pleomele auwahiensis;* and (2) elevations of 360 to 1,070 m (1,180 to 3,510 ft). Within these units the currently known primary constituent elements of critical habitat for *Alectryon macrococcus* var. *macrococcus* on Maui are the habitat components that provide: (1) Dry slopes or gulches (a) in dense mesic mixed *Metrosideros polymorpha* forest or *Diospyros sandwicensis* forest which contain (b) one or more of the following associated native plant species: *Nestegis sandwicensis* or *Antidesma platyphylla;* and (2) elevations of 360 to 1,070 m (1,180 to 3,510 ft).

Family Solanaceae: *Nothocestrum peltatum* ('Aiea)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rich soil on steep slopes (a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha,* and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* or *Perrottetia sandwicensis;* and (2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

Family Solanaceae: *Solanum sandwicense* ('Aiakeaakua, Popolu)

Kauai D, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open, sunny areas (a) in diverse lowland or montane mesic or wet forests and (b) containing one or more of the following associated plants: *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., or *Melicope* sp.; and (2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

Family Urticaceae: *Neraudia sericea* (No Common Name)

Maui units T and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Neraudia sericea* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Neraudia sericea* on Maui are the habitat components that provide: (1) Lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest containing one or more of the following associated native plant taxa: *Huperzia mannii, Urera glabra, Cyrtandra oxybapha, Cyrtandra platyphylla, Sida fallax, Diospyros* sp., *Bobea* sp., *Coprosma* sp., or *Hedyotis* sp.; and (2) elevations between 670 and 1,480 m (2,200 and 4,850 ft).

Family Violaceae: *Isodendrion laurifolium* (Aupaka)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Isodendrion laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forest (a) dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following associated native plant species: *Kokia kauaiensis, Streblus* sp., *Elaeocarpus bifidus, Canthium odoratum, Antidesma* sp., *Xylosma hawaiiense, Hedyotis terminalis, Pisonia* sp., *Nestegis sandwicensis, Dodonaea viscosa, Euphorbia haeleeleana, Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense, Alphitonia ponderosa, Myrsine lanaiensis,* or *Pouteria sandwicensis;* and (2) elevations between 490 and 820 m (1,600 and 2,700 ft).

Family Violaceae: *Isodendrion longifolium* (Aupaka)

Kauai F, G, L, M, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Isodendrion longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, gulches, or stream banks (a) in mesic or wet *Metrosideros polymorpha* forests and (b) containing one or more of the following native species: *Dicranopteris linearis, Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum, Melicope* sp., *Cheirodendron* sp., *Ilex anomala, Pipturus* sp., *Hedyotis fluviatilis, Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis, Cyanea hardyi, Syzygium* sp., *Cibotium* sp., *Bobea brevipes, Antidesma* sp., *Cyrtandra* sp., *Hedyotis terminalis, Peperomia* sp., *Pefrottetia sandwicensis, Pittosporum* sp., or *Psychotria* sp.; and (2) elevations between 410 to 760 m (1,345 to 2,500 ft).

Family Violaceae: *Viola helenae* (No Common Name)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and (2) elevations between 610–855 m (2,000–2,800 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (Nani Wai'ale'ale)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis, Diplopterygium pinnatum, Syzygium sandwicensis,* or *Metrosideros polymorpha;* and (2) elevations between 640 and 865 m (2,100 and 2,840 ft).

(B) Ferns and Allies

Family Adiantaceae: *Pteris lidgatei* (No Common Name)

Maui units Q and Aa, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Pteris lidgatei* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Pteris lidgatei* on Maui are the habitat components that provide: (1) Steep stream banks (a) in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest and (b) containing one or more of the following native plant taxa: *Cibotium chamissoi, Dicranopteris linearis, Elaphoglossum crassifolium, Sadleria squarrosa,* or *Sphenomeris chusana;* and (2) elevations between 915 and 1,070 m (3,000 and 3,500 ft).

Family Aspleniaceae: *Ctenitis squamigera* (Pauoa)

Maui units Q, T, Xx, and Zz, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Ctenitis squamigera* on Maui. Within these units the primary constituent elements of critical habitat for *Ctenitis squamigera* on Maui are the habitat components that provide: Forest understory (a) in *Metrosideros polymorpha* montane wet forest, *Metrosideros polymorpha-Diospyros* sp. mesic forest or diverse mesic forest and (b) containing one or more of the following native plant species: *Alyxia oliviformis, Freycinetia arborea, Coprosma* sp., *Pleomele* sp., *Thelypteris globulifera, Sadleria* sp., *Doodia* sp., *Pittosporum* sp., *Dryopteris* sp., *Bobea* sp., *Antidesma* sp., *Peperomia* sp., *Dicranopteris linearis, Schiedea pubescens* var. *pubescens, Hibiscus kokio* ssp. *kokio, Hedyotis formosa, Pritchardia forbesiana, Myrsine* sp., *Psychotria* sp., or *Xylosma* sp.; and (2) elevations between 380 and 1,000 m (1,250 and 3,280 feet).

Family Aspleniaceae: *Diellia erecta* (No Common Name)

Maui units Q, T, and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Diellia erecta* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Diellia erecta* on Maui are the habitat components that provide: (1) Steep slopes or gulch bottoms in deep shade (a) in *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Nestegis* sp., *Styphelia tameiameiae, Melicope* sp., *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Myrsine* sp., *Psychotria* sp., *Pleomele auwahiensis, Syzygium sandwicensis,* or *Wikstroemia* sp.; and (2) elevations between 210 and 1,590 m (700 and 5,200 ft).

Family Aspleniaceae: *Diellia pallida* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare soil on steep, rocky, dry slopes (a) in lowland mesic forests and (b) containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Psychotria mariniana, Carex meyenii, Diospyros hillebrandii, Hedyotis knudsenii, Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium, Alphitonia ponderosa, Styphelia tameiameiae,* or *Rauvolfia sandwicensis;* and (2) elevations between 530 to 915 m (1,700 to 3,000 ft).

Family Aspleniaceae: *Diplazium molokaiense* (No Common Name)

Maui unit Qq, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Diplazium molokaiense* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Diplazium molokaiense* on Maui are the habitat components that provide: (1) Proximity to waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest; and (2) elevations between 850 and 1,680 m (2,800 and 5,500 ft).

Family Grammitidaceae: *Adenophorus periens* (Pendant Kihi Fern)

Kauai F, G, K, L, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Adenophorus periens* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-developed, closed canopy that provides deep shade or high humidity (a) In *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and (b) containing one or more of the following native plant species: *Athyrium sandwicensis, Broussaisia* sp., *Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *Psychotria hexandra,* or *Syzygium sandwicensis;* and (2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

Family Lycopodiaceae: *Phlegmariurus mannii* (Wawae'iole)

Maui units Q, W, Jj, Kk, and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Phlegmariurus mannii* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Phlegmariurus mannii* on Maui are the habitat components that provide: (1) As an epiphyte on *Metrosideros polymorpha,* and *Acacia koa* trees in moist protected gulches (a) in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests or wet montane *Metrosideros polymorpha-Acacia koa* forests and (b) containing one or more of the following associated native plant taxa: *Thelypteris* sp., *Athyrium* sp., *Styphelia* sp., *Cyanea atra, Machaerina* sp., *Cyrtandra* sp., *Sadleria* sp., *Vaccinium* sp., *Dodonaea viscosa, Astelia menziesii, Coprosma* sp., *Cheirodendron trigynum, Ilex anomala,* or *Myrsine* sp.; and (2) elevations from 900 to 1,600 m (2,950 to 5,250 ft).

Dated: November 29, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–31078 Filed 12–15–00; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Revision of Braking Systems; Airworthiness Standards to Harmonize With European Airworthiness Standards for Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–1999–6063; Notice No. 99–16A]

RIN 2120–AG80

Revision of Braking Systems; Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking, (SNPRM).

SUMMARY: This document seeks public comment on changes proposed as a result of the comments received on Notice No. 99–16. The changes proposed in this supplemental notice would require an additional dynamometer test during brake qualification, namely, an accelerate-stop test with the brake heat sink in a new condition (also called a new brake rejected takeoff (RTO) test) for part 25 transport category airplanes. The new proposed brake test could result in a minimal cost increase for some part 25 small airplanes. These changes are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures in the airworthiness standards without reducing, but potentially enhancing, the current level of safety.

DATES: Comments must be received on or before February 16, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, NW, Washington, DC 20590–0001. You must identify the docket number FAA–1999–6063 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA has received your comments, include a self addressed, stamped postcard.

You may also submit comments through the Internet to: *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Docket Office between 9:00 a.m. and 5:00 p.m., on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mahinder K. Wahi, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2142; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters must identify the regulatory docket or notice number and submit comments in duplicative to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. The Docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–1999–6063." The postcard will be date stamped and mailed to the commenter.

Availability of the SNPRM

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this notice.

Background

On August 10, 1999, the the FAA issued an NPRM titled "Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes," Notice No. 99–16 (64 FR 43570), and two Notices of Availability, "Proposed TSO–C135, Transport Airplane Wheels and Wheel and Brake Assemblies," and "Proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis." The related background material leading to Notice No. 99–16 and the notices of availability is as follows:

In 1988, the FAA, in cooperation with the JAA and other organizations representing the American and European aerospace industries, began a process to harmonize the airworthiness requirements of the United States and the airworthiness requirements of Europe, especially in the areas of Flight Test and Structures.

Starting in 1992, the FAA's harmonization effort for various systems-related airworthiness requirements was undertaken by the ARAC. A working group of industry and government braking systems specialists of Europe, the United States, and Canada was chartered by notice in the **Federal Register** (59 FR 30080, June 10, 1994). The working group was tasked to develop a harmonized standard, such as a Technical Standard Order (TSO), for approval of wheels and brakes to be installed on transport category airplanes and to develop a draft notice of proposed rulemaking (NPRM), with supporting economic and other required analyses, and/or any other related guidance material or collateral documents, such as advisory circulars, concerning new or revised requirements and the associated test conditions for wheels, brakes and braking systems, installed in transport category airplanes (§§ 25.731 and 25.735).

The harmonization task was completed by the working group and recommendations were submitted to the FAA by a letter dated May 1, 1998. The FAA concurred with the recommendations and proposed them in Notice No. 99–16. A notice of availability of proposed TSO–C135 and request for comments and a notice of availability of proposed AC 25.735–1X and request for comments were also published in the **Federal Register** on August 10, 1999 (64 FR 43579). On August 25, 1999, the JAA issued two Notices of Proposed Amendment (NPA) 25D–291 and NPA TSO–7: "Brakes and Braking Systems" that included the proposed advisory material AMJ 25.735. The amendments proposed in NPA 25D–291 and the advisory material proposed in AMJ 25.735 were substantively the same as the amendments proposed by the Notice No. 99–16 and the advisory material in proposed AC 25.735–1X. The NPA TSO–7 was substantively the same as proposed TSO–C135.

As a result, the FAA and JAA each received a set of comments from the public in response to the proposed rule, the proposed TSO, and the proposed AC. These two sets of comments are interlinked and addressed jointly by the FAA in preparing this SNPRM.

Discussion of Comments: Notice 99–16

Twenty-one commenters responded to the request for comments contained in Notice No. 99–16, the notices of availability of proposed TSO–C135 and AC 25.735–1, and the corresponding JAA documents NPA 25D–291, NPA TSO–7, and AMJ 25.735. Comments were received from eight (8) foreign and domestic airplane and brake manufacturers, nine (9) foreign airworthiness authorities, one operator and three (3) foreign and domestic industry organizations. The majority of the commenters agree with the proposal and recommend its adoption. However, some commenters disagree with the proposal while providing alternative proposals that appear to merit further consideration by the ARAC. Therefore, the FAA tasked the ARAC Braking Systems Harmonization Working Group (HWG) by letter dated February 8, 2000, to consider the comments and provide recommendations for the disposition of the comments along with any recommendations for changes to the proposal. Proposal 11 is the only proposal relevant to this SNPRM. The disposition of the comments below is based on the agreement reached by the HWG.

Proposal 11, § 25.735(f)

The proposed paragraph § 25.735(f) in Notice No. 99–16 reads as follows:

(f) *Kinetic energy capacity.* The design landing stop, the maximum kinetic energy accelerate-stop, and the most severe landing stop brake kinetic energy absorption requirements of each wheel and brake assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy. Energy absorption rates defined by the airplane manufacturer must be achieved. These rates must be equivalent to mean decelerations not less than 10 fps^2 for the design landing stop and 6 fps^2 for the maximum kinetic energy accelerate stop. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe. Design landing stop is an operational landing stop at maximum landing weight. Maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. Most severe landing stop is a stop at the most critical combination of airplane landing weight and speed.

Comment: One commenter states that as proposed, § 25.735(f) is difficult to read and contains too many separate requirements in itself. It could create undue difficulties during the finding of compliance. It is suggested that the paragraph be re-arranged such that:

- There is a distinct sub-paragraph that can be identified for the requirement for the determination of the levels of kinetic energy and the energy absorption rates. This paragraph should indicate that three cases are to be considered (design landing stop, accelerate-stop, and most severe landing stop). This sub-paragraph could also mention the caveats about the need to consider, or not consider, during testing the most severe landing stop.
- There is a distinct sub-paragraph for the requirement for the wheel and brake assembly to meet the levels of kinetic energy.
- There is a distinct sub-paragraph for the requirement for the wheel and brake assembly to meet the energy absorption rates.
- The definitions of the three stop cases (the last 9 lines of the currently proposed paragraph, starting with: ". . . Design landing stop is an operational . . .") are taken out of the requirement and placed in the proposed AC 25.735–1X.

The FAA concurs that rearranging § 25.735(f) into three distinct sub-paragraphs clarifies the requirement. The FAA, however, decided that it is more appropriate to retain the definitions as part of the regulatory text, since this is the only place where these terms are identified.

The text of this paragraph is divided into three subparagraphs f(1), f(2), and f(3) with appropriate headings. The subparagraphs cover each of the three tests and include the definitions.

Comment: Two commenters suggest adding a requirement that the accelerate-stop test, reference: paragraph 3.3.3.2 of the proposed TSO–C135, and § 25.735(f) of Notice No. 99–16, must be completed on both a new brake and a fully worn brake. The fully worn brake is the worst case condition for energy absorption capability, however, the new brake condition is the worst case condition for performance for some heat sink materials. (The heat sink is the mass of the brake that is primarily responsible for absorbing energy during a stop. For a typical brake, this would consist of the stationary and rotating disc assemblies.)

The FAA concurs with this comment. Applicable text in the TSO–C135 paragraph 3.3.3.2, and the new § 25.735(f)(2) in this SNPRM add a new brake accelerate-stop test requirement with the new brake defined as a brake worn no more than 5 percent of its usable wear range. The accelerate-stop applicable portion of § 25.735(f) text, Notice No. 99–16, is revised from "It must be substantiated by dynamometer testing that, at the declared fully-worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy" to "(f)(2): It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake." Although, not a part of the TSO, large airplane manufacturers currently require a new brake RTO test as part of brake qualification. Small airplane manufacturers may experience a cost increase of $20,000 per certification.

The New Proposal

The revised proposed rule reads as follows:

(f) *Kinetic energy capacity*

(1) *Design landing stop:* The design landing stop is an operational landing stop at maximum landing weight. The design landing stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate derived from the

airplane manufacturer's braking requirements must be achieved. The mean deceleration must not be less than 10 fps².

(2) *Maximum kinetic energy accelerate-stop:* The maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. The accelerate-stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate defined by the airplane manufacturer must be achieved. The mean deceleration must not be less than 6 fps².

(3) *Most severe landing stop:* The most severe landing stop is a stop at the most critical combination of airplane landing weight and speed. The most severe landing stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe.

The rulemaking proposal contained in this supplemental notice is based on a recommendation developed by the Braking Systems Harmonization Working Group, and presented to the FAA by the ARAC as a recommendation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

Compatibility with ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. For this SNPRM, the FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards, and, where appropriate, to use those standards as the basis of U.S. standards. Fourth, Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. In conducting these analyses, the FAA has determined that this supplemental proposal: (1) Would generate benefits that justify its costs and is not "a significant regulatory action" as defined in Executive Order 12866 or in the Department of Transportation's Regulatory Policies and Procedures; (2) would not have a significant impact on a substantial number of small entities; (3) would not constitute a barrier to international trade, and (4) does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

These analyses, available in the docket, are summarized below. All estimates are expressed in year 2000 dollars.

Regulatory Evaluation Summary

Summary of Major Economic Issues in NPRM 99–16

Of several revisions proposed for 14 CFR 25.735, only one, proposal 11, was expected to impose additional costs, estimated at $20,000 to $60,000 (the latter upper estimate has been reduced to $40,000) for part 25 large airplanes and $20,000 (as explained below, the latter estimate has been increased to a range of $20,000 to $40,000) for part 25 small airplanes. Most of the changes codify current industry practice or conform 14 CFR 25.735 to corresponding sections of the JAR. The resulting regulatory harmonization would eliminate unnecessary duplication of airworthiness requirements, thus reducing manufacturers' certification costs.

None of the commenters disputes FAA's estimates of specific incremental certification costs. One commenter, however, questions FAA's contention that costs would be balanced by the savings from rule harmonization, and further objects to the vagueness of the expected safety benefits. The FAA disagrees with the latter commenter's synopsis of the benefits' conclusion in the NPRM. The FAA did not contend that quantified benefits from averted future accidents alone would economically justify the proposed rule. Although total harmonization savings were not specified, the FAA nevertheless stated that "according to one manufacturer, cost savings from harmonization * * * would be equal to or greater than the maximum incremental cost of $60,000." The FAA also noted that "potential safety benefits resulting from specification of minimum accepted standards would supplement these cost savings." In addition, even though none of the previous accidents would have been directly preventable by the proposed amendments, "different designs in future type certifications, however, could present other problems (unexpected) and raise future accident rates."

Notwithstanding the above, since publication of Notice 99–16, the FAA has contacted industry sources to obtain estimates of harmonization cost savings attributable to the revisions originally proposed in the Notice. These cost savings would be, at a minimum, between $50,000 and $75,000 for a part 25 small airplane type certification and $100,000 to $300,000 for a part 25 large airplane type certification. These harmonization benefits would exceed the incremental costs of all the revisions specified in the NPRM as well as the costs attributable to the SNPRM change.

Supplemental Change and Associated Costs and Benefits

The proposed dynamometer test, also called a new brake rejected takeoff (RTO) test, is currently conducted by brake manufacturers as specified by large airplane manufacturers during brake qualification testing and is considered standard industry practice. For some manufacturers of part 25 small airplanes, however, the proposed test could result in a cost increase of

$20,000 per type certification (thus increasing incremental costs for proposal 11 in the NPRM from an estimated $20,000 to a range of $20,000 to $40,000). This incremental but nonrecurring cost for some manufacturers of part 25 small airplanes would easily be offset by the harmonization cost savings cited earlier. Any potential safety benefits from avoiding even one minor accident would add to such benefits. The FAA, therefore, finds the additional change to proposal 11 to be cost beneficial for both part 25 small and large airplane manufacturers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a "significant economic impact on a substantial number of small entities." If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This SNPRM would affect manufacturers of transport category airplanes produced under future new airplane type certifications. For airplane manufacturers, a small entity is one with 1,500 or fewer employees. Since no part 25 airplane manufacturer has 1,500 or fewer employees, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small manufacturers.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to United States' companies doing business in foreign markets, and foreign companies doing business in the United States.

The subject proposal is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result would be a positive step toward removing impediments to international trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This supplemental proposal does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator when modifying regulations in title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this proposed rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Amend § 25.735 for revising the heading and paragraph (f) to read as follows:

§ 25.735 Brakes and braking systems.

* * * * *

(f) *Kinetic energy capacity*

(1) *Design landing stop:* The design landing stop is an operational landing stop at maximum landing weight. The design landing stop brake kinetic energy

absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate derived from the airplane manufacturer's braking requirements must be achieved. The mean deceleration must not be less than 10 fps.[2]

(2) *Maximum kinetic energy accelerate-stop:* The maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. The accelerate-stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate defined by the airplane manufacturer must be achieved. The mean deceleration must not be less than 6 fps.[2]

(3) Most severe landing stop: The most severe landing stop is a stop at the most critical combination of airplane landing weight and speed. The most severe landing stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe.

* * * * *

Issued in Renton, Washington on December 4, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31927 Filed 12–15–00; 8:45 am]

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Federal Register

Monday,
December 18, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Reduced Vertical Separation Minimum (RVSM); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2000–8490; Notice No. 00–16]

RIN 2120–AH12

Reduced Vertical Separation Minimum (RVSM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would add the New York Flight Information Region (FIR) portion of the West Atlantic Route System (WATRS) to the airspace where Reduced Vertical Separation Minimum (RVSM) may be applied. RVSM saves fuel and minimizes traffic delays by accommodating greater numbers of aircraft in the most fuel-efficient routes available. This is accomplished by reducing the vertical separation between aircraft that fly in RVSM airspace. Safety is maintained by restricting RVSM airspace to aircraft with approved equipment that is operated by crews with proper training to assure high levels of long-range navigation precision. International RVSM planning groups have agreed to implement RVSM in the New York Flight Information Region (FIR) portion of WATRS on November 1, 2001. This NPRM also proposes to require aircraft that are equipped with Traffic Alert and Collision Avoidance System (TCAS) to incorporate a version of TCAS that is compatible with RVSM operations.

DATES: Comments must be submitted on or before February 16, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8490 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov/*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dave Maloy, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 600 Independence Avenue, SW., Washington, DC 20591, telephone (860) 654–1006.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as you may desire. You are also invited to submit comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Your comments should identify the regulatory docket number and you should submit two copies of your comments to the address shown above.

Because this proposed rule was developed as a result of an international agreement, comments deemed substantive will be presented for consideration and reviewed by the international community under the auspices of the International Civil Aviation Organization (ICAO). If considered relevant, the comments will be included for use by all participating member States.

All comments received will be available both before and after the closing date for comments in the Department of Transportation Docket for examination by interested persons.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2000–8490." The FAA will date, time stamp, and return the postcard.

Availability of This Document

You may download an electronic copy of this document, using a modem and suitable communications software, from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this proposed rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this NPRM.

Background

Introduction

Below flight level (FL) 290 (29,000 feet), air traffic controllers can assign aircraft operating under Instrument Flight Rules (IFR) altitudes a minimum of 1,000 feet apart. Above FL 290, however, the Conventional Vertical Separation Minimum (CVSM) is 2,000 feet.

RVSM is the reduction of vertical separation of aircraft from the conventional 2,000 feet of separation to 1,000 feet of separation between flight levels (FL) 290 (29,000 feet) and 410 (41,000 feet). RVSM is authorized only for aircraft flying in RVSM airspace that have equipment and training to maintain long term navigation precision.

Flight levels are stated in digits that represent hundreds of feet. The term flight level is used to describe a surface of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude (in the United States, 18,000 feet) on this standard reference. FL 290 represents the pressure surface equivalent to 29,000 feet based on the 29.92″ Hg datum; FL 310 represents 31,000 feet, and so on.

The 2,000-foot minimum vertical separation restricts the number of flight levels available. Flight levels 310, 330, 350, 370, and 390 are flight levels at which aircraft crossing oceanic airspace operate most economically. At peak hours these flight levels can become congested When all RVSM flight levels (FL290–410) are utilized, six additional flight levels are available: FLs 300, 320, 340, 360, 380 and 400.

RVSM has been successfully established in the North Atlantic (NAT) and in Pacific airspace. Increasing the number of flight levels available in the WATRS airspace is projected to enhance operator benefits in a similar way to those achieved in the NAT (i.e., mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks).

This proposed rule complies with international agreements under which the international aviation community, including the United States, plans to implement RVSM in the New York FIR portion of the WATRS airspace. Based on three years of successful RVSM operations in the NAT, the users, Air Transport Association (ATA), International Air Transport Association (IATA), International Civil Aviation Organization (ICAO), and the New York Oceanic Capacity Enhancement Task Force (NYOCETF) have requested the FAA to implement RVSM in WATRS airspace as well.

Why RVSM in WATRS Airspace Is Necessary

Air traffic in WATRS airspace has increased steadily in the past few years and is projected to continue to increase. Between 1997 and 1999, the annual traffic count in the WATRS airspace increased from 72,020 to 109,044 flights. This represents an increase of 51 percent. This is a result of several years of economic downturn followed by a resurgence of activity. The Office of International Operations for New York Center estimates a similar increase over at least the next several years, assuming the economy stays healthy. A substantial portion of the increase is the Europe to Caribbean traffic that overflies the WATRS airspace.

Unless action is taken, as traffic increases, the opportunity for aircraft to fly at fuel-efficient altitudes and tracks will be significantly diminished. In addition, air traffic service providers may not be able to accommodate greater numbers of aircraft in the airspace without invoking restrictions that can result in traffic delays and fuel penalties.

RVSM Has Been Implemented Successfully in the North Atlantic (NAT) and in the Pacific

With air traffic levels increasing annually worldwide, FAA airspace planners and their international counterparts continually explore methods of enhancing the air traffic control (ATC) system's ability to accommodate traffic in a safe and efficient manner. NAT MNPS (Minimum Navigation Performance Specifications) airspace was chosen to be the first airspace for RVSM introduction because it is the busiest oceanic airspace in the world and traffic is forecast to continue to increase. The NAT Traffic Forecasting Group Report shows that the number of annual flight operations increased 28 percent between 1993 and 1998 with a forecast 65 percent rise over the 1994 level of 164,500, by 2004.

On March 27, 1997, RVSM was implemented from FL 330 to FL 370 in the NAT MNPS. On October 8, 1998 the RVSM airspace was increased from FL 310 to FL 390 (inclusive). In designated NAT MNPS airspace, tracks are spaced 60 nautical miles (NM) apart. Between FLs 310 and 390 (inclusive), aircraft are separated vertically by 1000 feet.

All aircraft operating in this airspace must be appropriately equipped and capable of meeting required lateral navigation performance standards of part 91, § 91.705 and vertical navigation performance standards of part 91, § 91.706. Operators must follow procedures that ensure the standards are met. Flight crews must also be trained on RVSM policy and procedures. Each operator, aircraft, and navigation system combination must receive and maintain authorization to operate in the NAT RVSM/MNPS airspace.

The North Atlantic Systems Planning Group (NATSPG) Central Monitoring Agency (CMA) monitors NAT aircraft fleet performance to ensure that a safe operating environment is maintained.

Pacific RVSM was implemented on February 24, 2000. The Asia/Pacific Approval Registry and Monitoring Agency performs the function of the CMA in the Pacific.

Prior to the introduction of RVSM, 27 percent of flights in NAT airspace were issued clearances on tracks and at altitudes other than those requested by the operators in their filed flight plans. These flights were, therefore, generally conducted at less than optimum tracks and altitudes for the aircraft, resulting in time and fuel inefficiencies.

The NAT Implementation Management Group (IMG) has observed the following improvements in NAT operations due to the introduction of RVSM:

1. Fifty percent of the fuel penalty attributed to NAT system operation was eliminated. The total NAT system fuel penalty is estimated based on track design, meteorological forecast, cruise level and traffic congestion penalties.
2. Twenty five percent fewer fixed tracks were required to be published. This allows more airspace for operators to fly preferred tracks.
3. There was a five percent increase in flights cleared to fly both at the altitude and on the track that the operator requested.

Most WATRS Operators Already Have Experience With RVSM

Approximately 60% of the operations in the WATRS airspace are conducted by aircraft and operator combinations that already have experience with RVSM operations. This is because some of the WATRS operators conduct operations worldwide and therefore, have been required to obtain RVSM approval to operate in NAT and Pacific RVSM airspace. Aircraft that have been approved for RVSM are approved for RVSM in any area of the world where it is applied. This high percentage of operators that already have RVSM experience has encouraged WATRS planners to expeditiously implement RVSM in WATRS airspace.

Applying RVSM to the New York Flight Information Region (FIR) of WATRS

The New York Oceanic Capacity Enhancements Task Force (NYOCETF) provides oversight for plans and policy related to:

1. Changes to separation minima
2. Issues relating to traffic management
3. Airspace/ATS Routes
4. Standardization of ATC and Operator procedures
5. Contingency procedures
6. Communication issues
7. Status of oceanic ATC automation

The Task Force is using the policy and criteria developed in other ICAO forums to build the RVSM program for the WATRS airspace.

Projected increases in WATRS air traffic and the successful implementation of RVSM operations in the NAT and the Pacific support the implementation of RVSM in WATRS airspace. WATRS operators and Air Traffic Service (ATS) providers have requested that RVSM be pursued aggressively.

The NYOCETF is developing WATRS RVSM implementation plans. The New York ARTCC Plans and Procedures Manager chair the Task Force. The Task Force chairperson and representatives will oversee the two phases of the WATRS implementation process, which are (1) the system verification phase and (2) the initial operational capability/operational trials phase.

System Verification Phase

During the system verification phase, unapproved aircraft will continue to be separated vertically by 2,000 feet. Operators and aircraft that have not already been approved for RVSM will begin to receive RVSM approval in accordance with § 91.706 and Appendix G (or their equivalent for foreign operators). The overall objectives of the system verification phase are to:

1. Confirm that the target level of safety (TLS) will continue to be met.
2. Confirm that aircraft approved for RVSM operation demonstrate altitude-

keeping performance that meets RVSM standards. This will be achieved by:

• Identifying and eliminating any causes of out-of-tolerance altitude-keeping performance, in general or for specific aircraft groups and

• Monitoring a sample of RVSM-approved aircraft and operators that is representative of the total population.

3. Verify that operational procedures adopted for RVSM are effective and appropriate.

4. Confirm that the altitude-monitoring program is effective. The principal purpose of this phase has been to gain confidence that the operational trial phase can begin.

Initial Operational Capability/ Operational.Trials Phase

When the objectives of the system verification phase have been met, initial operational capability will be declared and RVSM will be implemented at designated flight levels. The first year after implementation is considered the operational trials phase. The objectives of the operational trial phase are to:

1. Continue to collect altitude-keeping performance data.

2. Increase the level of confidence that safety goals are being met.

3. Demonstrate operationally that there are no difficulties with RVSM implementation.

Beginning November 1, 2001, only RVSM approved operators and aircraft will be cleared to operate in the New York FIR portion of the WATRS airspace between FLs 290 and 410 (inclusive). Aircraft that are not RVSM compliant (*e.g.*, State aircraft, ferry and maintenance flights) will only be cleared to operate between FLs 290 and 410 (inclusive) after coordination with the first and notification given to subsequent oceanic centers. Notification constitutes approval. A 2,000-foot vertical separation will be applied to such aircraft.

Provided that all requirements continue to be met, at the end of one year, RVSM will be declared fully operational.

Altitude-Keeping Performance

For the past three years, the FAA, in conjunction with the NATSPG, has monitored aircraft altitude-keeping performance of RVSM approved aircraft. A major objective of monitoring is to establish that the altitude-keeping performance of the aircraft fleet operating in airspace where RVSM is applied continues to meet minimum requirements.

Altimeter system error (ASE) is the major component of aircraft altitude-keeping performance. In the past three years, 42,648 measurements of altimetry system error have been taken for over 3,400 different airframes. Those measurements have shown that the altitude-keeping performance of aircraft approved for RVSM operations is significantly better than the minimum requirement. For group aircraft, the ASE requirement established for RVSM is that average ASE not exceed 80 feet and 99.9% of ASE observed not exceed 245 feet. The monitoring results have shown that actual average ASE is −4 feet and 99.9% of ASE is within 156 feet.

The FAA has determined that the appropriate method of assessing collision risk is the Reich collision risk model (CRM). As noted in AC No. 91–70, Oceanic Operations, collision risk refers to the number of midair accidents likely to occur due to the loss of separation in a prescribed volume of airspace for a specific number of flight hours.

Collision Risk Methodology (CRM) was used to develop the requirements for safe implementation of a 1,000-foot vertical separation standard. The United States supported the methodology used to derive the accepted level of safety for RVSM implementation.

The TLS that is being used in the NAT, the Pacific, and the WATRS airspace to assess safety is no more than five fatal accidents in 1 billion flying hours. The level of safety was developed using historical data on safety from global sources. One precedent used was a period of 100 to 150 years between midair collisions. When the TLS of 5 accidents in a billion flying hours is projected in terms of a calendar year interval between accidents in the WATRS, it yields a theoretical interval between midair collisions of more than 600 years. The accepted level of safety is consistent with the acceptable level for aircraft hull loss and is based on the precedence of extremely improbable events as they relate to system safety, the basis for certain requirements in certification regulations such as 14 CFR 25.1309.

To ensure that the TLS is met, the FAA is monitoring the total vertical error (TVE) and the remaining CRM parameters that are critical for safety assessment (probability of lateral and longitudinal overlap). TVE is defined as the geometric difference between the aircraft and the flight level altitude. To monitor TVE, the FAA has deployed measurement systems that will produce estimates of aircraft and flight level geometric altitude. The overall goal of monitoring is to ensure that airworthiness, maintenance, and operational approval requirements result in required system performance (and level of safety) in the flight environment on a continuing basis. One such measurement/monitoring system is a Global Positioning System (GPS)-based monitoring system (GMS). The GMS has been used extensively in the NAT along with ground based Height Monitoring Units (HMUs).

The on-going assessment of risk in the NAT over the past two years has shown that the TLS of 5 accidents in 1 billion flight hours can be met. All sources of error related to aircraft performance and to human error have been assessed.

Current Requirements

The FAA published 14 CFR 91.706 (Operations within airspace designated as Reduced Vertical Separation Minimum Airspace.) and Appendix G to Part 91 (OPERATIONS IN REDUCED VERTICAL SEPARATION MINIMUM (RVSM) AIRSPACE) in April 1997. They are based on the ICAO Manual on RVSM, NAT Doc 9574. Technical and operational experts from the FAA, the European Joint Airworthiness Authorities (JAA), the aircraft manufacturers, and pilot associations developed the criteria in a joint FAA/JAA working group. Section 91.706 requires that aircraft and operators meet the requirements of Appendix G and receive authorization from the FAA prior to flying in airspace where RVSM is applied. Appendix G contains requirements in eight sections:

1. Definitions
2. Aircraft Approval
3. Operator Authorization
4. RVSM operations (flight planning into RVSM airspace)
5. Deviation Authority Approval
6. Reporting Altitude-keeping Errors
7. Removal or Amendment of Authority
8. Airspace Designation

Flight Standards Handbook Bulletin for Air Transportation (HBAT) 99-11A and General Aviation (HBGA) 99-17A entitled "Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where 1,000 foot Vertical Separation Minimum Is Applied", has been distributed through Flight Standards District Offices (FSDOs). This document provides guidance to FAA Flight Standards inspectors on the process and procedures to follow before approving an operator and its aircraft for RVSM operations. It details inspector responsibilities for assessment of airworthiness approval, maintenance program approval, and operations approval requirements in the rule. It discusses timing, process, and maintenance and operations material that the operator should submit for FAA review and evaluation normally at least 60 days before the planned operation in RVSM airspace. Operators under Title 14, Code of Federal Regulations (14 CFR) part 91 receive FAA approval in the form of a Letter of Authorization (LOA), and operators under 14 CFR parts 121, 125, and 135 receive Operations Specifications (OPS–SPEC) approval.

For operations over the high seas outside the United States, 14 CFR 91.703 requires that aircraft of U.S. registry comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation. Annex 2, amendment 32, effective February 19, 1996, reflects the change from 2,000 feet to 1,000 feet vertical separation for Instrument Flight Rules (IFR) traffic between FL 290 and FL 410, based on appropriate airspace designation, international agreements, and conformance with specified conditions.

General Discussion of the Proposal

The proposal would allow operation of civil aircraft of U.S. registration in WATRS airspace where RVSM is applied. It is based on improvements in altitude-keeping technology. These improvements include:

• Introduction of the air data computer (ADC), which provides an automatic means of correcting the known static source error of aircraft to improve aircraft altitude measurement capability.

• Development of altimeters with enhanced transducers or double aneroid for computing altitude.

Under this proposal, airspace or routes in the WATRS airspace where RVSM is applied would be considered special qualification airspace. Both the operator and the specific types of aircraft that the operator intends to use in RVSM airspace would have to be approved by the appropriate FAA office before the operator conducts flights in RVSM airspace.

Implementation of a 1,000-foot vertical separation standard above FL 290 offers substantial operational benefits to operators, including:

• Greater availability of the most fuel-efficient altitudes. In the RVSM environment, aircraft are able to fly closer to their optimum altitude at initial level off and through step climbing to the optimum altitude during the enroute phase.

• Greater availability of the most time and fuel-efficient tracks and routes (and an increased probability of obtaining these tracks and routes). Operators often are not cleared on the track or route that was filed due to demand for the optimum routes and resultant traffic congestion on those routes. RVSM allows ATC to accommodate a greater number of aircraft on a given track or route. More time and fuel-efficient tracks or routes would therefore be available to more aircraft.

• Increased controller flexibility. RVSM gives ATC greater flexibility to manage traffic by increasing the number of flight levels on each track or route.

• Reduction of pilot and controller work load. When controllers are required to re-route aircraft from their filed track and/or altitude they are required to re-coordinate and revise clearances. Pilots are required to re-program aircraft navigation systems (which has been a major cause of navigational errors). RVSM will reduce the number of re-routes required and therefore reduce both pilot and controller workload.

• Enhanced flexibility to allow aircraft to fly across route systems. Operators are often required to remain at lower, less fuel-efficient altitudes until the aircraft crosses a route system. RVSM makes more flight levels available at higher, more fuel-efficient altitudes to allow aircraft to cross route systems.

• Enhanced safety in the lateral dimension. Studies indicate that RVSM produces a wider distribution of aircraft among different tracks and altitudes, resulting in less exposure to aircraft at adjacent separation standards. RVSM reduces the number of occasions when two aircraft pass each other separated by a single separation standard (e.g., 60 NM laterally). The benefit to safety is that, in the event of a gross navigation error, the deviating aircraft is less likely to find another aircraft on the adjacent route at the same flight level.

This amendment to 14 CFR part 91, appendix G, section 8 would add the New York FIR portion of the WATRS airspace to the list of airspace where RVSM can be applied.

TCAS (Traffic Alert and Collision Avoidance System) II, Version 7 for RVSM Operations

Currently, 14 CFR 121.356, 125.224, and 135.180 require that certain aircraft be operated with TCAS II, or an equivalent, and the appropriate class of Mode S transponder. Certain other aircraft may be operated with TCAS I or an equivalent. Airworthiness Directives issued to the avionics manufacturers in 1994 require that those aircraft that are required to be TCAS II equipped be equipped with TCAS II, Version 6.04 Enhanced. Approximately 90% of the flights now conducted in RVSM airspace are equipped with TCAS II, version 6.04 Enhanced.

This proposed rule would require that aircraft operated in RVSM airspace and equipped with TCAS II, be modified to incorporate collision avoidance system logic software version 7.0, or a later version. This requirement is added because, as further explained below, only version 7.0 incorporates revised alert thresholds for traffic alerts (TA) and resolution advisories (RA) for flight levels (FL) 300 through FL 420 that are compatible with RVSM operations. The alert thresholds in Version 6.04 Enhanced are not totally compatible with RVSM operations. This proposal is specifically related to TCAS II operating characteristics needed in RVSM airspace and would not amend or be affected by rules that require that TCAS be installed in an aircraft.

TCAS I is compatible with RVSM operations and no modifications are necessary.

Why This Proposed Rule Would Require Version 7 of TCAS II

1. Background

RVSM was implemented in North Atlantic Minimum Navigation Performance Specifications Airspace (NAT MNPSA) in March 1997. In preparation for RVSM implementation, the North Atlantic System Planning Group (NATSPG) Operations/ Airworthiness (Ops/Air) group reviewed the effect that RVSM would have on the operation of TCAS II, Version 6.04 Enhanced in NAT oceanic airspace. The group recognized that TCAS II, Version 6.04 Enhanced was designed with a TA alert threshold of 1,200 feet for FL 300 through FL 420 and would produce inappropriate TA's for aircraft that were separated in RVSM airspace by 1,000 feet vertically, especially in certain situations. For example, the group recognized that in situations where two aircraft were separated by 1,000 feet vertically and one nautical mile or less longitudinally, on the same track and proceeding in the same direction at approximately the same speed, TA's could be received in the cockpit repeatedly over an extended period of time. The group observed, however, that the traffic levels in oceanic airspace are low relative to continental operations and operations are relatively stable (*i.e.*, aircraft generally climb or descend infrequently). For this reason, it concluded that TCAS II, Version 6.04 Enhanced was acceptable during the early stages of RVSM operations in oceanic airspace provided pilots were informed on the operating characteristics of TCAS II, Version 6.04 Enhanced operations in RVSM airspace. To do this, the group developed and

distributed a document to educate pilots on these characteristics. The document also recommended that pilots limit their vertical speed to 1,000 feet per minute when close to other aircraft to reduce the number of unnecessary alerts.

RVSM has been implemented for over 3 years in North Atlantic airspace and since February 2000 in the Pacific Oceanic Flight Information Regions. In that time, TCAS II, Version 6.04 Enhanced has proven generally acceptable for RVSM operations in oceanic airspace, however, multiple TA events have, in fact, been found to occur in situations where aircraft are on the same track, speed and direction with one nm or less longitudinal spacing.

2. Effect on Safety

TCAS provides an aural TA in the form of the announcement "Traffic, Traffic" in the cockpit. The "Traffic, Traffic" announcement repeated over a period of time distracts the pilot from the execution of his or her duties and produces the potential to cause a pilot error. As an example, during the flight, pilots program navigation computers with a series of numbers representing positions on the route of flight. A distraction while programming the navigation computer can cause the pilot to make an error that results in the aircraft straying from its assigned route and posing a hazard to itself and other aircraft.

3. Increase in RVSM Operations

As air traffic increases in areas where RVSM is currently implemented and as RVSM is implemented in new areas, there will be more aircraft conducting RVSM flights and increased exposure to distracting TA's. Air traffic in NAT and Pacific oceanic airspace where RVSM has already been implemented is projected to increase 4–6% each year. New RVSM implementations are planned in the near future in airspace over the Western and South Atlantic, the western Pacific, and the Caribbean. The number of RVSM flights will continue to increase and therefore, the probability of aircraft experiencing distracting multiple TA's will also increase.

4. TCAS II, Version 7.0 Compatibility With RVSM Operations

To avoid the potential for an increase in distracting TA's that can lead to pilot errors, aircraft that are used in RVSM operations that are equipped with TCAS II systems must be modified to incorporate a version of TCAS that is compatible with RVSM operations. TCAS II, version 7.0 was designed to be compatible with RVSM operations and mitigates the occurrence of unnecessary TA's in RVSM operations. In TCAS II, version 7.0, the TA alert threshold between flight levels 300 and 420 is reduced from 1,2000 feet to 850 feet. This revision will eliminate unwarranted TA's between aircraft that are correctly separated by 1,000 feet vertically in RVSM airspace.

5. ICAO and Foreign Standards

ICAO Annexes and civil aviation authorities in foreign countries have already established standards and requirements for specified aircraft to be equipped with TCAS II, version 7. ACAS II is the ICAO term that describes aircraft collision avoidance systems and related equipment. To comply with ICAO ACAS II Standards, version 7 must be incorporated in TCAS II. The aircraft covered and compliance dates for ACAS II (TCAS II, Version 7) are discussed in the paragraphs below.

a. Part 91, Section 91.703 Requirements Applicable to U.S. Operators

Various countries through out the world have adopted the ICAO Annex 6 requirements discussed below for ACAS II equipage in their airspace. In some major areas, countries and regions have adopted accelerated equipage compliance dates. Because 14 CFR 91.703 requires U.S. operators to comply with the regulations of the countries in which they are operating, the ACAS II equipage requirements of foreign countries have already required U.S. operators to plan to equip with Version 7.

Section 91.703 is entitled "Operations of civil aircraft of U.S. registry outside of the United States". Paragraph 91.703(a)(2) states that each person operating a civil aircraft of U.S. registry outside the United States shall "[w]hen within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force".

b. ICAO Annex 6 Standards for ACAS II Equipage

ICAO Annex 6 (Operation of Aircraft), Part 1 (International Commercial Air Transport—Aeroplanes), paragraph 6.18 contains standards calling for TCAS II, Version 7 (ACAS II) equipage for specified aircraft by 1 January 2003. Paragraph 6.18 is entitled "Aeroplanes required to be equipped with an airborne collision avoidance system (ACAS II). Specifically, it states that all turbine-engine aircraft with a maximum certified take-off mass (gross weight) that exceeds 15,000 kg (33,000 pounds) or authorized to carry more than 30 passengers shall be equipped with ACAS II by January 1, 2003. Annex 6 also calls for all aircraft to be equipped with a pressure altitude reporting transponder that operates in accordance with the relevant provisions of ICAO Annex 10.

c. Asia/Pacific Regional Standards for ACAS II

The ICAO Regional Supplements for the Middle East/Asia and the Pacific are published in the ICAO document entitled "Regional Supplementary Procedures" (ICAO Doc 7030). Those regional supplements call for TCAS II, Version 7 equipage for the aircraft specified in Annex 6 by 1 January 2000. Since version 7 was not widely available from avionics manufactures, most aircraft were not able to meet that date. In response, the Asia/Pacific Air Navigation Planning and Implementation Regional Group (APAN/PIRG) has adopted a regional policy that calls for the specified aircraft to be equipped by January 1, 2002.

d. North Atlantic Regional Standards for ACAS II

The ICAO Doc 7030 Regional Supplement for the NAT Region calls for TCAS II, version 7.0 equipage for the aircraft specified in Annex 6 by March 31, 2001. The ICAO NAT Region encompasses most of WATRS airspace.

e. European Country Requirements for ACAS II

The requirements for ACAS II equipage in European countries have been published in the European Regional Supplements contained in ICAO Doc 7030. European Supplement paragraph 16.1 (Carriage and operation of ACAS II) calls for the aircraft specified in Annex 6, Part 1 to be ACAS II equipped by 1 January 2000. In response to the lack of availability of version 7, the European Civil Aviation Conference (ECAC) member States have granted exemptions to allow aircraft to continue to operate until 31 March 2001 with TCAS, Version 6.04 Enhanced.

f. Requirements for TCAS II, Version 7 in Countries in the Pacific and Asian Regions

The ICAO Bangkok office has conducted a survey of countries in Asia and the Pacific to determine those countries that have established or plan to establish requirements for ACAS II equipage in their airspace. To date, 28 countries have established or are developing requirements for operators to equip by the ICAO Annex 6 compliance date of 1 January 2003 or sooner. This list includes: Australia, China, Japan, Korea, New Zealand and Singapore.

6. Effect of Linking TCAS II, Version 7 Equipage to RVSM Operations

The proposal is that aircraft used in RVSM operations and equipped with TCAS II be equipped version 7.0 because it is compatible with RVSM operations. Because other countries and ICAO Regions are already requiring ACAS II (Version 7), however, the economic and aircraft engineering impact directly related to this proposal will be minimal.

RVSM is currently applied only in certain major oceanic airspaces outside the US—the NAT and Pacific. As detailed above, requirements for TCAS, Version 7 have already been established for operators and aircraft operating outside the US to destinations in Europe, Asia and the Pacific. Since operators will already be required to equip with TCAS II, Version 7 to operate in the airspace of most countries in the Pacific and European regions, the effect of requiring TCAS II, version 7.0 for RVSM operations after march 31, 2002 will be minimal.

7. Justification for Compliance Date

The FAA proposes that operators be required to incorporate Version 7.0 software into TCAS II equipment when used in RVSM operations after March 31, 2002. The following are factors the FAA considered in arriving at this proposed date.

First, an earlier date has not been proposed because adequate numbers of Version 7.0 units and upgrade kits have not been available to operators. This is one reason that European aviation authorities delayed to TCAS II, Version 7.0 requirement for European airspace to March 31, 2001. A large number of U.S. operators will be complying with the European requirements for their operations. In proposing a compliance date for this amendment, the FAA has allowed adequate time for additional Version 7.0 units and upgrade kits to be made available following the European compliance date, for other operators. This will allow 12 months after the initial demand for Version 7.0 to meet the European requirement, for adequate numbers of modified TCAS units to be made available to operators not covered by the European requirement.

Second, incorporation of version 7.0 in TCAS II units is not a major aircraft engineering effort. Incorporation of version 7.0 is a software change. Existing equipment is removed from the aircraft and the Version 7.0 software modification is accomplished by an authorized service facility. Considering these factors, the FAA believes establishing a requirement for incorporation of version 7.0 for operations after March 31, 2002 will provide adequate time for all aircraft operating in RVSM.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule: (1) Has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

This proposal amends 14 CFR part 91, appendix G, section 8 (Airspace Designation) by adding the New York FIR portion of the WATRS airspace to the list of airspaces where RVSM would be implemented. The benefits of this proposed rulemaking are (1) an increase in the number of available flight levels, (2) enhance airspace capacity, (3) permit operators to operate more fuel/time efficient tracks and altitudes, and (4) enhance air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this proposed rule would cost U.S. operators $26.0 million for the fifteen-year period 2001–2015 or $23.3 million, discounted. The costs can be considered voluntary as they would be incurred only by operators that participate in WATRS RVSM. However, operators of non-RVSM aircraft would still be able to fly above or beneath the WATRS RVSM airspace. Benefits would begin accruing in 2001. Estimated benefits, based on fuel savings for the commercial aircraft fleet over the years 2001 to 2015, would be $34.7 million or discounted at $19 million.

In addition to fuel savings, many non-quantifiable or value-added benefits would result from the implementation of RVSM in WATRS. Input from air traffic managers, controllers, and operators has identified numerous additional benefits.

Through implementation of RVSM in the North Atlantic (NAT) and Pacific (PAC) regions, operators and controllers have realized some additional benefits. The major additional benefits as identified by air traffic managers and controllers are:

- Enhanced capacity
- Reduced airspace complexity
- Decreased operational errors in these regions
- Reduction of user-requested off course climbs for altitude changes
- Improved flexibility for peak traffic demands
- More options in deviating aircraft during periods of adverse weather.

The benefits outlined above for RVSM in the NAT and PAC regions are anticipated in WATRS as well. There should be expected efficiencies through reduced airspace complexity, increased flight levels, and fewer altitude changes with crossing traffic.

Operators can expect increased performance due to greater airspace capacity eliminating current restrictions to desired airspace. Operators can also expect increased aircraft performance and decreased delays due to improved airspace efficiency. Specific benefits cited by aircraft operators are:

- Decreased flight delays
- Improved access to desired flight levels
- Reduced average flight times
- Increased availability of step climbs
- Increased likelihood of receiving a clearance for weather deviations
- Seamless, transparent, and harmonious operations between the NAT and WATRS regions
- Consistent procedural environment throughout the entire flight
- Reduced impact of adverse weather by permitting aircraft deviations to other airways without any efficiency loss.

Implementation of RVSM in WATRS should result in increased under

satisfaction. The benefits described in this section are compelling in number and operational impact. These benefits are also significant in that they are enjoyed both by air traffic service providers and aircraft operators.

TCAS II Version 7 is also included in this rule as described in a previous section. There is no economic impact to operators upgrading to TCAS II Version 7 because many destination countries served by U.S. air carriers already require this equipment.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Operators that met the Small Business Administration (SBA) small entity criteria were extracted from the 44-day traffic sample of enhanced Traffic Management System (ETMS) data. These operators were cross-referenced with the Central Monitoring Agency (CMA) and the Asia Pacific Approvals and Monitoring Organization (APARMO) databases to determine if they operated any RVSM-approved aircraft. The small entity operators with RVSM-approved aircraft were not considered further in this impact determination.

The list of potential small entity operators, taken from the traffic sample, was used to identify six operators currently reporting financial data to the FAA Bureau of Transportation Statistics. Revenue information for these small entities for year 1999 was obtained from the Air Carrier Financial Statistics Quarterly. The operators were then ranked with respect to their total operating revenue. Using this financial data, the impact threshold of $305,540.00 was determined for the six small entity operators. The impact threshold, which is calculated as 1% of the 1999 median impacted small business annual revenues, was compared to the cost of compliance.

Research of operators in WATRS has revealed that implementation of RVSM in WATRS would impact only one small entity operator. Moreover, the costs of implementing RVSM are not mandated by the FAA. These costs will be voluntarily incurred by those small operators who wish to participate in the RVSM program in WATRS. The FAA, therefore, concludes that a substantial number of small entity operators would not be significantly affected by the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act of 1995

The reporting and record keeping requirements associated with this rule remain the same as under the current rules and have previously been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers 2120–0026. The FAA believes that this rule does not impose any additional record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local and tribal governments in the aggregate, or by the private sector; such as a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on ICAO, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. In Appendix G, amend section 2 by revising paragraph (g) and adding a new paragraph (h) and by revising section 8 to read as follows:

Appendix G to Part 91—Operations In Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 2. Aircraft Approval

* * * * *

(g) Traffic alert and collision avoidance system compatibility with RVSM operations: all aircraft. After March 31, 2002, unless otherwise authorized by the FAA, if you operate an aircraft that is equipped with TCAS II in RVSM airspace, it must be a TCAS II that meets TSO C–119b (version 7.0), or a later version.

(h) If the FAA finds that the applicant's aircraft comply with this section, we will notify the applicant in writing.

Section 8. Airspace Designation

(a) RVSM may be applied in the NAT in the following ICAO Flight Information Regions (FIRs): New York Oceanic, Gander Oceanic, Sondrestrom FIR, Reykjavik Oceanic, Shanwick Oceanic, and Santa Maria Oceanic. RVSM may be effective in the Minimum Navigation Performance Specifications (MNPS) airspace within the NAT. The MNPS airspace within the NAT is defined by the volume of airspace between FL 285 and FL 420 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundaries of control areas Reykjavik Oceanic, Gander Oceanic, and New York Oceanic, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

(b) RVSM may be applied in the Pacific in the following ICAO Flight Information Regions (FIRs): Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, Ujung Pandang, and Vancouver.

(c) RVSM may be applied in the New York FIR portion of the West Atlantic Route System (WATRS). The area is defined as beginning at a point 38°30′N/60°00′W direct to 38°30′N/69°15′W direct to 38°20′N/69°57′W direct to 37°31′N/71°41′W direct to 37°13′N/72°40′W direct to 35°05′N/72°40′W direct to 34°54′N/72°57′W direct to 34°29′N/73°34′W direct to 34°33′N/73°41′W direct to 34°19′N/74°02′W direct to 34°14′N/73°57′W direct to 32°12′N/76°49′W direct to 32°20′N/77°00′W direct to 28°08′N/77°00′W direct to 27°50′N/76°32′W direct to 27°50′N/74°50′W direct to 25°00′N/73°21′W direct to 25°00′05″N/69°13′06″W direct to 25°00′N/69°07′W direct to 23°30′N/68°40′W direct to 23°30′N/60°00′W to the point of beginning.

Issued in Washington, DC, on December 6, 2000.

Ava L. Mims,

Acting Director, Flight Standards Service.

[FR Doc. 00–31687 Filed 12–15–00; 8:45 am]

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Federal Register

Monday,
December 18, 2000

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

FAR/JAR Harmonization Actions; Revisions to Requirements Concerning Airplane Operating Limitations and the Content of Airplane Flight Manuals for Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2000–8511; Notice No. 00–17]

RIN 2120–AG92

FAR/JAR Harmonization Actions; Revisions to Requirements Concerning Airplane Operating Limitations and the Content of Airplane Flight Manuals for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposed to amend the airworthiness standards for transport category airplanes concerning airplane operating limitations and the content of airplane flight manuals. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirement of Europe, without affecting current industry design practices.

DATES: Send your comments on or before February 16, 2001.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8511 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2000–8511." We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address; *http://dms.dot.gov.*

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–1129; facsimile 425–227–1320, e-mail *don.stimson@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light on the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339); the Government Printing Office (GPO)'s electronic bulletin board service (telephone; 202–512–1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access recently published rulemaking documents at the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the *GPO's* web page at *http://www.access.gpo.gov/nara.*

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202–267–9680. Communications must identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task area. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

What Is the "Fast Track Harmonization Program"?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled "The Fast Track Harmonization Program," is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would "envelope" the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be "enveloped" (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested a number of editorial changes, which have been incorporated into this RPRN.

Discussion of the Proposal

How Does This Proposed Regulation Relate to "Fast Track"?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this notice, the FAA proposes to amend six sections of the regulations concerning transport category airplane operating limitations and the content of airplane flight manuals (AFM). The six proposed changes are described separately below.

Change 1: New § 25.1516, "Other Speed Limitations"

What Is the Underlying Safety Issue Addressed by the Current Standards?

There may be speeds above which it is unsafe to extend devices such as ram air turbines, thrust reversers, and landing lights into the air stream, or to open windows or doors. The current standards require that speed limitations must be established and made available to the flightcrew to ensure safe operation.

What Are the Current 14 CFR and JAR Standards?

Currently, the FAA relies on § 25.1503 ("Airspeed limitations: general") and § 25.1533 ("Additional operating limitations") as the means to fulfill the underlying safety issue. These two sections mandate speed limitations. Additionally, the text of paragraph (a) of § 25.1501 [amendment 25–42 (43 FR 2323, January 16, 1978)] states:

"§ 25.1501 Operating Limitations and Information—General.

(a) Each operating limitation specified in §§ 25.1503 through 25.1533, and other limitations and information necessary for safe operation, must be established."

However, JAR–25 (Change 14, Orange Paper 96/1) contains an additional specific paragraph 25.1516 that states:

"JAR 25X1516 Other speed limitations

Any other limitation associated with speed must be established (See also ACJ 25X1516.)"

What Are the Differences in the Standards and What Do Those Differences Result In?

Part 25 does not have an explicit requirement to mandate that any other limitation associated with speed be established, while JAR–25 does. There are no practical differences resulting from the difference in the standards, however. Currently, applicants seeking certification of transport airplane designs by both the FAA and JAA must establish all limitations associated with speed.

What, If Any, Are the Differences in the Means of Compliance?

There are no differences between part 25 and JAR–25 in the means of compliance with the addressed requirement.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising part 25 to adopt the text of JAR 25X1516 as new § 25.1516. This proposed action would codify current FAA policy.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard continues to address the underlying safety issue by requiring that airspeed limitations be established for devices that can open into the air stream in flight. With the addition of this standard, part 25 will have one explicit requirement that applicants establish all limitations associated with speed.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level of safety and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA does not consider that any additional advisory material is needed. Advisory Circular (AC) 25.1581–1, "Airplane Flight Manual," dated July 14, 1997, provides adequate guidance related to the issue addressed by this proposed rulemaking. The advisory material will be fully harmonized when JAA's Advisory Material Joint (AMJ) 25.1581–1 is published.

Change 2: § 25.1527, "Maximum Operating Altitude"

What Is the Underlying Safety Issue Addressed by the Current Standards?

Operation of a transport category airplane outside of the environmental envelope established for the airplane may be unsafe. Therefore, the boundaries of that envelope must be established to ensure safe operations. Section 25.1527 requires that such boundaries be established.

What Are the Current 15 CFR and JAR Standards?

The current text of 14 CFR 25.1527 is:

"25.1527 Maximum operating altitude.

The maximum altitude up to which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established."

The current text of JAR 25.1527 (Change 14, Orange Paper 96/1) is:

"JAR 25.1527 Ambient air temperature and operating altitude.

The extremes of the ambient air temperature and operating altitude for which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established."

What Are the Differences in the Standards and What Do Those Differences Result In?

Section 25.1527 requires that only the maximum altitude portion of the environmental envelope be established. However, JAR 25.1527 requires that both the *minimum* and *maximum* altitudes and ambient temperatures be established. Although this difference exists, the FAA's policy of applying § 25.1527 is consistent with JAR 25.1527. This is evidenced by the compliance method described in FAA AC 25.1581–1. However, the FAA must rely on the general provisions of § 25.1501(a) ("* * * *other limitations and information necessary for safe operation must be established*") for its regulatory basis.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in their application or means of compliance. As stated previously, the FAA relies on both the general provisions of § 25.1501(a) and the guidance in AC 25.1581–1 to apply the requirement.

Currently, there is no relevant JAA advisory material. However, the JAA has advised the FAA that it soon will be issuing AMJ 25.1581, which will contain material harmonized with that in AC 25.1581–1.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1527 to adopt the language currently in JAR 25.1527. This proposed action would codify current FAA policy and practice.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner. It would simply codify current FAA policy and application of the regulations.

What Is the Effect of the Proposed Standards Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 3: § 25.1583(c), "Operating Limitations/Weight and Loading Distribution"

What Is the Underlying Safety Issue Addressed by the Current Standards?

Section 25.1583 (as well as JAR 25.1583) currently requires that the limitations established under §§ 25.1501 through 25.1533 be provided in the AFM. To ensure safe operation, any limitations established for the airplane must be made known to the flightcrew. This is accomplished through instrument markings, placards, and the information provided in the AFM.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1853(c) [amendment 25–72 (55 FR 29787, July 20, 1990)] is:

"§ 25.1583 Operating limitations.

* * * (c) *Weight and loading distribution.* The weight and center of gravity limits required by §§ 25.25 and 25.27 must be furnished in the Airplane Flight Manual. All of the following information must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight as defined in accordance with § 25.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(3) If certification for more than one center of gravity range is requested, the appropriate limitations, with regard to weight and loading procedures, for each separate center of gravity range."

The current text of JAR 25.1583(c) (Change 14, Orange Paper 96/1) is:

"JAR 25.1583 Operating limitations.

* * * (c) *Weight and loading distribution.* The weight and centre of gravity limitations established under JAR 25.1519 must be furnished in the aeroplane Flight Manual. All the following information, including weight distribution limitations established under JAR 25.1519, must be presented either in the aeroplane Flight Manual or in a separate weight and balance control and loading document which is incorporated by reference in the aeroplane Flight Manual [see ACJ 25.1583(c)]:

(1) The condition of the aeroplane and the items included in the empty weight as defined in accordance with JAR 25.29.

(2) Loading instructions necessary to ensure loading of the aeroplane within the weight and centre of gravity limits, and to maintain the loading within these limits in flight.

(3) If certification for more than one centre of gravity range is requested, the appropriate limitations, with regard to weight and loading procedures, for each separate centre of gravity range."

What Are the Differences in the Standards and What Do Those Differences Result In?

There are no practical differences in the application of the two standards. However, the references to other standards that appear in JAR 25.1583(c) are more exact than those that appear in § 25.1583(c). The standards referenced are:

Section No.	Title of section*
25.23	Load distribution limits.
25.25	Weight limits.
25.27	Center of gravity limits.
25.1519	Weight, center of gravity, and weight distribution.

*The title of each section is the same in both part 25 and JAR–25.

JAR 25.1583(c) requires that the operating limitations established under JAR 25.1519 be provided in the AFM. JAR 25.1519 then requires that weight, center of gravity, and weight distribution limitations, "including those established under *JAR 25.23 to JAR 25.27*," be established as operating limitations.

On the other hand, § 25.1583(c) requires that the weight and center of gravity limitations required by *§§ 25.25 and 25.27* must be provided in the AFM. Like its counterpart JAR standard, § 25.1519 requires that weight, center of gravity, and weight distribution limitations established under *§§ 25.23 and 25.27* be established as operating limitations.

Thus, instead of referencing § 25.1519, the requirements of § 25.1583(c) specifically refer to the weight and center of gravity limitations determined under §§ 25.25 and 25.27. This mistakenly excludes any operating limitations established under § 25.23.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in their application or means of compliance. The FAA's policy of applying § 25.1583 is consistent with JAR 25.1583. The FAA relies on the general provisions of § 25.1501(a), and the guidance material in AC 25.1581–1 to apply the same requirement.

The JAA has a current Advisory Circular Joint (ACJ) 25.1583 that is relevant and provides some guidance on complying with the standard. However, the JAA has advised the FAA that it soon will be issuing AMJ 25.1581, which will contain guidance material harmonized with that in AC 25.1581–1.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1583(c) to adopt the language currently in JAR 25.1583(c). This proposed action would codify current FAA policy.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner. It would simply codify current FAA policy and application of the regulations.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 4: § 25.1583(f), "Operating Limitations/Altitudes"

What Is the Underlying Safety Issue Addressed by the Current Standards?

As discussed previously, § 25.1583 (as well as JAR 25.1583) currently requires that the limitations established under §§ 25.1501 through 25.1533 be provided in the AFM. To ensure safe operation, any limitations established for the airplane must be made known to the flightcrew. This is accomplished through instrument markings, placards, and the information provided in the AFM.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1583(f) [amendment 25–72 (55 FR 29787, July 20, 1990)] is:

"25.1583 Operating limitations.

* * * (f) *Altitudes.* The altitude established under § 25.1527."

The current text of JAR 25.1583(f) (Change 14, Orange Paper 96/1) is:

"JAR 25.1583 Operating limitations.

* * * (f) *Ambient air temperatures and operating altitudes.* The extremes of the ambient air temperatures and operating altitudes established under JAR 25.1527 and an explanation of the limiting factors must be furnished."

What Are the Differences in the Standards and What Do Those Differences Result In?

Consistent with § 25.1527 (refer to previous discussion), § 25.1583(f) requires that only the maximum altitude portion of the environmental envelop be established. Consistent with JAR 25.1527, JAR 25.1583(f) requires that the limitations relative to both the *minimum* and *maximum* altitudes and ambient temperatures be established. Although the explicit standards are different, there are no differences in their application or means of compliance. The FAA's policy of applying § 25.1583(f) is consistent with JAR 25.1583(f). This is evidenced by the compliance method described in FAA AC 25.1581–1. However, the FAA must rely on the general provisions of § 25.1501(a) for its regulatory basis.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance. As stated above, the FAA relies on the general provisions of § 25.1501(a) and the guidance material in AC 25.1581–1 to apply the same requirement.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1583(f) to adopt the language currently in JAR 25.1583(f). This proposed action would codify current FAA policy.

The current requirement in JAR 25.1583(f) for an explanation of the limiting factors would not be included in the revised § 25.1583(f), however, as this does not represent current practice and the FAA considers it unnecessary for safety.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner. It would simply codify current FAA policy and application of the regulations.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practices, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 5: § 25.1585, "Operating Procedures"

What Is the Underlying Safety Issue Addressed by the Current Standards?

The primary purpose of the AFM is to provide an authoritative and approved source of information that is considered necessary for safely operating the airplane. Consistent with this purpose, § 25.1585 requires that the AFM must provide those operating procedures related to airworthiness and necessary for safe operation, including those procedures that may be unique to the specific type of airplane.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1585 is:

"§ 25.1585 Operating procedures.

(a) Information and instructions regarding the peculiarities of normal operations (including starting and warming the engines, taxiing, operation of wing flaps, landing gear, and the automatic pilot) must be furnished, together with recommended procedures for—

(1) Engine failure (including minimum speeds, trim, operation of the remaining engines, and operation of flaps);

(2) Stopping the rotation of propellers in flight;

(3) Restarting turbine engines in flight (including the effects of altitude);

(4) Fire, decompression, and similar emergencies;

(5) Ditching [including the procedures based on the requirements of §§ 25.801, 25.807(d), 25.1411, and 25.1415(a) through (e)];

(6) Use of ice protection equipment;

(7) Use of fuel jettisoning equipment, including any operating precautions relevant to the use of the system;

(8) Operation in turbulence for turbine powered airplanes (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(9) Restoring a deployed thrust reverser intended for ground operation only to the forward thrust position in flight or continuing flight and landing with the thrust reverser in any position except forward thrust; and

(10) Disconnecting the battery from its charging source, if compliance is shown with § 25.1353(c)(6)(ii) or (c)(6)(iii).

(b) Information identifying each operating condition in which the fuel system independence prescribed in § 25.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) The buffet onset envelopes, determined under § 25.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

(d) Information must be furnished which indicates that when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished."

The current text of JAR 25.1585 (Change 14, Orange Paper 96/1) is:

"JAR 25.1585 Operating procedures.

(a) Information and instructions regarding operating procedures must be furnished [see ACJ 25.1585(a)] in substantial accord with the categories described below—

(1) Emergency procedures which are concerned with foreseeable but unusual situations in which immediate and precise action by the crew, as detailed in the recommended procedures, may be expected substantially to reduce the risk of catastrophe.

(2) Other procedures peculiar to the particular type or model encountered in connection with routine operations including malfunction cases and failure conditions, involving the use of special systems and/or the alternative use of regular systems not considered as emergency procedures.

(b) Information or procedures not directly related to airworthiness or not under the control of the crew, must not be included, nor must any procedure which is accepted as basic airmanship.

(c) The buffet onset envelopes, determined under JAR 25.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the aeroplane is normally loaded during cruise if corrections for the effect of different centre of gravity locations are furnished. [See ACJ 25.1585(c).]

(d) Information must be furnished which indicates that when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished."

What Are the Differences in the Standards and What Do Those Differences Result In?

There are two differences between the standards. First, the JAR standard does not include the text of current § 25.1585(b), which requires including information in the AFM concerning each operating condition in which the fuel system independence is necessary for safety, and instructions for placing the rule system in a configuration used to show compliance with § 25.953 ("Fuel system independence"). Lack of such information may compromise the intent of the rules regarding fuel system independence. On this specific issue, the part 25 standard is "more stringent" than the JAR standard. (As discussed later, the JAA intends to revise JAR 25.1585 to add this requirement.)

Second, the text of JAR 25.1585(a) and (b) essentially "updates" the requirements of § 25.1585(a) to better reflect current policy, practices, and interpretations.

These differences do not necessarily entail any substantial differences in the technical requirements for including procedural information in the AFM. If differences in practice have arisen, they may have resulted more from differences in the means of compliance (and interpretation). Harmonizing the relevant guidance material (*i.e.*, FAA's AC 25.1581–1 and JAA's soon-to-be published AMJ 25.1581) will reduce the potential for such differences in the future.

What, If Any, Are the Differences in the Means of Compliance?

As one means to demonstrate compliance with § 25.1585, applicants have relied on the guidance material related to the operating procedures section of the AFM that is contained in AC 25.1581–1. The JAA has provided relevant guidance in ACJ's 25.1585(a), 25.1585(c), and 25.251(e). Although there are differences between the texts of the FAA AC and the JAA ACJ's, both authorities agree that the FAA AC represents a harmonized text. The JAA is currently in the process of revising its guidance and will soon publish a new AMJ 25.1581, which will be harmonized with the FAA's AC 25.1581–1.

What Is the Proposed Action?

This action would revise § 25.1585 to incorporate the text of JAR 25.1585. The current text of § 25.1585(b) would be retained, but it would be redesignated as § 25.1585(c). [The JAA intends to revise JAR 25.1585 to incorporate these same requirements, and will designate them as JAR 25.1585(c).] The incorporated text would be revised editorially to simplify it and make it better reflect current practices. (The JAA intends to make these same editorial revisions to JAR 25.1585.)

Although the text of the current § 25.1585(a) could be considered "more stringent" because it is more specific than the JAR as to the procedures that must be furnished in the AFM, it is considered outdated and not completely consistent with current practices. Additionally, some of the mandated procedures are no longer appropriate and other important procedures are not included. The proposed standard would provide a better description of what types of procedures are required to be in the AFM, the specifics of which will depend on the particular design developed by the applicant (i.e., a performance-based requirement).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner by requiring information and procedures necessary for airworthiness and operational safety to be furnished in the AFM.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to the Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA did not consider any option other than harmonizing this item with the JAR. The JAR 25.1585(a) standard is considered to be closer to current practices than the manner in which § 25.1585(a) is actually applied. The

FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 6: § 25.1587, "Performance Information"

What Is the Underlying Safety Issue Addressed by the Current Standards?

The primary purpose of the AFM is to provide an authoritative and approved source of information considered necessary for safely operating the airplane. Consistent with this purpose, § 25.1587 requires that performance information related to airworthiness and necessary for safe operation must be provided in the AFM.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1587 [amendment 25–72 (55 FR 29787, July 20, 1990)] is:

"§ 25.1587 Performance information.

(a) Each Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free air temperature if other than a free air temperature indicator is used to comply with the requirements of § 25.1303(a)(1).

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information.

(2) V_S determined in accordance with § 25.103.

(3) The following performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights):

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under § 25.101(f), (g) and (h) that are related to the limitations and information required by § 25.1533 and by this paragraph. These procedures must be in the form of guidance material, including any relevant limitations or information.

(5) An explanation of significant or unusual flight or ground handling characteristics of the airplane."

The current text of JAR 25.1587 (Change 14, Orange Paper 96/1) is:

"JAR 25.1587 Performance information.

"(a) *Not required for JAR–25.*

(b) Each aeroplane Flight Manual must contain the performance information computed under the applicable provisions of this JAR–25 (including JAR 25.115, 25.123, and 25.125 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the aeroplane, and must contain the following:

(1) The condition of power, configuration, speeds and the procedures for handling the aeroplane and any system having a significant effect on performance upon which the performance graphs are based must be stated in each case. (See ACJ 25.1587(b)(1).)

(2) *Not required for JAR–25 as this sub-paragraph is covered by the opening sentence of sub-paragraph (b).*

(3) the following gross performance information (determined by extrapolation and computed for the range of weights between the maximum landing weight and maximum takeoff weight) must be provided.

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under § 25.101 (f) and (g) that are related to the limitations and information required by JAR 25.1533 and by this paragraph must be stated in the form of guidance material, including any relevant limitation or information.

(5) An explanation of significant or unusual flight or ground handling characteristics of the aeroplane.

(6) Corrections to indicated values of airspeed, altitude and outside air temperature.

(7) An explanation of operational landing runway length factors included in the presentation of the landing distance, if appropriate. (See ACJ 25.1587(b)(7).)"

What Are the Differences in the Standards and What Do Those Differences Result In?

There are several differences between the standards:

- Part 25 does not include the text of JAR 25.1587(b)(6) or (7).
- The JAR does not include the text of § 25.1587(a) and (b)(2).
- The JAR contains some wording differences in the text that better reflect current interpretations and practices.

These differences do not necessarily entail any substantial differences in technical requirements for including performance information in the AFM. If differences in practice have arisen, they would have resulted more from differences in the means of compliance (and interpretation). Harmonizing the relevant guidance material (i.e., FAA's AC 25.1581–1 and JAA's soon-to-be-published AMJ 25.1581) will reduce the potential for such differences in the future.

What, If Any, Are the Differences in the Means of Compliance?

As one means to demonstrate compliance with § 25.1585, applicants have relied on the guidance material related to the operating procedures section of the AFM that is contained in AC 25.1581–1. The JAA has provided relevant guidance in ACJ's 25.1587(b)(1) and ACJ 25.1587(b)(7). Although there are differences between the texts of the FAA AC and the JAA ACJ's, both authorities agree that the FAA AC represents a harmonized text. The JAA is currently in the process of revising its guidance and will soon publish a new AMJ 25.1581, which will be harmonized with the FAA's AC 25.158–1.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1587 to adopt portions of the text of JAR 25.1587. This proposed action would codify current FAA policy.

In general, where the standards are different, the JAR standard properly reflects current practices and is proposed as the harmonized standard. In areas where there is a requirement in one standard that does not appear in the other standard, that requirement has been carried over into the proposed harmonized standard. Some minor non-substantive editorial changes also would be included in the proposed standard.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner by requiring performance information necessary for airworthiness and operational safety to be furnished in the AFM.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and man increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 as amended requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposal has benefits, but no more than minimal costs, and that is not a "a significant regulatory action" under section 3(f) of Executive Order 12866. This proposal would not have a significant economic impact on a substantial number of small entities, reduces barriers to international trade, and imposes no unfunded mandates on state, local, or tribal governments, or the private sector.

Because there are no more than minimal costs associated with this proposal, it does not warrant the preparation of a full economic evaluation for placement in the docket. The basis of this statement and for the above determinations is summarized in this section of the preamble. The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Currently, airplane manufacturers must satisfy both the requirements of 14 CFR part 25 standards and the European JAR certification standards to market transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the itnerest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create to the maximum possible extent a single set of certification requirements accepted in both the United States and Europe. These efforts are referred to as harmonization.

In this notice, the FAA proposes to amend six sections of the regulations concerning transport category airplane operating limitations and the content of airplane flight manuals (AFM). The six proposed changes are described separately below.

Change 1: New § 25.1516, "Other Speed Limitations"

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA Advisory Circular (AC) 25.1581–1. They also would comply with the proposed new § 25.1516, which would be harmonized to existing JAR 25X1516, because § 25.1501 encompasses the requirements of the proposed new FAA rule.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1516 or JAR 25X1516 will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 2: § 25.1527, "Maximum Operating Altitude"

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA AC 25.1581–1. They also would comply with the proposed amendment of § 25.1527 to harmonize to JAR 25.1527, because § 25.1501 encompasses the requirements of § 25.1527 as it is proposed to be amended.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1527 or JAR 25.1527 will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 3: § 25.1583(c), "Operating Limitations/Weight and Loading Distribution"

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA Advisory Circular 25.1581–1. They also would comply with the proposed amendment of § 25.1583(c) that would harmonize it to the existing JAR 25.1583(c), because § 25.1501 encompasses § 25.1583(c) as it is proposed to be amended.

This change would amend § 25.1583(c) to eliminate its inclusion of direct references to § 25.25 and to § 25.27 and its concomitant omission of a direct reference to § 25.23. By amending § 25.1583(c) so that it refers directly to § 25.1519, which includes references to these three sections, they—§ 25.25, § 25.27, and § 25.23—would be incorporated into the scope of § 25.1583. Thus, all three sections would be referenced indirectly by § 25.1583(c) through its reference to § 25.1519.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1583(c) or JAR 25.1583(c) will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 4: § 25.1583(f), "Operating Limitations/Altitudes"

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA AC 25.1581–1. They also would comply with this proposed amendment that would harmonize § 25.1583(f) to the existing

JAR 25.1583(f), because § 25.1501 encompasses the requirements of § 25.1583(f) as it is proposed to be amended.

The FAA expects the result of this proposed harmonization action will be that compliance with either § 25.1583(f) or JAR 25.1583(f) will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 5: § 25.1585, "Operating Procedures"

U.S. manufacturers of part 25 airplanes comply now with § 25.1585 which encompasses and exceeds the scope of existing JAR 25.1585. They also would comply with the proposed amendment to harmonize § 25.1585 to JAR 25.1585.

The part 25 requirement would be harmonized to the JAR because, with one exception, the content of the JAA rule better presents FAA's current policy, practices, and interpretations than does the content of the FAA rule. The single exception is the omission in JAR 25.1585 of an equivalent to § 25.1585(b). This paragraph requires information and instructions to be furnished toward compliance with § 25.953. The harmonized FAA/JAA standard would maintain this FAA requirement. Harmonization of related advisory material would be complete when JAA advisory material is harmonized to existing FAA advisory material.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1585 or JAR 25.1585 will mean compliance with the other. Further, no reduction in the level of safety would result from this action. Neither the proposed harmonization of the rules, nor the harmonization of proposed associated JAA advisory material to the FAA advisory material would present U.S. manufacturers with any practical change in their procedures.

Change 6: § 25.1587, "Performance Information"

U.S. manufacturers of part 25 airplanes comply now separately with existing § 25.1587 and JAR 25.1587, which differ in some particulars. This action would result in a harmonized FAA/JAA standard such that manufacturers' compliance with either rule would mean compliance with the other.

The harmonized standard would incorporate the requirements of § 25.1587(a) and of § 25.1587(b)(2), which now are lacking in the JAR. It also would incorporate the requirements of JAR 25.1587(b)(6) and of JAR 25.1587(b)(7), which now are lacking in part 25. Some minor non-substantive editorial changes also would be included in the proposed harmonized standard. Harmonization of related advisory material would be complete when JAA advisory material is harmonized to existing FAA advisory material.

The FAA expects that the result of this proposed harmonization action would be that compliance with either § 25.1587 or JAR 25.1587 will mean compliance with the other. Neither the proposed harmonization of the rules, nor the harmonization of proposed associated JAA advisory material to the FAA advisory material would present U.S. manufacturers with any practical change in their procedures.

Benefits and Costs of Proposed Changes

The effect of these proposed regulatory changes would be to improve the codification of current certification practice and no consequent substantive change either in practice or in costs of compliance would result. Thus, the FAA anticipates that minimal additional costs would be associated with compliance to this rule.

The FAA expects that these proposed changes would result in benefits in the form of cost savings received by affected manufacturers because they would be able to effect compliance with both part 25 and JAR requirements in a simpler and more direct fashion. Further, the FAA expects that the existing level of safety will be maintained.

The FAA has not attempted to quantify the benefits from cost savings that may accrue because of this rule beyond noting that while the savings from this rule may be small, they are part of a potentially large savings from the harmonization program. The FAA concludes that, because there is agreement among potentially affected airplane manufacturers that no costs and no more than minimal savings will result, further analysis is not required. The FAA requests that those who believe this action would result in a cost increase provide to the Docket their basis for such a belief.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), of 1980 as amended, establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons: First, the net economic effect of the proposed rule is minimal reduction of regulatory cost. Second, all United States transport-aircraft category manufacturers exceed the Small Business Administration small-entry criteria of 1,500 employees for aircraft manufacturers. United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Based on these two reasons, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with that statute and policy, the FAA has assessed the potential effects of these six proposed harmonization actions and has determined that they would reduce trade barriers by eliminating the differences between FAA and JAA regulations.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Because this proposed rule does not contain a Federal, another governmental, or because this proposed rule does not contain a Federal, another governmental or a private sector mandate that exceeds $100 million in any year, the assessment requirements of the Act do not apply. Private sector mandate that exceeds $100 million in any year, the assessment requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

2. Add new § 25.1516 to read as follows:

§ 25.1516 Other speed limitations.

Any other limitation associated with speed must be established.

3. Revise § 25.1527 to read as follows:

§ 25.1527 Maximum operating altitude.

The extremes of the ambient air temperature and operating altitude for which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established.

4. Amend § 25.1583 by revising paragraphs (c) and (f) to read as follows:

§ 25.1583 Operating limitations.

* * * * *

(C) *Weight and loading distribution.* The weight and center of gravity limitations established under § 25.1519 must be furnished in the airplane Flight Manual. All of the following information, including the weight distribution limitations established § 25.1519, must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document that is incorporated by reference in the Airplane Flight Manual;

(1) The condition of the airplane and the items included in the empty weight as defined in accordance with § 25.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(3) If certification for more than one center of gravity range is requested, the appropriate limitations, with regard to weight and loading procedures, for each separate center of gravity range.

* * * * *

(f) *Ambient air temperatures and operating altitudes.* The extremes of the ambient air temperatures and operating altitudes established under § 25.1527 must be furnished.

* * * * *

5. Revise § 25.1585 to read as follows:

§ 25.1585 Operating procedures.

(a) Operating procedures must be furnished for—

(1) Normal procedures peculiar to the particular type or model encountered in connection with routine operations;

(2) Non-normal procedures for malfunction cases and failure conditions involving the use of special systems or the alternative use of regular systems; and

(3) Emergency procedures for foreseeable but unusual situations in which immediate and precise action by the crew may be expected to substantially reduce the risk of catastrophe.

(b) Information or procedures not directly related to airworthiness or not under the control of the crew, must not be included, nor must any procedure that is accepted as basic airmanship.

(c) Information identifying each operating condition in which the fuel system independence prescribed in § 25.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(d) The buffet onset envelopes, determined under § 25.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

(e) Information must be furnished that indicates that when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(f) Information on the total quantity of usable fuel for each fuel tank must be furnished.

6. Revise § 25.1587 to read as follows:

§ 25.1587 Performance information.

(a) Each Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free air temperature if other than a free air temperature indicator is used to comply with the requirements of § 25.1303(a)(1).

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part (including §§ 25.115, 25,123, and 25,125 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the airplane, and must contain the following:

(1) In each case, the conditions of power, configuration, and speeds, and the procedures for handling the airplane and any system having a significant effect on the performance information.

(2) V_s determined in accordance with § 25.103.

(3) The following performance information (determined by extrapolation and computed for the range of weights between the maximum landing weight and the maximum takeoff weight):

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under § 25.101 (f) and (g) that are related to the limitations and information required by § 25.1533 and by this paragraph in the form of guidance material, including any relevant limitations or information.

(5) Any explanation of significant or unusual flight or ground handling characteristics of the airplane.

(6) Corrections to indicated values of airspeed, altitude, and outside air temperature.

(7) An explanation of operational landing runway length factors included in the presentation of the landing distance, if appropriate.

Issued in Renton, Washington, on December 4, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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Capital; leverage and risk-based capital and capital adequacy guidelines, capital maintenance, residual interests, etc.; comments due by 12-26-00; published 9-27-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Consolidated return regulations—
Agent for consolidated group; comments due by 12-26-00; published 9-26-00

TREASURY DEPARTMENT
Thrift Supervision Office
Capital; leverage and risk-based capital and captial adequacy guidelines, capital maintenance, residual interests, etc.; comments due by 12-26-00; published 9-27-00
Savings and loan holding companies:
Significant transactions or activities and capital

adequacy review; comments due by 12-26-00; published 10-27-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.J. Res. 128/P.L. 106–540
Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 8, 2000; 114 Stat. 2571)

S. 2796/P.L. 106–541
Water Resources Development Act of 2000 (Dec. 11, 2000; 114 Stat. 2572)

Last List December 11, 2000

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
1900–1939	(869–042–00018–8)	21.00	Jan. 1, 2000
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
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10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
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13	(869–042–00036–6)	35.00	Jan. 1, 2000
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1–59	(869–042–00037–4)	58.00	Jan. 1, 2000
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140–199	(869–038–00039–1)	17.00	[4] Jan. 1, 2000
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141–199	(869–042–00054–4)	40.00	Apr. 1, 2000
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29 Parts:			
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500–899	(869–042–00102–8)	47.00	July 1, 2000
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1927–End	(869–042–00108–7)	49.00	July 1, 2000
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1–190	(869–042–00114–1)	51.00	July 1, 2000
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Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

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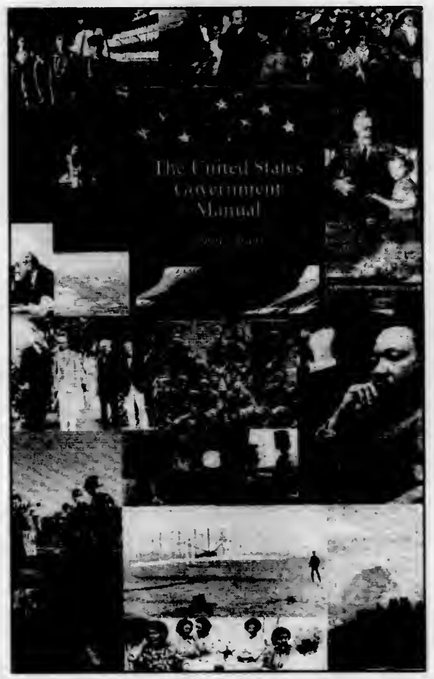
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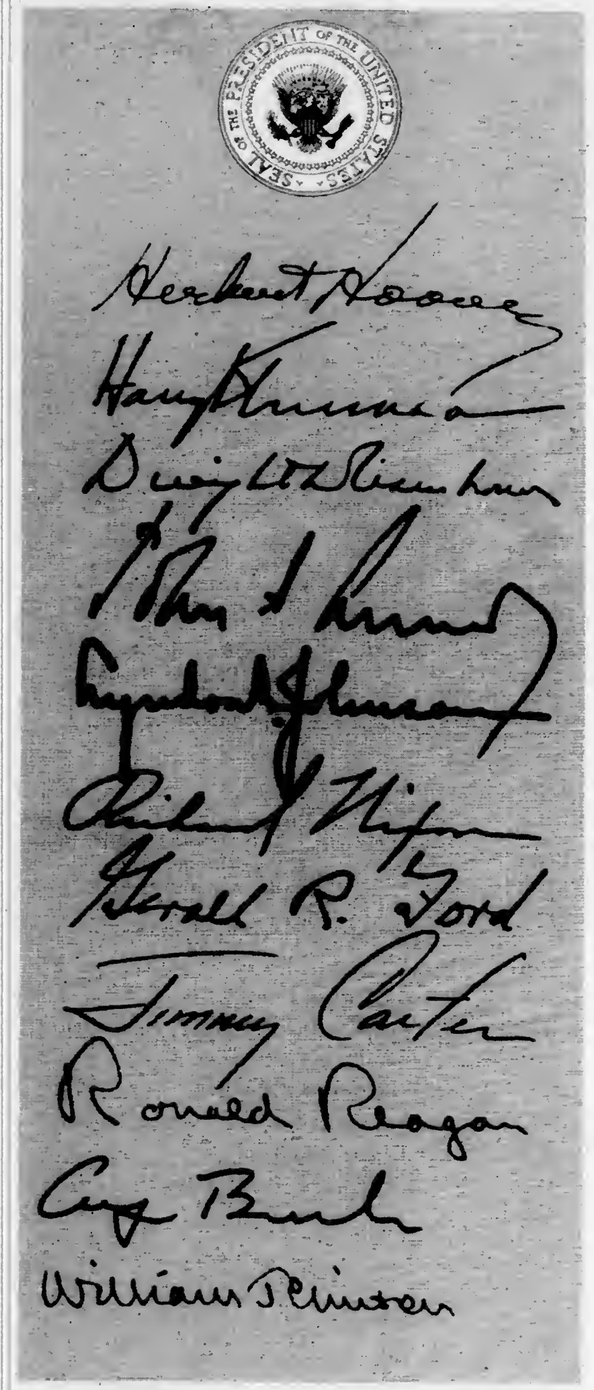
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